

1 J. FELIX DE LA TORRE, Bar No. 204282
General Counsel
2 WENDI L. ROSS, Bar No. 141030
Deputy General Counsel
3 DANIEL M. TRUMP, Bar No. 276392
Senior Regional Attorney
4 JEREMY G. ZEITLIN, Bar No. 287962
Regional Attorney
5 PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
6 Sacramento, CA 95811-4174
Telephone: (916) 322-3198
7 Facsimile: (916) 327-6377
PERBLitigation@perb.ca.gov
8
9 Attorneys for State of California,
PUBLIC EMPLOYMENT RELATIONS BOARD

FILED
Superior Court Of California,
Sacramento
05/02/2018
skhorn1
By _____ Deputy
Case Number:
34-2018-00232166

10 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 PUBLIC EMPLOYMENT RELATIONS
13 BOARD,
14 Plaintiff,
15 v.
16 AMERICAN FEDERATION OF STATE,
17 COUNTY, AND MUNICIPAL
EMPLOYEES, LOCAL 3299/
18 UNIVERSITY PROFESSIONAL AND
TECHNICAL EMPLOYEES-
19 COMMUNICATION WORKERS OF
AMERICA, LOCAL 9119/AND
20 CALIFORNIA NURSES ASSOCIATION,
Defendants.
21
22 REGENTS OF THE UNIVERSITY OF
CALIFORNIA,
23 Real Party in Interest.

Case No.: [***]
**COMPLAINT FOR INJUNCTIVE
RELIEF**

Ex Parte Hearing Date:
Date: May __, 2018
Time:
Dept.:
Judge:

Exempt from Fees
(Gov. Code, § 6103)

1 TO THE HONORABLE COURT, CLERK OF THE COURT, AND ALL PARTIES:

2 Comes now Plaintiff California Public Employment Relations Board (PERB or Board),
3 and alleges a claim for injunctive relief regarding a strike and sympathy strike by employees who
4 are represented for purposes of collective bargaining by Defendants American Federation of
5 State, County, And Municipal Employees Local 3299 (AFSCME), University Professional and
6 Technical Employees-Communication Workers of America Local 9119 (UPTE), and California
7 Nurses Association (CNA) and employed at the five Medical Centers operated by Real Party in
8 Interest University of California (UC or University)¹ (as well as medical clinics and student
9 health centers), a strike or sympathy strike of which **the University has had more than ten**
10 **days advance notice**, which is set to begin:

- 11 • for AFSCME-represented employees at 4:00 a.m. on May 7, 2018² and conclude
12 at 3:59 a.m. on May 10;
- 13 • for UPTE-represented employees on Tuesday, May 8 at 4:00 a.m. and conclude at
14 3:59 a.m. on May 10; and
- 15 • for CNA-represented employees on Tuesday, May 8 at 4:00 a.m. and conclude at
16 3:59 a.m. on May 10.

17 The strike or sympathy strike involves certain “essential” employees whose participation in the
18 strike creates a substantial and imminent threat to the health or safety of the public under the test
19 established by the California Supreme Court in *County Sanitation Dist. No. 2 v. Los Angeles*
20 *County Employees Ass’n* (1985) 38 Cal.3d 564 (*County Sanitation*):

21 **Parties**

22 1. Plaintiff PERB, is now and at all times mentioned herein has been an
23 administrative agency created by Government Code section 3541, and statutorily vested with the
24 authority to administer the Higher Education Employer-Employee Relations Act (HEERA)

25
26
27 ¹ PERB anticipates that Real Party in Interest University will seek to intervene in this
matter.

28 ² All further references are to the year 2018, unless otherwise specified.

1 (Gov. Code, § 3560 et seq.)³ for the purpose of, inter alia, promoting the development of
2 harmonious and cooperative labor relations between California's public-sector employers and
3 their employees, including California's public higher education employers and their employees.
4 (§ 3560 et seq.)

5 2. PERB alone has the power to petition a superior court for injunctive relief.
6 PERB may exercise this authority upon the issuance of an administrative complaint charging that
7 an employer or employee organization has engaged or is engaging in an unfair practice. (§ 3563,
8 subdivision (i) see also Cal. Code Regs., tit. 8, § 32450 et seq.⁴; *City of San Jose v. Operating*
9 *Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 605-608; *San Diego Teachers Assn. v.*
10 *Superior Court* (1979) 24 Cal.3d 1, 12-15.)

11 3. As a public agency, PERB is not required to file a bond or undertaking when
12 requesting injunctive relief. (Code Civ. Proc., § 529, subd. (b)(3).)

13 4. As a public agency, PERB is not required to pay a filing fee. (§ 6103.)

14 5. Defendant AFSCME is and at all times mentioned herein has been an employee
15 organization in the State of California within the meaning of section 3562, subdivision (f)(1).
16 AFSCME is the recognized exclusive representative, within the meaning of section 3562,
17 subdivision (i), of the University employees in the Service (SX) and Patient Care Technical
18 (EX/PCT) bargaining units. AFSCME operates offices at various locations in California,
19 including the cities of Sacramento, Oakland, San Francisco, Los Angeles, Orange, and San
20 Diego in the counties, respectively of Sacramento, Alameda, San Francisco, Los Angeles,
21 Orange and San Diego.

22 6. Defendant UPTE is and at all times mentioned herein has been an employee
23 organization in the State of California within the meaning of section 3562, subdivision (f)(1).
24 UPTE is the recognized exclusive representative, within the meaning of section 3562,
25 subdivision (i), of the University employees in the Health Care Professionals (HX) bargaining
26

27 ³ All further references are to the Government Code, unless otherwise stated.

28 ⁴ All further citations to provisions of the California Code of Regulations, title 8, will use
the shorthand "PERB Regulation," followed by section and subsection numbers as appropriate.

1 unit. UPTE operates offices at various locations in California, including the cities of
2 Sacramento, Berkeley, San Francisco, Los Angeles, Newport Beach, and San Diego in the
3 counties, respectively of Sacramento, Alameda, San Francisco, Los Angeles, Orange and San
4 Diego.

5 7. Defendant CNA is and at all times mentioned herein has been an employee
6 organization in the State of California within the meaning of section 3562, subdivision (f)(1).
7 CNA is the recognized exclusive representative, within the meaning of section 3562, subdivision
8 (i), of the University employees in the Nurse (NX) bargaining unit. CNA operates offices at
9 various locations in California, including the cities of Sacramento, Oakland, Glendale, Orange in
10 the counties, respectively of Sacramento, Alameda, Los Angeles, and Orange.

11 8. Real Party in Interest University is now and at all times mentioned herein has
12 been a higher education employer within the meaning of section 3562, subdivision (g), and the
13 employer of appropriate units of employees, including employees in the SX, EX/PCT, HX, and
14 NX bargaining units, exclusively represented by AFSCME, UPTE and CNA. The University is
15 and at all times mentioned herein has been operating various medical facilities in and throughout
16 California, including in the cities of Sacramento, San Francisco, Los Angeles, Irvine, and San
17 Diego, in the counties, respectively of Sacramento, San Francisco, Los Angeles, Orange and San
18 Diego.

19 **Jurisdiction and Venue**

20 9. This Court has jurisdiction of the subject matter of this action pursuant to Code
21 of Civil Procedure sections 526 and 527, and the specific relief sought herein is authorized by
22 section 3563, subdivision (i) and PERB Regulation 32450 et seq.

23 10. Venue is proper in this Court because it is the Court of first resort with the
24 power to grant relief to PERB, and because AFSCME, UPTE, CNA, and the University either
25 have offices within Sacramento County and/or do business within Sacramento County.

26 **The Parties' Recent Collective Bargaining History and Commencement of Strike**

27 11. AFSCME and the University were signatories to a Memorandum of
28 Understanding (MOU) for the SX bargaining unit, covering approximately 7,000 University

1 service employees in various classifications, including janitors and cafeteria workers. (A
2 description of the demographics and a full list of classifications in the SX unit, along with
3 applicable wage schedules, are available on UC's website.⁵) The most recent MOU between
4 AFSCME and UC covering the SX unit expired on June 30, 2017. (*Ibid.*) That MOU
5 contained a no-strike clause, which expired along with the MOU on that same date. (*Ibid.*)

6 12. On or about April 26, AFSCME, through its officers, agents, representatives,
7 and/or members, and in acting in concert with them, gave the University formal notice of its
8 intent for SX unit members to engage in a 72-hour strike at each of the University's medical
9 facilities in California—including UC Davis Medical Center, UC San Francisco Medical
10 Center, UC San Francisco-Mission Bay, UC Los Angeles Medical Center, UC Irvine Medical
11 Center and UC San Diego Medical Center—beginning at 4:00 a.m. on May 7 and concluding
12 at 3:59 a.m. on May 10 (except striking employees who were scheduled to work shifts
13 commencing prior to 4:00 a.m. on Thursday, May 10 will remain on strike through the close
14 of those shifts and will not report to work in mid-shift). (Ross Decl., Ex. O.)

15 13. AFSCME and the University are also signatories to an MOU for the EX/PCT
16 bargaining unit, which covers approximately 13,000 Patient Care Technical employees in
17 various classifications, including: licensed vocational nurses (LVNs), laboratory technicians,
18 radiologic technicians, pharmacy technicians, and respiratory therapists. Most of the
19 employees in the EX/PCT bargaining unit work at the five UC Medical Centers; a small
20 number of EX/PCT employees work at UC's academic campuses. There are no registered
21 nurse (RN) or physician classifications in the EX/PCT unit. A description of the
22 demographics and a full list of classifications in the EX unit, along with applicable wage
23 schedules, are available on UC's website.

24 14. The most recent MOU between AFSCME and UC covering the EX/PCT unit
25 expired on December 31, 2017. (UC website.) That MOU contained a no-strike/no-sympathy
26 strike clause, which expired along with the MOU on that same date. (*Ibid.*)

27
28 ⁵ UC's website is as follows: <https://ucnet.universityofcalifornia.edu/labor/bargaining-units>

1 15. On or about April 26, AFSCME through its officers, agents, representatives,
2 and/or members, and acting in concert with them, gave the University formal notice of its
3 intent for the EX/PCT unit members to engage in a 72-hour sympathy strike from 4:00 a.m.
4 on May 7 until 3:59 a.m. on May 10, at the same locations as the SX unit strike. (Ross Decl.,
5 Ex. P.)

6 16. The EX/PCT sympathy strike notice also provided the following “non-
7 precedent-setting” exceptions: (1) sufficient respiratory therapists so that, when counted as a
8 supplement to supervisors, the combined staffing level in all NICUs, PICUs and BICUs will
9 equal that found on a typical Sunday or holiday; (2) sufficient hemodialysis technicians and
10 hospital laboratory technicians at San Francisco General Hospital so that, when counted as a
11 supplement to supervisors, the combined staffing level will equal that found on a typical
12 Sunday or holiday; (3) strike activity will be called off immediately in any location affected
13 by a regional disaster causing a sharp upward spike in medical treatment needs; and (4)
14 AFSCME has created a Patient Protection Task Force that can assist in providing additional
15 EX unit staffing should unmet emergent staffing needs arise during the strike. (Ross Decl.,
16 Ex. P.)

17 17. The most recent MOU for the HX bargaining unit expired on October 31, 2017.
18 That MOU contained a no-strike/no-sympathy strike clause, which expired along with the MOU
19 on that same date. (UC website.)

20 18. On or about April 26, UPTE through its officers, agents, representatives, and/or
21 members, and acting in concert with them gave the University formal notice of its intent for HX
22 unit members to engage in a 48-hour sympathy strike beginning at 4:00 a.m. on May 8, and
23 concluding at 3:59 a.m. on May 10 at the same location noticed for the SX unit strike. (Ross
24 Decl., Ex. Q.)

25 19. The HX sympathy strike notice also provided the following “non-precedent-
26 setting” exceptions: (1) sufficient inpatient pharmacists and clinical laboratory scientists so that,
27 when counted as a supplement to supervisors, the combined staffing level will equal that found
28 on a typical Sunday or holiday; (2) sufficient pharmacists working in California’s poison control

1 system so that, when counted as a supplement to supervisors, the combined staffing level will
2 equal that found on a typical Sunday or holiday; (3) a hospital radiation physicist at UCSF for
3 the day shift; (4) strike activity will be called off immediately in any location affected by a
4 regional disaster causing a sharp upward spike in medical treatment needs; and (5) UPTE has
5 created a Patient Protection Task Force that can assist in providing additional HX unit staffing
6 should unmet emergent staffing needs arise during the strike. [Ross Decl., Ex. Q.]

7 20. CNA and the University are signatories to an MOU for the NX bargaining unit,
8 which covers approximately 14,000 nursing employees. Most of the employees in the NX unit
9 work at the five UC Medical Centers; other NX employees work at UC's academic campuses.
10 There are no physician classifications in the NX unit. (UC Website)

11 21. The most recent MOU for the NX bargaining unit expired on July 31, 2017. (UC
12 website.) That MOU contained a no-strike/no-sympathy strike clause, which expired along with
13 the MOU on the same date. (*Ibid.*)

14 22. On or about April 26, CNA through its officers, agents, representatives, and/or
15 members, and acting in concert with them gave the University formal notice of its intent for NX
16 unit members to engage in a 48-hour sympathy strike beginning at 4:00 a.m. on May 8, and
17 concluding at 3:59 a.m. on May 10 at the same location noticed for AFSCME's SX unit strike.
18 (Ross Decl., Ex. R.)

19 23. On or about April 26, and continuing to date, AFSCME, UPTE, and CNA through
20 their officers, agents, representatives, and/or members, and acting in concert with them, have
21 called for, authorized, assisted, encouraged, sanctioned, condoned, provided support to, and
22 caused their members in the EX/PCT, HX, NX, and SX units—including certain allegedly
23 "essential" employees whose absence from or refusal to work during the strike may pose an
24 imminent and substantial threat to the public health and safety—to withdraw their services for
25 and during the strike to commence on May 7. [Ross Decl., Exhs. O-R.]

26 **Operations of the Five University Medical Centers Necessary for Maintaining**
27 **Public Health and Safety**

28 24. Because the nature of the services provided at the five UC Medical Centers is

1 important to an understanding of the legal issues presented in this case, a brief summary of these
2 operations is included here, along with information about other comparable private and public
3 hospitals and medical centers in the geographic regions served by the UC Medical Centers.

4 25. The UC Davis Medical Center, located in Sacramento, California, is the only
5 adult and pediatric Level One trauma center in the geographic region from Merced north to the
6 Oregon border. (Ross Decl., Ex. W [Marsh Decl.]) However, there are five Level Two trauma
7 centers in the same region, including three in the Sacramento area. (*Ibid.*) UC Davis Medical
8 Center also includes a Burn Center, which averages 14 patients per day, and is the primary
9 referral hospital for rural hospitals in Northern California for such care. (*Ibid.*) UC Davis has,
10 on average, a total of 627 licensed inpatient beds. (*Ibid.*)

11 26. The UC Irvine Medical Center is the only Level One trauma center in Orange
12 County. (Ross Decl., Ex. W, [Patton Decl.]) UC Irvine Medical Center provides a high level of
13 indigent care (*Ibid.*), has a specialized burn center (*Ibid.*), and receives transfer patients from
14 other hospitals. (*Ibid.*) UC Irvine Medical Center has 417 licensed beds. (*Ibid.*)

15 27. The UCLA Medical Center is one of four Level One trauma centers in Los
16 Angeles County. (Ross Decl., Ex. W [Decl. Cherry.]) UCLA Medical Center is an expert
17 research center, performs some highly specialized acute care services, and is a large organ
18 transplant center. (*Ibid.*)

19 28. The UC San Diego Medical Center is one of two Level One trauma centers in San
20 Diego County. (Ross Decl., Ex. W [Scioscia Decl.]) It is the only hospital in the County for
21 lung transplants, and also performs other types of organ transplant operations, although such
22 surgeries are generally not performed on an emergent basis. (*Ibid.*) UC San Diego Medical
23 Center serves a high level of indigent care. (*Ibid.*)

24 29. The UCSF Medical Center treats patients with the highest severity illnesses of any
25 regional hospital. (Ross Decl., Ex. W [Decl. Green, A.]) UCSF Medical Center also provides
26 triage services for other hospitals confronted with complex medical emergencies. (*Ibid.*) UCSF
27 also operates a locked inpatient facility for involuntarily committed psychiatric patients (Ross
28 Decl., Ex. Y [Decl. Polek.])

1 **AFSCME's and UPTE's Requests for Information, in**
2 **Anticipation of Injunctive Relief Requests by UC Seeking to Prohibit**
3 **"Essential Employees" From Striking in the EX/PCT, SX, and HX Bargaining Units**

4 30. Sections 3570 and 3571.1, require higher-education employers and employee
5 organizations to meet and negotiate in good faith over matters within the scope of representation,
6 and to participate in good faith in PERB's impasse procedures, including mediation and
7 factfinding. Failure or refusal by a higher-education employer to do so constitutes an unfair
8 practice under sections 3571, subdivision (c). Included within the employer's duty to meet and
9 negotiate in good faith is an obligation to provide an exclusive representative of its employees,
10 upon request, all information that is "necessary and relevant" to the discharge of its duty of
11 representation. Failure or refusal to provide such information is a per se violation of the
12 employer's duty to bargain in good faith.

13 31. On or about August 9, 2017 AFSCME submitted its request for information to the
14 University, and on or about February 15, UPTE submitted the same request for information
15 asking for copies of numerous items of information that they claimed to be relevant and
16 necessary to the discharge of their duties to represent employees, including, but not limited to:
17 (1) UC's contingency plans pertaining to a strike or work stoppage at any University facility
18 between January 1, 2012-present; (2) any and all agreements currently in effect between the
19 University and any entity that offers to supply replacement workers in the event of a strike; (3)
20 inquiries, orders, emails or requests, as well as any answers thereto, regarding temporary or
21 replacement employees for any classifications in the EX, SX, or HX bargaining units made to
22 any registry, provider of temporary labor, or strike staffing agency, or any other outside staffing
23 agency of any kind in anticipation of any strike by AFSCME in 2013 or 2014 or UPTE in 2013;
24 (4) inquiries, orders, emails, or requests, as well as any answers thereto, regarding temporary
25 employees for any classifications in the EX or HX bargaining units made to any registry,
26 provider of temporary labor or outside staffing agency of any kind since 2012; (5) records of all
27 deposits or payment paid to any strike replacement agency; (6) records and information showing
28 "minimum staffing" for employees in those classifications/titles at each UC Medical Center on
regular weekdays, weekends, and key holidays; (7) for any AFSCME- or UPTE-represented job

1 classifications at each UC Medical Center that UC claims should be wholly or partially
2 prohibited from striking in order to protect the public from alleged imminent and substantial
3 threats to the public health and safety, and records and information showing the full names and
4 titles of all University employees *not* represented by AFSCME or UPTE who could partially or
5 fully cover for employees in the relevant EX or HX classifications; (8) a complete list of any and
6 all AFSCME- and UPTE-represented job classifications, titles, or employees that should be
7 wholly or partially prohibited from participating in a strike in order to protect the public from
8 alleged imminent and substantial threats to the public health and safety, including the number of
9 employees in each classification or job title that should be prohibited from striking for each shift
10 during a strike, the specific work areas where such employees should be required to work during
11 a strike, and an explanation of the extent to which any claimed need for these employees during a
12 strike can be mitigated or reduced by a reduction in patient census, diversion or transfer of
13 patients, postponement of care, closure of certain operations before or after a strike, use of
14 supervisory, managerial, administrative and other non-AFSCME-represented staff to fill in
15 during a strike, use of nurses, doctors, fellows, residents, or medical students to perform certain
16 functions, and the use of registries, temporary agencies travelers, and staff recruited by striker
17 replacement companies; (9) all records such as invoices, billing statements, etc., reflecting
18 expenses incurred at the five UC Medical Centers or other medical facilities contracted with by
19 the University, as a result of actual or threatened strike activity at any time in 2013 or 2014; (10)
20 all records reflecting potential revenues to the University that were lost or delayed as a result of
21 actual or threatened strike activity at any time in 2013 or 2014; (11) all records indicating
22 monetary savings by the University, including reductions in compensation costs for University
23 employees, as a result of strike activity occurring at any time in 2013; (12) all records including
24 internal expense tracking records, reflecting payments to employees for overtime hours worked
25 as a result of strike activity occurring at any time in 2013; (13) all records indicating amounts
26 billed to and/or paid by the University to outside law firms for legal services rendered since
27 January 1, 2013, pertaining to anticipated or actual legal proceedings as to strike activity by
28 AFSCME, UPTE or CNA; (14) all records reflecting orders or requests by the University for

1 temporary labor or temporary employees of any kind in anticipation of or as a result of actual or
2 threatened strike activity at any time in 2013 or 2014; (15) all written correspondence of any
3 kind between the University and any provider of temporary labor or temporary employees,
4 written in anticipation of or as a result of actual or threatened strike activity at any time in 2013
5 or 2014; (16) all records reflecting University plans for operation, partial operation, closure or
6 partial closure of University hospitals and/or medical clinics during actual or threatened strike
7 activity at any time in 2013 or 2014; and (17) all records reflecting the University's instructions
8 to its supervisors and/or managers to inquire as to whether employees would be at work during
9 actual or threatened strike activity at any time in 2013 or 2014. (Ross Decl., Exhs. B-C.)

10 32. To date, the University has failed to provide all of the information described in
11 paragraph 32, claiming that it had no legal obligation to do so. (See Ross Decl., Exhs. B-C.)

12 33. On or about April 16, the Unions filed with PERB two unfair practice charges
13 (UPCs), Nos. SF-CE-1183-H (AFSCME) and SF-CE-1184-H (UPTe), alleging that the
14 University failed and refused to meet and confer in good faith with them in violation of
15 Government Code section 3571, subdivision (c), and interfered with the rights of bargaining unit
16 employees to be represented by the Unions in violation of Government Code section 3571,
17 subdivision (a), by refusing to provide information necessary and relevant to its ability to carry
18 out its representational duties. (Ross Decl., Exhs. B-C.)

19 34. Also on April 16, having not received the bulk of the requested information from
20 the University, the Unions filed a Joint Position Statement and Request (UJR), asking to
21 consolidate the administrative proceedings on UPC Nos. SF-CE-1183-H and SF-CE-1184-H; to
22 consolidate those charges with anticipated charges to be filed by the University in conjunction
23 with a request for injunctive relief (IR Request) as to a possible strike by "essential employees"
24 in the EX/PCT, SX, and HX units at the five UC Medical Centers. The voluminous filing in
25 support of this motion was accompanied by a 143-page brief, and more than 100 declarations in
26 support of the Unions' position that the requested information was necessary and relevant to
27 prepare for and defend against the anticipated IR Requests. (Ross Decl., Exhs. D - N.)

28 35. On or about May 1, PERB's General Counsel issued administrative complaints on

1 UPC Nos. SF-CE-1183-H and SF-CE-1184-H. (Ross Decl., Ex. HH.)

2 **UC's Unfair Practice Charges and Requests for Injunctive Relief to Enjoin the Essential**
3 **Employees from Striking**

4 36. Sections 3570 and 3590 et seq., require higher-education employers and employee
5 organizations to meet and negotiate in good faith over matters within the scope of representation,
6 and to participate in good faith in PERB's impasse procedures under HEERA, including
7 mediation and factfinding. Failure or refusal by an employee organization to do so constitutes an
8 unfair practice under sections 3571.1, subdivision (c), and/or 3571.1, subdivision (d).

9 37. On or about April 27, UC filed with PERB three unfair practice charges, UPC
10 Nos. SF-CO-222-H (AFSCME), SF-CO-223-H (UPTE) and SF-CO-224-H (CNA), alleging in
11 relevant part that the entire May 7-10, strike noticed by AFSCME in the SX and EX/PCT units,
12 and the entire May 8-10 sympathy strike noticed by UPTE in the HX unit and CNA in NX unit
13 are unlawful because some EX/PCT, HX and NX unit members are "essential employees,"
14 whose absence from or refusal to work during the strike may pose an imminent and substantial
15 threat to the public health and safety within the meaning of *County Sanitation, supra*, 38 Cal.3d
16 564. (Ross Decl., Exhs. S - U.)

17 38. On May 1, PERB's General Counsel filed administrative complaints based on
18 UPC Nos. SF-CO-222-H, SF-CO-223-H, and SF-CO-224-H. (Ross Decl., Ex. II.)

19 39. On or about April 27, UC filed with PERB three requests for injunctive relief
20 pursuant to section 3563, subd. (i), and PERB Regulation 32450 et seq., seeking to enjoin the
21 sympathy strike noticed by AFSCME in the EX/PCT unit (IR Request No. 746), the sympathy
22 strike noticed by UPTE in the HX (IR Request No. 747), as well as the sympathy strike noticed
23 by CNA in the NX unit (IR Request No. 748), contending in relevant part that these strikes are
24 unlawful because some EX/PCT, HX and NX unit members may be "essential employees,"
25 whose absence from or refusal to work during the strike may pose an imminent and substantial
26 threat to the health and safety of the public within the meaning of *County Sanitation, supra*, 38
27 Cal.3d 564. (Ross Decl., Exhs. V, X & AA.)

28 40. The University's IR Request Nos. 746, 747, 748 specifically asked PERB to seek

1 a court order enjoining certain designated "essential employees" in EX/PCT, HX and NX units
2 from engaging in a sympathy strike between May 7 through 10. (Ross Decl., Exhs. V, X & AA.)

3 41. In support of its requests for injunctive relief, the University provided PERB with
4 numerous declarations supporting its request and demonstrating that the absence of allegedly
5 "essential employees" in the EX/PCT, HX and NX units will disrupt the University's ability to
6 provide necessary medical care to numerous patients treated daily at its various medical
7 facilities, including the five UC Medical Centers. (Ross. Decl., Exhs. W, Y & AA.)

8 42. On or about May 2, the Board granted the University's IR Request Nos. 746, 747,
9 and 748, in part, and directed the General Counsel to initiate an appropriate Superior Court
10 action for injunctive relief, but only as to those employees in the EX/PCT, HX and NX units that
11 the University has clearly demonstrated with competent and admissible evidence, and/or UC and
12 the Unions have stipulated, to be employees who provide "truly essential" services within the
13 meaning of *County Sanitation, supra*, 38 Cal.3d 564. (Ross Decl., MM.)

14
15 **FIRST CAUSE OF ACTION**
16 **Injunctive Relief**

17 (Code Civ. Proc., §§ 526 & 527; Gov. Code, § 3563, subd. (i);
18 Cal. Code Regs. § 32450 et seq.)

19 43. PERB incorporates all preceding paragraphs as though fully set forth herein.

20 44. Section 3571.1, subdivision (c) requires employee organizations representing
21 higher education employees to meet and negotiate in good faith over matters within the scope
22 of representation. It is an unfair labor practice for an employee organization to fail or refuse
23 to bargain in good faith under section 3571.1, subdivision (c). Subdivision (d) of the same
24 section provides in pertinent part that it is unlawful for an employee organization to refuse to
25 participate in good faith in the impasse procedures.

26 45. Public employee strikes that involve "essential employees" are illegal when the
27 striking employees perform essential services such that the "strike creates a substantial and
28 imminent threat to the health or safety of the public." (*County Sanitation, supra*, 38 Cal.3d
564, 586; *City and County of San Francisco v. United Assn. of Journeymen etc. of United
States & Canada* (1986) 42 Cal.3d 810, 813.)

1 46. AFSCME, UPTE and CNA's conduct as described above constitutes a prima facie
2 violation of section 3571.1 et seq., meaning that the strike and sympathy strikes noticed by the
3 Unions in the EX/PCT, HX, and NX units to occur on May 7-10, may be unlawful, but *only to*
4 *the extent* that they include employees who provide "truly essential services," and whose
5 participation in the strikes may create an imminent and substantial threat to the public health and
6 safety within the meaning of *County Sanitation, supra*, 38 Cal.3d 564. A true and correct copy of
7 the list of those employees who UC has clearly demonstrated with competent and admissible
8 evidence, and/or who defendants AFSCME and UPTE have agreed for present purposes only,
9 and only on a "non-precedential basis," to be "essential" within the meaning of *County*
10 *Sanitation, supra*, 38 Cal.3d 564, is attached hereto and to PERB's "[Proposed] Order" as
11 Exhibit A.

12 47. The University's declarations detail substantial and irreparable injury if the
13 employees listed in Exhibit A, who have been clearly demonstrated by competent and admissible
14 evidence or by agreement of the parties to be employees who provide "truly essential services"
15 within the meaning of *County Sanitation, supra*, 38 Cal.3d 564, are not enjoined from striking.
16 (Ross Decl., Exhs. W, Y & AA.)

17 48. The instant action for injunctive relief is filed by direction of the Board. (Ross
18 Decl., Ex. MM.)

19 49. Under the well-settled standards governing an action for injunctive relief in public
20 sector labor relations cases, *Public Employment Relations Board v. Modesto City Schools*
21 *District* (1982) 136 Cal.App.3d 881 (*Modesto*), PERB has "reasonable cause" to believe that a
22 violation of HEERA has occurred or imminently will occur because the Unions' conduct in this
23 case—i.e., calling for, authorizing, assisting, encouraging, sanctioning, condoning, lending
24 support to, or causing any "truly essential" EX/PCT, HX and NX bargaining-unit members to
25 withhold their services during the noticed strike in those units—amounts to an unlawful work
26 stoppage within the meaning of *County Sanitation, supra*, 38 Cal.3d 564.

27 50. Injunctive relief is also "just and proper" in the present circumstances because,
28 unless the noticed strikes are enjoined to the extent requested herein, the Board will be unable to

1 award an effective final remedy and public policy will be thwarted; the Unions' strike will create
2 a substantial and irreparable risk of harm to the public's health and safety; and no adequate
3 remedy at law exists because monetary damages are unavailable and insufficient to remedy any
4 such resulting harm.

5 WHEREFORE, Plaintiff prays for judgment as follows:

6 1. That defendants AFSCME, UPTE, and CNA their agents, employees,
7 representatives, officers, organizers, committee persons, stewards, members, and all
8 corporations, unincorporated associations, and natural persons acting in concert and participation
9 with any of them, until a hearing or trial on a preliminary injunction, be enjoined and restrained:

10 a. from calling, continuing, sanctioning, inducing, aiding, enticing,
11 encouraging, abetting, or assisting certain employees—specifically those employed in the
12 classifications and positions identified in Exhibit A— to engage in any strike, walkout,
13 slowdown, or work stoppage of any nature against UC during their working hours on or about
14 May 7-10, 2018;

15 b. from continuing in effect or refusing to rescind any strike, walkout,
16 slowdown, or work stoppage, notice, call, order, or sanction heretofore issued by defendants
17 AFSCME, UPTE or CNA to or involving those "essential employees" employed in the
18 classifications or positions identified in Exhibit A with respect to the anticipated strike or work
19 stoppage on or about May 7-10, 2018.

20 2. That defendants AFSCME, UPTE, and CNA and their agents, employees,
21 representatives, officers, organizers, committee persons, stewards, members, and all
22 corporations, unincorporated associations, and natural persons acting in concert and participation
23 with any of them, until a hearing or trial on a preliminary injunction, be enjoined and restrained
24 from doing or attempting to do, directly or indirectly, by any means, method or device
25 whatsoever, any of the acts enjoined in paragraph 1 hereof and each subdivision thereof during
26 the duration of this action.

27 3. That a Temporary Restraining Order be granted, enjoining and restraining
28 AFSCME, UPTE, and CNA and their agents, employees, representatives, officers, organizers,

1 committee persons, stewards, and members, and all persons acting in concert with them or any of
2 them, until the hearing upon an Order to Show Cause, from doing or causing or permitting to be
3 done any of the acts complained of in paragraph 1 of this prayer.

4 4. That upon the hearing of said Order to Show Cause, a Preliminary Injunction be
5 granted herein restraining AFSCME, UPTE and CNA and their agents, employees,
6 representatives, officers, organizers, committee persons, stewards, and members, and all persons
7 acting in concert with them or any of them, from doing or causing or permitting to be done any
8 of the acts or things prayed in paragraph 1 of this prayer to be enjoined and restrained.


9 5. For its cost of suit herein incurred.

10 6. For such other and further relief as may be just and proper.

11
12 Dated: May 2, 2018

Respectfully submitted,

13 J. FELIX DE LA TORRE, General Counsel

14 By 
15 WENDI L. ROSS, Deputy General Counsel
16 Attorneys for Plaintiff
17 PUBLIC EMPLOYMENT RELATIONS BOARD
18
19
20
21
22
23
24
25
26
27
28