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12 Attorneys for Defendant
13 LOS ANGELES UNIFIED SCHOOL DISTRICT

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 CHANDA SMITH, et al.,
17 Plaintiffs,
18 v.
19 LOS ANGELES UNIFIED SCHOOL
20 DISTRICT, et al.,
21 Defendants/Third-Party
Plaintiff
22 v.
23 UNITED TEACHERS LOS
24 ANGELES.
25 Third-Party
26 Defendants.

Case No. CV 93-7044-RSWL (GHKx)
ASSIGNED FOR ALL PURPOSES TO
JUDGE RONALD S. W. LEW
**DEFENDANT LOS ANGELES
UNIFIED SCHOOL DISTRICT'S
EX PARTE APPLICATION FOR
LEAVE OF COURT TO FILE
THIRD-PARTY COMPLAINT**
[RULE 14]

1 A strike of teachers, nurses, counselors, and psychologists is imminent in the
2 Los Angeles Unified School District (LAUSD or District). The strike is set to
3 commence next Thursday, January 10, 2019, and as of today's date no exception has
4 been made for the provision of services to students with disabilities who have a right
5 under federal law and the within Modified Consent Decree (MCD) to receive special
6 education and related services.

7 The District hereby applies ex parte for leave of court to file a third-party
8 complaint under Rule 14 against Third-Party Defendant United Teachers Los Angeles
9 (UTLA), the exclusive bargaining representative of LAUSD certificated classroom
10 teachers, nurses, psychologists, counselors, and other LAUSD employees, who
11 provide special education and related services to individuals with exceptional needs
12 (i.e., special education students) enrolled in and attending schools within the LAUSD.

13 The Third-Party Complaint, a proposed-version of which is being lodged
14 concurrently herewith, seeks declaratory and injunctive relief against UTLA,
15 enjoining UTLA, its officers, and representatives from causing, encouraging,
16 condoning, or participating in any strike, slowdown, or other work stoppage by any
17 UTLA bargaining unit member who provides educational services to LAUSD special
18 education students.

19 The relief that will be sought will be limited to services being provided to
20 students with disabilities, and is predicated on the requirements under the IDEA and
21 the MCD that students with disabilities not be deprived of legally-mandated services.

22 As set forth in the points and authorities filed concurrently herewith, the
23 proposed complaint is timely under Rule 14 because the events set forth there
24 occurred very recently and LAUSD has acted promptly in filing this action. The
25 request is filed ex parte because the strike date is imminent, and LAUSD will need to
26 seek immediate relief to protect the rights of students with disabilities.

27 Counsel for LAUSD spoke on the morning of January 1, 2019, with two of the
28 three Plaintiff-side parties in the case (Seymour Amster, Esq., for the April Munoz

1 Intervenor, and Suzanne Snowden, Esq. for the Mina Lee Intervenor). Both Mr.
2 Amster and Ms. Snowden conveyed that their clients have no objection to the filing of
3 the Third-Party Complaint, and that they will not oppose this ex parte application.
4 (See Declaration of Barrett K. Green, filed concurrently herewith.)

5 Counsel for Plaintiffs' Class has stated that the Class will oppose the
6 application. (See Declaration of Barrett K. Green, filed concurrently herewith.)

7 As more fully set forth in the points and authorities and accompanying papers,
8 it is respectfully submitted that good cause exists for granting the ex parte application,
9 and LAUSD respectfully requests that the Court grant leave for the filing of the
10 proposed Complaint.

11 Dated: January 3, 2019

Respectfully submitted,

12
13 */s/ Barrett K. Green* _____

14 BARRETT K. GREEN
LITTLER MENDELSON PC

15 Attorneys for Defendant LAUSD

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ASSIGNED FOR ALL PURPOSES TO
JUDGE RONALD S. W. LEW
**DEFENDANT LOS ANGELES
UNIFIED SCHOOL DISTRICT'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE APPLICATION FOR
LEAVE OF COURT TO FILE
THIRD-PARTY COMPLAINT**
[RULE 14]

INTRODUCTION

1
2 Defendant Los Angeles Unified School District (LAUSD or District) submits
3 this memorandum of points and authorities in support of its application for leave of
4 court to file a Third-Party Complaint against proposed Third-Party Defendant United
5 Teachers Los Angeles (UTLA) in the within action.

6 A strike of teachers, nurses, counselors, and psychologists is imminent. The
7 strike is set to commence next Thursday, January 10, 2019, and, as of today's date, no
8 exception has been made for the provision of services to students with disabilities who
9 have a right under federal law and the within Modified Consent Decree (MCD) to
10 receive special education and related services. (See Declaration of Barrett K. Green
11 ("Green Decl."), filed concurrently herewith, pars. 5-8.)

12 UTLA is the exclusive bargaining representative of LAUSD certificated
13 classroom teachers, nurses, psychologists, counselors, and other LAUSD employees,
14 who provide special education and related services to individuals with exceptional
15 needs (i.e., special education students) enrolled in and attending schools within the
16 LAUSD. (Green Decl., par. 5.)

17 The Third-Party Complaint, a proposed-version of which is being lodged
18 concurrently herewith, seeks declaratory and injunctive relief against UTLA,
19 enjoining UTLA, its officers, and representatives from causing, encouraging,
20 condoning, or participating in any strike, slowdown, or other work stoppage by any
21 UTLA bargaining unit member who provides educational services to LAUSD special
22 education students.

23 The relief that will be sought will be limited to services being provided to
24 students with disabilities, and is predicated on the requirements under the IDEA and
25 the MCD that students with disabilities not be deprived of legally-mandated services.
26 There are separate legal proceedings ongoing with state enforcement agencies relating
27 to the labor-relations aspects of the case, and the services to be provided to non-
28 disabled children. The proposed Third-Party Action is limited to issues involving

1 students with disabilities who have rights under the IDEA and the MCD. (Green
2 Decl., par. 9.)

3 As more fully-set forth below, good cause exists for the granting of leave for
4 the following reasons:

5 1. The application was timely. LAUSD filed the application promptly upon
6 learning of the threat to disruption of special education services;

7 2. The underlying issue relates directly to matters that are the subject of the
8 within proceedings;

9 3. There is no prejudice to the plaintiffs (either Plaintiffs' Class, or either
10 set of Intervenors).

11 4. Third-Party Defendant has no say in whether the application is granted,
12 but if leave is given the Third-Party Defendant has the right to respond in the same
13 manner as any defendant, by motion or Answer.

14 5. Without adjudicating the merits of the claims in the Third-Party
15 Complaint, the Third-Party Complaint presents legitimate issues for consideration and
16 adjudication by the Court.

17 ARGUMENT

18 A. Authority For Third-Party Complaint Under Rule 14, And 19 Discretion Of The Court To Allow Filing.

20 Fed. R. Civ. Proc. 14 allows a defending party, as third-party plaintiff, to serve
21 a summons and complaint on a nonparty who is or may be liable to it for all or part of
22 the claim against it. (Fed. R. Civ. Proc. 14(a)(1).)

23 Where the defending party seeks to file the third-party complaint more than 14
24 days after service of the defending party's original answer, the third-party plaintiff
25 must obtain the court's leave to file the complaint. (Fed. R. Civ. Proc 14(a)(1).)

26 The Rule does not set forth any specific criteria which the Court should
27 evaluate in determining whether to grant leave.

28

1 However, the courts have held that in deciding whether to grant leave, a court
2 must consider the following: (1) prejudice to the original plaintiff; (2) complication of
3 issues at trial; (3) likelihood of trial delay; and (4) timeliness of the motion to implead.
4 (*Irwin v. Mascott*, 94 F. Supp. 2d 1052, 1056 (N.D. Cal. 2000.)

5 Rule 14 may be used for purpose of bringing third-party actions in cases in
6 which declaratory judgment or injunctions are sought, where common issues in
7 actions are so interrelated that it would be wastefully duplicative to require separate
8 lawsuits. *Phoenix Mut. Life Ins. Co. v. Seafarers Officers & Employees Pension Plan*,
9 128 FRD 25 (E.D.N.Y. 1989).

10 A motion for leave under Rule 14 should be liberally allowed, if it will prevent
11 duplication of suits based on closely related matters," *Shaw v. Dawson Geophysical*
12 *Co.*, 657 F.Supp.2d 740, 743 n. 2 (S.D.W.Va. 2009) (quoting *Dishong v. Peabody*
13 *Corp.*, 219 F.R.D. 382, 385 (E.D.Va. 2003)),

14 **B. Good Cause Exists For Granting Leave To File The Third-Party**
15 **Complaint.**

16 It is respectfully submitted that the factors set forth in *Irwin v. Mascott*, supra,
17 all support the granting of leave.

18 **1. No Prejudice To Plaintiff.**

19 There is no prejudice to the Plaintiff Class. The MCD is in place and there are
20 no proceedings pending at all, let alone any that will be impacted by the Third-
21 Complaint. To the contrary, the Third-Party Complaint seeks to protect the interests
22 of the Plaintiff Class in ensuring the continuity of special education and related
23 services to which the Class is entitled under the IDEA and the MCD.

24 Moreover, the two sets of Intervenors have stated that they do not oppose the ex
25 parte application or the filing of the Third-Party Complaint.¹ (Green Decl., pars. 2
26 and 3.)

27 ¹ The proposed third-party defendant (here, UTLA) is not entitled to notice of the
28 proposed complaint because it is not a party at the time the application is made. Only
the existing parties are entitled to notice. (See *Patano v. Clark Equipment Co.*, 139

1 In terms of attorneys' fees, pursuant to the MCD, the fees of class counsel are
2 being paid for by the District. (See MCD Section 19, "Attorneys' Fees and Expenses
3 to Plaintiffs' Counsel."²)

4 It is respectfully submitted that these factors all support the granting of leave.

5 **2. No Complication Of Issues At Trial.**

6 There would be no complication of issues at trial. There is no trial, and the
7 parties are operating under the terms of a consent decree. The bringing of the Third-
8 Party Complaint would in no way impact any trial involving Plaintiffs.

9 **3. No Likelihood Of Delay.**

10 There is no likelihood of delay with respect to the existing litigation. Again,
11 there are no trial-related dates imminent, and the parties are operating under the terms
12 of a consent decree.

13 **4. Timeliness Of Motion To Implead.**

14 UTLA and LAUSD have been involved in mediation and "factfinding" relating
15 to contract negotiation. (Green Decl., par. 6.) So far, these efforts have been
16 unsuccessful and, on December 19, 2018, UTLA announced a strike for UTLA unit
17 members, set to commence January 10, 2019. (Green Decl., par. 6.)

18 LAUSD promptly prepared and lodged the within Third-Party Action, less than
19 two weeks after UTLA announced the strike, and less than a week after the most
20 recent attempt (December 28, 2018) by LAUSD to persuade UTLA to return to the
21 bargaining table. (Green Decl., pars 5-8.)

22 LAUSD's request is timely.
23
24

25 FRD 40 (S.D.N.Y. 1991); see also *Hensley v. United States* (D. Montana 1968) 45
26 F.R.D. 352, 353; *Nelson v. Quimby Island Rec. Dist. Fac. Corp.* (N.D.Cal. 1980) 491
F.Supp. 1364, 1387 n.48.)

27 ² "96. Counsel for plaintiffs are entitled to recover reasonable attorneys' fees and other
28 expenses pursuant to 42 U.S.C. § 1988, 20 U.S.C. § 1415, and 29 U.S.C. § 794a(b) for
work reasonably performed on behalf of the class during the pendency of this
Modified Consent Decree"

1 Finally, to the extent the Court desires the District to preview the merits of the
2 claim in order to demonstrate a reasonable likelihood of success, the District offers the
3 following:

4 California enacted and has in effect the Educational Employment Relations Act
5 (EERA) (California Government Code section 3540 et seq.).

6 Under California Government Code section 3544 of the EERA, an employee
7 organization (i.e., union) may become the exclusive representative for the employees
8 of an appropriate unit for purposes of meeting and negotiating (i.e., collective
9 bargaining) by filing a request with a public school employer alleging that a majority
10 of the employees in an appropriate unit wish to be represented by such organization
11 and asking the public school employer to recognize it as the exclusive representative.

12 Under California Government Code section 3544.1, the public school employer
13 must grant a request for recognition filed pursuant to Section 3544 if the union in
14 question has demonstrated that it has majority support.

15 Under Government Code section 3543.3, once the union has been recognized,
16 only that union, and not individual employees, may meet and negotiate (i.e.,
17 collectively bargain) with the public school employer.

18 Pursuant to the requirements of the EERA, as enacted by the State of California
19 and mandated upon local school districts, LAUSD recognizes UTLA as the exclusive
20 bargaining representative for the unit of certificated employees of LAUSD that
21 includes teachers, nurses, psychologists, and counselors. (Green Decl., par. 5.)

22 The EERA also vests in the exclusive representative (in this instance, UTLA),
23 standing to sue in any action or proceeding instituted by it as representative and on
24 behalf of one or more of its members. (See California Government Code section
25 3543.8.)

26 Pursuant to the statutory framework described above, UTLA has an exclusive
27 derivative monopoly vested by virtue of LAUSD's recognition of UTLA as
28 bargaining representative, a monopoly imposed by the California Legislature via the

1 enactment of the EERA. In acting in this capacity, UTLA is an instrumentality
2 created by the State of California and affiliated with LAUSD.

3 Under the IDEA, the federal government provides funds to the states and, in
4 exchange, states must provide special education and related services to students with
5 disabilities. (See, e.g., *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S.
6 291, 295-96 (2006); *Schaffer v. Weast*, 546 U.S. 49, 51 (2005).)

7 The within class action alleged noncompliance by the District with
8 requirements of the IDEA and related special education laws. The MCD requires that
9 the District ensure the provision of special education services to students, and
10 noncompliance may constitute a violation of the decree. A strike would severely
11 hamper the District's ability to meet its special education obligations, the evidence in
12 support of which the District would proffer during the proceedings.

13 A disruption of services to class members would expose the District to liability
14 for violation of the MCD, a liability caused by UTLA.

15 As an instrumentality of the state, the court may enjoin unlawful activity by
16 UTLA similar to the manner in which the Supreme Court recently derived jurisdiction
17 over the dispute in *Janus v. AFSCM Et Al.* (2018) 585 U.S. ____.

18 In *Janus*, the Supreme Court was able to reach the issue of dues being received
19 by American Federation Of State, County, And Municipal Employees, Council 31, Et
20 Al ("AFSCM") because of the state statutory scheme in requiring the payment of the
21 dues.

22 The District respectfully submits that, upon application for provisional relief,
23 the District will be able to prove its case to warrant the intervention of this Court.

24 However, it is respectfully submitted that the District need not, at this stage,
25 prove that it will certainly prevail in the action, and that the District has made a
26 showing of serious issues to be considered in the Third-Party Complaint warranting
27 the granting of leave to file the Complaint.

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For the above reasons, it is respectfully submitted that good cause exists for granting the *ex parte* application, and LAUSD respectfully requests that the Court grant leave for the filing of the proposed Third-Party Complaint.

Dated: January 3, 2019

Respectfully submitted,

/s/ Barrett K. Green

BARRETT K. GREEN
LITTLER MENDELSON PC

Attorneys for Defendant LAUSD

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Case No. CV 93-7044-RSWL (GHKx)
ASSIGNED FOR ALL PURPOSES TO
JUDGE RONALD S. W. LEW
**DECLARATION OF BARRETT K.
GREEN IN SUPPORT OF
DEFENDANT LOS ANGELES
UNIFIED SCHOOL DISTRICT'S
EX PARTE APPLICATION FOR
LEAVE OF COURT TO FILE
THIRD-PARTY COMPLAINT**
[RULE 14]

1 I, Barrett K. Green, hereby declare and state as follows:

2 1. I am a shareholder with Littler Mendelson PC, counsel for Defendant Los
3 Angeles Unified School District (“District” or “LAUSD”) in the within matter. I am
4 also counsel for the District in connection with the labor relations negotiations
5 ongoing between the District and the United Teachers Los Angeles union (“UTLA”).
6 I have personal knowledge of the facts stated in this affidavit and, if called as a
7 witness, could and would testify competently thereto.

8 2. At approximately 11:00 a.m. on January 1, 2019, I spoke by telephone
9 with Suzanne Snowden, Esq., counsel for the Mina Lee intervenors. The call had
10 been arranged on December 28, 2018. During the call with Ms. Snowden, I explained
11 that LAUSD intended to file an ex parte application for leave of court to file a Third-
12 Party Complaint, and I explained to Ms. Snowden the nature of the Complaint. I
13 asked Ms. Snowden whether her clients had any objection to the application or to the
14 filing of the Complaint, and Ms. Snowden told me that they did not.

15 3. At approximately 11:07 a.m. on January 1, 2019, I spoke by telephone
16 with Seymour Amster, Esq., counsel for the April Munoz intervenors. The call had
17 been arranged on December 28, 2018. During the call with Mr. Amster, I explained
18 that LAUSD intended to file an ex parte application for leave of court to file a Third-
19 Party Complaint, and I explained to Mr. Amster the nature of the Complaint. I asked
20 Mr. Amster whether his clients had any objection to the application or to the filing of
21 the Complaint, and Mr. Amster told me that they did not.

22 4. Commencing December 28, 2018, I attempted to contact counsel for the
23 Plaintiffs’ Class (specifically, Melinda Bird, Esq., and David German, Esq.) to set up
24 a call regarding the within ex parte application, but was unable to reach them, most
25 likely due to the holiday season. I connected with Ms. Bird yesterday morning,
26 January 2, 2019, and arranged for a 1:30 p.m. call. Ms. Bird and I spoke at
27 approximately 1:30 p.m. yesterday, and she advised that she felt her colleague Robert
28 Myers, Esq., would need to decide what the Class’s position is, and that he would call

1 me if he had any opposition. I did not receive a call, but shortly thereafter I received
2 an email from Mr. Myers saying that the Class would oppose the application.

3 5. The United Teachers Los Angeles (UTLA) is an official LAUSD-
4 recognized union, representing over 30,000 LAUSD employees, including 24,000
5 teachers, and other certificated employees such as nurses, counselors, and
6 psychologists, and is recognized by LAUSD as the exclusive bargaining
7 representative for this 30,000-employee unit.

8 6. UTLA and LAUSD have been involved in mediation and “factfinding”
9 relating to contract negotiation. So far, these efforts have been unsuccessful and, on
10 December 19, 2018, UTLA announced a strike for UTLA unit members, set to
11 commence January 10, 2019.

12 7. LAUSD has made repeated overtures to UTLA to return to the table, but
13 UTLA has declined.

14 8. LAUSD promptly prepared and lodged the within Third-Party Action,
15 less than two weeks after UTLA announced the strike, and less than a week after the
16 most recent attempt (December 28, 2018) by LAUSD to persuade UTLA to return to
17 the bargaining table.

18 9. The relief sought in this case would be limited to services being provided
19 to students with disabilities, and is predicated on the requirements under the IDEA and
20 the MCD that students with disabilities not be deprived of legally-mandated services.
21 There are separate legal proceedings ongoing with state enforcement agencies relating
22 to the labor-relations aspects of the case, and the services to be provided to non-
23 disabled children. The proposed Third-Party Action is limited to issues involving
24 students with disabilities who have rights under the IDEA and the MCD.

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10. A true and correct copy of the ***[PROPOSED] THIRD-PARTY COMPLAINT BY DEFENDANT LOS ANGELES UNIFIED SCHOOL DISTRICT AGAINST THIRD-PARTY DEFENDANT UNITED TEACHERS LOS ANGELES*** and the ***[PROPOSED] SUMMONS ON A THIRD-PARTY COMPLAINT*** are attached hereto as **Exhibit A** and **Exhibit B**, respectively.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this third day of January, 2019, at Los Angeles, California.

/s/ Barrett K. Green
BARRETT K. GREEN

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Exhibit A

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**[PROPOSED] THIRD-PARTY
COMPLAINT BY DEFENDANT
LOS ANGELES UNIFIED SCHOOL
DISTRICT AGAINST THIRD-
PARTY DEFENDANT UNITED
TEACHERS LOS ANGELES**

INTRODUCTION

1
2 1. This is a Third-Party Complaint brought by Defendant Los Angeles
3 Unified School District (LAUSD or District) against Third-Party Defendant United
4 Teachers Los Angeles (UTLA), the exclusive bargaining representative of LAUSD
5 certificated classroom teachers, nurses, psychologists, counselors, and other LAUSD
6 employees, who provide special education and related services to individuals with
7 exceptional needs (i.e., special education students) enrolled in and attending schools
8 within the LAUSD. The Third-Party Complaint seeks declaratory and injunctive
9 relief against UTLA, enjoining UTLA, its officers, and representatives from causing,
10 encouraging, condoning, or participating in any strike, slowdown, or other work
11 stoppage by any UTLA bargaining unit member who provides educational services to
12 LAUSD special education students.

13 2. The operative complaint in the within action (Second Amended Class
14 Action Complaint For Injunctive And Declaratory Relief filed June 26, 1995 by the
15 Plaintiff Class) alleges that LAUSD violated the Individuals with Disabilities
16 Education Act (IDEA), Section 504 the Rehabilitation Act (Section 504), and the
17 Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C.
18 section 1983 by failing to timely identify disabled children, and by failing to provide
19 disabled students with a free appropriate public education necessary for the students to
20 successfully participate in and complete elementary and secondary schooling within
21 the LAUSD. (See Second Amended Class Action Complaint, Par. 1.)

22 3. There are greater than 60,000 special education students in the LAUSD.

23 4. Failure of LAUSD employees to provide special education and related
24 services to LAUSD students with disabilities exposes LAUSD to liability against the
25 Plaintiff Class. Further, pursuant to the terms of the Modified Consent Decree (MCD)
26 entered into hereto in 2003, the District is under strict guidelines to ensure that
27 students with disabilities are provided, and not systemically deprived of, special
28 education and related services. Failure of LAUSD employees to provide special

1 education and related services to students with disabilities exposes LAUSD to liability
2 against the Plaintiff Class for noncompliance with the MCD.

3 5. Under Rule 14 and law, a defending party may, as third-party plaintiff,
4 serve a summons and complaint on a nonparty who is or may be liable to it for all or
5 part of the claim against the defending party.

6 6. LAUSD seeks declaratory and emergency provisional relief, enjoining
7 UTLA from calling for the deprivation of services to LAUSD's most vulnerable
8 students. Absent provisional relief, already identified children with disabilities will
9 suffer irreparable harm through the deprivation of services, children with unidentified
10 disabilities will be delayed in being identified as eligible and be deprived of services
11 and in, some instances, students with serious disabilities will be placed in extreme
12 danger of injury due to lack of trained personnel or supervision.

13 JURISDICTION

14 7. This Court has jurisdiction under 28 U.S.C. section 1331 and 28 U.S.C.
15 section 1343. Federal question jurisdiction arises under the Constitution and laws of
16 the United States of America, including but not limited to (a) the Individuals with
17 Disabilities Education Act (20 U.S.C. section 1400 et seq.), (b) Section 504 of the
18 Rehabilitation Act of 1973 (29 U.S.C. section 701 et seq.), and (c) the Fourteenth
19 Amendment to the United States Constitution pursuant to 48 U.S.C. section 1983.

20 VENUE

21 8. Venue is proper in this Court under 28 U.S.C. section 1391(b) because
22 UTLA resides within the Central District of California, and all or substantially all of
23 the events which are the subject of this Complaint took place or are expected to take
24 place within the Central District of California.

PARTIES

1
2 9. LAUSD is a public school district organized and operating under the
3 Constitution and laws of the State of California. The District is a “public school
4 employer” within the meaning of California Government Code section 3540.1(k).

5 10. Third-Party Defendant UTLA is a “certified employee organization”
6 within the meaning of California Government Code section 3540.1(b), and has been
7 recognized by LAUSD as being the exclusive representative of a bargaining unit of
8 certain LAUSD “certificated employees” that includes LAUSD public school
9 teachers, nurses, psychologists, counselors, and other employees who provide services
10 to special education students.

STATEMENT OF FACTS

11
12 ***A. Harm To Children, And Violation Of The IDEA And MCD, In The***
13 ***Event Of A Strike.***

14 11. Under the IDEA, the federal government provides funds to the states and,
15 in exchange, states must provide special education and related services to students
16 with disabilities. (See, e.g., *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548
17 U.S. 291, 295-96 (2006); *Schaffer v. Weast*, 546 U.S. 49, 51 (2005).)

18 12. In the event of a strike, over 60,000 LAUSD special education students
19 would be severely impacted. Approximately half of this group is in need of the most
20 critical support to maintain their health and safety, including students with severe
21 intellectual disabilities and serious health conditions who require assistance from
22 essential employees, such as special education teachers, counselors, school
23 psychologists, and therapists. Without these critical services, these students’ health
24 and safety would be in jeopardy. They could get hurt, hurt themselves, or hurt others.

25 13. It is highly unlikely that LAUSD will be able to obtain sufficient
26 substitutes to cover for striking UTLA unit members who provide services to LAUSD
27 students with disabilities.

28

1 14. Additionally, if UTLA strikes and some school sites are forced to merge
2 or relocate, the consolidation of schools would have a severe negative impact on the
3 District's blind and visually impaired students who spend a significant amount of time
4 learning mobility and orientation within their assigned school, which would be
5 undermined and could cause physical harm to the students and/or force these students
6 to be confined to a classroom instead of walking around the school site. Similarly, if
7 UTLA strikes, the hearing impaired students would be severely impacted because
8 their communication and access to sign language assistance would likely be limited.

9 15. A UTLA strike would cause severe emotional and psychological trauma
10 for special education students, especially the approximately 11,500 LAUSD students
11 who suffer from autism. Students with autism typically do not handle changes in their
12 schedules well.

13 16. Additionally, the District offers programs for the District's approximately
14 650 students identified as emotionally disturbed, and a UTLA strike would likely
15 cause emotional and possible physical harm to these students, who are dependent
16 upon these special education and related services, and by the UTLA unit members
17 who provide the services.

18 17. In addition to threatening the health and safety of students, a strike would
19 also jeopardize the legal rights of all special education students because the District
20 would be unable to fully implement students' Individualized Education Programs
21 (IEPs) and comply with federal and state special education laws. This may result in
22 increased complaints made to the Office of Administrative Hearings, California
23 Department of Education, and/or federal Office of Civil Rights, by families on behalf
24 of their children. Responding to and defending the District against these complaints
25 can require a great deal of District resources, and adverse findings can result in
26 enforceable orders and corrective actions being imposed on the District. This, in turn,
27 leads to greater scrutiny of and heavier burdens placed upon the District, as failure to
28 comply with such directives can result in sanctions, including the loss of funding.

1 18. The within class action alleged noncompliance by the District with
2 requirements of the IDEA and related special education laws. The MCD requires that
3 the District ensure the provision of special education services to students, and
4 noncompliance may constitute a violation of the decree. A strike would severely
5 hamper the District's ability to meet its special education obligations.

6 ***B. Monopoly Powers Vested In UTLA By LAUSD As Mandated By The***
7 ***State Of California.***

8 19. California enacted and has in effect the Educational Employment
9 Relations Act (EERA) (California Government Code section 3540 et seq.).

10 20. Under California Government Code section 3544 of the EERA, an
11 employee organization (i.e., union) may become the exclusive representative for the
12 employees of an appropriate unit for purposes of meeting and negotiating (i.e.,
13 collective bargaining) by filing a request with a public school employer alleging that a
14 majority of the employees in an appropriate unit wish to be represented by such
15 organization and asking the public school employer to recognize it as the exclusive
16 representative.

17 21. Under California Government Code section 3544.1, the public school
18 employer must grant a request for recognition filed pursuant to Section 3544 if the
19 union in question has demonstrated that it has majority support.

20 22. Under Government Code section 3543.3, once the union has been
21 recognized, only that union, and not individual employees, may meet and negotiate
22 (i.e., collectively bargain) with the public school employer.

23 23. Pursuant to the requirements of the EERA, as enacted by the State of
24 California and mandated upon local school districts, LAUSD recognizes UTLA as the
25 exclusive bargaining representative for the unit of certificated employees of LAUSD
26 that includes teachers, nurses, psychologists, and counselors.

27 24. This recognition is reflected in "Article I, Recognition" of the collective
28 bargaining agreement between UTLA and LAUSD (the "CBA"), as follows:

1
2 ARTICLE I – RECOGNITION

3 1.0 The Unit: Pursuant to applicable California statutes and
4 regulations, UTLA has been certified as the exclusive
5 representative for the following employees of the District:
6 Included: Certificated employees, except those excluded in
7 Section 1.1, who are in the broad classification of Teacher;
8 Instructor; Library Media Teacher; Counselor; Adviser;
9 Audiologist; Audiometrist; Hygienist; Nonclassroom
10 Assignment, Preparation Table; Non-school Assignment,
11 Preparation Table; Nurse; Optometrist; Psychologist; Social
12 Worker; Teacher-Adviser; Teacher-Counselor; Therapist; or
13 Driver Safety Instructor.

14 25. The EERA also vests in the exclusive representative (in this instance,
15 UTLA), standing to sue in any action or proceeding instituted by it as representative
16 and on behalf of one or more of its members. (See California Government Code
17 section 3543.8.)

18 26. Pursuant to the statutory framework described above, UTLA has an
19 exclusive derivative monopoly vested by virtue of LAUSD’s recognition of UTLA as
20 bargaining representative, a monopoly imposed by the California Legislature via the
21 enactment of the EERA. In acting in this capacity, UTLA is an instrumentality
22 created by the State of California and affiliated with LAUSD.

23 **C. Plan By UTLA Leadership To Strike In Order To Create Chaos In**
24 **Public Education.**

25 27. In 2014, Alex Caputo-Pearl was appointed as President of UTLA.

26 28. Commencing in or about August 2016, Mr. Caputo-Pearl began openly
27 describing a plan to “build a capacity to strike,” at the expiration of the parties’
28 collective bargaining agreement, with a goal to “create a state crisis” and “shock the
system into investing in the civic institution of public education.” (See Alex
Caputo-Pearl, “State of the Union” speech on August 24, 2016.)

1 29. Specifically, Mr. Caputo-Pearl stated in part during the State of the
2 Union speech, as follows:

3 “With our contract expiring in June 2017, ... the next year and
4 a half must be founded upon building our capacity to strike, and
5 our capacity to create a state crisis, in early 2018. There simply
6 may be no other way to protect our health benefits and to shock
7 the system into investing in the civic institution of public
8 education.”

9 30. Commencing in Spring 2017 and through until July 2018, UTLA and
10 LAUSD engaged in bargaining on a successor to the bargaining agreement that was
11 set to expire June 30, 2017. Thereafter, UTLA declared in July 2018 that the parties
12 were at an “impasse” and EERA State-mandated impasse procedures were
13 implemented that included three mediation sessions in September and October 2018.

14 31. After mediation did not result in a resolution of the impasse, the parties
15 proceeded to “factfinding,” a process set forth in the EERA, whereby a neutral
16 factfinder makes recommendations for settlement of the dispute.

17 32. A factfinding hearing was held on December 3 and 4, 2018, and a
18 factfinding report was issued on December 17, 2018, containing recommendations to
19 resolve the items in dispute.

20 33. Under California law, when the factfinding report is issued, the parties
21 are required to consider the report in good faith to determine whether the report forms
22 the basis for resolution of the dispute, or for a resumption of bargaining that might
23 lead to a resolution of the dispute.

24 34. Immediately following issuance of the factfinding report, on December
25 18, 2018, LAUSD reached out to UTLA, and invited UTLA to resume bargaining in
26 an effort to resolve the labor dispute, as follows:

27
28 We have had a chance to review the Factfinding Report, and
we are hopeful that the information contained in the report

1 will enable the parties to resolve the labor dispute. LAUSD
2 is willing and able to resume bargaining, and invites UTLA
3 to return to the table. Please let us know by end of day
4 Wednesday as to whether UTLA will resume bargaining
and, if so, provide proposed dates and times. Please also
advise whether it would be desirable to re-engage the
mediators. We look forward to hearing from you.

5 35. On December 19, 2018, UTLA replied, declining to resume bargaining,
6 and insisted that LAUSD accept its demands, as follows:

7 UTLA has reviewed and considered the Factfinding Report,
8 and we don't believe the findings of the report serve as a
9 basis for resolving the bargaining dispute between UTLA
10 and LAUSD. We encourage the District to finally read the
entirety of our last, best, and final package proposal and
11 agree to our demands, which will fundamentally improve the
lives of students and educators.

12 36. That same day, December 19, 2018, UTLA issued a press release and
13 held a press conference, calling for a strike commencing January 10, 2019.

14 In addition, in the press conference, Mr. Caputo-Pearl stated as follows:

15 [T]he District has disrespected our students and disrespected us.
16 For these reasons, we have not accepted the District's offer to
go back to the table. We're not going to go back and do what
17 we've already done for 20 months and sustain more disrespect
of students and members. We've reached the point where
18 enough is enough. We've established January 10th as a strike
date.

19 37. There is no exception under the IDEA or the MCD for denying services
20 to students with disabilities because of a labor strike.

21 **CLAIMS FOR RELIEF**

22 ***FIRST CLAIM FOR RELIEF***

23 ***(Declaratory Relief)***

24 38. LAUSD incorporates by reference the allegations contained in
25 paragraphs 1 through 38, inclusive.

26 39. LAUSD alleges that a strike by UTLA would result in an illegal
27 deprivation of services to LAUSD students with disabilities in violation of the IDEA,
28 Section 504, 42 U.S.C. section 1983, and the MCD.

1 40. LAUSD seeks declaratory judgment from this Court that such a strike by
2 UTLA would be unlawful, and that UTLA is liable to LAUSD for damages and other
3 consequences of the strike.

4 41. An actual, present, and justiciable controversy has arisen between
5 LAUSD and UTLA concerning UTLA’s called-for strike, and responsibility for
6 liability and consequences in the event of a strike.

7 **SECOND CLAIM FOR RELIEF**

8 ***(Injunctive Relief)***

9 42. LAUSD incorporates by reference the allegations contained in
10 paragraphs 1 through 41, inclusive.

11 43. No plain, adequate, or complete remedy at law is available to LAUSD to
12 redress the wrongs addressed herein.

13 44. If this Court does not grant the injunctive relief sought herein, LAUSD
14 and affected special education students will be irreparably harmed, and LAUSD is
15 likely to prevail on the merits of the claim.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, LAUSD prays for relief as follows:

- 18 1. For a declaration that UTLA’s threatened actions are unlawful;
- 19 2. For an order enjoining UTLA from engaging in the unlawful acts
20 complained of herein; and
- 21 3. For such other and further relief as this Court deems just and proper.

22 Dated: January ____, 2019

Respectfully submitted,

23
24 _____
25 BARRETT K. GREEN
LITTLER MENDELSON PC

26 Attorneys for Defendant LAUSD
27

28 FIRMWIDE:161394464.13 040530.1058

Exhibit B

AO 441 (Rev. 07/10) Summons on Third-Party Complaint

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)
Plaintiff)
v.) Civil Action No.
_____)
Defendant, Third-party plaintiff)
v.)
_____)
Third-party defendant)

SUMMONS ON A THIRD-PARTY COMPLAINT

To: (Third-party defendant's name and address)

A lawsuit has been filed against defendant _____, who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff _____.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or defendant's attorney, whose name and address are:

It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may – but are not required to – respond to it.

Date: _____

CLERK OF COURT

Signature of Clerk or Deputy Clerk

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHANDA SMITH, et al.,

Plaintiffs,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, et al.,

Defendants/Third-Party
Plaintiff

v.

UNITED TEACHERS LOS
ANGELES.

Third-Party
Defendants.

Case No. CV 93-7044-RSWL (GHKx)

ASSIGNED FOR ALL PURPOSES TO
JUDGE RONALD S. W. LEW

**[PROPOSED] ORDER GRANTING
DEFENDANT LOS ANGELES
UNIFIED SCHOOL DISTRICT
LEAVE OF COURT TO FILE
THIRD PARTY COMPLAINT**

FED. R. CIV. P. 14

1 The Court, having reviewed the ex parte application of Defendant Los Angeles
2 Unified School District (LAUSD or District) for leave of court to file its proposed
3 Third-Party Complaint against proposed Third-Party Defendant United Teachers Los
4 Angeles (UTLA), and good cause appearing therefrom,

5 IT IS HEREBY ORDERED as follows:

- 6 1. The application is granted.
- 7 2. The proposed Third-Party Complaint, lodged January 3, 2019, is deemed
8 filed as of the date of this Order, and summons shall issue to LAUSD to serve on
9 Third-Party Defendant UTLA together with the Complaint.

10 **IT IS SO ORDERED.**

11
12 Dated _____

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15
16 HON. RONALD S. W. LEW
17 UNITED STATES DISTRICT JUDGE

18 FIRMWIDE:161579844.1 040530.1058
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