

1 Mark C. Holscher (SBN 139582)
mark.holscher@kirkland.com
2 Edward Hillenbrand (SBN 310872)
edward.hillenbrand@kirkland.com
3 KIRKLAND & ELLIS LLP
555 South Flower Street
4 Los Angeles, CA 90071
Telephone: (213) 680-8400
5 Facsimile: (213) 680-8500

6 Sierra Elizabeth (SBN 268133)
sierra.elizabeth@kirkland.com
7 Kathryn E. Panish (SBN 324047)
kathryn.panish@kirkland.com
8 KIRKLAND & ELLIS LLP
2049 Century Park East
9 Los Angeles, CA 90067
Telephone: (310) 552-4200
10 Facsimile: (310) 552-5900

11 Laura Kelley Uhlenhuth (SBN 330678)
laura.uhlenhuth@kirkland.com
12 KIRKLAND & ELLIS LLP
555 California Street
13 San Francisco, CA 94104
Telephone: (415) 439-1498
14 Facsimile: (415) 439-1500

15 *Attorneys for Plaintiffs*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES**

18 KESHARA SHAW; ALMA ROSA FARIAS DE
19 SOLANO; JOSUE RICARDO GASTELUM-
20 CAMPISTA; MARITZA GONZALEZ; RONNIE
21 HEARD, JR.; DEYANIRA HOOPER; JUDITH
22 LARSON; VICENTA MARTINEZ; AND AKELA
23 WROTEN, JR.,

24 Plaintiffs,

25 v.

26 LOS ANGELES UNIFIED SCHOOL DISTRICT;
27 AUSTIN BEUTNER, Los Angeles Unified School
28 District Superintendent; and DOES 1-25, inclusive,

Defendants.

UNITED TEACHERS LOS ANGELES,

Relief Defendant.

Case No. 20STCV36489

Honorable Yvette M. Palazuelos

**PLAINTIFFS' SEPARATE STATEMENT
OF REQUESTS FOR PRODUCTION,
REQUESTS FOR STATEMENT OF
COMPLETION, AND REQUEST FOR
PRIVILEGE LOG IN SUPPORT OF ITS
MOTION TO COMPEL PRELIMINARY
INJUNCTION DISCOVERY**

Complaint Filed: 09/24/2020
FAC Filed: 10/07/2020
Dept. 9

FILED
Superior Court of California
County of Los Angeles

FEB 25 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By Tanya Herrera Deputy
Tanya Herrera

ORIGINAL

1 Plaintiffs Keshara Shaw, Alma Rosa Farias De Solano, Josue Ricardo Gastelum-Campista,
2 Maritza Gonzalez, Ronnie Heard, Jr., Deyanira Hooper, Judith Larson, Vicenta Martinez, and Akela
3 Wroten, Jr. (collectively, the “Plaintiffs”) submit this Separate Statement pursuant to Rule 3.1345 of the
4 California Rule of Court in connection with their Motion to Compel Preliminary Injunction Discovery.
5 The Requests for Production of Documents that are in dispute are set forth below verbatim, along with the
6 responses received verbatim, and the reasons why further responses to the propounded discovery should
7 be compelled.

8 **REQUESTS FOR PRODUCTION TO DEFENDANT LAUSD**

9 **DEFINITIONS RELEVANT TO REQUESTS FOR PRODUCTION:**

- 10 1. “AUGUST SIDE LETTER” means the 2020-2021 Distance Learning Side Letter Between the
11 Los Angeles Unified School District and United Teachers Los Angeles, dated August 11, 2020.
- 12 2. “COMMUNICATION(S)” means any form of information exchange, or attempted exchange,
13 including but not limited to: written, oral, or electronic exchanges; exchanges by letter,
14 telephone, facsimile, email, text message, face-to-face conversation, meeting or conference;
15 any exchange whether or not written, taped or recorded; any exchange without limit to the
16 time, place or circumstances of its occurrence; and/or any other transmittal of information by
17 any media by any manner.
- 18 3. “DISTANCE LEARNING” means the definition set forth in California Education Code §
19 43500(a):
20 instruction in which the pupil and instructor are in different locations and pupils are under
21 the general supervision of a certificated employee of the local educational agency. Distance
22 learning may include, but is not limited to, all of the following:
23 (1) Interaction, instruction, and check-ins between teachers and pupils through the
24 use of a computer or communications technology.
25 (2) Video or audio instruction in which the primary mode of communication
26 between the pupil and certificated employee is online interaction, instructional
27 television, video, telecourses, or other instruction that relies on computer or
28 communications technology.
(3) The use of print materials incorporating assignments that are the subject of
written or oral feedback.
4. “DOCUMENT(S)” means any means of writing, as defined in Section 250 of the California
Evidence Code, and includes, without limitation: the original or a copy as well as drafts and
all versions of all writings and recordings; material that is stored, compiled or organized by
means of any electronic, magnetic, optical or mechanical device, such as by handwriting,
typewriting, printing, photostating, or filming; agreements, analytical data, art work, audio
recordings, books, bulletins, calendars, computer tapes, computer storage media, contracts,
correspondence, diagrams, diaries, drawings, email, facsimiles, forms, interoffice
communications, keypunch cards, letters, memoranda, messages, notes, papers, photographs,
pictures, pleadings, proposals, reports, studies, surveys, sketches, telexes, telegrams,

1 telecopies, telegraphs, telex communications, text messages, video recordings, and
2 worksheets; and any writing or recording prepared on or with any other physical objects.

- 3 5. "FALL SEMESTER" means the Los Angeles Unified School District semester that begins on
4 August 17, 2020 and ends on December 18, 2020.
- 5 6. "OCTOBER SIDE LETTERS" means the Los Angeles Unified School District and United
6 Teachers Los Angeles Sideletter Addressing Voluntary In-Person Tutoring Services by UTLA-
7 Represented Employees, dated October 8, 2020, and the Los Angeles Unified School District
8 and United Teachers Los Angeles Sideletter Addressing Voluntary In-Person Student
9 Assessment Services by UTLA-Represented Employees, dated October 8, 2020.
- 10 7. "RELATING" means, without limitation, analyzing, concerning, consisting of, describing,
11 discussing, embodying, evidencing, identifying, including, pertaining to, memorializing,
12 mentioning, naming, negating, recording, reflecting, showing, supporting, summarizing, or
13 having any logical or factual connection with the matter discussed.
- 14 8. "SPRING SEMESTER" means the Los Angeles Unified School District semester that begins
15 on January 11, 2021 and ends on June 10, 2021.
- 16 9. "UTLA" means United Teachers Los Angeles, as well as all present or former affiliated
17 entities, subsidiaries, employees, members, agents, attorneys, or representatives of United
18 Teachers Los Angeles. This term also encompasses and refers to any other person(s) or
19 entity(ies) acting in concert with United Teachers Los Angeles or acting or purporting to act
20 on United Teachers Los Angeles' behalf.
- 21 10. "YOU," "YOUR," "YOURS," and "LAUSD" means the Los Angeles Unified School District,
22 as well as all present or former affiliated entities, subsidiaries, employees, members, agents,
23 attorneys, or representatives of the Los Angeles Unified School District, including but not
24 limited to its Board Members. These terms also encompass and refer to any other person(s) or
25 entity(ies) acting in concert with YOU or acting or purporting to act on YOUR behalf.

26 **REQUEST FOR PRODUCTION NO. 1:**

27 All DOCUMENTS and COMMUNICATIONS RELATING to the drafting of, negotiation of
28 terms of, implementation of, or extension of any side letter or sideletter agreement entered into with UTLA
that is in effect during the FALL SEMESTER or SPRING SEMESTER, including but not limited to the
AUGUST SIDE LETTER and the OCTOBER SIDE LETTERS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

The District incorporates its preliminary response and general objections as if fully set forth herein.
The District objects to this request to the extent that it seeks information protected from disclosure under
the Brown Act (Gov. Code, §§ 54950, *et seq.*), the legislative process privilege, the official information
privilege, and/or the deliberative process privilege. The District objects that this request is vague,
ambiguous, and compound with regard to the terms "drafting of, negotiation of, terms of, implementation
of, or extension of" and "side letter or sideletter." The District further objects that this request is overbroad

1 and unduly burdensome and further seeks information that is neither relevant to Plaintiffs' claims nor
2 reasonably calculated to lead to the discovery of admissible evidence. The District objects to the extent
3 this request seeks information protected by the attorney client privilege and/or attorney work product
4 doctrine. The District objects to the extent this request seeks confidential information relating to the
5 development and/or presentation of the District's positions with respect to employer-employee relations,
6 confidential information that is used to contribute significantly to the development of the District's
7 positions with respect to employer-employee relations, confidential information regarding internal
8 collective bargaining strategies or tactics, and/or confidential discussions with the Board of Education
9 regarding the District's position regarding any matter within the scope of representation and instructing
10 its designated representatives regarding same. (Gov. Code, §§ 3540.1(c), 54957.6, 54936, 3549.1; see,
11 e.g., *Colton Joint Unified School District/Rialto Unified School District/San Bernardino City Unified*
12 *School District* (1981) PERB Order No. Ad-113; *Berbiglia, Inc.* (1977) 233 NLRB 1476, 1495;
13 *Burlingame Elementary School District* (2006) PERB Dec. No. 1847.)

14 The District further objects to this request to the extent it violates the right to confidentiality of its
15 employees, students and/or their parents under the California Constitution and common law, and also
16 violates the obligation to keep student records and information confidential under state and federal law.
17 (See Cal. Const. art. I, § 1; 20 U.S.C. §§ 1232g *et seq.*; Ed. Code, §§ 49073 *et seq.*)

18 The District objects to the extent this request seeks discovery of voluminous email or electronically
19 stored information, which would be subject to a motion for protective order under Code of Civil Procedure
20 section 2031.060, subdivision (f), which provides in part relevant here: "The court shall limit the frequency
21 or extent of discovery of electronically stored information, even from a source that is reasonably
22 accessible, if the court determines that any of the following conditions exist: (1) It is possible to obtain
23 the information from some other source that is more convenient, less burdensome, or less expensive. (2)
24 The discovery sought is unreasonably cumulative or duplicative. . . . (4) The likely burden or expense of
25 the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the
26 resources of the parties, the importance of the issues in the litigation, and the importance of the requested
27 discovery in resolving the issues."

1 Pursuant to Code of Civil Procedure section 2031.280, subdivision (c), the District objects to
2 Plaintiffs' instruction number five, which appears to be a boilerplate instruction. The District further
3 objects that this request seeks broad merits discovery at the outset of this putative class action, in violation
4 of the Judicial Council's guidance that, "[i]n complex litigation . . . the issues may not be well defined
5 when the case is first filed and may become better defined only after some initial discovery has occurred.
6 This means there is a risk, particularly early in the life of a complex case, that discovery can become
7 unfocused and out of control." (California Deskbook on Complex Civil Litigation Management, § 3.30.)
8 As a result, "in some cases when it is appropriate for certain issues to precede other issues, such as
9 questions of statute of limitations, jurisdiction, or standing, discovery should be staged so that these issues
10 can be determined before other discovery proceeds." (*Id.* at § 3.31.)

11 Subject to and without waiving these objections, the District responds as follows: Responsive,
12 non-privileged and non-confidential documents in the custody, possession or control of the District, will
13 be produced. The District's investigation and discovery are continuing and the District reserves its right
14 to supplement this response.

15 **REQUEST FOR PRODUCTION NO. 2:**

16 All DOCUMENTS and COMMUNICATIONS discussing the impact of DISTANCE LEARNING
17 on LAUSD students during the FALL SEMESTER or SPRING SEMESTER.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

19 The District incorporates its preliminary response and general objections as if fully set forth herein.
20 The District objects to this request to the extent that it seeks information protected from disclosure under
21 the Brown Act (Gov. Code, §§ 54950, *et seq.*), the legislative process privilege, the official information
22 privilege, and/or the deliberative process privilege. The District objects that this request is vague,
23 ambiguous, and compound with regard to the terms "discussing," "impact of," and "FALL SEMESTER
24 or SPRING SEMESTER." The District further objects that this request is overbroad and unduly
25 burdensome and further seeks information that is neither relevant to Plaintiffs' claims nor reasonably
26 calculated to lead to the discovery of admissible evidence. The District objects to the extent this request
27 seeks information protected by the attorney client privilege and/or attorney work product doctrine. The
28 District objects to the extent this request seeks confidential information relating to the development and/or

1 presentation of the District’s positions with respect to employer-employee relations, confidential
2 information that is used to contribute significantly to the development of the District’s positions with
3 respect to employer-employee relations, confidential information regarding internal collective bargaining
4 strategies or tactics, and/or confidential discussions with the Board of Education regarding the District’s
5 position regarding any matter within the scope of representation and instructing its designated
6 representatives regarding same. (Gov. Code, §§ 3540.1(c), 54957.6, 54936, 3549.1; see, e.g., *Colton Joint*
7 *Unified School District/Rialto Unified School District/San Bernardino City Unified School District* (1981)
8 PERB Order No. Ad-113; *Berbiglia, Inc.* (1977) 233 NLRB 1476, 1495; *Burlingame Elementary School*
9 *District* (2006) PERB Dec. No. 1847.) The District further objects to this request to the extent it violates
10 the right to confidentiality of its employees, students and/or their parents under the California Constitution
11 and common law, and also violates the obligation to keep student records and information confidential
12 under state and federal law. (See Cal. Const. art. I, § 1; 20 U.S.C. §§ 1232g *et seq.*; Ed. Code, §§ 49073
13 *et seq.*)

14 The District objects to the extent this request seeks discovery of voluminous email or electronically
15 stored information, which would be subject to a motion for protective order under Code of Civil Procedure
16 section 2031.060, subdivision (f), which provides in part relevant here: “The court shall limit the frequency
17 or extent of discovery of electronically stored information, even from a source that is reasonably
18 accessible, if the court determines that any of the following conditions exist: (1) It is possible to obtain
19 the information from some other source that is more convenient, less burdensome, or less expensive. (2)
20 The discovery sought is unreasonably cumulative or duplicative. . . . (4) The likely burden or expense of
21 the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the
22 resources of the parties, the importance of the issues in the litigation, and the importance of the requested
23 discovery in resolving the issues.”

24 Pursuant to Code of Civil Procedure section 2031.280, subdivision (c), the District objects to
25 Plaintiffs’ instruction number five, which appears to be a boilerplate instruction. The District further
26 objects that this request seeks broad merits discovery at the outset of this putative class action, in violation
27 of the Judicial Council’s guidance that, “[i]n complex litigation . . . the issues may not be well defined
28 when the case is first filed and may become better defined only after some initial discovery has occurred.

1 This means there is a risk, particularly early in the life of a complex case, that discovery can become
2 unfocused and out of control.” (California Deskbook on Complex Civil Litigation Management, § 3.30.)
3 As a result, “in some cases when it is appropriate for certain issues to precede other issues, such as
4 questions of statute of limitations, jurisdiction, or standing, discovery should be staged so that these issues
5 can be determined before other discovery proceeds.” (*Id.* at § 3.31.)

6 Subject to and without waiving these objections, the District responds as follows: Responsive,
7 non-privileged and non-confidential documents in the custody, possession or control of the District, will
8 be produced. The District’s investigation and discovery are continuing and the District reserves its right
9 to supplement this response.

10 **OTHER REQUESTS AND RESPONSES SERVING AS A BASIS FOR THE NEED FOR**
11 **FURTHER PRODUCTION:**

12 **REQUEST FOR ADMISSION NO. 1:**

13 Admit that the AUGUST SIDE LETTER reduces the number of hours that UTLA teachers must
14 work from eight hours per school day to five and a quarter hours per school day.

15 **LAUSD’S RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

16 The District incorporates its preliminary response and general objections as if fully set forth herein.
17 The District objects to this request on the grounds that it is improper in form and is not full and complete
18 in and of itself because it incorporates and requires reference to other materials in violation of Code of
19 Civil Procedure section 2033.060, subdivision (d). The District objects that this request is vague and
20 ambiguous with regard to the phrase “must work.” The District objects that this request seeks information
21 that is neither relevant to Plaintiffs’ claims nor reasonably calculated to lead to the discovery of admissible
22 evidence. The District objects to the extent this request seeks information protected by the attorney client
23 privilege and/or attorney work product doctrine. The District objects to the extent this request seeks
24 confidential information relating to the development and/or presentation of the District’s positions with
25 respect to employer-employee relations, confidential information that is used to contribute significantly
26 to the development of the District’s positions with respect to employer-employee relations, confidential
27 information regarding internal collective bargaining strategies or tactics, and/or confidential discussions
28 with the Board of Education regarding the District’s position regarding any matter within the scope of

1 representation and instructing its designated representatives regarding same. (Gov. Code, §§ 3540.1(c),
2 54957.6, 54936, 3549.1; see, e.g., *Colton Joint Unified School District/Rialto Unified School District/San*
3 *Bernardino City Unified School District* (1981) PERB Order No. Ad-113; *Berbiglia, Inc.* (1977) 233
4 NLRB 1476, 1495; *Burlingame Elementary School District* (2006) PERB Dec. No. 1847.)

5 The District further objects that this request seeks broad merits discovery at the outset of this
6 putative class action, in violation of the Judicial Council’s guidance that, “[i]n complex litigation . . . the
7 issues may not be well defined when the case is first filed and may become better defined only after some
8 initial discovery has occurred. This means there is a risk, particularly early in the life of a complex case,
9 that discovery can become unfocused and out of control.” (California Deskbook on Complex Civil
10 Litigation Management, § 3.30.) As a result, “in some cases when it is appropriate for certain issues to
11 precede other issues, such as questions of statute of limitations, jurisdiction, or standing, discovery should
12 be staged so that these issues can be determined before other discovery proceeds.” (*Id.* at § 3.31.)

13 Subject to and without waiving these objections, the District responds as follows: Deny.

14 **REQUEST FOR ADMISSION NO. 2:**

15 Admit that the AUGUST SIDE LETTER prohibits school principals from requiring UTLA
16 teachers to participate in more than one hour of professional development meetings per week.

17 **LAUSD’S RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

18 The District incorporates its preliminary response and general objections as if fully set forth herein.
19 The District objects to this request on the grounds that it is improper in form and is not full and complete
20 in and of itself because it incorporates and requires reference to other materials in violation of Code of
21 Civil Procedure section 2033.060, subdivision (d). The District objects that this request is vague and
22 ambiguous with regard to the terms “prohibits,” “requiring,” and “professional development meetings.”
23 The District objects that this request seeks information that is neither relevant to Plaintiffs’ claims nor
24 reasonably calculated to lead to the discovery of admissible evidence. The District objects to the extent
25 this request seeks information protected by the attorney client privilege and/or attorney work product
26 doctrine. The District objects to the extent this request seeks confidential information relating to the
27 development and/or presentation of the District’s positions with respect to employer-employee relations,
28 confidential information that is used to contribute significantly to the development of the District’s

1 positions with respect to employer-employee relations, confidential information regarding internal
2 collective bargaining strategies or tactics, and/or confidential discussions with the Board of Education
3 regarding the District’s position regarding any matter within the scope of representation and instructing
4 its designated representatives regarding same. (Gov. Code, §§ 3540.1(c), 54957.6, 54936, 3549.1; see,
5 e.g., *Colton Joint Unified School District/Rialto Unified School District/San Bernardino City Unified*
6 *School District* (1981) PERB Order No. Ad-113; *Berbiglia, Inc.* (1977) 233 NLRB 1476, 1495;
7 *Burlingame Elementary School District* (2006) PERB Dec. No. 1847.)

8 The District further objects that this request seeks broad merits discovery at the outset of this
9 putative class action, in violation of the Judicial Council’s guidance that, “[i]n complex litigation . . . the
10 issues may not be well defined when the case is first filed and may become better defined only after some
11 initial discovery has occurred. This means there is a risk, particularly early in the life of a complex case,
12 that discovery can become unfocused and out of control.” (California Deskbook on Complex Civil
13 Litigation Management, § 3.30.) As a result, “in some cases when it is appropriate for certain issues to
14 precede other issues, such as questions of statute of limitations, jurisdiction, or standing, discovery should
15 be staged so that these issues can be determined before other discovery proceeds.” (*Id.* at § 3.31.)

16 Subject to and without waiving these objections, the District responds as follows: Deny.

17 **REQUEST FOR ADMISSION NO. 3:**

18 Admit that the AUGUST SIDE LETTER does not require YOU to evaluate, oversee, or monitor
19 the in-class performance of UTLA teachers.

20 **LAUSD’S RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

21 The District incorporates its preliminary response and general objections as if fully set forth herein.
22 The District objects to this request on the grounds that it is improper in form and is not full and complete
23 in and of itself because it incorporates and requires reference to other materials in violation of Code of
24 Civil Procedure section 2033.060, subdivision (d). The District objects that this request is compound in
25 violation of Code of Civil Procedure section 2033.060, subdivision (f). The District objects that this
26 request is vague and ambiguous with regard to the terms “evaluate, oversee, or monitor” and “in-class
27 performance.” The District objects that this request seeks information that is neither relevant to Plaintiffs’
28 claims nor reasonably calculated to lead to the discovery of admissible evidence. The District objects to

1 the extent this request seeks information protected by the attorney client privilege and/or attorney work
2 product doctrine. The District objects to the extent this request seeks confidential information relating to
3 the development and/or presentation of the District's positions with respect to employer-employee
4 relations, confidential information that is used to contribute significantly to the development of the
5 District's positions with respect to employer-employee relations, confidential information regarding
6 internal collective bargaining strategies or tactics, and/or confidential discussions with the Board of
7 Education regarding the District's position regarding any matter within the scope of representation and
8 instructing its designated representatives regarding same. (Gov. Code, §§ 3540.1(c), 54957.6, 54936,
9 3549.1; see, e.g., *Colton Joint Unified School District/Rialto Unified School District/San Bernardino City*
10 *Unified School District* (1981) PERB Order No. Ad-113; *Berbiglia, Inc.* (1977) 233 NLRB 1476, 1495;
11 *Burlingame Elementary School District* (2006) PERB Dec. No. 1847.)

12 The District further objects that this request seeks broad merits discovery at the outset of this
13 putative class action, in violation of the Judicial Council's guidance that, "[i]n complex litigation . . . the
14 issues may not be well defined when the case is first filed and may become better defined only after some
15 initial discovery has occurred. This means there is a risk, particularly early in the life of a complex case,
16 that discovery can become unfocused and out of control." (California Deskbook on Complex Civil
17 Litigation Management, § 3.30.) As a result, "in some cases when it is appropriate for certain issues to
18 precede other issues, such as questions of statute of limitations, jurisdiction, or standing, discovery should
19 be staged so that these issues can be determined before other discovery proceeds." (*Id.* at § 3.31.)

20 Subject to and without waiving these objections, the District responds as follows: Deny.
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1 **PLAINTIFFS’ FACTUAL AND LEGAL REASONS FOR COMPELLING LAUSD’S FURTHER**
2 **PRODUCTION IN RESPONSE TO REQUEST FOR PRODUCTION NOS. 1, 4, AND 5:**

3 The LAUSD repeatedly has refused to produce any internal, confidential communications
4 concerning the side letters or the impact of distance learning on students. *See* Hillenbrand Decl. Ex. 1
5 (RFP No. 1, 4); *see also* Exs. 32, 35, 36. It has also redacted portions of the side letter negotiation meeting
6 notes it produced that reflect internal caucus discussions. *See, e.g., id.* Exs. 3–13, 19–23. It claims these
7 communications are irrelevant and nonetheless protected by the Brown Act, the deliberative process,
8 legislative, and official information privileges, and an administrative law policy opposed to the discovery
9 of internal collective bargaining communications during an ongoing negotiation. *Id.* Exs. 23 (RFP Nos 1–
10 5), 27. These blanket relevance, confidentiality, and privilege objections categorically do not apply. The
11 Court should order the LAUSD to produce these documents, and remove the applied redactions, or at
12 minimum require the LAUSD to submit them for *in camera* review to determine if they are discoverable.

13 **Relevance Objections:** These communications are highly relevant, as made clear by the side letter
14 negotiation meeting notes produced by the LAUSD. Those meeting notes show that the terms the LAUSD
15 believed would comply with SB 98 were very different from the terms it agreed to. For example, during
16 the August Side Letter negotiations, the LAUSD initially asked for a requirement that teachers work a
17 “*regular 8 hour day as defined in the CBA.*” *See, e.g.,* Hillenbrand Decl. Ex. 4 at LAUSD001250
18 (emphasis added); *see also id.* at LAUSD001249 (“We see a need for live video, need a defined school
19 day, and would like to see the work day mirror or parallel a regular work day. Cant short change the
20 students.”). That request was met with significant resistance from UTLA:

- 21 • During a July 24, 2020 negotiation, a UTLA representative encouraged everyone to “stop
22 talking about a full day’s worth of work for teachers. When people push back about March,
23 April the best approach from the District is to say our teachers were heroic, and they were
24 trying to triage.” *Id.* Ex. 7 at LAUSD001109.
- 25 • During a July 31, 2020 negotiation, a UTLA representative accused the district of “capitulating
26 to political pressure” while admitting that one of his son’s teachers “mailed it in” during the
27 spring semester. *Id.* Ex. 11 at LAUSD001324.
- 28 • During an August 1, 2020 negotiation, a UTLA representative said that teachers cannot “be
expected to sit in front of [a] computer screen for 8 or 9 hours a day, even though [a] loss for
students” because “[e]veryone suffers from [the] pandemic.” *Id.* Ex. 13 at LAUSD001336.

Eventually, the LAUSD agreed that teachers only had to work **5.25 hours** and were “expected” to work **6 hours**. *Id.* Ex. 9; *see also* Exs. 14–18. Notably, the December Side Letter does not require that teachers

1 work full school days either. *Id.* Ex. 41 ¶ 5. And during those negotiations, UTLA representatives accused
2 the LAUSD of responding to “media pressure” and trying to “punish” UTLA members, and called the
3 district’s proposals “borderline criminal.” Ex. 19 at LAUSD001137–40. Therefore, and given the hotly-
4 contested nature of these negotiations, Plaintiffs are entitled to know what internal discussions the LAUSD
5 had about the terms it believed were SB 98 compliant, the terms proposed by UTLA, and the reasons for
6 agreeing to the terms set forth in the executed side letters.

7 Relevance in this case is not merely limited to the four corners of the side letters. For example,
8 Plaintiffs’ Disparate Racial Discrimination claim—*see* FAC ¶¶ 153–165 (Oct. 7, 2020)—requires a
9 showing (1) that LAUSD’s distance learning policy has a disparate impact on minority children, (2)
10 causing de facto segregation and an appreciable impact on the district’s educational quality, and (3) that
11 “***no action is taken to correct that policy when its impacts are identified.***” *Collins v. Thurmond*, 41 Cal.
12 App. 5th 879, 896-97 (2019) (emphasis added). Plaintiffs therefore are entitled to obtain discovery about
13 the LAUSD’s knowledge of the likely and actual impact of the policies it negotiated, and what (if any)
14 actions the LAUSD implemented in response to that information. Whether the LAUSD discussed the
15 impact of distance learning on students, reviewed and considered what distance learning policies other
16 districts adopted, or drew conclusions from studies, surveys, and reports related to distance learning is
17 plainly relevant to Plaintiffs’ constitutional claims. *See, e.g., Butt v. California*, 4 Cal. 4th 668, 674 (1992)
18 (finding “***an unjustified discrimination against District students compared to those elsewhere in***
19 ***California***”) (emphasis added); *Collins*, 41 Cal. App. 5th at 847 (citing *Butt*).

20 Even still, the LAUSD has called into question the plain meaning of the side letters’ terms. For
21 example, despite the express terms of the August Side Letter that teachers were only required to work
22 between 9:00 a.m. and 2:15 p.m. during the fall semester, the LAUSD denied that teachers were only
23 required to work 5.25 hours per school day. *See* Hillenbrand Decl. Ex. 26 (RFA No. 1). The LAUSD
24 denied other requests for admission concerning the plain language of the August Side Letter as well. *Id.*
25 (RFA Nos. 2–3). Accordingly, the Plaintiffs are entitled to investigate the LAUSD’s understanding of the
26 meaning of the side letter terms. *See Glenfed Dev. Corp. v. Superior Court*, 53 Cal. App. 4th 1113, 1118
27 (1997) (permitting discovery of extrinsic evidence to determine how an insurer interpreted language in an
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1 insurance policy); *Pac. Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.*, 69 Cal. 2d 33, 40
2 (1968) (extrinsic evidence is admissible when the interpretation of contractual terms is in dispute).

3 **Confidentiality Objections:** The LAUSD cannot withhold documents merely because they
4 contain confidential information. “Simply put, confidentiality does not equate with privilege.” *Los Angeles*
5 *Unified Sch. Dist. v. Trustees of S. California IBEW-NECA Pension Plan*, 187 Cal. App. 4th 621, 631 n.7
6 (2010). Nonetheless, the LAUSD has cited various administrative decisions to claim that the Court should
7 recognize a policy opposed to the discovery of internal collective bargaining communications. *See*
8 *Hillenbrand Decl. Ex. 1* (citing *Berbiglia, Inc.*, 233 NLRB 1476, 1495 (1977); *Burlingame Elementary*
9 *Sch. District*, PERB Dec. No. 1847 (2006); *Colton Joint Unified Sch. District*, 1981 Cal. PERB LEXIS
10 218 (1981)).¹

11 As an initial matter, administrative decisions are not binding on California courts. *See, e.g., Elliott*
12 *v. Indus. Acc. Comm’n*, 21 Cal. 2d 281, 284 (1942) (“The decisions of the [Industrial Accident
13 Commission] are not binding on this court.”); *Sara M. v. Superior Court*, 36 Cal. 4th 998, 1011 (2005)
14 (“Ultimately, the interpretation of a statute is a legal question for the courts to decide, and
15 an administrative agency’s interpretation is not binding.”). But even if the Court were to find these
16 decisions persuasive, the California Court of Appeal already determined that there is no privilege that
17 protects communications related to the collective bargaining process because “[p]rivileges contained in
18 the Evidence Code are exclusive” and “courts are not free to create new privileges as a matter of judicial
19 policy.” *See Montebello Rose* 119 Cal. App. 3d at 33–37 (finding *Berbiglia* unpersuasive); *see also* Cal.
20 Evid. Code § 911. *Montebello* clearly established that there is no collective bargaining process privilege
21 under California law, and the California Legislature has not acted in the **40 years** since to create one.

22 Therefore, no such confidential internal labor deliberation privilege exists and confidentiality is
23 not a proper basis for withholding relevant documents, especially when the Court already has entered a
24 protective order that governs the parties’ exchange of confidential materials.

25 _____
26 ¹ These administrative law decisions all concern an ongoing negotiation that could prejudice one
27 negotiating party and advantage another. *See, e.g., Berbiglia, Inc.*, 233 NLRB at 1495 (denying
28 employer’s subpoenas of union communications during a labor dispute because the subpoenas requested
“crucial material regarding ***pending union negotiations***” (emphasis added)). Plaintiffs here were not
parties to the negotiations, which have since ended and resulted in fully executed agreements. Therefore,
any threat of prejudice stemming from disclosure is minimal and distinguishable from those decisions.

1 **Privilege Objections:** The LAUSD’s assertions of the Brown Act as well as the deliberative
2 process, legislative, and official information privileges are misplaced and cannot overcome Plaintiffs’
3 need for this highly relevant information. **First**, Plaintiffs have made clear that they are not seeking any
4 materials from the LAUSD Board’s closed sessions (and tabled their initial request to depose the LAUSD
5 Board after realizing that they did not participate in the side letter agreement negotiations). Therefore, the
6 Brown Act does not apply.

7 **Second**, the “deliberative process” privilege is codified within the California Public Records Act.
8 See Cal. Civ. Proc. Code § 6254 (codifying the deliberative process privilege). It is not an evidentiary or
9 discovery privilege, and only applies to public records requests. See *Marylander*, 81 Cal. App. 4th at
10 1126–27; see also Cal. Gov. Code § 6260 (“[t]he provisions of [the Public Records Act] shall not be
11 deemed in any manner to affect . . . the rights of litigants”). Therefore, the deliberative process privilege
12 does not apply to civil discovery between litigants unless the action concerns a request made under the
13 Public Records Act. Indeed, all of the cases the LAUSD has cited as alleged support concern Public
14 Records Act requests. See *City of San Jose v. Superior Court*, 2 Cal. 5th 608 (2017); *Regents of Univ. of*
15 *California v. Superior Court*, 20 Cal. 4th 509 (1999); *Times Mirror Co. v. Superior Court*, 53 Cal. 3d
16 1325 (1991). Because this case does not concern any request made under the Public Records Act, the
17 deliberative process privilege is not a valid privilege objection.

18 **Third**, the “legislative process” privilege protects from disclosure the motives and mental
19 processes of individual “legislators” when enacting “legislation.” *Cty. of Los Angeles*, 13 Cal. 3d at 727;
20 see also *People ex rel. Harris v. Rizzo*, 214 Cal. App. 4th 921, 944 (2013) (creation of memorandum was
21 not a “legislative act”). Superintendent Beutner and other LAUSD employees, including those who
22 negotiated the August Side Letter and December Side Letter, are not “legislators,” and their
23 communications about the side letters or the impact of distance learning do not concern “legislative acts.”
24 Indeed, the negotiation and execution of a labor **contract**—a bilateral agreement between a government
25 entity and its employees—is **administrative** in nature; whereas a municipal employee salary **ordinance**—
26
27
28

1 a unilateral legislative act enacted by a board of supervisors—is *legislative* in nature. *Cty. of Los Angeles*,
2 13 Cal. 3d at 723. The LAUSD, in over two months, has not cited a single case that says otherwise.²

3 The LAUSD more recently has suggested that any internal side letter communications are
4 protected under the legislative privilege because the LAUSD Board eventually approved the August Side
5 Letter after it was executed. But this premise falsely assumes that the Board’s after-the-fact approval of a
6 negotiated labor contract somehow converts an administrative act into a legislative one. It does not.
7 Moreover, there is no evidence that any Board members directly participated in the August Side Letter
8 negotiations—which were conducted by the LAUSD’s labor relations team and other employees—and
9 Plaintiffs are not seeking any discovery about why the Board approved the August Side Letter. Notably,
10 the Board *has never approved the December Side Letter*, which has been operative since December 18,
11 2020, or the April Side Letter from last spring. Clearly, the Board’s approval is not needed for the side
12 letters to be operative. And whatever tangential role the LAUSD Board played in approving the August
13 Side Letter does not somehow convert a labor contract into a legislative act, or justify withholding every
14 internal or confidential communication LAUSD employees had about the August Side Letter or the
15 negotiation thereof.

16 The LAUSD also has recently argued that the side letters are legislative in nature because they
17 reflect “policy considerations.” If the Court were to adopt such an expansive view of the legislative
18 privilege—which, again, is intended to protect only the mental processes and motives of “legislators” in
19 enacting “legislation”—then every decision made by the LAUSD, and any internal communications about
20 that decision, would be protected from disclosure. Clearly, that is not the intended purpose of the
21 legislative privilege. The Court should reject the LAUSD’s improper, blanket use of it.³

22
23 ² The LAUSD has cited three inapposite cases that concern the awarding of government contracts to
24 private parties during a competitive bidding process. *See SN Sands Corp. v. City and Cty. of San*
25 *Francisco*, 167 Cal. App. 4th 185, 191 (2008); *Marshall v. Pasadena Unified Sch. Dist.*, 119 Cal. App.
26 4th 1241, 1253 (2004); *Mike Moore’s 24-Hour Towing v. City of San Diego*, 45 Cal. App. 4th 1294,
1303 (1996). None of these cases support, let alone establish, that a labor negotiation between the
LAUSD and UTLA is “legislative in character.”

27 ³ Nevertheless, the legislative privilege is not an absolute prohibition and does not preclude Plaintiffs, at
28 minimum, from requesting documents that reflect the LAUSD employees’ “knowledge of objective facts
and circumstances” at the time they negotiated the side letters. *See City of King v. Cmty. Bank of Centl.*
California, 131 Cal. App. 4th 913, 931 n.12 (2005) (citing cases).

1 **Finally**, the official information privilege only protects “information acquired in confidence” from
2 disclosure. Cal. Evid. Code § 1040(a). The purpose of § 1040 is to afford a “privilege against disclosure
3 of official information communicated by informants.” *People v. Garcia*, 67 Cal. 2d 830, 842 n.11 (1967).
4 Thus, cases upholding the privilege generally protect information that agencies acquired in confidence
5 from informants and other private parties. *See, e.g., Los Angeles Unified Sch. Dist.*, 187 Cal. App. 4th at
6 624 (contractors’ payroll records in the possession of the school district). On the other hand, information
7 that is “never transmitted” to an agency “has not been acquired in confidence by a public employee.”
8 *Union Bank of California, N.A. v. Superior Court*, 130 Cal. App. 4th 378, 389 n.6 (2005); *see also People*
9 *ex rel. Dep’t Pub. Wks. v. McNamara Corp.*, 28 Cal. App. 3d 641, 650–51 (1972) (noting that the
10 “statutory language [of § 1040] suggests a narrow application of the official information privilege in
11 contentious matters”). Therefore, the requested internal communications are not protected by the official
12 information privilege unless and until the LAUSD can establish that they contain “information acquired
13 in confidence.”⁴ The LAUSD has not done so, nor has it established that disclosure is forbidden by statute,
14 which means that the LAUSD must prove its need for confidentiality outweighs the public interest. *See*
15 Cal. Evid. Code § 1040(b)(1)–(2).

16 **Qualified Privileges**: Even if the official information privilege, the deliberative process privilege,
17 or some other qualified privilege applies to one or more of these communications, the Court would still
18 need to balance the LAUSD’s interest in keeping the information secret against Plaintiffs’ need for the
19 information to prove their case. *See* Cal. Evid. Code § 1040(b)(2); *see also* Cal. Gov. Code § 6255. To
20 evaluate the need for information, courts consider (1) the importance of the information to the lawsuit, (2)
21 the availability of these materials by other means, and (3) the reasonableness of those other means. *See*
22 *Marylander*, 81 Cal. App. 4th at 1129 (citing *Shepherd v. Superior Court*, 17 Cal. 3d 107, 126 (1976));
23 *see also* Cal. Evid. Code § 1040(b)(2) (“the interest of the public entity as a party in the outcome of the
24 proceeding ***may not be considered***”) (emphasis added).

25 _____
26 ⁴ The three cases cited by the LAUSD concern requests for criminal and regulatory investigative
27 materials or closed board session materials, which are not at issue here. *See Suarez v. Office of Admin.*
28 *Hearings*, 123 Cal. App. 4th 1191 (2004) (Department of Real Estate audit and enforcement deputy
manuals “contain confidential investigative training materials”); *Cty. of Orange v. Superior Court*, 79
Cal. App. 4th 759 (2000) (finding criminal investigative file to be “acquired in confidence”); *Kleitman v.*
Superior Court, 74 Cal.App.4th 324 (1999) (analyzing confidentiality of closed board sessions).

1 For the reasons stated above, these communications are highly relevant to Plaintiffs claims and the
2 fair resolution of this lawsuit. They directly concern LAUSD students' fundamental, constitutional right
3 to a "basic educational equality," which is the crux of this case. *Butt*, 4 Cal. 4th at 685 (1992); *see also*
4 *Collins*, 41 Cal. App. 5th at 898. There are no other means for Plaintiffs to obtain these internal
5 communications. Conversely, the LAUSD's interest in keeping this information secret is minimal now
6 that the negotiations are over and there is a protective order in effect that governs the exchange of
7 confidential materials. *See Los Angeles Unified Sch. Dist.*, 187 Cal. App. 4th at 632 n.8 (the existence of
8 a protective order weighs in favor of discoverability). Therefore, any qualified privilege the LAUSD could
9 claim should not apply but, at the very least, the Court should review these communications *in camera* to
10 determine whether they are discoverable. *See Marylander*, 81 Cal.App.4th at 1130 (*in camera* review is
11 appropriate where "the communications are alleged to be relevant" and the court cannot weigh the need
12 for the information "without knowing the contents").

13 **REQUESTS FOR PRODUCTION TO RELIEF DEFENDANT UTLA**

14 **DEFINITIONS RELEVANT TO REQUESTS FOR PRODUCTION:**

- 15 1. "AUGUST SIDE LETTER" means the 2020-2021 Distance Learning Side Letter Between the
16 Los Angeles Unified School District and United Teachers Los Angeles, dated August 11, 2020,
attached hereto as Exhibit 1.
- 17 2. "COMMUNICATION(S)" means any form of information exchange, or attempted exchange,
18 including but not limited to: written, oral, or electronic exchanges; exchanges by letter,
19 telephone, facsimile, email, text message, face-to-face conversation, meeting or conference;
20 any exchange whether or not written, taped or recorded; any exchange without limit to the
time, place or circumstances of its occurrence; and/or any other transmittal of information by
any media by any manner.
- 21 3. "DISTANCE LEARNING" means the definition set forth in California Education Code §
43500(a):

22 instruction in which the pupil and instructor are in different locations and pupils are under
23 the general supervision of a certificated employee of the local educational agency. Distance
learning may include, but is not limited to, all of the following:

- 24 (1) Interaction, instruction, and check-ins between teachers and pupils through the
25 use of a computer or communications technology.
- 26 (2) Video or audio instruction in which the primary mode of communication
27 between the pupil and certificated employee is online interaction, instructional
television, video, telecourses, or other instruction that relies on computer or
28 communications technology.

1 (3) The use of print materials incorporating assignments that are the subject of
2 written or oral feedback.

- 3 4. "DOCUMENT(S)" means any means of writing, as defined in Section 250 of the California
4 Evidence Code, and includes, without limitation: the original or a copy as well as drafts and
5 all versions of all writings and recordings; material that is stored, compiled or organized by
6 means of any electronic, magnetic, optical or mechanical device, such as by handwriting,
7 typewriting, printing, photostating, or filming; agreements, analytical data, art work, audio
8 recordings, books, bulletins, calendars, computer tapes, computer storage media, contracts,
9 correspondence, diagrams, diaries, drawings, email, facsimiles, forms, interoffice
10 communications, keypunch cards, letters, memoranda, messages, notes, papers, photographs,
11 pictures, pleadings, proposals, reports, studies, surveys, sketches, telexes, telegrams,
12 telecopies, telegraphs, telex communications, text messages, video recordings, and
13 worksheets; and any writing or recording prepared on or with any other physical objects.
- 14 5. "FALL SEMESTER" means the Los Angeles Unified School District semester that begins on
15 August 17, 2020 and ends on December 18, 2020.
- 16 6. "LAUSD" means the Los Angeles Unified School District, as well as all present or former
17 affiliated entities, subsidiaries, employees, members, agents, attorneys, or representatives of
18 the Los Angeles Unified School District, including but not limited to its Board Members. This
19 term also encompasses and refers to any other person(s) or entity(ies) acting in concert with
20 the Los Angeles Unified School District or acting or purporting to act on the Los Angeles
21 Unified School District's behalf.
- 22 7. "OCTOBER 2020 UTLA MEMBER SURVEY" means the October 2020 UTLA Member
23 Survey on Distance Learning and Reopening Schools, which is attached hereto as Exhibit 2.
- 24 8. "OCTOBER SIDE LETTERS" means the Los Angeles Unified School District and United
25 Teachers Los Angeles Sideletter Addressing Voluntary In-Person Tutoring Services by UTLA-
26 Represented Employees, dated October 8, 2020 and attached hereto as Exhibit 3, and the Los
27 Angeles Unified School District and United Teachers Los Angeles Sideletter Addressing
28 Voluntary In-Person Student Assessment Services by UTLA-Represented Employees, dated
October 8, 2020 and attached hereto as Exhibit 4.
9. "RELATING" means, without limitation, analyzing, concerning, consisting of, describing,
discussing, embodying, evidencing, identifying, including, pertaining to, memorializing,
mentioning, naming, negating, recording, reflecting, showing, supporting, summarizing, or
having any logical or factual connection with the matter discussed.
10. "SPRING SEMESTER" means the Los Angeles Unified School District semester that begins
on January 11, 2021 and ends on June 10, 2021.
11. "YOU," "YOUR," "YOURS," and "UTLA" means United Teachers Los Angeles, as well as
all present or former affiliated entities, subsidiaries, employees, members, agents, attorneys,
or representatives of United Teachers Los Angeles, including but not limited to its Board
Members. These terms also encompass and refer to any other person(s) or entity(ies) acting in
concert with YOU or acting or purporting to act on YOUR behalf.

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS and COMMUNICATIONS RELATING to the drafting of, negotiation of,
terms of, implementation of, or extension of any side letter or sideletter agreement entered into with the

1 LAUSD that is in effect during the FALL SEMESTER or SPRING SEMESTER, including but not limited
2 to the AUGUST SIDE LETTER and the OCTOBER SIDE LETTERS.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

4 Objection. Compound request; seeks to evade the numerical limits of the requests imposed by the
5 Court. The request unlawfully and improperly seeks confidential information, including but not limited
6 to, drafts of proposals not proposed to the District, and internal union communications relating to union
7 bargaining strategy, deliberations, priorities and tactics. *See, e.g., Berbiglia* 233 NLRB 1476 (1977);
8 *Harvey's Wagon Wheel, Inc. v. N.L.R.B.*, 550 F.2d 1139, 1143 (9th Cir. 1976); *Colton Joint Unified School*
9 *District*, PERB Order No. Ad-11, 1981 Cal. PERB LEXIS 218 (1981); *County of Tulare*, PERB Decision
10 No. 2697-M, 2020 Cal. PERB LEXIS 74, fn.9 (2020). In addition, this request seeks documents not
11 reasonably calculated to lead to admissible evidence, in that documents other than the AUGUST SIDE
12 LETTER (or any other collective bargaining agreement) itself do not provide insight into whether that
13 agreement is lawful and constitutional. The language of the Sideletter speaks for itself. Internal union
14 communications do not shed light on the meaning of a collective bargaining agreement. *Santisas v.*
15 *Goodin*, 17 Cal.4th 599, 608 (1998); *Los Angeles Unified School Dist. v. Torres Construction Corp.*, 57
16 Cal. App. 5th 480, 495 (2020); *Silverado Modjeska Recreation & Park Dist. v. County of Orange*, 197
17 Cal. App. 4th 282, 313 (2011); Civ. Code § 1639. Plaintiffs have disavowed making any claim against
18 UTLA in this lawsuit, and have not asserted that there is any ambiguity in the Sideletter that is at issue in
19 this lawsuit. Moreover, this request is based on Plaintiffs' premise, which Defendants have explained to
20 the Plaintiffs is erroneous, that the Sideletter, either alone or in combination with other CBAs, comprises
21 the entirety of the District's educational program and policy. That is, the Sideletter's terms do not
22 determine or tend to prove or disprove the legality or constitutionality of the District's operation during
23 COVID-19. Finally, in light of the expiration of the August Sideletter and LAUSD's and UTLA's
24 agreement to a new Sideletter effective January 1, 2021, this request is moot; with the expiration of the
25 August Sideletter, it no longer can be the subject of a preliminary injunction, even if that relief would
26 otherwise be warranted. Without waiving those objections, the Union responds as follows:

27 Relief Defendant will produce non-privileged responsive documents that are not drafts of
28 proposals or internal communications.

1 **REQUEST FOR PRODUCTION NO. 3:**

2 All DOCUMENTS and COMMUNICATIONS RELATING to DISTANCE LEARNING surveys
3 of UTLA members, including but not limited to the OCTOBER 2020 UTLA MEMBER SURVEY.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

5 Objection. Compound request; seeks to evade the numerical limits of the requests imposed by the
6 Court. The request unlawfully and improperly seeks confidential information, including but not limited
7 to, internal union communications relating to union bargaining strategy, deliberations, priorities and
8 tactics. *See, e.g., Berbiglia* 233 NLRB 1476 (1977); *Harvey's Wagon Wheel, Inc. v. N.L.R.B.*, 550 F.2d
9 1139, 1143 (9th Cir. 1976); *Colton Joint Unified School District*, PERB Order No. Ad-11, 1981 Cal.
10 PERB LEXIS 218 (1981); *County of Tulare*, PERB Decision No. 2697-M, 2020 Cal. PERB LEXIS 74,
11 fn.9 (2020). It also seeks information and documents that intrude on the associational and individual
12 privacy and confidentiality of individual respondents to the survey, who were promised confidentiality
13 and anonymity when surveyed. In addition, this compound request seeks documents not reasonably
14 calculated to lead to admissible evidence, in that documents pertaining to the subjects enumerated in this
15 request will not shed light on or tend to prove or disprove whether the District's educational program and
16 policy are lawful and constitutional. Plaintiffs have disavowed making any claim against UTLA in this
17 lawsuit. Plaintiffs already have the survey to which this request refers.

18 Without waiving those objections, the Union responds as follows:

19 Relief Defendant will produce non-privileged responsive documents that are not internal
20 communications, do not include private or confidential information, and that are not already in Plaintiffs'
21 possession.

22 **REQUEST FOR PRODUCTION NO. 4:**

23 All DOCUMENTS and COMMUNICATIONS discussing the impact of DISTANCE LEARNING
24 on LAUSD teachers during the FALL SEMESTER or SPRING SEMESTER.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

26 Objection. Compound request; seeks to evade the numerical limits of the requests imposed by the
27 Court. The request unlawfully and improperly seeks confidential information, including but not limited
28 to, internal union communications relating to union bargaining strategy, deliberations, priorities and

1 tactics. *See, e.g., Berbiglia* 233 NLRB 1476 (1977); *Harvey's Wagon Wheel, Inc. v. N.L.R.B.*, 550 F.2d
2 1139, 1143 (9th Cir. 1976); *Colton Joint Unified School District*, PERB Order No. Ad-11, 1981 Cal.
3 PERB LEXIS 218 (1981); *County of Tulare*, PERB Decision No. 2697-M, 2020 Cal. PERB LEXIS 74,
4 fn.9 (2020). In addition, this request seeks documents not reasonably calculated to lead to admissible
5 evidence, in that documents pertaining to the subjects enumerated in this compound request will not shed
6 light on or tend to prove or disprove whether the District's educational program and policy are lawful and
7 constitutional. Plaintiffs have disavowed making any claim against UTLA in this lawsuit.

8 Without waiving those objections, the Union responds as follows:

9 Relief Defendant will produce non-privileged responsive documents that are not internal
10 communications and not already in Plaintiffs' possession.

11 **OTHER REQUESTS AND RESPONSES SERVING AS A BASIS FOR THE NEED FOR**
12 **FURTHER PRODUCTION:**

13 **REQUEST FOR ADMISSION NO. 1:**

14 Admit that the AUGUST SIDE LETTER reduces the number of hours that YOUR teachers must
15 work from eight hours per school day to five and a quarter hours per school day.

16 **UTLA'S RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

17 Objection. This request seeks irrelevant information not reasonably calculated to lead to admissible
18 evidence, because the hours of required work are not necessarily connected with or determinative of the
19 total hours of instruction provided to each student. The document also speaks for itself, and does not
20 encompass the entirety of the terms to which UTLA and the District have agreed. Additionally, this request
21 when written called for speculation. It is premised upon a misunderstanding of the role of collective
22 bargaining agreements in determining the rules that employees are subject to at work. In light of the
23 expiration of the August Sideletter and LAUSD's and UTLA's agreement to a new Sideletter effective
24 January 1, 2021, this request is moot; with the expiration of the August Sideletter, it no longer can be the
25 subject of a preliminary injunction, even if that relief would otherwise be warranted.

26 Without waiving these or any other objections, UTLA responds: Denied. The AUGUST SIDE
27 LETTER does not, as a practical matter, dictate how many hours teachers must work, or how many hours
28

1 they work. Additionally, teachers would not necessarily be required to work eight hours per school day in
2 the absence of the AUGUST SIDE LETTER.

3 **REQUEST FOR ADMISSION NO. 2:**

4 Admit that the AUGUST SIDE LETTER prohibits school principals from requiring YOUR
5 teachers to participate in more than one hour of professional development meetings per week.

6 **UTLA'S RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

7 Objection; this request seeks irrelevant information not reasonably calculated to lead to admissible
8 evidence. The AUGUST SIDE LETTER speaks for itself, and does not and did not encompass the entirety
9 of the terms to which UTLA and the District have agreed. Additionally, this request when written called
10 for speculation. It is premised upon a misunderstanding of the role of collective bargaining agreements in
11 determining the actions that school administrators are authorized to take. In light of the expiration of the
12 August Sideletter and LAUSD's and UTLA's agreement to a new Sideletter effective January 1, 2021,
13 this request is moot; with the expiration of the August Sideletter, it no longer can be the subject of a
14 preliminary injunction, even if that relief would otherwise be warranted.

15 UTLA also incorporates its objections stated above as if fully set forth herein. Without waiving
16 said objections, UTLA responds as follows:

17 Denied. The August Side Letter does not state any such prohibition.

18 **REQUEST FOR ADMISSION NO. 3:**

19 Admit that the AUGUST SIDE LETTER does not require the LAUSD to evaluate, oversee, or
20 monitor the in-class performance of YOUR teachers.

21 **UTLA'S RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

22 Objection; this request seeks irrelevant information not reasonably calculated to lead to admissible
23 evidence. The document speaks for itself, and does not encompass the entirety of the terms to which
24 UTLA and the District have agreed. It is premised upon a misunderstanding of the role of collective
25 bargaining agreements in determining the actions that school administrators are authorized to take. It also
26 assumes the erroneous premise that the AUGUST SIDE LETTER comprises or comprised the entire
27 educational and operational program of the District. In light of the expiration of the August Sideletter and
28 LAUSD's and UTLA's agreement to a new Sideletter effective January 1, 2021, this request is moot; with

1 the expiration of the August Sideletter, it no longer can be the subject of a preliminary injunction, even if
2 that relief would otherwise be warranted.

3 UTLA incorporates its objections stated above as if fully set forth herein. Without waiving said
4 objections, UTLA responds as follows:

5 Denied. Please refer to the provisions entitled “Compensation, Evaluation, Benefits and Leaves.”

6 **FACTUAL AND LEGAL REASONS FOR COMPELLING UTLA’S FURTHER PRODUCTION**
7 **IN RESPONSE TO REQUEST FOR PRODUCTION NOS. 1, 4, AND 5:**

8 UTLA has refused to produce any internal communications, including those concerning the side
9 letters, the October 2020 survey of its members, or the impact of distance learning. *See* Hillenbrand Decl.
10 Ex. 2 (RFP Nos. 1, 3, 4); Ex. 32 at 1–2. It did not assert any privilege objections in its responses to RFP
11 Nos. 1–4, while asserting only the attorney-client privilege in response to RFP No. 5, which requested all
12 documents relied upon to respond to Plaintiffs’ RFAs and Interrogatories. *Id.* Ex. 33. All privilege
13 objections not asserted by UTLA in its written responses are waived. *See* Cal. Civ. Proc. Code § 2031.240;
14 *Catalina Island Yacht Club v. Superior Court*, 242 Cal. App. 4th 1116, 1125–26 (2015) (“the failure to
15 assert a specific objection waives that particular objection” (citation omitted)). This includes the trade
16 secret objections first raised in UTLA’s privilege log weeks after responses were due. *See* Hillenbrand
17 Decl. Ex. 33; *see also* *Stadish v. Superior Court*, 71 Cal. App. 4th 1130, 1141 (1999) (finding waiver
18 where defendant “did not assert the trade secret privilege in its response”). Therefore, UTLA cannot
19 withhold its internal communications responsive to RFP Nos. 1–4, including those concerning the side
20 letters, the October 2020 member survey, and the impact of distance learning, on privilege grounds.

21 UTLA’s remaining objections are relevance and confidentiality—the same administrative law
22 policy that the LAUSD cited in its responses. *Id.* Ex. 1; *see also id.* Ex 32 at 3–8, 13–18 (citing *Berbiglia,*
23 *Inc., Burlingame Elementary Sch. District, and Colton Joint Unified Sch. District*). Plaintiffs incorporate
24 their relevance and confidentiality arguments from Section IV.A.1 here, which apply with equal weight
25 to UTLA. To summarize, these internal communications are highly relevant and cannot be obtained
26 through other means, relevance in this case is not limited to the four corners of the side letters, and
27 confidentiality is not a proper objection especially when a protective order is in effect.

1 UTLA claims without any authority that as a Relief Defendant, its discovery obligations are
2 “proportionately diminished.” Hillenbrand Decl. Ex. 1 at 3. But UTLA has chosen to actively litigate this
3 case, including by striking a judge, serving discovery, filing a motion to stay proceedings, and making its
4 intentions known that it will file a demurrer, oppose Plaintiffs’ preliminary injunction motion, and oppose
5 Plaintiffs’ class certification motion. *See* Hillenbrand Decl. Ex. 42 at 3, 6, 12–13, 18–19. UTLA has taken
6 full advantage of the rights afforded to party litigants. It must likewise adhere to the obligations imposed
7 on party litigants.

8 UTLA already has implicated its internal communications in the case. Like the LAUSD, UTLA
9 denied Plaintiffs’ requests for admission concerning the plain meaning of the August Side Letter. *Id.* Ex.
10 27 (RFP Nos. 1–3). Therefore, Plaintiffs are entitled to investigate UTLA’s understanding of the meaning
11 of the side letter terms. *See Glenfed Dev. Corp.*, 53 Cal. App. 4th at 1118; *Pac. Gas & Elec. Co.*, 69 Cal.
12 2d at 40. UTLA further claimed in the Joint Status Conference Report that Plaintiffs have “misinterpreted”
13 and “misapplied” side letter negotiation meeting notes produced by the LAUSD, and that UTLA “always
14 bargain[s] for students,” and UTLA only proposes “what is best for students.” Hillenbrand Decl. Ex. 41
15 at 13. However, documents produced by UTLA indicate that it negotiated in the best interests of *teachers*.
16 *See, e.g.*, Ex. 43 at UTLA_00304 (if members do not ratify the August Side Letter, “[t]he district would
17 be able to unilaterally implement working conditions as outlined in the [CBA], *including a longer school*
18 *day and the loss of many victories in this agreement*” for teachers (emphasis added)). Teacher interests
19 and student interests do not always align and are sometimes even diametrically opposed. Therefore,
20 Plaintiffs are entitled to discovery to determine whether UTLA did in fact “always bargain for students”
21 and propose “what is best for students.”

22 **LAUSD’S DOCUMENT COLLECTION EFFORTS AND PRIVILEGE LOG**
23 **REQUEST FOR PRODUCTION INSTRUCTION NO. 7**

24 If YOU do not produce all DOCUMENTS responsive to a request, YOUR response must contain
25 a representation of YOUR inability to comply, affirming that a diligent search and reasonable inquiry were
26 conducted, and stating whether YOU are unable to comply because the DOCUMENTS either never
27 existed, have been destroyed, lost, misplaced, or stolen, or never have been, or are no longer in YOUR
28 possession, custody, or control.

1 **LAUSD’S OBJECTIONS TO REQUEST FOR PRODUCTION INSTRUCTION NO. 7:**

2 None.

3 **REQUEST FOR PRODUCTION INSTRUCTION NO. 9:**

4 If no DOCUMENTS responsive to a particular request exist, or if such DOCUMENTS exist but
5 are not in YOUR possession, custody, or control, then YOUR response to that request shall so state.

6 **LAUSD’S OBJECTIONS TO REQUEST FOR PRODUCTION INSTRUCTION NO. 9:**

7 None.

8 **REQUEST FOR PRODUCTION INSTRUCTION NO. 10:**

9 For each DOCUMENT that YOU withhold on the basis of privilege, please state:

10 a) the type of DOCUMENT (i.e., letter, memorandum, report, etc.);

11 b) information sufficient to enable identification of the DOCUMENT, including without
12 limitation, the title or subject matter, date, name and address of the author or signor, name
and address of the addressee, persons copied on the DOCUMENT and all other recipients;

13 c) the location of the DOCUMENT; and

14 d) the type and basis of the privilege asserted, including without limitation, the facts upon
15 which you rely as the basis for the privilege.

16 **LAUSD’S OBJECTIONS TO REQUEST FOR PRODUCTION INSTRUCTION NO. 10:**

17 None.

18 **OTHER REQUESTS AND RESPONSES SERVING AS A BASIS FOR THE NEED FOR
19 FURTHER PRODUCTION:**

20 **SPECIAL INTERROGATORY NO. 5:**

21 Describe in detail all steps YOU have taken to determine whether YOUR teachers are complying
22 with DISTANCE LEARNING policies during the FALL SEMESTER, including but not limited to those
set forth in SB 98 and the AUGUST SIDE LETTER.

23 **LAUSD’S RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

24 The District incorporates its preliminary response and general objections as if fully set forth herein.
25 The District objects to this interrogatory to the extent that it seeks information protected from disclosure
26 under the Brown Act (Gov. Code, §§ 54950, *et seq.*), the legislative process privilege, the official
27 information privilege, and/or the deliberative process privilege. The District objects to this interrogatory
28 on the grounds that it is improper in form and is not full and complete in and of itself because it

1 incorporates and requires reference to other materials in violation of Code of Civil Procedure section
2 2030.060, subdivision (d). The District objects that this interrogatory is compound in violation of Code of
3 Civil Procedure section 2030.060, subdivision (f). The District further objects to this interrogatory to the
4 extent it violates the right to confidentiality of its employees, students and/or their parents under the
5 California Constitution and common law, and also violates the obligation to keep student records and
6 information confidential under state and federal law. (See Cal. Const. art. I, § 1; 20 U.S.C. §§ 1232g *et*
7 *seq.*; Ed. Code, §§ 49073 *et seq.*) The District objects that this interrogatory is vague and ambiguous with
8 regard to the phrase “all steps.” The District further objects that this interrogatory is overbroad and, to the
9 extent it seeks underlying student or employee data, responding would be unduly burdensome. The
10 District objects that this interrogatory seeks information that is neither relevant to Plaintiffs’ claims nor
11 reasonably calculated to lead to the discovery of admissible evidence. The District objects to the extent
12 this interrogatory seeks information protected by the attorney client privilege and/or attorney work product
13 doctrine.

14 The District further objects that this interrogatory seeks broad merits discovery at the outset of this
15 putative class action, in violation of the Judicial Council’s guidance that, “[i]n complex litigation . . . the
16 issues may not be well defined when the case is first filed and may become better defined only after some
17 initial discovery has occurred. This means there is a risk, particularly early in the life of a complex case,
18 that discovery can become unfocused and out of control.” (California Deskbook on Complex Civil
19 Litigation Management, § 3.30.) As a result, “in some cases when it is appropriate for certain issues to
20 precede other issues, such as questions of statute of limitations, jurisdiction, or standing, discovery should
21 be staged so that these issues can be determined before other discovery proceeds.” (*Id.* at § 3.31.)

22 Subject to and without waiving these objections, the District responds that because the answer to
23 the interrogatory necessitates the preparation or summary of documents in the District’s possession and
24 the burden or expense in preparing such a summary is substantially the same for Plaintiff, the District
25 responds to the interrogatory pursuant to Code of Civil Procedure section 2030.230: See documents
26 produced in response to Plaintiff’s Request for Production of Documents, Set One, Request Numbers 1
27 through 4.

1 **FACTUAL AND LEGAL REASONS FOR COMPELLING LAUSD TO MAKE A STATEMENT**
2 **CONFIRMING ITS DOCUMENT COLLECTION PROCESSES AND TO PRODUCE A**
3 **COMPREHENSIVE PRIVILEGE LOG:**

4 The LAUSD has produced roughly 650 documents to date. *See* Hillenbrand Decl. ¶ 31. Its
5 production omits entirely or contains a surprisingly low number of highly relevant documents. For
6 example, the LAUSD has not produced documents concerning how the LAUSD determined whether
7 teachers complied with SB 98 or the August Side Letter,⁵ and limited attendance and performance data
8 concerning Plaintiffs’ children *See id.* ¶ 31. Its production contains far fewer studies, surveys, data
9 compilations, or analyses related to distance learning during the fall semester than one would expect, and
10 no discussion of the report generated by the LAUSD’s Independent Analysis Unit. *Id.* It contains just **eight**
11 **emails** sent to or from Superintendent Austin Beutner, and **less than 25 emails** sent to or from Chief
12 Academic Officer Alison Yoshimoto-Towery, who played a key role in the side letter negotiations. *Id.*
13 And produced documents refer to other responsive materials, such as a “Superintendent’s Dashboard” and
14 reports from a “Tableau” platform, that are absent. *See id.* Exs. 45, 46. While the LAUSD has asserted
15 numerous blanket privilege objections and agreed to produce a privilege log for any withheld documents
16 by January 21st, its privilege log only lists redactions applied to produced documents. *Id.* Ex. 34.

17 Making matters worse, the LAUSD first disclosed last week, after many weeks of meet and confer
18 correspondence about the LAUSD’s production, that it ran a search for a single term—“side letter”—
19 across every lausd.net email account to collect potentially responsive documents to RFP No. 4. According
20 to the LAUSD’s counsel, this search resulted in **800,000 emails**. *Id.* Ex. 37. Thereafter, the LAUSD
21 narrowed the search by adding the quoted full names of custodians it unilaterally selected (which did not
22 include any members of the LAUSD labor relations team) and, remarkably, its search resulted in **0 emails**.
23 *Id.* This was neither a reasonable nor proper way to search for potentially responsive documents to RFP
24 No. 4, especially given that the LAUSD did not disclose its search efforts to Plaintiffs until many weeks
25 after the fact.

26 Therefore, the LAUSD’s productions, redaction-only privilege log, and feigned attempt to search
27 for responsive documents raise serious questions about its efforts to collect, review, and either produce or

28 ⁵ In response to Plaintiffs’ Interrogatory No. 5, which asked the LAUSD to describe all steps taken “to
determine whether your teachers are complying with the distance learning policies during the fall
semester,” the LAUSD referred Plaintiffs to its production set. *Id.* Ex. 44 (Interrogatory No. 5).

1 log responsive materials. *See Regency Health Serv., Inc.*, 64 Cal. App. 4th at 1504 (“a party has a general
2 duty to conduct a reasonable investigation to obtain responsive information . . . and must furnish
3 information from all sources under his or her control”); Cal. Civ. Proc. Code § 2031.240. The Court should
4 order the LAUSD to affirm in writing that it has conducted a diligent search for any responsive documents
5 in its possession, custody or control, and produce a comprehensive privilege log that accounts for any
6 withheld or redacted documents.

7 **UTLA’S DOCUMENT COLLECTION EFFORTS AND PRIVILEGE LOG**

8 **REQUEST FOR PRODUCTION INSTRUCTION NO. 7**

9 If YOU do not produce all DOCUMENTS responsive to a request, YOUR response must contain
10 a representation of YOUR inability to comply, affirming that a diligent search and reasonable inquiry were
11 conducted, and stating whether YOU are unable to comply because the DOCUMENTS either never
12 existed, have been destroyed, lost, misplaced, or stolen, or never have been, or are no longer in YOUR
13 possession, custody, or control.

14 **UTLA’S OBJECTIONS TO REQUEST FOR PRODUCTION INSTRUCTION NO. 7:**

15 None.

16 **REQUEST FOR PRODUCTION INSTRUCTION NO. 9**

17 If no DOCUMENTS responsive to a particular request exist, or if such DOCUMENTS exist but
18 are not in YOUR possession, custody, or control, then YOUR response to that request shall so state.

19 **UTLA’S OBJECTIONS TO REQUEST FOR PRODUCTION INSTRUCTION NO. 9:**

20 None.

21 **PLAINTIFFS’ REQUEST FOR PRODUCTION INSTRUCTION NO. 10**

22 For each DOCUMENT that YOU withhold on the basis of privilege, please state:

23 a) the type of DOCUMENT (i.e., letter, memorandum, report, etc.);

24 b) information sufficient to enable identification of the DOCUMENT, including without
25 limitation, the title or subject matter, date, name and address of the author or signor, name
and address of the addressee, persons copied on the DOCUMENT and all other recipients;

26 c) the location of the DOCUMENT; and

27 d) the type and basis of the privilege asserted, including without limitation, the facts upon
28 which you rely as the basis for the privilege.

1 **UTLA’S OBJECTIONS TO REQUEST FOR PRODUCTION INSTRUCTION NO. 10:**

2 None.

3 **FACTUAL AND LEGAL REASONS FOR COMPELLING UTLA TO MAKE A STATEMENT**
4 **CONFIRMING ITS DOCUMENT COLLECTION PROCESSES AND TO PRODUCE A**
5 **COMPREHENSIVE PRIVILEGE LOG:**

6 While UTLA has objected to producing *any internal communications*, its privilege log contains
7 just *11 entries* and *none of them are emails*. See Hillenbrand Decl. Ex. 33. That means there is an untold
8 number of emails that UTLA has not accounted for in either its production or privilege log. Therefore,
9 there are serious questions about UTLA’s efforts to collect, review, and either produce or log responsive
10 materials. See *Regency Health Serv., Inc.*, 64 Cal. App. 4th at 1504; Cal. Civ. Proc. Code § 2031.240. The
11 Court should order UTLA to affirm in writing that it has conducted a diligent search for any responsive
12 documents in its possession, custody or control, and produce a privilege log for any withheld or redacted
13 documents.

1 DATED: February 25, 2021

KIRKLAND & ELLIS LLP



2
3 Mark Holscher (SBN 139582)
4 mark.holscher@kirkland.com
5 Edward Hillenbrand (SBN 310872)
6 edward.hillenbrand@kirkland.com
7 KIRKLAND & ELLIS LLP
8 555 South Flower Street
9 Los Angeles, CA 90071
10 Telephone: (213) 680-8400
11 Facsimile: (213) 680-8500

12
13 Sierra Elizabeth (SBN 268133)
14 sierra.elizabeth@kirkland.com
15 Kathryn E. Panish (SBN 324047)
16 kathryn.panish@kirkland.com
17 KIRKLAND & ELLIS LLP
18 2049 Century Park East
19 Los Angeles, CA 90067
20 Telephone: (310) 552-4200
21 Facsimile: (310) 552-5900

22
23 Laura Kelley Uhlenhuth (SBN 330678)
24 laura.uhlenhuth@kirkland.com
25 KIRKLAND & ELLIS LLP
26 555 California Street
27 San Francisco, CA 94104
28 Telephone: (415) 439-1498
Facsimile: (415) 439-1500

Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 I, La Tonya Fountain, am employed in the County of Los Angeles, State of California. I am over
3 the age of 18 and not a party to the within action. My business address is 555 South Flower Street, Suite
4 3700, Los Angeles, California 90071.

5 On February 25, 2021, a copy of the foregoing document was served on the interested parties in this action
6 as follows:

7 **By CASE ANYWHERE**

8 By causing a true and correct copy of the document(s) to be electronically served by transmission
9 by use of the Case Anywhere electronic service platform for those parties on the Case Anywhere
Service, list.

10 Sue Ann Salmon Evans Esq.
11 sevans@dwkesq.com

Lisa Demidovich, Esq.
ldemidovich@bushgottlieb.com

12 Ellen C. Wu, Esq.
13 ewu@dwkesq.com

Ira L. Gottlieb
igottlieb@bushgottlieb.com

14 Keith A. Yeomans, Esq.
15 kyeomans@dwkesq.com

Dexter Rappleye, Esq.
drappleye@bushgottlieb.com

16 Luke L. Punnakanta, Esq.
lpunnakanta@dwkesq.com

17 **DANNIS WOLIVER KELLEY**
18 115 Pine Avenue, Suite 500
19 Long Beach, CA 90802
Telephone: (562) 366-8500
Facsimile: (562) 366-8505

BUSH GOTTLIEB, A LAW CORPORATION
801 North Brand Boulevard, Suite 950
Glendale, CA 91203-1260
Telephone: (818) 973-321
Facsimile: (818) 973-3201

20 *Attorneys Specially Appearing for Defendants Los Angeles Unified School District and Austin*
21 *Beutner*

Counsel For United Teachers Los Angeles Relief Defendant

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on February 25, 2021, at Los Angeles, California.

24
25 

26
27 La Tonya D. Fountain