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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

KESHARA SHAW et al.,

Plaintiffs,

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT, AUSTIN BEUTNER, Los Angeles Unified School District Superintendent, and DOES 1-25,

Defendant, and

UNITED TEACHERS LOS ANGELES,

Relief Defendant.

CASE NO. 20STCV36489

RELIEF DEFENDANT UTLA'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO COMPEL

[Filed Concurrently with Separate Statement of Disputed Items; and Declaration of Carlos Torres; Declaration of Ira L. Gottlieb

Judge: Hon. Yvette Palanzuelos
Date: March 19, 2021
Time: 10:00 a.m.
Dept.: 9

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I. INTRODUCTION

Plaintiffs have moved for an order compelling Relief Defendant United Teachers Los Angeles ("UTLA") to produce private, internal records consisting of notes and communications relating to its confidential strategies and tactics for collective bargaining with Defendant Los Angeles Unified School District ("LAUSD" or the "District"), and other internal discussions. The Court should deny the Motion in its entirety.

First, decades of authority from various jurisdictions and tribunals, including the administrative agency with primary statutory authority to regulate public sector labor relations in California, has recognized the importance of a union's interest in maintaining the confidentiality of its internal bargaining strategies and tactics, including by withholding those documents from discovery responses unless the requesting party meets a heightened burden to show the necessity of the requested documents; no California court has compelled disclosure of such information and documents. Second, these confidential records have no probative value in this litigation, as it is well-established that evidence of one negotiating party's private, undisclosed understanding of disputed contractual terms is irrelevant to the construction of language in the final agreement. Third, Plaintiffs have not met their burden to recover protected information from a "relief defendant" against whom they are not asserting any specific claims for relief. Fourth, Plaintiffs' requests for "all documents and communication" discussing the impact of distance learning are grossly overbroad and unduly burdensome. Finally, Plaintiffs have not identified even a colorable basis for their assertion that UTLA failed to make adequate efforts to identify and either produce or log all responsive information in its initial discovery responses.

II. BACKGROUND

When the COVID-19 pandemic upended public education across the country, forcing millions of teachers and students to attempt to continue learning remotely for the first time, UTLA and LAUSD had to engage in emergency negotiations over a series of Sideletters to their existing collective bargaining agreement ("CBA") to address labor-

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relations implications of the District's new "distance learning" program. Plaintiffs initiated this suit on September 14, 2020, alleging that the District violated the California Constitution as well as provisions of Senate Bill 98 ("SB 98"), a law passed in June that set requirements for distance learning. When the District argued UTLA was an indispensable party because Plaintiffs' claims are focused on the terms of the Sideletters between LAUSD and UTLA, Plaintiffs filed a First Amended Complaint ("FAC") naming UTLA as a "Relief Defendant," but disavowing any claims against UTLA. FAC ¶ 30.

On December 1, 2020, the Court partially lifted the stay to allow the parties to conduct expedited discovery related to the issues to be raised in Plaintiffs' anticipated motion for preliminary injunction. Because this case was initially stayed pending an Initial Status Conference, as of the filing of Plaintiffs' Motion to Compel, UTLA and LAUSD have not had an opportunity to file demurrers to test the validity of the claims for relief alleged in the FAC; the Court has now scheduled an April 5 demurrer hearing date. To date, Plaintiffs have served interrogatories, requests for admissions, and requests for production of documents on UTLA, and UTLA has provided complete and verified responses and applicable objections in a timely manner. Both bargaining parties have produced extensive notes and document exchanges occurring at their meetings, but have declined to disclose their confidential deliberations revealing their priorities and strategy. In response to Plaintiffs' requests for production, UTLA affirmed that it conducted a diligent search for responsive documents and produced those documents that were not confidential—including all bargaining proposals and other notes and communications that were shared between the parties during negotiations over the relevant Sideletters. UTLA also produced a privilege and objections log identifying specific documents that UTLA is not obligated to provide, for reasons set forth below.

III. ARGUMENT

A. Internal Union Communications Related to Bargaining Strategy Are Protected Against Unwarranted Disclosure

Plaintiffs seek production of documents reflecting internal union discussions

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relating to collective bargaining negotiations between UTLA and LAUSD. Both Defendants have produced bargaining notes, written communications and proposals purporting to reflect what each party said or provided to the other. Both bargaining parties have objected, however, to production of documents reflecting their respective *internal* discussions within each side's bargaining caucus, that were intentionally *not* shared with the bargaining counterpart and would reveal strategy, priorities and other confidential information. Such documents are invariably kept confidential by unions and employers.

There is ample authority recognizing that the internal, private notes and communications reflecting the deliberations of parties engaged in collective bargaining are protected against unwarranted disclosure in discovery. This principle is well-established in the private sector and has been recognized in numerous decisions of federal courts and the National Labor Relations Board in various contexts, including in addressing requests for enforcement of discovery demands.[1] The principle has also long been recognized and

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[1] *See, e.g.*, *Boise Cascade Corp*. (1986) 279 N.L.R.B. 422, 432 (refusing to order an employer to disclose statements regarding its negotiating strategies on the grounds that "[a] proper bargaining relationship between the parties mandates that [the employer] be able to confidentially evaluate possible interpretations of the existing labor agreement and that it be able to plan in confidence a strategy for altering or changing [terms]"); *Mallick v. IBEW* (D.C. Cir. 1981) 749 F.2d 771, 785 (noting that internal records pertaining to union's "organizing strategy" or "negotiating plans" are protected union "secrets," analogous to trade secrets); *Harvey's Wagon Wheel v. NLRB* (9th Cir. 1976) 550 F.2d 1139 (statements of union representatives obtained in an NLRB investigation are "normally exempt from disclosure as a matter of law" because "[o]therwise, the danger of their withholding relevant information for fear of exposing crucial material regarding pending union negotiations would be manifest"); *Berbiglia, Inc.* (1977) 233 NLRB 1476, 1495 (refusing to enforce subpoenas seeking disclosure of "crucial material regarding union negotiations" because "requiring the Union to open its files to Respondent would be inconsistent with and subversive of the very essence of collective bargaining and the quasi-fiduciary relationship between a union and its members," and "[i]f collective bargaining is to work, the parties must be able to formulate their positions and devise their strategies without fear of exposure"); *Volume Servs., Inc. v. Unite Here* (N.D. Cal. Jan. 28, 2014) No. C-13-02318 YGR (DMR), 2014 U.S. Dist. LEXIS 10492, at *5 ("[T]he court recognizes the important concerns expressed in *Harvey* and the Board decisions: when an employer and a union are engaged in collective bargaining, discovery by the employer into its opponent's negotiation plans would severely prejudice the union's ability to bargain effectively. For

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applied under the corresponding state law governing collective bargaining between LAUSD and UTLA, the Educational Employment Relations Act ("EERA"), as well as other similar state laws.[2] These decisions recognize that confidentiality is essential to effectuate and maintain the important public policy of encouraging public employee collective bargaining and association, and that disclosure of confidential bargaining-related information should not be ordered in civil actions unless the necessity of the requested information is conclusively shown.

UTLA is aware of no appellate court ruling in California compelling disclosure of internal union communications and deliberations related to bargaining strategy and tactics. There are, however, numerous decisions recognizing the need to carefully consider claims that discovery requests infringe on protected confidentiality interests even in the absence

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this reason, when crafting the scope of relevant discovery under such circumstances, the court should exercise particular caution and care in balancing the competing concerns."); *Raymond v. Spirit Aerosystems Holdings, Inc*. (D. Kan. Dec. 21, 2017) No. 16-1282-JTM-GEB, 2017 U.S. Dist. LEXIS 209709, at *13-14 & n.13 (rejecting subpoena seeking internal union communications because of "the Court's concern about the confidentiality of communications between [the union] and the employees it represents—especially those not parties to this case[,]" relying on *Berbiglia*); *Winnett v. Caterpillar, Inc.* (M.D. Tenn. Feb. 6, 2008) No. 3:06-cv-00235, 2008 U.S. Dist. Lexis 9167, at *8-13 (denying in part employer's motion to compel discovery, holding that information relating to union's collective bargaining strategy constituted "an actual trade secret or other confidential business information" protected from disclosure under Fed. R. Civ. P. 26(c)).

[2] *County of Tulare* (2020) PERB Decision No. 2697-M, 2020 Cal. PERB LEXIS 74, p. 15 n.9 (2020) (discussing the "limited privilege" that protects unions against disclosure in discovery of "internal discussions regarding strategy for collective bargaining"); *Colton Joint Unified School District*, PERB Order No. Ad-113, 1981 Cal. PERB LEXIS 218, pp. 5-6 (1981) (adopting rule applied in *Berbiglia*, holding that "[n]egotiating team members should generally not be compelled to disclose the content or substance of communications regarding planning of strategy and tactics for negotiations"); *see also Illinois Educational Labor Relations Board v. Homer Community Consolidated School District,* 547 N.E.2d 182, 185 (Ill. 1989) ("Disclosure of these deliberations to a teachers' union with whom the school board is engaged in collective bargaining would seriously undermine the board's negotiating position. School board members would be reluctant to discuss bargaining strategy if they thought their discussion would be disclosed to the union. Similarly, union negotiating teams might be hampered in their planning sessions if a school board could subpoena information contained within such strategy meetings.").

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of an absolute privilege, and to limit the scope of discovery where necessary to accommodate those interests.[3] If the need to obtain the information does not outweigh the confidentiality interest at stake, a court should not require disclosure. *See Britt v. Superior Court*, 20 Cal.3d 844, 865 (1978)(vacating discovery order in light of associational privacy interests); *see also Grafilo v. Wolfsohn* (2019) 33 Cal. App. 5th 1024, 1037 (reversing trial court order requiring disclosure of medical records). The interest-balancing approach used to evaluate privacy claims is consistent with the one taken in the administrative and federal cases cited above that addressed demands for records of bargaining deliberations. *See, e.g.*, *Berbiglia*, 233 NLRB at 1495-96 (assessing necessity of internal union communications to establish allegation that a strike was undertaken for unlawful purposes, noting that the union had already provided its official notes from meetings where strike votes were taken and made its officials available for testimony, holding that General Counsel had to establish some "indication of reasonable ground . . . to believe that the Union's files contain reasonably specific, substantial, probative evidence establishing [the motive for the strike]" before the information could be subpoenaed).

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[3] *See, e.g.*, *Alch v. Superior Court* (2008) 165 Cal. App. 4th 1412, 1422-26 (discussing the balancing of interests that courts must perform when evaluating discovery requests that implicate privacy rights); *Lantz v. Superior Court* (1994) 28 Cal. App. 4th 1839, 1853-57 (reversing trial court order requiring disclosure of patients' medical records where court failed to conduct balancing inquiry); *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 713 ("When the interest of a private litigant in discovering relevant facts conflicts with the right of others to maintain reasonable privacy regarding their financial affairs, a court must indulge in a careful balancing before ordering disclosure."); *Britt v. Superior Court* (1978) 20 Cal.3d 844, 859-860 (refusing to compel disclosure of information regarding litigants' private associational activities because the relationship between the information sought and the defenses with respect to which the information was sought was "tenuous at best"); *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656 (even where no specific privilege applies, courts consider "the purpose of the information sought, the effect that disclosure will have on the parties and on the trial, the nature of the objections urged by the party resisting disclosure, and ability of the court to make an alternative order which may grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances").

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Plaintiffs suggest without authority that a union's interest in maintaining confidentiality of bargaining strategies only applies in the context of "an ongoing negotiation that could prejudice one negotiating party and advantage another." Plaintiffs' Memorandum ("Mem.") at 8 n.1. Plaintiffs are wrong. The courts have applied it both in cases involving requests by parties who were not directly involved in the bargaining, and where the negotiations in which the records were originally created were resolved before the discovery dispute arose. *See Mallick*, 749 F.2d at 785; *Winnett*, *supra*, 2008 U.S. Dist. Lexis 9167 at *12 (rejecting argument that "collective bargaining strategy materials do not merit protection after the negotiation to which they were related have concluded," emphasizing that parties in a collective bargaining relationship "revisit and renegotiate the same issues again and again").

Finally, Plaintiffs assert that confidentiality concerns are irrelevant here because "the Court has already entered a protective order that governs the parties' exchange of confidential materials." Mem. at 8. But that protective order cannot ameliorate the confidentiality concerns because it grants access to all materials disclosed in discovery, even those designated confidential, to all parties' attorneys, all parties' officers, directors, partners, members, employees, and agents whom their attorneys deem necessary, witnesses in a deposition or eventual trial, and all parties' "outside experts or expert consultants." Hillenbrand Dec. Exh. 29 (Protective Order) at 4-6. Given that LAUSD—the party with whom UTLA was negotiating when these records were created, and is currently engaged in further negotiations—is a named Defendant in this case, the protective order cannot eliminate the need to weigh UTLA's confidentiality interests before ordering disclosure. Indeed, the order itself contemplates the right of any party to assert "any ground on which production of . . . information should not be made to any party," and to "assert[] in good faith that certain Confidential Parties require additional protection." *Id.* at 7-8. That is exactly what UTLA is asking the Court to do here: shield its internal deliberations from exposure to outsiders not welcome in the caucus room.

Thus, the recognized privacy and state policy interests in maintaining the

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confidentiality of these internal communications require that the Court balance those interests against the importance of the information to Plaintiffs' case. As will be explained below, Plaintiffs have no legitimate basis for surveilling these internal unshared discussions because they do not have anything to do with, and reveal nothing about, the issues to be litigated in this case.

B. Internal Union Communications Are Irrelevant to the Issues at Stake.

Plaintiffs are not entitled to the disputed information because internal Union deliberations not conveyed to the other bargaining party are not conceivably relevant to the interpretation of the collective bargaining agreements at issue, which is already a distinct question from the issues actually presented by the FAC, which concern the legality or constitutionality of *the District's overall educational program*. *See Butt v. State* (1992) 4 Cal.4th 668, 686-87 ("A finding of constitutional disparity depends on the individual facts. Unless the actual quality of the district's program, *viewed as a whole*, falls fundamentally below prevailing statewide standards, no constitutional violation occurs."); *Collins v. Thurmond* (2019) 41 Cal. App. 5th 879, 896-98 (same)(emphasis added).

The FAC consists of allegations of harm that specific students have suffered in connection with LAUSD's distance learning program, selective quotations from LAUSD's August Sideletter with UTLA, and speculative, often misleading, assertions about what the Sideletter allows. But it does not include any facts that support a connection between the Sideletter—the text of which is compliant with SB 98—and the alleged harms to students.[4] They do not allege, for example, that the District permitted the named plaintiffs' teachers to work a reduced number of hours, citing the Sideletter as the basis for that decision (such an allegation would be false), or that such an action by the District caused some of the

[4] Plaintiffs' Motion highlights the premature nature of their discovery demands. As of the filing of the Motion, UTLA still had not been permitted to file a demurrer to challenge the glaring deficiencies in their allegations. Consequently, UTLA has already had to respond to discovery requests that are only "relevant" in the sense that they relate to allegations *that do not support Plaintiffs' actual claims for relief*, which ordinarily would be stricken prior to the commencement of discovery—assuming any of those claims survive demurrer.

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harms students allegedly suffered. There is even less support for a connection between the claimed deficiencies in training and evaluation under the Sideletter and the harms alleged in the FAC, as Plaintiffs have not articulated how any particular training or evaluation could have prevented the harms students suffered in the course of the pandemic.

Even if Plaintiffs had alleged a connection between the Sideletter and the harms to students, they would still be engaged in an improper attempt to prove through extrinsic evidence that the Sideletter should be construed in a manner inconsistent with its plain language. Extrinsic evidence has no relevance to the construction of unambiguous contract language. *See, e.g.*, *Wolf v. Walt Disney Pictures & Television* (2004) 162 Cal. App. 4th 1107, 1126 ("The court generally may not consider extrinsic evidence . . . to vary or contradict the clear, unambiguous terms of a written, integrated contract.") (citing Cal. Code Civ. P. § 1856(a)); *Cerritos Valley Bank v. Stirling* (2000) 81 Cal. App. 4th 1108, 1115-16 ("[E]xtrinsic evidence is not admissible to contradict express terms in a written contract or to explain what the agreement was."). Plaintiffs seek to prove that various terms of the Sideletter have hidden meanings that conflict with SB 98, the state law establishing the requirements districts' distance learning plans must meet—ignoring the fact that the agreement *expressly incorporates* SB 98's requirements. Gottlieb Decl. Exh. 2 (Sideletter), p. 1, ¶ 1.a. Plaintiffs do not even identify any specific language in the Sideletter that conflicts with SB 98 to justify their fishing expedition. Rather, they rely on hypothetical provisions that the Side Letter omits or "fails to address."[5] Given that the

[5] *See, e.g.*, FAC at ¶¶ 11, 12 (Sideletter "failed to address or remedy" lack of training), ¶ 55 (Sideletter "left many students" without access to education, no explanation); ¶ 63 (Sideletter "offers no explanation" as to how the District will meet standards); ¶ 64 (Sideletter "lacks . . . instructional requirements"); ¶ 68 (Sideletter did not ensure Plaintiffs could access classes); ¶ 80 (Sideletter "does nothing to remedy" remote learning problems or intervene on behalf of students who are not engaging); ¶¶ 83-85 (Sideletter allows synchronous and asynchronous learning; neglecting to mention this is consistent with SB 98); ¶ 89 (Sideletter "does not mandate" teachers balance instructional methods); ¶ 90 (Sideletter "does not ensure" Plaintiffs receive necessary instruction); ¶ 98 (incorrectly alleging limits on instructional hours, failing to account for preparation time and other

Sideletter expressly incorporates SB 98's requirements, and does not, contrary to Plaintiffs' FAC (¶11), comprise the District's entire educational program, these "omissions" do not create a reason for Plaintiffs to permitted to search for evidence supporting a construction of the Sideletter that *conflicts* with SB 98.

The Sideletter was an addendum to the CBA between UTLA and the District, which remains in effect to the extent it has not been superseded. The CBA governs labor relations between the parties; it does not comprise the District's entire educational program, and cannot override applicable state law requirements for school districts.[6] Not only does the CBA control where the Sideletter is silent, all matters that the CBA and the scope of bargaining do not control are left to the District's discretion.[7] As discussed further below, Plaintiffs mischaracterize the documents Defendants have already produced to support the erroneous assertion that the Sideletter reduced the length of teachers' overall work day. But the eight-hour work day is established in the CBA, and is not contradicted by any Sideletter. CBA at 32 (Art. IX Sec. 1.0) ("*It is agreed that the professional*

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work outside school day); ¶ 111 (Sideletter "does nothing to ensure" adequate teacher training); ¶ 115 (Sideletter "fails to place limits" on amount of substitute instruction); ¶ 118 ("there is no mandate" in Side Letter to reach out to students or families); ¶ 119 (Sideletter prevents LAUSD from intervening to fix student disengagement; no explanation of how); ¶ 122 (Sideletter does not require home visits); ¶ 126 (Sideletter is "silent on the issue" of student assessments); ¶ 141 (Sideletter "failed to provide necessary educational requirements"); ¶ 150 (Sideletter "fails to provide pre-pandemic benefits").

[6] *See* GOV'T CODE § 3540 (the Educational Employment Relations Act, which governs educational employee labor relations, does not supersede the Education Code).

[7] Under the CBA, the District retains unilateral authority over "[t]he classes to be taught and the other duties and services to be rendered by District personnel to students and to the public, and the support services to be provided to employees and other District personnel; and the methods, personnel, and materials to be utilized in such services." Gottlieb Dec. Exh. 1 (CBA), Art. III, Sec. 3.0(e). The District similarly retains authority over its "educational policies, objectives, standards, and programs, including but not limited to those relating to curriculum, textbook selection, educational equipment and supplies, admissions, attendance, student assignments, grade level advancement, student guidance, student testing, student integration, student conduct and discipline . . . and the type of extracurricular and co-curricular activities," subject only to a "consultation right" for UTLA. *Id.*, Art. III, Sec. 3.0(f).

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workday of a full-time regular employee requires no fewer than eight hours of on-site and off-site work, and that the varying nature of professional duties does not lend itself to a total maximum daily work time of definite uniform length."). The District's LCAP confirms that the Sideletter did not override that basic contractual requirement.[8]

In any event, even if there were any grounds for Plaintiffs to rely on extrinsic evidence to support their already tangential attack on the Sideletter (as opposed to the LCAP, the statutorily mandated program to be adopted and implemented by the District), they can only rely on materials or communications that were exchanged or shared between the bargaining parties, all of which have already been disclosed by both UTLA and LAUSD. In interpreting ambiguous contract language, the only possibly relevant communications are those between the parties, not thoughts and considerations the parties did not share with each other. *Central States v. Hartlage Truck Serv., Inc.* (9th Cir. 1991) 991 F.2d 1357, 1362 ("The parties to a collective bargaining agreement are bound by the terms of their agreement, **regardless of their undisclosed intent**.") (emphasis added) (citation omitted); *Iqbal v. Ziadeh* (2017) 10 Cal. App. 5th 1, 8-9 ("California recognizes the objective theory of contracts[], under which it is the objective intent, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, that controls interpretation. **The parties' undisclosed intent or understanding is irrelevant to contract interpretation.**") (emphasis added) (internal quotations omitted); *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc*. (2003) 109 Cal. App. 4th 944, 955 ("The parties' undisclosed intent or understanding is irrelevant to contract interpretation."); *California Teachers Assn. v. Governing Bd. of Hilmar Unified*

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[8] The currently effective LCAP states: "Per the District's agreement with the United Teachers of Los Angeles (UTLA), *all teachers have a contractual 8-hour work day obligation comprised of both on-site and off-site work*. The side letter modifies the teacher 6-hour on-site portion of their workday to provide students virtual services (synchronous and asynchronous instruction) with the remaining minutes of work to be completed outside of the 9:00 AM to 2:15 PM school day (such as preparing lesson plans, grading of student work, feedback to students, conferences, maintaining appropriate records, communicating with parents, IEP meetings)". Gottlieb Dec. Exh. 4 (November LCAP), p. 20.

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School Dist. (2002) 95 Cal. App. 4th 183, 189 n.3 ("If the intent of the bargaining team . . . was not communicated to the District, then it is merely evidence of undisclosed subjective intent of a party and is irrelevant to determining the meaning of contractual language.").

Courts have declined to order disclosure of internal union communications in cases where their asserted relevance was based on a dispute over contractual interpretation. *See, e.g.*, *Winnett*, 2008 U.S. Dist. LEXIS 9167. In *Winnett*, for example, the court denied the plaintiffs' motion to compel production of union bargaining strategies in part because unlike bargaining proposals that were exchanged across the table, one party's undisclosed notes and communications were not probative of the meaning of disputed CBA terms:

> Caterpillar maintains that UAW's strategic bargaining information does not merit protection because the parties' negotiations are relevant . . . . [W]ith regard to the issue of interpretation of the labor agreements between Caterpillar and the UAW, bargaining history can be useful in construing an ambiguous collective bargaining agreement. However, . . . Caterpillar makes no distinction between evidence that was passed across the table or disclosed to third-parties and evidence that remained wholly confidential to one side of the negotiations. While agreeing that **evidence showing what representations were made by one party to the other may be probative of the parties' intent in executing the contract**, the Union asserts that **the undisclosed, confidential bargaining strategies of a party to a contract are not probative of the meaning of the written agreement between the parties**. The court agrees with the Union . . . .

Id. at *7-8 (emphasis added).

Plaintiffs' reliance on *Montebello Rose Co. v. Agricultural Labor Relations Bd.* (1981) 119 Cal. App. 3d 1, is misplaced. That decision involved an administrative labor relations case before the Agricultural Labor Relations Board ("ALRB"), in which the state of mind of the collective bargaining negotiators was squarely at issue because the litigation centered on the question whether the employer collectively bargained in bad faith. The case did not involve the meaning of a CBA, or a third party intruding upon the collective bargaining process. Instead, the expert labor agency, the ALRB, was policing the bargaining process itself, as it has authority to do. The Superior Court, however, has no jurisdiction to perform that function in this case—that is the province of PERB—and is not

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in any event called upon to do so, because the issue of good faith bargaining is not presented in this litigation. Here, unlike *Montebello*, Plaintiffs and the Court can only assess the *results* of the bargaining process, i.e. the CBA itself, insofar as that agreement may bear on the alleged statutory and constitutional violations.

The *Montebello* court's recitation of the "rule" that there is no recognized statutory "negotiator-client" privilege does not account for or touch upon the above-stated law honoring, through careful balancing with legitimate discovery needs, collective bargaining caucus confidentiality. Nor did that court have occasion to address the EERA's longstanding protection for internal union and employer deliberations. *See Colton*, PERB Order No. Ad-113, p. 6 ("The establishment of goals for negotiations, and the process of communication involved in mapping out the strategy and tactics for the attainment of those goals, is activity which is of crucial importance to the entire scheme of employer-employee relations as established by the EERA."); *see also* Gov. Code § 3549.1 (collective bargaining discussions under the EERA are exempt from disclosure requirements under California's open meetings and public records laws).

Plaintiffs also baselessly assert that UTLA has somehow put its internal documents at issue by denying their misguided requests for admission. Mem. at 13 (citing *Glenfed Dev. Corp. v. Superior Court* (1997) 53 Cal. App. 4th 1113, 1118; and *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 40 ["*PG&E*"]). Neither of the authorities cited support Plaintiffs' position that a party is obligated to accede to their unreasonable interpretations of a contract to preclude unwarranted discovery into private information. *See Glenfed*, 53 Cal. App. 4th at 1118 (finding that an insurer's claims manual is discoverable in a dispute over the construction of an insurance policy); *PG&E*, 69 Cal.2d at 40 (finding that "testimony as to the circumstances surrounding the making of [an] agreement including the object, nature and subject matter of the writing" may be admissible as extrinsic evidence). These inapt citations do nothing to undermine the weight of authority cited above holding that one party's *undisclosed* understanding of a particular term is irrelevant to interpretation of the final agreement.

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Finally, the Court should note the misleading nature of Plaintiffs' citations to the materials that have already been disclosed, which they attempt to twist to support their unreasonable construction of the CBA terms. For example, they claim a union representative "encouraged everyone to 'stop talking about a full day's worth of work for teachers," Mem. at 6, omitting that this representative began his comment by stating, "Our teachers always work a full day." Hillenbrand Dec. Ex. 7 at LAUSD001109. None of these citations provide a basis for concluding that the parties' internal bargaining notes are likely to contain relevant information. Thus, UTLA's internal deliberations are irrelevant to the issues in this litigation, and Plaintiffs' purported need for the information does not outweigh UTLA's interest in maintaining their confidentiality.

C. Plaintiffs Cannot Meet the Heightened Burden to Recover Private Information from a "Relief Defendant" Like UTLA

Plaintiffs added UTLA as a nominal party in their FAC because LAUSD took the position that UTLA was an indispensable party. (FAC, ¶30.) Plaintiffs aver that they are "*not bringing any claims against UTLA*." *Id.* Consequently, UTLA should be treated as a non-party or nominal party for purposes of assessing its discovery obligations.

Parties requesting discovery from nonparties carry a heavier burden than they do with respect to named parties. *Catholic Mutual Relief Society v. Superior Court* (2007) 42 Cal.4th 358, 366 n.6 ("The permissible scope of discovery in general is not as broad with respect to nonparties as it is with respect to parties."); *Calcor Space Facility v. Superior Court* (1997) 53 Cal. App. 4th 216, 225 ("As between parties to litigation and nonparties, the burden of discovery should be placed on the latter only if the former do not possess the material sought to be discovered."). More specifically, "a party seeking to compel production of records from a nonparty must articulate specific facts justifying the discovery sought; it may not rely on mere generalities." *Board of Registered Nursing v. Superior Court* (2021) 59 Cal. App. 5th 1011, 1039.[9]

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[9] Indeed, in a Joint Status Conference report filed October 23, 2020, Plaintiffs represented

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Plaintiffs contend that they are entitled to the full scope of discovery because UTLA has itself exercised its rights as participants in the litigation by filing motions and issuing its own discovery. Mem. at 23. But it was Plaintiffs who brought the Union into this litigation, and now seek to intrude into irrelevant internal discussions. In any event, Plaintiffs have not articulated "specific facts" justifying their invasive requests, or explained how UTLA, as a non-government actor that does not make educational policy decisions, can properly be compelled to reveal its internal deliberations. Therefore, Plaintiffs may not enforce these demands against "relief Defendant" UTLA.

D. Plaintiffs' Demands for Other Confidential Internal Communications are Unduly Burdensome

In addition to bargaining-related communications, Plaintiffs also seek to compel production of "[a]ll documents and communications discussing the impact of distance learning on LAUSD teachers during the fall semester and spring semester[,]" despite UTLA having turned over all responsive, non-confidential communications that it was able to locate with a diligent search.

Courts have recognized that overbroad and burdensome discovery demands like this one can be used as "weapons" rather than "tools to facilitate litigation," cautioning that judges should be "aggressive" in acting to curb such abusive practices that undermine the adjudicative process. *Calcor Space Facility v. Superior Court* (1997) 53 Cal. App. 216, 221. Indicators of unduly burdensome discovery include "insufficient identification of the requested information to acquaint the other party with the nature of information desires," and "placing more burden upon the adversary than the value of the information warrants." *Id.*; *cf. Cottle v. Superior Court* (1991) 3 Cal. App. 4th 1367, 1395 ("Courts handling complex cases should . . . balance the burdensomeness of particular discovery activity against its materiality and reduce discovery of tangential, immaterial matters.").

Plaintiffs have demanded all documents and communications concerning the impact

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to the Court and the parties that they "*do not intend to request any discovery from relief Defendant UTLA*." (Jt Status Report, p. 3, lines 20-21.)

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of distance learning on teachers. In the midst of an ongoing pandemic that has changed literally every aspect of how teachers work, it is no exaggeration to expect that almost every internal "document and communication" in UTLA's possession over the last year may have had some reference to "the impact of distance learning." Moreover, these requests are yet another step removed from Plaintiffs' focus on collective bargaining, seeking *any* internal communications related to distance learning. Again, Plaintiffs have no business inquiring into the deliberations and discussions of a non-government non-decisionmaker like UTLA, especially apart from and disconnected with the collective bargaining which they errantly target. There is no reason to believe that any of those communications has anything to do with the issues in this case—whether the *District's* program complies with SB 98 and students' constitutional right to an equal education. As detailed by the operator of UTLA's IT systems who has been involved in efforts to locate, identify and compile responsive documents, it would take no less than 200 hours to respond to this vague and overbroad request, to sift through tens of thousands of emails across dozens of mailboxes. Torres Dec. ¶'s 3, 4. The court should reject Plaintiffs' motion to compel any such documents.

E. UTLA Should Not Be Required to "Affirm" Its Collection Efforts

Plaintiffs speculate without any basis in law or in the record that UTLA "has not accounted for" responsive documents. *See* Mem. at 15. Their only asserted grounds for this inference is the number of documents listed in UTLA's privilege log, and the fact that none of those documents is an email.

UTLA served timely responses to Plaintiffs' demands for inspection, including statements of compliance pursuant to Cal. Code Civ. P. § 2031.220, indicating that it made diligent efforts to locate and either produce or log responsive documents. Its responses were verified pursuant to § 2031.250. Plaintiffs have no basis for their suspicion relating to the Union's production. In any event, they have not identified any basis for requiring UTLA to "affirm in writing" its efforts to compile responsive documents, and to produce *another* privilege log in addition to the one it has already produced.

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IV. CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Motion to Compel Preliminary Injunction Discovery in its entirety.

DATED: March 8, 2021

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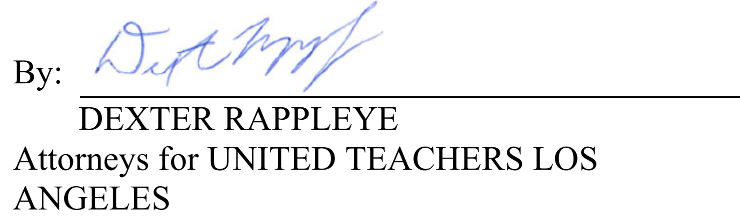
By: 

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