

1 Dirk B. Paloutzian #173676
dpaloutzian@bakermanock.com
2 Michael J. Fletcher #272057
mfletcher@bakermanock.com
3 BAKER MANOCK & JENSEN, PC
5260 North Palm Avenue, Fourth Floor
4 Fresno, California 93704
Telephone: 559.432.5400
5 Facsimile: 559.432.5620

E-FILED
7/29/2019 12:30 PM
Superior Court of California
County of Fresno
By: A. Ramos, Deputy

6 Attorneys for Respondents, CALIFORNIA TEACHERS ASSOCIATION, FRESNO CITY
DIVISION - FRESNO TEACHERS ASSOCIATION (erroneously sued and
7 served herein as "FRESNO TEACHERS ASSOCIATION"); and MANUEL
BONILLA, PRESIDENT, FRESNO TEACHERS ASSOCIATION
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF FRESNO, CENTRAL DIVISION

11

12 HILARY LEVINE, FELICIA BURRELL,
MARIA RIVERA, VIRGINIA RIVERA,
13 REBECCA McALARY, and MARK
VARGAS, on behalf of themselves and others
14 similarly situated,

15 Petitioners,

16 v.

17 FRESNO TEACHERS ASSOCIATION, a
California corporation; MANUEL BONILLA,
18 PRESIDENT, FRESNO TEACHERS'
ASSOCIATION,

19 Respondents.
20

Case No. 19CECG02032

**NOTICE OF DEMURRER AND
DEMURRER TO PETITION FOR WRIT
OF MANDATE; COMPLAINT FOR
DECLARATORY RELIEF**

Judge: Hon. Kimberly Gaab
Date: November 19, 2019
Time: 3:30 p.m.
Dept.: 503

Assigned for All Purposes to
The Hon. Kimberly Gaab

Action Filed: June 11, 2019
Trial Date: Not Yet Assigned

21

22 **TO PLAINTIFFS HEREIN AND TO THEIR COUNSEL OF RECORD:**

23 **PLEASE TAKE NOTICE** that, on November 19, 2019 at 3:30 p.m., or as soon
24 thereafter as counsel may be heard, in Department 503 of the above-captioned Court, located at
25 1130 "O" Street, Fresno, California 93721, Respondents CALIFORNIA TEACHERS
26 ASSOCIATION, FRESNO CITY DIVISION - FRESNO TEACHERS ASSOCIATION
27 (erroneously sued and served herein as "FRESNO TEACHERS ASSOCIATION"); and MANUEL
28 BONILLA, PRESIDENT, FRESNO TEACHERS ASSOCIATION ("Respondents"), will and

1 hereby do, pursuant to Code of Civil Procedure section 430.10 et seq., generally and specially
2 demur to the Petition for Writ of Mandate and Complaint for Declaratory Relief on file herein (the
3 "Petition") filed by petitioners HILARY LEVINE, FELICIA BURRELL, MARIA RIVERA,
4 VIRGINIA RIVERA, REBECCA McALARY and MARK VARGAS ("Petitioners").

5 Specifically, the Petition is subject to demurrer for lack of subject matter
6 jurisdiction under Code of Civil Procedure section 430.10(a) for two different reasons. First, the
7 Petitioners failed to exhaust their administrative remedies before filing the Petition. The
8 Representative Council is governed by Robert's Rules of Order, which allow any member to bring
9 a motion to rescind a prior motion. Petitioners have a plain, speedy, and adequate remedy at their
10 disposal, to be heard and voted on by the same Representative Council that originally voted on the
11 Motion and on which they sit. Case law states, "*It is the general and well established*
12 *jurisdictional rule that a plaintiff who seeks judicial relief against an organization of which he is a*
13 *member must first invoke and exhaust the remedies provided by that organization applicable to his*
14 *grievance.*" (*DeVaughn Peace, M.D., Inc. v. St. Francis Medical Center* (1994) 28 Cal.App.4th
15 454, 462-463.)

16 Second, the Court should use its discretion to decline to exercise jurisdiction in this
17 matter. The Petition involves an internal dispute of a private organization, regarding an issue that
18 concerns only the organization and its members. Precedent discussing this very situation explains,
19 "[i]n many disputes in which [the rights and duties of the membership in relation to the
20 association] are at issue ... the courts may decline to exercise jurisdiction." (*California Trial*
21 *Lawyers Assn. v. Superior Court* (1986) 187 Cal.App.3d 575, 579.) Declining to exercise
22 jurisdiction here is especially justified given that the Petitioners have another available remedy.

23 This Demurrer is based on this Notice of Demurrer and Demurrer to the Petition,
24 the Memorandum of Points and Authorities served and filed herewith, the Declaration of Michael
25 J. Fletcher, and all of the pleadings, files, and records in this proceeding, all other matters of which
26 the Court may take judicial notice, and any argument or evidence that may be presented to or
27 considered by the Court prior to its ruling.

28 Accordingly, Respondents respectfully request that the Court sustain its Demurrer

1 as to Plaintiffs' Petition for Writ of Mandate and Complaint for Declaratory Relief in its entirety,
2 without leave to amend.

3 DATED: July 26, 2019

BAKER MANOCK & JENSEN, PC

4
5 By: 
6 Dirk B. Paloutzian
7 Michael J. Fletcher
8 Attorneys for Respondents
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 **Hilary Levine, et al. v. Fresno Teachers Association, et al.**
3 **Case No. 19 CE CG 02032**

4 **STATE OF CALIFORNIA, COUNTY OF FRESNO**

5 At the time of service, I was over 18 years of age and not a party to this action. I am
6 employed in the County of Fresno, State of California. My business address is 5260 North Palm
7 Avenue, Fourth Floor, Fresno, CA 93704.

8 On July 26, 2019, I served true copies of the following document(s) described as **NOTICE**
9 **OF DEMURRER AND DEMURRER TO PETITION FOR WRIT OF MANDATE;**
10 **COMPLAINT FOR DECLARATORY RELIEF** on the interested parties in this action as
11 follows:

12 Barry J. Bennett	Attorneys for Petitioners, Hilary Levine, Felicia
13 Law Offices of Bennett, Sharpe & Bennett, Inc.	Burrell, Maria Rivera, Virginia Rivera,
14 2444 Main Street, Suite 150	Rebecca McAlary and Mark Vargas, on behalf
15 Fresno, CA 93721	of themselves and other similarly situated
16 Telephone: (559) 485-0120	
17 Facsimile: (559) 485-5823	
18 Email: barry@bennettsharpe.com	

19 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
20 persons at the addresses listed in the Service List and placed the envelope for collection and
21 mailing, following our ordinary business practices. I am readily familiar with the practice of
22 Baker Manock & Jensen, PC for collecting and processing correspondence for mailing. On the
23 same day that correspondence is placed for collection and mailing, it is deposited in the ordinary
24 course of business with the United States Postal Service, in a sealed envelope with postage fully
25 prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was
26 placed in the mail at Fresno, California.

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct.

Executed on July 26, 2019, at Fresno, California.

22 
23 _____
24 Bea C Medina-Storie