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Superior Court of California
County of Fresno
By: A. Ramos, Deputy

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

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF FRESNO, CENTRAL DIVISION

12 HILARY LEVINE, FELICIA BURRELL,
13 MARIA RIVERA, VIRGINIA RIVERA,
14 REBECCA McALARY, and MARK
15 VARGAS, on behalf of themselves and others
16 similarly situated,
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18 Petitioners,
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20 v.
21
22 FRESNO TEACHERS ASSOCIATION, a
23 California corporation; MANUEL BONILLA,
24 PRESIDENT, FRESNO TEACHERS'
25 ASSOCIATION,
26
27 Respondents.

Case No. 19CECG02032

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
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

22 Respondents, CALIFORNIA TEACHERS ASSOCIATION, FRESNO CITY
23 DIVISION - FRESNO TEACHERS ASSOCIATION; and MANUEL BONILLA, PRESIDENT,
24 FRESNO TEACHERS ASSOCIATION ("Respondents"), submit the following Memorandum of
25 Points and Authorities in support of their demurrer to the Petition for Writ of Mandate and
26 Complaint for Declaratory Relief on file herein (the "Petition") filed by petitioners HILARY
27 LEVINE, FELICIA BURRELL, MARIA RIVERA, VIRGINIA RIVERA, REBECCA
28 McALARY and MARK VARGAS ("Petitioners").

1 I.

2 INTRODUCTION

3 Petitioners are members of the Fresno Teachers Association ("FTA")
4 Representative Council and disagree with a Council vote that occurred on March 11, 2019. As a
5 result of the vote, a \$5 voluntary contribution by all FTA members, to a non-profit organization
6 named the Central Valley Education Foundation, was approved. Petitioners argue that the voting
7 procedure was irregular and that 30 days' notice was required to be given to the dues-paying
8 members before the vote could be taken.

9 The Petition is subject to demurrer for lack of subject matter jurisdiction under
10 Code of Civil Procedure section 430.10(a) for two different reasons. First, Petitioners failed to
11 exhaust their administrative remedies before filing the Petition. The Representative Council is
12 governed by "Robert's Rules of Order", which allow any member to bring a motion to rescind a
13 prior motion. Petitioners have a plain, speedy, and adequate remedy within the FTA at their
14 disposal, and which would resolve their complaints. Case law states, "*It is the general and well*
15 *established jurisdictional rule that a plaintiff who seeks judicial relief against an organization of*
16 *which he is a member must first invoke and exhaust the remedies provided by that organization*
17 *applicable to his grievance.*" (*DeVaughn Peace, M.D., Inc. v. St. Francis Medical Center* (1994)
18 28 Cal.App.4th 454, 462-463.)

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

26 Due to the foregoing, Respondents respectfully request that their demurrer under
27 Code of Civil Procedure section 430.10(a), for lack of subject matter jurisdiction, be sustained
28 without leave to amend.

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II.

FACTUAL BACKGROUND

The following facts are set forth in the Petition and relied on by Petitioners.

On March 11, 2019, the FTA Representative Council held a meeting. (Petition, ¶ 12.) At the meeting, a motion was introduced (the "Motion") to "increase the dues" of the members of the FTA. (Petition, ¶ 12.) As set forth in Section "L" of the FTA Standing Rules, the alleged "increase in dues" that was the subject of the Motion was a \$5 voluntary contribution (the "Contribution") to a non-profit organization named the Central Valley Education Foundation. (Petition, Exhibit "2", § L.)

Petitioners allege that the Motion was declared adopted and that the president of the FTA "refused to allow a count of those voting at the Representative Council meeting on March 11, 2019, to determine whether a majority of the present Representative Council delegates had in fact voted to increase the membership dues." (Petition, ¶¶ 12-13.) Petitioners also allege that under Section V(B) of the Bylaws, at least 30 days' notice to all dues paying members was required before the Motion could be voted on by the Representative Council. (Petition, ¶ 11.)

On June 11, 2019, Petitioners filed their Petition for Writ of Mandate and Complaint for Declaratory Relief.

III.

MEET AND CONFER

Code of Civil Procedure sections 430.41 imposes a requirement for a demurring party to meet and confer with the party who filed the pleading to attempt to resolve the any disputes regarding the pleading. On July 11, 2019, counsel for Respondents had a telephone conference with counsel for Petitioners regarding the grounds for Respondents' demurrer to the Petition. (Declaration of Michael J. Fletcher ["Fletcher Dec."], ¶ 4.) That same day, in order to attempt to resolve the Petition and potential demurrer, and allow sufficient time to meet and confer, counsel for Petitioners provided an extension on the deadline for Respondents to file a demurrer to the Petition, extending the deadline to July 28, 2019. (Fletcher Dec., ¶ 5.) Though Petitioners and Respondents made progress and may be close to resolving this matter, the issues

1 regarding the demurrer were not resolved. (Fletcher Dec., ¶ 6.)

2 **IV.**

3 **POINTS AND AUTHORITIES**

4 **A. Legal Standard.**

5 Petitioners have brought their Petition pursuant to Code of Civil Procedure section
6 1085. Pursuant to Code of Civil Procedure section 1089, "the party upon whom the writ or notice
7 has been served may make a return by demurrer, verified answer or both."

8 Code of Civil Procedure section 430.10 provides authority for the court to review
9 the sufficiency of a complaint or petition. Specifically, Section 430.10 provides the following
10 grounds to support a demurrer: "(a) The court has no jurisdiction of the subject of the cause of
11 action alleged in the pleading; (b) The person who filed the pleading does not have the legal
12 capacity to sue; ... (e) The pleading does not state facts sufficient to constitute a cause of action;
13 (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and
14 unintelligible." The court's ruling should be directed only to the face of the complaint. (*James v.*
15 *Superior Court* (1968) 261 Cal.App.2d 415, 416.)

16 For purposes of the demurrer, the facts alleged in the complaint, if any, must be
17 accepted as true. (*Salimi v. State Comp. Ins. Fund* (1997) 54 Cal.App.4th 216, 219.) However, a
18 court may disregard general allegations of fact that are inconsistent with specific allegations of
19 fact. (*Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 995.) Further,
20 the court is not required to accept contentions, deductions, or conclusions of fact and law as true.
21 (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 907; *Blank v. Kirwan* (1985) 39
22 Cal.3d 311, 318.)

23 Leave to amend should be denied unless there is a reasonable possibility that the
24 defect can be cured by amendment. (*Ankeny v. Lockheed Missiles and Space Co.* (1989) 88
25 Cal.App.3d 531, 537.) The burden of proving that it is reasonably possible the complaint may be
26 cured by amendment falls squarely on the shoulders of the plaintiff or petitioner. (*Ibid.*)

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1 **The Petition is Subject to Demurrer under Code of Civil Procedure section 430.10(a)**
2 **Due to a Lack of Subject Matter Jurisdiction based on Failure to Exhaust**
3 **Administrative Remedies.**

4 Petitioners have not exhausted their administrative remedies, therefore, the Court
5 lacks subject matter jurisdiction to hear the case, and the Petition is subject to demurrer under
6 Code of Civil Procedure section 430.10(a).

7 It is black letter and long-established law in California that the exhaustion of an
8 administrative remedy is a jurisdictional prerequisite for judicial intervention in private
9 administrative proceedings. (3 Witkin, *California Procedure, Actions*, § 308, p. 392 (4th Ed.
10 1996).) In *Abelleira v. District Court of Appeal*, the California Supreme Court held:

11 This is the doctrine of ‘exhaustion of administrative remedies.’ In
12 brief, the rule is that where an administrative remedy is provided
13 by statute, relief must be sought from the administrative body and
14 this remedy exhausted before the courts will act. The authorities to
15 this effect are so numerous that only the more important ones need
16 be cited here as illustrations. (*Abelleira v. District Court of Appeal*
17 (1941) 17 Cal.2d 280, 292.)

18 The exhaustion doctrine requires a party to “go through the entire proceeding to a ‘final decision
19 on the merits of the entire controversy’ before resorting to the Courts for relief.” (*Bollengier v.*
20 *Doctors Medical Center* (1990) 222 Cal.App.3d 1115, 1125.)

21 To satisfy the requirement that they exhaust their administrative remedies, the
22 Petitioners allege:

23 Petitioners, and each of them, have no adequate and/or available
24 administrative remedy of which to avail themselves in this matter.

25 Petitioners, and each of them, have no plain, speedy or adequate
26 legal remedy available to them. Respondents, by their failure to
27 perform their legal duties as described above, have deprived
28 Petitioners of substantial legal rights, and damages in a suit at law
do not constitute sufficient relief where a corporate official must be
ordered to cease and desist from, or to perform, an act. (Petition,
¶¶ 18-19.)

///

1 Petitioner's allegations are conclusory, and do not acknowledge the plain, speedy, and adequate
2 legal remedy that remains at their disposal.

3 Specifically, the Bylaws of the FTA are attached to the Petition. Under Section
4 XVI of the Bylaws, it states that the Representative Council is governed by Robert's Rules of
5 Order:

6 **PARLIAMENTARY AUTHORITY**

7 Robert's Rules of Order, latest edition, shall be followed at all
8 meetings of the Association, the Representative Council, and the
9 Executive Board. (Petition, Ex. "1", p. 50.)

9 Robert's Rules of Order are procedures commonly used by organizations to manage board meetings
10 and actions. Under Robert's Rules, Rule 35, Petitioners have a remedy they can use to challenge the
11 Motion. Specifically, Robert's Rules, Rule 35 states, in part:

12 **§35 RESCIND; AMEND SOMETHING PREVIOUSLY**
13 **ADOPTED**

14 Rescind-also known as Repeal or Annul-is the motion by which a
15 previous action or order can be cancelled or countermanded. The
16 effect of Rescind is to strike out an entire main motion, resolution,
17 order, or rule that has been adopted at some previous time. ...
(*Robert's Rules of Order Newly Revised*, 11th ed., p. 305 (Da Capo
Press, 2011).)

18 Can be applied to anything (e.g., bylaw, rule, policy, decision, or
19 choice) which has continuing force and effect and which was made
20 or created at any time or times as the result of the adoption of one
or more main motions. (*Ibid.*)

21 **Further Rules and Explanation**

22 RIGHT OF ANY MEMBER TO MAKE THE MOTIONS,
23 WITHOUT TIME LIMIT. [T]here is no time limit on making
24 these motions [to rescind] after the adoption of the measure to
25 which they are applied, and they can be moved by any member,
26 regardless of how he voted in the original question. (*Robert's*
Rules of Order Newly Revised, 11th ed., p. 307 (Da Capo Press,
2011).)

27 Each one of the Petitioners is a member of the Representative Council and the
28 FTA. (Petition, ¶ 8.) As members, Petitioners have the right, under Robert's Rules of Order, to

1 make a motion to rescind the prior Motion. A motion to rescind under Rule 35 would be a plain,
2 speedy, and simple way to resolve the issues that Petitioners have prematurely brought before the
3 Court. Case law states:

4 **'It is the general and well established jurisdictional rule that a**
5 **plaintiff who seeks judicial relief against an organization of**
6 **which he is a member must first invoke and exhaust the**
7 **remedies provided by that organization applicable to his**
8 **grievance.** [Citations.] This rule is analogous to the rule requiring
9 the exhaustion of administrative remedies as a condition precedent
10 to resorting to the courts [citation] and to the rule requiring the
11 parties to a contract for arbitration of disputes to exhaust those
12 remedies before seeking judicial relief. [Citations.] Such rules ...
13 make possible the settlement of such matters by simple,
14 expeditious and inexpensive procedures, and by persons who,
15 generally, are familiar therewith. Such internal remedies are
16 designed not only to promote the settlement of grievances but also
17 to promote more harmonious relationships and the courts look with
18 favor upon them.' (*DeVaughn Peace, M.D., Inc. v. St. Francis*
19 *Medical Center* (1994) 28 Cal.App.4th 454, 462-463 [emphasis
20 added].)

21 Petitioners have not exhausted the intraorganizational/administrative remedies available to them.
22 Therefore, this Court lacks subject matter jurisdiction to hear the Petition for Writ of Mandate, and
23 the Petition is subject to demurrer under Code of Civil Procedure section 430.10(a).

24 **C. The Court Should Decline the Exercise Jurisdiction.**

25 As set forth above, the Petitioners failed to exhaust the administrative remedies
26 available to them and the Petition is subject to demurrer. However, even if Petitioners are deemed
27 to have exhausted their administrative remedies, the Court should still decline to exercise
28 jurisdiction in this case.

Indeed, Courts should not become involved in the internal affairs of a private
organization unless it is absolutely necessary. Case law explains, "[i]n many disputes in which
[the rights and duties of the membership in relation to the association] are at issue ... **the courts**
may decline to exercise jurisdiction. Their determination not to intervene reflects their judgment
that the resulting burdens on the judiciary outweigh the interests of the parties at stake. One
concern in such cases is that judicial attempts to construe ritual or obscure rules and laws of
private organizations may lead the courts into what Professor Chafee called the 'dismal swamp.'"

1 (*California Trial Lawyers Assn. v. Superior Court* (1986) 187 Cal.App.3d 575, 579.)
 2 Furthermore, "when a private voluntary organization plainly contravenes the terms of its bylaws,
 3 the issues of whether and to what extent judicial relief will be available depend on balancing (1)
 4 the interest in protecting the aggrieved party's rights against (2) the infringement on the
 5 organization's autonomy and the burdens on the courts that will result from judicial attempts to
 6 settle such internal disputes." (*Ibid.* [citing *California Dental Assn. v. American Dental Assn.*
 7 (1979) 23 Cal.3d 346].)

8 The case at hand involves that exact type of issue that is described in the case law
 9 above. The Motion, and the Contribution, effect the "rights and duties of the membership in
 10 relation to the association" which is the exact type of issue that Court are wary of becoming
 11 involved in. (*California Trial Lawyers Assn. v. Superior Court, supra*, 187 Cal.App.3d at p. 579.)
 12 It will result in the Court having to make determinations regarding the FTA's internal policies and
 13 procedures. In addition, the "interest in protecting the aggrieved party's rights" should not weigh
 14 heavily in light of the administrative remedy that the Petitioners still have available to them. (*Ibid.*
 15 [citing *California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346].) Instead of
 16 consuming judicial resources to litigate differences in opinion between the members of the FTA's
 17 Representative Council, the Petitioners could instead move to rescind the Motion and Contribution,
 18 and invoke their right to have the Representative Council vote on and resolve the issue.

19 **V.**

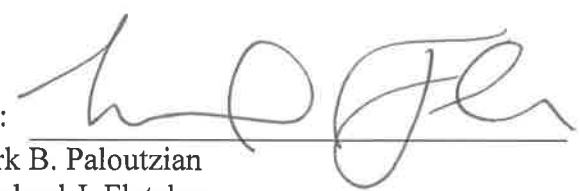
20 **CONCLUSION**

21 Due to the foregoing, Respondents respectfully request that their demurrer under
 22 Code of Civil Procedure section 430.10(a), for lack of subject matter jurisdiction, be sustained
 23 without leave to amend.
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DATED: July 26, 2019

BAKER MANOCK & JENSEN, PC

By: 
Dirk B. Paloutzian
Michael J. Fletcher
Attorneys for Respondents

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
9 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO
10 PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY RELIEF**
11 on the interested parties in this action as 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