

1 ROBERT J. BEZEMEK, State Bar # 058740
PATRICIA LIM, State Bar # 209478
2 DAVID CONWAY, State Bar # 253903
LAW OFFICES OF ROBERT J. BEZEMEK
3 A Professional Corporation
The Latham Square Building
4 1611 Telegraph Avenue, Suite 936
Oakland, California 94612
5 Telephone: (510) 763-5690
Facsimile: (510) 763-4255
6 Email: rjbezemek@bezemeklaw.com
Attorneys for Plaintiffs

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**
11 **UNLIMITED JURISDICTION**

12 AFT LOCAL 2121; PALOMAR FACULTY)
13 FEDERATION, AFT LOCAL 6161,)
MENDOCINO COLLEGE FEDERATION)
14 OF TEACHERS, AFT LOCAL 6322; AND)
SAN JOSE-EVERGREEN FEDERATION)
15 OF TEACHERS, AFT LOCAL 6157, ON)
BEHALF OF THEMSELVES AND THEIR)
16 MEMBERS; CALIFORNIA)
FEDERATION OF TEACHERS; ALISA)
17 MESSER, TIM KILLIKELLY, KAREN)
SAGINOR, SHANNON LIENHART,)
18 SHANELL WILLIAMS, AUGUSTA)
GOLDSTEIN,)

19 Plaintiffs,)

20 vs.)

21 ACCREDITING COMMISSION FOR)
22 COMMUNITY AND JUNIOR)
COLLEGES; and DOES 1 through 50,)
23 inclusive,)

24 Defendants.)
25)
26)
27)
28)

Case No. CGC 13-534447

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF FOR VIOLATIONS
OF BUSINESS AND PROFESSIONS CODE
SECTION 17200, AND INTENTIONAL
INTERFERENCE IN PROSPECTIVE
ECONOMIC ADVANTAGE, AND
DECLARATORY RELIEF UNDER THE
BAGLEY-KEENE ACT, GOVERNMENT
CODE §§11120**

Dept. 304

Judge: Honorable Curtis E.A. Karnow

Trial Date: not set

1 Plaintiffs SAN FRANCISCO COMMUNITY COLLEGE FEDERATION OF TEACHERS, AFT
2 LOCAL 2121, PALOMAR FACULTY FEDERATION OF TEACHERS, AFT LOCAL 6161,
3 MENDOCINO FEDERATION OF TEACHERS, AFT LOCAL 6322, SAN JOSE-EVERGREEN
4 FEDERATION OF TEACHERS, AFT LOCAL 6157, on behalf of themselves and on behalf of their
5 members to the extent permitted by Government Code section 3543.8; CALIFORNIA FEDERATION
6 OF TEACHERS; and the individual PLAINTIFFS herein, are informed and believe and allege as
7 follows:

8 PRELIMINARY STATEMENT

9 1. Under the California constitution, education is a *fundamental* interest and a constitutional
10 right of the residents of California. *Serrano v. Priest* (197) 5 Cal.3d 584, 604-610; *Butt v. State* (1992)
11 4 Cal. 4th 668; California Constitution, Article IX, Sec. 1. A college education is no less important to the
12 fulfillment of this right than a public school education.

13 2. Community colleges are an integral part of California’s system of public higher
14 education. Every year, more than 2 million students attend a community college, in a system that
15 includes 113 colleges operated by 72 community college districts.

16 3. Federal and State law both demand that institutions of higher education be accredited by
17 an accreditor recognized by the U.S. Department of Education.

18 a. California law expressly requires that each community college within a
19 community college district be an accredited institution. (Cal. Code Regs., tit. 5 § 51016). From 1991
20 until May 22, 2015, Section 51016 stated specifically that accreditation was to be performed by the
21 Defendant, ACCJC. Effective May 22, 2015, Section 51016 was amended to allow accreditation to be
22 performed “only by an accrediting agency recommended by the Chancellor and approved by the Board
23 of Governors.” Nevertheless, currently ACCJC is the only accrediting agency approved by the Board of
24 Governors of the Community Colleges, which has delegated to the ACCJC the authority to accredit all
25 community colleges within the state system.

26 b. ACCJC accreditation is therefore necessary to the operation of a California
27 community college district, and the colleges and other centers or organizational units within each
28 district.

1 c. ACCJC accredits colleges, not community college districts. However, ACCJC
2 bases many of its decisions and actions on district operations, because many critical aspects of
3 community college operations are organized, determined, controlled or operated at a district, not college,
4 level. Among these are generally the determinations of wages, hours and terms and conditions of
5 employment for college employees.

6 d. At all times relevant herein, the Higher Education Act of 1965 (“HEA” – 20 USC
7 Chapter 28, §§ 1001 *et seq.*) enacted by the federal government has been in effect. The HEA provides
8 federal funding for educational institutions and students in states that have elected to participate in the
9 HEA programs. Under the HEA, participation by the state of California and its community colleges
10 requires that all California community colleges be accredited by a federally recognized accrediting
11 agency. California has chosen to participate in the federally funded programs established in the HEA.

12 e. The accreditation requirement is expressed in several sections of the U.S. Code
13 and in the regulations adopted by the U.S. Department of Education. For all HEA purposes other than
14 Title IV (student assistance), 20 USC Sec. 1001(a)(5) defines “institution of higher education” (a term
15 that includes community colleges) to include only institutions that are accredited by a federally
16 recognized accrediting agency, with no exceptions that are relevant here. For purposes of student
17 assistance under HEA Title IV (20 USC, Chapter 28, sub-chapter IV, Secs. 1070 *et seq.*), 20 USC Sec.
18 1094(a)(21) defines an “eligible institution” as an institution that “will meet the requirements established
19 by the Secretary [of Education] and accrediting agencies....” Under the regulations adopted by the
20 Secretary, 34 CFR Sec. 668.13 defines an “eligible institution” for purposes of Title IV as one that meets
21 the requirements for eligibility under 34 CFR Part 600. 34 CFR Sec. 600.2 and Sec. 600.4(a)(5) together
22 define “eligible institution” as one that is “accredited.” 34 CFR Sec. 600.2 then defines “accredited” to
23 mean the status of accreditation granted by a recognized accrediting agency.

24 4. This lawsuit was filed after ACCJC disaccredited City College of San Francisco, one of
25 California’s most outstanding community colleges. For the past 12 years, the ACCJC has not been a fair
26 accreditor. ACCJC’s issuance of sanctions to California community colleges have caused substantial
27 harm to these colleges, their students and their employees. For more than a dozen years ACCJC has been
28 the most aggressive regional accreditor, consistently sanctioning member institutions at a rate in excess

1 of 400% times the rate of the next highest sanctioning regional accrediting body. In 2012 no other
2 regional accreditor sanctioned above 4% of the total number of their member institutions. For ACCJC,
3 however, 19% of their member institutions were on sanction in 2012.

4 5. Plaintiffs allege that ACCJC is violating federal laws and regulations that ACCJC is
5 required to obey, and that ACCJC violates the requirements of California common law fair procedure.
6 These and other “predicate acts” establish that ACCJC is committing unfair and unlawful business
7 practices which affect the public interest and disregard the public policy of California, in violation of
8 California’s Unfair Competition Law, Business and Professions Code § 17200 *et seq.*.

9 6. Plaintiffs allege that the ACCJC is violating California’s Bagley-Keene Act which
10 requires that many actions of the ACCJC that have been occurring in secret, are the public’s business
11 and must be conducted openly.

12 7. An important public policy of California is its recognition that public employees may
13 form labor organizations and engage in negotiations with their public employers, leading to binding
14 collective bargaining agreements that arrange their wages, hours and terms and conditions of
15 employment. Plaintiffs allege that ACCJC has illegally impinged on these collective bargaining rights,
16 preventing their full exercise. Thus, Plaintiffs alleges that the ACCJC has constrained labor
17 organizations in exercising their rights to negotiate wage increases and evaluations.

18 8. This lawsuit seeks injunctive relief to prevent the continued unfair and unlawful acts of
19 the ACCJC which interfered in the prospective economic advantages Plaintiffs enjoy through collective
20 bargaining agreements that are negotiated in accordance with the Educational Employment Relations
21 Act (EERA).

22 9. In amending this lawsuit, additional Plaintiffs have been added and some original
23 Plaintiffs deleted, and the scope of the lawsuit has been enlarged to challenge additional actions by
24 ACCJC, most of which arose since the action was filed. These actions have caused and threaten to cause
25 substantial harm to colleges, employees, students and labor organizations throughout the California
26 community college system. City College of San Francisco remains at risk, and most of the added claims
27 apply to it as well.

28 10. While this case was originally filed as a class action, it was never certified, and Plaintiffs

1 have now deleted the class allegations.

2 11. The plaintiffs consist of labor unions, employees and students who have standing to
3 challenge ACCJC's unfair and unlawful practices. The Plaintiff unions have diverted staff and officer
4 time and money to investigating and analyzing ACCJC's alleged unfair and unlawful acts and practices,
5 and in bringing it to the attention of federal, state and local governmental officials in an effort to enforce
6 the laws, or encourage remedies other than this lawsuit. Investigations and analysis by Plaintiff unions
7 and individual plaintiffs have produced evidence of ACCJC's unfair and unlawful activities. The
8 individual plaintiffs have either spent or diverted their own financial resources in this effort and/or
9 incurred loss of money because of ACCJC's unfair or unlawful acts.

10 12. Despite these efforts, ACCJC continues to engage in unfair and unlawful practices, which
11 compromise the fair and objective accreditation that the law demands.

12 13. ACCJC's unfair and unlawful practices led to the unjustified sanctioning and
13 disaccreditation of City College of San Francisco, and still threaten its existence, as well as other
14 California community colleges. ACCJC's sanctions have adversely affected students pursuit of an
15 inexpensive but excellent college education. Information confirms that City College of San Francisco
16 experienced a large drop in the number of students resulting from ACCJC's wrongful sanctions, and the
17 related negative publicity. The number of high school graduates enrolling at CCSF from several San
18 Francisco High Schools (Lowell, Galileo and Washington) declined after 2012 when the Show Cause
19 announcement was made. Credit FTES declined steadily from more than 25,000 in 2011-2012, to about
20 17,500 in 2014-2015. Non-credit FTES declined from about 10,000 in 2011-2012 to about 7,500 in
21 2014-2015. The message "don't go to CCSF if you can avoid it" has, on information and belief, reached
22 many high school students, in particular, ones who are concerned about transfer to CSU or UC. Thus,
23 ACCJC's actions toward CCSF threaten the educational rights affirmed by the California Supreme Court
24 in *Serrano* and *Butt*.

25 14. In the First Cause of Action, Plaintiffs allege that ACCJC engaged in numerous unfair
26 and unlawful business practices in violation of Business and Professions Code section 17200. The
27 predicate acts are found in the Higher Education Act and its implementing regulations, in California's
28 common law fair procedure doctrine, and in the EERA.

1 Edmund G. Brown, unanimously approved the “Master Plan” for Education in California. The Master
2 Plan was signed into law in Spring 1960. It was “the high step forward in higher education in the State
3 of California.” (Governor Brown, quoted in *California Rising: The Life and Times of Pat Brown*, Ethan
4 Rarick, University of California Press, 2005, pp. 147, 163.) Within a few years, the “junior” colleges
5 were recognized as “community colleges.”

6 20. In 1988, the Legislature revised the Education Code with comprehensive legislation to
7 formally recognize the community colleges as part of a statewide community college system. (A.B.
8 1725, Stats. 1988, Chap. 973) The legislation reaffirmed that the community colleges were crucial to
9 providing economic opportunity for all Californians:

10 “SEC. 5. The Legislature finds and declares the following **with regard to access** to the
11 California Community Colleges, and the importance and value of success to those who
participate in the system:

12 (a) **It is the responsibility of this state to provide to every Californian the**
13 **opportunity** to realize his or her intellectual, emotional, and vocational potential. To
14 fulfill this responsibility, and to ensure that California enjoys a healthy economy and
15 society, **open access to a quality community college system must be affirmed for a**
diverse student population, which includes, but is not limited to, ... **persons at a**
variety of income levels, ...

16 (c) **Open access to community colleges must be assured for all adults who can**
17 **benefit from instruction ...**” (Stats. 1988, Chap. 973, section 5, note to Ed. Code §
70900, emphasis added)

18 21. In implementing California’s right to an education, the Legislature decreed that the State
19 should establish and maintain community colleges throughout the State, so that “all of the territory of
20 the State shall be included within a community college district”. In other words, the law requires that
21 every one of California’s 58 counties must have a public community college district. (See Education
22 Code § 74000) The community college system has grown to include 113 public community colleges in
23 72 community college districts, each with a publicly-elected board of trustees. Some counties have
24 multiple colleges and districts, such as Los Angeles and Santa Clara.

25 22. California community colleges serve as a bridge to UC and CSU, for thousands of
26 students, thanks to carefully coordinated matriculation agreements between the community colleges and
27 UC and CSU. The community college system educates more than 2 million students annually.

28 23. California Education Code section 72208 requires the accreditor of California community
colleges to report to the Legislature upon the issuance of any decision of the accreditor that affects the

1 accreditation status of a community college. This shall be done on a biannual basis report that reports
2 any accreditation policy changes that affect the accreditation process or status for a community college.

3 24. California Education Code section 67102 requires any California community college that
4 receives state funding for veterans' education, or which has enrolled veterans eligible for state funding
5 for said veterans, to provide evidence of accreditation.

6 25. California Education Code section 76243(a)(6) authorizes agencies that accredit the
7 California community colleges to review otherwise confidential student records, so as to provide such
8 access as is needed.

9 26. The State of California offers to assume loans incurred by college graduates who graduate
10 from an accredited college, as provided by Education Code section 69618.2 - 69618.3.

11 **PARTIES**

12 **Plaintiffs**

13 27. Plaintiff AFT LOCAL 2121, CFT/AFT, AFL-CIO (AFT 2121 or "Local 2121"), also
14 known as San Francisco Community College Federation of Teachers, AFT Local 2121, is a labor
15 organization which has been certified by the California Public Employment Relations Board since in or
16 about March, 1978, as the exclusive bargaining agent for the academic employees of the San Francisco
17 Community College District, (excluding department chairs and supervisory or managerial employees).
18 The San Francisco Community College District has also "confirmed" in a succession of collective
19 bargaining agreements that AFT 2121 is the sole and exclusive representative of all academic employees
20 in the San Francisco Community College District, with exclusions of supervisory, confidential and
21 managerial employees. AFT 2121 has approximately 1,300 members who are employed at City College
22 of San Francisco.

23 28. Plaintiff PALOMAR FACULTY FEDERATION, AFT Local 6161 has been certified by
24 the California Public Employment Relations Board as the exclusive bargaining representative for a unit
25 of full-time academic employees of the Palomar Community College District, at Palomar College in San
26 Diego County, CA. Local 6161 has entered into a succession of collective bargaining agreements with
27 the District, regarding the wages, hours and terms and conditions of employment of these employees.
28 The current agreement runs through June 30, 2016. The bargaining unit consists of approximately 1,000

1 full-time and part-time academic employees.

2 29. Plaintiff MENDOCINO COLLEGE FEDERATION OF TEACHERS, AFT Local 6322
3 has been certified by the California Public Employment Relations Board as the exclusive bargaining
4 representative for a unit of full-time academic employees of the Mendocino-Lake Community College
5 District, who work at Mendocino College and other district sites. Local 6322 has entered into a
6 succession of collective bargaining agreements with the District, regarding the wages, hours and terms
7 and conditions of employment of these employees. The bargaining unit consists of approximately 50
8 full-time academic employees.

9 30. Plaintiff SAN JOSE-EVERGREEN FEDERATION OF TEACHERS, AFT LOCAL 6157
10 has been certified by the California Public Employment Relations Board as the exclusive bargaining
11 representative for a unit of full-time academic employees of the San Jose-Evergreen Community College
12 District. Local 6517 has entered into a succession of collective bargaining agreements with the District,
13 regarding the wages, hours and terms and conditions of employment of these employees. The bargaining
14 unit consists of nearly 750 full-time and part-time academic employees.

15 31. The primary purposes of LOCALS 2121, 6322, 6161 and 6157 are set forth in their
16 constitution, which declares that their objectives include promoting the welfare of students and the
17 advancement of community college education at the local, state and national level, promoting the highest
18 standards of professional service in education, obtaining for faculty members their rightful voice in
19 shaping educational policy and in establishing the conditions under which they teach, promoting the
20 welfare of faculty members by obtaining fair and just compensation for professional services rendered,
21 maintaining for faculty members the right to good faith collective bargaining as a necessary means for
22 achieving the substantive aims and purposes of the union, advancing the economic, social and political
23 well-being of the faculty members and building alliances with students and others to promote social
24 justice and equity.

25 a. The members of each Union Plaintiff pay a percentage of their college income as
26 organizational dues and/or fees. The percentage is 1.31% for AFT 2121, 1.6% for Local 6161, 1.4% for
27 Local 6157 and 1.0 % for Local 6322. Each local represents its members in negotiating wages and
28 working conditions, defending them in investigations, investigating and prosecuting grievances, unfair

1 labor practices and lawsuits to improve their employment conditions, and legislative lobbying.

2 32. Plaintiff CALIFORNIA FEDERATION OF TEACHERS (CFT) is the statewide affiliate
3 of the American Federation of Teachers, and the parent of nearly 100 “local unions” representing
4 employees of community colleges, public schools, the University of California, and numerous private
5 schools, colleges and universities. CFT is the parent of each AFT affiliated plaintiff in this case.

6 a. CFT’s objectives, as stated in its Constitution, includes organizing the
7 educational and health care employees of California into locals chartered by the American Federation of
8 Teachers (AFT); bringing them into relations of mutual assistance and cooperation; obtaining for them
9 all the rights and benefits to which they are entitled; raising the standards of their professions and
10 securing the conditions essential to the best professional service; promoting such democratization of the
11 educational institutions as will enable them better to equip their students to take their places in the
12 economic, social and political life of the community; striving for equal educational opportunities for all;
13 initiating and supporting state legislation to benefit the students, and educational and health care
14 employees of the state of California.

15 b. CFT assists its local affiliates in pursuing various processes to protect the rights of
16 its affiliates, including employees represented by its affiliates, in grievances, unfair labor practice
17 charges, arbitrations, and lawsuits. It assists its affiliates in negotiations, and research, and in
18 suggesting, supporting, or giving its opinion on proposed legislation, and in pursuing other objectives.

19 33. Plaintiff TIM KILLIKELLY is the president of AFT 2121 and a tenured instructor at City
20 College of San Francisco. KILLIKELLY diverted his time, attention and resources from other matters,
21 and spent substantial time and significant money from July 2012, to the present, investigating various
22 aspects of ACCJC’s operations in regard to whether they violated federal regulations and State law, or
23 were otherwise unfair or unlawful, and attempting to remedy ACCJC’s acts and practices by persuading
24 various entities, groups or individuals to take action to remedy unfair and unlawful conduct. The efforts
25 include, but are not limited to, traveling to Washington D.C., Sacramento and other locations to
26 investigate ACCJC and meet with entities and individuals in an effort to obtain remedies for ACCJC’s
27 unfair and unlawful acts and practices.

28 34. Plaintiff ALISA MESSER is the former president of AFT 2121, serving from 2010 to

1 2014. She is currently a member of the AFT 2121 Executive Board. She is a tenured instructor at City
2 College of San Francisco., where she has worked since 2001. She diverted her time, attention and
3 resources from other matters, and spent substantial time and significant money from July 2012, to the
4 present, investigating various aspects of ACCJC's operations in regard to whether they violated federal
5 regulations and State law, or were otherwise unfair or unlawful, and attempting to remedy ACCJC's acts
6 and practices by persuading various entities, groups or individuals to take action to remedy unfair and
7 unlawful conduct. The efforts include, but are not limited to, attending ACCJC public meetings, meeting
8 with groups of faculty, students and others, speaking with legislators, the City Attorney's Office, the
9 Mayor, board of supervisors members, community college officials, and others, and traveling to
10 numerous locations including Sacramento and to Washington D.C. on two occasions to address NACIQI
11 about ACCJC's misconduct and the Department of Education de-listing the ACCJC.

12 35. Plaintiff KAREN SAGINOR is a tenured librarian employed by City College of San
13 Francisco, where she has worked since 1991. She is the former president of the City College Academic
14 Senate, a position she held from May 2010 to May 2013. Ms. Saginor diverted her time, attention and
15 resources from other matters, and spent substantial time and significant money from July 2012, to the
16 present, investigating various aspects of ACCJC's operations in regard to whether they violated federal
17 regulations and State law, or were otherwise unfair or unlawful, and attempting to remedy ACCJC's acts
18 and practices by persuading various entities, groups or individuals to take action to remedy unfair and
19 unlawful conduct. The efforts include, but are not limited to, the following:

20 a. Traveling to Sacramento, Washington D.C., Santa Rosa, Fresno, Oakland and
21 numerous other places to address entities, groups and individuals, in an effort to persuade them to take
22 action to remedy or support remedies for ACCJC's alleged unlawful and unfair actions, including but
23 not limited to: speaking to the National Advisory Committee for Institutional Integrity and Quality in
24 Washington, D.C., which advises the U.S. Department of Education on whether to recognize the ACCJC;
25 attend meetings of the ACCJC; meet with leaders of the California Community Colleges, the Faculty
26 Association of the California Community Colleges (FACCC), and Brice Harris, then the Chancellor of
27 the California Community Colleges.

28 b. Attending ACCJC public meetings and traveling to numerous locations, including

1 Cabrillo College, Marin Community College, Manhattan Beach, San Jose, and Los Angeles and meeting
2 with other entities, groups or people to obtain information about ACCJC's unfair and unlawful acts and
3 practices, to assist in seeking remedies for those matters.

4 36. Plaintiff AUGUSTA "GUS" GOLDSTEIN is and at all relevant times has been a resident
5 of and taxpayer in San Francisco City and County. She was a faculty member at City College of San
6 Francisco (CCSF), and AFT 2121 from 1995 to 2015. (She was hired as a part-time instructor in 1995
7 and became a full-time faculty member in 2006.) She retired from City College of San Francisco on or
8 about May 22, 2015, and is an annuitant and member of the California State Teachers Retirement
9 System. Goldstein suffered the pay cuts that resulted from the loss of student enrollment and the
10 District's response to Show Cause and Disaccreditation. This in turn led to a reduction in her retirement
11 income, which is based on her salary.

12 37. Plaintiff SHANELL WILLIAMS grew up in San Francisco, is a resident of the City and
13 County of San Francisco and enrolled at City College of San Francisco in 2010. She was the student
14 trustee in 2013, and also elected president of the student body. She is an urban studies major. Ms.
15 Williams intended to complete her CCSF education in the Spring semester of 2014, hoping to transfer to
16 UC Berkeley. After ACCJC issued disaccreditation, she diverted her time and significant resources to
17 participate in the effort by students, faculty, staff and City residents to bring ACCJC's unfair and
18 unlawful actions to the attention of legislators, the City Attorney, and others who could remedy these
19 acts, and restore CCSF's full accreditation. In this effort she expended more than trivial amounts of her
20 own money. She delayed completing her educational plans because of the time commitment; later, she
21 resumed her plans and expended more time and money than she anticipated to recover the lost time. She
22 remains a resident of San Francisco.

23 38. Plaintiff SHANNON LIENHART, is President of the Palomar Faculty Federation of
24 Teachers, and a tenured faculty member of Palomar Community College in San Diego County, CA.
25 Plaintiff Shannon Lienhart, President of Palomar Federation of Teachers, AFT Local 6161, diverted her
26 attention and spent substantial time to deal with ACCJC's alleged unfair and unlawful business
27 practices. Among other things she traveled at her expense to Sacramento, CA, to meet with California
28 legislators to surge the adoption of legislation to require ACCJc's compliance with certain California

1 laws that would remedy ACCJC’s unfair and unlawful practices.

2 **Defendants**

3 39. Defendant ACCREDITING COMMISSION FOR COMMUNITY AND JUNIOR
4 COLLEGES (“ACCJC”) is a private, nonprofit corporation, organized under the Nonprofit Public
5 Benefit Law of the State of California, with its principal office in Novato, California. The principal
6 business of the ACCJC is accrediting California community colleges and other community colleges or
7 two-year degree-granting educational institutions. ACCJC also provides workshops, training and
8 consultancy services to institutions, including California community colleges which it accredits.

9 40. Plaintiffs are not aware of the true names and capacities of Defendants sued herein as
10 DOES 1 through 50, inclusive, and therefore sue these Defendants by such fictitious names. Each
11 fictitiously named Defendant is responsible in some manner for the violations of law alleged. The
12 Plaintiffs will seek leave of court to amend this complaint to allege their true names and capacities when
13 that information is ascertained.

14 **ACCJC’s Business Operations**

15 41. The ACCJC was created in or about 1962, as part of the Western Association of Schools
16 and Colleges (WASC), which was created at the same time. WASC was formed, in part, to provide
17 accreditation services to public schools, colleges, universities and other institutions of higher education
18 in California, Hawaii, the Territories of Guam and American Samoa, the Commonwealth of the
19 Northern Marianas, the Republic of Palau, the Federated States of Micronesia, and the Republic of the
20 Marshall Islands. The ACCJC’s bylaws provide that it may also accredit non-domestic institutions in
21 other geographic regions at its discretion.

22 42. From 1962 until the 2012-2013 academic year, WASC was composed of three
23 “commissions,” one of which (ACCJC) accredited junior or community colleges and other two-year
24 institutions, both private and public. In 2012-2013, the three commissions reincorporated as three
25 separate entities which share the WASC “acronym,” and use WASC to “hold” their intellectual property,
26 but otherwise are separate entities. This ended WASC oversight of ACCJC; ACCJC assumed full
27 control over its assets, legal obligations and responsibilities.

28 43. “WASC-ACCJC” or ACCJC has been recognized for several decades by the United

1 States Department of Education as a regional accreditor. ACCJC is one of six higher education
2 accreditors that are “recognized” by the U.S. Department of Education to accredit community and junior
3 colleges. The others, however, also have jurisdiction over senior colleges and universities. They are: the
4 Middle States Association of Colleges and Schools, New England Association of Schools and Colleges,
5 Higher Learning Commission (Formerly the North Central Association of Colleges and Schools),
6 Southern Association of Colleges and Schools, and the Northwest Commission on Colleges and
7 Universities. The U.S. Department of Education also accredits “national accreditors.” Under federal
8 law, any regional or national accreditor is free to expand its jurisdiction to include the California
9 community colleges, but to be recognized by the Department of Education to include California, it
10 would need to apply for appropriate recognition by the Department.

11 44. From 1974 until 1988, Federal law provided that more than one association or agency
12 would not likely qualify for Departmental recognition (1) in a defined geographical area of jurisdiction
13 or (2) in a defined field or program specialization within secondary or postsecondary education. (Former
14 45 C.F.R. § 149.5(b); see 39 Fed. Reg. 30,042 (1974)) In 1988, the aforementioned regulation was
15 repealed by the Department of Education, in favor of fostering competition among accrediting bodies.
16 (53 Fed. Reg. 25, 096 (1988)) ACCJC’s monopoly over, California’s community colleges ended in 2015
17 (Cal. Code Regs., tit. 5, §51016).

18 45. The ACCJC accredits approximately 145 institutions, including the 113 California
19 community colleges. Any institution accredited by ACCJC must become a member of the ACCJC, in
20 accordance with ACCJC’s bylaws and constitution.

21 46. ACCJC is governed by a 19-member Commission, which also serves as ACCJC’s board
22 of directors. The Commission in turn is governed by the ACCJC’s Constitution and Bylaws, and various
23 policies and procedures which it adopts.

24 47. ACCJC declares that it evaluates institutions in order to assure “the educational
25 community, the general public, and other organizations and agencies that an institution has clearly
26 defined objectives appropriate to higher education; has established conditions under which their
27 achievement can reasonably be expected; appears in fact to be accomplishing them; is so organized,
28 staffed, and supported that it can be expected to continue to do so; and demonstrates that it meets

1 ACCJC’s Eligibility Requirements, Accreditation Standards and Commission policies.” In order to
2 assure that the public is aware of ACCJC’s actions and decisions involving community colleges, ACCJC
3 requires each community college to maintain an accreditation webpage just one click from the college’s
4 home page, and to post ACCJC’s reports and action letters so they can be read and considered by
5 students and the general public.

6 48. The ACCJC is managed and operated by a group of officers and staff including its
7 president, Dr. Barbara Beno, several vice presidents, and several other employees. ACCJC’s staff make
8 a living working for ACCJC and earn substantial wages and benefits. President Beno was paid
9 compensation of \$ 316,571 for 2011-2012, and \$ 376,245 for 2012-2013. ACCJC’s Vice Presidents also
10 receive significant compensation. In 2011-2012, Vice President Clifford received compensation of
11 about \$186,000, Vice President Pond received compensation of \$194,820. ACCJC employs several
12 administrative staff besides its officers.

13 49. ACCJC’s accreditation activities include creating standards, eligibility requirements and
14 policies, appointing evaluation teams to evaluate institutional members, reviewing institutional reports,
15 preparing institutional evaluation reports, writing manuals, handbooks and other materials for
16 accreditation training and activities, conducting training of evaluation teams, team chairs, and employees
17 of colleges that participate in facilitating accreditation (accreditation liaison officers), voting to take
18 “action” on accreditation status and related issues, conducting training of college trustees and employees,
19 and a variety of other accreditation related matters. Some of these activities are included in ACCJC’s
20 basic fee to the colleges it accredits, and others are the subject of separate charges, as determined
21 annually by ACCJC.

22 50. Each college which is a member of the ACCJC pays annual membership dues to ACCJC.
23 These fees are substantial. Each college pays an annual “base fee” that is calculated according to the
24 college’s “unduplicated headcount enrollment.” In addition, an institution annually pays one-half of the
25 base annual dues for each branch campus which is separately listed in the ACCJC Schools and Colleges
26 Directory. For example, the Peralta Community College District, which has four colleges listed in the
27 Directory, pays the base fee according to the rate of the district’s unduplicated headcount enrollment,
28 and then also pays one-half of that base fee for each of its three other listed colleges.

1 51. ACCJC fees are graduated, and have 11 levels. The lowest rate is for colleges with
2 unduplicated headcount at 499 students or less. The highest is for colleges with a headcount of 40,000
3 or more. The fee for the smallest college for 2016-2017 has been announced as \$8,049 and the largest is
4 announced as \$42,929. ACCJC has increased these fees by 46.4% since 2012-2013.

5 52. ACCJC charges separately for some services, including special visits and follow-up visits
6 to colleges (\$1,000 flat fee in 2015-2016, plus actual expenses and another 15% for administrative
7 costs.) Other ACCJC special fees include but are not limited to: candidate visits to the ACCJC office
8 (\$500); for regular site visit, fees (\$1,000, plus actual expenses of the visit and a 15% administrative
9 fee); review of a substantive change proposal, whether or not approved (\$500); approval of a substantive
10 change proposal pending additional information (\$550), and deferral of a substantive change proposal
11 pending additional information (\$750).

12 53. In addition to the above-referenced accreditation services, ACCJC offers special
13 workshops and training for which it charges a flat fee, which is \$2,000 as of 2015-2016. Most of these
14 workshops, such as its Trustees Roles workshop, involve a presentation by one or two ACCJC officers,
15 and occasionally commissioners or ACCJC-related individuals. ACCJC encourages institutions that it
16 has “sanctioned” or that have been identified by ACCJC as having deficiencies, to engage ACCJC to
17 provide workshops on matters related to accreditation. For example:

18 a. During 2013, ACCJC presented at least 13 workshops on Trustee Roles or
19 Leadership, to numerous California community colleges including Contra Costa, Ohlone, Pasadena,
20 Sequoias, Cuesta, Yosemite, Solano, Riverside, San Francisco, and Los Angeles, and to Northern
21 Marianas College. ACCJC’s California community college workshops are generally open to the entire
22 college community and the public.

23 b. ACCJC provided workshops, offered by president Beno, shortly after City College
24 of San Francisco was placed on show cause in 2012, and for College of the Redwoods on March 26,
25 2012, shortly after it was placed on show cause. At the CCSF and Redwoods workshops, the entire
26 college community was invited.

27 c. ACCJC officers regularly present workshops to associations and other groups
28 related to the California community colleges, including the Association of California Community

1 College Administrators, Association of Chief Business Officers, and the Northern and Southern
2 California CEOs.

3 d. ACCJC offers meetings and conferences related to accreditation subjects, in
4 which it charges up to \$500, for about 100 attendees. These meetings compete for attendance with
5 similar meetings and conferences offered by other entities.

6 54. The ACCJC receives substantial dues and fee income from its accreditation and related
7 activities. For 2011-2012, ACCJC reported income on its IRS Form 990 of \$2,945,309, along with
8 expenses of \$1,934,381. The vast majority of its income is paid by the California community colleges.

9 55. ACCJC has competitors in regard to accreditation services.

10 a. Other organizations or individuals provide training and workshops for California
11 community colleges, for a fee, including the RP Group, the Academic Senate of the California
12 Community Colleges (ASCCC) with its “Accreditation Institute,” and various individuals. The
13 ASCCC’s fee for its 2015 two-day “Accreditation Institute” was approximately \$450-500 per person,
14 exclusive of hotel accommodations. The RP Group is a 501(c)(3) non-profit organization that is
15 composed of individual California community colleges and district offices, and has presented workshops
16 and conferences on numerous issues including accreditation.

17 b. Besides competing with various businesses to provide workshops and consultation
18 services to institutions, the ACCJC now competes with the five other regional accreditors recognized by
19 the U.S. Department of Education. These accreditors are free to offer their accreditation services
20 anywhere they desire. If they want recognition by the U.S. Department of Education in California, they
21 must apply to the Department to extend the scope of their recognition. There is no legal impediment to
22 any of the other DOE-recognized accreditors seeking approval to operate in California. The State
23 Chancellor’s Office recently created a task force to consider other regional accreditors for California
24 community colleges.

25 56. ACCJC advertises its services by publishing a newsletter two or more times per year,
26 which it distributes to the colleges it accredits, and posts on the ACCJC website. ACCJC also advertises
27 by attending and making presentations at numerous conferences of California community college-related
28 advocacy groups and associations. For example, it regularly presents at the Community College League

1 of California (CCLC) conferences, where it attained the status of “conference partner.” The CCLC is a
2 nonprofit public benefit corporation and trade association, whose membership consists of the 72
3 California community college districts, and which is governed by a board of directors elected by the
4 chancellors and presidents of the 72 California community colleges. The CCLC engages in advocacy,
5 policy development, and various services for community college districts.

6 57. Although ACCJC evaluation team members are generally volunteers, the ACCJC pays
7 them for expenses they incur in serving on ACCJC teams. Most of the volunteers who are employed by
8 California community colleges are paid by their district employers for the time spent on ACCJC
9 accreditation team visits and work.

10 58. ACCJC was determined by a decision issued in the case of *People v. ACCJC*, San
11 Francisco Superior Court No. CGC-13-533693, on February 17, 2015, that it is a business subject to the
12 Unfair Competition Law.

13 59. By reason of its business activities, including but not limited to those described herein,
14 ACCJC is a business subject to California Business and Pretensions Code section 17200 *et seq.*

15 **JURISDICTION AND VENUE**

16 60. The Superior Court has jurisdiction over this action. The ACCJC is conducting unlawful,
17 unfair and/or deceptive business practices in California, including in San Francisco. Many of these
18 practices originated or occurred after this action was originally filed, and directly affect the future
19 accreditation of City College of San Francisco, which in turn affects Plaintiffs AFT 2121, CFT, and the
20 faculty and students of CCSF.

21 61. This action was filed in San Francisco County, California, in the Superior Court on
22 September 24, 2013, where venue is proper pursuant to Code of Civil Procedure section 395, because
23 the ACCJC transacts substantial business in the City and County of San Francisco, because many of the
24 acts complained of occurred in the City and County and/or caused injury to residents of the City and
25 County, and because Defendant’s liability arose, in part, in the City and County of San Francisco.

26 **STANDING TO SUE**

27 62. Each individual plaintiff has suffered actual injury and has standing, as alleged above.
28 Each labor organization plaintiff has suffered actual injury and has standing, as alleged below.

1 63. ACCJC’s unlawful and unfair business practices alleged herein are inimical to the
2 principal purposes of AFT Locals 2121, 6157, 6161 and 6322 in that they interfere in, are hostile to and
3 impede the Unions’ efforts to negotiate fair wages and benefits better than the annual state COLA, and
4 negotiate such better wages “on the salary schedule” so that they are “continuing” and also improve
5 employees’ retirement income. These ACCJC practices also seek to reduce employees’ wages and
6 benefits by coercing districts to expend less money on employee compensation. Such acts also seek to
7 divert funds which would otherwise be available for employee compensation, into unnecessary
8 contributions to irrevocable trust funds to pre-fund estimated, future liabilities for retiree health benefits.

9 64. AFT 2121, its officers and staff, have diverted substantial staff time, and expended
10 substantial financial resources, since in or about July 2012, and continuing thereafter, investigating
11 ACCJC’s actions in regard to their violations of federal regulations, of state law, and ACCJC’s own
12 policies; and other unfair and unlawful practices.

13 65. AFT 2121 has also diverted substantial staff time and resources from other activities, to
14 analyze the information it has obtained and bring such information to the attention of California
15 legislators, the State Chancellor’s Office, the San Francisco City Attorney, the Congress of the United
16 States, the federal Department of Education, the National Advisory Committee on Institutional Quality
17 and Integrity (NACIQI) of the U.S. Department of Education, and the ACCJC itself. AFT 2121 has filed
18 complaints and “third party comments” with the Department of Education, informed legislators about
19 ACCJC’s unfair and unlawful practices and encouraged the adoption of legislation to prevent and
20 remedy ACCJC’s unfair and unlawful acts. These activities include, but are not limited to;

21 a. In December 2015, AFT 2121 paid some of the travel expenses for a contingent of
22 its officers, staff, members, and CCSF students to travel to Washington D.C. where they addressed the
23 December 16-18, 2015, meeting of NACIQI, the principal public advisory body of the Department of
24 Education, on the recognition of the ACCJC. The group included Plaintiffs Tim Killikelly, Alisa Messer
25 and Karen Saginor. AFT 2121’s group attested to ACCJC’s unlawful and unfair practices. AFT 2121
26 expended at least \$5,000 for this.

27 b. On November 16, 2015, officers, staff, and members of AFT 2121 traveled to
28 Sacramento, California, at the Union’s expense, to address the Board of Governors of the California

1 Community Colleges and request that they de-list the ACCJC as the mandatory accreditor for California
2 community colleges, as then provided in Cal. Code Regs., tit. 5, § 51016.

3 c. Officers and staff met with and informed legislators, the California Community
4 Colleges Board of Governors and leaders about the need to adopt legislation, and met with students to
5 gain knowledge of the adverse effects of ACCJC's unfair and unlawful business practices.

6 66. AFT 2121 has also suffered actual injury because: ACCJC's unfair and unlawful acts
7 caused the issuance of show cause and disaccreditation to CCSF, which in turn resulted in a large
8 decline in student enrollment. This loss of enrollment caused, even with State "stabilization" funding to
9 help mitigate the loss financially, reductions in faculty wages. Since the dues of AFT 2121 are a
10 percentage of members' pay, these reductions led to loss of revenue for AFT 2121. In addition, more
11 than 150 faculty retired or resigned from City College, many because of the limits on wages and turmoil
12 resulting from ACCJC's disaccreditation order. As a result of these events, AFT 2121 suffered a loss of
13 dues that exceeds \$50,000 since July 2013.

14 67. CALIFORNIA FEDERATION OF TEACHERS (CFT) suffered an injury in fact, and a
15 loss of money and property as a result of the actions of ACCJC complained of herein, as demonstrated
16 by the following:

17 a. ACCJC's unlawful and unfair business practices alleged herein are inimical to the
18 principal purposes of CFT in that they interfere in, are hostile to and impede the efforts of CFT's affiliate
19 organizations and members, to negotiate fair wages and benefits better than the annual state COLA, and
20 negotiate such better wages "on the salary schedule" so that they are "continuing" and improve
21 employees' retirement income, and threaten the continued employment of the individual members of the
22 CFT. These ACCJC practices also seek to reduce their members wages and benefits by coercing
23 California community college districts to expend less money on employee compensation, and such acts
24 also seek to divert funds which would otherwise be available for employee compensation, into
25 unnecessary contributions to irrevocable trust funds to pre-fund estimated, future liabilities for retiree
26 health benefits.

27 b. CFT has spent substantial money and diverted significant resources from other
28 activities to investigate and counteract ACCJC's unfair and unlawful business activities. Its activities

1 include, but are not limited to:

2 i. appearing before the ACCJC at its public meetings in Burlingame, CA.,
3 and Sacramento, CA; serving complaints on ACCJC at its Novato, CA. office.

4 ii. propose, support or oppose State and federal legislation to address the
5 unfair and unlawful actions and practices of the ACCJC.

6 iii. sent CFT officers and employees to attend meetings of, *inter alia*,
7 NACIQI, Board of Governors of the California Community Colleges, State Chancellor Brice Harris,
8 various legislators, and others, to seek remedies for ACCJC's unfair and unlawful business practices,
9 including supporting legislation such as S.B. 965 and A.B. 1942.

10 c. CFT has suffered decreased payments from its affiliates, which are a percentage of
11 dues money collected, because of pay cuts suffered by City College of San Francisco, described herein.

12 68. Mendocino College is part of the Mendocino-Lake Community College District, and was
13 created in 1972. It's main campus is located in Ukiah, CA, with centers in Willits and Lakeport, and a
14 coastal field station near Point Arena. It annually serves approximately 4,500 students.

15 69. In or about January 2010, the faculty union accepted a 4% pay cut in lieu of faculty
16 layoffs. The academic employees of the Mendocino-Lake Community College District have not received
17 a pay increase in two of the last four years, and only an aggregate 7% increase between 2008-2009 and
18 2014-2015. In 2014-2015, the faculty received no pay increase. The District policy calls for maintaining
19 reserves as 15% of the general fund. Presently they are about 17%. ACCJC's action to place the College
20 on enhanced monitoring interferes with Union efforts to negotiate improvements in faculty wages as
21 allowed by State law. ACCJC's CFI rubric does not, on information and belief, provide that a large
22 reserve mitigates the effects of ACCJC's other CFI criteria (e.g. compensation percentage, excess COLA
23 settlement) on assigning colleges to enhanced monitoring.

24 a. Mendocino College Federation of Teachers, AFT Local 6322 suffered an injury in
25 fact, and a loss of money and property as a result of the actions of ACCJC complained of herein, as it:
26 was required to divert resources from negotiating other matters within the scope of negotiations, in order
27 to negotiate contractual language addressing the subject of faculty evaluations including a portion
28 devoted to SLOs, as demanded of the College by ACCJC, and in order to avoid ACCJC sanctions.

1 CCSF expanded rapidly. In 1970, the College separated from the Unified District and the San Francisco
2 Community College District was formed. As of 2011, CCSF served 85,000 students annually, in credit
3 and noncredit programs at its main campus called the “Ocean Campus,” nine “centers” located
4 throughout San Francisco, and many other sites, in response to demand for a public institution to serve
5 the academic and vocational needs of students in San Francisco. (CCSF Show Cause Self-Study Report
6 to ACCJC, March 15, 2013.) By 2012, the centers had been converted to campuses, and City College
7 operated at ten campuses.

8 73. CCSF has continuously expanded its academic and vocational programs, and community
9 services, to meet the “changing needs” of people living and working in San Francisco. (*See City College*
10 *of San Francisco*, Julia Bergman, Valerie Sherer Mathes and Austin White (2010).)

11 74. For many years, CCSF has served a highly diverse student population. During 2009,
12 about 30% of the students were Asian, 18% was Hispanic, 8.5% was African-American, and 6.5% was
13 Filipino. In addition, about 15% of the students were age 19 or younger, 47% were in their twenties,
14 18% were in their thirties, 10% in their forties, and 10% were 50 or older.

15 75. City College trains students for 140 vocations, such as law enforcement, firefighting,
16 nursing, culinary, paralegal, and mechanics, for more than 60 academic degrees, and for more than 200
17 credit and non-credit programs. City College prepares many students for further academic study at four-
18 year universities, provides lifelong learning for older adults, and educates about 20,000 immigrants
19 annually in English as a Second Language. Many of the noncredit classes it offers, such as automotive
20 technology, construction, accounting and bookkeeping, health care) are designed to help adult learners
21 improve their job prospects or job skills.

22 76. As of June 2011, CCSF City College employed about 1,500 experienced faculty to serve
23 about 80,000 students. It is the largest community college in California, and the only community college
24 within San Francisco. Statistics prove it to be one of California’s most successful community colleges.

25 **Accrediting Commission for Community and Junior Colleges**

26 77. The Accrediting Commission for Community and Junior Colleges (ACCJC) is a private
27 non-profit corporation, formed under the California non-profit corporation law. At all times relevant
28 herein, the ACCJC has been recognized by the U.S. Department of Education as an accrediting agency

1 for community and junior colleges within California, Hawaii, and the Pacific Island territories of the
2 United States.

3 78. ACCJC operates, for some purposes, under the corporate entity the Western Association
4 of Schools and Colleges (“WASC”). WASC is recognized by the U.S. Department of Education
5 (“DOE”) as one of seven regional accreditation associations that accredit public and private schools, and
6 institutions of higher education (primarily colleges and universities) in the United States. ACCJC is
7 recognized by the DOE as authorized to accredit institutions of higher education in the “Western region”
8 of the United States that consist of certain private two-year “technical” colleges in California, Hawaii
9 and certain Pacific islands, while another WASC commission, the Senior College and University
10 Commission, accredits public and private institutions that grant bachelors and graduate degrees in the
11 same region.

12 79. Defendant ACCJC is under a contractual obligation to provide accreditation services to
13 each of the California community colleges and California community college districts. Among these
14 services is to issue decisions granting, re-affirming, withdrawing or denying accreditation, and issuing
15 sanctions including warning, probation and “show cause” to the California community colleges. ACCJC
16 also acts to place some colleges on “enhanced monitoring” when ACCJC decides it is warranted.

17 **ACCJC Acts to Put CCSF on Show Cause Sanction in 2012**

18 80. CCSF was evaluated for renewed accreditation by ACCJC in 2012, resulting in CCSF
19 being placed on show cause sanction. ACCJC’s action resulted from it having failed to respect the
20 mission of CCSF, and was therefore arbitrary, capricious, unjustified and unreasonable.

21 81. Dramatic reductions in State funding for the community college system continued during
22 fiscal year 2010-2011, including severe cuts initiated during 2009-2010 to both apportionment and
23 categorical programs. Multiple strategies were employed by CCSF to ensure that the College operated
24 within a balanced budget during this two-year period; strategies that required very high levels of
25 cooperation across all College constituencies including the elected Board of Trustees. Actions taken by
26 the College to reduce spending in accord with reduced resources included termination of consultant
27 contracts, reducing the number of administrators through attrition, reducing the number of classified
28 positions through attrition, reducing other operating expenditures and supplies, and carefully reducing

1 the number of class sections during years in which such action was consistent with the College's effort
2 to manage enrollment. The College was successful in achieving its goal of not spending any money from
3 its Board Designated Reserve during both of these fiscal years. CCSF notified ACCJC of the
4 information in this paragraph with the CCSF "self-study" issued in January 2012.

5 82. Prior to 2012, ACCJC had recommended that the College reduce its expenditure of
6 general fund monies toward compensation. CCSF notified ACCJC this was not possible in its self-study
7 to ACCJC. CCSF notified ACCJC that the College is located in one of the highest cost areas in the
8 country and this is reflected in the aggregate cost of the current salary and benefits. The ratio of
9 personnel to non-personnel costs remains at a high level with more than 90 percent of unrestricted
10 general fund expenditures going towards employee compensation. Additional funding would be needed
11 to provide increased support for non-personnel items that would change this ratio. In addition, under
12 historically difficult fiscal conditions, the College has made strategic decisions to maintain as many class
13 sections and student services as possible in the face of significant state cuts in workload funding and
14 severe state cuts to categorical programs. CCSF explained that, "Under current circumstances, these
15 efforts to protect students will contribute to the percentage of the budget going to personnel costs." (Self-
16 study, p. 136)

17 83. In placing CCSF on show cause, ACCJC sanctioned the College for preserving classes
18 for needy students, thereby fulfilling its mission.

19 84. In or about December 2011, the ACCJC staff appointed an evaluation team to evaluate
20 CCSF for continued accreditation. The team consisted of 16 appointees and one team administrative
21 assistant. Only three of the 16 team members were academics. One member, Peter Crabtree, was
22 employed by the neighboring Peralta Community College District as a dean, where he had
23 responsibilities for working on grants related to career and technical education and "workforce
24 development." On information and belief, Crabtree was not required to file a conflict of interest
25 disclosure form identifying actual or apparent conflicts, nor did the Commission investigate whether his
26 appointment to the CCSF evaluation team posed an actual or apparent conflict of interest.

27 85. During the ACCJC-appointed evaluation team visit to CCSF in March 2012, the team
28 voted to recommend that ACCJC place CCSF on a "probation" sanction. In accordance with ACCJC

1 policy, this recommendation was not provided to CCSF or to the public. At a closed-session meeting of
2 the Commission held in June 2012, the Commission voted to place City College on “Show Cause”
3 sanction.

4 86. Among the reasons cited by the team for this sanction, and in ACCJC’s July “action
5 letter” to CCSF were (a) percentage of compensation expenditures was too high at 92% and (b) CCSF
6 had failed to prefund its estimated retiree health benefits (also known as Other Post-Employment
7 Benefits, or “OPEB.”) In placing CCSF on show cause, ACCJC acted arbitrarily and capriciously, as
8 alleged herein.

9 87. The visiting team issued 14 recommendations for CCSF to “improve” the effectiveness of
10 2 standards, and to “meet” 2 and “fully meet” 10 of the other ACCJC standards. Neither the team, nor
11 the ACCJC’s Commission, issued findings of fact or conclusions. As of the issuance of the 2012 report,
12 ACCJC policy provided that a college would be reaffirmed if it “substantially meets or exceeds the
13 Eligibility Requirements, Accreditation Standards and Commission policies.” ACCJC acted arbitrarily
14 and capriciously in requiring that the institution “fully meet” ACCJC policies.

15 88. The letter from ACCJC gave CCSF until March 15, 2013, to “come into compliance”
16 with ACCJC’s standards and eligibility requirements, and to prepare a “Closure Report.” It was directed
17 to “address all recommendations and Commission concerns.”

18 89. Under ACCJC policy, the College, despite being accredited, was not allowed to appeal
19 the issuance of the sanction. The show cause status also, under ACCJC policy, reversed the “burden of
20 proof,” even though the College was accredited, meaning the College carried the burden of proof in the
21 next ACCJC decision (whether the College should be discredited, or otherwise sanctioned) as
22 contrasted with ACCJC having to prove the college warranted losing its accreditation.

23 90. CCSF was placed on show cause despite having a stellar record at educating its students.
24 Among the California community colleges, the average transfer velocity to 4 year institutions was
25 38.2%. When CCSF was placed on show cause, its transfer velocity was 48.1%, placing it in the *top 12*
26 *percent of California community colleges*. For those California community college transfer students
27 who attend CSUs, the average GPA was 3.03 for the Fall 2011 semester. City College’s students who
28 transferred to CSU’s were *above average* compared to their peers in that category, maintaining an

1 average 3.08 GPA in the Fall 2011 semester. CCSF also maintained *higher than average* completion
2 rates for its college-prepared students. In the category of completion rates for college-unprepared
3 students, City College was in the top 3% of all California Community Colleges. For total completion
4 rates CCSF was in the 83rd *percentile* of all California Community Colleges - the top 20%. In 2012,
5 only 21 colleges were above average in each of the aforementioned categories. Despite this, of these 21
6 colleges, ACCJC placed 8 (38%) on sanction at some point in the previous 10 years. Two of these high
7 performing schools were placed on show cause (CCSF and Diablo Valley).

8 **ACCJC Disaccredits CCSF in 2013**

9 91. ACCJC appointed a 9 person evaluation team, which on April 4-5, 2013, conducted a
10 show cause visit to CCSF, resulting in a report that went to ACCJC's Commission. Only one of the nine
11 team members was an academic. One member of the team formerly was employed by CCSF, which on
12 information and belief, disqualified him from service under ACCJC policies.

13 92. The Commission itself met in a "closed session meeting" in June 2013, and determined
14 that it would increase the number of "deficiencies" identified by the visiting team, from 19 to 30
15 deficiencies. The team report identified 19 "deficiencies."

16 93. ACCJC's own policy allows such an increase only after ACCJC gives the college written
17 notice of the increased number of deficiencies, allows the college an opportunity to respond to the new
18 charges in writing, and postpones the ACCJC's decision until its next regular meeting, 6 months hence.
19 Both the Commission and President Beno disregarded this policy restriction, and the Commission voted
20 to disaccredit CCSF, the action to take effect in July 2014. The decision was made in a closed session,
21 without either the College or the public allowed to attend. ACCJC announced the decision in an "action
22 letter" to the College from president Beno dated July 3, 2013. Dr. Beno's "action letter" includes no
23 discussion of those additional standards found not to be met and offers no explanation as to the ways in
24 which CCSF's performance has been deficient according to the Commission, but satisfactory according
25 to the visiting team in its discussion of these same standards. In the action letter: (1) the ACCJC
26 acknowledges explicitly, or confirms implicitly, that it did not afford CCSF sufficient time to meet many
27 of the standards or elements and (2) the alleged shortcomings of CCSF identified in the report and letter
28 were not identified as having had an adverse impact on the quality of the education that CCSF provides

1 to its students. In the team report under each standard, there was a description of what the college had
2 done or not done, and then a leap to the determination that the college had or had not met the standard,
3 without any additional information, principle, measuring stick, touchstone, interest-balancing, or any
4 other aid to explain the ACCJC's decision-making process.

5 94. On information and belief, ACCJC has a practice of increasing deficiencies or sanctions
6 beyond those identified by a visiting team, approximately 25% of the time. On information and belief,
7 ACCJC did not give notice to colleges involved in such changes, as to what they were, and that they had
8 been added after the team report and recommendation were made.

9 95. The Commission's action to disaccredit CCSF was based on an entirely different view of
10 CCSF's response to the Show Cause sanction, than was held by the 2013 visiting team. The 2013
11 visiting team concluded that of the 2012 team's 14 recommendations, CCSF was on track to resolve
12 many of the issues, had "fully addressed" four recommendations, and "partially addressed" the other 10.
13 Overall, the 2013 team was "impressed with the engagement and responsiveness of the entire college
14 community." In contrast, by its action the Commission itself rejected the recommendation of the 2103
15 team it had appointed, and concluded:

16 The College has fully addressed two of those recommendations (Recommendations 6 and
17 9), and has resolved the deficiencies associated with those recommendations. The College
18 has addressed and nearly resolved the deficiencies noted in one other recommendation,
19 (Recommendation 3), which is expected to be fully implemented next year. However,
20 eleven of the fourteen recommendations were not adequately addressed . . . (ACCJC
21 Action Letter, July 3, 2013, p. 3)

22 96. The Commission issued no findings of fact or conclusions to explain the basis of its
23 decision. In 2012 and 2013, the ACCJC placed CCSF on Show Cause sanction, and then disaccredited
24 it, in large measure because the College had allegedly been found to have deficiencies in its re-
25 accreditation in 2006, that subsequently went unremedied for seven years. To make these findings in
26 2012 and 2013, ACCJC retroactively recharacterized recommendations for improvement as deficiencies.
27 This arbitrary and capricious act deprived CCSF of an opportunity to proper notice and to respond to the
28 alleged deficiencies; but for this recharacterization, CCSF would not have been placed on show cause or
disaccredited.

97. CCSF filed a Request for Review of the Commission's decision. The Request for Review
was decided by the Commission in a closed session, to which the public was not admitted. The Request

1 for Review was denied. CCSF then filed an appeal with ACCJC, and the Commission appointed an
2 “appeal hearing panel” of three persons to hear the appeal. CCSF challenged the composition of the
3 panel on grounds of a conflict of interest. ACCJC treated the challenge as confidential, and issued a
4 confidential decision rejecting CCSF’s conflict of interest challenge. Subsequently, following a closed
5 appeal hearing, the CCSF appeal was denied.

6 98. ACCJC’s actions to sanction CCSF with show cause and then disaccreditation, had a
7 dramatic adverse impact on student enrollment, and in attracting and retaining faculty. ACCJC created
8 problems with various academic or vocational programs maintaining their accreditation because
9 ACCJC’s actions led to program-level accreditors questioning CCSF’s long-term viability.

10 **ACCJC Places CCSF on Restoration Status**

11 99. In January 2014, the San Francisco Superior Court enjoined the ACCJC from finalizing
12 disaccreditation of CCSF, pending a trial of the People’s case.

13 100. Subsequently, ACCJC created a new “status” for its member institutions which it called
14 “Restoration Status.” CCSF, facing disaccreditation once the Court’s preliminary injunction was lifted,
15 and if disaccreditation was not ordered revoked, filed an application for Restoration Status in July 2014.
16 ACCJC visited CCSF in November 2014, and in January 2015, placed CCSF on Restoration Status.
17 Under this status CCSF must file a self-study report with ACCJC, which will conduct a visit to CCSF in
18 or about October 2016, and make a decision on CCSF’s future at its January 2017 meeting. Under this
19 status CCSF must come into “complete” or “full compliance” with ACCJC’s standards. This is a higher
20 standard than ACCJC applies to other institutions. The standard ACCJC applies is ordinarily
21 “substantial compliance.” ACCJC had good cause to provide CCSF more time than 9 and ½ months to
22 achieve compliance after it placed CCSF on show cause status, and had it acted consistently with its
23 treatment of other institutions, that is what it should have done.

24 101. Contrary to other ACCJC policies, a decision to disaccredit CCSF would not be subject to
25 internal appeal or review and would be effective immediately upon being announced.

26 **California Law Provides that Wages and Working Conditions For Community College** 27 **Employees Are Determined in Collective Bargaining Negotiations, Not By the ACCJC**

28 102. In 1976, the California Legislature enacted the Educational Employment Relations Act
(Cal. Govt. Code §3540 *et seq.*, known as the “EERA”). The EERA was adopted pursuant to the

1 authority of the State of California to regulate within its borders, public sector collective bargaining
2 activities and rights.

3 103. The EERA represents the public policy of the State, which favors collective bargaining
4 for employees and the California community colleges. The EERA declares that it is designed to
5 “promote the improvement of personnel management and employer-employee relations within the public
6 school systems in the State of California by providing a uniform basis for recognizing the right of public
7 school employees to join organizations of their own choice, to be represented by the organizations in
8 their professional and employment relationships with public school employers, [and] to select one
9 employee organization as the exclusive representative of the employees in an appropriate unit, ...” (Cal.
10 Gov. Code § 3540)

11 104. In accordance with the EERA, labor organizations (also known as “employee
12 organizations” or “unions”) such as the Plaintiff labor organizations here, may petition for and obtain the
13 right to be certified by the California Public Employment Relations Board (PERB) as the exclusive
14 collective bargaining representative for appropriate bargaining units of community college employees.
15 Certification by the PERB, or recognition by a district, affords labor organizations the right to negotiate
16 binding and enforceable collective bargaining agreements with community college districts.

17 105. Since 1976, the academic employees of every one of California’s 72 community college
18 districts have selected a labor organization to represent them in appropriate bargaining units, and to
19 negotiate on their behalf, with their employer. Since 1976, “classified,” non-academic employees of
20 every one of California’s 72 community college districts have selected a labor organization to represent
21 them in negotiations with their employer.

22 106. California Government Code section 3543.2 authorizes negotiations over matters related
23 to wages, hours and terms and conditions of employment, which are defined as being within the “scope
24 of negotiations” under the EERA. The EERA enumerates several other topics as being within the scope
25 of bargaining including “health and welfare benefits,” and “procedures to be used for the evaluation of
26 employees.” The EERA, in section 3543.3, also forbids colleges to bypass a recognized labor
27 organization and meet with a third party over negotiated matters.

28 107. The EERA also provides that community colleges and employee organizations shall

1 negotiate in good faith over matters within the scope of negotiations, in an effort to reach a binding
2 collective bargaining agreement. Such binding agreements shall not exceed three years in length. (Cal.
3 Gov. Code §3540.1(h))

4 108. The State of California has determined in Government Code section 3540, that mandatory
5 provisions of the law supercede the scope of negotiations under 3543.2. However, section 3540
6 specifies that negotiations are prohibited only when provisions of the Education Code or other statutes
7 would be “replaced, set aside or annulled by the language of the proposed contract clause.” Unless the
8 statutory language “of the Education Code clearly evidences an intent to set inflexible standards or
9 insure immutable provisions, the negotiability of such a proposal should not be precluded.” *San Mateo*
10 *City School District* (1984) PERB Dec. No. 375, 8 PERC § 15021, p. 134. ACCJC is bound by this rule.

11 109. Under the EERA it is an unfair practice for a California community college district to
12 refuse to negotiate with an exclusive representative over the labor organization’s proposals which would
13 increase employee salaries. This bargaining obligation exists regardless of whether the union proposes
14 to increase compensation at a percentage equal to or greater than the annual, announced State “COLA.”

15 110. California public policy favors the payment of sufficient wages to academic employees,
16 and restrictions on monies devoted to administrative purposes. Hence the Legislature adopted Education
17 Code section 84362 to require that community college districts must expend at least 50% of the “current
18 expense of education,” as defined in section 84362, for the salaries of classroom teachers.

19 111. Nothing within the Higher Education Act (20 U.S.C. § 1099b and 1099c, or federal
20 regulations, authorizes ACCJC to nullify, supercede or preempt state laws, such as EERA.

21 112. The laws under which ACCJC operates do not vest any authority in ACCJC to determine,
22 cap or limit the wages, hours or other terms and conditions of employment for California’s public
23 community college employees, nor to sanction or take any other adverse action against a California
24 public community college due to the wages, hours and other terms and conditions of employment
25 negotiated with recognized bargaining agents, nor to annul collective bargaining agreements, nor restrict
26 the scope of collective bargaining under the EERA.

27 113. The Higher Education Act neither expressly nor impliedly preempts State collective
28 bargaining laws. Except in areas where federal requirements mandate a particular standard or criteria,

1 the standards or criteria applied by ACCJC must not violate State law.

2 114. The State of California has not authorized the ACCJC or any accreditor of California
3 community colleges to annul or preempt the collective bargaining rights provided by the EERA to
4 certified labor organizations and employers whom they represent including the plaintiff labor
5 organizations herein, or the members they represent.

6 115. Based on information and belief, no other federally-recognized regional or national
7 accreditor, or programmatic accreditor, coerces institutions to (a) withhold on-schedule pay increases to
8 a cost-of-living adjustment; (b) use a cost-of-living adjustment as a metric to determine institutional
9 fiscal capacity or stability; c) to coerce institutions to expend less than 86% or 90% of their expenditures
10 on employee compensation; (d) to use “executive leadership changes” above two as a metric for
11 financial capacity or stability; or to use OPEB prefunding as a metric for such purposes.

12 **State Funding of the California Community Colleges**

13 116. Each year the State of California provides funding to support the general operations and
14 student support functions of California’s 113 public community colleges. Most community colleges
15 receive, through their districts, a basic appropriation from the State. (A few districts are funded through
16 “basic aid,” which derives from local property taxes). This money is distributed to each of the 72
17 community college districts, and is apportioned at scheduled intervals during the academic year, that
18 runs from July 1 to June 30. The funding is calculated based on a State-created funding formula which
19 appropriates funds based on factors such as the number of full-time equivalent students (FTES) a college
20 enrolls. Each year the state decides what funding it will provide based on this formula and other
21 considerations.

22 117. The State “Cost of Living Adjustment” (“COLA”) is a calculation generally determined
23 annually by the State to periodically increase the State’s basic FTES appropriation to most community
24 college districts. The State’s basic appropriation per FTES, and money from the State COLA are just two
25 of several sources of revenue which annually provide funding for community colleges. Other funding
26 includes monies related to specific state programs or goals. For example, funding is made available for
27 “enrollment growth” to provide some additional funds when a college increases its enrollment. In
28 addition, community colleges may supplement State funding with locally raised property taxes, grants,

1 and other sources. The basic appropriation, COLA funding, growth funding, and other revenue streams
2 are available to fund employee compensation and benefits. Some funding sources may not be used for
3 employee compensation. A few districts are also entitled to receive funding through local property
4 taxes, instead of the basic state appropriation.

5 118. The public policy of the State of California, set forth in the EERA, does not limit or “cap”
6 the amount of any wage increase(s) an exclusive bargaining agent may negotiate with the community
7 college employer to the amount of the State COLA, whether or not some or all of the wage increase is
8 “on” the salary schedule and therefore of a continuing nature, or “off” the salary schedule, and therefore
9 a one-time payment. There are no California statutes or other laws which cap the amount of wages that
10 an exclusive bargaining agent and a community college employer may negotiate, with EERA entrusting
11 the subject to good faith negotiations. There are no California Education Code or other statutes which
12 supercede or prohibit a recognized labor organization from seeking or obtaining in collective bargaining,
13 pay increases that exceed the annual “State COLA,” whether the wage increase is paid “on” or “off” the
14 salary schedule.

15 **ACCJC’s Interference in the Collective Bargaining Rights of Plaintiff Labor Organizations**

16 119. The ACCJC is not privileged by law to impinge on the collective bargaining relationship
17 between labor organizations and California community college districts.

18 120. Despite ACCJC’s obligation to respect the public policy of California in its operations, it
19 is ACCJC’s practice and policy to disregard California law in its actions. Thus, ACCJC states in its
20 “Team Evaluator Manual” (2015 ed. and in prior editions) that, “... the Commission does not exercise
21 the regulatory control of state and federal governments, nor apply their mandates regarding collective
22 bargaining, affirmative action, health and safety regulations, etc. Furthermore, the Commission does not
23 enforce ... the laws and regulations of state agencies...”

24 121. In practice, ACCJC coerces colleges and labor unions to disregard the rights and
25 obligations of community college districts and labor organizations, and to negotiate in good faith over
26 wage increases, as alleged herein.

27 122. Plaintiff AFT 2121 has a long-standing economic relationship with City College of San
28 Francisco, in that AFT 2121 negotiates with CCSF over matters related to wages, hours and terms, and

1 conditions of employment for employees whom AFT 2121 represents, since its certification as
2 bargaining agent for the academic employees more than 35 years ago. It has entered into a series of
3 binding collective bargaining agreements setting forth the wages, hours and terms and conditions of
4 employment of academic employees represented by AFT 2121.

5 123. The Palomar Federation of Teachers, and the Mendocino Federation of Teachers, have
6 similar long-standing economic relationships with the colleges that have recognized them as bargaining
7 representatives, Palomar College and Mendocino College. Both labor unions have entered into a series
8 of collective bargaining agreements since their certification as the bargaining representative, governing
9 the wages, hours and terms and conditions of employees these labor organizations represent.

10 124. Other affiliated locals of the California Federation of Teachers have similar economic
11 relationships with various community college districts throughout California, in that these locals
12 negotiate with college districts over matters related to wages, hours and terms and conditions of
13 employment for employees whom the affiliated local unions represent. The districts involved include,
14 but are not limited to, Los Rios, Marin, San Mateo, West Valley-Mission, San Jose-Evergreen, Peralta,
15 Cabrillo, Cuesta, College of the Canyons, Cerritos, Victor Valley, Allan Hancock, Yuba, Coast, San
16 Diego, Antelope Valley, Citrus, El Camino, Feather River, Glendale, Santa Rosa, State Center, Ventura,
17 and Los Angeles. Other labor unions not affiliated with the CFT also enjoy similar economic
18 relationships with California community colleges.

19 125. The ACCJC is, and has been, familiar with the aforementioned economic relationships as
20 demonstrated by the following: (a) ACCJC routinely identifies such relationships and collective
21 bargaining agreements whenever it performs a team visit to a college for purposes related to
22 accreditation; (b) many of ACCJC's officers and commissioners have either been members of
23 community college bargaining units represented by labor unions, or served as community college
24 administrators where their duties and responsibilities included abiding by collective bargaining
25 agreements; and c) faculty labor organizations have filed complaints with the ACCJC or participated in
26 filing complaints against the ACCJC with the U.S. Department of Education, and in the courts.

27 **Enhanced Monitoring of Colleges**

28 126. During 2013 and 2014, ACCJC took action to place an unknown number of colleges on

1 “enhanced monitoring” or “referred monitoring” due to alleged deficiencies or risks associated with their
2 fiscal affairs or Student Learning Outcomes. On information and belief, approximately 20 colleges were
3 placed on “enhanced monitoring” in 2013. An unknown number of colleges were placed on enhanced
4 monitoring in 2014.

5 127. On or about July 2, 2015, ACCJC wrote to at least four community colleges advising
6 them that it had acted to place them on “enhanced monitoring” because of ACCJC assessment of their
7 Annual Fiscal Reports. These colleges are City College of San Francisco, Palomar College, Mendocino
8 College and Copper Mountain College. Attached to each letter was a rubric entitled “ACCJC Composite
9 Financial Index”, which specified approximately 12 criteria that ACCJC relied upon to take this action.
10 None of the colleges were told their actual “score” or “rating” on the rubric. Subsequently, Palomar
11 College was given its rating in each category, and informed it had the twelfth highest score in the
12 “region,” which, upon information and belief, is a reference to the ACCJC “region.”

13 128. In the July 2, 2015 letters cited above, ACCJC explained that colleges assigned to
14 “enhanced monitoring” would have enhanced monitoring in the current and subsequent fiscal reporting
15 years, potentially leading to further ACCJC action, and thereby potentially or actually affecting the
16 accreditation of these California community colleges or districts.

17 129. ACCJC’s action to place these colleges in enhanced monitoring status was allegedly
18 based on the colleges “financial health” as identified by a “composite financial index” or “CFI” “rubric”
19 which ACCJC created and applied to the Annual Fiscal Reports prepared by the colleges and submitted
20 to ACCJC. These Annual Fiscal Reports contain only public information which appear in public
21 documents and public actions of these California community colleges. ACCJC allegedly analyzed the
22 Annual Fiscal Reports using the “CFI criteria.” This analysis resulted in the colleges being assigned a
23 “risk level,” of “referred” to “financial reviewers” selected by ACCJC, or “enhanced monitoring” of the
24 college, or “normal monitoring.” In addition, some colleges are placed on “referred” monitoring, which
25 is a “more comprehensive analysis” of the college’s financial condition.

26 130. The CFI “rubric” applied approximately 12 criteria including, but not limited to:
27 operating deficit (3 year average), salary/benefits as a percentage of general fund expenditures (less fund
28 transfers), collective bargaining agreement wage settlements in excess of the state COLA, that were

1 ongoing on a salary schedule, and leadership changes. Each of the criteria in the rubric has a “threshold”
2 that leads to the computation of a “score” and, on information and belief, a “ranking” compared to other
3 colleges in the ACCJC’s Western Region. The criteria includes measuring some factors which apply to
4 the college districts, as opposed to the colleges reviewed. For example, an Annual Required
5 Contribution to an “irrevocable trust” is not paid by a college - it is paid by a community college district.
6 Similarly, the wage settlements in excess of COLA are a district-wide settlement, and the percentage of
7 compensation is a district-wide figure, not a college figure.

8 131. On information and belief, ACCJC did not validate its CFI rubric or its CFI rubric criteria
9 as constituting a fair, reasonable or accurate measure of a college’s fiscal capacity as related to its
10 mission, or for any other purpose. On information and belief, the rubric used by ACCJC is not widely
11 used by educators and educational institutions, licensing bodies, practitioners, and employees in the
12 professional fields for which the California community colleges prepare their students.

13 132. ACCJC placed CCSF on enhanced monitoring because of its “score” on 7 criteria on the
14 rubric, including enrollment change, ARC contribution, salary and benefits percentage, and excessive
15 leadership changes. Palomar College was placed on enhanced monitoring because of its “score” on 8
16 criteria, including enrollment change, ARC contribution, salary and benefits percentage, and excess
17 COLA. Mendocino College was placed on enhanced monitoring because of its “score” on 8 criteria,
18 including “enrollment change,” ARC contribution, salary and benefits percentage, and excess COLA.

19 133. CCSF’s placement on enhanced monitoring was unjustified because the criteria are
20 invalid and implemented contrary to law as alleged herein. ACCJC did not notify CCSF of its “score,”
21 nor did it notify the college of its score on any of the “criteria.” CCSF was cited for “enrollment
22 change,” even though ACCJC’s wrongful show cause and disaccreditation decisions were a motivating
23 factor in the college’s decline in enrollment.

24 134. The placement of CCSF, Palomar College and Mendocino College on enhanced
25 monitoring was unjustified because the criteria are invalid and implemented contrary to law as alleged
26 herein.

27 135. Notwithstanding the invalidity of the CFI criteria as a whole, had ACCJC excluded salary
28 and benefit percentage, ARC contribution, excess COLA and enrollment change from the criteria, on

1 information and belief, CCSF, Palomar and Mendocino would not have been placed on enhanced
2 monitoring.

3 **ACCJC Constrains the Negotiations of Wage Settlements**
4 **in Excess of the State COLA**

5 136. ACCJC’s CFI rubric criteria “Settlement in Excess COLA - ongoing” is not a valid or
6 legal measure of the fiscal capacity of accredited colleges, for the reasons alleged herein. Upon
7 information and belief, this criteria “Settlement in Excess of COLA - ongoing” refers to a collective
8 bargaining agreement entered into by a college or college district that “settles” or “agrees to” wage
9 increases which exceed the State-granted COLA, and which are “on” the salary schedule. That means
10 that the pay increase continues year after year, unless and until modified.

11 a. After the onset of the Great Recession in 2009, individual faculty members wages
12 at CCSF declined through salary reductions that were the result of contractual agreements, negotiated
13 “givebacks”, and unilateral district action where the District imposed a massive wage cut that AFT 2121
14 claimed was illegal. AFT 2121 filed legal actions (grievance and unfair labor practice charge). The
15 District reduced the extent of the cut, while the Union pursued its legal remedies. The issue was settled
16 with a minor restoration in January 2014, and January 2015, still leaving the college faculty below where
17 they had been. As of today the faculty remain about 3.5% below 2007-2008 wage levels.

18 b. With the issuance of show cause in July 2012, and disaccreditation in July 2013,
19 and the uncertainty which resulted from these actions, the enrollment of students dropped by thousands
20 of students. Another result of ACCJC’s actions was that CCSF departments experienced difficulty in
21 attracting and retaining faculty. About 200 full-time faculty left the college from 2012-2013 through
22 2015-2016, and most have not been replaced by full-time or part-time faculty.

23 c. On July 2, 2015, ACCJC wrote to CCSF stating that its staff had analyzed
24 CCSF’s 2015 Annual Fiscal Report, that the Commission reviewed the staff analysis and that as a result
25 of the analysis CCSF had been identified as being assigned to “enhanced monitoring”, noting that the
26 reasons involved seven CFI criteria, including “salary and benefits percentage,” “ARC contribution,”
27 “excessive leadership changes,” “enrollment changes,” and others. The District eventually provided
28 AFT 2121 with a copy of the letter. The letter did not indicate CCSF’s “score.” The College confirmed
it had not received scoring information from ACCJC.

1 d. To address the pay reductions faculty suffered, as described above, AFT 2121
2 proposed on-schedule pay increases. These proposals were made most recently during negotiations that
3 began in Spring 2015. The District responded to AFT 2121 in or about September and October 2015,
4 and after, by agreeing to restore wages to 2007-2008 levels plus the State COLA “on schedule”; beyond
5 that the District offered nothing else besides one-time bonuses for faculty (at one point the District
6 offered to “rearrange” its aggregate offer of “restoration plus COLA” so that money within this “pot”
7 would be redistributed, with part-time faculty receiving only COLA, and more restoration money going
8 to fund an additional 1.1% increase for full-time faculty, on schedule.) The District’s proposals were
9 rejected by AFT 2121, because, *inter alia*, they did not include a real salary increase above 2007-2008
10 levels. The District has continued to insist on its offer of “bonuses” as opposed to on-going wage
11 increases. The District has maintained it cannot provide an on-schedule salary increase beyond salary
12 restoration to 2007-2008 levels plus the State COLA.

13 e. The District’s unwillingness to include on-going pay increases on the salary
14 schedule has contributed to a negotiations impasse, and led to a labor dispute with the District, with the
15 District and AFT 2121 filing unfair labor practice charges against each other over bad faith bargaining.

16 137. ACCJC never adopted its CFI criteria, such as no salary settlement above COLA - on
17 schedule, as a published standard or eligibility requirement. Based on information and belief, no other
18 higher education regional accreditor has adopted this criteria as a standard or eligibility requirement, nor
19 examines this criteria in assessing colleges for fiscal capacity, fiscal stability or for any other matter.

20 138. It is reasonably probable that Plaintiffs AFT 2121 and AFT 6161 would have had the
21 opportunity to negotiate more beneficial wage increases, or on schedule pay increases, except for
22 ACCJC’s impingement on collective bargaining. As a result, the employees represented by AFT 2121
23 and AFT 6161 have suffered or will continue to suffer economic harm, in the form of lower wages.

24 139. It is also reasonably probable that AFT 2121, AFT 6161 and CFT suffered economic
25 harm, that was the proximate result of the ACCJC’s wrongful interference in collective bargaining
26 negotiations.

27 140. ACCJC has publicized generally throughout the 72 community college districts and 113
28 community colleges, its new “enhanced monitoring” process and Composite Financial Index rubric,

1 including the criteria limiting wage increases to “COLA.” For example, on October 26-27, 2015, in
2 Redondo Beach, CA, Dr. Norval Wellsfry, the Associate Vice President of ACCJC, informed the annual
3 meeting of the California’s “Association of Chief Business Officers” (“ACBO”) of the 72 California
4 community colleges districts, of the aforementioned restrictions on collective bargaining, and that
5 ACCJC would take action to place colleges on “enhanced monitoring status,” or cause teams of
6 “financial reviewers” to conduct on-site visits of colleges which ACCJC determined to have certain “risk
7 factors,” including the limitations described above.

8 141. By including “settlement in excess of COLA - continuing” as one of the CFI criteria,
9 ACCJC is acting to place colleges and/or college districts on “referred” status or “enhanced monitoring
10 status,” with the threat of further sanctions if the colleges do not restrict pay increases for employees to
11 COLA, regardless of the College’s fiscal situation.

12 142. ACCJC thereby coerces college districts to limit their wage offers and agreements, or face
13 sanctions. This ACCJC criteria also coerces employee organizations to agree to limited pay offers
14 because implicit or explicit in the ACCJC’s actions is the threat that it will monitor more closely,
15 sanction, or disaccredit a college if it does not comply, and as a result the employees will lose their jobs.

16 143. ACCJC’s use of this “settlement in excess of COLA - ongoing” criteria has no
17 demonstrable bearing on the ability of a college or college district to provide a quality education within
18 the upcoming 6-year accreditation period.

19 144. ACCJC has by its actions in regard to collective bargaining agreement wage
20 “settlements,” acted to coerce community colleges to refuse to agree to pay increases that exceed the
21 annual State COLA, as herein described, thereby impinging on the EERA and violating California public
22 policy and the collective bargaining rights of labor unions, employees and college districts. ACCJC has,
23 by its application of the CFI criteria to colleges or college districts, acted to coerce community college
24 labor unions to accept such coercive threats in order to avoid risking colleges being sanctioned or
25 disaccredited by ACCJC, thereby impinging on the EERA and violating California public policy, and the
26 collective bargaining rights of employees and employee unions.

27 145. ACCJC has therefore violated the public policy of the State of California and destabilized
28 collective bargaining negotiations throughout the State between college districts and labor organizations.

1 146. The criteria “excess COLA - ongoing” is not a valid, reasonable, justifiable or legitimate
2 criteria to measure fiscal capacity or stability, whether used singularly or in combination with ACCJC’s
3 other CFI criteria, its Standards or its Eligibility Requirements.

4 147. ACCJC has, on information and belief, not validated the use of “excess COLA - ongoing”
5 as a valid, reasonable, justifiable or legitimate criteria to measure fiscal capacity or stability.

6 148. ACCJC’s reliance on the annual State COLA as a cap for incurring a negative “mark” as
7 one of approximately 12 criteria, is arbitrary, capricious, unreasonable and unjustifiable because, among
8 other things:

9 a. The state COLA does not reflect actual regional cost of living increases.

10 b. Limiting pay increases to COLA does not allow colleges to recruit and retain
11 qualified faculty.

12 c. The COLA has been zero for 8 years out of the last 25 academic years. Even when
13 the State designates a COLA, it does not necessarily “fund” the COLA, so colleges in actuality receive
14 no COLA increase. However, colleges receive State funding in other forms, including:

15 d. The State COLA is only one form of revenue provided by the State to community
16 colleges. California community colleges receive revenue from numerous sources not considered by
17 ACCJC’s rubric. For 2016-2017, the State COLA funding is estimated at \$29.3 million for a COLA of
18 .47 %. Other funding dwarfs the COLA, including “access” funding (estimated at \$114.7 million in
19 2016-2017), workforce funding (est. at \$200 million in 2016-2017), CTE Pathways (estimated \$48
20 million in 2016-2017), Basic Skills (estimated at \$30 million in 2016-2017), Innovation Awards
21 (estimated at \$25 million in 2016-2017), and millions from other funding sources. ACCJC’s rubric
22 ignores these income streams, and reserves, which are available to fund negotiated wage increases.

23 e. The COLA “cap” does not appear to consider and balance the complete budget
24 situation of a community college district. For example, for 2014-2015, community colleges districts by
25 the end of the academic year had, on average, a reserve of 17%; 19 colleges had reserves above 20%, 4
26 had reserves above 30% and one had a reserve above 40%. Palomar College had a reserve of 10%;
27 however, it had other reserves that boosted this to more than 20%. Based on information and belief,
28 ACCJC has encouraged colleges to maintain reserves above the State-approved minimum reserve of 5%.

1 f. The ACCJC rubric does not appear to provide “credit” for large reserves.

2 **ACCJC Constrains Negotiations of Employee Evaluations and Working Conditions**

3 149. The ACCJC has impinged on the collective bargaining rights of Plaintiff faculty unions in
4 other ways, including but not limited to:

5 a. Requiring that colleges and unions agree to include “student learning outcomes”
6 statements on the course syllabi created by instructors for courses they teach. The inclusion of
7 information on such syllabi is a matter of working conditions, and hence within the scope of
8 representation under the EERA.

9 b. Requiring that colleges agree to include student learning outcomes as a
10 component of faculty evaluations by measuring how academic employees use the results of student
11 learning outcomes to improve teaching and learning. ACCJC’s 2014 Standards state that “The
12 evaluation of faculty ... and other personnel directly responsible for student learning includes, *as a*
13 *component of that evaluation*, consideration of how these employees use the results of the assessment of
14 learning outcomes to improve teaching and learning.” (Standard III.A.1.c.) The 2012 Standards
15 provided included a similar provision. The procedures to be used for evaluating academic employees is a
16 subject within the scope of representation under the EERA. And ACCJC is aware that including this
17 criteria in faculty evaluations requires negotiations with bargaining agents for faculty. ACCJC has made
18 such demands of most, if not all, California community colleges, including Mendocino and San Jose-
19 Evergreen Valley colleges. ACCJC has threatened and issued sanctions to coerce colleges, and unions,
20 to agree to this condition in faculty evaluations.

21 c. ACCJC has also recently required faculty “disaggregate” student learning
22 outcomes by student, which requires substantial additional work time and record keeping by faculty.
23 Such changes in faculty working conditions are a negotiable subject under the EERA.

24 150. The ACCJC has a practice of demanding changes in faculty duties that increase their
25 workload, thereby intruding on matters subject to collective bargaining. For example, ACCJC has
26 threatened colleges with sanctions if they fail to modify union collective bargaining agreements, thereby
27 coercing labor organizations to accept changes to avoid adverse consequences to the district and faculty
28 resulting from a show cause sanction.

1 a. San Jose City College had been evaluated by ACCJC in 2004 and 2010 and had a
2 Follow Up visit in 2011. San Jose City was sanctioned with a Warning in 2005 and with Probation in
3 2011. It was removed from sanction by a letter in or about 2013.

4 b. Evergreen Valley College had been evaluated by ACCJC in 2004 and 2010 and
5 had Follow Up visits in 2011 and 2012. It was sanctioned with a Warning in 2005 and 2011 and it was
6 continued on Warning in 2012. It was removed from sanction and had its accreditation reaffirmed by a
7 letter from Barbara Beno dated February 11, 2013, and submitted a “Midterm Report” in Fall 2013.

8 c. On Feb. 7, 2014, ACCJC president Barbara Beno wrote Evergreen that at its Jan.
9 8-10, 2014 meeting, the Commission “took action to require Evergreen Valley College complete a
10 Follow-Up Report by March 31, 2014,” which was seven weeks later. The letter said that the Report
11 should demonstrate that Evergreen was in “full compliance with Standard III.A.1.c.” Ordinarily ACCJC
12 does not require “full” but only “substantial compliance.”

13 d. The crux of the Feb. 7, 2014, letter was that faculty and others responsible for
14 “student progress toward achieving stated student learning outcomes” must “have, as a component of
15 their evaluation, effectiveness in producing these learning outcomes.” Beno’s letter stated that the
16 college was required to disseminate the Commission’s letter and the college’s Midterm Report from
17 2013.

18 e. On Feb. 7, Beno wrote to San Jose City’s Interim President, with a letter identical
19 to that sent to Evergreen that same date, and with the same requirements.

20 f. On or about February 27, 2014, ACCJC Vice President Krista Johns orally
21 informed representatives of San Jose City and Evergreen Valley that the colleges had until on or about
22 March 31, to sign a Memorandum of Understanding (MOU) with the AFT Local 6157 that included a
23 pilot program for executing an agreement with the faculty union to include SLO compliance as a part of
24 faculty evaluations. Johns informed the District that failure by the District to meet the stated
25 “recommendation” by establishing a pilot program as evidenced through a fully executed MOU with the
26 faculty union would result in the District being placed on Show Cause sanction immediately following
27 March 31, 2014.

28 g. Vice President Johns advised that the content of the MOU should be that included

1 in a similar MOU negotiated between a faculty union and College of the Sequoias. ACCJC gave the
2 District a copy of the agreement executed between the College of the Sequoias and their local union, and
3 suggested it would be appropriate for San Jose-Evergreen. District representatives subsequently
4 informed Local 6157 of ACCJC's requirements and provided them with a copy of the Sequoias MOU.

5 h. The ACCJC was not satisfied with the MOU, and on July 3, 2014, president Beno
6 wrote San Jose City and Evergreen that they were being placed on probation and were required to submit
7 a follow-up report by March 15, 2015. The attached report indicated the inclusion of the SLO criteria
8 had to be included in the collective bargaining agreement. Because of the threat resulting from
9 Probation, Local 6157 agreed to include the language in the Agreement. Subsequently, based on the
10 foregoing, ACCJC removed the colleges from probation in 2015.

11 151. The ACCJC has also demanded that faculty prepare "student learning outcomes," even
12 though faculty are already required by their colleges to prepare "student performance objectives," which
13 are designed to correlate courses with CSU and UC, so that the courses are given credit for students
14 matriculating to four-year universities. Such ACCJC demands impinge on faculty working time and
15 workload, which are negotiable subjects under the EERA.

16 152. The ACCJC has also instructed colleges to significantly modify provisions of existing
17 collective bargaining agreements. In August 2013 ACCJC president Beno notified Imperial Valley
18 College that it was "identified for additional financial review by the Financial Review Task Force" of
19 ACCJC. In a follow-up letter from Dr. Beno dated February 7, 2014, ACCJC advised that Imperial
20 Valley College should by April 15, 2014 "address" the "high permanent fixed costs that are included in
21 labor contracts," including a "classified support" personnel salary schedule with too many "steps," too
22 much "release time" for faculty to perform administrative work, and pay for faculty working for the
23 College during "off-contract periods and for overload assignments" that was too high. Dr. Beno
24 demanded that the District change the negotiated CSEA contract by limiting "the number of longevity
25 increments available" on the classified employee salary schedule. As a consequence of ACCJC's
26 interference, the District entered into collective bargaining negotiations to reduce the pay of employees,
27 resulting in a negotiations impasse, and labor strife, including unsuccessful mediation; and a fact-finding
28 proceeding. Eventually a settlement was reached in which the CSEA union agreed to reductions

1 demanded by ACCJC. At the end of the year the District had a reserve fund of nearly 17%. A July 3,
2 2014 ACCJC action letter continued the college on warning sanction, and required further reports and
3 visits. It also demanded the college “address funding for its long-term ... retiree health benefits.”

4 **ACCJC’s Compensation Percentage Constrains Negotiations of Employee Compensation and**
5 **Contributed to the Show Cause Sanction and Disaccreditation**
6 **of City College of San Francisco**

7 153. ACCJC has sanctioned one or more colleges because they spent too great a percentage of
8 the colleges’ total expenditures for employee compensation (wages and benefits). This metric, the
9 percentage of expenditures devoted to employee compensation, has been used as a standard and/or
10 criteria by ACCJC. In various documents issued by ACCJC in 2015, including letters to City College of
11 San Francisco, Palomar College and Mendocino College, and a “CFI rubric”, ACCJC refers to this as the
12 “*salary and benefits percentage*.” In this first amended complaint Plaintiffs shall for simplicity,
13 generally refer to this “criteria”, “metric” or “standard” as the “*compensation percentage*.” Whether the
14 compensation percentage is referred to as a metric, standard or criteria, or by other terms, it has never
15 been published as part of ACCJC’s standards or eligibility requirements.

16 154. ACCJC has cited the compensation percentage as a reason for decisions to sanction City
17 College of San Francisco. The compensation percentage is a criteria in the ACCJC’s CFI, and was cited
18 by ACCJC in 2015, in placing City College of San Francisco, Mendocino College and Palomar College
19 on enhanced monitoring. Plaintiffs allege that this criteria is not justified as a basis for determining a
20 college’s fiscal stability or capacity, for sanctioning a college, or placing a college on enhanced
21 monitoring. On information and belief, when ACCJC took action to sanction or place a college on
22 enhanced monitoring, the college’s compensation percentage actually referred to the compensation
23 percentages incurred by the college districts of which the colleges were a part, and not compensation
24 percentages for individual colleges within any district.

25 155. The Palomar Faculty union was informed on July 27, 2015 by Palomar College negotiator
26 Bill Shaeffer that the District was unable to agree to wage proposals made by the Union as a result of the
27 July 2, 2015 “enhanced monitoring” letter that the College received from the ACCJC, and due to
28 ACCJC’s statement that colleges spending more than 86% of their expenditures for compensation would
be in violation of one of the benchmarks in the rubric. As a result of the ACCJC’s July 2, 2015 letter, the

1 District presented the union with a last, best and final offer based on the State COLA. The Palomar
2 Federation and the District subsequently settled their negotiations based on the District's proposal. This
3 resulted in an off-schedule pay increase of .85% COLA for 2014-2015 and an off-schedule pay increase
4 of 1.02% COLA for 2015-2016 and an additional 1.13% on-going increase for each of the faculty salary
5 schedules, including stipends. This percentage increase was substantially less than the AFT 6161
6 reasonably expected to receive in negotiations, had it not been for the ACCJC's enhanced monitoring
7 letter.

8 156. ACCJC never adopted its criteria for compensation percentage as published standards or
9 eligibility requirements.

10 157. Based on information and belief, no other "recognized" higher education regional or
11 national accreditor, or programmatic accreditor, uses the compensation percentage as standards,
12 eligibility requirements, criteria or metrics, nor has any other such accreditor examined the compensation
13 percentage in assessing colleges for fiscal capacity or fiscal stability.

14 158. In sanctioning City College of San Francisco with show cause in 2012 and then
15 disaccreditation in 2013, ACCJC relied heavily on the College expending 92% of the College's total
16 general fund expenditures during the 2011-2012 school year on "employee compensation" (wages plus
17 benefits), less inter-fund transfers.

18 159. In addition to "Salary and benefits percentage" (from ACCJC's July 2, 2015 Notice of
19 Enhanced Monitoring to CCSF), ACCJC uses other terminology to refer to this criteria, including
20 "Excessive Salary/Benefits as a proportion of expenditures" (from ACCJC's August 16, 2013 Notice of
21 enhanced monitoring to Victor Valley); "Salaries and benefits at 85% of expenditures are within a
22 statewide normal range." (From ACCJC's September 12-13, 2013 Financial Reviewer Panel Report to
23 Victor Valley); and, "The Salary and Benefit calculation was the 3 year average of the College's reported
24 Salaries and Benefits/Total Unrestricted Expenditures" (from ACCJC's July 2, 2015 letter to Palomar
25 entitled "Enhanced Fiscal Monitoring Overview.").

26 160. On information and belief, during the last four years the ACCJC has used multiple
27 benchmarks for its unpublished compensation percentage criteria including a percentage of no more than
28 80% , or 83%, or 85%, and lately 86% or 90%.

1 161. There are no California Education Code statutes, nor other California statutes or
2 regulations which define an appropriate, preferred or required “compensation percentage” for a
3 community college district. To the contrary, California has one statute which addresses employee
4 compensation in the aggregate, and that is section 84362. This statute is designed to encourage
5 community colleges to expend a fair percentage of their revenue for instructor salaries, and to discourage
6 them from spending too much on administration. The law, which dates to the 1850s and was initially
7 applied only to public schools, requires that community colleges expend at least 50% of the “current
8 expense of education” for instructional salaries (wages and benefits for instructors and instructional
9 aides). ACCJC does not evaluate colleges’ compliance with the 50% law. Regardless of whether a
10 college expends 83%, 86% or 90%, or more towards employee compensation, generally most colleges
11 are barely able to satisfy the 50% requirement of section 84362. For the last decade, while CCSF
12 averaged a compensation percentage of 91.1% on average per academic year, it barely exceeded 50% for
13 instructor salaries.

14 162. CCSF has had, for many years, a broad mission: transfer to baccalaureate institutions;
15 Associate Degrees in Arts and Sciences; certificates and career skills needed for success in the
16 workplace; and Basic Skills, including learning English as a Second Language and Transitional Studies.
17 This broad mission explains the numerous academic, vocational and basic skills programs that are
18 designed to serve the vast and diverse population of San Francisco.

19 163. The CCSF mission has inevitably resulted in a higher compensation percentage than such
20 percentages of smaller colleges with less ambitious missions and a student population less diverse than
21 CCSF. However, ACCJC used the expenditure experience of these smaller institutions as the “model”
22 for evaluating and sanctioning larger, diverse urban institutions. From the 2004-2005 academic year
23 until the 2012-2013 academic year, CCSF expended, respectively, the following percentages for
24 compensation: 91.7%, 92.1%, 91.1%, 91.3%, 90.6%, 91.7%, 89.3%, 92.% and 90.3%. This history
25 undermines and discredits the action of placing CCSF on show cause and disaccrediting it because its
26 compensation percentage was too great. Because of its disregard of this history and its failure to
27 consider only the period of prospective accreditation (six years), ACCJC disaccredited CCSF.

28 164. In sanctioning CCSF on July 2, 2012, ACCJC concluded that the 8% remaining after the

1 92% was expended was “simply not adequate for all other operations and maintenance,” but it had been
2 for 20 years. ACCJC arbitrarily and capriciously disregarded this, as alleged herein. This conclusion
3 resulted from ACCJC’s ignoring the funding structure for California community colleges and its duty to
4 respect the mission of the largest colleges, which almost invariably expend over 86% and in large urban
5 settings with diverse student populations and greater educational needs, more than 90%, thereby
6 disregarding CCSF’s mission. But for this arbitrary, capricious and unjustifiable action, ACCJC would
7 not have disaccredited CCSF.

8 165. In disaccrediting CCSF on July 3, 2013, ACCJC concluded that CCSF would have
9 needed “more time” to “fully comply.” Because the CCSF budget for 2012-2013 had been finalized
10 before the July 2, 2012 sanction, it was impossible for CCSF to reduce its compensation percentage prior
11 to ACCJC’s assessment of the College in June 2013, and its July 3, 2013 announcement.

12 **ACCJC Arbitrarily and Unjustifiably Sanctions Colleges For Compensation Percentage**

13 166. Community colleges and community college districts have varying student populations,
14 and students with differing needs. For example, in 2012-2013 CCSF had an enrolled headcount of
15 79,728 students, whereas Gavilan College in Gilroy had enrolled headcount of 11,377 students. These
16 differences in numbers of students arise from various factors including the college’s chosen mission,
17 demographics (the scope and nature of a college’s local population, and their educational or vocational
18 needs), whether the college is located in an urban or rural area, competition from other institutions, and
19 the local economy. Serving more and differing populations (e.g. number of racial or ethnic groups
20 served, the number of low socio-economic students - SES students- with special needs or non-credit ESL
21 students) may result in substantial differences in the number and type of academic faculty and counselors
22 needed by the College to serve their students and local community, and achieve the college’s educational
23 mission. Thus, a college with a large number of health care-related vocational programs may need to
24 offer more chemistry classes, requiring the college to hire more skilled classified lab technicians, and
25 increasing the college’s compensation percentage. (For example, CCSF has a chemistry department with
26 about a dozen chemistry labs, and about 14 full-time chemistry teachers and several lab technicians
27 educating close to 2,000 students annually, whereas Gavilan College has no chemistry department; it’s
28 science department has a chemistry lab and about one full-time chemistry instructor). Such needs

1 invariably result in the larger districts generally having to expend larger sums on employee
2 compensation in the aggregate, than the smaller colleges with less ambitious missions. Likewise,
3 colleges in certain areas may face stiffer competition for highly qualified teachers, and may need to pay
4 higher salaries to attract and retain excellent instructors.

5 167. In 2013-2014, the 15 smallest community college districts' enrollment ranged from 1,434
6 to 6,000 full-time equivalent students (FTES), while the 15 largest districts, which included CCSF,
7 ranged from 21,265 to 97,858 FTES enrollment. The 15 smallest were: Compton/Costa Mesa, Napa,
8 Gavilan, West Hills, Marin, Redwoods, Mendocino, West Kern, Barstow, Siskiyou, Copper Mountain,
9 Palo Verde, Lassen, Lake Tahoe and Feather River. The 15 largest were Los Angeles, Los Rios, San
10 Diego, San Francisco, North Orange Coast, Coast, Mt. San Antonio, Rancho Santiago, South Orange
11 County, Foothill-DeAnza, Contra Costa, State Center, Riverside, Ventura and Santa Monica.

12 168. In 2013-2014, the State funded the 15 smallest districts at a rate of \$7,091.65 per FTES,
13 and the 15 largest districts at an average rate of \$5,553.69 per FTES.

14 169. This differential in funding results in the 15 largest districts, which have much larger
15 populations of under-served students (sometimes referred to as low socio-economic status students or
16 low SES) receiving 78% of the funding per FTES compared to the small colleges per FTES funding.
17 This difference in average funding per FTES explains why the 15 larger community college districts,
18 with multi-faceted missions due to their multi-ethnic local demography, generally spend a significantly
19 higher percentage of their total expenditures on employee compensation, compared to the 15 smaller
20 college districts with small student populations and more narrowly focused missions.

21 170. The 15 smallest colleges averaged less than one percent of the FTES enrollment taught in
22 the 15 largest community colleges. Hence, the 15 largest colleges served a far greater number of state
23 residents, spent significantly more money and experienced significantly higher compensation
24 percentages.

25 171. ACCJC's actions reveal an arbitrary lack of awareness and indifference to the significant
26 funding and mission disparities, such as those cited above, between the 15 largest and the 15 smallest
27 districts. Yet ACCJC uses the smallest districts with the more modest mission and enrollments, as its
28 model for sanctioning colleges, particularly the largest districts, over such issues as compensation

1 expenditures.

2 172. ACCJC's reliance on the compensation percentage, without factoring in the mission of
3 larger colleges, results in unjustified actions such as sanctions, enhanced monitoring, and in the case of
4 City College of San Francisco, disaccreditation. ACCJC's reliance on this criteria tends to assure that
5 most large colleges will fail ACCJC's compensation percentage requirements.

6 173. The original purpose behind differential funding of large and small California community
7 colleges, determined by the State, was that large colleges would have "efficiencies of scale." But the
8 emerging challenge of vast numbers of community college entering students in need of intensive
9 developmental education, mostly at the large, urban community colleges, contradicted the assumptions
10 behind the original and still extant funding formula. The 15 smallest community colleges average
11 spending 79% of their unrestricted revenue on compensation, and the 15 largest averaged 86% during
12 2013-2014. CCSF served more minority students (24,345) in its credit program in 2013-2014 than
13 nearly all small colleges combined. CCSF taught a greater percentage of African American, Asian and
14 Filipino students than the remaining 113 community colleges' average.

15 174. ACCJC also, in its CFI rubric, coerces colleges into putting a large percentage of a
16 college's annual unrestricted revenues into an irrevocable trust, to pre-fund estimated liabilities for
17 retiree health benefits (OPEB). If a large college such as CCSF observed this demand, then the college
18 would likely have to deny low socioeconomic status students needed instructional and counseling
19 services. Thus, ACCJC takes adverse actions - sanctions, enhanced monitoring, and disaccreditation -
20 that would result in adverse educational consequences for students attending, or hoping to attend, CCSF.

21 175. This action towards CCSF was arbitrary, capricious, unjustified, unreasonable, and
22 discriminatory.

23 **ACCJC's Actions Based on Contributions to**
24 **Estimated Retiree Health Benefit Liabilities**

25 176. Post-employment, "retiree health benefits" were first offered to California public school
26 and community college employees in the 1960s, by their district employers, as the result of a State policy
27 adopted by the Legislature which encouraged public entities to provide this benefit. (Cal. Government
28 Code §53205.2.) This benefit helped recruit and retain employees.. In general, the benefit is earned by
meeting district requirements of length of service and retirement provisions; in many instances, the

1 benefit is subsidized or entirely paid for by the district. In general, these retiree health benefits are
2 contractually-vested rights which cannot be modified after being offered, or an employee retires,
3 depending on their terms.

4 177. The Government Accounting Standards Board (GASB) is a private accountancy
5 organization which offers advice concerning governmental accounting principles and procedures.

6 178. In 2004, the GASB issued what is known as the “GASB No. 45” statement, entitled
7 *Accrediting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*.
8 GASB 45 promulgates *financial reporting standards* for OPEB plan sponsors, namely state and local
9 government employers offering OPEB. The GASB No. 45 statement requires public employers to
10 *produce actuarial valuations* for their OPEB, following government accounting principles, and to report
11 these liabilities on their financial reports. GASB 45 *does not* require that future liabilities be pre-funded,
12 only that they be reported.

13 179. One of the tools created and used by GASB 45 to calculate this estimated future liability
14 is the “Annual Required Contribution” (“ARC”). Despite its name, the ARC is not required to be paid by
15 any entity. Rather it is used as a *measurement tool* to inform public entities what their Annual Required
16 Contribution would be *if* they choose to pay annually a projected yearly contribution needed to *amortize*
17 the estimated future liability of the OPEB within the time span of *30 years*; and if they choose to deposit
18 this amount each year into an “irrevocable trust” fund.

19 180. The “predominant” approach to “OPEB funding” by governmental entities is “pay-as-
20 you-go” funding. This means an entity pays the annual cost of retiree health benefits, and does not pay
21 an additional amount into a trust, to be paid years later.

22 181. On June 14, 2010, Frederick E. Harris, Assistant Vice Chancellor for College Finance and
23 Facilities Planning in the State Chancellor’s office, issued an Accounting Advisory Memorandum to all
24 of the community colleges stating that: “GASB 45 ... does not require funding the ARC: districts can
25 continue using the Pay-As-You-Go approach ...” Many community college districts continued the pay-
26 as-you-go approach to funding.

27 182. In 2005, the CCLC created a retiree health benefits Joint Powers Agency (JPA) trust to
28 accept, maintain and administer prefunded, irrevocable OPEB contributions from California community

1 college districts. Many of the leaders of the CCLC and its JPA trust also have served with the ACCJC
2 as, for example, commissioners, task force members, and visiting team leaders or members, or are
3 otherwise active in ACCJC. For example, the first chair of the JPA trust board, and one of its founders,
4 was CCLC member Steven Kinsella, who was the president/superintendent of Gavilan Community
5 College, served as an ACCJC commissioner from 2010 until approximately April 2016, and as president
6 from June 2014 until about April 2016, served as chair of several ACCJC visiting teams, and was a
7 member of the ACCJC's ad hoc Fiscal Review Task Force that was convened in 2011 to revise
8 ACCJC's fiscal review process and that helped create the CFI process.

9 183. Since in or about 2004, ACCJC has coerced colleges into prefunding retiree health
10 benefits to "satisfy" GASB 45, citing unfunded retiree health benefit liabilities as a factor in evaluation
11 of financial stability, and required college districts to plan and prefund retiree health benefits to satisfy
12 GASB 45. ACCJC has had an actual or apparent conflict of interest, with ACCJC teams led by Steven
13 Kinsella or with other JPA trust board members, encouraging pre-funding of retiree health benefits
14 through trusts such as the CCLC JPA trust. For example, a 2009 team led by Kinsella that visited
15 Palomar College wrote that to meet ACCJC standards, the college had to "identify and plan for the
16 funding of the future retiree health benefits" by paying into a trust, noting that the district was a member
17 of the JPA trust, and criticizing the college's failure to transfer funds to the JPA. The college was given a
18 warning sanction based in part on this prefunding issue.

19 184. ACCJC advised several colleges to transfer funds into an irrevocable trust to pay for
20 future benefits "in accordance with GASB 45," including Solano in 2008, Antelope Valley in 2010, Los
21 Angeles in 2010, San Jose in 2011, Antelope Valley in 2015, and others. For example, in a 2015 "action
22 letter," ACCJC instructed the Antelope Valley College "it needs to allocate funds to the OPEB trust",
23 and that it had to demonstrate to the ACCJC that it did this. When ACCJC sent this letter it was aware
24 the trust the College had joined was the CCLC JPA trust. ACCJC has been successful in constraining
25 districts to pre-fund their estimated OPEB liabilities through the CCLA JPA trust and other trusts. The
26 JPA trust had accumulated nearly \$200 million by 2014. Palomar College had contributed more than \$3
27 million. Other trusts have also accumulated college funds. On information and belief, no ACCJC
28 commissioners, task force members or team leaders or members have filed conflict of interest statements

1 identifying service on the JPA trust board.

2 185. During the 2011-2012 fiscal year, CCSF paid the actual cost of retiree health benefits, a
3 sum of \$7,243,730. Had it elected to pay the entire estimated ARC, it would have had to “pay” a total of
4 \$16,590,309, meaning that CCSF would have had to pay another \$9,236,579. That would have been
5 nearly 4.7 percent of its budget. To pay that amount, CCSF would have had to make huge cuts in
6 personnel and classes.

7 186. One of the primary reasons ACCJC placed CCSF on show cause status in 2012 is the
8 college’s alleged failure to make progress towards “addressing” its estimated future liabilities for retiree
9 health benefits. This lack of progress is indicated as a “deficiency” in regard to Standard III.D. in
10 President Beno’s July 2, 2012 Action Letter to CCSF. The “deficiency” was described as the college’s
11 failure to “pre-fund” its “liabilities” for Other Post-Employment Benefits (“OPEB”), by not paying the
12 “Annual Required Contribution” into an irrevocable “trust.” ACCJC decided that “Without ... realistic
13 plans for the future, CCSF will be challenged to maintain financial stability and realistic plans for the
14 future ... the institution’s short range financial plans do not incorporate plans for payment of future
15 liabilities ... the long range liabilities that have not been considered include post-employment medical
16 benefits (OPEB) ... These liabilities clearly are a threat to the financial stability of the College ...”

17 187. The July 3, 2013, ACCJC disaccreditation order similarly relied on the college’s failure to
18 prefund OPEB, and the 2013 team report found that CCSF did not meet Standards III.D.1.b. and
19 III.D.1.c. in regard to financial resources and financial plans and stability, and not funding OPEB was
20 given as one of the main reasons: “Also, there is no final resolution of the issues related to the
21 percentage of the budget that is dedicated to salaries and benefits, including the cost of unfunded
22 liabilities, such as other post employment benefits. (OPEB). ¶ The college has not fully addressed long-
23 term liabilities in order to provide a realistic assessment of financial resources available to support and
24 sustain all obligations and operations. A letter from ... the district’s OPEB consultant” stated that
25 contributions for the next 5 years “would be less than the ARC” although in subsequent years he
26 predicted they would be enough to cover the ARC plus the “cumulative shortfall from the first five
27 years.” The team concluded this was not good enough, that because “a full analysis of the impact of ...
28 pay-as-you-go funding after the expiration of the [recently enacted, eight year long] parcel tax has not

1 been included in the assessment of financial resources ...” the college “does not meet the Standards.”
2 (2013 Team Report, pp. 48-49). Hence, ACCJC issued its disaccreditation order based, in part, on the
3 college not prefunding its OPEB liabilities. In fact, ACCJC’s action was arbitrary and capricious, as
4 CCSF had acted consistent with State public policy in its payment of OPEB liabilities, and ACCJC was
5 in much better shape than most Bay Area community college districts, which were not sanctioned or
6 found deficient for their OPEB-related practices by ACCJC.

7 188. In fact, CCSF had maintained fiscal stability for decades since it began to offer retiree
8 health benefits, without prefunding them. CCSF had acted consistent with the public policy of
9 California in regard to its estimated future OPEB liabilities. ACCJC’s action in disaccrediting CCSF
10 because it did not prefund the ARC was arbitrary and capricious, and a violation of California common
11 law fair procedure.

12 189. ACCJC CFI rubric includes a criteria entitled “Contribution to ARC” and a “threshold”
13 of “< 50% of ARC.” The July 2, 2015 ACCJC “CFI letters” to CCSF and Mendocino cited this criteria
14 as among the reasons for “enhanced monitoring.”

15 190. A college’s ARC contribution or “<50% of ARC” is not used widely used by educators
16 and educational institutions, licensing bodies, practitioners, and employees in the professional fields for
17 which the California community colleges prepare their students.

18 191. ACCJC accredits a college for a period of 6 years or less. In evaluating whether a college
19 has sufficiently prefunded its OPEB, ACCJC applies a GASB 45 formula that accounts for prefunding of
20 estimated liabilities arising and paid for over a period of 30 years. The ACCJC has no rational or
21 legitimate basis upon which it can reliably predict from the GASB 45 accounting methods, whether a
22 college’s failure to sufficiently prefund OPEB over a period of six years using a GASB formula that is
23 based on estimated future OPEB liabilities which are accumulated over a period of 30 years, will have an
24 adverse impact on the stability or capacity of the college’s finances, or the quality of education.

25 192. It is ACCJC policy that it “does not enforce the standards of specialized accrediting
26 agencies or other nongovernmental organizations.” Despite this, ACCJC applies the GASB 45 standards
27 and formula, based on the ARC, in determining whether to sanction, monitor or disaccredit colleges for
28 not sufficiently prefunding OPEB.

1 193. The Chancellor’s Office of the California Community Colleges evaluates the fiscal
2 stability and capacity of the California community college districts.

3 194. In acting to sanction, disaccredit or place California community colleges on referred or
4 enhanced monitoring, or take other actions, ACCJC disregards the public policy of California. In
5 disregarding the notice issued by the California Community Colleges that districts may continue the pay-
6 as-you-go system for funding OPEB, the ACCJC disregards the public policy of California.

7 **ACCJC’s Actions Based on “Excessive Leadership Changes”**

8 195. The measurement of fiscal capacity, resources or financial stability based on “excessive
9 executive leadership changes”, meaning more than two leadership changes, is unreasonable, invalid,
10 arbitrary and capricious.

11 a. The executive level is not defined, so two changes are treated as material and
12 result in a demerit, regardless of whether the college has 5 or 10 executive leaders.

13 b. Two changes is not a valid measure of insufficient fiscal capacity.

14 c. Leadership changes are not included with ACCJC’s standards and eligibility
15 requirements.

16 **ACCJC Interference in the Brown Act and Constitutional Rights**

17 196. After ACCJC placed CCSF on show cause sanction on July 2, 2012, numerous issues
18 arose, including the State’s displacing of the elected governing board and empowering of a state trustee,
19 and the College’s response to show cause sanction. These and related matters caused considerable
20 public interest, unrest and controversy, some of which was manifested by demonstrations and public
21 presentations at meetings of the District’s governing board, which generally included the appointed state
22 trustee. Attending these meetings were members of the San Francisco community, classified staff,
23 students, faculty, district retirees, political leaders, union leaders from the San Francisco Labor Council,
24 and others from the Bay Area and state. Many of those attending expressed their opinions about the
25 ACCJC, the College’s reaction to disaccreditation, and related matters. Some of the opinions expressed
26 alleged misconduct by the ACCJC. Some of the presentations were caustic, where some attendees
27 expressed anger and other emotions, or criticism of the ACCJC or the college.

28 197. Meetings of a community college governing board are open to the public for public

1 comment under the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 *et seq.* It is well known that
2 “... the university is a traditional sphere of free expression so fundamental to the function of our society
3 [that] the Government’s ability to control speech within that sphere ... is restricted.” *Rust v. Sullivan*, 500
4 US 173, 200 (1992). Moreover, “. . . a function of free speech . . . is to invite dispute. It may indeed
5 best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions
6 as they are, or even stirs people to anger. Speech is often provocative and challenging.” *Terminiello v.*
7 *Chicago*, 337 U.S. 1, 4 (1949).

8 198. But under federal and state constitutional law, they had a right to express their opinions.
9 And under the Brown Act, the College had little or no control over the opinions expressed, and was
10 barred from preventing the expression of public opinion.

11 199. ACCJC discredited City College, in part, because of these protests even though they
12 were beyond the control of the College. Nearly half of ACCJC’s disaccreditation letter dated July 3,
13 2013 was devoted to finding that CCSF’s leadership and governance was unsatisfactory because of
14 “acrimony” and “differences of opinion” “evident in behaviors at governing board meetings among other
15 venues.” The disaccreditation decision indicated that “some groups work to make needed changes,
16 others militate against change.” The groups were not identified by ACCJC. The letter said some faculty
17 feel pressure or intimidation to “defer” to “faculty leaders.” Again, no one was identified. And the letter
18 stated as a ground for ACCJC’s decision that “active protests against the direction the college is taking,
19 expressed at governing board meetings, and against the college leadership, indicate that not all
20 constituencies are likely to follow college leadership to make needed changes in a timely manner.”

21 200. In acting to disaccredit City College because unnamed individuals exercised their
22 Constitutional rights of freedom of speech, the ACCJC disregarded California’s constitutional rights to
23 address the governing board of the District, or otherwise address matters of public concern in various
24 venues.

25 **ACCJC’s Actions Based on College Trustees Not Speaking With One Voice**

26 201. At ACCJC’s meeting of January 10-12, 2012, Ventura, Moorpark, and Oxnard Colleges
27 were placed on Probation because 12-year veteran Board of Trustee member Arturo Hernandez, had
28 publicly requested at Board meetings that the college administration share with the Board the analysis

1 used to validate the proposed elimination of certain instructional programs at one of the colleges.
2 Trustee Hernandez had a responsibility to gain clarification before voting on the abolishment of
3 programs, jobs or other services, and it was his fiduciary duty to seek clarification. Sanctioning colleges
4 because a publicly-elected trustee performed his or her elected function violates the constitutional rights
5 of the trustee and the trustee's constituents to be informed, and is contrary to the public policy of
6 California.

7 202. ACCJC has failed to apply standards with consistency. For example, taking action to
8 sanction or place colleges on referred or enhanced monitoring for not completing sufficient Student
9 Learning Outcomes, when the institutions were already approved by the California State Chancellor's
10 Office, and the University of California or California State University System, for having created and
11 implemented Student Performance Objectives, which are equivalent to Student Learning Outcomes, and
12 which warrant course credit from UC or CSU for matriculation purposes. These colleges include, but are
13 not limited to, Monterey Peninsula College, Merced, Napa, Pasadena, Moreno Valley, Glendale, Mt. San
14 Antonio, Foothill, Santa Monica, Siskiyous, East Los Angeles, Norco, Rio Hondo and San Diego.

15 **ACCJC's Failure to Apply Standards Consistently**

16 203. ACCJC has failed to consistently apply its standards and requirements. It has also failed
17 to have effective controls against the "inconsistent application of the agency's standards." For example,
18 with regard to the issue of funding of OPEB, ACCJC applies this metric inconsistently, finding some
19 colleges to be deficient, and others satisfactory, despite being similarly situated; in addition, ACCJC
20 respects the mission of some community colleges, while sanctioning others for attempting to follow the
21 college's declared mission. An example is ACCJC placing CCSF on show cause, and then
22 disaccrediting it, for a rational, conscious decision to pursue its mission by maintaining classes despite
23 fiscal challenges arising from the Great Recession.

24 **ACCJC's Failure to Appoint Sufficient Academics to Evaluation Teams**

25 204. In 2012 and 2013 ACCJC appointed insufficient academics to the two CCSF evaluation
26 teams. Despite this court having concluded in the People's case that ACCJC appointed insufficient
27 academics to the 2013 team, ACCJC continues to appoint insufficient academics to its evaluation teams.
28 For example, in Spring 2014, 5 of the teams ACCJC appointed (Golden West, LA Southwest, LA

1 Valley, Coastline, and Victor Valley) had no academics whatsoever. Lassen’s 12-person team had one
2 academic, Palo Verde’s 10-person team had two academics, and Cerritos 14-person team had 2
3 academics. In Fall 2014 ACCJC appointed approximately 12 teams - the number of academics appointed
4 was approximately 29%. In Spring 2015 the Peralta “District” team had zero academics, and Butte’s 12-
5 person team had two. The average for 10 teams declined to about 25% academics. While the 12 teams
6 appointed in Fall 2015 averaged about 33% academics, this is still not a fair or sufficient complement.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 *ET SEQ.***

9 205. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 204, inclusive.

10 206. California Business and Professions Code section 17200 *et seq.* prohibits any “unlawful,
11 unfair or fraudulent business acts or practices.” The ACCJC has engaged in “unlawful, unfair or
12 fraudulent business acts or practices” in violation of Section 17200. Such acts and practices include, but
13 are not limited to, the following.

14 a. ACCJC violated California common law fair procedure by:

15 i. Impinging on the statutory collective bargaining rights of labor unions and
16 disregarding California public policy by coercing community college districts, through threats of referred
17 or enhanced monitoring, its CFI rubric ratings and scores, or other actions including sanctions, to refuse
18 to settle collective bargaining agreements by agreeing to on-schedule wage increases above the annual
19 state COLA, thereby depressing employee compensation by penalizing or discouraging colleges from
20 making such agreements; by coercing colleges/districts into refusing to pay compensation that exceeds
21 86% or more of the college’s total expenditures; and by reducing funds available for wage and benefit
22 negotiations by coercing colleges into prefunding annual OPEB contributions based on GASB 45’s
23 “Annual Required Contribution”, or by other similar conduct that interferes in negotiations under the
24 California EERA.

25 ii. Impinging on the collective bargaining rights of labor unions and
26 disregarding California public policy by demanding that colleges, on the explicit or implicit threat of
27 sanctions or other actions, negotiate agreements with their unions that interfere in negotiations over
28 hours and working conditions, through, e.g., requiring the inclusion of individual Student Learning

1 Outcome compliance on evaluation forms, or otherwise making demands that affect the negotiable hours
2 or working conditions of employees.

3 iii. failing to comply with its own policies as when it issued a show cause
4 sanction to City College of San Francisco in 2013, after it increased the number of deficiencies from 19
5 to 30, without notice and a postponement of its decision until it served the College with notice of the
6 additional deficiencies and afforded it an opportunity to respond; and when it enforces the Annual
7 Required Contribution concept of GASB 45, despite its rule that it does not enforce the standards of
8 other private organizations.

9 iv. failing to issue findings and conclusions when making decisions, as in
10 when it issued show cause and disaccreditation to CCSF.

11 v. applying standards and criteria which conflict with the mission of
12 California community colleges and CCSF, as when it applied the compensation percentage criteria to
13 justify its action placing CCSF on show cause, and disaccrediting CCSF.

14 vi. applying criteria in its CFI rubric that are arbitrary, capricious,
15 unreasonable, and discriminatory, and are not a fair or reasonable measure of fiscal capacity or stability,
16 including particularly the compensation percentage, the COLA limit on salary settlements, leadership
17 changes, and OPEB prefunding under the GASB 45 ARC formula.

18 vii. failing to adopt and apply effective procedures against conflicts of interest
19 in its decision-making, as when it appointed Peter Crabtree to the CCSF visiting team in 2012 despite
20 his employment at adjoining Laney College, without applying effective procedures to determine whether
21 his appointment created an actual or apparent conflict of interest, or when it appointed the five members
22 of the CCSF appeals panel without applying effective procedures to determine whether any of them had
23 an actual or apparent conflict of interest.

24 viii. when placing CCSF and other colleges on show cause, probation or
25 warning, ACCJC does not allow internal appeals.

26 ix. appointing evaluation teams with insufficient academic representation, as
27 where only one of 9 or 3 of 16 members are academics, as occurred with the CCSF team in 2012 and
28 2013; where zero academics were appointed to other teams subsequently, and where many teams have

1 only 20% to 33% academics.

2 x. failing to give colleges notice of recommended actions such as show
3 cause, disaccreditation, probation or warning, issued by evaluation teams.

4 xi. placing the burden of proof on colleges sanctioned with show cause, to
5 show they should remain accredited, when the burden should rest with the Commission, when acting on
6 an institution that is accredited.

7 xii. failing to rely on published standards in taking actions to sanction
8 colleges.

9 xiii. engaging in disparate treatment and arbitrarily, capriciously and
10 inconsistently applying its eligibility requirements, standards and policies to some colleges, but not to
11 others that are similarly situated, as when ACCJC respected the mission of small community colleges in
12 regard to their mission, but sanctioned and disaccredited CCSF for adhering to its mission, in a
13 financially responsible manner, and consistent with its history of compensation expenditures.

14 xiv. failing to notify CCSF in 2013 that the Commission intended to increase
15 the number of deficiencies from 19 to 30, to halt its proceedings, and to afford the college an opportunity
16 to respond to the new deficiencies before taking action.

17 xv. failing to make necessary findings of fact to support its decisions and
18 failing to hold public hearings when making decisions on sanctions, as to CCSF and all colleges.

19 xvi. In 2012 and 2013, justifying show cause and disaccreditation sanctions for
20 CCSF by retroactively re-characterizing its recommendations for improvement made in and after 2006 as
21 deficiencies.

22 xvii. sanctioning colleges, and disaccrediting CCSF in 2013, because
23 unidentified attendees at meetings of the College's board of trustees meetings exercised their rights to
24 freedom of speech, and due to "active protests against the direction the college is taking, expressed at
25 governing board meetings, and against the college leadership," the result of unidentified individuals or
26 groups exercising their rights of freedom of speech.

27 xviii. sanctioning colleges because trustees, rather than speaking with "one
28 voice," express their views and individual opinions, thereby exercising their rights of free speech.

1 xix. disregarding the public policy of California by demanding that colleges or
2 districts pre-fund their estimated future OPEB liabilities, when the policy of the State is that prefunding
3 is not necessary or required.

4 xx. demanding that some college districts maintain reserves above 5%, when
5 5% is the minimum permitted by California public policy.

6 xxi. acting to place colleges on sanction, or enhanced or referred monitoring
7 because, *inter alia*, the college expends more than 86% (or in some cases, more than 90%) of its
8 expenditures on employee compensation. In doing this the ACCJC acts disparately, discriminatorily,
9 arbitrarily and capriciously, and contrary to the mission of colleges such as CCSF, which support high
10 enrollments and broad academic and vocational missions, and that make rational, permissible decisions
11 inevitably causing them to exceed 86%, or 90% for employee compensation.

12 b. ACCJC violated and continues to violate 34 CFR sections 602.23(a) and 602.18
13 by failing to make available to the public written materials describing the standards, requirements,
14 policies and procedures it uses to “grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any
15 other action related to each type of accreditation” that ACCJC grants, and by failing to base decisions on
16 the ACCJC’s “published standards”, ACCJC’s conduct includes but is not limited to the following:

17 i. ACCJC failed to give CCSF and the public written notice in or about June
18 or July 2013, or thereafter until enjoined by the Court in 2015, that the Commission had identified
19 deficiencies not found by the ACCJC visiting team, and on that basis disaccredit CCSF.

20 ii. ACCJC failed to notify colleges placed on Enhanced Monitoring for fiscal
21 reasons by ACCJC in 2015, and thereafter, of the composite scores they received on the ACCJC
22 Composite Financial Index, the rankings for other colleges relative to them, the relative weight ACCJC
23 affords each of the CFI criteria and the “score” for exceeding a threshold, the methodology applied by
24 ACCJC to create the rankings, and the relative rank and score of each college compared to the others
25 that were ranked.

26 iii. By failing to publish written specifications of the agency’s “standards,
27 criteria, guidelines, policies and procedures” that are “in writing, readily available and easily understood,
28 and unambiguously affirm respect for institutional mission in its application and enforcement of its

1 standards.” DOE Guidelines, p. 45, 602.18 (2012).

2 iv. ACCJC failed to inform the public that it sometimes takes action against
3 institutions because they fail to prefund estimated OPEB liabilities by paying the GASB 45-determined
4 “Annual Required Contribution” to an irrevocable trust.

5 c. ACCJC violated 34 C.F.R. section 602.15(a)(6) by failing to have clear and
6 effective controls against conflicts of interest and the appearance of conflicts of interest, as demonstrated
7 by:

8 i. not requiring Commissioners, officers and staff, visiting team leaders and
9 members, and others performing services for ACCJC to file annual conflict of interest statements, and
10 using such statements to avoid conflicts of interest in regard to actions the ACCJC takes towards
11 community colleges.

12 ii. encouraging or coercing colleges to prefund their Other Post Employment
13 Benefits as defined in Government Accounting Standards Board No. 45 by making contributions to the
14 Community College League of California Retiree Health Benefits trust when the founder and many
15 trustees of the CCLC trust are commissioners, task force members, team leaders, team members and
16 otherwise active in ACCJC.

17 iii. even though ACCJC considers employment by a neighboring community
18 college district to constitute a disqualifying conflict of interest, it appointed Peter Crabtree, an
19 administrator in the neighboring Peralta District, to serve on the CCSF 2012 visiting team. ACCJC’s
20 internal controls failed to determine whether Crabtree or the programs with which he was involved at
21 Peralta benefitted from CCSF’s placement on show cause, or disaccreditation.

22 iv. appointing William “Bill” McGinnis, Thomas McFadden, Joseph Richey,
23 Margaret Tillery and Erlinda Martinez to the ACCJC 5-person appeals panel that considered and denied
24 CCSF’s appeal of disaccreditation. Each of these appointees suffered from an actual or apparent conflict
25 of interest.

26 v. appointing a former CCSF administrator to the 2013 ACCJC “show cause
27 team” that visited CCSF and made decisions about CCSF.

28 d. ACCJC violated 20 U.S.C. section 1090b(a)(4)(A) and 34 CFR §602.18, by

1 failing to have “effective controls against the ‘inconsistent application of the agency’s standards,’” and
2 failing to “consistently apply and enforce standards that respect the stated mission of the institution”
3 when it

4 i. sanctioned colleges for reasonably deciding to maintain and maintaining
5 their educational mission during and after the Great Recession, even if it caused their compensation
6 percentage to exceed 86% or 90%.

7 ii. by sanctioning colleges, or using as a criteria for its CFI rubric, whether a
8 college (district) spends more than 86% or 90% of its expenditures on employee compensation, when
9 such expenditures are the natural and probable result of California’s method of financial community
10 college education, and college (districts) that expend these amounts are successfully satisfying their
11 declared mission, and this “criteria” is arbitrary, capricious, unreasonable and discriminatory, in that it
12 discriminates against colleges with high percentages of lower socioeconomic students, broader academic
13 and vocational programs, and greater needs of their community population, and disregards the mission of
14 these colleges. On information and belief, ACCJC generally does not sanction smaller colleges for
15 deciding to pursue a narrower educational and vocational mission and generally expend less than 86%
16 for employee compensation, the ACCJC accepting their narrow mission.

17 iii. by interfering in the negotiations of collective bargaining agreements as
18 alleged herein, and disregarding the laws and public policy of California, which protect the right of
19 employees and their labor unions and college employers to engage in collective bargaining under
20 California’s Educational Employment Relations Act.

21 iv. by applying criteria in its CFI rubric which are inconsistent or interfere
22 with paying faculty fair, negotiated wages and benefits sufficient to attract and retain highly qualified
23 academic and classified employees, such as its COLA “policy” and its compensation percentage policies.

24 v. by taking actions against colleges, including enhanced monitoring or
25 sanctions, because they failed to expend more than 50% of the GASB 45 determined “Annual Required
26 Contribution” annually.

27 vi. by taking actions against colleges, including but not limited to, issuing
28 sanctions and disaccreditation, for matters contrary to the public policy of the State of California,

1 including but not limited to: not maintaining reserves above 5%, members of the college community
2 exercising their rights of freedom of speech and holding colleges responsible for such exercises,
3 violating the California constitution when members of the college community disagree with college
4 leadership.

5 vii. by taking action to place colleges on enhanced monitoring, or taking other
6 actions toward them such as sanctions, by applying criteria in its CFI rubric that are arbitrary, capricious,
7 unreasonable and discriminatory, and are not a fair, credible or reasonable measure of fiscal capacity or
8 stability, including particularly the compensation percentage, the COLA limit on salary settlements,
9 leadership changes, and OPEB prefunding under the GASB 45 ARC formula.

10 viii. by taking action to place colleges on enhanced monitoring, or taking other
11 actions toward them such as sanctions, by applying its CFI rubric as a whole, because as a whole it is
12 arbitrary, capricious, unreasonable and discriminatory, and not a fair, credible or reasonable measure of
13 fiscal capacity or stability.

14 e. ACCJC violated 34 C.F.R. section 602.13, which requires that an accreditor’s
15 “standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted in the
16 United States by (a) “Educators and educational institutions, and (b) licensing bodies, practitioners, and
17 employees in the professional fields for which the educational institutions or programs within the
18 agency’s jurisdiction prepare their students.” ACCJC sanctioned colleges or determined they were
19 deficient based on standards, eligibility requirements and criteria that are not “widely accepted” within
20 the meaning of 602.13, including but not limited to the following:

21 i. taking action on colleges, including issuing sanctions and placing colleges
22 on “enhanced monitoring, based, in whole or in part, on whether (A) they agree to wage increases, on the
23 salary schedule, in any given year which exceed the applicable State cost-of-living adjustment (COLA);
24 (B) the college expends more than 86% or 90% of its total expenditures on employee compensation
25 (whether averaged over three years or otherwise), as specified in ACCJC’s Composite Financial Index
26 rubric (86% or 90%) , or other percentages previously applied to City College of San Francisco and other
27 colleges (e.g. 80%, or 83% or 85%); (C) whether they annually pay less than 50% of the “Annual
28 Required Contribution” to pre-fund their Other Post Employment Benefits as defined in Government

1 Accounting Standards Board No. 45; (D) whether any of their trustees, instead of speaking with “one
2 voice,” communicate their individual opinions about college matters in news media or other media, or
3 directly to Union or academic senate representatives; (E) whether they sanction colleges because of
4 members of the public exercising their rights of freedom of speech, and because constituent groups
5 disagree with leadership of institutions, and express that disagreement, including in forums created for
6 the purpose of facilitating public comment; (E) whether the colleges’ fiscal stability or capacity is
7 determined by, *inter alia*, applying GASB 45's ARC calculation to require the colleges’ to expend
8 monies to pre-fund their estimated OPEB liabilities over a period of 30 years, as opposed to focusing on
9 the institution’s fiscal capacity or stability for the period of accreditation.

10 ii. affording institutions insufficient and inadequate due process as required
11 by common law fair procedure.

12 iii. such other and further activities of ACCJC as established according to
13 proof.

14 f. ACCJC violated 20 U.S.C. section 1099b(a)(4)(A), 34 C.F.R. section
15 602.16(a)(1)(v) and 34 C.F.R. section 602.18, by penalizing, sanctioning and/or subjecting colleges to
16 special (referred) or enhanced fiscal monitoring, and placed CCSF on show cause and disaccredited it,
17 because colleges expended, over a period of three years, or in the case of City College of San Francisco
18 in 2011-2012 and 2012-2013, more than 86%, or more than 90%, of the college’s expenditures on
19 employee compensation (wages and benefits).

20 g. ACCJC violated 34 CFR §602.18(c) (which requires that reviews must be based
21 on published standards), 34 CFR §602.23(a) (which requires that ACCJC must “maintain and make
22 available to the public, written materials describing...the standards and *procedures* it uses to determine”
23 the accreditation decisions it makes (Emphasis added)) when it takes action against colleges based on its
24 CFI rubric, and when it sanctioned colleges, and placed CCSF on show cause and disaccredited it, based
25 on unpublished standards as alleged herein.

26 h. ACCJC violated 34 C.F.R. § 602.18 by taking actions to place colleges on
27 enhanced or referred monitoring, or issuing sanctions including disaccreditation, because colleges have
28 failed to prefund estimated OPEB liabilities based on a 30-year GASB formula, when an accreditor is

1 limited to reviewing colleges over the period of their accreditation, which is six years or less.

2 i. ACCJC violated 20 U.S.C. section 1099c and 34 C.F.R. §602.18, by taking action
3 to place colleges on enhanced fiscal monitoring, or issue sanctions including disaccreditation, over their
4 finances, when colleges are backed by the full faith and credit of the State pursuant to the California
5 constitution, Article IX.

6 j. ACCJC violated 34 C.F.R. §602.14 by failing to create and operate a separate and
7 independent commission which avoids conflicts of interest, by, among other things, placing colleges on
8 sanction or disaccrediting them for not making pre-funded contributions for estimated OPEB liabilities
9 into the CCLC JPA trust, or a similar trust, and appointing a CCSF appeals panel whose members had
10 actual or apparent conflicts of interest.

11 k. ACCJC violated 34 C.F.R. §§ 602.13, 602.18 and 602.19, 602.21, because ACCJC
12 lacks clear standards or monitoring programs as demonstrated by, for example, its actions of sanctioning
13 or placing colleges on referred or enhanced monitoring for not completing sufficient Student Learning
14 Outcomes, when the institutions have already been approved by the California State Chancellor's Office,
15 and the University of California or California State University System, for having created and
16 implemented Student Performance Objectives, which are equivalent to Student Learning Outcomes, and
17 which provide course credit from UC or CSU for matriculation purposes.

18 l. ACCJC violated 34 C.F.R. § 602.23(b) by adopting in or about June 2014, and
19 thereafter maintaining and enforcing a "revised" Policy on Complaints Against the Accrediting
20 Commission for Community and Junior Colleges" which, contrary to the provisions federal law, restricts
21 complaints to those filed by "individuals who have been directly aggrieved as a direct result of acts and
22 omissions by the [ACCJC]," and restricts the scope of complaints which may be filed.

23 m. ACCJC violated 34 C.F.R. § 602.15 by appointing evaluation teams with
24 insufficient academics, as where only 1 of 9 or 3 of 16 members of CCSF teams for 2012 and 2013 were
25 academics, or where ACCJC thereafter continued to appoint insufficient academics to evaluation teams.

26 207. ACCJC's acts and practices, as set forth in this complaint, constitute unfair business
27 practices because they offend established public policy and cause harm that greatly outweighs any
28 benefits associated with those practices.

1 **SECOND CAUSE OF ACTION**

2 **INTERFERENCE IN PROSPECTIVE ECONOMIC ADVANTAGE**

3 **ACCJC Interference in State-Authorized Collective Bargaining Negotiations**

4 208. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 207, inclusive.

5 209. This Cause of Action is brought by Plaintiffs AFT 2121, AFT 6161, AFT LOCAL 6322
6 and the CFT, and addresses the economic relationship between these organizations and various
7 community colleges or college districts, that ACCJC interfered with in violation of the law. These
8 economic relationships arose out of legislation adopted by the Legislature to facilitate the negotiations of
9 collective bargaining agreements.

10 210. As alleged above, ACCJC has actual knowledge of the collective bargaining and
11 contractual relationships that AFT 2121, AFT 6161, AFT 6322, other CFT-affiliated local unions, and
12 other labor unions have with the community colleges that have recognized them as exclusive bargaining
13 representatives. ACCJC has actual knowledge that resulting collective bargaining agreements determine
14 the wages earned by non-managerial, non-supervisory employees of community college districts and
15 colleges. AFT Locals 2121, 6161 and 6322 were reasonably likely to negotiate and execute collective
16 bargaining agreements following expiration of any existing agreements.

17 211. The ACCJC has engaged in intentional and wrongful conduct which was intended to, and
18 does interfere or disrupt the bargaining and contractual relationship between AFT 2121 and CCSF, AFT
19 Local 6161 and Palomar College, AFT Local 6322 and Mendocino College, AFT Local 6157 and San
20 Jose-Evergreen, other CFT-affiliated local unions and various California community colleges, and
21 between other labor unions and the colleges that have recognized them.

22 212. ACCJC's actions as described herein have interfered in collective bargaining between
23 community college districts and employee organizations which represent their employees and negotiate
24 collective bargaining agreements. ACCJC has done this, and is continuing to do this, by placing
25 conditions on the receipt of accreditation by ACCJC that violate or impinge on State collective
26 bargaining laws or require community colleges and their recognized employee organizations to forego
27 the exercise of their negotiations rights as conferred by the Educational Employment Relations Act.
28 These acts are in conflict with the public policy of the State of California, as exemplified by the EERA,

1 which favor collective bargaining over aggregate pay increases, employee compensation amounts, and
2 other matters within the scope of bargaining under the EERA.

3 213. On or about July 2, 2015, ACCJC notified San Francisco, Palomar and Mendocino
4 community colleges or districts by letter, that ACCJC had placed them on enhanced monitoring status
5 and would engage in enhanced monitoring of their actions with respect to listed criteria, which could
6 lead to further ACCJC action.

7 214. ACCJC's July 2, 2015, notice to San Francisco, Palomar and Mendocino referred to these
8 districts' "Salary and Benefit percentages", "Excess COLA" and "Contribution to ARC." In taking the
9 aforementioned action the ACCJC coerced these colleges to reduce or restrict the percentage of funds
10 expended for employee compensation, to refuse to agree on wage increases that exceeded the state
11 COLA on a continuing or on-schedule basis, and to reduce the funds available for negotiations by
12 placing district funds in an irrevocable OPEB trust fund. The letters included a copy of the ACCJC's
13 rubric "form" that listed the abovementioned criteria and the "threshold for rubric." No further
14 explanation was provided as to how ACCJC created a "score" from the rubric.

15 215. The intentional and wrongful conduct by ACCJC actually disrupted or interfered in the
16 relationship between AFT 2121 and CCSF, AFT Local 6161 and Palomar College, AFT Local 6322 and
17 Mendocino College, by, among other things, artificially limiting the wages and benefits that these unions
18 could negotiate to obtain for their members, and causing the districts to limit or restrict the wage
19 proposals they otherwise would likely have made.

20 216. It is reasonably probable, based on the totality of circumstances, including but not limited
21 to wage and negotiations history and past practice, that but for ACCJC's conduct in placing California
22 community colleges on enhanced monitoring, and including negotiable subjects as criteria used to decide
23 on whether a college is placed on enhanced monitoring, that there would have been more beneficial
24 wage settlements or proposals for the faculty in the aforementioned community college districts.

25 217. The public policy of California, as expressed by the adoption of the EERA, favors
26 collective bargaining and means that ACCJC is not free to interfere in or constrain collective bargaining
27 negotiations by limiting the pay rates that can be negotiated, the aggregate funds that can be devoted to
28 employee compensation, or the amount of monies to be diverted to irrevocable trusts. ACCJC's conduct

1 in impinging on collective bargaining is unlawful, unjustifiable and contrary to established public policy
2 as represented by the EERA.

3 218. As a direct and proximate result of ACCJC unfair and unlawful conduct described herein,
4 Plaintiffs AFT Locals 2121, 6161, and 6322, and CFT have suffered and will continue to suffer financial
5 injuries as a result of ACCJC's conduct.

6 Wherefore, Plaintiffs pray for an injunction, enjoining ACCJC from such interference in
7 collective bargaining relationships, and for such other relief as is just and proper. . .

8 **THIRD CAUSE OF ACTION (DECLARATORY RELIEF)**

9 **ACCJC IS BOUND BY THE BAGLEY-KEENE ACT**

10 219. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 218, inclusive.

11 220. Plaintiffs bring this cause of action as interested persons pursuant to Government Code
12 Sec. 11130, seeking declaratory relief to determine the applicability of the Bagley-Keene Act, Gov't
13 Code Secs. 11120-11132, to all actions by the ACCJC's 19-member governing body, its committees, its
14 review board, and its appeals board, whenever those actions involve or have a bearing on the
15 consideration of accreditation standards for California Community Colleges, the granting or withholding
16 of accredited status for a California community college, the enforcement of accreditation standards
17 through the imposition of sanctions against California Community Colleges, or the consideration of any
18 other substantive, procedural, or financial matters that affect or involve California Community Colleges.

19 **Additional facts and law pertaining to California Community Colleges**

20 221. The California Community Colleges exist within the California Community College
21 System, established pursuant to California Education Code Secs. 70900 *et seq.* Each community college
22 in the system is part of a community college district that is funded by taxes and/or state apportionment,
23 and is ordinarily governed, at the local level, by a Board of Trustees elected by the registered voters in
24 the applicable community college district.

25 222. The California Community Colleges are governed, at the state-wide level, by the Board of
26 Governors of the California Community Colleges, pursuant to Education Code Sec. 70901. Under
27 Education Code Sec. 70901, at all relevant times herein, the Board of Governors was and is provided
28 with authority and charged with duties that include the authority and duty to set and enforce academic,

1 fiscal, administrative, and governance standards for the community colleges.

2 223. Under Education Code Sec. 70901(d), the Board of Governors is expressly authorized to
3 delegate certain of its powers to certain named bodies and officials. Under section 70901(b)(5), the
4 Board of Governors is authorized to administer “those federally supported programs for which the board
5 of governors has responsibility pursuant to state or federal law.” In Section 70901, the Legislature
6 delegated to the Board of Governors the authority to provide general supervision over community
7 college districts and set minimum standards for the operation of community college districts, including
8 establishing minimum conditions entitling districts to receive state aid for support of community
9 colleges. Pursuant to that authority the Board of Governors delegated to a federally recognized
10 accreditor the authority to accredit California community colleges. That accreditor is currently the
11 ACCJC. To the extent that state participation in a federally supported program, such as federal financial
12 support for students or federal support to California community colleges requires that the Board of
13 Governors delegate authority to an accrediting agency, section 70901(b)(5) authorizes this delegation.

14 224. In delegating authority to the ACCJC to accredit the California community colleges, the
15 state has authorized ACCJC to evaluate California community colleges, for purposes of granting,
16 denying or withdrawing accreditation.

17 **Additional Facts and Law Pertaining to ACCJC**

18 225. This recognition by the Department of Education makes the ACCJC an official
19 gatekeeper for access to federal funds under the Federal Higher Education Act, by the educational
20 institutions that the ACCJC accredits and by the students at those institutions.

21 226. The Department of Education imposes some requirements on the ACCJC as a condition
22 of recognition. Under 34 CFR Sec. 602.16, the Department requires that the ACCJC have standards to
23 effectively address the quality of the institution it accredits in 10 specific areas including “faculty,”
24 “fiscal and administrative capacity as appropriate to the specified scale of operations”, and “success with
25 respect to student achievement in relation to the institution’s mission.”

26 227. Within these mandatory subject areas, the regulations do not specify much detail about
27 these subjects. The Department requires that the standards cover at least the broadly identified
28 mandatory subjects, that the standards respect the stated missions of the accredited institutions, that all

1 the standards be “widely accepted,” and that the standards be “sufficiently rigorous to ensure that the
2 agency is a reliable authority regarding the quality of the education or training provided by the
3 institutions or programs it accredits.” The Department then requires that the accreditor enforce its
4 standards fairly and consistently on all the colleges it accredits. (34 C.F.R. Part 602).

5 **The Higher Education Act of 1965 and California’s Response**

6 228. As alleged above, the Board of Governors of the California Community Colleges
7 delegated accreditation authority to the ACCJC.

8 229. Delegating such authority to the ACCJC, the Board of Governors of necessity delegated
9 to the ACCJC authority to grant, revoke or withhold accreditation to the community colleges. In
10 addition, by coupling this delegation with a requirement that California community colleges be
11 accredited, the Board of Governors delegated to the ACCJC authority to close colleges through its
12 withdrawal or denial of accreditation to these colleges. In granting authority to the ACCJC to close
13 colleges, the Board of Governors granted authority to the ACCJC that when exercised might potentially
14 force the reorganization of community college districts (see Education Code §.70901(b)(11)) so that all
15 the territory of the state would be included in such a district with an active community college as
16 required by Education Code §74000.

17 **The Bagley-Keene Act and the ACCJC**

18 230. The Bagley-Keene Open Meeting Act is set forth in Government Code §§ 11120-11132.
19 It applies to all “state bodies.” Government Code Sec. 11121(a) defines “state body” to include a “state
20 board, or commission, or similar multimember body of the state that is created by statute or required by
21 law to conduct official meetings.” The Board of Governors of the California Community College
22 System is created by statute in Education Code § 70900 (“There is hereby created ... the Board of
23 Governors of the California Community Colleges”), and it is a “state body” under Government Code §
24 11121(a).

25 231. In addition, section 11121(b) defines “state body” to include any “board, commission,
26 committee, or similar multimember body that exercises any authority of a state body delegated to it by
27 that state body.” The Board of Governors, a state body under the Bagley-Keene Act, has delegated to the
28 ACCJC a significant portion of its authority to set and enforce academic, fiscal, administrative and

1 governance standards for community colleges in California. The ACCJC is therefore a state body within
2 the meaning of Gov't Code Sec. 11121(b).

3 **Additional Fact Regarding the ACCJC's Commission**

4 232. Under the Bylaws of the ACCJC, Article III, Sec.1, the ACCJC is governed by and acts
5 officially through a 19-member Commission. This Commission is a "commission or similar multi-
6 member body that exercises" the authority delegated to it by the Board of Governors. ACCJC's bylaws
7 provide that "one Commission member shall represent the California Community College Chancellor's
8 Office and shall be selected from among the nominees provided by the California Community College
9 Chancellor." The Chief Executive Officers of each member institution vote to elect some at-large
10 commissioners. A majority of the voting CEOs are from California community colleges. At present, 8
11 of the 17 Commissioners are either employees or trustees of California community colleges, or
12 employees of the State Chancellor's Office.

13 233. The 19-member Commission is subject to the requirements of the Bagley-Keene Act
14 whenever its actions involve or have a bearing on the consideration or adoption of accreditation
15 standards for California Community Colleges, the granting or withholding of accredited status for any
16 California community college, the enforcement of accreditation standards through the imposition of
17 sanctions against California Community Colleges, or the consideration of any other substantive,
18 procedural, or financial matters that affect or involve California Community Colleges.

19 **The ACCJC Board of Directors (Commission)**

20 234. Under the ACCJC Bylaws, Article VI, the 19-member Commission also serves as the
21 Board of Directors of the ACCJC. Sections 1, 2 and 7 in Article VI seem to provide in general that the
22 duties of the Board of Directors relate to the internal affairs of the ACCJC, although Section 2 states
23 broadly, "the Board shall determine the ACCJC's policies or changes therein." Article VI, Section 1 of
24 the Bylaws states: "The Board and the Commission shall at all times constitute the same body and shall
25 consist of the same individuals; however, the Board shall be referred to as the Commission when it is
26 meeting on matters concerning the accreditation of its Members." Plaintiff understands that there are
27 many actions that the ACCJC may take as a private, a non-profit organization, that have no effect on
28 California community colleges and do not involve the exercise of authority delegated by the Board of

1 Governors. On the other hand, Plaintiff is unable to ascertain whether the distinction between “matters
2 concerning the accreditation of its Members” and “other matters” will in actual practice suffice to make
3 the Board of Directors exempt from the Bagley-Keene Act in all of its activities. Plaintiff therefore
4 alleges that the Board of Directors is subject to the Bagley-Keene Act whenever its actions involve or
5 have a bearing on the consideration or adoption of accreditation standards for California Community
6 Colleges, the granting or withholding of accredited status or restoration status for any California
7 community college, the enforcement of accreditation standards through the imposition of sanctions **or**
8 enhanced or referred monitoring against California Community Colleges, or the consideration of any
9 other substantive, procedural, or financial matters that affect or involve California Community Colleges.

10 **The ACCJC Standing Committees**

11 235. Gov’t Code Sec. 11121(b) defines “state body” to include any “committee, or similar
12 multi-member body that exercises any authority of a state body delegated to it by that state body.”

13 236. Under Article VIII of the ACCJC Bylaws, the 19-member Commission may appoint
14 standing committees, and “the Commission may charge a standing committee to act on its behalf, to the
15 extent permitted by law.” Article VIII thus allows the Commission, a state body, to delegate its authority
16 to the standing committees, and if the Commission does so, then the committee that exercises such
17 authority is a state body whenever its actions involve or have a bearing on the consideration or adoption
18 of accreditation standards for California Community Colleges, the granting or withholding of accredited
19 status for any California community college, the enforcement of accreditation standards through the
20 imposition of sanctions against California Community Colleges, or the consideration of any other
21 substantive, procedural or financial matters that affect or involve California Community Colleges.

22 237. The ACCJC Bylaws, Article VIII, specify by name a number of standing committees,
23 including the Substantive Change Committee. The federal regulations governing accreditation agencies
24 – specifically, 34 CFR Sec. 602.22 – require that the ACCJC maintain supervisory control over any
25 “substantive changes” to programs made by any college accredited by the ACCJC. The regulation states
26 that the ACCJC meets this requirement if the “agency requires the institution to obtain the agency’s
27 approval of the substantive change before the agency includes the change in the scope of accreditation ...
28 it previously granted to the institution....” The ACCJC’s Substantive Change Committee implements

1 this federal requirement. Thus, the Substantive Change Committee is charged with considering matters
2 that can affect the accreditation of California Community Colleges. Whenever the committee does that,
3 it is a state body.

4 238. Gov't Code Sec. 11121(c) defines "state body" to include an "advisory committee,
5 advisory subcommittee, or similar multimember advisory body of a state body ... [which is] created by
6 formal action of the state body ... [and which] consists of three or more persons."

7 239. The ACCJC Bylaws, Article VIII, specify a number of standing committees and the
8 procedure for creating other standing committees. The ACCJC Bylaws are adopted by formal action of
9 the Commission or Board of Directors, and therefore the standing committees listed in the Bylaws or
10 created pursuant to the Bylaws are "created by formal action of the state body." If the standing
11 committee is an advisory committee with 3 or more members, then it is also a state body whenever its
12 actions involve or have a bearing on the consideration or adoption of accreditation standards for
13 California Community Colleges, the granting or withholding of accredited status to a California
14 community college, the enforcement of accreditation standards through the imposition of sanctions
15 against California Community Colleges, or the consideration of any other substantive, procedural or
16 financial matters that affect or involve California Community Colleges.

17 240. Gov't Code Sec. 11121(d) defines "state body" to include a
18 committee, or similar multimember body on which a member of a body that is a state
19 body ... serves in his or her official capacity as a representative of that state body and that
20 is supported, in whole or in part, by funds provided by the state body, whether the
21 multimember body is organized and operated by the state body or by a private
22 corporation.

23 241. If any member of the Commission serves on a standing committee, then that committee
24 will also be a state body whenever its actions involve or have a bearing on the consideration of
25 accreditation standards for California Community Colleges, the granting or withholding of accredited
26 status for any California community college, the enforcement of accreditation standards through the
27 imposition of sanctions against California Community Colleges, or the consideration of any other
28 substantive, procedural or financial matters that affect or involve California Community Colleges.

29 242. Article VIII of the Bylaws states that the Executive Committee must include members of
30 the Commission. The Executive Committee is therefore a state body.

1 next regular meeting. The Commission then decides what action it will take on the review, based on
2 “the evidence available to it.” The policy does not define what evidence will be “available” to the
3 Commission, if any, beyond what is in the review committee’s report and letter.

4 245. In this process, the review committee is an “advisory committee, advisory subcommittee,
5 or similar multimember advisory body of a state body ... [which is] created by formal action of the state
6 body ... [and which] consists of three or more persons.” The review committee is thus a “state body”
7 within the meaning of Gov’t Code Sec. 11121(c) and is subject to the Bagley-Keene Act whenever its
8 actions involve or have a bearing on the consideration of accreditation standards for California
9 Community Colleges, the granting or withholding of accredited status for any California community
10 college, the enforcement of accreditation standards through the imposition of sanctions against
11 California Community Colleges, or the consideration of any other substantive, procedural or financial
12 matters that affect or involve California Community Colleges.

13 **The ACCJC Appeals Panel**

14 246. The ACCJC operates with a body it calls an “appeals panel.” Article X, Section 1 of the
15 ACCJC Bylaws establishes a procedure whereby a community college aggrieved by a disaccreditation
16 decision may appeal a decision by the review committee. Under Article IX, Section 2, the appeal will be
17 heard by a appeals panel of not less than 5 nor more than 7 individuals appointed in the manner
18 described in the Bylaws.

19 247. The appeals panel is a “board ... or similar multimember body” within the meaning Sec.
20 11121(b) of the Bagley-Keene Act. It exercises the authority delegated by the Board of Governors (a
21 state body) to the Commission and by the Commission (a state body) to the Appeals Panel. It is
22 therefore a state body under Sec. 11121(b) and is subject to the Bagley-Keene Act whenever its actions
23 involve or have a bearing on the consideration of accreditation standards for California Community
24 Colleges, the granting or withholding of accredited status for any California community college, the
25 enforcement of accreditation standards through the imposition of sanctions against California
26 Community Colleges, or the consideration of any other substantive, procedural or financial matters that
27 affect or involve California Community Colleges.

28 **Decisions Affecting Community Colleges Are the People’s Business**

1 248. Community colleges in the California Community College system are governmental
2 institutions. They are established by statute and funded by California taxpayers. Each local community
3 college district is ordinarily governed by a board of trustees that is chosen by a vote of the people voting
4 in that district. At the state level, the system as a whole is governed by a Board of Governors appointed
5 by state elected officials.

6 249. The California Constitution, Article 9, makes public education a matter of constitutional
7 importance. Article 9, Sec. 14, expressly empowers the legislature “to provide for the incorporation and
8 organization of school districts, high school districts, and community college districts, of every kind and
9 class.” The Constitution thus confirms that matters pertaining to public education, including the
10 education provided by community colleges, are matters of critical importance to the public and to the
11 citizens of this state.

12 250. In Education Code Sec. 74000, the legislature has directed that there be a community
13 college district in every county of this state. Such a requirement is meaningless without the existence of
14 an active community college in each district.

15 251. The business of community colleges is therefore the people’s business. The setting and
16 enforcement of academic, fiscal, administrative, and governance standards for community colleges is the
17 people’s business. The making of decisions to grant accreditation to or withhold it from community
18 colleges is the people’s business. The enforcement of accreditation standards through the imposition of
19 sanctions against California Community Colleges, and the consideration of any other substantive,
20 procedural or financial matters that affect or involve California Community Colleges are the people’s
21 business. Those subjects are the people’s business when they are considered by the Community College
22 Board of Governors. They remain the people’s business when they are considered by the ACCJC.

23 **The Public Right of Access to the People’s Business**

24 252. The California Constitution, Article I, Sec. 3(b)(1) states, “The people have the right of
25 access to information concerning the conduct of the people’s business....” Article I, Sec. 3(b)(2) then
26 states:

27 A statute, court rule, or other authority, including those in effect on the effective date of
28 this subdivision, shall be broadly construed if it furthers the people’s right of access, and
 narrowly construed if it limits the right of access.

1 The Bagley-Keene Act, and specifically, Gov't Code Sec. 11121, which defines the bodies to which the
2 Bagley-Keene Act applies, is a statute that furthers the people's right of access to the people's business.
3 It may not be narrowly construed, but rather, it must be broadly construed to give effect to the people's
4 "right of access to information concerning the conduct of the people's business" by the ACCJC.

5 **Specific Requirements of the Bagley-Keene Act**

6 253. The Bagley-Keene Act imposes various requirements on "state bodies," including, but not
7 limited to the following requirements:

8 (a) Gov't Code Sec. 11122.5: All business of a state body must be conducted during
9 properly held official meetings, and the members of the body may not circumvent that rule by a series of
10 contacts outside a properly held official meeting.

11 (b) Gov't Code Sec. 11123: All meetings of a state body shall be open and public and all
12 persons shall be permitted to attend any meeting of a state body except as otherwise specified in the
13 Bagley-Keene Act ("this article," namely, Title 2, Division 3, Part 1, Chapter 1, Article 9, Secs. 11120-
14 11132).

15 (c) Gov't Code Sec. 11124.1: Any person attending an open and public meeting of the state
16 body has the right to record the proceedings with an audio or video recorder or a still or motion picture
17 camera unless such activity would in fact be disruptive to the meeting.

18 (d) Gov't Code Sec. 11124.1: No state body shall prohibit or otherwise restrict the
19 broadcast of its open and public meetings unless such activity would in fact be disruptive to the meeting.

20 (e) Gov't Code Sec. 11125: The state body shall provide written notice of its meetings,
21 along with an agenda for the meeting, with the contents and in the time and manner required by law.

22 (f) Gov't Code Sec. 11125.1: Any writings distributed to all, or a majority of all, of the
23 members of a state body by any person in connection with a matter subject to discussion or consideration
24 at a public meeting of the body, are disclosable public records under the California Public Records Act
25 (Gov't Code Secs. 6250 et seq.) and shall be made available to members of the public as required by
26 law.

27 (g) Gov't Code Sec. 11125.7: The state body shall provide an opportunity for members of
28 the public to directly address the state body on each agenda item before or during the state body's

1 discussion or consideration of the item, unless an exception to this requirement is allowed by law.

2 (h) Gov't Code Sec. 11128.5: Whenever the state body adjourns a meeting to another time,
3 the order for adjournment must specify the time and place at which the next session of the meeting will
4 be held.

5 **Plaintiff Asserts That ACCJC Decision-Making Bodies Are Subject to Bagley-Keene**

6 254. Plaintiff asserts that the Commission, committees, and boards of the ACCJC described
7 above are subject to the terms of the Bagley-Keene Act and have been so subject at all relevant times
8 herein.

9 **ACCJC Denies That Its Decision-Making Bodies Are Subject to Bagley-Keene**

10 255. Defendant ACCJC implicitly denies that the Commission, committees, and boards of the
11 ACCJC described above are now or ever were subject to the terms of the Bagley-Keene Act. The
12 Bylaws of the ACCJC demonstrate such denial, in the following respects:

13 (a) Gov't Code Sec. 11122.5: Article IX, Sections 1-4 of the Bylaws conflicts with this
14 section by allowing the Commission to take any action without a meeting.

15 (b) Gov't Code Sec. 11123: Article V, Section 2 of the Bylaws conflicts with this section
16 by requiring that the Commission consider all matters regarding the accredited status of colleges in a
17 closed session. This section states: "Consideration of the accredited status of institutions and other
18 confidential matters concerning member institutions will take place in Closed Session." No section of
19 the Bagley-Keene Act or other applicable statute allows a closed session for such matters.

20 (c) Gov't Code Sec. 11124.1: Article V, Section 2 conflicts with this section by calling for
21 consideration of accreditation decisions in closed session, which means that no person will have any
22 right to record the proceedings with an audio or video recorder or a still or motion picture camera.

23 (d) Gov't Code Sec. 11124.1: Article V, Section 2 conflicts with this section by calling for
24 consideration of accreditation decisions in closed session, which means that no person will have any
25 right to broadcast such meetings.

26 (e) Gov't Code Sec. 11125: Article V, Section 1, fails to comply with this section, in that it
27 requires that notice of "meetings" of the Commission be given only to the chief executive officer of each
28 member institution. The Commission's Policy on Access to Commission Meetings does not satisfy the

1 requirements of Sec. 11125. This policy is found in the ACCJC's Accreditation Reference Handbook,
2 2015 ed., p. 149. This policy requires that the President send a preliminary agenda "approximately 45
3 days before each regular meeting of the Commission" to various officials at various institutions, and also
4 requires that the preliminary agenda be posted on the Commission web page "in advance of the
5 meeting." Sec. 11125, however, imposes additional requirements that apply to *all* meetings, not just
6 "regular" meetings, including the following, which the ACCJC does not meet:

7 (a) The state body shall provide notice of its meeting to any person who requests that
8 notice in writing. Notice shall be given and also made available on the Internet at least 10
9 days in advance of the meeting, and shall include the name, address, and telephone
10 number of any person who can provide further information prior to the meeting, but need
11 not include a list of witnesses expected to appear at the meeting. The written notice shall
12 additionally include the address of the Internet site where notices required by this article
13 are made available.

14 (b) The notice of a meeting of a body that is a state body shall include a specific agenda
15 for the meeting, containing a brief description of the items of business to be transacted or
16 discussed in either open or closed session.

17 (f) Gov't Code Sec. 11125.1: The ACCJC's actions conflict with this section by its refusal
18 to make documents available to the public. The visiting team Report prepared by the ACCJC Evaluation
19 Team after its visit to CCSF in March 2012, stated on its cover that the report was a "confidential report"
20 prepared for the ACCJC. It was not provided to the public after it was finalized and for some time
21 thereafter. This report was presented to the members of the ACCJC Commission for consideration at its
22 meeting on June 2012. At this meeting, the Commission acted to place CCSF on show cause. The
23 ACCJC prevented this report from being distributed to the public before the meeting. In the ACCJC
24 action letter to CCSF dated July 2, 2012 President Beno finally gave CCSF permission to publish and
25 distribute the report to the public. In withholding this report from the public both before and after the
26 meeting at which its contents were to be considered, the ACCJC actions were in conflict with section.
27 11125.1. The same sequence of events occurred in 2013, when ACCJC was discredited. And the
28 same sequence has been repeated every year.

(g) Gov't Code Sec. 11125.7: The ACCJC's actions are in conflict with this section when it
holds closed sessions that are not allowed by the Bagley-Keene Act, thereby preventing any public
comment on the items on the agenda. In addition, Article V, Section 2 of the ACCJC Bylaws fails to
comply with this section with respect even to those meetings that the ACCJC treats as "public sessions."

1 Article V, Section 2 states that the Commission limits public comments in a “public session” in
2 accordance with the Commission Policy on Access to Commission Meetings. This policy is found in the
3 ACCJC’s Accreditation Reference Handbook, 2015 ed.,p. 149. This policy is in conflict with Section
4 11125.7, by placing limits on the public’s right to address such meetings. As presently drafted, written
5 copies of prepared remarks “should” be provided to the ACCJC not less than 15 days before the
6 meeting, request to bring items to the attention of the Commission “should” be made to the President in
7 writing not less than 15 days before the meeting, brief comments on specific points in the public session
8 agenda may be made “at the discretion of the Chair,” and 15 minutes will be allowed for public
9 comment. These provisions leave it to the discretion of the Chair whether to allow any public comment
10 that does not comply with these conditions. The ACCJC policies thus permit the Chair to disallow
11 public comment in violation of Gov’t Code Sec. 11125.7.

12 (h) Gov’t Code Sec. 11128.5: The ACCJC documents include no procedures for compliance
13 with this section.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for relief as follows:

16 1. On Plaintiffs’ First Cause of Action, for an injunction ordering ACCJC to cease and desist
17 engaging in the unlawful and unfair business practices alleged herein.

18 2. On Plaintiffs’ Second Cause of Action, for an order enjoining ACCJC from taking action to
19 interfere with California community college negotiations protected by the public policy of California and
20 the EERA..

21 3. On Plaintiff’s Third Cause of Action, for an order declaring that the ACCJC Commission, the
22 ACCJC Board of Directors, the standing committees of the ACCJC Commission and Board of Directors,
23 the ACCJC Review Committee, and the ACCJC Appeals Panel are “state bodies” as defined in
24 Government Code § 11121 and are subject to the requirements of the Bagley-Keene Act, Government
25 Code §§ 11120-11132, whenever their actions involve or have a bearing on the consideration of
26 accreditation standards for California Community Colleges, the granting or withholding of accredited
27 status for a California community college, the enforcement of accreditation standards through the
28 imposition of sanctions against California Community Colleges, or the consideration of any other

1 substantive, procedural or financial matters that affect or involve California Community Colleges;

2 4. Order the ACCJC to vacate the improper Show Cause and Termination of Accreditation
3 decisions against City College of San Francisco.

4 5. Enjoin the ACCJC from engaging in accreditation actions toward any California community
5 college in a manner that violates applicable federal or state law.

6 6. Order the ACCJC to pay Plaintiffs costs of suit pursuant to Government Code §11130.5, or as
7 otherwise provided by law.

8 7. Order ACCJC to pay Plaintiffs legal fees pursuant to Government Code §11130.5 and/or
9 Code of Civil Procedure 1021.5.

10 8. On each cause of action, for such other and further relief as is just and proper.

11
12 Dated: May 19, 2016

Respectfully submitted,

13
14 LAW OFFICES OF ROBERT J. BEZEMEK
A Professional Corporation

15
16 By: 

17 ROBERT J. BEZEMEK
18 LAW OFFICES OF ROBERT J. BEZEMEK, P.C.
Attorneys for Plaintiffs

19 Z:\Shared_Data\Documents\2100-San Francisco\Fiscal Crisis 2012\AFT - CFT Compt Round 2\FAC - drafts\FAC Draft 51 Thurs 5-19-16.wpd

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to the
3 within action. My business address is 1611 Telegraph Avenue, Suite 936, Oakland, California 94612.
4 On **May 19, 2016**, I electronically served the following document(s) via File & Serve Xpress described
5 as:

6 **FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF FOR VIOLATIONS OF**
7 **BUSINESS AND PROFESSIONS CODE SECTION 17200, AND INTENTIONAL**
8 **INTERFERENCE IN PROSPECTIVE ECONOMIC ADVANTAGE, AND**
9 **DECLARATORY RELIEF UNDER THE BAGLEY-KEENE ACT, GOVERNMENT**
10 **CODE §§11120**

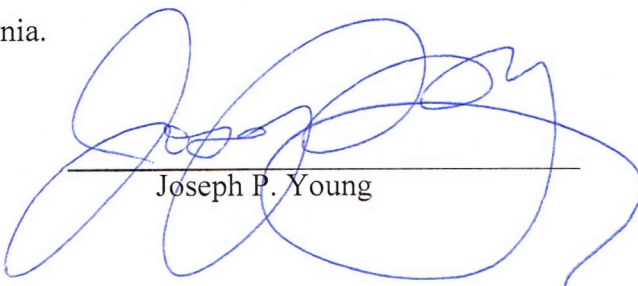
11 on the recipients (including the following interested parties in this action) designated on the Transaction
12 Receipt located on the File & Serve Xpress website:

13 **Kenneth Keller, Esq.**
14 **Jennifer McGlone, Esq.**
15 **Keller, Sloan, Roman & Holland LLP**
16 **555 Montgomery Street, 17th Floor**
17 **San Francisco, CA 94111**
18 **Email: kkeller@ksrh.com**

19 **Laurence W. Kessenick**
20 **Kessenick Gamma & Free, LLP**
21 **Attorneys at Law**
22 **44 Montgomery, Suite 3380**
23 **San Francisco, CA 94104**
24 **E-mail: lkessenick@kgf-lawfirm.com**

25 I declare under penalty of perjury under the laws of the state of California that the foregoing is
26 true and correct.

27 Executed on **May 19, 2016**, in Oakland, California.

28 

Joseph P. Young