

1 MICHAEL J. BRADY (SBN 40693)  
2 RICHARD M. WILLIAMS (SBN 68032)  
3 O. ANTONY ABDOLLAHI (SBN 157235)  
4 ROPERS, MAJESKI, KOHN & BENTLEY  
5 1001 Marshall Street  
6 Redwood City, CA 94063  
7 Telephone: (650) 364-8200  
8 Facsimile: (650) 780-1701

6 KRIS W. KOBACH (*Pro Hac Vice* Application  
7 Pending – To Be Filed)  
8 Kansas State Bar No. 17280  
9 9159 Kessler  
10 Overland Park, KS 66212  
11 Telephone: (913) 638-5567  
12 Facsimile: (816) 235-5276

11 Attorneys for Class Plaintiffs

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF YOLO

14 ROBERT MARTINEZ, CORY MCMAHON,  
15 ONSON LUONG, SCOTT NASS, JUSTIN  
16 RABIE, MARK HAMMES, STEVEN  
17 HAMMES, DAVID HAMMES, ASH  
18 CALOUSTIAN, AARON DALLEK, SOLEIL  
19 TEUBNER, MARA MCDERMOTT, ADAM  
20 ANDERSON, DEMYAN DRURY, CASEY  
21 MEGURO, CHANING JANG, KYLE  
22 DOZEMAN, KELLAN DIDIER, JAMES  
23 DEUTSCH, PATRICK BILBRAY, BRIANA  
24 BILBRAY, BRIAN BILBRAY, CORY  
25 ROBERTSON, DANIEL ALAMEDA, DAN  
26 GOLDBERG, TIM KOZONO, JOSEPH  
27 KONRAD, DAVID TAYLOR, SUZANNE  
28 KATTIJA-ARI, JUSTINE SMITH, AMANDA  
HILDEBRAND, AARON MALONE-  
STRATTON, PAMELA STRATTON,  
MICHAL BULMASH, JIMMY DAVALT,  
III, MATT BITTNER, ANTWANN DAVIS,  
ARRINGTON DENNISON, KATHRYN  
JELSMA, EMILY GRANT, PETER SHEA,  
ADAM THOMSON,

Plaintiffs,

CASE NO.

CLASS ACTION

CLASS ACTION COMPLAINT FOR  
DAMAGES; INJUNCTIVE RELIEF;  
DECLARATORY RELIEF; FEDERAL  
PREEMPTION; VIOLATION OF U.S.  
CONSTITUTION (FOURTEENTH  
AMENDMENT), CALIFORNIA  
CONSTITUTION (ARTICLE 1, §7),  
FEDERAL STATUTE (8 U.S.C. 1623; 8  
U.S.C. 1621; 42 U.S.C. 1983), UNRUH  
CIVIL RIGHTS ACT (CALIFORNIA  
CIVIL CODE §51)

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v.  
REGENTS OF THE UNIVERSITY OF CALIFORNIA, TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY SYSTEM, BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES, ROBERT C. DYNES, CHARLES B. REED, MARSHALL DRUMMOND and DOES 1-500,

Defendants.

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I.  
**INTRODUCTION**

1. Plaintiffs are United States citizens enrolled or who have been enrolled in a course of study for an undergraduate or graduate degree at a public university or college of the State of California, who have been classified under California law as “nonimmigrant aliens” and illegally denied exemption from nonresident tuition under California Education Code §68130.5.

2. Plaintiffs bring this civil action against the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and their respective presidents and chairpersons.

3. In denying nonresident U.S. citizens the tuition exemption afforded to illegal aliens, California Education Code §68130.5 violates the United States Constitution and federal law. Congress has stated, “[i]t is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.” (8 U.S.C. 1601(6)). In furtherance of its ongoing efforts to promote a fair and effective immigration policy under the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), in 1998 Congress enacted 8 U.S.C. 1623 which bars an alien not lawfully present in the United States from eligibility, on the basis of residence within a state, for “any postsecondary education benefit” unless all United States citizens are eligible for the same benefit.

4. Consistent with the aforementioned national policy, California Education Code §68062(h) precludes undocumented alien students from qualifying as residents of California for tuition purposes. California courts have likewise acknowledged, “[t]he state’s legitimate interests in denying resident tuition to undocumented aliens are manifest and important,” citing “the state’s interests in not subsidizing violations of law” and “avoiding discrimination against citizens of sister states and aliens lawfully present” as examples. Accordingly, California courts have expressly held that §68062(h) precludes Defendants University of California and California State University from affording nonresident tuition to illegal aliens.

5. Despite this proscription, in its 1999-2000 session, the California legislature

1 passed Assembly Bill 1197, a bill intended to exempt illegal aliens residing in California from  
2 paying nonresident tuition without conferring the same benefit on U.S. citizens/students from  
3 other states. However, then Governor Davis vetoed the bill on the grounds that under the IIRIRA  
4 illegal aliens are ineligible to receive educational benefits based on state residence unless  
5 nonresident U.S. citizens are eligible for the same benefits and that the costs of conferring such  
6 benefits would have exceeded \$63 million for the 1998 enrollment period alone.

7 6. Despite the acknowledged illegality and financial imprudence of AB 1197, in its  
8 2001-2002 session the California state legislature passed the "same" legislation in the form of  
9 Assembly Bill 540. The California legislature again noted that the measure contravened the  
10 IIRIRA but nevertheless passed the bill and it was signed into law and became California  
11 Education Code §68130.5.

12 7. However, defendant U.C. Regents concluded that §68130.5 violated federal law  
13 and refused to implement the measure unless they were afforded protection from liability arising  
14 thereunder. At the behest of Defendants, the California legislature introduced Assembly Bill  
15 1543, which purports to preclude the recovery of damages from the University of California, the  
16 California State University or California Community Colleges for liability arising from the  
17 illegality of §68130.5. AB 1543 has been codified as Education Code §68130.7.

18 8. The Defendants' *Illegal Alien Tuition Scheme* therefore consists of a knowing and  
19 deliberate violation of federal and state law by (1) granting illegal aliens a tuition exemption  
20 denied to nonresident U.S. citizens/students in violation of 8 U.S.C. 1623, and (2) shielding  
21 themselves from monetary damages arising from their unlawful conduct. In short, Defendants  
22 have knowingly violated the law and procured legislation to protect themselves from their illegal  
23 conduct.

24 9. Plaintiffs intend to and hereby maintain the claims reflected herein as a class  
25 action. The plaintiff class consists of thousands of former and current nonresident U.S. citizens  
26 too numerous to be practically joined. All class members are bound by common questions of law  
27 and fact regarding the Defendants' improper denial of the nonresident tuition exemption illegally  
28 afforded to illegal aliens under §68130.5 and General Order 110.2. The named plaintiffs claims

1 are typical of the class and, accordingly, the named plaintiffs are able to fairly and adequately  
2 protect the interests of all class members.

3 10. Plaintiffs seek reimbursement of nonresident tuition fees resulting from the  
4 unlawful discrimination against them based on their status as out-of-state U.S. citizens under  
5 §68130.5. Indeed, this Court need look no further than Governor Davis' veto of Assembly Bill  
6 1197, the predecessor to §68130.5, for affirmation of the plaintiffs' right to reimbursement of  
7 their nonresident tuition payments; in his official veto message, the Governor admitted that the  
8 "IRIRA would require that all out-of-state legal residents be eligible for this same benefit."

9 11. Plaintiffs seek a declaration that Defendants' *Illegal Alien Tuition Scheme* violates  
10 the laws specified herein. Plaintiffs seek injunctive relief precluding Defendants from denying  
11 Plaintiffs exemption from nonresident tuition while improperly affording this benefit to illegal  
12 aliens for so long as Defendants continue this unconstitutional and unlawful practice. Plaintiffs  
13 seek all remedies available under the Unruh Act, including but not limited to, the maximum  
14 amount of statutory damages and a \$25,000 award for each plaintiff.

15 12. In sum, the Defendants' *Illegal Alien Tuition Scheme* must be stopped and  
16 reimbursement must be made to the nonresident U.S. citizens who have been improperly denied  
17 tuition exemption under §68130.5.

18 II.

19 PLAINTIFFS

20 13. The illegal and discriminatory law (Education Code §68130.5), forming one of the  
21 principal bases of this lawsuit, became effective January 1, 2002. The following students are the  
22 named plaintiffs and appropriate representatives of the class. All of the named plaintiffs (and all  
23 class members) are identically situated; were enrolled in a college or university administered and  
24 controlled by defendants after January 1, 2002; were assessed by defendants and paid out-of-state  
25 tuition after January 1, 2002; and after January 1, 2002, were illegally discriminated against and  
26 were denied the same benefit (in-state tuition charges) provided to illegal aliens, in violation of  
27 federal and state law; and were accordingly all damaged in amounts precisely and readily  
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1 calculable by a simple mathematical formula (i.e., exact amount of out-of-state charges assessed  
2 against plaintiffs and class member by defendants). Each of the individual named plaintiffs is  
3 qualified to represent all members of the class.

4 14. Robert Martinez, Santa Barbara City College (Nevada); Cory McMahon, San  
5 Diego State University (Pennsylvania); Onson Luong, UC Davis (Nevada); Scott Nass, UCLA  
6 Medical School (Ohio); Justin Rabie, UC Berkeley (Oregon); Mark Hammes, UC Davis  
7 (Hawaii); Steven Hammes, UC Berkeley (Hawaii); David Hammes (Hawaii) [tuition paying  
8 parent for Mark and Steven Hammes]; Ash Caloustian, Glendale Community College (Texas);  
9 Aaron Dallek, UC Berkeley (Illinois); Soleil Teubner, UCLA (Washington); Mara McDermott,  
10 UC Davis (Maryland); Adam Anderson, UC Davis (Nevada); Demyan Drury, San Diego City  
11 College (Virginia); Casey Meguro, UC Davis (Hawaii); Chaning Jang, UC Davis (Hawaii); Kyle  
12 Dozeman, California Polytechnic State University (Colorado); Kellan Didier, California  
13 Polytechnic State University (Arizona); James Deutsch, California Polytechnic State University  
14 (Illinois); Patrick Bilbray, San Diego City College (Virginia); Briana Bilbray, San Diego City  
15 College (Virginia); Brian Bilbray (Virginia) [tuition paying parent of Patrick and Briana Bilbray];  
16 Cory Robertson, California Polytechnic State University (Oregon); Daniel Alameda, California  
17 Polytechnic State University (Arizona); Dan Goldberg, UC Davis (New Jersey); Tim Kozono,  
18 California Polytechnic State University (Hawaii); Joseph Konrad, UC Davis (Illinois); David  
19 Taylor, San Diego State University (Oregon); Suzanne Kattija-Ari, UC Davis (Hawaii); Justine  
20 Smith, San Diego State (Washington State); Amanda Hildebrand, San Diego State (Washington);  
21 Aaron Malone-Stratton, San Diego State (Alaska); Pamela Stratton (Alaska) [tuition paying  
22 parent for Aaron Malone-Stratton]; Michal Bulmash, UC Berkeley (Florida); Jimmy DaVault, III,  
23 Santa Barbara City College (Idaho); Matt Bittner, San Diego State (South Dakota); Antwann  
24 Davis, Santa Barbara City College (South Carolina); Arrington Dennison, Santa Barbara City  
25 College (South Carolina); Kathryn Jelsma, Cal State Fullerton (South Dakota); Emily Grant,  
26 Santa Barbara City College (Arizona); Peter Shea (Montana) [tuition paying parent of Emily  
27 Shea, U.C. Berkeley]; Adam Thomson, San Diego State University (New York).

28 15. Upon information and belief, during the Fall 2004 term:

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- a. The University of California enrolled 207,900 students, of whom 27,415 were classified as freshmen, and, for the 2003 enrollment period, 2,101 were identified as nonresident domestic freshmen.
- b. The California State University system enrolled 397,048 students, of whom 69,130 were classified as freshmen, and, 1,256 were identified as out-of-state freshmen.
- c. The California Community Colleges enrolled 1,439,923 students, approximately 37,000 of which were "full-time equivalent" out-of-state students.

16. Upon information and belief, undergraduate tuition and fees for the Fall 2005 term was as follows:

- a. For the University California, \$6,769 for a resident undergraduate; \$17,304 tuition fee for a nonresident undergraduate, combined with other fees resulting in "total nonresident student charges" of \$24,589 for a nonresident undergraduate.
- b. For the California State University, at least \$2,520 for a resident undergraduate with a "campus average" of \$3,164; an additional \$10,170 nonresident tuition fee, for a total of \$13,334 for a nonresident undergraduate.
- c. For the California Community Colleges, \$26 per unit is assessed to residents, \$135 per unit is assessed to nonresidents, and the average student takes 15 units per semester.

17. The payment of said tuition and the ensuing matriculation creates a contractual relationship between Plaintiffs and Defendants. "[By] the act of matriculation, together with payment of required fees, a contract between the student and the institution is created." Andersen v. Regents of University of California (1972) 22 Cal.App.3d 763, 769-770.

18. Student Plaintiffs will suffer significant financial injury, in most cases in excess of \$15,000 annually per student, during the period of study for an undergraduate or graduate degree program, as well as deprivation of federal and state constitutional and statutory rights, when aliens unlawfully present in the United States are exempt from nonresident tuition, and thus receive valuable benefits that are denied to Plaintiffs.

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**III.**  
**DEFENDANTS**

19. Defendant Regents of the University of California is a corporation formed under the laws of and conducting business in the State of California. "The Regents of the University of California are a corporation with full powers of organization and government over the university. . . [t]he corporation is in the form of a board composed of 25 members." Regents of University of California v. Superior Court (1999) 20 Cal.4th 509, 514. "Said corporation shall also have all the powers necessary or convenient for the effective administration of its trust, including the power to sue and to be sued." California Constitution, Article IX, §9(f).

20. Through, *inter alia*, the University of California at Davis, the Regents of the University of California conduct business in and, by having illegally assessed non-resident tuition to Plaintiffs, have given rise to a claim in Yolo County under Code of Civil Procedure §§393, 395.

21. Defendant Trustees of the California State University is an organization formed under the laws of and conducting business in the of State of California. "The California State University shall be administered by a board designated as the Trustees of the California State University, which is hereby created." California Education Code §66600.

22. Defendant Board of Governors of the California Community Colleges is an organization formed under the laws of and conducting business in the of State of California. "The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of the California Community Colleges and exercise general supervision over the California Community Colleges." California Education Code §66700.

23. Through, *inter alia*, Woodland Community College, the Board of Governors of the California Community Colleges conduct business in and, by having illegally assessed non-resident tuition to Plaintiffs, have given rise to a claim in Yolo County under Code of Civil Procedure §§393, 395.

24. Defendant Robert C. Dynes is the President of the University of California.

1 25. Defendant Charles B. Reed is the Chancellor of the California State University.

2 26. Defendant Marshall Drummond is the Chancellor of the California Community  
3 Colleges.

4 27. Defendants are responsible for establishing, implementing, and enforcing the  
5 *Illegal Alien Tuition Scheme* at the California public postsecondary educational institutions  
6 identified herein.

7 28. Plaintiffs are informed and believe, and thereon allege, that aliens not lawfully  
8 present in the United States are matriculating and, in violation of 8 U.S.C. 1623, obtaining  
9 exemption from nonresident tuition at the University of California, the California State University  
10 and the California Community Colleges.

11 29. Defendants Doe I through Doe 500, inclusive, are sued herein under fictitious  
12 names. Their true names and capacities are unknown to Plaintiffs. When their true names and  
13 capacities are ascertained, Plaintiffs will amend this complaint by inserting their true names and  
14 capacities herein. Plaintiffs are informed and believe, and thereon allege, that each of the  
15 fictitiously named defendants is responsible in some manner for the occurrences herein alleged,  
16 and that Plaintiffs' damages as herein alleged were proximately caused by those defendants.

17 30. Plaintiffs are informed and believe, and thereon allege, that each of the defendants  
18 herein was, at all times relevant to this action, the agent, employee, representing partner, or joint  
19 venturer of the remaining defendants and was acting within the course and scope of that  
20 relationship. Plaintiffs are further informed and believe, and thereon allege, that each of the  
21 defendants herein gave consent to, ratified, and authorized the acts alleged herein to each of the  
22 remaining defendants.

23 IV.

24 **LEGAL BACKGROUND**

25 **Federal Immigration Law**

26 31. 8 U.S.C. 1623 is a component of the United States' national policy of ensuring that  
27 immigrants are lawfully in this country, self-sufficient and not a burden on public resources. The  
28 Defendants' *Illegal Alien Tuition Scheme* subverts each of these objectives. In order to

1 discourage states from flaunting federal law, the legislative intent underlying 8 U.S.C. 1623 is to  
2 prevent any state from granting “any postsecondary education benefit” to an alien not lawfully  
3 present in the United States unless all United States citizens are eligible for the same benefit. The  
4 text of 8 U.S.C. 1623 states:

5           Notwithstanding any other provision of law, an alien who is not  
6 lawfully present in the United States shall not be eligible on the  
7 basis of residence within a State (or a political subdivision) for any  
8 postsecondary education benefit unless a citizen or national of the  
9 United States is eligible for such a benefit (in no less an amount,  
10 duration, and scope) without regard to whether the citizen or  
11 national is such a resident.

12           32.    *“It is a compelling government interest to remove the incentive for illegal*  
13 *immigration provided by the availability of public benefits.”* 8 U.S.C. 1601(6) (emphasis  
14 added).

15           33.    *“It continues to be the immigration policy of the United States that (a) aliens*  
16 *within the Nation’s borders not depend on public resources to meet their needs, but rather rely on*  
17 *their own capabilities and the resources of their families, their sponsors, and private*  
18 *organizations, and (b) the availability of public benefits not constitute an incentive for*  
19 *immigration to the United States.”* 8 U.S.C. 1601(2).

20           34.    In 1996, Congress enacted the Illegal Immigration Reform and Immigrant  
21 Responsibility Act (IIRIRA), which amended the Immigration and Nationality Act (INA) and  
22 Social Security Act in order to limit illegal aliens’ access to public benefits. Section 505 of  
23 IIRIRA would become 8 U.S.C. 1623. The House Conference Report documented the legislative  
24 intent of Section 505 as follows: “this section provides that illegal aliens are not eligible for in-  
25 state tuition rates at public institutions of higher education.”

26           35.    In 1996, a few months prior to the enactment of IIRIRA, Congress also enacted the  
27 Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), which also  
28 included a provision intended to stop the flow of state or local benefits to illegal aliens. 8 U.S.C.  
1621(a).

          36.    Under PRWORA, a non-U.S. citizen who is neither a “qualified alien” as defined  
in 8 U.S.C. 1641, nor an alien with valid nonimmigrant status under the Immigration and

1 Nationality Act (“INA”), nor an alien paroled into the United States under INA §212(d)(5), is  
2 ineligible for any State or local public benefit. 8 U.S.C. 1621(a).

3 37. An alien unlawfully present in the United States (“illegal alien”) is not a “qualified  
4 alien” as defined in 8 U.S.C. 1641.

5 38. The definition of a state or local benefit includes “... any ... postsecondary  
6 education ... or any other similar benefit for which payments or assistance are provided to an  
7 individual, household, or family eligibility unit by an agency of a State or local government or by  
8 appropriated funds of a State or local government.” 8 U.S.C. §1621(c).

9 39. Federal immigration statutes governing educational benefits preempt any  
10 inconsistent state laws. “Congress has ousted state power in the field of regulation of public  
11 benefits to immigrants by enacting legislation that denies federal, state and local ...  
12 postsecondary education benefits to aliens who are not ‘qualified.’” League of United Latin  
13 American Citizens v. Wilson (C.D.Cal. 1997) 997 F.Supp. 1244, 1254, citing 8 U.S.C. §1621.

14 40. The legislative intent of 8 U.S.C. 1623 is to create a private right of action held by  
15 out-of-state U.S. citizen students where any state has provided in-state tuition rates to illegal  
16 aliens and has denied that postsecondary educational benefit to out-of-state U.S. citizens. Former  
17 Wyoming Senator Alan Simpson co-sponsored the IIRIRA and, in connection with an action  
18 pending in the 10th Circuit Court of Appeals, submitted a declaration attesting to the intent  
19 underlying 8 U.S.C. 1623. Senator Simpson has testified, “[i]t was the Congressional intent that  
20 [8 U.S.C. 1623] create a valid, enforceable right for the ‘especial benefit’ of United States  
21 citizens and nationals.” (Ex. A: Declaration of the Honorable Alan K. Simpson.) (Emphasis  
22 added). Similarly, Congressman Lamar Smith (Texas), who serves on the Subcommittee on  
23 Immigration, Border Security, and Claims, Committee on the Judiciary – and was the primary  
24 sponsor of the IIRIRA – agreed that the foregoing was the legislative intent underlying 8 U.S.C.  
25 1623.

26 41. Thus, the Defendants’ *Illegal Alien Tuition Scheme* violates 8 U.S.C. 1623 and  
27 contravenes the “compelling government interest” of removing the incentive for illegal  
28 immigration by providing unlawful public benefits. To the contrary, the *Illegal Alien Tuition*

1 *Scheme* encourages unlawful immigration by affording benefits to illegal aliens denied to U.S.  
2 citizens and lawful residents. As reflected by the underlying legislative intent, 8 U.S.C. 1623  
3 creates a private right of action against the defendants for their knowing violation of the federal  
4 immigration laws.

5 California Law

6 42. California statutory and common law preclude illegal aliens from obtaining tuition  
7 benefits conferred upon lawful California residents. This prohibition is justified by the same  
8 public policy underlying the IIRIRA – discouraging violation of immigration laws and avoiding  
9 discrimination against out-of-state U.S. residents and lawfully admitted aliens. Section 68130.5  
10 establishes a *de facto* residency requirement which violates both state and federal law.

11 43. Residency for purposes of tuition is governed by California Education Code  
12 §68062(h), which provides that an alien can be a resident student for tuition purposes “unless  
13 precluded by the Immigration and Nationality Act . . . from establishing domicile in the United  
14 States.”

15 44. California law provides that §68062(h) “was intended to permit only legally  
16 admitted alien students to qualify as residents for tuition purposes. [¶] Accordingly, we hold that  
17 section 68062, subdivision (h), precludes undocumented alien students from qualifying as  
18 residents of California for tuition purposes.” Regents of University of California v. Superior  
19 Court (Bradford) (1990) 225 Cal.App.3d 972, 980.

20 45. Indeed, the withholding of tuition benefits from illegal aliens is consistent with  
21 California’s policy of not subsidizing violations of immigration laws and not discriminating  
22 against out-of-state U.S. citizens:

23 *The state’s legitimate interests in denying resident tuition to*  
24 *undocumented aliens are manifest and important. We will name*  
25 *just a few: the state’s interests in not subsidizing violations of law;*  
26 *in preferring to educate its own lawful residents; in avoiding*  
27 *enhancing the employment prospects of those to whom*  
28 *employment is forbidden by law; in conserving its fiscal resources*  
*for the benefit of its lawful residents; in avoiding accusations that it*  
*unlawfully harbors illegal aliens in its classrooms and dormitories;*  
*in not subsidizing the university education of those who may be*

1           deported; *in avoiding discrimination against citizens of sister*  
2           *states and aliens lawfully present*; in maintaining respect for  
3           government by not subsidizing those who break the law; and in not  
4           subsidizing the university education of students whose parents,  
          because of the risk of deportation if detected, are less likely to pay  
          taxes. Bradford, supra, 225 Cal.App.3d at 981 (emphasis added).

5           46.       Accordingly, as clarified by Bradford, “Education Code section 68062,  
6           subdivision (h) precludes undocumented alien students from qualifying as residents of California  
7           for tuition purposes.” American Assn. of Women v. Board of Trustees (1995) 31 Cal.App.4th  
8           702, 705. The proscription against granting nonresident tuition to illegal aliens explicitly applies  
9           to the University of California and the California State University. “[Bradford] is binding upon  
10          both the University of California and the California State University.” Id. at 706.

11          47.       Section 68130.5 employs a *de facto* residency requirement. The requirement  
12          under §68130.5 that an illegal alien demonstrate “[h]igh school attendance in California for three  
13          or more years” requires California residency *as a matter of law*. California Education Code  
14          §48200 requires that a pupil attend school in the district wherein the parent resides and Welfare  
15          and Institution Code §17.1 provides that a minor is deemed to reside with the parent with whom a  
16          minor maintains residence.

17          48.       Education Code §48200 dictates that a student’s residence is determined by that of  
18          the parent. “Section 48200 embodies the general rule that parental residence dictates a pupil’s  
19          proper school district. ‘By the terms of Education Code section 48200, a pupil is eligible to enroll  
20          in a public school maintained by the governing board of a school district in which the pupil’s  
21          parent resides.’ Section 48200 ‘generally requires that children attend school in the district where  
22          the residence of either the parent or legal guardian is located’” Katz v. Los Gatos-Saratoga Joint  
23          Union High School Dist. (2004) 117 Cal.App.4th 47, 57.

24          49.       Moreover, Welfare & Institution Code § 17.1 provides that a minor’s residence is  
25          determined by the residence of the parent with whom the minor lives. “[T]he residence of a  
26          minor person shall be determined by the following rules . . . [t]he residence of the parent with  
27          whom a child maintains his or her place of abode or the residence of any individual who has been  
28          appointed legal guardian or the individual who has been given the care or custody by a court of

1 competent jurisdiction, determines the residence of the child.” Wel. & Inst. Code §17.1.  
2 Accordingly, the primary test for a minor’s residency is “the residence of the parent with whom  
3 the minor maintains a ‘place of abode.’” In re Ramona S. (1976) 64 Cal.App.3d 945, 950.

4 50. Thus, because a pupil is required to attend high school in the district wherein the  
5 parent resides and a minor is deemed to reside with the parent with whom he or she lives, a pupil  
6 must necessarily be a resident of the California high school district which he or she attends.  
7 Accordingly, the §68130.5 requirement of “[h]igh school attendance in California for three or  
8 more years” necessarily requires at least three years of California residence.

9 51. Consequently, the *de facto* residency requirement inherent in the Defendants’  
10 *Illegal Alien Tuition Scheme* violates both the 8 U.S.C. 1623 prohibition against granting illegal  
11 aliens educational benefits “on the basis of residence within a State” and the aforementioned  
12 California statutes – and supporting case law – prohibiting the granting of tuition benefits to  
13 illegal aliens.

14 **California Education Code §§68130.5, 68130.7**

15 52. Section 68130.5 denies out-of-state U.S. citizens exemption from nonresident  
16 tuition while conferring this benefit upon illegal aliens. Section 68130.5, signed into law by the  
17 Governor on October 12, 2001 and effective January 1, 2002, was based on Assembly Bill 540.  
18 AB 540, in turn, was substantially the same as AB 1197 introduced in the 1999-2000 legislative  
19 session and vetoed by the same Governor on the grounds that it violated the IIRIRA and was  
20 fiscally unsound. In short, §68130.5 is based on a bill whose predecessor was vetoed because it  
21 violated federal law. Due to the acknowledged illegality of §68130.5, the Defendants caused the  
22 implementation of §68130.7 which ostensibly protects them for their unlawful conduct under  
23 §68130.5.

24 53. The full text §68130.5, as enacted, provides that “notwithstanding any other  
25 provision of the law”:

- 26 (a) A student, other than a nonimmigrant alien within the meaning of paragraph  
27 (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, who  
28 meets all of the following requirements shall be exempt from paying nonresident  
tuition at the California State University and the California Community Colleges:

1 (1) High school attendance in California for three or more years.

2 (2) Graduation from a California high school or attainment of the  
3 equivalent thereof.

4 (3) Registration as an entering student at, or current enrollment at, an  
5 accredited institution of higher education in California not earlier than the  
6 fall semester or quarter of the 2001-02 academic year.

7 (4) In the case of a person without lawful immigration status, the filing  
8 of an affidavit with the institution of higher education stating that the  
9 student has filed an application to legalize his or her immigration status, or  
10 will file an application as soon as he or she is eligible to do so.

11 (b) A student exempt from nonresident tuition under this section may be  
12 reported by a community college district as a full-time equivalent student for  
13 apportionment purposes.

14 (c) The Board of Governors of the California Community Colleges and the  
15 Trustees of the California State University shall prescribe rules and regulations  
16 for the implementation of this section

17 (d) Student information obtained in the implementation of this section is  
18 confidential.

19 54. Upon promulgating §68130.5, at the behest of the Defendants, the California  
20 legislature enacted a measure to limit the Defendants' liability arising thereunder. Section  
21 68130.7 provides:

22 If a state court finds that Section 68130.5, or any similar provision  
23 adopted by the Regents of the University of California, is unlawful,  
24 the court may order, as equitable relief, that the administering entity  
25 that is the subject of the lawsuit terminate any waiver awarded  
26 under that statute or provision, but no money damages, tuition  
27 refund or waiver, or other retroactive relief, may be awarded. In any  
28 action in which the court finds that Section 68130.5, or any similar  
provision adopted by the Regents of the University of California, is  
unlawful, the California Community Colleges, the California State  
University, and the University of California are immune from the  
imposition of any award of money damages, tuition refund or  
waiver, or other retroactive relief.

55. In granting illegal aliens exemption from nonresident tuition while denying this  
benefit to out-of-state U.S. citizens, §68130.5 violates state and federal statutes specifically  
proscribing such action – Education Code §68062(h) provides that “only legally admitted alien  
students to [may] qualify as residents for tuition purposes,” and 8 U.S.C. 1623 bars an alien not

1 lawfully present in the United States from eligibility, on the basis of residence within a state, for  
2 “any postsecondary education benefit” unless a United States citizen is eligible for the same  
3 benefit. Moreover, 8 U.S.C. 1621 also prohibits states from extending state or local public  
4 benefits, including in-state tuition rates, to illegal aliens. The legislative history underlying  
5 §68130.5 shows that the Defendants made a knowing and deliberate decision to violate federal  
6 and state law.

7  
8 Assembly Bill 1197

9 56. Assembly Bill 540, which served as the legislative predicate for §68130.5, was the  
10 second attempt by the California legislature to implement a statute which denied out-of-state  
11 United States citizens, characterized as “nonimmigrant aliens,” exemption from nonresident  
12 tuition granted to “persons without lawful immigration status.” The first bill was vetoed by then  
13 Governor Davis because it was in violation of federal law and implicated an unacceptable  
14 financial burden. Indeed, Governor Davis expressly conceded that federal immigration law  
15 would require that all out-of-state U.S. citizens – i.e., the Class Plaintiffs – be eligible for the  
16 same benefit conferred on illegal aliens under current §68130.5.

17 57. During the 1999-2000 legislative session, Assemblyman Firebaugh – who later  
18 authored AB 540 – introduced Assembly Bill 1197. AB 1197 was substantively the same as AB  
19 540 and sought to qualify “long term California residents, . . . regardless of citizenship status, for  
20 the lower resident fee payments.” (Ex. B: Sen. Rules Com., Off. of Sen. Floor Analyses, 3d  
21 reading analysis of AB 1197 (1999-2000 Reg. Sess.) as amended January 4, 2000, p. 1.)

22 58. In attempting to enact AB 1197, the California Legislature explicitly  
23 acknowledged that the bill circumvented Federal immigration laws. “AB 1197 would require that  
24 a person, including an alien precluded from establishing California residency because of federal  
25 law, who meets certain eligibility requirements, be exempted from paying nonresident tuition . . .”  
26 (Ex. C: Appropriations Com. Fiscal Summary of AB 1197 (1999-2000 Reg. Sess.) as amended  
27 January 4, 2000, p. 1.)

28 59. However, the Governor vetoed AB 1197 for the very reason that it violated federal

1 law and because it would cost California tens of millions of dollars. In the message  
2 accompanying his veto, the Governor set forth the scope of the bill. "This bill would exempt any  
3 person who has filed a petition for lawful immigration Status and meets other specified criteria,  
4 from paying nonresident fees for attending the California Community Colleges, the California  
5 State University, or the University of California." (Ex. D: Governor's Veto of AB 1197 (1999-  
6 2000 Reg. Sess.) as amended January 4, 2000, p. 3.)

7 60. The Governor explicitly acknowledged that the relief offered by AB 1197 was in  
8 contravention of the federal immigration laws, specifically §1623. "Pursuant to the Illegal  
9 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), undocumented aliens  
10 are ineligible to receive postsecondary education benefits based on state residence unless a citizen  
11 or national of the United States would be eligible for the same benefits without regard to their  
12 residence (Title VIII, Section 1623)." (*Id.* at pp. 3-4 (parenthesis in original)).

13 61. The Governor stated that in order to give effect to AB 1197 without violating  
14 federal law, the same tuition exemption must be granted to out-of-state U.S. citizens at an  
15 estimated cost of over \$63 million for the year 1998 alone. "In order for undocumented students  
16 to be exempt from paying nonresident tuition charges as called for in this legislation, *IIRIRA*  
17 *would require that all out-of-state legal residents be eligible for this same benefit.* Based on  
18 Fall 1998 enrollment figures at the University of California and the California State University  
19 alone, this legislation could result in a revenue loss of over \$63.7 million to the State." (*Id.* at p. 4  
20 (emphasis added)).

21 62. The Governor accordingly vetoed AB 1197 on the grounds that the State's priority  
22 was the higher education of "legal" residents. "For the reasons outlined above, I cannot support  
23 AB 1197. I believe the State's priorities and funding must be focused on higher education  
24 attainment for California legal residents, both present and future." (*Id.*)

25 **Assembly Bill 540**

26 63. Despite the acknowledged illegality of AB 1197 – as reflected by the Governor's  
27 veto, the California legislature introduced the "same" bill. The later bill was justified by a  
28

1 legislative staff attorney who opined that AB 540 passed muster because it purportedly did not  
2 tamper with an illegal alien's residency status. The Defendants seized on the foregoing to  
3 implement the *Illegal Alien Tuition Scheme* and effectuate their policy of denying out-of-state  
4 U.S. citizens exemption from nonresident tuition.

5 64. In the 2001-2002 legislative session, Assemblyman Firebaugh reintroduced AB  
6 1197 in the form of AB 540. Indeed, the legislature acknowledged that AB 1197 "contained the  
7 same general provisions as this bill [AB 540]." (Ex. E: Appropriations Com. Fiscal Summary of  
8 AB 540 (2001-2002 Reg. Sess.) as amended July 3, 2001, p. 1.) Likewise, the descriptive  
9 summary of AB 540 was identical to AB 1197, indicating that AB 540 sought to qualify "long  
10 term California residents, . . . regardless of citizenship status, for the lower resident fee  
11 payments." (Ex. F: Concurrence in Senate Amendments of AB 540 (2001-2002 Reg. Sess.) as  
12 amended September 7, 2001, p. 1.)

13 65. In implementing AB 540, the legislature acknowledged the significant loss of  
14 tuition revenue to the State of California precipitated by the bill. For example, the legislature  
15 estimated that the value of the exemptions awarded under AB 540, in combination with the  
16 applicable grants, exceeded \$4 million for a single four-year California State University class.  
17 "Those students receiving Cal Grant B awards in the first year would be eligible to receive Cal  
18 Grant A awards in the second, third, and fourth years for total eligibility award costs of up to  
19 \$4,021,650." (Ex. E: Appropriations Com. Fiscal Summary of AB 540 (2001-2002 Reg. Sess.)  
20 as amended July 3, 2001, p. 2.)

21 66. The Legislature acknowledged that Governor Davis had vetoed predecessor AB  
22 1197 on the grounds that it violated 8 U.S.C. 1623. "In his veto message, Governor Davis cited  
23 the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), by which  
24 undocumented aliens are ineligible to receive postsecondary education benefits based on state  
25 residence unless a citizen or national of the U.S. would be eligible for the same benefits without  
26 regard to their residence (Title VIII, Section 1623)." (Ex. F: Concurrence in Senate  
27 Amendments of AB 540 (2001-2002 Reg. Sess.) as amended September 7, 2001, p. 4 (parenthesis  
28 in original)).



1 Reg. Sess.) as amended January 24, 2002, p. 2.)

2 72. Thus, AB 1543 was intended to protect the California post-secondary institutions  
3 from liability arising from the violation of federal immigration laws. "This bill limits the legal  
4 exposure for the University of California, the California State University, and the California  
5 Community Colleges if a state court finds unlawful existing provisions of law which exempt  
6 specified nonimmigrant alien students who, in part, have attended California high schools for  
7 three or more years from paying nonresident tuition." (*Id.* at p. 1.) Likewise, the legislative  
8 summary for AB 1543 confirmed that it exempted the participating California post-secondary  
9 institutions from liability arising from §68130.5, observing that the bill "[p]rovides specified legal  
10 protections to the University of California (UC), California State University (CSU) and the  
11 California Community Colleges (CCC) if a state court finds unlawful Education Code Section  
12 68130.5 or any similar regulation." (Ex. H: Concurrence in Senate Amendments of AB 1543  
13 (2001-2002 Reg. Sess.) as amended January 24, 2002, p.1.) Assembly Bill 1543 was codified as  
14 California Education Code §68130.7.

15 73. Thus, as the final component of the *Illegal Alien Tuition Scheme*, §68130.7  
16 purports to protect the Defendants from their knowing violation of the United States Constitution,  
17 federal law and California law. The course of conduct engaged in by the defendants in procuring  
18 legislative immunity from the consequences of implementing the *Illegal Alien Tuition Scheme* is  
19 an admission from defendants that they were in fact about to engage in conduct violating federal,  
20 state and constitutional rights.

21 74. However, §68130.7 is void and ineffective, since it seeks to insulate Defendants  
22 from federal and state constitutional rights and guarantees in furtherance of civil rights and  
23 against discrimination.

24 **The University of California's Standing Order 110.2**

25 75. The University of California, as an "autonomous" entity, could choose whether or  
26 not to adopt AB 540. However, as reflected by the legislative history underlying AB 1543, the  
27 Board of Regents was concerned that AB 540 violated the IIRIRA and refused to implement it  
28

1 absent protection from liability arising thereunder. Only after ostensibly obtaining protection  
2 from their unlawful conduct did the U.C. Board of Regents choose to adopt the *Illegal Alien*  
3 *Tuition Scheme*.

4 76. The rules regarding legal residence for tuition purposes at the University of  
5 California are governed by the California Education Code and implemented by Standing Order  
6 110.2 of the Regents of the University of California. Beginning in late 2001 and continuing in  
7 2002, the Board of Regents undertook the matter of amending Standing Order 110.2 to implement  
8 AB 540.

9 77. On November 15, 2001, defendant U.C. Board of Regents met to consider the U.C.  
10 President's recommendation that the University of California adopt Education Code §68130.5.  
11 "The President recommended that following service of appropriate notice, the Committee on  
12 Finance recommend that The Regents consider at the January 2002 meeting the amendment of  
13 Standing Order 110.2 – Matters Relating to Residency, as follows: ... [a] student meeting the  
14 requirements of Section 68130.5 of the Education Code of the State of California shall also be  
15 exempt from paying nonresident tuition." (Ex. I: Minutes of the November 15, 2001 meeting of  
16 the Regents of the University of California's Committee on Educational Policy Committee on  
17 Finance, pp. 1-2.)

18 78. However, defendant U.C. Board of Regents "deferred" implementing amended  
19 Standing Order 110.2 until the financial exposure arising from legal liability had been curtailed.  
20 "This change is subject to implementation of the amendment being deferred until the President,  
21 with the concurrence of the Chairman of the Board, the Chair of the Committee on Finance, and  
22 the Chair of the Committee on Educational Policy, determined, based on advice of the General  
23 Counsel, that potential financial exposure has been eliminated or reduced to an acceptable level."  
24 (*Id.*, p. 2.)

25 79. Indeed, as with the California legislature, the defendant U.C. Board of Regents  
26 *acknowledged* that §68130.5 violated federal immigration laws. "Because of the potential for  
27 financial exposure resulting from the terms of the federal Illegal Immigration Reform and  
28 Immigrant Responsibility Act of 1996, the Regents is being asked to approve the amendment to

1 the Standing Orders, thereby supporting the intent of Assembly Bill 540, subject to satisfactory  
2 resolution of the legal issues involved.” (Id., p. 3.)

3 80. On January 17, 2002, the defendant U.C. Board of Regents voted overwhelmingly  
4 to adopt §68130.5. “As a measure to further expand access to a University of California  
5 education, the UC Board of Regents today (Jan. 17) conditionally approved by a 17-5 vote a new  
6 tuition exemption program that will allow certain nonresident students to pay in-state fees if they  
7 have attended at least three years at and graduated from a California high school. [¶] With the  
8 exemption, which was proposed in response to passage of Assembly Bill 540 (authored by  
9 Assemblyman Marco Firebaugh, D-Los Angeles), eligible students will be exempt from paying  
10 the nonresident tuition fee. In 2001-02, the annual nonresident tuition fee is \$10,704.” (Ex. J:  
11 U.C. President Press Release of January 17, 2002 (parenthesis in original)).<sup>2</sup>

12 81. The defendant U.C. Board of Regents nevertheless acknowledged that  
13 implementation of *Illegal Alien Tuition Scheme* was conditioned upon protection for liability  
14 arising thereunder. “The regents’ action aligns UC policy with new state policies for CSU and  
15 the community colleges; these policies were contained in AB 540 and signed into law last  
16 October. However, implementation at UC is conditioned on the enactment of additional state  
17 legislation limiting UC’s liability should the new policy ever be successfully challenged in the  
18 courts.” (Id.)

19 82. In view of the perceived protection to be afforded thereunder, the U.C. Regents  
20 amended Standing Order 110.2 to exempt “persons without lawful immigration status” from  
21 paying nonresident tuition. “A student meeting the requirements of Section 68130.5 of the  
22 Education Code of the State of California shall be exempt from paying nonresident tuition.” (Ex.  
23 K.)<sup>3</sup>

24 83. In conjunction with the Press Release, the U.C. President further issued a  
25 “Questions and Answers” statement. This statement acknowledged that the tuition exemption

26 <sup>2</sup> The January 17, 2002 press release is available online at [http://www.ucop.edu/news/  
27 archives/2002/ab540qa.htm](http://www.ucop.edu/news/archives/2002/ab540qa.htm).

28 <sup>3</sup> Standing Order 110.2 is available online at [http://www.universityofcalifornia.edu/  
regents/bylaws/so1102.html](http://www.universityofcalifornia.edu/regents/bylaws/so1102.html).

1 required actual residence in California. "Can students living out of state enroll in a private  
2 California 'Internet high school,' complete their course work via distance learning or  
3 correspondence, and meet the California high school enrollment and graduation requirement? [¶]  
4 No. This type of private school would not meet the requirements of Section 48222 of the  
5 California Education Code, which defines what constitutes a 'high school in California' for the  
6 purposes of exemption eligibility." (Ex. L: U.C. President Press Release of January 17, 2002 –  
7 U.C. Tuition Exemption Questions and Answers, p. 2, ¶8.)<sup>4</sup>

8 84. Accordingly, defendant U.C. Board of Regents acknowledged that §68130.5  
9 violated the IIRIRA and refused to implement it without protection from liability arising  
10 thereunder. Defendant U.C. Board of Regents were therefore active participants in the creation  
11 and maintenance of the *Illegal Alien Tuition Scheme*.

12 **V.**  
13 **CLASS ALLEGATIONS**

14 85. "Under the class action provisions of the Federal Rules of Civil Procedure, to  
15 which California courts look in the absence of state authority, rule 23(a) requires that before a suit  
16 can be certified as a class action, four criteria must be met: (1) numerosity, (2) commonality, (3)  
17 typicality, and (4) adequacy of representation." 7-Eleven Owners for Fair Franchising v.  
18 Southland Corp. (2000) 85 Cal.App.4th 1135, 1160.

19 86. The Plaintiff Class satisfies the prerequisites for a class action under California  
20 law. The numerosity element is satisfied under Rule 23(a)(1) because the class is so numerous  
21 that joinder of all members is impractical. The commonality element is satisfied under Rule  
22 23(a)(2) because common questions of law and fact predominate in the class. The typicality  
23 element is satisfied under Rule 23(a)(3) because the claims of the class representatives are typical  
24 of the claims of the class. Finally, the adequacy of representation element is satisfied under Rule  
25 23(a)(4) because the class representatives are able to fairly and adequately protect the interests of  
26 all class members.

27 \_\_\_\_\_  
28 <sup>4</sup> The "Questions and Answers" statement accompanying the January 17, 2002 press release  
is also available online at <http://www.ucop.edu/news/archives/2002/ab540qa.htm>.

1           87.    *Numerosity.* Publicly available information reflecting a fraction of the class  
2 plaintiffs herein demonstrates that the class satisfies the numerosity element under Rule 23(a)(1).  
3 According to a summary of enrollment figures on its website, the University of California  
4 enrolled 2,101 “nonresident domestic” freshman for the year 2003, 2,124 for the year 2002, and  
5 2,077 for the year 2001. According to a summary of enrollment figures on its website, the  
6 California State University system enrolled 1,256 “new first-time freshmen” from “other states”  
7 for the year 2004. According to publicly available information, the California Community  
8 Colleges enrolled 1,439,923 students, approximately 37,000 of which were “full-time equivalent”  
9 out-of-state students. The Plaintiffs constitute an ascertainable class readily identifiable by their  
10 status as non-resident U.S. citizens matriculating at the defendant institutions and illegally denied  
11 exemption from non-resident tuition granted to “persons without lawful immigration status”  
12 under §68130.5.

13           88.    *Commonality.* A common nucleus of law and operative facts is inherent to the  
14 plaintiff class and therefore satisfies the commonality element under Rule 23(a)(2). Section  
15 68130.5 illegally denies each class plaintiff exemption from nonresident tuition granted to  
16 “persons without lawful immigration status” and thereby causes the same harm in dictating  
17 payment of nonresident tuition. As a result, each class plaintiff has a common claim for, *inter*  
18 *alia*, violation of 8 U.S.C. 1623, 42 U.S.C. 1983, the Fourteenth Amendment and the Unruh Civil  
19 Rights Act.

20           89.    *Typicality.* The equivalence of the named plaintiffs’ legal and remedial theories  
21 with that of the plaintiff class satisfies the typicality element under Rule 23(a)(3). The named  
22 plaintiffs have suffered actual injury in having to pay nonresident tuition, whereas “persons  
23 without lawful immigration status” have been illegally exempt from this requirement. The entire  
24 class – named plaintiffs and class plaintiffs alike – has suffered the same type of injury arising  
25 from the same events, practice and course of conduct. Section 68130.5 denies all class members  
26 – named plaintiffs and class plaintiffs alike – the tuition benefit afforded to “persons without  
27 lawful immigration status” in violation of Federal law, thereby entitling all class members to  
28 reimbursement of nonresident tuition fees.

1           90.    *Adequacy of representation.* The named plaintiffs will fairly and adequately  
2 protect the interests of all class members in accordance with Rule 23(a)(4). The class  
3 representatives' counsel is experienced and competent. As set forth herein, the named plaintiffs'  
4 interests are the same as the other class members, and there is no antagonism between the  
5 interests of the named plaintiffs and that of other class members. The named plaintiffs have the  
6 financial resources to prosecute the action.

7           91.    *Scope and breadth and relief requested.* The class is large and broad, consisting  
8 of thousands of out-of-state students who attended the U.C. system, the C.S.U. system, and the  
9 California Community College system at any time after January 1, 2002 and continuing to the  
10 present and beyond, since the illegal laws and orders have never been repealed. The class  
11 consists of students currently enrolled or who have been enrolled since January 1, 2002, so long  
12 as any member of the class paid at least one illegally-extracted out-of-state tuition bill, and  
13 includes all undergraduates, all graduate students, post-graduate students and students enrolled in  
14 all professional schools. The damages for each class member are readily ascertainable and can be  
15 easily determined by the defendants: the defendants merely have to examine their records for  
16 out-of-state students during the period in question (and continuing) to determine the out-of-state  
17 students' status and whether out-of-state tuition bills have been demanded of that student. This  
18 may be readily accomplished through the defendants' computer databases. Since both the  
19 identity of all class members entitled to relief and the exact amount of each class members' relief  
20 may be ascertained from the defendants' records, the rendition of relief to eligible class members  
21 is readily capable of implementation. Further damages (Unruh Act) requested in this complaint  
22 are also readily ascertainable for each class member, since class member eligible for relief  
23 automatically receives the same \$25,000 amount "per victim" and each class member will also be  
24 automatically eligible to recover three times the amount of actual damages (the tuition differential  
25 between in-state and out-of-state tuition) or \$4,000 "per offense" (each tuition bill constitutes a  
26 separate offense) – whichever measure of damages is greater. All such damage formulas,  
27 mandated by California law, are automatic, formula driven, and are easily ascertainable from the  
28 defendants' records. Each year, approximately 20,000 new members will be added to the class,

1 consisting of new freshmen entering the U.C. system, the C.S.U. system, and the California  
2 Community College system. So long as the defendants continue to violate federal and state law,  
3 new members will be damaged.

4 VI.

5 CLAIMS FOR RELIEF

6 FIRST CAUSE OF ACTION

7 VIOLATION OF 8 U.S.C. 1623

8 92. Plaintiffs incorporate by reference ¶¶ 1 through 91 above.

9 93. 8 U.S.C. 1623(a) expressly bars an alien who is not lawfully present in the United  
10 States from eligibility, on the basis of residence within a State or a political subdivision therein,  
11 for "any postsecondary education benefit," unless a United States citizen is eligible for the same  
12 benefit (in no less an amount, duration, and scope) without regard to whether the citizen is a  
13 resident.

14 94. Defendants, acting upon California Education Code §68130.5, have and continue  
15 to violate 8 U.S.C. 1623 by denying "nonimmigrant alien" U.S. citizens who are residents of  
16 other states eligibility for those same postsecondary education benefits in the same amount,  
17 duration, and scope, offered to the aliens without lawful immigration status. Defendants have  
18 offered a postsecondary education benefit to illegal aliens who have attended California high  
19 schools for three or more years, and graduated therefrom or attained an equivalent degree or  
20 certificate. Because it is an illegal alien's California residency that entitles him to attend a  
21 California high school, §68130.5 imposes a *de facto* durational residency requirement. So long as  
22 such denials occur under color of California state law, Defendants are in violation of federal law.

23 95. Finally, under §68130.5, a lawfully admitted alien residing in the United States  
24 who is eligible for fees and tuition for "residents" of another state is deemed ineligible for the  
25 postsecondary education benefit offered by the State of California. Thus, being a resident of  
26 another state disqualifies a legal alien from obtaining this education benefit. Therefore, only an  
27 illegal alien who is a resident of California is eligible to receive the postsecondary education  
28 benefit offered under §68130.5. This eligibility violates 8 U.S.C. 1623.



1 Nationality Act, nor an alien paroled into the United States under INA §212(d)(5), is ineligible for  
2 any State or local public benefit. (8 U.S.C. 1621(a)).

3 104. The definition of a state or local benefit includes “... any ... postsecondary  
4 education ... or any other similar benefit for which payments or assistance are provided to an  
5 individual, household, or family eligibility unit by an agency of a State or local government or by  
6 appropriated funds of a State or local government.” (8 U.S.C. 1621(c)).

7 105. California state government agencies that are classified as “postsecondary  
8 educational institutions,” including the institutions of the University of California and the  
9 California State University System, and the California Community Colleges, are bound by the  
10 restrictions of 8 U.S.C. 1621. Payment of tuition at greatly reduced rates is therefore, as a matter  
11 of law, a state or local benefit forbidden to illegal aliens.

12 106. PRWORA provided states or local governments with a single loophole by which  
13 an alien who is not lawfully present in the United States may be made eligible for a state or local  
14 public benefit. Such eligibility may be provided “only through the enactment of a State law after  
15 August 22, 1996, which affirmatively provides for such eligibility.” (8 U.S.C. 1621(d)).

16 107. The legislative history of 8 U.S.C. 1621(d) makes clear that any state seeking to  
17 provide public benefits to illegal aliens, and to avoid the general prohibition of such benefits  
18 under 8 U.S.C. 1621, must specify that “illegal aliens” are eligible for such benefits and must  
19 specifically refer to 8 U.S.C. 1621(d) in the relevant state statute. 104th Cong., 2nd Session.,  
20 Conference Report No. 104-725 on H.R. 3734 (July 31, 1996), at 383:

21 No current State law, State constitutional provision, State executive  
22 order or decision of any State or Federal court shall provide a  
23 sufficient basis for a State to be relieved of the requirement to deny  
24 benefits to illegal aliens. Laws, ordinances, or executive orders  
25 passed by county, city or other local officials will not allow those  
26 entities to provide benefits to illegal aliens. **Only the affirmative  
27 enactment of a law by a State legislature and signed by the  
28 Governor after the date of enactment of this Act, that references  
this provision, will meet the requirements of this section.** The  
phrase “affirmatively provides for such eligibility” means that the  
State law enacted must specify that illegal aliens are eligible for  
State or local benefits. Persons residing under color of law shall be  
considered to be aliens unlawfully present in the United States and  
are prohibited from receiving State or local benefits, as defined,  
regardless of the enactment of any State law. (Emphasis added.)

1 108. Section 68130.5 does not meet the statutory requirements of 8 U.S.C. 1621(d):

2 (a) Federal law uses the terms "illegal alien" and "alien who is not lawfully present in  
3 the United States" synonymously in 8 U.S.C. 1621(d). In contrast, the undefined term "person  
4 without lawful immigration status" is used in §68130.5. The failure of §68130.5 to use the  
5 appropriate legal terms defeats any attempt to invoke the exceptions under U.S.C. 1621(d);

6 (b) Section 68130.5 does not specify that "illegal aliens" are eligible for state or local  
7 benefits, and thus fails to use the express statutory language required by federal law;

8 (c) Section 68130.5 does not make reference to the provisions of 8 U.S.C. 1621(d), as  
9 required by Congress;

10 (d) Section 68130.5 requires California postsecondary educational institutions to  
11 provide State and local benefits to aliens "without lawful immigration status."

12 109. The effect of 8 U.S.C. 1623 is to preempt any state law, such as §68130.5, which  
13 purports to grant illegal aliens tuition benefits denied to out-of-state U.S. citizens.

14 110. Plaintiffs are among the classes of United States citizens for whose specific benefit  
15 and protection 8 U.S.C. 1621 was enacted by Congress.

16 111. Implementation of §68130.5 by the Defendants violates and will continue to  
17 violate 8 U.S.C. 1621 unless and until judicial relief is granted.

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF 42 U.S.C. 1983**

20 112. Plaintiffs incorporate by reference ¶¶ 1 through 111 above.

21 113. 42 U.S.C. 1983 protects against deprivation of all the rights guaranteed by the  
22 Constitution or laws of the United States; including those guaranteed by the Fourteenth  
23 Amendment. Paul v. Davis (1976) 424 U.S. 693, 712 n.5. "Section 1983 makes a deprivation of  
24 such rights actionable independently of state law." Id.

25 114. Individual Defendants Dynes, Reed and Drummond have been, at all times  
26 mentioned in this complaint, acting in their capacities as President of the University of California,  
27 Chancellor of the California State University and Chancellor of the California Community  
28

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Colleges, respectively. Defendants are sued in their individual capacities.

115. Defendants have been, at all times mentioned in this complaint, acting in the course and scope of their employment.

116. Defendants have been, at all times mentioned in this complaint, acting under color of state law. Specifically, in depriving out-of-state U.S. citizens the exemption from nonresident tuition granted to "persons without lawful immigration status," Defendants have been acting under color of California Education Code §68130.5.

117. The continuing discrimination by Defendants against out-of-state U.S. citizens in depriving them of an exemption from nonresident tuition granted to "persons without lawful immigration status" constitutes a violation of rights protected by the Constitution, in the form of the Fourteenth Amendment, and federal statute, in the form of 8 U.S.C. 1623.

118. The effect of 8 U.S.C. 1623 is to preempt any state law, such as §68130.5, which purports to grant illegal aliens tuition benefits denied to out-of-state U.S. citizens.

119. As a direct and proximate result of depriving out-of-state U.S. citizens the exemption from nonresident tuition granted to "persons without lawful immigration status," the Defendants have caused harm to the Plaintiffs by compelling payment of nonresident tuition from which illegal aliens are unlawfully exempt under §68130.5.

120. The Plaintiffs are further entitled to attorneys fees under 42 U.S.C. §1988, which authorizes an award of a reasonable attorneys fees as part of the costs to the prevailing party in actions under 42 U.S.C. §1988.

121. In acting as alleged herein, Defendants have acted knowingly, willfully and with disregard for Plaintiffs' federally protected rights under the Fourteenth Amendment and 8 U.S.C. 1623.

**FOURTH CAUSE OF ACTION**

**VIOLATION OF EQUAL PROTECTION CLAUSE OF U.S. CONSTITUTION**

122. Plaintiffs incorporate by reference ¶¶ 1 through 121 above.

123. The *Illegal Alien Tuition Scheme* violates the constitutional rights of plaintiff U.S.

1 citizens to equal protection of the law under the Fourteenth Amendment by effectively denying  
2 Plaintiffs the postsecondary educational benefits granted to illegal aliens residing in California.

3 124. Illegal alien beneficiaries of §68130.5 and U.S. citizen Plaintiffs are similarly  
4 situated in that neither class is lawfully domiciled in the state of California. However, illegal  
5 alien beneficiaries of §68130.5 are provided access to in-state tuition rates at California  
6 postsecondary institutions, whereas Plaintiffs are denied this benefit.

7 125. The text, structure, and history of §68130.5 demonstrate an intent to discriminate  
8 against U.S. citizen Plaintiffs, in favor of similarly-situated illegal aliens.

9 126. “[T]he Court’s decisions have established that classifications based on alienage . . .  
10 are inherently suspect and subject to close judicial scrutiny.” Graham v. Richardson (1971) 403  
11 U.S. 365, 376. State laws that discriminate between U.S. citizens and illegal aliens in the  
12 extension of educational benefits are evaluated under “heightened” review, rather than mere  
13 rational basis review. Plyer v. Doe (1982) 457 U.S. 202, 238-239 (Powell, J., concurring).  
14 Accordingly, the Defendants’ discriminatory treatment can only withstand constitutional  
15 challenge if it serves important governmental objectives and is substantially related to those  
16 objectives.

17 127. Section 5 of the Fourteenth Amendment empowers Congress to implement  
18 legislation in furtherance of the protections afforded under the Equal Protection Clause. “The  
19 Congress shall have the power to enforce, by appropriate legislation, the provisions of this  
20 article.” The language of 8 U.S.C. 1623 expresses a determination by Congress that under certain  
21 circumstances, equal protection and equal treatment is mandated for out-of-state students,  
22 namely, when a state has granted certain significant benefits to illegal aliens attending college in  
23 that state. Therefore, 8 U.S.C. 1623 constitutes a specific carve-out and specific equal protection  
24 classification/guarantee mandated by Congress pursuant to its powers under the Fourteenth  
25 Amendment and, as a result, 8 U.S.C. 1623 rises to a level of a Constitutional guarantee.

26 128. Defendants, by acting under color of state law to effectuate California Education  
27 Code §68130.5, have extended postsecondary education benefits to a particular class of persons in  
28 the United States. Specifically, persons “without lawful immigration status” have been deemed

1 by Defendants to be eligible for exemption from nonresident tuition to which they are not entitled  
2 under federal law. Defendants have further denied out-of-state U.S. citizens the identical  
3 postsecondary education benefits to which they are expressly entitled by federal law.

4 129. Discriminating against U.S. citizens in favor of illegal aliens in the provision of  
5 postsecondary education benefits fails equal protection analysis under heightened scrutiny. This  
6 discriminatory treatment is not substantially related to any important governmental objective.  
7 The statutory findings of the California legislature reveal its objective to be "increas[ing] the  
8 state's collective productivity and economic growth." Cal. Stats 2001, ch. 814 §1(a)(3). The  
9 subsidization of the postsecondary education of aliens who may not lawfully work in the state of  
10 California cannot promote this objective without violating federal law. Moreover, §68130.5  
11 undermines the "compelling government interest [in] remov[ing] the incentive for illegal  
12 immigration provided by the availability of public benefits." 8 U.S.C. 1601(6). Section 68130.5  
13 also undermines the rule of law by encouraging illegal aliens, whose presence in the United States  
14 constitutes an ongoing violation of federal law, to remain in the United States to avail themselves  
15 of the statute's benefits.

16 130. The *Illegal Alien Tuition Scheme* is further contrary to the specific governmental  
17 objective of barring an alien not lawfully present in the United States from eligibility, on the basis  
18 of residence within a state, for "any postsecondary education benefit" unless a United States  
19 citizen is eligible for the same benefit. 8 U.S.C. 1623.

20 131. Accordingly, the *Illegal Alien Tuition Scheme* violates the Fourteenth Amendment  
21 by granting illegal aliens the privilege of classification as *de facto* residents of California for  
22 tuition eligibility purposes, while similarly-situated U.S. citizens and legal permanent residents of  
23 other states are denied such benefits. The scheme discriminates in favor of a class of illegal  
24 aliens who are prohibited by state and federal law from establishing either legal residence or  
25 domicile in the state of California. This discriminatory treatment constitutes a violation of the  
26 Equal Protection Clause of the U.S. Constitution.

27 132. As a direct and proximate result of depriving out-of-state U.S. citizens the  
28 exemption from nonresident tuition granted to illegal aliens in violation of the Fourteenth

1 Amendment, the Defendants have caused harm to the Plaintiffs by compelling payment of  
2 nonresident tuition from which “persons without lawful immigration status” are  
3 unconstitutionally exempt under §68130.5.

4 133. In acting as alleged herein, Defendants have acted knowingly, willfully, and with  
5 disregard for Plaintiffs’ federally protected rights.

6 **FIFTH CAUSE OF ACTION**

7 **VIOLATION OF 14TH AMENDMENT PRIVILEGES AND IMMUNITIES CLAUSE**

8 134. Plaintiffs incorporate by reference ¶¶ 1 through 133 above.

9 135. The Privileges and Immunities Clause of the Fourteenth Amendment of the U.S.  
10 Constitution bars the states from enacting laws that infringe upon the privileges of U.S.  
11 citizenship. “No state shall make or enforce any law which shall abridge the privileges or  
12 immunities of citizens of the United States....” U.S. Const., 14th Am., Section 1. Section  
13 68130.5 abridges a fundamental privilege that attaches to U.S. citizenship: the privilege that a  
14 U.S. citizen shall be treated no worse under law than an alien unlawfully present in the United  
15 States. By making illegal aliens who possess no lawful domicile in the state of California eligible  
16 for in-state tuition rates, while denying this benefit to U.S. citizens whose lawful domicile is  
17 outside California, the state of California has denigrated U.S. citizenship and placed U.S. citizen  
18 Plaintiffs in a legally disfavored position compared to that of illegal aliens.

19 136. The United States Supreme Court has specifically warned against such denigration  
20 of U.S. citizens who leave their state of domicile and travel to a new state. Indeed, the Court has  
21 compared this denigration to treating U.S. citizens as unwelcome (i.e., illegal) aliens. The  
22 Privileges and Immunities Clause protects U.S. citizens’ “right to be treated as a welcome visitor  
23 rather than an unfriendly alien when temporarily present in the second State.” Saenz v. Roe  
24 (1999) 526 U.S. 489, 500. Defendants, by implementing §68130.5, have taken this concept one  
25 step further – they treat U.S. citizens *worse* than illegal aliens.

26 137. Section 5 of the Fourteenth Amendment empowers Congress to implement  
27 legislation in furtherance of the protections provided by the Privileges and Immunities Clause.  
28

1 “The Congress shall have the power to enforce, by appropriate legislation, the provisions of this  
2 article.” Congress, by enacting 8 U.S.C. 1623, exercised this power. Specifically, Congress  
3 prevented states from treating U.S. citizens worse than illegal aliens in the provision of  
4 postsecondary education benefits. The language of 8 U.S.C. 1623 expresses a determination by  
5 Congress that under certain circumstances, the same privileges and immunities are mandated for  
6 out-of-state students, namely, when a state has granted certain significant benefits to illegal aliens  
7 attending college in that state. Therefore, 8 U.S.C. 1623 constitutes a specific privileges and  
8 immunities classification/guarantee mandated by Congress pursuant to its powers under the  
9 Fourteenth Amendment and, as a result, 8 U.S.C. 1623 rises to a level of a Constitutional  
10 guarantee.

11 138. As a direct and proximate result of depriving out-of-state U.S. citizens the  
12 exemption from nonresident tuition granted to illegal aliens in violation of the Privileges and  
13 Immunities Clause of the Fourteenth Amendment, Defendants have caused harm to Plaintiffs by  
14 compelling payment of nonresident tuition from which “persons without lawful immigration  
15 status” are illegally exempt under §68130.5.

16 139. In acting as alleged herein, Defendants have acted knowingly, willfully and with  
17 disregard for Plaintiffs’ rights.

18 **SIXTH CAUSE OF ACTION**

19 **FIELD PREEMPTION**

20 140. Plaintiffs incorporate by reference ¶¶ 1 through 139 above.

21 141. In addition to the express preemption brought about by the fact that §68130.5  
22 violates 8 U.S.C. 1623, Defendants are also barred from enforcing §68130.5 through field  
23 preemption.

24 142. “The Supremacy Clause of the United States Constitution provides that ‘this  
25 Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . .  
26 shall be the supreme Law of the Land.’ U.S. Const. art. VI, cl. 2. State law is preempted  
27 explicitly where Congress states an intent to occupy a field and to exclude state regulation. State  
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1 law is preempted implicitly where the federal interest in the subject matter regulated is so  
2 pervasive that no room remains for state action, indicating an implicit intent to occupy the field,  
3 or where the state regulation at issue conflicts with federal law or stands as an obstacle to the  
4 accomplishment of its objectives.” Rondout Elec., Inc. v. N.Y. State DOL (2nd Cir. (N.Y.) 2003)  
5 335 F.3d 162, 166, citing Pacific Gas & Elec. Co. v. State Energy Commission (1983) 461 U.S.  
6 190, 203-204.

7 143. “Power to regulate immigration is unquestionably exclusively a federal power.”  
8 De Canas v. Bica (1976) 424 U.S. 351, 355. “Over no conceivable subject is the legislative  
9 power of Congress more complete than it is over the admission of aliens . . . [t]he power of  
10 Congress to exclude aliens altogether from the United States, or to prescribe the terms and  
11 conditions upon which they may come to this country . . . is settled by our previous  
12 adjudications.” Kleindienst v. Mandel (1972) 408 U.S. 753, 766. “Under the Constitution the  
13 states are granted no such powers; they can neither add to nor take from the conditions lawfully  
14 imposed by Congress upon admission, naturalization and residence of aliens in the United States  
15 or the several states.” Takahashi v. Fish & Game Commission (1948) 334 U.S. 410, 419.

16 144. California Education Code §68130.5 is preempted because (1) Congress has  
17 expressed an intent to preempt any state law regulating the terms and conditions for alien  
18 residency, (2) Congress completely occupies the field of immigration law and, by way of  
19 particularity, the terms and conditions for alien residency, (3) it is impossible for a person who is  
20 an illegal alien to both receive postsecondary education benefits under §68130.5 and to comply  
21 with federal immigration law, and (4) §68130.5 is “an obstacle to the accomplishment and  
22 execution of the full purposes and objectives of Congress,” in particular the enforcement of  
23 immigration law, as articulated in 8 U.S.C. 1601 and 8 U.S.C 1623.

24 145. States may not enact statutes that attempt to regulate immigration independently or  
25 in any way interfere with federal regulation of immigration. Accordingly, a state statute is  
26 preempted if it “stands as an obstacle to the accomplishment and execution of the full purposes  
27 and objectives of Congress.” De Canas v. Bica (1976) 424 U.S. 351, 363, citing Hines v.  
28 Davidowitz (1941) 312 U.S. 52, 67. Section 68130.5 plainly stands as an obstacle to the

1 objective that Congress has specified in federal law: "It is a compelling government interest to  
2 remove the incentive for illegal immigration provided by the availability of public benefits." 8  
3 U.S.C. 1601(6).

4 146. Field preemption in immigration also prevents states from using statutory terms  
5 that are in any way inconsistent with the terminology of federal law. Federal law uses the terms  
6 "illegal alien" and "alien who is not lawfully present in the United States" synonymously. (8  
7 U.S.C. 1621(d)). In contrast, §68130.5 uses the undefined term "person without lawful  
8 immigration status." An earlier California law dealing with the extension of benefits to illegal  
9 aliens – Proposition 187 – was held to be preempted for precisely this reason. In holding  
10 Proposition 187 unconstitutional, the U.S. District Court found that the term "alien in the United  
11 States in violation of federal law" was not in "harmony with federal law." LULAC v. Wilson  
12 (C.D.Cal. 1997) 997 F.Supp. 1244, 1258. This use of terms that were "not in any way tied to  
13 federal standards" rendered the law unconstitutional. LULAC v. Wilson (C.D.Cal. 1997) 908  
14 F.Supp. 755, 772.

15 147. In addition to the state-created term "person without lawful immigration status,"  
16 the Defendants' *Illegal Alien Tuition Scheme* uses the state-created term "application to legalize  
17 his or her immigration status," which is not identical to any controlling terms found in federal law  
18 and cannot be construed to correspond to such terms. Furthermore, there is not one iota of  
19 guidance in the legislative history of §68130.5 as to the meaning of these phrases and words. In  
20 short, California once again "has created its own scheme" setting forth various immigration  
21 classifications that are preempted by federal law. *Id.* at 772. The *Illegal Alien Tuition Scheme* is  
22 preempted.

23 148. In acting as alleged herein, Defendants have acted knowingly, willfully and with  
24 disregard for Plaintiffs' rights.

25 **SEVENTH CAUSE OF ACTION**

26 **VIOLATION OF EQUAL PROTECTION CLAUSE OF CALIFORNIA CONSTITUTION**

27 149. Plaintiffs incorporate by reference ¶¶ 1 through 148 above.  
28

1 150. The California Constitution, Article 1, Section 7, guarantees equal protection  
2 under the law such that “[a] person may not be deprived of life, liberty, or property without due  
3 process of law or denied equal protection of the laws.”

4 151. The Defendants’ *Illegal Alien Tuition Scheme* violates the equal protection clause  
5 of the California State Constitution by denying out-of-state United States citizens exemption from  
6 nonresident tuition while improperly granting this benefit to illegal aliens. Specifically, the  
7 *Illegal Alien Tuition Scheme* classifies illegal aliens as *de facto* residents of California for tuition  
8 eligibility purposes, while U.S. citizens and legal permanent residents of other states are denied  
9 such benefits. Accordingly, the *Illegal Alien Tuition Scheme* perpetuates an unequal  
10 classification against out-of-state U.S. citizens.

11 152. As a direct and proximate result of depriving out-of-state U.S. citizens the  
12 exemption from nonresident tuition granted to illegal aliens in violation of the California  
13 Constitution, the Defendants have caused harm to the Plaintiffs by compelling payment of  
14 nonresident tuition from which “persons without lawful immigration status” are illegally exempt  
15 under §68130.5.

16 153. In acting as alleged herein, Defendants have acted knowingly, willfully, and with  
17 disregard for Plaintiffs’ rights protected by the California Constitution.

18 **EIGHTH CAUSE OF ACTION**  
19 **VIOLATION OF THE UNRUH ACT**

20 154. Plaintiffs incorporate by reference ¶¶ 1 through 153 above.

21 155. “[I]n enacting the Unruh Act, the Legislature intended to ban all forms of arbitrary  
22 discrimination in public accommodations.” Koebke v. Bernardo Heights Country Club (2005) 36  
23 Cal.4th 824, 840. The Unruh Act prohibits discrimination on the basis of any “personal  
24 characteristic,” including “geographical origin.” Id. at 842-843.

25 156. The defendants are business establishments within the meaning of the Unruh Civil  
26 Rights Act, California Civil Code §51 et seq. The Defendants are public institutions with  
27 substantial physical facilities throughout California. The Defendants engage in significant  
28

1 economic activity, such as paying their staff, maintaining and expanding their facilities, selling  
2 books and supplies, providing housing, contracting with the state and federal government,  
3 collecting royalties on intellectual property licenses, providing consulting services, etc.

4 157. Indeed, it was acknowledged 35 years ago that “[t]he huge operations of the  
5 University of California, involving the annual expenditure of hundreds of millions of dollars,  
6 vitally affect the lives of thousands of students and teachers.” Regents of University of California  
7 v. Superior Court (1970) 3 Cal.3d 529, 541. The business operations of the Defendants have  
8 increased multifold since then.

9 158. The Defendants, in violation of California Civil Code §51 et seq., discriminate  
10 against out-of-state U.S. citizens by denying them exemption from nonresident tuition while  
11 improperly granting this benefit to illegal aliens. This discrimination continues to the present  
12 day.

13 159. As addressed in the causes of action and claims for federal preemption set forth  
14 above, the effect of 8 U.S.C. 1621 and 8 U.S.C. 1623 is to preempt, displace, and supplant  
15 California Education Code §68130.5.

16 160. To the extent that §68130.5 is preempted by federal law, it has no force and effect.  
17 As a result, by denying out-of-state U.S. citizens exemption from nonresident tuition while  
18 improperly granting this benefit to illegal aliens, the *Illegal Alien Tuition Scheme* violates, *inter*  
19 *alia*, §68062(h), which “precludes undocumented alien students from qualifying as residents of  
20 California for tuition purposes.” Bradford, supra, 225 Cal.App.3d at 980. Indeed, §68062(h)  
21 furthers California public policy. “The state’s legitimate interests in denying resident tuition to  
22 undocumented aliens are manifest and important” and include “avoiding discrimination against  
23 citizens of sister states and aliens lawfully present.” Id. at 981.

24 161. Nevertheless, since January 1, 2002, Defendants have been in violation of these  
25 statutes by granting in-state tuition benefits to illegal aliens in violation of applicable California  
26 law that has been in effect for many years and still remains in effect. Since §68130.5 is  
27 preempted by federal law, the Defendants’ violation of §68062(h) in discriminating against out-  
28 of-state U.S. citizens is actionable under the Unruh Act.

1 162. The Defendants' conduct is, at best arbitrary and in fact willful, in that Defendants  
2 discriminate against Plaintiffs based solely on the characteristic that they are out-of-state U.S.  
3 citizens. Such discrimination predicated on geographic origin is barred under the Unruh Act.

4 163. As a direct and proximate result of depriving out-of-state U.S. citizens exemption  
5 from nonresident tuition granted to "persons without lawful immigration status," the Defendants  
6 have caused harm to the Plaintiffs by compelling payment of nonresident tuition from which  
7 illegal aliens are unlawfully exempt under §68130.5.

8 164. As a result of the wrongful act of the Defendants, Plaintiffs are entitled, under  
9 California Civil Code §52, to recover statutory damages of up to three times actual damages or  
10 \$4,000 for each offense, attorneys fees and a civil penalty in the amount of \$25,000 for each  
11 plaintiff.

12 165. In acting as alleged herein, Defendants have acted knowingly, willfully, and with  
13 disregard for Plaintiffs' rights.

14 **NINTH CAUSE OF ACTION**

15 **INJUNCTIVE RELIEF**

16 166. Plaintiffs incorporate by reference ¶¶ 1 through 165 above.

17 167. Education Code §68130.5 became effective on January 1, 2002. Beginning at the  
18 time, Defendants wrongfully and unlawfully discriminated against the plaintiff out-of-state  
19 United States citizens by denying them exemption from nonresident tuition improperly afforded  
20 to illegal aliens.

21 168. Defendants' wrongful conduct, unless and until enjoined and restrained by order of  
22 this Court, will cause great and irreparable injury to Plaintiffs by denying exemption from  
23 nonresident tuition to which they are lawfully entitled under 8 U.S.C. 1623. As a direct and  
24 proximate result of the *Illegal Alien Tuition Scheme*, Plaintiffs may be unable to afford to attend  
25 the subject institutions of higher learning or will have to attend at a substantially higher cost than  
26 that to which they are legally entitled.

27 169. Plaintiffs have no adequate remedy at law for the injuries suffered as the  
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1 Defendants are engaged in prospective conduct such that Defendants will continue to deny the  
2 Plaintiffs exemption from nonresident tuition improperly granted to illegal aliens.

3 170. Plaintiffs are accordingly entitled to injunctive relief because (1) they have no  
4 adequate remedy at law; (2) they will suffer immediate and continuing harm if required to pay  
5 significantly greater tuition and expenses associated with nonresident status; (3) they are likely to  
6 succeed on the merits of their claims; and (4) Defendants will suffer no harm in being denied the  
7 opportunity to effectuate California Education Code §69130.5 in the circumstances alleged in this  
8 case pending resolution of the merits of the case.

9 **TENTH CAUSE OF ACTION**  
10 **DECLARATORY RELIEF**

11 171. Plaintiffs incorporate by reference ¶¶ 1 through 170 above.

12 172. An actual controversy has arisen and now exists between the Plaintiffs and  
13 Defendants. The Plaintiffs contend and the Defendants deny the following:

14 (a) The *Illegal Alien Tuition Scheme*, which denies out-of-state United States citizens  
15 a tuition exemption afforded to illegal aliens, violates 8 U.S.C. 1623, which bars an alien not  
16 lawfully present in the United States from eligibility on the basis of residence within a state for  
17 "any postsecondary education benefit" unless a United States citizen is eligible for the same  
18 benefit; and

19 (b) The *Illegal Alien Tuition Scheme*, by exempting illegal aliens from nonresident  
20 tuition while denying out-of-state U.S. citizens the identical postsecondary education benefits,  
21 violates the Equal Protection Clause of the Fourteenth Amendment; and

22 (c) The *Illegal Alien Tuition Scheme*, by exempting illegal aliens from nonresident  
23 tuition while denying out-of-state U.S. citizens the identical postsecondary education benefits,  
24 violates the Privileges and Immunities Clause of the Fourteenth Amendment; and

25 (d) The *Illegal Alien Tuition Scheme*, by exempting illegal aliens from nonresident  
26 tuition while denying out-of-state U.S. citizens the identical postsecondary education benefits, is  
27 preempted by federal immigration law, the Illegal Immigration Reform and Immigrant  
28

1 Responsibility Act, 8 U.S.C. 1601 and 8 U.S.C. 1623; and

2 (e) The *Illegal Alien Tuition Scheme*, by exempting illegal aliens from nonresident  
3 tuition while denying out-of-state U.S. citizens the identical postsecondary education benefits,  
4 violates the Equal Protection Clause of Article 1, Section 7 of the California Constitution; and

5 (f) The *Illegal Alien Tuition Scheme*, by exempting illegal aliens from nonresident  
6 tuition while denying out-of-state U.S. citizens the identical postsecondary education benefits,  
7 violates the Unruh Act.

8 173. The Plaintiffs desire a judicial determination of the foregoing. Such a declaration  
9 is necessary and appropriate at this time in order that the Plaintiffs' may ascertain their rights and  
10 duties with respect to the Defendants.

11 **VII.**

12 **PRAYER**

13 WHEREAS, because of the actions alleged above, Plaintiffs respectfully ask this Court to  
14 grant the following relief:

15 **PRAYER FOR DECLARATORY RELIEF**

16 174. For the following declarations:

17 (a) The *Illegal Alien Tuition Scheme* violates 8 U.S.C. 1623; and

18 (b) The *Illegal Alien Tuition Scheme* violates the Equal Protection Clause of the  
19 Fourteenth Amendment; and

20 (c) The *Illegal Alien Tuition Scheme* violates the Privileges and Immunities Clause of  
21 the Fourteenth Amendment; and

22 (d) The *Illegal Alien Tuition Scheme* is preempted by federal immigration law through  
23 field preemption as set forth herein; and

24 (e) The *Illegal Alien Tuition Scheme* violates the Equal Protection Clause of Article 1,  
Section 7 of the California Constitution; and

25 (f) The *Illegal Alien Tuition Scheme* violates the Unruh Act.

26 **PRAYER FOR TUITION RESTITUTION**

27 175. That Plaintiffs be awarded tuition reimbursement/damages arising from the illegal  
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1 denial of exemption from nonresident tuition based – in violation of 8 U.S.C. 1623, 42 U.S.C.  
2 1983, the Equal Protection Clause and Privileges and Immunities Clause of the Fourteenth  
3 Amendment of the U.S. Constitution, and/or Article I of the California Constitution – on their  
4 status as non-resident U.S. citizens matriculating at the defendant institutions and illegally denied  
5 exemption from non-resident tuition granted to “persons without lawful immigration status”  
6 under §68130.5.

7 **PRAYER FOR RELIEF UNDER THE UNRUH ACT**

8 176. The Unruh Civil Rights Act provides for two measures of relief, whichever is  
9 greater, and the Class Plaintiffs request that this relief be granted as follows:

10 (a) First measure of damages: actual and compensatory damages suffered by each  
11 class member; a separate award of three times the actual class compensatory damages; \$25,000  
12 for each class member; and interest thereon.

13 (b) Second measure of damages: \$4,000 for each class member for each offense  
14 under the Unruh Act (each offense consisting of each unlawful tuition bill paid by each class  
15 member); \$25,000 for each class member; and interest thereon.

16 **CLASS ACTION ATTORNEYS FEES**

17 177. Plaintiff's recovery of tuition benefits illegally denied under §68130.5 will create a  
18 common fund consisting of the sum total of nonresident tuition paid by Plaintiffs during their  
19 course of enrollment at California public post-secondary educational institutions. Such common  
20 fund will directly result from the efforts and industry of class counsel and confer a substantial  
21 public benefit. Plaintiffs' counsel are therefore entitled to and hereby request a percentage of  
22 recovery from the common fund.

23 178. That in furtherance of the foregoing, Plaintiffs recover from Defendants all of  
24 Plaintiffs' attorney fees, expenses, and costs under 42 U.S.C. 1988.

25 179. That in furtherance of the foregoing, Plaintiffs recover from Defendants all of  
26 Plaintiffs' attorney fees, expenses, and costs under California Civil Code §52(b)(3).  
27  
28

GENERAL PRAYER

A. All remedies, whether constituting reimbursement, restitution, damages, awards, costs, fees or penalties, set forth above; and

B. That a preliminary and a permanent injunction be issued enjoining the Defendants in perpetuity from enforcing California Education Code §68130.5 with respect to the provision of exempting "persons without lawful immigration status" from nonresident tuition; and

C. That Defendants be enjoined from discriminating against Plaintiffs and in favor of illegal aliens exempt under §68130.5 for tuition and fees, and any other services or facilities provided by California public postsecondary educational institutions; and

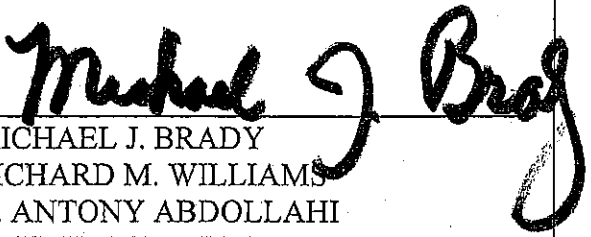
D. That Plaintiffs recover from Defendants all of Plaintiffs' attorney fees, expenses, and costs; and

E. That Plaintiffs be granted any further relief as the Court deems just and proper.

Dated: December 14, 2005

ROPER, MAJESKI, KOHN & BENTLEY

By:



MICHAEL J. BRADY  
RICHARD M. WILLIAMS  
O. ANTONY ABDOLLAHI  
KRIS W. KOBACH (*Pro Hac Vice*  
Application Pending – To Be Filed)

Attorneys for Plaintiffs