

1 The ADDA's certification as a union began with employees returning union cards
2 indicating their desire to unionize. (Mot. at 2.) "When ADDA supporters were collecting
3 union cards in early 2008, ADDA Board Member Frank Tavelman asked Assistant District
4 Attorney Jacquelyn Lacey, one of the top officials in the DA's Office, to issue a
5 memorandum to all prosecutors stating the DA's office would be neutral regarding union
6 organization and would refrain from retaliating against any prosecutor for exercising his
7 or her right to join ADDA." (Id.) (citing Tavelman Decl., Exh. 1 ¶ 3)). Lacey informed
8 Tavelman that Defendants would not comply with this request. (Exh. 1 ¶ 4.) Despite the
9 lack of any promise by the DA's office to remain neutral, enough prosecutors returned
10 union cards to the Los Angeles County Employee Relations Commission ("ERCOM") to
11 certify ADDA as a county employees union on March 24, 2008. (Id.) (citing Compl. ¶¶ 8,
12 16; Answer, ¶¶ 8, 16). ADDA is now the representative of Bargaining Unit 801, which
13 consists of approximately 1000 deputy district attorneys in Grades I through IV. (Id.)
14 (citing Exh. 2 ¶ 17).

15 "On October 17, 2008, District Attorney Steve Cooley ["Cooley"] met with Robert
16 Dver, a prosecutor with 24 years of experience in the DA's Office." (Id.) During that
17 meeting, Cooley told Dver that ADDA President Steve Ipsen was a "crook," and that the
18 prosecutors who signed union cards leading to ADDA's certification were "contaminated."
19 (Id.) Plaintiffs also allege, and Defendants do not dispute that Cooley instructed Dver to
20 "undermine" the ADDA. (Id. at 2-3.) After Dver refused to follow Cooley's directions,
21 "Cooley transferred Dver and stripped him of his supervisory tasks." (Id. at 3) (citing
22 Exhibit 3, pp. 23-24)). One of Cooley's top officials, Assistant District Attorney Jacquelyn
23 Lacey, corroborated Dver's testimony, admitted to warning Dver not to join ADDA's
24 contract negotiating team and not to even discuss ADDA matters with Cooley, as it would
25 negatively impact his career. (Id.) (citing Exh. 4.) Lacey also provided that being
26 associated with ADDA would "definitely" hurt Dver's career. (Id.)

1 Defendants also subjected other ADDA Board Members to forced transfers and other
2 forms of retaliation for their union activities. Steve Ipsen, the president of ADDA, who
3 had consistently received “Outstanding” performance evaluations during his twenty-year
4 career, was suspended without pay for two days following a meeting with an Inglewood
5 supervisor concerning mistreatment of a deputy district attorney, whose contested demotion
6 was rescinded by Defendants due to an unfair performance evaluation. (Mot. at 4) (citations
7 omitted). Ipsen was then transferred to Compton and, after he elicited damaging testimony
8 from Lacey during an ERCOM hearing, he was issued a rating of “Needs Improvement”
9 on his performance evaluation. (Mot at 4) (citing Exh. 2 ¶ 29.) “This rating was based
10 substantially on the Inglewood supervisor’s allegations relating to Ipsen’s intervention in
11 December 2008 on behalf of the young prosecutor that the Inglewood supervisor had
12 falsely maligned.” (Id) (citing Exh. 2 ¶ 29.) “None of the other 1000 deputy district
13 attorneys received such a rebuke during 2009.” (Id.)

14 ADDA’s Vice President Marc Debbaudt has been a prosecutor in the DA’s office
15 for over 20 years and, until ADDA’s certification in 2008, all of his performance
16 evaluations had been “Outstanding.” (Mot at 5) (citing Exh. 5 ¶ 4.) His supervisor
17 described him as the “best calendar deputy I have ever seen in the office.” (Id.) (citations
18 omitted). “In September 2008 Defendants transferred Debbaudt for his role in drafting an
19 ERCOM complaint as well as for other acts taken in his capacity as an ADDA member.”
20 (Id. at 6.) Lacey admitted that Defendants first decided to transfer Debbaudt to an
21 entry-level position in the Eastlake Juvenile Court, but later revised their plan and
22 transferred Debbaudt to an entry-level assignment in Pomona Juvenile Court, which
23 required a much longer commute. (Id) (citations omitted). Lacey explained that Cooley
24 himself ordered Debbaudt’s transfer and that such orders were “infrequent.” (Id.) (“In fact,
25 Grade IV deputy district attorneys such as Debbaudt are never transferred to entry-level
26 juvenile assignments.”). Debbaudt was transferred to yet another entry-level assignment
27 and, for the first time, his evaluations dropped below “Outstanding.” (Id.)
28

1 Hyatt Seligman is another ADDA Board Member with over 30 years of experience
2 in the DA's office. (Id.) (citing Seligman Decl. Exh. 6 ¶ 2.) He has received glowing
3 evaluations throughout his career and is one of the state's foremost experts on the use of
4 mental defenses in criminal prosecutions. (Id.) (citations omitted). Two days after
5 questioning defendants about "punitive transfers of prosecutors" during a bargaining
6 session between ADDA and Defendants, Seligman was transferred to the Long Beach
7 Courthouse. (Id. at 7.) "Defendants' transfers of Seligman and Dver from the Training
8 Division [] ensured that no active ADDA members remain in the Training Division." (Id.)
9 (citing Exh. 6 ¶ 22). Seligman's supervisor at the Training Division from which he was
10 transferred was upset at the move and his new supervisor in Long Beach did not need him
11 or have any office space for him, but attempted to somehow accommodate him. (Id.) After
12 his transfer to Long Beach, Seligman received a rating of "Met Expectations" from his
13 supervisor, which was two levels below the "Outstanding" ratings Seligman had previously
14 received throughout his career. (Id.) (citations omitted). "When Seligman asked [his
15 supervisor] about the [evaluation], [the supervisor] explained that a 'Met Expectations'
16 rating was the highest rating he was allowed to give to Seligman and, if he had given a
17 higher rating, Defendants would have 'kicked it back' [to the supervisor] and made him
18 revise it." (Id. at 7-8) (citations omitted).

19 ADDA commenced contract negotiations with Defendants in December 2008 for its
20 first collective bargaining agreement, but filed "an unfair labor practices charge with
21 ERCOM on May 13, 2009" after it became clear that Defendants' negotiators had only
22 authority to prolong negotiations. (Id. at 8) (citations omitted). In September 2009,
23 Defendants informed all County employees of a substantial increase in monthly fees for
24 the County's health benefit plans for 2010, but explained in October 2009 that they were
25 reducing those costs. (Id. at 8-9) (citations omitted). "The October 2009 notice also
26 contained a paragraph notifying ADDA members that they were *excluded* from the
27 County's reduced rate structure." (Id.) (citation omitted) (emphasis in original).

1 Defendants admit that the “difference in treatment is between all the employees in
2 the ADDA bargaining unit versus County employees who are not represented by a union.”
3 (Opp’n at 6.) They contend, however, without citation to authority, that certain “statutes
4 and rules regarding labor negotiations require the County not” to alter an employee’s
5 benefits based on whether that employee is represented by a union. (Id. at 2.) Defendants’
6 argument, and Plaintiffs’ other allegations, shall be further discussed below as necessary.

7 **II. DISCUSSION**

8 **A. Legal Standard: Preliminary Injunction**

9 “A plaintiff seeking a preliminary injunction must establish that he is likely to
10 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
11 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
12 the public interest.” *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052
13 (9th Cir.2009) (quoting *Winter v. Natural Res. Def. Council*, --- U.S. ----, 129 S. Ct. 365,
14 374 (2008)). While Plaintiffs bear the burden of establishing their entitlement to the
15 requested relief, the “court may [] consider hearsay in deciding whether to issue a
16 preliminary injunction.” *Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009) (citing
17 *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9th Cir.1988) (en banc)); *see*
18 *also Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir.1984) (“The district court
19 may give even inadmissible evidence some weight, when to do so serves the purpose of
20 preventing irreparable harm before trial.”).

21 **B. Plaintiffs’ Motion for Preliminary Injunction**

22 Plaintiffs seek a preliminary injunction prohibiting Defendants from discriminating
23 or otherwise taking adverse employment actions against deputy district attorneys based
24 upon their union status. Plaintiffs’ request is premised on Defendants’ alleged violations
25 of their First Amendment rights and their rights to equal protection under the Fourteenth
26 Amendment. Establishing a likelihood of success as to either claim is sufficient to satisfy
27 Plaintiffs’ burden under the first prong of the preliminary injunction inquiry.
28

1 *Likelihood of Success*

2 The supreme Court has “long understood as implicit in the right to engage in
3 activities protected by the First Amendment a corresponding right to associate with others
4 in pursuit of a wide variety of political, social, economic, educational, religious, and
5 cultural ends.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). Such “protected First
6 Amendment rights flow to unions. . . .” *Allee v. Medrano*, 416 U.S. 802, 820 n.13 (1974).
7 “If, as alleged by the union in its complaint, its members were subject to unlawful [actions]
8 and intimidation for engaging in union organizational activity protected by the First
9 Amendment, the union’s capacity to communicate is unlawfully impeded, since the union
10 can act only through its members.” *Id.* As Plaintiffs point out, moreover, the “threat of
11 sanctions may deter [the exercise of First Amendment freedoms] almost as potently as the
12 actual application of sanctions.” (Mot. at 12) (quoting *N.A.A.C.P. v. Button*, 371 U.S. 315,
13 433 (1963)). Government actions may unconstitutionally infringe upon this associational
14 freedom through various forms. “Among other things, government may seek to impose
15 penalties or withhold benefits from individuals because of their membership in a disfavored
16 group.” *Roberts*, 468 U.S. at 622-23.

17 Here, Plaintiffs have alleged several violations of their First Amendment rights,
18 which are largely undisputed by Defendants. Defendants do not deny, for example, that
19 Cooley instructed Robert Dver to “undermine” or otherwise interfere with the union. Nor
20 do they dispute that Cooley demoted Dver when he refused to do so. Similarly undisputed
21 is Lacey’s admission that being associated with ADDA would “definitely” hurt one’s
22 career so far as Cooley was concerned. Such actions unquestionably interfere with the
23 union’s function and chill the free exercise of Plaintiffs’ First Amendment rights. *See, e.g.,*
24 *Coszalter v. City of Salem*, 320 F.3d 968, 974-75 (9th Cir. 2003) (“The precise nature of
25 the retaliation is not critical to the inquiry in First Amendment retaliation cases. The goal
26 is to prevent, or redress, actions by a government employer that ‘chill the exercise of
27 protected’ First Amendment rights.”) (citation omitted).

1 Nevertheless, Plaintiffs have established a course of explicit retaliation by
2 Defendants that is both striking and rampant. The habitual transfers of ADDA organizers
3 cannot be excused, as Defendants contend, by reliance on John K. Spillane’s declaration
4 that the transfers fall “within the written policy of the District Attorney’s office, and that
5 none of them were done for the purpose of retaliating for union activity.” (Opp’n at 8.)
6 Even a proper procedure, after all, can be employed to accomplish an improper purpose.
7 The extent, timing and impact of such transfers evince such a purpose in this case.

8 Steve Ipsen, the president of ADDA, was transferred to the Inglewood Courthouse
9 shortly after he investigated a complaint by a Lancaster deputy district attorney who was
10 unfairly treated “for seeking to disclose exculpatory evidence to a defense attorney as
11 required under *Brady v. Maryland*, 373 U.S. 83 (1963).” (Mot. at 4) (citation omitted).
12 And, after Ipsen helped achieve the rescission of a deputy’s questionable demotion at his
13 new location, he was transferred again, this time to the Compton Courthouse. (Id.)

14 ADDA’s Vice President Marc Debbaudt was “transferred [] for his role in drafting
15 an ERCOM complaint as well as for other acts taken in his capacity as an ADDA member.”
16 (Mot. at 6.) As Lacey admitted, Defendants first decided to transfer Debbaudt to an
17 entry-level position in the Eastlake Juvenile Court, but later revised their plan and
18 transferred him to an entry-level assignment in Pomona Juvenile Court, which required
19 a much longer commute. (Id.) (citations omitted). According to Lacey, Cooley himself
20 ordered Debbaudt’s transfer, noting that such orders were “infrequent.” (Id.)

21 ADDA Board Member Hyatt Seligman was transferred two days after questioning
22 Defendants about “punitive transfers of prosecutors” during a bargaining session between
23 ADDA and Defendants. (Id. at 7.) Robert Dver was warned by Lacey that being associated
24 with ADDA would “definitely” hurt his career, and was later transferred after he refused
25 Cooley’s instruction to undermine ADDA. “Defendants’ transfers of Seligman and Dver
26 from the Training Division [] ensured that no active ADDA members remain[ed] in the
27 Training Division.” (Mot. at 7) (citing Exh. 6 ¶ 22).

1 While the foregoing is but a sample of Defendants' actionable conduct, (*see* mot. at
2 2-10), it sufficiently establishes that Defendants have not only made it difficult for ADDA
3 to carry out its objectives, but have also deterred prospective members from joining the
4 union. "Indeed, several prosecutors have already said as much to ADDA Board Members."
5 (Reply at 2) (citing Exh. 2 ¶ 37).

6 Defendants argue these actions are not actionable because there was no reduction in
7 the transferred individuals' pay. (Opp'n at 8-10.) As Plaintiffs point out, however, this
8 argument misstates the law. (Reply at 3.) When based upon a retaliatory motive, as
9 Defendants' actions were, "a transfer to another job of the same pay and status may
10 constitute an adverse employment action." *Ray v. Henderson*, 217 F.3d 1234, 1241 (9th
11 Cir. 2000). And, the sole case cited by the Defendants, *Benach v. County of Los Angeles*,
12 149 Cal. App. 3d 836 (2007), "is not on point because the plaintiff in that action offered
13 no evidence [] showing his transfer was based upon improper motives." (Reply at 3.) In
14 any event, it cannot be said that the transfers were for a job of similar status where the
15 transferees were either stripped of their supervisory duties or otherwise demoted.

16 This brings us to the disparity in health care costs between unionized employees and
17 others. First, the fact that two other bargaining units face the same disparity as ADDA
18 does not somehow establish that the practice is proper, as Defendants suggest. As stated
19 above, secondly, Defendants *concede* that the "difference in treatment is between all []
20 employees in the ADDA bargaining unit versus County employees who are not represented
21 by a union." (Opp'n at 6.) Defendants contend, however, this disparity is compelled by
22 certain "statutes and rules regarding labor negotiations." (Id. at 2.) Yet the statutes and
23 ordinances offered by Defendants do not support this contention, and their legal authority,
24 *Oakland Unified School Dist. v. Public Employment Relations Bd.*, 120 Cal. App. 3d 1007
25 (1981), is inapplicable. Absent such a valid and compelling directive, this Court finds that
26 such a disparity likely infringes upon Plaintiffs' associational freedom by seeking "to
27 impose penalties or withhold benefits from individuals because of their membership in a
28 disfavored group." *Roberts*, 468 U.S. at 622-23.

1 Indeed, contrary to Defendants’ unsubstantiated assertions, the California Legislature
2 enacted a statute specifically *prohibiting* Los Angeles County from “discriminat[ing]
3 against employees by removing or disqualifying them from a health benefit plan, or
4 otherwise restricting their ability to participate in a health benefit plan, on the basis that the
5 employees have selected or supported a recognized employee organization.” (Reply at 8)
6 (quoting Cal. Govt. Code § 3504.5(c)).

7 In sum, the Court finds that Plaintiffs’ largely undisputed allegations sufficiently
8 establish their likelihood of success on their constitutional claims.

9 *Irreparable Harm*

10 “Unlike monetary injuries, constitutional violations [including the disparity in health
11 care costs] cannot be adequately remedied through damages and therefore generally
12 constitute irreparable harm.” *Nelson v. National Aeronautics and Space Admin.*, 530 F.3d
13 865, 882 (9th Cir. 2008) (citation omitted); *see also Elrod v. Burns*, 427 U.S. 347, 373-74
14 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time,
15 unquestionably constitutes irreparable injury.”).

16 Even aside from the constitutional nature of Defendants’ violations, Plaintiffs have
17 established a high likelihood of irreparable harm. Defendants’ far-reaching actions have
18 pushed the union to the brink and, as Plaintiffs point out, “ADDA’s ability to recruit new
19 members, and retain current ones, has been severely strained by the pressures from
20 Defendants’ harassment and intimidation.” (Mot. at 21.) Indeed, given the fear instilled
21 by Defendants, and the union hesitancy and defections resulting therefrom, it is very likely
22 that ADDA will not even exist by the time this action concludes. (*See* Mot. at 21-22) (“Not
23 surprisingly, Defendants[] . . . have reduced ADDA’s membership and chilled the
24 enthusiasm of many of its remaining members. Several non-ADDA members . . . have told
25 ADDA Board Members that they support ADDA’s efforts and would be interested in
26 joining the union but will not do so because of fear of retaliation by Defendants.”) (citation
27 omitted). Plaintiffs thus clearly satisfy this prong of the preliminary injunction inquiry.
28

1 *Balance of Equities and Public Interest*

2 The balance of equities tips sharply in favor of Plaintiffs, who face an onslaught of
3 retaliation and constitutional violations. Plaintiffs seek merely to exercise their First
4 Amendment rights and perform their duties without harm or consternation. On the other
5 side of the balance, Defendants cannot seriously suffer any harm if they are preliminarily
6 enjoined from engaging in their questionable conduct; they need merely obey the law.

7 An injunction in this case also serves the public interest by protecting the
8 constitutional principles underlying this very society. This is especially true where, as
9 here, those officials entrusted with upholding those values could likely be found to have
10 abrogated their duty. The public surely has a vested interest not only in abating such
11 violations but also in ensuring that those responsible cease their abuse. (*See also* Mot. at
12 24) (“it is always in the public interest to protect First Amendment liberties”) (quoting
13 *Joelner v. Washington Park*, 378 F.3d 613, 620 (7th Cir. 2004)).

14 Before concluding, it bears emphasizing that, while the foregoing sufficiently
15 establishes Plaintiffs’ entitlement to a preliminary injunction, Defendants’ abuses far
16 exceed the specific examples illustrated above. (*See* Mot. at 2-10.) Plaintiffs’ allegations
17 are mostly undisputed, moreover, and Defendants offer no persuasive reason why
18 Plaintiffs’ arguments should not be sustained. Plaintiffs do offer some hearsay evidence
19 in support of their motion but, as mentioned above, such evidence is acceptable at this
20 juncture. And, to the extent Defendants object to the authentication of certain exhibits,
21 such deficiencies are remedied by Plaintiffs’ Reply documents. (*See* Reply at 2 n.2.)

22 Finally, the Court disagrees with Defendants’ assertion that Plaintiffs’ “proposed
23 order regarding transfers is unworkably vague.” (Opp’n at 12.) While the injunction only
24 prohibits transfers made with an improper purpose, it would not be “virtually impossible
25 to comply with.” (Id.) The timing and nature of the transfers is quite telling, and this Court
26 will carefully consider all relevant evidence should contempt proceedings ensue. Such a
27 premature concern is simply no reason to deny the requested relief.

1 **III. CONCLUSION and ORDER**


2 Plaintiffs are likely to succeed on the merits of their claims, they will likely suffer
3 irreparable harm absent injunctive relief, the balance of equities tips greatly in Plaintiffs'
4 favor and an injunction is in the public interest. Plaintiffs' motion for a preliminary
5 injunction is therefore GRANTED.¹

6 **IT IS HEREBY ORDERED** that Defendants, their officers, agents, servants,
7 employees, or persons in active concert with any of them, are restrained and enjoined from
8 discriminating or retaliating against members of the Association of Deputy District
9 Attorneys on the basis of their membership in ADDA. This Order includes, but is not
10 limited to, a prohibition of punitive transfers, demotions, discriminatory distribution of
11 benefits and discipline on the basis of membership in the ADDA. Defendants are also
12 enjoined and restrained from utilizing rates for medical or health benefit plans that are
13 based upon a deputy district attorney's representation by ADDA.

14 This Order shall remain in full force and effect until such time as a final judgment
15 has issued in this matter or until further order of this Court.

16
17 **IT IS SO ORDERED**

18 DATED: March 2, 2010

19
20 
21 _____
22 OTIS D. WRIGHT II
23 UNITED STATES DISTRICT JUDGE

24 _____
25 ¹ As discussed above, Defendants' evidentiary objections are overruled to the extent pertinent to the
26 Court's decision. Defendants' timely objections to Plaintiffs' proposed order are also overruled, but
27 Defendants' newly filed objections are disregarded as improper. (*See* Docket No. 36.) All other objections
28 to the scope of the injunction are rejected, as the injunction aims to quell all discrimination and retaliation
against ADDA members. As to transfers, should contempt proceedings ensue, the Court will carefully
review the parties' respective arguments in light of the nature and timing of the transfers, in conjunction
with the identity and activities of the persons transferred. (*See* Opp'n at 12.) Defendants' concern that
Plaintiffs will challenge every transfer is thus of no moment.