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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

12 A.A.; M.H.; A.F.; E.E.; C.B.; L.R.; L.B.;
13 C.U.; A.I.; J.B.; and S.D.,

14 Plaintiffs,

15 v.

16 GAVIN NEWSOM, in his official
capacity as Governor of the State of
17 California; DR. MARK GHALY, in his
official capacity as Secretary of the
18 Department of Health and Human
Services of the State of California; DR.
19 NAOMI BARDACH, in her official
capacity as Successful Schools Team Lead
20 for the Department of Health and Human
Services of the State of California; DR.
21 TOMÁS ARAGÓN, in his official
capacity as Director and State Public
22 Health Officer of the Department of
Public Health of the State of California;
23 SAN DIEGUITO UNION HIGH
SCHOOL DISTRICT; CARLSBAD
24 UNIFIED SCHOOL DISTRICT;
OCEANSIDE UNIFIED SCHOOL
25 DISTRICT; SAN MARCOS UNIFIED
SCHOOL DISTRICT; POWAY
26 UNIFIED SCHOOL DISTRICT; and
DOES 1–50, inclusive,

27 Defendants.
28

Case No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND
PETITION FOR WRIT OF MANDATE**

Dept.:

Judge:

1 *The AAP continues to strongly advocate that all policy*
2 *considerations for school COVID-19 plans should start with a goal*
3 *of having students physically present in school.*

4 – American Academy of Pediatrics

5 Plaintiffs A.A.; M.H.; A.F.; E.E.; C.B.; L.R.; L.B.; C.U.; A.I.; J.B.; and S.D. complain of
6 Defendants GAVIN NEWSOM, in his official capacity as Governor of the State of California;
7 DR. MARK GHALY, in his official capacity as Secretary of the Department of Health and
8 Human Services of the State of California; DR. NAOMI BARDACH, in her official capacity as
9 Successful Schools Team Lead for the Department of Health and Human Services of the State of
10 California; DR. TOMÁS ARAGÓN, in his official capacity as Director and State Public Health
11 Officer of the Department of Public Health of the State of California; SAN DIEGUITO UNION
12 HIGH SCHOOL DISTRICT; CARLSBAD UNIFIED SCHOOL DISTRICT; OCEANSIDE
13 UNIFIED SCHOOL DISTRICT; SAN MARCOS UNIFIED SCHOOL DISTRICT; POWAY
14 UNIFIED SCHOOL DISTRICT; and DOES 1–50, inclusive, as follows:

15 **I. PARTIES.**

16 **A. Plaintiffs.**

17 **1. A.A.**

18 1. A.A. resides in the Poway Unified School District. A.A. has four school-aged
19 children, three of whom have been diagnosed as being on the autism spectrum. Three of A.A.’s
20 children are in elementary school and one is in high school. All of A.A.’s children are suffering
21 academically and psychologically after nearly a year of distance learning and the associated social
22 isolation.

23 2. After attending a special preschool for autistic children last year, A.A.’s second
24 youngest child is currently in kindergarten. However, none of the Individual Education Plans
25 (“IEPs”) that were in place for this child have been revised to adjust for virtual learning. As a
26 result, the child is struggling with academics, including core concepts and skills that will be
27 necessary for future academic success.

28 3. A.A. also has a child in second grade who is struggling with learning to read along
with the lack of peer interaction and socialization caused by the school’s decision to continue

1 with distance learning and not to offer in-person instruction. This child underwent a new IEP
2 assessment in the fall of 2020 and was diagnosed with dyslexia. However, to date, the district has
3 failed to provide any services to properly address the child's disability.

4 4. A.A.'s oldest child is a freshman in high school. In mid-September of 2020, after
5 learning that school would be resuming with distance learning only, she told A.A. of a detailed
6 plan she had devised to end her life. By the time she told A.A. of her plan, she had already written
7 a suicide letter to her family that was saved on her smartphone. After A.A. learned of her child's
8 suicidal thoughts and plans, her child was admitted to the psychiatric unit of Rady Children's
9 Hospital for more than a week, followed by a two-week intensive outpatient program at Sharp
10 Mesa Vista. Because she cannot maintain a distance learning schedule while participating in the
11 outpatient program and obtaining additional therapeutic intervention, A.A.'s child was forced to
12 withdraw from traditional high school. The child is now enrolled in the district's New Directions
13 independent study program.

14 **2. M.H.**

15 5. M.H. is a Carlsbad resident who has two children in the Carlsbad Unified School
16 District. The older child is in high school, and the younger child is in middle school.

17 6. Before school closed in March of 2020, M.H.'s younger child had loved school
18 and enjoyed an active social life. He was always a conscientious student who cared deeply about
19 getting good grades. This year, he enrolled in advanced English and math. After struggling with
20 the advanced English class shortly after distance learning resumed in September 2020, he elected
21 to move into a regular English class.

22 7. Around the end of September or beginning of October, shortly after the district
23 announced that middle school students would not be returning to campus as previously planned,
24 M.H. noticed that the child had missed quite a few assignments and was failing several classes.
25 When M.H. logged into the child's Google Classroom account, she discovered nearly 1,100
26 unread emails from teachers in the inbox. When asked about the unread emails, failing grades,
27 and missing assignments, M.H.'s child broke down, explaining he simply couldn't navigate and
28 was overwhelmed by the constant barrage of emails from seven different teachers, which was

1 exacerbated by a lack of one-on-one communication and in-person contact with teachers.

2 8. In mid-October, M.H. unenrolled the child from CUSD and enrolled him in a
3 nearby private school that offers in-person instruction. Initially, he appeared to be happier and
4 seemed to be adjusting to his new school. But in or around early December 2020, he started
5 telling M.H. that he still felt very sad, lost, and lonely. A few weeks later, he complained of
6 recurring suicidal thoughts. M.H. immediately called the child's medical provider, who instructed
7 her to go straight to the emergency room. At the emergency room, M.H.'s child revealed to the
8 intake physician that he had a detailed plan to kill himself by electrocution.

9 9. M.H.'s child currently attends weekly therapy sessions. However, based on
10 conversations with her child, M.H. knows that her child's mental health would significantly
11 improve if he were able to return to in-person instruction at the CUSD middle school he
12 previously attended with familiar teachers and friends.

13 **3. A.F.**

14 10. A.F. is a resident of San Marcos and has three children enrolled in the San Marcos
15 Unified School District.

16 11. A.F.'s oldest child, a high school student, has suffered immensely from school
17 closures. In 2019 through early 2020, A.F.'s oldest child was gradually recovering after having
18 suffered an extremely traumatic incident. She had embraced the experience by becoming a leader
19 at school with the help and support of the school social worker, sheriff resource officer, and other
20 students. The school community provided a strong base of support and encouraged her to speak
21 out about the incident to educate other students. However, when school closed in March 2020,
22 she lost all contact with her support team and lost her newly found role.

23 12. A.F.'s child logged into her remote classes consistently but was not motivated to
24 do the assigned work. Without the support system that in-person school had provided, she
25 ultimately lost the ability to focus on schoolwork. She spent an increasing amount of time alone
26 in her room and refused to participate in family activities. She reported losing all hope and started
27 to tell A.F. that she didn't want to live anymore.

28 13. In or around October 2020, after several weeks of failed efforts to find a suitable

1 therapist that was taking new patients, A.F. enrolled her child in a local youth depression study
2 program that includes weekly therapy sessions. As A.F. and the child were in A.F.'s car on the
3 freeway traveling to meet the therapists conducting the study, A.F.'s child opened the car door
4 and attempted jump out of the moving car.

5 14. After meeting with A.F.'s child, the therapists attributed most of her mental health
6 issues to distance learning. The therapists urged A.F. to move the child to a different school
7 where she could attend classes in person. A.F. unenrolled her child from SMUSD and enrolled
8 her in a small private school, where she has made friends and joined after-school clubs. With the
9 resumption of in-person education and school associated social activities, A.F. and the therapists
10 have noticed a dramatic improvement in the child's mental health and motivation.

11 **4. E.E.**

12 15. Plaintiff E.E.'s daughter is a high school student in the San Dieguito Union High
13 School District. She is an excellent student who has been a leader throughout her school career.
14 She is well-liked by both teachers and her peers. She was in her first year of high school in
15 SDUHSD and had just started to make new friends when her school closed. Now, during distance
16 learning, she is on the computer for ten to twelve hours a day, which has caused feelings of
17 isolation, loneliness, lack of motivation, and anxiety. She routinely expresses concern about her
18 friends' mental health and has grown especially concerned about her peers after learning that a
19 classmate committed suicide in late 2020. That classmate's death was especially difficult for
20 E.E.'s daughter as the classmate had been the first peer to talk to E.E.'s daughter when she started
21 attending school in the district.

22 16. E.E.'s daughter has expressed concern that she no longer knows how to interact
23 with people because she rarely has opportunities to socialize with her peers. Technology
24 challenges routinely prevent her from feeling as though she can make a connection with her
25 teachers and classmates. She often feels "numb" and "dead" at the end of a school day. She has
26 also said that she often feels like she is "reaching out a hand with nothing to grab on the other
27 side." After consistent isolation for over ten months, she is now afraid of everything: she is scared
28 to turn on the camera and scared to turn on the chat during class. Her anxiety has recently

1 increased and is now impacting all aspects of her life.

2 17. Once a straight-A student, E.E.'s daughter now has declining grades while, in
3 contrast, she has observed classmates bragging about cheating on schoolwork and exams. E.E.'s
4 daughter feels like the students are just numbers to their teachers, none of whom they have met in
5 person.

6 **5. C.B.**

7 18. Plaintiff C.B.'s child is a student in the San Dieguito Union High School District.
8 C.B.'s child is dyslexic and has been diagnosed with ADHD and anxiety. C.B.'s child has had a
9 very difficult time with distance learning, as she is unable to sit at a computer and engage in
10 distance learning for a full day without losing focus. As a result of C.B.'s decision to hire a full-
11 time tutor to sit with their child during distance learning, the child is now getting straight A's,
12 which has excluded her from eligibility to receive on-campus support services during distance
13 learning.

14 19. C.B.'s child's anxiety recently increased after one of her teachers told the students
15 that she will die from COVID-19 if she is forced to teach in-person. C.B.'s child was very
16 worried about the teacher and got involved in asking the school's administration not to require the
17 teacher to return to campus. C.B.'s child's strong views about the teacher, prompted by the
18 teacher's incessant discussion about her own fears, led to conflicts within C.B.'s family.

19 **6. L.R.**

20 20. Plaintiff L.R.'s daughter is a student in the San Dieguito Union High School
21 District. Before March 2020, she was very outgoing, happy, and social. When the district initially
22 announced that it would be closing schools in March 2020, she was happy to have the free time
23 and seemed to enjoy the change of pace. Sadly, she missed out on her middle school graduation,
24 but she still seemed to be taking things in stride.

25 21. In or around October 2020, after the district announced it would not be returning to
26 in-person education at any time during the first semester, L.R. started to notice changes in her
27 daughter's behavior. L.R.'s daughter grew sad, withdrawn, melancholy, angry, and lethargic, and
28 started spending all day in bed. She now routinely stays in bed during distance learning and goes

1 back to sleep at various times throughout the day. In or around January 2021, L.R. found an
2 empty bottle of alcohol in her child's room. L.R. talked with her daughter and tried to encourage
3 her to talk to a counselor or a therapist, but for now she is unwilling.

4 22. L.R. also encouraged her daughter take advantage of an opportunity to do distance
5 learning in a cohort on campus. However, the day before L.R.'s child was supposed to go to
6 school for distance learning, she melted down because she did not know anyone in the cohort.
7 She did ultimately go to school for on-campus distance learning, but she quickly reported having
8 a headache to administrators in order to have the school send her home.

9 23. At the start of winter break, L.R. noticed that her child had 22 incomplete
10 assignments. She admitted to feeling overwhelmed and unable to handle the isolation imposed by
11 distance learning. The district's consistent failure to reopen schools on the deadlines it sets for
12 itself has only added to her hopelessness, frustration, and loneliness. She recently explained that
13 in March 2020, she thought the school would only be closed for a couple of weeks. L.R. and her
14 child continue to lose hope and faith that school will reopen this year, further exacerbating the
15 child's feelings of hopelessness and depression.

16 **7. L.B.**

17 24. Plaintiff L.B.'s daughter is a student in the San Dieguito Union High School
18 District. L.B. works full-time outside the home, as her employer will not permit her to work from
19 home. L.B.'s daughter is a competitive athlete who was extremely social, dedicated, and
20 conscientious before her school closed in March of 2020.

21 25. For the first few months after schools closed, L.B.'s daughter seemed happy to be
22 home, but that happiness gradually turned into tears that grew in frequency and intensity. Around
23 the start of school in September 2020, she started crying uncontrollably several nights a week.
24 Once a confident teenager, she can no longer look anyone in the eye, will not leave the house for
25 fear of running into someone she knows, and leaves her camera turned off during distance
26 learning because she cannot handle the thought of other students looking at her.

27 26. In the fall of 2020, L.B.'s daughter stopped eating regular meals and started
28 reporting dark thoughts and urges to hurt herself. She is now receiving intensive psychotherapy.

1 She has lost a significant amount of weight and spent two days as an inpatient at Rady Children’s
2 Hospital for eating disorder treatment.

3 27. While L.B.’s daughter still tries to train for athletic competitions, she quickly gets
4 winded and lightheaded because she has an iron deficiency arising from her eating disorder, and
5 has become more and more out of shape for athletic competition.

6 28. L.B.’s daughter suffers from recurrent anxiety and panic attacks. She wears a
7 hoodie all day in an effort to cover her face and was too overwhelmed to sit at the table with her
8 family to enjoy Christmas dinner. She spends most of her days in bed, often curled up in a fetal
9 position and crying uncontrollably. Her therapist attributes the onset of her mental health issues to
10 distance learning.

11 **8. C.U.**

12 29. C.U.’s son is a high school student in the Oceanside Unified School District. He
13 aspires to a career in the military. Until March 2020, he was confident, consistently achieved A
14 and B grades in his classes, and had a tight group of friends at school. He has not been identified
15 as having any learning deficiencies but needs a consistent, structured educational environment to
16 thrive.

17 30. C.U.’s son’s high school closed in March 2020 without a plan for remote learning.
18 From that date until the end of the school year, he did not receive any meaningful education from
19 his teachers. Most critically, he lost nearly a semester of instruction from his Math I class.

20 31. Though OUSD would have been allowed to do so under the state guidelines in
21 place at the time, the district decided not to open for in-person instruction at the start of the 2020–
22 2021 school year.

23 32. Instead, the district provided a well-intentioned but poorly planned and executed
24 program of remote learning. Many of C.U.’s son’s “classes” were only fifteen to twenty minutes
25 long. The various teachers had no consistency in the technology platforms they used, and none of
26 the platforms were specifically designed for educational use. Though C.U. works in the
27 information technology industry, even she at times had difficulty navigating the disparate
28 platforms used by her son’s teachers.

1 33. C.U.’s son has been frequently marked absent even though he was logged on and
2 participating in his virtual classes.

3 34. Though C.U.’s son had been a solid A/B student his entire life, and though his
4 family spent significant sums of money on tutors after his school closed, he continued to struggle
5 academically during distance learning. He had particular difficulty in his Math II class because he
6 lacked many of the foundational skills that he should have learned in his Math I class during the
7 spring 2020 semester that was abruptly canceled.

8 35. Through months of distance learning, C.U.’s son has lost his confidence. His
9 mother could no longer see the “luster” she was used to seeing his countenance. He has become
10 sad and depressed, suffered emotional meltdowns, and has made comments to C.U. about self-
11 harm.

12 36. C.U.’s son briefly found hope when his school announced it would begin
13 reopening after the 2020–2021 winter break, but during the break the school announced it had
14 canceled its reopening plans. The announcement sent him immediately back into depression.

15 37. C.U.’s son finished with failing grades in all his classes the first semester of the
16 2020–2021 school year. He is now missing a total of 25 credits required to graduate.

17 38. C.U. and her son met with his academic counselor to try to come up with a plan to
18 make up the 25 credits. The counselor callously blamed C.U.’s son for his academic failure. The
19 counselor said the school could do nothing to help him, and his only options for catching up were
20 to transfer to a continuation school or an online university.

21 39. With the school having failed him, C.U.’s son decided to withdraw from OUSD
22 and enroll in an online university.

23 **9. A.I.**

24 40. A.I.’s son and daughter attend school in the San Dieguito Union High School
25 District.

26 41. Before the school closures, A.I.’s daughter was described by her teachers as a
27 “role model.” She had always worked hard, been helpful and friendly to other students, and been
28 involved in sports.

1 42. When SDUHSD announced it would close all its schools, A.I.’s daughter initially
2 felt excited to have a break from school. Though she received very little instruction from her
3 teachers and had little interaction with her peers in her online classes, she maintained a positive
4 outlook through the end of the spring semester.

5 43. After the district announced it would not reopen for in-person instruction for the
6 2020–2021 school year, and as the ensuing weeks turned into months, A.I.’s daughter’s mood
7 changed. She would frequently cry herself to sleep, and A.I. noticed that she would wake up in
8 the morning with her eyes red and puffy. A.I.’s daughter has been seeing a therapist, but she has
9 shown little improvement. On Christmas Day, she slit her wrists.

10 44. In December 2020, SDUHSD announced a plan to reopen its schools, beginning
11 January 5, 2021, with students being given the option of returning to school one day per week for
12 in-person instruction. Students were also given the option of continuing with online instruction.
13 A.I.’s daughter chose to return to school. Later, one of her teachers thanked those students who
14 had chosen the online option and chastised those who had chosen to return to in-person school,
15 explaining “I will have to either come into school and get COVID or take off without pay.” The
16 comment was transparently intended to pressure students not to choose the option for partial in-
17 person learning.

18 45. Unfortunately for the students, the San Dieguito Faculty Association sued
19 SDUHSD, and, in a memorandum of understanding quickly executed between the district and the
20 teachers’ union without input from students or their parents, the district agreed to eliminate the in-
21 person learning option.

22 46. Unable to thrive academically or emotionally in a distance learning environment,
23 and seeing no support from the district’s administrators or teachers, A.I.’s daughter now plans to
24 transfer to a private school that offers in-person learning.

25 47. A.I.’s son was diagnosed with ADHD inattentive type and had a 504 plan in place
26 prior to the school closures. Despite his ADHD, A.I.’s son earned straight As in his classes.

27 48. A.I.’s son is having difficulty learning virtually. He cannot stay focused during his
28 online classes, and his grades have dropped.

1 49. A.I. sees her son “floating” without sufficient academic direction through his
2 online classes. A.I. has also observed that regardless of her son’s grades, his learning is
3 significantly diminished.

4 **10. J.B.**

5 50. J.B.’s daughter is a student in San Dieguito Union High School District.

6 51. J.B. is very familiar with his daughter’s group of friends, having coached their
7 basketball team for three years.

8 52. When J.B.’s daughter’s school closed in March 2020, she was suddenly unable to
9 see her friends. She became visibly annoyed at the loneliness that came with quarantine. Yet she
10 was resistant to reconnect with her friends in person — not for fear of contagion, but lack of
11 confidence in how to act or what to say amongst her friends.

12 53. J.B., who works from home, watched his once confident and cheerful daughter
13 skulk through the house daily with a sad, angry, or sometimes vacant face, and she exhibited
14 signs of sub-clinical depression. She exhibited mood swings, often becoming angry for no
15 apparent reason.

16 54. J.B.’s daughter began to linger in bed most mornings. She withdrew further into
17 isolation, interacting mostly with video games and television. When she emerged, she regressed
18 to kiddish stuffed animal role playing with her younger sister.

19 55. J.B.’s daughter clearly longed to connect with friends but had grown wary of
20 social interaction. In comparing notes with other parents, J.B. found these symptoms common in
21 their children as well.

22 56. On July 17, 2020, the SDUHSD school board voted to continue remote classes in
23 the fall. J.B.’s daughter listened intently to the meeting and that decision. Her reaction: She was
24 crushed. She cried. She was visibly shaken.

25 57. Realizing that his daughter would continue to suffer emotionally and socially if
26 she continued to be separated from her friends, J.B. invited his daughter’s group of friends to
27 study at J.B.’s house, which was possible because J.B. works from home.

28 58. When J.B.’s daughter first got together with her friends, she had forgotten how to

1 talk to them. Nevertheless, J.B. soon noticed an improvement in his daughter’s social, emotional,
2 and academic well-being.

3 59. J.B. succeeded — to a limited extent — in preserving a normal adolescent
4 existence for his daughter in the absence of school. But he is aware that many children in our
5 community have no way to get such help.

6 60. Lacking the structure of a real school environment and interaction with their
7 teachers, J.B.’s daughter and her friends eventually began to lose their academic focus and began
8 to spend more time playing video games. J.B.’s daughter and most of her friends have now
9 experienced dramatic drops in their grades. J.B. has found that the individual efforts of parents
10 can only help their children to a point. Now, approaching a once unimaginable full year of school
11 closures, the impact of positive parental intervention has dwindled.

12 **11. S.D.**

13 61. Two of S.D.’s children are high school students in SMUSD. One child is a
14 sophomore, and the other a senior. Both have had their lives flipped upside down as a result of
15 school closures.

16 62. S.D.’s sophomore daughter initially enjoyed the extra time with friends that the
17 closure of school unintentionally fostered. But she had trouble getting into a routine at home. She
18 experienced difficulty waking up each morning and watched her grades drop from As and Bs to
19 Cs. S.D.’s daughter spent most of her days sleeping, watching music videos, and playing video
20 games. S.D. became more alarmed when she discovered that her daughter had started to spend
21 time with a different circle of friends with whom she drank alcohol. She was growing
22 increasingly moody and ultimately told S.D. that she had a plan to commit suicide by drinking a
23 poisonous substance. S.D. immediately got her daughter into counseling and hid any dangerous
24 objects and potentially lethal fluids in her home. S.D.’s daughter has continued with the second
25 semester of distance learning but is still not herself and frequently has trouble focusing, is very
26 emotional, and tells S.D. that she “hates everything.”

27 63. While she has still been able maintain her grades, S.D.’s senior daughter is also
28 suffering from the isolation imposed by nearly a year of remote high school. S.D.’s senior

1 daughter complains that her online classes are extremely boring and a waste of time as her
2 teachers are typically only online for only 15 to 20 minute periods and provide little instruction.
3 Before the school lockdown, S.D.’s senior daughter was a star athlete who was poised to obtain
4 an athletic scholarship for college and had been eagerly anticipating her senior year social
5 activities including prom and football games. Now she is now increasingly moody, bitter, and has
6 lost both hope and motivation.

7 64. S.D. is concerned that, as a result of school closures, both of her daughters have
8 suffered irreparable emotional and academic harm that will negatively impact them for years.

9 **B. Defendants.**

10 65. Defendant Gavin Newsom (“Governor Newsom”) is Governor of the State of
11 California and is sued in his official capacity as such.

12 66. Dr. Mark Ghaly (“Dr. Ghaly”) is Secretary of the Department of Health and
13 Human Services of the State of California and is sued in his official capacity as such.

14 67. Dr. Naomi Bardach (“Dr. Bardach”) is Successful Schools Team Lead for the
15 Department of Health and Human Services of the State of California and is sued in her official
16 capacity as such.

17 68. Dr. Tomás Aragón (“Dr. Aragón”) is Director and State Public Health Officer of
18 the Department of Public Health of the State of California and is sued in his official capacity as
19 such.

20 69. San Dieguito Union High School District (“SDUHSD”) is a school district in the
21 County of San Diego comprising the City of Del Mar, the City of Solana Beach, the City of
22 Encinitas, parts of the City of Carlsbad, and certain unincorporated areas of the County of San
23 Diego. SDUHSD is a local education agency (“LEA”) under the California Education Code.
24 SDUHSD, unlike the other school district defendants, offers only middle school and high school
25 (grades 7 through 12).

26 70. Carlsbad Unified School District (“CUSD”) is a school district in the County of
27 San Diego comprising most of the City of Carlsbad and a small part of the City of Oceanside.
28 CUSD is a LEA under the California Education Code.

1 71. Oceanside Unified School District (“OUSD”) is a school district in the County of
2 San Diego comprising most of the City of Oceanside and parts of Marine Corps Base Camp
3 Pendleton. OUSD is a LEA under the California Education Code.

4 72. San Marcos Unified School District (“SMUSD”) is a school district in the County
5 of San Diego comprising most of the City of San Marcos, parts of the City of Vista, parts of the
6 City of Carlsbad, and certain unincorporated areas of the County of San Diego. SMUSD is a LEA
7 under the California Education Code.

8 73. Poway Unified School District (“PUSD”) is a school district in the County of San
9 Diego comprising the City of Poway, parts of the City of San Diego, and certain unincorporated
10 areas of the County of San Diego. PUSD is a LEA under the California Education Code.

11 **II. GENERAL ALLEGATIONS.**

12 **A. Governor Newsom declares a state of emergency and schools shut down.**

13 74. On March 4, 2020, Governor Newsom declared a state of emergency in response
14 to the COVID-19 pandemic.

15 75. On March 13, 2020, Governor Newsom signed Executive Order N-26-20, which
16 permitted California’s local school districts to initiate school closures. That executive order
17 directed that California school districts would continue to receive state funding so long as they
18 “deliver[ed] high-quality educational opportunities to students to the extent feasible through,
19 among other options, distance learning and/or independent study.”

20 76. On the same day, the San Diego County Office of Education announced that all
21 San Diego County school districts would be closing to curb the potential transmission of COVID-
22 19.

23 77. On March 29, 2020, the San Diego County Health and Human Services Agency
24 issued an order prohibiting schools from holding classes or school activities on campus. San
25 Diego County public schools remained closed for the remainder of the school year.

26 78. On June 16, 2020, the San Diego County Health and Human Services Agency
27 issued an updated order providing that “[a]ll public, charter and private schools may hold classes
28 or school business operations on the school campus, provided the school complies with the

1 measures contained in the State COVID-19 Industry Guidance: Schools and School-Based
2 Programs issued by the CDPH”

3 **B. Legislature passes SB 98 requiring schools to provide in-person instruction.**

4 79. To ensure the continuity of education during the COVID-19 pandemic following
5 the end of the 2019–2020 school year, the California Legislature passed Senate Bill 98 (“SB 98”).
6 Governor Newsom signed SB 98 into law on June 29, 2020. Senate Bill 98 amended and added
7 various provisions to the Education Code to clarify the obligations of LEAs, such as the
8 defendant school districts, during the COVID-19 pandemic.

9 80. SB 98 directed LEAs to develop new Learning Continuity and Attendance Plans
10 (“LCAPs”) for the 2020–2021 school year. LCAPs were required to address “[i]n-person
11 instructional offerings, and specifically, the actions the school district, county office of education,
12 or charter school will take to *offer classroom-based instruction whenever possible*” (Educ.
13 Code, § 43509, subd. (f)(1)(A) [emphasis added].)

14 81. To that end, SB 98 modified section 43502 of the Education Code to state: “For
15 purposes of calculating apportionments for the 2020–21 fiscal year, a local education agency
16 *shall offer in-person instruction*, and may offer distance learning, pursuant to the requirements of
17 this part.” (Educ. Code, § 43502, subd. (a) [emphasis added].) The Legislature further stated that
18 a “local educational agency *shall offer in-person instruction to the greatest extent possible.*” (*Id.*,
19 § 43504, subd. (b) [emphasis added].)

20 82. SB 98 specified that distance learning may be offered in only two circumstances:
21 “(A) On a local educational agency or schoolwide level as a result of an order or guidance from a
22 state public health officer or a local public health officer;” or “(B) For pupils who are medically
23 fragile or would be put at risk by in-person instruction, or who are self-quarantining because of
24 exposure to COVID-19.” (Educ. Code, § 43503(a)(2).)

25 **C. The state issues its Reopening In-Person Learning Framework.**

26 83. On July 17, 2020, the California Health and Human Services Agency, through the
27 California Department of Public Health (“CDPH”), issued the “COVID-19 and Reopening In-
28 Person Learning Framework for K-12 Schools in California, 2020-2021 School Year” (“July

1 2020 Framework”) “to support school communities as they decide when and how to implement
2 in-person instruction for the 2020–2021 school year.” That “framework” provided that schools
3 could reopen for in-person instruction subject to conditions outlined by the local public health
4 department. The framework also required compliance with the “COVID-19 Industry Guidance:
5 Schools and School-Based Programs,” which mandated certain safety protocols such as masks
6 and spacing between teachers and students, while only recommending other protocols such as
7 upgraded air filtration, regular cleaning and disinfection, and six feet of spacing between student
8 desks “where practicable.”

9 84. According to Governor Newsom’s statement the same day, “schools can
10 physically open for in-person instruction when the county they are operating in has been off our
11 monitoring list for 14 consecutive days.”

12 **D. The state issues its Blueprint for a Safer Economy.**

13 85. On August 28, 2020, Governor Newsome announced the Blueprint for a Safer
14 Economy (“Blueprint”), which created a color-coded tier system for reopening or closing
15 economic sectors based on the case rate in a particular county. The most restrictive “Purple Tier”
16 of greater than 7 cases per 100,000 residents provided similar restrictions to the now obsolete
17 monitoring list and allowed schools to open for in-person instruction once their case rates
18 dropped the county from the “Purple Tier” to the “Red Tier” (7 or fewer cases per 100,000
19 population) for two consecutive weeks. The Blueprint also provided that “schools that have
20 reopened for in-person instruction are not required to close if their county moves back to the
21 Widespread (purple) tier.”

22 **E. Schools in San Diego County are given permission to reopen.**

23 86. San Diego County moved off the state monitoring list on August 18, 2020, and
24 was given permission to open all K-12 schools for in-person instruction on September 1, 2020.
25 San Diego County remained in the Red Tier until November 14, 2020, when it moved to the
26 Purple Tier, where it remains today.

27 **F. Many public schools fail to provide in-person instruction.**

28 87. Despite being permitted — and required — to offer in-person instruction as of

1 September 1, 2020, the majority of public school districts in San Diego County failed to plan for a
2 return to in-person instruction.

3 88. CUSD initially provided elementary students with a “hybrid learning model,”
4 which provided in-person instruction only two modified days per week starting in late September
5 2020. While many of CUSD’s elementary students are now back in school for in-person
6 instruction five days per week, CUSD has failed to offer any in-person instruction to its
7 secondary students and voted to keep them in distance learning until January 2021. Although the
8 CUSD Board of Trustees briefly reconsidered the reopening of secondary schools in October
9 2020, the board ultimately voted again to delay reopening to January 5, 2021. At a meeting on
10 December 16, 2021, the board voted to further delay reopening to January 25, 2021.

11 89. SDUHSD voted in September 2020 to keep all secondary students in distance
12 learning until January 2021. In December 2020, the SDUHSD Board of Trustees voted to reopen
13 its middle and high schools on January 5, 2021, for a one-day-per-week hybrid model with a full
14 five-day-per-week reopening planned for January 27, 2021. But after a lawsuit was filed by the
15 California Teachers Association (“CTA”) on behalf of the San Dieguito Faculty Association,
16 SDUHSD entered a memorandum of understanding agreeing not to reopen until at least January
17 27, 2021.

18 90. OUSD decided to bring elementary students back for in-person instruction in a
19 hybrid model starting in October 2020 but subsequently delayed the reopening date to November
20 2020. Secondary students would remain in virtual instruction until January 11, 2021, when they
21 would return for a hybrid model of instruction, although Expanded Enrichment Programs and
22 Secondary Learning Centers were created at each school site to provide in-person academic
23 support and enrichment opportunities to students in grades K–12. On December 10, 2020, the
24 OUSD Board of Trustees voted to return elementary students to virtual instruction and delay the
25 reopening of secondary schools until San Diego County returned to the “Red Tier” of the
26 Blueprint. On January 13, 2021, the OUSD Board of Trustees voted to keep all grade levels in
27 virtual learning until San Diego County returned to the Red Tier.

28 91. PUSD similarly voted to reopen elementary schools in October 2020, but decided

1 to keep secondary schools closed during four separate board meetings in October 2020,
2 November 2020, December 2020, and January 2021, ultimately deciding at the January 15, 2021
3 Board Meeting to reopen secondary schools on February 17, 2021, for a hybrid model of
4 instruction.

5 92. SMUSD voted in September 2020 to return elementary students under a hybrid
6 model in phases beginning in October 2020, while secondary students would remain in virtual
7 learning until January 2021 or later if San Diego County had not returned to the Red Tier.

8 **G. California Teachers Association demands schools remain closed.**

9 93. On December 9, 2020, the CTA sent a letter to the San Diego County Office of
10 Education (“SDCOE”) demanding that CUSD, SDUHSD, and SMUSD be prohibited from
11 implementing their announced plans for further reopening while San Diego County remained in
12 the Purple Tier. On December 16, 2020, the CTA sent a letter to California lawmakers demanding
13 that no school be allowed to reopen or even remain open while the county in which the school
14 was located was in the Purple Tier.

15 **H. Evidence mounts that schools can safely reopen.**

16 94. While California and the aforementioned San Diego County school districts
17 postponed or canceled reopening plans, a growing body of evidence continued to show that
18 reopening schools for all students in all grades can be safely accomplished. The COVID School
19 Dashboard developed by Brown University tracks over 5,000 schools, 4 million students, and 1.3
20 million staff, and has consistently found student and staff infection rates of 0.1% to 0.2% since it
21 began publishing in September. A September report from Insights for Education of data from 191
22 countries found no link between schools being open for in-person learning and COVID infection
23 rates, and data collected during a surge in cases in the state of Illinois in November also found
24 only 16 schools experienced outbreaks of between 11 and 16 cases each among over 750,000
25 students in full- or part-time in-person learning.

26 95. In an article published in the medical journal *Pediatrics* January 8, 2021,
27 researchers reported that in a study of 90,000 students across 56 school districts in North Carolina
28 during the first nine weeks of the school year, there were only a few dozen instances of secondary

1 spread in schools, and *no cases were found of in-school child-to-adult* spread, even with
2 community infection rates of up to 29 per 100,000.

3 96. In a study of Swedish schools from March through June 2020, published January
4 6, 2021, researchers similarly found that even though community spread was prevalent and
5 schools for ages 1 through 16 remained open, only 15 out of 1.95 million children were
6 hospitalized with COVID-19, and only 20 out of 103,596 teachers were admitted to the ICU, and
7 no students or teachers died from COVID-19.

8 97. A January 4, 2021 study by the National Center for Research on Education Access
9 and Choice at Tulane University also “found no evidence that reopening schools in-person or in a
10 hybrid form increased COVID hospitalizations” and “suggest[ed] that it seems safe to reopen
11 schools when there are no more than 36 to 44 total new COVID hospitalizations per 100,000
12 people per week.” San Diego County, hospitalizations for COVID-19 have averaged
13 approximately 9 new hospitalizations per 100,000 per week since early January and at the
14 December peak averaged less than 30 new hospitalizations per 100,000.

15 98. The United States Centers for Disease Control (“CDC”) recently published two
16 separate studies concluding “there has been little evidence that schools have contributed
17 meaningfully to increased community transmission,” “that when schools strictly adhere to layered
18 mitigation strategies, they can minimize in-school transmission even during times of higher
19 community incidence,” and that “with proper prevention efforts ... we can keep transmission in
20 schools and educational settings quite low.”

21 99. According to the San Diego County Office of Education (“SDCOE”), as of
22 February 4, 2021, there are 32,624 students learning full-time on campus, 71,629 students in
23 hybrid learning models, and 409,251 students in distance learning. According to the latest Weekly
24 Update from the San Diego County HSSA, only 1.9% of COVID cases have a potential link to a
25 K–12 school setting, versus 32.1% for workplaces, 9.7% for retail locations and 7.0% for
26 restaurants and bars.

27 100. There is almost universal consensus that schools are safe for both students and
28 staff and that their low case rates actually make them the safest place for children to be during the

1 COVID-19 pandemic. As the CDC wrote in its “Summary of Guidance” on December 4, 2020,
2 “because of ... the disproportionate impact that school closures can have on those with the least
3 economic means, kindergarten through grade 12 schools should be the last settings to close after
4 all other mitigation measures have been employed and the first to reopen when they can do so
5 safely.”

6 **I. Failure of distance learning models.**

7 101. At the same time that data is showing schools can be reopened safely, a growing
8 body of evidence shows the alarming effects of prolonged and indefinite school closures on
9 students. The data is particularly alarming among teenagers, who have been continuously
10 excluded from school reopening plans while many their younger counterparts have been brought
11 back. In November, the CDC reported that mental health-related emergency department visits
12 among children in the 5 to 11 and 12 to 17 age brackets increased approximately 24% and 31%,
13 respectively. A national survey of high school students in the spring found nearly a third reported
14 that they were unhappy and depressed “much more than usual” in the past month. One study
15 released in November indicate that school closures “may be associated with a decrease in life
16 expectancy for US children.”

17 102. On January 13, 2021, a group of thirty University of California San Francisco
18 medical professionals published an open letter calling for schools to be reopened by February 1,
19 2021, noting that distance learning has led to mental health issues, especially for teenagers. Dr.
20 Saun-Toy Trotter, a psychotherapist at UC San Francisco’s Benioff Children’s Hospital in
21 Oakland, saw “high levels of depression” and said the clinic recorded more youth suicide
22 attempts in the first four weeks of the pandemic than it did in the entire previous year.

23 103. A local clinical psychologist wrote to the SDUHSD Board of Trustees on October
24 7, 2020: “never in my two decades of clinical work have I ever seen such a rapid deterioration of
25 social and emotional health as I have witnessed during the pandemic.”

26 104. On the academic front, the San Diego Union-Tribune reported in late November
27 that school districts were seeing surges in failing grades, with CUSD reporting a *312% increase*
28 *in failing grades* during its first grading period from September through October.

1 105. A McKinsey & Company report in June 2020 concluded that students who do not
2 receive full-time, in-person instruction until 2021 will have lost an average of seven months of
3 learning this school year, and a RAND survey found that only 19% of teachers had covered all or
4 nearly all of the content they would have covered by the same time the previous school year.

5 106. Disparate outcomes for poor and minority children are increasing as well. The
6 same McKinsey & Company report estimated that white students will be set back one to three
7 months in math, while students of color lost three to five months. Applicants for federal student
8 aid dropped 16% in the fall, with larger drops in college applications from Hispanic and low-
9 income students.

10 **J. Governor Newsom announces Safe Schools for All Plan.**

11 107. On December 30, 2020, Governor Newsom announced a Safe Schools for All Plan
12 which was described as “California’s framework to support schools to *continue operating safely*
13 *in-person* and to *expand the number of schools safely resuming in-person instruction.*” (Emphasis
14 added.) The Safe Schools Plan had four pillars that Governor Newsom pledged to advance “with
15 the Legislature,” the first being a proposal for a \$2 billion budget allocation “for immediate action
16 in January.” The remaining pillars included: (1) safety and mitigation measures, (2) hands-on
17 oversight via medical and public health experts including Dr. Bardach, and (3) a state dashboard
18 to publicly track California school reopenings.

19 108. However, as of the date of this filing, the state legislature has not considered or
20 approved a budget allocation in support of any of these incentives.

21 **K. CDPH announces its January 2021 Framework**

22 109. Although there was no evidence that the existing July 2020 Framework was
23 resulting in the unsafe reopening of schools, and despite increasing state, national, and
24 international data on the safety of reopening schools, on January 14, 2021, CDPH abruptly
25 released a new “COVID-19 and Reopening In-Person Instruction Framework and Public Health
26 Guidance for K–12 Schools in California, 2020–2021 School Year” (“January 2021
27 Framework”), which created significant new restrictions for California schools. The January 2021
28 Framework mirrored much of the Safe Schools Plan but added numerous new requirements for

1 school reopenings, while failing to allocate any funding through the State budget to support
2 school reopening, as described in the original Safe Schools Plan. The Framework mandated: (1)
3 the closure of all public and private schools which had previously not reopened in the Red Tier;
4 (2) the implementation of new minimum distancing requirements for students, from three feet to
5 four feet; (3) the creation of stable groups; and 4) the closure of secondary schools for grades 7
6 through 12 until the new requirements for distancing and stable groups were submitted and
7 approved by the CDPH. LEAs were given until February 1, 2021, to comply with the January
8 2021 Framework.

9 110. More importantly, instead of supporting “schools to continue operating safely” and
10 “expand[ing] the number of schools safely resuming in-person instruction,” the January 2021
11 Framework instead purported to create new and significant mandatory restrictions for LEAs
12 which forced them to close or delay existing reopening plans. The January 2021 Framework
13 included an undefined requirement for the implementation of small stable groups of students and
14 teachers, an arbitrarily selected physical distance requirement between student desks, and an
15 ambiguous and an improper attempt to change the definition that the state utilizes to determine
16 whether a school site had previously opened, all of which led to confusion, frustration, and the
17 delay of reopening plans that had been in the works for months, had been approved by county
18 health authorities and shown to be effective, and in many cases were only days away from
19 implementation.

20 **L. The January 2021 Framework sets an arbitrary distinction between schools**
21 **that are “open” and those that are still in the process of reopening.**

22 111. Under the July 2020 Framework, CDPH permitted school sites which had already
23 opened while in the Red Tier to remain open and continue reopening even if the county where the
24 school site was located returned to the Purple Tier. However, if the school site had not reopened
25 before the county returned to the Purple Tier, it was not permitted to reopen as long as the county
26 was in the Purple Tier. Certain school districts including CUSD, PUSD, SDUHSD, and SMUSD,
27 along with the San Diego County Health and Human Services Department, had determined that
28 their secondary school sites were “open” under the July 2020 Guidelines and could therefore

1 continue to reopen even though San Diego County had returned to the Purple Tier. These school
2 districts continued with their efforts to plan to reopen over the next few months.

3 112. However, the January 2021 Framework created a new definition of an “open”
4 school site as one that had offered in-person instruction to all students in at least one grade for
5 classes in a required subject. Through its more restrictive definition of “open,” the January 2021
6 Framework operated to prohibit schools from reopening that otherwise would have been able to
7 open. The change clearly did not “expand the number of schools safely resuming in-person
8 instruction,” as was the stated goal of the Safe Schools for All Plan.

9 113. The new definition of whether a school site was “open” caused considerable
10 confusion, with school districts including CUSD, PUSD, SDUHSD, and SMUSD determining
11 along with the San Diego County Health and Human Services that their secondary school sites
12 were no longer considered “open.” The months of work and millions of dollars spent preparing to
13 safely reopen had gone to waste. As CUSD Superintendent Ben Churchill wrote in an update to
14 CUSD parents on January 15, 2021:

15 At the secondary level, we will not be allowed by CDPH to
16 implement the hybrid schedule as planned on January 25 Our
17 district has spent millions of dollars on upgrades to our ventilation
18 systems, installation of air filtration units, and additional staff to
19 reduce class sizes and increase cleaning and disinfection protocols.
20 We negotiated an agreement with our teachers union, which was
21 subsequently ratified by a majority of its members, so that we’d be
22 ready to expand to Phase 3 of our reopening plan at both the
23 elementary and secondary level on January 25.

24 114. Dr. Bardach, the CDPH Safe Schools for All lead, attempted to explain that a
25 school cannot reopen in the Purple Tier because “reopening a school with all the layers of
26 mitigation is just operationally complicated.” Yet there is no evidence that the act of reopening is
27 any more “operationally complicated” than the act of remaining open, and has the State has not
28 cited any evidence to support this assertion. In fact, the rule stating that schools could not reopen
once in the Purple Tier but could continue to remain open in the Purple Tier dates to the original
July 2020 Framework, prior to any school having reopened, negating any potential evidentiary
basis for its existence. Dr. Bardach’s rationalization is especially arbitrary, problematic, and
inapplicable as applied to CUSD, OUSD, PUSD, SDUHSD, and SMUSD, where all school sites

1 have, indeed, been open to hundreds of students and staff for various activities at least since
2 October, demonstrating that site staff and students have sufficient experience to continue
3 progressing toward a full reopening. With many of the elementary campuses having been opened
4 for in-person education for months, it is illogical to think that the knowledge and experience
5 obtained there would not translate over to other staff and students in these same school districts,
6 particularly when some of the elementary school sites share a campus with secondary schools.

7 115. The arbitrary nature of the January 2021 Framework is further highlighted by the
8 fact that school districts like Vista Unified School District, which opened for full-time, in-person
9 learning in October, are allowed to continue to reopen in the Purple Tier once they create and
10 implement a new learning model that is more similar to the plans that CUSD, OUSD, PUSD,
11 SDUHSD, and SMUSD had already been developing and implementing for months. In reality,
12 reopening the Vista Unified School District under a new plan would be more “operationally
13 complicated” than for CUSD, OUSD, PUSD, SDUHSD, and SMUSD to proceed with the
14 reopening plans they had already begun implementing at all of their elementary and the majority
15 of their secondary schools since at least October.

16 **M. The January 2021 Framework maintains an arbitrary threshold for**
17 **secondary schools.**

18 116. The January 2021 Framework creates a new age-based restriction which mandates
19 school closures for grades 7 through 12 until a case rate threshold of 7 per 100,000 is achieved,
20 while allowing elementary schools to open at a case rate threshold almost four times greater at 25
21 per 100,000.

22 117. The CDPH purports to base this distinction on the aforementioned *Pediatrics*
23 study showing that schools had extremely low rates of transmission in communities with case
24 rates of up to 29 per 100,000. However, CDPH grossly misinterprets the study on several counts.
25 First, the study covered elementary, middle, *and* high schools and found similarly low
26 transmission rates for all grades, yet CDPH has applied the new case rate threshold only to
27 elementary students. Second, the study does not indicate that a case rate exceeding 29 per
28 100,000 is unsafe, as CDPH has apparently concluded. The study simply mentions that the

1 highest case rate observed in the community during the study period was 29 per 100,000.

2 118. In attempting to justify the January 2021 Framework’s new rule that allows only
3 elementary schools, and not secondary schools, to reopen in communities with higher case rates,
4 CDPH arbitrarily cites one study from France estimating infections in a single high school
5 between January and March 2020, before any mitigation measures such as masking, distancing,
6 testing, or even symptom screening were in place. CDPH apparently decided to ignore the
7 countless studies and data points released since March 2020 showing secondary schools with
8 transmission rates as low as those in elementary schools with similar precautions in place.

9 119. In fact, numerous other states have reopened schools when community case rates
10 were at far higher levels, and several states just recently unveiled reopening plans with thresholds
11 that are also significantly higher than California’s threshold of 7 per 100,000 case rate required to
12 open secondary schools or the 25 per 100,000 case rate required to reopen elementary schools
13 under the January 2021 Framework. In October, Oregon permitted schools to return to some form
14 of in-person instruction at a case rate of 100 per 100,000 and allowed schools to return to full-
15 time, in-person learning if the case rate falls below 50 per 100,000. Washington State updated its
16 recommendations in December to make in-person learning available to all students if case rates
17 fall below 50 per 100,000, and still allows school districts to phase in learning over time if the
18 case rate is between 50 and 350 cases per 100,000. As of February 9, 2021, San Diego County
19 reported an unadjusted case rate of 35.4 per 100,000 and an adjusted case rate of 34.2 per
20 100,000, and those rates have been consistently falling.

21 **N. The January 2021 Framework imposes a vague “stable groups” requirement.**

22 120. The “stable groups” requirement imposed by the January 2021 Framework is
23 vague, ambiguous, and arbitrary, as it does not provide a single definition for how the
24 requirement can be met, instead providing several pages of possible examples of different
25 measures that could be implemented without indicating which one measure or combination of
26 measures would be sufficient to meet the requirement.

27 121. CDPH effectively admits that the “stable groups” requirement is vague,
28 ambiguous, and arbitrary by hollowing out the requirement after a few weeks and simply asking

1 that school districts follow the “intent” of why stable groups are important, if that can even be
2 discerned.

3 122. With this ambiguity in mind, San Diego County Superintendent of Schools Dr.
4 Paul Gothold sent an email to the respondent school districts on February 4, 2021 stating:

5 CDPH is not requiring schools to choose from the recommenda-
6 tions provided. Instead, CDPH requires schools to follow the intent
7 of why stable groups are important and develop the best stable
8 group system with their students that will limit exposure to the
9 greatest extent possible. The County of San Diego has advised that
10 schools must show rigor in considering stable groups, documenting
11 it in their Schools Guidance Checklist, which must be completed
12 and posted.

13 **O. The January 2021 Framework imposes an arbitrary four-foot requirement.**

14 123. Both the American Academy of Pediatrics and the World Health Organization
15 recommend that schools engage in efforts to ensure only three feet (one meter) of physical
16 spacing between students, referencing numerous studies showing that the risk of transmission of
17 COVID-19 at three feet — even without masks — is very low.

18 124. The July 2021 Framework recommended that student desks be spaced six feet
19 apart, “as practicable,” reflecting an apparent understanding that many school districts would be
20 unable to offer in-person learning to all students with this increased spacing with a mandatory six
21 feet of spacing between students.

22 125. Despite the recommendations of the American Academy of Pediatrics and the
23 World Health Organization, the January 2021 Framework eliminates the flexibility provided by
24 the July 2020 Framework and now requires that all student desks be spaced at least four feet
25 apart, without any evidence or explanation for the sudden increase in minimum spacing.

26 126. Tellingly, the state officials responsible for releasing the January 2021 Framework
27 have begun to walk back many of the more restrictive new guidelines now that the unintended
28 consequences of their implementation are becoming clear. During a press conference on January
29 26, 2021, Dr. Ghaly addressed the State’s response to the fact that the new four-foot spacing rule
30 has led to the unintended consequence of preventing schools from providing in-person learning:

31 We’re working hard to make sure that schools with plans that are
32 already in place — demonstrating the ability to track transmission,

1 safety — are continued ... and the hope is that we work with all
2 education leaders to make sure these rules — *or these concepts,*
3 *really* — help facilitate that safe and secure return to school, but
4 *don't inhibit and slow down some of the important plans that have*
5 *been already in place.* [Emphasis added.]

6 127. In other words, the idea of four-feet of spacing between students was intended as a
7 conceptual guideline, not a rule, and was not intended to inhibit or slow down existing school
8 reopening plans. Nevertheless, that has been the effect of the January 2021 Framework.

9 **P. The state is now providing waivers for the January 2021 Framework**

10 128. With confusion mounting among school districts as to how or whether the January
11 2021 Framework would be enforced or whether it would be attached to legislative funding that
12 had not yet materialized, some school districts outside of San Diego County began to advocate for
13 exemptions from the requirements in order to continue with reopening plans or keep their schools
14 open. On January 28, 2021, Dr. Bardach sent an e-mail to a concerned parent regarding the
15 January 2021 Framework, commenting:

16 The guidance was intended to add greater clarity to many aspects of
17 the previous guidance that we discovered were either unclear or
18 being interpreted differently across the state. With that being said,
19 we also acknowledge some of the unintended consequences and are
20 working to mitigate situations, including those regarding physical
21 distancing requirements; specifically instances whereby the
22 guidance itself may actually return students back to distance
23 learning in situations where it is clear from work with the local
24 health department, that the schools have been operating safely and
25 have implemented all other necessary and appropriate safety
26 measures for safe in-person instruction.

27 We are in the process of designing a safety modification request
28 process for those in the situation you highlight. This process would
be done in conjunction with the local health department and with
their approval. It will require evidence of the safety of the situation
in addition to documentation of how other safety mitigation
strategies were strengthened. We anticipate that this request process
will be available next week or the week after and will let you know
when it is available.

For the purposes of completing and posting the COVID19 safety
plan (CSP) by Feb 1st, for schools that are currently open with less
than 4 feet of distancing, we ask that schools complete the form
noting the current physical distancing in place and note in
parentheses “(safety modification request pending with CDPH)”.

129. As with the ambiguity surrounding the “stable groups” concept, it appears that

1 CDPH has now acknowledged that its requirements are arbitrary, unnecessary, and
2 overburdensome, and has started to develop a formal process for waivers from the very rules that
3 caused CUSD, OUSD, PUSD, SDUHSD, and SMUSD to postpone their reopening plans.
4 However, there is no indication that the waiver process will result in the issuance of a waiver for
5 any of the aforementioned school districts, many of which have plans that would appear to satisfy
6 the “stable group” and four-foot spacing requirements but are no longer allowed to reopen simply
7 because they are not considered to have been “open” under the new definition in the January 2021
8 Framework prior to San Diego County moving into the Purple Tier.

9 **Q. Waivers have already been granted in advance of a formal process.**

10 130. Some school districts in California separately negotiated for a waiver to exempt
11 themselves from the requirements of the January 2021 Framework even before the formal waiver
12 process was announced. On January 31, 2021, the Roseville Joint Union High School District
13 announced that it would be continuing with its five-day, in-person schedule (which did not meet
14 the four-foot distancing requirement and did not have pre-approval for “stable groups”) based on
15 consultation with the county public health department and CDPH, indicating that schools in the
16 district were permitted to stay open “while we work to participate in the safety mitigation form
17 submission process.”

18 **III. CAUSES OF ACTION.**

19 **FIRST CAUSE OF ACTION**
20 **VIOLATION OF ARTICLE IX OF THE CALIFORNIA CONSTITUTION**
21 **AGAINST ALL DEFENDANTS**

22 131. Plaintiffs hereby incorporate each of the foregoing paragraphs as though fully set
23 forth herein.

24 132. Article IX, section 1 of the California Constitution provides: “A general diffusion
25 of knowledge and intelligence being essential to the preservation of the rights and liberties of the
26 people, the Legislature shall encourage by all suitable means the promotion of intellectual,
27 scientific, moral, and agricultural improvement.”

28 133. Article IX, section 5 of the California Constitution provides: “The Legislature
shall provide for a system of common schools by which a free school shall be kept up and

1 supported in each district at least six months in every year”

2 134. By preventing schools from reopening for in-person instruction in any capacity,
3 Defendants, through their orders, decisions, and other actions recited herein, have denied
4 Plaintiffs their fundamental right on behalf of their school-aged children to an education that
5 provides a “general diffusion of knowledge and intelligence essential to the preservation of the
6 rights and liberties of the people,” ensures the opportunity to become proficient according to the
7 state of California’s standards, develop the skills and capacities necessary to achieve economic
8 and social success in our competitive society, and participate meaningfully in political and
9 community life.

10 135. By preventing schools from reopening for in-person instruction in any capacity,
11 Defendants, through their orders, decisions, and other actions recited herein, have interfered, to
12 the detriment of California schoolchildren, with the state’s “system of common schools by which
13 a free school shall be kept up and supported in each district at least six months in every year”

14 136. No compelling state interest justifies this infringement on California
15 schoolchildren’s constitutional right to a quality education.

16 137. Defendants’ orders, decisions, and other actions recited herein are significantly
17 broader than necessary to serve any alleged government interest.

18 138. Defendants’ orders, decisions, and other actions recited herein are not carefully or
19 narrowly tailored to minimize the infringement of California schoolchildren’s educational rights.

20 139. California schoolchildren are suffering irreparable harm each day that the schools
21 remain closed for in-person instruction.

22 140. Plaintiffs have no administrative remedy and have no adequate remedy at law.

23 **SECOND CAUSE OF ACTION**
24 **VIOLATION OF ARTICLE IX OF THE CALIFORNIA CONSTITUTION**
25 **AGAINST ALL DEFENDANTS**

26 141. Plaintiffs hereby incorporate each of the foregoing paragraphs as though fully set
27 forth herein.

28 142. Defendants’ orders, decisions, and other actions recited herein fail to account for
the needs of disadvantaged students, including students with disabilities, thereby depriving them

1 of an equal educational opportunity to become proficient in the State of California’s academic
2 standards.

3 143. Defendants’ orders, decisions, and other actions recited herein have led to
4 substantial disparities in the quality and availability of opportunities for Plaintiffs’ school-aged
5 children in violation of Article IX of the California Constitution.

6 144. No compelling state interest justifies this infringement on disadvantaged students’
7 constitutional right to basic educational equality.

8 145. Defendants’ orders, decisions, and other actions recited herein are significantly
9 broader than necessary to serve any alleged government interest.

10 146. Defendants’ orders, decisions, and other actions recited herein are not carefully or
11 narrowly tailored to minimize the infringement of students’ educational rights.

12 147. California schoolchildren are suffering irreparable harm each day that the schools
13 remain closed for in-person instruction.

14 148. Plaintiffs have no administrative remedy and have no adequate remedy at law.

15 **THIRD CAUSE OF ACTION**
16 **VIOLATION OF ARTICLE III, SECTION 3 OF THE CALIFORNIA CONSTITUTION**
17 **AGAINST DEFENDANTS NEWSOM, GHALY, BARDACH, AND ARAGÓN**

18 149. Plaintiffs hereby incorporate each of the foregoing paragraphs as though fully set
19 forth herein.

20 150. The Separation of Powers Clause of the California Constitution provides: “The
21 powers of state government are legislative, executive, and judicial. Persons charged with the
22 exercise of one power may not exercise either of the others except as permitted by this
23 Constitution.” (Cal. Const., art. III, § 3.)

24 151. On March 4, 2020, Governor Newsom declared a state of emergency under the
25 Emergency Services Act, sections 8550 through 8667.7 of the Government Code, in response to
26 COVID-19.

27 152. Governor Newsom’s March 13, 2020 order and subsequent orders have delegated
28 to CDPH and county health officers complete discretion to decide core issues of education policy,
including the decision of whether to reopen schools for in-person learning. Thus, the governor

1 and state and county health officials are exercising a quintessentially legislative function in
2 violation of the California Constitution.

3 153. The “temporary” delegation of legislative power to the executive branch is not
4 justified by the public health emergency. The state became aware of the potential impact of
5 COVID-19 in January 2020 and shut down schools on March 13, 2020. State officials have now
6 had nearly a year to figure out how to reopen schools in a reasonably safe manner. At this point,
7 “it is too late for the State to defend extreme measures with claims of temporary exigency, if it
8 ever could.” (*South Bay United Pentecostal Church v. Newsom* (Feb. 5, 2021, No. 20A136 (20–
9 746)) 592 U.S. ___, slip opn., p. 6 (conc. opn. of Gorsuch, J.).)

10 154. Furthermore, the Emergency Services Act itself violates the California
11 Constitution, as applied here, to the extent it purports to vest in the governor for an indefinite
12 period of time and without limitation, upon his own declaration of a state of emergency,
13 “complete authority over all agencies of the state government and the right to exercise within the
14 area designated all police power vested in the state by the Constitution and laws of the State of
15 California” to “promulgate, issue, and enforce such orders and regulations as he deems necessary
16”

17 155. California schoolchildren are suffering irreparable harm each day that the schools
18 remain closed for in-person instruction.

19 156. Plaintiffs have no administrative remedy and have no adequate remedy at law.

20 **FOURTH CAUSE OF ACTION**
21 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**
22 **AGAINST DEFENDANTS NEWSOM, GHALY, BARDACH, AND ARAGÓN**

23 157. Plaintiffs hereby incorporate each of the foregoing paragraphs as though fully set
24 forth herein.

25 158. The Administrative Procedure Act (“APA”) provides: “No state agency shall issue,
26 utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order,
27 standard of general application, or other rule, which is a regulation as defined in Section
28 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general
application, or other rule has been adopted as a regulation and filed with the Secretary of State

1 pursuant to [the APA].” (Gov. Code, § 11340.5, subd. (a).)

2 159. Compliance with the APA, which requires among other things public notice and
3 comment for proposed regulations, is not a mere technicality. The procedures required by the
4 APA ensure that regulations are clear and understandable to the public, are based on sound data
5 and scientific principles, and are consistent with the law.

6 160. Defendants’ orders and directives described herein, including but not limited to the
7 January 2021 Framework, are regulations that can only be adopted and enforced pursuant to the
8 requirements of the APA.

9 161. Defendants have not complied with any of the requirements of the APA. They
10 have simply announced new “guidelines” and “frameworks” for schools while the schools are in
11 the process of implementing plans created under previous state directives. The “guidelines” and
12 “frameworks” are poorly thought out, confusing, and ever-changing, and it is often unclear
13 whether they are mandatory prescriptions or simply aspirational standards. Defendants have even
14 refused to disclose the data they are relying on to come up with their “guidelines” and
15 “frameworks.” Defendants’ continuous issuance of individual and blanket waivers of its own
16 rules is evidence of the haphazard nature of Defendants’ practice of “emergency” rulemaking. It
17 is also entirely unclear what the procedures and criteria are for obtaining waivers of state
18 requirements, which change weekly. This combination of factors has created a moving and
19 uncertain target that has greatly frustrated those who are trying to comply these directives
20 including school boards, school administrators, teachers, parents, and students. This is the
21 definition of an illegal “underground regulation,” the epitome of bad government, and exactly the
22 kind of chaos that the Legislature sought to eliminate by enacting the APA.

23 162. Defendants’ failure to follow the APA is not justified by the declared state of
24 emergency. Again, Defendants have now had nearly a year to figure out how to reopen schools in
25 a reasonably safe manner and cannot credibly claim that exigency has prevented them from going
26 through the processes required by law.

27 163. Indeed, nothing has occurred since the issuing of the July 2020 Framework that
28 would justify an “emergency” release of a new set of rules. The only plausible reason to issue

1 new “emergency rules” might be evidence that their previous Framework was leading to
2 outbreaks in schools, but the opposite has proven to be true. Schools were opening safely under
3 the existing July 2020 Framework. The supposed justification for a new “framework” was to help
4 more schools open, but the January 2021 Framework has instead forced many schools to close or
5 postpone their reopening plans. If anything, Defendants should have been relaxing the
6 requirements under the July 2020 Framework based on the evidence from schools all over the
7 state, the country, and the entire world which have reopened without incident by following only
8 the minimum safety protocols.

9 164. In addition to its violations of the procedural requirements of the APA, the January
10 2021 Framework is substantively flawed. It is not based on sound data and scientific principles. It
11 ignores data showing that many schools — both elementary and secondary — in California, in
12 other states, and around the world have remained open or reopened safely for in-person learning.
13 It ignores data about the ineffectiveness of distance learning for many students. It ignores data
14 showing dramatic increases in mental health issues, social and emotional issues, academic delays,
15 and other related problems in school-aged children. It ignores authoritative pronouncements by
16 the World Health Organization, the United States Centers for Disease Control, the American
17 Academy of Pediatrics, and other organizations stating that schools should remain open for in-
18 person learning under virtually all circumstances. It makes arbitrary distinctions between schools
19 that are “open” and those that are not yet “open.” As a result, children at one school can under
20 this definition remain in or return to full-time, in-person learning, while children at a neighboring
21 school (if they do not have the means to transfer to a private school) are shut in at home, though
22 both groups of children are living in the same community. The January 2021 Framework also
23 makes an arbitrary distinction between primary and secondary schools, meaning that in some
24 cases a child cannot go to school while his or her younger sibling can, even though their schools
25 might share a campus. It imposes an ill-defined “stable groups” requirement. It imposes an
26 arbitrary four-foot distance requirement between students when such a requirement is not
27 supported by any data and is impossible to comply with at many school sites. Defendants have
28 openly admitted the flaws in the January 2021 Framework and have begun granting ad hoc

1 waivers to various requirements, yet they refuse to rescind the January 2021 Framework or
2 modify it into true “guidance” to help LEAs reopen safely using proven practices.

3 165. The January 2021 Framework is not authorized by statute. Indeed, it started out as
4 a preliminary legislative proposal to promote reopening with a grant program. When it stalled in
5 the Legislature, Defendants added restrictions not provided for in the original legislative proposal
6 and ordered it unilaterally, without an appropriation of funds for its implementation.

7 166. California schoolchildren are suffering irreparable harm each day that the schools
8 remain closed for in-person instruction.

9 167. Plaintiffs have no administrative remedy and have no adequate remedy at law.

10 **FIFTH CAUSE OF ACTION**
11 **VIOLATION OF SENATE BILL 98**
12 **AGAINST ALL DEFENDANTS**

13 168. Plaintiffs hereby incorporate each of the foregoing paragraphs as though fully set
14 forth herein.

15 169. Senate Bill 98 (“SB 98”) mandates that, for the 2020–2021 school year, while a
16 LEA “*may* offer distance learning,” it “*shall* offer in-person instruction.” (Educ. Code, § 43502,
17 subd. (a) [emphasis added].)

18 170. SB 98 repeats this mandate in no uncertain terms: “A local educational agency
19 *shall* offer in-person instruction *to the greatest extent possible.*” (Educ. Code, § 43504, subd. (b)
20 [emphasis added].)

21 171. Defendants Governor Newsom, Dr. Ghaly, Dr. Bardach, and Dr. Aragón have
22 violated SB 98 by issuing and seeking to enforce the January 2021 Framework, which has caused
23 SDUHSD, CUSD, SMUSD, OUSD, PUSD, and other districts in San Diego County and
24 throughout California to halt their plans to reopen their schools for in-person instruction.

25 172. Defendants SDUHSD, CUSD, SMUSD, OUSD, and PUSD have violated SB 98
26 by refusing to reopen their schools for in-person instruction. Defendants have chosen to heed the
27 invalid January 2021 Framework rather than the clear mandate of SB 98 to “offer in-person
28 instruction to the greatest extent possible.”

173. California schoolchildren are suffering irreparable harm each day that the schools

1 remain closed for in-person instruction.

2 174. Plaintiffs have no administrative remedy and have no adequate remedy at law.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for relief as follows:

6 As to the First Cause of Action:

- 7 1. A temporary restraining order and preliminary and permanent injunction enjoining
8 Defendants Governor Newsom, Dr. Ghaly, Dr. Bardach, and Dr. Aragón from
9 enforcing the January 2021 Framework and from issuing any new order, directive,
10 or “framework” that would prevent any school from reopening for full-time, in-
11 person instruction;
- 12 2. A preliminary and permanent injunction and/or writ of mandamus compelling
13 Defendants SDUHSD, CUSD, SMUSD, OUSD, and PUSD to open all their
14 schools, primary and secondary, for full-time, in-person instruction to the greatest
15 extent possible within seven days;
- 16 3. A declaration that the January 2021 Framework is invalid and unlawful;
- 17 4. Attorneys’ fees pursuant to section 1021.5 of the Code of Civil Procedure and any
18 other applicable provision of law;
- 19 5. Costs of suit; and
- 20 6. Such other and further relief as the court may deem just and proper.

21 As to the Second Cause of Action:

- 22 1. A temporary restraining order and preliminary and permanent injunction enjoining
23 Defendants Governor Newsom, Dr. Ghaly, Dr. Bardach, and Dr. Aragón from
24 enforcing the January 2021 Framework and from issuing any new order, directive,
25 or “framework” that would prevent any school from reopening for full-time, in-
26 person instruction;
- 27 2. A preliminary and permanent injunction and/or writ of mandamus compelling
28 Defendants SDUHSD, CUSD, SMUSD, OUSD, and PUSD to open all their
schools, primary and secondary, for full-time, in-person instruction to the greatest
extent possible within seven days;
3. A declaration that the January 2021 Framework is invalid and unlawful;
4. Attorneys’ fees pursuant to section 1021.5 of the Code of Civil Procedure and any
other applicable provision of law;
5. Costs of suit; and
6. Such other and further relief as the court may deem just and proper.

1 As to the Third Cause of Action:

- 2 1. A temporary restraining order and preliminary and permanent injunction enjoining
3 Defendants Governor Newsom, Dr. Ghaly, Dr. Bardach, and Dr. Aragón from
4 enforcing the January 2021 Framework and from issuing any new order, directive,
5 or “framework” purporting to exercise legislative or judicial powers; and
- 6 2. A declaration that the January 2021 Framework is invalid and unlawful;
- 7 3. Attorneys’ fees pursuant to section 1021.5 of the Code of Civil Procedure and any
8 other applicable provision of law;
- 9 4. Costs of suit; and
- 10 5. Such other and further relief as the court may deem just and proper.

11 As to the Fourth Cause of Action:

- 12 1. A temporary restraining order and preliminary and permanent injunction enjoining
13 Defendants Governor Newsom, Dr. Ghaly, Dr. Bardach, and Dr. Aragón from
14 enforcing the January 2021 Framework and from issuing any new order, directive,
15 or “framework” without following the procedures required by the APA;
- 16 2. A declaration that the January 2021 Framework is invalid and unlawful;
- 17 3. Attorneys’ fees pursuant to section 1021.5 of the Code of Civil Procedure and any
18 other applicable provision of law;
- 19 4. Costs of suit; and
- 20 5. Such other and further relief as the court may deem just and proper.

21 As to the Fifth Cause of Action:

- 22 1. A temporary restraining order and preliminary and permanent injunction enjoining
23 Defendants Governor Newsom, Dr. Ghaly, Dr. Bardach, and Dr. Aragón from
24 enforcing the January 2021 Framework and from issuing any new order, directive,
25 or “framework” that would prevent any school from reopening for full-time, in-
26 person instruction;
- 27 2. A preliminary and permanent injunction compelling Defendants SDUHSD,
28 CUSD, SMUSD, OUSD, and PUSD to open all their schools, primary and
secondary, for full-time in person instruction to the greatest extent possible within
seven days;
3. A declaration that the January 2021 Framework is invalid and unlawful;
4. Attorneys’ fees pursuant to section 1021.5 of the Code of Civil Procedure and any
other applicable provision of law;
5. Costs of suit; and
6. Such other and further relief as the court may deem just and proper.

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Dated: February 12, 2021

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s/ Lee M. Andelin

Lee M. Andelin
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Attorneys for Plaintiffs