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

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

15 Plaintiffs,

16 v.

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

Case No. 37-2021-00007536-CU-WM-NC

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

Department: N-27

Judge: Hon. Cynthia A. Freeland

Action filed: February 16, 2021

Trial date: None set

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DISTRICT; and DOES 1–50, inclusive,
Defendants.

1 *As we approach the one-year mark of the COVID-19 pandemic, we*
2 *are again reminded of the catastrophic education emergency*
3 *worldwide lockdowns have created. With every day that goes by,*
4 *children unable to access in-person schooling fall further and*
5 *further behind, with the most marginalized paying the heaviest*
6 *price. We cannot afford to move into year two of limited or even no*
7 *in-school learning for these children. No effort should be spared to*
8 *keep schools open, or prioritise them in reopening plans.*

9 – Henrietta Fore, Executive Director of UNICEF

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

21 **I. PARTIES.**

22 **A. Plaintiffs.**

23 **1. A.A.**

24 1. Plaintiff A.A. resides in the Poway Unified School District. A.A. has four school-
25 aged children, three of whom have been diagnosed as being on the autism spectrum. Three of
26 A.A.’s children are in elementary school and one is in high school. All of A.A.’s children are
27 suffering academically and psychologically after nearly a year of “distance learning” and the
28 associated social isolation.

 2. After attending a special preschool for autistic children last year, A.A.’s second
youngest child is currently in kindergarten. However, none of the Individual Education Plans
 (“IEPs”) that were in place for this child were revised to adjust for “distance learning.” As a

1 result, the child is struggling with academics, including core concepts and skills that will be
2 necessary for future academic success.

3 3. A.A. also has a child in second grade who is struggling with learning to read and
4 suffering from a lack of peer interaction and socialization caused by the school's "distance
5 learning" program. This child underwent a new IEP assessment in the fall of 2020 and was
6 diagnosed with dyslexia. To date, however, the district has failed to provide any services to
7 properly address the child's disability.

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

18 **2. M.H.**

19 5. Plaintiff M.H. resides in the Carlsbad Unified School District has two school-aged
20 children. The older child is in high school, and the younger child is in middle school.

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

26 7. Around the end of September or beginning of October, shortly after the district
27 announced that middle school students would not be returning to campus as previously planned,
28 M.H. noticed that her child had missed quite a few assignments and was failing several classes.

1 When M.H. logged into his Google Classroom account, she discovered nearly 1,100 unread
2 emails from teachers in the inbox. When asked about the unread emails, failing grades, and
3 missing assignments, he broke down, explaining he simply couldn't navigate distance learning
4 and was overwhelmed by the constant barrage of emails from seven different teachers, which was
5 exacerbated by a lack of one-on-one communication and in-person contact with teachers.

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

14 9. M.H.'s child currently attends weekly therapy sessions. However, based on
15 conversations with him, she know that his mental health would significantly improve if he were
16 able to return to in-person instruction at the CUSD middle school he previously attended with
17 familiar teachers and friends.

18 **3. A.F.**

19 10. Plaintiff A.F. resides in San Marcos and has three children enrolled in the San
20 Marcos Unified School District.

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

28 12. A.F.'s child logged into her remote classes consistently but was not motivated to

1 do the assigned work. Without the support system that in-person school had provided, she
2 ultimately lost the ability to focus on schoolwork. She spent an increasing amount of time alone
3 in her room and refused to participate in family activities. She reported losing all hope and started
4 to tell A.F. that she didn't want to live anymore.

5 13. In or around October 2020, after several weeks of failed efforts to find a suitable
6 therapist that was taking new patients, A.F. enrolled her child in a local youth depression study
7 program that includes weekly therapy sessions. As A.F. and the child were driving on the freeway
8 to meet the therapists conducting the study, A.F.'s child attempted to open the door and jump out
9 of the moving car.

10 14. After meeting with A.F.'s child, the therapists attributed most of her mental health
11 issues to her school's "distance learning" program. The therapists urged A.F. to move the child to
12 a different school where she could attend classes in person. A.F. unenrolled her child from San
13 Marcos Unified School District and enrolled her in a small private school, where she has made
14 friends and joined after-school clubs. With the resumption of in-person education and school-
15 associated social activities, A.F. and the therapists have noticed a dramatic improvement in the
16 child's mental health and motivation.

17 **4. E.E.**

18 15. E.E.'s daughter is a high school student in the San Dieguito Union High School
19 District. She is an excellent student who has been a leader throughout her school career—not only
20 because of her academic performance as a straight-A student, but also because of her enthusiasm,
21 love of learning, and zest for life she brought to everything she did within the school community.

22 16. E.E.'s daughter was in her first year of high school in the district and had just
23 started to make new friends when her school closed. Now, during distance learning, she is on the
24 computer for ten to twelve hours a day, which has caused feelings of isolation, loneliness, lack of
25 motivation, and anxiety. She routinely expresses concern about her friends' mental health and has
26 grown especially concerned about her peers after learning that a classmate committed suicide in
27 late 2020. That classmate's death was especially difficult for E.E.'s daughter as the classmate had
28 been the first peer to talk to E.E.'s daughter when she started attending school in the district.

1 17. E.E.’s daughter has expressed concern that she no longer knows how to interact
2 with people because she rarely has opportunities to socialize with her peers. Technology
3 challenges routinely prevent her from feeling as though she can make a connection with her
4 teachers and classmates. She feels like the students are just numbers to their teachers, none of
5 whom they have met in person. E.E.’s daughter often feels “numb” and “dead” at the end of a
6 school day. She has also said that she often feels like she is “reaching out a hand with nothing to
7 grab on the other side.”

8 18. After consistent isolation for nearly a year, she is now afraid of everything: she is
9 scared to turn on the camera and scared to turn on the chat during class. Her anxiety, which she
10 didn’t have prior to the school closure, has increased steadily throughout this past year and is now
11 impacting all aspects of her life.

12 19. Once a straight-A student, E.E.’s daughter now has declining grades while, in
13 contrast, she has observed classmates bragging about cheating on schoolwork and exams. She had
14 failing grades in all four of her classes for the third quarter in March 2021 due to fifteen missed
15 assignments. The reason she stated for why they weren’t turned in was that she had “zero
16 motivation” anymore. While she made up some of her assignments at the last minute in hopes of
17 not failing all her classes (final third-quarter grades are not yet released as of the date of this
18 filing), she has, for all intents and purposes, given up. E.E.’s concern is that these effects will be
19 long lasting and she won’t bounce back once school reopens.

20 **5. C.B.**

21 20. Plaintiff C.B.’s child is a student in the San Dieguito Union High School District.
22 C.B.’s child is dyslexic and has been diagnosed with ADHD and anxiety. C.B.’s child has had a
23 very difficult time with “distance learning,” as she is unable to sit at a computer and engage in
24 “distance learning” for a full day without losing focus. As a result of C.B.’s decision to hire a full-
25 time tutor to sit with the child during “distance learning,” the child is now getting straight A’s,
26 which has excluded her from eligibility to receive on-campus support services during “distance
27 learning.”

28 21. C.B.’s child’s anxiety recently increased after one of her teachers told the students

1 that she will die from COVID-19 if she is forced to teach in-person. C.B.'s child was very
2 worried about the teacher and got involved in asking the school's administration not to require the
3 teacher to return to campus. C.B.'s child's strong views about the teacher, prompted by the
4 teacher's incessant discussion about her own fears, has led to conflicts within C.B.'s family.

5 **6. L.R.**

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

11 23. In or around October 2020, after the district announced it would not be returning to
12 in-person education at any time during the first semester, L.R. started to notice changes in her
13 daughter's behavior. L.R.'s daughter grew sad, withdrawn, melancholy, angry, and lethargic and
14 started spending all day in bed. She now routinely stays in bed during "distance learning" and
15 goes back to sleep at various times throughout the day.

16 24. In or around January 2021, L.R. found an empty bottle of an alcoholic beverage in
17 her child's room. L.R. talked with her daughter and tried to encourage her to talk to a counselor or
18 a therapist, but for now she is unwilling.

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

24 26. At the start of winter break, L.R. noticed that her child had 22 incomplete
25 assignments. She admitted to feeling overwhelmed and unable to handle the isolation imposed by
26 "distance learning." The district's consistent failure to reopen schools on the deadlines it sets for
27 itself has only added to her hopelessness, frustration, and loneliness. She recently explained that
28 in March 2020, she thought the school would only be closed for a couple of weeks. L.R. and her

1 child continue to lose hope and faith that school will reopen this year, further exacerbating the
2 child's feelings of hopelessness and depression.

3 **7. L.B.**

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

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

14 29. In the fall of 2020, L.B.'s daughter stopped eating regular meals and started
15 reporting dark thoughts and urges to hurt herself. She lost a significant amount of weight and
16 spent two days as an inpatient at Rady Children's Hospital for eating disorder treatment. She is
17 now receiving intensive psychotherapy.

18 30. While L.B.'s daughter still tries to train for athletic competitions, she quickly gets
19 winded and lightheaded because she has an iron deficiency resulting from her eating disorder, and
20 has become more and more out of shape for athletic competition.

21 31. L.B.'s daughter suffers from recurrent anxiety and panic attacks. She wears a
22 hoodie all day in an effort to cover her face and was too overwhelmed to sit at the table with her
23 family to enjoy Christmas dinner. She spends most of her days in bed, often curled up in a fetal
24 position and crying uncontrollably. Her therapist attributes the onset of her mental health issues to
25 her school's "distance learning" program.

26 **8. C.U.**

27 32. C.U.'s son is a high school student in the Oceanside Unified School District. He
28 aspires to a career in the military. Until March 2020, he was confident, consistently achieved A

1 and B grades in his classes, and had a tight group of friends at school. He has not been identified
2 as having any learning deficiencies but needs a consistent, structured educational environment to
3 thrive.

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

7 34. Though Oceanside Unified School District would have been allowed to do so
8 under the state guidelines in place at the time, the district decided not to open for in-person
9 instruction at the start of the 2020–2021 school year.

10 35. Instead, the district provided a well-intentioned but poorly planned and executed
11 program of “distance learning.” Many of C.U.'s son's “classes” were only fifteen to twenty
12 minutes long. The various teachers had no consistency in the technology platforms they used, and
13 none of the platforms were specifically designed for educational use. Though C.U. works in the
14 information technology industry, even she at times had difficulty navigating the disparate
15 platforms used by her son's teachers.

16 36. C.U.'s son has been frequently marked absent even though he was logged on and
17 participating in his virtual “classes.”

18 37. Though C.U.'s son had been a solid A/B student his entire life, and though his
19 family spent significant sums of money on tutors after his school closed, he continued to struggle
20 academically during “distance learning.” He had particular difficulty in his Math II class because
21 he lacked many of the foundational skills that he should have learned in his Math I class during
22 the spring 2020 semester that was abruptly canceled.

23 38. Through months of “distance learning,” C.U.'s son has lost his confidence. His
24 mother could no longer see the “luster” she was used to seeing his countenance. He has become
25 sad and depressed, suffered emotional meltdowns, and has made comments to C.U. about self-
26 harm.

27 39. C.U.'s son briefly found hope when his school announced it would begin
28 reopening after the 2020–2021 winter break, but during the break the school announced it had

1 canceled its reopening plans. The announcement sent him immediately back into depression.

2 40. C.U.'s son finished with failing grades in all his classes the first semester of the
3 2020–2021 school year. He is now missing a total of 25 credits required to graduate.

4 41. C.U. and her son met with his academic counselor to try to come up with a plan to
5 make up the 25 credits. The counselor callously blamed C.U.'s son for his academic failure. The
6 counselor said the school could do nothing to help him, and his only options for catching up were
7 to transfer to a continuation school or an online university.

8 42. With the school having failed him, C.U.'s son decided to withdraw from OUSD
9 and enroll in an online university.

10 **9. A.I.**

11 43. A.I. has a son enrolled in the San Dieguito Union High School District and a
12 daughter who, until February 2021, was also enrolled in the district.

13 44. Before the school closures, A.I.'s daughter was described by her teachers as a
14 “role model.” She had always worked hard, been helpful and friendly to other students, and been
15 involved in sports.

16 45. When San Dieguito Union High School District announced it would close all its
17 schools, A.I.'s daughter initially felt excited to have a break from school. Though she received
18 very little instruction from her teachers and had little interaction with her peers in her online
19 classes, she maintained a positive outlook through the end of the spring semester.

20 46. After the district announced it would not reopen for in-person instruction for the
21 2020–2021 school year, and as the ensuing weeks turned into months, A.I.'s daughter's mood
22 changed. She would frequently cry herself to sleep, and A.I. noticed that she would wake up in
23 the morning with her eyes red and puffy. A.I.'s daughter began to see a therapist, but initially she
24 made little progress.

25 47. In December 2020, shortly before winter break, the district announced a plan to
26 reopen its schools, beginning January 5, 2021, with students being given the option of returning
27 to school one day per week for in-person instruction. Students were also given the option of
28 continuing with online instruction. A.I.'s daughter chose to return to school. Later, one of her

1 teachers thanked those students who had chosen the online option and chastised those who had
2 chosen to return to in-person school, stating, “I will have to either come into school and get
3 COVID or take off without pay.” The comment was transparently intended to pressure students
4 not to choose the option for partial in-person learning.

5 48. A.I. emailed and exchanged voice mails with both the assistant principal and the
6 principal to report the teacher’s inappropriate comment, but they both sided with the teacher.

7 49. Unfortunately for the students, the San Dieguito Faculty Association sued the
8 district, and, in a memorandum of understanding quickly executed between the district and the
9 teachers’ union without input from students or their parents, the district agreed to eliminate the in-
10 person learning option.

11 50. At that point, A.I.’s daughter rapidly spiraled downward, and on Christmas Day
12 she slit her wrists.

13 51. Because of her mistreatment by the district’s administrators and teachers and the
14 district’s refusal to provide in-person instruction, my daughter transferred to a private school that
15 is fully reopened for in-person instruction.

16 52. The transfer to a private school caused significant academic setbacks for A.I.’s
17 daughter because she switched from a 4-by-4 schedule to a semester schedule (meaning she had
18 to join classes that were already more than halfway through). But the change was necessary for
19 her mental health. She is now making good progress in her therapy.

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

22 54. A.I.’s son is having difficulty learning virtually. He cannot stay focused during his
23 online classes, and his grades have dropped. He is earning Cs and Ds this semester, which he has
24 never done before. The only intervention offered was to allow him to come to the school campus,
25 which would have been of no help because he would just be doing “distance learning” at school
26 with no one-on-one adult supervision, which A.I. can provide at home.

27 55. A.I. sees her son “floating” without sufficient academic direction through his
28 online classes. A.I. has also observed that regardless of her son’s grades, his learning is

1 significantly diminished.

2 **10. J.B.**

3 56. J.B.'s daughter is a student in San Dieguito Union High School District.

4 57. J.B. is very familiar with his daughter's group of friends, having coached their
5 basketball team for three years.

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

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

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

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

20 62. On July 17, 2020, the SDUHSD school board voted to continue "distance
21 learning" in the fall. J.B.'s daughter listened intently to the meeting and that decision. Her
22 reaction: She was crushed. She cried. She was visibly shaken.

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

26 64. When J.B.'s daughter first got together with her friends, she had forgotten how to
27 talk to them. Nevertheless, J.B. soon noticed an improvement in his daughter's social, emotional,
28 and academic well-being.

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

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

10 **11. S.D.**

11 67. S.D. has two children enrolled at a high school in the San Marcos Unified School
12 District. One child is a sophomore, and the other a senior. Both have had their lives flipped upside
13 down as a result of school closures.

14 68. S.D.’s sophomore daughter initially enjoyed the extra time with friends that the
15 closure of school unintentionally fostered. But she had trouble getting into a routine at home. She
16 experienced difficulty waking up each morning and watched her grades drop from As and Bs to
17 Cs. S.D.’s daughter spent most of her days sleeping, watching music videos, and playing video
18 games.

19 69. S.D. became more alarmed when she discovered that her daughter had started to
20 spend time with a different circle of friends with whom she drank alcohol. She was growing
21 increasingly moody and ultimately told S.D. that she had a plan to commit suicide by drinking a
22 poisonous substance. S.D. immediately got her daughter into counseling and tried to hide any
23 dangerous objects and potentially lethal fluids in her home.

24 70. S.D.’s daughter has continued with the third semester of “distance learning” but is
25 still not herself and frequently has trouble focusing, is very emotional, and tells S.D. that she
26 “hates everything.”

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

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

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

8 **12. C.R.**

9 73. C.R. and her son reside in the Vista Unified School District.

10 74. C.R.'s son attended high school in the Vista Unified School District and was an
11 extremely successful student. He took a challenging course load, including multiple Advanced
12 Placement ("AP") classes, and consistently earned straight As. He was also on the high school
13 baseball team. He aspired to attend a four-year university and was in an excellent position to earn
14 an academic or athletic scholarship.

15 75. When the district closed his high school in March 2020, C.R.'s son began
16 participating in "distance learning," which consisted of approximately seven hours per day on the
17 computer plus another three hours of homework. The "distance learning" model did not work for
18 him. He became reclusive and fell further and further behind in his assignments. Eventually, he
19 had F grades in all his classes.

20 76. His high school reopened for in-person instruction on October 20, 2021, but closed
21 again less than two weeks later. Even during the short window when his school was ostensibly
22 open for in-person instruction, some of his classes were only offered remotely, and he "attended"
23 those classes while sitting on the bleachers, connected through his laptop.

24 77. C.R. wrote to her son's teachers, the school principal, and the district
25 superintendent about her son's academic struggles, but they offered no meaningful assistance.

26 78. C.R.'s son has suffered emotionally as well as academically. He has had frequent
27 emotional breakdowns and anxiety attacks, which became so severe that at times he has trouble
28 breathing. He ultimately became suicidal and tried to take his own life by overdosing on pills.

1 Nothing like this had ever happened before the school closures.

2 79. C.R.'s son was diagnosed with attention deficit disorder and anxiety and is now
3 taking medication for his anxiety. Because of his suicide attempt, however, C.R. can never leave
4 her son alone.

5 80. C.R.'s son continues to struggle academically. He finally withdrew from school,
6 dropped out of baseball, and is trying to earn enough credits to graduate through independent
7 study. His goal of attending a four-year university, much less earning an athletic or academic
8 scholarship, is now nothing more than a distant memory.

9 **13. R.K.**

10 81. R.K has three school age children in Carlsbad Unified School District.

11 82. The elementary student cried daily at the start of the school year, saying that he
12 just couldn't take one more day of distance learning on a screen. He is now in school five days a
13 week in CUSD and is happy and motivated for each school day on campus with his peers and
14 teachers.

15 83. However, his two high school age brothers are still having to learn via distance
16 learning simply because they are a different age.

17 84. One of his older brothers is a curious and creative student who thrives in a hands-
18 on environment but struggles with learning challenges related to difficulties with attention. He
19 has been a mostly A/B student and has won some significant academic awards.

20 85. During distance learning he failed all six of his fall semester courses. He is unable
21 to engage in learning that is completely online let alone succeed at it. He is motivated by social
22 interaction and learns better in hands-on environments. He is unable to sit in front of a screen and
23 focus for long periods of time in order to engage in a fully digital learning model. An SST was
24 done that led to a 504 plan that provided for extra time in completing work or preferred seating in
25 the classroom. However, the classroom is not open to him for full-time in-person learning, and
26 the extra time granted did nothing to address that he is unable to learn effectively in the distance
27 learning format. His school does not have an alternate plan for students who are not successful in
28 the distance learning format.

1 86. Each time CUSD delayed the reopening date, this student manifested mental
2 health distress that played out in behavioral issues that were detrimental to much more than just
3 his academic progress. He initially thought about dropping out but is trying to find a way to
4 achieve his high school diploma even though distance learning has left him credit deficient. He
5 has expressed concern over how this will affect his future, and it has been very stressful for the
6 family as a whole.

7 87. R.K.'s other high school age son earned good grades while on distance learning,
8 but he complains daily of eye strain and too much time in front of a screen. Sports and time in-
9 person with friends have been one of the only things keeping him motivated and mentally
10 healthy. However, since he is not struggling academically, he has been eligible for even less
11 support, resources, and in-person time on campus than his brother who has struggled
12 academically.

13 **B. Defendants.**

14 88. Defendant Gavin Newsom ("Governor Newsom") is Governor of the State of
15 California and is sued in his official capacity as such.

16 89. Dr. Mark Ghaly ("Dr. Ghaly") is Secretary of the Department of Health and
17 Human Services of the State of California and is sued in his official capacity as such.

18 90. Dr. Naomi Bardach ("Dr. Bardach") is Successful Schools Team Lead for the
19 Department of Health and Human Services of the State of California and is sued in her official
20 capacity as such.

21 91. Dr. Tomás Aragón ("Dr. Aragón") is Director and State Public Health Officer of
22 the Department of Public Health of the State of California ("CDPH") and is sued in his official
23 capacity as such.

24 92. San Dieguito Union High School District ("SDUHSD") is a school district in the
25 County of San Diego comprising the City of Del Mar, the City of Solana Beach, the City of
26 Encinitas, parts of the City of Carlsbad, and certain unincorporated areas of the County of San
27 Diego. SDUHSD is a local education agency ("LEA") under the California Education Code.
28 SDUHSD, unlike the other school district defendants, offers only middle and high school (grades

1 7 through 12) to eligible students residing within its boundaries.

2 93. Carlsbad Unified School District (“CUSD”) is a school district in the County of
3 San Diego comprising most of the City of Carlsbad and a small part of the City of Oceanside.
4 CUSD is an LEA under the California Education Code. CUSD offers elementary, middle, and
5 high school (grades kindergarten through 12) to eligible students residing within its boundaries.

6 94. Oceanside Unified School District (“OUSD”) is a school district in the County of
7 San Diego comprising most of the City of Oceanside and parts of Marine Corps Base Camp
8 Pendleton. OUSD is an LEA under the California Education Code. OUSD offers elementary,
9 middle, and high school (grades kindergarten through 12) to eligible students residing within its
10 boundaries.

11 95. San Marcos Unified School District (“SMUSD”) is a school district in the County
12 of San Diego comprising most of the City of San Marcos, parts of the City of Vista, parts of the
13 City of Carlsbad, and certain unincorporated areas of the County of San Diego. SMUSD is an
14 LEA under the California Education Code. SMUSD offers elementary, middle, and high school
15 (grades kindergarten through 12) to eligible students residing within its boundaries.

16 96. Poway Unified School District (“PUSD”) is a school district in the County of San
17 Diego comprising the City of Poway, parts of the City of San Diego, and certain unincorporated
18 areas of the County of San Diego. PUSD is an LEA under the California Education Code. PUSD
19 offers elementary, middle, and high school (grades kindergarten through 12) to eligible students
20 residing within its boundaries.

21 97. Vista Unified School District (“VUSD”) is a school district in the County of San
22 Diego comprising the City of Vista, parts of the City of Carlsbad, parts of the City of Oceanside,
23 and certain unincorporated areas of San Diego County. VUSD is an LEA under the California
24 Education Code. VUSD offers elementary, middle, and high school (grades kindergarten through
25 12) to eligible students residing within its boundaries.

26 **II. GENERAL ALLEGATIONS.**

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

28 98. On March 4, 2020, Governor Newsom declared a state of emergency in response

1 to the COVID-19 pandemic.

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

7 100. On the same day, the San Diego County Office of Education announced that all
8 San Diego County school districts would be closing to curb the potential transmission of COVID-
9 19.

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

13 102. On June 16, 2020, the San Diego County Health and Human Services Agency
14 issued an updated order providing that “[a]ll public, charter and private schools may hold classes
15 or school business operations on the school campus, provided the school complies with the
16 measures contained in the State COVID-19 Industry Guidance: Schools and School-Based
17 Programs issued by the CDPH”

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

19 103. Following the end of the 2019–2020 school year, to ensure the continuity of
20 education during the COVID-19 pandemic, the California Legislature passed Senate Bill 98 (“SB
21 98”). Governor Newsom signed SB 98 into law on June 29, 2020. Senate Bill 98 amended and
22 added various provisions to the Education Code to clarify the obligations of LEAs, such as the
23 defendant school districts, during the COVID-19 pandemic.

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

1 § 43504, subd. (b) [emphasis added].)

2 105. SB 98 directed each LEA to develop a Learning Continuity and Attendance Plan
3 (“LCAP”) for the 2020–2021 school year. Each LCAP was required to address “[i]n-person
4 instructional offerings, and specifically, the actions the school district, county office of education,
5 or charter school will take to *offer classroom-based instruction whenever possible*” (Educ.
6 Code, § 43509, subd. (f)(1)(A) [emphasis added].)

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

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

13 107. On July 17, 2020, the California Health and Human Services Agency, through the
14 CDPH, issued the COVID-19 and Reopening In-Person Learning Framework for K–12 Schools
15 in California, 2020-2021 School Year (“July 2020 Framework”) “to support school communities
16 as they decide when and how to implement in-person instruction for the 2020–2021 school year.”
17 That “framework” provided that schools could reopen for in-person instruction subject to
18 conditions determined by the local public health department. The framework also required
19 compliance with the COVID-19 Industry Guidance: Schools and School-Based Programs, which
20 mandated certain safety protocols such as masks and spacing between teachers and students,
21 while only recommending other protocols such as upgraded air filtration, regular cleaning and
22 disinfection, and six feet of spacing between student desks “where practicable.”

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

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

27 109. On August 28, 2020, Governor Newsom announced the Blueprint for a Safer
28 Economy (“Blueprint”), which created a color-coded tier system for reopening or closing

1 economic sectors based on the case rate in a particular county. The most restrictive “Purple Tier”
2 of greater than 7 cases per 100,000 residents provided similar restrictions to the now obsolete
3 “monitoring list” and allowed schools to open for in-person instruction once their case rates
4 dropped the county from the “Purple Tier” to the “Red Tier” (7 or fewer cases per 100,000
5 population) for two consecutive weeks. The Blueprint also provided that “schools that have
6 reopened for in-person instruction are not required to close if their county moves back to the
7 Widespread (purple) tier.”

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

9 110. San Diego County moved off the state monitoring list on August 18, 2020, and
10 was given permission to open schools at all grade levels for in-person instruction on September 1,
11 2020. San Diego County remained in the Red Tier until November 14, 2020, when it moved to
12 the Purple Tier, where it remains today.

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

14 111. Despite being permitted—and required—to offer in-person instruction as of
15 September 1, 2020, the majority of public school districts in San Diego County failed to plan for a
16 return to in-person instruction.

17 112. CUSD initially provided its elementary students a “hybrid learning model,” which
18 provided in-person instruction only two modified days per week starting in late September 2020.
19 While many of CUSD’s elementary students are now back in school for in-person instruction five
20 days per week, CUSD has failed to offer any in-person instruction to its secondary students and
21 voted to keep them in “distance learning” until January 2021. Although the CUSD Board of
22 Trustees briefly reconsidered the reopening of secondary schools in October 2020, the board
23 ultimately voted again to delay reopening to January 5, 2021. At a meeting on December 16,
24 2021, the board voted to further delay reopening to January 25, 2021. That reopening plan was
25 canceled, however, when CDPH issued its January 2021 Framework (defined below). As of the
26 date of this filing, CUSD still has not reopened for its middle and high school students, even
27 under a hybrid model.

28 113. SDUHSD voted in September 2020 to keep all its students in “distance learning”

1 until January 2021. In December 2020, the SDUHSD Board of Trustees voted to reopen its
2 schools on January 5, 2021, under a one-day-per-week hybrid model, with a full five-day-per-
3 week reopening planned for January 27, 2021. But after the California Teachers Association
4 (“CTA”) filed a lawsuit on behalf of the San Dieguito Faculty Association, SDUHSD and the
5 CTA entered into a memorandum of understanding agreeing not to reopen until at least January
6 27, 2021. As of the date of this filing, SDUHSD still has not reopened, even under a hybrid
7 model.

8 114. OUSD decided to bring elementary students back for in-person instruction in a
9 hybrid model starting in October 2020 but delayed the reopening date to November 2020.
10 Secondary students would remain in virtual instruction until January 11, 2021, when they would
11 return for a hybrid model of instruction. Expanded Enrichment Programs and Secondary Learning
12 Centers were created at each school site to provide in-person academic support and enrichment
13 opportunities to students in grades K–12. On December 10, 2020, the OUSD Board of Trustees
14 voted to return elementary students to “distance learning” and delay the reopening of secondary
15 schools until San Diego County returns to the “Red Tier” of the Blueprint. On January 13, 2021,
16 the OUSD Board of Trustees again voted to keep all grade levels in “distance learning” until San
17 Diego County returns to the Red Tier.

18 115. PUSD reopened its elementary schools for in-person instruction on October 1,
19 2020, but “suspended” in-person instruction on December 17, 2020. The PUSD board voted to
20 reopen elementary schools again for in-person instruction beginning February 1, 2021, “when
21 staffing permits.” The PUSD board voted three times, in October, November, and December
22 2020, to keep its middle and high schools closed. On January 14, 2021, the board voted to reopen
23 the middle and high schools on February 17, 2021, under a two-day-per-week hybrid model.
24 PUSD canceled that plan the next day when it learned of the state’s January 2021 Framework
25 (defined below). PUSD has now announced that it intends to reopen its middle and high schools
26 under a similar two-day-per-week hybrid model on March 15, 2021, subject to approval by
27 CDPH.

28 116. The SMUSD board voted in September 2020 to return elementary students to

1 school under a hybrid model in phases beginning in October 2020. The board voted to keep all its
2 middle and high school students in “distance learning” at least until San Diego County returns to
3 the Red Tier.

4 117. VUSD reopened its schools for in-person instruction for all grade levels on
5 October 20, 2020. Less than two weeks later, the VUSD board abruptly decided to close the
6 schools again and return to online-only instruction after students at some school sites tested
7 positive for COVID-19, though there was no evidence of in-school transmission. Elementary
8 schools in VUSD reopened for in-person instruction on January 11, 2021. The VUSD board voted
9 to reopen its middle and high schools on January 19 and 26, 2021, respectively, but canceled
10 those plans when CDPH issued its January 2021 Framework (defined below). On February 8,
11 2021, the VUSD board voted to implement a one-day-per-week hybrid model for its middle and
12 high school students beginning March 1 and 8, 2021, respectively.

13 **G. The California Teachers Association demands schools remain closed.**

14 118. On December 9, 2020, the CTA sent a letter to the San Diego County Office of
15 Education demanding that CUSD, SDUHSD, and SMUSD be prohibited from implementing their
16 announced plans for further reopening while San Diego County remained in the Purple Tier. One
17 week later, on December 16, 2020, the CTA sent a letter to California lawmakers demanding that
18 no school be allowed to reopen or even remain open while the county in which the school was
19 located was in the Purple Tier.

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

21 119. While the aforementioned San Diego County school districts postponed or
22 canceled reopening plans, a growing body of evidence continued to show that reopening schools
23 for all students in all grades can be safely accomplished.

24 120. The COVID School Dashboard developed by Brown University tracks over 5,000
25 schools, 4 million students, and 1.3 million staff, and has consistently found student and staff
26 infection rates of 0.1% to 0.2% since it began publishing in September.

27 121. A September report from Insights for Education of data from 191 countries found
28 no link between schools being open for in-person instruction and COVID infection rates, and data

1 collected during a November 2020 surge of COVID cases in the State of Illinois also found only
2 16 schools experienced outbreaks of between 11 and 16 cases each among over 750,000 students
3 in full- or part-time in-person instruction.

4 122. In an article published in the medical journal *Pediatrics* January 8, 2021,
5 researchers reported that in a study of 90,000 students across 56 school districts in North Carolina
6 during the first nine weeks of the school year, there were only a few dozen instances of secondary
7 spread in schools, and *no cases were found of in-school child-to-adult* spread, even with
8 community infection rates of up to 29 per 100,000.

9 123. In a study of Swedish schools from March through June 2020, published January
10 6, 2021, researchers similarly found that even though community spread was prevalent and
11 schools for ages 1 through 16 remained open, only 15 out of 1.95 million children were
12 hospitalized with COVID-19, and only 20 out of 103,596 teachers were admitted to the ICU, and
13 no students or teachers died from COVID-19.

14 124. A study by the National Center for Research on Education Access and Choice at
15 Tulane University, published January 4, 2021, also “found no evidence that reopening schools in-
16 person or in a hybrid model increased COVID hospitalizations” and “suggest[ed] that it seems
17 safe to reopen schools when there are no more than 36 to 44 total new COVID hospitalizations
18 per 100,000 people per week.” San Diego County, hospitalizations for COVID-19 have averaged
19 approximately 9 new hospitalizations per 100,000 per week since early January 2021 and at the
20 December 2020 peak averaged less than 30 new hospitalizations per 100,000.

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

27 126. According to the San Diego County Office of Education, as of February 4, 2021,
28 there were 32,624 students learning full-time on campus, 71,629 students in hybrid learning

1 models, and 409,251 students in “distance learning.” According to the latest Weekly Update from
2 the San Diego County HSSA, only 1.9% of COVID cases have a potential link to a K–12 school
3 setting, versus 32.1% for workplaces, 9.7% for retail locations and 7.0% for restaurants and bars.

4 127. There is almost universal consensus that schools are safe for both students and
5 staff and that their low case rates actually make them the safest place for children to be during the
6 COVID-19 pandemic. As the CDC wrote in its “Summary of Guidance” on December 4, 2020,
7 “because of ... the disproportionate impact that school closures can have on those with the least
8 economic means, kindergarten through grade 12 schools should be the last settings to close after
9 all other mitigation measures have been employed and the first to reopen when they can do so
10 safely.”

11 **I. Failure of “distance learning” models.**

12 128. At the same time as data is showing schools can be reopened safely, a growing
13 body of evidence is revealing the alarming effects of prolonged and indefinite school closures on
14 students. The data is particularly alarming among teenagers, who have been excluded from school
15 reopening plans while many their younger counterparts have been brought back. The CDC
16 reported in November 2020 that mental health-related emergency department visits among
17 children in the 5 to 11 and 12 to 17 age brackets increased approximately 24% and 31%,
18 respectively. In a national survey conducted last spring, nearly a third of high school students
19 reported that they were unhappy and depressed “much more than usual” during the prior month.
20 One study released in November indicated that school closures “may be associated with a
21 decrease in life expectancy for US children.”

22 129. On January 13, 2021, a group of thirty University of California San Francisco
23 medical professionals published an open letter calling for schools to be reopened by February 1,
24 2021, noting that distance learning has led to serious mental health issues, especially for
25 teenagers. Dr. Saun-Toy Trotter, a psychotherapist at U.C. San Francisco’s Benioff Children’s
26 Hospital in Oakland, saw “high levels of depression” and said the clinic recorded more youth
27 suicide attempts during the first four weeks of the pandemic than it had the entire previous year.

28 130. A local clinical psychologist wrote to the SDUHSD Board of Trustees on October

1 7, 2020: “never in my two decades of clinical work have I ever seen such a rapid deterioration of
2 social and emotional health as I have witnessed during the pandemic.”

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

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

10 133. Disparate outcomes for poor and minority children are increasing as well. The
11 same McKinsey & Company report estimated that white students will be set back one to three
12 months in math, while students of color will have lost three to five months. Applications for
13 federal student aid dropped 16% in the fall, with larger drops in college applications from
14 Hispanic and low-income students.

15 **J. Governor Newsom announces his Safe Schools for All Plan.**

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

24 135. However, the state legislature did not approve a budget allocation in support of
25 this plan.

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

27 136. Although there was no evidence that the existing July 2020 Framework was
28 resulting in the unsafe reopening of schools, and despite increasing state, national, and

1 international data on the safety of reopening schools, on January 14, 2021, CDPH abruptly
2 released a new COVID-19 and Reopening In-Person Instruction Framework and Public Health
3 Guidance for K–12 Schools in California, 2020–2021 School Year (“January 2021 Framework”),
4 which purported to impose significant new restrictions for California schools. The January 2021
5 Framework mirrored much of the Safe Schools Plan but added numerous new requirements for
6 school reopening, while failing to allocate any funding to support school reopening as described
7 in the original Safe Schools Plan. The January 2021 Framework mandated: (1) the closure of all
8 public and private schools that had not previously reopened in the Red Tier; (2) a new four-foot
9 minimum distancing requirement for students; (3) requirements for stable groups; and (4) the
10 closure of secondary schools for grades 7 through 12 until the new requirements for distancing
11 and stable groups were submitted and approved by the CDPH. LEAs were given until February 1,
12 2021, to comply with the January 2021 Framework.

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

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

25 138. Under the July 2020 Framework, CDPH permitted school sites which had already
26 opened while in the Red Tier to remain open and continue reopening even if the county where the
27 school site was located returned to the Purple Tier. However, if the school site had not reopened
28 before the county returned to the Purple Tier, it was not permitted to reopen as long as the county

1 was in the Purple Tier. Certain school districts including CUSD, PUSD, SDUHSD, and SMUSD,
2 along with the San Diego County Health and Human Services Department, had determined that
3 their secondary school sites were “open” under the July 2020 Guidelines and could therefore
4 continue to reopen even though San Diego County had returned to the Purple Tier. These school
5 districts were continuing their efforts to plan to reopen over the next few months.

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

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

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

27 141. Dr. Bardach, the CDPH Safe Schools for All Team Lead, attempted to explain that
28 a school cannot reopen in the Purple Tier because “reopening a school with all the layers of
mitigation is just operationally complicated.” Yet there is no evidence that the act of reopening is
any more “operationally complicated” than the act of remaining open, and the State has not 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

1 2020 Framework, prior to any school having reopened, negating any potential evidentiary basis
2 for its existence. Dr. Bardach’s rationalization is especially arbitrary, problematic, and
3 inapplicable as applied to CUSD, OUSD, PUSD, SDUHSD, and SMUSD, where all school sites
4 have, indeed, been open to hundreds of students and staff for various activities at least since
5 October, demonstrating that site staff and students have sufficient experience with mitigation
6 protocols to continue progressing toward a full reopening without contributing to a measurable
7 increase in community case rates, hospitalizations, or deaths. Where many of the elementary
8 school sites have successfully reopened and remained open for in-person education for months, it
9 is illogical to think that the knowledge and experience obtained there would not translate over to
10 other staff and students in these same school districts, particularly when some of the elementary
11 school sites share a campus with secondary schools.

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

21 **M. The January 2021 Framework maintains an arbitrary threshold for**
22 **secondary schools.**

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

27 144. The CDPH purports to base this distinction on the aforementioned *Pediatrics*
28 study showing that schools had extremely low rates of transmission in communities with case

1 rates of up to 29 per 100,000. However, CDPH grossly misinterprets the study on several counts.
2 First, the study covered elementary, middle, *and* high schools and found similarly low
3 transmission rates for all grades, yet CDPH has applied the new (higher) case rate threshold only
4 to elementary students. Second, the study does not indicate that a case rate exceeding 29 per
5 100,000 is unsafe, as CDPH has apparently concluded. The study simply mentions that the
6 highest case rate observed in the community during the study period was 29 per 100,000.

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

15 146. In fact, numerous other states have reopened schools when community case rates
16 were at far higher levels, and several states just recently unveiled reopening plans with thresholds
17 that are also significantly higher than California's threshold of 7 per 100,000 case rate required to
18 open secondary schools or the 25 per 100,000 case rate required to reopen elementary schools
19 under the January 2021 Framework. In October, Oregon permitted schools to return to some form
20 of in-person instruction at a case rate of 100 per 100,000 and allowed schools to return to full-
21 time, in-person learning if the case rate falls below 50 per 100,000. Washington State updated its
22 recommendations in December to make in-person learning available to all students if case rates
23 fall below 50 per 100,000, and still allows school districts to phase in in-person learning over
24 time if the case rate is between 50 and 350 cases per 100,000. As of March 2, 2021, San Diego
25 County reported an unadjusted case rate (7-day daily average with 7-day reporting lag) of 11.3
26 per 100,000 and an adjusted case rate of 10.8 per 100,000, and those rates have been consistently
27 falling.

28 ///

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

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

7 148. CDPH effectively admitted that the “stable groups” requirement is vague,
8 ambiguous, and arbitrary by hollowing out the requirement after a few weeks and simply asking
9 that school districts follow the “intent” of why stable groups are important, if that can even be
10 discerned.

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

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

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

19 150. Both the American Academy of Pediatrics and the World Health Organization
20 recommend that schools engage in efforts to ensure three feet (one meter) of physical spacing
21 between students, referencing numerous studies showing that the risk of transmission of COVID-
22 19 at three feet—even without masks—is very low.

23 151. The July 2021 Framework recommended that student desks be spaced six feet
24 apart “as practicable,” reflecting an apparent understanding that many school districts would be
25 unable to offer in-person learning to all students with a mandatory six feet of spacing between
26 students.

27 152. Despite the recommendations of the American Academy of Pediatrics and the
28 World Health Organization, the January 2021 Framework eliminates the flexibility provided by

1 the July 2020 Framework and now requires that all student desks be spaced at least four feet
2 apart, without any evidence or explanation for the sudden increase in minimum spacing.

3 153. Tellingly, the state officials responsible for releasing the January 2021 Framework
4 have begun to walk back many of the more restrictive new guidelines now that the unintended
5 consequences of their implementation are becoming clear. During a press conference on January
6 26, 2021, Dr. Ghaly addressed the State’s response to the fact that the new four-foot spacing rule
7 has led to the unintended consequence of preventing schools from providing in-person learning:

8 We’re working hard to make sure that schools with plans that are
9 already in place—demonstrating the ability to track transmission,
10 safety—are continued ... and the hope is that we work with all
11 education leaders to make sure these rules—or *these concepts,*
really—help facilitate that safe and secure return to school, but
don’t inhibit and slow down some of the important plans that have
been already in place. [Emphasis added.]

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

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

16 155. With confusion mounting among school districts as to whether or how the January
17 2021 Framework would be enforced and whether it would be attached to legislative funding that
18 had not yet materialized, some school districts outside of San Diego County began to advocate for
19 exemptions from the requirements in order to continue with reopening plans or keep their schools
20 open. On January 28, 2021, Dr. Bardach sent an e-mail to a concerned parent regarding the
21 January 2021 Framework, commenting:

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

We are in the process of designing a safety modification request

1 process for those in the situation you highlight. This process would
2 be done in conjunction with the local health department and with
3 their approval. It will require evidence of the safety of the situation
4 in addition to documentation of how other safety mitigation
5 strategies were strengthened. We anticipate that this request process
6 will be available next week or the week after and will let you know
7 when it is available.

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

13 156. As with the ambiguity surrounding the “stable groups” concept, it appears that
14 CDPH has now acknowledged that its requirements are arbitrary, unnecessary, and
15 overburdensome, and has started to develop a formal process for waivers from the very rules that
16 caused CUSD, OUSD, PUSD, SDUHSD, SMUSD, and VUSD to postpone their reopening plans.
17 Though several of these school districts have applied for waivers, i.e., “safety modification
18 requests” or “Safety Review Requests,” there is no assurance that this process will result in the
19 issuance of a waiver for any of the aforementioned school districts, many of which have plans
20 that would appear to satisfy the “stable group” and four-foot spacing requirements but are no
21 longer allowed to reopen simply because they are not considered to have been “open” under the
22 new definition in the January 2021 Framework prior to San Diego County moving into the Purple
23 Tier.

24 157. On March 7, 2021, the CDPH Safe Schools For All Team denied waiver requests
25 by SDUHSD, CUSD, and PUSD. SDUHSD had planned to reopen under a one-day-per-week
26 hybrid model the very next day, March 8, 2021, while CUSD had planned to reopen under a two-
27 days-per-week hybrid model on March 11, 2021.

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

158. Some school districts in California separately negotiated for a waiver to exempt
themselves from the requirements of the January 2021 Framework even before the formal waiver
process was announced. On January 31, 2021, the Roseville Joint Union High School District
announced that it would be continuing with its five-day, in-person schedule (which did not meet
the four-foot distancing requirement and did not have pre-approval for “stable groups”) based on

1 consultation with the county public health department and CDPH, indicating that schools in the
2 district were permitted to stay open “while we work to participate in the safety mitigation form
3 submission process.”

4 **III. CAUSES OF ACTION.**

5 **FIRST CAUSE OF ACTION**
6 **VIOLATION OF ARTICLE IX OF THE CALIFORNIA CONSTITUTION**
7 **AGAINST ALL DEFENDANTS**

8 159. Plaintiffs hereby incorporate each of the foregoing paragraphs as though fully set
9 forth herein.

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

14 161. Article IX, section 5 of the California Constitution provides: “The Legislature
15 shall provide for a system of common schools by which a free school shall be kept up and
16 supported in each district at least six months in every year”

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

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

164. The alleged government interest in slowing the spread of the virus that causes

1 COVID-19 does not justify this infringement on California schoolchildren’s constitutional right to
2 a quality education.

3 165. Defendants’ orders, decisions, and other actions recited herein are significantly
4 broader than necessary to serve the alleged government interest in slowing the spread of the virus
5 that causes COVID-19.

6 166. Defendants’ orders, decisions, and other actions recited herein are not narrowly
7 tailored to minimize infringements on California schoolchildren’s educational rights.

8 167. California schoolchildren and their families are suffering irreparable harm each
9 day that their schools remain closed for in-person instruction.

10 168. Plaintiffs have no administrative remedy and have no adequate remedy at law.

11 **SECOND CAUSE OF ACTION**
12 **VIOLATION OF ARTICLE III, SECTION 3 OF THE CALIFORNIA CONSTITUTION**
13 **AGAINST DEFENDANTS NEWSOM, GHALY, BARDACH, AND ARAGÓN**

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

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

20 171. On March 4, 2020, Governor Newsom declared a state of emergency under the
21 Emergency Services Act, sections 8550 through 8667.7 of the Government Code, in response to
22 COVID-19.

23 172. Governor Newsom’s March 13, 2020 order and subsequent orders have delegated
24 to CDPH (including Dr. Bardach, who was unilaterally appointed without any legislative
25 authority or constituent oversight) and county health officers complete and unfettered discretion
26 to decide core issues of education policy, including decisions of whether and to what extent to
27 reopen schools for in-person learning, based solely on the purported prevention of the spread of
28 COVID-19 and without regard to the academic, mental, and social-emotional harm caused by
school closures. Thus, the governor and state and county health officials are exercising a

1 quintessentially legislative function in violation of the California Constitution.

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

10 174. Furthermore, the Emergency Services Act itself, as applied here, violates the
11 California Constitution to the extent it purports to vest in the governor for an indefinite period of
12 time and without limitation, upon his own declaration of a state of emergency, “complete
13 authority over all agencies of the state government and the right to exercise within the area
14 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” (Gov. Code, § 8627.)

17 175. California schoolchildren and their families are suffering irreparable harm each
18 day that their schools remain closed for in-person instruction.

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

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

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

25 178. 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).)

2 179. 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 accurate data
5 and sound scientific principles, and are consistent with the law.

6 180. Defendants’ orders and directives described herein, including but not limited to the
7 ad hoc creation of the Safe Schools for All Team to oversee the closure, reopening, and operation
8 of public and private schools state-wide, the appointment of Dr. Bardach as the Team Lead for
9 the Safe Schools for All Team, and the drafting and implementation of the January 2021
10 Framework, are acts and regulations that can only be adopted and enforced pursuant to the
11 requirements of the APA.

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

27 182. Defendants’ failure to follow the APA is not justified by the declared state of
28 emergency. Again, Defendants have now had a full year to figure out how to reopen schools in a

1 reasonably safe manner and cannot credibly claim that exigency has prevented them from going
2 through the processes required by law.

3 183. Indeed, nothing has occurred since the issuing of the July 2020 Framework that
4 would justify an “emergency” release of a new set of rules. The only plausible reason to issue
5 new “emergency” rules might be evidence that their previous Framework was leading to
6 outbreaks in schools, but the opposite has proven to be true. Schools were reopening safely under
7 the existing July 2020 Framework. The supposed justification for a new “framework” was to help
8 more schools open, but the January 2021 Framework has instead forced many schools to close or
9 postpone their reopening plans. If anything, Defendants should have been relaxing the
10 requirements under the July 2020 Framework based on the evidence from schools all over the
11 state, the country, and the entire world that have reopened without incident by following only the
12 minimum safety protocols.

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

1 can, even though their schools might share a campus. It imposes an ill-defined “stable groups”
2 requirement. It imposes an arbitrary four-foot distance requirement between students when such a
3 requirement is not supported by any data and is impossible comply with at many school sites.
4 Defendants have openly admitted the flaws in the January 2021 Framework and have begun
5 granting ad hoc waivers to various requirements, yet they refuse to rescind the January 2021
6 Framework or modify it into true “guidance” to help LEAs reopen safely using proven practices.

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

11 186. California schoolchildren and their families are suffering irreparable harm each
12 day that their schools remain closed for in-person instruction.

13 187. Plaintiffs have no administrative remedy and have no adequate remedy at law.

14 **FOURTH CAUSE OF ACTION**
15 **VIOLATION OF SENATE BILL 98**
16 **AGAINST ALL DEFENDANTS**

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

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

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

25 191. Defendants Governor Newsom, Dr. Ghaly, Dr. Bardach, and Dr. Aragón have
26 violated SB 98 by issuing and seeking to enforce the January 2021 Framework and denying
27 waiver requests, which have caused SDUHSD, CUSD, SMUSD, OUSD, PUSD, VUSD, and
28 other districts in San Diego County and throughout California to halt their plans to reopen their
schools for in-person instruction.

1 for in-person instruction on September 1, 2020, when the state allowed them to do so, and by
2 repeatedly postponing their reopening plans.

3 201. The alleged government interest in slowing the spread of the virus that causes
4 COVID-19 does not justify Defendants' rules.

5 202. Defendants' rules are significantly broader than necessary to further the alleged
6 government interest in slowing the spread of the virus that causes COVID-19.

7 203. Defendants' rules are not narrowly drawn to minimize infringements on Plaintiffs'
8 fundamental rights.

9 204. Experience has shown that schools do not drive community transmission of the
10 virus and that schools can reopen safely with basic precautions that are much less harmful to
11 students than the overbroad measures Defendants have imposed.

12 205. The January 2021 Framework's distinction between "open" and not-yet-open
13 school sites cannot survive strict scrutiny. In the alternative, this distinction cannot survive even
14 rational basis scrutiny. There is no reason to believe that a school site that has spent months
15 carefully preparing a reopening plan cannot reopen as safely as a school site that has already
16 reopened.

17 206. The distinction made by all Defendants between elementary and secondary schools
18 cannot survive strict scrutiny. In the alternative, this distinction cannot survive even rational basis
19 scrutiny. Defendants have allowed many elementary school sites to reopen while keeping
20 secondary school sites closed. Yet secondary school sites across the country and throughout the
21 world have reopened safely with basic precautions. Furthermore, there is no reason to believe that
22 secondary school students are any less impacted than elementary school students by school
23 closures. If anything, it is becoming apparent that secondary school students are more severely
24 impacted.

25 207. The January 2021 Framework's four-foot distance rule cannot survive strict
26 scrutiny. In the alternative, it cannot survive even rational basis scrutiny. There is no evidence to
27 support a four-foot rule over a three-foot rule. The four-foot rule was determined arbitrarily. Strict
28 adherence to a four-foot rule would require many school sites, especially those in poorer or urban

1 areas, to remain closed due to space restrictions.

2 208. The ad hoc waiver process cannot save the January 2021 Framework. There has
3 been no clear explanation of the standards for obtaining a waiver, and there is no assurance that a
4 particular waiver request will be granted. Moreover, some school districts have not even applied
5 for a waiver.

6 209. The plans by Defendants CUSD, OUSD, PUSD, SDUHSD, SMUSD, and VUSD
7 for partial reopening under various hybrid models (subject to approval by CDPH) are not
8 sufficient to remedy their equal protection violations. Locally, many elementary school sites have
9 fully reopened (or will soon reopen) for in-person learning. Many private school sites for all
10 grade levels locally and throughout the state—including the school attended by Governor
11 Newsom’s children—have fully reopened for in-person learning. And several public secondary
12 school sites in the state, including those in the Roseville Joint Union High School District
13 mentioned above, have fully reopened for in-person learning. This proves that school sites,
14 including secondary school sites, can fully reopen for in-person learning and can do so safely.
15 Under either a strict scrutiny or rational basis standard, there is no reason Plaintiffs’ children
16 should have to suffer through one- or two-day-per-week hybrid models while other similarly
17 situated students enjoy in-person learning five days per week.

18 210. California schoolchildren and their families are suffering irreparable harm each
19 day that their schools remain closed for in-person instruction.

20 211. Plaintiffs have no administrative remedy and have no adequate remedy at law.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for relief as follows:

23 As to the First Cause of Action:

- 24 1. A temporary restraining order and preliminary and permanent injunction
25 restraining and preventing Defendants Governor Newsom, Dr. Ghaly, Dr.
26 Bardach, and Dr. Aragón from applying and enforcing the January 2021
27 Framework and from issuing any new order, directive, or “framework” that would
28 prevent any school from reopening for full-time, in-person instruction;
2. A temporary restraining order and preliminary and permanent injunction
restraining and preventing Defendants Governor Newsom, Dr. Ghaly, Dr.
Bardach, and Dr. Aragón from applying and enforcing the CDPH Safe Schools for

- 1 All Team’s March 7, 2021 denial of the Safety Review Requests submitted by
2 Defendants SDUHSD, CUSD, and PUSD;
- 3 3. A temporary restraining order and preliminary and permanent injunction and/or
4 writ of mandamus compelling Defendants SDUHSD, CUSD, SMUSD, OUSD,
5 PUSD, and VUSD to reopen all their schools, primary and secondary, for full-
6 time, in-person instruction to the greatest extent possible within seven days;
- 7 4. A declaration that the January 2021 Framework and the CDPH Safe Schools for
8 All Team’s March 7, 2021 denial of the Safety Review Requests submitted by
9 Defendants SDUHSD, CUSD, and PUSD are invalid and unlawful;
- 10 5. A writ of mandamus compelling the CDPH Safe Schools for All Team to vacate
11 its March 7, 2021 denial of the Safety Review Requests submitted by Defendants
12 SDUHSD, CUSD, and PUSD and issue a new order allowing these school districts
13 to reopen all their school sites for full-time, in-person instruction;
- 14 6. Attorneys’ fees pursuant to section 1021.5 of the Code of Civil Procedure and any
15 other applicable provision of law;
- 16 7. Costs of suit; and
- 17 8. Such other and further relief as the court may deem just and proper.

18 As to the Second Cause of Action:

- 19 1. A temporary restraining order and preliminary and permanent injunction
20 restraining and preventing Defendants Governor Newsom, Dr. Ghaly, Dr.
21 Bardach, and Dr. Aragón from applying and enforcing the January 2021
22 Framework and from issuing any new order, directive, or “framework” purporting
23 to exercise legislative or judicial powers;
- 24 2. A temporary restraining order and preliminary and permanent injunction
25 restraining and preventing Defendants Governor Newsom, Dr. Ghaly, Dr.
26 Bardach, and Dr. Aragón from applying and enforcing the CDPH Safe Schools for
27 All Team’s March 7, 2021 denial of the Safety Review Requests submitted by
28 Defendants SDUHSD, CUSD, and PUSD;
3. A declaration that the purported delegation of legislative authority to the Safe
Schools for All Team is improper, invalid, and unlawful;
4. A declaration that the January 2021 Framework and the CDPH Safe Schools for
All Team’s March 7, 2021 denial of the Safety Review Requests submitted by
Defendants SDUHSD, CUSD, and PUSD are invalid and unlawful;
5. A writ of mandamus compelling the CDPH Safe Schools for All Team to vacate
its March 7, 2021 denial of the Safety Review Requests submitted by Defendants
SDUHSD, CUSD, and PUSD and issue a new order allowing these school districts
to reopen all their school sites for full-time, in-person instruction;
6. Attorneys’ fees pursuant to section 1021.5 of the Code of Civil Procedure and any
other applicable provision of law;
7. Costs of suit; and

1 8. Such other and further relief as the court may deem just and proper.

2 As to the Third Cause of Action:

- 3 1. A temporary restraining order and preliminary and permanent injunction
4 restraining and preventing Defendants Governor Newsom, Dr. Ghaly, Dr.
5 Bardach, and Dr. Aragón from applying and enforcing the January 2021
6 Framework and from issuing any new order, directive, or “framework” without
7 following the procedures required by the APA;
- 6 2. A temporary restraining order and preliminary and permanent injunction
7 restraining and preventing Defendants Governor Newsom, Dr. Ghaly, Dr.
8 Bardach, and Dr. Aragón from applying and enforcing the CDPH Safe Schools for
9 All Team’s March 7, 2021 denial of the Safety Review Requests submitted by
10 Defendants SDUHSD, CUSD, and PUSD;
- 9 3. A declaration that the January 2021 Framework and the CDPH Safe Schools for
10 All Team’s March 7, 2021 denial of the Safety Review Requests submitted by
11 Defendants SDUHSD, CUSD, and PUSD are invalid and unlawful;
- 11 4. A writ of mandamus compelling the CDPH Safe Schools for All Team to vacate
12 its March 7, 2021 denial of the Safety Review Requests submitted by Defendants
13 SDUHSD, CUSD, and PUSD and issue a new order allowing these school districts
14 to reopen all their school sites for full-time, in-person instruction;
- 14 5. Attorneys’ fees pursuant to section 1021.5 of the Code of Civil Procedure and any
15 other applicable provision of law;
- 15 6. Costs of suit; and
- 16 7. Such other and further relief as the court may deem just and proper.

17 As to the Fourth Cause of Action:

- 18 1. A temporary restraining order and preliminary and permanent injunction
19 restraining and preventing Defendants Governor Newsom, Dr. Ghaly, Dr.
20 Bardach, and Dr. Aragón from applying and enforcing the January 2021
21 Framework and from issuing any new order, directive, or “framework” that would
22 prevent any school from reopening for full-time, in-person instruction;
- 21 2. A temporary restraining order and preliminary and permanent injunction
22 restraining and preventing Defendants Governor Newsom, Dr. Ghaly, Dr.
23 Bardach, and Dr. Aragón from applying and enforcing the CDPH Safe Schools for
24 All Team’s March 7, 2021 denial of the Safety Review Requests submitted by
25 Defendants SDUHSD, CUSD, and PUSD;
- 24 3. A temporary restraining order and preliminary and permanent injunction and/or
25 writ of mandamus compelling Defendants SDUHSD, CUSD, SMUSD, OUSD,
26 PUSD, and VUSD to reopen all their schools, primary and secondary, for full-time
27 in person instruction to the greatest extent possible within seven days;
- 27 4. A declaration that the January 2021 Framework and the CDPH Safe Schools for
28 All Team’s March 7, 2021 denial of the Safety Review Requests submitted by
29 Defendants SDUHSD, CUSD, and PUSD are invalid and unlawful;

- 1 5. A writ of mandamus compelling the CDPH Safe Schools for All Team to vacate
2 its March 7, 2021 denial of the Safety Review Requests submitted by Defendants
3 SDUHSD, CUSD, and PUSD and issue a new order allowing these school districts
4 to reopen all their school sites for full-time, in-person instruction;
- 5 6. Attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure and any
6 other applicable provision of law;
- 7 7. Costs of suit; and
- 8 8. Such other and further relief as the court may deem just and proper.

9 As to the Fifth Cause of Action:

- 10 1. A temporary restraining order and preliminary and permanent injunction enjoining
11 Defendants Governor Newsom, Dr. Ghaly, Dr. Bardach, and Dr. Aragón from
12 enforcing the January 2021 Framework and from issuing any new order, directive,
13 or "framework" that would prevent any school from reopening for full-time, in-
14 person instruction;
- 15 2. A temporary restraining order and preliminary and permanent injunction
16 restraining and preventing Defendants Governor Newsom, Dr. Ghaly, Dr.
17 Bardach, and Dr. Aragón from applying and enforcing the CDPH Safe Schools for
18 All Team's March 7, 2021 denial of the Safety Review Requests submitted by
19 Defendants SDUHSD, CUSD, and PUSD;
- 20 3. A temporary restraining order and preliminary and permanent injunction and/or
21 writ of mandamus compelling Defendants SDUHSD, CUSD, SMUSD, OUSD,
22 PUSD, and VUSD to reopen all their schools, primary and secondary, for full-time
23 in person instruction to the greatest extent possible within seven days;
- 24 4. A declaration that the January 2021 Framework and the CDPH Safe Schools for
25 All Team's March 7, 2021 denial of the Safety Review Requests submitted by
26 Defendants SDUHSD, CUSD, and PUSD are invalid and unlawful;
- 27 5. A writ of mandamus compelling the CDPH Safe Schools for All Team to vacate
28 its March 7, 2021 denial of the Safety Review Requests submitted by Defendants
SDUHSD, CUSD, and PUSD and issue a new order allowing these school districts
to reopen all their school sites for full-time, in-person instruction;
6. Attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure and any
other applicable provision of law;
7. Costs of suit; and
8. Such other and further relief as the court may deem just and proper.

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Dated: March 9, 2021

AANNESTAD ANDELIN & CORN LLP

s/ Lee M. Andelin

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