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13 **UNITED STATES DISTRICT COURT FOR**
 14 **THE CENTRAL DISTRICT OF CALIFORNIA**
 15 **WESTERN DIVISION**

16 **MATTHEW BRACH**, an individual;
 17 **JESSE PETRILLA**, an individual;
 18 **LACEE BEAULIEU**, an individual;
 19 **ERICA SEPHTON**, an individual;
 20 **KENNETH FLEMING**, an individual;
 21 **JOHN ZIEGLER**, an individual;
 22 **ALISON WALSH**, an individual;
 23 **ROGER HACKETT**, an individual;
 24 **CHRISTINE RUIZ**, an individual; and
 25 **Z.R.**, a minor;

26 Plaintiffs,
 27 v.

28 **GAVIN NEWSOM**, in his official
 capacity as the Governor of California;
XAVIER BECERRA, in his official
 capacity as the Attorney General of

Case No.:

**COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF**



1 California; **SONIA Y. ANGELL**, in
2 her official capacity as the State Public
3 Health Officer and Department of
4 Public Health Director; and **TONY**
5 **THURMOND**, in his official capacity
6 as State Superintendent of Public
7 Instruction and Director of Education
8 Defendants.

9 *Today, education is perhaps the most important function of state and local*
10 *governments. Compulsory school attendance laws and the great*
11 *expenditures for education both demonstrate our recognition of the*
12 *importance of education to our democratic society. It is required in the*
13 *performance of our most basic public responsibilities, even service in the*
14 *armed forces. It is the very foundation of good citizenship. Today it is the*
15 *principal instrument in awakening the child to cultural values, in preparing*
16 *him for later professional training, and in helping him to adjust normally to*
17 *his environment. In these days, it is doubtful that any child may reasonably*
18 *be expected to succeed in life if he is denied the opportunity of education.*
19 *Such an opportunity, where the state has undertaken to provide it, is a right*
20 *which must be made available to all on equal terms. – Chief Justice Earl*
21 *Warren, Brown v. Board of Education, 347 U.S. 483, 491 (1954).*

22 Plaintiffs Matthew Brach, Jesse Petrilla, Lacey Beaulieu, Erica Sephton, Kenneth
23 Fleming, John Ziegler, Alison Walsh, Roger Hackett, Christine Ruiz, and her minor
24 child, referred to by his initials, Z.R., by their attorneys, Dhillon Law Group, Inc., for
25 their claims against Defendants Gavin Newsom, in his official capacity as the Governor
26 of California; Xavier Becerra, in his official capacity as the Attorney General of
27 California; Sonia Y. Angell, in her official capacity as the State Public Health Officer
28 and Department of Public Health Director; Tony Thurmond, in his official capacity as

1 State Superintendent of Public Instruction and Director of Education, allege and show
2 the Court as follows (this “Complaint”).

3 **NATURE OF ACTION**

4 1. Defendants have ushered in a new wave of COVID-19 restrictions, this
5 time barring in-person schooling for most children in California. In Defendants’ rush to
6 enact these new restrictions, they have placed politics ahead of the wellbeing of
7 children, and children’s important—indeed, fundamental—interest in receiving equal
8 access to meaningful education. Defendants’ arbitrary restrictions on in-person
9 schooling effectively deprive Plaintiffs’ children, and millions of other children across
10 California, of the opportunity for meaningful education and the attendant hope for a
11 brighter future.

12 2. This Action presents facial and as-applied challenges to the Governor of
13 California’s May 4, 2020 Executive Order N-60-20 (“State Order”), attached here as
14 **Exhibit 1**, which requires Californians to obey all State Public Health directives and
15 orders, including the State’s July 17, 2020 “COVID-19 Industry Guidance: School and
16 School-Based Programs,” attached here as **Exhibit 2**.

17 3. This Action is brought pursuant to 42 U.S.C. § 1983, on the grounds that
18 the State Order and associated guidance and directives, and Defendants’ enforcement
19 thereof, violate Plaintiffs’ constitutionally and federally protected rights, including
20 specifically: (1) the right to equal protection, free from arbitrary treatment by the State
21 (U.S. Const. amend. XIV); (2) the right to procedural and substantive due process (U.S.
22 Const. amend. XIV); (3) the right to be free from federally-funded state action resulting
23 in a disparate impact on racial minorities (Title VI of the Civil Rights Act of 1964, 42
24 U.S.C. 2000d, *et seq.*); and (4) the right to equal and meaningful access to education,
25 free from arbitrary state action resulting in a disparate impact on those with disabilities
26 (Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*; Title II of the
27 Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, *et seq.*; and Section 504 of
28 the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*)).

1 4. With the school year commencing in mere weeks from the date of this
2 filing, time is of the essence, and the Court should not hesitate to ensure that Plaintiffs'
3 fundamental interests in securing a meaningful education for their children are
4 preserved and protected from Defendants' arbitrary actions.

5 **JURISDICTION AND VENUE**

6 5. This action arises under 42 U.S.C. § 1983 in relation to Defendants'
7 deprivation of Plaintiffs' rights as secured by the U.S. Constitution and federal law.
8 Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and
9 1343. This Court has authority to award the requested declaratory relief under 28
10 U.S.C. § 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a);
11 and attorneys' fees and costs under 42 U.S.C. § 1988.

12 6. The Central District of California is the appropriate venue for this action
13 pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is the District in which
14 Defendants maintain offices, exercise their authority in their official capacities, and will
15 enforce the State Order; and it is the District in which substantially all of the events
16 giving rise to the claims occurred.

17 **PARTIES**

18 7. Plaintiff Matthew Brach is a resident of Rancho Palos Verdes, California.
19 He is suing in his individual capacity and not as an elected member of the Board of
20 Education for the Palos Verdes Peninsula Unified School District. He is the father of
21 two children. His sixteen-year-old son and thirteen-year-old daughter are students in the
22 Palos Verdes Peninsula Unified School District. His son is entering his senior year and
23 will suffer academically as a result of the denial of personal interaction with teachers
24 and positive academic role models. His son's learning style requires him to be able to
25 ask questions of and interact with his teachers and to learn collaboratively with peers.
26 His daughter is already suffering emotionally from being isolated from her learning
27 community.

1 8. Plaintiff Jess Petrilla is a resident of Mission Viejo, California. He has a
2 son who is about to enter first grade. Last school year, when his son was in kindergarten
3 and transitioned from in-classroom to distance learning, Petrilla noticed a significant
4 decline in his discipline and engagement. His son's enthusiasm for learning declined,
5 and his son became restless. Petrilla's wife has been forced to take time off of work in
6 order to oversee her son's education. The Petrillas are concerned about the negative
7 effects that this prolonged absence from the social aspects of structured education will
8 have on the future development of their son.

9 9. Plaintiff Lacey Beaulieu is a resident of La Jolla, California. She has two
10 children, a daughter who is entering the ninth grade at a private school and a son who is
11 about to enter 5th grade in the San Diego Unified School District. One of her biggest
12 challenges with distance learning was trying to balance screen time. Her son's doctor
13 has recommended that he not spend more than two hours a day in front of computer
14 screens. With distance learning, this instruction has been almost impossible to honor.
15 She is concerned that if her son is going to keep up academically, this could come at a
16 cost of brain development issues as a result of him spending too much time in front of
17 computer screens. She found it unrealistic to expect her son to follow the daily/weekly
18 schedule on his own. If she was tied up with work, her son was unable to proceed with
19 his daily lesson plans. While her daughter had more interaction with her teachers,
20 because of the lack of labs, she was unable to properly do science experiments.
21 Beaulieu believes that the increased screen time has had a negative affected on both of
22 her children. She has noticed that they have difficulty with sleep schedules, both are
23 depressed, and their discipline in completing school assignments has decreased. The
24 enforced deprivation of personal contact with their peers has also affected these
25 children negatively.

26 10. Plaintiff Erica Sephton is a resident of Murrieta, California. She has a
27 daughter who is about to enter transitional kindergarten at Saint Jeanne de Lestonnac
28 Catholic school in Temecula. Sephton understands that her daughter needs social

1 interaction with her fellow classmates, something that she cannot get at home doing
2 distance learning. Sephton is aware of the risks of COVID-19 and believes that these
3 minor risks for children do not outweigh the harm that her daughter is suffering by
4 being deprived of her in-person education. While the school, the teachers and the
5 students are ready to resume school instruction in the classroom with proper
6 precautions, Sephton believes that they are being held back because of positive test
7 results in other parts of the county and not because of any substantial risk in her
8 community. She does not understand why her daughter is allowed to spend all day in a
9 childcare facility, but cannot spend the same period of time in a private school,
10 learning.

11 11. Plaintiff Kenneth Fleming is the father of a public high school senior in
12 Long Beach, California. His daughter has maintained straight A's on her report card for
13 the last three years. She is a student athlete with ambition to earn a sports scholarship to
14 attend her dream school. Plaintiff Fleming is concerned that online-only education,
15 which has not been awarding letter grades to students, adversely impacts his daughter's
16 opportunity to compete for a college scholarship. He also believes that online-only
17 education does not assist his daughter either athletically or academically in preparing
18 for college.

19 12. Plaintiff John Ziegler is a resident of Camarillo, California and is the father
20 of an eight-year-old girl enrolled in public school. When her school moved from in-
21 person instruction to an online platform during the Spring 2020 semester, her
22 educational development suffered. She fell behind in her academic progress. As a result
23 of the denial of in-person educational instruction, Plaintiff Ziegler's wife is left with no
24 choice but to forgo her employment to stay home with their daughter.

25 13. Plaintiff Alison Walsh is the mother of two children who were in the
26 Capistrano Unified School District during the 2019-2020 school year. When CUSD
27 moved to an online platform in the 2020 spring semester, her children's education
28 suffered. Her children's school did not offer her children any live instruction. Their

1 teachers merely sent work packets to the students to complete independently. In
2 preparation for the 2020-2021 academic year, Plaintiff Walsh enrolled her children in
3 private school to ensure that her children could receive academic instruction. Now with
4 Defendants' guidance, even the private school is required to provide distance learning.

5 14. Plaintiff Roger Hackett lives in Ventura County and has a son who will
6 attend a private middle school in Westlake Village, California. His son's school has
7 made significant preparations for safe in-person instruction pursuant to the CDC and
8 local guidelines. This school is willing to offer both in-person and distance learning
9 options based on the preference of the parents, and is ready to safely reopen in-school
10 classes and non-contact athletics starting August 12. Plaintiff Hackett's concern is that
11 online-only education will adversely impact his son's academic and social
12 development. His son is frustrated by continual isolation from his academic community
13 and absence from school athletics. Even though Westlake Village has very few
14 COVID-19 positive cases, because it is in Los Angeles County which is on the state's
15 watch list, this private school is being prevented from operating in compliance with
16 COVID safety guidelines and in accordance with the desires of the school, teachers,
17 parents, and students.

18 15. Plaintiff Christine Ruiz is Hispanic and lives in Los Angeles County. She
19 has two sons who attend public school in the county, one of whom is Plaintiff Z. R.,
20 referred to herein by his initials. Both boys have been diagnosed with autism. Her 15-
21 year-old son, Z. R., attends high school, in moderate to severe special education classes.
22 Under normal circumstances, he has an entire team of special needs educated,
23 credentialed staff working hands on with him during the entire school day pursuant to
24 an Individual Education Program ("IEP") mandated by law. As of March 16, 2020, he
25 has received no services as mandated by his IEP. While the school offered a Zoom
26 meeting, this did not work. Her younger son is in junior high school. He has been
27 placed in mild to moderate special education classes. The online class only lasted about
28 30 minutes a day, and he did not learn anything by clicking a few links and watching a

1 video. Her son is a hands-on learner. As a result of the school transitioning to online-
2 only education and not providing the request IEP services, Ruiz has had to hire an
3 educational tutor to assist her sons.

4 16. Plaintiff Z. R. is a minor and, as such, is referred to herein by his initials.
5 Z. R. is the 15-year-old son of Christine Ruiz who currently attends high school. Z. R.
6 is Hispanic and takes moderate to severe special education classes as a result of his
7 autism.

8 17. Defendant Gavin Newsom (“Newsom”) is made a party to this Action in
9 his official capacity as the Governor of California. The California Constitution vests the
10 “supreme executive power of the State” in the Governor, who “shall see that the law is
11 faithfully executed.” Cal. Const. Art. V, § 1. Governor Newsom signed Executive Order
12 N-60-20 (the “Executive Order”) on May 4, 2020. *See, e.g., Ex Parte Young*, 209 U.S.
13 123 (1908).

14 18. Defendant Xavier Becerra (“Becerra”) is made a party to this Action in his
15 official capacity as the Attorney General of California. Under California law, Becerra is
16 the chief law enforcement officer in the State. Cal. Const. Art. V, § 13.

17 19. Defendant Sonia Y. Angell, MD, MPH (“Dr. Angell”) is made a party to
18 this Action in her official capacity as the Director and State Public Health Officer. Dr.
19 Angell is sued herein in her official capacity to the extent that she is responsible for
20 providing official government guidance to the various industries that are allowed to
21 operate.

22 20. Defendant Tony Thurmond, (“Thurmond”) is made a party to this Action
23 in his official capacity as State Superintendent of Public Instruction and Director of
24 Education. Thurmond is responsible for enforcing education law and regulations in
25 California.

26
27 ///

28 ///

1 **FACTUAL ALLEGATIONS**

2 21. On or about March 4, 2020, California Governor Gavin Newsom
3 proclaimed a State of Emergency as a result of the threat of COVID-19.¹

4 22. On or about March 19, 2020, California Governor Newsom issued
5 Executive Order N-33-20 in which he ordered “all residents are directed to immediate
6 heed the current State public health directives.”²

7 23. On or about May 4, 2020, California Governor Newsom issued Executive
8 Order N-60-20 in which he ordered “All residents are directed to continue to obey State
9 public health directives, as made available at [https://covid19.ca.gov/stay-home-except-](https://covid19.ca.gov/stay-home-except-for-essential-needs/)
10 [for-essential needs/](https://covid19.ca.gov/stay-home-except-for-essential-needs/) and elsewhere as the State Public Health Officer may provide.” Ex.
11 1.

12 24. On July 17, 2020 Newsom announced a framework to reopening schools.³

13 25. Under his plan, reopening hinges on not being on the county monitoring
14 list for two weeks.⁴

15 26. “Schools and school districts may reopen for in-person instruction at any
16 time if they are located in a local health jurisdiction (LHJ) that has not been on the
17 county monitoring list within the prior 14 days.”⁵

18 27. The plan also includes a waiver procedure:
19

20 _____
21 ¹ Available as of the date of this filing: [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)
22 [content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf).

23 ² Available as of the date of filing: [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf)
24 [content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-](https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf)
25 [002.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf).

26 ³ Available as of the date of filing:
27 [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CO](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf)
28 [VID-19/Schools%20Reopening%20Recommendations.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf).

⁴ Available as of the date of filing:
[https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CO](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf)
[VID-19/Schools%20Reopening%20Recommendations.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf).

⁵ *Id.*

1 “A waiver of this criteria may be granted by the local health officer for
2 elementary schools to open for in-person instruction. A waiver may only be
3 granted if one is requested by the superintendent (or equivalent for charter
4 or private schools), in consultation with labor, parent and community
5 organizations. Local health officers must review local community
6 epidemiological data, consider other public health interventions, and
7 consult with CDPH when considering a waiver request.”⁶

8 28. California is the only state in the U.S. that is mandating at the state level
9 that school districts not hold in-person classes, affecting millions of students, rather
10 than leave that decision to the individual school district.⁷

11 29. California Department of Public Health (CDPH) has provided guidance to
12 similarly situated industries, namely camps⁸ and childcare⁹, allowing them to remain
13 open, but guidance for schools¹⁰ reveal that schools are subject to more stringent
14 standards that defy reason.

15 30. Currently, there are 32 counties on the watchlist.¹¹

16 31. There are currently 5.9 million students K-12 in California.¹²

17 _____
18 ⁶ *Id.*

19 ⁷ Available as of the date of filing: <https://thehill.com/homenews/state-watch/508105-heres-your-states-plan-for-reopening-schools>.

20 ⁸ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-daycamps.pdf>.

21 ⁹ Available as of the date of filing: [https://files.covid19.ca.gov/pdf/guidance-childcare--en.pdf](https://files.covid19.ca.gov/pdf/guidance-childcare-en.pdf).

22 ¹⁰ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-schools.pdf>.

23 ¹¹ As of July 20, 2020, the following counties are on the watchlist: Alameda, Colusa,
24 Contra Costa, Fresno, Glenn, Imperial, Kings, Los Angeles, Madera, Marin, Merced,
25 Monterey, Napa, Orange, Placer, Riverside, Sacramento, San Benito, San Bernardino,
26 San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, San Francisco,
27 Solano, Sonoma, Stanislaus, Sutter, Tulare, Yolo, Yuba, and Ventura. Available as of
28 the date of filing: <https://covid19.ca.gov/roadmap-counties/#track-data>.

¹² Available as of the date of filing: <https://lao.ca.gov/Education/EdBudget/Details/331>.

32. As of July 14, 2020, there are 8,433 Child Care centers opened in the state of California and a total of 24,915 licensed Family Child Care Homes for a total of 33,348 total facilities.¹³

Table 1: Total Number of Open Child Care Centers and Family Child Care Homes Statewide and by County (Data Retrieved: 7/14/2020)

County	Total Number of Open Facilities	Total Number of Open Facilities	Total Number of Open Facilities
	Child Care Centers	Family Child Care Homes	All
Statewide	8,433	24,915	33,348

The U.S. Department of Education Is Encouraging Schools to Open

33. During a July 8 briefing conducted by the Vice President and the coronavirus task force, the United States Secretary of Education, Betsy DeVos, stated “[t]here were a number of schools and districts across the country that did an awesome job of transitioning this spring. And there were a lot in which I and state school leaders were disappointed in that they didn't figure out how to continue to serve their students. Too many of them just gave up. The Center for Reinventing Public Education [CRPE] said that only 10 percent across the board provided any kind of real curriculum and instruction program.”¹⁴

34. The United States Department of Education spent approximately \$8.3 billion on California K-12 schools for the 2019-2020 school year.¹⁵

35. Not providing education for America’s children is not a choice. “It would fail America’s students, and it would fail taxpayers who pay high taxes for their education.”¹⁶

¹³ Available as of the date of filing: <https://cdss.ca.gov/Portals/9/Additional-Resources/Research-and-Data/DSSDS/ChildCare-7-19.pdf>.

¹⁴ Available as of the date of filing: <https://www.whitehouse.gov/briefings-statements/press-briefing-vice-president-pence-members-coronavirus-task-force-july-8-2020/>.

¹⁵ Available as of the date of filing: <https://lao.ca.gov/Education/EdBudget/Details/331>.

¹⁶ *Id.*

1 36. Devos also quotes The American Academy of Pediatrics, “Keeping
2 schools closed ‘places children and adolescents at considerable risk of morbidity and, in
3 some cases, mortality.’” The Pediatrics guidance concluded that everyone “should start
4 with a goal of having students physically present in school.” “Fully open” and “fully
5 operational” means that students need a full school year or more, and it’s expected it
6 will look different depending on where you are.”¹⁷ “Ultimately, it’s not a matter of ‘if’
7 schools should reopen, it’s simply a matter of ‘how.’ They must fully open, and they
8 must be fully operational.”¹⁸

9 37. CRPE found many disparities among schools.¹⁹ In a new report involving a
10 nationally representative sample of 477 school systems, statistical weights were applied
11 to provide a nationally representative sample of U.S. school districts. CRPE was able to
12 compare remote education in districts in different types of communities and with
13 different student characteristics. The original cohort of districts followed showed
14 increasing clarity and expectations for instruction, tracking student engagement, and
15 progress monitoring. CRPE found a “sobering story... just one in three districts expect
16 teachers to provide instruction, track student engagement, or monitor academic progress
17 for all students... Far too many districts are leaving learning to chance during the
18 coronavirus closures.”²⁰

19 38. CRPE also notes, “[e]xperience tells us that low expectations for
20 instruction bode poorly for the students who faced the greatest challenges: those in low-
21 income households, those with disabilities, those who speak a language other than
22 English at home.”²¹

23 ¹⁷ *Id.*; full report available as of the date of filing:

24 [https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-
25 guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/.](https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/)

26 ¹⁸ *Id.*

27 ¹⁹ Available as of the day of filing: [https://www.crpe.org/thelens/too-many-schools-
28 leave-learning-chance-during-pandemic.](https://www.crpe.org/thelens/too-many-schools-leave-learning-chance-during-pandemic)

²⁰ *Id.*

²¹ *Id.*

1 39. “Tracking student progress by collecting work for review, assessing
2 students’ progress toward academic benchmarks, or grading their work is the best way
3 to gauge if students are continuing to learn in their remote settings. It may also be our
4 only way to get a sense of gaps in students’ learning that may emerge before the fall,
5 when districts may be able to assess where students stand. Again, we found worrisome
6 trends in the expectations districts set. Just 42 percent expect teachers to collect student
7 work, grade it, and include it in final course grades for at least some students (typically
8 those in middle and upper grades).”²²

9 40. The CRPE found a rural-urban divide. “This rural-urban divide in
10 expectations is stark—far more so than the gap in instruction between districts with
11 high concentrations of students who qualify for free or reduced-price lunch. When we
12 divide the sample into quartiles based on the district’s concentration of economically
13 disadvantaged students, we do not see a clear divide between the districts with the
14 highest and lowest quartiles in terms of expectations for instruction, tracking student
15 engagement, or progress monitoring.”²³

16 41. “More affluent school districts are more likely to require live video
17 instruction from teachers. While expectations around synchronous, or real-time,
18 teaching are uncommon across the board (expected in 21.8 percent of districts), only
19 14.5 percent of school districts with the highest concentration of students receiving free
20 or reduced-price lunch expect teachers to provide live instruction. The most affluent 25
21 percent of districts in our sample are twice as likely to expect real-time teaching.”²⁴

22 42. School closings also disproportionately affects minorities, as the NAACP
23 notes.²⁵

24
25 _____
²² *Id.*

26 ²³ *Id.*

27 ²⁴ *Id.*

28 ²⁵ Available as of the day of filing: <https://naacp.org/coronavirus/coronavirus-impact-on-students-and-education-systems/>

1 43. “For students of color at all levels across the country, school closings
2 create problems even more urgent than the interruption of their educations. Schools also
3 serve as a community nexus for food and housing. Many Black students are eligible for
4 the federal Free or Reduced-Price Lunch Program (FRPL). Fall 2016 data from the
5 National Center on Education Statistics show that for high-poverty schools where more
6 than 75% of students are eligible for FRPL, Blacks students accounted for 44% of those
7 attending. At schools where 50-75% percent of students are eligible for FRLP, Black
8 students made up 30% of the student population. For students who rely on their schools
9 as a reliable source of daily meals, school closings leave a critical gap. The Secretary of
10 Agriculture is granted waiver authority with respect to the student lunch law (under the
11 Meals Act), including regarding nutritional content. This is a double-edged sword. It is
12 important for the Secretary to be able to move quickly to get meals to students,
13 including outside the school and in individual settings. Yet even here some guardrails
14 must remain in place. We cannot go back to the days when ketchup counted as a
15 vegetable for school lunches.”²⁶

16 **American Academy of Pediatrics Recommends Students**
17 **Physically Present in Schools**

18 44. In late June, the American Academy of Pediatrics (“AAP”) “strongly”
19 recommended that “the coming school year should start with a goal of having students
20 physical present in school.”²⁷

21 45. The AAP noted the health benefits that would otherwise be lost such as
22 “child . . . development,” “social and emotional skills,” “reliable nutrition,”
23 physical/speech and mental health therapy,” and “opportunities for physical activity.”²⁸

24 _____
25 ²⁶ *Id.*

26 ²⁷ American Academy of Pediatrics, *COVID-19 Planning Considerations: Guidance for*
27 *School Reentry*, 3d para. (Last Updated June 25, 2020),
<https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

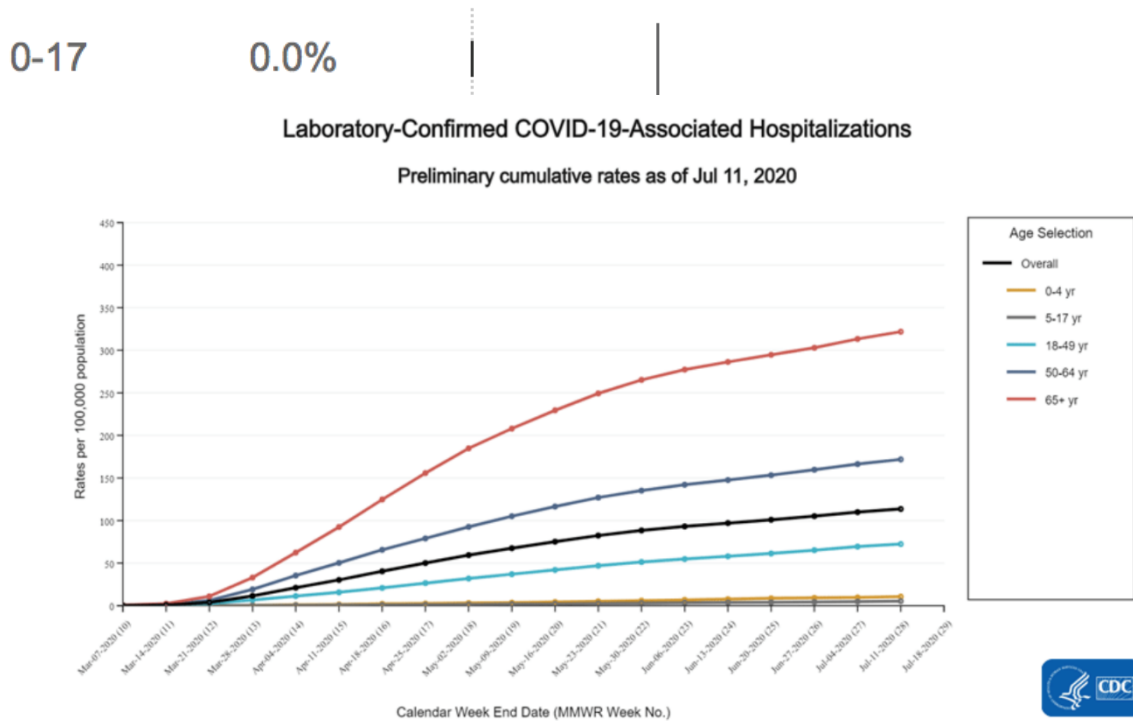
28 ²⁸ *Id.* at 1st para.

1 46. The AAP also noted that the lack of “in-person learning” could
 2 disproportionately affect minorities and those of less socioeconomic means.²⁹

3 **Studies Show that Open Schools Present Minimal Risk**

4 47. According to California’s own published reports, not a single minor in the
 5 state of California has died as a result of COVID-19.³⁰

6 **Total Deaths by Age**



48. The CDC reports that children between the ages of 5 -17 are hospitalized at
 a rate of 5.3 per 100,000 compared to a national average of 113.6.³¹

49. On March 30, 2020, the Australian Research Council released a study that
 looked at the early data from China, Singapore, South Korea, Japan, and Iran. The study
 concluded that while “SARS-CoV-2 can cause mild disease in children, the data

²⁹ *Id.*

³⁰ Available as of the date of filing: <https://update.covid19.ca.gov>.

³¹ Available as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html#hospitalizations>

1 available to date suggests that children have not played a substantive role in the intra-
2 household transmission of SARS-CoV-2.³²

3 50. On April 26, 2020, another Australian study found *no* evidence of children
4 infecting teachers.³³ The study concluded that the “spread of COVID-19 within NSW
5 (New South Wales) schools has been very limited.”³⁴ This study also found that unlike
6 other respiratory viruses, children are not the primary drivers of the spread of COVID-
7 19.³⁵

8 51. On May 18, 2020, during a video conference of ministers of education
9 with the Council of the European Union, it was reported that since the reopening of
10 schools in 22 member states, there had been no increase in infections of COVID-19
11 among students, teachers and parents.³⁶

12 52. On May 28, 2020, a study was released showing that there was no
13 evidence of secondary transmission of COVID-19 from children attending school in
14 Ireland.³⁷

15 53. On June 23, 2020, the Institute Pasteur after studying 1,340 people linked
16 to primary schools in France released a study in which they found that infected children
17 did not spread the virus to other children or to teachers or other school staff.³⁸

18
19 _____
20 ³² Available as of the date of filing:

21 <https://www.medrxiv.org/content/10.1101/2020.03.26.20044826v1>.

22 ³³ Available as of the date of filing: http://ncirs.org.au/sites/default/files/2020-04/NCIRS%20NSW%20Schools%20COVID_Summary_FINAL%20public_26%20April%202020.pdf, p. 4.

23 ³⁴ *Id.*

24 ³⁵ *Id.*

25 ³⁶ Available as of the date of filing: <https://www.washingtonexaminer.com/news/22-eu-member-states-have-not-seen-a-spike-in-coronavirus-cases-in-schools-after-reopening>.

26 ³⁷ Available as of the date of filing: https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.21.2000903#html_fulltext.

27 ³⁸ Available as of the date of filing: <https://www.pasteur.fr/fr/file/35404/download>.

1 54. On July 7, 2020, the Public Health Agency of Sweden published a study
2 titled “Covid-19 in schoolchildren”.³⁹ This study found:

- 3 a. Closing of schools had no measurable effect on the number of cases of
4 COVID-19 among children;
- 5 b. Children are not a major risk group of the COVID-19 disease and seem to
6 play a less important role from the transmission point of view, although
7 more active surveillance and special studies such as school and household
8 transmission studies are warranted; and
- 9 c. The negative effects of closing schools must be weighed against the
10 possible positive indirect effects it might have on the mitigation of the
11 COVID-19 pandemic.

12 55. July 8, 2020, Prevent Epidemics published a report by the former head of
13 the Centers for Disease Control and Prevention. In this report titled “Reopening
14 America’s Schools: A Public Health Approach” they found that the evidence “suggests
15 that children may play a smaller role in transmission of COVID-19 than adults.”⁴⁰

16 56. On July 15, 2020, a study of 2,000 German school children was released
17 that concluded that schools and young people do not play a significant role in the
18 transmission of the coronavirus.⁴¹ This study found that schools in Germany did not
19 become hotspots after they were reopened.⁴²

20 _____
21 ³⁹ Available as of the date of filing:

22 [https://www.folkhalsomyndigheten.se/contentassets/c1b78bffbde4a7899eb0d8ffdb57b
23 09/covid-19-school-aged-children.pdf](https://www.folkhalsomyndigheten.se/contentassets/c1b78bffbde4a7899eb0d8ffdb57b09/covid-19-school-aged-children.pdf).

24 ⁴⁰ Available as of the date of filing: [https://preventepidemics.org/wp-
25 content/uploads/2020/07/Reopening-Americas-Schools_07-08-2020-Final.pdf](https://preventepidemics.org/wp-content/uploads/2020/07/Reopening-Americas-Schools_07-08-2020-Final.pdf), p. 6.

26 ⁴¹ U.S. News article available as of the date of filing at:

27 [https://www.washingtonexaminer.com/news/german-study-no-evidence-coronavirus-
28 spreads-in-schools](https://www.washingtonexaminer.com/news/german-study-no-evidence-coronavirus-spreads-in-schools). Summary of study available in German as of the date of filing:

29 [https://tu-dresden.de/med/mf/die-fakultaet/newsuebersicht/immunisierungsgrad-
30 geringer-als-erwartet-schulen-haben-sich-nicht-zu-hotspots-entwickelt](https://tu-dresden.de/med/mf/die-fakultaet/newsuebersicht/immunisierungsgrad-geringer-als-erwartet-schulen-haben-sich-nicht-zu-hotspots-entwickelt).

31 ⁴² *Id.*

1 **Studies Show that the Digital Divide Harms Students**

2 57. Another study noted “there are many reasons to believe the COVID-19
3 impacts might be larger for children in poverty and children of color,” citing (1) the
4 disproportionately higher rate of COVID-19 infections and deaths and worse effect of
5 the economic downturn on African American and Hispanic parents, and (2) the “digital
6 divide in technology and internet access by race/ethnicity and socioeconomic status.”⁴³

7 58. This digital divide is supported by surveys, such as one that showed that:
8 (1) 41% of respondents stated that “not having a computer or tablet or enough available
9 devices” was a “top barrier” to distance learning, while only 37% said that their child’s
10 school had lent mobile technology devices; and (2) 71% of African American families
11 and 69% of families with a household income of less than \$50,000 stating that lending
12 mobile technology devices would be very helpful for families like theirs.⁴⁴ This survey
13 comports with the “evidence that, even when teachers are making themselves and their
14 instructional materials available virtually, many students lack the means to access
15 online.”⁴⁵

16 59. A Brown University study estimated those negative impacts on children to
17 be a loss of 63-68% of the learning gains in reading relative to a typical school year and
18 a loss of 37-50% in learning gains in math.⁴⁶

19 60. In some grades, students may come back close to a “full year behind in
20 math.”⁴⁷

21 _____
22 ⁴³ Kuhfeld *et al.* (May 2020) *Projecting the potential impacts of COVID-19 school*
23 *closures on academic achievement*, p. 25 Annenberg Institute at Brown University,
<https://doi.org/10.26300/cdrv-yw05>.

24 ⁴⁴ The Education Trust-West, *California Parent Poll: COVID-19 and School Closures*
25 (Accessed on June 19, 2020), available at: <https://west.edtrust.org/ca-parent-poll-covid-19-and-school-closures/>.

26 ⁴⁵ Kuhfeld, *Projecting the potential impacts of COVID-19 school closures on academic*
27 *achievement*, p. 10.

28 ⁴⁶ *Id.* p. 23.

⁴⁷ *Id.*

1 61. The fact that this “digital divide” is a factor in the disproportionate effect
2 of school shutdowns is even more troubling when data and anecdotal evidence show
3 that remote learning encourages decreased teacher interaction with students.⁴⁸

4 62. Less than two weeks after the school shutdown on March 16, 2020, the Los
5 Angeles School District officials admitted that 15,000 students are completely
6 unaccounted for and more than 40,000 had not been in daily contact with their
7 teachers.⁴⁹

8 63. Even among students from families with lower economic means who are
9 provided with tablets and wifi hotspots, it has been reported that parents who are
10 technically challenged have been unable to help their children get online. Teachers
11 report children who are unable to respond online because they are babysitting their
12 siblings, also home from school, while parents work to keep the family housed. Even
13 the most diligent of teachers cannot provide extra attention to a struggling student in a
14 class as they might in person.

15 **Student’s Futures are Already Affected**

16 64. FAFSA (Free Application for Federal Student Aid) and college
17 applications are down.⁵⁰ This certainly does not align with goals for college and
18 preparing for future.

19 **Special Education Students are Disadvantaged by Distance Learning**

20 65. Under federal law, students with disabilities are guaranteed a Free,

21 _____
22 ⁴⁸ *Id.* at 10 “There are concerning signs that many teachers have had no contact at all
23 with a significant portion of students . . . only 39% of teachers reported interacting with
24 their students at least once a day, and most teacher-student communication occurred
25 over email”, and absenteeism.

26 ⁴⁹ Howard Blume, *15,000 L.A. high school students are AWOL online, 40,000 fail to*
27 *check in daily amid coronavirus closures*, LOS ANGELES TIMES, (March 30, 2020)
28 Available at: <https://www.latimes.com/california/story/2020-03-30/coronavirus-los-angeles-schools-15000-high-school-students-absent>.

⁵⁰ Available as of the date of filing: <https://www.fastweb.com/student-news/articles/coronavirus-impacts-fafsa-applications-college-enrollment>.

1 Appropriate Public Education (FAPE), as incorporated through the IDEA ACT 34
2 C.F.R. § 300.101 and Title III of the Americans with Disabilities Act of 1990 (“ADA”),
3 § 504 of the Rehabilitation Act of 1973.⁵¹

4 66. The federal government allocates approximately \$1.2 billion for California
5 for special education each year.⁵²

6 67. Students with disabilities have been especially vulnerable to distance
7 learning, as it is common for a student’s individualized education program (IEP) to
8 have individualized instruction, like a one-on-one aide, for example. When school are
9 closed, it is difficult, and sometimes impossible to implement a student’s IEP. Not
10 following an IEP can cause grave consequences such as regression.

11 68. Many parents of special needs children in California have reported that
12 their children received none, or nearly none, of the individualized instruction
13 guaranteed by law. Frustrated instructors simply gave up when faced with technology
14 challenges, while others didn’t try at all, and many school districts made zero provision
15 for delivering these federally mandated services to children, despite the federal funding
16 provided to the state for them.

17 69. While not solely unique to students with disabilities, socialization in
18 schools is critical for special needs children.

19 **Distance-Only Schools Pose Child Safety Concerns**

20 70. As mandatory reporters, teachers who have daily contact with children are
21 in the best position to notice and report suspected child abuse.

22 71. Nationwide, “stay at home” does not mean “safe at home” as a report from
23 RAINN (Rape, Abuse, & Incest National Network) describes. “Many minors are now
24 quarantined at home with their abuser. Meanwhile, these kids are cut off from their
25 safety net — the teachers, coaches, and friends’ parents who are most likely to notice

26 _____
27 ⁵¹ 20 U.S.C.A. § 1412; *see* 42 U.S.C.A. § 12132; *see* 29 USCA § 794.

28 ⁵² Available as of the date of filing:

<https://lao.ca.gov/Publications/Report/4110#Introduction>.

1 and report suspected abuse....As a result, abuse reports to many state authorities have
2 declined — not because there is less abuse taking place, but because children have less
3 contact with adults outside the home who could potentially spot and report abuse.
4 Sadly, it is likely that the risk of children being sexually abused will increase as shelter-
5 in-place orders continue — one more tragic consequence of the public health crisis the
6 country currently faces.”⁵³

7 72. Child abuse reports have also declined, but hospitals are reporting higher
8 numbers – this is concerning because abuse is not being detected in time (i.e., before an
9 abuse incident requiring hospitalization). In San Diego, during the months of April and
10 May, 24 children were reported as being treated for abuse symptoms which is double
11 what they normally see in the two-month period. Other locations have seen an increase,
12 including Jacksonville, Florida (8 abusive head trauma cases in March and April instead
13 of 3) and Fort Worth, Texas (9 severe cases at a hospital since March, when they usually
14 only have 6 in the whole year).

15 **One California School District’s Effort to Prepare to Open**

16 73. As an elected member of the Palos Verdes Peninsula Unified School District
17 (“PVPUSD”) which is located in Los Angeles County, plaintiff Brach was active in the
18 process of preparing the school district in reopening the schools.

19 74. Brach was involved in preparing a “Return to School” survey.

20 75. This survey found that over 60% of parents in the district believed that there
21 was not enough face-to-face teaching time during the initial shutdown.

22 76. Over 60% of parents also preferred that their children attend school in a
23 normal in-person setting rather than return to the virtual learning program.

24 77. Among teachers, over 60% of the teachers were comfortable with returning
25 to teach school.

26
27
28 ⁵³ Available as of the date of filing: <https://www.rainn.org/news/first-time-ever-minors-make-half-visitors-national-sexual-assault-hotline>

1 78. The survey also showed that due to financial constraints, if the school did
2 not return to in-person setting, over 7% of parents of TK – 5th grade children and over
3 19% of parents of parents of children between 6th - 12th grade would have to leave their
4 children home without supervision.

5 79. PVPUSD established a reopening committee that included staff, medical
6 professionals and parents.

7 80. PVPUSD was prepared to implement screening including providing a digital
8 app so parents could answer questions each morning regarding symptoms, and the school
9 was prepared to take students' temperature to verify the app's data.

10 81. PVPUSD also was prepared to implement the following mitigation strategy:

- 11 a. Staggered arrival times;
- 12 b. Designated entrance and exit routes;
- 13 c. Purchase no touch thermometers and handle the logistics of temp taking to
14 align with the number of thermometers;
- 15 d. Procure masks including N95 masks for nurses and cloth masks for students;
- 16 e. Provide water filling stations as no ability to use drinking fountains;
- 17 f. Provide grab/go meals for lunch;
- 18 g. Plexiglas for serving and cashier stations;
- 19 h. Investigation of HVAC system to support air circulation if windows had to
20 be closed;
- 21 i. Order signage for directional guides and handwashing reminders;
- 22 j. Handwashing stations with foot pedal;
- 23 k. Install touch free sanitizing;
- 24 l. Instituted protocols for high touch areas.

25 82. PVPUSD was ready to work with the teachers, parents, and students to
26 provide options. The 60% of teachers and parents who wanted in-person learning were
27 going to be able to choose that option while the other remainder could continue their
28 learning with virtual study.

1 **Newsom’s Doomsday Predictions Have Not Proven True**

2 83. Governor Newsom’s rationale for Executive Order N-33-20, his original
3 shelter in place order was to “bend the curve.”⁵⁴ He stated that “[i]n some parts of our
4 state, our case rate is doubling every four days,” and that “[t]he point of the stay at
5 home order is to make those numbers moot.”⁵⁵ The Governor added that one goal was
6 to slowdown transmission enough to reduce the strain it might place on hospital
7 resources.⁵⁶

8 84. California only accounts for five point three percent (5.3%) of the nation’s
9 COVID-19 deaths while containing twelve percent (12%) of the nation’s populace.⁵⁷

10 85. Governor Newsom cited a model showing that as of March 19, 2020, 56
11 percent of Californians, or more than 25 million people, could be infected over the next
12 eight weeks.⁵⁸

13 86. Contrastingly, several infectious disease experts, including Professor of
14 Epidemiology John P.A. Ioannidis of Stanford University, called this an extreme,
15 worst-case scenario that was unlikely to happen – and they turned out to be correct.⁵⁹

16 87. Upon information and belief, another piece of flawed data that drove
17 California’s and Santa Clara County’s original, onerous shelter-in-place orders was an

18 ⁵⁴ March 19, 2020 press briefing at 35:17-36:00, available as of the date of filing at
19 <https://www.youtube.com/watch?v=8OeyeK8-S5o>.

20 ⁵⁵ *Id.*

21 ⁵⁶ *Id.* at 5:42-8:09.

22 ⁵⁷ According to the CDC, California has 6,823 of the United States’ 128,035 COVID-19
23 deaths. Available as of the date of filing at

24 <https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm>. According to the U.S. Census,
25 California has 39,512,223 of the United States’ 328,239,523 people. Available as of
26 date of filing at <https://www.census.gov/quickfacts/fact/table/CA,US/PST045219>.

27 ⁵⁸ *Id.* at 5:00-6:00.

28 ⁵⁹ *Newsom: 56 % of Californians Could Get Coronavirus If Nothing Is Done*, San
Francisco Chronicle, March 19, 2020, available as of May 3, 2020 at:

https://webcache.googleusercontent.com/search?q=cache:sokxG9_b-2oJ:https://www.sfchronicle.com/health/article/Newsom-56-of-Californians-could-get-coronavirus-15144438.php+&cd=1&hl=en&ct=clnk&gl=us.

1 incorrect assumption that the R_0 of COVID-19 was 5.7.

2 88. The “R-naught” is the rate at which people can be infected, or more
3 precisely the rate of reproduction of the virus as measured by infected human hosts.⁶⁰

4 89. Upon information and belief, part of the data that the Governor depended
5 on for his claim—of 25 million infections in California within eight weeks—during his
6 March 19, 2020 announcement was the initial rate of infection in Wuhan, the
7 originating epicenter of COVID-19. Then and there, the numbers apparently showed a
8 R_0 of 5.7.⁶¹

9 90. However, now, the R_0 of COVID-19 without mitigation efforts is
10 understood to be approximately 2.2-2.7.⁶² With mitigation efforts, the R_0 of COVID-19
11 has been drive further down.

12 91. More egregiously, the COVID-19 death rate projections model on which
13 Governor Newsom relied for implementing a state of emergency and mass quarantine
14 of healthy Californians, turned out to be grossly flawed.⁶³

15 92. Governor Newsom’s inexplicable restrictions on school reopening is not
16 based in scientific facts, and is completely arbitrary especially in light of the fact that
17 California allows all of the functional components of schools allowed in camps and
18 childcare. More fundamentally, the school closing “plan” is no plan at all, and ignores
19 the state’s legal duties to California’s children.

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25 ⁶⁰ <https://www.nytimes.com/2020/04/23/world/europe/coronavirus-R0-explainer.html>.

26 ⁶¹ Available as of the date of filing: https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article.

27 ⁶² *Id.*

28 ⁶³ Available as of the date of filing: <https://www.statnews.com/2020/04/17/influenial-covid-19-model-uses-flawed-methods-shouldnt-guide-policies-critics-say/>.

1 CLAIMS

2 FIRST CLAIM FOR RELIEF

3 42 U.S.C. § 1983 – Violation of the Equal Protection Clause

4 Arbitrary School Closures

5 (By All Plaintiffs Against All Defendants)

6 93. Plaintiffs incorporate herein by reference each and every allegation
7 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

8 94. The equal protection doctrine prohibits “governmental classifications that
9 affect some groups of citizens differently than others.” *Engquist v. Or. Dep’t. of Agric.*,
10 553 U.S. 591, 601 (2008) (citations omitted). The touchstone of this analysis is whether
11 a state creates disparity “between classes of individuals whose situations are arguably
12 indistinguishable.” *Ross v. Moffitt*, 417 U.S. 600, 609 (1974).

13 95. The framework for reopening schools facially, and as-applied, arbitrarily
14 treats Plaintiffs’ children (and other minors attending public and private schools)
15 differently from those in nearby school districts; those in childcare; and those attending
16 summer camps, even though all such children and their families are all similarly
17 situated.

18 96. The risk of exposure or transmission within in any particular county is
19 substantially the same whether children are at school, daycare, or at camp, yet only
20 schools are subject to arbitrarily mandated closures. Children at summer camp, daycare,
21 and in school will be in the presence of other children, in an enclosed space, overseen
22 by an older person(s) not comprised of the child’s family unit, for an extended period,
23 and industry guidance issued for schools, camps, and daycare, contains the same or
24 essentially the same protocols for wearing face coverings, physically distancing,
25 hygiene, cleaning, arrival/departure procedures, sharing, checking for signs and
26 symptoms and notification procedures if a child or staff member becomes ill.

27 97. Defendants’ mandates arbitrarily restrict access to schools based on the
28 location of the school. Children residing in any particular county, including those

1 counties in which Defendants have forcibly shut down in-person instruction, may still
2 attend private school in nearby counties, despite the differing levels of risk or exposure
3 to the virus, further revealing the arbitrary nature of Defendants’ treatment of Plaintiffs
4 and all others who rely on the public school system.

5 98. There is no rational basis—much less any compelling reason—for
6 allowing Defendants’ arbitrary treatment of schools, which are vital to children’s
7 development, and are subject to more severe restrictions and potentially outright
8 closure. Moreover, apt and less restrictive alternatives to Defendants’ closure regime
9 exist, such as requiring schools to *enable* distanced learning over the internet, without
10 imposing Defendants’ overbearing, one-size-fits-all regime.

11 99. Defendants intentionally, discriminatorily, and arbitrarily imposed
12 restrictions on the reopening of schools in violation of Plaintiffs’ right to equal
13 protection under the law.

14 100. Plaintiffs have no adequate remedy at law and will suffer serious and
15 irreparable harm to their and/or their children’s constitutional rights unless Defendants
16 are enjoined from implementing and enforcing the State Order and associated guidance
17 documents which restrict the reopening of schools in a manner that violates the Equal
18 Protection Clause.

19 101. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
20 declaratory relief and temporary, preliminary, and permanent injunctive relief
21 invalidating and restraining enforcement of the State Order and any associated guidance
22 documents.

23 102. Plaintiffs found it necessary to engage the services of private counsel to
24 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
25 attorneys’ fees pursuant to 42 U.S.C. § 1988.

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1 **SECOND CLAIM FOR RELIEF**

2 **42 U.S.C. § 1983 – Violation of Due Process**

3 **Deprivation of Liberty Without Procedural Due Process of Law**

4 **(By All Plaintiffs against All Defendants)**

5 103. Plaintiffs incorporate herein by reference each and every allegation
6 contained in the preceding paragraphs of this Complaint as though fully set forth herein

7 104. The Due Process Clause of the Fourteenth Amendment provides that no
8 state shall “deprive any person of life, liberty, or property, without due process of law.”
9 U.S. Const. amend XIV. Plaintiffs and their children have a liberty interest in their right
10 to equal access to basic minimum education and in their rights secured by the California
11 Constitution and state law, which includes the right to an education, Cal. Const. art. IX,
12 § 1 (“[a] general diffusion of knowledge and intelligence [is] . . . essential to the
13 preservation of the rights and liberties of the people...”); *O’Connell v. Superior Court*,
14 141 Cal. App. 4th 1452, 1482 (2006) (students possess a constitutional right to “equal
15 access to a public education system that will teach them the skills they need to succeed
16 as productive members of modern society.”); *Butt v. State of California*, 4 Cal. 4th 668,
17 681 (1992) (“education is a “uniquely fundamental personal interest in California”);
18 *Serrano v. Priest*, 5 Cal. 3d 584, 589 (1971) (“the right to an education in our public
19 schools is a fundamental interest . . .”) and (2) their right to contract freely, without
20 impairment by the State, with private schools for the education of their children. U.S.
21 Const., art. I, § 10; Cal. Const. art. I, § 9.

22 105. Defendants deprive Plaintiffs and/or their children of these rights and
23 liberties without due process of law, in violation of the Fourteenth Amendment to the
24 U.S. Constitution, by (1) mandating distanced-learning in most circumstances, which
25 effectively provides no or unequal access to education; and by (2) substantially
26 impairing Plaintiffs’ ability to contractually obligate schools to complete the in-person
27 instruction of their children that the state refuses to provide.

28 106. The State Order and Defendants’ enforcement thereof violate Plaintiffs’

1 procedural due process rights because (1) Defendants lack any legal authority to issue
2 or enforce the State Order and associate guidance, and therefore deprive Plaintiffs of
3 liberties without any process whatsoever, and (2) Defendants fail to specify standards or
4 protocols applicable to requests for a waiver from compliance with Defendants’ orders.

5 107. Defendants have no authority under either the California Constitution nor
6 any law adopted by the legislature to deprive Plaintiffs or their children of their right to
7 receive an education or to be free of the State’s substantial impairment of contracts—
8 indeed, rights are themselves protected by the California Constitution, U.S.
9 Constitution, and fundamental law;

10 108. California law makes clear that “No state agency shall issue . . . any
11 guideline . . . unless the guideline . . . has been adopted as a regulation filed with the
12 Secretary of State . . .” Cal. Gov. Code § 11340.5(a).

13 109. Nowhere in the California Emergency Services Act, does it give the
14 Governor the authority to suspend the constitutional rights of Californians or to suspend
15 California statutes. Instead, Cal. Gov. Code §§ 8567, 8571, and 8627 only permit the
16 governor to suspend “regulations” and that these orders must be in writing. However,
17 the Governor has misused his Emergency Powers to mandate that any violation of the
18 State public health directives results in a fine not to exceed \$1,000 or by imprisonment
19 not to exceed six months. Cal. Gov. Code §8665.

20 110. In California, a regulation that has not been adopted in compliance with the
21 Administrative Procedure Act is deemed an Underground Regulation and is invalid. *See*
22 *Modesto City Schools v. Education Audits Appeal Panel*, 123 Cal.App.4th 1365, 1381
23 (2004). California is one of the few states that requires rulemaking procedure for the
24 adoption of guidance documents. California Practice Guide: Administrative Law 25:45,
25 by Rutter Group.

26 111. Defendant Sonia Y. Angell is not an elected official. However, Defendant
27 Newsom has effectively given Defendant Angell the ability to govern the state of
28 California by guidance shutting down businesses and schools, in the latter case with one

1 stroke of the pen dooming millions of California children to no meaningful education,
2 inadequate education, no provision of special needs instruction, and a myriad of health
3 and safety risks.

4 112. Governor Newsom has been impermissibly delegating executive authority
5 to the Public Health Agency, who in turn has been issuing directives, under the guise of
6 law, with criminal penalties associated for not following order.

7 113. The non-descript waiver process referenced in materials issued by the
8 California Department of Public Health is vague and subject to arbitrary enforcement
9 and implementation: “A waiver may only be granted if one is a requested by the
10 superintendent (or equivalent for charter or private schools), in consultation with labor,
11 parent and community organizations. Local health officers must review local
12 community epidemiological data, consider other public health interventions, and
13 consult with CDPH when considering a waiver request.”⁶⁴ Defendants provide no
14 standards by which local health officers are to assess, approve, or reject such waiver
15 requests. What does “in consultation with” mean? Californians are left to guess.

16 114. As such, Plaintiffs and the public lack any meaningful opportunity to seek
17 redress of injuries caused by Defendants’ mandates or by which they may seek to
18 reopen schools based on evidence of changing circumstances, recent research, or the
19 availability of healthcare or health practices to mitigate risks associated with the virus.

20 115. Plaintiffs have no adequate remedy at law and will suffer serious and
21 irreparable harm to their constitutional rights unless Defendants are enjoined from
22 implementing and enforcing the State Order and associated guidance.

23 116. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
24 declaratory relief and temporary, preliminary, and permanent injunctive relief
25 invalidating and restraining enforcement of the State Order and associated guidance.

26 _____
27 ⁶⁴ Available as of date of filing:

28 <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>.

1 117. Plaintiffs found it necessary to engage the services of private counsel to
2 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
3 attorneys’ fees pursuant to 42 U.S.C. § 1988.

4 **THIRD CLAIM FOR RELIEF**

5 **42 U.S.C. § 1983 – Violation of Due Process**

6 **Deprivation of Substantive Due Process of Law**

7 **(By All Plaintiffs against All Defendants)**

8 118. Plaintiffs incorporate herein by reference each and every allegation
9 contained in the preceding paragraphs of this Complaint as though fully set forth herein

10 119. The Due Process Clause of the Fourteenth Amendment provides that no
11 state shall “deprive any person of life, liberty, or property, without due process of law.”
12 U.S. Const. amend XIV. Plaintiffs and their children have a liberty interest in their right
13 to equal access to basic minimum education and in their rights secured by the California
14 Constitution and state law, which includes the right to an education, Cal. Const. art. IX,
15 § 1 (“[a] general diffusion of knowledge and intelligence [is] . . . essential to the
16 preservation of the rights and liberties of the people....”); *O’Connell v. Superior Court*,
17 141 Cal. App. 4th 1452, 1482 (2006) (students possess a constitutional right to “equal
18 access to a public education system that will teach them the skills they need to succeed
19 as productive members of modern society.”); *Butt v. State of California*, 4 Cal. 4th 668,
20 681 (1992) (“education is a “uniquely fundamental personal interest in California”);
21 *Serrano v. Priest*, 5 Cal. 3d 584, 589 (1971) (“the right to an education in our public
22 schools is a fundamental interest ...”) and (2) their right to contract freely, without
23 impairment by the State, with private schools for the education of their children. U.S.
24 Const., art. I, § 10; Cal. Const. art. I, § 9.

25 120. Defendants deprive Plaintiffs and their children of these rights and liberties
26 without due process of law, in violation of the Fourteenth Amendment to the U.S.
27 Constitution, by (1) mandating distanced-learning in most circumstances, which
28 effectively provides no or unequal access to education; and by (2) substantially

1 impairing Plaintiffs’ ability to contractually obligate private schools to complete the in-
2 person instruction of their children that the state refuses to provide.

3 121. The State Order and Defendants’ enforcement thereof violate Plaintiff’s
4 substantive due process rights as follows:

5 a. fundamental law and the California Constitution entitles Plaintiffs
6 and their children equal access to a basic minimum education.

7 b. the U.S. Constitution entitles Plaintiffs to be free of substantial
8 impairment from the state of their ability to obligate educational institutions to instruct
9 their children by operation of contract law;

10 c. Defendants lack any legitimate, rational, or compelling interest for
11 depriving Plaintiffs’ children of their right to an education.

12 d. even if such a legitimate interest existed, the State Order and
13 associated guidance is neither rationally related nor narrowly tailored to further any
14 such interest.

15 122. Plaintiffs have no adequate remedy at law and will suffer serious and
16 irreparable harm to their constitutional rights unless Defendants are enjoined from
17 implementing and enforcing the State Order and associated guidance.

18 123. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
19 declaratory relief and temporary, preliminary, and permanent injunctive relief
20 invalidating and restraining enforcement of the State Order and associated guidance.

21 124. Plaintiffs found it necessary to engage the services of private counsel to
22 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
23 attorneys’ fees pursuant to 42 U.S.C. § 1988.

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1 **FOURTH CLAIM FOR RELIEF**

2 **42 U.S.C. § 1983 – Violation of Title VI of Civil Rights Act of 1964**

3 **Disparate Impact on Racial Minorities**

4 **(By Christine Ruiz and Z. R. Against All Defendants)**

5 125. Plaintiffs incorporate herein by reference each and every allegation
6 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

7 126. Federal law conveys to Plaintiffs the right to be free from enforcement of
8 facially discriminatory laws, facially neutral laws adopted with discriminatory intent or
9 purpose, and facially neutral laws causing a disparate impact on racial minorities with
10 regard to federally funded public programs, including California’s public schools. 42
11 U.S.C. 2000d, *et seq.* (Title VI of the Civil Rights Act of 1964). Section 1983, in turn,
12 creates a private right of action against the deprivation of such federal rights against
13 officials acting under color of state law, despite there being no private right of action
14 under a disparate impact theory pursuant to Title VI itself. *See* 42 U.S.C. § 1983;
15 *Alexander v. Sandoval*, 532 U.S. 275, 300 (2001) (Stevens, J., dissenting) (“[I]tigators
16 who in the future wish to enforce the Title VI [disparate impact] regulations against
17 state actors in all likelihood must only reference § 1983 to obtain relief.”)

18 127. Mandatory distance learning facially, and as-applied here, creates a
19 negative, disparate impact on racial minorities, including Plaintiff Christine Ruiz and
20 her son, Z. R., who are Hispanic. Public policy research has confirmed that racial
21 minorities rely more heavily on educational opportunities for gaining equal
22 socioeconomic footing when compared to their non-minority counterparts, occasionally
23 resulting in an increased need for educational services.⁶⁵ Racial minorities are therefore
24 disproportionately required to devote greater resources to provide themselves and their
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26 ⁶⁵ See, e.g., [https://calmatters.org/explainers/achievement-gap-california-explainer-](https://calmatters.org/explainers/achievement-gap-california-explainer-schools-education-disparities-explained/)
27 [schools-education-disparities-explained/;](https://www.npr.org/2019/02/26/696794821/why-white-school-districts-have-so-much-more-money)
28 [https://www.npr.org/2019/02/26/696794821/why-white-school-districts-have-so-much-](https://www.npr.org/2019/02/26/696794821/why-white-school-districts-have-so-much-more-money)
[more-money.](https://www.npr.org/2019/02/26/696794821/why-white-school-districts-have-so-much-more-money)

1 children with the same educational opportunities available to their counterparts – this
2 phenomenon is known as the “education gap.”

3 128. Defendants have acted arbitrarily and with deliberate indifference toward
4 the unduly harsh effects their school restrictions have on Plaintiffs Ruiz and Z. R. and
5 all others racial minorities who must devote additional or unique resources to
6 implement meaningful at-home instruction when compared with non-minorities.

7 129. Plaintiffs have no adequate remedy at law and will suffer serious and
8 irreparable harm to their constitutional rights unless Defendants are enjoined from
9 implementing and enforcing their broad prohibitions on in-person education in
10 California.

11 130. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
12 declaratory relief and temporary, preliminary, and permanent injunctive relief
13 invalidating and restraining enforcement of the State Order.

14 131. Plaintiffs found it necessary to engage the services of private counsel to
15 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
16 attorneys’ fees pursuant to 42 U.S.C. § 1988.

17 **FIFTH CLAIM FOR RELIEF**

18 **42 U.S.C. § 1983 – Violation of Federal Disability Rights**
19 **Failure to Provide Equal Educational Access to Disabled Students**
20 **(By Plaintiffs Christine Ruiz and Z. R. against All Defendants)**

21 132. Plaintiffs incorporate herein by reference each and every allegation
22 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

23 133. Federal law provides Plaintiffs Ruiz and Z. R., along with all other
24 disabled families and children in California the right to free appropriate public
25 education, individualized education plans conferring meaningful educational benefit,
26 appropriate evaluation, and the right to be free from discrimination on the basis of any
27 disability, including through the exclusion from or deprivation of equal access to the
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1 educational opportunities. *See* 20 U.S.C. § 1400, *et seq.* (Individuals with Disabilities
2 Education Act (“IDEA”)); 42 U.S.C.A. § 12131, *et seq.*, (Title II of the Americans with
3 Disabilities Act of 1990 (“ADA”)); 29 U.S.C. § 794, *et seq.*, (Section 504 of the
4 Rehabilitation Act of 1973).

5 134. Defendants’ arbitrarily imposed restrictions on the reopening of schools,
6 including the forced closure of many public and private schools, deprives Plaintiffs
7 Ruiz and Z. R. of these rights, which are secured by the above-cited federal laws.

8 135. Defendants act knowingly, recklessly, and with deliberate indifference to
9 the rights of Plaintiffs Ruiz and Z. R., and their children, and all other disabled children,
10 by forcibly restricting most private and public schools in California from providing
11 meaningful educational opportunities commensurate with their obligations under
12 federal law.

13 136. Plaintiffs Ruiz and Z. R. have no adequate remedy at law and will suffer
14 serious and irreparable harm in the form of the deprivation of educational access and
15 other educational and non-discrimination rights secured by federal law, unless
16 Defendants are enjoined from implementing and enforcing the school closure.

17 137. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
18 declaratory relief and temporary, preliminary, and permanent injunctive relief
19 invalidating and restraining enforcement of the State Order and any associated
20 guidance.

21 138. Plaintiffs Ruiz and Z. R. found it necessary to engage the services of
22 private counsel to vindicate their rights under the law. They are therefore entitled to an
23 award of attorneys’ fees pursuant to 42 U.S.C. § 1988.

24 **WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment
25 against Defendants as follows:

- 26 • An order and judgment declaring that the State Order and the associated
27 guidance, facially and as-applied to Plaintiffs, violates the Equal Protection
28 and Due Process Clauses of the Fourteenth Amendment to the U.S.

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Constitution; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*); the Individuals with Disabilities Education Act (20 U.S.C. § 1400, *et seq.*); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131, *et seq.*); and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794, *et seq.*), and that Plaintiffs’ children should be allowed in-person instruction without delay;

- An order temporarily, preliminarily, and permanently enjoining and prohibiting Defendants from enforcing the State Order or otherwise interfering with Plaintiffs’ constitutional rights and federal guarantees;
- For attorneys’ fees and costs;
- Such other and further relief as the Court deems appropriate and just.

Date: July 21, 2020

DHILLON LAW GROUP INC.

By: /s/ Harmeet K. Dhillon
 Harmeet K. Dhillon
 Mark P. Meuser
 Gregory R. Michael

Attorneys for Plaintiffs