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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 **JENNIFER GUILFOYLE**, on her own
13 behalf and as parent and natural guardian of
14 **L.G.**; **CLAUDIA AGRAZ**, on her own
15 behalf and as parent and natural guardian of
16 **A.P.**; **ERIK AND RACHEL**
17 **NICOLAISEN**, on their own behalf and as
18 parents and natural guardians of **U.N.**, **F.N.**,
19 and **A.N.**, **RENEE ALSHEIKH** on her
20 own behalf and as parent and natural
21 guardian of **M.A.**, **NATASHA ALVAREZ**
22 on her own behalf and as parent and natural
23 guardian of **S.A.** and **E.A.**, and
24 **PROTECTION OF THE**
25 **EDUCATIONAL RIGHTS OF KIDS**
26 **(P.E.R.K.)** a California 501(c)(3) nonprofit
27 Corporation, on its own behalf and on
28 behalf of its members,

Plaintiffs,

vs.

AUSTIN BEUTNER, in his official
capacity as Superintendent of Los Angeles
Unified School District; **GEORGE**
MCKENNA, in his official capacity as a
member of the LAUSD Board of Education;

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

1 **MONICA GARCIA**, in her official capacity
2 as a member of the LAUSD Board of
3 Education; **SCOTT SCHMERELSON** in
4 his official capacity as a member of the
5 LAUSD Board of Education; **NICK**
6 **MELVOIN**, in his official capacity as a
7 member of the LAUSD Board of Education;
8 **JACKIE GOLDBERG**, in her official
9 capacity as a member of the LAUSD Board
10 of Education; **KELLY GONEZ**, in her
11 official capacity as a member of the LAUSD
12 Board of Education; **TANYA ORTIZ**
13 **FRANKLIN**, in her official capacity as a
14 member of the LAUSD Board of Education;
15 **MUNTU DAVIS, M.D.**, in his official
16 capacity as Public Health Officer for Los
17 Angeles County; and **DR. BARBARA**
18 **FERRER**, in her official capacity as the Los
19 Angeles County Director of Public Health,
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Plaintiffs, by their attorneys, Tyler & Bursch, LLP, for their Complaint against Defendants, allege as follows:

NATURE OF THE ACTION

1. This action seeks declaratory judgment declaring that the right to a public education guaranteed to Plaintiffs' minor children by the California Constitution cannot be made contingent upon Plaintiffs' consent to Defendants violating other rights of their children, which are codified by federal and state law and enshrined in the state and federal constitutions. Plaintiffs also seek injunctive relief barring Defendants from continuing to enforce these coercive measures so that all children may resume in-person learning immediately and without caveat.

2. Specifically, the officials of the Los Angeles Unified School District and County of Los Angeles Department of Public Health named as defendants herein have

1 prevented and are continuing to prevent Plaintiffs' children from attending school unless
2 Plaintiffs agree to: (i) allow their minor children to be tested weekly with a test that has
3 yet to be approved for use in humans by the U.S. Food and Drug Administration
4 ("FDA"), and that has no value as a diagnostic tool to determine if a student has COVID-
5 19 or is contagious with same; (ii) have their minor children's health data, movements,
6 genetic material, daily activities, contacts, and unknown other information and activities
7 collected and monitored by Defendants and their partner/agent Microsoft, and then
8 shared with a number of universities, scientists, professors and researchers absent valid
9 and transparent privacy protections regarding that data, and absent any known
10 boundaries or protections of any kind regarding Microsoft's use of and/or profit from
11 that data; and, (iii) cover their minor children's faces for the entirety of each school day
12 when evidence proves that face coverings are of little to no value in curtailing the spread
13 of COVID-19 and the prolonged use of such masks inflicts physical, psychological and
14 developmental damage on children.

15 3. As set forth in greater detail below, Defendants' actions violate federal law,
16 the United States Constitution, California law and the California Constitution and
17 irreparably harm Plaintiffs and their minor children.

18 **PARTIES**

19 4. Plaintiff JENNIFER GUILFOYLE (hereinafter referred to as "Ms.
20 Guilfoyle") is the parent of L.S. (age 5). Ms. Guilfoyle sues on her own behalf, as well
21 as on behalf of L.S. Ms. Smith is a resident of Los Angeles County and the State of
22 California.

23 5. Plaintiff CLAUDIA AGRAZ (hereinafter referred to as "Ms. Agraz") is the
24 parent of A.P. (age 15). Ms. Agraz sues on her own behalf, as well as on behalf of A.P.
25 Ms. Agraz is a resident of Los Angeles County and the State of California.

26 6. Plaintiffs ERIK & RACHEL NICOLAISEN (hereinafter referred to as "Mr.
27 & Mrs. Nicolaisen") are a married couple and the parents of U.N. (age 5), F.N. (age 7),
28 and A.N. (age 10). Mr. & Mrs. Nicolaisen sue on their own behalf, as well as on behalf

1 of their three children. They are all residents of Los Angeles County and the State of
2 California.

3 7. Plaintiff RENEE ALSHEIKH (hereinafter referred to as “Ms. Alsheikh”) is
4 the parent of M.A. (age 5). Ms. Alsheikh sues on her own behalf, as well as on behalf of
5 M.A. Ms. Alsheikh is a resident of Los Angeles County and the State of California.

6 8. Plaintiff NATASHA ALVAREZ (hereinafter referred to as “Ms. Alvarez”) is
7 the parent of S.A. (age 10) and E.A. (age 8). Ms. Alvarez sues on her own behalf, as
8 well as on behalf of S.A. and E.A. Ms. Alvarez is a resident of Los Angeles County and
9 the State of California.

10 9. Plaintiff PROTECTION OF THE EDUCATIONAL RIGHTS OF KIDS –
11 commonly referred to as PERK, commonly referred to as PERK (hereinafter referred to
12 as “PERK”), a California 501(c)(3) nonprofit corporation, is an organizational plaintiff
13 with a membership of approximately 3500 parents. Their mission is to protect children’s
14 right to an education. As described hereinbelow, the actions of the Los Angeles School
15 District have deprived many children of access to public education. Approximately 930
16 of PERK’s members reside within the confines of the Los Angeles Unified School
17 District and the majority of those have children enrolled in the District.

18 10. Defendant AUSTIN BEUTNER (hereinafter referred to as “Defendant
19 Beutner”) is the Superintendent of the Los Angeles County Unified School District
20 (“LAUSD”). As such, he is responsible for the daily operations of the Los Angeles
21 Unified School District at times relevant to this suit. Specifically, Defendant Beutner is
22 the individual who established, promulgated, and is vested with the power of
23 enforcement of LAUSD’s policies and protocols challenged herein. Defendant Beutner
24 is sued in his official capacity, only.

25 11. Defendants GEORGE MCKENNA, MONICA GARCIA, SCOTT
26 SCHMERELSON NICK MELVOIN, JACKIE GOLDBERG, KELLY GONEZ, and
27 TANYA ORTIZ FRANKLIN, respectively, are members of the LAUSD Board of
28 Education (collectively, the “Board Members”). Each of the Board Members are sued

1 herein in their official capacities, only. Upon information and belief, all of the Board
2 Members are residents of Los Angeles County and the State of California. The Board
3 Members collectively possess the legal authority and obligation to enact, eliminate, and
4 oversee all policies implemented by LAUSD.

5 12. Defendant MUNTU DAVIS, M.D. (hereinafter referred to as “Defendant
6 Davis” or collectively with Defendant Ferrer as “County Department of Public Health”)
7 Public Health Officer for Los Angeles County. Defendant Davis issues Public Health
8 Orders and asserts jurisdiction over LAUSD and its policies as they pertain to curtailing
9 the spread of COVID-19. Defendant Davis is sued in his official capacity, only.

10 13. Defendant DR. BARBARA FERRER (hereinafter referred to as “Defendant
11 Ferrer”) is the Los Angeles County Director of Public Health. As such, she (together with
12 Defendant Davis) is charged with establishing and enforcing public health policy for the
13 entire County, including LAUSD. Defendant Ferrer is sued herein in her official
14 capacity, only.

15 **JURISDICTION AND VENUE**

16 14. This action arises under 42 U.S.C. § 1983 because of Defendants’
17 deprivation, under color of law, regulation, custom or usage, of Plaintiffs’ constitutional
18 rights to due process and equal protection under the Fourth, Fifth, and Fourteenth
19 Amendments to the U.S. Constitution.

20 15. This Court has federal question jurisdiction over this matter pursuant to 28
21 U.S.C. § 1331 and § 1343, and has authority to award the requested declaratory relief
22 pursuant to 28 U.S.C. § 2201, to grant the requested injunctive relief pursuant to 28
23 U.S.C. § 1343(a) and 42 U.S.C. §1983, and has authority to award attorneys’ fees and
24 costs pursuant to 42 U.S.C. § 1988.

25 16. This Court has jurisdiction over the claims asserting violations of the laws
26 and Constitution of the State of California through its supplemental jurisdiction under 28
27 U.S.C. § 1367(a), as those claims are so closely related to the Plaintiffs’ federal question
28

1 and §1983 claims that they form part of the same case or controversy under Article III of
2 the United States Constitution.

3 17. Venue is proper in the Central District of California under 28 U.S.C. §
4 1391(b) in that a substantial part of the events giving rise to Plaintiffs' claims occurred
5 in this district.

6 **FACTUAL ALLEGATIONS**

7 18. California law requires children to attend school, and also guarantees them
8 a free public education as a core constitutional right.

9 19. Pursuant to state and local law and emergency orders promulgated as a
10 result of the COVID-19 pandemic, all schools in Los Angeles County were permitted to
11 reopen on February 15, 2021.

12 20. Defendant Beutner confirmed that LAUSD had fully retrofitted schools for
13 a safe reopening as of January 26, 2021.

14 21. Despite the legal authority to reopen schools at that time and the California
15 constitutional right to public education, the Board Members and Beutner did not re-open
16 LAUSD schools.

17 22. Instead of allowing students to attend school, the Board Members and
18 Beutner instituted a virtual learning program that empirical data proves and at least one
19 California state court judge has held is not an adequate substitute for in-person learning.¹

20 23. Sometime thereafter, Defendant Beutner, with the consent of and, upon
21 information and belief, in collaboration with the Board Members, announced that
22 LAUSD would only allow students to attend school if they submitted to: (i) regular
23 mandatory polymerase chain reaction ("PCR") testing ("mandatory PCR testing"); (ii)
24 the use of the Microsoft Daily Pass digital tracking system ("Microsoft Daily Pass");
25

26 ¹ See *A.A., et al. v. Newsom*, Case No. 37-2021-00007536-CU-WM-NC (Superior Court of the State of CA, County of San
27 Diego, North County Div., March 17, 2021) "The evidence submitted demonstrates that the January 2021 Framework and the
28 Approval with Conditions, which perpetuate remote learning for some students while not for others, has created an
impermissible divide in access to education as otherwise guaranteed by the California Constitution and as otherwise prescribed
by the California Education Code. As the California Supreme Court in *Serrano* noted, 'unequal education . . . leads to . . .
handicapped ability to participate in the social, cultural, and political activity of our society.' (Serrano, *supra*, at 606.)"

1 and, (iii) covering their noses and mouths with masks at all times while on school grounds
2 (“mandatory masking”).

3 24. These measures have since been instituted and are currently in force in all
4 LAUSD schools.

5 25. Although these conditions would violate the Constitution even in the throes
6 of a global pandemic, this action and the relief requested by it is further supported by the
7 large, and growing, body of scientific data that shows that children in school are at
8 negligible risk of contracting and/or suffering serious adverse impacts of contracting
9 COVID-19. Further, there is no proof that children in school create a greater risk of
10 transmission of the virus nor that schools generally have a higher degree of case rates or
11 transmissibility than any other location where people are congregated.

12 26. It has also been established by scientific studies and data, as will be alleged
13 in further detail below, that the PCR test is of no diagnostic value in determining whether
14 a test subject is infected with COVID-19, and that masks are ineffective in preventing or
15 reducing the spread of COVID-19 and are hazardous to children’s physical,
16 psychological and developmental health.

17 27. LAUSD’s testing and masking scheme simply does not provide a public
18 benefit that could survive the strict scrutiny analysis this Court is required to perform in
19 determining if prohibiting access to public education is justified.

20 Mandatory PCR Testing

21 28. None of the currently available PCR tests for COVID-19 have received final
22 approval from the Food and Drug Administration. Rather, all such tests are unapproved
23 products that have been authorized for emergency use only under an Emergency Use
24 Authorization.

25 29. To illustrate this and by way of example, the following language is
26 contained in (and excerpted from) Labcorp’s COVID-19 RT-PCR Test EUA Summary,
27 dated May 11, 2021²:

28 ² <https://www.fda.gov/media/136151/download>

1 Results are for the identification of SARS-CoV-2 RNA. The
2 SARS-CoV-2 RNA is generally detectable in respiratory
3 specimens during the acute phase of infection. Positive results
4 are indicative of the presence of SARS-CoV-2 RNA; clinical
5 correlation with patient history and other diagnostic information
6 is necessary to determine patient infection status. Positive
7 results do not rule out bacterial infection or co-infection with
8 other viruses. The agent detected may not be the definite cause
9 of disease. Laboratories within the United States and its
10 territories are required to report all results to the appropriate
11 public health authorities. Negative results do not preclude
12 SARS-CoV-2 infection and should not be used as the sole basis
13 for patient management decisions...The COVID-19 RT-PCR
14 Test is only for use under the Food and Drug Administration's
15 Emergency Use Authorization.

16 30. The statute granting the FDA the power to authorize a medical product for
17 emergency use requires, *inter alia*, that the person being administered the unapproved
18 product be advised of his or her right to refuse administration of the product. *See* 21
19 U.S.C. § 360bbb-3(e)(1)(A) ("Section 360bbb-3").

20 31. In violation of this Section 360bbb-3, Beutner and the Board Members,
21 acting under color of law, ordered mandatory PCR testing for all students.

22 32. However, due to publicly available information, Beutner and the Board
23 Members knew or should have known that PCR testing does not provide accurate,
24 actionable diagnostic information regarding whether the test subject is infected with
25 COVID-19, or is contagious with COVID-19, and that therefore, no reasonable basis for
26 the privacy intrusions of the mandatory PCR testing exists.

27 33. In addition to illegally mandating the use of an EUA product, Defendants
28 have failed to inform Plaintiffs and their minor children that the mandatory PCR testing
has not been approved for use in humans by the FDA for the purpose of diagnosing
whether they have COVID-19 or are contagious with COVID-19 as required by the
statutory framework governing issuance of EUAs generally, as well as the particular
EUAs authorizing the emergency use of the PCR tests.

1 34. Defendants have also failed to inform Plaintiffs and their minor children
2 that they have the option to refuse the mandatory PCR testing as required by the statutory
3 framework governing issuance of EUAs, as well as the particular EUAs authorizing the
4 emergency use of the PCR tests.

5 35. Beutner and the Board Members instituted the mandatory PCR testing
6 purportedly to prevent or diminish the spread of COVID-19.

7 36. However, PCR testing is not an effective diagnostic tool to achieve this goal,
8 as recognized by state and federal officials.

9 37. A “positive” test result is not necessarily indicative of COVID-19 infection
10 because PCR tests do not actually test for any disease or infection.

11 38. PCR tests amplify biological test material taken from the test subject, and
12 then match it to a handful of short genetic sequences “gene snippets” from the genome
13 of the SARS CoV-2 virus. The test does not determine whether the test subject is infected
14 with any live virus, nor can it diagnose a test subject to actually infected with, ill from,
15 or contagious with COVID-19.

16 39. As the CDC expressly states in the “Instructions for Use” of the PCR testing
17 kit, “[d]etection of viral RNA may not indicate the presence of infectious virus or that
18 2019-nCoV is the causative agent for clinical symptoms”.³

19 40. PCR tests are also known to produce a high level of false positives. Varying
20 numbers of testing “cycles” or “amplifications” drastically impact the number of
21 positives results. After approximately 40 amplifications, almost 100% of the positives
22 are likely to be false positives due to: (1) over-amplification; (2) failure to use FDA “gold
23 standard” Sanger sequencing to confirm each PCR positive matches the SARS CoV-2
24 genetic sequence; and (3) failure to culture a positive sample to determine infectiousness.
25 The cycle threshold (hereinafter “Ct”) for all tests in California had been set at 40, until

26 ³ CDC 2019-Novel Coronavirus (2019-nCoV) Real-Time RT-PCR Diagnostic Panel, “Instructions for
27 Use,” Catalog # 2019-nCoV-EUA-01, 1000 reactions; CDC-006-00019, Revision: 06,
28 CDC/DDID/NCIRD/ Division of Viral Diseases Effective: 12/01/2020,
www.fda.gov/media/134922/download

1 recently when the CDC changed the Ct to 28 (only for those who have been vaccinated,
2 while leaving the Ct at 40 for everyone else).

3 41. Dr. Anthony Fauci, Director of the National Institutes of Allergy and
4 Infectious Diseases of the National Institutes of Health, acknowledged in July 2020 that
5 a positive RT-PCR test result using a Ct above 35 is useless for diagnostics. He said, “[I]f
6 you get a cycle threshold of 35 or more, ...the chance of it being replication-competent
7 are [sic] miniscule. And we have patients – and it’s very frustrating for the patients as
8 well as for the physicians – somebody comes in and they repeat their PCR, and it’s like
9 37 cycle thresholds, but you almost never can culture virus for a 37-cycle threshold. So,
10 I think if someone does come in with 37-38, even 36, you got to say, ‘You know, it’s just
11 dead nucleotides, period’”.⁴

12 42. In sum, the PCR test is entirely useless as a tool to identify the presence of
13 a SARS-CoV-2 virus in the test subject unless the Ct is set at an appropriate level. Even
14 then, however, the PCR test does not diagnose whether the test subject is infected with,
15 ill from, or contagious with COVID-19. It merely compares whether amplified
16 biological test material taken from the test subject matches a handful of genetic snippets,
17 representing a minute portion of the SARS-CoV-2 virus.

18 43. If the Ct exceeds 28, any match is unlikely to be a confirmed infection after
19 culturing (were the lab to perform a culture, which they do not).

20 44. Any final diagnosis that a test subject is actually infected with COVID-19,
21 and therefore potentially contagious to others, can only be made following examination
22 by a medical doctor. The PCR test cannot and does make that diagnosis.

23 45. Beutner and the Board Members have unlawfully segregated students into
24 unequal groups based upon their consent or refusal to being subjected to mandatory PCR
25 testing, despite the fact that PCR testing has no diagnostic value in determining whether
26 the test subject has COVID-19, or is contagious with COVID-19 (which determination
27

28 ⁴ TWiV 641: COVID-19, Video interview with Dr. Anthony Fauci, This Week in Virology, 4:22-5:10
(Jul. 16, 2020), at https://www.youtube.com/watch?v=a_Vy6fgaBPE

1 can only be made by a medical doctor following examination). Nevertheless, only the
2 students who consent to the mandatory PCR testing will receive quality in-person
3 teaching and extracurricular activities while plaintiffs and other students and parents
4 similarly situated are denied access to school campuses altogether.

5 46. Defendants are coercing parents and children to “consent” to PCR testing
6 on threat of being denied the right to attend school in blatant violation of California state
7 law. Under California Health and Safety Code §§ 2440 *et. seq.*, voluntary consent to
8 medical intervention is required. Cal. Gov. Code § 37100 prevents any creation,
9 application or enforcement of a law or policy that violates the California Constitution or
10 the Constitution of the United States. The mandatory PCR testing violates both.

11 47. False positives also lead to isolation and quarantine of healthy people,
12 causing economic, academic, social, legal and psychological harm to Plaintiffs’ minor
13 children, and creating educational apartheid in violation of federal law and the United
14 States Constitution.

15 Microsoft Daily Pass

16 48. Microsoft Daily Pass was developed jointly under a partnership by and
17 between LAUSD (including the Board Members and Beutner) and Microsoft, and, upon
18 information and belief, with input from and in collaboration with the County Department
19 of Public Health, for use in all LAUSD schools. Microsoft acted under the active
20 supervision of, and pursuant to the encouragement, endorsement, and participation of,
21 LAUSD, the Board Members and Beutner.

22 49. LAUSD, the Board Members and Beutner directed the development and
23 implementation of the Daily Pass in LAUSD schools.

24 50. Microsoft Daily Pass is an app downloaded onto students’ smart phones
25 from a website controlled by Microsoft acting for and on behalf of LAUSD. Microsoft
26 Daily Pass forces each student to successfully answer a series of health questions and to
27 be current on their mandatory PCR testing prior to issuing a QR code to the student. That
28

1 QR code then serves as a “pass” to allow the student onto the school campus. Beutner
2 has described the QR code as the student’s “golden ticket” onto campus.

3 51. Microsoft Daily Pass is therefore an enforcement device for the mandatory
4 PCR testing. The required “pass” to attend school cannot be obtained without submitting
5 to and obtaining a negative result from the mandatory PCR testing.

6 52. Microsoft and its unknown partners, agents, and assigns will be privy to
7 students’ private health information, including genetic information gathered through the
8 mandatory PCR testing. Parents, therefore, have legitimate concerns that their children’s
9 personal health data, genetic material, and other private information will be circulated to
10 other corporate and government entities without their explicit consent since they are
11 being coerced into giving up their rights under federal and state law (including, but not
12 limited to the Health Insurance Portability and Accountability Act of 1996 “HIPAA”⁵)
13 to be able to send their children to school. Simply put, they are being forced to choose
14 between their children’s right to an education and their children’s right to medical
15 privacy and bodily autonomy. This is no choice at all.

16 53. Upon “positive” result of a PCR test, with no further investigation into
17 whether the student is actually ill, the student is refused admission to school for a period
18 of 14 days and his or her contacts are identified and traced by the “Community
19 Engagement Team”, and the student is then be given isolation instructions determined
20 by the County Department of Public Health.⁶

21 54. The student is not to be able to return to school until cleared by the
22 Community Engagement Team. Close contacts of the student are then required to be
23 tested and potentially quarantined. If the student was on campus, the Transportation

24 ⁵ The HIPAA Privacy Rule establishes national standards to protect individuals’ medical records and
25 other personal health information and applies to health plans, health care clearinghouses, and those
26 health care providers that conduct certain health care transactions electronically. The Rule requires
27 appropriate safeguards to protect the privacy of personal health information and sets limits and
28 conditions on the uses and disclosures that may be made of such information without patient
authorization. The Rule also gives patients rights over their health information, including rights to
examine and obtain a copy of their health records, and to request corrections. The Privacy Rule is
located at 45 CFR Part 160 and Subparts A and E of Part 164.

⁶ LAUSD Principal’s Resource Guide, April 5, 2021, p. 10.

1 Team is also advised of the positive test, which leads to further contact tracing and
2 potential quarantine of healthy children and adults.⁷ The County Department of Health
3 records and tracks all of this.

4 55. The data regarding the positive test and contacts is uploaded to the Daily
5 Pass platform and the student with the positive test result has their Daily Pass turned off
6 until the student is “cleared” the Community Engagement Team.⁸

7 56. The California Education Code forbids access to a school district’s pupil
8 records without written parental consent or judicial order, except pursuant to certain non-
9 applicable exceptions. Cal. Ed. Code § 49076.

10 57. The United States Constitution guarantees citizens of the United States a
11 zone of privacy emanating from the penumbras of the Bill of Rights into which no state
12 actor can intrude unless it is to achieve a compelling state interest through a narrowly
13 tailored methodology. Forcing Plaintiffs’ minor children to use the extraordinarily
14 invasive Microsoft Daily Pass absent any knowledge of, or assurances concerning, the
15 protection of the data gathered, or its subsequent use, and by whom, unconstitutionally
16 invades this protected zone of personal privacy.

17 Mandatory Masking

18 58. The wearing of face coverings or masks is purportedly required for a
19 medical purpose, i.e., to slow the community spread of the SARS-CoV-2 virus and
20 protect the health, safety, and welfare of individuals working, studying and visiting
21 properties belonging or run by LAUSD.

22 59. Prior to the prevalence of this particular virus, the use of surgical masks was
23 limited to use by healthcare workers, who are trained in their use, and were only worn
24 for single use and short periods of time.

25
26
27
28 ⁷ Id. at pp. 12-13.

⁸ Id. at p. 14.

1 60. There is no known history of persons wearing cloth masks or face coverings
2 for purposes other than religious-based, subjugation and dehumanization of the persons
3 made to wear them, or such other non-medical reasons.

4 61. There are short and long-term physical, psychological, and social side-
5 effects to children and adults from being forced to wear masks, especially for hours on
6 end while at school or work.

7 62. On the other hand, there is no reliable scientific evidence that face coverings
8 or masks reduce or prevent infection from SARS-CoV-2. Whatever arguments may be
9 advanced for placing masks on persons infected with the virus, there is absolutely no
10 logic to the masking of healthy persons to serve public health.

11 63. In the EUA authorizing general emergency use of face masks, the FDA
12 stated that it would “would misrepresent the product’s intended use” to state that it “is
13 for use such as infection prevention or reduction”.⁹

14 64. Similarly, in its Enforcement Policy for Face Masks and Respirators During
15 the Coronavirus Disease (COVID-19) Public Health Emergency (Revised)¹⁰, the Food
16 and Drug Administration clearly states that face masks are not intended to reduce or
17 prevent infection.

18 65. The first and only randomized controlled trial on the use of masks in
19 connection with this SARS-CoV-2 outbreak concluded that masks are ineffective in
20 reducing or preventing transmission.¹¹

21 66. A study published in the Emerging Infectious Disease Journal in May 2020
22 found that ten randomized control trial studies of the use of face masks to control the
23
24
25

26 ⁹ <https://www.fda.gov/media/137121/download>

27 ¹⁰ <https://www.fda.gov/media/136449/download>

28 ¹¹ Effectiveness of Adding a Mask Recommendation to Other Public Health Measures to Prevent SARS-CoV-2 Infection in Danish Mask Wearers: A Randomized Controlled Trial: Annals of Internal Medicine: Vol 174, No 3 (acpjournals.org)

1 influenza virus - a virus essentially the same size as the SARS-CoV-2 virus - showed no
2 significant reduction in influenza transmission with the use of face masks.¹²

3 67. Similarly, as study of nearly two thousand United States Marine Corps
4 recruits published in the New England Journal of Medicine on November 11, 2020
5 concluded that masks do not reduce or prevent the spread of SARS-CoV-2.¹³

6 68. The World Health Organization announced in 2020 that “at present, there is
7 no direct evidence (from studies on COVID-19) on the effectiveness face masking of
8 healthy people in the community to prevent infection of respiratory viruses, including
9 COVID-19.”¹⁴

10 69. Cloth masks – the type most commonly used by schoolchildren and the
11 community generally - are particularly problematic according to a randomized control
12 trial conducted on cloth masks with regard to the influenza virus in 2015. The study
13 concluded that due to moisture retention, reuse of cloth masks and poor filtration, cloth
14 masks may result in increased risk of infection.¹⁵

15 70. The physical properties of masks versus the SARS-CoV-2 virus alone prove
16 that masks simply cannot prevent the virus from exiting the nose and mouth of infected
17 individuals into the air around them to be breathed in by others. The SARS-CoV-2 virus
18 has a diameter of 60 nm to 140 nm (nanometers, a billionth of a meter). Medical and
19 non-medical facemasks’ thread diameter, on the other hand, ranges from 55 µm to 440
20 µm (micrometers, one millionth of a meter), which is more than 1000 times larger than
21 the diameter of the virus. Due to the difference in sizes between SARS-CoV-2 diameter
22 and facemasks thread diameter (the virus is 1000 times smaller), SARS-CoV-2 can easily
23 pass through any face mask.¹⁶

24 ¹² Nonpharmaceutical Measures for Pandemic Influenza in Nonhealthcare Settings—Personal
25 Protective and Environmental Measures - Volume 26, Number 5—May 2020 - Emerging Infectious
26 Diseases journal – CDC.

27 ¹³ SARS-CoV-2 Transmission among Marine Recruits during Quarantine | NEJM.

28 ¹⁴ World Health Organization. Advice on the use of masks in the context of COVID-19. Geneva,
Switzerland; 2020.

¹⁵ A cluster randomised trial of cloth masks compared with medical masks in healthcare workers -
PubMed (nih.gov).

¹⁶<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7224694/>.

1 71. The physical impossibility of filtering the SARS-CoV-2 virus with masks
2 is exacerbated by the lack of any seal between the wearer's face and the mask.

3 72. Not only are masks ineffective at reducing or preventing the spread of
4 SARS-CoV-2, the prolonged use of masks by children and adults is detrimental to their
5 physical and mental health.

6 73. Breathing is the most important physiological function to sustain life and
7 health. Humans are welcomed into the world with their first breath, and ushered from it
8 with their last. The human body requires a continuous and adequate oxygen supply to all
9 organs and cells for normal function and survival. Breathing is also an essential process
10 for removing metabolic byproducts, like carbon dioxide, occurring during cell
11 respiration.

12 74. Face masks are significantly detrimental to human health because they force
13 users to rebreathe their own expelled air over extended periods of times, thereby
14 decreasing oxygen intake and increasing levels of carbon dioxide in the body.

15 75. Prolonged mask wearing causes the following non-exhaustive list of
16 physical symptoms and damage:

- 17 • Hypoxia
- 18 • Hypercapnia
- 19 • Shortness of Breath
- 20 • Increased Lactate Concentration
- 21 • Acidosis
- 22 • Toxicity
- 23 • Chronic Inflammation
- 24 • Self-Contamination
- 25 • Increase in Stress Hormone Levels
- 26 • Increased Muscle Tension
- 27 • Immunosuppression.
- 28 • Fatigue

- Loss of concentration
- Headaches
- Loss of Reaction Time
- Loss of Brain Cells and Brain Function
- Long-term Neurodegenerative Disease
- Abnormal Cognitive Development in Children
- Increased Disposition for Viral and Infection Illnesses
- Hypertension
- Cardiovascular Disease
- Exacerbation of Existing Chronic Conditions
- Premature Aging
- Premature Death

76. Masks cause the following non-exhaustive list of psychological effects in the wearer:

- Fear
- Claustrophobia
- Mood Disturbances
- Compromised Cognitive Performance
- Peer Pressure

77. Masks have been used as a form of torture in prisons, to isolate prisoners from one another.

78. Masks dehumanize society by separating members of society from one another. The face is the essential tool for inter-human recognition and interaction. Hiding the face isolates people from one another, atomizing the members of society, and breaking down the social structure naturally social humans require.

79. The mandatory masking policy imposed by Defendants Beutner, School Board, Ferrer and Muntu disrupts and irreparably harms childhood development.

1 80. Nonverbal communication is one of the most important channels or the
2 social development of younger children. Furthermore, facial expression is one of the
3 central signals through which we communicate our own emotional state and infer the
4 emotional state of others, which makes this one of the fundamental building blocks for
5 the development of high emotional and social competence. Children in particular have
6 yet to learn how to reliably interpret these signals in the faces of others, which is critical
7 to the development of empathy. The wearing of masks inhibits the development of this
8 important ability.

9 81. Mask-wearing can also cause children to experience a negative distortion of
10 emotional experience. Fear and sadness are more likely to be read from the eyes and joy
11 from the mouth region. The wearing of masks could therefore lead to the perception of
12 less positive and more negative emotions in the faces of others.

13 82. The inability to see faces also interferes with a child's early education. One
14 of the goals of daycare and preschools is to teach children cooperation and
15 communication skills, but this pedagogical work is jeopardized when the child cannot
16 see the teacher or caregiver's face.

17 83. A masked face also impairs the development of attachment and
18 relationships, which are essential for the education and upbringing of children. It is
19 precisely the personal and familiar contact with between child and staff that is
20 enormously important for early childhood education.

21 84. The wearing of masks is also associated with the impairment of verbal skills
22 development. A mask mutes the voice's higher frequencies, while visual signals from
23 mouth and lip movement are completely obstructed. This has a particularly detrimental
24 effect on a child's ability to learn language.

25 85. None of the currently available face coverings for COVID-19 has received
26 final approval from the FDA. Rather, such face coverings are unapproved products that
27 have been authorized for emergency use under an Emergency Use Authorization
28 ("EUA").

1 86. Again, 21 U.S.C. § 360bbb-3(e)(1)(A), the statute granting the FDA the
2 power to authorize a medical product for emergency use, requires, *inter alia*, that the
3 person being administered the unapproved product be advised of his or her right to refuse
4 administration of the product.

5 Risks of COVID-19 Specific to Children

6 87. Mandatory PCR testing, Microsoft Daily Pass, and mandatory masking
7 impinge upon Plaintiffs' fundamental rights (and those of their minor children), and must
8 therefore survive strict scrutiny. Under that test, Defendants must prove that these
9 policies serve a compelling state interest and are narrowly tailored to achieve that goal.
10 Of all people in society, children are at lowest risk of COVID-19 infection and still lower
11 risk of serious medical consequences if they do contract the virus. Thus, it cannot be said
12 that any compelling state interest is served by the policies complained of herein. Even if
13 there were a compelling state interest, the dragnet testing and monitoring of each and
14 every student is overly broad, not narrowly tailored.

15 88. While Beutner and the Board Members refuse to open their schools to all
16 students for education and extracurricular activities, a growing body of evidence
17 continues to show that reopening schools for all students in all grades can be safely
18 accomplished.

19 89. Numerous studies and reports published in respected journals, in addition
20 to data amassed by various universities, have shown that schools are among the lowest
21 risk settings for infection from COVID-19.

22 90. There is now almost universal scientific consensus that schools are a safe
23 environment for both students and staff and that their low case rates actually make them
24 the safest place for children to be during the COVID-19 pandemic. As the CDC wrote in
25 its "Summary of Guidance" on December 4, 2020, "because of ... the disproportionate
26 impact that school closures can have on those with the least economic means,
27 kindergarten through grade 12 schools should be the last settings to close after all other
28 mitigation measures have been employed and the first to reopen when they can do so

1 safely.” Instead, schools are the last remaining bulwark against a return to normalcy as
2 they are now the most restrictive setting in the state.

3 “Distance Learning” Does not Pass Constitutional Muster

4 91. While data has consistently shown that schools can be reopened safely, a
5 growing body of evidence is also revealing the alarming effects of prolonged and
6 indefinite school closures on students.

7 92. A national survey of school districts indicated that the mental health impact
8 on children has increased by 74%, behavioral health referrals and counseling increased
9 by more than 90%, and 50% of school districts reported increased absenteeism and
10 decreased student engagement among virtual students.

11 93. The CDC reported in November 2020 that mental health-related emergency
12 department visits among children in the 5 to 11 and 12 to 17 age brackets increased
13 approximately 24% and 31%, respectively.¹⁷ In a national survey conducted last spring,
14 nearly a third of high school students reported that they were unhappy and depressed
15 “much more than usual” during the prior month.¹⁸ One study released in November
16 indicated that school closures “may be associated with a decrease in life expectancy for
17 US children.”¹⁹

18 94. Shortly after the decision was made collaboratively by Defendants Beutner,
19 Board Members and the County Department of Public Health to discontinue in-person
20 learning indefinitely, LAUSD adopted a distance learning program called Schoology.
21 However, many students did not use the program upon its initial adoption. Use and
22 participation in the program improved in the Fall of 2020, but only 25% of elementary
23 students were “actively engaged” through submitting assignments and posting comments
24 and 19% did not engage at all.²⁰

25
26
27 ¹⁷ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>

¹⁸ <https://www.americaspromise.org/sites/default/files/d8/Updated%20Appendix.pdf>

¹⁹ <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2772834>

²⁰ Fall 2020 Schoology Usage Update, LAUSD Independent Analysis Unit.

1 95. Middle school students demonstrated increased engagement, with 65%
2 “actively engaged” but 6% not engaged at all.²¹

3 96. Similarly, 67% of high school students were “actively engaged” while 7%
4 did not engage at all.²²

5 97. Across all grades, active engagement levels among students with
6 disabilities, students classified as English learners, homeless students and those in foster
7 care were generally below average.²³

8 98. LAUSD’s own studies reveal that many of its students are likely to
9 experience risk factors that worsen learning loss because they reside in communities
10 disproportionately affected by the pandemic. Some of the risk factors include increased
11 family financial stress caused by unemployment; learning constraints at home (including
12 parents’ availability and challenges in scheduling support for at home learning;
13 distractions and increased responsibilities); stress or trauma related to COVID-19
14 exposure or death of a loved one; increased exposure to abuse or neglect; and lack of
15 internet access or technology.

16 99. Many LAUSD students, including Plaintiffs herein, reside in historically
17 disadvantaged low-income communities of color that are disproportionately affected by
18 the pandemic. Approximately 80 percent of LAUSD’s students live in poverty. In May
19 2020, shortly after schools closed, the LAUSD Independent Analysis Unit estimated that
20 440,000 students (or 93%) would return to school in fall 2020 with “unprecedented
21 academic and social-emotional needs.”²⁴

22 100. Validating this data, Beutner admitted in November 2020 that LAUSD had
23 seen a 15% increase in D and F grades among high school students and a 10 percent drop
24 in reading proficiency among elementary students. Beutner acknowledged to the New
25 York Times: “If you’re a first or second grader, and someone is not home helping you,
26

27 ²¹ Id.

²² Id.

²³ Id.

²⁴ COVID-19 Learning Loss in LA Unified, LAUSD Independent Analysis Unit, May 2020.

1 you're probably not making a ton of progress. There is just no question that this is
2 disproportionately hurting students who can least afford it.”

3 101. The above statistics understate the problems with distance learning. In
4 December 2020, LAUSD acknowledged the failure of distance learning and directed all
5 principals to adopt a “no-fail” policy based upon a finding that “grades have dramatically
6 deteriorated, especially for Latino and Black students, English learners, students with
7 disabilities, foster youth and those experiencing homelessness.”

8 102. On January 13, 2021, a group of 30 University of California San Francisco
9 medical professionals published an open letter calling for schools to be reopened by
10 February 1, 2021, noting that distance learning has led to serious mental health issues,
11 especially for teenagers.²⁵ Dr. Saun-Toy Trotter, a psychotherapist at U.C. San
12 Francisco’s Benioff Children’s Hospital in Oakland, noted in the letter that he had seen
13 “high levels of depression” and said the clinic recorded more youth suicide attempts
14 during the first four weeks of the pandemic than it had the entire previous year.²⁶

15 103. A McKinsey & Company report in June 2020 concluded that students who
16 do not receive full-time, in-person instruction until 2021 will have lost an average of
17 seven months of learning this school year, and a RAND survey found that only 19% of
18 teachers had covered all or nearly all of the content they would have covered by the same
19 time the previous school year.²⁷

20 104. Disparate outcomes for poor and minority children are increasing as well.
21 The same McKinsey & Company report estimated that white students will be set back
22 one to three months in math, while students of color will have lost three to five months.
23 Applications for federal student aid dropped 16% in the fall, with larger drops in college
24 applications from Hispanic and low-income students.²⁸

25
26 _____
27 ²⁵ <https://dig.abclocal.go.com/kgo/PDF/011221-kgo-school-reopening-ucsf-letter.pdf>

28 ²⁶ Id.

²⁷ <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help>

²⁸ Id.

1 105. The United Nations Educational, Scientific and Cultural Organization
2 (“UNESCO”) has stated regarding the disparate impacts of school closures: “School
3 closures carry high social and economic costs for people across communities. Their
4 impact however is particularly severe for the most vulnerable and marginalized boys and
5 girls and their families. The resulting disruptions exacerbate already existing disparities
6 within the education system but also in other aspects of their lives.”²⁹

7 106. UNESCO further stated: “Schooling provides essential learning and when
8 schools close, children and youth are deprived opportunities for growth and
9 development. The disadvantages are disproportionate for under-privileged learners who
10 tend to have fewer educational opportunities beyond school.”³⁰

11 Defendants Must Allow Plaintiffs’ Minor Children to Attend School

12 *The Guilfoyles*

13 107. L.G. was registered to begin Kindergarten at the beginning of this school
14 year.

15 108. Ms. Guilfoyle was working full time, so Mr. Guilfoyle had to stay home
16 with the children due to the school closures and need to monitor L.G.’s online learning.

17 109. When LAUSD finally opened the elementary schools and offered a hybrid
18 model, L.G. was excited to finally go to school. However, L.G. suffers from enlarged
19 adenoids and tree allergies that are especially inflamed in the Spring.

20 110. Due to L.G.’s medical conditions, he is not able to endure wearing a mask
21 over his nose.

22 111. Covering his nose causes L.G.’s breathing to be restricted and the feeling of
23 not being able to breathe causes L.G. anxiety on top of the physiological problems just
24 described.

25 112. Ms. Guilfoyle requested a medical accommodation to the mask requirement
26 on behalf of L.G. Her request was denied by LAUSD.

27
28 ²⁹<https://en.unesco.org/covid19/educationresponse/consequences>

³⁰ Id.

1 113. L.G. is forced to remain out of school due to his medical condition and
2 inability to tolerate a mask.

3 *The Agrazs*

4 114. In April 2020, when LAUSD closed schools for what was supposed to be
5 short period of time, A.P. and her mother, Ms. Agraz, were hopeful that things would
6 return to normal soon. That never happened.

7 115. A.P. is a 10th grade student within the LAUSD. She has an Individualized
8 Education Plan (“IEP”) due to some cognitive and emotional challenges and her unique
9 manner of learning.

10 116. The sudden change in routine and the uncertainty about whether school
11 would resume and when caused A.P. a great deal of anxiety.

12 117. Ms. Agraz worked constantly with her child to assure her that there was no
13 reason to feel anxious and to ease her worries.

14 118. Finally, in April 2021 when schools slowly began to reopen with a hybrid
15 learning model, Ms. Agraz was initially relieved. However, she grew disturbed upon
16 subsequently learning that face masks, “baseline” and periodic PCR testing and use of
17 the Daily Pass application to house testing results, health questions and other student
18 medical and genetic data would be required for A.P. to be afforded any in-person or
19 hybrid school option.

20 119. A.P. is unable to tolerate a mask. She feels contained and claustrophobic
21 with her face covered.

22 120. Similarly, A.P. is unable to tolerate the PCR test. The method of testing
23 requires invasion into her personal space and nasal cavity, and that is something that A.P.
24 simply will not allow.

25 121. Ms. Agraz sought a medical exemption from her daughter’s school, but her
26 requests were denied. As a result, A.P. has been excluded from all in person learning and
27 continues to be confined to at-home, virtual learning.

1 122. The distance learning model is not compatible with A.P.'s specific learning
2 needs, and as a result she has suffered extreme academic setbacks and developed an
3 apathetic or even resistant attitude towards her schooling.

4 123. Ms. Agraz also objects to the use of the PCR test because she knows that it
5 is notorious for yielding false positive results and she is concerned about the trauma that
6 will be caused to her daughter if she returns to school and is thereafter ejected based on
7 such a result with no opportunity to refute it. If A.P. is not sick, she should not be
8 relegated once again to isolation, and the PCR test is simply not an effective way to
9 determine if a child is infected with COVID-19.

10 124. Ms. Agraz also object strenuously to her child's private health information
11 being uploaded into the Daily Pass.

12 *The Nicolaisens*

13 125. When it was announced that the children would have an opportunity to go
14 back to in-person schooling at the end of April 2021, Mr. & Mrs. Nicolaisen and their
15 three children were elated. The elation did not last long, however, as they learned the
16 details of Defendants' the plan for reopening.

17 126. Mr. & Mrs. Nicolaisen have strong objections to the required mandatory
18 PCR testing. They had researched the PCR testing protocols, beginning with the
19 statement from the test's inventor, Kerry Mullis, who emphasized that the PCR test
20 should NEVER be used as a clinical diagnostic tool, and that a positive PCR test in no
21 way means a person is sick or will become sick. Mr. & Mrs. Nicolaisen refuse to subject
22 their children to this procedure and to be groomed to allow authorities poke, prod, or
23 otherwise touch their person without their permission, our permission, and a parent being
24 present, particularly where there is no inherent value in the test itself in keeping people
25 healthy. Likewise, they do not want to subject their children to being deemed second
26 class students or, worse, ostracized and scorned should their PCR test happen to yield a
27 positive result.

1 127. Mr. & Mrs. Nicolaisen also have a strong objection to the mask requirement
2 due to concerns about their children suffering from hypoxia, anxiety, bacterial
3 pneumonia, and other known side effects of prolonged mask wearing.

4 128. Mr. & Mrs. Nicolaisen also do not want to subject their children to the the
5 psychological impacts of mask wearing such as conditioning the children to believe that
6 their immune systems are inadequate and to be afraid of their healthy peers.

7 129. Mr. & Mrs. Nicolaisen also object strenuously to their children's private
8 health information being uploaded into the Daily Pass.

9 130. U.N. has been denied the basic introduction to Kindergarten - things like
10 instruction on how to hold a pencil, what direction she is drawing her letters, and
11 interpersonal play time with her peers.

12 131. F.N. is extremely shy and, as such, it is difficult for him to develop
13 relationships. Being switched to a new teacher and new classmates because he is forced
14 to continue remote learning has crushed his progress in this regard. F.N. is also prone to
15 attention lapses. If he misses something the teacher says, he cannot easily look to his
16 peers to get him back on track when doing school remotely. The result has been months
17 of meltdowns over the most benign instruction that he missed in the moment.

18 132. A.N. has also been starved of interpersonal relationships with his peers. At
19 ten years old, this has had a serious negative impact on his self-confidence. The remote
20 schooling has begun to shape his confidence and perhaps character in ways that is gravely
21 concerning to his parents, so they are faced with the impossible choice of keeping him
22 home to his detriment or sending him back to school and compromising all of their beliefs
23 and values regarding the appropriate rearing of their children detailed above. They have
24 concluded, however, that returning him to school under the conditions imposed by
25 Defendants would be even more detrimental to his social and emotional health, as well
26 has his physical health, than keeping him isolated at home. Neither option is a good one.

The Alsheiks

1
2 133. M.A. has attended Calvert Elementary School for the last two school years.
3 He was only able to attend 3 months of preschool his first year before LAUSD closed
4 schools.

5 134. Ms. Alsheikh tried to engage her son in the distance learning program
6 created by Defendants Beutner and the Board Members, but quickly learned that this was
7 a woefully inadequate substitute for in-person learning for her four-year-old son.

8 135. Ms. Alsheikh was forced to violate her convictions regarding the use of
9 technology and limited screen time for her young child by having him on the iPad all day
10 for “school”.

11 136. Moreover, Ms. Alsheikh has suffered tremendous financial loss because she
12 had to stay home with her son. Given the amount she earns from work and the cost of
13 childcare, it was not feasible for her to continue working.

14 137. Ms. Alsheikh feels awful because she knows that M.A. is not getting his
15 educational, social, or other needs met due to school closure and loss of income, but Ms.
16 Alsheikh relied on the public school system for these things.

17 138. While Ms. Alsheikh knows that her son is being harmed by not being in
18 school, she believes he would suffer even greater harm were she to return him to school
19 in light of LAUSD’s non-negotiable requirements for students to have access to in-
20 person learning.

21 139. M.A. suffers from asthma and has had a seizure. Ms. Alsheikh sincerely and
22 legitimately fears that her son being forced to wear a mask all day while in school will
23 result in his death.

24 140. Ms. Alsheikh desperately wants for her son to return to school, socialize
25 with friends, develop relationships with teachers with loving and caring teachers with
26 whom he can interact and are not hidden behind masks, and to play and learn freely while
27 breathing fresh air. Ms. Alsheikh also needs to return to work, but she will not do these
28 things at the risk of her son’s life.

The Alvarezs

1
2 141. Ms. Alvarez and her children have endured so much trauma and loss from
3 the pandemic. The school closure is just one aspect of that loss and trauma, but it is
4 perhaps the most harshly felt since it impacts the children daily and a mother grieves
5 most over her children's pain and suffering.

6 142. S.A. is in fifth grade and E.A. is in second grade in LAUSD. They were
7 good students and thriving in school by all accounts.

8 143. Within a few months of S.A. and E.A. being forced out of school and into
9 virtual learning, they lost interest in school altogether. This was incredibly painful for
10 Ms. Alvarez to witness.

11 144. Ms. Alvarez has observed her children try to listen attentively to their 30-
12 minute virtual lessons, but lack understanding despite their best efforts. This is followed
13 by hours of independent work required by the school, but without direction the children
14 are unable to successfully grasp the concepts and complete the assignments given. As a
15 result, S.A. and E.A. feel increasingly discouraged.

16 145. Ms. Alvarez lacks the skills to personally assist her children with their
17 academic assignments, but she has tried to help them as best she can by engaging them
18 in learning PODS, hiring teachers and tutors, even having them learn in a "fun"
19 environment, but has nothing worked at restoring their prior academic success or drive.
20 What's worse is that not only have the children not made academic progress, but they
21 have lost so much of the knowledge they previously learned while in school and Ms.
22 Alvarez is at a loss for how to help them since everything she has tried has failed.

23 146. Ms. Alvarez provides car rides to people as her source of income. She has
24 had to give up a lot of income-generating opportunities to be with her children since they
25 are not in school. However, she cannot afford to not work at all, so the children have
26 sometimes had to do their remote learning while accompanying her and her passengers
27 on car rides. This is no environment for children or learning, but Ms. Alvarez has no
28

1 viable alternative. This, of course, causes her incredible guilt and sadness as a mother
2 who cares deeply about her children and their welfare.

3 147. The children also suffer emotionally. E.A. has developed anxiety as a result
4 of isolation, and now clings to her mother in an unhealthy way that she never did before.
5 It is almost as though she fears people having not been around them for so long.

6 148. S.A. has lost friendships due to not being in school and fear that has been
7 instilled in so many, resulting in families not allowing their children to interact with other
8 children. S.A. missed out on her fifth-grade graduation – an important milestone –
9 because the school would not allow her to attend unless she was masked and submitted
10 to a PCR test beforehand. Although Ms. Alvarez believes masks to be harmful and did
11 not see a need for her child’s nasal cavity to be swabbed since she is a completely healthy
12 child, she left the decision to S.A. because she did not want to force her to miss out and
13 cause her additional feelings of loss and sadness. S.A. chose not to attend the graduation;
14 although S.A. very much wanted to participate in the ceremony and see her friends, she
15 did not want to endure the discomfort of the test and the restricted breathing caused by
16 the mask. This was an awful position for a child to be placed in. Ms. Alvarez believe
17 S.A. is depressed, and she attributes S.A.’s condition entirely to the actions of
18 Defendants.

19 **LEGAL ALLEGATIONS**

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF PARENTAL RIGHTS SUBSTANTIVELY**
22 **GUARANTEED BY THE DUE PROCESS CLAUSE OF THE**
23 **FOURTEENTH AMENDMENT**

24 **(Brought Pursuant to 42 U.S.C. § 1983)**

25 149. Plaintiffs reallege and incorporate by reference the allegations set forth in
26 paragraphs 1 through 148 above as if fully alleged herein.

27 150. The Due Process Clause protects those fundamental rights and liberties
28 which are, objectively, deeply rooted in this Nation’s history and tradition, and implicit

1 in the concept of ordered liberty, such that neither liberty nor justice would exist if they
2 were sacrificed. *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). The Due
3 Process Clause includes a substantive component that bars arbitrary, wrongful,
4 government action “regardless of the fairness of the procedures used to implement them.”
5 *Zinerman v. Burch*, 494 U.S. 113, 125 (1990).

6 151. The Due Process Clause recognizes that certain interests are so substantial
7 that no process is enough to allow the government to restrict them absent a compelling
8 state interest. *Washington v. Glucksberg*, 521 U.S. at 719.

9 152. Plaintiffs, as parents, have a fundamental right to direct the care and
10 upbringing of their children, and medical decisions fall squarely within that liberty
11 interest.

12 153. Likewise, Plaintiffs have the right to direct their children’s education.
13 Access to a foundational level of literacy provided through public education has an
14 extensive historical legacy and is so central to our political and social system as to be
15 “implicit in the concept of ordered liberty.” 521 U.S. at 720-21.

16 154. Defendants have deprived Plaintiffs of the right to direct their children’s
17 education, in violation of the Fourteenth Amendment, by effectively precluding the
18 children from receiving a basic minimum education unless plaintiffs consent to the
19 violation of other legal rights of their children.

20 155. Plaintiffs have no adequate remedy at law. Plaintiffs will continue to suffer
21 irreparable harm unless Defendants are enjoined from enforcing their coercive policies.

22 **SECOND CAUSE OF ACTION**

23 **VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE**
24 **FOURTEENTH AMENDMENT**

25 **(Brought Pursuant to 42 U.S.C. § 1983)**

26 156. Plaintiffs reallege and incorporate by reference the allegations in paragraphs
27 1 through 148 above as if fully alleged herein.
28

1 157. The Equal Protection Clause of the Fourteenth Amendment prohibits
2 governmental classifications that affect some groups of citizens differently than others.
3 *Engquist v. Or. Dept. of Agric.*, 553 U.S. 591, 601 (2008). The touchstone of this analysis
4 is whether a state creates disparity between classes of individuals whose situations are
5 arguably indistinguishable. *Ross v. Moffitt*, 417 U.S. 600, 609 (1974).

6 158. Denial of education to isolated groups of children based on statistically
7 unreliable testing for COVID-19, which disease poses a small risk to those children (no
8 more risk than helpful immune system building illnesses like the rhinovirus (aka, ‘the
9 common cold’), is antagonistic to the goals of the Equal Protection Clause – i.e., to
10 abolish barriers presenting unreasonable obstacles to advancement on the basis of
11 individual merit.

12 159. Similarly, denial of education to those children whose parents object to
13 experimental, invasive, non-diagnostic testing, masking, and disclosure of private
14 medical information violates equal protection. Children whose parents object to these
15 mandated policies suffer unequally to those who do not, effectively causing these
16 children to be fully denied equal protection under the law.

17 **THIRD CAUSE OF ACTION**

18 **VIOLATION OF THE FOURTH AMENDMENT RIGHT TO BE** 19 **FREE FROM UNREASONABLE SEARCH AND SEIZURE**

20 160. Plaintiffs reallege and incorporate by reference the allegations in paragraphs
21 1 through 148 above as if fully alleged herein.

22 161. “The Fourth Amendment requires government to respect ‘the right of the
23 people to be secure in their persons . . . against unreasonable searches and seizures.’”
24 *Chandler v Miller*, 520 U.S. 305, 308 (1997).

25 162. It is irrefutable that the planned mandatory testing of school children and
26 the use of that data against the will of their parents is unconstitutional. Capturing bodily
27 fluid from a person has been deemed by the United States Supreme Court to fall within
28 this scope of review (*see, e.g., Skinner v. Ry. Labor Executives’ Assn.*, 489 U.S. 602

1 (1989)), and, in fact, such widespread testing of a student body has been struck down by
2 the Eighth Circuit in *Kittle-Aikeley v Strong*, 844 F.3d 727 (8th Cir. 2016).

3 163. The tracking of movement of students, which is intended by mandating the
4 Microsoft Daily Pass, also constitutes a search that falls under the Fourth Amendment.
5 *See, e.g., United States v Jones*, 565 U.S. 400 (2012). “To be reasonable...a search
6 ordinarily must be based on individualized suspicion of wrongdoing.” *Chandler v Miller*,
7 520 U.S. 305, 313 (1997).

8 164. Defendants’ mandates violate the Fourth Amendment’s prohibition against
9 unreasonable searches and seizures. “[A] search is warranted only if the student’s
10 conduct creates a reasonable suspicion that a particular regulation or law has been
11 violated, with the search serving to produce evidence of that violation.” *Cornfield v.*
12 *Consol. High Sch. Dist. No. 230*, 991 F.2d 1316, 1320 (7th Cir. 1993).

13 165. “[Y]oung people do not ‘shed their constitutional rights’ at the schoolhouse
14 door.” *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

15 **FOURTH CAUSE OF ACTION**

16 **VIOLATION OF TITLE 21 UNITED STATES CODE,**

17 **SECTION 360BBB-3**

18 166. Plaintiffs reallege and incorporate by reference the allegations in paragraphs
19 1 through 148 above as if fully alleged herein.

20 167. Federal laws and regulations governing the approval and administration of
21 medical products such as PCR tests and masks completely preempt any and all contrary
22 or inconsistent laws and policies of state and local governments, including the policies
23 promulgated by Defendants Beutner, School Board, Ferrer, and Muntu challenged
24 herein.

25 168. The PCR tests and masks mandated by said Defendants remain
26 investigational products in accordance with the FDA’s Emergency Use Authorization of
27 those products.
28

1 169. Title 21 United States Code, § 360bbb-3(e)(1)(A)(ii) requires that all
2 individuals to whom an investigational product available only pursuant to Emergency
3 Use Authorization is to be administered be informed “of the option to accept or refuse
4 administration of the product...”

5 170. Plaintiffs, acting on their own behalf and as the natural guardians of their
6 minor children, do not consent to their minor children being subjected to PCR testing nor
7 wearing face coverings or masks of any kind.

8 171. Defendants’ mandatory PCR testing and mandatory masking policy are
9 patently contrary to United States law, and thus preempted and invalid.

10 **FIFTH CAUSE OF ACTION**

11 **VIOLATION OF CALIFORNIA CONSTITUTION, ARTICLE IX**

12 **GUARANTEE OF PUBLIC EDUCATION**

13 172. Plaintiffs reallege and incorporate by reference the allegations in paragraphs
14 1 through 148 as if fully alleged herein.

15 173. The California Constitution, Article IX provides for a comprehensive and
16 efficient system of free public schools to be available to all California residents.

17 174. Defendants have failed to provide for the instruction of all California
18 children, thereby violating the California Constitution.

19 175. Plaintiffs and their children have no adequate remedy at law and will suffer
20 continuous, irreparable harm to their state constitutional rights unless Defendants are
21 enjoined from barring Plaintiffs from accessing the public schools in which they are duly
22 enrolled or otherwise permitted by law to be enrolled in unless and until Plaintiffs submit
23 to Defendants’ coercive and unlawful policies described herein.

24 **SIXTH CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA CONSTITUTION ARTICLE I,**

26 **SECTION 7(A) AND ARTICLE IV, SECTION 16(A)**

27 176. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs
28 1 through 148 and 157 through 159 as if fully alleged herein.

1 177. One of the great pillars of the California Constitution is that all children
2 have a fundamental right to a free and public education. It is a deprivation of that
3 constitutional right to remove educational resources and access unless that decision can
4 withstand strict constitutional scrutiny.

5 178. The Equal Protection clauses of the U.S. Constitution and the California
6 Constitution, Article I, § 7(a) and Article IV, § 16(a), bar the state from maintaining the
7 public school system in a manner that denies some students the basic education freely
8 provided to other students.

9 179. California State law recognizes the fundamental right to public education in
10 a classroom setting. The California Constitution plainly states: “A general diffusion of
11 knowledge and intelligence being essential to the preservation of the rights and liberties
12 of the people, the Legislature shall encourage by all suitable means the promotion of
13 intellectual, scientific, moral, and agricultural improvement.” Ca. Const., Art. IX, § 1
14 and “The Legislature shall provide for a system of common schools by which a free
15 school shall be kept up and supported in each district at least six months in every year,
16 after the first year in which a school has been established.” Ca. Const., Art. IX, § 5.

17 180. In direct conflict with the California Constitution, Defendants halted all in-
18 person instruction last year and have only partially re-opened schools to a select group
19 of students whose parents have relinquished their own and their children’s other
20 constitutional rights as outlined hereinabove.

21 181. Plaintiffs demand the constitutionally protected right to in-person learning
22 and extracurricular activities for their children, and should be able to provide satisfactory
23 documentation to Defendants regarding their children’s health, just as they do for all
24 other health considerations. *See Troxel v. Granville*, 530 U.S. 57, 60 (2000) (“There is
25 normally no reason for the State to inject itself into the private realm of the family to
26 further question fit parents’ ability to make the best decisions regarding their children.”)
27
28

1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA CONSTITUTION ARTICLE I,**

3 **SECTION I**

4 182. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs
5 1 through 148 as if fully alleged herein.

6 183. “A state constitutional privacy guarantee was added to the California
7 Constitution by an initiative passed in the 1972 general election.”³¹

8 184. The argument put forth by the legislature in support of the ballot initiative
9 to so amend the constitution included the following:

10 The proliferation of government snooping and data collecting is
11 threatening to destroy our traditional freedom. Government
12 agencies seen to be competing to compile the most extensive
13 sets of dossiers of American citizens. Computerization of
14 records makes it possible to create “cradle-to-grave” profiles on
15 every American. At present there are no effective estraiings on
16 the information activities of government and business. This
amendment creates a legal and enforceable right of privacy for
every Californian.

17 In light of this language, this provision irrefutably applies to the Daily Pass and other
18 tracking and data collection by Defendants. On this basis, use of the Daily Pass must be
19 enjoined.

20 185. In addition, the right to privacy has been commonly understood and
21 described by the courts to mean the right to be let alone. The Restatement (Second) of
22 Torts section 652B provides that “[o]ne who intentionally intrudes, physically or
23 otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is
24 subject to liability to the other for invasion of his privacy, if the intrusion would be highly
25 offensive to a reasonable person.”

26 186. Plaintiffs herein are reasonable persons who find the intrusions caused by
27 PCR testing, face coverings, and the mandated disclosure of personal health data and
28

³¹ http://law.scu.edu/wp-content/uploads/art_i_section1_cal_cnstn.pdf

1 other biological and genetic information all to be offensive and unacceptable intrusions
2 into their zone of privacy and, therefore, these requirements violate the California
3 Constitution.

4 **REQUEST FOR JURY TRIAL**

5 Plaintiffs request a jury trial on matters that may be so tried.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiffs respectfully ask the Court to issue an Order granting
8 the following relief:

9 1. Declaring that coercing parents to submit to Defendants’ prerequisites for
10 students to return to in-person learning (to wit: mandatory PCR testing, use of Microsoft
11 Daily Pass, and universal masking of students) violates substantive due process as
12 guaranteed by the Fourteenth Amendment to the United States Constitution; and,

13 2. Declaring that the classification, segregation, and denial of certain rights
14 and privileges to the class of students whose parents object to Defendants’ prerequisites
15 for students to return to in-person learning (to wit: mandatory PCR testing, use of
16 Microsoft Daily Pass, and universal masking of students) denies to those students and
17 families equal protection under the law, and thereby violates the rights afforded to those
18 students and their parents afforded to them by the Fourteenth Amendment to the United
19 States Constitution and Article I, § 7(a) and Article IV, § 16(a) of the California
20 Constitution; and,

21 3. Declaring that the mandatory use of Microsoft Daily Pass to record, track,
22 monitor, and disclose students’ private health data and movement violates the Fourth
23 Amendment to the United States Constitution and Article I, Section I of the California
24 Constitution; and,

25 4. Declaring that Defendants’ policy of mandatory PCR testing and mandatory
26 masking of students, as described in the Complaint herein, directly violates and
27 contravenes Title 21 United States Code, § 360bbb-3(e)(1)(A)(ii), which requires that
28

1 parents be afforded the option of refusing use of such unapproved products on their
2 children; and,

3 5. Declaring that Defendants' policies denying students' access to public
4 schools unless and until their parents consent to their children being subjected to
5 Defendants' prerequisites for in-person learning (to wit: mandatory PCR testing, use of
6 Microsoft Daily Pass, and universal masking of students) violates Article IX of the
7 California Constitution; and,

8 6. Enjoining Defendants from denying access to in-person learning to students
9 whose parents object to any or all of Defendants' prerequisites for return to in-person
10 learning (to wit: mandatory PCR testing, use of Microsoft Daily Pass, and universal
11 masking of students); and,

12 7. Awarding Plaintiffs costs of suit, and reasonable attorneys' fees and
13 expenses; and,

14 8. Awarding such other relief as this Court deems equitable, just, and proper.

15
16 Respectfully submitted,

17 TYLER & BURSCH, LLP

18 Dated: June 19, 2021

19 /s/ Robert H. Tyler, Esq

20 Robert H. Tyler

21 Attorney for Plaintiffs