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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

11 LET THEM CHOOSE, an initiative of
12 LET THEM BREATHE, a California
13 nonprofit public benefit corporation;

14 Plaintiffs,

15 v.

16 SAN DIEGO UNIFIED SCHOOL
17 DISTRICT; and DOES 1–50,

18 Defendants.

Case No. 37-2021-00043172-CU-WM-CTL

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

Department:
Judge:

Action filed:
Trial date:

1 Plaintiff LET THEM CHOOSE, an initiative of LET THEM BREATHE, complains of
2 Defendants SAN DIEGO UNIFIED SCHOOL DISTRICT; and DOES 1–50, inclusive, as
3 follows:

4 **I. PARTIES.**

5 **A. Plaintiffs.**

6 1. Plaintiff LET THEM CHOOSE is an initiative of LET THEM BREATHE, a
7 California nonprofit public benefit corporation that represents a community of more than 20,000
8 parents. Let Them Breathe has been advocating for mask choice since the start of 2021. The Let
9 Them Choose initiative aims to protect families’ rights to make personal medical decisions and
10 students’ right to an in-person education.

11 **B. Defendants.**

12 2. Defendant San Diego Unified School District (“SDUSD”) is a school district in
13 the County of San Diego that serves more than 121,000 students in preschool through 12th
14 grade in the City of San Diego. It is the second largest school district in the state. SDUSD is a
15 Local Educational Agency (“LEA”) under the California Education Code. SDUSD is governed
16 by elected officials who serve as members of its Board of Education.

17 3. The true names and capacities of Defendants sued herein as DOES 1 through 50,
18 inclusive, are presently unknown to Plaintiffs, who therefore sue these Defendants by such
19 fictitious names. Plaintiffs will seek leave to amend this complaint and petition to include these
20 Defendants’ true names and capacities when they are ascertained. Each of the fictitiously named
21 Defendants is responsible in some manner for the conduct alleged herein and for the damages
22 suffered by Plaintiffs.

23 **II. GENERAL ALLEGATIONS.**

24 **A. Governor Newsom Declares State of Emergency to Address COVID-19.**

25 4. On March 4, 2020, Defendant Governor Newsom declared a state of emergency
26 in response to the COVID-19 pandemic.

27 5. SDUSD, along with the majority of school districts throughout California,
28 ultimately closed its schools for the remainder of the school year to support public health efforts

1 to slow the spread of COVID-19.

2 6. In the fall of 2021, SDUSD reopened its schools for full-time, in-person
3 instruction.

4 7. On September 28, 2021, the SDUSD Board voted to implement a Vaccine
5 Mandate Plan (“Plan”), requiring all SDUSD students who are 16 years of age and older to
6 receive their first COVID-19 vaccine dose by no later than November 29, 2021, and their
7 second dose by no later than December 20, 2021. All unvaccinated students ages 16 and older
8 will be involuntarily transferred to independent study on January 21, 2022 (the start of the
9 spring semester).

10 8. Further, all other students will be required to receive their first dose of a
11 COVID-19 vaccine after full FDA approval of the vaccine for each age group. Students will
12 have 35 days from the first dose deadline to receive their second dose.

13 9. According to the Plan, all students who are eligible for the vaccine and not
14 vaccinated by established deadlines will be involuntarily enrolled in independent study.

15 10. SDUSD’s vaccine mandate does not apply to students who are migrants,
16 homeless, in foster care, or from military families. If they are a member of one of these groups,
17 unvaccinated students may be “conditionally enrolled,” even though they would otherwise be
18 required to get vaccinated. Students who have a medical reason that they cannot receive the
19 COVID-19 vaccine and students who have an individualized education plan (“IEP”) are also
20 exempt from SDUSD’s mandate.

21 11. While students will have the opportunity to submit requests for a medical
22 exemption, SDUSD contends state law does not recognize religious or personal belief
23 exemptions for any student immunizations.

24 12. All SDUSD employees, partners, contractors, and adults who work directly with
25 students and district employees on district property must be fully vaccinated against COVID-19
26 on or before December 20, 2021. SDUSD has advised its staff that it will consider requests for
27 religious exemptions from employees.

28 13. All students ages 16 and above who choose not to receive a COVID-19 vaccine

1 will not be permitted to attend classes or participate in extracurricular activities, including
2 sports, on any SDUSD campuses, unless they are a member of one of the aforementioned
3 exempt groups.

4 14. The Plan sets no expiration date for the district’s COVID-19 vaccination
5 requirement. Thus, even if COVID-19 no longer poses a threat to individuals, and even if the
6 State of California ultimately does not add COVID-19 to the statutory list of childhood illnesses
7 for which a child must be immunized as a condition for admission to any school in California,
8 SDUSD students will be indefinitely required to receive the vaccine.

9 **B. Governor Gavin Newsom Announces a Future Vaccine Mandate for**
10 **California Schoolchildren.**

11 15. On August 12, 2021, the California Department of Public Health (“CDPH”)
12 issued an order requiring all teachers and school staff, including volunteers, to either provide
13 proof of vaccination no later than October 15, 2021, or submit to diagnostic screening testing
14 for COVID-19 at least once a week.

15 16. On October 1, 2021, California Governor Gavin Newsom announced that all
16 California students will be required to provide proof that they have received the COVID-19
17 vaccine starting the term following full FDA approval of the vaccine for their age/grade span
18 (i.e., 7–12 and K–6) in order to attend school in-person. However, Governor Newsom stopped
19 short of announcing that all adults who work in schools will be required to provide proof of
20 vaccination.

21 **C. COVID-19 Vaccines Are Not Approved for Most Children.**

22 17. There are currently no COVID-19 vaccines approved by the FDA for use in
23 children under the age of 16.

24 18. On December 11, 2020, the Food and Drug Administration (“FDA”) issued an
25 Emergency Use Authorization (“EUA”) for the Pfizer-BioNTech vaccine for use in individuals
26 ages 12 and up. This EUA was issued under Title 21 United States Code section 360bbb-3.

27 19. On December 18, 2020, the FDA issued an EUA for use of the Moderna
28 COVID-19 vaccine for individuals over the age of 18.

1 20. On February 27, 2021, the FDA issued an EUA for the use of the Janssen
2 COVID-19 vaccine for individuals over the age of 18.

3 21. According to the FDA, “[t]he issuance of an EUA is different than an FDA
4 approval (licensure) of a vaccine.” ([https://www.fda.gov/emergency-preparedness-and-
5 response/coronavirus-disease-2019-covid-19/covid-19-frequently-asked-questions#biologics.](https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-frequently-asked-questions#biologics))
6 An authorization for emergency use applies to a drug or biological product that is not otherwise
7 approved, licensed, or cleared for commercial distribution or is approved or conditionally
8 approved for another use. (21 U.S.C. § 21 360bbb-3(a)(2).)

9 22. Currently, there is only one FDA-approved COVID-19 vaccine, and that vaccine
10 is only approved for individuals ages 16 and older. On August 23, 2021, the FDA approved a
11 Biologics License Application for BioNTech to manufacture a SARS-CoV-2 vaccine under the
12 name of Comirnaty, for use in individuals ages 16 and older.

13 23. The FDA approval letter for Comirnaty states: “We are deferring submission of
14 your pediatric studies for ages younger than 16 years because this product is ready for approval
15 for use in individuals 16 years of age and older, and the pediatric studies for younger ages have
16 not yet been completed.”

17 24. FDA documents indicate that children under 16 may benefit from lower doses of
18 Comirnaty. Dosing, efficacy, and safety of the vaccine for children under 16 remain subject to
19 ongoing study and review.

20 25. An August 30, 2021, preprint by Hoeg et al. concluded: “For boys 12–15 without
21 medical comorbidities receiving their second mRNA vaccination dose, the rate of CAE
22 [stratified cardiac adverse event] is 3.7 to 6.1 times higher than their 120-day COVID-19
23 hospitalization risk as of August 21, 2021 (7-day hospitalizations 1.5/100k population) and 2.6–
24 4.3-fold higher at times of high weekly hospitalization risk (7-day hospitalizations 2.1/100k),
25 such as during January 2021.”

26 26. According to a September 13, 2021, FDA review memorandum entitled Benefit-
27 Risk Assessment of the Pfizer Vaccine for Age 16-17 years, the Pfizer vaccine provides a 6-
28 month protection period and is predicted to prevent 142 COVID-19 hospitalizations but could

1 cause 196 myocarditis/pericarditis hospitalizations for males 16 to 17 years old; for males ages
2 12 to 15, the vaccine may prevent 122 COVID-19 hospitalizations but could cause 179
3 myocarditis/pericarditis hospitalizations. The memorandum further states: “We note that
4 COVID-19 incidence highly influences the predicted benefits of the vaccine. If the disease
5 incidence is higher, the benefits of the vaccine will be greater, and vice versa. Therefore, the
6 benefit-risk conclusion may change if the COVID-19 incidence rate becomes very low in the
7 future.”

8 27. On September 3, 2021, the United Kingdom’s Department of Health & Social
9 Care issued an independent report declining to recommend COVID-19 vaccinations for children
10 ages 12 to 15 without underlying health conditions, agreeing on a “precautionary approach ...
11 given the very low risk of serious disease in those aged 12 to 15 years without an underlying
12 health condition that puts them at increased risk.” The report continued: “Given this very low
13 risk, considerations on the potential harms and benefits of vaccination are very finely balanced.”
14 For example, the clinical picture for myocarditis, according to the report, “is atypical and the
15 medium to long-term (months to years) prognosis, including the possibility of persistence of
16 tissue damage resulting from inflammation, is currently uncertain as sufficient follow-up time
17 has not yet occurred.” The report concluded: “The margin of benefit [from the vaccine], based
18 primarily on a health perspective, is considered too small to support advice on a universal
19 programme of vaccination of otherwise healthy 12 to 15-year-old children at this time.”

20 28. After considering the potential benefits and harms of COVID-19 vaccination for
21 children, the United Kingdom’s Joint Committee on Vaccination and Immunisation (“JVCI”)
22 found, while it is a “very rare adverse event,” there “is increasingly robust evidence of an
23 association between vaccination with mRNA COVID-19 vaccines and myocarditis.” JVCI
24 found: “For persons aged <18 years old who do not have underlying health conditions that put
25 them at higher risk of severe COVID-19, there is more uncertainty in the precision of the harm-
26 benefit balance when considering the impacts on children and young people themselves.”

27 29. JVCI is currently recommending that 16- and 17-year-old children be “offered”
28 — but not required to receive — a first dose of the Pfizer vaccine. Notably, however, the

1 committee only recommends the vaccine for children 12 to 15 who have specific underlying
2 conditions that put them at risk of severe COVID-19.

3 **D. The California Legislature and Department of Public Health Fully Occupy**
4 **the Field of School Immunization Requirements.**

5 30. SDUSD lacks authority to mandate childhood vaccines that are not already
6 required by California law as a condition for attending school.

7 31. CDPH, in consultation with the California Department of Education, must adopt
8 and enforce all regulations necessary to carry out Health and Safety Code, division 105, part 2,
9 chapter 1, commencing with section 120325 but excluding section 120380. (Health & Safety
10 Code, § 120330.) Those regulations appear in the California Code of Regulations (“CCR”), title
11 17, division 1, chapter 4, beginning with section 6000.

12 32. CCR section 6000, subdivision (a), defines “[a]dmission” as “a pupil’s first
13 attendance in a school ... facility or re-entry after withdrawing from a previous enrollment,”
14 while subdivision (a)(1) defines “[u]nconditional admission” as “admission based upon
15 documented receipt of all required immunizations for the pupil’s age or grade, *in accordance*
16 *with section 6025*, except for those immunizations” permanently exempted for medical reasons
17 in accordance with section 6051 or “exempted for personal beliefs in accordance with Health
18 and Safety Code section 120335.” (Italics added.)

19 33. Childhood immunization requirements are within the sole province of the
20 California Legislature and CDPH, whose authority is limited by statute.

21 34. Health and Safety Code section 120325 provides, in relevant part, as follows: “In
22 enacting this chapter ... it is the intent of the Legislature to provide: (a) a means for the eventual
23 achievement of total immunization of appropriate age groups against the following childhood
24 diseases” Thus, SDUSD’s mandate conflicts with state law, which does not permit local
25 school boards to promulgate new vaccination requirements in addition to those already required
26 by state law.

27 35. Health and Safety Code section 120335 provides a list of ten specifically
28 enumerated childhood illnesses from which a child must be immunized as a condition for

1 admission to any school in California, unless the child has a medical exemption. Those illnesses
2 are identified in subdivision (b), as follows: (1) Diphtheria; (2) Hepatitis B; (3) Haemophilus
3 influenzae type b; (4) Measles; (5) Mumps; (6) Pertussis (whooping cough); (7) Poliomyelitis;
4 (8) Rubella; (9) Tetanus; and (10) Varicella (chickenpox). (Health & Safety Code, §
5 120335(b).) Notably, this list does *not* include immunization from COVID-19.

6 36. A report by the Assembly Committee on Health states: “Each of the 10 diseases
7 was added to California code through legislative action, after careful consideration of the public
8 health risks of these diseases, cost to the state and health system, communicability, and rates of
9 transmission.... All of the diseases for which California requires school vaccinations are very
10 serious conditions that pose very real health risks to children.” (*Love v. State Dept. of Education*
11 (2018) 29 Cal.App.5th 980, 987, citing Assem. Com. on Health, Analysis of Sen. Bill No. 277
12 (2015–2016 Reg. Sess.), as amended May 7, 2015, p. 4.)

13 37. While paragraph 11, subdivision (b) of Section 120335 provides for a possible
14 expansion of the statutorily enumerated vaccination requirements through the addition of “any
15 other disease deemed appropriate” by CDPH, it does not authorize individual school districts,
16 including SDUSD, to add other vaccination requirements.

17 38. Furthermore, California law expressly limits CDPH’s authority to mandate
18 additional vaccinations for schoolchildren unless they are provided the opportunity to opt out of
19 the requirement, as follows: “[A]ny immunizations deemed appropriate by the department
20 pursuant to paragraph (11) of subdivision (a) of Section 120325 or paragraph (11) of
21 subdivision (b) of Section 120335, may be mandated before a pupil’s first admission to any
22 private or public elementary or secondary school [...] *only if exemptions are allowed for both*
23 *medical reasons and personal beliefs.*” (Health & Safety Code, § 120338, italics added.)

24 39. The Legislature occupies the field that SDUSD’s vaccination mandate attempts
25 to invade. (*County of Los Angeles v. State Dep’t of Public Health* (1958) 158 Cal. App.2d 425,
26 437.) “Where the Legislature has adopted statutes governing a particular subject matter, its
27 intent with regard to occupying the field to the exclusion of all local regulation is not to be
28 measured alone by the language used but by the whole purpose and scope of the legislative

1 scheme.” (*O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068.) “Whenever the
2 Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the
3 entire control over whatever phases of the subject are covered by state legislation ceases as far
4 as local legislation is concerned.” (*Ibid.*) It follows that “local regulation is invalid if it attempts
5 to impose additional requirements in a field which is fully occupied by statute.” (*Tolman v.*
6 *Underhill* (1952) 39 Cal.2d 708, 712.)

7 40. California law supports existing statewide immunization requirements for
8 schoolchildren; however, a vaccine mandate by an individual public school district is
9 unprecedented where (a) the vaccine is not on the state’s immunization list; (b) many of
10 students are already immune from the virus; (c) the virus does not generally cause serious
11 conditions even for those children who are not immune; (d) the vaccine has a very short track
12 record; and (d) the vaccine poses very real health risks to children.

13 **E. COVID-19 Poses a Very Low Risk to Schoolchildren.**

14 41. COVID-19 cases in the SDUSD community have declined sharply since children
15 and teachers returned to in-person instruction in September 2021 — without any vaccine
16 mandate in place. As of the date of this filing, the test positivity rate for students in the district is
17 0.04%.

18 42. In addition, significant natural and vaccine-induced immunity has already built
19 up to protect the community.

20 43. According to data from CDPH, as of July 2021, more than 3,748,365
21 Californians (9.49% of the state’s population) have tested positive for COVID-19 since March
22 2020. The CDC estimates that only 1 of every 4.2 infections is reported, however, suggesting
23 that more than 15.7 million Californians have previously been infected with COVID-19.¹

24 44. In 2020, a total of 32,026 Californians (0.08% of the population) died with a
25 COVID-19 diagnosis.² For perspective, in 2017, an estimated 62,797 Californians died from

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27 ¹ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/burden.html>.

28 ² <https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm>.

1 heart disease and 59,516 died from cancer.

2 45. The rate of daily or weekly hospitalizations and deaths in a community speak to
3 the virility and severity of the disease locally.

4 46. On January 15, 2021, before vaccinations were widely available, an average of
5 22,265 Californians were hospitalized with COVID-19 over a 14-day period, and 1.7
6 Californians per 100,000 died with COVID-19 over a seven-day period.

7 47. As of September 20, 2021, 69.1% of Californians over the age of 12 have been
8 fully vaccinated, and an additional 8.3% of Californians have received at least one dose of a
9 two-dose vaccine.

10 48. On September 2, 2021, the CDC reported that by May of 2021, prior to the
11 current surge of infections, around 83% of the United States population over age 16 have some
12 degree of protection against COVID-19 due to vaccination or prior infection.³

13 49. According to CDPH, 85.9% of Californians have antibodies for SARS-CoV-2,
14 the virus that causes COVID-19, as of June 12, 2021, when CDPH stopped tracking this data.⁴
15 Logically, this number would only increase over time as additional people are vaccinated or
16 infected with the virus naturally. People who have antibodies were either infected with COVID-
17 19 at some point in the past or may have received a COVID-19 vaccine and are fully or partially
18 immune to COVID-19, meaning they are highly unlikely to be hospitalized or die from a
19 COVID-19 infection. While antibodies wane over time, T-cells, which trigger a robust antibody
20 response to prevent morbidity from infection, remain. T-cell responses are largely unaffected by
21 variants of the SARS-CoV-2 virus. While circulating memory T-cells may not prevent SARS-
22 CoV-2 infection entirely, they reduce the likelihood and limit the severity of a subsequent

24 ³ Jones et al., *Estimated US Infection- and Vaccine-Induced SARS-CoV-2 Seroprevalence Based*
25 *on Blood Donations, July 2020–May 2021* (published online Sept. 2, 2021) JAMA, at
<https://jamanetwork.com/journals/jama/fullarticle/2784013>.

26 ⁴ CDPH, *COVID-19 Seroprevalence Data* (July 9, 2021), at
27 [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Sero-prevalence-COVID-19-](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Sero-prevalence-COVID-19-Data.aspx)
28 [Data.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Sero-prevalence-COVID-19-Data.aspx).

1 COVID-19 infection.⁵

2 50. Data now shows that natural immunity from prior infection with COVID-19 is at
3 least as durable and likely longer-lasting than vaccine-induced immunity.

4 51. A large study from Israel published on August 25, 2021, found that natural
5 immunity following an infection offered considerably more protection than two doses of the
6 Pfizer-BioNTech vaccine, with the vaccinated-only population having a 13-fold increased risk
7 of infection over the population with natural immunity.⁶

8 52. Another large study of over 150,000 patients in Florida and Ohio, published on
9 March 15, 2021, also found that prior infection with COVID-19 was highly protective against
10 reinfection and symptomatic disease.⁷

11 53. A study of 52,238 employees in the Cleveland Clinic Health System found that
12 previously infected employees were highly protected from reinfection: “Not one of the 1359
13 previously infected subjects who remained unvaccinated had a SARS-CoV-2 infection over the
14 duration of the study.”⁸

15 54. A large majority of San Diego County residents have immunity to COVID-19
16 due to prior vaccination or infection, or both. As of October 5, 2021, 72.9% of San Diego
17 County residents are fully vaccinated and 79.7% of residents have had at least one dose of the
18

19 ⁵ Tarke et al., *Negligible impact of SARS-CoV-2 variants on CD4⁺ and CD8⁺ T cell reactivity in*
20 *COVID-19 exposed donors and vaccinees* (Mar. 1, 2021), at
<https://www.biorxiv.org/content/10.1101/2021.02.27.433180v1.full.pdf>.

21 ⁶ Gazit et al., *Comparing SARS-CoV-2 natural immunity to vaccine-induced immunity:*
22 *reinfections versus breakthrough infections* (Aug. 25, 2021), at
<https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1.full.pdf>.

23
24 ⁷ Sheehan et al., *Reinfection Rates among Patients who Previously Tested Positive for COVID-*
25 *19: a Retrospective Cohort Study* (Mar. 15, 2021) *Clinical Infectious Diseases*, available at
[https://academic.oup.com/cid/advance-article-](https://academic.oup.com/cid/advance-article-pdf/doi/10.1093/cid/ciab234/37532380/ciab234.pdf)
26 [pdf/doi/10.1093/cid/ciab234/37532380/ciab234.pdf](https://academic.oup.com/cid/advance-article-pdf/doi/10.1093/cid/ciab234/37532380/ciab234.pdf).

27 ⁸ Shrestha et al., *Necessity of COVID-19 vaccination in previously infected individuals* (June 19,
28 2021), available at <https://www.medrxiv.org/content/10.1101/2021.06.01.21258176v3.full.pdf>.

1 vaccine. 64.4% of San Diego County residents ages 12 to 17 are fully vaccinated, and 72.3%
2 have had at least one dose. Additionally, as of October 9, 2021, an estimated 626,926 San Diego
3 County residents have survived a COVID-19 infection.⁹ This widespread immunity throughout
4 the population helps to reduce the spread of COVID-19 throughout the state and helps to protect
5 children and vulnerable populations from infection.

6 55. Indeed, as of October 10, 2021, the 7-day average for COVID-19
7 hospitalizations throughout the county had decreased 30% over a 14-day period to 284 people
8 hospitalized with COVID-19. As of October 10, 2021, there have been a total of 17 deaths from
9 COVID-19 over a 14-day period in San Diego County. Despite the surge in infections during
10 July and August of 2021, the number of hospitalizations throughout the state has not reached
11 critical levels, and the average number of reported deaths is still only half of that of the surge in
12 July of 2020, when daily cases peaked at only 10,000 per day. As of the date of this filing,
13 CDPH data shows case rates, test positivity rates, hospitalizations, and deaths dropping sharply
14 despite the continued reopening of schools and the California economy.

15 **F. Children Have a Low Risk of Mortality and Morbidity From COVID-19.**

16 56. According to the CDC, children with COVID-19 typically have mild symptoms
17 or no symptoms at all.

18 57. According to the American Academy of Pediatrics and the Children’s Hospital
19 Foundation, for reporting states, the hospitalization rate for children with COVID-19 as of
20 September 2, 2021, is 0.9%, basically the same rate it has been since June 3, 2021, when the
21 rate was 0.8%.¹⁰ The 0.8% figure had persisted since January 7, 2021, when the rate was 0.9%.
22 The high was 3.8%, from May 21, 2020.¹¹ The mortality rate as of September 2, 2021, was
23 0.01% nationally, a figure that has remained the same since October 29, 2020, when it was

24 ⁹[https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/
25 2019-nCoV/status.html](https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/2019-nCoV/status.html).

26 ¹⁰ American Academy of Pediatrics and Children’s Hospital Assn., “Children and Covid-19:
27 State Data Report,” 9/2/21 version, at 18-19, Table 2B.

28 ¹¹ *Id.* at 20, Table 2B.

1 0.02%. In California, as of September 2, 2021, the mortality rate for children ages 0 to 17 is
2 0.01%.¹²

3 58. Likewise, as of September 8, 2021, CDPH reported a 0.0-percent death rate for
4 children 17 and under in California.¹³

5 59. The estimated infection fatality rate for all American children ages 0 to 17 is
6 0.00002%. A recent review found that the mortality risk for children without serious preexisting
7 conditions is effectively zero.¹⁴

8 60. For all children, the mortality risk from a COVID-19 infection is lower than from
9 seasonal influenza.¹⁵ For example, during the 2017–2018 flu season, the CDC estimated that
10 approximately 526 children in the United States died of influenza out of a total of 10.57 million
11 infections,¹⁶ while the CDC’s most recent estimate indicates that only 464 children have died
12 from COVID-19 out of a total of more than 26.8 million infections. Given that 58% of children
13 received the influenza vaccine during that year,¹⁷ influenza would on balance be even more

14 _____
15 ¹² *Id.* at 33, Table 6A.

16 ¹³ California Department of Public Health, Cases and Deaths Associated by Age Group,
September 8, 2021

17 ¹⁴ Makary, *Think Twice Before Giving the COVID Vax to Healthy Kids – Based on the data to*
18 *date, there’s no compelling case for it now* (June 10, 2021) MedPage Today, available at
19 <https://www.medpagetoday.com/opinion/marty-makary/93029>.

20 ¹⁵ Centers for Disease Control and Prevention, National Center for Immunization and
Respiratory Diseases (NCIRD), *2019-20 Season’s Pediatric Flu Deaths Tie High Mark Set*
21 *During 2017–18 Season* (Aug. 18, 2020), available at [https://www.cdc.gov/flu/spotlights/2019-](https://www.cdc.gov/flu/spotlights/2019-2020/2019-20-pediatric-flu-deaths.htm?web=1&wdLOR=cFF98CDC7-76A9-482E-995F-4BF669C8B244)
22 [2020/2019-20-pediatric-flu-deaths.htm?web=1&wdLOR=cFF98CDC7-76A9-482E-995F-](https://www.cdc.gov/flu/spotlights/2019-2020/2019-20-pediatric-flu-deaths.htm?web=1&wdLOR=cFF98CDC7-76A9-482E-995F-4BF669C8B244)
[4BF669C8B244](https://www.cdc.gov/flu/spotlights/2019-2020/2019-20-pediatric-flu-deaths.htm?web=1&wdLOR=cFF98CDC7-76A9-482E-995F-4BF669C8B244).

23 ¹⁶ Centers for Disease Control and Prevention, National Center for Immunization and
Respiratory Diseases (NCIRD), *Estimated Influenza Illnesses, Medical visits, Hospitalizations,*
24 *and Deaths in the United States — 2017–2018 influenza season* (Nov. 22, 2019), available at
25 <https://www.cdc.gov/flu/about/burden/2017-2018.htm>.

26 ¹⁷ Centers for Disease Control and Prevention, National Center for Immunization and
Respiratory Diseases (NCIRD), *Estimates of Flu Vaccination Coverage among Children —*
27 *United States, 2017–18 Flu Season* (Sept. 27, 2018), available at
28 <https://www.cdc.gov/flu/fluview/coverage-1718estimates-children.htm>.

1 deadly than COVID-19. Yet neither the State of California nor SDUSD require schoolchildren
2 to provide evidence of immunization for the flu as a condition to attending school in person.
3 The CDC and American Academy of Pediatrics have recently acknowledged that although more
4 children are getting infected due to the Delta variant, the variant has not increased the
5 hospitalization rate or overall severity in children.¹⁸

6 61. For perspective, over the course of the pandemic, through September 22, 2021,
7 56,781 Americans under the age of 18 have died of all causes, according to the CDC.¹⁹ Only
8 464 of those deaths were from COVID-19 — less than half as many as have died of pneumonia.
9 Of those deaths, 148 were between the ages of 5 and 14. Each year, approximately 4,000
10 American children die in car crashes, and approximately 1,000 die from drowning.²⁰

11 62. Importantly, the risk of COVID-19 mortality is significantly higher for older
12 adults. Indeed, 80% of COVID-19 deaths in America have been among those 65 and above.
13 However, according to the White House, 90% of American seniors are now fully vaccinated. In
14 San Diego County, as of October 5, 2021, 99% of seniors over the age of 70, and 79.7% of all
15 residents over the age of 12 have received at least one dose of a COVID-19 vaccine. On August
16 11, 2021, CDPH issued a public health order requiring all teachers and school staff to get
17 vaccinated or be tested for COVID-19 at least once per week.²¹ At this point, the remaining
18 unvaccinated adults are unvaccinated by choice, not because they are ineligible to receive the
19

20 ¹⁸ Delahoy et al., *Hospitalizations Associated with COVID-19 Among Children and Adolescents*
21 *— COVID-NET, 14 States, March 1, 2020–August 14, 2021*. (Sept. 10, 2021) vol. 70, No. 36
22 *Morbidity and Mortality Weekly Report (MMWR)* 1255, available at
<https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7036e2-H.pdf>.

23 ¹⁹ <https://data.cdc.gov/NCHS/Provisional-COVID-19-Deaths-by-Sex-and-Age/9bhg-hcku>.

24 ²⁰ Cunningham et al., *The Major Causes of Death in Children and Adolescents in the United*
25 *States* (Dec. 20, 2018) vol. 379, No. 25, *N. Engl. J. Med.* 2468, available at
https://www.nejm.org/doi/10.1056/NEJMSr1804754?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed.

26 ²¹ State Public Health Officer Order of August 11, 2021, available at
27 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Vaccine-Verification-for-Workers-in-Schools.aspx>.
28

1 vaccine or the supply of vaccines is inadequate.

2 **G. Children Are Not the Primary Source of COVID-19 Spread.**

3 63. The CDC reports: “The evidence to date suggests that staff-to-student and
4 student-to-student transmission are not the primary means of exposure to SARS-CoV-2 among
5 infected children. Several studies have also concluded that students are not the primary sources
6 of exposure to SARS-CoV-2 among adults in school setting.”²²

7 64. A study of Norwegian children that tested all contacts of children who had tested
8 positive for COVID-19 concluded that “transmission of SARS-CoV-2 from children under 14
9 years of age was minimal in primary schools in Oslo and Viken, the two counties with the
10 highest COVID-19 incidence.”²³

11 65. Additionally, a report in the New England Journal of Medicine summarizing data
12 from Sweden in Spring of 2020 — when schools for children ages 16 and under remained open
13 without requiring masks and COVID-19 vaccines were not yet available — only saw 15
14 children hospitalized in the ICU out of 1,951,905 children (0.77 per 100,000) with zero deaths,
15 and only 30 teachers were hospitalized in the ICU (19 per 100,000), a rate similar to other
16 occupations.²⁴

17 66. The COVID-19 School Dashboard developed by Brown University tracks over
18 5,000 schools, 4 million students, and 1.3 million staff, and has consistently found student and
19 staff infection rates of 0.1% to 0.2% since it began publishing in September 2020.

20
21 ²² National Center for Immunization and Respiratory Diseases (NCIRD), Division of Viral
22 Diseases, *Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and*
23 *Education Programs – Updated* (updated July 9, 2021), at
[https://www.cdc.gov/coronavirus/2019-ncov/science/science-
briefs/transmission_k_12_schools.html](https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html).

24 ²³ Brandal et al., *Minimal transmission of SARS-CoV-2 from paediatric COVID-19 cases in*
25 *primary schools, Norway, August to November 2020* (Jan. 7, 2021) Euro Surveillance, available
26 at <https://doi.org/10.2807/1560-7917.ES.2020.26.1.2002011>.

27 ²⁴ Ludvigsson et al., *Open Schools, Covid-19, and Child and Teacher Morbidity in Sweden*
28 (Feb. 18, 2021) vol. 384, No. 7, N. Engl. J. Med. 669, available at
<https://www.nejm.org/doi/pdf/10.1056/NEJMc2026670?articleTools=true>.

1 67. The CDC acknowledges that vaccinated individuals are still capable of becoming
2 infected and transmitting COVID-19 to others.²⁵

3 **H. SDUSD’s Mandate Will Not Achieve Its Intended Goal**

4 68. SDUSD states that vaccination is “the most *preventive* of all strategies,” because
5 “unlike masking, ventilation, and testing, vaccination protects students before the virus is
6 introduced into the setting, reducing disease and new mutations.” This statement is factually
7 incorrect, as both masking and ventilation strategies are intended to prevent exposure to the
8 SARS-CoV-2 virus altogether, while vaccination expects that the virus will first infect the body
9 but prepare the immune system to fight off the infection.

10 69. The CDC acknowledges that vaccinated individuals are still capable of becoming
11 infected and transmitting COVID-19 to others, and that evidence suggests “the viral load of
12 vaccinated and unvaccinated persons infected with SARS-CoV-2 is also similar.”²⁶

13 70. The latest report in the New England Journal of Medicine indicates that the
14 effectiveness of the Pfizer-BioNTech vaccine (the only vaccine available to children 12 and
15 older) against infection declines to approximately 20% after 5 months, and the authors conclude
16 “that a large proportion of the vaccinated population could lose its protection against infection
17 in the coming months, perhaps increasing the potential for new epidemic waves.”²⁷

18 71. Therefore, any decision to mandate vaccination is unlikely to reduce the number

19 _____
20 ²⁵ Brown et al., *Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine*
21 *Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County,*
22 *Massachusetts, July 2021* (Aug. 6, 2021), vol. 70, No. 31, Morbidity and Mortality Weekly
23 Report (MMWR) 1059, available at
24 <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7031e2-H.pdf>.

25 ²⁶ Brown et al., *Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine*
26 *Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County,*
27 *Massachusetts, July 2021* (Aug. 6, 2021), vol. 70, No. 31, Morbidity and Mortality Weekly
28 Report (MMWR) 1059, available at
<https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7031e2-H.pdf>.

²⁷ Chemaitelly et al., *Waning of BNT162b2 Vaccine Protection against SARS-CoV-2 Infection in Qatar* (October 6, 2021). DOI: 10.1056/NEJMoa2114114.

1 of infections or outbreaks in the school environment.

2 **I. SDUSD’s COVID-19 Vaccine Requirement Harms Children.**

3 72. Since “independent study” is not an effective substitute for in-person learning,
4 and in some instances is not even available,²⁸ students who are not allowed to attend school in-
5 person will have no way to make up for lost in-person learning time.

6 73. Keeping healthy children out of the classroom is contrary to California law, is
7 not necessary to reduce cases of COVID-19 in schools, and is not in the best interest of
8 students, parents, or school districts.

9 74. Policies that use COVID-19 vaccination status to exclude children from school
10 or provide preferential treatment in the form of fewer restrictions are incompatible with state
11 law. Under California law, which requires informed consent prior to any medical procedure,
12 parents and children are the sole decision makers whether a child receives a COVID-19 vaccine.

13 75. Healthy children who have natural immunity to COVID-19 and healthy children
14 who have not received the COVID-19 vaccine should not be discriminated against by SDUSD.

15 **J. Plaintiff Has Complied with Government Code section 954.4.**

16 76. Plaintiff has fully complied with the requirements set forth in Government Code
17 section 945.4. On September 23, 2021, Plaintiff presented a timely demand to the SDUSD,
18 demanding that it not approve implementation of a COVID-19 vaccine mandate. To date,
19 Plaintiff has not received any notice of SDUSD’s acceptance or rejection of their demand and
20 SDUSD has not rescinded its vaccine mandate.

21 **III. CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**
23 **Violation of Health and Safety Code section 120335 and**
24 **California Code of Regulations, Title 17, sections 6026, 6060, and 6065**
25 **Against All Defendants**

26 77. Plaintiffs hereby incorporate each of the foregoing paragraphs as though fully set

26 ²⁸ Rosales, *Independent study frustrates California parents who enrolled children* (Sept. 10,
27 2021) EdSource, at <https://edsource.org/2021/independent-study-frustrates-california-parents-who-enrolled-children/661009>.

1 forth herein.

2 78. Title 17, section 6025 of the California Code of Regulations, the implementing
3 regulation for Health and Safety Code section 120335, provides that a school “shall
4 unconditionally admit or allow continued attendance to any pupil ages 18 months or older
5 whose parent or guardian has provided documentation of any of the following for each
6 immunization required for the pupil's age or grade, as defined in Table A or B of this section.”

7 79. Table A of section 6025 identifies the Immunization Requirements for Pre-
8 Kindergarten, including doses required for specific age groups. Table B identifies California
9 Immunization Requirements for Grades K–12, including doses required for specific age groups.
10 Neither of these tables requires immunization against COVID-19.

11 80. Under title 17, section 6025 of the California Code of Regulations, a permanent
12 medical exemption in accordance with section 6051, or a personal beliefs exemption in
13 accordance with Health and Safety Code section 120335, may be provided in lieu of proof of
14 receipt of immunization.

15 81. SDUSD is required by California law to unconditionally admit or allow
16 continued attendance to any student who has provided proof of immunization, as provided by
17 Tables A and B, or has submitted a medical exemption or personal beliefs exemption.

18 82. Defendants’ COVID-19 vaccine mandate violates section 6025 because it
19 requires school administrators and staff to exclude a child age 16 or older from entering any
20 school property within SDUSD, attending in-person classes, and participating in extracurricular
21 activities, including sports, at any SDUSD school without first providing proof that the child has
22 been vaccinated for COVID-19, in accordance with the vaccination schedule determined by the
23 Board, even though the child has all the immunizations required by section 6025.

24 83. Defendants’ COVID-19 vaccine mandate violates section 120335 of the Health
25 and Safety Code and title 17, section 6025 of the California Code of Regulations because it
26 recognizes only vaccination for COVID-19, and not “immunization,” which can be acquired
27 naturally through prior infection.

28 84. California schoolchildren have a fundamental right to a free public education.

1 85. Hundreds of children 16 and over who have not yet received two shots of the
2 COVID-19 vaccine are currently enrolled as students at schools operated by SDUSD.

3 86. Hundreds of children over the age of 16 who have not yet received two shots of
4 the COVID-19 vaccine are also currently enrolled in school-sponsored extracurricular activities
5 that require them to participate in in-person meetings and activities with other students and
6 teachers at their school.

7 87. More than 1,600 parents called in to SDUSD's board meeting to oppose its
8 proposed vaccination mandate; in stark contrast, less than 100 parents registered comments in
9 favor. Unfortunately, SDUSD severely limited the number of parents who were permitted to
10 comment, and improperly permitted an equal number of speakers in support as in opposition to
11 ultimately speak at its board meeting.

12 88. Children over the age of 16 who do not receive their first dose of a COVID-19
13 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
14 SDUSD's December 20, 2021, deadline will be excluded from in-person instruction and
15 participation in extracurricular activities on SDUSD's campuses.

16 89. Children over the age of 16 who do not receive their first dose of a COVID-19
17 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
18 SDUSD's December 20, 2021, deadline will be involuntarily enrolled in an independent study
19 program and will not be permitted to enter school property for any purpose.

20 90. Children over the age of 16 who do not receive their first dose of a COVID-19
21 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
22 SDUSD's December 20, 2021, deadline will suffer irreparable harm each day that they are
23 excluded from SDUSD's school campuses, whether for in-person instruction, extracurricular
24 activities, or other educational or social purposes.

25 91. Plaintiff has no administrative remedy and has no adequate remedy at law.

26 **SECOND CAUSE OF ACTION**
27 **Violation of California Code of Regulations, title 5, section 11700**
28 **Against All Defendants**

92. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set

1 forth herein.

2 93. SDUSD’s Board Policy Manual states, in relevant portion, as follows: “The
3 Board of Education encourages the enrollment and appropriate placement of all school-aged
4 children in school. The Superintendent or designee shall inform parents/guardians of children
5 entering a district school at any grade level about admission requirements and shall assist them
6 with enrollment procedures. Before enrolling any child in a district school, the Superintendent
7 or designee shall verify the child’s age, residency, immunization, and other applicable eligibility
8 criteria specified in law, the accompanying administrative regulation, or other applicable Board
9 policy or administrative regulation. New to district and returning pupils will be initially enrolled
10 in accordance with CA Ed Code birthdate requirements and the district’s Board Policies and
11 Administrative Regulations.” (San Diego Unified School District – Students, Admission, BP
12 5111.)

13 94. SDUSD’s Board Policies include a policy specifying the immunizations that a
14 child must receive prior to admission in its schools, as follows: “The Superintendent or designee
15 shall not unconditionally admit any student to a district elementary or secondary school,
16 preschool, or child care and development program for the first time nor, after July 1, 2016,
17 admit or advance any student to grade 7 unless the student has been fully immunized. The
18 student shall present documentation of full immunization, in accordance with the age/grade and
19 dose required by the California Department of Public Health (CDPH), against the following
20 diseases: (Health and Safety Code 120335; 17 CCR 6020) 1. Measles, mumps, and rubella
21 (MMR); 2. Diphtheria, tetanus, and pertussis (whooping cough) (DTP, DTaP, or Tdap); 3.
22 Poliomyelitis (polio); 4. Hepatitis B; 5. Varicella (chickenpox); 6. Haemophilus influenza type
23 b (Hib meningitis); 7. Any other disease designated by the CDPH.” (San Diego Unified School
24 District – Students, IMMUNIZATIONS, Required Immunizations, AR 514.31(a).)

25 95. SDUSD is required by California law to unconditionally admit or allow
26 continued attendance to any student who has provided proof of immunization, as provided by
27 Title 17, Section 6025, Tables A and B, or has submitted a medical exemption or personal
28 beliefs exemption (subject to expiration per code).

1 96. SDUSD’s COVID-19 vaccine mandate contemplates involuntary, automatic
2 enrollment in the district’s independent study program for children ages 13 and over who do not
3 provide proof of COVID-19 vaccination by SDUSD’s January 21, 2022, deadline.

4 97. Under title 5, section 11700 of the California Code of Regulations, “Independent
5 study is an optional educational alternative in which no pupil may be required to participate.”
6 (Cal. Code. Regs., tit. 5, § 11700, subd. (d).)

7 98. Additionally, title 5, section 11700 of the California Code of Regulations
8 provides that “a pupil’s ... choice to commence, or to continue in, independent study must not
9 be coerced.” (Cal. Code. Regs., tit. 5, § 11700, subs. (d)(2)(A).)

10 99. Moreover, “instruction may be provided to the pupil through independent study
11 only if the pupil has the continuing option of classroom instruction.” (Cal. Code. Regs., tit. 5, §
12 11700, subd. (d)(2)(B).)

13 100. SDUSD’s COVID-19 vaccine mandate violates California Code of Regulations,
14 title 5, section 11700, because it will lead to the forced and involuntarily enrollment of any child
15 age 16 or over in the district’s independent study program, and will require the exclusion of the
16 child from any school property within SDUSD, in-person classes, and extracurricular activities,
17 including sports, at any SDUSD school, unless the child provides proof that they have been
18 vaccinated for COVID-19, in accordance with the vaccination schedule determined by the
19 Board.

20 101. California schoolchildren have a fundamental right to a free public education.

21 102. Hundreds of children over the age of 16 who have not yet received two shots of
22 the COVID-19 vaccine are currently enrolled as students at schools operated by SDUSD.

23 103. Hundreds of children over the age of 16 who have not yet received two shots of
24 the COVID-19 vaccine are also currently enrolled in school-sponsored extracurricular activities
25 that require them to participate in in-person meetings and activities with other students and
26 teachers at their school.

27 104. More than 1,600 parents called in to SDUSD’s board meeting to oppose its
28 proposed vaccination mandate; in stark contrast, less than 100 parents registered comments in

1 favor. Unfortunately, SDUSD severely limited the number of parents who were permitted to
2 comment, and improperly permitted an equal number of speakers in support as in opposition to
3 ultimately speak at its board meeting.

4 105. Children over the age of 16 who do not receive their first dose of a COVID-19
5 vaccine by SDUSD’s November 29, 2021, deadline and who do not receive a second dose by
6 SDUSD’s December 20, 2021, deadline will be excluded from in-person instruction and
7 participation in extracurricular activities on SDUSD’s campuses.

8 106. Children over the age of 16 who do not receive their first dose of a COVID-19
9 vaccine by SDUSD’s November 29, 2021, deadline and who do not receive a second dose by
10 SDUSD’s December 20, 2021, deadline will be involuntarily enrolled in an independent study
11 program, and will not be permitted to enter school property for any purpose.

12 107. Children over the age of 16 who do not receive their first dose of a COVID-19
13 vaccine by SDUSD’s November 29, 2021, deadline and who do not receive a second dose by
14 SDUSD’s December 20, 2021, deadline will suffer irreparable harm each day that they are
15 excluded from SDUSD’s school campuses, whether for in-person instruction, extracurricular
16 activities, or other educational or social purposes.

17 108. Plaintiff has no administrative remedy and has no adequate remedy at law.

18 **THIRD CAUSE OF ACTION**
19 **Violation of Education Code sections 51746 and 51747**
20 **Against All Defendants**

21 109. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set
22 forth herein.

23 110. The Education Code provides that “independent study is an optional educational
24 alternative in which no pupil may be required to participate.” (Ed. Code, § 51747, subd. (f)(8).)
25 A school may enroll a child in such a program only if there has been a “pupil-parent-educator
26 conference” to determine whether enrollment in independent study is in the best interest of the
27 child (*id.*, § 51747, subd. (h)(2)) and “a signed written agreement for independent study from
28 the pupil, or the pupil’s parent or legal guardian if the pupil is less than 18 years of age” (*id.*, §
51747, subd. (f)(9)(F)).

1 111. Additionally, a child enrolled in a remote learning or independent study program
2 cannot be excluded from school facilities. Rather, the school “shall ensure the same access to all
3 existing services and resources in the school in which the pupil is enrolled ... as is available to
4 all other pupils in the school.” (Ed. Code, § 51746.)

5 112. A child enrolled in an independent study program always retains the option to
6 return to his or her regular classroom for in-person instruction. The school is required to
7 “transition pupils whose families wish to return to in-person instruction from independent study
8 expeditiously, and, in no case, later than five instructional days.” (Ed. Code, § 51747, subd. (f).)

9 113. SDUSD’s COVID-19 vaccine mandate unlawfully requires school administrators
10 and staff to involuntarily enroll any child age 16 or over in the district’s independent study
11 program, and to exclude the child from any school property within SDUSD, in-person classes,
12 and extracurricular activities, including sports, at any SDUSD school unless they provide proof
13 that the child has been vaccinated for COVID-19, in accordance with the vaccination schedule
14 determined by the Board.

15 114. California schoolchildren have a fundamental right to a free public education.

16 115. Hundreds of children over the age of 16 who have not yet received two shots of
17 the COVID-19 vaccine are currently enrolled as students at schools operated by SDUSD.

18 116. Hundreds of children over the age of 16 who have not yet received two shots of
19 the COVID-19 vaccine are also currently enrolled in school-sponsored extracurricular activities
20 that require them to participate in in-person meetings and activities with other students and
21 teachers at their school.

22 117. More than 1,600 parents called in to SDUSD’s board meeting to oppose its
23 proposed vaccination mandate; in stark contrast, less than 100 parents registered comments in
24 favor. Unfortunately, SDUSD severely limited the number of parents who were permitted to
25 comment, and improperly permitted an equal number of speakers in support as in opposition to
26 ultimately speak at its board meeting.

27 118. Children over the age of 16 who do not receive their first dose of a COVID-19
28 vaccine by SDUSD’s November 29, 2021, deadline and who do not receive a second dose by

1 SDUSD’s December 20, 2021, deadline will be excluded from in-person instruction and
2 participation in extracurricular activities on SDUSD’s campuses.

3 119. Children over the age of 16 who do not receive their first dose of a COVID-19
4 vaccine by SDUSD’s November 29, 2021, deadline and who do not receive a second dose by
5 SDUSD’s December 20, 2021 deadline will be involuntarily enrolled in an independent study
6 program, and will not be permitted to enter school property for any purpose.

7 120. Children over the age of 16 who do not receive their first dose of a COVID-19
8 vaccine by SDUSD’s November 29, 2021, deadline and who do not receive a second dose by
9 SDUSD’s December 20, 2021 deadline will suffer irreparable harm each day that they are
10 excluded from SDUSD’s school campuses, whether for in-person instruction, extracurricular
11 activities, or other educational or social purposes.

12 121. Plaintiff has no administrative remedy and has no adequate remedy at law.

13 **FOURTH CAUSE OF ACTION**
14 **Violation of the Right to Privacy**
15 **Against All Defendants**

16 122. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set
17 forth herein.

18 123. All people are by nature free and independent and have inalienable rights.
19 Among these are the rights of enjoying and defending life and liberty; acquiring, possessing,
20 and protecting property; and pursuing and obtaining safety, happiness, and privacy.

21 124. The right to privacy was added to the California Constitution by voters in 1972.
22 The ballot pamphlet, which was distributed to the voters prior to the election, stated that the
23 constitutional right to privacy encompassed a variety of rights involving private choice in
24 personal affairs. “The right to privacy is the right to be left alone. It is a fundamental and
25 compelling interest. It protects our homes, our families, our thoughts, our emotions, our
26 expressions, our personalities, our freedom of communion, and our freedom to associate with
27 the people we choose [para.] The right of privacy is an important American heritage and
28 essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth, and Ninth
Amendments to the U.S. Constitution. This right should be abridged only when there is

1 compelling public need.” (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to
2 voters, Gen. Elec. (Nov. 7, 1972) p. 27, as quoted in *Robbins v. Superior Court* (1985) 38
3 Cal.3d 199, 212.)

4 125. The right to refuse medical treatment is a constitutionally guaranteed right which
5 must not be abridged. (*Bartling v. Superior Court* (1984) 163 Cal.App. 3d 186, 195.) This right
6 is specifically guaranteed by the California Constitution (art. I, § 1) and has been found to exist
7 in the “penumbra” of rights guaranteed by the Fifth and Ninth Amendments to the United States
8 Constitution. (*Griswold v. Connecticut* (1965) 381 U.S. 479, 484.) “In short, the law recognizes
9 the individual interest in preserving ‘the inviolability of his person.’” (*Superintendent of*
10 *Belchertown State School v. Saikewicz* (Mass. 1977) 370 N.E.2d 417, 424.) The constitutional
11 right of privacy guarantees to the individual the freedom to choose to reject, or refuse to consent
12 to, intrusions of his bodily integrity. (*Id.* at 427.)

13 126. “When receipt of a public benefit is conditioned upon the waiver of a
14 constitutional right, the government bears a heavy burden of demonstrating the practical
15 necessity for the limitation.” (*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 213.)

16 127. Though certain other vaccines have previously been required to attend school,
17 and courts have found those infringements on the right to privacy justified by public health
18 necessity, there is no such justification for SDUSD’s COVID-19 vaccine mandate. Children’s
19 risks of severe disease, hospitalization, and death from COVID-19 are extremely low — and
20 falling. Children have not been found to be a significant vector for spreading COVID-19 in
21 schools. COVID-19 vaccines for children thus provide very little benefit to the school
22 population. Weighing against this scant benefit, COVID-19 vaccines have been found to cause
23 negative side effects in children, including myocarditis and pericarditis, at higher rates than
24 adults. COVID-19 vaccines are relatively new, and the full extent of side effects in children is
25 not yet fully known. One otherwise healthy 15-year-old boy in Sonoma County died on June 7,
26 2021, two days after receiving his second dose of a COVID-19 vaccine. The cause of death was
27 determined to be “STRESS CARDIOMYOPATHY WITH PERIVASCULAR CORONARY
28 ARTERY INFLAMMATION,” believed to be a result of the COVID-19 vaccine. By

1 comparison, Sonoma County has recorded zero pediatric deaths from COVID-19. The
2 infringement on the privacy of California schoolchildren thus is not warranted.

3 128. California schoolchildren have a fundamental right to a free public education.

4 129. Hundreds of children over the age of 16 who have not yet received two shots of
5 the COVID-19 vaccine are currently enrolled as students at schools operated by SDUSD.

6 130. Hundreds of children over the age of 16 who have not yet received two shots of
7 the COVID-19 vaccine are also currently enrolled in school-sponsored extracurricular activities
8 that require them to participate in in-person meetings and activities with other students and
9 teachers at their school.

10 131. More than 1,600 parents called in to SDUSD's board meeting to oppose its
11 proposed vaccination mandate; in stark contrast, less than 100 parents registered comments in
12 favor. Unfortunately, SDUSD severely limited the number of parents who were permitted to
13 comment, and improperly permitted an equal number of speakers in support as in opposition to
14 ultimately speak at its board meeting.

15 132. Children over the age of 16 who do not receive their first dose of a COVID-19
16 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
17 SDUSD's December 20, 2021, deadline will be excluded from in-person instruction and
18 participation in extracurricular activities on SDUSD's campuses.

19 133. Children over the age of 16 who do not receive their first dose of a COVID-19
20 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
21 SDUSD's December 20, 2021, deadline will be involuntarily enrolled in an independent study
22 program, and will not be permitted to enter school property for any purpose.

23 134. Children over the age of 16 who do not receive their first dose of a COVID-19
24 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
25 SDUSD's December 20, 2021, deadline will suffer irreparable harm each day that they are
26 excluded from SDUSD's school campuses, whether for in-person instruction, extracurricular
27 activities, or other educational or social purposes.

28 135. Plaintiff has no administrative remedy and has no adequate remedy at law.

1 **FIFTH CAUSE OF ACTION**
2 **Violation of Article IX of the California Constitution**
3 **Against All Defendants**

4 136. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set
5 forth herein.

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

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

13 139. By implementing a stringent and discriminatory COVID-19 vaccine mandate,
14 Defendants are denying California schoolchildren their fundamental right to an education that
15 provides a “general diffusion of knowledge and intelligence essential to the preservation of the
16 rights and liberties of the people” and ensures the opportunity to become proficient according to
17 the state of California’s standards, to develop the skills and capacities necessary to achieve
18 economic and social success in our competitive society, and to participate meaningfully in
19 political and community life.

20 140. By preventing unvaccinated students from entering SDUSD’s school campuses
21 for in-person instruction and extracurricular activities, Defendants have interfered, to the
22 detriment of California schoolchildren and their families, with the state’s “system of common
23 schools by which a free school shall be kept up and supported in each district at least six months
24 in every year”

25 141. The alleged government interest in slowing the spread of the virus that causes
26 COVID-19 does not justify this infringement on California’s students’ constitutional right to a
27 quality education.

28 142. Defendants’ decisions and other actions recited herein are significantly broader
than necessary to serve the alleged government interest in slowing the spread of the virus that

1 causes COVID-19.

2 143. Defendants' decisions and other actions recited herein are not narrowly tailored
3 to minimize infringements on students' educational rights.

4 144. California students and their families are suffering irreparable harm each day that
5 their schools are required to implement Defendants' unreasonable and overly broad mandates.

6 145. Plaintiff has no administrative remedy and has no adequate remedy at law.

7 **SIXTH CAUSE OF ACTION**
8 **Violation of the Equal Protection Clause of the California Constitution**
9 **Against All Defendants**

10 146. Plaintiffs hereby incorporate each of the foregoing paragraphs as though fully set
11 forth herein.

12 147. Under the Equal Protection Clause of the California Constitution, "[a] person
13 may not be ... denied equal protection of the laws." (Cal. Const., art. I, § 7, subd. (a).) Further,
14 "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the
15 same terms to all citizens." (Cal. Const., Art. I, § 7, subd. (b).)

16 148. Equal protection of the laws ensures that people who are similarly situated for
17 purposes of a law are generally treated similarly by the law. This means that a government actor
18 may not adopt a rule that affects two or more similarly situated groups in an unequal manner.

19 149. "The first prerequisite to a meritorious claim under the equal protection clause is
20 a showing that the state has adopted a classification that affects two or more similarly situated
21 groups in an unequal manner. This initial inquiry is not whether persons are similarly situated
22 for all purposes, but whether they are similarly situated for purposes of the law challenged."
23 (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253, citations omitted; see also *DiMartile v.*
24 *Cuomo* (N.D.N.Y. 2020, No. 1:20-CV-0859 (GTS/CFH)), 2020 WL 4558711, at *10 [holding
25 pandemic restrictions violated equal protection guarantees]; *Deese v. City of Lodi* (1937) 21
26 Cal.App.2d 631, 635 [holding health restrictions applicable only to certain industries violated
27 equal protection guarantees].)

28 150. The government's exercise of police power "cannot be so used as to arbitrarily
limit the rights of one class of people, and allow those same rights and privileges to a different

1 class, where the public welfare does not demand or justify such a classification.” (*Deese, supra*,
2 21 Cal.App.2d at 640.))

3 151. Defendants’ restrictions violate the Equal Protection Clause of the California
4 Constitution because (1) Defendants’ COVID-19 vaccination mandate applies only to SDUSD,
5 whereas there is no such statewide mandate; (2) Defendants’ regulations distinguish between
6 vaccinated and unvaccinated children, and impose independent study as the sole option for
7 education for children over the age of 16 who are unvaccinated, including children who have
8 natural immunity from prior infection, while providing in-person education and opportunities to
9 participate in extracurricular activities to those who are vaccinated; (3) Defendants’ rules
10 wholly ignore the efficacy of naturally acquired immunity, while only recognizing vaccinated
11 immunity and sanctioning preferential treatment for vaccinated individuals; (4) Defendants’
12 rules enable its employees to request a religious exemption from the mandate, while denying
13 students an opportunity to make the same request; and (5) Defendants’ rules treat unvaccinated
14 migrant, foster, homeless, and military family members’ children more favorably than all other
15 unvaccinated children by permitting unvaccinated migrant, foster, homeless, and military family
16 members’ children to attend school in-person and to participate in extracurricular activities on
17 Defendants’ school campuses, even if they are unvaccinated.

18 152. Where a rule results in infringement of a fundamental right, such rule is subject
19 to strict scrutiny. Education is a fundamental right under the California Constitution. Thus, any
20 rule that deprives a person or group of equal access to education is subject to strict scrutiny.

21 153. Strict scrutiny demands that the government actor establish (1) it has a
22 compelling interest that justifies the challenged rule; (2) the rule is necessary to further that
23 interest; and (3) the rule is narrowly drawn to achieve that end.

24 154. The alleged government interest in slowing the spread of the virus that causes
25 COVID-19 does not justify Defendants’ rules.

26 155. Defendants’ rules are significantly broader than necessary to further the alleged
27 government interest in slowing the spread of the virus that causes COVID-19.

28 156. Defendants’ rules are not narrowly drawn to minimize infringements on the

1 fundamental rights of California’s schoolchildren.

2 157. Experience and science have demonstrated that schools do not drive community
3 transmission of the virus and that schools can reopen safely with basic precautions that are
4 much less harmful to students than the overbroad vaccine mandate Defendants have imposed.

5 158. The distinction made by Defendants between vaccinated and unvaccinated
6 children — and even different classes of unvaccinated children (i.e., migrant, foster, homeless,
7 and military family members’ children) — cannot survive strict scrutiny. In the alternative,
8 these distinctions cannot survive even rational basis scrutiny. Individuals who have been
9 vaccinated for COVID-19 can and do still get infected with the COVID-19 virus. Naturally
10 acquired immunity has been found to be equal or superior to vaccine-induced immunity.
11 Defendants’ preferential treatment of vaccinated individuals and certain classes of unvaccinated
12 individuals discriminates, without justification, against all other unvaccinated individuals,
13 including those with natural immunity who have recovered from COVID-19. It also creates
14 three classes of children: those who have been vaccinated for COVID-19, those who have not
15 been vaccinated for COVID-19 but fall within a certain class of children subject to preferential
16 treatment, and those children who do not fall within one of those classes but have not been
17 vaccinated.

18 159. Defendants’ COVID-19 vaccine mandate treats children who have not been
19 vaccinated and are not members of an exempt group as an inferior class, in that those children
20 cannot attend the school of their choice within SDUSD, cannot participate in in-person classes,
21 and cannot enter a school property for any purpose, including extracurricular and other
22 activities, while the children who have been vaccinated or are a member of an exempt group are
23 allowed to attend the school of their choice within SDUSD, to participate in in-person classes,
24 and to enter a school property for extracurricular and other activities.

25 160. Defendants’ COVID-19 vaccine mandate and their proposed exclusion and
26 imposition of restrictions on unvaccinated students cannot withstand strict scrutiny. In the
27 alternative, it cannot survive even rational basis scrutiny. A COVID-19 vaccine mandate for
28 children is nonsensical and unjustified where most teachers and school staff have been

1 vaccinated, and studies have revealed that children are unlikely to spread COVID-19 to adults
2 and others. *All teachers and staff have now had the opportunity to receive both doses of the*
3 *vaccine.* Defendants’ COVID-19 vaccine mandate does not guarantee or even suggest that all
4 students who are vaccinated will be free of COVID-19 when they are physically present at
5 school such that the safety of other students, teachers and staff, and their families will be
6 ensured or even nominally aided. Indeed, isolating and excluding unvaccinated students is
7 nothing more than theatrics, designed to make students, teachers, staff, and their families “feel
8 safe.”

9 161. California schoolchildren have a fundamental right to a free public education.

10 162. Hundreds of children over the age of 16 who have not yet received two shots of
11 the COVID-19 vaccine are currently enrolled as students at schools operated by SDUSD.

12 163. Hundreds of children over the age of 16 who have not yet received two shots of
13 the COVID-19 vaccine are also currently enrolled in school-sponsored extracurricular activities
14 that require them to participate in in-person meetings and activities with other students and
15 teachers at their school.

16 164. More than 1,600 parents called in to SDUSD’s board meeting to oppose its
17 proposed vaccination mandate; in stark contrast, less than 100 parents registered comments in
18 favor. Unfortunately, SDUSD severely limited the number of parents who were permitted to
19 comment, and improperly permitted an equal number of speakers in support as in opposition to
20 ultimately speak at its board meeting.

21 165. Children over the age of 16 who do not receive their first dose of a COVID-19
22 vaccine by SDUSD’s November 29, 2021, deadline and who do not receive a second dose by
23 SDUSD’s December 20, 2021, deadline will be excluded from in-person instruction and
24 participation in extracurricular activities on SDUSD’s campuses.

25 166. Children over the age of 16 who do not receive their first dose of a COVID-19
26 vaccine by SDUSD’s November 29, 2021, deadline and who do not receive a second dose by
27 SDUSD’s December 20, 2021, deadline will be involuntarily enrolled in an independent study
28 program and will not be permitted to enter school property for any purpose.

1 167. Children over the age of 16 who do not receive their first dose of a COVID-19
2 vaccine by SDUSD’s November 29, 2021, deadline and who do not receive a second dose by
3 SDUSD’s December 20, 2021, deadline will suffer irreparable harm each day that they are
4 excluded from SDUSD’s school campuses, whether for in-person instruction, extracurricular
5 activities, or other educational or social purposes.

6 168. Plaintiff has no administrative remedy and has no adequate remedy at law.

7 **SEVENTH CAUSE OF ACTION**
8 **Violation of Education Code section 220**
9 **Against All Defendants**

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

12 170. Under California Education Code section 220, “No person shall be subjected to
13 discrimination on the basis of disability, gender, gender identity, gender expression,
14 nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is
15 contained in the definition of hate crimes set forth in Section 422.55 of the Penal
16 Code, including immigration status, in any program or activity conducted by an educational
17 institution that receives, or benefits from, state financial assistance, or enrolls pupils who
18 receive state student financial aid.” (Ed. Code, § 220.)

19 171. SDUSD and its schools are educational institutions that receive state financial
20 assistance.

21 172. Defendants’ COVID-19 vaccine mandate discriminates against all unvaccinated
22 schoolchildren — including those who are immune due to prior infection — that are not
23 members of one of the classes of children that SDUSD has specified as exempt from the
24 requirement, including migrant children, who will be permitted to receive the benefits of in-
25 person education, regardless of their COVID-19 vaccination status, based solely on their
26 nationality and/or immigration status, while other unvaccinated children who are not migrants
27 will be involuntarily transferred to independent study.

28 173. Defendants’ COVID-19 vaccine mandate does not treat all children equally, as it
gives preference to and permits unvaccinated migrant children to continue to attend in-person

1 classes and extracurricular activities at its schools, while barring all other unvaccinated
2 schoolchildren, including children who have recovered from COVID-19, from in-person classes
3 and extracurricular activities at SDUSD schools.

4 174. California schoolchildren have a fundamental right to a free public education.

5 175. Hundreds of children over the age of 16 who have not yet received two shots of
6 the COVID-19 vaccine are currently enrolled as students at schools operated by SDUSD.

7 176. Hundreds of children over the age of 16 who have not yet received two shots of
8 the COVID-19 vaccine are also currently enrolled in school-sponsored extracurricular activities
9 that require them to participate in in-person meetings and activities with other students and
10 teachers at their school.

11 177. More than 1,600 parents called in to SDUSD's board meeting to oppose its
12 proposed vaccination mandate; in stark contrast, less than 100 parents registered comments in
13 favor. Unfortunately, SDUSD severely limited the number of parents who were permitted to
14 comment, and improperly permitted an equal number of speakers in support as in opposition to
15 ultimately speak at its board meeting.

16 178. Children over the age of 16 who do not receive their first dose of a COVID-19
17 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
18 SDUSD's December 20, 2021, deadline will be excluded from in-person instruction and
19 participation in extracurricular activities on SDUSD's campuses.

20 179. Children over the age of 16 who do not receive their first dose of a COVID-19
21 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
22 SDUSD's December 20, 2021, deadline will be involuntarily enrolled in an independent study
23 program and will not be permitted to enter school property for any purpose.

24 180. Children over the age of 16 who do not receive their first dose of a COVID-19
25 vaccine by SDUSD's November 29, 2021 deadline and who do not receive a second dose by
26 SDUSD's December 20, 2021 deadline will suffer irreparable harm each day that they are
27 excluded from SDUSD's school campuses, whether for in-person instruction, extracurricular
28 activities, or other educational or social purposes.

1 181. Plaintiff has no administrative remedy and has no adequate remedy at law.

2 **EIGHTH CAUSE OF ACTION**
3 **Violation of Government Code section 11135**
4 **Against All Defendants**

5 182. Plaintiffs hereby incorporate each of the foregoing paragraphs as though fully set
6 forth herein.

7 183. Under Government Code section 11135, “No person in the State of California
8 shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group
9 identification, age, mental disability, physical disability, medical condition, genetic information,
10 marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits
11 of, or be unlawfully subjected to discrimination under, any program or activity that is
12 conducted, operated, or administered by the state or by any state agency, is funded directly by
13 the state, or receives any financial assistance from the state.” (Cal. Gov. Code, § 11135.)

14 184. SDUSD and its schools receive state financial assistance.

15 185. Defendants’ COVID-19 vaccine mandate discriminates against all unvaccinated
16 schoolchildren — including those who are immune due to prior infection — that are not
17 members of one of the classes of children that SDUSD has specified as exempt from the
18 requirement, including migrant children, who will be permitted to receive the benefits of in-
19 person education, regardless of their COVID-19 vaccination status, based solely on their
20 ancestry, national origin, or ethnic group identification, while other unvaccinated children who
21 are not migrants will be involuntarily transferred to independent study.

22 186. Defendants’ COVID-19 vaccine mandate does not treat all children equally, as it
23 gives preference to and permits unvaccinated migrant children to continue to attend in-person
24 classes and extracurricular activities at its schools, while barring all other unvaccinated
25 schoolchildren, including children who have recovered from COVID-19, from in-person classes
26 and extracurricular activities at SDUSD schools.

27 187. California schoolchildren have a fundamental right to a free public education.

28 188. Hundreds of children over the age of 16 who have not yet received two shots of
the COVID-19 vaccine are currently enrolled as students at schools operated by SDUSD.

1 189. Hundreds of children over the age of 16 who have not yet received two shots of
2 the COVID-19 vaccine are also currently enrolled in school-sponsored extracurricular activities
3 that require them to participate in in-person meetings and activities with other students and
4 teachers at their school.

5 190. More than 1,600 parents called in to SDUSD's board meeting to oppose its
6 proposed vaccination mandate; in stark contrast, less than 100 parents registered comments in
7 favor. Unfortunately, SDUSD severely limited the number of parents who were permitted to
8 comment, and improperly permitted an equal number of speakers in support as in opposition to
9 ultimately speak at its board meeting.

10 191. Children over the age of 16 who do not receive their first dose of a COVID-19
11 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
12 SDUSD's December 20, 2021, deadline will be excluded from in-person instruction and
13 participation in extracurricular activities on SDUSD's campuses.

14 192. Children over the age of 16 who do not receive their first dose of a COVID-19
15 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
16 SDUSD's December 20, 2021, deadline will be involuntarily enrolled in an independent study
17 program and will not be permitted to enter school property for any purpose.

18 193. Children over the age of 16 who do not receive their first dose of a COVID-19
19 vaccine by SDUSD's November 29, 2021, deadline and who do not receive a second dose by
20 SDUSD's December 20, 2021, deadline will suffer irreparable harm each day that they are
21 excluded from SDUSD's school campuses, whether for in-person instruction, extracurricular
22 activities, or other educational or social purposes.

23 194. Plaintiff has no administrative remedy and has no adequate remedy at law.

24 WHEREFORE, Plaintiff prays for relief as follows:

- 25 1. A temporary restraining order, preliminary and permanent injunction, and writ of
26 mandate restraining and preventing Defendants and their officers, agents, or any
27 other persons acting with them or on their behalf from implementing and
 enforcing a COVID-19 vaccine mandate for all students ages 16 and up;
- 28 2. A temporary restraining order, preliminary and permanent injunction, and writ of
 mandate restraining and preventing Defendants and their officers, agents, or any

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other persons acting with them or on their behalf from excluding children who have not received two doses of a COVID-19 vaccine by December 21, 2021, or within 35 days of their 16th birthday, from reasonably enjoying the benefits of full-time, in-person instruction, extracurricular activities, and all other benefits afforded to vaccinated children in their schools, and ordering Defendants to admit all such students unconditionally for in-person school attendance and participation in extracurricular activities;

- 3. A declaration that Defendants lack authority to issue a COVID-19 vaccine mandate for students;
- 4. A declaration that SDUSD’s COVID-19 vaccine mandate is invalid and unlawful;
- 5. A declaration that Defendants cannot require schools to exclude a student unvaccinated for COVID-19 from in-person learning;
- 6. A declaration that Defendants cannot involuntarily enroll any student in an independent study program;
- 7. Attorneys’ fees pursuant to section 1021.5 of the Code of Civil Procedure and any other applicable provision of law;
- 8. Costs of suit; and
- 9. Such other and further relief as the court may deem just and proper.

Dated: October 11, 2021

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