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8 Attorneys for Plaintiffs

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES – SANTA MONICA COURTHOUSE**

11 LET THEM CHOOSE, an initiative of
12 LET THEM BREATHE, a California
13 non-profit public benefit corporation;
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15 Plaintiffs,
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17 v.
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19 PALISADES CHARTER HIGH
20 SCHOOL; and DOES 1–50,
21
22 Defendants.

Case No.
**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND
PETITION FOR WRIT OF MANDATE**

Department:
Judge:

Action filed:
Trial date:

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1 Plaintiff LET THEM CHOOSE, an initiative of LET THEM BREATHE, complains of
2 Defendants PALISADES CHARTER HIGH SCHOOL; and DOES 1–50, inclusive, as follows:

3 **I. PARTIES.**

4 **A. Plaintiffs.**

5 1. Plaintiff LET THEM CHOOSE is an initiative of LET THEM BREATHE, a
6 California nonprofit public benefit corporation that represents a community of more than 30,000
7 parent members, including parents and guardians whose children attend Palisades Charter High
8 School (“PCHS”). Let Them Breathe has been advocating for mask choice since the start of
9 2021. The Let Them Choose initiative aims to protect families’ rights to make personal medical
10 decisions and students’ right to an in-person education.

11 2. Plaintiff brings this lawsuit in a representative capacity on behalf of its parent
12 and guardian members whose children attend PCHS and will not receive two doses of the
13 COVID-19 vaccine by December 27, 2021.

14 **B. Defendants.**

15 3. Defendant PCHS is an independent charter high school in the Los Angeles
16 Unified School District (“LAUSD”) and City and County of Los Angeles that serves
17 approximately 3,000 students in 9th through 12th grade. It is accredited by the Western
18 Association of Schools and Colleges (WASC). More than 96% of its students graduate, with the
19 majority matriculating to college. PCHS is a nonprofit public benefit corporation governed by
20 elected officials who serve as members of its Board of Trustees. The PCHS Student Bill of
21 Rights and Responsibilities, drafted in January 2017, provides, in relevant portion, as follows:
22 “All students have the right to equal participation in the life of the school community, including
23 its resources, activities, and information.”

24 4. The true names and capacities of Defendants sued herein as DOES 1 through 50,
25 inclusive, are presently unknown to Plaintiffs, who therefore sue these Defendants by such
26 fictitious names. Plaintiffs will seek leave to amend this complaint and petition to include these
27 Defendants’ true names and capacities when they are ascertained. Each of the fictitiously named
28 Defendants is responsible in some manner for the conduct alleged herein and for the damages

1 suffered by Plaintiffs.

2 **II. GENERAL ALLEGATIONS.**

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

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

6 6. PCHS, along with the majority of schools and school districts throughout
7 California, ultimately closed its campus for the remainder of the school year to support public
8 health efforts to slow the spread of COVID-19.

9 7. In the fall of 2021, PCHS reopened for full-time, in-person instruction.

10 8. On September 9, 2021, the LAUSD Board of Education adopted a Resolution
11 requiring all students ages 12 and up to present proof of full vaccination for COVID-19 in order
12 to receive in-person instruction at its schools and to participate in extracurricular activities and
13 sports.

14 9. At an October 26, 2021 Special Meeting, the PCHS Board voted to approve a
15 Resolution similar to that enacted by LAUSD, requiring the COVID-19 vaccine for all eligible
16 students ages 16 and up. Pursuant to PCHS's COVID-19 Vaccination Mandate Policy
17 ("Policy"), which was disseminated to students and families on October 29, 2021, all PCHS
18 students who are 16 years of age and older are required to provide proof of full vaccination for
19 COVID-19 no later than December 27, 2021, or within eight weeks of their 16th birthday. All
20 unvaccinated students ages 16 and older will be excluded from the PCHS campus and facilities
21 starting on January 11, 2022.

22 10. The policy will apply to students ages 12 and up after the COVID-19 vaccine
23 receives full FDA approval for that age group.

24 11. PCHS's Policy does not apply to students who are migrants, homeless, in foster
25 care, or from military families, who may be "conditionally enrolled," even though they would
26 otherwise be required to get vaccinated. Students who have a medical reason that they cannot
27 receive the COVID-19 vaccine and students who have an individualized education plan ("IEP")
28 are also exempt from PCHS's mandate.

1 12. While students have had an opportunity to submit requests for a medical
2 exemption, PCHS contends will not recognize religious or personal belief exemptions.

3 13. All students ages 16 and above who choose not to receive a COVID-19 vaccine
4 will not be permitted to attend classes in-person or any activities at PCHS, unless they are a
5 member of one of the aforementioned exempt groups.

6 14. All students ages 16 and above who choose not to receive a COVID-19 vaccine
7 will be “encouraged” to enroll in PCHS’ online only “virtual academy”/independent study
8 program, which does not provide any in person instruction or meetings.

9 15. The Plan sets no expiration date for the school’s COVID-19 vaccination
10 requirement. Thus, even if COVID-19 no longer poses a threat to individuals, and even if the
11 State of California ultimately does not add COVID-19 to the statutory list of childhood illnesses
12 for which a child must be immunized as a condition for admission to any school in California,
13 PCHS students will be indefinitely required to receive the vaccine.

14 **B. Governor Gavin Newsom Announces a Future Vaccine Mandate for**
15 **California Schoolchildren.**

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

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

26 **C. FDA Approved COVID-19 Vaccine.**

27 18. Currently, there is only one FDA-approved COVID-19 vaccine, and that vaccine
28 is only approved for individuals ages 16 and older. On August 23, 2021, the FDA approved a

1 Biologics License Application for BioNTech to manufacture a SARS-CoV-2 vaccine under the
2 name of Comirnaty, for use in individuals ages 16 and older.

3 19. An August 30, 2021, preprint by Hoeg et al. concluded, for boys 12–17 without
4 medical comorbidities, the risk of a stratified cardiac adverse event following the second dose
5 of the COVID-19 vaccine exceeds the risk of hospitalization from a COVID-19 infection.

6 20. According to a September 13, 2021, FDA review memorandum entitled Benefit-
7 Risk Assessment of the Pfizer Vaccine for Age 16-17 years, the Pfizer vaccine provides a 6-
8 month protection period and is predicted to prevent 142 COVID-19 hospitalizations but could
9 cause 196 myocarditis/pericarditis hospitalizations for males 16 to 17 years old; for males ages
10 12 to 15, the vaccine may prevent 122 COVID-19 hospitalizations but could cause 179
11 myocarditis/pericarditis hospitalizations. The memorandum further states: “We note that
12 COVID-19 incidence highly influences the predicted benefits of the vaccine. If the disease
13 incidence is higher, the benefits of the vaccine will be greater, and vice versa. Therefore, the
14 benefit-risk conclusion may change if the COVID-19 incidence rate becomes very low in the
15 future.”

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

23 22. JVCI is currently recommending that 16- and 17-year-old children be “offered”
24 — but not required to receive — a first dose of the Pfizer vaccine.

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

27 23. PCHS lacks authority to mandate childhood vaccines that are not already
28 required by California law as a condition for attending school.

1 24. CDPH, in consultation with the California Department of Education, must adopt
2 and enforce all regulations necessary to carry out Health and Safety Code, division 105, part 2,
3 chapter 1, commencing with section 120325 but excluding section 120380. (Health & Safety
4 Code, § 120330.) Those regulations appear in the California Code of Regulations (“CCR”), title
5 17, division 1, chapter 4, beginning with section 6000.

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

13 26. Childhood immunization requirements are within the sole province of the
14 California Legislature and CDPH, whose authority is limited by statute.

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

21 28. Health and Safety Code section 120335 provides a list of ten specifically
22 enumerated childhood illnesses from which a child must be immunized as a condition for
23 admission to any school in California, unless the child has a medical exemption. Those illnesses
24 are identified in subdivision (b), as follows: (1) Diphtheria; (2) Hepatitis B; (3) Haemophilus
25 influenzae type b; (4) Measles; (5) Mumps; (6) Pertussis (whooping cough); (7) Poliomyelitis;
26 (8) Rubella; (9) Tetanus; and (10) Varicella (chickenpox). (Health & Safety Code, §
27 120335(b).) Notably, this list does *not* include immunization from COVID-19.

28 29. A report by the Assembly Committee on Health states: “Each of the 10 diseases

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

7 30. While paragraph 11, subdivision (b) of Section 120335 provides for a possible
8 expansion of the statutorily enumerated vaccination requirements through the addition of “any
9 other disease deemed appropriate” by CDPH, it does not authorize individual schools, including
10 PCHS, to add other vaccination requirements.

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

18 32. The Legislature occupies the field that PCHS’s vaccination mandate attempts to
19 invade. (*County of Los Angeles v. State Dep’t of Public Health* (1958) 158 Cal. App.2d 425,
20 437.) “Where the Legislature has adopted statutes governing a particular subject matter, its
21 intent with regard to occupying the field to the exclusion of all local regulation is not to be
22 measured alone by the language used but by the whole purpose and scope of the legislative
23 scheme.” (*O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068.) “Whenever the
24 Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the
25 entire control over whatever phases of the subject are covered by state legislation ceases as far
26 as local legislation is concerned.” (*Ibid.*) It follows that “local regulation is invalid if it attempts
27 to impose additional requirements in a field which is fully occupied by statute.” (*Tolman v.*
28 *Underhill* (1952) 39 Cal.2d 708, 712.)

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

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

8 34. COVID-19 cases in the PCHS community have declined sharply since children
9 and teachers returned to in-person instruction in September 2021 — without any vaccine
10 mandate in place. As of the date of this filing, a total of 42 PCHS students and 3 staff members
11 have tested positive for COVID-19 since September 2021.

12 35. In addition, significant natural and vaccine-induced immunity has already built
13 up to protect the community.

14 36. According to data from CDPH, as of July 2021, more than 3,748,365
15 Californians (9.49% of the state’s population) have tested positive for COVID-19 since March
16 2020. The CDC estimates that only 1 of every 4.2 infections is reported, however, suggesting
17 that more than 15.7 million Californians have previously been infected with COVID-19.¹

18 37. The rate of daily or weekly hospitalizations and deaths in a community speak to
19 the virility and severity of the disease locally.

20 38. In 2020, a total of 32,026 Californians (0.08% of the population) died with a
21 COVID-19 diagnosis.² For perspective, in 2017, an estimated 62,797 Californians died from
22 heart disease and 59,516 died from cancer.

23 39. On January 15, 2021, before vaccinations were widely available, an average of
24 22,265 Californians were hospitalized with COVID-19 over a 14-day period, and 1.7
25 Californians per 100,000 died with COVID-19 over a seven-day period.

26 _____
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 40. As of December 2, 2021, 75% of Los Angeles County residents over the age of
2 12 have been fully vaccinated, and an additional 7.8% of county residents have received at least
3 one dose of a two-dose vaccine.

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

7 42. According to CDPH, 85.9% of Californians have antibodies for SARS-CoV-2,
8 the virus that causes COVID-19, as of June 12, 2021, when CDPH stopped tracking this data.⁴
9 Logically, this number would only increase over time as additional people are vaccinated or
10 infected with the virus naturally. People who have antibodies were either infected with COVID-
11 19 at some point in the past or may have received a COVID-19 vaccine and are fully or partially
12 immune to COVID-19, meaning they are highly unlikely to be hospitalized or die from a
13 COVID-19 infection. While antibodies wane over time, T-cells, which trigger a robust antibody
14 response to prevent morbidity from infection, remain. T-cell responses are largely unaffected by
15 variants of the SARS-CoV-2 virus. While circulating memory T-cells may not prevent SARS-
16 CoV-2 infection entirely, they reduce the likelihood and limit the severity of a subsequent
17 COVID-19 infection.⁵

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

20 44. A large study from Israel published on August 25, 2021, found that natural
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22 ³ Jones et al., *Estimated US Infection- and Vaccine-Induced SARS-CoV-2 Seroprevalence Based*
23 *on Blood Donations, July 2020–May 2021* (published online Sept. 2, 2021) JAMA, at
<https://jamanetwork.com/journals/jama/fullarticle/2784013>.

24 ⁴ CDPH, *COVID-19 Seroprevalence Data* (July 9, 2021), at
25 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Sero-prevalence-COVID-19-Data.aspx>.

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

1 immunity following an infection offered considerably more protection than two doses of the
2 Pfizer-BioNTech vaccine, with the vaccinated-only population having a 13-fold increased risk
3 of infection over the population with natural immunity.⁶

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

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

11 47. A large majority of Los Angeles County residents—including children—have
12 immunity to COVID-19 due to prior infection. As of December 9, 2021, an estimated 1,541,886
13 Los Angeles County residents have survived a COVID-19 infection.⁹ This widespread
14 immunity throughout the population helps to reduce the spread of COVID-19 throughout the
15 state and helps to protect children and vulnerable populations from infection.

16 48. Indeed, as of December 7, 2021, the 7-day average for COVID-19
17 hospitalizations throughout the county had decreased from approximately 1,400 in September,
18

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

21
22 ⁷ Sheehan et al., *Reinfection Rates among Patients who Previously Tested Positive for COVID-*
19: a Retrospective Cohort Study (Mar. 15, 2021) *Clinical Infectious Diseases*, available at
23 [https://academic.oup.com/cid/advance-article-](https://academic.oup.com/cid/advance-article-pdf/doi/10.1093/cid/ciab234/37532380/ciab234.pdf)
[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).

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

26
27 ⁹ <http://publichealth.lacounty.gov/media/coronavirus/data/index.htm>.

1 to 667 people hospitalized with COVID-19. As of December 9, 2021, there have been an
2 average of 15 deaths per day from COVID-19 over a 7-day period in Los Angeles County, in
3 contrast with nearly double that amount in September.

4 49. Despite the surge in infections during July and August of 2021, the number of
5 hospitalizations throughout the state has not reached critical levels, and the average number of
6 reported cases is still less than half of that of the surge in July of 2020, when daily cases peaked
7 at 10,000 per day. As of the date of this filing, CDPH data shows case rates, test positivity rates,
8 hospitalizations, and deaths continuing to drop despite children being in school and the
9 continued reopening of the California economy.

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

11 50. According to the CDC, children with COVID-19 typically have mild symptoms
12 or no symptoms at all.

13 51. According to the American Academy of Pediatrics and the Children’s Hospital
14 Foundation, for reporting states, the hospitalization rate for children with COVID-19 as of
15 September 2, 2021, is 0.9%, basically the same rate it has been since June 3, 2021, when the
16 rate was 0.8%.¹⁰ The 0.8% figure had persisted since January 7, 2021, when the rate was 0.9%.
17 The high was 3.8%, from May 21, 2020.¹¹ The mortality rate as of September 2, 2021, was
18 0.01% nationally, a figure that has remained the same since October 29, 2020, when it was
19 0.02%. In California, as of September 2, 2021, the mortality rate for children ages 0 to 17 is
20 0.01%.¹²

21 52. Likewise, as of December 9, 2021, CDPH reported a 0.1-percent death rate for
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25 ¹⁰ American Academy of Pediatrics and Children’s Hospital Assn., “Children and Covid-19:
State Data Report,” 9/2/21 version, at 18-19, Table 2B.

26 ¹¹ *Id.* at 20, Table 2B.

27 ¹² *Id.* at 33, Table 6A.
28

1 children 17 and under in California.¹³

2 53. The estimated infection fatality rate for all American children ages 0 to 17 is
3 0.00002%. A recent review found that the mortality risk for children without serious preexisting
4 conditions is effectively zero.¹⁴

5 54. For all children, the mortality risk from a COVID-19 infection is lower than from
6 seasonal influenza.¹⁵ For example, during the 2017–2018 flu season, the CDC estimated that
7 approximately 526 children in the United States died of influenza out of a total of 10.57 million
8 infections,¹⁶ while the CDC’s most recent estimate indicates that only 464 children have died
9 from COVID-19 out of a total of more than 26.8 million infections. Given that 58% of children
10 received the influenza vaccine during that year,¹⁷ influenza would on balance be even more
11 deadly than COVID-19. Yet neither the State of California nor PCHS require schoolchildren to
12 provide evidence of immunization for the flu as a condition to attending school in person. The
13 CDC and American Academy of Pediatrics have recently acknowledged that although more
14 children are getting infected due to the Delta variant, the variant has not increased the

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16 ¹³ California Department of Public Health, Cases and Deaths Associated by Age Group,
December 9, 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
21 Respiratory Diseases (NCIRD), *2019-20 Season’s Pediatric Flu Deaths Tie High Mark Set*
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
24 Respiratory Diseases (NCIRD), *Estimated Influenza Illnesses, Medical visits, Hospitalizations,*
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
27 Respiratory Diseases (NCIRD), *Estimates of Flu Vaccination Coverage among Children —*
United States, 2017–18 Flu Season (Sept. 27, 2018), available at
28 <https://www.cdc.gov/flu/fluview/coverage-1718estimates-children.htm>.

1 hospitalization rate or overall severity in children.¹⁸

2 55. For perspective, over the course of the pandemic, through September 22, 2021,
3 56,781 Americans under the age of 18 have died of all causes, according to the CDC.¹⁹ Only
4 464 of those deaths were from COVID-19 — less than half as many as have died of pneumonia.
5 Of those deaths, 148 were between the ages of 5 and 14. Each year, approximately 4,000
6 American children die in car crashes, and approximately 1,000 die from drowning.²⁰

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

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

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

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

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

13 60. The COVID-19 School Dashboard developed by Brown University tracks over
14 5,000 schools, 4 million students, and 1.3 million staff, and has consistently found student and
15 staff infection rates of 0.1% to 0.2% since it began publishing in September 2020.

16 61. The CDC acknowledges that vaccinated individuals are still capable of becoming
17 infected and transmitting COVID-19 to others.²⁵

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

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

25 ²⁴ Ludvigsson et al., *Open Schools, Covid-19, and Child and Teacher Morbidity in Sweden*
26 (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>.

27 ²⁵ Brown et al., *Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine*
28 *Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County,*
Massachusetts, July 2021 (Aug. 6, 2021), vol. 70, No. 31, Morbidity and Mortality Weekly

1 **H. PCHS’s Mandate Will Not Achieve Its Intended Goal**

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

5 63. A recent report in the New England Journal of Medicine indicates that the
6 effectiveness of the Pfizer-BioNTech vaccine (the only vaccine available in the United States
7 for children 12 and older) against infection declines to approximately 20% after 5 months, and
8 the authors conclude “that a large proportion of the vaccinated population could lose its
9 protection against infection in the coming months, perhaps increasing the potential for new
10 epidemic waves.”²⁷ Hence, the recent push for a “booster” dose for all previously vaccinated
11 individuals ages 18 and up.

12 64. Therefore, any decision to mandate vaccination is unlikely to reduce the number
13 of infections or outbreaks in the school environment.

14 **I. PCHS’s COVID-19 Vaccine Requirement Harms Children.**

15 65. The only option for students ages 16 and above who choose not to receive a
16 COVID-19 vaccine but want to stay at PCHS is to enroll in PCHS’ online only “virtual
17 academy”/independent study program, which does not provide any in person instruction or
18 meetings.

19 66. Since “independent study” is not an effective substitute for in-person learning,
20

21 Report (MMWR) 1059, available at
22 <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7031e2-H.pdf>.

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

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

1 and in some instances is not even available,²⁸ students who are not allowed to attend school in-
2 person will have no way to make up for lost in-person learning time.

3 67. Keeping healthy children out of the classroom is contrary to California law, is
4 not necessary to reduce cases of COVID-19 in schools, and is not in the best interest of
5 students, parents, or school districts.

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

10 69. Healthy children who have natural immunity to COVID-19 and healthy children
11 who have not received the COVID-19 vaccine should not be discriminated against by PCHS.

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

13 70. Plaintiff has fully complied with the requirements set forth in Government Code
14 section 945.4. On September 20, 2021 and October 25, 2021, Plaintiff's counsel, on behalf of
15 PCHS parents opposed to a COVID-19 vaccine mandate for students, presented a timely
16 demand to the PCHS Board, asking that it not approve implementation of a COVID-19 vaccine
17 mandate for PCHS students. Subsequently, PCHS's Board approved the vaccine mandate and
18 has not made any indication that it intends to reconsider or rescind its Policy.

19 **III. CAUSES OF ACTION**

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

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

26 72. Title 17, section 6025 of the California Code of Regulations, the implementing

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

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

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

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

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

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

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

26 78. California schoolchildren have a fundamental right to a free public education.

27 79. Children 16 and over who have not yet received two doses of the COVID-19
28 vaccine are currently enrolled as students at PCHS.

1 88. Furthermore, there are no in-person public school options for PCHS students
2 who reside in LAUSD, because LAUSD is implementing a similar COVID-19 vaccine mandate,
3 effective January 10, 2022.

4 89. 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 90. 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 91. 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 92. PCHS’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 PCHS’s online only independent study program, and will require the exclusion
16 of the child from PCHS’s campus and facilities, in-person classes, and extracurricular activities,
17 including sports, unless the child provides proof that they have been vaccinated for COVID-19,
18 in accordance with the vaccination schedule determined by the Board.

19 93. California schoolchildren have a fundamental right to a free public education.

20 94. Children over the age of 16 who will not receive both doses of the two-dose
21 COVID-19 vaccine by PCHS’s December 27, 2021, deadline are currently enrolled as students
22 at PCHS.

23 95. Children over the age of 16 who will not receive both doses of the two-dose
24 COVID-19 vaccine by PCHS’s December 27, 2021, deadline are also currently enrolled in
25 school-sponsored extracurricular activities that require them to participate in in-person meetings
26 and activities with other students and teachers at their school.

27 96. Many parents called in and sent written comments prior to PCHS’s board
28 meeting to oppose its proposed vaccination mandate.

1 all other pupils in the school.” (Ed. Code, § 51746.)

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

6 105. PCHS’s COVID-19 vaccine mandate unlawfully requires students ages 16 and
7 up who are not fully vaccinated for COVID-19 to transfer to PCHS’s independent study
8 program and requires administrators to exclude the child from any school property within
9 PCHS, in-person classes, and extracurricular activities, including sports, at PCHS unless they
10 provide proof that the child has been vaccinated for COVID-19.

11 106. California schoolchildren have a fundamental right to a free public education.

12 107. Children over the age of 16 who will not receive both doses of the two-dose
13 COVID-19 vaccine by PCHS’s December 27, 2021, deadline are currently enrolled as students
14 at schools operated by PCHS.

15 108. Children over the age of 16 who will not receive both doses of the two-dose
16 COVID-19 vaccine by PCHS’s December 27, 2021, deadline are also currently enrolled in
17 school-sponsored extracurricular activities that require them to participate in in-person meetings
18 and activities with other students and teachers at their school.

19 109. Children over the age of 16 who do not receive both doses of the two-dose
20 COVID-19 vaccine by PCHS’s December 27, 2021, deadline will be excluded from in-person
21 instruction and participation in extracurricular activities on PCHS’s campus and facilities
22 starting on January 11, 2022.

23 110. Children over the age of 16 who will not receive both doses of the two-dose
24 COVID-19 vaccine by PCHS’s December 27, 2021, deadline will be coerced to enroll in an
25 online only independent study program and will not be permitted to enter school property for
26 any purpose.

27 111. Children over the age of 16 who will not receive both doses of the two-dose
28 COVID-19 vaccine by PCHS’s December 27, 2021, deadline will suffer irreparable harm each

1 day that they are excluded from PCHS’s campus and facilities, whether for in-person
2 instruction, extracurricular activities, or other educational or social purposes.

3 112. Plaintiff and the PCHS students and families for whom it brings this lawsuit have
4 no administrative remedy and no adequate remedy at law.

5 **FOURTH CAUSE OF ACTION**
6 **Violation of the Right to Privacy**
7 **Against All Defendants**

8 113. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set
9 forth herein.

10 114. All people are by nature free and independent and have inalienable rights.
11 Among these are the rights of enjoying and defending life and liberty; acquiring, possessing,
12 and protecting property; and pursuing and obtaining safety, happiness, and privacy.

13 115. The right to privacy was added to the California Constitution by voters in 1972.
14 The ballot pamphlet, which was distributed to the voters prior to the election, stated that the
15 constitutional right to privacy encompassed a variety of rights involving private choice in
16 personal affairs. “The right to privacy is the right to be left alone. It is a fundamental and
17 compelling interest. It protects our homes, our families, our thoughts, our emotions, our
18 expressions, our personalities, our freedom of communion, and our freedom to associate with
19 the people we choose [para.] The right of privacy is an important American heritage and
20 essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth, and Ninth
21 Amendments to the U.S. Constitution. This right should be abridged only when there is
22 compelling public need.” (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to
23 voters, Gen. Elec. (Nov. 7, 1972) p. 27, as quoted in *Robbins v. Superior Court* (1985) 38
24 Cal.3d 199, 212.)

25 116. The right to refuse medical treatment is a constitutionally guaranteed right which
26 must not be abridged. (*Bartling v. Superior Court* (1984) 163 Cal.App. 3d 186, 195.) This right
27 is specifically guaranteed by the California Constitution (art. I, § 1) and has been found to exist
28 in the “penumbra” of rights guaranteed by the Fifth and Ninth Amendments to the United States
Constitution. (*Griswold v. Connecticut* (1965) 381 U.S. 479, 484.) “In short, the law recognizes

1 the individual interest in preserving ‘the inviolability of his person.’” (*Superintendent of*
2 *Belchertown State School v. Saikewicz* (Mass. 1977) 370 N.E.2d 417, 424.) The constitutional
3 right of privacy guarantees to the individual the freedom to choose to reject, or refuse to consent
4 to, intrusions of his bodily integrity. (*Id.* at 427.)

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

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

23 119. California schoolchildren have a fundamental right to a free public education.

24 120. Children over the age of 16 who will not receive both doses of the two-dose
25 COVID-19 vaccine by PCHS’s December 27, 2021, deadline are currently enrolled as students
26 at PCHS.

27 121. Children over the age of 16 who will not receive both doses of the two-dose
28 COVID-19 vaccine by PCHS’s December 27, 2021, deadline are also currently enrolled in

1 school-sponsored extracurricular activities that require them to participate in in-person meetings
2 and activities with other students and teachers at school.

3 122. Children over the age of 16 who will not receive both doses of the two-dose
4 COVID-19 vaccine by PCHS's December 27, 2021, deadline will be excluded from in-person
5 instruction and participation in extracurricular activities on PCHS's campus and facilities.

6 123. Children over the age of 16 who will not receive both doses of the two-dose
7 COVID-19 vaccine by PCHS's December 27, 2021, deadline will be coerced into enrolling in
8 an online only independent study program and will not be permitted to enter school property for
9 any purpose.

10 124. Children over the age of 16 who will not receive both doses of the two-dose
11 COVID-19 vaccine by PCHS's December 27, 2021, deadline will suffer irreparable harm each
12 day that they are excluded from PCHS's school campuses, whether for in-person instruction,
13 extracurricular activities, or other educational or social purposes.

14 125. Plaintiff and the PCHS students and families for whom it brings this lawsuit have
15 no administrative remedy and no adequate remedy at law.

16 **FIFTH CAUSE OF ACTION**
17 **Violation of Article IX of the California Constitution**
18 **Against All Defendants**

19 126. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set
20 forth herein.

21 127. Article IX, section 1, of the California Constitution provides: "A general
22 diffusion of knowledge and intelligence being essential to the preservation of the rights and
23 liberties of the people, the Legislature shall encourage by all suitable means the promotion of
24 intellectual, scientific, moral, and agricultural improvement."

25 128. Article IX, section 5 of the California Constitution provides: "The Legislature
26 shall provide for a system of common schools by which a free school shall be kept up and
27 supported in each district at least six months in every year"

28 129. By implementing a stringent and discriminatory COVID-19 vaccine mandate,
Defendants are denying California schoolchildren their fundamental right to an education that

1 provides a “general diffusion of knowledge and intelligence essential to the preservation of the
2 rights and liberties of the people” and ensures the opportunity to become proficient according to
3 the state of California’s standards, to develop the skills and capacities necessary to achieve
4 economic and social success in our competitive society, and to participate meaningfully in
5 political and community life.

6 130. By preventing unvaccinated students from entering PCHS’s school campuses for
7 in-person instruction and extracurricular activities, Defendants have interfered, to the detriment
8 of California schoolchildren and their families, with the state’s “system of common schools by
9 which a free school shall be kept up and supported in each district at least six months in every
10 year”

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

14 132. Defendants’ decisions and other actions recited herein are significantly broader
15 than necessary to serve the alleged government interest in slowing the spread of the virus that
16 causes COVID-19.

17 133. Defendants’ decisions and other actions recited herein are not narrowly tailored
18 to minimize infringements on students’ educational rights.

19 134. PCHS students and their families are suffering irreparable harm each day that
20 their schools are required to implement Defendants’ unreasonable and overly broad mandates.

21 135. Plaintiff and the PCHS students and families for whom it brings this lawsuit have
22 no administrative remedy and no adequate remedy at law.

23 **SIXTH CAUSE OF ACTION**
24 **Violation of the Equal Protection Clause of the California Constitution**
25 **Against All Defendants**

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

28 137. Under the Equal Protection Clause of the California Constitution, “[a] person
may not be ... denied equal protection of the laws.” (Cal. Const., art. I, § 7, subd. (a).) Further,

1 “[a] citizen or class of citizens may not be granted privileges or immunities not granted on the
2 same terms to all citizens.” (Cal. Const., Art. I, § 7, subd. (b).)

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

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

15 140. The government’s exercise of police power “cannot be so used as to arbitrarily
16 limit the rights of one class of people, and allow those same rights and privileges to a different
17 class, where the public welfare does not demand or justify such a classification.” (*Deese, supra*,
18 21 Cal.App.2d at 640.))

19 141. Defendants’ restrictions violate the Equal Protection Clause of the California
20 Constitution because (1) Defendants’ COVID-19 vaccination mandate applies only to PCHS,
21 whereas there is no such statewide mandate; (2) Defendants’ regulations distinguish between
22 vaccinated and unvaccinated children, and impose independent study as the sole option for
23 education for children over the age of 16 who are unvaccinated, including children who have
24 natural immunity from prior infection, while providing in-person education and opportunities to
25 participate in extracurricular activities to those who are vaccinated; (3) Defendants’ rules
26 wholly ignore the efficacy of naturally acquired immunity, while only recognizing vaccinated
27 immunity and sanctioning preferential treatment for vaccinated individuals; (4) Defendants’
28 rules enable its employees to request a religious exemption from the mandate, while denying

1 students an opportunity to make the same request; and (5) Defendants’ rules treat unvaccinated
2 migrant, foster, homeless, and military family members’ children more favorably than all other
3 unvaccinated children by permitting unvaccinated migrant, foster, homeless, and military family
4 members’ children to attend school in-person and to participate in extracurricular activities on
5 Defendants’ school campus, even if they are unvaccinated.

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

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

12 144. The alleged government interest in slowing the spread of the virus that causes
13 COVID-19 does not justify Defendants’ rules.

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

16 146. Defendants’ rules are not narrowly drawn to minimize infringements on the
17 fundamental rights of California’s schoolchildren.

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

21 148. The distinction made by Defendants between vaccinated and unvaccinated
22 children — and even different classes of unvaccinated children (i.e., migrant, foster, homeless,
23 and military family members’ children) — cannot survive strict scrutiny. In the alternative,
24 these distinctions cannot survive even rational basis scrutiny. Individuals who have been
25 vaccinated for COVID-19 can and do still get infected with the COVID-19 virus. Naturally
26 acquired immunity has been found to be equal or superior to vaccine-induced immunity.
27 Defendants’ preferential treatment of vaccinated individuals and certain classes of unvaccinated
28 individuals discriminates, without justification, against all other unvaccinated individuals,

1 including those with natural immunity who have recovered from COVID-19. It also creates
2 three classes of children: those who have been vaccinated for COVID-19, those who have not
3 been vaccinated for COVID-19 but fall within a certain class of children subject to preferential
4 treatment, and those children who do not fall within one of those classes but have not been
5 vaccinated.

6 149. Defendants' COVID-19 vaccine mandate treats children who have not been
7 vaccinated and are not members of an exempt group as an inferior class, in that those children
8 cannot enter PCHS's campus or facilities, cannot participate in in-person classes, and cannot
9 enter a school property for any purpose, including extracurricular and other activities, while the
10 children who have been vaccinated or are a member of an exempt group are allowed to attend
11 PCHS, to participate in in-person classes, and to enter school property for extracurricular and
12 other activities.

13 150. Defendants' COVID-19 vaccine mandate and their proposed exclusion and
14 imposition of restrictions on unvaccinated students cannot withstand strict scrutiny. In the
15 alternative, it cannot survive even rational basis scrutiny. A COVID-19 vaccine mandate for
16 children is nonsensical and unjustified where most teachers and school staff have been
17 vaccinated, and studies have revealed that children are unlikely to spread COVID-19 to adults
18 and others. *All teachers and staff have now had the opportunity to receive both doses of the*
19 *vaccine.* Defendants' COVID-19 vaccine mandate does not guarantee or even suggest that all
20 students who are vaccinated will be free of COVID-19 when they are physically present at
21 school such that the safety of other students, teachers and staff, and their families will be
22 ensured or even nominally aided. Indeed, isolating and excluding unvaccinated students is
23 nothing more than theatrics, designed to make students, teachers, staff, and their families "feel
24 safe."

25 151. California schoolchildren have a fundamental right to a free public education.

26 152. Children over the age of 16 who will not receive both doses of the two-dose
27 COVID-19 vaccine by PCHS's December 27, 2021, deadline are currently enrolled as students
28 at PCHS.

1 receive state student financial aid.” (Ed. Code, § 220.)

2 160. PCHS and its schools are educational institutions that receive state financial
3 assistance.

4 161. Defendants’ COVID-19 vaccine mandate discriminates against all unvaccinated
5 schoolchildren — including those who are immune due to prior infection — that are not
6 members of one of the classes of children that PCHS has specified as exempt from the
7 requirement, including migrant children, who will be permitted to receive the benefits of in-
8 person education, regardless of their COVID-19 vaccination status, based solely on their
9 nationality and/or immigration status, while other unvaccinated children who are not migrants
10 will be involuntarily transferred to independent study.

11 162. Defendants’ COVID-19 vaccine mandate does not treat all children equally, as it
12 gives preference to and permits unvaccinated migrant children to continue to attend in-person
13 classes and extracurricular activities at its schools, while barring all other unvaccinated
14 schoolchildren, including children who have recovered from COVID-19, from in-person classes
15 and extracurricular activities at PCHS.

16 163. California schoolchildren have a fundamental right to a free public education.

17 164. Children over the age of 16 who will not receive both doses of the two-dose
18 COVID-19 vaccine by PCHS’s December 27, 2021, deadline are currently enrolled as students
19 at schools operated by PCHS.

20 165. Children over the age of 16 who will not receive both doses of the two-dose
21 COVID-19 vaccine by PCHS’s December 27, 2021, deadline are also currently enrolled in
22 school-sponsored extracurricular activities that require them to participate in in-person meetings
23 and activities with other students and teachers at their school.

24 166. Children over the age of 16 who do not receive both doses of the two-dose
25 COVID-19 vaccine by PCHS’s December 27, 2021, deadline will be excluded from in-person
26 instruction and participation in extracurricular activities on PCHS’s campus, effective January
27 11, 2022.

28 167. Children over the age of 16 who do not receive both doses of the two-dose

1 COVID-19 vaccine by PCHS’s December 27, 2021, deadline will be involuntarily enrolled in
2 an independent study program and will not be permitted to enter school property for any
3 purpose.

4 168. Children over the age of 16 who do not receive both doses of the two-dose
5 COVID-19 vaccine by PCHS’s December 27, 2021, deadline will suffer irreparable harm each
6 day that they are excluded from PCHS’s school campuses, whether for in-person instruction,
7 extracurricular activities, or other educational or social purposes.

8 169. Plaintiff and the PCHS students and families for whom it brings this lawsuit have
9 no administrative remedy and no adequate remedy at law.

10 **EIGHTH CAUSE OF ACTION**
11 **Violation of Government Code section 11135**
12 **Against All Defendants**

13 170. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set
14 forth herein.

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

22 172. PCHS receives state financial assistance.

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

1 174. Defendants' COVID-19 vaccine mandate does not treat all children equally, as it
2 gives preference to and permits unvaccinated migrant children to continue to attend in-person
3 classes and extracurricular activities at its schools, while barring all other unvaccinated
4 schoolchildren, including children who have recovered from COVID-19, from in-person classes
5 and extracurricular activities at PCHS schools.

6 175. California schoolchildren have a fundamental right to a free public education.

7 176. Children over the age of 16 who will not receive both doses of the two-dose
8 COVID-19 vaccine by PCHS's December 27, 2021, deadline are currently enrolled as students
9 at schools operated by PCHS.

10 177. Children over the age of 16 who will not receive both doses of the two-dose
11 COVID-19 vaccine by PCHS's December 27, 2021, deadline are also currently enrolled in
12 school-sponsored extracurricular activities that require them to participate in in-person meetings
13 and activities with other students and teachers at their school.

14 178. Children over the age of 16 who do not receive both doses of the two-dose
15 COVID-19 vaccine by PCHS's December 27, 2021, deadline will be excluded from in-person
16 instruction and participation in extracurricular activities on PCHS's campuses.

17 179. Children over the age of 16 who do not receive both doses of the two-dose
18 COVID-19 vaccine by PCHS's December 27, 2021, deadline will be coerced to enroll in an
19 online only independent study program and will not be permitted to enter school property for
20 any purpose.

21 180. Children over the age of 16 who do not receive both doses of the two-dose
22 COVID-19 vaccine by PCHS's December 27, 2021 deadline will suffer irreparable harm each
23 day that they are excluded from PCHS's school campuses, whether for in-person instruction,
24 extracurricular activities, or other educational or social purposes.

25 181. Plaintiff and the PCHS students and families for whom it brings this lawsuit have
26 no administrative remedy and no adequate remedy at law.

27 WHEREFORE, Plaintiff prays for relief as follows:

28 1. A temporary restraining order, preliminary and permanent injunction, and writ of

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mandate restraining and preventing Defendants and their officers, agents, employees, or any other persons acting with them or on their behalf from implementing and enforcing a COVID-19 vaccine mandate for all students;

2. A temporary restraining order, preliminary and permanent injunction, and writ of mandate restraining and preventing Defendants and their officers, agents, or any other persons acting with them or on their behalf from excluding children who have not received both doses of the two-dose COVID-19 vaccine by PCHS's December 27, 2021 deadline or within eight weeks 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 school, 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 PCHS'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: December 10, 2021

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Attorneys for Plaintiffs