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6 *individually and on behalf of*
7 *Jordan Cannistra, as his guardian in fact*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SACRAMENTO**

10
11 **ROBYN CANNISTRA, individually and**
12 **on behalf of JORDAN CANNISTRA, as**
13 **his guardian in fact;**

14 **Plaintiff,**

15 **vs.**

16 **TOMÁS ARAGÓN, in his official**
17 **capacity as Department of**
18 **Public Health Director and as the State**
19 **Public Health Officer; PETALUMA**
20 **CITY SCHOOLS; and DOES 1 through**
21 **20, inclusive.**

22 **Defendants.**

Case No.:

Assigned to:
Department:

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

Action Filed:
Trial Date:

1 Plaintiff Robyn Cannistra (“Robyn”), individually and on behalf of Jordan Cannistra (“Jordan”),
2 as his guardian in fact, complains of Defendant Tomás Aragón (“Dr. Aragón”), in his official capacity as
3 Department of Public Health (“CDPH”) Director and as the State Public Health Officer, and of Defendant
4 Petaluma City Schools (“PCS”); and DOES 1–20 (collectively “Defendants”), inclusive, as follows:

5 **PARTIES**

6 1. Robyn is an individual and a resident of Sonoma County, California.

7 2. Jordan is an individual, a minor, and a resident of Sonoma County, California.

8 3. Robyn is Jordan’s natural mother.

9 4. Jordan is 11 years old and will be entering the sixth grade at PCS this month. He has been
10 a PCS pupil since kindergarten.

11 5. Dr. Aragón is made a party to this action in his official capacity as the Director of CDPH
12 and as the State Public Health Officer. Dr. Aragón and CDPH office in Sacramento County, California.

13 6. PCS is a school district in Sonoma County, California that serves more than 7,200 students
14 from kindergarten through 12th grade. PCS is a Local Educational Agency (“LEA”) under the California
15 Education Code.

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

21 **JURISDICTION AND VENUE**

22 8. This Court has subject matter and personal jurisdiction over this matter and Defendants
23 because the acts, events, and occurrences which are the subject matter of this complaint occurred within
24 Sacramento County, California and were caused by California state agents and/or entities.

25 9. Sacramento County, California is the appropriate venue for this action because it is the
26 venue in which Dr. Aragón and CDPH maintain offices, exercise their authority in their official capacities,
27 and enforce their authority, and it is the venue in which substantially all of the events giving rise to the
28 claims occurred.

1 **FACTUAL ALLEGATIONS**

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

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

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

15 12. Childhood immunization requirements are within the sole province of the California
16 Legislature and CDPH, whose authority is limited by statute.

17 13. Health and Safety Code section 120325 provides, in relevant part, as follows: “In enacting
18 this chapter ... it is the intent of the Legislature to provide: (a) a means for the eventual achievement of
19 total immunization of appropriate age groups against the following childhood diseases”

20 14. Health and Safety Code section 120335 provides a list of ten specifically enumerated
21 childhood illnesses from which a child must be immunized as a condition for admission to any school in
22 California, unless the child has a medical exemption. Those illnesses are identified in subdivision (b), as
23 follows: (1) Diphtheria; (2) Hepatitis B; (3) Haemophilus influenzae type b; (4) Measles; (5) Mumps; (6)
24 Pertussis (whooping cough); (7) Poliomyelitis; (8) Rubella; (9) Tetanus; and (10) Varicella (chickenpox).
25 (Health & Safety Code, § 120335(b).) For K-12, pupils must have the following doses: Polio (4 doses);
26 DTaP (5 doses); Hep B (3 doses); MMR (2 doses); and Varicella (2 doses).

27 [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Immunization/IMM-](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Immunization/IMM-231.pdf)
28 [231.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Immunization/IMM-231.pdf)

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

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

14 17. “Where the Legislature has adopted statutes governing a particular subject matter, its intent
15 with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by
16 the language used but by the whole purpose and scope of the legislative scheme.” (*O’Connell v. City of*
17 *Stockton* (2007) 41 Cal.4th 1061, 1068.) “Whenever the Legislature has seen fit to adopt a general scheme
18 for the regulation of a particular subject, the entire control over whatever phases of the subject are covered
19 by state legislation ceases as far as local legislation is concerned.” (*Ibid.*) It follows that “local regulation
20 is invalid if it attempts to impose additional requirements in a field which is fully occupied by statute.”
21 (*Tolman v. Underhill* (1952) 39 Cal.2d 708, 712.)

22 ***Immunity Defined – Centers for Disease Control***

23 18. The Centers for Disease Control (“CDC”) glossary defines “immunity” as “[p]rotection
24 against a disease.” “Immunity is indicated by the presence of antibodies or other components in the blood
25 and can usually be determined with a laboratory test.”

26 <https://www.cdc.gov/vaccines/terms/glossary.html#i>

27 19. “Active Immunity” as defined by the CDC is “[t]he production of antibodies against a
28 specific disease by the immune system. Active immunity can be acquired in two ways, either by

1 contracting the disease or through vaccination.”

2 <https://www.cdc.gov/vaccines/terms/glossary.html#active>

3 20. “Passive Immunity” is “[p]rotection against disease through antibodies produced by
4 another human being or animal.”

5 <https://www.cdc.gov/vaccines/terms/glossary.html#P>

6 ***Antibody Titer Tests Are Accepted In California In Lieu of Vaccination***

7 21. Antibody titer is a laboratory test that measures the level of antibodies in a blood sample.

8 22. A titer test confirms that the person possesses sufficient antibodies for immunity from the
9 subject virus.

10 23. In the University of California system, a pupil may satisfy that system’s immunization
11 requirement by providing a titer test showing immunity, in lieu of being vaccinated.

12 24. At the University of California, Irvine, for example, titer tests showing immunity suffice
13 for MMR, Varicella, and Tdap, among other viruses.

14 <https://shc.uci.edu/new-student-information/immunization-requirements>

15 25. California State University (“CSU”) also permits titer tests to satisfy immunization
16 requirements in lieu of vaccines: “Titer test records are official immunization records.”

17 <https://www.csun.edu/shc/immunizations>

18 ***Jordan’s Proven and Documented Immunity***

19 26. Jordan is 11 years old and will be entering the sixth grade this month.

20 27. As a current PCS student since kindergarten, the sixth grade is not a vaccination
21 “checkpoint.”

22 28. Jordan has had the same vaccination status since before entering kindergarten.

23 29. Jordan has been vaccinated with:

- 24
- Three doses of the Polio vaccine
 - Five doses of the DTaP vaccine
 - One dose of the MMR vaccine
 - Three doses of the Hepatitis B vaccine
- 27

28 30. Jordan had chicken pox and so has immunity for that disease.

1 confirming that Jordan is immune to MMR and Polio.

2 44. PCS responded to Robyn on or about February 28, 2023 and stated that even if Jordan is
3 considered immune due to reasons other than vaccination, PCS still needs official verification from
4 Jordan's doctor that Jordan is *exempt* from the vaccine requirements, in the form of a medical exemption.

5 45. Dr. Lundergan would issue the medical exemption based on her professional judgment,
6 knowledge of Jordan's medical history (which includes the titer test results) and would complete the
7 exemption form to attest to her professional opinion that Jordan qualifies for the exemption.

8 46. Robyn did not believe that Jordan needed a medical exemption because Jordan has
9 immunity. Nonetheless, she proceeded with the medical exemption.

10 47. On or about March 1, 2023, Robyn requested a medical exemption (number 129146)
11 ("Medical Exemption") via the California Immunization Registry Medical Exemption ("CAIR-ME").

12 48. The Medical Exemption was only for MMR and Polio as those were the only diseases for
13 which Jordan needed to confirm his immunity.

14 49. Varicella was not at issue given Jordan's documented case of chicken pox.

15 50. On or about March 16, 2023, Robyn received a CAIR-ME notice that Dr. Lundergan had
16 submitted the Medical Exemption.

17 51. On or about April 6, 2023, however, Robyn received a CAIR-ME notice that Jordan's
18 Medical Exemption had been revoked by CDPH.

19 52. CAIR-ME did not provide any reason for the revocation.

20 53. The CAIR-ME revocation notice gave Robyn until May 6, 2023 for Jordan to either: (1)
21 start receiving the required vaccines, or (2) appeal the decision.

22 54. Robyn submitted detailed records and information from Dr. Lundergan to CDPH via
23 CAIR-ME to support Jordan's appeal. These documents included all applicable titer test results and
24 vaccination records, plus thoughtful references to California law and CDC guidelines. Specifically:

- 25 a. In the case of MMR, these are not diseases where people continue to receive
26 boosters. Per the CDC, one does not need the MMR vaccine if one has presumptive
27 evidence of immunity including "blood tests that show you are immune to MMR,"
28 which Jordan has.

1 70. Jordan is immune to all applicable diseases and therefore poses no risk to anyone at PCS
2 concerning these diseases, and has provided proof of his immunization.

3 71. Should Jordan not be admitted or allowed to continue attendance, PCS will enroll Jordan
4 in PCS' independent study program.

5 72. Under Title 5, Section 11700 of the California Code of Regulations, "Independent study is
6 an optional educational alternative in which no pupil may be required to participate." (Cal. Code. Regs.,
7 tit. 5, § 11700, subd. (d).)

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

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

14 75. Defendants' vaccination policy violates California Code of Regulations, Title 5, Section
15 11700, because it will lead to the forced and involuntarily enrollment of Jordan in PCS' independent study
16 program and will require the exclusion of Jordan from any school property within PCS, in-person classes,
17 and extracurricular activities, including sports, at any PCS school, unless Jordan provides proof of
18 vaccination.

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

20 77. Should Defendants continue not to recognize Jordan's immunized status, Jordan will suffer
21 irreparable harm (including, without limitation, academic, social, and mental health harms) each day that
22 Defendants exclude Jordan from in-person instruction and participation in extracurricular activities on
23 PCS' campuses and each day that Defendants prohibit Jordan from entering PCS property for any
24 educational or social purpose.

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

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THIRD CAUSE OF ACTION
Violation of Education Code Sections 51746 and 51747
Against All Defendants

79. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth herein.

80. The Education Code provides that “independent study is an optional educational alternative in which no pupil may be required to participate.” (Ed. Code, § 51747, subd. (f)(8).)

81. A school may enroll a child in such a program only if there has been a “pupil-parent-educator conference” to determine whether enrollment in independent study is in the best interest of the child (id., § 51747, subd. (h)(2)) and “a signed written agreement for independent study from 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)).

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

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

84. Jordan is immune to all applicable diseases and therefore poses no risk to anyone at PCS concerning these diseases, and has provided proof of his immunization.

85. Defendants’ vaccination policy violates Education Code Sections 51746 and 51747 because it will lead to the forced and involuntarily enrollment of Jordan in PCS’ independent study program and will require the exclusion of Jordan from any school property within PCS, in-person classes, and extracurricular activities, including sports, at any PCS school, unless Jordan provides proof of vaccination.

86. California schoolchildren have a fundamental right to a free public education.

87. Should Defendants not recognize Jordan’s immunized status, Jordan will suffer irreparable

1 harm (including, without limitation, academic, social, and mental health harms) each day that Defendants
2 exclude Jordan from in-person instruction and participation in extracurricular activities on PCS' campuses
3 and each day that Defendants prohibit Jordan from entering PCS property for any educational or social
4 purpose.

5 88. Plaintiff has no administrative remedy and has no adequate remedy at law.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for relief as follows:

8 1. A temporary restraining order, preliminary injunction, and permanent injunction,
9 restraining and preventing Defendants and their officers, agents, or any other persons acting with them or
10 on their behalf from implementing and enforcing a policy that requires *vaccination* rather than *immunity*
11 to the exclusion of Jordan from in-person instruction and participation in extracurricular activities on PCS'
12 campuses and each day that PCS prohibits Jordan from entering PCS property for any educational or social
13 purpose;

14 2. A declaration that antibody titer tests be recognized as immunity and be presented in lieu
15 of vaccination records;

16 3. A declaration that medical exemptions are not necessary when a person has titer tests
17 demonstrating immunity;

18 4. A declaration that Defendants cannot exclude a student with titer tests demonstrating
19 immunity from in-person learning;

20 5. A declaration that Defendants cannot involuntarily enroll any student in an independent
21 study program;

22 6. Attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure and any other
23 applicable provision of law;

24 7. Costs of suit; and

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28 ///

