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9 *individually and on behalf of*
10 *Jordan Cannistra, as his guardian in fact*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SONOMA**

13 **ROBYN CANNISTRA, individually and**
14 **on behalf of JORDAN CANNISTRA, as**
15 **his guardian in fact;**

16 **Plaintiff,**

17 **vs.**

18 **TOMÁS ARAGÓN, in his official**
19 **capacity as Department of**
20 **Public Health Director and as the State**
21 **Public Health Officer; PETALUMA**
22 **CITY SCHOOLS; and DOES 1 through**
23 **20, inclusive.**

24 **Defendants.**

Case No.: 24CV01964

Assigned to: Hon. Oscar A. Pardo
Department: 19

FIRST AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF AND PETITION FOR WRIT OF
MANDATE

Action Filed: August 11, 2023
Trial Date: None Set

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 **INTRODUCTION**

6 1. Defendants mandate that Jordan be *vaccinated* rather than *immunized* from certain
7 diseases, or else he will be excluded from in-person instruction and participation in extracurricular
8 activities on PCS’s campuses and be coerced into an independent study program.

9 2. Jordan has demonstrated the immunity that is required of students under California law,
10 but Defendants refuse to recognize Jordan’s immunized status and seek to enforce their vaccination
11 mandate against Jordan to his grave detriment.

12 3. Plaintiff hereby challenges the legality of Defendants’ vaccination mandate.

13 **PARTIES**

14 4. Robyn is an individual and a resident of Sonoma County, California.

15 5. Jordan is an individual, a minor, and a resident of Sonoma County, California.

16 6. Robyn is Jordan’s natural mother.

17 7. Jordan is 11 years old and is in the sixth grade at PCS. He has been a PCS pupil since
18 kindergarten.

19 8. Dr. Aragón is made a party to this action in his official capacity as the Director of CDPH
20 and as the State Public Health Officer.

21 9. PCS is a school district in Sonoma County, California that serves more than 7,200 students
22 from kindergarten through 12th grade. PCS is a Local Educational Agency under the California Education
23 Code.

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

1 **JURISDICTION AND VENUE**

2 11. This Court has jurisdiction to issue writs of mandate pursuant to California Code of Civil
3 Procedure Sections 1085 and 1094.5.

4 12. This Court has subject matter and personal jurisdiction over this matter and Defendants
5 because the acts, events, and occurrences which are the subject matter of this complaint occurred within
6 Sonoma County, California and were caused by California state agents and/or entities.

7 13. Sonoma County, California is the appropriate venue for this action because it is the venue
8 in which Dr. Aragón, CDPH, and PCS exercise their authority in their official capacities, and enforce their
9 authority, and it is the venue in which substantially all of the events giving rise to the claims occurred.

10 **FACTUAL ALLEGATIONS**

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

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

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

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

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

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

8 [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)
9 [231.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Immunization/IMM-231.pdf)

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

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

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

1 (Tolman v. Underhill (1952) 39 Cal.2d 708, 712.)

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

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

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

7 23. “Active Immunity” as defined by the CDC is “[t]he production of antibodies against a
8 specific disease by the immune system. Active immunity can be acquired in two ways, either by
9 contracting the disease or through vaccination.”

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

11 24. “Passive Immunity” is “[p]rotection against disease through antibodies produced by
12 another human being or animal.”

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

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

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

16 26. A titer test confirms that the person possesses sufficient antibodies for immunity from the
17 subject virus.

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

20 28. At the University of California, Irvine, for example, titer tests showing immunity suffice
21 for MMR, Varicella, and Tdap, among other viruses.

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

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

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

26 ***Attendance Without Proof of Immunity***

27 30. California allows several categories of schoolchildren to attend public and private schools
28 without proof of immunity:

- 1 a. Foster Care Children: Section 48850(f)(8)(B) of the Education Code was amended
2 this year to provide that when foster care children are transferred to a new school,
3 the school “shall immediately enroll the foster child even if the foster child...is
4 unable to produce...records normally required for enrollment, such as...proof of
5 immunization history...”
- 6 b. Homeless Children: Section 48852.7(c)(3) of the Education Code provides that to
7 “ensure that the homeless child has the benefit of matriculating with his or her peers
8 in accordance with the established feeder patterns of school districts...[t]he new
9 school shall immediately enroll the homeless child even if the child...is unable to
10 produce...records normally required for enrollment...including, but not limited to,
11 records or other proof of immunization history...”
- 12 c. Military Families: Section 48204.6(c)(3) of the Education Code provides that to
13 “ensure that the pupil who is a child of a military family has the benefit of
14 matriculating with his or her peers in accordance with the established feeder
15 patterns of school districts...[t]he new school shall immediately enroll the pupil
16 who is a child of a military family even if the child...is unable to produce...records
17 normally required for enrollment...including, but not limited to, records or other
18 proof of immunization history...”

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

20 31. Jordan is 11 years old and is in the sixth grade.

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

23 33. Jordan has had the same vaccination status since before entering kindergarten.

24 34. Jordan has been vaccinated with:

- 25 • Three of four doses of the Polio vaccine
26 • Five of five doses of the DTaP vaccine
27 • One of two doses of the MMR vaccine
28 • Three doses of the Hepatitis B vaccine

1 35. Jordan was previously infected with chicken pox (Varicella) and so has immunity for that
2 disease.

3 36. Jordan had a prior medical exemption from his former pediatrician, Dr. Sutton, which was
4 revoked because Dr. Sutton was disciplined.

5 37. SB 276 from 2019 states that a medical exemption written by a doctor who has ever been
6 disciplined is no longer valid – regardless of what they were disciplined for.

7 38. Accordingly, Jordan needed to demonstrate immunity for MMR (second dose) and Polio
8 (fourth dose).

9 39. Following this medical exemption revocation, Jordan underwent titer testing.

10 40. Jordan’s titer testing confirmed immunity for:

- 11 • MMR (measles, mumps, and rubella)
- 12 • Polio Type 1
- 13 • Polio Type 3

14 41. The Polio Type 2 titer was not included from the lab. Per the CDC, “Serologic testing for
15 antibodies against poliovirus type 2, an assay that uses live virus, is becoming increasingly unavailable as
16 US laboratories conform to WHO’s laboratory containment strategy to destroy type 2 poliovirus in their
17 facilities, this started in late 2015.” Thus, labs no longer test for Polio Type 2.

18 42. Moreover, Jordan received the IPV vaccine which covers all three types of Polio.

19 43. Jordan does not need a second dose of the MMR vaccine or a fourth dose of the Polio
20 vaccine due to his titer-confirmed immunity via positive antibodies to each of the diseases.

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

23 ***Jordan’s 2023 Exemption, Revocation, and Appeal***

24 45. PCS advised Robyn that titer tests in lieu of vaccination would be sufficient to satisfy
25 Jordan’s immunization requirements to attend PCS.

26 46. Robyn submitted records to PCS demonstrating Jordan’s titer-confirmed immunity for
27 MMR and Polio.

28 47. On or about February 28, 2023, Robyn offered to PCS the official laboratory titers results

1 from Quest Laboratories demonstrating Jordan’s immunity to MMR and Polio.

2 48. Robyn offered those results with notes from Jordan’s pediatrician, Dr. Faye Lundergan,
3 confirming that Jordan is immune to MMR and Polio.

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

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

10 51. Robyn did not believe that Jordan needed a medical exemption because Jordan has
11 immunity. Nonetheless, she proceeded with the medical exemption.

12 52. On or about March 1, 2023, Robyn requested a medical exemption (number 129146)
13 (“Medical Exemption”) via the California Immunization Registry Medical Exemption (“CAIR-ME”).

14 53. The Medical Exemption was only for MMR and Polio as those were the only diseases for
15 which Jordan needed to confirm his immunity.

16 54. Varicella was not at issue given Jordan’s documented case of chicken pox.

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

19 56. On or about April 6, 2023, however, Robyn received a CAIR-ME notice that Jordan’s
20 Medical Exemption had been revoked by CDPH.

21 57. CAIR-ME did not provide any reason for the revocation.

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

24 59. Robyn appealed on Jordan’s behalf by submitting detailed records and information from
25 Dr. Lundergan to CDPH via CAIR-ME to support Jordan’s appeal. These documents included all
26 applicable titer test results and vaccination records, plus thoughtful references to California law and CDC
27 guidelines. Specifically:

28 a. In the case of MMR, these are not diseases where people continue to receive

1 boosters. Per the CDC, one does not need the MMR vaccine if one has presumptive
2 evidence of immunity including “blood tests that show you are immune to MMR,”
3 which Jordan has.

4 b. Further, a large percentage of MMR vaccine recipients seroconvert with the first
5 dose. The second does is not intended as a booster, but to provide another
6 opportunity for vaccine response in the small proportion of recipients who do not
7 respond to the first dose. Jordan has serologic evidence of immunity for MMR and
8 therefore will not benefit from receiving a 2nd dose. Per the CDC, the MMR is a
9 live-virus vaccine, once an individual seroconverts (has antibodies), not only is the
10 vaccine recipient “protected” but it works really well in preventing the transmission
11 of the viruses.

12 c. In the case of Polio, this is also not a disease where people continue to receive
13 boosters. Jordan was vaccinated in the United States with IPV which means he was
14 vaccinated for all three types of the polio virus. The efficacy for IPV is 99% after
15 three doses, so it is no surprise that his serology test indicates immunity.

16 60. CDPH via CAIR-ME denied the medical exemption appeal without explanation.

17 61. If relief is not granted, Jordan risks being coerced into an independent study program and
18 furthers risks being excluded from in-person instruction and participation in extracurricular activities on
19 PCS’s campuses, and prohibited from entering PCS property for any educational or social purpose.

20 **FIRST CAUSE OF ACTION**
21 **Preemption By and Violation of Health and Safety Code Section 120335 and**
22 **California Code of Regulations, Title 17, Sections 6025, 6060, and 6065**
23 **Against All Defendants**

24 62. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth
25 herein.

26 63. Title 17, Section 6025 of the California Code of Regulations, the implementing regulation
27 for Health and Safety Code Section 120335, provides that a school “shall unconditionally admit or allow
28 continued attendance to any pupil aged 18 months or older whose parent or guardian has provided
documentation of any of the following for each *immunization* required for the pupil’s age or grade, as

1 defined in Table A or B of this section.” (Italics added.)

2 64. Table B identifies California Immunization Requirements for Grades K–12, including
3 doses required for specific age groups.

4 65. For K-12 (but under seventh grade), a pupil shall have immunization for Polio, DTaP, Hep
5 B, MMR, and Varicella: Polio (4 doses); DTaP (5 doses); Hep B (3 doses); MMR (2 doses); and Varicella
6 (2 doses).

7 66. Under Title 17, Section 6025 of the California Code of Regulations, a permanent medical
8 exemption in accordance with Section 6051 may be provided in lieu of proof of receipt of immunization.

9 67. PCS is required by California law to unconditionally admit or allow continued attendance
10 to any student who has provided proof of immunization, as provided by Tables A and B, or has submitted
11 a medical exemption.

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

14 69. Any refusal by PCS to admit Jordan or allow Jordan’s continued attendance, following
15 CDPH’s revocation of his medical exemption, violates Section 6025 because it excludes him even though
16 Jordan has all the immunizations required by Section 6025.

17 70. Any mandate by Defendants requiring Jordan to be *vaccinated* rather than *immunized*
18 violates Section 120335 of the Health and Safety Code and Title 17, Section 6025 of the California Code
19 of Regulations, because such mandate recognizes only vaccination, and not “*immunization*,” which can
20 be acquired naturally through prior infection and/or evidenced by antibodies.

21 71. California schoolchildren have a fundamental right to a free public education.

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

27 73. Plaintiff has no administrative remedy and has no adequate remedy at law.

28 ///

SECOND CAUSE OF ACTION
Preemption By and Violation of California Code of Regulations, Title 5, Section 11700
Against All Defendants

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

75. PCS is required by California law to unconditionally admit or allow continued attendance to any student who has provided proof of immunization, as provided by Title 17, Section 6025, Tables A and B, or has submitted a medical exemption.

76. 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.

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

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

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

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

81. Defendants' vaccination policy violates California Code of Regulations, Title 5, Section 11700, because it will lead to the forced and involuntarily enrollment of Jordan in PCS's 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.

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

83. Should Defendants continue not to recognize Jordan's immunized status, Jordan will suffer irreparable harm (including, without limitation, academic, social, and mental health harms) each day that

1 Defendants exclude Jordan from in-person instruction and participation in extracurricular activities on
2 PCS’s campuses and each day that Defendants prohibit Jordan from entering PCS property for any
3 educational or social purpose.

4 84. Plaintiff has no administrative remedy and has no adequate remedy at law.

5 **THIRD CAUSE OF ACTION**
6 **Preemption By and Violation of Education Code Sections 51746 and 51747**
7 **Against All Defendants**

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

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

12 87. A school may enroll a child in such a program only if there has been a “pupil-parent-
13 educator conference” to determine whether enrollment in independent study is in the best interest of the
14 child (id., § 51747, subd. (h)(2)) and “a signed written agreement for independent study from the pupil,
15 or the pupil’s parent or legal guardian if the pupil is less than 18 years of age” (id., § 51747, subd.
16 (f)(9)(F)).

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

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

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

26 91. Defendants’ vaccination policy violates Education Code Sections 51746 and 51747
27 because it will lead to the forced and involuntarily enrollment of Jordan in PCS’s independent study
28 program and will require the exclusion of Jordan from any school property within PCS, in-person classes,

1 and extracurricular activities, including sports, at any PCS school, unless Jordan provides proof of
2 vaccination.

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

4 93. Should Defendants not recognize Jordan’s immunized status, Jordan will suffer irreparable
5 harm (including, without limitation, academic, social, and mental health harms) each day that Defendants
6 exclude Jordan from in-person instruction and participation in extracurricular activities on PCS’s
7 campuses and each day that Defendants prohibit Jordan from entering PCS property for any educational
8 or social purpose.

9 94. Plaintiff has no administrative remedy and has no adequate remedy at law.

10 **FOURTH CAUSE OF ACTION**
11 **Violation of Article IX of the California Constitution**
12 **Against All Defendants**

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

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

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

22 98. By implementing a stringent and discriminatory vaccine mandate, Defendants are denying
23 California schoolchildren like Jordan their fundamental right to an education that provides a “general
24 diffusion of knowledge and intelligence essential to the preservation of the rights and liberties of the
25 people” and ensures the opportunity to become proficient according to the state of California’s standards,
26 to develop the skills and capacities necessary to achieve economic and social success in our competitive
27 society, and to participate meaningfully in political and community life.

28 99. By preventing unvaccinated students like Jordan who are immune from entering PCS’s
school campuses for in-person instruction and extracurricular activities, Defendants have interfered, to the

1 detriment of California schoolchildren and their families, with the state’s “system of common schools by
2 which a free school shall be kept up and supported in each district at least six months in every year”

3 100. The alleged government interest in slowing the spread of disease does not justify this
4 infringement on California’s students’ constitutional right to a quality education.

5 101. Defendants’ decisions and other actions recited herein are significantly broader than
6 necessary to serve the alleged government interest in slowing the spread of disease.

7 102. Defendants’ decisions and other actions recited herein are not narrowly tailored to
8 minimize infringements on students’ educational rights.

9 103. California students and their families are suffering irreparable harm each day that their
10 schools are required to implement Defendants’ unreasonable and overly broad mandates.

11 104. Plaintiff has no administrative remedy and has no adequate remedy at law.

12 **FIFTH CAUSE OF ACTION**
13 **Violation of the Equal Protection Clause of the California Constitution**
14 **Against All Defendants**

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

17 106. Under the Equal Protection Clause of the California Constitution, “[a] person may not be
18 ... denied equal protection of the laws.” (Cal. Const., art. I, § 7, subd. (a).) Further, “[a] citizen or class
19 of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.”
(Cal. Const., Art. I, § 7, subd. (b).)

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

23 108. “The first prerequisite to a meritorious claim under the equal protection clause is a showing
24 that the state has adopted a classification that affects two or more similarly situated groups in an unequal
25 manner. This initial inquiry is not whether persons are similarly situated for all purposes, but whether
26 they are similarly situated for purposes of the law challenged.” *Cooley v. Superior Court* (2002) 29 Cal.4th
27 228, 253, citations omitted; see also *Deese v. City of Lodi* (1937) 21 Cal.App.2d 631, 635 [holding health
28 restrictions applicable only to certain industries violated equal protection guarantees].)

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

4 110. Defendants’ restrictions violate the Equal Protection Clause of the California Constitution
5 because: (1) Defendants’ mandates distinguish between vaccinated and unvaccinated schoolchildren, and
6 impose independent study as the sole option for education for schoolchildren, including schoolchildren
7 who have natural immunity from prior infection, while providing in-person education and opportunities
8 to participate in extracurricular activities to those who are vaccinated; and (2) Defendants’ mandates
9 wholly ignore the efficacy of naturally acquired immunity, while only recognizing vaccinated immunity
10 and sanctioning preferential treatment for vaccinated individuals; (3) Defendants’ mandates treat
11 unvaccinated migrant, foster, homeless, and military family members’ schoolchildren more favorably than
12 all other unvaccinated schoolchildren by permitting unvaccinated migrant, foster, homeless, and military
13 family members’ schoolchildren to attend school in-person and to participate in extracurricular activities
14 on Defendants’ school campuses, even if they are unvaccinated.

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

18 112. Strict scrutiny demands that the government actor establish: (1) it has a compelling interest
19 that justifies the challenged rule; (2) the rule is necessary to further that interest; and (3) the rule is narrowly
20 drawn to achieve that end.

21 113. The alleged government interest in slowing the spread of disease does not justify
22 Defendants’ mandates.

23 114. Defendants’ mandates are significantly broader than necessary to further the alleged
24 government interest in slowing the spread of disease.

25 115. Defendants’ mandates are not narrowly drawn to minimize infringements on the
26 fundamental rights of California’s schoolchildren.

27 116. The distinction made by Defendants between vaccinated and unvaccinated schoolchildren
28 — and even different classes of unvaccinated schoolchildren (i.e., migrant, foster, homeless, and military

1 family members' schoolchildren) — cannot survive strict scrutiny. In the alternative, these distinctions
2 cannot survive even rational basis scrutiny. Naturally acquired immunity has been found to be equal or
3 superior to vaccine-induced immunity. Defendants' preferential treatment of vaccinated individuals and
4 certain classes of unvaccinated individuals discriminates, without justification, against all other
5 unvaccinated individuals, including those with natural immunity. It also creates three classes of
6 schoolchildren: those who have been vaccinated, those who have not been vaccinated but fall within a
7 certain class of schoolchildren subject to preferential treatment, and those schoolchildren who do not fall
8 within one of those classes but have not been vaccinated.

9 117. Defendants' mandates treat schoolchildren who have not been vaccinated and are not
10 members of an exempt group as an inferior class, in that those schoolchildren cannot attend the school of
11 their choice within PCS, cannot participate in in-person classes, and cannot enter a school property for
12 any purpose, including extracurricular and other activities, while the schoolchildren who have been
13 vaccinated or are a member of an exempt group are allowed to attend the school of their choice within
14 PCS, to participate in in-person classes, and to enter a school property for extracurricular and other
15 activities.

16 118. Defendants' mandate and their proposed exclusion and imposition of restrictions on
17 unvaccinated students cannot withstand strict scrutiny. In the alternative, it cannot survive even rational
18 basis scrutiny.

19 119. Plaintiff has no administrative remedy and has no adequate remedy at law.

20 **SIXTH CAUSE OF ACTION**
21 **Violation of Education Code Section 220**
22 **Against PCS**

23 120. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth
24 herein.

25 121. Under California Education Code section 220, "No person shall be subjected to
26 discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or
27 ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate
28 crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or
activity conducted by an educational institution that receives, or benefits from, state financial assistance,

1 or enrolls pupils who receive state student financial aid.” (Ed. Code, § 220.)

2 122. PCS and its schools are educational institutions that receive state financial assistance.

3 123. Defendants’ mandates discriminate against all unvaccinated schoolchildren — including
4 those who are immune due to prior infection — that are not members of one of the classes of
5 schoolchildren that are exempt from the requirement, including migrant schoolchildren, who will be
6 permitted to receive the benefits of in-person education, regardless of their vaccination status, based solely
7 on their nationality and/or immigration status, while other unvaccinated schoolchildren who are not
8 migrants will be involuntarily transferred to independent study.

9 124. Defendants’ mandates do not treat all schoolchildren equally, as they give preference to
10 and permit unvaccinated migrant schoolchildren to continue to attend in-person classes and extracurricular
11 activities at PCS schools, while barring all other unvaccinated schoolchildren, including those with natural
12 immunity, from in-person classes and extracurricular activities at PCS schools.

13 125. California schoolchildren have a fundamental right to a free public education.

14 126. Schoolchildren like Jordan, who are naturally immune but not fully vaccinated, will be
15 excluded from in-person instruction and participation in extracurricular activities on PCS’s campuses.

16 127. Further, such schoolchildren will be involuntarily enrolled in an independent study
17 program and will not be permitted to enter PCS property for any purpose.

18 128. Such schoolchildren will suffer irreparable harm each day that they are excluded from
19 PCS’s school campuses, whether for in-person instruction, extracurricular activities, or other educational
20 or social purposes.

21 129. Plaintiff has no administrative remedy and has no adequate remedy at law.

22 **SEVENTH CAUSE OF ACTION**
23 **Violation of Government Code Section 11135**
24 **Against PCS**

25 130. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth
26 herein.

27 131. Under Government Code section 11135, “No person in the State of California shall, on the
28 basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental
disability, physical disability, medical condition, genetic information, marital status, or sexual orientation,

1 be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination
2 under, any program or activity that is conducted, operated, or administered by the state or by any state
3 agency, is funded directly by the state, or receives any financial assistance from the state.” (Cal. Gov.
4 Code, § 11135.)

5 132. PCS and its schools receive state financial assistance.

6 133. Defendants’ mandates discriminate against all unvaccinated schoolchildren — including
7 those who are immune due to prior infection — that are not members of one of the classes of
8 schoolchildren that are exempt from the requirement, including migrant schoolchildren, who will be
9 permitted to receive the benefits of in-person education, regardless of their vaccination status, based solely
10 on their nationality and/or immigration status, while other unvaccinated schoolchildren who are not
11 migrants will be involuntarily transferred to independent study.

12 134. Defendants’ mandates do not treat all schoolchildren equally, as they give preference to
13 and permit unvaccinated migrant schoolchildren to continue to attend in-person classes and extracurricular
14 activities at PCS schools, while barring all other unvaccinated schoolchildren, including those with natural
15 immunity, from in-person classes and extracurricular activities at PCS schools.

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

17 136. Schoolchildren like Jordan, who are naturally immune but not fully vaccinated, will be
18 excluded from in-person instruction and participation in extracurricular activities on PCS’s campuses.

19 137. Further, such schoolchildren will be involuntarily enrolled in an independent study
20 program and will not be permitted to enter PCS property for any purpose.

21 138. Such schoolchildren will suffer irreparable harm each day that they are excluded from
22 PCS’s school campuses, whether for in-person instruction, extracurricular activities, or other educational
23 or social purposes.

24 139. Plaintiff has no administrative remedy and has no adequate remedy at law.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for relief as follows:

27 1. A temporary restraining order, preliminary injunction, permanent injunction, and writ of
28 mandate restraining and preventing Defendants and their officers, agents, or any other persons acting with

1 them or on their behalf from implementing and enforcing a policy that requires *vaccination* rather than
2 *immunity* to the exclusion of Jordan from in-person instruction and participation in extracurricular
3 activities on PCS's campuses and from entering PCS property for any educational or social purpose;

4 2. A declaration that Defendants' mandates as alleged herein are null and void as preempted
5 by state law;

6 3. A declaration that Defendants' mandates as alleged herein are invalid and unlawful;

7 4. A declaration that antibody titer tests be recognized as immunity and be presented in lieu
8 of vaccination records;

9 5. A declaration that antibody titer tests fully support medical exemptions or, in the
10 alternative, that medical exemptions are not necessary when a student has titer tests demonstrating
11 immunity;

12 6. A declaration that Defendants cannot exclude a student with titer tests demonstrating
13 immunity from in-person learning;

14 7. A declaration that Defendants cannot involuntarily enroll any student in an independent
15 study program;

16 8. Attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure and any other
17 applicable provision of law;

18 9. Costs of suit; and


19 10. Such other and further relief as the Court may deem just and proper.

20
21 Respectfully submitted,

22
23 DATED: May 10, 2024

THE NICOL LAW FIRM

24
25
26 By: _____


Jonathon D. Nicol
*Attorneys for Plaintiff Robyn Cannistra,
individually and on behalf of
Jordan Cannistra, as his guardian in fact*

1 **PROOF OF SERVICE**

2 **Cannistra et al. vs. Tomás Aragón**

3 **Sonoma County Superior Court 24CV01964**

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 At the time of service, I was over 18 years of age and not a party to this action. I am employed
6 in the County of Los Angeles, State of California. My business address is 1801 Century Park East, 24th
7 Floor, Los Angeles, CA 90067.

8 On May 10, 2024, I served true copies of the following document(s) described as **FIRST**
9 **AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND**
10 **PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

11 Stacey Leask 12 Stacey.Leask@doj.ca.gov 13 Darrell Spence 14 Darrell.Spence@doj.ca.gov 15 Office of the Attorney General 16 California Department of Justice 17 455 Golden Gate Avenue, Suite 11000 18 San Francisco, CA 94102-7004	Counsel for Defendant Tomás Aragón, in his official capacity as Department of Public Health Director and as the State Public Health Officer
16 Frank Zotter 17 fzotter@sclscal.org 18 School & College Legal Services of California 5350 Skylane Blvd. Santa Rosa, CA 95403	Counsel for Defendant Petaluma City Schools

19 BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be
20 sent from e-mail address jdn@nicolfirm.com to the persons at the e-mail addresses listed in the Service
21 List. I did not receive, within a reasonable time after the transmission, any electronic message or other
22 indication that the transmission was unsuccessful.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct.

25 Executed on May 10, 2024, at Los Angeles, California.

26
27 

28 Jonathon D. Nicol