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**ELECTRONICALLY FILED
Superior Court of California
County of Sonoma**

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By: Jennifer Ellis, Deputy Clerk**

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

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

Plaintiff,

vs.

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

Defendants.

Case No.: 24CV01964

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

**SECOND AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF AND VERIFIED 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 California law requires, but Defendants refuse
10 to recognize Jordan’s immunized status and seek to enforce their vaccination mandate against Jordan to
11 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 12 years old and is in the seventh 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”

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

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Immunization/IMM-231.pdf>

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

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

21. “Where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme.” (*O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068.) “Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned.” (*Ibid.*) It follows that “local regulation 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”) is the national public health agency of the United
4 States. It is a United States federal agency under the Department of Health and Human Services. The
5 definitions and regulations it adopts are binding nationwide.

6 23. The CDC glossary defines “immunity” as “[p]rotection against a disease.” “Immunity is
7 indicated by the presence of antibodies or other components in the blood and can usually be determined
8 with a laboratory test.”

9 <https://www.cdc.gov/vaccines/glossary/index.html#heading-i>

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

13 <https://www.cdc.gov/vaccines/glossary/index.html#heading-a>

14 25. “Passive Immunity” is “[p]rotection against disease through antibodies produced by
15 another human being or animal.”

16 <https://www.cdc.gov/vaccines/glossary/index.html#heading-p>

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

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

19 27. A titer test confirms that the person possesses sufficient antibodies for immunity from the
20 subject virus.

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

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

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

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

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

31. Every other state in America allows for titer testing for some or all diseases for school admission in lieu of vaccination, other than California and Nevada.

Attendance Without Proof of Immunity

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

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

33. California does not require school districts to disenroll these students if they do not provide proof of vaccination within thirty days.

34. There are circumstances when school districts, including schools in the Inland Empire of California, spend the entire school year or more trying to ensure that such students are compliant.

Jordan's Complete Immunity

35. Jordan is in the seventh grade at PCS.

36. Jordan has been vaccinated with:

- Five of five doses of the DTaP vaccine
- One of one dose of the Tdap vaccine
- Three of three doses of the Hepatitis B vaccine
- Three of four doses of the Inactivated Poliovirus Vaccine ("IPV")
- One of two doses of the MMR vaccine

37. Jordan was previously infected with Varicella (chickenpox) and thus he possesses acquired immunity for Varicella (chickenpox) as demonstrated in his medical records.

38. Accordingly, Jordan needed to demonstrate immunity only for MMR and for Polio.

39. Jordan underwent titer testing to confirm that he possesses sufficient antibodies for immunity from MMR and Polio (Type 1, Type 2, and Type 3).

40. Jordan's titer testing confirmed immunity for:

- MMR (measles, mumps, and rubella)
- Varicella (chickenpox)
- Polio Type 1
- Polio Type 3

41. Titer testing for Polio Type 2 is not available in the United States. Per the CDC, "Serologic testing for antibodies against poliovirus type 2, an assay that uses live virus, is becoming increasingly unavailable as US laboratories conform to WHO's laboratory containment strategy to destroy type 2 poliovirus in their facilities, this started in late 2015." Thus, labs no longer test for Polio Type 2.

<https://www.cdc.gov/mmwr/volumes/66/wr/mm6601a6.htm>

42. Per Defendants themselves, the entire world is immune from Polio Type 2, as it does not exist any longer in human populations.

43. California law does not delineate that a student must be vaccinated against, or show immunity to, Polio Type 2 – or to any specific type of Polio. This is because the Polio requirement was added in 1961, before any Polio types were eradicated.

44. Instead, California requires four doses of IPV – but only three doses “if one was given on or after 4th birthday.” <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/School/tk-12-immunizations.aspx>

45. Jordan received three doses of the IPV vaccine which covers all three types of Polio:

- a. Polio Type 1: The most common cause of polio outbreaks and paralytic polio.
- b. Polio Type 2: Certified *eradicated* globally since 1999.
- c. Polio Type 3: Certified *eradicated* globally since 2019.

<https://www.who.int/news-room/feature-stories/detail/two-out-of-three-wild-poliovirus-strains-eradicated>

46. California’s vaccination and/or immunity requirement as to Polio is effectively limited to Polio Type 1 – because Types 2 and 3 have been eradicated.

47. Per the CDC, the IPV vaccine ensures broad protection against Polio. While four is the recommended number of doses, two doses of IPV provide at least 90% protection and three doses of IPV provide at least 99% protection. <https://www.cdc.gov/polio/vaccines/index.html>

48. Jordan has had three IPV doses and therefore Jordan has *at least* 99% protection against all types of Polio.

49. Jordan’s titer results show immunity to Polio Type 1 and to Polio Type 3.

50. As to Polio Type 2, for which there is no titer test, this disease no longer exists.

51. Thus, the global eradication of Polio Type 2 renders Jordan immune to that type.

52. Jordan is therefore *fully* immune against Polio and does not need a fourth does of IPV.

53. Jordan is also fully immune against MMR and does not need a second dose of the MMR vaccine.

54. Jordan is also fully immune as to Varicella (chickenpox) given that he acquired immunity via infection, and which immunity is confirmed by his titer results.

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

Jordan’s 2023 Exemption, Revocation, and Appeal

56. PCS advised Robyn that titer tests in lieu of vaccination would be sufficient to satisfy

Jordan's immunization requirements to attend PCS.

57. Robyn submitted records to PCS demonstrating Jordan's titer-confirmed immunity for MMR and Polio.

58. On or about February 28, 2023, Robyn offered to PCS the official laboratory titers results from Quest Laboratories demonstrating Jordan's immunity to MMR and Polio.

59. Robyn offered those results with notes from Jordan's pediatrician, Dr. Faye Lundergan with Providence, confirming that Jordan is immune to MMR and Polio.

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

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

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

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

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

65. Varicella (chickenpox) was not at issue given Jordan's documented case of Varicella (chickenpox).

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

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

68. CAIR-ME did not provide any specific reason for the revocation – it only included a generic revocation statement.

69. The CAIR-ME revocation notice gave Robyn until May 6, 2023 for Jordan to either: (1)

1 start receiving the required vaccines, or (2) appeal the decision.

2 70. Robyn appealed on Jordan's behalf by submitting detailed records and information from
3 Dr. Lundergan to CDPH via CAIR-ME to support Jordan's appeal. These documents included all
4 applicable titer test results and vaccination records, plus thoughtful references to California law and CDC
5 guidelines. Specifically:

- 6 a. In the case of MMR, these are not diseases where people continue to receive
7 boosters. Per the CDC, one does not need the MMR vaccine if one has presumptive
8 evidence of immunity including "blood tests that show you are immune to MMR,"
9 which Jordan has.
- 10 b. Further, a large percentage of MMR vaccine recipients seroconvert with the first
11 dose. The second dose is not intended as a booster, but to provide another
12 opportunity for vaccine response in the small proportion of recipients who do not
13 respond to the first dose. Jordan has serologic evidence of immunity for MMR and
14 therefore will not benefit from receiving a 2nd dose. Per the CDC, the MMR is a
15 live-virus vaccine, once an individual seroconverts (has antibodies), not only is the
16 vaccine recipient "protected" but it works really well in preventing the transmission
17 of the viruses.
- 18 c. In the case of Polio, this is also not a disease where people continue to receive
19 boosters. Jordan was vaccinated in the United States with IPV which means he was
20 vaccinated for all three types of the polio virus. The efficacy for IPV is 99% after
21 three doses, so it is no surprise that his serology test indicates immunity to Polio,
22 including types deemed eradicated.

23 71. CDPH via CAIR-ME denied the medical exemption appeal without explanation, only
24 providing a generic denial.

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

FIRST CAUSE OF ACTION
Declaratory and Injunctive Relief
Against All Defendants

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

74. Title 17, Section 6025 of the California Code of Regulations, the implementing regulation for Health and Safety Code Section 120335, provides that a school “shall unconditionally admit or allow 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 defined in Table A or B of this section.” (Italics added.)

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

76. 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 Tables A and B, or has submitted a medical exemption.

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

78. An actual controversy exists. Jordan is entitled to attend in-person instruction at PCS given his immunized status.

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

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

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

82. Under Title 5, Section 11700 of the California Code of Regulations, “Independent study is

1 an optional educational alternative in which no pupil may be required to participate.” (Cal. Code. Regs.,
2 tit. 5, § 11700, subd. (d).)

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

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

9 85. Defendants’ vaccination policy violates California Code of Regulations, Title 5, Section
10 11700, because it will lead to the forced and involuntarily enrollment of Jordan in PCS’s independent
11 study program and will require the exclusion of Jordan from any school property within PCS, in-person
12 classes, and extracurricular activities, including sports, at any PCS school, unless Jordan provides proof
13 of vaccination.

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

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

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

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

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

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

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

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

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

15 95. A judicial declaration of the legality of Defendants' conduct and policies, and whether it
16 was proper for Defendants to require vaccination in light of Jordan's proven immunity, or whether it was
17 proper for CDPH to deny Jordan's Medical Exemption, is necessary and appropriate at this time.

18 **SECOND CAUSE OF ACTION**
19 **Writ of Mandate (Code Civ. Proc. § 1085)**
 Against All Defendants

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

22 97. Defendants have a clear, present, and ministerial duty to process medical exemptions (such
23 as Jordan's Medical Exemption) in a way that gives effect to California's interest in public health and to
24 schoolchildren's fundamental interest in education.

25 98. Plaintiff is beneficially interested in this matter as a parent and on behalf of Jordan in that
26 schoolchildren with proven immunity should be granted medical exemptions so that they may attend in-
27 person instruction at schools.

28 99. Defendants' implementation and enforcement of the medical exemption system is and will

1 be of a continuing nature for which Plaintiff has no plain, speedy or adequate remedy at law, and which
2 have and will continue to result in irreparable harm.

3 100. Plaintiff presents important questions of statutory interpretation, as well as questions of
4 public interest which further warrant prompt disposition of this matter.

5 101. Accordingly, Plaintiff seeks a writ of mandate, pursuant to Code of Civil Procedure
6 sections 1085, commanding Defendants to design, implement, maintain and enforce updates to the
7 medical exemption system such that it does not preclude immunized schoolchildren from securing such
8 exemptions in violation of California law, including without limitation the right to education.

9
10 **THIRD CAUSE OF ACTION**
Writ of Mandate (Code Civ. Proc. § 1094.5)
Against All Defendants

11 102. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth
12 herein.

13 103. Defendants' denial of Jordan's Medical Exemption constitutes an abuse of discretion in
14 that the denial imposed upon Jordan is not supported by the findings of fact, or by the evidence.

15 104. Defendants have acted unreasonably, arbitrarily, and capriciously in denying Jordan's
16 Medical Exemption.

17 105. Plaintiff is beneficially interested in this matter on behalf of Jordan in that he has proven
18 immunity and should be granted the Medical Exemption so that he may attend in-person instruction at
19 PCS.

20 106. Plaintiff does not have a plain, speedy, or adequate remedy at law.

21 107. Plaintiff has exhausted all available administrative remedies.

22 **FOURTH CAUSE OF ACTION**
23 **Violation of Article IX of the California Constitution**
Against All Defendants

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

26 109. Article IX, section 1, of the California Constitution provides: "A general diffusion of
27 knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the
28 Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and

1 agricultural improvement.”

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

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

11 112. By preventing partially-vaccinated students like Jordan who are immune from entering
12 PCS’s school campuses for in-person instruction and extracurricular activities, Defendants have
13 interfered, to the detriment of California schoolchildren and their families, with the state’s “system of
14 common schools by which a free school shall be kept up and supported in each district at least six months
15 in every year”

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

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

20 115. Defendants’ decisions and other actions recited herein are not narrowly tailored to
21 minimize infringements on students’ educational rights.

22 116. California students and their families are suffering irreparable harm each day that their
23 schools are required to implement Defendants’ unreasonable and overly broad mandates.

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

25 **FIFTH CAUSE OF ACTION**
26 **Violation of the Equal Protection Clause of the California Constitution**
27 **Against All Defendants**

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

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

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

8 121. “The first prerequisite to a meritorious claim under the equal protection clause is a showing
9 that the state has adopted a classification that affects two or more similarly situated groups in an unequal
10 manner. This initial inquiry is not whether persons are similarly situated for all purposes, but whether
11 they are similarly situated for purposes of the law challenged.” *Cooley v. Superior Court* (2002) 29 Cal.4th
12 228, 253, citations omitted; see also *Deese v. City of Lodi* (1937) 21 Cal.App.2d 631, 635 [holding health
13 restrictions applicable only to certain industries violated equal protection guarantees].)

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

17 123. Defendants’ restrictions violate the Equal Protection Clause of the California Constitution
18 because: (1) Defendants’ mandates distinguish between vaccinated and partially-vaccinated
19 schoolchildren, and impose independent study as the sole option for education for schoolchildren,
20 including schoolchildren who have natural immunity from prior infection, while providing in-person
21 education and opportunities to participate in extracurricular activities to those who are vaccinated; and (2)
22 Defendants’ mandates wholly ignore the efficacy of naturally acquired immunity, while only recognizing
23 vaccinated immunity and sanctioning preferential treatment for vaccinated individuals; (3) Defendants’
24 mandates treat unvaccinated migrant, foster, homeless, and military family members’ schoolchildren more
25 favorably than all other partially-vaccinated schoolchildren by permitting unvaccinated migrant, foster,
26 homeless, and military family members’ schoolchildren to attend school in-person and to participate in
27 extracurricular activities on Defendants’ school campuses, even if they are unvaccinated.

28 124. No California opinions address unvaccinated migrant, foster, homeless, and military family

members' schoolchildren in the context of Equal Protection.

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

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

127. The alleged government interest in slowing the spread of disease does not justify Defendants' mandates.

128. Defendants' mandates are significantly broader than necessary to further the alleged government interest in slowing the spread of disease.

129. Defendants' mandates are not narrowly drawn to minimize infringements on the fundamental rights of California's schoolchildren.

130. The distinction made by Defendants between vaccinated and partially-vaccinated schoolchildren — and even different classes of -schoolchildren (i.e., migrant, foster, homeless, and military family members' schoolchildren) — cannot survive strict scrutiny. In the alternative, these distinctions cannot survive even rational basis scrutiny. Naturally acquired immunity has been found to be equal or superior to vaccine-induced immunity. Defendants' preferential treatment of vaccinated individuals and certain classes of partially-vaccinated individuals discriminates, without justification, against all other partially-vaccinated individuals, including those with natural immunity. It also creates three classes of schoolchildren: those who have been vaccinated, those who have not been vaccinated but fall within a certain class of schoolchildren subject to preferential treatment, and those schoolchildren who do not fall within one of those classes but have not been vaccinated.

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

1 PCS, to participate in in-person classes, and to enter a school property for extracurricular and other
2 activities.

3 132. Defendants' mandate and their proposed exclusion and imposition of restrictions on
4 partially-vaccinated students cannot withstand strict scrutiny. In the alternative, it cannot survive even
5 rational basis scrutiny.

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

7 **SIXTH CAUSE OF ACTION**
8 **Violation of the Substantive Due Process Clause of the California Constitution**
9 **Against All Defendants**

10 134. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth
11 herein.

12 135. Under the Substantive Due Process of the California Constitution, "[a] person may not be
13 deprived of life, liberty, or property without due process of law." (Cal. Const., art. I, § 7, subd. (a).)

14 136. Substantive Due Process protects against government action that affirmatively places an
15 individual in deprivation of life, liberty, or property that he or she would not have otherwise faced.

16 137. Defendants' denial of Jordan's Medical Exemption, and their refusal to consider Jordan as
17 fully immunized, deprive Jordan of his fundamental right to a free public education.

18 138. Defendants' conduct also deprives Plaintiff of her right to make medical decisions for
19 Jordan.

20 139. Defendants' mandates discriminate against Plaintiff's and Jordan's fundamental
21 substantive due process rights in light of his fully immunized status.

22 140. Defendants' conduct cannot withstand any level of scrutiny given Jordan's proven
23 immunity.

24 141. Defendants' mandates harm schoolchildren who have not been fully vaccinated yet who
25 are fully immunized, in that those schoolchildren cannot attend the school of their choice within PCS,
26 cannot participate in in-person classes, and cannot enter a school property for any purpose, including
27 extracurricular and other activities.

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

SEVENTH CAUSE OF ACTION
Violation of Education Code Section 220
Against PCS

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

144. Under California Education Code section 220, “No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate 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, or enrolls pupils who receive state student financial aid.” (Ed. Code, § 220.)

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

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

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

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

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

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

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

1 or social purposes.

2 152. Plaintiff has no administrative remedy and has no adequate remedy at law.

3 **EIGHTH CAUSE OF ACTION**
4 **Violation of Government Code Section 11135**
5 **Against PCS**

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

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

14 155. PCS and its schools receive state financial assistance.

15 156. Defendants’ mandates discriminate against all partially-vaccinated schoolchildren —
16 including those who are immune due to prior infection — that are not members of one of the classes of
17 schoolchildren that are exempt from the requirement, including migrant schoolchildren, who will be
18 permitted to receive the benefits of in-person education, regardless of their vaccination status, based solely
19 on their nationality and/or immigration status, while other partially-vaccinated schoolchildren who are not
20 migrants will be involuntarily transferred to independent study.

21 157. Defendants’ mandates do not treat all schoolchildren equally, as they give preference to
22 and permit unvaccinated migrant schoolchildren to continue to attend in-person classes and extracurricular
23 activities at PCS schools, while barring all other partially-vaccinated schoolchildren, including those with
24 natural immunity, from in-person classes and extracurricular activities at PCS schools.

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

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

28 160. Further, such schoolchildren will be involuntarily enrolled in an independent study

1 program and will not be permitted to enter PCS property for any purpose.

2 161. Such schoolchildren will suffer irreparable harm each day that they are excluded from
3 PCS's school campuses, whether for in-person instruction, extracurricular activities, or other educational
4 or social purposes.

5 162. 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, permanent injunction, and writ of
9 mandate restraining and preventing Defendants and their officers, agents, or any other persons acting with
10 them or on their behalf from implementing and enforcing a policy that requires *vaccination* rather than
11 *immunity* to the exclusion of Jordan from in-person instruction and participation in extracurricular
12 activities on PCS's campuses and from entering PCS property for any educational or social purpose;

13 2. A temporary restraining order, preliminary injunction, permanent injunction, and writ of
14 mandate restraining and preventing Defendants and their officers, agents, or any other persons acting with
15 them or on their behalf from implementing and enforcing a policy that denies medical exemptions when
16 immunity is shown via titer tests;

17 3. A writ of mandate be issued ordering Jordan's Medical Exemption be granted;

18 4. A declaration that Defendants' mandates, policies, and conduct as alleged herein are
19 invalid and unlawful;

20 5. A declaration that antibody titer tests be recognized as confirming immunity and be
21 presented in lieu of vaccination records;

22 6. A declaration that antibody titer tests fully support medical exemptions or, in the
23 alternative, that medical exemptions are not necessary when a student has titer tests demonstrating
24 immunity;

25 7. A declaration that Jordan's Medical Exemption be granted;

26 8. A declaration that Defendants cannot exclude a student with titer tests demonstrating
27 immunity from in-person learning;

28 9. A declaration that Defendants cannot involuntarily enroll any student in an independent

1 study program;

2 10. Attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure and any other
3 applicable provision of law;

4 11. Costs of suit; and

5 12. Such other and further relief as the Court may deem just and proper.

6
7 Respectfully submitted,

8
9 DATED: January 16, 2024

THE NICOL LAW FIRM

10
11
12 By: _____



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

1 **VERIFICATION**

2 I, Robyn Cannistra, declare as follows:

3 1. I am the Plaintiff herein.

4 2. I have read the foregoing “Second Amended Complaint For Injunctive and Declaratory
5 Relief and Verified Petition For Writ of Mandate” and know its contents.

6 3. The facts alleged in the Complaint and Petition are within my own knowledge and I know
7 these facts to be true.

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

10 Executed this 16th day of January 2025.

11 *Robyn Cannistra*
12 Robyn Cannistra (Jan 16, 2025 13:10 PST)

13 Robyn Cannistra
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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 January 16, 2024, I served true copies of the following document(s) described as **SECOND**
9 **AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND**
10 **VERIFIED PETITION FOR WRIT OF MANDATE** on the interested parties in this action as
11 follows:

12 Stacey Leask Stacey.Leask@doj.ca.gov 13 Darrell Spence Darrell.Spence@doj.ca.gov 14 Office of the Attorney General 15 California Department of Justice 16 455 Golden Gate Avenue, Suite 11000 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
17 Frank Zotter fzotter@sclscal.org 18 School & College Legal Services of California 5350 Skylane Blvd. 19 Santa Rosa, CA 95403	Counsel for Defendant Petaluma City Schools

20 BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be
21 sent from e-mail address jdn@nicolfirm.com to the persons at the e-mail addresses listed in the Service
22 List. I did not receive, within a reasonable time after the transmission, any electronic message or other
23 indication that the transmission was unsuccessful. I declare under penalty of perjury under the laws of
24 the State of California that the foregoing is true and correct.

25 Executed on January 16, 2024, at Los Angeles, California.

26
27 

28 Jonathon D. Nicol