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and the State Public Health Officer
9

**Exempt from Fees
(Gov. Code § 6103)**

**ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
3/20/2025 3:19 PM
By: Kristin Breeden, Deputy Clerk**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SONOMA

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

15 Plaintiffs,

16 v.

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

21 Defendants.
22

Case No. 24CIV01964

**DECLARATION OF STACEY L. LEASK
IN SUPPORT OF DEFENDANT TOMÁS
ARAGÓN'S DEMURRER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT AND CONCURRENTLY
FILED MOTION TO STRIKE**

Date: May 30, 2025
Time: 3:00 pm
Dept: 19
Judge: The Honorable Oscar A. Pardo
Trial Date:
Action Filed: August 14, 2023

23
24 I, Stacey Leask, declare as follows:

25 1. I am a Deputy Attorney General with the California Department of Justice and an
26 attorney of record for the Director of the California Department of Public Health and the State
27 Public Health Officer (hereinafter, Director). I have personal knowledge of the matters contained
28 in this declaration, and if called upon as a witness, could and would competently testify to them.

1 2. This lawsuit was initially filed as a complaint for injunctive and declaratory relief
2 (Complaint) on August 14, 2023, in Sacramento County Superior Court, as Case Number
3 23CV006706, on behalf of Plaintiff Robyn Cannistra, individually and on behalf of Jordan
4 Cannistra, as his guardian in fact (Plaintiffs). Plaintiffs' complaint named as defendants, Tomás
5 Aragón, in his official capacity as Department of Public Health Director and as the State Public
6 Health Officer (Dr. Aragón), and Petaluma City Schools (PCS).

7 3. Dr. Aragón was succeeded by Dr. Erica Pan, M.D., MPH, FIDSA, FAAP, who
8 assumed the role of director and state public health officer for the California Department of
9 Public Health (CDPH) as of February 1, 2025. All references hereinafter to the Director of
10 CDPH and the state public health officer will be to the "Director."

11 4. The initial complaint alleged three causes of action against the Director and PCS: (1)
12 First Cause of Action for Violation of Health and Safety Code section 120335 and California
13 Code of Regulations, Title 17, sections 6025, 6060, and 6065; (2) Second Cause of Action for
14 Violation of California Code of Regulations, Title 5, section 11700; and (3) Third Cause of
15 Action for Violation of Education Code sections 51746 and 51747.

16 5. Through meet and confer, the parties stipulated and agreed to seek a transfer of the
17 venue of the action from Sacramento County Superior Court to Sonoma County Superior Court.
18 On March 28, 2024, the Sacramento County Superior Court transferred the action to the Sonoma
19 County Superior Court. The Sonoma County court clerk issued notice of receipt of the case
20 transfer from the Superior Court, County of Sonoma, on April 12, 2024.

21 6. Upon transfer of the action to Sonoma County Superior Court, I promptly resumed
22 my meet and confer efforts with Plaintiffs' counsel for the purposes of meeting my statutory meet
23 and confer obligations under California Code of Civil Procedure section 430.41.

24 7. On April 29, 2024, I spoke by telephone with Plaintiffs' counsel, Jonathon Nicol,
25 Esq., and the attorney for PCS, Mr. Frank Zotter, Esq. During the phone call, I reiterated the
26 grounds for demurrer of the complaint. Mr. Nicol informed me that he would discuss the matter
27 with his clients and let me know how they wished to proceed, including to possibly amend the
28 complaint.

1 8. On May 10, 2024, Plaintiffs served a first amended complaint for injunctive and
2 declaratory relief (FAC). Plaintiffs’ FAC pled five causes of action against the Director and PCS
3 and two causes of action against PCS only.

4 9. The five causes of action pled against the Director and PCS included the following:
5 (1) First Cause of Action for alleged preemption by and violation of Health and Safety Code
6 Section 120335 and California Code Regulations, Title 17, Sections 6025, 6060, and 6065; (2)
7 Second Cause of Action for alleged preemption by and violation of California Code of
8 Regulations, Title 5, Section 11700; (3) Third Cause of Action for preemption by and violation of
9 Education Code Sections 51746 and 51747; (4) Fourth Cause of Action for violation of the right
10 to education under California Constitution, Article IX, Section 5; and (5) Fifth Cause of Action
11 for violation of the Equal Protection Clause under California Constitution, Article I, Section 7.

12 10. The FAC also pled two causes of action against PCS only: a sixth cause of action for
13 Violation of Education Code Section 220 and a seventh cause of action for Violation of
14 Government Code Section 11135. The FAC did not plead any cause of action based on
15 California’s Substantive Due Process Clause.

16 11. Counsel for the parties thereafter met and conferred regarding a demurrer to the
17 causes of action asserted against the Director and PCS in the FAC. Counsel for the parties spoke
18 by phone on June 17, 2024, for the purposes of meet and confer as to the FAC. At this time, I
19 explained that the FAC still did not allege any private right of action for the asserted violation of
20 statutes and regulations pled in the FAC; and that Plaintiffs had not rectified the deficiency by
21 simply adding the term “preemption by.” I referred Mr. Nicol to the prior case law that I had
22 provided in my October 6, 2024, letter to counsel. I also reiterated that under well-established
23 case law, the added causes for violation of the California right to education and Equal Protection
24 Clause would fail. See *Love v. State Department of Education* (2018) 29 Cal.App.5th 980, *Brown*
25 *v. Smith* (2018) 24 Cal.App.5th 1135, and *Whitlow v. Cal. Dept. of Education* (S.D. Cal. 2016)
26 203 F.Supp.3d 1079. I further pointed out that the FAC failed to state any facts to support the
27 relief sought, including the request for writ relief under California Code of Civil Procedure
28

1 Section 1085 or California Code of Civil Procedure Section 1094. Mr. Nicol indicated on the call
2 that his clients did not wish to further amend the complaint.

3 12. On July 18, 2024, the Director filed a demurrer to Plaintiffs' FAC, namely, to the
4 first, second, third, fourth and fifth causes of action alleged in the FAC. The matter was briefed
5 by the parties and set for hearing on November 6, 2024. Plaintiffs filed an opposition brief on
6 November 26, 2024. Plaintiffs' opposition brief did not request leave to amend to add any cause
7 of action based on California's Substantive Due Process Clause.

8 13. Prior to the scheduled hearing, the Court issued its tentative ruling with respect to the
9 Director's demurrer to the FAC. No party contested the tentative ruling and no counsel or party
10 appeared at the hearing to contest the tentative ruling.

11 14. On January 6, 2025, the Court adopted its tentative ruling on the demurrer to the FAC
12 and executed its written order on the same. A true and correct copy of the entirety of the Court's
13 Order dated January 6, 2025, is attached as **Exhibit A** (hereinafter, Order.).

14 15. By its Order, the Court sustained demurrer as to the first, second, third, fourth and
15 fifth causes of action pled in the FAC. The Court granted leave to amend as to these five causes
16 of action only.

17 16. On January 16, 2025, Plaintiffs filed a Verified Second Amended Complaint for
18 Injunctive and Declaratory Relief and Verified Petition for Writ of Mandate (SAC). A true and
19 correct copy of the SAC is attached as **Exhibit B**.

20 17. In the SAC, Plaintiffs pleads eight causes of action total, six against the Director and
21 PCS, and two against PCS only. Plaintiffs re-plead their first, second and third causes of action,
22 albeit this time they are pled as petitions for writ of mandamus and as a cause of action for
23 declaratory and injunctive relief; they re-plead their fourth and fifth causes of action based on
24 constitutional violations, namely, an alleged violation of the California right to education and the
25 California Equal Protection Clause); and they re-plead the two causes of action against PCS only
26 (a seventh cause of action for violation of Education Code Section 220 and an eight cause of
27 action for Violation of Government Code Section 11135). In addition, Plaintiffs added an
28

1 entirely new sixth cause of action against the Director and PCS, based on an alleged violation of
2 the California Substantive Due Process Clause.

3 18. Plaintiffs have never filed any motion to request leave of court to add any new causes
4 of action based on California Due Process Clause or otherwise.

5 19. On February 20, 2025, the parties met and conferred by telephone regarding the SAC.
6 I explained the Director's position that Plaintiffs' SAC did not cure the defects of the pleading as
7 laid out in the Court's thorough written order on the demurrer to the FAC. I also explained the
8 Director's position that Plaintiffs did not have leave of court to file a new substantive due process
9 cause of action against defendants and requesting that the sixth cause of action be dismissed or
10 that a motion to strike would be filed in response. Plaintiffs' counsel did not agree. Plaintiffs'
11 counsel also transmitted an email to me the next day indicating their position as to the new sixth
12 cause of action, essentially refusing to withdraw it. A true and correct copy of Plaintiffs' email
13 dated February 21, 2025, is attached as **Exhibit C**.

14 20. I have in good faith attempted to meet and confer with counsel for all parties in this
15 litigation prior to the filing of the demurrer motion and motion to strike, and to avoid the filing of
16 each motion. The parties did not reach an agreement resolving the objections raised by me during
17 the meet and confer process.

18 21. Pursuant to Code of Civil Procedure sections 430.10, subdivision (e) and 436,
19 subdivision (b), the Director is filing the accompanying Demurrer to Plaintiffs' SAC and the
20 concurrently filed Motion to Strike the Sixth Cause of Action in the Second Amended Complaint.
21 I make this declaration as required by Code of Civil Procedure sections 430.41 and 435.5 to
22 establish that I have met my meet and confer obligations regarding these motions.

23 22. A true and correct copy of the Memorandum of Points and Authorities in support of
24 the Director's Demurrer to Plaintiffs' FAC, is attached as **Exhibit D**. The Director refers to the
25 factual summary already briefed in the moving papers on the Director's Demurrer of the FAC, for
26 the purposes of the Demurrer to the SAC and the concurrently filed motion to strike, and is
27 attaching it to this declaration for the Court's convenience. I declare under penalty of perjury
28 under the laws of the State of California that the foregoing is true and correct.

Executed on March 20, 2025, in Alameda, California.



Stacey L. Leask

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EXHIBIT A

**DECL. OF STACEY L. LEASK IN SUPPORT OF DEF. TOMÁS ARAGÓN'S DEMURRER TO
PLAINTIFFS' SECOND AMENDED COMPLAINT AND CONCURRENTLY FILED
MOTION TO STRIKE**

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8 *Tomás Aragón*

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Superior Court of California
County of Sonoma
1/6/2025 9:46 AM
Robert Oliver, Clerk of the Court
By: Angela Mendia, Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SONOMA

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

17 Plaintiffs,

18 v.

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

23 Defendants.

24CV01964

~~[PROPOSED]~~ **ORDER SUSTAINING
DEMURRER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT WITH LEAVE
TO AMEND**

Date: December 11, 2024

Time: 3:00 p.m.

Dept: 19

Judge: Honorable Oscar A. Pardo

Trial Date: Not yet set

Action Filed in Sacramento

Sup. Ct: August 14, 2023

Action Transferred to Sonoma County

Sup Ct: March 28, 2024

First Amended Complaint Filed: June 13,
2024

1 The Demurrer to the First, Second, Third, Fourth and Fifth Causes of Action in the First
2 Amended Complaint for Injunctive and Declaratory Relief (FAC), brought by Defendant Tomás
3 Aragón, sued in his official capacity as Department of Public Health Director and as the State
4 Public Health Officer (Dr. Aragón), came on regularly for hearing before this Court on December
5 11, 2024, at 3:00 p.m., in Department 19 of the Superior Court of the County of Sonoma, the
6 Honorable Oscar A. Pardo presiding.

7 No appearances were made at the hearing. No party contested the Court’s tentative ruling
8 issued on December 10, 2024, a copy that is attached hereto as Exhibit A. Accordingly, the Court
9 adopts the tentative ruling, which shall become the Order of the Court, as follows:

10 Plaintiff Robyn Cannistra (“Plaintiff”) individually and on behalf of Jordan Cannistra
11 (“Minor”) as his guardian in fact, filed the currently operative first amended complaint (the
12 “FAC”) in this action against defendants Tomas Aragon (“Aragon”) in his official capacity as the
13 Department of Public Health (the “Department”) director and as the State Public Health Officer,
14 Petaluma City Schools (“PCS”, together with Aragon, “Defendants”), and Does 1-20, for multiple
15 alleged causes of action arising out a controversy related to vaccination requirements under
16 Health & Saf. Code (“HSC”) § 120335.

17 This matter is on calendar for the Aragon’s demurrer to causes of action one through five
18 within the Complaint pursuant to Cal. Code Civ. Proc. (“CCP”) § 430.10(e) for failure to state
19 facts sufficient to constitute a cause of action. PCS has filed a joinder thereon. The Demurrer is
20 SUSTAINED with leave to amend as to the First through Fifth causes of action.

21 I. Legal Standards

22 A. General Demurrers

23 A demurrer can be used only to challenge defects that appear on the face of the pleading
24 under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a).
25 In the event a demurrer is sustained, leave to amend should be granted where the complaint’s
26 defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831,
27 852.

28 \\\

1 At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions
2 and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.
3 Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially
4 noticed are also disregarded. *Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.
5 Generally, the pleadings “must allege the ultimate facts necessary to the statement of an
6 actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence
7 by which he hopes to prove such ultimate facts.” *Careau & Co. v. Security Pac. Business Credit,*
8 *Inc.* (1990) 222 Cal. App. 3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal. App.
9 3d 367, 384. Each evidentiary fact that might eventually form part of a party’s proof does not
10 need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.
11 Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts.
12 *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. “The distinction between conclusions of
13 law and ultimate facts is not at all clear and involves at most a matter of degree.” *Burks v. Poppy*
14 *Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally
15 where there is some reasonable possibility that a party may cure the defect through amendment.
16 *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

17 B. Constitutional Issues

18 Federally, “it is within the police power of a state to provide for compulsory vaccination.”
19 *Zucht v. King* (1922) 260 U.S. 174, 176. In California, however, “The Legislature shall provide
20 for a system of common schools by which a free school shall be kept up and supported in each
21 district. . .” Cal. Const., art. IX, § 5. Subsequent cases have interpreted this in California as “the
22 distinctive and priceless function of education in our society warrants, indeed compels, our
23 treating it as a ‘fundamental interest,’” subject to constitutional protections. *Serrano v. Priest*
24 (1971) 5 Cal.3d 584, 608–609. ““The right of education, fundamental as it may be, is no more
25 sacred than any of the other fundamental rights that have readily given way to a State’s interest in
26 protecting the health and safety of its citizens, and particularly, school children,”” *Brown v. Smith*
27 (2018) 24 Cal.App.5th 1135, 1146–1147; quoting *Whitlow v. California* (S.D. Cal. 2016) 203
28 F.Supp.3d 1079, 1091.

1 “A citizen or class of citizens may not be granted privileges or immunities not granted on
2 the same terms to all citizens.” Cal. Const., art. I, § 7. “It needs no argument to show that, when it
3 comes to preventing the spread of contagious diseases, children attending school occupy a natural
4 class by themselves, more liable to contagion, perhaps, than any other class that we can think of.
5 This effort ... was for the benefit and protection of all the people It in no way interferes with
6 the right of the child to attend school, provided the child complies with its provisions.” *Brown v.*
7 *Smith* (2018) 24 Cal.App.5th 1135, 1147 (“*Brown*”), quoting *French v. Davidson* (1904) 143 Cal.
8 658, 662.

9 C. Statutory Interpretation, Preemption and Conflict of Laws

10 Interpretation of statutes is a question of law, not one of fact. *Burden v. Snowden* (1992) 2
11 Cal.4th 556, 562.

12 In interpreting a statute, our primary goal is to determine and give effect to the underlying
13 purpose of the law. (*People v. Valladoli* (1996) 13 Cal.4th 590, 597, 54 Cal.Rptr.2d 695, 918 P.2d
14 999.) “Our first step is to scrutinize the actual words of the statute, giving them a plain and
15 commonsense meaning.” (*Ibid.*) “ ‘If the words of the statute are clear, the court should not add to
16 or alter them to accomplish a purpose that does not appear on the face of the statute or from its
17 legislative history.’ ” (*California Teachers, supra*, 28 Cal.3d at p. 698, 170 Cal.Rptr. 817, 621
18 P.2d 856.) In other words, we are not free to “give words an effect different from the plain and
19 direct import of the terms used.” (*California Fed. Savings & Loan Assn. v. City of Los Angeles*
20 (1995) 11 Cal.4th 342, 349, 45 Cal.Rptr.2d 279, 902 P.2d 297; see § 1858.) However, “ ‘the
21 “plain meaning” rule does not prohibit a court from determining whether the literal meaning of a
22 statute comports with its purpose or whether such a construction of one provision is consistent
23 with other provisions of the statute.’ ” (*County of San Bernardino v. City of San Bernardino*
24 (1997) 15 Cal.4th 909, 943, 64 Cal.Rptr.2d 814, 938 P.2d 876.) To determine the most reasonable
25 interpretation of a statute, we look to its legislative history and background. (*Doe v. City of Los*
26 *Angeles* (2007) 42 Cal.4th 531, 543, 67 Cal.Rptr.3d 330, 169 P.3d 559 (Doe).)
27 (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332)

28 “(I)t is not to be presumed that the legislature in the enactment of statutes intends to

1 overthrow long-established principles of law unless such intention is made clearly to appear either
2 by express declaration or by necessary implication. (Citation). Wherever possible, a statute is to
3 be construed in a way which will render it reasonable, fair and harmonious with its manifest
4 purpose, and which will conform with the spirit of the act.” *Los Angeles County v. Frisbie* (1942)
5 19 Cal.2d 634, 644. “(W)hen a suggested construction of a statute in any given case necessarily
6 involves a decided departure from what may be fairly said to be the plain purpose of the
7 enactment, such construction will not be adopted to the exclusion of a possible, plausible
8 interpretation which will promote and put in operation the legislative intent.” *People v. Merrill*
9 (1914) 24 Cal. App. 206, 210. “(O)nce a particular legislative intent has been ascertained, it must
10 be given effect even though it may not be consistent with the strict letter of the statute.” *Kagy v.*
11 *Napa State Hospital* (1994) 28 Cal.App.4th 1, 6. “(W)here two statutes appear to be in conflict, a
12 more specific statute controls over a more general one.” *Stahl v. Wells Fargo Bank, N.A.* (1998)
13 63 Cal.App.4th 396, 401.

14 The party claiming that state law preempts that of local ordinances bears the burden of
15 demonstrating that presumption. *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38
16 Cal.4th 1139, 1149. “(W)hen local government regulates in an area over which it traditionally has
17 exercised control, such as the location of particular land uses, California courts will presume,
18 absent a clear indication of preemptive intent from the Legislature, that such regulation is not
19 preempted by state statute.” *Ibid.* “A pure legal issue of preemption is properly handled by
20 demurrer.” *Washington Mutual Bank v. Superior Court* (2002) 95 Cal.App.4th 606, 612.

21 D. Writ of Mandate

22 Writ proceedings of administrative bodies are governed by CCP § 1094.5. In such
23 proceedings, the trial court's review “shall extend to the questions whether the respondent has
24 proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there
25 was any prejudicial abuse of discretion.” CCP § 1094.5(b). An abuse of discretion can occur three
26 different ways: (1) “the respondent has not proceeded in the manner required by law,” (2) the
27 “decision is not supported by the findings,” or (3) “the findings are not supported by the
28 evidence.” *Ibid.*

1 “A writ of mandate may be issued by any court to any inferior tribunal, corporation, board,
2 or person, to compel the performance of an act which the law specially enjoins, as a duty resulting
3 from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of
4 a right or office to which the party is entitled, and from which the party is unlawfully precluded
5 by that inferior tribunal, corporation, board, or person.” Code Civ. Proc., § 1085. “There are two
6 essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and
7 usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right
8 on the part of the petitioner to the performance of that duty.” *California Assn. for Health Services*
9 *at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704. “A ministerial duty
10 is an act that a public officer is obligated to perform in a prescribed manner required by law when
11 a given state of facts exists.” *Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th
12 470, 495. “Section 1085 is the proper vehicle for challenging a ministerial act of an agency, such
13 as a mandatory duty to issue regulations.” *Harris Transportation Co. v. Air Resources Board*
14 (1995) 32 Cal.App.4th 1472, 1481. “Mandate will not issue to compel action unless it is shown
15 the duty to do the thing asked for is plain and unmixed with discretionary power or the exercise of
16 judgment.” *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 596. “When
17 there is no ministerial duty and review is for abuse of discretion, such limited review is grounded
18 in the doctrine of separation of powers, acknowledges the expertise of the agency, and derives
19 from the view that ‘[c]ourts should let administrative boards and officers work out their problems
20 with as little judicial interference as possible....’ (Citation.) It also recognizes that a challenged
21 administrative agency action comes before the court with a strong presumption that the agency's
22 official duty has been regularly performed and the burden is on appellants to show the agency's
23 action is invalid. (Citation.)” *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780.

24 A party may move for writ of mandate under both CCP § 1085 and CCP § 1094.5 if both
25 are applicable to the facts. *Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 751. Declaratory relief is
26 not the proper vehicle for reviewing an administrative decision. *State v. Superior Court* (1974) 12
27 Cal.3d 237, 249. In contrast, declaratory relief is an appropriate remedy if the petitioner seeks a
28 determination that a statute controlling a particular function is unconstitutional. *Beach & Bluff*

1 *Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259; *City of Carmel-By-The-*
2 *Sea v. Young* (1970) 2 Cal.3d 259, 263.

3 "The appropriate type of mandate is determined by the nature of the administrative action
4 or decision under review. In general, 'quasi-judicial' or 'adjudicative acts,' that is, acts that
5 involve the actual application of a rule to a specific set of existing facts are reviewed by
6 administrative mandamus under Code of Civil Procedure section 1094.5. [Citation.] [¶] More
7 specifically, a petition for administrative mandamus under Code of Civil Procedure section
8 1094.5 is appropriate when the party seeks review of a final 'determination, finding, or decision of
9 a public agency, made as a result of a proceeding in which by law a hearing is required to be
10 given, evidence is required to be taken and discretion in the determination of facts is vested in a
11 public agency' " *California Water Impact Network v. Newhall County Water Dist.* (2008)
12 161 Cal.App.4th 1464, 1482 (*California Water*).

13 Where a public entity's enactment of a rule "constitutes a [legislative or] 'quasi-legislative'
14 act and is reviewed by ordinary [or traditional] mandate [under Code of Civil Procedure] section
15 1085]. [Citations.] A petition for traditional mandamus is appropriate in . . . actions brought to
16 attack, review, set aside, or void a quasi-legislative . . . or ministerial determination, or decision of
17 a public agency. [Citations.] The trial court reviews an administrative action pursuant to Code of
18 Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious,
19 or entirely lacking in evidentiary support, contrary to established public policy, unlawful,
20 procedurally unfair, or whether the agency failed to follow the procedure and give the notices the
21 law requires." *California Water, supra*, 161 Cal.App.4th at 1483 (fn. omitted).

22 "The determination of whether Code of Civil Procedure section 1094.5 or 1085 applies does
23 not depend on whether the agency is required by statute to hold an evidentiary hearing in the
24 matter, but instead turns on the nature of the challenged action." *California Water, supra*, 161
25 Cal.App.4th at p. 1483, fn. 19; *Southern California Cement Masons Joint Apprenticeship*
26 *Committee v. California Apprenticeship Council* (2013) 213 Cal.App.4th 1531, 1541.

27 "[T]raditional mandamus under section 1085 applies to '[q]uasi-legislative' decisions, defined as
28 those involving ' "the formulation of a rule to be applied to all future cases," ' while administrative

1 mandamus under section 1094.5 applies to 'quasi-judicial' decisions, which involve ' "the actual
2 application of such a rule to a specific set of existing facts." ' "].) Traditional mandamus under
3 Code of Civil Procedure section 1085 "may be employed to compel the performance of a duty
4 which is purely ministerial in character; it cannot be applied to control discretion as to a matter
5 lawfully entrusted to [a public entity]" *State v. Superior Court* (1974) 12 Cal.3d 237, 247.

6 "Mandamus does not lie to compel a public agency to exercise discretionary powers in a
7 particular manner, only to compel it to exercise its discretion in some manner." *AIDS Healthcare*
8 *Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700–701.

9 "A proceeding in mandamus is generally subject to the general rules of pleading
10 applicable to civil actions." *Chapman v. Superior Court* (2005) 130 Cal.App.4th 261, 271.

11 "Therefore, it is necessary for the petition to allege specific facts showing entitlement to relief
12 upon one of the grounds just mentioned. If such facts are not alleged, the petition is subject to
13 general demurrer. . ." *Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 573.

14 E. School Health

15 "(T)he governing board of any school district may initiate and carry on any program,
16 activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or
17 preempted by, any law and which is not in conflict with the purposes for which school districts
18 are established." Ed. Code, § 35160. "The Legislature finds and declares that school districts,
19 county boards of education, and county superintendents of schools have diverse needs unique to
20 their individual communities and programs. Moreover, in addressing their needs, common as well
21 as unique, school districts, county boards of education, and county superintendents of schools
22 should have the flexibility to create their own unique solutions." Ed. Code, § 35160.1 (a). A
23 school has the obligation to provide a safe and healthy environment for students, and actions
24 taken in promotion of this obligation are to be balanced against the individual rights of the
25 students. *In re William G.* (1985) 40 Cal.3d 550, 571. Furthermore, a school has other health
26 related obligations to students, as "the governing board of a school district shall cooperate with
27 the local health officer in measures necessary for the prevention and control of communicable
28 diseases in schoolage children." Ed. Code, § 49403(a).

1 “The governing authority shall not unconditionally admit any person as a pupil of any
2 private or public elementary or secondary school, child care center, day nursery, nursery school,
3 family day care home, or development center, unless, prior to his or her first admission to that
4 institution, he or she has been fully immunized.” Health & Saf. Code (“HSC”) § 120335 (b). “The
5 department may specify the immunizing agents that may be utilized and the manner in which
6 immunizations are administered.” HSC § 120335 (e).

7 Parties may submit requests for exemption from immunization requirements. HSC §
8 120372. Each request for exemption shall include “(a) description of the medical basis for which
9 the exemption for each individual immunization is sought. Each specific immunization shall be
10 listed separately and space on the form shall be provided to allow for the inclusion of descriptive
11 information for each immunization for which the exemption is sought.” HSC § 120372 (a)(2)(F).
12 “The department shall identify those medical exemption forms that do not meet applicable CDC,
13 ACIP, or AAP criteria for appropriate medical exemptions.” HSC, § 120372 (d)(3)(A).
14 Thereafter, a reviewing department physician may revoke the medical exemption. HSC, § 120372
15 (d)(3)(C). A parent or guardian of the minor at issue may then appeal. HSC § 120372.05.

16 “The governing authority of each school or institution included in Section 120335 shall
17 prohibit from further attendance any pupil admitted conditionally who failed to obtain the
18 required immunizations within the time limits allowed in the regulations of the department until
19 that pupil has been fully immunized against all of the diseases listed in Section 120335, unless the
20 pupil is exempted under Section 120370 or 120372.” HSC, § 120375 (b). “The governing
21 authority shall exclude any pupil who does not meet the requirements for admission or continued
22 attendance as specified in Article 2 of this subchapter and Health and Safety Code section
23 120335.” Cal. Code Regs., tit. 17, § 6055.

24 II. Procedural and Evidentiary Issues

25 Defendants request judicial notice of a wide variety of public records related to either
26 legislative history, or this case in particular. Courts may take notice of public records, but not take
27 notice of the truth of their contents. *Herrera v. Deutsche Bank National Trust Co.* (2011) 196
28 Cal.App.4th 1366, 1375. The scope of the judicial notice taken is limited to the action of the

1 executive agency. *Herrera* at 1375. Additional information which is included in the
2 documentation or contentions as to the truth of the contents is not appropriate for judicial notice.
3 Ibid. Judicial notice is GRANTED as to the existence of the documents and their legal function as
4 to RFJN Exhibits 1-9. No conclusion as to the truth of their contents is taken. Judicial notice is
5 GRANTED as to Exhibits 10-16 in full.

6 III. Analysis

7 “On a demurrer a court’s function is limited to testing the legal sufficiency of the
8 complaint. [Citation.] ‘A demurrer is simply not the appropriate procedure for determining the
9 truth of disputed facts.’ [Citation.] The hearing on demurrer may not be turned into a contested
10 evidentiary hearing through the guise of having the court take judicial notice of documents whose
11 truthfulness or proper interpretation are disputable. [Citation.]”). *Bounds v. Sup. Ct.* (2014) 229
12 Cal.App.4th 468, 477-478. Plaintiff’s complaint is entitled to liberal factual construal. Where
13 facts are open to different interpretations, Plaintiff receives the benefit of the most beneficial
14 interpretation of those facts. However, Plaintiff is not entitled to any form of legal liberality.
15 Plaintiff still must plead adequate facts to meet viable legal theories. Where Plaintiff’s legal
16 theories are flawed, causes of action may be fatally deficient.

17 PCS has not filed a demurrer, only Aragon. However, PCS has filed a joinder to Plaintiff’s
18 allegations which are comingled between the Defendants, and therefore the Court must address
19 the sufficiency of the first five causes of action as to both Defendants in order to render thorough
20 analysis as to Aragon. Therefore, PCS’s joinder to the motion appears proper.

21 Plaintiff avers several causes of action predicated on preemption and statutes that
22 themselves are not causes of action. The only coherent reading of these causes of action are for
23 declaratory relief, based on Plaintiff’s various prayers for declaratory relief in statutory
24 interpretation. Preemption is a term of art in this instance applicable to state law overriding local
25 ordinance (or federal overriding state), and is not a cause of action. The Court proceeds to the
26 legal issues in a piecemeal manner in order to adequately lay the appropriate legal framework and
27 identify causes of action cognizable from the pleadings.

28 A. “Immunization”

1 Plaintiff's arguments are largely predicated on Plaintiff attempts to draw a distinction
2 between immunizations as required by HSC § 120335 and vaccinations. Given that the
3 Department and PCS sit at different levels of the administrative process, Plaintiff's arguments
4 must be weighed in two stages. However, Plaintiff's own citation to HSC § 120335 and CCR, tit.
5 17, § 6025 are self-defeating. HSC § 120335 clearly delegates substantial authority to the
6 Department in creating the requirements within the regulations. The language thereon cannot be
7 construed as foreclosing vaccinations as the method of immunization under the statute. Indeed,
8 the language clearly contemplates the opposite. "The department may specify the immunizing
9 agents that may be utilized and the manner in which immunizations are administered." HSC §
10 120335 (e). The statute delegates substantial power to the Department in promulgating the
11 regulation defining what "immunizing agents" are appropriate. Plaintiff cannot display, as a
12 matter of statutory interpretation that the Department is not entitled to promulgate a regulation
13 determining that the only appropriate immunizing agents are vaccinations. As to the Department,
14 Plaintiff can display no error if the regulations were to come to such a conclusion.

15 The regulations do just that, providing "Table B" which contains "the required
16 immunizations and number of doses for admission to and attendance at a school. . ." Cal. Code
17 Regs., tit. 17, § 6025 (c). Given the use of "doses" of immunization, and that the regulation
18 repeatedly interchanges the use of "vaccine" (see Table B, fn. 4), § 6025 clearly supports an
19 interpretation that four polio vaccinations are required to display the required four doses of
20 "immunization" required by the regulation. There is no support for Plaintiff's contention that PCS
21 has misapplied Cal. Code Regs., tit. 17, § 6025 by requiring proof of vaccination to meet the
22 unconditional admission requirements. This represents the clearest possible meaning of the
23 regulation. Plaintiff has not displayed an error of law in this interpretation.

24 Indeed, every case on the subject promulgates the same supposedly erroneous conflation.
25 See *Let Them Choose v. San Diego Unified School Dist.* (2022) 85 Cal.App.5th 693, 703 (HSC §
26 120335 creates "a comprehensive state procedure to determine the compulsory vaccinations for
27 school attendance..."); *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1139 ("Senate Bill No. 277
28 eliminated the personal beliefs exemption from the requirement that children receive vaccines for

1 specified infectious diseases before being admitted to any public or private elementary...”). For
2 the purposes of HSC § 120335, there does not appear to be a distinction between “immunizing
3 agents” and “vaccines”, therefore there can be no error in the Department’s subsequent
4 reinforcement of that through regulation. Neither the Department nor PCS committed error in
5 their construal of the statute.

6 B. Writ of Mandate and Declaratory Relief

7 Plaintiff alleges several causes of action which do not conform to those available under
8 statute. Plaintiff alleges no local “ordinance” at issue, and therefore preemption is not the
9 appropriate legal principle. Nor is it a local “mandate”. Plaintiff underwent an administrative
10 process in determination of the exemption. As is explored below, the statute and regulations
11 create clear standards which Plaintiff has conceded are not met. Plaintiff may not do an end run
12 around the administrative mandamus process by arguing that there is some local “mandate” which
13 they fail to identify beyond the quasi-judicial proceeding. To the degree that Plaintiff argues that
14 PCS has misapplied the exemption process based on the first, second and third “causes of action”,
15 these are merely legal posturing which can only be appropriately posed as a writ of administrative
16 mandamus under CCP § 1094.5. Therefore, Plaintiff has failed to state any claim for a conflict of
17 laws as applied to PCS. PCS has merely applied applicable statutes and regulations in the context
18 of a quasi-judicial proceeding. No other action alleged against PCS appears to be anything more
19 than their mandatory duties under the applicable statutes. As the facts are currently pled, only a
20 claim for administrative mandamus is posturally viable against PCS.

21 Without venturing into the consideration of what is true under the judicially noticeable
22 documents, it is clear that Plaintiff’s FAC concedes the key factual issue. Plaintiff’s entire case is
23 predicated on argued immunity regardless of vaccination status. Plaintiff has conceded that Minor
24 cannot display immunity from Polio Type 2 due to the titer test being unavailable. FAC ¶ 41.
25 Plaintiff merely alleges that the vaccine contains all three strains of Polio vaccine, and that Minor
26 displays immunity markers to Types 1 and 3. FAC ¶ 40. Plaintiff draws no factual nexus between
27 immunity to Types 1 and 3, and immunity to Type 2. The subsequent allegations that Minor is
28 immune appears generalized and conclusory given this admission. Given that Plaintiff avers that

1 PCS abused its discretion in the administrative process, Plaintiff must elucidate how that
2 discretion was abused.

3 Moreover, CCR, tit. 17, § 6025 provides no elucidated basis for titer testing as an
4 exemption to immunization requirements. Plaintiff admits to having only three doses of
5 immunization for Polio. FAC ¶ 33. CCR, tit. 17, § 6025, Table B, requires four. Facial non-
6 compliance with CCR, tit. 17, § 6025 does not display an abuse of discretion on the part of PCS.
7 Therefore, Plaintiff has failed to plead an abuse of discretion, and administrative mandamus will
8 not lie.

9 As to Aragon and the Department, Plaintiff's administrative mandamus turns on the very
10 same considerations. Plaintiff cannot display compliance with the express terms of CCR, tit. 17, §
11 6025. Those terms are clearly within the authority granted by HSC § 120335(e). Even had there
12 been a ministerial duty, it is clearly strongly mixed with discretion. *County of San Diego v. State*
13 *of California* (2008) 164 Cal.App.4th 580, 596. Defendants should be capable of exercising their
14 obligations without "judicial interference". *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780.
15 Plaintiff's factual pleading is insufficient to display an abuse of discretion.

16 Nor can Plaintiff state a claim for mandamus under CCP § 1085. The Department may
17 only be compelled to actions which are within a ministerial duty, such as to define immunizing
18 agents. *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780. The Court may not compel how that
19 discretion is exercised absent an abuse of discretion. *Ibid.* Given the discussion above, Plaintiff
20 has pled no abuse of discretion in the promulgation of the regulations. Plaintiff has not pled a
21 basis for either form of writ of mandate.

22 C. Declaratory relief

23 Plaintiff may not obtain declaratory relief for an administrative action. *State v. Superior*
24 *Court* (1974) 12 Cal.3d 237, 249. Plaintiff's citation to *Meyer v. Sprint Spectrum L.P.* (2009) 45
25 Cal.4th 634, 648 is entirely misplaced, as it deals with contractual rights as contemplated by CCP
26 § 1060, and not any declaratory relief in a writ of mandate context. Despite this, the Court finds
27 support for declaratory relief in writ of mandate cases where the petitioner seeks declaration that a
28 statute is invalid. *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244,

1 259; *City of Carmel-By-The-Sea v. Young* (1970) 2 Cal.3d 259, 263. On this basis, the Court
2 examines the FAC facts sufficient to show statutory invalidity.

3 D. Constitutional Claims

4 Plaintiff asserts two causes of action predicated on the California Constitution, claiming
5 that Defendants cannot meet either strict scrutiny nor a rational basis test for their policies.
6 Plaintiffs aver that the exclusion of Minor due to his vaccination status is a violation of both the
7 equal protection clause under Cal. Const. Art. I § 7, and a violation of the right to education under
8 Cal. Const., Art. IX, § 5.

9 The most applicable case to the instant matter is *Brown v. Smith* (2018) 24 Cal.App.5th
10 1135, 1143, and Plaintiff posits no response to its absolute and clear foreclosure of their
11 constitutional claims. *1* *Brown* in turn takes significant persuasive value from *Whitlow v.*
12 *California* (S.D. Cal. 2016) 203 F.Supp.3d 1079 (“*Whitlow*”). *Whitlow* is persuasive, and *Brown*
13 controlling. Plaintiff fails to distinguish from these applicable cases.

14 First, to Plaintiff’s claims of a right to education under the California Constitution, Plaintiff
15 overstates the bounds of the constitutional right at issue. As our state’s Supreme Court stated over
16 a hundred years ago, “effort to prevent the spread of contagion in a direction where it might do
17 the most good (is) for the benefit and protection of all the people, and there is in it no element of
18 class legislation. It in no way interferes with the right of the child to attend school, provided the
19 child complies with its provisions.” *French v. Davidson* (1904) 143 Cal. 658, 662. Each
20 subsequent case has found it within the power of the legislature to mandate vaccination. HSC §
21 120335, and its associated regulations, implicate no “suspect classification”. *Brown v. Smith*
22 (2018) 24 Cal.App.5th 1135, 1146. Therefore, there does not appear to be a rationalization
23 provided for why strict scrutiny applies, as opposed to rational basis. Despite this, the cases are
24 clear that Defendants can meet strict scrutiny were it necessary. “‘The right of education,
25 fundamental as it may be, is no more sacred than any of the other fundamental rights that have
26 readily given way to a State’s interest in protecting the health and safety of its citizens, and
27 particularly, school children,’ and ‘removal of the [personal beliefs exemption] is necessary or
28 narrowly drawn to serve the compelling objective of SB 277.’” *Brown*, *supra*, 24 Cal.App.5th at

1 1146–1147, quoting *Whitlow, supra*, 203 F.Supp.3d at 1091. Plaintiff displays no excess in how
2 the statute and regulations are tailored given the substantial interest of the state in public health.
3 As is fully addressed above, no action by PCS appears implicated, as PCS has only effectuated
4 HSC § 120335 and the Department’s regulations thereon. Plaintiff has pled no constitutional
5 violation to the right to education, as the case law weighs in favor of the state’s interest.

6 Plaintiff avers that the disparate treatment attributable to other categories of children is a
7 violation of equal protection under Cal. Const., art. I, § 7. Plaintiff particularly raises exceptions
8 for production of records applicable to homeless children, children in foster care, and children of
9 military families. While *Brown* does not directly address the categories of exceptions raised by
10 Plaintiff, the logic expressed therein on equal protection statutes remains applicable. “The
11 statutory classifications and exemptions plaintiffs dispute do not involve similarly situated
12 children, or are otherwise entirely rational classifications. For a discussion delineating, and
13 rejecting, equal protection claims based on these categories, see *Whitlow, supra*, 203 F.Supp.3d at
14 pages 1087-1088.” *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1147. The categories of students
15 at issue do not implicate students dealing with the same struggles or disadvantages. The
16 distinction created by the exception for homeless children, children in foster care, and children of
17 military families is rational. The exception fulfills a compelling state interest in ensuring
18 education for disadvantaged groups, an analysis thoroughly covered in the applicable legislative
19 histories.

20 Plaintiff also argues that this implicates distinguishing classes between vaccinated and
21 unvaccinated school children. FAC ¶ 109. As is addressed thoroughly above, cases
22 have addressed this distinction, and found that constitutional rights are not infringed by this
23 justified classification. Plaintiff has pled no cause of action predicated on equal protection.

24 The Court will not speculate on what factual allegations Plaintiff may make in light of this
25 ruling. As a result, it appears appropriate for Plaintiff to have an opportunity to state their claims
26 under the appropriate causes of action. Therefore, the Demurrer to the fourth and fifth causes of
27 action is SUSTAINED with leave to amend.

28 E. Conflict of Law

1 Plaintiff predicates the first, second and third causes of action on alleged conflicts of law.
2 The interpretation in the first cause of action is fully disposed of in section III(A) above. The
3 demurrer to that cause of action is SUSTAINED with leave to amend.

4 Plaintiff also argues that there is preemption by Cal. Code Regs., tit. 5, § 11700 (the
5 second cause of action), and Education Code §§ 51746 and 51747 (the third cause of action). The
6 Court again construes these as causes of action for declaratory relief or writ of mandate. Writ of
7 mandate fails for the reasons above. Declaratory relief as to the invalidity of the statutes and
8 regulations also fails.

9 Plaintiff's argument regarding Cal. Code Regs., tit. 5, § 11700 is simply incorrect. As was
10 noted above, Plaintiff's construal of HSC § 120335 was inconsistent with the very language of
11 the statute. The exclusion of children who are not immunized from traditional on campus
12 instruction is statutory. HSC, § 120375 (b). Plaintiff may not override the Legislature's statute
13 through citation to regulation. The demurrer to the second cause of action is SUSTAINED with
14 leave to amend.

15 As to the conflict between the Health and Safety Code and the Education Code, it is clear
16 that the interest of public health regularly overrides educational principles. *Brown, supra*, 24
17 Cal.App.5th at 1146–1147. The exclusion of children from educational institutions who are not
18 immunized in accordance with state law has been repeatedly upheld. The reasonable, non-
19 antagonistic interpretation of this interplay of laws is that Minor is not “required” to participate in
20 independent study. Minor is required, like almost every school age child not subject to an
21 exemption, to be fully immunized. It is the failure of Plaintiff to comply with the requirements of
22 the statute which foreclose the opportunity to attend public school. As discussed above, Plaintiff
23 identifies no “local” mandate, but rather an intersection of state laws and regulations, which must
24 be read to avoid absurd results while effectuating the legislative intent. HSC § 120335 is the more
25 specific statute. It therefore controls. *Stahl v. Wells Fargo Bank, N.A.* (1998) 63 Cal.App.4th 396,
26 401. Minor is required to display immunization in accordance with regulations in order to attend
27 campus. Minor is not required to participate in independent study.

28 \\\

1 Plaintiff also argues that Minor cannot be accorded the requirements of independent study,
2 as the school cannot provide him the same resources as other students as required under
3 Education Code § 51746 due to his exclusion. If anything, this is an argument for why Minor is
4 ineligible for independent study through PCS, not an argument for why he is allowed to attend
5 campus while non-complaint with HSC § 120335. Given that Minor’s actual enrollment in
6 independent study is not before the Court, it makes no determination as to the propriety thereon.
7 The demurrer to the third cause of action is SUSTAINED with leave to amend.

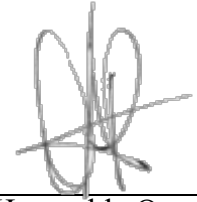
8 Once Plaintiff’s exemption is adversely determined, it seems that exclusion is mandatory.
9 Cal. Code Regs., tit. 17, § 6055 (children not meeting the requirements of HSC § 120335 “shall”
10 be excluded). Plaintiffs may not obtain their requested relief absent a showing that there has been
11 a legal error on the part of Defendants. No such error has been shown.

12 IV. Conclusion

13 Based on the foregoing, the Demurrer is SUSTAINED with leave to amend.

14 IT IS SO ORDERED.

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16 Dated: 1/6/2025



The Honorable Oscar A. Pardo

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EXHIBIT A

TENTATIVE RULING

**Case Name: Cannistra, Robyn, et al. v. Tomas Aragon, et al.
Sonoma County Superior Court Case No. 24CV01964**

7. 24CV01964, Cannistra v. Aragon

Plaintiff Robyn Cannistra (“Plaintiff”) individually and on behalf of Jordan Cannistra (“Minor”) as his guardian in fact, filed the currently operative first amended complaint (the “FAC”) in this action against defendants Tomas Aragon (“Aragon”) in his official capacity as the Department of Public Health (the “Department”) director and as the State Public Health Officer, Petaluma City Schools (“PCS”, together with Aragon, “Defendants”), and Does 1-20, for multiple alleged causes of action arising out a controversy related to vaccination requirements under Health & Saf. Code (“HSC”) § 120335.

This matter is on calendar for the Aragon’s demurrer to causes of action one through five within the Complaint pursuant to Cal. Code Civ. Proc. (“CCP”) § 430.10(e) for failure to state facts sufficient to constitute a cause of action. PCS has filed a joinder thereon. The Demurrer is SUSTAINED with leave to amend as to the First through Fifth causes of action.

I. Legal Standards

A. General Demurrers

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint’s defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings “must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts.” *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal. App. 3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 384. Each evidentiary fact that might eventually form part of a party’s proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. “The distinction between conclusions of law and

ultimate facts is not at all clear and involves at most a matter of degree.” *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

B. Constitutional Issues

Federally, “it is within the police power of a state to provide for compulsory vaccination.” *Zucht v. King* (1922) 260 U.S. 174, 176. In California, however, “The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district. . .” Cal. Const., art. IX, § 5. Subsequent cases have interpreted this in California as “the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a ‘fundamental interest,’” subject to constitutional protections. *Serrano v. Priest* (1971) 5 Cal.3d 584, 608–609. “The right of education, fundamental as it may be, is no more sacred than any of the other fundamental rights that have readily given way to a State’s interest in protecting the health and safety of its citizens, and particularly, school children,” *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1146–1147; quoting *Whitlow v. California* (S.D. Cal. 2016) 203 F.Supp.3d 1079, 1091.

“A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.” Cal. Const., art. I, § 7. “It needs no argument to show that, when it comes to preventing the spread of contagious diseases, children attending school occupy a natural class by themselves, more liable to contagion, perhaps, than any other class that we can think of. This effort ... was for the benefit and protection of all the people It in no way interferes with the right of the child to attend school, provided the child complies with its provisions.” *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1147 (“Brown”), quoting *French v. Davidson* (1904) 143 Cal. 658, 662.

C. Statutory Interpretation, Preemption and Conflict of Laws

Interpretation of statutes is a question of law, not one of fact. *Burden v. Snowden* (1992) 2 Cal.4th 556, 562.

In interpreting a statute, our primary goal is to determine and give effect to the underlying purpose of the law. (*People v. Valladoli* (1996) 13 Cal.4th 590, 597, 54 Cal.Rptr.2d 695, 918 P.2d 999.) “Our first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning.” (*Ibid.*) “If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.” (*California Teachers*, supra, 28 Cal.3d at p. 698, 170

Cal.Rptr. 817, 621 P.2d 856.) In other words, we are not free to “give words an effect different from the plain and direct import of the terms used.” (California Fed. Savings & Loan Assn. v. City of Los Angeles (1995) 11 Cal.4th 342, 349, 45 Cal.Rptr.2d 279, 902 P.2d 297; see § 1858.) However, “the “plain meaning” rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute.’ ” (County of San Bernardino v. City of San Bernardino (1997) 15 Cal.4th 909, 943, 64 Cal.Rptr.2d 814, 938 P.2d 876.) To determine the most reasonable interpretation of a statute, we look to its legislative history and background. (Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 543, 67 Cal.Rptr.3d 330, 169 P.3d 559 (Doe).)

(Goodman v. Lozano (2010) 47 Cal.4th 1327, 1332)

“(I)t is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication. (Citation). Wherever possible, a statute is to be construed in a way which will render it reasonable, fair and harmonious with its manifest purpose, and which will conform with the spirit of the act.” Los Angeles County v. Frisbie (1942) 19 Cal.2d 634, 644. “(W)hen a suggested construction of a statute in any given case necessarily involves a decided departure from what may be fairly said to be the plain purpose of the enactment, such construction will not be adopted to the exclusion of a possible, plausible interpretation which will promote and put in operation the legislative intent.” People v. Merrill (1914) 24 Cal. App. 206, 210. “(O)nce a particular legislative intent has been ascertained, it must be given effect even though it may not be consistent with the strict letter of the statute.” Kagy v. Napa State Hospital (1994) 28 Cal.App.4th 1, 6. “(W)here two statutes appear to be in conflict, a more specific statute controls over a more general one.” Stahl v. Wells Fargo Bank, N.A. (1998) 63 Cal.App.4th 396, 401.

The party claiming that state law preempts that of local ordinances bears the burden of demonstrating that presumption. Big Creek Lumber Co. v. County of Santa Cruz (2006) 38 Cal.4th 1139, 1149. “(W)hen local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute.” Ibid. “A pure legal issue of preemption is properly handled by demurrer.” Washington Mutual Bank v. Superior Court (2002) 95 Cal.App.4th 606, 612.

D. Writ of Mandate

Writ proceedings of administrative bodies are governed by CCP § 1094.5. In such proceedings, the trial court's review "shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." CCP § 1094.5(b). An abuse of discretion can occur three different ways: (1) "the respondent has not proceeded in the manner required by law," (2) the "decision is not supported by the findings," or (3) "the findings are not supported by the evidence." *Ibid.*

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person." Code Civ. Proc., § 1085. "There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty." *California Assn. for Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704. "A ministerial duty is an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists." *Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 495. "Section 1085 is the proper vehicle for challenging a ministerial act of an agency, such as a mandatory duty to issue regulations." *Harris Transportation Co. v. Air Resources Board* (1995) 32 Cal.App.4th 1472, 1481. "Mandate will not issue to compel action unless it is shown the duty to do the thing asked for is plain and unmixed with discretionary power or the exercise of judgment." *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 596. "When there is no ministerial duty and review is for abuse of discretion, such limited review is grounded in the doctrine of separation of powers, acknowledges the expertise of the agency, and derives from the view that '[c]ourts should let administrative boards and officers work out their problems with as little judicial interference as possible....' (Citation.) It also recognizes that a challenged administrative agency action comes before the court with a strong presumption that the agency's official duty has been regularly performed and the burden is on appellants to show the agency's action is invalid. (Citation.)" *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780.

A party may move for writ of mandate under both CCP § 1085 and CCP § 1094.5 if both are applicable to the facts. *Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 751. Declaratory relief is not the proper vehicle for reviewing an administrative decision. *State v. Superior Court* (1974)

12 Cal.3d 237, 249. In contrast, declaratory relief is an appropriate remedy if the petitioner seeks a determination that a statute controlling a particular function is unconstitutional. *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259; *City of Carmel-By-The-Sea v. Young* (1970) 2 Cal.3d 259, 263.

"The appropriate type of mandate is determined by the nature of the administrative action or decision under review. In general, 'quasi-judicial' or 'adjudicative acts,' that is, acts that involve the actual application of a rule to a specific set of existing facts are reviewed by administrative mandamus under Code of Civil Procedure section 1094.5. [Citation.] [¶] More specifically, a petition for administrative mandamus under Code of Civil Procedure section 1094.5 is appropriate when the party seeks review of a final 'determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency" *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1482 (California Water).

Where a public entity's enactment of a rule "constitutes a [legislative or] 'quasi-legislative' act and is reviewed by ordinary [or traditional] mandate [under Code of Civil Procedure section 1085]. [Citations.] A petition for traditional mandamus is appropriate in . . . actions brought to attack, review, set aside, or void a quasi-legislative . . . or ministerial determination, or decision of a public agency. [Citations.] The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires." *California Water*, supra, 161 Cal.App.4th at 1483 (fn. omitted).

"The determination of whether Code of Civil Procedure section 1094.5 or 1085 applies does not depend on whether the agency is required by statute to hold an evidentiary hearing in the matter, but instead turns on the nature of the challenged action." *California Water*, supra, 161 Cal.App.4th at p. 1483, fn. 19; *Southern California Cement Masons Joint Apprenticeship Committee v. California Apprenticeship Council* (2013) 213 Cal.App.4th 1531, 1541 ["[T]raditional mandamus under section 1085 applies to '[q]uasi-legislative' decisions, defined as those involving ' "the formulation of a rule to be applied to all future cases," ' while administrative mandamus under section 1094.5 applies to 'quasi-judicial' decisions, which involve ' "the actual application of such a rule to a specific set of existing facts." ' "].) Traditional mandamus under Code of Civil Procedure section 1085 "may be employed to compel the

performance of a duty which is purely ministerial in character; it cannot be applied to control discretion as to a matter lawfully entrusted to [a public entity]" State v. Superior Court (1974) 12 Cal.3d 237, 247. "Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner." AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health (2011) 197 Cal.App.4th 693, 700–701.

"A proceeding in mandamus is generally subject to the general rules of pleading applicable to civil actions." Chapman v. Superior Court (2005) 130 Cal.App.4th 261, 271. "Therefore, it is necessary for the petition to allege specific facts showing entitlement to relief upon one of the grounds just mentioned. If such facts are not alleged, the petition is subject to general demurrer. . ." Gong v. City of Fremont (1967) 250 Cal.App.2d 568, 573

E. School Health

"(T)he governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established." Ed. Code, § 35160. "The Legislature finds and declares that school districts, county boards of education, and county superintendents of schools have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts, county boards of education, and county superintendents of schools should have the flexibility to create their own unique solutions." Ed. Code, § 35160.1 (a). A school has the obligation to provide a safe and healthy environment for students, and actions taken in promotion of this obligation are to be balanced against the individual rights of the students. In re William G. (1985) 40 Cal.3d 550, 571. Furthermore, a school has other health related obligations to students, as "the governing board of a school district shall cooperate with the local health officer in measures necessary for the prevention and control of communicable diseases in schoolage children." Ed. Code, § 49403(a).

"The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless, prior to his or her first admission to that institution, he or she has been fully immunized." Health & Saf. Code ("HSC") § 120335 (b). "The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered." HSC § 120335 (e).

Parties may submit requests for exemption from immunization requirements. HSC § 120372. Each request for exemption shall include “(a) description of the medical basis for which the exemption for each individual immunization is sought. Each specific immunization shall be listed separately and space on the form shall be provided to allow for the inclusion of descriptive information for each immunization for which the exemption is sought.” HSC § 120372 (a)(2)(F). “The department shall identify those medical exemption forms that do not meet applicable CDC, ACIP, or AAP criteria for appropriate medical exemptions.” HSC, § 120372 (d)(3)(A). Thereafter, a reviewing department physician may revoke the medical exemption. HSC, § 120372 (d)(3)(C). A parent or guardian of the minor at issue may then appeal. HSC § 120372.05.

“The governing authority of each school or institution included in Section 120335 shall prohibit from further attendance any pupil admitted conditionally who failed to obtain the required immunizations within the time limits allowed in the regulations of the department until that pupil has been fully immunized against all of the diseases listed in Section 120335, unless the pupil is exempted under Section 120370 or 120372.” HSC, § 120375 (b). “The governing authority shall exclude any pupil who does not meet the requirements for admission or continued attendance as specified in Article 2 of this subchapter and Health and Safety Code section 120335.” Cal. Code Regs., tit. 17, § 6055.

II. Procedural and Evidentiary Issues

Defendants request judicial notice of a wide variety of public records related to either legislative history, or this case in particular. Courts may take notice of public records, but not take notice of the truth of their contents. *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375. The scope of the judicial notice taken is limited to the action of the executive agency. *Herrera* at 1375. Additional information which is included in the documentation or contentions as to the truth of the contents is not appropriate for judicial notice. *Ibid.* Judicial notice is GRANTED as to the existence of the documents and their legal function as to RFJN Exhibits 1-9. No conclusion as to the truth of their contents is taken. Judicial notice is GRANTED as to Exhibits 10-16 in full.

III. Analysis

“On a demurrer a court’s function is limited to testing the legal sufficiency of the complaint. [Citation.] ‘A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.’ [Citation.] The hearing on demurrer may not be turned into a contested

evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]”). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. Plaintiff’s complaint is entitled to liberal factual construal. Where facts are open to different interpretations, Plaintiff receives the benefit of the most beneficial interpretation of those facts. However, Plaintiff is not entitled to any form of legal liberality. Plaintiff still must plead adequate facts to meet viable legal theories. Where Plaintiff’s legal theories are flawed, causes of action may be fatally deficient.

PCS has not filed a demurrer, only Aragon. However, PCS has filed a joinder to Plaintiff’s allegations which are comingled between the Defendants, and therefore the Court must address the sufficiency of the first five causes of action as to both Defendants in order to render thorough analysis as to Aragon. Therefore, PCS’s joinder to the motion appears proper.

Plaintiff avers several causes of action predicated on preemption and statutes that themselves are not causes of action. The only coherent reading of these causes of action are for declaratory relief, based on Plaintiff’s various prayers for declaratory relief in statutory interpretation. Preemption is a term of art in this instance applicable to state law overriding local ordinance (or federal overriding state), and is not a cause of action. The Court proceeds to the legal issues in a piecemeal manner in order to adequately lay the appropriate legal framework and identify causes of action cognizable from the pleadings.

A. “Immunization”

Plaintiff’s arguments are largely predicated on Plaintiff attempts to draw a distinction between immunizations as required by HSC § 120335 and vaccinations. Given that the Department and PCS sit at different levels of the administrative process, Plaintiff’s arguments must be weighed in two stages. However, Plaintiff’s own citation to HSC § 120335 and CCR, tit. 17, § 6025 are self-defeating. HSC § 120335 clearly delegates substantial authority to the Department in creating the requirements within the regulations. The language thereon cannot be construed as foreclosing vaccinations as the method of immunization under the statute. Indeed, the language clearly contemplates the opposite. “The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered.” HSC § 120335 (e). The statute delegates substantial power to the Department in promulgating the regulation defining what “immunizing agents” are appropriate. Plaintiff cannot display, as a matter of statutory interpretation that the Department is not entitled to promulgate a regulation determining that the only appropriate immunizing agents are vaccinations. As to the Department, Plaintiff can display no error if the regulations were to come to such a conclusion.

The regulations do just that, providing “Table B” which contains “the required immunizations and number of doses for admission to and attendance at a school. . .” Cal. Code Regs., tit. 17, § 6025 (c). Given the use of “doses” of immunization, and that the regulation repeatedly interchanges the use of “vaccine” (see Table B, fn. 4), § 6025 clearly supports an interpretation that four polio vaccinations are required to display the required four doses of “immunization” required by the regulation. There is no support for Plaintiff’s contention that PCS has misapplied Cal. Code Regs., tit. 17, § 6025 by requiring proof of vaccination to meet the unconditional admission requirements. This represents the clearest possible meaning of the regulation. Plaintiff has not displayed an error of law in this interpretation.

Indeed, every case on the subject promulgates the same supposedly erroneous conflation. See *Let Them Choose v. San Diego Unified School Dist.* (2022) 85 Cal.App.5th 693, 703 (HSC § 120335 creates “a comprehensive state procedure to determine the compulsory vaccinations for school attendance...”); *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1139 (“Senate Bill No. 277 eliminated the personal beliefs exemption from the requirement that children receive vaccines for specified infectious diseases before being admitted to any public or private elementary...”). For the purposes of HSC § 120335, there does not appear to be a distinction between “immunizing agents” and “vaccines”, therefore there can be no error in the Department’s subsequent reinforcement of that through regulation. Neither the Department nor PCS committed error in their construal of the statute.

B. Writ of Mandate and Declaratory Relief

Plaintiff alleges several causes of action which do not conform to those available under statute. Plaintiff alleges no local “ordinance” at issue, and therefore preemption is not the appropriate legal principle. Nor is it a local “mandate”. Plaintiff underwent an administrative process in determination of the exemption. As is explored below, the statute and regulations create clear standards which Plaintiff has conceded are not met. Plaintiff may not do an end run around the administrative mandamus process by arguing that there is some local “mandate” which they fail to identify beyond the quasi-judicial proceeding. To the degree that Plaintiff argues that PCS has misapplied the exemption process based on the first, second and third “causes of action”, these are merely legal posturing which can only be appropriately posed as a writ of administrative mandamus under CCP § 1094.5. Therefore, Plaintiff has failed to state any claim for a conflict of laws as applied to PCS. PCS has merely applied applicable statutes and regulations in the context of a quasi-judicial proceeding. No other action alleged against PCS appears to be anything more than their mandatory duties under the applicable statutes. As the

facts are currently pled, only a claim for administrative mandamus is posturally viable against PCS.

Without venturing into the consideration of what is true under the judicially noticeable documents, it is clear that Plaintiff's FAC concedes the key factual issue. Plaintiff's entire case is predicated on argued immunity regardless of vaccination status. Plaintiff has conceded that Minor cannot display immunity from Polio Type 2 due to the titer test being unavailable. FAC ¶ 41. Plaintiff merely alleges that the vaccine contains all three strains of Polio vaccine, and that Minor displays immunity markers to Types 1 and 3. FAC ¶ 40. Plaintiff draws no factual nexus between immunity to Types 1 and 3, and immunity to Type 2. The subsequent allegations that Minor is immune appears generalized and conclusory given this admission. Given that Plaintiff avers that PCS abused its discretion in the administrative process, Plaintiff must elucidate how that discretion was abused.

Moreover, CCR, tit. 17, § 6025 provides no elucidated basis for titer testing as an exemption to immunization requirements. Plaintiff admits to having only three doses of immunization for Polio. FAC ¶ 33. CCR, tit. 17, § 6025, Table B, requires four. Facial non-compliance with CCR, tit. 17, § 6025 does not display an abuse of discretion on the part of PCS. Therefore, Plaintiff has failed to plead an abuse of discretion, and administrative mandamus will not lie.

As to Aragon and the Department, Plaintiff's administrative mandamus turns on the very same considerations. Plaintiff cannot display compliance with the express terms of CCR, tit. 17, § 6025. Those terms are clearly within the authority granted by HSC § 120335(e). Even had there been a ministerial duty, it is clearly strongly mixed with discretion. *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 596. Defendants should be capable of exercising their obligations without "judicial interference". *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780. Plaintiff's factual pleading is insufficient to display an abuse of discretion.

Nor can Plaintiff state a claim for mandamus under CCP § 1085. The Department may only be compelled to actions which are within a ministerial duty, such as to define immunizing agents. *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780. The Court may not compel how that discretion is exercised absent an abuse of discretion. *Ibid.* Given the discussion above, Plaintiff has pled no abuse of discretion in the promulgation of the regulations. Plaintiff has not pled a basis for either form of writ of mandate.

C. Declaratory relief

Plaintiff may not obtain declaratory relief for an administrative action. *State v. Superior Court* (1974) 12 Cal.3d 237, 249. Plaintiff's citation to *Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 648 is entirely misplaced, as it deals with contractual rights as contemplated by CCP § 1060, and not any declaratory relief in a writ of mandate context. Despite this, the Court finds support for declaratory relief in writ of mandate cases where the petitioner seeks declaration that a statute is invalid. *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259; *City of Carmel-By-The-Sea v. Young* (1970) 2 Cal.3d 259, 263. On this basis, the Court examines the FAC facts sufficient to show statutory invalidity.

D. Constitutional Claims

Plaintiff asserts two causes of action predicated on the California Constitution, claiming that Defendants cannot meet either strict scrutiny nor a rational basis test for their policies. Plaintiffs aver that the exclusion of Minor due to his vaccination status is a violation of both the equal protection clause under Cal. Const. Art. I § 7, and a violation of the right to education under Cal. Const., Art. IX, § 5.

The most applicable case to the instant matter is *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1143, and Plaintiff posits no response to its absolute and clear foreclosure of their constitutional claims. *1* *Brown* in turn takes significant persuasive value from *Whitlow v. California* (S.D. Cal. 2016) 203 F.Supp.3d 1079 (“*Whitlow*”). *Whitlow* is persuasive, and *Brown* controlling. Plaintiff fails to distinguish from these applicable cases.

First, to Plaintiff's claims of a right to education under the California Constitution, Plaintiff overstates the bounds of the constitutional right at issue. As our state's Supreme Court stated over a hundred years ago, “effort to prevent the spread of contagion in a direction where it might do the most good (is) for the benefit and protection of all the people, and there is in it no element of class legislation. It in no way interferes with the right of the child to attend school, provided the child complies with its provisions.” *French v. Davidson* (1904) 143 Cal. 658, 662. Each subsequent case has found it within the power of the legislature to mandate vaccination. HSC § 120335, and its associated regulations, implicate no “suspect classification”. *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1146. Therefore, there does not appear to be a rationalization provided for why strict scrutiny applies, as opposed to rational basis. Despite this, the cases are clear that Defendants can meet strict scrutiny were it necessary. “The right of education, fundamental as it may be, is no more sacred than any of the other fundamental rights that have readily given way to a State's interest in protecting the health and safety of its citizens, and particularly, school children,’ and ‘removal of the [personal beliefs exemption] is

necessary or narrowly drawn to serve the compelling objective of SB 277.” Brown , supra, 24 Cal.App.5th at 1146–1147, quoting Whitlow, supra, 203 F.Supp.3d at 1091. Plaintiff displays no excess in how the statute and regulations are tailored given the substantial interest of the state in public health. As is fully addressed above, no action by PCS appears implicated, as PCS has only effectuated HSC § 120335 and the Department’s regulations thereon. Plaintiff has pled no constitutional violation to the right to education, as the case law weighs in favor of the state’s interest.

Plaintiff avers that the disparate treatment attributable to other categories of children is a violation of equal protection under Cal. Const., art. I, § 7. Plaintiff particularly raises exceptions for production of records applicable to homeless children, children in foster care, and children of military families. While Brown does not directly address the categories of exceptions raised by Plaintiff, the logic expressed therein on equal protection statutes remains applicable. “The statutory classifications and exemptions plaintiffs dispute do not involve similarly situated children, or are otherwise entirely rational classifications. For a discussion delineating, and rejecting, equal protection claims based on these categories, see Whitlow, supra, 203 F.Supp.3d at pages 1087-1088.” Brown v. Smith (2018) 24 Cal.App.5th 1135, 1147. The categories of students at issue do not implicate students dealing with the same struggles or disadvantages. The distinction created by the exception for homeless children, children in foster care, and children of military families is rational. The exception fulfills a compelling state interest in ensuring education for disadvantaged groups, an analysis thoroughly covered in the applicable legislative histories.

Plaintiff also argues that this implicates distinguishing classes between vaccinated and unvaccinated school children. FAC ¶ 109. As is addressed thoroughly above, cases have addressed this distinction, and found that constitutional rights are not infringed by this justified classification. Plaintiff has pled no cause of action predicated on equal protection.

The Court will not speculate on what factual allegations Plaintiff may make in light of this ruling. As a result, it appears appropriate for Plaintiff to have an opportunity to state their claims under the appropriate causes of action. Therefore, the Demurrer to the fourth and fifth causes of action is SUSTAINED with leave to amend.

E. Conflict of Law

Plaintiff predicates the first, second and third causes of action on alleged conflicts of law. The interpretation in the first cause of action is fully disposed of in section III(A) above. The

demurrer to that cause of action is SUSTAINED with leave to amend.

Plaintiff also argues that there is preemption by Cal. Code Regs., tit. 5, § 11700 (the second cause of action), and Education Code §§ 51746 and 51747 (the third cause of action). The Court again construes these as causes of action for declaratory relief or writ of mandate. Writ of mandate fails for the reasons above. Declaratory relief as to the invalidity of the statutes and regulations also fails.

Plaintiff's argument regarding Cal. Code Regs., tit. 5, § 11700 is simply incorrect. As was noted above, Plaintiff's construal of HSC § 120335 was inconsistent with the very language of the statute. The exclusion of children who are not immunized from traditional on campus instruction is statutory. HSC, § 120375 (b). Plaintiff may not override the Legislature's statute through citation to regulation. The demurrer to the second cause of action is SUSTAINED with leave to amend.

As to the conflict between the Health and Safety Code and the Education Code, it is clear that the interest of public health regularly overrides educational principles. *Brown*, supra, 24 Cal.App.5th at 1146–1147. The exclusion of children from educational institutions who are not immunized in accordance with state law has been repeatedly upheld. The reasonable, non-antagonistic interpretation of this interplay of laws is that Minor is not "required" to participate in independent study. Minor is required, like almost every school age child not subject to an exemption, to be fully immunized. It is the failure of Plaintiff to comply with the requirements of the statute which foreclose the opportunity to attend public school. As discussed above, Plaintiff identifies no "local" mandate, but rather an intersection of state laws and regulations, which must be read to avoid absurd results while effectuating the legislative intent. HSC § 120335 is the more specific statute. It therefore controls. *Stahl v. Wells Fargo Bank, N.A.* (1998) 63 Cal.App.4th 396, 401. Minor is required to display immunization in accordance with regulations in order to attend campus. Minor is not required to participate in independent study.

Plaintiff also argues that Minor cannot be accorded the requirements of independent study, as the school cannot provide him the same resources as other students as required under Education Code § 51746 due to his exclusion. If anything, this is an argument for why Minor is ineligible for independent study through PCS, not an argument for why he is allowed to attend campus while non-complaint with HSC § 120335. Given that Minor's actual enrollment in independent study is not before the Court, it makes no determination as to the propriety thereon. The demurrer to the third cause of action is SUSTAINED with leave to amend.

Once Plaintiff's exemption is adversely determined, it seems that exclusion is mandatory. Cal. Code Regs., tit. 17, § 6055 (children not meeting the requirements of HSC § 120335 "shall" be excluded). Plaintiffs may not obtain their requested relief absent a showing that there has been a legal error on the part of Defendants. No such error has been shown.

IV. Conclusion

Based on the foregoing, the Demurrer is SUSTAINED with leave to amend.

Aragon's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

EXHIBIT B

**DECL. OF STACEY L. LEASK IN SUPPORT OF DEF. TOMÁS ARAGÓN'S DEMURRER TO
PLAINTIFFS' SECOND AMENDED COMPLAINT AND CONCURRENTLY FILED
MOTION TO STRIKE**

1 **THE NICOL LAW FIRM**

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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

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”

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”) 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>

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.

1 44. Instead, California requires four doses of IPV – but only three doses “if one was given on
2 or after 4th birthday.” [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/School/tk-
4 12-immunizations.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/School/tk-
3 12-immunizations.aspx)

- 4 45. Jordan received three doses of the IPV vaccine which covers all three types of Polio:
5 a. Polio Type 1: The most common cause of polio outbreaks and paralytic polio.
6 b. Polio Type 2: Certified *eradicated* globally since 1999.
7 c. Polio Type 3: Certified *eradicated* globally since 2019.

8 [https://www.who.int/news-room/feature-stories/detail/two-out-of-three-wild-poliovirus-strains-
10 eradicated](https://www.who.int/news-room/feature-stories/detail/two-out-of-three-wild-poliovirus-strains-
9 eradicated)

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

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

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

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

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

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

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

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

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

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

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

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

1 Jordan's immunization requirements to attend PCS.

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

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

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

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

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

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

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

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

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

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

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

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

28 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 does 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.

28

FIRST CAUSE OF ACTION
Declaratory and Injunctive Relief
Against All Defendants

1
2 73. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth
3 herein.

4 74. Title 17, Section 6025 of the California Code of Regulations, the implementing regulation
5 for Health and Safety Code Section 120335, provides that a school “shall unconditionally admit or allow
6 continued attendance to any pupil aged 18 months or older whose parent or guardian has provided
7 documentation of any of the following for each *immunization* required for the pupil’s age or grade, as
8 defined in Table A or B of this section.” (Italics added.)

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

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

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

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

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

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

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

27 82. Under Title 5, Section 11700 of the California Code of Regulations, “Independent study is
28

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 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

1 members' schoolchildren in the context of Equal Protection.

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

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

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

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

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

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

24 131. Defendants' mandates treat schoolchildren who have not been vaccinated and are not
25 members of an exempt group as an inferior class, in that those schoolchildren cannot attend the school of
26 their choice within PCS, cannot participate in in-person classes, and cannot enter a school property for
27 any purpose, including extracurricular and other activities, while the schoolchildren who have been
28 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

1
2
3 143. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth
4 herein.

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

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

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

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

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

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

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

27 151. Such schoolchildren will suffer irreparable harm each day that they are excluded from
28 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
7 herein.

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

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

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

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

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

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

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 13 Stacey.Leask@doj.ca.gov 14 Darrell Spence 15 Darrell.Spence@doj.ca.gov 16 Office of the Attorney General 17 California Department of Justice 18 455 Golden Gate Avenue, Suite 11000 19 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 18 fzotter@sclscal.org 19 School & College Legal Services of California 5350 Skylane Blvd. 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

EXHIBIT C

**DECL. OF STACEY L. LEASK IN SUPPORT OF DEF. TOMÁS ARAGÓN'S DEMURRER TO
PLAINTIFFS' SECOND AMENDED COMPLAINT AND CONCURRENTLY FILED
MOTION TO STRIKE**

From: [Jonathon Nicol](#)
To: [Stacey Leask](#)
Cc: [Darrell Spence](#); [Frank Zotter](#)
Subject: Re: Cannistra, et al. v Aragon, et al. No. 24CV01964
Date: Friday, February 21, 2025 2:45:33 PM

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Stacey,

I wanted to follow up on our meet and confer call from yesterday about the motion to strike issue. The new cause of action is based on the Court's order, specifically the statement in the Conclusion that "the Demurrer is SUSTAINED with leave to amend" and the citation to the classic case *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The order does not limit leave to only the stated causes of action, hence the new cause. I am certain your client disagrees but that is the basis for the new claim.

Thank You,
Jonathon

On Thu, Feb 20, 2025 at 3:49 PM Jonathon Nicol <jdnicol@nicolfirm.com> wrote:
Deal.

On Thu, Feb 20, 2025 at 3:42 PM Frank Zotter <fzotter@sclscal.org> wrote:

Speak to you both then!

Frank

From: Stacey Leask <Stacey.Leask@doj.ca.gov>
Sent: Thursday, February 20, 2025 1:42 PM
To: Jonathon Nicol <jdnicol@nicolfirm.com>; Frank Zotter <fzotter@sclscal.org>
Cc: Darrell Spence <Darrell.Spence@doj.ca.gov>
Subject: RE: Cannistra, et al. v Aragon, et al. No. 24CV01964

Thank you both. Let's say 2:30 pm

Dial in:

██████████

EXHIBIT D

**DECL. OF STACEY L. LEASK IN SUPPORT OF DEF. TOMÁS ARAGÓN'S DEMURRER TO
PLAINTIFFS' SECOND AMENDED COMPLAINT AND CONCURRENTLY FILED
MOTION TO STRIKE**

By: Janie Dorman, Deputy Clerk
Exempt from Fees
(Gov. Code § 6103)

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2 DARRELL W. SPENCE
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Tomás Aragón

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SONOMA

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

16 Plaintiffs,

17 v.

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

22 Defendants.

Case No. 24CV01964

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT TOMÁS ARAGÓN'S
DEMURRER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

Date: 11/06/2024
Time: 3:00 PM
Dept: 19
Judge: Honorable Oscar A. Pardo
Trial Date: Not yet set

Action Filed in Sacramento
Sup. Ct: August 14, 2023

Action Transferred to Sonoma County
Sup Ct: March 28, 2024

First Amended Complaint Filed: June 13,
2024

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1 **INTRODUCTION**

2 This litigation follows the administrative decision of the authorized state agency, the
3 California Department of Health and Human Services (CalHHS), to deny Plaintiffs’ requested
4 medical exemption from immunizations set by the Legislature and statutorily required for in-
5 person instruction in public school. Plaintiff Robyn Cannistra, individually and on behalf of
6 Jordan Cannistra, as his guardian in fact (Plaintiffs) filed a Complaint for Injunctive and
7 Declaratory Relief in Superior Court against the state’s Public Health Director and Officer (Dr.
8 Aragón), and against Petaluma City Schools (PCS). After meet and confer , Plaintiffs filed a First
9 Amended Complaint for Injunctive and Declaratory Relief (FAC).

10 Dr. Aragón now demurs to the FAC on the grounds that: (1) the first, second and third
11 causes of action fail because no private right of action exists under the statutes and regulations
12 plead; (2) the fourth cause of action fails because it fails to state facts sufficient to constitute a
13 cause of action for violation of the California right to education and because mandatory
14 immunization requirements for school-aged children do not violate the right to attend school; (3)
15 the fifth cause of action for violation of the California Equal Protection Clause fails to state facts
16 sufficient to give rise to an Equal Protection claim; and (4) the FAC fails to allege facts necessary
17 to obtain the relief sought. Accordingly, Dr. Aragón’s demurrer must be sustained.

18 **FACTUAL BACKGROUND**

19 **I. CALIFORNIA’S SCHOOL IMMUNIZATION REQUIREMENTS**

20 California law requires students be immunized against certain diseases¹ in order to attend
21 public or private schools. (Health & Saf. Code, §§ 120335, 120370.) In particular, California
22 state law requires that schools shall not admit students unless they have been fully immunized
23 against the specified 10 diseases or qualify for an exemption recognized by statute. (Health &
24 Saf. Code, §§ 120335, subd. (b) & (g)(3), 120370.) For Kindergarten through twelfth grade,

25 ¹ These communicable diseases include (1) Diphtheria; (2) Hepatitis B; (3) Haemophilus
26 influenza type b; (4) Measles; (5) Mumps; (6) Pertussis (whooping cough); (7) Poliomyelitis; (8)
27 Rubella; (9) Tetanus; (10) Varicella (chickenpox); and “any other disease deemed appropriate by
28 [CDPH], taking into consideration the recommendations of the Advisory Committee on
Immunization Practices of the United States Department of Health and Human Services, the
American Academy of Pediatrics, and the American Academy of Family Physicians.” (Health &
Saf. Code § 120325.)

1 students must have the following vaccine doses: Polio (4 doses); DTaP (5 doses); Hep B (3
2 doses); MMR (2 doses); and Varicella (2 doses). (Cal. Code Regs., tit 17, §6025; Declaration of
3 Stacey Leask (Leask Decl.), ¶ 13, Exhibit (Exh) H to Leask Decl.; FAC ¶ 18.)

4 The law allows for medical exemptions, provided certain requirements are met. (Health &
5 Saf. Code, § 120370, §120372.) Starting in 2021, a law enacted by Senate Bills 276 and 714
6 requires that all new medical exemptions be issued using a state database (the California
7 Immunization Registry-Medical Exemption (CAIR-ME)) and a standardized medical exemption
8 form, which, if approved, are the only medical exemptions that schools may accept. Medical
9 exemptions are subject to agency review and may be revoked. (*In re S.P.* (2020) 53 Cal.App.5th
10 13, 18; Health & Saf. Code, § 120372.)

11 Health and Safety Code section 120372.05 establishes the general requirements for
12 processing appeals of medical exemption revocations and requires CalHHS to establish the
13 process and guidelines for the appeals process. If the basis for the medical exemption is at issue,
14 an independent expert review panel, consisting of three licensed physicians and surgeons with
15 relevant knowledge, training, and experience relating to primary care or immunization, shall
16 evaluate the appeal and submit its determination to the CalHHS Secretary. (Health & Saf. Code,
17 § 120372.05(b).) The independent expert review panel “shall evaluate appeals consistent with the
18 federal Centers for Disease Control and Prevention, federal Advisory Committee on
19 Immunization Practices, or American Academy of Pediatrics guidelines or the relevant standard
20 of care, as applicable.” (Health & Saf. Code, § 120372.05(c); Cal. Code Regs., tit 17, §6000 et
21 seq.) The CalHHS Secretary shall adopt the determination of the independent expert review panel
22 and shall promptly issue a written decision to the child’s parent or guardian. (Health & Saf. Code
23 § 120372.05(d); Cal. Code Regs., tit 17, §6000 et seq.; Request for Judicial Notice in Support of
24 Demurrer (“RJN”), Exh. 2.²)

25
26
27 ² The immunization requirements are detailed in the Health and Safety Code sections
28 120325 through 120380 and California Code of Regulations section 6000-6075, including Tables
A-D.

1 **II. DENIAL OF PLAINTIFFS’ MEDICAL EXEMPTION APPEAL**

2 Plaintiff Jordan Cannistra (Jordan) is eleven years old and entering the sixth grade at PCS.
3 (FAC ¶¶ 7, 31.) Jordan has not received all of the statutorily required vaccinations under the law;
4 Jordan has not received the second dose of the Measles, Mumps, Rubella (MMR) vaccine and
5 Jordan has not received a fourth dose of the Polio vaccine. (FAC ¶¶ 33-34, 38; Health & Saf.
6 Code, § 120335.) Jordan’s mother sought a medical exemption on Jordan’s behalf via CAIR-ME
7 for both the MMR and Polio vaccines. (FAC ¶¶ 52-53.) Jordan’s mother received notice that
8 Jordan’s previous medical exemption had been revoked and that “Jordan [could] either: (1) start
9 receiving the required vaccines, or (2) appeal the decision.” (FAC ¶¶ 56-58.)

10 Jordan’s mother appealed the decision and submitted documentation of Jordan’s titer
11 laboratory results. (FAC ¶ 59.) Jordan’s tests confirmed his immunity to MMR, poliovirus type
12 1 and poliovirus type 3, but not poliovirus type 2. (FAC ¶ 40.) The FAC alleges, “[t]he Polio
13 Type 2 titer was not included from the lab” because “[p]er the CDC, ‘Serologic testing for
14 antibodies against poliovirus type 2, an assay that uses live virus, is becoming increasingly
15 unavailable as US laboratories conform to WHO’s laboratory containment strategy to destroy type
16 2 poliovirus in their facilities, this started in late 2015.’ Thus, labs no longer test for Polio Type
17 2.’” (FAC ¶¶ 41.) Plaintiffs nonetheless claim that Jordan does not need the required fourth dose
18 of the Polio vaccine. (FAC ¶¶ 43.)

19 Jordan’s appeal underwent Independent Medical Review (IMR). (RJN, Exh. 1.) Three
20 medical experts assigned to conduct the review determined that the appeal should be denied.
21 (RJN, Exh. 1.) The decision was based in part on the finding that, “the submitted documentation
22 fails to demonstrate Jordan’s immunity against poliovirus,” and that “without laboratory evidence
23 of immunity to poliovirus type 2, it is not possible to judge the child’s immunity against
24 poliovirus and the need for further doses. Per ACIP guidelines, completing the full series of the
25 vaccine is recommended instead.” (RJN, Exh. 1, p. 5.) As to MMR, the documentation was
26 deemed sufficient to establish immunity, however, because an appeal cannot be approved or
27 denied in part, the denial “will apply to all immunizations referenced in the request,” and Jordan

28 ³ The acronym “WHO” stands for the World Health Organization.

1 was informed that he can submit a new medical exemption request for MMR. (RJN, Exh. 1, p.
2 5.)

3 **III. THE INSTANT ACTION**

4 Plaintiffs filed their initial complaint in Sacramento Superior Court. (Decl. Leask, ¶ 2, Exh.
5 A.) The complaint pleaded three causes of action against Dr. Aragón and PCS, which were based
6 on alleged violation of the Health and Safety Code statutes and regulations and of Education
7 Code sections 51746 and 51747. (Decl. Leask, ¶ 2, Exh. A.) Prior to either defendant filing a
8 responsive pleading, the case transferred from the Sacramento County Superior to the Sonoma
9 County Superior Court. (Decl. Leask, ¶¶ 2-4.) Upon meet and confer, Plaintiffs' counsel
10 regarding a demurrer to the complaint, and Plaintiffs subsequently filed and electronically served
11 the FAC on June 17, 2024. (Decl. Leask, ¶¶ 2-13, Exh. H.)

12 The FAC pleads five causes of action against Dr. Aragón and PCS, which includes the
13 same three causes initially plead against Dr. Aragón and PCS for violation of the same California
14 statutes and regulations, albeit with the words "preemption by" added to the headings. The FAC
15 also added two additional causes for violation of Article IX of the California Constitution and
16 Violation of the Equal Protection Clause of the California Constitution. (FAC p. 9-15.⁴)

17 The parties met and conferred as required by Code of Civil Procedure section 430.41, prior
18 to the filing of this demurrer. (Decl. Leask, ¶¶ 2-16, Exh. A-F.)

19 **STANDARD OF REVIEW**

20 A complaint that fails to allege facts sufficient to constitute a cause of action is subject to
21 demurrer. (Code Civ. Proc., § 430.10, subd. (e).) In ruling on a demurrer, "the trial court
22 examines the pleading to determine whether it alleges facts sufficient to state a cause of action
23 under any legal theory, with the facts being assumed true for purposes of this inquiry."
24 (*Campaign for Quality Educ. v. State of California* (2016) 246 Cal.App.4th 896, 904.) A court
25 may also consider judicially noticeable matters that are outside the pleading and may disregard
26 allegations that are contrary to law, or are contrary to a fact of which judicial notice may be taken.

27 ⁴ The FAC also pleads two of action against PCS: a sixth cause of action for Violation of
28 Education Code Section 220 and a seventh cause of action for Violation of Government Code
Section 11135. (FAC p.16-18.) Neither of these causes are relevant to this demurrer.

1 (*Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1141; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318
2 [“[C]ourts may – and indeed, must – disregard allegations that are contrary to judicially noticed
3 facts and documents.”].) “[L]eave to amend should not be granted where . . . amendment would
4 be futile.” (*Vaillette v. Fireman’s Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685; see also *Brown*,
5 *supra*, 24 Cal.App.5th at 1148 (leave to amend denied).

6 ARGUMENT

7 I. THE FAC FAILS TO ALLEGE ANY VIABLE CAUSES OF ACTION AGAINST DR. 8 ARAGÓN

9 A. The First, Second and Third Causes of Action All Fail Because There Is No 10 Private Right of Action Under the Statutes and Regulations Pled, and 11 There Is No Viable Preemption Claim

12 1. No private right of action

13 The FAC pleads as the first, second and third causes of action, violation of California
14 Health and Safety Code section 120335, California Code of Regulations, Title 17, sections 6025,
15 6060, and 6065, and Title 5, section 11700; and Education Code sections 51746 and 51747).

16 (FAC ¶¶ 63, 70, 78-81, 86-91.) However, simply pleading a violation of a state statute or
17 regulation is not a sufficient basis for a cause of action; there must be a private right of action
18 under the statute. (*Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, 596; *Vikco Ins.*
Services, Inc. v. Ohio Indemnity Co. (1999) 70 Cal.App.5th 55, 62.)

19 Whether a party has a right to sue depends on whether the Legislature has “manifested an
20 intent to create such a private cause of action” under the statute. (*Id.*, citing *Moradi-Shalal v.*
Fireman’s Fund Ins. Companies (1988) 46 Cal.3d 287, 305.) A court is tasked with examining
21 the statutory text to see if it contains “clear, understandable, unmistakable terms” “which strongly
22 and directly” indicate a private right of action is allowed. (*Mayron v. Google LLC* (2020) 54
23 Cal.App.5th 566, 571.) Where the text does not contain unmistakable directive, the legislative
24 history may indicate whether the Legislature intended to create a private cause of action. (*Id.*,
25 citing *Lu, supra*, at 598.) It is the plaintiffs’ burden to offer the authority that creates a private
26 right of action. (*Rondeau v. Mosinee Paper Corp.* (1975) 422 U.S. 49, 63.)
27
28

1 In this case, the FAC does not plead any express private right of action under any of the
2 statutes or regulations cited. The FAC also does not cite to any part of the statute’s text that
3 affords Plaintiffs the right to bring this action, nor cite to any statutory language or legislative
4 intent that “unmistakably” confers any private right to sue. Nor do the statutes contain any such
5 private right of action. (Health & Saf. Code § 120335; Cal. Code Regs., tit. 17, §§ 6025, 6060,
6 6065; Cal. Code Regs., tit. 5, § 1700; Educ. Code §§ 51746, 51747.)

7 **2. No viable preemption claim**

8 Plaintiffs appear to argue that CalHHS’s vaccination policies are preempted by state law.
9 (FAC, ¶ 21; see also First, Second and Third Causes of Action [“Preemption By”].) If this is in
10 fact the case, the argument fails.

11 An essential prerequisite of a state law preemption claim is a conflict between local
12 legislation of a county or city and state law. (*O’Connell v. City of Stockton* (2007) 41 Cal.4th
13 1061, 1067.) “Under article XI, section 7 of the California Constitution, a county or city may
14 make and enforce within its limits all local, police, sanitary, and other ordinances and regulations
15 not in conflict with general state laws. If otherwise valid local legislation conflicts with state law,
16 it is preempted by such law and is void.” (*Id.* (citations and internal quotations omitted).)

17 Here, Plaintiffs do not identify any ordinance or regulation of a county or city that actually
18 conflicts with state law, nor do they allege any act by Dr. Aragón that allegedly violates or is pre-
19 empted by state law. Furthermore, the doctrine of state law preemption only applies to local
20 ordinances or local legislation by “a county or city,” and not to Dr. Aragón’s authority as the state
21 public health director. (Cal. Constitution, Art. XI, § 7.) Thus, the first, second, and third causes
22 of action fail and the demurrer should be sustained.

23 **B. The Fourth Cause of Action Fails Because There Is No Violation of the**
24 **California Right to Education**

25 For the fourth cause of action, the FAC alleges that “[b]y implementing a stringent and
26 discriminatory vaccine mandate, Defendants are denying California schoolchildren like Jordan
27 their fundamental right to an education . . .” afforded under Article IX of the California
28 constitution. (FAC ¶¶ 96-98.) The FAC, however, does not identify any regulation of Dr.

1 Aragon or CalHHS that violates any right of Plaintiffs or that contradicts state law. Plaintiffs
2 instead claim there is a vaccine mandate without any reference to such mandate and make only
3 conclusory arguments that Plaintiffs’ rights are being violated. Such conclusory allegations are
4 insufficient to withstand a demurrer. (*Hilltop Properties, Inc. v. State* (1965) 233 Cal.App.2d
5 349, 354.)

6 In addition, well-established California case law has held that mandatory immunization
7 requirements for school-aged children **do not** violate the right to attend school. For example, in
8 *Brown v. Smith*, a lawsuit that challenged amendments that eliminated the personal belief
9 exemption from the school immunization requirements, the court acknowledged that “federal and
10 state courts . . . have held, ‘either explicitly or implicitly’ that ‘society has a compelling interest in
11 fighting the spread of contagious diseases through mandatory vaccination of school-aged
12 children.” (*Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1145-1147 [citing *Whitlow v. Cal. Dept.*
13 *of Education* (S.D. Cal. 2016) 203 F.Supp.3d 1079, 1089-1090].)

14 In *Love v. State Department of Education*, the Third District Court of Appeal followed
15 *Brown* and the California Supreme Court’s holding in *French v. Davidson* (1904) 143 Cal. 658,
16 662, when it similarly held that statutes that eliminated personal belief exemption from the
17 mandatory immunization requirements for school-aged children did not violate the right to attend
18 school. (*Love v. State Department of Education* (2018) 29 Cal.App.5th 980, 994-995.)

19 Accordingly, even if the FAC were to have pleaded that the statutes and regulations for
20 mandatory immunizations in schools or for those as to the medical exemptions are
21 unconstitutional, such a claim would likewise fail given that such similar statutes and regulations
22 are already deemed to be necessary and narrowly drawn to serve compelling government interests
23 of achieving total immunization of appropriate age groups against childhood diseases. Thus, the
24 fourth cause of action fails and the demurrer should be sustained.

25 **C. The Fifth Cause of Action Likewise Fails to Establish a Violation of**
26 **California’s Equal Protection Clause**

27 Plaintiffs allege a violation of the Equal Protection Clause of the California Constitution,
28 Cal. Const., Art. I, § 7, subd. (a), asserting that “Defendants’ mandates” (1) distinguish between

1 vaccinated and unvaccinated schoolchildren, and impose independent study as the sole option for
2 education for schoolchildren, including schoolchildren who have natural immunity from prior
3 infection . . .; (2) wholly ignore the efficacy of naturally acquired immunity, while only
4 recognizing vaccinated immunity . . .; and (3) treat unvaccinated migrant, foster, homeless, and
5 military family members’ schoolchildren more favorably than all other unvaccinated
6 schoolchildren by permitting [them] to attend school in-person . . . even if they are unvaccinated.”
7 (FAC ¶ 110.) Plaintiffs assert that such statutes are subject to strict scrutiny. (FAC ¶¶ 111-118.)

8 To establish a violation of the Equal Protection Clause, a party must first demonstrate that
9 the State has adopted a classification that affects two or more similarly situated groups in an
10 unequal manner. (*People v. Wutzke* (2002) 28 Cal.4th 923, 943.) The constitutional doctrine of
11 equal protection of the laws ensures that persons similarly situated with respect to the legitimate
12 purpose of the law receive like treatment. (*Purdy and Fitzpatrick v. State* (1969) 71 Cal.2d 566,
13 578.) Equal protection, however, does not require “uniform operation of the law with respect to
14 persons who are different.” (*People v. Guzman* (2005) 35 Cal.4th 577, 591.)

15 However, the FAC does not identify “Defendants’ mandates” and there is no allegation that
16 the State’s immunization statutes or regulations themselves are unconstitutional or inconsistent
17 with state law. Indeed, neither Dr. Aragón nor CalHHS has any such mandates or policies that
18 “impose independent study” or that “ignore naturally acquired immunity.” Rather, CalHHS
19 follows state law as proscribed and as the law was intended, namely, to achieve “total
20 immunization” against childhood diseases. (Health & Saf. Code, § 120325.) Moreover, as
21 demonstrated by the appeal decision letter, individuals who demonstrate immunity through
22 acceptable laboratory test results can qualify for medical exemption through CalHHS. (RJN Exh.
23 1.) Thus, under the facts pled, the fifth cause of action fails.

24 The FAC also fails to plead similarly-situated groups that would give rise to equal
25 protection. “As its name suggests, equal protection of the laws assures that people who are
26 ‘similarly situated for purposes of [a] law’ are generally treated similarly by the law. (*Vergara v.*
27 *State* (2016) 246 Cal.App.4th 619, 644, quoting *Cooley v. Superior Court* (2002) 29 Cal.4th 228,
28

1 253.) Thus, an Equal Protection claim requires proof that two or more similarly situated groups are
2 being treated in an unequal manner. (*Id.*)

3 Here, none of the classifications alleged in the FAC support an Equal Protection claim.
4 Vaccinated children are not similarly situated to those who are not vaccinated; and neither are
5 school children who are migrant, foster, homeless, or military family versus those are not. (See
6 *Whitlow, supra*, 203 F.Supp.3d at 1087; see also, *Brown, supra*, 24 Cal.App.5th at 1147 (the
7 alleged classifications of home-based vs. classroom-based students, medically-exempt students
8 vs. students without medical exemptions, children with individualized education plans and those
9 without, “do not involve similarly situated children, or are otherwise entirely rational
10 classifications.”) Accordingly, even if the Court finds that Plaintiffs have alleged the elements of
11 an Equal Protection claim, rational basis review, not strict scrutiny, applies. (*Id.*)

12 Under a rational basis review, the Equal Protection Clause is satisfied so long as there is a
13 plausible policy reason for the classification, the legislative facts on which the classification is
14 apparently based rationally may have been considered to be true by the governmental decision
15 maker, and the relationship of the classification to its goal is not so attenuated as to render the
16 distinction arbitrary or irrational. (*Whitlow, supra*, 203 F.Supp.3d at 1087-1088 [citing
17 *Nordlinger v. Hahn* (1992) 505 U.S. 1, 11.]) Here, it is undisputed that a rational basis exists for
18 the classification of foster, homeless and military children and youth.

19 The first statute referenced in the FAC – Education Code section 48850, *et seq.* – arose out
20 of Assembly Bill No. 490 (AB 490), which sought to address barriers to equal educational
21 opportunity for foster children and homeless youth. The legislative intent behind the statute is to
22 ensure that such pupils have meaningful opportunity to meet the state pupil achievement
23 standards and to allow for immediate enrollment when transferring to a new school, while records
24 are located. (RJN, Exhs. 13, 14) Clearly, a rational basis exists for the statutory scheme

25 The second statute referenced in the FAC – Education Code section 48852.7(c)(3) – was
26 enacted to align with the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act) (42
27 U.S. Code § 11431-11435), which is federal law that ensures the educational rights of children
28 and youth experiencing homelessness. The McKinney-Vento Act mandates that states must

1 review and revise laws, regulations, policies, and practices that may act as a barrier to the
2 enrollment and attendance of homeless students, and to ensure that students experiencing
3 homelessness are afforded the same free, appropriate public education as provided to other
4 children and youth. (42 U.S.C. § 11431(2).) Here too, there is a rational basis for treating
5 homeless students differently, given the unique challenges they face in obtaining an education.
6 (RJN, Exh. 15.)

7 The last statute referenced in the FAC – Education Code section 48204.6 (Assembly Bill
8 No. 2949) – was enacted to eliminate barriers faced by children of military parents who move
9 and/or end their service and where there may be a delay in retrieving the students’ records. (RJN,
10 Exh. 16.) Likewise, a rational basis for treating such students differently under the law.

11 None of these statutes contravene the State’s interests in establishing total immunity or
12 protecting against diseases, and none on their face *eliminate* the requirements that students be
13 immunized for school attendance; rather, the statutes only prohibit the delay of enrollment while
14 immunization records are located or immunizations are administered. Accordingly, a rational
15 basis for the differing treatment of these classes of students exists. (See e.g., *Whitlow, supra*, 203
16 F.Supp.3d at 1088.)

17 Notwithstanding, even if strict scrutiny applies, well-established precedent in California and
18 by the United States Supreme Court has upheld the right of the states to enact and enforce laws
19 requiring citizens to be vaccinated, and in particular, school children. (*Whitlow supra*, 203
20 F.Supp.3d at 1083-1086, 1091-1092 [“State Legislatures have a long history of requiring children
21 to be vaccinated as a condition to school enrollment, and for as many years, both state and federal
22 courts have upheld those requirements against constitutional challenge.”]; *Brown, supra*, 24
23 Cal.App.5th at 1145-1148, citing *Butt v. State of California* (1992) 4 Cal.4th 668, 682.) The
24 State’s interest in protecting the health and safety of its citizens, and particularly of school
25 children, means that the medical exemption statutes and regulations would be deemed justified by
26 a compelling state interest under the strict scrutiny test and upheld in the same manner as other
27 laws relating to immunization requirements for school children. (*Love, supra*, 29 Cal.App.5th at
28 990. Thus, the fifth cause of action fails and demurrer should be sustained.

1 **II. THE FAC FAILS TO SEEK ANY AVAILABLE RELIEF**

2 **A. No Injunctive Relief**

3 “Injunctive relief is a remedy, not a cause of action. [Citations.] A cause of action must
4 exist before a court may grant a request for injunctive relief.” (*Allen v. City of Sacramento* (2015)
5 234 Cal.App.4th 41, 65; accord, *City of South Pasadena v. Department of Transportation* (1994)
6 29 Cal.App.4th 1280, 1293 [“A permanent injunction is merely a remedy for a proven cause of
7 action. It may not be issued if the underlying cause of action is not established.”].) Because
8 none of the causes of action are legally sufficient, Plaintiffs’ request for a temporary restraining
9 order or injunctive relief necessarily fails as well. (*Id.*) Thus, the demurrer should be sustained.

10 **B. No Declaratory Relief**

11 Declaratory relief requires an “actual controversy relating to the legal rights and duties of
12 the respective parties.” (Code Civ. Proc., § 1061.) To state a declaratory relief claim, the
13 plaintiff must allege a proper subject of declaratory relief and an actual controversy involving
14 justiciable questions relating to the party’s rights or obligations. (*Jolley v. Chase Home Finance,*
15 *LLC* (2013) 213 Cal.App.4th 872, 909; *Wilson & Wilson v. City Council of Redwood City* (2011)
16 191 Cal.App.4th 1559, 1582.)

17 Plaintiffs have not alleged that they have suffered any actual injury or harm that is
18 redressable. Plaintiffs allege only that “[a]ny mandate by Defendants” that requires Jordan to be
19 *vaccinated* rather than *immunized* would violate section 120335 of the Health and Safety Code
20 and section 6025 of the California Code of Regulations. (FAC ¶ 70.) Yet, as explained herein,
21 Plaintiffs have not cited to any mandate or policy of Dr. Aragón or CalHHS that actually requires
22 “vaccination” over “immunization” or that alleges that they have acted beyond the statutes in any
23 way. The FAC also does not allege that the statutes or regulations are unconstitutional.

24 Moreover, Jordan is currently attending school at PCS and thus, he has not alleged any facts
25 to demonstrate an actual justiciable controversy. (*DeLaura v. Beckett* (2006) 137 Cal.App.4th
26 542, 545; see also *Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 648 [demurrer properly
27 sustained where no allegations that declaratory relief would “have any practical consequences.”].)
28

1 In addition, “[w]here a trial court has concluded that a plaintiff did not state sufficient facts
2 to support a statutory claim and therefore sustained a demurrer as to that claim, a demurrer is also
3 properly sustained as to a claim for declaratory relief which is ‘wholly derivative’ of the statutory
4 claim.” (*Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800, citing *Ochs v.*
5 *PacifiCare of California* (2004) 115 Cal.App.4th 782, 794.) As the Supreme Court has
6 confirmed, “[t]he requirement that plaintiffs seeking declaratory relief allege ‘the existence of an
7 actual, present controversy’ would be illusory if a plaintiff could meet it simply by pointing to the
8 very lawsuit in which he or she seeks that relief. Obviously, the requirement cannot be met in
9 such a bootstrapping manner; ‘a request for declaratory relief will not create a cause of action that
10 otherwise does not exist.’” (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80.)

11 Under the facts pled, declaratory relief is improper. (*Id.*; see also *State of California v.*
12 *Superior Court (Veta)* (1974) 12 Cal.3d 237, 249, 251 [declaratory relief action is not an
13 appropriate remedy to challenge the application of such statute, regulation or ordinance]; *Walter*
14 *Leimert Co. v. Calif. Coastal Comm.* (1983) 149 Cal.App.3d 222, 230 [“...declaratory relief is
15 not appropriate to review an administrative decision.”]) Thus, the demurrer should be sustained.

16 **C. No Writ of Mandate Under California Code of Civil Procedure Sections**
17 **1085 or 1094.5**

18 Section 1085 of the Code of Civil Procedure provides for the issuance of a writ of mandate
19 to “any inferior tribunal, corporation board, or person, to compel the performance of an action
20 which the law specifically enjoins, as a duty resulting from an office, trust, or station.” (Code
21 Civ. Pro., § 1085, subd. (a).) “Generally, mandamus is available to compel a public agency’s
22 performance or to correct an agency’s abuse of discretion when the action being compelled or
23 corrected is ministerial.” (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public*
24 *Health* (2011) 197 Cal.App.4th 693, 700.) “A ministerial act is an act that a public officer is
25 required to perform in a proscribed manner in obedience to the mandate of legal authority and
26 without regard to his own judgment or opinion concerning such act’s propriety or impropriety,
27 when a given state of facts exists.” (*Kavanaugh v. West Sonoma County Union High School Dist.*
28 (2003) 29 Cal.4th 911, 916; *Carancho v. California Air Resources Bd.* (2005) 111 Cal.App.4th

1 1255, 1267 [A duty is ministerial when the law specifically prescribes the duties or course of
2 conduct that must be taken and leaves nothing to the discretion of the agency.].) It is the
3 petitioner’s burden to demonstrate that the department is subject to “a duty which is purely
4 ministerial in character.” (*Unnamed Physician v. Board of Trustees of Saint Agnes Medical*
5 *Center* (2001) 93 Cal.App.4th 607, 618.)

6 Conversely, a writ of administrative mandamus is used to review the quasi-judicial or
7 adjudicative acts of a state agency. “In general, ‘quasi-judicial’ or ‘adjudicative acts,’ that is, acts
8 that involve the actual application of a rule to a specific set of existing facts are reviewed by
9 administrative mandamus under Code of Civil Procedure section 1094.5.” (*Beach and Bluff*
10 *Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 258.)

11 In this case, Plaintiffs fail to plead either a writ of mandate cause of action under section
12 1085 of the Civil Code of Procedure (traditional mandamus) or a cause of action under section
13 1094.5 of the Civil Code of Procedure (administrative mandamus). The FAC states only that the
14 Court has jurisdiction to issue writs of mandate pursuant to California Code of Civil Procedure
15 sections 1085 and 1094.5. (FAC ¶ 11.) The FAC does not plead any ministerial duty of Dr.
16 Aragón; the FAC does not plead that Dr. Aragón violated any ministerial duty owed by Dr.
17 Aragón; and the FAC does not plead that Dr. Aragón abused his discretion under law. The FAC
18 also does not plead that the administrative agency’s review of the appeal denial was improperly
19 denied or unsupported by substantial evidence, nor do Plaintiffs seek review of the medical
20 exemption denial.⁵ Simply put, there are no facts in the FAC that serves as a basis for a Section
21 1085 writ action or a Section 1094.5 writ action, and the demurrer should be sustained.

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25 \\\

26 ⁵ Plaintiffs also have failed to exhaust their administrative remedies by refileing the
27 medical exemption request as to the MMR vaccine, which is a jurisdictional prerequisite for
28 access to the courts, and would bar any mandamus actions or declaratory relief actions. (*Bleek v.*
State Board of Optometry (1971) 18 Cal.App.3d 415, 432; (*Tri-County Special Educ. Local Plan*
Area v. County of Tuolumne (2004) 123 Cal.App.4th 563, 576.)

1 **III. LEAVE TO AMEND SHOULD BE DENIED**

2 The mere assertion of a statutory or constitutional violation, followed by simply a citation
3 to the statute or constitutional provision, does not merit a judicial response. (*Woods v. Horton*
4 (2008) 167 Cal.App.4th 658, 677.) Because there is no express right of action pled and none that
5 exists in the statutes, granting leave to amend as to the first, second and third causes of action is
6 futile.

7 Plaintiffs also concede that “[c]hildhood immunization requirements are within the sole
8 province of the California Legislature and CDPH, whose authority is limited by statute.” (FAC ¶
9 16.) As demonstrated, well-established precedent has upheld the right of the states to enact and
10 enforce laws requiring schoolchildren to be vaccinated. (*Whitlow, supra*, 203 F.Supp.3d at 1083-
11 1086, 1091-1092 [“State Legislatures have a long history of requiring children to be vaccinated as
12 a condition to school enrollment, and for as many years, both state and federal courts have upheld
13 those requirements against constitutional challenge.”]; *Brown, supra*, 24 Cal.App.5th at 1145-
14 1148, citing *Butt v. State of California* (1992) 4 Cal.4th 668, 682.) The State’s interest in
15 protecting the health and safety of its citizens, and particularly of schoolchildren, means that the
16 medical exemption statutes and regulations would be deemed justified by a compelling state
17 interest under the strict scrutiny test and upheld in the same manner as other laws relating to
18 immunization requirements for schoolchildren. (*Love, supra*, 29 Cal.App.5th at 990.) Thus,
19 there is no plausible way to amend the complaint to plead viable causes of action for violation of
20 the California right to education or the California Equal Protection clause. Both causes would fail
21 under the well-established case law precedent in California.

22 Moreover, it is undisputed that Jordan has **not** received all four doses of the polio vaccine.
23 (FAC ¶¶ 34,40-41; Health & Saf. Code, § 120335.) Plaintiffs cite to no authority that requires the
24 acceptance of Jordan’s titer tests as proof of immunity for the poliovirus type 2 in this instance.
25 Rather, the undisputed facts are that the decision was made in conformity with the state statute
26 that requires appeals to be evaluated “consistent with the federal Centers for Disease Control and
27 Prevention, federal Advisory Committee on Immunization Practices, or American Academy of
28 Pediatrics guidelines or the relevant standard of care, as applicable.” (Health & Saf. Code, §

1 120372.05(c); RJN, Exhs. 1-10.) Jordan’s appeal review followed the guidance from the CDC
2 and the ACIP, which specifies that with respect to poliovirus, “serologic testing is no longer
3 recommended to assess immunity,”; that “[w]ithout laboratory evidence of immunity against
4 poliovirus type 2, immunity could not be determined [in Jordan’s case]; and that “[p]er ACIP
5 guidelines, completing the full series of the vaccine is recommended instead.” (RJN, Exh. 1, p.5)

6 Plaintiffs’ reference to colleges’ acceptance of titer tests is inconsequential. Jordan seeks
7 admission to a public school, not a college. Further, our courts have consistently recognized that
8 there are particular concerns with respect to mandatory immunizations among *schoolchildren*.
9 *Whitlow, supra*, 203 F.Supp.3d at 1092. Plainly put, it is for the Legislature, not the court, to
10 determine medical exemption provisions and what constitutes proper documentation of
11 “immunity.” *Allen, supra*, 234 Cal.App.4th at 47 [the choice among competing policy
12 considerations in enacting laws relating to homeless persons is a legislative function]; *Let Them*
13 *Choose v. San Diego Unified School Dist.* (2022) 85 Cal.App.5th 693, 707 [“Since 1911, the
14 Legislature has regulated student vaccination. (See Stats. 1911, ch.134 [smallpox vaccine].)”].)

15 Accordingly, any request for leave to amend should be denied.


16 CONCLUSION

17 For the above reasons, Dr. Aragón respectfully requests that the demurrer as to each and
18 every cause of action alleged against Dr. Aragón (the first, second, third, fourth and fifth causes
19 of action) be sustained without leave to amend.

20 Dated: July 18, 2024

Respectfully submitted,

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