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Tomás Aragón, Director of the California
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Health Officer

Exempt from Fees
(Gov. Code § 68093)
ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
3/20/2025 3:19 PM
By: Kristin Breeden, Deputy Clerk

L&M Tentative Rulings may be
obtained between 2:00 pm and 4:00 pm
on the court day prior to the scheduled
hearing at www.sonoma.courts.ca.gov or
by phone at (707) 521-6606.

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**
and as the State Public Health Officer;
21 **PETALUMA CITY SCHOOLS; and DOES**
1 through 20, inclusive,

22 Defendants.

Case No. 24CIV01964

DEFENDANT TOMÁS ARAGÓN'S
NOTICE OF DEMURRER AND
DEMURRER TO PLAINTIFFS' SECOND
AMENDED COMPLAINT

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

1 **TO THE COURT AND ALL PARTIES AND THEIR ATTORNEY(S) OF RECORD:**

2 **PLEASE TAKE NOTICE:** that on May 30, 2025, at 3:00 pm, or as soon thereafter as the
3 matter may be heard in Department 19 of the Sonoma County Superior Court, located at 3055
4 Cleveland Avenue, Santa Rosa, CA 94503, Defendant Tomás Aragón, in his official capacity as
5 Department of Public Health Director and as the State Public Health Officer (Director)¹ will and
6 hereby does bring a demurrer to the Verified Second Amended Complaint (SAC) filed by
7 Plaintiff Robyn Cannistra, individually and on behalf of Jordan Cannistra, as his guardian in fact
8 (Plaintiffs), and for an order dismissing each and every cause of action pled against the Director
9 with prejudice and without leave to amend.

10 This Demurrer is brought pursuant to Code of Civil Procedure § 430.10, subdivision (e), on
11 the grounds that each of the causes of action alleged against the Director fail to plead sufficient
12 facts to constitute a cause of action, and for the following reasons:

13 1. The first cause of action for declaratory and injunctive relief fails because declaratory
14 and injunctive relief are not causes of action but relief sought, they are derivative of the other
15 failed causes of action, and because the SAC fails to state facts sufficient to entitle Plaintiffs to
16 declaratory or injunctive relief. In addition, Plaintiffs do not plead a justiciable or ripe
17 controversy that entitles Plaintiffs to declaratory relief.

18 2. The second cause of action for a writ of mandate under California Code of Civil
19 Procedure section 1085 fails because there is no ministerial duty alleged to grant the relief sought
20 and because the SAC fails to state facts sufficient to constitute a cause of action for writ of
21 mandate under California Code of Civil Procedure section 1085.

22 3. The third cause of action for writ of mandate under California Code of Civil
23 Procedure section 1094.5 fails because the SAC fails to state facts sufficient to constitute a cause
24 of action for writ of mandate under California Code of Civil Procedure section 1094.5.

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27 ¹ As of February 1, 2025, Dr. Erica Pan, M.D., MPH, FIDSA, FAAP, assumed the role of
28 director and state public health officer for the California Department of Public Health (CDPH) in
place of captioned defendant Tomás Aragón. (Decl. Leask, ¶ 3.) All references herein use
“Director” to refer to the Defendant sued as the director and state public health director of CDPH.

1 4. The fourth cause of action for violation of the right to education under California
2 Constitution, Article IX, Section 5, fails because the SAC fails to state facts sufficient to
3 constitute a cause of action for violation of the right to education, and, well-established case law
4 in California holds that mandatory immunization requirements for school-aged children do not
5 violate the right to attend school.

6 5. The fifth cause of action for violation of the Equal Protection Clause under California
7 Constitution, Article I, Section 7, fails because the SAC fails to state facts sufficient to give rise
8 to an Equal Protection claim. Vaccinated children and migrant/foster/homeless/military family
9 children are not similarly situated to Plaintiff's child, and, Plaintiff's child is not subject to a
10 suspect classification. Moreover, even if strict scrutiny applies, the State's interest in protecting
11 the health and safety of its citizens, particularly school children, means that the relevant statutes
12 and regulations would be deemed justified by a compelling state interest.

13 6. The sixth cause of action for violation of the Due Process Clause under California
14 Constitution, Article I, Section 7, subdivision (a), fails because the SAC fails to state facts
15 sufficient to establish a substantive due process violation. Moreover, Plaintiffs did not have leave
16 of court to amend their pleading to add a substantive due process cause of action and this entirely
17 new sixth cause of action is not in conformity with the Court's order of January 6, 2025. A
18 motion to strike this sixth cause of action is concurrently filed with this demurrer.

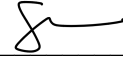
19 This motion is based on this Notice of Demurrer and Demurrer, the accompanying
20 Memorandum of Points and Authorities, Declaration of Stacey L. Leask in support, and Request
21 for Judicial Notice; all records and pleadings filed in the action, any oral argument of counsel,
22 and such other evidence as may be presented at the time of the hearing.

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1 Dated: March 20, 2025.
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Respectfully submitted,

ROB BONTA
Attorney General of California
DARRELL W. SPENCE
Supervising Deputy Attorney General



STACEY L. LEASK
Attorneys for Defendant
Tomás Aragón, Director of the California
Department of Public Health and the State
Public Health Officer

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1 **DEMURRER**

2 Pursuant to Code of Civil Procedure § 430.10, subdivision (e), Defendant Tomás Aragón,
3 in his official capacity as Department of Public Health Director and as the State Public Health
4 Officer (Director) demurs to the Verified Second Amended Complaint for Injunctive and
5 Declaratory Relief and Verified Petition for Writ of Mandate (SAC) of Plaintiff Robyn Cannistra,
6 individually and on behalf of Jordan Cannistra, as his guardian in fact (Plaintiffs), and each and
7 every cause of action therein alleged against Director, on the following grounds:

8 **GENERAL DEMURRER**

9 1. The Director generally demurs to the SAC and each and every cause of action therein
10 against the Director on the ground that the SAC fails to state facts sufficient to constitute a cause
11 of action against the Director. (Code of Civ. Proc., § 430.10, subd. (e).)

12 2. The Director generally demurs to the SAC and each and every cause of action therein
13 against the Director on the ground that the SAC fails to state facts sufficient to entitle Plaintiffs to
14 the relief sought. (Code Civ. Proc., §§ 1061, 1085, 1094.5; *Jolley v. Chase Home Finance, LLC*
15 (2013) 213 Cal.App.4th 872, 909.)

16 3. The Director generally demurs to the SAC and each and every cause of action therein
17 against the Director on the ground that Plaintiffs failed to exhaust their administrative remedies.
18 (*Bleeck v. State Board of Optometry* (1971) 18 Cal.App.3d 415, 432; *Abelleira v. District Court*
19 *of Appeal* (1941) 17 Cal.2d 280, 292-293.)

20 4. The Director generally demurs to the SAC and each and every cause of action therein
21 against the Director to the extent that Plaintiffs did not have leave of court to file an amended
22 complaint and/or amended cause of action (*Harris v. Wachovia Mortg., FSB* (2010) 185 Ca.4th
23 1018, 1023 (plaintiff may not amend the complaint to add a new cause of action without having
24 obtained permission to do so) and to the extent that the amended complaint conflicts with the
25 Court's order of January 5, 2025. (Cal. Code Civ. Proc., § 436, subd. (b).)

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1 **DEMURRER TO PLAINTIFFS' FIRST CAUSE OF ACTION**

2 1. The Director demurs to Plaintiffs' first cause of action for declaratory and injunctive
3 relief, because declaratory and injunctive relief are not causes of action but relief sought, they are
4 derivative of the other failed causes of action, and because the SAC fails to state facts sufficient
5 to entitle Plaintiffs to declaratory or injunctive relief. In addition, Plaintiffs do not plead a
6 justiciable or ripe controversy that entitles Plaintiffs to declaratory relief. (Code of Civ. Proc., §
7 430.10, subd. (e).)

8 **DEMURRER TO PLAINTIFFS' SECOND CAUSE OF ACTION**

9 1. The Director demurs to Plaintiffs' second cause of action for a writ of mandate under
10 California Code of Civil Procedure section 1085, because there is no ministerial duty alleged to
11 grant the relief sought and because the SAC fails to state facts sufficient to constitute a cause of
12 action for writ of mandate under California Code of Civil Procedure section 1085. (Code of Civ.
13 Proc., § 430.10, subd. (e).)

14 **DEMURRER TO PLAINTIFFS' THIRD CAUSE OF ACTION**

15 1. The Director demurs to Plaintiffs' third cause of action for a writ of mandate under
16 California Code of Civil Procedure section 1094.5, because there is no abuse of discretion under
17 the facts alleged and because the SAC fails to state facts sufficient to constitute a cause of action
18 for writ of mandate under California Code of Civil Procedure section 1094.5. (Code of Civ.
19 Proc., § 430.10, subd. (e).)

20 2. The Director demurs to Plaintiffs' third cause of action for a writ of mandate under
21 California Code of Civil Procedure section 1094.5, to the extent that Plaintiffs are challenging the
22 decision on the Medical Exemption appeal, because Plaintiffs have failed to exhaust their
23 administrative remedies, which is a jurisdictional bar to their action for relief. (*Bleeck, supra*, 18
24 Cal.App.3d at 432; *Abelleira, supra*, 17 Cal.2d at 292-293.)

25 **DEMURRER TO PLAINTIFFS' FOURTH CAUSE OF ACTION**

26 1. The fourth cause of action for violation of the right to education under California
27 Constitution, Article IX, Section 5, fails because the FAC fails to state facts sufficient to
28 constitute a cause of action for violation of the right to education, and because well-established

1 case law in California holds that mandatory immunization requirements for school-aged children
2 do not violate the right to attend school. (*Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1145-
3 1147; *Love v. State Dept. of Education* (2018) 29 Cal.App.5th 980, 994-995; *Whitlow v. Cal.*
4 *Dept. of Education* (S.D. Cal. 2016) 203 F.Supp.3d 1079, 1089-1090.)

5 **DEMURRER TO PLAINTIFFS' FIFTH CAUSE OF ACTION**

6 1. The fifth cause of action for violation of the Equal Protection Clause under California
7 Constitution, Article I, Section 7, fails because the FAC fails to state facts sufficient to give rise
8 to equal protection. Vaccinated children and migrant/foster/homeless/military family children are
9 not similarly situated to Plaintiff's child, and, Plaintiff's child is not subject to a suspect
10 classification. Moreover, even if strict scrutiny applies, the State's interest in protecting the
11 health and safety of its citizens, particularly school children, means that the relevant statutes and
12 regulations would be deemed justified by a compelling state interest. (*Brown, supra*, 24
13 Cal.App.5th at 1145-1147; *Love, supra*, 29 Cal.App.5th at 994-995; *Whitlow, supra*, 203
14 F.Supp.3d at 1089-1090.)

15 **DEMURRER TO PLAINTIFFS' SIXTH CAUSE OF ACTION**

16 1. The sixth cause of action for violation of the Due Process Clause under California
17 Constitution, Article I, Section 7, fails because the SAC fails to state facts sufficient to give rise
18 to a due process violation. (*Brown, supra*, 24 Cal.App.5th at 1145-1147; *Love, supra*, 29
19 Cal.App.5th at 994-995; *Whitlow, supra*, 203 F.Supp.3d at 1089-1090.)

20 **DEMURRER TO THE PRAYER FOR RELIEF**

21 1. The request for injunctive relief fails because it is derivative of the other failed causes
22 of action and because the FAC fails to state facts sufficient to entitle Plaintiffs to injunctive relief.
23 (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 65; accord, *City of South Pasadena v.*
24 *Department of Transportation* (1994) 29 Cal.App.4th 1280, 1293.)

25 2. The request for declaratory relief fails because it is derivative of the other failed
26 causes of action and because the FAC fails to state facts sufficient to entitle Plaintiffs to
27 declaratory relief. The FAC also fails to plead an "actual controversy relating to the legal rights
28 and duties of the respective parties" and thus, fail to plead a justiciable controversy that is ripe for

1 declaratory relief. (Code Civ. Proc., § 1061; *Jolley, supra*, 213 Cal.App.4th at 909; *DeLaura v.*
2 *Beckett* (2006) 137 Cal.App.4th 542, 545.)

3 3. The request for a writ of mandate fails because the FAC fails to state facts sufficient
4 to entitle Plaintiffs to writ relief under either California Code of Civil Procedure section 1085 or
5 California Code of Civil Procedure section 1094.5, and because Plaintiffs have failed to exhaust
6 their administrative remedies, which is a jurisdictional bar to their action for relief. (*Bleeck,*
7 *supra*, 18 Cal.App.3d at 432; *Abelleira, supra*, 17 Cal.2d at 292-293.)

8 WHEREFORE, the Director prays that:

9 1. The General Demurrer and Demurrer to the First, Second, Third, Fourth, Fifth, and
10 Sixth causes of action in the SAC be sustained without leave to amend;

11 2. Plaintiffs take nothing by reason of the First, Second, Third, Fourth, Fifth, and Sixth
12 causes of action in the SAC for injunctive and/or declaratory relief;

13 3. Plaintiffs' request for declaratory relief, injunctive relief, and writ of mandamus be
14 denied without leave to amend;


15 4. For costs associated with suit; and

16 5. For such other and further relief as the Court deems proper.

17 Dated: March 20, 2025

Respectfully submitted,

18 ROB BONTA
19 Attorney General of California
20 DARRELL W. SPENCE
Supervising Deputy Attorney General

21 
22 STACEY L. LEASK
23 Deputy Attorney General
24 *Attorneys for Defendant*
25 *Tomás Aragón, Director of the California*
26 *Department of Public Health and the State*
27 *Public Health Officer*
28

DECLARATION OF SERVICE BY E-MAIL and U.S. MAIL

Case Name: **Cannistra, et al. v Aragon, et al.**

No.: **24CIV01964**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. My business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. My electronic service address is Robert.Caoile@doj.ca.gov. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 20, 2025, I served the

1. DEFENDANT TOMÁS ARAGÓN'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT
2. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT TOMÁS ARAGÓN'S DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT
3. DECLARATION OF STACEY L. LEASK IN SUPPORT OF DEFENDANT TOMÁS ARAGÓN'S DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT AND CONCURRENTLY FILED MOTION TO STRIKE WITH EXHIBITS A TO D
4. [PROPOSED] ORDER SUSTAINING DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND PETITION FOR WRIT OF MANDATE

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Jonathon D. Nicol
The Nicol Law Firm
180 I Century Park East, 24th Floor
Los Angeles, CA 90067
E-mail Address: jdn@nicolfirm.com

I declare under penalty of perjury under the laws of the State of California and the United States

of America the foregoing is true and correct and that this declaration was executed on March 20, 2025, at San Francisco, California.

R. Caoile

Declarant

1st R. Caoile

Signature

DECLARATION OF SERVICE BY E-MAIL and U.S. MAIL

Case Name: *Cannistra, et al. v Aragon, et al.*

Case No.: **24CIV01964**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. My business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. My electronic service address is Claudine.Santos@doj.ca.gov. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 1, 2025, I served the attached:

1. **DEFENDANT TOMÁS ARAGÓN'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** (endorsed-filed copies with hearing date of May 30, 2025, 3:00 p.m., Courtroom 19)
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT TOMÁS ARAGÓN'S DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** (endorsed-filed copies with hearing date of May 30, 2025, 3:00 p.m., Courtroom 19)
3. **DECLARATION OF STACEY L. LEASK IN SUPPORT OF DEFENDANT TOMÁS ARAGÓN'S DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT AND CONCURRENTLY FILED MOTION TO STRIKE** (endorsed-filed copies with hearing date of May 30, 2025, 3:00 p.m., Courtroom 19)
4. **[PROPOSED] ORDER SUSTAINING DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND PETITION FOR WRIT OF MANDATE**
5. **DEFENDANT TOMÁS ARAGÓN'S NOTICE OF MOTION AND MOTION TO STRIKE THE SIXTH CAUSE OF ACTION FROM THE SECOND AMENDED COMPLAINT** (endorsed-filed copies with hearing date of May 30, 2025, 3:00 p.m., Courtroom 19)
6. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT TOMÁS ARAGÓN'S MOTION TO STRIKE THE SIXTH CAUSE OF ACTION FROM THE SECOND AMENDED COMPLAINT** (endorsed-filed copies with hearing date of May 30, 2025, 3:00 p.m., Courtroom 19)
7. **[PROPOSED] ORDER GRANTING DEFENDANT TOMÁS ARAGÓN'S MOTION TO STRIKE THE SIXTH CAUSE OF ACTION FROM THE SECOND AMENDED COMPLAINT**

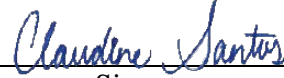
by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Jonathon D. Nicol
The Nicol Law Firm
1801 Century Park East, 24th Floor
Los Angeles, CA 90067
Email: jdn@nicolfirm.com
Attorneys for Plaintiffs

Frank Zotter Jr.
School & College Legal Services of California
5350 Skylane Blvd.
Santa Rosa, CA 95403
Email: fzotter@sclscal.org
Attorneys for Defendant Petaluma City Schools

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 1, 2025, at San Francisco, California.

Claudine Santos
Declarant


Signature