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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SONOMA

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

Plaintiffs,

v.

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

Defendants.

Case No. 24CIV01964

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT TOMÁS ARAGÓN'S
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

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1 **INTRODUCTION**

2 This Court sustained Defendant Tomás Aragón’s demurrer to the first five causes of action
3 pled in the First Amended Complaint (FAC). In doing so, the Court issued a very thorough and
4 well-written order laying out the necessary factual and legal standards for each of the causes of
5 action and the deficiencies thereby supporting demurrer. The Court’s order, while sustaining the
6 demurrer in its entirety, permits Plaintiffs limited leave to amend as to the first five causes of
7 action only.

8 Now, Plaintiffs have amended their complaint yet again, this time re-stating the same facts
9 and arguments that this Court previously found deficient to support the causes of action and relief
10 sought. Plaintiffs also improperly added an entirely new cause of action without prior leave of
11 court.

12 Because the factual allegations in the Second Amended Complaint (SAC) fail for the same
13 reasons discussed in the Court’s order sustaining the demurrer to the FAC, and for the reasons
14 below, the first through sixth causes of action should be dismissed. Additionally, leave to amend
15 should not be granted as it would be a futile exercise.

16 **PROCEDURAL AND FACTUAL BACKGROUND**

17 **I. THE COURT’S PRIOR ORDER SUSTAINING THE DIRECTOR’S DEMURRER**

18 Plaintiff Robyn Cannistra, individually and on behalf of Jordan Cannistra, as his guardian
19 in fact (Plaintiffs) filed a Complaint for Injunctive and Declaratory Relief against the State’s
20 Public Health Director and Officer (the Director)¹, and against Petaluma City Schools (PCS).
21 Later, Plaintiffs filed a First Amended Complaint (FAC), which asserted five causes of action
22 against the Director and PCS, and two causes against PCS only. (Decl. Leask, ¶¶ 2-10.)

23 The Director demurred to all five causes of action alleged against the Director and PCS,
24 including the following: (1) first cause of action for alleged preemption by and violation of Health
25 and Safety Code Section 120335 and California Code Regulations, Title 17, Sections 6025, 6060,

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

1 and 6065; (2) second cause of action for alleged preemption by and violation of California Code
2 of Regulations, Title 5, Section 11700; (3) third cause of action for preemption by and violation
3 of Education Code Sections 51746 and 51747; (4) fourth cause of action for violation of the right
4 to education under California Constitution, Article IX, Section 5; and (5) fifth cause of action for
5 violation of the Equal Protection Clause under California Constitution, Article I, Section 7.
6 (Decl. Leask, ¶¶ 8-9, 12; Ex. A, Order, p. 2, lines 1-6.)²

7 With respect to the first, second and third causes of action based on preemption and
8 violation of statutes, the Court interpreted these as claims for declaratory relief or writs of
9 mandate and found that “Plaintiffs have not displayed an error of law in [the] interpretation” and
10 that “[n]either the Department nor PCS committed error in their construal of the statute.” (Decl.
11 Leask, ¶ 14, Ex. A, Order, p. 10, lines 21-25, p. 11, lines 1-28, p. 12, lines 1-5, p. 16, lines 5-6.)
12 In addition, the Court found that, based on the facts alleged, Plaintiffs had not sufficiently pled a
13 viable claim for administrative mandamus or ordinary mandamus. (Decl. Leask, Ex. A, Order, p.
14 12, lines 7-28 and p. 13, lines 1-21.)

15 Next, the Court thoroughly analyzed each of Plaintiffs’ causes of action based on an alleged
16 violation of the California right to education and the California Equal Protection Clause (the
17 fourth and fifth causes of action, respectively). The Court sustained the demurrer as to both
18 causes, finding that, “Plaintiff has pled no constitutional violation to the right to education, as the
19 case law weighs in favor of the state’s interest” (Decl. Leask, Ex. A, Order, p. 15, lines 4-5) and
20 that based on the facts alleged, “Plaintiff has plead no cause of action predicated on equal
21 protection.” (Decl. Leask, Ex. A, Order, p. 15, line 23.) Notwithstanding, the Court granted
22 Plaintiffs limited leave to amend with respect to the fourth and fifth causes of action. (Decl.
23 Leask, Ex. A, Order, p. 15, lines 24-27.)

24 Ultimately, the Court sustained the demurrer as to each of the first through fifth causes of
25 action. (Decl. Leask, ¶¶ 12-15, Ex. A, Order, p. 2, lines 19-20, p. 17, line 13.) Plaintiffs were

26 _____
27 ² PCS filed a joinder to the Director’s demurrer with respect to Plaintiffs’ allegations that
28 are comingled between the two defendants, which the Court accepted as proper and accordingly,
the Court addressed the sufficiency of the first five cause of action plead in the FAC as to both the
Director and PCS. (Decl. Leask, Ex. A, Order, p. 10, lines 17-20.)

1 granted limited leave to amend as to these five causes of action only: “The Demurrer is
2 SUSTAINED with leave to amend as to the First through Fifth causes of action.”) (Decl. Leask,
3 Ex. A, Order, p. 2, lines 19-20.) The Court did not grant Plaintiffs leave to file any new causes of
4 action, nor did Plaintiffs request leave to do so.³ (*Id.*; Decl. Leask, ¶¶ 10, 12, 14.)

5 **II. PLAINTIFFS’ SECOND AMENDED COMPLAINT AND PETITION FOR WRIT OF**
6 **MANDATE (SAC)**

7 Plaintiffs filed their SAC essentially re-pleading the first through third causes of action as
8 petitions for writs of mandate and re-pleading their fourth and fifth causes of action based on
9 constitutional violations. Contrary to the Court’s order, Plaintiffs also added an entirely new
10 sixth cause of action.⁴

11 **A. The First, Second and Third Causes of Action are Re-framed as Petitions**
12 **for Writs of Mandate and Requests for Declaratory and Injunctive Relief**

13 The SAC pleads a first cause of action for declaratory and injunctive relief; a second cause
14 of action for writ of mandate under California Code of Civil Procedure Section 1085 (Section
15 1085); and a third cause of action for writ of administrative mandate under California Code of
16 Civil Procedure Section 1094.5 (Section 1094.5). (Decl. Leask, ¶ 16, Ex. B, SAC, p. 11-18.)

17 Plaintiffs’ first, second and third causes of action are based on the same underlying facts as
18 the FAC. Namely, Plaintiffs re-allege that the Health and Safety Code and regulations require
19 school admittance for any pupil “whose parent or guardian has provided documentation of any of
20 the . . . immunization[s] required for the pupils age or grade, as defined in Table A or B of this
21 section” and that “a permanent medical exemption . . . may be provided in lieu of proof of receipt
22 of immunization.” (Decl. Leask, Ex. B, SAC, ¶¶ 74-75.)

23 Plaintiffs again allege that Jordan is “immune” and has “provided proof of his
24 immunization.” (Decl. Leask, Ex. B, SAC, ¶ 77.) At the same time, they again concede that
25 Jordan cannot display immunity from Polio Type 2 due to the titer test being unavailable in the

26 ³ A complete copy of the Court’s order is attached as Exhibit A to the Declaration of
27 Stacey Leask.

28 ⁴ The SAC also re-pleaded two causes of action against PCS only: a seventh cause of
action for Violation of Education Code Section 220 and an eighth cause of action for Violation of
Government Code Section 11135. (Decl. Leask, Ex. B, SAC, p. 19-20.) Neither of these two
causes are relevant to this demurrer.

1 United States. (Decl. Leask, Ex. B, SAC, ¶¶ 35-41.) The only difference is that now, Plaintiffs
2 allege that, “[a]s to Polio Type 2, for which there is no titer test, this disease no longer exists” and
3 “the global eradication of Polio Type 2 renders Jordan immune to that type.” (Decl. Leask, Ex.
4 B, SAC, ¶¶ 44-55.) Plaintiffs also claim that “California law does not delineate that a student
5 must be vaccinated against, or show, immunity to, Polio Type 2 – or any specific type of Polio.”
6 (Decl. Leask, Ex. B, SAC, ¶43.)

7 As to the second cause of action for writ of mandate under Section 1085, the SAC alleges
8 that “Defendants have a clear, present, and ministerial duty to process medical exemptions (such
9 as Jordan’s Medical Exemption) in a way that gives effect to California’s interest in public health
10 and to schoolchildren’s fundamental interest in education.” (Decl. Leask, Ex. B, SAC, ¶ 97.) As
11 to this claim, Plaintiffs seek a writ of mandate forcing “Defendants to design, implement,
12 maintain and enforce updates to the medical exemption system” to “not preclude immunized
13 schoolchildren from securing such exemptions in violation of California law.” (Decl. Leask, Ex.
14 B, SAC, ¶ 101.)

15 The third cause of action for writ of mandate under Section 1094.5 alleges that Defendants’
16 denial of Jordan’s medical exemption constitutes an abuse of discretion, and that Defendants
17 acted “unreasonably, arbitrarily, and capriciously in denying Jordan’s Medical Exemption.”
18 (Decl. Leask, Ex. B, SAC, ¶¶ 103-104.) Plaintiffs seek to be “granted the Medical Exemption.”
19 (Decl. Leask, Ex. B, SAC, ¶105.) As demonstrated below, however, these claims continue to fail.

20 **B. Plaintiffs Re-Plead the Fourth and Fifth Causes of Action for Violation of**
21 **the California Right to Education and Equal Protection Clause**

22 Plaintiffs re-pleaded their fourth cause of action based on Article IX of the California
23 Constitution (right to education) and the fifth cause of action based on the Equal Protection
24 Clause of the California Constitution. (Decl. Leask, Ex. B, SAC, pp. 14-18.) These causes are
25 based on the same facts pled in the FAC, namely, that there is a “vaccine mandate” that denies
26 partially-vaccinated schoolchildren their fundamental right to education, which they claim does
27 not meet strict scrutiny (Decl. Leask, Ex. B, SAC, ¶¶ 111-115), and that, because California law
28 enacted statutory protections for homeless children, children in foster care, and children of

1 military families, there is a disparate treatment in violation of equal protection under the
2 California constitution. (Decl. Leask, Ex. B, SAC, ¶¶ 123, 130.) Plaintiffs allege no new
3 material facts as to these causes.

4 **C. Plaintiffs Add an Entirely New Sixth Cause of Action Based on Substantive**
5 **Due Process**

6 With no permission to do so by this Court, Plaintiffs have added an entirely new sixth cause
7 of action against the Director and PCS, alleging that the denial of Jordan’s Medical Exemption
8 request denies their fundamental substantive due process rights under California law. (Ex. B,
9 SAC, ¶¶ 137-138.)

10 **III. THE FACTUAL BACKGROUND**

11 The underlying facts in the SAC are the same as those asserted in the FAC, albeit with a
12 few added facts that are immaterial to the outcome of this motion. The Director incorporates by
13 reference the factual summary stated in the Director’s moving papers to the demurrer of the FAC.
14 (See Ex. D to Decl. Leask, Memorandum of Points and Authorities in Support of Dr. Aragón’s
15 Demurrer to Plaintiffs’ FAC.) The parties met and conferred as required by Code of Civil
16 Procedure section 430.41, prior to the filing of this demurrer. (Decl. Leask, ¶¶ 1-21, Ex. C.)

17 **STANDARD OF REVIEW**

18 A complaint that fails to allege facts sufficient to constitute a cause of action is subject to
19 demurrer. (Code Civ. Proc., § 430.10, subd. (e).) In ruling on a demurrer, “the trial court
20 examines the pleading to determine whether it alleges facts sufficient to state a cause of action
21 under any legal theory, with the facts being assumed true for purposes of this inquiry.”
22 (*Campaign for Quality Educ. v. State of California* (2016) 246 Cal.App.4th 896, 904.) A court
23 may also consider judicially noticeable matters that are outside the pleading and may disregard
24 allegations that are contrary to law or are contrary to a fact of which judicial notice may be taken.
25 (*Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1141; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

26 \\\

27 \\\

28 \\\

1 **ARGUMENT**

2 The Director demurs to the SAC on the grounds that, as to each of the first, second, third,
3 fourth, fifth, and sixth causes of action, Plaintiffs have failed to state facts sufficient to constitute
4 a cause of action or to obtain the relief sought. Because Plaintiffs have had ample opportunity but
5 have failed to cure the defects in their pleading, demurrer should be sustained without any further
6 leave to amend.

7 **I. THE SAC FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CAUSE OF ACTION FOR**
8 **CONSTITUTIONAL VIOLATIONS**

9 As the Court’s Order on the previous demurrer noted, controlling and persuasive case law
10 in California forecloses Plaintiffs’ constitutional claims. (Decl. Leask, Ex. A, Order p. 14, lines
11 9-13, citing *Brown, supra*, 24 Cal.App.5th at 1143 (*Brown*) and *Whitlow v. California* (S.D. Cal.
12 2016) 203 F.Supp.3d 1079 (*Whitlow*). As this Court has already ruled, the California Supreme
13 Court has held that state mandatory vaccination schedules and associated regulations in “no way
14 interferes with the right of the child to attend school provided the child complies with its
15 provisions” and “implicates no ‘suspect classification.’” (Decl. Leask, Ex. A, Order, p. 14, lines
16 14-23, citing *French v. Davidson* (1904) 143 Cal.658, 662 and *Brown, supra*, 24 Cal.App.5th at
17 1146.) Accordingly, strict scrutiny does not apply. (*Id.*) Even if it did, “the cases are clear that
18 Defendants can meet strict scrutiny were it necessary” given the State’s compelling interests in
19 protecting the health and safety of its citizens, particularly school children. (Decl. Leask, Ex. A,
20 Order, p. 14, lines 23-28 and p. 15, lines 1-5.)

21 **A. The Right to Education Claim Fails**

22 In their SAC, Plaintiffs have not alleged any new facts upon which to establish a
23 constitutional violation to the right to education. Plaintiffs continue to aver their same theory that
24 the Department’s enforcement of the state statutory vaccination requirements and accompanying
25 regulations violates their California right to education. (Decl. Leask, Ex. B, SAC, ¶¶ 111-117.)
26 Yet, as this Court already found, the reliance on such statutes and regulations does not establish a
27 violation of the right to education, given the State’s interest in protecting the health and safety of
28

1 its citizens, particularly, schoolchildren, and Plaintiffs have not alleged any new facts to
2 demonstrate otherwise. (Decl. Leask, Ex. A, Order, pp. 3-5, 8, 14-17; *Brown, supra*, 24
3 Cal.App.5th 1146-1147; *Whitlow, supra*, 203 F.Supp.3d 1091; *Love v. State Department of*
4 *Education* (2018) 29 Cal.App.5th 980, 994-995 (holding that statutes that eliminated personal
5 belief exemptions from the mandatory immunization requirements for school-aged children did
6 not violate the right to attend school).)

7 Plaintiffs' claim that California law does not delineate that a student must be vaccinated
8 against, or show immunity to, Polio Type 2, is misplaced. First, as this Court correctly noted,
9 Plaintiffs' own citations are "self-defeating," because "HSC § 120335 clearly delegates
10 substantial authority to the Department in creating the requirements within the regulations" which
11 "cannot be construed as foreclosing vaccinations as the method of immunization under the
12 statute." (Decl. Leask, Ex. A, Order p. 11, lines 1-8.) Further, because the statute "delegates
13 substantial power to the Department in promulgating the regulation defining what 'immunizing
14 agents' are appropriate . . . Plaintiffs cannot display, as a matter of statutory interpretation that the
15 Department is not entitled to promulgate a regulation determining that the only appropriate
16 immunizing agents are vaccinations." (Decl. Leask, Ex. A, Order p. 11, lines 1-8.)

17 As the Court also corrected noted, it is clear that "four polio vaccinations are required to
18 display the required four doses of 'immunization' required by the statutes and regulations," and
19 hence, "Plaintiffs have not displayed an error of law in this interpretation." (Decl. Leask, Ex. A,
20 Order p. 11, lines 8-23.) This same reasoning applies to the SAC and Plaintiffs have not cited to
21 any statute or regulation that eliminates the requirement for vaccination of poliovirus, Polio Type
22 2 or any specific type of Polio. For these reasons, demurrer to the fourth cause of action must be
23 sustained.

24 **B. The Equal Protection Claim Fails**

25 Plaintiffs again claim that the relevant statutory scheme contains exceptions for production
26 of records applicable to homeless children, children in foster care, and children of military
27 families treat such children differently from children not in these categories, and that strict
28

1 scrutiny applies. (Decl. Leask, Ex. B, SAC, ¶¶ 32-33). As already thoroughly analyzed by the
2 Court, these claims fail under the facts pled.

3 To this end, this Court already rejected Plaintiffs’ argument, finding that “[w]hile *Brown*
4 does not directly address the categories of exceptions raised by Plaintiff, the logic expressed
5 therein on equal protection statutes remains applicable” and that such classifications “do not
6 involve similarly situated children, or are otherwise entirely rational classifications.” (Decl.
7 Leask, Ex. A, Order, p. 15, lines 9-12.) The Court further stated, “[t]he categories of students at
8 issue do not implicate students dealing with the same struggles or disadvantages. The distinction
9 created by the exception for homeless children, children in foster care, and children of military
10 families is rational. The exception fulfills a compelling state interest in ensuring education for
11 disadvantaged groups, an analysis thoroughly covered in the applicable legislative histories.”
12 (Decl. Leask, Ex. A, Order, p. 15, lines 14-19.) Thus, none of the classifications presented by
13 Plaintiffs will support an equal protection claim.

14 Plaintiffs’ attempt to rectify this claim by calling into question the amount of time schools
15 spend trying to ensure compliance with vaccination requirements for these disadvantaged groups,
16 does nothing to revive their claim. (Decl. Leask, Ex. B, SAC, ¶ 34). Not only does this purported
17 reason not create a suspect class, but Plaintiffs have alleged nothing that would overcome the
18 compelling state interest in ensuring education for these disadvantaged groups, as covered in the
19 applicable legislative histories, as noted by the Court’s prior Order. (Decl. Leask, Ex. A, Order,
20 p. 15, lines 14-19, p. 3, lines 18-28, p. 4, lines 1-8; see *Brown, supra*, 24 Cal.App.5th 1146-1147;
21 *Whitlow, supra*, 203 F.Supp.3d 1091; *Zucht v. King* (1922) 260 U.S. 174, 176.) Moreover, this
22 Court has already determined that such distinctions are rational and fulfill a compelling state
23 interest, and nothing in the SAC changes this analysis. (*Id.*) Thus, the demurrer to the fifth cause
24 of action should be sustained.

25 **II. THE SAC FAILS TO ALLEGE FACTS SUFFICIENT TO SUPPORT WRITS OF MANDATE**
26 **OR TO OBTAIN DECLARATORY OR INJUNCTIVE RELIEF**

27 In its prior Order, the Court thoroughly laid out the legal standards for writs of mandate
28 under California law. (Decl. Leask, Ex. A, Order, pp. 5-8.) The Court then analyzed those

1 standards against Plaintiffs’ factual allegations, and concluded that, under the facts pled by
2 Plaintiffs, “only a claim for administrative mandamus is posturally viable against PCS.” (Decl.
3 Leask, Ex. A, Order, p. 12, lines 19-20.) The Court went on to find that, given Plaintiffs’
4 concession that Jordan cannot display immunity from Polio Type 2 due to the titer testing being
5 unavailable” and because “CCR, tit. 17, § 6025 provides no elucidated basis for titer testing as an
6 exemption to immunization requirements,” “Plaintiffs have failed to plead an abuse of discretion,
7 and administrative mandamus will not lie.” (Decl. Leask, Ex. A, Order, p. 12, lines 21-28, p. 13,
8 line 1-8.) The Court also found that, under the facts alleged, there is no ministerial duty owed
9 and, even if there had been, any such duty is clearly mixed with discretion of which the
10 defendants “should be capable of exercising their obligations without ‘judicial interference.’”
11 (Decl. Leask, Ex. A, Order, p. 13, lines 9-21.) Notwithstanding this clear finding, Plaintiffs re-
12 asserted their claims as petitions for writs of mandate. As explained more fully below, both of
13 those claims fail.

14 **A. Ordinary Mandamus Under Section 1085 Fails**

15 Section 1085 of the Code of Civil Procedure provides for the issuance of a writ of mandate
16 to “any inferior tribunal, corporation board, or person, to compel the performance of an action
17 which the law specifically enjoins, as a duty resulting from an office, trust, or station.” (Code
18 Civ. Pro., § 1085, subd. (a).) As this Court noted, “[t]here are two essential requirements to the
19 issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the
20 part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to
21 the performance of that duty.’ (*California Ass’n for Health Services at Home v. State Dept. of*
22 *Health Services*. (2007) 148 Cal.App.4th 696, 704.)” (Decl. Leask, Ex. A, Order, p. 6, lines 5-9.)

23 “A ministerial duty is an act that a public officer is obligated to perform in a proscribed
24 manner required by law when a given state of facts exists.’ *Schmid v. City and County of San*
25 *Francisco* (2021) 60 Cal.App.5th 470, 495... ‘Mandate will not issue to compel action unless it is
26 shown the duty to do the thing asked for is plain and unmixed with discretionary power or the
27 exercise of judgment.’ *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580,
28

1 596.” (Decl. Leask, Ex. A, Order, p. 6, lines 9-23; see also, *Alejo v. Torlakson* (2013) 212
2 Cal.App.4th 768, 780; *Unnamed Physician v. Board of Trustees of Saint Agnes Medical Center*
3 (2001) 93 Cal.App.4th 607, 618; *AIDS Healthcare Foundation v. Los Angeles County Dept. of*
4 *Public Health* (2011) 197 Cal.App.4th 693, 700.)

5 Plaintiffs allege that “Defendants have a clear, present, and ministerial duty to process
6 medical exemptions . . . in a way that gives effect to California’s interest in public health and to
7 school children’s fundamental interest in education.” (Decl. Leask, Ex. B, SAC, ¶ 97.) Plaintiffs
8 seek a writ of mandate compelling Defendants to “design, implement, maintain and enforce
9 updates to the medical exemption system . . . [to] not preclude immunized children from securing
10 exemptions . . .”; for a declaration that would preclude Defendants “from implementing and
11 enforcing a policy that denies medical exemptions when immunity is shown via titer tests”; and to
12 declare “that antibody titer tests be recognized as confirming immunity and be presented in lieu of
13 vaccination records.” (Decl. Leask, Ex. B, SAC, ¶ 101 and p. 21, ¶¶ 1-9.)

14 Yet, Plaintiffs have not alleged any facts showing that the Director or the Department has
15 any ministerial duty to do any of these things. Nothing in the statutes or regulations imposes a
16 mandatory duty on the Department to accept Jordan’s titer tests as proof of immunization as to
17 Polio Type 2 or to ignore that he has not received all four doses of the Polio vaccine or three of
18 the four doses where the last dose was provided on or after his fourth birthday. In fact, as the
19 Court noted, the statutes and regulations say just the opposite and Plaintiffs have conceded that
20 Jordan cannot display immunity from Polio Type 2 due to the titer testing being unavailable.
21 (Decl. Leask, Ex. B, SAC, ¶¶ 36-41; Ex. A, Order, p. 11, lines 1-23.)

22 Moreover, the statutes afford the Department with the authority to specify the immunizing
23 agents and the manner in which they are to be administered; and there is significant discretion
24 afforded to the Department to determine the process and guidelines for medical exemption and to
25 decide what constitutes appropriate proof of immunization, so long as those are consistent with
26 the federal Centers for Disease Control and Prevention, federal Advisory Committee on
27 Immunization Practices, or American Academy of Pediatrics guidelines or the relevant standard
28 of care, as applicable.” (Health & Saf. Code, § 120372.05(c); Cal. Code Regs., tit 17, §6000 et

1 seq.; Decl. Leask, Ex. A, Order, p. 13, lines 9-21.) Thus, Plaintiffs cannot establish the requisite
2 ministerial duty nor have they alleged any facts that would demonstrate that either the Director or
3 the Department acted inconsistent with the statutes and regulations entitling them to the relief
4 sought. Accordingly, the demurrer to the second cause of action must be sustained.

5 **B. Administrative Mandamus Under Section 1094.5 Fails**

6 A writ of administrative mandamus is used to review the quasi-judicial or adjudicative acts
7 of a state agency. (Decl. Leask, Ex. A, Order, p. 7, lines 4-6, citing *California Water Impact*
8 *Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1482.) “In general,
9 ‘quasi-judicial’ or ‘adjudicative acts,’ that is, acts that involve the actual application of a rule to a
10 specific set of existing facts are reviewed by administrative mandamus under Code of Civil
11 Procedure section 1094.5.” (*Beach and Bluff Conservancy v. City of Solana Beach* (2018) 28
12 Cal.App.5th 244, 258.) “In such proceedings, the trial court’s review ‘shall extend to the
13 questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether
14 there was a fair trial; and whether there was any prejudicial abuse of discretion.’ (CCP
15 §1094.5(b). An abuse of discretion can occur three different ways: (1) ‘the respondent has not
16 proceeded in the manner required by law,’ (2) the ‘decision is not supported by the findings,’ or
17 (3) ‘the findings are not supported by the evidence.’” (Decl. Leask, Ex. A, Order, p. 5, lines 22-
18 28, citing Code Civ. Proc., §1094.5, subd. (b).)

19 In its prior Order, the Court found that Plaintiffs had failed in their FAC to allege how
20 either the Department or PCS abused its discretion. (Decl. Leask, Ex. A, Order, p. 12, lines 21-28
21 and p. 13, lines 1-15.) Plaintiffs’ factual pleading in the SAC likewise do not allege facts to
22 establish an abuse of discretion. There is no statute or regulation requiring the Department to
23 accept Jordan’s titer testing as an exemption to the immunization requirements. Plaintiffs again
24 concede that Jordan has received only three of four required doses for the Polio vaccine and as the
25 Court pointed out, the regulatory scheme “provides no elucidated basis for titer testing as an
26 exemption to immunization requirements.” (Decl. Leask, Ex. A, Order, p. 13, lines 3-4.) Simply
27 put, the facts pleaded preclude any basis for a finding of abuse of discretion and thusly, the cause
28 of action for administrative mandamus is subject to demur.

1 As explained in the first demurrer, Plaintiffs’ reference to colleges’ acceptance of titer tests
2 is inconsequential. Jordan seeks admission to a public school, not a college. Further, as noted,
3 our courts have consistently recognized that there are particular concerns with respect to
4 mandatory immunizations among *schoolchildren*. (*Whitlow, supra*, 203 F.Supp.3d at 1092.) For
5 these reasons, the third cause of action is subject to demurrer.⁵

6 C. Declaratory and Injunctive Relief Fails

7 “Injunctive relief is a remedy, not a cause of action. [Citations.] A cause of action must
8 exist before a court may grant a request for injunctive relief.” (*Allen v. City of Sacramento* (2015)
9 234 Cal.App.4th 41, 65; accord, *City of South Pasadena v. Department of Transportation* (1994)
10 29 Cal.App.4th 1280, 1293 [“A permanent injunction is merely a remedy for a proven cause of
11 action. It may not be issued if the underlying cause of action is not established.”].) Because
12 none of the causes of action are legally sufficient, and because Plaintiffs have alleged no facts to
13 support injunctive relief, Plaintiffs’ request for a temporary restraining order or injunctive relief
14 necessarily fails as well. (*Id.*)

15 Plaintiffs’ claim for declaratory relief also fails because the claim is entirely derivative of
16 Plaintiffs’ other causes of action which, for the reasons set out above, all fail. (*Ball v. FleetBoston*
17 *Financial Corp.* (2008) 164 Cal.App.4th 794, 800, citing *Ochs v. PacifiCare of California* (2004)
18 115 Cal.App.4th 782, 794; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80 (‘a request for
19 declaratory relief will not create a cause of action that otherwise does not exist.’)).

20 Under the facts pled, declaratory relief is improper. (Decl. Leask, Ex. A, Order, p. 6, lines
21 25-27; *State of California v. Superior Court* (1974) 12 Cal.3d 237, 249, 251 [declaratory relief
22 action is not an appropriate remedy to challenge the application of such statute, regulation or
23 ordinance]; *Walter Leimert Co. v. Calif. Coastal Comm.* (1983) 149 Cal.App.3d 222, 230
24 [“...declaratory relief is not appropriate to review an administrative decision.”].) In contrast,
25 declaratory relief may be an appropriate remedy upon a determination that a statute is

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 unconstitutional or invalid. (*Beach and Bluff Conservancy, supra*, 28 Cal.App.5th at 259; *City of*
2 *Carmel-By-The-Sea v. Young* (1970) 2 Cal.3d 259, 263; Decl. Leask, Ex. A, Order, p. 6, lines 27-
3 28, p. 7, lines 1-2.)

4 As previously ruled by this Court, on the facts pleaded, Plaintiffs do not allege facts
5 sufficient to support any claim that the statutes are unconstitutional or invalid. (Decl. Leask, Ex.
6 A, Order, p. 11, lines 1-28, p. 12, lines 1-6, p. 12, lines 7-20, and p. 16, lines 1-8.) Plaintiffs also
7 fail to plead mandamus as explained above.

8 Finally, declaratory relief requires an “actual controversy relating to the legal rights and
9 duties of the respective parties.” (Code Civ. Proc., § 1061; *Jolley v. Chase Home Finance, LLC*
10 (2013) 213 Cal.App.4th 872, 909; *Wilson & Wilson v. City Council of Redwood City* (2011) 191
11 Cal.App.4th 1559, 1582.) Jordan is currently attending school at PCS and thus, he has not alleged
12 any facts to demonstrate an actual justiciable controversy. (Decl. Leask, Ex. B, SAC, ¶¶ 7, 35;
13 *DeLaura v. Beckett* (2006) 137 Cal.App.4th 542, 545; see also *Meyer v. Sprint Spectrum L.P.*
14 (2009) 45 Cal.4th 634, 648 [demurrer properly sustained where no allegations that declaratory
15 relief would “have any practical consequences.”].) Plaintiffs also have not alleged that they have
16 suffered any actual injury or harm that is redressable; Plaintiffs do not assert that Jordan has been
17 excluded from school or its programs; they assert that *if* there is such a mandate, that it would
18 cause them harm. (Decl. Leask, Ex. B, SAC, ¶¶ 72, 79-81.) Thus, demur to the first cause of
19 action for declaratory and injunctive relief should be sustained.

20 **III. PLAINTIFFS DID NOT HAVE PRIOR LEAVE OF COURT TO ADD THE SIXTH CAUSE OF**
21 **ACTION AND IT LIKewise FAILS UNDER THE FACTS ALLEGED**

22 Plaintiffs added a sixth cause of action for alleged violation of California’s substantive due
23 process. (Decl. Leask, Ex. B, SAC.) Plaintiffs allege that the denial of Jordan’s Medical
24 Exemption denied their fundamental substantive due process rights under California law. (Ex. B,
25 SAC, ¶¶ 137-138.)

26 Plaintiffs’ sixth cause of action should be stricken as argued in the Director’s concurrently
27 filed motion to strike for being added without proper leave of court. Even if Plaintiffs requested
28

1 leave to amend, which they did not, such exercise would be futile, because Plaintiffs cannot state
2 facts sufficient to plead a violation of the substantive due process clause.

3 In addition, the doctrine of substantive due process “does not protect individuals from all
4 [governmental] actions that infringe liberty or injure property in violation of some law. Rather,
5 substantive due process prevents ‘governmental power from being used for purposes of
6 oppression,’ or ‘abuse of governmental power that shocks the conscience,’ or ‘action that is
7 legally irrational in that it is not sufficiently keyed to any legitimate state interests.’” (*Las Lomas*
8 *Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 856, citing *Stubblefield*
9 *Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 709-710, quoting *PFZ*
10 *Properties, Inc. v. Rodriguez* (1st Cir. 1991) 928 F.2d 28, 31-32.)

11 In the SAC, Plaintiffs assert the same arguments for their substantive due process claim as
12 they do for the other alleged constitutional violations – that the denial of the medical exemption
13 request in Jordan’s case deprived him of his fundamental right to a free public education. (Decl.
14 Leask, Ex. B, SAC, ¶ 137.) Plaintiffs also contend that it deprives his mother of making medical
15 decisions for Jordan. (Decl. Leask, Ex. B, SAC, ¶ 138.)

16 Without conceding that substantive due process or strict scrutiny applies in this instance,
17 *Brown* and the related case law makes clear that “[t]he right of education, fundamental as it may
18 be, is no more sacred than any of the other fundamental rights that have readily given way to a
19 State’s interest in protecting the health and safety of its citizens, and particularly, school
20 children.” (*Brown, supra*, 24 Cal.App.5th at 1147, citing *Whitlow, supra*, 203 F.Supp.3d at
21 1091.) As fully explained above, immunization statutes and their corresponding regulations for
22 medical exemptions are justified by a compelling state interest under the strict scrutiny standard.
23 (*Whitlow supra*, 203 F.Supp.3d at 1083-1086, 1091-1092 [“State Legislatures have a long history
24 of requiring children to be vaccinated as a condition to school enrollment, and for as many years,
25 both state and federal courts have upheld those requirements against constitutional challenge.”];
26 see also, *Love, supra*, 29 Cal.App.5th at 889-890 (unquestionably, the State is well within its
27 powers to condition school enrollment on vaccination and the plaintiffs’ substantive due process
28

1 claim challenging elimination of the personal belief exemption fails under either level of
2 scrutiny.) Accordingly, any substantive due process claim fails under well-established law.

3 **IV. FURTHER LEAVE TO AMEND WOULD BE FUTILE**

4 Plaintiffs have been afforded ample opportunity to plead their causes. It is undisputed that
5 Jordan has not received all four doses of the polio vaccine, and his titer tests do not demonstrate
6 sufficient immunization as to the polio vaccine. (Decl. Leask, Ex. B, SAC, ¶¶ 36-40.) Given the
7 deference to be afforded to the Department, and because leave to amend would be futile, the
8 demurrer should be sustained without leave to amend. (*Vaillette v. Fireman's Fund Ins. Co.*
9 (1993) 18 Cal.App.4th 680, 685 (“[L]eave to amend should not be granted where . . . amendment
10 would be futile.”); see also *Brown, supra*, 24 Cal.App.5th at 1148 (leave to amend denied).)

11 **CONCLUSION**

12 For the foregoing reasons, the Director respectfully requests that the demurrer to the first,
13 second, third, fourth, fifth and sixth causes of action in the SAC be sustained without leave to
14 amend.

15
16 Dated: March 20, 2025

Respectfully submitted,

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20
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