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14 behalf of himself and as Guardian Ad Litem for his minor
15 child, AIDAN PALICKE; CHILDREN'S HEALTH
16 DEFENSE-CALIFORNIA CHAPTER

17 **SUPERIOR COURT FOR THE COUNTY OF ORANGE**

18 **CENTRAL JUSTICE CENTER**

19 **CHRIS PALICKE** an individual on behalf of
20 himself and as Guardian Ad Litem for his
21 minor child, **AIDAN PALICKE**;
22 **CHILDREN'S HEALTH DEFENSE-**
23 **CALIFORNIA CHAPTER**, a California
24 501(c)(3) non-profit corporation, on its own
25 and on behalf of its members,

26 Plaintiffs,

27 vs.

28 **PLACENTIA-YORBA LINDA UNIFIED**
SCHOOL DISTRICT, a local educational
agency in the County of Orange, **JIM**
ELSASSER, in his official capacity as
Superintendent of Placentia Yorba Linda
Unified School District, **RICHARD**
McALINDIN, in his official capacity as
Assistant Superintendent of Placentia-Yorba
Linda Unified School District, **LINDA**
ADAMSON, in her official capacity as
Assistant Superintendent of Placentia-Yorba
Linda Unified School District, **RICHARD**
DINH, in his official capacity as Principal of
Yorba Linda High School, **BIRD POTTER**, in
her official capacity as Assistant Principal of
Yorba Linda High School, **CARRIE BUCK**,
KARIN FREEMAN, and **MARILYN**
ANDERSON, each individual in her official

Case No.: 30-2022-01253908 CU-MC-CJC

**FIRST AMENDED VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DAMAGES**

- 1) **Violation of Ed. Code §§ 48900, 48910 (unlawful suspension/expulsion)**
- 2) **Violation of Ed. Code §§ 48213, 49451 (fraudulent expulsion)**
- 3) **Violation of Ed. Code §§ 51749.5, 51749.6, 51746, 51747 (Dec/Inj for unlawful coercion into independent study)**
- 4) **Violation of H&S Code §§ 24170-24179.5 (unlawful human experimentation)**
- 5) **Violation of Free Speech Under Articles I and 2 of California Constitution**
- 6) **Violation of Due Process Under Article I, Sections 1 and 7 of California Constitution**
- 7) **Violation of Right to Education Under Art IX of California Constitution**

1 capacity as a member of the School Board of
2 the Placentia Yorba Linda Unified School
3 District, DANA GIGLIOTTI, an individual,
4 BRYAN BLOOM, an individual, JACLYN
5 CHAVEZ, an individual, JOHN DOMEN, an
6 individual, MADISON WALTEMEYER, an
7 individual, AMBER FERRIS, an individual,
8 AND DOES 1-50, inclusive,

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Defendants.

- 8) **Violation of Equal Protection Under Article I, Section 7 of California Constitution**
- 9) **Violation Right to Privacy Under Article 1 Section 1 of California Constitution**
- 10) **Violation of Ed. Code §§ 51749.5, 51749.6, 51746, 51747 (Damages)**
- 11) **Negligence and Negligent Infliction of Emotional Distress**
- 12) **Intentional Infliction of Emotional Distress**
- 13) **Violation of Cal. Civ. Code § 52.1 (Bane Act)**

[Previously filed with District Court]

Docket Entry 8

Complaint Filed: April 7, 2022

Trial Date: Not yet set

12 Plaintiffs CHRIS PALICKE, on behalf of himself and his minor son, AIDAN PALICKE, and
13 CHILDREN’S HEALTH DEFENSE-CALIFORNIA CHAPTER complain of Defendants
14 PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT (“PYLUSD”), a local educational
15 agency in the County of Orange, JIM ELSASSER, in his official capacity as Superintendent of
16 PYLUSD, RICHARD McALINDIN, in his official capacity as Assistant Superintendent of PYLUSD,
17 LINDA ADAMSON, in her official capacity as Assistant Superintendent of PYLUSD, RICHARD
18 DINH, in his official capacity as Principal of YLHS, BIRD POTTER, in her official capacity as
19 Assistant Principal of YLHS, KARIN FREEMAN, CARRIE BUCK, and MARILYN ANDERSON,
20 each in her official capacity as a member of the PYLUSD School Board, DANA GIGLIOTTI, an
21 individual, BRYAN BLOOM, an individual, JACLYN CHAVEZ, an individual, JOHN DOMEN, an
22 individual, MADISON WALTEMEYER, an individual, AMBER FERRIS, an individual, AND
23 DOES 1-50, inclusive, as follows:

24 **INTRODUCTION**

25 1. For the past two and a half years, under the guise of a declared “COVID-19” pandemic,
26 a number of California school districts, including Defendants, along with their superintendents,
27 principals, teachers, and other school officials -- individuals and entities with a legal duty to protect
28 the schoolchildren in their care against dangerous conditions, abuse, discrimination, harassment, and

1 violations of their students’ Constitutional and statutory rights -- instead breached this duty of care
2 and became the enforcers of abusive “COVID-19 health” policies themselves. They claim they were
3 “just following orders.”

4 2. These school officials’ actions in implementing and enforcing these policies damaged
5 many of their students’ health and mental well-being, in-person educations, extracurricular
6 participation, college opportunities, and/or future career prospects. These actions also destroyed many
7 students’ formerly positive views of school and their basic trust in the school officials who wielded
8 such power capriciously, and in spite of the growing evidence of enormous harms resulting from many
9 of these unjustifiably prolonged measures.

10 3. On information and belief, much of this abuse occurred due to these districts and school
11 officials’ acceptance of millions or even billions of dollars of COVID-19 Relief funding with specific
12 “health and safety” conditions attached. These conditions were, in fact, wholly detached from
13 students’ actual health and well-being.

14 4. Defendants were and are among the California districts and school officials
15 perpetuating these abuses and violations of their students’ rights by imposing their own localized
16 COVID-19 policies, including a mandatory mask policy (“Mask Policy”), and by unlawfully
17 suspending, expelling, and coercing healthy students who did not comply with these policies into
18 independent study programs against their wishes, and on the fraudulent and defamatory basis that these
19 students were “clear and present” dangers to the PYLUSD community.

20 5. Aidan Palicke was one of the students specifically targeted by Defendants for not
21 complying with their dangerous Mask Policy, unlawfully suspended from school, and coerced into an
22 independent study program against his and his parents’ wishes, suffering substantial harms as further
23 described herein.

24 6. Although Defendants have now temporarily suspended their Mask Policy as of March
25 12, 2022, Defendants’ Mask Policy is capable of being reinstated at any time, without due process
26 of law for PYLUSD students or their families, and with the renewed threat of suspension, expulsion
27 and involuntary placements into independent study programs for failing to comply with any reimposed
28 Mask Policy. Accordingly, this issue is not moot. (*See Roman Catholic Diocese v. Cuomo* (2020) 592

1 U.S. ___, ___, 141 S.Ct. 63, 68 [holding that the lifting of restrictions did not moot the application
2 to enjoin defendants because “the applicants remain under a constant threat” that those restrictions
3 may be reinstated]).

4 7. Indeed, Governor Newsom and CDPH officials have already indicated in their
5 SMARTER PLAN an intent to reinstitute masking requirements on K-12 students as they deem fit in
6 the future, and without going through any proper administrative rule-making process to do so.

7 8. Defendants in this case took a polite, high-achieving student and athlete who simply
8 wanted to be able to breathe in the mask he was ordered to wear in order to attend in-person schooling,
9 and cruelly destroyed his high school life, his belief in the benevolence of his teachers and school
10 officials, and possibly his opportunity to attend the college of his choice.

11 9. Defendants did this while knowing that the Mask Policy it forced on its students was
12 not safe, did not prevent or slow transmission of COVID-19 or any of its variants, and that it imposed
13 these masking measures in order to receive significant federal funding, rather than to protect the health
14 and safety of its students.

15 10. Plaintiffs hereby ask this honorable Court to: (1) permanently enjoin Defendants, and
16 each of them, from suspending, expelling or coercing healthy students into independent study
17 programs against their wishes and in violation of California law, and declare that PYLUSD does not
18 have the legal authority to suspend, expel and coerce healthy students into independent study programs
19 against their wishes for alleged failures to comply with their Mask Policy, and (2) declare that
20 Defendants’ Mask Policy is violative of PYLUSD students’ fundamental constitutional and statutory
21 rights and permanently enjoin Defendants from re-instituting this Mask Policy at a future date.
22 Plaintiffs also seek damages for the intentional, reckless, and negligent actions of Defendants towards
23 Plaintiff Palicke and his son Aidan, as further described herein.

24 **PARTIES – PLAINTIFFS**

25 11. PLAINTIFF CHILDREN’S HEALTH DEFENSE, CALIFORNIA CHAPTER
26 (“CHD-CA”) is a California 501(c)(3) nonprofit corporation incorporated under the laws of the State
27 of California and headquartered in Ross, California. CHD-CA was founded in 2020 as the California
28 branch of Children’s Health Defense (“CHD”), a national non-profit organization headquartered in

1 Peachtree, Georgia. CHD-CA has over 7,000 members throughout California consisting
2 predominately of parents whose children have been negatively affected by environmental and
3 chemical exposures and damaging emergency “health” measures including unsafe emergency
4 vaccines, unsafe emergency lockdowns, illegal contact tracing, damaging quarantine and isolation
5 policies and damaging emergency masking policies, including violations of their rights to medical
6 choice and bodily autonomy. CHD-CA’s mission is to end childhood health epidemics by working to
7 end harmful exposures and policies, hold those responsible accountable, and to establish better
8 restrictions and safeguards. CHD-CA has members who are parents of PYLUSD students who have
9 been negatively impacted by PYLUSD’s “2021-2022 Return to School Plan Under COVID-19
10 Conditions,” which specifically includes its Mask Policy (collectively, the “RTS Plan”) and
11 PYLUSD’s violations of California’s independent study requirements and other laws, as well as
12 students who attend PYLUSD schools themselves and who have been negatively impacted by the RTS
13 Plan and Defendants’ violation of California’s independent study requirements and other laws.

14 12. An association has standing to bring suit on behalf of its members when: (a) its
15 members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect
16 are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested
17 requires the participation of individual members in the lawsuit. (*Driving School Association of*
18 *California v. San Mateo Union High School District* (1992) 11 Cal.App.4th 1513, 1517; see also
19 *Property Owners of Whispering Palms, Inc. v. Newport Pac., Inc.* (2005) 132 CA4th 666, 673
20 (associational standing sufficient so long **as any one of its members** would have standing to sue in
21 their own right) (emphasis added)). CHD-CA brings this action on behalf of its PYLUSD parent and
22 student members, and plaintiffs individually named for the benefit of all others similarly situated, in
23 support of CHD-CA’s mission to protect children’s health and to defend medical freedom, the right to
24 informed consent, and the right to refuse unwanted medical treatments, and to hold Defendants
25 accountable for the violation of Plaintiffs’ civil rights. The interests CHD-CA seek to protect in this
26 action are therefore germane to its fundamental purpose. None of the requested relief requires
27 participation of these individual members; rather CHD-CA broadly seeks to stop enforcement of the
28 RTS Plan and Mask Policy and otherwise declare it unlawful or in excess of PYLUSD’s authority.

1 CHD-CA has members negatively impacted by the RTS Plan and violations of students' fundamental
2 rights, therefore CHD-CA further meets all associational standing requirements for prosecuting this
3 action.

4 13. In addition to associational standing, Plaintiff CHD-CA has public interest standing.
5 The public interest exception "applies where the question is one of public right and the object of the
6 action is to enforce a public duty -- in which case it is sufficient that the plaintiff be interested as a
7 citizen in having the laws executed and the public duty enforced." (*Rialto Citizens for Responsible*
8 *Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914 (citations omitted)). The exception
9 "promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body
10 impairs or defeats the purpose of legislation establishing a public right." (*Rialto Citizens for*
11 *Responsible Growth*, supra, 208 Cal.App.4th at 914, quoting *Save the Plastic Bag Coalition v. City of*
12 *Manhattan Beach* (2011) 52 Cal.4th 155, 166).

13 14. On behalf of their members and other PYLUSD residents with children, Plaintiff CHD-
14 CA challenges the enforcement of the RTS Plan and Mask Policy and has standing as a beneficially
15 interested party in this lawsuit for injunctive and declaratory relief. Unless and until this Court grants
16 the requested temporary and permanent relief, the impacts of Defendants' enforcement of the RTS
17 Plan and Mask Policy will infringe on the rights of Plaintiff's members, supporters, and numerous
18 citizens within the PYLUSD community and will directly and adversely affect them.

19 15. The question of PYLUSD's authority to impose such unlawful and harmful
20 requirements is a public issue because it implicates the ability of school districts throughout California
21 to impose similar requirements. In addition, there is substantial public interest in resolving a dispute
22 central to the regulation of the public health of children. Plaintiff CHD-CA brings this action not only
23 on their own behalf and on behalf of their members, but also to enforce important public rights and to
24 compel compliance by Defendants with California law.

25 16. Other beneficially interested persons would find it difficult or impossible to seek
26 vindication of the rights asserted, given both financial and time constraints along with other limited
27 resources. (*Driving School Association of California v. San Mateo Union High School District* (1992)
28 11 Cal.App.4th 1513, 1519).

1 17. Accordingly, Plaintiff CHD-CA has a continuing interest in, and a well-established
2 commitment to, the public rights asserted herein.

3 18. PLAINTIFF CHRIS PALICKE is an individual residing in Orange County, California,
4 is a member of CHD CA, and is the parent of AIDAN PALICKE, a student within the PYLUSD and
5 former Yorba Linda High School (“YLHS”) who was involuntarily removed to Parkview, a home-
6 based independent study program within PYLUSD.

7 19. Generally speaking, minors lack legal capacity to sue in their own name; instead,
8 litigation must be conducted through a guardian, conservator, or guardian ad litem. (Cal. Code Civ.
9 Proc. § 372(a)). In this action, CHRIS PALICKE has been appointed as the Guardian Ad Litem for
10 his son AIDAN PALICKE and has standing to sue on his son’s behalf.

11 20. Aside from acting as Guardian Ad Litem for AIDAN PALICKE, PLAINTIFF CHRIS
12 PALICKE has standing as an individual. Although CHRIS PALICKE is not a student in PYLUSD,
13 the RTS Plan and Mask Policy affect his fundamental right as a parent to make decisions concerning
14 the care, custody, and control of his child. (*Doe v. Albany Unified School Dist.* (2010) 190 Cal.App.4th
15 668, 685, citing *In re Samuel G* (2009) 174 Cal.App.4th 502, 509 (“Among the constitutional
16 privileges enjoyed by parents is the right to determine how their children should be educated”; see
17 also *Troxel v. Granville* (2000) 530 U.S. 57, 66, citing cases recognizing “the fundamental right of
18 parents to make decisions concerning the care, custody, and control of their children”).

19 21. Moreover, with respect to the individually named Defendants in this action, CHRIS
20 PALICKE was directly involved in numerous harms committed by said Defendants against him and
21 his son, as alleged in detail in this First Amended Complaint, and was directly injured as a result.

22 22. In addition, PLAINTIFF CHRIS PALICKE has public interest standing for all the same
23 reasons alleged above for PLAINTIFF CHD-CA, and also has taxpayer standing as a taxpayer in
24 Orange County who has suffered various harms, as well as losses to his liberty, speech, and
25 associational rights under the California Constitution when Defendants instituted the RTS Plan and
26 Mask Policy, and he continues to be under constant threat of harm that PYLUSD may reinstitute this
27 Mask Policy at any time. (See e.g., *Roman Catholic Diocese v. Cuomo* (2020) 592 U.S. ___, ___,
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1 141 S.Ct. 63, 68 (holding that the lifting of restrictions did not moot the application because “the
2 applicants remain under a constant threat that those restrictions may be reinstated.”).

3 23. The California Code of Civil Procedure section 526a permits a taxpayer to bring an
4 action to restrain or prevent an illegal expenditure of public money. (*Connerly v. State Personnel*
5 *Board* (2001) 92 Cal.App.4th 16, 29).

6 24. CHRIS PALICKE has a present, beneficial interest as a taxpayer under California Code
7 of Civil Procedure section 526a in assuring that his tax dollars are properly accounted for and spent
8 appropriately and not illegally by his school district. (See e.g., *Taschner v. City Council* (1973) 31
9 Cal. App. 3d 48, 55 (“Insofar as standing is concerned, the allegation that Petitioner was an elector,
10 taxpayer, and owner of real property in the city was sufficient to give him standing to challenge the
11 validity of the ordinance”).

12 25. Numerous other PYUSD students object to PYLUSD’s COVID-19 Policies, including
13 forced masking, testing, and involuntary placement into independent study or home study programs
14 for the same reasons as Plaintiffs. These students and/or their parents have declined to join this lawsuit
15 for fear of academic, personal, and/or professional retribution by Defendants, including school
16 administrators and faculty, as well as potential harassment and bullying by their peers. Many of these
17 other students are members of CHD CA and their interests are represented by this associational
18 plaintiff.

19 **PARTIES – DEFENDANTS**

20 26. DEFENDANT YORBA-LINDA UNIFIED SCHOOL DISTRICT (“PYLUSD”) is a
21 school district and local educational agency established within the County of Orange, as well as an
22 agency of the state for purposes of implementing the educational requirements of state law within the
23 geographical boundaries of Placentia and Yorba Linda, California.

24 27. DEFENDANT JIM ELSASSER is the Superintendent of the PYLUSD. As such, he is
25 responsible for the daily operations of the PYLUSD, including during the time periods relevant to this
26 Complaint. DEFENDANT ELSASSER is the individual vested with the power of enforcement of the
27 RTS Plan, including PYLUSD’s Mask Policy, as well as the power of enforcement of PYLUSD’s
28 policies and protocols challenged herein. Defendant Elsasser is sued herein in his official capacity.

1 28. DEFENDANT RICHARD MCALINDIN is the Assistant Superintendent of Executive
2 Services at PYLUSD.

3 29. DEFENDANT LINDA ADAMSON is the Assistant Superintendent of Educational
4 Services at PYLUSD.

5 30. DEFENDANT RICHARD DINH is the Principal of YLHS.

6 31. DEFENDANT BIRD POTTER is the Assistant Principal of YLHS.

7 32. DEFENDANT CARRIE BUCK is a member of the PYLUSD School Board (the
8 “Board”) and is sued in her official capacity as a member of this Board.

9 33. DEFENDANT KARIN FREEMAN is a member of the Board and is sued in her official
10 capacity as a member of this Board.

11 34. DEFENDANT MARILYN ANDERSON is a member of the Board and is sued in her
12 official capacity as a member of this Board.

13 35. Upon information and belief, all members of the Board are residents of Orange County,
14 California. The Board members collectively possess the legal authority and duty to adopt, amend,
15 revise, rescind, and oversee all policies and procedures of the PYLUSD in a manner consistent with
16 state and federal law.

17 36. DEFENDANT DANA GIGLIOTTI is an individual and teacher at YLHS.

18 37. DEFENDANT BRYAN BLOOM is an individual and teacher at YLHS.

19 38. DEFENDANT JACLYN CHAVEZ is an individual and teacher at YLHS.

20 39. DEFENDANT JOHN DOMEN is an individual and teacher at YLHS.

21 40. DEFENDANT MADISON WALTEMEYER is an individual and teacher at YLHS.

22 41. DEFENDANT AMBER FERRIS is an individual and teacher at YLHS.

23 42. DEFENDANTS, DOES 1 through 50, inclusive, are and at all times herein mentioned
24 were, individuals, agents, officials, and/or employees of PYLUSD or YLHS.

25 43. The true names and capacities, whether individual, corporate, associate, or otherwise,
26 of DEFENDANTS DOES 1 through 50, inclusive, are unknown to PLAINTIFFS, who therefore sue
27 said DEFENDANTS by such fictitious names. PLAINTIFFS will ask leave of Court to amend this
28 Complaint to show their true names and capacities when the same have been ascertained.

1 PLAINTIFFS are informed and believe and thereon allege that each of the DEFENDANTS designated
2 herein as DOES 1 through 50, inclusive, is responsible in some manner for the events and happenings
3 referred to herein which caused the damages to PLAINTIFFS hereinafter alleged.

4 44. Reference to “Defendants” shall include the named Defendants and the “DOE”
5 Defendants.

6 **JURISDICTION AND VENUE**

7 45. This action arises under the applicable California statutes and common law, and the
8 California Constitution.

9 46. This Court and the California state courts have jurisdiction over complaints for
10 injunctive relief under California Code of Civil Procedure (“CCP”) §§ 525 and 526 and jurisdiction
11 over complaints for declaratory relief under CCP § 1060.

12 47. Plaintiffs are seeking combined damages in excess of \$25,000 and their case is properly
13 classified as an unlimited civil case under CCP §§ 85, 86, and 88.

14 48. On February 11, 2022, Plaintiff Chris Palicke, on behalf of his son Aidan, duly served
15 a Notice of Government Tort Claim on Defendant PYLSD pursuant to California Civil Code sections
16 810-996.6, which was acknowledged as received by Defendants, alleging damages for the harms
17 herein described. A true and correct copy of such Government Tort Claim is attached hereto as **Exhibit**
18 **A** and incorporated by reference herein. Such claims were denied by Defendant PYLSD on March 9,
19 2022, thus permitting the instant lawsuit for damages. A true and correct copy of such denial is
20 attached hereto as **Exhibit B** and incorporated by reference herein.

21 49. Orange County is the proper venue for this action because the acts, transactions and
22 occurrences giving rise to this action occurred in substantial part in the Cities of Placentia and Yorba
23 Linda, in the County of Orange, in the State of California. Defendants either reside in or maintain
24 business offices in this County, a substantial portion of the transactions and wrongs complained of
25 herein took place in this County, including Defendants’ primary participation in the acts detailed
26 herein, and Plaintiffs’ injuries occurred in this County. CCP §§ 15, 393(b), 394(a), and 401(1).

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1 **GENERAL ALLEGATIONS**

2 **Declared SOE and Public Health Mandates**

3 50. In late February of 2020, a federal state of emergency was announced, due to a declared
4 outbreak of a “novel” coronavirus, COVID-19.

5 51. On March 4, 2020, Governor Newsom also declared a “state of emergency” for
6 California on this same basis. Eventually, many states followed suit.

7 52. These declarations of emergency and the hundreds of executive orders and public
8 health mandates that followed thereunder set in motion a devastating and unprecedented chain of
9 events, including the swift imposition of state and federal authoritarian “pandemic safety measures”
10 that impacted every man, woman, and child in the country.

11 53. Under these various public health measures, healthy individuals were ordered to
12 “shelter-in-place,” businesses were divided into “essential” (liquor stores/corporate chains) versus
13 “non-essential” (dental offices/small stores),^{0F1} and schools, churches, and other places of regular
14 community assembly were all forbidden to operate in person.

15 54. Although originally promised that these unprecedented measures would be lifted in a
16 matter of weeks after “slowing the spread,” “flattening the curve,” and “helping to keep hospitals from
17 becoming overwhelmed,” it soon became apparent that many of these authoritarian measures would
18 remain in place for much longer than that. Eventually, the measures imposed became completely
19 detached from the original reasons given for issuing them.

20 55. To make sure the citizenry was sufficiently terrorized and therefore compliant with
21 these unprecedented impositions on their fundamental rights, video clips showing individuals
22 purportedly infected with “COVID-19” spontaneously collapsing and dying in the streets in Wuhan,
23 as well as World-o-Meter ticker tapes showing the alarming rise in cases, hospitalizations, and deaths
24 due to this novel virus were broadcast incessantly on every mainstream media outlet.

25 56. These videos and daily case, hospitalization, and death numbers later turned out to be
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27 _____
28 ¹ This illogical “public health” decision to only allow “essential” businesses to stay open determined that small garden stores selling vegetables, herbs, and fruit trees were non-essential, while strip clubs were allowed to remain open. *See* <https://www.cbsnews.com/news/strip-clubs-exempt-covid-rules-judge-san-diego-california/>.

1 either entirely false -- or stunningly misleading.^{1F²}

2 57. Sadly, this was just the beginning of a seemingly coordinated governmental, public
3 health, and corporate sponsored campaign to mislead the general public about the risks and dangers of
4 this “novel” coronavirus. This included intentional misrepresentations or omissions about (1) the
5 actual infection fatality rates, (2) the incredible rarity of asymptomatic spread, (3) the extreme risk
6 stratification (including the fact that healthy people under age 65 were at little risk for severe
7 symptoms), (4) the fact that the PCR tests could not distinguish between COVID-19 or the flu, (5) the
8 existence and availability of early effective treatments, and (6) the fact that nearly all pre-2020 science
9 and global pandemic planning reports agreed that cloth and/or surgical masks would do nothing to
10 stop the spread of a respiratory virus, including COVID-19.

11 58. Consistent with this inversion of previously sound medical advice on nearly everything
12 regarding appropriate measures to protect against a respiratory virus was the 180-degree flip-flop by
13 public health authorities on the appropriateness of masking for the general public. This messaging
14 stunningly morphed from: “masks are not necessary for the general public unless one is symptomatic”
15 to “masks are better than vaccines and you wear them to protect others, not yourself!” in a matter of a
16 few weeks, and with no credible science to back it up.

17 **Dubious Mask Mandates and Emerging Evidence of Harms**

18 59. Not surprisingly, the abrupt flip-flop in public health masking advice, *forcing* 330
19 million people to wear face coverings rather than giving them credible information to make this crucial
20 decision themselves, was met with some resistance. Mask mandates were immediately controversial,
21 politicized, and divisive.

22 60. Nor did there seem to be sufficient scientific justification for the abrupt change in
23 messaging. In fact, the pre-2020 “science” on cloth or surgical masking to protect against a respiratory
24 virus had almost exclusively gone the other way for decades, with study after study concluding that

25 _____
26 ² It is interesting that not a single COVID-19 death in the United States occurred by someone spontaneously collapsing in
27 the street like the Wuhan man in this original video. It has also never been fully explained how the creators of the “World-
28 O-Meter” daily COVID-19 counts were able to accumulate the global data needed to report case numbers, hospitalizations,
and deaths on a daily basis so quickly. Clearly, an impressive level of co-ordination from world governments, public and
private hospitals, and world-wide coroners’ offices had to have been immediately activated. *See also, e.g.*
<https://www.msn.com/en-us/health/medical/cdc-says-it-accidentally-inflated-children-s-covid-death-numbers-in-coding-logic-error/ar-AAVfD63>.

1 they did not serve to protect against infection or transmission of a respiratory virus, and in fact, could
2 lead to additional secondary harms, including bacterial and/or fungal infections.^{2F³}

3 61. Unfortunately, and contrary to this established literature, as of mid-2020, the Centers
4 for Disease Control (“CDC”) was vigorously recommending masks as a safe and effective tool against
5 COVID-19 transmission and infection, and this paved the way for mask mandates across the country.

6 62. The CDC later concocted, in 2021, a dubious study to support their new flip-flopped
7 assertion that prolonged masking was effective.^{3F⁴} This CDC study was subsequently replicated by
8 a group of scientists and physicians who produced opposite findings, and published those findings in
9 the prestigious Lancet journal, as alleged in greater detail below.

10 63. However, as the months went on and mask harms began accumulating, many informed
11 individuals, including experts in mask science, immunology, pediatrics, virology, OSHA mask safety
12 regulations, childhood speech pathologists, ESL teachers, child psychologists, and even dentists began
13 speaking out about both the rising harms caused by prolonged mask wearing and the lack of credible
14 evidence showing that any claimed benefits outweighed these numerous risks.

15 64. Experts also spoke out about the harms to children in particular from prolonged forced
16 mask wearing in schools, harms that included oxygen deprivation, carbon dioxide poisoning, increased
17 anxiety, social development impairments, skin rashes and other skin conditions, speech development
18 delays, mouth and tooth deformation due to mouth breathing, and concerning heart issues like
19 tachycardia.

20 65. Adding fuel to the controversy: despite near universal compliance with mask mandates
21

22 ³ See e.g., MacIntyre et al., *A Cluster Randomised Trial of Cloth Masks Compared with Medical Masks in Healthcare*
23 *Workers*, BMJ Open (2015) (cautioning against use of cloth masks due to greater risks of infection); World Health
24 Organization, *Advice on the Use of Masks in the Context of COVID-19* (April 6, 2020) (“[T]here is currently no evidence
25 that wearing a mask (whether medical or other types) by healthy persons in the wider community setting, including
26 universal community masking, can prevent them from infection with respiratory viruses, including COVID-19.”); Taiwan
University Hospital, *The Physiological Impact of N95 Masks on Medical Staff* (Sept. 15, 2005) (“[D]izziness, headache,
and short of breath are commonly experienced by the medical staff wearing N95 masks. The ability to make correct
decisions may be hampered too.”); Radonovich et. al., *N95 Respirators vs. Medical Masks for Preventing Influenza Among*
Health Care Personnel: A Randomized Clinical Trial, JAMA (2019) (no significant difference in the incidence of
laboratory-confirmed influenza between N95 and regular medical masks).

27 ⁴ Samantha E. Budzyn, Mark J. Panaggio, Sharyn E. Parks, Marc Papazian, Jake Magid, M Eng, Lisa C. Barrios, *Pediatric*
COVID-19 Cases in Counties With and Without School Mask Requirements — United States, July 1–September 4, 2021,
28 CDC (October 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7039e3.htm>. As alleged herein, this CDC study
was subsequently “replicated” by another study published in the Lancet -- subsequently discussed more fully in this First
Amended Verified Complaint-- with more school districts and for a longer period of time and reached opposite conclusions.

1 in many states, particularly in California, COVID-19 cases continued to allegedly skyrocket.⁴⁵

2 66. If masks worked, why weren't they working?

3 67. Then, in January of 2022, after twenty-two months of forcing or coercing much of
4 society, including schoolchildren, to cover their mouths and noses with cloth masks, the CDC, along
5 with various other "public health" experts, belatedly – and horrifyingly -- admitted that the cloth masks
6 they had forced onto society and on schoolchildren in order to be able to attend school in person were,
7 in fact, no better than "facial decorations," and certainly didn't work against "new variants."⁵⁶

8 **The Real Science Shows the Serious Harms to Children From Prolonged Masking**

9 68. Attempting to make sense of this increasing controversy on masking, many scientists
10 and doctors set out to investigate the CDC's questionable claims about the efficacy and safety of
11 prolonged masking, particularly as it applied to and affected schoolchildren.

12 69. Not surprisingly, the results of these investigations proved to be consistent with the
13 science that existed years before COVID-19, namely that prolonged masking does not work.

14 70. Even more, the real science that emerged, much to the dismay of the CDC, showed the
15 devastating harmful effects of masking on children, both physically, emotionally and psychologically.
16 Such studies and articles eviscerated the CDC's claims that masks are safe and effective.

17 71. One such study published in The Lancet thoroughly reviewed and replicated the 2021
18 CDC study, and then conducted a larger and more sound study to correct the numerous flaws in the
19 CDC study, finding no significant relationship between mask mandates and case rates: "We failed to
20 establish a relationship between school masking and pediatric cases using the same methods but a
21 larger, more nationally diverse population over a longer interval."⁶⁷ In layman's terms, the study
22 found that masks do not work. This Lancet study also explained a major flaw in the small 2021 CDC

23 _____
24 ⁵ In fact, significant evidence now exists that suggests that forced masking has had no statistically significant beneficial
25 impact on the rise or fall of COVID-19 cases, hospitalizations, and/or deaths, both in school environments or society-wide
26 – and may have made matters worse. Indeed, many states and schools that had abandoned forced masking early, like
27 Florida, had performed similarly or even better than states like California and New York, which held on to forced masking
28 the longest.

26 ⁶ CDC has not explained whether the particle size of these "new variants" is substantially different than the particle size
27 of the original Alpha strain to explain this sudden inability for cloth masks to stop Omicron but served as essential PPE
28 for earlier variants.

27 ⁷ Chandra Ambarish (University of Toronto) and Tracy Beth Høeg, MD, PhD (University of California, Davis),
28 *Revisiting Pediatric COVID-19 Cases in Counties With and Without School Mask Requirements—United States, July 1—
October 20 2021*, The Lancet (May 25, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4118566.

1 study: “Our study demonstrates that observational studies of interventions with small to moderate
2 effect sizes are prone to bias caused by selection and omitted variables. Randomized studies can more
3 reliably inform public health policy.”

4 72. Far more important than efficacy, multiple studies and papers clearly show that
5 masking children is extremely dangerous. For example, in April of 2021, a published paper evaluated
6 44 mostly experimental studies and 65 publications on mask wearing and concluded that there are both
7 long term and short term serious adverse effects from prolonged mask wearing.^{7F8} The paper
8 demonstrated the long-term effects of masking on the brain, lungs, heart, ear nose and throat and
9 showed a statistically significant correlation of hypoxia and the symptom of fatigue.

10 73. In addition, the paper revealed that both healthy and sick people can experience Mask-
11 Induced Exhaustion Syndrome (MIES), with symptoms such as increase in breathing resistance,
12 increase in blood carbon dioxide, decrease in blood oxygen saturation, increase in heart rate, increase
13 in blood pressure, decrease in cardiopulmonary capacity, increase in respiratory rate, shortness of
14 breath and difficulty breathing, headache, dizziness, feeling hot and clammy, decreased ability to
15 concentrate, decreased ability to think, drowsiness, decrease in empathy perception, impaired skin
16 barrier function with itching, acne, skin lesions and irritation, overall perceived fatigue and exhaustion.

17 74. Of note, the study found that “extended mask-wearing would have the potential,
18 according to the facts and correlations we have found, to cause a chronic sympathetic stress response
19 induced by blood gas modifications and controlled by brain centers. This in turn induces and triggers
20 immune suppression and metabolic syndrome with cardiovascular and neurological diseases.”

21 75. And those were only the long-term effects of masking. The study concluded that “we
22 not only found evidence in the reviewed mask literature of potential long-term effects, but also
23 evidence of an increase in direct short-term effects with increased mask-wearing time in terms of
24 cumulative effects for: carbon dioxide retention, drowsiness, headache, feeling of exhaustion, skin
25 irritation (redness, itching) and microbiological contamination (germ colonization).”

26 76. Another study by Dr. Zacharias Fögen revealed a correlation between mask mandates

27 ⁸ K. Kisielinski, P. Giboni, A. Prescher, B. Klosterhalfen, D. Graessel, S. Funken, O. Kempfski, O. Hirsch, *Is a Mask*
28 *That Covers the Mouth and Nose Free from Undesirable Side Effects in Everyday Use and Free of Potential Hazards?*,
Int. J. Environ. Res. Public Health 18, no. 8: 4344 (April 20, 2021), <https://www.mdpi.com/1660-4601/18/8/4344>.

1 and higher case fatality rates.^{8F9} This study concluded that the higher fatality rate was due to the
2 “Foegen Effect,” a term describing the serious danger of constantly re-inhaling hypercondensed
3 droplets or pure virions.

4 77. In other words, the constant breathing in of your air all day long contributes to your
5 death, not your health. According to this study, “these findings suggest that mask use might pose a yet
6 unknown threat to the user instead of protecting them, making mask mandates a debatable
7 epidemiologic intervention.”

8 78. Another study in August 2021 shows that Covid measures, including face masks, do
9 significant harm to the intelligence and developmental growth of children.^{9F10} The report found that
10 there was a meaningful drop in scores -- about 23% -- measuring children’s intelligence quotients
11 since the start of the pandemic, and found similar drops in regards to developing children’s ability to
12 communicate, both verbally and through subtle facial cues. The paper concluded: “we find that children
13 born during the pandemic have significantly reduced verbal, motor, and overall cognitive performance
14 compared to children born pre-pandemic. Moreover, we find that males and children in lower
15 socioeconomic families have been most affected.”

16 79. A recent article in May 2022 by Dr. Byram Bridle summarizes many of the devastating
17 health, developmental and emotional effects of masking children.^{10F11} Dr. Bridle states, “Isolating
18 children from the microbial world promotes the development of chronic diseases. Young children need
19 to interact with the microbial world. It is absolutely essential to the proper development of their
20 immune systems.”

21 80. Dr. Bridle explains how the immune system of a child is not fully mature until well
22 into the teenage years, and the self-regulation of that immune system depends on interactions with

24 ⁹ Fögen, Zacharias MD, *The Foegen Effect -- A Mechanism by Which Facemasks Contribute to the COVID-19 Case*
25 *Fatality Rate*, Medicine Volume 101 - Issue 7 (February 18, 2022), [https://journals.lww.com/md-](https://journals.lww.com/md-journal/Fulltext/2022/02180/The_Foegen_effect_A_mechanism_by_which_facemasks.60.aspx)
26 [journal/Fulltext/2022/02180/The_Foegen_effect_A_mechanism_by_which_facemasks.60.aspx](https://journals.lww.com/md-journal/Fulltext/2022/02180/The_Foegen_effect_A_mechanism_by_which_facemasks.60.aspx) (“A parallelization
analysis based on county-level data showed that in Kansas, counties with mask mandate had significantly higher case
fatality rates than counties without mask mandate, with a risk ratio of 1.85 (95% confidence interval [95% CI]: 1.51–
2.10) for COVID-19-related deaths”).

27 ¹⁰ Sean CL Deoni, Jennifer Beauchemin, Alexandra Volpe, Viren D’Sa, The Resonance Consortium (*Impact of the*
COVID-19 Pandemic on Early Child Cognitive Development: Initial Findings in a Longitudinal Observational Study of
Child Health (August 11, 2021), <https://www.medrxiv.org/content/10.1101/2021.08.10.21261846v1>.

28 ¹¹ Dr. Byram W. Bridle, *Stop Masking Children. They Need To Interact With The Microbial World* (May 31, 2022),
<https://viralimmunologist.substack.com/p/stop-masking-children?s=r>.

1 the microbial world. Such interactions teach the immune system how to better regulate, allowing the
2 immune system to learn the distinction between dangerous bacteria and viruses, on the one hand, and
3 benign actors like inert environmental molecules and normal gut-resident bacteria, on the other hand.

4 81. When you isolate children from non-dangerous microbes or force them to wear masks,
5 Dr. Bridle explains, you are shutting down that learning process for the immune system, which in turn
6 compromises the “immunoregulatory” components of their immune system. The result of this can be
7 devastating, including serious autoimmune diseases, asthma, and allergies, where the body no longer
8 understands the difference between good and bad cells/invaders, with the body consequently attacking
9 itself in response.

10 82. Even more, Dr. Bridle warned that the prolonged masking of children impairs their
11 speech development: “I have learned that observing lip, mouth and tongue placement and movements
12 is critical to the proper development of speech. For children who know what they want to say but
13 have trouble with enunciation, adding the muffling effect of a mask makes it even more difficult for
14 others to understand them, so there is a double-whammy that can cause a lot of frustration.”

15 **CDPH Responds to Mask Theatre -- with More Mask Theatre**

16 83. Ignoring all of this extensive research on the dangers and ineffectiveness of masking,
17 over the last two and a half years, Governor Newsom and his California Department of Public Health
18 (“CDPH”) have imposed, removed, and then reimposed various masking requirements for both adults
19 and children in K-12 schools without public review and comment, scientific justification, engagement
20 in a meaningful cost benefit analysis, or requesting or receiving the consent of the governed.

21 84. Chillingly, in Governor Newsom’s “SMARTER” Plan, announced on February 17,
22 2022, he and CDPH have indicated that they intend to hold onto these emergency powers to force
23 masks on citizens and K-12 children indefinitely, long after the conditions warranting a state of
24 emergency have clearly expired¹¹ -- and long after CDPH should have been required to once again

25 _____
26 ¹² The fact that Los Angeles could host a Superbowl in March 2022 and 70,000 maskless fans, including Governor
27 Newsom, Los Angeles Mayor Eric Garcetti, and San Francisco Mayor London Breed could crowd like sardines into a
28 stadium to cheer their chosen sports teams certainly must have led even the most fervent of forever-maskers to give at least
momentary pause about the need to continue a “state of emergency” -- with its attendant suspension of the normal
functioning of a representative democracy and the three branches of government that presumably serve as “checks and
balances” over one another.

1 reinstate the normal rule-making requirements of the California Administrative Procedure Act (the
2 “APA”).¹³

3 85. Given this penchant for governmental overreach, it is not surprising that in response to
4 the CDC’s admission of cloth mask *hygiene theatre*, in January 2022, the CDPH once again updated
5 its masking requirements by recommending that Californians, including California schoolchildren,
6 don even more restrictive masks like N95 or KN95 masks or wear triple layers of masks instead.
7 (“Mask Guidance”).

8 86. CDPH updated its Mask Guidance without conducting any legitimate risk-benefit
9 analysis, including any analysis of whether the prolonged wearing of these more restrictive masks by
10 millions of California school children for six to eight hours each day, five days a week, would
11 negatively impact their health, well-being, or social and educational development two years into an
12 endless “pandemic.” CDPH also failed to explain why the majority of states, rather than suggesting
13 even stricter masking, were abandoning mask requirements entirely, and often with much better results
14 than California.

15 **PYLUSD’s Updated Mask Policy**

16 87. Although CDPH’s January 2022 Masking Guidance still required that all California
17 school districts have a masking policy in place, the actual contours of each school district’s mask
18 policy, including the choice of masks imposed on its students, and the consequences for not wearing
19 a specific type of mask, was specifically left to the individual school districts.

20 88. On January 14, 2022, Defendant Superintendent Elsasser announced via email to
21 PYLUSD families an update to the PYLUSD masking policy that suggested that students would now
22 need to choose among the following more restrictive face coverings in order to attend PYLUSD
23 schools: “N95, KN95, double masks, fitted surgical masks, and fabric masks with three or more cloth
24 layers” (The aforementioned “Mask Policy”).

25 89. Defendant Elsasser’s email further stated that “masks with holes and mesh masks are
26 not acceptable.”

27
28 ¹³ See California SMARTER plan (February 2022), available at <https://files.covid19.ca.gov/pdf/smarterplan.pdf> (“Use of masks should be supported by all who want to use them and should be required in high-risk settings and other public indoor settings during periods of high transmission or when a variant emerges with potentially high virulence.”)

1 90. Before imposing their updated Mask Policy, Defendants failed to conduct (1) any
2 independent analysis or independent review of any studies showing whether any of these options for
3 face coverings would be effective in stopping or slowing COVID-19 or any of its newer variants; (2)
4 any independent analysis or review of credible safety studies regarding whether its updated Mask
5 Policy and the prolonged use of any of these more restrictive face coverings for 6-8 hours a day would
6 be physically harmful to its students; (3) any independent analysis or review of credible evidence
7 showing numerous other harms to students' mental, emotional, speech, associational, and social well-
8 being from prolonged and more restrictive face coverings; and (4) failed to indicate how much longer
9 PYLUSD students would be expected to cover their two airways in order to attend PYLUSD schools.

10 91. On information and belief, Defendants imposed their Mask Policy and other measures
11 contained in its 2021-2022 RTS Plan on PYLUSD students in exchange for the continued flow of
12 millions of dollars in COVID-19 relief ESSER III funding, funding given to school districts with
13 specific strings attached.

14 92. Specifically, to receive these substantial ESSER III funds, schools were required to
15 implement specific COVID-19 protocols on its students, including forced masking, testing, data
16 collection, quarantining, and encouragement of COVID-19 vaccination.

17 93. Defendants shirked their own independent and statutory duties as a school district and
18 as school officials to determine whether or not their updated Mask Policy would benefit – and certainly
19 not *harm* – their students' overall health and well-being, in exchange for this ESSER III funding.

20
21 **Selective Enforcement of Updated Mask Policy Against Aidan Palicke and Engagement**
22 **in Conduct that Shocks the Conscience**

23 94. Defendants also did not uniformly enforce its new Mask Policy against all students,
24 teachers, school employees, or anyone else on YLHS or PYLUSD grounds.

25 95. In fact, after the Mask Policy was announced, many individuals within PYLUSD
26 continued to wear cloth or mesh masks – or no masks at all. (*See* photos of PYLUSD students and
27 teachers included in the Govt Tort Claim attached as **Exhibit A**).

28 96. Despite this widespread non-compliance with the Mask Policy, Defendants decided to

1 target and make an example of Aidan Palicke, a well-behaved, high achieving junior at YLHS and a
2 team captain of the YLHS track team.

3 97. On information and belief, part of this targeting of Aidan Palicke was due to
4 Defendants' unhappiness with Plaintiff Chris Palicke and his wife Shari's conservative values,
5 Catholic faith, and vocal opposition to various PYLUSD school policies, including but not limited to
6 the COVID-19 RTS Plan at PYLUSD, which included forced masking.

7 98. With respect to forced masking, Aidan's parents, Chris and Shari Palicke, rightfully
8 believed that masks would not help stop the spread of a respiratory virus, and they did not believe that
9 making schoolchildren wear masks that blocked children's airways for 6-8 hours a day was a safe or
10 reasonable health response by PYLUSD. Chris and Shari Palicke made these opinions known during
11 several PYLUSD school board meetings, much to the dismay of several PYLUSD Board Members,
12 including certain named Defendants in this action.

13 99. Chris and Shari Palicke nevertheless believed that returning to in-person learning was
14 in the best interests of their three children, particularly after witnessing the severe negative impacts
15 that a year of remote learning had already had on Aidan and their other two children. This impact
16 included loss of enthusiasm and motivation to attend "remote" school, significantly lower grades,
17 depression, anxiety, and overall angst due to the inability to see, interact, and socialize with their
18 friends and peers, participate on sports teams, and become acquainted with their teachers in real life.
19 As a result, although they did not want their children to wear any masks, Chris and Shari Palicke
20 determined that a "mesh mask" would allow their children to comply with the PYLUSD masking
21 requirements while hopefully alleviating the more serious health and safety risks to their children that
22 would likely result from more restrictive, less breathable, mask options.

23 100. Like many other students, teachers, and school employees and officials, Aidan Palicke
24 and his siblings were all able to wear mesh masks or other more breathable masks without incident for
25 the entire fall quarter of their 2021-2022 school years within PYLUSD.

26 101. However, beginning on January 13, 2022, Defendants decided to selectively enforce
27 their updated Mask Policy, and further decided to single out Aidan Palicke for continuing to wear a
28 mesh mask.

1 102. This targeted harassment, discrimination, and abuse against Aidan by various
2 Defendants included, but was not limited to:

3 103. Defendants, specifically including Defendants Dinh, McAlindin, and Potter, each at
4 various times, having Aidan removed from his classes and sent to Principal Dinh’s office for wearing
5 a mesh mask, despite other students, teachers, school employees and school officials also wearing the
6 same or similar type of mask, or no mask at all;

7 104. Defendants, specifically including Defendants Dinh, McAlindin, and Potter, sending
8 school employees to wait outside classrooms and/or follow Aidan around school to make Aidan and
9 other students aware that Aidan was being uniquely monitored and targeted;

10 105. Defendants, specifically including Defendants Dinh, McAlindin, and Potter,
11 suspending Aidan and sending him home multiple times for wearing a mesh mask, despite other
12 students, teachers, and/or school employees and/or officials wearing the same or similar type of mask
13 or no mask at all;

14 106. Defendants, specifically including Defendants Dinh, McAlindin, Potter, Bloom,
15 Gigliotti, Domen, Waltemeyer, Ferris, and Chavez segregating and/or refusing to allow Aidan to take
16 his finals with the rest of his classmates, despite Aidan having no symptoms of any infectious disease
17 and despite allowing other students wearing the same or similar types of masks or no mask at all to
18 remain in class;

19 107. Defendants, specifically including Defendants Gigliotti and Chavez, forcing Aidan to
20 drag a desk to take his finals outdoors in the morning cold, unsupervised, for many hours at a time,
21 while being mocked and laughed at by his peers;

22 108. Defendants, specifically including Defendant Bloom, intentionally destroying Aidan’s
23 personal property, including his physics notebook, in order to interfere with Aidan’s ability to do his
24 schoolwork or maintain high grades; and

25 109. Defendants, specifically including Defendants Dinh, McAlindin, Potter, Elsasser,
26 Anderson, Buck, and Freeman, each of them prohibiting or directing others to prohibit Aidan from
27 returning to in-person schooling and stigmatizing Aidan by fraudulently, negligently and recklessly
28 labeling him a “clear and present danger” to the YLHS community, despite him not having an

1 infectious disease at any time, and despite continuing to allow other students, teachers, school
2 employees and/or other school officials to wear the same or similar type of mask or no mask at all.

3 110. This targeted harassment and discrimination by Defendants ultimately resulted in
4 Defendants' expulsion of Aidan from YLHS into home-based independent study against his wishes
5 and in violation of existing state law.

6 111. Although Aidan attempted to stay on the track team even after he was prohibited from
7 going back to school, Defendants' encouragement of and participation in further bullying and
8 harassment of Aidan during track meets ultimately resulted in Aidan's anguished decision to give up
9 his place as a team captain on the track team – something he had loved being a part of at YLHS.

10 112. Because California law is clear that students cannot be suspended or expelled from in-
11 person education for “defiance,” Defendants disingenuously and fraudulently claimed they had the
12 right to remove Aidan from school for being a “clear and present danger” to the health and safety of
13 the rest of the YLHS community purportedly due to Aidan's wearing of a simple mesh mask.

14 113. Yet Defendants knew there was no evidence of Aidan suffering from an infectious
15 disease, being in close contact with anyone with an infectious disease, living with anyone with an
16 infectious disease, or that Aidan was a “clear and present” danger in any way.

17 114. Instead, Defendants singled out and elected to interfere with Aidan's constitutionally
18 guaranteed right to an in-person public education solely due to Aidan's defiance – i.e., his decision
19 not to comply with Defendants' unsafe, and unlawful updated Mask Policy, as well as due to
20 Defendants' retaliation against Aidan for the vocal opposition to PYLUSD policies by his parents,
21 Plaintiff Chris Palicke and his wife Shari.

22 **Forcing Students into Remote Study on the Pretense of Being Infectious Is Outrageous**
23 **Conduct that Shocks the Conscience**

24 115. It is now widely acknowledged that the closure of in-person schools due to the
25 “pandemic,” which forced students into sub-par remote learning, had an absolutely devastating impact
26 on American school children.^{13F¹⁴}

27
28 ¹⁴ See, e.g., Heather Stringer, *Zoom School's Mental Health Toll on Kids*, American Psychological Association (October 13, 2020), <https://www.apa.org/news/apa/2020/online-learning-mental-health>.

1 116. Study after study has shown that school closures and remote learning led to widespread
2 learning losses, losses in motivation, lowered grades, speech and language delays, losses to English
3 language acquisition for ESL learners, losses in needed services for students with disabilities or on
4 IEPs, as well as losses to students’ overall health and well-being due to the lack of in-person school
5 nutritional services, mental health services, athletic programs, extracurricular activities and numerous
6 other school-provided services and benefits that helped children to thrive – and sometimes literally to
7 survive.

8 117. Given this widely available information on the detriments of remote learning,
9 Defendants’ actions in coercing perfectly healthy students into independent study programs for failing
10 to comply with an unscientific Mask Policy, or any other “health and safety” policy, on the
11 manufactured and provably false basis that an otherwise healthy student is a “clear and present danger
12 to the health and well-being of the school” is cruel, unreasonable, defamatory, punitive and
13 outrageous.

14 118. Such actions also directly conflict with, are inconsistent with, and violate existing
15 California statutory law and the California constitution.

16 119. In California, although the governing board of a school district generally has broad
17 authority to carry on a program or act in any manner to advance legitimate educational objectives, it
18 must not act in a way that is in conflict with, inconsistent with, or pre-empted by any law. (*See Ed.*
19 *Code § 31560*).

20 120. California law is very clear on when schools may place a child into an independent
21 study program. None of the applicable provisions allow school districts to force students into
22 independent study or remote learning options for failing to comply with a mask policy or any other
23 general “health” policy absent signs that the student has an actual infectious disease.

24 121. Under Education Code section 51749.5(a)(12), a student shall not be forced to enroll
25 in independent study courses.

26 122. This prohibition on forced independent study is confirmed and reinforced in title 5,
27 section 11700 of the California Code of Regulations, which states that “independent study is an
28 optional educational alternative in which no pupil may be required to participate,” and “a pupil’s

1 choice to commence or continue in independent study, must not be coerced.”

2 123. Under Education Code section 51749.5(a)(9), a local educational agency must develop
3 a plan for students in independent study wishing to return to in-person learning within five days of the
4 request.

5 124. Under Education Code section 51749.6, a student and a parent or legal guardian must
6 review and approve any independent study plan for any student under 18 years of age before an
7 independent study plan may commence.

8 125. Education Code section 51747 provides that a local educational agency shall not
9 receive funding for an independent study program unless independent study is an optional educational
10 alternative in which “no pupil may be required to participate.” (Ed. Code, § 51747, subd. (g)(8)). A
11 school may enroll a child in such a program only if there has been a “pupil-parent-educator
12 conference” to determine whether enrollment in independent study is in the best interest of the child
13 (id., § 51747, subd. (h)(2)) and “a signed written agreement for independent study from the pupil, or
14 the pupil’s parent or legal guardian if the pupil is less than 18 years of age” (id., § 51747, subd.
15 (f)(9)(F)).

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

20 127. Under Education Code section 48900(k)(1)-(4), students may not be *expelled* for
21 disruption or willful defiance of the valid authority of supervisors, teachers, administrators school
22 officials or other school personnel engaged in the performance of their duties.

23 128. Under Education Code section 48910, school officials who temporarily suspend a
24 student under Education Code 48900 for willful defiance may not do so for more than five consecutive
25 days and no more than twenty days in a school year. Schools must also comply with specific attempted
26 corrective protocols prior to suspending students under these provisions. (Ed. Code § 48900.5).

27 129. Under Education Code section 48213, a school may exclude a student pursuant to
28 section 120230 of the Health and Safety Code or section 49451 of the Education Code if the principal

1 or his/her designee reasonably determines, based on actual evidence, that the student poses a “clear
2 and present danger” to the life, safety, or health of pupil or school personnel.

3 130. Under Education Code section 49451, a school may temporarily send a child home
4 only if there is “good reason to believe” that the child is suffering from a recognized or infectious
5 disease and shall not be permitted to return “until the school authorities are satisfied that any
6 contagious or infectious disease does not exist.” This requires an objective finding that facts exist
7 demonstrating the presence of infectious disease and danger.

8 131. Under Health & Safety Code section 120230, a student who resides where any
9 infectious disease exists or has recently existed and was subject to strict isolation or quarantine of
10 contacts, may not return to school without the written permission of the health officer.

11 132. In other words, in order to exclude a student on the basis that they are a “clear and
12 present danger” based on an infectious disease, the school must actually engage in an objective
13 factfinding analysis of whether the student actually has or recently had an infectious disease or come
14 into close contact with someone who has or has actually had an infectious disease and actually poses
15 a legitimate health risk to others in the community.

16 133. Claiming that a student has an infectious disease when they do not is cruel,
17 unreasonable, defamatory, punitive and outrageous.

18 134. Defendants nevertheless repeatedly removed Aidan Palicke from his classrooms,
19 suspended him from school multiple times, and ultimately weaponized these statutory provisions to
20 wrongfully expel Aidan from school on the provably false basis that Aidan was a “clear and present
21 danger” to others, despite Aidan not having, and never having, any indication of having an infectious
22 disease, living with anyone with an infectious disease, or presenting a health risk or danger to anyone
23 within PYLUSD.

24 135. In addition, Defendants repeatedly insisted that Aidan involuntarily enroll in one of
25 two remote learning options offered by PYLUSD - Parkview or Buena Vista independent study
26 options - or be faced with truancy law violations, despite Aidan at all times being willing and desiring
27 to return to in-person school at YLHS, in violation of multiple provisions of California law.

28 136. In forcing its Mask Policy upon Aidan and suspending and removing him from in-

1 person learning for failure to comply with it by fraudulently and outrageously claiming that he was a
2 “clear and present danger” to others, Defendants have violated Aidan’s fundamental Constitutional,
3 statutory, and common law rights, and have further engaged in intentional, reckless and/or negligent
4 behavior towards Aidan.

5 137. In forcing its Mask Policy upon other similarly situated students, including student
6 members of Plaintiff CHD-CA, and suspending, removing, and coercing such students into
7 independent study by fraudulently and outrageously claiming that these students presented a “clear
8 and present” danger to others, Defendants have violated such students’ fundamental Constitutional,
9 statutory, and common law rights, and have further engaged in intentional, reckless, and/or negligent
10 conduct towards students who Defendants each owed a duty to protect.

11 **California School Children Should Not Be Shields or Perpetual Pawns**

12 138. Global data from the last 22 months has shown that children and young adults are
13 extremely unlikely to suffer severe symptoms of COVID-19 or any of its variants, are unlikely to be
14 hospitalized due to COVID-19 or any of its variants and are even less likely to die from the disease.
15 In fact, children are at a statistically zero risk of death from COVID-19.

16 139. With a statistically zero risk of death, hospitalization, or severe symptoms of COVID-
17 19 or any of its variants, there is literally no legitimate public health reason or any rational basis to
18 force any experimental face coverings on young healthy students, let alone mandate even more
19 restrictive masks like “K95’s, N95’s, surgical masks, or multiple layers of masks” two years into a
20 “pandemic.”

21 140. Moreover, children should not be asked to sacrifice their entire childhoods behind
22 dehumanizing face coverings or in remote learning programs to purportedly protect “at risk” adults.
23 Students must be allowed to attend school in person, to smile and to see smiles, to see and clearly hear
24 their teachers’ speaking words to learn to read facial social cues, to learn how to interact with others
25 without the boundary of a face covering, to make friends, to see friends, and to breathe normally. In
26 sum, children deserve a return to *normalcy*.

27 141. California courts have given far too much deference to its overreaching executive
28 branch and CDPH for far too long. It is critical that the judicial branch re-emerges as an active third

1 branch of government to restrain and undo the worst inclinations of those executive branch officials
2 who have been given unprecedented – and purportedly *temporary* – power, and who have thoroughly
3 abused this temporary grant and declared their intent to continue to do so.^{14F}¹⁵

4 142. Our courts also cannot allow individual school districts and officials to implement their
5 own localized unscientific health and safety policies and simply point the finger of blame upwards.
6 Although CDPH and other federal and state actors have provided both carrots and sticks for school
7 districts to create and impose these policies at local levels, school districts and school officials,
8 including Defendants, are responsible for their own masking and other “health” policies and the
9 enforcement of such policies. As such, they have an independent obligation to comply with the law
10 in adopting, enforcing, and implementing these policies and to conduct their own assessment of the
11 risks and benefits of these policies before inflicting them on students. They also have an ongoing
12 obligation to re-evaluate and abandon such policies in the face of mounting evidence of serious
13 physical, mental, and emotional harms to the students within their care.

14 143. While some courts have declined to meaningfully assess the mask mandate issue,
15 bowing out by saying that the courts should not “second guess” the public health agencies in this state
16 and the country, second guessing authority is precisely the point of having three separate branches of
17 government. The courts must serve as a check and balance of not only the executive and the
18 Legislature, but also of unelected agencies of government who wield tremendous power and are all
19 too often permitted to act without any supervision.

20 144. Not only that, but there is a constant “revolving door” between our federal and state
21 governments on the one hand and these public health agencies on the other, with individuals frequently
22 moving their employment from one to the other, eviscerating any real hope of independence,
23 impartiality, and true objective behavior on the part of the public health agencies.

24 145. For these reasons, and many more, it is imperative that the courts, despite receiving
25 pressure to bow out from our government officials and others, take a stand, be the checks and balances

26
27 ¹⁵ Specifically, Governor Newsom is under a legal obligation under the California Emergency Services Act to terminate
28 the state of emergency “at the earliest possible date that conditions warrant.” (Govt. Code § 8629). Considering that the
Governor has now enjoyed at least two-family vacations in Mexico and Costa Rica, went on a national book tour for his
children’s book, hosted a maskless dinner at French Laundry, and attended numerous large sporting events maskless during
the last two years, it is unclear what conditions will warrant Governor Newsom’s self-termination of his emergency powers.

1 that they were created to be and review the decisions, mandates and directives coming from our
2 government and from these public health agencies. The buck must stop at the courthouse door.

3 146. The “knee jerk” reaction of California school districts at the start of the COVID-19
4 pandemic to respond to what we were told was a very deadly virus may possibly be forgiven. However,
5 we are now two and a half years into COVID-19. We now know that almost every so-called “fact”
6 the CDC told the public was wrong, including for example where this virus came from, how it spreads,
7 the fatality rate, the proper treatment, and the use of masks.

8 147. We now know that children are *not* the great spreaders of COVID-19 that the CDC told
9 us they were. We now know that children have an almost zero chance of dying of COVID-19. We
10 now know that masks, testing protocols and quarantine do not work. And, we now know that
11 prolonged mask wearing is extremely harmful to our children. While this may not have been readily
12 apparent to the American public and the courts at the onset of the COVID-19 pandemic in early 2020,
13 it certainly is now. Continuing mask mandates for children is not just negligent; it is child abuse.

14 148. Aidan Palicke and all California schoolchildren deserve so much better than the
15 mistreatment they have endured for the last two and a half years.

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Suspension/Expulsion**

18 **Violation of Education Code Sections 48900 and 48910**

19 **(Declaratory and Injunctive Relief)**

20 ***(All Plaintiffs against All Defendants)***

21 149. Plaintiffs reallege and incorporate by reference their allegations in each of the
22 preceding paragraphs in this Complaint as if fully set forth herein.

23 150. Defendants have been wrongfully and unlawfully suspending, excluding and/or
24 expelling PYLUSD students who fail to comply with their Mask Policy or other “safety” measures in
25 their RTS Plan, as further described above, including but not limited to Aidan Palicke, and unless these
26 actions are enjoined and declared to be unlawful, Defendants will continue to do so in the future,
27 causing irreparable harm to PYLUSD students.

28 151. Education Code section 48900 provides the only mechanism for temporarily

1 suspending students for disruption or defiance of school authorities or school rules. This provision
2 provides, in relevant part, as follows: “A pupil shall not be suspended from school or recommended
3 for expulsion, unless the superintendent of the school district or the principal of the school in which
4 the pupil is enrolled determines that the pupil has committed an act as defined pursuant to any of
5 subdivisions (a) to (r), inclusive: ...”

6 152. Education Code sections 48900(k)(1)-(4) of this provision provides that, except as
7 provided in section 48910, School Officials may *temporarily* suspend – *but not expel* – students in
8 grades 8-12 who “disrupted school activities or otherwise willfully defied the valid authority of
9 supervisors, teachers, administrators, school officials, or other school personnel engaged in the
10 performance of their duties...” under certain limited circumstances.

11 153. Education Code section 48900 does not even allow suspension of students in the
12 younger grades of kindergarten through eighth grade for such disruption or defiance.

13 154. Further, the exception allowing suspensions under Education Code section 48910 is
14 narrow: it only allows “[a] teacher” to temporarily suspend a pupil “for the day of the suspension and
15 the day following” while the principal determines the appropriate discipline. It does not justify the
16 ongoing exclusion of a pupil from the classroom or from the school campus for the inability or refusal
17 to wear a mask or comply with the contours of the Mask Policy.

18 155. In fact, schools may only suspend students for a five-day consecutive period and may
19 not suspend students for more than twenty days over the course of a school year. (Ed. Code § 48900.5).

20 156. Defendants’ policy of suspending and/or expelling healthy students— including those
21 with natural or vaccine-induced immunity to COVID-19 — who do not comply with Defendants’
22 Mask Policy or other measures in its RTS Plan violates Section 48900.

23 157. Defendants’ policy of mandatory exclusion for any student who refuses to comply with
24 its Mask Policy or other coercive “health” measure and who is then forced into independent study is
25 expulsion in violation of Section 48900.

26 158. Defendants’ policy of mandatory exclusion for any student who refuses to comply with
27 its Mask Policy or other coercive “health” measures within its RTS Plan at any K–12 school within
28

1 PYLUSD also fails to satisfy the Education Code’s stringent requirements that must be met *before*
2 excluding a student from school. (*See generally* Educ. Code, §§ 49451, 48213, 76020.)

3 159. There are no statutory provisions in California allowing for the removal of perfectly
4 healthy students from schools. While the Legislature has contemplated situations where a child may
5 be excluded from school for public health reasons, that does mean that *any* exclusion from school
6 under the guise of “public health reasons” is permitted. It is not.

7 160. The existence of other statutory provisions involving the exclusion from school for
8 public health reasons do not change this fact, and are also inapplicable here. See, e.g., Health & Safety
9 Code section 120230 (a student in strict quarantine due to a contagious disease cannot attend school)
10 is inapplicable because excluding perfectly healthy children for an indefinite period of time is not what
11 is meant by “quarantine;” Health & Safety Code section 120335 (students must receive the ten listed
12 childhood vaccinations to attend school) is inapplicable because the Legislature did not include a
13 broader catch-all provision for health-related requirements to attend school, but rather focused solely
14 on vaccines; Education Code section 48205(a)(2) (children under quarantine are excused from school)
15 is inapplicable because this statute is not a mechanism for schools to exclude children, but rather a
16 *protection to* children to avoid being labeled a truant by requiring schools to label such an absence as
17 “excused.”

18 161. PYLUSD schoolchildren and their families have suffered and will continue to suffer
19 irreparable harm if Defendants continue to wrongfully suspend or expel students for failing to comply
20 with its Mask Policy or any other coercive “health” measure under its RTS Plan.

21 162. A judicial determination of these issues is necessary and appropriate because such a
22 declaration will clarify the parties’ rights and obligations, permit them to have certainty regarding
23 those rights and potential liability, and avoid a multiplicity of actions. An actual and present
24 controversy exists with respect to the disputes between Plaintiffs and Defendants as alleged above
25 (Code Civ. Proc., § 1060).

26 163. Plaintiffs have no administrative remedy and have no adequate remedy at law if the
27 Court does not declare that expelling PYLUSD students who fail to comply with their Mask Policy or
28 other “safety” measures in their RTS Plan is a violation of Education Code sections 48900 and 48910.

1 Thus, they seek preliminary and permanent injunctive relief enjoining Defendants from enforcing the
2 PYLUSD Mask Policy now and in the future.

3 164. WHEREFORE, Plaintiffs pray for relief as set forth below.

4 **SECOND CAUSE OF ACTION**

5 **Wrongful and Fraudulent Expulsion**

6 **Violation of Education Code Sections 48213 and 49451**

7 **(Declaratory and Injunctive Relief)**

8 ***(All Plaintiffs against All Defendants)***

9 165. Plaintiffs reallege and incorporate by reference their allegations in each of the
10 preceding paragraphs in this Complaint as if fully set forth herein.

11 166. Defendants have been wrongfully and unlawfully expelling PYLUSD students who fail
12 to comply with their Mask Policy or other “safety” measures in their RTS Plan, as further described
13 above, including but not limited to Aidan Palicke, fraudulently claiming that these healthy students
14 are “clear and present dangers” under Education Code sections 48213 and 49451, and unless these
15 actions are enjoined and declared unlawful, Defendants will continue to do so in the future, causing
16 irreparable harm to PYLUSD students.

17 167. Under Education Code section 48213, a school may only exclude a student pursuant to
18 section 120230 of the Health and Safety Code or section 49451 of the Education Code if the principal
19 or his/her designee determines that the student poses a “clear and present danger” to the life, safety,
20 or health of pupil or school personnel.

21 168. Under Education Code section 49451, a school may temporarily send a child home if
22 there is “good reason to believe” that the child is suffering from a recognized or infectious disease and
23 shall not be permitted to return “until the school authorities are satisfied that any contagious or
24 infectious disease does not exist.”

25 169. Under Health & Safety Code Section 120230, a student who resides where any
26 infectious disease exists or has recently existed and was subject to strict isolation or quarantine of
27 contacts, may not return to school without the written permission of the health officer.

28 170. These provisions require an objective finding that facts exist demonstrating the

1 presence of actual infectious or contagious disease, either within that student or where the student
2 resides, prior to excluding such a student from school on this basis.

3 171. Defendants’ policy of suspending and/or expelling healthy students without any
4 symptoms of an infectious disease — including those with natural or vaccine-induced immunity to
5 COVID-19 — who do not comply with Defendants’ Mask Policy or other coercive measures in its
6 RTS Plan weaponizes and unlawfully uses these provisions.

7 172. A judicial determination of these issues is necessary and appropriate because such a
8 declaration will clarify the parties’ rights and obligations, permit them to have certainty regarding
9 those rights and potential liability, and avoid a multiplicity of actions. An actual and present
10 controversy exists with respect to the disputes between Plaintiffs and Defendants as alleged above
11 (Code Civ. Proc., § 1060).

12 173. PYLUSD schoolchildren and their families have suffered and will continue to suffer
13 irreparable harm if Defendants continue to fraudulently and wrongfully suspend, exclude or expel
14 healthy students who do not have an infectious disease and do not reside where there is an infectious
15 disease as “clear and present dangers” for failing to comply with its Mask Policy or any other coercive
16 “health” measures under its RTS Plan.

17 174. Plaintiffs have no administrative remedy and have no adequate remedy at law if the
18 Court does not declare that expelling PYLUSD students who fail to comply with their Mask Policy or
19 other “safety” measures in their RTS Plan is a violation of Education Code sections 48213 and 49451.
20 Thus, they seek preliminary and permanent injunctive relief enjoining Defendants from enforcing the
21 PYLUSD Mask Policy now and in the future.

22 175. WHEREFORE, Plaintiffs pray for relief as set forth below.

23 **THIRD CAUSE OF ACTION**

24 **Unlawful Coercion into Independent Study**

25 **Violation of Education Code Sections 51749.5, 51749.6, 51746 and 51747**

26 **(Declaratory and Injunctive Relief)**

27 **(All Plaintiffs against All Defendants)**

28 176. Plaintiffs reallege and incorporate by reference their allegations in each of the

1 preceding paragraphs in this Complaint as if fully set forth herein.

2 177. California law is clear that no school is permitted to require, mandate or coerce a child
3 into an independent study program. In this state, independent study must be a voluntary program for
4 all students at all times.

5 178. Education Code section 51749.5(a)(12) states, “A pupil shall not be required to enroll
6 in” independent study courses.

7 179. This prohibition of forced independent study is confirmed and reinforced in title 5,
8 section 11700 of the California Code of Regulations, which states that “independent study is an
9 optional educational alternative in which no pupil may be required to participate,” and “a pupil’s
10 choice to commence or continue in independent study, must not be coerced.”

11 180. Under Education Code section 51749.5(a)(9), a local educational agency must develop
12 a plan for students in independent study wishing to return to in-person learning within five days of the
13 request.

14 181. Education Code section 51749.5(a)(4)(A) further requires that any independent study
15 program be of “the same rigor, educational quality, and intellectual challenge substantially equivalent
16 to in-person instruction and equivalent classroom-based courses, and shall be aligned to all relevant
17 local and state content standards.”

18 182. Under Education Code section 51749.6, a student and a parent or legal guardian must
19 review and approve any independent study plan for any student under 18 years of age before an
20 independent study plan may commence.

21 183. Specifically, Education Code section 51749.6(a)(6) states that, prior to enrolling a pupil
22 into independent study, the school must provide the parent with a written statement that independent
23 study is “an **optional** educational alternative in which no pupil may be required to participate.”

24 184. Education Code section 51747(g)(8) provides that a local educational agency shall not
25 receive funding for an independent study program unless independent study is an optional educational
26 alternative in which “no pupil may be required to participate.”

27 185. Education Code section 51747(h)(2) provides that a school may enroll a child in such
28 a program only if there has been a “pupil-parent-educator conference” to determine whether

1 enrollment in independent study is in the best interest of the child.

2 186. Education Code section 51747(f)(9)(F) requires the school to obtain “a signed written
3 agreement for independent study from the pupil, or the pupil’s parent or legal guardian if the pupil is
4 less than 18 years of age.”

5 187. Additionally, Education Code section 51746 provides that a child enrolled in a remote
6 learning or independent study program cannot be excluded from school facilities. Rather, the school
7 “shall ensure the same access to all existing services and resources in the school in which the pupil is
8 enrolled ... as is available to all other pupils in the school.”

9 188. A child enrolled in an independent study program always retains the option to return to
10 his or her regular classroom for in-person instruction. Education Code section 51747(f) states that the
11 school is required to “transition pupils whose families wish to return to in-person instruction from
12 independent study expeditiously, and, in no case, later than five instructional days.”

13 189. By removing students and placing them into independent study for not wearing the type
14 of mask Defendants included in their updated Mask Policy, including Plaintiffs, Defendants have
15 violated these Education Code provisions in numerous ways.

16 190. First, students suspended or expelled from school for not wearing a proper mask under
17 Defendants’ Mask Policy and then threatened with weaponized truancy laws if they do not go into an
18 independent study program who then enter independent study programs are not voluntarily entering
19 into an independent study program. They are being coerced.

20 191. Second, students coerced into independent study programs for not wearing a proper
21 mask under Defendants’ Mask Policy have not been and are not being given a required “pupil-parent-
22 educator conference” to determine whether enrollment in independent study is in the best interest of
23 the student.

24 192. Third, students who have been coerced into an independent study program for failure
25 to comply with Defendants’ Mask Policy have not been given any “access to all existing services and
26 resources in the school in which the pupil is enrolled ... as is available to all other pupils in the school.”
27 (Ed. Code, § 51746).

28 193. Finally, Defendants have not offered students they unlawfully forced into independent

1 study programs for failure to comply with their Mask Policy the opportunity to transition back to in-
2 person services within PYLUSD, despite the temporary cessation of their current Mask Policy.

3 194. By violating the express requirements of the Educational Code provisions noted above,
4 Defendants have caused and continue to cause PYLUSD students, including Plaintiffs, irreparable
5 harm.

6 195. A judicial determination of these issues is necessary and appropriate because such a
7 declaration will clarify the parties' rights and obligations, permit them to have certainty regarding
8 those rights and potential liability, and avoid a multiplicity of actions. An actual and present
9 controversy exists with respect to the disputes between Plaintiffs and Defendants as alleged above
10 (Code Civ. Proc., § 1060).

11 196. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court
12 does not declare that removing healthy students to independent study involuntarily for failure to
13 comply with Defendants' Mask Policy is unlawful and unconstitutional. Thus, they seek preliminary
14 and permanent injunctive relief enjoining Defendants from enforcing the PYLUSD Mask Policy now
15 and in the future through forced independent study enrollment.

16 197. WHEREFORE, Plaintiffs pray for relief as set forth below.

17 **FOURTH CAUSE OF ACTION**

18 **Unlawful Human Experimentation**

19 **Violation of Health & Safety Code Sections 24170-24179.5**

20 **(Declaratory and Injunctive Relief)**

21 ***(All Plaintiffs Against All Defendants)***

22 198. Plaintiffs reallege and incorporate by reference their allegations in each of the
23 preceding paragraphs in this Complaint as if fully set forth herein.

24 199. The Nuremberg trials were a series of trials carried out in Nuremberg, Germany,
25 between 1945 and 1949 where the defendants, who included Nazi Party officials and high-ranking
26 military officers along with German doctors, lawyers, and industrialists, were indicted on such charges
27 as crimes against peace and crimes against humanity for the murder, torture and the conducting of
28 human medical experiments and pseudoscientific medical experiments in the name of medical science

1 without the consent of the victim participants.

2 200. In recognition of the Nuremberg trials and of the obvious need to avoid and enjoin such
3 unethical and horrific human medical experiments in the future, the California Legislature codified in
4 Health & Safety Code sections 24170-24179.5 (entitled “Human Experimentation”) the right of
5 citizens to not be forced into unwanted medical experiments or subjected to unwanted medical devices.

6 201. California Health & Safety Code section 24171 provides: “The Legislature hereby
7 finds and declares that medical experimentation on human subjects is vital for the benefit of mankind,
8 however such experimentation shall be undertaken with due respect to the preciousness of human life
9 and the right of individuals to determine what is done to their own bodies. The Legislature further
10 finds and declares that: (a) The Nuremberg Code of Ethics in Medical **Research was developed after**
11 **the trial of Nazi war criminals for unethical use of persons in medical experiments**; subsequently,
12 the Declaration of Helsinki additionally established recommendations guiding doctors in
13 experimentation involving human subjects; (b) Neither the Nuremberg Code nor the Declaration of
14 Helsinki are codified under law and are, therefore, unenforceable; (c) It is necessary that medical
15 experimentation be done in such a way as to protect the rights of the human subjects involved; (d)
16 There is, and will continue to be, a growing need for protection for citizens of the state from
17 unauthorized, needless, hazardous, or negligently performed medical experiments on human beings.
18 It is, therefore, the intent of the Legislature, in the enacting of this chapter, to **provide minimum**
19 **statutory protection for the citizens of this state with regard to human experimentation and to**
20 **provide penalties for those who violate such provisions.”** (emphasis added).

21 202. California Health & Safety Code section 24172 provides that citizens “(j) Be given the
22 opportunity to decide to consent or not to consent to a medical experiment without the intervention of
23 any element of force, fraud, deceit, duress, coercion, or undue influence on the subject’s decision.”

24 203. California Health & Safety Code section 24173 provides that “informed consent”
25 means “(c)(7) An instruction to the subject that he or she is free to withdraw his or her prior consent
26 to the medical experiment and discontinue participation in the medical experiment at any time, without
27 prejudice to the subject.”

28 204. California Health & Safety Code section 24174 provides that a “medical experiment”

1 means, among other things “(a) the use of a drug or device.”

2 205. California Health & Safety Code section 109920 provides that a “device” means “any
3 instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or
4 related article, including any component, part, or accessory, that is any of the following ...(b)
5 Intended for use in the diagnosis of disease or other condition, or in the cure, mitigation, treatment, or
6 prevention of disease in humans or any other animal.”

7 206. California Health & Safety Code section 24176 provides that “**Any person** who is
8 primarily responsible for conduct of a medical experiment and who negligently allows the experiment
9 to be conducted without a subject’s informed consent” shall be held liable for damages.

10 207. At the onset of the COVID-19 pandemic, the FDA issued an emergency use
11 authorization (“EUA”) on face masks for the general public. On April 24, 2020, the FDA re-issued
12 an EUA to clarify that face masks, including cloth face coverings, that are authorized by the EUA are
13 only authorized for use by the general public and health care personnel as source control (i.e.,
14 preventing the transmission of infection through a person’s respiratory secretions which are produced
15 when speaking, coughing, or sneezing).^{15F}¹⁶

16 208. Face masks fall within the definition of “device” under California Health & Safety
17 Code section 109920, given that they were intended by the FDA, albeit without any real scientific
18 justification, to mitigate the spread of COVID-19.

19 209. EUA products and devices are by definition experimental. PYLUSD’s policy requiring
20 the use of EUA masks on school children for extended hours daily in order to attend school is forcing
21 these experimental EUA medical devices on these children without their informed consent through
22 duress and coercion. PYLUSD is the entity primarily responsible for the conduct of this medical
23 experiment regarding these EUA masks on children.

24 210. As alleged in the general allegations of this First Amended Complaint, the wearing of
25 face masks for prolonged periods of time is an experimental mandate that not only fails to achieve
26 what it was stated to achieve but also presents serious dangerous harms to children physically,
27

28 ¹⁶ *FAQs on the Emergency Use Authorization for Face Masks (Non-Surgical)*, <https://www.fda.gov/medical-devices/emergency-situations-medical-devices/faqs-emergency-use-authorization-face-masks-non-surgical>.

1 emotionally and psychologically. All policies calling for the forced wearing of face masks were done
2 without the informed consent of the citizens and without the ability to discontinue or withdraw from
3 the activity.

4 211. As such, Defendants violated Health & Safety Code sections 24170-24179.5 by failing
5 to provide the required option to refuse the wearing of masks or certain types of masks and instead
6 enforcing their Mask Policy.

7 212. PYLUSD children, including Aidan Palicke, have suffered significant harms by being
8 denied the right to refuse experimental “health” measures and products, such as all-day mask wearing
9 at school.

10 213. While the PYLUSD Mask Policy has been temporarily halted, both PYLUSD along
11 with Newsom’s SMARTER plan, clearly indicate an intent to keep re-imposing this Mask Policy, and
12 unless these actions are enjoined and declared to be unlawful, Defendants will continue to do so in the
13 future, likely without any meaningful notice, causing irreparable harm to PYLUSD students and
14 perpetuating a continuous feeling of anxiety on the part of the PYLUSD children in anticipation of
15 such re-implementation.

16 214. Plaintiffs desire a judicial declaration that the PYLUSD Mask Policy is a violation of
17 Health & Safety Code sections 24170-24179.5.

18 215. A judicial determination of these issues is necessary and appropriate because such a
19 declaration will clarify the parties’ rights and obligations, permit them to have certainty regarding
20 those rights and potential liability, and avoid a multiplicity of actions. An actual and present
21 controversy exists with respect to the disputes between Plaintiffs and Defendants as alleged above
22 (Code Civ. Proc., § 1060) because both PYLUSD along with Newsom’s SMARTER plan clearly
23 indicate an intent to keep re-imposing these failed and dystopian “tools” of forced masking.

24 216. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court
25 does not declare the PYLUSD Mask Policy a violation of Health & Safety Code sections 24170-
26 24179.5. Thus, they seek preliminary and permanent injunctive relief enjoining Defendants from
27 enforcing the PYLUSD Mask Policy now and in the future.

28 217. WHEREFORE, Plaintiffs pray for relief as set forth below.

1 **FIFTH CAUSE OF ACTION**

2 **Violation of Free Speech**

3 **Articles 1 and 2 of the California Constitution**

4 **(Declaratory and Injunctive Relief)**

5 ***(All Plaintiffs against All Defendants)***

6 218. Plaintiffs reallege and incorporate by reference their allegations in each of the
7 preceding paragraphs in this Complaint as if fully set forth herein.

8 219. Article I, Section 1 of the California Constitution provides, “All people are by nature
9 free and independent and have inalienable rights. Among these are enjoying and defending life and
10 liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness,
11 and privacy.”

12 220. Article I, Section 2(a) of the California Constitution provides, “Every person may
13 freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of
14 this right. A law may not restrain or abridge liberty of speech or press.”

15 221. Under Defendants’ Mask Policy and practices, schoolchildren who refuse to wear face
16 masks have not been permitted on the premises of their schools or to participate in organized school
17 activities and were required to remain at home for remote learning, losing the opportunity to associate
18 with other students, teachers and staff.

19 222. Exceptions to the mask wearing requirement were not available to the general student
20 population including Plaintiffs.

21 223. Governor Newsom has not relinquished his emergency powers declared two years ago
22 on March 4, 2020, and instead has indicated that he and his executive agency, the CDPH, intend to
23 reserve the power to reimpose mask mandates and other restrictions via executive order. Such
24 statements also appear in Governor Newsom’s document entitled “SMARTER” published February
25 17, 2022.

26 224. Defendants in this action have claimed that they were only “following orders” and will
27 continue to follow these orders and reinstitute their own unlawful Mask Policy if CDPH and Newsom
28 reinstitute these mask requirements for California K-12 schoolchildren.

1 225. However, Defendants cannot “just follow orders” and instead have their own
2 independent legal obligations and duties to both obey constitutional and legal limitations and restraints
3 on their exercise of power as school districts and school officials, and to refrain from breaching the
4 duties of care they owe to their students.

5 226. Mandatory wearing of masks by schoolchildren burdens and impairs protected speech
6 rights, inhibiting and preventing communication between students, and between students, teachers and
7 aides.

8 227. Mandatory mask wearing prevents the perception and exchange of non-verbal forms of
9 communication vital and material to the exchange of ideas, thoughts, and emotions.

10 228. Mandatory wearing of masks burdens and impairs protected associational rights of
11 schoolchildren, inhibiting and preventing the formation and maintenance of relationships and
12 friendships between schoolchildren, and between schoolchildren and teachers and staff.

13 229. Covering the face by masking prevents non-verbal exchanges of information and
14 signaling through facial cues and gestures of emotion, humor, approval and disapproval, joy, anger or
15 despair, encouragement or discouragement of friendship and other non-verbal forms of
16 communication.

17 230. Such non-verbal communication is necessary and material to normal human
18 associational rights and interests. Such non-verbal forms of communication are a critical and non-
19 severable part of human speech and association. Such non-verbal communication is necessary and
20 material to normal exchanges of ideas and thoughts.

21 231. Schoolchildren, like all human beings, require access to facial expressions and non-
22 verbal cues as a normal and assumed part of human association and the deprivation of such by
23 mandatory mask wearing impairs their liberty and privacy interests.

24 232. In addition, mandatory mask usage prevents and inhibits basic communication as words
25 are frequently muffled or students are chilled in their willingness to communicate or express
26 themselves by the barrier presented by face coverings; students are chilled in exercising their speech
27 rights, in part, because masking prevents the feedback of acceptance, disagreement and other non-
28 verbal cues that complete human thought and communication.

1 233. In other ways, the state has imposed restrictions on the ordinary and usual
2 communication, socialization and associational relationships between schoolchildren burdening their
3 rights of association speech and privacy.

4 234. Children are regularly chastised by teachers if their masks slip below their nose or if
5 masks are not adjusted properly; children are regularly and routinely threatened with disciplinary
6 write-ups if they do not adjust their masks to a “correct” usage.

7 235. In addition, the refusal to wear a mask in protest of the government’s attempt to
8 unlawfully silence and control its citizens falls under the umbrella of protected political speech. See
9 e.g., *Texas v. Johnson* (1989) 491 U.S. 397, 404-405, citing *Tinker v. Des Moines Independent*
10 *Community School District* (1969) 393 U.S. 503, 505 (the expressive nature of students wearing of
11 black armbands to protest American military involvement in Vietnam is protected by the First
12 Amendment).

13 236. Anxiety in schoolchildren caused by such continuing chastisement violates the privacy
14 rights of children and burdens and inhibits the exercise of children’s speech and associational rights.

15 237. Discipline over the use of masks is a new element in the public schools and in the state’s
16 educational program that has changed the relationship between students, and between students and
17 teachers, injected anxiety in the student-teacher relationship, violating the right of privacy of the
18 plaintiffs and their children.

19 238. The process of mandatory mask wearing causes anxiety as a direct by-product of school
20 attendance further burdening and interfering with their rights of association and privacy. Masks are
21 worn all day, giving rise to a continuing regimen of mask discipline; masks become wet with saliva,
22 causing discomfort, and interfering with a school child’s ordinary comfort and function; the forced
23 wearing of such an unnatural article of clothing further violates children’s rights of privacy.

24 239. The unnatural forced covering of a part of the children’s body, their face, that is
25 normally exposed in ordinary social intercourse violates children’s rights of privacy; parent Plaintiffs
26 have not consented to the imposition of this unnatural condition upon their children, violating parent
27 plaintiffs’ associational and privacy interests.

28 240. All such measures impair and burden speech, association and privacy rights of children

1 in the public schools.

2 241. No state interest rises to a sufficient level to support the mass imposition of the Mask
3 Policy and other COVID-19 related preventative measures on California schoolchildren.

4 242. Children of all ages, including young children, adolescents, and high school students,
5 are not vulnerable in any material way to COVID-19, suffer minimal hospitalization from COVID-19
6 and have negligible or statistically non-significant morbidity from this disease.

7 243. To the extent any state interest exists in protecting adults working in the schools from
8 the risk of transmission from children, the mask mandate and other preventative measures described
9 above are not the least restrictive and intrusive means of achieving said interest when weighed against
10 the loss and impairment of children's fundamental rights and liberties.

11 244. Other less intrusive means of protecting school staff who may have a high or unusual
12 sensitivity to transmission due to infirmity or medical condition include voluntary mask wearing by
13 staff or other voluntary isolating measures by such adults, including desk shields or face shields; for
14 any adults who are potentially vulnerable to COVID-19 transmission because they have not developed
15 anti-bodies following a COVID-19 infection or injection, such condition can be confirmed by making
16 anti-body testing available to school staff who can then assume voluntary protective measures.
17 Allowing staff to engage in such measures when medically necessary will promote any state interest
18 in protecting the health of the small number of potentially vulnerable adults in the schools, while
19 minimizing the burden upon and impairment of schoolchildren's fundamental rights and liberties.

20 245. No state interest lies in mass mandates imposing harsh and unnatural limitations on
21 millions of schoolchildren when less intrusive measures can adequately protect the very small class of
22 potentially vulnerable school staff without forcing the serious burden of these mandates on the
23 fundamental rights and liberties of California school children.

24 246. Neither CDPH nor any of the Defendants have studied or examined the impact of
25 COVID-19 mask mandates on schoolchildren or released such studies; have held no hearings to
26 evaluate such measures on the development or psychology of children; no public comment has been
27 permitted for testimony from lay witnesses or experts as to such impacts; no evaluation has taken place
28 or been released as to the effect of such measures on children, further violating the plaintiffs' rights to

1 privacy and due process, both substantive and procedural

2 247. The re-imposition of mask mandates and COVID-19 preventative measures over
3 schoolchildren under the Governor’s claim that he has the power to reinstate such restraints or the
4 imposition of such restraints by school districts, as now authorized by the Governor and/or the CDPH
5 will violate the First, Fifth and 14th Amendment rights of plaintiffs and others similarly situated for
6 the reasons set forth in this Complaint.

7 248. A judicial determination of these issues is necessary and appropriate because such a
8 declaration will clarify the parties’ rights and obligations, permit them to have certainty regarding
9 those rights and potential liability, and avoid a multiplicity of actions. An actual and present
10 controversy exists with respect to the disputes between Plaintiffs and Defendants as alleged above
11 (Code Civ. Proc., § 1060).

12 249. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court
13 does not declare the PYLUSD Mask Policy unconstitutional. Thus, they seek preliminary and
14 permanent injunctive relief enjoining Defendants from enforcing the PYLUSD Mask Policy now and
15 in the future.

16 250. WHEREFORE, Plaintiffs pray for relief as set forth below.

17 **SIXTH CAUSE OF ACTION**

18 **Violation of Due Process and the Right to Refuse Unwanted Medical Treatments**

19 **Article I, Sections 1 and 7 of the California Constitution**

20 **(Declaratory and Injunctive Relief)**

21 ***(All Plaintiffs against All Defendants)***

22 251. Plaintiffs reallege and incorporate by reference their allegations in each of the
23 preceding paragraphs in this Complaint as if fully set forth herein.

24 252. California Constitution Article I, Section 1 provides, “All people are by nature free and
25 independent and have inalienable rights. Among these are enjoying and defending life and liberty,
26 acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and
27 privacy.”

28 253. California Constitution Article I, Section 7 provides, “(a) A person may not be deprived

1 of life, liberty, or property without due process of law or denied equal protection of the laws.”

2 254. Plaintiffs, including Plaintiff Chris Palicke on behalf of himself and his son Aidan, have
3 a protected right to life and health, secured by the Due Process Clause of the California Constitution,
4 which includes the right to refuse non-consensual administration of any objectionable medical product,
5 and/or to be free from the forced administration of medical procedures and devices that Plaintiff Chris
6 Palicke reasonably believes may cause his son harm.

7 255. As well, or in the alternative, Plaintiffs have protected liberty rights against
8 infringement of liberty interests deemed “fundamental” in nature, which the Defendants’ Mask Policy
9 unconstitutionally infringed upon.

10 256. These fundamental rights include, but are not limited to: the fundamental right to refuse
11 medical interventions, even those that save one’s life, the fundamental right of fit parents to make
12 medical decisions for their children rather than the state or a third party, the fundamental right to a
13 medical exemption from medical devices that a licensed physician has certified may place a person at
14 risk of harm, the fundamental right to refuse medical interventions that are experimental in nature, and
15 the fundamental right to make medical decisions in accordance with one’s chosen physician absent
16 state or third-party interference.

17 257. As well, Plaintiffs have protected liberty interests, secured by the Due Process Clause
18 of the California Constitution, to informed consent.

19 258. Defendants’ Mask Policy violated and, if reinstated, may continue to violate several
20 of these related fundamental protected rights, including but not limited to the right to be free from
21 forced medical experimentation (also referred to as the right to “informed consent” or the right to
22 “bodily integrity”).

23 259. This right of informed consent and bodily integrity, particularly in the context of
24 experimental products, is a fundamental right.

25 260. As set forth more fully above, masks are defined as experimental products and their
26 forced *or coerced* use constitutes unlawful coerced participation in medical experimentation. No
27 government actor can lawfully force or coerce the use of these experimental products without violating
28 the most fundamental international and constitutional rights.

1 261. As well, or in the alternative, Plaintiff Chris Palicke has the fundamental right, secured
2 by the Due Process Clause of the California Constitution, to make medical decisions on behalf of his
3 son. Plaintiff has not been found to be an unfit parent, and thus is vested with the authority to choose
4 between competing medical opinions about what is safest for his son, and whether to consent to allow
5 his son to participate in using an experimental medical product. This right adheres not only to the
6 parent but to the child as well, whose best interest is served by loving fit parents having control over
7 medical decisions impacting the child.

8 262. Defendants violated and are continuing to violate Plaintiff's fundamental parental
9 rights by attempting to usurp Plaintiff Chris Palicke's authority to decide between competing medical
10 opinions and follow the advice of Plaintiff Chris Palicke and his son Aidan's own treating physician.

11 263. As well, or in the alternative, the Mask Policy violates the fundamental right to refuse
12 medical interventions. This right has been deemed fundamental by the Supreme Court and is even
13 protected and upheld in circumstances where the intervention will concededly help rather than harm a
14 patient.

15 264. Moreover, PYLUSD, under the guise of a state of emergency that continues despite the
16 fact that there is clearly no real state of emergency, is presently able to re-institute the Mask Policy at
17 any time or impose another mask policy without any justification and without any procedural due
18 process, denying Plaintiffs of their right to notice and a hearing.

19 265. Because the Mask Policy impacts fundamental rights, strict scrutiny applies. The US
20 Supreme Court has recognized a "general liberty interest in refusing medical treatment." (*Cruzan v.*
21 *Dir., Mo. Dep't of Health* (1990) 497 U.S. 261, 278, 110 S. Ct. 2841, 2851, 111 L.Ed.2d 224, 242;
22 *Washington v. Harper* (1990) 494 U.S. 210, 223, 229 (further acknowledging in dicta that, outside of
23 the prison context, the right to refuse treatment would be a "fundamental right" subject to strict
24 scrutiny).

25 266. As mandated medical treatments are a substantial burden, Defendants must prove that
26 the Mask Policy is narrowly tailored to meet a compelling interest.

27 267. Both facially and as applied, the Mask Policy promulgated and applied by Defendants
28 is not sufficiently narrowly tailored to impose the least amount of harm on fundamental protected

1 rights. Nor does it serve a compelling interest.

2 268. No credible evidence exists to show that masks prevent or even slow the spread of
3 COVID-19 or any of its variants.

4 269. No credible evidence exists to show that masks on healthy asymptomatic children do
5 anything to prevent or slow the spread of COVID-19 or any of its variants.

6 270. Public health will not be imperiled if children are allowed to opt out of the Mask Policy
7 entirely or to wear masks that are of less risk to their health and welfare, as determined by their parents
8 or own treating physicians.

9 271. Public health would not have been imperiled if Aidan Palicke had been allowed to opt
10 out of the Mask Policy or to continue to wear the mesh mask that his parents believed would be safest
11 for him to wear.

12 272. Considering the serious rights at stake, and the dearth of evidence to show Defendants'
13 Mask Policy is effective or necessary, there is no rational basis reason to mandate masks in school for
14 any student in K-12. Inflexibly mandating a child to use an experimental medical device when there
15 are known harms from the device simply shocks the conscience.

16 273. Pursuant to the Unconstitutional Conditions Doctrine, Defendants cannot condition
17 receipt of a benefit, such as access to school and educational opportunities, on the waiver of the right
18 to bodily autonomy and privacy.

19 274. Plaintiffs respectfully request that the Court enter a declaratory judgment that
20 Defendants' Mask Policy violates Plaintiffs' fundamental due process rights, and issue an order
21 permanently enjoining enforcement of the Mask Policy.

22 275. A judicial determination of these issues is necessary and appropriate because such a
23 declaration will clarify the parties' rights and obligations, permit them to have certainty regarding
24 those rights and potential liability, and avoid a multiplicity of actions. An actual and present
25 controversy exists with respect to the disputes between Plaintiffs and Defendants as alleged above
26 (Code Civ. Proc., § 1060).

27 276. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court
28 does not declare the PYLUSD Mask Policy unconstitutional. Thus, they seek preliminary and

1 permanent injunctive relief enjoining Defendants from enforcing the PYLUSD Mask Policy now and
2 in the future.

3 277. WHEREFORE, Plaintiffs pray for the relief as set forth below.

4 **SEVENTH CAUSE OF ACTION**

5 **Violation of the Right to Education**

6 **Article IX of the California Constitution**

7 **(Declaratory and Injunctive Relief)**

8 ***(All Plaintiffs against All Defendants)***

9 278. Plaintiffs reallege and incorporate by reference their allegations in each of the
10 preceding paragraphs in this Complaint as if fully set forth herein.

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

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

18 281. By violating numerous California statutory provisions regarding the suspension and
19 expulsions of students for “disruption” or “defiance” and by placing Aidan Palicke involuntarily into
20 independent study for his failure to comply with Defendants’ Mask Policy, Defendants, through their
21 decisions and other actions recited herein, have denied Aidan Palicke of his fundamental right to an
22 education that provides a “general diffusion of knowledge and intelligence essential to the preservation
23 of the rights and liberties of the people,” ensures the opportunity to become proficient according to
24 the state of California’s standards, develop the skills and capacities necessary to achieve economic
25 and social success in our competitive society, and participate meaningfully in political and community
26 life.

27 282. By preventing Aidan Palicke from returning to school for in-person instruction for
28 failing to comply with their Mask Policy, and by fraudulently using the “clear and present danger”

1 provision of the herein, have interfered, to the detriment of Aidan Palicke, with the state’s “system of
2 common schools by which a free school shall be kept up and supported in each district at least six
3 months in every year”

4 283. The alleged government interest in slowing the spread of the virus that causes COVID-
5 19 does not justify this infringement on Aidan Palicke’s constitutional right to a quality education.

6 284. Defendants’ decisions and other actions recited herein are significantly broader than
7 necessary to serve the alleged government interest in slowing the spread of the virus that causes
8 COVID-19.

9 285. Defendants’ decisions and other actions recited herein are and were not narrowly
10 tailored to minimize infringements on students’ educational rights.

11 286. Plaintiffs respectfully request that the Court enter a declaratory judgment that
12 Defendants’ Mask Policy violates Article IX of the California Constitution, and issue an order
13 permanently enjoining enforcement of the Mask Policy.

14 287. A judicial determination of these issues is necessary and appropriate because such a
15 declaration will clarify the parties’ rights and obligations, permit them to have certainty regarding
16 those rights and potential liability, and avoid a multiplicity of actions. An actual and present
17 controversy exists with respect to the disputes between Plaintiffs and Defendants as alleged above
18 (Code Civ. Proc., § 1060).

19 288. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court
20 does not declare the PYLUSD Mask Policy unconstitutional. Thus, they seek preliminary and
21 permanent injunctive relief enjoining Defendants from enforcing the PYLUSD Mask Policy now and
22 in the future.

23 289. WHEREFORE, Plaintiffs pray for relief as set forth below.

24 **EIGHTH CAUSE OF ACTION**

25 **Violation of Equal Protection**

26 **Article I, Section 7 of the**

27 290. Plaintiffs reallege and incorporate by reference their allegations in each of the
28 preceding paragraphs in this Complaint as if fully set forth herein.

1 291. Since Defendants are state actors enforcing governmental policies and objectives, they
2 are subject to constitutional limitations and scrutiny.

3 292. Under Article I, Section 7(a) of the California Constitution, “[a] person may not be ...
4 denied equal protection of the laws.”

5 293. Further, under Article I, Section 7(b) of the California Constitution, “[a] citizen or class
6 of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.”

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

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

17 296. Where a rule results in infringement of a fundamental right, such rule is subject to strict
18 scrutiny. (*Washington v. Harper* (1990) 494 U.S. 210, 223, 229). Strict scrutiny demands that the
19 government actor establish (1) it has a compelling interest that justifies the challenged rule; (2) the
20 rule is necessary to further that interest; and (3) the rule is narrowly drawn to achieve that end.

21 297. Although Aidan Palicke wore the same mesh mask as many other students, teachers,
22 and school officials had been wearing and continued to wear even after Defendants announced its
23 updated Mask Policy, Defendants treated him differently, taking numerous punitive measures against
24 him.

25 298. Specifically, Defendants targeted Aidan as a “clear and present danger” to others,
26 despite Defendants knowing that Aidan did not have any indication of having an infectious disease,
27 living with anyone with an infectious disease, or presenting a health risk or danger to anyone within
28 PYLUSD at the time he was removed from YLHS for failing to comply with Defendants’ Mask Policy.

1 In addition, Defendants harassed and discriminated against Aidan Palicke by pulling him out of his
2 classrooms, sending him to the office multiple times, segregating him from his peers, forcing him to
3 take his finals outside in the cold for hours, and encouraging others to ridicule, mock, and bully Aidan
4 for not complying with Defendants' updated Mask Policy.

5 299. Further, Defendant Bloom also engaged in retaliatory actions against Aidan and Chris
6 Palicke by intentionally "losing" Aidan's physics notebook, which Defendant Bloom insisted Aidan
7 turn in to him in order to receive his grade in Mr. Bloom's class. Defendant Bloom later claimed he
8 had "lost" Aidan's notebook, which contained all of Aidan's notes for class for the entire year.

9 300. Defendants engaged in such wrongful actions in order to punish Plaintiff Chris Palicke
10 and his son Aidan and serve as a precautionary tale to all other students at YLHS who might also not
11 want to comply with the Mask Policy or other coercive "health" measures in Defendants' RTS Plan.

12 301. By preventing Aidan Palicke from returning to school for in-person instruction for
13 failing to comply with their Mask Policy and coercing Aidan into independent study, while allowing
14 other students, teachers, school employees to continue to wear the same or similar types of masks or
15 no mask at all, Defendants violated Aidan Palicke's right to equal protection under the law.

16 302. Defendants' decisions and other actions recited herein are significantly broader than
17 necessary to serve the alleged government interest in slowing the spread of the virus that causes
18 COVID-19.

19 303. Defendants' decisions and other actions recited herein are and were not narrowly
20 tailored to minimize infringements on students' educational rights.

21 304. Plaintiffs respectfully request that the Court enter a declaratory judgment that
22 Defendants' Mask Policy violates the Equal Protection Clause of the California Constitution, and issue
23 an order permanently enjoining enforcement of the Mask Policy.

24 305. A judicial determination of these issues is necessary and appropriate because such a
25 declaration will clarify the parties' rights and obligations, permit them to have certainty regarding
26 those rights and potential liability, and avoid a multiplicity of actions. An actual and present
27 controversy exists with respect to the disputes between Plaintiffs and Defendants as alleged above
28 (Code Civ. Proc., § 1060).

1 Supreme Court has recognized a “general liberty interest in refusing medical treatment.” (*Cruzan v.*
2 *Dir., Mo. Dep't of Health* (1990) 497 U.S. 261, 278; *Washington v. Harper* (1990) 494 U.S. 210, 223,
3 229 (further acknowledging in dicta that, outside of the prison context, the right to refuse treatment
4 would be a “fundamental right” subject to strict scrutiny).

5 313. PYLUSD children, including Aidan Palicke, had and have a right to refuse unwanted
6 medical “health” measures such as forced masking and a right to prevent the intrusion of bodily
7 integrity. Being forced to comply with all-day mask wearing is a violation of this right to privacy.

8 314. By denying PYLUSD children, including Aidan Palicke, the right to refuse all-day
9 mask wearing and by removing Aidan Palicke and others from YLHS and placing them into
10 independent study for not wearing the type of mask Defendants included in their updated Mask Policy,
11 Defendants have violated their right to privacy.

12 315. While this Mask Policy has been temporarily halted, both PYLUSD along with
13 Newsom’s SMARTER plan, clearly indicate an intent to keep re-imposing this Mask Policy, and
14 unless these actions are enjoined and declared to be unlawful, Defendants will continue to do so in the
15 future, likely without any meaningful notice, causing irreparable harm to PYLUSD students and
16 perpetuating a continuous feeling of anxiety on the part of the PYLUSD children in anticipation of
17 such re-implementation.

18 316. PYLUSD students had and have a reasonable expectation of privacy. In addition,
19 Plaintiff Chris Palicke has a right to protect his son Aidan’s privacy interests. Plaintiffs’ expectation
20 of medical privacy, bodily autonomy, and freedom from bodily invasion is reasonable.

21 317. Defendants’ Mask Policy and corresponding actions are a serious invasion of the right
22 to privacy and have caused severe damage to PYLUSD students, and Aidan Palicke, in the following
23 ways: (1) Preventing schoolchildren from accessing facial expressions and non-verbal cues as a normal
24 and assumed part of human association; (2) Encouraging and condoning the threats by teachers with
25 disciplinary write-ups if children do not adjust their masks to a “correct” usage; (3) Subjecting children
26 to all day mask wearing, resulting in discomfort, oxygen deprivation, carbon dioxide poisoning,
27 increased anxiety, normal social development, skin rashes and other skin conditions, speech
28 development delays, mouth and tooth deformation due to continuous mouth breathing, and speech and

1 language developmental delays.

2 318. If the Mask Policy is determined to serve a compelling interest, there are feasible and
3 effective alternatives to controlling the spread of COVID-19 that are less restrictive on privacy
4 interests, particularly where credible data suggests that forced masking has had no significant
5 beneficial impact on the rise or fall of COVID-19 cases, hospitalizations, and deaths, both in school
6 environments or society-wide, and may have made matters worse.

7 319. Under the California Tort Claim Act (“CTCA”), public entities and their employees
8 may be sued for damages and held liable for injuries. See Cal. Gov’t Code § 945 (“A public entity
9 may sue and be sued.”); Cal. Gov’t Code § 820(a) (“a public employee is liable for injury caused by
10 his act or omission to the same extent as a private person.”).

11 320. In this action, none of the available exemptions under the CTCA are applicable to shield
12 defendants from liability for damages. See e.g., Cal. Gov’t Code § 818.2 (“A public entity is not liable
13 for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law”) is
14 inapplicable because (1) the CDPH masking recommendations are not laws and were never lawful
15 enactments of any kind, (2) the PYLUSD Mask Policy and RTS Plan along with their selective and
16 targeted enforcement was unlawful and exceeded their authority, and (3) forcing non-sick children
17 into independent study is a direct violation of California law; Cal. Gov’t Code § 820.2 (“a public
18 employee is not liable for an injury resulting from his act or omission where the act or omission was
19 the result of the exercise of the discretion vested in him, whether or not such discretion be abused”) is
20 inapplicable because nothing in the CDPH guidelines or in any CA statute confers discretion to school
21 districts and their employees to force healthy non infected students into independent study for refusing
22 to mask all day; Cal. Gov’t Code § 820.4 (“A public employee is not liable for his act or omission,
23 exercising due care, in the execution or enforcement of any law”) is inapplicable because the CDPH
24 masking recommendations are not laws and forcing non-sick children into independent study is a
25 direct violation of California law; Cal. Gov’t Code § 815.2(b) (“a public entity is not liable for an
26 injury resulting from an act or omission of an employee of the public entity where the employee is
27 immune from liability”) is inapplicable here because, as alleged in this cause of action, PYLUSD
28 employees are not immune from liability for the various wrongful acts committed.

1 receive funding for an independent study program unless independent study is an optional educational
2 alternative in which “no pupil may be required to participate.” (Ed. Code, § 51747, subd. (g)(8)). A
3 school may enroll a child in such a program only if there has been a “pupil-parent-educator
4 conference” to determine whether enrollment in independent study is in the best interest of the child
5 (id., § 51747, subd. (h)(2)) and “a signed written agreement for independent study from the pupil, or
6 the pupil’s parent or legal guardian if the pupil is less than 18 years of age” (id., § 51747, subd.
7 (f)(9)(F)).

8 331. Additionally, Education Code Section 51746 provides that a child enrolled in a remote
9 learning or independent study program cannot be excluded from school facilities. Rather, the school
10 “shall ensure the same access to all existing services and resources in the school in which the pupil is
11 enrolled ... as is available to all other pupils in the school.” (Ed. Code, § 51746).

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

16 333. By removing Aidan Palicke from YLHS and placing him into independent study for
17 not wearing the type of mask Defendants included in their updated Mask Policy, Defendants have
18 violated these education code provisions in numerous ways.

19 334. First, Aidan did not voluntarily go into an independent study program. In January and
20 February of 2022, Aidan was told by Defendants, including Defendant Dinh and Defendant
21 McAlindin, that Aidan would not be allowed back to school unless he wore an approved mask under
22 Defendants’ new Mask Policy. Aidan was also threatened by Defendants that he would be declared a
23 truant if he did not enroll in independent study or home study.

24 335. Because Defendants would not allow Aidan to return to campus without wearing an
25 approved mask and then weaponized truancy laws against Aidan and his family despite Aidan wanting
26 to attend school, Aidan was finally coerced into enrolling in an independent study program so that he
27 could complete his junior year and not fall further behind.

28 336. Second, Defendants did not offer or conduct a “pupil-parent-educator conference” with

1 Plaintiff Chris Palicke or his wife Shari to determine whether enrollment in independent study was in
2 the best interest of Aidan.

3 337. Third, Defendants did not provide Aidan with any access to all existing services and
4 resources in the school in which the pupil is enrolled ... as is available to all other pupils in the school.”
5 (Ed. Code, § 51746). Rather, Defendants made it quite clear that Aidan was not allowed to return to
6 campus or access in-person services.

7 338. Finally, Defendants have not offered to transition Aidan back to in-person services at
8 YLHS despite the temporary cessation of their current Mask Policy, nor made any assurances to Aidan
9 that they would not involuntarily remove him again should Defendants opt to reinstitute their Mask
10 Policy.

11 339. Under the California Tort Claim Act (“CTCA”), public entities and their employees
12 may be sued for damages and held liable for injuries. See Cal. Gov’t Code § 945 (“A public entity
13 may sue and be sued.”); Cal. Gov’t Code § 820(a) (“a public employee is liable for injury caused by
14 his act or omission to the same extent as a private person.”).

15 340. In this action, none of the available exemptions under the CTCA are applicable to shield
16 defendants from liability for damages. See e.g., Gov’t Code 818.2 (“A public entity is not liable for
17 an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law”) is
18 inapplicable because (1) the CDPH masking recommendations are not laws and were never lawful
19 enactments of any kind, (2) the PYLUSD Mask Policy and RTS Plan along with their selective and
20 targeted enforcement was unlawful and exceeded their authority, and (3) forcing non-sick children
21 into independent study is a direct violation of California law; Cal. Gov’t Code § 820.2 (“a public
22 employee is not liable for an injury resulting from his act or omission where the act or omission was
23 the result of the exercise of the discretion vested in him, whether or not such discretion be abused”) is
24 inapplicable because nothing in the CDPH guidelines or in any CA statute confers discretion to school
25 districts and their employees to force non-sick students into independent study for refusing to mask
26 all day; Cal. Gov’t Code § 820.4 (“A public employee is not liable for his act or omission, exercising
27 due care, in the execution or enforcement of any law”) is inapplicable because the CDPH masking
28 recommendations are not laws and forcing non-sick children into independent study is a direct

1 violation of California law; Cal. Gov't Code § 815.2(b) ("a public entity is not liable for an injury
2 resulting from an act or omission of an employee of the public entity where the employee is immune
3 from liability") is inapplicable here because, as alleged in this cause of action, PYLUSD employees
4 are not immune from liability for the various wrongful acts committed.

5 341. By violating the express requirements of the Educational Code provisions noted above,
6 Defendants has caused and continue to cause Aidan Palicke actual harm.

7 342. The actions, policies and determinations made by Defendants in unlawfully removing
8 Aidan into an independent study program against his wishes caused Plaintiff Chris Palicke and his son
9 Aidan significant harms, as further described hereinabove.

10 343. Plaintiff Chris Palicke on behalf of himself and his minor son, Aidan, suffered damages
11 in an amount that will be proved at trial and which exceeds \$25,000.

12 344. WHEREFORE, Plaintiffs pray for relief as set forth below.

13 **ELEVENTH CAUSE OF ACTION**

14 **Negligence and Negligent Infliction of Emotional Distress**

15 **(Damages Pursuant to Cal. Gov't Code Sections 945 and 820)**

16 ***(Plaintiff Chris Palicke for himself and as Guardian for Aidan Palicke against All Defendants)***

17 345. Plaintiffs reallege and incorporate by reference their allegations in each of the
18 preceding paragraphs in this Complaint as if fully set forth herein.

19 346. A special relationship exists between the students of PYLUSD and all Defendants,
20 which arises from the mandatory character of school attendance and comprehensive control over
21 students exercised by school personnel.

22 347. A special relationship existed between Aidan Palicke and all Defendants, which arises
23 from the mandatory character of school attendance and comprehensive control over students exercised
24 by school personnel.

25 348. Defendants, and each of them, owed a duty to exercise reasonable care in the
26 supervision of Aidan Palicke, a student within their care and custody.

27 349. Defendants, and each of them also had a legal obligation and duty to properly follow
28 the statutory requirements of Education Code sections 489000, 48900.5, 48910, 48213, 49451, prior

1 to suspending and/or expelling Aidan Palicke and involuntarily placing him into independent study
2 for failing to comply with their Mask Policy.

3 350. Defendants, and each of them, also had a legal obligation and duty to properly follow
4 the statutory requirements of Health & Safety Code sections 24170-24179.5 and provide Aidan the
5 right to refuse experimental mask products.

6 351. The consequential ramifications of forcing students to wear masks for extended periods
7 during a school day have known disproportional risks to support any benefits such as:

- 8 a. Those who have myopia can have difficulty seeing because the mask fogs their glasses.
9 (This has long been a problem for medical students in the operating room.)
- 10 b. Masks can cause severe acne and other skin problems.
- 11 c. The discomfort of a mask distracts some students from learning.
- 12 d. By increasing airway resistance during exhalation, masks can lead to increased levels of
13 carbon dioxide in the blood.
- 14 e. Masks can be vectors for pathogens if they become moist or are used for too long.
- 15 f. Masks may exacerbate anxiety or breathing difficulties for some students.
- 16 g. Some students compensate for such difficulties by breathing through their mouths.
17 Chronic and prolonged mouth breathing can alter facial development. It is well-
18 documented that children who mouth-breathe because adenoids block their nasal
19 airways can develop a mouth deformity and elongated face.
- 20 h. Facial expressions are integral to human connection. Covering a student's face mutes
21 these nonverbal forms of communication and can result in robotic and emotionless
22 interactions, anxiety and depression.

23 352. Defendants deliberately disregarded the harmful effects of their Mask Policy on all
24 students, including Aidan Palicke, and therefore breached their duty of care to all students, including
25 Aidan Palicke, by forcing them to comply with their Mask Policy.

26 353. Defendants also breached their duty of care to Aidan Palicke by failing to properly
27 follow all necessary Education Code provisions and procedures prior to suspending and expelling
28 Aidan Palicke and for involuntarily placing him into independent study for failing to comply with their

1 Mask Policy.

2 354. Defendants also breached their duty of care by fraudulently claiming that Aidan was a
3 “clear and present danger” to others, despite Defendants knowing that Aidan did not have any
4 indication of having an infectious disease, living with anyone with an infectious disease, or presenting
5 a health risk or danger to anyone within PYLUSD at the time he was removed from YLHS for failing
6 to comply with Defendants’ Mask Policy.

7 355. Defendants, and each of them, breached their duty of care to Aidan Palicke by
8 harassing, bullying, discriminating against, destroying his property and otherwise retaliating against
9 Aidan Palicke as further described herein.

10 356. As a direct result and proximate result of Defendants’ acts, as hereinabove alleged,
11 Aidan Palicke has suffered general and special damages.

12 357. The actions, policies and determinations made by Defendants, as more fully described
13 in the paragraphs herein, directly and proximately caused personal injury and/or financial damages to
14 Chris and Aidan Palicke as further described hereinabove.

15 358. Defendants are also liable for Negligent Infliction of Emotional Distress because
16 Defendants owed a duty to act reasonably towards Plaintiff Palicke and his son Aidan with regard to
17 implementing so-called safety measures at PYLUSD.

18 359. Defendants created, implemented, and enforced a Mask Policy without conducting any
19 necessary risk-benefit analysis, including a consideration of whether mandating more restrictive masks
20 required by its new Mask Policy would be detrimental to the health, safety, mental well-being, speech
21 development, associational rights, or basic human dignity rights of the students in their care.

22 360. Defendants enforced this Mask Policy abusively and selectively by discriminating
23 against Aidan Palicke for wearing the same mesh mask as many other students, teachers, and school
24 officials had been wearing and continued to wear even after Defendants announced its updated Mask
25 Policy.

26 361. Defendants harassed and discriminated against Aidan Palicke by pulling him out of his
27 classrooms, sending him to the office multiple times, segregating him from his peers, forcing him to
28 take his finals outside in the cold for hours, and encouraging others to ridicule, mock, and bully Aidan

1 for not complying with Defendants' updated Mask Policy, all in violation of PYLUSD's own anti-
2 discrimination and bullying policies and California state law. (*See e.g.*, Ed. Codes 48213, 49451,
3 48900, 48900.5, 48910, 48903, 48911).

4 362. Further, Defendant Bloom also engaged in extreme and outrageous retaliatory actions
5 against Aidan and Chris Palicke by intentionally "losing" Aidan's physics notebook, which Defendant
6 Bloom insisted Aidan turn in to him to receive his grade in Mr. Bloom's class. Defendant Bloom later
7 claimed he had "lost" Aidan's notebook, which contained all of Aidan's notes for class for the entire
8 year. On information and belief, this outrageous behavior by Mr. Bloom was in retaliation for Aidan
9 and Chris Palicke's filing of a claim against Defendants for their wrongful actions against his son and
10 naming Defendant Bloom as one of the offenders.

11 363. Defendants ultimately removed Aidan from school against his will and banned him
12 from YLHS campus by fraudulently claiming that he was a "clear and present danger" to the health
13 and safety of the YLHS community, despite Defendants knowing that Aidan did not have any
14 infectious disease, showed no symptoms of having an infectious disease, did not live with anyone with
15 an infectious disease, and was not a "clear and present" danger to the PYLUSD or YLHS community
16 at all.

17 364. On information and belief, Defendants engaged in such wrongful actions intentionally
18 and recklessly to punish Plaintiff Palicke and his son Aidan and serve as a precautionary tale to all
19 other students at YLHS who might also not want to comply with the Mask Policy or other coercive
20 "health" measures in Defendants' RTS Plan.

21 365. Defendants' actions in violating various the Education Codes noted herein and their
22 targeting, discriminating against, harassing, mocking, segregating, and encouraging others to bully
23 Aidan Palicke was extreme and outrageous behavior.

24 366. As a result of Defendants' extreme and outrageous behavior, Aidan chose to withdraw
25 from his beloved track team, and has since suffered severe feelings of anxiety, depression, isolation,
26 confusion, and betrayal.

27 367. Defendants knew or should have known that their extreme and unnecessary conduct
28 would cause or be likely to cause severe emotional distress for this young man.

1 368. It shocks the conscience that Defendants would predicate the continued enrollment of
2 a student at YLHS on compliance with a more restrictive Mask Policy using experimental medical
3 products that have not been approved by the FDA and that have been shown to be dangerous to
4 children and damaging to their health and well-being.

5 369. It shocks the conscience that Defendants would deliberately weaponize a “clear and
6 present” danger provision in the Education Code meant to protect against infectious disease by
7 knowingly and fraudulently labeling healthy students like Aidan Palicke as such in order to remove
8 them to independent study for failing to comply with a Mask Policy.

9 370. Under the California Tort Claim Act (“CTCA”), public entities and their employees
10 may be sued for damages and held liable for injuries. See Cal. Gov’t Code § 945 (“A public entity may
11 sue and be sued.”); Cal. Gov’t Code § 820(a) (“a public employee is liable for injury caused by his act
12 or omission to the same extent as a private person.”).

13 371. In this action, none of the available exemptions under the CTCA are applicable to shield
14 defendants from liability for damages. See e.g., Cal. Gov’t Code § 818.2 (“A public entity is not liable
15 for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law”) is
16 inapplicable because (1) the CDPH masking recommendations are not laws and were never lawful
17 enactments of any kind, (2) the PYLUSD Mask Policy and RTS Plan along with their selective and
18 targeted enforcement was unlawful and exceeded their authority, and (3) forcing non-sick children
19 into independent study is a direct violation of California law; Cal. Gov’t Code § 820.2 (“a public
20 employee is not liable for an injury resulting from his act or omission where the act or omission was
21 the result of the exercise of the discretion vested in him, whether or not such discretion be abused”) is
22 inapplicable because nothing in the CDPH guidelines or in any CA statute confers discretion to school
23 districts and their employees to force non-sick students into independent study for refusing to mask
24 all day; Cal. Gov’t Code § 820.4 (“A public employee is not liable for his act or omission, exercising
25 due care, in the execution or enforcement of any law”) is inapplicable because the CDPH masking
26 recommendations are not laws and forcing non-sick children into independent study is a direct
27 violation of California law; Cal. Gov’t Code § 815.2(b) (“a public entity is not liable for an injury
28 resulting from an act or omission of an employee of the public entity where the employee is immune

1 from liability”) is inapplicable here because, as alleged in this cause of action, PYLUSD employees
2 are not immune from liability for the various wrongful acts committed.

3 372. Plaintiff Chris Palicke, on behalf of himself and his son Aidan, has been damaged in
4 an amount to be proved at trial, but which exceeds \$25,000.

5 373. Plaintiff Chris Palicke, on behalf of himself and his son Aidan, is further entitled to
6 damages for Infliction of Emotional Distress due to the conduct of Defendants as described herein.

7 374. Wherefore, Plaintiffs pray for relief as set forth below.

8 **TWELVTH CAUSE OF ACTION**

9 **Intentional Infliction of Emotional Distress**

10 **(Damages Pursuant to Cal. Gov’t Code Sections 945 and 820)**

11 ***(Plaintiff Chris Palicke for himself and as Guardian for Aidan Palicke against All Defendants)***

12 375. Plaintiffs reallege and incorporate by reference their allegations in each of the
13 preceding paragraphs in this Complaint as if fully set forth herein.

14 376. Defendants owed a duty to act reasonably towards Plaintiff Chris Palicke and his son
15 Aidan with regard to implementing so-called safety measures at PYLUSD.

16 377. Defendants created, implemented, and enforced a Mask Policy without conducting any
17 necessary risk-benefit analysis, including a consideration of whether mandating more restrictive masks
18 required by its new Mask Policy would be detrimental to the health, safety, mental well-being, speech
19 development, associational rights, or basic human dignity rights of the students in their care.

20 378. Defendants enforced this Mask Policy abusively and selectively by discriminating
21 against Aidan Palicke for wearing the same mesh mask as many other students, teachers, and school
22 officials had been wearing and continued to wear even after Defendants announced its updated Mask
23 Policy.

24 379. Defendants harassed and discriminated against Aidan Palicke by pulling him out of his
25 classrooms, sending him to the office multiple times, segregating him from his peers, forcing him to
26 take his finals outside in the cold for hours, and encouraging others to ridicule, mock, and bully Aidan
27 for not complying with Defendants’ updated Mask Policy, all in violation of PYLUSD’s own anti-
28 discrimination and bullying policies and California state law. (*See e.g.*, Ed. Codes 48213, 49451,

1 48900, 48900.5, 48910, 48903, 48911).

2 380. Further, Defendant Bloom also engaged in extreme and outrageous retaliatory actions
3 against Aidan and Chris Palicke by intentionally “losing” Aidan’s physics notebook, which Defendant
4 Bloom insisted Aidan turn in to him in order to receive his grade in Mr. Bloom’s class. Defendant
5 Bloom later claimed he had “lost” Aidan’s notebook, which contained all of Aidan’s notes for class
6 for the entire year. On information and belief, this outrageous behavior by Mr. Bloom was in
7 retaliation for Aidan and Chris Palicke’s filing of a claim against Defendants for their wrongful actions
8 against his son and naming Defendant Bloom as one of the offenders.

9 381. Defendants ultimately removed Aidan from school against his will and banned him
10 from YLHS campus by fraudulently claiming that he was a “clear and present danger” to the health
11 and safety of the YLHS community, despite Defendants knowing that Aidan did not have any
12 infectious disease, showed no symptoms of having an infectious disease, did not live with anyone with
13 an infectious disease, and was not a “clear and present” danger to the PYLUSD or YLHS community
14 at all.

15 382. On information and belief, Defendants engaged in such wrongful actions intentionally
16 and recklessly in order to punish Plaintiff Chris Palicke and his son Aidan and serve as a precautionary
17 tale to all other students at YLHS who might also not want to comply with the Mask Policy or other
18 coercive “health” measures in Defendants’ RTS Plan.

19 383. Defendants’ actions in violating various provisions of the Education Codes noted
20 herein and their targeting, discriminating against, harassing, mocking, segregating and encouraging
21 others to bully Aidan Palicke was extreme and outrageous behavior.

22 384. As a result of Defendants’ extreme and outrageous behavior, Aidan chose to withdraw
23 from his beloved track team, and has since suffered severe feelings of anxiety, depression, isolation,
24 confusion, and betrayal.

25 385. Defendants knew or should have known that their extreme and unnecessary conduct
26 would cause or be likely to cause severe emotional distress for this young man.

27 386. It shocks the conscience that Defendants would predicate the continued enrollment of
28 a student at YLHS on compliance with a more restrictive Mask Policy using experimental medical

1 products that have not been approved by the FDA and that have been shown to be dangerous to
2 children and damaging to their health and well-being.

3 387. It shocks the conscience that Defendants would deliberately weaponize a “clear and
4 present” danger provision in the Education Code meant to protect against infectious disease by
5 knowingly and fraudulently labeling healthy students like Aidan Palicke as such in order to remove
6 them to independent study for failing to comply with a Mask Policy.

7 388. As alleged herein, Defendants’ conduct did not involve trivial insults or oppressions,
8 but rather went beyond all possible bonds of decency.

9 389. Under the California Tort Claim Act (“CTCA”), public entities and their employees
10 may be sued for damages and held liable for injuries. See Cal. Gov’t Code § 945 (“A public entity may
11 sue and be sued.”); Cal. Gov’t Code § 820(a) (“a public employee is liable for injury caused by his act
12 or omission to the same extent as a private person.”).

13 390. In this action, none of the available exemptions under the CTCA are applicable to shield
14 defendants from liability for damages. See e.g., Cal. Gov’t Code § 818.2 (“A public entity is not liable
15 for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law”) is
16 inapplicable because (1) the CDPH masking recommendations are not laws and were never lawful
17 enactments of any kind, (2) the PYLUSD Mask Policy and RTS Plan along with their selective and
18 targeted enforcement was unlawful and exceeded their authority, and (3) forcing non-sick children
19 into independent study is a direct violation of California law; Cal. Gov’t Code § 820.2 (“a public
20 employee is not liable for an injury resulting from his act or omission where the act or omission was
21 the result of the exercise of the discretion vested in him, whether or not such discretion be abused”) is
22 inapplicable because nothing in the CDPH guidelines or in any CA statute confers discretion to school
23 districts and their employees to force non-sick students into independent study for refusing to mask
24 all day; Cal. Gov’t Code § 820.4 (“A public employee is not liable for his act or omission, exercising
25 due care, in the execution or enforcement of any law”) is inapplicable because the CDPH masking
26 recommendations are not laws and forcing non-sick children into independent study is a direct
27 violation of California law; Cal. Gov’t Code § 815.2(b) (“a public entity is not liable for an injury
28 resulting from an act or omission of an employee of the public entity where the employee is immune

1 from liability”) is inapplicable here because, as alleged in this cause of action, PYLUSD employees
2 are not immune from liability for the various wrongful acts committed.

3 391. Plaintiffs Chris Palicke, on behalf of himself and his son Aidan, has been damaged in
4 an amount to be proved at trial, but which exceeds \$25,000.

5 392. Plaintiffs Chris Palicke, on behalf of himself and his son Aidan, is further entitled to
6 exemplary damages due to the conduct of Defendants as described herein.

7 393. WHEREFORE, Plaintiffs pray for relief as set forth below.

8 **THIRTEENTH CAUSE OF ACTION**

9 **Violation of the Bane Act**

10 **Cal. Civil Code Section 52.1**

11 **(Damages)**

12 ***(Plaintiff Chris Palicke for himself and as Guardian for Aidan Palicke against All Defendants)***

13 394. Plaintiffs reallege and incorporate by reference their allegations in each of the
14 preceding paragraphs in this Complaint as if fully set forth herein.

15 395. The conduct of Defendants in coercing Aidan Palicke into independent study for not
16 complying with Defendants’ Mask Policy also violates California Civil Code Section 51.2, known as
17 the Bane Act.

18 396. Under the Bane Act, if a person or person, whether or not acting under color of law,
19 interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation or
20 coercion with the exercise or enjoyment by any individual or individuals of rights secured by the
21 Constitution or laws of the United States, or rights secured by the Constitution or laws of California,
22 the individual whose rights have been interfered with, or attempted to be interfered with, may institute
23 and prosecute in their own name and on their own behalf a civil action for damages, injunctive relief,
24 and other appropriate equitable relief to protect the peaceful enjoyment of the right or rights secured.
25 (Cal. Civ. Code 52.1(b)-(c)).

26 397. Defendants’ have violated Plaintiff Chris Palicke’s various constitutional and legal
27 rights as a parent, as well as his son Aidan’s rights as an individual citizen of the state of California
28 by, *inter alia*, coercing Aidan Palicke into independent study against his and his parents’ wishes and

1 denying Aidan his rights to an in-person education under the California Constitution, as well as his
2 rights to privacy, due process, equal protection and the right to refuse unwanted and experimental
3 medical treatments under state law and the California Constitution.

4 398. Defendants' violated Plaintiff Chris Palicke's various constitutional and legal rights as
5 a parent, as well as his son Aidan's rights, through targeted harassment and abuse, by removing Aidan
6 from the classroom, having Aidan followed and monitored at school, expelling him from school
7 despite the fact that he presented no health threat to anyone, refusing to allow Aidan to take his exams
8 with his peers, forcing Aidan to drag his desk to take exams outdoors in the cold, encouraging Aidan's
9 peers to mock him and laugh at him, and intentionally destroying Aidan's personal property and school
10 work.

11 399. As a direct and proximate result of Defendants' actions and the aforementioned
12 violations of Plaintiff Chris Palicke's and his son Aidan's rights under the California Constitution and
13 other state laws, Plaintiff Chris Palicke, on behalf of himself and his son Aidan, have suffered damages
14 to be determined at trial but which exceeds \$25,000.

15 400. WHEREFORE, Plaintiffs pray for relief as set forth below.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for relief as follows:

18 1. As to the First Cause of Action, that the Court: (a) declare that Defendants' suspending
19 and/or expelling students from in-person schooling for failure to comply with Defendants' Mask
20 Policy is unlawful and in violation of the specific terms for suspension and/or expulsion under
21 Education Code sections 48900 and 48910, and (b) issue a Temporary Restraining Order, Preliminary
22 Injunction, and a Permanent Injunction enjoining Defendants from unlawfully suspending and/or
23 expelling students from in-person schooling for failing to comply with Defendants' Mask Policy.

24 2. As to the Second Cause of Action, that the Court: (a) declare that Defendants'
25 suspending, expelling, or otherwise removing a healthy student from in-person schooling using the
26 pretense that the student is a health risk and/or a "clear and present danger" under Education Codes
27 sections 48213 and 49451 is unlawful; and (b) issue a Temporary Restraining Order, Preliminary
28 Injunction, and a Permanent Injunction enjoining Defendants from unlawfully and fraudulently

1 suspending, expelling, or otherwise removing healthy students from in-person schooling on the
2 pretense that such students pose a health and safety risk and/or are a “clear and present danger” under
3 these Education Code provisions, including, but not limited to, the pretense that the student poses a
4 health risk and/or is a “clear and present danger” due to the student’s failure to comply with
5 Defendants’ Mask Policy.

6 3. As to the Third Cause of Action, that the Court: (a) declare that Defendants’
7 suspending, expelling, or otherwise removing healthy students from in-person schooling and coercing
8 them into independent study programs, including but not limited to coercing them into independent
9 study programs due to a student’s failure to comply with Defendants’ Mask Policy, is unlawful and in
10 violation of Education Code sections 51749.5, 51749.6, 51746 and 51747; and (b) issue a Temporary
11 Restraining Order, Preliminary Injunction, and a Permanent Injunction enjoining Defendants from
12 unlawfully suspending, expelling, or otherwise removing healthy students from in-person schooling
13 and coercing them into independent study programs, including but not limited to, coercing healthy
14 students into independent study programs for the student’s failure to comply with Defendants’ Mask
15 Policy.

16 4. As to the Fourth Cause of Action, that the Court: (a) declare that Defendants’ Mask
17 Policy is unlawful and violates a student’s guaranteed right to refuse an experimental device; and (b)
18 issue a Temporary Restraining Order, Preliminary Injunction, and a Permanent Injunction enjoining
19 Defendants from further enforcing its Mask Policy, now or in the future.

20 5. As to the Fifth Cause of Action, that the Court: (a) declare that Defendants’ Mask
21 Policy is unlawful and violates a student’s free speech rights; and (b) issue a Temporary Restraining
22 Order, Preliminary Injunction, and a Permanent Injunction enjoining Defendants from further
23 enforcing its Mask Policy, now or in the future.

24 6. As to the Sixth Cause of Action, that the Court: (a) declare that Defendants’ Mask
25 Policy is unlawful and violates a student’s due process rights; and (b) issue a Temporary Restraining
26 Order, Preliminary Injunction, and a Permanent Injunction enjoining Defendants from further
27 enforcing its Mask Policy, now or in the future.

28 7. As to the Seventh Cause of Action, that the Court: (a) declare that Defendants’ Mask

1 Policy is unlawful and violates a student’s right to free public education; and (b) issue a Temporary
2 Restraining Order, Preliminary Injunction, and a Permanent Injunction enjoining Defendants from
3 further enforcing its Mask Policy, now or in the future.

4 8. As to the Eighth Cause of Action, that the Court: (a) declare that Defendants’ Mask
5 Policy is unlawful and violates a student’s right to equal protection; and (b) issue a Temporary
6 Restraining Order, Preliminary Injunction, and a Permanent Injunction enjoining Defendants from
7 further enforcing its Mask Policy, now or in the future.

8 9. As to the Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Causes of Action, that
9 Plaintiff Chris Palicke, on behalf of himself and his minor son Aidan, be awarded monetary damages
10 for violations of his right to privacy, for unlawfully forcing Aidan into independent study, for
11 negligence, negligence infliction of emotional distress, intentional infliction of emotional distress, and
12 the violation of the state Constitutional provisions stated hereinabove in an amount to be proven at
13 trial.

14 10. As to all causes of action, as applicable, for a declaration of this Court of the respective
15 rights and responsibilities and liabilities of and amongst the parties and each of them; and

16 11. As to all causes of action, as applicable, for an award of punitive damages to Plaintiff
17 Chris Palicke, on behalf of himself and his minor son Aidan, to deter future reckless and outrageous
18 conduct by these Defendants; and

19 12. That this Court declare Plaintiffs are a prevailing party and award Plaintiffs the
20 reasonable costs and expenses of this action, including reasonable attorneys’ fees as allowed by law
21 and/or contract; and

22 13. That the Court find that this action is seeking to enforce an important right affecting
23 the public interest and that Plaintiffs should recover their costs and legal fees under section 1021.5 of
24 the Code of Civil Procedure; and

25 14. That this Court grant such other and further relief as this Court deems equitable and
26 just under the circumstances.

27 ///

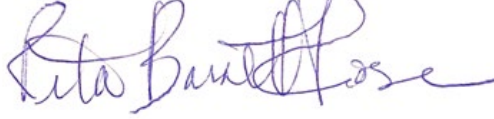
28 ///

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs request a jury trial on matters that may be so tried.

3
4 Respectfully submitted,

5 LAW OFFICE OF NICOLE C. PEARSON

6 

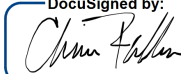
7 Dated: June 20, 2022

8 Rita Barnett-Rose
9 Jessica R. Barsotti
10 Nicole C. Pearson
11 Nicole Krasny Asch
12 Attorneys for Plaintiffs

VERIFICATION

I, Chris Palicke, am the Guardian ad Litem for Aidan Palicke, a Plaintiff in this case and I am a resident of the County of Orange, State of California. I have read the foregoing First Amended Verified Complaint for 1) Violation of Ed. Code sections 48900 and 48910 (unlawful suspension/expulsion); 2) Violations of Ed. Code sections 48213 and 49451 (fraudulent expulsion); 3) Violations of Ed. Code sections 51749.5, 51749.6, 51746 and 51747 (coercion into independent study); 4) Violation of H&S Code sections 24170-24179.5 (unlawful human experimentation); 5) Violation of Free Speech of Article I of California Constitution; 6) Violation of Due Process Under Article I, Sections 1 and 7 of California Constitution; 7) Violation of Right to Education Under Art IX of California Constitution; 8) Violation of Equal Protection Under Article I, Section 7 of California Constitution; 9) Violation of California Constitution - Right to Privacy; 10) Violation of Ed. Code sections 51749.5, 51749.6, 51746 and 51747 (Damages); 11) Negligence and Negligent Infliction of Emotional Distress; 12) Intentional Infliction of Emotional Distress; and 13) Violation of Cal. Civ. Code 52.1 (Bane Act) against all Defendants. I have personal knowledge of the facts alleged herein, and belief of such facts alleged to be believed as true, and I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 20 day of June 2022, in Yorba Linda, California.

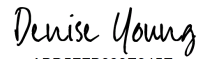
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36D9353067A846D...

Chris Palicke, for Aidan Palicke, Plaintiff

VERIFICATION

1
2 I, Denise Young, am the Executive Director of Plaintiff Children’s Health Defense,
3 California Chapter (“CHD-CA”) and I am a resident of the County of Los Angeles, State of
4 California. I have read the foregoing First Amended Verified Complaint for 1) Violation of Ed. Code
5 sections 48900 and 48910 (unlawful suspension/expulsion); 2) Violations of Ed. Code sections
6 48213 and 49451 (fraudulent expulsion); 3) Violations of Ed. Code sections 51749.5, 51749.6,
7 51746 and 51747 (coercion into independent study); 4) Violation of H&S Code sections 24170-
8 24179.5 (unlawful human experimentation); 5) Violation of Free Speech of Article I of California
9 Constitution; 6) Violation of Due Process Under Article I, Sections 1 and 7 of California
10 Constitution; 7) Violation of Right to Education Under Art IX of California Constitution; 8)
11 Violation of Equal Protection Under Article I, Section 7 of California Constitution; 9) Violation of
12 California Constitution - Right to Privacy; 10) Violation of Ed. Code sections 51749.5, 51749.6,
13 51747 and 51747 (Damages); 11) Negligence and Negligent Infliction of Emotional Distress; 12)
14 Intentional Infliction of Emotional Distress; and 13) Violation of Cal. Civ. Code 52.1 (Bane Act)
15 against all Defendants. I have personal knowledge of the facts alleged herein, and belief of those
16 facts alleged to be believed as true, and I declare under the penalty of perjury under the laws of the
17 State of California that the foregoing is true and correct.

18 Executed this 20 day of June 2022, in Pacific Palisades, California.

19
20 DocuSigned by:

ABD5FFB839E345E...

21 Denise Young for CHD-CA, Plaintiff

1 PROOF OF SERVICE

2 I am over the age of 18 and not a party to the within action. My business address is 3421 Via
3 Oporto, Suite 201, Newport Beach, Calif. 92263. On Tuesday, November 22, 2022, I served the
4 following document(s) on the interested parties in the following manner(s) as follows:

5 **FIRST AMENDED VERIFIED COMPLAINT**

6 / X / (VIA ELECTRONIC SERVICE) [Code Civ. Proc. Sec. 1010.6; CRC 2.251] by
7 electronic mailing a true and correct copy through Law Offices of Nicole C.
8 Pearson/Facts Law Truth Justice’s electronic mail system from
9 Michelle@FLTJLLP.com to the email address(es) set forth below, or as stated on the
10 attached service list per agreement in accordance with *Code of Civil Procedure* section
11 1010.6 and CRC Rule 2.251. The transmission was reported as complete and without
12 error.

13 Pancy Lin
14 Ladan Shelechi, Esq.
15 Tamara Heathcote, Esq.
16 Holly C.F. Soliman, Esq.
17 Lynberg & Watkins
18 1100 W. Town & Country Rd., Suite 1450
19 Orange, California 92868
20 Off: 714-937-1010
21 Fax: 714-937-1003
22 Dir: 714-352-3518

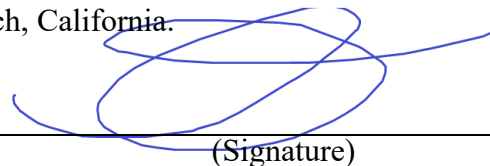
23 chylton@hyltonapc.com;
24 plin@hyltonapc.com;
25 christy@hyltonapc.com

26 Attorney for Respondents

27 / X / **State.** I declare under penalty of perjury under the laws of the State of California that the
28 above is true and correct.

Executed on November 22, 2022 Newport Beach, California.

Michelle Cusumano



(Signature)