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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SHASTA**

13 **GINA LOONEY**, on behalf Myles Smith;  
14 **CHRISTIE STRUBLE**, on behalf of Jennifer and  
15 Leala Struble; **BETH WATT**, on behalf of  
16 Abigail, Meredith, and John Watt; and  
17 **KIMBERLY HILL**, on behalf of Matthew and  
18 Vincent Hill;

19 Plaintiff,

20 v.

21 **GAVIN NEWSON**, in his official capacity as  
22 Governor of California; **XAVIER BECERRA**, in  
23 his capacity as Attorney General of the State of  
24 California; **SANDRA SHEWRY**, in her official  
25 capacity as the State Public Health Officer and  
26 Department of Public Health Director; **TONY**  
27 **THURMOND**, in his official capacity as State  
28 Superintendent of Public Instruction and Director  
of Education; **JIM CLONEY**, in his official  
capacity as Superintendent of the Shasta Union  
High School District; **MINDY DESANTIS**, in her  
official capacity as Superintendent of Millville  
Elementary School District; and **BRIAN**  
**WINSTEAD**, in his official capacity as  
Superintendent of Enterprise Elementary School  
District;

Defendants.

Case No.

**COMPLAINT FOR DAMAGES,  
DECLARATORY JUDGMENT AND  
INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

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## INTRODUCTION

1. The State of California’s response to COVID-19 prevents students, especially the disadvantaged, from accessing a quality education. Governor Gavin Newsom issued Executive Order N-60-20 (“State Order”) on May 4, 2020, requiring Californians to obey all state and local public health directives and orders, including the California Department of Public Health’s (CDPH) guidance for schools. (collectively, “Orders”). These Orders and the school policies that have followed unjustifiably prevent schools in Shasta County from fully reopening. Students require services and resources that cannot be delivered remotely. The citizens of California recognize the importance of a quality education cannot be overstated and have enshrined it as a right guaranteed by the California Constitution. The Orders and accompanying school policies not only violate this constitutional right but impair students’ ability to acquire the knowledge and skills necessary for success in our competitive economy, and to be informed citizens and productive members of society. Plaintiffs ask this Court to declare the Orders unconstitutional and order the State of California to implement school policies that delivers on the California students’ educational rights.

## JURISDICTION AND VENUE

16 2. This action arises under the California Constitution. This Court has jurisdiction  
17 over this matter pursuant to section 1060 of the Code of Civil Procedure, which authorizes  
18 declaratory relief, and sections 525, 526, and 526a, which authorize injunctive relief.

19 3. Venue is proper in this Court under sections 393(b), 394(a), and 401(1) of the Code  
20 of Civil Procedure.

## PARTIES

21 4. Plaintiff Gina Looney is a resident of Shasta County, California. She has one child,  
22 Myles Smith, who entered his freshman year at Enterprise High School. Myles has fetal alcohol  
23 spectrum disorder, attention learning hyperactivity disorder (ADHD), an auditory processing  
24 disorder and is deficient in proprioception and vestibular systems. He needs daily in-person  
25 instruction from a teacher who will hold him accountable, provide guidance and direction, answer  
26 his questions, and ensure he understands the assignments. Under normal circumstances, he has  
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1 an entire team of staff working with him pursuant to his Individual Education Program (“IEP”).  
2 Currently, he can only attend school on Tuesday and Friday and is supposed to study remotely on  
3 Monday and Thursday at his aunt and uncle’s house while his parents are at work. His aunt and  
4 uncle cannot provide him with the special services and attention he needs. Consequently, his  
5 educational development has been significantly impaired.

6 5. Plaintiff Beth Watt is a resident of Shasta County, California. Her daughter, Abigail  
7 Watt, is in ninth grade attending Foothill High School. Abigail is a straight A student and has also  
8 competed in various sports including volleyball, softball and soccer. Since the COVID-19  
9 restrictions, she is no longer able to compete in sports or physical education (PE) and only attends  
10 limited in-person instruction on Tuesday and Friday and is forced to attempt to study remotely on  
11 Monday, Wednesday, and Thursday. Her school’s current curriculum does not challenge her  
12 academically and deprives her of much needed physical activity and social interaction. Plaintiff  
13 Beth Watt also has two children attending Millville Elementary School. Meredith Watt is in  
14 seventh grade and John Watt is in fifth grade. Both children attend in-person instruction only on  
15 Tuesday and Friday. The teachers post assignments online on Monday and Thursday. Meredith  
16 is a straight A student-athlete and does not find her school’s online curriculum challenging  
17 academically. Like her sister Abigail, she has lost motivation to excel in school. She has been  
18 deprived of sports and PE, which has impacted her mood and emotional state. John Watt is in  
19 fifth grade and struggles significantly under part-time instruction. John thrives in a school  
20 environment where he can interact with other children daily and play during recess and PE. The  
21 forced remote setting impairs his educational development and has also led to anxiety, which has  
22 in turn, contributed to stomach issues.

23 6. Plaintiff Christie Struble is a resident of Shasta County, California. She has two  
24 children who attend Millville Elementary School. Jennifer Struble in fifth grade and Leala Struble  
25 in second grade. They attend school in-person on Monday and Thursday, and their teachers post  
26 assignments online on Tuesday and Friday. Wednesday is considered a check-up day, and the  
27 children do not attend any instruction. Jennifer needs social interaction and physical activity,  
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1 something she cannot get at home. She has witnessed a decline in schoolwork under the hybrid  
2 model which has caused apathy. Leala Struble has not adjusted well to her school’s part-time  
3 instruction. She is a kinesthetic learner and extroverted, and the remote setting does not meet her  
4 learning or social needs. Consequently, she has seen a decline in school performance.

5 7. Plaintiff Kimberly Hill is a resident of Shasta County, California. She has two  
6 children, Matthew and Vincent. Her children previously attended Boulder Creek Elementary, but  
7 because the school’s part-time instruction was not challenging academically, she started  
8 homeschooling her children this semester. Both children are frustrated by the forced isolation  
9 from their academic community and peers and have not been able to achieve their normal levels  
10 of academic success.

11 8. Defendant Gavin Newsom is sued in his official capacity as Governor of California.  
12 The California Constitution vests the “supreme executive power of the State” in the governor,  
13 who “shall see that the law is faithfully executed.” Cal. Const. Art. V, § 1. Governor Newsom  
14 signed the State Order on May 4, 2020.

15 9. Defendant Xavier Becerra is sued in his official capacity as the Attorney General  
16 of California. Under California law, Becerra is the chief law enforcement officer in the State. Cal.  
17 Const. Art. V. § 13.

18 10. Defendant Sandra Shewry is sued in her official capacity as the Director and State  
19 Public Health Officer to the extent that she is responsible for providing official government  
20 requirements to the various industries that are allowed to operate, including schools.

21 11. Defendant Tony Thurmond is sued in his official capacity as the State  
22 Superintendent of Public Instruction and Director of Education. Thurmond is responsible for  
23 enforcing education law and regulations in California.

24 12. Defendant Jim Cloney is sued in his official capacity as the superintendent of Shasta  
25 Union High School District, which serves all high schools in Redding and its surrounding areas,  
26 including Enterprise High School.

27 13. Defendant Mindy DeSantis is sued in her official capacity as superintendent of  
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1 Millville Elementary School District.

2 14. Defendant Brian Winstead is sued in his official capacity as superintendent of  
3 Enterprise Elementary School District, which serves schools in Redding, including Boulder Creek  
4 Elementary.

5 15. Defendants Tony Thurmond, Jim Cloney, Clay Ross, Mindy DeSantis, and Brian  
6 Winstead (collectively, “Superintendents”) are responsible for implementing policies that  
7 impermissibly infringe the educational rights of California schoolchildren.

## 8 STATEMENT OF FACTS

### 9 California Schoolchildren Have a Fundamental Right to a Quality Education

10 16. The California Constitution guarantees its citizens certain “rights and liberties,”  
11 including “pursuing and obtaining safety, happiness, and privacy,” “acquiring, possessing, and  
12 protecting property,” the right to “freely speak, write, and publish his or her sentiments on all  
13 subjects, “ the right to “instruct their representatives, petition government for redress of grievances,  
14 and assemble freely to consult for the common good,” the right to vote, and the right to a jury  
15 trial.” Cal. Const. art. 1.

16 17. The State of California recognizes that education is instrumental and necessary to  
17 provide citizens with these rights and liberties:

18 A general diffusion of knowledge and intelligence being essential to the  
19 preservation of the rights and liberties of the people, the Legislature shall encourage  
20 by all suitable means the promotion of intellectual, scientific, moral and agricultural  
21 improvement. Cal. Const. art. IX, § 1.

22 18. Education is a fundamental right of each child in California. *Serrano v. Priest*, 5  
23 Cal. 3d 584 (1971). Because public education is “uniquely fundamental concern of the State,” the  
24 State must ensure that all students have equal access to the State’s education program and cannot  
25 delegate that responsibility. *Butt v. State of California*, 4 Cal. 4th 668, 681 (1992). This education  
26 program must be provided on an equal basis to all students, permitting all students the opportunity  
27 to develop the skills and capacities necessary to achieve economic and social success in our  
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1 competitive society, participate meaningfully in political and community life, and to become  
2 informed citizens and productive members of society. *Serrano*, 5 Cal. 3d at 608-09.

3 19. Implicit in Article IX is a requirement that the diffusion of knowledge and  
4 intelligence be of *sufficient quality* to preserve the rights and liberties of the people, which are  
5 specified in detail in the Constitution. *See Serrano I*, 5 Cal. 3d at 607-10; *Cal. Statewide Cmty.*  
6 *Dev. Auth..v. All Persons Interested in the Matter of the Validity of a Purchase Agreement*, 40  
7 Cal. 4th 788, 792 (2007).

8 20. In order to ensure that all students are afforded their right to an education, the  
9 Constitution requires that “[t]he Legislature shall provide for a system of common schools by  
10 which a free school shall be kept up and supported in each district at least six months in every  
11 year....” Cal. Const. art. IX, §§ 5, 6. As part of this system, the Constitution requires the  
12 establishment of a “State School Fund” to be maintained by the Legislature to provide for the  
13 public schools. Cal. Const. art. IX, § 6.

#### 14 **Governor Newsom’s State Order**

15 21. On or about March 4, 2020, Governor Newsom proclaimed a State of Emergency  
16 as a result of the threat of Covid-19.<sup>1</sup> This uniliteral declaration granted Newsom complete  
17 authority over all agencies, all police power, and the right to suspend,<sup>2</sup> amend, rescind,<sup>3</sup> create and  
18 enforce law.<sup>4</sup> The Emergency Services Act provides no termination date.

19 22. On or about March 19, 2020, Newsom issued Executive Order N-33-20 in which  
20 he ordered all residents immediately to comply with the current State public health directives and  
21 guidance.<sup>5</sup> As such, public health directives and guidance documents take on the full force of law.

22 23. On or about May 4, 2020, Newsom issued the State Order in which he ordered “All  
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24 <sup>1</sup> Available as of the date of filing: [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-  
25 Coronavirus-SOE-Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)

26 <sup>2</sup> Cal. Gov. Code 8571

27 <sup>3</sup> Cal. Gov. Code 8567(a)

28 <sup>4</sup> Cal. Gov. Code. 8627

<sup>5</sup> Available as of the date of filing: [https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-  
33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf)

1 residents are directed to continue to obey State public health directives...”<sup>6</sup>

2 24. Government Code section 8665 provides that any person who violates or willfully  
3 neglects to obey an Executive Order shall be guilty of a misdemeanor and on conviction shall be  
4 punishable by a fine.

5 25. Because COVID-19 is a disease, liability insurance will not cover lawsuits brought  
6 against school districts.

7 26. On August 3, 2020, the California Department of Public Health (“CDPH”) issued  
8 guidance regarding schools, which provides, in part, that “students must remain in the same space  
9 and in cohorts as small and consistent as practicable.”<sup>7</sup>

10 27. CDPH guidelines apply to all public and private schools operating in California.

11 28. Even though Shasta County is not on the watchlist, the Superintendents have  
12 implemented a blended model, in which students only attend classes two days a week while the  
13 other students attempt to participate in distance learning, and vice-versa.

14 29. On information and belief, the students are assigned work that is required to be  
15 completed on their home days. Home days are still counted as a school day, and completing an  
16 assignment qualifies as school attendance.

17 30. Pursuant to California’s truancy laws, Education Code Section 48260(a), a pupil is  
18 truant if a pupil subject to compulsory full-time education or to compulsory continuation education  
19 is absent from school without a valid excuse three full days in one school year or tardy or absent  
20 for more than a 30-minute period during the school day without a valid excuse on three occasions  
21 in one school year, or any combination thereof.

22 31. Further, Education Code Section 48263.6 defines chronic truant as any pupil  
23 subject to compulsory full-time education or to compulsory continuation education who is absent  
24 from school without a valid excuse for ten percent or more of the school days in one school year,  
25 from the date of enrollment to the current date.

26 <sup>6</sup> Available as of the date of filing: <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.4.20-EO-N-60-20.pdf>

27 <sup>7</sup> Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-schools.pdf>

1 32. Violations of truancy laws can subject pupil’s parents to civil and criminal  
2 penalties. See, e.g., Education Code Section 48291.

3 33. According to the Attorney General of California, truancy “interfere[s] with  
4 students’ right to an education under California Constitution.” Further, truancy “drive[s] crime and  
5 incarceration, and hurt[s] our economy. And most importantly – [truancy] put[s] California’s most  
6 vulnerable students at a lifelong learning disadvantage.”<sup>8</sup>

7 34. No one ensures that Plaintiffs’ children are not truant from schools on their home  
8 days.

9 35. On information and belief, the Superintendents claim they cannot open full-time  
10 and still comply with the CDPH guidelines.

11 36. For instance, Mindy DeSantis, Millville Elementary School Superintendent,  
12 recently posted on a school update they are unable to open five days a week because they cannot  
13 maintain the required distance between students in the classroom.<sup>9</sup> Thus, until the CDPH amends  
14 or rescinds their guidelines, students can only attend school part-time.<sup>10</sup>

15 **Studies Show that In-Person Instruction Five Days a Week Present Minimal Risk**

16 37. The Center for Disease Control and Prevention (CDC) reports that children between  
17 the ages of 5-17 are hospitalized for COVID-19 at a rate of 9.2 per 100,000 cared to the nation  
18 average of 161.0.<sup>11</sup>

19 38. The CDC has also reported that COVID-19 poses a low risk to children.<sup>12</sup> When  
20 proper precautions are followed, the rate of infection among young children, and from students to  
21 teachers, has been low. <sup>13</sup>

22  
23 <sup>8</sup> Available as of the date of filing:

24 [https://oag.ca.gov/sites/all/files/agweb/pdfs/tr/truancy\\_2014.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/tr/truancy_2014.pdf)

25 <sup>9</sup> Available as of the date of filing: <https://www.millvilleschool.net/>

26 <sup>10</sup> *Id.*

27 <sup>11</sup> Available as of the date of filing: [https://www.cdc.gov/coronavirus/2019-ncov/covid-  
28 data/covidview/index.html#hospitalizations](https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html#hospitalizations)

<sup>12</sup> Available as of the date of filing: [https://www.cdc.gov/coronavirus/2019-  
ncov/community/schools-childcare/reopening-schools.html](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html)

<sup>13</sup> *Id.*



1 39. On May 18, 2020, during a video conference of ministers of education with the  
2 Council of the European Union, it was reported that since the reopening of schools in 22 member  
3 states, there has been no increase in infections of COVID-19 among students, teachers and  
4 parents.<sup>14</sup>

5 40. On May 28, 2020, a study was released showing that there was no evidence of  
6 secondary transmission of COVID-19 from children attending school in Ireland.<sup>15</sup>

7 41. On June 23, 2020, the Institute Pasteur after studying 1,340 people linked to  
8 primary schools in France released a study in which they found that infected children did not spread  
9 the virus to other children or to teachers or other school staff.<sup>16</sup>

10 42. On July 8, 2020, Prevent Epidemics published a report by the former head of the  
11 CDC titled “Reopening America’s Schools: A Public Health Approach.” The report found that the  
12 evidence “suggests that children may play a smaller role in transmission of COVID-19 than  
13 adults.”<sup>17</sup>

14 43. On July 15, 2020, a study of 2,000 German schoolchildren was released and found  
15 that schools and young people did not play a significant role in the transmission of the  
16 coronavirus.<sup>18</sup>

17 44. In Shasta County, the total COVID-19 cases confirmed on this date are 606 and  
18 total confirmed deaths on this date are 12.<sup>19</sup>

19 **The Defendants Have Prevented Students from Accessing a “Quality” Education**

20 45. The Plaintiffs are failing to receive an education that helps them achieve social and  
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22 <sup>14</sup> Available as of the date of filing: <https://www.washingtonexaminer.com/news/22-eu-member-states-have-not-seen-a-spike-in-coronavirus-cases-in-schools-after-reopening>

23 <sup>15</sup> Available as of the date of filing: [https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.21.2000903#html\\_fulltext](https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.21.2000903#html_fulltext).

24 <sup>16</sup> Available as of the date of filing: <https://www.pasteur.fr/fr/file/35404/download>

25 <sup>17</sup> Available as of the date of filing: [https://preventepidemics.org/wp-content/uploads/2020/07/Reopening-Americas-Schools\\_07-08-2020-Final.pdf](https://preventepidemics.org/wp-content/uploads/2020/07/Reopening-Americas-Schools_07-08-2020-Final.pdf), p. 6.

26 <sup>18</sup> Available as of the date of filing: <https://www.washingtonexaminer.com/news/german-study-no-evidence-coronavirus-spreads-in-schools>

27 <sup>19</sup> Available as of the date of filing: <https://www.co.shasta.ca.us/covid-19/data>

1 economic success and become informed citizens and productive members of society.

2 46. In-person instruction is critical for students' educational development.<sup>20</sup>

3 47. In-person instruction supports the development of children's social and emotional  
4 skills. Social interaction at school among children in grades PK-12 is particularly important for  
5 the development of language, communication, social, emotional, and interpersonal skills.<sup>21</sup>

6 48. This social-emotional development is largely developed through in-person contact.  
7 Such routine-in-person contact is greatly hindered by distance learning.<sup>22</sup>

8 49. In-person instruction also strengthens a child's mental health and self-esteem  
9 because students feel more connected and have access to vital mental health and social services  
10 like speech therapy and physical or occupational therapy.<sup>23</sup>

11 50. Students with physical or mental disabilities are especially vulnerable to the  
12 deficiencies inherent in distance learning.<sup>24</sup> These students need access to therapy services that are  
13 received through schools, which are difficult, and sometimes impossible, to replicate through  
14 distance learning.

15 51. The American Academy of Pediatrics ("AAP") has strongly recommended that "the  
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19 <sup>20</sup> Available as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>

20 <sup>21</sup> Available as of the date of filing: <https://casel.org/what-is-sel/>

21 <sup>22</sup> *Id.*

22 Available as of the date of filing: <https://doi.org/10.1016/j.childyouth.2017.08.011>

23 Loukas A, Roalson LA, & Herrera DE (2010). School connectedness buffers the effects of  
negative family relations and poor effortful control on early adolescent conduct  
problems. *Journal of Research on Adolescence*, 20(1), 13–22

24 <sup>23</sup> Available as of the date of filing: <https://doi.org/10.1016/j.childyouth.2017.08.011>

25 Available as of the date of filing: <https://www.healthychildren.org/English/health-issues/conditions/COVID-19/Pages/Return-to-School-During-COVID-19.aspx>

26 Available as of the date of filing:

27 <https://www.sciencedirect.com/science/article/pii/S1936657420300674?via%3Dihub>

28 <sup>24</sup> Constantino J, Sahin M, Piven J, Rodgers R, and Tschida J. The Impact of COVID-19 on  
Individuals with Intellectual and Developmental Disabilities: Clinical and Scientific Priorities.  
*Am J Psychiatry*, submitted.

1 coming school year should start with a goal of having students physically present in school.<sup>25</sup>

2 52. The AAP noted the health benefits that would otherwise be lost such as “child  
3 ...development,” “social and emotional skills,” “reliable nutrition,” “physical/speech and mental  
4 health therapy,” and “opportunity for physical activity.”<sup>26</sup>

5 **Part-Time School Models Will Not Advance the Goal of Combating the Spread of COVID-**  
6 **19.**

7 53. Part-time in-person school plans can be the riskiest option, especially if the main  
8 goal is to prevent the virus from getting into schools.

9 54. Indeed, infectious disease experts warn that hybrid schooling could be a public  
10 health disaster.<sup>27</sup>

11 55. Willian Hanage, an associate professor of epidemiology at Harvard T.H. Chan  
12 School recently said in an interview that “Schools opening ought to be a priority, and I think that  
13 when there is a low rate of community transmission, schools can open comparatively safely.”  
14 However, under a hybrid model, parents are likely to seek childcare or help from family members,  
15 and, “All that does is add more contacts, and that means more routes into the schools.”<sup>28</sup>

16 56. The part-time in-person school models also burden teachers because they have to  
17 simultaneously adapt to both in-person and remote instruction.<sup>29</sup>

18 57. Lastly, truancy is the cause of many developmental and criminal problems in  
19 children and causes long-term deficiencies in math and reading skills.<sup>30</sup>

21 <sup>25</sup> Available as of the date of filing: <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>

22 <sup>26</sup> *Id.* at 1st para.

23 <sup>27</sup> Available as of the date of filing: <https://www.bostonglobe.com/2020/08/13/metro/some-mass-schools-are-pursuing-hybrid-schooling-plan-could-be-public-health-disaster/>

24 <sup>28</sup> Available as of the date of filing: <https://www.hsph.harvard.edu/news/hsph-in-the-news/why-hybrid-schooling-could-be-risky/>

25 <sup>29</sup> Available as of the date of filing: <https://www.washingtonpost.com/outlook/2020/08/14/hybrid-learning-coronavirus-risk/>

26 <sup>30</sup> Available as of the date of filing:  
27 [https://oag.ca.gov/sites/all/files/agweb/pdfs/tr/truancy\\_2016\\_en.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/tr/truancy_2016_en.pdf)

1 58. Unlike in a regular in-person school setting, none of the Defendants monitor or  
2 enforce school attendance, further depriving children of a quality education.

3 //

4 **FIRST CAUSE OF ACTION**  
5 **Violation of Article IX of the California Constitution**  
6 **(By Plaintiffs Against Defendants)**

7 ***Defendants violated the Plaintiffs' fundamental right to a quality education.***

8 59. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as  
9 though fully set forth herein.

10 60. By preventing schools from reopening fully, the Defendants have denied the  
11 Plaintiffs their fundamental right to an education that provides a “general diffusion of knowledge  
12 and intelligence essential to the preservation of the rights and liberties of the people,” ensures the  
13 opportunity to become proficient according to the state of California’s standards, and ensures the  
14 opportunity to develop the skills and capacities necessary to achieve economic and social success  
15 in our competitive society, participate meaningfully in political and community life, and to become  
16 informed citizens and productive members of society.

17 61. Further, by failing to monitor attendance, Defendants fail to protect Plaintiffs and  
18 other students from the detrimental effects of truancy.

19 62. No compelling state interest justifies this infringement on California  
20 schoolchildren’s constitutional right to a quality education.

21 63. The Orders and Superintendents’ school policies are significantly broader than  
22 necessary to serve any possible alleged government interest.

23 64. The Orders and Superintendents’ school policies are not carefully or narrowly  
24 tailored to minimize the infringement of California schoolchildren’s educational rights.

25 **SECOND CAUSE OF ACTION**  
26 **Violation of Article IX of the California Constitution**  
27 **(By Plaintiff Gina Looney on behalf of Myles Smith Against All Defendants)**  
28 ***Defendants violated Myles Smith's right to basic educational equality.***

65. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as

1 though fully set forth herein.

2 66. The Defendants fail to account for the needs of disadvantaged students, thereby  
3 depriving them of an equal educational opportunity to become proficient in the State of  
4 California’s academic standards.

5 67. The Defendants conduct led to substantial disparities in the quality and availability  
6 of opportunities for Myles Smith in violation of Article IX of the California Constitution.

7 68. No compelling state interest justifies this infringement on disadvantaged students’  
8 constitutional right to basic educational equality.

9 69. The Orders and Superintendents’ school policies are significantly broader than  
10 necessary to serve any possible alleged government interest.

11 70. The Orders and Superintendents’ school policies are not carefully or narrowly  
12 tailored to minimize the infringement of disadvantaged students’ educational rights.

13 **THIRD CAUSE OF ACTION**  
14 **Violation of Article III, § 3 of the California Constitution**  
15 **(By Plaintiffs Against all Defendants)**

16 ***The State Order and Emergency Services Act Violate the Non-Delegation Doctrine of the***  
17 ***Separation of Powers Clause.***

18 71. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as  
19 though fully set forth herein.

20 72. The Separation of Powers Clause of the California Constitution is an express  
21 separation-of-powers provision not found in the U.S. Constitution and many other state  
22 constitutions: “The powers of state government are legislative, executive, and judicial. Persons  
23 charged with the exercise of one power may not exercise either of the others exception permitted  
24 by this Constitution.” (Cal. Const., art. III, § 3.).

25 73. Under Article III of the California Constitution, if the state legislature delegates to  
26 the Governor or the executive branch the power to restrict civil liberties, strict scrutiny applies.

27 74. On March 4, 2020, Governor Newsom declared a State of Emergency in response  
28 to COVID-19 under the California Emergency Services Act, sections 8565 through 8574 of the  
Government Code. The Emergency Services gives the Governor unbridled discretion over

1 fundamental liberties for an indefinite period.

2 75. Governor Newsom’s State Order delegated CDPH and county health officers with  
3 complete discretion to decide fundamental issues of policy that surround education.

4 76. The consequence of Governor Newsom declaration a State of Emergency in  
5 response to COVID-19 under the California Emergency Services act, sections 8565 through 8574  
6 of the Government Code, has resulted in deprivation of civil liberties.

7 77. The legislative delegation is not narrowly tailored to meet a compelling state  
8 interest because they lack legal text limiting the Governor’s and executive branch’s restriction of  
9 civil liberties to “the least restrictive alternatives.”

10 78. Under the California Constitution, the legislature cannot delegate legislative power  
11 to the Governor or executive branch to restrict civil liberties without “the least restrictive  
12 alternative” legal text or something similar.

13 79. As a result of the absence of this limiting language, the statutes and State actions  
14 under the statutes restricting civil liberties violate the Separation of Powers Clause in California’s  
15 Constitution.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs prays this Court grant the relief requested herein, specifically  
18 that the Court render the following judgment in Plaintiffs’ favor and against Defendants:

- 19 **i. AS TO COUNT I:** For entry of a Declaratory Judgment that the Orders and  
20 Superintendents’ policies facially and as applied prevents Plaintiffs from accessing a  
21 quality education guaranteed under the California Constitution;
- 22 **ii. AS TO COUNT II:** For entry of a Declaratory Judgment that the Orders and  
23 Superintendents’ policies facially and as applied deprive disadvantaged students of an  
24 equal educational opportunity to become proficient in the State of California’s academic  
25 standards;
- 26 **iii. AS TO COUNT I AND II:** For damages in the amount of per pupil spending pro-rated  
27 for the time Plaintiffs are not in school full-time, to be used by the parents of Plaintiffs for  
28

1 alternative means of education;

2 **iv. AS TO COUNT III:** For entry of a Declaratory Judgment that the State Order and  
3 Emergency Services Act violate Article III, § 3 of the California Constitution;

4 **v. AS TO COUNT I, II AND III:** For entry of an order temporarily, preliminarily, and  
5 permanently enjoining and prohibiting the Defendants from enforcing the Orders or  
6 otherwise interfering with the Plaintiffs' right to a quality education guaranteed under the  
7 California Constitution;

8 **vi. Costs and attorneys' fees:** For an award of costs, disbursements, and reasonable  
9 attorneys' fees and expenses pursuant to section 1021.5 of the California Code of Civil  
10 Procedure and any other applicable provision of the law;

11 **vii. Other relief:** For such other and additional relief as the Court may deem just and proper.

12 Dated: September 10, 2020.

13  
14 FREEDOM FOUNDATION

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