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20 *Attorneys for Plaintiffs*

21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 SAMUEL A. FRYER YAVNEH ACAD-
24 EMY, MONTEBELLO CHRISTIAN
SCHOOL, GINDI MAIMONIDES
25 ACADEMY, SAINT JOSEPH ACAD-
26 EMY, YESHIVA RAV ISACSOHN
TORAS EMES ACADEMY, CHRIS AM-
27 BUUL, MICHELLE AMBUUL, RABBI
MOSHE AMSTER, LEA AUST, RABBI
28 MOSHE BRULL, HOLLY BURGESS,
ROBERT A. EVANS, JR., TZVI

No. 2:20-cv-7408

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 FLEISCHMANN, HEATHER GRAVES,
2 ROBERT GRAVES, KEREN KATZ, AL-
3 LEN MANN, RABBI MORDECHAI
4 MCKENNEY, ASHER PERETZ,
5 MARISA RODRIGUEZ, OFELIA SAND-
6 OVAL, LIAT SHAMULIAN, JEROME
7 TOLIVER, VERONICA TOLIVER, AL-
8 ETE TSFIRA, and VICKIE ZARAZUA,

9 Plaintiffs,

10 v.

11 GAVIN NEWSOM, in his official capacity
12 as the Governor of California; XAVIER
13 BECERRA, in his official capacity as the
14 Attorney General of California; TONY
15 THURMOND, in his official capacity as
16 State Superintendent of Public Instruction
17 and Director of Education; SANDRA
18 SHEWRY, in her official capacity as the
19 Acting Director of the California Depart-
20 ment of Public Health; and ERICA PAN,
21 in her official capacity as the Acting State
22 Public Health Officer,

23 Defendants.

24 * *Application for admission pro hac vice to be submitted*

25 † *Counsel for Plaintiff Montebello Christian School only*

26 ‡ *Mr. Reaves and Ms. Boyd are admitted only in New York and Virginia, respectively,*
27 *and are practicing law in the District of Columbia pending admission to the D.C.*
28 *Bar and under the supervision of principals of the firm who are members in good*
standing of the D.C. Bar.

1 Plaintiffs bring this lawsuit to vindicate their constitutional rights as parents,
2 students, and educators to the free exercise of religion and due process of law. Defend-
3 ants, elected and appointed public health officials, have ordered that virtually all
4 schools in the State of California, public and private, remain closed this fall. In so do-
5 ing, they risk replacing the most serious public health challenge in a generation with a
6 public health disaster that will reverberate for generations. Plaintiffs would have all
7 school systems in the state free to make their own individualized determination as to
8 whether and when to resume in-person education, consistent with sound science, data,
9 and their own individual circumstances. That issue is already being litigated else-
10 where. Plaintiffs bring this particular suit to advance their rights as religious schools,
11 parents, students, and educators to choose—again, consistent with sound science, data,
12 and their own individual circumstances—to hold in-person religious education in a
13 manner consistent with their faith.

14 “For centuries now, people have come to this country from every corner of the
15 world to share in the blessing of religious freedom,” because “[o]ur Constitution
16 promises that they may worship in their own way, without fear of penalty or danger.”
17 *Town of Greece v. Galloway*, 572 U.S. 565, 615 (2014) (Kagan, J., dissenting). In times
18 of joy and times of sorrow, in times of plenty and times of lean, in end-times and
19 times of rebirth, Americans of all creeds turn to faith in thanks and supplication. Here,
20 unlike in many other countries, government does not declare what is orthodox, does
21 not select ministers, and does not define what it is to be ministering. Matters of faith
22 are left, appropriately, to the faithful. This includes, for many faith traditions, educa-
23 tion in a religious setting. Indeed, “[t]he religious education and formation of students
24 is the very reason for the existence of most private religious schools” *See Our*
25 *Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055, 2064 (2020).

26 The COVID-19 pandemic has stressed religion as it has all our institutions. In
27 the early, darkest days of the pandemic, most houses of worship and religious schools
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1 closed their doors voluntarily at the recommendation, and then the insistence, of pub-
2 lic health officials to help slow the spread of this novel and unknown virus. This was
3 as it should have been. Love for one's neighbors, known and unknown, from time to
4 time requires some personal sacrifice. Now months later, armed with a vastly better
5 understanding of the virus, and with reinvigorated public health services, states are
6 managing the reopening process. Public officials must weigh the risks and costs of re-
7 opening particular institutions against the risks and costs of not doing so.

8 In so doing, government must take particular care to respect and protect funda-
9 mental civil liberties. As the Sixth Circuit observed, “[w]hile the law may take peri-
10 odic naps during a pandemic, we will not let it sleep through one.” *Maryville Baptist*
11 *Church, Inc. v. Beshear*, 957 F.3d 610, 615 (6th Cir. 2020) (per curiam). While the
12 challenge remains, constitutional norms must be respected and reinstated. Our laws
13 are clear that government shall make no law abridging the free exercise of religion.
14 Laws that treat religious institutions, including schools, unequally must be narrowly
15 tailored to minimize the burden they place on a fundamental right. Parents have the
16 right to direct the education of their children in the religious setting of their choice.
17 Government cannot dictate, without the most compelling of justifications, where and
18 how religious instruction may occur. And even a compelling justification can only
19 support the narrowest possible imposition by the state.

20 Defendants, sadly, have not respected these rights. They have opened daycare
21 centers and summer camps, but not schools. They have allowed gatherings in the very
22 same buildings where instruction might take place, but have prohibited that in-person
23 instruction. Defendants have mandated that the vast majority of schools only conduct
24 instruction online. When considered in the context of religious education, the docu-
25 mented failings of online education present more than just a pedagogical disaster.
26 When the state prohibits religious schools from conducting in-person education, it is
27 preventing faith communities from observing religious ritual, conducting religious
28 worship, and inculcating religious values.

1 Defendants have made the judgment that parents’, teachers’, and religious lead-
2 ers’ beliefs that faith mandates in-person instruction where possible are of little value
3 and may be disregarded. This the Constitution does not allow. Because Defendant
4 public officials have elected to not protect fundamental religious freedoms, Plaintiffs
5 bring this suit asking the Court to do so.

6 INTRODUCTION

7 1. Defendants have shuttered nearly all religious schools in California, in-
8 cluding the School Plaintiffs. Defendants have done so contrary to sound science and
9 against the advice of the Centers for Disease Control and Prevention (“CDC”), the
10 American Academy of Pediatrics (“AAP”), and other organizations and experts.

11 2. Defendants have closed religious schools while simultaneously allowing
12 similarly situated entities, such as camps and childcare facilities, to conduct in-person
13 operations. Tens of thousands of childcare facilities are open for business in the same
14 jurisdictions where religious schools are prevented from opening. In fact, childcare is
15 being provided in some of the very same school buildings that have been closed to ed-
16 ucational instruction.

17 3. Defendants have created a framework whereby a group of children can
18 gather in a room for play, but those very same children in that very same room are
19 prohibited from learning and praying.

20 4. Plaintiff Schools, Parents, Students, and Teachers hold the firm convic-
21 tion that, consistent with their religious beliefs, education must be conducted in person
22 to the extent possible. For Jewish schools, for example, the communal study of the To-
23 rah is itself a form of worship. Depriving students of this ability and forcing such
24 study online creates a unique form of religious injury. So too for many Catholic and
25 Christian schools, offering the sacraments and communal religious instruction is exis-
26 tential to their mission. These cannot be replicated in whole—or indeed in part—
27 through video chats.

1 5. Defendants made no effort to ascertain whether in-person instruction is
2 essential to the religious educational institutions they have shut down. Defendants
3 made no effort to discern whether a more tailored, individualized approach to school
4 opening would achieve the same public health outcome while being more protective
5 of fundamental religious liberties. To the contrary, Defendants imposed their shut-
6 down orders without any prior process or prospective procedural protections whatso-
7 ever. Plaintiffs’ constitutional liberties persist only at the mercy of Defendants bound-
8 less discretion.

9 6. Under the United States Constitution and the California Constitution, this
10 framework cannot stand.

11 7. The Defendants’ actions are clear violations of Plaintiffs’ rights to the
12 free exercise of religion and both substantive and procedural due process.

13 8. As the Supreme Court recently held: “Religious education is vital to
14 many faiths practiced in the United States” and “[t]he religious education and for-
15 mation of students is the very reason for the existence of most private religious
16 schools” *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2055, 2064.

17 9. Accordingly, Defendants’ shuttering of religious schools is subject to
18 strict scrutiny. First, Defendants’ actions are not neutral or generally applicable. Sec-
19 ond, even if they were, those actions would still be subject to strict scrutiny. “[W]hen
20 the interests of parenthood are combined with a free exercise claim ..., more than
21 merely a ‘reasonable relation to some purpose within the competency of the State’ is
22 required to sustain the validity of the State’s” actions under the First Amendment.
23 *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972).

24 10. Strict scrutiny requires Defendants to prove that religious education, con-
25 ducted in compliance with social distancing requirements and other preventative
26 measures, poses a unique public health risk not present in *any* other permitted activi-
27 ties. Put differently, Defendants must prove that time spent gathering in childcare fa-
28

1 cilities and camps does *not* present a public-health risk—but socially-distanced, hy-
2 gienic in-person religious education somehow *does*. Defendants cannot meet this bur-
3 den.

4 11. Plaintiffs accordingly seek declaratory and injunctive relief to prevent the
5 enforcement of the school closure order and protect their constitutional rights to con-
6 duct in-person religious education in compliance with applicable public-health guide-
7 lines.

8 JURISDICTION AND VENUE

9 12. This Court has subject matter jurisdiction over this action pursuant to 28
10 U.S.C. §§ 1331, 1343, and 1367. This action arises under the Constitution and laws of
11 the United States.

12 13. This Court has the authority to issue the relief sought pursuant to 28
13 U.S.C. §§ 1343(a), 2201, and 2202 and 42 U.S.C. § 1988.

14 14. Venue lies in this district under 28 U.S.C. § 1391(b)(1) and (2). All De-
15 fendants maintain offices and perform their official duties in this district, and a sub-
16 stantial part of the events or omissions giving rise to the claims occurred in this dis-
17 trict.

18 PARTIES

19 **School Plaintiffs**

20 15. Plaintiff Samuel A. Fryer Yavneh Academy (“Yavneh”) is located in Los
21 Angeles, California. Yavneh is a school devoted to Orthodox Jewish education.

22 a. Teaching Orthodox Judaism, developing the faith of students, and
23 ministering to students are central to the mission and curriculum of Yavneh.
24 Yavneh believes that Judaism, when practiced soundly, is meant to be part and
25 parcel with academic excellence. The school strives for a high level of religious
26 observance and recognizes education as part of the development of the whole
27 person in a contemporary society. Yavneh is not only central to the religious
28

1 practice and education of its students, but through celebrations and communal
2 activities, also serves to unite the students’ families in their faith.

3 b. In-person education is critical for Yavneh’s free exercise of reli-
4 gion. Religious education at Yavneh is a combination of ritual, prayer, and study
5 all geared towards the inculcation of Jewish values and socialization of students
6 into the Orthodox Jewish community. For that reason, religious education at
7 Yavneh is largely experiential: the school year revolves around in-person com-
8 munal prayer, Torah study, and ritual celebrations that cannot be accomplished
9 via distance learning. Remote learning is simply not up to the task of providing
10 an environment where religious education can successfully impart the Jewish
11 values and identity central to Yavneh’s religious mission.

12 c. Yavneh wants to open for in-person education, and would do so
13 but for the School Closure Order. Yavneh has a reopening plan that is at least as
14 protective, if not more, than applicable guidance from the CDC and state and
15 local public health agencies. If allowed to resume in-person education, Yavneh
16 is willing to take appropriate additional steps to accommodate faculty compro-
17 mised by COVID-19.

18 d. The School Closure Order deprives Yavneh of the right to the free
19 exercise of religion.

20 16. Plaintiff Montebello Christian School (“Montebello”) is located in Mon-
21 tebello, California. Montebello is a school devoted to providing its students with a
22 Christian education.

23 a. Teaching the Christian faith, developing the faith of students, and
24 ministering to students are central to the mission and curriculum of Montebello.
25 Montebello was founded 50 years ago and serves a primarily Hispanic popula-
26 tion. The school focuses on the academic, social, and spiritual development of
27 each student, with a mission to impact the young lives studying at Montebello
28 in order for those students to become Gospel ministers. Montebello is not only

1 central to the religious practice and education of its students, but through cele-
2 brations and communal activities, also serves to unite the students' families in
3 their faith.

4 b. In-person education is critical for Montebello's free exercise of re-
5 ligion. Montebello's mission is to teach its students what it means to be a disci-
6 ple of Jesus. Montebello and its students and faculty believe that the Bible man-
7 dates that in order to practice the Christian faith, and in order to learn how to be
8 a disciple of Christ, you need to gather together with your fellow Christians.
9 Montebello cannot effectively provide a Christian education to its students if
10 the students are not meeting in person.

11 c. Montebello wants to open for in-person education, and would do
12 so but for the School Closure Order. Montebello has a reopening plan that is at
13 least as protective, if not more, than applicable guidance from the CDC and
14 state and local public health agencies. If allowed to resume in-person education,
15 Montebello will accommodate faculty members unable to return on account of
16 COVID-19.

17 d. The School Closure Order deprives Montebello of the right to the
18 free exercise of religion.

19 e. The School Closure Order also causes additional harm to Monte-
20 bello, including threatening the very existence of the school, which is prepared
21 to celebrate its 50th anniversary this year. During the 2019–2020 school year,
22 approximately 103 students attended Montebello. However, due to the uncer-
23 tainty as to whether Montebello will be able to provide an in-person Christian
24 education this school year, only 40 students are currently enrolled. Many fami-
25 lies are unable and unwilling to pay the tuition for their children to receive a
26 Christian education at Montebello if the school year will be taking place re-
27 motely. If the school's enrollment remains at 40 students, there is a strong like-
28 lihood that Montebello will have to shut its doors for good.

1 17. Plaintiff Gindi Maimonides Academy (“Maimonides”) is located in Los
2 Angeles, California. Maimonides is a school devoted to Orthodox Judaism.

3 a. Religious education plays a central role at Maimonides. For ele-
4 mentary students, half of their day consists of Judaic studies. From a young age,
5 these students learn to speak and read Hebrew, study Judaic texts, and partake
6 in religious services. Even in middle school, these students continue taking a
7 mix of academic and religious classes. Maimonides is not only central to the re-
8 ligious practice and education of its students, but through celebrations and com-
9 munal activities, also serves to unite the students’ families in their faith.

10 b. Teaching Orthodox Judaism, developing the faith of students, and
11 ministering to students are central to the mission and curriculum of Maimoni-
12 des. Students at Maimonides partake in a variety of daily religious activities
13 such as prayer. They also attend weekly Shabbat services on Fridays.

14 c. It is the aim of Maimonides that each student feels a connection to
15 the Jewish people and has a relationship with God. These religious goals cannot
16 be adequately accomplished over Zoom or other remote learning platforms. In-
17 formation may be shared through remote learning, but community cannot. Stu-
18 dents do not learn what it means to be part of the Jewish community, personally
19 partake in services, and share their faith with other students. This communal as-
20 pect of the religious experience is the core of Judaism. The information, alt-
21 hough obviously important, is secondary to the community that these students
22 form with one another and their instructors.

23 d. Maimonides wants to open for in-person education, and would do
24 so but for the School Closure Order. Maimonides has a reopening plan that is at
25 least as protective, if not more, than applicable guidance from the CDC and
26 state and local public health agencies. If allowed to resume in-person education,
27 Maimonides is willing to take additional steps to accommodate faculty compro-
28 mised by COVID-19.

1 e. The School Closure Order deprives Maimonides of the right to the
2 free exercise of religion.

3 18. Plaintiff Saint Joseph Academy (“Saint Joseph”) is located in San Mar-
4 cos, California. Saint Joseph is a school devoted to Catholic education.

5 a. Teaching Catholicism, developing the faith of students, and minis-
6 tering to students are central to the mission and curriculum of Saint Joseph.
7 Prayer and devotion to the Catholic faith are central to every part of the day at
8 Saint Joseph, and parents specifically choose Saint Joseph because of the cen-
9 trality of Catholicism in the school’s mission. The students pray as a school
10 every morning, and each class prays before and after lunch and at the end of the
11 day. In addition, there is a weekly celebration of Holy Mass for the entire
12 school. There is also a celebration of Holy Mass for staff members that is held
13 once a week. Saint Joseph is not only central to the religious practice and edu-
14 cation of its students, but through celebrations and communal activities, also
15 serves to unite the students’ families in their faith.

16 b. In-person education is critical for Saint Joseph’s free exercise of
17 religion. Distance learning prevented its students from joining together as the
18 Body of Christ, which is an essential aspect of the Catholic faith. The students
19 were prevented from living out the teachings of their faith during distance
20 learning, and teachers were prevented from cultivating the virtues of Catholi-
21 cism in their students.

22 c. Saint Joseph wants to open for in-person education, and would do
23 so but for the School Closure Order. Saint Joseph has a reopening plan that is at
24 least as protective, if not more, than applicable guidance from the CDC and
25 state and local public health agencies. If allowed to resume in-person education,
26 Saint Joseph will accommodate faculty members unable to return on account of
27 COVID-19.

28

1 d. The School Closure Order deprives Saint Joseph of the right to the
2 free exercise of religion.

3 19. Plaintiff Yeshiva Rav Isacsohn Toras Emes Academy (“Toras Emes”) is
4 located in Los Angeles, California. Toras Emes is a school devoted to Jewish educa-
5 tion in the Orthodox tradition.

6 a. Educating students about Orthodox Judaism and teaching them
7 about how to live according to the values and ethics of Orthodox Judaism are
8 central to the mission and curriculum of Toras Emes. The school provides an
9 education built on the Jewish values of the study of the Bible and other founda-
10 tional Jewish texts, instruction in prayer, and the development of character ac-
11 cording to Jewish laws and ethics. Life at the school is based upon the commu-
12 nal experience of prayer and study and the curriculum relies upon the strong,
13 personal connection between a teacher and student to transmit the core values
14 and ways of life that are central to the religion, especially the practice of Ortho-
15 dox Judaism. Toras Emes is not only central to the religious practice and educa-
16 tion of its students, but through celebrations and communal activities, also
17 serves to unite the students’ families in their faith.

18 b. In-person education is critical for Toras Emes’ free exercise of reli-
19 gion. Consistent with the Jewish tradition, Toras Emes recognizes that it is the
20 experience of Judaism that is most essential to educating the next generation
21 about the religion. This experience cannot be replicated through a video call.
22 Remote learning deprives students of any communal experience, so they cannot
23 experience the joy and efficacy of prayer performed with others. Additionally,
24 teachers use their in-person interactions with students to model how to live as
25 observant Jews, including how to behave and treat others in the community ac-
26 cording to Jewish ethics.

27 c. Toras Emes wants to open for in-person education, and would do
28 so but for the School Closure Order. Toras Emes has a reopening plan that is at

1 least as protective, if not more, than applicable guidance from the CDC and
2 state and local public health agencies. If allowed to resume in-person education,
3 Toras Emes will accommodate faculty members unable to return on account of
4 COVID-19.

5 d. The School Closure Order deprives Toras Emes of the right to the
6 free exercise of religion. Remote learning precludes the meaningful personal
7 moments and modeling how to be an observant Jew that are fundamental to
8 Toras Emes's religious mission.

9 **Parent Plaintiffs**

10 20. Plaintiffs Chris and Michelle Ambuul reside in Valley Center, California.
11 The Ambuuls are practicing Roman Catholics. They are suing on behalf of themselves
12 and their six minor children who are enrolled at Saint Joseph. The Ambuul children at
13 Saint Joseph are entering kindergarten and first, sixth, seventh and 12th grades.

14 a. The Ambuuls decided to enroll their children in Saint Joseph be-
15 cause they wanted them to be educated as Catholics, and Catholic principles are
16 integrated into every course at Saint Joseph. They also wanted their children to
17 be surrounded with friends taught in the same way and of the same faith.

18 b. In-person education is critical for the Ambuuls' children's free ex-
19 ercise of religion and religious education. The children normally attend Mass
20 and receive the Eucharist at least once during each week. To the Ambuuls, re-
21 ceiving the Eucharist is the holiest thing a Catholic can do. Because the sacra-
22 ment of confession and the Eucharist can only be received in person from a
23 priest or Eucharistic minister, the School Closure Order has caused the Am-
24 buuls' children to miss out on these essential elements of their religion.

25 c. For the Ambuuls, the sense of religious community their children
26 feel at Saint Joseph is incredibly important. One of their daughters is struggling
27 with malaise and depression because she misses her community and participat-
28 ing in religious sacraments together with her friends. The daughter has lost 15

1 pounds from stress and depression caused by not being able to attend Saint Jo-
2 seph in person.

3 d. The Ambuuls' son in sixth grade has dyslexia and an auditory pro-
4 cessing disorder that often makes him unable to understand information con-
5 veyed through remote instruction. At Saint Joseph, the Ambuuls' son normally
6 has a dedicated resource teacher that assists him in the classroom by sitting with
7 him and reading instructional materials to him. Since the son cannot attend
8 Saint Joseph in person, Michelle Ambuul has to serve this role herself, which
9 means she cannot dedicate sufficient time to her other children.

10 e. Another of the Ambuuls' sons was supposed to start second grade
11 in the fall, but because of his difficulties with distance learning the Ambuuls
12 have decided to hold him back a grade year. This has affected his spiritual de-
13 velopment as well, because Saint Joseph students prepare to receive their first
14 Holy Communion during their second grade year. Instead, because of the harm
15 caused by remote learning, the Ambuuls will have to wait another year before
16 reaching this milestone in the life of a Catholic.

17 f. The Ambuuls want their children to attend Saint Joseph in person,
18 and their children would attend in person but for the School Closure Order.

19 g. The School Closure order harms the Ambuuls and their children,
20 deprives them of the right to direct their children's education, and deprives the
21 Ambuuls and their children of the free exercise of religion.

22 h. The School Closure Order also causes additional harm to the Am-
23 buuls, including monetary damages in the form of tuition they continue to pay
24 for services that Saint Joseph Academy is forbidden to provide.

25 21. Plaintiff Tzvi Fleischmann is a resident of Los Angeles, California. He is
26 a practicing Orthodox Jew. He is suing in his individual capacity on behalf of himself
27 and his minor child. He is the parent of five children, including his 13-year-old son
28 who is currently enrolled at Toras Emes and entering the eighth grade. Fleischmann's

1 other four children previously attended and graduated from Toras Emes, as did
2 Fleischmann and his wife.

3 a. Fleischmann enrolled his son in Toras Emes to provide him with a
4 strong religious and ethical education.

5 b. Attending Toras Emes is central to the free exercise of religion for
6 Fleischmann and his son. Fleischmann believes that the strong Jewish education
7 Toras Emes provides is necessary to be able to fulfill one's religious responsi-
8 bility to pray, study foundational Jewish texts and ethics, and live an ethical life.

9 c. In-person education is critical for the free exercise of religion for
10 Fleischmann and his son because a large part of the education of an Orthodox
11 Jew is experiential. At Toras Emes, teachers model for the children how to man-
12 ifest Judaism's values and ethics, and use moments throughout the day as prac-
13 tical opportunities to teach the children how to apply the teachings of Judaism
14 to life's everyday challenges. Fleischmann believes these moments are essential
15 to the education of an Orthodox Jew. Additionally, the teachers and other chil-
16 dren at Toras Emes provide the communal support that is necessary to support
17 Fleischmann's son as he undertakes the study of complex religious texts and
18 deepens his understanding of daily prayers and other religious practices.

19 d. Fleischmann wants his son to attend Toras Emes in person, and his
20 child would attend Toras Emes in person but for the School Closure Order.

21 e. The School Closure Order harms Fleischmann and his son, de-
22 prives Fleischmann of the right to direct his son's education, and deprives
23 Fleischmann and his son of the free exercise of religion.

24 f. The School Closure Order also causes additional harm to Fleisch-
25 mann and his son, including monetary damages in the form of tuition Fleisch-
26 mann continues to pay to the school for an education Toras Emes cannot pro-
27 vide remotely.

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1 22. Plaintiffs Robert and Heather Graves reside in San Marcos, California.
2 They are practicing Roman Catholics. They are suing in their individual capacity on
3 behalf of themselves and their minor children. The Graveses have five children, three
4 of whom are entering grades five, six, and eight at Saint Joseph.

5 a. The Graveses decided to enroll their children in Saint Joseph prin-
6 cipally because of their Catholic faith and to further their children's religious
7 education.

8 b. In-person education is critical for the Graveses and their children's
9 free exercise of religion. The children normally attend Mass and receive the Eu-
10 charist at least once during each week, and regularly participate in confession
11 with a priest at Saint Joseph. The School Closure Order has prevented them
12 from participating in these sacred religious practices, which are key to the de-
13 velopment of their faith.

14 c. The Graveses' 11-year-old son entering sixth grade is especially af-
15 fected by the School Closure Order because he has Down Syndrome. Saint Jo-
16 seph practices integration and inclusion for students with special needs, so the
17 Graveses' son is fully integrated into his class, rather than separated into a des-
18 ignated special-education classroom. His spiritual, academic, and social experi-
19 ence at Saint Joseph is dependent on his interactions with and the support he re-
20 ceives from the faculty and his fellow students. Because of the School Closure
21 Order, the Graveses' son is struggling greatly to focus on the computer screen,
22 and his ability to learn and grow through social interaction has been greatly
23 harmed.

24 d. The Graveses also do not have enough electronic devices for all of
25 their children to participate in distance learning at the same time. This has
26 caused added stress to the Graveses and their children as they attempt to coordi-
27 nate devices for scheduled class time. As a result, the Graveses' children have
28

1 missed classes, or been forced to watch recorded lectures where they lose all
2 ability to participate in both the religious and academic aspects of the class.

3 e. The Graveses want their children to attend Saint Joseph in person,
4 and their children would attend in person but for the School Closure Order.

5 f. The School Closure Order harms the Graveses and their children,
6 deprives the Graveses of the right to direct their children's education, and de-
7 prives the Graveses and their children of the free exercise of religion.

8 g. The School Closure Order also causes additional harm to the
9 Graveses, including monetary damages in the form of tuition the Graveses con-
10 tinue to pay for services that Saint Joseph is forbidden to provide, added emo-
11 tional stress to the entire family from the need to coordinate class time on elec-
12 tronic devices, and the Graveses need to be significantly more involved in
13 teaching and answering questions that would have been fielded by teachers, but
14 for the School Closure Order.

15 23. Plaintiff Keren Katz is a resident of Los Angeles, California. She is an
16 observant Jew. Katz is suing in her individual capacity on behalf of herself and her
17 three minor children, ages 8, 6, and 4, who are entering grades pre-one, one, and three
18 at Maimonides.

19 a. Katz's children's attendance at Maimonides is central to the free
20 exercise of Katz and her children's religion. Katz believes that academic and
21 spiritual development are predicated on dialogue, which requires learning from
22 multiple people with a diversity of understandings and opinions. Katz and her
23 children's religious practice is almost entirely communal, rather than individual,
24 and Maimonides is the primary religious community where their faith has its
25 communal expression.

26 b. In-person education is critical for Katz and her children's free ex-
27 ercise of religion because the dialogue that Katz believes is fundamental to reli-
28 gious education cannot take place over a video call. Central to Katz and her

1 children's practice of Judaism is the concept of *chavrutah*, which can be trans-
2 lated "friendship" or "companionship," and is also a traditional rabbinic ap-
3 proach to small-group study of a shared text, including the Talmud. In fact, the
4 Talmud itself says "give me a *chavrutah* or give me death." According to Katz's
5 belief, religious and educational development is about more than individual per-
6 ception; it is inherently communal.

7 c. Katz's belief in the centrality of *chavrutah* has also motivated her
8 to teach at Maimonides for the past six years. She currently teaches seventh and
9 eighth grade literature. Katz feels that she has a religious calling to teach at
10 Maimonides in order to show students what it means to be a strong Jewish
11 leader and how the Jewish faith ties into all aspects of life, including the study
12 of literature.

13 d. Katz wants Maimonides to reopen in person, and for her children
14 to attend in person. Katz would resume teaching at Maimonides in person and
15 sending her children to Maimonides in person but for the School Closure Order.

16 e. The School Closure order harms Katz and her children, deprives
17 Katz of the right to direct her children's education, and deprives Katz and her
18 children of the free exercise of religion. Without being able to attend Maimoni-
19 des, Katz and her children are frequently unable to pray in the communal fash-
20 ion prescribed by their faith. Katz's children have suffered spiritually as a re-
21 sult, and have also suffered academically due to the inability of their teachers to
22 engage them in the experience of Judaism as they would do in person. Moreo-
23 ver, as a teacher, Katz is unable to work individually with her students as she
24 would in person, especially students with special needs who require extra atten-
25 tion, and this has impaired Katz's ability to fulfil her religious vocation to edu-
26 cate the students entrusted to her.

27 f. The School Closure Order also causes additional harm to Katz, in-
28 cluding the significant difficulties imposed on her by the need to manage her

1 own children's remote learning while also remotely educating her students. As a
2 result, she has frequently had to leave her children in the house and teach her
3 remote classes from her car.

4 24. Plaintiff Asher Peretz is a resident of Los Angeles, California. He is a
5 practicing Orthodox Jew. He is suing in his individual capacity on behalf of himself
6 and his minor children. He is the parent of four boys enrolled at Toras Emes in first
7 grade, fifth grade, sixth grade and eighth grade.

8 a. Peretz enrolled his children in Toras Emes to provide them with a
9 strong religious education and to experience the communal prayer and experi-
10 ential learning that are core to the practice of Orthodox Judaism. Because nei-
11 ther Peretz nor his wife were raised as Orthodox Jews, they rely upon the reli-
12 gious educators and rabbinical faculty at Toras Emes to provide engaging and
13 historically- and religiously-accurate instruction about Jewish traditions, ob-
14 servance, prayer, and the study of ancient texts.

15 b. Peretz's children's attendance at Toras Emes is central to the free
16 exercise of Orthodox Judaism for Peretz and his children. The school is the only
17 place that provides formal religious instruction to Peretz's children, which in-
18 cludes learning prayers and how to pray, and the communal study of ancient
19 texts, such as the Talmud. Additionally, when at school, the children learn by
20 example—from their teachers, religious figures and older children—how to
21 properly conduct themselves as Orthodox Jews, including respecting elders, re-
22 solving interpersonal disputes consistently with Jewish ethics, and practicing
23 lovingkindness in all aspects of one's life.

24 c. In-person instruction is critical for Peretz's and his children's free
25 exercise of religion and religious education. The children cannot effectively par-
26 take in the communal experience of religious learning and prayer through re-
27 mote meetings. The children are not able to learn, practice or recite entire sec-
28 tions of the daily prayer service remotely because according to Jewish law,

1 those prayers can only be recited within a *minyan*, a quorum of 10 males aged 13
2 or over. Additionally, by not being in the presence of learned teachers and reli-
3 gious figures, the children are not able to receive the important experiential edu-
4 cation about how to live as an Orthodox Jew that the religion requires be trans-
5 mitted from one generation to the next.

6 d. Peretz wants his children to attend Toras Emes in person, and his
7 children would attend Toras Emes in person but for the School Closure Order.

8 e. The School Closure Order harms Peretz and his children, deprives
9 Peretz of the right to direct his children's education, and deprives Peretz and his
10 children of the free exercise of religion.

11 25. Plaintiff Marisa Rodriguez is a resident of Whittier, California. Rodriguez
12 is a practicing Christian. She is suing on behalf of herself and her two minor children
13 who are enrolled at Montebello and entering grades four and seven.

14 a. Marisa Rodriguez decided to enroll her children in Montebello in
15 furtherance of her children's religious education.

16 b. Rodriguez's children's attendance at Montebello is central to the
17 free exercise of religion by Rodriguez and her children. It is important to Rodri-
18 guez that faith is built into the curriculum and daily activities of the school.
19 Aside from morning prayer, weekly chapel, and daily Bible class, scripture is
20 built into the broader academic curriculum.

21 c. In-person education is critical for Rodriguez's children's free exer-
22 cise of religion and religious education. Rodriguez has spent some time volun-
23 teering in the school cafeteria, and has witnessed how in-person education and
24 community reinforces religious lessons learned in class. In between classes,
25 children sing songs learned in chapel, discuss religious lessons, and pray with
26 one another. In-person education allows their children to experience a brother-
27 hood and sisterhood in Christ.

28

1 d. Rodriguez wants her children to attend Montebello in person, and
2 her children would attend Montebello in person but for the School Closure Or-
3 der.

4 e. The School Closure order harms Rodriguez and her children, de-
5 prives her of the right to direct her children's education, and deprives Rodriguez
6 and her children of the free exercise of religion.

7 f. The School Closure Order may also exacerbate the anxiety issues
8 that Rodriguez's youngest child developed when in-person instruction ended
9 during the spring of 2020.

10 26. Plaintiff Ofelia Sandoval is a resident of Los Angeles County, California.
11 Sandoval is a practicing Christian. She is suing in her individual capacity on behalf of
12 herself and her minor children. She is the parent of three boys enrolled at Montebello.
13 Sandoval's 7-year-old son is entering the second grade, her 10-year-old son is entering
14 the fifth grade, and her 13-year-old son is entering the eighth grade.

15 a. Sandoval decided to enter her children in Montebello in further-
16 ance of her children's religious education. She desires for her children to have a
17 faith-based education for their faith development and for reinforcement of their
18 family's values.

19 b. Sandoval's children's attendance at Montebello is central to the
20 free exercise of Sandoval's and her children's religion. Sandoval and her chil-
21 dren believe the Bible is the Word of God and that Jesus Christ is their savior.
22 At Montebello, their faith is reinforced in the classroom setting. Teachers at
23 Montebello trust God as their Lord and savior, pray regularly, and impart a spir-
24 itual discipline to their students.

25 c. In-person education is critical for Sandoval's children's free exer-
26 cise of religion and religious education. Sandoval and her children believe that
27 there is a communal aspect to worship and prayer, and that spiritual develop-
28 ment is stifled without the community. Sandoval's children are also very active

1 in the worship ministry at Montebello. Sandoval's 13-year-old son plays the
2 drums and piano at chapel. They cannot participate in the worship ministry
3 when the school is closed. Montebello has moved chapel to an online service,
4 but Sandoval's children are not able to engage in worship over a screen in the
5 same manner as they would in person. Furthermore, Sandoval and her children
6 believe that being surrounded by teachers and students who share the same val-
7 ues strengthens and encourages spiritual development. Sandoval has sacrificed
8 so that her children can have a lifelong experience in God's word based on an
9 in-person Christian education.

10 d. Sandoval wants her children to attend Montebello in person, and
11 her children would attend Montebello in person but for the School Closure Or-
12 der.

13 e. The School Closure Order harms Sandoval and Sandoval's chil-
14 dren because it deprives Sandoval of the right to the direct her children's educa-
15 tion, and deprives Sandoval of the free exercise of religion. Sandoval desires for
16 her children to grow up with the foundations of the Christian faith and faith in
17 God's Word, which is best instilled when her children have an interconnection
18 with other believers.

19 f. The School Closure Order also causes additional harm to Sandoval
20 and her children because of the emotional distress her children have experi-
21 enced by being apart from their school classmates. Her 10-year-old son has de-
22 veloped anxiety, a condition from which he has never suffered before. He has
23 started to chew his shirts so badly that they develop holes. He sometimes wears
24 a chewing necklace. Sandoval's 13-year-old son has also developed anxiety is-
25 sues that he has never previously experienced. He feels a tingling sensation in
26 his arm and has suffered from at least one anxiety attack. Sandoval believes that
27 these new anxiety symptoms are a result of the social isolation and separation
28 from other Christian believers whom her sons ordinarily see and in school.

1 Their Christian school community provides an outlet to relieve stress with fel-
2 low believers.

3 27. Plaintiffs Jerome and Veronica Toliver are residents of San Marcos, Cali-
4 fornia. They are practicing Roman Catholics. Jerome and Veronica have three chil-
5 dren: their eldest is an alumna of Saint Joseph; their daughter is entering the 10th
6 grade at Saint Joseph; and their son is entering seventh grade at Saint Joseph.

7 a. The Tolivers chose to send their children to Saint Joseph to instill a
8 strong Catholic faith and learn from leaders in the Catholic education field. Je-
9 rrome and Veronica make significant financial sacrifices to pay tuition so their
10 children can attend Saint Joseph for the religious education and community.
11 They pay for their children's education in the context of their faith.

12 b. The Tolivers' children's attendance at Saint Joseph is central to the
13 free exercise of the Tolivers' and their children's religion. In the Catholic faith,
14 it is the father's sole purpose to ensure his children are granted eternal life. Be-
15 cause that is a heavy burden to shoulder, and one that Jerome Toliver felt he
16 needed assistance with, the Tolivers decided to send their children to a school
17 recognized by the Catholic leadership to instill strong Catholic values.

18 c. In-person education is critical for the Tolivers and their children.
19 In-person education is essential for their children to be able learn about practic-
20 ing Roman Catholicism through observing and modeling the actions and values
21 of teachers and peers.

22 d. The Tolivers want their children to attend Saint Joseph in person,
23 and their children would attend Saint Joseph in person but for the School Clo-
24 sure Order.

25 e. The School Closure Order harms the Tolivers and their children,
26 deprives the Tolivers of the right to direct their children's education, and de-
27 prives the Tolivers and their children of the free exercise of religion.

28

1 28. Plaintiff Alete Tsfira is a resident of Los Angeles, California. Tsfira is a
2 practicing Modern Orthodox Jew. She is suing in her individual capacity on behalf of
3 herself and her minor children. She is the parent of four children enrolled at Yavneh.
4 Tsfira has children aged 5, 7, 9, and 11, who are entering grades pre-one, two, four, and
5 six.

6 a. Tsfira decided to enroll her children in Yavneh in furtherance of
7 her children's religious education. Tsfira was not raised as an Orthodox Jew and
8 does not speak Hebrew, so she relies on Yavneh to educate her children in Or-
9 thodox Jewish religious traditions and in the Hebrew language.

10 b. Tsfira's children's attendance at Yavneh is central to the free exer-
11 cise of Tsfira and her children's religion. Tsfira feels that only a structured, reli-
12 gious school environment like the one that Yavneh provides can give her chil-
13 dren the comprehensive experience of Jewish culture that is fundamental to her
14 religious belief.

15 c. In-person education is critical for Tsfira's children's free exercise
16 of religion and religious education. It is particularly important to Tsfira that her
17 children receive rigorous, immersive instruction in the Hebrew language, which
18 is impossible to achieve other than in person. Additionally, Tsfira believes, con-
19 sistent with the tenets of Judaism, that prayer is inherently a communal activ-
20 ity, not an individual activity, and attending Yavneh in person is therefore essen-
21 tial to Tsfira's children's experience of and participation in Jewish prayer.

22 d. Tsfira wants her children to attend Yavneh in person, and her chil-
23 dren would attend Yavneh in person but for the School Closure Order.

24 e. The School Closure Order harms Tsfira and her children, deprives
25 Tsfira of the right to direct her children's education, and deprives Tsfira and her
26 children of the free exercise of religion. Because they are unable to attend
27 Yavneh in person, Tsfira's children have no other religious community in which
28

1 they can participate, and cannot join with their peers in the communal ob-
2 servance of Jewish Holy Days and other milestone celebrations.

3 f. The School Closure Order also causes additional harm to Tsfira, in-
4 cluding monetary damages in the form of tuition Tsfira continues to pay for ser-
5 vices that Yavneh is forbidden to provide, and lost earnings and other difficul-
6 ties with Tsfira's work as a result of the time she has to spend with her children
7 providing religious education and other services that Yavneh ordinarily pro-
8 vides.

9 29. Plaintiff Vickie Zarazua is a resident of Montebello, California. She is a
10 practicing Christian. Zarazua is suing in her individual capacity on behalf of herself
11 and her minor child. She is the mother of a child enrolled at Montebello Christian
12 School. Her child is entering grade seven.

13 a. Zarazua decided to enroll her child in Montebello in furtherance of
14 her child's religious education. Zarazua's child previously attended a non-reli-
15 gious school. Zarazua moved her child to Montebello specifically to aid her
16 child's spiritual development.

17 b. Zarazua's child's attendance at Montebello is central to the free ex-
18 ercise of religion by her and her child. Since her child first began attending
19 Montebello, Zarazua has witnessed a growth in her child's spirituality and
20 knowledge of theology. It is important to Zarazua that faith is built into the cur-
21 riculum and daily activities of the school. Aside from weekly chapel and daily
22 Bible class, scripture is built into the broader academic curriculum.

23 c. In-person education is critical for Zarazua's child's free exercise of
24 religion and religious education. Zarazua believes that there is frequently inter-
25 nal warfare in matters of spirituality, and it is important to have people physi-
26 cally present who can model Christ's teachings for her child. Zarazua believes
27 that the spirit of God moves in the halls of Montebello, and she has witnessed
28 the benefits of the in-person spiritual support provided by the school. Among

1 other things, a pastor would frequently have lunch with her child, and provided
2 a form of “spiritual therapy.” School staff also prayed for and comforted her
3 child during times of trouble.

4 d. Zarazua works, and therefore cannot be physically present to aid in
5 her child’s education. The distance learning that took place in the spring of
6 2020 hindered her son’s development.

7 e. Zarazua wants her child to attend Montebello in person, and her
8 child would attend Montebello in person but for the School Closure Order.

9 f. The School Closure Order harms Zarazua and her child, deprives
10 her of the right to direct her child’s education, and deprives her and her child of
11 the free exercise of religion.

12 **Teacher Plaintiffs**

13 30. Rabbi Moshe Amster is a resident of Los Angeles County, California.
14 He is a practicing Orthodox Jew and an administrator and sixth and seventh grade Ju-
15 daic Studies teacher at Yavneh, where he has taught for 45 years.

16 a. Rabbi Amster chose to teach at Yavneh because he felt a spiritual
17 calling to serve as a teacher. Defendants’ actions deprive Rabbi Amster of the
18 right to the free exercise of religion.

19 b. In-person education is critical for Rabbi Amster’s free exercise of
20 religion because in his view, the most important part of Judaism is being able to
21 apply the commandments of the Torah to one’s daily life, which requires careful
22 observation and emulation of the customs that are the hallmarks of the faith.
23 Rabbi Amster believes that aspects of the school day cannot be replicated by
24 virtual means, such as morning prayer, the serving of kosher foods and practices
25 in the cafeteria (where meat and dairy is served at different tables), the blessing
26 of snacks or lunch (there is always a Judaic teacher around for a proper bless-
27 ing), and afternoon services.

28

1 c. Rabbi Amster wants to teach at Yavneh in person, and would do so
2 but for the School Closure Order.

3 d. The School Closure Order deprives Rabbi Amster of the right to
4 the free exercise of religion. Rabbi Amster believes that Jewish teaching is care-
5 fully woven into the curriculum at Yavneh, and he lives out his religious calling
6 by instructing his students in Orthodox Jewish practices and customs. Rabbi
7 Amster believes that parents who were raised nonobservant, or do not like the
8 role of becoming assistant teachers, have entrusted him to educate their children
9 in the faith. Having dedicated his life to the personal instruction of the next Or-
10 thodox Jewish generation, Rabbi Amster believes that the School Closure Order
11 jeopardizes his ability to carry out his religious calling by preventing him from
12 teaching his students in person.

13 31. Plaintiff Lea Aust is a resident of Oceanside, California. She is a prac-
14 ticing Roman Catholic, and a fourth grade teacher at Saint Joseph.

15 a. Aust chose to work at Saint Joseph after doing mission work in
16 Haiti. At first, she thought she might stay a year or so. She has worked there for
17 11 years so far, and she attributes it to being part of God's plan.

18 b. In-person education is critical for Aust's free exercise of religion.
19 Students pray before every class, after lunch, and go to mass with the entire
20 school at least once a week on Friday. Every lesson incorporates Catholic teach-
21 ings and engagement with students. Even if families practice at home, Catholi-
22 cism is reinforced at school through the environment, group prayer, and teach-
23 ers who express their faith to the students. In-person instruction is particularly
24 important for students who do not practice Catholicism at home. For such stu-
25 dents, the only time that they are able to receive sacraments, such as confession,
26 chapel time, and receiving the Eucharist, is while they are at school. Aust taught
27 three students who were converting to the faith this past school year. Although
28

1 they would normally make their First Communion in May, they were prevented
2 from doing so.

3 c. Some of Aust's students do not even have the requisite tools to ad-
4 equately attend school on Zoom. Many of the families at the school are large,
5 and some families do not have sufficient devices at home. Some families had
6 seven children and just one computer. Because of these and other complications
7 of distance learning, some children fell behind in Zoom, but would not have if
8 they had attended in-person instruction.

9 d. Aust wants to teach at Saint Joseph Academy in person, and would
10 do so but for the School Closure Order.

11 e. The School Closure Order deprives Aust of the right to the free ex-
12 ercise of religion.

13 f. Aust has witnessed and experienced other harms caused by the
14 School Closure Order. For example, one of her former students' parents ap-
15 proached her in public and, without prompting, said that her 10-year-old son
16 was borderline suicidal, and that he hated himself. In March, while in school,
17 the child was doing well. Aust strongly believes that this student needs to be
18 part of the Catholic community at Saint Joseph.

19 32. Plaintiff Rabbi Moshe Brull is a resident of Los Angeles County, Cali-
20 fornia. He is a practicing Orthodox Jew and has worked at Maimonides for one year as
21 a Rabbi teaching sixth and seventh grade.

22 a. Rabbi Brull decided to move his family across the country so he
23 could work at Maimonides because it was such a great opportunity to teach and
24 change young students' lives. He has dedicated his life to his faith and becom-
25 ing a Rabbi, spending over thirteen years in training (including a year and a half
26 in Israel).

27 b. In-person education is critical for Rabbi Brull's free exercise of re-
28 ligion. The students at Maimonides participate in group prayer, singing, reading

1 from sacred scrolls and holy day celebrations, all of which are not possible
2 through distance learning. Rabbi Brull feels that so much of his Jewish faith is
3 built on learning and teaching by example. His ability to teach Judaism to his
4 students is greatly strengthened by the bond he forms with students, by speak-
5 ing to students individually after class, eating lunch with them in the cafeteria,
6 and celebrating milestones in their religious development and education.

7 c. Studying Judaism requires learning foreign languages and adapting
8 an entirely new way of thinking, which all requires an incredible focus. When
9 he is in the room with students, he can guide the students and help them to fo-
10 cus, but he cannot do that adequately through a computer screen. Rabbi Brull
11 has had to lower academic expectations for all of his students because they
12 simply cannot learn the principles of Judaism as effectively through remote
13 learning.

14 d. Rabbi Brull wants to teach at Maimonides in person, and would do
15 so but for the School Closure Order.

16 e. The School Closure Order deprives Rabbi Brull of the right to the
17 free exercise of religion.

18 33. Plaintiff Holly Burgess is a resident of Los Angeles County, California.
19 She is a practicing Christian and a teacher at Montebello.

20 a. Burgess decided to teach at Montebello because she felt a religious
21 calling to teach at a Christian school where she could teach from a biblical
22 worldview.

23 b. In-person education is critical for Burgess's free exercise of reli-
24 gion. Burgess believes there is power in people connecting and meeting in per-
25 son. She cites the Bible verse, Matthew 18:20, "For where two or three gather in
26 my name, there am I with them" as part of the basis for her belief that the Holy
27 Spirit moves people more when they gather together. She thinks that gathering
28 in Christ's name invites the Holy Spirit and is more likely to make a Christian

1 believer feel in tune with God’s will for his or her life. She thinks this is espe-
2 cially important in the tentative years of elementary and middle school when
3 students are still forming their beliefs and are highly influenced by people
4 around them. According to Burgess, Christians edify each other and hold each
5 other accountable, which cannot easily be done by remote means. At school,
6 Burgess prays with her students and asks them whether they have any prayer re-
7 quests or if they need a prayer outside of class. On Zoom, however, students are
8 much less engaged and less likely to volunteer a prayer or prayer request.

9 c. Burgess wants to teach at Montebello in person, and would do so
10 but for the School Closure Order.

11 d. The School Closure Order deprives Burgess of the right to the free
12 exercise of religion.

13 34. Plaintiff Robert A. Evans, Jr. is a resident of San Diego County, Cali-
14 fornia. Evans is a practicing Roman Catholic. He has worked at Saint Joseph for eight
15 years and is currently the lead high school teacher.

16 a. Evans came to work at Saint Joseph after retiring from his job as
17 an Oceanographer and Hydrologist working for the federal government, be-
18 cause he wanted to live his faith in every aspect of his life including his job. He
19 teaches physics, American history, and various math classes.

20 b. In-person education is critical for Evans’s free exercise of religion.
21 He leads a prayer before every class, and attends Mass with the entire school at
22 least once per week. The sense of community and family that exists between
23 Evans and his students is a key part of Evans’s religious experience at Saint Jo-
24 seph. He incorporates Catholic doctrine into every lesson he teaches: for exam-
25 ple, understanding Catholic teachings helps his physics students to better com-
26 prehend the creation of the universe through the Big Bang, and to understand
27 key ideas in the United States Constitution.

28

1 c. Even though Evans’s students can read religious texts at home,
2 their faith is greatly strengthened at school through the environment, group
3 prayer, and experienced teachers who express their faith to students. Saint Jo-
4 seph has teachers with advanced degrees in theology, which enriches the faith
5 and knowledge of the students. Teachers and students simply cannot have the
6 same kind of open dialogue on religious topics through a computer screen.

7 d. Evans wants to teach at Saint Joseph in person, and would do so
8 but for the School Closure Order.

9 e. The School Closure Order deprives Evans of the right to the free
10 exercise of religion.

11 f. Evans has witnessed and experienced other harms caused by the
12 School Closure Order. For example, students have reported experiencing head-
13 aches through looking at a screen all day for classes. Evans’s students’ learning
14 is also greatly affected because they are much more distracted during virtual
15 lessons at home and participate far less than during in-person classes.

16 35. Plaintiff Allen Mann is a resident of Los Angeles, California. He is a
17 practicing Orthodox Jew and a sixth- to eighth-grade math teacher at Toras Emes,
18 where he has worked for approximately nine years.

19 a. Mann chose to teach at Toras Emes because the values and philos-
20 ophy of the school matched his own and he wanted to teach children from fami-
21 lies that also shared his religious beliefs and levels of observance. Mann is also
22 a graduate of Toras Emes, and has three children enrolled at the school. Defend-
23 ants’ actions deprive Mann of the right to the free exercise of religion.

24 b. In-person education is critical for Mann’s free exercise of religion.
25 Mann weaves instruction about how to live as an Orthodox Jew into his daily
26 interactions with his math students and other children at Toras Emes. He uses
27 in-person interactions with students—whether in class or on the playground—to
28 correct and teach children how to act in accordance with Jewish law and ethics.

1 Additionally, consistent with centuries-old Jewish traditions applicable to teach-
2 ers and their students, Mann transmits the religion’s values and ethical require-
3 ments by modeling to his students how to how to live as an Orthodox Jew. His
4 in-person interactions with students allow him to develop close connections
5 with students that are needed to foster the love of and respect for community
6 that are central tenants of Orthodox Judaism.

7 c. Mann wants to teach at Toras Emes in person, and would do so but
8 for the School Closure Order.

9 d. The School Closure Order deprives Mann of the right to the free
10 exercise of religion. He cannot effectively establish the personal connection
11 with students that is critical to the transmission of Jewish values. Not being in
12 physical proximity to the students means that Mann is unable to model how to
13 live as an observant Jew and that he cannot provide the experiential instruction
14 about Jewish ethics that is core to the mission of the school.

15 36. Plaintiff Rabbi Mordechai McKenney is a resident of Los Angeles,
16 California. Rabbi McKenney is a practicing Orthodox Jew. He is a second grade Ju-
17 daic Studies teacher entering his eighth year teaching at Yavneh.

18 a. Rabbi McKenney chose to teach at Yavneh because he felt a reli-
19 gious calling to teach young children about Orthodox Judaism. He considers it a
20 tremendous privilege and opportunity to pass along the Jewish faith to the next
21 generation.

22 b. Rabbi McKenney believes that religious education is absolutely vi-
23 tal to the Jewish faith. He considers education in Orthodox Judaism the link to
24 the next generation to pass on Judaism’s system of beliefs, and believes that
25 world history is a testament to the significance of education in the survival of
26 Judaism, as there is no other culture or religion that has passed their beliefs on
27 so strongly for so many years (dating back about 3,500 years ago when the To-
28 rah was given to Moses). Through the ups and downs of every generation, the

1 Jewish faith has lived on through the education of the next generation. Rabbi
2 McKenney refers to this phenomenon as *mesorah*, which is the Hebrew word
3 for links in a chain. According to Rabbi McKenney, if one link is missing, then
4 the chain is broken. Thus, he sees education as the lifeblood of Orthodox Juda-
5 ism and has a personal passion in sharing his faith with the next generation of
6 Orthodox Jews.

7 c. In-person education is critical for Rabbi McKenney's free exercise
8 of religion. In addition to the significance of education to Judaism, and the tra-
9 ditional approach of in-person instruction that leaves a greater impact on stu-
10 dents who serve as the link in the chain of a faith that is over 3,000 years old,
11 Rabbi McKenney believes that the customs and way of life taught by the Torah
12 are best understood when taught in person. In Orthodox Judaism, according to
13 Rabbi McKenney, education is not just about digesting information, but is also
14 building up the character of students to help them live out their values. In his
15 experience, the in-person interaction that students have with other students and
16 their teachers helps them to develop emotional skills and builds character,
17 which strengthens them in the faith. Rabbi McKenney believes that even if stu-
18 dents can regurgitate information for a test over a computer, he cannot impart
19 the Orthodox Jewish way of living to his students if they are not in school in
20 person. Students look to teachers for guidance in their thoughts and conduct,
21 and it is impossible in a virtual environment for students to get a full picture of
22 how to live out Orthodox Jewish values in day-to-day living. Moreover, Rabbi
23 McKenney reads the Torah itself as prescribing in-person interaction with stu-
24 dents and teachers as necessary for their religious education. The guidance Or-
25 thodox Jews have received from great rabbis for generations is that children
26 need to be in school. There are other traditions that Rabbi McKenney celebrates
27 in his classes that do not lend themselves to Zoom or other virtual means, such
28 as the singing of prayers. He attempted to do this with his students but the

1 sound and synchronization of internet streaming does not permit for it. His stu-
2 dents are less engaged and enjoy class far less without these components. There
3 is an enthusiasm and connectedness when class is in person that is unattainable
4 over the computer.

5 d. Rabbi McKenney regards distance learning as an inadequate sub-
6 stitute for the traditional teaching of Judaic Studies that has been done in person
7 for 3,500 years. He has observed that it does not carry the same impact or make
8 the next link as strong.

9 e. Rabbi McKenney wants to teach at Yavneh in person, and would
10 do so but for the School Closure Order.

11 f. The School Closure Order deprives Rabbi McKenney of the right
12 to the free exercise of religion.

13 37. Plaintiff Liat Shamulian is a resident of Los Angeles County, California.
14 Shamulian practices Orthodox Judaism. She is dean of students and teaches Judaic
15 studies to seventh-grade girls at Yavneh. Additionally, Shamulian's 8- and 12-year-old
16 sons are entering the third and seventh grades at Yavneh.

17 a. Shamulian chose to teach and serve as dean of students at Yavneh
18 because she feels a spiritual calling to teach at an Orthodox Jewish school and
19 to deepen her knowledge of Judaism in an Orthodox school community.

20 b. In-person education is critical for Shamulian's free exercise of reli-
21 gion because of its centrality to the historical and continuing practice of the
22 Jewish faith. Much of the Jewish tradition that Shamulian teaches and desires
23 for her sons to be taught consists of communal prayer, singing, and other reli-
24 gious practices that cannot be replicated using remote learning.

25 c. As an educator, Shamulian feels strongly that many of her students
26 are disserved by remote learning, and that this jeopardizes Yavneh's mission—
27 and her own personal religious vocation—to impart the Jewish faith and cul-
28

1 tural traditions to her students and to her sons. The study of conversational He-
2 brew, in particular, which requires a mastery of phonetic sounds unknown in
3 English, is best taught by immersion, which cannot be replicated over a video
4 call.

5 d. Another core tenet of Shamulian's Orthodox Jewish faith is the
6 cultivation of *middot*, or good character traits. Yavneh instills *middot* in its stu-
7 dents, including Shamulian's sons, by encouraging them to emulate the good
8 role models they find among the school's faculty and staff. Students at Yavneh
9 also study the Torah's teachings on how to pray and dress, among other things,
10 and simultaneously learn these things by observing their elders doing them.

11 e. Shamulian wants to teach at Yavneh in person, and would do so but
12 for the School Closure Order. Shamulian wants to send her children to Yavneh
13 in person, and her children want to attend in person, and would do so but for the
14 School Closure Order.

15 f. The School Closure Order deprives Shamulian of the right to the
16 free exercise of religion.

17 g. The School Closure Order also causes additional harm to
18 Shamulian by interfering with her ability to fulfil her professional obligations
19 while also helping her children adapt to the new demands of remote learning.

20 **Faith-Community Interests**

21 38. In preparing this Complaint, counsel for Plaintiffs have been contacted by
22 numerous additional schools and families similarly interested in vindicating their con-
23 stitutional rights and resuming safe and effective in-person education. Owing to the
24 press of time and because this suit seeks state-wide injunctive relief, counsel have not
25 added all these additional institutions and individuals as named plaintiffs. Counsel
26 could do so in an Amended Complaint, if appropriate. A sampling of these additional
27 schools includes: (1) YULA Boys, a Modern Orthodox high school that "strives to pro-
28

1 vide the religious context for a student-centered, integrated, college preparatory edu-
2 cation in both Torah and General Studies”; (2) YULA Girls, “an Orthodox Yeshiva
3 High School, dedicated to cultivating an unwavering commitment to Halacha, Torah
4 values, outstanding academic achievement, and exemplary moral conduct”; (3) Valley
5 Torah High School, whose mission is “to create an ambitious religious and educa-
6 tional experience where our students are inspired to live a life of commitment to Torah
7 knowledge, continual spiritual growth and the pursuit of Judaic and Twenty-first Cen-
8 tury learning”; and (4) Yeshiva Ohr Eliyahu, whose “primary goal is that the cumula-
9 tive experiences of our students over the years result in enthusiastic and dedicated reli-
10 gious study and observance, refinement of character, and the prerequisite knowledge
11 to be successful participants in the economic and social life of our society.”

12 **Defendants**

13 39. Defendant Gavin Newsom (“Newsom”) is made a party to this Action in
14 his official capacity as the Governor of California. The California Constitution vests
15 the “supreme executive power of the State” in the Governor, who “shall see that the
16 law is faithfully executed.” Cal. Const. art. V, § 1. Governor Newsom signed Execu-
17 tive Order N-60-20 on May 4, 2020.

18 40. Defendant Xavier Becerra (“Becerra”) is made a party to this Action in
19 his official capacity as the Attorney General of California. Under California law,
20 Becerra is the chief law enforcement officer in the State. Cal. Const. art. V, § 13.

21 41. Defendant Tony Thurmond (“Thurmond”) is made a party to this Action
22 in his official capacity as State Superintendent of Public Instruction and Director of
23 Education. Thurmond is responsible for enforcing education law and regulations in
24 California.

25 42. Defendant Sandra Shewry (“Shewry”) is made a party to this Action in
26 her official capacity as the Acting Director of the California Department of Public
27 Health. Shewry is sued herein in her official capacity to the extent that she is responsi-
28

1 ble for providing official government guidance to the various industries that are al-
2 lowed to operate. Shewry was selected to replace Sonia Angell, the former State Pub-
3 lic Health Officer and Department of Public Health Director, after Angell’s abrupt res-
4 ignation in August 2020.¹

5 43. Defendant Erica Pan, MD, MPH (“Dr. Pan”) is made a party to this Ac-
6 tion in her official capacity as the Acting State Public Health Officer. Pan is sued
7 herein in her official capacity to the extent that she is responsible for providing official
8 government guidance to the various industries that are allowed to operate. Pan was se-
9 lected to replace Sonia Angell, the former State Public Health Officer and Department
10 of Public Health Director, after Angell’s abrupt resignation in August 2020.²

11 FACTUAL ALLEGATIONS

12 **I. Defendants Have Banned In-Person Education, Including Religious** 13 **Education, While Allowing Similar Entities to Re-Open**

14 44. On March 4, 2020, California Governor Gavin Newsom proclaimed a
15 State of Emergency as part of California’s response to the COVID-19 pandemic.³

16 45. On March 19, 2020, Governor Newsom issued Executive Order N-33-20
17 in which he ordered “all residents ... to immediately heed the current State public
18 health directives.”⁴

19 46. On May 4, 2020, California Governor Newsom issued Executive Order
20 N-60-20, which stated that “[a]ll residents are directed to continue to obey State pub-
21 lic health directives, as made available at [https://covid19.ca.gov/stay-home-except-for-](https://covid19.ca.gov/stay-home-except-for-essential-needs/)
22 [essential needs/](https://covid19.ca.gov/stay-home-except-for-essential-needs/) and elsewhere as the State Public Health Officer may provide.”⁵

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25 ¹ Kathleen Ronayne and Brian Melley, *Governor Gives Few Details on Top of California*
Official’s Exit, ASSOCIATED PRESS (Aug. 10, 2020), <https://bit.ly/30XQbJC>.

26 ² *Id.*

27 ³ Exec. Dep’t, State of Cal., *Proclamation of a State of Emergency* (Mar. 4, 2020),
<https://bit.ly/31ZDbTj>.

28 ⁴ Cal. Exec. Order No. N-33-20 (Mar. 19, 2020), <https://bit.ly/3arL6fM>.

⁵ Cal. Exec. Order No. N-60-20 (May 4, 2020), <https://bit.ly/3h0MWH1>.

1 47. On July 17, 2020, Governor Newsom and the Department of Public
2 Health Director announced a “framework for reopening” that, in effect, prohibits “in-
3 person learning” in most of the state (the “School Closure Order”).⁶

4 48. Under the School Closure Order, schools and school districts are allowed
5 to reopen for in-person instruction only “if they are located in a local health jurisdic-
6 tion (LHJ) that has not been on the county monitoring list within the prior 14 days.”⁷
7 Otherwise, when a school “has been on the monitoring list within the last 14 days,” the
8 school may “conduct distance learning only.”⁸ Plaintiffs were not given any notice or
9 opportunity for hearing prior to the issuance of the School Closure Order.

10 49. Currently, there are 38 counties on the county monitoring list.⁹ A county
11 is put on the list if it exceeds any one of five benchmarks. These five benchmarks in-
12 clude: (1) more than 100 cases per 100,000 people over a two-week period; (2) more
13 than 25 cases per 100,000 people with positive test rates of more than 8%; (3) an in-
14 crease in the number of COVID-19 patients hospitalized of more than 10% over a
15 three-day average; (4) ICU bed availability below 20%; and (5) ventilator availability
16 below 25%. According to media reports, in order to get off the watch list, a county
17 must not trigger any of the five thresholds for three consecutive days.¹⁰

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22 ⁶ Cal. Dep’t of Pub. Health, *COVID-19 and Reopening In-Person Learning Frame-*
23 *work for K-12 Schools in California, 2020-2021 School Year* (July 17, 2020),
<https://bit.ly/2Y4fCaI> [hereinafter *School Closure Order*].

24 ⁷ *Id.* (footnote omitted).

25 ⁸ *Id.* In addition to the framework, the Department of Public Health has also issued
26 “industry guidance” on the reopening of schools. See Cal. Dep’t of Pub. Health & Cal.
27 Dep’t of Indus. Relations, *COVID-19 Industry Guidance: Schools and School-Based*
Programs (updated Aug. 3, 2020), <https://bit.ly/30ZPTC4>.

28 ⁹ Cal. Dep’t of Pub. Health, *County Monitoring List*, <https://perma.cc/E8J7-9SHK> (last
updated Aug. 15, 2020, 11:07 AM).

¹⁰ Annie Vainshtein, *California’s Watch List: What It Monitors, and Why It Matters*
for the Bay Area, S.F. CHRON. (Aug. 4, 2020), <https://bit.ly/2FtxXrf>.

1 50. According to 2019–2020 public school enrollment data, there are approx-
 2 imately 6.1 million K-12 public school students in California.¹¹ Approximately 6 mil-
 3 lion of these students are in LHJs that are on the county monitoring list.¹² According
 4 to 2019-2020 private school affidavit information, there are approximately 470,000 K-
 5 12 private school students in California.¹³ Approximately 465,000 of these students
 6 are in LHJs that are on the county monitoring list.¹⁴

7 51. Public health officials and others have criticized the county monitoring
 8 list and the methodology for placing counties on the list. For example, one county
 9 health official has stated that the “arbitrary and constantly changing framework that
 10 the State has set up to put counties on the watch list and to determine closures (beyond
 11 the State ‘floor’) is fundamentally flawed.”¹⁵ That health official cited “data inconsis-
 12 tencies as well as state-imposed hospital transfers and testing restrictions as evidence
 13 the watch list criteria is unfair.”¹⁶

14 52. The State of California itself has acknowledged flaws in the county mon-
 15 itoring list. On August 5, 2020, it was reported that, due to a “technical problem with
 16 the state’s coronavirus testing database,” California stopped removing from and add-
 17 ing to the county monitoring list.¹⁷ When the monitoring list is frozen, it is impossible
 18 for schools in LHJs on the county monitoring list to become eligible for in-person ed-
 19 ucation.

21 _____
 22 ¹¹ Data Reporting Office, Cal. Dep’t of Educ., *2019-20 Enrollment by Grade*,
<https://perma.cc/85SD-9CDP> (last updated Aug. 15, 2020).

23 ¹² *Id.*; see also *County Monitoring List*, *supra* note 9.

24 ¹³ Educ. Data Mgmt. Div., Cal. Dep’t of Educ., *2019-20 Private School Affidavit Data*
- Schools with Enrollment of Six or More Students (July 7, 2020),
<https://perma.cc/ZLL6-PRYN>.

25 ¹⁴ *Id.*; see also *County Monitoring List*, *supra* note 9.

26 ¹⁵ Eric Ting, *San Mateo County Health Officer Assails ‘Fundamentally Flawed’ State*
Watch List, SFGATE (Aug. 6, 2020), <https://bit.ly/2PSsLiu>.

27 ¹⁶ *Id.*

28 ¹⁷ Amy Taxin, *California’s Growing Virus Data Collection Headache*, ASSOCIATED
 PRESS (Aug. 5, 2020), <https://bit.ly/2CAMErW>.

1 53. Sonia Angell, the former State Public Health Officer and Department of
2 Public Health Director, abruptly resigned on August 9, 2020. Media reports indicate
3 that Governor Newsom has “hinted that the abrupt departure ... of his state public
4 health officer was related to” California’s coronavirus testing data problems.¹⁸

5 54. In an article about the flaws in California’s testing data, one public health
6 official was quoted saying “I would say now we’re back to feeling blind. We don’t
7 know how the epidemic is trending.”¹⁹

8 55. The School Closure Order provides that a local health officer may grant a
9 waiver of the reopening restrictions, but only for elementary schools.²⁰ A school’s su-
10 perintendent—or the equivalent for a charter or private school—may request a waiver
11 “in consultation with labor, parent and community organizations.”²¹

12 56. The Department of Public Health provided limited guidance on these
13 waivers on August 3, 2020.²² The guidance does not provide an objective standard for
14 evaluating waiver requests, and does not provide for an oral presentation, a reasoned
15 decision, or an appeal process. The guidance recommends that schools not be consid-
16 ered for a waiver in jurisdictions where the 14-day case rate was more than double the
17 threshold for inclusion on the county monitoring list. In light of this recommendation,
18 Los Angeles County has preemptively stated that it will not entertain waiver requests
19 until “the case rate falls to the levels recommended by the State.”²³

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21
22 ¹⁸ Kevin Yamamura & Victoria Colliver, *Newsom Indicates California Health Of-*
23 *ficer’s Abrupt Departure Related to Data Blunder*, POLITICO (Aug. 11, 2020),
<https://politi.co/2DWiHCL>.

24 ¹⁹ Taxin, *supra* note 17.

25 ²⁰ *School Closure Order*, *supra* note 6.

26 ²¹ *Id.*

27 ²² Cal. Dep’t of Pub. Health, *COVID-19 and Reopening In-Person Learning Elemen-*
28 *tary Education Waiver Process* (Aug. 3, 2020), <https://bit.ly/31YpqUz>.

²³ News Release, L.A. Cty. Dep’t of Pub. Health, *Los Angeles County Will Not Con-*
sider School Re-opening Waivers, Per State Guidance (Aug. 4, 2020),
<https://bit.ly/3iFbmGg>.

1 57. California has not tied the in-person operation of similarly situated enti-
2 ties—such as childcare facilities and camps—to the county monitoring list. Such enti-
3 ties are allowed to conduct in-person operations regardless of whether those entities
4 are located in an LHJ that has been on the county monitoring list within the prior 14
5 days.

6 58. On July 17, 2020, California issued a guidance document for childcare fa-
7 cilities. Recognizing that many childcare facilities remained available to essential
8 workers throughout the pandemic, the childcare guidance provides instruction “[a]s
9 programs begin to reopen and other programs transition from emergency child care for
10 essential workers to enhanced regular operations.”²⁴ The guidelines suggest measures
11 for both children and adults to reduce the risk of COVID-19 transmission, including
12 wearing masks and gloves, standards for cleaning and disinfecting surfaces, hygiene
13 protocols, and physical distancing requirements. However, there is no prohibition on
14 childcare facilities conducting in-person operations, regardless of whether a childcare
15 facility is located in an LHJ on the county monitoring list.

16 59. On July 29, 2020, California also issued guidelines for reopening day
17 camps. As with childcare facilities, the guidelines provide safety and hygiene
18 measures for both children and adults for reducing the risk of COVID-19 transmission.
19 These include wearing masks, washing hands, cleaning surfaces, and ensuring suffi-
20 cient ventilation. However, the State of California has not mandated that camps are
21 only allowed to operate in LHJs not on the county monitoring list.

22 60. In sum, Governor Newsom’s scheme subjects schools to greater re-
23 strictions than camps and childcare facilities. A camp or daycare in an LHJ on the
24 county monitoring list can conduct in-person business, but the parochial school across
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27 ²⁴ Cal. Dep’t of Pub. Health, Cal. Dep’t of Soc. Servs. & Cal. Dep’t of Indus. Rela-
28 tions, *COVID-19 Update Guidance: Child Care Programs and Providers 2* (July 17,
2020), <https://bit.ly/2Q2uSAd>.

1 the street cannot. There is no legally-appropriate basis for this discriminatory treat-
2 ment.

3 61. Camps and childcare facilities have been conducting in-person business.
4 In fact, childcare is being provided in the very same school buildings that have been
5 closed to educational instruction.²⁵

6 62. As of August 11, 2020, there were 8,633 Child Care centers and 24,942
7 licensed Family Child Care Homes open in California, for a total of 33,575 open facil-
8 ities.²⁶ According to California's data, 32,543 of these facilities are located in LHJs
9 that appear on the county monitoring list.²⁷ Nevertheless, under California's arbitrary
10 framework, zero schools are allowed to conduct in-person education in these very
11 same jurisdictions, even if they implement the same preventative measures (e.g., the
12 use of masks and gloves, hygiene protocols, and physical distancing).

13 63. These prohibitions on in-person education apply county-wide without
14 any effort to ascertain local conditions or any particular school's circumstances. Nor
15 do these prohibitions make any accommodation for religious schools, religious in-
16 struction, or religious worship offered as part of or in conjunction with an educational
17 curriculum.

18 64. In other words, children may gather in a school building to play games,
19 take field-trips, design tie-dye tee shirts, and engage in other fun camp activities.
20 Those same children, however, cannot attend regular school in that same setting to
21 study math, history, or religious studies, or engage in worship.

22 65. The discriminatory treatment against schools cannot survive scrutiny.
23 There is no reason to believe that schools implementing the same preventative
24 measures and sometimes operating in the very same buildings present any greater risk

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26 ²⁵ Amy Taxin, *California Using Virus-Closed Classrooms for Child Care*, ASSOCIATED
PRESS (July 22, 2020), <https://bit.ly/3h0NnB9>.

27 ²⁶ Cal. Dep't of Soc. Servs., *Coronavirus (COVID-19) Cases in Child Care Facilities*
(Aug. 13, 2020), <https://perma.cc/TW2E-NM7C>.

28 ²⁷ *Id.*; see also *County Monitoring List*, *supra* note 9.

1 of transmission than childcare facilities or camps. Defendants have offered no expla-
2 nation for why it is fine for children to share a room to play, but it is prohibited for
3 those very same children in that very same room to learn and pray.

4
5 **II. Defendants' Actions Are Not Supported by Science and Defy**
6 **Recommendations from the CDC and the AAP to Allow**
7 **In-Person Instruction**

8 66. The CDC, AAP, and numerous other organizations and experts have rec-
9 ommended resuming in-person education. Defendants have ignored those recommen-
10 dations to the detriment of California's children.

11 67. Continued school closures in California will have long-term detrimental
12 consequences for the education, safety, and health of school-aged children. Evidence-
13 based research has shown that distance learning is less effective than in-person school-
14 ing. Implementation of distance learning since school closures in the spring of 2020
15 has already had disastrous results in educational growth and development. Children's
16 social development, physical safety, and health are jeopardized by school closures.
17 These costs are too high a burden for California's children to bear, particularly when
18 overwhelming scientific data shows the minimal public health risk that school-aged
19 children pose in contracting or transmitting COVID-19.

20 ***a. Evidence-based Research Shows Distance Learning to be***
21 ***Substantially Less Effective than In-person Schooling***

22 68. The concept of distance learning is not new in America. The expansion of
23 virtual or online education since the late 1990s has drawn attention of policymakers
24 and researchers alike, with 501 full-time virtual schools enrolling 297,712 students na-
25 tionwide in the 2017-2018 academic year.²⁸ Empirical studies consistently show that
26 students in virtual schools underperform when compared to their counterparts in live
27 educational settings. This performance gap exists for virtual schools established with

28 ²⁸ Alex Molnar, Nat'l Educ. Pol'y Ctr., *Virtual Schools in the U.S. 2019* 4 (May 2019),
<https://bit.ly/33YNJ7I>.

1 the express purpose of effectively implementing distance learning for students who
2 have chosen to enroll in this method of instruction. This fall, California students who
3 have known only in-person education will be forced to virtually attend schools that are
4 not designed or intended for distance learning—an *ad hoc* experiment in distance
5 learning that will likely widen the existing performance gap.

6 69. In a 2019 report by the National Education Policy Center, only 48.5% of
7 virtual schools received acceptable performance ratings, with an average graduation
8 rate of 50.1%, “far short of the national average of 84%.”²⁹

9 70. In a 2015 study, the Center for Research on Education Outcomes at Stan-
10 ford University (“CREDO”) compared online charter school students in 17 states and
11 the District of Columbia to demographically identical students attending in-person
12 schools. Compared to traditional public school students, full-time virtual charter
13 school students showed substantially weaker academic growth. Overall, full-time vir-
14 tual charter school students experience 180 fewer days of learning in math and 72
15 fewer days of learning in reading in comparison to traditional public school students.³⁰
16 Academic growth was weaker than traditional public schools in a substantial majority
17 of states with online charter schools (including California) and across all subgroups of
18 students (white, black, Hispanic, Asian/Pacific Islander, Native American, multi-ra-
19 cial, those in poverty, English-language learners, and special education students).³¹

20 71. For younger students, a distance-learning model presents particular ob-
21 stacles to their academic growth and development. For example, “[i]n grades K-3,
22 children are still developing the skills to regulate their own behavior, emotions, and
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24
25

26 ²⁹ *Id.* at 9 (summarizing data for states with available school performance ratings).

27 ³⁰ James L. Woodworth et al., Ctr. for Research on Educ. Outcomes, *Online Charter*
School Study 23 (2015), <https://stanford.io/34gu2sj>.

28 ³¹ *Id.* at 25-34.

1 attention, and therefore struggle with distance learning.”³² To help these younger stu-
2 dents, distance-learning models tend to rely heavily on increased levels of parental in-
3 volvement to increase student participation and the effectiveness of instruction. *See,*
4 *e.g.*, 2015 Mathematica Policy Research Report (showing that 78 percent of online
5 charter elementary schools “expect parents to actively participate in the student’s in-
6 struction”).³³ This puts single-parent and two-working-parent families in a systemi-
7 cally disadvantaged position, where parents will have significant difficulty providing
8 the level of participation needed to replace a full-time in-person teacher. The increased
9 reliance on parental participation will also disproportionately hurt lower socio-eco-
10 nomic families, where parents’ jobs “are more likely to be deemed essential and to be
11 employed in lower-paid service sector positions in transportation, food production, de-
12 livery or grocery.”³⁴ These parents are therefore more likely to be unavailable in the
13 home during the school day to participate in the instruction program.

14 72. In addition, distance learning relies heavily on screened electronic de-
15 vices to convey instruction, even as the scientific literature has long and consistently
16 discouraged screen time for young children. Early data from a landmark National In-
17 stitutes of Health study that began in 2018 indicates that “children who spent more
18 than two hours a day on screen-time activities scored lower on language and thinking
19 tests,” and if children spent more than seven hours a day on a screen, they “experi-
20 enced thinning of the brain’s cortex, the area of the brain related to critical thinking
21 and reasoning.”³⁵ This may be because “screens could inhibit certain aspects of a
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23 ³² News Release, Nat’l Acads. of Scis., Eng’g, & Med., *Schools Should Prioritize Reo-*
24 *pening in Fall 2020, Especially for Grades K-5, While Weighing Risks and Benefits*
(July 15, 2020), <https://bit.ly/2E4rbr9>.

25 ³³ Brian Gill et al., Mathematica Pol’y Research, *Inside Online Charter Schools 22-*
26 *23*(Oct. 2015), <https://bit.ly/2Y52F0p>.

27 ³⁴ Christina Ramirez, Commentary, *Fall School Closure = Long-Term Health, Learn-*
ing Costs for Kids, REALCLEAR POL. (Aug. 6, 2020), <https://bit.ly/3av7J2N>.

28 ³⁵ Jennifer F. Cross, *What Does Too Much Screen Time Do to Children’s Brains?*,
HEALTH MATTERS (2020), <https://bit.ly/2Y6HQS1>.

1 child’s development by narrowing their focus of interest and limiting their other
2 means of exploration and learning.”³⁶

3 73. These shortcomings are magnified when applied to instruction that ordi-
4 narily takes place in a religious setting. As described above, many Plaintiffs send their
5 children to, teach in, or attend a religious school because religious instruction is in-
6 fused throughout the school day including during non-instructional time. Faculty
7 model appropriate behavior between classes, in the lunchroom, and on the playground
8 and playing fields. Students congregate together in a religious manner and appropriate
9 conduct is steadily encouraged and reinforced. Religious study, together, is itself often
10 a form of worship, and religious services are included congregationally as part of the
11 school day. These things cannot be pushed online; they are simply and irreparably lost.

12 ***b. Distance Learning During the COVID-19 Pandemic to Date Shows***
13 ***Negative Results that Are Unlikely to Improve in the Fall***

14 74. Data regarding distance learning implemented following school closures
15 in the spring of 2020 show troubling trends that are projected to continue into the fall.

16 75. A survey of 477 school districts by the University of Washington’s Center
17 on Reinventing Public Education found a “sobering story”: “[J]ust one in three dis-
18 tricts expect teachers to provide instruction, track student engagement, or monitor aca-
19 demic progress for all students.... Far too many districts are leaving learning to
20 chance during the coronavirus closures.”³⁷

21 76. In addition to inadequate engagement by schools, evidence in California
22 also shows student participation rates in pandemic distance learning programs are
23 troublingly low. Shortly after the Los Angeles School District shut down in March
24 2020, the district reported that “[a]bout 15,000 ... high school students are absent
25 online and have failed to do any schoolwork,” while “more than 40,000 have not been

26 ³⁶ *Id.*

27 ³⁷ Betheny Gross & Alice Opalka, Ctr. on Reinventing Pub. Educ., *Too Many Schools*
28 *Leave Learning to Chance During the Pandemic* 1 (June 2020),
<https://bit.ly/2Y62WzV>.

1 in daily contact with their teachers.”³⁸ A study from the Los Angeles Unified School
 2 District found that, on an average day between mid-March and late-May 2020, “only
 3 about 36% of middle and high school students participated online,” about 25% only
 4 “logged on or viewed work,” and “about 40% were absent.”³⁹

5 77. One study found that, because of school closures this past spring, stu-
 6 dents likely would achieve only “63–68% of the learning gains in reading relative to a
 7 typical school year,” and only “37–50% of the learning gains in math.”⁴⁰

8 78. Another study concluded that even those students receiving online learn-
 9 ing of average quality for the upcoming fall will lose “three to four months of learn-
 10 ing” by the start of 2021, as compared to their peers receiving in-person education.⁴¹

11 79. Many parents send their children to religious schools because the schools
 12 teach things that the parents cannot. While such parents will make every effort to en-
 13 courage their children, there is no reason to believe that similar losses would not man-
 14 ifest in religious education.

15 ***c. School Closures Put Children’s Social Development,
 16 Physical Safety, and Mental Health at Risk***

17 80. Trusted institutions and individuals throughout the scientific and medical
 18 community overwhelmingly support re-opening schools this fall, including the
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22 ³⁸ Howard Blume, *15,000 L.A. High School Students Are AWOL Online, 40,000 Fail*
 23 *to Check in Daily Amid Coronavirus Closures*, L.A. TIMES (Mar. 30, 2020),
 24 <https://lat.ms/3iIZdjD>.

25 ³⁹ Paloma Esquivel, *L.A. Latino, Black Students Suffered Deep Disparities in Online*
 26 *Learning, Records Show*, L.A. TIMES (July 16, 2020), <https://lat.ms/3g7D25i>.

27 ⁴⁰ Megan Kuhfeld et al., *Projecting the Potential Impacts of COVID-19 School Clo-*
 28 *tures on Academic Achievement 2* (Brown Univ. Annenberg Inst., Paper No. 20-226,
 May 2020), <https://bit.ly/3IYY7dl>.

⁴¹ Emma Dorn et al., McKinsey & Company, *COVID-19 and Student Learning in the*
United States: The Hurt Could Last a Lifetime 3 (June 2020),
<https://mck.co/3kKUnV0>.

1 CDC;⁴² the AAP;⁴³ the World Health Organization (“WHO”);⁴⁴ Royal College of Pae-
 2 diatrics and Child Health;⁴⁵ The National Academies of Sciences, Engineering and
 3 Medicine;⁴⁶ the former Commissioner of the Food and Drug Administration, Dr. Scott
 4 Gottlieb;⁴⁷ and the Director of the National Institute of Allergy and Infectious Dis-
 5 eases, Dr. Anthony S. Fauci.⁴⁸ These experts have warned of the detrimental effects
 6 that continued school closures will have on the social development, safety and mental
 7 health of children.

8 81. Dr. Anthony S. Fauci stated recently that the “default position should be
 9 to try, as best as you possibly can, to open up the schools for in-person learning ... be-
 10 cause of the psychological benefit and in some places, even for the nutrition of chil-
 11 dren[.]”⁴⁹

12 82. The CDC explained that “[s]chools play a critical role in supporting the
 13 whole child, not just their academic achievement,” including the “development of so-
 14 cial and emotional skills,” “creat[ing] a safe environment for learning; address[ing]
 15 nutritional needs; and facilitat[ing] physical activity.”⁵⁰

16 83. Social interaction among school-aged children is “particularly important
 17 for the development of language, communication, social, emotional, and interpersonal
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20 ⁴² Ctrs. for Disease Control & Prevention, *The Importance of Reopening America’s*
 21 *Schools This Fall*, <https://bit.ly/31WJc2N> (last updated July 23, 2020).

22 ⁴³ *COVID-19 Planning Considerations: Guidance for School Re-entry*, Am. Acad. of
 23 Pediatrics, <https://bit.ly/3fXIZBv>.

24 ⁴⁴ World Health Org., *Considerations for School-Related Public Health Measures in*
 25 *the Context of COVID-19* (May 10, 2020), <https://bit.ly/3h1Ixn5>.

26 ⁴⁵ Royal College of Paediatrics and Child Health, *Open Letter from UK Paediatricians*
 27 *About the Return of Children to Schools* (June 17, 2020), <https://bit.ly/322ljom>.

28 ⁴⁶ *Schools Should Prioritize Reopening in Fall 2020*, *supra* note 32.

⁴⁷ Scott Gottlieb, Opinion, *Schools Can Open Safely This Fall*, WALL ST. J. (July 12,
 2020), <https://on.wsj.com/2YIP451>.

⁴⁸ Mark Pazniokas, *In Connecticut Briefing, Fauci Urges a Return to Classroom*, CT
 MIRROR (Aug. 3, 2020), <https://bit.ly/30Xa7MP0>.

⁴⁹ *Id.*

⁵⁰ *The Importance of Reopening America’s Schools This Fall*, *supra* note 42.

1 skills.”⁵¹ Especially for younger children (ages 2–5), interactive play with other chil-
2 dren is essential both for building foundational skills and for avoiding “anxiety and
3 depression” and “an array of sensory, motor and cognitive issues” later in life.⁵²

4 84. School closures also cut off access to support systems that children need
5 to help them recognize and manage emotions, appreciate others’ perspectives, and
6 make responsible decisions. School connectedness, or a student’s belief that teachers
7 and other adults at school care about them and their well-being, is associated with
8 lower levels of depression, thoughts about suicide, social anxiety, and sexual activity,
9 as well as higher levels of self-esteem.⁵³ This connection in a school environment is
10 especially important for children in unstable or unsupportive home environments.⁵⁴

11 85. As mandatory reporters, teachers who have daily contact with children
12 are in the best position to notice and report suspected child abuse. As a report from
13 RAINN (Rape, Abuse, & Incest National Network) explains:

14 Many minors are now quarantined at home with their
15 abuser. Meanwhile, these kids are cut off from their safety
16 net—the teachers, coaches, and friends’ parents who are
17 most likely to notice and report suspected abuse.” ... “As
18 a result, abuse reports to many state authorities have de-
19 clined—not because there is less abuse taking place, but
20 because children have less contact with adults outside the
21 home who could potentially spot and report abuse. Sadly,
22 it is likely that the risk of children being sexually abused
will increase as shelter-in-place orders continue—one

23 ⁵¹ *Id.*

24 ⁵² Christine K. VanDeVelde, Opinion, *School Closures Damage the Youngest Chil-*
dren, WALL ST. J. (Aug. 7, 2020), <https://on.wsj.com/2Y44cnj>.

25 ⁵³ Cynthia Ewell Foster et al., *Connectedness to Family, School, Peers, and Commu-*
nity in Socially Vulnerable Adolescents, 81 CHILD. & YOUTH SERVS. REV. 321 (2017).

26 ⁵⁴ See Alexandra Loukas et al., *School Connectedness Buffers the Effects of Negative*
Family Relations and Poor Effortful Control on Early Adolescent Conduct Problems,
27 20 J. RES. ON ADOLESCENCE 13 (2010), <https://bit.ly/3iIhBJA> (a longitudinal study of
28 478 adolescents over 3 years finding “high levels of school connectedness protected
adolescents from the deleterious effects of negative family relations”).

1 more tragic consequence of the public health crisis the
2 country currently faces.⁵⁵

3 86. A 2018 U.S. Department of Health and Human Services study found that
4 teachers and other educational staff were responsible for making more than one-fifth
5 of all reports of child abuse—more than any other category of reporter.⁵⁶ During
6 school closures since the pandemic began “there has been a sharp decline in reports of
7 suspected maltreatment,” and hospitals have seen an increase in hospitalizations of
8 children suffering from abuse.⁵⁷ Calls to the hotline of the Los Angeles County De-
9 partment of Children and Family Services “have plummeted since schools were closed
10 due to the pandemic” by 50%.⁵⁸ The pandemic has caused school-aged children to be
11 “isolated at home with parents, who may be under increased stress with the added re-
12 sponsibilities of educating their kids ... working from home or the economic stress of
13 recent job loss” which are “well known risk factors for abuse.”⁵⁹

14 87. As the foregoing paragraphs indicate, resumption of in-person education
15 will have manifold psychological benefits for children. This is particularly true for re-
16 ligious schools, which are often tight-knit communities of families with shared values
17 and experiences. Children attending such schools congregate with their peers in
18 school, at religious worship, and elsewhere, and such schools are at the core of these
19 communities. Shutting down these schools shuts down substantially more than just
20 school.

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⁵⁵ *For the First Time Ever, Minors Make Up Half of Visitors to National Sexual As-*
24 *sault Hotline*, RAINN (Apr. 16, 2020), <https://bit.ly/3fXLlP>.

25 ⁵⁶ U.S. Dep’t of Health & Human Servs., *Child Maltreatment 2018*, at 8 (2018),
<https://bit.ly/3h48gLC>.

26 ⁵⁷ *The Importance of Reopening America’s Schools this Fall*, *supra* note 42.

27 ⁵⁸ Kelly Callahan & ChrisAnna Mink, *Child Abuse Hotline Calls Are Down During*
COVID-19, But Abuse Fears Are Up, CTR. FOR HEALTH JOURNALISM (May 7, 2020),
<https://bit.ly/31Q9Z0Q>.

28 ⁵⁹ *Id.*

1 ***d. Current Scientific Data Shows that Opening Schools***
 2 ***Presents Minimal Risk to Public Health***

3 88. The latest CDC guidance shows the relatively low infection risk in chil-
 4 dren: people younger than 18 years old are hospitalized at a rate of 8.0 per 100,000
 5 population, compared to 164.5 for adults.⁶⁰ The breakdown of hospitalization rates
 6 shows that children younger than two years old were hospitalized at much higher rates
 7 (24.8 per 100,000 population) compared to children aged 2–4 years (4.2) and 5–17
 8 years (6.4).⁶¹

9 89. As of August 13, 2020, the California Department of Public Health re-
 10 ports children under the age of 5 account for 2.1 percent of the cases in the state; chil-
 11 dren between 5 and 17 years old account for 7.46 percent of cases.⁶² For both age
 12 groups, the percentage of infection is less than half of their respective percentage of
 13 the California population (5.8% and 16.7%, respectively; compared to people ages 18–
 14 34, which represent 35.3% of infections in California, but only account for 24.3% of
 15 the state population).⁶³ A recent study shows that the lower rates of infection in young
 16 children may be due to lower levels of a receptor enzyme gene in their airways, which
 17 COVID-19 uses “for host entry.”⁶⁴ California reports only a single death of a child,
 18 from the 5- to 17-years-old age group.⁶⁵

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 22 ⁶⁰ Lindsay Kim et al., *Hospitalization Rates and Characteristics of Children Aged <18*
 23 *Years Hospitalized with Laboratory-Confirmed COVID-19 — COVID-NET, 14 States,*
 24 *March 1–July 25, 2020*, 69 *MORBIDITY & MORTALITY WKLY. REP.* 1081 (2020),
 25 <https://bit.ly/310asyn>.

26 ⁶¹ *Id.*

27 ⁶² Cal. Dep’t of Pub. Health, *Cases and Deaths Associated with COVID-19 by Age*
 28 *Group in California* (Aug. 13, 2020), <https://perma.cc/6SZ4-SPV5>.

⁶³ *Cases and Deaths Associated with COVID-19 by Age Group in California*, *supra*
 note 62.

⁶⁴ Supinda Bunyavanich, Alfin Vicencio, *Nasal Gene Expression of Angiotensin-Con-*
verting Enzyme 2 in Children and Adults, *JAMA* (2020) 323(23); 2427-2429.

⁶⁵ *Id.*

1 90. When school-age children are infected, studies show that they tend to
2 have mild⁶⁶ or asymptomatic infections.⁶⁷

3 91. Early in the global outbreak, the Australian Research Council released a
4 study that looked at countries experiencing the pandemic earlier than Western coun-
5 tries: China, Singapore, South Korea, Japan, and Iran. The study concluded that while
6 “SARS-CoV-2 can cause mild disease in children, the data available to date suggests
7 that children have not played a substantive role in the intra-household transmission of
8 SARS-CoV-2.”⁶⁸

9 92. In April, the Ministry of Health for British Columbia found that
10 “COVID-19 virus has a very low infection rate in children estimated at 1–5% world-
11 wide.”⁶⁹

12 93. A large-scale analysis of school transmission studies, reviewing data
13 from December 2019 to the end of May 2020, showed that the children were not driv-
14 ers of transmission in school environments.⁷⁰ Similarly, a study of county infection
15 rates of COVID-19 across the United States from March 1, 2020, to April 27, 2020,
16 found “no evidence that school closures influenced the growth rate” in COVID infec-
17 tions.⁷¹

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20 ⁶⁶ Nisha S. Mehta et al., *SARS-CoV-2 (COVID-19): What Do We Know About Chil-*
21 *dren? A Systematic Review*, CLINICAL INFECTIOUS DISEASES (May 11, 2020),
<https://bit.ly/2PYnWV2>.

22 ⁶⁷ Petra Zimmermann & Nigel Curtis, *Coronavirus Infections in Children Including*
COVID-19, 39 PEDIATRIC INFECTIOUS DISEASE J. 355 (2020), <https://bit.ly/2DOBYpT>.

23 ⁶⁸ Yanshan Zhu et al., *Children Are Unlikely to Have Been the Primary Source of*
24 *Household SARS-CoV-2 Infections*, MEDRXIV (Mar. 30, 2020), <https://bit.ly/311190Q>
(preprint).

25 ⁶⁹ Sarah Silverberg & Laura Sauvé, BC Centre for Disease Control, *Caring for Chil-*
dren with COVID-19 (Apr. 3, 2020), <https://bit.ly/3avBbpm>.

26 ⁷⁰ Luis Rajmil, *Role of Children in the Transmission of the COVID-19 Pandemic: A*
Rapid Scoping Review, BMJ PAEDIATRICS OPEN (2020), <https://bit.ly/2E8RYm4>

27 ⁷¹ Charles Courtemanch et al., *Strong Social Distancing Measures in the United States*
28 *Reduced the COVID-19 Growth Rate*, 39 HEALTH AFF. 1237, 1242 (2020),
<https://bit.ly/3asqlAF>.

1 94. Finland and Sweden conducted a comparative joint study of transmission
2 rates in Finnish schools (which reopened in mid-May 2020) compared to Swedish
3 schools (which never closed), then compared them to the rate of infection in other pro-
4 fessions in both countries. The report observed that there was “no measurable direct
5 impact on the number of laboratory confirmed cases” in children in either country, but
6 also that there was no increased risk for teachers as compared to higher risks present
7 in other professional environments.⁷²

8 95. An Australian study observed COVID-19 transmission among children
9 and adults in 25 educational settings (early childhood education and care settings, in
10 addition to primary and secondary schools) for a period of three months.⁷³ The study
11 concluded that the “spread of COVID-19 within NSW (New South Wales) schools has
12 been very limited.”⁷⁴ This study also found that, unlike other respiratory viruses, chil-
13 dren are not the primary drivers of the spread of COVID-19.⁷⁵

14 96. Since the reopening of schools in 22 member states in the European Un-
15 ion, there has been no significant increase in infections of COVID-19 among students,
16 teachers, and parents.⁷⁶

17 97. An Irish study observing six confirmed cases in children found that no
18 secondary cases were reported as arising from the original pediatric infections.⁷⁷

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20 ⁷² Pub. Health Agency of Swed., *Covid-19 in Schoolchildren – A Comparison Between
Finland and Sweden* 7 (2020), <https://bit.ly/2FwFsxL>.

21 ⁷³ National Centre for Immunisation Research and Surveillance, *Covid-19 in Schools:
The Experience in NSW* 1 (Apr. 26, 2020), <https://bit.ly/2FuEAcT>. See also Kristine
22 Macartney et al., *Transmission of SARS-CoV-2 in Australian Educational Settings: A
Prospective Cohort Study*, THE LANCET (Aug. 3, 2020), <https://bit.ly/3g0cH97> (re-pre-
23 senting findings of the same study).

24 ⁷⁴ *Covid-19 in Schools*, *supra* note 73, at 1.

25 ⁷⁵ *Id.*

26 ⁷⁶ Carly Ortiz-Lytle, *More Than 20 EU Member States Have Not Seen a Spike in
Coronavirus Cases in Schools After Reopening*, WASH. EXAMINER (May 21, 2020),
<https://washex.am/2E4lo4U>.

27 ⁷⁷ Laura Heavey et al., *No Evidence of Secondary Transmission of COVID-19 from
Children Attending School in Ireland, 2020*, 25 EUROSURVEILLANCE, May 28, 2020, at
28 2, <https://bit.ly/34gxkMb>.

1 98. On June 29, 2020, a French study released a report on 1,340 people
2 linked to primary schools in France and concluded that infected children did not
3 spread the virus to other children, teachers, or school staff.⁷⁸

4 99. On July 8, 2020, Prevent Epidemics published a report by the former
5 Head of the CDC, titled “Reopening America’s Schools: A Public Health Approach.”
6 The report found that the evidence “suggests that children may play a smaller role in
7 transmission of COVID-19 than adults.”⁷⁹

8 100. A study of German school children published in July 2020 concluded that
9 schools and young people do not play a significant role in the transmission of the
10 coronavirus.⁸⁰ This study found that schools in Germany did not become hotspots af-
11 ter they were reopened.⁸¹

12 101. The National Academies of Sciences, Engineering, and Medicine pub-
13 lished a report in July 2020 that weighed the health risks of reopening K-12 schools
14 against the educational risks of providing no in-person instruction. According to the
15 report, “the science has suggested that children are at lower risk of severe illness rela-
16 tive to adults, and many infections in children are either asymptomatic or are very
17 mild.”⁸² The report concluded that:

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22 ⁷⁸ Arnaud Fontanet et al., *SARS-CoV-2 Infection in Primary Schools in Northern*
23 *France: A Retrospective Cohort Study in an Area of High Transmission*, MEDRXIV
(June 29, 2020), <https://bit.ly/2YISrcb> (preprint).

24 ⁷⁹ Prevent Epidemics, *Reopening America’s Schools: A Public Health Approach 6*
25 (July 2020), <https://bit.ly/3atSpDG>.

26 ⁸⁰ Jakob Peter Armann et al., *Hospital Admission in Children and Adolescents with*
COVID-19, 117 DEUTSCHES ÄRZTEBLATT INT’L 373 (2020), <https://bit.ly/3g5hxlf>.

27 ⁸¹ *Id.*

28 ⁸² *Reopening K-12 Schools During the COVID-19 Pandemic: Prioritizing Health, Eq-*
uity, and Communities 14 (Enriqueta Bond et al. eds., Nat’l Acads. Press 2020),
<https://bit.ly/2CuWYRE> (preprint).

1 Districts should weigh the relative health risks of reopening
2 against the educational risks of providing no in-person in-
3 struction in Fall 2020. Given the importance of in-person in-
4 teraction for learning and development, districts should prior-
5 itize reopening with an emphasis on providing full-time, in-
6 person instruction in grades K-5 and for students with special
7 needs who would be best served by in-person instruction.⁸³

8 102. A leading U.K. epidemiologist reported to the media in July 2020 that
9 there has been no reported cases of a teacher catching coronavirus from pupils.⁸⁴

10 103. Israel reported that even in the case of a large high school outbreak, in
11 which 13.2% of students tested positive for COVID-19, no hospitalizations were re-
12 quired, and no secondary infections were documented, indicating the outbreak was
13 both mild and limited to the school.⁸⁵

14 104. On July 23, 2020, the CDC updated its report titled “The Importance of
15 Reopening America’s Schools This Fall.”⁸⁶ This report found:

16 Death rates among school-aged children are much lower
17 than among adults. At the same time, the harms attributed
18 to closed schools on the social, emotional, and behavioral
19 health, economic well-being, and academic achievement
20 of children, in both the short- and long-term, are well-
21 known and significant.

22 105. There is no reason to think that these statistics would be any different for
23 religious schools. To the contrary, schools that teach personal propriety including hy-
24 giene not only as a matter of good practice but as an article of faith are more likely to
25 be effective in implementing disease-containing protocols.

26 ⁸³ *Id.* at 5, 75.

27 ⁸⁴ Mark McLaughlin et al., *No Known Case of Teacher Catching Coronavirus from Pupils, Says Scientist*, TIMES (London) (July 21, 2020), <https://bit.ly/346I8fw>.

28 ⁸⁵ Chen Stein-Zamir et al., *A Large COVID-19 Outbreak in a High School 10 Days After Schools’ Reopening, Israel, May 2020*, 25 EUROSURVEILLANCE, July 23, 2020, at 2, <https://bit.ly/2DNmUZC>.

⁸⁶ *The Importance of Reopening America’s Schools This Fall*, *supra* note 42.

1 **III. The Defendants’ Actions Irreparably Harm Plaintiffs**
2 **and Deprive Them of the Free Exercise of Religion**

3 106. In addition to subjecting Parent Plaintiffs’ children to the emotional, psy-
4 chological, physical, and academic harms discussed above, the School Closure Order
5 deprives Plaintiffs of the free exercise of religion.

6 107. As the Supreme Court recently affirmed, religious education is central to
7 the free exercise of religion. *See Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2064. “Re-
8 ligious education is vital to many faiths practiced in the United States,” including,
9 among others, Christian, Islamic, and Judaic faiths. *Id.* “The religious education and
10 formation of students is the very reason for the existence of most private religious
11 schools” *Id.* at 2055.

12 108. There is a “close connection that religious institutions draw between their
13 central purpose and educating the young in the faith.” *Id.* at 2066.

14 109. “Religious education is a matter of central importance in Judaism.” *Id.* at
15 2065. “The term ‘rabbi’ means teacher,” *id.* at 2067, and “the Torah is understood to
16 require Jewish parents to ensure that their children are instructed in the faith,” *id.* at
17 2065.

18 110. Religious education is also crucial to Christians. For example, “[i]n the
19 Catholic tradition, religious education is ‘intimately bound up with the whole of the
20 Church’s life.’ Under canon law, local bishops must satisfy themselves that ‘those
21 who are designated teachers of religious instruction in schools ... are outstanding in
22 correct doctrine, the witness of a Christian life, and teaching skill.’” *Id.* (omission in
23 original) (internal citations omitted). Canon law also provides that “Catholic par-
24 ents ... have the duty and right of choosing those means and institutions through
25 which they can provide more suitably for the Catholic education of their children,”
26 and “are to entrust their children to those schools which provide a Catholic educa-
27 tion.” *Codex Iuris Canonici* c.793 § 1, c.798 (1983).

1 111. Similarly, Protestant churches have long “viewed education as a religious
2 obligation.” *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2065.

3 112. As detailed in the Plaintiff descriptions above, Defendants’ actions de-
4 prive Plaintiffs of their ability to exercise this key element of their faith.

5 113. The School Plaintiffs are religious schools devoted to Orthodox Jewish,
6 Christian, and Catholic education.

7 114. Each of the Parent Plaintiffs have enrolled their children with a School
8 Plaintiff in order to direct the religious education of their minor children.

9 115. Each of the Teacher Plaintiffs chose to teach at a School Plaintiff because
10 of the religious mission of the school.

11 116. Teaching religion, developing the faith of students, and ministering to
12 students are central to the mission and curriculum of each of the School Plaintiffs. Re-
13 ligious education, ceremony, and prayer are incorporated throughout the schools’ cur-
14 ricula and schooldays. The education provided by the Plaintiff Schools is essential to
15 the free exercise of religion by the Plaintiff Schools, the Plaintiff Parents and their
16 children, and the Plaintiff Teachers.

17 a. The primary goal of Jewish education is the study of Torah. The
18 study of Torah is itself a form of religious worship: “For as the Talmud sees it,
19 the study of Torah, a study often centered on picayune particulars of halakhah,
20 is one of the most pristine forms of divine worship.” Chaim Saiman, *Halakhah:
21 The Rabbinic Idea of Law* 6 (2018). Through study of Torah, Jewish education
22 hopes to socialize students into an Orthodox Jewish way of life. For Jewish stu-
23 dents, the education provided by School Plaintiffs is necessary to fulfill one’s
24 religious responsibility to pray, study foundational Jewish texts and ethics, and
25 live an ethical life. The schools’ curricula provide children instruction in the
26 Hebrew language, Jewish history, the text and historical commentary on the To-
27 rah, and the rituals that are foundational to the tenets of their religion.

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1 b. For Christian students, prayer, chapel, and bible study are vital ele-
2 ments of schooldays, and scripture is incorporated throughout the students’ aca-
3 demic education. For Catholic students, the school schedule also includes regu-
4 lar Mass in which the entire school community participates.

5 117. In-person education is critical to the free exercise of religion by each of
6 the School Plaintiffs, Parent Plaintiffs, and Teacher Plaintiffs.

7 a. Community and gathering together are essential elements of the
8 Catholic, Christian, and Jewish faiths.

9 b. The communal aspect of the Jewish religious experience is the core
10 of Judaism. Judaic study is an inherently communal experience that historically
11 requires partnered dialogue, communal prayer, and a tangible, sensory experi-
12 ence of holidays and celebrations, particularly for young children. The Torah it-
13 self is read as prescribing in-person interaction between students and teachers as
14 necessary for the religious education of children. Study of Torah is not simply
15 about the accumulation of knowledge or development of skill: “even if one has
16 retained nothing, the experience itself—live contact with the epiphanous divine
17 will manifested through Torah, and encounter with the divine presence, which
18 hovers over its student—is immeasurably important.” Aharon Lichtenstein,
19 “Study” in *Twentieth Century Jewish Religious Thought* 931, 934 (A. Cohen &
20 P. Mendes-Flohr eds. 2009). “Torah study, regarded as an encounter with the
21 Sekhinah (the divine presence), is enhanced by an experiential dimension.
22 Hence the importance that the rabbis assigned to the confluence of prayers and
23 study: They urged that one should preferably engage in both at the same
24 place” *Id.*

25 c. Similarly, in Christianity, the Bible requires that in order to prac-
26 tice the Christian faith, and in order to learn how to be a disciple of Christ, you
27 need to gather together with your fellow Christians. For example, Matthew
28 18:20 states: “For where two or three gather in my name, there am I with them.”

1 In-person education allows children to be moved by the Holy Spirit and experi-
2 ence what it means to be a part of the brotherhood and sisterhood in Christ.

3 d. The Catholic Church, in particular, has repeatedly reaffirmed the
4 centrality of physical presence in the practice of Christianity. As a 2002 Vatican
5 document explained, “the virtual reality of cyberspace cannot substitute for real
6 interpersonal community, the incarnational reality of the sacraments and the lit-
7 urgy, or the immediate and direct proclamation of the gospel.” Pontifical Coun-
8 cil for Social Communications, *The Church and the Internet*, I.5 (2002).

9 118. Defendants’ actions deprive the School Plaintiffs, the Parent Plaintiffs
10 and their children, and the Teacher Plaintiffs of the free exercise of religion, and de-
11 prive the Parent Plaintiffs of the right to direct the religious education of their minor
12 children. Distance learning does not allow for the School Plaintiffs to provide the reli-
13 gious instruction that their faiths require.

14 a. Because Jewish education does not merely aim to impact skills and
15 knowledge, but socialize students into a religious community and inculcate reli-
16 gious values, online platforms are uniquely inadequate for Jewish education.
17 Socializing young children cannot be done without in-person community. Dis-
18 tance learning does not allow for the traditional communal celebration of reli-
19 gious milestones, such as the *upsherin* (an Orthodox Jewish boy’s first haircut),
20 and observances, such as *siyum* (a celebratory meal to mark a student’s comple-
21 tion of a section of central Jewish religious texts such as the Talmud or the
22 Mishnah). Children are not able to learn, practice, or recite entire sections of the
23 daily prayer service remotely because according to Jewish law, those prayers
24 can only be recited within a *minyan*, a quorum of 10 males aged 13 or over. Stu-
25 dents are deprived of the opportunity to understand important aspects of the rit-
26 uals and Holy Days that are critical to the practice of their religion. Distance
27 learning also does not allow for immersive Hebrew instruction which is central
28 to religious practice and often cannot be provided at home. Distance learning

1 also does not allow teachers to model for the students how to manifest Juda-
2 ism's values and ethics and apply the teachings of Judaism to life's everyday
3 challenges.

4 b. In Christian schools, distance learning does not allow students to
5 join together as the Body of Christ, effectively participate in communal prayer,
6 or participate in corporate worship. Without in-person education, students are
7 deprived of the daily spiritual support provided by clergy and staff, and they are
8 robbed of the opportunity to witness educators who have been charged with
9 modeling Christ's teachings.

10 c. In Catholic schools in particular, the life of the school revolves
11 around the celebration of Mass and the reception of the sacraments, especially
12 the Eucharist and confession. None of these is possible except in the physical
13 presence of a priest or Eucharistic minister.

14 119. Each of the School Plaintiffs desires to open for in-person instruction,
15 and would do so but for the School Closure Order. Each of the Parent Plaintiffs want
16 their children to attend school in-person, and those children would do so but for the
17 School Closure Order. Each of the Teacher Plaintiffs desires to resume in-person in-
18 struction, and would do so but for the School Closure Order.

19 120. Each school's situation is different. Plaintiff Schools plan on opening, but
20 if their circumstances changed, may make a different choice. Many other religious
21 schools similarly will wrestle with the decision whether to open. Laws disparately
22 burdening religion should be tailored to minimize the imposition on this fundamental
23 right. Laws trenching on fundamental rights should be adopted and reviewed with pro-
24 tective procedures. California did none of this. As the saying goes, when all you have
25 is a hammer, the whole world looks like a nail. Defendants have made nails of all reli-
26 gious schools.

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1 **CLAIMS FOR RELIEF**

2 **FIRST CLAIM**
3 **42 U.S.C. § 1983**

4 **Violation of Free Exercise Clause – Lack of General Applicability**

5 121. Plaintiffs repeat and incorporate the preceding paragraphs as if fully
6 stated herein.

7 122. The First Amendment, made applicable to the States through the Four-
8 teenth Amendment, prohibits any law abridging the free exercise of religion.

9 123. A state action that discriminates on the basis of religion is subject to strict
10 scrutiny, and must be invalidated unless it is “justified by a compelling interest and is
11 narrowly tailored to advance that interest.” *Church of the Lukumi Babalu Aye, Inc. v.*
12 *City of Hialeah*, 508 U.S. 520, 533 (1993).

13 124. A law that provides for individualized exceptions is not generally appli-
14 cable and therefore discriminates on the basis of religion.

15 125. In-person religious education is central to the faith of and free exercise of
16 religion by each of the Plaintiffs.

17 126. The School Closure Order infringes on the right of School Plaintiffs and
18 Teacher Plaintiffs to provide religious instruction to their students, the right of Parent
19 Plaintiffs to choose religious education for their children, and the right of Parent Plain-
20 tiffs’ students to receive religious instruction.

21 127. The School Closure Order is not generally applicable because it does not
22 apply to equivalent operations such as childcare facilities and camps. It also permits
23 local health officials discretion to grant waivers for elementary schools to open for in-
24 person instruction. The School Closure Order does not offer any objective standard for
25 local health officials to employ when evaluating the merits of waiver requests.

26 128. While the State unquestionably has a compelling interest in safeguarding
27 public health, the School Closure Order is not narrowly tailored to that interest. The
28 CDC, the AAP, and other public health organizations have endorsed in-person instruc-
tion for the 2020–21 school year, and have outlined measures that would ensure public

1 safety while also providing students with the educational developmental benefit of in-
2 person education. The state itself has crafted social distancing guidelines and other
3 preventative measures that allow childcare facilities and camps to safely conduct in-
4 person operations. Those measures, among others, are more narrowly tailored than the
5 blanket closure order imposed here.

6 129. Moreover, mandatory distance learning for all grade levels and all ability
7 groups does not advance the state’s interest in protecting public health at all. Distance
8 learning increases educational inequities, particularly for low-income, minority, and
9 special-needs students; deprives families of childcare, meals, and other supports; de-
10 creases mental health; and increases the risk of child abuse. By contrast, children are
11 at the lowest risk of contracting or spreading COVID-19, and are at the lowest risk of
12 developing serious complications in the improbable event that they contract COVID-
13 19.

14 130. Therefore, the Court should enter judgment in favor of Plaintiffs and de-
15clare that the School Closure Order violates the Free Exercise Clause of the First
16 Amendment.

17 **SECOND CLAIM**
18 **42 U.S.C. § 1983**
19 **Violation of Substantive Due Process – Right to an Education**

20 131. Plaintiffs repeat and incorporate the preceding paragraphs as if fully
21 stated herein.

22 132. The Due Process Clause of the Fourteenth Amendment “specially pro-
23 tects those fundamental rights and liberties which are, objectively, ‘deeply rooted in
24 this Nation’s history and tradition, and implicit in the concept of ordered liberty, such
25 that neither liberty nor justice would exist if they were sacrificed.’” *Washington v.*
26 *Glucksberg*, 521 U.S. 702, 720–21 (1997) (citations omitted).

1 133. State action that infringes on a fundamental right is “subject to strict scrutiny and is invalid[] unless it is ‘narrowly tailored to serve a compelling state interest.’” *United States v. Juvenile Male*, 670 F.3d 999, 1012 (9th Cir. 2012) (quoting *Reno v. Flores*, 507 U.S. 292, 301-02 (1993)); *see also Serrano v. Priest*, 5 Cal. 3d 584, 597 (1971) (noting that, where strict scrutiny applies, “the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose”).

8 134. The right of parents to “direct the upbringing and education of children under their control” is a fundamental constitutional right. *Pierce v. Soc’y of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534–35 (1925).

11 135. California courts have long recognized that education is a fundamental interest in California. *Serrano*, 5 Cal. 3d at 608–09. Article IX of the California Constitution affirms that “[a] general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people.” Cal. Const. art. IX, § 1. Recognizing the importance of education, courts apply strict scrutiny when evaluating executive actions that infringe upon this interest. *Serrano*, 5 Cal. 3d at 597.

17 136. In-person instruction is a critical component of Plaintiff Schools’ educational mission.

19 137. Parents have chosen to enroll their children at Plaintiff schools specifically to provide their children with an in-person, religious education.

21 138. Parents of students with special needs, in particular, have chosen to enroll their children at Plaintiff Schools to provide the educational and therapeutic services of their choice, options that they determined were not available in their local public schools.

25 139. Plaintiff Schools cannot provide the same level of instruction—to all students generally and to special needs students specifically—through remote learning.

27 140. The School Closure Order infringes on the rights of the Parent Plaintiffs by preventing them from directing the religious education of their children.

1 141. The School Closure Order infringes on the rights of the Parent Plaintiffs
2 by categorically prohibiting parents from choosing a specific educational program and
3 by compelling private schools to follow the same path of education as public schools.

4 142. The School Closure Order infringes on the rights of the Plaintiff Parents’
5 minor children by basing the in-person instruction ban on the geographic locations of
6 schools rather than each school’s ability to implement appropriate safety measures.
7 *See Butt v. State*, 4 Cal. 4th 668, 692 (1992) (noting that California’s Constitution for-
8 bids State actors from denying “basic educational equality on the basis of district resi-
9 dence”).

10 143. The School Closure Order is contrary to the expert judgment of the CDC,
11 the AAP, and other public health organizations that have determined that the risks of
12 COVID-19 to children and teachers is outweighed by the educational, psychological,
13 and developmental harm of mandatory distance-learning.

14 144. Even as the Defendants force the closure of School Plaintiffs, the state
15 and local governments are permitting other forms of indoor gatherings that create
16 equal or greater risk of COVID-19 transmission. Among other things, Defendants have
17 allowed childcare facilities and camps to conduct in-person operations, so long as so-
18 cial distancing and other preventative measures are followed.

19 145. The School Closure Order is not narrowly tailored to the state’s interest
20 in combatting the spread of COVID-19. As demonstrated by the less restrictive regula-
21 tions imposed on childcare facilities, camps, and other more-favored gatherings, the
22 Defendants could prevent the transmission of COVID-19 through other means that do
23 not infringe on individuals’ fundamental constitutional rights.

24 146. Therefore, the Court should enter judgment in favor of Plaintiffs and de-
25clare that the School Closure Order violates the Due Process Clause of the Fourteenth
26 Amendment to the United States Constitution and Article IX of the California Consti-
27 tution.

28

1 **THIRD CLAIM**
2 **42 U.S.C. § 1983**
3 **Violation of Free Exercise Clause – Parental Rights**

4 147. Plaintiffs repeat and incorporate the preceding paragraphs as if fully
5 stated herein. The Free Exercise Clause of the First Amendment, in combination with
6 the Due Process Clause of the Fourteenth Amendment, enshrines a right of the highest
7 constitutional order. *See Yoder*, 406 U.S. at 233 (“However read, the Court’s holding
8 in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing
9 of their children. And, when the interests of parenthood are combined with a free exer-
10 cise claim of the nature revealed by this record, more than merely a ‘reasonable rela-
11 tion to some purpose within the competency of the State’ is required to sustain the va-
12 lidity of the State’s requirement under the First Amendment.”); *Emp’t Div., Dep’t of*
13 *Human Res. v. Smith*, 494 U.S. 872, 881 (1990) (recognizing that the First Amendment
14 may bar the application of a neutral, generally applicable law when the law implicates
15 both the Free Exercise Clause and the right of parents to direct the education of their
16 children); *see also Espinoza v. Mont. Dep’t of Revenue*, 140 S. Ct. 2246, 2261 (2020)
17 (“Drawing on ‘enduring American tradition,’ we have long recognized the rights of
18 parents to direct ‘the religious upbringing’ of their children.” (citing *Yoder*, 406 U.S.
19 at 213–14, 232)).

20 148. The state may not interfere with parents’ rights to direct the religious up-
21 bringing and education of their children except where the interference is narrowly tai-
22 lored to a compelling state interest.

23 149. In-person instruction is a critical component of School Plaintiffs’ reli-
24 gious mission.

25 150. Parents have chosen to enroll their children at School Plaintiffs specifi-
26 cally to provide their children with an in-person, devotional education.

27 151. The School Closure Order infringes on the ability of Parent Plaintiffs to
28 direct the religious upbringing of their children.

1 152. By forcing the closure of religious schools, while permitting childcare fa-
2 cilities and camps to conduct in-person operations, the Defendants have unlawfully
3 abridged the ability of Plaintiff Parents and their children to freely exercise their reli-
4 gion.

5 153. The School Closure Order is not narrowly tailored to the state’s interest
6 in combatting the spread of COVID-19. As demonstrated by the less restrictive regula-
7 tions imposed on childcare facilities, camps, and other more-favored gatherings, the
8 Defendants could prevent the transmission of COVID-19 through other means that do
9 not infringe on individuals’ religious liberty.

10 154. Therefore, the Court should enter judgment in favor of Plaintiffs and de-
11clare that the School Closure Order violates the Free Exercise Clause of the First
12 Amendment.

13 **FOURTH CLAIM**
14 **42 U.S.C. § 1983**
15 **Violation of Procedural Due Process**

16 155. Plaintiffs repeat and incorporate the preceding paragraphs as if fully
17 stated herein.

18 156. The Fourteenth Amendment to the U.S. Constitution and article I, section
19 7 and article I, section 15 of the California Constitution prohibit state actors from
20 “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S.
21 Const. amend. XIV, § 1; *see* Cal. Const. art. I, §§ 7, 15.

22 157. “For more than a century the central meaning of procedural due process
23 has been clear: ‘Parties whose rights are to be affected are entitled to be heard; and in
24 order that they may enjoy that right they must first be notified.’” *Fuentes v. Shevin*,
25 407 U.S. 67, 80 (1972) (quoting *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1864)).
26 This “‘opportunity to be heard’ ... must be granted at a meaningful time and in a
27 meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

28 158. Generally, “the Constitution requires some kind of a hearing *before* the
State deprives a person of liberty or property.” *Shinault v. Hawks*, 782 F.3d 1053, 1058

1 (9th Cir. 2015) (quoting *Zinermon v. Burch*, 494 U.S. 113, 127 (1990)). “[I]n situations
2 where the State feasibly can provide a predeprivation hearing ... it generally must do
3 so regardless of the adequacy of a postdeprivation ... remedy.” *Id.* (quoting *Zinermon*,
4 494 U.S. at 132); see *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569–70
5 (1972) (“When protected interests are implicated, the right to some kind of prior hear-
6 ing is paramount.”).

7 159. The process that is constitutionally required is determined by weighing
8 (1) “the private interest affected”; (2) “the risk of erroneous deprivation through the
9 procedures used, and the value of additional safeguards”; and (3) “the government’s
10 interest, including the burdens of additional procedural requirements.” *Shinault*, 782
11 F.3d at 1057 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

12 160. Here, the state’s failure to provide any pre-deprivation hearing violated
13 Plaintiffs’ procedural due process rights.

14 161. First, the School Closure Order deprives Plaintiffs of fundamental liberty
15 interests, including their rights “to acquire useful knowledge ..., establish a home and
16 bring up children, to worship God according to the dictates of [their] own conscience,
17 and generally to enjoy those privileges long recognized ... as essential to the orderly
18 pursuit of happiness by free men.” *Roth*, 408 U.S. at 572 (second omission in original)
19 (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

20 162. The School Closure Order deprives Plaintiffs of these rights for an indefi-
21 nite period of time, which could potentially last for months or even longer. See *Goss v.*
22 *Lopez*, 419 U.S. 565, 577 (1975) (deprivation of right to education lasting 10 days was
23 substantial and required pre-deprivation process). The indefinite deprivation of these
24 interests comes at a great cost: the educational, emotional, and spiritual well-being of
25 children. Distance learning increases educational inequities, decreases mental health,
26 and increases the risk of child abuse.

1 163. Second, the School Closure Order presents a substantial risk of erroneous
2 deprivation, which could be avoided through additional procedural safeguards. For ex-
3 ample, a pre-deprivation hearing would allow School Plaintiffs to present plans and
4 evidence that they are prepared to open safely (including by implementing CDC and
5 AAP guidance), rather than being subjected to a blanket closure order based only on
6 their location.

7 164. Third, the state’s interests in dispensing with any pre-deprivation hearing
8 is minimal. This is not the type of “emergency situation[]” that can justify eliminating
9 pre-deprivation process. *See Bell v. Burson*, 402 U.S. 535, 542 (1971). Although the
10 COVID-19 pandemic has created many challenges, it is now a long-term problem. The
11 School Closure Order was issued more than four months after California proclaimed a
12 State of Emergency, and nearly two months before the traditional start of the school
13 year in California. Given the lengthy period of time available, the State clearly could
14 have permitted some pre-deprivation process, such as allowing schools that wish to
15 conduct in-person instruction to present evidence regarding how school re-openings
16 can be conducted safely, and to submit written plans and protocols for their proposed
17 reopening.

18 165. Therefore, the state violated Due Process by failing to provide Plaintiffs
19 notice and a hearing before prohibiting schools from opening.

20 166. The School Closure Order also violates Due Process because it fails to
21 provide a sufficient post-deprivation hearing. While the Order allows local health of-
22 ficers to grant a waiver, the waiver process is unconstitutionally restrictive and vague.

23 167. First, waivers are available only to elementary schools. For middle and
24 high schools, the Order provides for no pre-deprivation or post-deprivation process
25 whatsoever. Schools in locations—including Los Angeles County—where the 14-day
26 case rate is more than double the threshold for inclusion on the county monitoring list,
27 may also be ineligible for waivers, and thus likewise are provided no pre-deprivation
28 or post-deprivation process.

1 168. The Order also provides no meaningful criteria or objective standard by
2 which the local health officer should examine and evaluate the waiver request. It
3 therefore “impermissibly delegates basic policy matters” to local officials “for resolu-
4 tion on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and dis-
5 criminatory application.” *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972);
6 *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018) (plurality opinion) (The void-for-
7 vagueness doctrine “guards against arbitrary or discriminatory law enforcement” by
8 local officials.).

9 169. The waiver process also fails to provide several “elements of due pro-
10 cess,” including an opportunity to make an oral presentation, a decision based on the
11 record with a statement of reasons for the result, or an opportunity to appeal. *See*
12 *Rogin v. Bensalem Twp.*, 616 F.2d 680, 694 (3d Cir. 1980) (citing *Mathews*, 424 U.S. at
13 335).

14 170. Therefore, the Court should enter judgment in favor of Plaintiffs and de-
15clare that the School Closure Order violates the Due Process Clause of the Fourteenth
16 Amendment, and Article I of the California Constitution.

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiffs request that the Court:

19 a. Declare that the First and Fourteenth Amendments to the United States
20 Constitution and Articles I and IX of the California Constitution require Defendants to
21 cease enforcing the School Closure Order against Plaintiffs and similarly-situated in-
22dividuals and entities;

23 b. Enjoin Defendants from enforcing the School Closure Order against
24 Plaintiffs and similarly situated individuals and entities in violation of their constitu-
25tional rights, including the rights to the free exercise of religion and due process;

26 c. Award nominal damages to Plaintiffs;

27 d. Award actual damages to Plaintiffs;

1 e. Award Plaintiffs the costs of this action and reasonable attorney's fees;
2 and

3 f. Award such other and further relief as the Court deems equitable and just.

4 **JURY TRIAL DEMANDED**

5 Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of
6 Civil Procedure, of all issues so triable.

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Respectfully Submitted,

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