

1 MARK ROSENBAUM (CA SBN 59940)
mrosenbaum@publiccounsel.org
2 JESSELYN FRILEY (CA SBN 319198)
jfriley@publiccounsel.org
3 PUBLIC COUNSEL
610 S. Ardmore Avenue
4 Los Angeles, California 90005
Telephone: 213.385.2977
5 Facsimile: 213.385.9089

6 MICHAEL A. JACOBS (CA SBN 111664)
MJacobs@mofocom
7 SHAELYN K. DAWSON (CA SBN 288278)
ShaelynDawson@mofocom
8 MORRISON & FOERSTER LLP
425 Market Street
9 San Francisco, California 94105
Telephone: 415.268.7000
10 Facsimile: 415.268.7522

11 Attorneys for Plaintiffs
(Additional counsel on next page)
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

15 CAYLA J., KAI J., AND ELLORI J., through
their guardian ad litem ANGELA J.,
16 MATTHEW E. AND JORDAN E., through
their guardian ad litem CATHERINE E.,
17 MEGAN O. AND MATILDA O., through their
guardian ad litem MARIA O., ALEX R. AND
18 BELLA R., through their guardian ad litem
KELLY R., TAMARA I., ISAAC I., AND
19 JOSHUA I., through their guardian ad litem
SUSAN I., NATALIA T. AND BILLY T.,
20 through their guardian ad litem HILLARY T.,
DANIEL A. through his guardian ad litem
21 SARA A., COMMUNITY COALITION, AND
THE OAKLAND REACH,

22 Plaintiffs,

23 v.

24 STATE OF CALIFORNIA, STATE BOARD
25 OF EDUCATION, STATE DEPARTMENT
OF EDUCATION, TONY THURMOND, in
26 his official capacity as State Superintendent of
Public Instruction, and DOES 1-100,
27

28 Defendants.

Case No. RG20084386

UNLIMITED JURISDICTION

**MEMORANDUM AND POINTS OF
AUTHORITY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: June 4, 2021
Time: 10:00 a.m.
Dept.: 21
Judge: Hon. Winifred Y. Smith

Date Action Filed: November 30, 2020
Trial Date: Not Yet Set

Reservation No. R-2257106

1 ERIK J. OLSON (CA SBN 175815)
EJOlson@mofo.com
2 YUE LI (CA SBN 287280)
YLi@mofo.com
3 MORRISON & FOERSTER LLP
755 PAGE MILL ROAD
4 Palo Alto, California 94304
Telephone: 650.813.5600
5 Facsimile: 650.494.0792

6 PURVI G. PATEL (CA SBN 270702)
PPatel@mofo.com
7 VIRGINIA M. CHOI (CA SBN 294659)
VChoi@mofo.com
8 MORRISON & FOERSTER LLP
707 Wilshire Boulevard, Suite 6000
9 Los Angeles, California 90017
Telephone: 213.892.5200
10 Facsimile: 213.892.5454

11 Attorneys for Plaintiffs
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
I. BACKGROUND	7
A. Underserved Students Face Profound Inequities Caused by the Digital Divide, Learning Loss, and a Lack of Mental Health Support	7
1. The Digital Divide.....	7
2. Underserved Students Have Suffered Significantly More Learning Loss Than Their Peers.....	10
a. Underserved students suffer learning loss due to the digital divide and other challenges associated with poverty	10
b. The State’s failures have exacerbated preexisting inequities.....	10
3. The Students Most Affected by the Pandemic Do Not Have the Mental Health Support That They Need to Learn.....	11
B. Individual Students’ Experiences Illustrate the Ongoing Education Crisis	12
C. Despite Schools’ “Reopening,” Most Schools Include Remote Instruction	13
D. Where the State Failed, Community Organizations Have Sought to Offer High-Quality Remote Learning Programs	14
E. For Over a Year, the State Has Abdicated Its Constitutional Duties to Ensure Free and Equal Education	14
1. The State Has Not Ensured Oversight and Implementation of Critical Standards Intended to Protect Underserved Students	14
2. AB/SB 86 Fails to Ensure that Students Who Have Suffered Substantial Learning Loss Receive Necessary Technological, Curricular, and Mental Health Supports	16
3. California’s Underserved Students Are Falling Further Behind.....	17
4. The State Continues to Abdicate Its Constitutional Duties.....	18
II. LEGAL STANDARD	20
III. ARGUMENT	20
A. Plaintiffs Have a Strong Likelihood of Success on the Merits	21
1. Defendants Violate California Constitution’s Equal Protection Clause.....	21
a. Defendants’ conduct has had a substantially disparate impact on underserved students.	23
(i) The digital divide is causing <i>de facto</i> segregation in California’s public schools.....	23
(ii) Underserved students are suffering significantly more learning loss than their peers.....	23
(iii) The lack of mental health supports further disadvantages underserved students.....	25
b. The education that underserved students are receiving falls fundamentally below prevailing statewide standards.	25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS
(continued)

	Page
c. Defendants cannot demonstrate a compelling reason for their failure to intervene.....	26
2. Defendants Violate California Constitution’s Free School Guarantee	28
B. Plaintiffs Face Immediate and Irreparable Harm	29
C. The Balance of Equities Favors Grant of Preliminary Injunction.....	31
D. Granting the Preliminary Injunction Is in the Public Interest	31
E. Plaintiffs’ Proposed Relief Is No Broader than Necessary and Minimizes the Potential Harm to the Defendants	32
IV. CONCLUSION AND REQUESTED RELIEF	34

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

Butt v. State of California,
4 Cal. 4th 668 (1992) *passim*

Collins v. Thurmond,
41 Cal. App. 5th 879 (2019) 22, 23, 26

Doe v. Albany Unified Sch. Dist.,
190 Cal. App. 4th 668 (2010) 31

Hartzell v. Connell,
35 Cal.3d 899 (1984) 21, 28, 29

Hector F. v. El Centro Elementary Sch. Dist.,
227 Cal. App. 4th 331 (2014) 31

O’Connell v. Super. Ct.,
141 Cal. App. 4th 1452 (2006) 21

People v. Uber Techs., Inc.,
56 Cal. App. 5th 266 (2020) 20, 31

Serrano v. Priest,
18 Cal. 3d 728 (1976) 21

Serrano v. Priest,
5 Cal. 3d 584 (1971) 21

Statutes & Other Authorities

Cal. Educ. Code

§ 43500..... 26

§ 43501..... 16, 32

§ 43503..... 15, 16

§ 43509..... 15

§ 43520..... 16, 17

§ 43521..... 16, 17

§ 43522..... 16, 17

Cal. Const. art. IX, §§ 1, 5 28

2020 Budget Act 14, 18

Senate Bill 86 *passim*

Senate Bill 98 15

1 For well over a year now, California’s students of color and students from low-income
2 families have suffered enormous losses of learning time, experienced trauma that makes
3 educational success difficult to impossible, and felt the widening of pre-existing opportunity gaps
4 between them and their more privileged peers. While the COVID-19 pandemic was unavoidable,
5 the extensivity of these harms was not. For most of this period, State officials constitutionally
6 charged with ensuring that all of California’s children receive at least basic educational equality
7 have remained on the sidelines, leaving each school and district with little direction or support.
8 We know the dire consequences of the State’s inaction: as every expert who has weighed in
9 concludes, these underserved students’ chances in life are rapidly diminishing.

10 Now that schools are partially and haltingly reopening, the State has set these students up
11 for failure. The State has yet to ensure that underserved students receive adequate compensatory
12 education to address the learning loss that they suffered during the pandemic. The State has yet
13 to determine which students lack access to devices and connectivity needed for remote learning,
14 let alone ensure such students get the access they need. The State has yet to ensure that teachers
15 receive proper training and support to deliver curriculum to returning students and help students
16 make up the material they have missed. The State has yet to ensure that students receive critical
17 mental health services, without which they cannot learn. The State has yet to ensure that parents
18 and community organizations have a say in identifying and addressing underserved students’
19 learning needs and in determining how to deliver real learning and support to these students.

20 It is no mystery why underserved students have not received the same education that their
21 more privileged peers have received. The State has not fulfilled its constitutional obligation to
22 effectively mitigate the harms that this pandemic has wreaked on these vulnerable children. The
23 State’s own leaders have underscored how vital it is that the State take action. Dr. Linda Darling-
24 Hammond, President of the State Board of Education, has stated that “[u]niversal broadband and
25 device access is the *absolute minimum* for ensuring that every child can continue learning” and
26 that “[i]ntegrating social and emotional learning (SEL) into the life of a school is *essential* to
27
28

1 mitigate the pandemic’s impact on lifelong success and learning.” (Ex. 1¹ at 5 (emphasis added).)
2 California’s Surgeon General and expert on childhood trauma Dr. Nadine Burke-Harris has stated
3 that “[i]f we don’t act intentionally and inclusively, COVID-19’s disproportionate impact on
4 vulnerable communities will worsen . . . existing disparities.” (Ex. 2 at 2.)

5 Despite these unambiguous directives, the deprivations continue. Schools are “reopening”
6 to a degree, but without a State-level mandate that students receive what they need to learn and to
7 catch up. Most schools remain remote at least some of the time, and some remain completely
8 remote. While the State is belatedly offering financial incentives for “reopening,” the bucks are
9 being passed without any requirement or accountability for delivering the basics needed for
10 meaningful education. And the State is not even inquiring into what underserved students need,
11 let alone making sure that they get it. The consequences are predictable but heart-breaking.
12 Affluent districts are opening sooner, have more students in classrooms, provide more hours of
13 instruction, and, most significantly, provide the necessities that students require to learn.
14 Underserved students thus are falling further behind. The State’s continued inaction will further
15 entrench the two-tier educational system that the pandemic exacerbated.

16 It is not too late to reverse course and afford all underserved students in California a fair
17 measure of what they need to catch up and move forward. These students are resilient and
18 desperately want the opportunity to learn. But that cannot happen unless the State of California
19 ensures what experts across the board say must be done at once: (1) access to technology and
20 connectivity that makes remote learning possible; (2) a concrete plan to identify and compensate
21 for learning loss; and (3) mental health supports to address underserved students’ trauma.

22 **I. BACKGROUND**

23 **A. Underserved Students Face Profound Inequities Caused by the Digital** 24 **Divide, Learning Loss, and a Lack of Mental Health Support**

25 **1. The Digital Divide**

26 Widely disparate access to educational opportunities and essential technology resources

27 ¹ “Ex.” refers to the exhibits to the Declaration of Yue Li attached to the Compendium of
28 Evidence filed herewith.

1 for students of color and students from low income families (collectively “underserved students”),
2 including Student Plaintiffs, during the pandemic have left these students behind.² The State has
3 failed to provide these students with access to the devices, connectivity, and technical training
4 and support necessary for remote education, aggravating a preexisting “digital divide.”
5 Disproportionately, low-income families and families of color have not been able to afford digital
6 readiness. (*See, e.g.*, Howard Decl.³ ¶¶ 38-39.) Even now that it has become clear that education
7 will be at least partially remote for the foreseeable future, the State has not provided many of
8 these students access to the necessary technology for remote learning, including the following:

9 **Computers:** Many underserved students still do not have computers adequate for
10 engaging in remote learning. As of June 2020, 42% of African American households and 48% of
11 low-income households did not always have devices available for educational purposes,
12 compared to 33% of households overall in California. (Ex. 21 at 7.) As of December 2020, at
13 least 11 of the 25 largest school districts were still distributing devices to students. (Ex. 22 at 2;
14 *see also* Ex. 23 at 13-15.) Although many underserved students have received computers from
15 their schools, those computers are often unreliable. (*See, e.g.*, Constance C. Decl. ¶¶ 3-4; Maria
16 O. Decl. ¶ 4; Young Decl. ¶ 12; Hernandez Decl. ¶ 9.) A 2021 survey by the California Emerging
17 Technology Fund and University of Southern California (2021 CETF-USC Survey) reported that
18 an estimated **300,000** students across California still do not have their own device to use for
19 remote classes (*i.e.*, they either have to share a device with others in their home or have no device
20 at all). (Ex. 32 at 2.) Among families with annual incomes below \$40,000, about 1 in 10 families
21 either lacks a device or shares a device among multiple children for remote learning. (*Id.* at 2-3.)

22 **Internet connectivity:** A lack of consistent Internet connectivity also continues to be a
23 barrier to effective remote learning. As the State concedes, “[a]s many as one million students
24 still lack[ed] internet connectivity” at home as of February 2, 2021. (Ex. 4.) Numerous statistics
25 confirm that the State has done far from enough to bridge the digital divide. In fall 2020, when

26 _____
27 ² “Student Plaintiffs” refers to Cayla J., Kai J., Ellori J., Matthew E., Jordan E., Megan O.,
Matilda O., Alex R., Bella R., Tamara I., Isaac I., Joshua I., Natalia T., Billy T., and Daniel A.

28 ³ “Decl.” refers to the declarations attached to the Compendium of Evidence filed herewith.

1 nearly all schools continued with distance learning, nearly 40% of low-income students lacked
2 reliable Internet. (Howard Decl. ¶ 39; *see also* Gibson Decl. ¶ 10.) Between spring 2020 and
3 January 2021, the percentage of low-income students in California who lack reliable Internet rose
4 only from 55% to 65%. (Ex. 23 at 15-16.) As of February 2021, 25% of African American
5 households, 21% of Latinx households, and 30% of American Indian households did not have
6 access to Internet. (Ex. 4 at 2.) Among L.A. County households, 19% have either no Internet
7 connection or rely on smartphones for Internet. (Ex. 24 at 4; *see also* Ex. 25 at 6.) According to
8 the 2021 CETF-USC Survey, “16% [of parents of California students] report that Internet access
9 is available ‘sometimes but not always’ and 6% report ‘rarely’ or ‘never’ . . . [L]ow-income
10 families are about 4 times more likely to report that students are unable to connect to remote class
11 (‘rarely’ or ‘never’), thus indicating the extent to which disparities in access continue to impact
12 online learning opportunities.” (Ex. 32 at 4; *see also* Ex. 28 at 2 (“one in five California
13 households with K–12 students told the Census Bureau in late March [of 2021 that] they don’t
14 always have the internet access needed for virtual school”; Hernandez Decl. ¶ 6).)

15 Although some students have received hotspots to help with connectivity, these hotspots
16 can only provide limited bandwidth (compared to broadband Internet access). For example, some
17 students’ families have multiple students logging on to a single hotspot that loses Internet access
18 as often as every 15 minutes. (*See* Susan I. Decl. ¶¶ 5, 9, 14; Maria O. Decl. ¶ 5; Hernandez
19 Decl. ¶ 9.) Some hotspots stop working entirely, and requests for new devices have been ignored
20 for months, all the way to the present day. (*See* Susan I. Decl. ¶¶ 6, 14.) Students also are
21 disconnected from their classrooms when their district experiences outages (*see* Kelly R. Decl.
22 ¶ 8), and have weak Wi-Fi connections (Adriana G. Decl. ¶ 6; Kelly R. Decl. ¶ 7).

23 **Technology training and support:** Even students who have devices and connectivity
24 struggle to learn under the conditions they face during the pandemic. They have not received
25 adequate training and technical support for accessing remote learning platforms. (Young Decl.
26 ¶¶ 10-11.) Nor have their parents received any training. In a recent survey, 52% of LAUSD
27 parents reported not having completed high school; 44% stated that they never used any
28 computing devices at home; 10% reported that they never used the Internet at home; and 32%

1 stated that they never visited any websites that schools use to share information, like Schoology
2 or Google Classroom. (Ex. 26 at 12-13.) Remote learning has caused students to increasingly
3 rely on their parents to support them at home, especially younger students who require assistance
4 with online learning, Internet access, and technology troubleshooting. But parents of underserved
5 students face many barriers in helping their children, especially proficiency with technology.

6 **2. Underserved Students Have Suffered Significantly More Learning**
7 **Loss Than Their Peers**

8 **a. Underserved students suffer learning loss due to the digital**
9 **divide and other challenges associated with poverty**

10 Underserved students have suffered significant learning loss directly due to the State’s
11 inaction. Live instruction is a critical component of remote learning and is associated with higher
12 completion of schoolwork. (Howard Decl. ¶ 45.) But as a result of the State’s failure to ensure
13 access to devices, connectivity, and technology training and support, underserved students have
14 had disproportionately less live remote instruction than their peers. (*Id.* ¶¶ 34-36, 45-46.)

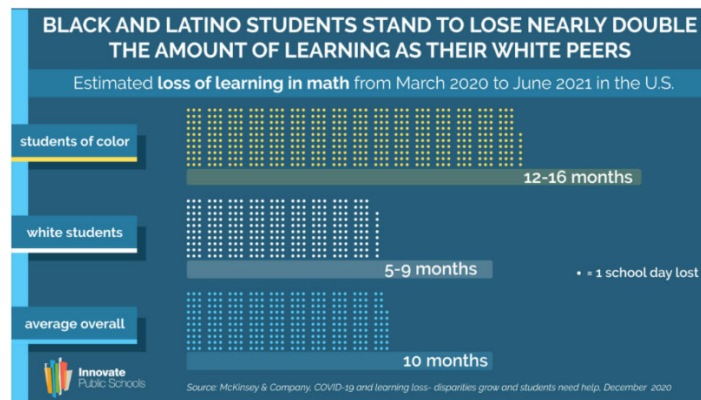
15 Other challenges associated with poverty and racism compound the learning loss that
16 underserved students have suffered. For many, a single room is a multi-grade classroom as well
17 as a workplace for several adults. (*See, e.g.,* Maria O. Decl. ¶ 3.) The housing crisis poses a
18 significant burden on underserved students, and they are more likely to have parents in low-wage
19 jobs, and during the pandemic, in high-risk, essential jobs. (*See* Howard Decl. ¶¶ 29-33; Saleem
20 Decl. ¶ 30; Gandara Decl. ¶ 9-10; Bishop Decl. ¶¶ 39-46.) As Dr. Burke Harris acknowledges,
21 these students “are going to have significantly increased risk of long-term negative
22 developmental, educational, health, and mental health consequences.” (Ex. 6 at 12.)

23 **b. The State’s failures have exacerbated preexisting inequities**

24 The State’s failures over the past year have exacerbated preexisting achievement gaps
25 based on racial and wealth disparities. (Howard Decl. ¶¶ 12-13.) Such achievement gaps are
26 reflected most clearly in grades, standardized test scores, high school graduation rates, placement
27 in special education and advanced placement courses, and suspension and expulsion rates. (*See*
28 Howard Decl. ¶ 14, 22-28; Bishop Decl. ¶¶ 10-26; Gandara Decl. ¶¶ 15-16.) For example, in
OUSD, only 18.7% of Black students and 24% of Latinx students were reading at grade level,

1 while 72.7% of white students were meeting or exceeding reading standards. (Ex. 7; *see also*
2 Howard Decl. ¶¶ 16-18.) In LAUSD, Black and Latinx males constitute almost 80% of youth in
3 special education programs and have the lowest third-grade reading proficiency rates of any
4 students across the country. (Howard Decl. ¶ 15.)

5 Due to the State’s failures, underserved students have suffered significantly more learning
6 loss from fall 2019 to fall 2020 compared to previous years. (Ex. 5 at 4-5.) In some grades,
7 underserved students lost learning while their peers’ learning accelerated. (*Id.*) By the end of the
8 2021 school year, students of color are likely to lose 12-16 months of learning. By contrast,
9 white students may lose only 5-9 months (Ex. 8 at 1-2):



16 The effects of inequitable remote learning due to the State’s failure extend through high
17 school and beyond. The number of students in the Class of 2020 enrolled in college was down
18 6.8% from 2019, with high-poverty and urban areas most severely affected. (Ex. 9 at 2-3.)
19 Graduates of high-poverty high schools enrolled in college fell 11.4% compared with 2.9% at
20 low-poverty schools. (*Id.*) Likewise, graduates of schools with large proportions of minority
21 students fell by 9.4% compared with 4.8% at counterpart high schools. (*Id.*)

22 3. The Students Most Affected by the Pandemic Do Not Have the Mental 23 Health Support That They Need to Learn

24 Due to the State’s inaction, mental health support is all but nonexistent for underserved
25 students and their teachers and families. As Dr. Harris concludes, “the kind of trauma and stress
26 many children are experiencing during the COVID-19 emergency has the potential to embed
27 itself in children’s DNA, dramatically affecting their brains and other critical body systems and,
28 as a result, their health across a lifetime.” (Ex. 10 at 1.) It is critical to provide students with

1 mental health support during the transition back to in-person learning or they will not be able to
2 learn. (Biel Decl. ¶¶ 16-31; Himelstein Decl. ¶¶ 16-30; Willard Decl. ¶¶ 7-9; Ex. 33 at 1, 9-10.)

3 As with the impacts on educational outcomes, underserved communities are suffering
4 most from the health and economic impacts of the pandemic because of inequitable access to
5 healthcare, income inequality, and disproportionate employment in high-risk, essential jobs. (See
6 Biel Decl. ¶ 12; Saleem Decl. ¶ 30.) The impacts of COVID-19 on student mental health, without
7 the State’s intervention, have therefore been compounded for underserved students, who have
8 endured the worst economic and health consequences of the pandemic. (Saleem Decl. ¶¶ 34-37.)

9 **B. Individual Students’ Experiences Illustrate the Ongoing Education Crisis**

10 The experiences of individual students, including Student Plaintiffs—all Black or Latinx
11 students from low-income families—illustrate the worsening inequities among California
12 students. When the classroom relocated to the home, families scrambled to find work space,
13 computers, supervision, and Internet access for their children. (See Adriana G. Decl. ¶¶ 5, 9-11,
14 Maria O. Decl. ¶ 3; Susan I. Decl. ¶ 4.) Students worked from their beds when the kitchen table
15 was too crowded or noisy (see Adriana G. Decl. ¶ 11), shared devices with other family members
16 (see Constance C. Decl. ¶ 3), and called in for class from parents’ cell phones or tablets (see
17 Maria O. Decl. ¶ 4). In a state that suffers from a severe low-income housing crisis leading to
18 overcrowding and couch-surfing, family homes do not easily substitute for classrooms.

19 Parents are deeply concerned that their children are falling behind academically. (See
20 Angela J. Decl. ¶ 12; Maria O. Decl. ¶¶ 12-13; Constance C. Decl. ¶¶ 7-8; Susan I. Decl. ¶¶ 4,
21 13.) Some believe that their children are so far behind that they will have to repeat a grade.
22 (Angela J. Decl. ¶ 12.) Other parents have watched their children’s enthusiasm for school
23 understandably dwindle into disdain. (Maria O. Decl. ¶ 13; Kelly R. Decl. ¶¶ 4, 10.) Parents
24 have witnessed the emotional and mental health toll that a year of isolation and limited interaction
25 with peers and teachers has taken on their children. (See Adriana G. Decl. ¶¶ 12-13, 19;
26 Angela J. Decl. ¶ 13; Maria O. Decl. ¶ 11; Kelly R. Decl. ¶ 10; Constance C. Decl. ¶¶ 12-13.)
27 Many students have tragically lost family members to COVID-19, further compounding the
28 mental health impact. (See, e.g., Angela J. Decl. ¶ 13; Kelly R. Decl. ¶ 11.) Even as schools

1 reopen for some degree of in-person instruction, many students, including many of the Student
2 Plaintiffs, will continue with remote learning. (Angela J. Decl. ¶¶ 15-17; Kelly R. Decl. ¶¶ 12-
3 13; *see also* Constance C. Decl. ¶¶ 14-17.)

4 **C. Despite Schools’ “Reopening,” Most Schools Include Remote Instruction**

5 Although recent developments indicate that districts across the State are initiating
6 in-person instruction, “reopening” does not translate to all-day, all-week, in-person instruction.
7 Normal is not yet in sight. Rather, most schools remain remote at least some of the time, and
8 some remain remote completely. Statewide, at least 75% of elementary school students (as of
9 May 2, 2021), 82% of middle school students (as of May 2, 2021), and 77% of high school
10 students (as of April 23, 2021) still do not have the option to attend school fully in-person,
11 meaning they must still engage in remote learning to some extent. (Ex. 11 at 1; Ex. 35 at 1.) And
12 students expect to return to remote learning whenever one of their classmates or teachers is
13 infected with or exposed to COVID-19.

14 Both LAUSD and OUSD are implementing hybrid instruction models. In OUSD,
15 elementary school students would only receive in-person instruction for five hours a week, in two
16 and a half hour sessions at a time. (Ex. 12 at 6.) Middle school students would receive in-person
17 instruction two afternoons per week for two hours, or in a four-hour block on Wednesday
18 (including non-academic courses). (*Id.* at 8.) For many parents, these updated school schedules
19 have not been communicated clearly, and in some cases have not been communicated at all. (*See,*
20 *e.g.*, Constance C. Decl. ¶ 14.) Many schools in OUSD remain closed or partially closed because
21 not all teachers have agreed to come back. When schools initially reopened on March 30, 2021,
22 49 out of 107 OUSD schools were still partially or fully closed. (Ex. 12 at 12.)

23 Likewise, in LAUSD, elementary school students will come to school either in the
24 morning or the afternoon for three hours every day. (Ex. 13 at 1.) For example, one Student
25 Plaintiff will only attend from 8:30 a.m. to 11:30 a.m. (*See* Susan I. Decl. ¶ 23.) Another two
26 Student Plaintiffs’ school is only opening for a few hours a day, two days a week. (*See* Kelly R.
27 Decl. ¶ 12.) Middle and high school students in LAUSD will come to school two to three times a
28 week for the entire day under the hybrid model. (Ex. 3 at 3; *see also* Ex. 13 at 1.) Some LAUSD

1 schools are open for students, but teachers are still providing virtual instruction. (Ex. 34 at 8.)

2 Due to these incomplete and hybrid models of reopening, deficiencies in remote learning
3 thus remain an urgent matter for underserved students. (*See, e.g.*, Angela J. Decl. ¶ 16; Maria O.
4 Decl. ¶ 14; Kelly R. Decl. ¶ 12-13; Susan I. Decl. ¶ 28; Constance C. Decl. ¶ 15.)

5 **D. Where the State Failed, Community Organizations Have Sought to Offer**
6 **High-Quality Remote Learning Programs**

7 Community organizations such as Plaintiffs The Oakland REACH (“The REACH”) and
8 Community Coalition (“CoCo”), have sought to mitigate the harm and have served as a lifeline to
9 many families. (*See* Adriana G. Decl. ¶¶ 9, 14; Angela J. Decl. ¶ 14; Constance C. Decl. ¶¶ 1,
10 19.) But the cumulative efforts of community organizations, parents, and teachers cannot address
11 the ever-deepening educational inequalities caused by the State’s inaction.

12 CoCo has significantly increased resources to serve students and families, including by
13 distributing devices, hiring teachers and tutors to provide individual support, and offering virtual
14 summer programs, parent workshops, and in-person learning pods. (Hernandez Decl. ¶¶ 6–10,
15 23–24.) Likewise, The REACH has created a citywide virtual “Hub” to help parents strengthen
16 their children’s learning, to deliver academic and social enrichment courses and tutoring to
17 students, and to provide technology support to parents. (Young Decl. ¶¶ 5-10; Constance C.
18 Decl. ¶ 19.) The REACH also has a four-point platform aimed at closing the digital divide, which
19 provides families with laptops, Internet hotspots, technical support, and technology trainings to
20 support remote education. (Young Decl. ¶¶ 17-21.)

21 Although community organizations continue to serve an important role in the delivery of
22 education, a statewide education system cannot depend on the heroic and unsupported efforts of
23 community groups as a substitute for fulfillment of the State’s constitutional obligations.

24 **E. For Over a Year, the State Has Abandoned Its Constitutional Duties to**
25 **Ensure Free and Equal Education**

26 **1. The State Has Not Ensured Oversight and Implementation of Critical**
27 **Standards Intended to Protect Underserved Students**

28 On June 29, 2020, Governor Newsom signed the 2020 Budget Act, which allocated one-
time \$5.3 billion funding that purports “to mitigate learning loss and support the immediate needs

1 of students and schools.” (Ex. 14 at 1.) The State permits Local Educational Agencies (“LEAs”)
2 to spend these funds on, *e.g.*, (i) “learning supports” to address learning loss or accelerate
3 academic progress, (ii) increases in instructional time or services provided to students, (iii)
4 devices or connectivity for in-classroom and distance learning, (iv) mental health services, and
5 (v) personal protective equipment. (Ex. 15 at 2.) There is, however, no State oversight,
6 assistance, or enforcement to ensure that the LEAs spend these funds for these essential purposes.
7 And the State has not committed to deliver students what they need where the LEAs fall short.

8 Although the Legislature passed Senate Bill 98 setting standards for LEAs to follow
9 during the pandemic, the State has exercised no oversight to ensure these standards are met:

- 10 • Requirement: School districts adopt learning continuity and attendance plan that
11 addresses each school within LEA describing how school district will provide
12 continuity of learning and address impact of COVID-19 on students, staff, and
13 community. Cal Educ. Code § 43509.
 - 14 ○ No State role in oversight or enforcement.
 - 15 ○ Only requires school districts to submit a plan “using a template issued by the
16 Superintendent of Public Instruction.”
 - 17 ○ No requirement that the State approve or assist in implementing such plans.
- 18 • Requirement: LEAs consult with parents, pupils, and others in developing learning
19 continuity and attendance plans. *Id.* § 43509(b).
 - 20 ○ No State oversight or enforcement.
 - 21 ○ No concrete expectations about consultation.
- 22 • Requirement: LEAs provide “[a]cademic and other supports designed to address the
23 needs of pupils who are not performing at grade level, or need support in other areas,
24 such as English learners, pupils with exceptional needs, . . . and pupils requiring
25 mental health supports.” *Id.* § 43503(b)(3).
 - 26 ○ No State oversight or enforcement.
- 27 • Requirement: LEAs confirm or provide “access for all pupils to connectivity and
28 devices” and align distance learning content “to grade level standards . . . substantially

1 equivalent to in-person instruction.” *Id.* §§ 43503(b)(1), 43503(b)(2).

2 ○ No State oversight or enforcement.

3 ● Requirement: LEAs provide daily minimum duration of instruction. *Id.* § 43501.

4 ○ No State oversight or enforcement.

5 ○ The State does not specify minimum *live* instruction time.

6 **2. AB/SB 86 Fails to Ensure that Students Who Have Suffered**
7 **Substantial Learning Loss Receive Necessary Technological,**
8 **Curricular, and Mental Health Supports**

9 On March 5, 2021, nearly a full year after schools closed, Governor Newsom signed into
10 law Assembly/Senate Bill 86, which takes initial steps for reopening California’s public schools.
11 AB/SB 86 provides one-time \$6.6 billion funding that purports to incentivize school reopening
12 and implement “learning recovery programs.” Although it permits LEAs to use the funding for
13 various purposes, including devices for remote learning, mental health services, and instruction to
14 address learning loss, this funding comes without oversight, assistance, or enforcement to ensure
15 that LEAs will use the funding to address the digital divide, learning loss, and mental health
16 support. In short, the State has established no meaningful accountability system.

17 AB/SB 86 consists of two main components: (1) \$4.6 billion apportioned to LEAs to
18 purportedly implement “learning recovery programs” (California Education Code §§ 43521(b),
19 43522); and (2) \$2 billion in grants to incentivize LEAs to “reopen” (*id.* § 43521(c)).

20 **Learning Recovery Funding.** To receive Learning Recovery Funding, an LEA must
21 implement a “learning recovery program” providing “supplemental instruction, support for social
22 and emotional well-being, and . . . meals and snacks” to certain students, including students from
23 low-income families and English language learners. (*Id.* §§ 43520, 43522(a)(1).) But missing
24 from AB/SB 86 is any actual plan for learning recovery or oversight regarding implementation.
25 Although LEAs are required to report on their expected expenditures (*id.* § 43522(e)), the State
26 does not commit to reviewing LEAs’ planned or actual expenditures, providing oversight, or
27 taking steps to ensure that LEAs adequately target and help the underserved students that have
28 borne the brunt of the pandemic.

Reopening Incentive Grants. AB/SB 86 provides for funding to LEAs that return to “in-

1 person instruction” by May 15, 2021.⁴ (*Id.* § 43521(c).) Schools that do not “reopen” in time
2 will not qualify for this funding. Thus, the legislation offers no support to underserved students
3 attending schools that do not “reopen” in time. Grant funding *may* be used for in-person services
4 and supplies, including COVID-19 testing, personal protective equipment, and mental health
5 support services. (*Id.* § 43522(f).) Again, the legislation does not require the State to oversee or
6 ensure that the LEAs use the funding for its intended purpose. Nor does it require that LEAs
7 offer any of the services and supplies for which the Reopening Incentive Grants may be used,
8 much less that LEAs direct those services toward underserved students.

9 Under AB/SB 86, “in-person instruction” is a pale shadow of the pre-pandemic standard
10 school week. So long as the LEA offers in-person instruction “to the greatest extent possible,”
11 hybrid models having fewer than five days per week of in-person instruction are sufficient for
12 Reopening Incentive Grants. (*Id.* § 43520.5(f)(1).) For middle and high schools, the State
13 considers LEAs offering in-person instruction to all students in just *one* grade level (plus students
14 with exceptional needs and other “prioritized pupil groups”) a sufficient return to in-person
15 instruction. (*Id.* § 43521(c)(3)(C).) Still, the State makes no effort to improve access to
16 technology and connectivity, beyond allowing that LEAs *may* use a small portion (up to 15
17 percent) of their learning recovery funding to, among other things, “increase or improve services
18 for pupils participating in distance learning.” (*Id.* § 43522(d)(3).)

19 3. California’s Underserved Students Are Falling Further Behind

20 Without any State oversight, assistance, and enforcement, these one-time grants fall far
21 short of remedying the harm inflicted over the past year. (*See, e.g.*, Gross Decl. ¶¶ 10-25; Gibson
22 Decl. ¶¶ 15-44; Heffner Decl. ¶¶ 7-29; Howard Decl. ¶¶ 49-69; Livingston Decl. ¶¶ 5-18; Hudson
23 Decl. ¶¶ 6-23; Gandara Decl. ¶ 19.) Early indications suggest that schools will be reopening
24 more slowly for student of color. As of February 12, 2021, nearly 90% of Black students, 85% of
25 Latino students, and 81% of Asian students in California were still in distance learning, compared
26

27 ⁴ LEAs that return to in-person instruction by April 1, 2021, receive the maximum grant
28 apportionment; this amount decreases 1% for each subsequent instructional day that an LEA does
not return to in-person instruction. (Cal. Educ. Code § 43521(c)(2)(B).)

1 with 64% of white students. (Ex. 16 at 2.) According to the Los Angeles Times, there are only
2 four communities in Los Angeles where more than 40% of students were expected to return to in-
3 person school, each of which is a majority white higher-income community. (Ex. 17 at 1.) In
4 Latino-majority communities like South Gate, East Los Angeles, Pico Union, and Bell, only
5 about 25% of students were expected to return. (*Id.*) These disparities have continued.

6 In a similar vein, the Times reported on March 22, 2021 that “[p]arents of fewer than 1 in
7 3 students said they are ready to send children back to Los Angeles school district campuses, a
8 reluctance fueled by lingering health concerns as well as confusion and dissatisfaction with the
9 in-person academic program being offered.” (Ex. 18 at 1.) Children in affluent districts “are
10 about twice as likely” to return to campus as those in low-income districts. (*Id.* at 2.)

11 **4. The State Continues to Abdicate Its Constitutional Duties**

12 In response to the correspondence from Plaintiffs’ counsel raising the State’s abdication of
13 its duties, the State has written twice attempting to defend its inaction throughout the pandemic.
14 But both letters, particularly the State’s most recent letter, confirm the State’s failures to ensure
15 that underserved students receive their constitutionally-guaranteed public education.

16 The State’s October 13, 2020 letter focuses on its one-time funding of \$5.3 billion for the
17 LEAs. It fails to show that the State is developing a systematic mechanism to ensure that (i) the
18 LEAs’ remote learning plans meet any standard; (ii) the LEAs consult parents and community
19 organizations in developing those plans; (iii) the LEAs enforce those plans; and (iv) the LEAs be
20 held accountable for failures to adequately implement remote learning programs. (*See* Ex. 19.)

21 The State’s April 21, 2021 letter, which purports to identify “numerous developments
22 since Plaintiffs filed their complaint,” says little more. (Ex. 20 at 1-2.) The State points to
23 increased state and federal funding for the LEAs, but ignores the reality that underserved students
24 still suffer profound inequities. The State still provides no plans for how itself will provide the
25 necessary oversight, assistance, and enforcement to guarantee an equal and free education for all
26 children. The following discussions in the State’s letter highlight its ongoing failures:

27 **State Funding for LEAs:** The State attempts to defend its failures by pointing to its
28 increased funding to LEAs through the 2020 Budget Act and AB/SB 86. (Ex. 20 at 6-7.) But, as

1 discussed above, the State does not—and cannot—point to any oversight, assistance, and
2 enforcement it has implemented in connection with this funding. These dollars by themselves fail
3 to satisfy the State’s duties to ensure an equal and free education for underserved students.

4 **Federal Funding:** The State similarly cites a recent influx of federal dollars as proof that
5 the State has not failed its underserved students during the pandemic. (Ex. 20 at 7.) The federal
6 government providing supplemental funding to California public schools, however, has no
7 bearing on whether the State has fulfilled its constitutional duties to underserved students.

8 **School Reopening:** The State points to the facts that OUSD and LAUSD have developed
9 reopening plans, entered into new memoranda of understanding with teachers’ unions, and begun
10 the process of reopening. (Ex. 20 at 4-5.) But as illustrated in the reality playing out throughout
11 the state, “reopening” does not mean a return to full-day, all-week, in-person instruction for most
12 students. (*See supra* Section I(C).) Rather, the State has set a low bar for what it calls
13 “reopening,” largely leaving it to LEAs to decide what “reopened” looks like, and leaving parents
14 and teachers on their own to accommodate complex hybrid learning arrangements.

15 **Initiatives to Address the Digital Divide:** The State’s letter also describes programs at
16 the state- and LEA-level aimed at closing the digital divide. (Ex. 20 at 11-12.) The State does
17 not dispute that the digital divide still exists. Further, the State does not claim to have any idea
18 how many students are still lacking the devices and connectivity for effective remote learning.
19 Nor does the State appear to have any plans to determine the extent of these needs or any interest
20 in learning more about the needs of Student Plaintiffs and other underserved students.

21 **School Districts’ Actions:** Finally, the State describes many of the initiatives that the
22 LEAs themselves—including LAUSD and OUSD—have implemented or planned to address the
23 digital divide, learning loss, and mental health of their students. (Ex. 20 at 7-12.) Plaintiffs
24 appreciate the efforts of many school districts during the pandemic. The examples that the State
25 provides, however, do not show that the State is meeting its constitutional duties or to provide any
26 sort of snapshot of underserved students across the State. The State must step up to the plate.

27 In sum, the State’s latest letter—focused almost exclusively on funding and LEA-level
28 initiatives—highlights the State’s enormous blind spot as to what is needed to remedy the State’s

1 ongoing failures to its underserved students. California’s students need oversight, assistance, and
2 enforcement from the State. Anything less is not enough.

3 **II. LEGAL STANDARD**

4 In deciding whether to issue a preliminary injunction, courts weigh the following factors:
5 (1) the plaintiff “is likely to succeed on the merits; (2) the plaintiff “is likely to suffer irreparable
6 harm in the absence of preliminary relief”; (3) “the balance of equities tips in [the plaintiff’s]
7 favor”; and (4) “particularly where public harm is implicated, ‘that an injunction is in the public
8 interest.’” *See People v. Uber Techs., Inc.*, 56 Cal. App. 5th 266, 272 (2020) (citing *Winter v.*
9 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). *See also Butt v. State of California*, 4 Cal.
10 4th 668, 677-78 (1992). In addition, in fashioning a remedy, a court should “strive for the least
11 disruptive remedy adequate to its legitimate task” and tailor it to the harm at issue. *Uber Techs.*,
12 56 Cal. App. 5th at 313 (citing *Butt* 4 Cal.4th at 695-96).

13 As shown below, a preliminary injunction is warranted. First, Plaintiffs are likely to prove
14 that Defendants have violated the equal protection and free school guarantee of the California
15 Constitution. Second, Plaintiffs have suffered and will continue to suffer interim, irreparable
16 harm in the form of continued learning loss and mental health decline absent preliminary
17 injunctive relief. Third, the balance of equities heavily favors entry of a preliminary injunction.
18 Fourth, granting the preliminary injunction is in the public interest. Finally, Plaintiffs’ requested
19 injunctive relief is no broader than necessary.

20 **III. ARGUMENT**

21 “Public education is an obligation which the State assumed by the adoption of the
22 Constitution.” *Butt*, 4 Cal. 4th at 680. “Local districts are the State’s agents for local operation of
23 the common school system, and the State’s ultimate responsibility for public education cannot be
24 delegated to any other entity.” *Id.* at 681 (citations omitted). “[T]he California Constitution
25 makes public education uniquely a fundamental concern of the State and prohibits maintenance
26 and operation of the common public school system in a way which denies basic educational
27 equality to the students of particular districts.” *Id.* at 685. Defendants bear the “ultimate
28 authority and responsibility to ensure” that public schools provides basic equality of educational

1 opportunity.” *Id.* When a school or local district “den[ies] its students basic educational
2 equality” and/or creates discriminatory disparities in the system of common schools, the State is
3 obligated to intervene, “even when the discriminatory effect was not produced by the purposeful
4 conduct of the State or its agents.” *Id.* at 681, 692.

5 **A. Plaintiffs Have a Strong Likelihood of Success on the Merits**

6 Plaintiffs are likely to succeed in proving that Defendants have violated the equal
7 protection and free school guarantee of the California Constitution due to their failure to: (1)
8 provide access to technology and connectivity that makes remote learning possible; (2) make a
9 concrete plan to identify and compensate for learning loss; and (3) secure the mental health
10 supports such that the underserved students are able to learn.

11 **1. Defendants Violate California Constitution’s Equal Protection Clause**

12 The right to an education in California is a “fundamental interest.” *Serrano v. Priest*,
13 18 Cal. 3d 728, 767-68 (1976) (“*Serrano I*”); *see also O’Connell v. Super. Ct.*, 141 Cal. App. 4th
14 1452, 1482, 1465 (2006) (“[A]ll California children should have equal access to a public
15 education system that will teach them the skills they need to succeed as productive members of
16 modern society”). In considering the California Constitution’s protection of the fundamental
17 right to equal education, the Supreme Court has emphasized that a core purpose of education is to
18 “bring together members of different racial and cultural groups.” *Hartzell v. Connell*, 35 Cal.3d
19 899, 908 (1984). Equal access to education is especially important for the poor: “Education holds
20 out a ‘bright hope’ for the ‘poor and oppressed’ to participate fully in the economic life of
21 American society,” and is “an essential step” in achieving “economic self-sufficiency.” *Id.*
22 (citations omitted); *Serrano v. Priest*, 5 Cal. 3d 584, 605 (1971) (“*Serrano II*”).

23 The fundamental right to a basic education is denied when the State’s common school
24 system denies its students of an education “basically equivalent to that provided elsewhere
25 throughout the State.” *Butt*, 4 Cal. 4th at 685. A student’s education is not “basically equivalent”
26 when “the actual quality of the [school’s] program, viewed as a whole, falls fundamentally below
27 prevailing statewide standards,” thereby demonstrating “a real and appreciable impact on the
28 affected students’ fundamental California right to basic educational equality.” *Id.* at 686-88.

1 “The State is the entity with ultimate responsibility for equal operation of the common school
2 system.” *Id.* at 692. Accordingly, the State is obligated to intervene “unless the State can
3 demonstrate a compelling reason for failing to do so.” *Id.*

4 The State’s continued failures to provide adequate resources for remote learning, secure
5 mental health support, and compensate learning loss have denied underserved students, including
6 Student Plaintiffs, their fundamental right to an education. These students are facing learning loss
7 on an order of magnitude even greater than what the Supreme Court found unconstitutional in
8 *Butt*. See *id.* at 676 (affirming a preliminary injunction to keep schools open despite a severe
9 financial crisis caused by fiscal mismanagement). In *Butt*, the Supreme Court held that the
10 constitutional violation resulting from school closure derived from the “real and appreciable
11 impact on the affected students’ fundamental California right to basic educational equality,”
12 including the loss of “instruction in phonics, reading comprehension, creative writing,
13 handwriting skills, . . . all necessary for advancement to the second grade.” *Id.* at 687-88 & n. 16.

14 When inequity in education has a substantially disparate impact on students of color,
15 causing *de facto* segregation, it deprives such students of an equal educational opportunity.
16 *Collins v. Thurmond*, 41 Cal. App. 5th 879, 898-99 (2019) (“[R]acial segregation of any kind in
17 school harms students by depriving them of an equal educational opportunity.”). The California
18 Constitution’s equal protection clause prohibits the State from adopting a policy that “has a
19 substantial disparate impact on the minority children of its schools, causing *de facto* segregation
20 of the schools,” that has “an appreciable impact to a district’s educational quality,” and where “no
21 action is taken to correct that policy when its impacts are identified.” *Id.* at 896–97. “[I]t is
22 reasonable to conclude that students of a district subject to *de facto* racial segregation due to
23 racially discriminatory disciplinary practices are receiving an education that is fundamentally
24 below the standards provided elsewhere throughout the state where the legal proscriptions on
25 such discriminatory practices are being enforced.” *Id.* at 898–99.

26 Plaintiffs have a strong likelihood of success on their claim that Defendants violate the
27 California Constitution’s guarantees of equal protection on the basis of wealth and race for each
28 of the following reasons: (a) Defendants’ conduct has had a substantially disparate impact on

1 underserved students, causing *de facto* racial segregation; (b) the education that the underserved
2 students are receiving falls fundamentally below prevailing statewide standards; and (c)
3 Defendants can demonstrate no compelling interest for their failure to intervene.

4 **a. Defendants' conduct has had a substantially disparate impact**
5 **on underserved students.**

6 California's implementation of remote learning and plans for a return to in-person
7 instruction have had and continue to have a substantially disparate impact on underserved
8 students, such that it is causing *de facto* racial segregation in the administration of education. *See*
9 *Collins*, 41 Cal. App. 5th at 896-97. The State's response to education during COVID-19 has
10 directly and disproportionately impacted underserved students, including Student Plaintiffs.
11 Widely disparate access to educational opportunities and digital resources have left these students
12 further behind, as they face the following significant obstacles during remote learning and
13 looking ahead to transitioning back to in-person instruction: (i) the digital divide; (ii) substantial
14 learning loss; and (iii) inadequate mental health supports.

15 **(i) The digital divide is causing *de facto* segregation**
16 **in California's public schools.**

17 As discussed above, the digital divide still exists and the State does not dispute that. (*See*
18 *supra* Sections I(A)(1), I(E)(4).) The lack of access to technology or the Internet continues to be
19 a barrier to effective learning, particularly for underserved students. (*Id.*; *see also* Ex. 4 at 1-2.)
20 Even underserved students who are provided with devices and connectivity still struggle to learn
21 due to lack of technical training and support for students and their parents in accessing the remote
22 learning platforms. (*See supra* Sections I(A)(1), I(A)(2).)

23 **(ii) Underserved students are suffering significantly**
24 **more learning loss than their peers.**

25 **Inadequate Live Remote Instruction.** Due to the State's failures, underserved students
26 have received less live remote instruction than their peers. (*See supra* Section I(A)(2)(a).)
27 Students from high-income families have received one more hour of live instruction per week on
28 average than students in low-income families. (Howard Decl. ¶ 46.) Black and Latinx students
are twice as likely as their white peers to have had no contact with their teachers, and are three to

1 six percentage points less likely than their white peers to be receiving consistent live instruction.
2 (Ex. 27 at 4-5.) Almost 40% of Black students received no live contact. (Howard Decl. ¶ 46.)

3 Despite schools beginning to transition back to what the State considers “in-person
4 instruction” under AB/SB 86, most LEAs are still relying on a hybrid model. (*See supra* Section
5 I(C).) Thus, issues with inadequate live instruction and other problems related to the digital
6 divide pervade, despite the State’s “plan” for reopening.

7 **Failure to Address Learning Challenges Due to Poverty.** Challenges associated with
8 poverty and racism compound the learning loss that underserved students have suffered. (*See*
9 *supra* Section I(A)(2)(a).) Only 1 in 3 families are able to provide their children with a quiet,
10 distraction-free learning environment. (Ex. 26 at 11.) As a result, students cannot learn content
11 and skills as easily as they would in school. (Howard Decl. ¶ 31; Bishop Decl. ¶ 25.)

12 Parent involvement also is an important aspect of remote learning, where parents have to
13 fill in the gaps of reduced school resources and assist their children. More than half of low-
14 income households are unable to spend more than four hours per week on average helping their
15 children with remote learning, compared with more than seven hours per week for high-income
16 parents. (Howard Decl. ¶ 47.) Similarly, parents in white households are able to spend two more
17 hours per week on average helping with schoolwork than Latinx families. (Howard Decl. ¶ 47.)
18 88% of teachers in LAUSD reported that the lack of adult support at home is a serious obstacle in
19 distance learning. (Ex. 25 at 6; *see also* Howard Decl. ¶ 47; *supra* Section I(A)(1).)

20 **Inability to compensate learning loss.** Unlike higher income families, underserved
21 students are unable to compensate learning loss by hiring private tutors or creating their own
22 online learning communities. (Howard Decl. ¶ 47.) Although AB/SB 86 provides funding to
23 LEAs meeting certain criteria, the legislation lacks any (i) actual plan for learning recovery,
24 (ii) any system for ensuring that all students obtain technology and training for themselves or
25 their families essential to accessing remote learning, necessary mental health supports, and (iii)
26 benchmarks to measure LEAs’ success with learning recovery efforts so as to remediate losses
27 suffered, or any oversight for future accountability. (*See supra* Section I(E)(1)-(2).)

1 (iii) **The lack of mental health supports further**
2 **disadvantages underserved students.**

3 Before the pandemic, school was the primary place for children to receive mental
4 healthcare, whether through counselors, social workers, or therapy. (Biel Decl. ¶ 5; King Decl.
5 ¶¶ 4-8; Saleem Decl. ¶¶ 21-27.) While some schools have provided these services virtually,
6 many children have lost all or most of their access to vital mental health supports and services.
7 (Biel Decl. ¶ 7; Willard Decl. ¶ 5; Rappaport Decl. ¶¶ 15-16.) As a result, students are
8 experiencing more anxiety and depression. (Biel Decl. ¶ 8.) The rates of emergency room visits
9 for self-injury, suicidal thinking, and anxiety have increased significantly during the COVID-19
10 pandemic. (Biel Decl. ¶ 9; Willard Decl. ¶¶ 4, 6; Rappaport Decl. ¶¶ 11-14, 17.) From mid-
11 March to October 2020, the proportion of mental health-related emergency department visits
12 increased a staggering 24% among children 5–11 years old and 31% among adolescents 12–17
13 years old as compared to the same period in 2019. (Biel Decl. ¶ 9.) Tragically, youth seeking
14 care in emergency departments presented with an increased risk of suicide as compared to the
15 previous year. (*Id.*; *see also* Willard Decl. ¶ 4; Rappaport Decl. ¶ 12.)

16 Due to the State’s failure, underserved students do not have the mental health support that
17 they need to learn. (*See supra* Section I(A)(3).) They are severely at risk for disengagement and
18 distancing from schools, including chronic absenteeism, which exacerbates the learning gaps for
19 underserved students. (Biel Decl. ¶¶ 28-29; Himmelstein Decl. ¶¶ 16-18; Saleem Decl. ¶¶ 9-20, 37;
20 King Decl. ¶¶ 9, 11; Rappaport Decl. ¶¶ 7-10.) Many of them need intensive academic and
21 social-emotional support to make up for lost time. (Biel Decl. ¶ 4; Saleem Decl. ¶ 34; King Decl.
22 ¶¶ 9-12; Willard Decl. ¶¶ 9-12.) Although the long-term effects are not yet fully known, it is
23 reasonably foreseeable that many adolescents will drop out, choose alternative life paths that do
24 not include high school or higher education, and suffer increased mental health problems. (Biel
25 Decl. ¶¶ 28-29; Saleem Decl. ¶ 37; Gandara Decl. ¶ 14.) This is especially true for underserved
26 students. (Biel Decl. ¶ 30; Himmelstein Decl. ¶¶ 17-18; Saleem Decl. ¶¶ 28-37.)

27 **b. The education that underserved students are receiving falls**
28 **fundamentally below prevailing statewide standards.**

The discriminatory effects of the State’s remote learning on underserved students,

1 including Student Plaintiffs, have deprived these students of anything approaching a “basically
2 equivalent” education. *See Collins*, 41 Cal. App. 5th at 898 (applying *Butt*, 4 Cal. 4th at 687-88).
3 The education that underserved students have received “falls fundamentally below prevailing
4 statewide standards.” *Butt*, 4 Cal. 4th at 686-87; *Collins*, 41 Cal. App. 5th at 898.

5 For example, the education that underserved students have received falls fundamentally
6 below the prevailing statewide standards because it fails to (1) provide a daily minimum duration
7 of live instruction; (2) ensure sufficient connectivity and devices adequate to participate in remote
8 learning; (3) secure academic and mental health supports for students who need them; and (4)
9 deliver an education that is at a level of quality and intellectual challenge substantially equivalent
10 to in-person instruction. (*See supra* Sections I(A)-(D).) *See* Cal. Educ. Code §§ 43500 *et seq.*

11 Due to the State’s failures to ensure equal education, underserved students like Student
12 Plaintiffs have suffered significant learning loss compared to their peers, *i.e.*, failure to learn
13 content and skills that they typically would be. (*See id.* at I(A)(2)(a), III(A)(1)(a)(ii).) They have
14 received significantly less live remote instruction time than other students. For example, low-
15 income and Black students received only 2.6 and 2.4 hours per week of live instruction,
16 respectively, compared with 3 hours for all students. (Ex. 21 at 3.) The lost live instruction time
17 not only negatively impacts students’ test scores, but also their social and emotional outcomes.
18 (Howard Decl. ¶ 32.) By the end of the 2021 school year, students of color are likely to lose
19 ***seven more months*** of learning compared to white students. (Ex. 8 at 1; *see also* Ex. 27 at 1.)

20 **c. Defendants cannot demonstrate a compelling reason for their**
21 **failure to intervene.**

22 Because education is a fundamental interest in California, denials of basic educational
23 equality are subject to strict scrutiny. *Butt*, 4 Cal. 4th at 692. The State’s failures have denied
24 underserved students basic educational equality, a denial that both creates and exacerbates
25 discriminatory disparities in the system of common schools. Defendants are obliged to intervene
26 “even when the discriminatory effect was not produced by the purposeful conduct of the State or
27 its agents,” unless the State can demonstrate a compelling reason for failing to do so. *Id.* at 681,
28 692 (holding the State bears the “ultimate authority and responsibility to ensure that its district-

1 based system of common schools provides basic equality of educational opportunity”).

2 Despite its knowledge of pre-pandemic educational disparities, the State has nevertheless
3 diverted all responsibility to the LEAs without providing support and oversight that the crisis
4 demands. The State’s letters confirms its failure to take sufficient steps to ensure that
5 underserved students receive their constitutionally-guaranteed public education. (*See supra*
6 Section I(E)(4).) The State still does not commit to ensuring that underserved students receive
7 their constitutionally-guaranteed education. Its letters do not mention Student Plaintiffs, inquire
8 after their educational well-being, or offer any reassurance that what they need is coming.

9 The State does not dispute that it has a constitutional duty to guarantee an equal and free
10 education. Nor does the State dispute that (1) all students in California who still participate in
11 remote learning should have access to technology and connectivity; (2) students who have
12 suffered learning loss should receive compensatory education; and (3) students should receive
13 adequate mental health support. Yet the State continues to abdicate its duties to ensure that all of
14 the above happens. Without oversight, assistance, and enforcement, the one-time grants that the
15 State has provided LEAs (*supra* Section I(E)(1)-(2)) fall far short of remedying the harm inflicted
16 over the past year, particularly with respect to the digital divide, learning loss, and mental health.

17 Defendants cannot demonstrate any justification for their failure to ensure basic
18 educational equality, let alone a compelling state interest. *See, e.g., Butt*, 4 Cal. 4th at 704
19 (rejecting the State’s argument that “[l]ocal control of public schools” was a compelling interest
20 such that it was not required to intervene). Defendants cannot demonstrate a compelling interest
21 for their failure to ensure that all students have access to devices, connectivity, and technical
22 support, all of which are strongly correlated with the number of live education hours that students
23 receive. Given the ongoing prominence of remote learning for underserved students, the lack of
24 sufficient devices and connectivity for distance learning among these students translates directly
25 into a lack of basic education. An August 2020 white paper by the Learning Policy Institute
26 (“LPI Report”) sets ten priorities for schools in the wake of the pandemic; “Priority 1” is to
27 “Close the Digital Divide.” (Ex. 1 at 5-9; *see also* Ex. 29; Burch Decl. ¶ 20-26.) To date, the
28 State still has not fulfilled its duty to close the digital divide. (Burch Decl. ¶ 20-26.)

1 Defendants also cannot demonstrate a compelling interest for their failure to ensure
2 remediation of the learning loss and associated mental health issues that underserved students
3 have faced. The State has engaged in no systematic planning to catch up students who have lost
4 precious months of education due to its failure to undertake reasonable measures to ensure basic
5 educational equality. Similarly, the State has engaged in no systematic effort to help students
6 overcome the mental health issues that are keeping them from learning (and which inadequate
7 remote learning programs contributed to in the first place). The State has not signaled what, if
8 anything, it intends to do to ensure remediation of the consequences of the pandemic as
9 exacerbated by the State’s inaction. This is true even though officers charged constitutionally to
10 do so are aware that these students have received education in name only, if that, for over a year.

11 **2. Defendants Violate California Constitution’s Free School Guarantee**

12 The California Constitution gives all California students the right to learn in a “system of
13 common schools by which a *free school* shall be kept up and supported” such that students may
14 learn and receive the “diffusion of knowledge and intelligence . . . essential to the preservation of
15 the[ir] rights and liberties.” Cal. Const. art. IX, §§ 1, 5 (emphasis added). The Free School
16 Guarantee imposes on Defendants the duty to provide underserved students—including Student
17 Plaintiffs—an education that will teach them the skills they need to succeed as productive
18 members of modern society, and to cover all expenses for resources and activities constituting an
19 “integral fundamental part of the elementary and secondary education” or which amount to
20 “necessary elements of any school’s activity.” *Hartzell*, 35 Cal. 3d at 905 (citation omitted).

21 In the current environment, digital devices and connectivity constitute an “integral
22 fundamental part” of education. (Howard Decl. ¶¶ 37, 40.) The LPI report observes: “Computers
23 and connectivity are to today’s schools what textbooks and chalkboards were to the schools of the
24 past.” (Ex. 1 at 5; *see also* Ex. 29.) For the millions of California students unable to return to
25 full-time, all in-person instruction, digital devices and connectivity are the only means by which
26 to attend class and to interact with their teachers and other students. (*See supra* Section I(A)(1).)

27 The Department of Education has acknowledged that “the California Constitution
28 prohibits LEAs from requiring students to purchase devices or Internet access, to provide their

1 own devices, or otherwise pay a fee as a condition of accessing required course materials under
2 the free schools guarantee[.]” (Ex. 30 at 3.) Despite this, underserved students, including Student
3 Plaintiffs, lack access to this integral fundamental part of education. They cannot effectively
4 learn without access to technology. (Howard Decl. ¶ 40.) For example, in LAUSD, about 1 in 3
5 families bought a new device, like a laptop, or new Internet service, to support their children.
6 (*Id.*) These expenses amount to an intolerable fee as a barrier to education.

7 Mental health supports are likewise an integral and fundamental part of education. (Biel
8 Decl. ¶ 27; Himmelstein Decl. ¶¶ 5-15; Saleem Decl. ¶ 24.) Before the pandemic, school was the
9 primary place that children had access to mental healthcare. (*See supra* Section III(A)(1)(a)(iii).)
10 School-based mental health care leads to improved school attendance, lower depression, and
11 fewer emergency room visits. (Saleem Decl. ¶ 24.) Untreated mental health issues become more
12 severe in adolescence and negatively impact educational attainment. (*Id.*; Gandara Decl. ¶¶ 13-
13 14; Willard Decl. ¶ 8.) When schools closed, students lost access to these vital services, and
14 Defendants have not stepped in to ensure necessary supports. Students are now forced to forego
15 those supports or obtain them at their own expense. (*See supra* Section I(A)(3), III(A)(1)(a)(iii).)
16 The California Constitution does not tolerate such a choice. *See Hartzell*, 35 Cal. 3d at 911 (“In
17 guaranteeing ‘free’ public schools, article IX, section 5 fixes the precise extent of the financial
18 burden which may be imposed on the right to an education—none.”).

19 **B. Plaintiffs Face Immediate and Irreparable Harm**

20 Plaintiffs will suffer interim, irreparable harm absent preliminary injunctive relief
21 requiring Defendants to ensure equal and free education. These harms include severe and
22 immediate academic disruption, psychological harm, and harm to students’ long-term well-being
23 arising from the inadequate remote learning.

24 **Continued Academic Disruption.** The cumulative effects of both known and unknown
25 opportunity gaps that the State has caused will further exacerbate disparities in achievement
26 between at-risk students and their white and wealthier peers. (Bishop Decl. ¶¶ 49-50; *see also*
27 *supra* Section I(A)(2)(b).) Research findings already show significant learning loss among
28 vulnerable students due to inequities in remote learning. (*See supra* Section I(A)(2)(b).) In short,

1 the State’s inaction has set up these students to fail. Underserved students need urgent
2 intervention to correct course and bring them up to grade-level.

3 **Psychological Harm.** One major consequence of COVID-19 and the resulting school
4 closures is that many children have lost all or most of their access to vital mental health supports
5 and services. (Biel Decl. ¶ 7; Willard Decl. ¶ 5.) Parents have witnessed the emotional and
6 mental health toll that a year of isolation and limited interaction with peers and teachers has taken
7 on their children. (See Adriana G. Decl. ¶¶ 12-13, 18; Angela J. Decl. ¶ 13; Maria O. Decl. ¶ 11;
8 Kelly R. Decl. ¶ 10; Constance C. Decl. ¶ 12-13.) Students are experiencing more anxiety and
9 depression than prior to the pandemic, and rates of emergency room visits for self-injury, suicidal
10 thinking, and anxiety have gone up significantly during the same period. (Biel Decl. ¶ 9; Willard
11 Decl. ¶ 4.) As mental health is a critical foundational aspect of students’ ability to learn, absent
12 an injunction requiring the State to ensure mental health support, these students will not be in a
13 position to learn. (See *supra* Sections I(A)(3), III(A)(1)(a)(iii).)

14 **Harm to Long-Term Wellbeing.** Students who underachieve as a result of remote
15 learning are also likely to either repeat a grade or drop out. (Howard Decl. ¶¶ 19–20.) Parents
16 are deeply concerned that their children are falling behind academically, and even that their
17 children may have to repeat a grade. (See *supra* Section I(B).) Both repeating a grade and
18 dropping out altogether have severe implications for a student’s long-term wellbeing. (Howard
19 Decl. ¶¶ 19–20.) Students who drop out of school are more likely to be incarcerated at some
20 point in their lives, to live in poverty, and to send their own future children to low-performing
21 schools. (*Id.* ¶ 21.) On average, students who do not finish high school will earn significantly
22 lower wages over their lives, compared to their high school graduate peers. (*Id.* ¶ 20.)
23 Historically, students who lacked access to digital tools averaged an overall GPA that was 0.4
24 points lower than students with access. (Ex. 31 at 8.) This gap leads to a 4% to 6% lower annual
25 income. (*Id.*) As experts predict that lack of access to digital tools during the COVID-19
26 pandemic will result in 7 to 14 months of lost learning, the digital divide could lead to an annual
27 earnings deficit of \$110 billion across the current cohort of K-12 students. (*Id.*) Thus, there must
28 be interventions to improve the prospects of students at the low end of the “achievement

1 spectrum” before these harms materialize. (Howard Decl. ¶ 20.)

2 Immediate relief also is necessary given the slow, patchwork reopening of schools, where
3 in-person learning is all-too-often limited to just a few hours a week and a significant portion of
4 students—particularly underserved students—continue learning remotely in part or in full. The
5 need to close the digital divide cannot wait any longer. The longer students are unable to attend
6 school in person full time, the greater the economic losses they can expect to accrue over their
7 entire lives. An OECD report estimated that by September 2020, a typical student subject to
8 pandemic-related school closures would lose 3% of their lifetime income, with greater losses
9 expected for low-income students of color. (Hanushek Decl. ¶ 4.) For students who remain out
10 of school as of April 2021, this lost income would rise to 6-9%. (*Id.* ¶¶ 5-6.) This continuing
11 harm to Plaintiffs counsels in favor of granting preliminary injunctive relief.

12 **C. The Balance of Equities Favors Grant of Preliminary Injunction**

13 The balance of equities favors a preliminary injunction because Plaintiffs will face
14 immediate and irreparable harm absent interim relief. Unlike Plaintiffs, Defendants would face
15 no harm—let alone irreparable harm—should this Court issue a preliminary injunction. As
16 discussed above, Defendants already have the constitutional duty to ensure students have equal
17 and free access to basic education. *See Uber Techs.*, 56 Cal. App. 5th at 306 (“[A] party suffers
18 no grave or irreparable harm by being prohibited from violating the law.”). A preliminary
19 injunction would merely bring Defendants into compliance with this existing duty.

20 **D. Granting the Preliminary Injunction Is in the Public Interest**

21 The public interest favors granting the preliminary injunction. Public schools were
22 conceived as the engine of democracy: the great equalizer that affords all children the opportunity
23 to define their destinies, lift themselves up, and better their circumstances. The public interest is
24 served when all students are afforded an equal opportunity to realize these opportunities free from
25 discrimination based on race or wealth. *See Hector F. v. El Centro Elementary Sch. Dist.*, 227
26 Cal. App. 4th 331, 341 (2014) (citing *Doe v. Albany Unified Sch. Dist.*, 190 Cal. App. 4th 668
27 (2010)) (“Plainly the public interest in ensuring public schools are free from discrimination . . . is
28 as great or greater than the public interest in assuring schools provide the mandated minimum

1 number of hours of physical education the court considered in *Doe.*”).

2 **E. Plaintiffs’ Proposed Relief Is No Broader than Necessary and Minimizes the**
3 **Potential Harm to the Defendants**

4 Plaintiffs’ proposed relief (*infra* Section IV) is no broader than necessary and minimizes
5 the potential harm to the Defendants, further warranting granting the preliminary injunction.

6 **Digital Divide:** Plaintiffs request that this Court order Defendants to determine which
7 California students lack access to remote learning tools and connectivity and ensure that LEAs
8 and school districts immediately provide such resources. As the LPI Report specifies, “Priority
9 1” is to “Close the Digital Divide” as “[c]omputers and connectivity are to today’s schools what
10 textbooks and chalkboards were to the schools of the past.” (Ex. 1 at 5; *see also* Ex. 29.) Any
11 remedy must include this baseline requirement—including (a) determining which students still
12 lack devices and connectivity and (b) equipping these students with the equipment they need—as
13 it is a necessary first step to remedying the harm to Plaintiffs. (Howard Decl. ¶¶ 37-44, 55-59.)

14 Plaintiffs also request that this Court order Defendants to ensure effective live remote
15 instruction that is substantially equivalent to in-person instruction and meets daily minimum
16 instructional times under Cal. Educ. Code § 43501. This request is no broader than necessary to
17 provide a basic education that the California Constitution guarantees.

18 Plaintiffs also request that this Court order Defendants to ensure that LEAs and school
19 districts provide parents, caregivers, and students training and technical support on how to use the
20 provided devices and distance learning platforms. Parents have—all at once—become teachers
21 and tech support professionals. Unfortunately, parents are often ill-equipped to fill these roles
22 and lack sufficient knowledge of the tools their children are using. (Howard Decl. ¶ 42.) This
23 request is no broader than necessary because equipping parents and students with the resources
24 they need to facilitate learning is essential to provide a more equitable learning environment.
25 (Bishop Decl. ¶ 36; Howard Decl. ¶¶ 41-43, 53-54.)

26 **Mental Health:** Plaintiffs further request that the Court order Defendants to ensure that
27 all students and teachers have access to adequate mental health support, as well as training for
28 teachers to support their students’ emotional, social, and mental health needs. This remedy is

1 necessary to ensure that students and teachers have the baseline mental health to learn and teach.
2 The LPI Report recognizes that: “to buffer a generation of children and youth from the negative
3 impacts of [] cumulative inequities, schools need to nurture the whole child by intentionally
4 integrating social and emotional learning.” (Ex. 1 at 33.) It recommends that schools adopt a
5 social and emotional learning (“SEL”) curriculum, develop and launch standards and guidance for
6 SEL, and train educators in SEL-informed and trauma-informed practices. (Ex. 1 at 36-43.)
7 Although such robust wraparound services would be welcome, Plaintiffs’ requested remedy does
8 not go nearly this far. Rather, Plaintiffs seek the bare minimum necessary to equip students with
9 the mental health they need to learn. (Saleem Decl. ¶¶ 38-43; Howard Decl. ¶¶ 63-65.)

10 **Learning Recovery:** Plaintiffs also request that the Court order Defendants to:

11 (1) determine which California students lack effective remote instruction that is substantially
12 equivalent to in-person instruction and meets minimum instructional times and assess
13 corresponding learning loss; (2) provide direct outreach and support on at least a weekly basis to
14 the family of every low-income student or student of color in California to aid in transitioning
15 back to in-person learning at least through the end of August 2022; and (3) provide a statewide
16 plan to assist, oversee, and ensure that LEAs put in place programming to remedy the learning
17 loss caused by inadequate remote learning. Such efforts are necessary to remedy the damage
18 caused by Defendants’ inaction. Community and parent input, direct outreach to underserved
19 students’ families, and enforcement are all critical components of ensuring the efficacy of a
20 learning recovery plan. (Ex. 1 at 23-24, 27-28, 70-77; Biel Decl. ¶¶ 32-35; Howard Decl. ¶ 62.)

21 **Concrete Plans:** Plaintiffs also request that this Court order Defendants to file written
22 plans—approved by the Court—to address (1) the digital divide, mental health, and learning
23 recovery remedies discussed above, (2) education to remediate the learning loss and associated
24 mental health issues that underserved students have sustained as a result of inadequate remote
25 learning, and (3) returning to five days per week, full-day, in-person instruction. These plans
26 require meaningful participation from low-income families, families of students of color, and
27 community organizations that serve these families, including The REACH and CoCo.

28 (Hernandez Decl. ¶¶ 18–21; Young Decl. ¶¶ 13-16; Howard Decl. ¶ 69.) This proposed relief is

1 no broader than necessary due to the long-term harm facing Student Plaintiffs. Without
2 implementing a plan immediately, learning loss will be further compounded due to the
3 cumulative nature of education. (*See supra* Section III(B); Bishop Decl. ¶¶ 48-50.)

4 **IV. CONCLUSION AND REQUESTED RELIEF**

5 Plaintiffs request that the Court order the Defendants as follows on an expedited basis:

6 **1) Digital Divide:** Take the following steps to remedy the digital divide for
7 California students engaging in remote learning to any extent (including students attending school
8 in a hybrid format and students subject to quarantine):

9 a) **Devices and Connectivity:** Determine which California students engaging
10 in remote learning lack access to the devices and connectivity that they need to effectively
11 participate in remote learning, and ensure that LEAs and school districts provide those students
12 with remote learning devices and connectivity.

13 b) **Adequate Live Remote Instruction:** Ensure effective live remote
14 instruction that is substantially equivalent to in-person instruction and meets daily minimum
15 instructional times of 180 instructional minutes in kindergarten; 230 instructional minutes in
16 grades 1 to 3; and 240 instructional minutes in grades 4 to 12.

17 c) **Training:** Ensure that LEAs and school districts provide parents,
18 caregivers, and students necessary resources and training on how to use devices, distance learning
19 platforms, and any other tools that Defendants, LEAs, or school districts have or will implement
20 for remote learning.

21 d) **Technology Support:** Ensure that LEAs and school districts provide
22 students and their parents and caregivers access to technical support for potential issues with
23 provided devices, distance learning platforms, and any other tools that Defendants, LEAs, or
24 school districts have or will implement for remote learning.

25 **2) Mental Health:** Develop and implement a structure to assist, oversee, and ensure
26 that all students and teachers have access to free-of-charge counseling services, and provide all
27 teachers statewide with training regarding mental health, trauma, classroom management, and/or
28 behavioral supports by the end of 2021 and on at least an annual basis thereafter.

1 3) **Learning Recovery:**

2 a) Determine which California students lack effective remote instruction that
3 is substantially equivalent to in-person instruction and meets minimum instructional times and
4 assess corresponding learning loss.

5 b) With input from parents and the community, provide direct outreach and
6 support at least weekly to the family of every low-income student or student of color in California
7 to aid in transitioning back to in-person learning at least through the end of August 2022.

8 c) With input from parents and the community, provide a statewide plan to
9 assist, oversee, and ensure that LEAs put in place programming to remedy learning loss.

10 4) Within 14 days of the Order granting Plaintiffs’ motion, (a) file with the Court for
11 approval a written plan that includes action steps, staffing, funding, and a timeline of how
12 Defendants will implement items (1)–(3), and (b) thereafter file quarterly progress reports with
13 the Court as Defendants carry out the approved plan.

14 5) Within 14 days of the Order granting Plaintiffs’ motion, (a) file with the Court for
15 approval a written plan for education to remediate the learning loss and associated mental health
16 issues that students of color and students from low-income families have sustained as a result of
17 inadequate remote learning, implemented with meaningful participation from low-income
18 families, families of students of color, and community organizations that serve these families,
19 including The REACH and CoCo, and (b) thereafter file quarterly progress reports with the Court
20 as Defendants carry out the approved plan.

21 6) Within 14 days of the Order granting Plaintiffs’ motion, (a) file with the Court for
22 approval a written plan for the steps the State and LEAs will take to return to five days per week,
23 full-day, in-person instruction for all California students, developed with meaningful participation
24 from low-income families, families of students of color, and community organizations that serve
25 these families, including The REACH and CoCo, and (b) thereafter file quarterly progress reports
26 with the Court as Defendants carry out the approved plan.

27 7) Any other and further relief as the Court may deem appropriate.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: May 3, 2021

PUBLIC COUNSEL

By: /s/ Mark Rosenbaum
MARK ROSENBAUM
Attorney for Plaintiffs

By: /s/ Jesselyn Friley
JESSELYN FRILEY
Attorney for Plaintiffs

MORRISON & FOERSTER LLP

By: /s/ Michael A. Jacobs
MICHAEL A. JACOBS
Attorney for Plaintiffs

By: /s/ Shaelyn K. Dawson
SHAELYN K. DAWSON
Attorney for Plaintiffs