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**CALIFORNIA SUPERIOR COURT**

**FOR THE COUNTY OF SAN DIEGO**

SPRING VICK and DAVID  
HARGENBURGER, on behalf of themselves  
and the Proposed Class

Plaintiffs

v.

LA MESA-SPRING VALLEY UNIFIED  
SCHOOL DISTRICT, BRIAN MARSHALL;  
CALIFORNIA DEPARTMENT OF  
EDUCATION; TONY THURMOND; and  
DOES 1-5

Defendants.

Case No.: 37-2021-00014498-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR:**

- 1. VIOLATION OF EDUCATION  
CODE SECTIONS 43500 ET SEQ.**
- 2. VIOLATION OF CAL. EDUCATION  
CODE SECTION 51865**
- 3. UNFAIR BUSINESS PRACTICES  
(BUS. & PROF. CODE §§ 17200-  
17208)**
- 4. DECLARATORY RELIEF**

**DEMAND FOR JURY TRIAL**

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**04/02/2021** at 01:45:45 PM

Clerk of the Superior Court  
By Melinda McClure, Deputy Clerk

1  
2 **I. SUMMARY OF CLAIMS**

3 1. Plaintiffs are parents and/or guardians of children who attend schools within the La-  
4 Mesa-Spring Valley Unified School District ("DISTRICT").

5 2. Plaintiffs allege that since March of 2020, Defendants DISTRICT, California  
6 Department of Education ("CDE"), DISTRICT Superintendent Brian Marshall and CDE  
7 Superintendent Tony Thurmond have, in violation of applicable law, failed to provide  
8 DISTRICT students with equal access to distance learning, have failed to provide *any* in-person  
9 learning at all, and have failed to provide DISTRICT students with the required number of  
hours of instruction per day.

10 3. Plaintiffs allege that by these acts and omissions, Defendants have acted negligently and  
11 have otherwise violated California law, including but not limited to, California Education Code  
12 sections 43500 et seq. and 51865, and Business and Professions Code section 17200 et seq.

13 4. Plaintiffs allege Defendants these acts and omissions have directly and proximately  
14 caused damages to Plaintiffs and their children.

15 **II. THE PARTIES**

16 **A. Plaintiffs**

17 5. Plaintiff Spring Vick is a resident of San Diego County and is the parent and guardian of  
18 four minor children who during the relevant times allege in this complaint have attended  
Northmont Elementary School, which is a part of the DISTRICT.

19 6. Plaintiff David Hardenburger is a resident of San Diego County and is the parent and  
20 guardian of a minor child who is a 6<sup>th</sup> grader at Murray Manor Elementary School, which is a  
21 part of the DISTRICT.

22 **B. Defendants**

23 7. Defendant DISTRICT is a California Local Education Agency which includes 21  
24 schools. Plaintiffs are informed and believe that DISTRICT serves more than 12,000 students  
from preschool to high school and has an annual budget of approximately \$100 million.

25 8. Defendant Brian Marshall is, and at all times relevant to the claims alleged herein, was  
26 Superintendent of DISTRICT.

1 9. Defendant California Department of Education or “CDE” is a California state agency  
2 which oversees public, including policies, funding, testing education for its local educational  
3 agencies, including DISTRICT.

4 10. Defendant Tony Thurmond is, and at all times relevant to the claims alleged herein, was  
5 Superintendent of CDE.

6 11. The true names and capacities, whether individual, corporate, associate, or otherwise, of  
7 Defendants sued here in as DOES 1 through 5, inclusive, are currently unknown to Plaintiffs,  
8 who therefore sue such Defendant(s) by such fictitious names. Plaintiffs are informed and  
9 believe, and based thereon alleges, that Defendants designated herein as a DOE are legally  
responsible in some manner for the unlawful acts referred to herein.

10 12. Plaintiffs will seek leave of court to amend this complaint to reflect the true names and  
11 capacities of the Defendants designated hereinafter as DOES when such identities become  
12 known.

### 13 **III. GENERAL ALLEGATIONS**

14 13. In March of 2020, in response to the nationwide COVID-19 pandemic, DISTRICT  
15 closed all of its member schools, including all of its elementary and high schools. In April of  
16 2020, DISTRICT began offering only distance learning to its students. Essentially all  
17 DISTRICT students have only been offered distance learning from DISTRICT from April of  
2020 to the present.

18 14. This has resulted in almost a year of online schooling only for DISTRICT schools,  
19 which Plaintiffs allege has been less effective, inaccessible, inadequate, unnecessary,  
20 inconsistent with the law, and in too many cases, very harmful to DISTRICT students and  
families.

21 15. Plaintiffs allege these actions and omissions by DISTRICT violate, among other things,  
22 Senate Bill 98 (“SB 98”) which was signed by Governor Newsom on June 29, 2020. SB 98 was  
23 passed in response to the closure of thousands of California public schools because of the  
24 COVID-19 pandemic. The bill’s purpose was to rework certain parameters for the 2020-2021  
25 school year in California, including for distance learning.

26 16. SB 98 was codified in Education Code section 43500 et seq. Section 43500 defines  
27 “distance learning” as “instruction in which the pupil and instructor are in different locations  
28 and pupils are under the general supervision of a certificated employee of the local educational

1 agency.”

2 17. Education Code section 43503(b), places a strong emphasis on teacher-student  
3 engagement in distance learning. It provides that distance learning must include the following  
4 minimum components: (1) provision of access for all pupils to connectivity and devices  
5 adequate to participate in the educational program and complete assigned work; (2) content  
6 aligned to grade level standards that is provided at a level of quality and intellectual challenge  
7 equivalent to in-person instruction; (3) academic and other supports designed to address the  
8 needs of pupils who are performing below grade level, or need support in other areas; (4)  
9 special education, related services, and any other services required by a pupil’s individualized  
10 education program; (5) designated and integrated instruction in English language development;  
11 and (6) **daily live interaction** with certificated employees and peers for purposes of instruction,  
progress monitoring, and maintaining school connectedness. (Emphasis added.)

12 18. Pursuant Education section 43503(c): “For the 2020–21 fiscal year, a local educational  
13 agency shall satisfy the annual instructional day requirements described in Sections 41420,  
14 46200.5, and 46208, and in Section 11960 of Title 5 of the California Code of Regulations  
15 through in-person instruction or a combination of in-person instruction and distance learning  
16 pursuant to this part.” For fiscal year 2020–21 a minimum day of instruction for SDUSD is  
17 required to be 180 minutes of instructional minutes for kindergarten, 230 minutes of  
18 instructional time for grades 1 to 3, and 240 minutes of instructional time for grades 4-12.

19 19. Education Code section 34503 provides that “daily live interaction” may take the form  
20 of internet or telephonic instruction, or by other means permissible under public health orders.  
21 If “daily live interaction” is not “feasible” as part of regular instruction, the [school district] shall  
22 develop an alternative plan for frequent live interaction that provides a comparable level of  
23 service and school connectedness.

24 20. Education Code section 43502, contains a statement that school districts “shall offer in-  
25 person instruction and may offer distance learning, pursuant to the requirements of this part.”

26 21. Education Code section 43504 contains a statement that school districts “shall offer in-  
27 person instruction to the greatest extent possible.”

28 22. Plaintiffs allege that SB 98 mandates that all school districts such as DISTRICT must  
offer *some amount* of in-person instruction to all students, but for the vast majority of its  
schools, including those attended by the children of the Plaintiffs, DISTRICT has not offered in-

1 person learning since March of 2020 except to a small percentage of students, and presently  
2 offers little if any in-person learning to any of its current students.

3 23. SB 98 mandates that school districts such as DISTRICT reacting to state or local public  
4 health guidance may offer a range of educational options, including hybrid instructional models  
5 and 100% distance learning, *provided that at least one option must include some amount of in-*  
6 *person instruction.*

7 24. Plaintiffs allege that DISTRICT has failed its students since the beginning of the COVID-  
8 19 pandemic through exclusively providing only distance learning in violation of Education  
9 Code section 43503(b)(6) to nearly all of its students. This failure has significantly harmed  
10 Plaintiffs' children and the Proposed Class in a number of ways. Defendants have also failed to  
11 provide the same access to distance learning for all students in the DISTRICT, as required by  
12 law.

13 25 Additionally, Plaintiffs allege DISTRICT has failed to provide Plaintiffs' children and the  
14 Proposed Class with the required minimum number of instructional hours. This failure has also  
15 significantly harmed Plaintiffs' children and the Proposed Class.

#### 16 IV. CLASS ACTION ALLEGATIONS

17 26. Plaintiffs seek to represent the following class pursuant to California Code of Civil  
18 Procedure section 382:

19 **All children, by and through their parents or guardians, and all adult age**  
20 **students, who have been enrolled at any time in a La Mesa-Spring Valley Unified**  
21 **School District school between April of 2020 to the present, and continuing.**

22 27. **Numerosity.** The members of the Proposed class are so numerous that their individual  
23 joinder is impracticable. Plaintiffs are informed and believe, and on that basis allege, that the  
24 Proposed Class contains over 12,000 students. The precise number of Proposed Class members  
25 is unknown to Plaintiffs. The true number of the Proposed Class is known by the Defendants,  
26 however, and thus, may be notified of the pendency of this action by first class mail, electronic  
27 mail, and by published notice.

28 28. **Existence and Predominance of Common Questions of Law and Fact.** Common  
questions of law and fact exist as to all members of the Proposed Class and predominate over  
any questions affecting only individual Proposed Class members.

1 29. **Typicality.** Plaintiffs' claims are typical of the claims of the Proposed Class.

2 30. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the interests  
3 of the members of the Proposed Class. Plaintiffs have retained counsel experienced in complex  
4 labor and consumer class action litigation. Plaintiffs intend to prosecute this action vigorously.  
5 Plaintiffs have no adverse or antagonistic interests to those of the Proposed Class.

6 31. **Superiority.** A class action is superior to all other available means for the fair and  
7 efficient adjudication of this controversy. The damages or other financial detriment suffered by  
8 individual Proposed Class members is relatively small compared to the burden and expense that  
9 would be entailed by individual litigation of their claims against the defendant. It would thus be  
10 virtually impossible for the class, on an individual basis, to obtain effective redress for the  
11 wrongs done to them. Furthermore, even if Proposed Class members could afford such  
12 individualized litigation, the court system could not. Individualized litigation would create the  
13 danger of inconsistent or contradictory judgments arising from the same set of facts.  
14 Individualized litigation would also increase the delay and expense to all parties and the court  
15 system from the issues raised by this action. By contrast, the class action device provides the  
16 benefits of adjudication of these issues in a single proceeding, economies of scale, and  
17 comprehensive supervision by a single court, and presents no unusual management difficulties  
18 under the circumstances here.

## 17 V. CAUSES OF ACTION

### 18 FIRST CAUSE OF ACTION

#### 19 VIOLATION OF EDUCATION CODE SECTIONS 43500 ET SEQ.

#### 20 AGAISNT ALL DEFENDANTS

21 32. Plaintiffs re-allege the paragraphs above as if fully set forth herein.

22 33. Plaintiffs allege DISTRICT is a "local educational agency" under Education Code  
23 section 43500(c).

24 34. Education Code section 43504 provides a local educational agency shall offer in-  
25 person instruction to the greatest extent possible.

26 35. Plaintiffs allege Defendants have violated Education Code sections 43500, 34501,  
27 43502, 43503 and 43504, by among other things, failing to provide any in-person learning, and  
28 failing to provide the required amount of instruction time per day to its students. Plaintiffs

1 allege their children and the Proposed Class have been harmed by Defendants' failures and  
2 refusals to abide by the provisions of Education Code section 43500 et seq.

3  
4 **SECOND CAUSE OF ACTION**  
5 **VIOLATION OF EDUCATION CODE SECTION 51865**  
6 **AGAINST ALL DEFENDANTS**

7 36. Plaintiffs re-allege the paragraphs above as if fully set forth herein.

8 37. Education Code section 51865(b) provides:

9 Distance learning should be utilized by the state to achieve the following educational  
10 goals:

11 (1) Equity in education, which requires that every pupil in California's public  
12 schools, and every adult in the state, have equal access to educational  
opportunities, regardless of where he or she lives or how small a school the pupil  
attends.

13 (2) Quality in education, which would be enhanced through the creative  
14 application of telecommunications, as pupils are given the opportunity to interact  
15 with pupils from other cultures and geographical locations, and with outstanding  
educators from other educational institutions.

16 (3) Diversity among educational institutions, which has been recognized in  
17 California through the support of various types of public educational institutions  
18 as well as of independent and private colleges and universities. Distance learning  
19 technology permits greater diversity in the means of instruction and in the  
20 delivery of educational and training services to an adult population that is more  
and more likely to seek education outside of the traditional baccalaureate program  
designed for four consecutive years on a full-time basis shortly after graduating  
from high school.

21 (4) Efficiency and accountability, which receive increasing emphasis as state  
22 budget resources become increasingly restricted. Distance learning technologies  
23 can be effective only through the cooperative efforts of individuals from different  
24 institutions, a collaboration that has the potential to reduce costs and increase  
25 efficiency. A technology-integrated educational delivery system would allow for  
26 the electronic transmittal of files and reports, thus providing the information  
needed for accountability more rapidly and at a lower cost, and for video  
teleconferencing for state and local education and other government agencies,  
thereby diminishing travel requirements.

27 38. Education Code section 51865(f) provides:

28 In expanding the use of distance learning technology, the state should emphasize the  
delivery of education and training services to populations currently not receiving those

1 services, the ease of access by educational institutions to the technology, and the lower  
2 cost over time of providing instruction through distance learning rather than on site.

3 39. Plaintiffs allege Defendants have breached these provisions by, among other things, not  
4 providing adequate access to distance learning to all students in the SDUSD, especially those  
5 students from disadvantaged or underserved communities and/or homes.

6 40. Plaintiffs allege their children and the Proposed Class have been harmed by  
7 Defendants' failures and refusals to abide by the provisions of Education Code section 51865 et  
8 seq.

### 9 **THIRD CAUSE OF ACTION**

#### 10 **UNFAIR BUSINESS PRACTICES**

#### 11 **AGAINST ALL DEFENDANTS**

12 41. Plaintiffs re-allege the paragraphs above as if fully set forth herein.

13 42. The actions of Defendants as alleged herein constitute false, fraudulent, unlawful,  
14 unfair and deceptive business practices within the meaning of California Business and  
15 Professions Code Sections 17200, et seq.

16 44. Plaintiffs and the Proposed Class are entitled to an injunction and other equitable relief  
17 against such unlawful practices in order to prevent future damage, for which there is no  
18 adequate remedy at law, and to avoid a multiplicity of lawsuits.

19 45. As a result of their unlawful acts, Defendants have significantly harmed the students in  
20 their school district, and their families. Plaintiffs allege Defendants should be ordered to follow  
21 the laws alleged herein, by among other things, restoring access to in person learning and  
22 providing the proper amount of hours of education to its students who still only have the option  
23 of participating in distance learning.

24 46. Plaintiffs and the Proposed Class allege they have been harmed and prejudiced as a  
25 direct and proximate cause of Defendants' unfair business practices alleged herein.

26 47. Plaintiffs and the Proposed Class are entitled to equitable and injunctive relief as alleged  
27 herein.

28 48. Plaintiffs allege the unlawful conduct alleged herein is continuing and there is no  
indication that Defendants will not continue with their unlawful, unfair and harmful conduct  
towards Plaintiffs and the Proposed Class, as alleged herein.



1 **FOURTH CAUSE OF ACTION**

2 **DECLARATORY RELIEF**

3 **AGAINST ALL DEFENDANTS**

4 49. Plaintiffs re-allege the paragraphs above as if fully set forth herein.

5 50. Plaintiffs allege that there is presently a dispute between Plaintiffs and Defendants  
6 regarding the claims made in this complaint.

7 51. Plaintiffs seek from the court a declaratory judgment regarding:

8 1. Whether Defendants have failed to provide in-person instruction to  
9 Plaintiffs and the Proposed Class when mandated to by law and when there is  
10 and was evidence that offering at least partial in-person instruction is safe,  
11 reasonable and in the best interest of Plaintiffs and the Proposed Class.

12 2. Whether Defendants have failed to provide underprivileged students  
13 and/or students from underserved communities the same standard of and access  
14 to distance learning as other students in the DISTRICT.

15 3. Whether DISTRICT failed to provide students with the daily amount of  
16 hours of instruction provided for by law.

17 **VI. PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiffs requests that the Court enter a judgment awarding the  
19 following relief:

20 1. That the Court find in favor of Plaintiffs on their claims for Declaratory Judgment;

21 2. That the Defendants be ordered to pay damages to Plaintiffs and the Proposed Class  
22 and judgment be entered against Defendants according to proof;

23 3. That the Defendants be found to have engaged in unfair competition in violation of  
24 Business and Professions Code section 17200;

25 4. That Defendants be ordered and enjoined to rectify Defendants' unlawful and unfair  
26 business practices as alleged herein;

27 5. That Defendants be enjoined from further acts of unfair competition;


28 6. That Plaintiffs be awarded Attorneys' fees and costs pursuant to statute, including  
but not limited to Code of Civil Procedure section 1021.5;

7. Otherwise determine the appropriate remedy to compensate Plaintiffs and the

1 proposed class, as required to promote fairness and justice, including but not limited to  
2 establishing procedures for compensation, compensation amounts and fluid recovery if  
3 appropriate.

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5 **DATED:** March 28, 2021

**HAMNER LAW OFFICES, APLC**

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9 Christopher J. Hamner  
10 Attorney for Plaintiffs  
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