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State Board of Education, California  
7 Department of Education, and State  
Superintendent of Public Instruction  
8 Tom Torlakson

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

10 JESSY CRUZ; BRIAN CRUZ, a minor, by  
Jonathan Cruz, guardian ad litem; BRIANNA  
11 LAMB, a minor, by Ronald Lamp, guardian ad  
litem; CHRISTIAN GASPAS, a minor, by  
12 Guadalupe Gaspar, guardian ad litem; LEE  
SIMMONS, a minor, by Rhae Ray Eason,  
13 guardian ad litem; MYRIAM GISELLE  
GONZALEZ; SAMARIA HUDSON, a minor, by  
14 Chawmein Hudson, guardian ad litem; TALIIYAH  
JACOBS, a minor, by Katherine Jacobs, guardian  
15 ad litem; JUMANTAE SMITH; ARNOLD  
GUTIERREZ, a minor, by Norma Gutierrez,  
16 guardian ad-litem; ERIC FLOOD, a minor, by  
Nicole King, guardian ad litem; EDITH  
17 QUINTERO; DAISY ROMO, a minor, by  
Elizabeth Rodriguez, guardian ad litem; RIANNA  
18 BROWN, a minor, by Victoria Williams, guardian  
ad litem; EMMANUEL ENRIQUEZ, a minor, by  
19 Olga Enriquez, guardian ad litem; NATHAN  
SAUCEDA, a minor, by Olga Enriquez, guardian  
20 ad litem; IGNACIA BARAJAS, a minor, by  
Genoveva Barajas, guardian ad litem; and LUCIA  
21 BARAJAS, a minor, by Genova Barajas, guardian  
ad litem,  
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23 Plaintiffs,

24 vs.

25 STATE OF CALIFORNIA; STATE BOARD OF  
EDUCATION; STATE DEPARTMENT OF  
26 EDUCATION; TOM TORLAKSON, and DOES  
1-100, inclusive,  
27

28 Defendants.

No.: RG14727139

**ANSWER OF STATE BOARD OF  
EDUCATION, CALIFORNIA  
DEPARTMENT OF EDUCATION, AND  
STATE SUPERINTENDENT OF PUBLIC  
INSTRUCTION TOM TORLAKSON  
TO CLASS ACTION COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

The Honorable George C. Hernandez, Jr.  
Dept.: 17

1 Defendants State Board of Education, California Department of Education, and State  
2 Superintendent of Public Instruction Tom Torlakson answer the Complaint for Injunctive and  
3 Declaratory Relief filed by plaintiffs as follows:

4 **GENERAL DENIAL**

5 Defendants generally deny each and every allegation set forth in the complaint pursuant  
6 to California Code of Civil Procedure section 431.30(d), and defendants further generally deny that  
7 plaintiffs have sustained any injury, damage, or loss by reason of any act or omission on the part of  
8 defendants. In addition, without admitting any allegations contained in the complaint, defendants  
9 assert the following affirmative defenses based on information and belief:

10 **FIRST AFFIRMATIVE DEFENSE**

11 The complaint, and each cause of action, fails to state a claim upon which relief can be  
12 granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 The complaint, and each cause of action, fails for lack of certainty.

15 **THIRD AFFIRMATIVE DEFENSE**

16 The complaint, and each cause of action, is nonjusticiable.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 The complaint, and each cause of action, is barred because the action is moot and no  
19 actual controversy exists, or in the alternative, the action is premature, is not ripe, and no actual  
20 controversy exists.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 The complaint, and each cause of action, is barred by the doctrines of collateral estoppel  
23 and/or res judicata.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 The complaint, and each cause of action, is barred by plaintiffs' failure to exhaust  
26 administrative remedies.  
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1 **SEVENTH AFFIRMATIVE DEFENSE**

2 Plaintiffs lack a clear, present, and beneficial right to the relief requested, and the relief  
3 sought would be against the public interest.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 Plaintiffs are not entitled to injunctive relief because they have an adequate remedy at  
6 law.

7 **NINTH AFFIRMATIVE DEFENSE**

8 To the extent plaintiffs' complaint states a cause of action for unfunded or inadequate  
9 funding of any state mandates, plaintiffs have failed to exhaust administrative remedies with the  
10 Commission on State Mandates pursuant to Government Code sections 17500 et seq.

11 **TENTH AFFIRMATIVE DEFENSE**

12 The complaint is defective on the basis of nonjoinder or misjoinder of parties.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 The action, and the relief sought, is barred by the separation of powers doctrine.

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 The action may not properly be maintained as a class action.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, defendants pray as follows;

- 19 a. That the court enter judgment in favor of defendants;  
20 b. That plaintiffs take nothing by their complaint;  
21 c. That the court award defendants their costs incurred in connection with this  
22 action; and  
23 d. For such other and further relief as the court deems just and proper.  
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1 Dated: August 6, 2014

Respectfully submitted,

2 Robin B. Johansen  
3 Karen Getman  
4 Juan Carlos Ibarra  
5 REMCHO, JOHANSEN & PURCELL, LLP

6 By:   
7 Karen Getman

8 Attorneys for Defendants State Board of Education,  
9 California Department of Education, and State  
10 Superintendent of Public Instruction Tom Torlakson

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States, over the age of 18, and not a party to the within  
4 cause of action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

5 On August 6, 2014, I served a true copy of the following document(s):

6 **Answer of State Board of Education, State Department of**  
7 **Education, and State Superintendent of Public Instruction**  
8 **Tom Torlakson to Class Action Complaint for Injunctive**  
**and Declaratory Relief**

9 on the following party(ies) in said action:

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*Attorneys for Defendant State of California*

- 14  **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed  
15 envelope or package addressed to the person(s) at the address above and  
16  depositing the sealed envelope with the United States Postal Service, with  
17 the postage fully prepaid.  
18  placing the envelope for collection and mailing, following our ordinary  
19 business practices. I am readily familiar with the business's practice for  
20 collecting and processing correspondence for mailing. On the same day  
21 that correspondence is placed for collection and mailing, it is deposited in  
22 the ordinary course of business with the United States Postal Service,  
23 located in San Leandro, California, in a sealed envelope with postage  
24 fully prepaid.
- 21  **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope  
22 or package provided by an overnight delivery carrier and addressed to the persons  
23 at the addresses listed. I placed the envelope or package for collection and  
24 overnight delivery at an office or a regularly utilized drop box of the overnight  
25 delivery carrier.
- 24  **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or  
25 package addressed to the persons at the addresses listed and providing them to a  
26 professional messenger service for service.
- 26  **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons  
27 at the fax numbers listed based on an agreement of the parties to accept service by  
28 fax transmission. No error was reported by the fax machine used. A copy of the  
fax transmission is maintained in our files.



**BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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4 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on  
5 August 6, 2014, in San Leandro, California.

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8 Michael Narciso

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