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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

UNLIMITED JURISDICTION

BEATRIZ VERGARA, a minor, by Alicia Martinez, as her guardian ad litem; ELIZABETH VERGARA, a minor, by Alicia Martinez, as her guardian ad litem; CLARA GRACE CAMPBELL, a minor, by Lauren Campbell, as her guardian ad litem; BRANDON DEBOSE, JR., a minor, by Satonna Ballard-DeBose, as his guardian ad litem; KATE ELLIOTT, a minor, by Terri Elliott, as her guardian ad litem; HERSCHEL LISS, a minor, by Lisa Liss, as his guardian ad litem; JULIA MACIAS, a minor, by Jose Macias, as her guardian ad litem; DANIELLA MARTINEZ, a minor, by Karen Martinez, as her guardian ad litem; and RAYLENE MONTERROZA, a minor, by Martha Monterroza, as her guardian ad litem,

Plaintiffs,

vs.

STATE OF CALIFORNIA; EDMUND G. BROWN, JR., in his official capacity as Governor of California; TOM TORLAKSON, in his official capacity as State Superintendent of Public Instruction; CALIFORNIA DEPARTMENT OF EDUCATION; STATE BOARD OF EDUCATION; LOS ANGELES UNIFIED SCHOOL DISTRICT; OAKLAND UNIFIED SCHOOL DISTRICT; and ALUM ROCK UNION SCHOOL DISTRICT,

Defendants.

Case No. BC484642

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT ALUM ROCK UNION SCHOOL DISTRICT'S (1) DEMURRER TO PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND (2) PARTIAL JOINDER IN STATE DEFENDANTS' DEMURRER

Date: November 9, 2012
Time: 8:30 a.m.
Dept: 58

Complaint Filed: May 14, 2012
Trial Date: TBD

Exempt from filing fees pursuant to Gov. Code §6103

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Defendant Alum Rock Union School District ("Defendant ARUSD") submits the following Memorandum of Points and Authorities in support of (1) its Demurrer to the First Amended Complaint for Declaratory and Injunctive Relief (the "FAC") of Plaintiffs Beatriz Vergara, a minor, by Alicia Martinez, as her guardian ad litem; Elizabeth Vergara, a minor, by Alicia Martinez, as her guardian ad litem; Clara Grace Campbell, a minor, by Lauren Campbell, as her guardian ad litem; Kate Elliott, a minor, by Terri Elliott, as her guardian ad litem; Herschel Liss, a minor, by Lisa Liss, as his guardian ad litem; Julia Macias, a minor, by Jose Macias, as her guardian ad litem; Daniella Martinez, a minor, by Karen Martinez, as her guardian ad litem; and Raylene Monterroza, a minor, by Martha Monterroza, as her guardian ad litem (collectively "Plaintiffs") and (2) its Partial Joinder in the Demurrer to the First Amended Complaint filed by Defendants State of California, Edmund G. Brown, Jr., Tom Torlakson, California Department of Education, and State Board of Education (the "State Defendants"):

I. INTRODUCTION.

In their FAC, Plaintiffs ask this Court to strike down five California statutes because the statutes purportedly violate the Equal Protection Clause embodied in the California Constitution. Plaintiffs fail to allege sufficient facts to support their request, and instead incorrectly attempt to rely upon unsupported conclusory contentions. Furthermore, Defendant ARUSD is not a proper party to this action. Plaintiffs fail to allege any wrongful acts committed by ARUSD, which would give rise to a cause of action against it. None of the Plaintiffs attend any schools in ARUSD, and there is no allegation that any Plaintiff has been taught by any teachers from ARUSD. Second, a local school district, such as Defendant ARUSD, is not a proper party to an action seeking declaratory and injunctive relief based on a challenge to the constitutionality of a state statute. It is fundamental that Defendant ARUSD cannot change the five challenged statutes; it can only follow the laws enacted by the California Legislature, and, indeed, Plaintiffs appear to be alleging that Defendant ARUSD has been fully complying with the challenged statutes. Therefore, Defendant ARUSD should not be a party to this action.

Moreover, Defendant ARUSD joins, in part, in the State Defendants' Demurrer, and. as set forth below, incorporates many of the arguments presented by the State Defendants.

For all of the reasons set forth herein, and for many of the reasons set forth in the State Defendants' Demurrer, Defendant ARUSD requests that the Court sustain its Demurrer to the FAC without giving Plaintiffs leave to amend.

II. ARGUMENT.

A. ARUSD's Demurrer Should Be Sustained Because Plaintiffs' FAC Is Defective Due To Its Uncertainty.

1. Plaintiffs fail to plead a cause of action against Defendant ARUSD.

It is fundamental in California that a plaintiff's complaint must set out the causes of action and the relief sought. Code of Civil Procedure section 425.10(a) states: "A complaint or cross-complaint shall contain both of the following: (1) A statement of the facts constituting the cause of action, in ordinary and concise language. (2) A demand for judgment for the relief to which the pleader claims to be entitled." (Code Civ. Proc. § 425.10.) Furthermore, the California Rules of Court specifically instruct plaintiffs on the format to be used in drafting the complaint:

> Each separately stated cause of action, count, or defense must specifically state:
>
> (1) Its number (e.g., "first cause of action");
>
> (2) Its nature (e.g., "for fraud");
>
> (3) The party asserting it if more than one party is represented on the pleading (e.g., "by plaintiff Jones"); and
>
> (4) The party or parties to whom it is directed (e.g., "against defendant Smith").

(Rule of Court 2.112.)

Here, Plaintiffs ignore the basic requirements of both Code of Civil Procedure section 425.10 and Rule 2.112. Plaintiffs never once use the term "cause of action" in their FAC. Instead, Plaintiffs list out seven "claims for relief," the nomenclature used in the Federal Rules of Civil Procedure. (See Fed. R. Civ. Proc. 8(a) ["A pleading that states a claim for relief must contain . . ."].) Additionally, in Claims One through Six, Plaintiffs also fail to identify the defendant or defendants against whom each claim is directed; while it is clear that each of those

"Claims" targets particular groupings of the Challenged Statutes as being violative of the Equal Protection Clause, it is not clear which Defendants are alleged to have responsibility for such violations.

Moreover, Plaintiffs never allege anywhere in the FAC any facts showing "a wrong" committed by Defendant ARUSD. Such facts are required to have a cause of action. As one Court of Appeal has explained:

> "California defines a 'cause of action' in accord with Pomeroy's 'primary right' theory.... A cause of action consists of (1) a *primary right* possessed by the plaintiff and a corresponding *primary duty* imposed upon the defendant, and (2) a *delict or wrong* committed by the defendant which constitutes a breach of such primary right and duty." (*Miranda v. Shell Oil Co.* (1993) 17 Cal.App.4th 1651, 1658, citations omitted and italics in original; 4 Witkin, Cal. Procedure (3d ed. 1985) Pleading, § 23, pp. 66-67.)

(*Olsen v. Breeze, Inc.* (1996) 48 Cal.App.4th 608, 625-26 ["*Olsen*"] (emphasis in original).)

Indeed, Plaintiffs make very few references to Defendant ARUSD at all in the FAC. There are no allegations that any Plaintiff attends now or has ever attended an ARUSD school; there are no allegations that any Plaintiff is being instructed now or has ever been instructed by an ARUSD teacher; there are no allegations that ARUSD has more "grossly ineffective" teachers than other school districts in the State; and there are no allegations that ARUSD puts all of its "grossly ineffective" teachers at a particular school. In fact, Plaintiffs make a total of *four* references to Defendant ARUSD in the FAC, two of which are specific and two of which are general references to all Defendants. First, in Paragraph 22, Plaintiffs allege that Plaintiff Daniella Martinez "resides in the Alum Rock Union School District," but actually attends a public charter school, which is *not* an ARUSD school. Second, in Paragraph 32, Plaintiffs allege that Defendant ARUSD "is a school district organized by the State Legislature and charged with administration of public schools within its jurisdiction" and that it "possesses those powers set forth in articles IX and XVI of the California Constitution and as otherwise set forth by the laws of the State of California." Third, in Paragraph 33, Plaintiffs allege that "Defendants[1], and those

[1] The FAC never defines the term "Defendants" but one can surmise that it includes all of the seven named Defendants.

subject to their supervision, direction, and control, are responsible for enforcement of the statutes challenged herein." Fourth, in Paragraph 107, Plaintiffs allege that a "justiciable controversy exists between Plaintiffs and Defendants because Plaintiffs contend, and Defendants dispute, that Defendants' actions and inactions as described above have violated the constitutional provisions cited herein."

The FAC makes no other references to Defendant ARUSD, either expressly or generally. The FAC is completely devoid of any allegation of any type of wrongdoing by Defendant ARUSD. Although Paragraph 107 alleges that "Defendants' actions and inactions as described above have violated the constitutional provisions," there are no "actions or inactions" attributed to Defendant ARUSD. There are not even any references to Defendant ARUSD in which it is grouped in with the other Defendants and alleged that the group engaged in some type of conduct which caused harm to Plaintiffs. Plaintiffs do not allege that Defendant ARUSD is in any manner responsible for either the passage or the existence of the Challenged Statutes.[2] This utter lack of any allegations of wrongdoing by Defendant ARUSD renders the FAC defective in its failure to state a claim. (*Okun v. Superior Court* (1981) 29 Cal.3d 442, 457 ["The sole misconduct that those paragraphs allege is the making of a 'slanderous statement' by 'defendants does 301 through 400.' There is no allegation of wrongful conduct by any of the defendant-conspirators Harris, Ruden, Okun, and Does 501 through 600. Accordingly, the sixth cause fails to state a claim against any defendant"]; Code Civ. Proc. § 430.10(e) [Defendant may demur to a cause of action or an entire complaint where the "pleading does not state facts sufficient to constitute a cause of action"]; Code Civ. Proc. § 425.10.)

Presumably, the implied (but unstated) allegation against Defendant ARUSD is that, as part of its regular operations, it complies with the five Education Code sections which Plaintiffs want declared as unconstitutional. However, Plaintiffs never allege any facts establishing that Defendant ARUSD's compliance with the Challenged Statutes is a "wrong . . . which constitutes a breach of" a primary right and duty owed to Plaintiffs. (*Olsen*, 48 Cal.App.4th at 625-26.)

[2] Hereinafter, Defendant ARUSD adopts, for ease of reference purposes only, Plaintiffs' use of the term the "Challenged Statutes" when referring to Education Code sections 44929.21(b), 44934, 44938(b)(1) and (2), 44944, and 44955.

Therefore, the FAC fails to allege a cause of action against Defendant ARUSD.

2. Plaintiffs' FAC also is uncertain because it relies on unsupported conclusions, is internally inconsistent, and is vague.

As the State Defendants explained in their Memorandum of Points and Authorities in support of their Demurrer, the FAC is defective because it is ambiguous, inconsistent, conclusionary, and vague. (State Defendants' Memorandum, pp. 7 – 9.) First, the FAC is full of ambiguous, undefined terms (i.e., "grossly ineffective teachers" – FAC at ¶ 9). Second, the FAC contains numerous contradictory allegations (i.e., alleging that the number of grossly ineffective teachers is "small" while also alleging that school boards hire and retain such teachers at "alarming rates" – FAC at ¶ 9 and p. 11, line 1). Third, the FAC is conclusionary as Plaintiffs allege that "grossly ineffective" teachers are "disproportionately assigned to schools serving predominantly minority and economically disadvantaged students" (FAC at ¶ 13); however, Plaintiffs fail to allege any facts supporting this conclusion, and the Court is not required to accept this type of conclusory allegation as true. (See *Serrano v. Priest* (1971) 5 Cal.3d 584, 591 ["*Serrano I*"] [Stating that in ruling on a demurrer, a court will "treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law"]; *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126 [same].) Fourth, the FAC is vague on important details as it fails to allege any specific harm actually suffered by any Plaintiff and fails to allege the causal connection between the Challenged Statutes and any violation of the Plaintiffs' constitutional rights.

3. Plaintiffs' attack on the Challenged Statutes fails to recognize the constitutional due process rights of teachers which are protected therein.

The State Defendants present an excellent summary of the Challenged Statutes. (State Defendants' Memorandum, pp. 4 – 7.) As is clear from the cases cited by the State Defendants, the Challenged Statutes are part of a legislative framework designed to protect teachers' due process rights in their employment. (See *Skelly v. State Personnel Board* (1975) 15 Cal.3d 195, 206 ["We begin our analysis in the instant case by observing that the California statutory scheme regulating civil service employment confers upon an individual who achieves the status of

'permanent employee' a property interest in the continuation of his employment which is protected by due process"].) The teachers' due process rights are balanced against the school districts' power to make teacher evaluations. (See *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 917 [Holding that Education Code "authorizes the governing boards of school districts to hire, classify, promote and dismiss certificated employees (i.e., teachers) (see § 44831), but establishes a complex and somewhat rigid scheme to govern a board's exercise of its decisionmaking power"]; *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 215 [Holding that under Education Code, local school district has "substantial leeway in determining when to take disciplinary action against a permanent employee and what action to take"]; *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 343-45 [Explaining teachers' procedural due process rights before dismissal or suspension].)

Furthermore, the statutory scheme balances the teachers' due process rights with the discretion provided to the school boards. (See *McFarland Unified School Dist. v. Public Employment Relations Bd.* (1991) 228 Cal.App.3d 166, 169 ["There is no question but that the final determination about rehiring probationary teachers lies within the discretion of the governing board and that tenure can be denied for any lawful reason regardless of the sufficiency of the cause. (Ed.Code, § 44929.21, formerly § 44882, subd. (b))"].) This is the process created by the California legislature. (*Barnhouse v. City of Pinole* (1982) 133 Cal.App.3d 171, 184 fn. 4 ["The equal protection clause is not an authorization for the courts to second-guess the Legislature on the best way to deal with aspects of a problem. It protects classes of people from arbitrary discrimination"].)

Thus, Plaintiffs' attack on the Challenged Statutes ignores the numerous cases, including many from the California Supreme Court, upholding the Education Code's statutory scheme which is designed to protect the due process rights of teachers and balance it against the rights of school districts to make teacher discipline and termination decisions.

B. Plaintiffs Fail To Allege A Valid Cause Of Action Against ARUSD.

In Claims One through Six in the FAC, Plaintiffs allege that the Challenged Statutes violate the Equal Protection Clause both on their face and as applied by undermining a

fundamental interest and by making the quality of education be a function of wealth. All of Plaintiffs' claims that the Challenged Statutes violate the Equal Protection Clause in any manner are unmeritorious and do not raise any triable issues against Defendant ARUSD.

1. Plaintiffs' claims that the Challenged Statutes are facially violative of the Equal Protection Clause are without merit.

Plaintiffs allege that the Challenged Statutes are facially in violation of the Equal Protection Clause. Defendant ARUSD joins in the State Defendants' arguments that the Challenged Statutes are facially constitutional because the statutes are presumed to be constitutional and because Plaintiffs fail to show a facial conflict with the Equal Protection Clause. (State Defendants' Memorandum, pp. 12 – 17.) As the State Defendants argued, "Plaintiffs must show that the Challenged Statutes 'inevitably pose a present total and fatal conflict with applicable prohibitions.' . . . The Court's task, therefore, 'is to determine whether the challenged [legislation] can be applied in any set of circumstances.'" (State Defendants' Memorandum, 13:27 – 14:3.) Plaintiffs fail to satisfy that burden. They do not allege that the Challenged Statutes use racial, ethnic, or wealth classifications of teachers or students on their face. Plaintiffs do not allege any discriminatory purpose appearing on the face of the Challenged Statutes.

Therefore, for these reasons and those more fully explained in the State Defendants' Demurrer, Plaintiffs' claims that the Challenged Statutes are facially unconstitutional must be dismissed.

2. The FAC does not state a claim that the Challenged Statutes violate the Equal Protection Clause as applied.

Plaintiffs also allege that each of the Challenged Statutes is unconstitutional as it is applied. As the California Supreme Court has explained:

> An as applied challenge may seek (1) relief from a specific application of a facially valid statute or ordinance to an individual or class of individuals who are under allegedly impermissible present restraint or disability as a result of the manner or circumstances in which the statute or ordinance has been applied, or (2) an injunction against future application of the statute or ordinance in the allegedly impermissible manner it is shown to have been applied in the past. It contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to

> consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right.

(*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 ["*Tobe*"].) As the State Defendants correctly note, Plaintiffs' allegations in the FAC in support of their as applied challenge "are predicated on undefined terms, unfounded assumptions and unsupported conclusions." (State Defendants' Memorandum, 17:16 – 18.)

Plaintiffs first allege that a child's right to an education is a fundamental interest guaranteed by the California Constitution. (FAC at ¶ 5 citing *Serrano I, supra*, 5 Cal.3d at 609.) Plaintiffs next allege some factors which play into the State's duty to ensure "equality of treatment to all the pupils in the state." (FAC at ¶¶ 6 – 7 quoting *Serrano v. Priest* (1976) 18 Cal.3d 728, 747-48 ["*Serrano II*"].) Plaintiffs then contradict the overall goal of their action by conceding that "the majority of teachers in California are providing students with a quality education" and that "the number of such grossly ineffective teachers may be small." (FAC at ¶ 9.) Setting aside their concessions, Plaintiffs allege that two newspapers wrote articles detailing problems with the Los Angeles Unified School District. (FAC at ¶ 11.) Inexplicably, from those basic and unprovocative allegations, Plaintiffs make the extraordinary leap to the conclusion that the Challenged Statutes "are therefore unconstitutional." (FAC at ¶ 12.) Plaintiffs completely fail to explain how the examples cited in the news articles leads to the conclusion that the Challenged Statutes, under which Plaintiffs admit "the majority of teachers in California are providing students with a quality education" (FAC at ¶ 9), are unconstitutional and deny students their right to an education. The Court need not accept these types of conclusory allegations. (*Serrano I, supra*, 5 Cal.3d at 591.)

Furthermore, the essential aspect of any as applied challenge to a statute is that it must deprive the individual of a protected right. (*Tobe, supra*, 9 Cal.4th at 1084 [Courts are required to "consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right"] citing *Broadrick v. Oklahoma* (1973) 413 U.S. 601, 615-16.) Plaintiffs allege that the protected right of which they are being deprived is "an effective education." (FAC at ¶ 4.) However, there is no such fundamental right – no California court has

held that all students in California are entitled to an "effective education." That is simply too nebulous a concept to enforce through judicial action. In *Serrano I*, the Supreme Court held that the plaintiffs' allegations showed that California's then-existing school financing system likely was unconstitutional because there was empirical data showing large disparities in school funding, with wealthier areas receiving substantially more funds. (*Serrano I*, 5 Cal.3d at 590 – 97.) Here, Plaintiffs make no allegations of similar empirical data which shows that some students are receiving an "effective education" while others are not.

Moreover, Plaintiffs fail to allege (and would never be able to demonstrate if they could get past this Demurrer) how the Challenged Statutes result in any disparities of the education provided to students between schools based on either wealth or race. In *Serrano II*, the Supreme Court found that it was plainly apparent that wealth was a major factor for the amount of funds going to the schools; as a result, the Court ordered the State to develop a funding formula which balanced out the inequalities in funding. (*Serrano II, supra,* 18 Cal.3d 728.)

Therefore, Plaintiffs' allegations in the FAC do not give rise to a valid cause of action.

3. None of the claims in the FAC are directed to Defendant ARUSD.

a. Claims One and Four are not valid claims against ARUSD.

In Claims One and Four, Plaintiffs allege that what they call the "Permanent Employment Statute" (Educ. Code § 44929.21(b)) violates the Equal Protection Clause both on its face and as applied to Plaintiffs by undermining a fundamental interest and by making the quality of education be a function of wealth. (FAC ¶¶ 80 – 82 and 92 - 95.) As set forth above, Plaintiffs' claim that the Permanent Employment Statute is unconstitutional, either on its face or as applied, is invalid.

Furthermore, Plaintiffs make no allegations against ARUSD in Claims One or Four. There is no allegation that ARUSD has engaged in any conduct which undermined the interest of any Plaintiff in obtaining an education. There is no allegation that ARUSD has engaged in any conduct which has made the quality of education received by student in its district a function of wealth or race; Plaintiffs never identify the purportedly wealthy school which receives all of the good teachers, as alleged in the FAC.

In adhering to the Challenged Statutes, Defendant ARUSD is simply following the laws with which it is required to comply. The State of California makes those laws; Defendant ARUSD complies with them. (*San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 951-52 ["'The education of the children of the state is an obligation which the state took over to itself by the adoption of the Constitution.' [Citation omitted.] To carry out this responsibility the state has created local school districts, whose governing boards function as agents of the state"].) There is no allegation that ARUSD does not adhere to the law.

Therefore, because ARUSD did not author or vote upon the Permanent Employment Statute, and, as alleged in the FAC, it does nothing other than comply with its terms as it is required to do in order to provide the teachers with their due process rights, Claims One and Four are not valid claims to allege against ARUSD.

b. Claims Two and Five are not valid claims against ARUSD.

In Claims Two and Five, Plaintiffs allege that what they call the "Dismissal Statutes" (Educ. Code §§ 44934, 44938(b)(1) and (2), and 44944) violate the Equal Protection Clause both on its face and as applied to Plaintiffs by undermining a fundamental interest and by making the quality of education be a function of wealth. (FAC ¶¶ 84 – 86 and 97 - 100.) As set forth above, Plaintiffs' claim that the Dismissal Statutes are unconstitutional, either on their face or as applied, is invalid.

Furthermore, Plaintiffs make no allegations against ARUSD in Claims Two or Five. There is no allegation that ARUSD has engaged in any conduct which undermined the interest of any Plaintiff in obtaining an education. There is no allegation that ARUSD has engaged in any conduct which has made the quality of education received by any Plaintiff be a function of wealth; Plaintiffs never identify the purportedly wealthy school which receives all of the good teachers, as alleged in the FAC.

In adhering to the Challenged Statutes, Defendant ARUSD is simply following the laws with which it is required to comply. The State of California makes those laws; Defendant ARUSD complies with them. (*San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 951-52 ["'The education of the children of the state is an obligation which the state took

over to itself by the adoption of the Constitution.' [Citation omitted.] To carry out this responsibility the state has created local school districts, whose governing boards function as agents of the state"].)

Therefore, because ARUSD did not author or vote upon the Dismissal Statutes, and it does nothing other than comply with their terms as it is required to do in order to provide the teachers with their due process rights, Claims Two and Five are not valid claims to allege against ARUSD.

c. Claims Three and Six are not valid claims against ARUSD.

In Claims Three and Six, Plaintiffs allege that what they call the "LIFO Statute" (Educ. Code § 44955) violates the Equal Protection Clause both on its face and as applied to Plaintiffs by undermining a fundamental interest and by making the quality of education be a function of wealth. (FAC ¶¶ 88 – 90 and 102 - 105.) As set forth above, Plaintiffs' claim that the LIFO Statute is unconstitutional, either on its face or as applied, is invalid.

Furthermore, Plaintiffs make no allegations against ARUSD in Claims Three or Six. There is no allegation that ARUSD has engaged in any conduct which undermined the interest of any Plaintiff in obtaining an education. There is no allegation that ARUSD has engaged in any conduct which has made the quality of education received by any Plaintiff be a function of wealth; Plaintiffs never identify the purportedly wealthy school which receives all of the good teachers, as alleged in the FAC.

In adhering to the Challenged Statutes, Defendant ARUSD is simply following the laws with which it is required to comply. The State of California makes those laws; Defendant ARUSD complies with them. (*San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 951-52 ["'The education of the children of the state is an obligation which the state took over to itself by the adoption of the Constitution.' [Citation omitted.] To carry out this responsibility the state has created local school districts, whose governing boards function as agents of the state"].)

Therefore, because ARUSD did not author or vote upon the LIFO Statute, and it does nothing other than comply with its terms as it is required to do in order to provide the teachers

with their due process rights, Claims Three and Six are not valid claims to allege against ARUSD.

d. Claim Seven is not a valid claim against ARUSD.

In Claim Seven, Plaintiffs allege that a controversy exists between Plaintiffs and Defendants regarding whether "Defendants' actions and inactions as described above" are in violation of the Equal Protection Clause. (FAC ¶¶ 107 – 108.) However, Plaintiffs fail to allege any specific actions or inactions of Defendant ARUSD anywhere in the FAC. Plaintiffs fail to show the existence of any controversy with ARUSD. (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606 ["In a declaratory relief action, the ultimate facts are those facts establishing the existence of an actual controversy"].) Plaintiffs' failure to plead such facts results in the failure to plead a cause of action for declaratory relief under Code of Civil Procedure 1060.

Moreover, as set forth above, Plaintiffs' Claims One through Six are not valid claims against ARUSD, and Plaintiffs cannot maintain a declaratory relief claim which purportedly derives from non-existing other claims. (See *Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800 ["Where a trial court has concluded the plaintiff did not state sufficient facts to support a statutory claim and therefore sustained a demurrer as to that claim, a demurrer is also properly sustained as to a claim for declaratory relief which is 'wholly derivative' of the statutory claim"] citing *Ochs v. PacifiCare of California* (2004) 115 Cal.App.4th 782, 794.)

Therefore, Plaintiffs do not have a valid claim for declaratory relief against ARUSD.

C. Plaintiffs Cannot Obtain An Injunction Against Defendant ARUSD.

For all of the reasons set forth above, Plaintiffs have not stated a cause of action against Defendant ARUSD. Because Plaintiffs have not stated a cause of action, they cannot obtain an injunction against Defendant ARUSD: "Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted." (*Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168 citing *Williams v. Southern Pac. R.R. Co.* (1907) 150 Cal. 624.)

Therefore, Plaintiffs cannot obtain an injunction against Defendant ARUSD.

D. The Defects Within The FAC Are Fatal And Incurable By Amendment.

Generally, the trial court has wide discretion in allowing the amendment of any pleading. (*Record v. Reason* (1999) 73 Cal.App.4th 472, 485.) Here, however, the Court should not grant Plaintiffs leave to amend as to the claims against Defendant ARUSD. It would be futile to allow Plaintiffs to amend their FAC to add allegations relating to Defendant ARUSD because there is no potential set of facts which can create a cause of action against Defendant ARUSD based on its compliance with the Challenged Statutes. (See *Vaillette v. Fireman's Fund Insurance Co.* (1993) 18 Cal.App.4th 680, 685 [Stating that "leave to amend should not be granted where, in all probability, amendment would be futile"].) Moreover, the burden is on the plaintiff "to demonstrate the manner in which the complaint might be amended." (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.)

III. CONCLUSION.

Based on the above, Defendant ARUSD requests that its demurrer to the First Amended Complaint be sustained without leave to amend.

DATED: September 17, 2012

REHON & ROBERTS
A Professional Corporation

By: _____
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