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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF CONTRA COSTA

12
13 JANE DOE 1, *et al.*,
Petitioners and Plaintiffs,
14 v.
15 ANTIOCH UNIFIED SCHOOL DISTRICT,
et al.,
16 Respondents and Defendants.

Case No. N15-1127

**NOTICE OF MOTION AND MOTION
FOR WRIT OF MANDATE OR OTHER
APPROPRIATE RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declarations of Joshua S. Lipshutz and John
E. Deasy, and [Proposed] Order filed
concurrently herewith]

Date: March 7, 2016
Time: 8:30 a.m.
Department: 17
Judge: Hon. Barry P. Goode

Action Filed: July 16, 2015

1 **NOTICE OF MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE THAT on March 7, 2016, at 8:30 a.m., or as soon thereafter as the
4 matter may be heard before the Honorable Barry P. Goode in Department 17 of the Contra Costa
5 County Superior Court, located at Wakefield Taylor Courthouse, 725 Court Street, Martinez,
6 California 94553, Petitioners and Plaintiffs Jane Doe 1, Jane Doe 2, John Doe, Cynthia Crutchfield,
7 Katherine Czujko, and Steve Traylor (collectively, "Petitioners"), will and hereby do move for a writ
8 of mandate or other appropriate relief compelling Respondents and Defendants Antioch Unified
9 School District, Chaffey Joint Union High School District, Chino Valley Unified School District, El
10 Monte City School District, Fairfield-Suisun Unified School District, Fremont Union High School
11 District, Inglewood Unified School District, Ontario-Montclair School District, Pittsburg Unified
12 School District, Saddleback Valley Unified School District, San Ramon Valley Unified School
13 District, Upland Unified School District, Victor Elementary School District (collectively, "School
14 District Respondents"), and their respective superintendents (together with School District
15 Respondents, "Respondents") to:

- 16 1. Comply immediately with California Education Code section 44660 *et seq.*, by, *inter*
17 *alia*, implementing a comprehensive system of evaluating applicable certificated
18 employees' performance in accordance with specified mandated elements, including,
19 but not limited to, pupil progress as it reasonably relates to the standards of expected
20 pupil achievement at each grade level in each area of study as established by each
21 District and, if applicable, the state-adopted academic content standards as measured
22 by state-adopted criterion-referenced assessments;
- 23 2. Refrain from complying with or entering into any agreement, with local teachers
24 unions or otherwise, that includes an evaluation system that does not fully comply
25 with the Stull Act or that delays or otherwise prevents Respondents from
26 implementing a comprehensive program of evaluating certificated employees'
27 performance as required by the Stull Act; and
28

1 3. Immediately evaluate, in full compliance with the Stull Act, *all* applicable certificated
2 personnel regardless of permanent employment status.

3 Furthermore, Petitioners seek a declaration that:

- 4 1. The current and proposed collective bargaining agreements and associated memoranda
5 of understanding between Respondents and their local teachers unions, respectively,
6 violate the Stull Act in that each agreement currently does not allow or require lawful,
7 complete certificated employee evaluations, and further that these agreements
8 preclude Respondents' full compliance in the future to ensure proper performance
9 evaluations are conducted for certificated personnel, as applicable; and
- 10 2. The current and proposed collective bargaining agreements and associated memoranda
11 of understanding between Respondents and their local teachers unions, respectively,
12 are null and void in their entirety or to the extent that they do not comply with the
13 Stull Act.

14 Petitioners' Motion is based on this Notice of Motion and Motion; the accompanying
15 Memorandum of Points and Authorities; the concurrently filed Declarations of Joshua S. Lipshutz
16 and John E. Deasy; any matters of which the Court may take judicial notice; other documents on file
17 in this action; and any oral argument of counsel.

18
19 Respectfully submitted,

20 Dated: December 16, 2015

GIBSON, DUNN & CRUTCHER LLP

21
22 By: /s/ Theodore J. Boutrous Jr.
23 Theodore J. Boutrous Jr.

24 Attorneys for Petitioners and Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 For more than 40 years, the Stull Act has set the minimum standards for teacher evaluations in
4 California. (Ed. Code, § 44660 *et seq.*) In enacting the Stull Act, the California Legislature
5 determined that a teacher cannot be evaluated properly without taking into account objective
6 evidence of student learning, including the performance of the teacher’s students on certain state-
7 adopted standardized tests. (Ed. Code, § 44662, subd. (b)(1).) The Stull Act “is premised on the
8 public policy belief that student achievement will improve if student progress is made a component of
9 teacher and administrator performance evaluations.” (*Doe et al. v. Deasy et al.* (Super. Ct. L.A.
10 County, June 12, 2012, No. BS134604), Modified Tentative Decision Granting Petition for Writ of
11 Mandate, p. 24 (*Doe v. Deasy*) (Declaration of Joshua S. Lipshutz (“Lipshutz Decl.”) ¶ 6, Ex. 5).)

12 Yet despite the Stull Act’s clear language and purpose, a significant number of school districts
13 throughout California, including the 13 districts that are Respondents in this case, defy state law each
14 year by entering into collective bargaining agreements (“CBAs”) with their local teachers unions that
15 *prohibit* students’ standardized test results from being used, in any capacity, in the performance
16 evaluations of teachers. These school districts—often at the insistence of the local teachers unions—
17 willfully violate the Stull Act, intentionally disregarding valuable student achievement data that are
18 accessible to them, choosing instead to remain ignorant as to the quality of the teachers in their
19 schools. In doing so, these school districts fail hundreds of thousands of children who attend their
20 schools, the parents and guardians of those students, taxpayers, the communities they serve, and the
21 State of California.

22 Teachers must be evaluated properly in order to be appropriately rated, retained, promoted,
23 supported with additional training, transferred, or dismissed under state law. In the absence of the
24 proper evaluation of teachers, school districts cannot reasonably know whether teachers are actually
25 promoting and advancing student learning. As long as the Stull Act remains unenforced in California
26 school districts, students will continue to suffer negative consequences each year, as they are
27 assigned to classrooms staffed by teachers that the school district should, but does not, know are
28 ineffective at achieving student learning.

1 In this case, it is beyond dispute that the school districts *know full well* they are violating the
2 law. After Petitioners launched this lawsuit, many of the School District Respondents began
3 scrambling to change their CBAs to remove the offensive language prohibiting the use of student test
4 scores in teacher evaluations—a clear acknowledgment that their agreements were illegal. But even
5 though some of the districts have now eliminated or modified the most egregious sentences in their
6 CBAs, *none* of the School District Respondents has materially modified its teacher evaluation
7 practices to be compliant with the Stull Act. In other words, the very same practices that were in
8 place when Respondents’ CBAs *prohibited* them from using students test scores remain in place
9 today, notwithstanding the new window dressing that adorns their CBAs.

10 Petitioners respectfully move this Court for a writ of mandate to compel Respondents to
11 comply with state law by taking into account objective evidence of pupil progress, as measured by
12 students’ standardized test scores, when evaluating teachers. Compliance with the Stull Act will have
13 a tremendous positive impact, not only on the nearly 250,000 students who attend school in the 13
14 school districts at issue in this case, but also on the more than six million public schoolchildren
15 statewide whose education depends on a California school system staffed by quality teachers.

16 **II. STATEMENT OF FACTS**

17 **A. The Stull Act**

18 **1. The Purpose of Education**

19 Student learning is the primary goal of the public education system. (See Ed. Code, § 33080
20 [“[T]he purpose of the educational system of this state is to enable each child to develop all of his or
21 her own potential.”]; *Payroll Guarantee Assn. v. Bd. of Ed. of S.F. Unified Sch. Dist.* (1945) 27
22 Cal.2d 197, 203 [“The primary task of the schools is education.”]; Lipshutz Decl. ¶ 2, Ex. 1 at p. 3
23 [“Respondents admit that student learning is a primary goal of the public education system.”].)
24 Teachers play a crucial role in providing California students the education they are guaranteed by the
25 California Constitution. (See *Serrano v. Priest* (1971) 5 Cal.3d 584, 609; *Vergara v. State of*
26 *California* (Super. Ct. L.A. County, Aug. 27, 2014, No. BC484642), Judgment, pp. 1-3, 7-8
27 (*Vergara*) (Lipshutz Decl. ¶ 7, Ex. 6); Lipshutz Decl. ¶ 2, Ex. 1 at p. 2 [“Respondents admit that
28 teachers play an important role in their students’ education.”].) In fact, teacher quality is the single

1 most important in-school factor affecting student success. (Lipshutz Decl. ¶ 8, Ex. 7 [Greatness by
2 Design]; *id.* ¶ 9, Ex. 8 [Evaluating Progress Toward Equitable Distribution of Effective Educators].)
3 Students taught by great teachers are more likely to succeed in school and in life—more likely to
4 attend college, earn more money, and save more for retirement—whereas students taught by
5 ineffective teachers are less likely to succeed both in school and in life. (Declaration of John E.
6 Deasy (“Deasy Decl.”) ¶¶ 12-13, Ex. B at p. 3.)

7 Of course, teachers differ in their abilities to provide effective instruction to students.
8 (Lipshutz Decl. ¶ 2, Ex. 1 at p. 2 [“Respondents admit that teachers’ abilities differ from one
9 another.”].) Some teachers foster remarkable academic growth in their students, while others do not.
10 (*Doe v. Deasy* at p. 17 (Lipshutz Decl. ¶ 6, Ex. 5); *Vergara* at pp. 7-8 (Lipshutz Decl. ¶ 7, Ex. 6).)
11 For these reasons, “there is much to be gained from identifying those teachers whose performance
12 lags, both for themselves and for their students.” (*Doe v. Deasy* at p. 17 (Lipshutz Decl. ¶ 6, Ex. 5).)
13 Recognizing that student learning is the primary goal of the public education system, the California
14 Legislature has concluded that student learning must be taken into account when evaluating the
15 performance of teachers.

16 2. The History of The Stull Act

17 The Stull Act, first signed into law in 1971, sets forth the minimum requirements for teacher
18 performance evaluations in California public schools. (Ed. Code, § 44660 *et seq.*) In enacting the
19 Stull Act, the California Legislature expressly declared its intent that “governing boards establish a
20 uniform system of evaluation and assessment of the performance of all certificated personnel within
21 each school district of the State.” (Ed. Code, § 44660.) Passed as a “Tenure Reform Bill,” the Stull
22 Act was intended from the start to require “school districts to develop and adopt prescribed objective
23 evaluation and assessment guidelines and procedures regarding certificated employees” to ensure that
24 students would be taught “by competent and responsible instructors.” (Lipshutz Decl. ¶ 4, Ex. 3 at
25 p. 2.)

26 In a July 2, 1971 press release, Assemblymember John Stull (sponsor of the Stull Act)
27 explained: “I consider the passage of this measure a significant step toward revision of California’s
28 archaic tenure system; a system which has made meaningful educational house-cleaning virtually

1 impossible.” (*Id.* ¶ 4, Ex. 3 at p. 2.) In another press release, he stated: “I’m sick and tired of
2 hearing specious arguments about fairness and due process for teachers. It’s about time someone
3 asks about due process for the child subjected to an unsatisfactory teacher[.]” (*Id.* ¶ 4, Ex. 3 at p. 2.)
4 In 1975, then-Senator Stull wrote a letter to Governor Edmund G. Brown, Jr., regarding Senate Bill
5 777, an “educator accountability” bill that amended the Stull Act, stating:

6 You and I have touched upon the subject of educator accountability in our
7 past conversations. I believe this is one area in which you and I are in
8 substantial agreement, and that the Stull Act and its successful
9 implementation are crucial to improving the quality of education in
10 California. The impact of the law is beginning to be felt, both in increased
11 numbers of dismissals and in terms of local district personnel meeting and
12 considering just what it is they are trying to accomplish through our public
13 school system. ***The Stull Act and SB 777 remain one of the few places
14 in the entire Education Code where specific reference to pupil progress
15 is made,*** and I am sure that you share my belief that it is pupil progress, in
16 fact, that our schools are about.

17 (Lipshutz Decl. ¶ 5, Ex. 4 at p. 1, emphasis added.)

18 In 1995, the Legislature amended the Stull Act to clarify that certificated personnel may be
19 dismissed for “unsatisfactory performance,” as determined by evaluations conducted under the Stull
20 Act. (Lipshutz Decl. ¶ 60, Ex. 48 at pp. 1-4; *id.* ¶ 63, Ex. 51.) Under the amended statute, a teacher
21 must be provided with a copy of her final Stull Act evaluation, containing the grounds for dismissal,
22 following which the school district may seek to dismiss the teacher for unsatisfactory performance.
23 (*Id.* ¶ 60, Ex. 48 at pp. 1-4.)

24 In 1999, Antonio R. Villaraigosa, then Speaker of the California Assembly, carried legislation
25 that amended the Stull Act again, mandating that certificated personnel be evaluated, in part, based
26 upon the progress of pupils toward state academic content standards as measured by certain state
27 standardized tests. (See Ed. Code, § 44662, subd. (b)(1); Deasy Decl. ¶¶ 12-13, Ex. B at pp. 1-2.)

28 In sum, the Legislature enacted the Stull Act and its subsequent amendments “in an effort to
improve the dismal progress of students in California’s public schools.” (*Doe v. Deasy* at p. 24
(Lipshutz Decl. ¶ 6, Ex. 5).)

1 **3. The Requirements of The Stull Act**

2 Education Code section 44662 sets forth the minimum criteria by which a governing board of
3 a school district must evaluate and assess teacher performance. (Ed. Code, § 44662.) It provides, in
4 pertinent part:

5 (a) The governing board of each school district shall establish standards of expected
6 pupil achievement at each grade level in each area of study.

7 (b) The governing board of each school district shall evaluate and assess certificated
8 employee performance as it reasonably relates to:

9 (1) The progress of pupils toward the standards established pursuant to
10 subdivision (a) and, if applicable, the state adopted academic content standards
11 as measured by state adopted criterion referenced assessments.

12 (2) The instructional techniques and strategies used by the employee.

13 (3) The employee’s adherence to curricular objectives.

14 (4) The establishment and maintenance of a suitable learning environment,
15 within the scope of the employee’s responsibilities.

16 (Ed. Code, § 44662, emphasis added.)¹

17 The four components of Section 44662(b) focus on different aspects of a teacher’s
18 performance. Each factor is separate and distinguishable, and serves a different purpose. The first
19 criterion, Section 44662(b)(1), focuses on student *outcomes*, seeking to measure a teacher’s impact
20 on student learning—whether a teacher’s students progress toward local and state achievement
21 standards. (Ed. Code, § 44662, subd. (b)(1).) This criterion specifically calls for teachers to be
22 evaluated based on student results. And although an outcome-focused requirement has been in place
23 since the Stull Act was enacted in 1970, the 1999 amendments clarified that student achievement on
24 *state standardized tests* (“criterion referenced assessments”) must be considered as part of this first
25 factor. In contrast, the second, third, and fourth criteria focus on a teacher’s *inputs*—how a teacher
26 goes about teaching, whether the teacher adheres to the curriculum, and the environment in which the

27 _____
28 ¹ The meaning of “criterion referenced assessments” is discussed below, *infra* pp. 7-8.

1 students attend school. (Ed. Code, § 44662, subds. (b)(2)-(4).) These three criteria call for teachers
2 to be evaluated based on actions they take to improve student achievement, but—unlike the first
3 criterion—do not look at the *actual* achievement of their students. Thus, a teacher can score highly
4 on these three criteria *even if her students are not learning*. In sum, the first criterion concerns
5 student learning *outcomes* whereas the other three criteria concern a teacher’s *inputs* (i.e., her
6 teaching practice). Both components—student outcomes and teacher inputs—are necessary for a
7 complete Stull Act evaluation, but the requirement that standardized test results be utilized appears
8 *only* in the first criterion.

9 The Stull Act requires all four of Section 44662(b)’s criteria to be used in teacher
10 performance evaluations. Section 44662(b) is mandatory: “[E]ach school district *shall* evaluate and
11 assess certificated employee performance as it reasonably relates to [subdivisions (b)(1)-(4)].” (Ed.
12 Code, § 44662, subd. (b), italics added.) Following a colon, subdivisions (b)(1) through (b)(4) each
13 end in a period, indicating the conjunctive; the section contains no language indicating the
14 disjunctive. School districts have no discretion to ignore any of Section 44662(b)’s four criteria. The
15 Stull Act does not allow teachers to be evaluated based solely on student outcomes or solely on
16 instructional techniques and strategies. Evaluations that exclude or dilute the importance of any of
17 these four criteria do not comply with the Stull Act. (Ed. Code, § 44662, subd. (b); see *Doe v. Deasy*
18 at pp. 22-23 (Lipshutz Decl. ¶ 6, Ex. 5).)

19 The Stull Act sets forth additional requirements regarding the substance, timing, and
20 consequences of teacher performance evaluations. Section 44663 requires Stull Act evaluations to be
21 reduced to writing and given to the teacher not later than 30 days prior to the end of the school year in
22 which the evaluation occurred. (Ed. Code, § 44663.) Prior to the last day of the school year, the
23 evaluator and the teacher must meet to discuss the evaluation. (Ed. Code, § 44663.) The teacher may
24 issue a formal written response, which becomes a permanent attachment to the employee’s personnel
25 file. (Ed. Code, § 44663.) A teacher not performing his or her duties in a satisfactory manner is
26 given an evaluation of unsatisfactory performance. (Ed. Code, § 44664, subd. (b).) The
27 superintendent, or superintendent’s designee, must meet with any teacher receiving an unsatisfactory
28 performance evaluation, “mak[e] specific recommendations as to areas of improvement in the

1 employee’s performance,” and “endeavor to assist the employee in his or her performance.” (Ed.
2 Code, § 44664, subd. (b).) And, if a teacher consistently receives unsatisfactory Stull Act
3 performance evaluations, California law prescribes a mechanism for the teacher to be dismissed for
4 unsatisfactory performance based, in part, on those evaluations. (See Ed. Code, § 44938, subd.
5 (b)(1).)

6 Section 44664 sets forth the frequency with which teachers must be evaluated under the Stull
7 Act. (Ed. Code, § 44664.) Probationary teachers must be evaluated at least once each school year;
8 permanent (i.e., tenured) teachers must be evaluated at least once every other year; permanent
9 teachers who have received an unsatisfactory evaluation must be evaluated annually until they
10 receive a positive evaluation or are separated from the district; and permanent teachers with ten or
11 more years of service in a school district may be evaluated at least once every five years if (1) they
12 satisfy the definition of “highly qualified” under the No Child Left Behind Act, (2) they met or
13 exceeded standards in their previous evaluation, and (3) they and their evaluators agree to an
14 evaluation at least once every five years. (Ed. Code, § 44664, subs. (a)-(b).) A school district may
15 exclude substitute teachers from Stull Act evaluations. (Ed. Code, § 44664, subd. (d).)

16 **4. California Has Adopted and Implements Criterion-Referenced Assessments**

17 California has developed, adopted, and currently implements “criterion referenced
18 assessments”—standardized tests designed to measure students’ progress toward state academic
19 content standards. (See Ed. Code, § 44662, subd. (b)(1); Lipshutz Decl. ¶ 2, Ex. 1 at pp. 13, 16-17.)
20 Criterion-referenced assessments are “used to determine how well students have learned specific
21 information they have been taught.” (Lipshutz Decl. ¶ 10, Ex. 9.) These tests seek to show how well
22 students are performing on specific goals or standards, rather than how their performance compares
23 to a norm group of students nationally or locally. (*Id.* ¶ 2, Ex. 1 at p. 16.) Criterion-referenced
24 assessments thus differ from so-called “norm-referenced assessments,” which measure students
25 against other students.

26 The State has been administering state-adopted criterion-referenced assessments to public
27 school students since at least 1998. (*Id.* ¶ 2, Ex. 1 at p. 13.) From 1998 to 2013, the State
28 administered such assessments through the Standardized Testing and Reporting (STAR) Program.

1 (*Id.* ¶ 2, Ex. 1 at p. 14.) Under the STAR Program, criterion-referenced assessments called the
2 California Standards Tests (CSTs) were administered to public school students in the State each year,
3 covering core content areas for each grade, grades 2 through 11. (*Doe v. Deasy* at p. 5 (Lipshutz
4 Decl. ¶ 6, Ex. 5); Lipshutz Decl. ¶ 2, Ex. 1 at pp. 14-15.) On January 2, 2014, California established
5 the California Assessment of Student Performance and Progress (CAASPP) system of assessments to
6 replace the STAR Program, which became inoperative on July 1, 2013. (Ed. Code., § 60640.)
7 California currently implements the CAASPP System of criterion-referenced assessments. (Lipshutz
8 Decl. ¶ 12, Ex. 11; *id.* ¶ 2, Ex. 1 at p. 21.) The CAASPP System, like the former testing system,
9 measures student progress against the State’s adopted academic content standards, and relies on
10 criterion-referenced, standards-aligned assessments. (*Id.* ¶ 2, Ex. 1 at pp. 16-17.)

11 The CAASPP System consists of several assessments and tools, including Smarter Balanced
12 Assessments, which are state-adopted criterion-referenced assessments. (*Id.* ¶ 2, Ex. 1 at pp. 17-18;
13 *id.* ¶ 24, Ex. 20 ¶¶ 4-6; *id.* ¶ 37, Ex. 31 ¶¶ 5-7.) One component of Smarter Balanced Assessments
14 are Summative Assessments—comprehensive end-of-year assessments that measure progress toward
15 college and career readiness. (*Id.* ¶ 2, Ex. 1 at p. 18.) Summative Assessments are administered to
16 students throughout California in grades 3 through 8 and 11 for English Language Arts and
17 Mathematics, as part of the CAASPP System. (*Id.* ¶ 2, Ex. 1 at pp. 18, 21.) School districts
18 throughout California are currently administering Smarter Balanced Assessments. (See *id.* ¶ 24,
19 Ex. 20 ¶¶ 4-6; *id.* ¶ 37, Ex. 31 ¶¶ 5-7.)

20 The results of state-adopted criterion referenced assessments are distributed to school districts
21 each year. (*Id.* ¶ 2, Ex. 1 at pp. 3, 5; *id.* ¶ 37, Ex. 31 ¶ 7.)

22 **B. *Doe v. Deasy***

23 Several years ago, in a case entitled *Doe et al. v. Deasy et al.* (Super. Ct. L.A. County, 2012,
24 No. BS134604), a group of Californians successfully challenged the failure of the State’s largest
25 school district, Los Angeles Unified School District (“LAUSD”), to comply with the Stull Act. (See
26 *Doe v. Deasy* (Lipshutz Decl. ¶ 6, Ex. 5); Deasy Decl. ¶¶ 2-13.) LAUSD’s teacher evaluation
27 system, like that of many school districts in California, indirectly permitted consideration of student
28 test scores to help guide and inform teachers’ instructional practices—an informal feedback

1 mechanism designed to help teachers develop into better teachers, known colloquially as “formative”
2 assessments. But LAUSD’s final teacher evaluations—the formal evaluations required by the Stull
3 Act, known colloquially as “summative” evaluations or “Stull” evaluations—did not take into
4 account the academic progress of the teacher’s students as measured by state standardized test results.

5 LAUSD implemented its performance evaluation system through a series of standard forms.
6 (*Doe v. Deasy* at p. 6 (Lipshutz Decl. ¶ 6, Ex. 5).) “The Stull evaluation process [was] a year-long
7 endeavor,” beginning with completion of an initial planning sheet setting forth the teachers’ goals and
8 objectives for the year. “Student test results from the previous year inform[ed] the teacher what work
9 need[ed] to be done,” but the planning sheet “[did] not include any direct reference to pupil
10 progress.” (*Id.*) During the school year, administrators tracked teachers’ progress toward achieving
11 the goals established in the planning sheet. (*Id.* at p. 7.) At the end of the school year, a teacher’s
12 final “Stull evaluation” was based in part on whether the teacher met the goals described in the
13 planning sheet, “the point of which [was] to improve the teacher’s teaching and his or her students’
14 performance.” (*Id.* at pp. 6-7.) This final evaluation included assessment of (i) instructional
15 techniques and strategies, (ii) adherence to instructional objectives, and (iii) maintenance of a suitable
16 learning environment, but not pupil progress. (*Id.* at p. 7.) The final evaluation form, on which
17 LAUSD relied to evaluate teachers, included 27 separate factors, but did “not expressly include any
18 factor of pupil progress.” (*Id.* at pp. 7-8.) For each area of evaluation on the form, the evaluator was
19 required to check one of three boxes: (a) “Meets”; (b) “Needs Improvement”; or (c) “No.” (*Id.* at
20 p. 8.)

21 The Honorable James C. Chalfant, Los Angeles Superior Court, found that LAUSD did not
22 comply with the Stull Act because the district’s evaluations, which focused on teachers’
23 “instructional techniques and strategies,” failed to evaluate teachers based on the *actual* academic
24 progress of their students. The court explained:

25 By their express terms, the factors in the final evaluation form that are relied on by
26 the District evaluate a teacher on his or her instructional techniques and strategies,
27 a completely separate Stull Act factor from pupil progress. *See* §44662(b)(2).
28 Thus, a teacher is evaluated on how he or she (1) uses the result of multiple
assessments to **guide instruction**; (2) **guides** all students to be self-directed and
assess their own learning; (3) **engages students** in problem solving, critical
thinking and other activities that make subject matter meaningful; (4) uses a

1 variety of **instructional strategies** and resources to respond to student’s diverse
2 needs; (5) demonstrates evidence of short-term and long-term **plans to foster**
3 **student learning** and achievement of the State standards; (6) uses State subject
4 matter content standards **to establish rigorous learning goals** for students; (7)
5 **interrelates ideas and information** within and across subject matter areas; (8)
6 uses **instructional strategies**, materials, resources, and technologies that are
7 appropriate to the subject matter; (9) **demonstrates knowledge** of State Standards
8 and student development; (10) **uses a grading/evaluation system** that is aligned
9 with State Standards; and (11) **plans and implements classroom procedures** and
10 routines that support student learning.

11 (*Id.* at p. 22.) “As the bolded language shows, these final evaluation factors concern what the teacher
12 does, plans, or uses as part of the teaching process. Nothing in these factors concerns student
13 progress.” (*Id.*) Thus, the court determined that LAUSD’s evaluation process was based on an
14 impermissible and false premise: “The District essentially contends that if a teacher performs these
15 instructional tasks well, then his or her students *should* improve on both District periodic assessments
16 and their [state-adopted standardized tests].” (*Id.*, emphasis added.) But that is not what the Stull Act
17 requires; instead, the court concluded, “there must be a nexus between pupil progress and teacher
18 evaluations” to determine whether the teacher’s students actually *did* improve. (*Id.*)

19 The court rejected LAUSD’s argument that it indirectly considered pupil progress in
20 evaluating teachers over the school year because it used student testing data to “guide and advise
21 teachers on their instruction of students.” (*Id.* at p. 23.) As the court explained, “[t]his argument is
22 simply a restatement of the tautology that as teachers teach, students will learn.” (*Id.*) “The point of
23 section 44662(b)(1) is to incorporate pupil progress in the teacher’s evaluation,” the court stated. (*Id.*)
24 “The required nexus between teacher evaluations and student progress toward District standards is
25 not traceable where a teacher is evaluated based on his or her instructional technique, as separately
26 required by section 44662(b)(2).” (*Id.*) Under the Stull Act, “pupil progress must be reflected in
27 some factor on a written teacher evaluation.” (*Id.*) The court thus held that LAUSD “[did] not
28 currently comply with the Stull Act’s requirements that teachers and principals be evaluated by the
progress of students toward District standards, however measured, and by the progress of students
toward State standards as measured by [applicable state-adopted criterion-referenced assessments].”
(*Id.*)

1 The court held that LAUSD’s duty to comply with the Stull Act was enforceable by
2 mandamus, granted the petitioners’ motion for writ of mandate, ordered that the performance of
3 LAUSD’s certificated personnel must be evaluated as it reasonably relates to pupil progress toward
4 local and state standards as measured by certain state standardized tests, and (later) awarded
5 petitioners the costs of the suit, including attorneys’ fees. (*Id.* at pp. 24-25.)

6 As a result of the *Doe v. Deasy* ruling, LAUSD and its local teachers union engaged in
7 redesigning the district’s teacher evaluation system to comply with the Stull Act, as the court ordered.
8 In an effort to make pupil progress “a significant factor in the evaluation of teachers,” LAUSD has
9 developed a sophisticated statistical model called Academic Growth over Time (“AGT”), designed to
10 measure a teacher’s effect on her students’ performance on standardized tests. (*Id.* at p. 9; *L.A.*
11 *Unified Sch. Dist. v. Superior Court* (2014) 228 Cal.App.4th 222, 230-231 (*LAUSD*)). “AGT scores
12 are based on a ‘value-added’ methodology and are derived by comparing students’ *predicted*
13 [criterion-referenced standardized test] scores with their *actual* scores.” (*LAUSD*, 228 Cal.App.4th at
14 p. 231.) “The predicted score is based on students’ past performance on the [tests], as well as on a
15 host of sociodemographic and other factors, such as gender, race, English language learner status, and
16 special education status.” (*Id.*) “An AGT score is assigned using a five-point scale reflecting student
17 performance: (1) far below predicted, (2) below predicted, (3) within the predicted range, (4) above
18 predicted, and (5) far above predicted.” (*Id.*) When *Doe v. Deasy* was decided, no teachers or
19 administrators were being evaluated under the AGT system, except on a “no stakes” basis—meaning
20 the evaluation could have no negative repercussions for the teacher or administrator. (*Doe v. Deasy*
21 at p. 9 (Lipshutz Decl. ¶ 6, Ex. 5).) As a result of the *Doe v. Deasy* decision, AGT scores are now
22 being generated and utilized in LAUSD with “stakes” attached. (See *LAUSD*, 228 Cal.App.4th at
23 pp. 230-231.)

24 C. The School District Respondents

25 When Petitioners filed this action on July 16, 2015, all 13 of the School District Respondents
26 had CBAs that prohibited the use of *any standardized test results* (including state-adopted criterion-
27 referenced assessments) in the evaluations of certificated employees—a blatant violation of the Stull
28 Act. (See Complaint ¶¶ 20, 124-165.) All 13 School District Respondents subsequently admitted

1 that they seek to comply with the terms of their respective CBAs. (Lipshutz Decl. ¶ 2, Ex. 2 at pp. 2-
2 6.) Thus, the only plausible inference to be drawn from School District Respondents’ admissions is
3 that their respective teacher evaluation practices complied with their CBAs and did not utilize
4 students’ standardized test results, in violation of the Stull Act. This inference was subsequently
5 borne out by School District Respondents’ teacher evaluation forms, none of which (at the time this
6 action was filed) provided any mechanism for an evaluator to assess the progress of a teacher’s
7 students on standardized tests, and the School District Respondents’ declarations, all of which
8 explained that student standardized test scores are not used in the districts’ Stull Act evaluation
9 process. In response to this lawsuit, nearly all of the School District Respondents have sought to
10 revise their illegal CBAs, but none of the districts have changed their teacher evaluation practices,
11 which continue to violate the Stull Act.

12 III. LEGAL STANDARD AND APPROPRIATENESS OF WRIT OF MANDATE

13 “A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or
14 person, to compel the performance of an act which the law specially enjoins, as a duty resulting from
15 an office, trust, or station” (Code Civ. Proc., § 1085, subd. (a).) A traditional writ of mandate
16 under California Code of Civil Procedure section 1085 is a method of compelling the performance of
17 a legal duty. (*Pomona Police Officers’ Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 583-
18 584.) “Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy; the
19 respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance.”
20 (*Id.* at 584 [internal citations omitted].)

21 Respondents have a clear, present, and ministerial legal duty to comply with the Stull Act.
22 (See *Doe v. Deasy* at p. 24 (Lipshutz Decl. ¶ 6, Ex. 5).) Respondents also have a present legal duty
23 and present ability to perform their legal duty and comply with the Stull Act. (See *id.*) Furthermore,
24 Respondents lack the authority to negotiate contracts that violate the Education Code. (Ed. Code,
25 § 44924; see also *California Teachers’ Assn. v. Livingston Union Sch. Dist.* (1990) 219 Cal.App.3d
26 1503, 1518 [“The collective bargaining representative is without power to negotiate or waive the
27 mandatory provisions of the Education Code; any provision violative of the Education Code is null
28

1 and void.”]; Lipshutz Decl. ¶ 2, Ex. 1 at p. 10.) “An agency can always be compelled to comply with
2 the law.” (*Doe v. Deasy* at p. 24 (Lipshutz Decl. ¶ 6, Ex. 5).)

3 IV. ARGUMENT

4 A. The Stull Act Requires School Districts To Evaluate Teachers’ Performance, At Least In 5 Part, By Assessing Student *Outcomes* (Whether Students Are Actually Learning)

6 Under the plain terms of the Stull Act, each school district in California must evaluate and
7 assess certificated employee performance, at least in part, by considering student outcomes—as
8 measured by students’ progress toward local and state academic standards. (Ed. Code, § 44662,
9 subd. (b); *Doe v. Deasy* at p. 3 (Lipshutz Decl. ¶ 6, Ex. 5); see *LAUSD, supra*, 228 Cal.App.4th at
10 p. 231.) Student outcomes must *always* be considered in teacher evaluations conducted pursuant to
11 the Stull Act. Formal, written consideration of pupil progress toward standards established by the
12 local school district is always required, regardless of whether state standardized test scores are
13 applicable. (Ed. Code, § 44662, subd. (b)(1).) And when state standardized test scores are
14 applicable, school districts are required to consider them as well when evaluating teacher
15 performance. (Ed. Code, § 44662, subd. (b)(1); *LAUSD, supra*, 228 Cal.App.4th at p. 230 [“[B]y
16 law, school districts must establish standards of expected pupil achievement, and teachers are
17 evaluated and assessed in regard to their students’ progress.”]; *Doe v. Deasy* at p. 19 (Lipshutz Decl.
18 ¶ 6, Ex. 5) [“Under section 44662, the performance of teachers and school principals and assistant
19 principals . . . must be evaluated as their performance reasonably relates to pupil progress toward
20 [LAUSD’s] standards and by [state-adopted criterion-referenced assessments], if applicable.”].)

21 1. There Must Be a Nexus Between Pupil Progress and Teacher Evaluations

22 As stated in *Doe v. Deasy*, “there must be a nexus between pupil progress and teacher
23 evaluations.” (*Doe v. Deasy* at p. 22 (Lipshutz Decl. ¶ 6, Ex. 5).) The nexus has several components:
24 (1) “the evaluator must know what the pupil progress is with respect to that teacher”; (2) “the
25 evaluator must know how to use the pupil progress information”; and (3) “since the evaluation must
26 be in writing (§44663), the evaluator’s determination of the impact of pupil progress must be
27 reflected somewhere in writing.” (*Id.* at pp. 22-23.) “This does not mean that there must be a box on
28 a form which directly addresses pupil progress,” but “it does mean that pupil progress must be

1 reflected in some factor on a written teacher evaluation.” (*Id.* at p. 23.) “This interpretation is
2 consistent with the Stull Act’s purposes, one of which is to require that school districts evaluate
3 teacher and principal performance based in part on the progress of pupils.” (*Id.* at p. 22.) In other
4 words, a bare focus on teacher “inputs” (i.e., teaching methods and instructional strategies), with no
5 consideration of actual student “outputs” (i.e., whether students are actually learning), is insufficient
6 under the Stull Act.

7 Moreover, the consideration of pupil progress must actually impact the teacher’s evaluation.
8 If a teacher struggles to adhere to curricular objectives (Section 44662(b)(3)) or to maintain a suitable
9 learning environment (Section 44662(b)(4)), one would expect her Stull Act evaluation to reflect that.
10 Likewise, in a proper Stull Act evaluation, if a teacher’s students are not actually learning, if they are
11 not making progress toward state standards and are performing worse than expected on local district
12 assessments and state standardized tests (Section 44662(b)(1)), the teacher’s evaluation should be
13 negatively impacted in some tangible way. And if a teacher’s students are thriving academically,
14 performing better than expected on local district assessments and state standardized tests, the
15 teacher’s evaluation should be positively impacted in some tangible way.

16 Simply using student test scores indirectly “to guide and advise teachers on their instruction
17 of students” is insufficient to comply with the Stull Act. (*Doe v. Deasy* at pp. 22-23 (Lipshutz Decl.
18 ¶ 6, Ex. 5).) At best, this practice would satisfy Section 44662(b)(2), which requires school districts
19 to evaluate teachers based, in part, on “[t]he instructional techniques and strategies used by the
20 employee.” (Ed. Code, § 44662, subd. (b)(2).) It does nothing to address Section 44662(b)(1),
21 which—as a completely distinct factor—requires school districts to evaluate teachers based, in part,
22 on student outcomes. (Ed. Code, § 44662, subd. (b)(1).)

23 **2. Evaluations Based on the California Standards for the Teaching Profession Do**
24 **Not Satisfy the Stull Act**

25 Before the *Doe v. Deasy* decision, LAUSD (like many other school districts in California)
26 used the California Standards for the Teaching Profession (“CSTP”) as the basis for its teacher
27 evaluations. Each of the 13 School District Respondents in this case likewise bases its evaluations of
28 certificated personnel on the CSTP. (Lipshutz Decl. ¶ 17, Ex. 15, Ex. “A1” [Antioch USD]; *id.* ¶ 21,

1 Ex. 17 ¶ 3 [Chaffey Joint Union High SD]; *id.* ¶ 24, Ex. 20 ¶ 3 [Chino Valley USD]; *id.* ¶ 27, Ex. 23
2 ¶¶ 20-25 [El Monte City SD]; *id.* ¶ 31, Ex. 26 ¶ 20 [Fairfield-Suisun USD]; *id.* ¶ 32, Ex. 27 at pp. 52-
3 54 [Fremont Union High SD]; *id.* ¶ 35, Ex. 29 at p. 42 [Inglewood USD]; *id.* ¶ 42, Ex. 35 ¶ 3
4 [Ontario-Montclair SD]; *id.* ¶ 45, Ex. 37, Ex. “A1” [Pittsburg USD]; *id.* ¶ 46, Ex. 38 at p. 19
5 [Saddleback Valley USD]; *id.* ¶ 52, Ex. 42, Ex. “A” [San Ramon Valley USD]; *id.* ¶ 55, Ex. 44 ¶ 3
6 [Upland USD]; *id.* ¶ 59, Ex. 47 ¶ 3 [Victor Elementary SD].)

7 The CSTP are a set of teacher evaluation standards designed “to serve and support
8 professional educators.” (Lipshutz Decl. ¶ 13, Ex. 12 at p. 1.) The CSTP standards “are not set forth
9 as regulations to control the specific actions of teachers, but rather to guide teachers as they develop,
10 refine, and extend their practice.” (*Id.*) “Since their inception in the 1990s, the CSTP have been
11 widely influential in California policy and practice.” (*Id.* at p. 3.)

12 Unfortunately, the CSTP standards do not meet the demands of the Stull Act—indeed, they
13 are carefully crafted to *avoid* the requirements of the Stull Act—because they focus only on teacher
14 inputs, not student outcomes. The CSTP consist of six interdependent standards, or domains of
15 teaching practice:

16 Standard 1: Engaging and Supporting All Students in Learning

17 Standard 2: Creating and Maintaining an Effective Environment for Student Learning

18 Standard 3: Understanding and Organizing Subject Matter for Student Learning

19 Standard 4: Planning Instruction and Designing Learning Experiences for All Students

20 Standard 5: Assessing Student Learning

21 Standard 6: Developing as a Professional Educator

22 (Lipshutz Decl. ¶ 27, Ex. 23 ¶ 20.) Each Standard is further subdivided into constituent elements:

23 **Standard 1: Engaging and Supporting All Students in Learning**

24 1.1 Using knowledge of students to engage them in learning

25 1.2 Connecting learning to students’ prior knowledge, backgrounds, life experiences, and interests.

26 1.3 Connecting subject matter to meaningful real-life contexts

27 1.4 Using a variety of instructional strategies, resources, and technologies to meet students’ diverse
28 learning needs

1.5 Promoting critical thinking through inquiry, problem solving, and reflection

1.6 Monitoring student learning and adjusting instruction while teaching

Standard 2: Creating and Maintaining an Effective Environment for Student Learning

2.1 Promoting social development and responsibility within a caring community where each student

1 is treated fairly and respectfully
2 2.2 Creating physical or virtual learning environments that promote student learning, reflect diversity,
3 and encourage constructive and productive interactions among students
4 2.3 Establishing and maintaining learning environments that are physically, intellectually, and
5 emotionally safe
6 2.4 Creating a rigorous learning environment with high expectations and appropriate support for all
7 students
8 2.5 Developing, communicating, and maintaining high standards for individual and group behavior
9 2.6 Employing classroom routines, procedures, norms, and supports for positive behavior to ensure a
10 climate in which all students can learn
11 2.7 Using instructional time to optimize learning

12 **Standard 3: Understanding and Organizing Subject Matter for Student Learning**

13 3.1 Demonstrating knowledge subject matter, academic content standards, and curriculum
14 frameworks
15 3.2 Applying knowledge of student development and proficiencies to ensure student understanding of
16 subject matter
17 3.3 Organizing curriculum to facilitate student understanding of the subject matter
18 3.4 Utilizing instructional strategies that are appropriate to subject matter
19 3.5 Using and adapting resources, technologies, and standards-aligned instructional materials,
20 including adopted materials, to make subject matter accessible to all students
21 3.6 Addressing the needs of English learners and students with special needs to provide equitable
22 access to the content

23 **Standard 4: Planning Instruction and Designing Learning Experiences for All Students**

24 4.1 Using knowledge of students' academic readiness, language proficiency, cultural background,
25 and individual development to plan instruction
26 4.2 Establishing and articulating goals for student learning
27 4.3 Developing and sequencing long-term and short-term instructional plans to support student
28 learning
29 4.4 Planning instruction that incorporates appropriate strategies to meeting the learning needs of all
30 students
31 4.5 Adapting instructional plans and curricular materials to meet the assessed learning needs of all
32 students

33 **Standard 5: Assessing Student Learning**

34 5.1 Applying knowledge of purposes, characteristics, and uses of different types of assessments
35 5.2 Collecting and analyzing assessment data from a variety of sources to inform instruction
36 Assessing Students for Learning
37 5.3 Reviewing data, both individually and with colleagues, to monitor student learning
38 5.4 Using assessment data to establish learning goals and to plan, differentiate, and modify
39 instruction
40 5.5 Involving all students in self-assessment, goal setting, and monitoring progress
41 5.6 Using available technologies to assist in assessment, analysis, and communication of student
42 learning
43 5.7 Using assessment information to share timely and comprehensible feedback with students and
44 their families

45 **Standard 6: Developing as a Professional Educator**

46 6.1 Reflecting on teaching practice in support of student learning
47 6.2 Establishing professional goals and engaging in continuous and purposeful professional growth

- 1 and development
- 2 6.3 Collaborating with colleagues and the broader professional community to support teacher and student learning
- 3 6.4 Working with families to support student learning
- 4 6.5 Engaging local communities in support of the instructional program
- 5 6.6 Managing professional responsibilities to maintain motivation and commitment to all students
- 6 6.7 Demonstrating professional responsibility, integrity and ethical conduct

7 (Lipshutz Decl. ¶ 13, Ex. 12 at pp. 4-17.)

8 By their own terms, the CSTP concern teaching practice—not pupil progress. The CSTP
9 “provide a set of interrelated guideposts for teachers across the professional continuum . . . to
10 examine their practice, seek support and resources for continuous improvement, and affirm their
11 talents and accomplishments.” (*Id.* at p. 4.) The CSTP do not seek to measure student progress or to
12 evaluate teachers in any way based on the performance of their students.

13 The CSTP include 38 factors, none of which concerns a teacher’s impact on pupil progress.
14 Of the six CSTP standards, only Standard 5 (“Assessing Student Learning”) even mentions student
15 performance data, but it deals entirely with a teacher’s *response* to student learning data and how a
16 teacher *uses* assessment data—not what the data indicate about the teacher’s impact on pupil progress
17 (i.e., whether teachers are actually able to achieve student learning). (*Id.* at pp. 13-15.) The seven
18 sub-elements of Standard 5 examine whether and how a teacher is “[a]pplying knowledge of
19 purposes, characteristics, and uses of different types of assessments,” “[c]ollecting and analyzing
20 assessment data from a variety of sources to inform instruction,” “[r]eviewing data, both
21 individually and with colleagues, to monitor student learning,” “[u]sing assessment data to establish
22 learning goals and to plan, differentiate, and modify instruction,” “[i]nvolving all students in self-
23 assessment, goal setting, and monitoring progress,” “[u]sing available technologies to assist in
24 assessment, analysis, and communication of student learning,” and “[u]sing assessment information
25 to share timely and comprehensible feedback with students and their families.” (*Id.*, emphases
26 added.) Not a single factor considers how students actually performed on assessments. Not a single
27 factor allows an evaluator to consider whether, and to what extent, a teacher has contributed to
28 student learning as measured by students’ performance on state standardized tests, as required by the

1 Stull Act. In fact, the sub-elements of Standard 5 ensure that pupil progress is *not* considered when
2 evaluating teacher performance.

3 In sum, the CSTP standards focus entirely on teaching inputs (i.e., what a teacher does and
4 how she goes about doing it), not student outcomes (i.e., how successful a teacher is at fostering
5 actual student learning gains). The CSTP do not “incorporate pupil progress in the teacher’s
6 evaluation,” thus ignoring “[t]he point of section 44662(b)(1).” (*Doe v. Deasy* at p. 23 (Lipshutz
7 Decl. ¶ 6, Ex. 5).) A teacher evaluation system based on the CSTP alone cannot satisfy the Stull Act.

8 **B. Stull Act Evaluations Must Have Consequences**

9 The Stull Act prescribes formal requirements for meaningful, authoritative teacher evaluations
10 that are intended to impact employment decisions, including advancement and dismissal. (See Ed.
11 Code, § 44664.) Stull Act evaluations are formal, typically year-end performance evaluations. They
12 are meant to mean something.

13 **1. The Teacher Evaluations Required by the Stull Act Must Be Formal Reviews**
14 **That Can Inform Employment Decisions**

15 By definition, an “evaluation” is “the making of a *judgment* about the . . . *value* of
16 something.” (Oxford Dictionaries, available at [http://www.oxforddictionaries.com/us/definition/
17 american_english/evaluation](http://www.oxforddictionaries.com/us/definition/american_english/evaluation), emphases added.) In school districts throughout California, the terms
18 “Stull evaluation” and “Stull Act evaluation” are known to refer to a certificated employee’s final,
19 year-end evaluation. (Lipshutz Decl. ¶ 63, Ex. 51.) In *Doe v. Deasy*, for example, the court
20 explained that the local teachers union “warned its members: ‘if your administrator makes any
21 indication or comments on *your Stull evaluation* that ties your evaluation to student test scores in any
22 way, talk to your chapter chair who will then contact your school and [union] representative.’” (*Doe*
23 *v. Deasy* at p. 10 (Lipshutz Decl. ¶ 6, Ex. 5), emphasis added; Deasy Decl. ¶ 7, Ex. A at p. 115.)
24 Moreover, the collectively bargained evaluation procedures that apply to a teacher’s final, year-end
25 evaluation typically track the Stull Act’s requirements regarding the frequency, timing, and
26 consequences of teacher evaluations. (See, e.g., Lipshutz Decl. ¶ 18, Ex. 16 at p. 38.)

27 This identity between the Stull Act evaluation and teachers’ final, year-end evaluation makes
28 sense; the text of the Stull Act clearly contemplates and requires evaluations of consequence. For

1 example, unsatisfactory performance evaluations under the Stull Act trigger a number of mandatory
2 processes. (See Ed. Code, § 44664, subd. (b).) If a teacher receives an unsatisfactory performance
3 evaluation, the superintendent, or superintendent’s designee, must (1) notify the teacher in writing,
4 (2) describe the unsatisfactory performance to the teacher, (3) meet with the teacher, (4) make
5 specific recommendations as to how the teacher can improve, (5) assist the teacher in his or her
6 performance, and (6) evaluate the teacher annually, regardless of the teacher’s employment status,
7 until the teacher receives a positive evaluation. (Ed. Code, § 44664, subd. (b).) Furthermore, in any
8 district that participates in the Peer Assistance and Review Program for Teachers, any certificated
9 employee who receives an unsatisfactory rating on a Stull Act evaluation must participate in the
10 program. (Ed. Code, § 44664, subd. (c).) Perhaps most significantly, Stull Act evaluations form the
11 basis for dismissal proceedings where a school district seeks to dismiss a teacher for unsatisfactory
12 performance. (Ed. Code, § 44938, subd. (b)(1).)

13 **2. Low- And No-Stakes “Formative” Assessments Are Not Stull Act Evaluations**

14 In contrast, more informal assessment processes that are designed to give teachers feedback
15 are not the Stull Act evaluation. Thus, simply using student test scores as a low- or no-stakes tool to
16 help teachers improve their instructional practices and techniques does not satisfy the Stull Act. (See
17 *Doe v. Deasy* at pp. 22-23 (Lipshutz Decl. ¶ 6, Ex. 5).) In an effort to avoid actually evaluating
18 teachers based on pupil progress, numerous school districts in California (including LAUSD before
19 the *Doe v. Deasy* decision, as well as many of the School District Respondents in this case) have
20 limited the use of student test scores to so-called “formative” assessments of teachers, while
21 prohibiting the use of student test scores as part of “summative” evaluations of teachers. This false
22 distinction between formative and summative assessments finds no support in the Stull Act.²

23 **Formative** assessments are “focused on the process of increasing knowledge and improving
24 professional practice”; “[t]he focus is on assessing ongoing activities and providing information to
25

26 ² Respondents provide no explanation for this differential treatment of student test data. If test
27 scores are useful for informing instructional practice (as Respondents concede), and are valid
28 measures of student learning (as the State believes), then surely they have value in the context of
measuring teacher effectiveness, as the Legislature has already determined.

1 monitor and improve a [teacher’s] teaching practice.” (Lipshutz Decl. ¶ 40, Ex. 33 at p. 6.) The
2 purpose of a formative assessment is to provide ongoing feedback that can be used by instructors to
3 improve their teaching—a *prospective* tool for the *benefit of teachers*. Formative assessments are
4 typically low- or no-stakes assessments; they are not formal evaluations. As a result, many school
5 districts and teachers unions do not object to using standardized test data when conducting formative
6 evaluations of teachers. (See, e.g., *id.*)

7 **Summative** evaluations, by contrast, are “focused on outcomes.” (Lipshutz Decl. ¶ 40, Ex. 33
8 at p. 6.) A summative evaluation “summarizes the development of a [teacher’s] practice at a
9 particular point in time and [often includes] multiple sources of evidence about teacher and student
10 learning, such as: portfolios, checklists, lesson plans, observations, self-assessments, surveys, and
11 student work samples.” (*Id.*) The purpose of a summative evaluation is to measure a teacher’s
12 performance—a *retrospective* tool for the *benefit of students*.³ Summative evaluations typically
13 involve some stakes—they are evaluations of consequence. Unsurprisingly, teachers unions often
14 object to using students’ standardized test results when conducting summative evaluations of teachers
15 (i.e., any evaluations that matter). (See, e.g., *id.*; see also *Doe v. Deasy* at p. 10 (Lipshutz Decl. ¶ 6,
16 Ex. 5) [“UTLA has expressed hostility toward incorporating student test data in teacher
17 evaluations.”].)

18 Several Respondents contend that they comply with the Stull Act because they use student
19 standardized test data when conducting formative assessments, to inform and guide instruction.
20 These Respondents contend that student data from state-adopted criterion-referenced assessments
21 should be used “solely as a formative assessment tool”—“to inform and shape adjustments to the
22 instructional strategies, methods and emphases, to influence and guide the establishment of each
23 teacher’s performance objectives and strategies for the current year, and to influence upcoming
24 classroom observations and other traditionally utilized assessment tools regarding classroom
25 methods, skill levels and effectiveness” (*id.* ¶¶ 18-20, Ex. 16 at p. 153 [Ex. 2])—but should “not be
26

27 ³ By way of comparison, when a student receives a grade at the end of the school year (A, B, C, D,
28 F), or a score on a standardized test, that is a *summative* assessment.

1 used as part of summative assessment” (*id.* ¶ 40, Ex. 33 at p. 6). But Respondents ignore that
2 formative assessments are not Stull Act *evaluations* and do nothing to *measure* a teacher’s impact on
3 pupil progress.

4 LAUSD took the same approach before *Doe v. Deasy*. “While there [was] some expectation
5 that a teacher will make pedagogical changes to instruction, the District [did] not . . . evaluate
6 teachers by how students [did] academically. . . . Student academic outcomes [were] used to adjust
7 instruction. . . . But in terms of the teachers’ year-end performance evaluation, ‘It’s not used.’” (*Doe*
8 *v. Deasy* at p. 10 (Lipshutz Decl. ¶ 6, Ex. 5); *Deasy* Decl. ¶¶ 2-13.) As stated by John E. Deasy, then-
9 Superintendent of LAUSD, “[t]he system that we currently use is absent kind of the fundamental goal
10 of the whole process of education, and that is how students do.” (*Doe v. Deasy* at p. 10 (Lipshutz
11 Decl. ¶ 6, Ex. 5); *Deasy* Decl. ¶¶ 5-11.)

12 **C. School Districts Have Everything They Need To Comply With The Law**

13 As described above, California has adopted and currently administers applicable “state
14 adopted criterion referenced assessments”—the CAASPP assessments—to students throughout
15 California. (Ed. Code, § 44662, subd. (b)(1); Lipshutz Decl. ¶ 2, Ex. 1 at p. 21.) This past year,
16 CAASPP assessments were administered to roughly 3.2 million students. (Lipshutz Decl. ¶ 61,
17 Ex. 49.) And test results are provided to school districts each school year. (*Id.* ¶ 12, Ex. 11; *id.* ¶ 2,
18 Ex. 1 at p. 22.) Thus, information that would empower school districts to evaluate teachers properly
19 under the law exists and is available to them; they just need to use it.

20 There are many techniques available for school districts to evaluate teachers based, in part, on
21 student performance, as required by the Stull Act. Extensive research has shown that effective
22 teaching can, in fact, be measured accurately and responsibly, provided it is based, in part, on
23 objective evidence of student learning (including test scores) over a period of time. (See, e.g.,
24 Lipshutz Decl. ¶ 11, Ex. 10.) For example, some statistical models—like the AGT methodology in
25 use in LAUSD (see *Doe v. Deasy* at p. 9 (Lipshutz Decl. ¶ 6, Ex. 5); *LAUSD, supra*, 228 Cal.App.4th
26 at pp. 230-231)—allow school districts to disaggregate a teacher’s impact on students from other
27 factors affecting student performance (e.g., socioeconomic background). (See Lipshutz Decl. ¶ 8,
28 Ex. 7 at p. 61 [California Department of Education publication describing “value-added models

1 (VAM)—statistical methods for examining changes in students’ test scores over time”].) Such
2 methods are used throughout the country. At least 40 states require or recommend that teachers be
3 evaluated using multiple measures of teacher performance, including student achievement data. (See
4 Lipshutz Decl. ¶ 62, Ex. 50 at p. 9; see also *id.* [“Value-added models (VAMs) are one of the best
5 tools available for measuring teacher effect.”].) At least 20 states require or recommend that student
6 achievement indicators comprise half of a teacher’s evaluation. (*Id.* at p. 12.) And these states allow
7 evaluations to impact employment decisions, and impose consequences for unacceptably poor
8 evaluations. (*Id.* at p. 27.)

9 Furthermore, pursuant to a decision by the California Commission on State Mandates, school
10 districts may obtain reimbursement from the State for the costs incurred as a result of compliance
11 with the 1999 amendments to the Stull Act. (Lipshutz Decl. ¶ 14, Ex. 13; see also *Doe v. Deasy* at
12 p. 4 (Lipshutz Decl. ¶ 6, Ex. 5).) They simply need to seek reimbursement.

13 **D. Respondents Refuse To Comply With The Stull Act**

14 Despite the Stull Act’s clear mandate to include consideration of student performance on
15 “state adopted criterion referenced assessments” when evaluating certificated employees,
16 Respondents—in negotiations with their local teachers unions—have decided to explicitly *prohibit*
17 such consideration in their CBAs and teacher evaluation forms. Since the enactment of the Stull Act,
18 and continuing at least until the filing of this lawsuit, Respondents have knowingly and willingly
19 executed unlawful CBAs that prevent them from evaluating certificated personnel based on the
20 progress of students toward state academic standards. Some Respondents have (since this lawsuit
21 was filed) revised their CBAs to remove the most egregious language, but even those districts
22 continue to defy the Stull Act by prohibiting or omitting consideration of pupil progress in their
23 evaluation forms. *All* of the Respondents’ operative CBAs and teacher evaluation forms prohibit
24 them from using any standardized test results, including state-adopted criterion-referenced
25 assessments, in the *summative* evaluations of certificated employees. And the declarations submitted
26 by Respondents, describing their teacher evaluation practices, confirm their failure to utilize student
27 test scores as required by law. In other words, by illegal contract, Respondents have prohibited
28 themselves from using standardized test data in any evaluation that counts. As a result, all of the

1 Respondents fail to comply with their mandatory legal duty under the Stull Act to evaluate
2 certificated personnel based in part on student performance.

3 Respondents' failure to comply with the Stull Act fosters evaluation systems that enable
4 teachers to receive satisfactory ratings regardless of whether their students are actually learning. In
5 fact, across California, **98%** of teachers receive satisfactory evaluation ratings even though only 44%
6 of students are meeting the State's standard for English Language Arts / Literacy and only 33% of
7 students are meeting the State's standard for Mathematics. (Lipshutz Decl. ¶ 64, Ex. 52 [EdVoice
8 report, "Student Progress Ignored"]; *id.* ¶ 65, Ex. 53 ; *id.* ¶ 61, Ex. 49.) In Respondents' districts
9 alone, nearly 250,000 students are being taught by educators who have not been evaluated in
10 accordance with state law, leaving those students vulnerable to being taught by ineffective teachers
11 who are not properly being identified as such.

12 **1. Antioch Unified School District**

13 Antioch USD flatly prohibits the use of *any* standardized test results in the evaluations of
14 certificated employees. Antioch USD's CBA with its local teachers union, Antioch Education
15 Association, provides that "[n]o bargaining unit member shall be evaluated . . . on the basis of the
16 scores of his/her students on standardized or norm-referenced tests." (Lipshutz Decl. ¶ 15, Ex. 14 at
17 p. 77; *id.* ¶ 2, Ex. 1 at p. 22.) Antioch USD admits that it "attempts to comply" with the terms of its
18 CBA (*id.* ¶ 2, Ex. 1 at p. 22), and that its evaluation process, which is based on the CSTP, does not
19 use test results as part of summative teacher evaluations: "Although summative/final evaluations and
20 ratings of teachers are not directly based on results of state adopted criterion referenced assessments,
21 evaluators are aware of and consider the results of criterion referenced assessment administered to
22 students while providing on-going feedback and assessment of teachers." (*Id.* ¶ 17, Ex. 15, Ex.
23 "A1".) In other words, Antioch USD's evaluations lack the necessary nexus to pupil progress.
24 Antioch USD's teacher evaluation forms merely parrot the CSTP criteria, none of which connect
25 teacher performance to student outcomes. (*Id.* ¶ 15, Ex. 14 at pp. 109-118.) As a result, Antioch
26 USD does not comply with the Stull Act.

1 **2. Chaffey Joint Union High School District**

2 Until very recently, the CBA between Chaffey Joint Union High SD and its local teachers
3 union, Associated Chaffey Teachers, provided that “[t]he evaluation of unit members . . . shall not
4 include or be based upon . . . [s]tandardized or other District test results that measure achievement.”
5 (Lipshutz Decl. ¶ 18, Ex. 16 at p. 39; *id.* ¶ 2, Ex. 1 at p. 22.) Chaffey Joint Union High SD admits
6 that it “seeks compliance with the terms of the collective bargaining agreement to which it has
7 agreed.” (*Id.* ¶ 2, Ex. 1 at p. 23.) In response to this lawsuit, Chaffey Joint Union High SD ratified a
8 memorandum of understanding that deleted this offending language from its CBA, but added
9 language that clarifies that the district has not used, and still has no plans to use, student assessment
10 data to evaluate teacher performance. (*Id.* ¶ 18, Ex. 16 at p. 153 [Ex. 2].) The ratified memorandum
11 of understanding provides that student assessment data can be used “solely as a formative assessment
12 tool to inform and shape adjustments to the instructional strategies, methods and emphases, to
13 influence and guide the establishment of each teacher’s performance objectives and strategies for the
14 current year, and to influence upcoming classroom observations and other traditionally utilized
15 assessment tools regarding classroom methods, skill levels and effectiveness,” and thus cannot be
16 used for summative purposes to comply with the Stull Act. (*Id.*) Chaffey Joint Union High SD’s
17 evaluation forms, which are based on the CSTP, do not include any factor of pupil progress. (*Id.*
18 ¶ 18, Ex. 16 at Appendix H.) Chaffey Joint Union High SD admits that it “administers the state
19 mandated and adopted summative criterion referenced assessments” each year, and that it “receives
20 the results of these summative assessments,” but it notably does not (and cannot) claim to use the
21 results of these assessments in any way when evaluating teachers, as required by the Stull Act. (*Id.*
22 ¶ 21, Ex. 17 ¶¶ 4-6.) Chaffey Joint Union High SD violates the Stull Act.

23 **3. Chino Valley Unified School District**

24 Chino Valley USD’s CBA with its local teachers union, Associated Chino Teachers, provides
25 that “[t]he evaluation of unit members shall not include, nor be based upon, . . . [r]esults of any tests
26 utilized for measuring progress toward the fulfillment of goals set forth in the Single School Plan.”
27
28

1 (Lipshutz Decl. ¶ 22, Ex. 18 at p. 16; *id.* ¶ 2, Ex. 1 at p. 23.)⁴ Chino Valley USD admits that it “seeks
2 compliance with the terms of the collective bargaining agreement to which it has agreed.” (*Id.* ¶ 2,
3 Ex. 1 at p. 23.) Chino Valley USD’s teacher evaluation forms—like those at issue in *Doe v. Deasy*—
4 focus entirely on instructional technique and strategies, and thus fail to create any nexus between
5 pupil progress and teacher evaluations. (*Id.* ¶ 23, Ex. 19.) Chino Valley USD admits that it
6 “administers the state mandated and adopted summative criterion referenced assessments” each year,
7 and that it “receives the results of these summative assessments,” but it does not (and cannot) claim
8 to use the results of these assessments in any way when evaluating teachers, as required by the Stull
9 Act. (*Id.* ¶ 24, Ex. 20 ¶¶ 4-6.) As a result, Chino Valley USD does not comply with the Stull Act.

10 **4. El Monte City School District**

11 Until November 2015, El Monte City SD’s CBA with its local teachers union, El Monte
12 Elementary Teachers Association (“EMETA”), flatly prohibited the use of any standardized test
13 results in the evaluations of teachers. (Lipshutz Decl. ¶ 25, Ex. 21 at p. 33 “[e]valuations shall not
14 be based on . . . [s]tandardized test results”; *id.* ¶ 2, Ex. 1 at p. 23.) El Monte City SD admits that it
15 “seeks compliance with the terms of the CBA to which it has agreed.” (*Id.* ¶ 2, Ex. 1 at p. 23.) In
16 response to this lawsuit, on November 18, 2015, El Monte City SD and EMETA entered into a
17 memorandum of understanding to strike this offending language from the CBA. (*Id.* ¶ 27, Ex. 23 at
18 ¶ 18, Ex. A.)

19 Notwithstanding this recent step in the right direction, El Monte City SD’s actual evaluation
20 practices still violate the Stull Act—indeed, they remain unchanged. El Monte City SD’s evaluation
21 practices, which incorporate and are based on the CSTP (*id.* ¶ 20-25), allow “administrators and
22 teachers [to be] trained to understand, analyze, and apply student performance data . . . to inform
23 instruction and teacher performance,” but not to *actually evaluate and assess teacher performance* in

24
25
26 ⁴ A Single School Plan, more commonly known as a Single Plan for Student Achievement
27 (“SPSA”), is a document that sets forth a plan of actions to raise the academic performance of
28 students. The California Department of Education requires every public school receiving federal
funds to annually develop a SPSA. The plan describes goals and objectives based on each school
site’s assessment data, and describes how funds will be spent to support the goals identified. (See
Ed. Code, § 64001.)

1 terms of pupil progress, as required by the Stull Act. (*Id.* ¶¶ 10-11.) According to El Monte SD,
2 “student performance data is used to identify strengths and weaknesses in teacher performance under
3 the CSTP criteria which are reflected in the evaluation form,” but not to connect pupil progress to
4 actual teacher evaluations. (*Id.* ¶¶ 24-25.) El Monte City SD’s contention that “California has not
5 yet determined what weight will be given each measure of the CAASPP accountability system” does
6 not excuse the district from using CAASPP results in teacher evaluations, as required by the Stull
7 Act. (*Id.* ¶ 8.) Thus, while El Monte City SD’s revised CBA no longer forecloses its ability to
8 comply with the Stull Act, its evaluation practices still prohibit the district from complying with the
9 Stull Act. El Monte City SD has violated and continues to violate the Stull Act.

10 **5. Fairfield-Suisun Unified School District**

11 Fairfield-Suisun USD’s CBA with its local teachers union, Fairfield-Suisun Unified Teachers
12 Association (“F-SUTA”), provides that “[s]tandardized test scores shall not be used as evaluation
13 data.” (Lipshutz Decl. ¶ 28, Ex. 24 at p. 11; *id.* ¶ 29, Ex. 25 at p. 3.) Fairfield-Suisun USD admits
14 that it “seeks compliance with the terms of the collective bargaining agreement to which it has
15 agreed.” (*Id.* ¶ 2, Ex. 1 at p. 24.)

16 According to Fairfield-Suisun USD, “[w]hile the agreement with the F-SUTA . . . provides a
17 structural and logistical framework for evaluation, the substance is found in the holistic approach of
18 evaluators in incorporating various data points, including an understanding of student outcomes and
19 performance, into their evaluations and discussions with teachers.” (Lipshutz Decl. ¶ 31, Ex. 26 ¶ 5.)
20 “All teachers are evaluated based on the CSTP.” (*Id.* ¶ 20.) Fairfield-Suisun USD points to CSTP
21 Standard 5 in an attempt to demonstrate its compliance with the Stull Act. (*Id.* ¶ 21.) But, as
22 discussed above, CSTP Standard 5’s seven subparts concern how a teacher uses, reflects on, and
23 adjusts to assessment data—not whether a teacher’s performance results in actual student progress.
24 An evaluation system that relies exclusively on the CSTP does not satisfy the Stull Act.

25 Fairfield-Suisun USD notes that it “maintains an electronic student data system, known as
26 ‘School City’ which combines comprehensive test creation and administration services with
27 advanced reporting features.” (*Id.* ¶ 24.) School City “maintains assessment data provided by the
28 State,” and “is accessible to all teachers and evaluators.” (*Id.*) Fairfield-Suisun USD asserts that

1 “this information can help teachers and site administrators identify students, subjects, or even entire
2 classrooms which may benefit from additional evaluation and support.” (*Id.* ¶ 26.) But Fairfield-
3 Suisun USD misses the point. Fairfield-Suisun USD does not purport to *use* any of the data available
4 on School City, or any criterion-referenced assessments data at all, to conduct summative evaluations
5 of certificated personnel. Fairfield-Suisun USD does not comply with the Stull Act.

6 **6. Fremont Union High School District**

7 Fremont Union High SD’s CBA with its local teachers union, Fremont Education
8 Association, provides that “[r]esults of standardized tests or district wide criterion-referenced tests
9 shall not be used in the performance evaluation of a unit member, unless by agreement.” (Lipshutz
10 Decl. ¶ 32, Ex. 27 at p. 79; *id.* ¶ 2, Ex. 1 at p. 24.) Fremont Union High SD “attempts to comply”
11 with the terms of its CBA. (*Id.* ¶ 2, Ex. 1 at pp. 22, 24.) Fremont Union High SD bases its evaluation
12 system on the CSTP, which provides no opportunity to evaluate teachers based on actual pupil
13 progress. (*Id.* ¶ 32, Ex. 27 at pp. 52-54.) Fremont Union High SD has not used, and still has no
14 intention to use, student assessment data to conduct summative evaluations of certificated personnel.
15 (*Id.* ¶ 37, Ex. 31 at Ex. “A”.) Fremont Union High SD has violated and continues to violate the Stull
16 Act.

17 **7. Inglewood Unified School District**

18 Inglewood USD’s CBA with its local teachers union, Inglewood Teachers Association,
19 provides that “[t]he evaluation of unit members . . . shall not include or be based upon . . .
20 [s]tandardized achievement test results.” (Lipshutz Decl. ¶ 35, Ex. 29 at p. 44; *id.* ¶ 2, Ex. 1 at p. 24.)
21 Inglewood USD “seeks compliance with the terms of the collective bargaining agreement to which it
22 has agreed.” (*Id.* ¶ 2, Ex. 1 at p. 24.)

23 Significantly, Inglewood USD’s teacher evaluation forms offer no opportunity to evaluate and
24 assess educators based on their students’ progress toward state academic content standards as
25 measured by state-adopted criterion-referenced assessments. (*Id.* ¶ 36, Ex. 30.) The forms simply
26 provide a small box, grouping “adherence to curriculum” and “pupil progress” into one category.
27 (Lipshutz Decl. ¶ 36, Ex. 30.) Because Inglewood USD’s CBA expressly prohibits evaluations from
28 including or being based on test results, the opportunity to evaluate a teacher’s effect on pupil

1 progress is, at best, incomplete and, at worst, illusory. Inglewood USD admits that it “administers the
2 state mandated and adopted summative criterion referenced assessments” each year, and that it
3 “receives the results of these summative assessments,” but it does not (and cannot) claim to use the
4 results of these assessments in any way when evaluating teachers, as required by the Stull Act.
5 (Lipshutz Decl. ¶ 37, Ex. 31 ¶¶ 5-7.) Inglewood USD violates the Stull Act.

6 **8. Ontario-Montclair School District**

7 Ontario-Montclair SD’s CBA with its local teachers union, Ontario-Montclair Teachers
8 Association, provides that “[t]he evaluation of unit members . . . shall not include or be based upon . .
9 . [s]tandardized test results.” (Lipshutz Decl. ¶ 38, Ex. 32 at p. 46; *id.* ¶ 2, Ex. 1 at p. 24.) Ontario-
10 Montclair SD admits that it “seeks compliance with the terms of the collective bargaining agreement
11 to which it has agreed.” (*Id.* ¶ 2, Ex. 1 at p. 25.) Like Inglewood USD, Ontario-Montclair SD further
12 admits that it “administers the state mandated and adopted summative criterion referenced
13 assessments” each year, and that it “receives the results of these summative assessments,” but it does
14 not (and cannot) claim to use the results of these assessments in any way when evaluating teachers, as
15 required by the Stull Act. (*Id.* ¶ 42, Ex. 35 ¶¶ 4-6.)

16 On October 23, 2015, in response to this lawsuit, Ontario-Montclair SD and the Ontario-
17 Montclair Teachers Association agreed to modify the district’s evaluation form and rubric, deleting
18 the offending language quoted above but adding the following offensive provisions, among others:
19 “Value Added Measures, may not be considered in evaluations”; “[t]he state adopted criterion
20 referenced assessment data may be used as part of formative assessment”; and “[t]he state adopted
21 criterion referenced assessment data may not be used as part of summative assessment.” (Lipshutz
22 Decl. ¶¶ 40-41, Ex. 34.) These unratified modifications make clear that Ontario-Montclair SD has
23 not used, and still does not plan to use, state-adopted criterion-referenced assessment data as part of
24 summative evaluations, in defiance of the Stull Act. Ontario-Montclair SD has violated and
25 continues to violate the Stull Act.

26 **9. Pittsburg Unified School District**

27 Pittsburg USD’s CBA with its local teachers union, Pittsburg Education Association, provides
28 that “[s]tandardized test scores shall not be used as evaluation data.” (Lipshutz Decl. ¶ 43, Ex. 36 at

1 p. 31; *id.* ¶ 2, Ex. 1 at p. 25.) Pittsburg USD admits that it “attempts to comply” with the terms of its
2 CBA. (*Id.* ¶ 2, Ex. 1 at pp. 22, 25.)

3 Pittsburg USD contends that, “[a]lthough language exists that read [sic] ‘Standardized test
4 scores shall not be used as evaluation data’ (Articles 10.6.2.4.3 and 10.13.7), the evaluation
5 documents support the evaluation of teacher performance as it reasonably relates to student
6 progress.” (*Id.* ¶ 45, Ex. 37 at Ex. “A1”.) But Pittsburg USD’s “evaluation documents” are based on
7 the CSTP, which do not connect pupil progress to teacher evaluations. (*Id.*) Pittsburg USD states
8 that “[a]dministrative-initiated, school-level, and teacher-initiated data (formative data) has been
9 provided and utilized as it relates to the performance of teachers.” (*Id.*) Pittsburg USD does not, and
10 cannot, assert that it conducts summative evaluations using student achievement data from state-
11 adopted criterion-referenced assessments. Pittsburg USD does not comply with the Stull Act.

12 **10. Saddleback Valley Unified School District**

13 Saddleback Valley USD’s CBA with its local teachers union, Saddleback Valley Educators
14 Association, provides that “[s]tudent performance on standardized tests shall not be used as part of
15 the evaluation of teachers.” (Lipshutz Decl. ¶ 46, Ex. 38 at p. 22; *id.* ¶ 2, Ex. 1 at p. 25.) Saddleback
16 Valley USD admits that it “seeks compliance with the terms of the collective bargaining agreement to
17 which it has agreed.” (*Id.* ¶ 2, Ex. 1 at p. 25.) The district further admits that it “administers the state
18 mandated and adopted summative criterion referenced assessments” each year, and that it “receives
19 the results of these summative assessments,” but it does not (and cannot) claim to use the results of
20 these assessments in any way when evaluating teachers, as required by the Stull Act. (*Id.* ¶ 49,
21 Ex. 40 at ¶¶ 4-6.) Saddleback Valley USD violates the Stull Act.

22 **11. San Ramon Valley Unified School District**

23 San Ramon Valley USD’s CBA with its local teachers union, San Ramon Valley Education
24 Association, provides that “[t]he evaluation and assessment of employee competency shall not
25 include the use of results from any tests.” (Lipshutz Decl. ¶ 50, Ex. 41 at p. 56; *id.* ¶ 2, Ex. 1 at p.
26 26.) San Ramon Valley USD admits that it “attempts to comply” with the terms of the CBA to which
27 it has agreed. (*Id.* ¶ 2, Ex. 1 at pp. 22, 26.)
28

1 San Ramon Valley USD’s evaluations are based on the CSTP. (*Id.* ¶ 52, Ex. 42, Ex. “A”.)
2 “While administrators review and consider the results of formative and summative assessments of
3 students assigned to certificated employees in determining their effectiveness, including classroom-
4 based, District-based, and state-adopted assessment results, the summative evaluations of certificated
5 employees do not include the results of any tests which are administered to their students.” (*Id.*) “A
6 new evaluation process for certificated employees, based upon the same standards and criteria as the
7 current process, was developed and approved for pilot implementation at five schools in the District
8 beginning in the 2015-16 school year.” (*Id.*) San Ramon Valley USD’s pilot evaluation forms,
9 policies, and procedures make clear that San Ramon Valley USD still has no intention of using
10 student test scores in summative evaluations of teachers. The new materials give a nod to student
11 learning, but only for the purpose of guiding and informing instruction—not for the purpose of
12 evaluating teacher performance, as required by the Stull Act. San Ramon Valley USD still violates
13 the Stull Act.

14 **12. Upland Unified School District**

15 Upland USD’s CBA with its local teachers union, Upland Teachers Association, provides that
16 “[t]he evaluation of unit members . . . shall not include or be based upon . . . standardized
17 achievement test results.” (Lipshutz Decl. ¶ 53, Ex. 43 at p. 36; *id.* ¶ 2, Ex. 1 at p. 26.) Upland USD
18 admits that it “generally seek[s] to abide by the terms” of the CBA to which it has agreed. (*Id.* ¶ 2,
19 Ex. 1 at p. 26.)

20 Upland USD seeks to justify its violation of the Stull Act by asserting that it “knows of no
21 effective and reliable method to directly use student achievement on criterion-referenced assessments
22 in evaluating teacher performance in party [sic] because the State provides no statistical method to
23 disaggregate teacher effectiveness from other internal and external factors affecting student
24 achievement.” (*Id.* ¶ 55, Ex. 44 ¶ 10.) Upland USD further claims that it “knows of no statistical
25 method to determine which certificated staff during a student’s career, has negatively or positively
26 influenced a particular achievement score.” (*Id.*) Of course, Upland USD’s purported lack of
27 knowledge regarding effective and reliable methods certainly does not mean such methods do not
28 exist or that it can simply refuse to comply with the Stull Act on alleged (and inaccurate)

1 “impossibility” grounds. (See *Doe v. Deasy* at p. 9 (Lipshutz Decl. ¶ 6, Ex. 5); see *LAUSD, supra*,
2 228 Cal.App.4th at p. 230-231.) Indeed, LAUSD and numerous other districts have developed
3 effective and reliable value-added methods to disaggregate a teacher’s performance from other
4 factors based on student test scores. (See, *supra*, pp. 21-22.) Upland USD cannot claim ignorance as
5 a basis for ignoring the law. Upland USD does not comply with the Stull Act.

6 13. Victor Elementary School District

7 Until October 2015, the operative CBA between Victor Elementary SD and the Victor
8 Elementary Teachers Association (“VETA”) expressly prohibited “[t]he evaluation [of teachers]”
9 from including “the use of student scores established by standardized tests.” (Lipshutz Decl. ¶ 58,
10 Ex. 46 at p. 39.) Victor Elementary SD “generally seek[s] to abide by the terms” of the CBA to
11 which it has agreed. (*Id.* ¶ 2, Ex. 1 at p. 26.) In response to this lawsuit, on October 7, 2015, Victor
12 Elementary SD and VETA agreed to strike the offensive language from the CBA, which now
13 provides that the performance evaluation and assessment of certificated employees will be based, in
14 part, on “[a]ssessing students for learning by using past performance data from multiple measures
15 (including the progress of students towards the Board’s established standards of expected pupil
16 achievement at each grade level in each area of study and state adopted academic content standards
17 measured by state-adopted criterion-referenced assessments, if applicable.)” (*Id.* ¶ 56, Ex. 45 at
18 p. 39; *id.* ¶ 59, Ex. 47 ¶ 3.) Additionally, Victor Elementary SD altered Standard 5.4 of its
19 Certificated Evaluation Form, which now provides: “Using assessment data [including state-adopted
20 criterion-referenced assessments] to establish learning goals and to plan, differentiate, and modify
21 instruction.” (*Id.* ¶¶ 56-57, Ex. 45 at Appendix D.)

22 Notwithstanding these cosmetic changes to the CBA and Certificated Evaluation Form, Victor
23 Elementary SD’s policies and procedures make clear that Victor Elementary has not evaluated, and
24 still has no plans to evaluate, teachers based on the progress of their students on standardized tests, as
25 required by the Stull Act. (See *id.* ¶¶ 56-57, Ex. 45 at Appendix D.) Victor Elementary SD’s
26 Certificated Evaluation Form is based on the CSTP, and thus does not include any factor of pupil
27 progress. The recent addition to the form only allows an evaluator to evaluate a teacher based on
28 how she ***uses assessment data to inform her own instruction.*** (*Id.*) In Victor Elementary SD,

1 administrators are taught to “utilize assessment results to identify areas of weakness to be addressed
2 on . . . a school-wide, department and individual level during the evaluation process.” (*Id.* ¶ 59,
3 Ex. 47 ¶ 4.) “[S]tudent achievement on State approved criterion-referenced assessments is not a
4 specific evaluative category in the evaluation matrix,” yet Victor Elementary SD claims “this data is
5 used in the evaluation process and in CSTP Standard 5.” (*Id.*) Victor Elementary SD asserts that
6 “[s]ite administrators are trained to, and in practice do, use the evaluation process to ensure that
7 effective classroom techniques and differentiated instruction are being utilized to specifically address
8 the weaknesses identified through available assessment data.” (*Id.* ¶ 6.) But, at best, “available data
9 is used to focus on those areas in which certificated staff must improve his or her classroom
10 technique and differentiated instruction to improve student progress outcomes.” (*Id.* ¶ 7.) Thus, like
11 the other Respondents, Victor Elementary SD admits that it uses student achievement data *only to the*
12 *extent the data inform instructional technique*, and does not consider student assessment data in
13 evaluations to determine whether students are actually learning. This violates the Stull Act because
14 there is not now, nor has there ever been, a practice of actually evaluating teachers based, in part, on
15 pupil progress on criterion-referenced assessments.

16 Like Upland USD, Victor Elementary SD claims it “knows of no effective and reliable
17 method to directly use student achievement on criterion-referenced assessments in evaluating teacher
18 performance because . . . the State provides no statistical method to disaggregate teacher
19 effectiveness from other internal and external factors affecting student achievement.” (*Id.* ¶ 13.)
20 Victor Elementary SD, too, claims that it “knows of no statistical method to determine which
21 certificated staff during a student’s career, has negatively or positively influenced a particular
22 achievement score.” (*Id.*) Victor Elementary SD’s contentions fail for the same reasons that Upland
23 USD’s do: reliable and effective methods exist; the districts just need to use them. The Stull Act is a
24 law that imposes obligations, not suggestions or debate topics. Victor Elementary SD has violated
25 and continues to violate the Stull Act.

26 **E. Petitioners Are Entitled To Attorneys’ Fees**

27 Code of Civil Procedure section 1021.5 authorizes the award of attorneys’ fees to a
28 “successful party” whenever “(1) [an] action has resulted in the enforcement of an important public

1 right affecting the public interest, (2) a significant benefit, whether pecuniary or nonpecuniary has
2 been conferred on the general public or a large class of persons and (3) the necessity and financial
3 burden of private enforcement are such as to make the award appropriate.” (*Conservatorship of*
4 *Whitley* (2010) 50 Cal.4th 1206, 1214 [quotation marks and citations omitted].) The “fundamental
5 objective” of this statute “is to encourage suits effectuating a strong public policy by awarding
6 substantial attorneys’ fees to those who successfully bring such suits” (*Daniels v. McKinney*
7 (1983) 146 Cal.App.3d 42, 49 [citations omitted] [italics deleted].)

8 If the Court grants Petitioners’ Motion for Writ of Mandate and issues a writ, Petitioners will
9 be “successful parties” within the meaning of Code of Civil Procedure section 1021.5. The term
10 “successful party” refers to any “party to litigation that achieves its objectives.” (*Graham v.*
11 *DaimlerChrysler Corp.* (2005) 34 Cal.4th 553, 571; see also *Maria P. v. Riles* (1987) 43 Cal.3d 1281,
12 1291 [finding that plaintiffs were “successful parties” because they “obtained an injunction to stop
13 enforcement of Education Code section 6957”].) An award of attorneys’ fees will be warranted
14 because this action will have (1) resulted in the enforcement of an important public right affecting
15 hundreds of thousands of students, parents, and taxpayers; (2) conferred a significant benefit on the
16 general public; and (3) because private enforcement of this action was necessary.

17 First, Petitioners’ success will result in the enforcement of an important right affecting the
18 public interest. Students, parents, guardians, and taxpayers all have a right to public school teachers
19 who are evaluated pursuant to state law. (See *Slayton v. Pomona Unified Sch. Dist.* (1984) 161
20 Cal.App.3d 538, 547-548 [enforcement of Education Code was important right for purposes of
21 section 1021.5]; *Doe et al. v. Deasy et al.* (Super. Ct. L.A. County, Dec. 11, 2012, No. BS134604),
22 Modified Tentative Decision Granting Motion for Attorneys’ Fees, pp. 2-3 (“*Order Granting*
23 *Attorneys’ Fees*”).)

24 Second, Petitioners will have conferred a significant benefit on the general public or a large
25 class of persons, directly benefiting hundreds of thousands of students and taxpayers. Additionally,
26 this action will benefit Respondents themselves, as well as the teachers and administrators in these
27 districts who previously were not evaluated in conformity with state law. (*Order Granting Attorneys’*
28 *Fees, supra*, at p. 3.)

1 Third, the necessity and substantial financial burden of private enforcement will make an
2 award of attorneys' fees appropriate. The fact that Respondents have not complied with the Stull Act
3 for years demonstrates that private enforcement is necessary. Further, there is no reason to believe
4 that Respondents would change their practices in the absence of this litigation. Finally, Petitioners
5 will have obtained no financial recovery in this matter from which they could pay their fees. An
6 award of attorneys' fees is appropriate when "the cost of the claimant's legal victory transcends his
7 personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff
8 out of proportion to his individual stake in the matter." (*Woodland Hills Residents Assn., Inc. v. City*
9 *Council of L.A.* (1979) 23 Cal.3d 917, 941; *Order Granting Attorneys' Fees, supra*, at p. 3.)

10 Thus, if successful, Petitioners will be entitled to reasonable attorneys' fees.⁵

11 V. CONCLUSION

12 Petitioners respectfully request that the Court grant Petitioners' Motion for Writ of Mandate,
13 issue a writ, and authorize an award of attorneys' fees and costs in favor of Petitioners and against
14 Respondents.

15
16 Respectfully submitted,

17 Dated: December 16, 2015

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19 By: /s/ Theodore J. Boutrous Jr.
Theodore J. Boutrous Jr.

20 Attorneys for Petitioners and Plaintiffs
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27 ⁵ Indeed, given the changes that Respondents have already made to their CBAs in response to this
28 litigation, Petitioners contend that they are already "successful parties" under Code of Civil
Procedure section 1021.5.