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12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

15
16 CALIFORNIA SCHOOL BOARDS
ASSOCIATION, ASSOCIATION OF
17 CALIFORNIA SCHOOL ADMINISTRATORS,
18 LOS ANGELES UNIFIED SCHOOL DISTRICT,
SAN FRANCISCO UNIFIED SCHOOL
19 DISTRICT, and TURLOCK UNIFIED SCHOOL
DISTRICT,

20
21 Petitioners/Plaintiffs,

22 v.

23 STATE OF CALIFORNIA; ANA J.
MATOSANTOS, in her official capacity as the
24 DIRECTOR OF FINANCE; TOM TORLAKSON,
in his official capacity as the SUPERINTENDENT
25 OF PUBLIC INSTRUCTION; and JOHN
CHIANG, in his official capacity as the STATE
26 CONTROLLER,

27 Respondents/Defendants,
28

CASE NO.:

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

**(Pursuant to CCP §§ 1085, 526, 526(a), 1060,
and 1062)**

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1 Petitioners/plaintiffs CALIFORNIA SCHOOL BOARDS ASSOCIATION, ASSOCIATION OF
2 CALIFORNIA SCHOOL ADMINISTRATORS, LOS ANGELES UNIFIED SCHOOL DISTRICT,
3 SAN FRANCISCO UNIFIED SCHOOL DISTRICT, and TURLOCK UNIFIED SCHOOL DISTRICT
4 (hereafter “petitioners”) bring this petition for writ of mandate and complaint for declaratory and
5 injunctive relief pursuant to California Code of Civil Procedure sections 1085, 1060, 526, and 526a
6 against respondents/defendants STATE OF CALIFORNIA, ANA J. MATOSANTOS, in her official
7 capacity as the DIRECTOR OF FINANCE, TOM TORLAKSON, in his official capacity as the
8 SUPERINTENDENT OF PUBLIC INSTRUCTION, and JOHN CHIANG, in his official capacity as the
9 STATE CONTROLLER (hereafter “respondents”) and allege as follows:
10

11 **INTRODUCTION**

12 In the 2011-12 Budget Act and related bills, the State chose to divert about \$2 billion of funding
13 from public education in order to promote other policy goals. In doing so, the State violated article XVI,
14 section 8 of the California Constitution, commonly referred to as the Proposition 98 “minimum funding
15 guarantee” for public education. (Cal. Const., art. XVI, § 8.) The State artificially lowered the
16 Proposition 98 minimum funding guarantee by redefining revenues that would otherwise be used to
17 calculate the minimum funding amount as “not General Fund revenues” and therefore not available for
18 Proposition 98 funding calculations.

19 The State recognized that its 2011-12 budget actions would violate the Constitution, and it
20 therefore created a convoluted and speculative plan to either retroactively render the diversion of funds
21 inoperative, depending on the outcome of November 2012 initiatives not yet drafted or qualified for the
22 ballot, or to restore the legally required funding at a later date. Rather than curing the constitutional
23 violation in the 2011-12 budget actions, the “repayment” mechanisms constitute an implicit admission
24 by the State that its actions were unconstitutional. Significantly, the proposed repayment provisions
25 allow for repayment at the discretion of the State rather than in accordance with the constitutionally
26 required formula, thus replacing a constitutional guarantee with a statutory commitment that can be later
27 changed by the Legislature.

28 The Constitution allows for “suspension” and restoration of the Proposition 98 minimum funding

1 guarantee only through extraordinary action by the Legislature. The Legislature may suspend the
2 guarantee and thereby appropriate less than the amount required by the formulas provided in article
3 XVI, section 8, but is only allowed it to do so by enactment of an urgency statute with a separate two-
4 thirds vote specifically focused on suspension, it only can suspend for one year, and it must restore the
5 suspended amount in accordance with a formula tied to the State’s growth in revenues and per capita
6 income. (Cal. Const., art. XVI, § 8, subd. (d) and subd. (h).) The Legislature made no attempt to
7 comply with these suspension provisions when it lowered the minimum funding guarantee in the 2011-
8 12 budget.

9 In fact, the Proposition 98 implementing legislation enacted shortly after the voters approved the
10 measure anticipated and prohibits just the sort of manipulation of the minimum funding guarantee
11 attempted in the 2011-12 budget. Education Code section 41204 provides that if funds are shifted out of
12 the General Fund and redirected for other purposes, the State is required to recalculate the Proposition
13 98 minimum funding guarantee in a manner intended to hold public education funding harmless. The
14 State’s 2011-12 budget actions violate the constitutional principle specifically set forth in the
15 implementing legislation.

16 After several years of cuts to public education and suspension of the Proposition 98 guarantee in
17 2010-11, in 2011-12 education was entitled to receive a badly needed increase in funding. Proposition
18 98 was designed to ensure that—at a minimum—K-14 funding would be equal to a fixed percentage of
19 General Fund revenues. In the 2011-12 budget, the State unlawfully avoided this requirement by
20 manipulating the minimum funding guarantee and redirecting a portion of Proposition 98 funding to
21 other purposes without adjusting the calculation to reflect the constitutional requirement. If the actions
22 taken in the 2011-12 budget are allowed to stand, the “guarantee” of Proposition 98 will be eviscerated.
23 The State’s attempt to define away its constitutional obligation for public education funding must be
24 declared unlawful and state officials must be directed to implement Proposition 98 in accordance with
25 law.

26 **PARTIES**

27 1. Petitioner CALIFORNIA SCHOOL BOARDS ASSOCIATION and its EDUCATION
28 LEGAL ALLIANCE (“CSBA”) is, and was at all relevant times, a California nonprofit corporation duly

1 formed and validly existing under the law of the State of California. CSBA is a member-driven
2 association composed of the governing boards of nearly 1,000 K-12 school districts and county boards
3 of education throughout California. CSBA supports local school board governance and advocates on
4 behalf of school districts and county offices of education before state and federal education policy-
5 makers. The EDUCATION LEGAL ALLIANCE (“Alliance”) is composed of over 800 CSBA
6 members dedicated to addressing legal issues of statewide concern to school districts. The Alliance has
7 authorized this litigation. All references herein to “CSBA” include the Alliance. CSBA and its
8 members are directly affected by the State’s appropriations to K-12 school districts; any error in the
9 calculation of the State’s minimum funding guarantee pursuant to article XVI, section 8 (“Proposition
10 98”) which results in less funding for education than is legally required directly impacts CSBA and its
11 members. CSBA brings this action on its own behalf and on behalf of its members. CSBA members
12 would otherwise be entitled to bring this suit in their own right, the interests that CSBA seeks to protect
13 in this litigation are germane to its purpose, and neither the claim nor the relief sought herein require the
14 participation of individual members.

15 2. Petitioner ASSOCIATION OF CALIFORNIA SCHOOL ADMINISTRATORS

16 (“ACSA”) is a California nonprofit corporation and a member-driven association composed of the
17 superintendents and other administrators at all levels of K-12 school programs with over 16,000
18 members in K-12 school districts throughout the State of California. The purpose of ACSA, among
19 other things, is to ensure that all students attending K-12 schools in California have the skills,
20 knowledge, and environment they need to learn and that funding for state programs is provided to school
21 districts for those purposes. ACSA and its members are directly affected by the State’s appropriations to
22 K-12 school districts; any error in the calculation of the State’s minimum funding guarantee pursuant to
23 article XVI, section 8 (“Proposition 98”) which results in less funding for education than is legally
24 required directly impacts ACSA and its members. ACSA brings this action on its own behalf and on
25 behalf of its members. ACSA members would otherwise be entitled to bring this suit in their own right,
26 the interests that ACSA seeks to protect in this litigation are germane to its purpose, and neither the
27 claim nor the relief sought herein require the participation of individual members.

28 3. Petitioner LOS ANGELES UNIFIED SCHOOL DISTRICT (“LAUSD”) is a unified

1 school district duly formed in accordance with law and possessing those powers set forth in the
2 California Constitution and the laws of the State of California. LAUSD operates 1,092 schools,
3 including 526 elementary schools, 131 middle schools, 140 high schools, 173 charter schools, and 122
4 alternative school programs. LAUSD maintains 24 community adult schools and 206 early education
5 centers or preschools. LAUSD enrolls more than a million K-12 students. LAUSD receives funding
6 from the State of California in order to provide the State’s required educational program and is directly
7 harmed by the State’s failure to comply with the education funding requirements of article XVI, section
8 8 of the California Constitution (“Proposition 98”). On behalf of its students, LAUSD also asserts that
9 its students are being harmed or at substantial risk of being harmed by the State’s failure to provide
10 funding as required by Proposition 98.

11 4. Petitioner SAN FRANCISCO UNIFIED SCHOOL DISTRICT (“SFUSD”) is a unified
12 school district duly formed in accordance with law and possessing those powers set forth in articles IX
13 and XVI of the California Constitution and the laws of the State of California. SFUSD, which also
14 serves as the County Office of Education, operates 104 schools including 65 elementary schools, 13
15 middle schools, 17 high schools, and nine alternatively configured schools. SFUSD enrolls
16 approximately 55,000 students. SFUSD receives funding from the State of California in order to
17 provide the State’s required educational program and is directly harmed by the State’s failure to comply
18 with the education funding requirements of article XVI, section 8 of the California Constitution
19 (“Proposition 98”). On behalf of its students, SFUSD also asserts that its students are being harmed or
20 at substantial risk of being harmed by the State’s failure to provide funding as required by Proposition
21 98.

22 5. Petitioner TURLOCK UNIFIED SCHOOL DISTRICT (“TUSD”) is a unified school
23 district duly formed in accordance with law and possessing those powers set forth in articles IX and XVI
24 of the California Constitution and the laws of the State of California. TUSD operates 13 schools
25 including 9 elementary schools, 2 middle/junior high schools, 3 high schools and one alternatively
26 configured charter school. In addition, TUSD has an adult school with 1600 students and a preschool
27 with 300 students. TUSD enrolls approximately 13,700 students. TUSD receives funding from the
28 State of California in order to provide the State’s required educational program and is directly harmed

1 by the State’s failure to comply with the education funding requirements of article XVI, section 8 of the
2 California Constitution (“Proposition 98”). On behalf of its students, TUSD also asserts that its students
3 are being harmed or at substantial risk of being harmed by the State’s failure to provide funding as
4 required by Proposition 98.

5 6. Respondent STATE OF CALIFORNIA (“State”) is the legal and political entity required
6 by article IX of the California Constitution to provide an educational system for California students. In
7 1988, voters adopted Proposition 98, now codified in article XVI, section 8, to require the State to
8 provide K-14 education with minimum funding each year in accordance with the formulas provided by
9 that provision. While the formulas were slightly modified in 1990 by Proposition 111, the State remains
10 responsible for ensuring that K-14 receives its constitutionally required share of state revenues each
11 year.

12 7. Respondent ANA J. MATOSANTOS (“Director of Finance”) is the Director of the
13 Department of Finance (“DOF”) for the State of California. The Director of Finance has general
14 powers of supervision over all matters concerning the financial and business policies of the State. (Gov.
15 Code, § 13070.) As the chief fiscal advisor to the Governor, the Director of Finance directs the
16 preparation of the Governor's Budget each year. She also has a statutory duty to propose necessary
17 adjustments to the Governor's Budget each May. (Gov. Code, § 13308.) Together with the
18 Superintendent of Public Instruction, respondent MATOSANTOS is responsible for calculating and
19 certifying the minimum school funding guarantee of article XVI, section 8 of the California
20 Constitution. (Ed. Code, § 41206, subd. (b).) MATOSANTOS is named herein in her official capacity
21 only.

22 8. Respondent TOM TORLAKSON is the Superintendent of Public Instruction (“SPI”) for
23 the State of California. Respondent TORLAKSON is responsible for the administration of the State's
24 K-12 education system, including certification of the amount required to be appropriated for that system
25 pursuant to Proposition 98. (Ed. Code, § 41206, subd. (b).) Respondent TORLAKSON is named in this
26 action for remedial purposes only. References to “respondents” herein do NOT refer to TORLAKSON
27 unless specifically indicated.

28 9. Respondent JOHN CHIANG is the Controller of the State of California and is sued in his

1 official capacity. Respondent CHIANG is responsible for the administration of the State's finances,
2 including school funding, and is responsible for allocating money to meet deficiencies in Proposition 98
3 funding. Respondent CHIANG is named in this action for remedial purposes only. References to
4 “respondents” herein do NOT refer to CHIANG unless specifically indicated.
5

6 **JURISDICTION**

7 10. This Court has jurisdiction over this matter and authority to issue a writ of mandate
8 pursuant to Code of Civil Procedure section 1085. Petitioners are beneficially interested in the proper
9 construction and enforcement of article XVI, section 8 of the California Constitution and the
10 respondents’ legal duties arising from that provision, and have no other adequate remedy at law to
11 enforce those duties.

12 11. This Court has jurisdiction over this matter and authority to issue permanent and
13 temporary injunctions pursuant to Code of Civil Procedure sections 526 and 526a.

14 12. This Court has authority to issue declaratory relief pursuant to Code of Civil Procedure
15 sections 1060 and 1062. There is an actual controversy between petitioners and respondents concerning
16 the proper construction to be given article XVI, section 8 of the California Constitution and specifically
17 whether certain provisions in the 2011-12 Budget Act and the related trailer bills violate that
18 constitutional provision.

19 **FACTUAL ALLEGATIONS**

20 **[History and Purpose of Proposition 98]**

21 13. On November 8, 1988, the people of the State of California adopted Proposition 98,
22 which amended article XVI, section 8 of the California Constitution to provide a guaranteed minimum
23 funding level for K-12 public schools and community college districts. References in this petition to
24 “Proposition 98” are to the provisions of article XVI, section 8 of the Constitution.

25 14. The basic purpose of Proposition 98 is to provide public schools and community college
26 districts with a guaranteed and stable source of funding and to ensure that, over time, education spending
27 grows with the economy and state General Fund revenues.

28 15. Proposition 98 amended subdivision (a) of section 8 of article XVI of the California

1 Constitution to provide that “[f]rom all state revenues there *shall first be set apart* the moneys to be
2 applied by the State for support of the public school system and public institutions of higher education.”
3 (Emphasis added.) Section 8 requires the State to “first set apart” an amount of money each year for
4 education-related appropriations that is not less than the amount determined by the formulas contained
5 in section 8, subdivision (b).

6 16. Subdivision (b) of section 8 provides that the moneys to be applied by the State for the
7 support of school districts and community colleges is required to be the higher of (1) “[t]he amount
8 which, as a percentage of General Fund revenues which may be appropriated pursuant to Article XIII B,
9 equals the percentage of General Fund revenues appropriated for school districts and community college
10 districts, respectively, in fiscal year 1986-87” (referred to as Test 1) or (2) the amount actually allocated
11 for school districts and community college districts in the previous fiscal year, adjusted for changes in
12 enrollment and inflation (referred to as Test 2). Proposition 111, adopted in 1990, provided an
13 alternative method for calculating a lower inflation factor in years with relatively slow growth in
14 General Fund revenues, leading to an alternative commonly referred to as Test 3. (Cal. Const., art. XVI,
15 § 8, subd. (b).)

16 17. Although Proposition 111 amended Proposition 98 to provide additional fiscal flexibility
17 to the State, it did not change the underlying purpose of Proposition 98 and specifically did not change
18 the “percentage of revenue” test provided by Proposition 98 (Test 1). Absent specific identification to
19 the contrary, references made hereafter to “Proposition 98” include the 1990 amendments added by
20 Proposition 111.

21 18. Proposition 98 provides the Legislature with the authorization to suspend the
22 constitutional minimum funding guarantee and thereby appropriate an amount that is less than the
23 amount required by the formulas provided in article XVI, section 8, but it is only allowed to do so for
24 one year, and it is only allowed it to do so by enactment of an urgency statute with a separate two-thirds
25 vote specifically focused on suspension. (Cal. Const., art. XVI, § 8, subd. (h).)

26 19. If the Legislature votes to suspend the minimum funding obligation in a given year, the
27 State must restore the difference between the amount that was constitutionally required and the amount
28 that was actually appropriated – the “maintenance factor” – and it must restore those amounts in

1 accordance with a formula tied to the State’s growth in revenues and per capita income. (Cal. Const.,
2 art. XVI, § 8, subd. (d).)

3 20. Proposition 98 can only be amended to further its purposes by a two-thirds vote of the
4 Legislature. (Proposition 98, § 13.)

5 **[Statutory Implementation of Proposition 98]**

6 21. In 1989, shortly after voters approved Proposition 98, the Legislature enacted by a two-
7 thirds vote a series of statutes, commencing with Education Code section 41200, in order to implement
8 the constitutional guarantee and define the terms used in Proposition 98. In Education Code section
9 41200, the Legislature found and declared that “by defining certain terms used in establishing a method
10 of calculation for determining the guaranteed minimum level of funding, Section 14022.3, 14022.5
11 [provisions defining enrollment] and this chapter further the purposes of [Proposition 98].” (Stats. 1989,
12 ch. 83, § 8.)

13 22. Education Code section 41202 defines “General Fund revenues which may be
14 appropriated pursuant to article XIII B” as General Fund revenues that are the “proceeds of taxes” under
15 article XIII B, section 8. “Proceeds of taxes” for purposes of article XIII B include all tax revenues,
16 certain fees and the investment of tax revenues.

17 23. The Legislature also enacted Education Code section 41204, which contained several
18 provisions – termed “anti-manipulation” provisions – that stated the intent of the Legislature that public
19 education “annually receive a basic minimum portion of the revenues that is equivalent to the percentage
20 of revenues that were deposited to the General Fund in [1986-87]” and “that both houses and the
21 Governor be guided by” several principles in future implementation of Proposition 98.

22 24. Section 41204, subdivision (b)(1) provides that “[i]f the revenues of a tax that were
23 deposited in the General Fund in the 1986-87 fiscal year are redirected to another fund, or level of
24 government, then the percentages of General Fund revenues required to be applied by the state for the
25 support of school districts, community college districts, and state agencies providing direct elementary
26 and secondary level instructional services shall be recalculated as if those revenues were not deposited
27 in the General Fund in the 1986-87 fiscal year.”

28 25. When Proposition 98 was initially implemented in 1988-89, Test 1 was used as there was

1 no prior year spending. However, since that time, the minimum guarantee has historically been
2 determined by either Test 2 or 3. This means that education spending in the prior fiscal year, adjusted in
3 accordance with per Proposition 98 or 111, has always been higher than the amount determined by
4 applying the 1986-87 percentage of General Fund revenues.

5 **[The 2011-12 Budget Act and Trailer Bills]**

6 26. In January, 2011, the Governor submitted a proposed 2011-12 budget to the Legislature.
7 Budget documents submitted with the proposed budget indicated that state revenues would increase in
8 both the 2010-11 and 2011-12 fiscal years assuming the State extended a set of limited term taxes.
9 Because the State had suspended the Proposition 98 minimum guarantee for 2010-11, the rise in 2010-
10 11 revenues did not result in increased education spending. A combination of multiple years of
11 education cuts and the suspension of the Proposition 98 minimum guarantee in 2010-11 resulted in
12 education's share of General Fund revenues decreasing to the point that Test 1 (the "percentage of
13 revenues" test) became operative for the first time since the initial implementation of Proposition 98.

14 27. On June 28, 2011 the Legislature enacted, and on June 30, 2011 the Governor signed, the
15 Budget Act (Stats. 2011, ch. 33 [SB 87]) and a series of "trailer bills" designed to implement the budget
16 assumptions. AB 114 (Stats. 2011, ch. 43) is the education trailer bill. AB 118 (Stats. 2011, ch. 40) is a
17 general government trailer bill that includes changes to the Revenue & Tax Code.

18 28. Despite the fact that the revenue projections in the final 2011-12 budget would have
19 required an increase in the Proposition 98 minimum funding guarantee for this fiscal year, funding for
20 K-14 public education in the final 2011-12 Budget Act remained virtually flat. The Legislature
21 accomplished this by excluding approximately \$5 billion of available General Fund revenues which had
22 previously been included within the Test 1 calculation, thereby lowering the Test 1 amount and the
23 minimum guarantee for 2011-12.

24 29. The Legislative Analyst's Office explained that "the budget diverts 1.0625 cents of the
25 state's SUT [Sales & Use Tax revenues] (approximately \$5.1 billion) to counties and cities and excludes
26 these revenues from the Proposition 98 calculation. This reduces the minimum guarantee by \$2.1
27 billion." ("The 2011-12 California Spending Plan" (Aug. 2011) p. 17.)

28 30. The State thus diverted \$5.1 billion in General Fund revenues to a newly created special

1 fund and deducted these revenues from the Proposition 98 base calculations. Specifically, the education
2 trailer bill added sections 41210 and 41211 to the Education Code. (Stats. 2011, ch. 43, §§ 15-16 [AB
3 114].) Subdivision (a) of section 41210 provides that “[t]he revenues transferred pursuant to Section
4 6015.15 [sic – apparently a reference to section 6051.15, sales tax] and 6201.15 [use tax] of the
5 Revenue & Taxation Code are *not* ‘General Fund revenues’ as that term is used in Section 8 of Article
6 XVI of the California Constitution.” (Emphasis added.) Contrary to Education Code section 41204, the
7 State did not adjust the percentage of revenues that must be appropriated to satisfy Test 1 to hold
8 education harmless for this diversion of funds.

9 31. The sales and use tax revenues provided in Revenue and Taxation Code sections 6051 *et*
10 *seq.* and 6201 *et seq.* have historically been considered General Fund revenues and have been treated as
11 General Fund revenues in prior budgets for purposes of Proposition 98 calculations. Those revenues are
12 available for state appropriation under article XIII B as a matter of law, and are required to be included
13 in the minimum funding calculations required by Proposition 98.

14 32. New Revenue & Taxation Code sections 6051.15 and 6201.15 provide for a fixed
15 percentage (1.0625%) of existing sales and use tax revenues to be diverted to a Local Revenue Fund
16 2011 (“LRF”). (Stats. 2011, ch. 39, §§ 9-10 [AB 118].) The LRF, created by new Government Code
17 section 30025, is intended to fund the realignment of certain public safety services from the State to
18 local governments. (Stats. 2011, ch. 39, § 3 [AB 118].)

19 33. By its terms, the diversion of funds from the General Fund to the LRF is intended to
20 provide the State with temporary relief from the requirements of Proposition 98. While section 41210,
21 subdivision (a), defines the diverted tax revenues as “not General Fund revenues,” subdivision (b)
22 provides that this restriction will only be effective for 2011-12 and subsequent years “*so long as*” a
23 ballot measure is approved in November 2012 that replaces those revenues.

24 34. Section 41211 applies if there is no ballot measure that replaces those revenues.
25 Subdivision (a) of section 41211 requires the Director of Finance to recalculate the 2011-12 Proposition
26 98 minimum guarantee to include the General Fund revenue lost as a result of section 41210 and
27 subdivision (b) provides that the amount so calculated will be restored to K-14 education over five
28 years. Subdivision (d) of section 41211 provides that the Proposition 98 minimum guarantee

1 calculations for 2011-12 and thereafter will include the amount determined to have been lost as a result
2 of section 41210, *i.e.*, the amount diverted from the General Fund, and that such amount will be returned
3 to the “base” for purposes of calculating the constitutional minimum funding guarantee for 2011-12 and
4 thereafter.

5 35. The specific purpose and effect of sections 41210 and 41211 is to artificially reduce
6 funding for K-14 education for 2011-12 below the constitutionally required minimum with the intention
7 of restoring a like amount either through a ballot measure next year or with a five year repayment plan,
8 but to do so without complying with the requirements for suspension and restoration provided in article
9 XVI, section 8.

10 36. Although section 41211 anticipates a future five year repayment plan, that repayment
11 plan is subject to future legislative action or modification, and the provisions requiring restoration of the
12 base could likewise therefore be legislatively modified. Repayment is therefore completely subject to
13 the political process and there is no guarantee that the legislative repayment would provide school
14 districts with funding that meets the requirements of article XVI, section 8.

15 37. The Legislature’s actions represent a direct attempt to evade the minimum funding
16 requirements of Proposition 98. Test 1 of Proposition 98 expresses an intent to fix the minimum
17 percentage of education spending as of 1986-87 and to then apply that percentage in subsequent years to
18 all revenues available for appropriation under article XIII B – the appropriations limit provisions of the
19 Constitution. This intent was clearly reflected in Education Code section 41204, subdivision (b)(1),
20 adopted shortly after Proposition 98 itself, which requires that if tax revenues that would otherwise be
21 included in the Proposition 98 calculation are removed or moved elsewhere, the Test 1 percentage must
22 be recalculated as if those revenues had not been part of the General Fund in 1986-87.

23 38. Section 41204 represents the longstanding legislative construction of the constitutional
24 funding guarantee of Proposition 98 and specifically the calculation of Test 1, or the percentage of
25 revenues test. Section 41204 reflects the historic understanding that the minimum funding requirement
26 cannot be subverted or evaded by manipulation of General Fund revenues and that voluntary legislative
27 changes in the mix of available state revenues must be done in such a way as to hold public education
28 harmless for purposes of the minimum funding guarantee.

1 39. Previous legislative changes to General Fund revenues have, in fact, acknowledged and
2 reflected the need to hold education funding harmless from those changes in accordance with the
3 constitutional intent of Proposition 98 and the specific requirement of Education Code section 41204.
4 As recently as March 2011, when the State converted a sales tax on gasoline (a General Fund revenue)
5 into an excise tax (a non-General Fund revenue), it made an adjustment in the Test 1 percentage of
6 General Fund in order to hold education harmless for the tax policy change. New Education Code
7 section 41204.2 directs the Director of Finance to “adjust the [Test 1 percentage] in a manner that
8 ensures that the shift of General Fund revenues, pursuant to [various Revenue & Taxation provisions]
9 shall have no net fiscal impact upon the amounts that are otherwise required to be applied by the state
10 for the support of school districts and community college districts pursuant to Section 8 of Article XVI
11 of the California Constitution.” (Stats. 2011, ch. 7 [SB 70] § 23.7.)

12 40. The language of new Education Code sections 41210 and 41211 reflect the Legislature’s
13 virtual acknowledgement that its actions were not constitutionally permissible. The “temporary”
14 reduction in education funding conditioned on the promise of a statutory repayment plan, even if well-
15 intentioned, represents a deliberate manipulation and evasion of the constitutional guarantee with little
16 more than a promise to pay the amount owed later – a promise that may be virtually impossible to keep
17 if economic conditions continue to be dire.

18 41. The Legislature’s actions, if permitted, would allow the State to avoid its constitutional
19 obligation to provide minimum education funding each and every year in accordance with the specific
20 requirements of Article XVI, section 8. It would make the annual minimum guarantee of Proposition 98
21 illusory.

22 42. The Budget Act fixes the amount of the 2011-12 minimum funding requirement under
23 Test 1 of Proposition 98 at \$ 32,879,227,000. (Stats. 2011, ch. 33, § 12.32 [SB 87].) Upon information
24 and belief, this amount is approximately \$2.1 billion less than the amount constitutionally required by
25 article XVI, section 8 for 2011-12 if the diverted sales and use tax revenues had remained in the General
26 Fund. Alternatively, upon information and belief, this amount is approximately \$2.7 billion less than the
27 amount constitutionally required if the re-benching methodology in Education Code section 41204,
28 subdivision (b)(1) had correctly been implemented. In either case, the precise amount of the shortfall

1 cannot be known until the close of the fiscal year.

2 43. The reduction of approximately \$2 billion in state funding for public education translates
3 directly to a corresponding reduction in funding to school districts and schools throughout the State.
4 This reduction in funding will reduce available educational resources and adversely impact students
5 throughout the state.

6 **[The Proposition 98 Certification Process]**

7 44. The precise level of funding required each year under Proposition 98 is based on final
8 revenues, attendance and personal income figures for that fiscal year and thus changes as those figures
9 change. For purposes of preparation of the budget, the State is directed to use the “best available
10 estimate until actual data becomes available.” (Ed. Code, § 41206, subd. (a).)

11 45. Within nine months following the end of any fiscal year, the Superintendent of Public
12 Instruction and the Director of Finance are required to recalculate, as necessary, and jointly certify all
13 actual data pertaining to school districts. (Ed. Code, § 41206, subd. (b).)

14 46. If the certification reveals a deficiency in the funding for that fiscal year, the Controller is
15 required to set aside the amount necessary to make up the shortfall. If the Legislature fails to
16 appropriate the funds set aside to remedy the minimum funding guarantee shortfall within 90 days, such
17 funds “shall be allocated by the Controller” to the school districts. (Ed. Code, § 41206, subd. (b)(1).)
18 Any such appropriation is deemed to be an appropriation in the fiscal year in which the deficiency
19 occurred unless otherwise provided by law.
20

21 **FIRST CAUSE OF ACTION**
22 **Writ of Mandate – Code of Civil Procedure Section 1085**
(Violation of Article XVI, Section 8 of the California Constitution)

23 47. Petitioners re-allege and incorporate by reference as if fully set forth herein the
24 allegations of paragraphs 1 through 46 above.

25 48. Respondents and those public officers and employees acting by and through their
26 authority, have a clear, present and ministerial duty to comply with the requirements of article XVI,
27 section 8, of the California Constitution. Education Code sections 41210 and 41211, added by sections
28 15 and 16 of AB 114, and the calculation of the minimum funding guarantee set forth in section 12.32 of

1 the 2011-12 Budget Act (AB 87) violate that duty.

2 49. Petitioners have no plain, speedy, or adequate remedy at law to correct that failure.

3 50. Petitioners are beneficially interested in a peremptory writ of mandate compelling
4 respondents and those public officers and employees acting by and through their authority, to re-
5 calculate the minimum funding guarantee required in 2011-12 in accordance with article XVI, section 8
6 without regard to the provisions of Education Code section 41210 and 41211 and directing respondents,
7 including respondents Torlakson and Chiang, to take such steps as are necessary to implement such re-
8 calculation in a way that ensures that K-14 schools and school districts receive no less than the
9 constitutionally required minimum level of funding or in accordance with a plan to be approved by the
10 Court that holds education funding harmless for the changes enacted in the 2011-12 Budget Act and
11 related legislation.

12
13 **SECOND CAUSE OF ACTION**
14 **Declaratory Relief - Code of Civil Procedure § 1060**
(Violation of Article XVI, Section 8 of the California Constitution)

15 51. Petitioners re-allege and incorporate by reference as if fully set forth herein the
16 allegations contained in paragraphs 1 through 50 above.

17 52. An actual controversy has arisen and now exists between the petitioners and respondents
18 as to the requirement imposed upon the State by article XVI, section 8 of the California Constitution.
19 Petitioners contend that Education Code sections 41210 and 41211, added by sections 15 and 16 of AB
20 114, and section 12.32 of the 2011-12 Budget Act (SB 87) violate article XVI, section 8 of the
21 California Constitution, while respondents contend that these provisions do not violate article XVI,
22 section 8.

23 53. Petitioners desire a judicial determination of their rights and a declaration of whether
24 Education Code sections 41210 and 41211, added by sections 15 and 16 of AB 114, and section 12.32 of
25 the 2011-12 Budget Act (SB 87) violate article XVI, section 8. A judicial determination is necessary
26 and proper at this time and under these circumstances in order to determine whether the actions of
27 respondents in enacting and implementing these provisions are unlawful, and to determine the proper
28 construction of the requirements of article XVI, section 8 of the California Constitution for the 2011-12

1 fiscal year and the future.

2
3 **THIRD CAUSE OF ACTION**
4 **Injunction - Code of Civil Procedure § 526**
5 **(Violation of Article XVI, Section 8 of the California Constitution)**

6 54. Petitioners re-allege and incorporate by reference as if fully set forth herein the
7 allegations contained in paragraphs 1 through 53 above.

8 55. The actions of respondents have caused, and continue to cause, great and irreparable
9 harm to petitioners.

10 56. Petitioners request that, following a judicial declaration that Education Code sections
11 41210 and 41211, added by sections 15 and 16 of AB 114, and section 12.32 of the 2011-12 Budget Act
12 (SB 87) violate article XVI, section 8, respondents and those public officers and employees acting by
13 and through their authority be directed to take such actions as are necessary to recalculate the minimum
14 funding guarantee required in 2011-12 in accordance with article XVI, section 8 without regard to the
15 provisions of Education Code section 41210 and 41211 and that respondents, including respondents
16 Torlakson and Chiang, be directed to take such steps as are necessary to implement such re-calculation
17 in a way that ensures that K-14 schools and school districts receive no less than the constitutionally
18 required minimum level of funding, and that the Court retain jurisdiction over this matter until such time
19 as the Court has determined that the respondents have fully and properly fulfilled its orders.

20 WHEREFORE, Petitioners/Plaintiffs pray for relief as follows:

- 21 1. That this Court order the issuance of the peremptory writ of mandate as requested;
- 22 2. That this Court issue a declaratory judgment as requested;
- 23 3. That this Court direct respondents/defendants, and those public officers and employees
24 acting on their behalf, to recalculate the minimum funding guarantee required in 2011-12 in accordance
25 with article XVI, section 8 and the orders of this Court and that the Court retain jurisdiction over this
26 matter until such time as it has determined that the respondents/defendants have fully and properly
27 fulfilled its orders.
- 28 4. That this Court order an award of attorneys fees to petitioners/plaintiffs; and

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5. That this Court provide such other and further legal and/or equitable relief as it deems appropriate.

Dated: September ____, 2011

Respectfully submitted,

OLSON HAGEL & FISHBURN LLP
Deborah B. Caplan
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By: _____
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