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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF CONTRA COSTA**
12

13 MARK S., BY AND THROUGH HIS
GUARDIAN AD LITEM, ANNA S., ROSA T.,
14 BY AND THROUGH HER GUARDIAN AD
LITEM SOFIA L., AND JESSICA BLACK,
15 MICHELL REDFOOT, AND DR. NEFERTARI
ROYSTON, AS TAXPAYERS,

16 Plaintiffs and Petitioners,
17

18 v.

19 STATE OF CALIFORNIA; TONY
THURMOND, in his official capacity as STATE
SUPERINTENDENT OF PUBLIC
20 INSTRUCTION; STATE BOARD OF
EDUCATION; CALIFORNIA DEPARTMENT
21 OF EDUCATION; and PITTSBURG UNIFIED
SCHOOL DISTRICT, DOES 1-100,
22 INCLUSIVE

23 Defendants and Respondents.
24
25
26
27
28

Case No. N21-1755

UNLIMITED JURISDICTION

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS CALIFORNIA
DEPARTMENT OF EDUCATION, STATE
BOARD OF EDUCATION, STATE
SUPERINTENDENT TONY THURMOND,
AND JOINED BY DEFENDANT STATE
OF CALIFORNIA'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
DEMURRER**

Judge Edward G. Weil
Department 39
Time: 9:00 A.M.
Date: February 24, 2022

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1 **INTRODUCTION**

2 Student Plaintiffs Mark S. and Rosa T., through their guardians ad litem, Anna S. and
3 Sofia L., and Taxpayer Plaintiffs Jessica Black, Michell Redfoot, and Dr. Nefertari Royston
4 (collectively, “Plaintiffs”), respectfully request that this Court deny the Request for Judicial
5 Notice of Exhibits 1-17 in support of Defendants State Board of Education, California
6 Department of Education (“CDE”), and State Superintendent of Public Instruction Tony
7 Thurmond’s Demurrer in which they are joined by Defendant State of California (collectively,
8 “State Defendants”). The State Defendants seek to rely on these Exhibits for the truth of the facts
9 contained therein, and such reliance is an impermissible use of judicial notice.

10 **ARGUMENT**

11 California Evidence Code section 451 specifies certain matters about which a court must
12 take judicial notice, such as decisional and statutory law of this state. Under Evidence Code
13 section 452, a court “may” take judicial notice of additional specified matters. The only
14 discretionary categories relevant to the proffered exhibits are:

15 Official acts of the legislative, executive, and judicial departments
16 of the United States and of any state of the United States.

17 Facts and propositions that are of such common knowledge within
18 the territorial jurisdiction of the court that they cannot reasonably be
the subject of dispute.

19 Facts and propositions that are not reasonably subject to dispute and
20 are capable of immediate and accurate determination by resort to
sources of reasonably indisputable accuracy.

21
22 Cal. Evid. Code § 452(c), (g), (h). “A matter ordinarily is subject to judicial notice only if the
23 matter is reasonably beyond dispute. Although the **existence** of a document may be judicially
24 noticeable the truth of statements contained in the document and its proper interpretation are not
25 subject to judicial notice if those matters are reasonably disputable.” *Fremont Indem. Co. v.*
26 *Fremont Gen. Corp.*, 148 Cal. App. 4th 97, 113 (2007) (citation omitted) (emphasis original);
27 *accord Arce v. Kaiser Found. Health Plan, Inc.*, 181 Cal. App. 4th 471, 482 (2010) (“While we
28 may take judicial notice of court records and official acts of state agencies, the truth of the

1 matters asserted in such documents is not subject to judicial notice.”) (citations omitted). Here,
2 the State Defendants seek to rely on these Exhibits for the truth of the facts contained therein,
3 and such reliance is an impermissible use of judicial notice under section 452 of the California
4 Evidence Code.¹ The State Defendants’ request should be denied.²

5 **I. Exhibits 1, 2, and 3 Are Not Subject to Judicial Notice Pursuant to Evidence Code**
6 **Section 452**

7 State Defendants request judicial notice of Exhibits 1, 2, and 3. Exhibit 1 is the CDE
8 Special Education Division’s Disproportionality Calculation Methodologies. Exhibit 2 is a Letter
9 to Woolsey, Office of Special Education Programs, 61 IDELR 144, June 26, 2012. Exhibit 3 is a
10 copy of a February 23, 2017 Questions and Answers on IDEA Part B—Significant
11 Disproportionality, Equity in IDEA, U.S. Department of Education, Office of Special Education
12 Programs, 69 Indiv. Disab. Educ. L. Rep. (IDELR).

13 Based on their Demurrer, State Defendants are requesting judicial notice of Exhibit 1 to
14 support their argument that the CDE adopted a risk ratio of 3 to 1 to analyze data and identify
15 school districts that disproportionately identify, segregate, and discipline students based on race
16 and that this ratio has been judicially approved. Mem. of P&A in Supp. of Defs.’ CDE, Tony
17 Thurmond, and SBE’s Dem. to Pls.’ Compl. 7 (“State MPA ISO Dem.”). Similarly, State
18 Defendants request judicial notice of Exhibits 2 and 3 in order to prove how the CDE’s
19 determination of significant disproportionality triggers an analysis of policies, procedures, and
20 practices to determine root causes. *Id.* The Court should deny the request, as this is an
21 impermissible use of judicial notice. State Defendants cannot show that the information “is ‘not
22 reasonably subject to dispute’ and . . . is ‘capable of immediate and accurate determination by
23 resort to sources of reasonably indisputable accuracy’” as required by section 452, subdivision
24 (h). *Duronslet v. Kamps*, 203 Cal. App. 4th 717, 737 (2012) (citation omitted). State Defendants
25 improperly rely on these documents for the truth of statements contained therein. *See Fremont*
26 *Indem. Co.*, 148 Cal. App. 4th at 113. The documents cannot demonstrate that CDE intends to or

27 ¹ Unless otherwise noted, all section references hereafter are to the California Evidence Code.

28 ² The State Defendants’ Request for Judicial Notice fails to provide any reasoning to support its
request for judicial notice. Rather, State Defendants leave it up to Plaintiffs and this Court to
determine whether any of these matters need to be judicially noticed.

1 will use a risk ratio of three to one to analyze data to monitor school districts, as this is subject to
2 reasonable dispute. Nor can the documents demonstrate that CDE intends to or will analyze
3 policies, procedures, and practices of school districts to determine the root cause of significant
4 disproportionality, as this is also subject to reasonable dispute. The Exhibits are contradicted by
5 allegations in the Complaint that question whether the State Defendants in fact analyze data
6 using its stated methods, and the propriety of those methods for identifying underlying issues in
7 school districts and remedying constitutional violations. The Complaint alleges that the State
8 Defendants’ monitoring mechanism fails to sufficiently analyze policies, procedures, and
9 practices at the school district level to identify the underlying issues that cause constitutional
10 violations. Compl. ¶¶ 97-98. The Complaint further alleges that State Defendants fail to collect
11 and analyze district-level data consistent with their claims to monitor school districts. *See* ¶ 99.
12 As a result, the Complaint alleges, State Defendants’ monitoring of Pittsburg Unified School
13 District’s (“PUSD”) special education program has been ineffective. ¶¶ 97-98.

14 Although the Court may take judicial notice of official acts of any state, county, or federal
15 legislative, executive, or judicial department, *see* Cal. Evid. Code § 452(c), Exhibits 1, 2, and 3
16 are not official acts that are not subject to dispute, as State Defendants seek to rely on these
17 Exhibits for the truth of the facts contained therein. *Cruz v. County of Los Angeles*, 173 Cal. App.
18 3d 1131, 1133 (1985). Additionally, judicial notice at the demurrer stage is not a substitute for or
19 alternative to presenting evidence to the trial court. *Unruh-Haxton v. Regents of Univ. of*
20 *California*, 162 Cal. App. 4th 343, 365 (2008), *as modified* (May 15, 2008) (“[J]udicial notice
21 of matters upon demurrer will be dispositive only in those instances where there is not or cannot
22 be a factual dispute concerning that which is sought to be judicially noticed.”) (internal citation
23 omitted).

24 Furthermore, to the extent that Exhibits 1, 2, 3, and any of the other exhibits listed in their
25 Request exclusively relate to State Defendants’ obligations under the Individuals with
26 Disabilities Education Act (“IDEA”), such information is not pertinent to the issues before the
27 Court in this case since the IDEA is not a cause of action brought by Plaintiffs. Evidence of one
28 does not carry over to provide evidence of entirely separate claims. *Blank v. Kirwan*, 39 Cal. 3d
311, 333 n.9 (1985) (“We decline the request of City of Bell to judicially notice the minutes of

1 certain meetings of the city council on the ground that they are not relevant to the issues before
2 us.”). Any general similarities between the State’s obligations to monitor under both an IDEA
3 claim and a State constitutional claim do not mean that evidence under one can be transferred as
4 evidence of the other. The State has duties and obligations under both that it must fulfill.

5 **II. Exhibits 4 and 5 Are Not Subject to Judicial Notice Pursuant to Evidence Code**
6 **Section 452**

7 State Defendants request judicial notice of Exhibits 4 and 5. Exhibit 4 is the CDE’s
8 January 31, 2020 Notification to PUSD of 2018-19 Annual Determination Pursuant to the IDEA
9 and Selection for 2019-20 Special Education Monitoring Activities Including Identification of
10 Significant Disproportionality. Exhibit 5 is the CDE’s January 12, 2021 Notification to PUSD of
11 2019-20 Annual Determination Pursuant to the IDEA and Selection for 2020-21 Special
12 Education Monitoring Activities Including Identification of Significant Disproportionality. State
13 Defendants cite to Exhibits 4 and 5 to support their contention that the CDE annually evaluated
14 PUSD’s performance in meeting state targets on the seventeen federally established State
15 Performance Plan (“SPP”) indicators. State Defendants further rely on these exhibits to
16 demonstrate that they have taken sufficient action to fulfill their constitutional duties. State MPA
17 ISO Dem. 12. The Court should deny the request. State Defendants have not shown how this
18 information “is ‘not reasonably subject to dispute’ and . . . is ‘capable of immediate and accurate
19 determination by resort to sources of reasonably indisputable accuracy’” as required by section
20 452, subdivision (h). *Duronslet*, 203 Cal. App. 4th at 737 (citation omitted). State Defendants
21 improperly rely on these documents for the truth of statements contained therein. *See Fremont*
22 *Indem. Co.*, 148 Cal. App. 4th at 113. The documents cannot demonstrate that CDE monitored
23 PUSD’s compliance with the law, as this is subject to reasonable dispute. The Exhibits are
24 contradicted by allegations in the Complaint that question whether the State Defendants in fact
25 analyze data using its stated methods and the propriety of those methods for identifying
26 underlying issues in school districts. The Complaint alleges that the State Defendants’
27 monitoring mechanism fails to sufficiently analyze policies, procedures, and practices at the
28 school level to identify the underlying issues that cause constitutional violations. Compl. ¶¶ 97-
98. The Complaint further alleges that State Defendants fail to collect and analyze district-level

1 data consistent with their claims to monitor school districts. *See* ¶ 99. As a result, the Complaint
2 alleges State Defendants’ monitoring of PUSD’s special education program has been ineffective.
3 ¶¶ 97-98.

4 Although the Court may take judicial notice of official acts of any state, county, or
5 federal legislative, executive, or judicial department, *see* Cal. Evid. Code § 452(c), Exhibits 4
6 and 5 are not official acts that are not subject to dispute, as State Defendants seek to rely on these
7 Exhibits for the truth of the facts contained therein. *Cruz*, 173 Cal. App. 3d at 1133.
8 Additionally, judicial notice at the demurrer stage is not a substitute for or alternative to
9 presenting evidence to the trial court. *Unruh-Haxton*, 162 Cal.App. 4th at 365. Furthermore, to
10 the extent that Exhibits 4, 5, and any of the other exhibits listed in their Request exclusively relate
11 to State Defendants’ obligations under the Individuals with Disabilities Education Act (“IDEA”),
12 such information is not pertinent to the issues before this Court in this case since the IDEA is not
13 a cause of action brought by Plaintiffs. Evidence of one does not carry over to provide evidence
14 of entirely separate claims. *Blank*, 39 Cal.3d at 333. Any general similarities between the State’s
15 monitoring obligations under the IDEA and the State constitution do not permit the transfer of
16 evidence under one can be transferred as evidence of the other. The State has duties and
17 obligations under both that it must fulfill.

18 Further, Exhibit 4 appears to have internal comments and highlights from a “JBarden”
19 dated on or around April 2021. This provides a further reason for this Court to deny this request,
20 as such internal comments are plainly not subject to judicial notice.

21 **III. Exhibits 6, 7, 8, 9, and 10 Are Not Subject to Judicial Notice Pursuant to Evidence**
22 **Code Section 452**

23 State Defendants request judicial notice of Exhibits 6, 7, 8, 9, and 10. Exhibit 6 is PUSD’s
24 2019-20 Special Education Plan, Element 3c, English Language Arts Achievement. Exhibit 7 is
25 PUSD’s 2019-20 Special Education Plan, Element 5c, Least Restrictive Environment, Separate
26 Schools. Exhibit 8 is PUSD’s 2019-20 Special Education Plan, Element 10, Disproportionate
27 Representation of Students with Disabilities by Race or Ethnicity By Disability. Exhibit 9 is
28 PUSD’s 2019-20 Special Education Plan, Local Educational Agency Identification Form.
Exhibit 10 is PUSD’s 2019-20 Special Education Plan Successful Submission.

1 State Defendants cite to Exhibits 6, 7, 8, 9, and 10 for the proposition that the CDE
2 ensured that PUSD prepared the required Special Education Plan (“SEP”) for improvement in
3 the areas it was identified for poor performance. State Defendants further rely on these exhibits
4 to demonstrate that they have taken sufficient action to fulfill their constitutional duties. State
5 MPA ISO Dem. 12. The Court should deny the request. State Defendants have not shown how
6 this information “is ‘not reasonably subject to dispute’ and . . . is ‘capable of immediate and
7 accurate determination by resort to sources of reasonably indisputable accuracy’” as required by
8 section 452, subdivision (h). *Duronslet*, 203 Cal. App. 4th at 737 (citation omitted). State
9 Defendants improperly rely on these documents for the truth of statements contained therein. *See*
10 *Fremont Indem. Co.*, 148 Cal. App. 4th at 113. The documents cannot demonstrate that CDE
11 monitored PUSD’s compliance with the law and taken remedial action to ensure compliance, as
12 this is subject to reasonable dispute. The Exhibits are contradicted by allegations in the
13 Complaint that question whether State Defendants’ monitoring mechanism sufficiently identifies
14 underlying issues in school districts and sufficiently analyze policies, procedures, and practices
15 at the school level and intervene to remedy constitutional violations. The Complaint alleges that
16 the State Defendants’ monitoring mechanism fails to sufficiently analyze policies, procedures,
17 and practices at the school level to identify the underlying issues that cause constitutional
18 violations. Compl. ¶¶ 97-98. The Complaint further alleges that State Defendants fail to collect
19 and analyze district-level data consistent with their claims to monitor school districts. *See* ¶ 99.
20 As a result, the Complaint alleges State Defendants’ monitoring of PUSD’s special education
21 program has been ineffective. ¶¶ 97-98.

22 Although the Court may take judicial notice of official acts of any state, county, or federal
23 legislative, executive, or judicial department, *see* Cal. Evid. Code § 452(c), Exhibits 6, 7, 8, 9,
24 and 10 are not official acts that are not subject to dispute, as State Defendants seek to rely on
25 these Exhibits for the truth of the facts contained therein. *Cruz*, 173 Cal. App. 3d at 1133.
26 Additionally, judicial notice at the demurrer stage is not a substitute for or alternative to
27 presenting evidence to the trial court. *Unruh-Haxton*, 162 Cal.App. 4th at 365. Furthermore, to
28 the extent that these and any of the other exhibits listed in their Request exclusively relate to
State Defendants’ obligations under the Individuals with Disabilities Education Act (“IDEA”),

1 such information is not pertinent to the issues before this Court in this case since the IDEA is not
2 a cause of action brought by Plaintiffs. Evidence of one does not carry over to provide evidence
3 of entirely separate claims. *Blank*, 39 Cal. 3d at 333. Any general similarities between the State’s
4 monitoring obligations under the IDEA and the State constitution do not permit the transfer of
5 evidence under one can be transferred as evidence of the other. The State has duties and
6 obligations under both that it must fulfill.

7 **IV. Exhibits 11, 12, and 13 Are Not Subject to Judicial Notice Pursuant to Evidence**
8 **Code Section 452**

9 State Defendants request judicial notice of Exhibits 11, 12, and 13. Exhibit 11 is
10 Significant Disproportionality Data for PUSD, Data Year 2019-20 with a three year comparison
11 of significant disproportionality in identification of African American students with emotional
12 disturbance and other health impairment. Exhibit 12 is Disproportionality Data for Indicator 9
13 and 10 for PUSD showing PUSD was disproportionate on Indicator 10 for identification of
14 African American students with emotional disturbance. Exhibit 13 is the CDE’s May 3, 2021
15 Annual Disproportionality Review Notification and Instructions to PUSD.

16 State Defendants cite Exhibits 11, 12, and 13 for the contention that the CDE identified
17 PUSD as significantly disproportionate with respect to the identification of Black students with
18 emotional disturbance and other health impairment. State Defendants further rely on these
19 exhibits to demonstrate that they have taken sufficient action to fulfill their constitutional duties.
20 State MPA ISO Dem. 13. The Court should deny the request. State Defendants have not shown
21 how this information “is ‘not reasonably subject to dispute’ and . . . is ‘capable of immediate and
22 accurate determination by resort to sources of reasonably indisputable accuracy’” as required by
23 section 452, subdivision (h). *Duronslet*, 203 Cal. App. 4th at 737 (citation omitted). State
24 Defendants improperly rely on these documents for the truth of statements contained therein. *See*
25 *Fremont Indem. Co.*, 148 Cal. App. 4th at 113. The documents cannot demonstrate that CDE
26 monitored PUSD’s compliance with the law and provided took remedial action to ensure
27 compliance, as this is subject to reasonable dispute. The Exhibits are contradicted by allegations
28 in the Complaint that question whether State Defendants’ monitoring mechanism sufficiently
identifies underlying issues in school districts and sufficiently analyze policies, procedures, and

1 practices at the school level and intervene to remedy constitutional violations. The Complaint
2 alleges that the State Defendants’ monitoring mechanism fails to sufficiently analyze policies,
3 procedures, and practices at the school level to identify the underlying issues that cause
4 constitutional violations. Compl. ¶¶ 97-98. The Complaint further alleges that State Defendants
5 fail to collect and analyze district-level data consistent with their claims to monitor school
6 districts. *See* ¶ 99. As a result, the Complaint alleges, State Defendants’ monitoring of PUSD’s
7 special education program has been ineffective. ¶¶ 97-98.

8 Although the Court may take judicial notice of official acts of any state, county, or
9 federal legislative, executive, or judicial department, *see* Cal. Evid. Code § 452(c), Exhibits 11,
10 12, and 13 are not an official “acts” that are not subject to dispute. *Cruz*, 173 Cal. App. 3d at
11 1133. Additionally, judicial notice at the demurrer stage is not a substitute for or alternative to
12 presenting evidence to the trial court. *Unruh-Haxton*, 162 Cal.App. 4th at 365. Furthermore, to
13 the extent that these and any of the other exhibits listed in their Request, exclusively relate to
14 State Defendants’ obligations under the Individuals with Disabilities Education Act (“IDEA”),
15 such information is not pertinent to the issues before this Court in this case since the IDEA is not
16 a cause of action brought by Plaintiffs. Evidence of one does not carry over to provide evidence
17 of entirely separate claims. *Blank*, 39 Cal. 3d at 333. Any general similarities between the State’s
18 monitoring obligations under the IDEA and the State constitution do not permit the transfer of
19 evidence under one can be transferred as evidence of the other. The State has duties and
20 obligations under both that it must fulfill.

21 **V. Exhibit 14 Is Not Subject to Judicial Notice Pursuant to Evidence Code Section 452**

22 State Defendants request judicial notice of Exhibit 14. Exhibit 14 is PUSD’s 2021
23 significant disproportionality Comprehensive Coordinated Early Intervening Services (CCEIS)
24 Plan for Indicator 10 (significant disproportionality in identification of African American
25 students with emotional disturbance and other health impairment). State Defendants cite to this
26 exhibit to support their argument that CDE ensured that PUSD used fifteen percent of its IDEA
27 funds to prepare a Comprehensive Coordinated Early Intervening Services plan that identifies the
28 factors contributing to significant disproportionality. State Defendants further rely on these
exhibits to demonstrate that they have taken sufficient action to fulfill their constitutional duties.

1 State MPA ISO Dem. 14. The Court should deny the request. State Defendants have not shown
2 how this information “is ‘not reasonably subject to dispute’ and . . . is ‘capable of immediate and
3 accurate determination by resort to sources of reasonably indisputable accuracy’” as required by
4 section 452, subdivision (h). *Duronslet*, 203 Cal. App. 4th at 737 (citation omitted). State
5 Defendants improperly rely on these documents for the truth of statements contained therein. *See*
6 *Fremont Indem. Co.*, 148 Cal. App. 4th at 113. The document cannot demonstrate that PUSD
7 used fifteen percent of its IDEA funds and that CDE ensured the plan identified the factors
8 contributing to significant disproportionality, as this is subject to dispute. The Exhibit is
9 contradicted by allegations in the Complaint that question whether State Defendants’ monitoring
10 mechanism sufficiently identifies underlying issues in school districts and sufficiently analyze
11 policies, procedures, and practices at the school level and intervene to remedy constitutional
12 violations. The Complaint alleges that the State Defendants’ monitoring mechanism fails to
13 sufficiently analyze policies, procedures, and practices at the school level to identify the
14 underlying issues that cause constitutional violations. Compl. ¶¶ 97-98. The Complaint further
15 alleges that State Defendants fail to collect and analyze district-level data consistent with their
16 claims to monitor school districts. *See* ¶ 99. As a result, the Complaint alleges State Defendants’
17 monitoring of PUSD’s special education program has been ineffective. ¶¶ 97-98.

18 Although the Court may take judicial notice of official acts of any state, county, or
19 federal legislative, executive, or judicial department, *see* Cal. Evid. Code § 452(c), Exhibit 14 is
20 not an official act that is not subject to dispute. State Defendants seek to rely on Exhibit 14 for
21 the truth of the facts contained therein. *Cruz*, 173 Cal. App. 3d at 1133. Additionally, judicial
22 notice at the demurrer stage is not a substitute for or alternative to presenting evidence to the trial
23 court. *Unruh-Haxton*, 162 Cal.App. 4th at 365. Furthermore, to the extent that Exhibit 14 and
24 any of the other exhibits listed in their Request exclusively relate to State Defendants’ obligations
25 under the Individuals with Disabilities Education Act (“IDEA”), such information is not
26 pertinent to the issues before this Court in this case since the IDEA is not a cause of action
27 brought by Plaintiffs. Evidence of one does not carry over to provide evidence of entirely
28 separate claims. *Blank*, 39 Cal. 3d at 333. Any general similarities between the State’s
monitoring obligations under the IDEA and the State constitution do not permit the transfer of

1 evidence under one can be transferred as evidence of the other. The State has duties and
2 obligations under both that it must fulfill.

3 **VI. Exhibits 15 and 16 Are Not Subject to Judicial Notice Pursuant to Evidence Code**
4 **Section 452**

5 State Defendants request judicial notice of Exhibits 15 and 16. Exhibit 15 is the CDE’s
6 Criteria for Providing Differentiated Assistance to Local Educational Agencies. Exhibit 16 is the
7 PUSD Student Group Report for 2019 displaying the performance level for each student group
8 on all state indicators, as identified by the CDE.

9 State Defendants cite Exhibits 15 and Exhibit 16 to support their argument that PUSD
10 was not identified for assistance with respect to the suspension rate for 2019 because PUSD
11 performed at the yellow performance level with respect to suspension rate for Black students.
12 State Defendants further rely on these exhibits to demonstrate that they have taken sufficient
13 action to fulfill their constitutional duties. State MPA ISO Dem. 14. The Court should deny the
14 request. State Defendants have not shown how this information “is ‘not reasonably subject to
15 dispute’ and . . . is ‘capable of immediate and accurate determination by resort to sources of
16 reasonably indisputable accuracy’” as required by section 452, subdivision (h). *Duronslet*, 203
17 Cal. App. 4th at 737 (citation omitted). State Defendants improperly rely on these documents for
18 the truth of statements contained therein. *See Fremont Indem. Co.*, 148 Cal. App. 4th at 113. The
19 documents cannot demonstrate that CDE monitored PUSD’s compliance with the law and did
20 not take remedial action because PUSD’s data did not require such action. The Exhibits are
21 contradicted by allegations in the Complaint that PUSD’s suspension rates required State
22 Defendants to act. They are also contradicted by allegations that question whether State
23 Defendants analyze data using their stated methods, and whether their monitoring mechanism
24 sufficiently identifies underlying issues in school districts and sufficiently analyze policies,
25 procedures, and practices at the school level and intervene to remedy constitutional violations.
26 The Complaint alleges that State Defendants’ monitoring mechanism fails to sufficiently analyze
27 policies, procedures, and practices at the school level to identify the underlying issues that cause
28 constitutional violations. Compl. ¶¶ 97-98. The Complaint further alleges that State Defendants
fail to collect and analyze district-level data consistent with their claims to monitor school

1 districts. ¶ 99. As a result, the Complaint alleges, State Defendants’ monitoring of PUSD’s
2 special education program has been ineffective. ¶¶ 97-98.

3 Although the Court may take judicial notice of official acts of any state, county, or
4 federal legislative, executive, or judicial department, *see* Cal. Evid. Code § 452(c), Exhibit 1 is
5 not an official “act” that is not subject to dispute *Cruz*, 173 Cal. App. 3d at 1134. Additionally,
6 judicial notice at the demurrer stage is not a substitute for or alternative to presenting evidence to
7 the trial court. *Unruh-Haxton*, 162 Cal.App. 4th at 365. Furthermore, to the extent that these and
8 any of the other exhibits listed in their Request exclusively relate to State Defendants’
9 obligations under the Individuals with Disabilities Education Act (“IDEA”), such information is
10 not pertinent to the issues before this Court in this case since the IDEA is not a cause of action
11 brought by Plaintiffs. Evidence of one does not carry over to provide evidence of entirely
12 separate claims. *Blank*, 39 Cal. 3d at 333. Any general similarities between the State’s
13 monitoring obligations under the IDEA and the State constitution do not permit the transfer of
14 evidence under one can be transferred as evidence of the other. The State has duties and
15 obligations under both that it must fulfill.

16 **VII. Exhibit 17 Is Not Subject to Judicial Notice Pursuant to Evidence Code Section 452**

17 State Defendants request judicial notice of Exhibit 17. Exhibit 17 is California school
18 Dashboard, Exploring Equity Reports, describing how the dashboard identifies performance gaps
19 among student groups through equity reports. State Defendants cite to Exhibit 17 to support their
20 contention that CDE also uses “Equity Reports” to examine performance gaps among student
21 groups. State Defendants further rely on this exhibit to demonstrate that they have taken
22 sufficient action to fulfill their constitutional duties. State MPA ISO Dem. 14. The Court should
23 deny the request. State Defendants have not shown how this information “is ‘not reasonably
24 subject to dispute’ and . . . is ‘capable of immediate and accurate determination by resort to
25 sources of reasonably indisputable accuracy’” as required by section 452, subdivision (h).
26 *Duronslet*, 203 Cal. App. 4th at 737 (citation omitted). State Defendants improperly rely on these
27 documents for the truth of statements contained therein. *See Fremont Indem. Co.*, 148 Cal. App.
28 4th at 113. The document cannot demonstrate how the CDE identifies performance gaps among
student groups, as that is subject to reasonable dispute. The Exhibit is contradicted by allegations

1 in the Complaint that question whether State Defendants analyze data using their stated methods,
2 and whether their monitoring mechanism sufficiently identifies underlying issues in school
3 districts and sufficiently analyze policies, procedures, and practices at the school level and
4 intervene to remedy constitutional violations. The Complaint alleges that the State Defendants’
5 monitoring mechanism fails to sufficiently analyze policies, procedures, and practices at the
6 school level to identify the underlying issues that cause constitutional violations. Compl. ¶¶ 97-
7 98. The Complaint further alleges that State Defendants fail to collect and analyze district-level
8 data consistent with their claims to monitor school districts. ¶ 99. As a result, the Complaint
9 alleges, State Defendants’ monitoring of PUSD’s special education program has been
10 ineffective. ¶¶ 97-98.

11 Although the Court may take judicial notice of official acts of any state, county, or federal
12 legislative, executive, or judicial department, *see* Cal. Evid. Code § 452(c), Exhibit 1 is not an
13 official act that is not subject to dispute. *Cruz*, 173 Cal. App. 3d at 1133. Additionally, judicial
14 notice at the demurrer stage is not a substitute for or alternative to presenting evidence to the trial
15 court. *Unruh-Haxton*, 162 Cal.App. 4th at 365. Furthermore, to the extent that Exhibit 17 and
16 any of the other exhibits listed in their Request exclusively relate to State Defendants’ obligations
17 under the Individuals with Disabilities Education Act (“IDEA”), such information is not
18 pertinent to the issues before this Court in this case since the IDEA is not a cause of action
19 brought by Plaintiffs. Evidence of one does not carry over to provide evidence of entirely
20 separate claims. *Blank*, 39 Cal. 3d at 333. Any general similarities between the State’s
21 monitoring obligations under the IDEA and the State constitution do not permit the transfer of
22 evidence under one can be transferred as evidence of the other. The State has duties and
23 obligations under both that it must fulfill.

24 CONCLUSION

25 For these reasons, Plaintiffs respectfully request that this Court deny State Defendants’
26 requests to take judicial notice of the 17 aforementioned exhibits for the reasons stated above.

27 Date: February 1, 2022



28 Malhar Shah
Claudia Center

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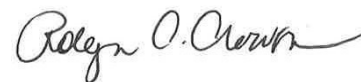
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