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10 Attorneys for Plaintiffs

11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

14 Plaintiff J.P. on behalf of her minor son  
R.P., and all others similarly situated;  
15 THE NATIONAL CENTER FOR FAIR  
& OPEN TESTING doing business as  
16 FAIRTEST, a Massachusetts  
corporation; A.K., individually and on  
17 behalf of all others similarly situated;  
R.G. on behalf of her minor son J.G., and  
18 all others similarly situated; Plaintiff  
M.S. on behalf of her minor daughter  
19 Z.S., and all others similarly situated,

20 Plaintiffs,

21 vs.

22 EDUCATIONAL TESTING SERVICES  
(ETS), a New York corporation;  
23 THE COLLEGE ENTRANCE  
EXAMINATION BOARD, a New York  
24 corporation, doing business as THE  
COLLEGE BOARD; and  
25 DOES 1 through 50, inclusive,

26 Defendants.

Case No.:

**NATIONWIDE AND  
CALIFORNIA CLASS ACTION  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

27  
28 ///

899-5656-0001

1 Plaintiffs, Plaintiff J.P. on behalf of her minor son R.P. and all others similarly  
2 situated; THE NATIONAL CENTER FOR FAIR & OPEN TESTING (“FairTest”);  
3 A.K., individually and on behalf of all others similarly situated; R.G. on behalf of her  
4 minor son J.G., and all others similarly situated; Plaintiff M.S. on behalf of her minor  
5 daughter Z.S., and all others similarly situated (collectively, “Plaintiffs”), allege and  
6 plead as follows:

7 **INTRODUCTION**

8 1. Plaintiffs bring this suit against Defendants to recover the damages owed to  
9 them and others similarly situated and for injunctive relief as a result of the Defendants’  
10 failure to allow access to and failure to administer its Advanced Placement (“AP”)  
11 program properly and without prejudice.

12 2. The College Board is involved at every level of the college preparation,  
13 testing, admissions, financial aid, and placement process. It is the leading player in the  
14 higher education industry responsible for the fates of millions of high school students  
15 every year, deciding who will be recruited, who will apply, who will be accepted, who  
16 will receive financial aid, and who will be able to afford college and other  
17 postsecondary opportunities. The Educational Testing Service (“ETS”) is responsible  
18 for the development, administration, and scoring of College Board’s assessments,  
19 including AP exams.

20 3. AP is a program offered by the College Board that offers college-level  
21 courses and examinations to high school students. Colleges and universities frequently  
22 grant placement and course credit to students who obtain passing scores on their AP  
23 examinations. The length of time each student will spend in college, their curriculum,  
24 and how much they pay to attend college are factors heavily influenced by College  
25 Board and the AP opportunities available to students. The College Board claims that  
26 AP courses and examinations also favorably impact college admissions decisions by  
27 demonstrating to admissions officers that a student is prepared for college-level work.  
28

1 AP courses strengthens a student's high school transcript and help students qualify for  
2 scholarships.

3 4. In March of 2020, schools around the world moved to distance learning  
4 due to the COVID-19 pandemic. The College Board was faced with the decision of  
5 cancelling its popular and profitable AP program for the year, postponing the exams, or  
6 offering them at home to students. The College Board made the decision to offer the  
7 AP exams to students at home but with significant structural changes.

8 5. The College Board was immediately made aware by numerous sources,  
9 including counselors, educators, advocates and families, that there were serious  
10 concerns that the at-home AP exams would not be fair to students who have no  
11 computer, access to Internet or quiet workspaces from which to work, or to under-  
12 resourced students in general. Even as the test began, questions remained about the  
13 availability and applicability of legally required accommodations for students with  
14 disabilities, the fair access to connectivity for all students, test security, and score  
15 comparability.

16 6. Counselors, educators, advocates, and families immediately reached out to  
17 The College Board to make them aware of their serious concerns with the at-home AP  
18 format's likely impact on students who have no computer, access to Internet or quiet  
19 workspaces from which to work, or on under-resourced students in general. Even as the  
20 test began, questions remained about the availability and applicability of legally  
21 required accommodations for students with disabilities, connectivity, test security, and  
22 score comparability.

23 7. The College Board acknowledged that these issues existed, but it did not  
24 change its policies to address them. On May 14, 2020, after 3 full days of at-home AP  
25 exams, the College Board admitted that there was a measurable failure rate in uploading  
26 exams, and it attempted to change its policies going forward. The College Board's  
27 President, David Coleman acknowledged in an email that, "we can't control the  
28 conditions in students' homes." Technical problems with the digital versions of the AP

1 exams caused and continue to cause tremendous angst for high school students and their  
2 parents during this already stressful time.

3 8. Before this year, high school students took their AP exams at school during  
4 the regular school day hours in a controlled and regulated environment where they could  
5 ask for assistance if necessary. The College Board acknowledged that it knew moving  
6 the exams home may exclude some students from testing at all, stating that, “We  
7 recognize that the digital divide could prevent some low-income and rural students from  
8 participating.” The College Board moved the AP exams to students’ homes under the  
9 present conditions despite this acknowledgement. In doing so, the College Board  
10 knowingly discriminated against under-resourced students, disabled students, and  
11 students in remote locations, and it failed to honor its commitments to students and their  
12 families.

13 9. After one day of testing, it became clear that the College Board and ETS  
14 had failed to fairly, competently, or equitably administer the AP exams. The students  
15 who relied on AP scores for the financial benefits of college placement and credit  
16 experienced technical glitches, timing issues, and a heightened level of anxiety and  
17 distress. Reports of anywhere between 5% and 20% of examinees were unable to  
18 submit their responses through the at-home testing platform during the first three days  
19 of AP exams. One AP Coordinator reported a failure rate of 30%. Some students could  
20 only submit partial responses, and others could not even log on to take the exams.

21 10. Despite the fact that these are challenging times for families, The College  
22 Board offered no acceptable remedies to students whose lack of digital access prevented  
23 them from fairly testing. Nor did it offer remedies to students who experienced glitches  
24 with the AP platform. On May 15, 2020, The Chronicle of Higher Education reported,  
25 “AP Tests During Covid-19: Heartbreak, Technical Glitches, and Anonymous  
26  
27  
28

1 Intrigue.”<sup>1</sup> On the same day, The Washington Post reported, “College Board Says New  
2 AP Test Online Going Well – But Students Report Big Problems.”<sup>2</sup>

3 11. The College Board intends to move all of its assessments to an at-home  
4 format, including the SAT; however, this year’s AP exam administration makes it  
5 perfectly clear that until the technical issues, the digital divide and other inequities are  
6 adequately addressed, it cannot not do so.

7 12. The challenge of the at-home AP exam format is only the final hurdle for  
8 many AP students, and it is also one step that many students may never even reach.  
9 Some AP students are fully denied access to AP exams and others must overcome  
10 additional hurdles to obtain access to AP exams based solely on where they are enrolled  
11 in school. Access is particularly challenging for students enrolled in California public  
12 charter schools or homeschools.

13 **THE PARTIES**

14 **Plaintiffs:**

15 13. Plaintiff J.P. is acting on behalf of her minor son R.P. and all others  
16 similarly situated. R.P. is a high school student who is registered to take at-home AP  
17 exams. Pseudonyms have been used throughout the complaint in order to protect the  
18 identity of the minor Plaintiffs. Further the public has little legitimate interest in  
19 knowing the true identity of the Plaintiffs. The Defendants will not be prejudiced by  
20 allowing the Plaintiffs to proceed anonymously and in this manner until a protective  
21 order is in place.

22 14. The National Center for Fair & Open Testing (“FairTest”) is a nationwide  
23 public charity that operates in California. FairTest’s mission is to advance quality  
24 education and equal opportunity by promoting fair, open, valid evaluations of students,  
25 teachers, and schools. FairTest works on behalf of examinees to end the misuses of  
26

27 <sup>1</sup> <https://www.chronicle.com/article/AP-Tests-During-Covid-19-/248792>

28 <sup>2</sup> <https://www.washingtonpost.com/education/2020/05/15/college-board-says-new-online-ap-tests-are-going-well-students-report-big-problems/>

1 standardized tests, placing special emphasis on eliminating the racial, class, gender, and  
2 cultural barriers to equal opportunity. In pursuit of its mission, FairTest provides  
3 information and technical assistance to students and parents as well as advocacy on a  
4 broad range of testing concerns, including those relating to the at-home AP exams.

5 15. Plaintiff A.K. is acting individually and on behalf of all others similarly  
6 situated. A.K. is a high school student who registered for and took AP exams.

7 16. Plaintiff R.G. is acting on behalf of her minor son J.G and all others  
8 similarly situated. J.G. is a high school student who is registered to take at-home AP  
9 exams.

10 17. Plaintiff M.S. is acting on behalf of her minor daughter Z.S. and all others  
11 similarly situated. Z.S. is a high school student who is registered to take one at-home  
12 AP exam.

13 **Defendants:**

14 18. Defendant EDUCATIONAL TESTING SERVICE (“ETS”) is registered as  
15 a non-profit organization headquartered in Princeton, New Jersey. ETS has multiple  
16 offices in the State of California, including within this jurisdiction. Plaintiffs are  
17 informed and believe that ETS administers AP exams on behalf of Defendant College  
18 Board.

19 19. Defendant COLLEGE ENTRANCE EXAMINATION BOARD (“The  
20 College Board”) is a New York corporation with its principal place of business in New  
21 York, New York, which does business in California. Plaintiffs are informed and believe  
22 that the AP program is fully owned and operated by The College Board.

23 20. Defendants ETS and College Board are referred to collectively herein as  
24 “Defendants.”

25 21. The true names and capacities of defendant DOES 1 through 50, inclusive,  
26 whether individual, corporate, associate or otherwise, are unknown to Plaintiff, who  
27 therefore sues said defendants by such fictitious names and will amend to allege their  
28 true names and capacities when ascertained. Plaintiffs are informed and believe that

1 each of the DOE defendants is responsible for the acts or omissions alleged in this  
2 complaint, and that Plaintiffs' injuries and damages were proximately caused by the acts  
3 or omissions of these unnamed defendants.

4 22. Plaintiffs are informed and believe, and based thereon allege, that each of  
5 the Defendants herein was at all relevant times the principal, agent, alter-ego, joint-  
6 venturer, partner, affiliate, manager, subsidiary, servant, employee and/or co-conspirator  
7 of each other Defendant, and in performing the acts described in this complaint, was  
8 acting in the scope of his, her or its authority with the consent of each other Defendant.  
9 Each Defendant ratified and/or authorized the wrongful acts, conduct, omissions, or  
10 commissions of each of the other Defendants. At all relevant times, each Defendant  
11 acted with full knowledge of the conduct of each of the other Defendants, with the  
12 intention to cooperate therewith.

13 23. Plaintiffs do not know the true names and capacities, whether corporate,  
14 partnership, associate, individual, or otherwise of Defendant issued herein as DOES 1  
15 through 10, inclusive, under the provisions of Central District of California, Local Rule  
16 19-1. Defendant DOES 1 through 50, inclusive, are in some manner responsible for the  
17 acts, occurrences and transactions set forth herein, and are legally liable to Plaintiff.  
18 Plaintiff will seek leave to amend this Complaint to set forth the true names and  
19 capacities of the fictitiously named Defendants, together with appropriate charging  
20 allegations, when ascertained.

21 24. All acts of corporate employees as alleged were authorized or ratified by an  
22 officer, director or managing agent of the corporate employer.

### 23 **JURISDICTION AND VENUE**

24 25. This Court has subject matter jurisdiction over this action pursuant to the  
25 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), as the proposed class contains  
26 more than 100 members, at least one of whom maintains citizenship in a state diverse  
27 from the defendant, and seeks in the aggregate more than \$5,000,000, exclusive of costs  
28 and interest.

1 26. Venue is proper pursuant to 28 U.S.C. § 1391(b) & (c) because a  
2 substantial part of the events or omissions giving rise to the claim occurred in this  
3 judicial district, and because Defendants are subject to the Court's personal jurisdiction  
4 in this judicial district.

5 27. This Court has personal jurisdiction over the parties hereto, because the  
6 Defendants are corporations that do business throughout the State of California. The  
7 facts underlying this case arise from the State of California and from within this judicial  
8 district. Defendants' conduct substantially impacts the State of California and its  
9 students. Plaintiffs are informed and believe that each Defendant herein has sufficient  
10 contacts with California so as to make proper the exercise of personal jurisdiction over  
11 them, and have sufficient minimum contacts so as to render the exercise of personal  
12 jurisdiction permissible under traditional notions of fair play and substantial justice.

### 13 **COMMON FACTUAL ALLEGATIONS**

14 28. The College Board claims that students who score a 3 or higher (out of 5)  
15 on an AP Exam typically experience greater academic success in college and are more  
16 likely to earn a college degree on time than non-AP students.<sup>3</sup> As the only player in the  
17 education market with this level of influence over high school curriculum, college  
18 admissions, course placement, and financial outcomes, the College Board knows that  
19 access to its AP exams must be fair, reliable, and affordable.

20 29. To ensure that low-income students can access AP Exams at a reduced  
21 cost, Every Student Succeeds Act (ESSA) provides funding for AP Exams and courses  
22 under the Title IV, Part A block grant.<sup>4</sup> Additional funding is also available for states  
23 and districts to cover AP Exam fees for low-income students. In California, an  
24 increasing number of lower income students are enrolling in AP courses. Of the 58.7  
25

26  
27 <sup>3</sup> <https://collegereadiness.collegeboard.org/about/benefits/connect-to-ap>

28 <sup>4</sup> <https://professionals.collegeboard.org/testing/states-local-governments/new-education-policies/essa-federal-funding-ap>



1 percent of the state's K–12 students eligible for the free or reduced-price lunch program  
2 in the Class of 2017, 45.5 percent took at least one AP exam.<sup>5</sup>

3 30. Each year, millions of high school students take 38 different AP exams at  
4 the end of the school year. In 2019, 3.1 million students took a total of 4.9 million AP  
5 exams at school. In 2020, 3.4 million students are registered to take over 5 million AP  
6 exams. During the first week of testing, students took or attempted to take over 2.2  
7 million AP exams. The cost of an AP exam is generally between \$100 and \$150 per test.

8 31. In 2018, the College Board earned over \$480 million dollars from its AP  
9 program alone. The College Board collected its exam fees in the Fall of 2019 for the  
10 Spring 2020 exams.

11 32. AP exams provide a means for high school students to earn college credit  
12 while in high school. Defendant College Board advertises that, “by taking an AP course  
13 and scoring successfully on the related AP Exam, [a high school student] can save on  
14 college expenses: most colleges and universities nationwide offer college credit,  
15 advanced placement, or both, for qualifying AP Exam scores... These credits can allow  
16 students to save college tuition, study abroad, or secure a second major.” College Board  
17 further advertises that, “[e]arning a qualifying score on the AP Exam can help you  
18 advance and avoid required introductory courses – so you can move directly into upper-  
19 level classes and focus on the work that interests you most.”

20 33. The AP program is the only widely available high program allowing  
21 students to earn college credits. Defendant College Board organizes and administers the  
22 AP tests. The AP program is the only means for high school students to test for college  
23 credit in dozens of subject matters. In order to obtain college credits, students are  
24 required to pass the AP test, as scored and reported by Defendants.

25 34. Passing scores (a 3, 4, or 5) on the AP exams can save students and their  
26 parents thousands of dollars in college tuition and costs. A successful student who takes  
27

28 <sup>5</sup> <https://www.cde.ca.gov/nr/ne/yr18/yr18rel16.asp>

1 multiple AP exams can potentially finish college a year or more earlier than students  
2 who did not earn AP credit during high school. Some students understandably wanted  
3 an option to take their AP exams for college credit when COVID-19 forced their  
4 schools to convert to distance learning and they could no longer test at school.

5 35. However, the format of the at-home AP exams is different from the format  
6 students are accustomed to and different from the practice AP exams they have taken.  
7 The 2020 home-based AP exams are digitally-based instead of on paper as they have  
8 always been in the past. The new exams are scheduled to last only 45 minutes (actually  
9 40 minutes with the required 5 minutes to begin uploading answers before the test ends)  
10 instead of 3 hours, and all tests in the same subject are given at exactly the same time.  
11 This means that some students in one part of the world could be taking an exam in the  
12 middle of the night, while others are taking it in the middle of the day. Students in  
13 Hawaii begin their first exams each day at 6 a.m., while students in New York begin the  
14 same exams at noon. The 2020 exams include material covered until the time of the  
15 COVID-19 breakout instead of the entire course curriculum. Most importantly, the  
16 exams are taken at home, where the testing environment can be unpredictable and  
17 distracting.

18 36. Some of the issues with the at-home format should have been anticipated.  
19 As soon as the College Board announced its plans to administer at-home exams,  
20 educators, students, parents, and AP coordinators voiced their concerns over equity and  
21 access issues. They also expressed concerns about timing and technical problems with  
22 the new format as well as score validity.

23 37. The College Board announced prior to the administration of the at-home  
24 exams that certain disability accommodations that were previously provided would be  
25 modified, eliminated, or were deemed “unnecessary” due to the new format.

26 38. Dozens of educators and counselors wrote an “Open Letter” to the College  
27 Board on April 22, 2020 outlining why the exams would not be fair to students who  
28 have no computer, access to Internet or quiet work spaces from which to work, or to

1 students with disabilities who would not have their approved accommodations.<sup>6</sup> Plaintiff  
2 FairTest announced that its concerns about the 2020 AP exams included computer  
3 equipment and technology, connectivity, the availability of legally required  
4 accommodations, security, and score comparability.

5 39. The College Board did not address these issues or change its policies prior  
6 to the administration of the at-home AP exams. In fact, on May 14, 2020, after 3 full  
7 days of AP exam administration, College Board's President David Coleman  
8 acknowledged in an email that, "we can't control the conditions in students' homes." He  
9 added, "Students may face technology or internet issues, need to tend to unexpected  
10 family obligations, or face other disruptions that will impact their testing experience.  
11 Like the virus itself, these disruptions will disproportionately impact low-income and  
12 underrepresented students." Instead of changing the testing format to address the  
13 disparities among student testing environments, however, Mr. Coleman recommended  
14 that students explain their disadvantages to college admissions officers. In an admission  
15 that the tests are not valid for all students, Coleman said, "We're working to ensure that  
16 students who take the exam in challenging situations can share context with admissions  
17 officers about their exam experience."

18 40. The first week of the 2020 AP exams revealed the deep digital divide  
19 among AP test-takers, and it became clear how the revised exam format  
20 disproportionately impacted certain groups of students, including those who are under-  
21 resourced, who lack access to technology or quiet workspaces, students with disabilities,  
22 and students testing in non-ideal time zones. A number of students suffered from  
23 technical glitches, timing issues, issues with their computer software, disability  
24 accommodation issues, and widespread panic due to the inability to reach anyone at the  
25 College Board for assistance.

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28 <sup>6</sup> <https://www.washingtonpost.com/education/2020/04/22/an-open-letter-college-board-about-online-at-home-ap-tests/>

1 41. After the first week of testing, The College Board reported a failure rate of  
2 only 1%, but AP coordinators and students told a different story. Schools estimated that  
3 anywhere between 5-20% of their AP test-takers were unable to submit their exam  
4 responses through College Board’s testing platform during the first week. Other  
5 students could not finish their exams or log into the platform at all despite practicing  
6 beforehand.

7 42. One AP Calculus teacher reported that 3 out of her 13 students, or 23% of  
8 her students, faced technical obstacles submitting their work during the AP Calculus AB  
9 examination. This Santa Barbara-area teacher reported that one of her students received  
10 an upload error message after the testing time had expired. A second student had issues  
11 with her devices, even though she had practiced logging on and taking mock exams with  
12 her teacher. A third student in the class reported that her screen froze, then went blank,  
13 and then logged the student out upon trying to submit her answers. This student was  
14 never able to get back into the exam to upload her submissions.

15 43. Another AP Coordinator reported that, “This whole thing was a mess. It  
16 was unprofessional and added more stress to the students, teachers, families, and  
17 coordinators.” Another AP coordinator reported a 10% failure rate on the AP Calculus  
18 exam. These reports from the ground to do not square up with the College Board’s  
19 statement that “the vast majority” of the 2.2 million students who tested last week  
20 successfully completed those exams, or its written statement that less than 1% technical  
21 of test takers encountered technical difficulties.

22 44. Students who experienced issues with the College Board’s platform  
23 emailed their time-stamped work to the College Board, but it was not accepted. They  
24 were told that their only remedy was to retake the exam over the summer, if they  
25 qualified for a retake exam. Students’ anxiety continued to grow as the week progressed  
26  
27  
28

1 due to legitimate fears that they would complete their work but not be unable to submit  
2 it and would then have no remedy.<sup>7</sup>

3 45. Students have not been able to confirm access to the retake exams despite  
4 technical failures. Students have also reported that they have two AP exams scheduled  
5 for the same retake day and that they were told by The College Board that they would  
6 have to choose only one exam to take.

7 46. FairTest received an influx of reports about at-home AP exam failures and  
8 the lack of remedies. One parent reported, “We also had technical issues trying to sign  
9 up for a make-up exam. I spent over an hour on phone with CB. They refused to allow  
10 me to speak to supervisor and offered no reassurance that the problem would be fixed  
11 by a makeup.”

12 47. One student reported that, “Due to a technical malfunction on the College  
13 Board's website during the APUSH exam (AP U.S. History), I was unable to submit by  
14 work. My dad has been critically ill and hospitalized for the past few weeks and despite  
15 this challenge, I persisted in preparing for my AP exams because I wanted to achieve  
16 my goals of earning college credits. Now, due to a technical issue on the College  
17 Board's website, I am going to have to continue working during this incredibly stressful  
18 time in my life to prepare to re-take the exam in June.”

19 48. One parent said, “My son has time stamped images of his Physics AP  
20 answers. Why can't college board find a way to accept those? We worry there is no  
21 make up for the make-up test. What happens if this glitch happens on the make up?”  
22 Another parent reported, “We also had technical issues trying to sign up for make-up  
23 exam. I spent over an hour on phone with CB. They refused to allow me to speak to  
24 supervisor and offered no reassurance that problem would be fixed by makeup.”  
25  
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27 <sup>7</sup> <https://www.washingtonpost.com/education/2020/05/15/college-board-says-new-online-ap-tests-are-going-well-students-report-big-problems/>  
28 <https://www.insidehighered.com/admissions/article/2020/05/18/students-complain-they-cannot-submit-ap-tests>

1 49. One student described the experience of carefully preparing for the exam  
2 but still being unable to submit his responses. “I took all precautions once I heard from  
3 some students that there were submission errors. I updated my computer, used chrome  
4 because it was recommended by the college board, sent my brother to my dad’s house  
5 so I wasn’t distracted during my test, and made my family get off the wifi so I could  
6 have the maximum potential my wifi could give me. . . Then, when I took Physics 1, my  
7 first answer submitted with no problem, but my second question wouldn’t submit.”

8 50. In response to the complaints, the College Board officials initially claimed  
9 that their systems did not malfunction, but the problems were instead caused by  
10 students. Students were instructed to update their browsers, disable plug-ins, and make  
11 sure their devices were properly set up.

12 51. Ultimately, in response to what some called a “tsunami” of complaints, the  
13 College Board made some adjustments to its policies, announcing on May 17, 2020 that  
14 it would provide a backup email submission option of browser-based exams for students  
15 testing between May 18 and May 22, 2020. Nonetheless, if the student is unable to  
16 upload responses through the exam platform or successfully transmit by email at the  
17 time of the exam, as in the case of a home connectivity problem, the student would still  
18 have to request a makeup exam. In addition, the College Board will not accept email  
19 transmissions from students who already tested between May 11 and May 15, 2020.

20 52. Students taking exams between May 18 and May 22, 2020 have an added  
21 safeguard, providing a slightly more desirable and less stressful testing environment for  
22 these test-takers. Students who experienced technical failures during the first week have  
23 still not received any confirmation that they will be eligible to take a makeup exam or  
24 that they will receive the added safeguard of email submission, even for their retakes.

25 53. An online petition is circulating, called “Let Students Submit AP Work,”  
26 which requests remedies for the students who tested between May 11 and May 15, 2020  
27 and could not submit their work.<sup>8</sup> The Petition states that, “We, along with all our  
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<sup>8</sup> <https://www.change.org/p/college-board-let-students-re-submit-ap-work?signed=true>  
899-5656-0001

1 sisters and brothers in humanity, have already been having a hard time because of  
2 COVID and we were already tired and stressed out and a lot of us have been struggling  
3 with sadness and mental health issues. This will make all of that worse. Fortunately,  
4 there's a solution. Most of us still have our work and answers saved. The college board  
5 can give us time to re-submit after they fix their website.” As of the time of filing, the  
6 petition had over 20,000 signatures.

7 54. Students who do not wish to retake their exams, and even those who do not  
8 wish to test at all, cannot receive a refund of their test fees directly from the College  
9 Board. Even though the College Board collected money for the AP exams at least six  
10 months ago, it will not directly issue refunds to students. The College Board has stated  
11 that after both the regular and makeup testing windows have passed, if students have not  
12 taken or attempted to take any exams, their schools will be refunded the cost of their  
13 exam fees. It is then up to the students to request fee refunds from their schools. The  
14 College Board’s website does not provide any instructions to students about how  
15 students can receive fee refunds. Its website says, “[L]ocal school policy determines the  
16 amount of the refund.”

17 55. These are challenging times for high school students and their families,  
18 emotionally and financially. Students are entitled to the valid and reliable exam they  
19 signed up and paid for, absent the severe stress and anxiety associated with the new  
20 format. Despite collecting what Plaintiffs believe to be approximately half a billion  
21 dollars in exam fees, The College Board has failed to provide students with an AP exam  
22 that is similar to the one they purchased.

23 56. One counselor reported that, “For students this was a traumatic experience,  
24 especially after all the time they put into salvaging this course/the year/etc. CB should  
25 have troubleshooted the "what-ifs" ahead of time and had the policy in place for  
26 students to submit answers that did not immediately go. Technology issues are not a  
27 new phenomenon! What more can these poor kids be penalized for? CB needs to accept  
28 the answers that would not submit last week.”

1           57. The “digital divide” was not properly managed. Students are entitled to an  
2 exam that does not discriminate based on their lack of access to resources or based on  
3 their disabilities. The College Board represented that it would provide the necessary  
4 technology to all students; however, there is more than one type of device required to  
5 take the AP exams this year and different exams require different equipment. For  
6 example, all language tests must be taken on a phone or tablet (only specific models),  
7 while others are taken on a computer. Although the College Board claimed that it would  
8 get a device to everyone who needed one, the method of requesting a device required  
9 digital access and was therefore not accessible to the students who needed it.

10           58. As of the first day of AP testing, the College Board said that it had  
11 “connected” with 27,000 students, less than 1% of this year’s AP exam-takers. The  
12 distribution of devices to under-resourced students does not fix slow or unavailable  
13 internet service, multiple family members using the internet at the same time, or other  
14 issues contributing to poor testing environments.

15           59. Some students have reported that they have nowhere to take their exams at  
16 home where they can be free of distraction. It is unrealistic to think that all students  
17 have quiet, private spaces at home in which to test. Lower income students are much  
18 more likely to face cramped housing, siblings and parents sharing the same workspace,  
19 internet connectivity problems, noisy environments, and less comfortable testing spaces.  
20 It has been reported that one New Jersey teacher, worried about her star AP English  
21 student’s lack of reliable internet at home, inquired with the College Board but was told  
22 “have her use the free WiFi at McDonald’s.”<sup>9</sup>

23           60. Prior to the at-home AP exams, counselors, educators and advocates  
24 requested that The College Board provide additional testing time to all students. An  
25 Open Letter to the College Board said that students should be provided with a flexible  
26 time period, not a fixed time, in which to test. As support for this request, the Letter  
27

28 <sup>9</sup> <https://www.nydailynews.com/opinion/ny-oped-taking-an-ap-test-outside-mclds-20200518-pbzbctec4rgnvkhlwrzfsd3poe-story.html>  
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1 stated, “The proposed time limitations have not been tested under these extreme  
2 conditions. With the extra stress associated with this year’s tests, many students fear  
3 they will not be able to complete the tests in the allotted time frames. We expect this to  
4 cause widespread anxiety and panic from minute one. If students know they have  
5 enough time, they may still be stressed, but they will be able to relax a little and may  
6 even complete the tests with a small amount of extra time, time that may be necessary to  
7 accommodate differences in access.”<sup>10</sup>

8         61. Students have already reported issues with the time limits imposed by this  
9 year’s AP exams. The exams have not been properly piloted for time limits, and they are  
10 more speeded and abridged than the original versions. The College Board has  
11 acknowledged the timing issues. The 2020 AP Testing Guide states, “Don't worry if you  
12 don't complete all parts of the question before you need to attach and submit your  
13 response. To give students as many different chances to demonstrate what they know as  
14 possible, a question may have more parts than can be answered in the allowed time. You  
15 don't need to complete the entire question to get a score of 5, but you do need to submit  
16 whatever work you've done.” While this could alleviate some students’ despair about  
17 not finishing their exams, it confirms the fears of other students that their scores will be  
18 seen as invalid or meritless.<sup>11</sup>

19         62. Adding to the perception that the scores on this year’s exam may not be fair  
20 or consistent is the ability of high schools to review students’ scores and request score  
21 increases. The 2020 AP Testing Guide says that “AP teachers will have the chance to  
22 review your score and your exam responses this summer. If you don't receive a score of  
23 3 or higher and your teacher is convinced you should have, your teacher will be able to  
24 engage with the AP Program's college faculty partners to review and confirm your  
25 score, ensuring it's fair and appropriate.” This policy benefits students at schools with  
26

27 \_\_\_\_\_  
28 <sup>10</sup> <https://www.washingtonpost.com/education/2020/04/22/an-open-letter-college-board-about-online-at-home-ap-tests/>

<sup>11</sup> <https://apcentral.collegeboard.org/pdf/ap-testing-guide-2020.pdf>  
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1 more resources, and it discriminates against students who are underprivileged or who  
2 attend under-resourced schools.<sup>12</sup>

3 63. Moreover, there is no guarantee that the AP exam scores will count for  
4 anything in the collegiate landscape. While some colleges have said they will accept the  
5 credit, others have remained silent. Some colleges view at-home testing as inherently  
6 inequitable.

7 64. Defendants' unlawful conduct has caused and will continue to cause  
8 substantial and irreparable damage and injury to Plaintiffs in ways that cannot be  
9 compensated with money, and Plaintiffs have no speedy, plain, or adequate remedy at  
10 law. Students pay for these AP exams but will have disadvantages due to the College  
11 Board's restrictions and practices discussed herein.

12 65. If Defendants' actions are not remedied immediately, Plaintiffs will also  
13 suffer injuries, such as the cost of preparing for yet another set of AP exams.

14 **Students with Disabilities**

15 66. When the College Board announced the new at-home testing format, it  
16 initially stayed silent on accessibility and accommodations for disabled students. After  
17 parents, teachers and counselors repeatedly asked for more details about  
18 accommodations, the College Board announced a month before the AP exams were  
19 scheduled to begin that all accommodations would be provided on the at-home exams. S  
20 Still, no details about how the exams would be delivered to students with disabilities  
21 were released at that time.

22 67. On April 27, approximately two weeks before the exams were scheduled to  
23 begin, the College Board finally released information regarding disability  
24 accommodations.<sup>13</sup> Students were told that extended time would be provided through  
25 the online exam. They were also told that they needed to use their own assistive  
26

27  
28 <sup>12</sup> Id.

<sup>13</sup> [https://apcentral.collegeboard.org/pdf/ap-testing-guide-2020.pdf?SFMC\\_cid=EM305179-&rid=80697368](https://apcentral.collegeboard.org/pdf/ap-testing-guide-2020.pdf?SFMC_cid=EM305179-&rid=80697368)  
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1 technology, such as screen reader software, that was compatible with the at-home AP  
2 platform.

3 68. The College Board’s announcement regarding test accommodations also  
4 stated that “Students approved to use specific devices or aids may use what they have  
5 access to at home.” In other words, The College Board would not be providing any of  
6 these devices or aids, even if the students had access to them during AP exams taken at  
7 school.

8 69. Assuming the availability, willingness and ability of students’ household  
9 members, the College Board stated that students approved for a reader or scribe “may be  
10 assisted by a family or household member while testing.” These tasks are ordinarily  
11 performed by a trained staff member at school during AP exams.

12 70. Some students who were initially approved for 50% extended time were  
13 initially told they had their 50% time built into the exams. On May 7, less than one  
14 week before the AP exams were scheduled to begin, some, but not all, of those students  
15 with the accommodation of 50% extended time were informed they would automatically  
16 receive 100% extended time (those with 100% extended time did not get more time).  
17 Students with this 50% extended time were informed this would take the place of their  
18 breaks. Some students with 50% extended time did not want this additional time,  
19 because they have to wait the time for each question of the exam has passed to move to  
20 the next question.

21 71. In addition, with the additional time, students who have two exams on one  
22 day have little to no break between them. For example, there are exams scheduled at  
23 11:00 a.m. and 1:00 p.m. on the same day. So, if a student with extended time has 90  
24 minutes to finish the first exam at 11:00 a.m., he or she would have to start the 1:00 p.m.  
25 exam immediately thereafter at 12:30 p.m. There is no time to take a break, as the AP  
26 instructions specifically require students to log on 30 minutes before their exams  
27 commence.

1 72. “Breaks-as-needed” is a common disability accommodation, especially for  
2 students with medical issues such as diabetes. These students are generally not given  
3 extended testing time, but their breaks do not count as part of their testing time. With  
4 the 2020 format, there are no breaks at all.

5 73. Many disability accommodations offered to the at-home AP examinees are  
6 dependent upon access to purchased software. Other accommodations require the  
7 availability of an adult who happens to be free during testing time. This available adult  
8 must not be working remotely in the home, or outside of the home and must also be  
9 qualified to act as a reader or a scribe according to the College Board’s detailed  
10 standards. These required circumstances again weigh heavily in favor of wealthier  
11 students who have access to purchase software and adults who have the luxury of time  
12 to help them take their AP exams.

13 74. All AP students were told that any disability accommodation requests  
14 approved after the conversion to online testing would force them to forfeit their original  
15 testing day and have only one opportunity to test. Some students needed to request  
16 different or additional accommodations based upon exam’s format change.

17 75. The at-home AP exams have not been validated for students with  
18 disabilities or for students with these accommodations. The inequitable access to  
19 available household members and the disparity in technology invalidate the at-home AP  
20 exam results.

21 **Public Charter School Students and Homeschool Students**

22 76. The change of the AP exam to the at-home format is only the final hurdle  
23 for many students, and it is one hurdle that some students will never even reach. The  
24 College Board denies access to students or causes them to incur additional costs to  
25 access AP exams based solely on where they are enrolled in school.

26 77. The College Board decides who will and who will not be able to access its  
27 AP program and the associated secondary, postsecondary and financial aid  
28 opportunities. The College Board does not allow access on an equal and nonpartisan

1 basis and makes false claims regarding the availability of its programs in its written  
2 materials. The College Board has been made aware that it excludes groups of students  
3 from its programs and their benefits. However, it has not made any effort to remedy the  
4 situation.

5 78. The College Board determines what schools and what types of schools can  
6 provide AP courses and administer AP exams. The College Board's Level 1  
7 authorization allows schools to provide AP courses to their students and receive their  
8 students' AP and other College Board test scores. Schools with Level 1 authorization  
9 cannot administer AP or other College Board exams. The College Board's Level 2  
10 authorization allows schools to receive scores as well as administer AP Exams to their  
11 students.

12 79. The College Board has denied certain classes of schools, including public  
13 charter schools, the opportunity to administer AP exams, if their curriculum is partially  
14 or entirely non-classroom based. Even after the AP exams moved to an at-home format  
15 this year, students who attended Level 1 schools were not permitted to register for AP  
16 exams. This policy is discriminatory and deprives students of the financial opportunities  
17 that the AP program affords students who pass the exams.

18 80. In California, families have the option of sending their children to local  
19 public schools, public charter schools or private schools. As of the 2017–18 school year,  
20 the number of California students enrolled in charter schools was approximately  
21 628,849, or approximately ten percent of the public school student population  
22 in California.<sup>14</sup> Approximately 25% of California charter schools are either partially or  
23 exclusively non-classroom-based (independent study).

24 81. There are approximately 120,000 public independent study high school  
25 students in California.<sup>15</sup> An estimated 15-20% of these independent study students have  
26

27 \_\_\_\_\_  
<sup>14</sup> <https://www.cde.ca.gov/sp/ch/cefcharterschools.asp>

28 <sup>15</sup> Id.  
899-5656-0001

1 documented disabilities, and this number is on the rise due to the personalized learning  
2 opportunities offered through independent study.

3 82. The College Board does not allow public charter schools that offer  
4 independent study programs or blended learning to administer AP exams to their own  
5 students, even if they are qualified to teach the curriculum. There are countless other  
6 small private schools, homeschool and religious schools that are not College Board-  
7 approved test centers. Students at these schools have no access to AP exams or  
8 additional barriers.

9 83. Families at schools without the College Board's approval to test are  
10 required to find willing test centers on their own, without the assistance of the College  
11 Board. If asked, the College Board will provide parents with a list of all local schools  
12 that are approved to administer the AP exam, and parents can call around hoping to find  
13 one that will accept their student. Based on Plaintiffs' experiences, few schools actually  
14 accept outside students, and the schools on the College Board's lists may be hundreds of  
15 miles away from their homes. Some schools that do agree to test outside students charge  
16 exorbitant sums on top of the official test fees. Test centers that accept outside students  
17 are generally less willing to accept disabled students with accommodations for AP  
18 testing.

19 84. The College Board's policy says that "The AP Program encourages AP  
20 coordinators to assist homeschooled students, students from virtual schools, and  
21 students whose schools don't offer AP Exams," but there is no requirement that they do  
22 so and no alternative if parents cannot locate a willing test center on their own.

23 85. A.K. is a public charter school student with disabilities who resides in Long  
24 Beach, California. His high school does not have authorization to administer AP exams.  
25 One local high school would not administer A.K.'s AP exams with accommodations,  
26 saying that it had a "limited number of proctors and it sounds like [the student] will  
27 require a designated proctor because of the specific accommodations from the College  
28 Board."

1 86. Z.S. attends a public charter school that offers an independent study  
2 curriculum. Z.S. and her siblings have always been educated through homeschooling or  
3 through an independent study program due to religious reasons. Her school is not a  
4 College Board-approved test center, but she wished to take the AP English exam after  
5 having taken the course.

6 87. In the Fall of 2019, Z.S.'s mother called approximately 14 schools in an  
7 attempt to register her to take the AP exam. Her neighborhood high school would not  
8 accept her for testing, and neither would any of the schools on the list provided to her by  
9 the College Board. Z.S.'s mother finally heard of a school near her home that would test  
10 outside students for an additional fee of \$150 on top of her exam registration fee.

11 88. Due to the testing difficulties, some Level 1 schools now discourage  
12 enrollment in AP courses or have stopped offering them altogether, even though this  
13 means that their students may forego the opportunity to earn the college credits (and  
14 cost savings) that come along with those courses.

### 15 **Background of Plaintiffs**

#### 16 **FairTest:**

17 89. The National Center for Fair and Open Testing ("FairTest") is a  
18 Massachusetts public charity that operates in California, nationwide, and internationally.  
19 FairTest's mission is to advance quality education and equal opportunity by promoting  
20 fair, open, and valid evaluations of students, teachers, and schools. FairTest also works  
21 to end the testing practices that impede those goals, including standardized testing that  
22 negatively impacts students with disabilities, underrepresented minorities, gender bias,  
23 and dozens of other issues involving the fair evaluation of students, teachers, and  
24 schools.

25 FairTest engages in three main activities:

- 26 **1) Education of the public.** FairTest serves as a unique source of information  
27 about testing and alternatives for educators, parents, public officials, journalists  
28 and policymakers.

1       **2) Advocacy.** FairTest advocates on behalf of low income families, disabled  
2       students and other marginalized student groups to close the gap in admissions  
3       and outcomes. FairTest coordinates and catalyzes educators, citizen groups and  
4       parents to bring about needed assessment reforms.

5       **3) Strategic Assistance.** FairTest provides training and advice to parents,  
6       educators and a broad range of civil rights organizations about assessments.

7       90. FairTest places special emphasis on eliminating the racial, class, gender,  
8       and cultural barriers to equal opportunity posed by standardized tests. In pursuit of its  
9       mission, FairTest provides information, technical assistance and advocacy on a broad  
10      range of testing concerns, focusing on three main areas: K-12, college and university  
11      admissions, and employment tests.

12      91. Since the College Board announced its changes to the AP exam two  
13      months ago, FairTest has expended significant resources addressing the issues  
14      associated with the at-home exam and advocating for the student groups most affected.  
15      In the past two months, FairTest has repeatedly communicated its concerns about the  
16      2020 AP exams through social media, interviews with journalists, phone calls, and  
17      emails.

18      92. Specifically, FairTest emphasized the potential issues involving computer  
19      equipment and technology, connectivity, the availability of legally required  
20      accommodations, test security and score comparability. In the last week alone, Robert  
21      Schaeffer, FairTests' Interim Executive Director, communicated with dozens of  
22      students, parents, and reporters specifically about the glitches and "snafus" that took  
23      place during the first week of AP exams. Dozens of other queries were sent to FairTest's  
24      general email box and referred for response.

25      93. In the last week, Akil Bello, FairTest's Senior Director of Advocacy and  
26      Advancement, has responded to hundreds of emails about AP issues and recorded close  
27      to 200 accounts of student testing issues. He has spent additional time advocating for  
28      under-resourced students taking the AP exams this year through social media and



1 interviews with reporters. In the last two weeks, nearly all of Mr. Bello's time has been  
2 devoted to AP-related issues.

3 94. FairTest addresses multiple testing reform issues involving high stakes  
4 testing, college admissions testing, mandatory state testing, K-12 admissions, as well as  
5 graduation and promotion tests. Instead of expending its resources on the spectrum of  
6 testing issues, FairTest has been forced to allocate a disproportionate amount of  
7 resources in recent weeks to address the College Board's AP failures.

8 **R.G. on behalf of J.G.:**

9 95. R.G. is acting on behalf of her minor son J.G, who is a high school junior  
10 enrolled in four (4) AP courses this year: AP Calculus AB, AP Chemistry, AP United  
11 States History, and AP English Literature and Composition. He paid for and registered  
12 to take all four AP exams. On Tuesday, May 12, 2020, J.G. took the AP Calculus AB  
13 examination and successfully submitted his work in a JPEG format. The next day,  
14 while using the same computer, the same browser, and connected to the same Wi-Fi  
15 network in the same room in his home, he took the AP Chemistry exam; however, when  
16 he attempted to submit his work in the same JPEG format, he received a message  
17 stating: "there was an error, we did not receive your submission."

18 96. J.G. and his mother, R.G., immediately took a picture of his work, emailed  
19 the College Board with his test work attached as a JPEG, and called the College Board.  
20 They were unable to reach anyone after remaining on hold for 90 minutes.

21 97. As a result, J.G. applied to take a Retake Examination. In the application,  
22 he had to explain why he needed the retake. J.G. received a message saying that he be  
23 notified the week of May 25, 2020, if he was accepted for a Retake, less than a week  
24 before the Retake was scheduled to take place.

25 98. After applying to retake the AP Chemistry exam, J.G. realized he will not  
26 be able available to retake this test on the scheduled date because of a scheduling  
27 conflict. If the College Board does not accept his work that was photographed, time-  
28

1 stamped, and promptly emailed to the College Board on May 13, 2020, he will not have  
2 the opportunity to pass the test and receive the benefits of AP credit.

3 **A.K.:**

4 99. Plaintiff A.K. is a graduating senior with learning disabilities including  
5 ADHD, sensory motor dysfunction, and a speech and language disorder. When A.K.  
6 was in his 9<sup>th</sup> grade year at a public charter school, his mother contacted the AP  
7 Coordinator at the local public school in his district in Long Beach, California, and A.K.  
8 was initially approved to take the AP examination at the high school. When A.K.'s  
9 mother informed the AP Coordinator that A.K. needed accommodations for his AP  
10 Exam, the AP Coordinator told her that the school could no longer administer the test  
11 for A.K. because it did not have a proctor or a teacher available to administer his  
12 accommodations.

13 100. A.K.'s high counselor contacted the College Board to see if the charter  
14 school could administer the examination. The College Board denied the request, and  
15 A.K. had to find an alternative location. A.K.'s mother finally made private  
16 arrangements for A.K.'s high school counselor to proctor A.K.'s AP test at the local  
17 public school. In this case, the student and his family were solely responsible for  
18 finding the proctor and ensuring he could even take the examination, making access  
19 challenging and unduly burdensome.

20 **M.S. on behalf of Z.S.**

21 101. Plaintiff M.S. is acting on behalf of her minor daughter Z.S., who both  
22 reside in the Central District of California. Z.S. is currently enrolled in AP English  
23 Literature and Composition, and she took the AP examination on May 13, 2020. Z.S.  
24 suffers from severe test anxiety, even under ordinary testing conditions. Z.S.  
25 experienced heightened anxiety and fear due to the technical challenges involved with  
26 the administration and submission of the exam. Under these rushed and condensed  
27 conditions, Z.S. did not have time to complete the AP English exam on May 13<sup>th</sup>;  
28 however, she is not eligible to retake the exam. The College Board's website policy

1 expressly prohibits retakes of the examination when a student runs out of time:  
2 “Running out of time to finish and submit your response is NOT an approved reason for  
3 requesting a makeup test.”

4 **J.P. on behalf of R.P.**

5 102. Plaintiff J.P., on behalf of her minor son R.P. who is a sophomore at  
6 Saugus High School, is currently enrolled in two AP classes, AP Chemistry and AP  
7 World History. J.P. and R.P. live in the Central District. The AP Chemistry exam was  
8 administered on May 20, 2020, the very day of the six-month anniversary of the tragic  
9 Saugus school shooting.

10 103. Already under tremendous amounts of stress and anxiety due to COVID  
11 and the anniversary of this horrific school event, R.P. began the AP Chemistry exam  
12 and successfully submitted the answer to the first question. After finishing the second  
13 of two questions with six minutes remaining, R.P. tried to submit his answer but  
14 received an error message that his work would not upload, despite his careful attention  
15 to following instructions. He and his mother actually practiced logging in, preparing,  
16 and submitting answers the day prior to the real examination.

17 104. His mother J.P., an LAUSD teacher, immediately called the College Board.  
18 After waiting on hold and transferring to several different departments, she finally  
19 reached a customer service agent. J.P. asked whether College Board was experiencing  
20 reports of similar technical problems, and rather than responding honestly, the College  
21 Board customer service employee said they had received very few technical problem  
22 reports, and blamed the student for using an out of date browser. R.P.’s browser was not  
23 out of date.

24 105. J.P. asked if she could help her son R.P. submit the work, and was told no.  
25 R.P. as a first week test-taker, does not have the same remedy nor did he have the same  
26 test experience as the week two test-takers, who now have the opportunity to submit  
27 their work if the College Board rejects submission attempts. R.P. has saved his entire  
28

1 answer, including the unsubmitted portion to question 2, and requests that the College  
2 Board accept his work and grade his test answers.

3 **CLASS ACTION ALLEGATIONS**

4 Plaintiffs bring this action on his own behalf, and as a class action on behalf of  
5 the Classes defined herein, pursuant to, and properly maintainable under Fed. R. Civ. P.  
6 23(a) and Fed. R. Civ. P. 23(b)(3). The Classes consist of tens of thousands of students  
7 victimized by Defendants' unfair and illegal practices. Specifically, Plaintiffs brings  
8 this suit on behalf of the following Classes:

9  
10 **The "Nationwide Class"**: All persons who are or were students who did  
11 not have fair and equal access to, or were not able to complete, the 2020  
12 AP exams as a result of the College Board's decisions prior to the  
13 administration of the exams. The class excludes counsel representing the  
14 class and all persons employed by said counsel.

15  
16 **The Fair Access "California Subclass"**: All persons who are or were  
17 students who did not have fair and equal access to, or were not able to  
18 complete, the 2020 AP exams as a result of the College Board decisions  
19 prior to the administration of the exams. The class excludes counsel  
20 representing the class and all persons employed by said counsel.

21  
22 **The Disabled Students "California Subclass"**: All persons who are or  
23 were disabled students who did not have fair and equal access to the AP  
24 exams due to the College Board's decisions. The class excludes counsel  
25 representing the class and all persons employed by said counsel.

26  
27 **The Under-Resourced "California Subclass"**: All persons who are or  
28 were under-resourced students who did not have fair and equal access to

1 the AP exams due to the College Board's decisions. The class excludes  
2 counsel representing the class and all persons employed by said counsel.  
3

4 **The Denied Access Students “California Subclass”:** All persons who  
5 are or were students who were denied access to, faced additional burdens,  
6 or were not able to complete, the 2020 AP exams as a result of the College  
7 Board decisions prior to the administration of the exams. The class  
8 excludes counsel representing the class and all persons employed by said  
9 counsel.  
10

11 Numerosity: The proposed classes are so numerous that individual joinder of all  
12 their members is impracticable. While the exact number and identities of the Class  
13 Members are unknown at this time, such information can be ascertained through  
14 appropriate investigation and discovery. The disposition of the claims of these Class  
15 Members in a single class action will provide substantial benefits to all parties and to  
16 the Court.

17 Typicality: Plaintiff’s claims are typical of the claims of his respective Classes in  
18 that his claims arise from the same event or practice or course of conduct that gives rise  
19 to the claims of other class members, and is based on the same legal theory as their  
20 claims.

21 Adequacy of Representation: Plaintiffs will fairly and adequately represent and  
22 protect the interests of the Classes. Undersigned counsel has substantial experience in  
23 prosecuting complex lawsuits and class action litigation. Plaintiffs and undersigned  
24 counsel are committed to vigorously prosecuting this action on behalf of the Classes,  
25 and have the financial resources to do so. Neither Plaintiffs nor their counsel have any  
26 interests adverse to the Classes.

27 Superiority of Class Action and Impracticability of Individual Actions: Plaintiffs  
28 and the members of the Classes suffered harm as a result of the College Board

1 Defendants' unlawful conduct. A class action is superior to other available methods for  
2 the fair and efficient adjudication of the controversy. Individual joinder of all members  
3 of the Classes is impractical. Even if individual Class Members had the resources to  
4 pursue individual litigation, it would be unduly burdensome to the courts in which the  
5 individual litigation would proceed. Individual litigation magnifies the delay and  
6 expense to all parties in the court system of resolving the controversies engendered by  
7 the Defendants' common course of conduct. The class action device allows a single  
8 court to provide the benefits of unitary adjudication, judicial economy, and the fair and  
9 equitable handling of all Class Members' claims in a single forum. The conduct of this  
10 action as a class action conserves the resources of the parties and of the judicial system,  
11 and protects the rights of the Class Members. Adjudication of individual Class  
12 Members' claims with respect to Defendants would, as a practical matter, be dispositive  
13 of the interests of other members not parties to the adjudication, and could substantially  
14 impair or impede the ability of other Class Members to protect their interests.

15 Common Questions of Law and Fact Predominate: In addition, the requirements  
16 of Federal Rule of Civil Procedure 23 are satisfied by questions of law and fact  
17 common to the claims of Plaintiff and of each member of the Classes and which  
18 predominate over any question of law or fact affecting only individual members of the  
19 Classes. Common questions of law and fact include, but are not limited to, the  
20 following:

- 21 a. The questions of law and fact common to the Nationwide Class include the  
22 following: (1) were members of the Nationwide Class entitled to equal  
23 access to the AP exams?; (2) did Defendants' practices constitute breach of  
24 contract?; (3) did Defendants' practices constitute breach of implied  
25 covenant of good faith and fair dealing?; (4) did Defendants' practices  
26 constitute negligence?; (5) did Defendants' practices constitute negligent  
27 misrepresentation?; (6) did Defendants' practices constitute gross  
28 negligence?; (7) did Defendants' practices constitute unjust enrichment?;

1 (8) did Defendants’ practices constitute breach of implied in fact contract?;  
2 (9) did Defendants’ practices constitute breach of fiduciary duty?; (10) did  
3 Defendants’ practices constitute violation of Americans with Disabilities  
4 Act?; (11) did Defendants’ practices constitute violation of Unruh Act?;  
5 (12) did Defendants’ practices constitute violation of Americans with  
6 Disabilities Act Section 794?; (13) did Defendants’ practices constitute  
7 violation of Americans with Disabilities Act Section 12101?; (14) did  
8 Defendants’ practices constitute violation of Rehabilitation Act?; (15) did  
9 Defendants’ practices constitute unfair competition?; (16) did Defendants’  
10 practices constitute false advertising?; and (17) are members of the  
11 Nationwide Class entitled to damages?

12 b. The questions of law and fact common to the California Subclasses include  
13 the following: (1) were members of the California SubClass entitled to  
14 equal access to the AP exams?; (2) did Defendants' practices constitute  
15 breach of contract?; (3) did Defendants' practices constitute breach of  
16 implied covenant of good faith and fair dealing?; (4) did Defendants’  
17 practices constitute negligence?; (5) did Defendants’ practices constitute  
18 negligent misrepresentation?; (6) did Defendants’ practices constitute gross  
19 negligence?; (7) did Defendants’ practices constitute unjust enrichment?;  
20 (8) did Defendants’ practices constitute breach of implied in fact contract?;  
21 (9) did Defendants’ practices constitute breach of fiduciary duty?; (10) did  
22 Defendants’ practices constitute violation of Americans with Disabilities  
23 Act?; (11) did Defendants’ practices constitute violation of Unruh Act?;  
24 (12) (12) did Defendants’ practices constitute violation of Rehabilitation  
25 Act?; (15) did Defendants’ practices constitute unfair competition?; (16)  
26 did Defendants’ practices constitute false advertising?; and (17) are  
27 members of the California Sub Class entitled to damages?  
28

1 106. Notice: Notice can be provided via internet publication, published notice  
2 and/or through the mail and paid for by the College Board.

3 **FIRST CLAIM FOR RELIEF**

4 **BREACH OF CONTRACT**

5 112. Plaintiffs repeat and incorporates by reference paragraphs 1 to 111 of this  
6 Complaint.

7 113. Upon registration for the AP exams, the Class Members entered into an  
8 agreement with the College Board wherein the College Board expressly recognizes its  
9 obligation to ensure a fair and equitable opportunity to demonstrate college readiness  
10 for every student and to prevent anyone from gaining an unfair advantage on the tests.

11 114. Defendants breached the agreement by failing to ensure a fair and equitable  
12 testing opportunity and to prevent anyone from gaining an unfair advantage by the  
13 College Board's distinctions between what is considered an official test site,  
14 accommodations and bars to taking the exams.

15 115. As a direct result of Defendants' breach, Plaintiff and the Class suffered  
16 damages.

17 **SECOND CLAIM FOR RELIEF**

18 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

19 116. Plaintiffs repeat and incorporates by reference paragraphs 1 to 115 of this  
20 Complaint.

21 117. Defendants breached the express contract provision obligating Defendants  
22 to ensure a fair and equitable opportunity to demonstrate college readiness for every  
23 student and to prevent anyone from gaining an unfair advantage on the AP exams.

24 118. As a direct result of Defendant's breach, Plaintiff and the Class suffered  
25 damages.

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1 **THIRD CLAIM FOR RELIEF**

2 **NEGLIGENCE**

3 119. Plaintiffs repeat and incorporates by reference paragraphs 1 to 118 of this  
4 Complaint.

5 120. Defendants, as owners, sponsors, developers and administrators of the AP  
6 exams, respectively, had a duty to exercise reasonable care in providing the exams to  
7 Plaintiff and the Class. Specifically, Defendants were under a duty to offer and  
8 administer the exams in a fair and equitable manner and to safeguard the exams against  
9 any foreseeable unfair advantages.

10 121. Defendants, through an affirmative and/or promised act, undertook to  
11 render the exams in a fair and equitable manner, free from impropriety.

12 122. Defendants breached their duty by negligently offering and administering  
13 the exams despite failing to ensure a fair and equitable testing opportunity and access  
14 and failing to prevent anyone from gaining an unfair advantage by the College Board's  
15 distinctions between what is considered an official test site, accommodations, and bars  
16 to taking the exams.

17 123. Defendants' conduct foreseeably and substantially caused Plaintiff and the  
18 Class to suffer damages.

19 124. Plaintiff and the Class suffered damages as a direct and proximate result of  
20 Defendants' breach.

21 **FOURTH CLAIM FOR RELIEF**

22 **NEGLIGENT MISREPRESENTATION**

23 125. Plaintiffs repeat and incorporates by reference paragraphs 1 to 124 of this  
24 Complaint.

25 126. Defendants misrepresented to Plaintiff and the Class that the AP exams  
26 would be fairly and equitably offered and administered.

27 127. Based on the history of which types of students took these exams and the  
28 College Board's active role in creating rules and barriers to entry to the exams,

1 Defendants should have known that its representations regarding fairness, equity and  
2 validity were false.

3 128. Defendants intended to induce Plaintiff and the Class to rely on the  
4 misrepresentations in signing up for the exams and in trusting that Defendants were  
5 administering the exams fairly.

6 129. Plaintiff and the Class acted in justifiable reliance upon the  
7 misrepresentation by registering for and taking or not being able to take the exams,  
8 resulting in injury to Plaintiff and the Class.

9 **FIFTH CLAIM FOR RELIEF**

10 **GROSS NEGLIGENCE**

11 130. Plaintiffs repeat and incorporates by reference paragraphs 1 to 129 of this  
12 Complaint.

13 131. There is an imminently clear and present danger that the AP exams will be  
14 administered unfairly and invalidly as there is no equal access to these exams for all  
15 2020 AP exam takers, students with disabilities or under-resourced students, based on  
16 fundamental flaws inherent to the College Board's requirements for access to these  
17 exams.

18 132. There is also an imminently clear and present danger that the AP exams  
19 will be exploited by individuals.

20 133. Defendants have knowledge of and/or awareness of the imminent danger of  
21 unfair administration of these exams and the risk of exploitation.

22 134. Therefore, it is indisputably foreseeable that more students like those in this  
23 class will be denied an equal opportunity to partake in these tests, which in turn will  
24 affect their ability to show college readiness.

25 135. By failing to rectify the obvious flaw—unequal access—Defendants evince  
26 a conscious disregard of the consequences.

27 As a result of Defendants gross negligence, Plaintiff and the Class suffered  
28 damages.

**SIXTH CLAIM FOR RELIEF**

**UNJUST ENRICHMENT**

1  
2  
3 136. Plaintiffs repeat and incorporates by reference paragraphs 1 to 135 of this  
4 Complaint.

5 137. Plaintiff and the Class conferred benefits to Defendants by registering for,  
6 paying for, and taking the exams.

7 138. Defendants knowingly and willingly retained the registration fees and  
8 associated fees conferred in connection with registering for and taking the exams  
9 despite knowing of these inequities.

10 139. Under the circumstances, it would be inequitable for Defendants to retain  
11 this monetary benefit at the expense of Plaintiff and the Class.

12 140. Moreover, no adequate legal remedy exists.

13 141. As a direct result of Defendants' unjust enrichment, Plaintiff and the Class  
14 have suffered injury and are entitled to reimbursement, restitution and disgorgement by  
15 Defendants of the benefit conferred by Plaintiff and the Class.

16 142. Defendants benefited from their unlawful acts, as alleged herein, through  
17 payment by Plaintiffs and the Class for the 2020 AP exams, and through the resulting  
18 profits enjoyed by Defendants as a direct result of such payments.

19 143. As a direct and proximate result of Defendants' conduct, they have been  
20 and continue to be unjustly enriched at the expense of, and to the detriment of, Plaintiffs  
21 and the Class.

22 144. It would be against equity and good conscience to permit Defendants to  
23 retain the benefit of these payments that were conferred by the Plaintiff and the Class  
24 and retained by Defendants. The benefit held by Defendants rightly belongs to the  
25 Plaintiffs and the Class, as the Plaintiff and the Class have paid for services that  
26 Defendants failed and continue to fail to provide.

27 145. In equity, Defendants should not be allowed to retain the economic benefit  
28 from their improper conduct and should be ordered to disgorge profits or pay restitution

1 and pre-judgment interest to the Plaintiff and the Class, or in the alternative, ordered to  
2 score the exams that were recorded and time-stamped immediately if the student is  
3 unable to take a make-up test without charge on the date unilaterally scheduled by  
4 Defendants.

5 **SEVENTH CLAIM FOR RELIEF**

6 **BREACH OF IMPLIED IN FACT CONTRACT**

7 146. Plaintiffs repeat and incorporates by reference paragraphs 1 to 145 of this  
8 Complaint.

9 147. Defendants tacitly promised Plaintiff and the Class, as inferred in whole or  
10 in part by its conduct, that it would fairly and equitably offer and administer the exams.

11 148. Under the circumstances, Plaintiff and the Class presumed based on  
12 Defendants' conduct that the tests would be fairly and equitably offered and  
13 administered.

14 149. Defendants breached the implied contract by failing to ensure a fair and  
15 equitable testing opportunity for all students.

16 150. As a result of Defendants' breach, Plaintiff and the Class were damaged.

17 **EIGHTH CLAIM FOR RELIEF**

18 **BREACH OF FIDUCIARY DUTY**

19 151. Plaintiffs repeat and incorporates by reference paragraphs 1 to 150 of this  
20 Complaint.

21 152. A fiduciary relationship between Plaintiffs and the Class and Defendants  
22 exists. Defendants agreed to offer and administer fair and equitable exams for the  
23 benefit of Plaintiff and the Class and were thereby granted a high degree of control and  
24 discretionary power to do so, evidencing a high level of trust and confidence in and  
25 reliance on Defendants to perform their duties.

26 153. Defendants breached their fiduciary duty by failing to administer the exams  
27 and allow access to the exams in a fair and equitable manner.

1 154. As a proximate result of Defendants' breach, Plaintiff and the Class  
2 suffered damages.

3 **NINTH CLAIM FOR RELIEF**

4 **VIOLATION OF AMERICANS WITH DISABILITIES ACT 42**

5 **USC SECTION 12101**

6 155. Plaintiffs repeat and incorporates by reference paragraphs 1 to 154 of this  
7 Complaint.

8 156. By creating barriers to access for these exams and failing to provide  
9 appropriate accommodations for all students, whether disabled or in need of resources,  
10 Defendants failed to prevent an unfair disadvantage for students with disabilities.

11 157. As a result of Defendants' breach of its duty to provide appropriate  
12 accommodations and its violation of the ADA, Plaintiff and the Class were damaged.

13 **TENTH CLAIM FOR RELIEF**

14 **VIOLATION OF UNRUH ACT CCC SECTION 51-DENIAL OF**

15 **OPPORTUNITIES FOR DISABLED AND**

16 **UNDERRESOURCED STUDENTS**

17 158. Plaintiffs repeat and incorporates by reference paragraphs 1 to 157 of this  
18 Complaint.

19 159. The Unruh Act provides: "All persons within the jurisdiction of this state  
20 are free and equal, and no matter what their...disability...are entitled to the full and  
21 equal accommodations, advantages, facilities, privileges, or services in all business  
22 establishments of every kind whatsoever." Cal. Civil Code Section 51(a). The Unruh  
23 Act makes liable any person who "denies, aids or incites a denial, or makes any  
24 discrimination or distinction" contrary to Section 51.

25 160. The Unruh Act provides that a "violation of the right of any individual  
26 under the federal Americans with Disabilities Act of 1990...shall also constitute a  
27 violation of this section." Cal. Civil Code Section 51(f).

1 161. Defendants have denied students with disabilities the same access other  
2 students have to the AP exams. Defendants have therefore denied, aided, or incited a  
3 denial, or made a discrimination or distinction contrary to Section 51 in doing so.

4 162. As a result of Defendants' breach of its duty to provide equal access to AP  
5 exams and their violations of the Unruh Act, Plaintiff and the Class were damaged.

6 **ELEVENTH CLAIM FOR RELIEF**

7 **VIOLATION OF REHABILITATION ACT**

8 163. Plaintiffs repeat and incorporates by reference paragraphs 1 to 162 of this  
9 Complaint.

10 164. By creating barriers to access for these exams and failing to provide  
11 appropriate accommodations for disabled students, Defendants failed to ensure that the  
12 students with disabilities would have equitable access and opportunity to take these  
13 exams and participate equally in college admissions by failing to provide adequate  
14 accommodations.

15 165. As a result of Defendants' breach of their duty to ensure that disabled  
16 students would have equitable access and opportunity to take the AP exams and its  
17 violation of the Rehabilitation Act, Plaintiff and the Class were damaged.

18 **TWELVTH CLAIM FOR RELIEF**

19 **UNFAIR COMPETITION, BUSINESS AND PROFESSIONS**

20 **CODE SECTION 17200**

21 166. Plaintiffs repeat and incorporates by reference paragraphs 1 to 165 of this  
22 Complaint.

23 167. California Business & Professions Code Section 17200 *et seq.*, also known  
24 as the California Unfair Competition Law (“UCL”), prohibits acts of “unfair  
25 competition” including any unlawful, unfair, fraudulent or deceptive business act or  
26 practice as well as “unfair, deceptive, untrue or misleading advertising.”  
27  
28

1 168. By engaging in the unlawful conduct alleged above, Defendants have  
2 engaged in unlawful business acts and practices in violation of the UCL by violating  
3 state and federal laws including but not limited to the ADA and the Unruh Act.

4 169. As a result of Defendants' violation of Business & Professions Code  
5 Section 17200, Plaintiff and the Class were damaged.

6 **THIRTEENTH CLAIM FOR RELIEF**

7 **FALSE ADVERTISING, BUSINESS AND PROFESSIONS CODE**

8 **SECTION 17500**

9 170. Plaintiffs repeat and incorporates by reference paragraphs 1 to 169 of this  
10 Complaint.

11 171. California Business & Professions Code Section 17500 prohibits acts of  
12 “untrue or misleading” advertising.

13 172. By engaging in the unlawful conduct alleged above, including the issuance  
14 of false statements regarding the percentage of students who faced technological  
15 obstacles with submitting their exam answers, Defendants have engaged in unlawful  
16 business acts and practices in violation of Business & Professions Code Section 17500  
17 by violating state and federal laws including, but not limited to the prohibition against  
18 false advertising.

19 173. As a result of Defendants' violation of Business & Professions Code  
20 Section 17500, Plaintiff and the Class were damaged.

21  
22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

24 86. Plaintiffs seek to recover the following damages and obtain the following  
25 relief from Defendants:

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1                   **ON THE CAUSE OF ACTION FOR BREACH OF CONTRACT**

- 2           1.     An Order certifying that the action be maintained as a class action under  
3                 Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.  
4           2.     Economic loss and damages suffered by Plaintiffs.  
5           3.     For attorneys’ fees incurred herein, to the extent permitted by law.  
6           4.     Court costs.  
7           5.     For pre and post judgment interest and costs of suit incurred herein.  
8           6.     For such other relief to which Plaintiffs may show themselves justly  
9                 entitled.  
10          7.     For injunctive relief requiring injunctive relief the College Board to accept  
11                 any test answers from last week’s test by time stamp, photo and email.  
12

13                   **ON THE CAUSE OF ACTION FOR BREACH OF IMPLIED COVENANT**  
14                                   **OF GOOD FAITH AND FAIR DEALING**

- 15           1.     An Order certifying that the action be maintained as a class action under  
16                 Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.  
17           2.     An injunction precluding the wrongful conduct described herein.  
18           3.     For compensatory damages in an amount that exceeds \$500 million, with  
19                 the exact amount to be proven at trial.  
20           4.     For punitive damages in an amount sufficient to punish Defendants and to  
21                 deter them from engaging in wrongful conduct in the future.  
22           5.     For pre and post judgment interest and costs of suit incurred herein.  
23           6.     For attorneys’ fees incurred herein, to the extent permitted by law.  
24           7.     For such other and further relief as the Court may deem just and proper.

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**ON THE CAUSE OF ACTION FOR NEGLIGENCE**

1. An Order certifying that the action be maintained as a class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.
2. An injunction precluding the wrongful conduct described herein.
3. For compensatory damages in an amount that exceeds \$500 million, with the exact amount to be proven at trial.
4. For punitive damages in an amount sufficient to punish Defendants and to deter them from engaging in wrongful conduct in the future.
5. For pre and post judgment interest and costs of suit incurred herein.
6. For attorneys’ fees incurred herein, to the extent permitted by law.
7. For such other and further relief as the Court may deem just and proper.
8. For injunctive relief requiring injunctive relief the College Board to accept any test answers from last week’s test by time stamp, photo and email.

**ON THE CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION**

1. An Order certifying that the action be maintained as a class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.
2. An injunction precluding the wrongful conduct described herein.
3. For compensatory damages in an amount that exceeds \$500 million, with the exact amount to be proven at trial.
4. For punitive damages in an amount sufficient to punish Defendants and to deter them from engaging in wrongful conduct in the future.
5. For pre and post judgment interest and costs of suit incurred herein.
6. For attorneys’ fees incurred herein, to the extent permitted by law.
7. For such other and further relief as the Court may deem just and proper.

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**ON THE CAUSE OF ACTION FOR GROSS NEGLIGENCE**

1. An Order certifying that the action be maintained as a class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.
2. An injunction precluding the wrongful conduct described herein.
3. For compensatory damages in an amount that exceeds \$500 million, with the exact amount to be proven at trial.
4. For punitive damages in an amount sufficient to punish Defendants and to deter them from engaging in wrongful conduct in the future.
5. For pre and post judgment interest and costs of suit incurred herein.
6. For attorneys' fees incurred herein, to the extent permitted by law.
7. For such other and further relief as the Court may deem just and proper.
8. For injunctive relief requiring injunctive relief the College Board to accept any test answers from last week's test by time stamp, photo and email.

**ON THE CAUSE OF ACTION FOR UNJUST ENRICHMENT**

1. An Order certifying that the action be maintained as a class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.
2. An injunction precluding the wrongful conduct described herein.
3. For compensatory damages in an amount that exceeds \$500 million, with the exact amount to be proven at trial.
4. For punitive damages in an amount sufficient to punish Defendants and to deter them from engaging in wrongful conduct in the future.
5. For pre and post judgment interest and costs of suit incurred herein.
6. For attorneys' fees incurred herein, to the extent permitted by law.
7. For such other and further relief as the Court may deem just and proper.

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**ON THE CAUSE OF ACTION FOR BREACH OF IMPLIED**

**IN FACT CONTRACT**

1. An Order certifying that the action be maintained as a class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.
2. An injunction precluding the wrongful conduct described herein.
3. For compensatory damages in an amount that exceeds \$500 million, with the exact amount to be proven at trial.
4. For punitive damages in an amount sufficient to punish Defendants and to deter them from engaging in wrongful conduct in the future.
5. For pre and post judgment interest and costs of suit incurred herein.
6. For attorneys' fees incurred herein, to the extent permitted by law.
7. For such other and further relief as the Court may deem just and proper.
8. For injunctive relief requiring injunctive relief the College Board to accept any test answers from last week's test by time stamp, photo and email.

**ON THE CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY**

1. An Order certifying that the action be maintained as a class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.
2. An injunction precluding the wrongful conduct described herein.
3. For compensatory damages in an amount that exceeds \$500 million, with the exact amount to be proven at trial.
4. For punitive damages in an amount sufficient to punish Defendants and to deter them from engaging in wrongful conduct in the future.
5. For pre and post judgment interest and costs of suit incurred herein.
6. For attorneys' fees incurred herein, to the extent permitted by law.
7. For such other and further relief as the Court may deem just and proper.
8. For injunctive relief requiring injunctive relief the College Board to accept any test answers from last week's test by time stamp, photo and email.

1                   **ON THE CAUSE OF ACTION FOR VIOLATION OF AMERICANS**  
2                   **WITH DISABILITIES ACT 42 USC SECTION 12101**

- 3           1.     An Order certifying that the action be maintained as a class action under  
4                   Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.  
5           2.     An injunction precluding the wrongful conduct described herein.  
6           3.     For compensatory damages in an amount that exceeds \$500 million, with  
7                   the exact amount to be proven at trial.  
8           4.     For punitive damages in an amount sufficient to punish Defendants and to  
9                   deter them from engaging in wrongful conduct in the future.  
10          5.     For pre and post judgment interest and costs of suit incurred herein.  
11          6.     For attorneys' fees incurred herein, to the extent permitted by law.  
12          7.     For such other and further relief as the Court may deem just and proper.

13  
14                   **ON THE CAUSE OF ACTION FOR VIOLATION OF UNRUH ACT CCC**  
15                   **SECTION 51-DENIAL OF OPPORTUNITIES**

- 16          1.     An Order certifying that the action be maintained as a class action under  
17                   Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.  
18          2.     An injunction precluding the wrongful conduct described herein.  
19          3.     For compensatory damages in an amount that exceeds \$500 million, with  
20                   the exact amount to be proven at trial.  
21          4.     For statutory damages as set forth under the Unruh Act.  
22          5.     For punitive damages in an amount sufficient to punish Defendants and to  
23                   deter them from engaging in wrongful conduct in the future.  
24          6.     For pre and post judgment interest and costs of suit incurred herein.  
25          7.     For attorneys' fees incurred herein, to the extent permitted by law.  
26          8.     For such other and further relief as the Court may deem just and proper.

27     ///

28     ///

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**ON THE CAUSE OF ACTION FOR UNFAIR COMPETITION, BUSINESS AND PROFESSIONS CODE SECTION 17200**

1. An Order certifying that the action be maintained as a class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.
2. An injunction precluding the wrongful conduct described herein.
3. For compensatory damages in an amount that exceeds \$500 million, with the exact amount to be proven at trial.
4. For restitution as set forth in Business & Professions Code 17200.
5. For punitive damages in an amount sufficient to punish Defendants and to deter them from engaging in wrongful conduct in the future.
6. For pre and post judgment interest and costs of suit incurred herein.
7. For attorneys’ fees incurred herein, to the extent permitted by law.
8. For such other and further relief as the Court may deem just and proper.

**ON THE FIFTEENTH CAUSE OF ACTION FOR FALSE ADVERTISING, BUSINESS AND PROFESSIONS CODE SECTION 17500**

1. An Order certifying that the action be maintained as a class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.
2. An injunction precluding the wrongful conduct described herein.
3. For compensatory damages in an amount that exceeds \$500 million, with the exact amount to be proven at trial.
4. For restitution as set forth in Business & Professions Code section 17500.
5. For punitive damages in an amount sufficient to punish Defendants and to deter them from engaging in wrongful conduct in the future.
6. For pre and post judgment interest and costs of suit incurred herein.

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1 7. For attorneys' fees incurred herein, to the extent permitted by law.

2 8. For such other and further relief as the Court may deem just and proper.

3  
4 DATED: May 19, 2020

BAKER, KEENER & NAHRA, LLP

5 By /s/ PHILLIP A. BAKER

6 PHILLIP A. BAKER  
JENNIFER L. STONE

7  
8 MILLER ADVOCACY GROUP

9 By /s/ MARCI LERNER MILLER

10 MARCI LERNER MILLER  
CHRISTINA N. HOFFMAN

11 Attorneys for Plaintiffs

12  
13 **JURY DEMAND**

14 Plaintiffs hereby demand a trial by jury on all issues so triable.

15 DATED: May 19, 2020

BAKER, KEENER & NAHRA, LLP

16 By /s/ PHILLIP A. BAKER

17 PHILLIP A. BAKER  
JENNIFER L. STONE

18  
19 MILLER ADVOCACY GROUP

20 By /s/ MARCI LERNER MILLER

21 MARCI LERNER MILLER  
CHRISTINA N. HOFFMAN

22 Attorneys for Plaintiffs