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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO

20 ELIEZER WILLIAMS, a minor, by Sweetie
Williams, his guardian ad litem, *et al.*, each
21 individually and on behalf of all others simi-
larly situated,

22 Plaintiffs,

23 v.

24 STATE OF CALIFORNIA, DELAINE
EASTIN, State Superintendent of Public In-
struction, STATE DEPARTMENT OF
25 EDUCATION, STATE BOARD OF
EDUCATION,

26 Defendants.
27
28

No. 312236

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
ADJUDICATION OF THE STATE'S DUTY
TO ENSURE EQUAL ACCESS TO DECENT
SCHOOL FACILITIES FOR ALL
CALIFORNIA'S PUBLIC SCHOOL
STUDENTS**

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25
26
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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES	iii
INTRODUCTION	1
ARGUMENT	3
I. THE STATE HAS THE DUTY TO OPERATE A SYSTEM OF OVERSIGHT THAT WILL EITHER PREVENT OR DISCOVER AND CORRECT DEPRIVATIONS OF EQUAL ACCESS TO DECENT SCHOOL FACILITIES.	3
A. State Officials Have Made Repeated Admissions That School Facilities Are Fundamentally Important To Learning.	4
B. The Courts Of This State And Other States, As Well As The United States Supreme Court, Hold That Decent School Facilities Are Fundamental To Education.	7
C. Both The State’s Experts And Plaintiffs’ Experts Agree That Decent School Facilities Are Essential Learning Conditions.	10
D. School District Superintendents And Other School Practitioners Confirm The Fundamental Importance Of School Facilities.	12
II. THE STATE HAS BREACHED ITS DUTY BY FAILING TO OPERATE A SYSTEM OF OVERSIGHT AND MANAGEMENT GOVERNING EQUAL ACCESS TO DECENT SCHOOL FACILITIES.	14
A. Both The Governor And Former Superintendent of Public Instruction Delaine Eastin Have Made Admissions Acknowledging Inequalities In Access To Decent School Facilities.	14
B. Independent Sources Document Gross Inequality In Access To Decent School Facilities.	14
C. State Documents Reveal Appalling Facilities Needs In Many California Public Schools.	17
D. District Documents And Plaintiffs’ Evidence Confirm The Gross Inequity In Access To Decent Facilities In California Public Schools.	22

1	1.	District Documents And Plaintiffs’ Evidence Show	
2		Desperate Facilities Needs In Some California Public	
3		Schools.	22
4	2.	Severe Facilities Needs Persist Today In Some California	
5		Public Schools.....	40
6	E.	Evidence In This Case Shows That Appalling Facilities	
7		Conditions Aggregate In Schools.	49
8	F.	The Vast Majority Of California’s Public School	
9		Students Do Have Access To Decent School Facilities.....	54
10	III.	THE STATE’S ACTIONS AND INACTIONS CONSTITUTE	
11		WHOLESALE, DELIBERATE ABDICATION OF ITS	
12		DUTY TO ENSURE EQUAL ACCESS TO DECENT	
13		SCHOOL FACILITIES.	55
14		CONCLUSION	60

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

<i>Abbott v. Burke</i> , 575 A.2d 359 (N.J. 1990).....	9
<i>Arcadia v. State Dep't. of Educ.</i> , 2 Cal. 4th 251 (1992)	7
<i>Butt v. State</i> , 4 Cal. 4th 668 (1992)	2, 3, 59
<i>Campaign for Fiscal Equity, Inc. v. State</i> , 86 N.Y.2d 307 (1995)	9
<i>Campaign for Fiscal Equity, Inc. v. State</i> , No. 74, 2003 WL 21468502 (N.Y. June 26, 2003).....	9
<i>Campbell County Sch. Dist. v. State</i> , 907 P.2d 1238 (Wyo. 1995)	9
<i>Crawford v. Bd. of Educ.</i> , 113 Cal. App. 3d 633 (1980), <i>aff'd</i> 458 U.S. 527 (1982).....	7
<i>DeRolph v. State</i> , 677 N.E. 2d 733 (Ohio 1997).....	9
<i>FPI Dev., Inc. v. Nakashima</i> , 231 Cal. App. 3d 367 (1991).....	6
<i>Hartzell v. Connell</i> , 35 Cal. 3d 899 (1984)	7
<i>Keyes v. Sch. Dist. No. 1</i> , 413 U.S. 189 (1973).....	8
<i>Le Bourgeois v. Fireplace Mfg., Inc.</i> , 68 Cal. App. 4th 1049 (1998)	6
<i>Opinion of the Justices</i> , 624 So. 2d 107 (Ala. 1993)	9
<i>Roosevelt Elementary School District Number 66 v. Bishop</i> , 877 P.2d 806 (Ariz. 1994).....	9

1		
2	<i>San Antonio Indep. Sch. Dist. v. Rodriguez,</i>	
	411 U.S. 1 (1973).....	8
3		
4	<i>Swann v. Charlotte-Mecklenburg Bd. of Educ.,</i>	
	402 U.S. 1 (1971).....	8
5	<i>Tinsley v. Palo Alto Unified Sch. Dist.,</i>	
6	91 Cal. App. 3d 871 (1979).....	3

STATUTES

8	Cal. Bus. & Prof. Code	
	§§ 7351-52	56
9	§ 19160.....	56
10	Cal. Civ. Code	
11	§ 1941.1.....	56
12	Cal. Civ. Proc. Code	
13	§ 437c.....	2
14	Cal. Evid. Code	
	§ 1222.....	6
15	Cal. Health & Safety Code	
16	§ 16500.....	55
	§ 17060.....	56
17	§ 17920.3.....	56
	§ 114030.....	56
18	§ 114040.....	56
19	§ 114120.....	56

INTRODUCTION

The squalid condition of some California public schools and classrooms interferes with students' education so seriously as to deny fundamental equality of educational opportunity. According to the State's¹ own documents, some of California's schools — populated primarily with students of color and poor students — are “decaying,” “deteriorating,” and “hazardous”; “[b]uildings . . . are desperately in need of repair and painting. There are leaking roofs leaving mold and mildew in some of the classroom[s] and hallways”; and schools “are poorly maintained and may pose a health risk to students and staff.” (DOE 48241, 46560, 137016, 48364.)² State documents further show, for example, “[c]lassrooms [that] are crowded with class sizes too large” with “[n]o significant evidence of . . . [a]dequate classroom space for classes housed in the library.” (DOE 57460, 58480.) District documents reveal “fecal residue” remaining in a school for weeks or even months without clean-up, schools “infested with rats,” carcinogenic mold and such high levels of fungi that they affect wall structures, and as many as 116 complaints in one year about classroom temperature in a single school. (DT-OA 5305, 5417, 5527-28, 7378-90, 7579-88; DT-LA 2996, 6326-28.)³ Plaintiffs' evidence discloses severe facilities needs that persist to this day, including “droppings and other signs of mice every day” in schools and a school with such a chronically leaky roof that the district simply ripped out the carpet and installed tile floors to minimize the water damage the district expects to persist. (Declaration of Jeremiah Jeffries (“Jeffries Decl.”) at ¶ 4; Declaration of Aisha Blanchard Young (“Blanchard Young Decl.”) at ¶ 3.)

These seriously substandard facilities conditions degrade students and their learning opportunities. The State's own research underscores the “critical” importance to student health and performance of school facilities: students “spend a considerable portion of their time for years within the confines of school buildings. Thus, ensuring healthful conditions inside classrooms is a critical factor in both teachers' and students' health and performance.” Cal. Air Resources Bd. & Cal. Dep't Health Services, *Report to the California Legislature* (“CARB Report”) at 3. (Welch Decl. at Exh. 4.)

¹ For ease of reference, this memorandum refers to all defendants as “the State.”

² All cited DOE documents are attached. (Declaration of Leecia Welch (“Welch Decl.”) at Exh. 1.)

1 Likewise, the State has repeatedly admitted that “an appropriate environment in which they can
2 learn” is essential to students’ education. (PLTF 81380.)⁴ And the State has made no effort to rebut
3 the obvious fact that students who are consigned to decaying schools are stigmatized by the marked
4 inequality — because of course the vast majority of California’s public school students do not suffer
5 any such appalling conditions in their schools — with resultant harm to the students’ ability to learn.

6 In spite of its agreement that the facilities conditions matter fundamentally for student learn-
7 ing, and in spite of the stark inequality in access to decent school facilities, the State nonetheless in-
8 sists that it has no responsibility for school facilities conditions. In fact, consistent with this position,
9 the State has no system for preventing or discovering and correcting the inequality of access to decent
10 school facilities described in this motion. The State learns of some slum-like school facilities only by
11 happenstance and belatedly; others the State fails altogether to discover, much less to correct. The
12 consequences of the State’s position cannot be overstated. Some students’ physical health will never
13 recover from the conditions to which they are relegated in school. All of the students who are subject
14 to these squalid conditions are stripped of fundamental educational opportunity because they cannot
15 hear or cannot see well or cannot concentrate or cannot breathe freely — or all of the above. The
16 school facilities in the worst of California’s schools damn their students, and the State — the entity
17 constitutionally assigned “ultimate responsibility” for these students’ education — stands by with no
18 system to protect the children in its care or to safeguard their fundamental right to educational equal-
19 ity. *See Butt v. State*, 4 Cal. 4th 668, 681 (1992).

20 By failing, as this Court has put it, to “prevent or discover and correct” these and other uncon-
21 scionable school conditions, the State has violated its guarantee a fundamentally equal public educa-
22 tion for all California public school students. (Nov. 14, 2000 Order at 2.) This motion therefore
23 seeks summary adjudication that the State has this duty, specifically with respect to unequal physical
24 conditions among the State’s schools; and that the State has breached its duty because it lacks a legally
25 adequate system of oversight and management governing equal access to decent school facilities, as
26

27 ³ All cited DT-OA and DT-LA documents are attached. (Welch Decl. at Exhs. 2 & 3.)

28 ⁴ All cited PLTF, PLTF-XP-JO, and PLTF-XP-NM documents are attached. (Welch Decl. at Exh. 5.)

1 evidenced both by the disparities shown in this motion and by the State's concession that it has no
2 system to prevent or discover and correct inequalities in access to decent school facilities.⁵ The criti-
3 cal issues in this motion are the importance to learning of decent school facilities, the fundamental
4 and chronic inequality in access to such decent school facilities, and the State's resultant duty to in-
5 tervene "to ensure basic educational equality under the California Constitution." *Butt*, 4 Cal. 4th at
6 681. This Court should issue the requested order under Code of Civil Procedure section 437c.⁶ The
7 Court would thereby dramatically truncate the issues left to be tried and finally resolve the question
8 of the State's responsibility to its students, at least with respect to basic school facilities needs.

9 ARGUMENT

10 I. THE STATE HAS THE DUTY TO OPERATE A SYSTEM OF OVERSIGHT THAT 11 WILL EITHER PREVENT OR DISCOVER AND CORRECT DEPRIVATIONS OF EQUAL ACCESS TO DECENT SCHOOL FACILITIES.

12 The State's legal duty regarding equal access to decent school facilities is, and has been since
13 the inception of the Constitution, crystal clear. As the California Supreme Court most recently ex-
14 plained in *Butt v. State*, 4 Cal. 4th 668, 684-85 (1992) (quoting *Tinsley v. Palo Alto Unified Sch.*
15 *Dist.*, 91 Cal. App. 3d 871, 903-04 (1979)), the State has "responsibility" "to provide 'equal educa-
16 tional opportunity to the youth of the state' and 'has a duty to intervene to prevent unconstitutional
17 discrimination' in its schools." This duty and responsibility extend to prevention or correction of
18 conditions that "would have a real and appreciable impact on the affected students' fundamental Cali-
19 fornia right to basic educational equality" by "den[ying] the students of one district an education ba-
20 sically equivalent to that provided elsewhere throughout the State." *Id.* at 688, 685. The constitu-
21 tional guarantee of equal educational opportunity would be a hollow promise if it permitted low in-

22
23 ⁵ This motion does not seek summary adjudication concerning every facilities issue raised in this liti-
24 gation. For example, one issue not presented in this motion is the issue of the State's involvement in
25 creating and encouraging the use of a multitrack, year-round school calendar that in and of itself de-
prives students of educational equality. Plaintiffs intend to seek summary adjudication separately on
the question of the State's duty regarding use of the Concept 6 multitrack, year-round calendar.

26 ⁶ In the Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Adju-
27 dication of the State's Duty to Ensure Equal Access to Instructional Materials for All California's
28 Public School Students, plaintiffs fully briefed the procedural basis supporting the type of summary
adjudication of duty and breach sought here. (Mem. P. & A. at 23-25.) Plaintiffs therefore incorpo-
rate that explanation by reference and do not repeat it in this Memorandum.

1 come students and students of color to persist in schools in which decrepit facilities hold them behind
2 students in most public schools. (*Cf.* July 10, 2003 Order at 2 (“It cannot be overemphasized that
3 education is a fundamental right of every Californian.”); *id.* at 6 (“The California Supreme Court’s
4 long history of education jurisprudence clearly holds that the fundamental right to educational equal-
5 ity is greater than and not tied to the specifics of any one of the many constitutional sections address-
6 ing education.”).)

7 Unequal access to decent school facilities unquestionably affects fundamental learning oppor-
8 tunity. As demonstrated below, the State has made repeated admissions acknowledging the funda-
9 mental importance of school facilities, and these admissions are confirmed by every authority to con-
10 sider the question, including California and other state courts as well as both the State’s and plain-
11 tiffs’ experts. The State’s litigation posturing notwithstanding, the State itself, and every respected
12 authority on the topic, has acknowledged that decent facilities are absolutely essential to learning.

13 Indeed, Governor Gray Davis and the State Legislature together ordered “the most compre-
14 hensive study of environmental conditions in kindergarten through 12th grade (K-12) classrooms to
15 date,” which concluded just this year that “ensuring healthful conditions inside classrooms is a criti-
16 cal factor in both teachers’ and students’ health and performance.” CARB Report at 20, 3.

17 **A. State Officials Have Made Repeated Admissions That School Facilities Are Fun-**
18 **damentally Important To Learning.**

19 Former Superintendent Delaine Eastin has admitted that “[w]e can’t have high-quality schools
20 if we have crummy, run-down facilities” Expert Report of Robert Corley (“Corley Report”) at 6
21 (citing Kerr, SACRAMENTO BEE, Aug. 21, 2001, produced at PLTF-XP-NM 227). (Welch Decl. at
22 Exh. 6.) Eastin further admitted that “[s]chool facilities poorly maintained and just plain inadequate
23 can depress the human spirit. Cleanliness and enough room are not frills; they enhance productivity.”
24 (STATE 73100.)⁷ In 1986, Delaine Eastin’s predecessor, former Superintendent Bill Honig, under-
25 scored the fundamental significance of school facilities to learning:

26 Are the students who now attend our schools receiving instruction in safe, ade-
27 quate, and well-maintained facilities? And will our future students have such facili-

28 ⁷ All cited STATE documents are attached. (Welch Decl. at Exh. 7.)

1 ties in which to learn?

2 Many of our educational reform efforts will be in vain if we cannot answer these
3 questions positively. We cannot offer rigorous courses in science if high schools
4 do not have the appropriate laboratory facilities. We cannot expect our children to
 learn basic skills in reading and writing if they are taught in overcrowded class-
 rooms or in inadequate facilities.

5 (DOE 61.)

6 The current Superintendent of Public Instruction, Jack O'Connell, has been quoted making a
7 similar admission: "'School facilities are key' 'We have studies from other states that show that
8 when we invest in our infrastructure, test scores go up, discipline problems go down, absenteeism
9 goes down.'" ⁸ (PLTF 66391; *see also* PLTF 81346 (quoting O'Connell stating that the "'two biggest
10 issues facing public education' . . . 'are the inadequacy of our school facilities and a shortage of
11 qualified teachers.'").)

12 Similar to each of the three most recent Superintendents of Public Instruction, Lieutenant
13 Governor Cruz M. Bustamante has admitted:

14 California is the fifth-largest economy in the world, yet our children are learning in
15 trailers and cafeterias. This is unacceptable! . . . How can we expect students to be
16 prepared for the challenges of tomorrow if we don't provide an appropriate envi-
 ronment in which they can learn today? Our children deserve safe, modern class-
 rooms where they can reach their full potential.

17 (PLTF 81380.)

18 Likewise, the Director of the CDE School Facilities Planning Division, Duwayne Brooks, has
19 made the admission that "[a] clear relationship exists between school facilities and student perform-
20 ance in the classroom. . . . A successful maintenance and operations program contributes to the com-
21 fort, safety, efficiency, and well-being of all those who use school facilities. To provide a proper
22 learning environment, these elements are essential if we are to meet our goals of educational excel-
23 lence." (DOE 155.) Director Brooks also conceded in his deposition that:

24 One way that [a poor school facility] could impair the learning process is, as the
25 superintendent has often said, the facilities that we provide our students sends them
 signals regarding how we value education. They see nice, new shiny malls, they

26 ⁸ Plaintiffs assume that the State would stipulate to the authenticity of this and other publicly quoted
27 statements. If there is any dispute about the authenticity of such publicly quoted admissions, how-
28 ever, the issue can be resolved in depositions before this motion is heard. Plaintiffs hereby request
 prompt identification of matters the State will dispute so plaintiffs may take appropriate discovery.

1 see the way the facilities can be, and if our schools are not constructed and main-
2 tained in a manner that sends the right message to kids about the way we value
education, then they won't value education.

3 (Deposition of Duwayne Brooks ("Brooks Depo.") at 329:18-330:1.)⁹ Similarly, Susan Lange, Dep-
4 uty Superintendent of Finance, Technology, and Administration, has admitted that "properly main-
5 taining our school buildings is an essential part of providing a quality education to our students."
6 (DOE 139958.)

7 These admissions are binding on the State: "'The admissions of a party receive an unusual
8 deference in summary judgment proceedings. An admission is binding unless there is a credible ex-
9 planation for the inconsistent positions taken by a party.'" *Le Bourgeois v. Fireplace Mfg., Inc.*,
10 68 Cal. App. 4th 1049, 1060 n.12 (1998) (quoting *FPI Dev., Inc. v. Nakashima*, 231 Cal. App. 3d
11 367, 396 (1991)); see also CAL. EVID. CODE § 1222 (codifying the evidentiary value of admissions).

12 In addition to its outright admissions, the State has repeatedly declared the fundamental im-
13 portance of decent school facilities. For example, the State Legislature found:

14 (f) Educational research suggests a positive relationship between pupil achieve-
ment and the condition of the facility in which pupils are schooled.
15 (g) It is important for school facilities to be maintained in order to provide a safe,
clean, adequate environment for teachers to teach effectively and for pupils to be
16 educated properly and to excel academically.

17 Legis. Findings to Educ. Code § 17584.1, West's Cal. Legis. Serv. No. 7 (1999) ("Legis. Findings"),
18 at 2274. (Welch Decl. at Exh. 8.) The Legislature's Joint Committee to Develop a Master Plan for
19 Education — Kindergarten through University recently recognized that:

20 Significant research documents that clean, safe, well maintained, and otherwise
suitable learning environments have a positive impact on student learning, while
21 the opposite is true of unsuitable environments. In addition . . . survey data indi-
cate that unsuitable environments have a negative impact on the ability of schools
22 to provide the quality teaching and leadership that is necessary to provide a high-
quality education.

23 (PLTF 78030.) Given this research and survey documentation, the Legislature's Master Plan main-
24 tains that "[t]he State should guarantee suitable learning environments for all students, including
25 buildings, classrooms, and other facilities." (*Id.*) Likewise, the California Department of Education
26 has declared that "[i]t is the policy of the State Board of Education that all students in the public
27

28 ⁹ All cited deposition excerpts are attached. (Welch Decl. at Exh. 9.)

1 schools have the right to attend school on campuses that are safe and secure. . . . Safe schools
2 have . . . timely maintenance programs. Their campuses and classrooms present clean and attractive
3 appearances.” (PLTF 75705; *see also* DOE 137016 (CDE Scholastic Audit Team report requiring
4 that a “[s]chool and district take immediate corrective action to provide a safe and hygienic learning
5 environment, expediting facilities maintenance”).) The Education Data Partnership, of which the
6 California Department of Education is a part, produced a report in April 2003 that concluded:

7 Research evidence and common sense indicate that there is a minimum level of
8 quality for a school facility, below which student and teacher effectiveness can be
9 seriously compromised. Various studies show that students achieve less in school
 buildings that are situated on noisy streets, have too many students for their capac-
 ity, or cannot be adequately and safely maintained.

10 Ed-Data, School Facilities in California (2003) at www.ed-data.k12.ca.us/Articles/facilities.asp (“Ed-
11 Data Report”) (Welch Decl. at 10.) Finally, the State has already conceded in this litigation the fun-
12 damental importance of school facilities. In its demurrer, the State acknowledged: “The State and the
13 plaintiffs agree that the goal is . . . for school facilities to be clean, safe, and sanitary.” (Reply Mem.
14 P. & A. State Demurrer at 2.)

15 **B. The Courts Of This State And Other States, As Well As The United States**
16 **Supreme Court, Hold That Decent School Facilities Are Fundamental To**
 Education.

17 The California Supreme Court determined that school facilities are fundamental to education
18 when it held that “[c]learly, the protection of the free school clause extends to the cost and upkeep of
19 the school itself and its physical facilities” because the free school guarantee extends to “all activities
20 which constitute an integral fundamental part of the elementary and secondary education, or which
21 amount to necessary elements of any schools activity.” *Arcadia Unified Sch. Dist. v. State Dep’t. of*
22 *Educ.*, 2 Cal. 4th 251, 264 n.10, 262 (1992) (quoting *Hartzell v. Connell*, 35 Cal. 3d 899, 905 (1984)
23 (internal quotations omitted)). Even before then, the California Supreme Court had recognized:

24 In the words of John Dewey, “[i]t is not enough to see to it that education is not ac-
25 tively used as an instrument to make easier the exploitation of one class by another.
26 School facilities must be secured of such amplitude and efficiency as will in fact
 and not simply in name discount the effects of economic inequalities, and secure to
 all the wards of the nation equality of equipment for their future careers.”

27 *Hartzell v. Connell*, 35 Cal. 3d 899, 923 (1984); *see also Crawford v. Bd. of Educ.*, 113 Cal. App. 3d
28

1 633, 647 (1980) (holding that the fundamental importance “to equalize school facilities” “has been
2 the law in California for many years, most conspicuously set out in *Serrano v. Priest*”), *aff’d*
3 458 U.S. 527 (1982).

4 The United States Supreme Court also has acknowledged “the recognized essentials in facili-
5 ties and academic opportunities”: “[T]he extent to which the quality of education varies with expen-
6 diture per pupil is debated inconclusively by the most thoughtful students of public education. . . .
7 [A]ll would agree that there is a correlation up to the point of providing the recognized essentials in
8 facilities and academic opportunities” *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1,
9 46 (1973). Indeed, the Supreme Court’s school desegregation jurisprudence rested in part on the rec-
10 ognition that separate and unequal school facilities violate fundamental equality principles. *See, e.g.,*
11 *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 18 (1971) (“where it is possible to identify
12 a ‘white school’ or a ‘Negro school’ simply by reference to . . . the quality of school buildings and
13 equipment . . . a *prima facie* case of violation of substantive constitutional rights under the Equal Pro-
14 tection Clause is shown”); *see also, e.g., Keyes v. Sch. Dist. No. 1*, 413 U.S. 189, 201 (1973) (“where
15 plaintiffs prove that the school authorities have carried out a systematic program of segregation af-
16 fecting a substantial portion of the . . . facilities within the school system, it is only common sense to
17 conclude that there exists a predicate for a finding of the existence of a dual school system”).

18 Like the California and United States Supreme Courts, other state courts have similarly held
19 that decent facilities are essential to education. According to the United States General Accounting
20 Office, “[a] number of state courts as well as the Congress have recognized that a high-quality learn-
21 ing environment is essential to educating the nation’s children. Crucial to establishing that learning
22 environment is that children attend school in decent facilities.”¹⁰ (PLTF 59114.) More specifically,
23 New York’s highest court recently reaffirmed its definition of “essentials” for education to require
24 that “[c]hildren are entitled to minimally adequate physical facilities and classrooms which provide
25 enough light, space, heat, and air to permit children to learn. Children should have access to mini-
26

27 ¹⁰ The California Legislative Analyst’s Office confirms that “[t]here is a growing body of educational
28 research that suggests there is a positive relationship between student achievement and the condition
of the facility in which they are schooled.” (PLTF 78461.)

1 mally adequate instrumentalities of learning such as desks, [and] chairs” *Campaign for Fiscal*
2 *Equity, Inc. v. State*, 2003 WL 21468502, at 5 (N.Y. June 26, 2003) (quoting *Campaign for Fiscal*
3 *Equity, Inc. v. State*, 86 N.Y.2d 307, 317 (1995)). Similarly, the Wyoming Supreme Court held un-
4 constitutional a financing system that allowed deficient school facilities because “[s]afe and efficient
5 physical facilities with which to carry on the process of education are a necessary element of the total
6 educational process.” *Campbell County Sch. Dist. v. State*, 907 P.2d 1238, 1275 (Wyo. 1995).

7 Like the New York and Wyoming highest courts, the Arizona Supreme Court held in *Roose-*
8 *velt Elementary School District Number 66 v. Bishop*, 877 P.2d 806, 808 (Ariz. 1994), that disparities
9 in school facilities, including “schoolhouses that are unsafe, unhealthy, and in violation of building,
10 fire, and safety codes” and “schools without libraries, science laboratories, computer rooms, art pro-
11 grams, gymnasiums, and auditoriums” violate the state’s constitution. In *Opinion of the Justices*,
12 624 So. 2d 107, 121 (Ala. 1993) (adopting lower court opinion), the Alabama Supreme Court relied
13 on expert testimony “that poorly maintained restroom facilities can impair students’ sense of well-
14 being and — to the extent that students are reluctant to use dirty facilities that do not supply soap,
15 towels and toilet paper — may cause anxiety and physical discomfort that adversely affect learning”
16 to conclude that inequities among school facilities violated students’ rights to an equal and adequate
17 education under the Alabama Constitution. The Ohio Supreme Court held that “school districts,
18 plagued with deteriorating buildings . . . and large student-teacher ratios, desperately lack the re-
19 sources necessary to provide students with a minimally adequate education” in violation of the Ohio
20 Constitution because, consistent with that constitution, “[a] thorough and efficient system of common
21 schools includes facilities in good repair and the supplies, materials, and funds necessary to maintain
22 these facilities in a safe manner, in compliance with all local, state, and federal mandates.” *De-*
23 *Rolph v. State*, 677 N.E.2d 733, 745, 747 (Ohio 1997). In *Abbott v. Burke*, 575 A.2d 359, 397 (N.J.
24 1990), the New Jersey Supreme Court held that deficient facilities conditions in some schools com-
25 pared with other wealthier schools violate the state constitution:

26 Many poorer urban districts operate schools that, due to their age and lack of main-
27 tenance, are crumbling. These facilities do not provide an environment in which
28 children can learn; indeed, the safety of children in these schools is threatened. . . .
In contrast, most schools in richer suburban districts are newer, cleaner, and safer.

1 They provide an environment conducive to learning. They have sufficient space to
2 accommodate the childrens' [sic] needs now and in the future. While it is possible
3 that the richest of educations can be conferred in the rudest of surroundings, the re-
cord in this case demonstrates that deficient facilities are conducive to a deficient
education.

4 According to all these courts, decent facilities are "integral fundamental" "essentials" for education.

5 **C. Both The State's Experts And Plaintiffs' Experts Agree That Decent**
6 **School Facilities Are Essential Learning Conditions.**

7 Expert reports prepared by plaintiffs and the State in this case verified the fundamental impor-
8 tance of adequate school facilities. State expert Margaret Raymond acknowledged that "[t]here is no
9 quibble that . . . adequate facilities . . . play a role in the production of good education"; "every stu-
10 dent deserves . . . clean and decent facilities that are conducive to learning." Report of State Expert
11 Margaret Raymond ("Raymond Report") at 11, 2. (Welch Decl. at Exh. 11.) State expert Thomas
12 Duffy agreed that "school facilities are an integral part of the package of the resources necessary to
13 provide a high quality education for students." (Deposition of Thomas Duffy, Rough Depo. Tr.
14 ("Duffy Depo.") at 68:25-69:4.) State expert Eric Hanushek was even more assertive, stating that
15 "[i]f unsafe or unsanitary schools exist anyplace in the state, they should be immediately corrected or
16 shut down." Report of State Expert Eric Hanushek at 13. (Welch Decl. at Exh. 12.)

17 Affirming the importance of decent school facilities, plaintiffs' experts have demonstrated
18 that poor and unequal school facilities conditions harm students in numerous ways, including threat-
19 ening their health and safety, causing devastating psychological consequences, and lowering their
20 academic performance. For example, plaintiffs' expert Megan Sandel established, without rebuttal,
21 that "substandard conditions in school environment lead to poor health and school absences in many
22 children." Expert Report of Megan Sandel ("Sandel Report") at 3. (Welch Decl. at Exh. 13.)
23 Dr. Sandel detailed the harmful effects of several maladies common to substandard schools, including
24 biologic hazards such as mold, which is associated with asthma and cough symptoms; allergens, es-
25 pecially strong forms of which are associated with exposure to pests, rodents, and cockroaches; and
26 toxins, including lead paint dust caused by peeling paint, which studies have shown cause several
27 forms of neurodevelopmental abnormalities. *Id.* at 6-11. Dr. Sandel also pointed to lack of hot water
28 and soap for washing, old and decaying carpet, extreme temperatures, and damp conditions as con-

1 contributing to the spread of infectious diseases, respiratory problems, and viral infections, particularly in
2 children. *Id.* at 12-13. There is an obvious corollary: “School building conditions can exacerbate
3 many diseases students have, which can result in not only severe illness but also missed school days.”
4 *Id.* at 3. Indeed, plaintiffs’ expert Michelle Fine concluded, again without rebuttal, that “the deterio-
5 ration of a school facility is, in and of itself, sufficient to produce adverse effects with respect to at-
6 tendance — a proxy for academic engagement — and ultimately academic achievement.” Expert
7 Report of Michelle Fine (“Fine Report”) at 40. (Welch Decl. at Exh. 14.)

8 State experts also do not rebut plaintiffs’ expert Glen Earthman’s conclusions that extreme
9 temperatures and poor acoustic quality significantly affect schoolchildren’s ability to learn. Expert
10 Report of Glen Earthman (“Earthman Report”) at 5-8. (Welch Decl. at Exh. 15.) Citing numerous
11 studies, Dr. Earthman concluded: “[A] controlled thermal environment was . . . necessary for satisfac-
12 tory student performance,” and extreme temperatures “adversely affected reading and mathematics
13 skills” and increased incidence of student illness. *Id.* at 5-6. Dr. Earthman also established, citing a
14 series of studies that span almost one hundred years, that “[p]roper and accurate hearing is essential
15 to student’s ability to learn in the classroom”; “[t]he ability to clearly hear and understand what is be-
16 ing spoken is a prerequisite for effective learning.” *Id.* at 6, 8.

17 Plaintiffs’ experts further demonstrated, again without rebuttal, that overcrowded schools and
18 classrooms lead to diminished capacity to learn. Fine Report at 41; Earthman Report at 12. Drs. Fine
19 and Earthman affirmed that overcrowding reduces student concentration and heightens noise levels,
20 distractions, absenteeism among teachers and students, and the likelihood of school violence, all of
21 which inhibit teaching and learning and “reduce students’ capacity to engage academically.”¹¹ Fine
22 Report at 41; *see also* Earthman Report at 12.

23 Finally, in addition to diminishing student learning capacity, decrepit school conditions also
24 have a devastating psychological effect on schoolchildren. Expert Report of Thomas Sobol (“Sobol
25 Report”) at 9-10 (Welch Decl. at Exh. 16.); Fine Report at 37-43. The former Commissioner of Edu-

26 ¹¹ In particular, Dr. Earthman cited teacher perception studies that discussed the harmful effects of
27 overcrowding on student achievement and a multiple regression analysis of the effect of overcrowd-

1 cation in New York State, Dr. Thomas Sobol established without rebuttal that “[c]hildren are learning
2 all the time; they learn not only the lessons their teachers intend to teach them but also the lessons
3 their schools send them about their value and relative place in the world.” Sobol Report at 9. Going
4 to school with rodents, peeling ceilings, filthy bathrooms, and inadequate desk space “perpetuates a
5 cumulative, ongoing, unending depressive effect of the total environment for the students.” *Id.* at 10.
6 To further demonstrate this point, California students who participated in Dr. Fine’s focus groups de-
7 scribed being “upset” by their schools’ disrepair and “feel[ing] bad” and “feel[ing] dirty” because
8 they attend a “dirty school.” Fine Report at 8, 15.¹² Dr. Fine determined that “[i]f surrounded by de-
9 cay, disrepair, and filth, and if no adult intervenes to protect, a child may come to see him/herself as
10 worthy of little more.”¹³ *Id.* at 40. In addition, “[i]n educational contexts . . . permeated by low ex-
11 pectations, high rates of teacher turnover, environmental stress, and a sense of buildings that are out
12 of control, youth develop, over time, what is called *academic learned helplessness*” *Id.* at 29.
13 This learned helplessness harms students’ ability to cope with difficult situations and to learn. *Id.* at
14 29-30. The State has never addressed, much less rebutted, the stigmatizing and psychological effects
15 of attending schools with substandard and overcrowded facilities that plaintiffs’ experts demonstrate.

16 **D. School District Superintendents And Other School Practitioners Confirm The**
17 **Fundamental Importance Of School Facilities.**

18 School district superintendents and other school practitioners have acknowledged the funda-
19 mental importance to learning of decent school facilities. For example, Ravenswood Unified School

20 ing on student math and reading scores, which controlled for socioeconomic background, to reach his
21 conclusion that overcrowding negatively affects student achievement. Earthman Report at 12-13.

22 ¹² Students’ testimony in this case confirms precisely the psychological harm Drs. Fine and Sobol
23 articulate. For example, when describing the compounding effect of the multiple conditions she
24 lacked in her school, class representative Alondra Jones testified that “[i]t make you feel less about
25 yourself, you know, like you sitting here in a class where you have to stand up because there’s not
26 enough chairs, and you see rats in the buildings, [and] the bathrooms is nasty” (Deposition of
27 Alondra Jones (“Jones Depo.”) at 348:17-21.)

28 ¹³ A 2001 report by Dr. Robert McCord that was submitted in the San Francisco school desegregation
case, *NAACP v. San Francisco Unified School District*, confirms the analysis Drs. Fine and Sobol
submitted: “The findings of my school facility appraisal . . . point to a pattern of disparate facility
conditions associated with the racial and ethnic identity of SFUSD schools. This pattern of disparate
conditions is likely to convey the message of racial inferiority that is implicit in a policy of segrega-
tion. . . . Based upon my appraisal and review of relevant materials, it is my opinion that vestiges of
segregation related to facilities remain in SFUSD.” (SF 3036.) (All cited SF and DT-SF documents
are attached (Welch Decl. at Exh. 17.).)

1 District Superintendent Floyd Gonella testified that “if you don’t have safe, secure facilities that pre-
2 sent a learning environment, I think that it’s not conducive to good learning. . . . I’m talking about
3 the basic fundamentals of having a classroom basically where the student spends time. Classroom,
4 playground, facilities like that that should be conducive to learning.” (Deposition of Floyd Gonella at
5 195:9-23; *see also id.* at 197:5-8 (“I think that if you have school buildings that have broken win-
6 dows, a lot of graffiti, a broken chain link fence . . . , I think those are substandard.”).) Former Oak-
7 land Unified School District Superintendent Dennis Chaconas testified that when he arrived at the
8 district in February of 2000, he found schools in which the physical conditions of the physical plant
9 were poor enough to interfere with the educational process. (Deposition of Dennis Chaconas at 8:7-
10 9, 97:12-20; *see also id.* at 10:10-11 (noting that “the facilities [in district schools] were in non-
11 acceptable condition” when he became superintendent); *id.* at 17:8-25 (testifying that conditions of
12 the physical facilities in Oakland schools when he arrived were a material impediment to recruiting
13 qualified teachers).)

14 Similarly, Brian McKibben, principal of Fremont High School in Oakland, testified that hav-
15 ing “a quiet, calm, safe place for kids” is “one of the fundamental things to having a good learning
16 environment” and that “safety is always Number 1 . . . and then simply to try to create a better, more
17 secure, more stable learning environment so that teachers could teach and kids can learn. Those are
18 basically the top two priorities.” (Deposition of Brian McKibben at 23:1-4, 26:21-27:4; *see also id.*
19 at 19:5-6, 21:10-14, 81:11-82:2, 101:5-10.) The Chief Executive Officer of the Fiscal Crisis and
20 Management Assistance Team (“FCMAT”), which is the organization the State Legislature has au-
21 thorized to provide oversight to districts with severe financial and management problems, also testi-
22 fied that “it is common sense that a safe and healthy environment is conducive to learning and proper
23 instruction.” (Deposition of Thomas Henry (“Henry Depo.”) at 43:1-3; *see also id.* at 41:12-20.) The
24 FCMAT CEO continued:

25 I personally believe that the safety and health of staff and students is the most im-
26 portant element that we address relative to student learning, and because of that it
27 is important that staff members and students are able to teach and learn in safe and
28 healthy environments. And if we’re not focusing in on that, I personally believe
that there is potential that we’re going to lose that client base, that student base.

1 (*Id.* at 88:11-19.) These varied authorities uniformly confirm the fundamental importance of decent
2 school facilities.

3 **II. THE STATE HAS BREACHED ITS DUTY BY FAILING TO OPERATE A SYSTEM**
4 **OF OVERSIGHT AND MANAGEMENT GOVERNING EQUAL ACCESS TO**
5 **DECENT SCHOOL FACILITIES.**

6 The State’s own admissions regarding gross inequality in access to decent school facilities, as
7 well as State, independent, district, and plaintiff evidence documenting that inequality itself, establish
8 the State’s breach of its duty to its public school students.

9 **A. Both The Governor And Former Superintendent of Public Instruction Delaine**
10 **Eastin Have Made Admissions Acknowledging Inequalities In Access To Decent**
11 **School Facilities.**

12 Governor Davis acknowledged in a recent campaign letter that “[h]undreds of thousands of
13 our children are trying to learn in overcrowded, out-of-date, unsafe schoolrooms — or in temporary
14 trailers stacked on what were once playgrounds. Our critical class-size-reduction program[s] simply
15 won’t work if schools have no space.” (PLTF 81433.) Similarly, former Superintendent of Public
16 Instruction Delaine Eastin admitted that as many as a third of California’s public school students are
17 housed in substandard school facilities: “We can’t have high-quality schools if we have crummy, run-
18 down facilities housing a third of our students as we have today.” Corley Report at 6 (citing Kerr,
19 SACRAMENTO BEE, Aug. 21, 2001, produced at PLTF-XP-NM 227). In April 2003, the Education
20 Data Partnership, of which the California Department of Education is a part, confirmed the continu-
21 ing inequality in access to decent school facilities, acknowledging that “overcrowded [schools], and
22 an alarming number of buildings need[ing] renovation and modernization” “still exist in many
23 places” in California and that “such space [including “enough room to allow students to move
24 around, areas designed for special activities such as science labs and library/media centers, and space
25 in which to display and store student projects”] is still missing in many California schools.” Ed-Data
26 Report.

27 **B. Independent Sources Document Gross Inequality In Access To**
28 **Decent School Facilities.**

A legislatively ordered report prepared in June 2003 concerning environmental health condi-
tions in California classrooms demonstrates California’s continuing disparity in access to decent

1 school facilities. According to the report:

- 2 • “In both types of classrooms [portable and traditional], the amount of outdoor air was in-
3 adequate about 40% of the time (carbon dioxide levels exceeded 1000 ppm), and seriously
4 deficient for about 10% of classroom hours (carbon dioxide levels exceeded 2000 ppm).
5 This is a critical finding; this latter group clearly did not meet state ventilation require-
6 ments, and such deficiencies have been associated with increased eye and throat irritation,
7 lethargy, headache and other symptoms that are incompatible with an acceptable learning
8 environment.” CARB Report at 10.
- 9 • “17% of all classrooms (12% portables, 20% traditionals) had excess moisture measured
10 in the walls, ceiling, or floor Water stains and measurements of excess moisture in
11 building materials sometimes indicate hidden mold, and at a minimum indicate a moisture
12 problem such as a leak that needs to be remedied.” *Id.* at 13.¹⁴
- 13 • “1% of all classrooms had visible mold inside the classroom, and 3% had visible mold on
14 exterior walls.” *Id.*¹⁵
- 15 • “Water stains on the ceiling were found in 21% of the portable classrooms, indicating cur-
16 rent or previous roof leaks. . . . Traditional classrooms had a higher frequency of water
17 stain on the ceiling (35%) Water stains on the floor were observed in 13% of the
18 portable classrooms” *Id.* at 56.
- 19 • “27% of portables and 17% of traditionals experienced temperatures below ASHRAE’s
20 [American Society of Heating, Refrigerating, and Air-Conditioning Engineers] thermal
21 comfort standards for the heating season. Some classrooms of both types also experi-
22 enced temperatures above the ASHRAE standard range for acceptable indoor temperature
23 during cool weather.” *Id.* at 11.
- 24 • “About one-third of classrooms do not meet IESNA [Illumination Engineering Society of
25 North America] professional design guidelines of 50 foot-candles [of light] for low con-
26 trast materials.” *Id.* at 14.

27 A 1996 report from the General Accounting Office demonstrates the longstanding existence
28 of similarly gross inequality in access to decent school facilities in California public schools. Al-
though facilities work since 1996 has surely alleviated some of the conditions identified in the GAO
report (as confirmed by the percentages identified in the CARB report), nonetheless the following
charts illustrate the severity of inequality extant at the time and provide a short predicate for the dis-

25 ¹⁴ The report states that California has 268,000 classrooms, CARB Report at 20, so 17% means that
26 45,560 classrooms indicate the presence of moisture problems such as leaks or possibly mold. Most
27 conservatively estimated, if these classrooms serve only 20 students per day (as distinct from 35 or
28 more students per classroom in some classrooms), the classrooms serve 911,200 students.

¹⁵ Of the total 268,000 public classrooms the report states California has, CARB Report at 20, 1% is
2,680 — most conservatively estimated, these classrooms serve 53,600 students.

1 parity that persists today.¹⁶

2 Features	Percentage of California Schools Re- porting "Inadequate" Building Fea- tures in 1994-95 ¹⁷
3 Roofs	40.5
4 Framing, floors, foundations	27.8
5 Exterior walls, finishes, windows, doors	41.7
6 Interior finishes	46.5
7 Plumbing	40.9
8 Heating, ventilation, air conditioning	41.2
Electrical power	32.1
Electrical lighting	42.5
Life safety codes (such as fire and earthquake)	20.8
At least one inadequate on-site building	42.9

9 Factors	Percentage of California Schools Reporting "Unsatisfactory" Environmental Conditions
10 Lighting	31.1
11 Heating	24.7
12 Ventilation	28.8
13 Indoor air quality	21.8
Acoustics for noise control	34.2
5 or more unsatisfactory environmental conditions	20.0

14 (STATE 71855, 71862-63, 71874, 71878-79 (based on data reported from the 1994-95 school year).)

15 Other independent sources have identified inequalities in access to specific facilities condi-
16 tions. For example, a 2001 survey of officials responsible for pest management at 394 California
17 school districts reported that 31.9% of the officials considered mice or rats to be a serious problem,
18 and 23.4% considered cockroaches to be a serious problem in their districts. (PLTF 80538-39.) A
19 1998 report from the California Department of Health Services found that children were potentially

20
21 ¹⁶ Likewise, in a random sample of K-12 teachers in California conducted by the pollster Louis Harris
22 in 2002, teachers in the 51% of the schools with the lowest percentages of low-income students and
23 English Language Learners rate the condition of their facilities much more highly than teachers in the
24 schools with the highest percentage of low-income students and English Language Learners. (PLTF-
25 XP-JO 7445.) According to the Harris poll, only 4.4% of the teachers in the low-risk group rated
26 their school facilities as poor, versus 19.3% in the high-risk group. (*Id.*) While this motion is not the
forum to address State expert Richard Berk's challenges to the reliability of the Harris data, even if
the challenges had merit — which we believe they do not — they would nonetheless be irrelevant to
the point the Harris survey results support here, which is that serious facilities needs tend to exist in
schools populated primarily with low-income students and students of color rather than in schools
populated primarily with wealthier, white students. This truism is so obvious that it hardly needs
proof, and the State has never challenged it in this litigation.

27 ¹⁷ The GAO's methodology categories for rating buildings and their features were "excellent, good,
28 adequate, fair, poor, or replace." (STATE 71829.) "A building or building feature was considered in
inadequate condition if fair, poor, or replace was indicated." (*Id.*)

1 exposed to deteriorating lead-containing paint in 37.6% of the elementary schools studied and that
2 there was deteriorating lead-based paint in 31.8% of elementary schools sampled. The Department of
3 Health Services also found that “6.1 percent (307) of public elementary schools may have some soil
4 that exceeds the USEPA [United States Environmental Protection Agency] recommended high of 400
5 ppm [lead level] for areas in which children play,” and that 15.5% of public elementary schools had
6 lead in drinking water above regulatory standards. (PLTF 75792, 75794, 75798.) Finally, a survey
7 the California Department of Education conducted in spring 2002 of teachers in schools that partici-
8 pated in the first year of the State’s Immediate Intervention/Underperforming Schools program re-
9 veals that 49% of surveyed teachers found that “[i]nadequate classroom space/school facilities” had
10 been a barrier to implementing the reforms at their schools. Cal. Dep’t Educ., *Public School Ac-
11 countability (2001-2002)* (2003) at 14. (Welch Decl. at Exh. 18.)

12 **C. State Documents Reveal Appalling Facilities Needs In Many California Public**
13 **Schools.**

14 The State’s own documents confirm the severity of school facilities needs statewide.¹⁸ The
15 action plans from schools participating in the State’s Immediate Intervention/Underperforming
16 Schools Program (“II/USP”) reveal decaying and decrepit schools. (E.g., DOE 31105, 35589, 36883,
17 37376, 38879-80, 40060, 44528, 46989, 48492, 59172, 66071, 69580, 71502.) Notably, the II/USP
18 action plan for class representative Moises Canel’s school—Helms Middle School in San Pablo —
19 reported that “[b]uildings . . . are desperately in need of repair and painting. There are leaking roofs
20 leaving mold and mildew in some of the classroom[s] and hallways. . . . As it stands, the school is
21 not an inviting place for students, teachers or parents.” (DOE 48364.) The plan further stated that
22 “[s]tudents, teachers and parents complained that the school is not clean or maintained. Prior to one

23 ¹⁸ Plaintiffs certainly presume that some of the facilities conditions identified in these documents
24 have been or soon will be corrected. As this Court has repeatedly made clear, the issue in this case is
25 whether the State has a constitutionally sufficient “system of oversight and management of public
26 education.” (July 10, 2003 Order at 4; *see also* Nov. 14, 2000 Order at 2 (“The lawsuit is aimed at
27 ensuring a system that will either prevent or discover and correct such deficiencies going forward.”).)
28 As is explained in section III below, the State has no system to identify and prioritize facilities needs
statewide. Instead, inconsistent with equal protection guarantees and minimum education require-
ments, the State knows only about those conditions it happens to learn of through the small subset of
schools that participate in its intervention programs. The correction of facilities needs that come to

1 meeting in the library, one of the evaluators vacuumed the carpet herself to assure a clean space for
2 parents.” (*Id.*) The Helms action plan continued: “The student population at Helms continues to
3 grow, stretching the capacity of the school to accommodate more students. There are not enough
4 classrooms for each teacher to meet individually with students in their own classrooms, requiring
5 some teachers to move from room to room as they teach.” (*Id.*)

6 Helms Middle School is located in West Contra Costa Unified School District, which is the
7 renamed school district whose proposed early closure gave rise to the *Butt* litigation. The State has
8 been intensively involved at least in fiscal oversight in that school district since 1992, when *Butt* was
9 decided, and nonetheless deterioration in district schools has remained “desperately” severe.¹⁹ (DOE
10 48364.) Helms is thus one hallmark of the State’s oversight failure, confirming that the State is
11 committed to being nonresponsive when serious educational inequality exists and persists.²⁰

12 The State’s II/USP program documents show other similar hallmarks. For example, the
13 II/USP action plan for Tweedy Elementary School in Los Angeles reported that “Tweedy is experi-
14 encing extreme overcrowding. Due to a chemical hazard situation at the original site, Tweedy has no
15 the State’s attention is therefore neither systematic nor any indicator of the likelihood that other, simi-
16 lar conditions will be prevented or discovered and corrected elsewhere.

17 ¹⁹ The Fiscal Crisis and Management Assistance Team explained in its 2001 assessment of West
Contra Costa Unified School District operations: .

18 As a backdrop to the conditions conveyed in this report, it is important to note that
19 during the five-year period beginning in 1993 and ending with the passage of Sen-
20 ate Bill 50 in 1998, the district was prohibited from participating in the State
21 School Facilities Program. During that time, the district was, and remains, subject
to additional state oversight and a very heavy debt burden as a result of state loans
granted in the early 1990s to alleviate severe financial conditions. These two con-
ditions led to several predictable results, including the deterioration of existing fa-
cilities and lack of investment in new facilities.

22 (FCMAT 4291.) (All cited FCMAT documents are attached (Welch Decl. at Exh. 19).)

23 ²⁰ Although the district apparently now has plans to demolish and replace Helms beginning in sum-
24 mer 2004, see Kara Shire, *West County to Raze, Rebuild Schools*, CONTRA COSTA TIMES, May 9,
2003 (Welch Decl. at Exh. 20.), the fact that its facilities have deteriorated so badly and for so long
25 shows the State’s commitment to inaction, other than encouraging the passage of school bonds, in the
face of stark inequality even during the time when the *Butt* remedy has been in place in the Helms
26 school district. (See also DOE 48241, 48814, (Declaration of Magaly de Loza (“de Loza Decl.”) at
¶ 7) (discussing severe facilities needs at three other schools — Grant Elementary, Wilson Elemen-
27 tary, and Richmond High — in the West Contra Costa Unified School District).) (The de Loza decla-
ration and other cited declarations that were filed with plaintiffs’ Motion for Summary Adjudication

1 permanent location or buildings and has been in this condition for over thirteen years. The school is
2 housed in ‘temporary’ bungalows in a small corner of South Gate Park.” (DOE 37848.) Similarly,
3 the action plan for Grant Elementary School in West Contra Costa Unified School District stated:

4 **Inadequate facility:** Grant is housed within a decaying infrastructure, surrounded
5 by fields of asphalt. The facilities are poorly maintained and may pose a health
6 risk to students and staff. Not only are the facilities in poor condition, they are
overcrowded. There is little space available for extra curricular activities, tutoring
or mentoring sessions, or parent meetings, for example.

7 (DOE 48241.) The action plan for Horace Cureton Elementary in Alum Rock Union Elementary
8 School District explained that “[t]he condition of the school plant, with its aging facilities . . . and
9 heating outages, is a noted concern.” (DOE 44528.)

10 The action plan for Hoover Elementary School in Oakland reported: “The External Evalua-
11 tors found many of the facilities in the district to be deteriorating and poorly maintained. Overall,
12 they were inadequate in promoting a healthy and supportive learning environment.” (DOE 46560.)
13 The action plan for Willowbrook Middle School in Compton stated that “[t]he peeling paint and dete-
14 rioration of the school was a[n] eyesore” and that “[t]he facilities at Willowbrook have deteriorated
15 over the years and as you walk onto the school campus, you can see paint peeling off of buildings and
16 worn and dated classrooms. Window coverings are missing in many classes and there is no way to
17 deflect the light or the heat as the sun beats down in many rooms.” (DOE 53025, 53027.)

18 According to the action plan for Miramonte Elementary School in Los Angeles, school staff
19 indicated that “poor heating and air conditioning systems have a negative impact on teaching and
20 learning.” (DOE 37376; *see also* DOE 59814 (action plan for Bates Elementary School in River
21 Delta Joint Unified School District stating that “[l]ack of air conditioning in all classrooms contrib-
22 utes to a negative learning environment in some classrooms, particularly in the late spring and early
23 fall”); DOE 69580 (action plan for Thurgood Marshall Academic High School in San Francisco re-
24 porting that “[w]e have new boilers but still no heat, because the distribution system needs upgrad-
25 ing.”).) At Cali Calmecac (Charter # 162) in Windsor Unified School District,

26
27
28 of the State’s Duty to Ensure Equal Access to Instructional Materials for All California’s Public
School Students are attached (Welch Decl. at Exh. 21.).)

1 [c]lassroom facilities (e.g., furniture, walls, ceilings, carpets) are generally old and
2 worn, and classrooms are poorly lit, particularly in the upper grades. All students
3 expressed the desire for new and better facilities (citing computers, library materi-
als, and sports equipment), and parents, students, and teachers perceive inequities
in the condition of Cali's facilities relative to the district's other school sites.

4 (DOE 77590.) In addition, "[s]tudents and parents [at Cali Calmecac] also complained of the lack of
5 cleanliness of grounds, bathrooms, and classrooms" and "[s]ignificant growth . . . during the past two
6 years ha[s] challenged [the] current staff." (DOE 77590, 77551.)

7 According to the II/USP action plan for Earlimart Elementary School:

8 Classroom temperature was uncomfortable in 1/3 of the classrooms observed due
9 to heat not working or [the] thermostat being set too high. Numerous heating and
10 air conditioning breakdowns were reported by teachers. Parents said that students
11 are sent home when air conditioning doesn't work. Parents said that students are
12 sometimes left outside in the morning. No bells were working, few intercoms were
13 functioning and [the] school needs paint and classroom furniture replacement.
Lack of bells and working PA [Public Address system] may pose safety issues
(fire, etc.). Without bells during yard duty, teachers use whistles to "freeze" stu-
dents who are then slowly returned to their classrooms. Parents are concerned
about the bathrooms at school

14 (DOE 36883.) The action plan for Will Rogers Elementary School reported that:

15 [T]he school is loaded to full capacity which causes stress on class composi-
16 tions [T]he infrastructure at the Will Rogers School site (heating/ventilation
17 and AC systems, sewage system, lighting, security, roof structure, rodent control,
cleanliness and lack of lockable storage) needs a thorough examination and a
bringing up to standards/codes. . . . Overcrowding at the school site impacts stu-
dent transfers which results in interrupted instruction and lower student achieve-
ment.

18 (DOE 39770-71.)

19 The II/USP action plan for Wilson Elementary School in West Contra Costa Unified School
20 District stated that "[s]upport services often meet with students in an unused custodial storage area
21 that leaks in heavy rain." (DOE 48814.) According to the action plan for Fremont Middle School in
22 Stockton City Unified School District, "[o]f the 53 full time teachers many have no permanent class-
23 rooms and are forced to rotate to rooms vacated by other teachers on prep." (DOE 70147.) The ac-
24 tion plan for Perris High School in Perris Union High School District reported "[n]o significant evi-
25 dence of [a]dequate classroom space for classes housed in the library." (DOE 58480.) Like-
26 wise, the action plan for Raymond Cree Middle School in Palm Springs Unified School District noted
27 that "[c]lassrooms are crowded with class sizes too large." (DOE 57460.)
28

1 Many school II/USP action plans specifically identified school crowding as impediments to
2 student learning. (*E.g.*, DOE 37376, 46747, 48241, 48259, 65557, 74226.) The II/USP action plan
3 for Calvin Simmons Middle School in Oakland, for example, listed “high student enrollment in over-
4 crowded facilities” as one “major barrier[] to the creation of a stable, trust-based student-centered
5 school” (DOE 31680.) and lamented having a “[l]arge overcrowded school and learning environ-
6 ments that prevent students from being well-known and connected to caring adults.” (DOE 31683.)

7 The action plan for Marcus Foster Elementary School in Oakland reported that “[t]he school’s
8 architecture is not suited to elementary students and acts as a barrier to a nurturing environment.
9 High ceilings and a lack of walls and doors create a noisy atmosphere that can be disruptive to learn-
10 ing. Thus far district interventions have been inadequate.” (DOE 31077.) Similarly, the II/USP ac-
11 tion plan for Pacifica Elementary School in Oceanside Unified School District stated: “Interior walls
12 are not sound-proof. Many of the 20 classrooms are surrounded by three or four other classrooms;
13 the sound of instructional programs continually filters through these walls, unintentionally but con-
14 stantly distracting to students and staff. . . . Student bathrooms for grades 1-6 are accessible only
15 through the outside of the main building. These existing conditions detract from instructional time
16 and focus.” (DOE 68582; *see also* DOE 71502 (action plan for Harry Slonaker Elementary School in
17 Alum Rock Union Elementary School District stating that “[s]tudent bathrooms are dirty; there was
18 no soap or paper towels for students to wash with . . .”).)

19 Like the II/USP action plans, school assessments conducted during the 2001-2002 school year
20 pursuant to the State’s Scholastic Audits reflect severe facilities needs among the lowest performing
21 schools in the State.²¹ These documents report, for example, that at Mount Vernon Middle School in
22 Los Angeles, “[t]he school facility is in a state of disrepair, not well maintained and does not accom-
23 modate the numbers of students and programs,” and that at Sun Valley Middle School in Los Ange-
24 les, “[t]he campus is unsanitary, unsafe, and hazardous.” (DOE 137072, 137078, 137016.) Simi-
25 larly, the Scholastic Audit report for Fremont High School in Los Angeles states that “[s]chool over-
26 crowding is negatively affecting instructional programs and student achievement,” “[t]he school’s
27
28

1 ‘unsightly and run-down’ appearance is not conducive to a positive learning environment,” and
2 “[s]everal school practices (e.g. . . . one girls’ restroom and one boys’ restroom open in the Admini-
3 stration Building for the entire school, students in wheelchairs not having ready access to the eleva-
4 tor) appear to lack complete planning and are not sensitive to students’ needs.” (DOE 137046,
5 137043.) The report for Wilson High School in Los Angeles notes that

6 [f]acilities are not properly maintained: Classrooms are not cleaned on a daily basis
7 and the lawns are dead. Graffiti is particularly evident in the student hallways and
8 walkways. The ROTC room is not cleaned; the students clean it and take out the
trash daily. Custodians report that positions have been cut and that it is impossible
to adequately provide proper services.

9 (DOE 137054.)

10 The State’s notification of findings from the 1999-2000 Coordinated Compliance Review of
11 the Oakland Unified School District noted that parents had answered reviewers’ questions regarding
12 “[w]hat needs improvement?” with the following facilities recommendations for the district:
13 “[b]etter school facilities, [fix the problem of] no yards for students to play, age-appropriate play
14 ground equipment,” “[u]nsafe water fountains, pipes need to be capped for water, this has caused
15 health issues for students, i.e. asthma, rashes.” (DOE 23201.) Similarly, a FCMAT report noted that
16 Fremont High School in Oakland suffered “Serious Safety and Health Issues” that include: “Large
17 rats are entering the classrooms. . . . Campus lighting very poor. . . . Electrical hazards in port-
18 ables. . . . Exposed electrical panel in gym.” (FCMAT 1369.)

19 **D. District Documents And Plaintiffs’ Evidence Confirm The Gross Inequity**
20 **In Access To Decent Facilities In California Public Schools.**

21 Like the independent sources and State-collected documents, district documents and testi-
22 mony taken in this litigation underscore the appalling facilities needs in some California schools.

23 **1. District Documents And Plaintiffs’ Evidence Show Desperate Facilities**
24 **Needs In Some California Public Schools.**

25 School district records show that on April 27, 2001, a “sewage backup extended throughout
26 the lower level of the Boiler Room to a height of 8 [inches]” at Fremont High School in Oakland and
27 that three more sewage backups occurred in the six weeks between May 8 and June 6, 2001, but that

28 ²¹ Scholastic Audits were performed in schools that failed to make progress in student performance

1 none of these backups was appropriately cleaned or resolved. (DT-OA 5303-05.) These same re-
2 cords note that the presence of viable *E. coli*, which is “a typical organism in the human intestinal
3 tract” and “is an indicator of fecal residue and can be used to identify the presence of a viable biohaz-
4 ard,” was confirmed on each occasion, and that as late as September 2001 “the damaged/blocked
5 sewer line(s), source of the sewage backups, have not been repaired.” (DT-OA 5305.) Ultimately,

6 [a]fter multiple sewage backups (April 27th, May 8th, May 25th) and follow up
7 cleaning, total coliforms, fecal coliforms and *E. coli* were still detected in the
8 Boiler Room of Fremont Sr. HS. Also after the most recent sewage backup of
June 6, 2001 SINA Environmental, Inc. was not contacted to collect clearance
swab samples, so that biohazards are assumed to still be present in the area.

9 (*Id.*)

10 School staff, parent, and student testimony all confirm that class members attend schools
11 where it is not uncommon to see rats, mice, and their feces; cockroaches; water bugs; and other ver-
12 min. (*E.g.*, Deposition of Cynthia Artiga-Faupusa (“Artiga-Faupusa Depo.”) at 135:14-142:16;
13 Deposition of Jose Garcia (“J. Garcia Depo.”) at 157:11-159:1, 162:2-163:20; Deposition of Maria
14 Gonzales (“Gonzales Depo.”) at 74:18-77:4; Deposition of Silas Moultrie (“Moultrie Depo.”)
15 at 57:22, 72:21-73:1, 100:8-14, 335:16-17, 339:14-19, 341:18-342:8; Deposition of Patricia Muñoz
16 at 223:5-24, 224:15-225:20, 226:17-21, 230:18-21; Deposition of Jason Nawa (“Nawa Depo.”)
17 at 176:13-22; Deposition of Amy Salyer (“Salyer Depo.”) at 334:19-335:11, 337:21-25, 339:15-17;
18 Deposition of Carlos Santos (“Santos Depo.”) at 281:8-18; *see also* DT-LA 55280-82, 55286-89,
19 55291-94, 55296-97, 55299-302, 55306, 55308-12, 55314-19, 55321-28, 55330-33, 55336, 55338-
20 40, 55345-48, 55350-51 (51 maintenance confirmations of rat or mouse problems in 64 different
21 classrooms and other rooms, including the principal’s office, at Locke High School in Los Angeles
22 between January 2002 and February 2003).) At class representatives Delwin and D’Andre Lamp-
23 kin’s school, Crenshaw High School in Los Angeles, maintenance records report: “the horticultural
24 center is infested with rats. Rat ate a hole in the pig. . . . would need to clean up outside all foods
25 and take pig away and care for it.” (DT-LA 2996; *see also, e.g.*, DT-LA 54106 (“live rat trapped on
26 3rd floor by elevator and removed from site”); DT-LA 3002 (“rat is dead” in classroom 335); DT-LA

27
28 for four consecutive years but also did not participate in the II/USP program. (PLTF-XP-JO 10890.)

1 8631 (“rats in the kitchen store rm”); DT-LA 8673 (“rodents in cafeter[i]a store room”); DT-LA 8701
2 (“receiving door to kitchen — need to replace metal screen door — rat problem caused by door —
3 per pest control”).) On April 16, 2001, “oriental Roaches were found in 5 . . . traps in the kitchen,
4 serving line area, and the faculty dining.” (DT-LA 5440; *see also* DT-LA 3016, 3018-20, 3024,
5 5444, 5447, 5449, 54091, 54094, 54097, 54099 (maintenance records noting the presence of
6 roaches).)

7 Maintenance records from class representative Lizette Ruiz’s school — Huntington Park High
8 School in Los Angeles — report repeated vermin calls during the 1998 to 2002 school years, includ-
9 ing reports that “rats are in room 222 — (the unfriendly kind . . .),” “cafeteria serving area ‘spotted a
10 huge rat walking from one store room to the other,’” “rat is eating bread in cafeteria, cannot catch it,”
11 and “mice in rm. 71, 72, 73, 77, 76, and rm. 77 storage rm.” (DT-LA 6333; *see also, e.g.*, DT-LA
12 55172 (November 2001 report of “noted gnawing on ceiling tiles in these [five] rooms”); DT-LA
13 55159 (October 2001 report that “rats are eating bread, upon arrival. Bread is being attack [sic] early
14 morning.”); DT-LA 5151 (November 2000 report that cafeteria “[h]ad problems with rats again. Pest
15 control caught them. . . .”); DT-LA 5045 (May 1999 report that the kitchen area “[h]as a rat. Pest
16 control there daily. . . . Call for door sweeps on storeroom doors and exit doors.”); *see also* Deposi-
17 tion of Emilio Garcia at 83:7-16, 84:14-16 (Huntington Park principal testifying that the school had a
18 vermin problem and that teachers and students had complained to him about seeing mice or rats and
19 their droppings in classrooms at the school).) Lizette also testified that in one of her classes, “[o]n
20 top of the cabinet there was like a hole bitten off by the rat or mouse, or whatever it was, and the
21 teacher showed us the trap with the tail in it.” (Deposition of Lizette Ruiz (“L. Ruiz Depo.”)
22 at 341:11-14; *see also id.* at 339:11-340:22, 354:2-11.)

23 Pest control service logs from Fremont High School in Los Angeles — class representative
24 Cindy Diego’s school — note that the school was serviced about 40 times per year for mice, rats,
25 roaches, ants, and other vermin between March 1998 and April 2001. (DT-LA 4115-18, 5412-15.)
26 For example, in October 2000, maintenance records reported “[r]ats in 319, 317, 317a, 309, 309a,
27 304a, 313a, 309a, 317a, 306-a, 319-a 313-a 3 rats and rat glueboards placed in above noted rooms”
28

1 and “[t]hree rats caught on trap rm# 313-A. Rodent droppings found throughout store rms and class
2 rms.” (DT-LA 5412, 5428; *see also* DT-LA 4141 (“Heavy infestation [of cockroaches] found in all
3 areas.”); DT-LA 4184 (“Inspected room # 318. . . . Found dead rat under sink area.”); DT-LA 5412
4 (“Mice droppings and loaf of bread eaten in the kitchen Need to check for roaches and mice in
5 135, 138, 315.”); DT-LA 5413 (“Rodents in the kitchen have rat droppings in the bins and drawers”);
6 DT-LA 5421 (“Rat and mouse droppings found by flour bins, and underneath oven/stove. . . . Ham-
7 burger buns and bread has been eat[e]n off of bread delivery rack . . .”).) Likewise, maintenance re-
8 cords from Fremont High School detail almost-monthly calls (except during the first half of 1999)
9 regarding rodents or mice between July 1998 and April 2001. (DT-LA 5338-5340.) Cindy testified
10 to having seen mice “running around” in her Spanish class and that other people also had told her
11 they had seen mice on campus. (Deposition of Cindy Diego (“Diego Depo.”) at 297:1-22, 299:23-
12 300:5.) Teacher Joel Vaca testified that “every time I would sweep the room — and I do a thorough
13 sweeping of the room — I would have to pick up also feces of rat or rodent,” that “on numerous oc-
14 casions” students in his classes have told him they have seen a rat during class, and that he himself
15 had seen rats on campus three times, including one morning when he “opened the door to the
16 [class]room. And there’s a good sized rat, or maybe it was a big mouse, kind of healthy, just hanging
17 out in the middle of the room” (Deposition of Joel Vaca at 115:10-116:3, 114:9-12; *see also*
18 Deposition of Mary Hoover at 186:17- 187:10 (librarian testified to having seen mice and rats in
19 three different rooms at Fremont); Deposition of Marcia Hines (“Hines Depo.”) at 150:21-151:10 (as-
20 sistant principal testified to having seen mice or rats in her office about twice a year over 13 years).)

21 Class representative Alondra Jones testified that she routinely saw mice and mice droppings
22 during her four years at Balboa High School in San Francisco. (Jones Depo. at 127:25-128:22.)
23 Principal Patricia Gray testified that she had seen a mouse in her office a couple of weeks before her
24 deposition and that teachers had complained to her about having seen mice and mouse droppings in
25 their classrooms. (Deposition of Patricia Gray (“Gray Depo.”) at 125:22-128:19, 384:13-385:4.)
26 Teacher Shane Safir testified that she saw mice in one of her classrooms “at least ten or 15 [times], I
27 would say, and the droppings were daily, pretty much”:
28

1 There were definitely mice in the classroom. They would occasionally run across
2 the classroom, once or twice when students were in there, and if I were in there
3 working alone and it was a bit quieter, they would come out and run around. And
4 then they left their droppings all along the chalk . . . ledge and often on the book-
5 shelves near the books

6 (Deposition of Shane Safir (“Safir Depo.”) at 182:1-15.) Likewise, teacher Stephen Brady testified
7 that “I’ve seen a mouse in my classroom several times. . . . I had this as a running complaint for
8 more than one year. And I would see mouse droppings in the classroom. I’d have to sweep it up so
9 the students wouldn’t see it. It was really disgusting.” (Deposition of Stephen Brady (“Brady
10 Depo.”) at 35:23-36:15; *see also* DT-SF 52, 972.)

11 In addition, class members are also exposed to mold, fungus, mildew, damaged paint with
12 high levels of lead, and rotting areas in their classrooms and schools. (*E.g.*, J. Garcia Depo.
13 at 152:13-21, 170:15-171:15, 172:21-174:8; Salyer Depo. at 308:13-17, 347:14-348:16, 349:24-
14 350:5, 351:22-25, 352:5-8, 356:6-13, 364:6-23; DT-OA 5417, 7579-88; PLTF 80394-80401.) As a
15 teacher from Hawthorne Elementary School in Oakland explained, “I spent two years in a classroom
16 that was identified as having carcinogenic mold. That was a concern to me.” (Salyer Depo.
17 at 348:14-16.) This same teacher testified that, because of the mold in her classroom,

18 I had a student in my class in 1st grade who had pre-existing asthma who was ab-
19 sent 94 days out of that school year. The preceding year when she was not in that
20 building, she was absent 30 days. The year after that when she was not in that
21 building, she was absent 18 days.

22 (*Id.* at 353:15-20.) In another school class members attend, mushrooms grew out of a classroom’s
23 tiled floor after repeated flooding of the room; the mold problem was serious enough that it affected
24 the wall structure. (DT-OA 5527-28.) District documents show that at Fremont High School in Los
25 Angeles, “mold stained tiles need replacing” in three rooms since August 2002 but by January 2003
26 still had not been repaired. (DT-LA 51453; *see also* DT-LA 51459.)

27 The principal of Helms Middle School in San Pablo testified that he was concerned about
28 mold and mildew in classrooms because “I was aware that some teachers were suffering from — a
29 few teachers were suffering from allergies” and that when he arrived at the school as principal there
30 were already leaks in the roofs of the main building, a second building, two portables, and the gym-
31 nasium. (Deposition of Steven Muzinich (“Muzinich Depo.”) at 100:6-8, 12:7-13:19; *see also* Depo-
32 . . .)

sition of Harriet MacLean (“MacLean Depo.”) at 16:6-7, 14:4-6 (current principal testifying to the presence of “moldy” tiles and walls with “brown marks on them”).) A facilities study of Helms found that “[r]oof and skylights are in serious disrepair causing leaks and resulting in additional damage to walls and floors,” and “[g]lass block walls throughout school leak and need to be repaired/replaced.” (PLTF 1834.) The principal confirmed the problems with the glass blocks, testifying that in the main hall, a “couple of glass blocks are cracked or broken,” exposing jagged edges, without anything to prevent students from becoming injured on them, and that “[i]t was my understanding that the water leaks into the glass block and then runs down the wall and then leaks onto the floors. Mainly in the hallways on the first floor. And then on the second floor it was leaking down into the — on into the classrooms down the wall.” (Muzinich Depo. at 107:12-24, 17:8-12; *see also* Maclean Depo. at 14:8-18 (current principal testifying that “we would have water dripping from the ceiling tiles onto the stairwells” in the main building, leaving standing puddles “about a foot in diameter”).) The current principal noted that “[t]here are some [windows] that are broken, boarded. Boarded up” in the main building and that it takes “[i]n my experience, four years” to replace a broken window with new glass instead of boards. (MacLean Depo. at 118:9-119:1; *see also* Muzinich Depo. at 91:16-19 (former principal testimony that “I haven’t walked the school and counted the boarded windows, but there are — there are, you know, a fair number of them”); Deposition of Sara Canel at 144:21 (parent testifying that “[t]here are windows that are broken everywhere” at Helms).)

District documents and testimony taken in this case show students attending schools with missing and falling ceiling tiles, broken glass, and other evidence of general disrepair of the facilities. (E.g., J. Garcia Depo. at 182:8-183:6; Deposition of Beatriz Islas (“Islas Depo.”) at 71:7-72:11; Deposition of Pedro Monje Robles at 57:22-24, 60:21-61:1; Salyer Depo. at 297:7-22; DT-OA 6444, 6451-56, 7376-77, 7496, 7500; DT-LA 51240-42.) For example, a facilities study for Helms Middle School in San Pablo found that “[c]eiling tiles throughout [the] site are in various states of disrepair and need to be repaired/replaced.” (PLTF 1835.) Indeed, a January 14, 2002 article in the Contra Costa Times reported that:

The sky in this San Pablo school is, quite literally, falling.

1 Ceiling tiles, burdened by water and age, have buckled and snapped in the two-
2 story, green-tiled entryway that each morning greets 1,350 babbling pre-teens at
Helms Middle School.

3 One by one, the tiles have dropped, smacking the red tile floor below and leaving a
4 gaping black hole overhead.

5 “They fall whenever they fall,” said principal Harriet MacLean, an outspoken
6 woman who keeps a trash bin full of fallen tiles in a storage closet near her office.
7 “One fell mid-day, and luckily it didn’t hit anybody.”

8 (PLTF 66390; *see also* MacLean Depo. at 16:10-11 (“in the rainy season in 2001-2002 I would say
9 about 12 tiles, 10 to 12 tiles fell”).)

10 Similarly, district documents show repeated requests in August, September, October, and No-
11 vember 2002 to replace ceiling tiles in more than six rooms at Fremont High School in Los Angeles,
12 but that by January 2003, none of these tiles had yet been replaced. (DT-LA 51453-54; *see also* DT-
13 LA 51455 (broken window went unrepaired, still “need[ing] window board up,” for six weeks).)
14 These same documents show 19 requests to repair “various holes” in walls in 29 different locations at
15 Fremont that remained still unrepaired by January 2003, even though these requests were made as
16 many as 10 months before then. (DT-LA 51462-63.) Requests to replace missing floor tiles in nine
17 different rooms took six months to fulfill. (DT-LA 51481; *see also id.* (need to “replace about 20
18 missing flr. tiles 12x12 for room 124. Brown in color[,] tripping hazard” went unrepaired for two
19 months).) In addition, Fremont’s assistant principal testified that “there are rooms that definitely
20 need paint. . . . I have been there 14 years, and the classrooms have not been painted the whole time
21 I’ve been there on the inside”; “[i]f you think about your house, don’t paint a room for 14 years and
22 people use it year-round day in, day out — kids, students, greasy hair — it needs to be painted.”
(Hines Depo. at 310:14-20, 591:12-15.)

23 Class representative Alondra Jones testified that at Balboa High School in San Francisco,
24 “[s]ome of the gym window panes are broken,” that the broken window shades in her European lit-
25 erature course “added to the heat” in that class, and that her art classroom was regularly dirty, with
26 paint peeling off the walls, chalk dust strewn around the room, and missing ceiling tiles that left “a
27 whole bunch of empty space in the ceiling.” (Jones Depo. at 159:9, 200:8-11, 320:13-322:10.)
28 Alondra testified that approximately twice a month, “I had to get out of class and go to the teen health

1 clinic that we have at our school when the chalk irritated my nose and made [m]e have sneezing at-
2 tacks, and my eyes were watering and getting all red and puffy. I had to go to the clinic. And then if
3 I wasn't in class because I was sick from something that was in the class, of course, I couldn't learn."
4 (*Id.* at 322:21-323:6.) Likewise, Alondra's teacher, Shane Safir, testified that "I saw broken windows
5 in the hallways. . . . multiple windows at different times [that] remained broken for a long time,"
6 that "probably three-quarters of the classrooms at least" had missing or broken ceiling tiles, and that
7 "I heard of a couple of classrooms where the tiles fell down during class." (Safir Depo. at 213:3-15,
8 203:11-13, 207:10-15.) In addition, Ms. Safir testified that all the window shades in one of her class-
9 rooms were broken, that shades in other classrooms were broken as well, and that:

10 the Department Chair and I spoke about it. She was very frustrated, too, because a
11 lot of teachers in the Social Studies Department couldn't close their shades and we
12 show a lot of slides to illustrate different historical eras or films, so if it was any
time after 10:00 in the morning, the kids couldn't really see it. It was kind of ri-
diculous.

13 (*Id.* at 212:2-8.) Student Antonio Lewis testified that broken glass in windows remained unrepaired
14 for "a few weeks to a month" in a school hallway and in the gym locker room, and that broken glass
15 remained on the floor in the gym locker room for "approximately say a week or two." (Deposition of
16 Antonio Lewis ("Lewis Depo.") at 147:7-148:1.) Antonio also testified that he saw water leaking
17 from the ceiling on the third floor "whenever it rains": "I have a class on the third floor, it is like a
18 little walkway or bridge that we have to walk through to get to the third floor and generally when you
19 walk through the door, you can see the water, like physically see the water just dropping down on to
20 the actual floor." (*Id.* at 157:1-8.) School work orders from 1997-2001 support this testimony, show-
21 ing that broken windows routinely went unrepaired for long periods of time. (DT-SF 994-1006.)

22 At class representative Silas Moultrie's school, Luther Burbank Middle School in San Fran-
23 cisco, teacher Cynthia Artiga-Faupusa testified that school ceiling tiles "were falling":

24 [A] lot of times, the kids would come back [from P.E.] with flecks in their hair.
25 And I'd say, "Hey, you got stuff in your hair." She'd say, "Yeah, I know. A piece
26 of the ceiling fell down." You'd walk in there and you'd look up and you'd see the
majority of the tiles on the building gone. And it's a pretty—I mean, it's a pretty
high ceiling to be hit by something falling from the ceiling.

27 (Artiga-Faupusa Depo. at 161:6-13; *see also id.* at 130:16-132:20 (testifying that at least fifteen ceil-
28

1 ing tiles in her classroom were chipped and broken); Nawa Depo. at 174:7-9 (“I personally would
2 estimate that in the gymnasium, specifically more than 50 percent of the tiles were already miss-
3 ing.”).) Ms. Artiga Faupusa testified that “throughout the school, there were broken windows. A lot
4 of the windows were covered with plywood.” (Artiga-Faupusa Depo. at 159:24-160:1; *see also id.*
5 at 134:1-135:10 (testifying that a broken window in another classroom “didn’t get fixed for a while”
6 and its ultimate “repair” was simply to board it over with plywood instead of to replace the broken
7 glass).) Luther Burbank maintenance records confirm these degraded conditions. For example,
8 1997-2001 work orders detail many broken windows (DT-SF 876-877, 904-917.); ceiling tiles falling
9 (DT-SF 884.); boarded-up windows (*id.*); the presence of damaged ceiling and floor tiles and a ceil-
10 ing tile with asbestos loose and presenting health and safety concerns (DT-SF 888, 886.); and plumb-
11 ing problems (DT-SF 944-951.).

12 Class representative Carlos Santos testified that at Edison-McNair Academy in East Palo
13 Alto, broken glass remained on the blacktop outside a classroom where a broken window was re-
14 placed, even though “[i]t happened a long time ago”; Carlos testified that he knew the broken glass
15 was still there “[b]ecause we always play there. . . . there’s nowhere else to play.” (Santos Depo.
16 at 215:5-217:3.) School records from class representatives Delwin and D’Andre Lampkin’s school,
17 Crenshaw High School in Los Angeles, show that broken glass in the library took over two months to
18 repair. (DT-LA 3032-3036, 3041.) Likewise, class representative Krystal Ruiz testified that one of
19 the windows in her social studies classroom at Cesar Chavez Academy in East Palo Alto was broken
20 and boarded-over with a piece of wood and that a gym window was broken. (Deposition of Krystal
21 Ruiz at 276:16-24, 313:14-315:4; *see also* Deposition of Carla Walden at 210:14-20 (principal testi-
22 mony that she had seen broken windows in the school gym).) Student Rebecca Ruiz summed up her
23 Cesar Chavez experiences by testifying that “Cesar Chavez is small, dirty, and not that good to go to
24 school” (Deposition of Rebecca Ruiz at 123:4-5.)

25 Furthermore, students and teachers have repeatedly testified to suffering extreme classroom
26 temperatures that impede their ability to learn and to teach. (*E.g.*, J. Garcia Depo. at 262:4-24, 266:4-
27 19, 267:19-268:9, 269:4-12, 270:3-17, 273:3-11; Deposition of Jackelyne Montes at 142:3-143:7;

1 Salyer Depo. at 328:7-12, 330:1-12, 331:17-21, 334:6-13.) For example, maintenance logs from
2 class representative Lizette Ruiz’s school — Huntington Park High School in Los Angeles — reflect
3 116 complaints about air conditioning and heating problems during the 1998-1999 school year alone
4 and another 92 complaints about the same problems during the 2000-2001 school year. (DT-LA
5 6326-28, 6368-70.) Lizette testified that it seems like the air conditioner is “always broken down”
6 and that when it is broken down “sometimes it is kind of like unbearable and it just makes people
7 sleepy. It makes me sleepy, so it is kind of distracting and it kind of gets frustrating sometimes.”
8 (L. Ruiz Depo. at 632:20-23, 49:10.)

9 In class representative Carlos Ramirez’s school — Bryant Elementary School in San Fran-
10 cisco — the principal testified that “[t]he air-conditioning is a constant problem, almost daily prob-
11 lem.” (Deposition of Larry Alegre (“Alegre Depo.”) at 147:4-5; *see also* DT-SF 1072-1076 (school
12 maintenance logs showing 63 complaints about the heating and air conditioning system between Oc-
13 tober 1997 and March 2001).) Carlos himself testified that “I fainted because I was too hot” in
14 school. (Deposition of Carlos Ramirez (“C. Ramirez Depo.”) at 313:22.) Maintenance logs from Lu-
15 ther Burbank Middle School in San Francisco reflect 82 complaints about the heating and air condi-
16 tioning system from November 1997 through October 2000, including the absence of heat altogether
17 in particular rooms. (DT-SF 917-23.) One Luther Burbank work order reflects 20 days having
18 passed before repairs were made to a classroom heater, notwithstanding the work order note that
19 “[n]eed this fixed asap. very cold classroom.” (DT-SF 128.) Class representative Silas Moultrie tes-
20 tified that the heaters did not work in any of his classrooms and therefore his classroom temperatures
21 were typically cold in the fall and winter and that “[w]hen you’re very cold, you don’t want to move,
22 really” but that when he complained to a teacher about the temperature, “[t]here’s nothing he can
23 really say. The heaters don’t work.” (Moultrie Depo. at 260:22-24, 256:7-23, 260:6-19.) Teacher
24 Cynthia Artiga-Faupusa testified that her classroom became so cold that “you could see your breath”
25 and that from December through March “[i]t felt like almost every morning it was cold, particularly if
26 it was cold out. I’d get in in the morning, and I would leave my coat on, my gloves on and my hat on
27 in the classroom because it was still freezing cold in the classroom.” (Artiga-Faupusa Depo.

1 at 152:21, 154:9-24.)

2 Trouble call reports for class representative Cindy Diego's year-round high school in Los An-
3 geles noted that in some instances air-conditioning repairs took as long as one month, during summer
4 months, to complete, and that there were 19 requests to repair the temperature in the C building alone
5 between June 1999 and June 2000. (DT-LA 3928-3935; *see also* DT-LA 5321-5336.) When asked
6 about conditions that interfered with her ability to learn, Cindy testified: "I guess when we had [a]
7 problem with the air conditioning or the heating, especially when it was real hot and we will go inside
8 the class and it will be as hot as it was outside because of the air conditioning [not working], or when
9 it was cold and raining and we didn't have any heat." (Diego Depo. at 205:12-20; *see also* Hines
10 Depo. at 147:16-18 (assistant principal Marcia Hines testified about "a portable that came in without
11 air [conditioning], and it came in in the summer, and it was absolutely dreadful . . .").)

12 Class representative Alondra Jones testified that in her economics class at Balboa High
13 School in San Francisco, "it's been cold enough that you shiver" — indeed, "some days it's been
14 colder inside the classroom than it is outside" — but that "when I tried to turn it [the heater] on, noth-
15 ing happened because it's broken." (Jones Depo. at 222:17-21, 225:14-15.) Another Balboa student
16 testified that in his American Democracy class "I would say it is generally hot every day that I have
17 his class, so four times a week," (Lewis Depo. at 199:25-200:1.), but that, by contrast, he was cold in
18 his English/European Literature class because the heater in that class had not worked during the en-
19 tire 2001-2002 school year. (*Id.* at 201:14-19.) This student testified that on the days when he had
20 English/European Literature in the morning:

21 it is always cold and we would tell Mr. Bond, like we just came from Mr. Deguia's
22 class and it was hot and now we're in here and it is really cold and he would say,
23 "Try to turn on the heater." And students would make an effort to turn on the
24 heater, but after waiting approximately ten minutes or so, the heater would still not
come on and Mr. Bond would say, "Make sure you have a jacket or something and
keep the windows closed."

(*Id.* at 202:24-203:6.) Balboa teacher Shane Safir testified that it was "[o]ften, often a problem" that
25 her classroom was uncomfortably hot. (Safir Depo. at 167:13-17.) She explained:

26
27 There was a crank knob on the heater, so I would turn it off, but because it was
28 broken, it would turn itself back on, so it would just emit extremely hot air, like I
said, despite the temperature outside and I didn't seem to be able to resolve the

1 problem on my own. I didn't know how to fix it, so it was often hot, which was
2 fine if it was a cool day, but if it was warm or hot outside, it was troubling.
3 (*Id.* at 167:19-168:1; *see also* Brady Depo. at 17:8-12 ("The classroom was extremely hot and the
4 students that were asthmatic might have difficulty breathing. I shouldn't say 'might,' definitely had
5 difficulty breathing in my classroom several different years."))

6 Deposition testimony and district documentation also show that, for many students, a lack of
7 basic sanitary supplies is the rule, rather than the exception. (*See, e.g.,* Deposition of Altagracia Gar-
8 cia at 268:12-20 ("There is never soap [in the bathrooms at Jefferson High School] Q. And by the
9 end of lunch you are out of toilet paper and towels; correct? A. Correct."); Deposition of Manuel
10 Ortiz ("Ortiz Depo.") at 76:12-13, 77:3-6; Diego Depo. at 589:24-590:3 (testifying that "85 to 90
11 percent of the time there's no toilet paper" at Fremont High School in Los Angeles).) A teacher at
12 Bryant Elementary School in San Francisco testified:

13 The bathrooms smelled of urine and feces, and were — I can't think of a good
14 word for this right now. They were not attractive places for a child to go when
15 they needed to do business because they were repellent in that way. There were
16 children that I became aware of over my years teaching there who began to stop us-
17 ing the bathroom. In my last year at Bryant, one of my students, I found out
18 through the school nurse and his grandmother that he had been holding his bowel
19 movements for years. At the age of nine, he had hemorrhoids.

20 (*Deposition of Lili Malabed ("Malabed Depo.") at 282:11- 21.*)

21 Inspection logs of the bathrooms at Crenshaw High School in Los Angeles, the former school
22 of class representatives Delwin and D'Andre Lampkin, identify the following conditions:

23 Two stall doors are missing. . . . There is dried avian (bird) feces found on the win-
24 dow sills. . . . There is a noticeable odor of urine present. . . . The floor is soiled and
25 there is visible urine on the floor. . . . 1/2 of the toilet paper dispensers are
26 empty. . . . There is a build-up of urine and grime found on the outside of the toi-
27 lets. . . . There is a build-up of debris around the floor drain. . . . The soap dispenser
28 is empty. . . . The toilet seats are badly soiled. . . . There is obvious debris found on
the floor.

(DT-LA 5459-64.) Crenshaw maintenance records show that during the 1999-2000 school year, re-
pair for two stopped-up toilets in the girls' restrooms took 28 and 30 days, respectively (DT-LA
3042.); replacement of a stall door in the boys' restroom took 20 days (DT-LA 3044.); and repair of
two stopped-up urinals in the boys' restroom took one week. (DT-LA 3034; *see also* Deposition of
D'Andre Lampkin ("D'Andre Lampkin Depo.") at 339:8-12 (urinal flooded for a long time without

1 being fixed); *id.* at 342:16-345:17 (lobby restroom dispensers lack soap and paper towels; the rest-
2 room has graffiti all over, and the floor is frequently wet).) In addition, numerous bathrooms at
3 Crenshaw are often locked. (Deposition of Travis Kiel (“Kiel Depo.”) at 196:14-197:13; Deposition
4 of Delwin Lampkin at 702:12-704:14 (estimating that 2 or 3 of the 18 bathrooms at Crenshaw are ac-
5 tually open and accessible to students on a regular basis).)

6 Class representative Silas Moultrie testified to similar conditions at Luther Burbank Middle
7 School in San Francisco: “They’re [the bathrooms] all the same. They’re all dirty. No soap, no seat
8 covers, no paper towels.” (Moultrie Depo. at 281:12-14.) The conditions of bathrooms at many
9 other California schools are similarly deplorable. (*See, e.g.*, DT-LA 6373-78 (February 2001 memo
10 to Huntington Park High School plant manager from LAUSD citing “grime and scum” in the bath-
11 rooms, toilet paper and soap dispensers that need to be replaced, empty soap dispensers, and missing
12 lights); DT-LA 50712 (November 2002 survey of restrooms at Huntington Park High showing that
13 just 25% of boys’ restrooms and 70% of girls’ restrooms were available for use “all day” and “before
14 school” and only 30% of girls’ restrooms and 50% of boys’ restrooms were found to be of an “ac-
15 ceptable cleanliness level”); DT-LA 51235 (November 2002 survey of restrooms at Roosevelt High
16 School in Los Angeles showing that only 21% of boys’ restrooms and 25% of girls’ restrooms were
17 available for use “all day” and “before school”).) Class representative Manuel Ortiz testified that, at
18 Watsonville High School, “[a] lot of times when I’ve been wanting to go to the restroom during fifth
19 and sixth [period], they’re not even open. I have to go to like three or four different restrooms to try
20 to find one open.” (Ortiz Depo. at 76:7-11; *see also* Deposition of Emmanuel Medina (“Medina
21 Depo.”) at 280:1-282:23.)

22 Los Angeles Unified School District records show that while the law requires Fremont High
23 School to have 33 toilets available for boys and 50 toilets available for girls, the school had only
24 27 toilets available for the male enrollment of 1576 students and 41 toilets available for the estimated
25 female enrollment of 1471 students. (DT-LA 1852.) At some periods during the day, far fewer toi-
26 lets are actually available for student use. The assistant principal testified that during lunch and nutri-
27 tion, only two girls’ bathrooms are open, containing between 10 and 14 toilets. (Hines Depo.
28

1 at 143:11-25.) School district records show that a stall door has been missing in one of the Fremont
2 girls' bathrooms since October 11, 2002, and as of January 2003 still had not been replaced. (DT-LA
3 51452; *see also* DT-LA 51451 (it took three months to replace a broken restroom door); DT-LA
4 51491 (October 2002 request to replace mirrors in bathrooms was still unfulfilled in January 2003);
5 DT-LA 51506-09, 51516 (Fremont repeatedly took as many as 19 days to fix stopped-up toilets and
6 leaking urinals).)

7 Class representative Moises Canel testified that at Helms Middle School in San Pablo, "the
8 bathrooms are dirty. They don't have toilet paper. They don't have soap or the towels to wipe your
9 hands. There's graffiti on the walls in the hallways, the gym, and the bathrooms." (Deposition of
10 Moises Canel ("M. Canel Depo.") at 267:14-17.) The Helms principal testified that he received
11 complaints about the bathrooms being dirty and lacking soap and paper towels. (Muzinich Depo.
12 at 29:18-20; *see also* M. Canel Depo. at 272:1-6 ("There's no, um — like no toilet paper [in the boys'
13 bathroom of the second floor of the main building]. There's no soap for you to wash your hands.
14 There's no hot water. There's no towels to wipe your hands. The floors are always wet. The toilets
15 are always — not always but mostly — flooded. There's graffiti on the walls."); *id.* at 293:11-12
16 (hand dryer in the boys' bathroom of the second floor of the main building does not work).) In addi-
17 tion, a 2001 district facilities study identified as one of the 23 "major site limitations" at Helms the
18 "[l]ack of adequate restrooms due to age of school, general disrepair, and increased enrollment" and
19 stated that "[a]ll restrooms need to be renovated by replacing stools, stalls, sinks, floors, and all
20 equipment." (PLTF 1834.) Of the ten bathrooms at Helms, two of them are locked and have been
21 for years; others are closed to student use on occasion. (Muzinich Depo. at 26:18-28:9.)

22 Beyond that, students and teachers have testified that noise impedes learning opportunities in
23 schools with such learning impediments as inadequate walls between classrooms, inopportune siting
24 of portable classrooms on playgrounds, other noisy areas or ongoing construction during school
25 hours, and the location of classes in public spaces such as libraries or auditoriums or in spaces shared
26 with other classrooms. (*E.g.*, Diego Depo. at 434:15-23, 595:14-17; J. Garcia Depo. at 184:19-
27 185:12, 243:23-244:10, 250:23-254:1, 256:16-257:1; Deposition of Natalie Perkins-Ali ("Perkins-Ali
28

1 Depo.”) at 273:11-274:5, 281:16-21; Salyer Depo. at 393:4-394:5.) In class representative Carlos
2 Ramirez’s school, Bryant Elementary School in San Francisco, which lacks adequate walls between
3 classrooms, the principal testified that “I just remember feeling — being disrupted myself in the
4 classroom” because of the din from students learning in other rooms. (Alegre Depo. at 118:16-17.)
5 Carlos himself testified that “[t]he walls are — you can hear — you can hear other classrooms jump,
6 scream, laugh, play games, run around, play music” (C. Ramirez Depo. at 54:6-8; *see also*
7 Malabed Depo. at 325:14-15 (“as you know, you could hear through the walls”); DT-SF 81, 94, 107,
8 111, 114, 116 (essays from Bryant students complaining about noise interfering with their learning).)

9 At Watsonville High School, where construction took place during school hours, class repre-
10 sentative Manuel Ortiz testified that “there was a lot of hammering going around, a lot of heavy
11 equipment being there. For anybody it would be hard to concentrate with all that noise outside” and
12 wondered “why couldn’t they do it [construction] after school or wait till there’s no school? Why did
13 they have to do it during school? And it was getting really heavy during finals, like before finals.
14 Why do they have to do it then? Why not after school or weekends?” (Ortiz Depo. at 317:19-22,
15 318:21-319:1; *see also* DT-PV 117-120 (school records confirming that construction took place on
16 weekdays from November 1999 through October or November 2000).)²² Manuel’s assistant principal
17 noted in an email that he had spoken with a teacher about “the amount of noise and various interrup-
18 tions that he and his students had to live through as the new two-story was being constructed. He has
19 some very legitimate concerns as do other teachers near this area.” (DT-PV 1538.) Assistant princi-
20 pal Lawrence Lane testified that he saw jackhammers, trucks, a trencher, and tractors on campus dur-
21 ing the hours of 7:00 AM until 3:00 or 4:00 PM on school days and that after he received teacher
22 complaints about the disruptive construction noise he negotiated with the construction teams to try to
23 stop the noise but ultimately agreed to allow the construction to continue. (Deposition of Lawrence
24 Lane Vol. II (“Lane Depo. II”) at 69:17-70:15, 107:4-108:19.)

25 Class members testified that students often have to stand or sit on counters and tables and
26 makeshift spaces in their crowded classes because the classes do not have enough seats for all the

27 _____
28 ²² All cited DT-PV documents are attached. (Welch Decl. at Exh. 22.)

1 students. (E.g., J. Garcia Depo. at 152:22-153:17, 154:15-155:13, 347:25-349:12; Islas Depo.
2 at 63:23-66:7; Perkins-Ali Depo. at 217:4-18, 221:7-8, 242:1-246:13.) One parent testified that she
3 heard teachers on her son's campus (Fremont High School in Oakland) complain to the principal
4 "[a]lmost every day" that they did not have enough chairs for all the students in their classes to sit in.
5 (Deposition of Maria de Los Angeles Gonzales ("Gonzalez Depo.") at 47:5-8.) As one student from
6 this school explained,

7 Actually the overcrowding affected the psychological health of the students, since
8 they feel couped up in the facility, which is designed to house an amount lesser
9 than the actual numbers that Fremont had of students. And when I say affect the
10 psychological health, I mean they feel couped up, they start getting stressed or
11 nervous, and they kind of act differently. So it's like some of the students might
12 act in a hostile manner due to the overcrowding, they'll be bumping in the hallways
13 because they are so crowded, which led to conflicts. Counselors will be definitely
14 overwhelmed by students, especially the first weeks of school, because they are
15 trying to get the classes together.

16 (J. Garcia Depo. at 202:25-203:13.) Similarly, the principal of Helms Middle School in San Pablo
17 testified that the school is so crowded that classes are held in every room in the school, even in rooms
18 that were not designed for classroom instruction, such as "there are three rooms in the breezeway be-
19 hind the kitchen of the cafeteria that have . . . classes in them, and a small room between two of the
20 former shop rooms that has a class." (MacLean Depo. at 85:7-16, 87:22-88:1.)

21 Class representative Alondra Jones testified that in one class she took at Balboa High School
22 in San Francisco, with "40 plus" students in it, "students were sitting everywhere, on the floor, on top
23 of the file cabinets, on his [the teacher's] desk, at his desk. Some kids even got chairs from out [of]
24 other classrooms to sit. I mean that class was packed." (Jones Depo. at 406:14-25.) Teacher
25 Stephen Brady testified that at Balboa "I have personally had, on more than one occasion, in more
26 than one type of class, not enough chairs in my classroom to fit students and have had them standing
27 or have had them sit on the counter in order to attend my class." (Brady Depo. at 35:12-16; *see also*
28 Medina Depo. at 120:1-122:8 (math teacher testimony that he had more than 40 students in one of his
classes when the 1998-1999 school year started and that it took approximately six weeks to stabilize
the course enrollment to approximately 29 to 33 students).) Teacher Shane Safir testified that
"[o]vercrowding was a consistent problem [at Balboa]. My classes were particularly overcrowded

1 my first year and then I was able to escape that to some extent, but it continued to be a big problem in
2 other classrooms.” (Safir Depo. at 227:7-10.) Ms. Safir testified that during her first year teaching at
3 Balboa (the 1997-1998 school year), “I had a class with about 40 seniors in it and it was a problem
4 because the rooms aren’t that big, plus you had to scramble to try to get chairs or desks for all the
5 kids, so that was a problem.” (*Id.* at 228:4-7; *see also id.* at 233:3-18 (estimating that four students
6 had chairs but no desks in that class because “either we couldn’t get enough desks or we couldn’t fit
7 enough desks, but I don’t remember which”).) Ms. Safir also testified that, “this year [2001-2002
8 school year], the Spanish teacher, who is in my former Classroom 323, had over 40 kids in her class.”
9 (*Id.* at 241:12-17.)

10 Class representatives Delwin and D’Andre Lampkin’s principal testified that at Crenshaw
11 High School in Los Angeles, it is “[n]ormal within the first week of school” for students to sit on
12 counters to take notes because there are not enough seats for all students in a class. (Kiel Depo.
13 at 167:17-21.) School documents confirm that overcrowding is normal. School year enrollment class
14 lists for 2000-2001 show multiple core classes with allowable enrollments up to 56 students and ac-
15 tual enrollments up to 44. Specifically, one English class had 44 students, another had 42 students,
16 and a third had 39 students; one biology class had 41 students and another had 40 students; one world
17 education class had 42 students; and one drama class had 43 students. (DT-LA 8519, 8488, 8491.)
18 D’Andre testified that as many as 15 students, with an average of five students, had to stand during
19 the entire class period in his biology class “because the class is overcrowded [and] there weren’t
20 enough seats.” (D’Andre Lampkin Depo. at 263:21-265:3.)

21 School records from class representative Lizette Ruiz’s school, Huntington Park High School
22 in Los Angeles, reflect the “[s]tudent dining area used for classes” for at least three school years.
23 (DT-LA 5152 (November 2000); *see also* DT-LA 5043 (May 1999), DT-LA 5108 (May 2000).)
24 Class representative Lizette Ruiz testified that her tenth grade honors English class was “[e]xtremely
25 overcrowded” and “[t]here weren’t enough seats so we were scattered around the room. . . . I re-
26 member seeing people sitting on the floor and others sitting on top of desks.”; “I was sitting at the
27 teacher’s desk.” (L. Ruiz Depo. at 182:3-183:21; *see also id.* at 270:21-271:2.)

1 Teacher attendance records from fall 2001 for class representative Cindy Diego's school,
2 Fremont High School in Los Angeles, show as many as 52 students enrolled in an algebra class four
3 weeks into the school year; although nine of these 52 students may have transferred to other classes
4 (six of those 52 students never came to class and three other students stopped coming), still 43 stu-
5 dents showed regular attendance in the overcrowded class. (PLTF 6657-58; *see also* PLTF 6655
6 (2001 teacher attendance record showing 39 students enrolled in another algebra class).) Cindy testi-
7 fied that "[f]or the first two weeks there were sixty people in my Government class and some people
8 had to stand." (Diego Depo. at 122:1-2; *see also id.* at 504:9-505:9 (testifying that for approximately
9 three and a half weeks there were approximately 45 people in her American literature class and four
10 people had to stand); DT-LA 51660 (local district superintendent acknowledging that "the school was
11 crowded").) In addition, assistant principal Marcia Hines testified that "[w]e already have one [math
12 class] in the cafeteria," and because all available campus classrooms were already in use,

13 I'm estimating there are about four or five [teachers traveling on one of three tracks
14 at the school], which, to me, is unacceptable. . . . [E]specially as a new teacher, you
15 have your stuff and you have your books, your classroom library, you put your ob-
16 jectives, standards for the lesson, and you may have two or three classes that are
17 the same English 9. Why should you have to go back to another room and put up
18 those standards and objectives again three or four times a day? That doesn't make
a lot of sense, plus you have to schlep your books to these places, too, because
maybe you have a classroom set of what you want to use in that particular session.
So then you have to take that to three other sessions. I think it's a travesty for a
teacher to travel more than twice. If a teacher has to go to five different locations
in one day, I think it's unacceptable. I feel strongly about that.

19 (Hines Depo. at 630:14-15, 582:15-584:1, 660:9-13; *see also id.* at 589:6-19; Deposition of Margaret
20 Roland ("Roland Depo.") at 304:23-305:14.)

21 The transcript of a May 2001 school board meeting describes the overcrowding at class repre-
22 sentative Manuel Ortiz's school — Watsonville High School in Watsonville — as a "crisis situation"
23 and reflects discussion of Watsonville High teachers having to rove from room to room, using other
24 teachers' classrooms during their free periods, because of campus crowding. (DT-PV 3112-13.) As-
25 sistant principal Lawrence Lane testified that, for every year since even before 1967, at least one
26 teacher per year has had to rove. (Lane Depo. II at 62:15-63:12; *see also* Deposition of Jose Banda
27 ("Banda Depo.") at 110:11-13 (principal testimony that "because of our high student population and
28

1 the impact on facilities, we don't have a classroom for every single teacher").) In addition, assistant
2 principal Lane testified that geometry and health classes had met in the library and that English, so-
3 cial studies, and art classes had been held in the old district office because the school did not have
4 enough available classroom space. (Lane Depo. II at 57:6-15, 58:10-25; *see also* Banda Depo. at
5 80:1-23.) Teacher James Hagan testified that "I happen[ed] to witness a young lady trying to give a
6 science class, a biology class . . . in the library for a better part of a semester" and that

7 the library is not suited for teaching a biology class. I mean, this is a class in which
8 frogs should be dissected as an example Well, you need certain facilities to
9 do something like that A library is not consistent with those kinds of facilities
10 In addition to that, the library, in my opinion, is the intellectual heart and soul
11 of a learning institution. And by having a class in there, it really precludes the free
12 flow of students to come in and do the normal functions of a library. I mean, the
13 tables are not available to them. They don't feel they can speak and wander
14 around I just think that it's despicable.

15 (Deposition of James Hagan ("Hagan Depo.") at 15:2-18.) Mr. Hagan explained that the biology
16 class was taught in the library "[b]ecause there was no other place to put it. . . . [W]e had classes in
17 the back stage of the performing arts center, in the cafeteria, in the gym. We had students taking
18 class sitting on the floor of the gymnasium. We had people in classes in an office building behind
19 posts so they couldn't see" (*Id.* at 179:24-180:5.) Principal Jose Banda testified that every year
20 since he had been at Watsonville High School, he had heard about one or more classes in which there
21 were more students than available seats. (Banda Depo. at 77:4-8.) Likewise, Mr. Hagan testified that
22 he has had more students than desks in his classes "[v]irtually every year" he has taught at Watson-
23 ville High School, including "[r]ight now." (Hagan Depo. at 165:4-17; *see also id.* at 14:20-24 (testi-
24 fying that almost two months into the 2001-2002 school year, "we're so overcrowded, we still don't
25 have a balance of students" in classes).) Class representative Manuel Ortiz testified that in one of his
26 classes, "we had too many students in that class and not enough seats. So sometimes I remember we
27 had to stay standing up for the period toward the beginning of the year" and that in another class,
28 "some students were standing up for the whole first week." (Ortiz Depo. at 179:10-13, 197:3-4.)

2. Severe Facilities Needs Persist Today In Some California Public Schools.

Declarations attached to this motion illustrate examples of the currency of facilities needs in
schools from San Francisco to Salinas to Inglewood, and beyond. As shown in the attached chart,

1 these declarants' schools serve the State's lowest income students and student populations comprised
2 largely of students of color, and the schools' student performance falls woefully short of State stan-
3 dards. (Welch Decl. at Exh. 23.) Moreover, many of these declarants are the same students and
4 teachers who signed declarations stating that they lack sufficient numbers of textbooks and instruc-
5 tional materials in their schools. (Welch Decl. at Exh. 21.) The conditions that give rise to this suit
6 thus aggregate in specific schools and persist to the students' detriment today.

7 Students and teachers testify to having seen "mice or rats at school at least once a month" and
8 "droppings and other signs of mice every day" during the current, 2002-2003, school year. (Declara-
9 tion of Amanda Piercy ("Piercy Decl.") at ¶ 3; Jeffries Decl. at ¶ 4; *see also* Declaration of Nathalie
10 Granados (Granados Decl.) at ¶ 9 (student from Thurgood Marshall High School in San Francisco
11 testifying that she has seen rats and mice in classes); Declaration of Kim-Shree Maufas ("Maufas
12 Decl.") at ¶ 9 (Thurgood Marshall parent declaring that "I saw mice over ten times last school year");
13 Declaration of Cheryl Lana ("Lana Decl.") at ¶ 8 (teacher testifying that "Thurgood Marshall also
14 seems to be experiencing a rodent problem once again. Recently, I began seeing mice in classrooms
15 after hours and mouse droppings more frequently."); Declaration of Geraldine Martinez ("Martinez
16 Decl.") at ¶ 9 (Thurgood Marshall student declaring that "[s]everal times rats ran across the dance
17 floor or out of my teacher's closet" in her dance class during the 2002-2003 school year); Declaration
18 of Sandy Gonzales ("Gonzales Decl.") at ¶ 8 (student testimony from Locke High School in Los An-
19 geles that the school also has "a rat problem" such that the student has seen "rats on top of the air
20 conditioning" and has seen "rat droppings near the air conditioning").) Teachers from Woodworth
21 Elementary School in Inglewood declare that the school is so "infested with cockroaches and mice"
22 that "I would find evidence of mice in my classroom on a weekly basis." (Blanchard Young Decl. at
23 ¶ 4; Declaration of Earlene Gray ("Gray Decl.") at ¶ 3.) As one teacher explained:

24 The ledge on the bottom of the chalkboard is full of mice droppings every morning
25 when I get to class. Any space that is partially enclosed winds up with mice drop-
26 pings in it. I have found mouse droppings in the closet in my classroom. There
27 were mouse droppings mixed in with the beads in the kits that my first graders use
for science. There are droppings in the boxes that my students dig around in for
books. I don't like my kids to have to come into contact with the mice droppings
but I feel like there is nothing I can do.

1 (Jeffries Decl. at ¶ 4.) A student from Locke High School in Los Angeles states:

2 I have heard rats running around in the air conditioner vents. I have also seen rat
3 droppings between the shelves and books and on top of the books in my English,
4 ROTC, and Algebra classes. I have also seen rat droppings on the floor in biology.
Sometimes my biology teacher gives us extra credit to sweep the floors and I have
seen rat droppings while sweeping the floor.

5 (Declaration of Alfredo Vargas (“Vargas Decl.”) at ¶ 8.) Similarly, a teacher from Roosevelt High
6 School in Los Angeles testifies that the “mouse problem” at her school is so routine that teachers ex-
7 pect to — and do — have mice “living in the corner” of classrooms. (Declaration of Gillian Russom
8 (“Russom Decl.”) at ¶ 7; *see also* Declaration of Isaac Medina (“Medina Decl.”) at ¶ 7 (student de-
9 claring that “[t]he classrooms and halls at Roosevelt have a lot of cockroaches, ants, and even rats”).)

10 Declarations reveal chronically leaking ceilings, including one student whose “third period
11 English class has two big leaks in the ceiling” such that:

12 The water comes in pretty fast. It is like a faucet dripping, except that the drops are
13 much bigger. My teacher puts down buckets where the water comes in so that we
14 don’t get puddles on the floor. By the time I leave my class the buckets are about
15 half full. There are leaks in the hallways outside of the classrooms too, but there
are no buckets to catch the water so big puddles form on the ground every time it
rains. They are so big you could splash in them. I have never seen anybody do
anything about the leaks in the hallways.

16 (Piercy Decl. at ¶ 5.) A student from Roosevelt High School in Los Angeles testifies that “[t]here is a
17 big problem with leaky ceilings in some of my classrooms” and that “[w]hen the ceiling leaks in my
18 History and English classes, the teachers put trashcans under the leaks to keep the floors dry” but
19 “[t]he noise from the leaks bothers me a lot.” (Medina Decl. at ¶ 8.) According to a teacher from
20 Woodworth Elementary School in Inglewood: “There are water leaks in the ceilings in many class-
21 rooms at Woodworth” that have persisted for years and that when it rained, “I had to put a trash can
22 under the leak to prevent water from soaking the floor and rugs. If it rained over the weekend. . . wa-
23 ter would get all over the floor and I had to prevent my [kindergarten] students from going to the wet
24 area of the room on the next school day.” (Blanchard Young Decl. at ¶ 3.) The school district ulti-
25 mately decided simply to pull up the carpet and install tile floors to minimize rain damage from leaks
26 because it could not afford to fix the leak itself. (*Id.*)

27 Bathrooms in some schools are “really gross” because “[a] lot of the time there is no toilet pa-
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1 per” and “[a] lot of the stalls in the girls’ bathroom have doors that are broken so that you can’t lock
2 them and there is no privacy. If you try to shut the door it just swings open” in “not just one particu-
3 lar bathroom at Balboa — they are all like that.” (Piercy Decl. at ¶ 4; *see also* Declaration of An-
4 thony Wesley (“Wesley Decl.”) at ¶ 10 (Balboa student declaring that Balboa bathrooms are “messed
5 up”: “There is never any soap or toilet paper. They smell nasty like somebody urinated on the floor or
6 something is leaking.”); Blanchard Young Decl. at ¶ 8 (teacher from Woodworth Elementary School
7 in Inglewood testifying that “[t]he bathrooms are often nasty and filthy and there is often no toilet
8 paper, paper towels, or soap and there is often water on the floor”); Gonzales Decl. at ¶ 10 (student
9 from Locke High School in Los Angeles testifying that her school bathrooms generally lack paper
10 supplies and are dirty).) One teacher testifies that “Hawthorne didn’t have soap or paper towels in
11 any of the bathrooms for the last three months of school.” (Declaration of Erika Strand (“Strand
12 Decl.”) at ¶ 5.) Fremont High School in Los Angeles has only “one or two restrooms open for each
13 sex, and each bathroom has only six or seven stalls[; t]his is definitely not enough for 3,000 stu-
14 dents!” (Declaration of Sandra Robles (“Robles Decl.”) at ¶ 9.) According to another student “only
15 three or four” of Locke High School’s approximately seven bathrooms are open and available for
16 student use, with “often no toilet paper or soap.” (Vargas Decl. at ¶ 10; *see also* Strand Decl. at ¶ 4
17 (teacher from Hawthorne Elementary School in Oakland testifying that “[t]he module bathrooms
18 were closed for perhaps the first one-third of the year due to sewage backing up onto the playground
19 yard. With the closed module bathrooms, there were three functioning bathrooms each for boys and
20 girls on campus that all 1,200 students had to use.”); Declaration of Enrique Garcia (“E. Garcia
21 Decl.”) at ¶¶ 13, 12 (teacher from Roosevelt Elementary School in Lynwood declaring that “[t]here
22 are not enough bathrooms for the students. I believe there are three bathrooms for the girls and three
23 for the boys” in a school with 1,430 students).)

24 A student from Roosevelt High School in Los Angeles explained: “If you ask anyone what the
25 worst thing about Roosevelt is, they’ll probably tell you the bathrooms” because they are “dirty,” the
26 “toilets usually don’t flush,” “many times there are no paper towels,” “[s]ome of the stalls do not
27 have doors,” and “[s]ome bathroom sinks don’t even work at all.” (Medina Decl. at ¶ 6.) A student
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1 from Thurgood Marshall High School in San Francisco also testifies that the school bathrooms “are
2 disgusting,” lack stall doors for privacy, and often lack paper products and soap. (Granados Decl. at
3 ¶ 6; *see also* Maufas Decl. at ¶ 6 (Thurgood Marshall parent declaring that bathrooms are “filthy” and
4 broken down); Martinez Decl. at ¶ 7 (“The bathrooms at Thurgood are gross. . . . A lot of the stalls
5 don’t have doors. They often don’t have toilet paper.”).) The student notes that “[l]ast year I repre-
6 sented Thurgood Marshall on the SFUSD student advisory committee and I know that the students at
7 Lowell High School got their bathrooms fixed up after they complained. . . . We have been complain-
8 ing about the bathrooms at our school for years. Why doesn’t somebody come to fix our bath-
9 rooms?” (Granados Decl. at ¶ 6.) Another student testifies that because bathrooms at E.A. Hall
10 Middle School in Watsonville are “really dirty” and “almost never [have] any soap or paper towels in
11 the bathrooms”, “I am embarrassed when visitors come to our school and have to see our bathrooms
12 and I also get so grossed out sometimes by the bathrooms that I won’t use them even though I need
13 to.” (Declaration of Magge Rodriguez (“Rodriguez Decl.”) at ¶ 8.)

14 Several declarations reveal that students take instruction in classes with 40 and more — and
15 as many as 50 — students in core academic classes. (Declaration of Julio Velez at ¶ 11 (student from
16 South Gate High School in Los Angeles testifying that “[m]y Honors History class currently has ap-
17 proximately 43 students”); Declaration of Danitza Nunez at ¶ 4 (South Gate High School student re-
18 porting that “[t]here are approximately 42 students in my History class”); Piercy Decl. at ¶ 7 (student
19 from Balboa High School in San Francisco testifying that her health class was crowded with “about
20 42 students” during the 2002-2003 school year); Declaration of Mayeli Avalos (“Avalos Decl.”) at
21 ¶ 10 (student from Fremont High School in Los Angeles testifying that “[l]ast year there were 40 stu-
22 dents in my Spanish class and sometimes we had to sit at the computer tables because there weren’t
23 enough desks for all of us”); Declaration of Clive Aden (“Aden Decl.”) at ¶ 8 (Fremont High School
24 student declaring that “[w]hen I started my Chemistry class, the classroom had about 50 students in
25 it”); Declaration of Victoria Torres (“Torres Decl.”) at ¶ 5 (Fremont High School student declaring
26 that “[l]ast year there were over 40 students in my geometry class at the beginning of the semester”);
27 Russom Decl. at ¶ 3 (teacher from Roosevelt High School in Los Angeles testifying that she had 41
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1 students in her honors world history class for the entire first semester of the 2002-2003 school year).)

2 Students also testify to “so overcrowded” classes without enough seats for students so “[t]he teacher

3 has a system where students rotate so that everyone at some point has to stand during the class.”

4 (Medina Decl. at ¶ 3; *see also* Rodriguez Decl. at ¶ 7 (student testifying that E.A. Hall Middle School

5 in Watsonville is “really crowded” and that “[t]here are times when my science class does not have

6 enough chairs for all the students in the class” so “we have to borrow chairs from the class next

7 door”); Blanchard Young Decl. at ¶ 6 (teacher testifying that Woodworth Elementary School in

8 Inglewood is “overcrowded”); E. Garcia Decl. at ¶¶ 12, 11 (teacher declaring that “Roosevelt [Ele-

9 mentary School in Lynwood] is severely overcrowded” with “approximately 1,430 students” when

10 “the school was designed to have a maximum capacity of 650-700 students” and that as a result

11 “[t]here is absolutely not enough playground space for the students” because “there are so many trail-

12 ers located on the playground”).) According to students from Fremont High School in Los Angeles,

13 “some students have to sit at the computer tables with their backs facing the teacher” in a history

14 class because the class is overcrowded, and some English and French classes have more students than

15 seats so on some days “I have to sit on the floor.” (Robles Decl. at ¶ 8; Declaration of Jose Toribio

16 (“Toribio Decl.”) at ¶ 6.) A student from Roosevelt High School in Los Angeles explains: “I even

17 have friends who have their homeroom class inside the school gymnasium because there is no class-

18 room available for them to use.” (Medina Decl. at ¶ 5.) Thurgood Marshall High School in San

19 Francisco “is way too small for how many students are there” with such severe overcrowding that

20 during passing periods the school is “a zoo” and “[o]ver 1/4 of the teachers at Thurgood Marshall do

21 not have permanent classrooms. Those teachers are forced to roam from classroom to classroom to

22 teach.” (Granados Decl. at ¶ 3; Maufas Decl. at ¶ 5; Declaration of Trevor Gardner at ¶ 7; *see also*

23 Lana Decl. at ¶ 10 (Thurgood Marshall teacher testifying that “[a]ll available classroom space is util-

24 ized. All but two English and Social Studies teachers shared classrooms with one to three other

25 teachers.”).) A student at Locke High School in Los Angeles reports that because of her school’s

26 overcrowding, “at the beginning of the first semester when I tried to get into Algebra II my counselor

27 said that it was already full and that there wasn’t any room. Because there wasn’t any room I am not

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1 taking any math class right now and I have to take Algebra II during summer school.” (Gonzales
2 Decl. at ¶ 6.)

3 A teacher from Jesse G. Sanchez Elementary School in Salinas testified that temperature in
4 her classroom reaches “at least 90 degrees” in September and early October, and that in the extreme
5 heat in which students were “perspiring” sitting in class, “my students had difficulty paying atten-
6 tion.” (Declaration of Stella Gloria Najera (“Najera Decl.”) at ¶ 3; *see also id.* (noting that 12-14
7 other classrooms at the school also lack air conditioning and that “I have had teachers complain to me
8 that without air conditioning and with windows that do not open it gets very hot in the classroom, and
9 the heat makes it difficult for their students, especially in the afternoon, to focus and concentrate”).)
10 Similarly, a teacher from Roosevelt Elementary School in Lynwood declares that “[a] conservative
11 estimate of the room temperatures on warm days is at least 90 to 95 degrees. Students often complain
12 about the uncomfortable temperature, and it makes it very difficult for the students to concentrate.”
13 (E. Garcia Decl. at ¶ 8.) A teacher from Roosevelt High School in Los Angeles explains that the air
14 conditioning in her classroom “would stop working by 4th period (which begins at 11:30.)” during all
15 of May and again stopped working in June, leaving the classroom extremely hot — she testified that
16 “[b]ecause I teach on B track [in a multitrack, year-round school], I teach throughout the entire sum-
17 mer when it is very hot” — to the point that “[d]ue to the heat students cannot concentrate and are
18 much less focused and there are constant complaints about the heat which takes away from the in-
19 struction.” (Russom Decl. at ¶ 6.) Students testify that classes become so hot without air condition-
20 ing that “often times our teacher moves the class outside because . . . it gets too hot.” (Medina Decl.
21 at ¶ 5; Vargas Decl. at ¶ 9 (student from Locke High School in Los Angeles testifying that the air
22 conditioning did not work in his algebra class and the resultant Los Angeles heat “makes it hard to
23 concentrate to focus on my work”); Gonzales Decl. at ¶ 9 (Locke High School student testifying that
24 that the air conditioning does not work in her U.S. history class: “it gets really hot in class and when
25 it does all I can think of is how hot it is and not the work or what we are learning”); Robles Decl. at
26 ¶ 7 (student from Fremont High School in Los Angeles testifying that “[t]he air conditioning has not
27 been working in some of my classes at Fremont this past semester” and “[w]hen it is very hot in the

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1 classroom, it makes it very difficult to concentrate”).)

2 A San Francisco teacher explained that “at least twenty percent of the time the heat isn’t
3 working at all when it is cold outside so my classroom is so frigid that my kids have to wear jackets
4 inside. My students are uncomfortable most of the time because of the classroom temperature and
5 that affects their learning experience.” (Jeffries Decl. at ¶ 9 (describing John Swett Elementary
6 School).) Another San Francisco teacher declares that at Thurgood Marshall High School, “[t]he
7 heating system has also been erratic for many years. It is either going full blast, resulting in swelter-
8 ing classrooms, or not working at all.” (Lana Decl. at ¶ 8.) At E.A. Hall Middle School in Watson-
9 ville, classes get so cold that students “would wear gloves and hats in class” “almost everyday in the
10 winter and in almost all my classes”; the problem is so severe that teachers “would have us do
11 stretches during class to help us warm up.” (Rodriguez Decl. at ¶ 5.) According to a Richmond stu-
12 dent,

13 [s]ome of the classrooms in Richmond High School have very poor ventilation and
14 lack air conditioning and heating. In the winter, the heat often does not function
15 and we are very cold. In the warmer months, the classrooms get very hot and
stuffy. The poor ventilation and the overheating of the classrooms makes it diffi-
cult for students to concentrate and for teachers to teach.

16 (de Loza Decl. at ¶ 7.)

17 The current declarations identify a litany of other run-down school facilities conditions. A
18 teacher from John Swett Elementary School in San Francisco declares that his school has had mold
19 growing unabated in classrooms for three years, including “a flaky mold spot at least three feet tall
20 and two feet wide growing in a cone shape near the ceiling” in one classroom. (Jeffries Decl. at ¶ 3.)
21 This same teacher continued that “[t]he vents in the classrooms have black rings around them because
22 the air that blows out is so dirty” and that “[i]t is like balls of pollution are falling out of the vents.”
23 (*Id.* at ¶ 6; *see also* E. Garcia Decl. at ¶¶ 6-7 (teacher from Roosevelt Elementary School in Lynwood
24 testifying that “there is very poor ventilation in these [4th grade] buildings” such that when the
25 teacher taught in them “I found that I was nearly constantly sick” and that in “decrepit” portable
26 classrooms on the campus, “the smell [i]s rotten and swamp-like” “partially due to the moisture in
27 these buildings”).) A teacher from Roosevelt High School in Los Angeles testifies that her classroom
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1 has had a broken window pane with cardboard covering the glass for months without repair, and a
2 parent from Thurgood Marshall High School in San Francisco notes that “[t]here are broken windows
3 all around the school that are taped up and not repaired quickly. One very large window at the back
4 of the school has been broken for months and remains taped over.” (Russom Decl. at ¶ 8; Maufas
5 Decl. at ¶ 8; *see also* Martinez Decl. at ¶ 6 (Thurgood Marshall student testifying that “[a] lot of the
6 windows are broken in my classrooms”).) A teacher from Jesse G. Sanchez Elementary School in
7 Salinas explains that “[c]urrently in my classroom there is a window that has been boarded up since I
8 was first assigned to the room two years ago.” (Najera Decl. at ¶ 4; *see also id.* (noting that “I have
9 also seen other windows around campus that have been boarded up instead of being replaced” and
10 that during the 2000-2001 school year another “window was boarded up for approximately 6 months
11 before it was finally repaired”).) An Oakland elementary school had “several large potholes on the
12 concrete playground that were left unfilled for months” during the 2002-2003 school year. (Strand
13 Decl. at ¶ 6.)

14 At E.A. Hall Middle School in Watsonville, only one of four lights over the auditorium stage
15 works and “[t]here are also three other broken light bulbs above the chairs where the audience sits”;
16 all these lights have been broken at least since fall 2001. (Rodriguez Decl. at ¶¶ 6, 2.) A parent from
17 Thurgood Marshall High School in San Francisco explains that “[t]iles are missing all over the
18 school — off of the ceilings and off of the walls.” (Maufas Decl. at ¶ 8; *see also* Lana Decl. at ¶ 8
19 (Thurgood Marshall teacher testifying that “there have been falling ceiling tiles in the classrooms
20 since I started” three years ago).) According to a student from Richmond High School, “[m]any of
21 the desks and seats are broken or are in poor condition.” (de Loza Decl. at ¶ 7.) A Los Angeles stu-
22 dent testifies: “[f]or about the first five weeks of my Algebra class last semester we had fold up chairs
23 and no desks. . . . We had to use folders or other books to write notes from the board.” (Vargas Decl.
24 at ¶ 7.) A teacher from Hawthorne Elementary School in Oakland whose classroom suffered such
25 severe mold problems this year that “almost everything” touching one of the walls “was covered in
26 mold” explains: “More importantly, I suffer from asthma, as do several of my students. My asthma
27 this year has been more severe than at any time in my life” and her students “certainly displayed
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1 coughing symptoms on a regular basis. From my limited research and from talking to my doctor, I
2 know that allergies, like those to mold, exacerbate the effects of asthma.” (Strand Decl. at ¶ 3.) An-
3 other teacher notes that “Woodworth [Elementary School] campus is in general disrepair. The paint
4 inside and outside the buildings at Woodworth is chipping. In the six years that I have been at the
5 school nothing has been repainted.” (Blanchard Young Decl. at ¶ 8; *see also* Gray Decl. at ¶¶ 4, 6-7;
6 Declaration of Christina Robinson at ¶¶ 4-7 (attaching photos).) Woodworth teachers also note that
7 “[b]asic furniture such as chairs and desks and bookcases are in poor condition,” and that classroom
8 walls are “moldy and the plaster is peeling.” (Blanchard Young Decl. at ¶ 5; Gray Decl. at ¶ 4.)
9 Given all these facilities problems, Woodworth’s young students graded the school facilities as 0.888
10 on a scale from zero to 4.0. (Blanchard Young Decl. at ¶ 9.)

11 **E. Evidence In This Case Shows That Appalling Facilities Conditions**
12 **Aggregate In Schools.**

13 Egregious as the facilities needs documented in this case are individually, their compounded
14 effect is all the more appalling in the schools in which they aggregate. As the State, district, and
15 plaintiff documents show, many California public schools suffer multiple severe facilities needs at
16 once. For example, class representative Alondra Jones’s school, Balboa High School in San Fran-
17 cisco, has been — and continues to be — marked by broken window panes; sightings of mice, rats,
18 and their feces; broken window shades; leaking ceilings and falling ceiling tiles; and overcrowded
19 classrooms, some of which have more students than seats. (DT-SF 52, 972, 973, 994-1006; Gray
20 Depo. at 125:22-128:19, 384:13-385:4; Jones Depo. at 127:25-128:22, 159:9, 200:8-11, 320:13-
21 322:10, 322:21-323:6, 406:14-25; Lewis Depo. at 147:7-148:1, 157:1-8; Safir Depo. at 182:1-15,
22 203:11-13, 207:10-15, 210:17-212:8, 213:3-15, 227:7-10, 228:4-7, 233:3-18, 241:12-17; Brady
23 Depo. at 35:12-17, 35:23-36:15; Medina Depo. at 120:1-122:8; Piercy Decl. at ¶¶ 3, 5, 7.) Balboa
24 suffers such severe temperature problems that “some days it’s been colder inside the classroom than
25 it is outside,” and the school bathrooms are so regularly filthy that students avoid using them. (Jones
26 Depo. at 222:17-21, 225:13-15, 441:23-442:8, 443:1-21, 446:9-447:6; Lewis Depo. at 199:25-200:1,
27 201:14-19, 202:21-203:7; Medina Depo. at 264:11-18, 283:13-21; Safir Depo. at 167:13-168:1,
28 266:19-25; Brady Depo. at 17:8-12; Piercy Decl. at ¶ 4; Wesley Decl. at ¶ 10.)

1 Class representative Moises Canel suffered a similarly appalling convergence of deprivations
2 at Helms Middle School in San Pablo, where the II/USP action plan reported that “[b]uildings . . . are
3 desperately in need of repair and painting. There are leaking roofs leaving mold and mildew in some
4 of the classroom [sic] and hallways. . . . As it stands, the school is not an inviting place for students,
5 teachers or parents.” (DOE 48364; *see also* Muzinich Depo. at 12:7-13:19, 18:23-19:4, 99:25-100:8;
6 PLTF 1834-35.) The Helms principal testified that jagged edges of broken glass remain unrepaired
7 and exposed in the main hall. (Muzinich Depo. at 47:8-13, 107:12-24.) The II/USP action plan con-
8 tinued: “Students, teachers and parents complained that the school is not clean or maintained. Prior
9 to one meeting in the library, one of the evaluators vacuumed the carpet herself to assure a clean
10 space for parents.” (DOE 48364; *see also* M. Canel Depo. at 267:14-17 (testifying about dirty bath-
11 rooms that lacked supplies such as toilet paper, soap, and paper towels); Muzinich Depo. at 29:18-
12 20.) “The student population at Helms continues to grow, stretching the capacity of the school to ac-
13 commodate more students. There are not enough classrooms for each teacher to meet individually
14 with students in their own classrooms, requiring some teachers to move from room to room as they
15 teach.” (DOE 48364; *see also* MacLean Depo. at 85:7-13, 87:16-88:1 (current principal testimony
16 that Helms is so “overcrowded” that “there is a classroom in every room at school” including “three
17 rooms in the breezeway behind the kitchen of the cafeteria that have . . . classes in them, and a small
18 room between two of the former shop rooms that has a class”).) The Helms principal concluded:

19 We need new doors actually on the building, the main building. . . . Windows, the
20 glass block, ceiling tiles, floor tiles. We need new restrooms, new stall wall divid-
21 ing things. We need new restrooms, paint, the outside and inside. Some landscap-
ing. New circuitry to support the additional electrical demands. Better . . . drainage
in the breezeway area of the cafeteria.

22 (MacLean Depo. at 139:1-14.)

23 School maintenance logs from class representative Silas Moultrie’s school, Luther Burbank
24 Middle School in San Francisco, reflect persistently broken heating and cooling systems, including
25 the absence of heat altogether in particular rooms; broken toilets that remain unrepaired for weeks;
26 and broken and boarded-up windows, damaged and falling ceiling tiles, and plumbing problems.
27 (DT-SF 876-77, 884, 886, 888, 904-23, 944-52.) In addition, students and teachers have routinely

1 seen mice, mice droppings, and roaches at Luther Burbank. (Moultrie Depo. at 57:22, 72:21-73:1,
2 100:8-14, 335:16-17, 339:14-19, 341:18-342:8; Nawa Depo. at 176:13-22; *see also* DT-SF 119.)

3 Class representative Lizette Ruiz's school, Huntington Park High School in Los Angeles, has
4 had routine temperature problems — including 116 complaints about air conditioning and heating
5 problems in one year alone — as well as such severely filthy bathrooms that the school district sent a
6 memo to the school citing its “grime and scum” in the bathrooms. (DT-LA 6326-28, 6373-78;
7 L. Ruiz Depo. at 632:20-23.) The school is generally unclean, and school maintenance records re-
8 flect severe vermin problems. (DT-LA 5043, 5045, 5108, 5151, 6333; L. Ruiz Depo. at 349:6-
9 350:10.) Lizette summarized her experience: “the school sucks.” (L. Ruiz Depo. at 48:1-2.)

10 Class representative Manuel Ortiz's school, Watsonville High School in Watsonville, is so
11 severely overcrowded that classes take instruction in the library and in the old district office, and
12 some teachers have to rove from room to room, using other teachers' classrooms during their free pe-
13 riods. (Lane Depo. II at 57:6-15, 58:10-25, 62:15-63:12; Banda Depo. at 76:2-16, 80:1-23, 109:25-
14 110:16; Hagan Depo. at 15:2-18, 165:4-17, 179:24-180:5.) Perhaps in an ill-conceived (and ill-
15 timed) effort to relieve overcrowding, noisy construction disrupts student learning by taking place on
16 campus during school hours. (DT-PV 117-120, 1538; Lane Depo. II at 69:17-70:15, 108:2-19; Ortiz
17 Depo. at 317:10-22, 318:15-319:8.) The Watsonville bathrooms have been so filthy that the 1993-
18 1994 WASC Accreditation Report found “[t]here needs to be some plan developed for keeping the
19 lavatories cleaner,” but still the problems of filth and lack of supplies persist. (DT-PV 1964, 1977;
20 Ortiz Depo. at 76:12-13, 77:3-6, 78:11-14, 429:20-22, 436:17-24.) When asked what conditions he
21 wanted to improve, Manuel testified: “There's a lot of 'em. More portables for the teachers, because
22 some teachers in my school don't got any stable classroom. . . . Better conditions of the rest-
23 rooms. . . . There's a lot of students in our school. We're way overcrowded. Instead of just — you
24 know, we got — our school is just meant for like a 1,700 students. We're over 3,000 students in our
25 school, at Watsonville High. We need better conditions at our school and we need a new school.”
26 (Ortiz Depo. at 69:10-13, 70:3-8.)

27 Bryant Elementary School in San Francisco, class representative Carlos Ramirez's school, has
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1 suffered “almost daily” uncomfortable temperatures, has been so distractingly noisy that the principal
2 “remember[s] feeling — being disrupted myself in the classroom,” and has been so crowded that
3 closets have been converted to instructional spaces. (C. Ramirez Depo. at 54:4-8, 311:17-315:9; Ale-
4 gre Depo. at 115:6-118:20, 146:24-147:8; Malabed Depo. at 99:23-100:3, 325:14-15, 365:14-366:3,
5 369:1-24; DT-SF 81, 90, 94, 99, 1072-76.) In addition, the school bathrooms have often been filthy
6 and smelly and lack toilet paper and soap and paper towels; the bathroom problem is so severe that
7 one nine-year-old Bryant student developed hemorrhoids from holding his bowel movements at
8 school for years. (DT-SF 104, 108; Malabed Depo. at 282:11-283:8; C. Ramirez Depo. at 96:7-11,
9 100:8-13, 166:16-167:9, 202:1-9.)

10 Course enrollments at Fremont High School in Los Angeles — class representative Cindy
11 Diego’s school — reach as high as 52 and even 60 students in core academic classes, some students
12 have to sit on the floor because there are not enough seats in class for all the students, and classes
13 have taken place in the cafeteria and teachers have to rove from classroom to classroom, using other
14 teachers’ classrooms during their break periods, because there are not enough available classrooms
15 for students. (PLTF 6655, 6657-58; Diego Depo. at 122:1-17, 504:9-505:9; Hines Depo. at 582:15-
16 584:1, 630:14-15; Roland Depo. at 304:23-305:14; Avalos Decl. at ¶ 10; Aden Decl. at ¶ 8; Torres
17 Decl. at ¶ 5; Robles Decl. at ¶ 8; Toribio Decl. at ¶ 6.) School records reflect persistent temperature
18 problems, with air conditioning repairs taking as long as one month to complete even in hot summer
19 months; noisy construction disrupts student learning; mice, rats, roaches, and other vermin are so
20 prevalent that the school required service 80 times between March 1998 and August 2000 and none-
21 theless required service again in October 2000 for rats in 8 different rooms; ceilings throughout the
22 campus have had gaping holes from missing ceiling tiles for six months to three years; “[t]he school’s
23 ‘unsightly and run-down’ appearance is not conducive to a positive learning environment”; class-
24 rooms have not been painted in 14 years; and the school has 15 fewer toilets available for student use
25 than the law requires. (DT-LA 3928-35, 4115-18, 4141, 4184, 5412-15, 5421, 5428, 1852; Hines
26 Depo. at 310:14-20, 593:3-8; Diego Depo. at 434:15-23; DOE 137043, 137046; Robles Decl. at ¶ 7;
27 Toribio Decl. at ¶ 5.) One student concluded: “I want to go to college, but I don’t think I’m getting
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1 the same education as people at other schools. I don't think I'm learning the same things as the kids
2 at a school in a better neighborhood.” (Robles Decl. at ¶ 10.)

3 Hawthorne Elementary School in Oakland has had to demolish some of its buildings because
4 of the presence of toxic mold. (DT-OA 4316-17, 6405; PLTF 62188; Salyer Depo. at 289:9-12; *see*
5 *also id.* at 348:14-16 (“I spent two years in a classroom that was identified as having carcinogenic
6 mold. That was a concern to me.”).) Even after the school attempted to abate the mold, however,
7 mold persists as a sufficiently severe problem at the school that, according to one teacher, “[d]uring
8 the last two weeks of the [2002-03] school year, as I was packing and moving things out of my room,
9 I found that almost everything in the classroom that lined these walls exposed to rainfall was covered
10 in mold.” (Strand Decl. at ¶ 3.) Separate even from the toxic mold, the school buildings have gener-
11 ally been, and remain, in disrepair, with visible mice, rats, and mice and rat droppings; high levels of
12 lead in paint on exterior walls; gaping potholes on the playground; too few toilets available for stu-
13 dent use; and missing and buckling floor tiles. (DT-OA 3151, 3751, 3770, 6407-6415, 6885; PLTF
14 62188; Salyer Depo. at 294:5-16, 334:19-335:11, 337:21-25, 339:15-17; Strand Decl. at ¶ 6.)

15 Woodworth Elementary School in Inglewood is overcrowded, vermin-infested, and in general
16 disrepair, including moldy classroom walls, peeling plaster and paint, and such chronically leaking
17 ceilings that the district simply tore out the carpet and replaced it with tile floors in expectation that
18 rain would continue to seep into the rooms and ruin any carpeting if it remained. (Blanchard Young
19 Decl. at ¶¶ 3-6, 8; Gray Decl. at ¶¶ 3-4, 7.) The school bathrooms are routinely filthy and lack paper
20 products and soap. (Blanchard Young Decl. at ¶ 8; *see also* Gray Decl. at ¶ 6.)

21 Fremont High School in Oakland has suffered repeated sewage backups that went uncleaned
22 for months, leaving fecal residue, mold, and even mushrooms growing in classrooms on campus; is
23 infested with rodents; and reflects general disrepair. (DT-OA 5303-05, 5527-28; J. Garcia Depo. at
24 152:13-21, 157:11-159:1, 162:2-163:20, 170:15-171:15; 172:21-174:8, 182:8-183:6; Gonzalez Depo.
25 at 74:18-77:4.) Fremont's classroom temperatures have been sufficiently extreme that they affect
26 student learning, and classroom and school crowding has been so severe that it negatively affects stu-
27 dents' psychological health and forces students to stand or sit on counters because there are not

1 enough seats in class for the students. (DT-OA 133; J. Garcia Depo. at 152:22-153:17, 154:15-
2 155:13, 202:17-204:5, 262:4-24, 266:4-19, 267:19-268:9, 269:4-12, 270:3-17, 273:3-19, 347:25-
3 349:12; Gonzalez Depo. at 47:5-8.)

4 Roosevelt High School in Los Angeles has overcrowded classes with more students than
5 seats, routinely leaking ceilings, vermin infestations, and such chronically hot classroom tempera-
6 tures that some teachers have to hold their classes outside where it is cooler than inside the class-
7 rooms. (Russom Decl. at ¶¶ 3, 6-7; Medina Decl. at ¶¶ 3, 5, 7-8.) School crowding is sufficiently
8 severe that at least one class takes place in the gymnasium rather than in a classroom. (Medina Decl.
9 at ¶ 5.) The shoddy facilities are sufficiently routine that a broken window pane can remain unre-
10 paired for months, with a simple cardboard cover boarding over the broken glass, and the bathrooms
11 are chronically filthy and broken down, lacking paper products, and simply closed and unavailable to
12 students. (DT-LA 51235; Russom Decl. at ¶ 8; Medina Decl. at ¶ 6.)

13 **F. The Vast Majority Of California's Public School Students Do Have Access To**
14 **Decent School Facilities.**

15 Most California public school students do not suffer the dismal school conditions to which the
16 plaintiff students are relegated. According to the most recent evaluation of school facilities, for ex-
17 ample, 17% of all classrooms, or 45,560 classrooms, have excess moisture in the walls, leaving
18 222,440 classrooms without excess moisture; 1% of all classrooms, or 2,680 classrooms, have visible
19 mold, leaving 265,320 classrooms without visible mold; water stains are found in the ceilings of
20 82,600 classrooms, leaving 185,400 classrooms without such stains; 53,560 classrooms experience
21 temperatures below thermal comfort standards, leaving 214,440 classrooms with temperatures within
22 the thermal comfort range; and approximately one-third of classrooms do not meet lighting guide-
23 lines, leaving two-thirds of classrooms with acceptable lighting. CARB Report at 13, 56, 2-3, 11, 14;
24 *see also id.* at 20 (stating that California has 268,000 classrooms). The 2001 survey of school district
25 officials who are responsible for pest management showed that 68.1% of officials did not consider
26 mice or rats to be serious problems on their school sites, and the California Department of Health
27 Services' 1998 report concerning lead paint found that 62.4% of studied schools did not have deterio-
28 rating lead paint. (PLTF 80539, 75792.) And in 2001, California's Legislative Analyst's Office es-

1 timated that “about one in three California students attends an overcrowded school, or one in need of
2 significant modernization” — which means that fully two-thirds of California’s students do not attend
3 schools with these facilities needs. Legislative Analyst’s Office, *A New Blueprint for California*
4 *School Facility Finance* (2001) at 2. (Welch Decl. at Exh. 24.) As severe as the facilities needs are
5 in some California schools, it is clear that the vast majority of California public school students do
6 not attend schools in such decay and filth.

7 **III. THE STATE’S ACTIONS AND INACTIONS CONSTITUTE WHOLESALE,**
8 **DELIBERATE ABDICATION OF ITS DUTY TO ENSURE EQUAL ACCESS TO**
9 **DECENT SCHOOL FACILITIES.**

10 Despite the substantial evidence of deplorable conditions at plaintiffs’ schools, the State has
11 failed to take corrective action. Instead, the State has repeatedly — and erroneously — denied that it
12 has any responsibility or authority to repair school facilities: “CDE has no regulatory responsibility
13 in the maintenance of facilities. Maintenance . . . is the responsibility of the local school board.”
14 (DOE 45; *see also* Defs.’ Mem. of P. & A. in Supp. of Bathroom Motion at 7 (“the Department of
15 Education does not have regulatory responsibility with respect to the maintenance of public school
16 bathrooms”).) Likewise, former Superintendent of Public Instruction Delaine Eastin has asserted,
17 ““If you have high-performing, well-heeled schools that are modern and low-performing, down-in-
18 the-heels schools that are old, this superintendent can’t do anything about that. . . . I can’t go in and
19 order you to fix the bathrooms and paint the walls.”” (PLTF 66380.)

20 Given this abdication of responsibility, it is hardly surprising that the State has failed to im-
21 plement a system to “prevent or discover and correct” (Nov. 14, 2000 Order at 2) the inequalities stu-
22 dents suffer based on the poor physical condition of their schools. (*See* Liability Disclosure at 285-
23 302 (detailing the flaws in the existing State system regarding school facilities).) Indeed, the undis-
24 puted evidence demonstrates the absence of a State oversight system regarding equal access to school
25 facilities. First, as plaintiffs’ expert Robert Corley explains without rebuttal, the State has failed to
26 adopt “sufficient standards for facility operations” — despite a 1989 legislative mandate that the
27 State do so. Corley Report at 33 (citing CAL. HEALTH & SAFETY CODE § 16500); (*see also* Duffy
28 Depo. at 106:8-109:21, 111:21-112:1, 112:18-21, 116:3-6, 116:16-19 (State expert Thomas Duffy

1 testifying that he is not aware of any state standard or regulation governing maintenance, bathrooms,
2 roofs, paint, or indoor air quality).) In addition, Mr. Corley notes that many of the regulations that do
3 exist apply only to newly constructed school facilities, and those that apply to existing structures “do
4 not include many aspects of classrooms and schools that are necessary to a properly operating school
5 such as operability of restrooms, temperature, ventilation, and so forth.”²³ Corley Report at 33-34.

6 The State’s own evidence and admissions in this case confirm Mr. Corley’s observations. In a memo
7 circulated to county and district school superintendents, Duwayne Brooks, head of CDE’s School Fa-
8 cilities Planning Division, wrote that “[t]here are no state statutes that govern cleanliness or repair of
9 school facilities” and, similarly, that “[t]here are no state statutes that govern provision of hot water
10 and paper supplies in rest rooms.” (DOE 45-46; *see also* DOE 139980 (Susan Lange, Deputy Super-
11 intendent of Finance, Technology, and Administration, admitting that, “[t]here are no state standards
12 regarding the provision of soap, paper products, and maintenance of school bathrooms”).) The State
13 Department of Health Services has stated:

14 [T]here are no state guidelines for the testing of indoor mold, or specific proce-
15 dures required for remediation of a mold-contaminated room. At this time there
16 are no programs within the state or local county health departments to provide test-
 ing of molds or to make specific recommendations for cleaning up mold contami-
 nated sites in schools.

17 (DT-OA 6278.) Moreover, the State has admitted in this litigation that “Defendants are not aware of
18 any state statutes or regulations that set standards for the physical maintenance of California public
19 school buildings.” (State Agency Defs.’ Responses to Pls.’ First Set of Special Interrogs. at 8.)

20 (Welch Decl. at Exh. 25.) Indeed, as recently as March 2002, the facilities working group of the Leg-
21 islature’s Joint Committee to Develop a Master Plan for Education — Kindergarten through Univer-
22 sity noted the absence of facilities standards, recommending that the State “[e]stablish clear, concise
23 and workable state facility standards that are characteristic of facilities providing a high quality/high
24 _____

25 ²³ Meanwhile, the State has adopted maintenance standards for, among other things, apartments and
26 other residential units, CAL. CIV. CODE § 1941.1; employee housing, CAL. HEALTH & SAFETY CODE
27 § 17060; restaurants, CAL. HEALTH & SAFETY CODE §§ 114030, 114040, 114120; home furnishing
28 stores, CAL. BUS. & PROF. CODE § 19160; buildings generally, CAL. HEALTH & SAFETY CODE
§ 17920.3; and even barbershops, CAL. BUS. & PROF. CODE §§ 7351-52. The State’s failure to adopt
standards for maintenance of school facilities stands in stark contrast to the State’s efforts regarding
other facilities in use in California.

1 performance teaching and learning environment.” (PLTF-XP-NM 84.)

2 Even if statewide standards existed, however, they would be ineffective today because the
3 State fails to monitor and collect systematic data on school facilities conditions and needs. As State
4 expert John Kirlin concedes, “California does not” “routinely track the condition of all school facili-
5 ties.”²⁴ Report of State Expert John Kirlin (“Kirlin Report”) at 20. (Welch Decl. at Exh. 28.) Plain-
6 tiffs’ expert Robert Corley similarly explains that California has no “systematic inventory of schools
7 and school facilities” detailing when buildings were constructed or renovated, or what condition they
8 are currently in.²⁵ Corley Report at 30. Depositions of State officials confirm this observation. *Id.* at
9 31 (citing Brooks Depo. at 335:14-336:4 and referring to “[t]he deposition of Susan Lange” [*see, e.g.,*
10 Lange Depo. at 19:20-20:1, 159:17-22, 160:2-161:14]); *see also* Expert Report of Nancy Myers at 4
11 (noting that Brooks, Lange, and “Mr. [Thomas] Henry of the Fiscal Crisis Management Assistance
12 Team (FCMAT), have identified problems with deteriorated and inappropriate school facilities, as
13 well as revealing that there is no comprehensive system of state oversight to address these prob-
14 lems.”). (Welch Decl. at Exh. 29.)

15 The undisputed evidence further establishes that the State’s method of school facilities fund-

16 ²⁴ The State asserts that CDE staff members “may” gather information about school facilities condi-
17 tions during the Coordinated Compliance Review (CCR) process. (State’s Third Set of Supplemental
18 Responses & Objections to Pls.’ First Set of Special Interrogs. at 23.) II/USP plans also contain some
19 facilities information. *See, e.g., supra*, Section IIC. However, as plaintiffs’ expert Robert Corley ex-
20 plains without rebuttal, the CCR process and II/USP program “do not function as facilities inspection
21 or oversight programs.” Corley Report at 32. For example, while the II/USP program includes some
22 consideration of facilities issues, it lacks a systematic approach to tracking and remedying facilities
23 problems. *Id.* In addition, the program includes only a small portion of California public schools —
24 one-fifth, at most. Expert Report of Heinrich Mintrop at 11. (Welch Decl. at Exh. 26.) The CCR
25 process is even less effective at monitoring school facilities because — as reflected in the State’s use
26 of “may” rather than “must” in its interrogatory responses — the process does not require considera-
27 tion of facilities issues. *Id.* at 21; Corley Report at 33 (citing testimony by Eleanor Clark-Thomas,
28 manager of the CCR unit at the CDE); (*see also* Brooks Depo. at 279:5-281:3 (noting that in his more
than ten years as director of the School Facilities Planning Division, he has not seen any CCR reports
discussing school facilities).) Moreover, only approximately ten percent of schools are reviewed ex-
ternally as part of the CCR process every four years. Expert Report of Jeannie Oakes (Textbooks) at
63 (citing Clark-Thomas testimony). (Welch Decl. at Exh. 27.) As a result, any claim by the State
that the CCR and II/USP programs sufficiently and effectively monitor school facilities conditions
lacks merit and must be dismissed.

²⁵ A report generated this year at the behest of Governor Davis and the State Legislature also con-
cluded that, “[t]he State needs an effective system to inventory public school facilities. These repre-
sent among the State’s greatest set of assets, yet there is no complete database on the condition, loca-
tion, or even number of school buildings.” CARB Report at 17.

ing is insufficient to satisfy the State’s constitutional obligations.²⁶ First, as Mr. Corley explains without rebuttal, the State has no inspection system in place to monitor how funds for facilities are being used and whether, when repairs and maintenance are completed, the particular need was adequately addressed. Corley Report at 32. Instead, “[t]he state can [only] tell where money has been spent by campus or by major accounting category, but cannot determine whether this has met all needs, some of the needs, or only a small part of the needs at a campus or systemwide for the entire state.” *Id.* As Mr. Corley further explains — again without rebuttal — the State’s per-pupil funding formula ignores need and therefore perpetuates the existing inequality of conditions among California schools:

[S]ome schools of eligible age are in fairly good condition and use modernization money to improve conditions, upgrade appearance and make other changes. Other schools have failing infrastructure and end up with most of the costs buried in new sewer lines, new electrical transformers and wiring, [and] replacing rotting floorboards. . . . This situation is inherent in a system with equal funding irrespective of need, but results in the schools in poorest condition staying in poor condition, and the schools in better condition able to improve.

Id. at 53.

Finally, as Mr. Corley explains and the State does not rebut, the State’s facilities funding system fails to protect against basic management failures at the district level, such as fiscal mismanagement or failing to apply for available State funds:

If districts miss this opportunity [for funding under the state bond passed by voters in 2002], their students will suffer; yet the State has not announced any plans to ensure that the districts most in need will apply for bond funds their students desperately need, as has happened in numerous instances in the past. Nor will the availability of money, without more active State oversight and assistance, prevent some districts from mismanaging their modernization and construction efforts.

Id. at 67; *see also id.* at 54-56, 58-59 (discussing past failure of needy districts to apply for available

²⁶Plaintiffs additionally contend that, based on the State’s own data, the level of facilities funding is insufficient to meet current needs. Corley Report at 50-51, 67-69; *cf.* Legis. Findings at 2274 (noting the State’s failure to provide “consistent, ongoing funding for deferred maintenance” of school facilities). Although the State disputes this point, Report of State Expert Thomas Duffy (“Duffy Report”) at 25 (Welch Decl. at Exh. 30.), this dispute is immaterial given the other systemic flaws discussed in this paragraph. Even if the level of funding were sufficient, the problems discussed below prevent the State’s current system from fulfilling the State’s duty, under *Butt*, to guarantee equal access to decent school facilities. Moreover, bond funds cover capital projects only and do not address ongoing maintenance issues such as mold abatement or unlocking restrooms that also severely impact basic educational equality.

funding and lack of state monitoring system to prevent such failure). This lack of oversight further exacerbates existing inequalities because “[s]tudents experiencing unusually poor conditions in their schools are compelled to attend, yet are told by the state that their only recourse is with the local agency even though the local district has shown itself unwilling or unable to remedy the problem.” *Id.* at 30. The State’s expert, Thomas Duffy, concedes the significance of district (mis)management in determining the conditions of school facilities: “[I]t is local decision making that separates the successful districts in terms of adequate facilities from those that are unsuccessful or simply mediocre.” Duffy Report at 20.

The State has a constitutional obligation to prevent such “unsuccessful” local decision making from harming “blameless students.” *Butt*, 4 Cal. 4th at 688-89. The State’s current approach to school facilities fails to satisfy that duty. The State’s own experts allow that, “[b]y using only test scores as the basis of school API scores, the state legislature has an accountability system that is focused exclusively on outcomes.” Raymond Report at 20. However, an “exclusive[.]” focus on outcomes by definition precludes focus on such fundamental school conditions as the decency of school buildings and classrooms. As the State baldly admits, it has no system in place to monitor or research the condition of its school facilities. Kirlin Report at 20. Hence, the State makes no effort to challenge the assessment that it fails to ensure equal access to decent school facilities. Because the substandard conditions at plaintiffs’ schools have “a real and appreciable impact on [plaintiffs’] fundamental California right to basic educational equality,” this Court cannot allow the State to continue to ignore its duty. *Butt*, 4 Cal. 4th at 688.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the Court grant summary adjudication that the State has a duty to ensure equal access to decent school facilities and that the State has breached that duty. The undisputed evidence presented in this motion demonstrates that decent school facilities are fundamental to an equal public education, that gross inequality in access to such decent school facilities persists today in California schools, and that the State has no system of oversight to prevent or discover and correct this fundamental inequality in California public schools.

1 These showings are more than sufficient to support summary adjudication of the State's duty and its
2 breach of that duty.

3 Dated: July 16, 2003

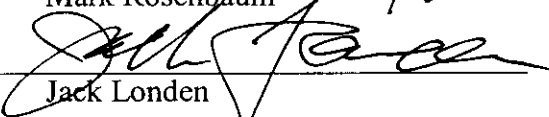
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