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8 a minor, by and through  
his Guardian ad Litem; J.P.

9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 TIDE RISING, an unincorporated association of )  
13 parents and guardians; A.P., a minor, by and )  
14 through his Guardian ad Litem; J.P. )  
15 Plaintiffs, )  
16 v. )  
17 SEQUOIA UNION HIGH SCHOOL DISTRICT, )  
18 Defendant. )

Case No.: 3:26-cv-00987-TLT

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**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF A TEMPORARY  
RESTRAINING ORDER**

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

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1 G requirements, significantly outperforming the state average of 23.61% and the county average of  
2 30.69%. (J.P. Decl. at Ex. A, Pg. 39).

3 The concentration of students with disabilities at TIDE is not coincidental—it is the direct  
4 and foreseeable consequence of the District’s own conduct. The District built TIDE as a small  
5 school. It promoted TIDE as the appropriate placement for students who could not thrive in large  
6 comprehensive settings. (Jambeck Decl. at EX. A, Pg. 7, 12, 16, 56, 63). Its own staff counseled  
7 families of struggling students to enroll at TIDE rather than remain at campuses where those students  
8 were failing. (Declaration of R.O. ¶¶ 2-4).

9 Those families followed the District’s guidance, and their children succeeded. The  
10 declarations submitted herewith establish a consistent pattern: students with disabilities who were  
11 struggling, failing, or being denied services at large schools were directed to TIDE—and were able  
12 to access their education. Having induced these families to rely on TIDE as the structural  
13 accommodation for their children’s disabilities, the District now proposes to pull the rug out from  
14 under them without any individualized assessment of the consequences and without any genuine  
15 fiscal emergency requiring such drastic action.

16 The declarations submitted in support of this motion demonstrate why TIDE Academy  
17 functions as a structural accommodation:

18 Declarant M.L. explains that her son, who is on the autism spectrum with anxiety, was unable  
19 to access his education in his previous public school environment. At TIDE, professionals scheduled  
20 a meeting within one week to address concerns, observed her son in class, and developed an IEP.  
21 She states: “At TIDE, my son is the happiest he has ever been in a school environment.” (Declaration  
22 of M.L. ¶¶ 2-12).

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1 Declarant C.L. describes her child's experience with ADHD, dyslexia, dyscalculia, and  
2 dysgraphia. At a traditional high school, her child struggled despite formal accommodations because  
3 “traditional school structures, even when accommodations exist on paper, are not designed in a way  
4 that allows my child to succeed.” At TIDE, “accommodations are integrated directly into the  
5 classroom” and her child “has been thriving academically, socially, and emotionally.” Declaration  
6 of C.L. ¶¶ 2-13.

7 Declarant R.O. recounts how her son was “incessantly bullied” and “struggled  
8 academically” at a large middle school until an 8th grade counselor recommended he consider TIDE  
9 for its small environment. She states: “I will be forever grateful to [the Menlo-Atherton (M-A)  
10 counselor] for her honesty. After hearing all about our son and his struggles, she reached across the  
11 table, held my hand and said M-A was the wrong place for our son, we should really consider TIDE.”  
12 Her son later faced a rare medical condition requiring weeks of absence, but TIDE's small size  
13 allowed “every single teacher [to work] individually with him” to keep up. Declaration of R.O. ¶¶  
14 2-4.

15 Declarant T.O. explains that her daughter has a 504 plan for General Anxiety Disorder and  
16 ADHD, inattentive type, but “has not once requested to use the accommodations in her plan”  
17 because TIDE's environment already provides what she needs. She emphasizes: “In many cases, it  
18 is the *environment* that creates the need for the accommodations, not the child.” Declaration of T.O.  
19 ¶¶ 2-7 (emphasis in original).

20 Declarant E.W. describes her daughter as autistic and gifted (“twice exceptional”), with  
21 sensory and emotional regulation challenges that make large school environments impossible. Her  
22 daughter “cannot tolerate the sensory input, noise level, and constant stimulation of a large school  
23 campus.” TIDE is “the least restrictive environment in which she can access her education.”  
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1 Critically, her daughter requires asynchronous English courses due to emotional regulation  
2 challenges, which TIDE permits but large comprehensive schools do not allow for graduation credit.

3 Declaration of E.W. ¶¶ 2-12.

4 Declarant J.L. describes her senior daughter with a learning disability that makes  
5 “performing under pressure very difficult.” At TIDE, “the small teacher-to-student ratio has changed  
6 everything.” She concludes: “While her IEP exists on paper, TIDE is the only place where it is  
7 implemented as intended.” Declaration of J.L. ¶¶ 3-5.

8 Declarant J.P. is the parent of two children who have required educational accommodations.  
9 His older child attended Woodside High School and Menlo-Atherton High School, where  
10 accommodations “frequently broke down at the classroom level” despite good-faith efforts by staff,  
11 because “counselors and support personnel were responsible for very large caseloads.” His younger  
12 child, A.P., has an IEP providing essential scaffolding. At TIDE, “accommodations are implemented  
13 consistently, without placing undue strain on individual teachers or requiring students to continually  
14 self-advocate.” J.P. states that “there is a substantial risk that my child’s legally required  
15 accommodations would not be implemented consistently or effectively if forced to transition to  
16 Woodside High School or another large high school.” (Declaration of J.P. ¶¶ 16–26.)

17 Declarant D.W. describes her child V.B., diagnosed with anxiety and maintaining a 504 plan,  
18 who spent two and a half years at Sequoia High School—a large comprehensive campus—where  
19 V.B. was “overlooked, overwhelmed, and shutting down emotionally.” Despite being on the honor  
20 roll, V.B. experienced panic attacks, dissociation, and mounting attendance problems. The SHS  
21 Wellness Center staff pressured V.B. to return to class rather than providing support, and the school  
22 lost V.B.’s name-change form three times. By junior year V.B. was in crisis and entered a partial  
23 hospitalization program; not one friend or teacher at SHS called to ask where they were. After

1 transferring to TIDE, V.B. “wanted to go to school,” was named Student of the Month, became  
2 president of the drama club, and graduated. D.W. states: “The difference was not the 504 plan—it  
3 was the environment. TIDE saved my child’s future.” Declaration of D.W. (re V.B.) ¶¶ 4–18.

4 Declarant D.W. also describes her son A.R., a current TIDE freshman diagnosed with  
5 Autism Spectrum Disorder who has a 504 plan for autism and anxiety. A.R. shadowed at Sequoia,  
6 Woodside, TIDE, and Junipero Serra, and found that only TIDE’s environment “accommodated his  
7 condition in a way that allows him to access his education.” D.W. states that Woodside “was and  
8 would be overwhelming for A.R.” and describes it as a “sink or swim” environment. At TIDE,  
9 A.R.’s math teacher noticed that instead of following directions to explain why a problem could not  
10 be solved, A.R. solved it using imaginary numbers—a concept three years beyond his current class.  
11 D.W. explains that A.R. “needs a school small enough that the teacher will know him” and will  
12 recognize his abilities rather than penalize him for not following rote instructions. Declaration of  
13 D.W. (re A.R.) ¶¶ 3–8.

14 In its marketing materials for TIDE, the District described TIDE as follows: “Welcome to  
15 TIDE Academy. We are a small and diverse public high school. We support students' academic and  
16 social development in a safe collaborative learning environment that prepares them for college and  
17 career pathways.” (Jambeck Decl. Ex A at 6). Moreover, the District stated “TIDE is a unique gem  
18 in the Sequoia Union High School District as a small, public high school. Small community allows  
19 more focus on students who are supported academically and social emotionally with Nucleus, our  
20 advisory class and small counselor caseloads.” (Jambeck Decl. Ex A at 18). The materials further  
21 described TIDE as a “Whole School Support.” (*Id.* at Ex. A, Pg. 94, 95).

22 TIDE's Lead Counselor, Lara Sandora, who coordinates 504 services for 11th and 12th grade  
23 students, confirms that many TIDE students arrived after being bullied, experiencing significant  
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25

1 mental health distress, or failing academically in larger school environments. (Declaration of  
2 Sandora ¶ 4.) When those students stabilize and succeed at TIDE, “the most significant change is  
3 not a new IEP, a new 504 Plan, or a new set of written accommodations. The most significant change  
4 is the environment. For many students with 504 Plans and IEPs, the environment itself is the  
5 intervention.” (Declaration of Sandora ¶ 4.) TIDE operates the only Wellness Center in the District  
6 where students can access, in a single location, their school counselor, therapist, school  
7 psychologist, health aide, Guidance Information Specialist, and a dedicated wellness room.  
8 (Sandora Decl. ¶ 7.) No other school in the District provides this consolidated model. (*Id.*)

9 **B. The District's Rushed Closure Process**

10 On November 12, 2025, the Board of Trustees directed the Superintendent to develop a  
11 timeline for TIDE's potential closure. During initial “listening meetings” on November 19 and 20,  
12 2025, Superintendent Crystal Leach explicitly stated that finances were *not* the reason for  
13 considering closure. (J.P. Decl. ¶ 2).

14 Yet by the January 26, 2026 study session, the District had shifted its justification entirely  
15 to financial considerations. (J.P. Decl. ¶ 3). Critically, the District admitted that per-student special  
16 education costs would simply “shift in location” rather than decrease, undermining the financial  
17 rationale. *Id.*

18 There is no fiscal emergency. The District holds a “Positive Certification” with the State of  
19 California, indicating it can meet its financial obligations for the current and subsequent two fiscal  
20 years. (J.P. Decl. ¶ 13, Ex. C at 1). The District has not identified any imminent budget shortfall  
21 that would require the immediate elimination of a school serving 200 students, a substantial portion  
22 of whom have documented disabilities. Indeed, closure may *increase* costs: students who cannot

1 function at large campuses will require Non-Public School placements at \$75,000 or more per year  
2 per student, far exceeding TIDE’s per-pupil cost. (Sandora Decl. at ¶12).

3 Equally significant is what the District failed to consider before targeting TIDE for closure.  
4 The District conducted no apparent analysis of less discriminatory alternatives. (J.P. Decl. ¶¶ 5–6).  
5 It did not meaningfully evaluate reductions in administrative overhead—despite the fact that the  
6 District’s own data, presented at the January 26, 2026 study session, identified that eliminating eight  
7 District Office administrative positions would yield approximately \$2.5 million in savings—the  
8 same figure the District projected from closing TIDE Academy. (J.P. Decl. Ex. A at 119.) The  
9 District chose to close the school serving 37% Students with Disabilities rather than reduce central  
10 office staffing, without any analysis of why the option that eliminates an accommodation for  
11 students with disabilities was preferable to the option that does not. (J.P. Decl. ¶¶ 5–6). It did not  
12 consider consolidating administrative functions, reducing non-classroom expenditures, or  
13 restructuring operations at its larger campuses. Instead, it selected the single school that  
14 disproportionately serves students with disabilities for elimination. (J.P. Decl. ¶ 6). Under Title II  
15 and Section 504, a public entity may not adopt a course of action with a disparate impact on  
16 individuals with disabilities when less discriminatory alternatives exist. 28 C.F.R. § 35.130(b)(8);  
17 34 C.F.R. § 104.4(b)(4). The District’s failure to explore any alternative to closure before voting to  
18 shut down TIDE is itself evidence that the financial justification is pretextual.

19 The District's process was further tainted by its admission that it had been informing  
20 prospective families about the “potential closure” during open enrollment, depressing interest and  
21 then citing the resulting “uncertainty” as justification for closure. (J.P. Decl. ¶4). The District  
22 withheld responsive documents to Public Records Act requests until after the scheduled final vote.  
23 (J.P. Decl. ¶ 6).



1                   **III. LEGAL STANDARD**

2                   “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on  
3 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
4 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat.*  
5 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

6                   In the Ninth Circuit, courts may employ a “sliding scale” approach where “a stronger  
7 showing of one element may offset a weaker showing of another.” *All. for the Wild Rockies v.*  
8 *Cottrell*, 632 F.3d 1127, 1131, 1135 (9th Cir. 2011). Under this approach, “serious questions going  
9 to the merits” and a hardship balance tipping “sharply” toward the plaintiff can support preliminary  
10 relief, so long as the plaintiff also shows a likelihood of irreparable injury and that the injunction  
11 serves the public interest. *Id.* at 1135.

12                   **IV. ARGUMENT**

13                   **A. Plaintiffs Are Likely to Succeed on the Merits**

14                   **1. Legal Framework for ADA Title II and Section 504 Claims**

15                   Title II of the ADA provides that “no qualified individual with a disability shall, by reason  
16 of such disability, be excluded from participation in or be denied the benefits of the services,  
17 programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42  
18 U.S.C. § 12132. Section 504 of the Rehabilitation Act similarly prohibits discrimination against  
19 individuals with disabilities by recipients of federal financial assistance. 29 U.S.C. § 794.

20                   In June 2025, the Supreme Court unanimously held that students with disabilities bringing  
21 ADA and Section 504 claims “are not required to make a heightened showing of ‘bad faith or gross  
22 misjudgment’ but instead are subject to the same standards that apply in other disability  
23 discrimination contexts.” *A.J.T. v. Osseo Area Sch. Dist. No. 279*, 604 U.S. \_\_\_, 145 S. Ct. 1528

1 (2025). For injunctive relief, plaintiffs need not prove intent to discriminate; the denial of an  
2 accommodation is sufficient. *Id.*

3 The implementing regulations for Section 504 prohibit recipients from “utiliz[ing] criteria  
4 or methods of administration . . . [t]hat have the effect of subjecting qualified handicapped persons  
5 to discrimination on the basis of handicap.” 34 C.F.R. § 104.4(b)(4). The District's decision to close  
6 TIDE Academy constitutes precisely such a “method of administration” that has a discriminatory  
7 effect.

## 8 **2. TIDE Academy Functions as a Structural Accommodation Providing Meaningful** 9 **Access**

10 The Supreme Court has held that Section 504 requires recipients of federal funds to provide  
11 individuals with disabilities “meaningful access” to federally funded programs. *Alexander v.*  
12 *Choate*, 469 U.S. 287, 301 (1985). The concept of meaningful access recognizes that  
13 “[d]iscrimination against the handicapped was perceived by Congress to be most often the product,  
14 not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect.” *Id.* at  
15 295. An express purpose of the Rehabilitation Act is “to empower individuals with disabilities to  
16 maximize ... independence, and inclusion ... into society, through ... the guarantee of equal  
17 opportunity.” 29 U.S.C. § 701(b)(1)(F).

18 TIDE Academy's small-school structure is not merely a preference—it is the mechanism by  
19 which students with autism, anxiety disorders, ADHD, sensory processing disorders, and learning  
20 disabilities access the general education curriculum. Although the District attempts to downplay this  
21 fact in its current communications related to TIDE’s closure, the District freely described TIDE as  
22 such in ongoing communications. (Jambeck Decl. Ex. A at 17). The materials further described  
23 TIDE as a “Whole School Support.” (*Id.* at Ex. A, Pg. 94, 95).

1 The declarations establish that for many students with disabilities, TIDE's small campus,  
2 small class sizes, accessible staff, and integrated support services function as an architectural  
3 accommodation analogous to a wheelchair ramp. Just as a school district cannot remove a  
4 wheelchair ramp and tell wheelchair-bound students to use the stairs, the District cannot eliminate  
5 TIDE Academy and tell students with autism and anxiety disorders to simply “accommodate” in a  
6 2,000-student campus when it has provided TIDE as an explicit accommodation. The result is the  
7 same: exclusion from meaningful participation in education.

8 Ms. Sandora, who has served as Lead Counselor at TIDE for five years and coordinates 504  
9 services, confirms that TIDE's small campus provides a “structural accommodation for student  
10 wellness that cannot be replicated at the District's larger comprehensive high schools.” (Sandora  
11 Decl. ¶ 5.) She explains that this model has “helped keep students with disabilities in the least  
12 restrictive environment of a general education setting” and that “[w]ithout this model, I believe a  
13 number of our students would require transition to a more restrictive therapeutic classroom setting,  
14 such as the District's STARS program, or to residential or non-public school placements.” (Sandora  
15 Decl. ¶ 10.) This clinical assessment is corroborated by expert testimony. Mary Pacheco, a mental  
16 health professional at Stanford Psychiatry who works with adolescents with serious mental health  
17 conditions, IEPs, and 504 Plans, opines that for students with mental health and neurodevelopmental  
18 disabilities, academic success “is not a matter of motivation or ability but of environmental fit” and  
19 that “[t]he environment in which a student is placed can be the single most significant variable  
20 determining whether that student is able to attend school consistently, engage with the curriculum,  
21 and progress toward graduation.” (Pacheco Decl. ¶ 4.)

1                   **3. The Closure Constitutes Discrimination against Students with Disabilities**

2                   To state a prima facie case for a violation of Title II, “a plaintiff must show: (1) he is a  
3 'qualified individual with a disability'; (2) he was either excluded from participation in or denied the  
4 benefits of a public entity's services, programs, or activities, or was otherwise discriminated against  
5 by the public entity; and (3) such exclusion, denial of benefits, or discrimination was by reason of  
6 his disability.” *Payan*, 11 F.4<sup>th</sup> at 737. The requirements for violation of Section 504 are the same  
7 except for the added requirement of federal funding. *Id.*

8                   The Ninth Circuit has consistently recognized that Section 504 and Title II reach disparate  
9 impact discrimination. In *Payan v. Los Angeles Community College District*, 11 F.4<sup>th</sup> 729, 738 (9th  
10 Cir. 2021), the court affirmed that Section 504 and the ADA “were specifically intended to address  
11 both intentional discrimination and discrimination caused by ‘thoughtless indifference.’” *See also*  
12 *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088 (9th Cir. 2013); *Rodde v. Bonta*, 357  
13 F.3d 988 (9th Cir. 2004).

14                   The Ninth Circuit has held that a policy denying meaningful access to individuals with  
15 disabilities violates Section 504 even without proof of discriminatory intent. *Crowder v. Kitagawa*,  
16 81 F.3d 1480, 1483-84 (9th Cir. 1996) (quarantine requirement for guide dogs violated ADA  
17 because it “burden[ed] visually-impaired persons in a manner different and greater than it  
18 burden[ed] others”).

19                   Finally, discrimination under the ADA and Section 504 can be established by the denial of  
20 a reasonable accommodation/modification. 28 C.F.R. § 35.130(b)(7).

21                   **a. Plaintiffs are qualified individuals with a disability**

1 Plaintiff A.P. is a student with a disabling condition whose IEP provides essential scaffolding  
2 for his education. (J.P. Decl. ¶ 21). Other TIDE RISING members are students with disabilities as  
3 well. (J.P. Decl. ¶¶ 16–17).

4 **b. Plaintiffs will be excluded from participation in or denied the benefits of a**  
5 **public entity's services, programs, or activities, or was otherwise discriminated against by the**  
6 **public entity**

7 As the declarations submitted into evidence substantiate, Plaintiff A.P. and members of  
8 TIDE have experienced other large school environments and have encountered barriers to their  
9 education, including bullying, lack of accommodations and the structural environment of a large  
10 school. (J.P. Decl. ¶¶ 18–20; Declarations of C.L. ¶¶ 2–13; R.O. ¶¶ 2–4; E.W. ¶¶ 2–12.) This is not  
11 speculative: J.P.'s older child attended Woodside and Menlo-Atherton and experienced persistent  
12 breakdowns in accommodation implementation due to large caseloads and structural constraints.  
13 (J.P. Decl. ¶¶ 18–20).

14 **c. Discrimination is by reason of disability**

15 The third element of Plaintiffs' prima facie case—that the discrimination is “by reason of”  
16 disability—is satisfied under both disparate impact, deliberate indifference and reasonable  
17 accommodation theories. Plaintiffs need not prove that the District acted with animus toward  
18 students with disabilities. *A.J.T. v. Osseo Area Sch. Dist. No. 279*, 604 U.S. \_\_\_, 145 S. Ct. 1528  
19 (2025) (rejecting heightened “bad faith or gross misjudgment” standard). Rather, Plaintiffs may  
20 establish this element by showing that the closure has a disparate impact on students with  
21 disabilities, that the District acted with deliberate indifference to that impact, or that the District  
22 failed to provide a reasonable accommodation. *Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th

1 729, 738 (9th Cir. 2021); *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010). The evidence  
2 here satisfies all three.

3 ***i. Disparate Impact.***

4 To establish a prima facie case under this theory, the plaintiff must show: (1) the occurrence  
5 of certain outwardly neutral practices, and (2) a significantly adverse or disproportionate impact on  
6 persons of a particular type produced by the defendant's facially neutral acts or practices.  
7 *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 574-75 (2d Cir. 2003) (citing *Gamble v. City of*  
8 *Escondido*, 104 F.3d 300, 306 (9th Cir. 1997)).

9 The District's closure of TIDE Academy is portrayed as an outwardly neutral practice of  
10 closing a small purportedly inefficient school.

11 However, the closure has a significantly adverse or disproportionate impact on the disabled  
12 population. The statistical disparity is stark and un rebutted. TIDE Academy's student body is 20.2%  
13 (total 37%) Students with Disabilities—more than double the rate at other District high schools such  
14 as Carlmont (9.2%). (J.P. Decl. ¶ 9, Ex. B at 3, 19.) The closure of TIDE will therefore eliminate  
15 the school that serves the highest concentration and the highest-achieving cohort of students with  
16 disabilities in the District. This is not a neutral policy that incidentally affects a protected class; it is  
17 the targeted elimination of the single campus that disproportionately serves that class. *See Crowder*  
18 *v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996) (facially neutral policy violated ADA where it  
19 "burden[ed] visually-impaired persons in a manner different and greater than it burden[ed] others").

20 Critically, non-disabled students transferring from TIDE to comprehensive campuses face  
21 an inconvenience—a change in school assignment. Students with disabilities face a fundamentally  
22 different harm: the loss of the structural environment that makes education accessible to them.  
23 Multiple declarants attest that their children previously failed at large campuses before succeeding

1 at TIDE, and that no amount of individualized accommodation on paper replicated what TIDE’s  
2 small-school structure provided in practice. (Declarations of C.L. ¶¶ 2–13; T.O. ¶¶ 2–7; E.W. ¶¶ 2–  
3 12; J.M. ¶¶ 4–5; D.W. (re V.B.) ¶¶ 4–18; D.W. (re A.R.) ¶¶ 3–8.) This differential burden is the  
4 hallmark of disparate impact. *See Lau v. Nichols*, 414 U.S. 563, 566-68 (1974) (facially neutral  
5 policy that “effectively foreclose[s]” meaningful access to a public benefit violates federal civil  
6 rights law).

7 The disproportionate concentration of students with disabilities at TIDE is not  
8 coincidental—it is the direct and foreseeable consequence of the District’s own conduct. The  
9 District designed TIDE as a small school. It marketed TIDE as “a unique gem” offering “small  
10 community” support with “more focus on students who are supported academically and social  
11 emotionally.” (Jambeck Decl. Ex. A at 18.) It described TIDE’s program as a “Whole School  
12 Support.” (*Id.* at Ex. A, Pg. 94, 95.) District counselors at other schools actively directed families of  
13 students with disabilities to TIDE. (Declaration of R.O. ¶ 3.) Those families relied on the District’s  
14 representations, withdrew their children from failing placements, and enrolled them at TIDE—  
15 where they thrived demonstrably.

16 Having induced families of students with disabilities to concentrate at TIDE, the District  
17 cannot now eliminate that school without accounting for the foreseeable discriminatory impact of  
18 its decision. The causal chain is direct: the District built the accommodation, told families to rely on  
19 it, and now proposes to destroy it. The “by reason of” element is established not merely by the  
20 statistical disparity, but by the District’s own role in creating the conditions that make closure  
21 uniquely harmful to students with disabilities. *Cf. Olmstead v. L.C.*, 527 U.S. 581, 597 (1999)  
22 (recognizing that unjustified institutional segregation is itself a form of discrimination “by reason  
23 of” disability); *see also Tsombanidis v. W. Haven Fire Dep’t*, 352 F.3d 565, 575 (2d Cir. 2003)

1 (government entity’s failure to account for known discriminatory effect of facially neutral decision  
2 constitutes discrimination under the ADA).

3 The District's own 504 coordinator at TIDE confirms that the services TIDE provides “are a  
4 function of TIDE's small-school structure, not of any individual accommodation plan” and “cannot  
5 be replicated by transferring a student's IEP or 504 Plan to a comprehensive campus of 2,000 or  
6 more students.” (Sandora Decl. ¶ 11.) As Ms. Sandora explains: “A 504 Plan can require that a  
7 student have access to a wellness center, but it cannot make that wellness center one minute away,  
8 staffed by professionals who know the student by name, and integrated with every other support  
9 service the student needs.” (*Id.*)

10 The disparate impact is further confirmed by the existence of a less discriminatory alternative  
11 that achieves the identical financial objective. The District’s own data, presented at the January 26,  
12 2026 study session, identified that eliminating eight District Office administrative positions would  
13 yield approximately \$2.5 million in annual savings—the same amount the District projected from  
14 closing TIDE Academy. (J.P. Decl. Ex. A at 119.) The District thus had before it two options  
15 producing equivalent savings: one that eliminates central office positions and leaves intact the only  
16 school serving a 37% population of students with disabilities, and one that closes that school and  
17 scatters its disabled students across campuses where they have previously failed. The District chose  
18 the latter without any documented analysis of why the option that destroys an accommodation for  
19 students with disabilities was preferable to the one that does not. Under the implementing  
20 regulations, a federally funded entity may not “utiliz[e] criteria or methods of administration” that  
21 “have the effect of subjecting qualified handicapped persons to discrimination on the basis of  
22 handicap” or that “have the purpose or effect of defeating or substantially impairing accomplishment  
23 of the objectives of the recipient’s program or activity with respect to handicapped persons.” 34

1 C.F.R. § 104.4(b)(4)(i)–(ii). Where a public entity’s own data demonstrates that a non-  
2 discriminatory alternative achieves the same fiscal result, the decision to instead eliminate the  
3 program disproportionately serving individuals with disabilities is a “method of administration” that  
4 has the effect of discrimination—regardless of whether the District harbored any discriminatory  
5 intent. See *Lau v. Nichols*, 414 U.S. 563, 568 (1974) (facially neutral administrative choice that  
6 “effectively foreclose[s]” access violates federal civil rights law where alternatives exist).

7 ***ii. Deliberate Indifference.***

8 Even if analyzed under a deliberate indifference framework, the evidence supports Plaintiffs’  
9 claim. Deliberate indifference requires showing that “the defendant knew that harm to a federally  
10 protected right was substantially likely and . . . failed to act on that likelihood.” *Duvall v. County of*  
11 *Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001). The District had actual knowledge that TIDE served a  
12 disproportionate population of students with disabilities: it designed the school for that purpose, it  
13 counseled families into the school, and its own School Accountability Report Cards documented the  
14 20.2% rate. (J.P. Decl. ¶ 9, Ex. B at 3, 19.) Despite this knowledge, the District voted to close TIDE  
15 without conducting any individualized assessment of the impact on students with disabilities,  
16 without evaluating less discriminatory alternatives, and without complying with the procedural  
17 requirements of 28 C.F.R. § 35.150(a)(3). (J.P. Decl. ¶¶ 5–6.) The District’s FAQ page further  
18 reveals its indifference: its only response to concerns about students with 504 plans was that  
19 accommodations are “portable” and “fully implementable at larger comprehensive sites”—a  
20 response that entirely ignores the structural setting that the District itself had identified as the  
21 accommodation. (Jambeck Decl. Ex. D.) This is not mere negligence; it is a knowing decision to  
22 disregard a substantially likely harm to students with disabilities. See *Payan*, 11 F.4th at 738–39

1 (deliberate indifference established where institution “knew of and disregarded” discriminatory  
2 impact on disabled students).

3         The District's indifference was not passive — it was active refusal to engage. Over a period  
4 of forty-four days, the President of the TIDE Education Foundation, Andromeda Garcelon, sent  
5 three separate emails to Superintendent Leach requesting community dialogue and a meeting to  
6 discuss alternatives to closure. (Garcelon Decl. ¶¶ 3–12, Exs. A–C.) On December 10, 2025 — the  
7 same day the Board directed the Superintendent to develop a closure timeline — Ms. Garcelon wrote  
8 to Superintendent Leach offering to “work collaboratively and solve whatever the as-yet-unclarified  
9 issues are for the District.” (Garcelon Decl. ¶ 4, Ex. A.) That same evening, Superintendent Leach  
10 publicly invited the community to join her in “thinking about every possible solution that could  
11 make TIDE sustainable over the long term” and committed to a process providing “opportunities  
12 for input and dialogue before any final decisions are made.” (Garcelon Decl. ¶ 5.) On January 14,  
13 2026, Ms. Garcelon wrote again in her formal capacity as TEF President, requesting both a  
14 community forum and a personal meeting before the January 26 study session to brainstorm  
15 sustainability ideas with District finance staff. She offered to meet at any time, at any location, in  
16 any configuration the Superintendent preferred. (Garcelon Decl. ¶¶ 6–7, Ex. B.) She received no  
17 response. On January 23, 2026, Ms. Garcelon sent a third email — this time copying all four  
18 members of the Board of Trustees — noting that the Superintendent had “chose[n] not to hold the  
19 promised community meeting,” describing the District's timeline as a “rushed process,” and  
20 requesting that the Superintendent acknowledge her correspondence and propose a time to meet  
21 before the February 4 vote. (Garcelon Decl. ¶ 9, Ex. C.) Neither Superintendent Leach nor any  
22 member of the Board responded. (Garcelon Decl. ¶ 10.) The Board voted to close TIDE Academy  
23 on February 4, 2026, without ever having provided the community dialogue its own process  
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1 In the Ninth Circuit, a plaintiff asserting a failure-to-accommodate claim under the ADA or  
2 Section 504 bears an initial burden of showing that (1) the plaintiff is a qualified individual with a  
3 disability, and (2) the requested accommodation is reasonable. *Vinson v. Thomas*, 288 F.3d 1145,  
4 1154 (9th Cir. 2002); *Wong v. Regents of Univ. of Cal.*, 192 F.3d 807, 816–18 (9th Cir. 1999). Once  
5 the plaintiff makes this showing, the burden shifts to the defendant to demonstrate that the  
6 accommodation would impose an undue burden or require a fundamental alteration of the program.  
7 *Vinson*, 288 F.3d at 1154; 28 C.F.R. § 35.150(a)(3); *see also A.J.T. v. Osseo Area Sch. Dist. No.*  
8 *279*, 604 U.S. \_\_\_, 145 S. Ct. 1528 (2025) (applying standard disability discrimination framework  
9 to educational accommodation claims).

10 Both elements of Plaintiffs’ initial burden are effectively conceded. First, Plaintiff A.P. is a  
11 student with a qualifying disability, as are numerous members of Plaintiff TIDE Rising. (J.P. Decl.  
12 ¶ 21.) The District’s own School Accountability Report Card confirms that 20.2% of TIDE’s student  
13 body are Students with Disabilities but the true disabled population is approximately 37%. (J.P.  
14 Decl. ¶ 9, Ex. B at 3, 19.) Second, the accommodation at issue—maintaining a small-school campus  
15 that functions as a structural accommodation for students with disabilities—is not merely  
16 reasonable; it is an accommodation the District itself created, promoted, and has been providing for  
17 years. TIDE Academy currently exists. It is currently operating. The District designed it as a small  
18 school, marketed it as the appropriate placement for students who could not succeed in large  
19 comprehensive environments, and directed families of students with disabilities to enroll there.  
20 (Declarations of R.O. ¶ 3; J.P. Decl. ¶¶ 16, 21.) The District described TIDE as a “Whole School  
21 Support” in its own materials. (Jambeck Decl. Ex. A at 94–95.) An accommodation that a public  
22 entity has already been providing is, by definition, a reasonable one. *See Zukle v. Regents of Univ.*

1 of *Cal.*, 166 F.3d 1041, 1048 (9th Cir. 1999) (reasonableness assessed in light of the totality of the  
2 circumstances including a program’s existing structure and resources).

3 Because Plaintiffs have satisfied their initial burden, the District must demonstrate that  
4 continuing to operate TIDE Academy would constitute a fundamental alteration of its program or  
5 impose an undue financial or administrative burden. *Vinson*, 288 F.3d at 1154; 28 C.F.R. §  
6 35.150(a)(3). The District cannot make either showing.

7 The District cannot establish fundamental alteration. TIDE Academy *is* the District’s  
8 program—it is a public high school that the District created and has operated for years as part of its  
9 portfolio of educational options. Continuing to operate a school that currently exists does not  
10 “fundamentally alter” the District’s educational program; closing it does. *See PGA Tour, Inc. v.*  
11 *Martin*, 532 U.S. 661, 682–83 (2001) (modification is not a “fundamental alteration” where it is  
12 consistent with the program’s existing purposes and structure). The District has offered no evidence  
13 that the continued operation of TIDE would alter the nature of any District program or service.

14 Nor can the District establish undue financial or administrative burden. The District holds a  
15 “Positive Certification” with the State of California, confirming its ability to meet financial  
16 obligations for the current and subsequent two fiscal years. (J.P. Decl. ¶ 13, Ex. C at 1.) The  
17 Superintendent initially stated that finances were not the reason for considering closure. (J.P. Decl.  
18 ¶ 2.) The District’s own presentation admitted that per-student special education costs would “shift  
19 in location” rather than decrease—meaning closure does not actually reduce the financial burden  
20 but merely relocates it. (J.P. Decl. ¶ 3.) Indeed, the District’s own study session data showed that  
21 reducing eight District Office administrative positions would produce the same \$2.5 million in  
22 savings without eliminating any student-serving program. (J.P. Decl. Ex. A at 119.) And closure  
23 will foreseeably *increase* costs: students who cannot function at large campuses will require Non-

1 Public School placements costing \$75,000 or more per year per student, far exceeding TIDE’s per-  
2 pupil cost. (Sandora Decl. at ¶12). A public entity that is fiscally stable, that concedes the  
3 accommodation produces no net savings when eliminated, and that faces increased costs from  
4 eliminating the accommodation cannot credibly claim undue burden.

5 Moreover, even if the District could substantively establish undue burden or fundamental  
6 alteration, it has failed to comply with the mandatory procedural requirements for invoking those  
7 defenses. Under 28 C.F.R. § 35.150(a)(3), “[t]he decision that compliance would result in such  
8 alteration or burdens must be made by the head of the public entity or his or her designee after  
9 considering all resources available for use in the funding and operation of the service, program, or  
10 activity and must be accompanied by a written statement of the reasons for reaching that  
11 conclusion.” The regulation further provides that even where undue burden is established, the public  
12 entity “shall take any other action that would not result in such an alteration or such burdens but  
13 would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive  
14 the benefits or services provided by the public entity.” *Id.*

15 The District failed to satisfy any of these requirements. (J.P. Decl. ¶¶ 5–6.) The decision to  
16 close TIDE was not accompanied by a written statement analyzing undue burden or fundamental  
17 alteration as those terms are defined under Section 504 and Title II. The District did not demonstrate  
18 that the Superintendent or Board—as the “head of the public entity or his or her designee”—formally  
19 considered “all resources available” before concluding that maintaining TIDE was financially  
20 untenable. And the District made no effort to identify alternative actions that would achieve  
21 comparable cost savings without eliminating the only small-school accommodation for students  
22 with disabilities—such as reducing administrative overhead, consolidating central office functions,  
23 or restructuring operations at larger campuses. (J.P. Decl. ¶¶ 5–6.) The District’s failure to comply

1 with § 35.150(a)(3) is independently fatal to any undue burden or fundamental alteration defense.  
2 *See Townsend v. Quasim*, 328 F.3d 511, 518–19 (9th Cir. 2003) (state entity bears the burden of  
3 establishing fundamental alteration defense and must demonstrate it considered available  
4 alternatives); *see also Arc of Wash. State Inc. v. Braddock*, 427 F.3d 615, 620 (9th Cir. 2005) (public  
5 entity must show it has a “comprehensive, effectively working plan” and that the proposed action is  
6 consistent with its obligations to individuals with disabilities).

7       The District’s failure is compounded by its refusal to engage in the interactive process  
8 required before withdrawing an existing accommodation. A public entity has an affirmative duty to  
9 engage in the interactive process with individuals with disabilities to identify reasonable  
10 accommodations, and that liability attaches when the interactive process breaks down due to the  
11 entity’s failure to participate in good faith. *Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th Cir. 2002);  
12 *Payan v. L.A. Cmty. Coll. Dist.*, No. 2:17-cv-01697-SVW-SK, 2018 U.S. Dist. LEXIS 225042 (C.D.  
13 Cal. Oct. 16, 2018). *See also Humphrey v. Memorial Hospitals Ass’n*, 239 F.3d 1128, 1137–38 (9th  
14 Cir. 2001) (“[T]he employer has a duty to engage in the interactive process once it becomes aware  
15 of the need to provide accommodation.”). Here, the District was not merely considering whether to  
16 grant a new accommodation—it was withdrawing one it had been providing for years. Before  
17 eliminating TIDE, the District was obligated to engage in an individualized interactive process with  
18 each affected student with a disability to determine what alternative accommodation could provide  
19 equivalent meaningful access. The District did nothing of the kind. Plaintiff J.P. specifically  
20 requested reasonable modification of the closure policy by emailing the Board of Trustees,  
21 Superintendent Leach, and District staff on January 29, 2026, proposing alternatives to closure. The  
22 District acknowledged receipt but provided no substantive response and refused to engage in the  
23 interactive process. (J.P. Decl. Ex. E.) Other members of TIDE Rising made similar requests for  
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1 reasonable modification, which the District likewise ignored. (J.P. Decl. at ¶28). It apparently  
2 convened no IEP team meetings to assess the impact of closure on individual students. It apparently  
3 held no Section 504 meetings to evaluate whether alternative placements could provide comparable  
4 support. It apparently conducted no individualized assessments whatsoever. Instead, it voted to close  
5 the school and sent enrollment emails directing families to select a new campus. The District's  
6 wholesale failure to engage in any interactive process with any affected student independently  
7 establishes liability under the failure-to-accommodate theory. See *Duvall v. County of Kitsap*, 260  
8 F.3d 1124, 1139 (9th Cir. 2001) (deliberate indifference established where entity failed to  
9 investigate feasible accommodations despite knowledge of need).

10 In sum, Plaintiffs have met their burden of showing that they are qualified individuals with  
11 disabilities and that the accommodation—TIDE Academy's continued operation—is reasonable.  
12 The burden has shifted to the District, which cannot demonstrate fundamental alteration or undue  
13 burden on the merits, has not complied with the procedural prerequisites for invoking those  
14 defenses, and failed entirely to engage in the interactive process required before withdrawing an  
15 existing accommodation. The failure-to-accommodate theory independently supports a finding of  
16 likelihood of success on the merits.

#### 17 **4. The Closure Forces Students Into More Restrictive Environments**

18 The closure will constitute a regression on the continuum of placements for students with  
19 disabilities, moving them from “Full Inclusion” at TIDE to “Segregation” in Special Day Classes or  
20 isolated settings at large campuses. (Sandora Decl. at ¶12); 34 C.F.R. § 300.114–300.116. The  
21 District's own admission that special education costs will “shift in location” rather than decrease  
22 confirms that students will continue to need—but may not receive—the same level of support. (J.P.  
23 Decl. ¶ 3, Ex. A at 10). Ms. Pacheco confirms that closing TIDE and dispersing its students into  
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1 comprehensive campuses of 2,000 or more “risks significant harm,” that students who are “currently  
2 stable and succeeding in TIDE’s environment may experience regression in their mental health and  
3 academic functioning,” and that some “will foreseeably require more restrictive and more costly  
4 placements, including therapeutic classroom settings, non-public schools, or residential treatment.”  
5 (Pacheco Decl. ¶ 9.)

6 The District’s own Frequently Asked Question page includes an admission that the District  
7 failed to account for TIDE as a “method of administration” accommodating students with  
8 disabilities. (Jambeck Decl. Ex. D.). The District states regarding 504 plans that: “Students with 504  
9 plans at TIDE Academy already receive supports that are individualized, portable, and fully  
10 implementable at larger comprehensive sites.” *Id.* This statement completely fails to account for the  
11 setting of TIDE which the District itself marketed, essentially, as an accommodation to students  
12 with disabilities.

13 The District’s own data confirms this disparity. The newly issued 2024-2025 School  
14 Accountability Report Cards for Woodside High School and TIDE Academy reveal that Woodside  
15 maintains a pupil-to-academic-counselor ratio of 282:1, compared to TIDE’s ratio of 110:1—nearly  
16 three times higher. Woodside’s overall support-staff-to-student ratio is 109:1, compared to TIDE’s  
17 52:1:

	Woodside	TIDE
Pupils to Academic Counselors	282:1	110:1
Support Staff - FTE		
Counselor	9	2
Librarian	1	0
Library paraprofessional	1	0
Psychologist	2	1
Social worker	0	0
Nurse	1	0.3
Speech/language specialist	1	0.3
Resource Specialist	0	0
Total Support Staff	15	4
Students	1640	200
Ratio of SS to Students	109.3	54.6

(J.P. Decl. Ex. D.)

Declarant E.W.'s experience illustrates this point. Her autistic daughter requires asynchronous English instruction due to emotional regulation challenges. TIDE permits this accommodation, but large comprehensive schools do not allow such credits to count toward graduation. Declaration of E.W. ¶ 10. Closure thus does not merely inconvenience this student—it eliminates her only viable path to a high school diploma within the District.

TIDE's Lead Counselor, who coordinates 504 services and has directly observed the impact of TIDE's model on students with disabilities, states that without TIDE's small campus and consolidated Wellness Center, “a number of our students would require transition to a more restrictive therapeutic classroom setting, such as the District's STARS program, or to residential or non-public school placements.” (Sandora Decl. ¶ 10.) This is not speculative: it is the professional judgment of the staff member responsible for implementing 504 services at TIDE.





1 Board voted to do. Once TIDE’s student body is dispersed, the structural accommodation is  
2 destroyed even if a court later orders TIDE reopened, because the peer community that declarants  
3 describe as central to their children’s social and emotional development cannot simply be  
4 reassembled. Moreover, scattering students in small numbers across large campuses makes it  
5 functionally impossible to measure the harm after the fact. If all 200 TIDE students transferred to  
6 Woodside, a court could evaluate changes in attendance, grades, mental health referrals, and 504  
7 compliance at a single site. By distributing ten students here and fifteen there, the District ensures  
8 that no campus shows a statistically significant decline attributable to the closure—not because the  
9 harm did not occur, but because it has been diluted below the threshold of measurability. This is  
10 precisely the kind of irreversible, unquantifiable harm that equity jurisdiction exists to prevent.

### 11 **C. The Balance of Equities Tips in Plaintiffs' Favor**

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13 The balance of hardships tips sharply in Plaintiffs' favor. If the closure proceeds and  
14 Plaintiffs ultimately prevail on the merits, the harm to students with disabilities will be devastating  
15 and potentially permanent: educational regression, mental health deterioration, loss of educational  
16 opportunity, and social harm.

17 By contrast, maintaining the status quo imposes minimal burden on the District. The school  
18 is currently operating. Teachers are employed. Students are enrolled. The District has maintained a  
19 “Positive Certification” with the State indicating fiscal stability. The only hardship to the District is  
20 the delay of a discretionary policy choice—a choice that, if Plaintiffs prevail, would constitute  
21 unlawful discrimination.

22 At the vote on school closure, the District considered keeping TIDE open for up to two years.  
23 (J.P. Decl. ¶ 6). Given that the District considered a longer timeframe for closure, there is no

1 significant harm to the District in keeping the status quo and considering other less discriminatory  
2 alternatives to achieving their goals.

3 The District's proffered financial justification does not outweigh this balance. The District  
4 admitted that special education costs will "shift in location" rather than decrease, and closure may  
5 actually increase costs through Non-Public School placements. The District has not presented any  
6 evidence that maintaining TIDE for the pendency of this litigation will cause financial distress.

7 **D. The Public Interest Favors Injunctive Relief**

8 The public interest strongly favors enforcement of federal civil rights laws. Congress enacted  
9 the ADA and Section 504 to ensure that individuals with disabilities have equal access to public  
10 programs and services. The public interest in preventing discrimination against a protected class—  
11 particularly children with disabilities—is paramount.

12 Moreover, the public has a strong interest in ensuring that educational institutions provide  
13 appropriate accommodations for students with disabilities. TIDE Academy serves not only its  
14 current students but also provides an educational model demonstrating that students with disabilities  
15 can thrive in inclusive settings when provided appropriate structural supports.

16 The injunction requested here is narrowly tailored to maintain the status quo pending  
17 resolution on the merits. It does not require the District to create new programs or expend significant  
18 new resources. It simply requires the District to continue operating a school that currently exists and  
19 is currently serving students—the most vulnerable students in the District.

20 **V. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT REQUIRED**

21 Plaintiffs are not required to exhaust administrative remedies under the Individuals with  
22 Disabilities Education Act ("IDEA") because the gravamen of this Complaint is discrimination and  
23 systemic exclusion, not the adequacy of an individual student's Individualized Education Program.

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1 In *Fry v. Napoleon Community Schools*, 580 U.S. 154 (2017), the Supreme Court held that  
2 IDEA's exhaustion requirement applies only "when the gravamen of a complaint seeks redress for  
3 a school's failure to provide a FAPE." *Id.* at 169. The Court explained that "the IDEA guarantees  
4 individually tailored educational services, while Title II and § 504 promise nondiscriminatory access  
5 to public institutions." *Id.* at 168.

6 The Supreme Court provided a helpful test: could the plaintiff bring "essentially the same  
7 claim if the alleged conduct had occurred at a public facility that was not a school"? *Id.* at 171. Here,  
8 the answer is yes. The closure of TIDE Academy is analogous to a municipality closing the only  
9 accessible public facility for individuals with disabilities. A plaintiff challenging such a closure  
10 would not be required to exhaust IDEA procedures—because the claim is not about the adequacy  
11 of individualized educational programming, but about systemic exclusion from public services.

12 This action challenges a "Method of Administration" under 34 C.F.R. § 104.4(b)(4)—the  
13 systemic decision to eliminate a school site that functions as an accommodation for students with  
14 disabilities. An Administrative Law Judge in a due process hearing cannot order a School Board to  
15 keep a building open. The administrative process therefore cannot provide the relief sought,  
16 rendering exhaustion futile.

17 Furthermore, in *Perez v. Sturgis Public Schools*, 598 U.S. 142 (2023), the Supreme Court  
18 confirmed that plaintiffs need not exhaust IDEA procedures when seeking remedies that IDEA  
19 cannot provide. Here, Plaintiffs seek an injunction preventing school closure—a remedy wholly  
20 unavailable through IDEA's administrative process.

21 **VI. CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully request that this Court issue a Temporary  
23 Restraining Order and Preliminary Injunction enjoining Defendant Sequoia Union High School  
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1 District from closing TIDE Academy or dispersing its student body until this matter can be fully  
2 adjudicated on the merits.

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7 DATED: February 13, 2026

**LEIGH LAW GROUP, P.C.**

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By: /s/Jay T. Jambeck  
JAY T. JAMBECK  
Attorney for Plaintiffs

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