APPENDIX

G.W., a minor, by and through her guardian Nicole Ward, and Tracy L. Henderson,
Applicants,
v.
Coronado Unified School District, et al.,
Respondents.

Appendix to Emergency Application for Stay Pending Petition for a Writ of Certiorari

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

G.W., a Minor, etc., et al., Plaintiffs and Appellants, v. CORONADO UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents.	D082619 (Super. Ct. No. 37-2022-00034756-CU-NP-CTL)

APPEAL from an order of the Superior Court of San Diego County, Gregory W. Pollack, Judge. Affirmed.

Law Offices of Tracy L. Henderson, Tracy L. Henderson; The Gavel Project, and Ryan Heath for Plaintiffs and Appellants.

Winet Patrick Gayer Creighton & Hanes, Randall L. Winet, and Erin N. Taylor for Defendants and Respondents.

G.W., a minor, and her mother Nicole W. (plaintiffs) sued the Coronado Unified School District (District) and 20 individual defendants, including members of the District's Board of Trustees (Trustees), District and school administrators (administrators), and several Coronado High School (CHS) teachers (Teachers) (collectively, defendants). Plaintiffs alleged that

defendants' adoption and enforcement of a mask policy at CHS to prevent the spread of COVID-19 during the pandemic violated G.W.'s constitutional rights and were tortious. The District, Trustees, administrators, and Teachers filed motions to strike plaintiffs' complaint as a strategic lawsuit against public participation (SLAPP) under Code of Civil Procedure[1] section 425.16. In a single order, the trial court granted all four anti-SLAPP motions (one for each group of defendants), ruling that: (1) plaintiffs' suit arose from defendants' protected activity, and (2) plaintiffs failed to demonstrate a probability of prevailing on their claims.

Plaintiffs contend on appeal that the court erred because: (1) their claims did not arise from activity protected by the anti-SLAPP statute; (2) defendants' enforcement of the mask policy was "illegal as a matter of constitutional law"; and (3) the court should not have taken judicial notice of COVID-19's "asymptomatic transmission." Plaintiffs further contend that the trial court judge, the Honorable Gregory W. Pollack, should be disqualified for demonstrating bias.

We conclude that plaintiffs have forfeited their claims of error by failing to include a factual summary of the significant facts in their opening brief and failing to address the multiple legal grounds for the trial court's ruling on the merits of their claims. We also reject plaintiffs' arguments on the merits and conclude they have failed to demonstrate a probability of prevailing on their constitutional and other claims. Accordingly, we affirm the trial court's order.[2]

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1 Further undesignated statutory references are to the Code of Civil Procedure.

2 Plaintiffs' request for judicial notice filed September 4, 2024 (one week before oral argument) is denied as untimely and irrelevant, and also because

FACTUAL AND PROCEDURAL BACKGROUND

A. G.W.'s Non-Compliance with CHS's Mask Policy

In March 2020, California Governor Gavin Newsom declared a state of emergency in response to the COVID-19 pandemic. Public high schools across the state, including CHS, closed their campuses and provided remote instruction for the remainder of 2020. CHS returned to in-person learning for the 2020 to 2021 school year under a reopening plan based on state mandates and public health directives. Assistant superintendent Donnie Salamanca was involved in developing the reopening plan, which included a requirement that all CHS staff and students wear masks indoors while at the school site, with limited exemptions, in accordance with state and California Department of Public Health directives at the time. Reopening procedures were to be updated "as necessary" based on COVID-19 transmission and case rates.

The District's mask policy continued into the 2021–2022 school year. In August 2021, superintendent Karl Mueller disseminated a statement through a District newsletter explaining that the District would comply with and enforce the mask policy. A local news outlet reported that according to Salamanca, defying the masking order could expose the District and the Trustees to liability. State agency guidance explained that masks were a low-cost, minimally intrusive way to mitigate the spread of COVID-19 within schools and the broader community. During the 2021 to 2022 school year, students had the option of either attending classes in person or virtually.

In January 2022, G.W. started attending classes at CHS in person without a mask, intending to protest the District's mask policy. The

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plaintiffs failed to request judicial notice of the November 2020 article in the trial court.

Teachers and three administrators, Niamh Foley, the District's director of student services, Karin Mellina, the CHS principal, and Shane Bavis, a CHS assistant principal, requested that G.W. abide by the policy, but she refused. When it became clear she would not wear a mask, Bavis called Nicole and asked her to bring G.W. home, but Nicole refused. Nicole and G.W. also refused to enroll in remote classes, asserting that G.W. was constitutionally entitled to an in-person education without having to wear a mask.

Over the several weeks that followed, G.W. continued to come to school in person without a mask. The Teachers, Mellina, Foley, and Bavis facilitated G.W.'s participation in classes from just outside the classroom doors or remotely from other locations on campus. G.W. insisted, however, that she should be allowed to attend in person and repeatedly attempted to enter classrooms without a mask. On many of those occasions, teachers had to move all the other students in the classroom to another classroom, or hold class outdoors, to comply with safety policies. Plaintiffs allege that when G.W. participated in classes from outside, she was subjected to "miserable cold" on days where the regional highs were in the low to mid-60s, "scorching heat," and "exposure to the elements." Plaintiffs also allege that while G.W. was outside, she could not participate in an emergency lockdown drill with her peers. Bavis allegedly instructed G.W. to lockdown in a nearby bathroom, which plaintiffs claim was unsafe because it had no interior lock to protect her against an emergency such as an active shooter.

As a result of her non-compliance, G.W. was suspended twice in February 2022 for willfully defying school policy, disrupting school activities, and defying the direction of school staff and administration. On February 1, about two weeks before G.W. was first suspended, Salamanca e-mailed Nicole to explain that the District was required by state law to enforce the mask

mandate and that G.W.'s failure to comply was causing her exclusion from classrooms. He wrote that the school would continue to offer G.W. independent study options as an alternative. The e-mail also stated that G.W.'s absences from the classroom were unexcused, could negatively impact her academic standing and her inter-district transfer agreement, and could result in "potential discipline."

After G.W. continued to come to school without a mask, Salamanca e-mailed Nicole again on February 7, 2022, informing her that beginning the next day, G.W. would no longer be allowed to attend classes remotely from on campus and would have to either wear a mask, obtain an exemption, or enroll in independent study. Salamanca also offered G.W. the short-term option of participating in classes remotely from off-campus along with students who are in temporary quarantine. He warned, however, that if G.W. continued her non-compliance, she might "be subject to disciplinary action" for her behavior in accordance with "the district's Discipline Action Guide[.]"[3] After Nicole turned down Salamanca's proposed alternatives, Salamanca wrote back that same day to inform Nicole that the school had consulted with its legal counsel. He stated that because Nicole had failed to submit a policy exemption request as she previously indicated she would, G.W. would be marked unexcused if she showed up to school the next day without a mask, and the school would "proceed with disciplinary action."

G.W. came to school for several days afterwards without a mask. During that time, she was barred from entering her classrooms and marked with unexcused absences.

On February 16, 2022, G.W. again attempted to enter one of her classrooms without a mask. But this time she refused to leave when asked,

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3 This guide is not included in the record before us.

so Bavis came to the classroom and requested that she put on a mask. After the students in that class were moved to another room, G.W. attempted to follow them and again refused to leave when asked. Bavis warned G.W. that if she continued to refuse to comply, she could be suspended. When G.W. entered yet another classroom without a mask, Mellina exercised her discretion as principal to suspend G.W. for one day. Mellina agreed to allow G.W. access to campus during that suspension and attend classes remotely.

When G.W. attempted to enter classrooms without a mask on February 23, 2022, Mellina suspended G.W. again. This time, G.W. was prohibited from being on campus for the duration of her suspension—but G.W. still returned the next day and attempted to enter one of her classrooms. Plaintiffs allege that Mellina physically blocked her from entering the classroom and threatened to report G.W. for assault. A school resource officer then told G.W. and Nicole, who was also present, to go home and return the following day to attend classes remotely.

G.W. continued to refuse to wear a mask for two weeks after her second suspension ended. During that time, she participated in classes virtually from outdoor locations on campus, or by sitting outside of the classroom door. Mellina, Foley, Bavis, and various Teachers continued telling plaintiffs that G.W. had to adhere to the mask mandate, and they also continued to prevent her from entering classrooms.

On March 11, 2022, G.W. disenrolled from CHS. Around that time, the District lifted its indoor mask requirement in accordance with updated health guidance from the Governor's office.

B. The Complaint

Plaintiffs sued defendants under title 42 United States Code section 1983 alleging violations of G.W.'s rights to freedom of speech and expression

under the First and Fourteenth Amendments to the United States Constitution, article I, section 2(a) of the California Constitution, and Education Code section 48907, subdivision (a). Plaintiffs also alleged violations of the Bane Act (Civ. Code, § 52.1) and tort claims for negligence and intentional infliction of emotional distress (IIED). The complaint alleged that the mask policy was illegal and that defendants "intentionally isolated and belittled G.W. by excluding her from the educational process," caused G.W. harm by forcing her to sit outside in the "miserable cold," penalized G.W. academically, and caused both plaintiffs severe trauma, anxiety, and stress. Plaintiffs sought declaratory relief, damages, civil penalties, attorney's fees, punitive damages, and costs.

Each of the four groups of defendants filed an anti-SLAPP motion, arguing that plaintiffs' complaint arose from protected activity under section 425.16, subdivisions (e)(1) through (e)(4). Defendants also argued that plaintiffs could not demonstrate a probability of prevailing because: (1) defendants are immune from liability under various state statutes, the Eleventh Amendment to the United States Constitution, and the qualified immunity doctrine; (2) requiring that students wear a mask consistent with public health orders does not violate constitutional rights; (3) there is no evidence any of defendants engaged in threats of violence, intimidation, or coercion; and (4) no evidence supports plaintiffs' claims for negligence or intentional infliction of emotional distress. Each of the four motions was supported by an identical set of 45 exhibits plus declarations of each of the 20 individual defendants.

Plaintiffs opposed the anti-SLAPP motions, contending that defendants' conduct in enforcing the mask policy did not constitute protected activity and was also illegal as a matter of law. They also argued that

defendants are not immunized from liability and there is sufficient evidence that, if credited, would demonstrate a probability of prevailing on the merits. In opposition to the anti-SLAPP motions, plaintiffs submitted an 11-page declaration of G.W. with three exhibits and a six-page declaration of her mother with seven exhibits.

C. Motion Hearing and Ruling

Judge Pollack presided over the hearing on defendants' anti-SLAPP motions. During arguments, plaintiffs' counsel asserted that the case was "not about a mask policy," but rather about "the punitive implementation" of the policy. Judge Pollack asked how a mask policy implemented for safety reasons would be different from a rule prohibiting firearms, and he commented that "[g]uns kill and so does COVID." Plaintiffs' counsel asserted that COVID-19's dangerousness and transmissibility were irrelevant, but also argued that medical testimony would be required before the court could make findings on those topics. Judge Pollack stated more than once that he would take judicial notice of the fact that COVID-19 can be transmitted by an asymptomatic carrier, which plaintiffs' counsel disputed. Judge Pollack also expressed concern that G.W. was being used as a "political pawn," and he voiced skepticism of some allegations in the complaint.

In a single written order issued after the hearing, the trial court granted each of defendants' anti-SLAPP motions. The court first found that the mask policy at CHS was legal as a matter of law, and that defendants were "entitled to undertake all reasonable efforts to enforce" the policy. The court noted that G.W.'s conduct was "clearly disruptive of the orderly operation of the school[,]" and that the school took efforts to accommodate G.W. before resorting to suspension. The court further found that the promulgation and enforcement of mask policies are "public issues of great

public interest," and that the anti-SLAPP statute protects defendants' comments and actions.

As to plaintiffs' probability of prevailing on the merits, the court ruled that several immunities barred plaintiffs' claims, specifically under Education Code section 44805, Government Code sections 818.2, 820.2, 820.4, and 855.4, Civil Code section 47, subdivision (a), and the Eleventh Amendment to the United States Constitution. The court also found that plaintiffs had not met their burden of establishing a probability of prevailing on their Bane Act or IIED claims because defendants' conduct "was quite appropriate" and "reasonable" as a matter of law. The court did not separately address the merits of G.W.'s negligence claim.

On these grounds, the court granted each of defendants' four anti-SLAPP motions.

DISCUSSION

I

A. *Statutory Framework*

The anti-SLAPP statute provides in relevant part that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech . . . in connection with a public issue shall be subject to a special motion to strike [anti-SLAPP motion], unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).) Ruling on an anti-SLAPP motion typically involves two steps. First, defendants moving to strike a cause of action must show the act underlying the claim falls within one of the four categories of protected activity listed in section 425.16, subdivision (e). (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396

(*Baral*); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 66; *Bowen v. Lin* (2022) 80 Cal.App.5th 155, 160 (*Bowen*).)

Those four categories include: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e)(1)–(4).)

If defendants make a sufficient showing under the first prong of the anti-SLAPP analysis, the burden shifts to plaintiffs to show the targeted causes of action are legally sufficient and supported by evidence that, if credited, would sustain a judgment for plaintiffs. (*Baral, supra*, 1 Cal.5th at pp. 384, 396; *Bowen, supra*, 80 Cal.App.5th at p. 160.) "Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89; accord, *Bowen*, at p. 160.) The trial court's decision on both prongs is subject to de novo review on appeal. (*Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1250; *Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 796; *Starr v. Ashbrook* (2023) 87 Cal.App.5th 999, 1018.)

B. *Forfeiture*

An appellant's opening brief must include a summary of the significant facts with appropriate citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C), (a)(2)(C).) The facts significant to this anti-SLAPP appeal are based on: (1) the allegations of the 315-paragraph complaint, (2) the 45 exhibits and 20 declarations submitted by defendants in support of their anti-SLAPP motions, and (3) the two declarations with 10 attached exhibits submitted by plaintiffs in opposition.

Plaintiffs' opening brief contains no factual summary of the allegations of their own complaint and no mention of the evidence submitted by both sides in connection with the anti-SLAPP motions. The opening brief never even identifies the 20 individually named defendants or describes what role each played in the masking dispute or what the factual basis for liability is against each of them. We cannot assess whether the claims against each of these defendants arise from protected activity without a proper factual summary of the allegations against them, including the statements each is alleged to have made regarding the mask mandate. Nor can we assess whether plaintiffs have demonstrated a sufficient probability of prevailing without a proper summary of the evidence submitted by both sides.

Even on de novo review, we are not "obligate[d] . . . to cull the record for the benefit of the appellant . . . ." (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 455; see also *People v. ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 879 ["It is not the function of this court to comb the record looking for evidence or the absence of evidence to support [appellants'] argument."].) We conclude that plaintiffs have forfeited their claims of error because their opening brief does not comply with the factual summary requirement of California Rules of Court, rule 8.204. (*Perry v. Kia Motors America, Inc.*

(2023) 91 Cal.App.5th 1088, 1096; *Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 817.)

C. *Prong One*

Notwithstanding the forfeiture, we will briefly address the two arguments plaintiffs make on prong one. First, plaintiffs contend that the trial court mischaracterized their claims by finding they were challenging the lawfulness of the District's mask policy itself, rather than its "punitive" implementation or enforcement. Plaintiffs now concede that the adoption of the mask policy is "undisputably" protected activity but deny that their complaint challenges the validity of the policy.

Plaintiffs misstate the allegations of their own complaint. The complaint clearly alleges that "[f]rom February 2, 2021, until lifting the policy on March 14, 2022, Defendants collectively chose to adopt and maintain an illegal indoor mask mandate for all students within CUSD's jurisdiction." It further alleges that the mask mandate was "illegal" because it was based on "non-binding" guidance from the California Department of Public Health. Plaintiffs named as defendants the individual members of the school board who they allege adopted the masking policy, and the complaint does not allege that they participated in CHS's enforcement of the policy. The complaint also attaches and incorporates by reference an "ULTIMATUM RE: YOUR SCHOOL'S COVID-19 POLICIES" that G.W. provided to the school. This document referred to "your institution's unconstitutional COVID-19 policies" including "masking, testing, and vaccination policies." It also threatened suit against "all involved in the adoption or enforcement of such policies." Finally, in the prayer for relief, plaintiffs' complaint explicitly sought "a judicial declaration that school district policy relating to forced masking is invalid and unenforceable . . . ."

These allegations make abundantly clear that plaintiffs are in fact challenging the adoption and validity of the masking policy itself. For purposes of an anti-SLAPP motion, the court must "assume [the] complaint means what it says." (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1017.) Plaintiffs cannot prevail on appeal merely by denying a central theory pled in their complaint.

In their opening brief, plaintiffs make no effort to differentiate between the allegations of their complaint challenging the masking policy itself and those challenging its enforcement or implementation. Nor do they distinguish between those individual defendants responsible for adopting the policy and those responsible for enforcing it. They also do not discuss which defendants allegedly made public statements about the mask policy (such as the statements to the press quoted in the complaint) and which allegedly engaged in "punitive" conduct enforcing the policy. Without a properly developed argument and factual summary of the allegations made against each defendant in the opening brief, " '[w]e are not bound to develop appellants' arguments for them.' " (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) Even applying a de novo standard of review, our review is limited to issues which have been adequately raised and supported in the opening brief. (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 554–555.) Confining ourselves to the issues raised in the opening brief, we reject plaintiffs' contention that their complaint did not challenge the adoption of the masking policy, which they concede is protected activity.

We also reject the only other argument plaintiffs make on prong one: that the anti-SLAPP statute is inapplicable because the mask policy was illegal as a matter of law for infringing on G.W.'s First Amendment rights.

Where an anti-SLAPP motion concerns alleged protected activity that "the defendant concedes, or the evidence conclusively establishes . . . was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action." (*Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1654 (*Mendoza*), italics omitted.)

Defendants have not conceded, nor has the evidence conclusively shown, that the mask policy was illegal as a matter of law. First, courts have found that the illegality exception narrowly applies only to criminal conduct. (See *Dziubla v. Piazza* (2020) 59 Cal.App.5th 140, 151 (*Dziubla*); *Mendoza, supra*, 182 Cal.App.4th at p. 1654.) Second, "it is not sufficient that plaintiffs can reasonably argue or offer some evidence that defendant's conduct was unlawful." (*Dziubla*, at p. 151, italics omitted.) As we discuss below under the second prong of the anti-SLAPP analysis, the evidence is far from conclusive that the mask policy violated plaintiffs' constitutional rights. We therefore find that the illegality exception to the anti-SLAPP statute does not apply.

D. *Probability of Prevailing*

Under the second prong, the burden shifts to plaintiffs to establish a probability of prevailing on their claims against defendants for their protected activities. As we shall explain, we conclude that plaintiffs have forfeited their arguments as to this prong as well, but to the extent they have preserved an argument that their constitutional claims have minimal merit, we disagree.

Plaintiffs' only prong-two argument on appeal is that the trial court erroneously took judicial notice of COVID-19's asymptomatic transmission. This position is puzzling because plaintiffs' counsel herself asserted that

COVID-19's transmission was "irrelevant" to their theory of the case. But more importantly, plaintiffs have failed to contest any of the substantive grounds for the trial court's prong-two ruling having nothing to do with asymptomatic transmission. The court ruled that several immunities barred plaintiffs' claims, specifically under Education Code section 44805; Government Code sections 818.2, 820.2, 820.4, 855.4; Civil Code section 47, subdivision (a); and the Eleventh Amendment to the United States Constitution. The court also found that plaintiffs had not met their burden of establishing a probability of prevailing on their Bane Act or IIED claims because defendants' conduct "was quite appropriate" and "reasonable" as a matter of law. Plaintiffs addressed none of these prong two rulings in their opening brief. Although the court did not expressly address the merits of G.W.'s negligence claim, it is plaintiffs' burden to show their claim has minimal merit, and they have put forth no argument on appeal to meet that burden. Accordingly, we conclude plaintiffs forfeited any challenge on appeal to the court's finding that they failed to establish a probability of prevailing under prong two.[4] (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.)

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[4] We also disagree that the trial court erred by taking judicial notice of COVID-19's asymptomatic transmission. Courts may take judicial notice of established scientific facts, even those that may be controversial to some in the general public. (Evid. Code, § 452, subd. (h); *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1142–1143 [taking judicial notice of safety and effectiveness of vaccines].) As other California courts have acknowledged, "it is undisputed that the disease [COVID-19] spreads through airborne transmission from an infected person (who may be asymptomatic) to an infected member of the community . . . ." (*County of Los Angeles Dept. of Public Health v. Superior Court* (2021) 61 Cal.App.5th 478, 482 (*County of Los Angeles*); see also *Western Growers Assn v. Occupational Safety & Health Standards Bd.* (2021) 73 Cal.App.5th 916, 938 [discussing November 2020 Cal/OSHA findings of emergency which "discussed the specific challenge posed by COVID-19 because infected individuals may be asymptomatic, yet

Plaintiffs did argue under prong one that the mask policy was illegal as a matter of law because it violated G.W.'s constitutional right to free speech. Specifically, plaintiffs claim G.W.'s refusal to wear a mask was an expressive act of protest protected by the First Amendment. To the extent those arguments can be construed as contending that their constitutional claims have minimal merit under prong two, we disagree.

The First Amendment guarantees that "Congress shall make no law . . . abridging the freedom of speech[.]" (U.S. Const., 1st Amend.) Article I, section 2(a) of the California Constitution similarly provides that "[e]very person may freely speak" and laws "may not restrain or abridge liberty of speech[.]" These provisions afford protection to symbolic or expressive conduct as well as actual speech. (*People v. Peterson* (2023) 95 Cal.App.5th 1061, 1068.)

We reject plaintiffs' argument that enforcement of the mask mandate constituted compelled speech or violated G.W.'s rights by preventing her from attending school unmasked as a form of protest. As the Eleventh Circuit has explained, "wearing a mask is not speech or expressive conduct protected by the First Amendment." (*Zinman v. Nova Southeastern University, Inc.* (11th Cir., Mar. 29, 2023, No. 21-13476) 2023 WL 2669904, *5 (*Zinman*) [rejecting student's challenge to mask mandate adopted during COVID-19 pandemic].)

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able to transmit the disease to others"]; *See's Candies, Inc. v. Superior Court* (2021) 73 Cal.App.5th 66, 85 [stating "[i]t is well known that people may transmit viruses, including the virus that causes COVID-19, before they themselves have developed symptoms" and citing guidance of Centers for Disease Control and Prevention "noting that persons afflicted with 'asymptomatic' or 'pre-symptomatic' COVID-19 can transmit the virus to others"]; *Midway Venture LLC v. County of San Diego* (2021) 60 Cal.App.5th 58, 66 ["The virus can be transmitted even by individuals who do not show symptoms."].)

For expressive conduct, "the likelihood must be great that 'the message would be understood by those who viewed it.' " (*Ibid.*, quoting *Tex. v. Johnson* (1989) 491 U.S. 397, 404.) But there are "many more probable explanations for a person's decision to go unmasked that have nothing to do with conveying any sort of message -- political, religious, or otherwise. Thus, for example, a person may not be masked for medical reasons, or because he left his mask at home, or perhaps just on account of a personal dislike for masking." (*Zinman*, at p. *5.)

Enforcement of such a school mask requirement does not constitute compelled speech either. In the context of the COVID-19 pandemic, a mask mandate does not constitute compelled speech because wearing a mask would not reasonably be understood as conveying any message. (*Antietam Battlefield KOA v. Hogan* (D. Md. 2020) 461 F.Supp.3d 214, 236–237 (*Antietam Battlefield*).) "Instead, especially in the context of COVID-19, wearing a face covering would be viewed as a means of preventing the spread of COVID-19, not as expressing any message." (*Id.* at p. 237; see also *Jacobs v. Clark County School Dist.* (9th Cir. 2008) 526 F.3d 419, 437–438 [school uniform requirement did not constitute compelled speech].) The remote possibility that someone might view wearing a mask during the COVID-19 pandemic as a message is not enough to confer First Amendment protection. "It is possible to find some kernel of expression in almost every activity a person undertakes—for example, walking down the street or meeting one's friends at a shopping mall—but such a kernel is not sufficient to bring the activity within the protection of the First Amendment." (*Dallas v. Stanglin* (1989) 490 U.S. 19, 25.)

Nor did G.W. have a constitutional right to protest the mask mandate by violating it. As another court has explained in rejecting the same

argument: "[S]imply framing defiance of a law or regulation as a means of communicating disagreement with that law or regulation cannot alone trigger a First Amendment analysis. . . . [¶] . . . [¶] The same might be said of, say, refusing to wear a seatbelt or a motorcycle helmet, despite laws requiring such safety measures, in protest of being told to do so." (*Zinman v. Nova Southeastern University, Inc.* (S.D. Fla., Aug. 30, 2021, No. 21-CV-60723) 2021 WL 4025722, at *13, report and recommendation adopted in *Zinman v. Nova Southeastern University* (S.D. Fla., Sept. 15, 2021, No. 21-CIV-60723-RAR) 2021 WL 4226028, affd. *Zinman, supra*, 2023 WL 2669904.) As the trial court observed: "The fundamental flaw in plaintiffs' case is the assumption that a student can violate any school rule so long as it is done for protest reasons. This logic would allow a student to attend school totally nude so long as the student's nudity was to protest the sexually-repressive Puritan norms of our society being advanced by the school." G.W. has made no effort to refute this reasoning—and we agree with it.

Even if G.W.'s refusal to wear a mask were expressive conduct, however, we would still find no violation. Constitutional rights "may at times, under the pressure of great dangers" be restricted "as the safety of the general public may demand." (*Jacobson v. Massachusetts* (1905) 197 U.S. 11, 29 (*Jacobson*).) *Jacobson* established the longstanding precedent of an "extremely deferential standard of review applicable to emergency exercises of governmental authority during a public health emergency." (*County of Los Angeles, supra*, 61 Cal.App.5th at pp. 487–488.) And when reviewing the constitutionality of public health mandates, "courts should be extremely deferential to public health authorities, particularly during a pandemic, and particularly where . . . the public health authorities have demonstrated a rational basis for their actions. Wisdom and precedent dictate that elected

officials and their expert public health officers, rather than the judiciary, generally should decide how best to respond to health emergencies in cases not involving core constitutional freedoms." (*Id.* at p. 483.)

Furthermore, in the school context, the United States Supreme Court has explained that student-speech claims must be evaluated "in light of the special characteristics of the school environment." (*Tinker v. Des Moines Indep. Cmty. Sch. Dist.* (1969) 393 U.S. 503, 506 (*Tinker*).) Those characteristics include "the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." (*Id.* at p. 507.) Considering the need to set standards for student conduct, the Court held that restrictions on student speech are constitutionally justified if school officials can show that the speech in question "would materially and substantially disrupt the work and discipline of the school" or invade the rights of others. (*Id.* at p. 513.)

Few California state courts have addressed the constitutionality of COVID-19 health mandates outside of the Sixth Amendment context involving the rights to public trial, speedy trial, and confrontation. But we find one court's analysis of a health agency's temporary prohibition of outdoor dining helpful here. In *County of Los Angeles*, the Court of Appeal observed "it is undisputed that [COVID-19] spreads through airborne transmission from an infected person (who may be asymptomatic) to an uninfected member of the community, if the latter receives a sufficient dose to overcome his or her defenses. The risk of transmission thus increases when people from different households gather in close proximity for extended periods without masks or other face coverings." (*County of Los Angeles, supra*, 61 Cal.App.5th at p. 482.) In analyzing a restaurateur's constitutional challenge to the county's mandate, the court in *County of Los Angeles* concluded that

the order did not violate First Amendment freedom-of-assembly rights because it did "not regulate assembly based on the expressive content of the assembly," "limiting the spread of COVID-19 [was] a legitimate and substantial government interest," and the order left open "alternative channels for assembling, i.e., videoconference or in-person socially distant gatherings with face coverings." (*County of Los Angeles*, at p. 496.)

Similarly, the District's policy did not regulate G.W.'s anti-mask speech based on its content—the policy applied to all students with only limited exemptions. The policy also had the compelling aim of stemming the spread of COVID-19 in schools. (See *Roman Catholic Diocese v. Cuomo* (2020) 592 U.S. 14, 18 [stemming the spread of COVID-19 was "unquestionably a compelling interest"]; cf. *Love v. State Dept. of Education* (2018) 29 Cal.App.5th 980, 990 ["It is well established that laws mandating vaccination of school-aged children promote a compelling governmental interest of ensuring health and safety by preventing the spread of contagious diseases."].) It was narrowly tailored in that masks only had to be worn indoors where the risk of transmission is higher, and re-opening plans left room for policy adjustments as needed based on changing COVID-19 case rates. (See *Ward v. Rock Against Racism* (1989) 491 U.S. 781, 800 ["So long as the means chosen are not substantially broader than necessary to achieve the government's interest . . . the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative."].) There is no evidence G.W. lacked alternate ways to express her opposition to the mask policy without creating health risks, such as by voicing her disagreement while still wearing a mask, handing out leaflets to explain her protest (as the complaint alleges she did), or displaying anti-mask slogans. Therefore, even setting

aside that G.W.'s expressive speech occurred at school, the District's mask policy passes constitutional muster.

The fact that G.W.'s acts of "protest" occurred in a school setting reinforces this conclusion. The record shows that G.W.'s conduct "materially and substantially" disrupted the work and discipline of the school and invaded the rights of others under the student-speech standard in *Tinker*. (*Tinker, supra*, 393 U.S. at p. 513.) When G.W. repeatedly attempted to enter classrooms without a mask over the course of several weeks, teachers had to move their entire classrooms outdoors or to other indoor locations to comply with District safety policies. Teachers and administrators alike spent substantial time engaging plaintiffs in conversations about G.W.'s refusal to wear a mask, often in the presence of other students because G.W. refused to leave the classroom or campus. According to plaintiffs' own allegations, in some instances teachers expressed concern over their own safety and the safety of their family members. Unlike in *Tinker*, the extent of these disruptions exceeded "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint[,]" and reasonably "led school authorities to forecast substantial disruption of or material interference with school activities" on school premises. (*Id.* at p. 509.) Under these circumstances, the District's mask policy was also constitutionally justified under *Tinker*.

We therefore conclude—in light of the deference owed to exercises of government authority amidst a public health emergency under *Jacobson* and the special characteristics of student speech under *Tinker*—that the District's facially neutral mask policy did not unlawfully deprive G.W. of her free speech rights, and her constitutional claims lack even minimal merit. Cases in other state and federal jurisdictions further support our conclusion. (See,

e.g., *Calm Ventures LLC v. Newsom* (C.D. Cal. 2021) 548 F.Supp.3d 966, 976 [collecting cases concluding that orders aimed at preventing the spread of COVID-19 serve an important and legitimate state interest]; *Bentonville Sch. Dist. v. Sitton* (2022) 2022 Ark. 80, 11 [holding that school district's mask policy had a "real or substantial relation" to protecting student health during the COVID-19 pandemic]; *Stepien v. Murphy* (D.N.J. 2021) 574 F.Supp.3d 229, 234 [holding that "the government acted within broad constitutional bounds when it enacted the in-school mask requirement" plaintiffs sought to enjoin]; *Megeso-William-Alan v. Ige* (D. Haw. 2021) 538 F.Supp.3d 1063, 1078–1080 [finding that Hawaii's mask mandate violated neither right to free speech nor right to free assembly]; *Oberheim v. Bason* (M.D. Pa. 2021) 565 F.Supp.3d 607, 618 [holding that "children do not have a fundamental right to attend school without masks on"]; *Antietam Battlefield, supra*, 461 F.Supp.3d at pp. 236–237 [finding that mask requirement did not violate right to free speech].)

II

Lastly, we turn to plaintiffs' argument that Judge Pollack should be disqualified for demonstrating bias. We disagree.

First, plaintiffs did not properly preserve a claim of judicial bias because they did not file a disqualification motion in the trial court. (See § 170.3, subd. (c)(1) [a party who believes a judge is required to disqualify himself or herself must file a disqualification motion in the trial court "at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification"]; *Kern County Dept. of Child Support Services v. Camacho* (2012) 209 Cal.App.4th 1028, 1038 ["We conclude that appellant's disqualification arguments are forfeited by his failure to raise them below."].) Generally, a specific and timely objection to judicial misconduct is required to

preserve the claim for appellate review. (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1320 (*Seumanu*); see also *People v. Johnson* (2015) 60 Cal.4th 966, 978 (*Johnson*) [party must seek disqualification at " 'the earliest practicable opportunity' " to avoid forfeiture].) Plaintiffs rely on *Catchpole v. Brannon* (1995) 36 Cal.App.4th 237 (*Catchpole*) to argue that we should look past their failure to object. But since the Court of Appeal decided *Catchpole*, the Supreme Court has stated in clear terms that a party must object at trial to alleged judicial bias, or the claim is forfeited. (See, e.g., *Seumanu*, at p. 1320; *Johnson*, at p. 978.)

Furthermore, although plaintiffs argue they should be excused from forfeiture because an objection would have been futile, we are not persuaded. Aside from citing the possibility of "severely offend[ing]" an "already offended" court and defense counsel's "shock, or whatever reason" for failing to object, Plaintiffs point to no other grounds for why an objection would have been fruitless. Plaintiffs again rely on *Catchpole*, but the facts in that case are distinguishable because the Court of Appeal found ample evidence of judicial gender bias in the trial court. (*Catchpole, supra*, 36 Cal.App.4th at p. 249 [finding that comments made over the course of the eight-day trial "collectively create[d] the impression of judicial gender bias"].) The court's alleged "hostility" in this case did not rise to such a level that we can conclude plaintiffs would have objected in vain. Because "[t]he ritual incantation that an exception applies is not enough[,]" we conclude that plaintiffs forfeited their disqualification argument and that no futility exception applies. (*People v. Gamache* (2010) 48 Cal.4th 347, 371.)

Second, even if plaintiffs properly raised the issue of disqualification in the trial court, they forfeited it by failing to seek appellate review via a petition for writ of mandate, which is the exclusive appellate remedy. (See

§ 170.3, subd. (d) ["The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate . . . ."]; *Brown v. American Bicycle Group, LLC* (2014) 224 Cal.App.4th 665, 672 (*Brown*) ["Brown's claim is not cognizable on appeal because a petition for writ of mandate is the exclusive method by which a party may seek review of the question of the disqualification of a judge."]; *Roth v. Parker* (1997) 57 Cal.App.4th 542, 548–549 [appellant forfeited a non-statutory claim of judicial bias by "fail[ing] to seek writ review"].)

Third, even if we were to reach the disqualification claim despite its forfeiture, we would reject it. Neither Judge Pollack's disagreements with plaintiffs' approach to the case, nor the views he expressed on the merits while hearing arguments, demonstrated disqualifying bias. (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219–1220.) "When making a ruling, a judge interprets the evidence, weighs credibility, and makes findings. In doing so, the judge necessarily makes and expresses determinations in favor of and against parties." (*Id.* at p. 1219; see also *Brown, supra*, 224 Cal.App.4that p. 674 ["[t]he mere fact that the trial court issued rulings adverse to [plaintiff] on several matters in this case, even assuming one or more of those rulings were erroneous, does not indicate an appearance of bias, much less demonstrate actual bias"].) Although plaintiffs may take issue with Judge Pollack's "tone," his skepticism regarding their motives, and his view of the facts, plaintiffs have not shown how his views reflected a disqualifying bias. Indeed, his exchanges with plaintiffs' counsel were primarily regarding factual disputes that counsel herself asserted were "irrelevant" to their theory of the case. In that regard, unlike in *Catchpole*, there is no indication that Judge Pollack's comments prejudiced plaintiffs. (Cf. *Catchpole, supra*, 36 Cal.App.4th at p. 249 ["The judge's expressed

hostility to sexual harassment cases and the stereotypical attitudes and misconceptions he adopted provide a reasonable person ample basis upon which to doubt whether appellant received a fair trial."]; see *Seumanu, supra*, 61 Cal.4th at p. 1321 [considering lack of prejudice in rejecting judicial disqualification argument].) We therefore conclude reversal is not warranted on judicial disqualification grounds.

DISPOSITION

The order granting the anti-SLAPP motions is affirmed. Respondents are entitled to recover their costs on appeal.

BUCHANAN, J.

WE CONCUR:

DO, Acting P. J.

RUBIN, J.

BRANDON L. HENSON, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

09/19/2024

BRANDON L. HENSON, CLERK

By A. Galvez Deputy Clerk

Filed 9/29/25

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

G.W., a Minor, etc., et al., Plaintiffs and Appellants, v. CORONADO UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents.	D083991 (Super. Ct. No. 37-2022-00034756-CU-NP-CTL)

APPEAL from an order of the Superior Court of San Diego County, Gregory W. Pollack, Judge. Affirmed.

Law Offices of Tracy L. Henderson, Tracy L. Henderson; The Gavel Project, and Ryan Heath for Plaintiffs and Appellants.

Winet Patrick Gayer Creighton & Hanes, Randall L. Winet, and Erin N. Taylor for Defendants and Respondents.

G.W. and her mother Nicole W. (together, plaintiffs) appeal from a fees award against them under the anti-SLAPP statute (Code Civ. Proc.,[1]

1 Further undesignated statutory references are to the Code of Civil Procedure.

§ 425.16) after the dismissal of their complaint against the Coronado Unified School District (CUSD) and associated individuals challenging the adoption and enforcement of a masking policy at Coronado High School (CHS) during the COVID-19 pandemic. In a prior appeal, we affirmed the underlying order dismissing plaintiffs' complaint in its entirety under the anti-SLAPP statute. (*G.W. v. Coronado Unified School Dist.* (Sept. 19, 2024, D082619) [nonpub. opn.].) In this appeal from the subsequent fees order, plaintiffs make no genuine challenge to the fees order itself and instead seek to relitigate the validity of the underlying anti-SLAPP ruling and the merits of their prior appeal. We conclude that this appeal is frivolous. Accordingly, we affirm the fees order and impose sanctions against appellants' counsel Tracy L. Henderson for prosecuting a frivolous appeal.[2]

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Anti-SLAPP Ruling*

G.W. was a student at CHS. In early 2022, she refused to comply with CUSD's masking policy adopted during the COVID-19 pandemic. After she was suspended twice, she continued to refuse to wear a mask at school. In March 2022, she disenrolled from CHS.

G.W. and her mother sued CUSD and 20 individual defendants, including members of the CUSD's board of trustees, administrators for CUSD and CHS, and CHS teachers. Plaintiffs were represented in the trial court by

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2 On the court's own motion, we take judicial notice of the appellate record, briefs, opinion, petition for rehearing, and order denying rehearing in the prior appeal. (*G.W. v. Coronado Unified School Dist., supra*, D082619.) Plaintiffs' second motion to augment the record, filed February 19, 2025 is granted as to Exhibits A, B, and C. Having previously denied plaintiffs' first motion to augment the record, filed January 13, 2025, as to Exhibit C, we now deny it as moot as to Exhibits A and B because they are duplicative of Exhibits A and B to the second motion to augment.

attorney Tracy L. Henderson. Plaintiffs asserted a claim under title 42 United States Code section 1983 alleging violations of G.W.'s rights to freedom of speech and expression under the First and Fourteenth Amendments to the United States Constitution, article I, section 2(a) of the California Constitution, and Education Code section 48907, subdivision (a). Plaintiffs also alleged violations of the Bane Act (Civ. Code, § 52.1) and tort claims for negligence and intentional infliction of emotional distress.

Each of the four groups of defendants (CUSD, the administrators, the trustees, and the teachers) filed an anti-SLAPP motion, arguing that plaintiffs' complaint arose from protected activity under section 425.16, subdivisions (e)(1) through (e)(4). Defendants also argued that plaintiffs could not demonstrate a probability of prevailing because: (1) defendants were immune from liability under various state statutes, the Eleventh Amendment to the United States Constitution, and the qualified immunity doctrine; (2) requiring that students wear a mask consistent with public health orders does not violate G.W.'s constitutional rights; (3) there was no evidence any of defendants engaged in threats of violence, intimidation, or coercion; and (4) no evidence supported plaintiffs' claims for negligence or intentional infliction of emotional distress. Each of the four motions was supported by an identical set of 45 exhibits plus declarations of each of the 20 individual defendants.

Plaintiffs opposed the anti-SLAPP motions, contending that defendants' conduct in enforcing the mask policy did not constitute protected activity and was illegal as a matter of law. They further argued that defendants were not immunized from liability and there was sufficient evidence that, if credited, would demonstrate a probability of prevailing on the merits. In opposition to the anti-SLAPP motions, plaintiffs submitted an

11-page declaration of G.W. with three exhibits and a six-page declaration of her mother with seven exhibits.

In a 10-page written order after a hearing, the trial court granted each of defendants' anti-SLAPP motions. As to prong one (whether plaintiffs' claims arose from protected activity), the court ruled that the targeted comments and actions of the defendants constituted protected activity because they arose out of CUSD's position in formulating and enforcing a COVID-19 policy in compliance with government guidance to prevent transmission of the disease, which was undeniably an issue of public interest. The court also found that the promulgation and enforcement of masking policies for in-person learning was related to the promotion of a safe workplace, and it cited authority for the proposition that statements and conduct undertaken to promote the public interest in a safe workplace qualify for anti-SLAPP protection. (*Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1653.) The court further concluded that the actual casting of votes in favor of the masking policy and the surrounding discussion and statements were also protected activity under the anti-SLAPP statute. The court rejected plaintiffs' prong one argument that the defendants' enforcement of the masking policy was illegal as a matter of law. Accordingly, the court concluded that defendants had satisfied their prong one burden, shifting the burden to plaintiffs to establish a probability of prevailing.

As to prong two, the court found plaintiffs had failed to establish a probability of prevailing on any of their claims. The court ruled that several immunities barred plaintiffs' claims, specifically under Education Code section 44805, Government Code sections 818.2, 820.2, 820.4, and 855.4, Civil Code section 47, subdivision (a), and the Eleventh Amendment to the United

States Constitution. The court further concluded that CUSD's masking policy was lawful; that defendants were entitled to undertake all reasonable efforts to enforce the policy; that the measures undertaken by the defendants were reasonable and permissible; and that G.W. did not have a constitutional right to attend school unmasked.

B. *The Prior Appeal*

Plaintiffs appealed the anti-SLAPP ruling. Their trial counsel, attorney Henderson, was one of the attorneys who represented them in the prior appeal. Plaintiffs' opening brief contained no factual summary of the allegations of their own complaint and no mention of the evidence submitted by both sides in connection with the anti-SLAPP motions. The opening brief also did not identify the 20 individually named defendants or describe what role each played in the masking dispute or what the factual basis for liability was against each of them. Plaintiffs did not argue on appeal that the trial court exceeded its jurisdiction in granting the anti-SLAPP motions. Finally, the opening brief did not mention or discuss any of the immunities relied on by the trial court.

After full briefing and oral argument, we issued a 25-page opinion affirming the order. We concluded that plaintiffs had forfeited their claims of error by failing to include a factual summary of the significant facts in their opening brief and failing to address the multiple legal grounds for the trial court's ruling on the merits. We explained that we could not assess whether the claims against each of these defendants arose from protected activity without a proper factual summary of the allegations against them, including the statements each was alleged to have made regarding the mask mandate.

Despite the forfeiture, we went on to address plaintiffs' prong one and prong two arguments on the merits. As to prong one, we considered and

rejected the arguments plaintiffs made on appeal: (1) that the trial court had purportedly mischaracterized their claims by finding that they were challenging the lawfulness of CUSD's masking policy itself, rather than merely its "punitive" implementation or enforcement; and (2) that the masking policy was illegal as a matter of law for infringing on G.W.'s constitutional rights. In addressing prong two, we discussed at length G.W.'s claims that she had a constitutional right to attend school unmasked, that enforcement of the mask mandate constituted compelled speech, and that she had a First Amendment right to protest the mask mandate by violating it. We also cited cases from other jurisdictions rejecting similar constitutional challenges to mask mandates.

Plaintiffs filed a 37-page petition for rehearing (excluding tables) asserting that our finding of forfeiture and our analysis of both prongs were erroneous. As to prong one, the petition for rehearing asserted that: (1) we had erroneously placed the burden of proof on plaintiffs; (2) we had failed to address whether defendants met their prong one burden of showing the suit arose from protected activity; (3) we had wrongly concluded that plaintiffs misstated the allegations of their own complaint; and (4) we had conflated and confused different issues.

We denied the petition for rehearing. According to the respondents' brief in this appeal, plaintiffs attempted to file a petition for review in the California Supreme Court, but it was rejected as untimely.

C. *The Fees Motion and Award*

After the trial court granted the anti-SLAPP motions, defendants filed a motion to recover their fees and costs incurred in the trial court in the total amount of $68,238.62 under the fees provision of the anti-SLAPP statute. (§ 425.16, subd. (c)(1) [prevailing anti-SLAPP defendant entitled to fees and

costs].) The motion was supported by defense counsel's detailed billing records. Plaintiffs opposed the motion on the ground that the fees requested were excessive and unreasonable. They did not argue that the trial court's anti-SLAPP ruling was constitutionally void, in excess of its jurisdiction, or violated their due process rights. In February 2024, before we decided the prior appeal, the trial court granted the motion and awarded fees and costs to defendants in the amount requested, subject to either augmentation to include appellate fees and costs if the defendants prevailed in the pending appeal or a "clawback" if the plaintiffs prevailed. Still represented by attorney Henderson, plaintiffs filed another notice of appeal from the fees order.

D. *Issues Raised in this Appeal*

After we decided the prior appeal affirming the anti-SLAPP ruling, attorney Henderson filed the opening and reply briefs as sole counsel for plaintiffs in this appeal. Aside from a single conclusory sentence in the introduction of the opening brief asserting that the amount of the fees awarded was "punitive and unreasonable," plaintiffs' briefs are devoted entirely to relitigating the underlying anti-SLAPP ruling and our prior decision affirming that ruling. Plaintiffs assert that the order dismissing their action under the anti-SLAPP statute is "constitutionally void" because both the trial court and this court purportedly gave no explanation for how the defendants met their prong one burden of demonstrating that the lawsuit arose from protected activity. They claim that this deficiency constituted a due process violation and the resulting judgment of dismissal "was issued in excess of the court's jurisdiction—because the trial court had no authority to grant the Defendants' motions (and the Court of Appeal had no authority to affirm)." The plaintiffs' opening brief concludes: "For the foregoing reasons,

this Court should find that the judgment dismissing the Plaintiffs' complaint and the Opinion [in the prior appeal] are constitutionally void, and so is the subsequent order of the trial court granting Defendants' request for attorneys' fees."

After completion of briefing, we issued an order advising that we were considering imposing sanctions against attorney Henderson and appellant Nicole W. for prosecuting a frivolous appeal. (Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276.) Our order noted that "[t]he issues appellants raise in this fees appeal go to the merits of the underlying anti-SLAPP order and were already resolved against them in their prior appeal from that order." We gave them an opportunity to file a written opposition to sanctions.

In their opposition, appellants and their counsel insisted that their "jurisdictional" argument challenging the underlying anti-SLAPP ruling and this court's prior decision was not only meritorious, but correct. They argued that this court's order regarding possible sanctions demonstrated "a fundamental lack of fair, unbiased review" and that the "prior rulings in this case represents [*sic*] an egregious abuse of power by the judiciary (which is exactly why this Court's prior Opinion, overruling all existing precedent on the interpretation of California's anti-SLAPP statute and unilaterally expanding its own jurisdiction thereunder, is *unpublished*)." They asserted: "Appellants are not asking for much—simply a ruling that explains which, if any, of the Appellees' statements and actions constitute 'protected activity' as is required by California's anti-SLAPP statute."

Although the parties waived oral argument on the merits of the appeal, we set and heard oral argument on the sanctions issue. Before oral argument, we granted Arizona attorney Ryan Heath's application to appear

pro hac vice on behalf of appellants. With Henderson's consent, Heath represented both Nicole W. and Henderson at the oral argument.

DISCUSSION

Plaintiffs cannot dispute that this appeal is an undisguised effort to relitigate the merits of the trial court's anti-SLAPP ruling and our prior decision affirming that ruling. They insist that both the trial court and this court got it wrong and that the dismissal of their lawsuit under the anti-SLAPP statute is therefore "constitutionally void."

We have no difficulty concluding that this appeal is frivolous. We apply both an objective and subjective standard in determining whether an appeal is frivolous. Under the objective standard, an appeal is frivolous if any reasonable attorney would agree it is totally and completely without merit. Under the subjective standard, an appeal is subjectively frivolous if it is prosecuted for an improper motive. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 649–650 (*Flaherty*).) A finding of frivolousness may be based on either standard by itself, but the two are often used together, with one providing evidence of the other. (*Malek Media Group, LLC v. AXQG Corp.* (2020) 58 Cal.App.5th 817, 834.)

We have already rejected plaintiffs' arguments and affirmed the trial court's anti-SLAPP ruling in the prior appeal. Although we found forfeiture based on plaintiffs' deficient briefing, we nevertheless addressed plaintiffs' claims of error on their merits. Our affirmance of the anti-SLAPP ruling in the prior appeal is conclusive and binding on the parties. Under the law of the case doctrine, " ' "[t]he decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent . . . appeal in the same case." ' " (*Leider v. Lewis* (2017) 2 Cal.5th

1121, 1127.) "[T]he law-of-the-case doctrine 'prevents the parties from seeking appellate reconsideration of an already decided issue in the same case absent some significant change in circumstances.' " (*People v. Boyer* (2006) 38 Cal.4th 412, 441.) "Absent an applicable exception, the doctrine 'requir[es] both trial and appellate courts to follow the rules laid down upon a former appeal whether such rules are right or wrong.' " (*People v. Barragan* (2004) 32 Cal.4th 236, 246.) The law of the case doctrine extends to questions that were implicitly determined because they were essential to the prior decision. (*Estate of Horman* (1971) 5 Cal.3d 62, 73.)

Plaintiffs assert that the law of the case doctrine does not apply because we did not explicitly or implicitly decide "the jurisdictional issue that is now raised in this appeal." But the plaintiffs have merely repackaged their attack on the trial court's prong one analysis as a "jurisdictional" issue for this appeal. Their only argument is that the trial court lacked jurisdiction to grant the anti-SLAPP motion because it purportedly failed to identify which of the defendants' statements and actions constituted protected activity. We have already rejected this argument by addressing plaintiffs' prong one arguments and affirming the trial court's anti-SLAPP ruling in the prior appeal. Moreover, plaintiffs are also trying to relitigate our forfeiture finding based on their deficient briefing in the prior appeal, asserting that it improperly shifted the burden to them under prong one of the anti-SLAPP statute. The law of the case doctrine does not permit plaintiffs to relitigate these issues already decided against them in the prior appeal.

Even without relying on the law of the case doctrine, however, we would still conclude that plaintiffs' arguments are frivolous. Plaintiffs' assertion that neither the trial court nor this court provided any explanation for their prong one analysis is without merit. As we have summarized above,

the trial court did explain why it concluded that plaintiffs' claims arose from protected activity. Plaintiffs had every opportunity to contest this ruling in the prior appeal. They did so by expressly conceding that defendants' adoption of the masking policy was "undisputedly protected activity" but claiming that: (1) they were only challenging its enforcement, not its adoption; and (2) the masking policy was illegal as a matter of law because it violated G.W.'s constitutional rights. In our prior opinion, we disagreed with both of these prong one arguments and explained why we were rejecting them on the merits, notwithstanding plaintiffs' forfeiture of the issue. Plaintiffs' refusal to accept the result of the prior appeal is not a basis for attacking the same anti-SLAPP order again in this fees appeal.

Equally devoid of merit is plaintiffs' argument that the dismissal of their case under the anti-SLAPP statute is constitutionally void because the trial court and this court purportedly acted in excess of jurisdiction. This jurisdictional argument is based entirely on the false premise that the trial court and this court failed to explain the basis for the prong one rulings. A court acts in excess of jurisdiction where, though it has jurisdiction over the subject matter and the parties in a fundamental sense, it has no jurisdiction (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 624.) At most, plaintiffs' argument amounts to an assertion that the trial court was mistaken in its prong one analysis and we were mistaken in affirming its anti-SLAPP ruling. Even if we were to accept this premise, "ordinary mistakes of law or procedure do not constitute acts in excess of jurisdiction." (*LAOSD Asbestos Cases* (2018) 28 Cal.App.5th 862, 870–871.) The trial court had jurisdiction and power to grant the anti-SLAPP motions and we had jurisdiction and power to decide

the appeal from that ruling. If parties could relitigate final judicial decisions merely by claiming they were erroneous, litigation would be never-ending.

Plaintiffs' claim of a due process violation is also specious. Due process requires notice and an opportunity to be heard. (*City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 927.) Plaintiffs had ample notice and opportunity to be heard on the anti-SLAPP motions. They were afforded an opportunity to present evidence in opposition to the motions, and they did so. There was full briefing and oral argument on both the motion and the prior appeal. In a detailed written order, the trial court rendered its ruling based on its evaluation of the evidence presented, and we affirmed the ruling in a reasoned opinion after oral argument. Although plaintiffs may be dissatisfied with the outcome, there was no conceivable due process violation.

Finally, plaintiffs' argument that our forfeiture finding in the prior appeal improperly shifted the burden to them is meritless. On appeal, a judgment is presumed correct and the appellant bears the burden of affirmatively demonstrating error. (*Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2023) 94 Cal.App.5th 764, 776–777.) "The appellant bears this burden of rebutting the presumption of correctness accorded to the trial court's decision, regardless of the applicable standard of review." (*Id.* at p. 777.) To meet this burden, the appellant must comply with the applicable appellate rules, including the rule requiring a factual summary of the significant facts with citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C), (a)(2)(C).) As we explained in the prior appeal, plaintiffs failed to do so. In finding forfeiture, we merely held the plaintiffs to

their ordinary burden of affirmatively demonstrating error on appeal; we did not shift the burden of proof under the anti-SLAPP statute.[3]

For all these reasons, plaintiffs' attempt to relitigate the trial court's anti-SLAPP ruling and the prior appeal is frivolous. Any reasonable attorney would agree that this appeal is totally and completely without merit. (*Flaherty, supra*, 31 Cal.3d at p. 650; see also *Pollock v. University of Southern California* (2003)112 Cal.App.4th 1416, 1433–1444 (*Pollock*) [imposing sanctions for frivolous appeal where the same attorney represented appellant in two appeals; by the time of the second appeal she knew that many of her arguments were unmeritorious; and yet she "persist[ed] in pursuing the same arguments" in the second appeal]; *Beckstead v. International Industries, Inc.* (1982) 127 Cal.App.3d 927, 933–935 [imposing sanctions for frivolous appeal raising issue already decided in prior appeal].)

We further conclude that the appeal was brought for an improper purpose. (*Flaherty, supra*, 31 Cal.3d at p. 650.) "Appellant's brief is largely

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[3] Nor have plaintiffs asserted any proper challenge to the amount of the fees awarded by the trial court. As noted, their opening brief includes only a single sentence in the introduction asserting that the amount of the fees was "punitive and unreasonable." But they did not develop this argument under a proper argument heading with meaningful analysis, citation to the record, or citation to authority. Accordingly, this issue is forfeited. (Cal. Rules of Court, rules 8.204(a)(1); see *BBBB Bonding Corp. v. Caldwell* (2021) 73 Cal.App.5th 349, 375, fn. 8 [argument made in single sentence without reasoned analysis was forfeited]; *Hollingsworth v. Heavy Transport, Inc.* (2021) 66 Cal.App.5th 1157, 1172, fn. 3 [arguments mentioned in introduction of opening brief but not included in argument section under appropriate headings were forfeited]; *United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 146 [assertions of error made without cogent argument supported by legal analysis and citation to record were forfeited]; *City of Tracy v. Cohen* (2016) 3 Cal.App.5th 852, 857, fn. 6 [issue mentioned in passing but not developed in argument was forfeited].)

devoted to rehashing issues raised and decided in the prior appeal, a totally inappropriate exercise." (*Hummel v. First Nat'l Bank* (1987) 191 Cal.App.3d 489, 495.) "Repeated litigation of matters previously determined by final judgment constitutes harassment and should be penalized." (*Weber v. Willard* (1989) 207 Cal.App.3d 1006, 1010; see also *Personal Court Reporters, Inc. v. Rand* (2012) 205 Cal.App.4th 182, 193 ["Where, as here, a party appeals and merely repeats an argument that was soundly rejected by another appellate panel, we have little difficulty concluding that the party lacked good faith in pursuing the appeal"].)

"An appeal taken for an improper motive represents a time-consuming and disruptive use of the judicial process." (*Flaherty, supra*, 31 Cal.3d at p. 650.) "Similarly, an appeal taken despite the fact that no reasonable attorney could have thought it meritorious ties up judicial resources and diverts attention from the already burdensome volume of work at the appellate courts." (*Ibid.*)

We will therefore impose sanctions against appellants' counsel Tracy L. Henderson for prosecuting a frivolous appeal. (Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276.) After careful consideration, we elect not to impose sanctions against appellants G.W. and Nicole W. They already face substantial fees awards under the anti-SLAPP statute, which we believe are sufficient to deter them from similar frivolous filings in the future.[4] (See *Pollock, supra*, 112 Cal.App.4th at p. 1434 ["One goal of sanctions is to deter future frivolous litigation"].)

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4 Our award of sanctions against plaintiffs' appellate counsel does not preclude defendants from seeking to recover additional fees for this appeal under the anti-SLAPP statute by motion in the trial court after issuance of the remittitur. (Cal. Rules of Court, rule 3.1702(c).)

Defendants have not requested an award of sanctions payable to them, but we will impose sanctions payable to the clerk of this court to compensate the state for the cost to the taxpayers of processing a frivolous appeal. (*In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 520.) A cost analysis undertaken by the clerk's office for the Second District estimated that the cost of processing an appeal resulting in an opinion was approximately $8,500 in 2008, while another calculation made in 1992 gave a conservative estimate of $5,900 to $6,000. (*Ibid*.) According to the United States Bureau of Labor Statistics inflation calculator, these figures are equivalent to approximately $13,000 in today's dollars. (CPI Inflation Calculator, U.S. Bureau of Labor Statistics (2025) <https://www.bls.gov/data/inflation_calculator.htm> [as of September 18, 2025], archived at <https://perma.cc/PCB6-MQSZ>.) We will therefore impose sanctions against appellants' counsel Tracy L. Henderson in the amount of $13,000, payable to the clerk of this court. This opinion shall serve as a written statement of reasons for imposing the sanctions.

DISPOSITION

The fees order is affirmed. As sanctions for prosecuting this frivolous appeal, appellants' counsel Tracy L. Henderson is ordered to pay $13,000 in sanctions payable to the clerk of this court no later than 30 days after the remittitur issues. As required by Business and Professions Code section 6086.7, subdivision (a)(3), the clerk of this court is directed to forward a copy of this opinion to the State Bar of California upon issuance of the remittitur. This disposition serves as notice to counsel that the imposition of sanctions will be reported to the State Bar of California. (Bus. & Prof. Code, § 6086.7, subd. (b).) Attorney Tracy L. Henderson is also ordered to personally report

the sanctions to the State Bar of California. (Bus. & Prof. Code, § 6068, subd. (o)(3).) Respondents are entitled to recover their costs on appeal.

BUCHANAN, J.

WE CONCUR:

DO, Acting P. J.

RUBIN, J.

BRANDON L. HENSON, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

09/29/2025

BRANDON L. HENSON, CLERK

By /Deputy Clerk

Court of Appeal, Fourth Appellate District, Division One - No. D083991

S293866

IN THE SUPREME COURT OF CALIFORNIA

En Banc

G.W., a Minor, etc. et al., Plaintiffs and Appellants,

v.

CORONADO UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents.

The petition for review is denied.

Guerrero, C. J., was recused and did not participate.

EVANS
Acting Chief Justice

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

San Diego County Superior Court - Main
P.O. Box 120128
San Diego, CA 92112

RE: G. W., a Minor, etc. et al.,
Plaintiffs and Appellants,
v.
CORONADO UNIFIED SCHOOL DISTRICT,
Defendant and Respondent.
D083991
San Diego County Super. Ct. No. 37-2022-00034756-CU-NP-CTL

* * * REMITTITUR * * *

I, Brandon L. Henson, Clerk of the Court of Appeal of the State of California, for the Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above-entitled case on September 29, 2025, and that this opinion or decision has now become final.

_____ Appellant _____Respondent to recover costs.
_____ Each party to bear own costs.
__X__ Other (See Below)

Respondents are entitled to recover their costs on appeal.

Witness my hand and the seal of the Court affixed this January 6, 2026.

BRANDON L. HENSON, Clerk

By: Jonathan Newton, Deputy Clerk

cc: All Parties (Copy of remittitur only, Cal. Rules of Court, rule 8.272(d).)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 05/12/2023 TIME: 09:30:00 AM DEPT: C-71

JUDICIAL OFFICER PRESIDING: Gregory W Pollack
CLERK: Terry Abas
REPORTER/ERM: Teri L. Smith CSR# 7949
BAILIFF/COURT ATTENDANT: Deputy Paul Tomcavage

CASE NO: **37-2022-00034756-CU-NP-CTL** CASE INIT.DATE: 08/25/2022
CASE TITLE: **G W vs Coronado Unified School District [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Non-PI/PD/WD tort - Other

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EVENT TYPE: SLAPP / SLAPPback Motion Hearing

EVENT TYPE: SLAPP / SLAPPback Motion Hearing

EVENT TYPE: SLAPP / SLAPPback Motion Hearing

Additional events listed on last page.

APPEARANCES
Tracy L Henderson, counsel, present for Plaintiff(s).
Randall L. Winet, counsel, present for Defendant(s).

The Court orally advises the parties of its tentative ruling, after which oral argument is conducted. Upon completion of oral argument, the Court (1) makes the following Order, (2) enters the date of this hearing for the following Order, and (3) gives Notice of Entry of the following Order:

I.

INTRODUCTION

This is an action brought by a high school student, plaintiff G.W., and her mother, plaintiff Nicole Ward, arising out of Coronado High School's former COVID policy making indoor mask-wearing mandatory.

Four anti-SLAPP motions have been brought by defendants Coronado Unified School District, as well as members of its Board of Trustees, Administrators, and certain Teachers, as listed below:

1. **Coronado Unified School District**, a school district;

2. **Esther Valdes-Clayton**, as an individual and in her official capacity as a Board of Trustees member of Coronado Unified School District;

3. **Helen Anderson-Cruz**, as an individual and in her official capacity as a Board of Trustees member of Coronado Unified School District;

4. **Witney Antrim**, as an individual and in her official capacity as a Board of Trustees member of Coronado Unified School District;

5. **Lee Pontes** as an individual and in her official capacity as a Board of Trustees member of Coronado Unified School District;

6. **Bruce Sheperd**, as an individual and in his official capacity as a Board of Trustees member of Coronado Unified School District;

7. **Karl Meuller**, in his official capacity as Superintendent of Coronado Unified School District;

8. **Donnie Salamanca**, in his official capacity as Assistant Superintendent of Coronado Unified School District;

9. **Niamh Foley**, in her capacity of Director of Student Services at Coronado Unified School District;

10. **Karen Mellina**, in her official capacity of Principal of Coronado High School;

11. **Shane Bavis**, in his official capacity as Teacher at Coronado High School;

12. **Joshua Dean**, in his official capacity as Teacher at Coronado High School;

13. **Michelle Walker**, in her official capacity as Teacher at Coronado High School;

14. **William Lemei**, in his official capacity as Teacher at Coronado High School;

15. **Shane Schneichel**, in his official capacity as Teacher at Coronado High School;

16. **Barbara Wolf**, in her official capacity as Teacher at Coronado High School;

17. **Kimberly Strassburger**, in her official capacity as Teacher at Coronado High School;

18. **David McBean**, in his official capacity as Teacher at Coronado High School;

19. **Katie Sapper,** in her official capacity as Teacher at Coronado High School;

20. **Donny Gersonde**, in his official capacity as Teacher at Coronado High School; and

21. **Chelsea Zeffiro**, in her official capacity as Teacher at Coronado High School.

II.

APPLICABLE LAW

Code of Civil Procedure §425.16(b)(1), the anti-SLAPP statute, provides that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. Pursuant to CCP §425.16(e), an "act in furtherance of a person's right of petition or free speech" includes:

1. Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;

2. Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;

3. Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest;

4. Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

As a first step [Prong 1], defendants carry the burden of showing that the challenged claim arises from their exercise of protected activity, which, *if* established, shifts the second step burden [Prong 2] to plaintiffs to prove a probability of success notwithstanding the fact that the claim arises from protected activity. CCP §425.16(b); Weil & Brown, Jr., RUTTER: Cal. Prac. Guide – Civil Procedure Before Trial, ¶¶7:990, 7:1005, pp. 7(II)-66, 68 (2022). "[Courts] have described this second step as a 'summary-judgment-like procedure.' ... The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. ... Claims with the requisite minimal merit may proceed." *Baral v. Schnitt* (2016) 1 Cal.5th 376, 384-385.

III.

ANALYSIS

This cases arises out of student G.W.'s refusal to comply with Coronado Unified School District's 2021-2022 COVID mask policy from January 31, 2022 through March 11, 2022 (Spring term), while a student at Coronado High School. The policy mirrored the state and California Department of Public Health's ("CDPH") public health policies and directives during that time that required universal masking indoors at all K-12 schools in response to the COVID crisis. Defendants' Exhibit M, a 5-page letter to "school leaders" by Tomas J. Aragon, M.D., Dr. P.H., Director & State Public Health Officer for

the CDPH, dated August 23, 2021, a date approximately five months prior to G.W.'s commencement of refusing to comply with Coronado High School's masking policy, explains to school leaders the bases for requiring schools to implement a universal masking policy. Among the numerous points raised in the letter, the following are particularly noteworthy:

1. "Schools throughout the state have implemented the requirement, which was subsequently adopted and endorsed by leading health authorities, including the Centers for Disease Control and Prevention (CDC) and the American Academy of Pediatrics (AAP). The scientific consensus is unequivocal. Unfortunately, some elected officials and school leaders have expressed their intent to violate the law – and risk their students' safety – by failing to enforce the universal mask requirement for indoor school settings. [¶] To be clear: failure to enforce the mask requirement breaches not only a legal duty, but also the first and foremost duty of every school leader – to protect students."

2. "Violation of mandatory public health guidance puts the health and safety of students, staff, and their families needlessly at risk, and also carries significant legal, financial, and other risks."

3. " CDPH Guidance for K-12 Schools (Guidance) requires mandatory universal masking indoors in K-12 settings – both public schools and private schools – with limited exemptions as specified in the general Guidance for the Use of Face Coverings."

4. "There is a strong consensus among public health and medical experts that universal masking in K-12 schools is an important and scientifically based strategy to protect the health and safety of students, staff, and their families. Both the federal CDC and the AAP have issued guidance that recommends precisely the approach that California has taken."

5. "Implementation of universal masking is also a strategy for maximizing in-person instructional days. Universal masking reduces the risk of outbreaks, thereby avoiding disruptions to school operations, including closure. Furthermore, masks empower schools to implement more targeted quarantine procedures, often eliminating the need for students to miss any instructional time."

6. "The risks to students and staff of not implementing universal masking is not hypothetical: there are well-documented instances where unmasked students spread COVID-19 within classrooms, resulting in outbreaks and high case rates on staff."

7. "Masks are one of the most effective and simplest safety mitigation layers to prevent in-school transmission of COVID-19. SARS-CoV-2, the virus that causes COVID-19, is primarily transmitted via airborne particles."

8. "COVID-19, particularly the Delta variant, poses significant health risks to students, and adults responsible for their safety should do everything possible to minimize those risks. There is a clear public health justification for requiring universal masking in K-12 schools to minimize those risks and avoid the needless tragedy of a student dying from COVID-19 due to exposure that could have been prevented through universal masking."

9. "In addition to the moral imperative to take this common-sense step to protect the California's students, school leaders have legal duties to protect the health and safety of students attending school. (See Cal. Const. art. I, §28 [public school students and staff "have the inalienable right to attend campuses which are safe, secure and peaceful"].) Failure to follow the mandatory public health directive will expose schools and school leaders personally to substantial legal and financial risks ..."

10. "In light of the overwhelming evidence detailed above about the risks to students of not implementing the universal masking requirement, schools and school leaders involved in that decision could face significant financial liability if a student or staff member contracts COVID-19 in the absence of universal masking being enforced. Similar liability would exist if the refusal to implement the mask requirement causes a staff member to contract COVID-19. The financial exposure would be substantial if a student or staff member were to die from COVID-19."

11. "[S]chools and school officials involved in the decision not to follow the mandatory public health guidance may face civil lawsuits by concerned families and staff compelling them to comply with the guidance. As noted, the public health directive has the force of law, and a mandatory duty therefore exists for schools to implement the guidance."

12. "[C]ertificated individuals – including school administrators – may be subject to referral to the Commission on Teacher Credentialing for disciplinary action for violating a mandatory legal duty to implement the masking requirement and knowingly exposing students to preventable harm. (See Educ. Code §44421 [authorizing discipline for "refusal to obey ... laws regulating the duties of persons serving in the public school system"].)"

13. "[S]chools and school officials may be subject to fines or civil enforcement actions by local health officers for refusal to adhere to the mandatory masking directive, pursuant to Health and Safety Code section 120175. In fact, Education Code section 49403 states clearly: "the governing board of a school district shall cooperate with the local health officer in measures necessary for the prevention and control of communicable diseases in school age children."

14. "[M]asking does not pose health risks for children."

15. "[T]here is no scientific evidence that masks have an adverse mental health impact, in contrast to the ample evidence that masks prevent illness, school absences, and even death.

16. "Overwhelming scientific evidence and empirical experience in California and elsewhere underscore how universal masking safeguards the health and safety of students, school staff, and their families. Indeed, it would [be] irresponsible and unreasonable to allow personal preference against a common-sense public health measure to put at risk the health, and potentially cause the death, of a child or school employee."

17. "The universal mask requirement is a public health directive that all schools are required to follow, similar to other public health orders, including orders that have been implemented both before and throughout this pandemic."

18. "If you are considering an approach that does not adhere to the universal mask requirement, we encourage you to consult with those experts to help assess and verify the risks identified above. If, like the vast majority of school leaders across California, you are implementing the universal mask requirement, we are grateful to you for taking the necessary measures to protect the children in your care."

The complaint challenges not only the legality of the mask policy, but also various measures taken in response to G.W.'s steadfast refusal to comply with the policy.

Plaintiffs G.W. and Nicole Ward seek compensatory damages, punitive damages, statutory

damages, attorney's fees, penalties and declaratory relief, alleging the following four causes of action within their complaint:

- Violation of Civil Rights: 42 USC §1983, U.S. Const., amends I, XIV; Cal.Const., art. I, §2(a); Educ. Code §48907(a);
- Violation of Civil Rights: Civil Code §52;
- Negligence;
- Intentional Infliction of Emotional Distress;

Following a period of COVID shutdown of its physical facilities with consequent reliance upon remote instruction, Coronado High School started with a phased reopening plan to return to full in-person learning for the 2021-2022 school year. Coronado High School policies in reopening were developed in accordance with the state and CDPH guidance directives, which included the wearing of face masks indoors while at school. For the 2021-2022 school year, students were provided with two non-masking options, *i.e.,* (1) attending 100% virtually via Zoom (BRIDGE) or (2) enrolling in an independent study program remotely through iAcademy. However, they were required to comply with the school's universal masking policy if they instead chose to attend classes in-person. For the Fall term of 2021, the masked G.W. actually attended classes in-person in compliance with the school's mask policy. However, commencing in January of 2022, the Spring term of the 2021-2022 school year, G.W. began coming to school unmasked, in clear violation of the school's policy, refusing to comply with repeated requests to honor the mask policy. G.W. and her mother insisted that G.W. had a right to attend classes in-person maskless.

Plaintiffs' contend that G.W.'s conduct in repeatedly coming to school maskless constituted protected political protest and that the school's refusal to permit G.W. to attend class unmasked, which ultimately led to G.W.'s suspension and voluntary decision to disenroll in March of 2022, was wrongful. Ironically, the policy of mandatory masking was replaced with optional masking at about the same time.

Although plaintiffs claim that the school's mask policy is unlawful, plaintiffs fail to cite a single legal authority that has found such a mask policy unlawful. In contrast, cases throughout the country have uniformly upheld a school's mandatory mask policy. *See* cases cited in footnote 1 at p. 2 of defendants' memoranda of points & authorities.

Plaintiffs contend that the anti-SLAPP statute does not apply because enforcement of the mask policy was illegal. It should be noted that the exception to the anti-SLAPP statute for illegal activity is very narrow and applies only in undisputed cases of illegality or where the illegality is conclusively shown by the evidence. *Finton Construction, Inc. v. Bidna & Keys, APLC* (2015) 238 Cal.App.4th 200, 210. Moreover, the conduct must be criminal; conduct is not considered illegal simply because it violates a statute or common law. CJER, California Judges Benchbook – Civil Proceedings Before Trial, §12.131, pp. 1400-1401 (2022).

Whether the state and CDHP directives constituted (1) legal mandates (they clearly did) or (2) merely strong and forceful recommendation is actually of little concern to this court in deciding these anti-SLAPP motions. Even if the universal mask policy was only strongly recommended by the state and CDHP, it cannot be said that the Coronado School District, in following such strong recommendation, created an unlawful policy as argued by plaintiffs. This court finds as a matter of law that the subject masking policy of Coronado High School was legal and, as such, the school and its agents were entitled to undertake all reasonable efforts to enforce such policy. Education Code §48907, which recognizes that students have certain rights to exercise freedom of speech and the press, is of no assistance to

plaintiffs as it prohibits activities that violate lawful school regulations, or create substantial disruption of the orderly operation of the school. As noted above, the school's universal masking policy was lawful. Moreover, G.W.'s conduct was clearly disruptive of the orderly operation of the school, *e.g.,* it lead to moving 50 students to a different classroom or outside, "which really upset kids and parents." *See* Declaration of G.W., ¶12. Educ. Code §48900(k)(1) provides for suspension or expulsion of a student who has "[d]isrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties."

The evidence points to a number of measures that the school district undertook before suspending G.W. to enforce the policy (and accommodate G.W.), including moving the other students to different classrooms, moving classes outside, providing a special place for G.W. to go to in the event of a lockdown (bathroom), offering G.W. a mask, making space available for G.W. to attend classes seated in a remote location within an unused administrative office, offering G.W. to request an exemption from the masking policy, *etc.* Frankly, none of these reasonable measures can give rise to any tort liability. The measures undertaken by the teachers were not beyond a school's customary supervisory disciplinary duties. This is not a case where, *e.g.,* G.W. was paddled for her disobedience. Coronado High School would have been justified in simply prohibiting her from coming into the school unmasked in light of the unambiguous policy. That Coronado High School undertook multiple measures to accommodate G.W.'s willful disobedience of its legal mask policy, for which Coronado is now being sued, underscores the saying, "No good deed goes unpunished." Furthermore, that G.W. chose to remain outside the school in cold weather rather than simply wear the required mask, as she had during Fall semester, and thereafter enter the warm confines of the classroom was a choice made by G.W. Coronado High School had the right to enforce its rules and, quite frankly, would have been subject to battery liability had it physically moved G.W. into the school. Defendants are no more liable to plaintiffs for any harms occasioned by G.W.'s voluntary decision to remain outside in the cold than would defendants be for any harms occasioned by G.W.'s voluntary decision to go on a hunger strike.

While G.W. characterizes her behavior as a legally permissible political protest, this is not a case where a student stands outside of campus with a protest sign regarding the mask policy. This is a case where a student purports to protest by violating a safety measure placing other students, teachers, and their families at risk. While a student can protest restrictions on Second Amendment rights, that does not mean that the student can come to school with a gun as a protest measure. This case is unlike *Tinker v. Des Moines School District* (1969) 393 U.S. 503 (students right to attend class wearing a black armbands in protest of the Viet Nam War) because here G.W.'s purported protest of the mask policy did not simply create a risk of arousing the ire of pro-mask students or divert attention from regular activities, it placed teachers, at least one of whom was older with an immunocompromised family member, and other students at an increased risk of disability and death. G.W.'s protest did not consist of wearing a shirt that said, "Down with masks" or some other anti-masking slogan; G.W.'s purported "protest" activities, themselves, created health risks to teachers and other students whom the Coronado School District had a duty to protect.

The fundamental flaw in plaintiffs' case is the assumption that a student can violate any school rule so long as it is done for protest reasons. This logic would allow a student to attend school totally nude so long as the student's nudity was to protest the sexually-repressive Puritan norms of our society being advanced by the school.

Plaintiffs' argument that G.W. was "healthy" and, therefore, should not have been sent home is naïve and ignores the obvious, scientifically-established fact that potentially deadly COVID can be

transmitted from a healthy-appearing, asymptomatic individual, a fact of which this court takes judicial notice under Evid. Code §§451(f) and 452(g), (h). Thus, to assume one can safely dispense with mask-wearing so long as that person appears healthy employs faulty logic. Mask-wearing not only provides some protection to the mask-wearer from others who may have transmissible COVID, but also protects others from the mask-wearer who may have transmissible COVID.

How best to return to in-person learning, as well as the promulgation and enforcement of mask policies were clearly public issues of great public interest, garnering significant national and local attention. Part of the discourse in returning to in-person learning related to promoting a safe workplace for teachers and other school employees, as well as other students. *See, e.g., Mendoza v. ADP Screening & Selective Services, Inc.,* (2010) 182 Cal.App.4th 1644, 1653 (statements made and conduct undertaken which promotes the public interest in safe workplaces qualifies for anti-SLAPP protection).

The comments and actions of the Coronado School District, as well as its Board members, Administrators, and Teachers, clearly come within CCP §425.16(b). They directly arise out of the District's position in formulating and thereafter enforcing a COVID policy in compliance with state and CDPH guidance regarding the use of masks and the prevention of COVID transmission. Undeniably, this is an issue of public interest.

Moreover, the actual casting of votes in favor of the mask policy and the surrounding discussion and statements regarding are clearly protected under CCP §425.16(e)(2). *See City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 422-423. ("Here, the councilmembers' votes, as well as statements made in the course of their deliberations at the city council meeting where the votes were taken, qualify as 'any written or oral statement or writing made before a legislative ... proceeding.' §425.16, subd. (e)(1).) Anything they or City Administrator Torres said or wrote in negotiating the contract qualifies as 'any written or oral statement or writing made in connection with an issue under consideration or review by a legislative ... body ...'" (§425.16, subd. (e)(2).)"

As noted above, this court finds that the Coronado High School mask policy was lawful and that the measures undertaken to enforce the policy were reasonable. The court further finds that defendants have satisfied their Prong 1 burden, thereby shifting the burden to plaintiff to establish their burden of probability of prevailing, which plaintiffs have failed to carry.

Education Code §44805 ("Every teacher in the public schools shall enforce the course of study, the use of legally authorized textbooks, *and the rules and regulations prescribed for schools."* [Italics added.]) requires school authorities to enforce school District rules and regulations of pupils on school grounds. *Brown v. City of Oakland* (1942) 51 Cal.App.2d 150, 152. Furthermore, the allegations against these public employees fall squarely with the immunity of Gov. Code §820.4 ("A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.").

Moreover, it should be noted that teachers and other persons hired by the District do not relinquish their free speech rights on issues of public importance guaranteed by the First Amendment simply by virtue of their employment within the school district. *Pickering v. Board of Ed. of Tp High School Dist. 205* (1968) 391 U.S. 563, 574.

Decisions by the school district's governing board qualify as discretionary acts within the meaning of Government Code §820.2. They also are protected as a publication made "[i]n the proper discharge of an official duty" under Civil Code §47(a). *Morrow v. Los Angeles Unified School District*

(2007) 149 Cal.App. 4th 1424, 1440 (anti-SLAPP motion by defendants school district and school superintendents to defamation action granted under Civil Code §47(a)). Moreover, to the extent plaintiffs seek to hold defendants liable for enacting and enforcing the universal masking policy, such is barred by Gov. Code §818.2 ("A public entity is not liable for any injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.").

Plaintiffs' action is also barred by the discretionary immunity under Gov. Code §820.2. *Nicole M. v. Martinez Unified School District* (ND Cal. 1997) 964 F.Supp. 1369, 1389 (decisions by school district, school principal, and superintendent to discipline students and investigate complaints necessarily require the exercise of judgment of choice and are thus discretionary rather than ministerial); *Caldwell v. Montoya* (1985) 10 Cal.4th 972 (Gov. Code §820.2 discretionary immunity applies to school board members).

Defendants are further immunized by operation of Gov. Code §855.4:

(*a) Neither a public entity nor a public employee is liable for an injury resulting from the decision to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community if the decision whether the act was or was not to be performed was the result of the exercise of discretion vested in the public entity or the public employee, whether or not such discretion be abused.*
(b) Neither a public entity nor a public employee is liable for an injury caused by an act or omission in carrying out with due care a decision described in subdivision (a).

Moreover, a cause of action under 42 USC §1983 may not be asserted against a California public school district because it is an "arm of the state" pursuant to the Eleventh Amendment and not subject to liability under federal civil rights statutes in any forum. *Kirchmann v. Lake Elsinore Unified School District* (2000) 83 Cal.App.4th 1098.

With regard to the claim for intentional infliction of emotional distress, it cannot be said that the conduct of defendants was "so extreme as to exceed all bounds of that usually tolerated in a civilized community," sufficient to prevail on any claim for intentional infliction of emotional distress. *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001. Frankly, defendants' conduct was quite appropriate as a matter of law. "[M]ere insults, indignities, threats, annoyances, petty oppressions, or other trivialities" do not constitute extreme and outrageous conduct. *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 496.

Plaintiffs' alleged Bane Act (Civil Code §52.1) claim also fails. G.W. did not have a constitutional right to enter a school unmasked in clear violation of that school's safety policy, a policy based upon adherence to state and CDPH guidance to protect students and teachers. The measures undertaken by the school district, as a matter of law, were reasonable and permissible to enforce such law, even if G.W. and her mother may have been offended by those measures. *You can't blame the messenger for the message.* While there is a fundamental right or interest to an education, courts routinely have permitted exclusion of students who refuse to comply with public health and safety measures designed to prevent the spread of communicable diseases by measures more invasive than a mask mandate. *See, e.g., Love v. State Department of Education* (2018) 29 Cal.App.5th 980, 990 ("It is well established that laws mandating vaccination of school-aged children promote a compelling governmental interest of ensuring health and safety by preventing the spread of contagious diseases."); Health & Safety Code §120335 (mandatory school vaccines include coverage for Poliomyelitis, Diphtheria, Tetanus, Pertussis, Hepatitis B, Haemophilus influenzae type B, Measles, Mumps, Rubella, and Varicella).

IV.

CONCLUSION

Defendants' anti-SLAPP motions are granted as to all defendants.
The court finds that defendants have successfully satisfied their Prong I burden, *i.e.,* the acts for which liability is sought against them arise out of or were in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest under CCP §425.16(b), and (e) (1), (2), (3), and/or (4). The court further finds that plaintiffs have failed to satisfy their Prong II burden of establishing a probability of prevailing.

Plaintiffs' request for an award of costs and reasonable attorneys' fees is denied. However, by virtue of this court's granting defendants' anti-SLAPP motions, defendants are entitled to an award of prevailing attorneys' fees and costs pursuant to CCP §425.16(c)(1) if the appropriate motion timely requesting same is filed.

Judge Gregory W Pollack

II. STATEMENT OF THE CASE

G.W. sued the Coronado Unified School District ("CUSD") and its agents on numerous bases. First, G.W. challenged whether the implementation of CUSD's masking policy, under which G.W. was required to wear a face mask as a precondition of attending school (the "Policy"), violated her right, as a student, to peacefully express her dissenting viewpoint by refusing to wear a mask in protest—free from harassment and discrimination. Consistent with the requirements set forth by *Tinker v. Des Moines Independent School District* (1968) 393 U.S. 503, in her Complaint, G.W. alleged (which both the trial court and the Court of Appeal were required to accept as true, but did not) that her protest neither disrupted the learning environment (AOB p. 22) nor violated the rights of others because, at all relevant times, G.W. was perfectly healthy and did not have COVID-19. (AOB p. 30). Second, G.W. challenged whether the actions taken by school officials to coerce her into compliance with the Policy violated the Bane Act (Civ. Code. § 52.1) and whether these actions constituted negligence and intentional infliction of emotional distress (IIED).

In 2022, G.W. was a sixteen-year-old who attended a special school for singing, dance, and acting, only a few of which existed in her county. 3CT 0727. The classes were of the type that required in-person participation based on the subject matter. 1 CT 0059 (Appx C, Part 1). On January 31, 2022, she decided that she was done wearing the suffocating masks because she believed they were ineffective and pointless, and she decided to protest wearing them in school. 1 CT 0060. In response, the educators at Coronado High School ("CHS"), pursuant to the directives of CUSD's administrators and

board of trustees, forced G.W. to sit outside in the bitter cold and sweltering heat. 1 CT 0054. Occasionally, G.W. was permitted to sit outside the doorway of her classrooms, where she could neither see nor hear. 1 CT 0033. She was treated like a "leper" by her physics teacher, Defendant Lemei. 1 CT 0031. Defendant Salamanca attempted to force her into independent study in violation of Cal. Ed. Code § 51747(g)(8), called the police on her claiming that she was "trespassing" (despite her having every right to be on campus) and threatened to pull G.W.'s interdistrict transfer. 1 CT 0032; Compl. ¶¶ 57, 210, 276. The Defendants repeatedly marked her as "unexcused," threatening truancy charges against her mother. 1 CT 0032. When there was an emergency lock-down drill, G.W. was sent to a room without a lock, which made her feel like a fish in a barrel, waiting to be shot. 1 CT 0033. In classes such as acting and singing, which required in-person learning, G.W. was forced to "direct" herself and do a duet without a partner. 1 CT 0035.

G.W. was made to feel anxious, humiliated, alienated, and harassed by the Defendants' collective actions. 1 CT 0035. Meanwhile, her classmates were allowed to play their wind-instruments **without masks**. 1 CT 0035 (bolding added). She lost sleep, and her grades suffered. 1 CT 0038. Instead of letting this healthy child simply learn like children across the United States (outside of California) did on a daily basis (without masks), she was issued an in-school suspension for no valid reason. 1 CT 0040. She was threatened with police for trying to go to class and reported for "trespassing"—when she had every right to be on campus (given that she was issued an "in-school" suspension). 1 CT 0045. In all, she missed nearly one-third of her academic year and was forced to make it up. Her parents finally just disenrolled her from school, even though, at the time, the rest

118. Instead of learning with her classmates, G. W. was again forced to sit outside all day in the cold.

119. Again, G. W. was marked with an unexcused absence for periods two, three, and four.

120. On **February 15, 2022**, G. W. was again "excluded" by Defendants Dean, Walker, Lemei, Wolf and Gersonde from accessing an in-person education despite being on campus all day.

121. She was marked as unexcused absences for periods one, two, three, four, five, and D.

122. On **February 16, 2022**, G. W. attempted to acquire her in-person education, as she was entitled by law.

123. Feeling determined, G. W. went to her first-period class taught by Defendant Dean in contravention of CUSD's mask mandate.

124. This day, G. W. respectfully protested CUSD's mask requirement by declining to mask inside of her first-period class, taught by Defendant Dean.

125. Defendant Dean ordered G. W. to leave the room, and she politely declined. Accordingly, Defendant Dean sought the assistance of Defendant Bavis.

126. Inside and maskless, G. W. was confronted by Defendant Bavis, who asked G. W. to put on a mask.

127. G. W. responded: "No thank you."

128. When asked by Defendant Bavis to leave, G. W. politely declined.

129. At that time, Defendant Bavis ordered the class to move to another room.

130. By moving the class, Defendant Bavis disrupted G. W.'s learning and that of her classmates by choosing to punish G. W. for her lawful protest.

131. G. W. followed her classmates into the other room, determined to attain an in-person education.

144. Irrespective of the "suspension," G. W. politely refused to leave campus.

145. To avoid further harassment and bullying at the hands of CHS employees, however, G. W. did not enter her third period class with Mr. Lemei and instead sat outside to attend online (via Zoom).

146. Around 11:30 a.m., G. W.'s capacity to access her class via Zoom was terminated by Defendant Lemei.

147. Defendant Bavis later prevented G.W. from accessing her CoSA classes with Defendants McBean, Wolf, and Zeffiro. Outside, Defendant Bavis cornered G. W. and told her about the availability of school counselors with whom she could discuss her issues with masking.

148. G.W. politely declined the services, as she believed the offer was a guise to further harass her into compliance.

149. Around 3:30 p.m., G. W.'s Parents, Mr. R. W. and Mrs. NICOLE WARD, visited Coronado High School to ascertain the details of G. W.'s purported suspension.

150. The parents were informed that the alleged suspension was scheduled for the following day.

151. Prior to their arrival at 3:30 p.m., neither G. W. nor her Parents were provided written notice explaining the terms of the suspension.

152. A copy of the suspension documentation was provided to the parents only upon demand.

153. Despite being on campus all day, G. W. was marked as an unexcused absence from periods two and four.

154. G. W. left campus in tears.

155. On **February 17, 2022**, upon arriving at CHS, G. W. and Mrs. NICOLE WARD were greeted by Defendants Mellina and Foley.

156. Defendants Mellina and Foley explained that G. W. was not permitted to enter any classrooms as she was "excluded" pursuant to CUSD policy.

253. This day, G. W. was, again, "excluded" and forced by Defendants Dean, Walker, Lemei, Wolf, Strassburger, and Sapper to sit outside and attend Zoom classes.

254. Despite her presence on campus and her attendance via Zoom, G. W. was marked with unexcused absences for periods one, two, three and five.

255. On **March 11, 2022**, despite her presence on campus and her attendance via Zoom, G. W. was "excluded" by Defendants Dean, Walker, Lemei, Sapper, Gersonde, and McBean and marked with unexcused absences for periods one, two, three, four, five and D.

256. At the end of the day on **March 11, 2022**, Mr. R. W. and Mrs. NICOLE WARD begrudgingly disenrolled G. W. from CHS.

257. **On all dates and at all times listed above**, G. W. was lawfully on campus and entitled, by law, to access an in-person education free of harassment and discrimination. G.W. was not ill at any time.

258. As of March 11, 2022, G. W. was effectively forced to miss nearly six weeks (a total of twenty–seven days) of in-person instruction because of Defendants' joint unlawful actions.

259. As a result of being forced to sit outside and in order to keep warm, G. W. wore a battery-operated-heated jacket to school on all but a few days during the period of her protest.

260. As a result of forced exposure to cold temperatures, G. W. repeatedly experienced red, irritated and chapped skin on her hands and face.

261. On multiple occasions during the protest period, G. W. was sun-burnt as a result of forced exposure to the elements.

262. G. W. did not learn anything from any of her classes during the subject period—as she was not allowed to effectively participate in the learning experience.

community. Defendants, each of them, who were in positions of power as school authorities put G.W. outside in the fridged cold, in the scorching heat, in a bathroom without a lock during a lockdown drill, harassed, bullied, intimidated and coerced her into wearing a mask she did not want or need to wear—all to intentionally intimidate, pressure and coerce her into wearing a mask, get tested for COVID, and make her so miserable so that she would beg her parents to get her "Vaccinated."

310. The Defendant's agents, each of them, intended to cause, and/or recklessly disregarded the possibility of such actions causing G.W. and NICOLE WARD emotional distress.

311. Plaintiffs have suffered humiliation, great stress, mental anguish, substantial annoyance, emotional trauma, severe and extreme emotional and physical distress and, thereby, have been directly and proximately injured in mind and body.

312. Defendants conduct, each of them as herein alleged, was a substantial factor in causing Plaintiffs' severe emotional distress, resulting in suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation and shame, more than an ordinary reasonable person would be able to cope with, and with physical manifestations therein.

313. As a further proximate result of the acts alleged above, Plaintiffs were required to and did employ professional counselors to examine, treat, and care for Plaintiffs, and incurred additional incidental expenses related to this counseling. Plaintiffs are informed and believes and thereon alleges that Plaintiffs will incur additional expenses for necessary counseling and therapy to cope with the trauma caused by Defendants' joint conduct, the exact amount of these expenses is unknown.

314. By reason of the acts alleged above, G. W. was prevented from attending CoSA as a student and thereby suffered great learning loss and extra-curricular activity loss and suffered the cost of attending a private alternative program to supplement said losses.

America healthy. We don't know if they're sick or not.

THE COURT: Guns kill and so does COVID.

MS. HENDERSON: That's irrelevant. I respect that position, your Honor, but it's irrelevant.

Your ruling based on that part of it, your Honor, requires medical testimony, and there's no medical testimony before this Court that says that there's an asymptomatic carrier situation.

THE COURT: I'll take judicial notice of it.

MS. HENDERSON: Of a medical expert's testimony?

THE COURT: I will take judicial notice that COVID can be transmitted by an asymptomatic carrier. I'll take judicial notice of it.

MS. HENDERSON: Your Honor, I rather we set this for an evidentiary hearing and we'll put experts on so that the Court can make a ruling.

THE COURT: No, I'll take judicial notice of it.

MS. HENDERSON: Well, just for the record, your Honor, plaintiff objects.

THE COURT: Okay. All right. Just for the record, your objection is overruled.

MS. HENDERSON: Again, your Honor, it's not about the mask policy. It's about how they hurt this child.

THE COURT: No, no, because once you have -- once you start out with a premise that's lawful and they had a right to enforce it, then you look at what the measures were taken to enforce it.

the teacher's choice, it's the administration's choice to take her out of the classroom, to move an entire class outside --

THE COURT: It was her choice --

MS. HENDERSON: -- to call the police on her, to illegally suspend her.

THE COURT: If she was cold outside, all she had to do is put a mask on and come into the warm confines of the school. That's all she had do.

MS. HENDERSON: Put a mask on, your Honor, that is exactly what the threats and the coercion, the intimidation and the bullying were aimed to do, to coerce her into putting her mask back on, giving up her First Amendment, fundamental rights, to in-person instruction.

Education Code 201 says she has a right to be in school, free from harassment and discrimination. And if she had done that, would that be a better case, your Honor?

THE COURT: What if she brought a gun in?

MS. HENDERSON: We're not talking about a gun.

THE COURT: No, no, no. Let's talk about guns.

Could she have brought a gun in in protest of the Second Amendment?

MS. HENDERSON: I don't understand your analogy, your Honor.

THE COURT: Oh, it's right on point, because guns kill, COVID kills.

MS. HENDERSON: Your analogy is saying that

THE COURT: Well, you know, disruption's only part of it. What we have here is we've got her behavior putting other people's health at risk. That's the -- that's the big difference.

MS. HENDERSON: There's no evidence of that, your Honor, none.

THE COURT: Well, maybe if I take judicial notice for the 15th time today, you'll understand where I'm coming from.

I believe, and I think that it's well supported in the scientific literature -- in fact, it's common knowledge -- that you can have asymptomatic transmission of COVID. A transmitter can be not symptomatic but still transmit it to other people. And as a result of that, when the school has a mask policy, they can't create an exception for those people -- or they're not required to create an exception for those people who appear to be asymptomatic.

I know people who got COVID through asymptomatic transmission.

MS. HENDERSON: Respectfully, your Honor --

THE COURT: I'm not considering that.

MS. HENDERSON: -- there's no evidence she was asymptomatic.

THE COURT: I'm not considering that. My own experience, I'm not considering that in my ruling here. But I am taking a judicial notice of a fact that is truly scientifically established and settled.

THE COURT: Your position is this young lady has been so harmed by this -- by this mask exclusion, that she is now set up for a lifetime of long-term counseling to remedy it.

MS. HENDERSON: I don't recall those exact words in the Complaint, your Honor, but I'd have to do a scan. It's a very long Complaint.

THE COURT: It's pretty significant what you've alleged. And I'm sitting here thinking, why would a parent, if the parents were behind this, or why would a lawyer, if the lawyer's behind it, use this 16-year-old girl as a political pawn to make a point to oppose the mask policy?

Couldn't a law -- couldn't a lawsuit have been filed by someone who did not -- did not have to go through this period of waiting outside?

MS. HENDERSON: Your Honor, I don't even know what to say to that. It's absolutely false. I respectfully --

THE COURT: Okay. So if she came to school and she was unmasked and they said you have to have a mask, and then she said, okay. Well, I'm protesting. And came in and put the mask on and sat through it or went home and never came back, you'd have -- you'd have standing to bring your lawsuit; right?

I'm not sure why she kept going to school, waiting outside when it was cold. I mean, at one point there was an allegation in the Complaint that mom was

THE COURT: I think they heard it here. Yes, I think this is a frivolous lawsuit and I feel bad that G.W. was used as a pawn here, if she was used as a pawn.

Maybe she has this deep-seeded hatred of masks and mother couldn't convince her otherwise. But she was -- she went through a process that I don't think the parents should have promoted.

MS. HENDERSON: It happened all over the state, Judge.

THE COURT: Unfortunately, you may be right.

MS. HENDERSON: She just decided to file suit for her harms. It happened all over the state.

THE COURT: She or her mom?

MS. HENDERSON: I'm sorry?

THE COURT: She or her mom?

MS. HENDERSON: I think this young lady is making her own informed decisions, Judge. She lived through the humiliation and the intimidation and the threats.

I mean, one of her administrators said, "If you touch me, I'm going to file charges for assault."

What kind of administrator runs a school like that?

THE COURT: An administrator who thought she was going to be touched.

MS. HENDERSON: She was trying to walk into the classroom, which happens every day.

THE COURT: The administrator said -- you have

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Attorneys for Defendants Coronado Unified School District, et al

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO - CENTRAL DIVISION

G.W., a minor, by her Parent Nicole Ward, and Nicole Ward, an individual,

Plaintiffs,

vs.

CORONADO UNIFIED SCHOOL DISTRICT, a school district, Esther Valdes-Clayton as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Helen Anderson-Cruz as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Whitney Antrim as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Lee Pontes as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Bruce Sheperd as an individual and in his official capacity as a board of trustees member of Coronado Unified School District, Karl Meuller in his official capacity as superintendent of Coronado Unified School District, Donnie Salamanca, in his official capacity as assistant superintendent for Coronado Unified School District, Niamh Foley in her official capacity of Director of Student Services at Coronado Unified School District, Karen Mellina as her official capacity of principal of Coronado High School, Shane Bavis in his official capacity as teacher at Coronado High School, Joshua Dean in his official capacity as teacher at Coronado High School,

CASE NO. 37-2022-00034756-CU-NP-CTL
ACTION DATE: 08/25/2022

I/C JUDGE: Hon. Gregory W. Pollack; Dept C-71

NOTICE OF RULING GRANTING DEFENDANT CORONADO UNIFIED SCHOOL DISTRICT'S MOTION FOR APPELLATE ATTORNEYS' FEES

Date: May 16, 2025
Time: 9:30 a.m.
Dept.: C-71

[Defendant Coronado Unified School District and its employees/agents are exempt from filing fees pursuant to Government Code § 6103]

[*IMAGED FILE*]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
UNLIMITED CIVIL CASE

G.W., a minor,

Plaintiff,

vs.

CORONADO UNIFIED SCHOOL DISTRICT, a school district, et al,

Defendants.

Case No.: 37-2022-00034756-CU-NP-CTL

PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY STAY OF (1) ENFORCEMENT OF ATTORNEYS' FEES AWARDS AND (2) ANY TRIAL-COURT ENFORCEMENT AND/OR IMPLEMENTATION OF PROCEEDINGS RELATING TO THE COURT OF APPEAL'S SANCTIONS ORDER AGAINST ATTORNEY TRACY L. HENDERSON; AND FOR ORDER SHORTENING TIME (NO BOND REQUESTED)

DECLARATION OF TRACY L. HENDERSON, ESQ RE: EX-PARTE NOTICE

Date: January 26, 2026
Time: 8:45 a.m.
Dept: C-71
Judge: Hon. Gregory W. Pollack

Plaintiffs G.W., Nicole Ward and counsel for Plaintiffs Tracy L. Henderson, Esq apply for an emergency order staying enforcement of this Court's attorney's fees awards and the First District Court of Appeal's sanctions order against Plaintiff's counsel . This application is made on the grounds pursuant to Code Civ. Proc., § 918, subd. (a).

This application is based on the Declaration of Tracy L. Henderson, Esq, Re: Notice and the Memorandum of Points and Authorities in Support of this Application and its supporting exhibits.

Respectfully submitted:

Dated: January 23, 2026

Tracy L. Henderson, Esq.
Attorney for Plaintiffs

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 01/26/2026 TIME: 8:45 AM DEPT: C-71

JUDICIAL OFFICER: GREGORY W. POLLACK
CLERK: Valeria Contreras
REPORTER/ERM:
BAILIFF/COURT ATTENDANT: D. DiValerio

CASE NO: **37-2022-00034756-CU-NP-CTL** CASE INIT.DATE: 08/25/2022
CASE TITLE: **G W vs Coronado Unified School District [IMAGED]**
CASE CATEGORY: Civil CASE TYPE: (U)Other Non-PI/PD/WD Tort

HEARING TYPE: Ex Parte Hearing
MOVING PARTY:

APPEARANCES

Tracy L Henderson, Attorney for Plaintiff(s) and Appellant(s), present via remote video appearance.
Erin Taylor, Attorney for Defendant(s) and Respondent on Appeal(s), present via remote video appearance.

Ex Parte Application for Temporary Stay of (1) Enforcement of Attorneys' Fees Awards and (2) Any Trial-Court Enforcement and/or Implementation of Proceedings Relating to the Court of Appeal's Sanctions Order Against Attorney Tracy L. Henderson requested by Plaintiff.

Court denies request for stay, good cause not having been shown.

Gregory W. Pollack

Judge Gregory W. Pollack