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10 Attorneys for Plaintiff
11 California Charter Schools Association

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES

14
15 CALIFORNIA CHARTER SCHOOLS
ASSOCIATION, a not-for-profit California
16 Corporation,

17 Plaintiff,

18 v.

19 LOS ANGELES UNIFIED SCHOOL DISTRICT,
BOARD OF EDUCATION OF THE LOS
20 ANGELES UNIFIED SCHOOL DISTRICT, and
RAMON C. CORTINES, in his capacity as
21 Superintendent of Schools,

22 Defendants.

CASE NO. **BC 488336**

**COMPLAINT FOR BREACH OF
SETTLEMENT AGREEMENT AND
VIOLATION OF PROPOSITION 39
SEEKING SPECIFIC PERFORMANCE,
PERMANENT INJUNCTION,
APPOINTMENT OF SPECIAL MASTER
AND DECLARATORY RELIEF**

**CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court**

MAY 24 2010

John A. Clarke, Executive Officer/Clerk
M Garcia
BY MARY GARCIA, Deputy

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Plaintiff California Charter Schools Association (“CCSA”) alleges as follows:

I.

INTRODUCTION AND SUMMARY OF ACTION

1. CCSA is a nonprofit public charter school membership and professional organization. CCSA’s member schools are public schools, many operated as or by nonprofit entities, dedicated to innovation and educating public school students more effectively than district-run schools have done. CCSA advances the charter school movement by providing state and local advocacy, leadership on school quality, and operational and support services to its member schools.

2. There are over 800 public charter schools in the State of California serving over 341,000 California public charter school students.

3. About seventy-two percent (72%) of California’s public charter schools are CCSA members educating over 286,000 public charter school students across California.

4. Currently, there are about 166 public charter schools in the Los Angeles Unified School District (“LAUSD”), of which about 143 (86%) are CCSA members.

5. Nearly 10% of all public school students in LAUSD’s area attend charter schools, making charter schools an integral part of the public education system in LAUSD’s boundaries.

6. The vast majority of students enrolled at public charter schools within LAUSD’s boundaries are students of color. For example, data taken from the California Department of Education (“CDE”), California Basic Educational Data System (“CBEDS”) reported that charter schools within the LAUSD area educated approximately 57,904 public school students in 2008-2009. Of those 57,904 charter school students, approximately 33,604 (58%) were identified as Latino students and about 11,145 (19%) were identified as African-American students. Combined, Latino and African-American charter school students made up about 77% of the total charter school population in LAUSD’s boundaries. Clearly, public charter schools in LAUSD are diverse places of learning.

7. Moreover, public charter schools have been very successful in educating public school students within LAUSD’s boundaries and across California. For example, the CDE’s

1 2009 Academic Performance Index (“API”) Growth File reported that the growth score for
2 African-American charter school students in the LAUSD area was 47 points higher (709 vs. 662)
3 than the growth score obtained by African-American students attending LAUSD traditional
4 district schools. Indeed, with strong API scores, charter schools generally outperform LAUSD
5 traditional district schools, and they do so while serving a diverse population.

6 8. Charter school success in LAUSD is vitally important to CCSA, its membership,
7 and to Los Angeles students and their families seeking educational choice and opportunity.
8 Indeed, the success of these charter schools is important to the entire state of California because
9 of the sheer number of students involved. Significantly, the total enrollment of charter school
10 students in the LAUSD area is larger than the total enrollment of all but four (4) of over 950
11 California school districts.

12 9. Despite the strong performance of charter schools within LAUSD, many of
13 CCSA’s member schools in LAUSD are suffering because they lack even the most minimal
14 facilities in which to operate. While some charter schools are fortunate to find space at current
15 or former parochial schools or private schools, many are forced to rent commercial locales at
16 high prices that were not built as schools and that lack basic school facilities – like libraries, play
17 yards, cafeterias, and similar facilities that are common at LAUSD traditional district schools.

18 10. Despite the facilities challenges faced by many public charter schools, there
19 remains tremendous unmet demand for them. At a time when LAUSD traditional district
20 schools face continuously declining enrollment that prompts LAUSD to engage in various tactics
21 to try to fill its classrooms, some charter schools are unable to open, grow, or remain operating
22 because they cannot find affordable space, and many others cannot meet the huge demand that
23 exists as parents seek better educational options for their children than LAUSD traditional
24 district schools.

25 *Proposition 39*

26 11. To address this gross disparity in the physical facilities that many district-run
27 schools have compared to what many charter-run public schools have, California’s voters
28 enacted Proposition 39 (“Prop. 39”) in November 2000. With Prop. 39’s passage, California’s

1 voters declared that “public school facilities should be shared fairly among all public school
2 pupils, including those in charter schools.” (Ed. Code, § 47614, subd. (a).)

3 12. Prop. 39 imposes a mandatory duty on each school district to “make available, to
4 each charter school operating in the school district, facilities sufficient for the charter school to
5 accommodate all of the charter school’s in-district students in conditions reasonably equivalent
6 to those in which the students would be accommodated if they were attending other public
7 schools of the district.” (Ed. Code, § 47614, subd. (b) [emphasis added].)

8 13. In addition, Prop. 39 requires that the facilities provided to a charter school must
9 be contiguous (located together, not spread across campus or multiple sites) and must be
10 furnished and equipped similarly to district-run schools. (Ed. Code, § 47614, subd. (b); Cal.
11 Code Regs., tit. 5, § 11969.2, subd. (d).) School districts also must make a reasonable effort to
12 locate charter schools near the area where they wish to locate. (Ed. Code, § 47614, subd. (b).)

13 14. Prop. 39’s mandates require that “to the maximum extent practicable, the needs of
14 the charter school must be given the same consideration as those of the district-run schools.”
15 (*Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal. App. 4th
16 986, 1001.) **The purpose of Prop. 39 is “to equalize the treatment of charter and district-**
17 **run schools with respect to the allocation of [public school campus] space between them.”**
18 (*Id.* [emphasis added].)

19 ***LAUSD’s Prop. 39 Violations and CCSA’s Previous Prop. 39 Lawsuit Against LAUSD***

20 15. Despite the clear mandates of Prop. 39, LAUSD refuses to follow the law. To
21 highlight just a small handful of the facilities challenges faced by public school students
22 attending public charter schools in LAUSD’s boundaries, CCSA has attached the following
23 exhibits: **Exhibit A**, which has true and correct copies of recent photographs taken at Frederick
24 Douglass Academy Elementary School, a charter school forced to remain in a challenging
25 private facility because of LAUSD’s failure to comply with Prop. 39; **Exhibit B**, which has true
26 and correct copies of photographs taken of the grossly inadequate space that LAUSD offered
27 New West Charter Middle School, pursuant to Prop. 39, at Marina del Rey Middle School; and
28 **Exhibit C**, which has a true and correct copy of the only lunch space that LAUSD provided to

1 Ivy Academia, a charter school which is co-locating, pursuant to Prop. 39, on the campus of
2 LAUSD's Sunny Brae Elementary School.

3 16. Even though LAUSD's conduct is unlawful, few charter schools have any chance
4 to seek judicial review of LAUSD's routine violations of Prop. 39. In addition to the cost and
5 time burdens of litigation, LAUSD prevents courts from reviewing its violations of Prop. 39 by
6 forcing charter schools through a long and arduous alternative dispute resolution ("ADR")
7 process. In short, as a condition of obtaining charter approval, LAUSD forces charter applicants
8 to acquiesce to a broadly-interpreted, LAUSD-written and unilaterally imposed ADR clause and
9 process that is so slow and costly that it has proven impossible to get to court until the school
10 year in question has long passed. During these purposefully drawn-out ADR processes, LAUSD
11 has used the passage of time it has caused to its strategic advantage asserting that any action for a
12 violation of Prop. 39 that does not get adjudicated promptly has become moot. This is an
13 LAUSD-created "Catch 22" – the ADR process it set up cannot move fast enough to obtain a
14 speedy resolution, and when the process moves slowly, LAUSD claims that the dispute is moot
15 so no court can judge it. CCSA is informed and believes and thereon alleges that LAUSD uses
16 this two-step technique – forcing an inequitable ADR clause and process then claiming disputes
17 are mooted – as a shield to avoid letting any court judge its illegal Prop. 39 practices.

18 17. Faced with LAUSD's continuous and on-going violations of Prop. 39, on May 17,
19 2007, CCSA was forced to sue LAUSD. CCSA joined in that case with two non-profit charter
20 school operators and with the parents of children attending eight separate charter schools to
21 which LAUSD illegally denied facilities. While CCSA sought immediate judicial relief arguing
22 that the LAUSD-imposed ADR provisions should not apply to those time-urgent Prop. 39 claims
23 seeking school space for a school year that was to start in just months, the trial court in those
24 cases granted LAUSD's motion to compel ADR, which prevented any chance of prompt judicial
25 review. Still, the plaintiffs did as ordered and pursued the ADR process, pushing for a speedy
26 resolution while LAUSD did all it could to delay adjudication.

27 18. LAUSD insisted that every step of its ADR provision be followed to delay letting
28 a mediator even be appointed. Finally, after Hon. Eli Chernow, retired judge of the Los Angeles

1 County Superior Court, was appointed as arbitrator, LAUSD still delayed by resisting the
2 plaintiffs' efforts to proceed with briefing the merits of the dispute.

3 19. Eventually, over LAUSD's objections, Judge Chernow set a schedule for the
4 arbitration. The briefing was to be completed by February 8, 2008, with a hearing on the merits
5 on April 7, 2008 – nearly at the end of the school year for which LAUSD was supposed to have
6 provided facilities and nearly a year after the litigation had commenced. Nevertheless, plaintiffs
7 finally had a date when the retired judge would hear the dispute.

8 20. With a briefing and hearing schedule finally set, LAUSD at last took action. Just
9 two business days after Judge Chernow set the briefing and arbitration hearing schedule,
10 LAUSD's Board voted to approve a settlement with CCSA. LAUSD's Board finally agreed that
11 it would comply with Prop. 39, rescind its previous charter school facilities policy, adopt new
12 legal policies, work to create a publicly available facilities inventory, and negotiate a facilities
13 form use agreement that complies with the law.

14 21. On April 22, 2008, after two months of further negotiation, LAUSD formally
15 entered into a settlement agreement with CCSA, a true and correct copy of which is attached
16 here as **Exhibit D** ("Settlement Agreement").

17 22. The Settlement Agreement was a major break-through in that it created a right for
18 CCSA to compel LAUSD to start complying with Prop. 39, and it specified that no ADR process
19 would be required for CCSA to enforce the Settlement Agreement.

20 *LAUSD's Continued Violations Since the Settlement Agreement and*
21 *CCSA's Efforts to Exact Compliance*

22 23. Despite LAUSD's promise that it would abide by Prop. 39 and make legally
23 compliant facilities offers to charter schools, LAUSD has utterly failed to do so in the two years
24 following the Settlement Agreement's execution. To the contrary, LAUSD has violated nearly
25 every obligation to which it agreed in the Settlement Agreement, with its violations starting
26 literally within days of the execution of that agreement.

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1 24. Since the execution of the Settlement Agreement, CCSA and its Los Angeles
2 members have invested nearly two years of time, resources and energy in their repeated attempts
3 to press LAUSD to live up to the law and its promises in the Settlement Agreement.

4 25. On March 19, 2010, CCSA sent LAUSD its most detailed letter yet spelling out
5 how LAUSD has violated nearly every element of the Settlement Agreement, attaching
6 documents evidencing all of those violations, and demanding immediate compliance with the
7 Settlement Agreement – and Prop. 39. A true and correct copy of that March 19, 2010, letter and
8 the exhibits thereto are collectively attached hereto as **Exhibit E** (“Demand Letter”).

9 26. The Demand Letter, the Settlement Agreement, and CCSA’s previous Prop. 39
10 litigation against LAUSD, all make clear that CCSA and its members seek no favors. They
11 simply demand that LAUSD start complying with Prop. 39 as the voters intended.

12 27. CCSA and its LAUSD members have made demonstrable efforts to get LAUSD
13 to follow Prop. 39’s clear and unequivocal mandate that “[e]ach school district shall make
14 available, to each charter school operating in the school district, facilities sufficient for the
15 charter school to accommodate all of the charter school’s in-district students in conditions
16 reasonably equivalent to those in which the students would be accommodated if they were
17 attending other public schools of the district.” (Ed. Code, § 47614, subd. (b) [emphasis added].)

18 28. LAUSD’s conduct over the past two years unequivocally illustrates a different
19 picture. LAUSD’s letters, memos and actions over the last two years demonstrate bad faith,
20 illegal conduct, and gamesmanship to avoid its legal duties under Prop. 39.

21 29. CCSA is informed and believes and thereon alleges that LAUSD has continued to
22 use its now-familiar tactic of forcing any LAUSD-chartered school alleging Prop. 39 violations
23 into the slow mediation and arbitration process that LAUSD forces on charter schools in its
24 boilerplate, non-negotiable charter language. LAUSD’s efforts are tailored to delay all such
25 disputes to the point where LAUSD may argue that the school year in question has begun and,
26 consequently, the dispute is moot. CCSA is informed and believes and thereon alleges that
27 LAUSD forces those one-sided, take-it-or-leave-it ADR provisions on charter schools, and then
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1 uses them as a shield to let LAUSD violate Prop. 39 with impunity, thereby preventing families
2 and students from having alternatives to LAUSD traditional district schools.

3 *The New West Charter Middle School Prop. 39 Litigation Win*

4 30. In an extremely important litigation involving the special situation of New West
5 Charter Middle School (“New West”), LAUSD’s pattern of violating Prop. 39 and hiding behind
6 its ADR provision is highlighted. There, following LAUSD’s refusal even to grant New West a
7 charter, New West was granted its charter directly from the State Board of Education.
8 Accordingly, New West’s charter does not contain the onerous ADR provisions that LAUSD
9 forces on its authorized charter schools as a condition of getting a charter, so New West was able
10 to seek swift judicial recourse for LAUSD’s violations of Prop. 39. That case – *New West*
11 *Charter Middle School v. Los Angeles Unified School District, et al.*, L.A.S.C. Case No.
12 BS115979 – afforded what CCSA believes is the first chance ever for a public charter school
13 within LAUSD’s boundaries to get a court to review LAUSD’s illegal conduct under Prop. 39.

14 31. The Hon. James C. Chalfant of the Los Angeles County Superior Court readily
15 confirmed that LAUSD’s Prop. 39 practices violate the law. In issuing a writ of mandate against
16 LAUSD for violating Prop. 39 by refusing to provide school facilities to New West, Judge
17 Chalfant chided LAUSD for using a “parade of unproven horrors” to make up excuses for
18 ignoring the law, and Judge Chalfant found that “LAUSD does not offer any legal authority” for
19 its refusal to provide school facilities. Judge Chalfant held that “LAUSD has violated its
20 statutory obligation to accommodate New West students,” noting that “charter students are
21 LAUSD students too” and are entitled to occupy an LAUSD-owned campus even if it might
22 cause some “disruption and dislocation” for LAUSD. Accordingly, in a huge victory for New
23 West, Judge Chalfant ordered LAUSD to provide facilities at Fairfax High School or an
24 equivalent campus at an acceptable location. True and correct copies of the September 5, 2008,
25 Tentative Decision on Petition for Writ of Mandate, the October 3, 2008, Judgment Granting
26 Peremptory Writ of Mandate and Order, and the November 21, 2008, Tentative Decision on
27 Motion to Enforce Writ, are attached hereto as Exhibit F.

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1 32. Unfortunately, despite the Court’s decision and judgment, LAUSD flatly refused
2 to comply with the court’s writ of mandate.

3 33. When New West was forced to move to enforce the writ, Judge Chalfant found
4 that LAUSD “deliberate[ly] refus[ed] to comply with the writ,” fined LAUSD, and ordered
5 damages to be paid. Those are condemning findings against LAUSD, a public body that should
6 scrupulously follow the law.

7 34. Although LAUSD at first appealed from Judge Chalfant’s writ and judgment,
8 LAUSD later dismissed its appeal. CCSA is informed and believes and thereon alleges that
9 LAUSD dismissed its appeal to avoid letting an appellate court confirm that it regularly violates
10 Prop. 39, mindful that it was also violating the Settlement Agreement with CCSA and hoping to
11 contain New West’s victory so that LAUSD could continue to violate the law with impunity.
12 Since only a low monetary damages award to New West was made, which sum is currently on
13 appeal, CCSA is informed and believes and thereon alleges that LAUSD made the decision that
14 paying a small monetary damages award to one of a handful of charter schools that are able to
15 avoid its ADR hoops, was better for LAUSD’s political interests than to risk appellate court
16 authority that might force LAUSD to start following Prop. 39.

17 ***LAUSD’s Failures to Comply With Prop. 39 Require the Court’s Intervention***

18 35. It has now been two years since execution of the Settlement Agreement. LAUSD
19 has failed to live up to virtually every promise that it made in the Settlement Agreement,
20 including most importantly its commitment to start following Prop. 39. Despite its legal
21 obligation to follow Prop. 39 and its separate contractual promise in the Settlement Agreement to
22 comply with Prop. 39, LAUSD continues to breach its obligation to share its facilities with its
23 public school students attending charter schools.

24 36. There should be no mistake – LAUSD’s misconduct has been intentional, and
25 intentionally deceptive. CCSA is informed and thereon alleges that LAUSD implemented a
26 secretive program dubbed “Bucks for Bungalows” under which it ordered schools with excess
27 classroom space to remove their portable classrooms from service so that LAUSD could
28 misrepresent those campuses as too full to accommodate charter school students, even going so

1 far as offering a \$25,000 reward for each portable classroom removed fast enough. It is shocking
2 bad faith for LAUSD to waste public money and get rid of public assets with the explicit intent
3 of then misrepresenting itself as having no room for public school students in charter schools.

4 37. CCSA is informed and believes and thereon alleges that LAUSD intentionally
5 undermines its own charter school office and precludes its charter school office from having any
6 chance at ever complying with Prop. 39. CCSA is informed and believes and thereon alleges
7 that such undermining conduct includes actions by local districts, principals, teachers and other
8 LAUSD representatives aimed at deterring LAUSD's charter school office from assigning space
9 to charter schools under Prop. 39. Such conduct reaches into even the highest levels at LAUSD,
10 where, for example, one LAUSD Board member has publicly asserted that "we don't have the
11 money or the space to offer classrooms to 81 charters," then, in that same comment going so far
12 as to wonder whether LAUSD should illegally stop approving charter petitions entirely ("Should
13 the board only approve the charter schools that we have space to house?"). (See Connie Llanos,
14 *Schools say LAUSD not abiding by legal settlement*, L.A. Daily News (March 30, 2010), a true
15 and correct copy of which is attached as **Exhibit G.**)

16 38. Moreover, CCSA is informed and believes and thereon alleges that such
17 obstructive conduct also includes LAUSD school principals actively undermining LAUSD's
18 charter school office by seeking to intimidate that office so it does not allow charter schools to be
19 co-located on "their" campuses, regardless of the law.

20 39. In fact, CCSA is informed and believes and thereon alleges that there was one
21 especially egregious incident in early May, 2010, in which LAUSD officials organized an
22 ambush of LAUSD's own charter school office that is tasked with complying with Prop. 39. In
23 that incident, CCSA is informed and believes and thereon alleges that LAUSD's charter school
24 office representative visited a campus that had the capacity to provide space to a charter school
25 under Prop. 39, but upon his arrival on campus he was ushered into a gathering of angry parents
26 and ambushed with tremendous pressure not to allow any charter school to be located on that
27 campus, despite the fact that space was available and that Prop. 39 requires space to be shared

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1 equitably with charter schools. CCSA is informed and believes and thereon alleges that this
2 ambush was organized by the LAUSD school principal.

3 40. This incident is further proof that LAUSD's misconduct toward charter schools
4 and Prop. 39 compliance is outrageous and has gone past the crisis point.

5 41. This complaint seeks specific performance, declaratory relief and injunctive relief
6 to compel LAUSD to follow the law and comply with the promises it made under the Settlement
7 Agreement. This Court needs to step in to ensure that public school students attending charter
8 schools will no longer be treated like second-class citizens. To ensure that such an injunction is
9 not an empty promise, recognizing LAUSD's years of bad faith conduct, this Court also needs to
10 appoint a special master to aid it to monitor and compel LAUSD, finally, to follow the law.

11 **II.**

12 **THE PARTIES**

13 42. Plaintiff CCSA is a nonprofit membership and professional organization duly
14 organized and existing under the laws of the State of California. CCSA serves California's
15 charter school movement, which is comprised of over 800 public charter schools across
16 California, including 166 within LAUSD's jurisdiction. About 72% of California's charter
17 schools are CCSA members. CCSA and its membership across California, and especially those
18 within the boundaries of LAUSD, are deeply concerned by LAUSD's long-standing hostility to
19 charter schools and its policies and practices of flouting the directives of Prop. 39 and its failure
20 to perform under the Settlement Agreement.

21 43. Defendant LAUSD is a public school district organized and existing under the
22 laws of the State of California.

23 44. Defendant the Board of Education of the Los Angeles Unified School District (the
24 "Board") is LAUSD's political body with authority to govern the district and to ensure that
25 LAUSD complies with the Settlement Agreement, to which the Board is a party.

26 45. Defendant Ramon C. Cortines is LAUSD's Superintendent of Schools
27 ("Superintendent Cortines"), and as such is its highest administrative officer and shares
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1 responsibility with the Board to ensure that LAUSD complies with the Settlement Agreement.
2 Superintendent Cortines is sued here solely in his official capacity.

3 **III.**

4 **JURISDICTION AND VENUE**

5 46. This action is properly filed in the Superior Court of California, County of Los
6 Angeles, Central Judicial District, because the principal place of business for all Defendants and
7 the principal location of the events at issue here are in the City of Los Angeles and, more
8 specifically, in the Central Judicial District. Further, the Settlement Agreement provides in
9 Section 14 that “[t]he venue for any disputes concerning this Agreement shall be in Los Angeles
10 County.”

11 **IV.**

12 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

13 **A. Charter Schools Play An Important Role In Educating California’s Children**

14 47. Public charter schools are an increasingly popular and successful option for
15 parents of public school students. Charter schools are public schools, and they are given the
16 autonomy to tailor their educational and operational approaches to meet the needs of their
17 students and community. In exchange for this flexibility, charter schools are held accountable
18 for producing results. This model – that fosters creativity and educational innovation – has been
19 extremely successful for the majority of Los Angeles charter school students who mostly come
20 from economically disadvantaged and underserved communities.

21 48. The diverse pedagogies and educational services offered by charter schools have
22 proven to be very successful when compared to traditional district schools operating in the
23 LAUSD area. The API, which is used by the State of California to evaluate a school’s overall
24 academic performance, demonstrates that charter schools in LAUSD are outperforming LAUSD
25 traditional district schools at every level – elementary school, middle school, and high school.
26 For the 2008-09 school year, CDE’s API Growth File indicates that LAUSD traditional district
27 elementary schools had a median API score of 757, far below the charter schools’ median API of
28 804. At the middle school level, LAUSD traditional district schools had an API of 657, far

1 below the charter schools' median API of 742. Finally, at the high school level, LAUSD
2 traditional district schools had a median API score of 639, again far below the charter schools'
3 median API of 694.

4 49. Given this success and the promise of opportunity for an upward trajectory, many
5 parents have endeavored to place their children in the severely seat-limited charter schools.
6 Charter schools generally have long waiting lists and must conduct public lotteries to fill their
7 seats in an equitable manner. While LAUSD often asserts that charter schools select the best
8 students as an excuse for the lower performance of LAUSD traditional district schools, to the
9 contrary charter school students are not selected as the "cream of the crop," but rather are
10 selected by a random drawing (i.e., lottery) open to all those seeking to attend. Some parents try
11 year after year to get a spot for their children, but remain on waiting lists due to a lack of
12 facilities space. There is no selectivity in charter school admissions.

13 **B. Prop. 39 Obligates LAUSD To Share Facilities Equitably**

14 50. Recognizing the value of charter schools, Prop. 39 provides that "[s]tudents in
15 public charter schools should be entitled to reasonable access to a safe and secure learning
16 environment." (Prop. 39, § 2, subd. (e).) Codified at Education Code Section 47614, Prop. 39
17 further provides that public school facilities "should be shared fairly among all public school
18 pupils, including those in charter schools." (Ed. Code, § 47614, subd.(a).)

19 51. Prop. 39 mandates that "each school district shall make available . . . facilities
20 sufficient for the charter school to accommodate all of the charter school's in-district students in
21 conditions reasonably equivalent to those in which the students would be accommodated if they
22 were attending other public schools of the district." (Ed. Code, § 47614, subd. (b).)

23 52. Regulations enacted to implement Prop. 39 (the "Implementing Regulations")
24 provide that "[o]n or before February 1, the school district shall prepare in writing a preliminary
25 proposal regarding the space to be allocated to the charter school and/or to which the charter
26 school is to be provided access." (Cal. Code Regs., tit. 5, § 11969.9, subd. (f).) Moreover, "[o]n
27 or before April 1 . . . the school district shall submit in writing a final notification of the space
28 offered to the charter school." (*Id.*, § 11969.9, subd. (h) [emphasis added].)

1 53. Prop. 39 also requires school districts, including LAUSD, to provide public
2 charter schools and the students who attend them “reasonably equivalent” facilities to those they
3 would have if they attended district-run schools. LAUSD’s failure to provide such facilities
4 poses an immediate harm to thousands of charter school students within LAUSD.

5 C. **LAUSD’s Prop. 39 Violations Forced CCSA To File Suit in May 2007,**
6 **Resulting In The Settlement Agreement Which LAUSD Is Breaching.**

7 54. On May 17, 2007, CCSA, two non-profit charter school management
8 organizations, and parents of charter school students attending eight charter schools filed two
9 related lawsuits against LAUSD alleging, *inter alia*, that LAUSD unlawfully denied charter
10 schools’ facilities requests and failed to comply with Prop. 39 and the Implementing
11 Regulations. Those lawsuits were titled *California Charter Schools Association, et. al. v. Los*
12 *Angeles Unified School District, et. al.*, Los Angeles County Superior Court Case No.
13 BS108934, and *California Charter Schools Association, et. al. v. Los Angeles Unified School*
14 *District, et. al.*, Los Angeles County Superior Court Case No. BS108936.

15 55. As discussed above, while CCSA sought immediate judicial relief the trial court
16 granted LAUSD’s motion to compel ADR, after which LAUSD did all it could to slow the ADR
17 process. Only with CCSA’s continuous pushing was an arbitrator eventually appointed. Even
18 then, LAUSD attempted to slow the arbitration process, with CCSA pushing over LAUSD’s
19 objections for the arbitrator to set a briefing schedule for the cases’ prompt adjudication.

20 56. Two business days after the arbitrator set a schedule for the merits to be briefed
21 (over LAUSD’s objections and efforts to delay the matter), on February 12, 2008, LAUSD’s
22 Board approved a settlement of those two lawsuits, which was committed to writing in the
23 Settlement Agreement entered into on or about April 22, 2008.

24 57. The Settlement Agreement verifies that LAUSD must share facilities equitably
25 under the rubric of Prop. 39. Specifically, should a CCSA member school make a facilities
26 request that complies with Prop. 39 and the Implementing Regulations, “LAUSD shall make a
27 facilities offer to that charter school that complies with Prop. 39 and any Prop. 39 implementing
28 regulations in effect at that time.” (Exh. D, § 3.)

1 58. The Settlement Agreement also imposes affirmative obligations with clear
2 deadlines on LAUSD to ensure its compliance with the spirit and intent of Prop. 39 and the
3 Implementing Regulations. As described in detail below, those obligations include mandates
4 that LAUSD: (1) negotiate in good faith and use its best efforts to agree to a form use agreement
5 (“Form Use Agreement”) that complies with Prop. 39 and the Implementing Regulations, to be
6 offered for use by CCSA member charter schools; (2) rescind its then-existing Prop. 39 policies
7 and replace them with policies that comply with Prop. 39 and the Implementing Regulations; (3)
8 use its best efforts to secure funding for a comprehensive inventory of LAUSD facilities; and (4)
9 immediately begin a planning process to produce a five-year facilities plan that meets the
10 projected needs of charter schools. (*See* Exh. D, §§ 4-7.)

11 59. Despite the Settlement Agreement’s mandate that LAUSD fulfill all of those
12 obligations, LAUSD unabashedly breached the Settlement Agreement and continues to violate
13 the law. LAUSD failed to meet any of the deadlines imposed by the Settlement Agreement, and
14 also failed to comply with any of its ongoing substantive duties thereunder – duties to which it
15 agreed to ensure its proper conformance with Prop. 39 and the Implementing Regulations.

16 60. On March 19, 2010, CCSA sent the Demand Letter to LAUSD outlining
17 LAUSD’s many breaches of the Settlement Agreement and demanding that LAUSD comply
18 with the agreement without delay. (Exh. E.)

19 61. LAUSD’s response was dated April 9, 2010, and postmarked April 14, 2010. It
20 contained nothing more than a summary denial of CCSA’s allegations and a suggestion that the
21 parties meet in order to allow LAUSD to demonstrate all of its efforts under Prop. 39. A true
22 and correct copy of that April 9, 2010, letter is attached hereto as **Exhibit H**.

23 62. On April 30, 2010, CCSA responded to LAUSD indicating its disappointment at
24 LAUSD’s shallow response. In addition, CCSA indicated that it would meet with LAUSD to
25 discuss CCSA’s allegations provided certain assurances were met by the District that would
26 make the exercise a timely and fruitful one as opposed to an unproductive and drawn-out
27 process. A true and correct copy of that April 30, 2010, letter is attached hereto as **Exhibit I**.

28

1 63. LAUSD responded again to CCSA in a letter dated May 5, 2010 – seven weeks
2 after CCSA sent its Demand Letter – and in it LAUSD claimed that it was still discussing the
3 matter internally and determining who from LAUSD should participate in a meeting with CCSA.
4 Yet again, LAUSD offered no dates for any meeting – just another statement that it hopes to talk
5 someday. That dilatory conduct shows that LAUSD does not take CCSA’s concerns over
6 LAUSD’s many breaches of the Settlement Agreement seriously, and has no true intention of
7 discussing how LAUSD can comply with the Settlement Agreement and Prop. 39. A true and
8 correct copy of that May 5, 2010, letter is attached hereto as **Exhibit J**.

9 **D. LAUSD Breached Section 3 of the Settlement Agreement, Which Required**
10 **LAUSD to Make Prop. 39-Compliant Facilities Offers to Charter Schools.**

11 **1. LAUSD Breached the Settlement Agreement Immediately After its**
12 **Execution By Rescinding Offers to Charter Schools.**

13 64. Section 3 of the Settlement Agreement states: “Future Facilities Offers. Provided
14 that a CCSA member charter school submits a future facilities request that is legally sufficient
15 under Prop. 39 and any Prop. 39 implementing regulations in effect at that time, LAUSD shall
16 make a facilities offer to that charter school that complies with Prop. 39 and any Prop. 39
17 implementing regulations in effect at that time. This obligation shall apply to requests for
18 facilities that are submitted for the 2008-2009 school year, shall inure to the benefit of all CCSA
19 member charter schools, including without limitation to PUC and Green Dot, and shall continue
20 for the term of this Agreement.”

21 65. Despite its duties under Prop. 39 and Section 3 of the Settlement Agreement,
22 LAUSD began breaking its promises before the ink on the Settlement Agreement was even dry.

23 66. On April 22, 2008, the same day that the Settlement Agreement was executed,
24 LAUSD sent a series of inter-office memoranda to Board members addressing charter school co-
25 locations at schools such as Taft High School and Fairfax High School. A true and correct copy
26 of the April 22, 2008, Inter-Office Correspondence from Ray Cortines regarding Taft High
27 School and the April 22, 2008, Inter-Office Correspondence from Ray Cortines regarding Fairfax
28

1 High School are attached hereto as Exhibit K. Those actions set LAUSD on a path toward an
2 immediate breach of Section 3.

3 67. In those April 22 memoranda, LAUSD acknowledged its legal obligation to
4 provide facilities to charter schools under Prop. 39 and the Settlement Agreement and noted an
5 increased need for charter school seats among LAUSD public charter school students, but after
6 recounting its obligations the memoranda undercut one of the main principles of Prop. 39 by
7 asserting that LAUSD would not provide space to a charter school entitled to it if LAUSD, in its
8 sole discretion, “find[s] that the co-location is clearly detrimental to the education of charter or
9 non-charter school students.” (See, e.g., Exh. K [emphasis added].) LAUSD’s actions were
10 patently illegal. The law does not provide an option or discretionary authority for LAUSD’s
11 Superintendent, in his sole opinion, to decree that following Prop. 39 and the Settlement
12 Agreement is “detrimental” and, thus, to refuse to follow its obligations.

13 68. Putting that unlawful and unilateral presumption into effect, on April 30, 2008, in
14 further violation of Prop. 39 and the Settlement Agreement, LAUSD sent another memorandum
15 to the Board, this time stating that LAUSD had “decided to withdraw . . . seven offers based
16 upon impacts the charter co-location would impose.” That same day, LAUSD sent letters to
17 seven charter schools that had received facilities offers, including New West Charter Middle
18 School, unilaterally withdrawing LAUSD’s facilities offers. True and correct copies of the April
19 30, 2008, Inter-Office Correspondence from Ray Cortines and the April 30, 2008, Letter from
20 Ray Cortines to New West Charter School are collectively attached hereto as Exhibit L.

21 69. Those unlawful April 30, 2008, rescissions stated that LAUSD had “reassessed
22 [the] offer and . . . concluded that the campus of [the school where the co-location was to occur]
23 cannot be shared fairly among the non-charter and charter school students *because the co-*
24 *location may have a detrimental impact* on the education of all the students on this campus.”
25 (See, Exh. L [emphasis added].) And so, with no warning or process, LAUSD deprived
26 classrooms to all of the public school students who would have attended those facilities.

27 70. Those actions were plainly illegal. As discussed above, Judge Chalfant in *New*
28 *West Charter Middle School v. LAUSD*, Los Angeles Superior Court Case No. BS115979,

1 confirmed that LAUSD's conduct was illegal and granted New West's petition for writ of
2 mandate and entered a judgment against LAUSD. Notably, Judge Chalfant recognized that
3 LAUSD's conduct was "*patently unreasonable and unlawful*," its justification for actions taken
4 constituted a "Parade of Unproven Horribles," and that it had "*a duty to accommodate New West*
5 *somewhere*." (Tentative Order, Exh. F, at pp. 4-6 [emphasis added].)

6 71. Despite the writ of mandate requiring LAUSD to "fulfill its Prop. 39 duty" and
7 provide New West with legally sufficient facilities, LAUSD refused to comply with the writ. In
8 granting New West's motion to enforce the writ, Judge Chalfant held that the alternative space
9 LAUSD offered New West "could not possibly meet the requirements" of Prop. 39. (See,
10 November 21, 2008, Tentative Decision on Motion to Enforce Writ, Exh. F, p. 4.) Among other
11 significant deficiencies in the offer, Judge Chalfant noted that "LAUSD staff explained that New
12 West's middle schools students would have no access to any library, computer lab, multi-
13 purpose auditorium, or cafeteria areas. New West's designated student 'eating area' was
14 outdoors and barely separated by a wall from LAUSD's garbage dumpsters, which have a bad
15 odor." (*Id.* at p. 3.)

16 2. **LAUSD Breached the Settlement Agreement Again When It Refused**
17 **To Make Lawful Facilities Offers For The 2009-10 School Year.**

18 72. Despite adverse rulings in the *New West* case, and in further breach of Section 3
19 of the Settlement Agreement, LAUSD again failed to make legally compliant facilities offers to
20 charter schools during the facilities request and offer process for the 2009-10 school year.

21 a. **LAUSD Illegally Rejected Charter Schools' Attendance**
22 **Projections, Even Though The Projections Followed the Law.**

23 73. On December 1, 2008, LAUSD sent letters to several charter schools telling them
24 that LAUSD would not accept the schools' average daily attendance ("ADA") projections,
25 asserting that LAUSD believed that they would have fewer than the required 80 in-district ADA
26 for the 2009-10 school year.

27 74. In objecting to those charter schools' ADA projections, LAUSD violated the
28 Implementing Regulations. LAUSD inappropriately ignored the schools' documentation of

1 historical enrollment, student retention, and student growth trends, prior ADA figures, and/or
2 historical and current wait list information. In many cases, LAUSD only acknowledged one-to-
3 one verification of specific student names despite the fact that LAUSD's conduct violated the
4 Implementing Regulations' express provision that the ADA projections "need not be verifiable
5 for precise arithmetical accuracy." (See Cal. Code Regs., tit. 5, § 11969.9, subd. (c)(1)(C).)
6 LAUSD's conduct in misapplying those schools' attendance projections did not comply with
7 Prop. 39's Implementing Regulations and so deprived those schools of facilities, violating
8 Section 3 of the Settlement Agreement requiring LAUSD to make facilities offers that "compl[y]
9 with Prop. 39 and any Prop. 39 implementing regulations in effect at that time" (Exh. D, § 3.)

10 75. In addition, LAUSD rejected outright many charter schools' ADA projections
11 without informing the schools of their right to respond to LAUSD's determination by January 2.
12 In doing so, LAUSD cut off the iterative process for those schools, completely ignoring the
13 Implementing Regulations. CCSA notified LAUSD of these violations in a letter dated January
14 29, 2009, from Gary Borden of CCSA to Jose Cole-Gutierrez of the LAUSD, a true and correct
15 copy of which is attached hereto as Exhibit M, but LAUSD did not remedy its breach.

16 **b. LAUSD Failed to Make Legally-Compliant Preliminary and**
17 **Final Offers For The 2009-2010 School Year, In Breach of**
18 **Prop. 39 and Section 3 Of The Settlement Agreement.**

19 76. On January 30, 2009, LAUSD sent letters to various CCSA member schools
20 refusing to provide preliminary facilities offers and claiming that those schools were ineligible to
21 receive facilities offers based on their ADA projections.

22 77. Each of those schools, however, provided timely responses documenting specific
23 objections to LAUSD's December 1, 2008, letters claiming reductions in the schools' ADA
24 projections. Despite this, LAUSD arbitrarily denied those schools facilities in violation of Prop.
25 39 and in further breach of Section 3 of the Settlement Agreement.

26 78. In addition, on January 30, 2009, LAUSD sent letters to over a dozen other CCSA
27 member schools refusing to provide preliminary offers based on a claim that it "has not yet been
28 able to identify space." Those letters continued in the vein of LAUSD's inappropriate Inter-

1 Office Correspondence of April 22, 2008, (Exh. K) by continuing to assert that, unless LAUSD
2 in its sole discretion finds it convenient to provide space to charter schools, it simply will not do
3 so. That is a clear violation of Prop. 39 and Section 3 of the Settlement Agreement.

4 79. Of the purported offers, both preliminary and final, that LAUSD was willing to
5 make for the 2009-2010 school year, which LAUSD made in or about February 1 and April 1,
6 2009, respectively, they universally violated Prop. 39 in various respects, further breaching
7 Section 3 of the Settlement Agreement.

8 80. For example, among other things, those preliminary offers failed to identify
9 comparison schools properly; used incorrect ADA projections for the charter schools; failed to
10 allocate sufficient teaching stations, specialized classroom space, and non-teaching space to the
11 charter schools; offered facilities not reasonably equivalent to the condition of comparison
12 schools; and contained illegal contingencies, including the contingency that the charter schools
13 waive their rights to challenge LAUSD's compliance with Prop. 39 as a condition to accepting
14 the facilities offer. In some instances, those preliminary offers even admitted that LAUSD did
15 not accommodate the charter schools' projected in-district ADA.

16 81. LAUSD was notified of these deficiencies in a February 27, 2009, letter from
17 Middleton, Young & Minney, LLP to LAUSD responding to LAUSD's preliminary offer to New
18 West Charter School, but LAUSD refused to remedy its violations.

19 82. LAUSD's final facilities offers had similar deficiencies, including the failure to
20 respond to concerns addressed by charter schools, the failure to allocate reasonably equivalent
21 facilities to charter schools, the failure to make a reasonable effort to locate the charter schools
22 near their requested locations, and the imposition of a facilities Form Use Agreement containing
23 impermissible provisions on the charter schools as a condition of acceptance, all in breach of
24 Prop. 39, its Implementing Regulations, and Section 3 of the Settlement Agreement.

25 83. In a letter sent on or about March 9, 2009, CCSA notified LAUSD of its breaches
26 of the Settlement Agreement and its failure to comply with Prop. 39.

27
28

1 84. LAUSD was also notified of these issues in an April 30, 2009, letter from
2 Middleton, Young & Minney, LLP to LAUSD responding to LAUSD's final offer to CHAMPS
3 Charter High School, but LAUSD refused to remedy its violations.

4 85. Such deficiencies forced New West Charter Middle School, one of the few charter
5 schools located in LAUSD's jurisdiction that is not subject to LAUSD's onerous ADR provision,
6 to file another lawsuit against LAUSD alleging violations of Prop. 39. That action, which was
7 filed in the Los Angeles County Superior Court on August 11, 2009, is titled *New West Charter*
8 *Middle School v. LAUSD*, Case No. BS122116, and is currently pending.

9 c. LAUSD Continued To Violate Prop. 39 and Breach Section 3
10 of The Settlement Agreement By Making Rolling Offers For
11 The 2009-2010 School Year and Imposing Illegal Restrictions
12 and Burdens From April 2009 Through August 2009.

13 86. After the April 1, 2009, deadline for final offers had come and gone and LAUSD
14 failed, yet again, to comply with Prop. 39, LAUSD continued to engage with certain Prop. 39
15 applicants. In the course of those actions, LAUSD took advantage of schools needing sites by
16 exacting unlawful concessions from charter schools, including making some accept changes to
17 their schedules to conform to LAUSD's schedule, making charter schools to use LAUSD's meal
18 services, changing space allocations, and many other forced concessions that violate Prop. 39, its
19 Implementing Regulations, Section 3 of the Settlement Agreement, and the covenant of good
20 faith and fair dealing implied in the Settlement Agreement.

21 87. CCSA is informed and believes and thereon alleges that although 60 charter
22 schools requested facilities from LAUSD for the 2009-10 school year, LAUSD provided final
23 offers to only 36 of them and none of those offers complied with Prop. 39. Even though some of
24 the charter schools had no alternative but to accept LAUSD's unlawful offers, the fact that a
25 charter school with no viable options might accept an illegal offer rather than turn students away
26 does not mean the offer complied with Prop. 39. LAUSD sometimes asserts that the fact that
27 some charter schools accept their offers means that LAUSD complies with the law, but all that
28 shows is that LAUSD takes advantage of charter schools' desperation for educational space.

1 a projected ADA of 564 students the use of seven classrooms and one office, resulting in 80+
2 students per classroom. These purported offers do not qualify as valid Prop. 39 offers.

3 91. After the deadline, LAUSD continued to make equally non-compliant rolling
4 preliminary offers in breach of Section 3 of the Settlement Agreement.

5 **b. LAUSD's Final Offers For the 2010-2011 School Year Violated**
6 **Prop. 39 And Further Breached The Settlement Agreement.**

7 92. Despite the April 1, 2010, deadline to make final space offers for the 2010 – 2011
8 school year (see Cal. Code Regs., tit. 5, § 11969.9, subd. (h)), out of 81 applications, LAUSD
9 issued timely final offers to only 42 schools – even though the law requires offers to be made to
10 all qualified applicants.

11 93. CCSA is informed and believes and thereon alleges that none of those 42 “offers”
12 comply with Prop. 39.

13 94. As for the rest of the charter school applicants, LAUSD refused to offer them any
14 space or unilaterally decreed that they were ineligible for space, in violation of Prop. 39.

15 **4. Since 2002, LAUSD Issued Over \$6 Billion In Bonds To Build 180,000**
16 **New Classroom Seats But Its Student Population Declined 16%**
17 **Leaving LAUSD With Excess Space and Reduced Class Sizes, But**
18 **LAUSD Still Refuses Space to Students in Charter Schools.**

19 95. Since 2002, LAUSD asked voters to approve three bond measures primarily for
20 new facility construction, allegedly to relieve “overcrowding” at LAUSD traditional district
21 schools. Based largely on LAUSD’s dire warnings about a student population that LAUSD said
22 would greatly increase through the decade of the 2000s, voters approved over \$10 billion in
23 bonds: \$3.3 billion 2002 for Measure K, \$3.87 billion in 2004 for Measure R, and \$3.985 billion
24 in 2005 for Measure Y. Most of that bond money – over \$6 billion – was earmarked for new
25 construction: \$2.6 billion from Measure K, \$1.857 billion from Measure R and \$1.6 billion from
26 Measure Y. Those bond measures stated that they would allow LAUSD to create approximately
27 179,000 new classroom seats: 110,000 for Measure K, 49,000 for Measure R, and 20,000 for
28 Measure Y.

1 96. The ballot measure for Measure K in 2002 stated that “the District expects to be
2 able to create *110,000 new classroom seats* for District students at neighborhood schools.”
3 (Emphasis added.) The “Argument in favor of Measure K” section of the ballot measure stated:
4 “Many of our schools are overcrowded. Over the next decade our district will likely grow by
5 200,000 students. Measure K will help relieve overcrowding by permitting the construction of
6 80 new schools and 79 additions or expansions.”

7 97. The findings section of the ballot measure for Measure R in 2004 stated:

8 “The Los Angeles Unified School District (“the District”) is
9 supported by a community that is committed to creating and
10 maintaining a high-quality learning environment for all of its
11 *approximately 750,000 students*. The District has experienced
12 enormous growth within the past 20 years, adding approximately
13 190,000 students — a number that is itself larger than any other
14 school district in California. Consequently, over 100,000 more
15 students are enrolled in the District than it has two-semester seats
for them to occupy. More than 15,000 students cannot attend their
neighborhood schools due to overcrowding and must instead be
bussed to other campuses, sometimes more than an hour away.
*Enrollment is expected to continue to increase by thousands of
students each year.* Furthermore, additional facilities are necessary
if the District is going to be able to achieve the educational benefits
of smaller learning environments.”

16 (Emphasis added.)

17 98. The ballot measure for Measure R stated “the District expects to be able to create
18 approximately 49,162 new classroom seats for District students at neighborhood schools.”

19 99. Similarly the findings section of the ballot measure for Measure Y in 2005 stated:

20 The Los Angeles Unified School District (“the District”) is
21 supported by a community that is committed to creating and
22 maintaining a high-quality learning environment *for all of its*
approximately 750,000 students.

23 The District has experienced enormous growth within the past 20
24 years, adding approximately 190,000 students — a number that is
25 itself larger than any other school district in California. By 2002,
26 over 100,000 more students were enrolled in the District than it
27 had two-semester seats for them to occupy, more than 15,000
28 students could not attend their neighborhood schools due to
overcrowding and instead had to be bussed to other campuses,
sometimes more than an hour away. Over 354,000 students
attended schools that were operating on special calendars that
could only accommodate their enrollment through the use of multi-
tracking schedules that reduced the number of school-days students
attended school. *This level of enrollment is expected to continue.*

1 (Emphasis added.) It also claimed: “This measure will enable the District to construct the
2 20,000 classroom seats needed to end overcrowding and accommodate future enrollment.”

3 100. Taken together, LAUSD told the voters that these three bond measures would
4 create approximately 180,000 new classroom seats (110,000 for Measure K, 49,162 for
5 Measure R, and 20,000 for Measure Y).

6 101. In addition to this \$6 billion in bond money for new construction, LAUSD had
7 substantial additional money that it used to build new schools. As Superintendent Cortines
8 stated in a March 17, 2010, press release: “[W]e have invested \$14 billion in constructing 87
9 brand new schools and have completed nearly 20,000 modernization projects designed to
10 promote positive educational learning environments and excellence in academic achievement.”

11 102. In stark contrast to LAUSD’s assertions of large, imminent increases in its student
12 population, enrollment at LAUSD traditional district schools has substantially decreased since it
13 started its “bond and build” campaigns in 2002, and it is still declining. In 2002-2003, before its
14 massive construction program, LAUSD’s student population was 737,739 students (excluding
15 students in independent charter schools) but LAUSD’s estimate for its 2009-2010 enrollment is
16 just 621,689 (excluding charters) and LAUSD’s projected enrollment for 2010-2011 and 2011-
17 2012 is even less. That is a 16% decline in eight years. (See LAUSD’s Superintendent’s 2009-
18 2010 Final Budget, App. I, [http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/
19 LAUSDNET/OFFICES/CFO_HOME/CFO_TREASURY/
20 CFO_FINANCIAL_INFORMATION/09-10%20SUPERINTENDENT'S%20FB.PDF](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/LAUSDNET/OFFICES/CFO_HOME/CFO_TREASURY/CFO_FINANCIAL_INFORMATION/09-10%20SUPERINTENDENT'S%20FB.PDF).)

21 103. The fact that LAUSD was building more classroom seats than it needed to meet
22 all of its goals was apparent even as early as two years ago. As the Los Angeles Times noted,
23 LAUSD’s “own projections show [new construction] would produce space for 25,000 more
24 students than needed to take schools off year-round schedules and eliminate forced busing, the
25 goals of the school building program.” (See Evelyn Larrubia, *L.A. Unified Schools Won’t Lack
26 for Space; The District’s Building Boom is a Bust for Taxpayers, Critics Say*, L.A. Times (June
27 23, 2008), p.1.)

28

1 104. So, LAUSD planned for a huge student increase and borrowed \$6 billion to build
2 180,000 new classroom seats to meet that “increase,” then actually had a 16% reduction in
3 students, but still refuses to accommodate public school students attending charter schools.

4 5. **The “Public School Choice” Program Shows that LAUSD Has Excess**
5 **Space, Yet LAUSD Refuses Facilities To Students in Charter Schools.**

6 105. LAUSD recently started a program it entitled, “Public School Choice” (“PSC”)
7 that, in its first round of operation, was supposed to have taken 24 of LAUSD’s new schools and
8 some of its underperforming schools and open them up for innovation through a public bidding
9 process. That PSC process was deeply flawed, however, and unlike true public bidding
10 processes with rules and an obligation for the best bidders to win, this PSC process had results
11 dictated largely by political interests that cut charter school operators out. That process was
12 heavily influenced by LAUSD union interests that wanted to keep charters out of LAUSD
13 facilities, some of whom even sued LAUSD to prevent any charter schools from getting any of
14 the PSC campuses.

15 106. While the PSC process has proven to be mostly an empty promise for most
16 students attending charter schools, the very fact that LAUSD engaged in this PSC process to
17 decide what to do with 24 new campuses shows that LAUSD has the capacity to comply with its
18 legal duties under Prop. 39 and the Settlement Agreement. Having violated Prop. 39 and the
19 Settlement Agreement for years, LAUSD could have chosen to use the luxury of so many new
20 campuses at a time of declining enrollment to start following the law while meeting its other
21 obligations to Concept 6 multi-track campuses – but LAUSD refused to do so.

22 107. The inherently political nature of LAUSD’s animus toward highly successful
23 charter schools is widely known. For example, in a March 2, 2010, Los Angeles Times editorial,
24 the Times wrote: “The Los Angeles Unified school board looked transformation in the eye – and
25 blinked. By overriding several recommendations of its top experts and cutting three of the
26 region’s most respected charter organizations out of the picture, the board sadly demonstrated
27 once again that it is devoted more to the politics of running schools than to the education of
28

1 students.” (See *So-called school reform*, L.A. Times (March 2, 2010), a true and correct copy of
2 which is attached hereto as **Exhibit N.**)

3 108. That Times editorial continued: “There is no way to ignore the effect of heavy
4 lobbying by labor-related groups against the charter applicants. One board member reportedly
5 voted against a certain charter because of personal dislike of its leader. Another said privately
6 that the board is already liberal in its approval of new charter schools; why give them district
7 campuses as well? If those are among the prevailing opinions, it’s hard to see why the board
8 bothered with the initiative in the first place.” (*Id.* [emphasis added].)

9 109. LAUSD’s PSC process highlights that LAUSD is firmly committed to violating
10 Prop. 39 and the Settlement Agreement, and further demonstrates that LAUSD is not telling the
11 truth – year in and year out – when it insists during the Prop. 39 process that it has no room for
12 the public school students attending charter schools.

13 6. **“Bucks for Bungalows” – LAUSD Is Eliminating Portable Classrooms**
14 **Even As It Claims That It Has No Room For Its Public Students**
15 **Attending Charter Schools.**

16 110. CCSA is informed and believes and on that basis alleges that LAUSD is in the
17 process of removing large numbers of portable classrooms from its school campuses. These
18 portable classrooms have been used at schools for decades as a viable option to add classroom
19 space to existing campuses relatively quickly and inexpensively, and they are perfectly adequate
20 for educating students.

21 111. CCSA is informed and believes and thereon alleges that LAUSD’s goal of
22 removing portable classrooms from LAUSD campuses is specifically intended to reduce
23 classroom space so that LAUSD traditional district schools can pretend to be too crowded to
24 accommodate co-location with charter schools.

25 112. CCSA is informed and believes and thereon alleges that LAUSD, knowing that
26 this lawsuit was imminent, has given huge monetary incentives to schools to remove those
27 portable classrooms fast, offering LAUSD traditional district schools \$25,000 for each portable
28 removed and shamefully calling this secretive program “Bucks for Bungalows.”

1 113. CCSA is informed and believes and thereon alleges that LAUSD was so
2 desperate to eliminate these portable classrooms that could be used by students attending charter
3 schools that it demanded that schools remove them in a matter of weeks – causing great
4 disruption to the schools that had the excess space – but that the schools moved fast to comply to
5 keep charter school students out and to collect LAUSD’s cash reward.

6 114. Based on the foregoing allegations, LAUSD’s conduct constitutes a waste of
7 public funds and gross abuse of power. In an environment where students attending charter
8 schools have no classrooms at all and LAUSD falsely insists that it has no space for them,
9 LAUSD’s apparent intentional actions to reduce its own classroom space show that LAUSD has
10 no intention of ever complying with Prop. 39 or the Settlement Agreement. LAUSD needs direct
11 judicial oversight to stop intentional misconduct. LAUSD forfeited any claim of trust.

12 7. **LAUSD’s Closure of Several Schools And Its Continuation Of Schools**
13 **With Low Enrollments Also Shows That LAUSD Has Excess Space**

14 115. CCSA is informed and believes and thereon alleges that, prompted by declining
15 enrollment, LAUSD recently formed a plan to close at least eleven schools. Ultimately, in April,
16 2010, LAUSD approved the closure of just three of those schools, and chose to keep operating
17 eight schools with low student populations. LAUSD’s decision to close some schools and
18 maintain others with low enrollments further demonstrates that LAUSD has excess classroom
19 space that LAUSD could use to comply with Prop. 39 and the Settlement Agreement.

20 8. **LAUSD Tried To Force Students Attending Schools In Other School**
21 **Districts To Attend LAUSD Traditional District Schools, Further**
22 **Showing That LAUSD Has Excess Space But Still Will Not**
23 **Accommodate Charters.**

24 116. CCSA is informed and believes and thereon alleges that LAUSD has long had the
25 practice that if parents found public schools in other school districts that they would rather have
26 their children attend, and if the other school districts would accept the student, then LAUSD
27 would consent to that inter-district transfer. Recently, however, LAUSD suddenly rescinded that
28

1 long-held policy because LAUSD has excess classroom space that it wanted to force students to
2 fill, even when those students had been attending schools in other districts for many years.

3 117. LAUSD issued a press release on March 17, 2010, announcing a revised inter-
4 district transfer policy that LAUSD admitted was designed to force students who are already
5 happily attending schools in other school districts to leave the schools they have long attended
6 and to attend LAUSD traditional district schools instead. LAUSD even admitted that the point
7 of that new policy was “to help maintain class size and save teacher jobs.” (See Exhibit O,
8 containing a true and correct copy of LAUSD’s March 17, 2010, News Release, “LAUSD
9 REVISES INTER-DISTRICT TRANSFER POLICY.”)

10 118. In that same press release, Superintendent Cortines touted that LAUSD had
11 “invested \$14 billion in constructing 87 brand new schools and have completed nearly 20,000
12 modernization projects designed to promote positive educational learning environments and
13 excellence in academic achievement,” which he used to justify the decision to force students to
14 leave their current schools and attend LAUSD traditional district schools. (*Id.*)

15 119. CCSA is informed and believes and thereon alleges that, due to a major outcry
16 from parents who did not want to take their children out of their current schools and put them in
17 LAUSD traditional district schools, LAUSD was forced to drop that new policy.

18 120. LAUSD’s conduct with its ill-fated effort to force students to attend its schools
19 simultaneously demonstrates LAUSD’s capacity to comply with Prop. 39 and its refusal to do so.
20 Instead of trying to fill its empty seats with students who do not want to attend LAUSD
21 traditional district schools, LAUSD could have started complying with Prop. 39 and the
22 Settlement Agreement. Further, LAUSD’s stated goal of wanting “to help maintain class size
23 and save teacher jobs” shows LAUSD’s unlawful and political priorities. LAUSD’s priority is
24 supposed to be educating students, and Prop. 39 and the Settlement Agreement requires LAUSD
25 to accommodate charter schools as part of that goal to educate students, but when faced with
26 empty seats LAUSD looks first to how it can protect jobs of teachers in LAUSD’s unions
27 without regard for what is best for the educations of the students involved.

28

1 **E. LAUSD Is Also Breaching Section 4 Of The Settlement Agreement Because**
2 **It Failed To Negotiate A Form Use Agreement In Good Faith; LAUSD**
3 **Imposes A Form Use Agreement on Charters That Violates Prop. 39.**

4 121. Section 4 of the Settlement Agreement required LAUSD to “negotiate in good
5 faith” with CCSA and use its best efforts to agree to a Form Use Agreement that LAUSD would
6 then offer for use by any CCSA member school planning to co-locate on LAUSD facilities in
7 accordance with Prop. 39. The Settlement Agreement specified that the Form Use Agreement
8 must “comply with Prop. 39 and the implementing regulations.” While CCSA and LAUSD
9 engaged in protracted negotiations over a template Form Use Agreement, LAUSD did not
10 negotiate in good faith and the negotiations ultimately resulted in a Form Use Agreement that
11 violates Prop. 39.

12 122. For example, the Implementing Regulations provide that ongoing maintenance
13 and operations (“M&O”) of facilities are the responsibility of the charter school with the school
14 district providing only deferred maintenance on the facilities. (Cal. Code Regs., tit. 5, § 11969.4,
15 subd. (b).) Moreover, Section 11969.7(a) expressly states that “facilities costs do not include any
16 costs that are paid by the charter school, including, but not limited to, costs associated with
17 ongoing operations and maintenance . . .” (Cal. Code Regs., tit. 5, § 11969.7, subd. (a).) Thus,
18 Prop. 39 and the Implementing Regulations expressly provide that the costs that LAUSD can
19 charge charter schools must not include costs for routine repair and maintenance of the facility.

20 123. Despite the express language that provides charter schools with the statutory right
21 to take care of M&O themselves, Section 11.6 of the Form Use Agreement mandates that
22 LAUSD perform those operations and maintenance (at great expense to the charter school)
23 stating specifically: “LAUSD shall solely be responsible for performing M&O on the Charter
24 School Premises and the Charter School Shared Premises.”

25 124. Moreover, LAUSD’s calculation of those costs also fails to comply with Prop. 39.
26 For the 2009-2010 school year, LAUSD charged an outrageous \$7.62 per square foot for what it
27 labels “LAUSD Facilities Costs for Co-Locations.” The costs outlined are described in a manner
28 designed to make it particularly difficult for charter schools to separate out what is permitted and

1 what is not, especially given that LAUSD fails to separate out the oversight, pro rata share, and
2 maintenance and operations charges for the 2009-2010 school year. For the 2010-2011 school
3 year LAUSD seeks to charge an even more outrageous \$7.92 per square foot.

4 125. Despite the obtuse presentation of charges, it is evident that many are unlawful.
5 For example, Exhibit B to the Form Use Agreement includes a line item for "Insurance."
6 Insurance is not contemplated under the Implementing Regulations as an acceptable "facilities
7 cost." Moreover, the calculation of these charges, most of which depend upon the LAUSD's
8 total building square footage, is questionable given LAUSD's lack of a comprehensive facilities
9 inventory, as discussed below.

10 126. Pursuant to Section 4 of the Settlement Agreement, LAUSD was obligated to
11 negotiate a Form Use Agreement that fully complied with Prop. 39. LAUSD's failure to do that
12 is a breach of Section 4 of the Settlement Agreement as well as a breach of the covenant of good
13 faith and fair dealing implied in the Settlement Agreement.

14 127. In its March 19, 2010, Demand Letter, CCSA demanded that LAUSD perform in
15 accordance with Section 4 of the Settlement Agreement by modifying the Form Use Agreement
16 to comply with law in sufficient time meet the legal standards in sufficient time to place such a
17 revised Form Use Agreement in effect during the next school year. (Exh. E, p. 11-12.) LAUSD
18 has not corrected the Form Use Agreement.

19 **F. LAUSD Is Also Breaching Section 5 Of The Settlement Agreement Because**
20 **It Failed To Rescind Its Unlawful Prop. 39 Policies and Replace Them with A**
21 **New Prop. 39-Compliant Policy As Mandated By The Settlement Agreement**

22 128. In March 2004, LAUSD adopted Report No. 257-03-04, "Policies and Procedures
23 Regarding Allocation of Facilities to Charter Schools Under Education Code Section 47614"
24 ("Prop. 39 Policies"), a true and correct copy of which is attached hereto as **Exhibit P**. This
25 document unlawfully included many criteria beyond Prop. 39's scope, and mischaracterized
26 Education Code 47614(b), with the intention of discriminating against charter school students.

27 129. Part of the reason that CCSA was forced to sue LAUSD in 2007 was because of
28 LAUSD's unlawful Prop. 39 Policies. Those policies include many facilities allocation criteria

1 beyond Prop. 39 that LAUSD uses to deny facilities to public school students attending charter
2 schools. For example, the illegal Prop. 39 Policies purport to allow LAUSD to refuse to make
3 facilities available to public school students attending charter schools if it creates “an unfair
4 burden on District-operated programs and students.” That provision incorrectly presumes that
5 students attending LAUSD traditional district schools and programs in those LAUSD traditional
6 district schools always outrank students attending charter schools. This is a clear violation of
7 Prop. 39’s decree that “public school facilities should be shared fairly among all public school
8 pupils, including those in charter schools.” (Ed. Code, § 47614 subd.(a) [emphasis added].)

9 130. A district’s actions “in responding to a Prop. 39 facilities request must comport
10 with the evident purpose of the Act to equalize the treatment of charter and district-run schools
11 with respect to the allocation of space between them.” (*Ridgecrest Charter School v. Sierra
12 Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 1002.) “[T]o the maximum extent
13 practicable, the needs of the charter school must be given the same consideration as those of the
14 district-run schools, subject to the requirement that the facilities provided to the charter school
15 must be “contiguous.” (*Id.*) In this sense, LAUSD must give “equal consideration to the
16 ‘district’ and charter school students.” (*Id.*)

17 131. Section 5 of the Settlement Agreement required LAUSD, within 60 days of the
18 effective date of the Amended Implementing Regulations (*i.e.*, by May 30, 2008), to:

19 [R]escind its Prop. 39 policies (including the March 2004 LAUSD
20 Report No. 257-03-04 titled “Policies and Procedures Regarding
21 Allocation of Facilities to Charter Schools Under Education Code
22 Section 47614,” pertaining to facilities allocations to charter
schools) and . . . replace them with a policy that is compliant with
the Amended Implementing Regulations.”

23 In breach of Section 5 of the Settlement Agreement, LAUSD failed to comply with this clear
24 mandatory duty. Even now, nearly two years past the deadline to which LAUSD committed,
25 LAUSD has still failed to rescind its illegal Prop. 39 Policies and adopt new, lawful policies.

26 132. Although CCSA was not required to do so, in an effort to help LAUSD meet the
27 May 30, 2008, deadline, CCSA put considerable effort into working with LAUSD to revise the
28 Prop. 39 Policies so that they could come closer to complying with Prop. 39. LAUSD and

1 CCSA eventually agreed to the language for a revised Prop. 39 policy around June 23, 2008,
2 which was already past the May 30, 2008 deadline.

3 133. LAUSD staff failed to present the revised policy to its Board at the subsequent
4 meeting. In fact, the revised Prop. 39 policy has never has been presented to the Board. Instead,
5 LAUSD's illegal policy that it promised to rescind two years ago remains in place to this day.

6 134. While it failed entirely to fulfill its legal and contractual obligation to rescind its
7 illegal Prop. 39 Policies, in stark contrast LAUSD managed to adopt a new authorizing policy
8 that increases its oversight and control of charter schools, *i.e.*, the LAUSD Policy for Charter
9 School Authorizing (adopted by Board of Education on January 12, 2010). In taking on this
10 additional program, LAUSD has demonstrated that it is more than capable of adopting new
11 policies that it is motivated to adopt.

12 135. In its March 19, 2010, Demand Letter, CCSA demanded that LAUSD comply
13 with Section 5 of the Settlement Agreement by rescinding the illegal LAUSD policies and
14 adopting the revised policy previously agreed upon by LAUSD's staff. LAUSD has not
15 rescinded its illegal Prop. 39 Policies.

16 **G. LAUSD Is Also Breaching Section 6 Of The Settlement Agreement Because**
17 **It Failed To Make Good Faith Efforts To Secure Funding And Complete The**
18 **Comprehensive Inventory of LAUSD Facilities.**

19 136. In the process of reviewing LAUSD's performance under Prop. 39, it has become
20 evident that LAUSD operates its real estate assets in a surprisingly erratic and subjective fashion.

21 137. During negotiations of the Settlement Agreement and in LAUSD's responses to
22 Public Records Act requests seeking information about LAUSD's real estate assets, LAUSD has
23 stated that it does not have an inventory of its own real estate assets.

24 138. This lack of basic information is puzzling. How can LAUSD comply with Prop.
25 39 or, even more basically, use its taxpayer-funded real estate in a responsible fashion, if it does
26 not even know what real estate it has? How can LAUSD continue to ask voters in the LAUSD
27 jurisdiction for more funding for buildings when the District cannot accurately articulate the real
28 estate assets it already has?

1 139. As a matter of fiduciary responsibility, it would seem that LAUSD was (and is)
2 required to create an inventory of its own real estate assets so that LAUSD can use appropriate
3 information when it makes decisions to allocate those assets. Nevertheless, LAUSD refused to
4 do so unless special funding was found to create such an inventory. Accordingly, Section 6 of
5 the Settlement Agreement required LAUSD and CCSA to work in good faith and use their
6 mutual best efforts to secure funding to create a comprehensive inventory of LAUSD facilities.
7 If funding was available, LAUSD had to perform a comprehensive facilities inventory.

8 140. As with the rest of its obligations under the Settlement Agreement, LAUSD failed
9 to meet its obligations here in breach of Section 6 of the Settlement Agreement. Shortly after the
10 Settlement Agreement was executed, LAUSD insisted that it would cost \$2 million to create an
11 inventory. That sum was (and is) inexplicably high and LAUSD never provided any support for
12 that unreasonable and arbitrary number.

13 141. Despite that unsupported sum, CCSA tried to help find third-party funding for an
14 inventory. However, this proved impossible given the factual circumstances. First, it was clear
15 that such an inventory was a basic obligation already expected from any public entity with
16 widespread real estate assets. Moreover, such an inventory would primarily benefit LAUSD
17 itself. Finally, it appeared that the creation of such an inventory could be funded from LAUSD's
18 massive real estate and construction budget with little additional effort on LAUSD's part.

19 142. CCSA is informed and believes and thereon alleges that, for its part, LAUSD
20 made no effort whatsoever to raise money for the facilities inventory. The only effort LAUSD
21 made was to "offer" that it would be willing to take money out of a small fraction of bond funds
22 that were allocated to charter schools and use that money to create the District's facilities
23 inventory. In other words, LAUSD was willing to take more away from charter schools in order
24 to fund the inventory of its own assets.

25 143. CCSA is informed and believes and thereon alleges that LAUSD made up an
26 unreasonably high cost estimate for the inventory to create a barrier that would be impossible to
27 overcome, because LAUSD prefers to avoid taking an inventory of its own facilities so that
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1 LAUSD can continue to assert falsely that it does not have space for public school students
2 attending charter schools.

3 144. Not having an inventory has added self-interest and subjectivity to the process of
4 determining available facilities. As it stands, CCSA is informed and believes and thereon alleges
5 that LAUSD relies on LAUSD principals to self-report whether their school sites have space to
6 share with charter school students. CCSA is informed and believes and thereon alleges that there
7 is no desire or incentive for any of those principals to share the facilities with schools they often
8 view as competitors of their own programs, so principals make no serious effort to do so.

9 145. Whatever its motives, it is apparent that LAUSD violated its duty in Section 6 of
10 the Settlement Agreement by making no efforts to find funding for a facilities inventory and by
11 arbitrarily setting a high sum for such an inventory that made it impossible for CCSA to find
12 funding. LAUSD's conduct is a breach of Section 6 of the Settlement Agreement as well as a
13 breach of the covenant of good faith and fair dealing implied into the Settlement Agreement.

14 146. In its March 19, 2010, Demand Letter, CCSA demanded that LAUSD comply
15 with Section 6 by examining its own staff and financial resources to determine how it can create
16 an inventory of its real estate holdings, and by moving forward with an inventory of its facilities.
17 In taking these actions, LAUSD can begin to manage its assets as the taxpayers have a right to
18 expect and for the benefit of the students who need responsible allocations of those assets.
19 (Exh. E, p.14-15.) On information and belief, CCSA alleges that LAUSD has not started the
20 required inventory process.

21 **H. LAUSD Is Also Breaching Section 7 Of The Settlement Agreement Because**
22 **It Failed To Produce The Required Five-Year Facilities Plan That Meets The**
23 **Projected Needs Of Students Attending Charter Schools.**

24 147. Section 7 of the Settlement Agreement required LAUSD to begin a facilities
25 planning process with CCSA to produce a five-year facilities plan that meets the projected needs
26 of public school students attending charter schools. The LAUSD Board was required to adopt
27 that plan by December 31, 2008 – over 17 months ago – but LAUSD failed to do so.
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1 148. CCSA expended extensive resources to facilitate preparation of the five-year
2 facilities plan. CCSA went to great effort to project the needs of charter schools. CCSA
3 employees spent weeks on the phone with charter school operators gathering information to
4 provide to LAUSD for the joint facilities planning process. As a result of those efforts, by
5 August 2008 – well in advance of the December 31, 2008 deadline – CCSA provided LAUSD
6 with a spreadsheet noting the information that LAUSD needed to produce the required five-year
7 facilities plan. Further, CCSA proactively scheduled meetings with LAUSD, preparing detailed
8 agendas for those meetings, and presented a timeline designed to meet the deadline.

9 149. In contrast, LAUSD failed to act in good faith, thereby subjecting CCSA to a
10 wasteful process that was never going to produce the five-year facilities plan required by the
11 Settlement Agreement. That process consisted of a series of meetings with a constantly
12 changing group of LAUSD representatives. LAUSD unilaterally invited an ever-expanding
13 group of both LAUSD and non-LAUSD individuals to those meetings, which undermined any
14 hope of genuine progress towards preparation of the required five-year facilities plan.

15 150. LAUSD's conduct here demonstrates that it allowed bureaucratic gamesmanship
16 to obstruct progress toward meeting this mandatory duty. Rather than create an efficient and
17 manageably sized group of LAUSD staff with sufficient seniority and expertise to make a real
18 five-year plan to meet the needs of public school students attending charter schools, LAUSD
19 engaged in an unwieldy and unproductive process that amounted in no tangible benefit.

20 151. LAUSD's conduct is a breach of Section 7 of the Settlement Agreement as well
21 as a breach of the implied covenant of good faith and fair dealing.

22 152. In its March 19, 2010, Demand Letter, CCSA notified LAUSD of its failure to
23 perform in accordance with Section 7 of the Settlement Agreement. As of the filing of this
24 complaint, LAUSD has not complied with the terms of the agreement.

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V.

FIRST CAUSE OF ACTION

(AGAINST ALL DEFENDANTS)

**(BREACH OF SETTLEMENT AGREEMENT FOR FAILURE TO MAKE
FACILITIES OFFERS PURSUANT TO PROP. 39)**

153. CCSA re-alleges and incorporates by reference each and every allegation contained in the paragraphs in this Complaint above.

154. At the time the parties entered into the Settlement Agreement, the consideration was adequate and the Settlement Agreement was just and reasonable as to Defendants.

155. CCSA has performed or substantially performed all conditions and covenants required on its part to be performed in accordance with the terms and conditions of the Settlement Agreement.

156. As alleged above, Defendants have failed and refused, and continue to fail and refuse, to perform pursuant to Paragraph 3 of the Settlement Agreement by failing to make any facilities offer whatsoever to numerous CCSA member charter schools that submitted facilities requests that comply with Prop. 39 and also by illegally withdrawing numerous Prop. 39 facilities offers that it did make.

157. Moreover, by operation of law, the Settlement Agreement contains an implied covenant of good faith and fair dealing requiring the parties thereto not to do anything that will deprive the other party of the benefits of the Settlement Agreement. In acting in the manner alleged above Defendants also violated the implied covenant of good faith and fair dealing.

158. Such actions by Defendants frustrated the benefits that CCSA was to receive under the Settlement Agreement.

159. Defendants' obligations pursuant to the Settlement Agreement are sufficiently certain to make the precise acts that are to be done clearly ascertainable.

160. For the reasons stated heretofore, CCSA has no adequate legal remedy in that money damages cannot compensate CCSA for Defendants' failure to provide facilities to

1 CCSA's member schools pursuant to Prop. 39 as required by Section 3 of the Settlement
2 Agreement.

3 161. CCSA is entitled to specific performance of the terms, conditions and provisions
4 of Section 3 of the Settlement Agreement. CCSA requests that Defendants be ordered to
5 perform pursuant to the terms of Section 3 of the Settlement Agreement as more fully described
6 in the prayer for relief below.

7 162. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing
8 breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear
9 that unless and until restrained by order of this Court the Defendants will continue to proceed in
10 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will
11 not have facilities to house the public school students that they serve. CCSA is also entitled to a
12 preliminary injunction and a permanent injunction commanding Defendants to comply with
13 Section 3 of the Settlement Agreement as more fully described in the prayer for relief below.

14 163. To compel LAUSD to follow the law and comply with the promises it made under
15 the Settlement Agreement, CCSA requests that this Court step in to ensure that public school
16 students attending charter schools will no longer be treated like second-class citizens. To ensure
17 that such an injunction is not an empty promise, CCSA requests that this Court appoint a special
18 master to aid it to compel LAUSD, finally, to follow the law.

19 VI.

20 **SECOND CAUSE OF ACTION**

21 **(AGAINST ALL DEFENDANTS)**

22 **(BREACH OF SETTLEMENT AGREEMENT FOR MAKING FACILITIES**

23 **OFFERS THAT VIOLATE PROP. 39)**

24 164. CCSA re-alleges and incorporates by reference each and every allegation
25 contained in the paragraphs in this Complaint above.

26 165. As alleged above, Defendants have failed and refused, and continue to fail and
27 refuse, to perform pursuant to Paragraph 3 of the Settlement Agreement by making facilities
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1 offer to numerous CCSA member charter schools that fail to comply with Prop. 39 and the Prop.
2 39 Implementing Regulations.

3 166. Moreover, by operation of law, the Settlement Agreement contains an implied
4 covenant of good faith and fair dealing requiring the parties thereto not to do anything that will
5 deprive the other party of the benefits of the Settlement Agreement. Defendants took advantage
6 of charter schools needing sites by exacting concessions from them in the form of: changes to
7 charter school schedules to conform to district schedules; requiring charter schools to use district
8 services for meals; changing space allocations; and a host of other overreaching actions in breach
9 of the covenant of good faith and fair dealing implied into section 3 of the Settlement
10 Agreement. LAUSD took advantage of the fact that charter schools are often desperate to find
11 space to educate the public school students in their care and are often in virtually powerless
12 bargaining positions. As it has in the past, LAUSD continued to use that imbalance of power to
13 force charter schools to consent to LAUSD demands that violate Prop. 39. In acting in this
14 manner Defendants also violated the implied covenant of good faith and fair dealing.

15 167. Such actions by Defendants frustrated the benefits that CCSA was to receive
16 under the Settlement Agreement.

17 168. Defendants' obligations pursuant to the Settlement Agreement are sufficiently
18 certain to make the precise acts that are to be done clearly ascertainable.

19 169. For the reasons stated heretofore, CCSA has no adequate legal remedy in that
20 money damages cannot compensate CCSA for Defendants' failure to provide facilities to
21 CCSA's member schools pursuant to Prop. 39 as required by Section 3 of the Settlement
22 Agreement.

23 170. CCSA is entitled to specific performance of the terms, conditions and provisions
24 of Section 3 of the Settlement Agreement. CCSA requests that Defendants be ordered to
25 perform pursuant to the terms of Section 3 of the Settlement Agreement as more fully described
26 in the prayer for relief below.

27 171. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing
28 breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear

1 that unless and until restrained by order of this Court the Defendants will continue to proceed in
2 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will
3 not have facilities to house the public school students that they serve.

4 172. CCSA is entitled to a preliminary injunction and a permanent injunction
5 commanding Defendants to comply with Section 3 of the Settlement Agreement as more fully
6 described in the prayer for relief below.

7 173. To compel LAUSD to follow the law and comply with the promises it made under
8 the Settlement Agreement, CCSA requests that this Court step in to ensure that public school
9 students attending charter schools will no longer be treated like second-class citizens. To ensure
10 that such an injunction is not an empty promise, CCSA requests that this Court appoint a special
11 master to aid it to compel LAUSD, finally, to follow the law.

12 **VII.**

13 **THIRD CAUSE OF ACTION**

14 **(AGAINST ALL DEFENDANTS)**

15 **(BREACH OF SETTLEMENT AGREEMENT FOR FAILURE TO**
16 **NEGOTIATE A FORM USE AGREEMENT THAT COMPLIES WITH PROP. 39)**

17 174. CCSA re-alleges and incorporates by reference each and every allegation
18 contained in the paragraphs in this Complaint above.

19 175. As alleged above, Defendants have failed and refused, and continue to fail and
20 refuse, to perform pursuant to Section 4 of the Settlement Agreement. In breach of Section 4 of
21 the Settlement Agreement, Defendants failed to negotiate a Form Use Agreement in good faith
22 and ultimately imposed a Form Use Agreement on CCSA that does not comply with Prop. 39.

23 176. Moreover, by operation of law, the Settlement Agreement contains an implied
24 covenant of good faith and fair dealing requiring the parties thereto not to do anything that will
25 deprive the other party of the benefits of the Settlement Agreement. Defendants made it
26 impossible for the parties to negotiate a Form Use Agreement that complies “with Prop. 39 and
27 the implementing regulations” as required by Section 4 of the Settlement Agreement by refusing
28 to agree to terms required by Prop. 39 and by causing the negotiations to take so long that CCSA

1 was forced to yield to a Form Use Agreement that included terms that were contrary to Prop. 39
2 in order that its members would have a Form Use Agreement prior to the start of the 2008-2009
3 school year. In acting in this manner Defendants also violated the implied covenant of good
4 faith and fair dealing.

5 177. Such actions by Defendants frustrated the benefits that CCSA was to receive
6 under the Settlement Agreement.

7 178. Defendants' obligations pursuant to the Settlement Agreement are sufficiently
8 certain to make the precise acts that are to be done clearly ascertainable.

9 179. For the reasons stated heretofore, CCSA has no adequate legal remedy in that
10 money damages cannot compensate CCSA for Defendants' failure to negotiate a Form Use
11 Agreement that complies with Prop. 39 as required by Section 4 of the Settlement Agreement.

12 180. CCSA is entitled to specific performance of the terms, conditions and provisions
13 of Section 4 of the Settlement Agreement. CCSA requests that Defendants be ordered to
14 perform pursuant to the terms of Section 4 of the Settlement Agreement as more fully described
15 in the prayer for relief below.

16 181. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing
17 breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear
18 that unless and until restrained by order of this Court the Defendants will continue to proceed in
19 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will
20 not have facilities to house the public school students that they serve.

21 182. CCSA is entitled to a preliminary injunction and a permanent injunction
22 commanding Defendants to comply with Section 4 of the Settlement Agreement as more fully
23 described in the prayer for relief below.

24 183. To compel LAUSD to follow the law and comply with the promises it made under
25 the Settlement Agreement, CCSA requests that this Court step in to ensure that public school
26 students attending charter schools will no longer be treated like second-class citizens. To ensure
27 that such an injunction is not an empty promise, CCSA requests that this Court appoint a special
28 master to aid it to compel LAUSD, finally, to follow the law.

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VIII.

FOURTH CAUSE OF ACTION

(AGAINST ALL DEFENDANTS)

**(BREACH OF SETTLEMENT AGREEMENT FOR FAILURE TO
RESCIND UNLAWFUL PROP. 39 POLICY)**

184. CCSA re-alleges and incorporates by reference each and every allegation contained in the paragraphs in this Complaint above.

185. As alleged above, Defendants have failed and refused, and continue to fail and refuse, to perform pursuant to Section 5 of the Settlement Agreement. In breach of Section 5 of the Settlement Agreement, Defendants failed to rescind LAUSD's unlawful Prop. 39 Policies and replace them with a new legally-compliant policy as mandated by the Settlement Agreement.

186. Moreover, by operation of law, the Settlement Agreement contains an implied covenant of good faith and fair dealing requiring the parties thereto not to do anything that will deprive the other party of the benefits of the Settlement Agreement which Defendants have similarly breached.

187. Such actions by Defendants frustrated the benefits that CCSA was to receive under the Settlement Agreement.

188. Defendants' obligations pursuant to the Settlement Agreement are sufficiently certain to make the precise acts that are to be done clearly ascertainable.

189. For the reasons stated heretofore, CCSA has no adequate legal remedy in that money damages cannot compensate CCSA for Defendants' failure to rescind its illegal Prop. 39 Policies as required by Section 5 of the Settlement Agreement.

190. CCSA is entitled to specific performance of the terms, conditions and provisions of Section 5 of the Settlement Agreement. CCSA requests that Defendants be ordered to perform pursuant to the terms of Section 5 of the Settlement Agreement as more fully described in the prayer for relief below.

191. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear

1 that unless and until restrained by order of this Court the Defendants will continue to proceed in
2 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will
3 not have facilities to house the public school students that they serve.

4 192. CCSA is entitled to a preliminary injunction and a permanent injunction
5 commanding Defendants to comply with Section 5 of the Settlement Agreement as more fully
6 described in the prayer for relief below.

7 193. To compel LAUSD to follow the law and comply with the promises it made under
8 the Settlement Agreement, CCSA requests that this Court step in to ensure that public school
9 students attending charter schools will no longer be treated like second-class citizens. To ensure
10 that such an injunction is not an empty promise, CCSA requests that this Court appoint a special
11 master to aid it to compel LAUSD, finally, to follow the law.

12 **IX.**

13 **FIFTH CAUSE OF ACTION**

14 **(AGAINST ALL DEFENDANTS)**

15 **(BREACH OF SETTLEMENT AGREEMENT FOR FAILURE TO**
16 **MAKE GOOD FAITH EFFORTS TO SECURE FUNDING FOR AND COMPLETE THE**
17 **COMPREHENSIVE INVENTORY OF LAUSD FACILITIES)**

18 194. CCSA re-alleges and incorporates by reference each and every allegation
19 contained in the paragraphs in this Complaint above.

20 195. As alleged above, Defendants have failed and refused, and continue to fail and
21 refuse, to perform pursuant to Section 6 of the Settlement Agreement. In breach of Section 6 of
22 the Settlement Agreement, Defendants failed to make good faith efforts to secure funding for and
23 complete the comprehensive inventory of LAUSD facilities.

24 196. Moreover, by operation of law, the Settlement Agreement contains an implied
25 covenant of good faith and fair dealing requiring the parties thereto not to do anything that will
26 deprive the other party of the benefits of the Settlement Agreement. Defendants breached the
27 covenant of good faith and fair dealing in regard to Section 6 of the Settlement Agreement by
28 making no efforts to find funding for a facilities inventory and by arbitrarily setting a high sum

1 for such an inventory that made it impossible for CCSA to find funding.

2 197. Such actions by Defendants frustrated the benefits that CCSA was to receive
3 under the Settlement Agreement.

4 198. Defendants' obligations pursuant to the Settlement Agreement are sufficiently
5 certain to make the precise acts that are to be done clearly ascertainable.

6 199. For the reasons stated heretofore, CCSA has no adequate legal remedy in that
7 money damages cannot compensate CCSA for Defendants' failure to secure funding and
8 complete the comprehensive inventory of LAUSD facilities as required by Section 6 of the
9 Settlement Agreement.

10 200. CCSA is entitled to specific performance of the terms, conditions and provisions
11 of Section 6 of the Settlement Agreement. CCSA requests that Defendants be ordered to
12 perform pursuant to the terms of Section 6 of the Settlement Agreement as more fully described
13 in the prayer for relief below.

14 201. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing
15 breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear
16 that unless and until restrained by order of this Court the Defendants will continue to proceed in
17 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will
18 not have facilities to house the public school students that they serve.

19 202. CCSA is entitled to a preliminary injunction and a permanent injunction
20 commanding Defendants to comply with Section 6 of the Settlement Agreement as more fully
21 described in the prayer for relief below.

22 203. To compel LAUSD to follow the law and comply with the promises it made under
23 the Settlement Agreement, CCSA requests that this Court step in to ensure that public school
24 students attending charter schools will no longer be treated like second-class citizens. To ensure
25 that such an injunction is not an empty promise, CCSA requests that this Court appoint a special
26 master to aid it to compel LAUSD, finally, to follow the law.

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1 X.

2 **SIXTH CAUSE OF ACTION**

3 **(AGAINST ALL DEFENDANTS)**

4 **(BREACH OF SETTLEMENT AGREEMENT FOR FAILURE TO**
5 **PRODUCE THE FIVE-YEAR FACILITIES PLAN)**

6 204. CCSA re-alleges and incorporates by reference each and every allegation
7 contained in the paragraphs in this Complaint above.

8 205. As alleged above, Defendants have failed and refused, and continue to fail and
9 refuse, to perform pursuant to Section 7 of the Settlement Agreement. In breach of Section 7 of
10 the Settlement Agreement, Defendants failed to produce the five-year facilities plan that meets
11 the projected needs of students attending charter schools.

12 206. Moreover, by operation of law, the Settlement Agreement contains an implied
13 covenant of good faith and fair dealing requiring the parties thereto not to do anything that will
14 deprive the other party of the benefits of the Settlement Agreement. Defendants breached the
15 covenant of good faith and fair dealing in regard to Section 7 of the Settlement Agreement by
16 setting meetings with CCSA and conducting those meetings in a manner that caused CCSA to
17 engage in a wasteful process that was never going to produce the five-year facilities plan
18 required by the Settlement Agreement, such as, for example, causing the process to consist of a
19 series of meetings with a constantly changing group of LAUSD representatives and unilaterally
20 inviting an ever-expanding group of both LAUSD and non-LAUSD individuals to those
21 meetings, which undermined any genuine progress towards preparation of the required five-year
22 facilities plan

23 207. Such actions by Defendants frustrated the benefits that CCSA was to receive
24 under the Settlement Agreement.

25 208. Defendants' obligations pursuant to the Settlement Agreement are sufficiently
26 certain to make the precise acts that are to be done clearly ascertainable.

27 209. For the reasons stated heretofore, CCSA has no adequate legal remedy in that
28 money damages cannot compensate CCSA for Defendants' failure to prepare a five-year

1 facilities plan that meets projected needs of charter schools as required by Section 7 of the
2 Settlement Agreement.

3 210. CCSA is entitled to specific performance of the terms, conditions and provisions
4 of Section 7 of the Settlement Agreement

5 211. CCSA requests that Defendants be ordered to perform pursuant to the terms of
6 Section 7 of the Settlement Agreement as more fully described in the prayer for relief below.

7 212. Moreover, as evidenced by LAUSD's consistent, pervasive and continuing
8 breaches of Prop. 39, its Implementing Regulations, and the Settlement Agreement, it is clear
9 that unless and until restrained by order of this Court the Defendants will continue to proceed in
10 a manner that forces CCSA and its members to suffer great and irreparable harm in that they will
11 not have facilities to house the public school students that they serve.

12 213. CCSA is entitled to a preliminary injunction and a permanent injunction
13 commanding Defendants to comply with Section 7 of the Settlement Agreement as more fully
14 described in the prayer for relief below.

15 214. To compel LAUSD to follow the law and comply with the promises it made under
16 the Settlement Agreement, CCSA requests that this Court step in to ensure that public school
17 students attending charter schools will no longer be treated like second-class citizens. To ensure
18 that such an injunction is not an empty promise, CCSA requests that this Court appoint a special
19 master to aid it to compel LAUSD, finally, to follow the law.

20 **XI.**

21 **SEVENTH CAUSE OF ACTION**

22 **(AGAINST ALL DEFENDANTS)**

23 **(DECLARATORY RELIEF FOR FAILURE TO PROVIDE FACILITIES OFFERS**

24 **PURSUANT TO PROP. 39)**

25 215. CCSA re-alleges and incorporates by reference each and every allegation
26 contained in the paragraphs in this Complaint above.

27 216. An actual controversy has arisen and now exists between CCSA and Defendants.
28 CCSA alleges that LAUSD has violated Prop. 39 by failing to provide any facilities offer to

1 numerous charter schools that submitted Prop. 39 compliant facilities requests. LAUSD claims
2 that its actions in this regard do not violate Prop. 39.

3 217. CCSA needs a judicial determination of its legal rights and Defendants' legal
4 duties. Such declaration is necessary and appropriate at this time to ensure that LAUSD
5 complies with its statutory duties pursuant to Prop. 39, and is necessary to protect the rights of
6 the CCSA's member charter schools and the general public. Such a declaration is critical
7 because, absent a clear declaration that LAUSD is breaking the law, LAUSD will continue to
8 break the law causing great and irreparable harm to public school students in charter schools.

9 218. By reason of the foregoing, CCSA is entitled to a declaration and judgment that
10 LAUSD violated Prop. 39 where it failed to provide any facilities whatsoever to CCSA member
11 charter schools that submitted Prop. 39 compliant requests for facilities.

12 **XII.**

13 **EIGHTH CAUSE OF ACTION**

14 **(AGAINST ALL DEFENDANTS)**

15 **(DECLARATORY RELIEF RE FAILURE TO PROVIDE PROP. 39-COMPLIANT**
16 **FACILITIES OFFERS TO CHARTER SCHOOLS)**

17 219. CCSA re-alleges and incorporates by reference each and every allegation
18 contained in the paragraphs in this Complaint above.

19 220. An actual controversy has arisen and now exists between CCSA and Defendants.
20 CCSA alleges that many of the facilities offers made by LAUSD to charter schools do not
21 comply with Prop. 39. Defendants assert that LAUSD has complied with Prop. 39.

22 221. CCSA needs a judicial determination of its legal rights and Defendants' legal
23 duties. Such declaration is necessary and appropriate at this time to ensure that LAUSD
24 complies with its statutory duties, and is necessary to protect the rights of the CCSA's member
25 charter schools and the general public. Such a declaration is especially critical because, absent a
26 clear declaration that LAUSD is breaking the law, LAUSD will continue to break the law
27 causing great and irreparable harm to public school students in charter schools.

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XIV.

TENTH CAUSE OF ACTION

(AGAINST ALL DEFENDANTS)

(DECLARATORY RELIEF RE UNLAWFUL LAUSD PROP. 39 POLICY)

227. CCSA re-alleges and incorporates by reference each and every allegation contained in the paragraphs in this Complaint above.

228. An actual controversy has arisen and now exists between CCSA and Defendants. CCSA alleges that LAUSD's Prop. 39 Policies do not comply with Prop. 39. CCSA is informed and believes and thereon alleges that LAUSD asserts that its Prop. 39 Policies are not unlawful.

229. CCSA needs a judicial determination of its legal rights and Defendants' legal duties. Such declaration is necessary and appropriate at this time to ensure that LAUSD complies with its statutory duties, and is necessary to protect the rights of the CCSA's member charter schools and the general public. Such a declaration is especially critical because, absent a clear declaration that LAUSD is breaking the law, LAUSD will continue to break the law causing great and irreparable harm to students in charter schools.

230. By reason of the foregoing, CCSA is entitled to a declaration and judgment that LAUSD's Prop. 39 Policies are unlawful.

PRAYER FOR RELIEF

WHEREFORE, CCSA prays for judgment on this complaint as follows:

ON THE FIRST CAUSE OF ACTION

a. That Defendants be ordered to specifically perform the Settlement Agreement by making final facilities offers to charter schools for the 2010-2011 school year and subsequent years in compliance with Prop. 39 and the Implementing Regulations, in accordance with Section 3 of the Settlement Agreement;

b. That this Court issue a permanent injunction, and a preliminary injunction if CCSA so moves, commanding Defendants to perform in accordance with Section 3 of the Settlement Agreement by making final facilities offers to charter schools for the 2010-2011

1 school year and subsequent years in compliance with Prop. 39 and the Implementing
2 Regulations; and

3 c. For the Court to appoint a special master at LAUSD's expense to assist the
4 Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.

5 **ON THE SECOND CAUSE OF ACTION**

6 a. That Defendants be ordered to specifically perform the Settlement
7 Agreement by making final facilities offers to charter schools for the 2010-2011 school year and
8 subsequent years in compliance with Prop. 39 and the Implementing Regulations, in accordance
9 with Section 3 of the Settlement Agreement;

10 b. That this Court issue a permanent injunction, and a preliminary injunction
11 if CCSA so moves, commanding Defendants to perform in accordance with Section 3 of the
12 Settlement Agreement by making final facilities offers to charter schools for the 2010-2011
13 school year and subsequent years in compliance with Prop. 39 and the Implementing
14 Regulations; and

15 c. For the Court to appoint a special master at LAUSD's expense to assist the
16 Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.

17 **ON THE THIRD CAUSE OF ACTION**

18 a. That Defendants be ordered to specifically perform the Settlement
19 Agreement by modifying the Form Use Agreement to comply Prop. 39 and the Implementing
20 Regulations in accordance with Section 4 of the Settlement Agreement and in sufficient time to
21 place such a revised Form Use Agreement in effect during the next school year;

22 b. That this Court issue a permanent injunction, and a preliminary injunction
23 if CCSA so moves, commanding Defendants to perform in accordance with Section 4 of the
24 Settlement Agreement by modifying the Form Use Agreement to comply Prop. 39 and the
25 Implementing Regulations in sufficient time to place such a revised Form Use Agreement in
26 effect during the next school year; and

27 c. For the Court to appoint a special master at LAUSD's expense to assist the
28 Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.

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ON THE FOURTH CAUSE OF ACTION

- a. That Defendants be ordered to specifically perform the Settlement Agreement by rescinding its illegal Prop. 39 Policies and replacing them in accordance with Section 5 of the Settlement Agreement with a legally compliant policy;
- b. That this Court issue a permanent injunction, and a preliminary injunction if CCSA so moves, commanding Defendants to perform in accordance with Section 5 of the Settlement Agreement by rescinding its illegal Prop. 39 Policies and replacing them with a legally compliant policy; and
- c. For the Court to appoint a special master at LAUSD's expense to assist the Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.

ON THE FIFTH CAUSE OF ACTION

- a. That Defendants be ordered to specifically perform the Settlement Agreement by examining its own staff and financial resources to determine how it can create an inventory of its real estate holdings, and by moving forward and producing an inventory of its facilities in accordance with Section 6 of the Settlement Agreement;
- b. That this Court issue a permanent injunction, and a preliminary injunction if CCSA so moves, commanding Defendants to perform in accordance with Section 6 of the Settlement Agreement by examining its own staff and financial resources to determine how it can create an inventory of its real estate holdings, and by moving forward with and producing an inventory of its facilities; and
- c. For the Court to appoint a special master at LAUSD's expense to assist the Court in ensuring that LAUSD performs as required by the terms of the Settlement Agreement.

ON THE SIXTH CAUSE OF ACTION

- a. That Defendants be ordered to specifically perform the Settlement Agreement by immediately appointing a group of not more than three LAUSD employees, including the Executive Director of the Innovation and Charter Schools Division, to meet with CCSA and with a firm deadline to create a five-year plan as required under Section 7 of the Settlement Agreement;

ON ALL CAUSES OF ACTION

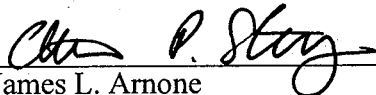
- a. For the Court to exercise continuing jurisdiction over this action to ensure that LAUSD complies with the order of specific performance, declaration, and injunction of this Court;
- b. For the recovery in full of CCSA's costs and attorneys' fees incurred in this action under Code of Civil Procedure section 1021.5; and
- c. Such other relief as the Court may find appropriate.

Dated: May 24, 2010

Respectfully submitted,

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