

1 HIGGS FLETCHER & MACK LLP
William M. Low, Bar No. 106669
2 wlow@higgslaw.com
Edwin M. Boniske, Bar No. 265701
3 boniske@higgslaw.com
Roger W.R. Clayton, Bar No. 298819
4 claytonr@higgslaw.com
401 West "A" Street, Suite 2600
5 San Diego, California 92101-7913
Telephone: 619.236.1551
6 Facsimile: 619.696.1410

7 Attorneys for Plaintiff
SAN DIEGO UNIFIED SCHOOL DISTRICT, a public
8 entity

9 THORSNES BARTOLOTTA McGUIRE LLP
Kevin F. Quinn, Esq.
10 kquinn@tbmlawyers.com
2550 Fifth Avenue, 11th Floor
11 San Diego, CA 92103
Telephone: 619.236.9363
12 Facsimile: 619.236.9653

13 Attorneys for Plaintiff
SCRIPPS RANCH GROUP, an unincorporated
14 association

15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

18 SAN DIEGO UNIFIED SCHOOL
19 DISTRICT, a public entity, and
20 SCRIPPS RANCH GROUP, an
unincorporated association,

21 Plaintiffs,

22 v.

23 EDUCATIONAL TESTING
24 SERVICES, a New York corporation;
and COLLEGE ENTRANCE
25 EXAMINATION BOARD, a New
York corporation; and DOES 1-50,
26 inclusive,

27 Defendants.
28

CASE NO. '17CV1379 W KSC

COMPLAINT FOR:

- 1. **Breach of Contract;**
- 2. **Breach of the Implied Covenant of Good Faith and Fair Dealing; and**
- 3. **Declaratory Relief.**

[DEMAND FOR JURY TRIAL]

1 Plaintiffs SAN DIEGO UNIFIED SCHOOL DISTRICT, individually and in
2 a representative capacity on behalf of the students and their families who are
3 members of the SAN DIEGO UNIFIED SCHOOL DISTRICT and thereby
4 impacted by Defendants’ actions, and SCRIPPS RANCH GROUP (collectively
5 “Plaintiffs”) hereby allege and state as follows.

6 I.

7 **NATURE OF THE CASE**

8 1. This action arises from the wrongful acts of Defendants Education
9 Testing Services and College Entrance Examination Board in unilaterally
10 invalidating, without cause, 844 AP test scores, spanning nine different AP
11 subjects, for a total of 543 innocent students at Scripps Ranch High School, based
12 on purported “irregularities” in the students’ seating chart.

13 2. Defendants’ refusal to score and report the subject AP examinations is
14 a direct and material breach of their contractual duties to the school and its students.
15 In making this arbitrary and capricious determination to invalidate these tests,
16 Defendants have caused substantial harm to SDUSD and the students of Scripps
17 Ranch High School, whose actions have jeopardized the academic achievement and
18 future prospects of 543 high-achieving students without evidence of wrongdoing by
19 any of the students, or evidence that the claimed “testing irregularities” impacted
20 any of the test scores.

21 3. Defendants have ignored the requests of students, parents, and the
22 school to validate the scores. Rather, the only action Defendants have offered is to
23 permit all 543 students to retake all of their AP exams, which is patently
24 unreasonable and highly insensitive to the stress, hard work and effort that goes into
25 preparing for and taking an AP test, especially when the unexpected retest is
26 offered more than two months *after* the initial examination was taken, and during
27 summer when many of these students and their families are travelling or otherwise
28 unavailable to prepare for or take the offered retests.

1 **II.**

2 **THE PARTIES**

3 4. Plaintiff SAN DIEGO UNIFIED SCHOOL DISTRICT (“SDUSD”) is
4 a public body and a properly constituted school district pursuant to the California
5 Education Code. Plaintiff SDUSD brings this lawsuit individually and in a
6 representative capacity on behalf of the 543 students of Scripps Ranch High School
7 who took the AP exam in May 2017 and had their scores unilaterally invalidated by
8 Defendants. The 543 Scripps Ranch High School students and their families are
9 part of the SDUSD.

10 5. Plaintiff SCRIPPS RANCH GROUP (the “Scripps Ranch Group”) is
11 an unincorporated association comprised of high school students who took
12 Advanced Placement tests at Scripps Ranch High School and have had their scores
13 invalidated by Defendants through no fault of their own (the “AP Students”). It is
14 also comprised of those students’ parents, who will be harmed financially and
15 otherwise by the invalidation of the May 2017 AP examination scores. The Scripps
16 Ranch Group has standing to bring suit on behalf of its members because (1) its
17 members would otherwise have standing to bring suit in their own right; (2) the
18 interests it seeks to protect are germane to the association's purpose; and (3) neither
19 the claim asserted nor the relief requested requires the participation of the
20 individual members in the action. The Scripps Ranch Group fairly protects the
21 rights of the AP Students and their parents.

22 6. Defendant EDUCATIONAL TESTING SERVICE (“ETS”) is a New
23 York corporation with its principal place of business in New York, New York,
24 which is authorized to do and does business in San Diego County, California.
25 Plaintiffs are informed and believe that ETS administers AP exams on behalf of
26 Defendant College Board.

27 7. Defendant COLLEGE ENTRANCE EXAMINATION BOARD
28 (“College Board”) is a New York corporation with its principal place of business in

1 New York, New York, which is authorized to do and does business in San Diego
2 County, California. Plaintiffs are informed and believe that College Board scores
3 AP test scores and reports them to public and private colleges and universities
4 throughout the United States.

5 8. Defendants ETS and College Board are referred to collectively herein
6 as “Defendants.”

7 9. The true names and capacities of defendants DOES 1 through 50,
8 inclusive, whether individual, corporate, associate or otherwise, are unknown to
9 Plaintiff, who therefore sues said defendants by such fictitious names and will
10 amend to allege their true names and capacities when ascertained. Plaintiffs are
11 informed and believe that each of the DOE defendants is responsible for the acts or
12 omissions alleged in this complaint, and that Plaintiffs’ injuries and damages were
13 proximately caused by the acts or omissions of these unnamed defendants.

14 10. Plaintiffs are informed and believe, and based thereon alleges, that
15 each of the Defendants herein was at all relevant times the principal, agent, alter-
16 ego, joint-venturer, partner, affiliate, manager, subsidiary, servant, employee and/or
17 co-conspirator of each other Defendant, and in performing the acts described in this
18 complaint, was acting in the scope of his, her or its authority with the consent of
19 each other Defendant. Each Defendant ratified and/or authorized the wrongful acts,
20 conduct, omissions, or commissions of each of the other Defendants. At all
21 relevant times, each Defendant acted with full knowledge of the conduct of each of
22 the other Defendants, with the intention to cooperate therewith.

23 **III.**

24 **JURISDICTION AND VENUE**

25 11. This Court has original jurisdiction over this action under 28 U.S.C. §
26 1332, because the matter is between citizens of different states, and the matter in
27 controversy exceeds the sum or value of \$75,000. Specifically, each of the
28 Plaintiffs are citizens of California, and each of the Defendants are citizens of New

1 York. As alleged herein, Plaintiffs have suffered, and will suffer, damages and
2 attorneys' fees in excess of \$75,000.

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

13 13. Venue is proper in the District Court for the Southern District of
14 California under 28 U.S.C. § 1391(b) because a substantial part of the events or
15 omissions giving rise to the claim occurred in this judicial district. Scripps Ranch
16 High School, where the AP students took the subject AP tests whose results were
17 improperly invalidated, is located in San Diego, California, and the injuries upon
18 which this action is based occurred and continue to occur in the County of San
19 Diego, California, in this district.

20 **IV.**

21 **GENERAL ALLEGATIONS**

22 **A. Background Regarding AP Exams.**

23 14. Advanced Placement ("AP") exams provide a means for high school
24 students to earn college credit while in high school. Defendant College Board
25 advertises that, "by taking an AP course and scoring successfully on the related AP
26 Exam, [a high school student] can save on college expenses: most colleges and
27 universities nationwide offer college credit, advanced placement, or both, for
28 qualifying AP Exam scores... These credits can allow students to save college

1 tuition, study abroad, or secure a second major.” College Board further advertises
2 that, “[e]arning a qualifying score on the AP Exam can help you advance and avoid
3 required introductory courses – so you can move directly into upper-level classes
4 and focus on the work that interests you most.”

5 15. Defendants have a monopoly on the market for earning college credits
6 for high school students. Defendant College Board organizes and administers the
7 AP tests. The AP program is the only means for high school students to test for
8 college credit in dozens of subject matters. In order to obtain college credits,
9 students are required to pass the AP test, as scored and reported by Defendants.

10 16. AP exams are based on as much as a year of coursework offered by a
11 high school instructor, and typically involve months of preparation, on top of the
12 students’ normal course load. Successful scores on the AP exams can save students
13 and their parents thousands of dollars in light of the skyrocketing college tuitions
14 and costs, which are reaching record heights. A successful student who takes
15 multiple AP exams can potentially save almost an entire semester or even a year of
16 introductory college level coursework.

17 **B. Defendants Agreed to Write The Exams, Score the Exams, and Report**
18 **the Scores In Exchange for Fees.**

19 17. Prior to the first day of AP examinations in May of 2017, the AP
20 Students registered for AP exams to be given at Scripps Ranch High School by or
21 on behalf of Defendants, and the students (or their parents) paid Defendants the
22 required exam fees. The AP Students and/or their parents entered into written
23 contracts with the Defendants, to score and report the exam results to colleges and
24 universities where the students had applied for admission, in exchange for such
25 payment. The AP Students were never informed, advised, or instructed that a
26 deviation from the seating policy, no matter how small, would automatically
27 invalidate their test scores. Rather, the students relied on SDUSD and Defendants
28 to ensure the test environment was satisfactory.

1 18. The AP Students also agreed to abide by Defendants’ policies set forth
2 in a document Defendants provided, entitled “Bulletin for AP Students and Parents”
3 (“Bulletin”). Likewise, the Bulletin sets forth Defendants’ obligations, including
4 that the exams would be offered in May 2017 and that grades would be reported by
5 July 2017. In the Bulletin, students are advised of their responsibilities as
6 individual students. Buried in the fourth page of the Bulletin, amidst a laundry list
7 of instructions to students, is the statement that the College Board has the sole and
8 final discretion to invalidate test scores because of “testing irregularities.”

9 19. Although the Bulletin references the AP Coordinator’s Manual, that
10 document is not provided to the AP Students. The amount of documentation and
11 references that the AP Students would need to review, which are not all provided to
12 the AP Students, to understand all of the rules and regulations governing the exams,
13 is voluminous. In such a situation, where the validity of AP test scores is of the
14 utmost importance and where College Board claims to have sole and final
15 discretion on “testing irregularities,” it is imperative that Defendants exercise such
16 discretion with the utmost good faith and not in an arbitrary and capricious manner.

17 20. The terms of the parties’ agreements related to “Testing irregularities”
18 is unconscionable and unenforceable. It is procedurally unconscionable because it
19 is contained in a contract of adhesion. The students are required to sign
20 documentation purportedly incorporating the Bulletin on the day they take the AP
21 exams, putting them in a position where they are forced to sign the form documents
22 given to them or risk invalidating the months of work that they put into preparing
23 for the AP exam. The contract is also substantively unconscionable since it permits
24 Defendants to invalidate the scores of students without due process and without any
25 evidence of a breach of contract by the students. Indeed, the students are given no
26 notice of the exact grounds which will cause their scores to be automatically
27 invalidated.

28 ///

1 21. AP exams were administered at Scripps Ranch High School during the
2 period May 1-5 and 8-12, 2017. The contracts between the AP Students and
3 Defendants were memorialized when Plaintiffs signed answer sheets on the date of
4 each exam, in which they purported to agree to the conditions stated in the Bulletin.

5 **C. SDUSD Entered Into a Contract with Defendants to Administer the AP**
6 **Exams at Scripps Ranch High School.**

7 22. In addition to their contracts with the Scripps Ranch Group,
8 Defendants also entered into a contract with SDUSD under which Defendants
9 would write the exam, score the exams, and report the exam results in exchange for
10 a fee. SDUSD agreed to oversee the giving of the exams at the school, and to
11 transmit the completed exams to Defendants for scoring.

12 23. Plaintiff SDUSD signed a Participation Form with Defendants, which
13 was required for any schools that intended to offer AP exams in May 2017. The
14 Participation Form incorporates by reference all of the policies and procedures in
15 the AP’s Coordinator Manual, and specifically identifies eight specific rules,
16 including that “exam seating procedures and policies will be followed for all exams,
17 as described in the *AP Coordinator’s Manual*. The agreement is clear that, if the
18 school did not comply with those policies, “one, some, or all of my students’ AP
19 Exam scores may be cancelled or not reported.”

20 24. Nowhere in the Participation Form, the Bulletin, or the Coordinator
21 Manual does it provide that alleged violations of the seating policies, however
22 trivial, would automatically result in the invalidation of test scores for the entire
23 school. If the alleged failure to follow seating requirements automatically resulted
24 in cancellation of test scores without any actual evidence of cheating, the rules,
25 should so provide (but do not).

26 ///

27 ///

28 ///

1 **D. The AP Exams Were Administered In A Manner Designed To Test**
2 **Students' Knowledge and Prevent Cheating.**

3 25. The AP Students studied diligently in preparation for the AP exams.
4 AP classes are the most difficult and time-consuming courses offered to high school
5 students. In addition to attending regular classes and completing regular
6 assignments, many of the AP students also purchased their own AP examination
7 preparation materials and took private review courses. The AP students prepared
8 for the AP examinations over the course of the entire school year, and spent a
9 considerable amount of extra time studying exclusively for these examinations in
10 the months before they were administered. They took the exams in an environment
11 that was designed to test their own knowledge and stop cheating.

12 26. The Scripps Ranch High School faculty and staff administer thousands
13 of high stakes tests each year including Advanced Placement exams. In each of
14 these test administrations, the Scripps Ranch High School faculty and staff are
15 diligent in their preparation and organization so as to support student achievement
16 and test integrity. They carefully consider test schedules, testing environment, and
17 administrative supervision and support to create an environment that is conducive
18 to student performance and test security. They take test integrity seriously,
19 communicate the importance of this with their students, and provide multiple
20 controls to ensure academic integrity.

21 27. The subject AP examinations were administered in May 2017, in a
22 manner that it believed was accordance with the rules and policies provided by
23 Defendants. The tests were then sealed and returned to Defendants, who were
24 contractually obligated to score the answers and release those scores to designated
25 colleges and universities by July 2017.

26 28. Once the AP exams were completed, the students finished their spring
27 semester and many began educational trips. Many students left San Diego County
28 for summer break and a significant number are unavailable for different reasons,

1 including summer school, work, college orientation, or leaving the country for
2 educational trips or to visit friends and family members overseas. For the seniors
3 who had taken the AP exams, this was the last summer before starting college.

4 **E. Defendants' Decision to Invalidate 841 AP Exam Scores Based on**
5 **Alleged "Irregularities" in the Students' Seating Arrangements.**

6 29. On or about June 8, 2017, Defendants contacted Scripps Ranch High
7 School's AP Coordinator requesting specific information relating to the testing
8 environment at Scripps Ranch High School. The Site Coordinator provided all
9 requested by Defendants, including the seating chart for students at Scripps Ranch
10 High School. Among other things, the AP Coordinator informed Defendants that
11 during the exam, some of the AP test takers were sat on the same side of a 6-foot
12 table, 4-feet apart. The AP Coordinator also informed Defendants that each student
13 who took the exam on a 6-foot table was provided with a three-sided partition that
14 was only closed in on the sides, to prevent any possibility of the test taker looking
15 to the side and cheating. As relevant here, the front of each partition was cut out to
16 provide the proctors with an unobstructed line of sight to each test taker.

17 30. On June 26, 2017, Defendants notified SDUSD that they had decided
18 to invalidate 844 AP test scores in the subjects of Biology, Calculus AB, Calculus
19 BC, Computer Science A, English Language and Composition, English Literature
20 and Composition, Psychology, Statistics, and United States History. Defendants
21 invalidated these scores for what they determined to be "improper seating
22 conditions" during the AP exams. Specifically, Defendants decision was based on
23 the fact that some students were seated at 6-foot tables with partitions (to prevent
24 cheating), instead of 8-foot tables with no partitions. In other words, Defendants
25 chose to invalidate hundreds of students test scores and cast-aside thousands of
26 hours of preparation by the students because Defendants determined that some
27 students were sat approximately 4-feet apart, instead of 5-feet apart as specified in
28 the AP Coordinator Manual.

1 31. Notably, there is no evidence that the alleged improper seating
2 conditions provided any student with an unfair advantage on the AP tests, or that
3 the alleged “irregularity” had any effect on the scores or the integrity of the test.
4 Indeed, the decision to invalidate the scores of 543 students was made without any
5 determination that there had been any cheating or misconduct by any of those
6 students. Plaintiffs are informed and believe that this decision was made in haste,
7 and without conducting any statistical or particularized analysis of any of the
8 students. Defendants, who claim to be institutions devoted to education and higher
9 learning, and who profit from a college admissions/college credit construct that
10 they created, instead chose to effectively punish all 543 students who were seated in
11 the above-described manner (at no fault of their own), even though there was no
12 evidence that the test results did not accurately reflect the students’ own knowledge.

13 32. Plaintiffs are informed and believe that none of the affected students
14 were provided with an opportunity to provide any information regarding the test
15 environment before their scores were summarily dismissed. As a result, Defendants
16 have no evidence or basis for actually believing that any of the affected students
17 whose scores were invalidated cheated, and have no evidence or basis for believing
18 that the test environment was anything less than secure. Plaintiffs are informed and
19 believe that Defendants have methods to test the validity of scores, including a
20 comparison of prior scores, conducting statistical analysis, and interviewing
21 affected students, but did not do so, instead imposing a “death penalty” sanction
22 without regard the effect of the alleged violation. The alleged trivial violation of
23 the seating policy is not a sufficient reason to invalidate over 840 tests for 543 high
24 school students.

25 33. The decision to cancel all scores taken in these nine AP exams based
26 only on a determination of improper seating conditions is not warranted where, as
27 here, there are no factors suggesting that the test results are invalid. Nor is that
28 decision proper under Defendants’ own policies and procedures, which fail to

1 adequately warn a school that alleged seating irregularities, without more, will
2 automatically result in the invalidation of ALL scores, regardless of whether or not
3 the test results were affected.

4 **F. Defendants' Breaches of the Contractual Duties Has Caused Severe and**
5 **Irreparable Harm to SDUSD and the Scripps Ranch Group.**

6 34. Defendants' unlawful conduct has caused and will continue to cause
7 substantial and irreparable damage and injury to Plaintiffs in ways that cannot be
8 compensated with money, and Plaintiffs have no speedy, plain or adequate remedy
9 at law. If the rescheduled AP exams go forward without Defendants first
10 establishing whether irregularities or misconduct materially impacted the validity of
11 the test results of the 543 Scripps Ranch High School students, the AP Students and
12 others will be placed in the untenable position of retaking AP exams without
13 textbooks, study guides, or notes from year-long courses; and without sufficient
14 time to prepare, which is likely to detrimentally impact their admission to college,
15 the progress of their college education, and the cost of their college tuition.

16 35. Further, Defendants' rescheduled exams will necessarily interrupt the
17 students' participation in various summer programs, vacations and work schedules,
18 resulting in further financial hardship. Students will be forced to repeat classes
19 they have already demonstrated mastery in. Extra semesters of college will
20 inevitably delay their entry into the workforce. For some, the costs of an extra year
21 of tuition may influence whether they go college at all, or which college they select.
22 This uncertainty has also harmed various students in their registration for college
23 courses, and have has cost them spots in (now) needed classes.

24 36. If Defendants' breach of contract is not remedied immediately,
25 SDUSD will also suffer injuries, such as the cost of preparing for and administering
26 yet another set of AP exams at the behest of Defendants. These direct costs cannot
27 be recouped and are lost; especially since Defendants are refusing to honor the
28 agreement with Plaintiffs by failing to report the AP exam test scores of the 543

1 Scripps Ranch High School students who properly took the AP tests in May 2017.
2 As a proximate result of Defendants' actions, SDUSD has also suffered damages
3 and significant reputational harm by the acts and omissions of Defendants.

4 37. There is a real and present danger that Defendants and others acting in
5 concert with them will continue to engage in the unlawful activities described
6 herein, thereby increasing and aggravating the damage that Plaintiffs have already
7 suffered by reason of such activities unless this Court orders the tests to be graded,
8 the scores validated, and reported to colleges.

9 38. The AP Students merely ask that Defendants be ordered to comply
10 with their legal obligations and report the AP scores that they earned from the May
11 2017 AP Tests. Defendants had the means to validate scores by interviewing
12 proctors/students, comparing students' scores to previous scores, and looking for
13 other irregularities in scores, yet they failed to do so. Instead, they have taken an
14 untenable position based on seating irregularities, without any evidence that there
15 was misconduct or cheating by the AP Students whose scores were invalidated.

16 39. Absent any evidence of wrongdoing, Defendants are now attempting
17 to force 543 students and their families to face irreparable harm and profound
18 financial impact by invalidating their AP exam scores, and offering to allow them
19 to sit for re-tests, to be given on short notice (but now several months after the AP
20 courses have completed and the original AP tests were taken). Thus, greater injury
21 will be inflicted upon the AP Students by the denial of the relief prayed for below
22 than will be inflicted upon the Defendants by granting that relief.

23 40. Plaintiff SDUSD seeks the same relief since any failure to meet any
24 technical requirement of AP Coordinator's Manual, especially one that the
25 Defendants own policies did not state mandated immediate and widespread
26 invalidation, does not warrant an indiscriminate and widespread sanction against
27 SDUSD and the 543 affected Scripps Ranch High School students.

28 ///

FIRST CAUSE OF ACTION

(Breach of Written Contract)

(Against All Defendants)

1
2
3
4 41. Plaintiffs incorporate each of the paragraphs above as though fully set
5 forth herein.

6 42. Plaintiffs and Defendants entered into contracts for the provision and
7 administration of AP tests for students at Scripps Ranch High School, as described
8 herein.

9 43. SDUSD performed material conditions, covenants, and promises
10 required of it to be performed, unless excused, in accordance with its contracts with
11 Defendants. SDUSD administered the AP exams at the behest of ETS and the
12 College Board, such that Defendants were able to obtain substantial fees from
13 Scripps Ranch High School students. SDUSD administered the exams under test
14 conditions that ensure the validity of the test results. In exchange, Defendants
15 agreed to administer, score and report the AP exam test results of Scripps Ranch
16 High School students for the benefit of SDUSD and its members.

17 44. The Scripps Ranch Group similarly performed all of the material
18 conditions, covenants, and promises required of them to be performed, unless
19 excused, in accordance with their contracts with Defendants. The Scripps Ranch
20 Group were required to, and did, pay Defendants (directly or through SDUSD) for
21 the right to take each AP examination, prepared for and sat for the exams, and
22 followed the requirements set forth in the Bulletin. In exchange, Defendants were
23 required to administer the AP exams for the AP Students, and to score and report
24 the results of those exams to colleges where they had applied to admission by July
25 2017.

26 45. Commencing on or around June 28, 2017, Defendants breached the
27 terms of their contracts with Plaintiffs by refusing to report the AP exam test scores
28 for 543 Scripps Ranch High School students in nine different AP subjects, and by

1 unilaterally offering to instead make re-testing available in July 2017. Defendants
2 have thus refused to score and report the AP exam test results for SDUSD by July
3 2017, as they were required to do. SDUSD has demanded that Defendants comply
4 with their contractual obligations to report the scores for the AP Students, but
5 Defendants have failed and refused to do so.

6 46. The “Testing irregularities” provisions in the written agreements are
7 substantively and procedurally unconscionable. The Scripps Ranch Group, through
8 the AP Students, were forced to sign a contract of adhesion incorporating the entire
9 Bulletin on the day the test is administered. The Scripps Ranch Group had no
10 meaningful ability to challenge or contest the provision, which was provided on a
11 “take it or leave it” basis on the day of the exam. The provision is also
12 substantively unconscionable because Defendants purportedly can repudiate the
13 entire purpose of the contract indiscriminately, arbitrarily and capriciously.
14 Defendants can purportedly invalidate the AP scores of the AP Students without
15 any evidence of wrongdoing by any of the AP Students, have no procedural
16 safeguards to protect the students, and the Defendants claim have unfettered
17 discretion to harm students through score invalidation. No investigation
18 requirement exists or is actually followed by Defendants before scores can be
19 invalidated. As such, the purported “testing irregularities” provision is
20 unconscionable and cannot be enforced.

21 47. As a direct and proximate result of Defendants’ conduct, Plaintiff
22 SDUSD will suffer injuries, including without limitation the costs of preparing for
23 and administering the AP exam at the behest of Defendants. These direct costs
24 cannot be recouped and are lost, and especially so considering that Defendants are
25 refusing to honor their agreements by refusing to report the AP exam test scores of
26 the 543 Scripps Ranch High School students who devoted their full time and
27 attention to taking the AP tests in May 2017. Plaintiff SDUSD has also sustained
28 significant direct reputational harm due to the allegations made by Defendants of

1 “testing irregularities” and suggestions of “cheating” when no such evidence exists.
2 AP students have also suffered injuries, such as the loss of having their validly
3 obtained AP test scores being invalidated by Defendants, and the additional costs
4 and burdens of having to take an unnecessary retest in July 2017.

5 48. Plaintiff Scripps Ranch Group will also suffer injuries, in that they are
6 being effectively forced to prepare for and re-take AP examinations without
7 outlines, study aids, or notes from year-long courses, and without sufficient time to
8 prepare, which is likely to detrimentally impact their admission to college, the
9 progress of their college education, and the cost of their college tuition. Many
10 members of Scripps Ranch Group are simply unavailable on the re-testing dates,
11 and have thus been deprived of the benefit of their bargain, in addition to incurring
12 substantial costs and devoting substantial irreplaceable time to prepare for the
13 subject examinations.

14 49. Under the terms of the parties’ written agreement, Plaintiffs’ are also
15 entitled to recovery their reasonable attorneys’ fees in connection with this matter.

16 50. Unless and until enjoined and restrained by order of this Court,
17 Defendants’ threatened wrongful conduct in invalidating 543 innocent students’ AP
18 test scores, including the scores of the AP Students, and proceeding to require re-
19 testing by students without any evidence of misconduct that materially affected the
20 test scores of any student, will cause great and irreparable injury to Plaintiffs.
21 Assuming AP Students are even able to attend the rescheduled exams, they will be
22 effectively forced to prepare for them without essential outlines, study aids, or notes
23 from year-long courses; and without sufficient time to prepare, which is likely to
24 detrimentally impact their scores, and thus their admission to college, the progress
25 of their college education, and the cost of their college tuition.

26 51. Neither the Scripps Ranch Group nor Plaintiff SDUSD have an
27 adequate remedy at law for these injuries, because it will be impossible for
28 Plaintiffs to determine the precise amount of damages that they will suffer if

1 Defendants' conduct is not restrained; and Plaintiffs will be forced to institute a
2 multiplicity of suits to obtain adequate compensation for their injuries.

3 **SECOND CAUSE OF ACTION**

4 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

5 **(Against All Defendants)**

6 52. Plaintiffs incorporate each of the paragraphs above as though fully set
7 forth herein.

8 53. Defendants' conduct in invalidating the AP exam test scores of 543
9 Scripps Ranch High School students without cause, without any evidence of
10 misconduct by the affected students, and without any evidence that the alleged
11 group testing irregularities materially affected the validity of the students'
12 individual scores, was arbitrary and capricious. Although the AP Coordinators'
13 Manual provides that Defendants "may" invalidate scores based on seating
14 arrangements, the discretion conferred to Defendants under that section must be
15 exercised in good faith and in the best interests of the students. By making the
16 arbitrary decision to invalidate 841 exam scores, without any evidence of
17 wrongdoing by test takers, and without regard for the effect their decision will have
18 on these students, Defendants abused their discretion and unfairly frustrated
19 Plaintiffs' ability to obtain the benefits of the agreements. As a result of the above-
20 described conduct, Defendants have breached the implied covenant of good faith
21 and fair dealing.

22 54. As a direct and proximate result of Defendants' conduct, Plaintiff
23 SDUSD will suffer injuries, including without limitation the costs of preparing for
24 and administering the AP exam at the behest of Defendants. These direct costs
25 cannot be recouped and are lost, and especially so considering that Defendants are
26 refusing to honor their agreements by refusing to report the AP exam test scores of
27 the 543 Scripps Ranch High School students who devoted their full time and
28 attention to taking the AP tests in May 2017. Plaintiff SDUSD has also sustained

1 significant direct reputational harm due to the allegations made by Defendants of
2 “testing irregularities” and suggestions of “cheating” when no such evidence exists.
3 AP students have also suffered injuries, such as the loss of having their validly
4 obtained AP test scores being invalidated by Defendants, and the additional costs
5 and burdens of having to take an unnecessary retest in July 2017.

6 55. Plaintiff Scripps Ranch Group will also suffer injuries, in that they are
7 being effectively forced to prepare for and re-take AP examinations without
8 outlines, study aids, or notes from year-long courses, and without sufficient time to
9 prepare, which is likely to detrimentally impact their admission to college, the
10 progress of their college education, and the cost of their college tuition. Many
11 members of Scripps Ranch Group are simply unavailable on the re-testing dates,
12 and have thus been deprived of the benefit of their bargain, in addition to incurring
13 substantial costs and devoting substantial irreplaceable time to prepare for the
14 subject examinations.

15 56. Under the terms of the parties’ written agreement, Plaintiffs’ are also
16 entitled to recovery their reasonable attorneys’ fees in connection with this matter.

17 57. Unless and until enjoined and restrained by order of this Court,
18 Defendants’ threatened wrongful conduct in invalidating 543 innocent students’ AP
19 test scores, including the scores of the AP Students, and proceeding to offer re-
20 testing by students, on very short notice, without any evidence of misconduct that
21 materially affected the test scores of any student, will cause great and irreparable
22 injury to Plaintiffs. Assuming AP Students are even able to attend the rescheduled
23 exams, they will effectively be forced to prepare for them without essential
24 outlines, study aids, or notes from year-long courses; and without sufficient time to
25 prepare, which is likely to detrimentally impact their scores, and thus their
26 admission to college, the progress of their college education, and the cost of their
27 college tuition.

28 ///

1 58. Neither the Scripps Ranch Group nor Plaintiff SDUSD have an
2 adequate remedy at law for these injuries, because it will be impossible for
3 Plaintiffs to determine the precise amount of damages that they will suffer if
4 Defendants' conduct is not restrained; and Plaintiffs will be forced to institute a
5 multiplicity of suits to obtain adequate compensation for their injuries.

6 **THIRD CAUSE OF ACTION**

7 **(Declaratory Relief)**

8 **(Against All Defendants)**

9 59. Plaintiffs incorporate each of the paragraphs above as though fully set
10 forth herein.

11 60. An actual controversy has arisen and now exists between Plaintiffs, on
12 the one hand, and Defendants, on the other hand. Plaintiffs contend that they
13 satisfied their obligations under their contracts with Defendants, that Defendants
14 have a contractual duty to score and report the AP test results of the 543 Scripps
15 Ranch High School students who took AP exams in May 2017, and that, before
16 invalidating the AP test results of those students, Defendants have a duty to
17 determine whether any alleged irregularities materially affected the test scores of
18 the affected student(s), and that, absent substantial evidence of misconduct or
19 irregularities which affected test results, Defendants were required to report each
20 test score pursuant to their written agreements with Plaintiffs. Plaintiffs are
21 informed and believe that Defendants dispute these contentions.

22 61. Plaintiffs also seek a declaration that the "testing irregularities" section
23 of the parties' agreement is substantively and procedurally unconscionable. The
24 Scripps Ranch Group and SDUSD's members were forced to sign a contract of
25 adhesion incorporating the entire Bulletin on the day the test is administered, at a
26 time when they were prohibited from having documents in their possession
27 (including the Bulletin they purported to incorporate). The Scripps Ranch Group
28 and SDUSD's members had no meaningful ability to challenge or contest the

1 subject provisions, which were presented on a “take it” or “leave it and forfeit
2 months of hard work and dedication” basis. The provisions are also substantively
3 unconscionable in that Defendants can purportedly repudiate the entire purpose of
4 the contract indiscriminately and capriciously. Defendants can purportedly
5 invalidate the AP scores without any evidence of wrongdoing by any students, and
6 have no procedural safeguards exist to protect the students, scores can be
7 invalidated at no fault of their own. As such, the terms of the parties’ agreements
8 relating to “Testing irregularities” are unconscionable and cannot be enforced.
9 Defendants utterly failed to inform SDUSD that improper seating conditions was,
10 without more, sufficient to justify the immediate invalidation of all the test scores.

11 62. Plaintiffs request a judicial determination their rights and obligations,
12 and a declaration as to which parties’ interpretation of the agreement is correct. A
13 judicial declaration is necessary and appropriate at this time, to ensure that
14 Plaintiffs may ascertain their rights and duties under their contracts with
15 Defendants.

16 **JURY TRIAL DEMAND**

17 Plaintiffs demand a trial by jury.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of
20 them, as follows:

21 1. For a declaration of the respective rights and duties of the parties under
22 the contracts in question;

23 2. For an order requiring Defendants to show cause, if they have any, as
24 to why they should not be required, as set forth above, to grade and validate the
25 May 2017 AP tests and to report the results to the requested colleges and
26 universities;

27 3. For a temporary restraining order, a preliminary injunction, and a
28 permanent injunction, all requiring Defendants, and each of them, and their agents,

1 servants, and employees, and all persons acting under or in concert with, to grade
2 and validate the May 2017 AP tests and to report the results to the requested
3 colleges and universities;

4 4. For a permanent injunction prohibiting Defendants from engaging in
5 further lawful behavior as alleged herein;

6 5. For an award of compensatory and general damages according to
7 proof;

8 6. For an award of pre-judgment interest;

9 7. For Plaintiff's costs and expenses of this action, including Plaintiff's
10 reasonable attorneys' fees pursuant to the parties' written agreement; and

11 8. For such other and further relief as the Court deems just and proper.

12 DATED: July 7, 2017

HIGGS FLETCHER & MACK LLP

13
14
15 By: /s/ William M. Low
16 WILLIAM M. LOW, ESQ.
EDWIN M. BONISKE, ESQ.
ROGER W.R. CLAYTON, ESQ.

17 Attorneys for Plaintiff
18 SAN DIEGO UNIFIED SCHOOL
DISTRICT

19
20 THORSNES BARTOLOTTA
MCGUIRE LLP
Kevin F. Quinn

21 Attorneys for Plaintiff
22 SCRIPPS RANCH GROUP
23
24
25
26
27
28