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19 Attorneys for Defendants  
20 LOS ANGELES UNIFIED SCHOOL DISTRICT,  
21 AUSTIN BEUTNER and LINDA DEL CUETO

22 UNITED STATES DISTRICT COURT

23 CENTRAL DISTRICT OF CALIFORNIA

24 CALIFORNIA EDUCATORS FOR  
25 MEDICAL FREEDOM ARTEMIO  
26 QUINTERO, MIGUEL SOTELO,  
27 JANET PHYLLIS BREGMAN, CEDRIC  
28 JOHNSON, MISANON (SONI) LLOYD,  
HEATHER POUNDSTONE, and  
THERESA D. SANFORD,

Plaintiffs,

v.

THE LOS ANGELES UNIFIED  
SCHOOL STRICT, AUSTIN  
BEUTNER, in his official capacity as  
Superintendent of the Los Angeles  
Unified School District, and LINDA DEL  
CUETO, in her official capacity as the  
Director of Human Resources for the Los  
Angeles Unified School District,

Defendants.

Case No. 2:21-cv-02388-DSF-PVC

**DEFENDANTS AUSTIN  
BEUTNER AND LINDA DEL  
CUETO'S NOTICE OF MOTION  
AND MOTION TO DISMISS ALL  
CAUSES OF ACTION IN  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

Date: July 12, 2021  
Time: 1:30 p.m.  
Dept: Courtroom 7D

Complaint Filed: March 17, 2021  
FAC Filed: May 24, 2021  
Trial Date: TBD

1 **TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on July 12, 2021 at 1:30 p.m., or as soon thereafter  
3 as the matter can be heard in Courtroom 7D of the above-captioned Court, located at  
4 350 West First Street, Los Angeles, California 90012, Defendants AUSTIN BEUTNER  
5 (“Beutner”), and LINDA DEL CUETO (“Del Cueto”) (collectively “Defendants”) will,  
6 and hereby do, move the Court to dismiss all causes of action in Plaintiffs’ First  
7 Amended Complaint (“Complaint”), with prejudice, for lack of subject matter  
8 jurisdiction and for failure to state a claim upon which relief can be granted pursuant to  
9 Federal Rule of Civil Procedure 12(b)(1) and (6), as set forth below:

10 1. This Court lacks subject matter jurisdiction over all of Plaintiffs’ claims  
11 for declaratory and injunctive relief as Plaintiffs’ requests are premature.

12 2. This Court lacks subject matter jurisdiction over the claims as to the  
13 Defendants in their official capacities as the District is an arm of the state and any  
14 damages assessed against the individual Defendants would be paid for by the state, an  
15 arm of the state or from state funds.

16 3. Plaintiffs fail to allege sufficient facts to state a cause of action against the  
17 Defendants in their individual capacities.

18 4. Plaintiffs fail to state a cause of action against the Defendants in their  
19 official capacities as the District is an arm of the state and any damages assessed against  
20 the individual Defendants would be paid for by the state, an arm of the state or from  
21 state funds.

22 5. Plaintiffs’ First Cause of Action for “Federal Preemption” fails because  
23 Federal Preemption is not a *bona fide* cause of action.

24 6. Plaintiffs’ Second Cause of Action for Substantive Due Process – Medical  
25 Experimentation under 42 U.S.C. section 1983 fails against all Defendants because  
26 Plaintiffs fail to adequately allege a violation of a constitutional right under Section  
27 1983.

28 7. Plaintiffs’ Second Cause of Action for Substantive Due Process – Medical

1 Experimentation under 42 U.S.C. section 1983 also fails as it is not an appropriate claim  
2 for relief against the individual Defendants in their official capacities.

3 8. Plaintiffs’ Third Cause of Action for Violation of California’s Protection  
4 Of Human Subjects In Medical Experimentation Act, California Health & Safety Code  
5 Section 24170, *et al.* fails because Plaintiffs fail to allege sufficient facts to support this  
6 claim.

7 This Motion is made after Defendants’ counsel’s effort to meet and confer  
8 pursuant to Local Rule 7-3 on May 27, 2021 and counsel for the parties’ efforts to meet  
9 and confer on June 2, 2021. *See* Declaration of Connie Michaels, ¶¶ 2-3, Ex. A.

10 This Motion is based on this Notice of Motion and Motion, the Memorandum of  
11 Points and Authorities, Declaration of Connie L. Michaels, the papers and pleadings on  
12 file in this case, and all other evidence and argument as may be presented at the hearing  
13 on the Motion.

14 Dated: June 7, 2021

Respectfully Submitted,

LITTLER MENDELSON P.C.

*/s/ Connie L. Michaels*

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Connie L. Michaels  
Attorneys for Defendants  
LOS ANGELES UNIFIED SCHOOL  
DISTRICT, AUSTIN BEUTNER and  
LINDA DEL CUETO

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