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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

14 Plaintiff J.P. on behalf of her minor son
R.P., and all others similarly situated;
15 THE NATIONAL CENTER FOR FAIR
& OPEN TESTING doing business as
16 FAIRTEST, a Massachusetts
corporation; A.K., individually and on
17 behalf of all others similarly situated;
R.G. on behalf of her minor son J.G., and
18 all others similarly situated; Plaintiff
M.S. on behalf of her minor daughter
19 Z.S., and all others similarly situated,

20 Plaintiffs,

21 vs.

22 EDUCATIONAL TESTING SERVICES
(ETS), a New York corporation;
23 THE COLLEGE ENTRANCE
EXAMINATION BOARD, a New York
24 corporation, doing business as THE
COLLEGE BOARD; and
25 DOES 1 through 50, inclusive,

26 Defendants.

Case No.:

**NATIONWIDE AND
CALIFORNIA CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

27
28 ///

899-5656-0001

1 Plaintiffs, Plaintiff J.P. on behalf of her minor son R.P. and all others similarly
2 situated; THE NATIONAL CENTER FOR FAIR & OPEN TESTING (“FairTest”);
3 A.K., individually and on behalf of all others similarly situated; R.G. on behalf of her
4 minor son J.G., and all others similarly situated; Plaintiff M.S. on behalf of her minor
5 daughter Z.S., and all others similarly situated (collectively, “Plaintiffs”), allege and
6 plead as follows:

7 INTRODUCTION

8 1. Plaintiffs bring this suit against Defendants to recover the damages owed to
9 them and others similarly situated and for injunctive relief as a result of the Defendants’
10 failure to allow access to and failure to administer its Advanced Placement (“AP”)
11 program properly and without prejudice.

12 2. The College Board is involved at every level of the college preparation,
13 testing, admissions, financial aid, and placement process. It is the leading player in the
14 higher education industry responsible for the fates of millions of high school students
15 every year, deciding who will be recruited, who will apply, who will be accepted, who
16 will receive financial aid, and who will be able to afford college and other
17 postsecondary opportunities. The Educational Testing Service (“ETS”) is responsible
18 for the development, administration, and scoring of College Board’s assessments,
19 including AP exams.

20 3. AP is a program offered by the College Board that offers college-level
21 courses and examinations to high school students. Colleges and universities frequently
22 grant placement and course credit to students who obtain passing scores on their AP
23 examinations. The length of time each student will spend in college, their curriculum,
24 and how much they pay to attend college are factors heavily influenced by College
25 Board and the AP opportunities available to students. The College Board claims that
26 AP courses and examinations also favorably impact college admissions decisions by
27 demonstrating to admissions officers that a student is prepared for college-level work.
28

1 AP courses strengthens a student's high school transcript and help students qualify for
2 scholarships.

3 4. In March of 2020, schools around the world moved to distance learning
4 due to the COVID-19 pandemic. The College Board was faced with the decision of
5 cancelling its popular and profitable AP program for the year, postponing the exams, or
6 offering them at home to students. The College Board made the decision to offer the
7 AP exams to students at home but with significant structural changes.

8 5. The College Board was immediately made aware by numerous sources,
9 including counselors, educators, advocates and families, that there were serious
10 concerns that the at-home AP exams would not be fair to students who have no
11 computer, access to Internet or quiet workspaces from which to work, or to under-
12 resourced students in general. Even as the test began, questions remained about the
13 availability and applicability of legally required accommodations for students with
14 disabilities, the fair access to connectivity for all students, test security, and score
15 comparability.

16 6. Counselors, educators, advocates, and families immediately reached out to
17 The College Board to make them aware of their serious concerns with the at-home AP
18 format's likely impact on students who have no computer, access to Internet or quiet
19 workspaces from which to work, or on under-resourced students in general. Even as the
20 test began, questions remained about the availability and applicability of legally
21 required accommodations for students with disabilities, connectivity, test security, and
22 score comparability.

23 7. The College Board acknowledged that these issues existed, but it did not
24 change its policies to address them. On May 14, 2020, after 3 full days of at-home AP
25 exams, the College Board admitted that there was a measurable failure rate in uploading
26 exams, and it attempted to change its policies going forward. The College Board's
27 President, David Coleman acknowledged in an email that, "we can't control the
28 conditions in students' homes." Technical problems with the digital versions of the AP

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1 exams caused and continue to cause tremendous angst for high school students and their
2 parents during this already stressful time.

3 8. Before this year, high school students took their AP exams at school during
4 the regular school day hours in a controlled and regulated environment where they could
5 ask for assistance if necessary. The College Board acknowledged that it knew moving
6 the exams home may exclude some students from testing at all, stating that, “We
7 recognize that the digital divide could prevent some low-income and rural students from
8 participating.” The College Board moved the AP exams to students’ homes under the
9 present conditions despite this acknowledgement. In doing so, the College Board
10 knowingly discriminated against under-resourced students, disabled students, and
11 students in remote locations, and it failed to honor its commitments to students and their
12 families.

13 9. After one day of testing, it became clear that the College Board and ETS
14 had failed to fairly, competently, or equitably administer the AP exams. The students
15 who relied on AP scores for the financial benefits of college placement and credit
16 experienced technical glitches, timing issues, and a heightened level of anxiety and
17 distress. Reports of anywhere between 5% and 20% of examinees were unable to
18 submit their responses through the at-home testing platform during the first three days
19 of AP exams. One AP Coordinator reported a failure rate of 30%. Some students could
20 only submit partial responses, and others could not even log on to take the exams.

21 10. Despite the fact that these are challenging times for families, The College
22 Board offered no acceptable remedies to students whose lack of digital access prevented
23 them from fairly testing. Nor did it offer remedies to students who experienced glitches
24 with the AP platform. On May 15, 2020, The Chronicle of Higher Education reported,
25 “AP Tests During Covid-19: Heartbreak, Technical Glitches, and Anonymous
26
27
28

1 Intrigue.”¹ On the same day, The Washington Post reported, “College Board Says New
2 AP Test Online Going Well – But Students Report Big Problems.”²

3 11. The College Board intends to move all of its assessments to an at-home
4 format, including the SAT; however, this year’s AP exam administration makes it
5 perfectly clear that until the technical issues, the digital divide and other inequities are
6 adequately addressed, it cannot not do so.

7 12. The challenge of the at-home AP exam format is only the final hurdle for
8 many AP students, and it is also one step that many students may never even reach.
9 Some AP students are fully denied access to AP exams and others must overcome
10 additional hurdles to obtain access to AP exams based solely on where they are enrolled
11 in school. Access is particularly challenging for students enrolled in California public
12 charter schools or homeschools.

13 THE PARTIES

14 Plaintiffs:

15 13. Plaintiff J.P. is acting on behalf of her minor son R.P. and all others
16 similarly situated. R.P. is a high school student who is registered to take at-home AP
17 exams. Pseudonyms have been used throughout the complaint in order to protect the
18 identity of the minor Plaintiffs. Further the public has little legitimate interest in
19 knowing the true identity of the Plaintiffs. The Defendants will not be prejudiced by
20 allowing the Plaintiffs to proceed anonymously and in this manner until a protective
21 order is in place.

22 14. The National Center for Fair & Open Testing (“FairTest”) is a nationwide
23 public charity that operates in California. FairTest’s mission is to advance quality
24 education and equal opportunity by promoting fair, open, valid evaluations of students,
25 teachers, and schools. FairTest works on behalf of examinees to end the misuses of
26

27 ¹ <https://www.chronicle.com/article/AP-Tests-During-Covid-19-/248792>

28 ² <https://www.washingtonpost.com/education/2020/05/15/college-board-says-new-online-ap-tests-are-going-well-students-report-big-problems/>

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