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Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

14 ELIZABETH MIRABELLI, an
15 individual, on behalf of herself and all
16 others similarly situated; LORI ANN
17 WEST, an individual, on behalf of herself
18 and all others similarly situated; et al.,

18 Plaintiffs,

19 v.

20 MARK OLSON, in his official capacity
21 as President of the EUSD Board of
22 Education, et al.,

22 Defendants.

Case No.: 3:23-cv-0768-BEN-VET

**Notice of Motion and Plaintiffs’
Renewed Motion for (1) Summary
Judgment on Prospective Relief
Claims; (2) Partial Summary
Judgment re Liability on Damages
Claims; (3) Entry of a Rule 54(b)
Separate Judgment on Prospective
Relief Claims and Stay of Damages
Claims; and (4) Entry of a Class-Wide
Permanent Injunction or, in the
Alternative, a Class-Wide Preliminary
Injunction**

Judge: Hon. Roger T. Benitez
Courtroom: 5A
Hearing Date: August 18, 2025
Hearing Time: 10:30 a.m.

1 **TO: THE COURT, ALL PARTIES, AND THEIR**
2 **ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on August 18, 2025 at 10:30 a.m., in
4 Courtroom 5A of this Court, located at 221 West Broadway, San Diego, CA 92101,
5 Plaintiffs Elizabeth Mirabelli, Lori Ann West, Jane Roe, Jane Boe, John Poe, Jane
6 Poe, John Doe, and Jane Doe, by and through counsel, will and hereby do move this
7 Court for the following relief:

8 (1) Pursuant to Fed. R. Civ. P. 56(a), Plaintiffs request partial summary
9 judgment on their constitutional and declaratory relief claims for
10 prospective relief. This includes:

- 11 a. Plaintiffs Mirabelli, West, Roe, Boe, and the First Sub-Class’s claims
12 for violation of the Free Speech Clause (First Claim for Relief) against
13 Attorney General Rob Bonta and the CDE Defendants,¹ and Plaintiffs
14 Roe, Boe, and the First Sub-Class’s claims for violation of the Free
15 Speech Clause against the EUSD Official-Capacity Defendants.²
- 16 b. Plaintiffs Mirabelli, West, Roe, Boe, and the Second Sub-Class’s
17 claims for violation of the Free Exercise Clause (Second and Third
18 Claim for Relief) against Attorney General Rob Bonta and the CDE
19 Defendants, and Plaintiffs Roe, Boe, and the Second Sub-Class’s
20 claims for violation of the Free Exercise Clause against the EUSD

21 _____
22 ¹ Tony Thurmond, in his official capacity as the California State Superintendent of
23 Public Instruction, and Linda Darling-Hammond, Cynthia Glover Woods, Francisco
24 Escobedo, Brenda Lewis, James J. McQuillen, Sharon Olken, Gabriela Orozco-
25 Gonzalez, Kim Pattillo Brownson, Haydee Rodriguez, Alison Yoshimoto-Towery,
26 and Julian Clauson, all in their official capacities as members of the California State
27 Board of Education. Ms. Clauson’s term expires on July 31, 2025, and she should be
28 automatically substituted for her successor at that time. *See* Fed. R. Civ. P. 25(d).

² Luis Rankins-Ibarra, in his official capacity as Superintendent of EUSD, and Mark
Olson, Frank Huston, Joan Gardner, Doug Paulson, and Zesty Harper, all in their
official capacities as members of the EUSD Board of Education.

1 Official-Capacity Defendants.

2 c. Plaintiffs John Poe, Jane Poe, John Doe, Jane Doe, and the Third
3 Sub-Class’s claims for violation of Substantive Due Process: Parental
4 Rights (Seventh Claim for Relief) against Attorney General Rob
5 Bonta and the CDE Defendants.

6 d. Plaintiffs John Poe, Jane Poe, John Doe, Jane Doe, and the Fourth
7 Sub-Class’s claims for violation of the Free Exercise Clause (Sixth
8 and Eighth Claims for Relief) against Attorney General Rob Bonta
9 and the CDE Defendants.

10 (2) Pursuant to Fed. R. Civ. P. 56(a), Plaintiffs Mirabelli and West request
11 partial summary judgment on the issue of liability with respect to their
12 damages claims. This includes:

13 a. Plaintiff West’s claim for violation of Title VII by failure to
14 accommodate (Fourth Claim for Relief) against Defendant
15 Escondido Union School District.

16 b. Plaintiffs Mirabelli’s and West’s claims for violation of the Free
17 Speech Clause (First Claim for Relief) against the EUSD Official-
18 Capacity Defendants on the basis that sovereign immunity does not
19 apply, and against the EUSD Personal-Capacity Defendants³ on the
20 basis that qualified immunity does not provide an affirmative defense.

21 c. Plaintiffs Mirabelli’s and West’s claims for violation of the Free
22 Exercise Clause (Second and Third Claims for Relief) against the
23

24 ³ Former Assistant Superintendent John Albert in his personal capacity, current
25 Director of Integrated Student Services Trent Smith, former Director of Integrated
26 Student Services Tracy Schmidt, and Rincon Middle School Principal Steve White.
27 Although these individuals were sued in their personal capacity, all damages would be
28 against EUSD itself, since it would indemnify both the official-capacity and personal-
capacity defendants. *Williams v. Horvath*, 16 Cal. 3d 834, 843 (1976) (citing Cal. Gov.
Code § 825).

1 EUSD Official-Capacity Defendants on the basis that sovereign
2 immunity does not apply, and against the EUSD Personal-Capacity
3 Defendants on the basis that qualified immunity does not provide an
4 affirmative defense.

5 (3) Pursuant to Fed. R. Civ. P. 54(b), Plaintiffs request entry of a Rule 54(b)
6 Separate Judgment on the claims for prospective relief resolved in (1)
7 above, and a stay of the remaining claims at issue in (2) above (as well as
8 Plaintiff West’s Title VII retaliation claim).

9 (4) Pursuant to Fed. R. Civ. P. 65(d), Plaintiffs request entry of a class-wide
10 permanent injunction with respect to the claims for prospective relief
11 resolved in (1) above. In the alternative, pursuant to Fed. R. Civ. P. 65(b),
12 Plaintiffs request entry of a class-wide preliminary injunction with respect
13 to the claims for prospective relief. Plaintiffs request that the EUSD
14 Official-Capacity Defendants and the State-Level Defendants be prohibited
15 and enjoined as follows:

16 a. Defendants and their officers, agents, servants, employees, and
17 attorneys, and those in active concert or participation with them, and
18 those who gain knowledge of this injunction order, or know of the
19 existence of this injunction order, are enjoined, on a state-wide basis,
20 from (1) enforcing, implementing, or recommending Parental
21 Exclusion Policies (“PEPs”)* and (2) knowingly allowing school
22 districts and state education employees to enforce, implement, or
23 recommend PEPs, including by using a student’s preferred names
24 and pronouns without parental consent, against any member of the
25 Class.

26 b. *“PEPs” are defined as the requirements identified by the California
27 Department of Education in its webpage “School Success and
28 Opportunity Act (Assembly Bill 1266) Frequently Asked Questions,”

1 which provide that (1) “school districts should accept and respect a
2 student’s assertion of their gender identity where the student
3 expresses that identity at school,” (2) “schools must consult with a
4 transgender student to determine who can or will be informed of the
5 student’s transgender status, if anyone, including the student’s
6 family”; (3) “[w]ith rare exceptions, schools are required to respect
7 the limitations that a student places on the disclosure of their
8 transgender status, including not sharing that information with the
9 student’s parents”; and (4) “[a] transgender student’s right to
10 privacy does not restrict a student’s right to openly discuss and
11 express their gender identity or to decide when or with whom to share
12 private information.”

13 Plaintiffs’ motion for partial summary judgment is made on the grounds that
14 no triable issue of material facts exists as to Plaintiffs’ claims for prospective relief,
15 and no triable issue of material facts exists as to the issue of liability on Plaintiffs’
16 claims for damages. Plaintiffs’ motion for entry of a Rule 54(b) separate judgment
17 and a stay of the remaining claims is made on the grounds that the interests of judicial
18 and party efficiency warrant severance and immediate appeal of the claims for
19 prospective relief. Plaintiffs’ motion for entry of a permanent injunction or, in the
20 alternative, a preliminary injunction is made on the grounds that Plaintiffs either have
21 succeeded (if the court grants partial summary judgment) or are likely to succeed on
22 their claims for prospective relief, that the violation of their constitutional rights will
23 cause irreparable harm, that the balance of harms tips in their favor, and that the
24 public interest warrants injunctive relief.

25 This motion is supported by the accompanying Memorandum of Points and
26 Authorities, by the declarations of Paul M. Jonna, Esq., Elizabeth Mirabelli, Lori Ann
27 West, Jane Roe, Jane Boe, John Poe, Jane Poe, John Doe, Jane Doe, Erica Anderson,
28

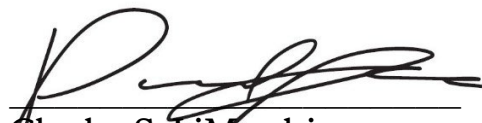
1 Ph.D., and Nathan Szajnberg, M.D., and all exhibits attached thereto,⁴ and by such
2 further argument and evidence that may be adduced at any hearing on this matter or
3 of which the Court may take judicial notice.

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Respectfully submitted,

LiMANDRI & JONNA LLP

Dated: July 16, 2025

By: 
Charles S. LiMandri
Paul M. Jonna
Jeffrey M. Trissell
Attorneys for Plaintiffs

⁴ “[T]here is no meaningful distinction between an expert report accompanied by a sworn declaration and an expert report that is itself sworn.” *Am. Fed’n of Musicians v. Paramount Pictures Corp.*, 903 F.3d 968, 976-77 (9th Cir. 2018).

CERTIFICATE OF SERVICE

Elizabeth Mirabelli v. Mark Olson, President of the EUSD Board of Education, et al.

USDC Court Case No.: 3:23-cv-00768-BEN-VET

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; my business address is P.O. Box 9120, Rancho Santa Fe, California 92067, and that I served the following document(s):

1. Notice of Motion and Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Permanent Injunction or, in the Alternative, a Class-Wide Preliminary Injunction;
2. Memorandum of Points & Authorities in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Permanent Injunction;
3. Declaration of Plaintiff Elizabeth Mirabelli in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Injunction;
4. Declaration of Plaintiff Lori Ann West in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Injunction;
5. Declaration of Teacher Jane Boe in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Injunction;
6. Declaration of Teacher Jane Roe in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Injunction;
7. Declaration of Mother Jane Poe in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Injunction;
8. Declaration of Father John Poe in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Injunction;
9. Declaration of Mother Jane Doe in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Injunction;
10. Declaration of Father John Doe in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Injunction;

CERTIFICATE OF SERVICE - CONT'D.

Elizabeth Mirabelli v. Mark Olson, President of the EUSD Board of Education, et al.

USDC Court Case No.: 3:23-cv-00768-BEN-VET

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11. Declaration of Dr. Erica E. Anderson, Ph.D., in Support of Plaintiffs’ Motion for Summary Judgment and Daubert Motion to Exclude;
 12. Declaration of Dr. Nathan M. Szajnberg, M.D., in Support of Plaintiffs’ Motion for Summary Judgment and Daubert Motion to Exclude;
 13. Notice of Manual Filing of Flash Drive, Tentatively Under Seal, in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Injunction
 14. Declaration of Paul M. Jonna, Esq., in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Permanent Injunction or, in the Alternative, a Class-Wide Preliminary Injunction;
 15. Appendix of Authorities in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Permanent Injunction or, in the Alternative, a Class-Wide Preliminary Injunction - VOLUME I OF II;
 16. Appendix of Authorities in Support of Plaintiffs’ Renewed Motion for (1) Summary Judgment on Prospective Relief Claims; (2) Partial Summary Judgment re Liability on Damages Claims; (3) Entry of a Rule 54(b) Separate Judgment on Prospective Relief Claims and Stay of Damages Claims; and (4) Entry of a Class-Wide Permanent Injunction or, in the Alternative, a Class-Wide Preliminary Injunction - VOLUME II OF II; and
 17. Exhibits in Support of Plaintiffs’ Motion for Summary Judgment and Entry of a Class-Wide Injunction - EXHIBIT SERIES C & D;
 18. Exhibits in Support of Plaintiffs’ Motion for Summary Judgment and Entry of a Class-Wide Injunction - EXHIBIT SERIES E;
 19. Exhibits in Support of Plaintiffs’ Motion for Summary Judgment and Entry of a Class-Wide Injunction - EXHIBIT SERIES F & G;
 20. Exhibits in Support of Plaintiffs’ Motion for Summary Judgment and Entry of a Class-Wide Injunction - EXHIBIT SERIES H & I;
 21. Exhibits in Support of Plaintiffs’ Motion for Summary Judgment and Entry of a Class-Wide Injunction - EXHIBIT SERIES J, K & L;
 22. Exhibits in Support of Plaintiffs’ Motion for Summary Judgment and Entry of a Class-Wide Injunction - EXHIBIT SERIES M, N & O;
 23. [Proposed] ORDER GRANTING: (1) SUMMARY JUDGMENT ON PLAINTIFF’S CLAIM FOR PROSPECTIVE RELIEF; (2) PARTIAL SUMMARY JUDGMENT AS TO DAMAGES; (3) ENTRY OF A RULE 54(B) SEPARATE JUDGMENT; AND (4) ENTRY OF A CLASS-WIDE PERMANENT INJUNCTION; and
 24. [Proposed] JUDGMENT AND CLASS-WIDE PERMANENT INJUNCTION.

on the interested parties in this action by placing a true copy in a sealed envelope, addressed as follows:

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CERTIFICATE OF SERVICE - CONT'D.

Elizabeth Mirabelli v. Mark Olson, President of the EUSD Board of Education, et al.

USDC Court Case No.: 3:23-cv-00768-BEN-VET

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 X **(BY ELECTRONIC MAIL)** I served a true copy, electronically on designated recipients via electronic transmission of said documents.

 X **(BY ELECTRONIC FILING/SERVICE)** I caused such document(s) to be Electronically Filed and/or Service using the ECF/CM System for filing and transmittal of the above documents to the above-referenced ECF/CM registrants.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Executed on July 16, 2025, at Rancho Santa Fe, California.



Kathy Denworth