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ROB BONTA
Attorney General of California
MICHAEL NEWMAN
Senior Assistant Attorney General
LAURA L. FAER (SBN 233846)
JAMES F. ZAHRADKA II (SBN 196822)
Supervising Deputy Attorneys General
EDWARD NUGENT (SBN 330479)
GARY D. ROWE (SBN 165453)
ALEXANDER SIMPSON (SBN 235533)
XIYUN YANG (SBN 315187)
DELBERT TRAN (SBN 323993)
Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 229-0110
E-mail: Delbert.Tran@doj.ca.gov
Attorneys for The People of the State of California

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 29 2023

BY: Cesar R. Lepo
Cesar R. Lepo, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE OF CALIFORNIA, EX REL. ROB BONTA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

Plaintiffs,

v.

CHINO VALLEY UNIFIED SCHOOL DISTRICT,

Defendant.

Case No. **CIV SB 2317301**

THE PEOPLE OF THE STATE OF CALIFORNIA'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

Date: 9/6/2023
Time: 8:30 a.m.
Dept: 527
Judge: Hon. Thomas Garza
Trial Date:
Action Filed: August 28, 2023

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REQUEST FOR LEAVE TO FILE OVERSIZED MEMORANDUM

The People of the State of California (the People) request leave of court to file this oversized Memorandum of Points and Authorities. (Rules of Court, rule 3.1113(e).) Good cause supports this request: the People seek emergency relief to prevent psychological, emotional, and physical injury to transgender and gender nonconforming students whom the policy at issue here has targeted for discriminatory treatment. In this Memorandum, the People: present the likelihood of success on the merits across two California constitutional provisions and two statutes; recount the record of animus expressed by the Chino Valley Unified School District (CVUSD or the District); and present the balance of harms, which requires presentation of factual evidence of how subdivisions of Board Policy 5020.1 affect transgender and gender nonconforming students and the school environment more broadly. In order to fully and fairly present these issues, the People request leave to file this oversized memorandum of 20 pages, which exceeds the default 15-page limit set by California Rules of Court, rule 3.1113(d) by five pages.

INTRODUCTION AND RELIEF REQUESTED

Just two-and-a-half weeks before the start of the 2023-2024 school year, CVUSD changed its long-standing policy and adopted Board Policy 5020.1 (Policy 5020.1), forcing school personnel to “out” transgender or gender nonconforming¹ students to their parents, even against the students’ express wishes, or even when disclosure would foreseeably cause physical, emotional, or psychological harm to the student. By singling out transgender and gender nonconforming students, Policy 5020.1’s forced disclosure provisions violate their California constitutional right to equal protection and statutory protections from discrimination. Policy 5020.1’s forced disclosure provisions also infringe upon students’ state constitutional right to privacy, depriving them of their fundamental ability to express who they are. And Policy 5020.1 serves no valid end, as preexisting policies already protected parent-child relationships by allowing students to initiate these conversations with their parents; allowing school personnel could encourage students to have these conversations with their parents; and creating counseling

¹ As used herein, the term “gender nonconforming,” includes those whose gender identities are not solely male or female (gender non-binary).

1 programs advising students on how to have these conversations with their parents. The Policy’s
2 forced disclosure provisions thus do not foster the parent-child relationship, but instead reflect a
3 discriminatory attack on already marginalized children.

4 This Court should issue a temporary restraining order and an order to show cause as to why
5 a preliminary injunction should not issue to enjoin the enforcement of the Policy’s forced
6 disclosure provisions² and protect the District’s students, many of whom have already suffered,
7 and will continue to suffer, irreparable harm under the Policy. (See Code Civ. Proc., § 527.)

8 STATEMENT OF FACTS

9 **I. TRANSGENDER AND GENDER NONCONFORMING STUDENTS ALREADY SUFFER 10 EXTENSIVE DISCRIMINATION AND HARASSMENT THAT IMPACTS THEIR 11 SCHOOLING**

12 Transgender or gender nonconforming individuals are individuals whose gender identity
13 does not align with the sex they were assigned at birth. (Declaration of Dr. Christine Brady
14 (Brady Decl.), ¶ 20.) Though varying expressions of gender identity—including being
15 transgender or gender nonconforming—are natural and rooted in human biology, pervasive
16 gender identity norms have caused many to discriminate against transgender and gender
17 nonconforming people. (See *id.*, ¶¶ 20-24, 29, 75-80.)

18 Transgender and gender nonconforming students, in particular, suffer from psychological,
19 emotional, and physical harassment and abuse. (*Id.*, ¶ 75-80 [transgender and gender
20 nonconforming students are disproportionately bullied, physically victimized, or at risk of suicide
21 due to lack of accepting environments].) While schools are typically supportive environments,
22 schools that are not lead to serious harms. Students’ experiences in California follow national
23 trends. (*Id.*, ¶¶ 76-78 [transgender students in California reported substantially greater levels of

24 ² Specifically, the People request this Court to enjoin the forced disclosure provisions of
25 Policy 5020.1, i.e.: (1) subdivisions 1.(a) and (b) of the Policy in full; (2) subdivision 1.(c) of the
26 Policy, insofar as it applies to transgender or gender nonconforming students’ requests to change
27 their name, pronouns, sex, or gender on unofficial records; and (3) subdivision 5 of the Policy,
28 insofar as it applies to transgender or gender nonconforming students (a) requesting to be treated
as a gender other than the student’s biological sex or gender listed on the student’s birth
certificate or any other official records or (b) accessing sex-segregated school programs or
activities that do not align with a student’s biological sex or gender listed on the student’s birth
certificate or other official records. Hereinafter these provisions are referred to as “Policy 5020.1”
or “the Policy.”

1 bullying and physical victimization].) Given such discrimination, transgender students without a
2 safe or affirming environment face greater risk of suicide and other mental health issues. (*Id.*,
3 ¶¶ 32-34, 79-86.) Eighty-six percent of transgender youth reported suicidal thoughts, and 56
4 percent of transgender youth reported a previous suicide attempt. (*Id.*, ¶ 79.) Conversely,
5 transgender youth who socially transition³ have more positive mental health outcomes, mirroring
6 their cisgender peers. (*Id.*, ¶¶ 40, 86.)

7 While many transgender and gender nonconforming students are blessed to have accepting
8 parents, others are not so lucky. One in ten transgender youth surveyed said an immediate family
9 member had been violent toward them because they are transgender, and 15 percent ran away
10 from or were kicked out of their home because they were transgender. (*Id.*, ¶ 58.) Due to those
11 risks, many transgender and gender nonconforming students are not “out” to their immediate
12 families. Fewer than 40 percent of LGBTQ+ youth found their home to be gender-affirming. (*Id.*,
13 ¶ 51.)

14 Recognizing the risks, the California Department of Education has, since at least 2014,
15 issued statewide guidance generally recommending that school officials and staff members do not
16 “out” students to their parents against the students’ wishes. (People’s Request for Judicial Notice
17 (RJN), Ex. 9.) Based on this guidance, schools across the State, including CVUSD, have adopted
18 their own versions of that regulation. (*Id.*, Ex. 7.) Indeed, CVUSD had a regulation protecting the
19 privacy of its transgender and gender nonconforming students for at least six years. (*Ibid.*)

20 **II. CHINO VALLEY BOARD POLICY 5020.1 SINGLES OUT TRANSGENDER AND GENDER** 21 **NONCONFORMING STUDENTS FOR DISCRIMINATORY TREATMENT**

22 **A. Two-and-a-Half Weeks Before the Start of School, the CVUSD School** 23 **Board Enacts Board Policy 5020.1’s Forced Disclosure Provisions**

24 The District’s policy changed on July 20, 2023, when the District School Board (Board)
25 held a public meeting to discuss adoption of the Policy, which requires school personnel to
26 disclose a student’s transgender identity—even against their express wishes—to the student’s
27

28 ³ Social transitioning is the process by which transgender people publicly affirm their
gender identity after coming out. (Brady Decl, ¶ 35.)

1 parents or guardians whenever school personnel “become aware” of the student’s gender identity.
2 (RJN, Ex. 1.)

3 Dozens of community members spoke at that meeting about the proposal. Those opposing
4 the Policy included current and former LGBTQ+ students, teachers, parents, mental health
5 professionals, and advocates who warned that the policy would endanger students. A current
6 CVUSD student stated, “[t]his policy threatens my safety” and “tells me I don’t belong.” (RJN,
7 Ex. 6 at p. 80:22-24.) The student explained:

8 52 percent of trans kids feel accepted at school, but only 35 percent feel accepted at
9 home. That leaves a large gap there of kids who feel welcome at school but not at
10 home. Feeling safe at school lessens suicide risk. If a student isn’t out to their parent,
[the Policy] shoves them “in the closet” at school.

11 (*Id.* at pp. 79:23-80:1-4.) Another current LGBTQ+ CVUSD student added, “[t]his policy will
12 destroy the lives of kids who should not have to live in fear for being their true selves.” (*Id.* at p.
13 84:13-15.)

14 Explaining the consequences of forced disclosure, a recent graduate from a CVUSD high
15 school, who self-identified as queer, stated that “[Students] could be kicked out or attacked by
16 their parents both physically and verbally. Their home life may become a living hell because of
17 that [disclosure].” (*Id.* at p. 92:5-8.) Reaffirming those dangers with statistics, one current
18 CVUSD student, who self-identified as queer, testified that “LGBTQ youth who experience
19 parental rejection are eight times more likely to attempt suicide and six times more likely to
20 report major depressive symptoms.” (*Id.* at p. 137:10-13.)

21 Several adults read letters by LGBTQ+ students or individuals who feared for their safety.
22 One read a letter from a transgender student that explained: “If a student is outed to their family
23 without their consent, this could possibly result in abuse, hate crimes, getting kicked out of their
24 homes, [and] in extreme cases, being murdered.” (*Id.* at pp. 117:22-118:1.) Another letter from a
25 transgender student raised “the continuous fear and pressure that [Policy 5020.1] put[s] upon all
26 of us trans youth. . . . we’re constantly in a state of panic, fearing the consequences of being
27 outed. Some of us may even feel the need to hide our identities.” (*Id.* at p. 121:19-122:2.)
28

1 A number of parents of current CVUSD students also expressed opposition to the Policy.
2 One parent, who was also a “public school educator with 22 years of experience,” identified the
3 policy as “a flagrant attempt to isolate, shame, and otherwise alienate our LGBTQIA students,
4 creating a hostile environment for them in public schools.” (*Id.* at p. 81:8-14.) Another parent and
5 former educator stated, “[t]his policy breaks down trust between parents, teachers, and students
6 and exposes our most vulnerable students. . . . and they make all kids feel less safe. Kids cannot
7 learn if they do not feel safe, period.” (*Id.* at p. 83:8-14.) One former educator “know[s] students
8 who left the district because they were outed,” cautioning that “[t]hey will be put in . . . risky
9 situations; they will be unhoused; they will have . . . suicidal tendencies if this policy is passed.”
10 (*Id.* at p. 147:16-22.)

11 Also speaking in opposition to the Policy, a school counselor on the Board of the National
12 Association of Social Workers’ California Chapter warned that the Policy “directly contradicts”
13 social workers’ “oath to do no harm in [t]heir work with students,” including social workers’
14 commitment to “put our students’ safety and trust first.” (*Id.* at p. 93:3-25.) Sounding similar
15 notes, another individual speaking in opposition referenced research showing that “if parent
16 notification was mandated,” youth are “less likely to seek . . . counseling or medical services.”
17 (*Id.* at p. 125:11-25, emphasis added.) As one CVUSD teacher put it starkly: “This policy will out
18 a student . . . putting them into a hostile household, which will further their mental degradation to
19 the point where they will harm themselves. . . . This policy will kill somebody.” (*Id.* at pp.
20 129:24-130:1-4.)

21 Meanwhile, some who spoke in support of the Policy claimed that transgender identity is a
22 “mental illness,” a “delusion,” or a “damaging ideolog[y].” (See, e.g., *id.* at pp. 42:1-4, 119:18-
23 24, 150:6-14.) After public comment, the Board echoed these statements. Board Member 1 stated,
24 “there’s always been man, woman; and then you have this transgender [identity] . . . it is really a
25 dismantling of our humanity. And it is an illusion; it is a mental illness.” (*Id.* at p. 176:7-12.) He
26 expressed fear that “women are being erased” and claimed that the Policy was needed to “sav[e]
27 children” from transgender identities “because we are losing a lot of them,” likening the issues
28 related to gender identity to a “death culture.” (*Id.* at p. 176:24-25, 180:23-24.) Concluding,

1 Board Member 1 proclaimed, “[i]t’s not going to end with transgenderism. . . . You got to put a
2 stop to it.” (*Id.* at p. 183:6-8.)

3 The Board President expressed “appreciat[ion]” for “each one of our board member’s
4 viewpoints,” offering no repudiation of Board Member 1’s comments. (*Id.* at p. 194:22-23.) She
5 asserted that transgender and gender nonconforming individuals needed “non-affirming” parental
6 actions so that they can “get better” (*id.*, p. 198:4-7); earlier in the meeting, she claimed the State
7 Superintendent, by supporting policies protecting transgender or gender nonconforming students,
8 was “proposing things that pervert children.” (*Id.* at p. 75:1-6.) Board Member 2 agreed that the
9 Policy was needed, stating that it was necessary to counter Karl Marx’s call, in the *Communist*
10 *Manifesto*, “for the abolition of the family” and prevent the creation of “the, quote unquote, ‘new
11 man’.” (*Id.* at pp. 185:25-186:10.)

12 Board Member 4, the lone dissenter, expressed concern that “[i]f this policy passes, we will
13 have, effectively, shut the door on students confiding to a staff member or a teacher,” preventing
14 the school from being “a supportive place.” (*Id.* at pp. 188:13-22.) “So how good is this
15 notification process if these students are, effectively . . . ‘throw[n] . . . back into the closet . . .
16 slamming the door?’” (*Id.* at pp. 189:7-8.)

17 The Board voted 4-1 to approve the Policy.

18 **B. The Policy**

19 The Policy states, in part, that a school’s “[p]rincipal/designee, certificated staff, and school
20 counselors” shall notify parents or guardians “in writing, within three days” whenever “any
21 District employee, administrator, or certificated staff, becomes aware” that a student is:

22 (a) Requesting to be identified or treated, as a gender . . . other than the student’s
23 biological sex or gender listed on the student’s birth certificate or any other official
24 records. This includes any request by the student to use a name that differs from their
25 legal name (other than a commonly recognized diminutive of the child’s legal name)
or to use pronouns that do not align with the student’s biological sex or gender listed
on the student’s birth certificate or other official records.

26 (b) Accessing sex-segregated school programs and activities, including athletic
27 teams and competitions, or using bathroom or changing facilities that do not align
28 with the student’s biological sex or gender listed on the birth certificate or other
official records.

1 (RJN, Ex. 1.) In addition, the Policy requires tracking and recording of requests made by
2 transgender and gender nonconforming youth and notice of changes in official records to parents.
3 (*Id.*, Ex. 1, subd. 1(c) and 5.) The Policy also contains a paragraph identifying purported
4 exceptions to its forced disclosure requirements:

5 For purposes of this Board policy, Family Code Section 6924, Health and Safety
6 Code Section 124260, and Education Code Section 49602(C), inclusion of
7 parent(s)/guardian(s) is appropriate unless specifically prohibited by law. Nothing in
8 this policy affects the obligations of the District’s employees, administrators, and
9 certificated staff as mandated reporters under Article 2.5 of the Child Abuse and
Neglect Reporting Act Sections 11164-11174.3 of the Penal Code, and the District
Policy 5141 and Administrative Regulations 5141.4(a).

10 (*Id.*, Ex. 1, subd. 6.) According to a presentation by CVUSD’s counsel at the July 20 Board
11 meeting, CVUSD believes that this paragraph provides two exceptions to its forced disclosure
12 policy: (1) when students 12 years old or older disclose their gender identity to a counselor or
13 mental health professional during counseling or treatment; or (2) “if there is a reasonable
14 suspicion that child abuse or child neglect could take place as a result.” (*Id.*, Ex. 6, pp. 67:24-
15 68:21, 69:16-21, 71:8-10.)

16 The referenced statutes do not provide the exceptions claimed by CVUSD’s counsel:

17 *First*, Article 2.5 of the Child Abuse and Neglect Reporting Act requires school personnel to
18 report known or suspected child abuse to a child welfare agency or police department—it does
19 not prohibit a school staff member from disclosing a student’s transgender identity, even if the
20 staff member knows that disclosure could cause harm. (See generally Penal Code, §§ 11164-
21 11174.3.)⁴ CVUSD Policy 5141.4 and Administrative Regulation 5141.4(a) similarly refer to
22 mandatory reporting obligations, while Policy 5141 has no relevance; none of these policies or
23 regulations prohibit disclosures that might cause abuse or neglect. (RJN, Exs. 2-4.) *Second*,
24 Family Code Section 6924 and Health and Safety Code Section 124260, which address mental
25 health treatment for minors, both default to including involvement of parents, protecting the
26 privacy of a minor only at the mental health professional’s discretion and for those 12 years or

27 ⁴ Section 11164, subdivision (b), of the Child Abuse and Neglect Reporting Act does not
28 impose any legal duty that would prohibit disclosure. (See *Jacqueline T. v. Alameda Cty. Child
Protective Servs.* (2007) 155 Cal.App.4th 456, 470.)

1 older. *Third*, while Education Code Section 49602 provides that personal information disclosed
2 by a pupil 12 years or older while “receiving counseling from a school counselor . . . is
3 confidential,” the Policy cites to the provision’s subdivision (c), which permits counselors to
4 *report* information to parents if there is reasonable cause to “believe that disclosure is necessary
5 to avert a clear and present danger to the health, safety, or welfare of the pupil.”

6 **C. The Attorney General’s Investigation of the Policy Finds Harm Inflicted**
7 **on Students**

8 On August 4, 2023, pursuant to the Attorney General’s authority under the state
9 constitution and Government Code, the Department of Justice (DOJ) notified the District it was
10 opening an investigation to determine the legality and effect of Policy 5020.1. (Declaration of
11 Delbert Tran (Tran Decl., ¶ 8; Cal. Const., art. V, § 13; Gov. Code, §§ 11180 et seq.) As part of
12 the investigation, DOJ interviewed District students, parents, teachers, and community members
13 regarding Policy 5020.1 and its effects. (*Id.*, ¶ 9.)⁵

14 The Rainbow Youth Project, an LGBTQ+ organization working in Chino Valley,
15 established a crisis hotline to collect reports related to the enactment of the Policy. (Declaration of
16 Kristen Johnson (Johnson Decl.), ¶ 4.) It has communicated with and received over 60 reports
17 from current students, parents, teachers, and community members in the District who fear
18 harassment, bullying, and targeting based on their gender identity, expression, and/or
19 nonconformity at school as a result of the Policy. (*Id.*, ¶ 5.) One student also identified an
20 increased risk of suicidal ideation as a result of the Policy’s passage. (*Id.*, ¶ 6(e).)

21 Several current teachers in the District aver that school personnel have already disclosed
22 several students’ gender identity to parents or guardians without the student’s consent (see, e.g.,
23 Declaration of Andrea McFarland (McFarland Decl.), ¶¶ 16, 43.) A Chino Hills High School
24 teacher, Gary Crow, states that one of his students was outed within the first two days of the
25 school year, leaving her in tears. (Declaration of Gregory Crow (Crow Decl.), ¶ 21, 22.)

26
27 ⁵ Under Government Code section 11181, subdivision (h), DOJ may “[p]resent
28 information or evidence obtained or developed from the investigation of unlawful activity to a
court . . . in connection with any action or proceeding.”

1 Current teachers also describe how the Policy has created a discriminatory environment that
2 terrorizes transgender and gender nonconforming students. Andrea McFarland, another Chino
3 Hills High School teacher, shared that since the enactment of the Policy, LGBTQ+ students are
4 having hushed conversations about “which teacher might report them.” (McFarland Decl., ¶ 46.)
5 She described students telling her: “I feel like I’m not wanted.” (*Id.*, ¶ 48.) One of her students,
6 Jordan,⁶ expressed fear that McFarland will now be forced to out Jordan to his parents—one of
7 whom was hostile toward the LGBTQ+ community, had “an aggressive personality,” and Jordan
8 “did not feel safe.” (*Id.*, ¶ 26, 27.) Crow, too, shared observations of a “significant change” in
9 students at his high school. (Crow Decl., ¶ 31.) In previous years, students in the student-run
10 LGBTQ+ club had “express[ed] their gender identity and other parts of their personality openly,”
11 with “enthusiasm,” “energy and excitement.” (*Id.*, ¶ 33.) After the Policy, students are now
12 “withdrawn” and “no longer . . . speak[] up” about “LGBTQ+ rights.” (*Id.*, ¶ 34.)

13 Kristi Hirst, a former educator and parent of current students at CVUSD, spoke numerous
14 times with a student at Chino Hills High School, Morgan, who expressed fear of severe physical
15 or emotional harm that the Policy would cause him. (Declaration of Kristi Hirst (Hirst Decl.), ¶¶
16 16, 20-22.) Though Morgan had previously participated in his school’s “Gender Support Plan”—
17 which provided accommodations for his gender identity at school—he became fearful enough
18 that he asked Hirst whether he should delete that plan (and all the accommodations included)
19 before the start of the school year to avoid the even greater harm he would experience from
20 forced disclosure. (*Id.*, ¶ 19.) Morgan also asked to have an anonymous statement read to the
21 School Board at its July 20, 2023 meeting, stating that when he first “came out to a parent” about
22 his transgender identity,” he was “ridiculed heavily, yelled at, and called names” and “vile words
23 . . . in public.” (*Id.*, ¶ 21.)

24 Chris, a current student in the District, confirmed the imminent threats that he and other
25 transgender students faced under the Policy. When a teacher refused to recognize Chris’s gender
26 identity, it caused him to withdraw completely from participating in class. (Declaration of Chris
27 R. (Chris R. Decl.), ¶¶ 11-13.) Chris attended the July 20 Board meeting, and when they heard

28 ⁶ Students are referred to by pseudonyms herein to protect their privacy and safety.

1 comments made by Board member 1—that transgender identity is a “delusion” or “mental
2 illness”—after several students, like Chris, had made their presence known during public
3 comment, Chris felt that the Board member “was speaking to us, the trans kids in the audience . . .
4 like he wanted us to know that we were an illness that needed to be cured. That we needed to be
5 exterminated.” (*Id.*, ¶ 26.) The Board’s policy and its statements made Chris R. feel physically
6 threatened. (*Id.*, ¶¶ 27, 29, 31, 40-46.)

7 Another transgender student informed Chris that though they usually ask their teachers to
8 call them by a gender affirming nickname, the student was too afraid to do so this year, and was
9 “struggling with depression and anxiety.” (*Id.*, ¶¶ 33-35.) Chris echoed that feeling, explaining
10 how “extremely draining” it was to “hid[e] who I was . . . like I had a thousand pound weight on
11 my shoulders.” (*Id.*, ¶ 36.) In Chris’s words, “No kid wants to have to waste time that could be
12 spent finishing their homework to attend a Board meeting to fight for their right to exist. . . . We
13 don’t deserve to be shoved back in the closet, forever afraid to express who we are.” (*Id.*, ¶¶ 45,
14 47.)

15 On August 14, 2023, the Attorney General served a letter on the District requesting the
16 District halt implementation or enforcement of the Policy until after the District adopted an
17 Administrative Regulation related to the policy. (Tran Decl., ¶ 14.) The District rejected the
18 Attorney General’s request. (*Id.*, ¶ 16.)

19 To date, through its investigation of the Policy, DOJ has found, within the first two
20 weeks of school, that the Policy has already forced school personnel to out transgender and
21 gender nonconforming students, causing harm, and that the Policy threatens further immediate
22 risk of severe, irreparable physical, emotional, and psychological harm to students. (*Id.*, ¶ 4.)

23 ARGUMENT

24 The People seek a temporary restraining order and preliminary injunction to halt the
25 forced disclosure provisions of CVUSD’s Policy 5020.1. (See *ante*, at p. 8 fn. 2.) This policy has
26 caused real, substantial harm to some of the State’s most vulnerable children and youth—
27 transgender and gender nonconforming students—and will cause further harm if this Court does
28 not enjoin it. The Policy singles out transgender and gender nonconforming students for

1 discriminatory treatment. In doing so, it violates the California Constitution’s guarantee of equal
2 protection (Cal. Const. Art. 1, § 7); statutory prohibitions of discrimination based on gender
3 expression and gender identity (Ed. Code, § 220; Gov. Code, § 11135); and the California
4 Constitution’s guarantee of privacy and autonomy (Cal. Const. Art. 1, § 1).

5 When deciding whether a temporary restraining order or preliminary injunction is
6 appropriate, courts generally consider “two interrelated factors: (1) the likelihood that the plaintiff
7 will prevail on the merits, and (2) the relative balance of harms that is likely to result from the
8 granting or denial of interim injunctive relief.” (*Tulare Lake Canal Co. v. Stratford Pub. Util.*
9 *Dist.* (2023) 92 Cal.App.5th 380, 396 [cleaned up]; see also *Butt v. St. of Cal.* (1992) 4 Cal.4th
10 668, 677–678.) The greater Plaintiff’s showing on one, the less must be shown on the other to
11 obtain an injunction. (*Butt, supra*, 4 Cal.4th at p. 678.) Here, the Policy flagrantly violates state
12 constitutional and antidiscrimination law, and the People’s strong likelihood of success on the
13 merits alone justifies interim relief. Moreover, the balance of harm weighs sharply in the People’s
14 favor, as interim relief must be granted to protect the State’s students from the physical,
15 psychological, or emotional trauma that the Policy has already inflicted, and continues to inflict,
16 on transgender and gender nonconforming students.

17 **I. THE PEOPLE HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS**

18 **A. The Policy Violates California’s Equal Protection Clause**

19 **1. The Policy expressly discriminates based on gender identity,**
20 **requiring strict scrutiny review**

21 Like all other people, transgender and gender nonconforming individuals have equal value
22 and inherent dignity, deserving equal protection under the law. Yet the Policy explicitly and
23 textually discriminates against them, treating them differently based on gender identity than their
24 cisgender peers.⁷ Education is a fundamental right in California under the equal protection clause
25 (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608–09, 616–17), and such discrimination and harassment
26 denies or limits these students’ equal access to education. Transgender or gender nonconforming

27 ⁷ Because the text of the Board’s policy itself treats students differently based on their
28 gender identity, there is no need to ferret out discriminatory intent from a facially neutral policy,
using the method in *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.* (1977) 429 U.S. 252.

1 individuals constitute a protected class under California’s equal protection clause, and any
2 governmental policy subjecting such individuals to disfavorable treatment is invalid unless it
3 survives strict scrutiny. This is so for two independent reasons.

4 First, *gender identity* is an aspect of *gender*. (See Civ. Code, § 51, subd. (e)(5); Gov. Code,
5 § 12926, subd. (r)(2); Ed. Code, § 210.7 [all defining “[s]ex” to include a person’s “gender
6 identity and gender expression”].) In California, discrimination based on gender is fully suspect,
7 subject to strict scrutiny. (See *Catholic Charities of Sacramento, Inc. v. Sup. Ct.* (2004) 32
8 Cal.4th 527, 564.) Accordingly, the California Court of Appeal has treated discriminatory
9 classifications based on gender identity as discrimination based on gender. (*Taking Offense v.*
10 *State* (2021) 66 Cal.App.5th 696, 725–726, review on other grounds granted Nov. 10, 2021,
11 S270535.) The United States Supreme Court recently echoed that conclusion, in a decision
12 interpreting Title VII. (*Bostock v. Clayton Cty., Georgia* (2020) 140 S.Ct. 1731, 1741 [“[I]t is
13 impossible to discriminate against a person for being . . . transgender without discriminating
14 against that individual based on sex”].) Even before *Bostock*, “[m]any courts . . . have held that
15 various forms of discrimination against transgender individuals constitute sex-based
16 discrimination for purposes of the Equal Protection Clause because such policies punish
17 transgender persons for gender non-conformity, thereby relying on sex stereotypes.” (*Grimm v.*
18 *Gloucester Cty. Sch. Bd.* (4th Cir. 2020) 972 F.3d 586, 608; see also *Hecox v. Little* (9th Cir.,
19 Aug. 17, 2023, No. 20-35813) 2023 WL 5283127, at *12 [“[D]iscrimination on the basis of
20 transgender status is a form of sex-based discrimination. . . . subject to heightened scrutiny”].)

21 Second, discrimination against transgender and gender nonconforming individuals is
22 subject to strict scrutiny because—based on the historical adverse treatment they have endured
23 and the arbitrariness of that treatment—they are a protected class, just as the California Supreme
24 Court held with respect to lesbian, gay, and bisexual individuals. (*In re Marriage Cases* (2008) 43
25 Cal.4th 757, 843–844.) The invidious and prejudicial treatment to which transgender people have
26 historically been subject is beyond dispute. (See *Whitaker By Whitaker* (7th Cir. 2017) 858 F.3d
27 1034, 1051 [“There is no denying that transgender individuals face discrimination, harassment,
28 and violence because of their gender identity”]; *Grimm, supra*, 972 F.3d 586, 611 [same].) And

1 being transgender bears no relationship to one’s ability to perform or contribute to society. (See,
2 e.g., *id.* at p. 612, citation omitted; *M.A.B. v. Bd. of Ed. of Talbot Cty.* (D. Md. 2018) 286
3 F.Supp.3d 704, 720.)

4 **2. The Policy cannot survive strict scrutiny**

5 The Policy can survive strict scrutiny only if the District meets its “burden of establishing
6 not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by
7 the law are *necessary* to further its purpose.” (*In re Marriage Cases, supra*, 43 Cal.4th at p. 832
8 [cleaned up].) The District cannot meet its burden here.

9 To begin, members of the School Board who voted to enact the Policy made invidious
10 statements—immediately before voting for adoption—that establish that the Board lacked a
11 compelling purpose. Three of the four School Board members who voted to enact the policy
12 stated their intent to discriminate against transgender and gender nonconforming students in the
13 District. (See *ante*, at pp. 11–12.) Their goal was to “put a stop to” transgender identities, which
14 they viewed as a “mental illness”; to be “non-affirming” so that transgender or gender
15 nonconforming children could “get better.” (*Ibid.*) Hostility to transgender individuals and those
16 who do not conform to stereotypical gender norms lies at the heart of the policy. (Cf. *Grimm v.*
17 *Gloucester Cty. Sch. Bd., supra*, 972 F.3d 586, 615 [discriminatory transgender restroom policy
18 failed to satisfy intermediate scrutiny because it was “adopted in the context of two heated Board
19 meetings filled with vitriolic, off-the-cuff comments,” revealing “misconception and prejudice”];
20 *Lyle v. Warner Bros. Television Prods.* (2006) 38 Cal.4th 264, 280–281 [“hostile, sexist
21 statements”—including “derogatory comments”—“relevant to show discrimination on the basis
22 of sex”]; *Lynn v. Regents of Univ. of California* (9th Cir. 1981) 656 F.2d 1337, 1343 fn. 5
23 [decisions motivated by discriminatory attitudes relating to sex are probative of discrimination].)
24 These are not legitimate—much less compelling—governmental interests.

25 Moreover, the explicit text of the Policy itself reveals an invidious intent, stating that being
26 transgender is a “mental health” issue that requires parental intervention “at the earliest possible
27 time” because it could give rise to “instances of self-harm.” (RJN, Ex. 1, at p. 1.) The policy thus
28 relies on “outdated social stereotypes,” which has “result[ed] in invidious laws or practices”—

1 precisely what strict scrutiny is designed to identify and counteract. (*Sail'er Inn, Inc. v. Kirby*
2 (1971) 5 Cal.3d 1, 18.)

3 And as to the test's second prong, the Policy is not narrowly tailored to any non-
4 discriminatory interest it might purport to advance. For instance, if CVUSD claimed the Policy
5 intended to support students by ensuring parental support as they navigate their gender identity,
6 the provisions of the Policy both belie and fail to fit that purpose.

7 *First*, the Policy lacks an exception for—or even consideration of—children who may face
8 emotional, physical or psychological abuse at home as a result of disclosure of a student's gender
9 identity to parents. (See *supra*, at pp. 6-7.) CVUSD's counsel claimed that the Policy creates an
10 exception to forced disclosure where there is reasonable risk of parental abuse, yet the policy in
11 fact provides no such exception, citing only to a reporting statute that provides no prohibition on
12 disclosure. (*Ibid.*) *Second*, any narrow tailoring claimed by the District is further contradicted by
13 the harm the Policy has inflicted and is continuing to inflict upon current CVUSD students. (See,
14 e.g., Brady Decl., ¶¶ 54-75, 81-82, 89-95; Chris R. Decl., ¶¶ 22-47; Crow Decl., ¶¶ 19-36;
15 McFarland Decl., ¶ 33-37, 43-58.) *Third*, the forced disclosure policy fails to accomplish even its
16 stated goal of catalyzing parental intervention as early as possible; rather than increase student
17 openness about their gender identity, it has the effect of caging students within themselves,
18 quashing their expressions of gender identity at school for fear of forced disclosure. (See, e.g.,
19 Chris R. Decl., ¶¶ 32-38; Crow Decl., ¶ 34; McFarland Decl., ¶¶ 33-36.)

20 Because the District can neither articulate a non-invidious interest for Policy 5020.1
21 nor show how the policy is necessary to further non-discriminatory interests, the People are likely
22 to prevail in asserting that the Policy fails strict scrutiny and violates equal protection. (*In re*
23 *Marriage Cases, supra*, 43 Cal.4th at p. 831.)

24 **B. The Policy Violates Statutory Prohibitions on Discrimination Based on**
25 **Gender, Gender Expression, and Gender Identity**

26 For the same reasons the Policy violates California constitutional equal protection, the
27 Policy also violates California's Education Code and Government Code provisions that expressly
28 prohibit discrimination in public schools on the basis of gender identity and gender expression.

1 Section 220 of the Education Code states, “No person shall be subjected to discrimination
2 on the basis of . . . *gender, gender identity, [or] gender expression*” in any educational program
3 that receives state financial assistance. (Emphasis added.) Government Code section 11135,
4 subdivision (a), likewise provides that “no person in the State of California shall, on the basis of
5 sex . . . be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to
6 discrimination under, any program or activity that” receives state financial assistance. Subdivision
7 (c) defines “sex” to “include[] a person’s gender identity and gender expression.”

8 As with equal protection, the Policy runs afoul of Education Code section 220’s and
9 Government Code section 11135’s express commands not to discriminate on the basis of gender
10 identity and gender expression. A law that categorically “presum[es]” the need for forced
11 disclosures for one group but not another “reflect[s] . . . unexamined role stereotypes,” plainly
12 betraying a “statute . . . discriminatory on its face.” (*Arp v. Workers’ Comp. Appeals Bd.* (1977)
13 19 Cal.3d 395, 406–407.) Where “a plaintiff demonstrates that the challenged action involves
14 disparate treatment through explicit facial discrimination, or a facially discriminatory
15 classification, a plaintiff need not prove the malice or discriminatory animus of a defendant.”
16 (*Cnty. Sers., Inc. v. Wind Gap Mun. Auth.* (3d Cir. 2005) 421 F.3d 170, 177 [cleaned up].) Here,
17 the Policy targets one group, and “that group alone” for discriminatory treatment, violating state
18 antidiscrimination law. (*Isbister v. Boys’ Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, 89 [Unruh
19 Act]; see also *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 35 [Unruh Act violation because
20 “[sex]-based . . . differential treatment is precisely the type of practice prohibited”]; *Bangerter v.*
21 *Orem City Corp.* (10th Cir. 1995) 46 F.3d 1491, 1500 [where policy “facially single[s] out” group
22 and “appl[ies] different rules to them,” it directly reveals “discriminatory intent and purpose”].)⁸
23 This is a case in which “the decisionmaker . . . selected . . . a particular course of action . . . at
24 least in part because of, not merely in spite of, its adverse effects upon an identifiable group.”
25 (*Personnel Adm’r of Mass. v. Feeney* (1979) 442 U.S. 256, 279 [cleaned up].) The Policy thus
26 violates these statutory antidiscrimination provisions because it burdens students with forced

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28 ⁸ “[P]ertinent federal precedent” is persuasive when applying similar state
antidiscrimination statutes. (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 354.)

1 disclosure based solely on gender identity and expression. And, though a showing of
2 discriminatory animus is entirely unnecessary, the School Board also adopted the Policy for
3 invidious reasons. (See *ante*, at pp. 11–12.)

4 This is a simple case of unlawful discrimination. (Cf. *Cnty. of Santa Barbara v. Workers’*
5 *Comp. Appeals Bd.* (1980) 109 Cal.App.3d 211, 215.) “What has been explained to this point
6 should more than suffice to establish that the principal purpose and the necessary effect of this
7 law are to demean those persons who are” transgender and gender nonconforming. (*U.S. v.*
8 *Windsor* (2013) 570 U.S. 744, 774.) The People have a substantial likelihood of prevailing on the
9 merits of their statutory discrimination claims.

10 **C. The Policy Violates Students’ California Constitutional Right to Privacy**

11 The California Constitution’s express protection of the right to privacy (Cal. Const. Art. I,
12 § 1) includes a guarantee of “autonomy privacy.” (*Sheehan v. S.F. 49ers, Ltd.* (2009) 45 Cal.4th
13 992, 999.) The latter includes “making intimate personal decisions or conducting personal
14 activities without observation, intrusion or interference.” (*Ibid.*)

15 To demonstrate a violation of privacy rights, a plaintiff must show: “(1) a legally
16 protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3)
17 conduct by defendant constituting a serious invasion of privacy.” (*Mathews v. Becerra* (2019) 8
18 Cal.5th 756, 769.) If a plaintiff shows all three elements, a defendant must show that “the
19 invasion of privacy is justified because it substantively furthers one or more countervailing
20 interests.” (*Ibid.*) A plaintiff, in turn, “may rebut” the assertion of countervailing interests by
21 showing “there are feasible and effective alternatives . . . which have a lesser impact on privacy
22 interests.” (*Ibid.*) When a case involves “an obvious invasion of an interest fundamental to
23 personal autonomy,” a defendant must establish a “compelling interest” to overcome an
24 individual’s privacy interest (*ibid.*) and that the infringement is necessary to serve that compelling
25 interest (*Lungren, supra*, 16 Cal.4th at pp. 356–357).

1 **1. Minors have a legally protected and reasonable expectation of**
2 **privacy in their gender identity, a core aspect of their autonomy**

3 A student’s gender identity is a legally protected autonomy interest. “[M]inors, as well as
4 adults, possess a constitutional right of privacy under the California Constitution.” (*Poway*
5 *Unified Sch. Dist. v. Sup. Ct. (Copley Press)* (1998) 62 Cal.App.4th 1496, 1505.) And courts have
6 repeatedly affirmed that an individual has a constitutionally protected privacy interest in their
7 sexual orientation or gender identity. (See, e.g., *Pettus v. Cole* (1996) 49 Cal.App.4th 402, 444–
8 445 [describing “sexual orientation and conduct” as legally protected privacy interest]; *Powell v.*
9 *Schrivver* (2d Cir. 1999) 175 F.3d 107, 111–112 [transgender identity is an “excrutiatingly [*sic*]
10 private and intimate” detail about oneself protected by the right to privacy].)

11 Moreover, the Policy intrudes upon a core aspect of students’ privacy and autonomy—their
12 ability to express their identity. In *American Academy of Pediatrics v. Lungren*, the California
13 Supreme Court held that a law requiring parental consent before a minor could obtain an abortion
14 violated minors’ constitutional right to privacy. (*Lungren, supra*, 16 Cal.4th 307.) While parents
15 generally have the “legal right (and obligation) to act on behalf of their child to protect their
16 child’s rights and interests,” the Court observed that “[c]hildren are not simply chattels belonging
17 to the parent, but have fundamental interests of their own that may diverge from the interests of
18 the parent.” (*Id.* at pp. 335, 337.) Because the decision to continue or terminate a pregnancy:

19 has such a substantial effect on a pregnant minor’s control over her personal bodily
20 integrity, has such serious long-term consequences in determining her life choices,
21 is so central to the preservation of her ability to define and adhere to her ultimate
22 values regarding the meaning of human existence and life . . . we conclude that a
23 minor who is pregnant has a protected privacy interest under the California
24 Constitution.

25 (*Id.* at p. 337.) As with abortion, a student has “fundamental interests of their own” in their
26 gender identity “that may diverge from the interests of the parent.” (*Id.* at p. 337, citation
27 omitted.) A student’s gender identity will likewise implicate the student’s “control over [their]
28 personal bodily integrity,” “serious long-term consequences in determining [their] life choices,”
and an aspect of their identity “so central” to a student’s “ability to define” their life. (*Id.* at p.
337; see also Brady Decl., ¶ 15 [“Gender identity is not a choice. It is an essential part of one’s

1 identity and being”]; see also *Mathews, supra*, 8 Cal.5th 756 at p. 774 [citing *Lungren, supra*, 16
2 Cal.4th at pp. 326, 338–339].)

3 For similar reasons, transgender students also have a reasonable expectation of
4 privacy in their gender identity. A student’s disclosure of their gender identity to persons of their
5 choosing at school does not negate their reasonable expectation of privacy in their gender identity
6 generally. (See *Mathews, supra*, 8 Cal.5th at p. 769 [requiring reasonable expectation of privacy
7 “in the circumstances”].) “In a society in which individuals play multiple, often conflicting”
8 social roles, people may still “fear exposure . . . to those closest to them The claim is not so
9 much one of total secrecy as it is of the right . . . to choose who shall see beneath the quotidian
10 mask.” (*Hill v. Nat. Coll. Athletic Assn.* (1994) 7 Cal.4th 1, 25; see Brady Decl., ¶¶ 43-47 [only
11 21 percent of LGBTQ youth in California were “out” to all caregivers]; *C.N. v. Wolf* (C.D. Cal.
12 2005) 410 F.Supp.2d 894, 903 [student had reasonable expectation of privacy in sexual
13 orientation with respect to parents, even if publicly homosexual at school].) Transgender and
14 gender nonconforming students have a reasonable expectation of privacy with respect to how and
15 when to disclose their identity.

16 2. The Policy’s forced disclosure requirements seriously invade 17 students’ privacy and autonomy

18 The Policy constitutes a serious invasion of privacy. (See *Hill, supra*, 7 Cal.4th at p. 37.) A
19 student’s gender identity concerns “the most intimate aspects” of “thought and behavior” such
20 that “[m]andatory reporting of such information is a severe invasion.” (*Mathews, supra*, 8 Cal.5th
21 at p. 780.) In a related context, California courts have described revelations of sexual orientation
22 as a serious invasion of privacy, as disclosure of “sexual orientation and conduct” . . . “could
23 prove to be highly embarrassing . . . and/or disruptive” of the victim’s “relationship[s],” causing
24 “great damage to both [the victim’s] self-concept and to his professional image.” (*Pettus, supra*,
25 49 Cal.App.4th at p. 445.)

26 Forced disclosure of a person’s gender identity constitutes a violation of privacy that
27 is just as serious as the forced disclosure of a person’s sexual orientation. It can cause “great
28 damage” to the individual, causing even greater harm than the career harm recognized by

1 California courts as a “serious invasion.” (See, e.g., *Mathews, supra*, 8 Cal.5th at p. 780; see also
2 Brady Decl., ¶¶ 54-64.) “LGBTQ youth who experience parental rejection,” for example, “are
3 eight times more likely to attempt suicide and six times more likely to report major depressive
4 symptoms.” (Brady Decl., ¶ 62.) And CVUSD teachers, students, and parents all report that the
5 looming threat of forced disclosure has destroyed students’ ability to freely express their core
6 identity. (See, e.g., Chris R. Decl., ¶¶ 32-38; Crow Decl., ¶ 34; Hirst Decl., ¶ 16-25; McFarland
7 Decl., ¶¶ 33-36.) In doing so, the policy seriously invades students’ ability to make “intimate
8 personal decisions or conduct[] personal activities without observation, intrusion or interference”
9 (*Sheehan, supra*, 45 Cal.4th at p. 999), “shov[ing students] back in the closet,” making them
10 “forever afraid to express who [they] are.” (Chris R. Decl., ¶ 47.)

11 **3. The Policy does not further a compelling interest, and feasible and**
12 **effective alternatives had already protected families and students**
13 **with lesser intrusions upon privacy**

14 As explained above, Policy 5020.1 cannot be justified by any compelling interest, and
15 contradicts the aims of any such interest. (See *ante*, at pp. 19–20.) Further, feasible and effective
16 alternatives better protect families, parents, and students—as enacted in many other school
17 districts in the State. Under the California Department of Education’s guidelines, districts have
18 adopted policies protecting the privacy of transgender students, but encouraging the involvement
19 of families and parents wherever possible, while equipping students with the tools to start these
20 conversations in the time and manner of the family’s choosing. (See, e.g., RJN, Ex. 9.) To the
21 extent CVUSD is concerned with child safety, the preexisting policy in CVUSD—and in most
22 other school districts—already included an exception that allowed disclosure where necessary to
23 protect the safety and wellbeing of the child. (See, e.g., *id.*, Exs. 5, 7.) The Policy’s forced
24 disclosure provision thus singles out transgender students for little reason other than to apply
25 discriminatory harm.

26 **II. THE BALANCE OF HARMS REQUIRES INTERIM RELIEF TO PREVENT IRREPARABLE**
27 **PHYSICAL, EMOTIONAL, AND PSYCHOLOGICAL HARM TO THE STATE’S STUDENTS**

28 Because CVUSD’s constitutional and statutory violations are apparent under California
law, this Court need not reach the balance of harms. (*Pleasant Hill Bayshore Disposal, Inc. v.*

1 *Chip-It Recycling, Inc.* (2001) 91 Cal.App.4th 678, 696.) Even so, the balance of harms clearly
2 calls for the Court to issue interim relief to protect the District’s students.

3 The Policy has already caused irreparable physical, emotional, and psychological
4 harm to students. (See *ante*, at pp. 14–16.) With each day, it continues to threaten students, both
5 through future forced disclosures that will take place, and through the psychological and mental
6 fear and terror it inflicts upon transgender students who can no longer openly express their
7 identities without fear of being outed. (See *Am. Acad. of Pediatrics v. Van de Kamp* (1989) 214
8 Cal.App.3d 831, 847 [affirming preliminary injunction where trial court found a likelihood that
9 law “will not protect minors from needless physical, psychological or emotional harm”]; see also
10 *Butt, supra*, 4 Cal.4th 668, 693 [declarations by “District teachers” and experts establishing
11 “severe and immediate academic disruption” established sufficient harm to merit preliminary
12 injunction].)

13 Meanwhile, any claimed harm by the District is illusory. Preexisting policies already
14 protected parent-child relationships by involving parents where possible, while still protecting the
15 privacy of vulnerable children. (See *Van de Kamp, supra*, 214 Cal.App.3d 831, 848; cf. *Arizona*
16 *Dream Act Coal. v. Brewer* (9th Cir. 2014) 757 F.3d 1053, 1068 [the “irreparable nature of
17 Plaintiffs’ injury is heightened by Plaintiffs’ young age”].) Without the Policy, students would
18 remain free, as they always had been before, to initiate these conversations with their parents.
19 School personnel would remain free, as before, to encourage students to have these conversations
20 with their parents. School districts would remain free, as before, to create counseling and support
21 programs advising students on how to have these conversations with their parents. The Policy’s
22 forced disclosure provisions thus do not foster the parent-child relationship, but instead reflect a
23 discriminatory attack on already marginalized children. (See *ante*, at pp. 11–12, 17–22.)

24 CONCLUSION

25 For these reasons, the court should grant the People of the State of California’s motion.
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Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
LAURA L. FAER
JAMES F. ZAHRADKA II
Supervising Deputy Attorneys General



DELBERT TRAN
Deputy Attorney General
Attorneys for the People of the State of California