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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

HANNAH (ELIO) ELLUTZI; LAAILA IRSHAD; CHRISTINE HONG,

Plaintiffs,

vs.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; CYNTHIA LARIVE, in her official capacity as Chancellor of the University of California, Santa Cruz ("UCSC"); LORI KLETZER, in her official capacity as UCSC Campus Provost and Executive Vice Chancellor; EDWARD D. REISKIN, in his official capacity as UCSC Vice Chancellor for Finance, Operations and Administration; AKIRAH J. BRADLEY-ARMSTRONG, in her official capacity as UCSC Vice Chancellor of Student Affairs; ALEX DOUGLAS MCCAFFERTY, in his official capacity as UCSC Campus Budget Director; SONYA KIERNAN, in her official capacity as Executive Assistant to the UCSC Chancellor; HERBERT LEE, in his official capacity as UCSC Vice Provost of Academic

Case No. 24CV02532

Assigned for all purpose to the Hon. Syda Kosofsky Cogliati

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: November 19, 2024
Time: 8:30 a.m.
Dept.: 5

Action Filed: September 9, 2024

Affairs; JESSICA RASHID, in her official capacity as UCSC Assistant Dean of Students, Student Conduct & Community Standards; ADRIENNE RATNER, in her official capacity as UCSC Director of Academic Employee Relations; KEVIN DOMBY, in his official capacity as UCSC Chief of Police and Executive Director of Public Safety; and DOES 1-10,

Defendants.

INTRODUCTION

Defendants' Opposition confirms that UCSC is committed to pursuing a guilty-by-association strategy to address protests on campus. This approach contravenes well established constitutional principles, *Braxton v. Municipal Court* (1973) 10 Cal.3d 138, and the very text of Section 626.4. The question in this case is not whether UCSC may take action against individuals who set up blockades and encampments. It can. Rather, the question is whether UCSC violated due process by making a pre-determined decision to instantaneously ban the three named plaintiffs for failing to disperse from a protest. The answer to this question is clear: it did.

Defendants admit to adopting and executing an advance plan to treat every person arrested at the May 30-31 protest with the same punishment: instant banishment. Defendants provisioned for no hearing and made no individualized determination about each plaintiff—an honor roll student, a Resident Advisor, and a tenured professor—or about any other person arrested. An individual suspected of failing to disperse is, however, not ***automatically*** the same as an individual who constitutes "a substantial and material threat of significant injury to persons or property"—which is the high threshold for summary exclusion set by *Braxton*, 10 Cal.3d at pp. 143-45.

The Opposition's factual concessions also confirm the merit of Plaintiffs' other due process claim: Defendants violated the law by failing to follow Section 626.4's requirements. In trying to justify why they did not prepare, review, or confirm mandatory written reports, Defendants demonstrate a fundamental misapprehension of the statute. And while UCSC points to new policies implemented ***after*** Plaintiffs initiated this lawsuit (Domby, Exs. 1 & 2), it fails to establish the lawfulness of the practices in place when Plaintiffs were banished. This omission is damning.

Defendants try to distract from their failures to follow the law by employing a rhetorical sleight of hand. Without naming any plaintiff, Defendants submit hundreds of pages of unduly prejudicial and inflammatory material about different pro-Palestine campus protests in May. (Opp. at pp. 8-11 [citing declarations].) UCSC seems to insinuate that everyone aligned with the Gaza Solidarity Encampment was somehow complicit in other participants' allegedly illegal acts. But this "collective action" theory of liability breaks with constitutional protections. Not every protester arrested on May 30-31 participated equally, or at all, in these past acts. A protester does not bear

responsibility for allegedly criminal or tortious conduct undertaken by other protesters. (*NAACP v. Claiborne Hardware* (1982) 458 U.S. 886, 920; *Lam v. Ngo* (2001) 91 Cal.App.4th 832, 851.)

To be clear, UCSC may have had authority to issue 626.4 notices when clearing the blockade ***if*** it had provided the due process required by law. But what UCSC did not have authority to do is pre-judge the entire group of persons arrested for the separate offense of failing to disperse, decree everyone *en masse* responsible for days of blockade disruptions, and summarily banish the entire group without making individualized determinations. Defendants assert that the Legislature intended Section 626.4 to operate in this way, but *Braxton* ruled that this approach violated due process and the First Amendment—specifically holding that, even in exigent circumstances, the inquiry focuses on the threat level posed by the person sought to be banned, not the group.

The Opposition accuses Plaintiffs of seeking to impose "new limits" that are "not supported by any statute or caselaw." (Opp. at p. 7.) But it is UCSC that proposes a radical departure by advancing a novel "collective action" theory. This Court should not let Defendants act as if *Braxton* was never decided. Democracy depends on the messy business of coming together to protest. UCSC's pre-determined, indiscriminate treatment of all individuals caught up in conduct that was both within and outside the First Amendment jeopardizes this precious freedom.

ARGUMENT

I. Plaintiffs Are Likely to Prevail on the Merits of Their Claims

A. UCSC advances a "collective action" theory and interpretation of Section 626.4 at odds with *Braxton* and due process requirements.

1. Section 626.4 and *Braxton* focus on the person, not the group.

Both Section 626.4 and *Braxton* confronted, as here, large, anti-war protests. And yet neither of these authorities embraced a group theory of liability. They instead turned on a threat analysis of the "person" sought to be excluded. (*See* Pen. Code, § 626.4, subd. (a)-(c); *Braxton*, *supra*, 10 Cal.3d at p. 145.) In particular, *Braxton* delineated the importance of this individualized inquiry so as to determine the level of due process required: a disruptive "person" whose "continued presence" constitutes "a substantial and material threat of significant injury to persons or property" can be banished on the spot, whereas a disruptive person whose continued presence does not constitute such a threat must be afforded a hearing "to contest the charges or explain his

actions." (*Braxton*, *supra*, 10 Cal.3d at p. 145; *id*. at p. 154 [holding "that section 626.4 requires reasonable cause to believe ***the person*** excluded . . . .]; MPA at pp. 16-17 [additional examples].)[1]

Here, UCSC admits that it made no specific findings about any plaintiff. All officers knew when they banned each one was: (1) officials had made a predetermined decision to ban everyone arrested for failing to disperse from what they declared an unlawful assembly; and (2) Plaintiffs were among the over 100 people arrested. (Larive ¶ 22; Romo ¶¶ 24-25, 30; Flippo ¶¶ 25, 52.) This indiscriminate treatment is the opposite of individualized determination. Again, a manifest difference exists between conduct constituting failure to comply with a dispersal order under Penal Code section 416 and conduct constituting a substantial threat of significant injury under 626.4.

2. Defendants wrongly import a "collective action" theory into Section 626.4.

Because UCSC made no individualized determinations about Plaintiffs before banishing them, it falls back on a theory of its own making. Generally, UCSC insists that it has authority to "issu[e] 626.4 orders to members of a group whose collective action constitutes a substantial threat of significant injury." (Opp. at p. 8.) And specifically, UCSC argues that it was justified in banning Plaintiffs without due process because "Plaintiffs willfully participated in a group that erected a barricade across UCSC's Main Entrance and, at times, also blocked the *only* other accessible vehicle entrance to campus." (*Id.* at p. 7, emphasis in original.) This guilty-by-association strategy fails to comprehend *Braxton* and 626.4's focus on "the person;" it is also blatantly unconstitutional. Collective action is not an enemy. To the contrary, it is "by collective effort" that "individuals can make their views known, when individually, their voices would be faint or lost." (*Claiborne Hardware*, *supra*, 458 U.S. at pp. 907-08; *see also NAACP v. Alabama* (1958) 357 U.S. 449, 463.)

According to UCSC, the protests and actions that took place in May spanned different locations, occurred at different times of day, involved different numbers of people, and used different strategies. (Opp. at pp. 8-11.) And yet UCSC liberally treats anyone allegedly involved in

[1] The Supreme Court had the benefit of 626.4's legislative history when it ruled the statute, literally construed, was unconstitutional. By noticing this history as if *Braxton* had not already considered it (Defs. RJN, Ex. A), Defendants invite this Court to overwrite the Supreme Court's interpretation. Had the Legislature disagreed with *Braxton*, it could have amended 626.4 during later amendments. But it did not, which indicates "an intent to leave the law as it stands[.]" (*Cole v. Rush* (1955) 45 Cal.2d 345, 355, disapproved on other grounds in *Vesely v. Sager* (1971) 5 Cal.3d 153, 167.)

the events and blockades as if they proximately caused the cumulative impacts. For example, UCSC provides miscellaneous statistics about the garbage generated from an encampment set up at the main quad; proffers pictures of altars in fields and hammocks on gas lines; includes screenshots of unauthenticated and miscellaneous social media posts; tells harrowing stories about building takeovers, road closures, and a choking toddler. This proffered evidence treats all "the protesters" as if they were one and the same. The Opposition doubles down on this approach using the word "group" no less than ten times and the phrase "collective action" four times. (*Id.* at pp. 15, 20-21.)[2]

If—instead of deciding in advance to ban "each protester who did not disperse" (Romo ¶ 30)—UCSC had afforded Plaintiffs the individualized determination or hearing to which they were entitled, officials would have learned that Plaintiffs did not construct the blockade at the main entrance on May 28 and that people were present at the protest on May 30 for a variety of reasons, some protected by the First Amendment, including to observe police conduct, protest the use of militarized law enforcement officers, and show solidarity with the encampment's expressive message. (Ellutzi ¶ 6; Hong ¶ 13; MPA at pp. 8-9, 14.) And UCSC would have also learned that, contrary to its assertions, Plaintiffs (and many others) found the dispersal orders confusing, the path to exit unclear or impassable, and the officers' kettling techniques to be the reason why many people (even the onlookers on the sidelines) were in the street. (Ellutzi ¶¶ 8-9; Irshad ¶¶ 13-14; Parrish ¶¶ 7-8 Hong ¶¶ 15-16.) Perhaps most significantly, UCSC would have learned each plaintiff did not pose a substantial threat of significant injury to person or property. (MPA at pp. 9-10.)

The decision to summarily ban everyone in advance was also an impermissible shortcut to an extreme penalty. At the time when officers released and banned Plaintiffs, they were exhausted, and both the blockade and encampment had been disbanded. UCSC fails to show why arresting each plaintiff for failing to disperse would have been insufficient to deter further disruptive conduct

[2] UCSC states that the blockades at both the Main Entrance and West Gate on May 28 debilitated campus. (Opp. at pp. 9-10.) But while they were no doubt disruptive, the Situation Report for that day, entered at 7:15 p.m., does not evidence the level of chaos described. The Report states that a team "was active during today's rally and noted no major disruptions." (Edgar, Ex. 18 at p. 2; *see also id.* at p. 1 [discussing movement of traffic at both entrances].) The mismatch with this contemporaneous record calls into question either the credibility of the declarants or the utility of the Situation Reports—especially the "Weekend Situation Reports," which lack proper foundation and authentication. (*See* Edgar, Ex. 22; *see also* Evid. Code, §§ 356, 403, 412, 702, 1271, 1400.)

on campus. (*See* Flippo ¶ 55 [discussing impact of *threat* of arrest].) UCSC had apparently not made any protest-related arrests in the month prior, thus any sense of what impact arrests would—or would not—have had is unreasonably speculative. (Opp. at p. 10.) Similarly, unreasonable is any assertion that submitting Plaintiffs to pre-banishment 626.4 hearings would not have fairly met the school's safety concerns.[3] Where constitutional freedoms are at risk, the school was obligated to "not employ means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." (*Claiborne Hardware*, *supra*, 458 U.S. at p. 920.)

3. Guilty-by-Association is an Anathema to the Constitution.

In rewriting Section 626.4 to comply with constitutional limits, *Braxton* incorporated due process and the First Amendment's protection of free speech, free assembly, and free association. (*Braxton*, supra, 10 Cal.3d at p. 150.) UCSC's collective action theory runs contrary to this body of law; so too does its presumption that all arrestees were "guilty" of maintaining a days-long blockade "by association." Neither the state nor the federal constitution tolerates a scheme in which individuals are punished for conduct that they did not direct or intend. Rather, "[g]uilt is personal," and for punishment to be imposed on "conduct" related to "concededly criminal activity . . . that relationship must be sufficiently substantial . . . to withstand attack under the Due Process Clause of the Fifth Amendment." (*Scales v. United States* (1961) 367 U.S. 203, 224-25.)

Participants in protests marred by violence or other unlawful conduct do not categorically forfeit their First Amendment and due process protections. Indeed, it "has long been established that guilt by association alone, without establishing that an individual's association poses the threat feared by the Government, is an impermissible basis upon which to deny First Amendment rights." (*Santopietro v. Howell* (9th Cir. 2023) 73 F.4th 1016, 1025 [quotations omitted].) As the U.S. Supreme Court ruled, the "right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected." (*Claiborne Hardware*, *supra*, 458 U.S. at p. 908; *see also Barham v. Ramsey* (D.C. Cir. 2006) 434 F.3d 565, 573 [condemning "mass arrest" of protesters in public park

[3] The assertion that UC San Diego issued 626.4 orders to clear an encampment (Romo ¶ 35) is belied by the public record, which suggests interim suspensions under student code procedures.

for "Failure to Obey an Officer" and ruling that "probable cause to believe that *some people* present . . . had committed arrestable offenses" was not the same as "probable cause for detaining *everyone* who happened to be at the park"] [emphasis in original]; *Lam*, *supra*, 91 Cal.App.4th at pp. 851-52 [emphasizing that an individual protestor does not bear responsibility for criminal or violent acts committed by "other, anonymous, protesters"].)

Wong v. Hayakawa (9th Cir. 1972) 464 F.2d 1282, cited by Plaintiffs, exemplifies these principles and directly rebuts UCSC's "collective action" and group "acting in concert" theories. (MPA at pp. 13-14.) UCSC falls flat in its attempts to distinguish *Wong* because it "*did not even concern Section 626.4*." (Opp at p. 15, emphasis in original.) In fact, *Wong*'s most salient distinction is that UCSC's conduct violated due process to an even greater extent. The *Wong* plaintiffs were students subjected to blanket university discipline after being caught up in a dragnet and mass arrested; Plaintiffs here were caught up in a dragnet, mass arrested, subjected to blanket university discipline ***and*** blanket 626.4 bans. UCSC's brush-off also ignores the fact that *Braxton* looked to *Wong* to undergird its analysis, citing the case for the proposition that "courts have for more than a decade held that procedural due process requires appropriate notice and hearing before the right to attend a state university or college is withdrawn." (*Braxton*, *supra*, 10 Cal.3d at p. 154, fn. 16.) Thus, *Wong* provided the authority under which *Braxton* imposed limits on Section 626.4.

This Court should not break with *Braxton*, nor grapple with the fraught questions left unanswered by UCSC—what standard should be applied to determine when someone is a member of a "group," what level of individual participation constitutes "collective action," and what types of conduct should be considered "acting in concert." Ultimately, while "procedure by presumption is always cheaper and easier than individualized determination," due process is required. (*Stanley v. Illinois* (1972) 405 U.S. 645, 656-57; *see Index Newspapers LLC v. U.S. Marshals Serv.* (9th Cir. 2020) 977 F.3d 817, 834 [no sweeping "prophylactic measures" where free speech is at stake].)

B. Defendants Failed to Comply with Section 626.4

Even assuming that UCSC's instantaneous exclusion of Plaintiffs complied with constitutional limits (which it did not), the Court should still grant this Motion based on UCSC's failure to follow Section 626.4's mandatory provisions. (MPA at pp. 16-19.) UCSC concedes these

failures but shrugs them off. (Opp. at pp. 11, 16-17.) The violations were, however, material and prejudicial—not technical or ministerial like in the cases upon which Defendants rely. (*Ibid.*)

Defendants' most egregious procedural failure is that, after banishing Plaintiffs, they did not prepare, review, or confirm reports providing (1) a "description of the person from whom consent was withdrawn" or (2) a "statement of the facts giving rise to the withdrawal." (Pen. Code, § 626.4, subd. (b).) Such a report was required "as soon as [wa]s reasonably possible." (*Ibid.*) And yet, UCSC wrongly contends it did not need to prepare anything because "Chancellor Larive personally made the decision to issue 626.4 orders based on her reasoned assessment that the barricading of the campus's Main Entrance constituted a threat of significant injury to persons on campus." (Opp. at p. 17.) UCSC mistakes the act of delegation for something more. In the Chancellor's words, she "authorized law enforcement officers to provide notice of summary Section 626.4 exclusion orders to any students or others." (Larive ¶ 22; *see also* Romo ¶ 30; Flippo ¶ 25.) It was thus the officers who developed "the reasonable cause to believe" which specific individuals failed to disperse and "willfully the disrupted the orderly operation" of campus. (Pen. Code, § 626.4, subd. (a)-(b).) And it was then also the officers who had an obligation to prepare substantiating written reports. Taken to its logical conclusion, UCSC's interpretation would erase 626.4 reporting entirely.

The lack of written reports further confirms that UCSC did not conduct the individualized determination required. It also means that Plaintiffs were deprived the opportunity to have had a written report about them reviewed and confirmed by Larive or her duly authorized official within the 24-hour period set by Section 626.4. (Pen. Code, § 626.4(b)(2).) This, in turn, means Plaintiffs were likely subjected to exclusion orders that, by law, should have been "deemed void" (*ibid.*)—an additional deprivation of their protected interest in pursuing studies and employment on campus.

Defendants, perhaps anticipating that this Court would find a "statutory defect" in their procedures, shift attention to UCSC's "new policies and templates for 626.4 orders." (Opp. at p. 17.) But UCSC adopted these policies ***after*** Plaintiffs had challenged its unlawful conduct in this lawsuit. Defendants notably do not put into the record, or defend, the policies that were purportedly in place at the time of Plaintiffs' exclusion. UCSC's desire to cut and run in this regard is damning.

In addition to shrugging off their own statutory responsibilities, Defendants make light of the harm that summary banishment caused Plaintiffs. (Opp. at pp. 8, 11-12.) It is now undisputed that when UCSC officers banished Plaintiffs on the spot, they provided nothing about 626.4 in writing, nothing about Plaintiffs' rights to appeal, and nothing about the accommodations that Plaintiffs might seek. (Opp. at pp. 11, 16.) In other words, Defendants kicked Plaintiffs off campus and out of their housing and classes by providing less information than is on a parking ticket.

Notwithstanding that the plan to issue 626.4 Notices *en masse* had been decided in advance, it took UCSC four days to provide Ellutzi and Irshad with written notice and five days for Hong. (MPA at pp. 9-10; Maxwell, Exs. 1 & 2.) By then, an entire weekend and two days of classes (or almost a third of the exclusion period) had passed. And still, the notices, which were generic and identical for the students, did not explain that it was possible to return to campus for the purpose of retrieving one's belongings, attending a class, or taking an exam. (*Id.*; *see also* Belisario ¶¶ 7-10) [form to request belongings published June 1, but not publicized to students until June 6].)[4]

The student notices did include a hyperlink to an under-construction "626.4 FAQ webpage" that itself was ambiguous with respect to available accommodations. (Maxwell ¶¶ 6-8.) The FAQ informed students that each one's ability to attend classes was up to the discretion of their professors. For those "needing to access healthcare services," they were told to reach out and wait to be "direct[ed] accordingly." (Hernandez-Jason, Ex. 2.) Significantly, however, this medical information appeared online (without announcement) just one full day before the June 6 appointment that Ellutzi had to miss. Prior to that, the FAQ was silent on this topic. (*Id.*, ¶ 4, Ex. 1.)

Indeed, it is unsurprising that UCSC does not know of any person denied accommodations. One cannot be denied if one does not know to ask. Finally, UCSC's apparent willingness to accommodate and allow every banned person at the May 30-31 protest (and future protests, *see* Opp. at p. 19) onto campus for certain purposes, undermines the extent to which any person really was or continued to be a threat to campus safety. (*See* Pen. Code, § 626.4, subd. (c) [mandating consent be reinstated "whenever" official "has reason to believe" a person is not "a substantial and material threat to the orderly operation of the campus"].)

[4] Defendants do not identify any accommodations for excluded faculty, like Hong. (Opp. at p. 12.)

II. Balance of Harms Weighs in Plaintiffs' Favor

As a result of Defendants' unconstitutional exclusions, Plaintiffs have suffered significant and irreparable harm and are likely to suffer more. Plaintiffs want to engage in further group protest activity (Ellutzi ¶¶ 26–28; Irshad ¶¶ 32–33; Hong ¶ 34); whereas UCSC continues to press a shifting legal standard[5] and insist on its right to use 626.4 to exclude protesters on a collective action theory (Domby ¶ 5; Larive ¶ 5; *see also* MPA at p. 11.) The two are on a collision course.

Absent the preliminary injunctive relief sought, Plaintiffs will suffer from the chilling impact of Defendants' indiscriminate practices and non-particularized mass exclusions. (MPA at pp. 19-20.) Chilling will occur because, as recognized in *Castro v. Superior Court* (1970) 9 Cal.App.3d 675, people can be so fearful of coming within a sanction's broad sweep that they "limit their behavior to that which is unquestionably safe." (*Id.* at p. 683 [citing *Keyishian* v. *Bd. of Regents of New York* (1967) 385 U.S. 589, 609]; *id*. at 683-84 [quoting *In re Kay* (1970) 1 Cal.3d 930, 941] ["threat of sanctions may deter almost as potently as the application of sanctions"].)

That UCSC has yet to issue 626.4 notices in response to campus protests this fall does not mean Plaintiffs have nothing to fear. This lawsuit has been pending since the schoolyear started and large-scale 626.4 exclusions would have exposed Defendants to further liability. (*See Marin Cnty. Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 929 [court must adjudicate claims even if "voluntary discontinuance of alleged illegal practices"]; *Rouser v. White* (E.D. Cal. 2010) 707 F. Supp. 2d 1055, 1071 [voluntary cessation does not preclude preliminary injunction].)[6]

Nor is there comfort in Defendants' preposterous suggestion that Plaintiffs (and others) could pursue an alternate remedy to abate future harm. (Opp. at pp. 8, 19-20.) Defendants suggest that any student who believes that they were unfairly banned could petition for a writ of mandate and immediately seek an *ex parte* temporary restraining order. But a student banished under Section 626.4 would be barred from campus for up to 14 days, and it is difficult to fathom how a

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[5] Defendants assert that summary exclusions may issue "when necessary to protect the safety of persons or property" (Larive ¶ 5),when "necessary to maintain peace and order on campus" (Domby ¶ 5), or when responding to behavior creating a disruption off campus (Romo ¶ 41). None of these standards is correct and their formulations reinforce fears of future unlawful exclusions.

[6] More telling is that, between May 31 and the filing of this lawsuit, UCSC issued 626.4 orders to pro-Palestine protesters on two occasions. (Romo ¶¶ 40-41; Parrish ¶ 18.)

student unfamiliar with civil litigation could seek, retain, and pay civil counsel to challenge a 626.4 order within that time period. Even if a student could manage this feat, it is purely speculative that a court would exercise its discretion to stay the exclusion order until the petition could be heard. Such an impracticable procedure promotes neither efficiency nor justice.

By comparison, UCSC will suffer *no harm* if the preliminary injunction is granted. UCSC professes, on the one hand, that it "would be significantly hindered in its ability to protect its campus community" if it could not issue 626.4 orders *en masse* and, on the other, that it has used 626.4 only once in the last five years to address a large protest. (Opp. at pp. 8, 20-21; Domby ¶ 5; Larive ¶¶ 4-8.) It is hard to reconcile how vital this tool is if historically used so sparingly. Plaintiffs do not request that the Court prohibit UCSC from *ever* issuing 626.4 exclusion notices, nor do they ask the Court to "inhibit[] the lawful use of" them. (Opp. at p. 21.) The injunction, rather than "impede" UCSC's "ability to satisfy its legal obligations" (*ibid.*), would ensure that the school fulfills them. Again, "it is always in the public interest to prevent the violation of a party's constitutional rights." (*Melendres v. Arpaio* (9th Cir. 2012) 695 F.3d 990, 1002, citation omitted; *Zepeda v. I.N.S.* (9th Cir. 1983) 753 F.2d 719, 727 [Government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."].)

CONCLUSION

Because this case is about faithfully following *Braxton*, Plaintiffs turn to that Court's conclusion, which included this quote by Plato: "*What is happening to our young people? They disrespect their elders, they disobey their parents. They ignore the laws. They riot in the streets inflamed with wild notions. Their morals are decaying.*" (*Braxton*, *supra*, 10 Cal.3d at p.155.) The Court saliently observed that these words, voiced "some 2,300 years ago . . . remind us that youthful rebellion is not peculiar to recent years. Assuredly the 1960's marked the decade when many groups in our culture demanded new recognition and greater opportunity to affect public policy; none were more vocal than university students. Their pleas and protests did indeed win adjustments both on campus and in government itself." (*Ibid.*) Now, fifty years later, students are heeding another call to advocate against a war they believe to be unjust and immoral. With this frame, it is clear that *Braxton*'s constitutional limits are more vital than ever.

Dated: November 8, 2024

Respectfully submitted,

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