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**DEPARTMENT OF JUSTICE**

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May 23, 2022

Via electronic filing

Molly C. Dwyer, Clerk of Court  
Ninth Circuit Court of Appeals  
James R. Browning Courthouse  
P.O. Box 193939  
San Francisco, CA 94119-3939

RE: Mobilize the Message, LLC et al. v. Rob Bonta  
United States Court of Appeals for the Ninth Circuit, Case No. 21-55855

Dear Ms. Dwyer:

In response to Plaintiffs' recent letter, Defendant submits this letter regarding the Supreme Court's decision in *City of Austin v. Reagan National Advertising of Austin, LLC*, No. 20-1029. *City of Austin* is consistent with the district court's decision, and this Court's previous decision in *American Society of Journalists and Authors v. Bonta*, 15 F.4th 954 (9th Cir. 2021).

In short, AB 5 and its exemptions do not impose restrictions on speech, content-based or otherwise, and thus Plaintiffs cannot establish that the district court erred in denying a preliminary injunction. Like the provisions at issue in *City of Austin*, AB 5 "do[es] not single out any topic or subject matter for differential treatment." *City of Austin*, slip op. at 8. Similarly, any "substantive message" presented by the doorknockers and signature gatherers whom Plaintiffs purportedly represent "is irrelevant to the application of the provisions" of AB 5, which has "no content-discriminatory classifications for political messages," or "ideological messages." *Id.* AB 5 instead focusses on occupation or the service provided.

Although Plaintiff's letter argues that AB 5 classifies their speech "based on its subject matter," they cite to no classifications in the law that hinge on subject matter. None of AB 5's terms or exemptions involve an examination of the worker's message. *See* Cal. Lab. Code § 2783(e). To the extent the application of these criteria might incidentally involve an examination of expression, *City of Austin* clearly "reject[s] . . . the view that *any* examination of speech or expression inherently triggers heightened First Amendment concern." *City of Austin*, slip op. at 10. And while "a regulation of speech cannot escape classification as facially content based simply by swapping an obvious subject-matter distinction for a 'function or purpose' proxy that achieves the same result," this "does not mean that any classification that considers function or

Molly C. Dwyer  
May 23, 2022  
Page 2

purpose is *always* content based.” *Id.* at 11 (emphasis in original). Ultimately, *City of Austin* did not disturb the principle that “restrictions on protected expression are distinct from restrictions on economic activity or, more generally, on nonexpressive conduct.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011).

Sincerely,

/s/ Jose A. Zelidon-Zepeda  
JOSE A. ZELIDON-ZEPEDA  
Deputy Attorney General

For ROB BONTA  
Attorney General

cc: Alan Gura, counsel for Plaintiffs (via electronic filing)

## CERTIFICATE OF SERVICE

Case Name: **Mobilize the Message, LLC et al. v. Rob Bonta** No. **21-55855**

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I hereby certify that on May 23, 2022, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### **FRAP 28(j) Letter**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 23, 2022, at San Francisco, California.

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R. Caoile  
Declarant

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/s/ R. Caoile  
Signature