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October 18, 2021

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:

Per Federal Rule of Appellate Procedure 28(j), Defendant submits this letter brief regarding this Court's recent decision in *American Society of Journalists and Authors v. Bonta*, No. 20-55734, \_\_\_ F.4th \_\_\_, 2021 WL 4568057 (9th Cir. Oct. 6, 2021). This case is pertinent to the discussion in the answering brief regarding *ASJA*, appearing at pages 23-24.

In *ASJA*, this Court rejected a First Amendment challenge to Assembly Bill 5, in a context nearly identical to the claims raised by Plaintiffs here. 2021 WL 4568057, at \*4. The plaintiffs unsuccessfully argued that certain AB 5 exemptions under California Labor Code section 2778 improperly imposed content-based restrictions, in contravention of the First Amendment. This Court noted that the case law distinguishes between "restrictions on protected expression," and "restrictions on economic activity," and the First Amendment "does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech." *Id.* (citation omitted). "Section 2778 fits within this line of cases because it regulates economic activity rather than speech." *Id.* at \*5. Looking at the terms of AB 5, the Court concluded that it "is aimed at the employment relationship," and that its classification standards "vary based on the nature of the work performed or the industry in which the work is performed." *Id.*

Further, while recognizing that "economic regulations can still implicate the First Amendment when they are not 'generally applicable,'" and instead target particular types of speech, this Court ruled (in terms equally applicable to the exemptions at issue here) that "Section 2778 poses none of these problems" since it does not "target the press or a few speakers, because it applies across California's economy." *Id.* at \*\*5-6. Even assuming that section 2778 imposes an economic burden through its classification standard, "its applicability

Molly C. Dwyer  
October 18, 2021  
Page 2

does not turn on what workers say but, rather, on the service they provide or the occupation in which they are engaged.” *Id.* at \*6. Ultimately, “the inclusion of provisions specific to such ‘speaking’ professionals does not . . . transform a broad-ranging, comprehensive employment law like section 2778 into a content-based speech regulation.” *Id.* at \*6.

Sincerely,

/s/ Jose A. Zelidon-Zepeda  
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For ROB BONTA  
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cc: Alan Gura, counsel for Plaintiffs (via electronic filing)

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