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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AMERICAN CIVIL LIBERTIES UNION OF NEVADA, a domestic nonprofit organization; CORIE HUMPHREY, an individual, Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada, Defendant.	Case No.: 2:25-cv-00892 **Plaintiffs' Motion for Default Judgment and Permanent Injunction**

Plaintiffs American Civil Liberties Union of Nevada ("ACLU") and Corie Humphrey, hereby submit this motion pursuant to Fed. R. Civ. P. 55(b)(2) applying to this Court for a Default Judgment declaring Defendant Clark County School District's Policy R-5129 unconstitutional and unlawful and permanently enjoining Defendant Clark County School District from implementing the unlawful policy. This Motion is supported by the following memorandum of points and authorities and the attached exhibits, the Clerk's Entry of Default based on Defendant's failure to answer, and by the papers and pleadings on file in this action.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On March 27, 2025, Clark County School District ("CCSD") adopted Policy R-5129 ("Regalia Policy") regulating the attire, adornments, and decorations that students may wear to graduation. The Regalia Policy continues the District's years-long pattern of ignoring students' complaints that CCSD fails to accommodate reasonable requests to adorn or decorate their graduation caps and gowns with religious, cultural, or personally significant items. CCSD's Regalia Policy violates the First Amendment of the United States Constitution and Article 1, Section 9 of the Nevada Constitution, as it engages in facially unconstitutional content-based discrimination. It is also a prior restraint that violates the First Amendment in that the Regalia Policy provides Clark County schools and their officials with unbridled discretion to permit or deny expressive activity. Finally, it regulates beyond what is permissible under NRS 388.915.

Plaintiffs American Civil Liberties Union ("ACLU") of Nevada and Corie Humphrey brought this action on May 15, 2025, in the Eighth Judicial District Court of Nevada. After Defendant removed the matter to this Court, Plaintiffs obtained a preliminary injunction to ensure that their rights and the rights of students in Clark County School District were not violated by Defendant CCSD's unconstitutional Regalia Policy during the 2025 graduation season.

It has now been over six months since Plaintiffs filed their complaint and properly served Defendant CCSD with their Complaint and Summons. CCSD has failed to answer or provide any other legally required response to Plaintiffs' Complaint; Plaintiffs' counsel even notified CCSD's counsel of the discrepancy via email in November with no response forthcoming. The Clerk of the Court has since entered Default against Defendant CCSD.

Plaintiffs now seek: (1) entry of a default judgment; (2) a permanent injunction enjoining the unconstitutional provisions of Policy R-5129(II); and (3) an award of attorney's fees and costs.

II. STATEMENT OF FACTS

On March 27, 2025, Defendant CCSD implemented R-5129 Section II (the "Regalia Policy"), an official CCSD policy regulating how students may adorn or decorate their graduation regalia. The Regalia Policy places significant limitations on what students may wear to their graduation, only recognizing that students "are permitted" to wear "traditional tribal regalia or recognized objects of religious or cultural significance." CCSD Regulation R-5129 at 1, ECF No. 6-2. Without considering whether a particular adornment is likely to substantially disrupt or materially interfere with a graduation ceremony, it imposes the following additional limitations on tribal, religious, and cultural adornments:

- R-5129(II)(C) bans adornments that do not "lay flat" or exceed the dimensions of the cap;
- R-5129(II)(D) bans adornments that "cover more than 25 percent of the school selected graduation gown";
- R-5129(II)(E) bans adornments that "constitute proselytizing speech";
- R-5129(II)(F) requires that all decorations or adornments, no matter how clearly protected under NRS 388.915, receive prior approval from a school principal or designee before graduation.

Id. at 1–2. The Regalia Policy does not provide any guidance in how the approval process in R-5129(II)(F) should work, referring only to "separate administrative guidance." *See id.*

Multiple CCSD schools have posted their own guidelines implementing the Regalia Policy. These guidelines vary from school to school. For example, Canyon Springs High School posted graduation participation guidelines on its website that require students to present all decorations and adornments to the school's administration. Canyon Springs Graduation Guidelines at 2, ECF No. 6-8. In addition, the guidelines state that "Canyon Springs Administration has determined that adornment of caps will not be permitted." *Id.* at 1. Unlike Canyon Springs High School, Las Vegas

High School's guidelines state that students could decorate their cap or wear other personal items, but students must adhere to District guidelines. Las Vegas High School Grad. Info. At 3, ECF No. 6-9. Las Vegas High School's information further provides that "religious and/or cultural regalia is permitted with administration approval." *Id.* at 3. Del Sol Academy of the Performing Arts ("Del Sol Academy") provided conflicting guidance to its seniors. In one section of the school's newsletter, Del Sol Academy posts language from CCSD's Regalia Policy, including the provision that "decorations or adornments on caps must lay flat/flush and not exceed the dimension of the cap. . . ." Del Sol Academy Newsletter at 1–2, ECF No. 6-10. However, in a different section of the same newsletter, Del Sol Academy states that "graduation caps cannot be decorated." *Id.* at 4. In another section, it states: "Only CCSD sanctioned cords, medallions, stoles, etc. can be worn. No personal leis, money leis, candy leis can be worn or they will be confiscated." *Id.* at 6.

Plaintiff Humphrey's school, East Career and Technical Academy, provided seniors with graduation information during a senior assembly. Decl. Humphrey ¶ 9, ECF No. 6-5. At the assembly, the students were shown a slide show that generally tracked with the language of the Regalia Policy but were told by school officials that when students receive their gowns prior to graduation, "how you get them is how you should come." *Id.* ¶¶ 10–19. Ms. Humphrey was led to believe this meant there should be no customization of caps or gowns. *Id.* ¶¶ 10–19. While the slides stated that students could wear traditional tribal, religious, or cultural regalia, the presenter made clear students were limited to a maximum of one lei and no other mention of religious or cultural regalia was made. *Id.* ¶¶ 13–14. Ms. Humphrey asked her assistant principal immediately after the assembly if she could wear stoles or adornments that were not from school-sponsored clubs or academics, and the assistant principal told her no. *Id.* ¶¶ 21–22. Despite this arbitrary denial, this Court intervened to allow Ms. Humphrey to adorn her cap and gown with a stole with

the message "Black Girl Magic" to represent her culture and a stole and pin representing her time with ACLU of Nevada's Emerging Leaders program. *See* Ord. Pls.' Mot. TRO, ECF No. 25.

Because this Court preliminarily enjoined CCSD's Policy, ACLU of Nevada's Emerging Leaders were able to wear a stole and pin commemorating their association with ACLU of Nevada's Emerging Leaders program. ECF No. 25. Likewise, CCSD was prevented from prohibiting CCSD students from wearing graduation decorations and adornments that constituted protected expression under the First Amendment of the United States Constitution, religious, cultural, or otherwise. *See* ECF Nos. 25–26. However, ACLU of Nevada's Emerging Leaders Program currently has five students who are expected to graduate from schools in CCSD in May of 2026. Decl. Haseebullah ¶ 14, ECF No. 6-6. These students attend different schools with varying implementations of CCSD's Regalia Policy, including Las Vegas High School and Del Sol Academy of Performing Arts, among others. *Id.* ¶ 16. ACLU of Nevada again intends to provide its graduating Emerging Leaders members with a pin and stole to recognize their association with the organization. *Id.* ¶¶ 27–28. Prior to the graduation ceremonies for CCSD's Class of 2025, this Court found CCSD's Regalia Policy violated the First Amendment of the U.S. Constitution and thus issued an injunction preventing its enforcement during the upcoming graduations. *See* ECF Nos. 25–26. Because CCSD's Policy will result in those same violations against future graduates, ACLU of Nevada remains concerned that its Emerging Leaders members will be unable to wear the graduation stoles and pins commemorating their time in ACLU of Nevada's Emerging Leaders Program to their respective graduations or will be otherwise disciplined for attempting to do so should there not be a permanent remedy. *See* Decl. Haseebullah ¶¶ 29–30.

III. RELEVANT PROCEDURAL HISTORY

On May 15, 2025, Plaintiffs filed their Complaint challenging CCSD's Regalia Policy in the Eighth Judicial District Court of Nevada in Clark County, Nevada. *See* Notice of Removal,

ECF No. 1, Ex. A. Defendant CCSD then removed Plaintiffs' case to this Court. ECF No. 1. On May 23, 2025, Plaintiffs served Defendant CCSD with Plaintiffs' Complaint as contained in the Notice of Removal (ECF No. 1, Ex. A), Plaintiffs' Motion for Temporary Restraining Order and supporting documentation (ECF No. 6), Plaintiffs' Motion for Preliminary Injunction (ECF No. 8), and the Minute Order issued by the Hon. Judge Richard F. Boulware II (ECF No. 14) with a civil summons. Proof of Service, ECF No. 15. The same day, service of these documents was also effectuated on counsel for Defendant CCSD through priority mail and the Court's electronic filing system, with courtesy copies emailed to counsel. Certificate of Service, ECF No. 16, 2:5–11. As such, Defendant CCSD was required to respond by June 13, 2025. Fed. R. Civ. P. 12(a)(1)(A); Fed. R. Civ. P. 81(c)(2).

Upon order of this Court, Defendant CCSD responded to Plaintiffs' motions for emergency preliminary injunctive relief. Resp. Pls.' Mot. TRO, ECF No. 19. On May 25, 2025, counsel for Parties appeared in the hearing on Plaintiffs' Emergency Motion for a Temporary Restraining Order. *See* Minutes of Proc., ECF No. 23. Following the hearing, this Court issued an order finding CCSD Policy R-5129(II) facially unconstitutional and enjoining Defendant CCSD from preventing Plaintiffs from wearing the graduation regalia described to the court. ECF No. 25. This Court subsequently granted Parties' Stipulation and Proposed Order for Temporary Restraining Order and Preliminary Injunction, which modified CCSD's Policy to prevent CCSD from interfering with students' right to wear graduation adornments and decorations protected by the First Amendment of the United States Constitution during CCSD school's upcoming graduation ceremonies. ECF No. 26.

Since the hearing on Plaintiffs' motion for an emergency temporary restraining order, and in the six months since Defendant Clark County School District was served with Plaintiffs' Summons and Complaint, Defendant CCSD neither answered nor moved for further time to

respond to Plaintiffs' Summons and Complaint. *See* Clerk's Default, ECF No. 53. In an effort to ensure expeditious litigation of this matter and avoid the need to file the instant motion, on November 3, 2025, Plaintiffs' counsel contacted counsel for Defendant CCSD asking if Defendant CCSD intended to file a responsive pleading. Emails re Answer at 2, attached as Exhibit 1. Defendant CCSD's counsel responded on November 5, 2025, stating that an answer would be filed by the next day (November 6, 2025). Emails re Answer at 1, Ex. 1. Defendant CCSD did not file an answer on November 6, 2025, or any day thereafter. *See* Clerk's Default, ECF No. 53.

On November 20, 2025, Plaintiffs filed their Request for Entry of Default against Defendant CCSD to the Clerk of the Court. Pls.' Req. Entry Default, ECF No. 49. Notice of Plaintiffs' Request for Default was provided to Defendant CCSD and its Counsel by CM/ECF. The Clerk of the Court entered Default against Defendant CCSD on December 1, 2025. Clerk's Default, ECF No. 53. Plaintiffs now respectfully request this Court enter a Default Judgment based upon Defendant CCSD's failure to file a responsive pleading, as Defendant CCSD's continued delay obstructs Plaintiffs' efforts to expeditiously litigate and resolve this matter.

IV. LEGAL STANDARD

Granting a default judgment is a two-step process. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First is the entry of the clerk of the court's default based upon the party's failure "to plead or otherwise defend" as shown by a supporting affidavit or otherwise. Fed. R. Civ. P. 55(a). Once the clerk of court has entered default, a party may apply to the district court for a default judgment. Fed. R. Civ. P. 55(b). Whether a default judgment is entered lies within the sound discretion of the court. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

In deciding whether to grant a default judgment, a court may consider: (1) the possibility of prejudice to the plaintiff; (2) the merits of the substantive claims; (3) the sufficiency of the complaint; (4) the amount of money at stake; (5) the possibility of a dispute of material fact; (6)

whether the default was due to excusable neglect; and (7) the strong policy in favor of deciding cases on the merits. *Eitel*, 782 F.2d at 1471–72. After entry of default by the clerk, a court must accept all well-pleaded facts in a plaintiffs' complaint as true. *DirecTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007).

V. ARGUMENT

A. PLAINTIFFS HAVE OBTAINED CLERK'S ENTRY OF DEFAULT

Defendant CCSD has not filed a responsive pleading in the six months since being properly served with Plaintiffs' Summons and Complaint. *See* Proof of Service, ECF No. 15. Plaintiffs requested the Clerk of the Court to enter default against Defendant CCSD for its failure to plead or otherwise defend pursuant to Fed. R. Civ. P. 55(a). ECF No. 49. The Clerk of the Court entered default as to Defendant CCSD on December 1, 2025. Clerk's Default, ECF No. 53. Plaintiffs now ask this Court to enter a default judgment against Defendant CCSD pursuant to Fed. R. Civ. P. 55(b)(2). Notice of Plaintiffs' application for default judgment, required at least seven days before the hearing pursuant to Fed. R. Civ. Pro. 55(b)(2), will be served on Defendant CCSD and its counsel by CM/ECF upon the electronic filing of this Motion.

B. THE *EITEL* FACTORS FAVOR ENTRY OF A DEFAULT JUDGMENT

"A failure to make a timely answer to a properly served complaint will justify the entry of a default judgment." *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986) (citing Fed. R. Civ. P. 55). Default judgment "provides a useful remedy when a litigant is confronted by an obstructionist adversary and plays a constructive role in maintaining the orderly and efficient administration of justice." *Remexcel Managerial Consultants, Inc. v. Arlequin*, 583 F.3d 45, 51 (1st Cir. 2009). Because the public policy favoring decisions on the merits is outweighed by the other *Eitel* factors which favor default judgment and the interest of judicial economy, this Court should grant Plaintiffs' Motion for Default Judgment.

1. Plaintiffs Will Suffer Prejudice Absent Entry of a Default Judgment.

The first *Eitel* factor is whether the plaintiff(s) will suffer prejudice if a default judgment is not entered. *Eitel*, 782 F.2d at 1471–72. Defendant CCSD was made aware of its unconstitutional conduct when it was properly and personally served with Plaintiffs' Summons and Complaint on May 23, 2025, as was Defendant CCSD's counsel. ECF Nos. 15–16. Over six months later and well past the time limit outlined in Fed. R. Civ. P. 12(a), Defendant CCSD still has not filed a responsive pleading. Defendant not only ignored the deadline to respond to the complaint, it failed to answer even after Plaintiffs' counsel notified Defendant that no answer had been filed. Emails re Answer at 1–2, Ex. 1. Despite assurance an answer would be filed by November 6, 2025, Defendant has failed to do so. When Defendant willfully failed to file a responsive pleading two weeks after the date promised, Plaintiffs sought Entry of Default from the Clerk of the Court. ECF No. 49. The Clerk subsequently entered default against CCSD on December 1, 2025. ECF No. 53. As of the date of this filing, Defendant CCSD has neither responded to Plaintiffs' motion requesting clerk's entry of default nor asked this Court to vacate the Clerk's Entry of Default.

In the absence of a default judgment, Plaintiffs will be prejudiced, as Defendant's continued delay in filing an answer interferes with Plaintiffs' ability to expeditiously resolve this case. *Benny*, 799 F.2d at 492 ("A failure to make a timely answer to a properly served complaint will justify the entry of a default judgment."). In addition, this Court, by issuing preliminary injunctive relief, recognized that Plaintiffs and the other students in CCSD would suffer irreparable harm should CCSD's Regalia Policy remain in effect. *See* ECF No. 25. Plaintiffs will be prejudiced absent a default judgment and permanent injunction, as ACLU of Nevada's Emerging Leaders 2026 graduates and other upcoming CCSD graduates will continue to have their rights violated by CCSD's unconstitutional Regalia Policy. *See Elec. Frontier Found. v. Glob. Equity Mgmt. (SA) Pty Ltd*, 290 F. Supp. 3d 923, 941 (N.D. Cal. 2017) (finding prejudice to plaintiff where "it would

be forced to operate under a restriction on, or shadow over, its First Amendment rights"). *See also Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Therefore, Plaintiffs ask this Court to grant a Default Judgment with permanent injunctive relief.

2. Plaintiffs' Well-Pleaded Complaint States Sufficient and Meritorious Claims Upon Which the Plaintiffs May Recover.

The second and third *Eitel* factors favor a default judgment where the complaint sufficiently states "a claim on which the plaintiff may recover" under the "liberal pleading standards embodied in rule 8" of the Federal Rules of Civil Procedure. *Danning v. Lavine*, 572 F.2d 1386, 1389 (9th Cir. 1978); *see also* Fed. R. Civ. P. 8. Plaintiffs have properly stated claims on which they may recover by showing CCSD's unconstitutional Regalia Policy (1) on its face, violates the First Amendment right to free speech and expression; (2) violates the First Amendment right to free speech and expression as applied to Plaintiffs; (3) infringes upon the right to freedom of speech and expression outlined in Article 1, Section 9 of the Nevada Constitution; and (4) violates students' right to wear traditional tribal regalia or objects of religious or cultural significance pursuant to NRS 388.915. Plaintiffs have alleged facts, which now must be taken as true, proving these claims. *See Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977).

i. Defendant CCSD's Regalia Policy, on its face, violates the First Amendment of the United States Constitution.

"To establish a prima facie case under 42 U.S.C. § 1983, [Plaintiffs] must demonstrate proof that (1) the action occurred "under color of law" and (2) the action resulted in a deprivation of a constitutional right or a federal statutory right." *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir. 2000). Local government entities like CCSD may be sued under § 1983 if the constitutional

violation arises from "execution of a government's policy or custom." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978).

Here, CCSD and its school officials acted pursuant to CCSD's Regalia Policy and deprived students of their Constitutional right to freedom of expression under the First Amendment of the United States Constitution. The First Amendment, applied to the states through the Fourteenth Amendment of the United States Constitution, prohibits laws "abridging the freedom of speech." Plaintiffs have properly alleged that CCSD's Regalia Policy abridges freedom of speech in violation of the First Amendment because (1) it engages in content-based discrimination and outright bans certain protected content, and (2) it is an unconstitutional prior restraint that significantly restricts opportunities for expression and conditions such expression on the unbridled discretion of government officials. Compl. ¶¶ 102–167, ECF No. 1, Ex. A.

A defendant violates the First Amendment of the United States Constitution when it engages in content-based or viewpoint-based discrimination that is not narrowly tailored to serve a compelling state interest. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). The First Amendment prohibits restrictions that attempt to "disfavor certain subjects or viewpoints" or that "distinguish[] among different speakers, allowing speech by some but not others." *Citizens United v. FEC*, 558 U.S. 310, 340 (2010). While some content-based restrictions may be permitted in limited public forums, such restrictions are improper if they do not "preserve the purpose of the limited forum." *Hills v. Scottsdale Unified Sch. Dist.*, 329 F.3d 1044, 1050 (9th Cir. 2003). Where a plaintiff alleges outright bans of discussions of entire topics, allowances for some students to engage in speech while others are barred from the same opportunity, and such restrictions are not tailored to preserve the forum, the plaintiff sufficiently states a claim for a violation of the First Amendment. *See Reed*, 576 U.S. at 169 ("it is well established that '[t]he First Amendment's hostility to content-based discrimination extends not only to restrictions on particular viewpoints,

but also to prohibition of public discussion of an entire topic."); *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1163 (9th Cir. 2022) (finding defendant school district engaged in viewpoint discrimination when barring student from wearing religiously significant eagle feather on cap when students at another school were allowed to decorate caps); *Hills*, 329 F.3d at 1051 ("view-point discrimination is *not* permissible when it is directed at speech otherwise falling within the forum's limitations.").

Plaintiffs properly allege that CCSD's Regalia Policy engages in content-based discrimination and outright bans certain protected content. Compl., ¶¶ 143–167. Plaintiffs' factual allegations prove that, while the Policy provides some accommodation for students intending to express religiously and culturally significant messages, it fails to do the same for all messages entitled to First Amendment protections. Compl. ¶¶ 39–45, 149–160, 163. Plaintiffs' facts show that one student may be able to wear a traditional tribal, religious, or cultural item while another may be banned from political or proselytizing expressive conduct, proving that CCSD's Policy is not content or viewpoint neutral and thus violates the First Amendment of the United States Constitution under *Waln v. Dysart Sch. Dist*. Compl. ¶¶ 39–45, 53, 59, 62, 64, 148–160. In addition, Plaintiffs allege this content-based and viewpoint-based discrimination and CCSD's outright ban on proselytizing speech cannot survive strict scrutiny, as they are not narrowly tailored to serve a compelling government interest. Compl. ¶¶ 161–166.

Prior restrictions on First Amendment speech and expression are unconstitutional where a policy is absent of "narrowly drawn, reasonable, and definite standards" that guide the government official, as such lack of guidance vests that official with unbridled discretion to make allowances on the basis of content or viewpoint. *World Wide Rush, LLC. v. City of L.A.*, 606 F.3d 676, 687 (9th Cir. 2010); *Kaahumanu v. Hawaii*, 682 F.3d 789, 802 (9th Cir. 2012). Such restraints on speech "are the most serious and least tolerable infringement on First Amendment rights", *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1975), and thus carry a "heavy presumption of invalidity",

Long Beach Area Peace Network v. City of Long Beach, 574 F.3d 1011, 1023 (9th Cir. 2009). A plaintiff states a meritorious claim for a First Amendment violation where the plaintiff sufficiently alleges a graduation policy is unevenly enforced throughout the school district. *Waln*, 54 F.4th at 1163 (finding plaintiff plausibly alleged violation where policy was unevenly enforced throughout the school district, preventing plaintiff from wearing eagle feather to express her religious view, while student from another school was permitted to display secular message).

Plaintiffs properly allege that CCSD's Regalia Policy is an unconstitutional prior restraint. Plaintiffs first allege facts that show CCSD's Regalia Policy, in severely limiting students' expression through adorning or decorating their graduation regalia, "by its terms seeks to regulate spoken words or patently expressive conduct" and "significantly restricts opportunities for expression." Compl., ¶¶ 29–45, 82, 85–86, 123–125, 149–153. Plaintiffs also properly allege that CCSD's Regalia Policy is an unconstitutional prior restraint on protected speech and expression because it is absent "narrowly drawn, reasonable, and definite standards" and therefore vests school officials with unbridled discretion to make allowances on the basis of content or viewpoint. Compl. ¶¶ 121–130. Specifically, Plaintiffs' facts demonstrate CCSD's Regalia Policy fails to provide definite guidance to school officials, evidenced most clearly by CCSD schools' widely divergent graduation regalia policies. Compl. ¶¶ 46–84, 127–142. That Las Vegas High School would allow students to wear expressive adornments or decorations on caps while students elsewhere were forbidden from decorating caps altogether demonstrates obvious inconsistencies stemming from CCSD's failure to provide clear guidance. Compl. ¶¶ 56–59, 69, 132–142. Plaintiffs also properly allege that the pre-approval process in CCSD's Policy that limits protected activity is "overly broad and inadequately focused on avoidance of disruption and interference with school discipline", as it allows school administrators to restrict graduation decorations and

adornments without consideration of whether they would interfere with the graduation ceremony. Compl. ¶¶ 96–100, 122, 125, 128.

The sufficiency and merits of Plaintiffs' First Amendment claims are further evidenced by this Court's issuance of preliminary injunctive relief against Defendant CCSD. In its order enjoining CCSD, this Court found Defendant CCSD's Regalia Policy is facially unconstitutional under the First Amendment, as it "permits some forms of speech or expressive conduct (i.e., religious or cultural) while prohibiting others (e.g., political or proselytizing)" and thus was not content or viewpoint neutral. ECF No. 25 at 1. In finding so, this Court relied on *Waln*, which requires graduation regalia policies that discriminate based on viewpoint to survive strict scrutiny. ECF No. 25 at 1. This Court also cited to *World Wide Rush,* which "held that prior restrictions on First Amendment speech and expression are unconstitutional where a policy is absent of narrowly drawn, reasonable, and definite standards" as lack of guidance vests government officials with "unbridled discretion to make allowances on the basis of content or viewpoint." ECF No. 25 at 1–2. This Court ultimately found CCSD's Policy did not satisfy strict scrutiny, "as there is no compelling government interest to justify the non-neutral policy." ECF No. 25 at 2. In issuing preliminary relief, a court must make the determination that "not only have Plaintiffs sufficiently stated a plausible claim for relief, but also that Plaintiffs were likely to prevail on the merits." *Hand & Nail Harmony, Inc. v. Guangzhou Shun Yan Cosmetics Co.*, No. 2:12-cv-01212-JCM-PAL, 2015 U.S. Dist. LEXIS 93744, at *7–8 (D. Nev. July 15, 2015). As demonstrated by this Court's finding of unconstitutionality and issuance of preliminary relief, the second and third *Eitel* factors weigh in favor of entry of a default judgment and a permanent injunction against Defendant CCSD.

ii. Defendant CCSD's Regalia Policy, as applied to Plaintiffs, violates the First Amendment of the United States Constitution.

Second, Plaintiffs properly allege that CCSD's Regalia Policy, as applied to them, violates their rights to free speech and expression. Compl. ¶¶ 173–91. To establish a successful as applied challenge, a plaintiff "must show only that the statute unconstitutionally regulates plaintiffs' own speech." *Italian Colors Rest. v. Becerra*, 878 F.3d 1165, 1175 (9th Cir. 2018).

Plaintiff Corie Humphrey alleged facts that prove that the Regalia Policy unconstitutionally regulates her speech, as it was an unconstitutional prior restraint on her ability to wear decorations and adornments with messaging protected by the First Amendment. Compl., ¶¶ 52–59, 78–84, 173–77. Plaintiff Corie Humphrey also alleges facts that prove she would have been prevented from wearing a stole with the message "Black Girl Magic" and a stole and pin representing her association with ACLU of Nevada's Emerging Leaders program, while other traditional tribal or cultural messages would have been permitted. Compl. ¶¶ 52–59, 78–84, 178–85. These facts demonstrate content-based discrimination in violation of the First Amendment.

Plaintiff ACLU of Nevada similarly alleges facts that demonstrate that its graduating Emerging Leaders members would have been required to seek prior approval, and, at least in Corie Humphrey's instance, were denied approval to wear ACLU of Nevada Emerging Leaders adornments at their CCSD graduations. Compl. ¶¶ 85–86, 187–91. ACLU of Nevada further alleges that its members due to graduate in 2026, and each subsequent year, risk facing these same violations under CCSD's unconstitutional Regalia Policy. Compl. ¶¶ 21–25.

Again, this Court's issuance of a preliminary injunction against Defendant demonstrates that this claim is sufficiently stated and meritorious. In its Order on Plaintiffs' Motion for a Temporary Restraining Order, this Court found that "based upon the presentation of the expressive forms of conduct for Plaintiff Corie Humphrey, and the seniors associated with Plaintiff ACLU, the adornments identified cannot be restricted pursuant to the CCSD Regalia Policy R-5129 and must be permitted to be worn as protected expressive conduct under the First Amendment." ECF

No. 25 at 2. This Court further ordered that CCSD was enjoined from preventing Plaintiff Humphrey and the seniors associated with ACLU from wearing the described stoles and garments. ECF No. 25 at 2. Thus, the second and third *Eitel* factors weigh in favor of default judgment.

iii. Defendant CCSD's Regalia Policy, as applied to Plaintiffs, violates Article 1, Section 9 of the Nevada Constitution.

Similar to the First Amendment, Article 1, Section 9 of the Constitution of Nevada protects peoples' right to engage in speech and expressive activities in Nevada. Because Article 1, Section 9 of the Nevada State Constitution provides the same protections of speech and expressive activity as the First Amendment to the United States Constitution, *Univ. & Cmty. College Sys. Of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 722, 100 P.3d179,187 (2004) (citing *S.O.C., Inc. v. Mirage Casino-Hotel*, 117Nev. 403,415, 23 P.3d 243,251 (2001)), Plaintiffs' Complaint also properly alleges violations of Article 1, Section 9 of the Nevada Constitution. Compl. ¶¶ 168–72.

iv. Defendant CCSD's Regalia Policy, as applied to Plaintiffs, violates NRS 388.915.

Plaintiffs' Complaint properly alleges that Defendant CCSD's Regalia Policy violates NRS 388.915. Compl. ¶¶ 88–101. NRS 388.915 provides that students are "entitled to wear traditional tribal regalia or recognized objects of religious or cultural significance as an adornment at a school graduation ceremony." The only limitation to this right is that "the board of trustees of a school district . . . [may prohibit] an item that is likely to cause a substantial disruption of, or material interference with" a graduation ceremony. NRS 388.915(2). Plaintiffs properly allege that Defendant CCSD's Regalia Policy is far more limiting than is permitted by NRS 388.915(2), as the Policy contains additional restrictions interfering with students' ability to wear traditional or cultural items. Compl. ¶¶ 40–44, 95–101. In addition, Plaintiffs allege facts that prove that CCSD schools' implementation of CCSD's policy similarly limits student's right to wear traditional or

cultural adornments pursuant to NRS 388.915(2). For example, East Career and Technical Academy limited traditional leis to a maximum of one, forbade decorations on caps, and informed Plaintiff Humphrey that stoles and cords not related to school clubs or academic programs would not be permitted, preventing her from wearing her stole with the message "Black Girl Magic" to represent her culture. Compl. ¶¶ 54, 56–59. Del Sol Academy of the Performing Arts guidelines provided that traditional, religious, or cultural adornments could be worn on caps and gowns but elsewhere stated that caps could not be decorated and that personal leis would be confiscated. Compl. ¶¶ 62–66. These facts prove that CCSD's Regalia Policy unduly infringes upon students' right to wear traditional tribal, religious, or cultural graduation regalia in violation of NRS 388.915.

3. Plaintiffs Seek Injunctive Relief, Nominal Damages, and Attorneys' Fees and Costs, Weighing in Favor of Granting a Default Judgment.

Under the fourth *Eitel* factor, courts consider "the amount of money at stake in relation to the seriousness of [the] Defendant's conduct." *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1176 (C.D. Cal. 2002). Though Plaintiffs requested both compensatory and nominal damages in their Complaint, the need for compensation was avoided when this Court enjoined CCSD, thus allowing Plaintiffs to wear their planned graduation regalia. *See* ECF Nos. 25–26. Therefore, the money at stake in this matter at this time is nominal, particularly in relation to the seriousness of the Defendant's unconstitutional conduct. The only other money at stake is Plaintiffs' reasonable attorneys' fees and costs. Should this Court grant this motion, Plaintiffs are entitled to attorneys' fees pursuant to 42 U.S.C. § 1988 and NRS 18.010 as the prevailing party. *See Farrar v. Hobby*, 506 U.S. 103, 111 (1992) (finding injunctive or declaratory relief addressing merits of Plaintiffs' claim generally satisfies test for prevailing party); *Goldberg v. Barreca*, No. 2:17-CV-2106 JCM (VCF), 2022 U.S. Dist. LEXIS 58172, at *4 (D. Nev. Mar. 30, 2022) (finding where plaintiffs are awarded default judgment, they are a prevailing party eligible for attorney's

fees). At the time of this filing, Plaintiffs' attorneys' fees and costs estimate to $79,804.00 for attorneys' fees and $484.18 for costs. Because Plaintiffs only seek nominal damages, reasonable attorney's fees and costs, and injunctive relief, the amount of money at stake is proportional to the seriousness of the Defendant's violations of federal and Nevada law. Thus, this factor favors granting default judgment. *See Landstar Ranger, Inc. v. Parth Enters*., 725 F. Supp. 2d 916, 921 (C.D. Cal. 2010) ("If the sum of money at issue is reasonably proportionate to the harm caused by the defendant's actions, then default judgment is warranted."); *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177 (finding factor favors default judgment where Plaintiffs seek only injunctive relief, not monetary damages).

4. There Are No Genuine Disputes of Material Fact that Preclude Granting Plaintiffs' Motion for Default Judgment.

The fifth *Eitel* factor considers the possibility of a dispute of material fact. Upon entry of default, all well-pleaded factual allegations in Plaintiffs' complaint are taken as true, except those relating to damages. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987); *Geddes*, 559 F.2d at 560. As outlined above, Plaintiffs have sufficiently pled facts necessary to establish their claims and the Clerk has entered Default against the Defendant. Because these facts are accepted as true, there can be no genuine dispute of material fact that would preclude default judgment. *See Kloepping v. Fireman's Fund*, Case No. C 94-2684 THE, 1996 U.S. Dist. LEXIS 1786, at *11 (N.D. Cal. Feb. 13, 1996)) (finding plaintiff's "presumptively accurate factual allegations leave little room for dispute" while noting defendant had opportunity to dispute facts alleged, but "has avoided and utterly failed to respond to plaintiff's allegations."). Therefore, this factor weighs in favor of granting default judgment.

5. CCSD's Failure to File a Responsive Pleading Was Not the Result of Excusable Neglect.

The sixth *Eitel* factor considers whether the default was due to excusable neglect. A defendant's conduct is culpable, and therefore inexcusable, where it "has received actual or constructive notice of the filing of the action and failed to answer." *Meadows v. Dominican Republic*, 817 F.2d 517, 521–22 (9th Cir. 1987). Here, Defendant CCSD received actual notice of Plaintiffs' Complaint and intentionally declined to answer. While Defendant CCSD failed to timely respond to the complaint, it was present during the hearing on Plaintiffs' Motion for TRO and PI and has since stipulated to temporary injunctions, a discovery plan, and a settlement conference. "Given Defendant's early participation in the matter, the possibility of excusable neglect is remote." *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. Even after Plaintiffs' counsel informed counsel for Defendant CCSD it had not filed a responsive pleading, Defendant still failed to file an answer. Such failure to answer demonstrates intentional, culpable, and inexcusable default that weighs in favor of a granting of default judgment.

6. Consideration of All *Eitel* Factors and the Public Policy of Judicial Efficiency Outweigh the Public Policy Favoring Decisions on the Merits.

The final *Eitel* factor considers the public policy that "[c]ases should be decided upon their merits whenever reasonably possible." *Eitel*, 782 F.2d at 1472. However, "this preference, standing alone, is not dispositive." *PepsiCo, Inc*, 238 F. Supp. 2d at 1177 (quoting *Kloepping*, 1996 U.S. Dist. LEXIS 1786, 1996 WL 75314, at *3).

For example, in *O'Brien v. United States*, the court found it "obvious" that the case should be resolved by a court-ordered default when the policy favoring a decision on the merits was balanced against all other *Eitel* factors which favored granting default judgment. No. 2:07-cv-00986-GMN-GWF, 2010 U.S. Dist. LEXIS 101941, at *17 (D. Nev. Sept. 9, 2010). The court considered, along with the *Eitel* factors, the public policy interest of judicial efficiency, and found these considerations "compelled" a granting of default judgment. *Id.* at *17–18. In addition, a

"Defendant's failure to answer Plaintiffs' Complaint makes a decision on the merits impractical, if not impossible." *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177.

Here, like in *O'Brien*, the Court should find that granting a default judgment is necessary when the policy favoring a decision on the merits is balanced against all other *Eitel* factors which weigh in favor of granting default judgment. This is especially true here where the Defendants' failure to respond makes it impossible to get to the merits. The additional consideration of the interest of judicial efficiency under *O'Brien* also weighs in favor of granting default judgment, as Defendant CCSD's conduct has demonstrated disregard for the rules and deadlines that ensure the efficiency of the courts. Therefore, granting default judgment will ensure this Court's docket is not held up by a case where the Defendant has deliberately failed to wage a defense.

C. A PERMANENT INJUNCTION IS NECESSARY TO PREVENT DEFENDANT CCSD FROM IMPLEMENTING AN UNCONSTITUTIONAL GRADUATION REGALIA POLICY AND PROTECT PLAINTIFFS' RIGHTS.

In a request for default judgment, a Plaintiff may seek any relief which was sought in the complaint. *See* Fed. R. Civ. P. 54(c) ("A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings."). In their complaint, Plaintiffs sought: "All equitable injunctive relief that arises from or is implied by the facts, whether or not specifically requested, including an injunction preventing CCSD and its officials from implementing unconstitutional provisions of CCSD's Regalia Policy, found in R-5129 Section II (E)-(F)." Compl. at 33, ECF No. 1, Ex. A. Specifically, Plaintiffs sought relief preventing CCSD and its employees from carrying out R-5129(II) in violation of their rights under NRS 388.915, the First Amendment of the United States Constitution, and Article 1, Section 9 of the Nevada Constitution, and repealing the unlawful provisions of CCSD's Regalia Policy. *Id.* at ¶¶ 192–95.

A party seeking a permanent injunction must establish: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate

to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct. 1837, 1839 (2006). The standard for a permanent injunction is essentially the same as that for a preliminary injunction, with the exception that the plaintiff must show actual success on the merits. *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 546 n.12, 107 S. Ct. 1396, 1404 (1987). *See also Edmo v. Corizon, Inc.*, 935 F.3d 757, 784 (9th Cir. 2019) (applying fifth factor of "actual success on the merits" in case seeking mandatory permanent injunction). Default against CCSD satisfies the element of success on the merits. *Saini v. Int'l Game Tech.*, No. 3:05-CV-253-ECR-VPC, 2009 U.S. Dist. LEXIS 151979, at *12 (D. Nev. Sep. 30, 2009) (citing *Twentieth Century Fox Film Corp. v. Streeter*, 438 F. Supp. 2d 1065, 1073 (D. Ariz. 2006)). "Moreover, courts routinely grant permanent injunctive relief upon entry of default judgment." *Id.* (citing *Playboy Enters. Int'l, Inc. v. Muller*, 314 F. Supp. 2d 1037, 1043 (D. Nev. 2004)).

1. CCSD's Regalia Policy Irreparably Harms Plaintiffs, and Such Harm Cannot be Adequately Remedied Absent a Permanent Injunction

"It is axiomatic that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 694 (9th Cir. 2023). Therefore, by establishing success on the merits, Plaintiffs also establish they will suffer irreparable injury absent permanent injunctive relief. CCSD's repeated, yearly violations of CCSD students' First Amendment rights by preventing them from wearing protected, expressive items of religious, cultural, and personal significance demonstrates it is likely to continue to disregard students' rights under the law. This Court recognized CCSD's Regalia Policy as facially unconstitutional in violation of the First Amendment when it issued a preliminary injunction. ECF No. 25. Now, a permanent injunction is

necessary to ensure that Plaintiffs will not be forced to endure future violations of their rights under CCSD's graduation regalia policy. These violations cannot be adequately remedied through compensatory damages, as CCSD's Regalia Policy will continue to violate the rights of each graduating class of ACLU of Nevada's Emerging Leaders members and other CCSD students. Money damages cannot address the harm students face when CCSD prevents them from exercising their First Amendment right of expression through their graduation regalia in a ceremony they experience once in their lives.

2. The Balancing of Hardship and the Public Interest Both Weigh in Plaintiffs' Favor

Considering the balancing of hardship between the Plaintiffs and the Defendant, and that of the public interest, an equitable remedy is warranted. Defendant CCSD would suffer no harm from a permanent injunction. Defendant CCSD "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (quoting *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983)). *See also Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (holding government "cannot suffer harm from an injunction that merely ends an unlawful practice" implicating "constitutional concerns"). Alternatively, without a permanent injunction, Plaintiffs will face ongoing violations of their rights due to CCSD's unconstitutional Regalia Policy. CCSD will continue to irreparably harm Plaintiffs by suppressing their rights to wear graduation decorations or adornments that express their traditional, cultural, religious, or personal messages as they are entitled to under Nevada and federal law. Furthermore, a permanent injunction would not disserve the public interest – it would advance it. "Because 'public interest concerns are implicated when a constitutional right has been violated, . . . all citizens have a stake in upholding the Constitution,' meaning 'it is always in the public interest to prevent the violation of a party's constitutional rights.'" *Baird*, 81 F.4th at 1042 (internal citations omitted). Here, the public interest is great, as it

is always in the public interest to prevent the violation rights under the First Amendment of the U.S. Constitution. A permanent injunction would ensure the rights of not just Plaintiffs, but all students graduating from schools in CCSD.

Because Plaintiffs' irreparable injury can only be adequately remedied through permanent injunctive relief and the balance of hardship and public interest both weigh in Plaintiffs' favor, this Court should grant permanent injunctive relief preventing CCSD from enforcing the unconstitutional provisions of its Regalia Policy.

D. THE COURT SHOULD AWARD PLAINTIFFS THEIR REASONABLE ATTORNEYS' FEES AND COSTS.

Fed. R. Civ. P. 54(d)(1) provides that costs "should be allowed to the prevailing party." Fed. R. Civ. P. 54(d)(2) provides a "claim for attorney's fees and related nontaxable expenses must be made by motion . . . ." "In an action involving state law claims, [federal courts] apply the law of the forum state to determine whether a party is entitled to attorneys' fees, unless it conflicts with a valid federal statute or procedural rule." *MRO Communs., Inc. v. AT&T Co.*, 197 F.3d 1276, 1282 (9th Cir. 1999). Under Nevada law, attorneys' fees are recoverable when a statute, rule, or contractual provision permits such recovery. *Horgan v. Felton*, 123 Nev. 577, 583, 170 P.3d 982, 986 (2007). Pursuant to 42 U.S.C. § 1988, a court may award attorneys' fees to prevailing parties of claims brought pursuant to 42 U.S.C. § 1983. Also, NRS 18.010 provides that "[i]n addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party . . . [w]hen the prevailing party has not recovered more than $20,000." A plaintiff is a prevailing party where "actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Farrar*, 506 U.S. at 111. Injunctive or declaratory relief addressing the merits of Plaintiffs' claim will generally satisfy this test. *Id.* Where plaintiffs are

awarded default judgment, they are a prevailing party eligible for attorney's fees. *See Goldberg*, No. 2:17-CV-2106 JCM (VCF), 2022 U.S. Dist. LEXIS 58172, at *4.

Should this Court grant Plaintiffs' Motion for Default Judgment and Preliminary Injunction, Plaintiffs will file the papers required by Fed. R. Civ. P. 54(d)(2) and LR 54-14 supporting the amount of reasonable attorneys' fees and costs Plaintiffs are entitled to in this case.

VI. CONCLUSION

Plaintiffs seek a default judgment, as they should not be forced to continuously endure Defendant CCSD's violation of their rights. Defendant CCSD's failure to answer and meaningfully participate in this case makes clear an entry of a default judgment in favor of Plaintiffs ACLU of Nevada and Corie Humphrey and against Defendant CCSD is necessary to provide Plaintiffs with relief and to ensure efficient resolution of this matter. Plaintiffs ask this Court grant default judgment that (1) declares CCSD's Policy R-5129 unconstitutional under the First Amendment of the United States Constitution and Article 1, Section 9 of the Nevada Constitution and unlawful under NRS 388.915, and (2) permanently enjoins the unlawful provisions of CCSD's unconstitutional Regalia Policy. Plaintiffs also seek reasonable attorney's fees and costs as supported by separate motion, to be filed 14 days after judgment as required by Fed. R. Civ. P. 54(d)(2) and LR 54-14.

DATED: December 15, 2025.

AMERICAN CIVIL LIBERTIES UNION OF NEVADA

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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2025, I electronically filed a true and correct copy of the foregoing PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT AND PERMANENT INJUNCTION. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

☒ CM/ECF

☐ Electronic mail; or

☐ US Mail or Carrier Service

/s/Suzanne Lara
SUZANNE LARA
An employee of the ACLU of Nevada