

1 CHRISTOPHER M. PETERSON, ESQ.

2 Nevada Bar No.: 13932

3 JACOB T. S. VALENTINE, ESQ.

4 Nevada Bar No.: 16324

5 SAMANTHA R. KRONER, ESQ.

6 Nevada Bar No.: 17233

7 **AMERICAN CIVIL LIBERTIES**

8 **UNION OF NEVADA**

9 4362 W. Cheyenne Ave.

10 North Las Vegas, NV 89032

11 Telephone: (702) 366-1226

12 Facsimile: (702) 718-3213

13 Emails: peterson@aclunv.org

14 jvalentine@aclunv.org

15 skroner@aclunv.org

16 *Attorneys for Plaintiffs*

17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19 AMERICAN CIVIL LIBERTIES UNION OF
20 NEVADA, a domestic nonprofit organization;
21 CORIE HUMPHREY, an individual,

22 Plaintiffs,

23 vs.

24 CLARK COUNTY SCHOOL DISTRICT, a
25 political subdivision of the State of Nevada,

26 Defendant.

Case No.: 2:25-cv-00892

**Reply In Support of Plaintiffs’
Motion for Default Judgment**

27 Plaintiffs American Civil Liberties Union (ACLU) of Nevada and Corie Humphrey, hereby
submit this reply in support of their Motion for Default Judgment and Preliminary Injunction, ECF
No. 54. This Motion is supported by the following memorandum of points and authorities, the
attached exhibits, and by the papers and pleadings on file in this action.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. RELEVANT BACKGROUND**

3 After waiting over six months for Defendant Clark County School District (CCSD) to file
4 its answer, over a month after notifying CCSD of its failure to do so, and over two weeks after the
5 clerk entered default against CCSD, Plaintiffs filed their Motion for Default Judgment and
6 Preliminary Injunction on December 15, 2025. ECF No. 54. On December 16, 2025, CCSD filed
7 a motion to set aside, in which it requested this Court to set aside the Clerk's Entry of Default,
8 ECF No. 53, entered on December 1, 2025, and stated its intent to file an answer no later than
9 December 17, 2025. ECF No. 56. On December 19, 2025, CCSD filed its proposed Answer. ECF
10 No. 59. After requesting extensions, CCSD filed its reply to Plaintiffs' response to its motion to
11 set aside, ECF No. 68, and its response to Plaintiffs' Motion for Default Judgment, ECF No. 67,
12 on January 12, 2026.

13 Defendant CCSD's Response relies heavily on its former counsel's declaration¹ to ask this
14 Court to excuse its willful failure to answer for over six months, its repeated disregard of deadlines
15 set by the Federal Rules of Civil Procedure and the Orders of this Court, and its choice, on
16 numerous occasions, to altogether ignore Plaintiffs' efforts to resolve these issues without court
17 intervention.

18 **II. LEGAL STANDARD**

19 In deciding whether to grant default judgment, a court may consider the following factors:
20 (1) the possibility of prejudice to the plaintiff; (2) the merits of the substantive claims; (3) the
21 sufficiency of the complaint; (4) the amount of money at stake; (5) the possibility of a dispute of
22 material fact; (6) whether the default was due to excusable neglect; and (7) the strong policy in
23 favor of deciding cases on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

24 _____
25 ¹ Because it appears information in the declaration, at least in part, is not subject to seal and it is
26 unclear what the declaration asserts based on Defendant CCSD's references to it in its Response,
27 if this Court is inclined to grant CCSD relief based on the representations made therein, Plaintiffs
would ask this Court to make the declaration available either with redactions or pursuant to a
protective order so Plaintiffs may adequately respond.

1 **III. ARGUMENT**

2 **A. CCSD's Default Was Not the Result of Excusable Neglect, But Its Own, Culpable**
3 **Conduct**

4 Defendant CCSD offers two bases for its position that its untimely answer is the result of
5 excusable neglect. First, it points to its “participation” in this matter, referencing CCSD’s presence
6 at the hearing in Plaintiffs’ motion for a preliminary injunction, the stipulated injunction, Parties’
7 discovery plan, and scheduling a settlement conference. Def.’s Resp. to Pls.’ Mot. for Default J.
8 (“Def.’s Resp.”) at 17:25–28, ECF No. 67. However, this participation weighs against a finding
9 that CCSD’s failure to answer was due to excusable neglect. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238
10 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) (“Given Defendant’s early participation in the matter, the
11 possibility of excusable neglect is remote.”).

12 Second, Defendant CCSD cites to Ms. Nichols’s declaration to state her health issues
13 “materially impacted her ability to respond and participate in this litigation.” Def.’s Resp. at 17:28–
14 18:2. These health issues apparently began “[i]n or about October 2025” – months after CCSD’s
15 answer was due. Def.’s Resp. at 2:12–13. While Plaintiffs are sympathetic to counsel’s health
16 issues, these issues were never communicated to Plaintiffs’ counsel, nor was any other request for
17 an extension or justification for the delay. And, though Plaintiffs are unaware of the extent of Ms.
18 Nichols’s health issues because her declaration is filed under seal, they are aware that in the time
19 shortly before and after Plaintiffs notified said counsel of CCSD’s failure to answer, she was
20 apparently well enough to engage in a multi-day federal trial in front of Judge Du, Def.’s Resp. at
21 2:14–16, file an answer in a Class Action, *C.W. v. Nev. Dep’t Educ.*, No. 2:24-cv-1800-GMN-
22 DJA, ECF No. 123 (D. Nev. Oct. 23, 2025), and fly up to Carson City to present an oral argument
23 in front of the Nevada Supreme Court, *ACLU of Nevada v. Clark Cnty School Dist.*, No. 88680
24 (Nev. May 16, 2024). CCSD does not explain how Ms. Nichols’s medical condition prevented her
25 from filing an answer in this case, while she was well enough to actively litigate other cases.

26 Even considering counsel’s health issues, Defendant CCSD offers no explanation for why
27 these health issues, which began in October, prevented CCSD from filing its answer during any
month prior. *See* Def.’s Resp. at 17:19–18:3. In its introduction, CCSD points to its counsel’s

1 declaration to argue the filing of its proposed answer was not untimely because “it was apparently
2 Ms. Nichol’s understanding that the parties stipulated to the timing of the response.” Def.’s Resp.
3 at 2 n.1. CCSD also relies on the declaration to state “the parties agreed to stay deadlines in an
4 attempt to resolve the matter before the court hearing scheduled for May 25, 2025” and,
5 “[t]hereafter, the parties did not discuss answer deadlines. . . .” Resp. at 2:9–12. Plaintiffs do not
6 have access to Ms. Nichols’s declaration as it is filed under seal, so Plaintiffs do not know what
7 precisely Ms. Nichols claims the stay/stipulation entailed, including when it was agreed upon and
8 how long it allegedly lasted. As far as Plaintiffs can tell, this Court has not issued an order staying
9 this matter, nor have the Parties ever filed any signed stipulations agreeing to a stay or an extension
10 of the deadline to answer, only stipulations to extend discovery deadlines. *See* ECF Nos. 34, 51. If
11 the Parties had ultimately agreed on a stay, they would have stipulated to one on the record.

12 Even if the Court accepted Ms. Nichols’s declaration as true and considered it in the context
13 of this motion, the situation here is no different than that in *Franchise Holding II*, where one party
14 understood there was a “side-agreement” to extend the filing deadlines but was ultimately still
15 determined to be in default. *Franchise Holding II, Ltd. Liab. Co. v. Huntington Rests. Grp., Inc.*,
16 375 F.3d 922, 926 (9th Cir. 2004). Here, regardless of the informal discussions of a stay CCSD’s
17 counsel appears to reference, Defendant CCSD is still culpable for its failure to answer resulting
18 in default because, like the defendant in *Franchise Holding II*, CCSD was on notice that Plaintiffs
19 would pursue litigation and nevertheless failed to file anything with the Court until after Plaintiffs
20 filed for default judgment. *Id. See also Direct Mail Specialists, Inc. v. Eclat Computerized Techs.,*
21 *Inc.*, 840 F.2d 685, 690 (9th Cir. 1988) (where a defendant “has received actual or constructive
22 notice of the filing of the action and failed to answer,” its conduct is culpable).

23 Defendant CCSD was first put on notice of this case when they were properly served with
24 Plaintiffs’ Complaint and Summons. Proof of Service, ECF No. 15. It was again on notice that
25 Plaintiffs would continue to pursue litigation when the Parties stipulated to the Discovery Plan
26 setting deadlines for initial disclosures, amended pleadings, and discovery, ECF No. 41, and when
27 Plaintiffs issued discovery requests. And CCSD was undisputably on actual notice when Plaintiffs

1 informed CCSD’s counsel of its failure to file an answer. Emails re Answer at 2, ECF No. 54-2.
2 When CCSD’s counsel responded, they made no mention of a stay, but instead assured Plaintiffs
3 an answer would be filed the next day. Emails re Answer at 1, ECF No. 54-2. However, CCSD
4 failed to file a responsive pleading until after Plaintiffs moved this Court for default judgment over
5 a month later, demonstrating CCSD’s failure was not “inadvertent” or the result of excusable
6 neglect, but rather due to its own, culpable conduct, which alone justifies default judgment.

7 **B. Defendant CCSD’s Conduct has Prejudiced Plaintiffs**

8 Defendant CCSD points to its “active participation” in conducting discovery and litigation
9 to argue Plaintiffs are not prejudiced by its failure to timely answer. Def.’s Resp. at 7:2–6. In
10 Plaintiffs’ view, this is inaccurate; CCSD’s “participation” in litigation and discovery is overstated.
11 Rather, Defendant CCSD has prejudiced Plaintiffs not just by its failure to timely answer, but also
12 by its repeated failure to meet deadlines as required by the Federal Rules of Civil Procedure and
13 the Orders of this Court and by its failure to meaningfully engage in discovery.

14 Despite stipulating to Parties’ Discovery Plan, ECF No. 43, CCSD failed to provide Initial
15 Disclosures by the stipulated deadline, only doing so after Plaintiffs’ counsel inquired about when
16 Plaintiffs could expect such disclosures. Email re Def.’s Init. Discls., attached as Exhibit 1. When
17 CCSD provided its Initial Disclosures three weeks late, they disclosed no documents and no
18 privilege log, instead stating many documents could not be disclosed without a confidentiality
19 agreement. Def.’s Initial Disclosures, ECF No. 48-3. In addition, CCSD did not timely respond to
20 Plaintiffs’ First Requests for Production, due October 29, 2025, or otherwise make any effort to
21 confer about extending the 30-day deadline outlined in Fed. R. Civ. Pro. 34(a)(b)(2)(A). Decl.
22 Peterson (ISO Pls.’ Mot. to Compel) ¶¶ 12–14, 18, ECF No. 48-2. On November 6, 2025, Plaintiffs
23 informed CCSD’s counsel that Plaintiffs never received responses to their requests for production
24 and requested a meet-and-confer. Decl. Peterson (ISO Pls.’ Mot. to Compel) ¶¶ 15–16, ECF No.
25 48-2; Disc. Req. Emails at 3, ECF No. 48-4. Though CCSD’s counsel stated she was available on
26 November 10 for a meet-and-confer, CCSD’s counsel did not answer Plaintiffs’ counsel’s call,
27 and Plaintiffs’ counsel’s additional requests to meet-and-confer were similarly left unanswered

1 until after Plaintiffs filed their motion to compel, ECF No. 48. Decl. Peterson (ISO Pls.’ Mot. to
2 Compel) ¶¶ 20–27, ECF No. 48-2; Disc. Req. Emails at 1–2, ECF No. 48-4. Only after Plaintiffs
3 filed their motion to compel did CCSD provide any response to Plaintiffs’ requests for production
4 or their requests to meet-and-confer. Decl. Peterson (ISO Pls.’ Mot. to Compel) ¶¶ 20–27, ECF
5 No. 48-2; Disc. Conferral Emails at 4–5, ECF No. 64-2. CCSD’s responses, once provided,
6 referred only to the four documents provided with CCSD’s supplemental initial disclosures, which
7 were provided on November 20, and to documents formerly filed at the instruction of this Court.
8 Def.’s Resp. to Pls.’ RFPs at 4, attached as Exhibit 2 (instructing Plaintiffs to “*see Clark County*
9 *School District Regulation and Policy Nos. 5127 and 5129*” and “ECF No. 22 . . .”). CCSD did
10 not produce a single bates stamped document with its responses.

11 Though Parties met-and-conferred on November 21, 2025, to discuss how Plaintiffs’
12 requests may be narrowed and to develop a plan for how Defendant CCSD will collect the
13 requested documents, CCSD failed to follow through on that plan. During Parties’ conferral,
14 CCSD agreed (1) to reach out to the principals of all CCSD schools to determine the names and
15 emails of each school’s graduation coordinator, (2) to request any communications in which
16 students requested approval to wear graduation regalia items, and (3) to ask for the documents
17 each school provides to students that explain what students can wear at graduation. Stip. to Extend
18 Disc. Deadlines at 3:17–21, ECF No. 51. Plaintiffs agreed to develop keyword searches for each
19 of their requests asking for communications. Stip. to Extend Disc. Deadlines at 3:21–22, ECF No.
20 51. Parties agreed to complete the above tasks by December 5, 2025, and scheduled a follow-up
21 meet-and-confer on December 8, 2025. Conferral Follow-up Emails at 2, ECF No. 64-3. Plaintiffs
22 sent CCSD’s counsel their keyword search block on December 5, 2025, but did not receive any
23 updates from CCSD on that day, despite the Parties’ agreement to communicate about any changes
24 in the expected timeline. *See Conferral Follow-up Email at 2, ECF No. 64-3.*

25 While CCSD’s counsel did not appear for Parties’ follow-up conferral on December 8,
26 2025, counsel for Parties spoke after their oral arguments before the Nevada Supreme Court for a
27 separate matter on December 9. *See Conferral Follow-up Email at 2, ECF No. 64-3; Resp. at 2:18–*

1 20. At that time, CCSD's counsel confirmed the keyword search block Plaintiffs provided was
2 sufficient and explained there had been delays on CCSD's end due to the Thanksgiving holiday.
3 Conferral Follow-up Email at 2, ECF No. 64-3. When Plaintiffs did not receive any updates
4 regarding the tasks Parties agreed to complete by December 5 by the end of the following week,
5 Plaintiffs sent an email on December 19, 2025. The email outlined previous conferral discussions
6 and requested a follow up meet-and-confer to discuss outstanding discovery, noting that if there
7 had been additional delays for CCSD, there may be a need to adjust the timeline for future
8 discovery deadlines. Conferral Follow-up Emails at 2, ECF No. 64-3. When Plaintiffs did not
9 receive a response by December 23, 2025, they called and left a voicemail and sent a follow-up
10 email regarding their conferral request. Conferral Follow-up Emails at 1, ECF No. 64-3. Plaintiffs
11 again reached out to CCSD's counsel on December 29, 2025, via phone and email requesting an
12 update on CCSD's outstanding discovery. Conferral Follow-up Emails at 1, ECF No. 64-3.

13 Plaintiffs did not receive any response from CCSD's counsel until, made aware of Ms.
14 Nichol's disassociation from the case from CCSD's filing, ECF No. 60, Plaintiffs forwarded their
15 follow-up conferral and keyword search block emails to CCSD's other attorney who entered an
16 appearance on this case. While Plaintiffs have since, again, conferred with CCSD's counsel to
17 ensure they receive responses to their requests, this comes after months of delay. While CCSD's
18 present counsel has been more responsive, this does not change the fact that, to date, Plaintiffs
19 have yet to receive a single bates stamped document in response to their requests that were due in
20 October. The delay has required Plaintiffs to stipulate to an extension of discovery deadlines, ECF
21 No. 51, and request an additional extension to ensure they complete discovery, ECF No. 64. Each
22 extension pushes the resolution of this case closer to the 2026 graduations. With graduation
23 ceremonies drawing near, a default judgment and permanent injunction is necessary so ACLU of
24 Nevada Emerging Leaders's 2026 graduates are not subject to rights violations and irreparable
25 harm on account of CCSD's unconstitutional policy and prejudicial undue delay.

26 Defendant CCSD's conduct has evidenced a disregard for required deadlines and a refusal
27 to meaningfully engage in discovery, interfering with Plaintiffs' ability to efficiently and fully

1 litigate this matter. *See Kloepping v. Fireman's Fund*, Case No. C 94-2684 THE, 1996 U.S. Dist.
2 LEXIS 1786, at *14 (N.D. Cal. Feb. 13, 1996) (finding prejudice to plaintiff where “plaintiff has
3 made good faith efforts to negotiate with defendant to settle the case, and has had to expend more
4 time, effort, and money in order to recover the money that plaintiff has lost. Defendant’s history
5 of evasive tactics and willful disregard of this action leaves this Court with great pessimism as to
6 defendant’s ability to cooperate with the plaintiff should relief be denied.”). *See also* Fed. R. Civ.
7 Pro. 16(f) (permitting entry of default judgment for failure to obey scheduling order). While
8 Plaintiffs have made good faith efforts to litigate and settle this matter, CCSD has continuously
9 obstructed Plaintiffs’ ability to do so through its repeated failure to meet deadlines (including self-
10 imposed deadlines) and false assurances it will provide the required filings, disclosures, or
11 responses. Because Defendant CCSD failed to timely respond and participate in the manner
12 required by the Federal Rules of Civil Procedure and the Parties’ Discovery Plan, Plaintiffs will
13 be severely prejudiced unless the Court grants default judgment and a permanent injunction.

14 **C. Plaintiffs Raise Claims Which Remain Ripe and Are Not Moot**

15 CCSD argues that, because Plaintiff Humphrey has graduated, she lacks a legally
16 cognizable interest in the outcome of this case. Def.’s Resp. at 8:6–7. This is patently incorrect.
17 Plaintiff Humphrey is entitled to nominal damages for the violation of her constitutional rights, as
18 CCSD’s Policy acted as an unconstitutional prior restraint on her First Amendment rights.
19 *See United States v. Marolf*, 173 F.3d 1213, 1219 (9th Cir. 1999) (stating that nominal damages
20 are available in § 1983 action where the violation of a legal or constitutional right produces no
21 actual damages); *Draper v. Coombs*, 792 F.2d 915, 921-22 (9th Cir. 1986) (permitting nominal
22 damages in § 1983 action for violations of both statutory and constitutional rights). “A live claim
23 for nominal damages will prevent dismissal for mootness.” *Bernhardt v. Cty. of L.A.*, 279 F.3d
24 862, 872 (9th Cir. 2002). This constitutes a clear, cognizable interest in the outcome of this case.

25 Further, Plaintiffs also seek prospective declaratory and injunctive relief. CCSD’s
26 argument that Plaintiffs’ claims, which bring both as-applied and facial challenges to a policy
27 which is still in place, are not ripe, lacks muster. Def.’s Resp. at 7:24–8:3. CCSD does not dispute

1 that its Policy, R-5129, is still in effect and remains unchanged. And ACLU of Nevada's
2 graduating Emerging Leaders members of the class of 2026 are personally and presently impacted
3 by this Policy. ACLU of Nevada's Executive Director Mr. Haseebullah's declaration identifies
4 five junior Emerging Leaders members, now seniors, who attend schools in CCSD, including Las
5 Vegas High School and Del Sol Academy of Performing Arts. Decl. Haseebullah ¶¶ 14, 16, ECF
6 No. 6-6. Like the graduating members last year, these students will be provided with a graduation
7 stole and pin to represent their association with ACLU of Nevada's Emerging Leaders program.
8 Decl. Haseebullah ¶¶ 27–29, ECF No. 6-6. CCSD refers to the facts presented in Mr. Haseebullah's
9 declaration as “mere allegations” yet offers no facts to dispute these claims. Def.'s Resp. 8:9–10.
10 Even so, upon entry of default, Plaintiffs' well-pled allegations are taken as true. *DirectTV, Inc. v.*
11 *Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007). This does not change simply because CCSD has
12 filed an untimely answer, without leave of the Court.

13 Mr. Haseebullah's declaration clearly affirms CCSD's unconstitutional policy subjects
14 present senior Emerging Leaders members to the same violation of their rights as faced by the
15 students graduating in 2025, thus Plaintiffs' claims are not moot.² *Fellowship of Christian Athletes*
16 *v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 682 (9th Cir. 2023) (finding claims for
17 prospective relief for representational plaintiff not moot based on student advisor's declaration
18 identifying students who would be impacted; rejecting defendant's criticism Plaintiffs did not
19 provide “evidence from actual students”); *Mi Familia Vota v. Fontes*, 129 F.4th 691, 708 (9th Cir.
20 2025) (“As a general rule of representational standing, when it is clear and not speculative that a
21 member of a group will be adversely affected by a challenged action and a defendant does not need
22 to know the identity of a particular member to defend against an organization's claims, the
23 organization does not have to identify particular injured members by name.”).

24
25 ² Though not required to establish representational standing, Plaintiffs would be happy to provide
26 this Court with a declaration from a current Emerging Leader due to graduate, who is thus impacted
27 by CCSD's unconstitutional Policy. *Associated Gen. Contractors of Am. v. Metro. Water Dist. of*
S. Cal., 159 F. 3d 1178, 1181 (9th Cir. 1998) (“Individualized proof from the members is not
needed where, as here, declaratory and injunctive relief is sought rather than monetary damages.”)

1 **D. Plaintiffs Sufficiently Pleaded Facts and Meritorious Claims Upon Which Relief**
2 **May Be Granted**

3 Defendant CCSD’s claim that, based on the pleaded facts, Plaintiffs cannot establish a
4 violation of their rights is unconvincing. In arguing so, CCSD cites to a myriad of case law, often
5 from other circuits, but does not provide facts to support its argument in the instant case. CCSD
6 argues that student regalia is “school-sponsored”, Def.’s Resp. at 11:28, despite its own Policy
7 explicitly disclaiming that “[i]ndividual student graduation speeches and personal regalia,
8 adornments, and decorations on student graduation caps and gowns do not represent or imply the
9 endorsement, sponsorship, position, or expression of the District or a school.” R-5129 (VII), ECF
10 No. 6-2. Even while considering graduation proceedings “school-sponsored speech”, CCSD fails
11 to put forth the “pedagogical interest” justifying CCSD’s unconstitutional restrictions and fails to
12 acknowledge Nevadan students’ rights to wear traditional tribal, religious, and cultural regalia
13 pursuant to NRS 388.915. Further, CCSD’s argument dismisses the controlling case in this matter:
14 *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152 (9th Cir. 2022). *Waln* is clearly applicable here, as it
15 requires a school district to ensure its graduation regalia policy is applied equally throughout the
16 school district. *Id.* at 1163 (finding plaintiff plausibly alleged violation where policy was unevenly
17 enforced to prevent plaintiff from wearing eagle feather to express her religious view, while
18 student from another school was permitted to display secular message). As Plaintiffs outlined in
19 their motion for default judgment, and as recognized by this Court in its order issuing preliminary
20 relief, ECF No. 25, CCSD’s Policy directly violates *Waln* because it permits some forms of speech
21 or expressive conduct while prohibiting other protected speech, it is not content or viewpoint
22 neutral, and it cannot survive strict scrutiny. *Id.* at 1161.

23 **E. The Amount of Money at Stake Is Proportional to the Seriousness of Defendant’s**
24 **Conduct**

25 Where the relief sought is declaratory and injunctive, rather than monetary, this factor
26 favors default judgment. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal.
27 2002). Furthermore, the attorneys’ fees incurred here are a direct result of Defendant CCSD’s
conduct. Plaintiffs filed suit and sought preliminary relief in this matter to ensure that their rights,

1 violated by CCSD's unlawful Policy, were protected. ECF Nos. 1, Exhibit A, 6, 8. Plaintiffs filed
2 a motion to compel due to CCSD's failure to respond to their discovery requests and refusal to
3 confer. ECF No. 48. And Plaintiffs sought entry of default and default judgment after waiting
4 months for CCSD to file an answer and it failed to do so as promised. ECF Nos. 49, 54.

5 **F. Defendant Fails to Present a Genuine Dispute of Material Fact that Precludes**
6 **Granting Plaintiffs' Motion for Default Judgment.**

7 Upon entry of default, all well-pleaded factual allegations in Plaintiffs' complaint are taken
8 as true, except those relating to damages. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–
9 18 (9th Cir. 1987). As outlined in their motion for default judgment, Plaintiffs have sufficiently
10 pled facts necessary to establish their claims. Because these facts are accepted as true after the
11 clerk has entered default, there can be no genuine dispute of material fact. Further, in its Response,
12 CCSD fails to point to any specific facts which preclude default judgment, and instead points
13 generally to prior filings and, unrelatedly, to the Parties' upcoming settlement conference. Def.'s
14 Resp at 17:13–17. Therefore, this factor weighs in favor of granting default judgment.

15 **G. On Balance, the *Eitel* Factors Favor Granting Default Judgment**

16 Because all other *Eitel* factors weigh in favor of default judgment, and the preference to
17 decide a case on the merits, standing alone, is not dispositive, *PepsiCo, Inc*, 238 F. Supp. 2d at
18 1177, granting Plaintiffs default judgment is warranted here.

19 **H. Absent a Default Judgment and Permanent Injunction, Plaintiffs Will Suffer**
20 **Irreparable Harm**

21 As outlined in Plaintiffs' motion for default judgment and further justified above, a
22 permanent injunction is necessary to prevent irreparable harm to Plaintiffs. CCSD argues that
23 Plaintiffs cannot show that they have or will suffer irreparable harm. However, Plaintiffs' facts
24 demonstrate that CCSD's policy will continue to perpetuate irreparable harm upon each class of
25 graduating seniors, including ACLU of Nevada Emerging Leaders' current seniors, so long as it
26 remains in effect. "The loss of First Amendment freedoms, for even minimal periods of time,
27 unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). In cases
involving First Amendment challenges, irreparable injury is often presumed when the plaintiff

1 demonstrates a "colorable First Amendment claim." *Warsoldier v. Woodford*, 418 F. 3d 989, 1001-
2 02 (9th Cir. 2005). Because Plaintiffs have demonstrated colorable First Amendment claims,
3 irreparable injury is presumed unless Defendant provides facts to rebut this presumption. However,
4 Defendant has not offered any such facts, Def.'s Resp. at 18:13–26, further supporting that
5 Plaintiffs are entitled to permanent relief to ensure their rights are protected.

6 **IV. CONCLUSION**

7 Plaintiffs do not seek default judgment to avoid a decision on the merits; this Court has
8 already determined that Plaintiffs are likely to succeed on the merits of this case. Rather, Plaintiffs
9 seek to ensure that CCSD's class of 2026 graduates are not subject to the same rights violations
10 that graduates faced last year. Plaintiffs seek to bring an end to the unnecessary and repeated delay
11 caused by Defendant CCSD's failure to meet deadlines, failure to meaningfully engage in
12 litigation, and failure to communicate or otherwise justify their delays. While default judgment is
13 a proper remedy to bring an end to willful delay when a defendant fails to file a responsive
14 pleading, that is not its only utility. Default judgment is also about sanctioning sanctionable
15 behavior, such as the misconduct CCSD has demonstrated here.

16
17 DATED: January 20, 2026.

18 **AMERICAN CIVIL LIBERTIES**
19 **UNION OF NEVADA**

20 /s/ Samantha R. Kroner

21 SAMANTHA R. KRONER, ESQ.

22 Nevada Bar No.: 17233

23 4362 W. Cheyenne Ave.

24 North Las Vegas, NV 89032

25 Telephone: (702) 366-1226

26 Email: skroner@aclunv.org

27 *Attorney for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I electronically filed a true and correct copy of the foregoing REPLY IN SUPPORT OF 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/ Samantha Kroner
SAMANTHA KRONER
An employee of the ACLU of Nevada