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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

COUNTY OF SANTA CLARA, Plaintiff, v. DONALD J. TRUMP, *et al*. Defendants.	Case No. 17-cv-00574-WHO **THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION'S BRIEF AS *AMICUS CURIAE* IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS AND FOR RECONSIDERATION** Date: July 12, 2017 Time: 2:00 p.m. Dept.: Courtroom 2 Judge: Hon. William H. Orrick
CITY AND COUNTY OF SAN FRANCISCO, Plaintiff, v. DONALD J. TRUMP, *et al.*, Defendants.	Case No. 17-cv-00485-WHO

In his prior *amicus* brief (*see* S.F. Dkt. No. 64), California State Superintendent of Public Instruction, Tom Torlakson ("Torlakson") explained that: (a) California's K-12 public schools, which depend on more than the $8 billion annually from the federal government, must provide the fundamental right of a an education to all children, regardless of immigration status; (b) California's education officials recognize that a key part of optimizing individual and collective student success is creating a safe and secure place for students to focus on learning and for parents to feel comfortable engaging in their child's schooling; (c) in response to reports of increased anxiety due to fears of deportation and to bullying on the basis of county of origin, many public school districts have been adopting policies intended to assure students and their families that their schools are safe and secure places for learning and engagement; and (d) Executive Order 13768 has undermined those efforts by coercing local educational agencies to eliminate such productive policies or risk losing vitally important federal funding.

Though they remain relevant, Torlakson will not repeat his prior brief's arguments here. Instead, Torlakson respectfully submits this *amicus* brief because the comfort provided by this Court's Order Granting the County of Santa Clara's and the City and County of San Francisco's Motions to Enjoin Section 9(a) of Executive Order 13768 ("Preliminary Injunction Order") has been short-lived given the Defendants' actions since that order's issuance.

The Preliminary Injunction Order recognized that given the Executive Order's "plain language," as well as the President's and Attorney General's public comments about its intended scope, the Defendants' new interpretation of the Executive Order – which was first announced at the hearing on the preliminary injunction motion and rendered the Executive Order "toothless" – was unreasonable and implausible. (*See* S.F. Dkt. 82 (the Preliminary Injunction Order) at 2-3.)

Particularly following the Preliminary Injunction Order's issuance, there were a number of things that Defendants could have done if their new interpretation were genuine and they did not intend to revert back to their earlier stance. They could have withdrawn the Executive Order that their new interpretation rendered unnecessary. They also could have amended it to clarify its purportedly toothless nature, especially given how that purported nature conflicts with the existing Executive Order's plain language. Instead, Defendants have done the one thing most likely to allow them to

revert back to their earlier position as to the Executive Order's purpose and scope and to stoke continued uncertainty and fear regarding whether it really is or will be viewed as "'a weapon' to use against jurisdictions that disagree with [the President's] preferred policies of immigration enforcement." (S.F. Dkt. 82 at 3:4.) Specifically, Defendants have attempted to dismiss the case, and thereby dissolve the Preliminary Injunction Order, by pointing to a non-binding and reversible "Memorandum" from the Attorney General that espouses the same interpretation of the Executive Order that this Court found to be unreasonable and implausible.

Given the Defendants' rejection of simple alternative courses that would have eased state and local governments' well-founded fears, the Defendants' easily reversible decision to embrace their counsel's interpretation of the Executive Order that this Court found to be unreasonable and implausible does not give one comfort that Defendants will abide by such interpretation if this case is dismissed and the Preliminary Injunction Order dissolved. Thus, Defendants' decision should not deprive Plaintiffs of standing or result in dismissal of their cases.

Dated: June 28, 2017

Respectfully submitted,

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