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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

14 ELIZABETH MIRABELLI, an
15 individual, on behalf of herself and all
16 others similarly situated; LORI ANN
17 WEST, an individual, on behalf of herself
and all others similarly situated; et al.,

18 Plaintiffs,

19 v.

20 MARK OLSON, in his official capacity as
21 President of the EUSD Board of
Education, et al.,

22 Defendants.

Case No.: 3:23-cv-0768-BEN-VET

**Memorandum of Points & Authorities
in Support of Plaintiffs' Motion to
Exclude the Testimony of
Defendants' Experts Darlene Tando
and Christine Brady**

Judge: Hon. Roger T. Benitez
Courtroom: 5A
Hearing Date: August 18, 2025
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INTRODUCTION

The opinions of Defendants’ proposed experts are based on personal, quasi-spiritual beliefs, are based on false premises, are contrary to prevailing scientific studies, jump to legally impermissible extrapolations, and are self-contradictory. These opinions should be excluded entirely because they ring practically all the exclusionary bells of Rule 702, and they satisfy almost none of the factors that the Supreme Court or Ninth Circuit consider in testing the reliability of proposed expert opinions.

The Defendants cannot meet their burden to show “the expert’s testimony is the product of reliable principles,” much less reflecting “a reliable application of the principles.” Fed. R. Evid. 702(c), (d). These proposed expert opinions are grounded on personal, quasi-spiritual beliefs in an innate gender identity, rather than on concepts recognized in the mental health sciences. The proposed experts then impermissibly extrapolate from these mistaken and unproven personal beliefs to the conclusion that a gender transition is the natural and normal next step for a so-called transgender child, who must be affirmed in all cases.

Similarly, the Defendants cannot meet their burdens to show “the testimony is based on sufficient ... data” Fed. R. Evid. 702(b). The science allegedly supporting the view that a social transition has mental health benefits is extraordinarily weak—and none of it envisions the absence of parental involvement. Thus, absent science, the defense experts resort to false assumption that the relatively recent de-pathologization of gender incongruence necessarily means transgender identity is therefore “natural” and must be embraced in all cases, when this misunderstands the concept of “pathology.”

On top of all that, these experts have repeatedly contradicted the opinions they now state for this litigation, and offer the same, overlapping, and duplicative opinions. Thus, the Defendants’ proposed expert opinions cannot possibly be helpful to the factfinder to understand the evidence or to determine a fact in issue, and should be excluded. Fed. R. Evid. 702(a).

LEGAL STANDARD

An expert may give opinion testimony only if (a) the expert’s “scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue”; (b) “the testimony is based on sufficient facts or data”; (c) “the testimony is the product of reliable principles and methods”; and (d) the expert “has reliably applied the principles and methods to the facts of the case.” Fed. R. Evid. 702.

Under these standards, “bare qualifications alone cannot establish the admissibility of expert testimony.” *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 860 (9th Cir. 2014) (cleaned up). Rather, an expert must only be allowed to offer testimony that is both relevant and reliable, *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1993), under “exacting standards.” *Weisgram v. Marley Co.*, 528 U.S. 440, 455 (2000). While *Daubert* and its progeny have identified various factors that can be used to test reliability, “there is no definitive checklist or test.” *Pecover v. Elec. Arts Inc.*, No. 3:08-cv-2820, 2010 WL 8742757, at *4 (N.D. Cal. Dec. 21, 2010). But factors that the Supreme Court or Ninth Circuit have addressed include:

- (1) whether a method can be (and has been) tested,
- (2) whether the method has been subjected to peer review and publication,
- (3) the known or potential rate of error,
- (4) the existence and maintenance of standards controlling the method’s operation,
- (5) a degree of acceptance of the method within a relevant community,
- (6) whether the expert is proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation,
- (7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion,

///

1 (8) whether the expert has adequately accounted for obvious alternative
2 explanations,

3 (9) whether the expert employs in the courtroom the same level of intellectual
4 rigor that characterizes the practice of an expert in the relevant field, and

5 (10) whether the field of expertise claimed by the expert is known to reach
6 reliable results for the type of opinion the expert would give.

7 *Id.* (collecting cases). “It is the proponent of the expert who has the burden of proving
8 admissibility.” *Lust v. Merrell Dow Pharm., Inc.*, 89 F.3d 594, 598 (9th Cir. 1996).
9 “[D]istrict courts do not have discretion to abandon the gatekeeping function
10 altogether,” *United States v. Ruvalcaba-Garcia*, 923 F.3d 1183, 1189 (9th Cir. 2019)
11 (cleaned up), and in ruling on the admissibility of expert testimony, the Court must
12 make explicit findings and explain its reasoning. *City of Pomona v. SQM N. Am. Corp.*,
13 866 F.3d 1060, 1069-70 (9th Cir. 2017).

14 ARGUMENT

15 The defense experts, Darlene Tando and Christine Brady, are tasked with
16 providing a neutral and scientific sounding justification for California’s Parental
17 Exclusion Policies. However, in truth, “gender theory” is primarily a novel
18 philosophical paradigm—not a development in science. *See* Dkt. 133, Second Amend.
19 Compl., ¶¶66-78 (citing Patrick Parkinson, *Gender Identity Discrimination and*
20 *Religious Freedom*, 38 J.L. & Religion 10 (2023)). Thus, to come up with a scientific
21 sounding explanation of gender theory, they first describe the nature or character of
22 gender incongruence, and then the “natural” development of the transgender child,
23 before explaining how it would be harmful for anyone (such as parents) to interfere
24 with that so-called natural development.

25 But Tando and Brady have no support for their theory that there even is such a
26 thing as a “transgender child.” Rather, they have extrapolated backwards from the
27 concept that a transgender identity is not pathological to the concept that it must be
28 somehow innate and a natural expression of the human condition. From there, they

1 extrapolate forward again to a supposed natural and healthy manner in which the
2 transgender child progresses as he grows up—and for which it would be harmful for
3 parents to interfere in. But all of this is baseless extrapolation, logically unsound
4 extrapolation, and contrary to law. It should be excluded.

5 **I. BACKGROUND ON THE GENDER EXPERTS: TANDO & BRADY**

6 **A. Darlene Tando, LMFT**

7 Darlene Tando, LMFT, is a social worker. Ex. A, Tando Depo., pp.28:2-8,
8 62:18-63:15. She obtained her master's in social work from San Diego State
9 University in 2000, *id.*, pp.25:5-11, and started her own practice in 2006. *Id.*,
10 pp.28:25-29:5. Although she has authored a book called *The Conscious Parent's Guide*
11 *to Gender Identity: A Mindful Approach to Embracing Your Child's Authentic Self*, Ex. A-
12 6,¹ contributed to a second book titled *My Child Told Me They're Trans... What Do I*
13 *Do?*, Ex. A-5, and has a blog focusing on transgender issues, Ex. A-4, she has not
14 performed any original research, performed any systematic reviews, published any
15 peer-reviewed studies, and her books have no citations. Ex. A, Tando Depo., pp.59:2-
16 21, 90:10-21.

17 Tando had her first transgender client in 2006 and quickly made gender
18 identity a focus of her practice. Ex. A, Tando Depo., pp.29:19-30:12. She started out
19 as a solo practitioner, but in 2016 hired her first associate. *Id.*, p.34:19-22. In 2020,
20 she began hiring more associates and currently has eight therapists working for her.
21 *Id.*, pp.33:25-35:8. Nonetheless, Tando does not attribute the growth of her practice
22 to the significant growth in the number of children identifying as transgender at that
23 same time. *Id.*, pp.37:1-38:17. Some of these are licensed therapists, others are
24

25 ¹ This brief uses the same exhibit numbers as used in the depositions of Tando and
26 Brady, prefixed with "A" for Tando and "B" for Brady. For Plaintiffs' experts, Drs.
27 Erica Anderson and Nathan Szajnberg, their initial reports, supplemental reports,
28 and depositions are all attached to their declarations submitted in support of
Plaintiffs' motion for summary judgment.

1 associates working toward licensure. *Id.*, p.36:5-14. Five of the eight are transgender.
2 *Id.*, pp.43:24-44:8.

3 Currently, the vast majority of Tando's practice (90-95%) deals with
4 transgender issues. Ex. A, Tando Depo., pp.32:3-9, 42:5-22. Of her transgender
5 clients, 40% are children (pre-pubertal), 40% are adolescents, and 20% are adults, *id.*,
6 p.32:10-17, and 30% have been autistic. *Id.*, pp.275:1-276:6. She also has approximately
7 six or seven families with multiple transgender children. *Id.*, pp.218:24-220:17.

8 **B. Christine Brady, Ph.D.**

9 Christine Brady is a psychologist currently working as a clinical associate
10 professor at Stanford's Gender Clinic. Ex. B, Brady Depo., pp.21:14-17, 26:1-2. In her
11 current position, she does not teach, but trains students in clinical practice. *Id.*,
12 p.30:2-13. She has never performed any systematic reviews, *id.*, p.32:18-21, and has
13 not (yet) published any original peer-reviewed research relating to gender identity.
14 *Id.*, pp.31:13-32:17, 54:20-55:4. She is not board-certified, *id.*, pp.27:25-28:2, and does
15 not consider herself an expert in child cognitive development or neuropsychology. *Id.*,
16 pp.34:1-35:10. During her career, 30% of the transgender youth treated by Brady have
17 been pre-pubertal and 70% have been post-pubertal. *Id.*, p.43:12-19. Of her clients,
18 10% have been autistic. *Id.*, p.127:21-24.

19 Like Tando, Brady is an ardent activist. She successfully worked to have a
20 fellow professor fired for serving as an expert witness in favor of Florida's law
21 requiring students to use the restroom corresponding to their sex. She also funneled
22 information to Lambda Legal to support their efforts to challenge the Florida law. *See*
23 *Josephson v. Ganzel*, No. 3:19-cv-230, 2023 WL 2432024 (W.D. Ky. Mar. 9, 2023),
24 *aff'd*, 115 F.4th 771 (6th Cir. 2024); Ex. B, Brady Depo., p.246:11-252:23.

25 **II. THE COURT SHOULD EXCLUDE THE SO-CALLED EXPERT** 26 **OPINIONS OF TANDO AND BRADY**

27 The key opinion offered by both Tando and Brady is that a transgender identity
28 is not pathological, and therefore not a medical condition. Consequently, they

1 extrapolate from that fact that a gender transition is not “treatment,” and therefore
2 that parental involvement is not necessary. *See* Ex. A-1, Tando Rep., ¶¶ 17-20, 21-31,
3 32-35; Ex. B-2, Brady Rep., §§ III.D.1(a)-(c), III.D.2(a)-(c), III.D.13(a)-(c); Ex. B-3,
4 Brady Decl., ¶¶ 21-23, 30-33, 134-136.²

5 However, Tando’s and Brady’s opinions are based on mis-apprehending
6 certain concepts within gender theory and mis-extrapolating from those concepts.
7 When an “expert has unjustifiably extrapolated from an accepted premise to an
8 unfounded conclusion,” *Pecover*, 2010 WL 8742757, at *4, her testimony should be
9 excluded because “nothing in either *Daubert* or the Federal Rules of Evidence
10 requires a district court to admit opinion evidence that is connected to existing data
11 only by the *ipse dixit* of the expert.” *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997).
12 Despite being alleged experts within “gender theory,” they seriously misunderstand
13 it to justify their unwarranted extrapolations. And when the science does not support
14 their conclusions, they ignore it.

15 To begin, and most importantly, both Tando and Brady testify that a
16 transgender identity is not “pathological.” Ex. A-1, Tando Rep., ¶¶ 16(c), 17, 32;
17 Ex. B-2, Brady Rep., §§ III.C.2, III.D.2(a), III.E.15; Ex. B-3, Brady Decl., ¶¶ 20(b),
18 30-31, 159. From this, they extrapolate many of their opinions, including: (1) their
19 definition of “gender identity”; (2) their belief that there must be a biological, innate,
20 or natural cause of a transgender identity; and (3) that for these individuals, a gender
21 transition is the natural and normal next step. But these extrapolations are completely
22 unfounded.

23 ///

24 _____
25 ² There are essentially no substantive changes from Brady’s original declaration and
26 subsequent report. *See* Ex. B-2, Brady Rep.; Ex. B-3, Brady Decl. However, for the
27 report, all citations were omitted and moved up to a new section titled “Publications
28 Summarizing and/or Supporting Opinions.” *See* Ex. B-2, Brady Rep., pp.7-11,
§ III.B.(1)-(42). Thus, to understand what article is being cited for what proposition,
reference must be made to her original declaration.

1 A. Because the Existence of a “Transgender Identity” as Anything
2 Other than a Social Phenomenon is Unsatisfying, Tando and Brady
3 Erroneously Posit that “Gender Identity” Must Truly Exist as an
4 Internal Aspect of a Person.

5 1. *Both California statutes and science define “gender identity” as*
6 *primarily a social phenomenon.*

7 Both Tando and Brady begin their testimony by explaining what “gender
8 identity” is. Ex. A-1, Tando Rep., ¶17; Ex. B-2, Brady Rep., § III.D.1(a). This is
9 notable because, although numerous California statutes prohibit discrimination on the
10 basis of gender identity, none offer an actual definition of gender identity. For
11 example, although the California Education Code prohibits gender identity
12 discrimination, it never defines what gender identity is at all. *See* Cal. Educ. Code
13 §§ 200, 210.7, 220. It only defines gender as synonymous with “sex.” Cal. Educ.
14 Code § 210.7. Only two California statutes actually define gender identity, and are
15 similar. *See* Cal. Health & Saf. Code § 1439.50(b); Cal. Gov. Code § 54977(b).

16 The more comprehensive definition, from the Health and Safety Code, states:

17 “Gender identity” means a person’s identity based on *the individual’s*
18 *stated gender identity*, without regard to whether the self-identified
19 gender accords with the individual’s physical appearance, surgical
20 history, genitalia, legal sex, sex assigned at birth, or name and sex, as it
21 appears in medical records, and *without regard to any contrary statement*
22 *by any other person, including a family member*, conservator, or legal
23 representative. An individual who lacks the present ability to
24 communicate his or her gender identity shall retain the gender identity
25 most recently expressed by that individual.

26 Cal. Health & Saf. Code § 1439.50(b) (emphasis added); *see also* Cal. Gov. Code
27 § 54977(b) (“For purposes of this section, ‘gender identity’ means the gender or
28 absence of gender with which the board or commission member self-identifies, without
29 regard to the individual’s assigned sex at birth.”). The definition is entirely circular,
30 focusing more on an individual’s agency to self-define their own “gender identity”
31 than focusing on what “gender identity” actually is.

1 For the most part, the defense experts mirror this. Darlene Tando believes that
2 the terms “gender” and “gender identity” are generally synonymous, and refer
3 (circularly) to “the internal sense of self, psychological sense of self, identifying as
4 male, female, all genders, both genders, no gender.” Ex. A, Tando Depo., p.69:10-23.
5 Defendants’ other expert, Christine Brady, offered similar circular answers. When
6 asked to define the term “woman,” she responded: “I think that there’s a broad
7 spectrum of what being a woman can look like, feel like, and be like. And so that’s up
8 to each individual person to sort of self-define what it is to be a woman.” Ex. B, Brady
9 Depo., p.58:3-12.

10 Turning to the Diagnostic and Statistical Manual, it offers a similarly
11 unsatisfactory answer. As it states, “sex and sexual refer to the biological indicators
12 of male and female (understood in the context of reproductive capacity), such as in
13 sex chromosomes, gonads, sex hormones, and nonambiguous internal and external
14 genitalia.” Szajnberg Rep., ¶12 (emphasis added). In contrast, “[g]ender is used to
15 denote the *public, sociocultural* (and usually legally recognized) *lived role* as boy or girl,
16 man or woman, or other gender,” and “Gender identity is a category of *social identity*
17 and refers to an individual’s identification as male, female, some category in
18 between.” Szajnberg Rep., ¶13 (quoting DSM-5, pp.511-12; emphasis modified).

19 How does one determine the “lived role” of a man or woman? According to
20 Brady and Tando, “that’s pretty self-determined what that looks like” based on
21 “what the individual feels is stereotypically a male gender role or stereotypically a
22 female gender role,” Ex. B, Brady Depo., pp.57:2-60:18, because “there really are no
23 rules, when it comes to gender expression.” Ex. A, Tando Depo., pp.154:21-156:19;
24 *see also id.*, pp.95:23-96:8.

25 Although these answers are unsatisfying, and largely unhelpful, they are all that
26 exist. The DSM-5 defines “gender identity” as a “social identity” because there is
27 no consensus about the *cause* of gender incongruence: “there are multiple hypotheses
28 without any definitive answers.” Szajnberg Rep., ¶19 (citing Am. Psychol. Ass’n,

1 *Report of the APA Task Force on Gender Identity and Gender Variance* 52-53 (2008)).
2 “There is *no* consensus on the cause of a transgender identity, and there are likely
3 multiple, overlapping causal mechanisms in line with the many variations in gender
4 presentation.” Anderson Supp. Rep., ¶18.

5 Indeed, what it even means to be transgender, or have a gender identity, has
6 rapidly shifted over the past decades—in line with the absence of concrete
7 understanding of what it is: “[T]he current cohort of youth identifying as transgender
8 is different from 2015, and the current cohort is itself heterogeneous.” Anderson
9 Supp. Rep., ¶20. The science that does exist trying to identify a biological causal
10 mechanism for a transgender identity is “garbage science. It’s something so people
11 can get published and get grants is what I think it is.” Szajnberg Dep. p.128:3-10.

12 Stated differently, there is no basis for believing that “gender identity” itself
13 actually exists as an internal aspect of a person, as opposed to “transgender identity”
14 existing as a social phenomenon that—as a society—California has decided to accept.
15 All that is truly known is that—as a concrete reality—some people present with a
16 cross-sex gender identification, but nobody truly knows why. Thus, while being
17 transgender “is not a pathology, it is a psychological condition or developmental
18 perturbation—or whatever non-pathological term one prefers—that comes with
19 distinct symptoms.” Szajnberg Rep., ¶75. The same, however, is not true for being
20 cisgender—which could describe someone who denies even having a “gender
21 identity” and merely reports the absence of a feeling of incongruence. *See* Ex. B,
22 Brady Depo., pp.69:19-70:6, 70:15-71:18; *see also id.*, pp.61:3-62:25, 71:25-73:5; Ex. A,
23 Tando Depo., pp.82:24-83:4, 94:21-96:21.

24 **2. *Tando and Brady baselessly define “gender identity” as a***
25 ***biological, innate, and intrinsic aspect of a person.***

26 In the absence of a concrete definition or understanding of “gender identity,”
27 many advocates pivot and argue that whether a transgender identity is natural,
28 normal, and good is irrelevant—what matters is *individual liberty*. Under this view, as

1 stated in the Yogyakarta Principles—a document published following a meeting of
2 international human rights groups— “[e]ach person’s self-defined ... gender identity
3 is integral to their personality and is one of the most basic aspects of self-
4 determination, dignity and freedom.” Parkinson, *supra*, at 26 (quoting *The*
5 *Yogyakarta Principles*, <https://yogyakartaprinciples.org/>.) Thus, individuals have the
6 “right” to use “whatever terminology about themselves that they consider best
7 describes their inward reality.” *Id.* at 24.

8 However, to those wedded to the “born this way” mantra, this pivot can be
9 deeply unsatisfying. Thus, they resort to either the “garbage science” that Dr.
10 Szajnberg referenced, or they just move towards a quasi-spiritual explanation (with
11 gender identity variously described as in the brain, mind, or soul). *See* Ex. A, Tando
12 Depo., pp.73:18-86:21. As stated by Dr. Szajnberg:

13 Unlike the DSM-5, which defines “gender identity” as a “social
14 identity,” Tando defines “gender identity” in a somewhat spiritual
15 fashion, something that necessarily and inherently exists within a
16 person. She states that it is “a personal, core characteristic of a person;
17 a psychological sense of self,” “a reflection of who they are,” and states
18 everyone eventually comes to “conscious awareness of *authentic* gender
19 identity,” or “their ‘actual’ gender identity.” In light of her beliefs
20 regarding gender identity, Ms. Tando unequivocally rejects “that it is
21 ‘best’ to be cisgender” or a “worse outcome” to be transgender, such
22 that “[t]he goal of working with transgender youth *should not* be
23 desistence, it *should* be authenticity.” Elaborating upon this, she states
24 that “[c]isgender children are not expected to undertake [an]
25 exploration” to see if their asserted gender identity “is ‘real’,” and so
26 “attempts to force this with a gender diverse child ... can be
27 experienced as pathologizing, intrusive and/or cisnormative.”

28 ...

25 Slightly differently, Dr. Brady stresses that it is likely there is a “strong
26 innate biological basis for transgender identity.” Indeed, Dr. Brady
27 actually calls social transition part of a “natural process.” It is from this
28 belief that she concludes that “[g]ender identity is a person’s core,
innate, sense of self gender” or “a core aspect of a person’s being,” and
that alignment of gender expression and sex should not be

1 “privilege[d]” over alignment of gender expression with “their
2 authentic gender identity” or “authentic selves.”

3 Szajnberg Rep., ¶¶24-26. But there is no basis for believing that “gender identity”
4 itself actually exists as an internal aspect of a person, as opposed to “transgender
5 identity” existing as a social phenomenon.

6 **B. The Court Should Exclude Tando and Brady’s Testimony**
7 **Regarding Harm of Parental Consent to Gender Transition As**
8 **Scientifically Unsupported, Extrapolated Based on Logical Errors,**
9 **and Contrary to Law.**

10 The core aspect of both Tando’s and Brady’s opinions is that a gender transition
11 is the natural step for a transgender child, which necessarily leads to better health-
12 outcomes, and so parents who are not affirming should be deemed necessarily unfit and
13 excluded from decision-making. Indeed, both Tando and Brady are unequivocal that
14 there is no instance where it would be appropriate for a parent to say “no” to a social
15 transition. Ex. A, Tando Depo., pp.324:5-18; Ex. B, Brady Depo., pp.222:15-223:17.
16 As a result, there is similarly no instance where a school could appropriately say
17 “no.” Ex. A, Tando Depo., pp.318:2-324:3; Ex. B, Brady Depo., pp.231:2-234:14.

18 The Court should exclude this testimony for two primary reasons: (1) the alleged
19 benefits of social transition in this context have no scientific support, but rather are
20 extrapolated based on logical errors; and (2) excluding parents from decision-making is
21 contrary to law.

22 **1. *The alleged psychological benefits of social transition are baseless***
23 ***and/or more prejudicial than probative***

24 Both Tando and Brady opine that a social transition comes with significant
25 psychological benefits for a transgender child. Ex. A-1, Tando Rep., ¶¶ 36-39, 67;
26 Ex. B-2, Brady Rep., §§ III.D.2(i)-(p), III.D.4(b), III.D.5(j)-(k); Ex. B-3, Brady Decl.,
27 ¶¶38-44, 68, 85-86. But, as explained by Dr. Anderson:

28 none of the literature cited by the defense experts evaluates the mental
health and well-being of youth who undergo a social transition *over their*
parents’ objection or without parental notice. Instead, Dr. Brady and Ms.

1 Tando rely on studies in which parental involvement is presumed. It is
2 not scientifically sound to extrapolate data from studies in which parents
3 were involved in the young person's social transition and assume the
same results would be achieved when parents are not involved.

4 Anderson Rep., ¶129; *see also* Anderson Supp. Rep., ¶3 (“We all agree that social
5 transition can be in the best interest of children in some instances; but there are *no*
6 studies addressing the benefits or harms of social transition without parental
7 guidance.”).

8 Even the studies cited by Tando and Brady—which presume parental
9 involvement—are not rigorous: “The Cass Review—again, the most comprehensive
10 systematic review of youth gender treatment available—concludes that ‘there is no
11 clear evidence that social transition in childhood has positive or negative mental health
12 outcomes’ and ‘[t]here is relatively weak evidence for any effect in adolescence.’”
13 Anderson Rep., ¶131 (citing Cass Review, p.164). Thus, at best, the evidence regarding
14 the effect of a social transition is equivocal. But since even this equivocal evidence of
15 the alleged benefit of transition all deals with situations distinct from that presented
16 here—i.e., it presumes parental involvement—it could not possibly be helpful to a jury.
17 Fed. R. Evid. 702(a). Rather, the defense experts’ opinions on the effect of social
18 transition are most likely to merely mislead and confuse the factfinder and should be
19 excluded on those grounds as well. Fed. R. Civ. P. 403.

20 Nevertheless, Tando and Brady are adamant in their view that social transition is
21 the natural next step for the transgender child. Tando’s and Brady’s error appears to
22 flow from a misunderstanding of the concept of “pathology.” Specifically, since the
23 1970s, the concept of “pathology” has undergone a significant change. Prior to then,
24 “pathology” was viewed through a naturalist lens, meaning that conditions were
25 deemed pathological or non-pathological to the extent that they correlated to the
26 “natural” human state of being. Since then, the concept of “pathology” has changed
27 such that it is now viewed through a normative lens, meaning that conditions are not
28 considered pathological if society deems as much. Thus, the psychological and

1 psychiatric community takes no position on whether a transgender identity is
2 “natural,” but merely that it is (now) “normative.” *See* Szajnberg Rep., ¶¶15-22.

3 It is only because they misunderstand the concept of “pathology” that Tando
4 and Brady then turn to searching (in vain) for some naturally occurring thing in the
5 brain to explain why some people have a transgender identity, *see* Ex. A, Tando Depo.,
6 pp.73:18-80:4, 84:19-88:9, 90:4-103:4, 182:17-183:24; Ex. B, Brady Depo., pp.70:7-14,
7 129:19-130:5, and then to contend that a gender transition is the natural next step for
8 that natural state of being. *See* Ex. A, Tando Depo., pp.181:8-182:15, 204:22-211:13,
9 215:24-216:24; Ex. B-3, Brady Decl., ¶¶36-37, 98-107, 114-115, 136, 141.

10 Indeed, Tando even goes so far to argue that gender expression is also a
11 natural, innate, biologically caused thing—separate from gender identity—such that
12 “if someone was designated female and had feminine gender expression, yes, his
13 gender identity could [still] be that of a boy.” Ex. A, Tando Depo., p.89:11-14; *see also*
14 *id.*, pp.88:12-90:2, 111:17-115:3, 115:19-117:17, 119:24-120:24, 122:15-123:13, 144:11-
15 145:19. As she explained in one training:

16 So, a lot of times if someone has been affirmed young and start hormone
17 blockers, then they’re kind of in a limbo stage as far as their bodies
18 backing them up for their gender identity. So, they may modify their
19 gender expression. It may not be in line with how they would really like
20 to express themselves. So, I’ll give you an example. One of my kiddos,
21 um, designated female. Identified as male. And this kiddo had a very
22 feminine, authentic gender expression. However, he knew that if he
23 were to act upon his *authentic gender expression*, meaning nail polish,
24 skirts, purses, earrings, that he would be misgendered because he would
25 look like a girl. Um, and so, it wasn’t until—so this middle school stage,
26 he wore hoodies and jeans the entire time. It wasn’t until he started
27 testosterone and his voice deepened and he got facial hair that he would
28 allow himself to then start engaging in this *authentic gender expression*.
So, then he would start wearing earrings and nail polish and skirts and
carry purses because then he looked like a boy wearing those things.
And so it’s really interesting for, for kiddos who have some of those,
um, gender expression, um, preferences, that they really have to kind of
stall that. They really have to—, and, and this is an age where you’re really

1 trying to, uh, figure out who you are. Uh, so that can prolong
2 authenticity.

3 Ex. A-10, *Trans Children's Identity Evolution*, p.13; see Ex. A, Tando Depo., pp.164:2-
4 165:11.

5 But the premise for all of Tando's and Brady's conclusions is a logically
6 unfounded leap. Their opinions are based on assumptions that transgenderism is
7 caused by natural, normal, innate, or biological characteristics. As stated above, there
8 is no consensus regarding the cause of a transgender identity. See Szajnberg Rep.,
9 ¶¶19-20. Thus, their testimony should be excluded wholesale. *Heller v. Shaw Indus.,*
10 *Inc.*, 167 F.3d 146, 163 (3d Cir. 1999) (excluding expert testimony based on
11 unfounded assumptions); *Kempner Mobile Elecs., Inc. v. Sw. Bell Mobile Sys.*, 428 F.3d
12 706, 712-13 (7th Cir. 2005) (same); *United States v. Rushing*, 388 F.3d 1153, 1156-57
13 (8th Cir. 2004) (same).

14 **2. The alleged psychological benefits of social transition are**
15 **irrelevant as contrary to law.**

16 It is black letter law that "there is a presumption that fit parents act in the best
17 interests of their children," *Troxel v. Granville*, 530 U.S. 57, 68 (2000), because
18 "historically [the law] has recognized that natural bonds of affection lead parents to
19 act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 602 (1979).
20 This presumption can only be overcome through a judicial finding of clear and
21 convincing evidence that the parents are not acting in their child's best interest. See
22 *Santosky v. Kramer*, 455 U.S. 745, 768-69 (1982); *Wallis v. Spencer*, 202 F.3d 1126, 1141
23 (9th Cir. 2000); *Mueller v. Aufer*, 700 F.3d 1180, 1187 (9th Cir. 2012). This
24 presumption is not overcome "[s]imply because the decision of a parent is not
25 agreeable to a child," *Parham*, 442 U.S. at 603, and cannot be satisfied based on a
26 "presumption" of unfitness in certain classes of cases, but must always be based on
27 an "individualized determination." *Stanley v. Illinois*, 405 U.S. 645, 656-57 (1972).

28 ///

1 “[A] state has no interest whatever in protecting children from parents unless it
2 has some reasonable evidence that the parent is unfit and the child is in imminent
3 danger. The government may not, consistent with the Constitution, interpose itself
4 between a fit parent and her children simply because of the conduct—real or
5 imagined—of the other parent.” *Wallis v. Spencer*, 202 F.3d 1126, 1142 n.14 (9th Cir.
6 2000) (citation omitted). Thus, the Supreme Court has held that “We have little
7 doubt that the Due Process Clause would be offended if a State were to attempt to
8 force the breakup of a natural family ... without some showing of unfitness.” *Quilloin*
9 *v. Walcott*, 434 U.S. 246, 255 (1978) (cleaned up).

10 The Federal Rules allow expert testimony if it “will help the trier of fact to
11 understand the evidence or to determine a fact in issue.” Fed. R. Evid. 702(a). Certain
12 testimony, by definition, is unhelpful. For instance, if an expert were to testify that the
13 industry standard of care is to engage in actions that are illegal, the testimony should be
14 excluded. *See Englebrick v. Worthington Indus., Inc.*, No. 8:08-cv-1296, 2016 WL
15 6637712, at *1 (C.D. Cal. Mar. 11, 2016) (“The standards governing an attorney’s
16 ethical duties are conclusively established by the Rules of Professional Conduct” and
17 “cannot be changed by expert testimony. If an expert testifies contrary to the Rules of
18 Professional Conduct, the standards established by the rules govern and the expert
19 testimony is disregarded.”); *Hilburn v. Lund*, No. C078381, 2017 WL 6147392, at *14
20 (Cal. Ct. App. Dec. 8, 2017) (“Expert testimony regarding the standard of care for
21 submitting Medi-Cal cost reports was not necessary to establish Lund breached his
22 fiduciary duty to the corporate plaintiffs. The trial court properly determined it did not
23 need expert testimony to determine that hiding personal expenses under the guise of
24 legitimate nursing home costs violated the standard of care.”).

25 Despite this, both Tando and Brady offer the opinion that parental notice or
26 consent before a school facilitates a child’s social transition is not necessary if parents
27 would question the child’s transgender identity, claiming affirmation is necessary for
28 the child’s psychological well-being. *See* Ex. A-1, Tando Rep., ¶¶ 39, 50-54, 55-56, 57-

63, 64-66; Ex. B-2, Brady Rep., §§ III.D.1(f)-(i), III.D.2(d)-(e), (q)-(aa), III.D.3(a)-(k),
III.D.4(c)-(i), III.D.9(c)-(i), III.D.14(a)-(d); Ex. B-3, Brady Decl., ¶¶26-29, 34-35, 45-
55, 56-66, 69-75, 116-122, 141-144. As stated above, they both deny that it would ever
be appropriate for a parent to not allow a child to socially transition. Ex. A, Tando
Depo., pp.324:5-18; Ex. B, Brady Depo., pp.222:15-223:17. They also both reject
California’s mandatory reporting regime as inadequate because, as they see it, a
parent refusing a child’s request to socially transition is harmful—it just does not rise
to the level of abuse or neglect. Ex. A, Tando Depo., pp.314:13-316:20; Ex. B, Brady
Depo., pp.224:8-226:6, 228:18-230:3.

This testimony is contrary to law as it assumes: (1) a child’s say-so is adequate
to exclude parental decisionmaking; (2) that a decision that is not the “best,” but not
abusive, is sufficient to remove decisionmaking authority from a parent; and (3) that all
parents who do not immediately affirm should be presumed unfit as a class. All of these
opinions regarding parental notice should be excluded as contrary to law, as this Court
has already noted. *Mirabelli v. Olson*, 691 F. Supp. 3d 1197, 1210-12 (S.D. Cal. 2023).

As to (1), relying on a child’s decision to transition as a basis for excluding
parents, Tando’s opinion is contrary to Supreme Court guidance on the issue. In
Parham v. J.R., a minor child sued a Georgia official seeking to strike down a statute
allowing parents to commit their child to a mental hospital over his objection. In
upholding the statute, the Supreme Court held unequivocally that, “[t]he fact that a
child may balk at hospitalization ... does not diminish the parents’ authority to decide
what is best for the child.” 442 U.S. 584, 604 (1979).³

³ It also should be noted that Tando’s and Brady’s opinion here is radically lacking in
common sense. (Most of Tando’s and Brady’s opinions are lacking in common sense,
but this one is particularly so.) For example, Tando acknowledged that children *lack*
the ability to appreciate the consequences of a social transition. See Ex. A, Tando Depo.,
pp.176:21-178:22. Astoundingly, though, she then spun that fact as if it were a positive
factor, alleging that children tend to not “overthink” the issue. *Id.*

As to (2), Tando's and Brady's opinion that a parent's refusal to allow a child to engage in a social transition is a basis for excluding the parent from decisionmaking—because it is allegedly harmful—is contrary to law because they also agree that such a decision does not rise to the level of abuse or neglect. In *Troxel v. Granville*, the issue was a statute that allowed any person to petition the court for visitation rights with a minor child. The father of two girls passed away, their mother distanced herself from the paternal grandparents, and the grandparents then petitioned for visitation rights. The Supreme Court held that the statute was unconstitutional because it gave the court the right to decide what was in the best interests of the child when the mother was not abusive or neglectful. Unless the court finds the parent is unfit, the parent gets to decide what is best for their child. 530 U.S. 57, 70 (2000).

As to (3) Tando and Brady opine that all parents who do not immediately affirm are necessarily unfit parents. But this puts them in opposition to *Stanley v. Illinois*. There, Peter and Joan Stanley never married but lived together, and had three children, over a period of nearly twenty years. According to statute, the children of an unwed mother are considered orphans, so when Joan died, the state immediately took Peter's children from their home. In striking down the statute, the Supreme Court held that it was irrelevant that the father is not around in the vast majority of cases involving unwed mothers; the presumption could *never* be placed on the father to justify keeping his children. There can never be a "presumption" of unfitness in certain classes of cases; unfitness must always be based on an "individualized determination." 405 U.S. 645, 656-57 (1972).

C. The Court Should Exclude Tando and Brady for Self-Contradiction

Part of this Court's gatekeeping function "is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). Here, as ardent activists for their cause, Tando and Brady were eager to sign

up and parrot California’s talking points. But those talking points contradict much they have written elsewhere—indeed the political needs of this case have warped their actual views by 180 degrees. When impeachment is so damning as to make the expert’s testimony ultimately “equivocal,” the testimony should be excluded as unhelpful. *See Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 245 (5th Cir. 2002).

1. Tando and Brady actually believe that a social transition is medical treatment for the medical condition of being transgender, but want to testify to the opposite here.

First, to oppose Plaintiffs’ parental rights argument, California has argued that being transgender is neither “pathological” nor a “mental illness,” and therefore parents should have no say in what happens regarding it behind school doors. In this case, both Tando and Brady have parroted this. *See* Ex. A-1, Tando Rep., ¶¶ 32-35; Ex. B-2, Brady Rep., § III.C.2. But outside this case, both Tando and Brady have contradicted their own “expert” pronouncements offered here. For instance, Tando also asserted that “while being transgender is not a pathological condition, like a disease, it will be important for you [the parent] to look at your child’s being transgender as something concrete, *like a medical condition.*” Ex. A, Tando Depo., pp.184:20-185:16, 188:6-190:10. These contradictory opinions cannot be written up as a slip-up, as Tando has stated the same contradictory opinions elsewhere as well. She has written that, “I do believe being transgender *is a medical condition,*” *id.*, pp.194:2-195:23, and analogizes being transgender to needing supplemental oxygen, *id.*, pp.191:19-193:25, or antibiotics, a cast for a broken arm, or cough syrup. *Id.*, pp.201:4-204:6; *see also* Ex. A-12.

Likewise, Brady has stated in contexts outside this case (but under penalty of perjury) that, “[b]y itself, social transition is psychologically beneficial and is a *medically recognized treatment* for gender dysphoria. [Parental Notification] discourages this *medically recognized treatment* of gender dysphoria, thus harming transgender and gender nonconforming youths who have not yet socially

1 transitioned,” and that “[t]he *treatment* for gender dysphoria ... includes social
2 affirmation of the individual’s preferred pronouns and names.” Ex. B-20, pp.5, 7
3 (emphasis added); *see* Ex. B, Brady Depo., pp.197:15-202:22. If social transition is
4 “medically recognized treatment,” it is treating a medical condition, which Brady
5 denies in her expert opinion in this case. Brady cannot have it both ways.

6 **2. Tando and Brady actually believe that a social transition is**
7 ***extraordinarily stressful requiring therapeutic assistance, but***
8 ***want to testify to the opposite here.***

9 Second, both Tando and Brady are tasked with whitewashing California’s
10 Parental Exclusion Policies by downplaying the significance of a social transition. But
11 when pressed, Tando conceded that a social transition is extremely stressful. She
12 believes that if a child socially transitions at school, but other students do not know
13 they are transgender, then accidentally being “outed” by a teacher would be
14 “extremely distressing.” Ex. A, Tando Depo., pp.199:19-200:7. She also believes that
15 it can increase anxiety to use different pronouns at school than at home, *id.*,
16 pp.221:12-223:1, and that it can be stressful for children to feel like they have to hide
17 their gender identity from anyone—including their parents. *Id.*, pp.223:4-225:18. As
18 she stated, “[w]hile [children] may monitor or conceal their true gender expression in
19 other environments, it is important that they don’t do this at home.” Ex. A-6, p.50;
20 *see* Ex. A, Tando Depo., p.115:6-18, 117:18-119:23. Perhaps most damningly, she
21 believes that transitioning socially without simultaneously transitioning medically is
22 “*dangerous*,” because transitioning is one of the most stressful things someone can
23 engage in. Ex. A-4, p.44; Ex. A, Tando Depo., pp.225:21-238:17.

24 For her part, Brady agrees that “being transgender is hard” because of
25 “wondering if you’re passing or wondering if people will question you for going into
26 the wrong bathroom.” Ex. B, Brady Depo., pp.161:6-162:23. She also believes
27 “everybody who is identifying as that [transgender] *needs* the help of a mental health
28 professional to help them explore and truly understand what this is about.” Ex. B-9,

p.22; see also Ex. B, Brady Depo., pp.119:18-120:10, 122:8-126:19, 150:6-24. She also rejects that psychotherapy alone can be a stand-alone treatment for gender dysphoria—medical interventions will *necessarily* be required, Ex. B, Brady Depo., pp.245:14-246:10, and although having a transgender identity is not itself pathological, a diagnosis of gender dysphoria is “required in order to access hormone therapies, surgery, so what we would consider medical treatment.” *Id.*, pp.137:22-138:18.

3. Tando and Brady actually believe parental involvement in a social transition is key to best outcomes for a child, but want to testify to the opposite here.

Third, Tando and Brady are tasked with minimizing the relevance of parental involvement—an inherently self-contradictory task—by, for example, stating that it is normal for children to “come out” to peers before their parents and thus there is nothing that needs to be reported to parents. *See* Ex. A-2, Tando Decl., ¶49; Ex. B-2, Brady Rep., § III.D.2(r). Thus, on the one hand, Tando and Brady are willing to jettison parental involvement altogether if the parent’s decision is disagreeable to the child, or involves risks, or does not immediately affirm the child. Ex. A, Tando Depo., pp.324:5-18; Ex. B, Brady Depo., pp.222:15-223:17.

On the other hand, Tando testified that she firmly believes parents are important in a child’s gender journey. Ex. A, Tando Depo., pp.167:21-170:20, 174:19-176:20. This includes their important role in noticing a child’s gender incongruence even if the child is not insistent or persistent in a cross-gender identification. *Id.*, p.170:21-173:19. In fact, the majority of her work involves counseling parents. Ex. A-1, Tando Rep., ¶57. This is because she acknowledges that the natural and normal reaction for parents is to have a strong emotional response to their child’s transgender identification. Ex. A, Tando Depo., pp.241:20-243:21, 253:22-257:16. As she explained in her training video:

When parents are affirming, accepting, supportive and follow their child’s lead when it comes to gender, this is usually because they love their child. When parents are resistant, upset, caught up in their own

1 response and reject their child's assertion of gender, this is usually
2 because they love their child. So this is not an either or that if someone
3 is affirming, it means they're loving good parents. I think that any parent
4 who has a response to this, um, also loves their child and also wants the
best for them.

5 Ex. A-15, pp.11:27-12:5; *see* Ex. A, Tando Depo., pp.243:23-246:18, 249:18-250:13.

6 While Brady also minimized the relevance of parental involvement, she was a
7 bit cagier than Tando in also providing opinions about parental importance, directly
8 contradicting her statements promoting parental irrelevance. For instance, Brady
9 acknowledged that parents often are among the first to notice issues with their child.
10 Ex. B, Brady Depo., pp.154:8-155:19, that "it's a good thing if parents are involved in
11 their child's treatment," Ex. B, Brady Depo., pp.168:8-169:1, that "youth who have
12 come out to the families are generally psychosocially doing much better and are
13 happier." Ex. B-9, p.9, and that "[a]ssessing level of distress is important as dysphoria
14 contributes to negative mental health outcomes such as suicide attempts." Ex. B-14,
15 p.443; *see* Ex. B, Brady Depo., pp.164:23-165:7,

16 Lastly, of course, California law allows minors as young as twelve to obtain
17 professional counseling without parental consent. *See* Cal. Health & Saf. Code
18 § 124260(b)(1); Cal. Fam. Code § 6924(b). But neither Tando nor Brady themselves
19 would treat a minor without parental consent. Ex. A, Tando Depo., pp.56:18-57:20;
20 Ex. B, Brady Depo., pp.216:18-218:7. Thus, although Tando and Brady want to testify
21 that schools can socially transition a child without parental consent, they hold
22 themselves to a higher standard, even though not legally required.

23 **III. IN THE ALTERNATIVE, THE COURT SHOULD ORDER**
24 **DEFENDANTS TO SELECT ONLY ONE OF THEIR**
25 **DUPLICATIVE EXPERTS**

26 It is well established that "[t]he court may exclude relevant evidence if its
27 probative value is substantially outweighed by a danger of ... undue delay, wasting
28 time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. As a result, it

1 is equally well established that “[t]here can be no doubt of the power of the trial
2 court, in the exercise of a sound and reasonable judicial discretion, to limit the
3 number of expert witnesses.” *Ruud v. United States*, 256 F.2d 460, 463 n.5 (9th Cir.
4 1958); *see* Fed. R. Civ. P. 16(c)(2)(D). Thus, “it is the usual practice ..., in the absence
5 of extraordinary circumstances, to limit the parties to one expert for each distinct
6 discipline.” *Riley v. Dow Chem. Co.*, 123 F.R.D. 639, 640 (N.D. Cal. 1989); *accord*
7 *Redondo Beach Sch. Dist. v. Flodine*, 153 Cal. App. 2d 437, 449 (1957); *Thomas v.*
8 *Evenflo Co.*, 205 F. App’x 768, 772 (11th Cir. 2006).

9 The defense experts, Tando and Brady, are both essentially gender therapists.
10 Indeed, Tando’s and Brady’s expert reports are extraordinarily similar. Here, both
11 Tando and Brady plan to testify to the following topics:

- 12 (1) An explanation of what “gender identity” is, who has one, what causes it
13 (or does not cause it), how it is not pathological, and what gender
14 dysphoria is, Ex. A-1, Tando Rep., ¶¶ 17-20, 21-31, 32-35; Ex. B-2, Brady
15 Rep., §§ III.D.1(a)-(c), III.D.2(a)-(c), III.D.13(a)-(c); Ex. B-3, Brady Decl.,
16 ¶¶ 21-23, 30-33, 134-136;
- 17 (2) That children come to realize their “authentic” gender identity by around
18 age 3, although they may not realize it if they are not transgender, Ex. A-1,
19 Tando Rep., ¶¶ 21-31; Ex. B-2, Brady Rep., §§ III.D.13(a)-(g); Ex. B-3,
20 Brady Decl., ¶¶ 134-140;
- 21 (3) That following a child’s lead in their explanation of their transgender
22 identity is necessary for the child’s psychological well-being; Ex. A-1,
23 Tando Rep., ¶¶ 40-41, 44, 55-58; Ex. B-2, Brady Rep., §§ III.D.1(d)-(e),
24 III.D.5(a)-(m); Ex. B-3, Brady Decl., ¶¶ 24-25, 76-89;
- 25 (4) That a child’s social transition comes with significant psychological
26 benefits, Ex. A-1, Tando Rep., ¶¶ 36-38, 67; Ex. B-2, Brady Rep.,
27 §§ III.D.2(i)-(p), III.D.4(b), III.D.5(j)-(k); Ex. B-3, Brady Decl., ¶¶ 38-44,
28 68, 85-86;

- (5) That parental involvement is not necessary if parents would question the child's transgender identity since affirmation is necessary for the child's psychological well-being; Ex. A-1, Tando Rep., ¶¶ 39, 50-54, 55-56, 57-63, 64-66; Ex. B-2, Brady Rep., §§ III.D.1(f)-(i), III.D.2(d)-(e), (q)-(aa), III.D.3(a)-(k), III.D.4(c)-(i), III.D.9(c)-(i), III.D.14(a)-(d); Ex. B-3, Brady Decl., ¶¶ 26-29, 34-35, 45-55, 56-66, 69-75, 116-122, 141-144;
- (6) That a child's social transition does not require professional involvement because it is a natural stage in the development of a transgender person, Ex. A-1, Tando Rep., ¶¶ 36, 42, 45-46, 51; Ex. B-2, Brady Rep., §§ III.D.2(f)-(h), III.D.7(a)-(j), III.D.9(a)-(b), III.D.13(c), III.D.14(a); Ex. B-3, Brady Decl., ¶¶ 36-37, 98-107, 114-115, 136, 141;
- (7) That a child's social transition is unrelated to whether a child persists or desists from a transgender identity; Ex. A-1, Tando Rep., ¶¶ 43, 49, 73-77, 82-86; Ex. B-2, Brady Rep., §§ III.D.10(1), III.D.11(a)-(c), III.D.12(a)-(g); Ex. B-3, Brady Decl., ¶¶ 123, 124-126, 127-133;
- (8) That a child's social transition in some settings is better, psychologically, than a child not transitioning in all settings. Ex. A-1, Tando Rep., ¶¶ 47, 48; Ex. B-2, Brady Rep., § III.D.1(g), III.D.2(aa), III.D.4(a), III.D.8(a)-(f); Ex. B-3, Brady Decl., ¶¶ 27, 55, 67, 108-113;
- (9) That a child's social transition and de-transition is better than not socially transitioning, Ex. A-1, Tando Rep., ¶¶ 87-92; Ex. B, Brady Depo., pp.121:7-122:6; and
- (10) That Dr. Anderson's testimony is incorrect for relying on WPATH SOC 7 and the Cass Review; Ex. A-1, Tando Rep., ¶¶ 69, 78-81, Ex. B-2, Brady Rep., § III.D.6(a)-(h), III.D.7(f)-(h); Ex. B-3, Brady Decl., ¶¶ 90-97, 103-105.

Further, both Tando and Brady were initially retained to oppose Plaintiffs' motion for a class-wide preliminary injunction. *See* Ex. A-2, Decl. of Darlene Tando

(Oct. 21, 2024); Ex. B-3, Decl. of Christine Brady (Oct. 18, 2024). Apparently retained on an emergency basis, Tando had to prepare her report quickly. It shows that an earlier version of Brady’s testimony is one of the few documents that she had time to review. *See* Ex. A-1, Tando Rep., ¶ 15. Then, reviewing what propositions their declarations were actually cited for in that briefing confirms that their anticipated testimony is extraordinarily overlapping.

Attorney General Bonta cited Tando for the propositions that: (1) “[h]aving a gender nonconforming or transgender identity is not, in itself, a medical condition”; Dkt. 165 at p.17:18; (2) “the mere fact that social transition has recognized benefits does not render it medical treatment”; *id.*, pp.17:12-13, 17:24-25; (3) there is “a heightened risk of suicide[] that can result when school staff ‘forcibly out’ students without their consent and before they are ready”; *id.*, p.19:17-20; (4) “incorporating a system in which parents may opt out of application of a school [forced outing] policy as applies to their children, could destabilize the school environment, would place students in danger of harassment, bullying, or harm”; *id.*, p.25:9-12; and (5) “[f]eeling supported by educators positively impacts [transgender] students’ academic performance, educational aspirations, attendance, and psychological well-being”; *id.*, p.28:15-16.

Nearly identically, the CDE cited Brady for the propositions that: (1) “Being transgender is not a medical condition... Nor is social transition ‘a medical intervention’”; Dkt. 166 at p.14:19-22; (2) “using the correct name and pronouns reduced rates of depression, suicidal ideation, and suicide attempts among transgender youth”; *id.*, p.19:13-15; (3) “Forcing the disclosure of a student’s gender identity to unsupportive parents can lead to increased ‘...anxiety, depression, suicidal ideation, suicide attempts, and health care avoidance’”; *id.*, p.15:14-16; (4) “Unconsented disclosure increases the possibility of a forced disclosure of a student’s transgender or gender nonconforming identity to potentially unaccepting family members, which not only causes psychological distress to the student, but also

1 increases the risk of trauma, physical abuse, homelessness and long term negative
2 mental health outcomes”; *id.*, pp.21:28-22:4; and (5) “for many gender non-
3 conforming students, the school is a more accepting environment than their home...
4 ‘I have patients who feel that their school is their safe haven because the school
5 conscientiously uses the patient’s authentic name and pronouns. In contrast, the
6 patients’ parents are often misgendering them. School is a place where the hurt and
7 anxiety they experience at home cannot touch them’”; *id.*, p.22:5-10. In addition, the
8 CDE cites Brady for the propositions that: (6) “If educators disclose a student’s
9 gender identity without consent, students may feel pressured to hide their identity,
10 causing psychological harm and forcing them into the closet”; *id.*, pp.22:28-23:2; and
11 (7) “Efforts to try to change a person’s gender identity through therapy have been
12 shown to be ineffective and harmful.” *Id.*, p.15:26-28.

13 In sum, Tando and Brady are duplicative. To the extent that the Court does not
14 exclude both of them, *see supra*, the Court should order the State-Level Defendants to
15 choose one or the other.⁴

16 CONCLUSION

17 For the foregoing reasons, Plaintiffs respectfully request that this Court grant
18 their motion to exclude the testimony of Defendants’ experts Darlene Tando and
19 Christine Brady.

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23 ⁴ In contrast to the Defendants, Plaintiffs designated two experts with two different
24 focuses. Dr. Erica Anderson is a clinical psychologist who specializes in providing
25 therapy to transgender youth, and who will testify regarding the care of transgender
26 youth. *See* Anderson Rep., ¶¶3-4; Anderson Supp. Rep., ¶¶2-3. Distinctly, Dr.
27 Nathan Szajnberg is a psychiatrist, double-board certified in adult and child
28 psychiatry, who will testify regarding the practice of medicine from a psychiatrist’s
perspective and child cognitive development. *See* Szajnberg Rep., ¶3; Szajnberg
Supp. Rep., ¶1.


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By:

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