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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF ALAMEDA

17 THE PEOPLE OF THE STATE OF
18 CALIFORNIA,

19 Plaintiff,

20 v.

21 HEARTBEAT INTERNATIONAL, INC.,
22 AND REALOPTIONS, INC.,

23 Defendants.

Case No.: 23CV044940

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, SUMMARY
ADJUDICATION**

Judge: Hon. Patrick McKinney
Dept: 18
Date: April 15, 2026
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Action filed: September 21, 2023

1 **TABLE OF CONTENTS**

2 I. INTRODUCTION 1

3 II. FACTUAL & PROCEDURAL HISTORY 2

4 A. The Abortion Pill & Its Reversal..... 2

5 B. The Attacks on Abortion Pill Reversal..... 4

6 C. The Parties 7

7 III. LEGAL STANDARD..... 8

8 IV. ARGUMENT 9

9 A. Defendants’ Constitutional Rights Provide Dispositive Affirmative

10 Defenses. 9

11 1. Plaintiff’s Claims Violate Free Speech Protections..... 10

12 a. The challenged APR communications are core,

13 noncommercial speech on matters of public concern

14 and thus are protected by strict scrutiny. 11

15 b. Even if some communications are treated as

16 commercial speech, the Attorney General’s claims

17 still fail because heightened scrutiny applies. 13

18 i. The Attorney General fails heightened

19 (intermediate) scrutiny..... 15

20 ii. The Attorney General also fails *Zauderer*

21 review..... 16

22 c. The Attorney General’s FAL/UCL enforcement is

23 viewpoint-based and thus presumptively

24 unconstitutional. 16

25 2. The Free Exercise Clauses of Both the California and U.S.

26 Constitutions Independently Bar This Enforcement Action..... 18

27 a. Non-neutral or non-generally applicable enforcement

28 triggers strict scrutiny. 18

b. The FAL and UCL are not generally applicable..... 19

c. The Attorney General’s enforcement is not neutral or

generally applicable..... 19

3. Privacy Rights Under the U.S. Constitution, California

Constitution, and Reproductive Privacy Act also Protect

Defendants. 20

a. Background on the U.S. Constitution’s Liberty

Guarantee 20

1 **TABLE OF AUTHORITIES**

2 ***U.S. Supreme Court Cases***

3 *Adarand Constructors, Inc. v. Peña*
4 (1995) 515 U.S. 200 24

5 *Akron v. Akron Center for Reproductive Health, Inc.*
6 (1983) 462 U.S. 416 22

7 *Bolger v. Youngs Drug Products Corp.*
8 (1983) 463 U.S. 60 12

9 *Carey v. Population Services, Intl.*
10 (1977) 431 U.S. 678 21

11 *Central Hudson Gas & Electric Corp. v. Public Service Com.*
12 (1980) 447 U.S. 557 10, 13, 15

13 *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*
14 (1993) 508 U.S. 520 18, 19

15 *Cruzan v. Missouri Dept. of Health*
16 (1990) 497 U.S. 261 21

17 *Dobbs v. Jackson Women’s Health Organization*
18 (2022) 597 U.S. 215 1, 7, 15, 21

19 *Doe v. Bolton*
20 (1973) 410 U.S. 179 21

21 *Eisenstadt v. Baird*
22 (1972) 405 U.S. 438 21

23 *Employment Div., Dept. of Human Resources v. Smith*
24 (1990) 494 U.S. 872 18, 20

25 *Free Speech Coalition, Inc. v. Paxton*
26 (2025) 606 U.S. 461 10

27 *Fulton v. City of Philadelphia*
28 (2021) 593 U.S. 522 18, 20

Griswold v. Connecticut
(1965) 381 U.S. 479 21

Heller v. Doe
(1993) 509 U.S. 312 26

Illinois v. Telemarketing Associates, Inc.
(2003) 538 U.S. 600 9

1	<i>In re Primus</i> (1978)	
2	436 U.S. 412	12, 13
3	<i>Kennedy v. Bremerton School Dist.</i>	
4	(2022) 597 U.S. 507	18
5	<i>Meyer v. Nebraska</i>	
6	(1923) 262 U.S. 390	21
7	<i>Minnesota Voters Alliance v. Mansky</i>	
8	(2018) 585 U.S. 1	18
9	<i>Murdock v. Pennsylvania</i>	
10	(1943) 319 U.S. 105	39
11	<i>NAACP v. Button</i>	
12	(1963) 371 U.S. 415	14
13	<i>NIFLA v. Becerra</i>	
14	(2018) 585 U.S. 755	13, 16
15	<i>Obergefell v. Hodges</i>	
16	(2015) 576 U.S. 644	21, 24, 25
17	<i>Pittsburgh Press Co. v. Pittsburgh Com. on Human Relations</i>	
18	(1973) 413 U.S. 376	12
19	<i>Planned Parenthood of Central Missouri v. Danforth</i>	
20	(1976) 428 U.S. 52	23
21	<i>Police Department of Chicago v. Mosley</i>	
22	(1972) 408 U.S. 92	24, 25, 26
23	<i>R.A.V. v. City of St. Paul</i>	
24	(1992) 505 U.S. 377	17, 18
25	<i>Reed v. Town of Gilbert</i>	
26	(2015) 576 U.S. 155	10, 13, 17, 18
27	<i>Riley v. Natl. Fedn. of the Blind of North Carolina, Inc.</i>	
28	(1988) 487 U.S. 781	9, 12, 39
	<i>Romer v. Evans</i>	
	(1996) 517 U.S. 620	23, 25, 26
	<i>Rosenberger v. University of Virginia</i>	
	(1995) 515 U.S. 819	17
	<i>Secretary of State of Maryland v. Joseph H. Munson Co., Inc.</i>	
	(1984) 467 U.S. 947	9

1	<i>Skinner v. Oklahoma</i>	
2	(1942) 316 U.S. 535.....	21
3	<i>Sorrell v. IMS Health Inc.</i>	
4	(2011) 564 U.S. 552.....	11, 13, 17
5	<i>Strauder v. West Virginia</i>	
6	(1880) 100 U.S. 303.....	23
7	<i>Students for Fair Admissions, Inc. v. Harvard College</i>	
8	(2023) 600 U.S. 181.....	23, 24, 25
9	<i>Tandon v. Newsom</i>	
10	(2021) 593 U.S. 61.....	18, 19
11	<i>U.S. v. Alvarez</i>	
12	(2012) 567 U.S. 709.....	10, 14, 15
13	<i>Washington v. Glucksberg</i>	
14	(1997) 521 U.S. 702	21
15	<i>Whalen v. Roe</i>	
16	(1977) 429 U.S. 589.....	21
17	<i>Yick Wo v. Hopkins</i>	
18	(1886) 118 U.S. 356.....	23
19	<i>Zauderer v. Office of Disciplinary Counsel</i>	
20	(1985) 471 U.S. 626.....	16
21	California Cases	
22	<i>A & M Produce Co. v. FMC Corp.</i>	
23	(1982) 135 Cal.App.3d 473.....	35
24	<i>American Academy of Pediatrics v. Lungren</i>	
25	(1997) 16 Cal.4th 307	22
26	<i>Athens Lodge No. 70 v. Wilson</i>	
27	(1953) 117 Cal.App.2d 322	27
28	<i>Bank of the West v. Superior Court</i>	
	(1992) 2 Cal.4th 1254	27, 28
	<i>Bernardo v. Planned Parenthood Fedn. of America</i>	
	(2004) 115 Cal.App.4th 322.....	11, 12, 14, 27
	<i>Broberg v. The Guardian Life Ins. Co. of America</i>	
	(2009) 171 Cal.App.4th 912	35

1	<i>California Medical Assn., Inc. v. University of California</i>	
2	(2000) 79 Cal.App.4th 542	19
3	<i>Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.</i>	
4	(1999) 20 Cal.4th 163.....	19, 28
5	<i>Chern v. Bank of America</i>	
6	(1976) 15 Cal.3d 866	27
7	<i>City of Montebello v. Vasquez</i>	
8	(2016) 1 Cal.5th 409	12
9	<i>Civil Rights Dept. v. Cathy’s Creations, Inc.</i>	
10	(2025) 109 Cal.App.5th 204	18
11	<i>Com. on Children’s Television, Inc. v. General Foods Corp.</i>	
12	(1983) 35 Cal.3d 197.....	27, 28
13	<i>Comm. to Defend Reproductive Rights v. Myers</i>	
14	(1981) 29 Cal. 3d 252.....	22
15	<i>Daugherty v. American Honda Motor Co., Inc.</i>	
16	(2006) 144 Cal.App.4th 824.....	37
17	<i>Farm Raised Salmon Cases</i>	
18	(2008) 42 Cal.4th 1077	28
19	<i>Himes v. Somatics, LLC</i>	
20	(2024) 16 Cal.5th 209.....	37
21	<i>Hutton v. Fidelity Natl. Title Co.</i>	
22	(2013) 213 Cal.App.4th 486.....	9
23	<i>In re Tobacco II Cases</i>	
24	(2009) 46 Cal.4th 298	27, 29
25	<i>Kasky v. Nike, Inc.</i>	
26	(2002) 27 Cal.4th 939.....	11, 12, 27, 39
27	<i>Khan v. Medical Bd.</i>	
28	(1993) 12 Cal.App.4th 1834	28
	<i>Kwikset Corp. v. Superior Court</i>	
	(2011) 51 Cal.4th 310	29, 32
	<i>Lavie v. Procter & Gamble Co.</i>	
	(2003) 105 Cal.App.4th 496	28
	<i>Los Angeles Police Protective League v. City of Los Angeles</i>	
	(2025) 18 Cal.5th 970	15

1	<i>Molko v. Holy Spirit Assn.</i>	
2	(1988) 46 Cal.3d 1092	9
3	<i>Nationwide Biweekly Admin., Inc. v. Superior Court</i>	
4	(2020) 9 Cal.5th 279	28
5	<i>Natl. Council Against Health Fraud, Inc. v. King Bio Pharmaceuticals, Inc.</i>	
6	(2003) 107 Cal.App.4th 1336	27
7	<i>Nieto v. Blue Shield of California Life & Health Ins. Co.</i>	
8	(2010) 181 Cal.App.4th 60.....	8
9	<i>Norwest Mortgage, Inc. v. Superior Court</i>	
10	(1999) 72 Cal.App.4th 214	35
11	<i>People v. Barksdale</i>	
12	(1972) 8 Cal.3d 320.....	22
13	<i>People v. Belous</i>	
14	(1969) 71 Cal.2d 954.....	22
15	<i>People v. Duz-Mor Diagnostic Laboratory, Inc.</i>	
16	(1998) 68 Cal.App.4th 654	28
17	<i>People v. Forest E. Olson, Inc.</i>	
18	(1982) 137 Cal.App.3d 137	28
19	<i>People v. Garziano</i>	
20	(1991) 230 Cal.App.3d 241.....	22
21	<i>People v. Johnson & Johnson</i>	
22	(2022) 77 Cal.App.5th 295	32
23	<i>People v. Municipal Court (Street)</i>	
24	(1979) 89 Cal.App.3d 739	24
25	<i>People v. Orser</i>	
26	(1973) 31 Cal.App.3d 528.....	22
27	<i>PETA, Inc. v. California Milk Producers Advisory Bd.</i>	
28	(2005) 125 Cal.App.4th 871	19
	<i>Pines v. Tomson</i>	
	(1984) 160 Cal.App.3d 370	12
	<i>Planned Parenthood Affiliates v. Van de Kamp</i>	
	(1986) 181 Cal.App.3d 245.....	22
	<i>Quesada v. Herb Thyme Farms, Inc.</i>	
	(2015) 62 Cal.4th 298	28

1	<i>Rezec v. Sony Pictures Entertainment, Inc.</i>	
2	(2004) 116 Cal.App.4th 135	27
3	<i>Rincon Band of Luiseño Mission Indians v. Flynt</i>	
4	(2021) 70 Cal.App.5th 1059	19
5	<i>Rosenberg-Wohl v. State Farm Fire & Casualty Co.</i>	
6	(2024) 16 Cal.5th 520	28
7	<i>Salazar v. Walmart, Inc.</i>	
8	(2022) 83 Cal.App.5th 561.....	28
9	<i>Shulman v. Group W Productions, Inc.</i>	
10	(1998) 18 Cal.4th 200	9
11	<i>Smith v. Fair Employment & Housing Com.</i>	
12	(1996) 12 Cal.4th 1143	18
13	<i>Stephen K. v. Roni L.</i>	
14	(1980) 105 Cal.App.3d 640	22
15	<i>Stewart v. Rolling Stone LLC</i>	
16	(2010) 181 Cal.App.4th 664.....	11
17	<i>Taus v. Loftus</i>	
18	(2007) 40 Cal.4th 683.....	38
19	<i>Valov v. Dept. of Motor Vehicles</i>	
20	(2005) 132 Cal.App.4th 1113.....	18
21	<i>Veera v. Banana Republic, LLC</i>	
22	(2016) 6 Cal.App.5th 907	36
23	<i>Warfield v. Peninsula Golf & Country Club</i>	
24	(1989) 214 Cal.App.3d 646	38
25	<i>Zhang v. Superior Court</i>	
26	(2013) 57 Cal.4th 364.....	28
27	Other Federal Cases	
28	<i>All-Options, Inc. v. Atty. General of Indiana</i>	
	(S.D. Ind. 2021) 546 F.Supp.3d 754	5
	<i>American Academy of Pain Management v. Joseph</i>	
	(9th Cir. 2004) 353 F.3d 1099.....	11, 15
	<i>American Beverage Assn. v. San Francisco</i>	
	(9th Cir. 2019) 916 F.3d 749	16

1	<i>American Medical Assn. v. Stenehjem</i>	
2	(D.N.D. 2019) 412 F.Supp.3d 1134.....	5, 31
3	<i>Ariix, LLC v. NutriSearch Corp.</i>	
4	(9th Cir. 2021) 985 F.3d 1107	12
5	<i>Bates v. Pakseresht</i>	
6	(9th Cir. 2025) 146 F.4th 772	20
7	<i>Becerra v. Dr Pepper/Seven Up, Inc.</i>	
8	(9th Cir. 2019) 945 F.3d 1225.....	28
9	<i>Bella Health & Wellness v. Weiser</i>	
10	(D. Colo. 2025) 793 F.Supp.3d 1320.....	6
11	<i>Chico Feminist Women’s Health Center v. Butte Glenn Medical Society</i>	
12	(E.D. Cal. 1983) 557 F.Supp. 1190	22
13	<i>Coastal Abstract Service, Inc. v. First American Title Ins. Co.</i>	
14	(9th Cir. 1999) 173 F.3d 725.....	38
15	<i>Fellowship of Christian Athletes v. San Jose Unified School Dist.</i>	
16	(9th Cir. 2023) 82 F.4th 664.....	20
17	<i>Frederick Douglass Found., Inc. v. Dist. of Columbia</i>	
18	(D.C. Cir. 2023) 82 F.4th 1122.....	17
19	<i>Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City Council of Baltimore</i>	
20	(4th Cir. 2018) 879 F.3d 101.....	13
21	<i>Harkonen v. Fleming</i>	
22	(N.D. Cal. 2012) 880 F.Supp.2d 1071	38
23	<i>Hoye v. City of Oakland</i>	
24	(9th Cir. 2011) 653 F.3d 835	17
25	<i>In re GNC Corp.</i>	
26	(4th Cir. 2015) 789 F.3d 505.....	14, 27
27	<i>Junior Sports Magazines, Inc. v. Bonta</i>	
28	(9th Cir. 2023) 80 F.4th 1109.....	15, 16
	<i>Mullins v. Premier Nutrition Corp.</i>	
	(N.D. Cal. 2016) 178 F.Supp.3d 867	27, 32
	<i>NIFLA v. James</i>	
	(2d Cir. 2025) 160 F.4th 360	7, 12, 13
	<i>Obillo v. i-Health, Inc.</i>	
	(N.D. Cal., Mar. 18, 2025, No. 24-cv-2459) 2025 WL 844389	32

1	<i>ONY v. Cornerstone Therapeutics</i>	
2	(2d Cir. 2013) 720 F.3d 490.....	14
3	<i>Pacira BioSciences, Inc. v. American Society of Anesthesiologists, Inc.</i>	
4	(3d Cir. 2023) 63 F.4th 240	14
5	<i>Paul v. Watchtower Bible & Tract Society of New York, Inc.</i>	
6	(9th Cir. 1987) 819 F.2d 875.....	10
7	<i>Pearson v. Shalala</i>	
8	(D.C. Cir. 1999) 164 F.3d 650.....	16
9	<i>Planned Parenthood Arizona, Inc. v. Brnovich</i>	
10	(D. Ariz. 2016) 172 F.Supp.3d 1075	4
11	<i>Planned Parenthood Arizona, Inc. v. Humble</i>	
12	(9th Cir. 2014) 753 F.3d 905	23
13	<i>Planned Parenthood Fedn. of America, Inc. v. Center for Medical Progress</i>	
14	(N.D. Cal. 2020) 613 F.Supp.3d 1190	35
15	<i>Planned Parenthood of Tennessee and North Mississippi v. Slatery</i>	
16	(M.D. Tenn. 2021) 523 F.Supp.3d 985.....	31
17	<i>Siemens Credit Corp. v. Newlands</i>	
18	(N.D. Cal. 1994) 905 F.Supp. 757.....	35
19	<i>Torrey v. Infectious Diseases Society of America</i>	
20	(5th Cir. 2023) 86 F.4th 701	14
21	<i>U.S. v. Caronia</i>	
22	(2d Cir. 2012) 703 F.3d 149.....	15
23	<i>Waln v. Dysart School Dist.</i>	
24	(9th Cir. 2022) 54 F.4th 1152	19
25	<i>Constitutional Provisions</i>	
26	Cal. Const., art. I, § 1	22
27	Cal. Const., art. I, § 1.1.....	22
28	Cal. Const., art. I, § 4.....	18
	<i>California Statutes</i>	
	Bus. & Prof. Code, § 17200	8, 27
	Bus. & Prof. Code, § 17500	8, 27, 29, 32, 39, 40
	Civ. Code, § 47, subd. (c).....	38

1	Code Civ. Proc., § 437c, subd. (a)(1).....	8
2	Code Civ. Proc., § 437c, subd. (f)(1).....	8
3	Code Civ. Proc., § 437c, subd. (p)(2).....	8
4	Health & Saf. Code, § 123462.....	22
5	Health & Saf. Code, § 123467, subd. (b).....	22
6	Stats. 2022, ch. 629, § 5.....	22
7	<i>Other Statutes and Regulations</i>	
8	16 C.F.R. § 255.0(f).....	35
9	Ariz. Rev. Stat., § 36-2153(A)(1)(h) (eff. July 3, 2015).....	4
10	Ariz. Rev. Stat., § 36-2153(B) (eff. May 17, 2016).....	4
11	Ark. Code, § 20-16-1703(b)(9) (eff. July 22, 2015).....	4
12	Colo. Rev. Stat., § 12-30-120(2)(a) (eff. Apr. 14, 2023).....	6
13	Idaho Code, § 18-609(f) (eff. July 1, 2018).....	5
14	Ind. Code, § 16-34-2-1(a)(1)(E) (eff. July 1, 2021).....	5
15	Kan. Stat., § 65-6716(b) (eff. July 1, 2023).....	5
16	Ky. Rev. Stat., § 311.774(2) (eff. June 27, 2019).....	5
17	La. Stat., § 40:1061.11.1 (eff. Aug. 1, 2021).....	5
18	Mont. Code, § 50-20-707(5)(f) (eff. Oct. 1, 2021).....	5
19	N.D. Cent. Code, § 14-02.1-02(11)(b)(5) (eff. Mar. 22, 2019).....	5
20	Neb. Rev. Stat., § 28-327(1)(e) (eff. Sep. 1, 2019).....	5
21	Okla. Stat. tit. 63, § 1-756(B)(1) (eff. Nov. 1, 2019).....	5
22	S.D. Codified Laws, § 34-23A-10.1(1)(h) (eff. July 1, 2016).....	4
23	Tenn. Code, § 39-15-218(e) (eff. July 13, 2020).....	5
24	Utah Code, § 76-7-305(2)(a)(i)(D) (eff. May 8, 2018).....	5
25	W.Va. Code, § 16-2I-2(a)(4) (eff. July 9, 2021).....	5
26	<i>Other Authorities</i>	
27	18 Williston on Contracts	
28	(4th ed. 2025) § 52:83.....	35

1	“Antidote,” Dictionary.com	
2	< https://www.dictionary.com/browse/antidote > [as of Jan. 14, 2026].....	31
3	“Antidote,” Merriam-Webster.com	
4	< https://www.merriam-webster.com/dictionary/antidote > [as of Jan. 14, 2026].....	31
5	<i>NIFLA v. Bonta</i>	
6	(9th Cir., No. 25-2287, argued Oct. 9, 2025)	
7	< https://youtu.be/-UP8gTeLezw >	7
8	“Reverse,” Dictionary.com	
9	< https://www.dictionary.com/browse/reverse > [as of Jan. 14, 2026]	32
10	Stern, <i>Business & Professions Code Section 17200 Practice</i>	
11	(The Rutter Group 2025) ¶¶ 4:1, 4:21.....	27

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1 I. INTRODUCTION

2 Defendants provide free information and assistance to pregnant women who seek to reverse
3 their chemical abortions, principally by administration of supplemental progesterone. For nearly two
4 decades, licensed California healthcare providers have prescribed this treatment without incident. But
5 after the *Dobbs* decision, Attorney General Rob Bonta took aim at Defendants’ politically disfavored
6 speech, seeking to silence them through crippling fines and a permanent injunction. The Attorney
7 General’s suit would censor core First Amendment-protected speech that lacks economic
8 motive, faithfully recounts the results of numerous scientific studies and extensive lived experience,
9 and relates to an issue of significant public concern. Specifically, the AG alleges the defendant pro-life
10 charities are violating California’s commercial fraud statutes by publicly promoting peer-reviewed
11 scientific studies that affirm the safety and efficacy of “abortion pill reversal” (“APR”), with
12 no expectation of commercial profit.

13 By supplying progesterone shortly after ingesting mifepristone (the first drug in the two-pill
14 chemical abortion regimen), APR helps women seeking to save their pregnancies. APR remains entirely
15 legal in California and the FDA long ago concluded that progesterone can effectively “antagonize”
16 (i.e., reverse) the effects of mifepristone. Numerous credible scientific studies have likewise found the
17 same, with zero evidence that APR causes any harm. And after extensive discovery, the Attorney
18 General has not produced a single consumer complaint against APR, in California or elsewhere. Nor
19 has he produced *any* evidence that APR can harm women. This enforcement action relies not on
20 evidence of harm but on an alleged *absence* of evidence supporting APR’s safety and efficacy—a classic
21 improper “lack of substantiation” claim.

22 Accordingly, Defendants’ speech about APR does not violate state law. The Attorney General
23 concedes the statutes he invokes prohibit only *commercial* speech. But Defendants’ APR speech is *not*
24 commercial. Instead, Defendants provide information about APR entirely for free without any
25 commercial transaction or economic motive whatsoever. And in any event, their APR speech is not
26 false or misleading. Rather, they accurately describe non-falsified scientific findings of credible, peer-
27 reviewed studies, and a reasonable recipient would not be materially misled by any of this information.
28 Summary judgment is required for any of these reasons.

1 and was submitted to the FDA under the generic name mifepristone and the brand name Mifeprex as
2 part of a two-drug regimen to induce abortion. (Kraus Decl., ¶¶18-19; Valley Decl., ¶11-12.)

3 Mifepristone was developed as an abortifacient because it can compete with progesterone at
4 the receptor level. Early in vitro animal studies showed that increased progesterone concentrations
5 could displace mifepristone from the progesterone receptor, leading the drug’s inventor to conclude
6 that it acts “reversibly.” (Kraus Decl., ¶19.) Mifepristone alone is not fully effective, and its standalone
7 effectiveness is debated given the limited number of studies. (Kraus Decl., ¶21.) Accordingly, patients
8 follow mifepristone with a second drug—misoprostol—within one to two days to dilate the cervix and
9 induce muscle contractions to complete the abortion. (Kraus Decl., ¶¶18, 20; Valley Decl., ¶16.) In
10 combination, the two-drug regimen terminates 92-99% of early-term pregnancies. (Kraus Decl., ¶21.)
11 Although uncommon, some providers prescribe the chemotherapy drug methotrexate instead of
12 mifepristone. (Ex.22, APR Healthcare Professional Kit, pp.3, 9.)

13 In 2000, the FDA approved mifepristone tablets for chemical abortions up to seven weeks’
14 gestation and in 2016 extended that to ten weeks’ gestation. (Valley Decl., ¶11; Kraus Decl., ¶18;
15 Ex.53, Mifeprex Label.) In its pharmacological review—drawing in part on animal studies—the FDA
16 concluded that “the abortifacient activity of RU-486 is antagonized by progesterone allowing for
17 normal pregnancy and delivery.” (Valley Decl., ¶28; Ex.45, FDA Pharmacology Review.)

18 Some women report being coerced into taking mifepristone, and many other women regret
19 having decided to take the drug. Seeking to help a woman who came to him for care, Dr. Matthew
20 Harrison in 2006 made the first known attempt to use bioidentical progesterone to reverse
21 mifepristone’s effects in a human. His patient delivered a healthy baby girl. In 2008, Dr. George
22 Delgado helped another women in similar circumstances. (Compl., ¶26; Ex.22, APR Kit, p.5.) Then,
23 in 2012, Dr. Delgado published a retrospective six-patient case series describing attempts to reverse
24 mifepristone, reporting a 66% (4/6) pregnancy-continuation rate. (Compl., ¶27.) Comparing that rate
25 with the fetal survival rate after mifepristone alone, which mifepristone’s developer found to be 10-15%
26 (Kraus Decl., ¶21), Delgado concluded that progesterone likely reverses mifepristone’s effects in
27 humans as in animals. So, he proposed a treatment protocol using progesterone, which (over a decade
28 ago) he dubbed “abortion pill reversal” or “APR.” (Ex.40, 2012 Delgado study.) Although not as

1 robust as a randomized control trial, case series are the norm in pregnancy research due to the unique
2 ethical issues presented by experimenting on pregnant women. (Kraus Decl., ¶¶36-37; Decl. of
3 Michael New, Ph.D., ¶¶22-23, 29-30.)

4 After publishing the 2012 case series, Dr. Delgado founded a network and hotline to connect
5 women with providers willing to offer care through his nonprofit pregnancy help center. (Compl., ¶29.)
6 In 2018, Delgado and six co-authors published a much larger retrospective case series of 547 patients
7 who received APR within 72 hours. The case series showed that when patients were stratified by
8 treatment method, women who received progesterone intramuscularly had a fetal survival rate of 64%
9 (80/125), and women who received a high initial dose of oral progesterone followed by daily oral
10 progesterone had a fetal survival rate of 68% (21/31). (Ex.42, 2018 study.) The study authors reported
11 no adverse maternal health events and a birth-defect rate lower than in the general population. Based
12 on those findings, they concluded those two protocols represented viable treatment methods. (Ex.42.)
13 Recognizing that managing his referral network after publication of the 2018 results might exceed the
14 capacity of his small nonprofit, Delgado transferred it to Heartbeat International. (Godsey Decl., ¶11.)

15 **B. The Attacks on Abortion Pill Reversal**

16 Following APR's initial development, states began to require that information about it be
17 included in the informed consent-process for abortion. Arizona, Arkansas, and South Dakota enacted
18 measures in 2015 and 2016 on the strength of the existing six-patient case series.¹ Arkansas's and South
19 Dakota's informed-consent statutes went unchallenged, but Planned Parenthood sued over Arizona's
20 requirement. Arizona primarily defended its requirement by offering expert testimony on
21 mifepristone's mechanism of action and APR's biochemical basis.² Once Planned Parenthood survived
22 a motion to dismiss, however, Arizona modified the statute to require only that abortion-clinic staff
23 "inform the woman that the use of mifepristone alone to end a pregnancy is not always effective and
24 that she should immediately consult a physician if she would like more information."³ After Dr.

25 _____
26 ¹ (See Ariz. Rev. Stat., § 36-2153(A)(1)(h) (eff. July 3, 2015); Ark. Code, § 20-16-1703(b)(9) (eff. July
27 22, 2015); S.D. Codified Laws, § 34-23A-10.1(1)(h) (eff. July 1, 2016).)

28 ² (See Declaration of Mary Davenport, M.D., *Planned Parenthood Arizona, Inc. v. Brnovich*, No. 2:15-cv-
01022 (July 30, 2015), ECF No. 60-2.)

³ (Ariz. Rev. Stat., § 36-2153(B) (eff. May 17, 2016); see *Planned Parenthood Arizona, Inc. v. Brnovich*
(D. Ariz. 2016) 172 F.Supp.3d 1075.)

1 Delgado’s much larger 2018 case series, several additional states enacted similar informed-consent
2 statutes.⁴ When abortion providers challenged some of those statutes, federal district courts
3 preliminarily enjoined several of them (never permanently) as impermissibly compelling speech.⁵

4 Critics also sought to attack APR’s effectiveness. In 2015, in response to the earliest statutes,
5 abortion provider Dr. Daniel Grossman published a literature review that examined thirteen studies
6 and found 8-46% fetal survival after mifepristone absent any later intervention—much higher than the
7 10-15% identified by the drug’s developer. Based on this, he concluded that supplemental progesterone
8 is likely no better than doing nothing. Regardless, Dr. Grossman himself freely conceded that
9 progesterone “probably won’t hurt a woman if she’s under medical supervision.” (2 Creinin Dep.,
10 pp.547-549 & Ex.24.) But re-analysis of Dr. Grossman’s data, excluding studies he had improperly
11 included in violation of his own screening criteria, yielded an actual fetal survival rate of 10-23.3% with
12 mifepristone alone. (New Decl., ¶¶31-39; citing Appx. Ex.41; 2 Creinin Dep., pp.455-456.)

13 Following the publication of Dr. Delgado’s larger 2018 case series, Dr. Mitchell Creinin—a
14 prominent abortion provider, professor, and paid consultant for mifepristone’s manufacturer—took
15 up the mantle. His analysis of Grossman’s data showed that the fetal survival rate after mifepristone
16 alone was likely only 8%. (2 Creinin Dep., pp.453-457 & Ex.4; Appx. Ex.54.) So, he decided to perform
17 a randomized control trial with the express goal of debunking APR. (See Appx. Ex.55.) His trial
18 proposed recruiting forty women who were seeking a surgical abortion. Instead of obtaining an
19 immediate surgical abortion, they agreed to delay, in order to take mifepristone and then attempt to
20 reverse it with progesterone. If reversal was successful, then would proceed with surgical abortions at
21 the end of the two weeks. (1 Creinin Dep., p.296 & Exs.14-16.) The trial was flawed ab initio: Forty
22 women would be too small a number to have the requisite statistical power. (Swire-Thompson Dep.,
23 p.168; New Decl., ¶¶22-28.) And the study was riven with severe confounding variables, including a

24 _____
25 ⁴ (See, e.g., Utah Code, § 76-7-305(2)(a)(i)(D) (eff. May 8, 2018); Idaho Code, § 18-609(f) (eff. July 1,
26 2018); N.D. Cent. Code, § 14-02.1-02(11)(b)(5) (eff. Mar. 22, 2019); Ky. Rev. Stat., § 311.774(2) (eff.
27 June 27, 2019); Neb. Rev. Stat., § 28-327(1)(e) (eff. Sep. 1, 2019); Okla. Stat. tit. 63, § 1-756(B)(1) (eff.
28 Nov. 1, 2019); Tenn. Code, § 39-15-218(e) (eff. July 13, 2020); Ind. Code, § 16-34-2-1(a)(1)(E) (eff. July
1, 2021); W.Va. Code, § 16-2I-2(a)(4) (eff. July 9, 2021); La. Stat., § 40:1061.11.1 (eff. Aug. 1, 2021);
Mont. Code, § 50-20-707(5)(f) (eff. Oct. 1, 2021); Kan. Stat., § 65-6716(b) (eff. July 1, 2023).

⁵ (See *American Medical Assn. v. Stenehjem* (D.N.D. 2019) 412 F.Supp.3d 1134; *All-Options, Inc. v. Atty. General of Indiana* (S.D. Ind. 2021) 546 F.Supp.3d 754.)

1 significant number of prior abortions or clinically morbid obesity, and with randomization so flawed
2 that the control and treatment groups were very dissimilar. After recruiting a mere 12 study
3 participants, Dr. Creinin terminated the trial, citing safety concerns. But among those 12 women, the
4 fetal survival rate in the progesterone group was *twice* the rate in the mifepristone-only control group
5 and *only* the mifepristone control group had safety issues. (1 Creinin Dep., pp.310-314 & Exs.14-15.)

6 In light of the inconvenient results of his trial, Dr. Creinin held a meeting in Washington, D.C.,
7 with reproductive rights activists from across the country. (1 Creinin Dep., pp.358-370 & Exs.67-69.)
8 He published the trial results after that meeting, spotlighting its early termination due to safety
9 concerns and claiming that women should be advised that mifepristone without misoprostol could
10 result in life-threatening bleeding, *even with progesterone treatment*, by highlighting a single woman in
11 the progesterone group. (Creinin Dep., Ex.14.) In discovery, the medical records for the one woman in
12 the progesterone group whom Creinin claimed had hemorrhaged showed she did *not*, in fact,
13 hemorrhage. (1 Creinin Dep., pp.201-237, Ex.61.) Indeed, the Attorney General admits that the study
14 “does not establish” that APR is unsafe. (Appx. Ex.3, Resp. to FROGs, p.27.)

15 In parallel, abortion activists mounted a broad international pressure campaign to restrict APR,
16 to which some licensing boards and legislatures quickly caved. In 2016, the California Board of
17 Registered Nursing audited Heartbeat’s continuing-education courses concerning APR. (Godsey
18 Decl., ¶11.). The next year, the American College of Obstetricians and Gynecologists (“ACOG”)
19 published a “fact sheet” opining that APR lacked a scientific basis. (ACOG Dep., pp.27-33 & Ex.2.)
20 Some other professional organizations abroad then uncritically adopted ACOG’s position. (See
21 Compl., ¶45(c)-(d) [United Kingdom and Canada].) But the Nursing Board’s audit came to nothing
22 (Godsey Decl., ¶11), and discovery showed that Drs. Grossman and Creinin contributed to ACOG’s
23 foundational fact sheet, that it was based solely on their flawed studies, and that it was always a political
24 advocacy statement, not a medical recommendation. (ACOG Dep., pp.27-33 & Ex.2.)

25 Critics’ latest strategy has been to harness government power to suppress public knowledge
26 about APR. In 2023, Colorado enacted a statute branding APR unprofessional conduct. (Colo. Rev.
27 Stat., § 12-30-120(2)(a) (eff. Apr. 14, 2023).) The effort backfired, and the statute was permanently
28 enjoined without an appeal. (*Bella Health & Wellness v. Weiser* (D. Colo. 2025) 793 F.Supp.3d 1320.)

1 Other states have pursued consumer-fraud theories against APR providers. But that tack has similarly
2 backfired. New York has been enjoined on First Amendment grounds from attempting to sue APR
3 providers and California likely also will be. (*NIFLA v. James* (2d Cir. 2025) 160 F.4th 360; *NIFLA v.*
4 *Bonta* (9th Cir., No. 25-2287, argued Oct. 9, 2025) <<https://youtu.be/-UP8gTeLezw>>.)

5 As stated, discovery in this case has overwhelmingly disproved claims that APR (1) is no more
6 effective than doing nothing and (2) could lead to life-threatening hemorrhaging. Instead, Plaintiff
7 Attorney General Rob Bonta has abandoned all pretense of being able to prove that APR does not work.
8 His final theory is that the burden is on Defendants to substantiate that it *does* work or be enjoined from
9 offering a *completely free, safe, and effective service* to needy women who *want* an alternative option. But
10 that gets state law and the First Amendment’s “breathing space” for important speech like this exactly
11 backwards. Moreover, because Defendants’ operations are purely charitable with no economic or
12 commercial motive whatsoever, the Attorney General must survive the strictest of scrutiny, which he
13 has conceded he cannot do. (Appx. Ex.18, RFA No. 13.)

14 **C. The Parties: The Attorney General and Pro-Life Nonprofits**

15 Defendants are pro-life 501(c)(3) nonprofit organizations. Heartbeat International, Inc. is an
16 Ohio-based Christian trade association that provides affiliated pregnancy help centers (“PHCs”) with
17 informational resources such as model policies and procedures. Through its wholly owned subsidiary,
18 Abortion Pill Rescue Network, LLC, Heartbeat also operates the nationwide Abortion Pill Rescue
19 Network and Hotline which connects women who have begun the multistep chemical abortion protocol
20 but want to attempt to save their pregnancy with the aid of medical professionals. RealOptions is a
21 nonprofit pregnancy help organization that operates four community care clinics in California and
22 provides free APR services to women who request them. (Ex.1, Compl., ¶¶10-11; Godsey Decl., ¶¶2-
23 10; Keirns Decl., ¶¶3-8.)

24 Plaintiff is the Attorney General of the State of California, Rob Bonta. After excoriating the
25 Supreme Court over *Dobbs* in 2022, Bonta promised to use his power as attorney general to aggressively
26 advance abortion rights. (Appx. Ex.61, Ex.63.) He created a new “Reproductive Justice Unit” within
27 the Department of Justice and a statewide “Reproductive Rights Taskforce” to coordinate the unit’s
28 work with sympathetic local counsel across California. (Ex.65.) What began weeks after *Dobbs* with an

1 in the pleadings.” (*Hutton v. Fidelity Natl. Title Co.* (2013) 213 Cal.App.4th 486, 493, original italics.)
2 Summary judgment is a “favored remedy” in cases implicating First Amendment rights. (*Shulman v.*
3 *Group W Productions, Inc.* (1998) 18 Cal.4th 200, 228.)

4 IV. ARGUMENT

5 A. Defendants’ Constitutional Rights Provide Dispositive Affirmative Defenses.

6 This case does not present an ordinary dispute about false or misleading commercial
7 advertising. The Attorney General invokes the FAL and UCL to suppress and punish Defendants’
8 speech and ministry on a question that divides the public and the medical community: what information
9 women may receive, and what reproductive options they should be allowed to pursue, after ingesting
10 mifepristone. That enforcement campaign collides with constitutional limits that sit above the statutes
11 the Attorney General wields. Because his theory depends on restricting protected expression and
12 religious exercise—and because he selectively targets one side of an ongoing debate—the constitutional
13 defenses Defendants pleaded do not merely mitigate relief; they defeat the claims as applied.

14 The Supreme Court has explained that “the solicitation of charitable contributions is protected
15 speech” (*Riley v. Natl. Fedn. of the Blind of North Carolina, Inc.* (1988) 487 U.S. 781, 789), and that
16 charities often combine solicitation with “dissemination of information, discussion, and advocacy of
17 public issues, an activity clearly protected by the First Amendment.” (*Secretary of State of Maryland v.*
18 *Joseph H. Munson Co., Inc.* (1984) 467 U.S. 947, 961.) When a charity does engage in fraud, the least
19 restrictive means of achieving a compelling government interest—i.e., strict scrutiny—is a “properly
20 tailored fraud action” with its “[e]xacting proof requirements,” applying traditional common-law
21 elements (including *intent to mislead*) proved by clear and convincing evidence. (*Illinois v. Telemarketing*
22 *Associates, Inc.* (2003) 538 U.S. 600, 620 & fn.9.)⁶

23
24 ⁶ The same rule applies in the Free Exercise context. In *Molko*, the Unification Church practiced
25 “Heavenly Deception,” meaning essentially recruiting people to attend spiritual retreats by lying about
26 the retreats’ operator. The lies were not about the church’s religious beliefs, but were part of its
27 doctrine. David Molko was lured in through these lies and ultimately made a \$6,000 gift that he sought
28 back via a fraud claim. “After careful consideration,” the California Supreme Court held that “we
perceive no such less restrictive alternative available” than tort liability in fraud. (*Molko v. Holy Spirit*
Assn. (1988) 46 Cal.3d 1092, 1114-1118.) In *Paul*, the Ninth Circuit applied a similar analysis to tort
liability for “shunning.” There, the Jehovah’s Witnesses applied a practice of prohibiting current
members from associating with or talking to former members—including family members. After she
left, Ms. Janice Paul brought various common law tort claims such as “outrageous conduct” and

1 Here, however, the AG admits that he has no evidence that anybody has ever complained about
2 or been harmed by APR. (UMF #25.) And APR *itself* remains entirely legal. Thus, he admits he cannot,
3 and will not even try to, satisfy strict scrutiny. (UMF #17.) Nor can he satisfy intermediate scrutiny, as
4 he must here even if Defendants’ speech were commercial (which it is not), because he seeks to impose
5 a content-based regulation that gives rise to a *concern* or *risk* that viewpoint discrimination is afoot and
6 on speech not “inherently misleading.” On those admissions, if Defendants’ speech is protected *at all*,
7 this victimless enforcement action must fail under Defendants’ and their clients’ constitutional rights
8 to Free Speech, Free Exercise of Religion, Substantive Due Process/Privacy, and Equal Protection.

9 **1. Plaintiff’s Claims Violate Free Speech Protections.**

10 The Attorney General’s FAL and UCL theories seek to punish and deter—based expressly on
11 content—Defendants’ speech about APR, i.e., speech addressing abortion, medical ethics, emerging
12 scientific evidence, and the choices women may consider after ingesting mifepristone. That speech lies
13 at the core of the Free Speech guarantees of the U.S. Constitution and the California Constitution.
14 Under controlling Supreme Court and California authority, the State may not impose content-based
15 restrictions on pro-life organizations and physicians for expressing a contested view about a lawful
16 medical option, or for helping women locate physicians who share that view—particularly where it has
17 myriad less restrictive means of accomplishing its asserted interests.

18 Under the Free Speech Clause, the baseline rule is that government “has no power to restrict
19 expression because of its message, its ideas, its subject matter, or its content.” (*Reed v. Town of Gilbert*
20 (2015) 576 U.S. 155, 163.) A restriction on “fraud” or “lies” is inherently a restriction based on
21 “content.” (*Free Speech Coalition, Inc. v. Paxton* (2025) 606 U.S. 461, 492; *U.S. v. Alvarez* (2012) 567
22 U.S. 709, 716-717 [plur. opn.].) Content-based restrictions generally must satisfy strict scrutiny. (*Reed*,
23 *supra*, 576 U.S. at p.164.) Content-based restrictions of *commercial* speech, however, generally must
24 satisfy intermediate scrutiny. (*Central Hudson Gas & Electric Corp. v. Public Service Com.* (1980) 447 U.S.
25 557, 564.) Further, while unquestionably false, or inherently misleading, commercial speech may be
26 restricted as such without such scrutiny (*id.* at pp.563-564), content-based restrictions on only
27 defamation due to the practice of shunning. In ultimately holding that the Free Exercise Clause barred
28 her claim, the Ninth Circuit held that strict scrutiny required a greater “threat to the peace, safety, or
morality of the community” than the alleged emotional harm. (*Paul v. Watchtower Bible & Tract Society*
of New York, Inc. (9th Cir. 1987) 819 F.2d 875, 877, 883.)

1 *potentially* misleading commercial speech still must satisfy intermediate scrutiny. (*American Academy of*
2 *Pain Management v. Joseph* (9th Cir. 2004) 353 F.3d 1099, 1107).

3 Here Defendants’ speech is not commercial, and thus restricting it based on content triggers
4 strict scrutiny (which the Attorney General concedes he does not meet). Even if it were commercial,
5 the Attorney General’s content-based enforcement of the FAL and UCL in this action still triggers at
6 least heightened, i.e., intermediate review. (*Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 566-567.)
7 But the lack of evidence of any harm, coupled with the availability of lesser restrictive means (e.g., a
8 counter-information campaign, or outlawing APR itself) confirm the Attorney General cannot satisfy
9 such review. Lastly, the Attorney General’s *selective viewpoint-based enforcement* triggers the strictest of
10 scrutiny, even if Defendants’ speech were commercial (which it is not). For each of these independent
11 reasons, the Attorney General’s enforcement action violates the First Amendment.

12 **a. The challenged APR communications are core, noncommercial speech on**
13 **matters of public concern and thus are protected by strict scrutiny review.**

14 The Complaint itself confirms that the challenged communications are not advertisements
15 proposing a commercial transaction but rather advocacy, education, and religiously motivated speech
16 about abortion and APR. The Attorney General thus must satisfy strict scrutiny. The Attorney General
17 challenges websites, a hotline, live chat, protocols, FAQs, and podcasts that (1) discuss APR,
18 (2) connect women to physicians willing to prescribe progesterone, and (3) describe scientific literature
19 and success-rate data. None of those communications offer APR services for sale. Nor does Heartbeat
20 treat patients or bill women. Providers in the Abortion Pill Rescue Network, including at RealOptions,
21 typically provide services without any out-of-pocket cost to a patient. (UMF #1-17.)

22 California jurisprudence usually defines commercial speech as speech that “does no more than
23 propose a commercial transaction.” (*Bernardo v. Planned Parenthood Fedn. of America* (2004) 115
24 Cal.App.4th 322, 343, cleaned up.) Commercial speech exists only where there is “(1) a commercial
25 speaker, (2) an intended commercial audience, and (3) representations of fact of a commercial nature.”
26 (*Id.* at pp.347-348; *Stewart v. Rolling Stone LLC* (2010) 181 Cal.App.4th 664, 683-684.) California courts
27 follow Supreme Court precedent recognizing that when the question is “close,” courts should
28 consider, among other things, whether the speaker has an *economic* motivation. (*Kasky v. Nike, Inc.*

1 (2002) 27 Cal.4th 939, 956-957; citing *Bolger v. Youngs Drug Products Corp.* (1983) 463 U.S. 60, 66-67.)
2 Courts have more recently recognized that economic motive must be “the *primary* purpose for
3 speaking.” (*Ariix, LLC v. NutriSearch Corp.* (9th Cir. 2021) 985 F.3d 1107, 1117, emphasis added.)
4 Further, speech does not “retain[] its commercial character when it is inextricably intertwined with
5 otherwise fully protected speech.” (*Riley, supra*, 487 U.S. at p.796.) Thus, “[a] publication is *not* a
6 commercial advertisement if it ‘communicated information, expressed opinion, recited grievances,
7 protested claimed abuses, and sought financial support on behalf of a movement whose existence and
8 objectives are matters of the highest public interest and concern.’” (*Pines v. Tomson* (1984) 160
9 Cal.App.3d 370, 392–393, emphasis added; quoting *Pittsburgh Press Co. v. Pittsburgh Com. on Human*
10 *Relations* (1973) 413 U.S. 376, 385.)

11 Here, the speakers are a nonprofit association advocating life-affirming options and a nonprofit
12 pregnancy clinic offering a wide range of free or low-cost services. Their APR information and services
13 are entirely free. The audience includes women facing an abortion decision or regretting one, as well as
14 supporters and the broader public engaged in debate over abortion and emerging medical practices. The
15 content concerns whether and how progesterone may support a pregnancy after mifepristone, the state
16 of the evidence, potential risks and benefits, and the moral implications of providing or refusing that
17 option. (UMF #1-17.) In sum, Defendants’ APR statements could qualify as commercial speech only if
18 *Bernardo’s* three criteria are met, and the AG has not shown that even *one* is. Consequently,
19 Defendants’ APR statements are noncommercial advocacy on a matter of profound public concern—
20 not mere product advertising. (See *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 419-421.)

21 The Second Circuit recently recognized the same in *NIFLA v. James* (2d Cir. 2025) 160 F.4th
22 360. There, the Court held that NIFLA’s free and religiously motivated provision of information about
23 APR was quintessentially non-commercial. (*Id.* at pp.376-378.) While the Court observed that the case
24 before it did not present facts involving a party that provides APR services or speaks about APR in its
25 fundraising (*id.*), it relied on the Supreme Court’s decision in *In re Primus* (1978) 436 U.S. 412, 422,
26 which did involve a nonprofit that provided free services and raised funds from them. *Primus* teaches
27 that an ACLU lawyer’s solicitation of free legal *services* for political and civil-liberties objectives is fully
28 protected speech. (See *id.*) Further, the prospect the ACLU could recover substantial attorney fees as

1 a result did not alter the conclusion, in part because “the same situation obtains with voluntarily
2 contributions and foundation support, which also may rise with ACLU victories.” (*Id.* at p.431.) Thus,
3 under *NIFLA v. James and Primus*, Defendants’ free and religiously motivated provision of information
4 about APR is not commercial speech. This is true even if “voluntary contributions and foundation
5 support” increase due to promoting APR in fundraising or (in RealOptions’s case) providing APR
6 services. (*Primus, supra*, 436 U.S. at pp.421, 431; accord *Greater Baltimore Center for Pregnancy*
7 *Concerns, Inc. v. Mayor and City Council of Baltimore* (4th Cir. 2018) 879 F.3d 101, 108 [“A morally and
8 religiously motivated offering of free services” is not commercial speech].)

9 Because the APR communications are noncommercial, core political and scientific speech on a
10 matter of public concern, the Attorney General must satisfy strict scrutiny. Indeed, under *Reed, supra*,
11 576 U.S. at p.163, a regulation is content-based if it “applies to particular speech because of the topic
12 discussed or the idea or message expressed.” Such restrictions are “presumptively unconstitutional”
13 and survive only if the government proves they are narrowly tailored to serve a compelling interest. (*Id.*
14 at pp.163-164; *NIFLA v. Becerra* (2018) 585 U.S. 755, 771-772.) Here, targeting Defendants’ speech
15 because it is allegedly false or misleading necessarily regulates based on the “message expressed.”
16 (*Reed, supra*, 576 U.S. at p.163.) The AG thus must satisfy strict scrutiny, which he concededly makes
17 no attempt to do. (UMF #17.) Summary judgment should be granted for this reason alone.

18 **b. Even if some communications are treated as commercial speech, the Attorney**
19 **General’s claims still fail because heightened scrutiny applies.**

20 The First Amendment would bar this enforcement action even assuming, arguendo,
21 Defendants’ speech is commercial. Indeed, even in a commercial context, “[t]he First Amendment
22 directs us to be especially skeptical of regulations that seek to keep people in the dark for what the
23 government perceives to be their own good.” (*Sorrell, supra*, 564 U.S. at p.577, internal quotes
24 omitted.) Commercial speech “furthers the societal interest in the fullest possible dissemination of
25 information,” and “[p]eople will perceive their own best interests if only they are well enough
26 informed.” (*Central Hudson, supra*, 447 U.S. at pp.561-562.) Thus, where a commercial speech
27 restriction “is directed at certain content and is aimed at particular speakers,” it must undergo
28 “heightened scrutiny.” (*Sorrell, supra*, 564 U.S. at pp.567, 571.) Here, the Attorney General is

1 censoring Defendants’ speech precisely because of its content and speaker, and thus he must at least
2 satisfy “heightened,” or intermediate scrutiny, which he woefully fails. (See § IV.A.1.b.i, *infra*.)

3 To be sure, *inherently* false or misleading commercial information lacks such protection. But a
4 “[s]tate cannot foreclose the exercise of constitutional rights by mere labels.” (*NAACP v. Button* (1963)
5 371 U.S. 415, 429.) Courts thus apply a Scientific Debate Privilege emanating from the First
6 Amendment which bars actions against medical organizations that publish debated guidance on how to
7 treat certain conditions. (*Torrey v. Infectious Diseases Society of America* (5th Cir. 2023) 86 F.4th 701,
8 704-707; *Pacira BioSciences, Inc. v. American Society of Anesthesiologists, Inc.* (3d Cir. 2023) 63 F.4th 240,
9 245-249.) So long as the supporting information was not “fabricated” or “falsified,” it cannot be
10 restricted because of its alleged falsity, even in a commercial context. (See *ONY v. Cornerstone*
11 *Therapeutics* (2d Cir. 2013) 720 F.3d 490, 497.) This rule flows from the Free Speech Clause’s
12 fact/opinion dichotomy: matters of “scientific debate” are matters of “opinion,” and the First
13 Amendment precludes penalizing statements of opinion based on content. (See *Bernardo, supra*, 115
14 Cal.App.4th at pp.348-349; *In re GNC Corp.* (4th Cir. 2015) 789 F.3d 505, 515.)

15 Here, Defendants’ speech is *at worst* the subject of good-faith scientific debate. There is no
16 evidence of bad faith or data fabrication underlying Heartbeat’s offer of guidance to members of the
17 APR Network, or in RealOptions’s speech about APR. (UMF #18.) As noted above, their APR speech
18 is based on peer-reviewed scientific findings, including the 2018 Delgado study. Also importantly, peer-
19 reviewed case series like Delgado’s are the *norm* in obstetrics and gynecology contexts like this, where
20 randomized clinical trials are fraught with ethical concerns. (UMF #19.)

21 The Scientific Debate Privilege is consistent with the Supreme Court’s decision in *U.S. v.*
22 *Alvarez* (2012) 567 U.S. 709. There, two plurality opinions required heightened scrutiny for
23 government restrictions on allegedly “false” speech. (*Id.* at p.725 [plur. opn.]; *id.* at pp.730-731 [conc.
24 opn. of Breyer, J.].) Both opinions recognized that permissible restrictions on false speech involve an
25 associated “legally cognizable harm,” no matter the context (e.g., financial or property loss, disruption
26 of court proceedings). (*Id.* at p.719 [plur. opn.]; *id.* at p.734 [conc. opn. of Breyer, J.].) If, instead, the
27 government could restrict alleged falsity based on fostering “truthful discourse alone,” it would “cast[]
28 a chill” on free speech in the marketplace of ideas, which requires breathing space for robust debate.

1 (*Id.* at p.723 [plur. opn.]; *id.* at p.736 [conc. opn. of Breyer, J.].) The mere “risk” of such censorship
2 requires at least intermediate scrutiny. The California Supreme Court recently recognized the same in
3 *Los Angeles Police Protective League v. City of Los Angeles* (2025) 18 Cal.5th 970. There, relying on
4 *Alvarez*, it held that restrictions on even unprotected false factual statements are subject to heightened
5 scrutiny where there is “a consequential risk of deterring protected speech,” i.e., “truthful” or at least
6 “*not knowingly false*” speech on an important topic. (*Id.*, emphasis added.)

7 The same principles apply here. The AG is targeting Defendants’ speech about APR based on
8 its content, despite Defendants’ good-faith understanding that their speech is *true* in light of credible,
9 peer-reviewed science. The enforcement action also occurs in a highly political context, particularly in
10 the aftermath of *Dobbs*. As applied here, where Defendants’ speech at minimum involves a matter of
11 good-faith scientific debate on a matter of utmost public concern, there is at least a “risk” of chilling
12 *true*, protected speech, and “ensorious selectivity.” Thus, heightened scrutiny applies.⁷

13 **i. The Attorney General fails heightened (intermediate) scrutiny.**

14 Under *Central Hudson* intermediate scrutiny, the State must show (1) a substantial
15 governmental interest; (2) the regulation directly advances that interest; and (3) it is not more extensive
16 than necessary, i.e., “narrower restrictions on expression would serve its interest just as well.” (*Central*
17 *Hudson, supra*, 447 U.S. at pp.563, 565.) Here, censoring Defendants’ speech about APR does not
18 directly advance a substantial interest where APR itself remains lawful in California. (See *U.S. v.*
19 *Caronia* (2d Cir. 2012) 703 F.3d 149, 162-169 [finding same as to content restriction on speech *about an*
20 *off-label drug use, where the use itself “is not unlawful”*].) Similarly, intermediate scrutiny in the
21 commercial speech context still demands “evidence establishing that the harms [the state] recites are
22 real, and that its speech restriction will *significantly* alleviate those harms.” (*Junior Sports Magazines,*
23 *Inc. v. Bonta* (9th Cir. 2023) 80 F.4th 1109, 1117, internal quotes omitted.) Here, the Attorney General
24 does not have even a single consumer complaint about APR, and he has no evidence that APR is not
25 safe or effective. He merely asserts (wrongly) that APR *lacks* evidentiary support—which fails to satisfy
26 *his* burden “to provide evidence” that his enforcement action will alleviate “real” “harms.” (*Junior*

27 _____
28 ⁷ Even assuming, arguendo, there is no such risk, Defendants’ true statements drawn from non-
falsified, peer-reviewed scientific studies are at worst only *potentially* misleading, which still triggers
intermediate scrutiny. (*American Academy of Pain Management, supra*, 353 F.3d at p.1107.)

1 *Sports Magazines, supra*, 80 F.4th at p.1117.)

2 Lesser restrictive means also abound. For one, the state could outlaw APR itself (even though
3 progesterone use to preserve pregnancies is widely accepted). Additionally, the Attorney General could
4 conduct a “public-information campaign” informing women of his view of APR. (*NIFLA v. Becerra*
5 (2018) 585 U.S. 755, 775.) Finally, disclaimers in lieu of *suppression* are classically less restrictive.
6 (*Pearson v. Shalala* (D.C. Cir. 1999) 164 F.3d 650, 657.) While disclaimers in this highly fraught context
7 are themselves questionable, see *infra*, the fact the Attorney General has largely turned to censorship
8 in lieu of disclaimers here confirms his failure to satisfy heightened scrutiny. (UMF #18-27.)

9 **ii. The Attorney General also fails *Zauderer* review.**

10 Regulations that compel disclosures of “purely factual and uncontroversial” commercial
11 speech are subject to *Zauderer* review. (*NIFLA, supra*, 585 U.S. at p.768; quoting *Zauderer v. Office of*
12 *Disciplinary Counsel* (1985) 471 U.S. 626, 651.) “The *Zauderer* test, as applied in *NIFLA*, contains three
13 inquiries: whether the notice is (1) purely factual, (2) noncontroversial, and (3) not unjustified or unduly
14 burdensome.” (*American Beverage Assn. v. San Francisco* (9th Cir. 2019) 916 F.3d 749, 756 [en banc].)

15 No one could mistake the scientifically unsupported statements the Attorney General wants to
16 force Defendants to make about APR to be “purely factual and uncontroversial.” Only a little less
17 obvious is that they independently are unduly burdensome. Consider the sugar warning San Francisco
18 tried to force beverage makers to place on product labels, at issue in *American Beverage Association*. The
19 en banc Ninth Circuit observed that the warning would “drown out” the beverage manufacturers’
20 message and for that reason alone was unduly burdensome and inadequately tailored. (*American*
21 *Beverage Assn., supra*, 916 F.3d at pp.756-758.) The Attorney General’s theory requires far more
22 intrusive compelled speech than the ordinance at issue in *American Beverage Association*, insisting that
23 Defendants either (1) adopt the State’s contested view that APR is unsafe and ineffective, or (2) remain
24 silent about APR’s potential to help women continue pregnancies. Accordingly, the Attorney General’s
25 enforcement action fails even if Defendants’ speech were commercial (which it isn’t).

26 **c. The Attorney General’s FAL/UCL enforcement is viewpoint-based and thus**
27 **presumptively unconstitutional.**

28 The Complaint and the Attorney General’s briefing also confirm that this enforcement action

1 is motivated by disagreement with the *viewpoint* Defendants express. The State has not brought parallel
2 actions against abortion providers, pharmaceutical companies, or pro-choice organizations that speak
3 about mifepristone’s safety and efficacy in ways that even the Attorney General’s own scientific
4 expert’s testimony suggests is deceptive, or who advocate the off-label, unstudied use of progesterone
5 in gender affirming care. Instead, the AG targets pro-life organizations that speak optimistically about
6 progesterone’s potential to safely support pregnancies after mifepristone. (UMF #28-59.)

7 “Viewpoint discrimination is ... an egregious form of content discrimination.” (*Rosenberger v.*
8 *University of Virginia* (1995) 515 U.S. 819, 829.) This protection applies even in the “commercial
9 marketplace ... where ideas and information flourish” and “where information can save lives.”
10 (*Sorrell, supra*, 564 U.S. at pp.566, 579.) Even categorically unprotected speech cannot be prohibited
11 based on viewpoint. (*R.A.V. v. City of St. Paul* (1992) 505 U.S. 377 [viewpoint restriction on fighting
12 words violated First Amendment].) Laws that distinguish favored from disfavored speech “on the basis
13 of the ideas or views expressed” are content-based, and even facially neutral rules are content-based if
14 they cannot be justified without reference to the regulated speech. (*Reed, supra*, 576 U.S. at pp.164-
15 165.) Thus, the government can engage in “selective enforcement” of a statute in a manner that triggers
16 Free Speech protections. (*Frederick Douglass Found., Inc. v. Dist. of Columbia* (D.C. Cir. 2023) 82 F.4th
17 1122, 1141; *Hoye v. City of Oakland* (9th Cir. 2011) 653 F.3d 835, 849-852.)

18 Here, the Attorney General’s theory cannot be described without reference to viewpoint. The
19 Complaint alleges it is unlawful for Defendants to say APR “reverses” a chemical abortion (despite
20 over a decade of unobjectionable use of the term); that APR is “effective” or “has been shown” to
21 increase continuation rates; that APR has a 64–68% success rate and no increase in birth defects; or that
22 “thousands of lives” have been saved—while the State takes no issue with messages that describe
23 chemical abortion as safe, effective, and rarely harmful. (See Compl., ¶97.) The Attorney General’s
24 theory emphasizes that Defendants’ speech is problematic because it promotes APR and may persuade
25 women to save their child, assisted by progesterone prescribed by a licensed healthcare professional.
26 (UMF #220.) That is viewpoint discrimination: the State tolerates one side of an ongoing medical and
27 moral debate while threatening enforcement against the other side. (*R.A.V., supra*, 505 U.S. at p.392
28 [government cannot “license one side of a debate to fight freestyle,” while imposing more restrictive

1 rules on the other side].) *Reed, R.A.V.*, and *NIFLA* subject that regime to strict scrutiny, which the
2 Attorney General *admits* he cannot meet. (UMF #59.) (See *NIFLA, supra*, 585 U.S. at pp.771-773;
3 *Minnesota Voters Alliance v. Mansky* (2018) 585 U.S. 1, 20-21.) Summary judgment, or at minimum
4 summary adjudication, should be granted in Defendants’ favor for this separate reason, too.

5 **2. The Free Exercise Clauses of Both the California and U.S. Constitutions**
6 **Independently Bar This Enforcement Action.**

7 Defendants plead Free Exercise defenses under both the federal and California Constitutions.
8 They allege the Attorney General’s enforcement of the FAL and UCL burdens their religiously
9 motivated work offering APR as a charitable, pro-life ministry. (See Answer ¶¶1-3, 52-57, 90-93;
10 Affirmative Defenses (Twenty-First & Twenty-Second).)

11 **a. Non-neutral or non-generally applicable enforcement triggers strict scrutiny.**

12 The Free Exercise Clause protects not only inward belief but “the ability of [religious believers]
13 to live out their faiths in daily life through ‘the performance of (or abstention from) physical acts.’”
14 (*Kennedy v. Bremerton School Dist.* (2022) 597 U.S. 507, 524.) It is true that a neutral and generally
15 applicable law that incidentally burdens religious exercise is not subject to Free Exercise strict scrutiny.
16 (*Employment Div., Dept. of Human Resources v. Smith* (1990) 494 U.S. 872, 879-880.) But neutrality is
17 absent where the object is “to infringe upon or restrict practices because of their religious motivation.”
18 (*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah (Lukumi)* (1993) 508 U.S. 520, 533.) And
19 general applicability is absent where the government prohibits religious conduct while permitting
20 secular conduct that undermines the asserted interest in a similar way, or where government officials
21 have sufficiently broad discretion to grant exemptions that there is a risk they will do so in secular cases
22 but deny them in religious ones. (*Fulton v. City of Philadelphia* (2021) 593 U.S. 522, 534; *Tandon v.*
23 *Newsom* (2021) 593 U.S. 61, 62 [per curiam].)

24 California law likewise protects free exercise under the state Constitution and, when state
25 action substantially burdens religious exercise, requires the State to justify that burden under strict
26 scrutiny. (Cal. Const., art. I, § 4; *Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143, 1179
27 [plur. opn.]; *Civil Rights Dept. v. Cathy’s Creations, Inc.* (2025) 109 Cal.App.5th 204, 272; *Valov v. Dept.*
28 *of Motor Vehicles* (2005) 132 Cal.App.4th 1113, 1126 & fn.7.)

1 **b. The FAL and UCL are not generally applicable.**

2 The FAL and UCL aim to stop commercial fraud: their purposes are “the preservation of fair
3 business competition” and preventing “injuries to consumers.” (*Cel-Tech Communications, Inc. v. Los*
4 *Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) Although the business fraud statutes are
5 broad, a single exemption for a “comparable secular activity” is enough to defeat general applicability.
6 (*Tandon, supra*, 593 U.S. at p.62.) Here, however, the statutes expressly do not apply to “public
7 entit[ies]” regardless of their “involvement in commercial activity” (*California Medical Assn., Inc. v.*
8 *University of California* (2000) 79 Cal.App.4th 542, 551 & fn.14) and “even when those entities are
9 acting in a nongovernmental capacity.” (*Rincon Band of Luiseño Mission Indians v. Flynt* (2021) 70
10 Cal.App.5th 1059, 1090.) For example, a court held the UCL could not be used to challenge a public
11 California Milk Producers Advisory Board advertising campaign that falsely and misleadingly
12 “portray[ed] spacious, grassy pastures on beautiful, rolling hills with a few cows grazing and wandering
13 about” when that is not how dairy cows are actually raised. (*PETA, Inc. v. California Milk Producers*
14 *Advisory Bd.* (2005) 125 Cal.App.4th 871, 876-881.) Under the same public-entity exemption, a hospital
15 run by a public university could advertise and offer APR—making the very statements Defendants do—
16 with no fear of prosecution. That disparity triggers strict scrutiny.

17 **c. The Attorney General’s enforcement is not neutral or generally applicable.**

18 Independently, the Attorney General’s use of the FAL and UCL to target Defendants’ APR
19 communications is neither neutral nor generally applicable. Defendants operate APR as a charitable
20 endeavor rooted in religious convictions. They provide information and services at no charge and
21 maintain that they have no commercial motive. (UMF #1-17.) The State is not using the FAL and UCL
22 to police routine commercial advertising; it is wielding those statutes to suppress religiously motivated
23 counseling and charitable medical referrals in a heavily contested arena.

24 Government action is not neutral when it targets religious conduct for distinctive treatment or
25 restricts practices because of religious motivation. (*Lukumi, supra*, 508 U.S. at p.533.) Thus, if a rule is
26 not *enforced* against certain secular activity, then it cannot be enforced against comparable religious
27 activity, unless strict scrutiny is satisfied. (*Waln v. Dysart School Dist.* (9th Cir. 2022) 54 F.4th 1152,
28 1159.) The AG has brought this enforcement action against pro-life ministries and pregnancy-help

1 organizations for APR speech and referrals offered free of charge, while leaving other disputed health
2 messaging unchallenged. (UMF #51-59.) Nor has the AG lifted a finger to stop the *actual practice of*
3 *APR itself*, which obviously would cause more harm if neither safe nor effective. (UMF #51.) That
4 pattern places this case outside the “across-the-board” regulation contemplated in *Smith*. (See *Bates v.*
5 *Pakseresht* (9th Cir. 2025) 146 F.4th 772, 792 “[I]n practice,” the government’s actions “work to
6 burden [those] with sincere religious beliefs” about the disputed matter “and almost no others”),
7 internal quotations omitted; *Fellowship of Christian Athletes v. San Jose Unified School Dist.* (9th Cir.
8 2023) 82 F.4th 664, 687 [en banc] [enforcement revealed “individualized exemptions” in practice].)

9 Also, the Attorney General’s liability theory depends on discretionary judgments about which
10 contested medical statements are “misleading” enough to warrant penalties and injunctive
11 suppression—judgments that invite individualized, value-laden determinations. (Compl., ¶¶1-7, 19-37,
12 52-73.) In a context suffused with moral and religious disagreement, that discretion mirrors the
13 individualized-exemption problem identified in *Fulton, supra*, 593 U.S. at p.534, and the AG has in fact
14 selectively focused on religiously motivated APR speech while leaving comparable secular messaging
15 untouched. That triggers strict scrutiny, which the AG does not attempt to meet. (UMF #17.)

16 **3. Privacy Rights Under the U.S. Constitution, California Constitution, and** 17 **Reproductive Privacy Act also Protect Defendants.**

18 The AG’s theory also burdens an intensely personal decision that constitutional and statutory
19 law place beyond the State’s power to coerce or skew: whether a pregnant woman will attempt to
20 continue her pregnancy after beginning a chemical abortion. By threatening penalties and sweeping
21 injunctions aimed at the counseling, referrals, and clinical assistance that make APR possible, the State
22 chills women’s access to information and medical help at the moment a woman must decide whether
23 to continue her pregnancy. That intrusion triggers heightened scrutiny under multiple, reinforcing
24 sources of law, including the Due Process Clause of the U.S. Constitution, the Privacy Clause of the
25 California Constitution, and the Reproductive Privacy Act. (See Answer, Affirmative Defenses
26 (Eighteenth, Nineteenth, and Twentieth).)

27 **a. Background on the U.S. Constitution’s Liberty Guarantee**

28 The Fourteenth Amendment guarantees protection of fundamental rights that predate the

1 Constitution and, never having been surrendered to government, are “implicit in the concept of ordered
2 liberty,” (*Washington v. Glucksberg* (1997) 521 U.S. 702, 720-721), such as the right “to marry, establish
3 a home and bring up children.” (*Meyer v. Nebraska* (1923) 262 U.S. 390, 399.) “Marriage and procreation
4 are fundamental to the very existence and survival of the race” and thus “one of the basic civil rights of
5 man.” (*Skinner v. Oklahoma* (1942) 316 U.S. 535, 541.) The U.S. Supreme Court has treated these
6 interests as interconnected components of constitutional liberty. (*Obergefell v. Hodges* (2015) 576 U.S.
7 644, 668.) The Fourteenth Amendment also protects the right to refuse “unwanted medical
8 treatment.” (*Cruzan v. Missouri Dept. of Health* (1990) 497 U.S. 261, 278.)

9 When regulating in this domain, government may not pursue even legitimate ends “by means
10 which sweep unnecessarily broadly and thereby invade the area of protected freedoms.” (*Griswold v.*
11 *Connecticut* (1965) 381 U.S. 479, 485.) “If the right of privacy means anything,” the U.S. Supreme
12 Court long has admonished, “it is the right of the individual, married or single, to be free from
13 unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision
14 whether to bear or beget a child.” (*Eisenstadt v. Baird* (1972) 405 U.S. 438, 453.)⁸

15 Because a pregnant woman cannot exercise that right in isolation, the right includes the “right
16 to decide independently, with the advice of [her] physician, to acquire and to use needed medication.”
17 (*Whalen v. Roe* (1977) 429 U.S. 589, 603.) The government may not restrict procreative choice by
18 directing its action towards the “physician’s role” (*Griswold, supra*, 381 U.S. at p.482), by interfering
19 with “[t]he woman’s right to receive medical care in accordance with her licensed physician’s best
20 judgment and the physician’s right to administer it.” (*Doe v. Bolton* (1973) 410 U.S. 179, 197.) And
21 “where a decision as fundamental as that whether to bear or beget a child is involved, regulations
22 imposing a burden on it may be justified only by compelling state interests, and must be narrowly drawn
23 to express only those interests.” (*Carey v. Population Services, Intl.* (1977) 431 U.S. 678, 686.)

24 **b. Background on the California Constitution’s Privacy Clause**

25 California’s constitutional protection of privacy and reproductive choice is broader than federal

26
27 ⁸ In its most recent major discussion of these rights, the Court reaffirmed them, stating that “our
28 conclusion ... does not undermine them in any way” since they did not concern “the critical moral
question posed by” “what the law at issue in this case regards as the life of an ‘unborn human being.’”
(*Dobbs v. Jackson Women’s Health Organization* (2022) 597 U.S. 215, 256-257; see also *id.* at p. 295 [“It
is hard to see how we could be clearer” that *Dobbs* does not “cast doubt” on *Eisenstadt*].)

1 baseline protections. (*Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 276-
2 277.) Even before Californians added an express privacy right to the state Constitution, the California
3 Supreme Court recognized a fundamental right to procreate grounded in “privacy” and “liberty” in
4 matters of marriage, family, and sex. (*People v. Belous* (1969) 71 Cal.2d 954, 963; see also *Stephen K. v.*
5 *Roni L.* (1980) 105 Cal.App.3d 640, 645 [recognizing a right against “unwarranted governmental
6 intrusion”].) Then, in 1972, voters amended the California Constitution to expressly include “privacy”
7 as an inalienable right. (Cal. Const., art. I, § 1.) Applying that broader protection, the California
8 Supreme Court has held that “all women in this state—rich and poor alike—possess a fundamental
9 constitutional right to choose whether or not to bear a child.” (*Comm. to Defend Reproductive Rights v.*
10 *Myers* (1981) 29 Cal. 3d 252, 262.) The state has no authority to prohibit women “from exercising their
11 right to make procreative choices as they see fit.” (*People v. Garziano* (1991) 230 Cal.App.3d 241, 243.)

12 Three years ago, Californians ratified the state courts’ expansive view by amending the state
13 constitution to include an explicit guarantee of reproductive freedom. “The state shall not deny or
14 interfere with an individual’s reproductive freedom in their most intimate decisions.” (Cal. Const., art.
15 I, § 1.1 (2022).) Subsequently, the Legislature later amended the Reproductive Privacy Act to state that
16 “every individual possesses a fundamental right of privacy with respect to personal reproductive
17 decisions,” including decisions about “all matters relating to pregnancy.” (Stats. 2022, ch. 629, § 5
18 [amending Health & Saf. Code, § 123462].) Any government restriction on a woman’s pregnancy
19 choices in California therefore must satisfy strict scrutiny. (*American Academy of Pediatrics v. Lungren*
20 (1997) 16 Cal.4th 307, 340-341; *Myers, supra*, 29 Cal.3d at p.276 & fn.22.)

21 Finally, procreative choice cannot be meaningfully exercised without the ability to receive
22 assistance from others, including physicians and clinics. (See *People v. Barksdale* (1972) 8 Cal.3d 320,
23 332-333 [physician standing]; *People v. Orser* (1973) 31 Cal.App.3d 528, 535 [advertising restriction];
24 *Chico Feminist Women’s Health Center v. Butte Glenn Medical Society* (E.D. Cal. 1983) 557 F.Supp. 1190,
25 1200 [clinic standing].) And in 2023 the Reproductive Privacy Act was amended to provide that
26 persons—like Defendants—who *aid or assist* a pregnant person in exercising statutory rights “shall not
27 be subject to civil or criminal liability or penalty ... based solely on their actions” to provide such aid or
28 assistance with voluntary consent. (Health & Saf. Code, § 123467, subd. (b).)

1 **c. Either Strict Scrutiny or the Absolute Bar is Triggered**

2 Choosing to pursue APR is a reproductive decision, so any government action to restrict a
3 woman’s right to make that decision or to punish those who inform her about the APR option triggers
4 at least strict scrutiny—if not the absolute immunity of the Reproductive Privacy Act. A government
5 cannot rely on conclusory or unsupported assertions that a restriction is necessary for public health as
6 a *deus ex machina* to save its restriction of reproductive choice, as the Attorney General tries to do in
7 this case. Rather, the government must show that the restriction is calculated to advance health rather
8 than hinder protected choice. (See *Planned Parenthood of Central Missouri v. Danforth* (1976) 428 U.S.
9 52, 79; *Akron v. Akron Center for Reproductive Health, Inc.* (1983) 462 U.S. 416, 437; *Planned Parenthood*
10 *Arizona, Inc. v. Humble* (9th Cir. 2014) 753 F.3d 905, 913.) Yet, as applied in this case, the Attorney
11 General’s theory would suppress wanted speech and referrals that facilitate continuing a pregnancy
12 after mifepristone and would deter physicians from providing APR for that purpose. That burden
13 triggers strict scrutiny, which the State has admitted it cannot satisfy. (UMF #1-17.)

14 **4. Defendants’ Equal Protection Rights Also Defeat Plaintiff’s Claims.**

15 Defendants plead equal-protection defenses. (See Answer, Affirmative Defenses (Twenty-
16 Fifth & Twenty-Sixth).) The undisputed record confirms that this enforcement campaign singles out a
17 disfavored set of speakers and messages in a way the Fourteenth Amendment does not tolerate.

18 **a. Equal protection forbids discriminatory treatment of similarly situated**
19 **speakers, especially where fundamental rights are burdened.**

20 From its adoption, the Equal Protection Clause has been understood as a foundational principle:
21 all persons “shall stand equal before the laws of the States.” (*Students for Fair Admissions, Inc. v.*
22 *Harvard College (SFFA)* (2023) 600 U.S. 181, 202; quoting *Strauder v. West Virginia* (1880) 100 U.S.
23 303, 307-309.) That guarantee extends to discriminatory enforcement of facially neutral regimes. *Yick*
24 *Wo* remains the canonical example nearly a century and a half after it was decided: a neutral licensing
25 scheme became unconstitutional when it was enforced almost exclusively against a disfavored class.
26 (*Yick Wo v. Hopkins* (1886) 118 U.S. 356, 373-374.) And although most legislation necessarily draws
27 lines, equal protection asks whether the challenged classification burdens a fundamental right or targets
28 a suspect basis; if so, strict scrutiny applies. (*Romer v. Evans* (1996) 517 U.S. 620, 631; see *SFFA, supra*,

1 600 U.S. at p.206; *Adarand Constructors, Inc. v. Peña* (1995) 515 U.S. 200, 227.) Even outside the race
2 context, the Court has applied heightened scrutiny where legislative classifications threaten
3 fundamental rights, including the right to marry, to maintain family integrity, or to access the courts.
4 (See *Obergefell v. Hodges* (2015) 576 U.S. 644, 670-675.)

5 Equal protection principles apply with special force when state action affects First Amendment
6 interests. In *Mosley*, the Court invalidated a picketing ordinance that distinguished favored from
7 disfavored messages, emphasizing both that statutes affecting First Amendment interests must be
8 narrowly tailored and that government “has no power to restrict expression because of its message, its
9 ideas, its subject matter, or its content.” (*Police Department of Chicago v. Mosley* (1972) 408 U.S. 92, 95.)
10 *Mosley* thus makes clear that equal protection forbids selective access to the marketplace of ideas based
11 on what a speaker says. (*Id.* at pp.96-99.) It makes no difference that the Attorney General is simply a
12 political actor. He cannot wield consumer-fraud statutes to suppress one side of an ongoing scientific
13 and moral debate (*People v. Municipal Court (Street)* (1979) 89 Cal.App.3d 739, 747 [campaign promise
14 regarding non-enforcement of statute against men].)

15 **b. The Attorney General’s as-applied use of the FAL and UCL creates a**
16 **disfavored class of pro-life APR speakers and patients.**

17 The AG’s theory is not that California has chosen to regulate all contested claims about
18 mifepristone safety or pregnancy outcomes. It is that pro-life APR speakers, and only those speakers,
19 may not recite scientific findings supporting their view of APR safety and efficacy in increasing the
20 chances of continuing a pregnancy after mifepristone. (Compl., ¶¶5-7, 33-37, 57-73.) The same statutes
21 are not invoked against abortion-promoting entities that market mifepristone as “safe” and “highly
22 effective,” minimize ongoing scientific disputes, and omit mention of hemorrhage and miscarriage
23 which the AG’s own expert acknowledges are known side effects of mifepristone. (UMF #51-59.)

24 Defendants, by contrast, offer free information and care to women who regret beginning a
25 chemical abortion and want to try to preserve their pregnancies. (UMF #1-17.) The challenged
26 communications describe a protocol using progesterone—a hormone long known to be safe and widely
27 prescribed to help women with at-risk pregnancies—in hopes of the progesterone doing exactly what
28 the FDA pharmacological review of mifepristone says it does: counteract the effects of mifepristone.

1 (UMF #61.) Those communications rely on peer-reviewed case series and reviews, acknowledge that
2 APR is off-label, and caution that not every pregnancy will continue. (UMF#60-110.)

3 Yet the Attorney General has aimed the State’s consumer-fraud enforcement power at these
4 pro-life speakers while declining to bring any comparable action against abortion providers, drug
5 manufacturers, or advocacy organizations whose public claims about mifepristone’s safety and
6 effectiveness are, at minimum, similarly contestable. (UMF #51-59.) The line drawn is therefore not
7 between “truthful” and “untruthful” medical speech, or “evidence-based” and “non-evidence-
8 based” protocols. It is between speech that tends to facilitate abortion and speech that tends to facilitate
9 childbirth. *Mosley* forbids that one-way gatekeeping. (*Mosley, supra*, 408 U.S. at pp.96-99.)

10 **c. The Attorney General’s selective enforcement fails under both heightened**
11 **scrutiny and rational-basis review.**

12 This as-applied classification warrants heightened review for two independent reasons. First, it
13 burdens fundamental rights. The AG is using the FAL to restrict Defendants’ religiously motivated
14 speech to women about pregnancy, abortion, and alternatives—speech that lies at the core of the Free
15 Speech and Free Exercise Clauses. (See *Mosley, supra*, 408 U.S. at pp.96-99.) Where State action
16 burdens fundamental liberties and discriminates among speakers, equal protection demands a more
17 searching inquiry than minimal rationality. (See *Obergefell, supra*, 576 U.S. at pp.670-675 [equal
18 protection and due process “converge” when differential treatment burdens fundamental liberties].)
19 Second, the pattern reflects disfavor toward a particular set of religious and moral views. The AG has
20 targeted pro-life ministries and organizations for APR speech while leaving abortion-rights speakers
21 free to make their own claims about mifepristone. (UMF #28-59.) Equal protection does not permit
22 broad disabilities that lack a neutral justification. (See *Romer, supra*, 517 U.S. at pp.632-635.)

23 At minimum, the Attorney General must articulate a genuinely compelling interest and
24 demonstrate that his selective enforcement is narrowly tailored to that interest. (See *SFFA, supra*, 600
25 U.S. at p.206.) He has not made, and cannot make, that showing. That means that, notwithstanding
26 California’s inarguably legitimate interest in preventing fraud, that interest cannot justify using general
27 anti-fraud statutes as a one-way ratchet against only pro-APR speakers, while leaving anti-APR speakers
28 who peddle objective falsehoods unregulated. If the State wants more balanced information, it must

1 proceed evenhandedly rather than punitively against only those whose scientific views the Attorney
2 General rejects for ideological reasons.

3 But even if the Court were to conclude that no suspect classification or fundamental right is
4 implicated (several are), the Attorney General’s enforcement still fails even under rational-basis
5 review. Rational basis still requires a reasonable link between disparate treatment and a legitimate aim;
6 it does not allow classifications that appear driven by animus. (*Romer, supra*, 517 U.S. at p.632; see also
7 *Heller v. Doe* (1993) 509 U.S. 312, 320.) Yet here, the asserted goal is consumer protection against
8 “misleading” APR statements. (Compl., ¶¶5-7, 33-37.) But the State has not brought parallel actions
9 against speakers making similarly contestable claims about mifepristone risks—issues that remain
10 disputed in the literature and in the experts’ testimony. (UMF #51-59.)

11 If the Attorney General’s aim were in fact neutral accuracy in public medical messaging, he
12 would seek to regulate comparable claims on both sides. He has not. Instead, he seeks to impose
13 penalties only on speakers offering an option to continue a pregnancy. That is not rational consumer
14 protection; it is viewpoint discrimination under another label. (See *Romer, supra*, 517 U.S. at pp.632-
15 635; *Mosley, supra*, 408 U.S. at pp.96-99.) On this record, equal protection precedent compels the Court
16 to grant summary judgment on the Attorney General’s FAL and UCL causes of action in Defendants’
17 favor even for that reason alone.

18 * * *

19 Put simply, the AG’s FAL and UCL theories, as applied here, depend on suppressing and
20 punishing protected speech, religious exercise, and privacy rights. At minimum, they risk censoring
21 true and/or well-intentioned speech on matters of peer-reviewed scientific debate and public concern,
22 which triggers heightened scrutiny the AG’s enforcement action cannot survive. His selective
23 enforcement independently violates equal protection. As such, the Court should grant summary
24 judgment for Defendants on one or more of the constitutional defenses addressed above.

25 **B. The Attorney General Cannot Establish the Elements of His FAL and UCL Claims**

26 **1. The Elements of the FAL and UCL.**

27 As stated, the Complaint pleads two legal theories, violation of the FAL (Compl., ¶¶96-98) and
28 violation of the UCL. (Compl., ¶¶99-101.) While the FAL is limited to false or misleading advertising,

1 the UCL has multiple sub-types. (Bus. & Prof. Code, § 17200.) Here, the Complaint pleads that
2 Defendants unlawfully violated the FAL and engaged in “fraudulently representing” certain matters.
3 (Compl., ¶¶100(a)-(b).) In this context, where the UCL claim is derivative of the FAL claim, there is
4 “no difference in the scope of these enactments ... or the meaning of their provisions.” (*Com. on*
5 *Children’s Television, Inc. v. General Foods Corp. (Children’s Television)* (1983) 35 Cal.3d 197, 211; accord,
6 *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 312; *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 950-951;
7 Stern, *Business & Professions Code Section 17200 Practice* (The Rutter Group 2025) ¶¶ 4:1, 4:21.)

8 The FAL prohibits anyone (1) “with intent directly or indirectly to dispose of real or personal
9 property or to perform services ... or to induce the public to enter into any obligation relating thereto,”
10 (2) “to make or disseminate ... before the public in this state ... any statement, concerning that ...
11 property or those services ... which is untrue or misleading,” and (3) “which is known, or which by the
12 exercise of reasonable care should be known, to be untrue or misleading.” (Bus. & Prof. Code, § 17500.)

13 The FAL prohibits both false and misleading advertising. If the science is debated, the
14 statement is not “false,” (*Bernardo, supra*, 115 Cal.App.4th at pp.348-349; *GNC Corp., supra*, 789 F.3d
15 at p.515), but it still can be misleading if “the *vast* weight of the competent evidence establishes that
16 those health claims are false.” (*Mullins v. Premier Nutrition Corp.* (N.D. Cal. 2016) 178 F.Supp.3d 867,
17 894-895, emphasis added.) But “[n]either a private plaintiff nor a prosecuting authority may shift the
18 burden to the defendant to substantiate its claims. In other words, ...all plaintiffs (public or private)
19 must introduce evidence and cannot prevail by arguing that the defendant’s claims are unsubstantiated
20 and therefore misleading.” (*Id.* at p.892; citing *Natl. Council Against Health Fraud, Inc. v. King Bio*
21 *Pharmaceuticals, Inc.* (2003) 107 Cal.App.4th 1336, 1348.) Misleading advertising can occur through any
22 medium, including one-on-one conversations. (*Chern v. Bank of America* (1976) 15 Cal.3d 866, 875-876.)
23 But, in prohibiting misleading *advertising* with an intent to induce action, the FAL necessarily
24 “govern[s] only *commercial* speech.” (*Rezec v. Sony Pictures Entertainment, Inc.* (2004) 116 Cal.App.4th
25 135, 140, original italics.)⁹

26 The second element is satisfied when “members of the public are likely to be deceived.” (*Bank*

27
28 ⁹ (But see *Athens Lodge No. 70 v. Wilson* (1953) 117 Cal.App.2d 322, 325 [“[T]here is no limitation of
‘unfair, untrue or misleading advertising’ to business advertising”].) Either way, the Attorney General
has explicitly limited his claims to commercial speech. (Ex.18, RFA Nos. 12, 13.)

1 of the *West v. Superior Court* (1992) 2 Cal.4th 1254, 1267.) This looks at the *reasonable* member of the
2 intended audience. (See *Lavie v. Procter & Gamble Co.* (2003) 105 Cal.App.4th 496, 508-510 [rejecting
3 “least sophisticated consumer” standard]; *Children’s Television, supra*, 35 Cal.3d at p. 214 [discussing
4 intended audience of “naïve” “preschool children”].) The word “likely” requires that it be “probable”
5 that the reasonable consuming audience would be deceived, and, “[i]n determining whether a
6 reasonable consumer would have been misled by a particular advertisement, context is crucial.”
7 (*Salazar v. Walmart, Inc.* (2022) 83 Cal.App.5th 561, 566, 569; accord, *Becerra v. Dr Pepper/Seven Up,*
8 *Inc.* (9th Cir. 2019) 945 F.3d 1225, 1228-1229.) The third element requires intentional or at least
9 negligent misrepresentation. (*Khan v. Medical Bd.* (1993) 12 Cal.App.4th 1834, 1846; *People v. Forest E.*
10 *Olson, Inc.* (1982) 137 Cal.App.3d 137, 140.)¹⁰

11 The California Supreme Court has also emphasized that FAL and UCL actions—especially
12 those brought by public officials seeking injunctions and civil penalties—are equitable in nature and are
13 meant to be targeted tools for preventing clear, statutorily defined wrongs, not vehicles for re-writing
14 substantive policy or punishing debatable speech. (See *Nationwide Biweekly Admin., Inc. v. Superior*
15 *Court* (2020) 9 Cal.5th 279, 297-305, 308-310; *Rosenberg-Wohl v. State Farm Fire & Casualty Co.* (2024)
16 16 Cal.5th 520, 531-534; *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 371.) These decisions treat the
17 FAL and UCL as laws “of general application” designed to protect consumers and honest competitors
18 against clearly deceptive practices, while respecting statutory boundaries and parallel regulatory
19 schemes. (See, e.g., *Quesada v. Herb Thyme Farms, Inc.* (2015) 62 Cal.4th 298, 310-312; *Farm Raised*
20 *Salmon Cases* (2008) 42 Cal.4th 1077, 1091.) As equitable in nature, the court’s authority to redress
21 wrongdoing under the FAL and UCL is broad, but “[c]ourts may not simply impose their own notions
22 of the day as to what is fair or unfair.” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone*
23 *Co.* (1999) 20 Cal.4th 163, 182.)

24 Measured against the above framework, and as explained in greater detail below, the AG’s
25 claims fail as a matter of law for at least four independent reasons. **First** and dispositively, none of the
26 identified communications are commercial, properly characterized instead as advocacy, testimony, and
27 perhaps (nonactionable) fundraising speech under binding precedent.

28 ¹⁰ By itself the UCL is a strict liability statute, but “a defense to the underlying offense is a defense
under the Act.” (*People v. Duz-Mor Diagnostic Laboratory, Inc.* (1998) 68 Cal.App.4th 654, 673.)

1 **Second**, even if the communications were commercial, the Attorney General cannot prove the
2 challenged statements are “untrue” or likely to deceive a reasonable consumer—at best he is left with
3 a nonactionable substantiation claim. The Attorney General rides entirely on (1) an unevidenced
4 ACOG policy statement that ACOG admitted in deposition testimony does not establish that APR is
5 *either unsafe or ineffective*, and (2) his misreading of the discontinued Creinin study, which by its own
6 terms and as conceded by Creinin during his deposition was stopped early, underpowered, and so could
7 not make *any* statistically defensible claims about APR safety or effectiveness. When that inconclusive
8 study is set against the body of peer-reviewed literature documenting high pregnancy continuation rates
9 after APR and low continuation rates after mifepristone alone—by a margin so large it is all but
10 statistically impossible that it arises by chance—Defendants’ cautious, qualified APR statements
11 cannot be branded “false” or “misleading” as a matter of law.

12 **Third**, the Attorney General cannot prove the requisite scienter or negligence under § 17500.
13 The undisputed record shows Defendants relied on published clinical literature, guidance from
14 credentialed physicians, and the real-world experience of medical professionals in the APR Network.
15 There is no evidence that Defendants knew, or by reasonable care should have known, that any
16 challenged statement was false. And **fourth**, the Attorney General has no evidence of likely deception
17 or materiality to any reasonable California consumer. Defendants do not charge patients for APR
18 information or treatment. The record contains no evidence of any patient in California who claims to
19 have been misled, and no evidence that Defendants’ speech falsely or misleadingly induced anyone to
20 purchase goods or services. In contrast to cases in which the Supreme Court has upheld UCL/FAL
21 liability after extensive evidentiary showings that advertising misled paying consumers at scale, the
22 Attorney General here proceeds without any such proof. (See, e.g., *Kwikset Corp. v. Superior Court*
23 (2011) 51 Cal.4th 310, 328-331; *Tobacco II, supra*, 46 Cal.4th at pp.325-328.)

24 As stated, a motion for summary adjudication can only dispose of a cause of action in its entirety.
25 However, where multiple claims are pleaded as one, each can be separately challenged. Further, FAL
26 and UCL violation arises primarily when the reasonable member of the intended audience would be
27 misled by the advertisement. Thus, below, Defendants proceed on a per so-called “advertisement”
28 basis. (See Muñoz Decl.)

1 **2. The Claims Against Heartbeat are Fatally Defective.**¹¹

2 The Complaint contains six bullet points identifying allegedly misleading content, but the AG
3 expanded these to eight bullet points during discovery. (See Ex.3, FROGs, p.16.) In reality, none of the
4 challenged statements are misleading under the FAL and UCL.¹²

5 **a. The APR Referral Program Is Nonactionable.**

6 The Complaint’s primary target is Heartbeat’s APR referral program. (See Sep. Stmt. Issue
7 #5(B).) It consists of the APR website that women may find via searching online (Compl., ¶¶53-61), a
8 hotline and livechat (Compl., ¶¶68-70), and then information that Heartbeat nurses provide women
9 before referring them to independent practitioners. (Compl., ¶¶78-81.) As shown in the Appendix, the
10 Attorney General charges this program with misleadingly providing that APR is (1) “effective” at
11 “reversing” a chemical abortion, (2) that initial studies show a 64-68% success rate and no increase in
12 birth defects, (3) that supplemental progesterone may assist even more than 72 hours after taking
13 mifepristone, or even after taking misoprostol or methotrexate, and (4) not advising women that APR
14 can cause severe life-threatening bleeding.

15 **i. The use of the word “reversal” and the description of APR as an “effective
16 process,” with a 64-68% success rate and no increase in birth defects.**

17 The Complaint states that the term “reversal” is a technically incorrect term, that there is no
18 evidence supporting the theory that APR is “effective” at “increas[ing] the chances of allowing the
19 pregnancy to continue” after ingestion of mifepristone, and that the conclusions from the 2018 Delgado
20 study regarding success rates and birth defects are unreliable. (Compl., ¶21, Ex.3, FROGs, pp.16-17
21 [reversal]; Compl., ¶22, Ex.3, FROGs, pp.17-20 [effectiveness]; Compl., ¶55, Ex.3, FROGs, p.21
22 [success rates and birth defects].) These arguments are related but distinct and all fail.

23 _____
24 ¹¹ As noted above, the Attorney General’s claims fail at the start because Heartbeat’s challenged speech
is not commercial. (See § IV.A.1.a, *supra*.)

25 ¹² Confusingly, the FAL and UCL causes of action do not break out where the alleged misrepresentation
26 occurred. (See Compl., ¶¶97, 100.) An appendix identifying which content is associated with which
27 forum is attached at the end of this brief to break out the Complaint’s confusing organization.
28 Additionally, the Complaint erroneously alleges that Heartbeat provides model informed consent
forms for APR Network members to use. (Compl., ¶¶78-81.) Rather, these forms are used by
Heartbeat’s nurses to ensure that Heartbeat has done its due diligence in educating women seeking
APR before referring them to an independent practitioner who will do his or her own consenting.
(Godsey Decl., ¶13.)

1 (a) With respect to the words “reverse” or “reversal,” the Complaint alleges the word is
2 incorrect because APR works via “competition” between progesterone and mifepristone, and does not
3 act as an antidote. (Compl., ¶21; Sep. Stmt. Issue #5(B)(ii).) But the pharmacological word to describe
4 “competitive inhibition” is “reverse” (UMF #114), and the word “antidote” does apply.¹³ In
5 discovery, the Attorney General has apparently changed tack, explaining that “[t]he theory of APR ...
6 fails to account for the preferential and tighter bind of mifepristone,” and “[n]ot even the theory of
7 APR suggests that supplemental progesterone can unseat mifepristone once it has bound more tightly
8 and more preferentially to the progesterone receptors in the uterus and cervix.” (UMF #111.)

9 This pivot moves from whether the term “reverse” is incorrect to an argument about whether
10 supplemental progesterone can actually reverse mifepristone by displacing it from the progesterone
11 receptor. From a chemical perspective, this slant equally fails. Even if an antagonist (mifepristone)
12 binds to a receptor more tightly than an agonist (progesterone), *increasing concentrations of the agonist*
13 will result in out-competing of the antagonist. If the antagonist binds more tightly, that merely means
14 that even more agonist is needed. This reflects fundamental principles of receptor-binding chemistry.
15 (UMF #113.)¹⁴ Thus, as the FDA found, “the abortifacient activity of RU-486 [i.e., mifepristone] is
16 antagonized by progesterone allowing for normal pregnancy and delivery.” (UMF #61.)

17 In any event, the Attorney General’s academic chemistry argument is a red herring. The word
18 “reverse,” of course, can have multiple definitions¹⁵ and so the proper definition must be gleaned from

19 ¹³ (“Antidote,” Dictionary.com <<https://www.dictionary.com/browse/antidote>> [as of Jan. 14, 2026]
20 [“1. a medicine or other remedy for counteracting the effects of poison, disease, etc. 2. something that
21 prevents or counteracts injurious or unwanted effects.”]; accord, “Antidote,” Merriam-Webster.com
<<https://www.merriam-webster.com/dictionary/antidote>> [as of Jan. 14, 2026] [“1: a remedy to
22 counteract the effects of poison”].)

23 ¹⁴ The notion that the word “reverse” is inaccurate comes from two federal district court opinions,
24 each with a separate theory. But, notably, the Attorney General did not endorse either of them. In one,
25 the court wrote that the term “abortion reversal” is misleading because there is no “treatment that
26 may undo or negate her abortion,” for “patients whose pregnancies had *already terminated*.” (*Planned
27 Parenthood of Tennessee and North Mississippi v. Slatery* (M.D. Tenn. 2021) 523 F.Supp.3d 985, 1003,
28 emphasis added; citing *American Medical Assn. v. Stenehjem* (D.N.D. 2019) 412 F.Supp.3d 1134, 1149
[similar].) Here, Defendants use the term “abortion *pill* reversal,” not “abortion reversal.” Second,
the court wrote that “the term ‘reverse’ does not accurately describe the theory underlying Dr.
Delgado’s progesterone therapy,” because “the word ‘reverse’ suggests ... that supplemental
progesterone acts as a kind of anecdote [sic] to mifepristone.” (*Id.* at p. 1003.) As noted, the Complaint
cites this second theory (Compl., ¶21), but the Attorney General has since abandoned it.

¹⁵ The two primary definitions appear to be the difference between turning around and walking back

1 context. (See *Dr Pepper/Seven Up, supra*, 945 F.3d at pp. 1229-1230 [“diet” soda does not mean it
2 assists in weight loss].) Here, the question is whether any woman would actually be misled into
3 receiving APR based on Defendants’ alleged failure “to account for the preferential and tighter bind of
4 mifepristone.” (UMF #111; see *Kwikset, supra*, 51 Cal.4th at p.332 [“A misrepresentation is judged to
5 be ‘material’ if ‘a reasonable man would attach importance to its existence or nonexistence in
6 determining his choice of action in the transaction in question’”]; *People v. Johnson & Johnson* (2022)
7 77 Cal.App.5th 295, 327-328 [assuming without deciding that Attorney General must satisfy materiality
8 element].) Yet there is no evidence that any woman was misled by the words “reverse” and “reversal.”
9 (See UMF #211.)

10 (b) More important, the AG challenges the “effectiveness” of APR, stating that there is “no
11 credible evidence” supporting it. (Compl., ¶48; Sep. Stmt. Issue #5(B)(i); UMF #60.) This, of
12 course, is belied by the FDA, standard biochemistry, a half-dozen studies examining examples of that
13 biochemistry in action, several literature reviews, and Heartbeat’s own internal data. (UMF #60-110.)
14 Indeed, when the FDA has concluded that “the abortifacient activity of RU-486 is antagonized by
15 progesterone allowing for normal pregnancy and delivery,” that should be dispositive. (UMF #61.)
16 Moreover, the AG cannot prove that APR does not work. (UMF #63.) Rather, the AG merely argues
17 that Defendants lack sufficient evidence to represent that it does work, which is inadequate as a matter
18 of law. (*Mullins, supra*, 178 F.Supp.3d at p.892-895; see *Obillo v. i-Health, Inc.* (N.D. Cal., Mar. 18,
19 2025, No. 24-cv-2459) 2025 WL 844389, *6 [rejecting FAL claim based on argument that underlying
20 study “did not meet the minimum scientific standards to qualify as a ‘clinical’ study”].)

21 Further, as stated, the FAL prohibits either an intentional or negligent misrepresentation, i.e.,
22 a representation “which is known, or which by the exercise of reasonable care should be known, to be
23 untrue or misleading.” (Bus. & Prof. Code, § 17500.) Here, there is no evidence of a knowing
24 misrepresentation—all Defendants actually believe (with good reason) that APR works. (UMF #97,
25 99.) Thus, the question is whether Defendants acted with reasonable care when they relied on a half-
26 dozen peer-reviewed studies. The answer is yes. Defendants’ marketing expert testified that their

27 the way one has come, versus walking backwards. (See “Reverse,” Dictionary.com
28 <<https://www.dictionary.com/browse/reverse>> [as of Jan. 14, 2026] [“opposite or contrary in
position, direction”; “pertaining to or producing movement in a mechanism opposite to that made
under ordinary running conditions”].)

1 reliance on the peer-reviewed 2018 Delgado study was within the standard of care because of how and
2 where it was published. (See UMF #101.) The Attorney General has no evidence to the contrary.
3 Plaintiff retained a rebuttal mis-information expert, who opines on discredited journals, but she actually
4 confirmed that *Issues in Law & Medicine* is not one of those. (UMF #102.)

5 (c) Lastly, the Attorney General challenges Defendants’ recitation of the conclusions of the
6 2018 Delgado study that APR has a 64-68% success rate and that there was no increase in birth defects
7 higher than the average population. (Compl., ¶55; Sep. Stmt. Issue #5(B)(iii), 5(B)(iv); Ex.3, FROGs,
8 p.21.) In large part, the AG relies on his same critique of the 2018 Delgado study. (See Ex.3, FROGs,
9 p.21.) But he has no evidence contradicting Defendants’ expert’s citation that relying on this study was
10 within the standard of reasonable care. (See UMF #131-132, 139-140.)

11 In addition, the Attorney General states that a 64% success rate arises through the
12 “intramuscular injection” protocol and the 68% success rate comes from the “high dose oral” protocol,
13 while noting that women may receive vaginally administered progesterone which has a lower success
14 rate. (Ex.3, FROGs, p.21; citing Ex.20, APR website, FAQ 4.¹⁶) The 2018 Delgado study does not
15 recommend vaginal suppositories in light of their low effectiveness (UMF #121), and thus the vast
16 majority of APR involves oral progesterone. (UMF #130.) Taking the AG’s argument at face value, the
17 question is whether a *reasonable* woman would actually be misled into seeking APR because she prefers
18 vaginal suppositories and later learns that oral pills have a higher success rate—otherwise the statement
19 lacks materiality. But the Attorney General lacks any evidence of that.

20 **ii. Advising women that supplemental progesterone may assist even more**
21 **than 72 hours after taking mifepristone, or even after taking misoprostol or**
22 **methotrexate.**

23 The Complaint next states that (1) Defendants wrongly advise women to still contact them even
24 if 72-hours have passed since they took mifepristone, and (2) Defendants wrongly refer out women
25 seeking APR even if they have taken misoprostol or methotrexate. (Compl., ¶¶5, 60-61, 72-73; Sep.
26 Stmt. Issue #5(B)(v), 5(B)(vi).) These two statements appear in distinct contexts. The first appears
27 in a generic statement on both the APR and RealOptions websites. (Compl., ¶¶60-61, 92; Ex.3, FROGs,
28 pp.21-22.) The second is made only by Heartbeat and is not available publicly online. The statements

16 “The doctor or another medical provider will prescribe progesterone, given as a pill to be taken orally or vaginally or possibly by intramuscular injection.”

1 only arise if women who have taken misoprostol or methotrexate request help. (Compl., ¶¶72-73; Ex.3,
2 FROGs, p.22.)

3 (a) With respect to the 72-hour window, the statement repeated on both websites says:

4 **Is it too late to reverse the abortion pill?**

5 Time is of the essence. For those seeking to reverse the effects of the abortion pill (also
6 known as a chemical abortion or a medical abortion), the goal is to start the protocol
7 within 24 hours of taking the first abortion pill, mifepristone, or RU-486. However,
8 there have been many successful reversals when treatment was started within 72 hours
9 of taking the first abortion pill.

Even if 72 hours have passed, call our helpline 877.558.0333. We are here to help. It
may not be too late.

10 (UMF #141, 237.) Again, the Attorney General does not argue that the statement “it may not be too
11 late” is false even after 72 hours, but merely that there is inadequate evidence that APR could work in
12 that context, which is legally inadequate. (UMF #143.) And mifepristone’s “period of activity” (which
13 APR can reverse) is only “*mostly* within *about* 72 hours” or “*at least* for 72 hours.” (UMF #149), and
14 “up to 50 percent of the mifepristone could be in the body after 72 hours.” (UMF #150.) It follows that
15 APR *might* work even after 72 hours, and the AG cites no contrary evidence. Moreover, Heartbeat has
16 helped women who sought APR after 72-hours and had successful reversals. (UMF #148.)

17 The Attorney General merely cites the lack of published studies on APR—another “lack of
18 substantiation” claim—without addressing Heartbeat’s data. (UMF #142.) The Attorney General may
19 try to argue that causation is lacking, that APR is not the reason why the pregnancy is continuing. Even
20 so, the above statement does not actually say that APR could work after 72 hours—it merely says that
21 “it may not be too late” to save the pregnancy, which all sides agree is undeniably true.

22 (b) The second statement appears in a completely distinct context. (See Sep. Stmt. Issue
23 #5(B)(vi).) The APR website mentions only the first pill in the chemical abortion regimen,
24 mifepristone. It does not mention the second pill in the regimen, misoprostol, nor does it mention the
25 alternative abortion pill methotrexate. (See UMF #153). Nevertheless, if a woman calls the APR hotline
26 and states that she has taken misoprostol or methotrexate, Heartbeat will provide that woman with
27 information and refer her to a physician. (See UMF #154-155.) That information *expressly acknowledges*
28 that there are no studies on reversing a chemical abortion in this context, and informs women of the

1 risk of birth defects after taking either misoprostol or methotrexate. (UMF #154-155; Ex.22, Forms,
2 pp.22-25 [methotrexate]; pp.26-29 [misoprostol].) The Attorney General says the lack of such studies
3 is the problem—i.e., another improper “substantiation” claim. (Ex.3, FROGs, p.22.) Yet, the Attorney
4 General admits that Defendants do not represent that there are such studies. (UMF #144; Ex.11, RFA
5 Nos. 31, 32.) Rather, the AG’s expert contends that the issue is how the information is presented: “if
6 you’re like, you know, ‘kale cures cancer,’ and then below you’re like, ‘by the way, there are no studies
7 that cure cancer,’ it’s—it’s not ideal.” (Swire-Thompson Dep., p.234:10-15, 236:4-238:6.)

8 A threshold issue here is that the Attorney General has no evidence that any woman from
9 California has ever sought a referral in this context. As stated, discussion about reversing methotrexate
10 is not publicly available online; the issue only arises in very rare situations. Here, Heartbeat has never
11 provided a methotrexate referral to a California woman, and thus the AG lacks standing to challenge
12 statements relating to methotrexate.¹⁷ (UMF #160.)

13 Next, as stated, Heartbeat only refers a woman who has taken either methotrexate or
14 misoprostol to a physician after informing her that there are no studies looking at APR in that context.
15 (See UMF #154-155.) Women, of course, have a right to try even unstudied and experimental therapies
16 if they provide informed consent. Thus, the analysis here is whether the disclaimer is adequate. A
17 conspicuous disclaimer uses bolding, larger font size, contrasting font type, or contrasting font color
18 (*Broberg v. The Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 922; *Siemens Credit Corp.*
19 *v. Newlands* (N.D. Cal. 1994) 905 F.Supp. 757, 765), or is simply “difficult to miss.” (16 C.F.R.
20 § 255.0(f).) Further, a disclaimer can be made conspicuous by the seller verbally bringing the buyer’s
21 attention to it. (*A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 490.) In general,
22 conspicuousness is a question of law. (18 Williston on Contracts (4th ed. 2025) § 52:83.) Here, the
23 statement that there are no studies looking at reversing methotrexate or misoprostol appears in a
24 separate section, in bold. Further, Heartbeat’s nurses would always specifically draw this section to
25 women’s attention. That is adequate. (UMF #154-155.)

26 ///

27 ¹⁷ The UCL and FAL do not apply extraterritorially. Out-of-state conduct causing injury within
28 California may sometimes be enjoined, but out-of-state conduct causing out-of-state injury may not.
(*Planned Parenthood Fedn. of America, Inc. v. Center for Medical Progress* (N.D. Cal. 2020) 613 F.Supp.3d
1190, 1214; citing *Norwest Mortgage, Inc. v. Superior Court* (1999) 72 Cal.App.4th 214, 224, fn.12.)

1 **iii. Not advising women that supplemental progesterone may cause “life-**
2 **threatening bleeding.”**

3 The last issue that the Attorney General lodges with Defendants’ APR referral program is that
4 Defendants fail to advise women that “APR can cause severe, life-threatening bleeding.” (Compl.,
5 ¶¶97(f), 100(b)(vi); Sep. Stmt. Issue #5(B)(vii).) According to the AG, this risk should be prominently
6 displayed in the FAQs on the APR website (Compl., ¶57), and in the model FAQs that Heartbeat
7 provides to doctors. (Compl., ¶77.) The theory here has to be limited to the FAQs because Heartbeat
8 does provide women with a document advising them to immediately seek emergency medical care if
9 they have heavy bleeding. (UMF #188-189.) But the AG contends Defendants cannot “lure” women
10 in and then engage in a bait and switch. (*Veera v. Banana Republic, LLC* (2016) 6 Cal.App.5th 907, 918.)

11 In further elaboration, the Attorney General has admitted that Dr. Mitchell Creinin’s study
12 does not establish that APR can cause life-threatening bleeding and that the study had been California’s
13 *only* evidence of potential harm (UMF #163, 167.) Rather, the Attorney General alleges that Defendants
14 make the affirmative representation “that APR can only cause non-life-threatening side-effects” and
15 that Defendants lack evidence to justify this. (See Ex.3, FROGs, pp.22-23.) This also was a strategic
16 retreat necessitated by discovery. As shown in the deposition of Dr. Mitchell Creinin, the underlying
17 ER records show that no women in the APR group had a hemorrhage. (UMF #168-185.)

18 Reviewing the FAQ page on the APR website, there are nineteen separate questions and
19 answers. (Ex.20, pp.8-26.) The eighth FAQ states:

20 [Q] What if I am cramping or spotting? Does it mean it’s too late to reverse the abortion
21 pill? [A] Spotting or bleeding is common during the reversal treatment. It is important
22 and safe to continue the progesterone even if you experience spotting or bleeding unless
23 directed otherwise. [¶] **If you experience heavy bleeding, faintness, severe
abdominal pain, or fever, seek emergency medical attention immediately.** This
could be an effect of the first abortion pill and would require immediate care.

24 (UMF #187, original emphasis). Then, the fourteenth FAQ states:

25 [Q] What are the possible side effects of progesterone? [A] For some women
26 progesterone may cause sleepiness, lack of energy, lightheadedness, dizziness,
27 gastrointestinal discomfort and headaches. Increased fluid intake might help relieve
these symptoms. [¶] It is important that you follow all of the instructions of your APR
provider carefully. If you have any questions, contact your provider.

28 (Ex.20, p.21.)

1 The main problem with the Attorney General’s theory here is that Defendants do not
2 affirmatively represent that “that APR can only cause non-life-threatening side-effects.” (UMF #186.)
3 Defendants list the side-effects for which there is evidence. Simply listing known side-effects cannot be
4 reasonably read to imply that all other theoretically conceivable side effects have been affirmatively
5 disproven. (See *Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 838 [“We
6 cannot agree that a failure to disclose a fact one has no affirmative duty to disclose is ‘likely to deceive’
7 anyone within the meaning of the UCL.”].) And this is yet another lack of substantiation claim whose
8 truth the Attorney General has not even attempted to disprove.

9 **b. The APR Medical Guidance Material Is Nonactionable.**

10 The Complaint next challenges Heartbeat’s publication of model protocols for attempted
11 reversals of mifepristone, misoprostol, and methotrexate. (Compl., ¶¶72-73; Ex.22, APR Kit, pp.7-
12 10.)¹⁸ Although the Complaint specifically attacks these protocols only for offering best guidance on
13 how to reverse misoprostol or methotrexate (see Compl., ¶¶72-73), the Attorney General presumably
14 objects to Defendant Heartbeat offering APR protocols in general.

15 As stated, Heartbeat nowhere affirmatively asserts that reversal of misoprostol or methotrexate
16 has been studied—a point the Attorney General admits. (UMF #216; Ex.11, RFA Nos. 31, 32.) The
17 Attorney General also admits that the Complaint’s allegation that Heartbeat sells the APR Kit to
18 doctors was false. (UMF #8.) For the same reasons addressed above, this claim fails. (See § IV.B.2.a.ii,
19 *supra.*) Indeed, California law recognizes that sophisticated intermediaries such as physicians exercise
20 independent judgment and are expected to keep abreast of the clinical literature. (See *Himes v. Somatics,*
21 *LLC* (2024) 16 Cal.5th 209, 227.) The APR guidance at issue presupposes that clinicians will evaluate
22 the evidence and counsel patients consistent with their own professional standards; it is not a mass-
23 market advertisement aimed at inducing consumer purchases.

24
25 ¹⁸ This section of the complaint also references “Patient FAQs” and “Informed Consent Templates.”
26 (Compl. ¶¶74-81.) But these items do not belong together with the protocols. The model “Patient
27 FAQs” are substantively identical to those on the APR website. (Compare Ex.20, APR Website, pp.8-
28 27; with Ex.22, APR Kit, pp.13-16.) They are also distinct from the “APR Healthcare Professional
FAQs” that the Attorney General does not challenge. (See Ex.22, APR Kit, pp.11-12.) The “Informed
Consent Templates” are not model informed consent forms for independent doctors to use, but rather
information provided by Heartbeat to women as part of its due diligence before it passes them off to an
independent medical provider. (See Godsey Decl., ¶13; Ex.21, p.32; Ex.22, pp.17-29.)

1 Separate and independently, in this context, the Common Interest Privilege bars tort liability
2 that flows from scholarly activity. (See *Taus v. Loftus* (2007) 40 Cal.4th 683, 721; citing Civ. Code, § 47,
3 subd. (c).) The privilege can only be overcome by a showing of malice. (*Harkonen v. Fleming* (N.D. Cal.
4 2012) 880 F.Supp.2d 1071, 1079-1080.) Although most often invoked in the defamation context, the
5 common interest privilege applies to all “liability in tort.” (*Coastal Abstract Service, Inc. v. First*
6 *American Title Ins. Co.* (9th Cir. 1999) 173 F.3d 725, 735 & fn.8 [Lanham Act case; collecting non-
7 defamation cases].) Here, Heartbeat shares a common pro-life interest with members of its APR
8 network. (See *Warfield v. Peninsula Golf & Country Club* (1989) 214 Cal.App.3d 646, 660 [club members
9 have a common interest].) And there is no evidence that any network member was deceived or misled
10 or otherwise has any basis to complain against Heartbeat’s guidance. Nor is there any evidence of
11 malice, given Heartbeat’s belief that its guidance is the best available information. (UMF #218.)

12 **c. Heartbeat’s APR Advocacy Is Nonactionable.**

13 The Complaint next targets Heartbeat’s supporter-facing APR webpage, which describes
14 APR’s mission, briefly summarizes the state of the science, and invites visitors to support the APR
15 Network (Compl. ¶¶62-67; Ex.26), as well as Heartbeat personnel’s appearance on two podcasts.
16 (Compl., ¶¶82-86; Exs. 27-28.) The webpage is directed to potential donors, not patients; it solicits
17 charitable contributions, not payment for medical services. (See Ex.26.) The podcast appearances
18 similarly target supporters, seeking to spread the word about APR. (Exs. 27-28.)

19 The Complaint criticizes the webpage and podcast interviews for (1) using the word “reverse,”
20 (2) citing the 2018 Delgado study for a 64-68% success rate and no increase in birth defects, and
21 (3) stating that “thousands of lives have been saved” through APR. (Compl., ¶¶62-67.) The first two
22 items have been substantively addressed above and need not be repeated. As to the “thousands of lives
23 saved” tagline (which is actually “statistics show thousands ...”), it reflects an aggregation of the
24 number of cases in which, after receiving APR: (1) a woman has given birth(1,371); (2) a woman’s
25 pregnancy had remained viable after at least 20 weeks gestation, but contact with her was lost before
26 delivery (398); (3) a woman’s pregnancy had remained viable after at least 13 weeks gestation, but
27 contact with her was lost before delivery (258); or (4) a woman’s pregnancy had remained viable two
28 weeks after beginning APR, but contact with her was lost before delivery (217), for a total of 2,244.

1 (UMF #227.) Heartbeat also estimates an additional 5,075 “lives saved” by multiplying the total known
2 APR attempts by 64%. (Ex.29, APR Dashboard.)

3 The Attorney General contends this statement is false and misleading because “these figures
4 [do not] look to pregnancy outcomes or pregnant patient outcomes.” (Ex.3, FROGs, p.23.) This
5 objection appears to rest on the premise that “lives saved” is misleading absent tracked *live birth*. (See
6 Ex.3, FROGs, p.23.) That premise is untenable: the Attorney General cannot premise liability on his
7 own normative definition that a pre-born baby is not a life. In any event, this objection is irrelevant
8 because Heartbeat’s APR dataset does include more than 1,000 live births. (Godsey Decl., ¶17.)

9 In any event, even if these supporter-facing pages contained false information, nonprofit
10 fundraising and advocacy communications to donors and supporters are not “advertising” designed
11 “to induce the public to enter into any obligation” to purchase goods or services. (Bus. & Prof. Code,
12 § 17500.) Donor appeals describing a nonprofit’s work and summarizing supporting evidence are not
13 the kind of product promotion the FAL was designed to regulate. (See, e.g., *Murdock v. Pennsylvania*
14 (1943) 319 U.S. 105, 111 [rejecting as absurd the notion that “the passing of the collection plate in
15 church would make the church service a commercial project”]; *Kasky v. Nike, Inc.* (2002) 27 Cal.4th
16 939, 966-967 “[C]haritable solicitations [are] a category of speech that does not fit within our limited-
17 purpose definition of commercial speech because it does not involve factual representations about a
18 product or service that is offered for sale”].)

19 As explained in *Kasky*, charitable solicitations are fully protected. (See *id.* at 966-967; citing
20 *Riley v. Natl. Fedn. of the Blind of North Carolina, Inc.* (1988) 487 U.S. 781, 789.) Neither the supporter
21 webpage nor the podcasts offer APR services, quote prices, or direct patients to enroll. Instead, the
22 webpage explains that the APR Network connects women to local physicians who provide care—
23 typically at no cost to the patient—and the podcasts are free, on-demand programs discussing matters
24 of public concern: abortion, regret, conscience, and medical decision-making. They are education and
25 advocacy, not the sale of services. (UMF #223-228.)

26 **3. The Claims Against RealOptions are Fatally Defective.**¹⁹

27 Unlike Heartbeat, the Complaint alleges that RealOptions has violated the FAL and UCL

28 ¹⁹ As stated, the Attorney General’s claims initially fail because RealOptions’s challenged speech is not commercial. (See § IV.A.1, *infra*; see also Sep. Stmt. Issue #1(A).)

1 through its provision of APR to approximately 81 women. (See Compl., ¶¶87-95; Keirns Decl., ¶11.)
2 RealOptions is not a nationwide nonprofit membership organization, but a local community clinic.
3 (UMF #11.) Its APR communications therefore appear where one would expect: on its website and in
4 patient interactions. The Complaint targets RealOptions’s use on its website of Heartbeat’s model
5 FAQs, with their statements that (1) APR can “reverse” a chemical abortion; (2) APR is
6 “effective”/“been shown to increase the chances of allowing the pregnancy to continue”; (3) has a 64-
7 68% success rate; and (4) that women should call even if 72 hours have passed since taking mifepristone.
8 (Compl., ¶¶91-92; Exs. 31-32.) The Complaint furthermore challenges RealOptions’s informed-
9 consent form on the theory that it fails to advise women that APR can supposedly cause life-threatening
10 bleeding. (Compl., ¶94; Ex.33.)

11 The webpages at issue describe APR, provide basic information about mifepristone and
12 progesterone, and invite the reader to contact Heartbeat or RealOptions for a free consultation and
13 services. (Exs. 31-32.) At most, they invite a patient to seek free information and medical counseling.
14 RealOptions does not bill patients for APR information or treatment; any related medical care is
15 provided at no charge. (UMF #15.) On that undisputed record of no paid transaction or intent to induce
16 one, the Attorney General’s theory that these webpages are designed to induce purchases of services
17 collapses at the commercial-intent prong of § 17500. And, in any event, for reasons already explained
18 above, none of the challenged statements are actually false or misleading.

19 The consent forms fare no better as a basis for FAL/UCL liability. These documents are not
20 public advertisements; they are individualized medical-consent forms used in the course of protected
21 reproductive healthcare. Their function is to disclose risks, benefits, and alternatives—not to induce a
22 purchase. (Ex.31.) Moreover, the one charge the Attorney General lays against them fails. As discussed
23 above, the Attorney General’s current theory on the risk of life-threatening bleeding is that Defendants
24 make an affirmative statement that there is no such risk. (See § IV.B.2.a.iii.) Nothing remotely close to
25 such a statement can be found in RealOptions’ informed consent form. (UMF #239-241; Ex.33.)

26 V. CONCLUSION

27 In light of the foregoing, Defendants respectfully request that the Court grant their motion for
28 summary judgment in full.

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Respectfully submitted,
LiMANDRI & JONNA LLP

Dated: January 19, 2026

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APPENDIX

Forum	Alleged Misrepresentation							
	APR “reverses” a chemical abortion	APR is an “effective process” / “been shown to increase the chances of allowing the pregnancy to continue”	APR has a 64-68% success rate	APR may be effective 72-hours after taking chemical abortion pill	Birth defect rate is not grater after APR	APR has saved “thousands of lives”	APR may be effective after misoprostol or methotrexate	Not stating that APR can cause severe, life-threatening bleeding
<i>Directed at Women</i>								
APR Website (Compl., ¶¶53-61)	X	X	X	X	X			X
APR Hotline & Livechat (Compl., ¶¶68-70)	X	X	X		X		X	
APR Informed Consent Forms (Compl., ¶¶78-81)	X	X	X		X		X	
<i>Directed at Doctors</i>								
APR Healthcare Professional Kit, Protocols (Compl., ¶¶72-73)							X	
<i>Directed to Supporters/Advocacy</i>								
Heartbeat’s Website (Compl., ¶¶62-67)	X		X		X	X		

APPENDIX

Forum	Alleged Misrepresentation							
Ohio Right to Life Podcast (Compl., ¶¶83-84)	X					X		
Help Her Be Brave Podcast (Compl., ¶¶85-86)	X		X			X		
<i>RealOptions</i>								
RealOptions Website (Compl., ¶¶90-93)	X	X	X	X				
RealOptions Informed Consent Forms (Compl., ¶¶94-95)								X