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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

HEARTBEAT INTERNATIONAL, INC., and REALOPTIONS, INC.,

Defendants.

Case No.: 23CV044940

DEFENDANTS' CLOSING TRIAL BRIEF

Judge: Hon. Patrick McKinney
Dept: 18
Date: September 17, 2026
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Action Filed: September 21, 2023
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I. INTRODUCTION

In the shadow of the Supreme Court's historically polarizing decision in *Dobbs*, and without a shred of evidence of any actual victims after *years* of discovery and investigation—and now after a full bench trial—the Attorney General somehow *still* asks this Court with a straight face to punish and enjoin free, religiously motivated information of pro-life non-profits about Abortion Pill Reversal (APR) as if it were ordinary "commercial" fraud. Never mind that APR remains perfectly legal in California (and specifically approved by the California Board of Registered Nursing). Or that no California court has *ever* applied the FAL and UCL to a charitable nonprofit's free promotion of entirely legal services. Or that trial revealed this case is built on the theories of a so-called "expert" who *admits* he cannot swear APR is unsafe or ineffective—and who got caught acknowledging behind closed doors that his (botched) randomized trial on APR was only "pseudo-blinded" and that the worst alleged APR incident involved only *minor* bleeding—contrary to the deceptive descriptions of his published (and now thoroughly discredited) report.

That the Attorney General continues to rely on Creinin as a basis for APR's alleged hazards says more about the Attorney General's naked desperation than the actual science—or women's lived experiences. Of those who have received APR and actually testified, they uniformly expressed gratitude to Defendants. And instead of any private economic gain to Defendants, the testimony showed selfless public interest: individuals serving in nonprofits at grossly submarket salaries, to live out what they believe to be their and their organizations' religious callings.

Indeed, the evidence confirms the Attorney General's case fails at every turn. Defendants' speech is not commercial under either state or federal standards. They offer APR information for free, not for "sale," and out of sincere religious motivations, not *primarily economic* ones. And recent Supreme Court precedent confirms that medical professional information on controversial health topics is *fully* protected speech.

Additionally, the Attorney General wholly failed to meet *his* burden to show Defendants' APR speech is false or misleading. He relies entirely on (oft-discredited) criticisms of *Defendants' evidence*—a lack-of-substantiation theory that per se fails under California law. He introduced no affirmative evidence proving the untruthfulness of Defendants' statements—and, at minimum, the

challenged statements are capable of truthful qualification. The People thus did not carry their statutory burden.

Meanwhile, Defendants presented qualified expert opinion, scientifically legitimate studies in this ethically sensitive context (including the largest-ever study on APR), mechanistic evidence, observational results, continuing internal data—all affirmatively supporting APR. There are hundreds of women with continuing pregnancies in Delgado 2018, and four additional studies showing APR success: Delgado 2012**,** Turner 2017, Creinin 2020, Garratt 2023. There's RealOptions' internal data showing a 72% success rate for 67 women and Heartbeat International's data with a high success rate among thousands of women and many different providers. All higher than the 8-25% success rate with expectant management. But there's even more evidence: bench research showing reversibility; animal studies showing the same—prompting even the FDA to acknowledge that the effects of mifepristone can be reversed; DMPA studies showing an increase in continuing pregnancies using the same mechanism; and a sophisticated DNA study, Tapia 2025, showing an 83% reversal of chromosomal changes after the APR protocol.

And then there are the actual witnesses who received APR and testified under oath to their gratitude for the services they've received and concomitant total lack of harm.

Moreover—and incredibly—Creinin relied on the very Delgado 2018 study the Attorney General spent the entire trial excoriating when obtaining informed consent for his alleged groundbreaking study on APR. In other words, the actions of the State's own expert confirm the legitimacy of Defendants' science.

At worst, *arguendo*, Defendants' APR speech is only *potentially* misleading and still triggers the protection of intermediate scrutiny, requiring that the Attorney General's desired censorship be appropriately narrowly tailored. Here it is not: APR remains perfectly legal and there are far less restrictive means for spreading his (warped) viewpoint on APR. The First Amendment also protects allegedly "false" speech from content-based government censorship in the absence of associated cognizable harms. But, again, the Attorney General present no evidence of any APR harms. Worse, the evidence confirms at least a *suspicion* the Attorney General's enforcement action is viewpoint motivated in the wake of *Dobbs*, as a fulfillment of his promised crackdown on allegedly deceptive

"crisis pregnancy centers" that supposedly "limit" full "reproductive health care." It also continues to violate both Defendants' free exercise of religion and California's constitutional protections for reproductive choice.

The Attorney General has no evidence, no victim, and no commercial speech to regulate, and his claims are barred by the First Amendment and California's own Reproductive Privacy Act. Defendants ask for a finding of no liability.

II. ARGUMENT

A. Heartbeat and RealOptions' Speech Is Not Commercial

As the Attorney General acknowledges, proving that a challenged statement is commercial speech is an *element* of the UCL and FAL. "California Business and Professions Code §§ 17200 et seq. ("UCL") and 17500 et seq. ("FAL") "govern only *commercial* speech," *Rezec v. Sony Pictures Ent., Inc*. (2004) 116 Cal.App.4th 135, 140, disapproved of on other grounds by *FilmOn.com Inc. v. DoubleVerify Inc*. (2019) 7 Cal.5th 133, and do "not seek to restrict noncommercial speech in any manner," *Keimer v. Buena Vista Books, Inc.* (1999) 75 Cal.App.4th 1220, 1231." (AG's Rsps to RO's FROG, Set Two, RFA No. 11.) Therefore, Heartbeat International and RealOptions can be prosecuted on these claims only if their challenged speech is commercial. The evidence showed that it is not.

Whatever the merits of the Attorney General's commercial speech theories when this case began (they were fanciful even then), the gig is now up. Defendants' testimony confirmed their *primary* and total motivation is altruistic and religious: saving lives (both of mom and baby), not turning a profit. The Attorney General's sole hook for this first-ever enforcement of California's UCL and FAL against a charitable non-profit's offering of free information—(*First Resort, Inc. v. Herrera* (9th Cir. 2017), 860 F.3d 1263)—has been gutted. Just months ago, the Supreme Court reaffirmed that even *for-profit* medical professional speech is *fully* protected and cannot be "nullified" by "mere labels" (there, as "incident to conduct"; here, as "commercial"). (*Chiles v. Salazar* (2026), 146 S. Ct. 1010, 1023.) And this after the Supreme Court specifically recognized that *California pro-life pregnancy center advertising* contributes to the "marketplace of ideas." (*NIFLA v. Becerra* (2018), 585 U.S. 755, 772; directly contra *First Resort*, 860 F.3d at 1276.)

And now the other shoe has finally dropped: last month a federal court recognized that a non-profit's free information promoting the *abortion pill and abortion pill providers* is *not* commercial speech, even though it "fundraises and sells merchandise on its website to further its nonprofit mission." (*Mayday Health v. Rhoden* (D.S.D., July 17, 2026, No. 26-cv-4096) 2026 WL 2070966 at *11. ["[T]here is no evidence that Mayday receives payment for linking the websites for abortion pill merchants on its own website."].) And that in a state where the abortion pill is *illegal*.

The same conclusion follows *a fortiori* here, where APR remains entirely *legal*. The Attorney General seeks to censor fully protected religiously motivated information about APR within the heartland of the marketplace of ideas, along with fully protected healthcare professional speech regarding the same—not commercial speech.

1. Heartbeat and RealOptions' Speech Is Not Commercial Under The FAL

In determining whether potentially commercial speech is actionable under the FAL, the California Supreme Court applies a "limited-purpose definition," under which the speech "must consist of factual representations about the business operations, products, or services **of the speaker** . . . **made for the purpose of promoting sales of**, or other commercial transactions in, **the speaker's products or services**." (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 962, 963-964, emphasis added.) *Kasky* placed charitable solicitation outside that definition "because it does not involve factual representations about a product or service that is **offered for sale.**" (*Id.* at pp. 966-967, emphasis added.) Both the Ninth Circuit and the Court of Appeal have also enforced those limits. In *First Resort, Inc. v. Herrera* (9th Cir. 2017) 860 F.3d 1263, 1281, the court deemed San Francisco's ordinance **not preempted** by the False Advertising Law because the ordinance sweeps more broadly than the statute: "the Ordinance differs from the FAL as it narrowly proscribes false advertising concerning the performance of services, irrespective of whether those services are offered for sale," while the FAL reaches statements made with "the intent not to **sell**" property or services as advertised. *Bernardo v. Planned Parenthood Federation of America* (2004) 115 Cal.App.4th 322 applied the definition to speech materially identical to this — website statements about a contested scientific question in the abortion context — and held it noncommercial: the statements were "**not made in connection with an offer to sell** abortion services." (*Id.* at p. 350.)

Heartbeat provides no reversal treatment and charges no one. RealOptions bills no woman, no insurer, and no provider. There is no "sale." Ms. Brown testified that Heartbeat never bills for APR, no client or insurer has ever paid Heartbeat for APR, Heartbeat has never charged women for APR-related information or a connection to a provider, and Heartbeat has never charged providers or prospective providers for the APR Provider Kit. (7/29/26 Tr. 55:2-15.) RealOptions likewise does not bill women or insurance for APR-related services. (7/29/26 Tr. 131:4-14.) (See also *id.* 132:14-134:11.) The Attorney General cannot and does not dispute these facts.

And in *Exeltis USA Inc. v. First Databank, Inc.* (N.D. Cal. 2021) 520 F.Supp.3d 1225, 1230, the court held a drug-information publisher's statements noncommercial because its database "provides information about **third-party** pharmaceutical products . . . **not its own products**." (*Alfasigma USA, Inc. v. First Databank, Inc.* (N.D. Cal. 2021) 525 F.Supp.3d 1088, 1096, dismissing the "Lanham Act, FAL, and UCL claims . . . on this basis.") Defendants stand further outside the definition than First Databank did, for First Databank sold for profit the database that carried its statements. Heartbeat does not provide abortion pill reversal or sell APR information: Heartbeat describes a protocol that independent, licensed clinicians administer, and it receives nothing when they do. That commercial stake is what *Kasky*'s content element asks about—factual representations made to promote sale of "**the speaker's** products or services" (*id.* at p. 962)—and here it is absent.

2. Heartbeat and RealOptions' Speech Is Not Commercial Under The First Amendment

The federal courts hold that, under the First Amendment, "[c]ommercial speech is usually defined as speech that does no more than propose a commercial transaction." (*Ariix, LLC v. NutriSearch Corp*. (9th Cir. 2021) 985 F.3d 1107, 1115, internal marks omitted). (AG's Rsps to RO's FROG, Set Two, RFA No. 11.) Defendants' challenged communications fall outside even the federal courts' commercial speech definition, because they indisputably do not propose any commercial transaction.

Under the U.S. Constitution, those facts and the general rule do not, of course, end the inquiry. *T*he Attorney General admits his case for commercial speech here exists on the margins, leaning heavily on "ambiguities**.**" (AG's Rsps to RO's FROG, Set Two, RFA No. 11.) *Ariix* likewise treats

marginal cases as a close-question inquiry under *Bolger v. Youngs Drug Products Corp.* (1983) 463 U.S. 60, 66-67. (*Ariix*, *supra*, 985 F.3d at 1115-16.) Those three *Bolger* factors are economic motivation, advertising format, and product references, which in combination can support classifying speech as commercial. (*Kasky*, *supra*, 27 Cal.4th at 957.) Here, none of those factors, individually or collectively, amounts to commercial speech.

a. Economic Motivation

The economic motive factor asks whether the speaker acted "*primarily* out of economic motivation, not simply whether the speaker had any economic motivation." (*Ariix*, *supra*, 985 F.3d at 1116). Although theoretically non-essential, (*Bolger*, *supra*, 463 U.S. at 67 n.14), no case has ever found commercial speech without an economic motive. (*NIFLA v. James* (2d Cir. 2025) 160 F.4th 360, 377, citing *Thompson v. Western States Medical Center* (2002) 535 U.S. 357, 366*, Kiser v. Kamdar* (6th Cir. 2016) 831 F.3d 784, 787–89, and *American Academy of Pain Management v. Joseph* (9th Cir. 2004) 353 F.3d 1099, 1106.) *NIFLA v. James* holds substantially similar APR speech noncommercial where pregnancy centers referred women to APRN or other providers without remuneration. (*NIFLA v. James*, 160 F.4th at 366, 376–77; see also *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore*, 879 F.3d 101, 109 (not commercial, because pregnancy center "is a non-profit organization whose clearest motivation is not economic but moral, philosophical, and religious. It provides free services and collects no fees.").) The Attorney General has relied on *First Resort,* but that court found primary economic motive given that senior managers' bonuses were tied to new-client volume. (*First Resort, supra*, 860 F.3d at 1273; *Ariix*, *supra*, 985 F.3d at 1117 [characterizing *First Resort* in same way].) *First Resort* also relied on that pregnancy center allegedly participating in a "competitive marketplace for commercially valuable services," appearing "unbiased and neutral" and not disclosing its "anti-abortion stance or that it did not provide referrals for abortions," none of which apply here. (*Id.*, 860 F.3d at 1273-74.) The Attorney General has not sought to prove the existence of a competitive commercial market for APR services—his theory is that mainstream medicine rejects the practice—and Defendants' APR speech is clearly advocacy directed at women who have already purchased abortion pills. The fact APR has some commercial value is irrelevant. (*James*, *supra*, 160 F.4th at 377.)

The objective economics here thus resemble *James* and *Greater Baltimore* far more than *First Resort.* Indeed, the recent decision in *Mayday Health v. Rhoden* expressly relied on *James* in holding that "a nonprofit organization expressing a moral belief and providing information for free" about the *abortion pill* and its providers is non-commercial. (*Rhoden*, *supra*, 2026 WL 2070966, at *11 [citing *James* for proposition that lack of quid pro quo for abortion pill referrals vitiated economic motive]; accord Hr'g Tr. 15-16, *Mayday Health v. Jackley* (S.D.N.Y., Feb. 11, 2026, No. 26-cv-78) ECF No. 48 [Failla, J.] ["the fact that the website solicits donations does not transform its contents into commercial speech"].) The court in *Rhoden* declined to apply *First Resort*, characterizing it—just as the Ninth Circuit did in *Ariix*—as a case where the "success of the advertisements *directly relate[d]* to employee compensation." (*Rhoden*, *supra*, 2026 WL 2070966, at *11, emphasis added). No such evidence exists here.

i. Heartbeat's Motivation For Providing Information Regarding Abortion Pill Reversal Is Charitable and Religious, Not Commercial.

As Mr. Godsey testified, Heartbeat's fundraising and advocacy aim "[t]o reach and rescue as many lives as possible" and to help as many women as possible, in part by keeping the APRN staffed with nurses 24/7. (7/2/26 Tr. 103:19-104:1.) Their primary motivation for this ministry is *religious*: Mr. Godsey feels a religious obligation to encourage women to continue their pregnancies, and Heartbeat employees must agree to its statement of faith; and they share a religious message with moms experiencing unplanned pregnancies "whenever possible." (7/2/26 Tr. 75:1-6.) Consistent with that aim, the funds Heartbeat raises for APR directly maintain the network, primarily by paying the nurses who answer calls on the hotline, a critical part of Heartbeat's mission. (7/2/26 Tr. 103:7-15.) The Attorney General has not proved that Heartbeat's APR-related statements are directly related to its ability to fundraise. In fact, while Heartbeat's revenue has remained static over the last four years, its number of reversal clients has increased, forcing Heartbeat to take increasing net losses on its APR program. (7/2/26 Tr. 116:25-117:15.)

Compensation evidence reinforces the entity-level economics. Heartbeat President Jor-El Godsey earns just $160,000, in the bottom quartile of comparable nonprofit CEOs. (7/2/26 Tr. 79:4-15.) Nor do Heartbeat's roughly 110 other employees get rich from APR, generally earning far below

market rates for their work. (*Id*. at 104:2-15.) Heartbeat's director of medical impact, Christa Brown, could make 45% more in a comparable nonprofit role. (7/27/26 Tr. 129:27-130:7). Both Godsey and Brown accept below market pay for their work, for deeply moving personal reasons they shared at trial. (7/2/26 Tr. 75:7-14; 7/27/26 Tr. 125:3-126:13.) But even if they simply punched timeclocks, their financial sacrifice devastates the Attorney General's commercial speech argument under *Ariix* and meaningfully distinguishes this case from *First Resort*.

ii. RealOptions' Motivation For Providing Information Regarding Abortion Pill Reversal Is Charitable and Religious, Not Commercial.

RealOptions' compensation evidence likewise does not show a *First Resort*-type APR commercial incentive. Like Heartbeat, its motive is also primarily religious. RealOptions maintains a statement of faith that employees are required to sign and follow, (7/29/26 Tr. 121:12-122:7), and offering APR services fits within RealOptions' religious mission. (7/29/26 Tr. 123:1-27). Chief Marketing Officer Donna Hecke earns about $107,000 at RealOptions after having earned as much as $1,000,000 annually decades ago in the private sector. (7/22/26 Tr. 107:7–108:8.) Former CEO Valerie Hill earned $147,000, current CEO Tasha Keirns $175,000, and Dr. Davenport serves as medical director without compensation. (7/23/26 Tr. 108:7–28; 7/29/26 Tr. 119:14–18; 7/7/26 Tr. 102:15–16.) The cited compensation record thus shows submarket salaries and unpaid service—not the kind of new-client-volume bonus that drove the economic-motive analysis in *First Resort*.

All could make more money elsewhere but have deeply personal, nonfinancial reasons for working at RealOptions. Keirns unexpectedly became pregnant in college, was strongly pressured to abort, and now wants to help women in similar situations. (7/29/26 Tr. 103:25-106:5.) Hill had an abortion after an abusive marriage in her youth. (7/23/26 Tr. 54:9-55:2.) Hecke's birth mother resisted pressure to abort her in favor of adoption, and Hecke serves to honor her mother and other women in that situation. (7/22/26 Tr. 72:22-73:13.)

Notwithstanding employees' religious and personal reasons for joining RealOptions, bills still need to be paid if RealOptions wants to keep providing its free services to women in need. So, it fundraises via e-blast requests to its donors, a supporter page, and social media posts. (7/22/26 Tr. 57:6-58:7; *id.* 81:23-82:4.) Only roughly 2% of e-blasts before trial started concerned APR, and only

roughly 3% of its supporter-facing pages and social media posts mention APR. (7/22/26 Tr. 57:24-58:6, 90:17-21, 93:24-94:13.)

iii. Neither Fundraising Nor Incidental Income Render Defendants' Speech Commercial

Defendants do not dispute that they tell APR patient stories in donor communications and at fundraising events. (7/22/26 Tr. 56:20–57:11, 57:24–58:6; 7/23/26 Tr. 24:15–25:28, 29:24–32:4.) But the evidence confirms the purpose of sharing APR patient stories is not to enrich or financially benefit themselves, but to *inform* donors of their investment impact and to *raise* support to continue the cause. (7/22/26 Tr. 57:9-21; *id.* 58:9-21.) The Supreme Court has already held that such speech is not commercial. (*Riley v. Natl. Fedn. of the Blind of North Carolina*, *Inc.* (1988) 487 U.S. 781, 789, 796 ["solicitation is characteristically intertwined with informative and perhaps persuasive speech," and "without solicitation the flow of such information and advocacy would likely cease"]). (See also *Village of Schaumburg v. Citizens for a Better Environment* (1980) 444 U.S. 620, 632, "because charitable solicitation does more than inform private economic decisions and is not primarily concerned with providing information about the characteristics and costs of goods and services, it has not been dealt with in our cases as a variety of purely commercial speech.") And the Supreme Court has likewise recognized that a "rise" in "voluntary contributions" that "benefit the organization" does not render the organization's speech less protected. (*In re Primus* (1978) 436 U.S. 412, 430-31.)

Here, several challenged APR statements appear in donor solicitations, a form of protected charitable solicitations and hence protected by strict scrutiny the Attorney General concedes he does not even try to satisfy. For example, Joint Exhibit 28 is Heartbeat's *donor* facing webpage that calls for charitable donations to support the APRN, while Exhibits 20,017 and 20,044 are RealOptions' donor communications. (7/22/26 Tr. 56:20–57:11; 7/23/26 Tr. 24:15–25:28, 29:23–32:4.) Those communications therefore cannot be treated as ordinary product advertisements merely because they also seek donations; *Riley* requires the solicitation and accompanying advocacy to be analyzed as protected charitable speech.

That classification independently narrows Heartbeat's "thousands of lives saved" statement.

No record testimony shows that statement has ever been used in communications targeted to women seeking APR. Instead, it has appeared only in information directed to the public or donors. (Ex. 20,033; 7/2/26 Tr. 56:8–58:22; 7/29/26 Tr. 52:25–54:10.) Thus, besides being true, the phrase is completely protected as either information to the general public or as part of a charitable solicitation to potential donors.

Heartbeat's affiliation fees and trainings available for sale likewise do not render its APR speech commercial. The fees do not even cover the benefits of affiliation. (7/2/26 Tr. 73:11-16). And Heartbeat sells some APR trainings to pregnancy resource centers for as little as $9.95 up to a maximum of $119.95 even though it gives APR provider kits away for free. (7/2/26 Tr. 116:8-24; Ex. 20,093.) APR training revenue has not exceeded $5,000 nationwide in any year (7/2/26 Tr. 116:21-24), Heartbeat offers several free training programs, and paid training is not required to join the APRN (7/28/26 Tr. 61:2-23.) In any event, the APR trainings are educational, and minimal revenue incidentally earned from them cannot transform them into commercial speech: "A simple profit motive to sell copies of a publication or to obtain an incidental economic benefit, without more, does not make something commercial speech. Otherwise, virtually any newspaper, magazine, or book for sale could be considered a commercial publication." (*Ariix, supra*, 985 F.3d at 1117.) And even *selling* Bibles as the primary means of sustaining a religious ministry has been deemed noncommercial. (*Murdock v. Com. of Pennsylvania* (1943) 319 U.S. 105, 111-12.) So too here with respect to Heartbeat's incidental income to help sustain its own religious mission. (Accord *Rhoden*, 2026 WL 2070966, at *11 ["sell[ing] merchandise" did not render even secular non-profit's pro-abortion-pill speech commercial].)

b. Advertising Format

The Attorney General's trial presentation principally focused not on traditional paid advertisements but on: (a) Defendants' websites, (b) information provided by nurses and healthcare professionals, and (c) informed consent forms. His opening penalty theory likewise counted alleged exposures through those channels. (6/24/26 Tr. 21:12-24:3.) Advertising format is not dispositive under *Kasky*, but it remains relevant under *Bolger* and here reinforces the evidence of noncommercial character.

i. Defendants' Websites

A website describing available services can sometimes be commercial advertising, but Defendants' websites differ materially from paid advertisements pushed to consumers. Women generally must seek them out, often after taking mifepristone and then deciding they want to continue their pregnancies. (7/27/26 Tr. 149:7-12.) What women find is information rather than an attempt to make a sale: an explanation of APR, a hotline number, and details on obtaining free assistance. The nonfinancial character of the websites is attested to even in unexpected ways, like when RealOptions' website directs the APR-curious to Heartbeat's hotline that will refer at most some subset of them back to RealOptions rather than direct them all to a RealOptions appointment calendar. (Jt. Ex. 29 at 1–3; 7/22/26 Tr. 27:1–9, 27:19–28:11.)

ii. APRN Hotline Speech/RealOptions Nursing Staff Speech/Informed Consent Forms

Patient-specific APR communications similarly share little with traditional advertising. RealOptions nurses provide counseling and informed-consent information as part of clinical care, while APRN hotline nurses use standardized guidance to explain callers' options, safety information, and referrals to appropriate providers. (Searle Dep. 122:24-123:15, 126:10-127:11, 129:19-130:14, 131:1-19.) Before this case, no prosecutor in California ever attempted to penalize information conveyed in those ways under the FAL, and the attempt here must fail given recent U.S. Supreme Court decisions holding healthcare providers' client and patient communications fully protected by the First Amendment. (See *Chiles*, *supra*, 146 S. Ct. at 1024; *NIFLA*, *supra*, 585 U.S. at 771.) Indeed, "the dangers associated with censorship"—i.e., the "suppress[ion] [of] minorities" and "muzzl[ing]" of "unpopular ideas"—"are no less acute in the fields of medicine and public health than they are anywhere else." *Chiles*, 146 S. Ct. at 1024-25 (internal quotations marks omitted) (holding that *for*-profit counselor-patient communications were protected speech).[1]

Accordingly, this format of communication is *fully* protected speech under *Chiles* and *NIFLA*,

[1] Indeed, the recent application of *Chiles* in California demonstrates how far removed speech from a healthcare professional to a patient or client is from an "advertising" format. Earlier this month, *Kory v. Bonta* (E.D. Cal., Aug. 5, 2026, No. 24-cv-1) 2026 WL 2262361, applied *Chiles* to preliminarily enjoin viewpoint-based discipline of physicians for COVID-19 advice they provide their patients. (*Id*. at *3-4, 12.)

in addition to being so far from the traditionally circumscribed advertising format that it can no longer be classified within the category of commercial speech.

c. Product References

Defendants' public communications do not reference any product, only a service. Heartbeat does not recommend any specific progesterone manufacturer or formulation; its provider materials discuss only protocols and APR routes. (Jt. Ex. 21; Searle Dep. 133:22-135:15.) RealOptions likewise forgoes any reference to a specific APR protocol, instead describing APR services by multiple routes, including routes only available through *other* providers. (Jt. Ex. 29 at 1-3; 7/22/26 Tr. 27:19-28:11.) (See *Bolger*, *supra*, 463 U.S. at p.66 n.13.)

3. Information Provided To Women Regarding Abortion Pill Reversal After Methotrexate or After Misoprostol Is Noncommercial Speech

The Attorney General's advertising-format and economic-motive arguments are weaker still as to Heartbeat's challenged speech about APR after methotrexate or misoprostol. The trial record consists principally of informed-consent/provider materials and conditional hotline guidance addressing unusual clinical scenarios rather than mass-market advertising. (Jt. Ex. 21; Searle Dep. 133:22–135:15; 7/9/26 Tr. 23:20–25:21.) Those materials also contain cautionary disclosures: Heartbeat tells patients there are no studies establishing a success rate after methotrexate and expressly states that progesterone is not an antidote to methotrexate or misoprostol. (Ex. 21 at 9–10, 22–27.) The statements themselves are protected as individualized professional communications under *Chiles*, and the conditional, referral-oriented context in which Heartbeat situates them cuts against treating the statements as ordinary commercial promotion.

4. Downstream Payment of $0 to $150 To Third Party Pharmacists For Progesterone Cannot Make Defendants' Speech Commercial.

The Attorney General suggested in opening that Defendants' speech is commercial because women or their insurers may eventually pay third-party pharmacists for progesterone prescriptions. *NIFLA v. James* rejected the same theory. New York argued *someone* must pay for progesterone, rendering APR-related speech commercial. (160 F.4th at 377.) The Court reasoned that any nonprofit providing information, free services, and access to third-party providers "will inevitably have some

commercial value and eventually someone will have to be paid for them," but that "does not suffice" to transform ideological and religious advocacy into commercial activity. (*Id*. (internal marks omitted).)

So too here. Brown testified that money a woman pays for a progesterone prescription does not go to Heartbeat; Keirns likewise testified that pharmacy payments for progesterone prescriptions do not go to RealOptions. (7/27/26 Tr. 184:8–17; 7/29/26 Tr. 133:1–23.) Further, Heartbeat sometimes subsidizes the cost of progesterone. (7/2/26 Tr. 118:7–12).

The notion that Defendants have an economic motive to run up their expenses is patently absurd.

B. The Attorney General Has Failed His Burden to Prove Defendants' Statements Are False or Misleading.

Even if some challenged statements qualify as commercial speech (none do), the Attorney General still bears the trial burden to prove them false or misleading by a preponderance of the evidence. (Bus. & Prof. Code, § 17508(f); Evid. Code, § 520.) Section 17508 expressly addresses advertising claims purporting to rest on factual, objective, or clinical evidence, yet assigns "the burden of proof" to the plaintiff. (Bus. & Prof. Code, § 17508(a), (f).) Prosecutors may demand substantiation before suing, but they "retain the burden of proof in the false advertising actions." (*Kwan v. SanMedica Intl.* (9th Cir. 2017) 854 F.3d 1088, 1095, citing *King Bio*, 107 Cal.App.4th at 1344.) *Kwan* also rejects importing federal establishment-claim doctrine as a means of shifting California's burden to the advertiser. (*Id.* at 1097, citing *King Bio*, 107 Cal.App.4th at 1347-48.)

King Bio illustrates the distinction. The defendant sold homeopathic remedies that it claimed relieved "a variety of symptoms and ills, including stress, colds, flu, eating disorders, learning disorders, menstrual irregularities, snoring, and tobacco and alcohol cravings." (107 Cal.App.4th at 1341.) The plaintiff attacked those efficacy claims as inadequately substantiated but offered no confirmatory testing or even anecdote. (*Id.*) The Court rejected that attempted burden shift, observing that the *plaintiff* must provide evidence of "falsity of the advertising claims," which "may be established by testing, scientific literature, or anecdotal evidence." (*Id*. at 1348.) And this is true even of *government* plaintiffs: "At trial, . . . [n]either a private plaintiff nor a prosecuting authority may shift the burden

to the defendant to substantiate its claims." (*Mullins v. Premier Nutrition Corp.* (N.D. Cal. 2016) 178 F. Supp. 3d 867, 892.)

The same distinction controls here. The Attorney General identifies purported limitations of, and critical statements about, the scientific research Defendants' challenged statements quote or otherwise rely on. But methodological criticism and contrary expert opinions do not themselves establish that the challenged communications are false or likely to mislead.

The Attorney General's own medical expert, Dr. Creinin, testified that he could not swear under oath that APR is not safe or ineffective. (6/29/26 Tr. 147:2-6.) (See also Zahn Dep. 39:22–41:16., ACOG is not aware of any good or even "fair: evidence that APR does not work.) Dr. Creinin testified that no conclusions could be drawn from his own failed study. (6/30/26 Tr. 19:2-12.) As well he might: his study claimed to be double-blinded, when it was only pseudo-blinded. (6/29/26 Tr. 11:12-12:14, Ex. 30,142, pg. 4.) His study enrolled only 12 subjects, but he couldn't even keep their information straight. He claimed that a woman went to the ER in an ambulance, when she walked in on her own two feet. (6/29/26 Tr. 40:23-41:4.) He claimed an APR patient had a severe hemorrhage, but her medical records show a miscarriage without complication. (Ex. 8, at 6; Ex. 13, at 1, see safety discussion, *infra.*)

Dr. Creinin presented no affirmative evidence, only criticism. And his criticism is completely infected by his bias: he claims that APR raises safety concerns, whereas abortion procedures, that result in hemorrhages and transfusions, including one in which his patient died, are safe. (6/25/26 Tr. 116:18-117:10.) A paid consultant to Danco, the manufacturer of mifepristone, (6/25/26 Tr. 101:10-16), Dr. Creinin convened an emergency conference of "mifepristone stakeholders" after his study was published to control the public narrative on APR, drafting talking points that involved leading reporters away from uncomfortable questions on whether the mifepristone label should be changed in light of the study's suggestion of its danger. (6/29/26 Tr. 57:2-63:4.; Ex. 11, Ex. 12, pg. 3)

His very definition of the word "hemorrhage" is remarkably elastic: wide when it can be used against APR (encompassing normal miscarriage symptoms and grounded only in patient's "personal response" (6/30/26 Tr. 45:1-14)), and extremely narrow when applied to abortion procedures (only serious interventions like blood transfusions count; no quantity of blood loss alone qualifies.)

C. The Scientific Evidence Supports Defendants' Challenged Statements.

Defendants separately have affirmatively proved, often with the assistance of the Attorney General's experts, that all statements they make are true and not misleading. Even if the burden of proof were (improperly) shifted to Defendants to prove the truthfulness of their claims, they have shown that their claims are more likely than not true and not misleading.

1. Effectiveness Statement

The evidence shows that APR works. At the most basic level, APR is effective if more pregnancies continue after APR than after expectant management (mifepristone alone).

a. The baseline survival rate after mifepristone alone is likely 8% but certainly no higher than 25%.

The best available evidence about the rate of continuing pregnancy after mifepristone alone comes from studies conducted in the 1980s and 1990s about the safety and efficacy of using mifepristone alone to end a pregnancy. Using results from past studies as a comparator is a historical-control design. ACOG acknowledges historical controls can be valid comparators. (Zahn Dep. 80:8–18.) Glidden testified he has used historical controls and explained that the more comparable a historical group is to the treatment group, the more confidence one may place in an observed difference. (6/30/26 Tr. 93:4–96:24.) Here, however, even when accounting for the only variable known to make a difference, gestational age, the treatment group has far superior outcomes.

When Dr. Creinin reviewed the mifepristone-alone studies from the 1980s and 1990s, he concluded that the ongoing rate of pregnancy following mifepristone alone was most likely just 8%. (6/29/26 Tr. 102:2–104:23.) Crucially, he pooled studies that looked at 600mg doses and 200mg doses of mifepristone because the lower dose saturates blood serum with mifepristone and terminates pregnancy at approximately the same rate as the higher dose. (*Id.* 105:1-10, 106:1-107:19.)

However, Dr. Creinin's conclusion that the rate of ongoing pregnancy after mifepristone alone was just 8% never left the confines of the peer review process. In court, he testified (after the Attorney General made his private comments a joint exhibit) that the number was most likely "8-10%." In court, he testified that he had a low degree of confidence in that figure, something he had never mentioned to his scientific peers earlier. (6/29/26 Tr. 104:15-105:1–11; Jt. Ex. 9, at 7.)

Defendants agree with Dr. Creinin that the continuing pregnancy rate is most likely 8%. The rate is based on results from 450 women (6/29/26 Tr. 102:2–24), which is a large sample size in the pregnancy context. The difference between an 8% rate after mifepristone alone and the ongoing rate of pregnancy after APR in Dr. Delgado's study is so significant that even Dr. Glidden admitted "it might make it more plausible that APR is effective or that the selection mechanisms are more powerful than I expect." (7/1/26 Tr. 96:11-22) (See 6/29/26 Tr. 104:15-105:11; 7/1/26 Tr. 93:18–94:10.)

Other proposed continuing pregnancy rates following mifepristone alone are higher. But across the plausible baseline ranges evaluated at trial, APR patients still had a materially higher continuation rate than mifepristone-alone patients. New testified that "a broad body of research on mifepristone alone puts the embryo survival rate at certainly under 25 percent." (7/14/26 Tr. 37:3–12.) Kraus likewise placed the plausible rate between approximately 10 and 25 percent. (7/9/26 Tr. 52:7–25.) In sharp contrast, Delgado 2018 reported 48% of pregnancies overall survived following APR, and higher rates as to the most common modes of administration. (Jt. Ex. 5 at 7 tbl. 1.) No matter which rate is used, the evidence shows that women who choose APR are statistically more likely to have ongoing pregnancies. (7/14/26 Tr. 42:14–43:10.)

b. The survival rate after progesterone is significantly higher than 8-25%.

A substantial body of evidence documents success rates after APR. Dr. Delgado's 2018 study observed 261 successful reversals out of 547 women between 2012-2016, for a 48% success rate. There were higher success rates for intramuscular injections (80/125), 64% and for a high dose oral protocol (21/31), 68%. There were 291 women with pregnancies at a gestational age of seven weeks or less with 121 reversals, for a continuation rate of 41.5%.

The Attorney General did not appreciate these powerful results. For the Attorney General, there was no stick too flimsy with which to beat Dr. Delgado's 2018 study. The way he published it was wrong; the way he named it was wrong; the women he chose to include was wrong, the women he chose to exclude was wrong. It was wrong that some women received ultrasounds, it was wrong that some women did not receive ultrasounds, it was wrong he used a public IRB, it was wrong he

then used a private IRB. It had too many doctors, but it also did not have enough oversight. It was wrong that he included subgroups of data, but it was even more wrong that he did not include enough subgroups of data. The Attorney General could not even bring himself to call it a study, calling it a "report" throughout the entire trial.

In fact, Dr. Delgado's study was allegedly *so wrong*, yet the State's expert, Dr. Creinin, used its data without qualification to give informed consent to his research subjects. (6/29/26 Tr. 49:11-51:16.) Dr. Delgado's study was *so wrong*, yet the State's expert Dr. Creinin furiously emailed ACOG to change its public statement on APR because it inadvertently validated it as a study, only for ACOG to ignore Dr. Creinin's demands. (Zahn Dep. Tr. 131:4-137:8.) It was *so wrong*, yet Dr. Creinin privately referred to Dr. Delgado's study as a **"big study"** that "will make our study much easier." (6/29/26 Tr. 8:10-9:19; Ex. 30,142, pg. 16)

Whatever limitations one assigns Delgado 2018, its efficacy signal is directionally consistent with the other published APR studies cited at trial and with Heartbeat's and RealOptions' independent clinical data.

RealOptions' data corroborates Dr. Delgado's study. The same effectiveness signal appears with almost no loss to follow up. (It should be noted that the State's biostatistics expert, Dr. Glidden, drew safety and efficacy conclusions about medication abortion with an approximate range of 42% loss to follow up shortly after his deposition in which he criticized Dr. Delgado's 15% loss to follow up.) (7/1/26 Tr. 92:2-93:1) RealOptions' current admitted dataset lists only 1 patient as lost to contact out of 68 patients thanks to its painstaking tracking of its patients' outcomes in its EMR. (Ex. 30,173 at 2; 7/30/26 Tr. 38:12-40:9.)

Delgado's 2018 study was criticized for having 325 providers with differing protocols; RealOptions has one medical doctor using two very similar protocols at RealOptions' four clinics operating through one EMR system and "very tight policies and procedures." (7/8/26 Tr. 42:2-15, 44:1-2.) Yet RealOptions' more standardized clinical setting produces even a *higher* observed continuation rate. (*Id.* 45:1-46:19; Ex. 30,173.)

RealOptions, using either a hybrid intramuscular and high dose oral treatment protocol or a high dose oral protocol, observed 67 women classified as completing APR with an observed birth or

miscarriage outcome, 48 had successful reversals (43 births and 5 ongoing pregnancies not yet delivered), a 72% success rate. (7/8/26 Tr. 45:1-7; 7/30/26 Tr. 34:17-35:5, 38:8-11; Ex. 30,173, pg. 2) For women with pregnancies seven weeks old or less, 14/23 women had successful reversals (12 births and 2 ongoing pregnancies not yet delivered) for a success rate of 61%. (Ex. 30,173, pg. 2.) Dr. Kraus testified that a 61% RealOptions rate at seven weeks or less appears to be a significantly increased ongoing-pregnancy rate and "would certainly be statistically significant." (7/9/26 Tr. 82:2-11.)

Heartbeat International knew of 1,411 reversals out of 2,494 known outcomes between 2021-2025 for a 57% success rate, outperforming the overall success rate of 48% found in Dr. Delgado's 2018 study—potentially indicating that providers have improved their methods, as the high dose oral method has been recommended by Heartbeat. Heartbeat's success rates have stayed roughly consistent despite different rates of loss to follow up, indicating that loss to follow up is most likely not impacting results. (Ex. 30,184, tab 1.) While there have been some issues with consistent data as Heartbeat is working with very large numbers and is predominately focused on referring clients to providers, the very significant size of this data set means that marginal differences in data do not greatly affect the outcome. The breakdown for clients with gestational ages of seven weeks or less is currently unknown. However, the fact that the success rate outperforms Delgado 2018 indicates that the seven week or less success rate should at least not be any lower.

c. The Bradford-Hill criteria establish that progesterone causes the increase in continued pregnancies.

A longstanding method of evaluating whether a treatment causes a positive outcome using observational data is the Bradford Hill criteria. California and federal courts of appeals and all trial experts who opined on the matter agree this is a valid framework for assessing whether an observed correlation is more likely than not causal. (7/8/26 Tr. 35:17-36:3; 7/9/26 Tr. 110:3-17, 112:4-9; 7/14/26 Tr. 26:10-20; 7/27/26 Tr. 56:9-22, 57:9-28; *Hardeman v. Monsanto Co.* (9th Cir. 2021) 997 F.3d 941, 953 n.2; *Johnson & Johnson Talcum Powder Cases* (2019) 37 Cal.App.5th 292, 303–04 & n.4.) More broadly, all the trial experts agreed that effectiveness inferences may be drawn from observational data. Dr. Creinin and Dr. Glidden conceded that a large retrospective cohort study with

established comparator when an RCT is unethical or infeasible could be used to draw causal inferences. (6/24/26 Tr. 77:18-79:4, 88:5-89:14). Delgado 2018 is a retrospective cohort study (7/20/26 Tr. 66:22-67:6; 7/9/26 Tr. 75:2-7; *see* 6/30/26 Tr. 99:12-18), an APR RCT would be infeasible and unethical, and an established comparator group with a known outcome exists. Delgado 2018 thus satisfies the preconditions for permissible causal inference even under that strictest test and a fortiori under the more permissive Davenport, Kraus, and New proposed.

Sir Bradford Hill himself observed that no "hard-and-fast rules of evidence" could be laid down that "*must* be obeyed before we accept cause and effect." (Ex. 30,181, pg. 5.) This remains true today. Sir Bradford Hill wrote that his criteria "help us to make up our minds on the fundamental question - is there any other way of explaining the set of facts before us, **is there any other answer equally, or more, likely than cause and effect?**" (*Id.* (emphasis added).) The applicability of Bradford Hill's criteria to finding causality in civil cases, where the Court must determine what is "more likely than not" true, is self-evident.

The nine Bradford Hill criteria robustly support the statement that APR works. **Strength of association**, which asks how big of a difference a treatment makes, is well established: the group of women with pregnancies seven weeks old or less in Delgado's 2018 study have a survival rate of nearly *double* that of the most conservative historical control. This was a large group of women (291) with (121) reversals, for a continuation rate of 41.5% (Ex. 5, pg. 10 tbl.2), whereas Maria 1988 reported a 23.3% continuation rate and Dr. Creinin estimates only an 8% success rate.

Moreover, a robust statistical strength of association with a one-sided P-value of .0189 and two-sided .0355 was shown in data collected in Stifani and Lavelanet 2023 when stratified by gestational age. These authors conducted a systematic review of APR evidence. For pregnancies at seven weeks or less, the review compared mifepristone-alone groups drawn from Maria 1988 and the placebo arm of Creinin 2020 with APR groups drawn from Delgado 2012, Garratt and Turner 2017, Delgado 2018, and Creinin 2020. New explained that the relevant mifepristone dose was 200 mg in the principal comparator groups and described the resulting 22% versus 42% continuation comparison. (7/14/26 Tr. 37:13–41:16.) In other words, the rate of ongoing pregnancies nearly doubled. Dr. New confirmed that the difference between 22% and 42% ongoing pregnancy rate was statistically

significant meaning that it was very unlikely to arise by chance and very likely due to an intervention. (7/14/26 Tr. 37:13-41:16.) Glidden agreed the method Dr. New used to compare the results, Fisher's exact test, was an appropriate method, and both Glidden and Creinin agreed that a p-value less than .05 is statistically significant. (7/1/26 Tr. 33:17–23, 55:5–9; 6/29/26 Tr. 98:7–99:8.)

Consistency, which asks if the association under review has repeatedly been observed across diverse contexts: *every* peer-reviewed APR study ever done shows a higher continuing pregnancy rate after mifepristone with APR regardless of study size, despite using nonoverlapping datasets, and in the face of widely varying loss to follow up. (7/8/26 Tr. 37:11-20; 7/9/26 Tr. 77:9-16, 112:19-24; 7/14/26 Tr. 60:1-61:2; Ex. 30,217 tab 1, row 10.)

RealOptions data provides additional evidence of both consistency and strength of association. RealOptions maintains APR records across four clinics within one organization, using one electronic medical-record system and comparatively tight policies and procedures. (7/8/26 Tr. 42:2-15, 44:1-2.) Davenport personally reviewed the charts and gestational-age information for every patient in the admitted APR dataset. (*Id.* 43:6-20; Ex. 30,173.) And resulting data already discussed confirms effectiveness.

Dr. New testified that the dataset fits the Bradford Hill framework because it is "another data point" bearing on cause and effect, produces results "broadly consistent" with other APR studies, and is specifically consistent with Delgado 2018's high-dose oral and IM results. (7/14/26 Tr. 53:18-54:22.) That replication is especially probative because RealOptions does not share several Delgado-specific features the Attorney General criticizes: its patients are managed within one organization, through one EMR, under comparatively uniform procedures, and there was only one patient lost to follow up. (7/8/26 Tr. 42:2-15.)

Biological plausibility (whether the theory makes sense) and the related concept **coherence** (whether the proposed treatment conflicts with what is already known about the natural history and biology of the condition sought to be cured). At trial, the State's expert, Dr. Creinin agreed that APR's theory was biologically plausible and that the theory was supported by animal studies and other examples (6/29/26 Tr. 85:1-7.) The theory of APR, put in its simplest terms, is that supplemental progesterone (an agonist) reverses the effect of mifepristone, which binds to progesterone

receptors *and releases* without activating them (acting as a competitive antagonist) by outcompeting mifepristone and its metabolites at the receptor sites. (7/9/26 Tr. 38:8-24; 47:15-49:10.) Dr. Creinin acknowledged that for some drugs, the effect of a competitive antagonist (like mifepristone) can be overcome by adding more agonist (such as progesterone). (6/29/26 Tr. 83:3-6.)

Dr. Creinin acknowledged that competitive agonists (such as progesterone) can overcome antagonists with a significantly higher binding affinity, when enough agonist is added, such as when oxygen is used to reverse the effects of carbon monoxide poisoning, even though carbon monoxide has a binding affinity to the relevant receptors **200 times** as strong as oxygen. (6/29/26 Tr. 83:11-84:22.)

Mifepristone's metabolism makes APR even more plausible. Heikinheimo 1987—which the Attorney General admitted without objection and Dr. Creinin accepted as a reliable authority—found rapid first-pass metabolism of mifepristone. (Ex. 30,001, at 1, 3-4; 6/29/26 Tr. 85:12–89:12; *see also* 7/20/26 Tr. 41:12-42:20) Within hours, its principal metabolite exceeded the concentration of parent mifepristone. (Ex. 30,001, at 4; 7/20/26 Tr. 42:19-44:19 [mifepristone's weak metabolites "really are predominating as far as serum levels after that first pass"].)

And *each* mifepristone metabolite bound to the progesterone receptor *less avidly than progesterone itself*—indeed, progesterone had up to *five times their binding affinity*, meaning that progesterone is competing against metabolites significantly weaker than itself. (*Id.*at 4 tbl.1; 7/20/26 Tr. 42:19-44:19; *id.* 49:5-50:3.)

The effectiveness of starting APR hours or days after mifepristone is also plausible because, as observed by Dr. Baulieu, the pioneer of the abortion pill, the effects of mifepristone are gradual. (7/9/26 Tr. 43:14-23.) The gradual effect of mifepristone explains why misoprostol, the second drug in the abortion regimen, is not given until 24 to 48 hours after mifepristone ingestion. (*Id.* at 42:24-43:21.)

None of the medical experts at trial disagreed with mifepristone's inventor that APR plausibly could increase embryo survival by antagonizing mifepristone. (6/29/26 Tr. 82:8-83:6, 85:1-7; 7/9/26 Tr. 37:13-38:7, 41:22-42:23, 59:12-60:2) The FDA observed that based on rabbit and rat studies "the abortifacient activity of RU486 [mifepristone] is antagonized by progesterone allowing for

normal pregnancy and delivery." (Ex. 30,028, pg. 22.) More recently, the effectiveness of APR *after* mifepristone, rather than simultaneously, was confirmed in another animal study. (7/10/26 Tr. 58:11-59:11.) And a recent human-tissue study has shown progesterone indeed reverses 83% of mifepristone-induced transcriptomic changes in human secretory endometrium. (Ex. 30,019 at 5-8.) This study also showed that administering mifepristone to women created a delay in the development of the endometrium that was corrected when women were given progesterone. Since progesterone binding causes endometrium development this showed that progesterone was reversing the effects of mifepristone. (7/20/26 Tr. 97:17-98:6)

Analogy and **experiment** support Defendants' causal statements too. (Ex. 30,181 at 4-5.) Like supplemental progesterone, DMPA competes with mifepristone to occupy binding sites on progesterone receptors. (6/29/26 Tr. 89:13-90:13.) And the Raymond DMPA randomized trial of 461 women undergoing chemical abortion found pregnancy continuation quadrupled when DMPA was administered contemporaneously with mifepristone. (Ex. 30,006 at 4-5.) DMPA binds to progesterone receptors with similar affinity to progesterone itself. (6/29/26 Tr. 108:25-109:9.) Moreover, DMPA releases slowly after injection, taking three weeks to reach peak serum concentrations of 1-7 ng/ml, (7/9/26 Tr. 109:10-110:2) whereas supplemental progesterone in an APR protocol may rise rapidly to 150-200 ng/ml concentration two days after treatment start (6/29/26 Tr. 93:24-95:6) Progesterone is much more available than DMPA, and in much higher quantities. While no analogy is perfect, DMPA is a closer analogue to APR than Creinin's own inexact metaphor of a sledgehammer vs. pin hammer would suggest, because of the drugs' comparable receptor occupancy rates.

For **Biological Gradient**, Delgado 2018 found clear dose effect, as the more supplemental progesterone an APR patient received by IM injection or orally, the more the continuing pregnancy rate climbed. (Jt. Ex. 5 at 9 tbl.1.) Those patterns "suggest causality" (7/9/26 Tr. 113:8-15; 7/20/26 Tr. 71:7-19), even if immortal time bias might explain *part* of the dose response. For their part, **temporality** and **specificity** are undisputed. (7/8/26 Tr. 36:21-25; 7/9/26 Tr. 113:4-7; 7/14/26 Tr. 28:21-29:1.)

Here, considering the Bradford Hill criteria in their totality provides strong support for the effectiveness of APR. The Attorney General argues that each piece of evidence in isolation is not

sufficient. However, the Bradford Hill criteria show that evidence of causality must be weighed holistically.

2. Success Rate Statement

Defendants accurately report Dr. Delgado's results for the IM and high-oral-dose regimens, 64-68%, when advising potential patients or clients of the success rate of APR. Doing so is appropriate, truthful, and not misleading because the high dose oral route (68%) is the route of administration most commonly prescribed by providers in the APR Network. The high dose oral route, paired if possible with an initial progesterone injection, is the route of administration RealOptions uses. Sometimes, Heartbeat clients are referred to providers who prescribe progesterone vaginally, which was recorded in Dr. Delgado's study as having a lower success rate than the high dose oral or intramuscular method. Heartbeat allows doctors to provide the vaginal method because of their experience and expertise with prescribing progesterone. (7/27/26 Tr. 183:9-16.) Dr. Kraus, when asked to assume that Heartbeat treats hotline calls like 911 calls and whether it was appropriate to discuss the 64% to 68% figure, testified that the treatment discussed was usually the most common or most successful. (7/9/26 Tr. 118:7-119:3) If another method such as vaginal progesterone supplementation is to be used, a discussion with the patient involving lower rates of efficacy can be carried out. (Id.) This is what Heartbeat does: it relies on its referring providers to provide informed consent to patients, including when appropriate, the success rate of the vaginal method, if that method ends up being selected.

The 64–68% statement is moreover narrower than the Attorney General suggests. It says that "[i]nitial studies of APR have shown" a 64–68% success rate and thus identifies the source of the numbers rather than claiming that an RCT has established a universal individual success probability. (Ex. 29 at 2.) Delgado 2018 in fact reports 64% for intramuscular progesterone and 68% for high-dose oral progesterone. (Ex. 5 at 7 tbl. 1.) Muñoz therefore testified that reporting 64–68% for the principal methods was not misleading and complied with the need for simple communication in an emergency setting. (7/16/26 Tr. 64:1–8, 65:13–24.)

Defendants do not rely solely on the word "initial" as a disclaimer. But use of that word contributes to net impression, as the same page tells readers that mifepristone can fail without APR,

pregnancy may continue without progesterone, and the individual outcome "cannot be guaranteed." (Ex. 29 at 2.)

3. Reversal Statement

Abortion Pill Reversal is an accurate, truthful, and non-misleading way to describe the interventions at issue in this case. APR works through competitive inhibition, taking advantage of the fact that mifepristone binds **reversibly** to the progesterone receptors. (7/9/26 Tr. 38:8-24.) It works to undo the effect of the abortion pill, which is a commonplace understanding of the word reverse. The FDA pharmacology review described the effects of supplemental progesterone as antagonizing mifepristone's abortifacient activity, allowing normal pregnancy and delivery, and "reverse" is ordinary-language shorthand for that counteraction. (Ex. 30,028 at 22.) The CDC itself refers to the same process of competitive antagonization by the shorthand of "reversal" to explain to the public how naloxone works. (Ex. 30,145 at 1.) Even Colorado's failed attempt to ban APR defined it to mean administering "a drug with the intent to . . . reverse . . . a medication abortion." (*Bella Health and Wellness v. Weiser* (D. Colo. 2025) 793 F. Supp. 3d 1320, 1325, quoting Colo. Rev. Stat. § 12-30-120(1)(c).)

The State's misinformation expert Dr. Swire-Thompson conceded that it is commonplace for "many things" in the field of medicine "that don't say the exact mechanism, like, totally accurately" and that any issue regarding the term reversal was at best a "secondary" issue to the question of whether it worked. (7/6/26 Tr.153:1-16) Of course, the Attorney General knows this is a term many women use when they are searching for help on a very time-sensitive basis. (7/27/26 Tr. 149:7–12). Prohibiting the use of this term would make it more difficult for women to access needed assistance.

4. The Side Effects Statement

Heartbeat accurately tells women that supplemental progesterone can cause side effects like sleepiness, lack of energy, lightheadedness, dizziness, gastrointestinal discomfort and headaches. Heartbeat also informs women regarding the risk of miscarriage that could occur during the APR reversal process, and the attendant risk of incomplete abortion and heavy bleeding, including when to seek medical attention. (7/27/26 Tr. 157:5-158:10, 172:2-10, 175:20-28; Ex. 21, pg. 18-21; Ex. 30,072.)

RealOptions likewise instructs its patients to be vigilant about any bleeding they experience. Tasha Keirns testified that RealOptions reviews miscarriage precautions with APR patients before progesterone treatment begins, including what bleeding to watch for, when moderate or heavy bleeding warrants evaluation, and when additional medical intervention may be necessary. (7/30/26 Tr. 9:1–11:19; Ex. 31.) (Ex. 20,010 at 11–12.)

Moreover, out of 2,494 known outcomes, there were no maternal mortalities, only 3 known blood transfusions, one instance of IV antibiotics, 11 hospital admissions, and 88 emergency room visits. (7/28/26 Tr. 90:6-94:1.) See also (7/10/26 Tr. 13:15–14:8.) Two of the women with transfusions reported that they did not take their progesterone as prescribed. Serious safety events following *APR* were not observed in any published studies that tracked maternal safety outcomes, Delgado 2012, Garratt 2017, Creinin 2020, Turner 2023. (Ex. 30,016 at 4; 7/10/26 Tr. 13:15–14:8.)

A note of explanation must be given to Dr. Creinin's 2020 study, in which Dr. Creinin claimed that a woman in the progesterone arm of the study experienced a severe hemorrhage. Subject 8's underlying medical records indicate that she had a normal, non-life threatening miscarriage.

Subject 8, like all the other women in Dr. Creinin's study, was told that the possibility of passing her pregnancy during the study was "low." (Ex. 30,118, pg. 8.) The day she miscarried she visited Dr. Creinin's study clinic, where she did not have any bleeding symptoms and had a continuing pregnancy. (Ex. 8, pg. 22) She had no reason to believe she would be bleeding heavily that day and thus was not wearing a sanitary pad. This fact is confirmed by Dr. Creinin's note, which notes that at work, "she felt a small clot come out into her underwear." (Id.) This fact is further confirmed by the ambulance records which state she had gone through one "liner" (Id., pg. 51.) At this point, she called the study team, where Courtney Overstreet answered the phone. She told Ms. Overstreet that she was heavily bleeding and soaking through clothes—which is completely consistent with the amount of bleeding that would be experienced in normal miscarriage.

When Subject 8 called, she was advised to come into the study team's office. She did not have an immediate ride, panicked, and called 911. (Id., pg 27.) At the emergency department, she was noted as presenting with "**vaginal bleeding minor**." (Id., pg. 10, emphasis added, capitalization altered.) At all times, her vital signs were stable. Dr. Creinin himself noted that her bleeding was

"mild to moderate" at the time he examined her. She did not require a surgical aspiration to finish the miscarriage and did not receive a transfusion. (Id., pg 27.)

Upon reviewing Subject 8's medical records, Dr. Davenport concluded that "it looked like she had an ordinary pregnancy loss" but she would not call it a hemorrhage. (7/8/26 Tr. 66:12-19.) Dr. Kraus likewise concluded that it seemed like she had a miscarriage and would not classify what happened to Subject 8 as a severe hemorrhage. (7/9/26 Tr. 94:16-21.) Heartbeat and RealOptions are not second guessing a woman's decision to go to the ER because she was concerned about her symptoms—however, they do dispute that Subject 8's experience is evidence of dangerous bleeding following APR.

Although Dr. Creinin's study was admittedly too small to draw any conclusions from, it raises grounds for concern that taking mifepristone and then taking neither progesterone nor misoprostol could increase the likelihood of complications as compared to the common medical abortion protocol. Two women in the placebo arm of Dr. Creinin's study required surgical aspirations after miscarrying, and one required a transfusion. But this is ***not*** evidence that APR, which always involves supplemental progesterone, leads to greater risk than medication abortion.

The Attorney General might wish that RealOptions and Heartbeat would ascribe the risk of hemorrhage to APR directly despite the lack of any scientific evidence that APR causes hemorrhage. A communication that expressly says bleeding can occur during reversal, warns specifically about "heavy bleeding," directs immediate emergency care, and places that warning within "Risks Associated with APR" does not deceive APR patients into thinking they face no serious bleeding risk.

5. Birth-Defect Statement

Heartbeat informs potential patients "[i]nitial studies have found that the birth defect rate in babies born after the APR is less than or equal to the rate in the general population." (Ex. 20,010 at 12.) That statement is objectively true and accurately describes Delgado 2018, which observed birth defects in 2.7% of APR patients who gave birth compared to a 3% birth-defect rate in the general population and concluded there is "no apparent increased risk of birth defects" from APR. (Ex. 5 at 1–2.) The statement also conforms to the Creinin 2020 informed consent forms, which assured study subjects that neither mifepristone nor progesterone is known to cause birth defects. (6/29/26 Tr. 14:2–

24; Ex. 30,022, at 8; see also 7/10/26 Tr. 67:8–15.)[1]

6. Timing Statement

The Attorney General insists Defendants lie or mislead when they state it "may" not be too late for APR to save a pregnancy after mifepristone "even if more than 72 hours have passed." (Compl. ¶100(b)(ii).) Misunderstanding his legal burden, the Attorney General claims that no scientific evidence supports the truth of that claim. (*Id.*) But the statement is carefully caveated. Defendants do not claim that APR has a known success rate after 72 hours, is equally as effective at that point as when administered sooner after mifepristone, or that a woman starting treatment after 72 hours will or even is likely to save her pregnancy. (Searle Dep. 156:1–23; Ex. 20,090, at 14.) Defendants say only that it is "possible" APR might work. (Ex. 20,090, at 14.) The Attorney General's theory fails absent evidence that a significant number of readers acting reasonably will likely misunderstand the meaning of the word "may," and he did not present any evidence to this effect at trial.

Science makes a strong case for the objective truth of that statement, as no evidence exists of a 72-hour biological cliff for when progesterone can reverse the effects of mifepristone. Glidden conceded he knows of no biological, chemical, pharmacological, or pharmacokinetic reason why progesterone's potential effect would terminate at 72 hours. (7/1/26 Tr. 89:2–25.)

Moreover, there is a solid biological rationale for providing APR to women more than 72 hours post mifepristone: mifepristone has a long half-life and is detectable in the body up to 11 days post administration. (7/9/26 Tr. 44:13-20.) Since mifepristone is still in the body past 72 hours, it is clinically reasonable to provide women with supplemental progesterone in order to counteract ongoing effects from mifepristone. (7/20/26 Tr. 126:12–127:17; 7/8/26 Tr. 53:13–54:8.)

7. Misoprostol and Methotrexate Statements

The Attorney General alleges Heartbeat's statement that APR may benefit pregnant women after administration of misoprostol or methotrexate is false or misleading too, believing "no evidence" supports a claim that APR can reverse the effects of either abortion drug. (Compl. ¶ 100(b)(v).) But that is a strawman. Heartbeat does not say scientific studies have shown APR can reverse the drugs, only more modestly that APR "may also be beneficial to support the pregnancy" after them. (Ex. 21 at 9–10.) Lest anyone be confused, Heartbeat expressly separately discloses that

progesterone "is not an antidote" to either drug. (*Id.*)

Scientific evidence supports those statements to a reasonable degree of medical certainty. The pharmacological basis is solid given the drugs' effect window, progesterone's pregnancy-supporting effects, and evidence involving analogous progestogens administered in proximity to misoprostol. (7/9/26 Tr. 22:5–25.) The biological basis is separately powerful because progesterone inhibits uterine contractility and thus may provide pregnancy-supporting effects if a pregnancy remains viable after misoprostol. (7/20/26 Tr. 129:18–130:8.) At minimum, it is objectively true that progesterone *may* help *support* a pregnancy after exposure to either drug, such that the statements are not false. (*Id.*)

Heartbeat's methotrexate statement is even more caveated still. Heartbeat tells providers that progesterone "is not an antidote to methotrexate." (Ex. 21 at 9.) Its methotrexate consent form discloses there "have been no studies to show a success rate for women taking methotrexate and attempting reversal" and that the outcome cannot be guaranteed, while separately disclosing the significant fetal risks associated with continued pregnancy after methotrexate exposure. (Ex. 21 at 22–27.) The Attorney General may argue that evidence supporting progesterone's additional supportive role remains incomplete. But incomplete evidence does not itself prove false the qualified proposition that progesterone *may* provide support.

Nor can it plausibly be claimed that the misoprostol and methotrexate statements are likely misleading to a significant percentage of the target audience acting reasonably, given the statements' context. The provider kit identifies APR principally as a protocol developed to counteract mifepristone; expressly denies that progesterone is an antidote to methotrexate; makes only a qualified "may be beneficial" statement in these unusual circumstances; and leaves treatment decisions to the prescribing clinician. (Ex. 21 at 9–10.) Patients who proceed receive still more explicit disclosures: no measured success rate, no guarantee of continuation, and drug-specific risks. (*Id.* at 22–27.) Nothing in that sequence communicates that post-misoprostol or post-methotrexate efficacy has been scientifically established.

8. Thousands of Lives Saved Statement

The Attorney General treats Heartbeat's statement that "statistics show thousands of lives"

have been saved by APR as an audited birth count instead of an estimate. Heartbeat's admitted January 18, 2021 communication expressly described the figure as a "mix of what we know and what we can appropriately infer," and identified "statistics show" as its official formulation. (Ex. 20,033 at 2; 7/2/26 Tr. 56:8–57:2, 58:6–22.) Brown likewise explained the known-plus-estimated methodology. (7/29/26 Tr. 52:25–54:10.) The statement therefore disclosed a statistical *estimate* rather than representing that every success had been individually audited.

Heartbeat's estimate has a straightforward empirical basis, conservatively assigning to patients lost to follow-up the *lower* of the two continuing-pregnancy rates Delgado 2018 reported for the principal progesterone protocols Heartbeat recommends. (7/15/26 Tr. 125:24–126:24; 7/28/26 Tr.95:24-96:1; 7/2/26 Tr. 61:10–23.) The Attorney General speculates that this might overestimate lives saved because every patient lost to follow-up might receive APR vaginally—the route associated with the lowest success rate in Delgado 2018—even though Heartbeat does not recommend that route to its providers absent extraordinary individual circumstances. (7/29/26 Tr. 18:5–28; 7/15/26 Tr. 100:2–102:10, 122:23–123:14.)

But even that extreme assumption does not make Heartbeat's statement false. Heartbeat first made the "thousands of lives saved" claim on January 18, 2021. (Ex. 20,033.) Through 2020, its records showed 1,510 known APR successes among 3,325 APR patients. (Ex. 30,191 at 1.) If every patient with an unknown outcome is assigned only Delgado 2018's 32% success rate for vaginal progesterone, the result is still approximately 2,090 known and estimated successes before Heartbeat first made the challenged claim. (See *id.*) The Attorney General therefore cannot establish falsity even by imposing its own least-favorable assumption on every unknown outcome.

Nor does the Attorney General prove misleadingness through audience evidence. Swire-Thompson did not survey APR callers or patients and identified no empirical consumer-deception study showing how the target audience understood the "statistics show" formulation. (7/6/26 Tr. 91:16–22, 111:24-112:5, 113:25-114:9.) That absence is not dispositive by itself, but it matters under a probable-deception standard: the statement's own wording signals an estimate, and the Attorney General offers no audience evidence demonstrating that reasonable readers were likely to understand it as an audited individual count.

9. Defendants Believe In Their Use of The Challenged Statements Reasonably and In Good Faith, Defeating Any Claim That They Knew or Reasonably Should Have Known The Statements Were False

The lengthy expert testimony throughout this six-week trial, including from doctors associated with the defendants, such as Dr. Davenport, Dr. Delgado, and by depo designation, Dr. Boles, underscores that Defendants have a good faith belief in the statements they make with fulsome scientific and medical basis for their statements. (See *Counterman v. Colorado* (2023) 600 U.S. 66, 75 ["breathing room for more valuable speech" requires "*mens rea*" to "reduc[e] an honest speaker's fear that he may . . . erroneously incur liability," cleaned up].),

Although the Attorney General argues that several district court cases critical of APR should have given Heartbeat pause, Heartbeat reasonably understood those cases to involve issues of compelled speech—ironically the same issue that presents in this case. (See, e.g., *American Medical Assn. v. Stenehjem* (D.N.D. 2019) 412 F.Supp.3d 1134, 1151 ["The Court believes [the challenged law] violates a physician's First Amendment protection against compelled speech."].)[2] The Attorney General ignores cases recognizing APR's legitimacy. (E.g., *Bella Health*, *supra*, 793 F.Supp.3d at p.1331-1334; *NIFLA v. James* (W.D.N.Y. 2024) 746 F.Supp.3d 100, 108, 117-18.) Moreover, Heartbeat received an important validation of the reasonableness of their position on APR from the State of California itself. The California Board of Registered Nursing sent a letter (Ex. 30,148) to Heartbeat asserting that Heartbeat's APR-related courses did not comply with 16 CCR 1456. After Heartbeat provided scientific support for its APR-related courses (Ex. 30,169 at 19-26, 37-40), the Board ultimately "restored [Heartbeat's] ability to offer continuing education courses in abortion pill *reversal* to registered nurses in California." (Ex. 30,168; 7/2/26 Tr. 90:3–6) (emphasis added).

Notably, the Board requires the content of CEU courses to be based on "generally accepted medical procedures or treatments," a term it defines as: "(1) the efficacy of the procedure(s) or treatment(s) is supported by at least two peer-reviewed, publicly available scientific journals or studies, or is published in medical and/or scientific literature, and (2) there is no clear and convincing

[2] The recent decision in *Hodes* is likewise about compelled physician speech; further, the evidence relied on lacked expert testimony that mifepristone is a *reversible* antagonist, along with evidence of Heikinheimo's metabolite data, Tapia-Pizarro's progesterone-mifepristone data, Turner, Bradford Hill, and RealOptions's outcomes data. (*Hodes & Nauser MDS PA v. Kris Kobach* (Dist. Ct. Kan., Aug. 3, 2026, No. 23CV03140) J.E. 96-97, 145-46.) (6/29/26 Tr. 82:2-85:7.)

contradictory evidence presented in a major peer reviewed medical journal that the treatment or procedure is not safe and effective." 16 CCR 1456(b). The obvious takeaway is that, even before the publication of the 2018 Delgado study, the California Board of Registered Nursing evaluated the science supporting APR and concluded that the treatment was based on generally accepted medical procedures or treatments and that it could find no clear and convincing evidence that APR is not safe and effective.

The Defendants' desire for more research on APR further shows their good faith belief in the truth of their statements. Christa Brown, for instance, called for more research "to confirm what **we know to be true**, APR is safe and effective." (7/27/26 Tr. 73:4–14 (emphasis added).) Ms. Brown was writing in response to a comment that Arizona was forced to rescind APR counseling language in the face of "pro-abortion" opposition (Ex. 20,034, pg. 3.) Ms. Brown's call for research anticipated the overwhelming proof needed to convince ideological adversaries, far beyond what would be needed to persuade a disinterested, reasonable person.

Finally, Defendants' position that APR is effective and safe is not theirs alone. AAPLOG, the Christian Medical and Dental Association, and medical organizations in Germany, Ireland, and Canada — representing thousands of physicians — say so too. (7/27/26 Tr. 141:14–142:2.) A number of state legislatures have arrived at the same conclusion after intensely studying the science and subjecting its claims to a crucible of hearings, testimony, debate, and unfettered public comment. (See Ex. 7 at 3; Ex. 30,014 at 2.) At a minimum, these endorsements and enactments corroborate that Defendants' position exists within the mainstream of an ongoing medical and policy dispute rather than representing pseudoscience or a fringe theory. The mere existence of that ongoing debate suffices to defeat the Attorney General's claims under binding precedents and even the district-court APR decisions he cites.

D. The Attorney General's Action Violates Defendants' Constitutional Rights.

1. The Attorney General Fails Intermediate Scrutiny.

Even if Heartbeat and RealOptions have been found to have made commercial speech that is allegedly false or misleading, the AG's claims still fail. Restricting so-called "false" commercial speech apart from an associated legally cognizable harm, or commercial speech that is only

potentially misleading, still triggers at least intermediate scrutiny. (*U.S. v. Alvarez* (2012) 567 U.S. 709, 730-31 [conc. opn. of Breyer, J.]; *Assn. of Natl. Advertisers, Inc. v. Lungren* (9th Cir. 1994) 44 F.3d 726, 731; *Counterman*, *supra*, 600 U.S. at p.77 n.4 [recognizing "[f]alse commercial speech … has never been listed among the historically unprotected categories of speech"])

Here, at most, the Attorney General is prosecuting only *potentially* misleading speech. Indeed, the targeted APR speech is currently a matter of vigorous national debate. (*Bella Health*, *supra*, 793 F.Supp.3d at 1324.) And the Supreme Court recently confirmed that censoring speech based on "[m]edical consensus" necessarily triggers heightened scrutiny because such consensus is always "evolv[ing]"—and thus its aimed-at speech cannot be *inherently* false. (*Chiles*, 146 S. Ct. at 1029; accord *ONY, Inc. v. Cornerstone Therapeutics, Inc.* (2d Cir. 2013) 720 F.3d 490, 496 (statements of legitimately disputed science even in press releases are more in the nature of opinion).) At minimum, therefore, intermediate scrutiny still applies.

Under *Central Hudson* intermediate scrutiny, the State's enforcement action must be narrowly tailored to advancing a substantial government interest. (*Central Hudson Gas & Electric Corp. v. Public Service Com. of N.Y.* (1980) 447 U.S. 557, 563, 565.) Here, censoring Defendants' speech about APR does not directly advance a substantial interest where APR itself remains lawful in California. (See *United States. v. Caronia* (2d Cir. 2012) 703 F.3d 149, 162-69 [finding same as to content restriction on speech about an off-label drug use, where the use itself "is not unlawful"].) Similarly, intermediate scrutiny in the commercial speech context still demands "evidence establishing that the harms [the state] recites are real, and that its speech restriction will *significantly* alleviate those harms." (*Junior Sports Mags., Inc. v. Bonta* (9th Cir. 2023) 80 F.4th 1109, 1117, cleaned up.) Indeed, the Supreme Court has made clear that the Government cannot punish false speech without a "legally cognizable harm" such as the harm following defamation, fraud, perjury, statements made to Government officials, or impersonating a Government officer. (*United States v. Alvarez* (2012) 567 U.S. 709, 719.) Here, there was no evidence of harm presented, only speculation. The Attorney General has not received any complaints from women who have undergone APR. (AG's Rsps to RFA No. 17, Set Two; See *Also* AG's Rsps To HBI FROGS, Set One, No. 12.6 "To the extent this interrogatory seeks information about complaints that the People have received regarding APR, following a

reasonable search, the People do not believe it has any responsive information.") The trial record identifies no woman who complained to the Attorney General that a challenged APR statement deceived or harmed her. (AG's Rsps to RFA No. 17, Set Two; AG's Rsps to HBI FROGS, Set One, No. 12.6.)

Swire-Thompson likewise described speculative harms, not documented ones. She identified possible "harmful inaction" from not taking misoprostol if that increased the likelihood of miscarriage. (7/6/26 Tr. 86:8–22.) But the Attorney General admitted he did not show that omitting misoprostol increases hemorrhage risk. (AG's Rsps to HBI FROGS 17.1, RFA No. 15.) Nor did he identify a woman whom a challenged statement caused both to forgo misoprostol and to forgo supplemental progesterone.

The other hypothesized harms are similarly attenuated. A patient's cost of obtaining lawful progesterone treatment is not itself evidence that a misleading statement caused financial injury. And although miscarriage can cause profound emotional harm, Defendants repeatedly disclose that APR cannot guarantee pregnancy continuation and provide safety instructions concerning bleeding and emergency care. (Searle Dep. 129:19–130:14; Ex. 21; 7/9/26 Tr. 23:20–25:21.) It would be a cruel irony to hold Defendants liable for the emotional harm from miscarriages that they selflessly try to prevent. Finally, Swire-Thompson identified no concrete California patient injury caused by a challenged APR statement. (7/6/26 Tr. 168:1–20.) As such, Defendants' speech cannot be enjoined under intermediate scrutiny, especially as a less restrictive means, such as a public information campaign, would suffice to inform the public of the Attorney General's viewpoint. (Accord *NIFLA v. Becerra*, *supra*, 585 U.S. at p. 775.)

2. The Evidence Confirms a "Specter" of Viewpoint Discrimination

Enforcement of a facially neutral law can still violate the First Amendment when officials do so because of viewpoint. Indeed, "content discrimination *raises the specter* that the Government may effectively drive certain ideas or viewpoints from the marketplace." (*R.A.V. v. City of St. Paul* (1992) 505 U.S. 377, 387, emphasis added, internal marks omitted.) And the "vice of content-based" censorship "is not that it is always used for invidious, thought-control purposes, but that it lends itself *to use* for those purposes." (*Reed v. Town of Gilbert* (2015) 576 U.S. 155, 167, internal quotation marks

omitted, emphasis added.) That "danger" "requires" ensuring the government's content-based action is "*necessary* to serve [an] asserted compelling interest" through narrowly tailored means. (*R.A.V.*, *supra*, 505 U.S. at p.395, original emphasis, cleaned up.) Heightened scrutiny "ensure[s] … that the [government] does not seek to suppress a disfavored message." (*Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 571-72.) "[H]eightened scrutiny" is also "required" "whenever the government" *transparently* "regulat[es] … speech because of disagreement with the message it conveys," and "*[c]ommercial speech is no exception*." (*Id.* at p.566, emphasis added.)

The evidence showed the Attorney General is up to exactly that. Censoring allegedly false or misleading speech inherently restricts based on content. (*Alvarez*, *supra*, 567 U.S. at 717-18, pl. opn.) And the Attorney General's attempted censorship began shortly after the Supreme Court's decision in *Dobbs*, which he publicly excoriated as "dangerous" and a "return to the dark ages," before promising he would "use the full . . . authority of my office to protect reproductive health care" and singled out "crisis pregnancy centers" for allegedly providing "limited and potentially misleading . . . services," thus limiting "access to safe and legal abortion." (RJN Ex. 6; accord RJN Exs. 5, 7, 8, and 9, announcing "Reproductive Rights Task Force" and targeting alleged pro-life "deception," "scams," and "potentially misleading" "crisis pregnancy centers"; accord Ex. 30,089(B), at p.3, Task Force meeting minutes specifically targeting HBI's abortionpillreversal.com, RJN. Ex. 3.)

The Supreme Court recently recognized that while "[a] government official can share her views freely and criticize particular beliefs," and "can do so forcefully in the hopes of persuading others to follow her lead, . . . [w]hat she cannot do… is use the power of the State to punish disfavored expression." (*Natl. Rifle Assn. of America v. Vullo* (2024) 602 U.S. 175, 176, 188.) *Vullo* found evidence of plausible viewpoint discrimination based in part on a Governor Cuomo press release urging insurance companies to disassociate from the NRA, as well as on his *tweet* calling the NRA "an extremist organization" from which companies should disassociate. (*Id.* at pp. 184, 194-98 & n.6 (considering this evidence in evaluating whether state officials' direct engagement with banks and insurance companies to drop the NRA was plausibly viewpoint-based).) Evidence of the California Attorney General's analogous viewpoint-based animus towards Defendants here is of a piece.

Moreover, in 2022 the Attorney General sent investigatory subpoenas and interrogatories to

Heartbeat and RealOptions regarding their HIPAA practices. That fishing expedition did not find any wrongdoing. (RJN. Ex. 1, 2.) And at a meeting of his Reproductive Task Force, when two taskforce members proposed "suing for false advertising against pregnancy resource centers" and specifically targeting APR, another member who would later spearhead this prosecution countered that no evidence showed centers violating the FAL. (RJN. Ex. 3.) But that inconvenient fact did not prevent this suit from being filed nine months later.

After filing the lawsuit, the Attorney General solicited feedback *only* from secular organizations and persons aligned against APR including Planned Parenthood, the California Medical Association, Democracy Forward (Counsel for ACOG), ACLU, Planned Parenthood California Affiliates, National Health Law Program, Reproductive Freedom For All (formerly NARAL), and California Women's Law Center to discuss the filed complaint initiating this case. (See RJN. Ex. No. 11-19.)

At minimum, this evidence, coupled with the content-based nature of the Attorney General's enforcement action, "raises the specter" he may be trying to "drive certain ideas or viewpoints from the marketplace" in the wake of *Dobbs*. (*R.A.V.*, *supra*, 505 U.S. at 387.) Thus, his enforcement action must undergo strict scrutiny—which the Attorney General concededly makes no effort to meet, and which the Supreme Court confirmed last year is "fatal in fact" in First Amendment cases "absent truly extraordinary circumstances" not present here. (*Free Speech Coalition, Inc. v. Paxton* (2025) 606 U.S. 461, 485.)

3. The Attorney General's Selective Enforcement Violates the Free Exercise Clause.

The Free Exercise Clause forbids official action that selectively burdens religious exercise, and strict scrutiny applies when government treats comparable secular activity more favorably than religious exercise. (*Church of Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 533; *Tandon v. Newsom* (2021) 593 U.S. 61, 62.) Thus, if a rule is not *enforced* against certain secular activity, then it cannot be enforced against comparable religious activity, unless strict scrutiny is satisfied. (*Waln v. Dysart Sch. Dist.* (9th Cir. 2022) 54 F.4th 1152, 1159.)

The trial record presents precisely that scenario. As shown above, secular healthcare speakers make categorical APR-related representations to women that are objectively false and are tied to the

sale of abortion drugs, yet the Attorney General has never investigated those speakers. If the Court treats Defendants' patient-facing APR communications as commercial speech subject to the UCL/FAL, materially similar secular communications cannot be dismissed as incomparable merely because they express the opposite view. If this Court then finds comparable secular activity received more favorable treatment, strict scrutiny follows. And the Attorney General freely admits he does not even try to meet that higher level of scrutiny.[3]

4. The AG's Actions Violate The Reproductive Privacy Act

California protects the choice to continue a pregnancy as fully as the choice to end one. The state reproductive privacy act protects the right to "make and effectuate decisions about all matters relating to pregnancy," including "prenatal care" and "childbirth," and separately declares a fundamental right "to choose to bear a child" that the State shall not interfere with except as the statute permits. (Cal. Health & Safety Code § 123462.) The courts have understood that right to be as broad as the statute says it is. (*Carpenter v. Sup. Ct.* (2023) 93 Cal.App.5th 1279, 1298–1299.)

Women sometimes lack resources to exercise that broad reproductive right on their own. So the Reproductive Privacy Act protects those who help women exercise that choice, including physicians and clinics, barring liability or penalty "based solely on" consensual actions that "aid or assist" a pregnant person in exercising RPA rights. (Health & Saf. Code, § 123467, subd. (b).) That could not more perfectly characterize Defendants' APR-related activity and communications: Heartbeat's 24/7 hotline connects women who have started chemical abortions with APR providers, while RealOptions provides care. (7/2/26 Tr. 20:25–21:12.)

If the Attorney General succeeds in his aim of bankrupting Heartbeat and silencing its hotline, pregnant women who want to pursue a legal APR intervention will need to discover it exists and then connect with an APR provider on their own, quickly. Some women might be able to jump through the hoops and navigate online disinformation about APR the Attorney General is happy to leave online, to find an APR provider in time. Realistically, many would not. And a key reproductive right the Attorney General often pretends to champion, at least when he agrees with it, will become

[3] To be sure, *Culture of Life Family Services, Inc. v. Bonta* (S.D. Cal. 2025) 789 F.Supp.3d 902, 930–932, rejected a similar Free Exercise theory on a pleading record that identified no comparable secular activity. That nonbinding ruling does not resolve this materially developed trial record.

effectively impossible to exercise.

E. Penalties

1. The Attorney General's proposed violation count inflates communications.

Sections 17206 and 17536 authorize up to $2,500 "for each violation," and conduct violating both statutes can support cumulative UCL and FAL penalties. (*People v. Johnson & Johnson* (2022), 77 Cal.App.5th 295, 318.) But neither statute defines the unit of violation. Courts thus determine that unit contextually, considering the conduct proved and the circumstances surrounding it. (See *People v. JTH Tax, Inc.* (2013) 212 Cal.App.4th 1219, 1249–52.) Courts must act reasonably in light of the misrepresentation, intent, public injury, and defendant's size and wealth, and relate violations to the gain or opportunity for gain achieved by the advertising. (*People v. Superior Court (Olson)* (1979) 96 Cal.App.3d 181, 196–99.) For example, a count of how many days a misrepresentation has been displayed may be reasonable, especially if a per exposure tally would create an excessive penalty. (Id. at 197-199.) (See also *People v. Overstock.com, Inc.* (2017) 12 Cal.App.5th 1064, 1088–91.)

The FAL's statute of limitations is three years, so no FAL violation can be assessed from before September 21, 2020. The UCL's statute of limitations is four years, so no UCL violation can be assessed before September 21, 2019. (Code Civ. Proc., § 338(h); Bus. & Prof. Code, § 17208.)

The Court heard testimony that from January 2021 to the present, 1,369 women in California initiated progesterone after contacting the hotline and in total 1,836 people from California contacted the hotline. (7/15/26 Tr. 101:1-8; *id.* 114:1-17, 115:1-14.) The number of violations should be based off the number of women who initiated APR since it is unknown what, if any, information, a caller who did not decide to initiate treatment and did not receive the consent forms received. The total number should not be based on Mr. Godsey's declaration since it included contacts and reversals from 2018. The Attorney General assumes every woman who initiated APR treatment read the website, but that is not supported by evidence. Moreover, even assuming *arguendo* that the website is commercial speech, hotline calls are squarely protected professional speech and should not be counted at all. There is no legal basis for doubling violations based on viewing the website and hearing information on the hotline.

RealOptions presents the same problem. The Attorney General identified 64 individuals who visited RealOptions for APR between 2019 and 2025, then asserted at least 128 FAL violations and 128 UCL violations because those patients allegedly encountered challenged statements both on the website and in consent forms. (6/24/26 Tr. 23:23–24:3.) The statutes permit cumulative UCL and FAL penalties. But that rule does not answer whether each patient's website and consent-form interactions constitute two separate underlying violations. The Court should count communications the evidence establishes as independently unlawful—not multiply a patient merely because related information appeared in two places. Ms. Hecke testified that 5 of 86 APR patients found RealOptions organically, with the remainder referred through the APRN. (7/22/26 Tr. 27:28-28:11; see also 7/30/26 Tr. 27:10-22.) But even that concreteness does not answer the threshold question of how many of those organic patients ever saw RealOptions' website.

2. The statutory factors, considered together, support a nominal rate.

The rate presents a separate question. Sections 17206 and 17536 require a penalty for each violation, cap that penalty at $2,500, and specify no monetary minimum. Both instead direct the Court to consider the misconduct's nature and seriousness, number and persistence, duration and willfulness, and the defendant's assets, liabilities, and net worth. (Bus. & Prof. Code §§ 17206(a)–(b), 17536(a)–(b).) The amount remains committed to the Court's broad discretion.

Those factors do not prescribe a high rate per violation in this case. Defendants have a good faith belief in the reasonableness of their statements. They are non-profits that put all their money into their services. Defendants told women that APR was effective, but that reversal was not guaranteed, and the majority of women they are aware of had continuing pregnancies.

The safety allegations do not involve silence about bleeding. RealOptions warns that bleeding may occur "during reversal treatment," identifies "heavy bleeding" as a reason to seek emergency care, and places that warning under "Risks Associated with APR." (Ex. 20,010 at 19; 7/30/26 Tr. 9:1–11:19; Ex. 31.) Even on an adverse ruling, the defect would concern context, qualification, or causal attribution—not concealment of the existence of bleeding risk.

3. California precedent supports a $1 assessment.

No minimum penalty rate exists beyond the requirement that a penalty be imposed for each

proven violation. When a defendant proves a true inability to pay, courts of appeals have upheld penalties at least as low as twenty cents per violation. (*People v. First Federal Credit Corp.* (2002) 104 Cal.App.4th 721, 731, citing *People v. Dollar Rent-A-Car Systems, Inc.* (1989) 211 Cal.App.3d 119.) A $1 rate fits this record far better than the maximum rate the Attorney General demands, particularly given the disputed scientific record, lack of consumer injury, and Defendants' financial condition.

This penalty is far more appropriate than the $20 million the Attorney General seeks in hopes of bankrupting Heartbeat. (6/24/26 Tr. 52:23–53:5.) At roughly twice Heartbeat's annual revenue, it very likely would. (7/2/26 Tr. 119:13–18.) Such a rate is similarly more reasonable than the $640,000 Attorney General seeks against RealOptions—about 54% of RealOptions' latest reported net assets—in hopes of bankrupting that nonprofit too. (6/24/26 Tr. 52:23–53:5.) That penalty would in fact cripple RealOptions and likely lead it to close at least one of its clinics in a local community where no other organization of meaningful size provides women in need with the free resources, goods, and services RealOptions offers. (7/23/26 Tr. 107:14–108:6.)

III. CONCLUSION

Ironically, if the Attorney General succeeds in this action, states like South Dakota will wield it as a sword against mirror image organizations that provide free information about the *abortion pill* and its purveyors. (See *Rhoden*, *supra*, 2026 WL 2070966, at *11.) Such a "mirror image" effect is why Justices Kagan and Sotomayor agreed to strike down Colorado's law against "conversion therapy" for minors earlier this year: if that law were valid, courts would likewise have to uphold laws barring therapy that "*affirm[ ]*" "a minor's sexual orientation or gender identity." (*Chiles*, *supra*, 146 S. Ct. at 1030, conc. opn. of Kagan, J., emphasis added.) But "no[] matter what the State's preferred side is," it may not "suppress[ ] one side of a debate, while aiding the other." (*Id.*) And there is at least a specter that California is doing exactly that here—including by conveniently *labeling* Defendants' speech "commercial." (Cf. *Chiles*, *supra*, 146 S. Ct. at 1023.)

In the end, Defendants' speech is not commercial. The Attorney General woefully failed his burden. The evidence supports Defendants' claims. And the Attorney General's action blatantly violates Defendants' constitutional rights. This Court should find against the Attorney General on all

issues.

Respectfully submitted,

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Dated: August 27, 2026 By: _____

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COURT OF THE STATE OF CALIFORNIA ALAMEDA COUNTY SUPERIOR COURT - OAKLAND BRANCH		FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) **People of the State of California v. Heartbeat Int'l, Inc., et al.**		
ATTORNEY(S) NAME AND ADDRESS Charles S. LiMandri, Esq.; Paul M. Jonna, Esq. Jeffrey M. Trissell, Esq., Esq. LiMANDRI & JONNA LLP P.O. Box 9120 Rancho Santa Fe, California 92067 Tele: (858) 759-9930; Fax: (858) 759-9938		
ATTORNEY(S) FOR: Defendants Heartbeat International, Inc. and RealOptions, Inc.	Dept. 18	CASE NO.: 23CV044940 JUDGE: Hon. Michael Markman

CERTIFICATE OF SERVICE

I, Kathy Denworth, declare that: I am over the age of 18 years and not a party to the action; I am employed in, or am a resident of the County of San Diego, California; where the mailing occurs; and my business address is P.O. Box 9120, Rancho Santa Fe, CA 92067, Telephone number (858) 759-9930; Facsimile number (858) 759-9938.I further declare that I served the following document(s) on the parties in this action:

- **DEFENDANTS' CLOSING TRIAL BRIEF.**

by one or more of the following methods of service to:

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X **(BY E-MAIL/ELECTRONIC MAIL)** I caused a copy of the foregoing document(s) to be sent to the persons at the e-mail addresses listed above, this date via internet/electronic mail.

X (**BY ELECTRONIC FILING/SERVICE)** I caused such document(s) to be Electronically Filed and/or Service through the One Legal System.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 27
, 2026.

Kathy Denworth