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Attorneys for Defendants

17 **IN THE UNITED STATES DISTRICT COURT**
 18 **EASTERN DISTRICT OF CALIFORNIA**

20 PACIFIC COAST HORSESHOEING
 21 SCHOOL, INC., et al.,

22 Plaintiffs,

23 v.

24 KIMBERLY KIRCHMEYER, et al.,

25 Defendants.

No. 2:17-CV-02217-JAM-GGH

**STIPULATION AND ORDER OF
 SETTLEMENT**

Judge: Hon. John A. Mendez

Action Remanded: July 2, 2020

27 Plaintiffs Pacific Coast Horseshoeing School, Inc. (“Pacific Coast Horseshoeing School”)
 28 and Bob Smith, on the one hand, and Defendants Kimberly Kirchmeyer and Deborah Cochrane

1 (collectively, “Defendants”), on the other, respectfully submit this Stipulation and Order of
2 Settlement to the Court for entry and approval.

3 WHEREAS, this case involves a challenge to California’s ability-to-benefit requirement,
4 codified at California Education Code § 94904(a) and Cal. Code Regs., tit. 5, § 71770(a)(1);

5 WHEREAS, in June 2020 the U.S. Court of Appeals for the Ninth Circuit held that
6 California’s ability-to-benefit requirement is a content-based restriction on speech and subject to
7 heightened scrutiny;

8 WHEREAS, in September 2021 the California Assembly passed and the California
9 Governor signed into law Senate Bill 607;

10 WHEREAS, Senate Bill 607 repeals California Education Code § 94904, the statute
11 codifying California’s ability-to-benefit requirement;

12 WHEREAS, Senate Bill 607 will take effect on January 1, 2022;

13 WHEREAS, Senate Bill 607 does not expressly repeal or otherwise amend Cal. Code
14 Regs., tit. 5, § 71770(a)(1);

15 WHEREAS, as a result of Senate Bill 607, Cal. Code Regs., tit. 5, § 71770(a)(1) will be
16 unenforceable on and after January 1, 2022; and

17 WHEREAS, Plaintiffs Pacific Coast Horseshoeing School and Bob Smith and Defendants
18 now desire to resolve the issues raised in this litigation without further proceedings and have
19 agreed that it is reasonable and necessary to enter into this Stipulation and Order of Settlement;

20 NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, and ORDERED that
21 this litigation between Plaintiffs Pacific Coast Horseshoeing School and Bob Smith and
22 Defendants is settled on the following terms and conditions:

23 1. Defendants shall not enforce the ability-to-benefit requirement, currently codified
24 at California Education Code § 94904(a), against Pacific Coast Horseshoeing School, Bob Smith,
25 or any student or prospective student of Pacific Coast Horseshoeing School.

26 2. Defendants shall not enforce the ability-to-benefit requirement, currently codified
27 at Cal. Code Regs., tit. 5, § 71770(a)(1), against Pacific Coast Horseshoeing School, Bob Smith,
28 or any student or prospective student of Pacific Coast Horseshoeing School.

1 3. Defendants shall not require that Pacific Coast Horseshoeing School or Bob Smith
2 require students to have, as a prerequisite to their enrolling at Pacific Coast Horseshoeing School,
3 any level of education or educational credential, as specified in the ability-to-benefit requirement
4 currently codified at California Education Code § 94904(a) and Cal. Code Regs., tit. 5,
5 § 71770(a)(1).

6 4. Pacific Coast Horseshoeing School and Bob Smith may begin to enroll students—
7 regardless of the ability-to-benefit requirement currently codified at California Education Code
8 § 94904(a) and Cal. Code Regs., tit. 5, § 71770(a)(1)—for any classes beginning on or after
9 January 1, 2022.

10 5. Within 30 days after this Stipulation and Order of Settlement is entered as an order
11 of the Court, Defendants shall notify private postsecondary educational institutions alerting those
12 institutions that they and any prospective students no longer are subject to the ability-to-benefit
13 requirement, currently codified at California Education Code § 94904(a) and Cal. Code Regs., tit.
14 5, § 71770(a)(1).

15 6. Within 30 days after this Stipulation and Order of Settlement is entered as an order
16 of the Court, Defendants shall update the website of the Bureau for Private Postsecondary
17 Education to clearly state that private postsecondary educational institutions no longer are subject
18 to the ability-to-benefit requirement, currently codified at California Education Code § 94904(a)
19 and Cal. Code Regs., tit. 5, § 71770(a)(1). Defendants shall also remove the page
20 https://www.bppe.ca.gov/schools/ability_exam.shtml from the Bureau’s website or edit that page
21 to prominently display the following language: “Private postsecondary educational institutions no
22 longer are subject to the ability-to-benefit requirements codified at California Education Code
23 § 94904(a) and Cal. Code Regs., tit. 5, § 71770(a)(1).”

24 7. The terms and provisions of this Stipulation and Order of Settlement shall not be
25 used in this action in the event that this Stipulation and Order of Settlement is not approved by the
26 Court or does not become final for any reason. This Stipulation and Order of Settlement shall take
27 effect only upon the Court’s approval and entry of the Stipulation and Order of Settlement. Upon
28 the Court’s approval and entry of this Stipulation and Order of Settlement, the claims of Plaintiffs

1 Pacific Coast Horseshoeing School and Bob Smith in this action shall be dismissed without
2 prejudice.

3 8. Pacific Coast Horseshoeing School, Bob Smith, and Defendants shall bear their
4 own costs and fees.

5 9. The undersigned represent that they are fully authorized to execute and enter into
6 the terms and conditions of this Stipulation and Order of Settlement on behalf of their respective
7 clients.

8
9 Dated: December 3, 2021.

Respectfully submitted,

INSTITUTE FOR JUSTICE

10
11 /s/ Samuel B. Gedge

12 SAMUEL B. GEDGE
13 *Attorney for Plaintiffs Pacific Coast
Horseshoeing School and Bob Smith*

14 Dated: December 3, 2021.

15 ROB BONTA
16 Attorney General of California
17 PAUL STEIN
18 Supervising Deputy Attorney General

19
20 /s/ Chad A. Stegeman (as authorized on Nov.
21 30, 2021)

22 CHAD A. STEGEMAN
23 Deputy Attorney General
24 P. PATTY LI
25 Deputy Attorney General
26 *Attorneys for Defendants*

27
28 **IT IS SO ORDERED.**

Dated: December 3, 2021

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE