

1 CALEB R. TROTTER, Cal. Bar No. 305195
 2 Email: CTrotter@pacificlegal.org
 3 Pacific Legal Foundation
 4 930 G Street
 5 Sacramento, California 95814
 6 Telephone: (916) 419-7111
 7 Facsimile: (916) 419-7747
 8 JAMES M. MANLEY, Ariz. Bar No. 031820*
 9 Email: JManley@pacificlegal.org
 10 Pacific Legal Foundation
 11 3217 E. Shea Blvd. # 108
 12 Phoenix, Arizona 85028
 13 Telephone: (916) 419-7111
 14 Facsimile: (916) 419-7747
 15 *Pro Hac Vice Pending

16 *Attorneys for Plaintiffs American Society of Journalists and Authors, Inc.,*
 17 *and National Press Photographers Association*

18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA
 20 WESTERN DIVISION

21 AMERICAN SOCIETY OF
 22 JOURNALISTS AND AUTHORS,
 23 INC., and NATIONAL PRESS
 24 PHOTOGRAPHERS ASSOCIATION,

25 Plaintiffs,

26 v.

27 XAVIER BECERRA, in his official
 28 capacity as Attorney General of the
 State of California,

Defendant.

Case No.: 2:19-cv-10645

**COMPLAINT FOR VIOLATION
 OF FEDERAL CIVIL RIGHTS
 UNDER 42 U.S.C. § 1983
 DECLARATORY AND
 INJUNCTIVE RELIEF**

1 On behalf of their members, Plaintiffs American Society of Journalists and
2 Authors (ASJA) and the National Press Photographers Association (NPPA), by and
3 through their undersigned attorneys, file this Complaint against Defendant and
4 allege as follows:

5 **INTRODUCTION**

6 1. This civil rights lawsuit seeks to vindicate the constitutional rights to
7 free speech, the press, and equal protection for the members of Plaintiffs American
8 Society of Journalists and Authors and the National Press Photographers
9 Association.

10 2. ASJA and the NPPA are two of the leading voices advocating for the
11 rights of independent contractor (freelance) writers and visual journalists in the
12 United States.

13 3. As a result of a recently enacted California law (AB 5, codified at Cal.
14 Labor Code § 2750.3, *et seq.*), the constitutional rights of ASJA’s and NPPA’s
15 members are impaired, threatening the livelihood of those who work as freelancers.

16 4. The government faces a heavy burden of justification when its
17 regulations single out the press. *Minneapolis Star & Tribune Co. v. Minnesota*
18 *Comm’r of Revenue*, 460 U.S. 575, 583 (1983).

19 5. In violation of the First and Fourteenth Amendments to the United
20 States Constitution, AB 5 singles out ASJA’s and NPPA’s members who are writers,
21 editors, still photographers, and visual journalists by drawing unconstitutional
22 content-based distinctions about who can freelance—limiting certain speakers to 35
23 submissions per client, per year, and precluding some freelancers from making video
24 recordings.

25 6. As a result, ASJA and NPPA seek prospective relief for their members
26 in the form of a declaration that the challenged provisions of AB 5 are invalid,
27 unenforceable, and void; a permanent and preliminary injunction against any further
28 enforcement of the challenged provisions; plus costs and reasonable attorney fees,

1 pursuant to 42 U.S.C. § 1988. ASJA and NPPA do not seek money damages against
2 Defendant.

3 JURISDICTION AND VENUE

4 7. ASJA and NPPA bring this lawsuit on behalf of their members pursuant
5 to 42 U.S.C. § 1983 for the violation of rights secured by the First and Fourteenth
6 Amendments to the United States Constitution.

7 8. Jurisdiction over ASJA’s and NPPA’s claims for declaratory and
8 injunctive relief is proper under 28 U.S.C. §§ 1331 (federal question), 1343 (civil
9 rights), and 2201–2202 (Declaratory Judgment Act).

10 9. Venue is proper in this Court under 28 U.S.C § 1391(b) on the ground
11 that all or a substantial part of the acts giving rise to ASJA’s or NPPA’s claims
12 occurred in the Central District of California.

13 PARTIES

14 Plaintiffs

15 10. ASJA was founded in 1948 and is the nation’s largest professional
16 organization of independent nonfiction writers. Its membership consists of freelance
17 writers of magazine articles, trade books, and many other forms of nonfiction
18 writing, each of whom has met exacting standards of professional achievement.

19 11. ASJA has approximately 120 members in California.

20 12. Chartered in 1946, NPPA is the nation’s leading professional
21 organization for visual journalists. Its membership includes visual journalists who
22 are still photographers, videographers, multimedia journalists, editors and students
23 from print, television, and electronic media.

24 13. NPPA has 536 members in California.

25 14. NPPA advocates in support of visual journalists’ First Amendment
26 rights to report on news and matters of public concern as well as protect the copyright
27 of their images.

28 15. The term “photojournalist” is used throughout this Complaint to track

1 with the language of AB 5, as well as the synonymous “visual journalist.” Within
2 the journalism profession, the term photojournalist means any visual journalist,
3 including news photographers, videographers, and multimedia journalists who shoot
4 either still or video images.

5 Defendant

6 16. Defendant Xavier Becerra is the Attorney General of California and the
7 chief law officer of the state. *See* Cal. Gov. Code § 12511. AB 5 grants Mr. Becerra
8 specific authority to enforce the provisions of AB 5 complained of in this action.
9 Cal. Labor Code § 2750.3(j). Plaintiffs are informed and believe, and on that basis
10 allege, that Mr. Becerra also has ultimate responsibility for enforcing AB 5.
11 Defendant is being sued in his official capacity, pursuant to *Ex parte Young*, 209
12 U.S. 123 (1908), for depriving Plaintiffs’ members of their First and Fourteenth
13 Amendment rights under color of state law by enforcing AB 5.

14 **FACTUAL ALLEGATIONS**

15 **I**

16 **LEGAL FRAMEWORK**

17 ***Dynamex ABC Test***

18 17. Plaintiffs incorporate and reallege each and every allegation in the
19 preceding paragraphs of this Complaint.

20 18. California recently enacted Assembly Bill 5 (AB 5, codified at Cal.
21 Labor Code § 2750.3, *et seq.*). AB 5 codifies and expands the independent contractor
22 test established in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*,
23 4 Cal. 5th 903 (2018).

24 19. Under *Dynamex*, independent contractors must be classified as
25 employees under certain California wage orders unless the hiring entity satisfies a
26 new three-part test:

27 (A) that the worker is free from the control and direction of the hiring entity
28 in connection with the performance of the work, both under the contract for

1 the performance of the work and in fact, (B) that the worker performs work
2 that is outside the usual course of the hiring entity’s business, and (C) that the
3 worker is customarily engaged in an independently established trade,
4 occupation, or business of the same nature as the work performed for the
hiring entity.

5 *Id.* at 964. *See also* Cal. Labor Code § 2750.3(a)(1).

6 20. Failure to prove any element of the *Dynamex* ABC test results in the
7 independent contractor being classified as an employee.

8 21. The *Dynamex* ABC test overruled a prior multi-factor balancing test
9 that considered the economic realities of the employment relationship. *See S. G.*
10 *Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341 (1989).

11 22. Under *Borello*, freelancers like Plaintiffs’ members represented here
12 are classified as independent contractors and have been for decades.

13 23. *Dynamex* was limited to the “suffer or permit to work” standard in
14 California wage orders and “equivalent or overlapping non-wage order allegations
15 arising under the Labor Code.” *Gonzales v. San Gabriel Transit, Inc.*, 2019 WL
16 4942213, *14 (Cal. Ct. App. Oct. 8, 2019). Wage orders govern issues like minimum
17 wage, overtime pay, meals, and lodging. Professionals engaged in “original and
18 creative” work, like Plaintiffs’ members, are largely exempt from wage orders, and
19 thus *Dynamex* had little direct effect on their work.

20 **AB 5**

21 24. AB 5 applies the strict *Dynamex* ABC test to the entire Labor Code, the
22 Unemployment Insurance Code, and wage orders. Cal. Labor Code § 2750.3(a)(1).

23 25. AB 5’s expansion of the ABC test means that freelancers like the
24 writers, editors, photographers, and videographers who comprise Plaintiffs’
25 memberships must be classified as employees of the publishers for which they
26 produce content because content creation is “the usual course of the hiring entity’s
27 business.” Cal. Labor Code § 2750.3(a)(1)(B).

28 26. AB 5 also contains a number of exemptions to the ABC test, including

1 people who work pursuant to “a contract for ‘professional services.’” Cal. Labor
2 Code § 2750.3(c)(1). These exempt professionals remain subject to the existing
3 *Borello* independent contractor test.

4 27. AB 5 defines “professional services” as those provided by marketers,
5 human resources administrators, travel agents, graphic designers, grant writers, fine
6 artists, IRS enrolled agents, payment processing agents through an independent sales
7 organization, estheticians, electrologists, manicurists, barbers, and cosmetologists.
8 Cal. Labor Code § 2750.3(c)(2)(B)(i)—(viii), (xi).

9 28. Still photographers, photojournalists, freelance writers, editors, and
10 newspaper cartoonists are also included in “professional services,” but with
11 important limitations: (1) these speaking professions are limited to 35 “content
12 submissions” per client, per year, Cal. Labor Code § 2750.3(c)(2)(B)(ix) and (x);
13 and (2) video is expressly excluded from the still photography and photojournalism
14 exemption. Cal. Labor Code § 2750.3(c)(2)(B)(ix).

15 29. AB 5 does not exclude audio recording from the definition of
16 professional services.

17 30. The 35-submission cap in Cal. Labor Code § 2750.3(c)(2)(B)(ix) and
18 (x) limits freelancers’ ability to record, sell, or publish audio content.

19 31. The 35-submission cap in Cal. Labor Code § 2750.3(c)(2)(B)(x) only
20 applies to “items or forms of content by a freelance journalist” that meet the other
21 requirements of § 2750.3(c)(2)(B)(x).

22 32. ASJA’s membership includes freelance writers and editors who are
23 covered under AB 5’s “professional services” exemption but subject to the limit of
24 35 content submissions per client, per year.

25 33. NPPA’s membership includes still photographers and photojournalists
26 who are covered under AB 5’s “professional services” exemption but subject to the
27 limit of 35 content submissions per client, per year. NPPA’s membership also
28

1 includes videographers who are excluded from AB 5’s definition of “professional
2 services.”

3 34. AB 5 grants specific enforcement authority to Defendant “[i]n addition
4 to any other remedies available,” to bring an action for injunctive relief. Cal. Labor
5 Code § 2750.3(j). This new enforcement authority means that Plaintiffs’ members
6 who wish to work independently can still be forced to become employees due to
7 Defendant’s enforcement of AB 5.

8 **II**
9 **AB 5 HARMS PLAINTIFFS’ MEMBERS BY**
10 **SINGLING OUT FREELANCE JOURNALISTS**
11 **FOR UNIQUE AND SIGNIFICANT BURDENS**

12 35. Plaintiffs incorporate and reallege each and every allegation in the
13 preceding paragraphs of this Complaint.

14 36. Classifying Plaintiffs’ members as employees rather than freelance
15 independent contractors brings significant new costs and disadvantages to the
16 members. For professionals engaged in “original and creative” work, AB 5 adds
17 costs their client-turned-employer will have to pay, such as unemployment taxes¹ ,
18 workers’ compensation taxes² , state disability insurance³ , paid family leave⁴ , and
19 sick leave.⁵ Some of these costs are borne by an employer, but they all make
20 Plaintiffs’ members’ work more costly—and thus less attractive—to the client-
21 turned-employer. The additional burden on Plaintiffs’ members’ ability to engage in
22 independent journalism is a direct result of their classification as employees under
23 AB 5’s “usual course of the hiring entity’s business” prong. Cal. Labor Code
24 § 2750.3(a)(1)(B).

25 ¹ Cal. Un. Ins. Code § 1251.

26 ² Cal. Labor Code § 3600.

27 ³ Cal. Un. Ins. Code § 2625.

28 ⁴ Cal. Un. Ins. Code § 3303.

⁵ Cal. Labor Code § 246.

1 37. The threat of enforcement has already resulted in lost freelancing
2 opportunities for Plaintiffs' members.

3 38. In addition to these unavoidable costs of converting freelancers to
4 employees, Plaintiffs' members who are forced to become employees because of AB
5 5 will also lose ownership of the copyright to their creative work and control of their
6 workload unless they are able to negotiate to retain that right.

7 39. Ownership of the copyright of their work is especially pressing for
8 NPPA's members, who license their photographs and videos to their clients, but
9 often retain the copyright to such work, which they can then relicense for additional
10 income. Under the Copyright Act, the copyright in a work created by an independent
11 contractor vests with the creator. *Cnty. for Creative Non-Violence v. Reid*, 490 U.S.
12 730, 737 (1989). However, the copyright in a work created by an employee is usually
13 owned by the employer, unless the employee is able to negotiate to retain that right.

14 40. ASJA's members similarly benefit substantially from the ability to
15 republish work that they create as freelance independent contractors.

16 41. Freelance journalists who are forced to become employees due to AB
17 5 will lose the copyright to their work.

18 42. Control over their workload is also a primary concern for Plaintiffs'
19 members, and is what leads many of them to make the choice to work independently.

20 43. In a tumultuous industry that continues to lay off employees, Plaintiffs'
21 members find safety in flexibility. Rather than being tied to a single employer,
22 Plaintiffs' members are able to adapt their workload to their financial needs, balance
23 their work with their other responsibilities, and spread their workload across multiple
24 clients to minimize risk.

25 44. That flexibility even extends to business decisions, such as the choice
26 to attend a conference or event.

27 45. In addition, Plaintiffs' members can deduct business expenses on their
28 federal taxes for numerous expenses, including professional memberships,

1 educational and networking conferences, travel, equipment, home offices, insurance,
2 and other expenses, which an employee is not able to deduct.

3 46. They are also able to maintain benefits like healthcare and retirement
4 accounts, regardless of the number of publishers they produce content for or the
5 frequency and quantity of their work.

6 47. Flexibility is even more important in the digital space which, unlike the
7 traditional print model, allows for a higher volume of submissions to a greater
8 variety of publications.

9 48. Losing the freedom to freelance would upend years-long careers of
10 Plaintiffs' members which are built on this freedom and flexibility.

11 49. AB 5 is especially threatening to groups that are not well-represented
12 among voices in the media like women, ethnic minorities, LGBT people, the
13 disabled, and the elderly, because members of these groups work more often as
14 freelancers rather than staff employees.

15 50. By enforcing content-based distinctions about who can freelance—
16 limiting certain speakers to 35 submissions per client, per year, and precluding some
17 freelancers from making video recordings—Defendant currently maintains and
18 actively enforces a set of laws, practices, policies, and procedures under color of
19 state law that deprive Plaintiffs' members of their rights to free speech, free press,
20 and equal protection, in violation of the First and Fourteenth Amendments to the
21 United States Constitution and 42 U.S.C. § 1983.

22 51. Plaintiffs have no adequate remedy at law to compensate for the loss of
23 these fundamental freedoms and will suffer irreparable injury absent an injunction
24 restraining Defendant's enforcement of the 35-submission limit and the video
25 recording restrictions.

26 52. Plaintiffs are therefore entitled to prospective declaratory and
27 permanent injunctive relief against continued enforcement and maintenance of Cal.
28 Labor Code § 2750.3(c)(2)(B)(ix) and (x). *See* 28 U.S.C. §§ 2201, 2202.

LEGAL CLAIMS

Count I: Equal Protection

(Cal. Labor Code § 2750.3(c)(2)(B)(ix) and (x))

(Limit of 35 content submissions)

1
2
3
4 53. Plaintiffs incorporate and reallege each and every allegation in the
5 preceding paragraphs of this Complaint.

6 54. The Equal Protection Clause of the Fourteenth Amendment to the
7 United States Constitution prohibits the government from drawing arbitrary
8 distinctions between similarly situated professionals. *See* U.S. Const. amend. XIV,
9 § 1.

10 55. Granting a full exemption from AB 5 to speaking professionals who
11 engage in marketing, graphic design, grant writing, and fine arts, but subjecting
12 speaking professionals like Plaintiffs' members who are still photographers,
13 photojournalists, freelance writers, and editors, to a limit of 35 content submissions
14 per publisher per year, creates an irrational and arbitrary distinction among speaking
15 professionals.

16 56. By enforcing the irrational and arbitrary distinction among speaking
17 professionals, Defendant, acting under color of state law, irrationally and arbitrarily
18 discriminates against Plaintiffs' members in violation of their right to equal
19 protection of the laws.

20 57. Privileging marketers, graphic designers, grant writers, and fine artists
21 by providing those speaking professions with an exemption from AB 5, while
22 limiting still photographers, photojournalists, freelance writers, and editors to an
23 exemption of only 35 submissions per publisher per year, is not narrowly tailored to
24 any compelling government objective, nor is it rationally related to any legitimate
25 government objective.

26 58. Plaintiffs' members who are still photographers, photojournalists,
27 freelance writers, and editors are similarly situated to speaking professionals not
28 subject to the 35-submission limit of AB 5.

1 59. Plaintiffs' members will suffer substantial and ongoing harm from
2 being subject to Defendant's enforcement of the 35-submission limit while other
3 similarly situated speaking professionals are not.

4 60. Plaintiffs' members will continue to suffer substantial and irreparable
5 harm unless the discrimination enshrined in AB 5's selective and arbitrary
6 imposition of the 35-submission limit is declared unlawful and enjoined by this
7 Court.

8 **Count II: Equal Protection**
9 **(Cal. Labor Code § 2750.3(c)(2)(B)(ix))**
10 **(Exclusion of videography)**

11 61. Plaintiffs incorporate and reallege each and every allegation in
12 paragraphs 1–52 of this Complaint.

13 62. The Equal Protection Clause of the Fourteenth Amendment to the
14 United States Constitution prohibits the government from drawing arbitrary
15 distinctions between similarly situated professionals. *See* U.S. Const. amend. XIV,
16 § 1.

17 63. Permitting marketers, graphic designers, grant writers, and fine artists
18 to record video images, but excluding the recording of video images from the limited
19 exemption for photographers and photojournalists, creates an irrational and arbitrary
20 distinction among speaking professionals.

21 64. By enforcing the irrational and arbitrary distinction among speaking
22 professionals, Defendant, acting under color of state law, irrationally and arbitrarily
23 discriminates against Plaintiffs' members in violation of their right to equal
24 protection of the laws.

25 65. Privileging marketers, graphic designers, grant writers, and fine artists
26 by permitting them to record video images and remain exempt from AB 5, while
27 providing no exemption to photographers and photojournalists who record video, is
28 not narrowly tailored to any compelling government objective, nor is it rationally

1 related to any legitimate government objective.

2 66. Exempting still photographers and photojournalists for up to 35
3 submissions of still photographs per publisher per year, but providing no exemption
4 to photographers and photojournalists who record video images, creates an irrational
5 and arbitrary distinction between those individuals and others who provide
6 professional services under AB5's exemptions.

7 67. By enforcing the irrational and arbitrary distinction among
8 photographers and photojournalists, Defendant, acting under color of state law,
9 irrationally and arbitrarily discriminates against Plaintiffs' members in violation of
10 their right to equal protection of the laws.

11 68. Privileging still photographers and photojournalists who submit still
12 photographs by allowing them to submit up to 35 submissions per publisher per year
13 while remaining exempt from AB 5, while providing no exemption to those
14 recording video, is not narrowly tailored to any compelling government objective,
15 nor is it rationally related to any legitimate government objective.

16 69. Plaintiffs' members who are photographers and photojournalists that
17 record video are similarly situated to marketers, graphic designers, grant writers, and
18 fine artists who record video images.

19 70. Plaintiffs' members who are photographers and photojournalists that
20 record video are similarly situated to those who are still photographers and
21 photojournalists that do not shoot video.

22 71. Plaintiffs' members will suffer substantial and ongoing harm from
23 being subject to Defendant's enforcement of the exclusion of video recordings by
24 photographers and photojournalists from AB 5's exemptions.

25 72. Plaintiffs' members will continue to suffer substantial and irreparable
26 harm unless the discrimination enshrined in AB 5's selective and arbitrary
27 imposition of the exclusion of video recordings by photographers and
28

1 photojournalists from AB 5’s exemptions is declared unlawful and enjoined by this
2 Court.

3 **Count III: First Amendment**
4 **(Cal. Labor Code § 2750.3(c)(2)(B)(ix) and (x))**
5 **(Limit of 35 content submissions)**

6 73. Plaintiffs incorporate and reallege each and every allegation in
7 paragraphs 1–52 of this Complaint.

8 74. Pursuant to Cal. Labor Code § 2750.3(c)(2)(B)(ix) and (x), Defendant,
9 acting under color of state law, limits AB 5’s exemption for “professional services”
10 as applied to speaking professionals who engage in still photography,
11 photojournalism, freelance writing, and editing to only 35 content submissions per
12 publisher per year. In contrast, AB 5 grants an exemption free from the
13 35-submission limit to speaking professionals who engage in marketing, graphic
14 design, grant writing, and fine arts.

15 75. The 35-submission limit applies to Plaintiffs’ members based on the
16 content of their speech—i.e., whether they write about or photograph a topic in a
17 manner that constitutes marketing versus a manner that constitutes journalistic
18 reporting, or whether images are graphic design versus still photography.

19 76. Limiting AB 5’s exemption for “professional services” as applied to
20 speaking professionals who engage in still photography, photojournalism, freelance
21 writing, and editing to only 35 content submissions per publisher per year, while
22 granting an exemption free from the 35-submission limit to speaking professionals
23 who engage in marketing, graphic design, grant writing, and fine arts is not narrowly
24 tailored to a compelling governmental interest.

25 77. Under the AB 5 scheme, journalistic speech is expressly disfavored.

26 78. By enforcing the 35-submission limit, Defendant, acting under color of
27 state law, unconstitutionally deprives Plaintiffs’ members of their freedom of speech
28 as protected by the First and Fourteenth Amendments to the U.S. Constitution.

1 79. By enforcing the 35-submission limit, Defendant, acting under color of
2 state law, unconstitutionally burdens the press in violation of the First and
3 Fourteenth Amendments to the U.S. Constitution, because many of Plaintiffs’
4 members are journalists.

5 80. Plaintiffs’ members will suffer substantial and ongoing harm from
6 being subject to Defendant’s enforcement of the 35-submission limit.

7 81. Plaintiffs’ members will continue to suffer substantial and irreparable
8 harm unless the speech- and press-burdening 35-submission limit is declared
9 unlawful and enjoined by this Court.

10 **Count IV: First Amendment**
11 **(Cal. Labor Code § 2750.3(c)(2)(B)(ix))**
12 **(Exclusion of videography)**

13 82. Plaintiffs incorporate and reallege each and every allegation in
14 paragraphs 1–52 of this Complaint.

15 83. Pursuant to Cal. Labor Code § 2750.3(c)(2)(B)(ix), Defendant, acting
16 under color of state law, excludes from AB 5’s exemption for “professional services”
17 the recording of video images by photographers and photojournalists. In contrast,
18 the recording of video images for marketing, graphic design, and fine arts is not
19 excluded.

20 84. The exclusion of video recording from the “professional services”
21 exemption applies to Plaintiffs’ members based on the content of their speech—i.e.,
22 whether they record video to communicate news versus expression that is deemed
23 marketing.

24 85. Excluding video recording by photographers and photojournalists from
25 AB 5’s “professional services” exemption is not narrowly tailored to a compelling
26 government interest.

27 86. Under the AB 5 scheme, journalistic speech is expressly disfavored.

28 87. By enforcing the video recording exclusion for photographers and

1 photojournalists, Defendant, acting under color of state law, unconstitutionally
2 deprives Plaintiffs' members of their freedom of speech as protected by the First and
3 Fourteenth Amendments to the U.S. Constitution.

4 88. By enforcing the video recording exclusion for photographers and
5 photojournalists, Defendant, acting under color of state law, unconstitutionally
6 burdens the press in violation of the First and Fourteenth Amendments to the U.S.
7 Constitution, because many of Plaintiffs' members are journalists.

8 89. Plaintiffs' members will suffer substantial and ongoing harm from
9 being subject to Defendant's enforcement of the video recording exclusion for
10 photographers and photojournalists.

11 90. Plaintiffs' members will continue to suffer substantial and irreparable
12 harm unless the speech- and press-burdening video recording exclusion for
13 photographers and photojournalists is declared unlawful and enjoined by this Court.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs respectfully request the following relief:

16 1. Entry of a declaratory judgment that:

17 a. Limiting AB 5's "professional services" exemption for still
18 photographers, photojournalists, freelance writers, editors, and newspaper
19 cartoonists to 35 submissions per publisher per year, as codified at Cal. Labor Code
20 § 2750.3(c)(2)(B)(ix) and (x), is unconstitutional, facially and as applied to
21 Plaintiffs' members, to the extent that it deprives Plaintiffs' members of equal
22 protection of the laws in violation of the Equal Protection Clause of the Fourteenth
23 Amendment to the U.S. Constitution;

24 b. Excluding photographers and photojournalists who record video
25 images from AB 5's "professional services" exemption, as codified at Cal. Labor
26 Code § 2750.3(c)(2)(B)(ix), is unconstitutional, facially and as applied to Plaintiffs'
27 members, to the extent that it deprives Plaintiffs' members of equal protection of the
28

1 laws in violation of the Equal Protection Clause of the Fourteenth Amendment to
2 the U.S. Constitution;

3 c. Limiting AB 5’s “professional services” exemption for still
4 photographers, photojournalists, freelance writers, editors, and newspaper
5 cartoonists to 35 submissions per publisher per year, as codified at Cal. Labor Code
6 § 2750.3(c)(2)(B)(ix) and (x), is unconstitutional, facially and as applied to
7 Plaintiffs’ members, to the extent that it burdens protected speech and the press in
8 violation of the First and Fourteenth Amendments to the U.S. Constitution;

9 d. Excluding photographers and photojournalists who record video
10 images from AB 5’s “professional services” exemption, as codified at Cal. Labor
11 Code § 2750.3(c)(2)(B)(ix), is unconstitutional, facially and as applied to Plaintiffs’
12 members, to the extent that it burdens protected speech and the press in violation of
13 the First and Fourteenth Amendments to the U.S. Constitution;

14 2. Entry of a permanent and preliminary injunction against Defendant, his
15 agents, representatives, employees, and all persons in active concert or participation
16 with him, from enforcing the 35-submission limit and video recording exclusion
17 codified at Cal. Labor Code § 2750.3(c)(2)(B)(ix) and (x), as well as any and all
18 implementing administrative rules and regulations, and the policies and practices by
19 which Defendant enforces these provisions;

20 3. An award of Plaintiffs’ attorney fees, costs, and expenses in this action
21 pursuant to 42 U.S.C. § 1988; and

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 4. An award of any further legal and equitable relief as the Court may
2 deem just and proper.

3 DATED: December 17, 2019.

4 Respectfully submitted,

5
6 By /s/ Caleb R. Trotter
7 CALEB R. TROTTER

8 CALEB R. TROTTER
9 (Cal. Bar No. 305195)
10 Pacific Legal Foundation
11 930 G Street
12 Sacramento, California 95814
13 Telephone: (916) 419-7111
14 Facsimile: (916) 419-7747
15 Email: CTrotter@pacificlegal.org

16 JAMES M. MANLEY
17 (Ariz. Bar No. 031820*)
18 Pacific Legal Foundation
19 3241 E. Shea Blvd. #108
20 Phoenix, Arizona 85028
21 Telephone: (916) 419-7111
22 Facsimile: (916) 419-7747
23 Email: JManley@pacificlegal.org
24 *Pro Hac Vice pending

25
26 *Attorneys for Plaintiffs American Society of*
27 *Journalists and Authors, Inc., and National*
28 *Press Photographers Association*