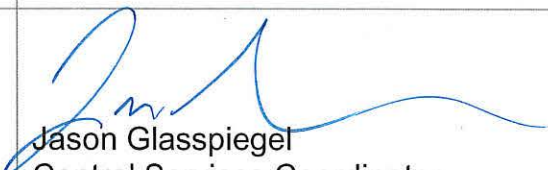


## ISSUE MEMORANDUM

DATE	February 5, 2016
TO	Board of Psychology Members
FROM	 Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #12 b) – Update regarding the California Child Abuse and Neglect Reporting Act (CANRA) and Mandated Reporting – Penal Code Sections 261.5, 288, and 11165.1

### **Background:**

The Board of Psychology requested an opinion from the Attorney General (AG) whether oral copulation and sodomy between minors of like age is reportable. The Board's request is still pending (Pending Opinion Request #15-201 – Eisenberg), due to a complaint against the AG's office.

Enclosures: Copy of the complaint filed against the AG.

### **Action Requested:**

This item is for informational purposes only. There is no action required of the Board.

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FILED

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FILED  
Superior Court of California  
County of Los Angeles

FEB 20 2015

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

11 DON L. MATHEWS, M.F.T.; MICHAEL  
12 L. ALVAREZ, M.F.T., and WILLIAM  
13 OWEN, CADC II,

Plaintiffs,

v.

15 KAMALA D. HARRIS, in her official  
16 capacity as Attorney General of California;  
17 and JACKIE LACEY in her official  
18 capacity as the District Attorney of the  
county of Los Angeles and representative  
of the California's district attorneys,

19 Respondents.

CASE NO.: BC573135

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

21 Plaintiffs Don L. Mathews, M.F.T., Michael L. Alvarez, M.F.T., and William Owen,  
22 CADC II, allege as follows:

23 INTRODUCTION

24 1. Plaintiffs Don L. Mathews, M.F.T., Michael L. Alvarez, M.F.T., and William  
25 Owen, CADC II ("Plaintiffs") hereby bring this Complaint for Declaratory and Injunctive Relief  
26 to enjoin and prohibit the Attorney General of California and the district attorneys of California  
27 (collectively, "Defendants") from enforcing Assembly Bill ("A.B.") 1775's recent amendment to  
28

CIT/CLERK: REC-73135  
LEA/DEF#: 02/20/15  
RECEIPT # 02/20/15  
DATE PAID: 02/20/15  
PAYMENT: \$435.00  
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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1 the Child Abuse and Neglect Reporting Act ("CANRA"), Penal Code section 11165.1, subd. (c)  
2 (2015), requiring psychotherapists (including marriage and family therapists ("MFTs")) to now  
3 report any patient who has ever downloaded or viewed child pornography on the Internet or on  
4 his cell phone to law enforcement authorities on the ground that this statute violates the patient's  
5 constitutional right to privacy regarding his confidential communications with a psychotherapist  
6 under article I, section 1, of the California Constitution and the Fourteenth Amendment of the  
7 U.S. Constitution, and subjects psychotherapists to criminal prosecution and loss of their licenses  
8 if they fail to comply with this illegal reporting requirement.

9       2. While child pornography is despicable, morally repugnant and the product of  
10 child sexual abuse, A.B. 1775's mandated reporting of child pornography viewing by  
11 psychotherapy patients unjustifiably violates their constitutional right of privacy regarding  
12 communications to their therapists, the confidentiality of which is critical and essential to the  
13 efficacy of psychotherapy to treat mental health issues. This reporting requirement is  
14 unconstitutional because it does not substantially further CANRA's purpose of identifying and  
15 protecting children from "hands on" abuse occurring in real life and is therefore outweighed by  
16 the patients' right to privacy and the compelling public interest (embodied in Evidence Code  
17 section 1104's psychotherapist-patient privilege) in ensuring that patients seeking psychotherapy  
18 treatment for sexual disorders, including pedophilia, can do so without fear of criminal  
19 prosecution and public disgrace.

20       3. Until A.B. 1775 was passed, CAMRA furthered the state's legitimate interest in  
21 protecting children from abuse by requiring psychotherapists to report any known or suspected  
22 children being sexually abused or exploited by others in the real world so that these child victims  
23 could be identified and protected by law enforcement authorities. Now, however, A.B. 1775 has  
24 dramatically and unconstitutionally expanded the scope of CANRA by requiring  
25 psychotherapists to violate the confidences of patients who report viewing child pornography  
26 over the Internet or on their cell phones without any evidence that the patient has engaged in  
27 "hands-on" sexual abuse of a child or that the depicted child victim can realistically be identified  
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1 and protected by law enforcement authorities. The overbroad nature of A.B. 1775's invasion of  
2 the privacy rights of patients extends to the reporting of minors who view sexually explicit self-  
3 portraits sent to them by other minors over cell phone networks. This practice, known as  
4 "sexting," does not involve any child abuse that CANRA was intended to prevent and its  
5 mandated reporting will serve only to shame and embarrass the minor patients involved. In  
6 addition, the mandated reporting of child pornography viewing will unnecessarily deter persons  
7 with sexual disorders from seeking psychotherapy treatment and improperly expend tax payer  
8 dollars on enforcement of an unconstitutional law that does not substantially further CANRA's  
9 salutary purpose of identifying and protecting children in California who are being abused by  
10 others.

11 4. Since the state cannot show that CANRA's purpose of protecting children from  
12 child abuse is substantially furthered by A.B. 1775's invasion of the patients' constitutional right  
13 to privacy regarding their communications to psychotherapists, this statutory amendment is  
14 unconstitutional under the California and U.S. Constitutions and its enforcement must be  
15 enjoined. In particular, the patients' right to privacy and the public interest in ensuring that  
16 persons seeking psychotherapy to address sexual disorders can obtain such treatment without  
17 fear of criminal prosecution trumps the Legislature's misguided transformation of CANRA into a  
18 vehicle to criminally prosecute child pornography viewers, a purpose which CANRA does not  
19 serve and that is not within any exception to Evidence Code section 1104's psychotherapist-  
20 patient privilege.

#### 21 PARTIES

22 5. Plaintiff Don L. Mathews, M.F.T., is a resident of Walnut Creek, California and  
23 licensed as a marriage and family therapist ("MFT") by the State of California. He is the founder  
24 and director of Impulse Treatment Center located in Walnut Creek, California, the largest  
25 outpatient treatment center for sexual compulsion/addiction in the United States. The center  
26 employs numerous licensed psychotherapists and is currently treating approximately 100 clients  
27 with sexual compulsivity disorders. Mr. Mathews' treatment program lasts for a period of three  
28 months to several years and currently includes 18 groups of sexually compulsive clients and their

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1 families. Mr. Mathews is also a California State Sex Offender Management Board (CASOMB)  
2 Certified Practitioner qualified to treat sex offenders. He is a member of SASH (Society for  
3 Advancement of Sexual Health, formerly National Counsel on Sexual Addiction and  
4 Compulsivity), CAMFT (California Association of Marriage and Family Therapists) and past  
5 President of the East Bay Chapter of CAMFT. Mr. Mathews brings this complaint as an MFT  
6 caught between the mandated reporting of child pornography viewing imposed by A.B. 1775's  
7 amendment of CANRA and his ethical obligations to provide confidential psychotherapy  
8 services to patients who present no serious danger of "hands on" or "contact" sexual abuse or  
9 exploitation of children, and his patients' right of privacy under the California and U.S.  
10 Constitutions regarding their confidential communications to him during therapy. He also  
11 asserts his beneficial interest as a citizen concerned for the proper performance of a public duty  
12 in an area of general public interest. (*See Planned Parenthood Affiliates of California v. Van De*  
13 *Kamp* (1986) 181 Cal.App.3d 245, 256-257, citing *Ballard v. Anderson* (1971) 4 Cal.3d 873, 877  
14 and *Green v. Obledo* (1981) 29 Cal.3d 126, 144-145.)

15 6. Plaintiff Michael L. Alvarez, M.F.T., is a resident of Palos Verdes, California and  
16 licensed as a marriage and family therapist by the State of California. In 1981, he established a  
17 private practice with a specialization in addictions, including sex addiction. He was the first  
18 program director and founder of the Sexual Disorders Program established in 1991 at Del Amo  
19 Hospital in Torrance, California. Mr. Alvarez also created a specialized track for the treatment  
20 of non-violent sex offenders at that facility. He has testified as an expert in sexual abuse crime  
21 for both prosecutors and defendants on numerous occasions. Mr. Alvarez has presented at the  
22 National Council on Sex Addiction (presently SASH) and well as for the Association for the  
23 Treatment of Sexual Abusers. Additionally, he has published articles in *Sexual Addiction and*  
24 *Compulsivity: The Journal of Treatment and Prevention*. He currently sees numerous patients  
25 who suffer from sexual addiction and compulsivity. Mr. Alvarez brings this complaint to assert  
26 his own rights as an MFT caught between the mandated reporting of child pornography viewing  
27 imposed by A.B. 1775's amendment of CANRA and his ethical obligations to provide  
28 confidential psychotherapy services to patients who present no serious danger of "hands on" or

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1 "contact" sexual abuse or exploitation of children, his patients' right of privacy under the  
2 California and U.S. Constitutions regarding their confidential communications to him during  
3 therapy, and his beneficial interest as a citizen concerned for the proper performance of a public  
4 duty in an area of general public interest.

5 7. Plaintiff William Owen is a resident of Los Angeles, California and a certified  
6 alcohol and drug counselor (CADC II). He has worked with sex addicts for the past 15 years,  
7 both as a counselor and intake director at various treatment programs, including the Sexual  
8 Disorders Unit at Del Amo Hospital, as well as in private practice. He brings this complaint to  
9 assert his beneficial interest as a citizen concerned for the proper performance of a public duty in  
10 an area of general public interest and his separate interest as a California taxpayer seeking to  
11 enjoin the expenditure of public monies in the enforcement of an invalid and unconstitutional  
12 law. (*See Planned Parenthood Affiliates of California*, 181 Cal.App.3d at 257, citing *Hollman v.*  
13 *Warren* (1948) 32 Cal.2d 351.)

14 8. Defendant Kamala D. Harris is the Attorney General of California charged with  
15 the enforcement of CANRA. The Attorney General has a major role in enforcing and  
16 implementing the law's provisions. She directs and controls the Department of Justice, and is  
17 responsible for maintaining the statewide databank of child abuse reports and with disseminating  
18 information from that bank to various agencies and law enforcement authorities. As the chief  
19 law enforcement officer of the state, the Attorney General has general enforcement power with  
20 respect to CANRA's criminal sanction for the non-reporting of known or suspected child abuse  
21 by psychotherapists and other mandated reporters.

22 9. Defendant Jackie Lacey is the District Attorney of the County of Los Angeles  
23 responsible for local enforcement of CANRA's penal provision against mandated reporters who  
24 fail to report child abuse or neglect. She is empowered to prosecute a psychotherapist who fails  
25 to report the viewing or downloading of child pornography by a patient as child abuse. She is  
26 named as a defendant in her capacity as a district attorney and as a representative of all  
27 California district attorneys. (*See Planned Parenthood Affiliates of California*, 181 Cal.App.3d  
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1 at 257, citing *Brosnahan v. Brown* (1982) 32 Cal.3d 236, *revd. on other grounds, Richardson v.*  
2 *Ramirez* (1974) 418 U.S. 24.)

### 3 JURISDICTION AND VENUE

4 10. This case raises questions under the California and U.S. Constitutions. Thus, this  
5 Court has jurisdiction over all of Plaintiffs' claims. Jurisdiction in this case is also founded on  
6 California's common law taxpayer standing doctrine and California Code of Civil Procedure §  
7 526a, which grant California taxpayers the right to sue government officials to prevent unlawful  
8 expenditures of taxpayer funds and taxpayer-financed resources. (*See Green v. Obledo*, 29 Cal.  
9 3d 28 126, 145 (1981); *Blair v. Pitchess*, 5 Cal.3d 258, 268 (1971); *Connerly v. Schwarzenegger*,  
10 146 Cal. App. 4th 739, 748-749, 751, fn. 5 (2007); *Connerly v. State Personnel Bd.*, 92 Cal. App.  
11 4th 16, 29-31 (2001). This Court is authorized to grant declaratory relief pursuant to California  
12 Code of Civil Procedure section 1060 and to grant injunctive relief pursuant to California Code  
13 of Civil Procedure sections 525, 526, and 526(a).

14 11. Venue is proper in this Court pursuant to California Code of Civil Procedure  
15 sections 393, subdivision (b), 394, subdivision (a), and 401 because this action is brought against  
16 public officers in a county where the Attorney General and District Attorney maintain offices,  
17 perform their functions, and expend tax payer dollars.

### 18 LEGAL BACKGROUND

#### 19 A. CALIFORNIA'S PSYCHOTHERAPIST-PATIENT PRIVILEGE

##### 20 (EVIDENCE CODE SECTION 1014)

21 12. As set forth in Evidence Code section 1014, California's psychotherapist-patient  
22 privilege provides that, "[s]ubject to Section 912 [waiver] and except as otherwise provided in  
23 this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent  
24 another from disclosing, a confidential communication between patient and psychotherapist . . ."  
25 The privilege may be claimed by the patient or the psychotherapist. (Evid. Code § 1014.) A  
26 "psychotherapist" is defined to include a licensed psychiatrist, psychologist, social worker, or  
27 MFT. (Evid. Code § 1010.)  
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1 13. Over the years, the California legislature has enacted various statutory exceptions  
2 to the psychotherapist-patient privilege, most of which are set forth in the Evidence Code. (See  
3 Evidence Code sections 1016 through 1026.) In this case, however, the exception at issue is set  
4 forth in CANRA, a set of Penal Code statutes compelling psychotherapists and other mandated  
5 reporters to disclose known or suspected child abuse and neglect to law enforcement authorities  
6 and subjecting them to criminal penalties if they fail to do so.

7 **B. THE CHILD ABUSE AND NEGLECT REPORTING ACT ("CANRA"),**  
8 **PENAL CODE SECTIONS 11164 ET SEQ.**

9 14. Under CANRA, Penal Code sections 11164 *et seq.*, mandated reporters (including  
10 psychotherapists) are required to report suspected child abuse and neglect to law enforcement  
11 authorities. The California Legislature has made clear that it intends a psychotherapist's  
12 statutory duty to report child abuse to be an exception to the psychotherapist-patient privilege set  
13 forth in Evidence Code section 1014. (See Pen. Code § 11171, subd. (b) ["Neither the physician-  
14 patient privilege nor the psychotherapist-patient privilege applies to information reported  
15 pursuant to this article in any court proceeding or administrative hearing."]; *People v. Stritzinger*  
16 (1983) 34 Cal.3d 505, 512.)

17 15. CANRA has 44 categories of mandated reporters including psychiatrists,  
18 psychologists, social workers, and MFTs. (Pen. Code § 11165.7, subd. (a)(1)-(44).) A report  
19 must be immediately made to law enforcement authorities of known or suspected child abuse or  
20 neglect involving physical abuse (Pen. Code § 11165.6); sexual abuse (Pen. Code § 11165.1);  
21 willful harming or endangerment (Pen. Code § 11165.3); general or severe neglect (Pen. Code §  
22 11165.2); and unlawful corporal punishment or injury. (Pen. Code § 11165.4.)

23 16. CANRA's duty to report is triggered "whenever the mandated reporter, in his or  
24 her professional capacity or within the scope of his or her employment, has knowledge of or  
25 observes a child whom the mandated reporter knows or reasonably suspects has been the victim  
26 of child abuse or neglect." (See Pen. Code § 11166, subd. (a).) A reasonable suspicion means  
27 "that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could  
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1 cause a reasonable person in a like position, drawing, when appropriate, on his or her training  
2 and experience, to suspect child abuse or neglect." (See Pen. Code § 11166, subd. (b).)

3 17. The mandated reporter must report child abuse or neglect to a police department  
4 or sheriff's department, a county probation department (if designated by the county to receive  
5 mandated reports), or a county welfare department. (See Pen. Code § 11165.9.) The report must  
6 include, if known, the names and present locations of the minor and the suspected child abuser,  
7 and the information that led the reporter to suspect child abuse or neglect. (Penal Code § 11167,  
8 subd. (a).)

9 18. The local law enforcement agency with jurisdiction over the reported child abuse  
10 or neglect must conduct an investigation and send a report of any substantiated child abuse or  
11 severe neglect to the Department of Justice so that the child abuser can be listed in the state's  
12 Child Abuse Central Index ("CACI"), a statewide data base. (See Pen. Code §§ 11165.9,  
13 11166.3, 11170.) The child abuse reports in CACI are not public documents, but may be  
14 released to a number of individuals and government agencies. (Pen. Code § 11167.5, subd. (b).)  
15 By way of examples, relevant CACI child abuse may be released to various agencies conducting  
16 child abuse investigations, child placement assessments, or background investigations of  
17 applicants seeking to adopt a child or to obtain a position as a peace officer or involving the care  
18 or supervision of children. (Pen. Code § 11170, subd. (b), 11170.5). CACI reports may also be  
19 disclosed to out-of-state agencies conducting child abuse investigations or adoption and foster  
20 care assessments. (Pen. Code § 11170, subds. (d),(e).)

21 19. The Department of Justice apparently maintains CACI reports of child abuse as  
22 permanent records with three exceptions. First, once a person listed in a CACI report reaches  
23 100 years of age, the report must be deleted. (Pen. Code § 11169, subd. (f).) Second, reports  
24 involving a person who was under 18 years of age at the time of the report must be deleted from  
25 the CACI 10 years from the date of the incident resulting in the CACI listing, if no subsequent  
26 report concerning the same person is received during that time period. (Pen. Code § 11170,  
27 subd. (a)(3).) Third, if a person is listed in the CACI only as a victim of child abuse or neglect,  
28 and that person is 18 years of age or older, that person may have his or her name removed from

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1 the index by making a written notarized request to the Department of Justice. (Pen. Code §  
2 11170, subd. (g).)

3 20. A mandated reporter's failure to report is a misdemeanor crime punishable by up  
4 to six months in prison, a fine of \$1,000, or both. (See Pen. Code § 11166, subd. (c).) In  
5 addition, an MFT who fails to comply with Penal Code section 11166's reporting requirements is  
6 guilty of unprofessional conduct that may result in the suspension or revocation of his/her  
7 license. (See Bus. & Prof. Code § 4982, subd. (w).)

8 21. With the exception of certain types of sexual abuse, CANRA generally only  
9 requires the mandated reporting of known or suspected physical abuse or neglect of children.  
10 For example, reports must be made of "physical injury or death inflicted by other than accidental  
11 means upon a child by another person," (Pen. Code § 11165.6); "the negligent failure of a person  
12 having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or  
13 supervision where no physical injury to the child has occurred," (Pen. Code § 11165.6); "any  
14 person [who] willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable  
15 physical pain or mental suffering, or having the care or custody of any child, willfully causes or  
16 permits the person or health of the child to be placed in a situation in which his or her person or  
17 health is endangered, (Pen. Code § 11165.3); or "any person [who] willfully inflicts upon any  
18 child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition."  
19 (Pen. Code § 11165.4).

20 C. A.B. 1775'S AMENDMENT OF CANRA, PENAL CODE SECTION

21 11165.1, SUBD. (C)

22 22. In the case of child sexual abuse, Penal Code section 11165.1 provides that  
23 reportable sexual abuse includes "sexual assault" or "sexual exploitation" of a child. "Sexual  
24 assault" is defined as various sexual crimes against the person of a child, including rape,  
25 statutory rape, incest, sodomy, lewd and lascivious acts, oral copulation, sexual penetration, and  
26 molestation. (Pen. Code § 11165.1, subds. (a), (b); see Pen. Code §§ 261, 261.5, subd. (d),  
27 264.1, 285, 286, 288, subds. (a), (b), or (c)(1), 288a, 289, 647.6.)  
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1           23. Penal Code section 11165.1, subdivision (c) defines "sexual exploitation" to  
2 include the crimes of possession of child pornography with intent to sell, distribute or exhibit to  
3 others, employing a child to assist with such criminal activity, and knowingly employing a child  
4 to participate in prostitution, the live performance of obscene sexual acts, or child pornography.  
5 (Pen. Code §§ 311.2, 311.4, subd. (a), 11165.1, subd. (c)(1), (2).)

6           24. In addition, the version of Penal Code section 11165.1, subdivision (c)(3) in effect  
7 until December 31, 2014 provided that "sexual exploitation" included:

8           (3) A person who depicts a child in, or who knowingly develops, duplicates,  
9 prints, or exchanges, a film, photograph, videotape, video recording, negative, or  
slide in which a child is engaged in an act of obscene sexual conduct.

10           25. Effective January 1, 2015, A.B. 1775 amended Penal Code section 11165.1,  
11 subdivision (c)(3), to now require mandated reporters to report any person who has simply  
12 downloaded or looked at child pornography from the Internet. The amended provision provides,  
13 in relevant part, as follows:

14           (3) A person who depicts a child in, or who knowingly develops, duplicates,  
15 prints, **downloads, streams, accesses through any electronic or digital media,**  
16 or exchanges, a film, photograph, videotape, video recording, negative, or slide in  
which a child is engaged in an act of obscene sexual conduct.

17 (Pen. Code § 11165.1, subd. (c) [emphasis added].)

18 **FACTUAL ALLEGATIONS**

19 A. **A.B. 1775 VIOLATES A PATIENT'S RIGHT TO PRIVACY UNDER THE**  
20 **CALIFORNIA AND U.S. CONSTITUTIONS REGARDING HIS**  
21 **COMMUNICATIONS WITH PSYCHOTHERAPISTS**

22           26. As psychotherapists, Plaintiffs Mathews and Alvarez have treated numerous  
23 patients who are seeking treatment for sex addiction, sexual compulsivity, and other sexual  
24 disorders, many of whom have admitted downloading and viewing child pornography on the  
25 Internet, but whom the petitioners, based on their considerable training and experience, do not  
26 believe present a serious danger of engaging in "hands-on" sexual abuse or exploitation of  
27 children or the distribution of child pornography to others. These patients typically have no prior  
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1 criminal history, have never expressed a sexual preference for children, and are active and  
2 voluntary participants in psychotherapy to treat their particular sexual disorder, which often  
3 involves compulsive viewing of pornography of all kinds on the Internet.

4 27. In addition, Plaintiffs Mathews and Alvarez have also treated patients seeking  
5 treatment because of sexual disorders involving a sexual attraction to children (including  
6 pedophilia), who have admitted to downloading and viewing child pornography, but whom the  
7 petitioners, based on their training and experience, do not believe present a serious danger of  
8 engaging in "hands-on" sexual abuse or exploitation of children or the active distribution of child  
9 pornography to others. These patients typically have no prior criminal record or history of  
10 "hands on" sexual abuse of children, no access to children in their home or employment, no  
11 history of "hands-on" sexual abuse or exploitation of children, and often express disgust and  
12 shame about their sexual attraction to children for which they are actively and voluntarily  
13 seeking psychotherapy treatment.

14 28. Under California law, since Plaintiffs Mathews and Alvarez are psychotherapists,  
15 statements made by their patients to them during therapy "are generally treated as confidential  
16 and enjoy the protection of a psychotherapist-patient privilege." (*People v. Gonzales* (2013) 56  
17 Cal.4th 353, 371.) California's psychotherapist-patient privilege (Evidence Code section 1014)  
18 is "an aspect of the patient's constitutional right to privacy" guaranteed by article I, section 1, of  
19 the California Constitution. (*Stritzinger*, 34 Cal.3d at 511, citing *In re Lifschutz* (1970) 2 Cal.3d  
20 415, 431-432.) As a result, all attempted legal invasions of the confidentiality psychotherapist  
21 and patient communications (including by the California legislature) must be scrutinized in light  
22 of the patient's constitutionally protected right to privacy under the California Constitution. (*In*  
23 *re Lifschutz*, 2 Cal.3d at 431-432.)

24 29. Similarly, "the [U.S.] Supreme Court has recognized a fundamental privacy right  
25 in non-disclosure of personal medical information" under the U.S. Constitution. (*Coons v. Lew*  
26 (9th Cir. 2014) 762 F.3d 891, 900, citing *Whalen v. Roe* (1977) 429 U.S. 589, 599; *Tucson*  
27 *Woman's Clinic v. Eden*, 379 F.3d at 550.) This right to privacy is one of the personal liberties  
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1 guaranteed by the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.  
2 (See *Whalen*, 429 U.S. at 598 n. 23; *Roe v. Wade*, 410 U.S. 113, 152-153 (1973).) Such right of  
3 privacy encompasses the doctor-patient relationship and "extends to psychotherapist-patient  
4 communications." (*Caesar v. Mountanos* (9th Cir. 1976) 542 F.2d 1064, 1067, *cert. denied*, 430  
5 U.S. 954 (1977); *Hawaii Psychiatric Soc., Dist. Branch of American Psychiatric Association v.*  
6 *Ariyoshi* (D. Hawaii 1979) 481 F. Supp. 1028, 1039 [patient's right to privacy "extends to an  
7 individual's liberty to make decisions regarding psychiatric care without unjustified  
8 governmental interference."])

9 30. The patient's privacy interest in maintaining the confidentiality of psychotherapist  
10 and patient communications has long since been recognized by California and federal courts.  
11 The California Legislature enacted the psychotherapist-patient privilege in 1965 in recognition of  
12 the fact that the success of psychotherapy depends on the confidentiality of communications  
13 regarding "the most intimate and embarrassing details of the patient's life." (*Gonzales*, 56  
14 Cal.4th at 371, quoting Cal. Law Revision Com., reprinted in *Deering's Ann. Evid. Code* § 1014,  
15 p. 217 (2004).) As explained by the California Supreme Court, the "contemporary value of the  
16 psychiatric profession, and its potential for the relief of emotional disturbances and of the  
17 inevitable tensions produced in our modern, complex society . . . is bottomed on a confidential  
18 relationship; but the doctor can be of assistance only if the patient may freely relate his thoughts  
19 and actions, his fears and fantasies, his strengths and weaknesses, in a completely uninhibited  
20 manner." (*Stritzinger*, 34 Cal.3d at 514 [internal citations omitted].) In recognition of "the  
21 growing importance of the psychiatric profession in our modern, ultracomplex society," (*In re*  
22 *Lifschutz* (1970) 2 Cal.3d 415, 421), California courts have broadly construed the  
23 psychotherapist-patient privilege in favor of the patient. (See *Stritzinger*, 34 Cal.3d at 511;  
24 *Roberts v. Superior Court* (1973) 9 Cal.3d 330, 337.)

25 31. In the context of adopting a federal psychotherapist-patient privilege, the U.S.  
26 Supreme Court has also described the critical importance of maintaining the confidentiality of  
27 the psychotherapist-patient relationship:  
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1 Effective psychotherapy . . . depends upon an atmosphere of confidence and trust  
2 in which the patient is willing to make a frank and complete disclosure of facts,  
3 emotions, memories, and fears. Because of the sensitive nature of the problems  
4 for which individuals consult psychotherapists, disclosure of confidential  
5 communications made during counseling sessions may cause embarrassment or  
6 disgrace. For this reason, the mere possibility of disclosure may impede  
7 development of the confidential relationship necessary for successful treatment.  
8 As the Judicial Conference Advisory Committee observed . . . , a psychiatrist's  
9 ability to help her patients "is completely dependent upon [the patients']  
10 willingness and ability to talk freely. This makes it difficult if not impossible for  
11 [a psychiatrist] to function without being able to assure . . . patients of  
12 confidentiality and, indeed, privileged communication. Where there may be  
13 exceptions to this general rule . . . , there is wide agreement that confidentiality is a  
14 *sine qua non* for successful psychiatric treatment."

15 (Jaffee, 518 U.S. at 10, quoting Advisory Committee's Notes to Proposed Rules, 56 F.R.D. 183,  
16 242 (1972).) Apart from protecting the patient's important privacy interests, the U.S. Supreme  
17 Court emphasized that maintaining the confidentiality of patient-psychotherapist communication  
18 also "serves the public interest by facilitating the provision of appropriate treatment for  
19 individuals suffering the effects of a mental or emotional problem" and recognizes that the  
20 "mental health of our citizenry, no less than its physical health, is a public good of transcendent  
21 importance." (Jaffee, 518 U.S. at 11.)

22 32. In this case, A.B. 1775's amendment of Penal Code section 11165.1, subdivision  
23 (c)(3), violates patients' right to privacy under the California and U.S. Constitutions because it  
24 compels Plaintiffs Mathews and Alvarez, and other California psychotherapists, to report current  
25 or future patients who admit downloading or viewing child pornography over the Internet to law  
26 enforcement authorities, despite the psychotherapists' professional opinions that these patients  
27 present no serious danger of otherwise reportable "hands-on" sexual abuse or exploitation of  
28 children, or risk a criminal misdemeanor conviction and the revocation of their licenses. The  
state's invasion of the patients' privacy rights includes both adult patients who view child  
pornography on the Internet, and minor patients who view sexually explicit "sexting selfies" sent  
by another minor over a cell phone even though such voluntary conduct between two minors  
would ordinarily be entirely legal if two adults were involved and such conduct does not fall  
within any reasonable definition of child sexual abuse.

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1           33. Under A.B. 1775, the mandated reporting of child pornography viewing by  
2 psychotherapists will obviously destroy the patient trust that communications during therapy will  
3 be kept confidential which is widely agreed to be the "*sine qua non* for successful psychiatric  
4 treatment." (*Jaffee v. Redmond* (1996) 518 U.S. 1, 10, quoting Advisory Committee's Notes to  
5 Proposed Rules, 56 F.R.D. 183, 242 (1972) [internal quotation marks and citation omitted.]) In  
6 particular, once current patients who have admitted downloading or viewing child pornography  
7 during therapy learn that CANRA now requires Plaintiffs Mathews and Alvarez or other  
8 psychotherapists to report such activity to law enforcement authorities for investigation, they will  
9 either cease therapy because Plaintiffs have exposed them to criminal prosecution and public  
10 disgrace or, if they continue, are unlikely to continue providing the full disclosure of intimate  
11 details that Plaintiffs need to provide effective therapy. Similarly, persons who are seeking  
12 psychotherapy for serious sexual disorders may refuse such therapy once Plaintiffs inform them  
13 during intake screening that they are required to report any viewing of child pornography or, if  
14 the persons have already described such child pornography viewing as a reason for seeking  
15 treatment, that Plaintiffs are now obligated to report them before any therapy even begins. (*See*  
16 *Jaffee*, 518 U.S. at 10; *Gonzales*, 56 Cal.4th at 371.) Enforcement of A.B. 1775 will also deter  
17 existing or potential patients who have serious sexual disorders – including sexual attraction to  
18 children – from obtaining needed psychotherapy, despite the lack of any evidence that they have  
19 engaged in "hands-on" or "contact" sexual abuse of children.

20           34. However, as is true of many constitutional rights, under state and federal law, a  
21 psychotherapy patient's right to privacy is not absolute. Instead, a state may violate a patient's  
22 right to privacy if it can show a compelling state interest to justify its invasion of the patient's  
23 privacy. (*See Stritzinger*, 34 Cal.3d at 511; *Tucson Woman's Clinic v. Eden* (9th Cir. 2004) 379  
24 F.3d 531, 551.) Under California law, "[e]ven where there is '(1) a legally protected privacy  
25 interest; (2) a reasonable expectation of privacy under the circumstances; and (3) conduct  
26 constituting a serious invasion of the privacy interest,' the constitutional right to privacy is not  
27 violated if 'the invasion of the privacy interest is justified because it substantially furthers one or  
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1 more legitimate competing or countervailing privacy or non-privacy interests.” (*People v.*  
2 *Ebertowski* (2014) 228 Cal. App.4th 1170, 1176, quoting *In re Christopher M.* (2005) 127  
3 Cal.App.4th 684, 695.)

4 35. Likewise, under federal law, in order “to determine whether the governmental  
5 interest in obtaining information outweighs the individual’s privacy interest,” a court must weigh  
6 the following factors: “(1) the type of information requested, (2) the potential for harm in any  
7 subsequent non-consensual disclosure, (3) the adequacy of safeguards to prevent unauthorized  
8 disclosure, (4) the degree of the need for access, and (5) whether there is an express statutory  
9 mandate, articulated public policy, or other recognizable public interest militating toward  
10 access.” (*Tucson Woman’s Clinic*, 379 F.3d at 551, citing *Planned Parenthood of Southern*  
11 *Arizona v. Lawall* (9th Cir. 2002) 307 F.3d 783, 790.) “It is the state’s burden to demonstrate  
12 that ‘its use of the information would advance a legitimate state interest and that its actions are  
13 narrowly tailored to meet the legitimate interest.’” (*Lawall*, 307 F.3d at 790, quoting *In re*  
14 *Crawford* (9th Cir. 1999) 194 F.3d 954, 959.)

15 36. California courts have upheld the constitutionality of various exceptions to the  
16 psychotherapist-patient privilege, but only if the exception is narrowly drawn and based on a  
17 compelling state interest that is substantially furthered by the exception in question. (*See e.g.*,  
18 *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 439, [psychotherapist’s  
19 duty to warn about a patient posing a serious danger of violence to others did not violate  
20 patient’s right to privacy in light of state’s interest in protecting citizens from violent assault],  
21 *superseded by statute*, Civil Code section 43.92 (1985); *In re Lifschutz*, 2 Cal.3d at 432 [patient-  
22 litigant exception to the psychotherapist-patient privilege (Evid. Code § 1016) did not invade  
23 patient’s right to privacy given state’s interest in facilitating ascertainment of truth in connection  
24 with legal proceedings where patient puts his mental and emotional state at issue].)

25 37. In this case, the California Legislature’s compelling interest in preventing child  
26 abuse through CAMRA is not substantially furthered by requiring psychotherapists to report  
27 patients (including minors) who have only viewed child pornography, even if just for a moment,  
28



1 when there is no reasonable likelihood that the depicted child victims are in California and can  
2 be identified and protected by state law enforcement authorities, and no evidence that such  
3 patients have engaged in actual "hands on" sexual abuse of children in real life. As a result, the  
4 state cannot justify A.B. 1775's violation of the patients' constitutional right to privacy when  
5 this overbroad reporting requirement does not further a mandatory CAMRA reporting scheme  
6 "aimed at increasing the likelihood that child abuse victims are identified." (*James W. v.*  
7 *Superior Court* (1993) 17 Cal.App.4th 246, 254.)

8 1. A.B. 1775 Is Unconstitutional Because There is No Reasonable  
9 Likelihood That the Child Victims Depicted In Child Pornography Are In  
10 California and Can Be Identified and Protected By the State

11 38. A.B. 1775's amendment of CAMRA to include the viewing of child pornography  
12 through "any electronic or digital media" coincides with the explosion of available pornography,  
13 including child pornography, on the Internet.

14 39. The days when "hard copy" child pornography was part of an underground  
15 culture that required significant motivation and effort to locate and obtain by mail – usually only  
16 by dedicated pedophiles and child sexual abusers – have long since ended. (See United States  
17 Sentencing Commission, *Report To The Congress: Sex Offenses Against Children: Findings And*  
18 *Recommendations Regarding Federal Penalties*, 29 (June 1996) [only 35 of 112 federal child  
19 pornography cases sentenced in 1994 and 1995 involved use of computer]; United States  
20 Sentencing Commission ("USSC"), *Federal Child Pornography Offenses*, Executive Summary,  
21 126 (2012) ("2012 USSC Report") [in 1992, there were 77 federal criminal non-production child  
22 pornography cases, compared to 1,717 such cases in 2010].) By "the mid-1980's, the trafficking  
23 of child pornography within the United States was almost completely eradicated through a series  
24 of successful campaigns waged by law enforcement. Producing and reproducing child sexual  
25 abuse images was difficult and expensive. Anonymous distribution and receipt was not possible,  
26 and it was difficult for pedophiles to find and interact with each other. For these reasons, child  
27 pornographers became lonely and hunted individuals because the purchasing and trading of such  
28

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1 images was extremely risky. Unfortunately, the child pornography market exploded [with] the  
2 advent of the Internet and advanced digital technology.” (Child Exploitation and Obscenity  
3 Unit, U.S. Dep’t of Justice, *Child Pornography*, available at [http://www.justice.gov/criminal/](http://www.justice.gov/criminal/ceos/subjectareas/childporn.html)  
4 [ceos/subjectareas/childporn.html](http://www.justice.gov/criminal/ceos/subjectareas/childporn.html).)

5 40. Today, “[n]on-production child pornography offenses have become almost  
6 exclusively Internet-enabled crimes.” (See 2012 USSC Report at ii, 6.) Child pornography is  
7 now unfortunately freely and easily accessible for viewing and downloading from the Internet to  
8 anyone who has a computer and Internet access. (See 2012 USSC Report, Executive Summary,  
9 5 (2012); Endrass J., Urbaniok F., *The consumption of Internet child pornography and violent*  
10 *and sex offending*, BMC Psychiatry 9:43 (2009).) The widespread acquisition of child  
11 pornography is facilitated by the Internet’s accessibility, affordability and anonymity. (See  
12 Endrass & Urbaniok, *supra*; Hamilton M., *The Child Pornography Crusade and Its Net*  
13 *Widening Effect*, 33 Cardozo L. Rev. 1679, 1681 (2012) (citing Cooper A, *Sexuality and the*  
14 *Internet: Surfing Into the New Millennium*, 1 Cyberpsychology & Behavior 187 (1998).) “Illegal  
15 images no longer have to be developed, printed, and shipped; instead, they are digitally recorded  
16 and made available for unlimited distribution at virtually no cost.” (2012 USSC Report at 43.)  
17 At the click of a mouse button, child pornography images are now “readily available through  
18 virtually every Internet technology including websites, email, instant messaging/ICQ, Internet  
19 Relay Chat (IRC), newsgroups, bulletin boards, peer-to-peer networks, and social networking  
20 sites.” (U.S. Dep’t of Justice, *Child Pornography*, *supra*.)

21 41. It has been estimated that the number of child pornography images on the  
22 Internet “runs into the millions and the number of individual children depicted is most likely in  
23 the tens of thousands.” (See U.N. Human Rights Council, *Report of the Special Rapporteur on*  
24 *the Sale of Children, Child Prostitution and Child Pornography*, Najat M’jid Maalla,  
25 A/HRC/25/48, 5 (2013); 2012 USSC Report at 107[noting estimate of “over five million unique  
26 child pornography images on the Internet”] U.N. Human Rights Council, *Report of the Special*  
27 *Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, Najat M’jid  
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1 *Maalla, A/HRC/12/23, 9 (2009) ("2009 UN Report")* ["Since child pornography is illegal, it is  
2 difficult to estimate the number of minors worldwide who are victims of these networks;  
3 estimates range from 10,000 to 100,000."]) Child pornography is produced in countries all over  
4 the world and then distributed across international borders via the Internet, including in and to  
5 the United States, a major market. (See Bunzeluk K, *Child Sexual Abuse Images – Analysis of*  
6 *Websites by Cybertip*, Canadian Centre for Child Protection, 11, 44 (2009) [study found Internet  
7 sites containing child pornography were hosted in close to 60 countries, with the United States,  
8 Canada, Russia, the Netherlands, Spain and Thailand being the top six host countries with the  
9 most illegal images.]

10 42. Given the international nature and scale of child pornography production and the  
11 availability of Internet distribution, "[i]dentifying and establishing the whereabouts of a child  
12 who has participated in pornographic scenes are difficult tasks for the authorities." (2009 UN  
13 Report at 15.) Between 2003 and 2009, the National Center for Missing & Exploited Children  
14 Child Victim Identification Program, a public-private partnership which assists law enforcement  
15 in identifying the victims of child pornography, reviewed and analyzed 15 million child  
16 pornography images, but only identified 1,600 child victims. (2009 UN report at 15-16.)  
17 Similarly, as of 2009, INTERPOL's Child Abuse Image Database contained more than 550,000  
18 images submitted by member countries, but assisted authorities in rescuing only 870 child  
19 victims worldwide. (2009 UN report at 6.) Identifying and protecting the depicted child victim  
20 based solely on a child pornography image is therefore extremely difficult. (See Friedman E,  
21 *Clues Caught on Tape Key to Child Porn Cases*, Abcnews.com. New York: American  
22 Broadcasting Company (Sept. 28, 2007) ["Less than 1 percent of children who appear in sex  
23 tapes are found each year, according to Interpol statistics"], available at [http://abcnews.go.com](http://abcnews.go.com/print?id=3665900)  
24 [/print?id=3665900](http://abcnews.go.com/print?id=3665900).)

25 43. A.B. 1775's mandated reporting by a psychotherapist of patients who have  
26 viewed child pornography on the Internet includes patients who may often be accessing illegal  
27 images on the Internet that were produced or stored in another state or on another continent. The  
28 state's practical ability to identify the depicted child victims from the images alone is extremely

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1 limited. A.B. 1775 therefore creates no realistic likelihood that state law enforcement authorities  
2 will be able to rescue the depicted children from further sexual abuse by the pornography  
3 producers, let alone identify and protect child abuse victims residing in California, the class of  
4 children that CAMRA was designed to protect.

5 44. As originally enacted, the predecessor statute to CAMRA established a  
6 comprehensive reporting scheme "directed toward discovering suspected child abuse and, to that  
7 end, encouraging reporters to spread the word as quickly as possible . . . so that independent  
8 governmental agencies can remove the child from immediate danger and investigate." (*James*  
9 *W.*, 17 Cal.App.4th at 254; *Stecks*, 38 Cal.App.4th at 371.) This statutory purpose has not  
10 changed. CAMRA currently provides that the "intent and purpose of this article is to protect  
11 children from abuse and neglect" and directs that "all persons participating in the investigation of  
12 [suspected child abuse] shall consider the needs of the child victim and shall do whatever is  
13 necessary to prevent psychological harm to the child." (Pen. Code § 11164, subd. (b); *James W.*,  
14 17 Cal.App.4th at 255 [purpose of mandated reporting is "to increase the likelihood that child  
15 abuse is identified and reported to authorities for investigation."]))

16 45. California, like every state, "possesses general jurisdiction to protect welfare of  
17 children who reside within its borders." (*Allison v. Superior Court* (1979) 99 Cal.App.3d 993,  
18 998; *In re Christopher I.* (2003) 106 Cal.App.4th 533, 557.) However, CAMRA's reporting  
19 requirement does not extend to protecting child abuse victims in other states or countries when  
20 California has no territorial jurisdiction over such children. (See *Global Packaging, Inc. v.*  
21 *Superior Court* (2011) 196 Cal.App.4th 1623, 1630 [state's "power ultimately ends at the state  
22 line."]) In other words, the state cannot justify its violation of its citizens' right to privacy based  
23 on the extremely slim possibility that state law enforcement authorities will be able to help  
24 identify and protect the children depicted in the child pornography from further sexual abuse  
25 somewhere in the world without any reasonable probability that such children are actually in  
26 California or are even still minors at the time that the child pornography is viewed and seized.

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46. In addition, the purpose of CAMRA's reporting requirement is not to criminally prosecute child abusers – although such prosecutions may follow based on the authorities' investigation of reports – but to identify and protect the Californian children who are the victims of either abuse or neglect, conduct that is not always criminal in nature under the statute. (See e.g., Penal Code § 11165.2, subd. (b) [mandating report of "the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred."]) Rather, "[i]dentification of abuse – not identification of the perpetrator – is the chief concern" of CAMRA's reporting scheme. (*James W.*, 17 Cal.App.4th at 255.) Any criminal prosecution of a child abuser is the responsibility of the law enforcement "authorities investigating the abuse and the criminal justice system." (*Id.*)

47. In this case, the state cannot justify A.B. 1775's new reporting requirement for child pornography viewing by psychotherapy patients based on the state's interest in protecting the depicted children from further abuse by the pornography producers. Instead, the nature and scope of child pornography creates no reasonable likelihood that the children victimized in the illegal images reside in California and can be identified and protected by state law enforcement authorities. While the reporting of psychotherapy patients who view child pornography would doubtlessly assist law enforcement authorities to criminally prosecute them for possession of child pornography, this state interest falls outside CAMRA's statutory purpose and instead is the separate responsibility of the state's criminal justice system. As such, A.B. 1775 does not substantially further CAMRA's purpose to "identify victims, bring them to the attention of the authorities, and, where warranted, permit intervention," to the extent that the children to be protected are those depicted in the illegal images. (*Stecks v. Young* (1995) 38 Cal.App.4th 365, 371.)

2. A.B. 1775 Is Unconstitutional Because There is No Evidence That Patients Who Have Viewed Child Pornography Have Engaged In "Hands On" Sexual Abuse of Children

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1           48. Plaintiffs' clinical experience that many of their patients have admitted  
2 downloading or viewing child pornography during therapy for sexual disorders, but do not  
3 present a serious danger of "hands-on" sexual abuse of children, correlates with the wide and  
4 easy availability of such illegal images on the Internet.

5           49. With millions of child pornography images now freely available online, the  
6 psychological profiles of psychotherapy patients who have downloaded or viewed child  
7 pornography on the Internet are no longer limited to pedophilia, but include a range of sexual  
8 disorders -- such as sex addiction and sexual compulsivity -- and other psychological disorders  
9 that often manifest in compulsive viewing of all kinds of Internet pornography, including child  
10 pornography.

11           50. While pedophiles have the most direct sexual motivation to access child  
12 pornography, empirical research has shown individuals may view child pornography for a  
13 variety of motivations, such as indiscriminate deviant sexual interests that include sexual interest  
14 in children, problematic Internet use leading to "habituation to adult pornography and an  
15 increasing need to identify new and more extreme images in order to achieve sexual arousal,"  
16 including child pornography "images that previously may have been horrifying to the offender,"  
17 as well as "initial curiosity, compulsive collecting behaviors, avoidance of stress or  
18 dissatisfaction with life, and an ability to create a new and more socially successful identity  
19 (within an online community)." (2012 USCC Report at 78-79 [internal citations omitted]; *see*  
20 *U.S. v. C.R.* (E.D.N.Y. 2011) 792 F.Supp.2d 343, 373, *reversed on other grounds*, *U.S. v.*  
21 *Reingold* (2nd Cir. 2013) 731 F.3d 204.).)

22           51. More importantly, few, if any, members of the psychotherapy community now  
23 believe that psychotherapy patients who admit to online viewing of child pornography have  
24 actually engaged in "hands-on" or "contact" sexual abuse or exploitation of children or present a  
25 serious danger of doing so in the absence of other risk factors, such a prior criminal record or  
26 history of "contact" sex crimes against children. (*See United States v. Apodaca*, 641 F.3d 1077,  
27 1083 (9th Cir. 2011); *C.R.*, 792 F. Supp. at 376 ["Scientifically acceptable empirical analyses  
28

1 have thus far failed to establish a causal link between the mere passive viewing of child  
2 pornography . . . and the likelihood of future contact offenses."))

3 52. In particular, the common belief that a person's viewing of online child  
4 pornography by itself means that person has committed or presents a high risk of committing  
5 "hands-on" or "contact" sexual abuse of child has been convincingly refuted by recent and  
6 scientifically reliable empirical evidence. (See Berlin FS, *Pedophilia and DSM-5: The*  
7 *Importance of Clearly Defining the Nature of a Pedophilic Disorder*, J Am. Acad.  
8 Psychiatry Law 42:404-7, 405 ["From a purely statistical standpoint (all else being equal)  
9 individuals with no history of a hands-on sexual offense against a child, but who have accessed  
10 child pornography, are at low risk as a group of committing a hands-on sexual offense in the  
11 future"]; Lee AF, *et al.*, *Predicting Hands-On Child Sexual Offenses Among Possessors of*  
12 *Internet Child Pornography*, 18 Psych., Public Pol'y & L. 644, 646 (2012) ["When  
13 predisposition is present, pornography may increase risk. Absent predisposition, exposure to  
14 pornography alone is not likely to instigate an offense"]; Seto MC, Hanson RK, Babchishin,  
15 KM, *Contact Sexual Offending by Men With Online Sexual Offenses*, Sexual Abuse: A Journal of  
16 Research and Treatment 23(1) 124-145 (2011) [study found that online child pornography  
17 offenders "who had no history of contact offenses almost never committed contact sexual  
18 offenses, despite a comparably high likelihood that they were sexually interested in children"];  
19 McCarthy J, *Internet Sexual Activity: A Comparison Between Contact and Non-Contact Child*  
20 *Pornography Offenders*, 16 J. Sexual Aggression 181, 194 (2010) ["[P]ossessing child  
21 pornography, by itself, is not a causative factor in the perpetration of child sexual abuse and thus  
22 other factors need to be considered when evaluating the dangerousness of these offenders . . ."];  
23 Howitt D., *Pornography and the Paedophile: Is it Criminogenic?*, 68 British J. of Med. Psychol.  
24 15 (1995) [after interviews with small sample of contact child sex offenders, concluding that  
25 pornography has no simple direct causal effect on offending]; Webb L, Craissati J, Keen S,  
26 *Characteristics of Internet Child Pornography Offenders: A Comparison With Child Molesters*,  
27 19 Sex Abuse 449, 451 (2007) [after reviewing research on causal links between viewing child  
28 pornography and "contact" sexual abuse of children, concluding that "as yet, there is no

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1 empirical support for a direct causal link between Internet sex offending and the commission of  
2 contact offenses"]; Endrass & Urbaniok, *supra*, at 43 [based on criminal records of 231 men  
3 convicted of viewing child pornography, study concluded that "consumption of child  
4 pornographic material alone does not seem to predict hands-on sex offenses" and men without a  
5 prior sexual conviction were unlikely to sexually assault a child, with only 1% known to have  
6 committed a "hands-on" sexual abuse crime before conviction and only 1% committing such a  
7 hands-on sex crime in the 6 years after].)

8 53. In a 2012 report to Congress, the United States Sentencing Commission, the  
9 federal agency responsible for establishing sentencing policies and practices for federal courts  
10 and assisting Congress in the development of effective and efficient crime policy, including with  
11 respect to federal child pornography crimes, also concluded that although "child pornography  
12 validates and normalizes the sexual abuse of children, social science research has not established  
13 that viewing child pornography 'causes' the typical offender to progress to other sex offending  
14 against minors." (2012 USSC Report, Executive Summary at vii [emphasis added].) Instead,  
15 the Commission found that "most current social science research suggests that viewing child  
16 pornography, in the absence of other risk factors, does not 'cause' individuals to commit sex  
17 offenses." (USSC Report at 102 [citations omitted, emphasis added].) The Commission also  
18 conducted a study of the recidivism rate of men convicted of non-production child pornography  
19 crimes in 1999 and 2000 which showed that only 3.6% of the offenders were subsequently  
20 convicted of "contact" sex crimes against children. (2012 USSC Report at 310.)

21 54. In this case, A.B. 1775 does not substantially further CAMRA's purpose of  
22 identifying and protecting children from abuse because a patient's viewing of child pornography  
23 does not constitute evidence that the patient has engaged in "hands on" sexual abuse or sexual  
24 exploitation of children. While Plaintiffs are sensitive to the argument that every viewing of a  
25 child pornography image further debases and harms the reputation and emotional well-being of  
26 the depicted child, this type of indirect emotional harm to a child (and perhaps now an adult)  
27 unknown to the viewer does not fall within CANRA's definition of child abuse.



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1           55. Instead, CANRA generally limits mandated reporting to "hands on" or "contact"  
2 sexual abuse (e.g., rape, incest, sodomy, lewd and lascivious acts) and sexual exploitation (e.g.,  
3 prostitution, pornography production) of children, and expressly provides that mandated  
4 reporters are not required to report known or suspected "serious emotional damage" of a child,  
5 but may do so. (*See* Pen. Code § 11166.05.) Accordingly, the state cannot justify its invasion of  
6 patients' privacy rights on the ground that child pornography viewing constitutes emotional  
7 "abuse" of the depicted child because CANRA only mandates reporting of "hands on" sexual  
8 abuse exploitation of identifiable children in the real world, not indirect emotional harm to  
9 children in a virtual world involving viewers' fantasies and sexual interests, however disgusting  
10 or aberrant.

11           56. Since there is no empirical evidence that a psychotherapy patient viewing child  
12 pornography has actually engaged in "hands on" sexual abuse or exploitation of children, the  
13 state's interest in protecting children from real-life abuse is not substantially furthered by A.B.  
14 1775's mandated reporting of conduct that does not help law enforcement authorities to protect  
15 Californian children from such abuse. Instead, A.B. 1775 will simply "overburden the reporting  
16 system and divert resources from the investigation of reports of actual abuse -- thereby working a  
17 detriment to the very abused children the Legislature has acted to protect." (*Planned Parenthood*  
18 *Affiliates of California*, 181 Cal.App.3d at 269.)

19           3. A.B. 1775 Is Unconstitutional Because CANRA's Mandated Reporting Is  
20 Intended to Protect Children Who Are Victims of Abuse, Not to Identify  
21 Persons Who May Pose a Danger to Children

22           57. A.B. 1775 is also an unconstitutional invasion of the privacy rights of  
23 psychotherapy patients to the extent that the state is seeking to transform CANRA's mandated  
24 reporting scheme to identify and protect child abuse victims into a prophylactic vehicle to  
25 identify patients who may pose a potential danger of engaging in "hands on" sexual abuse of  
26 children because they have viewed child pornography.

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58. CANRA does not require mandated reporters to report persons who present a possible danger of sexually abusing or exploiting children. Instead, CANRA's duty to report is only triggered "whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect." (See Pen. Code § 11166, subd. (a).) This statutory directive unambiguously requires psychotherapist to only violate their patients' confidences when they know or suspect that the patient has engaged in "hands on" abuse of a child. Thus, even if child pornography viewers all presented a serious danger of "hands on" sexual abuse or exploitation of children, CANRA's reporting scheme does not currently mandate the reporting of situations involving only a predictive danger of child sexual abuse, but is limited to the reporting of known or suspected child sexual abuse that has actually occurred so that the child victims can be identified and rescued.

59. In addition, even CANRA were to require psychotherapists to report patients who presented a possible danger of abusing children, current empirical research (see Paragraphs 51-53) shows that patients who view child pornography on the Internet do not present a serious danger of "hands on" sexual abuse of children absent other risk factors and almost never engage in such conduct. (See also *Apodaca*, 641 F.3d at 106 (Fletcher J., concurring)) ["Current empirical literature casts serious doubt on the existence of a substantial relationship between the consumption of child pornography and the likelihood of a contact sexual offense against a child."] Thus, the state cannot legitimately justify A.B. 1775 on the basis that a patient who views child pornography poses a serious danger of sexually assaulting a child. Furthermore, the state's reliance on notoriously unreliable predictions of future dangerousness is insufficient to justify its violation of the patient's right to privacy or to outweigh the state's interest in ensuring that its citizens can obtain confidential psychotherapy without fear that their communications will be publically disclosed. (See *Stritzinger*, 34 Cal.3d at 511, [psychotherapist-patient privilege "encourages those who may pose a threat to themselves or to others, because of some mental or emotional disturbance, to seek professional assistance"]; *Tarasoff*, 17 Cal.3d at 451-452 (conc. &

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1 dis. opn. of Mosk, J.) ["psychiatric predictions of violence are inherently unreliable" and  
2 "[p]redictions of dangerous behavior, no matter who makes them, are incredibly inaccurate.""]

3 60. As a result, the state cannot justify A.B. 1775's invasion of the patients' privacy  
4 rights on the ground that their viewing of child pornography demonstrates that they present a  
5 danger to children because CANRA does not mandate the reporting of conduct involving only a  
6 possible danger of child abuse, and, in any event, there is no reliable empirical evidence that  
7 child pornography viewers (especially psychotherapy patients) present a serious danger of  
8 engaging in "hands on" sexual abuse of children in the absence of other risk factors.

9  
10 **FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT**  
11 **CONSTITUTIONALITY OF A.B. 1775 UNDER**  
12 **CALIFORNIA CONSTITUTION, ARTICLE I, SECTION I**

13 61. Plaintiffs hereby incorporate paragraphs 1 through 60 above as though fully set  
14 forth in this paragraph.

15 62. A.B. 1775's amendment of CANRA, Penal Code §11165.1(c), to require that  
16 mandated reporters, including psychotherapists, report any persons who view child pornography,  
17 as applied to psychotherapy patients, is an unconstitutional and overbroad violation of the  
18 patients' right to privacy under article I, section 1 of the California Constitution. Specifically,  
19 the state's compelling interest in protecting children from abuse is not substantially furthered by  
20 requiring psychotherapists to report patients who view child pornography when there is no  
21 realistic likelihood that the depicted children are in California and can be identified and protected  
22 by law enforcement authorities and no reliable empirical evidence that such patients have  
23 actually engaged in "hands-on" sexual abuse or exploitation of identifiable children in the real  
24 world. As a result, A.B. 1775's invasion of the patients' constitutional privacy rights (embodied  
25 in Evidence Code section 1104's psychotherapist-patient privilege) is unjustified and outweighed  
26 by the state's interest in ensuring that its citizens can obtain needed psychotherapy, the  
27 confidentiality of which is critical and essential to its successful treatment of mental health  
28 issues, including sexual disorders.

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1           63.     An actual controversy has arisen and now exists between Plaintiffs and the  
2 Attorney General of California and the District Attorneys of California over whether A.B. 1775's  
3 2015 amendment to CANRA, Penal Code §11165.1(c) violates psychotherapy patients'  
4 constitutional right to privacy under article I, section 1 of the California constitution. Plaintiffs  
5 contend that A.B. 1775 is unconstitutional and its enforcement must be enjoined. Defendants  
6 contend otherwise.

7           64.     A judicial determination resolving this actual controversy is necessary and  
8 appropriate at this time.

9                   **SECOND CAUSE OF ACTION – DECLARATORY JUDGMENT**  
10                   **CONSTITUTIONALITY OF A.B. 1775 UNDER**  
11                   **FOURTEENTH AMENDMENT OF U.S. CONSTITUTION,**

12           65.     Plaintiffs hereby incorporate paragraphs 1 through 64 above as though fully set  
13 forth in this paragraph.

14           66.     A.B. 1775's amendment of CANRA to require that mandated reporters, including  
15 psychotherapists, report any persons who view child pornography, as applied to psychotherapy  
16 patients, is an unconstitutional and overbroad violation of the patients' right to privacy  
17 guaranteed by the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.  
18 Specifically, the state's compelling interest in protecting children from abuse is not substantially  
19 furthered by requiring psychotherapists to report patients who view child pornography when  
20 there is no realistic likelihood that the depicted children are in California and can be identified  
21 and protected by law enforcement authorities and no reliable empirical evidence that such  
22 patients have actually engaged in "hands-on" sexual abuse or exploitation of identifiable children  
23 in the real world. As a result, A.B. 1775's invasion of the patients' right to privacy under the  
24 U.S. Constitution is unjustified and outweighed by the state's interest in ensuring that its citizens  
25 can obtain needed psychotherapy, the confidentiality of which is critical and essential to its  
26 successful treatment of mental health issues, including sexual disorders.

27           67.     An actual controversy has arisen and now exists between Plaintiffs and the  
28 Attorney General of California and the District Attorneys of California over whether A.B. 1775's

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1 2015 amendment to CANRA, Penal Code §11165.1(c) violates psychotherapy patients' right to  
2 privacy guaranteed by the Due Process Clause of the Fourteenth Amendment of the U.S.  
3 Constitution. Plaintiffs contend that A.B. 1775 is unconstitutional and its enforcement must be  
4 enjoined. Defendants contend otherwise.

5 68. A judicial determination resolving this actual controversy is necessary and  
6 appropriate at this time.

7 **THIRD CAUSE OF ACTION – INJUNCTIVE RELIEF**

8 69. Plaintiffs hereby incorporate paragraphs 1 through 68 above as though fully set  
9 forth in this paragraph.

10 70. Plaintiffs are psychotherapists who treat patients who have viewed child  
11 pornography, but whom Petitioners believe do not present a serious danger of "hands on" sexual  
12 abuse or exploitation of children. Unless enforcement of A.B. 1775 is enjoined by order of this  
13 Court, Plaintiffs will suffer irreparable harm because they will be forced to either violate the trust  
14 and confidentiality of communications by patients who have viewed child pornography by  
15 reporting such conduct to law enforcement authorities, or potentially face a criminal  
16 misdemeanor conviction and loss of their license if they fail to report such patients.

17 71. Unless enforcement of A.B. 1775 is enjoined by order of this Court, patients of  
18 Plaintiffs who report viewing child pornography will suffer irreparable harm because Plaintiffs  
19 are required to report such conduct to law enforcement authorities, thereby exposing the patients  
20 to criminal prosecution for possession of child pornography and public shame and disgrace.

21 72. Defendants will continue enforcing A.B. 1775 even though it is unconstitutional  
22 under the California and U.S. Constitutions unless enjoined by order of this Court thereby  
23 causing Plaintiffs and their patients who have viewed child pornography to suffer irreparable  
24 injury because their psychotherapist-patient relationship will be damaged or destroyed, Plaintiffs  
25 will face criminal prosecution and loss of licensure if they fail to comply with A.B. 1775, and the  
26 patients will face criminal prosecution and public disgrace if Plaintiffs report their conduct.

27 73. Plaintiffs have no plain, speedy, or adequate remedy at law.  
28

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

1. For a prohibitory permanent injunction enjoining Defendants' enforcement of A.B. 1775's amendment of Penal Code section 11165.1, subdivision (c) against psychotherapists;

2. For a judicial declaration that A.B. 1775's amendment of Penal Code section 11165.1, subdivision (c) is unconstitutional as applied to psychotherapy patients because this statute violates their privacy rights under article I, section 1 of the California Constitution and/or the Fourteenth Amendment of the U.S. Constitution;

3. For reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5;

4. For costs of suit; and

5. For such other and further relief as the Court may deem just and proper.

Dated: February 20, 2015

Respectfully submitted,

NELSON HARDIMAN LLP

By: 

MARK HARDIMAN

Attorneys for Plaintiffs

ORIGINAL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
Mark Hardiman, Esq. (SBN 136602) Jonathan Radke, Esq. (SBN 257328) Salvatore Zimmitti, Esq. (245678)

NELSON HARDIMAN LLP

11835 W. Olympic Blvd., Suite 900  
Los Angeles, CA 90064

TELEPHONE NO.: 310-203-2800

FAX NO.: 310 203-2727

ATTORNEY FOR (Name): Attorneys for Plaintiffs, Don Mathews, M.F.T et al.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

STREET ADDRESS: 111 N. HILL STREET

MAILING ADDRESS: SAME AS ABOVE

CITY AND ZIP CODE: LOS ANGELES, CA 90012

BRANCH NAME: CENTRAL DISTRICT

CASE NAME:  
Don L. Mathews, et al., v. Kamala Harris, et al.

FOR COURT USE ONLY

FILED  
Superior Court of California  
County of Los Angeles

FEB 20 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Cristina Grijalva Deputy  
Cristina Grijalva

BC 573135

CIVIL CASE COVER SHEET

☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder

Filed with first appearance by defendant  
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)  
☐ Uninsured motorist (46)

Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)  
☐ Product liability (24)  
☐ Medical malpractice (45)  
☐ Other PIPD/WD (23)

Non-PIPD/WD (Other) Tort

☐ Business tort/unfair business practice (07)  
☐ Civil rights (08)  
☐ Defamation (13)  
☐ Fraud (16)  
☐ Intellectual property (19)  
☐ Professional negligence (25)  
☐ Other non-PIPD/WD tort (35)

Employment

☐ Wrongful termination (36)  
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)  
☐ Rule 3.740 collections (09)  
☐ Other collections (08)  
☐ Insurance coverage (18)  
☐ Other contract (37)

Real Property

☐ Eminent domain/inverse condemnation (14)  
☐ Wrongful eviction (33)  
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)  
☐ Residential (32)  
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)  
☐ Petition re: arbitration award (11)  
☐ Writ of mandate (02)  
☒ Other judicial review (39)

Provisionally Complex Civil Litigation  
(Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)  
☐ Construction defect (10)  
☐ Mass tort (40)  
☐ Securities litigation (28)  
☐ Environmental/Toxic tort (30)  
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)  
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)  
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses  
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 3

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 2-20-15

MARK HARDIMAN  
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (18)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PI/PD/WD Tort (36)

## Employment

Wrongful Termination (38)  
Other Employment (16)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller  
Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (36) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review

Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)  
Enforcement of Judgment  
Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition



ORIGINAL

SHORT TITLE:

Don L. Mathews et al. v. Kamala Harris, et al.

CASE NUMBER

BC 573185

**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☐ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL \_\_\_\_\_ ☐ HOURS/ ☐ DAYS

Item II. Indicate the correct district and courthouse location (4 steps -- If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case.

**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

1. Class actions must be filed in the Stanley Mosk Courthouse, central district.
2. May be filed in central (other county, or no bodily injury/property damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons (See Step 3 Above)
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death -- Uninsured Motorist	1., 2., 4.
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4. 1., 4. 1., 3. 1., 4.

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Non-Personal Injury/Property  
Damage/ Wrongful Death Tort

Employment

Contract

Real Property

Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons See Step 3 Above
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

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	A Civil Case Cover Sheet Category/No.	B Type of Action (Check only one)	C Applicable Reasons (See Step 3 Above)
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	<input type="checkbox"/> A6116 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	Other Judicial Review (39)	<input checked="" type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
		<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.	
Miscellaneous Civil Petitions	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
		<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
		<input type="checkbox"/> A6190 Election Contest	2.
		<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
		<input type="checkbox"/> A6100 Other Civil Petition	2., 9.

SHORT TITLE: Don L. Mathews et al. v. Kamala Harris, et al.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.  <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input checked="" type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		ADDRESS: Attorney General Kamala Harris Office of the Attorney General 300 Spring Street
CITY: Los Angeles	STATE: CA	ZIP CODE: 90013

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: February 20, 2015

  
 (SIGNATURE OF ATTORNEY/FILING PARTY)  
 MARK HARDIMAN

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for Issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initialing pleading in the case.

02 / 20 / 2015