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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF FRESNO

Christian Titman,

Plaintiff,

v.

Clovis Unified School District,

Defendant.

FILED

JUN 02 2015

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ LP - DEPUTY

Case No. 15CECG01717

**Plaintiff's Memorandum of Points &  
Authorities in Support of Ex Parte  
Application for Temporary Restraining  
Order and Order to Show Cause**

Hearing Date: June 2, 2015

Time: 3:30 p.m.

Dept.: 502: Hon. Donald S. Black

Case filed June 1, 2015; no trial date set

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## I. INTRODUCTION

Plaintiff Christian Titman seeks the immediate issuance of a temporary restraining order (TRO) enjoining Defendant Clovis Unified School District from prohibiting him from participating in his graduation ceremony at Clovis High School while wearing and displaying his eagle feather on his graduation cap. The graduation ceremony begins at 7:30 p.m. on June 4, 2015. Since late April, Christian and his parents have made multiple requests to the District that he be allowed to wear his eagle feather. The District has repeatedly denied Christian's request. Wearing an eagle feather on his head during his high school graduation ceremony—an event of exceptional importance in Christian's life—carries cultural and spiritual meaning for him as a member of the Pit River Tribe. Thus, it is both expressive and religious conduct protected by the California Education Code's provisions relating to students' freedom of expression and the California Constitution's Liberty of Speech Clause and Free Exercise of Religion Clause. Because the District is unlawfully infringing upon Christian's rights, and because he will miss out on this unique opportunity to commemorate his high school graduation while the District will suffer no hardship if he wears and displays his eagle feather during the graduation ceremony, the Court should immediately issue a TRO and order to show cause why a preliminary injunction should not issue.

## II. FACTUAL BACKGROUND

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### A. Christian Titman wishes to wear and display the eagle feather during graduation ceremony because it conveys the personal, cultural and spiritual significance of his academic achievement.

Plaintiff Christian Titman is an enrolled member of the Pit River Tribe and an 18-year-old graduating senior at Clovis High School, a school administered by Defendant Clovis Unified School District.<sup>1</sup> After falling behind academically during his first two years of high school,

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<sup>1</sup> Declaration of Christian Titman in Support of Plaintiff's Application for Temporary Restraining Order and Order to Show Cause, ¶¶ 1-2 (Titman Decl.).

1 Christian recommitted himself during his last two years and has earned enough credits to graduate  
2 with his class.<sup>2</sup> Christian's father presented Christian with an eagle feather to mark this important  
3 milestone in his life.<sup>3</sup> Christian wishes to wear the eagle feather on his cap during graduation  
4 ceremony to convey his tribe's recognition of this important transition and achievement.<sup>4</sup> As  
5 Christian, his mother, Renee Keeton, and Pit River Tribal Vice Chairperson Isidro Gali explain in  
6 their declarations in support of this Application, wearing and displaying the eagle feather in his  
7 graduation cap will allow Christian to express the pride he has in his Native American culture and  
8 the hard work he has completed in order to graduate from high school on time and to allow his  
9 creators and ancestors to share in his accomplishments.<sup>5</sup>

12 The graduation ceremony is at the Clovis High School football stadium on June 4.<sup>6</sup>  
13 Graduating students must wear caps and gowns.<sup>7</sup> Some students will be allowed to wear accessories  
14 outside of this required garb that show their membership in private organizations.<sup>8</sup> For example,  
15 members of the California Scholarship Federation (CSF) and the National Honor Society (NHS),  
16 both private organizations, may wear gold cords, special pins and large sashes.<sup>9</sup> But the District  
17 will not allow Christian to wear and display his eagle feather.<sup>10</sup>

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21 <sup>2</sup> *Id.* ¶ 4.

22 <sup>3</sup> *Id.* ¶ 5.

23 <sup>4</sup> *Id.* ¶ 5.

24 <sup>5</sup> *Id.* ¶¶ 5, 10; Declaration of Renee Keeton in Support of Plaintiff's Application for Temporary  
25 Restraining Order and Order to Show Cause, ¶ 5 (Keeton Decl.); Declaration of Pit River Tribal  
26 Vice Chairperson Isidro Gali in Support of Plaintiff's Application for Temporary Restraining  
27 Order and Order to Show Cause, ¶¶ 6, 9 (Gali Decl.).

28 <sup>6</sup> Titman Decl., ¶ 2; Declaration of Novella Coleman in Support of Plaintiff's Application for  
Temporary Restraining Order and Order to Show Cause, Ex. F, pp. 8 (Coleman Decl.).

<sup>7</sup> *Id.*, Ex. G, pp. 9-10.

<sup>8</sup> *Id.*, Ex. B, p. 1.

<sup>9</sup> *Id.*, ¶¶ 9-10 & Ex. B, pp. 1-2.

<sup>10</sup> *Id.*, Ex. B, p. 1; Titman Decl., ¶¶ 10-11; Keeton Decl., ¶¶ 8, 10.

1 Both bald and golden eagles and their feathers are considered sacred in Pit River culture  
2 and in many other Native American cultures.<sup>11</sup> And federal law recognizes this by providing  
3 exemptions from the Bald and Golden Eagle Protection Act – which generally makes it a crime to  
4 possess or transfer eagle feathers – to specifically allow Native Americans such as Christian who  
5 are members of recognized tribes to possess and gift these feathers. See *United States v. Dion*, 476  
6 U.S. 734, 740-45 (1986); 50 C.F.R. § 22.22.  
7

8 In the Pit River Tribe, the gift of an eagle feather to wear at a ceremony is a great honor  
9 given in recognition of an important transition, and to be worn with.<sup>12</sup> It is worn on the head; simply  
10 holding or bearing the feather is inconsistent with the Tribe's cultural and religious traditions.<sup>13</sup>  
11 Graduation from high school is an accomplishment that the Tribe holds in high esteem, and the  
12 Tribe sees Christian as a role model for other youth.<sup>14</sup>  
13

14 Christian obtained his eagle feather from his father.<sup>15</sup> Christian wishes to accept this  
15 honor by wearing his eagle feather during the ceremony.<sup>16</sup> The feather is approximately 5 inches  
16 long, much shorter than the 9-inch tassel that he and all other graduates will wear.<sup>17</sup> A photograph  
17 of the feather attached to the tassel as Christian would like to wear it is attached to his declaration as  
18 Exhibit A.  
19

20 **B. The District has repeatedly denied Christian's request to wear and display**  
21 **his eagle feather during graduation ceremony.**

22 Beginning in late, April Christian sought permission to wear his eagle feather during  
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25 <sup>11</sup> Gali Decl. ¶ 6; Titman Decl., ¶ 5; Keeton Decl., ¶ 6.

26 <sup>12</sup> Gali Decl. ¶ 6; Titman Decl., ¶¶ 5, 10, 15; Keeton Decl., ¶¶ 5, 13

27 <sup>13</sup> Gali Decl. ¶ 7; Titman Decl., ¶ 13.

28 <sup>14</sup> Gali Decl. ¶ 9.

<sup>15</sup> Titman Decl. ¶ 5.

<sup>16</sup> *Id.* ¶ 5, 7, 15.

<sup>17</sup> *Id.* ¶ 6 & Ex. A.



1 graduation ceremony, but the District denied his request every time.<sup>18</sup> First on April 29, the deputy  
2 principal told Christian's mother that the District has always denied requests by Native American  
3 students to wear eagle feathers during graduation ceremony.<sup>19</sup> Christian and his mother continued to  
4 make requests to school and District administrators until finally on May 13, 2015, a District  
5 governing school board member told Christian's mother that the only way the District would allow  
6 Christian to wear his eagle feather was to prove that the District was legally required to do so.<sup>20</sup>  
7

8  
9 On May 19, 2015, civil rights organizations wrote a letter to the District superintendent in  
10 support of Christian's request to wear an eagle feather on his cap during graduation ceremony on  
11 June 4, 2015.<sup>21</sup> The letter indicated that Christian wishes to wear the eagle feather during graduation  
12 ceremony for religious and spiritual reasons and as a sign of achievement, honoring his Native  
13 American heritage and his family.<sup>22</sup> And the letter cited California Education Code section  
14 48907(a), which provides for students' "right to exercise freedom of speech ... including, but not  
15 limited to ... *the wearing of buttons, badges, and other insignia.*"<sup>23</sup>  
16

17 On May 22, 2015, the District superintendent replied that it may legally prohibit Christian  
18 from wearing an eagle feather during graduation ceremony.<sup>24</sup> It stated that the required graduation  
19 attire is meant to "signif[y] the unity of the class and the students as graduates of Clovis High  
20 School."<sup>25</sup> The letter asserted that "[t]he purpose behind the graduation dress code and these  
21 behavior expectations includes a show of respect for the formality of the graduation ceremony,  
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25 <sup>18</sup> *Id.* ¶¶ 9-11; Keeton Decl., ¶¶ 6, 8, 10-12.

26 <sup>19</sup> *Id.* ¶ 7.

27 <sup>20</sup> *Id.* ¶ 11.

28 <sup>21</sup> Coleman Decl., Ex. A, p. 1.

<sup>22</sup> *Id.* at p. 1.

<sup>23</sup> *Id.* at p. 3.

<sup>24</sup> Coleman Decl., Ex. B.

<sup>25</sup> *Id.* at p. 1.

1 unity of the graduating class, and also to avoid disruption of the graduation ceremonies that would  
2 likely occur if students were allowed to alter or add on to their graduation cap and gown.”<sup>26</sup>  
3

### 4 III. LEGAL ANALYSIS

5 California courts weigh two factors in deciding whether to issue a temporary restraining  
6 order (“TRO”) or preliminary injunction: (1) the likelihood that the moving party will prevail on the  
7 merits at trial; and (2) the relative interim harm the parties will likely sustain from the issuance or  
8 non-issuance of the temporary restraining order. *IT Corp. v. County of Imperial*, 35 Cal. 3d 63, 69-  
9 70 (1983) (preliminary injunction); *Church of Christ in Hollywood v. Sup. Ct. of L.A. Cnty.*, 99 Cal.  
10 App. 4th 1244, 1251 (2002) (TRO); *see* Cal. Civ. Proc. Code § 526 *et seq.* The Court “must  
11 exercise its discretion in favor of the party most likely to be injured.” *Robbins v. Superior Court*, 38  
12 Cal. 3d 199, 205-06 (1985) (citation omitted). Thus, “[i]f the denial of an injunction would result in  
13 great harm to the plaintiff, and the defendants would suffer little harm if it were granted, then it is  
14 an abuse of discretion to fail to grant the preliminary injunction.” *Id.* “[H]arms to speech rights for  
15 even minimal periods of time unquestionably constitute irreparable injury supporting preliminary  
16 relief.” *Best Friends Animal Soc’y v. Macerich Westside Pavilion Prop., L.L.C.*, 193 Cal. App. 4th  
17 168, 185 (2011) (internal quotations omitted).  
18  
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#### 20 A. PLAINTIFF CHRISTIAN TITMAN IS LIKELY TO PREVAIL ON THE MERITS

21 Christian’s wearing and displaying of his eagle feather is religious and expressive conduct,  
22 protected by the Education Code’s specific protections for student speech, and the California  
23 Constitution’s Liberty of Speech and Free Exercise Clauses. The Education Code narrowly  
24 prescribes the situations under which public schools may limit students’ exercise of free expression,  
25 and Christian’s expression conveyed by wearing and displaying his eagle feather during graduation  
26 does not fall within the statute’s narrow prescriptions. Also, under the Liberty of Speech Clause, the  
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<sup>26</sup> *Id.* at p. 2.

District's restriction that Christian can only wear his eagle feather before or after, but not during, graduation ceremony is an unreasonable time, place and manner restriction on speech, and the restriction limits is inconsistent with the purposes of graduation. Finally, the state constitution's Free Exercise Clause, which is broader than its federal counterpart, protects Christian's wearing of his eagle feather during graduation ceremony.

**1. Education Code § 48907(a) protects Christian's right to wear and display his eagle feather during the graduation ceremony.**

Section 48907 of the Education Code provides that public school students

shall have the right to exercise freedom of speech and of the press *including, but not limited to*, the use of bulletin boards, the distribution of printed materials or petitions, *the wearing of buttons, badges, and other insignia*, and the right of expression in official publications, whether or not the publications *or other means of expression* are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material that so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.

Cal. Educ. Code § 48907(a) (emphasis added).

When interpreting a statute, courts look first to the "actual words of the statute, giving them a plain and commonsense meaning," "seek[ing] to give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose." *Smith v. Novato Unified Sch. Dist.*, 150 Cal. App. 4th 1439, 1454-55 (2007) (internal citations and quotations omitted). Although the legislature's intent in enacting this statute was to ensure that our state's schools respect the First Amendment right to free speech recognized in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 508 (1969), the statutory language is in some respects more protective than the constitutional provision. *Smith*, 150 Cal. App. 4th at 1452 ("section 48907 provides broader protection for student speech in California public school newspapers" than the First Amendment); *Lopez v. Tulare Joint Union High Sch. Dist.*, 34 Cal. App. 4th 1302, 1319



1 (1995) (“neither the legislative history of section 48907 nor California case law supports the  
2 conclusion that a student’s free speech rights under section 48907 are only coextensive with those  
3 guaranteed by the First Amendment and federal case law.”). And the statute’s language allows  
4 Christian to express himself by wearing and displaying his eagle feather.  
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6 First, displaying an eagle feather is expressive conduct. Christian wishes to wear it to  
7 express and honor his Native American heritage and his family, and for religious and spiritual  
8 reasons. This is “closely akin to ‘pure speech.’” *Tinker*, 393 U.S. at 505-06 (students’ wearing of  
9 armbands); see *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 569  
10 (1995) (collecting cases recognizing as constitutionally protected speech expressive conduct  
11 involving symbols). And § 48907(a) recognizes this by specifically protecting students’ rights to  
12 wear “insignia” and to engage in “other means of expression” than those listed.  
13

14  
15 **2. Wearing and displaying the eagle feather does not fall within any of Education Code**  
16 **§ 48907(a)’s exceptions for obscene, libelous, slanderous, or disruptive speech.**

17 Section 48907(a) thus gives Christian a right to wear and display his feather unless the  
18 government can meet its burden to show that his doing so falls within one of the statute’s  
19 exceptions. See *Prigmore v. City of Redding*, 211 Cal. App. 4th 1322, 1341 (2012) (“The  
20 government has the burden of justifying its restriction on speech.”) (citation omitted). But it cannot  
21 meet this burden. There is no plausible contention that Christian’s wearing his eagle feather during  
22 graduation ceremony is “obscene, libelous, or slanderous,” and the District has not suggested that it  
23 is. Instead, the District’s letter asserts that “disruption of the graduation ceremonies [] would likely  
24 occur if students were allowed to alter or add on to their graduation cap or gown.”<sup>27</sup>  
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<sup>27</sup> Coleman Decl., Ex. B, at p. 2.

1 But the government cannot demonstrate that wearing a small feather would cause a  
2 “substantial disruption” that can justify restricting speech under 48907(a), for two separate reasons.  
3 First, school officials’ “undifferentiated fear or apprehension of disturbance is not enough to  
4 overcome the right to freedom of expression.” *Tinker*, 393 U.S. at 508. The District has so far  
5 presented no more than a generalized apprehension. Second, under § 48907, “[s]chools may only  
6 prohibit speech that incites disruption, either because it specifically calls for a disturbance or  
7 because the manner of expression (as opposed to the content of the ideas) is so inflammatory that  
8 the speech itself provokes the disturbance.” *Smith v. Novato Unified Sch. Dist.*, 150 Cal. App. 4th  
9 1439, 1457 (2007). Since Christian’s altering of his cap with an eagle feather does not call for a  
10 disturbance or constitute an inflammatory manner of expression,<sup>28</sup> the District cannot prohibit it  
11 under § 48907(a)’s fourth category.  
12

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14 **3. The District’s denial of Christian’s request to wear and display his eagle feather**  
15 **cannot be justified as a time, place, and manner restriction under § 48907(b).**

16 Section 48907(b) allows schools to adopt reasonable time, place, and manner rules  
17 regulating speech:

18 The governing board or body of each school district or charter school and each  
19 county board of education shall adopt rules and regulations in the form of a  
20 written publications code, which shall include reasonable provisions for the  
21 time, place, and manner of conducting such activities within its respective  
jurisdiction.

22 Cal. Educ. Code § 48907(b).

23 If, in fact, the District’s Governing Board has adopted a rule that purports to prohibit  
24 Christian from wearing and displaying his eagle feather at graduation, such a rule would not be a  
25 reasonable time, place, and manner restriction. First, time, place, and manner restrictions must be  
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<sup>28</sup> Gali Decl., ¶ 9 explaining that the “eagle feather will signify to other young people in the tribal community the esteem that the Tribe has for academic achievement, as well as Christian’s respect for our cultural and religious traditions”).

1 content-neutral, meaning that they cannot treat speakers differently based on the content of their  
2 speech. *Prigmore*, 211 Cal. App. at 1341; *Best Friends Animal Soc’y v. Macerich Westside Pavilion*  
3 *Property LLC*, 193 Cal. App. 4th 168, 174-75 (2011). Here, the District allows some students to  
4 wear certain types of accessories on their gowns but not others. For example, it allows students to  
5 wear gold cords, pins and large sashes that show affiliation with private organizations like the  
6 California Scholarship Federation and National Honor Society.<sup>29</sup> Allowing students to wear insignia  
7 that show affiliation with some organizations favored by the district, but not those that show  
8 affiliation with Christian’s tribe, is not content-neutral and cannot constitute a valid time, place, or  
9 manner restriction. *Best Friends*, 193 Cal. App. 4th at 182 (rule that distinguished “between  
10 qualified labor activity and noncommercial expressive activity” was not content-neutral and could  
11 not be treated as time, place, and manner restriction).

12  
13  
14 In addition, time, place, and manner restrictions must be reasonable, must be “narrowly  
15 tailored” to “serve[] a significant government interest,” and must “leave[] open ample alternative  
16 avenues of communication.” *Id.* at 175. Under this standard, courts have struck down time and place  
17 restrictions that prevent speakers from “effectively reaching a large percentage of the target  
18 audience.” *Id.* at 181; *see id.* at 175-76 (“people engaged in free speech must be given sufficient  
19 access to their intended audience”) (collecting cases); *see also Riley v. Nat’l Fed’n of the Blind of N.*  
20 *Carolina, Inc.*, 487 U.S. 781, 790-91 (1988) (“The First Amendment mandates that we presume that  
21 speakers, not the government, know best both what to say and how to say it.”). Prohibiting a young  
22 man from wearing and displaying a small symbol of his Native American identity and religion at his  
23 graduation is not reasonable. It is not narrowly tailored to serve any significant government interest.  
24 And it does not leave open any alternative ways for Christian to express himself during his  
25 graduation to a unique audience.  
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<sup>29</sup> Coleman Decl., ¶¶ 9-10 & Ex. B, p. 1.



1 The fact that Christian's expressive conduct occurs during graduation and not during the  
2 regular school day does not change this analysis. Nothing in the text of § 48907 suggests that its  
3 protections do not apply at an official graduation that occurs on the school's campus. Students do  
4 not have the right to publish newspapers or other "official school publications" using school  
5 resources, but if a school chooses to allow them to do so this provision prohibits it from censoring  
6 them. § 48907(a), (d), (e); see *Lopez v. Tulare Joint Union High Sch. Dist.*, 34 Cal. App. 4th 1302,  
7 1315 (1995). Nor can the District stifle students' *constitutional* free-speech rights – as discussed  
8 below – simply by declaring that participation in graduation is a privilege, not a right: the "state is  
9 without power to impose an unconstitutional requirement as a condition for granting a privilege."  
10 *Danskin v. San Diego Unified Sch. Dist.*, 28 Cal. 2d 536, 545-46 (1946).<sup>30</sup>

13 Nor can the District justify its rules by claiming that it is somehow sponsoring the  
14 expressive content of graduates' garb. First, the claim is factually wrong: graduating students are  
15 not mere billboards that carry the school's message; even those students who the District allows to  
16 wear insignia to display their membership in various organizations have the choice whether they  
17 want to express themselves in that way. And even if the graduates' garb were school-sponsored  
18 expression, § 48907, unlike the First Amendment, *prohibits* California's educators from exercising  
19 "broad power to censor expression in school sponsored publications" or speech. *Smith v. Novato*  
20 *Unified Sch. Dist.*, 150 Cal. App. 4th 1439, 1452 (2007). The statute explicitly defines the extent to  
21 which schools can limit school-sponsored speech, and Christian's displaying a feather is outside the  
22 areas school may regulate. See Cal. Educ. Code § 48907(c)-(e).

26  
27 <sup>30</sup> Although the District cites it in its May 19 letter, Coleman Decl., Ex. B, p. 2, *Steffes v.*  
28 *California Interscholastic Federation*, 176 Cal. App. 3d 739, 748 (1986) is irrelevant, because  
that case did not involve free speech rights. In *Steffes*, the court applied rational basis analysis  
where the student's participation in the extracurricular athletic program was conditioned on a  
residency requirement. *Id.* at 742-43.

1  
2 Finally, § 48907(b) requires that any time, place, and manner rule be formally adopted by  
3 the District's governing board in a written publications code. As of yet, the District has only  
4 identified the Clovis High School's Senior Activities Handbook to justify its denial of Christian's  
5 request.<sup>31</sup> If the handbook contains the only written rule justifying the District's denial and it was  
6 not adopted by a formal governing board vote, *see* Cal. Educ. Code § 35163, and during open  
7 meetings complying with the Brown Act, *see id.* § 35145, then that rule cannot be enforced.

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9 **4. The District's restriction that Christian can only wear and display his eagle feather**  
10 **before or after, but not during, graduation ceremony also violates Article I, § 2(a) of**  
11 **the California Constitution.**

12 The California Constitution's Liberty of Speech Clause states that "[e]very person may  
13 freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse  
14 of this right. A law may not restrain or abridge liberty of speech or press." Cal. Const. art. I, § 2(a).  
15 This clause "'is broader and more protective than the free speech clause of the First Amendment.'" *Prigmore v. City of Redding*, 211 Cal. App. 4th 1322, 1336 (2012). Under state law, "the crucial  
16 question is whether the manner of expression is basically incompatible with the normal activity of a  
17 particular place at a particular time." *U. C. Nuclear Weapons Labs Conversion Project v. Lawrence*  
18 *Livermore Lab.*, 154 Cal. App. 3d 1157, 1168 (1984); *accord Kuba v. I-A Agr. Ass'n*, 387 F.3d 850,  
19 856-57 (9th Cir. 2004). Nothing about Christian's displaying of a small symbol of his achievement  
20 and identity is incompatible with a graduation where other students display sashes, pins, and cords  
21 to show their achievement and membership. And although Article I § 2(a) allows "the government  
22 [to] impose reasonable time, place and manner restrictions on expression occurring on state  
23 property provided the regulations are not vague or overbroad," *Lopez v. Tulare Joint Union High*  
24 *Sch. Dist.*, 34 Cal. App. 4th 1302, 1327 (1995), the analysis above already illustrates why the  
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<sup>31</sup> Coleman Decl., Ex. B, p. 1.

1 District's restriction on Christian's expression cannot be justified as a time, place, or manner  
2 restriction.  
3

4 Furthermore, since the District allows some students to wear insignia affiliated with other  
5 organizations, it has "opened the forum" and cannot prohibit other students from wearing insignia.<sup>32</sup>  
6 See *Dulaney v. Mun. Court*, 11 Cal. 3d 77, 82 (1974) (by allowing some people to post notices on  
7 telephone poles, city "opened the forum" to other speech and speakers); *Wirta v. Alameda-Contra*  
8 *Costa Transit Dist.*, 68 Cal. 2d 51, 54-55 (1967) (by accepting transit ads for the sale of goods,  
9 agency opened the forum and could not reject political ads). Just as the District's permissible  
10 accessories are symbols of academic achievement and membership, Christian's eagle feather marks  
11 high school graduation as a milestone academic achievement and membership in his tribe.<sup>33</sup> And a  
12 5-inch eagle feather hanging alongside his tassel will not harm the District's apparent desire for  
13 uniformity of appearance any more than the permissible colored cords, pins, or sashes. *Gonzales v.*  
14 *Superior Court*, 180 Cal. App. 3d 1116, 1124 (1986) ("by permitting the display of certain  
15 noncommercial signs while prohibiting others, the City has 'opened the forum' and cannot rely on  
16 such justifications as aesthetics ... to restrict vital noncommercial speech").  
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18

19 Finally, even in a nonpublic forum every restriction on protected speech must be  
20 reasonable. *Board of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569,  
21 575 (1987); *Brown v. California Dep't of Transp.*, 321 F.3d 1217, 1222-23 (9th Cir. 2003) (striking  
22 down ban on banners but not flags on nonpublic-forum overpasses). The District unreasonably  
23 excludes some, and in particular Christian's, symbols of academic achievement.  
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<sup>32</sup> See Coleman Decl., Ex. B, p. 1.

<sup>33</sup> Titman Decl., ¶ 5; Gali Decl., ¶ 6.



1  
2 **5. The District's rule prohibiting Christian from wearing and displaying his eagle**  
3 **feather during graduation ceremony violates Cal. Educ. Code § 48950 because**  
4 **wearing and displaying the feather would be constitutionally protected outside the**  
5 **school context.**

6 Education Code § 48950(b) prohibits the District from "mak[ing] or enforce[ing] a rule  
7 subjecting a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech  
8 or other communication that, when engaged in outside of the campus, is protected from  
9 governmental restriction by the First Amendment to the United States Constitution or Section 2 of  
10 Article I of the California Constitution." It is clear that Christian would have a constitutional right to  
11 wear his eagle feather outside the school context. Since the District claims wearing the eagle feather  
12 will likely be disruptive<sup>34</sup> and has threatened to discipline students who "disrupt[] the service in any  
13 way,"<sup>35</sup> the District's rule prohibiting Christian from wearing and displaying his eagle feather  
14 during graduation ceremony violates § 48950(b).

15 **6. The state constitution's Free Exercise Clause, which is broader than its federal**  
16 **counterpart, protects Christian's wearing and displaying of his eagle feather during**  
17 **graduation ceremony.**

18 Under Article I § 4 of the California Constitution, "Free exercise and enjoyment of  
19 religion without discrimination or preference are guaranteed." The California Supreme Court has  
20 "observed many times 'that the meaning of the California Constitution article I, section 4 ... is not  
21 dependent on the meaning of any provision of the federal Constitution.'" *Catholic Charities of*  
22 *Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 560-61 (2004). And Christian's wearing the  
23 eagle feather on his head during graduation ceremony is expressive conduct motivated by his  
24 religious beliefs: "In the cultural and spiritual traditions of my tribe, the importance of wearing and  
25 displaying the feather during the ceremony is to signify graduating with your creators and  
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28 <sup>34</sup> Coleman Decl., Ex. B, p. 2.

<sup>35</sup> Coleman Decl., Ex. F, p. 10.

1 ancestors.”<sup>36</sup> While the District contends that application of its dress code to Christian does not  
2 violate the federal Free Exercise Clause because the dress code is a neutral rule of general  
3 applicability,<sup>37</sup> the California Supreme Court has not yet “exercise[d] [its] responsibility and final  
4 authority to declare the scope and proper interpretation of the California Constitution’s free exercise  
5 clause.” *Id.* at 562. And since Article I § 4 gives greater protection to religious exercise “than the  
6 federal guarantee,” *Sands v. Morongo Unified Sch. Dist.*, 53 Cal. 3d 863, 883 (1991), this provision  
7 protects Christian’s right to wear his eagle feather during graduation.  
8

9  
10 **B. THE BALANCE OF EQUITIES FAVORS GRANTING A TRO**

11 In deciding whether to issue a TRO, the Court must balance the equities and decide  
12 whether “the plaintiff[ is] likely to suffer greater injury from a denial of the injunction than the  
13 defendants are likely to suffer from its grant.” *Robbins v. Superior Court*, 38 Cal. 3d 199, 206  
14 (1985).

15 Here, the equities all weigh in favor of granting the TRO. As a matter of law, “harms to  
16 speech rights for even minimal periods of time unquestionably constitute irreparable injury  
17 supporting preliminary relief.” *Best Friends Animal Soc’y v. Macerich Westside Pavilion Prop.*,  
18 *L.L.C.*, 193 Cal. App. 4th 168, 185 (2011) (internal quotations omitted); *accord Elrod v. Burns*, 427  
19 U.S. 347, 373 (1976). And the injury is even more acute here because of the cultural importance of  
20 the high school graduation. “[I]n our society and in our culture high school graduation is one of  
21 life’s most significant occasions.” *Lee v. Weisman*, 505 U.S. 577, 595 (1992). This is so “precisely  
22 because it occurs only once in the lifetime of a graduate.” *Sands*, 53 Cal. 3d at 875. Christian will  
23 have a single opportunity to participate in this ceremony wearing and displaying a symbol of his  
24 people and his spirituality. To deny him this will cause him great harm.  
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<sup>36</sup> Titman Decl., ¶ 10.

<sup>37</sup> Coleman Decl., Ex. B, p. 2.

1 In contrast, it is not clear what harm the District will suffer if Christian is allowed to wear  
2 and display the eagle feather on his graduation cap. In its May 22 letter the District says it wants to  
3 protect the “formality of the ceremony,” but it does not explain how allowing Christian to wear and  
4 display a small eagle feather disrupts this formality. People at formal events often wear small pins  
5 or insignia symbols. And the District cannot claim that allowing adornment of caps and gowns will  
6 cause it harm – it allows some to wear a gold cord, a life pin, a medallion, and a large sash.<sup>38</sup>  
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8 “If the denial of an injunction would result in great harm to the plaintiff, and the  
9 defendants would suffer little harm if it were granted, then it is an abuse of discretion to fail to grant  
10 the preliminary injunction.” *Robbins v. Superior Court*, 38 Cal. 3d 199, 206 (1985) (citation  
11 omitted). This rule of equity itself justifies granting the TRO.  
12

#### 13 IV. CONCLUSION

14 For these reasons, Plaintiff respectfully asks that this Court issue a TRO enjoining the  
15 District from prohibiting him from participating in his graduation ceremony at Clovis High School  
16 while wearing and displaying his eagle feather on his graduation cap.  
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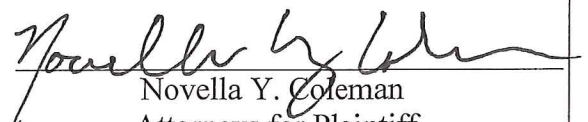
18 Dated: June 1, 2015

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<sup>38</sup> Coleman Decl., Ex. B, p. 1.



# **EXHIBIT A**

