APPENDIX

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APPENDIX A

FILED
APR 16 2024
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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RYAN CROWNHOLM; CROWN CAPITAL ADVENTURES, INC., DBA mysiteplan.com, a Delaware corporation, registered as a foreign corporation in California, Plaintiffs-Appellants, v. RICHARD B. MOORE, in his Official Capacity as Executive Officer of the California Board for Professional Engineers, Land Surveyors, and Geologists; et al., Defendants-Appellees.	No. 23-15138 D.C. No. 2:22-cv-01720-DAD-CKD AMENDED MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Argued and Submitted December 14, 2023
San Francisco, California

Before: KOH, H.A. THOMAS, and DESAI, Circuit Judges.

In 2021, Plaintiffs Ryan Crownholm and Crown Capital Adventures, Inc. (collectively, "Plaintiffs"), were cited by the California Board for Professional Engineers, Land Surveyors, and Geologists ("the Board") for practicing land surveying without a license. The Board issued its citation order because Plaintiffs produce and sell site plans on their website, MySitePlan.com, to customers in California. Plaintiffs filed suit under 42 U.S.C. § 1983, raising constitutional challenges to the California Professional Land Surveyors' Act ("the Act"), Cal. Bus. & Prof. Code § 8700 *et seq*. The district court denied Plaintiffs' motion for a preliminary injunction and subsequently granted Defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Plaintiffs timely appealed. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The denial of a motion for a preliminary injunction is reviewed for abuse of discretion, but the underlying legal decisions are reviewed *de novo*. *Washington v. U.S. Dep't of State,* 996 F.3d 552, 560 (9th Cir. 2021).

We review a district court's grant of a motion to dismiss *de novo*. *Am. Soc'y of Journalists & Authors, Inc. v. Bonta (ASJA)*, 15 F.4th 954, 960 (9th Cir. 2021).

1. Plaintiffs first argue that the Act is unconstitutional as applied to them. In assessing this challenge, we must first determine whether Plaintiffs have been regulated based on their speech or based on their conduct. *Expressions Hair Design v. Schneiderman*, 581 U.S. 37, 46–47 (2017); *see also Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010) (even if a law generally regulates conduct, the key question is whether "the conduct triggering coverage under the statute consists of communicating a message"). We conclude that Plaintiffs have been regulated based on their conduct.

As the Supreme Court has long held, "it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949); *see also*, *e.g.*, *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978) ("[T]he State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity."); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 706 (1986) ("[E]very civil and criminal remedy imposes some conceivable burden on First Amendment protected activities."); *Nat'l Inst. of Fam. & Life Advocs. v. Becerra (NIFLA)*, 585 U.S. 755, 768 (2018) ("[U]nder our precedents, States may regulate professional conduct, even though that conduct

incidentally involves speech." (citing *Ohralik*, 436 U.S. at 456)).

Indeed, the Ninth Circuit has held that practicing psychoanalysis and performing conversion therapy are conduct, not speech, even though both require the use of spoken words. *See Nat'l Ass'n for the Advancement of Psychoanalysis v. Cal. Bd. of Psych. (NAAP)*, 228 F.3d 1043, 1054 (9th Cir. 2000) ("[T]he key component of psychoanalysis is the treatment of emotional suffering and depression, *not* speech."); *Pickup v. Brown*, 740 F.3d 1208, 1229 (9th Cir. 2014) (finding that conversion therapy ban regulated conduct), *abrogated in part by NIFLA*, 585 U.S. at 767; *Tingley v. Ferguson*, 47 F.4th 1055, 1077–78 (9th Cir. 2022) (relying on *Pickup* to conclude "identical" conversion therapy ban also regulated conduct), *cert. denied*, 144 S. Ct. 33 (2023).

By the same token, the fact that Plaintiffs' site plans convey information through language and graphics does not *ipso facto* subject the Act to First Amendment scrutiny. Rather, as they describe, Plaintiffs assess their clients' needs, access Geographic Information System ("GIS") information and "other publicly available imagery," and use a computer-aided design program to electronically draft site plans. These site plans are (again in Plaintiffs' words) "by definition, . . . drawing[s] that provide[] a visual image of property by depicting property boundaries, structures, and measurements." By citing Plaintiffs, the Board has simply penalized unlicensed land surveying conduct. *See NAAP*, 228 F.3d at 1054; *see also Del Castillo v. Sec'y, Fla. Dep't of Health*, 26 F.4th 1214,

1225–26 (11th Cir. 2022) ("Assessing a client's nutrition needs, conducting nutrition research, developing a nutrition care system, and integrating information from a nutrition assessment are not speech. They are 'occupational conduct'; they're what a dietician or nutritionist does as part of her professional services."), *cert. denied sub nom. Del Castillo v. Ladapo*, 143 S. Ct. 486 (2022).

Moreover, the Act is content neutral: its application is not limited to site plans depicting only certain types of properties, such as wedding venues or mid-century modem homes, and nothing in the Act's "text, structure, or purpose reflects a legislative content preference." *ASJA*, 15 F.4th at 963; *cf. NAAP*, 228 F.3d at 1055 ("California's mental health licensing laws are content-neutral; they do not dictate what can be said between psychologists and patients during treatment."). The Act also in no way prohibits Plaintiffs from engaging in public discourse or "advocat[ing] for a position," including for a change in the law. *Tingley*, 47 F.4th at 1073.

Even to the extent Plaintiffs' activity has some expressive component, the Act's effect on this component is merely incidental to its primary effect of regulating Plaintiffs' unlicensed land surveying activities. *See Pickup*, 740 F.3d at 1229–31; *cf. Cap. Associated Indus., Inc. v. Stein*, 922 F.3d 198, 208 (4th Cir. 2019) ("Licensing laws inevitably have some effect on the speech of those who are not (or cannot be) licensed. But that effect is merely incidental to the primary objective of regulating the conduct of the profession."); *Del Castillo*, 26 F.4th at 1226. In short, just as the

state may constitutionally ban a particular medical treatment that requires the use of speech, *see Tingley*, 47 F.4th at 1073, so too may the state bar unlicensed persons from creating maps that have the effect of providing a "professional opinion as to the spatial relationship between fixed works or natural objects and the property line."[1]

We thus conclude that the Act regulates Plaintiffs' conduct and imposes only incidental burdens on their speech. *See Expressions Hair Design*, 581 U.S. at 47 (noting that if a law required sandwiches to be sold at a certain price, and that price was reflected on a menu, "[t]hose written or oral communications would be speech, and the law — by determining the amount charged — would indirectly dictate the content of that speech[, b]ut the law's effect on speech would be only incidental to its primary effect on conduct"). As such, the Act is subject to rational basis review and will be upheld if it is "rationally-related to a legitimate governmental interest." *ASJA*, 15 F.4th at 964 (quoting *Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1047 (9th Cir. 2002)); *accord Pickup*, 740 F.3d at 1231 (applying rational basis review). The state carries a

[1] *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011), is distinguishable. Notably, the statute at issue in *Sorrell* imposed both content- and speaker-based burdens on speech. *See id.* at 563–65. Indeed, the presence of these forms of discrimination made it possible for the Supreme Court to resolve the case "even assuming . . . that prescriber-identifying information is a mere commodity" rather than speech. *Id.* at 571. No such discrimination is present here. *IMDb.com Inc. v. Becerra*, 962 F.3d 1111 (9th Cir. 2020), is distinguishable for the same reason. *See id.* at 1120 (finding challenged statute "restrict[ed] speech because of its content" and "restrict[ed] only a single category of speakers").

"light burden" under this standard, *Tingley*, 47 F.4th at 1077 (citation omitted), and Plaintiffs have not plausibly shown that the Act cannot meet it.[2]

The district court correctly found that California's interests in "safeguard[ing] property and public welfare," Cal. Bus. & Prof. Code § 8708, are well served by preventing "incompetent people and entities [from] disseminating land surveying products" that could be used for, among other things, applying for building permits. MySitePlan.com clearly advertises that Plaintiffs' site plans are "[w]idely accepted by building departments and HOA's for residential permitting purposes"; that the plans "meet or exceed requirements"; and that they are "GREAT FOR . . . Demolition permits . . . Conditional Use Permits . . . Construction Permits . . . Sign Permits . . . Residential and Commercial Site Plans . . . [and] Tree Removal Permits."

Plaintiffs' "most popular" site plan specifically shows eight precise measurements to property

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[2] We note briefly that the Ninth Circuit has stated, in at least one case, that "[i]f legislation regulates conduct but incidentally burdens expression, we review that legislation under 'intermediate scrutiny.'" *Pac. Coast Horseshoeing Sch. v. Kirchmeyer (PCHS)*, 961 F.3d 1062, 1068 (9th Cir. 2020); *cf. NAAP*, 228 F.3d at 1055–56 (not clearly stating what standard it was applying). Given that this statement from *PCHS* was ultimately unnecessary to the panel's holding and thus is dicta (as Plaintiffs conceded at oral argument), it is not binding on us. *See United States v. McAdory*, 935 F.3d 838, 843 (9th Cir. 2019) ("[W]e are not bound by a prior panel's comments...done as a prelude to another legal issue that commands the panel's full attention." (cleaned up)).

boundaries and the boundaries themselves, with no disclaimer as to the plan's accuracy, and the exemplar is intended to be used for "[pl]anning for [a] propane tank." Even where Plaintiffs' site plans could initially be obtained for ostensibly benign purposes (like planning a farmers' market), the Board notes that once they are created, the site plans "can be improperly used, even years later, to support a permitting or planning decision, or to settle a property line dispute between neighbors." Finally, the fact that local permitting departments may accept Plaintiffs' site plans is immaterial. The Act is aimed at what Plaintiffs may *produce*, not what consumers or departments *accept*, and in any event, local departments do not have the legal right to allow the unlicensed practice of land surveying.

On this record, the Act as applied to Plaintiffs is rationally related to California's legitimate governmental interests. Plaintiffs' as-applied challenge was thus properly dismissed.

2. Next, Plaintiffs argue that the Act is facially unconstitutional because it is impermissibly vague. The veracity of this claim is undermined by the fact that Plaintiffs conceded at oral argument that their site plans are subject to regulation under the Act. *See Ledezma-Cosino v. Sessions*, 857 F.3d 1042, 1047 (9th Cir. 2017) ("Because Petitioner has engaged in conduct that is clearly covered, he 'cannot complain of the vagueness of the law as applied to the conduct of others.'" (quoting *Holder*, 561 U.S. at 19)). Regardless, we conclude that the Act is "sufficiently clear so as to allow persons of 'ordinary intelligence a reasonable

opportunity to know what is prohibited.'" *Foti v. City of Menlo Park*, 146 F.3d 629, 638 (9th Cir. 1998) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). Although the Act's language is not crystal clear, "perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity."[3] *Edge v. City of Everett*, 929 F.3d 657, 664 (9th Cir. 2019) (quoting *United States v. Williams*, 553 U.S. 285, 304 (2008)). Plaintiffs' argument that the Act relies on a subjective standard (namely, whether a given site map is "too fancy") is unsupported by the Act's text, and nothing in the record or the complaint indicates that the Act has ever been enforced in such a selective or arbitrary manner. *E.g., Coates v. City of Cincinnati*, 402 U.S. 611, 615 (1971) (finding unconstitutional ordinance that barred "annoying" conduct).

3. Plaintiffs also raise a facial overbreadth challenge to the Act under the First Amendment, arguing that the Act requires a land surveyor's license to create a map "show[ing] farmers' market vendors where to set up shop . . . or even for simple artwork depicting the location of a house." Beyond providing no evidence that the Act has actually been enforced so broadly, Plaintiffs' "string of hypotheticals" depends on an expansive and unsupported reading of the Act. *United States v. Hansen*, 599 U.S. 762, 782 (2023). Even granting that the Act is worded broadly, it plainly only covers maps produced "as an integral step in

[3] Regardless, the Act clearly does not purport to allow unlicensed persons to avoid being cited simply by disclaiming the accuracy of their site plans.

designing and locating specific projects," not any and all "map making in the abstract." 23 Ops. Cal. Atty. Gen. 86, 90 (1954); *see* Cal. Bus. & Prof. Code § 8726(a)(7) (barring unlicensed persons from "[d]etermin[ing] the information shown or to be shown on any map or document prepared or furnished *in connection with any one or more of the [land surveying] functions*" described in the preceding six subparagraphs (emphasis added)). Thus, "[e]ven assuming that [the Act] reaches some protected speech, and even assuming that its application to all of that speech is unconstitutional," Plaintiffs have not plausibly shown that "the ratio of unlawful-to-lawful applications is . . . lopsided enough to justify the 'strong medicine' of facial invalidation for overbreadth." *Hansen*, 599 U.S. at 784 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)).

4. Plaintiffs sought a preliminary injunction only with respect to their First Amendment challenges. Because we conclude that none of these challenges are stated plausibly, we necessarily find that none of these challenges are "likely to succeed on the merits." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As such, we affirm the district court's denial of Plaintiffs' motion for a preliminary injunction.

5. Plaintiffs' challenge under the Fourteenth Amendment's Due Process Clause is also meritless. Although the Due Process Clause "includes some generalized due process right to choose one's field of private employment," that right is "nevertheless subject to reasonable government regulation." *Conn v. Gabbert*, 526 U.S. 286, 291–92 (1999). Where a regulation

acts as a "complete barrier to entry into [a] profession," it is subject to rational basis review. *Dittman v. California*, 191 F.3d 1020, 1029–30 (9th Cir. 1999); *see Guzman v. Shewry*, 552 F.3d 941, 954 (9th Cir. 2009). Even assuming the Act operates to bar Plaintiffs from engaging in land surveying in California, the Act survives rational basis review for the reasons stated above.

6. Plaintiffs also challenge the Act under the Fourteenth Amendment's Equal Protection Clause. They essentially argue that they have been irrationally classified as producing "fancy" maps that are subject to regulation under the Act, despite the fact that their site plans contain the same information included in other "rough" maps "created by homeowners and contractors" that are not barred. Yet the Act makes no such distinction on its face, and Plaintiffs provide no evidence that the Act is actually enforced on the basis of whether a map is "too fancy,"[4] or that the Board would decline to investigate and cite similar maps created by others. *See also* Cal. Bus. & Prof. Code § 8790 (charging the Board with investigating and prosecuting violations of the Act "coming to its notice"). To the extent Plaintiffs allege that there are other site plans that "similarly violated [the Act], were reported to the Board, and despite that, [D]efendants chose only to

[4] Plaintiffs' emphasis on "fancy" maps appears to come from a comment made by Defendants' counsel at the preliminary injunction hearing. Read in context, however, Defendants' counsel simply used this word to indicate that Plaintiffs' site plans are sufficiently detailed that they are functionally indistinguishable from those produced by licensed land surveyors.

investigate and cite [P]laintiffs," the Opening Brief disclaims that Plaintiffs are making this argument.

7. Finally, the district court correctly declined to abstain under *Younger v. Harris*, 401 U.S. 37 (1971). Plaintiffs did not administratively appeal their citation order, and the mere fact that they *could* have done so and raised their constitutional challenges in the process does not mean there are any "ongoing state proceedings" for the purposes of *Younger* abstention. *See Potrero Hills Landfill, Inc. v. County of Solano*, 657 F.3d 876, 885 (9th Cir. 2011) ("Where a federal plaintiff seeks relief not from past state actions but merely from prospective enforcement of state law, federal court adjudication would not interfere with the state's basic executive functions in a way *Younger* disapproves."); *Duke v. Gastelo*, 64 F.4th 1088, 1096 (9th Cir. 2023) (criticizing as unsupported the argument that *Younger* requires a court to "look at all state-court proceedings — past, present, and future — afforded to the plaintiff" and abstain under *Younger* "if that plaintiff had or will have *any* chance to raise constitutional challenges in a state forum").[5]

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[5] Defendants request judicial notice of (a) the fact that Plaintiffs were cited a second time by the Board in October 2023, and (b) the fact that Plaintiffs have administratively appealed that second citation order. ECF Nos. 46, 52. Plaintiffs do not oppose either request. We grant the requests, but we note that the information contained therein has no bearing on the disposition of this case or, specifically, on the *Younger* abstention issue. *See Cook v. Harding*, 879 F.3d 1035, 1041 (9th Cir. 2018) ("We may not consider events after the filing of the complaint for purposes of our *Younger* analysis.").

AFFIRMED.[6]

[6] Plaintiffs' motion to expedite, ECF No. 26, is denied as moot.

APPENDIX B

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3. Plaintiffs also raise a facial overbreadth challenge to the Act under the First Amendment, arguing that the Act requires a land surveyor's license to create a map "show[ing] farmers' market vendors where to set up shop . . . or even for simple artwork depicting the location of a house." Beyond providing no evidence that the Act has actually been enforced so broadly, Plaintiffs' "string of hypotheticals" depends on an expansive and unsupported reading of the Act. *United States v. Hansen*, 599 U.S. 762, 782 (2023). Even granting that the Act is worded broadly, it plainly only covers maps produced "as an integral step in

[3] Regardless, the Act clearly does not purport to allow unlicensed persons to avoid being cited simply by disclaiming the accuracy of their site plans.

designing and locating specific projects," not any and all "map making in the abstract." 23 Ops. Cal. Atty. Gen. 86, 90 (1954); *see* Cal. Bus. & Prof. Code § 8726(a)(7) (barring unlicensed persons from "[d]etermin[ing] the information shown or to be shown on any map or document prepared or furnished *in connection with any one or more of the [land surveying] functions*" described in the preceding six subparagraphs (emphasis added)). Thus, "[e]ven assuming that [the Act] reaches some protected speech, and even assuming that its application to all of that speech is unconstitutional," Plaintiffs have not plausibly shown that "the ratio of unlawful-to-lawful applications is . . . lopsided enough to justify the 'strong medicine' of facial invalidation for overbreadth." *Hansen*, 599 U.S. at 784 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)).

4. Plaintiffs sought a preliminary injunction only with respect to their First Amendment challenges. Because we conclude that none of these challenges are stated plausibly, we necessarily find that none of these challenges are "likely to succeed on the merits." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As such, we affirm the district court's denial of Plaintiffs' motion for a preliminary injunction.

5. Plaintiffs' challenge under the Fourteenth Amendment's Due Process Clause is also meritless. Although the Due Process Clause "includes some generalized due process right to choose one's field of private employment," that right is "nevertheless subject to reasonable government regulation." *Conn v. Gabbert*, 526 U.S. 286, 291–92 (1999). Moreover, a

substantive due process claim invoking this right will generally only lie where there is "a *complete prohibition* of the right to engage in a calling." *Id.* at 292 (emphasis added).

Plaintiffs have not plausibly shown this is the case here. Indeed, Crownholm states that only "approximately sixteen percent of MySitePlan.com's existing total business" has been impacted by ceasing sales of site plan drawings in California.[4] A sixteen percent decline in revenue is not a complete prohibition. Even if it was sufficient to establish an infringed due process right, the Act would still only be subject to rational basis review. *Slidewaters LLC v. Wash. State Dep't of Lab. & Indus.*, 4 F.4th 747, 758 (9th Cir. 2021) (rational basis review is the proper test for "judging the constitutionality of statutes regulating economic activity"). As established above, the Act survives under this standard.

6. Plaintiffs also challenge the Act under the Fourteenth Amendment's Equal Protection Clause. They essentially argue that they have been irrationally classified as producing "fancy" maps that are subject to regulation under the Act, despite the fact that their site plans contain the same information included in other "rough" maps "created by homeowners and

[4] Furthermore, Richard Moore, the Board's Executive Officer, attested in a declaration to the district court that, "[h]ad Mr. Crownholm requested and attended an informal conference" after receiving the citation order, "he would have learned that it is possible for an unlicensed person to engage in the activities [Crownholm described] without violating" the portions of the Act for which he was cited.

contractors" that are not barred. Yet the Act makes no such distinction on its face, and Plaintiffs provide no evidence that the Act is actually enforced on the basis of whether a map is "too fancy,"[5] or that the Board would decline to investigate and cite similar maps created by others. *See also* Cal. Bus. & Prof. Code § 8790 (charging the Board with investigating and prosecuting violations of the Act "coming to its notice"). To the extent Plaintiffs allege that there are other site plans that "similarly violated [the Act], were reported to the Board, and despite that, [D]efendants chose only to investigate and cite [P]laintiffs," the Opening Brief disclaims that Plaintiffs are making this argument.

7. Finally, the district court correctly declined to abstain under *Younger v. Harris*, 401 U.S. 37 (1971). Plaintiffs did not administratively appeal their citation order, and the mere fact that they *could* have done so and raised their constitutional challenges in the process does not mean there are any "ongoing state proceedings" for the purposes of Younger abstention. *See Potrero Hills Landfill, Inc. v. County of Solano*, 657 F.3d 876, 885 (9th Cir. 2011) ("Where a federal plaintiff seeks relief not from past state actions but merely from prospective enforcement of state law, federal court adjudication would not interfere with the state's basic executive functions in a way

[5] Plaintiffs' emphasis on "fancy" maps appears to come from a comment made by Defendants' counsel at the preliminary injunction hearing. Read in context, however, Defendants' counsel simply used this word to indicate that Plaintiffs' site plans are sufficiently detailed that they are functionally indistinguishable from those produced by licensed land surveyors.

Younger disapproves."); *Duke v. Gastelo*, 64 F.4th 1088, 1096 (9th Cir. 2023) (criticizing as unsupported the argument that *Younger* requires a court to "look at all state-court proceedings — past, present, and future — afforded to the plaintiff" and abstain under *Younger* "if that plaintiff had or will have *any* chance to raise constitutional challenges in a state forum").[6]

AFFIRMED.[7]

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[6] Defendants request judicial notice of (a) the fact that Plaintiffs were cited a second time by the Board in October 2023, and (b) the fact that Plaintiffs have administratively appealed that second citation order. ECF Nos. 46, 52. Plaintiffs do not oppose either request. We grant the requests, but we note that the information contained therein has no bearing on the disposition of this case or, specifically, on the *Younger* abstention issue. *See Cook v. Harding*, 879 F.3d 1035, 1041 (9th Cir. 2018) ("We may not consider events after the filing of the complaint for purposes of our *Younger* analysis.").

[7] Plaintiffs' motion to expedite, ECF No. 26, is denied as moot.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RYAN CROWNHOLM, et al.,, Plaintiffs, v. RICHARD B. MOORE, et al., Defendants.	No. 2:22-cv-01720-DAD-CKD ORDER GRANTING DEFENDANTS' MOTION TO DISMISS (Doc. No. 15)

This matter is before the court on the motion to dismiss filed by Richard B. Moore, Rossana D'Antonio, Michael Hartley, Fel Amistad, Alireza Asgari, Duane Friel, Kathy Jones Irish, Coby King, Elizabeth Mathieson, Paul Novak, Mohammad Qureshi, Frank Ruffino, Wilfredo Sanchez, and Christina Wong ("defendants") on November 18, 2022. (Doc. No. 15.) A hearing by video was held on the pending motion on January 17, 2023. Attorney Paul Avelar appeared for plaintiffs. Deputy Attorney General Sharon O'Grady appeared on behalf of defendants. For the reasons explained below, the court will grant defendants' motion to dismiss.

BACKGROUND

Plaintiff Crown Capital Adventures, Inc., a Delaware corporation registered as a foreign corporation in California, operates the website MySitePlan.com, which creates and sells site plans in nearly all states of the United States, including California. (Doc. No. 1 at ¶¶ 11, 73.) Plaintiff Ryan Crownholm is the sole shareholder, director, and officer of Crown Capital Adventures, Inc., as well as the sole owner and operator of MySitePlan.com. (*Id.* at ¶¶ 9, 12.) Plaintiff Crownholm is not authorized to practice land surveying in California, since he is neither a licensed surveyor nor a civil engineer with a pre-1982 license. (*Id.* at ¶ 81); *see* Cal. Bus. & Prof. Code § 6731 (stating that civil engineers who became licensed before January 1, 1982 may practice land surveying). In California, plaintiffs create site plans using publicly available geographic information system mapping data, satellite imagery, and client-provided information, and then sell them to customers for planning, infrastructure management, general information, and submission to county and municipal building permit departments. (Doc. No. 1 at ¶¶ 2, 123.) Plaintiffs' website includes a disclaimer reading, "THIS IS NOT A LEGAL SURVEY, NOR IS IT INTENDED TO BE OR REPLACE ONE." (*Id.* at ¶ 62.)

Defendants are officers and members of the California Board for Professional Engineers, Land Surveyors, and Geologists (the "Board"), a consumer protection agency within the California Department of Consumer Affairs. (*See id.* at ¶¶ 13–18.) The Board regulates the practice of land surveying through its

administering of the California Professional Land Surveyors' Act (the "Act"), California Business & Professions Code §§ 8700–8805. (*See id.* at ¶ 76.) Section 8708 of the Act restricts the practice of land surveying in California to those who have a license or are specifically exempted, and § 8790 grants the Board disciplinary powers to enforce this restriction. Cal. Bus. & Prof. Code §§ 8708, 8790. The Act defines the practice of land surveying to include, among other things, a person who "[l]ocates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering"; "[d]etermines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in [this statute]"; or "[p]rocures or offers to procure land surveying work for themselves or others." (*Id.* at ¶ 84) (quoting Cal. Bus. & Prof. Code § 8726(a)(1), (7), (9)).

On December 28, 2021, the Board issued a citation order to plaintiffs for offering and practicing land surveying without legal authorization, in violation of the Act, on the grounds that the site plans that they offered through MySitePlan.com depicted "the location of property lines, fixed works, and the geographical relationship thereto," and therefore fall "within the definition of land surveying." (*Id.* at ¶¶ 77, 82.) The citation order issued by the Board directed plaintiffs to pay a fine of $1,000 and to "cease and desist from violating [California] Business & Professions Code §§ 8792(a) and (i)." (*Id.* at ¶¶ 79, 81.) California Business & Professions Code § 8792(a) and (i) make it a misdemeanor to "practice[], or offer[] to practice, land

surveying in this state" or "manage[] or conduct[] as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced" without legal authorization. (*Id.* at ¶ 83) (quoting Cal. Bus. & Prof. Code § 8792).

On September 29, 2022, plaintiffs filed the complaint initiating this action against defendants, in which plaintiffs seek a declaration by the Court that the Act, and in particular, California Business & Professions Code § 8726(a)(1), (7), and (9), and § 8792(a) and (i), is unconstitutional on its face and as applied to them. (*Id.* at 29.) On that basis, plaintiffs also seek to enjoin defendants from enforcing the Act. (*Id.*) Plaintiffs assert the following three causes of action in their complaint.

The first claim, brought under 42 U.S.C. § 1983 as an as-applied challenge, asserts that defendants violated the First Amendment of the U.S. Constitution by restraining how plaintiffs create and disseminate non-authoritative site plans to customers "for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing department purposes." (*Id.* at 20–22.) Plaintiffs allege that the way defendants apply the Act is a "content- and speaker-based restriction on the ability to use and generate information." (*Id.* at ¶ 128.) They also contend the "defendants lack a state interest, compelling or otherwise, in preventing Plaintiffs from creating and disseminating non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California

county and municipal building permit issuing department purposes." (*Id.* at ¶ 129.)

Plaintiffs' second claim, brought under 42 U.S.C. § 1983 as a facial challenge, alleges that California Business & Professions Code § 8726 is "unconstitutional on its face because it so vague that there is no way to know that it outlaws picture-drawing and/or it is so overbroad that it criminalizes innumerable wholly-innocuous pictures." (*Id.* at 23.) Plaintiffs allege that § 8726 is void for vagueness by "not providing fair warning to reasonable persons of ordinary intellect that their conduct is prohibited by the law in question" and specifically that the "use of preexisting public GIS data and other information to create and disseminate non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing department purposes is illegal." (*Id.* at ¶¶ 139, 146.) Plaintiffs allege that their customers have submitted thousands of their site plans to California county and municipal permit issuing departments over the years. (*Id.* at ¶ 147.) In addition, plaintiffs allege that "thousands of contractors and homeowners . . . regularly make such site plan drawing[s] and submit them to local jurisdictions, and the local jurisdictions accept[] such site plan drawings from non-surveyors." (*Id.* at ¶ 144.) Furthermore, plaintiffs allege that California Business & Professions Code § 8726(a)(1), (7), and (9) is overbroad because it "criminalizes a vast amount of informal mapmaking and information conveying by anyone without a surveyor's license." (*Id.* at ¶ 143.) They allege:

> [a]nyone who draws a picture of a property by retracing the alignment or elevation for a street or home (such as by copying a GIS map), draws a picture of a building on the earth (such as by copying a GIS map), retraces property lines (such as by copying a GIS map), determines the information to be shown in a drawing of property (such as choosing what information to copy from a GIS map), or offers to do any of those things, without a state license is a criminal.

(*Id.*) Additionally, plaintiffs point to the fact that the definition of land surveying from the National Council of Examiners for Engineering and Surveying ("NCEES") Model Rules excludes non-authoritative activities from its definition of land surveying. (*Id.* at ¶¶ 91, 92.) They allege that "[t]he Board has never adjusted its own rules or enforcement practices to reflect the NCEES Model Rules. To the contrary . . . the Board enforces California's vague, broad, and outdated statutes, rules, and regulations governing to their utmost limits." (*Id.* at ¶ 96.)

Plaintiffs bring their third cause of action under the Fourteenth Amendment's due process and equal protection clauses. (*Id.* at 26.) As unlicensed land surveyors, plaintiffs allege that "[f]orcing Plaintiffs into a regulatory framework meant to regulate professional surveyors results in unjustified barriers to Plaintiffs practicing their own occupation in violation of Due Process." (*Id.* at ¶ 158.) They allege that "[p]laintiffs' occupation is so different from the

occupation of professional land surveyors that the government's interest in regulating professional surveyors—ensuring accurate authoritative location survey products—is not implicated" and that the "years of education experience and exams" required to become a licensed land surveyor "are not rationally related to any legitimate government interest as applied to Plaintiffs' non-authoritative site plan drawings." (*Id.* at ¶¶ 157, 160). They further allege that "[o]n information and belief, hundreds, if not thousands, of non-surveyors in California routinely submit site plans based on copied GIS data or Google Maps to county and municipal building permit issuers" and that "county and municipal building permit issuers routinely accept" such site plans. (*Id.* at ¶¶ 51, 52.)

On October 18, 2022, plaintiffs filed a motion for a preliminary injunction, which the court denied on December 27, 2022. (Doc. Nos. 12, 21.) On November 18, 2022, defendants filed the pending motion to dismiss all of plaintiffs' claims. (Doc. No. 15.) On December 2, 2022, plaintiffs filed their opposition to the motion, and on December 12, 2022, defendants filed their reply thereto. (Doc. Nos. 17, 20.)

LEGAL STANDARD

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of

sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Though Rule 8(a) does not require detailed factual allegations, a plaintiff is required to allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. In determining whether a complaint states a claim on which relief may be granted, the court accepts as true the allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989), *abrogated on other grounds by DaVinci Aircraft, Inc. v. United States*, 926 F.3d 1117 (9th Cir. 2019).

When a complaint asserts statutory challenge claims that are subject to the rational basis level of scrutiny, the court may apply the rational basis test at the pleadings stage in ruling on a motion to dismiss, and the court can hypothesize a legitimate government interest.[1] *See Taylor v. Rancho Santa*

[1] The court notes that some district courts in the Ninth Circuit have held that applying the rational basis test is not appropriate at the motion to dismiss stage. *See, e.g.*, *Sacramento Cnty. Retired Emps. Ass'n v. Cnty. of Sacramento*, No. 2:11-cv-0355-KJM,

Barbara, 206 F.3d 932, 938 (9th Cir. 2000) (affirming the district court's grant of the defendant's motion to dismiss because the challenged statutes passed rational basis review, and accordingly, "the plaintiff [had failed] to state a constitutional claim upon which relief [could] be granted"); *Denis v. Ige*, 538 F. Supp. 3d 1063, 1077–78 (D. Haw. 2021) (dismissing a First Amendment free exercise claim under rational basis review on a motion to dismiss); *HSH, Inc. v. City of El Cajon*, 44 F. Supp. 3d 996, 1008 (S.D. Cal. 2014) ("In applying the rational basis test at the motion to dismiss stage, a court may go beyond the pleadings to hypothesize a legitimate governmental purpose."); *Est. of Vargas v. Binnewies*, No. 1:16-cv-01240-DAD-EPG, 2018 WL 1518568, at *7 (E.D. Cal. Mar. 28, 2018) (dismissing an equal protection claim under

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2012 WL 1082807, at *6 (E.D. Cal. Mar. 31, 2012); *FFV Coyote LLC v. City of San Jose*, No. 22-cv-00837-VKD, 2022 WL 15174254, at *7 (N.D. Cal. Oct. 26, 2022). However, given that "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the [government]," *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993), this court finds that it is proper to apply the rational basis test at the motion to dismiss stage, rather than waiting for summary judgment. *See also HSH, Inc.*, 44 F. Supp. 3d at 1008 (stating that when it comes to determining a legislature's purpose, courts may "hypothesize a legitimate governmental purpose" at the motion to dismiss stage, so long as the rational relationship is "real"). Nonetheless, as noted by the Seventh Circuit "[t]he rational basis standard, of course, cannot defeat the plaintiff's benefit of the broad Rule 12(b)(6) standard." *Wroblewski v. City of Washburn*, 965 F.2d 452, 459 (7th Cir. 1992). As a result, under Rule 12(b)(6), the court must assume the truth of the complaint's allegations and decline to dismiss the complaint if its allegations, if proven, would overcome the presumption of constitutionality. *Id.* at 460.

rational basis review on a motion to dismiss); *see also Sammon v. New Jersey Bd. of Med. Exam'rs*, 66 F.3d 639, 645 (3d Cir. 1995) ("Determining whether a particular legislative scheme is rationally related to a legitimate governmental interest is a question of law."). Nevertheless, courts have recognized that "rational basis review at the motion to dismiss stage poses unique challenges." *HSH, Inc.*, 44 F. Supp. 3d at 1008 (citation and internal quotations omitted). It has been recognized that a tension exists between the more liberal "plausibility" standard under Rule 12(b)(6) and the "heavy presumption of validity of government conduct inherent in the rational basis standard." *Olson v. California*, No. 19-cv-10956-DMG-RAO, 2020 WL 6439166, at *5 (C.D. Cal. Sept. 18, 2020) (quoting *A.J. Cal. Mini Bus, Inc. v. Airport Comm'n of the City & Cnty. of S.F.*, 148 F. Supp. 3d 904, 918–19 (N.D. Cal. 2015)). Therefore, when applying rational basis at the pleading stage, "[a] court should 'take as true all of the complaint's allegations and reasonable inferences that follow,' but the 'plaintiff must allege facts sufficient to overcome the presumption of rationality'" that applies to government conduct. *HSH, Inc.*, 44 F. Supp 3d at 1008 (quoting *Wroblewski*, 965 F.2d at 460).

ANALYSIS

In their pending motion, defendants seek dismissal of all three of plaintiffs' causes of action due to plaintiffs' failure to state a claim under Rule 12(b)(6). (Doc. No. 15-1 at 10.)[2] The court will address each of

[2] Defendants also move to dismiss the complaint pursuant to the *Younger* abstention doctrine, or in the alternative, to stay this

plaintiffs' claims under the Rule 12(b)(6) standard in turn.

A. First Amendment Free Speech Claim

In moving to dismiss plaintiffs' First Amendment claim, defendants argue that "the Act regulates conduct, and not protected speech, and as such it is subject to deferential rational basis review, which it easily passes." (Doc. No. 15-1 at 23.) The court agrees. In its order denying plaintiff's motion for a preliminary injunction, the court determined that the Act's restrictions on land surveying regulate professional *conduct* by requiring a license and this requirement does not impose more than an incidental burden on speech. (Doc. No. 21 at 11–12.) Accordingly, the court concluded that rational basis review is the appropriate standard of review, consistent with the Ninth Circuit's recent decision in *Tingley v. Ferguson*, 47 F.4th 1055, 1077, 1078 (9th Cir. 2022). (*Id.* at 12.)

Under rational basis review, California's land surveying law is "accorded a strong presumption of validity." *Heller v. Doe by Doe*, 509 U.S. 312, 319 (1993). The Act is constitutional if (1) it has a "legitimate governmental purpose" and (2) there is a "rational relationship between" that purpose and the means chosen

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action pursuant to the *Pullman* abstention doctrine. (Doc. No. 15-1 at 10.) In the court's order denying plaintiffs' motion for a preliminary injunction, the court explained why the *Younger* and *Pullman* abstention doctrines do not apply in this situation, and the court will not repeat its reasoning, which remains unchanged, here. (Doc. No. 21 at 4–7.)

by the government to achieve that purpose. *Id.* at 320. Taking as true all the factual allegations of plaintiffs' complaint and the reasonable inferences that follow, the court applies the facts in light of the rational basis standard. *See HSH, Inc.*, 44 F. Supp 3d at 1008.

Here, the challenged provisions of the Act satisfy both prongs of the rational basis test. The Act specifically states that its licensing requirement advances California's interest in "safeguard[ing] property and public welfare." Cal. Bus. & Prof. Code § 8708. California's state legislature has found that "[u]nlicensed activity in the professions and vocations regulated by the Department of Consumer Affairs is a threat to the health, welfare, and safety of the people of the State of California." Cal. Bus. & Prof. Code § 145(a). There is no question that states may enact licensing laws to protect the public from the consequences of ignorance or incapacity in the pursuit of professions. *See Hawker v. New York*, 170 U.S. 189, 195 (1898) ("It is within the power of the legislature to enact such laws as will protect the people from ignorant pretenders, and secure them the services of reputable, skilled, and learned men.") (citation omitted).

The Act's definition of land surveying and its licensing requirement are rationally related to California's interest in protecting the public from incompetent people and entities disseminating land surveying products. California's legislature's decision not to create a licensing exception for what plaintiffs describe as "non-authoritative" uses is rationally related to the state's goals of both protecting consumers and ensuring that building permits are not issued based on

incorrect property lines. Moreover, the licensing scheme helps ensure the competence of those who render land surveying services by requiring them to meet numerous requirements, which include multiple years of education and experience and four examinations. The Board protects consumers from the negligence of licensed land surveyors by disciplining them and suspending and revoking licenses. (Doc. No. 15-1 at 27.) The Board also protects consumers from unqualified land surveyors by issuing citation orders against persons and entities that offer illegal and unlicensed services when those activities have been brought to the Board's attention. (*Id.*)

Given this legitimate governmental purpose, the complaint's allegations are insufficient to overcome "the presumption of rationality" that applies to government conduct. *See Olson v. California*, 2020 WL 6439166, at *5; *HSH, Inc.*, 44 F. Supp 3d at 1008. Plaintiffs do allege that "various California county and municipal building permit issuers know that these site plans are not prepared by licensed surveyors and accept them because the permit issuers do not need legal surveys for their purposes," and "just need a general picture of the site." (*See* Doc. No. 1 at ¶¶ 41, 75.) Plaintiffs further allege that "[n]o building department or client has ever complained to Plaintiffs about MySitePlan.com site plan drawings." (*Id.*) But these facts, accepted as true, are insufficient to show that California's definition of land surveying is irrational or fails to serve the state's legitimate interests. Even if some permitting agencies accept unauthorized land surveys, plaintiffs' complaint does not negate California's rational basis for making these

products (like plaintiffs' site plan drawings) subject to the licensing scheme and giving the Board power to enforce such violations of the Act.

Because plaintiffs have alleged insufficient facts to support a plausible claim that the Act's land surveying definition is irrational, the court will grant defendants' motion to dismiss plaintiffs' First Amendment claim.

B. Vagueness and Overbreadth Claim

Plaintiffs' second claim, brought under 42 U.S.C. § 1983 as a facial challenge, asserts that California Business & Professional Code § 8726 is "unconstitutional on its face because it so vague that there is no way to know that it outlaws picture-drawing and/or it is so overbroad that it criminalizes innumerable wholly-innocuous pictures." (Doc. No. 1 at 23.)

1. Void for Vagueness

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). The vagueness doctrine reflects two related requirements. First, "laws [must] give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Id.* Ordinarily, all that is required to satisfy this due process concern is "'fair notice' of the conduct a statute proscribes." *Sessions v. Dimaya*, __U.S.__, 138 S. Ct. 1204, 1212 (2018). "But where

First Amendment freedoms are at stake, an even greater degree of specificity and clarity of laws is required, and courts ask whether language is sufficiently murky that speakers will be compelled to steer too far clear of any forbidden areas." *Edge v. City of Everett*, 929 F.3d 657, 664 (9th Cir. 2019) (internal citations, quotations, and brackets omitted). Second, the vagueness doctrine demands that laws "provide explicit standards for those who apply them" in order to avoid "arbitrary and discriminatory enforcement." *Grayned*, 408 U.S. at 108. Thus, when a statute's enforcement depends on a "completely subjective standard" it is constitutionally suspect. *Id.* at 113.

As noted, "vagueness concerns are more acute when a law implicates First Amendment rights." *Cal. Teachers Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001). But "perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity." *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989). Rather, "[t]he touchstone of a facial vagueness challenge in the First Amendment context . . . is not whether *some* amount of legitimate speech will be chilled; it is whether a *substantial* amount of legitimate speech will be chilled." *Cal. Teachers Ass'n*, 271 F.3d at 1152. It follows that "uncertainty at a statute's margins will not warrant facial invalidation if it is clear what the statute proscribes 'in the vast majority of its intended applications.'" *Id.* at 1151 (quoting *Hill v. Colorado*, 530 U.S. 703, 733 (2000)). At bottom, facial invalidation of a statute is "strong medicine" that should be employed "sparingly and only as a last resort." *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 580

(1998). Thus, the party seeking facial invalidation, even in the First Amendment context, faces a "heavy burden" in advancing their claim. *Id.* Whether a statute is unconstitutionally vague "'is a question of law' . . . that may be resolved on a motion to dismiss." *Mayfair House, Inc. v. City of W. Hollywood*, No. 13-cv-7112-GHK-RZ, 2014 WL 12599838, at *3 (C.D. Cal. May 5, 2014) (quoting *United States v. Erickson*, 75 F. 3d 470, 475 (9th Cir. 1996)).

As noted above, the Act defines the practice of land surveying to include, among other things, a person who "[l]ocates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering"; "[d]etermines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in [this statute]"; or "[p]rocures or offers to procure land surveying work for themselves or others." Cal. Bus. & Prof. Code § 8726(a)(1), (7), (9).

Based on this plain language of the statute, the court finds that § 8726 is not unconstitutionally vague. The court is not persuaded by plaintiffs' contention that this statute is void for vagueness by "not providing fair warning to reasonable persons of ordinary intellect that their conduct is prohibited by the law in question" and by not "provid[ing] fair warning to [p]laintiffs that their use of preexisting public GIS data and other information to create and disseminate non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and

municipal building permit issuing department purposes is illegal." (*See* Doc. No. 1 at ¶¶ 139, 146.) In the court's views, a person of ordinary intelligence would understand from the plain language of the statute that, absent a license, they cannot distribute or offer to distribute site plans to customers for building permits if those site plans retrace or reestablish boundary lines from preexisting public geographic information system data, and also that inclusion of a disclaimer does not shield them from liability. Notably, § 8726(a)(1) does not limit itself to the original surveyor who established a boundary line for the first time. Most of the words in § 8726(a)(1) describing what constitutes surveying begin with the prefix "re," commonly understood to mean "again," attached to the root word: locate, relocate (locate again), establish, reestablish (establish again), or retrace (trace again). Moreover, nowhere does the statute provide that a disclaimer, such as "this is not a legal survey," would serve to exclude that activity from the definition of land surveying or the licensing requirement. Accordingly, plaintiffs' factual allegations, accepted as true, are insufficient to show that the Act does not "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Grayned*, 408 U.S. at 108. Indeed, the Act's text is sufficiently clear that plaintiffs should have known their conduct qualified as land surveying under California law and is prohibited because plaintiffs were not licensed or exempted, and thus that they were at risk of being sanctioned pursuant to the Act's enforcement provisions.

As defendants argue, the fact that plaintiffs and other non-licensed persons have violated the statute without being cited for doing so does not render the Act vague. (*See* Doc. No. 15-1 at 30.) The Board is responsible for prosecuting violations of the Act "coming to its notice." Cal. Bus. & Prof. Code § 8790. The Board does not waive its enforcement authority merely because some unlicensed persons violating the provisions of the Act have not come to the Board's attention.

Accordingly, defendants' motion to dismiss plaintiffs' void for vagueness claim will also be granted.

2. Overbreadth

Plaintiffs' overbreadth claim presents a steep hurdle; the Supreme Court has cautioned that invalidating a statute under the First Amendment overbreadth doctrine is "'strong medicine' that is not to be 'casually employed.'" *United States v. Sineneng-Smith*, __ U.S. __, 140 S. Ct. 1575, 1581 (2020) (citation omitted). A statute is not overbroad just because "one can conceive of some impermissible applications." *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984). Rather, particularly in cases like this one where the challenged law regulates conduct and not merely speech, the asserted overbreadth must "not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). "[T]here must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the

Court for it to be facially challenged on overbreadth grounds." *Taxpayers for Vincent*, 466 U.S. at 801. Because the purpose of the overbreadth doctrine is to prevent the chilling of protected speech, "[r]arely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or to conduct necessarily associated with speech (such as picketing or demonstrating)." *Virginia v. Hicks*, 539 U.S. 113, 124 (2003).

Because the court has already determined that the Act's definition of land surveying regulates professional conduct with no more than an incidental burden on speech, plaintiffs face a significant obstacle in stating a claim upon which relief can be granted in this regard. *See Hicks*, 539 U.S. at 124; (Doc. No. 21 at 11–12.) The court finds that plaintiffs' allegations do not support an overbreadth challenge. Plaintiffs' allegations that the Act "criminalizes a vast amount of informal mapmaking and information conveying by anyone without a surveyor's license" and, for example, that "[a]nyone who draws a picture of a property by retracing the alignment or elevation for a street or home (such as by copying a GIS map) . . . without a state license is a criminal" are insufficient to state a cognizable claim. (*See* Doc. No. 1 at ¶ 143). Even accepting these allegations as true, they do not demonstrate that there is a realistic or actual danger that the statute will infringe upon recognized First Amendment protections. *See Taxpayers for Vincent*, 466 U.S. at 801. Plaintiffs have not alleged that the Act has been enforced against someone engaged in protected speech (such as an artist whose painting retraces the alignment or elevation of a house), let alone

that such an application constitutes a "substantial" number of enforcement actions. *See Broadrick*, 413 U.S. at 615 ("Although . . . laws, if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect—at best a prediction—cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe.").

Even if the NCEES Model Rules do not prohibit the dissemination of the type of non-authoritative, preliminary site plans that plaintiffs contend they make, California is not required to follow the NCEES Model Rules. Within the bounds of the U.S. Constitution, it is within each state's police power to determine how to regulate land surveying, if at all. The California legislature has chosen to proscribe the dissemination of maps depicting fixed works and geographical relationships, and it does not make an exception for situations where a person's land survey includes a disclaimer stating, "THIS IS NOT A LEGAL SURVEY, NOR IS IT INTENDED TO BE OR REPLACE ONE." That is, the statute does not support plaintiffs' view that a disclaimer of this sort renders their maps "informal" and "non-authoritative."

In addition, to support a claim of overbreadth, the party challenging the statute must identify a "significant difference between their claim that the [statute] is invalid on overbreadth grounds and their claim that it is unconstitutional when applied to their [own conduct]." *Taxpayers for Vincent*, 466 U.S. at 802, 803 (declining to entertain an overbreadth challenge

where the "appellees' attack on the ordinance is basically a challenge to the ordinance as applied to their activities"). Here, plaintiffs "have failed to identify any significant difference" between their claim that the Act's definition of land surveying is invalid on overbreadth grounds and their claim that the Act is unconstitutional when applied to their conduct. *See id.* at 802. In both scenarios, plaintiffs' allegations and arguments are that the Act should not regulate "informal" or "non-authoritative" site plans, regardless of whether those plans are offered by plaintiffs (plaintiffs' as-applied challenge) or by other non-licensed persons "not before the Court" (plaintiffs' facial overbreadth challenge). *See id.* at 801.

Accordingly, defendants' motion to dismiss plaintiffs' facial overbreadth claim will be granted.

C. Fourteenth Amendment Claim

Plaintiffs bring their third claim under the Fourteenth Amendment's due process and equal protection clauses. (Doc. No. 1 at 26.) The court will address each of these theories in turn.

1. Substantive Due Process

"[T]he Fourteenth Amendment's Due Process Clause includes some generalized due process right to choose one's field of private employment." *Conn v. Gabbert*, 526 U.S. 286, 291–92 (1999). However, the due process clause does not guarantee an unrestricted right to practice an occupation. *See id.* at 292

(clarifying that the right to choose one's field of private employment is "nevertheless subject to reasonable government regulation"); *Dent v. West Virginia*, 129 U.S. 114, 121–22 (1889) (holding "there is no arbitrary deprivation" of the right of plaintiff to "practice his profession" (medicine) "where its exercise is not permitted because of a failure to comply with conditions imposed by the state for the protection of society"); *Williamson v. Lee Optical of Okla. Inc.*, 348 U.S. 483, 486–87 (1955) (holding that an Oklahoma law making it unlawful for an optician to fit lenses without a prescription from a licensed optometrist or ophthalmologist did not violate the optician's due process right to do business); *Slidewaters LLC v. Wash. State Dep't of Lab. & Indus.*, 4 F.4th 747, 758 (9th Cir. 2021), *cert. denied sub nom. Slidewaters LLC v. Wash. Dep't of Lab. & Indus.*, __U.S.__, 142 S. Ct. 779 (2022) ("The right to pursue a common calling is not considered a fundamental right."). Ordinary economic and commercial regulations, such as the land surveying licensing scheme at issue here, are generally subject only to rational basis review. *See, e.g., Hodel v. Indiana*, 452 U.S. 314, 331–32 (1981); *Slidewaters*, 4 F.4th at 758. Indeed, plaintiffs concede that the rational basis test is appropriately applied to their Fourteenth Amendment claim. (Doc. No. 17 at 29.)

"The proper test for judging the constitutionality of statutes regulating economic activity is whether the legislation bears a rational relationship to a legitimate state interest." *Slidewaters*, 4 F.4th at 758 (internal quotations, citations, and modifications omitted). Under this standard, plaintiffs must show that California's actions are "clearly arbitrary and

unreasonable, having no substantial relation to the public health, safety, morals or general welfare." *Id.* (quoting *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1058 (9th Cir. 2012)) (citation omitted); *see also Hodel*, 452 U.S. at 331–32 ("Social and economic legislation . . . that does not employ suspect classifications or impinge on fundamental rights . . . carries with it a presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality."). Plaintiffs must negate "every conceivable basis which might support it." *Beach Commc'ns, Inc.*, 508 U.S. at 314–15; *see also Fields v. Legacy Health Sys.*, 413 F.3d 943, 955 (9th Cir. 2005) ("The challenger bears the burden of negating every conceivable basis which might support the legislative classification, whether or not the basis has a foundation in the record.").

Here, plaintiffs have not met their burden of alleging facts sufficient to show that California's actions are "clearly arbitrary and unreasonable." *Slidewaters*, 4 F.4th at 758. California, pursuant to its police power, has a legitimate interest in regulating those who practice land surveying within its borders to ensure that they provide at least minimally competent services to the public and to avoid building permits being issued based on unreliable data. *See Bradford v. State of Hawaii*, 846 F. Supp. 1411, 1420 (D. Haw. 1994) (upholding the use of Hawaiian language terms in the state's land surveyor's license exam under the rational basis test in response to an equal protection and substantive due process challenge); *Martinez v. Goddard*, 521 F. Supp. 2d 1002, 1009–11 (D. Ariz. 2007) (granting defendants' motion to dismiss,

finding that Arizona's contractor licensing law did not violate the Fourteenth Amendment's due process and equal protection clauses, as analyzed under the rational basis test). California's interest in this regard is furthered by requiring those practicing land surveying to have a license, even if land surveys are only used during the early stages in the permitting process and even if the site plans do not purport to be authoritative.

Although plaintiffs allege that the "years of education experience and exams" required to become a licensed land surveyor "are not rationally related to any legitimate government interest as applied to Plaintiffs' non-authoritative site plan drawings," (Doc. No. 1 at ¶ 160), this is merely an unsupported conclusion on plaintiffs' part. Plaintiffs contend that their site maps should not be deemed as legal surveys because they are "non-authoritative," i.e., the site maps contain a disclaimer that they are not legal surveys. (Doc. No. 17 at 24.) In so arguing, plaintiffs suggest that it is not reasonable to rely on these "non-authoritative" site plans given that they disclaim that they are legal surveys. (*Id.* at 23, 24). Thus, according to plaintiffs, because their "non-authoritative" site maps should not be defined as legal surveys, there is no rational basis to subject plaintiffs to the same qualifications as land surveyors. (*Id.* at 24.) Plaintiffs' argument is unavailing. California has rationally chosen not to include the exemption to its land surveying definition that plaintiffs wish to have included in the Act; under California law, what plaintiffs characterize as "non-authoritative" maps *are* nevertheless land surveys regulated by the Act. Moreover, plaintiffs'

argument that there is no rational basis to make the distribution of such land surveys unlawful (if done without a license) is undercut by plaintiffs' allegations that their customers use their site maps for planning and infrastructure management and local government agencies routinely accept these site maps for purposes of issuing permits. (Doc. No. 1 at ¶ 39, 40, 51, 52, 127.)

Plaintiffs' complaint does not plausibly allege that the government has acted irrationally in regulating land surveying. Rather, their claim appears to simply amount to a disagreement with California's land surveying regulations. However, as the Ninth Circuit recently noted, "government regulation does not constitute a violation of constitutional substantive due process rights simply because the businesses or persons to whom the regulation is applied do not agree with the regulation or its application." *Slidewaters*, 4 F.4th at 759.

For these reasons, the court will grant defendants' motion to dismiss plaintiffs' Fourteenth Amendment substantive due process claim.

2. Equal Protection

Plaintiffs do not allege they were subject to discrimination based on membership in a protected class. Rather, it appears that plaintiffs assert a "class of one" claim, arguing that they are being treated differently than others similarly situated to them. *See N. Pacifica LLC v. City of Pacifica*, 526 F.3d 478, 486

(9th Cir. 2008) ("When an equal protection claim is premised on unique treatment rather than on a classification, the Supreme Court has described it as a 'class of one' claim."). "In order to claim a violation of equal protection in a class of one case, the plaintiff must establish that the [government] intentionally, and without rational basis, treated the plaintiff differently from others similarly situated." *Id.* "To succeed, 'plaintiffs must demonstrate that they were treated differently than someone who is *prima facie* identical in all relevant respects.'" *Occhionero v. City of Fresno*, No. 1:05-cv-1184-LJO-SMS, 2008 WL 2690431, at *9 (E.D. Cal. July 3, 2008), *aff'd*, 386 F. App'x 745 (9th Cir. 2010) (citation omitted).

Plaintiffs do not adequately plead that defendants violated their right to equal protection. It is insufficient for plaintiffs to allege that "[o]n information and belief, hundreds, if not thousands, of non-surveyors in California routinely submit site plans based on copied GIS data or Google Maps to county and municipal building permit issuers." (Doc. No. 1 at ¶ 51.) Plaintiffs must also allege that those individuals' site maps similarly violated the statute, were reported to the Board, and despite that, defendants chose only to investigate and cite plaintiffs. *See Chico Scrap Metal, Inc. v. Raphael*, 830 F. Supp. 2d 966, 975 (E.D. Cal. 2011), *aff'd and remanded sub nom. Chico Scrap Metal, Inc. v. Robinson*, 560 F. App'x 650 (9th Cir. 2014). Plaintiffs have not done that. To reiterate, the Board is only responsible for prosecuting violations of the Act "coming to its notice." Cal. Bus. & Prof. Code § 8790. Thus, even if, as plaintiffs allege, "hundreds, if not thousands, of non-surveyors in California

routinely submit site plans based on copied GIS data or Google Maps to county and municipal building permit issuers" (Doc. No. 1 at ¶ 51), if those individuals were not reported to the Board, no intentional discrimination—and hence no denial of equal protection—plausibly occurred. *See N. Pacifica LLC*, 526 F.3d at 486; *Daniel v. Richards*, No. 13-cv-02426-VC, 2014 WL 2768624, at *2 (N.D. Cal. June 18, 2014) (granting a motion to dismiss the plaintiff's equal protection claim where the plaintiff did not allege facts that would demonstrate that any difference in treatment was intentionally directed at him). Furthermore, in support of their motion to dismiss, defendants have provided the court with copies of the Board's records, which show that the Board has enforced the Act against others similarly situated to plaintiffs. (Doc. No. 15-2 at 119–53.)[3]

For these reasons, plaintiffs' complaint fails to state a claim against defendants for violation of the equal protection clause, and defendants' motion to dismiss this claim will be granted as well.

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[3] Defendants seek judicial notice of the records of the Board's final enforcement actions (Doc. No. 15-2 at 119–53.) Having reviewed defendants' request, which plaintiffs do not oppose, the court takes judicial notice of these documents for the limited purpose of establishing that the Board has taken enforcement against others. *See* Fed. R. Evid. 201(b)–(c); *Burnell v. Marin Humane Soc'y*, No. 14-cv-05635-JSC, 2015 WL 6746818, at *2 n.1 (N.D. Cal. Nov. 5, 2015) (stating that "it is well established that a court may take judicial notice of records from other court proceedings, . . . including state judicial and administrative proceedings in particular") (citations omitted).

D. Leave to Amend

"Dismissal without leave to amend is proper if it is clear that the complaint could not be saved by amendment." *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1051 (9th Cir. 2008). To the extent that the pleadings can be cured by the allegation of additional facts, courts will generally grant leave to amend. *Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990) (citations omitted). At the hearing on the motion to dismiss, the court repeatedly invited plaintiffs to seek leave to amend their complaint. However, plaintiffs declined the opportunity to amend the complaint and instead chose to stand on their operative complaint. Accordingly, the court concludes that the granting of leave to amend would be futile.

CONCLUSION

For the reasons explained above:

1. Defendants' request for judicial notice (Doc. No. 15-2) is granted;

2. Defendants' motion to dismiss (Doc. No. 15) is granted in its entirety, without leave to amend;

3. The Clerk of the court is directed to close this case.

IT IS SO ORDERED.

Dated: **January 23, 2023**

/s/ Dale A. Drozd

UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RYAN CROWNHOLM, et al., Plaintiffs, v. RICHARD B. MOORE, et al., Defendants.	No. 2:22-cv-01720-DAD-CKD ORDER DENYING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION (Doc. No. 12)

This matter came before the court on December 6, 2022 for a hearing on a motion for a preliminary injunction filed on October 18, 2022 on behalf of Ryan Crownholm and Crown Capital Adventures, Inc. ("plaintiffs") seeking declaratory and injunctive relief against Richard B. Moore, Rossana D'Antonio, Michael Hartley, Fel Amistad, Alireza Asgari, Duane Friel, Kathy Jones Irish, Coby King, Elizabeth Mathieson, Paul Novak, Mohammad Qureshi, Frank Ruffino, Wilfredo Sanchez, and Christina Wong ("defendants"), in their official capacities as officers and members of the California Board for Professional Engineers, Land Surveyors, and Geologists (the "Board"). (Doc. No. 12.) Attorney Paul Avelar appeared by video for plaintiffs. Deputy Attorney

General Sharon O'Grady appeared by video on behalf of defendants. For the reasons explained below, the court will deny plaintiffs' motion for a preliminary injunction.

BACKGROUND

Plaintiff Crown Capital Adventures, Inc., a Delaware corporation registered as a foreign corporation in California, operates the website MySitePlan.com, which creates and sells site plans in nearly all states of the United States, including California. (Doc. No. 12-2 at ¶¶ 5, 49.) Plaintiff Ryan Crownholm is the sole shareholder, director, and officer of Crown Capital Adventures, Inc., as well as the sole owner and operator of MySitePlan.com. (*Id.* at ¶¶ 4, 6.) Mr. Crownholm is not authorized to practice land surveying in California, as he is neither a licensed surveyor nor a civil engineer with a pre-1982 license. (*Id.* at ¶ 7); *see* Cal. Bus. & Prof. Code § 6731 (stating that civil engineers who became licensed before January 1, 1982 may also practice land surveying). In California, plaintiffs create site plans using publicly available geographic information system mapping data, satellite imagery, and client-provided information, and then sell them to customers for planning, infrastructure management, general information, and submission to county and municipal building permit departments. (Doc. No. 1 at ¶¶ 2, 123.)

The Board is a consumer protection agency within the California Department of Consumer Affairs. (*See* Doc. No. 13-1 at 42.) The Board regulates the practice

of land surveying through administering the California Professional Land Surveyors' Act (the "Act"), California Business & Professions Code §§ 8700 through 8805. Section 8708 of the Act restricts the practice of land surveying in California to those who have a license or are specifically exempted, and § 8790 grants the Board disciplinary powers to enforce this restriction. California law defines the practice of land surveying to include, among other things, a person who "[l]ocates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering"; "[l]ocates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries"; "[d]etermines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in [this statute]"; or "[p]rocures or offers to procure land surveying work for themselves or others." Cal. Bus. & Prof. Code § 8726(1), (3), (7), (9).

On December 28, 2021, the Board issued a citation order to plaintiffs for offering and practicing land surveying without legal authorization, in violation of the Act, on the grounds that the site plans that they offered through MySitePlan.com depicted "the location of property lines, fixed works, and the geographical relationship thereto," falling "within the definition of land surveying." (Doc. Nos. 12-1 at 11, 12; 12-3 at 11.) Plaintiffs' website includes a disclaimer reading, "THIS IS NOT A LEGAL SURVEY, NOR IS IT INTENDED TO BE OR REPLACE ONE." (Doc. No. 13-

2 at ¶ 9.) However, the website also displays statements such as: "Guaranteed Acceptance," "Widely accepted by building departments and HO's for residential permitting purposes," "OUR SITE PLANS ARE GREAT FOR [¶] Demolition permits. . . . [¶] Conditional Use Permits. . . . [¶] Construction Permits. . . . [¶] Sign Permits. . . . [¶] Residential and Commercial Site Plans. . . ." (*Id.*) The citation order issued by the Board directed plaintiffs to pay a fine of $1,000 and to "cease and desist from violating" California Business & Professions Code §§ 8792(a) and (i) and 8726(a)(1), (3), and (9). (Doc. Nos. 12-3 at 10; 13 at 12.) California Business & Professions Code § 8792(a) and (i) make it a misdemeanor to "practice[], or offer[] to practice, land surveying in this state" or "manage[] or conduct[] as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced" without legal authorization.

Plaintiffs were advised that they could appeal the citation by requesting an informal conference, a hearing before an administrative law judge ("ALJ"), or both. (Doc. No. 13 at 13.) On January 20, 2022, plaintiffs submitted a notice of appeal and requested a hearing before an ALJ. (*Id.*) Plaintiffs withdrew the notice of appeal on September 22, 2022, less than one week before the requested hearing scheduled for September 27, 2022, and they expressly accepted the terms of the Board's citation and agreed not to appeal it. (Doc. No. 13-1 at 4–5, 42.)

On September 29, 2022, plaintiffs filed a complaint against defendants seeking to declare the Act, and in particular, California Business & Professions

Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i), unconstitutional on its face and as applied to them and to enjoin its enforcement. (Doc. No. 1 at 29.) Plaintiffs assert three causes of action in their complaint. The first claim, brought under 42 U.S.C. § 1983 as an as-applied challenge, asserts that defendants violated the First Amendment of the U.S. Constitution by restraining how plaintiffs create and disseminate non-authoritative site plans to customers "for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing department purposes." (*Id.* at 20–22.) Plaintiffs allege that the way defendants apply the Act is a "content- and speaker-based restriction on the ability to use and generate information." (*Id.* at ¶ 128.) Plaintiffs' second claim, brought under 42 U.S.C. § 1983 as a facial challenge, asserts that California Business & Professions Code § 8726 is "unconstitutional on its face because it so vague that there is no way to know that it outlaws picture-drawing and/or it is so overbroad that it criminalizes innumerable wholly-innocuous pictures." (*Id.* at 23.) Plaintiffs bring their third cause of action under the Fourteenth Amendment's Due Process and Equal Protection Clauses. (*Id.* at 26.)

On October 18, 2022, plaintiffs filed the pending motion for a preliminary injunction seeking to enjoin enforcement of the Act. (Doc. No. 12.) On November 1, 2022, defendants filed their brief in opposition to the pending motion, and plaintiffs filed their reply thereto on November 14, 2022. (Doc. Nos. 13, 14.)

ANALYSIS

A. Abstention

1. *Younger* Abstention

Defendants first assert that the court need not consider the merits of the pending motion because the *Younger* abstention doctrine applies here. (Doc. No. 13 at 14.) In *Younger*, the U.S. Supreme Court held that "absent extraordinary circumstances, a federal court may not interfere with a pending state criminal prosecution." *Potrero Hills Landfill, Inc. v. County of Solano*, 657 F.3d 876, 882 (9th Cir. 2011) (citing *Younger v. Harris*, 401 U.S. 37, 54 (1971)). The Supreme Court has since extended *Younger* abstention to two additional categories of cases identified in its decision in *New Orleans Pub. Service, Inc. v. Council of New Orleans* ("*NOPSI*"), 491 U.S. 350, 367–68 (1989): "'[1] state civil proceedings that are akin to criminal prosecutions, and . . . [2] state civil proceedings that implicate a State's interest in enforcing the orders and judgments of its courts.'" *Herrera v. City of Palmdale*, 918 F.3d 1037, 1043 (9th Cir. 2019) (quoting *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014)). Together, these three categories of cases are known as the *NOPSI* categories. *Id.* at 1044.

"To warrant *Younger* abstention, a state civil action must fall into one of the *NOPSI* categories, and must also satisfy a three-part inquiry: the state proceeding must be (1) 'ongoing,' (2) 'implicate important state interests,' and (3) provide 'an adequate

opportunity . . . to raise constitutional challenges.'" *Id.* (quoting *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)). In addition, the Ninth Circuit has "articulated an implied fourth requirement that (4) the federal court action would 'enjoin the proceeding, or have the practical effect of doing so.'" *Potrero Hills Landfill, Inc.*, 657 F.3d at 882 (quoting *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1148–49 (9th Cir. 2007)). "For *Younger* to apply, all four requirements must be 'strictly satisfied.'" *Barra v. City of Kerman*, No. 1:08-cv-01909-OWW-GSA, 2009 WL 1706451, at *5 (E.D. Cal. June 9, 2009) (citing *AmerisourceBergen Corp.*, 495 F.3d at 1149).

At the hearing on the pending motion for a preliminary injunction, defendants argued that the first requirement for abstention under *Younger* applies here because plaintiffs agreed to the cease-and-desist order and are subject to further proceedings if they were to violate it. However, the court finds that the first requirement of *Younger* is absent. On September 21, 2022, plaintiffs withdrew their notice of appeal and expressly accepted the terms of the citation, including agreeing not to appeal the Board's citation. (Doc. No. 13-1 at 4, 42.) Because plaintiffs agreed not to appeal the citation, defendants can point to no ongoing state proceedings. The fact that the Board could take further measures *if* plaintiffs were to violate the cease-and-desist order does not mean that those civil proceedings are currently ongoing. Thus, abstention under *Younger* would not appear to be appropriate at this time.

2. *Pullman* Abstention

Defendants also argue that the court should abstain from deciding the pending motion for a preliminary injunction under the doctrine explained in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), which is known as "*Pullman* abstention." (Doc. No. 13 at 16.) Abstention under *Pullman* "is an extraordinary and narrow exception to the duty of a district court to adjudicate a controversy." *Wolfson v. Brammer*, 616 F.3d 1045, 1066 (9th Cir. 2010) (internal alterations and quotation marks omitted); *see also Porter v. Jones*, 319 F.3d 483, 492 (9th Cir. 2003) ("*Pullman* abstention should rarely be applied."). It is appropriate only when all three of the following factors are satisfied:

> (1) The case touches on a sensitive area of social policy upon which the federal courts ought not enter unless no alternative to its adjudication is open, (2) constitutional adjudication plainly can be avoided if a definite ruling on the state issue would terminate the controversy, and (3) the proper resolution of the possible determinative issue of state law is uncertain.

Porter, 319 F.3d at 492 (internal alteration and quotation marks omitted).

The Ninth Circuit has observed that the first *Pullman* requirement for abstention "is 'almost never'

satisfied in First Amendment cases." *Courthouse News Serv. v. Planet*, 750 F.3d 776, 784 (9th Cir. 2014) (quoting *Ripplinger v. Collins*, 868 F.2d 1043, 1048 (9th Cir. 1989)); *see also Wolfson*, 616 F.3d at 1066 (specifically stating that *Pullman* abstention "is generally inappropriate when First Amendment rights are at stake") (internal alterations and quotation marks omitted). This is because "there is a risk in First Amendment cases that the delay that results from abstention will itself chill the exercise of the rights that the plaintiffs seek to protect by suit." *Porter*, 319 F.3d at 487. Moreover, the Ninth Circuit has stated that "we do not believe that the norm against *Pullman* abstention in First Amendment cases must be limited to instances in which the plaintiff challenges a statute that directly regulates expression. Government action that does not directly prohibit expressive activity may nonetheless raise profound First Amendment concerns." *Courthouse News*, 750 F.3d at 787.

Delaying the adjudication of plaintiffs' First Amendment claims would contravene the First Amendment's policy of mitigating any chilling influences on the exercise of rights. Indeed, plaintiffs themselves allege that the "application of California's surveying definition will chill First Amendment rights." (Doc. No. 12-1 at 29.) Defendants have also failed to explain how addressing plaintiffs' First Amendment challenge is not within this federal court's purview or what alternatives plaintiffs would have to remedy the alleged constitutional wrongs. Accordingly, the court concludes that the first factor

required for *Pullman* abstention is not satisfied here, making abstention under *Pullman* inappropriate.

B. Preliminary Injunction

The proper legal standard for preliminary injunctive relief requires a party to demonstrate "'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see also Ctr. for Food Safety v. Vilsack*, 636 F.3d 1166, 1172 (9th Cir. 2011) ("After *Winter*, 'plaintiffs must establish that irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.'") (quoting *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)). The Ninth Circuit has also held that an "injunction is appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *All. for Wild Rockies*, 632 F.3d at 1134–35 (citation omitted). The party seeking the injunction bears the burden of proof as to each of these elements. *Klein v. City of San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009); *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) ("A plaintiff must do more than merely allege imminent harm sufficient to establish standing; a plaintiff must *demonstrate* immediate threatened injury as a prerequisite to preliminary injunctive relief."). Finally, an injunction is "an extraordinary remedy that may

only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

1. Likelihood of Success on the Merits

The likelihood of success on the merits is the most important *Winter* factor. *See Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017). Plaintiffs bear the burden of demonstrating that they are likely to succeed on the merits of their claims or, at the very least, that "serious questions going to the merits were raised." *All. for Wild Rockies*, 632 F.3d at 1131. For the reasons stated below, the court concludes that plaintiffs have neither shown a likelihood of success on the merits nor raised serious questions going to the merits of their First Amendment freedom of speech, void for vagueness, and overbreadth claims.[1]

a. *Plaintiffs Have Failed to Show That the Law and Facts Clearly Favor Their Argument That the Act Violates the First Amendment*

i. Plaintiffs Have Not Clearly Shown That the Act Is Content Based

[1] Plaintiffs bring their third cause of action under the Fourteenth Amendment's Due Process and Equal Protection Clauses. However, neither their motion for a preliminary injunction nor their reply in support of that motion contain any argument to that effect. Accordingly, the court will not address plaintiffs' third cause of action in addressing their motion for a preliminary injunction.

"The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits laws that abridge the freedom of speech." *Nat'l Inst. of Family & Life Advocates v. Becerra* ("*NIFLA*"), __ U.S. __, 138 S. Ct. 2361, 2371 (2018). Under the First Amendment, a government cannot "restrict expression because of its message, its ideas, its subject matter, or its content." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (quoting *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 95 (1972)). A law that is content based is generally subject to strict scrutiny. *See id.* at 164. A law may be content based in two ways: it may be content based "on its face" or alternatively, it may rely on a content-based "purpose and justification." *Id.* at 163–64. "A regulation of speech is facially content based under the First Amendment if it 'target[s] speech based on its communicative content'—that is, if it 'applies to particular speech because of the topic discussed or the idea or message expressed.'" *City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC*, __ U.S. __, 142 S. Ct. 1464, 1471 (2022) (alteration in original) (quoting *Reed*, 576 U.S. at 163).

Plaintiffs argue that the California licensing requirement at issue here is content based on its face because it singles out a particular form of speech: the depiction of "property lines, fixed works, and the geographical relationship thereto." (Doc. No. 12-1 at 19.) Specifically, they contend that "[i]f Plaintiffs instead created and disseminated drawings depicting virtually anything besides 'property lines, fixed works, and the geographical relationship thereto,' . . . the Board would not have applied the surveyor-licensing law to restrict the drawings." (Doc. No. 12-1 at 19.) This

argument is both circular and unavailing to plaintiffs. Merely defining the conduct to be regulated, i.e., "locat[ing] property lines," and "establish[ing] . . . the alignment or elevation for . . . fixed works embraced within the practice of civil engineering," does not make the Act content based. Cal. Bus. & Prof. Code § 8726(a)(1), (3); *see Kagan v. City of New Orleans*, 957 F. Supp. 2d 774, 779 (E.D. La. 2013), *aff'd sub nom. Kagan v. City of New Orleans, La.*, 753 F.3d 560 (5th Cir. 2014) (maintaining that the mere fact that the licensing scheme referred to the conduct that it regulated did not mean that it was content based). Adopting plaintiffs' position that the Act is content based because it describes the content to be regulated would inappropriately blur the distinction between speech and conduct. *See United States v. O'Brien*, 391 U.S. 367, 376 (1968) ("We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea.").

The court finds nothing on the face of the Act suggesting that it is directed at any message, speaker, or group of speakers. The court is also unable to discern any viewpoints, topics, or subject matters that the Act singles out for differential treatment. *See Reagan Nat'l Advert.*, 142 S. Ct. at 1472 (finding that a sign ordinance was not subject to strict scrutiny because it did not "single out any topic or subject matter for differential treatment"). The Act's definition of land surveying does not mention speech at all and, instead, focuses on the non-expressive conduct that falls within the purview of the Act, for example, "establish[ing] . . . the alignment or elevation for . . . fixed

works embraced within the practice of civil engineering." Cal. Bus. & Prof. Code § 8726(a)(1). Additionally, the Act distinguishes not based on the speaker but based on whether one is legally authorized to practice land surveying. Cal. Bus. & Prof. Code § 8708. There is no indication that California's licensing scheme prevents certain speakers or groups of speakers from obtaining a license based on anything but their qualifications.

Next, the court must determine whether plaintiffs are likely to show that the Act relies on a content-based purpose or justification because of disagreement with the message it conveys. *See Reed*, 576 U.S. at 164; *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) ("Even if the hypothetical measure on its face appeared neutral as to content and speaker, its purpose to suppress speech and its unjustified burdens on expression would render it unconstitutional."). Here, the court also finds nothing to indicate that the Act was motivated by a desire to suppress any message based on disagreement with it. In fact, in their papers, plaintiffs offered no evidence or argument that they intend to express any idea or message through their distribution of land surveying products. At the hearing on the pending motion for a preliminary injunction, when asked by the court what idea plaintiffs were trying to convey with their site plans, plaintiffs responded that they were trying to portray the distance between a fixed work and a property line. Plaintiffs' response does not go beyond land surveying conduct or claim a "significant expressive element" in their site plans. *See HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682, 685 (9th Cir. 2019)

(finding that the challenged ordinance—which prohibited processing transactions for unlicensed properties—only regulated conduct, and that this conduct lacked any "significant expressive element").

Rather than regulating the practice of land surveying to suppress speech or expression, California's purpose and justification for the Act are directed at the non-speech-related risks of land surveying. *See Int'l Franchise Ass'n, Inc. v. City of Seattle*, 803 F. 3d 389, 409 (9th Cir. 2015) (finding that the district court did not err in finding that plaintiff did not show a likelihood of success on the merits with respect to its First Amendment Claim because the challenged ordinance did not target expressive activity). Any limitations on speech are incidental to the Act's purpose, which is "to safeguard property and public welfare." Cal. Bus. & Prof. Code § 8708. According to declarations defendants filed in support of their position, the consequences of providing incorrect land surveys include incorrect locations of property lines, gaps in the location of property ownership rights, and the construction of fixed improvements that encroach on required setbacks or on the property line itself, all of which can injure the value of the client's land, create disputes with neighbors regarding property, and result in litigation. (*See* Doc. Nos. 13-1 at ¶ 15; 13-2 at ¶ 6; 13-3 at ¶ 4.) The Act's licensing requirement helps ensure that those practicing land surveying are qualified and competent to do so and follow the applicable laws. (*See* Doc. Nos. 13-1 at ¶ 4; 13-2 at ¶ 4; 13-3 at ¶ 3.)

ii. Plaintiffs Have Not Clearly Shown That the Act Regulates Speech Rather Than Conduct

The First Amendment does not protect "nonexpressive conduct" or "prevent restrictions directed at . . . conduct from imposing incidental burdens on speech." *Sorrell*, 564 U.S. at 567. Because "[i]t is possible to find some kernel of expression in almost every activity a person undertakes," an activity containing a "kernel of expression" is not sufficient to bring the conduct within the First Amendment's protection. *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989). The Supreme Court has recently reaffirmed[2] that "[s]tates

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[2] A long line of Supreme Court precedent has upheld states' power to regulate professional conduct by mandating professional licensing requirements and prohibiting unlicensed practice. *See, e.g.*, *Dent v. West Virginia*, 129 U.S. 114, 122 (1889) ("As one means to this end [of securing the general welfare] it has been the practice of different states, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely . . . . The nature and extent of the qualifications required must depend primarily upon the judgment of the state as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty."); *Hawker v. New York*, 170 U.S. 189, 195 (1898) ("It is within the power of the legislature to enact such laws as will protect the people from ignorant pretenders, and secure them the services of reputable, skilled, and learned men.") (quotation marks omitted); *Schware v. Bd. of Bar Exam. of N.M.*, 353 U.S. 232, 239 (1957) ("A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law."); *Thomas v. Collins*, 323 U.S. 516, 545 (1945) (Jackson, J., concurring)

may regulate professional conduct, even though that conduct incidentally involves speech." *NIFLA*, 138 S. Ct. at 2372; *see also Tingley v. Ferguson*, 47 F.4th 1055, 1077, 1078 (9th Cir. 2022) (applying *NIFLA* and finding that Washington's conversion therapy law was a regulation on conduct that incidentally burdened speech and that it survived rational basis review). "While drawing the line between speech and conduct can be difficult, [the Supreme Court's] precedents have long drawn it." *NIFLA*, 138 S. Ct. at 2373.

Based on the record before the court, it appears that California's restrictions on land surveying regulate professional *conduct* by requiring a license and that this requirement does not impose more than an incidental burden on speech. The Act prevents one from practicing land surveying—i.e., "relocat[ing] . . . the alignment or elevation for any of the fixed works embraced within the practice of civil engineering"—without being licensed. Cal. Bus. & Prof. Code § 8726(a)(1). It does not prevent individuals from speaking about land surveying topics. For example, the Act does not prevent an unlicensed person from making a speech urging people to adopt certain land surveying practices. *See Thomas v. Collins*, 323 U.S. at 544 (Jackson, J., concurring) ("A state may forbid

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("The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or the irresponsible, or against unauthorized representation of agency. A usual method of performing this function is through a licensing system.").

one without its license to practice law as a vocation, but I think it could not stop an unlicensed person from making a speech about the rights of man or the rights of labor, or any other kind of right, including recommending that his hearers organize to support his views. Likewise, the state may prohibit the pursuit of medicine as an occupation without its license but I do not think it could make it a crime publicly or privately to speak urging persons to follow or reject any school of medical thought."). Because the Act regulates what activities fall within the ambit of land surveying requiring licensure, not what one can say, it is a regulation on conduct, not speech. *See Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 60 (2006) ("[T]he Solomon Amendment regulates conduct, not speech. It affects what law schools must *do*—afford equal access to military recruiters—not what they may or may not *say*."). While it might be possible to find a "kernel of expression" in the practice of land surveying, that is insufficient to trigger strict scrutiny. *See Stanglin*, 490 U.S. at 25.

iii. Plaintiffs Have Not Clearly Shown That the Act Does Not Withstand Scrutiny

Having determined that the Act regulates professional conduct with no more than an incidental burden on speech, the court must determine what level of scrutiny is appropriately applied in reviewing the Act. The Ninth Circuit recently stated in *Tingley* that "*Pickup*'s treatment of regulations of professional conduct incidentally affecting speech survives *NIFLA*." 47 F.4th at 1076. In *Pickup v. Brown*, *abrogated on other grounds by NIFLA*, 740 F.3d 1208 (9th Cir.

2014), the Ninth Circuit subjected a regulation of professional conduct that had an incidental effect on speech to the rational basis review test. *Id.* at 1231. Here, because the Act regulates professional conduct, rational basis review is also appropriate. "A law is 'presumed to be valid and will be sustained' under rational basis review if it is 'rationally related to a legitimate state interest.'" *Tingley*, 47 F.4th at 1078.

According to the Act, the licensing requirement at issue advances California's legitimate interest in "safeguard[ing] property and public welfare." Cal. Bus. & Prof. Code § 8708. Without a doubt, safeguarding property and the public welfare is an important and legitimate state interest. According to a declaration submitted by defendants, and as noted above, surveying incorrectly done "may result in incorrect locations of property lines, gaps in the location of property ownership rights, or the construction of fixed improvements that encroach on required setbacks, or even on the property line itself, potentially injuring the value of the client's land, creating disputes with neighbors whose property lines are affected, and even resulting in litigation." (Doc. No. 13-1 at ¶ 15.)

The means used to effectuate this purpose is rationally related to California's interests. *See F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993) ("[A] legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data."). California's legislature may have decided not to exempt land surveys with disclaimers from its licensing requirement to prevent building permits from being issued based

on incorrect property lines. The licensing requirement helps ensure that land surveyors have demonstrated competency and knowledge of relevant state laws and that licensees who violate those standards are subject to discipline. (Doc. Nos. 13-1 at ¶ 4; 13-2 at ¶ 4; 13-3 at ¶ 3.) As explained above, there is no indication that the challenged Act is in any way related to the suppression of ideas. Rather, the Act merely targets the non-expressive consequences of land surveying without a license.

Once a person obtains the required qualifications, they may sell site plans for building permits that include the depiction of property lines and measurements. *See* Cal. Bus. & Prof. Code § 8708. Even without obtaining a license, plaintiffs remain free to sell site plans that are not land surveying products, and they can speak with the public and their clients regarding any subject they choose. (*See* Doc. No. 13 at 25.) They can also continue doing business in California by offering site plans that do not require a land surveyor's license. (*See id.* at 29.) For these reasons, the court concludes that plaintiffs are unlikely to be successful in showing that the Act does not meet rational basis review.

Moreover, defendants have presented an alternative basis upon which to uphold the Act against plaintiffs' First Amendment challenge. Defendants argue in their opposition that the Act would likely be upheld because there is a long tradition of states regulating land surveying. (Doc. No. 13 at 22.) Plaintiffs do not address this argument in their reply. (Doc. No. 14.)

The court finds defendants' reasoning in this regard to be persuasive.

The Supreme Court acknowledged in *NIFLA* that governments may impose even content-based restrictions on speech where there is a "persuasive evidence . . . of a long (if heretofore unrecognized) tradition [of regulation] to that effect." *NIFLA*, 138 S. Ct. at 2372 (internal quotations and citations omitted). Recently, in *Tingley*, the Ninth Circuit relied on this principle as an alternative basis for upholding a challenged Washington law. 47 F.4th at 1080.

Here, there is persuasive evidence before the court establishing a long history of regulating land surveying. California has regulated land surveyors since 1891. (Doc. Nos. 13 at 22; 13-6 at 6 –8.)[3] California's definition of land surveying has remained relatively unchanged since 1941 and, in that time, has not specifically exempted site plans disclaiming that they are not legal surveys. (Doc. No. 13-6 at 17–79.) Declarations that defendants submitted indicate that all 50 states and the U.S. territories require that land

[3] Defendants request that this court take judicial notice of various versions of California statutes regulating land surveying since 1891. (Doc. No. 13-6.) Plaintiffs do not object to defendants' request for judicial notice. Public records are properly the subject of judicial notice because the contents of such documents contain facts that are not subject to reasonable dispute, and the facts therein "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Accordingly, the court grants defendants' request and takes judicial notice of the California statutes. *See id.*; *see also Intri-Plex Techs., Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007).

surveyors be licensed. (Doc. Nos. 13-1 at ¶ 16; 13-2 at ¶ 4; 13-5 at ¶ 4.) Moreover, neither party has cited any case in any jurisdiction striking down a state's definition of land surveying or requirement that persons engaged in land surveying must be licensed.

Thus, defendants have shown that the Act likely satisfies the requisite scrutiny, whether the court views it as falling under the exception from heightened scrutiny for regulations on professional conduct that incidentally involve speech or as falling under the tradition of land surveying regulations. *See Tingley*, 47 F.4th at 1080.[4]

b. *Plaintiffs Have Failed to Show That the Law and Facts Clearly Favor Their Argument That the Act Is Vague and Overbroad*

Plaintiffs raise a facial constitutional challenge to California's definition of land surveying set forth in California Business & Professions Code § 8726 on vagueness and overbreadth grounds. As to this challenge, plaintiffs confront a "heavy burden" in advancing their claim. *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998). As explained below, the court concludes that plaintiffs have not clearly shown that the challenged Act is void for vagueness or overbroad.

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[4] Defendants also argue that the Act would pass muster as a regulation of commercial speech. (Doc. No. 13 at 23.) Because the court has determined that plaintiffs have not shown a likelihood of success on the merits of their claims, it need not address defendants' commercial speech argument in this order.

i. Plaintiffs Have Not Clearly Shown that the Act Is Void for Vagueness

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). The vagueness doctrine reflects two related requirements. First, "laws [must] give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Id.* at 108. Ordinarily, all that is required to satisfy this due process concern is "'fair notice' of the conduct a statute proscribes." *Sessions v. Dimaya*, __U.S.__, 138 S. Ct. 1204, 1212 (2018). "But where First Amendment freedoms are at stake, an even greater degree of specificity and clarity of laws is required, and courts ask whether language is sufficiently murky that speakers will be compelled to steer too far clear of any forbidden areas." *Edge v. City of Everett*, 929 F.3d 657, 664 (9th Cir. 2019) (internal citations, quotations, and brackets omitted). Second, the vagueness doctrine demands that laws "provide explicit standards for those who apply them" in order to avoid "arbitrary and discriminatory enforcement." *Grayned*, 408 U.S. at 108. Thus, when a statute's enforcement depends on a "completely subjective standard" it is constitutionally suspect. *Id.* at 113.

Although "vagueness concerns are more acute when a law implicates First Amendment rights," *Cal. Teachers Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001), "perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity." *Ward v. Rock*

Against Racism, 491 U.S. 781, 794 (1989). Rather, "[t]he touchstone of a facial vagueness challenge in the First Amendment context . . . is not whether *some* amount of legitimate speech will be chilled; it is whether a *substantial* amount of legitimate speech will be chilled." *Cal. Teachers Ass'n*, 271 F.3d at 1152. It follows that "uncertainty at a statute's margins will not warrant facial invalidation if it is clear what the statute proscribes 'in the vast majority of its intended applications.'" *Id.* at 1151 (quoting *Hill v. Colorado*, 530 U.S. 703, 733 (2000)). At bottom, facial invalidation of a statute is "strong medicine" that should be employed "sparingly and only as a last resort." *Finley*, 524 U.S. at 580. Thus, the party seeking facial invalidation, even in the First Amendment context, faces a "heavy burden" in advancing their claim. *Id.*

Plaintiffs advance three arguments in contending that they are likely to succeed on the merits of their claim that the Act's land surveying definition is void for vagueness. (Doc. No. 12-1 at 28–30.) First, plaintiffs contend that "the land surveying definition did not give Plaintiffs fair notice that their site plan drawings were illegal," that "MySitePlan.com has been in business since 2013 and has done thousands of drawings in California" and California building departments had accepted plaintiffs' drawings without objection. (*Id.* at 28.) Second, they claim that "the Board's selective enforcement against Plaintiffs underscores the surveyor-licensing law's vagueness," and suggest that contractors and homeowners also engage in unlawful land surveying without being sanctioned. (*Id.*) Third, they argue that the "the vague text and arbitrary application of California's

surveying definition will chill First Amendment rights." (*Id.* at 29.)

Responding to plaintiffs' first argument, defendants maintain that despite plaintiffs' disclaimers, such as "THIS IS NOT A LEGAL SURVEY, NOR IS IT INTENDED TO BE OR REPLACE ONE," plaintiffs' site plans show "property lines and structures with measurements between major features" and "products which provide dimensional ties from existing structures to the property lines" and thus fall squarely within California Business & Professions Code § 8726(a)(1) and (3). (*See* Doc. Nos. 13 at 28; 13-2 at ¶ 9); *see also* Cal. Bus. & Prof. Code § 8726(a)(1), (3) (defining a person practicing land surveying as one who ""[l]ocates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering" and "[lo]cates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries."). The court finds defendants' arguments in this regard to be persuasive. Defendant Richard B. Moore has submitted a declaration in which he included screenshots of MySitePlan.com showing that the website advertised "site plans for permits," offering "three standard site plans which vary in level of detail." (Doc. No. 13-1 at 17.) The website's "basic site plans" included "property lines," "primary structures," "lot dimensions," "north arrow," "scale," and "measurements between major features." (Doc. No. 13-1 at 18.) A person of ordinary intelligence would have understood from the plain language of the statute—which includes in the

definition of land surveying "relocat[ing] . . . the alignment or elevation for any of the fixed works within the practice of civil engineering" and "relocat[ing] . . . any property line or boundary of any parcel of land"—that they cannot distribute or offer to distribute "site plans for permits" or other uses that establish "property lines," "lot dimensions," "scale," or "measurements between major features" without being a licensed land surveyor or being otherwise exempted from the Act and that a disclaimer does not shield them from liability. Cal. Bus. & Prof. Code §§ 8708, 8726(a)(1), (3), (9). Accordingly, plaintiffs should have been aware that their conduct qualified as land surveying, and since they were not licensed or exempted, that they were at risk of being sanctioned. As defendants argue, the fact that MySitePlan.com operated illegally for several years before any enforcement action took place does not render the Act vague. (Doc. No. 13 at 28). The Board is responsible for prosecuting violations of the Act "coming to its notice." Cal. Bus. & Prof. Code § 8790. According to defendant Moore's declaration, the Board is not set up in a manner that allows it to engage in general investigations; rather, the Board's enforcement actions begin when a complaint is filed with it. (Doc. No. 13-1 at ¶ 7.)

There is also no support for plaintiffs' second argument that the Board selectively enforces the Act. On the contrary, the records defendants submit[5] indicate

[5] Defendants seek judicial notice of exhibits 9 through 14 of the declaration of Richard B. Moore. (Doc Nos. 13-1 at 128–62; 13-6 at 3.) These are records of the Board's final enforcement actions. Having reviewed defendants' request, which plaintiffs do not oppose, the court takes judicial notice of these documents for the

that the Board investigates all complaints received and has taken enforcement action against other unlicensed persons. (Doc. No. 13-1 at 128–62.) The Board does not waive its ability to enforce the Act merely because some unlicensed persons have not come to the Board's attention.

Defendants do not directly respond to plaintiffs' third argument that the statutory definition of land surveying would chill First Amendment rights and that "non-surveyors like homeowners and contractors may stop creating site plan drawings altogether after learning of the Board's application of the licensing law to Plaintiffs." (Doc. No. 12-1 at 29, 30.) Nonetheless, the court finds that plaintiffs expressed concerns are speculative, without support in the record before the court, and in any event, would not be problematic because it would not involve the chilling of protected expression. Rather, it would involve chilling the type of unlawful land surveying conduct that plaintiffs are purportedly engaged in. Moreover, even if there might be "uncertainty at [the] statute's margins," plaintiffs have not shown that a "substantial amount of legitimate speech will be chilled" by the Act's definition of land surveying. *See Cal. Teachers Ass'n*, 271 F.3d at 1151, 1152.

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limited purpose of establishing that the Board has taken enforcement against others. *See* Fed. R. Evid. 201(b)–(c); *Burnell v. Marin Humane Soc'y*, No. 14-cv-05635-JSC, 2015 WL 6746818, at *2 n.1 (N.D. Cal. Nov. 5, 2015) (stating that "it is well established that a court may take judicial notice of records from other court proceedings, . . . including state judicial and administrative proceedings in particular") (citations omitted).

For these reasons, plaintiffs' challenge to the Act on void for vagueness grounds is not likely to succeed on its merits.

ii. Plaintiffs Have Not Clearly Shown That the Act Is Overbroad

Plaintiffs also complain that California Business & Professions Code § 8726(a) is facially unconstitutional because "it is so overbroad that it criminalizes innumerable wholly-innocuous pictures." (Doc. No. 1 at ¶ 137.)

Under the doctrine of overbreadth, litigants may be "permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). However, the Supreme Court has cautioned that invalidating a statute under the First Amendment overbreadth doctrine is "'strong medicine' that is not to be casually employed." *United States v. Sineneng-Smith*, __ U.S. __, 140 S. Ct. 1575, 1581 (2020) (quotations and citations omitted). A statute is not overbroad just because "one can conceive of some impermissible applications." *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984). Rather, particularly in cases like this one where the challenged law regulates conduct and not merely speech, the overbreadth must "not only be real, but substantial as well, judged in relation to the

statute's plainly legitimate sweep." *Broadrick*, 413 U.S. at 615; *see also Knox v. Brnovich*, 907 F.3d 1167, 1180 (9th Cir. 2018) ("In the First Amendment context, a party bringing a facial challenge need show only that 'a substantial number of [a law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'") (quoting *United States v. Stevens*, 559 U.S. 460, 473 (2010)); *United States v. Osinger*, 753 F.3d 939 (9th Cir. 2014) ("An overbreadth challenge . . . will rarely succeed against a law or regulation that is not specifically addressed to speech or to conduct necessarily associated with speech (such as picketing or demonstrating).") (citations, internal quotations, and modifications omitted).

According to plaintiffs, the Act's definition of land surveying is overbroad because it "bans a substantial amount of informal maps (based on their content), no matter whether those depictions purport to provide location information with any legally binding effect." (Doc. No. 14 at 18.) At the hearing on the pending motion, plaintiffs commented that their site plans are only intended to be used for "non-authoritative" purposes, as the opening to a conversation with permitting agencies, and not to definitively establish property boundaries. In support of their claim that the Act's definition of land surveying is overbroad, plaintiffs pointed to the fact that the definition of land surveying from the National Council of Examiners for Engineering and Surveying ("NCEES") Model Rules excludes non-authoritative activities from its

definition of land surveying. (Doc. No. 1 at ¶¶ 91, 92.)[6] They complain that "[t]he Board has never adjusted its own rules or enforcement practices to reflect the NCEES Model Rules. To the contrary . . . the Board enforces California's vague, broad, and outdated statutes, rules, and regulations governing 'land surveying' to their utmost limits." (*Id.* at ¶ 96.) Even if the NCEES Model Rules do not prohibit the dissemination of the type of non-authoritative, preliminary site plans that plaintiffs claim they make, California is not required to follow the NCEES Model Rules. Within the bounds of the U.S. Constitution, it is within each state's police power to determine how to regulate land surveying, if at all.

The Act has the "plainly legitimate sweep" of protecting the public's welfare and maintaining property lines. *See Broadrick*, 413 U.S. at 615. To the extent that the Act may restrict expressive conduct, plaintiffs have failed to show a "substantial number" of instances where it cannot be applied constitutionally in relation to its "plainly legitimate sweep." *See Knox*, 907 F.3d at 1180. Plaintiffs have not cited to any evidence that California Business & Professions Code § 8726 has been enforced against someone engaged in

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[6] At the hearing, defendants' counsel disagreed with plaintiffs' characterization of their site plans as merely being preliminary, arguing instead that the site plan dimensions are relied upon for obtaining building permits. Additionally, David Cox, the Chief Executive Officer of the NCEES, has submitted a declaration stating that the exclusions under the NCEES Model Law do "not extend to providing building permits or depicting fixed works" and that plaintiffs would have violated the NCEES Model Law and Rules if they had been applicable. (Doc. No. 13-5 at ¶¶ 7, 12.)

protected speech, despite the Act's long history. (Doc. No. 13-6 at 17, 19 [excerpt of the 1941 Act indicating that the definition of land surveying has changed little since then]). Instead, plaintiffs provide hypothetical prosecutions of protected speech under the Act, such as for drawing "a simple map on a cocktail napkin for a lost tourist." (Doc. No. 12-1 at 24.) Because plaintiffs have not shown that the alleged overbreadth is "real" or "substantial," they are not likely to prevail on the merits with respect to their overbreadth challenge to the Act. *See Broadrick*, 413 U.S. at 615; *United States v. Phomma*, 561 F. Supp. 3d 1059, 1068 (D. Or. 2021) (holding that the party failed to make the requisite showing that the challenged statute was overbroad because they had not cited any prosecutions under the statute for engaging in protected speech and provided only hypothetical situations).

2. Irreparable Harm

The phrase "irreparable harm" is a term of art, meaning a party has suffered a wrong which cannot be adequately compensated by remedies available at law, such as monetary damages. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); *see also E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 677 (9th Cir. 2021) ("Irreparable harm is 'harm for which there is no adequate legal remedy, such as an award for damages.'"); *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980) ("The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation,

weighs heavily against a claim of irreparable harm.") (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)).

Following the Supreme Court's decision in *Winter*, one moving for a preliminary injunction must show that irreparable harm is "likely" to occur. *Ctr. for Food Safety*, 636 F.3d at 1172; *All. for Wild Rockies*, 632 F.3d at 1131. In this regard, a showing of a speculative injury, or mere allegations of an imminent harm that would satisfy standing, are not sufficient to warrant the issuance of a preliminary injunction. *See Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988); *Goldie's Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Rather, a plaintiff must demonstrate that they face a real and immediate threat of an irreparable harm. *See Caribbean Marine*, 844 F.2d at 674; *Midgett v. Tri-Cnty. Metro. Transp. Dist. of Or.*, 254 F.3d 846, 850–51 (9th Cir. 2001).

Plaintiffs contend that they will suffer irreparable harm absent this court granting preliminary injunctive relief. (Doc. No. 12-1 at 30.) They allege loss of their First Amendment freedoms, which typically constitute irreparable harm. (*Id.* at 30, 31); *see also Elrod v. Burns*, 427 U.S. 347, 373–74 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") (citing *N.Y. Times Co. v. United States*, 403 U.S. 713 (1971)). However, the court has already concluded that plaintiffs have failed to demonstrate a likelihood of success on the merits of their First Amendment claim, and, therefore, that harm cannot be considered.

Plaintiffs also complain that without an injunction, a sizeable part of plaintiffs' business will be impacted because MySitePlan.com's sale of site plan drawings in California constitutes approximately 16 percent of its existing total business. (Doc. Nos. 12-1 at 31; 12-2 at ¶ 81.) They also claim that a preliminary injunction is needed to prevent "permanently losing a satisfied customer base Plaintiffs spent years and money carefully cultivating." (Doc. No. 12-1 at 31.) Conversely, defendants contend that plaintiffs overstate the impact of the Act on their business due to the incorrect assumption that they cannot operate in California at all without Mr. Crownholm becoming a licensed land surveyor. (Doc. No. 13 at 29.) According to defendants, plaintiffs could still do the kinds of drawings that they already make for general informational uses: "There is no reason why these kinds of drawings necessarily need to indicate for example, measurements between structures and property lines, thereby crossing over from drafting into land surveying." (*Id.* at 30.)

Even assuming that plaintiffs' assessment is not overstated, these effects do not constitute irreparable harm that would warrant the issuance of a preliminary injunction. All of the specified harms could be adequately compensated with money damages if plaintiffs were to ultimately succeed in this action. *See Keyoni Enters., LLC v. Cnty. of Maui*, No. 15-cv-00086-DKW, 2015 WL 1470847, at *9 (D. Haw. Mar. 30, 2015) (citations and quotations omitted) (finding that the plaintiffs had not shown an irreparable injury to warrant a preliminary injunction where the plaintiffs complained "that without an injunction,

their businesses would suffer a 75% loss in sales, fines totaling as much as $1,000 per day from the date the NOVs were issued, and ultimately, the potential shuttering of operations.").

The court finds that plaintiffs have not satisfied their burden of showing that they are likely to face imminent irreparable harm absent preliminary injunctive relief.

3. Balance of Equities and Public Interest

Courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief," and "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24. "In assessing whether the plaintiffs have met this burden, the district court has a duty to balance the interests of all parties and weigh the damage to each." *Stormans*, 586 F.3d at 1138 (internal quotation marks and alteration omitted). "Where the government is a party to a case in which a preliminary injunction is sought, the balance of the equities and public interest factors merge." *Roman v. Wolf*, 977 F.3d 935, 940–41 (9th Cir. 2020)) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)).

Plaintiffs argue that because they have raised serious First Amendment concerns, the balance of hardships tip sharply in their favor. (Doc. No. 12-1 at 31.) However, having determined that plaintiffs have not

raised serious First Amendment concerns, these considerations do not apply.

Rather, California is likely to suffer irreparable harm if the court were to enjoin its enforcement of the Act. *See Maryland v. King,* 567 U.S. 1301, 1303 (2012); *see also Wiese v. Becerra*, 263 F. Supp. 3d 986, 994 (E.D. Cal. 2017) ("The State has a substantial interest . . . in enforcing validly enacted statutes."). In enacting California Business & Professions Code §§ 8726 and 8792, the California legislature aimed to prevent the public from being adversely affected by ignorance and incapacity in the practice of land surveying. To that end, the legislature mandated a certain level of knowledge and skill in the land surveying profession and created the Board to oversee the statutory scheme. Enjoining the law would prevent the state from conducting meaningful oversight of unlicensed land surveying and thus would expose Californians to the consequences of ignorance and incapacity in the pursuit of land surveying. (*See* Doc. Nos. 13-1 at ¶ 4; 13-2 at ¶ 4; 13-3 at ¶ 3.)

Accordingly, under the applicable legal standards, plaintiffs have not satisfied their burden of showing that the balance of the equities and the public interest weighs in favor of granting their request for preliminary injunctive relief.

CONCLUSION

For the reasons explained above, plaintiffs' motion for a preliminary injunction (Doc. No. 12) is denied.

IT IS SO ORDERED.

Dated: **December 23, 2022**

/s/ Dale A. Drozd

UNITED STATES DISTRICT JUDGE

APPENDIX E

FILED
APR 16 2024
MOLLY C. DWYER, CLERK

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RYAN CROWNHOLM; CROWN CAPITAL ADVENTURES, INC., DBA mysiteplan.com, a Delaware corporation, registered as a foreign corporation in California, Plaintiffs-Appellants, v. RICHARD B. MOORE, in his Official Capacity as Executive Officer of the California Board for Professional Engineers, Land Surveyors, and Geologists; et al., Defendants-Appellees.	No. 23-15138 D.C. No. 2:22-cv-01720-DAD-CKD Eastern District of California, Sacramento ORDER

Before: KOH, H.A. THOMAS, and DESAI, Circuit Judges.

The panel has voted unanimously to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing is DENIED. No further petitions for rehearing or rehearing en banc may be filed.

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RYAN CROWNHOLM; and CROWN CAPITAL ADVENTURES, INC., d/b/a MYSITEPLAN.COM, Plaintiffs, v. RICHARD B. MOORE, in his official capacity as Executive Officer of the California Board for Professional Engineers, Land Surveyors, and Geologists; ROSSANA D'ANTONIO, in her official capacity as President of the California Board for Professional Engineers, Land Surveyors, and Geologists; MICHAEL HARTLEY, in his official capacity as Vice-President of the California Board for Professional Engineers, Land Surveyors, and Geologists; FEL AMISTAD, ALIREZA ASGARI, DUANE FRIEL, KATHY JONES IRISH, COBY KING, ELIZABETH MATHIESON, PAUL NOVAK, MOHAMMAD QURESHI, FRANK RUFFINO,	**No. _____** **COMPLAINT**

WILFREDO SANCHEZ, and CHRISTINA WONG, in their official capacities as members of the California Board for Professional Engineers, Land Surveyors, and Geologists,

Defendants.

1. This is a civil-rights complaint for declaratory and injunctive relief against the enforcement of a California law, the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700 *et seq.*, which Defendants enforce and have used to try to shut down MySitePlan.com, a business owned and operated by Plaintiffs.

2. Plaintiffs provide a useful service to homeowners and contractors that even the National Council of Examiners for Engineering and Surveying (NCEES) recognizes should not require a surveyor license. Plaintiffs use preexisting public data—Geographic Information System (GIS), satellite imagery and client-provided information—to generate new information—an aerial-view drawing of a property showing features relative to the lot boundaries, called a site plan. The creation and dissemination of information—including as part of a business—is speech within the protection of the First Amendment.

3. These kinds of site plans do not authoritatively determine property boundaries or locations and

do not require training or experience as a surveyor. Indeed, building departments across the state accept site plans that are drawn by people other than surveyors, architects, or engineers. These include site plans drawn by contractors and by homeowners themselves.

4. Plaintiffs expressly explain that their site plans are not legal surveys or intended to be or replace a legal survey. Plaintiffs do not stamp, sign, or seal any plans. Instead, their site plans are intended for general informational use and for use where building departments do not require that a site plan be prepared by a licensed surveyor, architect, or engineer.

5. Nevertheless, Defendants use California's vague, broad, and outdated statutes, rules, and regulations governing "land surveying" to shut down MySitePlan.com because it is not a licensed land surveyor. Defendants' enforcement violates Plaintiffs' constitutional rights protected by the First and Fourteenth Amendments.

JURISDICTION AND VENUE

6. Plaintiffs bring this civil-rights action under the First and Fourteenth Amendments to the U.S. Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201.

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

8. Venue is authorized in this judicial district by 28 U.S.C. § 1391(b)(1)-(2).

PARTIES

I. Plaintiffs

9. Plaintiff Ryan Crownholm, an individual, is a U.S. citizen who lives in California. He is the sole shareholder, director, and officer of Plaintiff Crown Capital Adventures, Inc.

10. Ryan is not licensed as a professional engineer, a professional land surveyor, a professional geologist, or in any other capacity by the Board.

11. Plaintiff Crown Capital Adventures, Inc., is a Delaware corporation, registered as a foreign corporation in California, doing business as MySite Plan.com. Plaintiff Ryan Crownholm is the sole shareholder, director, and officer of Plaintiff Crown Capital Adventures, Inc.

12. Through Plaintiff Crown Capital Adventures, Inc., Plaintiff Ryan Crownholm is the sole owner and operator of MySitePlan.com.

II. Defendants

13. The California Board for Professional Engineers, Land Surveyors, and Geologists is created by statute and vested by the State of California with the

authority to enforce the provisions and requirements of the Act. Cal. Bus. & Prof. Code § 8710.

14. Defendant Richard B. Moore is the Executive Officer of the California Board for Professional Engineers, Land Surveyors, and Geologists. He is sued in his official capacity. Defendant Richard B. Moore is also a licensed professional land surveyor ("PLS").

15. Defendant Rossana D'Antonio is the President of the California Board for Professional Engineers, Land Surveyors, and Geologists. She is sued in her official capacity.

16. Defendant Michael Hartley is the Vice-President of the California Board for Professional Engineers, Land Surveyors, and Geologists. He is sued in his official capacity.

17. Defendants Fel Amistad, Alireza Asgari, Duane Friel, Kathy Jones Irish, Coby King, Elizabeth Mathieson, Paul Novak, Mohammad Qureshi, Frank Ruffino, Wilfredo Sanchez, and Christina Wong are members of the California Board for Professional Engineers, Land Surveyors, and Geologists. They are each sued in their official capacity.

18. As the Executive Officer and members of the California Board for Professional Engineers, Land Surveyors, and Geologists, Defendants (collectively, the "Board") share ultimate responsibility for enforcing the statutes and regulations at issue here.

19. The Board's enforcement of those statutes and regulations has deprived and threatens to deprive Plaintiffs of their rights protected by the First and Fourteenth Amendments.

STATEMENT OF FACTS

I. Ryan Crownholm and MySitePlan.com.

20. Ryan Crownholm describes himself as a "serial entrepreneur," and his history bears this out.

21. Ryan began his college education while serving in the Army from 1996 to 1999.

22. Upon his honorable discharge, Ryan continued his education at Diablo Valley College and then St. Mary's College in California, from which he graduated in 2003 with a Bachelor of Arts in economics and business administration.

23. While still in college, Ryan started a successful rubbish removal/hauling company using his own pickup truck.

24. That company's success led to more entrepreneurial opportunities. To take on larger jobs, Ryan obtained a California demolition contractor license.

25. Starting in 2007, during the housing market crash, Ryan's company began to specialize in

residential demolition, excavation, and swimming pool removal.

26. Eventually, Ryan obtained a California "general engineering" contractor license.

27. Ryan's experience as a licensed contractor gave him experience with site plans.

28. As a precondition to issuing various building permits—including demolition permits—California county and municipal building departments often require submission of a site plan drawing.

29. This site plan drawing is, however, not necessarily a survey.

30. To obtain a permit, the site plan drawing need only show the basic layout of a property and a simple explanation of the changes that will be made to it.

31. The site plan drawing requirement is so simple that homeowners and contractors are allowed to create and submit it themselves.

32. For example, Contra Costa County explains that

> Almost all projects require plans. These include, but are not limited to, new structures, demolitions, additions, alterations,

> interior/exterior remodels, running new electrical, water or gas lines, repairs, outdoor kitchens, pergolas, pavilions, decks, carports, garages, docks, pools, foundation repairs, ADUs, and JR. ADUs, solar, energy storage systems, and backup generators.

https://www.contracosta.ca.gov/7863/Applying-for-a-Building-or-Grading-Permi

33. Contra Costa County further explains that

> Most projects will require Architectural, Structural, Electrical, and often Mechanical and Plumbing plans. Many details and calculations are also required, often these include structural and Title 24 energy calculations. Your design professional is the best resource to help you have a complete submittal.

https://www.contracosta.ca.gov/7863/Applying-for-a-Building-or-Grading-Permi

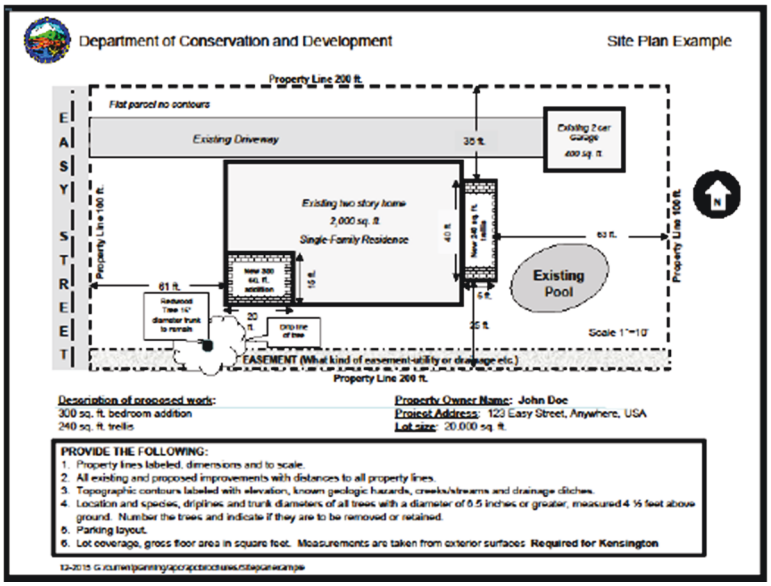
34. But not all projects require plans prepared by a "design professional." Some plans, Contra Costa County explains, can be prepared by an "unlicensed person." https://www.contracosta.ca.gov/DocumentCenter/View/45674/WHEN-IS-A-LICENSED-PROFESSIONAL-REQUIRED?bidId=.

35. Moreover, not all site plans must be prepared by a "design professional." Some projects

require only simple site plans that may be prepared by anyone.

36. Several California counties and municipalities provide guidance to non-surveyors on how to prepare their own site plan drawings for submission to permit issuing agencies.

37. For example, Contra Costa County tells unlicensed people how to draw a site plan, what information to provide in a site plan, and provides an exemplar for unlicensed people to use:



https://www.contracosta.ca.gov/DocumentCenter/View/44308/How-to-Draw-a-Site-Plan?bidId=.

38. Other counties and municipalities provide similar guidance, including:

- Monterey County: https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/development-services/building-services/preparing-a-site-plan

- Napa County: https://www.countyofnapa.org/DocumentCenter/View/7162/Sample-Site-Plan-PDF

- City of Citrus Heights: https://www.citrusheights.net/1094/How-to-Prepare-a-SitePlan

- City of Chino Hills: https://www.chinohills.org/DocumentCenter/View/1563/How-to-Prepare-A-Residential-Plot-Plan?bidId=

- City of Danville: https://www.danville.ca.gov/DocumentCenter/View/5351/How-to-Plot-Plan-PDF

- City of Murrieta: https://www.murrietaca.gov/DocumentCenter/View/137/Site-Plot-Plan-IB-105?bidId=

- City of Pleasant Hill: https://www.pleasanthillca.org/246/Plot-Plan-Instructions

- City of San Gabriel: https://www.sangabrielcity.com/DocumentCenter/View/217/How-to-Prepare-a-Site-Plan---A-Homeowners-Guide

- City of Visalia: https://www.visalia.city/civicax/filebank/blobdload.aspx?BlobID=14080.

39. Site plans are routinely submitted to various California county and municipal building permit issuers by non-surveyors, including contractors and homeowners with no surveyor training.

40. Site plans prepared by non-surveyors, including contractors and homeowners with no surveyor training, are routinely accepted by various California county and municipal building permit issuers.

41. These various California county and municipal building permit issuers know that these site plans are not prepared by licensed surveyors and accept them because the permit issuers do not need legal surveys for their purposes. They just need a general picture of the site.

42. When Ryan worked as a contractor, he spent hours hand drawing basic site plans to obtain demolition permits.

43. Building permit issuers always accepted Ryan's hand-drawn site plans because they did not need a legal survey that required a licensed surveyor. They just needed a general picture of the site.

44. Originally, Ryan did his site plan drawings by literally tracing by hand data and images from GIS data or even Google Maps, a method taught to him by county and municipal building permit issuer staff.

45. For example, the City of San Gabriel Community Development Department advises homeowners to prepare a site plan by using GIS maps maintained by the Los Angeles County Assessor to determine the "property boundaries," "dimensions" and "size" of their lot, and then adding the locations and measurements of "all structures and other physical features" of the site. City of San Gabriel, *A Homeowner's Guide to Site Plan Preparation for Small Projects*, https://www.sangabrielcity.com/DocumentCenter/View/217/How-to-Prepare-a-Site-Plan---A-Homeowners-Guide?bidId=.

46. GIS (Geographic Information System) is a computer system that analyzes and displays geographically referenced information (data that is attached to a unique location). GIS is used in public health; urban planning; banking; insurance; supply chain management; forestry, timber, and other resource management; earth sciences, biology, and many other fields.

47. The United States Geologic Survey maintains a publicly available GIS, The National Map, https://apps.nationalmap.gov/viewer/, which displays various geographically referenced data on a map.

48. Many other governments, especially at the county and municipal level, also maintain publicly available GIS that contain greater detail within the jurisdiction. These display parcel property boundaries, property ownership and tax records, parcel addresses, property building and other coverage, orthoimagery (aerial and/or satellite imagery geometrically corrected to a uniform scale), and other information. And because this publicly available GIS is at a uniform scale, these GIS often allow measurements of distances, dimensions, and area, to be calculated within the GIS based on polygon drawings.

49. The Sacramento County Assessor's Parcel Viewer, available at https://assessorparcelviewer.saccounty.gov/jsviewer/assessor.html, is an example of these GIS. Every county in California has a similar publicly available GIS.

50. Google Maps is not a true GIS because it lacks the extensive analytical capabilities of true GIS. But Google Maps contains much of the same information as GIS, including information about parcel property boundaries, locations, and building and other coverage, orthoimagery, and even street-view imagery.

51. On information and belief, hundreds, if not thousands, of non-surveyors in California routinely submit site plans based on copied GIS data or Google Maps to county and municipal building permit issuers.

52. On information and belief, county and municipal building permit issuers routinely accept site plans based on copied GIS data or Google Maps submitted by non-surveyors.

53. Eventually, Ryan learned how to use publicly available information from GIS to create electronic site plan drawings in a Computer-aided Design (CAD) program.

54. Based on government-provided GIS and other publicly available imagery, Ryan could electronically draft a site plan—including rough measurements—without ever visiting a property. He would then send the draft to a client to take measurements to confirm.

55. These site plan drawings can be used for general informational or planning purposes.

56. These site plan drawings can also be submitted by the client or by Ryan to a county or municipal building permit issuer.

57. These site plan drawings were always accepted by county or municipal building permit issuers.

58. In fact, building permit issuers appreciated Ryan's site plan drawings because they were easier to use than the typically hand-drawn plans they receive for such permits.

59. Other contractors started asking Ryan for site plan drawings.

60. No one ever thought that Ryan's site plan drawings were surveys.

61. Eventually, Ryan used his experience to start MySitePlan.com in 2013.

62. MySitePlan.com is headed by a disclaimer reading "THIS IS NOT A LEGAL SURVEY, NOR IS IT INTENDED TO BE OR REPLACE ONE."

63. The website further warns users that "**Before ordering:** Please verify with your building department that they **DO NOT** require that the plan to be prepared by surveyor, architect or engineer. **This is not a Legal Survey, nor is it intended to be or replace a Legal Survey**. We are a Drafting Company and do not stamp, sign or seal plans. Our plans are non-certified." https://www.mysiteplan.com/collections/frontpage.

64. The webpage further explains:

> **What Is a Non-Certified Site Plan?**
>
> A non-certified site plan is one that can be created by a homeowner, unlicensed individual, or a company like My Site Plan.

We use GIS (Geographical Information System) lot lines, satellite imagery, and client provided information to create the first draft which is sent to the client to verify dimensions. If you need any dimensions adjusted just mark them onto the draft and send back to us. We take care of those free of charge. We make no representation regarding the accuracy of our sources.

As long as a certified plan isn't required for your project, we stand by our work with a money-back guarantee.

What Is a Certified Site Plan?

A certified site plan is a site plan that is prepared by and stamped by an architect, engineer, or surveyor and requires a high level of accuracy. This will require a visit to your site.

Often, permit authorities will require a certified site plan for building additions or lot subdivisions where having dead-on measurements is a must. Every city is different, so it is always best to call to verify requirements before ordering a plan.

https://www.mysiteplan.com/pages/certified-site-plans

65. Occasionally, someone requests certified plans from MySitePlan.com. Ryan and his agents tell

those requestors to seek a locally licensed surveyor, engineer, or architect.

66. Neither MySitePlan.com nor Ryan have ever done a survey, claimed to do surveys, or claimed to be a surveyor.

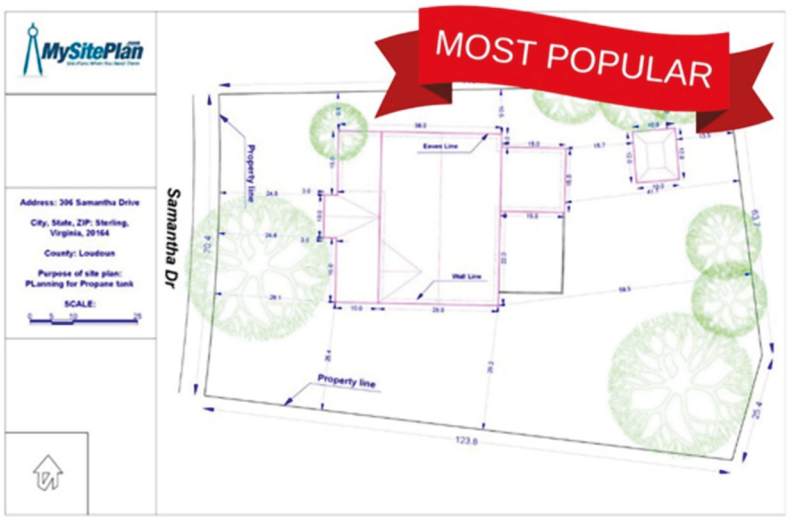
67. MySitePlan.com contracts with non-licensed individuals to prepare these site plan drawings based on publicly available satellite imagery and GIS data.

68. Every drawing prepared by MySitePlan.com includes MySitePlan.com's name.

69. No drawing done by MySitePlan.com carries any signature or seal.

70. The drawings done by MySitePlan.com are literally that: drawings. They are pictures that do not purport to be authoritative or surveys, much less authoritative surveys.

71. An example of the most popular version of a site plan drawing from MySitePlan.com is:



https://www.mysiteplan.com/collections/frontpage/products/plot-plan-showing-structures-tree-and-vegetation?variant=386904444.

72. The site plan drawings done by MySite Plan.com are used for a variety of purposes, including:

- Applying for a building permit for a new outdoor structure (Shed, fence, deck, gazebo, etc.)

- Applying for a demolition permit for the demolition of a house or another structure

- Swimming pool removals or remodels

- Landscape planning, including layout of bushes, trees, and sprinklers, and yard work maintenance instructions

- Applying for building permits in cities with tree protection requirements. Planning departments find it useful to determine if any extra protection is required for trees on the property

- Wedding, farmers market, and other event layout planning

- During COVID shutdowns, restaurants used site plan drawings to plan outdoor dining tables on streets and parking lots

- Maps for apartment complexes, hotels, and motels to show tenants and guests the location of buildings and units and directions to get to their apartment or room

- Vacation rental permits

- Sketching out a new roof line

- Conditional Use Permits for Commercial Properties, including plotting out parking spaces

73. MySitePlan.com does drawings in any English-speaking jurisdiction that has GIS data publicly available. This includes Canada, Australia, and nearly all U.S. States—including California.

74. MySitePlan.com has created approximately 42,000 site plan drawings in its nine years of operation.

75. No building department or client has ever complained to Plaintiffs about MySitePlan.com site plan drawings.

II. The Board uses the Professional Land Surveyor's Act to try to shut down MySitePlan.com.

76. California regulates land surveying through its Professional Land Surveyors' Act (Cal. Bus. & Prof. Code §§ 8700 *et seq*.), rules and regulations promulgated pursuant to the Act, and policies of the Board.

77. On December 28, 2021, Defendant Richard B. Moore, PLS, acting as the Executive Officer for the Board, issued a Citation Order to MySitePlan.com and Ryan.

78. The Board's Citation Order was served on MySitePlan.com and Ryan by email that same day.

79. The Board's Citation Order ordered MySitePlan.com and Ryan "to cease and desist from violating Business and Professions Code section(s) 8792(a) and (i)."

80. The Board's Citation Order also ordered MySitePlan.com and Ryan to pay "an administrative fine in the amount of $1,000.00".

81. The Board's Citation Order correctly notes that Ryan is not licensed as a "professional engineer, a professional land surveyor, a professional geologist, or in any other capacity" by the Board.

82. As "Cause for Citation" the Board stated:

> An investigation, including a review by at least one licensee of the Board who is competent in the branch of professional land surveying most relevant to the subject matter, determined that you have violated the Professional Land Surveyors' Act (Business and Professions Code section 8700, et seq.) related to your business known as My Site Plan. Specifically, you have offered and practiced land surveying, without legal authorization, as evidenced by a review of your business website by Board staff between March 2021 and December 2021. Preparing site plans which depict the location of property

> lines, fixed works, and the geographical relationship thereto falls within the definition of land surveying, pursuant to Business and Professions Code section(s) 8726(a) and (g). Offering to prepare subdivision maps and site plans which show the location of property lines, fixed works, and the geographical relationship thereto falls within the definition of land surveying pursuant to Business and Professions Code section 8726(i). In offering and practicing land surveying, you have violated Business and Professions Code section 8792(a). In managing a business from which land surveying is offered and practiced, without legal authorization, you have violated Business and Professions Code section 8792(i).

83. Business and Professions Code sections 8792(a) and (i) make it a misdemeanor to "practice[], or offer[] to practice, land surveying in this state without legal authorization" or exemption, or to "manage[] or conduct[] as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced" without legal authorization.

84. In relevant part, *i.e.*, the portions the Board has invoked, California's definition of "land surveying," Cal. Bus. & Prof. Code § 8726,[1] provides:

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[1] Technical corrections to Cal. Bus. & Prof. Code § 8726 became effective shortly after the Board's letter. 2021 Cal Stat. ch. 106 (effective Jan. 1, 2022). These did not substantively affect the cited provisions but did change number and lettering

(a) A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(1) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(2) Determines the configuration or contour of the earth's surface, or the position of fixed objects above, on, or below the surface of the earth by applying the principles of mathematics or photogrammetry.

(3) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.

(4) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined

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conventions. Former subsection (a) is now (a)(1), former subsection (g) is now (a)(7), and former subsection (i) is now (a)(9). For ease of reference, this Complaint proceeds with citations to the current statute.

to include, but not be limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of this code).

(5) By the use of the principles of land surveying determines the position for any monument or reference point that marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point.

(6) Geodetic surveying or cadastral surveying. As used in this chapter:

(A) Geodetic surveying means performing surveys, in which account is taken of the figure and size of the earth to determine or predetermine the horizontal or vertical positions of fixed objects thereon or related thereto, geodetic control points, monuments, or stations for use in the practice of land surveying or for stating the position of fixed objects, geodetic control points, monuments, or stations by California Coordinate System coordinates.

(B) Cadastral surveying means performing a survey that creates, marks,

> defines, retraces, or reestablishes the boundaries and subdivisions of the public land survey system of the United States.
>
> (7) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in paragraphs (1) to (6), inclusive.
>
> . . . .
>
> (9) Procures or offers to procure land surveying work for themselves or others.

85. Based on the Board's citation and statutory provisions cited, MySitePlan.com and Ryan are threatened with enforcement and fines merely for doing and offering to do their site plan drawings because they depict or show "the location of property lines, fixed works, and the geographical relationship thereto".

86. The Board has not claimed that MySitePlan.com and Ryan have falsely held themselves out as a licensed surveyor or other Board-licensed professional.

87. MySitePlan.com and Ryan have never held themselves out as a licensed surveyor or other Board-licensed professional.

88. Nonetheless, on September 21, 2022, Ryan signed a notice agreeing not to appeal the Board's citation, instead accepting its terms and paying the Board a $1,000 fine.

III. Experts recognize that not all mapping requires a license.

89. Even twenty years ago, experts recognized that a "literal interpretation" of practice of surveying definitions would mean that a large amount of spatial information, including GIS, would be illegal in the hands of people other than licensed surveyors. *See* Bruce A. Joffe, *Surveyors and GIS Professionals Reach Accord,* U.S. Geological Survey Open-File Report 02-370, 29 https://pubs.usgs.gov/of/2002/of02-370/dmt_02.pdf.

90. Beginning in 2006, the National Council of Examiners for Engineering and Surveying (NCEES), whose members are the engineering and surveying licensing boards from all 50 states, the District of Columbia, and U.S. Territories, promulgated Model Rules to distinguish activities and uses of data that require a license from those that do not.

91. The current version of the NCEES Model Rules, dated September 2021, provides in relevant part:

> 210.25 Inclusions and Exclusions to the Practice of Surveying

A. Activities Included within the Practice of Surveying

Activities that must be accomplished by or under the responsible charge of a professional surveyor (unless specifically exempted in subsection B of this section) include, but are not limited to, the following:

1. The creation of maps or georeferenced databases representing authoritative locations for boundaries, the location of fixed works, or topography. This includes maps and georeferenced databases prepared by any person or government agency where that data is provided to the public as a surveying deliverable.

2. Original data acquisition, or the resolution of conflicts between multiple data sources, when used for the authoritative location of features within the following data themes: geodetic control, orthoimagery, elevation and hydrographic, fixed works, private and public boundaries, and cadastral information

3. Certification of positional accuracy of maps or measured survey data

4. Adjustment or authoritative interpretation of raw survey data

5. Geographic Information System (GIS)-based parcel or cadastral mapping used for authoritative boundary definition purposes wherein land title or development rights for individual parcels are, or may be, affected

6. Authoritative interpretation of maps, deeds, and other land title documents to resolve conflicting data elements

7. Acquisition of field data required to authoritatively position fixed works or cadastral data relative to geodetic control

8. Analysis, adjustment or transformation of cadastral data of the parcel layers with respect to the geodetic control layer within a GIS resulting in the affirmation of positional accuracy

B. Activities Excluded from the Practice of Surveying

A distinction must be made in the use of electronic systems between making or documenting original measurements in the creation of surveying deliverables, versus the copying, interpretation, or representation of those measurements in such systems. Further, a distinction must be made according to the intent, use, or purpose of measurements derived from electronic systems to determine an authoritative location versus the use of those measurements

as a reference for planning, infrastructure management, and general information. The following items are not to be included as activities within the definition of the practice of surveying:

1. The creation of general maps

    a. Prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians

    b. Prepared for publication in a gazetteer or atlas as an educational tool or reference publication

    c. Prepared for or by education institutions for use in the curriculum of any course of study

    d. Produced by any electronic or print media firm as an illustrative guide to the geographic location of any event

    e. Prepared by laypersons for conversational or illustrative purposes. This includes advertising material and users [sic] guides.

2. The transcription of previously georeferenced data into a GIS or LIS by manual or electronic means, and the maintenance

thereof, provided the data are clearly not intended to indicate the authoritative location of property boundaries, the shape or contour of the earth, or fixed works

3. The transcription of public record data, without modification except for graphical purposes, into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or electronic means, and the maintenance of that cadastre, provided the data are clearly not intended to authoritatively represent property boundaries. This includes tax maps and zoning maps.

4. The preparation of any document by any federal government agency that does not define real property boundaries. This includes civilian and military versions of quadrangle topographic maps, military maps, satellite imagery, and other such documents.

5. The incorporation or use of documents or databases prepared by any federal agency into a GIS/LIS, including but not limited to federal census and demographic data, quadrangle topographic maps, and military maps

6. Inventory maps or databases created by any organization, in either hard-copy or electronic form, of physical features, facilities, or infrastructure that are wholly contained

within properties to which they have rights or for which they have management responsibility. The distribution of these maps or databases outside the organization must contain appropriate metadata describing, at a minimum, the accuracy, method of compilation, data sources and dates, and disclaimers of use clearly indicating that the data are not intended to be used as a surveying deliverable.

7. Maps and databases depicting the distribution of natural resources or phenomena prepared by foresters, geologists, soil scientists, geophysicists, biologists, archeologists, historians, or other persons qualified to document such data

8. Maps and georeferenced databases depicting physical features and events prepared by any government agency where the access to that data is restricted by statute. This includes georeferenced data generated by law enforcement agencies involving crime statistics and criminal activities.

NCEES Model Rule § 210.25, https://ncees.org/wp-content/uploads/Model_Rules_2021_web-2.pdf.

92. The NCEES Model Rules reflect that the rationale for licensing land surveyors extends only to activities related to determining or representing "authoritative" location.

93. Plaintiffs do not engage in any activities related to determining or representing "authoritative" location.

94. As reflected in the NCEES Model Rules, surveyor licensing does not include non-authoritative uses of location data such as references for planning, infrastructure management, and general information.

95. Plaintiffs use GIS and data to generate only non-authoritative site plans for planning, infrastructure management, general information, and similar uses.

96. The Board has never adjusted its own rules or enforcement practices to reflect the NCEES Model Rules. To the contrary, as illustrated by the enforcement action that precipitated this case, the Board enforces California's vague, broad, and outdated statutes, rules, and regulations governing "land surveying" to their utmost limits.

97. In comparison to the NCEES Model Rules, California's definition of land surveying, read literally, criminalizes a vast amount of informal mapmaking and information conveying by anyone without a surveyor's license.

IV. Surveyor license requirements are burdensome and unnecessary for drawing non-authoritative site plans.

98. There are a variety of ways to become a licensed professional land surveyor in California, but all of them require many years of education, experience, and exams. *See* California Board for Professional Engineers, Land Surveyors, and Geologists, Flowchart-Do I qualify to apply for the Professional Land Surveyor License?, https://www.bpelsg.ca.gov/applicants/flowchart_for_pls.pdf.

99. Generally, a person must (1) graduate from a four-year post-secondary curriculum "with an emphasis in land surveying approved by the board or accredited by a national or regional accrediting agency" and have "two years of actual broad based progressive experience in land surveying, including one year of responsible field training and one year of responsible office training, satisfactory to the board," (2) have "[a]ctual broad based progressive experience in land surveying for at least six years, including one year of responsible field training and one year of responsible office training, satisfactory to the board," or (3) already be licensed "as a civil engineer with two years of actual broad based progressive experience in land surveying satisfactory to the board." Cal. Bus. & Prof. Code § 8742(a); Cal. Code Regs. tit. 16, § 425.

100. In addition, a would-be licensed professional land surveyor must generally first be certified as a land surveyor-in-training if they are not already

licensed as a civil engineer. Cal. Bus. & Prof. Code § 8741.

101. All would-be licensed professional land surveyors also must pass four examinations: the NCEES Fundamentals of Surveying exam (unless approved for a waiver), the NCEES Principles and Practice of Surveying exam, a California-specific Professional Land Surveyor exam, and a California Professional Land Surveyors State Laws and Rules exam.

102. All would-be licensed professional land surveyors also must have references from at least four land surveyors or civil engineers. Cal. Bus. & Prof. Code § 8743.

103. Because Ryan is not a licensed civil engineer, not a licensed land surveyor-in-training, and did not graduate from any post-secondary curriculum with an emphasis in land surveying, he would need to stop working at his own business, obtain at least six years of additional education and experience (gained under a licensed land surveyor) and pass all four exams to become a licensed professional land surveyor.

104. These years of education, experience, and exams are overly burdensome and unrelated to MySitePlan.com's non-authoritative site plan drawings.

105. County and municipal building permit issuing entities in California regularly and repeatedly accept non-authoritative site plan drawings from contractors and homeowners who, like Ryan, do not have

the years of education, experience, and exam passes necessary to obtain a surveyor's license.

INJURY TO PLAINTIFFS

106. MySitePlan.com and Ryan have offered their site plan drawing services in California since at least 2013.

107. But for the Board's application of Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i) to MySitePlan.com and Ryan, MySitePlan.com and Ryan would be free to continue operating in California as they have done for many years and as they operate in other states and around the world.

108. But for the Board's application of Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i) to MySitePlan.com and Ryan, MySitePlan.com and Ryan would be free to continue using publicly available GIS and other information to create and disseminate new information in the form of non-authoritative site plan drawings.

109. California's definition of "land surveying," and in particular Cal. Bus. & Prof. Code § 8726(a)(1), (7), and (9), is unconstitutional in a substantial number of its applications, judged in relation to is plainly legitimate sweep.

110. California's definition of "land surveying," and in particular Cal. Bus. & Prof. Code § 8726(a)(1), (7), and (9), does not provide fair warning or allow

Ryan to determine if his business through MySitePlan.com is prohibited by the law.

111. California's definition of "land surveying," and in particular Cal. Bus. & Prof. Code § 8726(a)(1), (7), and (9), impermissibly delegates to the Board the power to determine, on an ad hoc and subjective basis, whether Ryan's business through MySitePlan.com is prohibited, which leads to arbitrary and discriminatory application of the law.

112. California's definition of "land surveying," and in particular Cal. Bus. & Prof. Code § 8726(a)(1), (7), and (9), operates to inhibit the exercise of protected constitutional rights.

113. California county and municipal building permit issuing departments accept non-authoritative site plans prepared by non-surveyors, including contractors and homeowners with no surveyor training.

114. Ryan's business through MySitePlan.com, creating non-authoritative site plans for submission to California county and municipal building permit issuing departments, is substantially different than the business of surveyors, who prepare drawings and materials related to authoritative location.

115. The years of education and experience and four exams required to become a licensed professional land surveyor are unjustified burdens on Ryan and MySitePlan.com creating non-authoritative site plans for planning, infrastructure management, general

information, and submission to California county and municipal building permit issuing departments.

116. But for the Board's application of Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i) to MySitePlan.com and Ryan, MySitePlan.com and Ryan would be free to continue to prepare non-authoritative site plans for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments without needing to first acquire years of education and experience and pass four exams.

117. But for the Board's application of Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i) to MySitePlan.com and Ryan, MySitePlan.com and Ryan would be free to continue to prepare non-authoritative site plans for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments, just as other non-surveyors, including contractors and homeowners with no surveyor training, are allowed to.

CONSTITUTIONAL VIOLATIONS AND CLAIMS FOR RELIEF

First § 1983 Cause of Action:

First Amendment

Declaratory and Injunctive Relief

118. Plaintiffs incorporate and re-allege paragraphs 1 through 117.

119. The First Amendment, which is made applicable to the states through the Fourteenth Amendment, provides: "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I.

120. Defendants' application of the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700 *et seq.*, to Plaintiffs abridges Plaintiffs' freedom of speech.

121. Plaintiffs take existing data and information, including GIS data made available to the public by governments, and use it to create and disseminate new information in the form of non-authoritative site plans.

122. The creation and dissemination of information are speech within the meaning of the First Amendment, do not fall within any recognized

exception to the First Amendment, and are fully protected by the First Amendment.

123. Plaintiffs create and disseminate non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes.

124. Under California law, as interpreted and enforced by the Board, Plaintiffs may not use preexisting public GIS data and other information to create and disseminate non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes.

125. Under California law, as interpreted and enforced by the Board, licensed surveyors may create and disseminate non-authoritative site plans from preexisting public GIS data, but Plaintiffs may not create and disseminate non-authoritative site plans from preexisting public GIS data.

126. Application of the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700 *et seq.*, to Plaintiffs restrains the way in which Plaintiffs may use and disseminate publicly available information.

127. Application of the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700

et seq., to Plaintiffs restrains the way in which they may provide non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes.

128. Defendants' application of the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700 *et seq.*, to Plaintiffs acts as a content- and speaker-based restriction on the ability to use and generate information.

129. Defendants lack a state interest, compelling or otherwise, in preventing Plaintiffs from creating and disseminating non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes.

130. Defendants possess no evidence that any of Plaintiffs' site plan drawings have ever caused any harm to anyone.

131. Defendants possess no evidence that they achieve any state interest, compelling or otherwise, by forbidding anyone other than licensed surveyors from drawing non-authoritative site plans for planning, infrastructure management, general information, and similar uses.

132. Defendants possess no evidence that they achieve any state interest, compelling or otherwise, by forbidding anyone other than licensed surveyors from submitting site plan drawings to permitting authorities that do not want and have not asked for formal surveys.

133. Defendants possess no evidence that they achieve any state interest, compelling or otherwise, by punishing Plaintiffs for creating site plan drawings of properties when it does not enforce the law against countless other persons statewide, including contractors and homeowners, who also create site plan drawings without being licensed surveyors.

134. Application of the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700 *et seq*., and in particular Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i), to Plaintiffs by Defendants, their agents and employees, acting under the color of state law, denies Plaintiffs their right to free speech, as guaranteed by the First and Fourteenth Amendments to the United States Constitution and protected by 42 U.S.C. § 1983.

135. Unless the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700 *et seq*., and in particular Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i), are declared unconstitutional as applied to Plaintiffs and Defendants are enjoined from enforcing those sections against Plaintiffs, Plaintiffs will suffer continuing and irreparable harm to their First Amendment rights.

Second § 1983 Cause of Action:

Facial Unconstitutionality;
Void for Vagueness and Overbreadth

Declaratory and Injunctive Relief

136. Plaintiffs incorporate and re-allege paragraphs 1 through 117.

137. Even if the state could criminalize Plaintiffs' drawings (which it cannot), the state's definition of "land surveying," Cal. Bus. & Prof. Code § 8726, and in particular the subparts cited by the Board in its citation to Plaintiffs, Cal. Bus. & Prof. Code § 8726(a)(1), (7), and (9), is unconstitutional on its face because it is so vague that there is no way to know that it outlaws picture-drawing and/or it is so overbroad that it criminalizes innumerable wholly-innocuous pictures.

138. In our constitutional order, a vague law is no law at all and unconstitutional on its face because it violates multiple constitutional guarantees.

139. First, a vague law violates due process by trapping the innocent by not providing fair warning to reasonable persons of ordinary intelligence that their conduct is prohibited by the law in question.

140. Second, a vague law violates separation of powers, due process, and equal protection guarantees,

because it impermissibly delegates basic policy matters to lower-level officials for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

141. Third, a vague law regulating speech operates to inhibit the exercise of the freedom of speech guaranteed by the First Amendment.

142. Additionally, a law regulating speech is overbroad, and therefore unconstitutional on its face, if a substantial number of its applications are unconstitutional, judged in relation to the law's plainly legitimate sweep.

143. Read literally, California's definition of "land surveying," Cal. Bus. & Prof. Code § 8726, and in particular the subparts cited by the Board in its citation to Plaintiffs, Cal. Bus. & Prof. Code § 8726(a)(1), (7), and (9), criminalizes a vast amount of informal mapmaking and information conveying by anyone without a surveyor's license: Anyone who draws a picture of a property by retracing the alignment or elevation for a street or home (such as by copying a GIS map), draws a picture of a building on the earth (such as by copying a GIS map), retraces property lines (such as by copying a GIS map), determines the information to be shown in a drawing of property (such as choosing what information to copy from a GIS map), or offers to do any of those things, without a state license is a criminal.

144. The Board has chosen not to enforce California's definition of "land surveying" literally, as is demonstrated by the numerous local jurisdictions that instruct non-surveyors how to draw site plans depicting property lines and the location of fixed works, and the numerous local jurisdictions that instruct non-surveyors how to determine what information to put in such a site plan drawing, as well as the thousands of contractors and homeowners who regularly make such site plan drawing and submit them to local jurisdictions, and the local jurisdictions accepting such site plan drawings from non-surveyors.

145. The Board's choice not to enforce California's definition of "land surveying" literally does not save the definition from being unconstitutionally overbroad. But it does demonstrate that California's definition of "land surveying," if not read literally, is unconstitutionally vague.

146. Cal. Bus. & Prof. Code § 8726(a)(1), (7), and (9) do not provide fair warning to Plaintiffs that their use of preexisting public GIS data and other information to create and disseminate non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes is illegal.

147. For example, Plaintiffs have used preexisting public GIS data and other information to create and disseminate non-authoritative site plans for many years, have had thousands of customers use

their non-authoritative site plans for planning, infrastructure management, and general information purposes, and have had thousands of non-authoritative site plans submitted to California county and municipal building permit issuing departments. Until the Board's citation of Plaintiffs, no one has ever believed Plaintiffs' services were illegal.

148. Cal. Bus. & Prof. Code § 8726(a)(1), (7), and (9) does not adequately constrain the Board's ability to prohibit Plaintiffs' use of preexisting public GIS data and other information to create and disseminate non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes on a subjective and ad hoc basis.

149. For example, Plaintiffs have used preexisting public GIS data and other information to create and disseminate non-authoritative site plans for many years, have had thousands of customers use their non-authoritative site plans for planning, infrastructure management, and general information purposes, and have had thousands of non-authoritative site plans submitted to California county and municipal building permit issuing departments. Until the Board's citation of Plaintiffs, no one has ever believed Plaintiffs' services were illegal. Indeed, California county and municipal building permit issuing departments routinely instruct non-surveyors (including contractors and homeowners with no surveyor training) how to draw non-authoritative site plans and accept non-authoritative site plans prepared by non-

surveyors (including contractors and homeowners with no surveyor training), yet the Board has never threatened to prosecute those county and municipal building permit issuing departments or other non-surveyors.

150. Cal. Bus. & Prof. Code § 8726(a)(1), (7), and (9) operates to inhibit the exercise of Plaintiffs' First Amendment rights because, as applied to Plaintiffs, it may prohibit, and does allow the Board to claim it prohibits, the use of preexisting public GIS data and other information to create and disseminate non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes, even though the use, creation and dissemination of such information is protected by the First Amendment.

151. Application of the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700 *et seq*., and in particular Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i), to Plaintiffs by Defendants, their agents and employees, acting under the color of state law, denies Plaintiffs their rights to free speech, due process, and separation of powers, as guaranteed by the First and Fourteenth Amendments to the United States Constitution and protected by 42 U.S.C. § 1983.

152. Unless the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700 *et seq*., and in particular Cal. Bus. & Prof. Code §§ 8726(a)(1), (7),

and (9), and 8792(a) and (i) are declared unconstitutionally overbroad and/or void for vagueness and Defendants are enjoined from enforcing those sections against Plaintiffs, Plaintiffs will suffer continuing and irreparable harm to their rights protected by First and Fourteenth Amendments.

Third Cause of Action:

Substantive Due Process and Equal Protection

Declaratory and Injunctive Relief

153. Plaintiffs incorporate and re-allege paragraphs 1 through 117.

154. The Fourteenth Amendment's Due Process and Equal Protection Clauses protect the right to earn a living in the occupation of a person's choice subject only to rational government regulation and the right to not be treated differently than similarly situated people without sufficient justification, including with regard to earning a living in the occupation of a person's choice.

155. Plaintiffs use preexisting public GIS data and other information to create and disseminate non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes.

156. The Board claims that Plaintiffs are prohibited from using preexisting public GIS data and other information to create and disseminate non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes because they are not licensed professional land surveyors.

157. Plaintiffs' occupation is so different from the occupation of professional land surveyors that the government's interest in regulating professional surveyors—ensuring accurate authoritative location survey products—is not implicated.

158. Forcing Plaintiffs into a regulatory framework meant to regulate professional surveyors results in unjustified barriers to Plaintiffs practicing their own occupation in violation of Due Process.

159. Because Ryan is not a licensed civil engineer, not a licensed land surveyor-in-training, and did not graduate from any post-secondary curriculum with an emphasis in land surveying, he must obtain at least six years of additional education and experience (gained under a licensed land surveyor) and pass four exams to become a licensed professional land surveyor.

160. These years of education, experience, and exams are not rationally related to any legitimate government interest as applied to Plaintiffs' non-authoritative site plan drawings.

161. These years of education, experience, and exams are overly burdensome and unrelated to Plaintiffs' non-authoritative site plan drawings.

162. Requiring Ryan to obtain at least six years of additional education and experience (gained under a licensed land surveyor) and pass four exams to become a licensed professional land surveyor will require him to stop working at and running his own business.

163. The NCEES recognizes that the practice of surveying, which must be accomplished by or under the responsible charge of a licensed professional surveyor, should include only activities related to determining or representing "authoritative" location.

164. Plaintiffs do not engage in any activities related to authoritative location.

165. The NCEES recognizes that activities related to non-authoritative uses of location data such as references for planning, infrastructure management, and general information do not implicate the justifications for practice of surveying licensing.

166. Plaintiffs only engage in activities related to non-authoritative location.

167. Plaintiffs do not claim to be licensed professional surveyors.

168. Plaintiffs do not claim that their site plans are surveys, certified, or authoritative; indeed, they clearly state that their site plans are not surveys, are not certified, and are not a substitute for a survey.

169. California does not prohibit other non-surveyors, including contractors and homeowners with no surveyor training, from creating non-authoritative site plans for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes.

170. Plaintiffs are similarly situated to these other non-surveyors, including contractors and homeowners with no surveyor training, who create non-authoritative site plans for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes.

171. There is no distinction between Plaintiffs and these other non-surveyors that is rationally related to any legitimate government interest supporting the licensing of land surveyors.

172. Application of the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700 *et seq.*, and in particular Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i), to Plaintiffs by Defendants, their agents and employees, acting under the color of state law, arbitrarily, unreasonably, and discriminatorily prohibit Plaintiffs from

pursuing their chosen livelihood by forcing them to obtain a license that is irrelevant to their profession and subjecting them to criminal penalties and fines, while other persons, similarly situated to Plaintiffs, are not forced to obtain a license to engage in the same occupation or threatened by criminal penalties and fines, thus threatening Plaintiffs' ability to earn a living in the occupation of their choice and the existence, profitability, and potential growth of Plaintiffs' business.

173. The arbitrary, unreasonable, and discriminatory diminution of Plaintiffs' economic liberty by the imposition of these regulations deprives them of substantive due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and protected by 42 U.S.C. § 1983.

174. Unless the California Professional Land Surveyors' Act, Cal. Bus. & Prof. Code §§ 8700 *et seq.*, and in particular Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i) are declared unconstitutional as applied to Plaintiffs and Defendants are enjoined from enforcing those sections against Plaintiffs, Plaintiffs will suffer continuing and irreparable harm to their rights protected by First and Fourteenth Amendments.

PRAYER FOR RELIEF

As remedies for the constitutional violations just described, Plaintiffs respectfully request the following relief:

A. Entry of judgment declaring Cal. Bus. & Prof. Code §§ 8700 *et seq.*, and in particular Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i), unconstitutional as applied to Plaintiffs' use of preexisting public GIS data and other information to create and disseminate non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing departments purposes.

B. Entry of a judgment declaring Cal. Bus. & Prof. Code §§ 8700 *et seq.*, and in particular Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i), unconstitutional on its face as overbroad and/or vague.

C. Entry of a preliminary and a permanent injunction prohibiting Defendants from enforcing Cal. Bus. & Prof. Code §§ 8700 *et seq.*, and in particular Cal. Bus. & Prof. Code §§ 8726(a)(1), (7), and (9), and 8792(a) and (i), against Plaintiffs.

D. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

E. Such further legal and equitable relief as the Court may deem just and proper.

Respectfully submitted this 29th day of September, 2022.

/s/ S. Michael Kernan

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*Application for admission *pro hac vice* to be filed

Attorneys for Plaintiffs

APPENDIX G

DECLARATION OF SERVICE
(via electronic mail)

I, Christine Doering, declare that I am a citizen of the United States of America, over 18 years of age, and not a party to the within cause; my business address is 2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833. I served the enclosed copy of the **CITATION ORDER 10977-U ISSUED TO RYAN CROWNHOLM** via electronic mail to the e-mail address listed below:

NAME	**E-MAIL ADDRESS**
RYAN CROWNHOLM	siteplan@mysiteplan.com

Said electronic mail was transmitted on December 28, 2021.

Executed on December 28, 2021, at Sacramento, California.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

/s/ Christine Doering
Christine Doering
Declarant

STATE OF CALIFORNIA GAVIN NEWSOM, GOVERNOR

BOARD FOR PROFESSIONAL ENGINEERS,
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CITATION ORDER
10977-U

ISSUED TO

RYAN CROWNHOLM
MY SITE PLAN
siteplan@mysiteplan.com

ON DECEMBER 28, 2021

CASE NO. 2021-03-093

RICHARD B. MOORE, PLS, in his official capacity as the Executive Officer for the Board for Professional Engineers, Land Surveyors, and Geologists (hereinafter referred to as the "Board"), issues this citation in accordance with Title 16, Division 5, California Code of Regulations section 472 for the violation(s) described below.

ORDER OF ABATEMENT

The Board hereby orders you to cease and desist from violating Business and Professions Code section(s) 8792(a) and (i).

ORDER TO PAY ADMINISTRATIVE FINE

The Board hereby orders you to pay an administrative fine in the amount of $1,000.00 as provided for by Title 16, Division 5, section 472.1 of the California Code of Regulations for the violation of section(s) 8792(a) and (i) of the Business and Professions Code, within thirty (30) days of the date the citation becomes final.

Licensing History

The records of the Board show that Ryan Crownholm is not licensed by the Board for Professional Engineers, Land Surveyors, and Geologists as a professional engineer, a professional land surveyor, a professional geologist, or in any other capacity.

Cause for Citation

An investigation, including a review by at least one licensee of the Board who is competent in the branch of professional land surveying most relevant to the subject matter, determined that you have violated the Professional Land Surveyors' Act (Business and Professions Code section 8700, et seq.) related to your business known as My Site Plan. Specifically, you

have offered and practiced land surveying, without legal authorization, as evidenced by a review of your business website by Board staff between March 2021 and December 2021. Preparing site plans which depict the location of property lines, fixed works, and the geographical relationship thereto falls within the definition of land surveying, pursuant to Business and Professions Code section(s) 8726(a) and (g). Offering to prepare subdivision maps and site plans which show the location of property lines, fixed works, and the geographical relationship thereto, falls within the definition of land surveying pursuant to Business and Professions Code section 8726(i). In offering and practicing land surveying, you have violated Business and Professions Code section 8792(a). In managing a business from which land surveying is offered and practiced, without legal authorization, you have violated Business and Professions Code section 8792(i).

Business and Professions Code 8726 (in pertinent part)

A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the

fixed works embraced within the practice of civil engineering, as described in Section 6731.

....

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

....

(i) Procures or offers to procure land surveying work for himself, herself, or others.

....

Business and Professions Code Section 8792 (in pertinent part)

A person who does any of the following is guilty of a misdemeanor:

(a) Unless the person is exempt from licensure under this chapter, practices, or offers to practice, land surveying in this state without legal authorization.

....

(i) Unless appropriately licensed, manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced, except as authorized pursuant to Section 6731.2 and subdivision (e) of Section 8729.

....

Payment Information

Payment of any fine shall not constitute an admission of the violation charged. (Business and Professions Code section 125.9(b)(4)) Where a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure. (B & P 125.9(d).) Payment of the administrative fine should be made to the Board for Professional Engineers, Land Surveyors, and Geologists, 2535 Capitol Oaks Drive, Suite 300, Sacramento, CA, 95833-2926.

Appeal and Compliance Information

Unless appealed, this citation shall become a final order of the Board 30 days after the Date of Issuance. Payment of the Administrative Fine is due within 30 days of the date the citation becomes final.

The failure of an unlicensed individual to pay an administrative fine after a citation becomes final is grounds for the Board's Executive Officer to apply to the appropriate superior court for a judgment in the amount of the administrative fine. The failure of an applicant for licensure as a professional engineer or professional land surveyor to comply with the order of abatement or pay the administrative fine within the time allowed is a ground for denial of licensure.

To appeal this citation or any portion thereof, or to request an informal conference, complete the enclosed "notice of appeal/request for an informal conference" form and submit it to the Board within 30 days of the date of issuance of this citation. Failure to submit a written request for an administrative hearing and/or an informal conference within 30 days of the date of issuance of this citation will waive your right to appeal this citation.

/s/ Richard B. Moore

Richard B. Moore, PLS, Executive Officer

STATE OF CALIFORNIA GAVIN NEWSOM, GOVERNOR

BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
2535 Capitol Oaks Drive, Suite 300,
Sacramento, California, 95833-2944
Telephone: (916) 999-3600–Toll Free: 1-866-780-5370
Facsimile: (916) 263-2246
www.bpelsg.ca.gov

STATEMENT OF RIGHTS –
INSTRUCTIONS TO CITED PERSON

You are hereby served with a citation issued by the Executive Officer of the California Board for Professional Engineers, Land Surveyors, and Geologists.

The citation is being served in accordance with Section 125.9 of the Business and Professions Code and Title 16, California Code of Regulations section 472.

Unless appealed, the citation shall be deemed a final order 30 days after the date of issuance of the citation. All orders of abatement or assessments of administrative fines are to be complied with in accordance with the time specified in the citation.

You may appeal the citation by submitting a written request for appeal to the Executive Officer within 30 days of the date of issuance of the citation. You may also submit a written request within 30 days of the date of issuance of the citation for an informal conference with the Executive Officer with respect to the

violations alleged, scope of order of abatement, or amount of administrative fine assessed.

INFORMAL CONFERENCE

The Executive Officer may, within 30 days from receipt of a written request, hold an informal conference with the cited person and/or the cited person's legal counsel or authorized representative.

At the conclusion of the informal conference, the Executive Officer may affirm, modify, or dismiss the citation and shall state in writing the reasons for his or her action and serve a copy of the findings and decision to the cited person within 30 days from the date of the informal conference. The decision shall be deemed to be a final order of the Executive Officer.

ADMINISTRATIVE HEARING

In order to be entitled to a hearing before an administrative law judge, a written request for an administrative hearing must be submitted to the Executive Officer within 30 days of the date of issuance of the citation, affirmation or modification of the citation. Administrative hearings will be conducted in accordance with the provisions of the Administrative Procedures Act, Chapters 4.5 and 5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code. The Board may review and sustain or reverse, by a majority vote, any final order.

STATE OF CALIFORNIA GAVIN NEWSOM, GOVERNOR

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NOTICE OF APPEAL
REQUEST FOR INFORMAL CONFERENCE
AND/OR ADMINISTRATIVE HEARING

CITATION ORDER 10977-U
ISSUED ON DECEMBER 28, 2021

RYAN CROWNHOLM
MY SITE PLAN
siteplan@mysiteplan.com

CASE NO. 2021-03-093

I hereby acknowledge receipt of the above referenced citation and notification of my rights to appeal the citation. I hereby request: (check appropriate items)

___ AN INFORMAL CONFERENCE with the Executive Officer and, if I choose, my legal counsel or authorized representative. I understand the Executive Officer may also have legal counsel

or an authorized representative present at the conference.

___ AN ADMINISTRATIVE HEARING conducted in accordance with the provisions of the California Administrative Procedures Act, Division 5 of Part 1 of Chapter 3 of Title 2 of the Government Code.

You may request both an Informal Conference and an Administrative Hearing by checking both items. You may withdraw a request for an Informal Conference any time prior to the date of the Informal Conference. You may withdraw a request for an Administrative Hearing any time prior to the hearing date.

By not requesting an Administrative Hearing or an Informal Conference within 30 days of the date of issuance of the citation, you expressly waive the right to appeal the citation. If you request an Informal Conference, and the citation is affirmed or modified, you may request an Administrative Hearing within 30 days of the date of the issuance of the order affirming or modifying the citation.

By returning this signed form to the Board office, you are stating your intent to appeal this citation. You must submit a statement of your reasons for appeal with this notice. If you have any questions concerning this process, please contact Christine Doering, Citation

Coordinator, at (916) 999-3583 or Christine.Doering@dca.ca.gov.

Signature _____ Date _____

Telephone#:
Business ( ) _____ Alternate
( ) _____