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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

**FILED**  
ALAMEDA COUNTY

SEP 15 2020

CLERK OF THE SUPERIOR COURT  
By  Deputy

Smith, )  
Plaintiff )

vs. )

State of California )

Defendant )

Case No. RG19046222

ORDER DENYING STAY OF  
PRELIMINARY INJUNCTION

This court issued a preliminary injunction prohibiting defendant from considering the SAT and ACT tests in its admissions and scholarship determinations. Defendant filed an ex parte request to stay the preliminary injunction on the grounds that it is mandatory, not prohibitory or, even if it were prohibitory, the court should exercise its discretion to stay the injunction. The court requested briefing in response from plaintiffs, which it has considered. Good cause appearing, the court denies the ex parte request.

The “general rule is that an injunction is prohibitory if it requires a person to refrain from a particular act and mandatory if it compels performance of an affirmative act that changes the position of the parties.” *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446. “The substance of the injunction, not the form, determines whether it is mandatory or prohibitory.” *Id.* While the test is easily stated, its application is not always so clear. A preliminary injunction requiring a party to cease an on-going violation of the law, even if the injunction has some incidentally mandatory aspects, is prohibitory. *People v. Mobile Magic Sales, Inc.* (1979) 96 Cal.App.3d 1, 13. Thus in *Mobile Magic Sales, Inc.*, the trial court issued a preliminary injunction to prohibit defendant from displaying an arguably unlawful sign. While the removal of the sign was undoubtedly an affirmative act, it was incidental to the injunction’s “objective to restrain

further violation of a valid statutory provision.” Id. See also *People ex rel. Brown v. iMergent, Inc.* (2009) 170 Cal.App.4th 333, 342–343.

Here is preliminary injunction is not only prohibitory in form, but also in substance. It prohibits ongoing reliance on tests that are likely discriminatory. Far from requiring defendant to restructure its admission process in any way, the order simply says this illegal component may not be used. The injunction does not compel any affirmative act. As the court indicated in its preliminary injunction order, and as plaintiffs’ opposition to this ex parte request underlines, the prohibition of the use of test results will not require a substantial restructure of the admissions process.

The court declines to stay the preliminary injunction based on its discretionary authority. The preliminary injunction order outlines the harm likely to be caused by the continued use of the tests and found the balance of hardship tips decidedly towards the plaintiffs.

IT IS SO ORDERED.

Dated: September 15, 2020

  
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BRAD SELIGMAN, JUDGE

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CLERK’S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed: 09/15/2020

*Jhalisa Castaneda*  
Courtroom Clerk, Dept. 23

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