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8

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION  
12

13 **CHARLES NICHOLS,**

14 Plaintiff,

15 v.

16 **EDMUND G. BROWN, Jr., in his**  
17 **official capacity as Governor of**  
18 **California, KAMALA D. HARRIS,**  
19 **Attorney General, in her official**  
20 **capacity as Attorney General of**  
21 **California, CITY OF REDONDO**  
**BEACH, CITY OF REDONDO**  
**BEACH POLICE DEPARTMENT,**  
**CITY OF REDONDO BEACH**  
**POLICE CHIEF JOSEPH**  
**LEONARDI and DOES 1 to 10,**

22 Defendants.  
23

CV-11-09916 SJO (SS)

**NOTICE OF MOTION AND**  
**MOTION TO DISMISS ACTION**  
**UNDER FED. R. CIV. P. 12(B)(1)**

Date: July 31, 2012  
Time: 10:00 a.m.  
Crtrm.: 23 – 3<sup>rd</sup> Flr.  
Judge: Hon. Suzanne H.  
Segal  
Trial Date: Not Yet Set  
Action Filed: Nov. 30, 2011

24 TO (PRO SE) PLAINTIFF CHARLES NICHOLS:

25 PLEASE TAKE NOTICE that, at 10:00 a.m., on Tuesday, July 31, 2012, or  
26 as soon thereafter as the matter may be heard in the above-entitled Court, located at  
27 312 North Spring St. in Los Angeles, Defendant Kamala D. Harris, Attorney  
28

1 General of the State of California (the “Attorney General”), will and hereby does  
2 move the Court to dismiss this action under Federal Rule of Civil Procedure  
3 12(b)(1), because of lack of subject-matter jurisdiction, on the specific grounds that  
4 Plaintiff Charles Nichols (“Nichols”) has not alleged a cognizable injury or a live  
5 case or controversy as regards the Attorney General; at least one claim of the two  
6 claims alleged against the Attorney General is not ripe for adjudication; and the  
7 Attorney General has immunity to Nichols’s claims under the U.S. Constitution’s  
8 Eleventh Amendment.

9 This motion is based on the instant notice of motion and motion, the  
10 accompanying supporting memorandum of points and authorities, the  
11 accompanying request for judicial notice, and the pleadings and papers on file in  
12 this action.

13 This motion is made after Jonathan M. Eisenberg, counsel of record for the  
14 Attorney General, *first* telephoned Nichols on June 21, 2012, seeking to meet and  
15 confer about this motion, but was not able to reach Nichols live and left a voicemail  
16 message for Nichols; and *second* sent a detailed e-mail message to Nichols on June  
17 22, 2012, outlining the Attorney General’s intended motion, and was met with  
18 Nichols’s (incorrect) response that the attempt to meet and confer came too late.  
19 L.R. 7-3.

20 Dated: June 29, 2012

Respectfully submitted,

21 KAMALA D. HARRIS  
22 Attorney General of California  
23 PETER K. SOUTHWORTH  
Supervising Deputy Attorney General

24  
25 /s/ Jonathan M. Eisenberg  
26 JONATHAN M. EISENBERG  
27 Deputy Attorney General  
Attorneys for Defendant California  
28 Attorney General Kamala D. Harris

## CERTIFICATE OF E-FILING AND SERVICE

Case Name: Nichols v. Brown No. U.S.D.C., C.D. Cal., 11-cv-09916-SJO-SS

I hereby certify that, on June 29, 2012, I caused to be electronically filed with the U.S. District Court, Central District of California, Clerk of the Court, through the CM/ECF system, the document(s) with the following title(s):

**NOTICE OF MOTION AND MOTION TO DISMISS ACTION UNDER FED. R. CIV. P. 12(B)(1)**

I certify that at least some of the participants in the above-entitled case are registered CM/ECF users.

I am employed in Los Angeles, California, in the Office of the Attorney General, Department of Justice, State of California ("OACG"), which is the office of a member of the California State Bar, at which member's direction the following service is made.

I am 18 years of age or older and not a party to this matter. I am familiar with the business practices at the OACG for collection and processing of correspondence for mailing with the U.S. Postal Service. In accordance with those practices, correspondence placed in the internal mail collection system at the OACG is deposited with the U.S. Postal Service, with postage thereon fully prepaid, that same day, in the ordinary course of business.

I further certify that at least some of the participants in the case are not registered CM/ECF users.

On June 29, 2012, I caused to be mailed, in the OACG's internal mail system, by First-Class Mail, postage prepaid, the foregoing document(s) to the following person(s) at the following address(es):

Charles Nichols  
P.O. Box 1302  
Redondo Beach, CA 90278

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 29, 2012, at Los Angeles, California.

\_\_\_\_\_  
R. Velasco  
Declarant

\_\_\_\_\_  
/s/ R. Velasco  
Signature