

1 XAVIER BECERRA  
 Attorney General of California  
 2 MARK R. BECKINGTON  
 Supervising Deputy Attorney General  
 3 P. PATTY LI  
 Deputy Attorney General  
 4 PETER H. CHANG  
 State Bar No. 241467  
 5 455 Golden Gate Avenue, Suite 11000  
 San Francisco, CA 94102-7004  
 6 Telephone: (415) 510-3776  
 Fax: (415) 703-1234  
 7 E-mail: Peter.Chang@doj.ca.gov  
*Attorneys for Defendants Gavin Newsom, in*  
 8 *his official capacity as Governor and Sonia Y.*  
*Angell, in her official capacity as*  
 9 *California Public Health Officer*

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 **ADAM BRANDY; ET AL.,**

16 Plaintiffs,

17 v.

20 **ALEX VILLANUEVA; ET AL.,**

21 Defendants.

2:20-cv-02874-AB-AK

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 STATE DEFENDANTS' EX PARTE  
 APPLICATION TO EXTEND  
 TIME TO RESPOND TO FIRST  
 AMENDED COMPLAINT BY 12  
 DAYS**

JUDGE: Hon. André Birotte Jr.

Complaint Served: April 2, 2020

Current response date: June 24, 2020

Proposed response date: July 6, 2020

1 Pursuant to Local Rule 7-19, Defendants Gavin Newsom, California  
2 Governor, and Sonia Y. Angell, California Public Health Officer (collectively, the  
3 “State Defendants”) hereby request that the Court extend the time for State  
4 Defendant to respond to Plaintiffs’ First Amended Complaint by 12 days, to and  
5 including July 6, 2020.

### 6 BACKGROUND

7 Plaintiffs filed the Original Complaint (Dkt. No. 1) on March 27, 2020 and  
8 the First Amended Complaint (“FAC”) (Dkt No. 9) on March 29, 2020. Counsel  
9 for State Defendants accepted service by email on April 2, 2020. *See* Dkt. No. 33.  
10 On April 16, 2020, counsel for Plaintiffs informed counsel for State Defendants  
11 that Plaintiffs intended to seek leave to amend the FAC. *Id.* Therefore, the parties  
12 agreed that the State Defendants need not respond to the FAC because Plaintiffs  
13 intended to further amend the complaint. *Id.*

14 The parties subsequently entered into two stipulations to extend the time for  
15 State Defendants to respond to the FAC so that Plaintiffs would have sufficient to  
16 prepare the amended complaint and to seek leave to file it. *See* Dkt Nos. 33 & 41.  
17 The Court granted both stipulations. Dkt. Nos. 34 & 44. Under the second  
18 stipulation to extend, the State Defendant’s response to the FAC was due on June  
19 24, 2020. Dkt. No. 44.

20 The parties had also engaged in discussions about settlement by way of a  
21 stipulation of dismissal. *See* Dkt. No. 41. The parties continued to discuss  
22 settlement until the afternoon of June 22, 2020, after which time counsel for  
23 Plaintiffs stopped responding to communications from counsel for State  
24 Defendants. *See* Declaration of Peter H. Chang in Supp. of ex parte App. (“Chang  
25 Decl.”), ¶¶ 5-10. In the early afternoon of June 23, 2020, having receiving no  
26 response from counsel for Plaintiffs, counsel for State Defendants emailed counsel  
27 for Plaintiffs again about the status of the settlement discussions. *Id.*, ¶ 5; Ex. 1.  
28 Counsel for State Defendants followed up the email with a phone call and left a

1 voicemail. *Id.* On the morning of June 24, counsel for State Defendants emailed  
2 Plaintiffs' counsel about the status of the draft stipulation of dismissal, and still  
3 received no response. Chang Decl., ¶ 7; Ex. 1. By that afternoon, having received  
4 no response from Plaintiffs' counsel about settlement, Counsel for State  
5 Defendants emailed Plaintiffs' counsel about the entering into a further stipulation  
6 to extend time by 12 days for State Defendants to respond to the FAC so as to  
7 provide time to either finalize a settlement, or "to provide sufficient time for [the  
8 parties] to meet and confer about a motion to dismiss ahead of that motion, if  
9 necessary." Chang Decl., ¶ 8; Ex. 1. Counsel for State Defendants also sent  
10 Plaintiffs' counsel a draft stipulation to extend time. Chang Decl., ¶ 8; *see* Ex. 1.  
11 Plaintiffs' counsel did not respond to this request for a stipulation to extend time.  
12 Chang Decl., ¶ 8.

### 13 ARGUMENT

14 Ex parte applications are for extraordinary relief, and will only be granted if  
15 (1) the moving party's cause will be irreparably prejudiced if the underlying  
16 motion is heard according to regular noticed motion procedures and (2) the moving  
17 party is "without fault in creating the crisis that requires ex parte relief, or that the  
18 crisis occurred as a result of excusable neglect." *Mission Power Eng'g Co. v.*  
19 *Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).

20 This application meet both requirements for this Court to grant an ex parte  
21 application. First, the State Defendants' deadline for answering or moving to  
22 dismiss Plaintiffs' FAC under Federal Rule of Civil Procedure 12(b) was June 24,  
23 2020, and State Defendants would be precluded from filing a 12(b) motion without  
24 relief from the Court.

25 Second, the State Defendants did not create this situation, which is the result  
26 of State Defendants' good faith reliance on communications with Plaintiffs'  
27 counsel; at a minimum, the need for a short extension has occurred as a result of  
28 excusable neglect. Plaintiffs had agreed that the State Defendants did not need to

1 respond to the FAC because Plaintiffs intended to further amend the complaint.  
2 See Dkt. No. 33 (“WHEREAS, the Parties agree that the State Defendants need not  
3 respond to the First Amended Complaint at this time because Plaintiffs intend to  
4 seek leave to file a second amended complaint by motion or stipulation”); Dkt. No.  
5 41 (same). At no time did Plaintiffs inform the State Defendants that it no longer  
6 intended to further amend the complaint. Therefore, the State Defendants had no  
7 reason to believe that they would be required to answer or otherwise respond to the  
8 FAC.

9 The State Defendants had also engaged in good-faith discussions of  
10 settlement with Plaintiffs until counsel for Plaintiffs ceased all communications  
11 after the afternoon of June 22. See Chang Decl., ¶¶ 5-10. When it appeared that a  
12 settlement may not be reached by June 24, the State Defendants also attempted to  
13 enter with Plaintiffs a further stipulation to extend time for the parties to either  
14 finalize the settlement, or to meet and confer under Local Rule 7-3 about a motion  
15 to dismiss, which attempt was also met with silence. *Id.*, ¶ 8.

16 Therefore, the State Defendants respectfully request that the Court grant this  
17 application and extend the State Defendants’ time to respond to the FAC by 12  
18 days, to and including July 6, 2020, which would provide sufficient time for the  
19 parties to finalize any settlement, or to engage in a meet and confer under Local  
20 Rule 7-3 for the State Defendants to move to dismiss the FAC.

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**CONCLUSION**

For these reasons, the State Defendants respectfully request that the Court grant this application and extend the State Defendants’ time to respond to the First Amended Complaint by 12 days, to and including July 6, 2020.

Dated: June 26, 2020

Xavier Becerra  
Attorney General of California  
Mark R. Beckington  
Supervising Deputy Attorney General

/s/ Peter H. Chang  
Peter H. Chang  
Deputy Attorney General  
*Attorneys for Defendants Gavin Newsom, in  
his official capacity as Governor and Sonia  
Y. Angell, in her official capacity as  
California Public Health Officer*