

1 TIMOTHY M. WHITE, Senior Deputy (SBN 220847)
Office of County Counsel, County of San Diego
2 1600 Pacific Highway, Room 355
San Diego, California 92101-2469
3 Telephone: (619) 531- 4865
E-mail: Timothy.White@sdcountry.ca.gov
4

5 Attorneys for Defendants, SUMMER STEPHAN, sued in her official capacity as District
Attorney of San Diego County; and LONNIE ELDRIDGE, sued in his official capacity
6 as County Counsel of San Diego County
7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10
11 B&L PRODUCTIONS, INC., d/b/a)
CROSSROADS OF THE WEST, et al.,)
12 Plaintiffs,)
13 v.)
14 GAVIN NEWSOM, in his official capacity)
as Governor of the State of California and)
15 in his personal capacity, et al.,)
16 Defendants.)

No. 3:21-cv-01718-AJB-KSC
**DEFENDANTS SUMMER STEPHAN
AND LONNIE ELDRIDGE’S NOTICE
OF MOTION AND MOTION TO
DISMISS PLAINTIFFS’ COMPLAINT
(AND EACH CAUSE OF ACTION
THEREIN THAT IS STATED AGAINST
THESE DEFENDANTS) FOR FAILURE
TO STATE A CLAIM
[Fed.R.Civ.P., Rule 12(b)(6)]**
**[DEFENDANTS SUMMER STEPHAN
AND LONNIE ELDRIDGE’S NOTICE
OF JOINDER AND JOINDER IN
STATE DEFENDANTS’ MOTION TO
DISMISS PLAINTIFFS’ COMPLAINT
IS FILED CONCURRENTLY
HEREWITH (CivLR 7.1(j))]**

Date: April 7, 2022
Time: 2:00 p.m.
Courtroom: 4A
Judge: Hon. Anthony J. Battaglia
Magistrate Judge: Hon. Karen S. Crawford

Action Filed: October 4, 2021
Trial Date: Not Set

[Demand for Jury Trial]

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on Thursday, April 7, 2022, at 2:00 p.m., or as
3 soon thereafter as this matter may be heard by the above-entitled Court, located at 221
4 West Broadway, San Diego, in Courtroom 4A, before the Honorable Anthony J.
5 Battaglia, defendants, SUMMER STEPHAN, sued in her official capacity as District
6 Attorney of San Diego County (“District Attorney Stephan”), and LONNIE ELDRIDGE,
7 sued in his official capacity as County Counsel of San Diego County (“County Counsel
8 Eldridge”) (collectively referred to herein as “County Defendants”), will, and hereby do,
9 move the Court for an order dismissing the Complaint (ECF No. 1) filed in this action by
10 plaintiffs B&L Productions, Inc., d/b/a Crossroads of the West, et al., with respect to each
11 individual cause of action alleged against County Defendants, for failure to state a claim
12 upon which relief can be granted. [Fed.R.Civ.P., Rule 12(b)(6) (“Rule 12(b)(6)”)].

13 County Defendants have, concurrently herewith, filed a Notice of Joinder in the
14 Motion to Dismiss Plaintiffs’ Complaint filed jointly by defendants GAVIN NEWSOM,
15 sued in his official capacity as Governor of the State of California and in his personal
16 capacity; ROBERT BONTA, sued in his official capacity as Attorney General of the
17 State of California and in his personal capacity; KAREN ROSS, sued in her official
18 capacity as Secretary of the California Department of Food & Agriculture and in her
19 personal capacity; and 22nd DISTRICT AGRICULTURAL ASSOCIATION
20 (collectively referred to herein as “State Defendants”). [State Defendants’ Motion to
21 Dismiss the Complaint, ECF Nos. 17 through 17.2.] County Defendants join in, and
22 expressly incorporate in this motion, the State Defendants’ Motion to Dismiss the
23 Complaint, including the argument, facts, and evidence contained therein.¹ In addition to

24
25 ¹ The County Defendants are included as defendants only on Plaintiffs’ federal
26 constitutional claims brought under 42 U.S.C. § 1983 (various First Amendment claims,
27 and an Equal Protection claim), and are not included as defendants on Plaintiffs’ state-
28 law claims. [*Compare* Complaint, ECF No. 1, at pp. 41 through 51, ¶¶ 155 through 220
(First through Sixth causes of action, alleging violations of the First and Fourteenth
Amendment to the United States Constitution and brought under § 1983), *with*

1 the grounds for dismissal raised in the State Defendants’ motion (which County
2 Defendants join), Plaintiffs’ causes of action against defendant County Counsel Eldridge
3 fail to state a claim upon which relief can be granted (and are thus subject to dismissal
4 under Rule 12(b)(6)), because—contrary to Plaintiffs’ allegations—California law does
5 not grant County Counsel Eldridge the authority or duty to enforce the challenged State
6 statute (California Food and Agricultural Code § 4158) by prosecuting violations of that
7 law.

8 This motion is based on this Notice of Motion and Motion, the Memorandum of
9 Points and Authorities filed herewith, the Notice of Joinder in the State Defendants’
10 Motion to Dismiss the Complaint filed herewith (and the State Defendants’ motion and
11 supporting moving papers and evidence), the pleadings and papers on file herein, and
12 upon such other matters as may be presented to the Court at the time of the hearing on
13 this motion.

14
15 DATED: January 24, 2022 OFFICE OF COUNTY COUNSEL

16
17 By s/Timothy M. White
18 TIMOTHY M. WHITE, Senior Deputy
19 Attorneys for Defendants SUMMER STEPHAN, sued
20 in her official capacity as District Attorney of San Diego
21 County; and LONNIE ELDRIDGE, sued in his official
22 capacity as County Counsel of San Diego County
23 E-mail: Timothy.White@sdcounty.ca.gov

24 _____
25 Complaint, ECF No. 1, at pp. 52 through 55, ¶¶ 221 through 248 (Seventh through Ninth
26 causes of action sounding in State tort law).] Accordingly, with respect to the
27 “Argument” section of the State Defendants’ Motion to Dismiss, the County Defendants’
28 join in the legal arguments applicable to Plaintiffs’ § 1983 claims. [See, e.g., State
Defendants’ Motion to Dismiss, Memorandum of Points and Authorities, ECF No. 17-1,
at “Argument” sections V and VI, at ECF pin cite pp. 20-32.]