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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.)
17

No. 3:21-cv-01718-AJB-KSC
**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS SUMMER STEPHAN
AND LONNIE ELDRIDGE’S 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))]**

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22 Date: April 7, 2022
Time: 2:00 p.m.
23 Courtroom: 4A
24 Judge: Hon. Anthony J. Battaglia
Magistrate Judge: Hon. Karen S. Crawford
25 Action Filed: October 4, 2021
26 Trial Date: Not Set

27 [Demand for Jury Trial]
28

1 **I. INTRODUCTION.**

2 The County Defendants¹ join fully in the State Defendants’² Motion to Dismiss
3 Plaintiffs’ Complaint filed in this action. [*See* County Defendants’ Notice of Joinder,
4 filed concurrently herewith; *see also* State Defendants’ Motion to Dismiss the Complaint,
5 at ECF Nos. 17 through 17-2.] In addition to the grounds for dismissal advanced by the
6 State Defendants’ motion (which County Defendants join and incorporate by reference
7 herein), Plaintiffs’ Complaint fails to state a claim against defendant County Counsel
8 Eldridge, because—contrary to Plaintiffs’ allegations—State law neither authorizes nor
9 imposes a duty on County Counsel Eldridge to enforce the challenged state statute,
10 California Food and Agricultural Code § 4158 (enacted in 2019 as California Assembly
11 Bill 893), by prosecuting violations of the law. Thus, for the reasons provided in the State
12 Defendants’ motion, and for the additional reasons set forth below, Plaintiffs’ Complaint
13 against the County Defendants should be dismissed. [Fed.R.Civ.P., Rule 12(b)(6) (“Rule
14 12(b)(6)”)].

15 **II. BACKGROUND.**

16 County Defendants join, and incorporate by reference herein, the Background
17 section from the State Defendants’ Motion to Dismiss. [State Defs. Motion, ECF 17-1, at
18 pp. 11-15.]³

19
20 ¹ The term “County Defendants” refers collectively to defendants, SUMMER
21 STEPHAN, sued in her official capacity as District Attorney of San Diego County
22 (“District Attorney Stephan”), and LONNIE ELDRIDGE, sued in his official capacity as
23 County Counsel of San Diego County (“County Counsel Eldridge”).

24 ² The term “State Defendants” refers collectively to defendants GAVIN
25 NEWSOM, sued in his official capacity as Governor of the State of California and in his
26 personal capacity; ROBERT BONTA, sued in his official capacity as Attorney General
27 of the State of California and in his personal capacity; KAREN ROSS, sued in her
28 official capacity as Secretary of the California Department of Food & Agriculture and in
her personal capacity; and 22nd DISTRICT AGRICULTURAL ASSOCIATION.

³ Citations to specific pages of pleadings that have been electronically filed in this
action are to the ECF page numbers stamped atop each page.

1 **III. LEGAL STANDARD.**

2 County Defendants join, and incorporate by reference herein, the Legal Standard
3 section from the State Defendants’ Motion to Dismiss. [State Defs. Motion, ECF 17-1, at
4 pp. 15-16.]

5 **IV. ARGUMENT.**

6 Plaintiffs allege in their Complaint that California Food and Agricultural Code §
7 4158 (enacted in 2019 as California Assembly Bill 893) (“FAC § 4158” or “AB 893”),
8 violates their free speech and free assembly/association rights under the First Amendment
9 to the United States Constitution, and their right to Equal Protection under the Fourteenth
10 Amendment. [Complaint, First through Sixth Causes of Action, ECF No. 1, at ¶¶ 155-
11 220.] Plaintiffs thus bring their claims against the defendants under 42 U.S.C. § 1983 (“§
12 1983”).⁴ With respect to the County Defendants, Plaintiffs’ allegations and claims are
13 limited to the contention that the County Defendants are purportedly “local actors
14 responsible for ensuring that AB 893 is enforced and thus have the authority to prosecute
15 violations of AB 893.” [Complaint, ECF No. 1, at ¶¶ 160, 173, and 186.] Specifically,
16 Plaintiffs allege that California Government Code § 26521 requires defendant District
17 Attorney Stephan to prosecute violations of FAC § 4158, and that this statutory mandate
18 to prosecute extends to defendant County Counsel Eldridge,⁵ because California
19 Government Code § 26529 purportedly requires the County Counsel to “discharge all
20 duties vested in the district attorney.” [Complaint, ECF No. 1, at ¶¶ 25-26.] Plaintiffs sue
21 the County Defendants in their official capacity only, and limit their request for relief
22 against the County Defendants to declaratory and injunctive relief. [*Id.*]

24 ⁴ While Plaintiffs include state-law tort causes of action in their Complaint, those
25 claims are not asserted against either of the County Defendants. Accordingly, this motion
26 only addresses the 1983 claims. [*See* Complaint, Seventh through Ninth Causes of
27 Action, ECF No. 1, at ¶¶ 221-248.]

28 ⁵ *See* Notice of Substitution of Party in Official Capacity, ECF No. 10 (substituting
County Counsel Eldridge as a defendant in place of former County Counsel Thomas
Montgomery).

1 County Defendants join, and expressly incorporate herein, the State Defendants’
2 Motion to Dismiss Plaintiffs’ First through Sixth Causes of Action brought against all
3 defendants under § 1983, for the alleged violation of Plaintiffs’ rights under the First and
4 Fourteenth Amendments to the United States Constitution, including the facts,
5 arguments, and evidence contained and cited therein. [See County Defendants’ Notice of
6 Joinder in State Defendants’ Motion to Dismiss the Complaint, filed concurrently
7 herewith; see also State Defs. Motion, ECF 17-1, at “Argument” §§ V (First Amendment
8 claims) and VI (Fourteenth Amendment claim), at pp. 20-32.]

9 In addition to the arguments presented in the State Defendants’ Motion to Dismiss
10 (which the County Defendants join and incorporate herein), dismissal of Plaintiffs’
11 claims against defendant County Counsel Eldridge is also warranted, because—contrary
12 to Plaintiffs’ allegations—the County Counsel is not authorized or charged by California
13 law with enforcing FAC § 4158, or prosecuting violations of that state statute. Plaintiffs’
14 allegations with respect to County Counsel Eldridge are limited to the following:

15 Defendant [LONNIE ELDRIDGE] is the County Counsel responsible for
16 enforcing the law within the County of San Diego. In that capacity, he must
17 “discharge all the duties vested in the district attorney.” Cal. Gov’t Code §
18 26529. The injunctive and declaratory relief portions of this suit are brought
19 against County Counsel [Eldridge] in his official capacity. [Complaint, ECF
20 No. 1, at ¶ 26];

21 and

22 Defendants Newsom, Becerra, Summers [sic], and [Eldridge] are the state
23 and local actors responsible for ensuring that AB 893 is enforced and thus
24 have the authority to prosecute violations of AB 893. [Complaint, ECF No.
25 1, at ¶¶ 160, 173, 186.]

26 But contrary to Plaintiffs’ allegation, California Government Code § 26529 neither
27 authorizes nor requires County Counsel Eldridge (or any other County Counsel) to
28 enforce FAC § 4158, including by prosecuting violations of that state statute. Violation of
29 FAC § 4158 is a misdemeanor. [FAC § 9.] California’s Food and Agricultural Code
30 provides that, “upon request of any enforcing officer or other interested person,” the
31 *district attorney* of a county (or a city attorney, if a violation of the Code occurs in a

1 municipality with its own prosecuting authority for misdemeanor violations) possesses
2 authority to prosecute a violation of the Food and Agricultural Code, including FAC §
3 4158. [FAC § 8.] No provision of the Food and Agricultural Code vests a County
4 Counsel with any such enforcement or prosecuting authority, and Plaintiffs cite none.

5 Instead, as noted above, Plaintiffs contend that under California Government Code
6 § 26529, County Counsel Eldridge is tasked with enforcing FAC § 4158, including
7 prosecuting violations of that statute. [Complaint, ECF No. 1, at ¶ 26.] Not so.

8 Government Code § 26529 provides, in relevant part:

9 (a) In counties that have a county counsel, **the county counsel shall**
10 **discharge all the duties vested in the district attorney by Sections 26520,**
11 **26522, 26523, 26524, and 26526.** The county counsel shall defend or
12 **prosecute all civil actions and proceedings in which the county or any of**
13 **its officers is concerned or is a party** in his or her official capacity. Except
14 where the county provides other counsel, the county counsel shall defend as
15 provided in Part 7 (commencing with Section 995) of Division 3.6 of Title 1
16 of the Government Code any action or proceeding brought against an
17 officer, employee, or servant of the county. [Cal. Govt. Code § 26529, subd.
18 (a) (emphasis added).]

17 Neither sections 26520, 26522, 26523, 26524, nor 26526 of the Government Code
18 pertain to the enforcement of the Food and Agricultural Code or the prosecution of
19 misdemeanor crimes. Government Code § 26520 states that the district attorney (and thus
20 the county counsel) may “render legal services to the county without fee and may render
21 legal services to school districts and to other local public entities as requested.”
22 Government Code § 26522 concerns the district attorney (or county counsel) assisting
23 public boards of education or school boards with “school bond” voting issues.
24 Government Code § 26523 authorizes a district attorney (or county counsel) to defend or
25 prosecute an action “brought by or against the auditor or treasurer” to test the
26 constitutionality of a legislative act “providing for the payment of any funds held in the
27 county treasury.” Government Code § 26524 provides that the district attorney (or county
28 counsel) shall represent a superior court or municipal court judge if the judge is sued in

1 his or her official capacity. And lastly, Government Code § 26526 simply specifies that
2 the county counsel is the “legal advisor of the board of supervisors,” and shall attend the
3 board of supervisors meetings when required, and oppose all claims and accounts against
4 the county that the county counsel deems unjust and illegal.

5 Simply put, the sole basis Plaintiffs’ identify for their claim that County Counsel
6 Eldridge is responsible for enforcing and prosecuting violations of FAC § 4158—
7 California Government Code § 26529 (Complaint, ECF No. 1, at ¶ 26)—as a matter of
8 law provides for no such authority or legal duty. Accordingly, in addition to the
9 arguments for dismissing Plaintiffs’ First and Fourteenth Amendment claims against the
10 State and County Defendants contained in the State Defendants’ Motion to Dismiss
11 (arguments the County Defendants join and incorporate herein), Plaintiffs’ Complaint
12 also fails to state a claim upon which relief can be granted against County Counsel
13 Eldridge, as—contrary to Plaintiffs’ allegations—the County Counsel has neither the
14 authority nor the duty to enforce FAC § 4158, including by prosecuting misdemeanor
15 violations of the statute. Plaintiffs’ causes of action against the County Defendants should
16 be dismissed.

17 **V. CONCLUSION.**

18 Based on the arguments and evidence advanced by the State Defendants in their
19 Motion to Dismiss (ECF Nos. 17 through 17-2), which County Defendants have joined
20 and incorporate herein, and in light of the reasons set forth above, the County Defendants
21 respectfully request that the Court grant their motion, and dismiss Plaintiffs’ claims
22 against them under Rule 12(b)(6).

23
24 DATED: January 24, 2022 OFFICE OF COUNTY COUNSEL

25
26 By s/Timothy M. White
27 TIMOTHY M. WHITE, Senior Deputy
28 Attorneys for Defendants SUMMER STEPHAN, sued
in her official capacity as District Attorney of San Diego
County; and LONNIE ELDRIDGE, sued in his official
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