

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@sdcounty.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
15 as Governor of the State of California and
in his personal capacity, et al.,

16 Defendants.
17
18
19

No. 3:21-cv-01718-AJB-KSC

**DEFENDANTS SUMMER STEPHAN
AND LONNIE ELDRIDGE’S NOTICE
OF JOINDER AND JOINDER IN:
(1) STATE DEFENDANTS’ REPLY
BRIEF IN SUPPORT OF MOTION TO
DISMISS PLAINTIFFS’ COMPLAINT;
AND (2) STATE DEFENDANTS’
OPPOSITION TO PLAINTIFFS’
REQUEST FOR JUDICIAL NOTICE OF
EXHIBITS 1-5
[JOINDER IN ECF NOS. 29 AND 30]**

[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

1 TO THE COURT, ALL PARTIES, AND COUNSEL OF RECORD HEREIN:

2 PLEASE TAKE NOTICE THAT, pursuant to CivLR 7.1(j), defendants,
3 SUMMER STEPHAN, sued in her official capacity as District Attorney of San Diego
4 County (“District Attorney Stephan”), and LONNIE ELDRIDGE, sued in his official
5 capacity as County Counsel of San Diego County (“County Counsel Eldridge”)
6 (collectively referred to herein as “County Defendants”), hereby join in:

7 (1) The reply brief filed by the State Defendants¹ in support of their motion to
8 dismiss Plaintiffs’ Complaint [State Defendants’ Reply Brief in support of Motion to
9 Dismiss, ECF No. 29]; and

10 (2) The State Defendants’ opposition to Plaintiffs’ request for judicial notice of
11 Exhibits 1-5 [State Defendants’ Opposition to Plaintiffs’ Request for Judicial Notice
12 Exhs. 1-5, ECF No. 30].

13 The County Defendants earlier joined in State Defendants’ motion to dismiss
14 Plaintiffs’ Complaint, and supporting papers, for the reasons explained in that Joinder.
15 [See County Defendants’ Joinder in State Defendants’ Motion to Dismiss Plaintiffs’
16 Complaint, ECF No. 19.]² Plaintiffs challenge the constitutionality of a *state* law, and

17
18 ¹ As used herein, “State Defendants” refers collectively to defendants GAVIN
19 NEWSOM, sued in his official capacity as Governor of the State of California and in his
20 personal capacity; ROBERT BONTA, sued in his official capacity as Attorney General
21 of the State of California and in his personal capacity; KAREN ROSS, sued in her
22 official capacity as Secretary of the California Department of Food & Agriculture and in
her personal capacity; and the 22nd DISTRICT AGRICULTURAL ASSOCIATION.

23 ² In addition to the grounds for dismissal raised in the State Defendants’ motion
24 (which County Defendants join), the County Defendants in their motion to dismiss made
25 the additional argument that Plaintiffs’ causes of action against defendant County
26 Counsel Eldridge, sued in his official capacity, fail to state a claim upon which relief can
27 be granted (and are thus subject to dismissal under Rule 12(b)(6)), because—contrary to
28 Plaintiffs’ allegations—California law does not grant County Counsel Eldridge the
authority or duty to enforce the challenged State statute (California Food and Agricultural

1 included County Defendants as official-capacity defendants—seeking only injunctive and
2 declaratory relief as to County Defendants, not damages—based on Plaintiffs’ allegations
3 that County Defendants may have some role in the future enforcement of the challenged
4 state law. Accordingly, and for the same reasons County Defendants joined in the State
5 Defendants’ motion to dismiss the Complaint, County Defendants now join in the State
6 Defendants’ reply brief in support of the motion to dismiss, and in the State Defendants’
7 opposition to Plaintiffs’ requests for judicial notice filed with their opposition to the
8 defendants’ motions to dismiss.

9
10 DATED: March 17, 2022 OFFICE OF COUNTY COUNSEL

11
12 By s/Timothy M. White
13 TIMOTHY M. WHITE, Senior Deputy
14 Attorneys for Defendants SUMMER STEPHAN, sued
15 in her official capacity as District Attorney of San Diego
16 County; and LONNIE ELDRIDGE, sued in his official
17 capacity as County Counsel of San Diego County
18 E-mail: Timothy.White@sdcounty.ca.gov

19 _____
20 Code § 4158) by prosecuting violations of that law. Plaintiffs did not address, much less
21 oppose, County Defendants’ arguments for defendant County Counsel Eldridge’s
22 dismissal from this action under Rule 12(b)(6). Accordingly, the Court should find that
23 Plaintiffs have abandoned their claims against County Counsel Eldridge. “Where a party
24 fails to address arguments against a claim raised in a motion to dismiss, the claims are
25 abandoned and dismissal is appropriate.” [*Shull v. Ocwen Loan Servicing, LLC*, 2014
26 U.S. Dist. LEXIS 50686, 2014 WL 1404877, *2 (S.D. Cal. 2014); *see also Silva v. U.S.*
27 *Bancorp*, 2011 U.S. Dist. LEXIS 152817, 2011 WL 7096576, at *3 (C.D. Cal. Oct. 6,
28 2011) (“[T]he Court finds that Plaintiff concedes his ... claim should be dismissed by
failing to address Defendants’ arguments in his Opposition.”) (citations omitted);
cf. Jenkins v. County of Riverside, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005) (noting that a
party abandoned claims not defended in opposition to a motion for summary judgment);
CivLR 7.1(f)(3)(c) (“Waiver: If an opposing party fails to file the papers in the manner
required by Civil Local Rule 7.1.e.2, that failure may constitute a consent to the granting
of a motion or other request for ruling by the Court.”).]

Declaration of Service

I, the undersigned, declare:

That I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California where the service occurred; and my business address is: 1600 Pacific Highway, Room 355, San Diego, California.

On March 17, 2022, I served the following documents: **DEFENDANTS SUMMER STEPHAN AND LONNIE ELDRIDGE'S NOTICE OF JOINDER AND JOINDER IN: (1) STATE DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT; AND (2) STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE OF EXHIBITS 1-5 [JOINDER IN ECF NOS. 29 AND 30]**; in the following manner:

(BY CM/ECF) I caused to be transmitted a copy of the foregoing document(s) this date via the United States District Court's ECF System, in accordance with the rules governing the electronic filing of documents in the **United States District Court for the Southern District of California**, which electronically notifies all counsel as follows:

SEE SERVICE LIST ON NEXT PAGE

I declare under penalty of perjury that the foregoing is true and correct.
Executed on March 17, 2022, at San Diego, California.

By: s/TIMOTHY M. WHITE
E-mail: timothy.white@sdcountry.ca.gov

SERVICE LIST

<p>C.D. Michel Anna M. Barvir Tiffany D. Cheuvront MICHEL&ASSOCIATES, P.C. 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802 Phone: (562) 216-4444 Fax: (562) 216-4445; Email: cmichel@michellawyers.com abarvir@michelleawyers.com</p>	<p>Attorneys for Plaintiffs <i>B&L Productions, Inc., Barry Bardack, Ronald J. Diaz, Sr., John Dupree, Christopher Irick, Robert Solis, Lawrence Michael Walsh, Captain Jon's Lockers, LLC, LAX Firing Range, Inc., California Rifle & Pistol Association, Incorporated, and South Bay Rod and Gun club, Inc.</i></p>
<p>Alexander A. Frank Severson & Werson APC 19100 Von Karman Avenue, Suite 700 Irvine, CA 92612 Phone: (949) 442-7110 Email: afrank@michellawyers.com</p>	
<p>Donald Kilmer LAW OFFICES OF DONALD KILMER, APC 14085 Silver Ridge Road Caldwell, Idaho 83607 Phone: (408) 264-8489 Email: Don@DKLawOffice.com</p>	<p>Attorney for Plaintiff <i>Second Amendment Foundation</i></p>
<p>Rob Bonta Attorney General of California Anthony R. Hakl Supervising Deputy Attorney General Charles J. Sarosy Deputy Attorney General CALIFORNIA ATTORNEY GENERAL'S OFFICE 300 South Spring Street, Suite 1702 Los Angeles, CA 90013 Phone: (213) 269-6356 Fax: (916) 731-2119 Email: Charles.Sarosy@doj.ca.gov</p>	<p>Attorneys for Defendants <i>Governor Gavin Newsom, Attorney General Rob Bonta, Secretary Karen Ross, and 22nd District Agricultural Association</i></p>