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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
14 v.
15 GAVIN NEWSOM, in his official capacity
as Governor of the State of California and
in his personal capacity, et al.,
16 Defendants.
17

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

**DEFENDANTS SUMMER STEPHAN
AND LONNIE ELDRIDGE’S REPLY
BRIEF IN SUPPORT OF THEIR
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)]**

**[FILED CONCURRENTLY WITH
NOTICE OF JOINDER AND JOINDER
IN STATE DEFENDANTS’ REPLY
BRIEF IN SUPPORT OF MOTION TO
DISMISS, AND OPPOSITION TO
PLAINTIFFS’ REQUEST FOR
JUDICIAL NOTICE (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 **I. JOINDER IN STATE DEFENDANTS’ REPLY BRIEF.**

2 In support of their motion to dismiss Plaintiffs’ Complaint under Federal Rule of
3 Civil Procedure 12(b)(6) (“Rule 12(b)(6)) [*see* ECF Nos. 20 to 20-1], the County
4 Defendants¹ joined in the State Defendants’² motion to dismiss the Complaint [ECF Nos.
5 17 to 17-2], and in particular the State Defendants’ substantive arguments against
6 Plaintiffs’ federal-law claims brought under 42 U.S.C. section 1983. [*See* County
7 Defendants’ Notice of Joinder and Joinder, ECF No. 19.] Likewise, the County
8 Defendants are—concurrently herewith—filing a Notice of Joinder and Joinder in (a) the
9 State Defendants’ reply brief in support of their motion to dismiss (in which County
10 Defendants’ previously had joined), and (2) the State Defendants’ opposition to the
11 request for judicial notice the Plaintiffs filed in support of their opposition to defendants’
12 motions to dismiss. [*See* County Defendants’ Notice of Joinder and Joinder in State
13 Defendants’ reply brief and opposition to plaintiffs’ request for judicial notice, filed
14 concurrently herewith.] For the reasons stated in the State and County Defendants’
15 respective motions to dismiss and the State Defendants’ reply brief (which County
16 Defendants have joined and is incorporated by reference herein), and for the additional
17 reasons addressed below, the Court should grant the County Defendants’ motion to
18 dismiss under Rule 12(b)(6).

19 ///

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

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

1 **II. PLAINTIFFS HAVE ABANDONED THEIR CLAIMS AGAINST**
2 **DEFENDANT COUNTY COUNSEL ELDRIDGE.**

3 In addition to the grounds for dismissal raised in the State Defendants' motion to
4 dismiss (which County Defendants join), the County Defendants in their motion to
5 dismiss [ECF Nos. 20 to 20-1] made the additional argument that Plaintiffs' causes of
6 action against defendant County Counsel Eldridge, sued in his official capacity, fail to
7 state a claim upon which relief can be granted (and are thus subject to dismissal under
8 Rule 12(b)(6)), because—contrary to Plaintiffs' allegations—California law does not
9 grant County Counsel Eldridge the authority or duty to enforce the challenged State
10 statute (California Food and Agricultural Code § 4158) by prosecuting violations of that
11 law. [See Memorandum of Points and Authorities in support of County Defendants'
12 Motion to Dismiss Plaintiffs' Complaint, ECF No. 20-1, at electronically-numbered
13 pages 3-6 (“Argument”).]

14 In their joint opposition to the State and County Defendants' respective motions to
15 dismiss [ECF No. 28], Plaintiffs did not address, much less oppose, County Defendants'
16 arguments for defendant County Counsel Eldridge's dismissal from this action under
17 Rule 12(b)(6). Accordingly, the Court should find that Plaintiffs have abandoned their
18 claims against County Counsel Eldridge, and dismiss him from this action without leave
19 to amend. “Where a party fails to address arguments against a claim raised in a motion to
20 dismiss, the claims are abandoned and dismissal is appropriate.” [*Shull v. Ocwen Loan*
21 *Servicing, LLC*, 2014 U.S. Dist. LEXIS 50686, 2014 WL 1404877, *2 (S.D. Cal. 2014);
22 *see also Silva v. U.S. Bancorp*, 2011 U.S. Dist. LEXIS 152817, 2011 WL 7096576, at *3
23 (C.D. Cal. Oct. 6, 2011) (“[T]he Court finds that Plaintiff concedes his ... claim should be
24 dismissed by failing to address Defendants' arguments in his Opposition.”) (citations
25 omitted); *cf. Jenkins v. County of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005)
26 (noting that a party abandoned claims not defended in opposition to a motion for
27 summary judgment); CivLR 7.1(f)(3)(c) (“Waiver: If an opposing party fails to file the
28 papers in the manner required by Civil Local Rule 7.1.e.2, that failure may constitute a

1 consent to the granting of a motion or other request for ruling by the Court.”.)]

2 **III. CONCLUSION.**

3 For the foregoing reasons, the County Defendants respectfully request that the
4 Court grant their motion to dismiss Plaintiffs’ Complaint, without leave to amend.

5
6 DATED: March 17, 2022

OFFICE OF COUNTY COUNSEL

7
8 By s/Timothy M. White
9 TIMOTHY M. WHITE, Senior Deputy
10 Attorneys for Defendants SUMMER STEPHAN, sued
11 in her official capacity as District Attorney of San Diego
12 County; and LONNIE ELDRIDGE, sued in his official
13 capacity as County Counsel of San Diego County
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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 REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' COMPLAINT (AND EACH CAUSE OF ACTION THEREIN THAT IS STATED AGAINST THESE DEFENDANTS) FOR FAILURE TO STATE A CLAIM;**

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>