

1 CLAUDIA G. SILVA, County Counsel (SBN 167868)
TIMOTHY M. WHITE, Senior Deputy (SBN 220847)
2 Office of County Counsel, County of San Diego
1600 Pacific Highway, Room 355
3 San Diego, California 92101-2469
Telephone: (619) 531- 4865
4 E-mail: Timothy.White@sdcountry.ca.gov

5
6 Attorneys for Defendant, SUMMER STEPHAN, sued in her official capacity as District
7 Attorney of San Diego County

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
17 Defendants.

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

**DEFENDANT SUMMER STEPHAN’S
NOTICE OF JOINDER AND JOINDER
IN REPLY BRIEF IN SUPPORT OF
STATE DEFENDANTS’ MOTION TO
DISMISS THE FIRST AMENDED
COMPLAINT
[JOINDER IN ECF NO. 45]**

[CivLR 7.1(j)]

Date: February 23, 2023
Time: 2:00 p.m.
Courtroom: 4A
Judge: Hon. Anthony J. Battaglia
Magistrate Judge: Hon. David D. Leshner

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

[Demand for Jury Trial]

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

2 PLEASE TAKE NOTICE THAT in response to plaintiffs’ First Amended
3 Complaint (“FAC”) [ECF No. 36] filed in this action, and pursuant to CivLR 7.1(j),
4 defendant, SUMMER STEPHAN, sued in her official capacity as District Attorney of
5 San Diego County (“District Attorney Stephan”), hereby joins in the reply brief filed
6 jointly by defendants Governor GAVIN NEWSOM, Attorney General ROB BONTA,
7 Secretary KAREN ROSS, and 22nd DISTRICT AGRICULTURAL ASSOCIATION
8 (collectively referred to herein as “State Defendants”) [ECF No. 45] in response to
9 Plaintiffs’ opposition [ECF No. 44] to the State Defendants’ Motion to Dismiss the FAC
10 [ECF Nos. 42 through 42-3].

11 Plaintiffs, in their FAC, challenge the constitutionality of a State law (California
12 Food and Agricultural Code § 4158 (enacted in 2019 as California Assembly Bill 893)),
13 and sue District Attorney Stephan in her official capacity only, with Plaintiffs’ request for
14 relief against District Attorney Stephan limited to declaratory and injunctive relief. [See
15 FAC, ECF No. 36, at ¶ 26.] Plaintiffs’ claims against the District Attorney Stephan are
16 based on Plaintiffs’ allegations that the District Attorney Stephan purportedly is among
17 the government officials tasked by State law with enforcing Food and Agricultural Code
18 § 4158 by prosecuting violations of the statute. [See FAC, ECF No. 36, at ¶¶ 26, 186,
19 199, 211, 223, 232, 241, and 247.] Accordingly, Plaintiffs contend that declaratory and/or
20 injunctive relief against District Attorney Stephan (among other defendants) is necessary
21 to afford Plaintiffs complete relief if they prevail in their challenge to the constitutionality
22 of the subject State law.

23 Because the State Defendants have filed a Motion to Dismiss the FAC under
24 Federal Rule of Civil Procedure 12(b)(6) on the grounds that the FAC, and each cause of
25 action therein (including the causes of action brought against District Attorney Stephan),
26 fails to state a claim upon which relief can be granted, and because Plaintiffs’ claims
27 against District Attorney Stephan are based solely on her purported authority under State
28 law to enforce the challenged statute (rather than any particular action taken by District

1 Attorney Stephan), District Attorney Stephan previously joined in the State Defendants’
2 Motion to Dismiss the FAC (*see* ECF No. 43, Def. Stephan’s Notice of Joinder and
3 Joinder, filed on 10/31/22), and hereby joins in the State Defendants’ reply to Plaintiffs’
4 opposition to defendants’ Motion to Dismiss the FAC, together with any supporting facts,
5 arguments, and/or evidence contained in or filed with State Defendants’ reply brief.¹
6

7 DATED: December 19, 2022 CLAUDIA SILVA, COUNTY COUNSEL

8
9 By s/Timothy M. White
10 TIMOTHY M. WHITE, Senior Deputy
11 Attorneys for Defendant SUMMER STEPHAN, sued in
12 her official capacity as District Attorney of San Diego
13 County
14 E-mail: Timothy.White@sdcountry.ca.gov
15
16
17
18
19

20 ¹ District Attorney Stephan is included as a defendant only on Plaintiffs’ federal
21 constitutional claims brought under 42 U.S.C. § 1983, and is not included as a defendant
22 on Plaintiffs’ state-law claims. [*Compare* FAC, ECF No. 36, at pp. 46 through 58, ¶¶ 182
23 through 252 (First through Seventh causes of action, alleging violations of the First,
24 Second, and Fourteenth Amendments to the United States Constitution, and brought
25 under § 1983), *with* FAC, ECF No. 36, at pp. 58 through 62, ¶¶ 253 through 280 (Eighth
26 through Tenth causes of action sounding in State tort law).] Accordingly, with respect to
27 the “Argument” section of the State Defendants’ reply brief, District Attorney Stephan in
28 particular joins in the legal arguments applicable to Plaintiffs’ § 1983 claims alleging
violations of the U.S. Constitution [*see* Reply, ECF No. 45, at Sections I through III].