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

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 12 B & L PRODUCTIONS, INC., d/b/a  
 CROSSROADS OF THE WEST, et al.,

13 Plaintiffs,

14 v.

15  
 16 22nd DISTRICT AGRICULTURAL  
 ASSOCIATION, et al.,

17 Defendants.

19-cv-0134-CAB-NLS

**NOTICE OF MOTION AND  
 MOTION TO DISMISS THE  
 COMPLAINT**

Date: May 1, 2019  
 Judge: The Honorable Cathy Ann  
 Bencivengo  
 Action Filed: January 21, 2019

PER CHAMBER RULES, NO ORAL  
 ARGUMENT UNLESS SEPARATELY  
 ORDERED BY THE COURT

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**NOTICE OF MOTION AND MOTION TO DISMISS**

PLEASE TAKE NOTICE THAT on May 1, 2019, or as soon thereafter as the matter may be heard before the Honorable Cathy Ann Bencivengo in Courtroom 4C of the Edward J. Schwartz U.S. Courthouse, located at 221 West Broadway, San Diego, California 92101, the Court will hear the motion filed by Defendants 22nd District Agricultural Association; Steve Shewmaker, President of 22nd District Agricultural Association, in his official and individual capacity; Richard Valdez, Vice President of 22nd District Agricultural Association, in his official and individual capacity; and Karen Ross, Secretary of California Department of Food & Agriculture, in her official capacity (collectively, “Defendants”), to dismiss the Complaint for Monetary, Declaratory & Injunctive Relief (ECF No. 1).

Defendants move to dismiss under Federal Rule of Civil Procedure 12(b)(6) on the grounds that:

- 1. All claims against Defendants Shewmaker and Valdez fail to state a claim upon which relief can be granted, based on absolute legislative immunity;
- 2. All damages claims against Defendants Shewmaker, Valdez, and Ross fail to state a claim upon which relief can be granted, because such claims are not cognizable under 42 U.S.C. section 1983;
- 3. All claims against Defendant Ross fail to state a claim upon which relief can be granted, based on sovereign immunity;
- 4. The First Amendment free speech claims (First through Fourth Causes of Action) all fail to state a claim upon which relief can be granted, because the challenged policy: does not regulate speech or expressive conduct, and survives rational basis review; applies to a limited or nonpublic forum and is viewpoint neutral and reasonable; and is content-neutral and survives intermediate scrutiny;
- 5. The First Amendment associational claim (Fifth Cause of Action) fails to state a claim upon which relief can be granted, because Plaintiffs do not plausibly allege that they are engaged in protected expressive association;

1           6.     The Equal Protection Clause claim (Sixth Cause of Action) fails to state a  
2 claim upon which relief can be granted, because it is duplicative of the First  
3 Amendment claims; Plaintiffs do not plausibly allege a “class of one” claim; and  
4 the challenged policy survives rational basis review;

5           7.     The claim under 42 U.S.C. section 1985 (Seventh Cause of Action) fails  
6 to state a claim upon which relief can be granted, because Plaintiffs are not a  
7 protected class; and

8           8.     All damages claims against Defendants Shewmaker and Valdez fail to  
9 state a claim upon which relief can be granted, based on qualified immunity.

10           This motion is based on this filing, the concurrently filed memorandum of  
11 points and authorities and request for judicial notice, the papers and pleadings on  
12 file in this action, and upon such matters as may be presented to the Court at the  
13 time of the hearing.

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Dated: March 27, 2019

Respectfully Submitted,  
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*s/ P. PATTY LI*  
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