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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  
13 Plaintiffs,  
14 v.  
15 GAVIN NEWSOM, in his official capacity  
as Governor of the State of California and  
in his personal capacity, et al.,  
16  
17 Defendants.  
18

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

**DEFENDANTS SUMMER STEPHAN  
AND LONNIE ELDRIDGE’S NOTICE  
OF MOTION AND 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))]**

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 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on Thursday, April 7, 2022, at 2:00 p.m., or as  
3 soon thereafter as this matter may be heard by the above-entitled Court, located at 221  
4 West Broadway, San Diego, in Courtroom 4A, before the Honorable Anthony J.  
5 Battaglia, defendants, SUMMER STEPHAN, sued in her official capacity as District  
6 Attorney of San Diego County (“District Attorney Stephan”), and LONNIE ELDRIDGE,  
7 sued in his official capacity as County Counsel of San Diego County (“County Counsel  
8 Eldridge”) (collectively referred to herein as “County Defendants”), will, and hereby do,  
9 move the Court for an order dismissing the Complaint (ECF No. 1) filed in this action by  
10 plaintiffs B&L Productions, Inc., d/b/a Crossroads of the West, et al., with respect to each  
11 individual cause of action alleged against County Defendants, for failure to state a claim  
12 upon which relief can be granted. [Fed.R.Civ.P., Rule 12(b)(6) (“Rule 12(b)(6)”)].

13 County Defendants have, concurrently herewith, filed a Notice of Joinder in the  
14 Motion to Dismiss Plaintiffs’ Complaint filed jointly by defendants GAVIN NEWSOM,  
15 sued in his official capacity as Governor of the State of California and in his personal  
16 capacity; ROBERT BONTA, sued in his official capacity as Attorney General of the  
17 State of California and in his personal capacity; KAREN ROSS, sued in her official  
18 capacity as Secretary of the California Department of Food & Agriculture and in her  
19 personal capacity; and 22nd DISTRICT AGRICULTURAL ASSOCIATION  
20 (collectively referred to herein as “State Defendants”). [State Defendants’ Motion to  
21 Dismiss the Complaint, ECF Nos. 17 through 17.2.] County Defendants join in, and  
22 expressly incorporate in this motion, the State Defendants’ Motion to Dismiss the  
23 Complaint, including the argument, facts, and evidence contained therein.<sup>1</sup> In addition to

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24  
25 <sup>1</sup> The County Defendants are included as defendants only on Plaintiffs’ federal  
26 constitutional claims brought under 42 U.S.C. § 1983 (various First Amendment claims,  
27 and an Equal Protection claim), and are not included as defendants on Plaintiffs’ state-  
28 law claims. [*Compare* Complaint, ECF No. 1, at pp. 41 through 51, ¶¶ 155 through 220  
(First through Sixth causes of action, alleging violations of the First and Fourteenth  
Amendment to the United States Constitution and brought under § 1983), *with*

1 the grounds for dismissal raised in the State Defendants’ motion (which County  
2 Defendants join), Plaintiffs’ causes of action against defendant County Counsel Eldridge  
3 fail to state a claim upon which relief can be granted (and are thus subject to dismissal  
4 under Rule 12(b)(6)), because—contrary to Plaintiffs’ allegations—California law does  
5 not grant County Counsel Eldridge the authority or duty to enforce the challenged State  
6 statute (California Food and Agricultural Code § 4158) by prosecuting violations of that  
7 law.

8 This motion is based on this Notice of Motion and Motion, the Memorandum of  
9 Points and Authorities filed herewith, the Notice of Joinder in the State Defendants’  
10 Motion to Dismiss the Complaint filed herewith (and the State Defendants’ motion and  
11 supporting moving papers and evidence), the pleadings and papers on file herein, and  
12 upon such other matters as may be presented to the Court at the time of the hearing on  
13 this motion.

14  
15 DATED: January 24, 2022 OFFICE OF COUNTY COUNSEL

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

24 \_\_\_\_\_  
25 Complaint, ECF No. 1, at pp. 52 through 55, ¶¶ 221 through 248 (Seventh through Ninth  
26 causes of action sounding in State tort law).] Accordingly, with respect to the  
27 “Argument” section of the State Defendants’ Motion to Dismiss, the County Defendants’  
28 join in the legal arguments applicable to Plaintiffs’ § 1983 claims. [See, e.g., State  
Defendants’ Motion to Dismiss, Memorandum of Points and Authorities, ECF No. 17-1,  
at “Argument” sections V and VI, at ECF pin cite pp. 20-32.]

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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  
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[Fed.R.Civ.P., Rule 12(b)(6)]**  
**[DEFENDANTS SUMMER STEPHAN  
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OF JOINDER AND JOINDER IN  
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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  
26 Action Filed: October 4, 2021  
Trial Date: Not Set

27 [Demand for Jury Trial]  
28

1 **I. INTRODUCTION.**

2 The County Defendants<sup>1</sup> join fully in the State Defendants’<sup>2</sup> 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.]<sup>3</sup>

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19  
20 <sup>1</sup> 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 <sup>2</sup> 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.

<sup>3</sup> 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”).<sup>4</sup> 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,<sup>5</sup> 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.*]

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24 <sup>4</sup> 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 <sup>5</sup> *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  
TIMOTHY M. WHITE, Senior Deputy  
27 Attorneys for Defendants SUMMER STEPHAN, sued  
in her official capacity as District Attorney of San Diego  
28 County; and LONNIE ELDRIDGE, sued in his official  
capacity as County Counsel of San Diego County  
E-mail: Timothy.White@sdcounty.ca.gov

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 January 24, 2022, I served the following documents:  
**DEFENDANTS SUMMER STEPHAN AND LONNIE ELDRIDGE'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' COMPLAINT (AND EACH CAUSE OF ACTION THEREIN THAT IS STATED AGAINST THESE DEFENDANTS) FOR FAILURE TO STATE A CLAIM;**

**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;**

in the following manner:

- (By Email)** I served the above-listed document(s) by transmitting via email to the email address listed. I did not receive within a reasonable period of time after the transmission any electronic message or other indication that the transmission was unsuccessful.

Donald Kilmer LAW OFFICES OF DONALD KILMER, APC 14085 Silver Ridge Road Caldwell, Idaho 83607 Phone: (408) 264-8489 Email: <a href="mailto:Don@DKLawOffice.com">Don@DKLawOffice.com</a>	Attorney for Plaintiff <i>Second Amendment Foundation</i>
---	---

- (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 CM/ECF SERVICE LIST ON NEXT PAGE

CM/ECF SERVICE LIST

<p>C.D. Michel                  Anna M. Barvir                  Tiffany D. Chevront                  MICHEL&amp;ASSOCIATES, P.C.                  180 East Ocean Blvd., Suite 200                  Long Beach, CA 90802                  Phone: (562) 216-4444                  Email: <a href="mailto:cmichel@michellawyers.com">cmichel@michellawyers.com</a>  <a href="mailto:abarvir@michellawyers.com">abarvir@michellawyers.com</a>  <a href="mailto:tcheuvront@michellawyers.com">tcheuvront@michellawyers.com</a></p>	<p>Attorneys for Plaintiffs <i>B&amp;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 &amp; Pistol Association, Incorporated, and South Bay Rod and Gun club, Inc.</i></p>
<p>Alexander A. Frank                  Severson &amp; Werson APC                  19100 Von Karman Avenue, Suite 700                  Irvine, CA 92612                  Phone: (949) 442-7110                  Email: <a href="mailto:afrank@michellawyers.com">afrank@michellawyers.com</a></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: <a href="mailto:Charles.Sarosy@doj.ca.gov">Charles.Sarosy@doj.ca.gov</a></p>	<p>Attorneys for Defendants  <i>Governor Gavin Newsom, Attorney General Rob Bonta, Secretary Karen Ross, and 22nd District Agricultural Association</i></p>

I declare under penalty of perjury that the foregoing is true and correct.  
 Executed on January 24, 2022, at San Diego, California.

By: s/TIMOTHY M. WHITE  
 E-mail: [timothy.white@sdcountry.ca.gov](mailto:timothy.white@sdcountry.ca.gov)