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 Association*

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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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14 **B&L PRODUCTIONS, INC., d/b/a**
 15 **CROSSROADS OF THE WEST, et**
 16 **al.,**

17 Plaintiffs,

18 v.

19 **GAVIN NEWSOM, in his official**
 20 **capacity as Governor of the State of**
 21 **California and in his personal**
 22 **capacity, et al.,**

23 Defendants.
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3:21-cv-01718 AJB-KSC

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

Date: April 7, 2022
 Time: 2:00 p.m.
 Courtroom: 4A
 Judge: The Honorable Anthony J.
 Battaglia
 Trial Date:
 Action Filed: 10/4/2021

1 **NOTICE OF MOTION AND MOTION TO DISMISS**

2 PLEASE TAKE NOTICE THAT on April 7, 2022 at 2:00 p.m., or as soon
3 thereafter as the matter may be heard before the Honorable Anthony J. Battaglia in
4 Courtroom 4A of the Edward J. Schwartz U.S. Courthouse, located at 221 West
5 Broadway, San Diego, California 92101, the Court will hear the motion filed by
6 Defendants Governor Gavin Newsom, Attorney General Rob Bonta, Secretary
7 Karen Ross, and the 22nd District Agricultural Association (collectively, “State
8 Defendants”), to dismiss the Complaint for Monetary, Declaratory & Injunctive
9 Relief (ECF No. 1).

10 State Defendants move to dismiss under Federal Rules of Civil Procedure
11 12(b)(1), and 12(b)(6) on the grounds that:

- 12 1. All 42 U.S.C. § 1983 claims against Governor Newsom fail to state a
13 claim upon which relief can be granted, based on absolute legislative immunity;
- 14 2. All claims against Governor Newsom and Secretary Ross fail to state a
15 claim upon which relief can be granted, based on sovereign immunity;
- 16 3. All damages claims against Governor Newsom, Secretary Ross, and
17 Attorney General Bonta fail to state a claim upon which relief can be granted
18 because such claims are not cognizable under § 1983;
- 19 4. All damages claims against Governor Newsom, Secretary Ross, and
20 Attorney General Bonta fail to state a claim upon which relief can be granted, based
21 on qualified immunity;
- 22 5. The First Amendment free speech claims (First through Third Claims) all
23 fail to state a claim upon which relief can be granted because California Assembly
24 Bill 893 (“AB 893”) does not regulate speech or expressive conduct, and it passes
25 rational basis review. Alternatively, AB 893: applies to a limited public forum—a
26 type of a nonpublic forum—and is viewpoint neutral and reasonable; and AB 893
27 satisfies the intermediate scrutiny tests applicable for commercial speech
28 restrictions and for content-neutral restrictions;

1 6. The First Amendment prior restraint claim (Fourth Claim) fails to state a
2 claim upon which relief can be granted because AB 893 does not grant a
3 government entity with unbridled discretion;

4 7. The First Amendment associational claim (Fifth Claim) fails to state a
5 claim upon which relief can be granted because Plaintiffs do not plausibly allege
6 that they are engaged in protected expressive association;

7 8. The Equal Protection Clause claim (Sixth Claim) fails to state a claim
8 upon which relief can be granted because it is duplicative of the First Amendment
9 claims; Plaintiffs do not plausibly allege a “class of one” claim; and AB 893 passes
10 rational basis review; and

11 9. This Court need not exercise its supplemental jurisdiction over the state-
12 law tort claims (Seventh through Ninth Claims) pursuant to 28 U.S.C. § 1367.
13 Additionally, the state-law tort claims all fail to state a claim upon which relief can
14 be granted because there is no alleged statutory basis that authorizes the tort claims
15 and the claims are time-barred since they were not timely presented in accordance
16 with the California Government Claims Act.

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

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Dated: January 24, 2022

Respectfully submitted,

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ANTHONY R. HAKL
Supervising Deputy Attorney General

/s/Charles J. Sarosy
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Deputy Attorney General
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