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 California, Sonia Y. Angell, M.D., in her official
 capacity as the State Public Health Officer and
 Director of the Department of Public Health and
 Tony Thurmond, in his official capacity as State
 Superintendent of Public Instruction and Director
 of Education*

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION – FIRST STREET COURTHOUSE

MATTHEW BRACH, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. 2:20-cv-06472 SVW (AFMx)

**STATE DEFENDANTS'
 RESPONSE TO NOTICE OF
 RELATED CASE (ECF NO. 53);
 DECLARATION OF DARIN L.
 WESSEL**

Date:
 Time:
 Courtroom: 10A - Telephonic
 Judge: The Honorable Stephen
 V. Wilson
 Trial Date: Not set
 Action Filed: 7/21/2020

1 **TO THE COURT:**

2 On the afternoon of August 25, 2020, proposed Amicus Curiae Educators for
 3 Safe School Opening filed a Notice of Related Case advising the Court and the
 4 parties of the prior similar case, *Brach, et al., v. Newsom, et al.*, No. 2:20-CV-
 5 06469 (C.D. Cal. Jul. 21, 2020). ECF No. 53; Decl. D. Wessel, below, ¶ 2. Earlier
 6 that same morning, counsel for Defendants Governor Newsom, et al. (State
 7 Defendants) was alerted to the fact that it appeared that Plaintiffs had filed two
 8 separate cases in quick succession (based on the case numbers), and then promptly
 9 dismissed the earliest-filed case *after* judicial assignments had been made in both
 10 cases. Decl. D. Wessel, below, ¶¶ 2-5.

11 The original complaint in *Brach, et al., v. Newsom, et al.*, No. 2:20-CV-06469
 12 (C.D. Cal. Jul. 21, 2020), is identical to the original complaint in the present case.
 13 Decl. D. Wessel, below, ¶ 3. Both complaints were filed on July 21, 2020. *Id.*, at
 14 ¶¶ 3-4. Judicial assignments were made in both cases on July 22, 2020. *Id.*, at ¶ 5.
 15 The very next day, on July 23, 2020, Plaintiffs filed their request for dismissal of
 16 the earlier-filed case assigned to be heard by Judge Consuelo B. Marshall. *Id.*, at ¶
 17 6. C.D. Cal. L.R. 83-1.3.1 obligated Plaintiffs and their counsel to file a Notice of
 18 Related Cases.¹ They did not do so.

19 While the earlier-filed case is identical to the original complaint filed in this
 20 case, the State Defendants nonetheless believe that judicial economy is best served
 21 by this case remaining before the Honorable Stephen V. Wilson. The public
 22 interest is also best served by this case remaining with the Honorable Stephen V.
 23 Wilson, in light of the current advanced stage of the proceedings, as well as the
 24 importance and complexity of the issues presented.

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 27 ¹ By filing two identical complaints in short succession and then,
 28 immediately after learning of the judicial assignment in both cases, dismissing one
 case, Plaintiffs appear to have attempted to circumvent C.D. Cal. L.R. 83-1.2.1,
 which precludes the improper dismissal and later refile of the same action to
 obtain a different judge.

1 Because a judicial reassignment at this time would likely result in a delay of a
2 decision on the consequential question of whether a preliminary and/or permanent
3 injunction should issue, the State Defendants believe that the interests of justice are
4 best served by this case remaining with the Honorable Steven V. Wilson for a
5 decision on the currently submitted matter.

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7 Dated: August 27, 2020

Respectfully submitted,

8 XAVIER BECERRA
9 Attorney General of California
10 JENNIFER G. PERKELL
Supervising Deputy Attorney General

11
12 /s Darin L. Wessel
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13 JENNIFER A. BUNSHOFT
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14 *Attorneys for Defendants*

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State Defendants Response to Notice of Related Case
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DECLARATION OF DARIN L. WESSEL

I, Darin L. Wessel, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a Deputy Attorney General with the California Office of the Attorney General. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. On the morning of August 25, 2020, I received an email from attorney Martin Anderson, who indicated he has been following this case. He alerted me to the fact that plaintiffs filed what appeared to be an identical action – Brach, et al., v. Newsom, et al., No. 2:20-CV-06469 (C.D. Cal. Jul. 21, 2020). Shortly thereafter, on the afternoon of August 25, 2020, I received ECF notice that proposed Amicus Curae Educators for Safe School Opening filed a Notice of Related Case, alerting the Court the existence of that same earlier filed case. ECF No. 53.

3. On the morning of August 26, 2020, I obtained a copy of the Complaint filed in Brach, et al., v. Newsom, et al., No. 2:20-CV-06469 (C.D. Cal. Jul. 21, 2020). The Complaint was filed on July 21, 2020. A brief comparison of the two complaints indicates that the original complaints filed in both cases are identical.

4. In the present case, Plaintiffs' Complaint was also filed on July 21, 2020. ECF No. 1. The Court issued the Notice of Assignment to Judge Pregerson on July 22, 2020. ECF No. 4.

5. I also reviewed the docket for Brach, et al., v. Newsom, et al., No. 2:20-CV-06469. A notice of case assignment to Judge Consuelo B. Marshall was issued on July 22, 2020. ECF No. 2 in No. 2:20-CV-06469. A notice of case assignment to Judge Dean Pregerson was also issued in the present case on July 22, 2020. ECF No. 4.

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