

1 LEN GARFINKEL State Bar No. 114815
 General Counsel
 2 BRUCE YONEHIRO, State Bar No. 142405
 Assistant General Counsel
 3 REBECCA P. FEIL. State Bar No. 273064
 Deputy General Counsel
 4 CHRISTOPHER MANDARANO, State Bar No. 263625
 Deputy General Counsel
 5 California Department of Education
 1430 N Street, Room 5319
 6 Sacramento, California 95814
 Telephone: 916-319-0860
 7 Facsimile: 916-322-2549
 Email: rfeil@cde.ca.gov
 8 Attorneys for Defendants Tony Thurmond in his official capacity as State
 Superintendent of Public Instruction and State Board of Education Members in their
 9 official capacities

10 *(Defendants Tony Thurmond in his official capacity and State Board of Education*
 11 *members in their official capacity are governmental parties exempt from the provisions*
of FRCP 7.1)

12 **UNITED STATES DISTRICT COURT**
 13 **SOUTHERN DISTRICT OF CALIFORNIA**

15 **ELIZABETH MIRABELLI, an**)
 16 **individual, and LORI ANN WEST, an**)
 17 **individual,**)
 18 **Plaintiffs,**)
 19 **v.**)
 20 **MARK OLSON, Superintendent of**)
 21 **EUSD, et al.,**)
 22 **Defendants.**)

Case No. 3:23-cv-0768-BEN-WVG
THE STATE-LEVEL
DEFENDANTS’ OBJECTION TO
PLAINTIFFS’ NOTICE OF
RELATED CASE
Hearing Date: August 23, 2023
Time: 2:00 P.M.
Courtroom: 5A
Judge: Hon. Roger T. Benitez

1 Pursuant to the United States District Court Southern District of California Local
2 Rule 40.1(g), the State-Level Defendants object to Plaintiffs’ most recent filing entitled
3 “Notice of Related Case” (Dkt. 36) on three distinct grounds. First, Plaintiffs fail to
4 satisfy the requirements of S.D. Cal. Civ. LR 40.1(f). Second, the case and other
5 documents filed in the notice do not bear a relationship to this matter. Third, Plaintiffs
6 improperly submit further argument that is not related to a Rule 40.1 Notice, and this
7 should be stricken as an improper sur-reply.

8 **I. ARGUMENTS**

9 **A. Plaintiffs Failed to Provide a Detailed Statement as Required Rule 40.1(f)**

10 Pursuant to Rule 40.1(f), Counsel is required to provide a:

11 ...[N]otice of related case, stating the title, number and filing date of each
12 action or proceeding believed to be related, together with a detailed
13 statement of their relationship and the reasons why assignment to a single
14 district judge is or is not likely to effect a saving of judicial effort and other
15 economies.

16 Here, Plaintiffs’ filing does not comply with Rule 40.1(f) because it does not state
17 any reasons, much less a detailed statement, as to why assignment of *People of the State*
18 *of California v. Chino Valley Unified School District*, No. CIV SB 2317301 (Cal. Super
19 Ct., San Bernardino Cnty., Aug. 28, 2023) to a single district judge is (or is not) likely to
20 effect a saving of judicial effort. Indeed, Plaintiffs could not provide such a statement
21 because, as noted below, the case identified is not related to this one as defined in the
22 rules.

21 **B. The Cases are Unrelated**

22 Local Rule 40.1(g) defines a related action as one where both of the cases:

23 1. Involve some of the same parties and are based on the same or similar
24 claims, or 2. Involve the same property, transaction, patent, trademark, or
25 event, or 3. Involve substantially the same facts and the same questions of
26 law.

27 While both the current matter and the complaint in *Chino Valley* arise from issues
28 related to the disclosure to parents of a student’s transgender status in a school setting,
that is where the similarity ends.

1 Plaintiffs do not allege, nor could they, that these cases involve any of the same
2 parties or are based on the same or similar claims. Plaintiffs do not allege, nor could
3 they, that these cases involve the same facts or questions of law. The *Chino Valley*
4 complaint’s four causes of action arise solely under the provisions of the California
5 constitution or state law concerning privacy and discrimination filed by the California
6 Attorney General against a school district’s policy requiring disclosure of a student’s
7 transgender status to parents. Here, Plaintiffs complaint alleges that they were denied
8 their First Amendment right to free exercise when Escondido Unified School District
9 (“EUSD”) denied them a religious accommodation exempting them from an
10 administrative regulation that generally prohibits such disclosure.

11 Plaintiffs do not allege these cases involve the same property, transaction, patent,
12 trademark or event.

13 **C. There is no Authority for the Additional Document Submitted**

14 Within a pleading labeled a Notice of Related Case, Plaintiffs improperly submit
15 further argument that is not related to a Rule 40.1 Notice. This should be stricken as an
16 improper sur-reply.

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II. CONCLUSION

The State-level Defendants object to Plaintiffs’ Notice of Related Case and respectfully request the Court strike Plaintiffs’ filing (Dkt. 36) in its entirety.

Dated: August 29, 2023

Respectfully submitted,

LEN GARFINKEL
General Counsel
BRUCE YONEHIRO
Assistant General Counsel

By: /s/ Rebecca P. Feil
REBECCA P. FEIL
Deputy General Counsel
Attorney for State-level Defendants

By: /s/ Christopher Mandarano
CHRISTOPHER MANDARANO
Deputy General Counsel
Attorney for State-level Defendants

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