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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11 FRESNO DIVISION

12
13 **RIGHT TO LIFE OF CENTRAL
CALIFORNIA,**

14 Plaintiff,

15 v.

16
17 **ROB BONTA, in his official capacity as
Attorney General of the State of California,**

18 Defendant.

1:21-cv-01512-DAD-SAB

**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO TRANSFER CASE
TO THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

19 Date: December 7, 2021
20 Time: 9:30 a.m.
21 Dept: 5
22 Judge: The Honorable Dale A. Drozd
23 Trial Date: Not set
24 Action Filed: October 13, 2021

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NOTICE OF MOTION

PLEASE TAKE NOTICE THAT on December 7, 2021 before the Honorable Dale A. Drozd in Courtroom 5 of the United States District Court for the Eastern District of California, Fresno Division, located at 2500 Tulare Street in Fresno, California, Defendant Rob Bonta, in his official capacity, will and hereby does move this Court to transfer this case to the United States District Court for the Northern District of California.

This motion to transfer is brought on the grounds that it is in the interests of justice to transfer this case to the Northern District pursuant to 28 U.S.C. § 1404(a). This motion is based on this Notice, the Memorandum of Points and Authorities in support, the papers and pleadings on file in this action, and upon such matters as may be presented to the Court at the time of the hearing. The parties met and conferred regarding the motion to transfer on October 28, 2021, and Plaintiff does not consent to this motion.

Dated: October 29, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
HEATHER HOESTEREY
Supervising Deputy Attorney General
Kristin A. Liska
Deputy Attorney General

/s/ Rita B. Bosworth

RITA B. BOSWORTH
Deputy Attorney General
*Attorneys for Defendant Rob Bonta,
in his official capacity.*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 While vaccines are a critical public health tool, they are not without controversy. In
4 response to widely publicized events of protestors obstructing vaccine sites and harassing patients
5 seeking a vaccine, the California Legislature enacted SB 742. This law, which became effective
6 October 8 of this year, makes it unlawful to knowingly approach a person near a vaccination site
7 without consent in order to obstruct, injure, harass, intimidate or interfere with those seeking
8 vaccines.

9 This case is one of three cases pending in three different district courts in California that
10 challenge the constitutionality of SB 742. The first such case was filed in the Northern District of
11 California on October 10, 2021. This court has broad discretion to transfer cases to another
12 district if they could have been filed in that district and if it would be in the interests of justice to
13 do so. Here, this case could have been filed in the Northern District, and transferring the case is in
14 the interests of justice because it will avoid inconsistent adjudications, conserve judicial
15 resources, and the benefits of transfer far outweigh the burden of litigating the same legal issue in
16 three different districts before three different judges.

17 **FACTUAL AND PROCEDURAL BACKGROUND**

18 On October 8, 2021, Governor Gavin Newsom signed SB 742 into law. Stats. 2021, c. 737
19 (“SB 742”), § 1(a)(9), eff. Oct. 8, 2021. The bill adds a new section to the California Penal Code,
20 § 594.39, which states:

21 It is unlawful to knowingly approach within 30 feet of any person while a person is
22 within 100 feet of the entrance or exit of a vaccination site and is seeking to enter or
23 exit a vaccination site, or any occupied motor vehicle seeking entry or exit to a
vaccination site, for the purpose of obstructing, injuring, harassing, intimidating, or
interfering with that person or vehicle occupant.

24 Cal. Pen. Code § 594.39(a). The bill defines “harassing” to mean “knowingly approaching,
25 without consent, . . . for the purpose of passing a leaflet or handbill to, displaying a sign to, or
26 engaging in oral protest, education, or counseling with, that other person in a public way or on a
27 sidewalk area.” *Id.* § 594.39(c)(1). Vaccination sites include “the physical location where
28

1 vaccination services are provided, including but not limited to, a hospital, physician’s office,
2 clinic, or any retail space or pop-up location made available for vaccination services.” *Id.*

3 SB 742 had an “urgency clause,” which means that it went into effect immediately. 2021
4 Cal. Legis. Serv. Ch. 737, Sec. IV (S.B. 742). Two days after it was signed, on October 10, 2021,
5 plaintiffs in *Aubin v. Bonta*, Case No. 21-CV-07938, (N.D. Cal 2021) (“*Aubin*”), filed a
6 constitutional challenge to SB 742 in the Northern District of California (“Northern District”)
7 alleging that the law violates their right to freedom of speech and assembly under the U.S.
8 Constitution and the California Constitution; their right to be free from unlawful search and
9 seizure under the U.S. Constitution and the California Constitution, and their right to be free from
10 unlawful discrimination and equal protection under the U.S. Constitution. *Aubin*, ECF 1 at ¶¶ 16,
11 27. Specifically, they argue that SB 742 is unconstitutionally overbroad, vague, content-based,
12 viewpoint-based, and not tailored to serve a significant government interest. *Id.* Plaintiffs in
13 *Aubin* filed an application for a Temporary Restraining Order (“TRO”), which has been fully
14 briefed and was heard before Magistrate Judge Cousins in the Northern District on Wednesday,
15 October 27 and is now under submission.

16 Two days after *Aubin* was filed, on October 12, 2021, Plaintiffs in *Gupta v. Bonta*, Case
17 No. 2:21-CV-08104 (C.D. Cal. 2021) (“*Gupta*”) lodged a nearly identical challenge to SB 742 in
18 the Central District of California. The *Gupta* plaintiffs similarly allege that SB 742 is
19 unconstitutional and violates their right to freedom of speech under the U.S. Constitution and the
20 California Constitution. *Gupta*, ECF 1 at ¶¶ 76-95. Much like in *Aubin*, Plaintiffs in *Gupta* argue
21 that SB 742 is unconstitutionally overbroad, vague, content-based, viewpoint-based, and not
22 tailored to serve a significant government interest. Pursuant to Local Rule 83-1.4, Plaintiffs in
23 *Gupta* filed a Notice of Pendency of *Aubin* with this Court, stating as follows: “Counsel considers
24 this case to have overlapping subject matter insofar that it also challenges the Constitutionality of
25 SB 742.” *Gupta*, ECF 5. Plaintiffs in *Gupta* also filed an application for a preliminary injunction,
26 with a hearing set for November 15, 2021 at 1:30 p.m.

27 One day after *Gupta* was filed, on October 13, 2021, Plaintiffs in the instant case (“*Right to*
28 *Life*”) filed yet another challenge to SB 742, this time in the Eastern District of California.

1 Plaintiffs allege that SB 742 violates their right to freedom of speech, free exercise of religion,
2 equal protection, procedural due process, and right to expressive association under the U.S.
3 Constitution. *Right to Life*, ECF 1 at ¶¶ 87-165. Like the other two cases, plaintiffs in *Right to*
4 *Life* filed an application for emergency relief, and Plaintiff’s TRO was heard and submitted on
5 October 28, 2021.

6 LEGAL STANDARD

7 Pursuant to 28 U.S.C. § 1404(a), a district court has broad discretion to transfer a case to
8 another district where venue is also proper. *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 639
9 (9th Cir. 1988). To support a motion to transfer, a moving party must show: (1) that the transferee
10 district is one where the action “might have been brought,” and (2) that the transfer promotes the
11 “interests of justice.” *See* 18 U.S.C. § 1404(a). Section 1404(a) transfers are appropriate “to
12 prevent the waste of time, energy, and money” and “to protect litigants, witnesses and the public
13 against unnecessary inconvenience and expense.” *Van Dusen v. Barrack*, 376 U.S. 612, 616
14 (1964). Determining whether a transfer is appropriate requires weighing multiple factors and an
15 “individualized, case-by-case consideration of convenience and fairness.” *Jones v. GNC*
16 *Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000); *see also Commodity Futures Trading*
17 *Comm. v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979) (“Weighing of factors for and against
18 transfer involves subtle considerations and is best left to the discretion of the trial judge”). As set
19 forth below, these considerations weigh strongly in favor of transfer to the Northern District.

20 ARGUMENT

21 I. THE ACTION COULD HAVE BEEN BROUGHT IN THE NORTHERN DISTRICT

22 The threshold inquiry in determining whether a transfer is appropriate is whether the action
23 may have been brought in the proposed transfer forum. *Commodity Futures Trading Comm.*,
24 *supra*, 611 F.2d at 279. This requirement is satisfied if the transferee court has subject matter
25 jurisdiction and is a proper venue for the action, and if defendants are subject to personal
26 jurisdiction in the transferee court and are amenable to service of process there. *Rubio v.*
27 *Monsanto Company*, 181 F.Supp.3d 746, 760 (C.D. Cal. 2016), *citing A.J. Industries, Inc. v. U.S.*
28 *District Court for Central Dist. Of Cal.*, 503 F.2d 384, 386-88 (9th Cir. 1974).

1 This threshold requirement is met here. There is no dispute that the Northern District would
2 have federal question subject matter jurisdiction over the alleged constitutional claims. 28 U.S.C.
3 § 1331. There is also no dispute that Defendant is subject to personal jurisdiction in the Northern
4 District because of his presence there. *International Shoe Co. v. Washington*, 326 U.S. 310, 316
5 (1945). Finally, venue would have been proper in the Northern District had the case been filed
6 there originally. Pursuant to 28 U.S.C. § 1391(b)(1), “A civil action may be brought in . . . a
7 judicial district in which any defendant resides, if all defendants are residents of the State in
8 which the district is located.” Here, Defendant is being sued in his official capacity. When state
9 and local public officials are sued in their official capacity, their “residence” is where they
10 perform their duties. *Berry v. New York State Dept. of Correctional Services*, 808 F.Supp. 1106,
11 1108 (S.D.N.Y. 1992); *see also* Cal. Code Civ. Proc. § 401 (proceedings against the state “may be
12 tried in any city and county in the state in which the Attorney General has an office.”).
13 Defendant, the Attorney General, has an office in San Francisco, California, which is in the
14 Northern District. Venue therefore would have been proper in the Northern District. Because this
15 case “might have been brought” in the Northern District, the Court has authority to transfer the
16 case there. 28 U.S.C. § 1404(a).

17 The Northern District is also the appropriate venue for all similar challenges to be heard
18 because it was the first district in which a suit of this nature, *Aubin*, was filed. The first-to-file rule
19 is “a generally recognized doctrine of federal comity which permits a district court to decline
20 jurisdiction over an action when a complaint involving the same parties and issues has already
21 been filed in another district.” *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 94, 94-95 (9th
22 Cir. 1982) (quoting *Church of Scientology of California v. United States Dep’t of the Army*, 611
23 F.2d 738, 749 (9th Cir. 1979). The “sameness” requirement does not mandate that the two actions
24 be identical; it is satisfied if they are “substantially similar.” *Inherent.com v. Martindale-Hubbell*,
25 420 F.Supp.2d 1093, 1097 (N.D. Cal. 2006) (citations omitted). “The purpose of this well-
26 established rule is to promote efficiency and to avoid duplicative litigation and thus it should not
27 be lightly disregarded.” *Id.*, citing *Alltrade, Inc. v. Uniweld Prod., Inc.*, 946 F.2d 622, 625 (9th
28 Cir. 1991). Here, not only could *Right to Life* have been filed in the Northern District, the first-to-

1 file rule counsels in favor of the Northern District as the appropriate venue for all similarly
2 situated cases.

3 **II. A TRANSFER TO THE NORTHERN DISTRICT IS IN THE INTERESTS OF JUSTICE**

4 The “interests of justice” consideration is the “most important factor a court must consider,
5 and may be decisive in a transfer motion even when all other factors point the other way.”

6 *London and Hull Maritime Ins. Co. Ltd. V. Eagle Pacific Ins. Co.*, No. 96-01512 CW, 1996 WL
7 479013, *3 (N.D. Cal. Aug. 14, 1996). In considering whether a transfer would serve the interest
8 of justice, courts should consider “whether efficient and expeditious administration of justice
9 would be furthered” by a transfer of venue. *Baglama v. MWV Consumer and Office Products*,
10 2013 WL 12200647, at *3 (C.D. Cal. Aug. 19, 2013), *citing Glaxo Grp. Ltd. v. Genentech, Inc.*,
11 2010 WL 1445666, *2 (N.D. Cal. Apr. 12, 2010). Indeed, “[c]onsideration of the interest of
12 justice, which includes judicial economy ‘may be determinative to a particular transfer motion,
13 even if the convenience of the parties and witnesses might call for a different result.’” *Regents of*
14 *the Univ. of California v. Eli Lilly & Co.*, 119 F.3d 1559, 1565 (Fed. Cir. 1997), *cert. denied*, 523
15 U.S. 1089 (1998). “The public interest factors of systemic integrity and fairness . . . come under
16 the heading of the interest of justice, which includes judicial economy.” *Synopsys, Inc. v. Mentor*
17 *Graphics Corp.*, 2013 WL 1365946, *4 (N.D. Cal. 2013). In considering the interests of justice,
18 the Court weighs such factors as “ensuring speedy trials, trying related litigation together, and
19 having a judge who is familiar with the applicable law try the case.” *Heller Financial, Inc., v.*
20 *Midwhey Powder Co.*, 883 F.2d 1286, 1293 (9th Cir. 1989); *see also Decker Coal Co. v.*
21 *Commonwealth Edison Co.*, 805 F.2d 834 (9th Cir. 1986). Overall, these factors favor transfer to
22 the Northern District.

23 **A. Transfer is Necessary to Avoid Inconsistent Results and to Conserve**
24 **Judicial Resources**

25 The Supreme Court has indicated that transfer is appropriate when two cases concerning the
26 same issues are pending in different districts:

27 To permit a situation in which two cases involving precisely the same issues are
28 simultaneously pending in different District Courts leads to the wastefulness of time,
energy and money that § 1404(a) was designed to prevent. Moreover, such a situation

1 is conducive to a race of diligence among litigants for a trial in the District Court each
2 prefers.

3 *Continental Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960). Indeed, the presence of a related
4 case in a transferee forum alone is sufficient to warrant a transfer. *See London and Hull Maritime*
5 *Ins. Co. v. Eagle Pacific Ins. Co.*, No. 96-01512 CW, 1996 WL 479013, *3 (N.D. Cal. Aug. 14,
6 1996); *Simmens v. The Coca Cola Company*, No. 07-668, 2007 WL 2007977 at *2 (E.D. Pa. July
7 5, 2007) (“The presence of related cases in the transferee forum is a strong factor in favor of
8 transfer.”). As such, “[I]tigation of related claims in the same forum is strongly favored in order
9 to avoid duplicitous litigation, with associated waste of time and money of the Court, the parties
10 and the witnesses, and to avoid inconsistent results.” *Pesin v. Goldman Sachs & Co.*, 392 F.Supp.
11 392, 393 (S.D.N.Y. 1975); *E.I. DuPont de Nemours & Co. v. Diamond Shamrock Corp.*, 522
12 F.Supp.588, 592 (D. Del. 1981) (“The waste of judicial resources and inconvenience of parties
13 and witnesses are manifest when the same issues arising from the same transactions are litigated
14 in two different courts.”).

15 Here, the claims brought in *Right to Life* and *Aubin* should be litigated in the same court to
16 avoid inconsistent results. Both *Right to Life* and *Aubin* bring constitutional challenges to a
17 newly-enacted law. Their challenges overlap substantially, and some of their claims are identical.
18 Plaintiffs in both cases challenge SB 742 pursuant to the First Amendment of the U.S.
19 Constitution, and they both allege that SB 742 is overbroad, vague, content-based, viewpoint-
20 based, and not tailored to serve a significant government interest. They also both allege a
21 violation of the Equal Protection Clause. Furthermore, because both *Right to Life* and *Aubin*
22 involve facial challenges to the law, it is in the interests of justice for the same court to try pure
23 questions of constitutional statutory interpretation. *American Canine Foundation v. Sun*, No. CIV.
24 S-06-654 2006 WL 2092614 at *3 (E.D. Cal. Jul. 27, 2006) (transferring a case from Eastern
25 District to Northern District so that similar cases challenging the constitutionality of a California
26 statute and municipal ordinance could be tried in the same district); *Mussetter Distributing, Inc. v.*
27 *DBI Beverage Inc.* 2009 WL 1992356 at *5 (E.D. Cal. Jul. 8, 2009) (transferring case from
28 Eastern District to Northern District so that cases challenging state statute pursuant to U.S. and

1 California Constitutions could be tried in the same district). Inconsistent rulings would merely
2 sow confusion for the parties, the courts, and the public in terms of how to comply with the law.
3 Already, two different judges have held temporary restraining order hearings, and it is possible
4 that conflicting decisions will issue. Given that the *Gupta* case also involves the same issues of
5 law and has a motion for preliminary injunction pending in a third district, the Central District,
6 the likelihood of conflicting rulings is even greater. Defendant intends to file a motion to transfer
7 *Gupta* to the Northern District as well. For the sake of consistency, systemic integrity, and
8 fairness, it is in the interest justice for *Right to Life* to be transferred to the Northern District and
9 handled alongside *Aubin* and any other case that raises the same issues.

10 Transferring *Right to Life* is also necessary to avoid wasting judicial resources. *Right to Life*
11 and *Aubin* were filed just three days apart, and they will likely be decided on the same timeline.
12 Indeed, it is possible that both cases will be resolved with a case-dispositive motion, in which the
13 exact same constitutional issues will be raised. It is much more efficient for one judge to manage
14 all cases concerning the same issue, as it will conserve the judicial resources necessary to
15 research the issues, manage the schedule, and conduct legal analysis in these cases. Already, two
16 judges have had to consider the same issue in temporary restraining order hearings, and there is
17 the potential that three judges will have to hold hearings on preliminary injunction requests,
18 motions to dismiss, summary judgment motions and more if the cases are not transferred.
19 Denying the transfer would simply require two (or more) judges to do the work that could be
20 done by one.

21 **B. The Strong Interests in Avoiding Inconsistent Rulings and Judicial**
22 **Economy Outweigh Other Considerations**

23 While there are multiple factors to consider in determining whether to transfer a case, no
24 single factor is determinative, as “weighing of factors for and against transfer involves subtle
25 considerations and is best left to the discretion of the trial judge.” *Commodity Futures Trading*
26 *Comm. v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). The Ninth Circuit has identified examples
27 of additional factors to consider, including which state is most familiar with the governing law,
28 the plaintiff’s choice of forum, the respective parties’ contacts with the forum, the differences in

1 the cost of litigation between the forums, the availability and cost of compulsory process to
2 compel unwilling witnesses, and the ease of access to sources of proof. *Jones v. GNC*
3 *Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000); see also *Piper Aircraft Co. v. Reyno*, 454
4 U.S. 235, 241 (1981). However, because this case involves constitutional statutory interpretation,
5 and is unlikely to involve fact-intensive disputes, none of these factors weigh against transferring
6 the case, and certainly not heavily enough to tip the balance in light of the strong need for
7 consistent judgments and judicial economy. Indeed, it is probable that the cases will be resolved
8 through dispositive motions and not even go to trial, rendering concerns such as witness
9 attendance, travel, compulsory process, and access to evidence moot. There is also no conflict of
10 law issue here, as both the Eastern District and the Northern District are in California, and the
11 Northern District has an equally strong interest in adjudicating this case because SB 741 is a
12 California law. Plaintiff's attorneys live in Arizona, Georgia, and Washington, D.C., and there is
13 no material difference in cost or travel time between the Eastern District and the Northern District
14 from those states. Finally, as the Court noted during the hearing on Plaintiff's Motion for
15 Temporary Restraining Order on October 28, 2021, this Court has a daunting caseload of over
16 1300 civil cases and over 700 criminal cases, and is currently the only active Article III judge in
17 the Fresno courthouse. Docket congestion is a factor to consider in weighing whether a transfer is
18 appropriate. *Davis v. Social Service Coordinators, Inc.*, No. 1:10-cv-02372, 2013 WL 4483067 at
19 *5 (E.D. Cal. Aug. 19, 2013) (holding that "the stark reality of the district judges' caseloads in the
20 Fresno division of the Eastern District, currently in excess of 1300 cases per judge" was relevant
21 to the convenience and costs of parties and weighed in favor of transfer); see also *Federal Energy*
22 *Regulatory Com'n v. Barclays Bank PLC*, 105 F.Supp.3d 1121, 1137 (E.D. Cal. 2015).

23 CONCLUSION

24 For the foregoing reasons, the Court should grant Defendant's Motion to Transfer to the
25 Northern District.

1 Dated: October 29, 2021

Respectfully submitted,

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ROB BONTA
Attorney General of California

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HEATHER HOESTEREY
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CERTIFICATE OF SERVICE

Case Name: **Right to Life of Central California v. Rob Bonta**

Case No. **1:21-cv-01512-DAD-SAB**

I hereby certify that on October 29, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANT'S NOTICE OF MOTION AND MOTION TO TRANSFER CASE TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 29, 2021, at San Francisco, California.

Robert Hallsey

Declarant

/s/ Robert Hallsey

Signature