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6 Attorneys for Plaintiffs
The People of the State of California, and
7 The People of the United States of America

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10 IN THE UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO

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14
15 People of the United States of
America and the State of California,
16
Plaintiffs,
17
vs.
18 Donald Trump; United States of
America,
19
Defendants.

Case Number: 3:17-cv-00451-JD

OPPOSITION TO MOTION TO
DISMISS

Date: May 11, 2017
Time: 10:00 a.m.
Courtroom: 11, 19th floor
Judge: Hon. James Donato

20
21 **I. ALTERNATIVE FACTS PRESENTED BY DEFENSE MUST BE**
22 **DISREGARDED AND PLEADED FACTS TAKEN AS TRUE**

23 Defendants allege that the complaint and grievances pleaded are not of the
24 many persons that have appeared by the requests for judicial notice in this case, and
25 not of the people suffering “concrete injury” as pleaded. Defendants interject
26 alternative facts, to wit:

27 Because Shalaby has not demonstrated standing to bring his claim, the
28 Court is without subject matter jurisdiction and must dismiss the case.
(Mtn/dismiss p.4:25-27.)

1 The plaintiff is not “Shalaby.” The plaintiffs are as pleaded on the complaint, namely
2 the People of the State of California as well as the People of the United States of
3 America, with statements of record signed by many of “the people” and filed with this
4 Court. The last RJN was filed 2/19/17 as RJN 20. The filings include Stanford and
5 University of California staff members, high-level professionals, and citizens from
6 California and other states. These are people. They are individuals. They, and the
7 many more, too numerous to count, seek the Court’s redress with regard to the
8 executive order at issue, which is not the repealed Executive Order 13769 as
9 Defendants allege on page 7:25 of their motion. Rather, it is the March 6, 2017
10 Executive Order, as identified on page 3:4 of the FAC. The FAC further makes clear
11 that it pertains to the March 6, 2017 Executive Order, seeking expansion of countries
12 specified on that latter order (FAC 3:26), and change with respect to the March 16,
13 2017 date specified in that Executive Order (FAC 4:4). Should this not be clear for
14 any reason, further clarification can be made via amendment, but Plaintiffs believe it
15 is sufficiently clear from the FAC that it seeks Judicial review with regard to the
16 March 6, 2017 order, and in fact quotes the relevant provisions on pages 4, 7 and 8 of
17 the FAC.

18 Defendants’ allegation that Shalaby is the plaintiff must be disregarded as
19 inconsistent with the facts pleaded on the FAC, and is simply untrue.

20 **II. INJURY IS ADEQUATELY PLEADED**

21 The injuries are adequately pleaded and are non-speculative and concrete.
22 Please see p.5:6 - 8:7. Defendants simply failed to address those harms, and appear
23 to allege that the harms were suffered by persons other than “Shalaby,” hence “no
24 standing.” Shalaby is not the plaintiff. He is only the attorney for the plaintiffs. As
25 pleaded within the four corners of the FAC, the plaintiffs include victims of harm,
26 violence, discrimination, and other quite tangible concrete injuries. The injuries
27 continued to follow the filing of the First Amended Complaint, particularly in
28

1 Berkeley, as nationally publicized. In Berkeley on April 15, 2017 violence erupted
2 between people at a Trump protest, with several injuries and the use of home-made
3 weapons. One of the many articles posted is found at this internet link:

4 <http://www.mercurynews.com/2017/04/16/berkeley-trump-related-protests-end-with-23-arrests/>
5

6 Although these harms continue and follow the filing of the FAC, the FAC pleads with
7 specificity some of the harms suffered up to the time of the filing of the FAC (i.e.
8 FAC p.5:25).

9 **III. NO PROHIBITION TO PRIVATE ATTORNEY GENERAL
10 ACTION EXISTS, AND IN FACT THE PRIVATE A.G.
11 ADVOCACY IS SUPERIOR AS A DIRECT COMMUNICATION
12 BETWEEN THE PEOPLE AND THE COURT**

13 Defendants raise a defective argument that a private attorney general action fails
14 because “Shalaby” lacks standing:

15 Nor is Shalaby able to salvage his claim of third-party standing by
16 relying on unspecified “Private Attorney General statutes of the State of
17 California and United States.” (Mtn/dismiss p.6:7.)

18 The argument is defective because Defendants are using the “alternative fact” that
19 “Shalaby” is bringing the action as the plaintiff. As is clear, Shalaby is not the
20 plaintiff.

21 It should be noted that a private attorney general action is the superior method
22 of advocacy as compared to a traditional government-appointed attorney general
23 action. A typical attorney general action brought by the government is brought in the
24 name of “the People,” with very little or no actual voicing of the grievance of “the
25 people.” One such matter in which this counsel is presently involved, also pending
26 at this Court, is Lopez v. Nissan North America (3/28/17) 3:17-cv-01625-EDL. In
27 that action, an individual driving a car after he had smoked “medical marijuana” ended
28 up crashing into six people, killing a mother of four, and crippling two young adult
women. The action is found with visual detail by Googling “Family Sues Nissan.”
In that action, a prosecution was initiated by the District Attorney on behalf of “The

1 People of the State of California.” However, “The People of the State of California”
2 had already voted to “legalize” marijuana, and do not support prosecution in the State
3 for possession and use of marijuana. The government-appointed prosecutor not only
4 failed to represent the true interests of “The People of the State of California,” but also
5 distressed the automobile driver into committing suicide.

6 In this case, a “private attorney general” representation, the “People” are
7 seeking redress of their grievances directly and personally, and many have filed signed
8 statements in this very action. The private attorney general action is thus superior
9 insofar as it represents the true and actual grievance of “The People,” with the inherent
10 understanding that “The People” does not represent every single person of the State
11 of California or of the United States. “The People” is, as explained on the FAC, a
12 designation of only those great many people of the State of California and of the
13 United States whom believe the subject Executive Order is unconstitutional and
14 requires judicial intervention pursuant to the “Balance of Powers” upon which the
15 three separate branches of government were created by our forefathers.

16 **IV. U.S. APPEARED, THEREFORE SERVICE CONCERN IS MOOT**

17 The United States of America has now made a general appearance on the
18 motion to dismiss, therefore the alleged non-service on it is moot.

19 **CONCLUSION**

20 At this juncture the only issue presented by the defendants is whether Plaintiff
21 “Shalaby” has standing. Shalaby is not the plaintiff, therefore the motion to dismiss
22 must be denied.
23

24 Dated: April 17, 2017

25 s/Andrew W. Shalaby
26 Andrew W. Shalaby, Attorney for
27 Plaintiffs
28

CERTIFICATE OF SERVICE

I, Andrew W. Shalaby, hereby certify that I am a member of the bar of this Court, and a Registrant authorized user of the Court's "Electronic Case Filing" ("ECF") system. On April 17, 2017 I electronically filed foregoing with the Clerk of the Court for the United States District Court for the NORTHERN District of California by using the Court's CM/ECF system. Counsels for all parties in this case are registered CM/ECF users, and have been served through the Court's CM/ECF system.

Dated: April 17, 2017

s/Andrew W. Shalaby