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10 UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12 PEOPLE OF THE UNITED STATES )  
 OF AMERICA AND THE STATE )  
 13 OF CALIFORNIA, )  
 )  
 14 Plaintiffs, )  
 )  
 15 v. )  
 )  
 16 DONALD TRUMP; UNITED )  
 STATES OF AMERICA )  
 17 )  
 18 Defendants. )

Case No. 3:17-cv-00451-JD

DEFENDANTS' REPLY  
 IN SUPPORT OF  
 MOTION TO DISMISS

Hearing: May 11, 2017, 10:00 a.m.  
 Courtroom 11  
 Hon. James Donato

## INTRODUCTION

1  
2 Defendants' motion to dismiss established that attorney Andrew W. Shalaby lacks direct-  
3 party or third-party standing to challenge the constitutionality of Executive Order 13780,  
4 "Protecting the Nation from Foreign Terrorist Entry into the United States." Defs' Not. of Mot.  
5 & Mot. to Dismiss & Mem. in Supp., Dkt. No. 22 ("Defs' Mot."), at 4-8. Conceding many of the  
6 arguments made by Defendants and failing to distinguish the cases upon which Defendants rely,  
7 Shalaby nonetheless insists that his lawsuit should survive Defendants' motion to dismiss in light  
8 of his invocation of unspecified private attorney general statutes. Opp. to Mot. to Dismiss, Dkt.  
9 No. 26 ("Opp."), at 1-4. He also contends that his allegations of injury are adequate to  
10 demonstrate standing. *Id.* at 2-3. As discussed below, these arguments are unpersuasive. The  
11 Court should therefore grant Defendants' motion to dismiss due to lack of subject matter  
12 jurisdiction.

## DISCUSSION

13  
14 As an initial matter, the Court should grant Defendants' motion to dismiss because  
15 Shalaby has failed to adequately oppose it. Shalaby has not only declined to distinguish any  
16 cases relied upon by Defendants, but has also refused to cite any authority in support of his  
17 position. *See* Opp. at 1-4. In addition, he has not responded to Defendants' points regarding the  
18 traceability and redressability elements of standing. *See id.* Shalaby has therefore conceded that  
19 his claims fail, and the Court may grant Defendants' motion on that basis alone. *See Roy v.*  
20 *Contra Costa Cty.*, No. 15-CV-02672-TEH, 2015 WL 5698743, at \*3 n.7 (N.D. Cal. Sept. 29,  
21 2015) ("When a non-moving party's opposition to a motion to dismiss fails to address the  
22 moving party's arguments regarding certain claims, the non-moving party has conceded that  
23 those claims fail." (citing *Silva v. City of San Leandro*, 744 F. Supp. 2d 1036, 1050 (N.D. Cal.  
24 2010))); *Guevara v. Marriott Hotel Servs. Inc.*, No. C 10-5347 SBA, 2013 WL 6172983, at \*7  
25 (N.D. Cal. Nov. 25, 2013) (viewing failure to respond to merits of argument as conceding that  
26 "claims would not withstand a motion to dismiss" (citing *Ramirez v. Ghilotti Bros. Inc.*, 941 F.  
27 Supp. 2d 1197, 1210 n.7 (N.D. Cal. 2013))); *Allen v. Dollar Tree Stores, Inc.*, No. C 10-4492  
28

1 WHA, 2010 WL 5088227, at \*2 (N.D. Cal. Dec. 8, 2010) (granting motion to dismiss in part  
2 because “plaintiff fail[ed] to cite a single legal authority in response to defendant’s motion to  
3 dismiss” and because plaintiff did not address arguments in opposition brief); *cf. Intertrust*  
4 *Techs. Corp. v. Microsoft Corp.*, 275 F. Supp. 2d 1031, 1051 (N.D. Cal. 2003), *as amended* (July  
5 7, 2003) (“[A]n argument that lacks appropriate supporting citations is no argument at all.”).

6 Further, the arguments that Shalaby does make are without merit. Emphasizing that he is  
7 not a plaintiff to this action, Shalaby primarily argues that the Court has subject matter  
8 jurisdiction because he is bringing this lawsuit pursuant to unidentified private attorney statutes.<sup>1</sup>  
9 Opp. at 1-4. But as Defendants have already discussed, Defs’ Mot. at 6 (citations omitted), a  
10 litigant cannot substitute a private attorney general statute for the standing requirements of  
11 Article III of the U.S. Constitution; rather, a litigant must demonstrate a personal stake in the  
12 outcome of the case in order to proceed. *See, e.g., Hangarter v. Provident Life & Acc. Ins. Co.*,  
13 373 F.3d 998, 1022 (9th Cir. 2004); *Vrooman v. Armstrong*, No. 3:16-CV-00770, 2016 WL  
14 3563293, at \*2 (D. Or. June 8, 2016), *report and recommendation adopted*, No. 3:16-CV-00770,  
15 2016 WL 3566733 (D. Or. June 29, 2016). Here, Shalaby has claimed no such interest. Indeed,  
16 his repeated assertions that he is not a plaintiff serve as an acknowledgement that he has not  
17 suffered any Article III injury. Accordingly, Shalaby has neither direct-party nor third-party  
18 standing, and his argument fails.

19 Nor has Shalaby demonstrated that *any* individual has suffered an injury for purposes of  
20 Article III. In their motion to dismiss, Defendants explained that Shalaby’s allegations of harm,  
21 as well as the “Statements of Support” he submitted to the Court, are insufficient because they  
22 are conclusory or describe injuries that are abstract or hypothetical. Defs’ Mot. at 7 (citations  
23 omitted). In response, Shalaby simply states that “[t]he injuries are adequately pleaded and are  
24 non-speculative and concrete” and that “the plaintiffs include victims of harm, violence,  
25 discrimination, and other quite tangible concrete injuries.” Opp. at 2. Such a rebuttal, tethered  
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27 <sup>1</sup> While Shalaby is willing to opine on the virtues on private attorney general statutes generally,  
28 he continues to refuse to identify the specific statutes on which he relies. *See* Opp. at 3. He  
therefore still has not established authorization to sue. *See Brockovich v. Cmty. Med. Ctrs., Inc.*,  
No. CV-F-06-1609, 2007 WL 738691, at \*4 (E.D. Cal. Mar. 7, 2007).

1 to equally conclusory allegations in the amended complaint, is plainly inadequate. *E.g.*,  
 2 *Connolly v. Remkes*, No. 5:14-CV-01344-LHK, 2014 WL 5473144, at \*13 (N.D. Cal. Oct. 28,  
 3 2014) (dismissing cause of action where complaint contained conclusory allegations and  
 4 plaintiff’s “[o]pposition brief is equally conclusory”).

5 Finally, Shalaby is unable to establish a legally cognizable harm by claiming that “[t]he  
 6 injuries continued to follow the filing of the First Amended Complaint.” Opp. at 3 (referring to  
 7 “violence [that] erupted between people at a Trump protest” on April 15, 2017). “It is axiomatic  
 8 that the complaint may not be amended by briefs in opposition to a motion to dismiss.”  
 9 *Tietzworth v. Sears*, 720 F. Supp. 2d 1123, 1145 (N.D. Cal. 2010) (quoting *Barbera v. WMC*  
 10 *Mortgage Corp.*, No. C 04-3738(SBA), 2006 WL 167632, at \*2 n.4 (N.D. Cal. Jan. 19, 2006)).  
 11 And in any event, further amending the complaint to include this factual allegation would not  
 12 establish standing for the reasons already described by Defendants. *See* Defs’ Mot. at 7-8  
 13 (discussing inadequacies of allegations that are conclusory or where alleged injuries are traceable  
 14 only to third parties).

### 15 CONCLUSION

16 For the foregoing reasons, Shalaby has failed to establish that the Court has subject  
 17 matter jurisdiction over this case. Defendants’ motion to dismiss should therefore be granted.

18 DATED: April 24, 2017

Respectfully submitted,

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22 Assistant Branch Director

23 /s/Stuart J. Robinson

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