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18 *Attorneys for Plaintiffs,*
19 *Michael Jackson and Tory Smith*

20 UNITED STATES DISTRICT COURT
21 SOUTHERN DISTRICT OF CALIFORNIA

22 MICHAEL JACKSON, et al.,	}	3:19-cv-1427-LAB-AHG	
23 Plaintiffs,		}	STATEMENT REGARDING
24 v.			NOTICE OF RELATED CASE
25 JANET NAPOLITANO, et al.,	}	LOCAL RULE 40	
26 Defendants.		} Honorable Larry A. Burns	

1 Plaintiffs Michael Jackson and Tory Smith (Plaintiffs) hereby file this
2 Statement Regarding the Notice of Related Case filed by counsel for Defendant
4 Teamsters Local 2010 (Local 2010) on October 7, 2019 (ECF 13). Local 2010's
5 Notice draws this Court's attention to *O'Callaghan and Jenee Misraje v.*
6 *Napolitano, Teamsters Local 2010, and Xavier Becerra*, Case No. 2:10-cv-02289-
7 JVS-DFM (C.D. Cal.), suggesting that Plaintiffs' case be transferred out of the
8 Southern District and reassigned to Judge Selna, the Central District judge who
9 decided *O'Callaghan*. While *O'Callaghan* and the instant case bear minor
10 similarities, the significant differences between the two cases strongly advise against
11 transfer.

12 **1. No Identical or Substantially Identical Questions of Law**

13 Plaintiffs raise five counts in their Complaint. ECF 1 at 10–18. Only one
14 count—the violation of Plaintiffs' First Amendment rights to free speech and
15 association to refuse to join or financially support a union without their affirmative
16 consent—is similar to any claim brought in *O'Callaghan*. Plaintiffs' other four
17 counts allege additional constitutional violations based on the First Amendment right
18 to receive information and both procedural and substantive due process claims
19 arising out of implementation and enforcement of Senate Bill 866, collectively
20 referred to as the Gag Rule Statutes (ECF 1 at Exh. A), that prohibit public
21 employees from talking to their own employers about payroll deductions, union
22 membership, or their constitutional rights recognized by the Supreme Court's
23 decision in *Janus v. Am. Fed'n of State, Cty., and Mun. Employees, Council 31*, 138
24 S. Ct. 2448, 2486 (2018). Since the bulk of Plaintiffs' claims involve questions of
25 law of first impression that were never briefed to or considered by Judge Selna in
26 *O'Callaghan* (or any other case), there is no benefit to efficiency or expertise in
27 transferring Plaintiffs' case to his docket.

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1 **2. No Identical or Substantially Identical**
2 **Transactions, Happenings, or Events**

4 While both *O'Callaghan* and the instant case involve attempts by employees
5 to cease union dues deductions taken without their affirmative consent, Plaintiffs
6 experienced significant additional constitutional injuries due to the Gag Rule
7 Statutes. Their unique experience, which informs four out of five of their claims, is
8 not the same or even substantially identical to the events in *O'Callaghan*. Given
9 these notable differences and their impact on this case, transfer to Judge Selna is
10 unlikely to conserve judicial effort or resources.

11 **3. Transfer Imposes an Unnecessary Burden on Plaintiffs**

12 Plaintiffs reside and work in and around San Diego. ECF 1 ¶¶ 3–4. Their
13 employer, the University of California, San Diego, is obviously located in San
14 Diego. The events giving rise to Plaintiffs' lawsuit all took place in San Diego. ECF
15 1 ¶¶ 21–56. The instant case was filed in the Southern District, in San Diego. Given
16 these significant connections to San Diego, Local 2010's suggestion that the instant
17 case be transferred to Los Angeles simply because it shares a single issue of law and
18 statewide defendants with a case already decided by a Central District judge is
19 patently unreasonable. Plaintiffs are entitled to participate fully in the prosecution of
20 their case. Imposing a drive to Los Angeles that can take over three hours in traffic,
21 in addition to extra time off work and travel expenses, is a significant and
22 unnecessary burden on Plaintiffs. *Cf. Ferens v. John Deere Co.*, 494 U.S. 516, 528
23 (1990) (defendants cannot impose an inconvenient forum on plaintiffs to discourage
24 them from exercising their opportunity to choose where to litigate). Logic and
25 fairness dictate that this case should remain in the Southern District.

26 *O'Callaghan* and the instant case share only one out of five claims. The events
27 giving rise to the instant case are intertwined with the Gag Rule Statutes, which
28 played no role in *O'Callaghan*. The Plaintiffs and this lawsuit are firmly rooted in

1 San Diego, and transfer to Los Angeles would make it needlessly difficult and
2 expensive for Plaintiffs to participate in their own lawsuit. For these reasons, this
4 Court should decline Local 2010's suggestion to transfer this case to Judge Selna in
5 the Central District.

6 Dated: October 8, 2019.

Respectfully Submitted,

7 /s/ Deborah J. La Fetra
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CERTIFICATE OF SERVICE

I hereby certify that that the foregoing document was electronically filed with the Clerk of the Court on October 8, 2019, using the CM/ECF system, which will send notification of said filing to the attorneys of record.

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