

1 LATHAM & WATKINS LLP
Sadik Huseny (pro hac vice)
2 *sadik.huseny@lw.com*
Amit Makker (pro hac vice)
3 *amit.makker@lw.com*
505 Montgomery Street, Suite 2000
4 San Francisco, CA 94111-6538
Telephone: (415) 391-0600
5 Facsimile: (415) 395-8095

6 ASIAN AMERICANS ADVANCING
JUSTICE-AAJC
7 Niyati Shah (pro hac vice)
nshah@advancingjustice-aajc.org
8 Terry Ao Minnis (pro hac vice)
tminnis@advancingjustice-aajc.org
9 1620 L Street NW, Suite 1050
Washington, DC 20036
10 Telephone: (202) 296-2300
Facsimile: (202) 296-2318

11 SPENCER FANE
12 Andrew M. Federhar (No. 006567)
afederhar@spencerfane.com
13 2415 East Camelback Road, Suite 600
Phoenix, AZ 85016
14 Telephone: (602) 333-5430
Facsimile: (602) 333-5431

15 *Attorneys for Plaintiff*

16
17 UNITED STATES DISTRICT COURT
18 DISTRICT OF ARIZONA

19 Arizona Asian American Native Hawaiian
And Pacific Islander For Equity Coalition,

20 Plaintiff,

21 vs.

22 Katie Hobbs, in her official capacity as
Arizona Secretary of State; et al.,

23 Defendants.
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Case No.: CV-22-01381-PHX-SRB

**RESPONSE TO STATE'S MOTION
FOR LEAVE REGARDING MOTION
TO DISMISS**

1 **Response to Motion for Leave to File a Consolidated Motion to Dismiss**

2 As the Court is aware, this case is not consolidated with the *Mi Familia Vota* cases.
3 The Attorney General filed its motion to consolidate (Dkt. 58) on September 10, 2022,
4 which does not seek consolidation for this particular briefing but instead seeks an undefined
5 scope of consolidation of this case with the *Mi Familia Vota* cases. Plaintiff timely filed
6 its response on September 26, 2022 (Dkt. 69), which details the many reasons why the
7 Attorney General’s motion to consolidate is inappropriate and should be denied.

8 Despite this procedural posture, in filing its responsive pleading particular to this
9 case (a motion to dismiss), the Attorney General decided to proceed (1) as though this case
10 were already consolidated with the others, and (2) as though Plaintiff had signed on to the
11 *Mi Familia Vota* parties’ Joint Motion for a Procedural Order Regarding Briefing (Case
12 No. 2:22-cv-00509-SRB, Dkt. 84). Neither is true and Plaintiff objects to the Attorney
13 General’s lodged motion to dismiss, including because it exceeds the page limits for such
14 a motion. The Attorney General could have consulted with Plaintiff to reach an agreement
15 on how to approach its responsive pleading and briefing in this case, or raised the issue
16 with the Court prior to any such filing.

17 Nevertheless, absent order from the Court directing otherwise, in an effort to further
18 efficiency, Plaintiff will respond to the Attorney General’s consolidated motion to dismiss.
19 But Plaintiff was not a party and did not agree to the joint motion that the parties in the *Mi*
20 *Familia Vota* cases coordinated on and filed regarding consolidated briefing, and was not
21 ordered by the Court to proceed in any particular fashion regarding its briefing. *Mi Familia*
22 *Vota*, No. 2:22-cv-509, Dkts. 84, 100. Indeed, Plaintiff has not been involved in any
23 decision as to whether there would be a consolidated response to the consolidated motion
24 to dismiss, as contemplated by the Court’s order in the consolidated cases; such would have
25 been improper, given Plaintiff here is not a consolidated plaintiff. *Id.*, Dkt. 100.

26 Given this posture, Plaintiff intends to respond to the Attorney General’s
27 consolidated motion to dismiss consistent with the Local Rules. *See* LRCiv 12.1(b) (stating
28 that schedule for motions to dismiss for lack of jurisdiction, like the Attorney General’s

1 motion here, follow those in Rule 56.1); LRCiv 56.1(d); LRCiv 7.2(e) (setting forth page
2 limits). This is particularly appropriate because the jumble of the consolidated motion to
3 dismiss makes it unclear which of Plaintiff’s claims are being attacked, and Plaintiff needs
4 to unpack the Attorney General’s overgeneralizations (e.g., conflating H.B. 2492 and H.B.
5 2243, assuming no distinction between the various plaintiffs, and not specifically
6 identifying nor addressing their different claims) to address Plaintiff’s specific claims.

7 **Response to Local Rule 12.1 Request**

8 The Attorney General apparently takes issue with Plaintiff’s pre-filing request that
9 the Attorney General identify “the issues asserted in” its then-forthcoming motion to
10 dismiss, so that Plaintiff could determine whether Plaintiff’s Complaint “pleading was
11 curable in any part by a permissible amendment.” LRCiv 12.1(c).

12 Plaintiff does not oppose this request, but the Attorney General’s attempt to
13 somehow lay fault on Plaintiff for even asking about the basis of its upcoming motion to
14 dismiss—in accordance with Local Rule 12.1—must be briefly addressed. The Attorney
15 General sent the following email to all counsel—including Plaintiff:

16 The State and its Attorney General plan on filing a motion to
17 dismiss under Rules 12(b)(1) and 12(b)(6) on Friday under the
18 schedule we have all agreed to. That motion will argue that
19 Plaintiffs have failed to establish standing and ripeness, and that
20 Plaintiffs have not pled sufficient facts to establish a viable causes
21 of action, and that Plaintiffs’ claims fail as a matter of law.

22 That’s all there was by way of substance in that email. As is readily apparent, that
23 email to all counsel failed to even identify which of Plaintiff’s claims the Attorney
24 General’s 12(b)(6) motion would address. Plaintiff hardly could have determined if any
25 alleged pleading defect was curable, as the local rule contemplates, without even knowing
26 which of its claims the Attorney General planned to move on. That plaintiffs in the *Mi*
27 *Familia Vota* cases did not ask the Attorney General for this information does not mean
28 Plaintiff also should not or could not have asked, as was its right pursuant to the local rules.

Regardless, the Attorney General’s subsequent response to Plaintiff’s second
inquiry sufficiently allowed Plaintiff here to understand the issues the Attorney General

1 intended to raise in its motion to dismiss, which its initial email did not. Plaintiff
2 understood that no further response from it was necessary, as the Attorney General’s email
3 response made clear, and for its part does not oppose the Attorney General’s Local Rule
4 12.1 request, though it is also unnecessary.¹

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8 Dated: September 30, 2022

Respectfully submitted,

9 By /s/ Amit Makker

LATHAM & WATKINS LLP
Sadik Huseny (*pro hac vice*)
Amit Makker (*pro hac vice*)
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095

ASIAN AMERICANS ADVANCING
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Attorneys for Plaintiff

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25 ¹ It is worth briefly noting that one of the arguments in the motion to dismiss is exactly the
26 sort of argument that Rule 12.1 contemplates capturing early so as to save this Court time:
27 the Attorney General argues that other plaintiffs failed to name all of the County Recorders
28 as necessary defendants, and their complaints should therefore be dismissed. This
argument does not apply to the Plaintiff here because, as the Court knows, Plaintiff *did*
name as defendants all of the County Recorders—which is of course yet another point of
distinction between the cases, weighing against consolidation.

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2022, I caused the foregoing to be filed and served electronically via the Court’s CM/ECF system upon counsel of record.

/s/ Amit Makker

Amit Makker

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