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11 *Weber, in her official capacity*

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15
16 **UNITED STATES OF AMERICA,**
17 Plaintiff,
18
19 **v.**
20 **STATE OF CALIFORNIA and**
SHIRLEY N. WEBER, in her official
21 **capacity as the California Secretary**
of State, and DEAN C. LOGAN, in
22 **his official capacity as the County of**
Los Angeles Registrar-Recorder /
County Clerk,
23 Defendants.

Case No. 2:26-cv-12025-DOC-ADS

STATE DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION FOR INJUNCTION
PENDING APPEAL

Date: Not Set
Time: Not Set
Courtroom: 10 A
Judge: Hon. David O. Carter
Trial Date: Not Set
Action Filed: October 15, 2026

1 Defendants the State of California and Secretary of State Shirley N. Weber,
2 Ph.D. (“State Defendants”) oppose Plaintiff’s motion for an injunction pending
3 appeal, ECF No. 76, because there are no grounds for such an appeal while the
4 Court evaluates the application for a temporary restraining order (“TRO
5 Application”).

6 Plaintiff chose to file this lawsuit on October 15, 2026, seventeen days before
7 Election Day for the 2026 General Election. ECF No. 1. Plaintiff waited four more
8 days, until October 19, to file its TRO Application. ECF No. 22-2. In that
9 application, Plaintiff requested relief “by **November 3, 2026**, before the end of
10 voting in the 2026 federal election.” ECF No. 22-2 (emphasis added). All
11 Defendants opposed the TRO Application the next day, on October 20. ECF Nos.
12 31-1 and 32-1.

13 On October 21, this case was first assigned to the Honorable John W.
14 Holcomb (ECF No. 34) and then transferred to the Honorable David O. Carter
15 (ECF No. 46). At 6:41 p.m. on October 21, several hours after being assigned the
16 case, the Court issued a scheduling order setting a hearing on the TRO Application
17 for Tuesday, October 27, a full week ahead of Plaintiff’s requested deadline for
18 relief. ECF No. 64. At 8:57 p.m., prior to serving the summons and complaint on
19 any Defendant, Plaintiff filed a request demanding a ruling on its TRO Application
20 by noon the following day. ECF No. 67.¹ On October 22, merely three days after
21 filing the original TRO Application, Plaintiff filed a Notice of Appeal, claiming that
22 the Court has constructively denied the preliminary injunction, even though the
23 scheduled hearing on the TRO Application had not happened. ECF No. 74. At 6:17
24 a.m. on October 23, Plaintiff filed its motion for an injunction pending appeal. ECF

25 ¹ Also on October 21, all Defendants filed motions to dismiss the complaint, ECF
26 Nos. 65, 68, requesting an expedited schedule on the motions, ECF No. 57. Despite
27 claiming in its request for an expedited TRO ruling that this case concerns an
28 “emergency” that “accelerates in real time” due to Defendants’ ongoing tabulation
of ballots, ECF No. 67, Plaintiff opposes expediting proceedings on the motions to
dismiss, questioning Defendants’ need for “clarity and assurance that they can
continue to administer” the elections according to law, ECF No. 71.

1 No. 76. Just over two hours later, the Court ordered any additional briefing in
2 opposition to Plaintiff's TRO Application by Saturday at 3:00 p.m., and a reply no
3 later than Sunday at 3:00 p.m. ECF Nos. 77, 78.

4 The Court should refuse to grant an injunction pending appeal for the simple
5 reason that the appeal is improper, since there is nothing currently to appeal. The
6 Court has not "even tentatively decide[d] anything about the merits of [Plaintiff's]
7 claim," let alone issued an order on the TRO Application. *Switzerland Cheese*
8 *Ass'n, Inc. v. E. Horne's Mkt., Inc.*, 385 U.S. 23, 25 (1966). Instead, the Court has
9 expeditiously set a hearing date four days from now and a full week before the date
10 by which Plaintiff originally requested a ruling. Plaintiff's dilatory, after-hours
11 pivot on October 21 to demand a ruling by noon the next day does not create a valid
12 basis for its purported appeal, which is without legal effect.

13 "District courts have wide discretion in managing their docket, and they do
14 not necessarily deny a motion by failing to rule on a parties' requested timeline."
15 *Amazon.com Servs. LLC v. Nat'l Lab. Rels. Bd.*, 151 F.4th 221, 227 (5th Cir. 2025)
16 (district court did not constructively deny motion for preliminary injunction by
17 failing to rule by requested date) (citing *In re Fort Worth Chamber of Commerce*,
18 100 F.4th 528, 535 (5th Cir. 2024)). "Appeal cannot be achieved simply by
19 asserting that the trial court has failed to act promptly as wished by a party seeking
20 an injunction." *Id.*; cf. *Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, (9th
21 Cir. 1992) (finding constructive denial where plaintiff moved for preliminary
22 injunction on August 22, the court scheduled a hearing for September 8, but at an
23 August 30 hearing on a different motion "announced its decision not to hold a
24 preliminary injunction hearing" until after the challenged action was substantially
25 completed); *Cedar Coal Co. v. United Mine Workers of Am.*, 560 F.2d 1153, 1161-
26 62 (4th Cir. 1977) (finding constructive denial when district court issued an order
27 that continued preliminary injunction hearing date indefinitely).

1 Moreover, the Court should consider the litigant’s “diligence in seeking to
2 expedite briefing and consideration,” such as whether it has made “repeated
3 requests for a ruling by a specific date.” *Amazon.com Servs. LLC*, 151 F.4th at 227.
4 Here, Plaintiff originally requested a ruling by November 3, which the Court’s
5 scheduled hearing will easily accommodate. Plaintiff’s October 21 request that this
6 Court issue a ruling on its TRO by noon the next day was not reasonable, and the
7 Court’s current schedule—where this TRO will be heard in only a few days—
8 cannot be constructive denial.

9 The TRO Application has not been denied, either by court order or
10 constructively, and the Court has not failed to rule. Instead, the Court set a hearing
11 on the TRO Application to be held four court days after being assigned this case.
12 There is no interlocutory order to appeal under 28 U.S.C. § 1292(a)(1), and the
13 appellate court therefore has no jurisdiction over this case. Accordingly, the Court
14 “may disregard” Plaintiff’s “notice of appeal and proceed with the case.” *Ruby v.*
15 *Secretary of United States Navy*, 365 F.2d 385, 389 (9th Cir. 1966); *see also*
16 *Hollywood v. City of Santa Maria*, 886 F.2d 1228, 1230 (9th Cir. 1989) (holding
17 notice of appeal deficient as “premature,” and thus “ineffective,” where it is “filed
18 before entry in the district court docket of the written disposition of [a] motion”);
19 *see also* 16 *Wright & Miller’s Federal Practice & Procedure* § 3924.1 (3d ed.
20 2012) (“Appeal cannot be achieved simply by asserting that the trial court has failed
21 to act as promptly as wished by a party seeking an injunction.”).

22 There is also no basis for Plaintiff’s alternative request for a 30-day
23 injunction pending further Ninth Circuit developments. ECF No. 76-1 at 2. In
24 *NetChoice v. Bonta*, the District Court issued such an injunction *solely to preserve*
25 *the status quo*. *See* 761 F. Supp. 3d 1232, 1236 (N.D. Cal. 2025). Here, by contrast,
26 Plaintiff seeks a mandatory injunction that would require Defendants to undertake
27 affirmative actions to “segregate ballots.” ECF No. 76-1 at 16; *but see Purcell v.*
28 *Gonzalez*, 549 U.S. 1 (2006).

1 If the Court finds that Plaintiff has validly appealed, the Court should deny
2 an injunction pending appeal for all the same reasons that State Defendants have
3 argued a TRO should not issue: Plaintiff lacks standing; Plaintiff's claim fails on
4 the merits; the relief Plaintiff seeks would independently violate federal and state
5 law; Plaintiff fails to demonstrate irreparable harm; and the equities strongly
6 disfavor relief in this case. *See generally* ECF 31-1 (State Defendants' Opposition
7 to Plaintiff's TRO).

8 For the foregoing reasons, the State Defendants respectfully request that the
9 Court deny the Application for Injunction Pending Appeal.

10
11 Dated: October 23, 2026

Respectfully submitted,

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24
25 /s/ Michael S. Cohen

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27 Deputy Attorney General
28 *Attorneys for Defendants State of
California and California Secretary of
State Shirley N. Weber, Ph.D.*

CERTIFICATE OF SERVICE

Case Name: **United States of America v. State of California, et al.** No. **2:26-cv-12025**

I hereby certify that on October 23, 2026, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **STATE DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTION PENDING APPEAL**

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 23, 2026, at Los Angeles, California.

Linda Zamora
Declarant

/s/ *Linda Zamora*
Signature

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