

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

**ROBERT L. SCHULZ, et al.,**

Plaintiffs,

v.

**STATE OF NEW YORK, et al.,**

Defendants.

Case No. 07-CV-0943 LEK/DRH

CALIFORNIA DEFENDANTS'  
NOTICE OF MOTION TO DISMISS  
PURSUANT TO FEDERAL RULE  
OF CIVIL PROCEDURE 12(b)(1) &  
12(b)(2)

PLEASE TAKE NOTICE that on January 18, 2008 at 9:30 a.m., or soon thereafter as is convenient for the court, the State of California and the California Secretary of State Debra Bowen (collectively the "California Defendants") will make a motion as a submission before the Honorable Lawrence E. Kahn, at the United States District Court, Northern District of New York, Albany, New York, pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the Federal Rules of Civil Procedure, for an order dismissing the amended complaint in its entirety on the grounds that: (1) this Court lacks jurisdiction over their persons; and (2) Plaintiffs' claims against the State of California are barred by the Eleventh Amendment to the United States Constitution.

PLEASE TAKE FURTHER NOTICE that in support of this motion, the California Defendants shall rely upon this Notice of Motion, Memorandum of Law in Support of California Defendants' Motion to Dismiss, and the Certification of Ms. Toledo submitted herewith.

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 7.1(c) of the Local Rules of Practice of the United States District Court for the Northern District of New York, any papers to be submitted in opposition to the within motion must be filed with Clerk in Albany, New York and served upon counsel for the defendants no later than seventeen (17) days before the return date of the motion, exclusive of that day. These papers must include, at a minimum, a memorandum of law containing relevant factual and legal arguments.

PLEASE BE FURTHER ADVISED that if you do not respond in opposition to the motion, the motion to dismiss, if appropriate, will be granted and judgment will be

entered against you. If the motion to dismiss is granted, your case will be dismissed and there will not be any trial concerning any of the issues asserted in your complaint.

Dated: December 10, 2007

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of the State of California

CHRISTOPHER E. KRUEGER  
Senior Assistant Attorney General

CONSTANCE L. LELOUIS  
Supervising Deputy Attorney General

*/s/ Margaret Carew Toledo* \_\_\_\_\_

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State of California and the California  
Secretary of State, Debra Bowen

To: All Parties on Certificate of Service

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