

**CONSOVOY MCCARTHY PLLC**

Thomas R. McCarthy (pro hac vice)  
Bryan Weir (SBN 310964)  
Cameron T. Norris (pro hac vice)  
cam@consovoymccarthy.com  
Frank H. Chang (pro hac vice)  
Mari Sayer (pro hac vice)  
R. Gabriel Anderson (pro hac vice forthcoming)  
1600 Wilson Blvd., Ste. 700  
Arlington, VA 22209  
(703) 243-9423

**LAWFAIR PLLC**

Adam K. Mortara (pro hac vice)  
40 Burton Hills Blvd., Suite 200  
Nashville, TN 37215  
(773) 750-7154

**ALTVIEW LAW GROUP LLP**

John M. Begakis (SBN 278681)  
john@altviewlawgroup.com  
9454 Wilshire Blvd., Suite 825  
Beverly Hills, CA 90212  
(310) 230-5580

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DO NO HARM; STUDENTS FOR  
FAIR ADMISSIONS; and KELLY MA-  
HONEY, individually and on behalf of  
others similarly situated,

*Plaintiffs,*

v.

DAVID GEFEN SCHOOL OF  
MEDICINE AT UCLA, et al.,

*Defendants.*

Case No.: 25-4131

**PLAINTIFFS' RESPONSE TO  
COURT'S SHOW-CAUSE  
ORDER REGARDING  
CONSOLIDATION**

1 The plaintiffs in *DNH* oppose consolidating their case with *SARD*. Consolida-  
2 tion would be premature before this Court decides the forthcoming motion to dismiss  
3 in *SARD*. If a decision on consolidation is made now, this Court should find that the  
4 costs will outweigh the benefits. The cases should not be consolidated for trial, since  
5 only the *DNH* plaintiffs have requested a jury trial. And consolidating the cases for  
6 pretrial would prejudice everyone by causing delay: *SARD*'s broader challenge to all  
7 admissions at every UC school would delay *DNH*'s narrower challenge to the admis-  
8 sions at UCLA's medical school. And *DNH*'s unique request for class certification  
9 could generate additional litigation that delays *SARD*. Meanwhile, the main benefits of  
10 consolidation could be achieved by simply ordering the parties to cooperate and not  
11 duplicate discovery into UCLA's medical school—something that the parties have al-  
12 ready agreed to do amongst themselves, and that this Court could easily enforce because  
13 it's overseeing both cases.

14 **I. This Court should not consolidate the cases before resolving**  
15 **all motions to dismiss.**

16 “[C]onsolidation is premature when motions to dismiss are pending.” Wright &  
17 Miller, 9A Fed. Prac. & Proc. Civ. §2383 (3d ed.); accord, e.g., *Tex. Ins. Co. v. Talisman*  
18 *Specialty Underwriters, Inc.*, 2025 WL 1697143, at \*2 (E.D. La. June 17); *Grobler ex rel. Inotiv,*  
19 *Inc. v. Leasure*, 2023 WL 2137414, at \*3-4 (N.D. Ind. Feb. 17). That principle applies  
20 even when the motions to dismiss aren't fully briefed. *Osman v. Weyker*, 2016 WL  
21 10402791, at \*3-4 (D. Minn. Nov. 21) (collecting cases). Rule 42—the one that governs  
22 consolidation—is “best served” when courts first decide motions that could avoid the  
23 need for consolidation altogether. *Sprint Commc'ns, L.P. v. Cox Commc'ns, Inc.*, 2012 WL  
24 1825222, at \*1 (D. Kan. May 18); accord *Thompson v. City of St. Peters*, 2016 WL 1625373,  
25 at \*2 (E.D. Mo. Apr. 21).

26 Motions to dismiss are pending here. The defendants in *DNH* just moved to  
27 dismiss. *DNH*-Doc.46. And the defendants in *SARD* moved to dismiss the original  
28

1 complaint. *SARD*-Doc.24-1. Though the complaint was then amended, *SARD*-Doc.26,  
2 the *DNH* plaintiffs understand that the defendants in *SARD* will move to dismiss the  
3 amended complaint as well by August 14, *see SARD*-Doc.30.

4 Per the usual rule, no consolidation should occur before these motions to dismiss  
5 are decided. If one of the cases is dismissed, then consolidation would only cause “con-  
6 fusion and inconvenience.” *Vickers v. Green Tree Servicing, LLC*, 2015 WL 7776880, at \*2  
7 (D. Kan. Dec. 2); *accord Leasure*, 2023 WL 2137414, at \*3-4. And if *SARD*’s allegations  
8 against UCLA’s medical school are dismissed, then consolidation will not be appropri-  
9 ate because the cases will no longer share a “common question.” Fed. R. Civ. P.  
10 42(a)(1)-(2); *see Leasure*, 2023 WL 2137414, at \*3. At this juncture, “it is too soon to  
11 ascertain the claims and parties which may remain in each case once those motions are  
12 resolved.” *Vickers*, 2015 WL 7776880, at \*2. Consolidation should “be addressed after”  
13 the motions to dismiss so that the Court can “understand the state of the cases better.”  
14 *SA Music LLC v. Apple, Inc.*, 2022 WL 1814148, at \*6 (N.D. Cal. June 2); *see also Campbell*  
15 *v. PricewaterhouseCoopers*, 2008 WL 3836972, at \*3 (E.D. Cal. Aug. 14) (“[The consolida-  
16 tion] determination should be made at a later stage, after a motion for class certifica-  
17 tion ... has been resolved.”).

18 **II. If the Court decides consolidation now, it should find that the**  
19 **costs outweigh the benefits.**

20 Though Rule 42 lets district courts “consolidate” cases that “involve a common  
21 question of law or fact,” Fed. R. Civ. P. 42(a)(1)-(2), it never *requires* consolidation, *Abate*  
22 *v. Lewis*, 74 F.3d 1245, 1245 (9th Cir. 1996); *Olaplex LLC v. Groupon*, 2019 WL 9042542,  
23 at \*1 (C.D. Cal. Apr. 19). Consolidation remains a matter of the court’s “broad discre-  
24 tion.” *Klauber Bros., Inc. v. Forever 21 Retail, Inc.*, 2015 WL 12720307, at \*1 (C.D. Cal. Apr.  
25 9). When exercising that discretion, courts weigh the “time and effort” that consolida-  
26 tion would save against the “inconvenience, delay, or expense” that consolidation  
27 would create. *Id.*  
28

1 The costs of consolidation outweigh the benefits here. To start, the cases should  
2 not be consolidated for trial—which is reason enough to deny consolidation altogether.  
3 *E.g., EPA v. City of Green Forest*, 921 F.2d 1394, 1403 (8th Cir. 1990). Though both cases  
4 now seek damages, only the *DNH* plaintiffs are demanding a jury trial. If the defendants  
5 in *SARD* do not seek a jury trial, then the two trials cannot be consolidated, since con-  
6 solidation cannot deprive *DNH* of its “right to a jury trial.” Fed. R. Civ. P. 42(b); *see also*  
7 *Acfalle v. DIRECTV*, 2015 WL 13609618, at \*1-2 (C.D. Cal. Aug. 14). Or if the defend-  
8 ants in *SARD* do seek a jury trial, then consolidation will create a “logistical night-  
9 mare.” *Acfalle*, 2015 WL 13609618, at \*1. This Court will have to decide whether and  
10 how to empanel two juries and “sequeste[r] one of the juries from hearing evidence and  
11 argument specific to the other case.” *Bower v. Wright Med. Tech. Inc.*, 2019 WL 3947087,  
12 at \*3 (C.D. Cal. Aug. 19). That situation could “prejudice” the parties, “confus[e]” the  
13 jurors, and “diminish any of the efficiencies gained by consolidating the cases.” *Id.*

14 Even if the cases were consolidated only for discovery and other pretrial pro-  
15 ceedings, the “possibility of delay” here “disfavors consolidation.” *New Jersey v. DOT*,  
16 2024 WL 493298, at \*2 (D.N.J. Feb. 8); *e.g., Lucas v. Gotra*, 2019 WL 3753245, at \*5  
17 (S.D. Ohio Aug. 8). The *DNH* plaintiffs will be delayed because *SARD* is a broader  
18 case. While *DNH* challenges the admissions process at UCLA’s medical school, *SARD*  
19 challenges the admission process at every UC school, including a range of graduate,  
20 undergraduate, and professional programs. *Compare DNH-Compl.*¶1, *with SARD-Am.-*  
21 *Compl.* 1-2 & ¶¶7-8, 40, 43, 46, 49, 52, 55. Consolidation would prejudice the *DNH*  
22 plaintiffs by making them “enmeshed in a much wider [case].” *Saleh v. Merchant*, 2017  
23 WL 2424229, at \*3 (N.D. Ill. June 5). And it would require them “to participate in  
24 various matters that are simply irrelevant” to them, like conferences and hearings about  
25 unrelated issues, parties, and claims. *Colt Int’l Clothing Inc. v. Quasar Sci.*, 2018 WL  
26 6252448, at \*3 (C.D. Cal. Aug. 21); *see DNH-Doc.*42 at 3 (“Lead trial counsel for each  
27 party must attend every status conference, scheduling conference, and pretrial  
28

1 conference.”). Those harms would “prejudice” the *DNH* plaintiffs in terms of lost time,  
2 increased expense, and delayed relief. *Saleh*, 2017 WL 2424229, at \*3; *Does No. 1 v.*  
3 *Springboro Cmty. City Sch. Dist.*, 2022 WL 219368, at \*2 (S.D. Ohio Jan. 25); *Kilgore Marine*  
4 *Servs. LLC v. SeaTrepid Int’l LLC*, 2024 WL 3996076, at \*1 (W.D. La. Aug. 29).

5 Consolidation could also slow down *SARD*. *DNH* and *SARD* seek damages  
6 against different defendants, who can all raise qualified-immunity defenses. *See DNH-*  
7 *Doc.46-1* at 26-28 (raising the defense here). Each denial of qualified immunity could  
8 lead to an interlocutory appeal. *Behrens v. Pelletier*, 516 U.S. 299, 306-09 (1996). Plus only  
9 *DNH* is a class action. When the *DNH* plaintiffs move for class certification, this  
10 Court’s decision could likewise be subject to an interlocutory appeal. Fed. R. Civ. P.  
11 23(f). During these interlocutory appeals, the *SARD* plaintiffs might have their case  
12 stayed in this Court—a clear “source of prejudice.” *Roberts v. Cnty. of Riverside*, 2020 WL  
13 5045152, at \*3 (C.D. Cal. May 8); *accord Campbell*, 2008 WL 3836972, at \*4 (stressing  
14 that “class certification proceedings [and] possible Rule 23(f) petitions for ap-  
15 peal ... would prejudice the [other] plaintiffs”). And if *SARD* goes forward while *DNH*  
16 is stayed, this “piecemeal litigation” will defeat the purpose of consolidation. *Aggreko,*  
17 *LLC v. Chartis Specialty Ins.*, 2017 WL 10128905, at \*2 (E.D. Tex. June 8). This Court  
18 can avoid these issues most easily by “[k]eeping the cases separate.” *Colt*, 2018 WL  
19 6252448, at \*3.

20 The main benefits of consolidation—the efficiencies gained by avoiding dupli-  
21 cative discovery into UCLA’s medical school—can be accomplished without consoli-  
22 dation. This Court can simply instruct the parties to coordinate discovery into UCLA’s  
23 medical school and to avoid duplication. *Campbell*, 2008 WL 3836972, at \*3. The parties  
24 have conferred and agree to do so. And this Court could “effectively manage and co-  
25 ordinate” discovery into UCLA’s medical school because it’s already overseeing both  
26 cases. *Roberts*, 2020 WL 5045152, at \*2-3. Because coordination would achieve the same  
27  
28

1 “efficiency gains” as consolidation, *Acfalle*, 2015 WL 13609618, at \*2, consolidation is  
2 not worth the costs here.

### 3 **CONCLUSION**

4 In response to this Court’s show-cause order, the *DNH* plaintiffs state that the  
5 cases should not be consolidated.

6 Dated: July 30, 2025

Respectfully submitted,

7 /s/ Cameron T. Norris

8 **CONSOVOY MCCARTHY PLLC**

9 Thomas R. McCarthy (pro hac vice)

10 Bryan Weir (SBN 310964)

11 Cameron T. Norris (pro hac vice)

12 cam@consovoymccarthy.com

13 Frank H. Chang (pro hac vice)

14 Mari Sayer (pro hac vice)

15 R. Gabriel Anderson (pro hac vice forth-  
16 coming)

17 1600 Wilson Blvd., Ste. 700

18 Arlington, VA 22209

19 (703) 243-9423

20 **LAWFAIR PLLC**

21 Adam K. Mortara (pro hac vice)

22 40 Burton Hills Blvd., Suite 200

23 Nashville, TN 37215

24 (773) 750-7154

25 **ALTVIEW LAW GROUP LLP**

26 John M. Begakis (SBN 278681)

27 john@altviewlawgroup.com

28 9454 Wilshire Blvd., Suite 825

Beverly Hills, CA 90212

(310) 230-5580

*Attorneys for Plaintiffs*

**CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.1 AND  
STANDING ORDER OF HON. JOHN W. HOLCOMB**

Undersigned certifies that this brief contains fewer than 25 pages, which com-  
plies with the page limit set by the Court's July 11, 2025, standing order.

Dated: July 30, 2025

/s/ Cameron T. Norris