

1 C. D. Michel – SBN 144258
cmichel@michellawyers.com
2 Sean A. Brady – SBN 262007
sbrady@michellawyers.com
3 Matthew D. Cubeiro – SBN 291519
mcubeiro@michellawyers.com
4 MICHEL & ASSOCIATES, P.C.
5 180 East Ocean Boulevard, Suite 200
Long Beach, CA 90802
6 Telephone: 562-216-4444
Facsimile: 562-216-4445
7

8 Attorneys for Plaintiffs

9 *[Additional Counsel on Following Page.]*

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**
13

14 STEVEN RUPP, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official
18 capacity as Attorney General of the State
19 of California,

20 Defendants.
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Case No.: 8:17-cv-00746-JLS-JDE

JOINT RULE 26(f) REPORT

Hearing Date: December 15, 2017
Hearing Time: 1:30 p.m.
Judge: Josephine L. Staton
Courtroom: 10A

1 XAVIER BECERRA
Attorney General of California
2 ANTHONY R. HAKL
Acting Supervising Deputy Attorney General
3 JOHN D. ECHEVERRIA
Deputy Attorney General
4 State Bar No. 268843
5 PETER H. CHANG
Deputy Attorney General
6 State Bar No. 241467
455 Golden Gate Avenue, Suite 11000
7 San Francisco, CA 94102-7004
Telephone: (415) 703-5939
8 Fax: (415) 703-1234
9 E-mail: Peter.Chang@doj.ca.gov

10 Attorneys for Defendant
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1 **a. Statement of the Case:**

2 Plaintiffs

3 Plaintiffs are California residents who filed suit alleging that California's
4 "Assault Weapon" Control Act ("AWCA") violates their Second Amendment right
5 to bear arms for self-defense because it prohibits the possession of arms that they
6 contend are typically possessed by law-abiding citizens for lawful purposes and are
7 thus protected under the Second Amendment.

8 Plaintiffs also seek relief under the Fourteenth Amendment's Due Process
9 Clause alleging that the AWCA deprives them of protected property interests—
10 namely the possession and transfer of otherwise-lawful rifles—without due process
11 of law, and the Fifth Amendment's Takings Clause because the AWCA constrains
12 their ability to transfer lawfully acquired property during their lifetime, and upon
13 their death to physically surrender that property to the government that they would
14 otherwise devise to their children or heirs.

15 Additionally, asserting the same constitutional provisions, Plaintiffs seek an
16 injunction prohibiting Defendant from enforcing a requirement that they provide
17 information regarding the date and source of acquisition for their firearms to be
18 registered as an "assault weapon" as applied to those who do not have such
19 information, because, according to Plaintiffs, the requirement is retroactive, does not
20 further Defendant's interest, and results in a taking of lawful firearms, which
21 Plaintiffs contend are protected under the Second Amendment.

22 Defendant

23 Plaintiffs assert a facial challenge to provisions of the AWCA that prohibit, in
24 relevant part, the possession of assault weapons, as the term is defined by the statute
25 by either make and model or feature. Plaintiffs claim that the AWCA violates the
26 Second Amendment, the Takings Clause, and the Due Process Clause. Plaintiffs
27 seek declaratory and injunctive relief only.

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1 Defendant Xavier Becerra, the California Attorney General, contends that the
2 AWCA does not violate the Second Amendment because assault weapons are not
3 protected by the Second Amendment and further because the AWCA's prohibition
4 of assault weapons survives heightened scrutiny. Defendant further contends that
5 the AWCA does not violate the Takings Clause or the Due Process Clause.

6 **b. Legal Issues:**

7 Plaintiffs

8 This case raises the question of whether California "assault weapon"
9 restrictions violate either the Second Amendment, Due Process Clause, or Takings
10 Clause, by prohibiting the acquisition or possession of certain firearms, which
11 Plaintiffs contend are typically possessed by law-abiding citizens for lawful
12 purposes.

13 Plaintiffs seek a declaratory judgement that the AWCA, and applicable
14 California Code of regulations, are unconstitutional facially and to the extent that
15 they apply to "assault weapons," or, alternatively, to the extent they prohibit any
16 semi-automatic, centerfire rifle with a detachable magazine having a "pistol grip,"
17 "flash suppressor," "thumbhole stock," or "telescoping stock," or any semi-
18 automatic, centerfire rifle that is over 26 inches in overall length. Plaintiffs also seek
19 an injunction prohibiting Defendants and their officers, agents, and employees from
20 enforcing any of the challenged provisions, or, alternatively, to the extent they
21 prohibit the acquisition, possession, or transfer of any semi-automatic, centerfire
22 rifle with a detachable magazine having a "pistol grip," "flash suppressor,"
23 "thumbhole stock," or "telescoping stock," or any semi-automatic, centerfire rifle
24 that is over 26 inches in overall length. Plaintiffs have no plain, speedy, and
25 adequate remedy at law, and will continue to suffer violations of their constitutional
26 rights if not enjoined by this Court.

27 Defendants have moved to dismiss plaintiffs' Due Process Clause claims on
28 the grounds that the challenged provisions are rationally related to the government's

1 purported interest. Defendants also moved to dismiss plaintiffs' Takings Clause
 2 claims on the grounds that the AWCA does not effect a physical or regulatory taking
 3 requiring compensation. Plaintiffs have filed a motion seeking a preliminary
 4 injunction against the AWCA's requirement that individuals provide information
 5 concerning the date and source of a firearm's acquisition which is to be registered as
 6 an "assault weapon" on the grounds that such a requirement violates the Due Process
 7 Clause, will work an unconstitutional taking, violates the Second Amendment, and
 8 will cause irreparable harm if not enjoined.

9 Defendant

10 The legal issues in this case are

- 11 • Whether the challenged provisions of the AWCA violate plaintiffs' right
- 12 under the Second Amendment;
- 13 • Whether the challenged provisions of the AWCA constitute a "taking"
- 14 requiring compensation; and if so, whether the State may be enjoined from
- 15 enforcing the AWCA under the Takings Clause; and
- 16 • Whether the challenged provisions of the AWCA violate plaintiffs'
- 17 substantive due process right.

18 Defendant believes that plaintiffs' takings claim and the due process claim
 19 may be resolved as a matter of law and has filed a partial motion to dismiss those
 20 claims under FRCP 12(b)(6). Dkt. No. 17.

21 Plaintiffs have moved to preliminarily enjoin the enforcement of certain of the
 22 AWCA's registration requirements. Dkt. No. 24. Defendant has opposed the
 23 motion. Dkt. No. 27.

24 Defendant believes that plaintiffs' Second Amendment claim may be
 25 appropriately resolved by cross motions for summary judgment, which the parties
 26 propose to file after conducting fact and expert discovery.

27 **c. Damages:**

28 Plaintiffs are not seeking damages.

d. Insurance:

The parties are not invoking insurance coverage.

e. Motions:

The parties do not anticipate motions seeking to add other parties or claims, file amended pleadings, or transfer venue, but Plaintiffs may request leave to amend the Complaint depending on the Court's pending rulings on Defendant's dismissal motion and claim of lack of standing.

f. Complexity:

The parties do not believe the Manual for Complex litigation is appropriate for this case.

g. Status of Discovery:

The parties have not begun discovery yet.

h. Discovery Plan:

The parties agree to complete all fact discovery by May 15, 2018.

The parties have agreed to exchange initial disclosures by January 5, 2018.

Attached as Exhibit A is the parties' joint proposed case schedule. The only proposed modification to the Court's typical schedule is that the parties propose to file cross- motions for summary judgment after completion of fact and expert discovery. The parties believe that this case would most likely be resolved by summary judgment and would like the benefit of expert reports and discovery for their respective motions.

i. Expert Discovery:

The parties agree to serve initial expert reports by May 29, 2018, rebuttal expert reports by June 26, 2018, with an expert discovery cut-off set for July 24, 2018.

j. Dispositive motions:

The parties intend to file cross motions for summary judgment by September 4, 2018.

k. Alternative Dispute Resolution (“ADR”) Procedure Selection:

The parties choose ADR Procedure No. 2 (Court Mediation Panel), however, the parties do not believe mediation is appropriate for this case because it deals with questions of law. Furthermore, Defendant is prohibited by Article III, section 3.5 of the California Constitution from refusing to enforce the AWCA unless enjoined by the Court or unless an appellate court determines that the AWCA is unconstitutional.

l. Settlement Efforts:

The parties have met and conferred on the possibility of settlement but do not believe this case has any potential of settling. Plaintiffs believe that Defendant’s policies violate their constitutional rights, and Defendant believes that the AWCA is constitutional. Furthermore, Defendant is prohibited by Article III, section 3.5 of the California Constitution from refusing to enforce the AWCA unless enjoined by the Court or unless an appellate court determines that the AWCA is unconstitutional.

m. Trial Estimate:

Plaintiffs’ constitutional claims raise largely legal issues that the parties believe should be resolved on motions for summary judgment and/or motions for judgment on the pleadings and will not require trial. In the event this case proceeds to trial, the parties estimate a bench trial of up to 7 days. In the event of trial, the parties would each anticipate calling 1 to 5 party witnesses and 1 to 5 expert witnesses each.

n. Trial Counsel:Plaintiffs

Joshua R. Dale; Sean A. Brady

Defendant

Peter H. Chang; John D. Echeverria

o. Independent Expert or Master:

The parties do not request appointment of an independent expert or master.

1 **p. Other Issues:**

2 The parties do not anticipate any other issues at this time.

3
4 Dated: December 1, 2017

MICHEL & ASSOCIATES, P.C.

5
6 /s/Sean A. Brady
7 Sean A. Brady
8 Attorneys for Plaintiffs

9 Dated: December 1, 2017

XAVIER BECERRA
Attorney General of California

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12 /s/Peter H. Chang
13 PETER H. CHANG
14 Deputy Attorney General
15 Attorneys for Defendant
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EXHIBIT A

EXHIBIT A
PROPOSED SCHEDULE OF PRETRIAL AND TRIAL DATES

CASE NAME: *Rupp, et al. v. Becerra*

CASE NO: 8:17-cv-00746-JLS-JDE

Matter	Deadline	Parties' Joint Request
Last Day to File Motions to Add Parties and Amend Pleadings	Scheduling Conference Date plus 60 Days	2/13/18
Fact Discovery Cut-Off	21 weeks before trial	5/15/18
Last Day to Serve Initial Expert Reports	19 weeks before trial	5/29/18
Last Day to File Motions (except <i>Daubert</i> and all other Motions in Limine)	19 weeks before trial	9/4/18
Last Day to Serve Rebuttal Expert Reports	15 weeks before trial	6/26/18
Last Day to Conduct Settlement Proceedings	12 weeks before trial	10/23/18
Expert Discovery Cut-Off	11 weeks before trial	7/24/18
Last Day to File <i>Daubert</i> Motions	Expert Discovery Cut-Off Date plus 7 days	11/6/18
Last Day to File Motions in Limine (other than <i>Daubert</i> Motions)	Final Pre-Trial Conference Date less 28 days	11/23/18
Final Pre-Trial Conference (Friday at 1:30 p.m.)	3 weeks before trial	12/21/18
Exhibit Conference (Friday at 3:30 p.m.)	Friday before trial	1/11/19
Trial: Jury or Court (Tuesday at 9:00 a.m.)		1/15/19

CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

JOINT RULE 26(f) REPORT

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
Attorney General of California
Peter H. Chang
Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102
E-mail: peter.chang@doj.ca.gov

I declare under penalty of perjury that the foregoing is true and correct.

Executed December 1, 2017.

/s/Laura Palmerin
Laura Palmerin

CERTIFICATE OF SERVICE