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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 SOUTHERN DIVISION

13  
14 **STEVEN RUPP; STEVEN**  
**DEMBER; CHERYL JOHNSON;**  
15 **MICHAEL JONES; CHRISTOPHER**  
**SEIFERT; ALFONSO VALENCIA;**  
16 **TROY WILLIS; and CALIFORNIA**  
**RIFLE & PISTOL ASSOCIATION,**  
17 **INCORPORATED,**

18 Plaintiffs,

19 v.

20 **XAVIER BECERRA, in his official**  
**capacity as Attorney General of the**  
21 **State of California; and DOES 1-10,**

22 Defendants.  
23

8:17-cv-00746-JLS-JDE

**DEFENDANT'S OPPOSITION TO**  
**PLAINTIFFS' MOTION FOR**  
**LEAVE TO FILE**  
**SUPPLEMENTAL**  
**DECLARATION OF DENNIS**  
**MARTIN IN SUPPORT OF**  
**PLAINTIFFS' MOTION FOR**  
**PRELIMINARY INJUNCTION**

Date: March 9, 2018  
Time: 2:30 p.m.  
Courtroom: 10A  
Judge: Hon. Josephine L. Staton  
Trial Date: N/A  
Action Filed: April 24, 2017

24 Defendant Xavier Becerra ("Defendant") hereby submits his opposition to  
25 Plaintiffs' Motion for Leave to File Supplemental Declaration of Dennis Martin in  
26 Support of Plaintiffs' Motion for Preliminary Injunction (the "Motion" or "Mot.")  
27 (Dkt. No. 41). The Court should deny the Motion because the supplemental  
28 declaration is untimely and does not address all of the standing and ripeness

1 concerns raised in the Attorney General’s opposition to Plaintiffs’ motion for a  
2 preliminary injunction.

### 3 **ARGUMENT**

#### 4 **I. THE SUPPLEMENTAL DECLARATION IS UNTIMELY.**

5 More than one month after the Court took Plaintiffs’ Motion for a Preliminary  
6 Injunction under advisement—following briefing by the parties, the submission of  
7 evidence, and oral argument—Plaintiffs now seek leave of Court to file a  
8 supplemental declaration of plaintiff Dennis Martin (“Martin”) in further support of  
9 their pending motion for a preliminary injunction.

10 Martin’s original declaration was filed with Plaintiffs’ preliminary injunction  
11 motion on November 14, 2017 (Dkt. No. 24-5).<sup>1</sup> On November 22, 2017,  
12 Defendant filed an opposition to the preliminary injunction motion (Dkt. No. 27),  
13 which, *inter alia*, showed that Plaintiffs lack standing to challenge the registration  
14 requirements of Penal Code § 30900(b)(3) and that their claims are not ripe for  
15 adjudication. (Opp’n at 5:2-8:28.) In particular, Defendant pointed out that  
16 Plaintiffs do not allege that Martin ever attempted to register his assault weapon.  
17 (*Id.* at 6:9-15.) Defendant also described how a firearm owner can, through the  
18 exercise of reasonable diligence, attempt obtain the date and source information to  
19 register an assault weapon and that Martin’s declaration failed to specify what  
20 efforts, if any, he undertook to attempt to ascertain the date and source information  
21 for his particular assault weapon. (*Id.* at 6:16-7:12.)

22 Upon the filing of Defendant’s opposition on November 22, 2017, Plaintiffs  
23 were on notice of the deficiencies in their motion for a preliminary injunction, and  
24 yet they did not attempt to submit a supplemental declaration for Martin with their

25 <sup>1</sup> Martin is the only remaining individual plaintiff who is allegedly unable to  
26 register an assault weapon pursuant to Penal Code § 30900(b)(3). (*See* First  
27 Amended Complaint ¶ 56 (Dkt. No. 16).) The only other plaintiff identified in the  
28 First Amended Complaint who was allegedly unable to register an assault weapon,  
Douglas Grassey (*see id.* ¶ 55), was voluntarily dismissed pursuant to a stipulation  
of the parties (Dkt. No. 26).

1 reply papers (filed on December 1, 2017) or in advance of the hearing on their  
 2 motion (held on December 22, 2017). Plaintiffs explain that Martin attempted to  
 3 register his firearms after the hearing because the Court “expressed concerned about  
 4 Plaintiff Martin’s standing based on the reasons Defendant raised.” (Mot.  
 5 at 4:9-10.) Those concerns were raised in Defendant’s opposition, as Plaintiffs  
 6 acknowledge, and Plaintiffs could have attempted to address those concerns before  
 7 the hearing. Plaintiffs’ delay is inexcusable, especially given the minimal effort  
 8 and time required for Martin to attempt to register two firearms online, which is the  
 9 only additional material discussed in his supplemental declaration. (*See id.*  
 10 at 4:13-18.) The Court should deny the Motion on this basis alone.

11 **II. THE SUPPLEMENTAL DECLARATION FAILS TO ADDRESS PLAINTIFFS’**  
 12 **STANDING AND RIPENESS DEFICIENCIES.**

13 Martin’s supplemental declaration, even if deemed to be timely, addresses  
 14 only one of Defendant’s standing and ripeness deficiencies: the fact that Plaintiffs  
 15 failed to allege that anyone tried and failed to register an assault weapon before  
 16 filing suit and seeking injunctive relief. According to the supplemental declaration,  
 17 after the hearing, Martin (i) unsuccessfully attempted to register the assault weapon  
 18 discussed in his original declaration online (on January 9, 2018), and  
 19 (ii) unsuccessfully attempted to register a *different* firearm—not discussed in the  
 20 First Amended Complaint or his original declaration—online (on January 14,  
 21 2018). (Mot., Ex. A (Supp. Decl.) ¶¶ 7-10.)<sup>2</sup> The supplemental declaration does  
 22 not demonstrate that Plaintiffs have standing to challenge the registration  
 23 requirements or that their claims are ripe.

24 As a preliminary matter, with respect to the new firearm that Martin attempted  
 25 to register on January 14, 2018, Martin does not explain what features, if any,  
 26 render that firearm an “assault weapon.” (*Compare* Mot., Ex. A ¶ 4 (describing

27 <sup>2</sup> For the first firearm, Martin did not input the estimated date of purchase in  
 28 the required format (mm/dd/yyyy) and instead provided only the estimated year.

1 features of the firearm discussed in this original declaration), *with id.* ¶ 9 (stating  
 2 that he attempted to “register another firearm as an ‘assault weapon’”).) Nor does  
 3 Martin state that the firearm was acquired between January 1, 2001 and December  
 4 31, 2016, and thus that it is even eligible for registration pursuant to Penal Code §  
 5 30900(b). If this firearm qualifies as an assault weapon eligible for registration,  
 6 Martin does not explain why he neglected to mention it in this original declaration.

7 Even assuming that the firearms are eligible for registration and that Martin  
 8 was unable to register them online, the supplemental declaration is silent on the  
 9 remaining standing and ripeness deficiencies discussed in Defendant’s opposition  
 10 to the preliminary injunction motion. As explained in Defendant’s opposition, a  
 11 firearm owner can attempt to obtain date and source information through the  
 12 exercise of reasonable diligence, even if the individual did not keep any records of  
 13 the transaction and has no memory of the transaction. For example, the owner can  
 14 contact the firearm manufacturer with the serial number of the firearm, contact the  
 15 dealer to obtain a record of the transaction, or contact the Department of Justice’s  
 16 Bureau of Firearms to obtain any ownership information for the firearm maintained  
 17 by the Bureau. (Opp’n at 6:16-12; Graham Decl. ¶¶ 19-23.)

18 In the supplemental declaration, Martin simply states that he reviewed his  
 19 “files and electronic correspondence.” (Mot., Ex. A ¶¶ 7, 9.) That is not enough.  
 20 There is no indication that Martin ever attempted to contact the Department of  
 21 Justice, Bureau of Firearms, to try to obtain firearm ownership information or  
 22 resolve his registration problems.<sup>3</sup> Aside from reviewing unspecified files and  
 23 correspondence, it is not clear what efforts Martin undertook to attempt to obtain  
 24 date and source information. Thus, even if the Court were to consider the  
 25 supplemental declaration, there is still “no allegation that Martin took *any* steps to

26 <sup>3</sup> Owners of firearms acquired through private-party transactions can contact  
 27 the Bureau of Firearms to try to resolve registration problems. If the Court grants  
 28 Plaintiffs leave to file the supplemental declaration, Defendant requests an  
 opportunity to submit a declaration to address the issues raised in the supplemental  
 declaration, including the issue of private-party transactions.

1 obtain the information. Neither the [First Amended Complaint] nor Martin's  
 2 declaration[s] state (1) what information he possesses relating to the circumstances  
 3 of his acquisition of his assault weapon[s], (2) if he attempted to obtain the date and  
 4 source information, (3) if so, how he did attempt to obtain that information, and (4)  
 5 whether he could obtain the date and source information sufficient to register his  
 6 assault weapon[s] with reasonable diligence." (Opp'n at 8:10-16.)

7 Even if Martin had exercised due diligence in attempting obtain the date and  
 8 source information for the two firearms discussed in his supplemental declaration,  
 9 the purported registration problems of a single individual, lacking any records of  
 10 his firearm purchases, and having no memory of the circumstances of those  
 11 purchases (or, apparently, even of the existence of one of the firearms he wishes to  
 12 register), should not serve as a basis for enjoining enforcement of the registration  
 13 requirements in their entirety as to other firearm owners.

### 14 CONCLUSION

15 For the reasons provided above, Plaintiffs' Motion for Leave to File  
 16 Supplemental Declaration of Dennis Martin in Support of Plaintiffs' Motion for  
 17 Preliminary Injunction should be denied.

18  
 19 Dated: February 16, 2018

Respectfully submitted,

20 XAVIER BECERRA  
 21 Attorney General of California  
 22 MARK R. BECKINGTON  
 23 Supervising Deputy Attorney  
 24 General  
 25 PETER H. CHANG  
 26 Deputy Attorney General

27 s/ John D. Echeverria

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*Xavier Becerra*

## CERTIFICATE OF SERVICE

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

I hereby certify that on February 16, 2018, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR  
LEAVE TO FILE SUPPLEMENTAL DECLARATION OF DENNIS  
MARTIN IN SUPPORT OF PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

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 the foregoing is true and correct and that this declaration was executed on February 16, 2018, at San Francisco, California.

John D. Echeverria

Declarant

/s/ John D. Echeverria

Signature

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