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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

11 STEVEN RUPP, et al.,

12 Plaintiffs,

13 vs.

14 XAVIER BECERRA, in his official
capacity as Attorney General of the State
15 of California,

16 Defendant.

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

**REPLY TO DEFENDANT'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL
DECLARATION OF DENNIS
MARTIN**

Hearing Date: March 9, 2018
Hearing Time: 2:30 p.m.
Judge: Josephine L. Staton
Courtroom: 10A

INTRODUCTION

Defendant does not dispute the veracity or relevance of Martin’s account of trying to register his “assault weapons” described in his supplemental declaration. Nor does Defendant raise a single argument as to how he or the State will be unduly prejudiced by allowing this Court to consider that declaration in ruling on Plaintiffs’ Motion for Preliminary Injunction (“MPI”). Instead, Defendant seeks to distract from the straightforward reality that it is impossible for Mr. Martin—or anyone lacking date and source information—to register firearms as “assault weapons” by highlighting supposed, and trivial, faults with the declaration and mischaracterizing the legal options available for acquiring date and source information.

Likewise flawed is Defendant’s assertion that Martin’s injury caused by the date and source requirement is not sufficient to warrant enjoining it as applied to *all* individuals in his same situation. This is a narrow issue of fundamental fairness for all those who, like Mr. Martin, wish to but cannot comply with the date and source requirement and face losing their property as a result. Case law makes clear that the relief Plaintiffs seek in their MPI will redress those injuries.

Accordingly, Mr. Martin’s declaration should be allowed to be filed for this Court to consider in ruling on Plaintiffs’ MPI currently under submission.

ARGUMENT

I. The Court Should Allow Martin’s Supplemental Declaration Because It Is Relevant and Defendant Shows No Undue Prejudice that Would Result From the Court Doing So

Defendant argues that Martin’s supplemental declaration should not be allowed in because he unjustifiably delayed his attempted registrations. Def.’s Opp’n Mot. Leave File Supp. Decl. (“Opp’n Supp. Decl.”) at 2-3. While it is true that Defendant raised arguments challenging Martin’s standing in his briefing opposing Plaintiffs’ MPI, it was not until the hearing that Martin had reason to believe that the Court took Defendant’s standing challenge seriously.

As Plaintiffs have explained, to have standing one does not need to engage in a futile act. Pl.’s Reply Def.’s Opp’n Mot. Prelim. Inj. at 8 (citing *Sporhase v. Nebraska, ex rel. Douglas*, 458 U.S. 941, 945 (1982)). In *Sporhase*, the Supreme Court held that because the plaintiffs “would not have been granted a permit had they applied for one,” “[t]heir failure to submit an application therefore does not deprive them of standing to challenge” a permitting requirement. *Id.* It is, therefore, reasonable for Martin to have believed that attempting to register without the date and source information would be such a futile act, based not only on the statute expressly demanding that date and source information be provided, Cal. Penal Code § 30900(b)(3), but also the registration forms, signed under penalty of perjury, requiring it. See Req. Jud. Not. Supp. Pl.’s Mot. Prelim. Inj. Plaintiffs respectfully maintain that the Court’s concern about Martin’s failure to attempt registration is misplaced; especially now that Martin has been vindicated in that belief. Accordingly, his delay in attempting registration was reasonable.

In any event, Martin’s registration attempts constitute new facts that are relevant to the pending MPI that did not exist at the time it was submitted to the Court. Defendant does not claim that allowing Martin’s supplemental declaration, which describes the details of those registration attempts, would cause him or the State undue prejudice or that it is irrelevant to Plaintiffs’ MPI. Nor does he dispute that allowing Martin’s declaration to be considered by the Court now will potentially save the parties’ resources, or that, more importantly, doing so will further judicial economy. As such, his supplemental declaration should be allowed.

II. Martin’s Supplemental Declaration Confirms that He Does Not Have Date and Source Information for “Assault Weapons” He Lawfully Owns and It Is, Therefore, Impossible for Him to Register Them

A. Martin’s “Assault Weapons” Qualify for Registration

Defendant does not dispute that Martin currently lacks possession of the date and source information for his “assault weapons.” Instead Defendant resorts to

1 raising trivial, nitpicky questions about Martin's firearms, trying to cast additional
2 doubts on his standing. The Court should disregard these irrelevant distractions.

3 First, Defendant suggests that it is unclear whether one of Martin's firearms is
4 an "assault weapon" that needs to be registered.¹ Opp'n Supp. Decl. at 3-4. But,
5 Martin completed all required fields in the "assault weapon" application form other
6 than for date and source. Supplemental Decl. Dennis Martin Supp. Pl.'s Mot. Prelim.
7 Inj. ("Supp. Decl.") ¶¶ 8, 10. This means he filled in the portion of the application
8 identifying what features make his firearm an "assault weapon." *Id.* Because the
9 rejection of his registration application does not mention anything about his firearm
10 not qualifying for registration, Defendant cannot now claim there is doubt as to
11 whether it does. *Id.*

12 Defendant's next claim that there is a problem because it is unknown whether
13 Martin's firearm was lawfully acquired between 2001 and 2016 is likewise without
14 merit. Opp'n Supp. Decl. at 4. The First Amended Complaint ("FAC") alleges that
15 Martin owns a Category 4 "assault weapon" for which he does not have the date and
16 source information. FAC ¶ 56. As the term "Category 4 assault weapon" is defined
17 in the FAC, its use is necessarily limited to firearms obtained post 2001 and before
18 2017. *Id.* ¶¶ 34-39. As such, there is little doubt Martin's firearms qualify for
19 registration, and any doubt should be decided in his favor.

20 Defendant's desperate attempt to resist admission into the record of Martin's
21 supplement declaration is telling. His nitpicking tenuously relevant details of
22 Martin's registration attempts is merely an attempt to disguise the obvious truth,
23 which Defendant has not and cannot deny: it is impossible for individuals without
24 date and source information to acquire it from a third party, without date and source
25

26 ¹ Defendant mistakenly claims that Martin attempted to register a second gun
27 not contemplated by the FAC. Opp'n Supp. Decl. at 3-4. While phrased in the
28 singular, Martin never expressly said he *only* had one "assault weapon" for which he
lacked date and source information. That was merely a general statement that he is
injured by the date and source requirement and should be liberally construed as such.

1 information it is impossible to register an “assault weapon,” and Plaintiff Martin
2 cannot acquire date and source information.

3 **B. Defendant’s Claim that Martin Can Obtain the Date and Source**
4 **Information for His “Assault Weapons” from Third Parties Is**
5 **Erroneous**

6 Defendant wrongly asserts that Martin does not have standing because he did
7 not attempt to seek out the date and source information for his “assault weapons”
8 from third parties who supposedly *might* have it. According to Defendant, “the
9 owner can contact the firearm manufacturer with the serial number of the firearm,
10 contact the dealer to obtain a record of the transaction, or contact the Department of
11 Justice’s Bureau of Firearms to obtain any ownership information for the firearm
12 maintained by the Bureau. Def.’s Opp’n Pls.’ Mot. Prelim. Inj. at 6; Decl. Blake
13 Graham Supp. Def.’s Opp’n (“Graham Decl.”) ¶¶ 19-23.

14 It is disingenuous, at best, for Defendant to continue with the demonstrably
15 false assertion that Martin can simply investigate his way to acquiring date and
16 source information from these sources for the firearm he purchased in a private party
17 transfer. See Supp. Decl. Ex. B. That investigation would *always* lead to a dead end.
18 First, assuming one can even locate the dealer where the transaction occurred—
19 which Martin cannot, see Supp. Decl. ¶¶ 5-6, 9, 11—it is illegal for the dealer to
20 disclose the seller’s name to Martin. *See* Cal. Penal Code § 28215(f). For that very
21 reason, even if Defendant’s claim that a firearm owner who is unaffiliated with law
22 enforcement can simply trace the firearm via its serial number to the dealer with help
23 from the manufacturer were reality, a dubious proposition, the dealer will still be
24 barred from disclosing the seller’s name.²

25 Defendant’s assertion that Martin was required to contact BOF for date and
26 source information on his firearms in order to have standing likewise fails. First,

27 _____
28 ² Defendant cites as support for this assertion one individual who claims no personal
knowledge of the inner workings of firearm manufacturers or whether they will
disclose information to non-law-enforcement personnel if asked. Graham Decl. ¶ 23.
As such, it should not be considered a viable option for Martin, let alone a
prerequisite for his standing.

1 Defendant raises this argument for the first time in opposing this motion, he did not
2 make this argument in opposing Plaintiffs' MPI. He, therefore, cannot now claim
3 Martin had notice thereof. But, more importantly, even if Martin were on notice that
4 he should have taken that step, it would have been a futile act for him to take. For,
5 there is no evidence in the record that BOF possess a private party firearm *seller's*
6 information. Defendant does not claim it does in any of its papers. He only claims
7 the BOF has "ownership" information. Opp'n Supp. Decl. at 4. But, even assuming
8 BOF has the seller's information, it is prohibited from disclosing it to Martin under
9 California law. Cal. Civ. Code § 1798.24 (generally prohibiting an agency from
10 disclosing "any personal information in a manner that would link the information
11 disclosed to the individual to whom it pertains . . .").

12 In sum, the *source* information for a private party transfer is *always* legally
13 unavailable to Martin and any person who does not already have it. As such, the
14 steps Defendant claims Martin needed to take to have standing would have been
15 futile acts with respect to the "assault weapon" he lawfully acquired from a private
16 party, as they are not actual sources of the information needed for registration.

17 Moreover, with few exceptions—none of which have been shown to apply to
18 Martin—BOF has no records of non-"assault weapon" rifle transactions that took
19 place prior to January 1, 2014. *See* Assembly Bill No. 809 (2012) (amending
20 California law to require all long-guns transferred in California to be registered with
21 the California Department of Justice's Automated Firearm System, which is what
22 BOF looks to for ownership information. *See* Graham Decl. ¶ 20.) As Martin
23 indicated in his registration application, the firearm he acquired from a dealer (the
24 identity of which he forgets and lacks documentation for, Supp. Decl. ¶¶ 5-7) was
25 acquired in 2012, approximately. *Id.* ¶ 7. As such, BOF would not have information
26 on Martin's rifle, even if he had asked for it.

27 Defendant should not be allowed to pretend that Martin contacting DOJ would
28 be anything other than futile, when Defendant has conceded that date and source

1 information is required to register, and he knows the BOF is either legally prohibited
 2 from disclosing the seller's information or does not have Martin's. Nor should
 3 Defendant be allowed to pretend that manufacturers can provide date and source
 4 information, when Defendant has no personal knowledge that such is the case.

5
 6 **III. Martin's Rejected Registration Attempts Expose a Constitutional**
 7 **Deficiency in the AWCA's Date and Source Requirement Affecting**
 8 **More than Just Him and Warranting an Injunction**

9 Defendant argues that Plaintiff Martin's rejected registration attempts should
 10 not serve as a basis for enjoining enforcement of the date and source requirement as
 11 to any person who cannot comply with it because they merely amount to the
 12 "purported registration problems of a single individual." Opp'n Supp. Decl. at 5. By
 13 doing so, Defendant seeks to impose a novel theory that because only a single
 14 Plaintiff has been prohibited from registering, an injunction is not warranted. But
 15 case law shows Plaintiffs' MPI properly seeks an injunction on the enforcement of
 16 the date and source requirement as applied to those, like Martin, for whom it is
 17 impossible to comply. See *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663
 18 (1966) (holding Virginia's poll tax unconstitutional following suit by 4 individuals);
 19 *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)
 20 (upholding lower court decision finding Pennsylvania abortion statute
 21 unconstitutional following suit by associations and individuals on behalf others
 22 similarly situated).

23 Nor is such a requirement placed on an association like Plaintiff CRPA to
 24 have standing. See *Warth v. Seldin*, 422 U.S. 490, 511 (1975) (holding that if
 25 association can demonstrate any one of its members suffer immediate or threatened
 26 injury as a result of the challenged action, the case or controversy requirement for
 27 associational standing has been satisfied). Plaintiff CRPA has declared that a number
 28 of its members are in the same position as Plaintiff Martin. Decl. Richard Travis
 Supp. Mot. Prelim. Inj. ¶ 5. And, in light of the facts that countless thousands of

1 Californians own newly defined “assault weapons” for which they were never
2 legally required to retain date and source information, the notion that Plaintiff
3 Martin is alone in his injury resulting from the date and source requirement strains
4 credulity. Defendant does not dispute that other law-abiding citizens face the same
5 obstacles as Plaintiff Martin. As explained in Plaintiffs’ MPI, Defendant previously
6 agreed with Plaintiff’s attorneys in prior “assault weapon” registration periods that
7 the problems associated with identical date and source requirements are not limited
8 to a single or small number of individuals, and as a result made the requirement
9 optional. Mem. P. & A. Supp. Mot. Prelim. Inj. at 8.

10 Plaintiff Martin’s attempts at registering provide a concrete example of how
11 the date and source requirement makes it impossible for him to register and continue
12 to possess his lawfully acquired property in violation of his constitutional rights. For
13 this reason, Plaintiffs have demonstrated—beyond mere allegations—that they are
14 *likely* to succeed on the merits of their claims and that an injunction should issue for
15 all similarly situated.

16 CONCLUSION

17 For the foregoing reasons, Plaintiffs respectfully request that the Court grant
18 their motion to file Martin’s supplemental declaration. If the Court denies the motion
19 or believes Martin’s supplemental declaration continues to be deficient for purposes
20 of standing to challenge the date and source requirement, Plaintiffs alternatively
21 request that the Court promptly grant them leave to amend either Martin’s
22 declaration or their complaint, whichever the Court believes to be the source of the
23 deficiency.

24
25 Dated: February 23, 2018

MICHEL & ASSOCIATES, P.C.

26
27 /s/Sean A. Brady
28 Sean A. Brady
Attorneys for Plaintiffs

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:

**REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFFS'
MOTION FOR LEAVE TO FILE SUPPLEMENTAL DECLARATION
OF DENNIS MARTIN**

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 February 23, 2018.

/s/Cyndi DeAngelo
Cyndi DeAngelo

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