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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF FRESNO
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13 **DANNY VILLANUEVA, NIALL
STALLARD, RUBEN BARRIOS,
14 CHARLIE COX, MARK STROH,
ANTHONY MENDOZA, AND
15 CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED,**

16
17 Petitioners,

18 v.

19 **XAVIER BECERRA, in his official capacity
as Attorney for the State of California;
20 STEPHEN LINDLEY, in his official
capacity as Chief of the California
21 Department of Justice, Bureau of Firearms;
CALIFORNIA DEPARTMENT OF
22 JUSTICE; and DOES 1-10,**

23 Respondents.
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Case No. 17CECG03093

**ANSWER TO VERIFIED PETITION
FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Date: April 19, 2018
Time: 3:30 p.m.
Dept: 501
Judge: The Honorable Mark Snauffer

Action Filed: September 7, 2017

1 Respondents Xavier Becerra, Stephen Lindley, and the California Department of Justice
2 (collectively, “Respondents”), by and through their counsel of record, answer the First Amended
3 Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief
4 (“Petition”) as follows:

5 1. As to the introductory paragraph on page 2 of the Petition, these allegations constitute
6 legal allegations, assertions, arguments and/or conclusions of law, and no response is required.

7 2. As to the allegations contained in paragraphs 1 through 15 of the Petition,
8 Respondents lack sufficient information or belief to respond to the factual allegations contained in
9 these paragraphs and on that basis deny them. The remaining allegations contained in paragraphs
10 1 through 15 constitute legal allegations, assertions, arguments and/or conclusions of law, and no
11 response is required.

12 3. Respondents admit the allegations in paragraph 16 that Xavier Becerra is the Attorney
13 General of California; is the chief law enforcement officer of the state; and has been sued in his
14 official capacity. The remaining allegations contained in paragraph 16 constitute legal
15 allegations, assertions, arguments and/or conclusions of law, and no response is required.

16 4. Respondents admit the allegations in paragraph 17 that Stephen Lindley is the Director
17 of the Bureau of Firearms of the California Department of Justice, and has been sued in his
18 official capacity. The remaining allegations contained in paragraph 17 constitute legal
19 allegations, assertions, arguments and/or conclusions of law, and no response is required.

20 5. Respondents admit the allegations in paragraphs 18 that the California Department of
21 Justice is a lawfully constituted executive agency authorized to promulgate regulations for the
22 registration of newly classified assault weapons pursuant to SB 880 and AB 1135, and that it is
23 the sole California agency responsible for doing so.

24 6. As to the allegations contained in paragraph 19, Respondents lack sufficient
25 information or belief to respond to the factual allegations contained in this paragraph and on that
26 basis deny them. The remaining allegations contained in paragraph 19 constitute legal
27 allegations, assertions, arguments and/or conclusions of law, and no response is required.
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1 7. As to the allegations contained in paragraphs 20 through 22, Respondents lack
2 sufficient information or belief to respond to the factual allegations contained in these paragraphs
3 and on that basis deny them. The remaining allegations contained in paragraphs 20 through 22
4 constitute legal allegations, assertions, arguments and/or conclusions of law, and no response is
5 required.

6 8. As to the allegations contained in paragraph 23, Respondents lack sufficient
7 information or belief to respond to the factual allegations contained in this paragraph and on that
8 basis deny them. To the extent a further response is required, Respondents deny the remaining
9 allegations contained in paragraph 23.

10 9. As to the allegations contained in paragraph 24, Respondents lack sufficient
11 information or belief to respond to the factual allegations contained in this paragraph and on that
12 basis deny them. The remaining allegations contained in paragraph 24 constitute legal
13 allegations, assertions, arguments and/or conclusions of law, and no response is required.

14 10. As to the allegations contained in paragraph 25, Respondents lack sufficient
15 information or belief to respond to the factual allegations contained in this paragraph and on that
16 basis deny them. To the extent a further response is required, Respondents deny the remaining
17 allegations contained in paragraph 25.

18 11. As to the allegations contained in paragraphs 26 through 33, Respondents lack
19 sufficient information or belief to respond to the factual allegations contained in these paragraphs
20 and on that basis deny them. The remaining allegations contained in paragraphs 26 through 33
21 constitute legal allegations, assertions, arguments and/or conclusions of law, and no response is
22 required.

23 12. As to the allegations contained in paragraph 34, to the extent the allegations are based
24 on information contained in the *Los Angeles Times* article cited in footnotes 7 and 8, the
25 document speaks for itself. To the extent a further response is required, Respondents deny the
26 remaining allegations contained in paragraph 34.

27 13. Respondents admit the allegations in paragraph 35 that DOJ promulgated a regulation
28 listing more than 60 firearms pursuant to current Penal Code section 30510, subdivision (f); that

1 this regulation was promulgated after the issuance of the California Supreme Court’s decision in
2 *Kasler v. Lockyer* (2000) 23 Cal.4th 472; and that the Legislature subsequently repealed DOJ’s
3 statutory authority to add new firearms to this list. The remaining allegations contained in
4 paragraph 35 constitute legal allegations, assertions, arguments and/or conclusions of law, and no
5 response is required.

6 14. The allegations contained in paragraph 36 constitute legal allegations, assertions,
7 arguments and/or conclusions of law, and no response is required.

8 15. Respondents admit the allegation in paragraph 37 that the process for registering a
9 “Category 2” assault weapon was set forth in former sections 978.30 and 978.31 of title 11 of the
10 California Code of Regulations, which regulations speak for themselves. To the extent a further
11 response is required, Respondents deny the remaining allegations contained in paragraph 37.

12 16. The allegations contained in paragraph 38 constitute legal allegations, assertions,
13 arguments and/or conclusions of law, and no response is required.

14 17. Respondents admit the allegations in paragraph 39 that DOJ adopted regulations
15 defining terms used in the identification of assault weapons set forth in former Penal Code section
16 30515, and that DOJ’s Initial Statement of Reasons for these regulations stated that the definitions
17 were “necessary to promote a clear understanding of” the statutory provision using those terms
18 (former Penal Code section 12276.1). The remaining allegations contained in paragraph 39
19 constitute legal allegations, assertions, arguments and/or conclusions of law, and no response is
20 required.

21 18. As to the allegations contained in paragraph 40, to the extent the allegations are based
22 on information contained in the document that purports to be an archived version of DOJ’s
23 website cited in footnote 17, the document speaks for itself. To the extent a further response is
24 required, Respondents deny the remaining factual allegations contained in paragraph 40. The
25 remaining allegations contained in paragraph 40 constitute legal allegations, assertions,
26 arguments and/or conclusions of law, and no response is required.

27 19. Respondents admit the allegation in paragraph 41 that certain firearm owners
28 retrofitted their firearms with an aftermarket product commonly known as a “bullet button” in

1 order to avoid their firearm being considered an assault weapon. Respondents deny the remaining
2 factual allegations. The remaining allegations constitute legal allegations, assertions, arguments
3 and/or conclusions of law, and no response is required.

4 20. Respondents admit the allegation in paragraph 42 that former section 5469,
5 subdivision (a), of title 11 of the California Code of Regulations, defined a “tool” to include a
6 bullet. Respondents further admit the allegation in paragraph 42 that pursuant to this regulation, a
7 firearm requiring the use of a bullet to remove a magazine from a firearm was not considered to
8 have the capacity to accept a detachable magazine, under former Penal Code section 30515.
9 Respondents deny the remaining factual allegations. The remaining allegations constitute legal
10 allegations, assertions, arguments and/or conclusions of law, and no response is required.

11 21. The allegations contained in paragraphs 43 through 46 constitute legal allegations,
12 assertions, arguments and/or conclusions of law, and no response is required.

13 22. As to the allegations contained in paragraph 47, Respondents deny that DOJ submitted
14 proposed regulations relating to “bullet-button” assault weapons to the Office of Administrative
15 Law on December 30, 2016. Those proposed regulations were submitted on December 29, 2016.
16 Respondents admit that the proposed regulations would amend sections 5469 and 5473 of title 11,
17 division 5 of the California Code of Regulations, as well as add sections 5470-5472, 5474-5474.2,
18 and 5475-5478.

19 23. As to the allegations contained in paragraph 48, Respondents admit that DOJ’s
20 December 29, 2016 submission of proposed regulations relating to “bullet-button” assault
21 weapons to the Office of Administrative Law requested the publication date as “ASAP,” and
22 indicated that the proposed regulations should have an effective date of January 1, 2017.
23 Respondents deny the remaining allegations.

24 24. As to the allegations contained in paragraph 49, Respondents admit that counsel for
25 Petitioners contacted DOJ to request a copy of the proposed regulations, and that DOJ declined to
26 provide a copy.

1 25. As to the allegations contained in paragraphs 50 through 51, Respondents lack
2 sufficient information or belief to respond to the factual allegations contained in these paragraphs
3 and on that basis deny them.

4 26. As to the allegations contained in paragraph 52, Respondents admit that counsel for
5 Petitioners sent DOJ a letter demanding that DOJ withdraw its proposed regulations.

6 27. As to the allegations contained in paragraph 53 purporting to cite or quote specific
7 documents, the documents speak for themselves. The remaining allegations contained in
8 paragraph 53 constitute legal allegations, assertions, arguments and/or conclusions of law, and no
9 response is required.

10 28. The allegations contained in paragraph 54 constitute legal allegations, assertions,
11 arguments and/or conclusions of law, and no response is required

12 29. As to the allegations contained in paragraph 55, Respondents deny that DOJ withdrew
13 its proposed regulations from consideration on February 13, 2017. The request to withdraw the
14 proposed regulations was made on February 10, 2017.

15 30. As to the allegations contained in paragraph 56, Respondents deny that DOJ submitted
16 proposed regulations relating to “bullet-button” assault weapons to the Office of Administrative
17 Law on May 15, 2017. These proposed regulations were submitted on May 12, 2017.
18 Respondents admit that these proposed regulations indicated “File & Print” as the “Type of
19 Filing.” Respondents admit that DOJ declined to provide a copy of the proposed regulations in
20 response to a request from counsel for Petitioners. As to the remaining allegations contained in
21 paragraph 56, Respondents lack sufficient information or belief to respond and on that basis deny
22 them.

23 31. As to the allegations contained in paragraphs 57 and 58 purporting to summarize or
24 characterize DOJ’s submission of proposed regulations, the documents speak for themselves.
25 Respondents deny the remaining allegations contained in paragraphs 57 and 58.

26 32. As to the allegations in paragraph 59, Respondents admit that counsel for Petitioners
27 sent DOJ a copy of a letter sent to the Office of Administrative Law, dated June 19, 2017. As to
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1 the allegations purporting to summarize or characterize the letter, the document speaks for itself.
2 Respondents deny the remaining allegations contained in paragraph 59.

3 33. As to the allegations in paragraph 60, Respondents admit that on June 26, 2017 the
4 Office of Administrative Law denied DOJ's request to file and print the proposed regulations
5 DOJ submitted on May 12, 2017. As to the allegations purporting to summarize or characterize
6 the denial, the document speaks for itself. Respondents deny the remaining allegations contained
7 in paragraphs 57 and 58.

8 34. As to the allegations contained in paragraph 61, Respondents deny that DOJ submitted
9 proposed regulations relating to "bullet-button" assault weapons to the Office of Administrative
10 Law on July 21, 2017. These proposed regulations were submitted on July 19, 2017.
11 Respondents admit that these proposed regulations indicated "File & Print" as the "Type of
12 Filing." Respondents admit that DOJ declined to provide a copy of the proposed regulations in
13 response to a request from counsel for Petitioners. As to the remaining allegations contained in
14 paragraph 61, Respondents lack sufficient information or belief to respond and on that basis deny
15 them.

16 35. As to the allegations contained in paragraph 62, Respondents admit that the proposed
17 regulations submitted to the Office of Administrative Law on July 19, 2017 sought adoption of 11
18 CCR sections 5470, 5471, 5472, 5473, 5474, 5474.1, 5474.2, 5475, 5476, 5477, and 5478, and
19 that they sought amendment of existing 11 CCR section 5469, and the repeal of 11 CCR section
20 5473.

21 36. As to the allegations contained in paragraph 63 purporting to summarize or
22 characterize DOJ's proposed regulations submitted to the Office of Administrative Law on July
23 19, 2017, the proposed regulations speak for themselves. Respondents deny the remaining
24 allegations contained in paragraph 63.

25 37. As to the allegations contained in paragraph 64, Respondents deny that the Office of
26 Administrative Law granted DOJ's request for filing and printing on August 3, 2017. The request
27 was granted on July 31, 2017. Respondents lack sufficient information or belief to respond to the
28 remaining factual allegations and on that basis deny them. The remaining allegations contained

1 in paragraph 64 constitute legal allegations, assertions, arguments and/or conclusions of law, and
2 no response is required.

3 38. As to the allegations contained in paragraph 65, Respondents admit that DOJ's
4 proposed regulations submitted to the Office of Administrative Law on July 19, 2017 have been
5 printed in the California Code of Regulations and are currently being administered and enforced
6 by DOJ.

7 39. The allegations contained in paragraphs 66 through 70 constitute legal allegations,
8 assertions, arguments and/or conclusions of law, and no response is required.

9 40. As to the allegations contained in paragraph 71, Respondents' responses to paragraphs
10 1 through 70 are fully incorporated herein.

11 41. The allegations contained in paragraphs 72 through 80 constitute legal allegations,
12 assertions, arguments and/or conclusions of law, and no response is required.

13 42. As to the allegations contained in paragraph 81, Respondents' responses to paragraphs
14 1 through 80 are fully incorporated herein.

15 43. The allegations contained in paragraphs 82 through 86 constitute legal allegations,
16 assertions, arguments and/or conclusions of law, and no response is required.

17 44. As to the allegations contained in paragraph 87, Respondents' responses to paragraphs
18 1 through 86 are fully incorporated herein.

19 45. The allegations contained in paragraphs 88 through 97 constitute legal allegations,
20 assertions, arguments and/or conclusions of law, and no response is required.

21 46. As to the allegations contained in paragraph 98, Respondents' responses to paragraphs
22 1 through 97 are fully incorporated herein.

23 47. The allegations contained in paragraphs 99 through 103 constitute legal allegations,
24 assertions, arguments and/or conclusions of law, and no response is required.

25 48. As to the allegations contained in paragraph 104, Respondents' responses to
26 paragraphs 1 through 103 are fully incorporated herein.

27 49. The allegations contained in paragraphs 105 through 116 constitute legal allegations,
28 assertions, arguments and/or conclusions of law, and no response is required.

1 50. As to the allegations contained in paragraph 117, Respondents' responses to
2 paragraphs 1 through 116 are fully incorporated herein.

3 51. The allegations contained in paragraphs 118 through 124 constitute legal allegations,
4 assertions, arguments and/or conclusions of law, and no response is required.

5 52. As to the allegations contained in paragraph 125, Respondents' responses to
6 paragraphs 1 through 124 are fully incorporated herein.

7 53. The allegations contained in paragraphs 126 through 140 constitute legal allegations,
8 assertions, arguments and/or conclusions of law, and no response is required.

9 54. As to the allegations contained in paragraph 141, Respondents' responses to
10 paragraphs 1 through 140 are fully incorporated herein.

11 55. The allegations contained in paragraphs 141 through 147 constitute legal allegations,
12 assertions, arguments and/or conclusions of law, and no response is required.

13 56. As to the allegations contained in paragraph 148, Respondents' responses to
14 paragraphs 1 through 147 are fully incorporated herein.

15 57. The allegations contained in paragraphs 149 through 160 constitute legal allegations,
16 assertions, arguments and/or conclusions of law, and no response is required.

17 58. As to the allegations contained in paragraph 161, Respondents' responses to
18 paragraphs 1 through 160 are fully incorporated herein.

19 59. The allegations contained in paragraphs 162 through 167 constitute legal allegations,
20 assertions, arguments and/or conclusions of law, and no response is required.

21 60. As to the allegations contained in paragraph 168, Respondents' responses to
22 paragraphs 1 through 167 are fully incorporated herein.

23 61. The allegations contained in paragraphs 169 through 183 constitute legal allegations,
24 assertions, arguments and/or conclusions of law, and no response is required.

25 62. As to the allegations contained in paragraph 184, Respondents' responses to
26 paragraphs 1 through 183 are fully incorporated herein.

27 63. The allegations contained in paragraphs 185 through 190 constitute legal allegations,
28 assertions, arguments and/or conclusions of law, and no response is required.

64. As to the allegations contained in paragraph 191, Respondents' responses to paragraphs 1 through 190 are fully incorporated herein.

65. The allegations contained in paragraphs 192 through 206 constitute legal allegations, assertions, arguments and/or conclusions of law, and no response is required.

66. As to the allegations contained in paragraph 207, Respondents' responses to paragraphs 1 through 206 are fully incorporated herein.

67. The allegations contained in paragraphs 208 through 213 constitute legal allegations, assertions, arguments and/or conclusions of law, and no response is required.

68. As to the allegations contained in paragraph 214, Respondents' responses to paragraphs 1 through 213 are fully incorporated herein.

69. The allegations contained in paragraphs 215 through 229 constitute legal allegations, assertions, arguments and/or conclusions of law, and no response is required.

70. As to the allegations contained in paragraph 230, Respondents' responses to paragraphs 1 through 229 are fully incorporated herein.

71. The allegations contained in paragraphs 231 through 236 constitute legal allegations, assertions, arguments and/or conclusions of law, and no response is required.

72. As to the prayer for relief on pages 49 through 54 of the Petition, no response is required. To the extent a response is required, Respondents deny each and every allegation contained therein.

AFFIRMATIVE DEFENSES

For each assertion, allegation, cause of action, and/or claim for relief, Respondents assert the following affirmative defenses. In asserting these defenses, Respondents do not assume the burden of establishing any fact or proposition where that burden belongs to Petitioners. Respondents reserve the right to assert any additional defenses that are revealed during the course of discovery or during any other part of this proceeding.

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FIRST DEFENSE

The Court lacks jurisdiction to consider Petitioners’ claims or grant the relief requested because the Petition, and each cause of action alleged therein, fails to allege facts sufficient to constitute an actionable case or controversy.

SECOND DEFENSE

The Petition, and each cause of action alleged therein, is barred by the doctrines of estoppel, laches, and/or waiver.

THIRD DEFENSE

To the extent that the Petition asks the Court to rewrite various statutes or constitutional provisions, this Court has no jurisdiction.

FOURTH DEFENSE

All alleged acts done by Respondents, their agents, employees, or representatives were performed fairly, in good faith and for a lawful purpose, and were reasonable and justified under the circumstances.

FIFTH DEFENSE

The Petition, and each cause of action alleged therein, fails because Respondents have simply fulfilled their duties as provided by law.

SIXTH DEFENSE

The Petition raises only abstract or hypothetical issues, i.e., there is no live, concrete, and ripe case or controversy for this Court to adjudicate, and the Court would have to render an advisory opinion in this case.

SEVENTH DEFENSE

The Petition raises claims that are moot.

EIGHTH DEFENSE

Respondents assert a reservation of rights to amend should any further defenses become apparent in the course of this action.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Respondents pray

- 3 1. That the petition for peremptory writ of mandate be denied.
4 2. That any request for attorney fees and costs of suit be denied.
5 3. That Respondents be awarded costs of suit.
6 4. That Respondents be granted such further relief as the Court may deem proper.

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8 Dated: April 6, 2018

Respectfully Submitted,

9 XAVIER BECERRA
10 Attorney General of California
11 TAMAR PACTHER
12 Supervising Deputy Attorney General

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14 P. PATTY LI
15 Deputy Attorney General
16 *Attorneys for Respondents Xavier Becerra,*
17 *Stephen Lindley, and the California*
18 *Department of Justice*
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DECLARATION OF SERVICE

Case Name: **Villanueva, Danny, et al. v. Xavier Becerra, et al.**

No.: **17CECG03093**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. My business address is 455 Golden Gate Avenue, San Francisco, CA 94102.


On April 6, 2018, I served the attached **ANSWER TO VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** by transmitting a true copy via electronic mail through Odyssey EfileCA, addressed as follows:

Sean A. Brady, Esq.
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
E-mail Address: sbrady@michellawyers.com

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 April 6, 2018, at San Francisco, California.

Susan Chiang

Declarant



Signature