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8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
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13 **KIM RHODE et al.,**

14 Plaintiffs,

15 **v.**

16 **XAVIER BECERRA, in his official**  
17 **capacity as Attorney General of the**  
18 **State of California, et al.,**

19 Defendants.  
20

3:18-cv-00802-BEN-JLB

**DEFENDANT XAVIER  
BECERRA'S NOTICE OF  
MOTION AND MOTION TO  
DISMISS THE FIRST AMENDED  
COMPLAINT**

Judge: Hon. Roger T. Benitez  
Date: Sept. 20, 2018  
Time: 10:00 a.m.  
Courtroom: 5A  
Action Filed: April 26, 2018

**NOTICE OF MOTION AND MOTION TO DISMISS**

PLEASE TAKE NOTICE THAT on September 20, 2018 at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Roger T. Benitez in Courtroom 5A of the Edward J. Schwartz U.S. Courthouse, located at 221 West Broadway, San Diego, California 92101, the Court will hear the motion filed by Defendant Xavier Becerra, in his official capacity as Attorney General of the State of California, to dismiss portions of the First Amended Complaint for Declaratory and Injunctive Relief (FAC), ECF No. 9.

The Attorney General moves to dismiss under to Federal Rule of Civil Procedure 12(b)(6) on the grounds that:

1. The first claim for relief for alleged violations of the dormant Commerce Clause of the United States Constitution (FAC ¶¶ 82-91) fails to state a claim upon which relief can be granted;

2. The eighth claim for relief for alleged violations of the Equal Protection Clause of the United States Constitution (FAC ¶¶ 123-30) fails to state a claim upon which relief can be granted; and

3. The ninth claim for relief for alleging that California Penal Code section 30314 is preempted by 18 U.S.C. § 926A (FAC ¶¶ 131-33) fails to state a claim upon which relief can be granted.

This motion is based on this filing, the concurrently filed memorandum of points and authorities and request for judicial notice, the papers and pleadings on file in this action, and upon such matters as may be presented to the Court at the time of the hearing.

1 Dated: July 18, 2018

Respectfully Submitted,

2 XAVIER BECERRA  
3 Attorney General of California  
4 TAMAR PACHTER  
5 Supervising Deputy Attorney General

6 /s/ Nelson Richards  
7 NELSON R. RICHARDS  
8 Deputy Attorney General  
9 *Attorneys for Defendant Attorney*  
10 *General Xavier Becerra*  
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