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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KIM RHODE, et al.,
Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of the State
of California,
Defendant.

Case No.: 3:18-cv-00802-BEN-JLB

**JOINT MOTION TO VACATE THE
MANDATORY SETTLEMENT
CONFERENCE**

Plaintiffs Kim Rhode, Gary Brennan, Cory Henry, Edward Johnson, Scott Lindemuth, Richard Ricks, Denise Welvang, Able's Sporting, Inc., a Texas corporation, AMDEP Holdings, LLC, a Florida limited liability company d/b/a Ammunition Depot, R&S Firearms, Inc., an Arizona corporation d/b/a Sam's Shooters' Emporium, and California Rifle & Pistol Association, Incorporated, a California corporation ("Plaintiffs"), and Defendant Xavier Becerra ("Defendant") through their counsel, hereby jointly request that the Court vacate the Mandatory Settlement Conference currently set for February 21, 2020.

The parties have discussed the possibility of settlement and do not believe this case has any potential of settling. Plaintiffs believe that the challenged provisions violate various constitutional rights, and Defendant believes the law is constitutional.

1 Plaintiffs have no intention of dismissing this lawsuit unless Defendant ceases
2 enforcement of the challenged provisions.

3 It is Defendant's position that the challenged provisions are constitutional and duly
4 enacted. Given the Attorney General's sworn duty to uphold the laws of the State, the
5 Attorney General cannot excuse Plaintiffs from compliance with the challenged
6 provisions or otherwise refuse to enforce them. Cal. Const., art. III, § 3.5.

7 Additionally, the Parties have not completed discovery in this matter. The
8 discovery cut off was suspended by Judge Benitez at the Status Conference on October 1,
9 2019 (see Exhibit 1, 45:22-46:2, relevant pages of Transcript of Status Conference). The
10 parties are currently awaiting an order regarding setting a new scheduling order, see
11 Exhibit 2, Joint Status Report and Proposed Order requesting to vacate the current
12 Scheduling Order.

13 For these reasons, settlement of this matter is practically impossible. The parties
14 thus respectfully request to be relieved from the Mandatory Settlement Conference and
15 its related requirements and that the hearing in chambers currently scheduled for
16 February 21, 2020 be taken off calendar.

17 Should the Court not relieve the parties from the Mandatory Settlement
18 Conference, they respectfully request in the alternative that their counsel be allowed to
19 attend the Mandatory Settlement Conference telephonically, rather than in person, to
20 avoid the significant costs of appearing in person when the outcome is known.

21
22 Dated: January 15, 2020

MICHEL & ASSOCIATES, P.C.

23
24 s/ Sean A. Brady
25 Sean A. Brady
26 Email: sbrady@michellawyers.com
27 Attorneys for Plaintiffs

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1 Dated: January 15, 2020

XAVIER BECERRA
Attorney General of California
TAMAR PACHTER
Supervising Deputy Attorney General

4 s/ Nelson R. Richards
NELSON R. RICHARDS
Deputy Attorney General
Email: Nelson.Richards@doj.ca.gov
Attorneys for Defendant

8 The below filer attests that concurrence in the filing of this document has been
9 obtained from the above signatories.

10 s/ Sean A. Brady
Sean A. Brady

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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4 KIM RHODE, et al.,)
5 Plaintiffs,) No. 18-CV-00802-BEN-JLB
6 v.) October 1, 2019
7 XAVIER BECERRA, et al.,) 1:05 p.m.
8 Defendants.) San Diego, California
9

10 TRANSCRIPT OF STATUS CONFERENCE
11 BEFORE THE HONORABLE ROGER T. BENITEZ
12 UNITED STATES DISTRICT JUDGE

12 APPEARANCES (Telephonic):

13 For the Plaintiffs: MICHEL & ASSOCIATES, P.C.
14 By: SEAN BRADY, ESQ.
15 180 East Ocean Boulevard
Suite 200
Long Beach, California 90802

16 For the Defendants: CALIFORNIA ATTORNEY GENERAL'S OFFICE
17 By: NELSON RICHARDS, ESQ.
2550 Mariposa Mall
Room 5090
18 Fresno, California 93721

19
20 Court Reporter: CYNTHIA R. OTT, RDR, CRR
District Court Clerk's Office
21 333 West Broadway, Suite 420
San Diego, California, 92101
22 cynthia_ott@casd.uscourts.gov

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25 Reported by Stenotype, Transcribed by Computer

1 get another round of information that could necessitate, you
2 know, deposing the same people a second time.

3 You know, I think it would be easier, more streamlined
4 for everybody, rather than, for example, you know, deposing
5 Ms. Morales now, based on this declaration, and then, you know,
6 having to recall her once we see the second round of
7 information, because there could be discrepancies, right, that
8 we want to ask about.

9 So I think it makes sense to kick it out past that.

10 THE COURT: Well, I agree with you in a sense, except
11 for, of course, this is sort of a rolling dataset. And so I
12 don't know that there would ever come a time when we would
13 really have the final data that we would be working with.

14 So I guess what I'm saying is there's going to come a
15 point where, for example, with interrogatories, you're going to
16 have to send the interrogatories out, and then we're going to
17 have to expect that there will be supplemental responses to the
18 original responses. And then, of course, it may be possible
19 that we do need to go a second round of depositions. Not in
20 all cases, but in some cases, there may be a second round of
21 depositions that's necessary.

22 But I hear you. I understand what you're saying. And
23 you're right, the current discovery date may be unrealistic.
24 So why don't I just cut that off, and let's -- let's think
25 about this when we have our next status conference. If maybe

1 the two of you can meet and confer and give me dates by when we
2 can -- you know, for discovery cutoffs, experts and so on.

3 I would like to have the evidentiary hearing on this
4 when everybody is reasonably well prepared. So I think it
5 would be a good idea to have most of the discovery done before
6 we do our hearing on the preliminary injunction.

7 So, I'll suspend the discovery cutoff date for now.
8 And then I want you to have a schedule for me, an agreed upon
9 schedule for me next time we talk, which will be sometime
10 probably in late November, okay? Agreed?

11 MR. BRADY: Perfect, Your Honor. Thank you very much.

12 MR. RICHARDS: This is Nelson Richards, Your Honor.
13 Thank you. We agree to that.

14 THE COURT: Thank you. All right. This hearing is
15 concluded.

16 (The proceedings concluded at 2:20 p.m., October 1, 2019.)
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1 COURT REPORTER'S CERTIFICATE

2
3 I, CYNTHIA R. OTT, Official Court Reporter, United States
4 District Court, Southern District of California, do hereby
5 certify that pursuant to 28 U.S.C. §753 the foregoing is a
6 true, complete and correct transcript of the stenographically
7 reported proceedings had in connection with the above-entitled
8 matter and that the transcript page format is in conformance
9 with the regulations of the Judicial Conference of the United
10 States.

11 DATED at San Diego, California, October 22, 2019.
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13

14 /s/ CYNTHIA R. OTT
15 CYNTHIA R. OTT, RDR, CRR
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EXHIBIT 2

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Defendant.

Case No.: 3:18-cv-00802-BEN-JLB

JOINT STATUS REPORT

BACKGROUND

On October 1, 2019, the parties participated in a telephonic status conference, during which the Court suspended the existing discovery cut-off dates and instructed counsel for the parties to meet and confer to develop agreed upon dates for new discovery deadlines to propose to the Court. Tr. of Proceedings at 45:22-46:1-2, 46:7-13, Oct. 1, 2019. The Court indicated it would hold another status conference sometime in late November and also suggested that it might hold an evidentiary hearing before ruling on Plaintiffs' Motion for Preliminary Injunction. Tr. of Proceedings at 43:15-17, 46:7-10, Oct. 1, 2019. The Court also invited Plaintiffs to file a supplemental brief, which they did on October 29, 2019. (ECF No. 46).

JOINT STATUS REPORT & REQUESTS

Counsel for the parties have met and conferred and, based thereon, jointly and respectfully request the following from the Court:

- 1) That no evidentiary hearing take place prior to the Court ruling on Plaintiffs' Motion for Preliminary Injunction, due not only to the significant costs and time required to hold one, and the potential redundancy of the merits stage, but also because the parties agree that the material facts are generally undisputed and that counsel should be able to address most, if not all, of the Court's questions about the issues currently before the Court sufficient to decide the pending motion;
- 2) That the Court grant Defendant an opportunity to respond to Plaintiffs' supplemental brief, either via a written brief not to exceed 10 pages to be filed within 14 days of the Court's response to this Joint Status Report, or at a hearing with counsel for all parties present to take place on the first convenient date for the Court (but excluding November 22, 25 and December 2, 4, 5, 2019);
- 3) That the Court allow the parties to wait until after the Court rules on Plaintiffs' Motion for Preliminary Injunction to meet and confer and finalize their stipulation concerning all new discovery deadlines at that time, because the parties believe that awaiting a ruling from the Court on the pending motion would likely add clarity to the issues that would facilitate the parties agreeing upon a case schedule going forward.

Dated: November 7, 2019

Respectfully submitted,
MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady
Sean A. Brady
Email: sbrady@michellawyers.com
Attorneys for Plaintiffs

Dated: November 7, 2019

XAVIER BECERRA
Attorney General of California
TAMAR PACTER
Supervising Deputy Attorney General

s/ Nelson R. Richards
NELSON R. RICHARDS
Email: nelson.richards@doj.ca.gov
Attorneys for Defendant

Attestation of Concurrence in Filing

I, Sean A. Brady, am the ECF user whose ID and password are being used to file the foregoing Joint Status Report. I hereby attest that all signatories listed above, and on whose behalf this filing is submitted, concur in the filings content and have authorized the filing.

Dated: November 7, 2019

s/ Sean A. Brady
Sean A. Brady

CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Rhode, et al. v. Becerra*
Case No.: 3:18-cv-00802-JM-JMA

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

JOINT STATUS REPORT

on the following parties by electronically filing the foregoing on November 7, 2019, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Nelson R. Richards
Deputy Attorney General
nelson.richards@doj.ca.gov
2550 Mariposa Mall, Room 5090
Fresno, CA 93721
Attorneys for Defendant Attorney
General Xavier Becerra

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 7, 2019, at Long Beach, CA.

s/ Laura Palmerin
Laura Palmerin

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KIM RHODE, et al.,
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v.

XAVIER BECERRA, in his official
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of California,

Defendant.

Case No.: 3:18-cv-00802-BEN-JLB

**ORDER REGARDING JOINT STATUS
REPORT**

1 The Court, having reviewed the parties' joint status report filed on November 7,
2 2019 (docket number 47) and good cause appearing, hereby ORDERS as follows:

3 1) That counsel for all parties appear for a hearing regarding the supplemental
4 filings relating to Plaintiffs' Motion for Preliminary Injunction, to take place:

5 _____;

6 2) All discovery and pretrial deadlines set forth in the Amended Scheduling Order
7 (docket number 27) are vacated. The parties must meet and confer and file a stipulation
8 requesting a new scheduling order with proposed deadlines no later than thirty (30) days
9 from the date of a ruling on Plaintiffs' Motion for Preliminary Injunction.

10
11 IT IS SO ORDERED.

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13 Dated: _____

14 Hon. Roger T. Benitez
15 United States District Judge
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CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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MANDATORY SETTLEMENT CONFERENCE**

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Nelson R. Richards
Deputy Attorney General
nelson.richards@doj.ca.gov
2550 Mariposa Mall, Room 5090
Fresno, CA 93721
*Attorneys for Defendant Attorney
General Xavier Becerra*

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 15, 2020, at Long Beach, CA.

s/ Laura Palmerin
Laura Palmerin