

20-55437

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KIM RHODE, et al.,

Plaintiffs-Appellees,

v.

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

Defendant-Appellant.

On Appeal from the United States District Court
for the District of California

No. 3:18-cv-00802 BEN JLB
The Honorable Roger T. Benitez, Judge

**APPELLANT’S UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE REPLY
BRIEF**

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
ANTHONY R. HAKL
Supervising Deputy Attorney General
PETER H. CHANG
Deputy Attorney General

NELSON R. RICHARDS
Deputy Attorney General
State Bar No. 246996
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7867
Fax: (916) 324-8835
Email: Nelson.Richards@doj.ca.gov
Attorneys for Defendant-Appellant

Pursuant to Ninth Circuit Rule 31-2.2, Appellant Xavier Becerra, in his official capacity as the Attorney General of the State of California, respectfully submits this unopposed motion for an extension of time in which to file his reply brief.

Plaintiffs-Appellees filed their answering brief on July 31, 2020. Appellees' Answering Br., ECF No. 33. Accordingly, the Attorney General's reply brief is currently due no later than August 21, 2020. Order at 1, ECF No. 2. The Attorney General respectfully requests a 10-day extension of time to file his reply brief, up to and including August 31, 2020. The Attorney General has not requested any previous extensions for this purpose. Declaration of Nelson R. Richards (Richards Decl.) ¶ 5. Appellees do not oppose this request. Richards Decl. ¶ 13.

There is substantial need for this request. *See* 9th Cir. R. 31-2.2(b). Since the filing of the Answering Brief, counsel with primary drafting responsibilities for the reply brief has had, and continues to have, significant deadlines in other cases. On August 4, 2020, he presented oral argument in *People v. Burhop* (Cal. Ct. App. E073709). Richards Decl. ¶ 7. On August 5, 2020, he filed an invited amicus curiae brief in *O.G. v. Superior Court* (Cal. Supreme Ct. S259011). Richards Decl. ¶ 7. In the coming days, he has a

supplemental brief due in *Department of Finance v. Commission on State Mandates* (Cal. Ct. App. B292446), and will be filing a motion for judgment on the pleadings in *Boydston v. Padilla* (San Bernardino Super. Ct.

CIVDS1921480). Richards Decl. ¶ 8. In addition, a new Deputy Attorney General has been assigned to the case and is still familiarizing himself with the case. Richards Decl. ¶ 9. And preparation of the Attorney General's reply brief involves collaboration among attorneys in the Department of Justice, including review by senior attorneys and the Office of the Solicitor General, as well as review by stakeholders in the Bureau of Firearms.

Richards Decl. ¶ 10.

The Attorney General believes that the additional time requested will permit counsel to prepare a reply brief in a way that will be most helpful to the Court. Richards Decl. ¶ 12. Counsel has worked diligently on this case, intends to continue to do so, and believes the Attorney General's reply brief will be filed within the time requested. Richards Decl. ¶ 6; *see also* 9th Cir. R. 31-2.2(b)(5).

Counsel for the Attorney General e-mailed counsel for Appellees on August 7, 2020, about the extension requested in this motion. Richards Decl.

¶ 13. On the same day, counsel for appellees responded that Appellees do not oppose the extension. Richards Decl. ¶ 13.

Dated: August 10, 2020

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
ANTHONY R. HAKL
Supervising Deputy Attorney General

/s/ Nelson Richards
NELSON R. RICHARDS
PETER H. CHANG
Deputy Attorneys General
Attorneys for Defendant-Appellant

DECLARATION OF NELSON R. RICHARDS

I, Nelson R. Richards, declare:

1. I am a Deputy Attorney General with the California Department of Justice and serve as counsel to Defendant Xavier Becerra, in his official capacity as Attorney General of the State of California, in the above-captioned matter. I make this declaration in support of Appellant's Unopposed Motion for Extension of time to File Reply Brief. Except as otherwise stated herein, I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently as to those facts.

2. I make this declaration to comply with Ninth Cir. Rule 31-2.2(b).

3. Pursuant to this Court's April 24, 2020 Order and Ninth Cir. Rule 3-3, the Attorney General's reply brief is currently due no later than August 21, 2020.

4. The Attorney General requests an extension of 10 days, which would make the reply brief due no later than August 31, 2020.

5. The Attorney General has not requested any previous extensions for this purpose.

6. I am the Deputy Attorney General with primary drafting responsibility for the reply brief. I have been working diligently on this matter, and intend to continue to do so, but I need additional time to prepare a brief that will be most helpful to the Court.

7. Since Appellees filed their Answering Brief on July 31, 2020, I have had several significant deadlines. On August 4, 2020, I presented oral argument in *People v. Burhop* (Cal. Ct. App. E073709). On August 5, 2020, I filed an invited amicus curiae brief in *O.G. v. Superior Court* (Cal. Supreme Ct. S259011).

8. I have a supplemental brief due on August 12, 2020, in *Department of Finance v. Commission on State Mandates* (Cal. Ct. App. B292446). And I anticipate filing a motion for judgment on the pleadings on August 11, 2020, in *Boydsten v. Padilla* (San Bernardino Super. Ct. CIVDS1921480).

9. My colleague who was formerly co-assigned to the case before going on indefinite leave has been replaced by Deputy Attorney General Peter H. Chang, who is still familiarizing himself with the case.

10. Preparation of the Attorney General's reply brief involves collaboration among attorneys in the Department of Justice, including review by senior attorneys and the Office of the Solicitor General, as well as review by stakeholders in the Bureau of Firearms.

11. As part of my preparation for of the reply brief, I will need to collaborate with numerous attorneys in the Department of Justice, including senior attorneys and attorneys in the Office of the Solicitor General. I will also need to collaborate with stakeholders in the Bureau of Firearms.

12. Additional time to file the reply brief will allow me and the other attorneys in my office to prepare a brief that will be most helpful to the Court.

13. On August 7, 2020, I e-mailed Paul Clement, Erin Murphy, and Sean Brady, counsel for appellees, and informed them that the Attorney General intended to request this extension and asked whether plaintiffs would oppose the request. Mr. Brady responded later that day saying Appellees do not oppose this request.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 10, 2020

/s/ Nelson Richards
NELSON R. RICHARDS

CERTIFICATE OF SERVICE

Case Name: **Rhode, Kim, et al. v. Xavier
Becerra, et al. [APPEAL 9th
Cir.]**

No. **20-55437**

I hereby certify that on August 10, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPELLANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF

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 and the United States of America the foregoing is true and correct and that this declaration was executed on August 10, 2020, at Sacramento, California.

Tracie L. Campbell

Declarant

/s/ Tracie Campbell

Signature