

1 C.D. Michel – SBN 144258
Sean A. Brady – SBN 262007
2 Anna M. Barvir – SBN 268728
Matthew D. Cubeiro – SBN 291519
3 MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
4 Long Beach, CA 90802
5 Telephone: (562) 216-4444
Facsimile: (562) 216-4445
6 Email: abarvir@michellawyers.com

7 Attorneys for Plaintiffs

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 VIRGINIA DUNCAN, et al.,

12 Plaintiffs,

13 v.

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

17 Defendant.
18
19
20
21
22
23
24
25
26
27
28

Case No: 17-cv-1017-BEN-JLB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' EX PARTE
APPLICATION FOR ORDER
EXTENDING PAGE LIMITATION**

INTRODUCTION

Plaintiffs seek leave to file a longer brief than is ordinarily authorized by Local Civil Rule 7.1(h). Plaintiffs bring this request ex parte because they require more than 25 pages to address the sheer volume of issues that the State raised in its 63-page supplemental brief, and there is not enough time to bring a properly noticed motion since the Court ordered Plaintiffs to file their supplemental brief just 21 days after the State filed its brief.

ARGUMENT

I. GOOD CAUSE EXISTS TO EXTEND THE PAGE LIMITATION

Ex Parte relief is appropriate if the moving party seeks relief that cannot be addressed by a regularly noticed motion and will face prejudice if their application is denied, provided that the party is without fault in creating the problem at issue. *Mendez v. LoanMe, Inc.*, No. 20-cv-00002, 2020 U.S. Dist. LEXIS 215405 (S.D. Cal. Nov. 17, 2020).

Under Local Rule 7.1(h), all briefs in support of or opposition to a motion are limited to 25 pages unless leave of the judge who will hear the motion is sought. Because the State filed a 63-page supplemental brief, Plaintiffs cannot adequately address all the issues and evidence the State's brief raises within the 25 pages normally allowed. Barvir Decl. ¶ 4. If the Court accepts the State's entire supplemental brief,¹ fairness dictates that Plaintiffs should be afforded the same number of pages to respond to the State's many arguments. Plaintiffs did not create the circumstance that necessitated this request for relief. And they will face irreparable harm if relief is not granted because they will be denied the ability to counter many of the arguments in the State's oversized brief.

¹ Plaintiffs simultaneously filed a Motion to Strike Defendant's Oversized Supplemental Brief (ECF No. 130).

1 **II. COUNSEL HAS FULLY COMPLIED WITH THE PROCEDURAL REQUIREMENTS**
 2 **GOVERNING EX PARTE MOTIONS IN THE SOUTHERN DISTRICT**

3 Pursuant to Southern District of California Local Rule 83.3(g)(2), Plaintiffs
 4 confirm that they have duly complied with the requirements of Federal Rules of Civil
 5 Procedure, rule 6, and Local Rules 7.1(e)(5) and 83.3(g)(2), for the notice, filing, and
 6 service of ex parte motions. To wit, Plaintiffs' counsel contacted counsel of record for
 7 Defendant Rob Bonta, Deputy Attorneys General John Echeverria and General Robert
 8 Meyerhoff, via email on November 30, 2022, to give notice that Plaintiffs intended to
 9 file this ex parte application. Barvir Decl. ¶ 2. Plaintiffs' counsel was subsequently
 10 directed to Deputy Attorney General Kevin Kelly because Mr. Meyerhoff is out of the
 11 office on leave. *Id.* Mr. Kelly informed me that his client's position is that
 12 "Local Rule 7.1(h) does not apply to limit the length of the court-ordered briefing,
 13 since that rule pertains to briefs 'in support of or in opposition to motions' and there is
 14 no pertinent motion currently pending before the Court." *Id.* ¶ 3. That said, Mr. Kelly
 15 indicated that his client would not oppose Plaintiffs' request for an order extending the
 16 page limitation. *Id.*

17 **CONCLUSION**

18 The Court should grant this request. The Southern District's Local Rules
 19 expressly authorize the requested relief and Plaintiffs have demonstrated good cause.

20
 21 Dated: December 1, 2022

MICHEL & ASSOCIATES, P.C.

22 *s/ Anna M. Barvir*

23 Anna M. Barvir

24 Email: abarvir@michellawyers.com

25 Attorneys for Plaintiffs
 26
 27
 28

CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Duncan, et al. v. Becerra*
Case No.: 17-cv-1017-BEN-JLB

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.

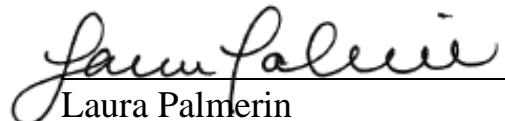
I have caused service of the following documents, described as:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' EX PARTE APPLICATION FOR ORDER EXTENDING PAGE
LIMITATION**

on the following parties by electronically filing the foregoing on December 1, 2022, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Rob Bonta
Attorney General of California
Mark R. Beckington
Supervising Deputy Attorney General
Kevin J. Kelly
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
kevin.kelly@doj.ca.gov

I declare under penalty of perjury that the foregoing is true and correct.
Executed on December 1, 2022, at Long Beach, CA.



Laura Palmerin