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7 *Attorneys for Defendant Rob Bonta,*
In his official capacity as Attorney
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
11

12 **VIRGINIA DUNCAN ET AL.,**
13
Plaintiffs,
14
v.
15 **ROB BONTA, IN HIS OFFICIAL**
16 **CAPACITY AS ATTORNEY GENERAL**
17 **OF THE STATE OF CALIFORNIA,**
Defendant.
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3:17-cv-1017-BEN-JLB

**DECLARATION OF KEVIN J. KELLY
IN SUPPORT OF DEFENDANT'S
RESPONSE TO PLAINTIFFS' EX
PARTE APPLICATION FOR ORDER
EXTENDING PAGE LIMITATION**

Courtroom: 5A
Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

1 I, KEVIN J. KELLY, declare:

2 1. I am a Deputy Attorney General with the California Department of Justice, Office of
3 the Attorney General, and an attorney for Defendant Rob Bonta, in his official capacity as
4 Attorney General of the State of California (“defendant”) in this matter. I am an attorney at law
5 duly licensed to practice before all courts of the State of California and admitted to practice
6 before the United States District Court for the Southern District of California. I have personal
7 knowledge of the facts set forth below and if called as a witness, I could and would competently
8 testify to them.

9 2. This declaration is made in support of Defendant’s Response to Plaintiffs’ Ex Parte
10 Application for Order Extending Page Limitation.

11 3. On November 30, 2022, Plaintiffs’ counsel contacted this office by e-mail and stated
12 that it was Plaintiffs’ position that the supplemental briefing ordered by the Court in this matter
13 on September 26, 2022 was bound by the 25-page limitation set by Local Rule 7.1(h). *See* Exhibit
14 A at 2. Plaintiffs’ counsel further inquired as to whether Defendant would oppose Plaintiffs’
15 contemplated ex parte application for leave to file a brief in excess of 25 pages. *See id.*

16 4. Later that day, the undersigned responded to counsel’s e-mail and stated it was
17 Defendant’s position that Local Rule 7.1(h) did not apply to limit the length of that briefing, since
18 that rule pertains to briefs “in support of or in opposition to motions,” and there was no pertinent
19 motion currently pending before the Court. *See id.* at 1-2. That said, the undersigned represented
20 that Defendant would not oppose Plaintiffs’ contemplated ex parte application. *See id.*

21 5. Plaintiffs’ counsel asked whether Defendant preferred that she inform the Court of
22 Defendant’s position but that Defendant did not oppose the motion, and the undersigned
23 responded in the affirmative. *See id.* at 1. There were no further communications between the
24 parties regarding that matter.

25 6. The following day, on December 1, 2022, Plaintiffs filed an Ex Parte Application for
26 Order Extending Page Limitation concurrently with a motion to strike Defendants’ brief for being
27 submitted in purported violation of Local Rule 7.1(h). *See* Dkts. 130 & 131. At no point prior to
28

1 the filing of these motions had Plaintiffs informed Defendant's counsel that a motion to strike
2 would be filed.

3 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and
4 correct.

5 Executed on: December 2, 2022

7 /s/ Kevin J. Kelly
8 KEVIN J. KELLY
9 Deputy Attorney General

9 SA2017107272
10 65600508.doc

EXHIBIT A

From: [Kevin Kelly](#)
To: ["Anna M. Barvir"](#)
Cc: [John D. Echeverria](#)
Subject: RE: Duncan v. Bonta: Notice of Ex Parte Application
Date: Wednesday, November 30, 2022 2:09:00 PM
Attachments: [image001.png](#)

Anna,

Thank you for following up. We would prefer that the application include our position, but that we do not oppose the motion.


Best,
Kevin

From: Anna M. Barvir <ABarvir@michellawyers.com>
Sent: Wednesday, November 30, 2022 2:05 PM
To: Kevin Kelly <Kevin.Kelly@doj.ca.gov>
Cc: John D. Echeverria <John.Echeverria@doj.ca.gov>
Subject: RE: Duncan v. Bonta: Notice of Ex Parte Application

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Thank you for your email, Kevin. I appreciate your prompt reply. One point of clarification. Do you prefer that I inform the court of your position that Rule 7.1(h) does not apply, but do not oppose the motion? Or simply indicate your non-opposition.

Regards,
Anna

<p>Anna M. Barvir Partner</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4453 Main: (562) 216-4444 Fax: (562) 216-4445 Email: ABarvir@michellawyers.com Web: www.michellawyers.com</p> <p>180 E. Ocean Blvd Suite 200 Long Beach, CA 90802</p>
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From: Kevin Kelly <Kevin.Kelly@doj.ca.gov>
Sent: Wednesday, November 30, 2022 1:47 PM
To: Anna M. Barvir <ABarvir@michellawyers.com>
Cc: John D. Echeverria <John.Echeverria@doj.ca.gov>
Subject: RE: Duncan v. Bonta: Notice of Ex Parte Application [MA-Interwoven.FID92062]

Anna,

Deputy AG Rob Meyerhoff is currently on parental leave and I will be filing a notice of appearance in this case shortly. Defendant's position is that Local Rule 7.1(h) does not apply to limit the length of the court-ordered briefing, since that rule pertains to briefs "in support of or in opposition to motions" and there is no pertinent motion currently pending before the Court. That said, Defendant would not oppose Plaintiffs' contemplated ex parte motion.

Best,
Kevin

Kevin J. Kelly
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From: Anna M. Barvir <ABarvir@michellawyers.com>
Sent: Wednesday, November 30, 2022 10:21 AM
To: Robert Meyerhoff <Robert.Meyerhoff@doj.ca.gov>; John D. Echeverria <John.Echeverria@doj.ca.gov>
Subject: Duncan v. Bonta: Notice of Ex Parte Application [MA-Interwoven.FID92062]

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Counsel,

Please take notice that Plaintiffs in *Duncan v. Bonta* will move the court on December 1, 2022, ex parte, for an order granting Plaintiffs leave to file an oversized supplemental brief. It is our position that the briefs are bound by the 25-page limitation set by Local Rule 7.1(h). But Plaintiffs will require additional pages to respond to the State's briefing and evidence. Plaintiffs will submit their ex parte motion simultaneously with their proposed supplemental brief.

Please let me know whether your client opposes this request and whether you intend to file any briefing in opposition.

Regards,
Anna

Anna M. Barvir
Partner



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