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2  
3 ROB BONTA  
Attorney General of California  
4 MARK R. BECKINGTON  
Supervising Deputy Attorney General  
5 KEVIN J. KELLY  
Deputy Attorney General  
6 State Bar No. 337425  
300 S. Spring St., Ste. 9012  
7 Los Angeles, CA 90013  
Telephone: (213) 266-6615  
8 Fax: (916) 731-2124  
E-mail: Kevin.Kelly@doj.ca.gov  
9 *Attorneys for Defendant Rob Bonta,*  
10 *In his official capacity as Attorney*  
*General of the State of California*

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
13

14 **VIRGINIA DUNCAN ET AL.,**

15 Plaintiffs,

16 v.

17 **ROB BONTA, IN HIS OFFICIAL**  
18 **CAPACITY AS ATTORNEY**  
19 **GENERAL OF THE STATE OF**  
**CALIFORNIA,**

20 Defendant.  
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3:17-cv-1017-BEN-JLB

**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

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ EX PARTE  
APPLICATION FOR ORDER EXTENDING PAGE LIMITATION**

Defendant respectfully submits this response to Plaintiffs’ “Ex Parte Application for Order Extending Page Limitation,” which was filed in the evening of December 1, 2022. *See* Dkt. 131. As the Court is likely aware, Plaintiffs have concurrently filed a motion to strike all pages except the first 25 pages of Defendant’s supplemental brief for being submitted in purported violation of Local Civil Rule 7.1(h). *See* Dkt. 130.

As Plaintiffs’ ex parte application papers reflect, on November 30, 2022, Plaintiffs’ counsel sought Defendant’s position on their contemplated ex parte application, and the undersigned informed counsel in good faith that Defendant would not oppose it even though the local rule does not apply to the supplemental briefing ordered by the Court. *See* Declaration of Anna M. Barvir in Support of Plaintiffs’ Ex Parte Application for Order Extending Page Limitation ¶¶ 2-3. However, at no time prior to filing their ex parte application did Plaintiffs disclose that they were also contemplating a motion to strike Defendant’s briefing on the grounds that it was purportedly “oversized” and submitted in violation Local Civil Rule 7.1(h). *See* Declaration of Kevin J. Kelly in Support of Defendant’s Response to Plaintiffs’ Ex Parte Application for Order Extending Page Limitation ¶ 6. Had Defendant been aware of the planned motion to strike, Defendant would have informed Plaintiffs that he would consent to Plaintiffs’ application provided that the Court does not strike any pages of his supplemental brief, which would severely prejudice Defendant by limiting his brief to 25 pages while permitting Plaintiffs’ supplemental brief to exceed 25 pages.

As Defendant informed Plaintiffs in advance of their ex parte application, Local Civil Rule 7.1(h) does not, by its terms, apply to the briefing at issue and thus Plaintiffs’ ex parte motion is not necessary. Following the remand of this matter, the Court ordered Defendant to “file any additional briefing that is necessary to

1 decide this case in light of *Bruen* within 45 days of this Order,” with Plaintiffs  
 2 filing “any responsive briefing within 21 days thereafter.” Dkt. 111. The Court did  
 3 not specify any page limitations on these briefs. *See id.* And Local Civil Rule 7.1(h)  
 4 does not apply to these briefs because they are not “in support of or in opposition to  
 5 a[ny] motions noticed for the same motion day” (*see* L.R. 7.1(h)), as there are no  
 6 pending motions before the Court. That said, Defendant continues to not oppose  
 7 Plaintiffs’ application to the extent Plaintiffs seek to file a responsive brief that  
 8 exceeds 25 pages in length.

9 However, if the Court is inclined to grant the ex parte application, Defendant  
 10 respectfully submits that the Court should *sua sponte* deny Plaintiffs’ motion to  
 11 strike Defendant’s supplemental briefing. Defendant was not given a full and fair  
 12 opportunity to consider his position on the ex parte application without the  
 13 knowledge that Plaintiffs would be filing a motion to strike Defendant’s own  
 14 briefing. Moreover, the granting of both Plaintiffs’ application and motion would  
 15 result in a plainly inequitable and absurd result—Defendant’s supplemental briefing  
 16 would be restricted to 25 pages, while Plaintiffs’ briefing would extend to some 50  
 17 pages, much of it submitted in response to argument set forth in the full version of  
 18 Defendant’s briefing. Accordingly, the Court should not grant Plaintiffs’  
 19 application if it is inclined to grant the motion to strike.

20 Dated: December 2, 2022

Respectfully submitted,

21 ROB BONTA  
 22 Attorney General of California  
 23 MARK R. BECKINGTON  
 Supervising Deputy Attorney General

24  
 25 /s/ Kevin J. Kelly  
 KEVIN J. KELLY  
 26 Deputy Attorney General  
 27 *Attorneys for Defendant Rob Bonta, in*  
*his Official Capacity as Attorney*  
*General of the State of California*

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