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14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**

16 MARK BAIRD and
17 RICHARD GALLARDO,

18 Plaintiffs,

19 v.

20 XAVIER BECERRA, in his official
21 capacity as Attorney General of the State of
22 California, and DOES 1-10,

23 Defendants.

Case No. 2:19-CV-00617

**DECLARATION OF
AMY L. BELLANTONI IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: September 6, 2019
Time: 10:00 a.m.
Room: 3
Judge: Hon. Kimberly J. Mueller

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DECLARATION OF AMY L. BELLANTONI

1. I am an attorney with The Bellantoni Law Firm, PLLC, attorneys of record for Plaintiffs, Mark Baird and Richard Gallardo. I am admitted to practice law before the United States District Court for the Eastern District of California, *pro hac vice*. I am also admitted to practice law before the Southern and Eastern District Courts of the State of New York and the Second Circuit Court of Appeals. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

2. On May 14, 2019, I contacted counsel for Defendant Attorney General Xavier Becerra, Deputy Attorney General R. Matthew Wise, Esq. by phone to meet and confer regarding Plaintiffs’ intention to file a motion for a preliminary injunction to enjoin defendant Becerra, his agents, servants, employees, and those working in active concert with him, from enforcing and/or giving effect to California Penal Codes §26150, §26155, §26350, and §25850 as they relate to the open carriage of a firearm in public, whether loaded or unloaded, pending the resolution of the instant matter on its merits. Mr. Wise indicated that his client would oppose Plaintiffs’ motion for a preliminary injunction.

3. Mr. Wise and I have had multiple communications since that date, during which Mr. Wise advised of his intention to file a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on behalf of Defendants. In the interest of judicial economy, Mr. Wise and I verbally entered into a motion schedule for the filing of Plaintiffs’ preliminary injunction motion, Defendants’ motion to dismiss, our respective submissions in opposition and in reply, including a return date and hearing on the motions of September 6, 2019, which was convenient for the parties, counsel and the Court. Counsels’ agreement was reduced to a written proposed Stipulation, which was presented for the Court’s consideration and thereafter executed by the Court on June 27, 2019.

1 4. The instant motion for a preliminary injunction is made based on the irreparable
2 and continued harm to Plaintiffs resulting from the enforcement and effect of California Penal
3 Codes §26150, §26155, §26350, and §25850, which will continue absent an injunction of the
4 statutes. The plain language of the aforementioned statutes, as well as the *de facto* ban on open
5 carry in the State of California enforced by defendant Attorney General Xavier Becerra through
6 the California Department of Justice, his agents, employees, servants, including the respective
7 state’s firearms licensing agencies, to wit, the sheriffs and chiefs of police throughout the state.

9 5. There are two (2) modalities for bearing a firearm in public for self-protection
10 against a violent confrontation: concealed carry (“CCW”) and open carry.

11 6. It is the opinion of the Ninth Circuit that the concealed carry of a firearm does not
12 fall within the scope of the protections provided by the Second Amendment. Upholding a
13 challenge to California’s “good cause” requirement for the issuance of a CCW license in *Peruta v*
14 *County of San Diego*, 824 F3d 919, 942 (9th Cir 2016) (en banc) (*Peruta II*) (cert. den.), the Ninth
15 Circuit held that the Second Amendment did not protect *in any degree* the right to carry a
16 concealed firearm in public and that *any* prohibition or restriction a state might choose to impose
17 on concealed carry, was not unconstitutional. (emphasis added). Concealed carry, the Circuit
18 reasoned, was a mere privilege, not a ‘right’.

19 7. The plain language of the Second Amendment mandate that “...the right to...bear
20 arms shall not be infringed” codifies the preexisting right to carry firearms in public in some
21 manner for self-protection. Thus, the open carriage of firearms *in fact* falls squarely within
22 Second Amendment protected activity. A contrary view irrationally eviscerates 50% of the
23 Second Amendment.

24 8. By removing concealed carry from the equation, the Ninth Circuit *de facto*
25 classified the open carriage of firearms in public – the sole remaining modality of bearing arms in
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1 public for self-defense - as the “right” referred to by the founding fathers and protected by the
2 Second Amendment.

3 9. As detailed in the accompanying Memorandum of Points and Authorities, the
4 complained of statutes severely limit the ability of the general public, including Plaintiffs, to
5 exercise the right to open carry a firearm for self-defense in public by (1) requiring a showing of
6 “good cause”; (2) containing “may issue” language, which permits licensing officials to
7 summarily deny open carry applications to otherwise qualified law-abiding individuals; (3)
8 restricting the validity of the open carry license to the county of issuance; and (4) exposing law-
9 abiding individuals to criminal penalties for exercising the right to open carry, whether loaded or
10 unloaded, (i) without an open carry license and/or (ii) outside of the boundaries of the issuing
11 county.

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14 10. In addition to the unconstitutional restrictions on the right to open carry
15 encompassed within the plain language of California’s licensing statutes and accompanying
16 criminal statutes for the prosecution of individuals who exercise that right, defendant Becerra has
17 *de facto* banned the right to open carry in the State of California.

18 11. Attached hereto are the Declarations of the plaintiffs in this action with
19 accompanying exhibits annexed thereto providing factual support for the within motion and
20 demonstrating, *inter alia*, irreparable harm by way of the continued violations of their Second
21 Amendment rights.

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23 12. The Declaration of Mark Baird, with accompanying exhibits, is annexed hereto as
24 Exhibit 1.

25 13. The Declaration of Richard Gallardo, with accompanying exhibits, is annexed
26 hereto as Exhibit 2.

1 14. The within Declaration and accompanying Memorandum of Points and Authorities
2 warrant the requested relief and issuance of an order enjoining defendant Becerra, his agents,
3 servants, employees, and those working in active concert with him, from enforcing and/or giving
4 effect to California Penal Codes §26150, §26155, §26350, and §25850 as they relate to the open
5 carriage of a firearm in public during the pendency of this proceeding.
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8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct.

10 Dated: July 8, 2019

 /s/ Amy L. Bellantoni, Esq.

Amy L. Bellantoni, Esq.

Attorney for Plaintiffs

Pro Hac Vice

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