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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.

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

**PLAINTIFFS' REPLY TO
OPPOSITION TO MOTION TO
STRIKE DEFENDANTS'
OVERSIZED SUPPLEMENTAL
BRIEF**

Hearing Date: January 9, 2023
Hearing Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez

1 Local Civil Rule 7.1(h) sets a 25-page upper limit for briefs filed in support of
 2 or in opposition to any pending “motion.” “Unless otherwise ordered by a judge of
 3 this district, or unless contrary to statute or in conflict with a provision of the Fed. R.
 4 Civ. P., the provisions of this rule will apply to *motions*, applications and orders to
 5 show cause, *or other request for ruling by the Court.*” S.D. Cal. Local Rule 7.1(a)
 6 (emphasis added). Without seeking leave, the State filed a 63-page brief in response to
 7 this Court’s order for supplemental briefing given the recent *Bruen* decision. Defs.’
 8 Suppl. Br. Re: Ct.’s Order of Sept. 26, 2022 (Nov. 10, 2022) (ECF No. 118). The
 9 State knowingly violated the rules, and its conduct unduly burdened Plaintiffs, who
 10 had only 21 days (including the Thanksgiving holiday) to analyze and respond to the
 11 State’s bloated brief and thousands of pages of supporting evidence.

12 The State’s only justification for its failure to seek leave to file its oversized
 13 brief is that Local Rule 7.1(h) does not apply because its supplemental brief is not “in
 14 support of or in opposition to” any pending motion. Defs.’ Opp’n to Pls.’ Mot. to
 15 Strike 2-3 (Dec. 27, 2022) (ECF No. 136). But as Plaintiffs’ moving papers point out,
 16 the parties’ court-ordered briefs relate to Plaintiffs’ motion for summary judgment
 17 under re-evaluation by this Court in light of the Ninth Circuit’s post-*Bruen* remand for
 18 further proceedings. Pls.’ Mot. to Strike 3 (Dec. 1, 2022) (ECF No. 130-1). Otherwise,
 19 the briefs would not be “supplemental” to anything; they would simply be trial briefs
 20 or some other such brief informing the Court of the parties’ post-appeal positions.

21 But even if the briefs are unrelated to Plaintiffs’ summary judgment motion, the
 22 State’s brief makes at least one “request for ruling by the Court,” bringing the brief
 23 within the scope of Local Rule 7.1(h). That is, the State’s brief recognizes that the
 24 result of the briefing will be a merits ruling by the Court, and it affirmatively requests
 25 at least two forms of relief related to that ruling. Defs.’ Suppl. Br. 63. First, it asks the
 26 Court to grant its motion for reconsideration to allow further discovery if the Court
 27 holds that the current record does not show that “California’s restrictions on large-
 28 capacity magazines comport with the Second Amendment.” *Id.* Then, it asks the Court

1 to “stay the enforcement of any judgment pending appeal” if the Court holds that
 2 California’s magazine ban violates the Second Amendment. *Id.* Under a plain reading
 3 of Local Rule 7.1(a), the State’s brief constitutes a “motion” subject to the page
 4 limitation set forth in Local Rule 7.1(h).

5 At the very least, the State’s conduct violates the spirit of a rule created to
 6 prevent the filing of grossly oversized briefs that unnecessarily burden the opposing
 7 party and the Court. Because the State thought it was necessary to file a brief well
 8 over 25 pages, it could have simply sought the Court’s permission to do so. This
 9 would have given the Court the chance to consider whether the State had good cause
 10 to file such a long brief under the circumstances. And, based on the Court’s comments
 11 during the December 12, 2022, Case Management Conference, it likely would have
 12 informed the parties that such briefs were unnecessary to the resolution of this
 13 straightforward matter—*before* both parties spent a great deal of time and money
 14 crafting briefs that are dozens of pages longer than this Court’s rules ordinarily allow.
 15 *See, e.g.*, Tr. at 39:24-40:15 (Dec. 12, 2022) (explaining that the parties in *Fouts*
 16 would not need 36 pages to discuss the history and tradition of arms regulations).

17 Moreover, when the State filed its 63-page supplemental brief, it was already on
 18 notice that the Court considered the State’s post-*Bruen* supplemental briefs to be
 19 “oversized.” In fact, in response to a nearly identical order for briefing in *Miller v.*
 20 *Bonta*, the State filed a 77-page brief that is remarkably similar to the State’s brief
 21 here. *See* Defendants’ Supplemental Brief in Response to the Court’s Order of August
 22 29, 2022, *Miller v. Bonta*, No. 19-cv-1537 (Oct. 13, 2022) (ECF No. 137). On October
 23 14, 2022—just one day after the State filed its brief in *Miller*—the Court ruled that
 24 “the parties ha[d] filed oversized briefs” and thus ordered that they file “a
 25 compendium of works, articles, studies, internet articles, etc., cited or referred to in
 26 the briefs and attached declarations and provide a printed courtesy copy of the
 27 compendium to chambers.” Minute Order, *Miller v. Bonta*, No. 19-cv-1537 (Oct. 14,
 28

2022) (ECF No. 138).¹ In short, when the State filed its 63-page supplemental brief in this matter, it *knew* it was filing an “oversized” brief and yet chose not to seek to leave to exceed the page limitations as the rules require.

All this said, however, Plaintiffs agree with the State’s concern that justice demands parity for the parties related to the length of their briefs. *See* Opp’n 3-4. As the Plaintiffs’ ex parte motion suggests, they requested leave to file their own oversized brief in the case that the Court accepts the State’s oversized brief. Pls.’ Ex Parte Appl. For Order Extending Pg. Limitation 2 (Dec. 1, 2022) (ECF No. 131-1) (“If the Court accepts the State’s entire supplemental brief, fairness dictates that Plaintiffs should be afforded the same number of pages to respond to the State’s many arguments.”) Likewise, if the Court grants Plaintiffs’ ex parte motion to exceed the page limits, they would withdraw their opposition to the State’s oversized brief.

Dated: January 3, 2023

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s/ Anna M. Barvir

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¹ To be fair, the State’s attorneys of record when the supplemental briefs were filed in *Miller* were not identical to the attorneys of record when the supplemental briefs were filed in this case. But the attorneys were all from the Attorney General’s office. They represent the same defendants. And they filed almost identical briefs in both matters. If the State’s attorneys are coordinating over the substance of their arguments to such a great extent, it is hard to believe they were not on notice of this Court’s order in *Miller* designating their brief as “oversized.” In fact, because they proactively filed the compendium of cited works that this Court ordered the State to file in *Miller*, it seems very likely that they were.

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.

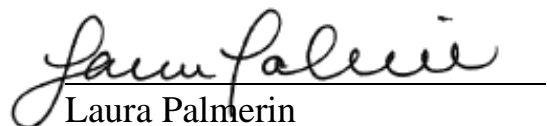
I have caused service of the following documents, described as:

**PLAINTIFFS' REPLY TO OPPOSITION TO MOTION TO STRIKE
DEFENDANTS' OVERSIZED SUPPLEMENTAL BRIEF**

on the following parties by electronically filing the foregoing on January 3, 2023, with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 3, 2023, at Long Beach, CA.


Laura Palmerin