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

14 **KIM RHODE et al.,**

15 Plaintiffs,

16 v.
17

18 **ROB BONTA, in his official capacity**
as Attorney General of the State of
19 **California, et al.,**

20 Defendant.
21

Case No. 3:18-cv-00802-BEN-JLB

**DEFENDANT'S OBJECTION TO
PLAINTIFFS' RESPONSE TO
DEFENDANT'S EXPERT
DECLARATIONS**

Dept: 5A
Judge: Hon. Roger T. Benitez
Action Filed: April 26, 2018

22 Defendant Rob Bonta, in his official capacity as Attorney General of the State
23 of California ("Defendant"), hereby objects to Plaintiffs' Response to Defendant's
24 Expert Declarations. Dkt. 95, 95-1.

25 On July 17, 2023, the Court held a hearing in this matter, during which the
26 Court ordered the parties to file supplemental declarations. *See* July 17, 2023
27 Hearing Tr. at 28, 41, 47. On July 18, 2023, the Court issued a Minute Entry for
28 the hearing (the "Order"), requiring Plaintiffs to file declarations regarding

Article III standing within 30 days of the hearing. Dkt. 90. The Order also required Defendant, within 30 days of the hearing, to (1) “name and file an expert report(s) or declaration(s) regarding the American history and tradition of background checks”; (2) “file an updated declaration regarding ammunition purchaser background check acceptance/rejection rates and processing times, as performed previously”; and (3) file a report, “to the extent ascertainable, on persons described in previous declarations as persons who underwent background checks and were identified as prohibited persons and indicate whether such persons were prosecuted and whether firearms were located and seized from such persons.” *Id.* Finally, the Order provided that, within 15 days of the filing of Defendant’s expert declarations, Plaintiffs must decide whether to depose Defendant’s experts and, within 30 days of deciding, “file a brief or expert declaration(s) in response.” *Id.*

Thirty days after the July 17 hearing, on August 16, 2023, Defendant timely filed his response to the Court’s Order, including expert declarations of Dr. Robert Spitzer, Dr. Michael Vorenberg, and Dr. Jennifer M. McCutchen and declarations of Mayra G. Morales and Sydney Jones. Dkt. 92. One day later, on August 17, 2023, Plaintiffs filed their response to the Order, including fourteen declarations. Dkt. 93. Thereafter, Plaintiffs did not request to depose Defendant’s experts, and on October 2, 2023, Plaintiffs filed their response to Defendants’ experts, including a declaration of Clayton Cramer. Dkt. 95, 95-1.

Defendant objects to Plaintiffs’ response to Defendant’s experts.¹ The Court’s Order allowed Plaintiffs to file either “a brief *or* expert declarations(s) in response” to Defendant’s experts. Dkt. 90 (emphasis added). Plaintiffs, however, filed both a declaration responding to Defendant’s experts *and* a legal brief urging the Court to invalidate the challenged Ammunition Laws.² Because Defendant was not given a

¹ Defendant has objected to the post-remand proceedings in this action. *See* Dkt. 81 at 8-10; Dkt. 89 at 2 n.1.

² Plaintiffs’ brief asks the Court to grant summary judgment in their favor,

1 similar opportunity to file a legal brief in addition to expert declarations, Plaintiffs'
 2 latest submission prejudices Defendant. Moreover, if the plain text of the Second
 3 Amendment covers Plaintiffs' proposed course of conduct, Defendant bears the
 4 burden of demonstrating that the Ammunition Laws are consistent with the
 5 Nation's tradition of firearm regulation. *See New York State Rifle & Pistol Ass'n*
 6 *v. Bruen*, 142 S. Ct. 2111, 2129-30 (2022). Because Defendant bears the burden of
 7 proof at the historical stage of the *Bruen* inquiry, Defendant should be afforded an
 8 opportunity to respond to Plaintiffs' submission.

9 Accordingly, Defendant objects to Plaintiffs' Response to Defendant's Expert
 10 Declarations, Dkt. 95, 95-1, and respectfully requests that the Court afford
 11 Defendant an opportunity to file, within fourteen (14) days, a response to Plaintiffs'
 12 brief and the declaration of Clayton Cramer, including supplemental declarations
 13 from Defendant's experts.

14 Dated: October 5, 2023

Respectfully submitted,

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 17 R. MATTHEW WISE
 18 Supervising Deputy Attorney General
 19 CHRISTINA R.B. LÓPEZ
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21 *s/ John D. Echeverria*

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 23 Deputy Attorney General
 24 *Attorneys for Defendant Rob Bonta, in*
 25 *his official capacity as California*
 26 *Attorney General*

27 _____
 28 even though no motion for summary judgment (or any other motion) is currently
 pending before the Court. *See* Dkt. 81 at 8.