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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 KIM RHODE, et al.,
14 Plaintiffs,

15 v.

16 ROB BONTA, in his official capacity as
17 Attorney General of the State of
18 California,

19 Defendant.

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

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

1 The State has filed an Objection to the short brief that Plaintiffs filed responding to
2 the State's recently filed historical declarations on the grounds that Plaintiffs were only
3 supposed to file a brief in the case they did not file rebuttal declarations, but could not file
4 both, as they did. Dkt. No. 96. This Court's July 28, 2023, Minute Entry stated that
5 following the State's expert reports or declarations on the American history and tradition
6 of background checks, "Plaintiffs shall decide whether to depose said expert(s), and
7 within 30 days after deciding, Plaintiffs **shall file a brief or expert declaration(s) in**
8 **response.**" Dkt. No. 90 (bold added.) Plaintiffs interpreted that "or" conjunctively, i.e.,
9 that Plaintiffs may file a brief, or an expert declaration, or both. A single rebuttal
10 declaration paired with a short brief seemed a proportional and fair response to three new
11 expert declarations from the State, as well as the declarations the State submitted with
12 updated data that Plaintiffs would otherwise have had no chance to address had they not
13 submitted a responsive brief.

14 If Plaintiffs' interpretation of this Court's order was incorrect, they apologize for
15 the misunderstanding and do not object to this Court choosing whether to strike
16 Plaintiffs' latest brief, Dkt. No. 95, or granting the State's request to file a reply brief
17 within 14 days. That said, Plaintiffs strongly object to the State's request to submit more
18 supplemental expert declarations. The State has had plenty of opportunity to compile all
19 the historical evidence that it wanted in the record. The Court can evaluate the respective
20 parties' declarations in light of Plaintiffs' expert's information and determine whose
21 analysis is correct or whether any additional information is needed. The State can also
22 consult with its experts to point out any issues they have with Professor Cramer's
23 characterization of their work and include that in a reply brief, should the Court allow
24 one. But the State should not be automatically entitled to file more expert declarations;
25 especially when it is Plaintiffs' primary position that the declarations provide no useful
26 information under the *Bruen* analysis.

27 In sum, this Court should: (1) accept the Declaration of Clayton Cramer as
28 properly filed, Dkt. No. 95-1; (2) reject the State's request to file additional expert

1 declarations; and (3) either (a) strike Plaintiffs' latest brief, Dkt. No. 95, or (b) grant the
2 State's request to file a reply brief thereto within 14 days.

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4
5 Dated: October 10, 2023

MICHEL & ASSOCIATES, P.C.

6 *s/ Sean A. Brady*

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9 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Rhode, et al. v. Bonta*
Case No.: 3:18-cv-00802-JM-JMA

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

on the following parties by electronically filing the foregoing on October 10, 2023, with the Clerk of the District Court using its ECF System, which electronically notifies them.

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General Rob Bonta*

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 10, 2023, at Long Beach, CA.


Laura Palmerin