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

14 **JAMES MILLER et al.,**

15 Plaintiffs,

16 v.

18 **ROB BONTA et al.,**

19 Defendants.

Case No. 3:22-cv-01446-RSH-DEB

**DEFENDANTS' SPECIAL  
APPEARANCE AND OBJECTION  
TO NOTICE OF RELATED CASE**

Courtroom: 3B  
Judge: Hon. Robert S. Huie

Action Filed: September 26, 2022

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26 <sup>1</sup> Acting Director of the Bureau of Firearms Blake Graham has succeeded  
27 former Director Luis Lopez. Pursuant to Federal Rule of Civil Procedure 25(d),  
28 Acting Director Graham, in his official capacity, is substituted as defendant in this  
case.

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
RECORD:**

Defendants Rob Bonta, in his official capacity as the Attorney General of the State of California, and Blake Graham, in his official capacity as the Acting Director of the California Department of Justice Bureau of Firearms (together, “Defendants”), hereby specially appear to object to the Notice of Related Case filed in his action. Dkt. 3.<sup>2</sup>

The Notice of Related Case contends that this action is related to *Miller v. Becerra*, No. 19-cv-01537-BEN-JLB (S.D. Cal.). It is not. Under Local Civil Rule 40.1(g), an action may be related to another action where both actions involve (i) “some of the same parties and are based on the same or similar claims,” (ii) the same “property, transaction, patent, trademark, or event,” or (iii) “substantially the same facts and the same questions of law.” Actions involve the same or similar “claims” where they arise out of the same nucleus of operative facts. *See Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 714 (9th Cir. 2001) (noting that claims are sufficiently similar for res judicata purposes where they “arise out of the same transactional nucleus of facts”).

This action has been brought by some of the same plaintiffs in the prior *Miller* action against the same defendants in that case, *see* Dkt. 3 at 1, but the similarities end there. Plaintiffs’ claims in this case do not “result” from their claims in the prior *Miller* action, which challenges California’s Assault Weapons Control Act under the Second Amendment. Instead, Plaintiffs here assert entirely different claims under the Supremacy Clause, the First Amendment, and the Equal Protection Clause, respectively, against a fee-shifting provision contained in Senate Bill 1327 (Stats. 2022, ch. 146 § 2), a newly enacted statute adding section 1021.11 to the California Code of Civil Procedure, which will not become effective until January 1, 2023.

<sup>2</sup> Defendants have not yet been served with a copy of the summons and complaint (Dkt. 1). Defendants specially appear at this time for the limited purpose of asserting their objection to the Notice of Related Case.

Judicial resolution of this action will involve consideration of different legislative records and different facts than those at issue here. This action does not involve the same or similar claims, the same property, transaction or event, or substantially the same facts and legal questions as were presented in the prior *Miller* action. Accordingly, it fails to satisfy any of the requirements for relatedness enumerated in Local Civil Rule 40.1(g). The constitutionality of section 1021.11 may be assessed independently of the prior *Miller* action, and the interests of judicial economy would not be served by deeming the instant action as related to that case.

For these reasons, Defendants respectfully object to the Notice of Related Case filed in this action. Dkt. 3.

Dated: September 27, 2022

Respectfully submitted,

ROB BONTA  
Attorney General of California  
P. PATTY LI  
Supervising Deputy Attorney General  
ANNA FERRARI  
Deputy Attorney General

s/ John D. Echeverria

JOHN D. ECHEVERRIA  
Deputy Attorney General  
*Attorneys for Defendants Rob Bonta  
and Blake Graham, in their official  
capacities*

## CERTIFICATE OF SERVICE

Case Name: Miller et al. v. Bonta, et al. Case No. 3:22-cv-01446-RSH-DEB

I hereby certify that on September 27, 2022, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### DEFENDANTS' SPECIAL APPEARANCE AND OBJECTION TO NOTICE OF RELATED CASE

I am employed by the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am over the age of 18 years and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service.

Participants in the case who are registered CM/ECF users will be served electronically by the CM/ECF system.

In addition, on September 27, 2022, I placed true copies thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, to the following addresses:

Bradley A. Benbrook  
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Case No. 3:22-CV-01446 ("Miller II")*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct.

Executed on September 27, 2022, at San Francisco, California.

Vanessa Jordan  
Declarant

*Vanessa Jordan*  
Signature