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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES MILLER; RYAN PETERSON;
GUNFIGHTER TACTICAL, LLC;
JOHN PHILLIPS; PWGG, L.P.; SAN
DIEGO COUNTY GUN OWNERS
PAC; CALIFORNIA GUN RIGHTS
FOUNDATION; SECOND
AMENDMENT FOUNDATION;
FIREARMS POLICY COALITION,
INC.; JOHN W. DILLON; DILLON
LAW GROUP, P.C.; and GEORGE M.
LEE,

Plaintiffs,

v.

ROB BONTA, Attorney General of
California; and LUIS LOPEZ, Director
of the California Department of Justice
Bureau of Firearms,

Defendants.

Case No.: 3:22-cv-01461-BEN-JLB

**PLAINTIFFS' PRELIMINARY
RESPONSE TO GOVERNOR
GAVIN NEWSOM'S MOTION TO
INTERVENE AND OBJECTION TO
PROPOSED MODIFICATIONS TO
SCHEDULING ORDER**

1 Plaintiffs offer the following preliminary response to Governor Newsom's
2 motion to intervene and object to the proposed modification to the scheduling order
3 as follows:

4 1. The motion to intervene fails to comply with Rule 24's procedural
5 requirement that such motion "be accompanied by a pleading that sets out the claim
6 or defense for which intervention is sought." Fed. R. Civ. P. 24(c). Given the nature
7 of the Rule 24 analysis, Plaintiffs cannot adequately respond to Governor Newsom's
8 motion to intervene until this requirement is fulfilled. For example, it is not entirely
9 clear from the intervention motion whether the Governor is going to argue on behalf
10 of the State—contrary to the State's argument to the United States Supreme Court—
11 that a fee-shifting statute functionally identical to SB 8 in Texas actually is
12 constitutional. Furthermore, the alleged timeliness of the motion should be measured
13 from the date that the motion is brought into compliance with Rule 24(c).

14 2. Plaintiffs oppose the proposed modifications to the briefing schedule set
15 forth in the motion to intervene. Dkt. 31-1. It is worth noting that the original hearing
16 date for plaintiffs' preliminary injunction was November 14, but that date got moved
17 to November 28 to combine the hearing with the *South Bay* case, Dkt. 24, and then
18 moved again to December 16 in light of the standing issues raised by the Attorney
19 General when his opposition was due. Dkt. 25. Indeed, the time for opposing the
20 preliminary injunction has long since passed, *see* CivLR 7.1(e)(2) (requiring
21 oppositions to be filed 14 calendar days before a noticed hearing).

22 Under the current compressed schedule, the Attorney General's supplemental
23 brief on the merits is due today and Plaintiffs' response is due on Tuesday, December
24 13. Dkt. 26. That truncated schedule was set in a context in which the Attorney
25 General signaled at the November 28 hearing that the supplemental brief was likely
26 to be limited in nature and, indeed, that an oral argument may not even be necessary:

27 Mr. Davis: I do want to just remind the court that there are six distinct
28 constitutional claims. I think there are some legal questions with regard
to remedy. So even if there was agreement as to the merits on any

1 particular constitutional claim, there's some at least disagreement about
 2 the ability of the court to issue an injunction that reaches local
 3 governments. So there may need to be some argument about the remedy
 4 and exactly what that looks like. We would just like the opportunity to
 brief those issues, present them to the court, and if the court has questions
 and concludes that argument would assist, then of course, we would be
 happy to come to court. But it may not be necessary if we just brief –

5 *See* Trans. at 42:1-13. The Court set the current schedule immediately after this
 6 representation.

7 The Governor asks for leave to file a brief of unknown (and potentially much
 8 larger) scope on Monday, December 12, and to reduce Plaintiffs' time to respond to
 9 that brief from four days to two (in addition to responding to the motion to intervene).
 10 Plaintiffs object to this proposed modification of the Court's scheduling order as
 11 unduly prejudicial. If the Court is going to amend the scheduling order to allow the
 12 Governor to file a pleading to accompany the motion to intervene, Plaintiffs
 13 respectfully request that the Court require the Governor to file his proposed pleading
 14 not later than 1:00 p.m. on Saturday, December 10, and allow Plaintiffs the
 15 opportunity to seek further adjustments to the scheduling order by noon on Monday,
 16 December 12, in light of the scope of that brief.

17 If necessary, Plaintiffs will file a further opposition to the motion to adjust the
 18 scheduling order to be filed by the Governor.

19
 20 Dated: December 9, 2022

BENBROOK LAW GROUP, PC

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 22 By s/ Bradley A. Benbrook
 23 BRADLEY A. BENBROOK
 24 Attorneys for Plaintiffs
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