

1 John W. Dillon (Bar No. 296788)
2 Gatzke Dillon & Ballance LLP
3 2762 Gateway Road
4 Carlsbad, California 92009
5 Telephone: (760) 431-9501
6 Facsimile: (760) 431-9512
7 E-mail: jdillon@gdandb.com

8 Attorney for Plaintiffs

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 MATTHEW JONES, et al.

12 Plaintiffs,

13 v.

14 XAVIER BECERRA, in his official
15 capacity as Attorney General of the
16 State of California, et al.,

17 Defendants.

Case No.: 3:19-cv-01226-L-AHG

Hon. M. James Lorenz and Magistrate
Judge Allison H. Goddard

**JOINT MOTION OF ALL PARTIES
SEEKING EXCUSAL FROM THE
EARLY NEUTRAL EVALUATION
CONFERENCE, OR, IN THE
ALTERNATIVE, EXCUSAL FROM
THE IN-PERSON PARTY
ATTENDANCE REQUIREMENT**

Action Filed: July 1, 2019

First Amended Complaint Filed:
July 30, 2019

First Amended Complaint and Summons
Served: August 1, 2019

1 Plaintiffs Matthew Jones, Thomas Furrh, Kyle Yamamoto, PWGG, L.P. (d.b.a.
2 Poway Weapons and Gear and PWG Range), North County Shooting Center, Inc.,
3 Beebe Family Arms and Munitions LLC (d.b.a. BFAM and Beebe Family Arms and
4 Munitions), Firearms Policy Coalition, Inc., Firearms Policy Foundation, the Calguns
5 Foundation, and Second Amendment Foundation, and Defendants Xavier Becerra (in
6 his official capacity as Attorney General of the State of California) and Brent E. Orick
7 (in his official capacity as Acting Director of the Department of Justice Bureau of
8 Firearms), through their respective counsel of record, and pursuant to Civil Local
9 Rules 7.1 and 7.2, hereby jointly move the Court to excuse them from the Early
10 Neutral Evaluation (ENE) conference, or, in the alternative, to excuse the parties from
11 the in-person party attendance requirement set forth in paragraphs 2-3 of Magistrate
12 Judge Barbara Lynn Major’s August 22, 2019 Notice and Order for Early Neutral
13 Evaluation Conference and Case Management Conference (Dkt. 6 [“ENE Order”]).
14 Good cause exists for excusal from the ENE conference generally, as well as from the
15 in-person party appearance requirement.

16
17
18
19
20
21 This Joint Motion is supported by (1) the Declaration of Jennifer E. Rosenberg
22 in Support of Joint Motion of All Parties Seeking Excusal From the Early Neutral
23 Evaluation Conference, or, in the Alternative, Excusal From the In-Person Party
24 Attendance Requirement, and (2) the Declaration of John W. Dillon in Support of
25 Joint Motion of All Parties Seeking Excusal From the Early Neutral Evaluation
26 Conference, or, in the Alternative, Excusal From the In-Person Party Attendance
27
28

1 Requirement, both of which are filed and served herewith.

2 **I. FACTUAL AND PROCEDURAL BACKGROUND**

3
4 Plaintiffs filed their initial complaint on July 1, 2019. ECF No. 1. Plaintiffs
5 did not serve the initial complaint or a summons thereon. *See* ECF No. 5 at 1, n.2.
6 Plaintiffs filed their First Amended Complaint for Declaratory and Injunctive Relief
7 (FAC) on July 30, 2019, and served the FAC and summons on August 1, 2019. ECF
8 No. 3; ECF No. 5 at 1, n.2. Defendants filed and served their Answer to the FAC on
9 August 22, 2019. ECF No. 5.
10

11
12 Plaintiffs' and Defendants' respective counsel met and conferred by
13 conference call on August 29, 2019, pursuant to Federal Rules of Civil Procedure
14 Rule 26(f) and paragraph 6(a) of the ENE Order requiring the parties to meet and
15 confer by no later than September 9, 2019.
16

17 **II. GOOD CAUSE EXISTS TO EXCUSE THE PARTIES FROM THE ENE**
18 **CONFERENCE AND RELATED REQUIREMENTS**

19 During the August 29 meet-and-confer telephonic conference, counsel for
20 Plaintiffs and Defendants discussed the possibility of settlement. They agreed that,
21 due to the nature of the complaint, there is no potential for settlement of Plaintiffs'
22 claims.
23

24 Plaintiffs believe that the challenged statutory provisions violate their
25 constitutional rights set forth in the Second Amendment to the U.S. Constitution.
26 Plaintiffs allege no claims for monetary damages; they seek injunctive and declaratory
27
28

1 relief. Plaintiffs will not dismiss the lawsuit unless Defendants cease enforcement of
2 the challenged provisions.

3
4 It is Defendants' position that the challenged provisions are constitutional and
5 duly enacted. Given the Attorney General's sworn duty to uphold the laws of the
6 State, the Attorney General cannot excuse Plaintiffs from compliance with or
7 application of the challenged provisions, or otherwise refuse to enforce the challenged
8 provisions. Cal. Const., art. III, § 3.5.

9
10 All parties agree that in light of the Parties' positions on the constitutionality
11 of the challenged provisions, neither further discussion nor mediation will allow them
12 to settle this case. For these reasons, there is no ground on which the Parties can reach
13 settlement, and the Parties respectfully request to be relieved from the requirement to
14 participate in the ENE conference and its related requirements, including submission
15 of confidential ENE statements as set forth in paragraph 4 of the ENE Order.
16
17

18 **III. GOOD CAUSE EXISTS TO EXCUSE ALL PARTIES FROM THE IN-PERSON**
19 **PARTY ATTENDANCE REQUIREMENT SHOULD THE COURT REQUIRE THE**
20 **PARTIES TO PROCEED WITH THE ENE CONFERENCE**

21 According to paragraphs 2-3 of the ENE Order, all parties must appear at the
22 ENE conference with full settlement authority. However, as shown in the preceding
23 section, the nature of the claims and the relief sought preclude any meaningful
24 settlement opportunities the Parties could discuss or agree to during an ENE
25 conference. Appearance in person will not alter the potential for settlement in the
26 matter, as contemplated by the ENE Order. Dkt. 6 at 2, n.1. Accordingly, appearance
27
28

1 by each individual party in person will require the eleven Parties to this action to incur
2 expense and inconvenience without serving the purposes underlying the ENE
3 conference. For these reasons, if the Court is unwilling to excuse the Parties from the
4 ENE conference, counsel for the Parties jointly request that their respective clients be
5 excused from the in-person party attendance requirement at the ENE conference.
6

7
8 As permitted by lines 9 through 12 on page 2 of the ENE Order, government
9 entities are excused from appearing at the ENE conference so long as the government
10 attorney with primary responsibility for handling the case will attend and is authorized
11 to negotiate settlement offers that the attorney is willing to recommend to the
12 government official defendants having ultimate settlement authority. As shown in the
13 supporting Declaration of Jennifer E. Rosenberg, government counsel from the
14 California Attorney General's Office with primary responsibility for representation of
15 Defendants Xavier Becerra and Brent E. Orick will be personally present at the ENE
16 Conference and is authorized to recommend settlement offers to Defendants (both of
17 whom have their principal offices in Sacramento, California, approximately 500 miles
18 from this Court).
19
20
21

22 Plaintiffs consist of several individuals, three federal firearm licensed
23 dealers/ranges (FFLs), and four institutional organizations. The individual Plaintiffs
24 live and work throughout San Diego and Hacienda Heights, California, and each has
25 their own specific work obligations and schedules. The FFL Plaintiffs own and
26 operate their respective businesses throughout San Diego County. Closing their
27
28

1 business, or finding a sufficient replacement in their absence, would be overly
2 burdensome. In addition, the institutional Plaintiffs' principle places of business are
3 in Sacramento, California and Bellevue, Washington. Due to the number of the
4 Plaintiffs involved in this case, as well as their respective locations and
5 responsibilities, it would be overly burdensome to require all Plaintiffs to attend the
6 ENE conference set for September 30, 2019 by Magistrate Judge Major's August 22,
7 2019 ENE Order.
8
9

10 If the parties are not excused from the ENE conference entirely, Defendants do
11 not oppose Plaintiffs sending a single party with full settlement authority to represent
12 Plaintiffs for purposes of the ENE Conference.
13

14 WHEREFORE:

15
16 The parties hereby jointly request that the Court issue an order excusing
17 Plaintiffs and Defendants from the requirement of participating in the ENE
18 Conference or submitting ENE statements, as directed by the ENE Order, and taking
19 the ENE conference off the Court's calendar. In the alternative, the parties hereby
20 stipulate to and jointly request that the Court issue an order excusing all parties from
21 the in-person attendance requirement at the ENE conference, allowing a single
22 representative party to attend on behalf of Plaintiffs, and allowing public entity
23 Defendants Xavier Becerra and Brent E. Orick to appear solely through their defense
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A proposed order will be lodged with the Court concurrently with submission of this Joint Motion.

September 17, 2019

Respectfully submitted,

Gatzke, Dillon & Ballance LLP

By: 

John Dillon
Attorney for Plaintiffs

September 17, 2019

XAVIER BECERRA
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General

By: 

JENNIFER E. ROSENBERG
Deputy Attorney General
Attorneys for Defendants Xavier Becerra, in his official capacity as Attorney General of the State of California, and Brent E. Orick, in his official capacity as Acting Director of the Department of Justice Bureau of Firearms