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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

16 **JAMES MILLER, et al.,**

17 Plaintiffs,

18 v.

19 **CALIFORNIA ATTORNEY
 20 GENERAL XAVIER BECERRA,
 et al.,**

21 Defendants.

19-cv-1537 BEN-JLB

**JOINT MOTION AND
 STIPULATION TO CONTINUE
 HEARING ON MOTION FOR
 PRELIMINARY INJUNCTION
 AND MOTION TO DISMISS**

[Fed. R. Civ. P. 6(b)(1)]

Judge: Hon. Roger T. Benitez
 Courtroom: 5A
 Action Filed: August 15, 2019

23 Plaintiffs and Defendants, by and through their respective counsel, and under
 24 Federal Rule of Civil Procedure 6(b)(1), hereby jointly move the Court to continue
 25 the hearing date for Plaintiffs’ Motion for Preliminary Injunction, Dkt. 22, and
 26 Defendants’ Motion to Dismiss Certain Claims in First Amended Complaint,
 27 Dkt. 16, from January 16, 2020 at 10:00 a.m. to January 30, 2020 at 10:00 a.m.

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BACKGROUND ON REQUESTED CONTINUANCE

Plaintiffs filed the initial complaint in this action on August 15, 2019, Dkt. 1, and the operative First Amended Complaint on September 27, 2019, Dkt. 9. On October 25, 2019, Defendants filed a motion to dismiss certain claims asserted in the First Amended Complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Dkt. 16. Defendants noticed the motion to dismiss for hearing on December 16, 2019. On December 4, 2019, Plaintiffs filed an opposition to the motion to dismiss. Dkt. 21.

On December 6, 2019, Plaintiffs filed a Motion for Preliminary Injunction, noticing the motion for hearing on January 16, 2019. Dkt. 22. The preliminary injunction motion included over 1,800 pages of material, including declarations from seven expert witnesses. *See* Dkt. 22-1–22-19. Under Local Civil Rule 7.1(e)(2), Defendants’ opposition to the preliminary injunction motion is currently due on January 2, 2020.

On December 10, 2019, the Court *sua sponte* continued the hearing on Defendants’ motion to dismiss, Dkt. 16, from December 16, 2019 to January 16, 2020—the current hearing date on Plaintiffs’ preliminary injunction motion. Dkt. 23. Under Local Civil Rule 7.1(e)(3), Defendants’ reply memorandum in further support of the motion to dismiss is currently due on January 9, 2020.

On December 13, 2019, Defendants filed a Motion to Stay Proceedings Pending Resolution of Related Appeals, noticing the motion for hearing on January 27, 2019. Dkt. 25.

GROUNDS FOR REQUESTED CONTINUANCE

Counsel for the parties have met and conferred regarding Defendants’ request to continue the hearing on the preliminary injunction motion. Defendants need additional time to review the preliminary injunction motion and prepare an opposition to the motion. The January 2, 2020 deadline for Defendants’ opposition

1 also poses additional scheduling difficulties for Defendants due to the Christmas
2 and New Year's holidays.

3 The parties have agreed to stipulate, for good cause, to a continuance of the
4 hearing on Plaintiffs' preliminary injunction motion to January 30, 2020, with
5 Defendants' opposition to the motion being due on January 16, 2020, and Plaintiffs'
6 reply being due on January 23, 2020. Defendants have agreed to stipulate that
7 Plaintiffs have not waived any argument of irreparable injury through Plaintiffs'
8 stipulation to continue the preliminary injunction hearing date; nor will Defendants
9 argue undue delay of the preliminary injunction briefing and hearing schedule as a
10 result of this stipulation. In the interest of judicial economy, and in light of the
11 Court's order resetting the motion to dismiss hearing for January 16, 2020, Dkt. 23,
12 the parties have also agreed that good cause exists to continue the hearing on the
13 motion to dismiss to January 30, 2020.

14 No previous continuances have been requested for the hearings on Plaintiffs'
15 preliminary injunction motion or Defendants' motion to dismiss.

16 **BACKGROUND ON DEFENDANTS' MOTION TO STAY PROCEEDINGS**
17 **PENDING RESOLUTION OF RELATED APPEALS**

18 On December 13, 2019, Defendants filed a motion to stay the instant action
19 pending resolution of two appeals currently pending before the Ninth Circuit: *Rupp*
20 *v. Becerra*, No. 19-56004 (9th Cir.), and *Duncan v. Becerra*, No. 19-55376 (9th
21 Cir.). Dkt. 25. The parties have met and conferred regarding Defendants' intention
22 to apply ex parte for a temporary stay of the preliminary injunction and motion to
23 dismiss hearings, and the attendant briefing schedules, until the Court has ruled on
24 Defendants' motion to stay. Plaintiffs oppose a stay of this case, desire an
25 opportunity to file a written opposition to Defendants' stay motion, and oppose the
26 ex parte request for a temporary stay of the two substantive matters already before
27 this Court (i.e., Plaintiffs' preliminary injunction motion and Defendants' motion to
28 dismiss), pending the Court's ruling on the motion to stay.

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Dated: December 18, 2019

Respectfully Submitted,
XAVIER BECERRA
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General

/s/ John D. Echeverria
JOHN D. ECHEVERRIA
Deputy Attorney General
Attorneys for Defendants

Dated: December 18, 2019

GATZKE DILLON & BALLANCE LLP

/s/ John W. Dillon (by consent)
JOHN W. DILLON
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Case Name: **James Miller, et al. v.
Xavier Becerra, et al.**

Case No. **19-cv-1537 BEN-JLB**

I hereby certify that on December 18, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

JOINT MOTION AND STIPULATION TO CONTINUE HEARING ON MOTION FOR PRELIMINARY INJUNCTION AND MOTION TO DISMISS

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 18, 2019, at Los Angeles, California.

John D. Echeverria

Declarant

/s/ John D. Echeverria

Signature