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California Association for Health Services
at Home*

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
CALIFORNIA CHAMBER OF COMMERCE,
NATIONAL RETAIL FEDERATION,
CALIFORNIA RETAILERS ASSOCIATION,
NATIONAL ASSOCIATION OF SECURITY
COMPANIES, HOME CARE ASSOCIATION
OF AMERICA, and CALIFORNIA
ASSOCIATION FOR HEALTH SERVICES
AT HOME,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
the Attorney General of the State of California,
LILIA GARCIA BROWER,
in her official capacity as the Labor
Commissioner of the State of California, JULIE
A. SU, in her official capacity as the Secretary
of the California Labor and Workforce
Development Agency, and KEVIN KISH, in his
official capacity as Director of the
Department of Fair Employment and Housing of
the State of California.

Defendants.

Case No. 2:19-cv-02456-KJM-DB

**REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

Hearing Date: December 23, 2019
Hearing Time: 2:00 p.m.
Courtroom: Telephonic Hearing

Hon. Kimberly J. Mueller

1 Defendants do not dispute that, in just over a week, AB 51 will make it a *crime* for
2 businesses to enter into arbitration agreements with new or existing employees as a condition of
3 employment. And the opposition fails to acknowledge that, since filing this lawsuit and their
4 motion for a preliminary injunction, Plaintiffs have tried to negotiate in good faith with Defendants
5 to obtain Defendants’ agreement to refrain from enforcing the statute, including its criminal
6 prohibitions, until the preliminary injunction hearing—currently scheduled for January 10, 2020.
7 If Defendants had agreed to a brief standstill—only 9 days after the statute’s effective date—that
8 would have obviated the need for emergency relief from this Court. But because Defendants have
9 not meaningfully conferred with Plaintiffs, a temporary restraining order is necessary to maintain
10 the status quo.

11 Defendants’ arguments that AB 51 is not preempted conflict with controlling Supreme
12 Court precedent. The opposition confirms that AB 51 singles out the “defining trait” of arbitration
13 agreements, “a waiver of the right to go to court” (*Kindred Nursing Centers Limited Partnership*
14 *v. Clark*, 137 S. Ct. 1421, 1427 (2017)), and makes it a *crime* to enter into workplace contracts
15 with that trait. That is a blatant “singling out” of arbitration agreements “for disfavored treatment,”
16 *id.*, and a result antithetical to the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (“FAA”), which “was
17 designed to promote arbitration.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 345 (2011).

18 As demonstrated in plaintiffs’ motions and complaint, California has repeatedly enacted
19 laws and adopted doctrines that violate the FAA. AB 51 is the latest of California’s “great variety
20 of devices and formulas declaring arbitration against public policy” that the FAA was enacted to
21 prevent. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1623 (2018) (quoting *Concepcion*, 563 U.S. at
22 342). But AB51 is exceptionally troubling because it criminalizes the formation of arbitration
23 agreements protected under federal law. Because Defendants have refused to agree to a brief delay
24 in any efforts to enforce AB51, emergency relief is urgently needed to maintain the status quo until
25 this Court can consider Plaintiffs’ challenge on January 10.

26 **ARGUMENT**

27 **A. Plaintiffs’ Motion Is Timely.**

28 Defendants fault Plaintiffs for not seeking “a temporary restraining order when they served

1 their complaint,” rather than “nearly a week after serving their motion for preliminary injunction.”
2 Opp. 5. The notion that plaintiffs seeking a preliminary injunction should rush to involve the
3 courts on an emergency basis is backwards. This Court’s own TRO checklist (ECF No. 8–3)
4 requires the party seeking a TRO to identify whether the applicant “discuss[ed] alternatives to a
5 TRO hearing” and “ask[ed the] opponent to stipulate to a TRO.” If Plaintiffs’ efforts to hold good-
6 faith negotiations with Defendants were a reason to deny the TRO, parties seeking a preliminary
7 injunction against the State would have to move for a TRO immediately in all cases, necessitating
8 emergency proceedings that could be avoided.

9 Indeed, it is telling that Defendants do not discuss the fact that Plaintiffs tried to reach
10 counsel for the Defendants and negotiate a stipulation that would avoid the need for a TRO—but
11 Defendants declined to respond on that point. *See* Declaration of Donald M. Falk, Dkt. No. 8-2,
12 ¶¶ 6-9, 17; *see also* Mot. 9 (ECF No. 8–1).

13 The opposition further fails to mention that, after filing their TRO motion, Plaintiffs have
14 continued to try in good faith to negotiate a stipulation that would have obviated the need for this
15 Court’s consideration of a request for emergency relief. *See* Reply Decl. of Donald M. Falk ¶¶ 6-
16 17 & Exs. A-B. Defendants have never meaningfully engaged in these efforts; instead,
17 Defendants’ counsel stated for the first time in an email on Thursday *afternoon* that defendants
18 “will oppose the TRO,” with no further explanation. *Id.* ¶ 13 & Ex. A.¹

19 Defendants next try to fault plaintiffs for filing this lawsuit less than two months after AB
20 51 was signed into law. Opp. 5-6. But they offer no authority even suggesting that it somehow
21 constitutes undue delay to challenge the constitutionality of a statute in that timeframe. Defendants
22 suggest that a substantial constitutional challenge to a state statute that involves a coalition of seven
23 plaintiffs (each representing numerous members) is akin to an individual’s contesting a foreclosure
24 sale (*see Expose v. Fay Servicing, Inc.*, 2019 WL 4640556 (E.D. Cal. Sept. 24, 2019) (cited at
25

26 ¹ Defendants also suggest that plaintiffs “could have sought an order shortening time on their
27 motion for a preliminary injunction” (Opp. 6), but Plaintiffs never had a chance to discuss that
28 possibility with defendants in light of defendants’ failure to negotiate. The parties have since
exchanged competing proposals, but have not reached an agreement as of the filing of this reply.
Falk Reply Dec. ¶¶ 21-23.

1 Opp. 5-6)), but the difference between the situations is obvious. For one thing, the shortness of
2 time may be laid at the feet of the Legislature, which chose an effective date less than three months
3 after enactment. The Legislature can and does provide greater lead times for statutes enacted near
4 the end of a legislative session. *See* AB 2455, 2017-2018 Reg. Sess., 2018 Stats. Ch. 917 (codified
5 at Cal. Health & Saf. Code § 1796.29) (enacted Sept. 29, 2018, effective July 1, 2019). Plaintiffs
6 not only needed to draft a complaint containing sufficient allegations, but also had to address the
7 misleading insertion of Labor Code § 432.6(f), which exempts already-formed arbitration
8 agreements from the statute without affecting the statute’s prohibition on forming those
9 agreements as a condition of employment.

10 Finally, Defendants fail to confront the practical consequence of their position: the
11 immediate filing of lawsuits challenging any potentially invalid state-law rule—combined with a
12 TRO—in order to avoid later arguments by the State that a plaintiff took too long to sue.

13 **B. Plaintiffs Are Likely To Succeed In Demonstrating That AB 51 Is Preempted By**
14 **The Federal Arbitration Act.**

15 On the merits, Defendants largely repeat the rationales offered by the California Legislature
16 for why AB 51 purportedly survives federal preemption—rationales that Plaintiffs have already
17 refuted in detail. *See* P.I. Mot. 9-13 (ECF No. 5–1). Those arguments did not persuade Governor
18 Brown when he vetoed AB 51’s predecessor, and they should not persuade this Court.

19 To begin with, it is revealing that Defendants rely on a series of *dissents* to suggest that the
20 FAA requires “equal bargaining power” between the parties. Opp. 7. But that is not the law;
21 indeed, the assertion borders on the frivolous. Of course this Court—like all courts—is bound by
22 the *decisions* of the Supreme Court interpreting the FAA, not the dissents. *See DIRECTV, Inc. v.*
23 *Imburgia*, 136 S. Ct. 463, 468 (2015). In fact, the Supreme Court in recent years has repeatedly
24 upheld arbitration agreements entered into as a condition of employment—rejecting conclusions
25 to the contrary by federal courts in California. For example, the Ninth Circuit decision reversed
26 by the Supreme Court in *Epic Systems* involved arbitration agreements signed “[a]s a condition of
27 employment.” *Morris v. Ernst & Young, LLP*, 834 F.3d 975, 979 (9th Cir. 2016), *rev’d*, *Epic*
28 *Systems*, 138 S. Ct. 1612. And even more recently, in *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407

1 (2019), the Supreme Court reversed another Ninth Circuit decision involving an arbitration
2 agreement that the plaintiff “sign[ed] as a condition of his employment.” *Varela v. Lamps Plus,*
3 *Inc.*, 701 F. App’x 670, 671 (9th Cir. 2017), *rev’d*, 139 S. Ct. 1407. Those binding precedents
4 squarely foreclose Defendants’ position that the FAA has no effect on a state-law rule prohibiting
5 the use of arbitration as a condition of employment.

6 AB 51 flatly violates Section 2 of the FAA by imposing restrictions on the ability of
7 businesses to enter into arbitration agreements with their workers that do not apply to other types
8 of contracts, including other conditions of employment. After all, nearly any contract term (salary,
9 benefits, and the like) may be a condition of employment or other working relationship *except*,
10 under AB 51, a term that requires a substitute for litigation in court. *See* Mot. 5. As the Supreme
11 Court has put it, States may not “decide that a contract is fair enough to enforce all its basic terms
12 (price, service, credit), but not fair enough to enforce its arbitration clause.” *Doctor’s Assocs., Inc.*
13 *v. Casarotto*, 517 U.S. 681, 686 (1996) (quoting *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S.
14 265, 281 (1995)). AB 51 runs headlong into that principle by treating arbitration, unlike other
15 contractual terms, as an impermissible condition of employment. States lack the power to treat
16 arbitration as a harm to be avoided.

17 Next, as Defendants concede, AB 51 labels making arbitration agreements a condition of
18 employment as an “unfair hiring practice[]” and makes engaging in that practice a *crime*. Opp. 8;
19 *see* Cal. Lab. Code § 433. Defendants’ insistence that AB 51 does not “discourage arbitration”
20 (Opp. 1) makes no sense; the (wholly improper) purpose of the California Legislature was to
21 discourage the formation of workplace arbitration agreements by making it criminal to do so as a
22 condition of employment.

23 Defendants next repeat the exact semantic legerdemain that *Kindred* rejected when they
24 maintain that AB 51 does not single out arbitration agreements because it prevents the waiver of
25 the right to go to court (and “pursue class actions”) in “both arbitration and non-arbitration
26 agreements.” Opp. 2 & n.3, 7-8. But “a waiver of the right to go to court” is the “primary
27 characteristic of an arbitration agreement,” and Section 2 of the FAA forbids States from
28 “subjecting [arbitration agreements], by virtue of their defining trait, to uncommon barriers.”

1 *Kindred*, 137 S. Ct. at 1427. As Justice Kagan explained for the Court, any such rule, even if it
2 “avoid[s] referring to arbitration by name,” “covertly accomplishes” the impermissible objective
3 of disfavoring arbitration agreements by instead “disfavoring contracts that (oh so coincidentally)
4 have the defining features of arbitration agreements.” *Id.* at 1426 (citing *Concepcion*, 563 U.S. at
5 341; *Perry v. Thomas*, 482 U.S. 483, 493 n.9); *see also Concepcion*, 563 U.S. at 342-44. As the
6 U.S. Supreme Court recently reiterated, Section 2’s “savings clause does not save defenses that
7 target arbitration either by name *or by more subtle methods.*” *Epic*, 138 S. Ct. at 1622 (emphasis
8 added). Defendants’ attempt to salvage AB 51 cannot be squared with these holdings.

9 Finally, Defendants try to obscure the issue by pointing out AB 51’s language stating that
10 the statute is not “intended to invalidate a written arbitration agreement that is otherwise
11 enforceable under the Federal Arbitration Act.” Opp. 8 (quoting Cal. Labor Code § 432.6(f)). But
12 defendants do not deny that AB 51 penalizes businesses, including with potential criminal liability,
13 for *forming* an arbitration agreement after the statute goes into effect. Criminalizing the formation
14 of a federally protected arbitration agreement is preempted just as much as refusing to enforce an
15 arbitration agreement once made. *See* P.I. Mot. 12 (ECF No 5–1). A contrary result not only
16 “would make it trivially easy for States to undermine the [FAA],” *Kindred*, 137 S. Ct. at 1428, but
17 directly conflicts with the FAA’s objective “to promote arbitration,” *Concepcion*, 563 U.S. at 345,
18 by deterring businesses from entering into arbitration agreements as a routine condition of
19 employment. Accordingly, AB 51 not only violates Section 2, but also is preempted because it
20 “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of
21 Congress,” as expressed in the FAA. *Id.* at 352 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67
22 (1941)).

23 **C. Defendants’ Arguments On The Remaining Factors Are Meritless.**

24 Defendants have little to say on the remaining factors supporting entry of a temporary
25 restraining order. They acknowledge that their argument against Plaintiffs’ showing of irreparable
26 harm rests almost entirely on their premise that there is an “absence of any likely FAA
27 preemption.” Opp. 9. But that premise is wrong for all of the reasons just discussed.

28 Beyond that, Defendants offer only a single paragraph decrying as “conjecture” and

1 “opinion” Plaintiffs’ detailed showing of the irreparable harms that they and their members will
2 suffer in the absence of emergency relief. *See* Mot. 6-8 (ECF No. 8–1)); P.I. Mot. 13-17 (ECF No.
3 5–1); Declaration of Brian Maas (ECF No.5–2).² Defendants insist that “[n]othing in AB 51
4 prevents employers and their employees from entering into agreements to arbitrate.” Opp. 9.
5 Nothing, that is, except the risk of criminal prosecution. Defendants simply ignore Plaintiffs’
6 showing that the only practical approach to ensure compliance with AB 51 is to cease entering into
7 predispute arbitration agreements altogether, in order to avoid the genuine possibility that a court
8 or one of the Defendants would deem the process for entering into the arbitration agreement
9 insufficiently “voluntary.” *See* P.I. Mot. 15 (ECF No. 5–1).

10 Moreover, Defendants’ attempt to downplay the benefits of arbitration as “highly
11 speculative” (Opp. 9) runs headlong into the Supreme Court’s repeated recognition of those
12 benefits to businesses and workers alike. *See* Mot. 1-2 (citing *Circuit City Stores, Inc. v. Adams*,
13 532 U.S. 105, 122-23 (2001)). That recognition, of course, is embodied in the FAA itself, which
14 Congress enacted to promote arbitration. And Defendants have identified *no* harm whatsoever to
15 *them* that would result from the entry of a TRO for the short period of time until the Court can
16 resolve the preliminary injunction motion.

17 Finally, Defendants’ assertion that enforcement of AB 51 is in the public interest (Opp. 10)
18 is likewise based on their incorrect premise that AB 51 is not preempted by the FAA. Defendants
19 ignore entirely the weight of authority (cited at Mot. 9 (ECF No. 8–1)) explaining that the public
20 interest is always served by enjoining enforcement of invalid provisions of state law.

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28 ² Plaintiffs will separately oppose Defendants’ evidentiary objections to the Maas
Declaration, Dkt. No. 15.

CONCLUSION

The Court should enter a temporary restraining order prohibiting Defendants from enforcing AB 51 pending the resolution of Plaintiffs' motion for a preliminary injunction.

Dated: December 21, 2019

Respectfully submitted,

By: /s/ Donald M. Falk
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California Retailers Association, National
Association of Security Companies, Home Care
Association of America, and California Association
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** Motion for Admission Pro Hac Vice To Be Filed*

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
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NATIONAL RETAIL FEDERATION,
CALIFORNIA RETAILERS ASSOCIATION,
NATIONAL ASSOCIATION OF SECURITY
COMPANIES, HOME CARE ASSOCIATION
OF AMERICA, and CALIFORNIA
ASSOCIATION FOR HEALTH SERVICES
AT HOME,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
the Attorney General of the State of California,
LILIA GARCIA BROWER,
in her official capacity as the Labor
Commissioner of the State of California, JULIE
A. SU, in her official capacity as the Secretary
of the California Labor and Workforce
Development Agency, and KEVIN KISH, in his
official capacity as Director of the
California Department of Fair Employment and
Housing of the State of California,

Defendants.

Case No. 2:19-cv-02456-KJM-DB

**REPLY DECLARATION OF DONALD
M. FALK IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING
ORDER**

Hearing Date: December 23, 2019
Hearing Time: 2:00 p.m.
Courtroom: 3, 15th Floor (telephonic)

Hon. Kimberly J. Mueller

ORAL ARGUMENT REQUESTED

1 I, Donald M. Falk, hereby declare that:

2 1. I submit this reply declaration in support of Plaintiffs' Motion for a Temporary
3 Restraining Order. I have personal knowledge of the statements in this declaration and, if called
4 as a witness, I could and would testify to their truth.

5 2. I am a partner in the law firm of Mayer Brown LLP, counsel for plaintiffs Chamber
6 of Commerce of the United States of America and California Chamber of Commerce, and have
7 been an active member of the California Bar since 1990.

8 3. The complaint in this action was served on December 10 and 11, 2019.

9 4. As my earlier declaration stated, I first succeeded in making contact with
10 Defendants' counsel, with Deputy Attorney General Chad Stegeman, on Friday, December 13.

11 5. In my communications with Mr. Stegeman (who now represents all Defendants), I
12 raised the possibility that, if the Defendants would commit not to enforce AB 51 until the Motion
13 for a Preliminary Injunction was heard and decided, Plaintiffs would not need to file a motion for
14 temporary restraining order and also would be willing to set the preliminary injunction hearing for
15 a later date so that the parties would not have to draft the opposition and reply briefs over the
16 holidays.

17 6. Mr. Stegeman appeared for Defendants Becerra, Su, and Kish on December 17
18 (ECF No. 12). He did not appear for Defendant Brower until he filed the Opposition to Plaintiffs'
19 Motion for a Temporary Restraining Order shortly before noon on December 20.

20 7. I continued to try to engage Mr. Stegeman in discussions about alternatives to a
21 temporary restraining order.

22 8. At 12:32 p.m. on December 17, in my email forwarding the Court's minute order
23 of 12:05 that day, I reiterated to Mr. Stegeman that "Plaintiffs remain open to discuss a stipulated
24 alternative" to a temporary restraining order. A true and correct copy of an email string beginning
25 with that December 17 email is attached as Exhibit A.

26 9. I left a voicemail for Mr. Stegeman to the same effect at 12:34 p.m. on December
27 17.

28 10. Mr. Stegeman did not respond to my suggestion of a stipulated alternative to a TRO,

1 but instead presented a form extension of the time to answer the complaint without mentioning the
2 TRO or other possible adjustments to the schedule for the motion for a preliminary injunction. *See*
3 Ex. A.

4 11. At 4:07 p.m., I responded to Mr. Stegeman, asking to “address the standstill issue
5 first” before addressing the less urgent matter of the time to answer the complaint. I also stated
6 my “hope” that “the Labor Commissioner,” for whom Mr. Stegeman had not yet appeared, would
7 “sign[] on soon” to be represented by Mr. Stegeman. *See* Ex. A.

8 12. I received no response from Mr. Stegeman. I emailed him again at 3:30 p.m. on
9 December 18, asking whether he had his “last client,” *i.e.*, Defendant Brower, and stating that “it
10 would be good to see if we can reach an agreement before you have to file your response” to the
11 Motion for a Temporary Restraining Order, and asking him to “[l]et me know.” *See* Ex. A.

12 13. I received no response until 2:30 p.m. on December 19, at which time Mr. Stegeman
13 informed me for the first time that the Labor Commissioner in fact had contacted him on Monday,
14 December 16. That is before the Motion for a Temporary Restraining Order was filed and served
15 (and before Mr. Stegeman appeared for the other three defendants). Mr. Stegeman stated that the
16 Defendants would “oppose the TRO.” He did not mention my repeated offers to discuss a
17 stipulated alternative. *See* Ex. A.

18 14. Twelve minutes later, at 2:42 p.m., I responded to Mr. Stegeman in an email stating:
19 “I take it you have no interest in discussing some other form of preserving the status quo.” *See*
20 Ex. A.

21 15. At 6:55 p.m., Mr. Stegeman stated that it was “probably too late to do anything,”
22 but asked him to “let me know what you have in mind.” *See* Ex. A.

23 16. I responded by reiterating our offer to move the hearing to a date later than January
24 10 if Defendants would commit not to enforce AB 51 against agreements entered into before this
25 Court ruled on the Motion for a Preliminary Injunction. *See* Ex. A.

26 17. Mr. Stegeman did not respond.

27 18. Had Defendants engaged with us to discuss alternatives to a Temporary Restraining
28 Order, Plaintiffs would have been willing to negotiate a solution.

1 19. Rather than negotiate, Defendants instead chose to present their response in their
2 Opposition to the Motion for a Temporary Restraining Order, filed at 11:51 a.m. on December 20,
3 where they chided us for “not seeking an order shortening time on their motion for a preliminary
4 injunction.” ECF No. 14, at 6:5-6.

5 20. At 1:12 p.m., on December 20, in response to the statement in the Opposition, I
6 emailed Mr. Stegeman offering “to stipulate to any hearing date that the Court makes available on
7 or before December 31, 2019, with an appropriately shortened briefing schedule.” I asked him to
8 “let me know if we can inform the Court that you concur in this request,” and for an “immediate
9 response to this e-mail.” A true and correct copy of an email string beginning with that email is
10 attached as Exhibit B.


11 21. Mr. Stegeman responded at 5:38 p.m. that he would agree to a shortened briefing
12 schedule only if Plaintiffs would waive reply. He also asserted that the Labor Commissioner had
13 not been properly served until December 16, implying that service on her, and acceptance of
14 service, at the address she holds out to the public as her San Francisco office is inadequate. *See*
15 Declaration of Donald M. Falk, ECF No. 8-2, ¶¶ 12-15. *See Ex. B.*

16 22. On Saturday, December 21, I declined to waive reply, but offered (should the Court
17 approve and set a hearing on the preliminary injunction before January 1) to file our reply by noon
18 the day before the hearing, provided that Defendants file their opposition 24 hours earlier. *See Ex.*
19 *B.*

20 23. I will immediately inform the Court if the parties agree to request an expedited
21 hearing and briefing schedule on the motion for a preliminary injunction.

22 I declare under penalty of perjury that the foregoing is true and correct.

23
24 Executed this 21st day of December 2019, at Oakland, California.

25
26 
27 _____
28 Donald Falk

Falk, Donald M.

From: Falk, Donald M. <DFalk@mayerbrown.com>
Sent: Thursday, December 19, 2019 8:50 PM
To: Chad Stegeman
Subject: Re: Activity in Case 2:19-cv-02456-KJM-DB Chamber of Commerce of the USA et al v. Becerra et al Minute Order.

Chad - It is late In the day, but we propose that your clients agree not to enforce AB51 against agreements entered until before the court rules on the motion for a preliminary injunction. We will agree to move the hearing (and thus the briefing schedule) back to a date mutually satisfactorily (and at this point any of her Friday hearing dates in January look fine to us).

Thanks, Don

Sent from my iPhone

On Dec 19, 2019, at 6:55 PM, Chad Stegeman <chad.stegeman@doj.ca.gov> wrote:

****EXTERNAL SENDER****

As a practical matter, it's probably too late to do anything on this, but let me know what you have in mind.

From: Falk, Donald M. <DFalk@mayerbrown.com>
Sent: Thursday, December 19, 2019 2:41:36 PM
To: Chad Stegeman
Subject: RE: Activity in Case 2:19-cv-02456-KJM-DB Chamber of Commerce of the USA et al v. Becerra et al Minute Order.

I take it that means you have no interest in discussing some other form of preserving the status quo?

Donald M. Falk
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T +1 650 331 2030

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-----Original Message-----

From: Chad Stegeman <Chad.Stegeman@doj.ca.gov>

Sent: Thursday, December 19, 2019 2:30 PM

To: Falk, Donald M. <DFalk@mayerbrown.com>

Subject: RE: Activity in Case 2:19-cv-02456-KJM-DB Chamber of Commerce of the USA et al v. Becerra et al Minute Order.

EXTERNAL SENDER

Don,

Yes. The Labor Commissioner was served Monday, and they quickly contacted me. We will oppose the TRO.

Chad A. Stegeman | Deputy Attorney General | California Department of Justice Government Law Section | 455 Golden Gate Ave., Suite 11000 | San Francisco, CA 94102 t (415) 510-3624 | f (415) 703-5843 | e chad.stegeman@doj.ca.gov<mailto:chad.stegeman@doj.ca.gov>

Sent from my iPhone

From: Falk, Donald M. <DFalk@mayerbrown.com>

Sent: Wednesday, December 18, 2019 3:30 PM

To: Falk, Donald M. <DFalk@mayerbrown.com>; Chad Stegeman <Chad.Stegeman@doj.ca.gov>

Subject: RE: Activity in Case 2:19-cv-02456-KJM-DB Chamber of Commerce of the USA et al v. Becerra et al Minute Order.

Chad – Have you gotten your last client yet? It would be good to see if we can reach an agreement before you have to file your response to the MTRO. Let me know. Thanks, Don

Donald M. Falk

Partner

Certified Appellate Specialist, California State Bar Board of Legal Specialization Mayer Brown LLP Two Palo Alto Square, Suite 300

3000 El Camino Real

Palo Alto, CA 94306-2112

United States of America

T +1 650 331 2030

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From: Falk, Donald M. <DFalk@mayerbrown.com<mailto:DFalk@mayerbrown.com>>
Sent: Tuesday, December 17, 2019 4:07 PM
To: Chad Stegeman <chad.stegeman@doj.ca.gov<mailto:chad.stegeman@doj.ca.gov>>
Subject: Re: Activity in Case 2:19-cv-02456-KJM-DB Chamber of Commerce of the USA et al v. Becerra et al Minute Order.

Hi Chad. Hope the Labor Commissioner signs on soon. Let's address the standstill issue first. I will review this stip for form. Thanks, Don Sent from my iPhone

On Dec 17, 2019, at 1:40 PM, Chad Stegeman <chad.stegeman@doj.ca.gov<mailto:chad.stegeman@doj.ca.gov>> wrote:

****EXTERNAL SENDER****

Thanks Don, for forwarding the below. I'll enter an appearance later today so I can begin receiving the notices. Also, per our discussion yesterday, I've attached a stipulation re responding to the complaint under LR 144. This will push a response date out of the holidays and past the PI hearing so we can deal with it then. It's written on behalf of all defendants, which I anticipate representing in the near term. Please let me know if you approve.

Chad

From: Falk, Donald M. <DFalk@mayerbrown.com<mailto:DFalk@mayerbrown.com>>
Sent: Tuesday, December 17, 2019 12:32 PM
To: Chad Stegeman <Chad.Stegeman@doj.ca.gov<mailto:Chad.Stegeman@doj.ca.gov>>; Paula Pearlman <Paula.Pearlman@dfeh.ca.gov<mailto:Paula.Pearlman@dfeh.ca.gov>>;
tbichsel@dir.ca.gov<<mailto:tbichsel@dir.ca.gov>>
Subject: Fwd: Activity in Case 2:19-cv-02456-KJM-DB Chamber of Commerce of the USA et al v. Becerra et al Minute Order.

Counsel- Below please find the district court's minute order entered shortly after noon today, stating that any opposition to the TRO must be filed by noon on Friday, December 20. Plaintiffs remain open to discuss a stipulated alternative.

Regards,
Don
Sent from my iPhone

Begin forwarded message:
From: "caed_cmecf_helpdesk@caed.uscourts.gov<mailto:caed_cmecf_helpdesk@caed.uscourts.gov>"

<caed_cmecl_helpdesk@caed.uscourts.gov<mailto:caed_cmecl_helpdesk@caed.uscourts.gov>>

Date: December 17, 2019 at 12:05:29 PM PST

To: "CourtMail@caed.uscourts.dcn<mailto:CourtMail@caed.uscourts.dcn>"

<CourtMail@caed.uscourts.dcn<mailto:CourtMail@caed.uscourts.dcn>>

Subject: Activity in Case 2:19-cv-02456-KJM-DB Chamber of Commerce of the USA et al v. Becerra et al Minute Order.

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The following transaction was entered on 12/17/2019 at 12:04 PM PST and filed on 12/17/2019 Case Name:

Chamber of Commerce of the USA et al v. Becerra et al

Case Number:

2:19-cv-02456-KJM-

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Filer:

Document Number:

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Docket Text:

MINUTE ORDER issued by Relief Courtroom Deputy G. Michel for District Judge Kimberly J. Mueller on 12/17/2019: The court is in receipt of Plaintiffs' Motion for Temporary Restraining Order. ECF No. [8]. Plaintiffs noticed the motion for hearing on a date and time the court is unavailable. Accordingly, the 12/19/2019 motion hearing is VACATED. Plaintiffs shall immediately notify defendants that they may file any opposition to the motion no later than noon on 12/20/2019; Plaintiffs shall provide notice to the court that they have fulfilled this directive. The court will on its own motion set a telephonic hearing if it deems a hearing necessary. IT IS SO ORDERED. (Text Only Entry) (Michel, G.)

2:19-cv-02456-KJM-DB Notice has been electronically mailed to:

Bruce J. Sarchet bsarchet@littler.com<mailto:bsarchet@littler.com>, lmiche@littler.com<mailto:lmichel@littler.com>, mbaskin@littler.com<mailto:mbaskin@littler.com>, vdowney@littler.com<mailto:vdowney@littler.com>

Donald M. Falk dfalk@mayerbrown.com<mailto:dfalk@mayerbrown.com>

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Falk, Donald M.

From: Falk, Donald M.
Sent: Saturday, December 21, 2019 12:15 PM
To: Chad Stegeman
Cc: Parasharami, Archis A.
Subject: RE: Chamber of Commerce v. Becerra (AB 51)

Chad –

As you know, we first spoke last Friday, December 13. During that conversation, I raised our proposal of a standstill agreement—i.e., that the State defendants would not enforce AB51 until resolution of the motion for a preliminary injunction. I pointed out that an agreement of that kind would have allowed for a briefing schedule that did not center on the holidays. You declined to engage at that point because you said you did not yet represent any of the defendants. I repeatedly sought to open a discussion on this topic—on which there was room for give-and-take--but you did not respond to those overtures until Thursday night at 6:55 p.m. You did not even correct my misimpression that you had not yet been contacted by the Labor Commissioner, who you now say reached out to you on Monday, December 16. If you had responded to my repeated requests to discuss an informal resolution, the parties could have conferred about a range of scheduling options that might have made a TRO unnecessary, whether by preserving the status quo in whole or in part, or by accelerating briefing on the preliminary injunction motion.

On the last point, we would welcome an expedited briefing schedule on the motion for a preliminary injunction. We are unwilling to waive reply, but with the Court's permission will agree to file our reply by noon on the day before the hearing, provided that you file your opposition at least 24 hours before then.

Finally, I am surprised to hear that you believe the Labor Commissioner was not properly served. As you know, we served the Labor Commissioner at the address she holds out to the public as her San Francisco office. Someone at that address signed to accept service. If you believe that address is nonetheless an improper address at which to serve the Labor Commissioner, I would appreciate an explanation.

You are authorized to file the stipulated extension of time to answer the complaint with my e-signature.

Regards, Don

Donald M. Falk
Partner

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-----Original Message-----

From: Chad Stegeman <Chad.Stegeman@doj.ca.gov>
Sent: Friday, December 20, 2019 5:37 PM
To: Falk, Donald M. <DFalk@mayerbrown.com>
Cc: Parasharami, Archis A. <AParasharami@mayerbrown.com>
Subject: RE: Chamber of Commerce v. Becerra (AB 51)

EXTERNAL SENDER

Don,

I did not decline to engage with you about the schedule for the PI motion, which you unilaterally set before we were served and I became involved here. So I'm not sure what you are talking about. Note-I first filed my notice of appearance on behalf of only some of my clients on Tuesday afternoon, three days ago. And you did not approach us about shortening time for the motion, but rather you wanted us, at the last minute, to stipulate to a TRO. One of my clients was first served on Monday (notice for the PI is improper as to this client).

Given I now have a week to respond to a PI motion, with a weekend and holidays that considerably shorten that time, I cannot agree to shorten the time to oppose the motion. In an attempt to move this along, if you waive the reply, extend the time to respond to the complaint under LR 144 so I don't have to focus on another filing on December 31, and the court has a hearing date available on the 31st, I can run the possibility of a shortened hearing schedule by my clients.

Chad

Chad A. Stegeman | Deputy Attorney General | California Department of Justice Government Law
Section | 455 Golden Gate Ave., Suite 11000 | San Francisco, CA 94102 t (415) 510-3624 | f (415) 703-
5843 | e chad.stegeman@doj.ca.gov<mailto:chad.stegeman@doj.ca.gov>

From: Falk, Donald M. <DFalk@mayerbrown.com>
Sent: Friday, December 20, 2019 1:12 PM
To: Chad Stegeman <Chad.Stegeman@doj.ca.gov>
Cc: Parasharami, Archis A. <AParasharami@mayerbrown.com>
Subject: Chamber of Commerce v. Becerra (AB 51)

Chad –

Given that you declined to engage with me in any discussions about the schedule for the PI motion, I was surprised to see in your brief that you are apparently willing to shorten time for the hearing on the preliminary injunction. Had you engaged in any discussions as I requested, we certainly would have raised that approach.

Plaintiffs will be happy to stipulate to any hearing date that the Court makes available on or before December 31, 2019, with an appropriately shortened briefing schedule. Please let me know if we can inform the Court that you concur in this request.

I would appreciate your immediate response to this e-mail.

Thanks, Don

Donald M. Falk
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Certified Appellate Specialist, California State Bar Board of Legal Specialization Mayer Brown LLP Two
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United States of America
T +1 650 331 2030

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