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In Pro Per

July 14, 2017
by **cm/ecf**

Ms. Molly C. Dwyer
Clerk, United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

RE: *Charles Nichols v. Edmund Brown, Jr., et al* 9th Cir. No.: 14-55873

Dear Ms. Dwyer:

Plaintiff-Appellant Nichols submits *REPLY TO OBJECTION to Report and Recommendation (Issued) 162 filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 04/14/2014)* (District Court Docket # 164) as supplemental authority under FRAP Rule 28(j).

The Report and Recommendation by the Magistrate Judge ER8-51 was accepted by Order of the district court judge ER2-7.

The REPORT AND RECOMMENDATION BY THE MAGISTRATE JUDGE recommended that the Defendant-Appellee Attorney General's Motion for Judgment on the Pleadings be granted and Plaintiff-Appellant Nichols' Motion for

Partial Summary Judgment be denied because the material facts were not at issue. ER50 and ER42.

Defendant-Appellee Attorney General filed the above referenced reply stating on page 2, line 3, **“The Attorney General agrees with the R & R...”**

Defendant-Appellee Attorney General forfeited any challenge to the Report and Recommendation by filing a document agreeing with the Report and Recommendation and by not filing a notice of appeal and by not challenging the finding of the report and recommendation in the district court and by not properly challenging the Order of the district court on appeal.

The motion could not have been granted had there been a material issue of fact remaining, *Hal Roach Studios v. Richard Feiner and Co.*, 896 F. 2d 1542, 1550 (9th Cir. 1990) and presumably any competent attorney would not file a 12(c) motion while believing that there was a material issue of fact remaining.

“The facts are not in dispute. *Nichols*’ appeal involves solely pure questions of law.” Reply Brief at 5, 33.

Dismissal on the pleadings pursuant to Rule 12(c) is reviewed *de novo*. Constitutional questions are reviewed de novo. *Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d 1099, 1103 (9th Cir. 2004). Appellant’s Opening Brief at 30.

Given that the facts are not in dispute, all that remains are pure questions of law.

Nichols submits that the Defendant-Appellees do not have standing to raise any factual challenge or dispute on appeal and have clearly forfeited any standing they might have had regarding factual disputes.

The body of this letter contains 333 words.

Sincerely,

/s/ Charles Nichols

Charles Nichols
Plaintiff-Appellant in Pro Per

cc: counsel of record (by cm/ecf)

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 Attorney General of California
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 7 *Attorneys for Defendant California Attorney
 General Kamala D. Harris*

9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

13 **CHARLES NICHOLS,**
 14 Plaintiff,
 15 v.
 16 **EDMUND G. BROWN JR., in his
 official capacity as Governor of
 California, KAMALA D. HARRIS, in
 17 her official capacity as Attorney
 General of California, CITY OF
 18 REDONDO BEACH, CITY OF
 19 REDONDO BEACH POLICE
 DEPARTMENT, CITY OF
 20 REDONDO BEACH POLICE
 CHIEF JOSEPH LEONARDI and
 21 DOES 1 to 10,**
 22 Defendants.

2:11-cv-09916-SJO-(SS)
**DEFENDANT KAMALA D.
 HARRIS'S RESPONSE TO
 PLAINTIFF CHARLES
 NICHOLS'S OBJECTIONS TO U.S.
 MAGISTRATE JUDGE REPORT
 AND RECOMMENDATION**
 Date: N/A
 Time: N/A
 Crtrm.: 1 – 2nd Flr.
 Judge: Hon. S. James
 Otero
 Trial Date: Not Yet Set
 Action Filed: Nov. 30, 2011

24 Defendant Kamala D. Harris, Attorney General of California (the “Attorney
 25 General”), submits the following response to the objections (“Objection”) of
 26 Plaintiff Charles Nichols (“Nichols”) to U.S. Magistrate Judge Suzanne H. Segal’s
 27
 28

1 March 18, 2014, report and recommendation (“R & R”) about the potentially
2 dispositive motions pending in the present case.

3 The Attorney General agrees with the R & R and disagrees with Nichols’s
4 objections, which seem largely duplicative of his rejected contentions in the motion
5 papers. The Attorney General makes the present submission, nonetheless, in order
6 to respond to two new points that Nichols has raised in his Objection.

7 First, Nichols is incorrect in asserting that the Attorney General
8 “acknowledged her defeat on” Nichols’s supposed claim of race-based
9 discrimination in the enforcement of the firearm “open-carry” laws in question in
10 this case. Objection, 6:19-7:5; *accord, id.*, at 21:27-23:5. The Attorney General
11 has not conceded any part of Nichols’s claim, and in fact has denied that Nichols
12 has properly articulated the claim. (See, e.g., footnote 3 to the Attorney General’s
13 memorandum of points and authorities in support of her motion for judgment on the
14 pleadings (Nov. 12, 2013).) Furthermore, Nichols improperly cites to passages in
15 an *erroneously filed draft* version of the Attorney General’s opposition to Nichols’s
16 (offensive) motion for partial summary judgment. The Attorney General’s
17 corrected pleading, filed a day later with a notice of errata, does not include the
18 passages cited by Nichols. (Compare Dkt. # 140 (Dec. 2, 2013) with Dkt. # 141-1
19 (Dec. 3, 2013).)

20 Second, the Attorney General objects to Nichols’s new declaration claiming
21 that he is of (some undefined) mixed-race heritage. Opposition, 22:19-22:26.
22 Nichols did not present any evidence on this issue in the summary-judgment papers,
23 although Nichols did assert what his age and gender were (see Dkt. # 136 at 32:11-

24 //
25 //
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27 //

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1 32:12). Nichols should not be allowed to introduce new evidence about his race, a
2 matter not pleaded, in an objection to the R & R.

3 Dated: April 14, 2014

Respectfully submitted,

4 KAMALA D. HARRIS
5 Attorney General of California
6 MARK R. BECKINGTON
7 Supervising Deputy Attorney General

8 /s/
9 JONATHAN M. EISENBERG
10 Deputy Attorney General
11 *Attorneys for Defendant California*
12 *Attorney General Kamala D. Harris*

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DECLARATION OF SERVICE BY U.S. MAIL

Court Name: **U.S. District Court, Central District of California**

Case Name: ***Nichols v. Brown***

Case No.: **11-cv-09916-SJO-SS**

I declare:

I am employed in 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 18 years of age or older and not a party to this matter. My business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On April 14, 2014, I served the attached **DEFENDANT KAMALA D. HARRIS'S RESPONSE TO PLAINTIFF CHARLES NICHOLS'S OBJECTIONS TO U.S. MAGISTRATE JUDGE REPORT AND RECOMMENDATION** by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the U.S. mail at Los Angeles, California, addressed as follows:

Charles Nichols
P.O. Box 1302
Redondo Beach, CA 90278

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 14, 2014, at Los Angeles, California.

Jonathan M. Eisenberg
Declarant

/s/ Jonathan M. Eisenberg
Signature

9th Circuit Case Number(s)

14-55873

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date)

July 14, 2017

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

Signature (use "s/" format)

/s/ Charles Nichols

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date)

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

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)