XAVIER BECERRA, State Bar No. 118517
Attorney General of California
ANTHONY R. HAKL
Acting Supervising Deputy Attorney General
GABRIELLE D. BOUTIN, State Bar No. 267308
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-6053
Fax: (916) 324-8835
E-mail: Gabrielle.Boutin@doj.ca.gov
Attorneys for Defendant Attorney General Xavier Becerra

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL RICHARDSON, Plaintiff, **v.** **JEFFERSON SESSIONS, in his official capacities; XAVIER BECERRA, in his official capacities,** Defendants.	2:17-cv-1838 JAM AC PS **NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES** Date: January 24, 2018 Time: 10:00 a.m. Dept: 26 Judge: The Hon. Allison Claire Trial Date: None set Action Filed: 9/5/2017

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

NOTICE OF MOTION AND MOTION

TO PLAINTIFF:

PLEASE TAKE NOTICE THAT on January 24, 2018, at 10:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Allison Claire in Courtroom 26 of the United States District Court for the Eastern District of California, located at 501 "I" Street, Sacramento, California, Defendant Xavier Becerra will move this Court to dismiss plaintiff's complaint pursuant to 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. This motion to dismiss is made on the grounds that this Court lacks subject matter jurisdiction and that plaintiff fails to state a claim upon which relief can be granted.

This motion is based on this Notice, the Memorandum of Points and Authorities, the declaration of Kara Weiland, and the papers and pleadings on file in this action, and upon such matters as may be presented to the Court at the time of the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This case is an as-applied constitutional challenge to sex-offender laws. The complaint challenges three California state laws: (1) The Sex Offenders Registration Act (SORA), which requires convicted sex offenders to register with local law enforcement; (2) Megan's Law, which requires the California Department of Justice to post on the Internet certain information about sex offenders in order to promote public safety; and (3) Jessica's Law, which restricts where sex offenders may reside while they are on parole.

Plaintiff's sixth through ninth claims should be dismissed under Federal Rule of Civil Procedure 12(b)(6). The sixth through eighth claims are constitutional claims requiring that the challenged law be punitive in nature. Under settled Supreme Court and Ninth Circuit law, SORA and Megan's Law are not punitive. Jessica's Law, meanwhile, does not apply to Plaintiff at all, because he alleges that he is not currently on parole. The ninth claim fails with respect to all challenged laws, because none impose involuntary servitude under the Thirteenth Amendment.

Plaintiff's sixth through ninth claims should also be dismissed under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction to the extent Plaintiff seeks to hold

Defendant Becerra responsible for the enforcement of federal law or local ordinances. Defendant Becerra has sovereign immunity against all claims in law and equity other than those for which he has direct enforcement authority.

For these reasons, the sixth through ninth claims in the complaint should be dismissed for failure to state a claim and lack of subject matter jurisdiction.[1]

FACTUAL AND PROCEDURAL BACKGROUND

I. PLAINTIFF'S COMPLAINT

Plaintiff admits that in 2006, he was found guilty of committing various sex offenses, which occurred in 2004. Complaint ("Compl.") at 12-13, 223.

The California Department of Justice maintains a "Megan's Law Website" which provides information on some registered sex offenders pursuant to California Penal Code § 290.46, so that members of the public can better protect themselves and their families. *See* https://www.meganslaw.ca.gov. The information on this site is extracted from the California Sex and Arson Registry (CSAR), the State's repository for sex offender information. Pen. Code § 290.012(d). The information in the CSAR is provided to local law enforcement agencies by the sex offender during the registration process. *Id.*

According to his profile on the Megan's Law website, Plaintiff was convicted of three felonies: attempted lewd or lascivious acts with a child under 14 years of age (Pen. Code § 288 (a)), annoying or molesting a child under 18 years of age (Pen. Code § 647.6(a)), and distributing harmful matter depicting a minor or sent to a minor via the Internet or email (Pen. Code §

[1] To be sure, Plaintiffs' complaint is an omnibus one, spanning ninety-two pages and purporting to allege nine causes of action. While this motion challenges about half of those claims, Defendant does not concede that the remaining claims (i.e., the first through fifth causes of action) have any merit. Indeed, defendant anticipates seeking dismissal of those claims by later motion, as appropriate. Moreover, this court has the authority to dismiss any claim against Defendant Becerra *sua sponte* on the basis of any motion to dismiss filed by co-defendant United States Attorney General Jefferson Sessions. *See Silverton v. Department of Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981) ("A [d]istrict [c]ourt may properly on its own motion dismiss an action as to defendants who have not moved to dismiss where such defendants are in a position similar to that of moving defendants").

288.2(b)[2]. *See also* Compl. At 12-13. Plaintiffs served a prison sentence for his crimes and completed his period of parole. *Id.* at 13.

On September 5, 2017 Plaintiff, proceeding pro se and in forma pauperis, filed a complaint for declaratory and injunctive relief. Compl. at 1. The complaint named as defendants United States Attorney General Jefferson Sessions and California Attorney General Xavier Becerra, both in their official capacities. *Id.*

The complaint alleges that, as applied to Plaintiff, certain federal, state, and local sex offender regulatory laws are unconstitutional. *See, e.g.*, Compl. at 1, 4-5. Plaintiff alleges that these laws require him to register as a sex offender, require the publication of his information on the Megan's Law website, and restrict his travel and movements. *See id.* at pp. 4-7. He specifically challenges the following state laws:

- The Sex Offenders Registration Act (SORA), Penal Code sections 290 – 290.024, which require sex offenders to register with local law enforcement (*see id.* at pp. 14-16);
- Megan's Law, Penal Code section 290.46, which mandates that some sex offender's information be posted and available to the public on the Megan's Law website (*see id.*), and;
- California Penal Code § 3003.5(b), part of "Jessica's Law," which restricts the places where paroled sex offenders may reside (*see e.g.* at pp. 4-5, 60)[3].

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[2] Defendant Becerra asks this Court to take judicial notice of the content of Plaintiff's profile on the website pursuant to Federal Rule of Evidence 201(b)(2) (facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"). *See also Terrebonne v. Blackburn,* 646 F.2d 997, 1000 n. 4 (5th Cir.1981) ("Absent some reason for mistrust, courts have not hesitated to take judicial notice of agency records and reports.").

[3] The complaint also mentions in passing Penal Code section 3003 and Welfare and Institutions Code section 6608.5, which are not discussed in this motion because clearly they are inapplicable here. Penal Code section 3003, which is also part of Jessica's Law, prescribes the parole process for sex offenders. Welfare and Institutions Code section 6608.5 governs the release and placement of sex offenders following civil commitment (not imprisonment).

The complaint also challenges federal law related to sex offenders, including the Sex Offender Notification Act (SORNA) (34 U.S.C. 20901[4] *et seq.*), as well as unspecified local ordinances.

The complaint asserts nine distinct claims, including the sixth claim for violation of the Ex Post Facto Clause, the seventh claim for "separation of powers doctrine and bill of attainder," the eighth claim for cruel and unusual punishment, and the ninth claim for involuntary servitude. Compl. at 56, 60, 77, 81.

All claims appear to be alleged against both defendants. Compl. At 16, 22, 29, 39, 48, 56, 60, 77, 81.

II. REGISTRATION AND NOTIFICATION REQUIREMENTS IN CALIFORNIA LAW

Offenders convicted of specified sex crimes in California have been required to register with local law enforcement since 1947. *Doe v. Harris*, 772 F.3d 563, 568 (9th Cir. 2014). Today, the statutes requiring registration are found in SORA, Penal Code sections 290 – 290.024. California is also required by federal law (SORNA) to maintain a sex offender registration program. 34 U.S.C. § 20912. Sex offender registration is designed to promote the state's interest in controlling crime, facilitating investigation of sex crimes, and preventing recidivism in sex offenders. *Wright v. Superior Court*, 15 Cal.4th 521, 527 (1997). Registration consists of a written statement, signed by the offender, giving information required by the California Department of Justice (DOJ), the fingerprints and photograph of the offender, and the license plate number of any vehicle owned by, regularly driven by, or registered in the name of the offender. Penal Code § 290.015.

In 1994, the California Legislature established a "900" telephone line, which the public could call and, for a fee, obtain information about registered sex offenders who had been convicted of designated sex crimes against children. 1994 Cal. Stats., c. 867, § 4, p. 4396-4400, effective July 1, 1995; see former Cal. Penal Code § 290.4. DOJ was to operate the "900" line and furnish information if the individual identified by the caller was one of the designated sex

[4] The Act was formerly at 42 U.S.C. § 16901, which is the citation used by Plaintiff in the complaint.

offenders. The caller would receive information about the offender's community of residence, zip code, physical description, and the crimes prompting the sex offender to register. *Id.*

In 2004, the California Legislature enacted Penal Code section 290.46, also known as "Megan's Law." The statute provides that "the Department of Justice shall make available information concerning persons who are required to register [as sex offenders] pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis." Penal Code § 290.46(a); Stats. 2004, ch. 745 (A.B. 488). Maintaining such a website is also required by SORNA. 34 U.S.C. § 20920. The information on the site must include the offender's "name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history" and, depending on the crime the offender committed, either "the address at which the person resides" or "the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient." Penal Code § 290.46(b)(1), (c)(1), & (d)(1).

In 2006, California voters passed Proposition 83, "Sexual Predatory Punishment and Control Act: Jessica's Law." *People v. Lynch*, 2 Cal.App.5th 524, 527 (2016). Among other provisions, Jessica's Law places residency restrictions on registered sex offenders. *Id.*; Penal Code § 3003.5(b). However, its application is limited to sex offenders who are currently on parole. *Lynch*, 1 Cal.App.5th at 527-529; 3 WITKIN, CAL. CRIM. LAW, Ch. IX, § 133 (4th ed. 2012); *see also Murtishaw v. Woodford*, 255 F.3d 926, 964–65 (9th Cir. 2001) (a federal court will look to state court precedent to determine the meaning of a challenged state statute); *Jensen v. Hernandez*, 864 F.Supp.2d 869 (E.D. Cal. 2012) (holding prisoner's claim not ripe where no evidence suggested that residency the requirement of section 3003.5 would be a condition of his parole).

ARGUMENT

I. LEGAL STANDARDS

A. Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the complaint. *North Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). "To survive a motion to

dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations and quotations omitted).

"A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)). The court accepts as true all material allegations in the complaint and construes those allegations in the light most favorable to the plaintiff. *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). The court may also consider matters properly subject to judicial notice. *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 899–900 (9th Cir. 2007). However, the court need not accept as true legal conclusions, conclusory allegations, unwarranted deductions of fact, or unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988, *amended by* 275 F.3d 1187 (9th Cir. 2001); *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

B. Rule 12(b)(1)

Rule 12(b)(1) allows a party to raise the defense that the court lacks "jurisdiction over the subject matter" of a claim. "A motion to dismiss for lack of subject matter jurisdiction may either attack the allegations of the complaint or may be made as a 'speaking motion' attacking the existence of subject matter jurisdiction in fact." *Thornhill Publ'g Co. v. Gen. Tel. & Elecs.*, 594 F.2d 730, 733 (9th Cir. 1979) (citations omitted). The instant Rule 12(b)(1) motion attacks the allegations of the complaint. In such cases, and similar to the standards applicable to Rule 12(b)(6) motions, the district court must accept the allegations of the complaint as true. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1121-22 (9th Cir. 2010); *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (plaintiff bears burden of showing federal subject matter jurisdiction). However, where a Rule 12(b)(1) motion is brought, the burden of proof is on the party asserting federal subject matter jurisdiction. *Id.*

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II. THE SIXTH CLAIM FOR VIOLATION OF EX POST FACTO CLAUSE FAILS TO STATE A CLAIM

The Sixth Claim for violation of the Ex Post Facto Clause should be dismissed because Plaintiff has failed to allege that application to him of Jessica's Law, SORA, or Megan's Law would violate the Ex Post Facto Clause of the United States Constitution. This is for the following reasons, which are detailed below:

1. Jessica's Law does not apply to Plaintiff. It applies only to sex offenders currently on parole, and Plaintiff has alleged that he has already completed parole.

2. Plaintiff has not alleged facts showing that SORA applies to him retroactively; and, in any event, the Ninth Circuit has determined that SORA's registration requirements are non-punitive.

3. Under the Supreme Court's decision in *Smith v. Doe*, Megan's Law is also non-punitive.

A. Jessica's Law Does Not Apply to Plaintiff Because He is Not Currently on Parole

Plaintiff has failed to state a claim that the residency restrictions in Jessica's Law, as applied to him, would violate the Ex Post Facto Clause. This is simply because Jessica's Law does not apply to him at all. Jessica's Law applies only to sex offenders who are currently on parole. *People v. Lynch*, 2 Cal.App.5th 524, 527 (2016); *see also Jensen v. Hernandez*, 864 F.Supp.2d 869 (E.D. Cal. 2012); Penal Code § 3003.5(b).

Plaintiff expressly alleges in the complaint that he has already completed his parole term. Compl. At 13. Any declaratory relief or injunction prohibiting application of the law would be moot and is therefore not proper. *See ACLU of Nev. v. Masto*, 670 F.3d 1046, 1061-62 (case rendered moot and court lacked jurisdiction where Nevada admitted that it did not intend to attempt to enforce sex offender residency statute retroactively).

As a result, Plaintiff has failed to state a claim challenging Jessica's Law's application to him under the Ex Post Facto Clause.

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B. SORA's Registration Requirements Do Not Apply Retroactively to Plaintiff and Are Non-Punitive

Plaintiff has failed to state a claim that the sex offender registration requirement in SORA, as applied to him, would violate the Ex Post Facto Clause. A violation of the Ex Post Facto Clause requires: (1) the retroactive application of (2) a punitive law. *Johnson v. United States*, 529 U.S. 694, 701 (2000). Neither of these elements are alleged in the complaint with respect to SORA.

First, Plaintiff has not alleged in the complaint that the sex offender registration requirement in SORA was enacted after he committed his offenses in 2004. In fact, offenders convicted of some sex crimes in California have been required to register with local law enforcement since 1947. *Doe v. Harris*, 772 F.3d 563, 568 (9th Cir. 2014). Plaintiff has therefore failed to allege the essential element of retroactive application of the statute.

Second, to potentially violate the Ex Post Facto Clause, a statute must be punitive, as opposed to civil and regulatory, in nature. *Smith v. Doe*, 538 U.S. 84, 92 (2003).

To decide whether a statute is punitive, and therefore violates the Ex Post Facto Clause, a court will apply a two-part test, enumerated in *Smith v. Doe*. Applying that test, the Ninth Circuit has repeatedly held that the registration requirements in SORA are non-punitive and that their application therefore cannot violate the Ex Post Facto Clause. *Hatton v. Bonner*, 356 F.3d 955, 963-64 (9th Cir. 2004), *accord Doe v. Harris*, 640 F.3d 972, 975 n. 3 (9th Cir. 2011), *accord U.S. v. Hardeman*, 704 F.3d 1266, 1268 (9th Cir. 2013); *Litmon v. Harris*, 768 F.3d 1237, 1242–43 (9th Cir. 2014). The California Supreme Court has also found the registration requirement in SORA to be non-punitive. *People v. Castellanos*, 21 Cal.4th 785, 799 (1999). Under these authorities, no application of the registration requirements in SORA to Plaintiff violates the Ex Post Facto Clause.

The complaint therefore fails to sufficiently allege the required elements of an ex post facto violation based on SORA.

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C. The Public Notification Provisions in Megan's Law Are Also Non-Punitive and Therefore Outside the Scope of the Ex Post Facto Clause

Like SORA, the public notification provision in Megan's Law, Penal Code section 290.46, is also non-punitive and therefore cannot support an alleged violation of the Ex Post Facto Clause. Although not necessarily binding here, California courts have already reached this conclusion. *See Doe v. California Department of Justice*, 93 Cal.Rptr.3d 736 (Cal. Ct. App. 2009); *People v. Presley,* 67 Cal.Rptr.3d 826 (Cal. Ct. App. 2007).

In the governing Supreme Court case of *Smith v. Doe*, 538 U.S. 84, 89-90 (2003), convicted sex offenders challenged Alaska's Sex Offender Registration Act which, like Megan's Law, required public notification of sex offender information on an Internet website. *Smith*, 538 U.S. at 84. Alaska's Act requires publication of the same categories of sex offender information as those required under Megan's law (i.e., name, aliases, photograph, physical description, date of birth, criminal history, and either address or community and zip code) and, additionally, the offenders' place of employment, license plate number, description of motor vehicles, and whether the offender is in compliance with sex offender registration laws. *Compare* Cal. Penal Code § 290.46(b)(1), (c)(1), & (d)(1) *with* Alaska Stat. § 18.65.087(b); *see also Smith*, 538 U.S. at 84. The *Smith* plaintiffs had both been convicted of sex offenses before Alaska's Act was enacted, and claimed that the law constituted retroactive punishment prohibited by the Ex Post Facto Clause. *Id.* The Supreme Court disagreed and upheld the law. *Id.* at 105-106. It doing so, it applied a two-part test.

First, a court must examine whether the legislature, when enacting the challenged provision, intended to impose punishment on sex offenders or to establish a civil regulatory scheme. *Id.* at 92. If the legislature intended to punish sex offenders, the inquiry is complete because enforcing the statute retroactively would violate the Ex Post Facto Clause. *Id.*

If, however, the legislature intended the statute to enact a civil regulatory scheme, a court must next examine whether the challenged provision is so punitive in effect "as to negate [the State's] intention' to deem it 'civil.'" *Id.* (quoting *United States v. Ward*, 448 U.S. 242, 248-249 (1980)); *see also id.* at 97. Under this second step, "only the clearest proof will suffice to

override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Id.* The Court concluded that Alaska's legislative intent was to create a civil, nonpunitive scheme, and that Alaska's Act was not punitive in effect. *Id.* at 105-106.

As discussed below, (1) California's Legislature similarly intended Megan's Law to be a civil, non-punitive scheme and (2) Megan's Law, like its broader Alaskan counterpart, is not punitive in purpose or effect under the Ex Post Facto Clause.

1. The California Legislature Enacted Penal Code Section 290.46 To Create a Civil, Non-punitive Regulatory Scheme

Just as in *Smith v. Doe*, the California Legislature did not intend section 290.46 to impose punishment, but intended to enact a regulatory scheme to protect the public. Courts can find nonpunitive intent by considering the following factors: (1) the statutory text for evidence of the "objective of the law," (2) other "formal attributes" of the legislative enactment, including "the manner of its codification," (3) the "procedural mechanisms to implement the Act," and (4) the determination of which agency would be vested with the power to implement the law. *Smith*, 538 U.S. at 93–96. All four factors indicate the non-punitive intent for California Penal Code section 290.46.

Factor 1: Megan's Law's text demonstrates that the law's objective was to increase access to truthful information in order to protect the public. This is a civil function. The statute provides that DOJ "shall make available information" concerning registered sex offenders and those who are required to register in the future. Cal. Penal Code § 290.46(a); § 290.46(b)(1). The text requires certain information be made available to the public on the Internet. *Id.*, § 290.46(b)(1). There is no mention of intent for the law to serve as punishment for sex offenders.[5]

Factor 2: The legislative history and other attributes associated with the passage of section 290.46 also strongly indicate that the Legislature intended it to protect the public, rather than to punish sex offenders. Megan's Law was enacted in 2004 through Assembly Bill 488. In that bill,

[5] The statute does provide for certain punishments if offenders attempt to access the database or if the information is misused by those accessing the database. *See* § 290.46(j) (providing potential punishment for persons misusing the provided information); § 290.46(k) (providing potential punishment for those required to register with the database).

the Legislature expressly disclosed its purpose by explaining why it would go into immediate effect. According to the Legislature, "[i]n order to ensure that members of the public have adequate information about the identities and locations of sex offenders who may put them and their families at risk, it is necessary that this act take effect immediately." 2004 Cal. Legis. Serv. Ch. 745 § 5 (A.B. 488) (West). This purpose was also stated in legislative committee analyses. *See* Sen. Comm. on Public Safety, Analysis of AB 488 (2003-2004 Reg. Sess.) June 22, 2004, at 7; Assemb. Comm. on Public Safety, Analysis of AB 488 (2003-2004 Reg. Sess.) June 22, 2004, at 3-4.[6]

In fact, the previous law already required public access to identifying information, such as name, alias, home address, physical description, gender, race and registered sex offenses; AB 488 simply replaced the outdated phone line and CD-ROM system in favor of a more accessible Internet system. Public Safety Comm., Assemb. Republican Bill Analysis of AB 488 (2003-2004 Reg. Sess.) June 2, 2003 at 2-3; Assemb. Comm. on Public Safety, Analysis of AB 488 (2003-2004 Reg. Sess.) April 1, 2003, at 3-4.

The Legislature also enacted criminal punishments for misuse of information as part of the regulatory scheme. Sen. Comm. on Public Safety, Analysis of AB 488 (2003-2004 Reg. Sess.) June 22, 2004, at 6. The text of section 290.46(*l*)(1) provides that "a person is authorized to use information disclosed pursuant to this bill only to protect a person at risk," which demonstrates that the Legislature was careful to limit use of the information to the stated purpose of the enactment—providing information for families about potential danger in their neighborhoods. Section 290.46(*l*); *see generally* Assemb. Comm. on Public Safety, Analysis of AB 488 (2003-2004 Reg. Sess.) April 1, 2003, at 1-2 (discussing the various forms of information available to the public).

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[6] This legislative history is attached to the declaration of Kara Weiland filed in support of this motion. "Under Rule 201 of the Federal Rules of Evidence, the court may take judicial notice of the records of state courts [and] the legislative history of state statutes." *Louis v. McCormick & Schmick Restaurant Corp.*, 460 F. Supp. 2d 1153, 1155, n.4 (C.D. Cal. 2006). Defendant Becerra requests that this Court do so.

Additionally, the Legislature took into account the possibility that this information could be misused by private parties in a way that opponents suggested could impose "punishment"—such as through vigilantism or other misuse of the information.[7] However, the Legislature determined that the public need for information outweighed the potential for such issues because they would follow not from the publishing of information, but from the fact of the conviction itself—which was already a matter of public record. Public Safety Comm., Assemb. Republican Bill Analysis of AB 488 (2003-2004 Reg. Sess.) June 2, 2003 at 272 (citing *Smith v. Doe*, 538 U.S. at 101). Moreover, in section 290.46(o) the Legislature included a provision requiring the Attorney General, among others, to develop strategies to increase effective public use of this information in order to further public safety. § 290.46(o). This demonstrates that the Legislature was aware of these concerns and addressed them explicitly in the statute.

Finally, throughout the legislative history, the enacting representatives discussed how *Smith v. Doe* provided a "green light" for this legislation. Assemb. Comm. on Public Safety, Analysis of AB 488 (2003-2004 Reg. Sess.) April 1, 2003, at 107. This demonstrates that the Legislature relied on the validity of *Smith v. Doe* and considered section 290.46 to be substantially similar to Alaska's law. Courts have agreed, finding that California's sex offender registration and notification provisions are "substantively identical to Alaska's law." *Doe v. California Dept. of Justice*, 93 Cal.Rptr.3d 736, 746 (Cal. Ct. App. 2009).

Factor 3: The procedural mechanisms used to enact section 290.46 indicate the Legislature intended to enact a regulatory scheme. The section amended the previously-existing Megan's Law in order to make the information more accessible. Finding that "Megan's Law . . . is only as effective as the availability of the sex offender database," the Legislature determined that putting Megan's Law information online, rather than providing it through a phone or CD-ROM system, would make the information more accessible, thus increasing public safety. Public Safety Comm., Assemb. Republican Bill Analysis of AB 488 (2003-2004 Reg. Sess.) June 2, 2003, at

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[7] Defendant Becerra does not concede that the discretionary acts of private parties could have any bearing on whether a statute is punitive in intent, purpose, or effect. Defendant offers this discussion only to demonstrate that the Legislature was keenly aware of its civil regulatory intent, even where it concerned the actions of private parties.

269. The Legislature found that "[t]he Internet system is a great vehicle for sharing information," because almost all people have Internet access at home, in the workplace, at school or at a public library. Assemb. Comm. on Public Safety, Analysis of AB 488 (2003-2004 Reg. Sess.) April 1, 2003, at 107. These changes were therefore largely to the form in which the sex offenders' information is provided to public, rather than the information's substance. As such, this factor cuts in favor of a finding that the scheme was intended to be regulatory.

Factor 4: Section 290.46 vests authority to manage the system with DOJ, an entity charged with criminal matters, but also civil regulatory matters, much like the Alaska Department of Public Safety was in *Smith*. *Smith*, 538 U.S. at 96. The statute provides that the DOJ "shall make available information concerning persons who are required to register." Section 290.46(a)(1). The statute does not grant the DOJ any authority to criminally prosecute offenders merely because they appear on the Megan's Law database. Taken together, the overwhelming purpose of the law is to provide information, rather than to punish, and the Legislature determined that the DOJ was best suited to this task.

Thus, the four factors in the first step of the *Smith* analysis establish that the Legislature did not intend for section 240.46 to impose punishment, but rather to serve civil, regulatory functions. This non-punitive intent may be overridden only by the "clearest" indication that the statute is nevertheless punitive in effect. *See Smith*, 538 U.S. at 85.

2. California Penal Code Section 290.46 Is Not Punitive in Effect

The second part of the *Smith v. Doe* test is whether the challenged provision is so punitive in effect so as to negate the state's intention to deem it a regulatory scheme. *Smith*, 538 U.S. at 84, 97. The most relevant factors are whether, in its necessary operation, the regulatory scheme: (1) has been regarded in our history and traditions as a punishment; (2) imposes an affirmative disability or restraint; (3) promotes the traditional aims of punishment; (4) has a rational connection to a nonpunitive purpose; or (5) is excessive with respect to this purpose. *Smith*, 538 U.S. at 97. In the present case, the application of these factors shows that section 290.46 operates in a regulatory, not punitive manner.

Factor 1: In *Smith*, the Supreme Court ruled that Internet publication of a sex offender registry has not been regarded in history and tradition as punishment. *Smith*, 538 U.S. at 98-100. The Court reasoned that "the stigma of Alaska's Megan's Law results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public. Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment." *Id.* at 98. The Court further explained that the wide reach of the Internet did not alter this conclusion because any resulting shame does not render the law punitive rather than regulatory. *Id.*; *see also Clark v. Ryan*, 836 F.3d 1013, 1017 (9th Cir. 2016) (increased general use of Internet since *Smith* decision not relevant).

Just like the internet publication law in *Smith*, the Internet publication provision in California Penal Code 290.46 is not a historical or traditional punishment. It is a regulatory provision, that actually provides *less* information about sex offenders than the Alaska law. *Compare* Penal Code § 290.46(b)(1), (c)(1), & (d)(1) *with* Alaska Stat. § 18.65.087(b). Just as in *Smith*, the California Legislature considered that the conviction was already public record and determined that it was appropriate to publish the record of the conviction online to increase access to information.

Factor 2: In *Smith*, the Supreme Court ruled that Internet publication of the sex offender registry did not impose any affirmative disability or restraint on the convicted offender; it simply provides access to information. *Smith*, 538 U.S. at 100-102. California Penal Code section 290.46 also does not restrain or disable offenders, particularly since it requires the publication of less information than the parallel statute in *Smith*. Rather, the statute merely enables greater public access to preventive information. *Id.* at 86–87.

Plaintiff's allegations in the complaint regarding the effect of section 290.46 on housing and employment are insufficient to allege the requisite affirmative disability or restraint. In *U.S. v. Elk Shoulder*, the Ninth Circuit held that the sex offender Internet notification provision of SORNA (the federal sex offender registration scheme) was not punitive. *U.S. v. Elk Shoulder*, 738 F.3d 948, 953-954 (9th Cir. 2013). Attempting to show that the Internet notification law

imposes disability or restraint, the plaintiff focused on the language in *Smith*, in which the Court noted the plaintiffs' failure to show that Alaska's notification law "led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred through the use of routine background checks by employers and landlords." *Id.* (quoting *Smith*, 538 U.S. at 100). The Plaintiff in *Elk Shoulder* attempted to show "substantial occupational or housing disadvantages" by arguing that "SORNA's registration requirement imposes significant hardships on offenders, who are held to public ridicule by community members, and face difficulty finding and maintaining both employment and housing." *Id.* at 954. The plaintiff also noted "that local newspapers frequently maintain interactive maps of the registered residences of sex offenders, and cited "reports of incidents of citizens standing on street corners bearing signs with the names and addresses of offenders blaz[o]ned across the front." *Id.* The Ninth Circuit held that these constituted "conclusory statements and a handful of anecdotal examples" which could not carry "the heavy burden of showing substantial changes in society that would require us to revisit the Supreme Court's conclusion [in *Smith* in 2003]." *Id.* at 954.

Like in *Elk Shoulder*, Plaintiff here has plead only conclusory and anecdotal statements which, even if proven, would not carry the burden of showing that, since the *Smith* decision, Internet notification laws now create affirmative disabilities and restraints. The allegations relate almost solely to his own personal experience. He alleges that the public notification law "adversely affects" his employability and choice of housing (Comp. at 7, 17), that potential employers and landlords "are reluctant" to employ or hire him (*id.* at p. 16), and that "very few employers will hire him" (*id.* at p. 21). Regarding the effects of the general sex offender registration scheme, Plaintiff alleges that it "has made the reintegration process for sex offenders extremely difficult, because it limits their options in housing, employment, social support, and education."[8] (*id.* at p. 26). Like in *Elk Shoulder*, these allegations are insufficient as conclusory and anecdotal. *See also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("[t]o survive a motion to

[8] The majority of Plaintiff's allegations regarding sex offenders' inability to find housing state that this results from laws which impose residence and movement restrictions on sex offenders, not from the Megan's Law website. *See, e.g.* Compl. at 20-31.

dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (emphasis added)).

Moreover, Plaintiff actually concedes that the laws' negative effects do not necessarily result from the Megan's Law website. He states, "most, if not all, job applications ask applicants whether they have been convicted of a felony and, if so, to describe the circumstances surrounding all convictions." Complaint at p. 60. He goes on to state that, "Common sense dictates that a felon has a more difficult time getting certain employment than someone's of equal qualifications without the conviction." *Id.* at p. 61. With respect to his own housing and employment, Plaintiff alleges that he currently rents an apartment, leads a "productive life," and since leaving prison has purchased a vehicle and paid off over $15,000 in child support. *Id.* at p. 13.

Under the precedent of *Smith* and *Elk* Shoulder, Plaintiff has not sufficiently alleged facts showing that section 290.46 affirmatively disables or restrains sex offenders.

Factor 3: In *Smith,* the Supreme Court ruled that the Internet publication provision did not promote traditional aims of punishment. *Smith*, 538 U.S. at 102. It reasoned that although making sex offender information available might incidentally deter some offenders from committing more crimes, there was no intended punitive purpose behind the law. *Id.* Similarly, here, the text and legislative history of section 290.46 demonstrate that the purpose of the law is to provide *preventive* information *to the public*—there is no discussion of imposing punishments, seeking deterrence, or other traditional aims of punishment.

Factor 4: A law's rational connection to a non-punitive purpose is "a most significant factor" in determining that a statute's effects are not punitive. *Id.* at 102. In *Smith*, the Court ruled that Alaska's publication provision had a close connection to a non-punitive purpose: increasing accessibility of information that is already public record. *Id.* at 102-103. So too, here, the statute's text and legislative record include discussion of increasing access to information, not imposing any form of punishment. *See generally* Sen. Comm. on Public Safety, Analysis of AB 488 (2003-2004 Reg. Sess.) June 22, 2004, at 2-6 (enumerating what specific types of

information will be provided to the public and what information will remain confidential to protect the privacy of offenders).

Factor 5: In *Smith*, the Supreme Court ruled that Alaska's Internet publication law was not excessive in accomplishing its regulatory purpose. *Id.* at 104-105. It stated that the applicable test was "whether the regulatory means chosen are reasonable in light of the non-punitive objective." *Id.* at 105. The Court held that Alaska's law met that standard because the wide-ranging availability of the offender information on the Internet promoted the law's underlying, non-punitive purpose– to make the information accessible to the public. *Id.* at 104-105. The same situation exists here. California's Internet publication law, which is narrower than the Alaska law, is not excessive. This is because the law is reasonable in light of its purpose to provide sex offender information to the public.

Accordingly, the application of the five *Smith* factors shows that California Penal Code section 290.46 is not punitive in effect. The Legislature's intent to enact a regulatory, non-punitive statute therefore governs here. Since section 290.46 is non-punitive, it cannot support a claim for violation of the Ex Post Facto Clause.

Plaintiff has failed to state a claim that, as applied to him, Jessica's Law, SORA, or Megan's Law violate the Ex Post Facto Clause. Plaintiff's sixth claim should be dismissed.

III. THE SEVENTH CLAIM FOR SEPARATION OF POWERS DOCTRINE AND BILL OF ATTAINDER FAILS TO STATE A CLAIM

Plaintiff alleges in the seventh claim that sex offender laws violate the separation of powers doctrine and constitute bills of attainder by legislating punishment against sex offenders without trial. Although it is difficult to determine which statutes Plaintiff challenges, the claim fails as a matter of law with respect to both SORA and Megan's Law. (As explained above, since Jessica's Law does not apply to Plaintiff, he may not bring an as-applied challenge to that law.)

Article I, Section 10, Clause 1 of the United States Constitution provides that, "[n]o State shall.... pass any Bill of Attainder." A bill of attainder is a "law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a

judicial trial." *Fowler Packing Co., Inc. v. Lanier*, 844 F.3d 809, 816–17 (9th Cir. 2016) (citing *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 468 (1977)). "The Bill of Attainder Clause implements the doctrine of separation of powers." *SeaRiver Mar. Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662, 668 (9th Cir. 2002).

A bill of attainder claim has three elements: (1) specification of the affected persons, (2) punishment, and (3) lack of a judicial trial. *Selective Serv. Sys. v. Minnesota Pub. Interest Research Grp.*, 468 U.S. 841, 847 (1984); *Fowler Packing*, 844 F.3d at 817.

Plaintiff has failed to allege facts to meet the second and third elements of a bill of attainder claim.

A. SORA and Megan's Law Do Not Impose Punishment

Plaintiff has failed to show that SORA or Megan's Law impose punishment. Three factors determine whether a statute inflicts forbidden punishment: "(1) whether the challenged statute falls within the historical meaning of legislative punishment; (2) whether the statute, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes; and (3) whether the legislative record evinces a congressional intent to punish." *Selective Serv. Sys.*, 468 U.S. at 852 (internal quotations omitted). These familiar factors provided the origins for the *Smith v. Doe* factors in the context of an ex post facto claim. *Smith v. Doe*, 538 U.S. 84, 97 (2003); *see also Brown v. Montoya*, 45 F.Supp.3d 1294, 1302 (Dist. N.M. 2014) (law determined to be non-punitive in ex post facto analysis, by definition, cannot constitute a bill of attainder).

SORA's registration requirements do not impose punishment under these three factors. In the context of its Ex Post Facto Clause analysis, the Ninth Circuit concluded that sex offender registration laws in SORA do not fall into the historical meaning of punishment. *Hatton v. Bonner*, 356 F.3d 955, 965 (9th Cir. 2004). It has also concluded that the law is "not excessive in light of its reasonable nonpunitive objective." *Hatton*, 356 F.3d. at 966; *accord Doe v. Harris*, 640 F.3d 972, 975 n. 3 (9th Cir. 2011). Finally, it determined that the Legislature's purpose in enacting the law was to protect the public, not to punish sex offenders. *Id.* at 962; *accord Doe v.*

Harris, 640 F.3d at 975 n. 3. SORA therefore does not constitute punishment for the purposes of a bill of attainder.

Megan's Law also does not impose punishment for the purposes of a bill of attainder. As explained in *Smith* in the context of the ex post facto analysis, Internet publication does not fall under the historical meaning of punishment. *Smith v. Doe*, 538 U.S. 84, 98-100 (2003). Megan's Law furthers the non-punitive purpose of increasing the public's access to information about sex offenders, and is not excessive in light of that purpose. *See* Argument section II(C)(2), *supra*, factors 4, 5. Finally, the legislative intent behind Megan's Law was to increase public safety, not to punish. *See* Argument section II(C)(I), *supra*, factors 1-4.

SORA and Megan's Law therefore do not impose punishment for the purposes of a bill of attainder.

B. Plaintiff Was Convicted in His Criminal Trial

The seventh claim for bill of attainder also fails because Plaintiff has failed to allege the third essential element: lack of a trial. Plaintiff has actually alleged the contrary in the complaint. He states that he was convicted, served a prison sentence and was paroled. Compl. at 12-13. He therefore received a trial for the conduct on which the sex offender laws are based. *See Schafer v. Moore*, 46 F.3d 43, 45 (8th Cir. 1995) (amendment to statute governing parole program for sex offenders ruled was not a bill of attainder because it applied only to convicted sex offenders); *see also Phillips v. Iowa*, 185 F.Supp.2d 992, 1005 (Dist. Iowa 2002) (statute "does not constitute a bill of attainder because the statute applies evenhandedly to all persons convicted of certain enumerated offenses and because it is implicated only after a judicial determination of guilt").

Because Plaintiff has failed to adequately allege the second and third elements of a bill of attainder, the seventh claim must be dismissed.

IV. THE EIGHTH CLAIM FOR CRUEL AND UNUSUAL PUNISHMENT FAILS TO STATE A CLAIM

In his eighth claim, Plaintiff claims that California's state sex offender laws constitute cruel and unusual punishment. This claim also fails and should be dismissed.

A law may only constitute cruel and unusual punishment under the Eighth Amendment if it is punitive, as opposed to regulatory. *U.S. v. Under Seal*, 709 F.3d 257, 263 (4th Cir. 2013) (federal Sex Offender Registration and Notification Act not punitive under Eighth Amendment); *Cutshall v. Sundquist*, 193 F.3d 466, 477 (6th Cir. 1999) (Tennessee sex offender law not punitive under Eighth Amendment). A law that is non-punitive under the ex post facto and bill of attainder analyses is necessarily also non-punitive for the purpose of cruel and unusual punishment. *See Cutshall*, 193 F.3d at 477; *Under Seal*, 709 F.3d at 263 (applying *Smith v. Doe* test to determine whether law was punitive under Eighth Amendment).

Because SORA and Megan's Law are non-punitive under the ex post facto and bill of attainder analyses, they are non-punitive for the purpose of the Eighth Amendment. Plaintiff's eighth claim for cruel and unusual punishment therefore must be dismissed.

V. THE NINTH CLAIM FOR INVOLUNTARY SERVITUDE FAILS TO STATE A CLAIM

Finally, Plaintiff alleges in the Ninth Claim that the registration requirements in SORA violate the Thirteenth Amendment's prohibition on involuntary servitude. This claim also fails as a matter of law.

The purpose of the Thirteenth Amendment was "to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War … ." *United States v. Kozminski*, 487 U.S. 931, 942 (1988). Today, the Thirteenth Amendment prohibits "compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results." *Id.* However, the latter prohibition "does not prevent the State or Federal Governments from compelling their citizens, by threat of criminal sanction, to perform certain civic duties." *Id.* at 943-944. This includes compulsory jury service, military service, and roadwork. *Id.* at 944 (citing *Hurtado v. United States,* 410 U.S. 578, 589, n. 11 (1973); *Selective Draft Law Cases,* 245 U.S. 366, 390 (1918); *Butler v. Perry*, 240 U.S. 328, 332 (1916)). Similarly, the administrative burdens of tax withholdings, record-keeping, and payments also do not constitute involuntary servitude in violation of the Thirteenth Amendment. *Kasey v. C. I. R.*, 457 F.2d 369, 370 (9th Cir. 1972); *Abney v. Campbell*, 206 F.2d 836, 841 (5th Cir. 1953).

"In evaluating claims under the Thirteenth Amendment, a court must take a 'contextual approach,' considering such factors as the nature and amount of work demanded, and the purpose for which it is required. *Id.* (citing *Immediato v. Rye Neck School District*, 73 F.3d 454, 459–460 (2d Cir.1996)).

Plaintiff alleges that SORA violates the Thirteenth Amendment because it requires him to register as a sex offender with local law enforcement in person once a year, and on additional occasions related to college academic terms and if he were to become homeless. Complaint at p. 81. These obligations are much more analogous to the administrative burdens cited in *Kozminski* and other cases (jury duty, military service, road work, tax reporting), than "labor akin to African slavery which in practical operation would tend to produce like undesirable results." *Kozminski*, 487 U.S. at 942. Like the former categories, SORA also serves regulatory and civic purposes, as opposed to the purpose of slavery, which is to exploit free labor for profit. Finally, the act of traveling to a local law enforcement office up to a few times per year to provide very basic and limited personal information is not overly burdensome.

The limited obligations imposed by SORA therefore do not constitute involuntary servitude, and the ninth claim should be dismissed.

VI. THE SIXTH THROUGH NINTH CLAIMS FAIL AGAINST DEFENDANT BECERRA TO THE EXTENT THEY CHALLENGE FEDERAL STATUTES OR LOCAL ORDINANCES BECAUSE THE ATTORNEY GENERAL IS IMMUNE FROM SUIT UNDER THE ELEVENTH AMENDMENT

In addition to challenging SORA, Megan's Law, and Jessica's Law, Plaintiff's sixth through ninth claims also challenge the as-applied constitutionality of federal statutes and unspecified local ordinances. *See, e.g.*, Compl. at 14-16, 56. As to these challenges, Defendant Becerra is immune from suit under the Eleventh Amendment. This court therefore lacks federal subject-matter jurisdiction over those claims. *See Long v. Van de Kamp*, 961 F.2d 151, 152 (9th Cir. 1992).

The Eleventh Amendment bars suit against a state or its instrumentalities for legal or equitable relief in the absence of consent by the state or an abrogation of that immunity by Congress. *Papasan v. Allain*, 478 U.S. 265, 276-77, 106 S.Ct. 2932, 2939 (1986); *Pennhurst*

State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100, 104 S.Ct. 900, 908 (1984). Section 1983 does not abrogate a state's Eleventh Amendment immunity. *Quern v. Jordan*, 440 U.S. 332, 341, 99 S.Ct. 1139, 1145 (1979). Nor has the State of California waived that immunity with respect to claims brought under section 1983 in federal court. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241, 105 S.Ct. 3142, 3147 (1985).

"The Eleventh Amendment [also] bars a suit against state officials when 'the state is the real, substantial party in interest.'" *Pennhurst*, 465 U.S. at 101 (citations omitted); *see Almond Hill Sch. v. U.S. Dept. of Agric.*, 768 F.2d 1030, 1033 (9th Cir. 1985). The "general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." *Pennhurst*, 465 U.S. at 101 (citation omitted). "[A]s when the State itself is named as the defendant, a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief." *Id.* at 101-02 (citation omitted).

The Supreme Court recognized a limited exception to Eleventh Amendment immunity in *Ex parte Young*, 209 U.S. 123 (1908). The *Ex parte Young* exception allows "suits for prospective declaratory and injunctive relief against state officers, sued in their official capacities, to enjoin an alleged ongoing violation of federal law." *Agua Caliente Band of Cahuilla Indians v. Hardin*, 223 F.3d 1041, 1045 (9th Cir. 2000). Additionally, however, for the *Ex parte Young* exception to apply "it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the State, and thereby attempting to make the State a party." *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998) (quoting *Ex parte Young*, 209 U.S. at 157). "This connection must be fairly direct; a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit." *L.A. County Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992) (citing *Long v. Van de Kamp*, 961 F.2d 151, 152 (9th Cir. 1992); *L.A. Branch NAACP v. L.A. Unified Sch. Dist.*, 714 F.2d 946, 953 (9th Cir. 1983)).

Plaintiff has presumably sued Defendant Becerra, the California Attorney General, because he is the "chief law officer of the State, with the generalized duty "to see that the laws of the State are uniformly and adequately enforced." *See* Cal. Const., art. V, § 13.

Dismissing Defendant Becerra on Eleventh Amendment grounds is firmly supported by Ninth Circuit authority, particularly the case of *Long v. Van de Kamp*. *Long* arose from warrantless surprise searches of a motorcycle repair shop by deputy sheriffs and members of the California Highway Patrol pursuant to a provision in the California Vehicle Code that authorized such searches. *Long v. Van de Kamp*, 772 F.Supp. 1141, 1142 (C.D.Cal. 1991). One of the operators of the repair shop was arrested in connection with a search, and filed suit challenging the constitutionality of the Vehicle Code provision. *Id.* at 1142-1143. The operators named the Attorney General and sought to enjoin the Attorney General from enforcing the statute. *Id.*

In directing the district court to dismiss the Attorney General on Eleventh Amendment grounds, the Ninth Circuit stated that "there must be a connection between the official sued and enforcement of the allegedly unconstitutional statute, and there must be a threat of enforcement." *Long*, 961 F.2d at 152. The Ninth Circuit found that the "general supervisory powers of the California Attorney General" did not establish the connection with enforcement required by *Ex parte Young*. *Id.*, citing *S. Pac. Transp. Co. v. Brown*, 651 F.2d 613, 614 (9th Cir. 1980) (as amended)). There also was no threat that the Vehicle Code provision would be enforced by the Attorney General, who "ha[d] not in any way indicated that he intend[ed] to enforce [the provision]." *Id.* "In addition, the searches of plaintiffs' premises were not the result of any action attributable or traceable to the Attorney General." *Id.* Accordingly, the Ninth Circuit held that "[a]bsent a real likelihood that the state official will employ his supervisory powers against plaintiffs' interests, the Eleventh Amendment bars federal court jurisdiction." *Id.*

The circumstances here are similar to those in *Long*. Here, the complaint alleges no direct connection between the Defendant Becerra and the enforcement of any federal laws (other than those already encompassed in SORA and Megan's Law) or any local ordinances against Plaintiff. Moreover, Plaintiff has shown no "real likelihood" that Defendant Becerra will enforce any federal law or local ordinance against Plaintiff. *Long*, 961 F.2d at 152. Accordingly, the *Ex parte*

Young exception does not apply in this case with respect to any claims against Defendant Becerra related to the constitutionality of federal or local laws. The Court, therefore, should grant Defendant Attorney General's motion to dismiss for lack of subject matter jurisdiction.

CONCLUSION

Dated: November 27, 2017

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
ANTHONY R. HAKL
Acting Supervising Deputy Attorney General

/s/ Gabrielle D. Boutin
GABRIELLE D. BOUTIN
Deputy Attorney General
Attorneys for Defendant Attorney General Xavier Becerra

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CERTIFICATE OF SERVICE

Case Name: **Richards, Michael v. Jefferson Sessions, et al.** No. **2:17-cv-1838 JAM AC PS**

I hereby certify that on November 27, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

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

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. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On November 27, 2017, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Michael Richardson
4624 Ashdale Court, #4
Sacramento, CA 95841

Pro Per

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 November 27, 2017, at Sacramento, California.

Tursun Bier
Declarant

/s/ Tursun Bier
Signature

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