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FILED
Dec 30, 2019
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

ORDER GRANTING TEMPORARY
RESTRAINING ORDER AND SETTING
EXPEDITED HEARING ON
PRELIMINARY INJUNCTION

1 This matter is before the court on plaintiffs’ motion for temporary restraining order,
2 seeking to restrain the California law passed as Assembly Bill (AB) 51 from taking effect January
3 1, 2020. AB 51 prohibits employers from requiring, as a condition of employment, employees’
4 waiver of any right, forum or procedure for a violation of any provision of the California Fair
5 Employment and Housing Act or the Labor Code. *See* Cal. Lab. Code § 432.6. All parties were
6 given notice and the court held a telephonic hearing on December 23, 2019, at which counsel
7 Donald Falk, Archis Parasharami and Bruce Sarchet appeared for plaintiffs, and counsel Chad
8 Stegeman appeared for defendants. Having considered plaintiffs’ papers filed in support of their
9 motion for a temporary restraining order, defendants’ written opposition thereto, counsel’s
10 arguments at the telephonic status and for good cause shown, the court hereby enters the following
11 order:
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14 The court finds that a temporary restraining order is warranted as provided by Federal Rule
15 of Civil Procedure 65 and Civil Local Rule 231. While plaintiffs filed their motion with very little
16 time to spare and could have sought the court’s intervention somewhat earlier, the court
17 nevertheless finds plaintiffs have carried their burden, at this early stage on a tightly compressed
18 timeline, by raising serious questions going to the merits and showing that the balance of hardship
19 tips decidedly in their favor. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th
20 Cir. 2011). Plaintiffs also have shown a likelihood of irreparable injury and that a restraining order
21 is in the public interest. *Id.* at 1135 (all four prongs of test articulated in *Winter v. Natural*
22 *Resources Defense Council*, 555 U.S. 7 (2008) must be met for “serious questions” to support
23 issuance of preliminary injunctive relief). Specifically, plaintiffs have raised serious questions
24 regarding whether the challenged statute is preempted by the Federal Arbitration Act as construed
25 by the United States Supreme Court. *See Kindred Nursing Centers Ltd. P’ship v. Clark*, 137 S.
26 Ct. 1421 (2017). Plaintiffs’ argument that allowing the statute to take effect even briefly, if it is
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1 preempted, will cause disruption in the making of employment contracts also is persuasive and
2 supports the other three *Winter* factors, particularly given the criminal penalties to which violators
3 of the law may be exposed. *See* Cal. Lab. Code § 433 (“Any person violating this article is guilty
4 of a misdemeanor.”). The court finds that plaintiffs have no other adequate legal remedy to
5 preserve the status quo for a short period of time until the court can consider their motion for a
6 preliminary injunction on a more well-developed record, with full opposition briefing as well.
7

8 Accordingly, IT IS HEREBY ORDERED that plaintiffs’ motion for a temporary
9 restraining order is GRANTED.

10 The court orders as follows:


11 1. Defendant Xavier Becerra, in his official capacity as the Attorney General of the State
12 of California, Lilia Garcia Brower, in her official capacity as the Labor Commissioner of the State
13 of California, Julia A. Su, in her official capacity as the Secretary of the California Labor and
14 Workforce Development Agency, and Kevin Kish, in his official capacity as Director of the
15 California Department of Fair Employment and Housing are temporarily enjoined from enforcing
16 AB 51, pending this court’s resolution of plaintiffs’ motion for a preliminary injunction.
17

18 2. There is no realistic likelihood of harm to defendants from temporarily enjoining
19 enforcement of AB 51, so no security bond is required.
20

21 3. Plaintiffs’ motion for a preliminary injunction will be heard on **January 10, 2020 at**
22 **10:00 AM**. Defendants have filed their opposition to the motion for a preliminary injunction.
23 Plaintiffs may file any written reply by **January 3, 2020**.

24 IT IS SO ORDERED.

25 DATED: December 29, 2019.

26 
27 UNITED STATES DISTRICT JUDGE
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