

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

R.J. REYNOLDS TOBACCO
COMPANY, *et al.*,

Plaintiffs,

v.

ROBERT BONTA, in his official
capacity as Attorney General of
California; and SUMMER STEPHAN,
in her official capacity as District
Attorney for the County of San Diego,

Defendants.

Case No. 22-cv-01755-CAB-WVG
Hon. Cathy Ann Bencivengo

**ORDER DENYING
PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION
AND INJUNCTION PENDING
APPEAL AND GRANTING THE
PARTIES’ JOINT MOTION TO
VACATE THE BRIEFING
SCHEDULE**

[Doc. Nos. 13, 18]

In this matter, Plaintiffs ask the Court to declare that California Senate Bill 793 (“S.B. 793”) is invalid and unenforceable. Plaintiffs moved for a preliminary injunction and an injunction pending appeal on enforcement of S.B. 793 based on their express preemption claim. [Doc. No. 13.] Plaintiffs acquiesced in the denial of that motion because, at this time, their express preemption claim is foreclosed in this Court by Ninth Circuit precedent. [Doc No. 13-1 (citing *R.J. Reynolds Tobacco Co. v. County of Los Angeles*, 29 F.4th 542 (9th Cir. 2022), *cert. pending*, No. 22-338 (U.S. filed Oct. 7, 2022)).] Plaintiffs preserved their claim and their requests for injunctive relief for appeal. Defendants oppose Plaintiffs’ motion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

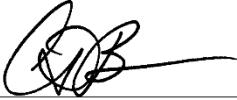
Upon review of the record, the Court finds that the Ninth Circuit’s decision in *County of Los Angeles* currently forecloses Plaintiffs’ express preemption claim in this Court. This Court therefore must deny the motion for a preliminary injunction and an injunction pending appeal. Plaintiffs have nevertheless preserved their claim and Defendants have preserved their defenses and arguments for further appellate review.

The parties have also jointly moved to vacate the briefing schedule on Plaintiffs’ motion for a preliminary injunction and an injunction pending appeal.

Accordingly, the joint motion to vacate the briefing schedule on Plaintiffs’ motion for a preliminary injunction and an injunction pending appeal [Doc. No. 18] is **GRANTED**, and Plaintiffs’ motion for a preliminary injunction and an injunction pending appeal [Doc. No. 13] is **DENIED**.

IT IS SO ORDERED.

Dated: November 15, 2022



Hon. Cathy Ann Bencivengo
United States District Judge