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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF LOS ANGELES
10 CENTRAL DISTRICT

11 SHASTA COUNTY SHERIFF THOMAS BOSENKO,
SAN BERNARDINO COUNTY SHERIFF JOHN
12 McMAHON, KERN COUNTY SHERIFF DONNY
YOUNGBLOOD, SAN LUIS OBISPO COUNTY
13 SHERIFF IAN S. PARKINSON, SACRAMENTO
COUNTY SHERIFF SCOTT JONES, EL DORADO
14 COUNTY SHERIFF JOHN D'AGOSTINI, SISKIYOU
COUNTY SHERIFF JON LOPEY, TOULUMNE
15 COUNTY SHERIFF JAMES MELE, STANISLAUS
COUNTY SHERIFF ADAM CHRISTIANSON,
16 MERCED COUNTY SHERIFF VERN WARNKE,
TEHAMA COUNTY SHERIFF DAVID HENCRATT,
17 HUMBOLDT COUNTY SHERIFF MICHAEL
DOWNEY, MENDOCINO COUNTY SHERIFF
18 THOMAS D. ALLMAN, SUTTER COUNTY SHERIFF
J. PAUL PARKER, MODOC COUNTY SHERIFF
19 MICHAEL POINDEXTER, FRESNO COUNTY
SHERIFF MARGARET MIMS, MADERA COUNTY
20 SHERIFF JAY VARNEY, AMADOR COUNTY
SHERIFF MARTIN RYAN, LASSEN COUNTY
21 SHERIFF DEAN F. GROWDON, COLUSA COUNTY
SHERIFF JOE GAROFALO, NEVADA COUNTY
22 SHERIFF KEITH ROYAL, TULARE COUNTY
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23 SHERIFF STEVE DURFOR, KINGS COUNTY
SHERIFF DAVID ROBINSON, PLUMAS COUNTY
24 SHERIFF GREGORY HAGWOOD, TRINITY
COUNTY SHERIFF BRUCE HANEY, SOLANO
25 COUNTY SHERIFF THOMAS A. FERRARA, GLENN
COUNTY SHERIFF RICHARD L. WARREN JR.,
26 BUTTE COUNTY SHERIFF KORY L. HONEA,
SIERRA COUNTY SHERIFF TIM STANDLEY,
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28 KENNETH TAKAHASHI, LAW ENFORCEMENT

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Superior Court of California
County of Los Angeles

NOV 12 2015

Sherri R. Carter, Executive Officer/Clerk
By: Jennifer De Luna, Deputy

Case No.: BS158682

**EX PARTE APPLICATION TO STAY
ENFORCEMENT OF LAMC SECTION
46.30, ALTERNATIVELY, FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE;
MEMORANDUM IN SUPPORT**

Date: November 12, 2015
Time: 8:30 a.m.
Dept.: 85
Judge: Honorable James C. Chalfant

Action Filed: October 23, 2015

1 ALLIANCE OF AMERICA, INC., CALIFORNIA
2 RIFLE AND PISTOL ASSOCIATION, CALIFORNIA
3 RESERVE PEACE OFFICERS ASSOCIATION,

4 Plaintiffs and Petitioners,

5 vs.

6 THE CITY OF LOS ANGELES, MAYOR ERIC
7 GARCETTI, in his official capacity, LOS
8 ANGELES POLICE DEPARTMENT CHIEF CHARLIE
9 BECK, in his official capacity, and DOES 1-10,

10 Defendants and Respondents.

11 **EX PARTE APPLICATION TO STAY ENFORCEMENT OF LAMC SECTION 46.30,**
12 **ALTERNATIVELY, FOR TEMPORARY RESTRAINING ORDER AND ORDER TO**
13 **SHOW CAUSE**

14 Pursuant to sections 525, 526, and 527 of the Code of Civil Procedure, rules 3.1150 and
15 3.1200 et seq. of the California Rules Court, and rule 3.321, subdivision (e) of the Local Rules for
16 the Superior Court of Los Angeles, Plaintiffs-Petitioners Shasta County Sheriff Thomas Bosenko,
17 et al., by and through their counsel of record, apply ex parte for an order staying enforcement of
18 Los Angeles Municipal Code section 46.30, prohibiting Defendants-Respondents the City of Los
19 Angeles, Mayor Eric Garcetti, Los Angeles Police Department Chief Charlie Beck, their
20 employees, agents, and persons acting with them on their behalf, from enforcing section 46.30
21 during the pendency of this action.

22 Alternatively, Plaintiffs-Petitioners apply for a temporary restraining order enjoining and
23 prohibiting Defendants their employees, agents, and persons acting with them on their behalf,
24 from enforcing section 46.30. Plaintiffs-Petitioners also request the Court issue an Order to Show
25 Cause, affording Defendants-Respondents the opportunity to appear and show cause why a
26 preliminary injunction should not issue restraining and enjoining Defendants in the same manner
27 for the remainder of this litigation.

28 This application is based upon California Code Civil Procedure sections 525, 526, and
527, California Rules of Court, rules 3.1150 and 3.1200 et seq., and Los Angeles Superior Court
rule 3.321, subdivision (e), on the grounds that: (1) Plaintiffs-Petitioners are likely to succeed on

1 the merits of their claims that Defendants-Respondents' enforcement of section 46.30, banning
2 the possession of ammunition magazines with the capacity to accept more than ten rounds of
3 ammunition, is invalid as preempted by state law; (2) Plaintiffs-Petitioners will suffer immediate
4 threat of irreparable harm unless enforcement of section 46.30 is stayed by this Court; and (3) the
5 balance of hardships tips sharply in Plaintiffs-Petitioners' favor.

6 This application is further based on the Memorandum of Points and Authorities attached
7 hereto, the supporting declarations and evidence filed concurrently herewith, the Petition for Writ
8 of Mandate and/or Prohibition or Other Appropriate Relief; Complaint for Declaratory and
9 Injunctive Relief, and upon such further evidence and argument as may be presented prior to or at
10 the time of hearing on the motion.

11 On November 6, 2015, Plaintiffs-Petitioners provided all Defendants-Respondents,
12 through their counsel Deputy City Attorney Benjamin Chapman, with e-mail notice of their
13 intention to seek ex parte relief and a copy of their ex parte application and supporting materials.
14 (Monfort Decl., ¶¶ 15-16; Ex. 3.) Plaintiffs' counsel is informed and believes that Mr. Chapman's
15 business address is 200 North Main Street, 9th Floor, Los Angeles, California, 90012, his phone
16 number is (213) 473-6858, and his email address is benjamin.chapman@lacity.org. (*Id.* at ¶ 17.)
17 Plaintiffs-Petitioners have not made any previous application for such relief.

18
19 Dated: November 6, 2015

MICHEL & ASSOCIATES, P.C.

20 
21 C.D. Michel
22 Counsel for Plaintiffs-Petitioners
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The City of Los Angeles, Mayor Eric Garcetti, Los Angeles Police Department Chief
3 Charlie Beck (“the City”) recently enacted and, beginning November 19, 2015, will begin
4 enforcing a city-wide ban on the possession of firearm magazines with the capacity to accept
5 more than ten rounds of ammunition. A majority of California’s county sheriffs, two law
6 enforcement organizations, a civil rights organization, and six other individuals who reside in or
7 travel through Los Angeles brought this action, seeking a writ of mandate and declaratory and
8 injunctive relief, barring the City from enforcing the ban because it is preempted by the state’s
9 comprehensive statutory scheme regulating such magazines. This case is not about whether the
10 City’s law is a good idea or whether it is likely to serve its laudable goals. Instead, this case
11 presents the narrow legal question of whether state laws that generally and expressly allow for the
12 possession of magazines over ten rounds permit the City to ban their possession.

13 Because no hearing on a formally noticed motion can be heard until February 2016 (see
14 *supra*, Statement of Facts, Part II), ex parte relief and a stay of enforcement is necessary to
15 prevent Plaintiffs from being irreparably harmed by the risk of criminal penalties under an
16 unconstitutional, preempted law as early as November 19, 2015. Plaintiffs are subject to arrest
17 and prosecution for continuing to possess their lawful firearm magazines in their homes or while
18 traveling into the city, including individuals who carry firearms with capacities greater than ten
19 rounds in the course of their daily employment duties.

20 **STATEMENT OF FACTS**

21 **I. THE STATE REGULATORY SCHEME AND THE CITY’S BAN**

22 Since January 1, 2000, state law has extensively regulated magazines capable of holding
23 more than ten rounds by restricting the manufacture, importation, sale, giving, lending, buying, or
24 receiving of any such magazine. (Pen. Code, § 32310.) In total, the state has enacted *fifteen*
25 separate statutes, *comprising an entire chapter of the Penal Code*, and six state regulations
26 specifically regulating magazines over ten rounds. (*Id.* at §§ 32310, 32311, 32315, 32390, 32400,
27 32405, 32410, 32415, 32420, 32425, 32430, 32435, 32440, 32445, 32450; Code Regs., tit. 11, §§
28 5469, 5480, 5481, 5482, 5483, 5484.) And at least nine other statutes also regulate conduct

1 regarding such magazines in California. (Pen. Code, §§ 16590, 16740, 17715, 17720, 17725,
2 17730, 17735, 17745, 18010.) Notably, all such magazines acquired prior to January 1, 2000, are
3 exempt from the state's comprehensive regulatory scheme, and they were intentionally
4 "grandfathered in" to authorize their continued possession and use for lawful purposes. (*Id.* at
5 32310.)

6 On January 15, 2013, City Councilmember Paul Krekorian moved to direct the City
7 Attorney and the Los Angeles Police Department to report "on the feasibility, effectiveness and
8 benefits of an ordinance to prohibit the possession of high-capacity ammunition magazines within
9 the City of Los Angeles." (Barvir Decl., ¶ 3; Ex. 6.) Two and a half years later, the City Council
10 voted to adopt File No. 13-0068, adding section 46.30 to the Los Angeles Municipal Code
11 ("LAMC section 46.30" or "section 46.30") and making it unlawful for any person to possess any
12 magazine over ten rounds. (L.A. Ord. No. 183806, adding art. 6.7, § 46.30 to L.A. Mun. Code
13 (hereafter § 46.30); Barvir Decl., ¶¶ 2, 4; Exs. 5, 7.) Mayor Eric Garcetti signed the ban into law
14 on August 7th, and the law took effect September 19th. (Barvir Decl., ¶¶ 2, 5, 6; Exs. 5, 8, 9.)

15 Any person who, prior to the law's effective date, was in legal possession of any magazine
16 over 10 rounds must: (1) "Remove the large-capacity magazine from the City of Los Angeles";
17 (2) "Surrender the large-capacity magazine to the Los Angeles Police Department for
18 destruction"; or (3) "Sell or transfer the large-capacity magazine lawfully in accordance with
19 Section 32410 of the California Penal Code." (§ 46.30, subd. (b)(2).) The last day for such
20 disposition is November 18, 2015. (*Ibid.*) Section 46.30 provides 13 exemptions, including one
21 for "[a]ny government officer, agent, or employee, member of the armed forces of the United
22 States, or peace officer, to the extent that such person is otherwise authorized to possess a large-
23 capacity magazine, and does so while acting within the scope of his or her duties."¹

24 The City's ban does not exempt law enforcement officers who possess magazines with the

25 ¹ Among other things, section 46.30 also exempts individuals who have been issued a license
26 by the Department of Justice pursuant to Penal Code sections 26700 through 26915 (§ 46.30,
27 subd. (c)(2); individuals who have been issued a permit by the Department of Justice pursuant to
28 Penal Code sections 18900, 31000, 32650, 32700-32720, or 33300 (*id.* at subd. (c)(7)); and
individuals who have been issued a permit by the Department of Justice pursuant to Penal Code
section 32315 (*id.* at subd. (c)(8)).

1 capacity to hold more than ten rounds while they are not on duty. (§ 46.30, subd. (c).) It does not
2 exempt persons who lawfully possessed magazines prior to 2000. (*Ibid.*) It does not exempt
3 individuals who enter into Los Angeles while traveling throughout California or into and out of
4 the state. (*Ibid.*) And it does not exempt non-government employees who travel into or through
5 the City with magazines over ten rounds as part of their employment or pursuant to firearm
6 licenses issued pursuant to state law. (*Ibid.*)

7 **II. CASE HISTORY AND THE NEED FOR EMERGENCY RELIEF**

8 In the weeks that followed section 46.30's passage, active and retired law enforcement,
9 security guards, and individuals residing in Los Angeles and throughout California voiced their
10 concerns to Plaintiffs' counsel regarding the need for judicial relief to prevent the enforcement of
11 the City's confiscatory ban. (Monfort Decl., ¶ 2.) But counsel was aware that the City intended to
12 amend the new ordinance immediately to alter the list of exemptions for various individuals,
13 potentially impacting Plaintiffs' need to pursue litigation. (*Id.* at p. ¶3.)

14 No amendments were enacted, however, and Plaintiffs proceeded with litigation to
15 prevent the criminal arrest and prosecution of individuals residing in or traveling through Los
16 Angeles with magazines over ten rounds. (Monfort Decl., ¶ 4.) Plaintiffs filed suit on October 23,
17 2015, and promptly served all Defendants. (*Id.* at ¶¶ 5, 9.) They then attempted to secure a
18 hearing date for a formally noticed motion to stay enforcement, but learned that one could not be
19 heard until February 2016—three months after the November 18 cut-off. (*Id.* at ¶¶ 6-7.)

20 Plaintiffs' counsel then contacted the City Attorney's office to discuss a temporary stay of
21 enforcement. (Monfort Decl., ¶ 9.) The City informed Plaintiffs that an attorney would not be
22 available until October 28th. (*Ibid.*) On October 28, Plaintiffs' counsel again contacted the City
23 Attorney's office and was instructed to contact Deputy City Attorney Benjamin Chapman to
24 discuss Plaintiffs' request. (*Id.* at ¶ 10.) Plaintiffs' counsel contacted Mr. Chapman on October 28
25 via telephone and e-mail, and again on October 29 via e-mail. (*Ibid.*; Ex. 1.) On October 30,
26 Plaintiffs' counsel contacted the City Attorney's office again. (Monfort Decl., ¶ 10.) Later that
27 day, Mr. Chapman responded that the City would consider a temporary stay. (*Id.* at ¶ 11; Ex. 1.)

28 After considering Plaintiffs' request for several days, counsel for the City explained that

1 he could not agree to a stay because he does “not believe the City Attorney’s office has the power
2 to stay enforcement of a lawfully enacted ordinance, and the City Council is not in session, so
3 they are unable to consider amending the ordinance to push back the enforcement date.” (Monfort
4 Decl., ¶ 12; Ex. 1.) Plaintiffs quickly prepared their ex parte application and informed the City
5 they would serve a copy as soon as possible. (Monfort Decl., ¶ 13.) On November 6, Plaintiffs
6 notified the City of their intention to appear ex parte on November 12, 2015, and served a copy of
7 their application—giving the City more than five days to respond. (*Id.* at ¶¶ 15-16; Ex. 3.)

8 ARGUMENT

9 I. LEGAL STANDARD FOR A STAY OF ENFORCEMENT OR PRELIMINARY INJUNCTION

10 The primary purpose of interim injunctive relief—whether a stay of enforcement or a
11 preliminary injunction—is to preserve the status quo until a court can make a final determination
12 on the merits of the action. (See *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512.) The test
13 most frequently used by California trial courts in deciding whether to issue such relief requires
14 the evaluation of two interrelated factors: (1) the likelihood that the plaintiff will succeed on the
15 merits of its claims; and (2) the harm that plaintiff is likely to suffer if the injunctive relief does
16 not issue, balanced against the harm that the defendant is likely to suffer if it does issue. (*Cohen v.*
17 *Bd. of Supervisors* (1985) 40 Cal.3d 277, 286.) When addressing these factors, the plaintiff must
18 prove the likelihood that it will suffer immediate and irreparable harm. (*Triple A Machine Shop,*
19 *Inc. v. California* (1989) 213 Cal.App.3d 131, 138.)

20 II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

21 The California Constitution explicitly commands that a county or city must take care not
22 to fall “in conflict with general laws.” (Cal. Const. art. XI, § 7.) Courts have long interpreted this
23 as a limitation on local government’s ability to interfere with the proper operation of state law
24 through local legislation. (*Agnew v. City of Los Angeles* (1958) 51 Cal.2d 1.) In short, a local law
25 “[i]s invalid if it attempts to impose additional requirements in a field that is preempted by the
26 general law.” (*In re Lane* (1962) 58 Cal.2d 99, 102.) In determining whether local law is
27 preempted, courts consider whether a local ordinance “duplicates, contradicts, or enters an area
28 fully occupied by general law, either expressly or by legislative implication.” (*Sherwin-Williams*

1 *Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.) The City’s ban on the possession of
2 magazines lawfully acquired and possessed pursuant to state law is preempted because it directly
3 contradicts state law, and because it attempts to regulate in a field that has been fully occupied.

4
5 **A. The City’s Magazine Ban Is Preempted Because It Contradicts Various State
6 Laws Regarding the Possession and Transfer of Magazines Over Ten Rounds**

7 A local ordinance “*contradicts* state law when it is inimical to or cannot be reconciled
8 with state law.” (*O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067.) To command with
9 a local ordinance that which a state statute prohibits—or to prohibit locally that which a state
10 statute commands—tramples on the constitutional mandate that cities govern subordinate to state
11 law. (*Sherwin-Williams, supra*, 4 Cal.4th at p. 902.) The *Sherwin-Williams* Court shed light on
12 what it means to say that a local law may not prohibit that which state law “commands,” when it
13 interpreted its earlier decision in *Ex parte Daniels* (1920) 183 Cal. 636, to have found
14 “‘contradiction,’ where local legislation purported to fix a lower maximum speed limit . . . than
15 that which general law fixed.” (*Sherwin-Williams, supra*, 41 Cal.4th at p. 898.) In other words, it
16 recognized that a municipality may not *prohibit* conduct that state law *allows*. Because the City’s
17 magazine ban prohibits such conduct, it is inimical to state law and must be stricken. (See *Fiscal*
18 *v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 903.)

19 Most notably, it contradicts state law to the extent that it applies to magazines over ten
20 rounds acquired by individuals prior to 2000—items that state law allows to be possessed
21 generally and when engaged in conduct specifically authorized by state law. (Pen. Code, §§
22 32310, et seq.) For example, it invalidates Penal Code section 32420’s carefully crafted exception
23 to the ban on importing magazines over ten rounds if an individual was lawfully in possession of
24 such a magazine, removed it from California, and subsequently returned with the same magazine.
25 The harm is particularly apparent when considering those individuals who travel out of state with
26 their magazines through LAX or those who reside in cities “landlocked” by Los Angeles.²

27 ² Cities that are entirely or almost entirely surrounded by the city of Los Angeles include the
28 cities of Athens, Baldwin Hills, Beverly Hills, Culver City, El Segundo, Gardena, Inglewood,
Lennox, Lomita, Rancho Palos Verdes, Santa Monica, and Torrance. (Barvir Decl., ¶ 8; Ex. 11.)

1 (Takahashi Decl., ¶¶ 3, 9, 12-13, 15; Wolcott Decl., ¶¶ 3, 12, 13; CRPA Decl., ¶¶ 5, 11-13, 17-
2 18.) For these individuals, it is impossible to travel in or out of the state with their magazines
3 pursuant to state law without violating the City’s ban.

4 The City’s ban also contradicts state law expressly authorizing the “sale to, lending to,
5 transfer to, purchase by, receipt of, or importation into this state of” the magazines by “any sworn
6 peace officer authorized to carry a *firearm* in the course and scope of the officer’s duties. (Pen.
7 Code, § 32405.) Each of these activities necessarily authorizes *possession* by those officers.
8 Unlike section 46.30, which permits possession only to the extent the officer is authorized to
9 possess a magazine over ten rounds “*and does so within the course and scope of his or her*
10 *duties*” (§ 46.30, subd. (c)(1), italics added), state law permits peace officers authorized to carry a
11 *firearm* to possess magazines over ten rounds without regard to whether they carry one in the
12 course and scope of their duties (Pen. Code, § 32405). What’s more, state law allows those
13 officers to possess such magazines even when off duty—something section 46.30 prohibits.

14 Similarly, section 46.30 requires individuals who lawfully owned magazines over ten
15 rounds before September 19, 2015, to remove them from the City, to surrender them to the LAPD
16 for destruction, or to sell or transfer them to a *licensed firearm vendor* pursuant to Penal Code
17 section 32410. The City’s ban thus contradicts state law because it prohibits individuals from
18 selling or transferring their magazines to *sworn peace officers* even though that conduct is
19 expressly authorized by Penal Code section 32405.

20 Finally, the City’s ban contradicts state law by interfering with state licenses issued by
21 county sheriffs pursuant to Penal Code section 26150. For sheriffs regularly issue permits
22 authorizing qualified residents to carry the specific handguns approved for carry by the issuing
23 sheriff—including firearms with magazines over ten rounds. (Youngblood Decl., ¶¶ 10-11; Jones
24 Decl., ¶¶ 10-11; Bosenko Decl., ¶¶ 10-11.) When individuals, including members of CRPA
25 (CRPA Decl., ¶¶ 15-16), travel to or through Los Angeles with handguns with capacities over ten
26 rounds pursuant to their section 26150 licenses, they expose themselves to criminal prosecution
27 even though they are engaged in conduct that they are explicitly authorized to engage in pursuant
28 to a state license.

1 Because the City's ban directly contradicts all of the state laws and licenses discussed
2 above, section 46.30 is inimical to state law and is preempted.

3
4 **B. The City's Magazine Ban Enters an Area Fully Occupied by General Law
Both Expressly and by Implication**

5 "[W]here the Legislature has manifested an intention, expressly or by implication, wholly
6 to occupy the field . . . municipal power [to regulate in that area] is lost." (*Fiscal, supra*, 158
7 Cal.App.4th at p. 904, quoting *O'Connell, supra*, 41 Cal.4th at p. 1067.) Here, the Legislature has
8 made clear—both expressly and impliedly—its intention to occupy the field of regulating
9 magazines over ten rounds, barring local interference with the state scheme.

10 **1. Government Code Section 53701 Expressly Preempts LAMC Section
11 46.30 Because the Ban Requires Residents to Enter the State Firearm-
Licensing Scheme to Retain Their Magazines**

12 Where state law, by its express terms, forecloses local regulation of a specified field, any
13 attempt by a locality to enter that field is preempted. Government Code section 53071 employs
14 broad language to expressly prohibit all local regulations "*relating to* registration or licensing of
15 commercially manufactured firearms."³ (Italics added.) *Doe v. City & County of San Francisco*
16 (1982) 136 Cal.App.3d 509 is helpful in defining the way section 53071 limits the power of local
17 governments to regulate firearms. There, the Court of Appeal ruled that a San Francisco law
18 prohibiting handgun possession and exempting those authorized to carry a handgun pursuant to
19 state law would have the minimum effect of "*relating to licensing*." (*Id.* at p. 517.) Even though
20 the challenged law did not establish a licensing procedure of any kind—nor did it mention
21 "licensing" at all—the court held that the effect of the law and its exemption for carry-license
22 holders was "to create a new class of person who will be required to obtain licenses in order to
23 possess handguns." (*Id.* at pp. 516-517.) The court continued:

24 Persons presently possessing handguns in their homes who are not licensed to
25 carry their weapons must obtain licenses or relinquish their handguns. Persons

26 ³ Government Code section 53071 states: "It is the intention of the Legislature to occupy the
27 whole field of regulation of the registration or licensing of commercially manufactured firearms
28 as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all
local regulations, relating to registration or licensing of commercially manufactured firearms, by
any political subdivision as defined in Section 1721 of the Labor Code."

1 who could have purchased handguns for home possession under prior law are
2 required under the San Francisco ordinance to enter the permit system.

3 (*Id.* at p. 517) In effect, San Francisco’s handgun ban “create[d] a licensing requirement where
4 one had not previously existed,” violating the Legislature’s express intention that state law “shall
5 be exclusive of all local regulations, *relating to* registration or licensing of” firearms. (*Ibid.*)

6 This case is on all fours with *Doe*. The City has chosen to bar the possession of firearm
7 magazines over ten rounds—items lawful to own and possess under state law—but it has carved
8 out exceptions for those holding certain firearm-related licenses issued by the state. (§ 46.30,
9 subd. (c)(2) [licensed firearm dealers]; *id.* subd. (7) [holders of a special weapons permit]; *id.*
10 subd. (8) [holders of permits for the possession, transportation, or sale of magazines over ten
11 rounds]; *id.* subd. (12) [those in the business of transferring magazines over ten rounds].) Like
12 San Francisco’s handgun ban, the City’s magazine ban, with its exceptions for state licensees,
13 creates a new class of persons who must enter the state firearm-licensing scheme in order to retain
14 possession of their lawfully possessed firearm magazines. *Doe* makes clear that, at the very least,
15 such *relates* to firearm licensing and is expressly preempted by section 53701.

16 **2. General State Law Impliedly Preempts LAMC 46.30 Because It**
17 **Evidences the Legislative Intent to Occupy the Field of Regulating**
Magazines Over Ten Rounds

18 Recall, even if the Legislature has not expressly stated its intent to preempt local
19 regulation, courts “look to whether it has impliedly done so.” (*O’Connell, supra*, 41 Cal.4th at p.
20 1068.) “It is settled that the enactment by the state of legislation constituting a comprehensive and
21 detailed general plan or scheme with respect to a subject shows, *without more*, an intent to occupy
22 the field, leaving no room for local regulation. . . .” (*Lane, supra*, 58 Cal.2d at p. 106 (conc. opn.
23 of Gibson, C.J.), *italics added.*) The Court may find a local ordinance impliedly preempted if:

24 (1) [T]he subject matter has been so fully and completely covered by general law
25 as to clearly indicate that it has become exclusively a matter of state concern; (2)
26 the subject matter has been partially covered by general law couched in such
27 terms as to indicate clearly that a paramount state concern will not tolerate further
28 or additional local action; or (3) the subject matter has been partially covered by
general law, and the subject is of such a nature that the adverse effect of a local
ordinance on the transient citizens of the state outweighs the possible benefit to
the locality.

1 (O'Connell, *supra*, 41 Cal.4th at p. 1068, citing *Sherwin-Williams*, *supra*, 4 Cal.4th at p. 898.)

2 Applying these principles, the California Supreme Court in *In re Lane* invalidated a Los
3 Angeles City ordinance that prohibited engaging in sexual intercourse or any lewd act with a
4 person not one's spouse. (58 Cal.2d at p. 102.) The Court combed through the Penal Code
5 sections addressing the criminal aspects of sexual activity, finding them to be "so extensive in
6 their scope that they clearly show an intention by the Legislature to adopt a general scheme for
7 the regulation of" that conduct. (*Id.* at p. 103) The Court recognized that, at the time, living in a
8 state of cohabitation and adultery was prohibited by state law, but "neither simple fornication or
9 adultery alone nor living in a state of cohabitation and fornication" were. (*Id.* at p. 104.) The
10 Court thus found it "clear that the Legislature has determined by implication that such conduct
11 *shall not* be criminal in this state" and struck the ordinance as preempted. (*Ibid.*, italics added.)

12 *Lane* commands the same outcome here. California law establishes a broad and
13 comprehensive scheme for the regulation of magazines over ten rounds. Touching every aspect of
14 the manufacture, importation, sale, giving, lending, buying, receiving, and licensing of such
15 magazines, providing a wide range of exemptions, and authorizing the possession of magazines
16 lawfully acquired before January 1, 2000, generally and when engaged in conduct specifically
17 authorized by state law (See *supra*, Statement of Facts, Part I), the comprehensive nature of the
18 state scheme is strong evidence of the Legislature's intent to "fully and completely" occupy the
19 entire field of magazines over ten rounds. (O'Connell, *supra*, 41 Cal.4th at p. 1068.) As in *Lane*,
20 the state has here clearly defined what conduct constitutes a crime as regards magazines over ten
21 rounds, intentionally leaving their possession untouched and making clear "by implication that
22 such conduct *shall not* be criminal in this state." (*Lane*, *supra*, 58 Cal.2d at p. 104, italics added.)
23 While a locality may make additional regulations not inconsistent with the state's general law
24 (see, e.g., *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1116), "this case is not one
25 where a local entity has legislated in synergy with state law" (*Fiscal*, *supra*, 158 Cal.App.4th at p.
26 915). "The City is not simply imposing additional restrictions on state law to accommodate local
27 concerns; but instead, it has enacted a total ban on an activity state law allows." (*Ibid.*) The
28 consequence of this distinction was well described by the Supreme Court in *Great Western*

1 Shows: “total bans are not viewed in the same manner as added regulations, and justify greater
2 scrutiny.” (*Ibid.*, citing *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th
3 853, 867-868.)

4 At the very least, the Legislature has *partially* covered the field by general law regulating
5 magazines over ten rounds, and it has done so in terms indicating that further local regulation
6 cannot be tolerated. For instance, state law expressly authorizing the transport of lawfully
7 acquired magazines out of and back into the state (Pen. Code, § 32315) necessarily authorizes of
8 those magazines and forecloses prohibition of that conduct by local governments. It is impossible
9 to travel out of California without entering cities and counties, which might elect as Los Angeles
10 did, to ban the possession of magazines over ten rounds if state law did not control. Indeed,
11 Plaintiffs and others residing in cities landlocked by Los Angeles cannot leave their homes with
12 their magazines to travel out of state without entering the City and exposing themselves to
13 criminal prosecution for conduct expressly authorized by state law. (Takahashi Decl., ¶¶ 3, 12-13;
14 Wolcott Decl., ¶¶ 3, 12-13; CRPA Decl., ¶¶ 5, 11-13.)

15 The third category—the adverse effect of local regulation on transient citizens—likewise
16 establishes the Legislature’s implicit manifestation of its intent to occupy the field. Local
17 prohibitions on the possession of these magazines harm transient citizens by creating a patchwork
18 quilt of laws throughout the state, subjecting persons in lawful possession to criminal liability for
19 entering cities with such bans, whether knowingly or not, while traveling throughout the state,
20 while traveling from one residence to another, while traveling between a residence and place of
21 employment, or while traveling between a residence or place of employment and a shooting
22 range. Unlike laws that prohibit the sale or transfer of certain items within the boundaries of a city
23 or county, criminal bans on mere possession expose unsuspecting citizens traveling to or through
24 the jurisdiction to prosecution for unknowingly violating a local law while engaging in conduct
25 that is otherwise legal throughout the state. (Cf. *Great Western*, *supra*, 27 Cal.4th at p. 867
26 [banning firearm sales on county property had “little impact on transient citizens”].) The threat of
27 inadvertent violation, arrest, and prosecution cannot be overstated.

28 In sum, the state has occupied the entire field of regulating magazines over ten rounds—

1 both expressly and by implication—and LAMC section 46.30 is preempted by state law.

2 **III. THE BALANCE OF HARMS TIPS SHARPLY IN PLAINTIFFS' FAVOR**

3 The Court must next balance the harm that Plaintiffs are likely to suffer if injunctive relief
4 does not issue against the harm Defendants are likely to suffer if it does. (*Cohen, supra*, 40 Cal.3d
5 at p. 286.) In evaluating the relative harm to the parties, the court may consider *any* of several
6 factors: “(1) the inadequacy of any other remedy; (2) the degree of irreparable injury the denial of
7 the injunction will cause; (3) the necessity to preserve the status quo; [and] (4) the degree of
8 adverse effect on the public interest or interests of third parties the granting of the injunction will
9 cause.” (*Id.* at p. 286, fn. 5.)

10
11 **A. Absent Preliminary Relief, Plaintiffs Will Suffer Irreparable Harm Without Adequate Remedy at Law**

12 “To qualify for preliminary injunctive relief plaintiffs must show irreparable injury, either
13 existing or threatened.” (*City of Torrance v. Transl. Living Ctrs. for L.A.* (1982) 30 Cal.3d 516,
14 526, citing *7978 Corp. v. Pitchess* (1974) 41 Cal.App.3d 42, 46; see also Code Civ. Proc., § 526,
15 subd. (a)(2).) Irreparable harm is present where a plaintiff will suffer an injury for which adequate
16 compensation is difficult, if not impossible, to ascertain. (*Wind v. Herbert* (1960) 186 Cal.App.2d
17 276, 285, citing Civ. Code, § 3422.) The City’s conduct has caused and, unless enjoined, will
18 continue to cause this very sort of injury to Plaintiffs.

19 **1. Transient Citizens Face Criminal Prosecution for Otherwise Lawful**
20 **Conduct If They Travel Through the City with Their Magazines After**
November 18, 2015

21 If the City’s magazine ban is allowed to take effect while this action is pending, visitors to
22 Los Angeles and those just driving through will be confronted by a patchwork quilt of different
23 magazine possession restrictions each time they enter another jurisdiction. Many visitors to the
24 City are likely to be unaware of the ban and, as a result, will face arrest and criminal prosecution
25 with potential life-altering consequences for conduct that is explicitly allowed under state law and
26 perfectly legal just outside the City’s borders. There is thus a clear and imminent threat of
27 irreparable harm to transient citizens, including Plaintiffs Takahashi and Wolcott, the Sheriff
28 Plaintiffs and their deputies, and members of CRPA and CRPOA, should the ordinance become

1 effective before final judgment can be rendered in this case. (Youngblood Decl., ¶¶ 6-9; Jones
2 Decl., ¶¶ 6-9; Bosenko Decl., ¶¶ 6-9; Takahashi Decl., ¶¶ 9-17; Wolcott Decl., ¶¶ 6-14; CRPA
3 Decl., ¶¶ 5, 7, 19; CRPOA Decl., ¶¶ 3, 5-12, 15.)

4
5 **2. Many Individuals Have No Lawful Means to Recover Their Magazines
If the Law Is Ultimately Overturned**

6 California law prohibits the manufacture, importation, sale, gift, loan, purchase, or
7 receiving of any “large-capacity” magazine absent an exemption. (Pen. Code, § 32310, subd. (a).)
8 Although many law-abiding gun owners, including Plaintiff Wiley, may surrender their
9 magazines to the LAPD or otherwise sell them to a licensed firearm dealer, there is no state law
10 exception for the return of such magazines to their rightful owners if the ordinance is voided, and
11 state law prohibits Plaintiffs from purchasing new ones. (Wiley Decl., ¶ 17.) What’s more, under
12 the terms of the ordinance, any magazines surrendered to the LAPD will be permanently
13 destroyed, as opposed to simply being stored. (§ 46.30, subd. (b)(2)(ii).) Because state law
14 prohibits the return of such magazines, and because the ordinance will result in hundreds—if not
15 thousands—of lawfully acquired magazines being arbitrarily destroyed, irreparable harm will be
16 suffered by Plaintiffs and members of the public if enforcement is not stayed pending resolution
17 of this case on the merits.

18 **3. Plaintiffs Takahashi, Wiley, and Wolcott and Members of Plaintiff
19 CRPOA Must Discontinue Their Business Practices as a Result of the
City’s Magazine Ban**

20 The California Supreme Court has recognized that a showing that a plaintiff must
21 discontinue a “method of conducting . . . business[] as alleged because of fear of arrest and
22 prosecution” under a constitutionally unsound law is sufficient irreparable injury. (*McKay
23 Jewelers, Inc. v. Bowron* (1942) 19 Cal.2d 595, 599.) Here, the City’s ban makes it impossible for
24 certain plaintiffs to carry magazines over ten rounds as security guards or law enforcement, to
25 attend trainings or qualify for firearm licenses with them, or to offer safety and training courses
26 with them—conduct in which they currently and regularly engage in the course of their business
27 practices.

28 For example, Plaintiff Kenneth Takahashi is a certified Firearm Safety Instructor and the

1 owner of Forward Assist Training, LLC, a firearm safety and training school with base operations
2 in Azusa, California. (Takahashi Decl., ¶ 4.) He provides several training classes each month,
3 ranging from basic handgun safety courses to advanced training for private security and law
4 enforcement personnel. (*Id.* at ¶ 7.) Mr. Takahashi lawfully owns magazines over ten rounds and
5 requires their use in various training courses he provides to security guards and law enforcement
6 officers at his base training location in Asuza and elsewhere. (*Id.* at ¶¶ 6, 8.) It is impossible for
7 Mr. Takahashi to travel to these locations without passing through Los Angeles, making it
8 impossible to lawfully transport his magazines for use in training individuals who are authorized
9 to possess them in the course of their law enforcement duties. (*Id.* at ¶¶ 9-10.)

10 Plaintiff Wiley faces nearly identical consequences absent a stay. (Wiley Decl., ¶¶ 5, 8-
11 11.) And Plaintiff Wolcott will be subject to arrest and prosecution for continuing to travel into
12 Los Angeles where he is employed as a Senior Corporate Security Manager and carries a firearm
13 with the capacity to accept over ten rounds in the course and scope of his daily employment
14 duties. (Wolcott Decl., ¶¶ 4-10, 13.) Facing potential arrest and prosecution, Mr. Takahashi, Mr.
15 Wiley, and Mr. Wolcott will be forced to change their business practices as a result of the City's
16 magazine ban (Takahashi Decl., ¶¶ 9, 17; Wiley Decl., ¶¶ 11, 18; Wolcott Decl., ¶¶ 9, 14), and
17 many CRPOA members are in the same boat. (CRPOA Decl., ¶¶ 12, 14-15.) These Plaintiffs will
18 suffer irreparable harm should the law take effect while this case is pending.

19 **B. Preliminary Relief Is Necessary to Preserve the Status Quo**

20 “The general purpose of a preliminary injunction is to preserve the status quo until the
21 merits of the action can be determined.” (*Harbor Chevrolet Corp. v. Machinists Local Union*
22 *1484* (1959) 173 Cal.App.2d 380, 384.) The balance of harms thus tips in favor of the party
23 seeking injunctive relief when necessary to preserve “the last actual peaceable, uncontested status
24 which preceded the pending controversy.” (*People v. Hill* (1977) 66 Cal.App.3d 320, 331.) To
25 that end, the California Supreme Court has recognized that preliminary injunctions preventing the
26 enforcement of statutes in effect for only a short time at the point of hearing a request for such
27 relief effectively *maintain* the status quo. (*King v. Meese* (1987) 43 Cal.3d 1217, 1227.) The
28 City's magazine ban took effect on September 19, 2015, and includes a 60-day grace period so

1 that residents may dispose of their lawfully acquired magazines in accordance with the new law.
2 (Barvir Decl., ¶¶ 3, 6; Exs. 6, 9; § 46.30, subd. (b)(2).) Staying its enforcement before that grace
3 period expires effectively maintains the status quo as is necessary to prevent the various
4 irreparable harms discussed above. (See *supra*, Argument, Part II.A.)

5 **C. The Public Interest Will Be Served, Not Harmed, by Preliminary Relief**

6 A third consideration in the balance of harms analysis is “the degree of adverse effect on
7 the public interest or interests of third parties the granting of the injunction will cause.” (*Cohen*,
8 *supra*, 40 Cal.3d at p. 286, fn. 5.) Where the public interest would be harmed by the issuance of a
9 preliminary injunction, courts are understandably reluctant to grant such relief. But when the
10 public interest is *served* by injunctive relief, the balance should tip in the movant’s favor.

11 Plaintiffs recognize that it is generally in the public interest for courts to refrain from
12 interfering in the enforcement of laws adopted by duly elected representatives out of respect for
13 the separation of powers. (*City of Santa Monica v. Super. Ct.* (1964) 231 Cal.App.2d 223, 226).
14 This interest, however, is not served when the law is clearly unconstitutional. Allowing such a
15 law to remain in effect invites a clear harm to the public trust every second it is enforced. Indeed,
16 localities could pass preempted laws with impunity, enforcing them for years while legal
17 challenges wind through the legal system, meanwhile, doing real damage to the state constitution
18 and to our system of government. It is in the best interest of the public to determine the legitimacy
19 of a recently passed ordinance *prior* to enforcement, rather than allow it to take effect and subject
20 citizens to its provisions and penalties, only to have it overturned.

21
22 **D. If Relief Is Granted, Defendants Will Suffer No Harm Sufficient to Outweigh
the Harm to Plaintiffs Absent Such Relief**

23 Given the substantial likelihood that Plaintiffs will succeed on the merits, the harm to
24 Defendants in delaying enforcement of the statute is slight. The City has no interest in enforcing
25 an unconstitutional law, as an “unconstitutional law is void and is as no law.” (*Ex parte Siebold*
26 (1879) 100 U.S. 371, 376.) Unlike Plaintiffs, who face arrest and criminal prosecution for conduct
27 they may engage in under state law or are expressly authorized to engage in pursuant to statewide
28 licenses, the City will incur *no injury* if the Court stays enforcement of section 46.30. The relief

1 Plaintiffs seek merely asks the City to delay the enforcement of a likely unconstitutional law—a
2 law it has no legitimate interest in enforcing. There is no further action required of or monetary
3 loss to the City, and it would not be deprived of any particular benefit.

4 What's more, no government interest is actually served by enforcing the ban before the
5 Court has had the opportunity to judge the merits of Plaintiffs' claims. Indeed, premature
6 enforcement will serve only to permanently deprive law-abiding citizens of their lawfully
7 acquired property. Even Councilmember Krekorian, the ban's sponsor, admits the magazines are
8 not "the cause" of the City's violent crime problem. (Barvir Decl., ¶ 7; Ex. 10.) And little
9 suggests that enforcement of the ban is in any way "urgent" to the City. Indeed, the law spent
10 over two and a half years in the political process before it was finally adopted, and then the City
11 built in a 60-day grace period for those in lawful possession of the magazines. And counsel for
12 the City indicated that it could not agree to temporarily stay enforcement simply because he
13 believed the City Attorney's office lacked the authority to do so and the City Council was not in
14 session to consider changing the enforcement date. (Monfort Decl., ¶ 12). In short, the City
15 cannot make any legitimate claim that it will somehow be harmed should the ordinance be stayed
16 temporarily. The balance of harms thus tilts in Plaintiffs' favor, and injunctive relief is proper.

17 CONCLUSION

18 Based on the foregoing, Plaintiffs respectfully request that this Court grant their motion
19 to stay enforcement of section 46.30 while this case is being litigated. In the alternative, Plaintiffs
20 ask that this Court grant their application for a TRO enjoining Defendants, their employees,
21 agents, and persons acting with them on their behalf, from enforcing section 46.30 and issue an
22 OSC so that Defendants may demonstrate why a preliminary injunction should not issue.

23 Dated: November 6, 2015

MICHEL & ASSOCIATES, P.C.



C.D. Michel

Counsel for Plaintiffs-Petitioners

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA
4 COUNTY OF LOS ANGELES

5 I, Laura L. Quesada, am employed in the City of Long Beach, Los Angeles County,
6 California. I am over the age eighteen (18) years and am not a party to the within action. My
7 business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

8 On November 6, 2015, I served the foregoing document(s) described as

9 **EX PARTE APPLICATION TO STAY ENFORCEMENT OF LAMC SECTION 46.30,
10 ALTERNATIVELY, FOR TEMPORARY RESTRAINING ORDER AND ORDER TO
11 SHOW CAUSE; MEMORANDUM IN SUPPORT**

12 on the interested parties in this action by placing [] the original [X] a true and correct copy
13 thereof addressed as follows:

14 Mr. Benjamin Chapman
15 Deputy City Attorney
16 200 North Main Street, 9th Floor,
17 Los Angeles, California, 90012
18 Phone: (213) 473-6858
19 E-mail: benjamin.chapman@lacity.org

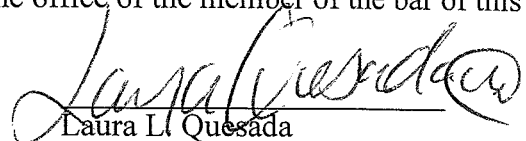
20 X (BY MAIL) As follows: By placing the sealed envelope for collection and mailing. I am
21 "readily familiar" with the firm's practice of collection and processing correspondence for
22 mailing. Under the practice it would be deposited with the U.S. Postal Service on that
23 same day with postage thereon fully prepaid at Long Beach, California, in the ordinary
24 course of business. I am aware that on motion of the party served, service is presumed
25 invalid if postal cancellation date is more than one day after date of deposit for mailing an
26 affidavit. Executed on November 6, 2015, at Long Beach, California.

27 — (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice
28 of collection and processing correspondence for overnight delivery by UPS/FED-EX.
Under the practice it would be deposited with a facility regularly maintained by
UPS/FED-EX for receipt on the same day in the ordinary course of business. Such
envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery
fees paid or provided for in accordance with ordinary business practices.
Executed on November __, 2015, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic
transmission to benjamin.chapman@lacity.org. Said transmission was reported and
completed without error. Executed on November 6, 2015, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct.

— (FEDERAL) I declare that I am employed in the office of the member of the bar of this
court at whose direction the service was made.

27
28 
Laura L. Quesada