No. 19-55376

In the
United States Court of Appeals for the Ninth Circuit

VIRGINIA DUNCAN; RICHARD LEWIS; PATRICK LOVETTE; DAVID MARGUGLIO; CHRISTOPHER WADDELL; CALIFORNIA RIFLE & PISTOL ASSOCIATION, INC., A CALIFORNIA CORPORATION,
Plaintiffs-Appellees,

v.

XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Defendant-Appellant

v.

LAW CENTER TO PREVENT GUN VIOLENCE; EVERYTOWN FOR GUN SAFETY,
Movants.

On Appeal from the United States District Court
for the Southern District of California
Case No. 3:17-cv-01017-BEN-JLB

BRIEF OF AMICUS CURIAE NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. IN SUPPORT OF PLAINTIFFS AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the National Rifle Association of America, Inc. states that it does not have a parent corporation, nor does any publicly held corporation own 10% or more of its stock.

Dated: September 23, 2019

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IDENTITY AND INTEREST OF AMICUS CURIAE

The National Rifle Association of America, Inc. ("NRA") was founded in 1871. It is the oldest civil rights organization in the United States and the Nation's foremost defender of Second Amendment rights. Since the NRA's founding, its membership has grown to include more than five million people, and its education, training, and safety programs reach millions more. The NRA is America's leading provider of firearms marksmanship and safety training for civilians and law-enforcement officers, and its self-defense seminars have helped more than 100,000 people develop strategies to avoid becoming a victim of crime. The NRA has a strong interest in this case because its outcome may affect the ability of NRA members in California and elsewhere to obtain standard-capacity ammunition magazines for self-defense and other lawful purposes. Like all law-abiding Americans, NRA members have a fundamental, individual right to keep and bear the arms that California would effectively remove from the market.

The NRA has obtained consent from the parties to the filing of this amicus curiae brief.[1]

[1] Under Federal Rule of Appellate Procedure 29, the NRA certifies that this brief was not written in whole or in part by counsel for any party, that no party or party's counsel made a monetary contribution to the preparation and submission of this brief, and that no person or entity other than the NRA, its members, and its counsel has made such a monetary contribution.

INTRODUCTION

It is well-settled that any categorical ban of arms typically possessed for lawful purposes violates the Second Amendment and is per se unconstitutional. *See District of Columbia v. Heller*, 554 U.S. 570, 628–29 (2008). Ignoring *Heller*'s instruction, California recently banned the possession of standard ammunition magazines holding more than ten rounds. Cal. Penal Code § 32310. The district court correctly held that this ban is unconstitutional, and this Court should affirm.

The scope of the Second Amendment is understood by examining its text, history, and tradition. *Id*. at 576–628; *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010). Under this analysis, prohibiting law-abiding, responsible citizens from possessing bearable arms that are typically possessed for lawful purposes—including the ammunition and magazines necessary to make them function—is inconsistent with the historical understanding of the scope of the Second Amendment. To the contrary, there is no longstanding tradition of banning standard-capacity magazines holding more than ten rounds of ammunition.

The banned magazines are ubiquitous. There are over one hundred million of them in the United States, they are legal in the vast majority of States, and they come standard with many of the Nation's most popular firearms. *Duncan v. Becerra*, 366 F. Supp. 3d 1131, 1143, 1145 (S.D. Cal. 2019). In California, however, anyone in possession of one of these standard-capacity magazines must remove it from the

State, sell it to a licensed firearms dealer, or forfeit it to the State, which will oversee its destruction. Cal. Penal Code §§ 32310(d)(1) & (3). If a citizen of California wishes to keep his lawfully obtained property, he will face criminal penalties of a fine up to $100 per magazine, one year of imprisonment in the county jail, or both. *Id*. § 32310(c). This is a ban that *Heller* forbids.

This Court has employed a two-tiered inquiry for analyzing Second Amendment cases that is squarely at odds with *Heller*'s analysis and holding. *See, e.g.*, *Fyock v. City of Sunnyvale*, 779 F.3d 991, 996 (9th Cir. 2015) (holding that the district court did not abuse its discretion in denying a preliminary injunction utilizing the two-tiered approach). The Court should reject the two-tiered inquiry here when considering a ban on possession of protected arms.

Even if the Court applies the two-tiered inquiry, however, California's magazine ban cannot pass constitutional muster. The State argues that the banned magazines are "not within the right secured by the Second Amendment," because they are "unquestionably most useful in military service" and are "designed to kill or disable the enemy on the battlefield." (Blue Br. 27 (citation omitted)). But this Court has already held that the banned magazines "are in common use," and, because the firearms that use them "are commonly possessed by law-abiding citizens for lawful purposes," "a regulation restricting [their] possession . . . burdens conduct falling within the scope of the Second Amendment." *Fyock*, 779 F.3d at 998; *see*

also Duncan v. Becerra, 742 F. App'x 218, 221 (9th Cir. 2018) (affirming the grant of a preliminary injunction in this case and holding that "the district court did not abuse its discretion by concluding that magazines for a weapon likely fell within the scope of the Second Amendment"). The result can be no different here because undisputed material facts support the district court's conclusions of law on summary judgment.

The State argues that this Court should apply only intermediate scrutiny and that its ban satisfies this level of scrutiny and is constitutional. (Blue Br. 31). But California's law bans conduct that lies at the very core of the Second Amendment's protections—namely, "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Heller*, 554 U.S. at 635. Accordingly, it should, at a minimum, be subjected to strict scrutiny. *See United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013). But, assuming intermediate scrutiny applies, California's ban is not narrowly tailored to serve a compelling or substantial government interest. *See McCullen v. Coakley*, 573 U.S. 464, 486 (2014). The judgment of the district court should be affirmed.

ARGUMENT

The district court correctly recognized that *Heller* "provided a simple Second Amendment test . . . that anyone can understand." *Duncan*, 366 F. Supp. 3d at 1142. "The right to keep and bear arms is a right enjoyed by law-abiding citizens to have

arms that are not unusual 'in common use' 'for lawful purposes like self-defense.'" *Id*. (quoting *Heller*, 554 U.S. at 624). This Court should faithfully apply *Heller*'s text, history, and tradition analysis to evaluate California's magazine ban.

Even if this Court rejects *Heller*'s analysis, the district court's decision should be affirmed because California's magazine ban cannot survive heightened constitutional scrutiny and must be struck down. Pursuant to the Court's two-tiered inquiry, the Court first asks "whether the challenged law burdens conduct protected by the Second Amendment" and, "if so, . . . appl[ies] an appropriate level of scrutiny." *Chovan*, 735 F.3d at 1136. The conduct banned by California—the possession of widely owned, standard-capacity magazines—is squarely within the Second Amendment's protective confines. And California's ban on possessing these magazines fails any level of heightened constitutional scrutiny.

I. The possession of magazines holding more than ten rounds is conduct protected by the Second Amendment.

"[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582. In *Heller*, the Court engaged in an extensive text, history, and tradition analysis that established a standard for determining the scope of the Second Amendment protection. *Id*. at 576–627. *Heller* unambiguously defined the class of firearms that citizens have a Second Amendment right "to keep and

bear": firearms that are "typically possessed by law-abiding citizens for lawful purposes." 554 U.S. at 596, 625.

The Supreme Court has since reaffirmed *Heller*'s text, history, and tradition analysis in *McDonald*, 561 U.S. at 768, and *Caetano v. Massachusetts*, 136 S. Ct. 1027, 1028 (2016) (per curiam). The Court's rejection of any interest-balancing approach is particularly evident in *Caetano*, where the Court addressed a categorical prohibition of stun guns—a modern arm entirely unrelated to the handguns at issue in *Heller* and *McDonald*. *See Caetano*, 136 S. Ct. at 1028. Like the handgun bans before it, the stun gun ban did not survive. *See Ramirez v. Commonwealth*, 479 Mass. 331, 332, 336–37, 94 N.E.3d 809, 811, 814–16 (2018) (applying *Caetano* to hold "that the absolute prohibition against civilian possession of stun guns . . . is in violation of the Second Amendment"). The district court correctly held that the undisputed evidence demonstrates that the magazines banned by California satisfy *Heller*'s standard. *Duncan*, 366 F. Supp. 3d at 1182–83.

The magazines banned by California are common to the point of ubiquity among the law-abiding gun owners of this country. *Id.* at 1143. Calling these devices "large capacity" magazines is a misnomer; they are a standard feature on many of this nation's most popular firearms. *Id.* at 1145. Two-thirds of the distinct models of semiautomatic centerfire rifles are sold with standard magazines holding more than ten rounds of ammunition. GUN DIGEST 2013 455–64, 497–99 (Jerry Lee ed., 67th

ed. 2012). The AR-15, which comes standard with a magazine holding more than ten rounds, is "the most popular civilian rifle design in America." *Kolbe v. Hogan*, 849 F.3d 114, 128–29 (4th Cir. 2017) (en banc); *see also Duncan*, 366 F. Supp. 3d at 1145. Magazines holding more than ten rounds of ammunition are also standard on many of this nation's most popular handgun models. *See Kolbe*, 849 F.3d at 129 ("Most pistols are manufactured with magazines holding ten to seventeen rounds."). As the D.C. Circuit put it, "[t]here may well be some capacity above which magazines are not in common use but, if so, . . . that capacity surely is not ten." *Heller v. District of Columbia ("Heller II")*, 670 F.3d 1244, 1261 (D.C. Cir. 2011).

Magazines holding more than ten rounds are not new and have traditionally been regarded as lawful possessions. Such magazines are at least as old as the Second Amendment itself. The Girandoni air rifle was in existence at the time of the Second Amendment's drafting, and it had a magazine holding twenty rounds; Merriweather Lewis carried one on the Lewis and Clark expedition. *See* Jim Garry, WEAPONS OF THE LEWIS & CLARK EXPEDITION 95–96, 99–100 (2012). Many lever-action rifles with magazines capable of holding more than ten rounds were introduced around the time of the adoption of the Fourteenth Amendment, including models produced by the Volcanic Repeating Arms Company in the 1850s, Henry in the 1860s, and Winchester in the 1860s and 1870s. *See* Harold F. Williamson, WINCHESTER: THE GUN THAT WON THE WEST 13 (1952); Norm Flayderman, FLAYDERMAN'S GUIDE TO

ANTIQUE AMERICAN FIREARMS AND THEIR VALUES 304–06 (9th ed. 2007); Arthur Pirkle, 1 WINCHESTER LEVER ACTION REPEATING FIREARMS: THE MODELS OF 1866, 1873 & 1876 44 (1994).

Further, these standard-capacity magazines are typically possessed for lawful purposes including the core right of self-defense. *See Duncan*, 366 F. Supp. 3d at 1134 (recounting situations in which law-abiding citizens defending themselves with firearms needed more than ten rounds of ammunition). There are many reasons why a law-abiding, responsible citizen would choose not to be limited to restricted-capacity ammunition magazines holding ten or fewer rounds. The most obvious is to decrease the risk of running out of ammunition before being able to repel a criminal attack. If a gun owner is attacked, there is a good chance he will be attacked by multiple offenders, naturally requiring an increased amount of readily available ammunition. According to survey data from the Bureau of Justice Statistics, for example, in 2008 nearly 800,000 violent crimes (17.4% of the total) involved multiple offenders. U.S. BUREAU OF JUSTICE STATISTICS, *CRIMINAL VICTIMIZATION IN THE UNITED STATES, 2008 STATISTICAL TABLES* tbl. 37 (2010), *available at* https://www.bjs.gov/content/pub/pdf/cvus08.pdf (last accessed Sept. 20, 2019).

Magazines holding more than ten rounds are effective for self-defense. Reloading a semiautomatic firearm with a detachable magazine is time-consuming, even under ideal circumstances. When considering factors such as distractions,

noise, multiple assailants, lighting conditions, nervousness, and fatigue, the time to reload increases. *See* Roland W. Ouellette, *Management of Aggressive Behavior Instructor Manual* at 23 (2006).

Reloading a firearm is also physically and mentally demanding, limiting a victim's ability to escape, fend off an attacker, call 911, or give physical aid or direction to others. And reloading a firearm requires focus, distracting the victim from the assailant and her surroundings, which increases the likelihood of a missed shot. *See* Bill Lewinski, *Stress Reactions of Lethal Force Encounters*, THE POLICE MARKSMAN at 27 (2002); N. Konttinen, D.M. Landers, & H. Lyytinen, *Aiming Routines and Their Electrocortical Concomitants Among Competitive Rifle Shooters*, 10 SCANDINAVIAN J. MED. & SCI. IN SPORT169 (2000) (concluding from a study of brain-wave research of competitive shooters that distractions increase the probability of a missed shot). An assailant, in contrast to a surprised victim, will have planned and prepared and will not be under the stress of surprise. The unintended but practical result of magazine bans is to significantly diminish the ability of victims to defend themselves while simultaneously doing little to affect criminal outcomes.

The availability of magazines holding more than ten rounds can be the difference in surviving or not surviving a self-defense situation. Civilians, unlike police officers, likely have no body armor, no radio, no partner, no cover units, and

no duty belt with extra magazines. Yet civilians are confronted by the same violent felons as the police. Because studies show that highly trained and experienced police officers require the use of more than ten rounds to subdue an aggressive assailant in 17% of their close-range encounters, it follows that an untrained civilian gun owner would need at least that many rounds. *Annual Firearms Discharge Report*, Office of Management Analysis and Planning, New York City Police Department (2015).

California's argument that ownership of the banned magazines falls outside the scope of the Second Amendment is squarely foreclosed by this Court's decision in *Fyock*. In that case, the district court concluded that magazines with a capacity of ten or more rounds "are in common use" and thus "fall[] within the scope of the Second Amendment"—based on evidence and studies simildar to the ones in the record in this case. *See Fyock v. City of Sunnyvale*, 25 F. Supp. 3d 1267, 1274–75 (N.D. Cal. 2014). This Court affirmed that holding. *See Fyock*, 779 F.3d at 998; *see also Duncan*, 742 F. App'x at 221. It necessarily follows that the district court did not err in this case by reaching the same conclusion.

II. California's ban on magazines holding more than ten rounds is unconstitutional under *Heller*'s text, history, and tradition analysis.

Applying *Heller*'s standard to this case is a "straightforward" exercise. *Duncan*, 366 F. Supp. 3d at 1153. The text, history, and tradition analysis asks: Are the banned standard-capacity magazines typically possessed by law-abiding,

responsible citizens for lawful purposes? The answer indisputably is "yes," and the magazine ban is unconstitutional.

Given the scope of the Second Amendment—as interpreted through text, history, and tradition—California's categorical magazine ban is a legislative policy choice that is "off the table." *See Heller*, 554 U.S. at 636; *see also Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1114 (S.D. Cal. 2017) (recognizing that "[t]he State of California's desire to criminalize simple possession of a firearm magazine able to hold more than ten rounds is precisely the type of policy choice that the Constitution takes off the table"), *aff'd*, 742 Fed. App'x 218 (9th Cir. 2018). California's magazine ban fails *Heller*'s constitutional analysis, and the judgment of the district court should be affirmed.

III. California's ban on magazines holding more than ten rounds is unconstitutional under any level of heightened constitutional scrutiny.

A. California's magazine ban should be subjected to strict scrutiny because a ban of protected arms severely burdens the core individual right to keep and bear arms for self-defense.

California's magazine ban forbids law-abiding, responsible citizens from keeping common arms that are typically possessed for lawful purposes including self-defense. It must survive the strictest form of constitutional scrutiny. It is well-settled that "strict judicial scrutiny [is] required" if a law "impinges upon a fundamental right explicitly or implicitly protected by the Constitution." *San Antonio Ind. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973). And the individual right

to bear arms is not only specifically enumerated in the constitutional text; it was also counted "among those fundamental rights necessary to our system of ordered liberty" by "those who drafted and ratified the Bill of Rights." *McDonald*, 561 U.S. at 768, 778. To survive strict scrutiny, California's ban must be the narrowest means possible to advance the most compelling of governmental interests.

This Court's precedent compels the application of strict scrutiny. To determine the correct level of scrutiny, this Court "consider[s] how close [the challenged restriction] is to the core of the Second Amendment right, and the severity of its burden on that right." *Jackson v. City and County of San Francisco*, 746 F.3d 953, 968 (9th Cir. 2014). Both factors dictate that the strictest scrutiny must be applied to California's magazine ban, which reaches the very heart of the Second Amendment's protection by banning the possession of common arms for the core purpose of self-defense (which is "the central component" of the right to keep and bear arms, *Heller*, 554 U.S. at 599) in the home ("where the need for defense of self, family, and property is most acute," *id*. at 628). And the burden this ban imposes on the core right is the most severe kind possible—a prohibition on the possession of these arms *under any circumstances*.

Other courts have also recognized that strict scrutiny must be used to analyze laws that burden the core guarantee of lawful possession of arms for self-defense. *E.g.*, *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, and*

Explosives, 700 F.3d 185, 195 (5th Cir. 2012) ("A regulation that threatens a right at the core of the Second Amendment—for example, the right of a law-abiding, responsible adult to possess and use a handgun to defend his or her home and family—triggers strict scrutiny." (citations omitted)); *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010) (applying "intermediate, rather than strict, scrutiny" because the challenged law "was neither designed to nor has the effect of prohibiting the possession of any class of firearms"). *Heller* itself forecloses the application of intermediate scrutiny here. While Justice Breyer, in dissent, urged the Court to craft a doctrinal test drawn from "cases applying intermediate scrutiny" in the First Amendment context, *Heller*, 554 U.S. at 704 (Breyer, J., dissenting), the *Heller* majority rejected that suggestion, *id*. at 634–35.

The *Heller* majority eschewed levels of scrutiny altogether, categorically invalidating the District of Columbia's bans on the possession of handguns and operable long guns in the home. That approach that would be most faithful to *Heller* in this case. But barring that, strict scrutiny should be applied.

B. California's magazine ban fails even intermediate scrutiny because it is not narrowly tailored.

Ultimately, this case does not depend on the level of heightened scrutiny because California's ban fails even intermediate scrutiny—the most lenient standard that possibly could be applied. *See Heller*, 554 U.S. at 628 n.27 (rejecting rational basis review as a standard for challenges brought under the Second Amendment).

Intermediate scrutiny requires a challenged law be "supported by an important government interest and substantially related to that interest." *Chovan*, 735 F.3d at 1141. Under intermediate scrutiny, a law impacting fundamental rights must be narrowly tailored to serve a substantial government interest. *McCullen v. Coakley*, 573 U.S. 464, 486 (2014). "The burden of justification is demanding and it rests entirely on the State." *United States v. Virginia*, 518 U.S. 515, 533 (1996). And the State cannot "get away with shoddy data or reasoning." *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438 (2002) (plurality). For multiple reasons, California does not meet this test.

There is no empirical evidence for the proposition that "large capacity" magazine bans advance public safety. *Duncan*, 366 F. Supp. 3d at 1162-65 (explaining why California's proffered evidence in this case did not satisfy its burden). A federal statute banned the same magazines as California between 1994 and 2004. *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 110105, 108 Stat. 2000 (1994). A social scientist whose work on gun control is repeatedly cited by California once acknowledged that his research for the Department of Justice on the ten-year federal ban of magazines holding more than ten rounds showed "no discernible reduction in the lethality or injuriousness of gun violence" while the ban was in effect. Christopher Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence*,

1994-2003, 96 (2004). Professor Koper also acknowledged that "studies suggest that state-level [magazine] bans have not reduced crime." *Id*. at 81 n.95.

The failure of the federal magazine ban to have any discernible effect on gun violence has been confirmed by the National Research Council ("NRC"), which conducted a comprehensive review of all the published literature on firearm violence. The NRC explained that "the premise of the ban" on magazines holding more than ten rounds "was that a decrease in their use may reduce gunshot victimization, particularly victimizations involving multiple wounds or multiple victims," but the data "did not reveal any clear impacts on gun violence outcomes." National Research Council, *Firearms and Violence: A Critical Review* 96–97 (Charles F. Wellford et al. eds., 2005).

California's ban necessarily will be *less* effective than its federal counterpart in curtailing criminal access to "large capacity" magazines because the banned magazines continue to be legal in the vast majority of States that do not have laws similar to California's. Empirical studies suggest that "the impact of [state bans such as these] is likely undermined to some degree by the influx of [prohibited items] from other states . . . ." Koper at 81 n.95.

It should not be surprising that bans like California's have not improved public safety. It is highly unlikely that such prohibitions will deter any violent criminal from using a banned magazine, for the simple reason that "most of the methods

through which criminals acquire guns and virtually everything they ever do with those guns are already against the law." James D. Wright & Peter H. Rossi, ARMED & CONSIDERED DANGEROUS XXXV (2d ed. 2008); *see also* U.S. Department of Justice, Anthony J. Pinizzotto, et al., *Violent Encounters* 50 (2006) (97% of handguns used to assault law enforcement officers participating in study were acquired illegally).

Unlike criminals, law-abiding, responsible citizens (by definition) will obey the law. This means that California's ban will actually impair public safety to the extent it deprives law-abiding, responsible citizens of the same ready ammunition capacity that criminals will have. Defensive gun uses "are about three to five times as common as criminal uses, even using generous estimates of gun crimes." Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. Crim. L. & Criminology 150, 170 (1995). And, as explained above, there are valid reasons why law-abiding, responsible citizens may prefer to possess for self-defense the magazines banned by California, and millions of Americans have chosen to possess them. Even assuming that California's ban did somehow reduce the incidence or severity of firearm crimes, the State has done nothing to show that any such public safety gains would outweigh the real public safety cost of depriving its citizens of a critical and effective means of self-defense.

California argues that "large capacity" magazines "feature prominently" in mass shootings (Blue Br. 1), but the State has failed to show that its magazine ban will do anything to reduce their incidence or severity. *See Duncan*, 366 F. Supp. 3d at 1162–65 (explaining that California's evidence was composed of biased secondary sources, did not demonstrate that the policy would be effective, and did not even demonstrate an overuse of these magazines in mass shootings). Mass shootings are statistically so rare that "there is no conclusive information about which policies and enforcement and prevention strategies might be effective" in reducing their number and severity. Institute of Medicine & National Research Council, *Priorities for Research to Reduce the Threat of Firearm-Related Violence* 31, 47 (Alan I. Leshner et al. eds., 2013).

California argues that "large capacity" magazines "enable a shooter to fire more rounds in a given period of time without reloading." (Blue Br. 5). But even if this is true, it does not show that these mass shooters were able to commit their atrocities *because* they used "large capacity" magazines. For example, a study of incidents from 1984 to 1993 found that "[n]one of the mass killers maintained a sustained rate of fire that could not also have been maintained—even taking reloading time into account—with either multiple guns or with an ordinary six-shot revolver and the common loading devices known as 'speedloaders.'" Gary Kleck, *Targeting Guns: Firearms and Their Control* 124–25 (2d ed. 2006).

California's magazine ban is statistically unlikely to prevent or lessen the severity of mass shootings. Defendants' speculative claims are more wishful thinking than sound policy and cannot justify this massive intrusion upon the rights of law-abiding, responsible citizens to defend themselves, their families, and their homes with standard-capacity magazines typically possessed for lawful purposes throughout the nation. The magazine ban is not narrowly tailored to intrude no more than necessary upon the core Second Amendment right and will not further any compelling or substantial government interest. The judgment of the district court should be affirmed.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's order granting Plaintiff's Motion for Summary Judgment.

Dated: September 23, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2019, I filed the foregoing with the Clerk of the Court via CM/ECF, which will serve the following counsel of record:

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 19-55376

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