

SEILER EPSTEIN ZIEGLER & APPEGATE LLP
Attorneys at Law

1 George M. Lee (SBN 172982)
Douglas A. Applegate (SBN 142000)
2 **SEILER EPSTEIN ZIEGLER & APPEGATE LLP**
601 Montgomery Street, Suite 2000
3 San Francisco, California 94111
Phone: (415) 979-0500
4 Fax: (415) 979-0511

5 Raymond M. DiGuseppe (SBN 228457)
LAW OFFICES OF RAYMOND MARK DIGUISEPPE, PLLC
6 4002 Executive Park Blvd., Suite 600
Southport, NC 28461
7 Phone: (910) 713-8804
Fax: (910) 672-7705

8 Attorneys for Plaintiffs
9 WILLIAM WIESE, JEREMIAH MORRIS,
LANCE COWLEY, SHERMAN MACASTON,
10 ADAM RICHARDS, CLIFFORD FLORES,
L.Q. DANG, FRANK FEDEREAU, ALAN NORMANDY,
11 TODD NIELSEN, THE CALGUNS FOUNDATION,
FIREARMS POLICY COALITION,
12 FIREARMS POLICY FOUNDATION,
and SECOND AMENDMENT FOUNDATION

13
14 UNITED STATES DISTRICT COURT

15 FOR THE EASTERN DISTRICT OF CALIFORNIA

16
17 WILLIAM WIESE, et al.,

18 Plaintiffs,

19 vs.

20
21 XAVIER BECERRA, in his official capacity as
Attorney General of California, et al.,

22 Defendants.
23
24

Case No. 2:17-cv-00903-WBS-KJN

**NOTICE OF MOTION AND MOTION OF
PLAINTIFFS FOR TEMPORARY
RESTRAINING ORDER, AND ISSUANCE OF
PRELIMINARY INJUNCTION**

[FRCP 65; E.D. L.R. 231]

Date: TBD
Time: TBD
Courtroom 5
Judge: Hon. William B. Shubb

25
26 //
27 //
28 //

1 TO THE COURT, AND TO DEFENDANTS, THROUGH THEIR ATTORNEYS OF
2 RECORD:

3 PLEASE TAKE NOTICE that pursuant to Fed. Rule of Civ. Pro. 65, and Eastern District
4 Local Rule 231, each of the above-named Plaintiffs, for themselves and in a representative
5 capacity on behalf of the class of individuals they represent, by and through their attorneys of
6 record, will and hereby do move this court, Hon. William B. Shubb presiding, for the immediate
7 grant of a Temporary Restraining Order (TRO) and issuance of a preliminary injunction,
8 enjoining the defendants or their agents from enforcing or applying Penal Code § 32310,
9 subdivs. (c) and (d), as now amended, on the following grounds:

10 1. The enforcement of section 32310(c), which as of July 1, 2017 would prohibit the
11 continuing possession of previously lawfully-obtained large-capacity magazines (as that term is
12 defined by statute), which were previously “grandfathered” (exempted) by statute, and which
13 items are inherent working parts of firearms, would violate the Second Amendment of the United
14 States Constitution under *District of Columbia v. Heller*, 554 U.S. 570 (2008);

15 2. The enforcement of section 32310, subdivs. (c) and (d), which as of July 1, 2017
16 would require plaintiffs Wiese, Morris, Cowley, Macaston, Flores and Dang, and a class of
17 similarly-affected individuals to dispose of, destroy, or “surrender” their constitutionally-
18 protected personal property, would constitute a taking of such property, for which no
19 compensation is or would be provided, and therefore, would violate both the Takings Clause and
20 the Due Process Clause of the United States Constitution; and

21 3. The enforcement of section 32310(c) is or should be prohibited because the
22 statute scheme under which it would operate it is constitutionally vague and overbroad, under the
23 due Process Clause, Amend. 14 of the U.S. Constitution.

24 Unless and until enjoined, through the pendency of this lawsuit and thereafter, Plaintiffs
25 and each of them, individually and on behalf of the class of persons they represent, would suffer
26 irreparable injury arising from the permanent loss of constitutionally-protected liberty interests
27 and loss of irreplaceable personal property.
28

1 ■ ■ ■

2 In accordance with Local Rule 231, and the case management/standing orders of Senior
3 Judge William B. Shubb, plaintiffs are submitting this motion for the issuance of a TRO, and
4 issuance of a preliminary injunction, to be heard on such date and time for the hearing of law and
5 motion matters as it may please the court, and pursuant to a briefing schedule as the court deems
6 to be appropriate, as set forth in the proposed order submitted herewith per L.R. 231(c)(7).

7 **Given the pending effective enforcement date of July 1, 2017 set forth in the statutes at**
8 **issue, however, Plaintiffs are, requesting temporary injunctive relief, and/or that this**
9 **matter be heard by July 1, 2017.** (See Lee Decl., ¶¶ 3-7.)

10 In support of this motion, Plaintiffs will rely upon and submit herewith the supporting
11 memorandum of points and authorities, supporting declarations and exhibits thereto, matters
12 which may be subject to judicial notice, including those matters which are contained within
13 plaintiffs' Request for Judicial Notice made pursuant to FRE 201, and any other such evidence
14 and argument as the court may consider upon the hearing of this motion.

15 Pursuant to Eastern Dist. L.R. 231(d), Plaintiffs inform the court that they do not intend
16 to present oral testimony at the hearing of such matter, and anticipate that the hearing on this
17 matter will take approx. one hour.

18
19
20 Dated: June 12, 2017

SEILER EPSTEIN ZIEGLER & APPLGATE LLP

21 /s/ George M. Lee
22 George M. Lee

23 **LAW OFFICES OF RAYMOND MARK**
24 **DIGUISEPPE, PLLC**

25 /s/ Raymond M. DiGuiseppe
26 Raymond M. DiGuiseppe

SEILER EPSTEIN ZIEGLER & APPLGATE LLP
Attorneys at Law