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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.

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

**DECLARATION OF PLAINTIFF SHERMAN
MACASTON IN SUPPORT OF PLAINTIFFS'
MOTION 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

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DECLARATION OF SHERMAN MACASTON

I, Sherman Macaston, declare as follows:

1. I am an adult resident of the County of Sonoma, California, and I am a named plaintiff in this matter. I have personal knowledge of the facts stated in this declaration, and if called as a witness, could competently testify thereto.

2. This declaration is executed in support of plaintiffs' motion for the issuance of a temporary restraining order, and issuance of a preliminary injunction, made pursuant to FRCP 65, whereby we are seeking an injunction prohibiting the temporary/permanent enforcement of the prohibition on the *possession* of large-capacity magazines, set forth in Pen. Code § 32310, subdiv. (c) and (d) as enacted in 2016.

3. I was born and raised in California, and have been a lifelong resident of this state. I am a law-abiding individual, and I am not prohibited from owning firearms.

4. I served my country by serving in the United States Army, and served a combat tour in the Vietnam conflict from 1972 to 1973. I also served in Korea.

5. After being honorably discharged from the Army in 1978, I returned to California. At or around that time, I acquired, lawfully, and prior to 2000, large-capacity magazines for a Browning Hi-Power pistol, chambered in 9mm, and also acquired large capacity magazines for a Smith & Wesson Model 59 pistol, also chambered in 9mm. I used and continued to use these pistols (including the magazines) for lawful purposes such as collection, target shooting, and defense of the home.

6. As far as I am aware, the magazines that I have for the Smith & Wesson Model 59 pistol were the original magazines that were issued with, or sold with, that pistol. On information and belief, no ten-round magazines were ever produced by the original manufacturer (Smith & Wesson) specifically for use with that pistol, before it was apparently discontinued in 1988. Although subsequently-manufactured ten-round magazines may (I am told) be compatible with this particular pistol, I am not sure if this is true and, in any event, I do not wish to 'part out' a rare and unique pistol with substitute parts that were not specifically designed for the pistol and

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1 may diminish its utility and/or value. I do not have replacement magazines for this pistol. I
2 therefore believe this is a substantial burden on my rights as a gun and property owner.

3 7. I have therefore brought this action on my own behalf, and in a representative
4 capacity on behalf of the class of law-abiding California citizens who have lawfully possessed
5 large-capacity magazines (as that term is defined by statute), since before 2000. Each of these
6 “pre-ban” magazines which I own are inherent operating parts of firearms. Each such firearm
7 containing these “pre-ban” large capacity magazines is lawfully owned by me, as is my right, as
8 guaranteed by the U.S. Constitution.

9 8. I do not wish to remove or sell these pre-ban large-capacity magazines in my
10 possession, as they are literally irreplaceable, given the prohibition on the further purchase,
11 acquisition or manufacture of such items under California law. I am unwilling to destroy or
12 surrender these pre-ban large capacity magazines in my possession.

13 9. Therefore, I believe that these large-capacity magazines in my possession have
14 substantial value, as irreplaceable items. Moreover, it would likely cost me substantial amounts
15 to replace the magazines with functional equivalents, using magazines holding ten or fewer
16 rounds, for which the pistol was not specifically designed. In my view, this deprives me of the
17 beneficial use of the firearm as it was intended to be used, and undermines its utility.

18 10. I am not current or retired peace officer, nor am I a federal firearms licensee
19 (FFL), and therefore, as an ordinary citizen, I do not qualify for the exceptions to the prohibition
20 on the possession of large capacity magazines set forth in Pen. Code sections 32406 or 32410.

21 11. Because of these facts and circumstances, as of July 1, unless the enforcement of
22 Pen. Code § 32310(c) is enjoined, I will suffer a permanent physical deprivation of personal
23 property, which happen to be inherent, operating parts of firearms, the ownership of which is
24 protected by the Constitution. I will therefore and for the reasons stated here suffer irreparable
25 injury unless the law is enjoined.

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