

1 XAVIER BECERRA, State Bar No. 118517
 Attorney General of California
 2 TAMAR PACTHER, State Bar No. 146083
 Supervising Deputy Attorney General
 3 ALEXANDRA ROBERT GORDON, State Bar No. 207650
 Deputy Attorney General
 4 JOHN D. ECHEVERRIA, State Bar No. 268843
 Deputy Attorney General
 5 300 South Spring Street, Suite 1702
 Los Angeles, CA 90013
 6 Telephone: (213) 897-4902
 Fax: (213) 897-5775
 7 E-mail: John.Echeverria@doj.ca.gov
Attorneys for Defendants

8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA
 11

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 13 **WILLIAM WIESE, et al.,**

14 Plaintiff,

15 v.

16 **XAVIER BECERRA, et al.,**

17 Defendant.
 18

2:17-cv-00903-WBS-KJN

**DECLARATION OF JOHN D.
 ECHEVERRIA IN SUPPORT OF
 DEFENDANTS' SUPPLEMENTAL
 BRIEF IN FURTHER OPPOSITION TO
 RENEWED MOTION FOR
 TEMPORARY RESTRAINING ORDER
 AND ISSUANCE OF PRELIMINARY
 INJUNCTION**

Date: June 29, 2017
 Time: 9:00 a.m.
 Dept: 5, 14th Floor
 Judge: Hon. William B. Shubb
 Trial Date: None Set
 Action Filed: April 28, 2017

1 I, John D. Echeverria, declare:

2 1. I am a Deputy Attorney General at the California Department of Justice and serve
3 as counsel to Defendants Xavier Becerra and Martha Supenor (together, "Defendants") in the
4 above-titled matter. I have personal knowledge of the facts set forth in this declaration, and if
5 called upon as a witness, I could testify competently as those facts. I make this declaration in
6 support of Defendants' Supplemental Brief in Further Opposition to Renewed Motion for
7 Temporary Restraining Order and Issuance of Preliminary Injunction.

8 2. A true and correct copy of the Order re Demurrers of the State Defendants and the
9 Defendant-Intervenors, issued by the Superior Court of the County of San Francisco in *Asian*
10 *American Rights Committee of California v. Brown*, No. CGC 12-517723 (Cal. Super. Ct. July
11 20, 2012), is annexed hereto as Exhibit A.

12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct.

14 Executed on June 23, 2017, at Los Angeles, California.

15 s/ John D. Echeverria
16 John D. Echeverria

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EXHIBIT A



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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Case Number: CGC-12-517723

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ORDER

ASIAN AMERICAN RIGHTS COMMITTEE OF CALIFORNIA, AN VS. EDMUND
BROWN, IN HIS OFFICIAL CAPACITY AS et al

001C03696237

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1 Prepared by the Court

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SUPERIOR COURT OF CALIFORNIA

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County Of San Francisco

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Department No. 302

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12-517723

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ASIAN AMERICAN RIGHTS COMMITTEE
OF CALIFORNIA,

No. CGC-10-501014

13

Plaintiff,

ORDER RE DEMURRERS OF THE STATE
DEFENDANTS AND THE DEFENDANT-
INTERVENORS

14

v.

15

EDMUND BROWN, et al,

16

Defendants

17

and

18

THE HUMANE SOCIETY OF THE UNITED
STATES, et al,

19

Defendant-Intervenors.

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On May 2, 2012 a hearing was held on the demurrers filed by the State Defendants

23

(Governor Brown, Attorney General Harris and the State of California) and the Defendant-

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1 Intervenor to all three causes of action alleged by the plaintiff in its complaint. At the
2 conclusion of the hearing I took the demurrers under submission so that I could more fully
3 consider the parties' oral and written arguments as well as review the large quantity of case law
4 that I was given at the hearing. Having completed my further consideration, I sustain the
5 demurrer without leave to amend as to the defendant State of California, overrule the demurrers
6 as to the first cause of action for declaratory relief for the alleged violation of the Commerce
7 Clause and the third cause of action for injunctive relief, and sustain the demurrers without leave
8 to amend as to the second cause of action for declaratory relief for the alleged violation of the
9 Takings Clause.

10 Plaintiff does not contest the portion of the State Defendants' demurrer contending that
11 the State of California is not a proper party. This aspect of the State Defendants' demurrer is
12 well-taken.

13 Defendant-Intervenors' demurrer on ripeness grounds to the first and third causes of
14 action alleging a violation of the Commerce Clause is overruled. Plaintiff's dormant Commerce
15 Clause claims are ripe because the challenged law, California Fish and Game Code sections 2021
16 and 2021.5 (the "Shark Fin Prohibition"), eliminated the California market for shark fins as of
17 January 1, 2012 by banning the purchase or acquisition of shark fins, and therefore plaintiff's
18 members are currently faced with the dilemma of either violating the Shark Fin Prohibition or
19 standing aside as it diminishes the value of their businesses and property. (*MedImmune, Inc. v.*
20 *Genentech, Inc.* (2007) 549 U.S. 118, 129; *Pacific Legal Foundation v. California Coastal*
21 *Commission* (1982) 33 Cal. 3d 158, 172-73).

22 The State Defendants' demurrer on the basis of failure to allege a cognizable claim to the
23 first and third causes of action alleging a violation of the Commerce Clause is overruled. Plaintiff
24 alleges that the Shark Fin Prohibition imposes "a burden on interstate commerce that is excessive
25

1 in relation to its putative local benefits.” Resolution of this allegation, at least for this case,
2 requires a factual record developed in the context of the balancing test set forth in *Pike v. Bruce*
3 *Church, Inc.* (1970) 397 US 137, 142. (*Bronco Wine Company v. Jolly* (2005) 129 Cal. App. 4th
4 988, 1027).

5 The State Defendants’ demurrer on the basis of failure to allege a cognizable claim to the
6 second cause of action alleging a violation of the Takings Clause is sustained without leave to
7 amend. Accepting the truth of plaintiff’s allegations that the Shark Fin Prohibition deprives
8 plaintiff’s members of all economically beneficial use of any shark fins that they have acquired
9 or will acquire, plaintiff nonetheless fails to state a claim for violation of the Takings Clause.
10 Plaintiff has not cited any case, nor am I aware of any case, that holds that a government violates
11 the Takings Clause when it imposes a complete ban on a product that it determines is harmful.
12 The alcohol prohibition cases discussed in *Andrus v. Allard* (1979) 441 US 51, 67-68 hold that
13 such a ban does not violate the Takings Clause. My determination that the second cause of action
14 fails to state a cognizable claim makes it unnecessary to decide the Intervenor-Defendants’
15 demurrer to that cause of action on ripeness grounds.

16 The State Defendants and Defendant-Intervenors have fifteen days from entry of this
17 order to file answers to the complaint.

18 IT IS SO ORDERED.

19 Dated: July 20, 2012

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21 

22 Harold Kahn
23 Superior Court Judge
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25

SUPERIOR COURT OF CALIFORNIA
County of San Francisco

ASIAN AMERICAN RIGHTS COMMITTEE OF
CALIFORNIA,

Plaintiff(s)

vs.

EDMUND BROWN, et al

Defendant(s)

And
THE HUMANE SOCIETY OF THE UNITED
STATES, et al,

Defendant-Intervenor(s)

Case Number: CGC-12-517723

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, L. FISCELLA, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On JUL-23-2012 I served the attached ORDER RE: DEMURRERS OF THE STATE DEFENDANTS AND THE DEFENDANT-INTERVENORS by placing a copy thereof in a sealed envelope, addressed as follows:

CHRISTOPHER H. CARR
WILLIAM F. TARANTINO
SUSAN L. LANDSITTEL
MORRISON & FORESTER LLP
425 MARKET STREET
SAN FRANCISCO, CA 94105

JOHN S. WORDEN
BRUCE WAGMAN
SCHIFF HARDIN LLP
ONE MARKET, SPEAR STREET TOWER
32ND FLOOR
SAN FRANCISCO, CA 94105

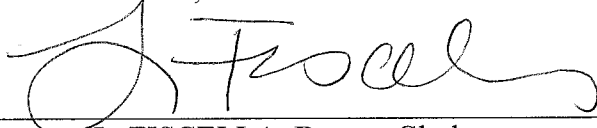
KAMALA D. HARRIS
TAMAR PACHTER
ALEXANDRA ROBERT GORDON
ATTORNEY GENERAL OF CALIFORNIA
455 GOLDEN GATE AVENUE
SUITE 11000
SAN FRANCISCO, CA 94102

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: JUL-23-2012

MICHAEL T. YUEN, Clerk Of The Court

By:

A handwritten signature in cursive script, appearing to read "L. Fiscella", written over a horizontal line.

L. FISCELLA, Deputy Clerk