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FIREARMS POLICY COALITION,
12 FIREARMS POLICY FOUNDATION,
and SECOND AMENDMENT FOUNDATION

13 UNITED STATES DISTRICT COURT

14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 WILLIAM WIESE, et al.,

16 Plaintiffs,

17 vs.

18 XAVIER BECERRA, in his official capacity as
19 Attorney General of California, et al.,

20 Defendants.

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

**SUPPLEMENTAL REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY RESTRAINING
ORDER AND ISSUANCE OF PRELIMINARY
INJUNCTION**

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

Date: June 29, 2017
Time: 9:00 a.m.
Courtroom 5
Judge: Hon. William B. Shubb

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SEILER EPSTEIN ZIEGLER & APPLGATE LLP
Attorneys at Law

1 Pursuant to Fed. Rule of Evidence 201, Plaintiffs and moving parties respectfully
2 supplement their prior request the Court to take judicial notice, filed June 14, 2017, and further
3 Request that this Court also take notice of the following matters, in support of their motion for
4 the issuance of a preliminary injunction:

ITEM	DESCRIPTION
Exhibit F:	Cal. DOJ Notice of Proposed Emergency Action, dated December 15, 2016
Exhibit G:	Text of [Proposed] Regulations, Cal. Code of Regulations, Title 11, Div. 5, submitted December 16, 2016
Exhibit H:	Office of Administrative Law, Amended Notice of Withdrawal, dated December 29, 2016

12 Dated: June 23, 2017

SEILER EPSTEIN ZIEGLER & APPLGATE LLP

/s/ George M. Lee

George M. Lee

Attorneys for Plaintiffs

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EXHIBIT F

December 15, 2016

Notice of Proposed Emergency Action

Pursuant to the requirements of Government Code section 11346.1, subdivision (a)(1), the Department of Justice (Department) is providing notice of proposed emergency adoption of regulations regarding large-capacity magazines.

Submission of Comments

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The text of the proposed emergency regulations, all documents incorporated by reference, and the “Finding of Emergency” are posted on the Department’s website at <http://oag.ca.gov/firearms>.

The Department plans to file the emergency rulemaking package with OAL at least five working days from the date at the top of this notice. If you would like to comment on the proposed emergency regulations or the Finding of Emergency, your comments must be received by both the Department and the OAL within five days of the Department’s filing with OAL. Responding to comments is strictly at the Department’s discretion. Send comments simultaneously to:

Department of Justice
Bureau of Firearms
Attn: Jacqueline Dosch
P.O. Box 160487
Sacramento, CA 95816

and

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

EXHIBIT G

California Code of Regulations
Title 11, Division 5

Chapter 39 Assault Weapons and Large-Capacity Magazines

Article 4. Large-Capacity Magazine Permits

§ 5480. Requirements for Large-Capacity Magazine Permits Pursuant to Penal Code Section 32315.

- (a) This article applies to Penal Code section 32315, which permits ~~for~~ the out-of-state importation and exportation of large-capacity magazines as defined in Penal Code section 16740. Importation and exportation includes the transportation of magazines as necessary to complete a transfer to or from an out-of-state source.
- (b) No large-capacity magazine permit shall be issued to any person who fails to establish “good cause” for issuance of the permit, ~~and that~~ the permit would not endanger public safety. “Good cause” shall be established by the following:
- (1) A statement from the applicant that a large-capacity magazine marketplace exists for their dealership; and
 - (2) Compliance with The Dangerous Weapons Control Law comprised of the provisions listed in Penal Code section 16580 relative to large-capacity magazines and record keeping requirements specified in section 5483 ~~of these regulations~~.
- (c) Large-capacity magazine permit applications shall be filed on DOJ ~~form~~ Form, BOF 050, Large-Capacity Magazine Permit Application (Rev. ~~1/2012~~ 12/2016), which is hereby incorporated by reference. This form ~~which~~ requires the following information: California Firearms Dealership (CFD) number; dealership name; dealership mailing address; statement of good cause; dealership licensee’s printed name; signature of dealership licensees; and date.
- (d) A dealership with multiple locations must obtain a separate large-capacity magazine permit for each location.
- (e) A large-capacity magazine permit will automatically transfer when an existing dealer relocates to a different physical store location(s) and notifies the DOJ prior to making the move.

Note: Authority cited: Sections 26905, 26910, and 32315, Penal Code. Reference: Sections 16580, 16740, 32310, 32315, 32400, 32405, 32410, 32415, ~~32420~~, 32425, 32430, 32435, 32440, 32445 and 32450, Penal Code.

§ 5483. Large-Capacity Magazine Permit Record Keeping.

- (a) Permittees shall maintain acquisition and disposition transaction records of the importation and exportation of large-capacity magazines. Records shall include transaction date, transaction volume; and the name, address, and Federal Firearms License number (if any) of the out-of-state transferee or transferor. Records must be maintained at the dealership for three years and be made available to representatives of the DOJ or any other law enforcement agency upon request.
- (b) Permittees shall keep record of all large-capacity magazine sales on a form prescribed by DOJ, hereby identified as the Large-Capacity Magazine Report, BOF 1002 (Rev. 12/2016). Information, including but not limited to: acquisition date, distributor/dealer, quantity, capacity, caliber, disposition date, purchaser's name, purchaser's agency, and salesperson's signature, shall be noted on the BOF 1002. This form shall be evidence of ongoing "good cause" for renewal purposes and shall serve as documentation of lawful sales to exempt parties.
- (c) A photocopy of the front and back of the credentials of the purchasing state or local peace officer shall be retained and attached to the DOJ form BOF 1002.
- (d) A business card from federal law enforcement purchasing personnel shall be retained and attached to the DOJ form BOF 1002. The federal law enforcement purchasing personnel's credentials shall be verified by the Permittee.
- (e) Permittees shall complete the documentation process within 24 hours of the sale.
- (f) Permittees shall keep all large-capacity magazine permit and/or sales records such as completed BOF 1002 forms, in a separate file, and the original form shall not be attached to a related Dealer Record of Sale (DROS) form. A copy of the BOF 1002 form may be attached to the DROS form if the dealer wishes.

Note: Authority cited: Section 32315, Penal Code. Reference: Sections 16740, ~~and~~ 32315, 32405; and 32410, Penal Code.

§ 5484. Large-Capacity Magazine Permit Revocations.

- (a) Large-capacity magazine permits shall be subject to revocation for failure to comply with record keeping requirements specified in section 5483 ~~of these regulations~~ or for failure to comply with The Dangerous Weapons Control Law comprised of the provisions listed in Penal Code section 16580 relative to large-capacity magazines.
- (b) A Permittee convicted of violating Penal Code section 32310 shall be subject to immediate revocation of the Permittee's large-capacity magazine permit(s). If a Permittee is convicted of any other firearms prohibiting offense or is otherwise firearms prohibited then the large-capacity magazine permit(s) shall be immediately revoked.

(c) All procedures and hearings related to the revocation of a large-capacity magazine permit, apart from those covered in section (b), shall be conducted in accordance with Government Code sections 11500 et seq.

(d) When revoking a large-capacity magazine permit from a Permittee that holds multiple large-capacity magazine permits for different locations, the DOJ may seek revocation of all permits. Factors the DOJ may consider include, but are not limited to, prior violations, egregiousness of the act(s), the number of violations, the length of time the business has been open, and training received by the store employees and Permittee.

(e) If the Permittee is prohibited under state or federal law from owning, possessing and/or purchasing firearms or ammunition, all of the Permittee's large-capacity magazine permits shall be revoked.

Note: Authority cited: Section 32315, Penal Code. Reference: Sections 16580, 16740, and 32310, 32315, and 32410, Penal Code.

Article 5. Large-Capacity Magazines and Large-Capacity Magazine Conversion Kits

§ 5490. Large-Capacity Magazines; manufacturing

A person who lawfully possesses and/or owns a large-capacity magazine may disassemble the magazine for cleaning, maintenance, and other lawful purposes, and then reassemble the magazine without violating Penal Code section 32310.

Note: Authority cited: Section 32315, Penal Code. Reference: Sections 32310, 32311, 32315, 32400, 32405, 32406(a), 32410, 32415, 32425, 32430, 32435 and 32440, Penal Code.

§ 5491. Large-Capacity Magazine; capacity

(a) Prior to July 1, 2017, large-capacity magazine permit holders may accept large-capacity magazines, as defined in Penal Code section 16740, from California residents for the purposes of permanently altering the magazine's feeding device so that it reduces the capacity to 10 rounds or less.

(b) Prior to July 1, 2017, an individual may dispose of a large-capacity magazine by permanently altering the magazine's feeding device so that it reduces the capacity to 10 rounds or less.

(1) A large-capacity magazine that is a box type can have its capacity permanently reduced by using both of the following methods:

(A) Inserting a rigid magazine capacity reduction device, also known as a magazine block, into the magazine body and then affixing the floor plate of the magazine to the body of the magazine with permanent epoxy. Metal magazines with metal floor

plates have the option of being either welded closed or permanently epoxied closed once the magazine block(s) have been inserted. Due to magazine manufacturing variations (such as drum magazines or tubular magazines) it may be necessary to insert multiple magazine blocks in order to reduce the capacity to 10 rounds; and

(B) Once the capacity of the magazine has been reduced by inserting a rigid magazine block into the magazine, it shall be riveted in place through either the floor plate or side wall of the magazine body.

(2) A large-capacity magazine that is a drum or tubular style can be permanently reduced by using any of the following methods:

(A) Drum magazines generally come in two styles: those that are fed from the neck of the magazine (neck fed drum magazines), and those that open from the side and are loaded once a lid or cover is opened up (clam shell drum magazines).

(i) A neck fed drum magazine needs a specific number of “dummy rounds” inserted into the neck fed magazine drum and then the “dummy rounds” needs to be epoxied in place in an attempt at reducing the capacity of the neck fed drum magazine. The actual numbers of dummy rounds vary per neck fed drum magazine depending on its original capacity. For example, a 50 round neck fed drum magazine needs 40 dummy rounds epoxied in placed so that no more than 10 rounds could be loaded. Once these dummy rounds are permanently epoxied into place the lid shall be closed and also permanently epoxied closed. Due to the internal moving parts of these magazines, a rivet securing the lid or cover is not possible in most cases. Armatac AR-15 style magazines are one example of this type of magazine.

(ii) Clam shell drum magazines are fed by opening the cover or lid and then loading the magazine. This magazine type cannot be loaded via the neck because of its design. Examples of this type are the AK-47 style Suomi, PPSH-41 and Thompson “Tommy Gun” drum magazines. If the capacity is reduced down to 10 rounds or less, (as described above), and the cover or lid is epoxied closed, the magazine could never be reloaded once the 10 rounds are fired. This magazine type is not a good candidate for reduction to 10 rounds or less and shall be disposed by other means if not permanently altered as described in this section.

(B) A tubular magazine that has more than a 10 round capacity shall have its capacity permanently reduced by insertion of a magazine block and use of permanent epoxy to hold the block in place. Then, a rivet shall secure the block in place by penetrating the tubular magazine and the magazine block.

(C) Per Penal Code section 16740, tubular magazines in lever action firearms and .22 caliber tubular magazines are not subject to the prohibition in Penal Code section 32310 or the permitting requirements for large-capacity magazines.

- (3) Magazine capacity for shotguns shall be based upon shotgun shells that are 2 3/4", which shall be the default standard if the firearm is not marked to indicate another shotgun shell standard. If a particular firearm is marked to indicate another shotgun shell standard, then the magazine capacity for that firearm shall be based upon those markings. Shotgun shells shorter than the default standard may only be used to determine magazine capacity if a firearm is specifically marked to accept this shell exclusively.
- (4) One or more magazines, each having a 10 round or less capacity, that are then attached to each other with tape, a plastic or metal coupler, or welded together would not be deemed a large-capacity magazine unless one of the following circumstances exist:
- (A) The internal magazines of a firearm are part of a design function in which the combined ammunition capacity exceeds 10 rounds, and can be fired by the shooter without manipulating the magazine selector switch. An example of this type of firearm is the Standard Manufacturing DP-12 pump shotgun. If the tubular magazines are permanently altered to reduce their capacity to 10 rounds or less as described in this section, then this firearm would not be deemed a large-capacity magazine.
- (B) The internal magazines of a firearm are part of a design function in which the combined ammunition capacity exceeds 10 rounds and the firearm has a selector switch that allows the shooter to alternatingly use ammunition from more than one tubular magazine without having to manually switch the ammunition feeding process. An example of this type of firearm is the UTAS MAKINE LTD., MODEL: UTS-15, pump shotgun which has two seven-round tubular magazines. If the tubular magazines are permanently altered to reduce their capacity to 10 rounds or less as described in this section then this firearm would not be deemed a large-capacity magazine. Alternatively, if the UTS-15 magazine selector switch was modified so that the shooter had to manually switch the ammunition feed from one tube to another, then this firearm would not be deemed a large-capacity magazine.
- (5) If a firearm with multiple tubular magazines, each having a 10 round or less capacity, must be manually switched from one tube to the other tube to use each group of ammunition, this type of firearm would not be deemed a large-capacity magazine. An example of this type of firearm is the KEL TEC, KSG shotgun which has two seven-round tubular magazines. While the tubes can collectively hold 14 rounds, the shooter must manually switch magazines. Another example of this type of firearm is the SRM-1216 semi automatic shotgun which has four four-round tubular magazines welded together. After firing the first four rounds the shooter must manually rotate the quad magazine clockwise to enable firing of the next group of four rounds. If a version of this firearm was manufactured that mechanically rotated the quad ammunition tubes it would be deemed a large-capacity magazine.

Note: Authority cited: Section 32315, Penal Code. Reference: Sections 16740, 32310, 32315, 32415, 32425, and 32440, Penal Code.

§ 5492. Large-Capacity Magazine: Conversion Kits.

- (a) A “magazine extension” is a device capable of increasing the magazine capacity of a magazine. These are considered large-capacity magazine conversion kits. These devices often increase both magazine capacity and finger grip available space.
- (b) A disassembled large-capacity magazine that may be readily assembled, which is in the possession of or under the control of the same person is a large-capacity magazine conversion kit. In the past these were sometimes sold and marketed as large-capacity magazine “repair kits.”
- (c) A “grip extension” is a device that solely increases grip space on the magazine(s) it is compatible with. A grip extension is not a large-capacity magazine conversion kit.
- (d) A person who lawfully possesses large-capacity magazines may disassemble their magazines for cleaning, maintenance and other lawful purposes and then reassemble the magazine without triggering Penal Code section 32311 regarding rules governing large-capacity magazine conversion kits.

Note: Authority cited: Section 32311, Penal Code. Reference: Sections 32311, 32315, 32415, 32425, and 32440, Penal Code.

EXHIBIT H

**State of California
Office of Administrative Law**

In re:
Department of Justice

Regulatory Action:

Title 11, California Code of Regulations

Adopt sections: 5490, 5491, 5492

Amend sections: 5480, 5483, 5484

Repeal sections:

AMENDED NOTICE OF WITHDRAWAL

Government Code Section 11349.3(c)

OAL Matter Number: 2016-1223-02

OAL Matter Type: Emergency (E)

This notice confirms that your proposed regulatory action regarding Large-Capacity Magazines was withdrawn from OAL review pursuant to Government Code section 11349.3(c).

OAL will return your rulemaking record promptly.

Date: December 29, 2016



**Mark Storm
Senior Attorney**

**For: Debra M. Cornez
Director**

**Original: Kamala D. Harris
Copy: Melan Noble**