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

10 WILLIAM WIESE, et al.,
11 Plaintiffs,
12 v.
13 XAVIER BECERRA, in his official capacity
14 as Attorney General of California, et al.,
15 Defendants.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR LEAVE
FOR CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED, TO
PARTICIPATE AS AMICUS CURIAE**

Date: February 19, 2019
Time: 1:30 p.m.
Courtroom: 5
Judge: William B. Shubb

1 **I. INTRODUCTION**

2 California Rifle & Pistol Association, Incorporated (“CRPA”) hereby moves for leave to
3 file the attached amicus curiae brief in support of Plaintiffs’ Opposition to Defendants’ Motion to
4 Dismiss Third Amended Complaint in this constitutional challenge to California Penal Code
5 section 32310, as amended by Proposition 63 (“Prop 63”). Plaintiffs’ counsel consented to the
6 filing of the brief. Counsel for Defendants stated they would not oppose this motion.

7 Founded in 1875, CRPA is a non-profit organization that seeks to defend the Second
8 Amendment and advance laws that protect the rights of individual citizens. CRPA regularly
9 participates as a party or amicus in firearms-related litigation and works to preserve the
10 constitutional and statutory rights of gun ownership, including the right to self-defense, the right to
11 hunt, and the right to keep and bear arms.

12 CRPA’s thousands of members throughout the state of California believe in assisting the
13 judiciary with important Second Amendment cases, such as this one before the Court. As such,
14 CRPA respectfully requests the opportunity to bring its knowledge and perspective on this
15 litigation to the Court’s attention.

16 **II. ARGUMENT**

17 District courts have “broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682 F.2d
18 1237, 1260 (9th Cir 1982), *abrogated on other grounds by Sandvin v. Conner*, 515 U.S. 472
19 (1995). Indeed, “[d]istrict courts frequently welcome amicus briefs from nonparties concerning
20 legal issues that have potential ramifications beyond the parties directly involved or if the amicus
21 has ‘unique information or perspective that can help the court beyond the help that the lawyers for
22 the parties are able to provide.’ ” *Safari Club Int’l v. Harris*, No. 2:14-cv-012856-GEB-AC, 2015
23 WL 1255491, at *1 (E.D. Cal. Jan. 14, 2015) (citing *NGV Gaming, Ltd. v. Upstream Point Molate,*
24 *LLC*, 355 F. Supp. 2d 1061, 1016 (N.D. Cal. 2005)). The relevant inquiry regarding amici
25 participation is whether its participation is “helpful.” *California v. U.S. Dep’t of Labor*, No. 2:13-
26 CV-02069-KJM-DAD, 2014 WL 12691095, at *1 (E.D. Cal. Jan. 14, 2014) (citing *Hoptowit*, 682
27 F.2d at 1260).

1 Under this generous standard, CRPA contends that its brief is an excellent candidate for
2 amicus admission. Significantly, CRPA is one of the plaintiffs in a related matter currently
3 pending before the Honorable Roger Benitez in the Southern District of California—*Duncan v.*
4 *Becerra*, No. 17-56081. Given the Ninth Circuit’s recent affirmance of Judge Benitez’s granting of
5 a preliminary injunction in *Duncan*, CRPA believes that it is clear that Plaintiffs here have
6 successfully pleaded their claims. *Duncan v. Becerra*, 742 Fed. Appx. 218 (9th Cir. 2018). This
7 conclusion flows from the fact that the instant matter and *Duncan* are extremely similar efforts to
8 challenge section 32310 on various constitutional grounds, including the Second Amendment and
9 the Takings Clause. Further, CRPA believes that *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th
10 Cir. 2015), requires the same conclusion. Although the Ninth Circuit ultimately reached the
11 opposite conclusion on a similar question involving large capacity magazines, the case still
12 supports the proposition that Plaintiffs here have stated a plausible claim for relief.

13 In addition, the Court should grant leave for CRPA to submit its amicus brief because this
14 case implicates a fundamental, constitutional right of significant public importance. CRPA
15 believes that such cases benefit the most from robust amici participation.

16 **III. CONCLUSION**

17 For the aforementioned reasons, CRPA respectfully requests that this Court grant leave for
18 it to participate as amicus curiae and submit a brief in support of Plaintiffs’ Opposition to
19 Defendants Motion to Dismiss Third Amended Complaint.

20 Dated: February 12, 2019

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24 Attorneys for Amicus Curiae

California Rifle & Pistol Association, Inc.

CERTIFICATE OF SERVICE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Case Name: *Wiese, et al. v. Becerra, et al.*

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

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED
MOTION FOR LEAVE FOR CALIFORNIA RIFLE & PISTOL ASSOCIATION,
INCORPORATED TO PARTICIPATE AS AMICUS CURIAE**

on the following parties by electronically filing the foregoing on February 12, 2019, with the Clerk of the District Court using its ECF System, which electronically notifies them.

See service list.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 12, 2019, at Long Beach, CA.

/s/Laura Palmerin

Laura Palmerin

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