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Sean A. Brady – SBN 262007  
2 Anna M. Barvir – SBN 268728  
Matthew D. Cubeiro – SBN 291519  
3 MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Boulevard, Suite 200  
4 Long Beach, CA 90802  
Telephone: (562) 216-4444  
5 Facsimile: (562) 216-4445  
Email: cmichel@michellawyers.com

6 Attorneys for Plaintiffs  
7

8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 VIRGINIA DUNCAN, RICHARD  
11 LEWIS, PATRICK LOVETTE, DAVID  
MARGUGLIO, CHRISTOPHER  
12 WADDELL, CALIFORNIA RIFLE &  
PISTOL ASSOCIATION,  
13 INCORPORATED, a California  
corporation,

14 Plaintiffs,

15 v.

16 XAVIER BECERRA, in his official  
17 capacity as Attorney General of the State  
of California; and DOES 1-10,

18 Defendant.

Case No: 17-cv-1017-BEN-JLB

**DECLARATION OF ANNA M.  
BARVIR IN SUPPORT OF EX  
PARTE APPLICATION FOR  
ORDER SHORTENING TIME;  
EXHIBITS A-B**

Date:

Time:

Dept: 5A

Judge: Hon. Roger T. Benitez

**DECLARATION OF ANNA M. BARVIR**

I, Anna M. Barvir, declare:

1. I am an associate attorney at the law firm of Michel & Associates, P.C., counsel for plaintiffs in the above-captioned action. I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify thereto.

2. At 2:53 p.m. on May 24, 2017, at my request, my co-counsel Sean Brady sent an e-mail to me and to various attorneys at the California Attorney General's office that we know to have handled firearms-related cases on the state's behalf. That correspondence sought to inform Defendants of Plaintiffs' intention to file a motion for preliminary injunction on May 26, 2017, and to file an ex parte application for order shortening time to hear that motion on May 25th or 26th. Mr. Brady asked the addressees to direct our message to the Deputy Attorney General to whom this case has been or will be assigned and, if possible, inform us who that person is. A true and correct copy of Mr. Brady's email, sent at 2:53 p.m. on May 24, 2017, and the subsequent chain of emails between counsel for both parties is attached as Exhibit A.

3. At 4:30 p.m. on May 24, 2017, Marc LeForestier, from the California Department of Justice, responded to Mr. Brady's email. Ex. A. at 2. Mr. LeForestier informed Mr. Brady that this case would be assigned to Deputy Attorney General Alexandra Robert Gordon, who will be out of the office until Monday, May 29th. Ex. A. at 2. Mr. LeForestier asked Mr. Brady to send any ex parte papers to Mr. Anthony O'Brien in her absence. Ex. A. at 2. Both Ms. Gordon and Mr. O'Brien were copied on Mr. LeForestier's email. Ex. A. at 2. Mr. O'Brien responded shortly thereafter, thanking our office "for providing notice of the ex parte motion" and providing his contact information: 1300 I Street, Suite 125, Sacramento, CA 95814; (916) 323-6879; [anthony.obrien@doj.ca.gov](mailto:anthony.obrien@doj.ca.gov). Ex. A. at 2. Mr. Brady added me to the e-mail chain at about 4:37 p.m. on May 24, 2017. Ex. A. at 2.

4. At 10:45 p.m. on May 24, 2017, I followed up with Mr. O'Brien via email to inform him that Plaintiffs intended to file an ex parte application for an order shortening

1 time on May 25, 2017, asking the Court to set a hearing for June 12, 2017, on 14 days'  
2 notice, with opposition papers due on June 5th and reply papers due on June 9th. Ex. A.  
3 at 1. I explained the grounds for Plaintiffs' request and asked whether his client intended  
4 to oppose Plaintiffs' request. Ex. A. at 1. I also invited Mr. O'Brien to suggest some  
5 other schedule for briefing and hearing Plaintiffs' preliminary injunction motion in order  
6 to avoid having to seek ex parte relief. Ex. A. at 1.

7 5. On May 25, 2017, Mr. O'Brien responded and indicated that his client  
8 would oppose Plaintiffs' application for shortened time, though he did not indicate on  
9 what grounds. Ex. B. at 1. A true and correct copy of Mr. O'Brien's May 25 email to me  
10 and to others copied is attached as Exhibit B.

11 6. This case presents a 42 U.S.C. § 1983 action for deprivation of rights  
12 guaranteed by the Second, Fifth, and Fourteenth Amendments of the United States  
13 Constitution. More specifically, Plaintiffs challenge the constitutionality of California  
14 Penal Code section 32310, which prohibits the acquisition, manufacture, import, transfer,  
15 and possession of firearm magazines capable of holding more than ten rounds of  
16 ammunition. Plaintiffs claim that section 32310 violates the right to keep and bear arms  
17 protected by the Second Amendment and constitutes an illegal governmental taking  
18 under the Takings Clause and the Due Process Clause.

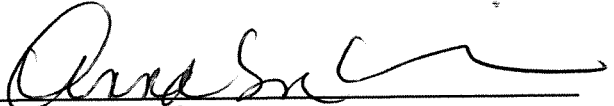
19 7. Plaintiffs' Ex Parte Application for Order Shortening Time is made in good  
20 faith and for good cause. While section 32310 has restricted the acquisition, manufacture,  
21 import, and transfer of magazines over ten rounds since January 2000, Cal. Penal Code §  
22 32310(a), recent amendments to the law barring the mere possession of such magazines  
23 will take effect on July 1, 2017, *id.* § 32310(c). By that date, thousands of law-abiding  
24 Californians must choose whether to surrender their constitutional rights to keep and use  
25 their lawfully acquired magazines or become criminals under state law. Plaintiffs require  
26 a preliminary injunction to prevent the enforcement of those portions of section 32310  
27 banning the possession of magazines over 10 rounds lawfully acquired by thousands of  
28 Californians, including Plaintiffs. A hearing before this Court on shortened time is thus

1 necessary because Plaintiffs must obtain an injunction before the amendments take effect  
2 on July 1. Otherwise, they will be forced, under threat of criminal penalty, to surrender  
3 their rights in their lawfully acquired property—possibly forever—without any recourse.

4 8. On behalf of Plaintiff, I respectfully request the Court to set the following  
5 briefing and hearing schedule:

- 6 • Filing and Service of Moving Papers: May 29, 2017
- 7 • Filing and Service of Opposition Papers: June 5, 2017
- 8 • Filing and Service of Optional Reply Papers: June 9, 2017
- 9 • Hearing on Motion for Preliminary Injunction: June 12, 2017

10 I declare under penalty of perjury that the foregoing is true and correct. Executed  
11 on May 25, 2017, in Long Beach, CA.

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13 \_\_\_\_\_  
14 Anna M. Barvir  
15 Declarant  
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27  
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# **EXHIBIT A**

**Anna M. Barvir**

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**From:** Anna M. Barvir  
**Sent:** Wednesday, May 24, 2017 10:53 PM  
**To:** Anthony OBrien  
**Cc:** Alexandra RobertGordon; Marc LeForestier; Sean Brady; Laura Palmerin  
**Subject:** RE: DAG assigned to Duncan v. Becerra, Case No.: 17-cv-1017-BEN-JLB [MA-Interwoven.FID70956]

Mr. O'Brien,


Thank you so much for reaching out and providing your contact information so quickly. I am writing to confirm that the *Duncan* plaintiffs intend to file an ex parte application for order shortening time on their soon-to-be-filed motion for preliminary injunction tomorrow (May 25). Specifically, Plaintiffs will ask the Court to set the MPI hearing for June 12, 2017, upon 14 days' notice with opposition papers due on or before June 5<sup>th</sup> and reply papers due on or before June 9<sup>th</sup>.

Plaintiffs will bring their ex parte application on the grounds that they require an order on their motion for preliminary injunction before July 1, 2017, when the amendments to CPC section 32310 take effect, requiring plaintiffs in lawful possession of magazines over 10 rounds to permanently dispossess themselves of their property. Under normal notice requirements, the hearing cannot be heard until June 26<sup>th</sup>, at the earliest, and it is unclear whether the Court can issue a ruling granting or denying injunctive relief before the amended law takes effect.

Please let me know at your earliest convenience whether your clients intend to oppose Plaintiff's ex parte application and on what grounds, so that I may inform the Court. If there is some other way you'd prefer to handle the hearing and briefing schedule in light of the July 1<sup>st</sup> deadline, I'd be glad to consider it if it could prevent the parties from having to go in ex parte.

Should you have any questions or concerns, I'm available by phone or email.

Regards,


<p><b>Anna M. Barvir</b> Attorney</p>  <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4453 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:ABarvir@michellawyers.com">ABarvir@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a></p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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**From:** Sean Brady  
**Sent:** Wednesday, May 24, 2017 4:37 PM  
**To:** Anthony OBrien <Anthony.OBrien@doj.ca.gov>; Marc LeForestier <Marc.LeForestier@doj.ca.gov>  
**Cc:** Alexandra RobertGordon <Alexandra.RobertGordon@doj.ca.gov>; Anna M. Barvir <ABarvir@michellawyers.com>; Laura Palmerin <lpalmerin@michellawyers.com>  
**Subject:** RE: DAG assigned to Duncan v. Becerra, Case No.: 17-cv-1017-BEN-JLB [MA-Interwoven.FID70956]

Got it, Tony. Please copy Anna Barvir (who I copied here) on all correspondence regarding this matter, as she is the lead attorney on this matter from our office.

Regards,

<p><b>Sean Brady</b> Attorney</p>  <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:SBrady@michellawyers.com">SBrady@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a></p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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**Cc:** Alexandra RobertGordon <[Alexandra.RobertGordon@doj.ca.gov](mailto:Alexandra.RobertGordon@doj.ca.gov)>  
**Subject:** RE: DAG assigned to Duncan v. Becerra, Case No.: 17-cv-1017-BEN-JLB [MA-Interwoven.FID70956]

Sean-

Thank you for providing notice of the ex parte motion. Please find my contact information below.

Tony

Anthony P. O'Brien  
Deputy Attorney General  
Government Law Section  
California Department of Justice  
1300 I Street, Suite 125  
Sacramento, CA 95814  
Phone: (916) 323-6879

---

**From:** Marc LeForestier  
**Sent:** Wednesday, May 24, 2017 4:30 PM  
**To:** [SBrady@michellawyers.com](mailto:SBrady@michellawyers.com)  
**Cc:** Alexandra RobertGordon <[Alexandra.RobertGordon@doj.ca.gov](mailto:Alexandra.RobertGordon@doj.ca.gov)>; Anthony OBrien <[Anthony.OBrien@doj.ca.gov](mailto:Anthony.OBrien@doj.ca.gov)>  
**Subject:** RE: DAG assigned to Duncan v. Becerra, Case No.: 17-cv-1017-BEN-JLB [MA-Interwoven.FID70956]

Sean, thank you for your email. This case will be assigned to deputy attorney general Alexandra Robert Gordon, who is out of the office until Monday. In the meantime, please provide deputy attorney general Tony O'Brien with any ex parte papers. Both are copied here. Thank you.

Marc.



**From:** Sean Brady [<mailto:SBrady@michellawyers.com>]

**Sent:** Wednesday, May 24, 2017 2:53 PM

**To:** Anthony Haki <[Anthony.Haki@doj.ca.gov](mailto:Anthony.Haki@doj.ca.gov)>; Jonathan M Eisenberg <[Jonathan.Eisenberg@doj.ca.gov](mailto:Jonathan.Eisenberg@doj.ca.gov)>; Peter Chang <[Peter.Chang@doj.ca.gov](mailto:Peter.Chang@doj.ca.gov)>; Robert Wilson <[Robert.Wilson@doj.ca.gov](mailto:Robert.Wilson@doj.ca.gov)>; Jeffrey Rich <[Jeffrey.Rich@doj.ca.gov](mailto:Jeffrey.Rich@doj.ca.gov)>

**Cc:** Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>; Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>

**Subject:** DAG assigned to Duncan v. Becerra, Case No.: 17-cv-1017-BEN-JLB [MA-Interwoven.FID70956]

**Importance:** High


Gentlemen,

Our office is counsel in the above titled matter. Because the complaint in that case has only recently been served on your office, we do not yet know who the DAG assigned to the case is. We intend to file a motion for preliminary injunction on Friday and to seek an ex parte order shortening the AG's time to respond to our MPI either tomorrow or Friday. While we are not required to give notice of our ex parte application where opposing counsel is unknown, I wanted to extend the professional courtesy of at least attempting to give notice to the responsible DAG via you all, each of whom I know to have worked on firearm-related cases. I would appreciate if you could pass along the message, assuming none of you are the one we are looking for.

Under the federal rules, it is unclear whether the Court will have a hearing on our ex parte application, assuming the AG would oppose it. If a hearing is ordered, we will personally serve such order on the AG's office in Sacramento, but would also like to know the DAG to direct it to so as to be as fair as possible in giving notice.

Please let me know if you have any questions or concerns. I am happy to speak with any of you or the assigned DAG, if that person can be located.

Sincerely,

<p><b>Sean Brady</b> Attorney</p>  <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:SBrady@michellawyers.com">SBrady@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a></p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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# **EXHIBIT B**

**Anna M. Barvir**

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**From:** Anthony OBrien <Anthony.OBrien@doj.ca.gov>  
**Sent:** Thursday, May 25, 2017 9:35 AM  
**To:** Anna M. Barvir  
**Cc:** Alexandra RobertGordon; Marc LeForestier; Sean Brady; Laura Palmerin  
**Subject:** RE: DAG assigned to Duncan v. Becerra, Case No.: 17-cv-1017-BEN-JLB [MA-Interwoven.FID70956]

Anna-  
Thank you for your e-mail. We will be opposing the ex parte application for an order shortening time. Please send me the ex parte papers when they are ready.

Thanks,  
Tony

Anthony P. O'Brien  
Deputy Attorney General  
Government Law Section  
California Department of Justice  
1300 I Street, Suite 125  
Sacramento, CA 95814  
Phone: (916) 323-6879

---

**From:** Anna M. Barvir [mailto:ABarvir@michellawyers.com]  
**Sent:** Wednesday, May 24, 2017 10:53 PM  
**To:** Anthony OBrien <Anthony.OBrien@doj.ca.gov>  
**Cc:** Alexandra RobertGordon <Alexandra.RobertGordon@doj.ca.gov>; Marc LeForestier <Marc.LeForestier@doj.ca.gov>; Sean Brady <SBrady@michellawyers.com>; Laura Palmerin <lpalmerin@michellawyers.com>  
**Subject:** RE: DAG assigned to Duncan v. Becerra, Case No.: 17-cv-1017-BEN-JLB [MA-Interwoven.FID70956]

Mr. O'Brien,

Thank you so much for reaching out and providing your contact information so quickly. I am writing to confirm that the *Duncan* plaintiffs intend to file an ex parte application for order shortening time on their soon-to-be-filed motion for preliminary injunction tomorrow (May 25). Specifically, Plaintiffs will ask the Court to set the MPI hearing for June 12, 2017, upon 14 days' notice with opposition papers due on or before June 5<sup>th</sup> and reply papers due on or before June 9<sup>th</sup>.


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Please let me know at your earliest convenience whether your clients intend to oppose Plaintiff's ex parte application and on what grounds, so that I may inform the Court. If there is some other way you'd prefer to handle the hearing and

briefing schedule in light of the July 1<sup>st</sup> deadline, I'd be glad to consider it if it could prevent the parties from having to go in ex parte.

Should you have any questions or concerns, I'm available by phone or email.

Regards,

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**Sent:** Wednesday, May 24, 2017 4:37 PM


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**Cc:** Alexandra RobertGordon <[Alexandra.RobertGordon@doj.ca.gov](mailto:Alexandra.RobertGordon@doj.ca.gov)>; Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>;  
Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>

**Subject:** RE: DAG assigned to Duncan v. Becerra, Case No.: 17-cv-1017-BEN-JLB [MA-Interwoven.FID70956]

Got it, Tony. Please copy Anna Barvir (who I copied here) on all correspondence regarding this matter, as she is the lead attorney on this matter from our office.

Regards,

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**Sent:** Wednesday, May 24, 2017 2:53 PM  
**To:** Anthony Hakl <[Anthony.Hakl@doj.ca.gov](mailto:Anthony.Hakl@doj.ca.gov)>; Jonathan M Eisenberg <[Jonathan.Eisenberg@doj.ca.gov](mailto:Jonathan.Eisenberg@doj.ca.gov)>; Peter Chang <[Peter.Chang@doj.ca.gov](mailto:Peter.Chang@doj.ca.gov)>; Robert Wilson <[Robert.Wilson@doj.ca.gov](mailto:Robert.Wilson@doj.ca.gov)>; Jeffrey Rich <[Jeffrey.Rich@doj.ca.gov](mailto:Jeffrey.Rich@doj.ca.gov)>  
**Cc:** Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>; Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>  
**Subject:** DAG assigned to Duncan v. Becerra, Case No.: 17-cv-1017-BEN-JLB [MA-Interwoven.FID70956]  
**Importance:** High


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Sincerely,

<p><b>Sean Brady</b> Attorney</p>  <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:SBrady@michellawyers.com">SBrady@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a></p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA

3 VIRGINIA DUNCAN, RICHARD  
4 LEWIS, PATRICK LOVETTE, DAVID  
5 MARGUGLIO, CHRISTOPHER  
6 WADDELL, CALIFORNIA RIFLE &  
PISTOL ASSOCIATION,  
INCORPORATED, a California  
corporation,

7 Plaintiffs,

8 v.

9 XAVIER BECERRA, in his official  
10 capacity as Attorney General of the State  
of California; and DOES 1-10,

11 Defendant.

Case No: 17-cv-1017-BEN-JLB

**CERTIFICATE OF SERVICE**

12 IT IS HEREBY CERTIFIED THAT:

13 I, the undersigned, am a citizen of the United States and am at least 18 years of  
14 age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, California  
90802. I am not a party to the above-entitled action.

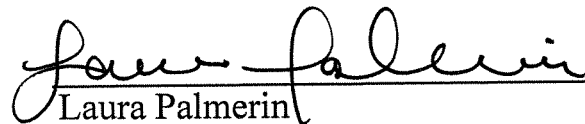
15 I have cause service of the following documents, described as:

16 **DECLARATION OF ANNA M. BARVIR IN SUPPORT OF EX PARTE**  
17 **APPLICATION FOR ORDER SHORTENING TIME; EXHIBITS A-B**

18 on all parties by email with return receipt requested and by overnight mail, with postage  
19 fully prepaid, for each address named below and depositing each in the U.S. Mail at Long  
Beach, California, on May 25, 2017.

20 Ms. Alexandra Robert Gordon  
[alexandra.robertgordon@doj.ca.gov](mailto:alexandra.robertgordon@doj.ca.gov)  
21 Mr. Anthony P. O'Brien  
[anthony.obrien@doj.ca.gov](mailto:anthony.obrien@doj.ca.gov)  
22 California Department of Justice  
1300 I Street, Suite 125  
Sacramento, CA 95814

23 I declare under penalty of perjury that the foregoing is true and correct. Executed  
24 on May 25, 2017, at Long Beach, CA.

25   
26 Laura Palmerin  
27  
28