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7

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

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

14 Plaintiffs,

15 v.

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

18 Defendants.

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

**DECLARATION OF SEAN BRADY
IN SUPPORT OF PLAINTIFFS' EX
PARTE APPLICATION FOR
ORDER SHORTENING TIME**

DECLARATION OF SEAN BRADY

1
2 1. I am an attorney at law duly licensed to practice in the State of California. I am
3 an associate at Michel & Associates, P.C., attorneys of record for Plaintiffs Virginia
4 Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell, and the
5 California Rifle & Pistol Association, Inc. (“CRPA”). I have personal knowledge of the
6 facts set forth herein and if called as a witness I could and would competently testify
7 thereto.

8 2. On July 1, 2016, several new firearm related laws were chaptered into the
9 California Penal Code by the Secretary of State. These new measures included
10 restrictions on firearms now classified as “assault weapons,” a prohibition on the
11 possession of magazines capable of holding more than ten rounds, restrictions on home-
12 built firearms, restrictions on loaning a firearm, and a new regulatory scheme for the
13 transfer of ammunition.¹

14 3. Because these new laws drastically changed California’s regulatory scheme
15 regarding firearms, members of the public—including law enforcement, prosecutors,
16 courts, firearm dealers, and law-abiding gun owners—were uncertain how they were to
17 be implemented and enforced. No guidance was provided by Defendants, and many of
18 the new laws were set to take effect January 1, 2017.

19 4. To assist members of the public and our clients in avoiding prosecution for
20 unintentional violations, our office began the process of reviewing and analyzing each of
21 the new laws. Given the length and complexity of each bill, this process took a
22 substantial amount of time and effort from multiple attorneys in our office over the
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26 ¹ See S.B. 880, 2015-2016 Leg. Sess. (Cal. 2016); S.B. 1446, 2015-2016 Leg. Sess.
27 (Cal. 2016); S.B. 1235, 2015-2016 Leg. Sess. (Cal. 2016); Assemb. B. 1135, 2015-2016
28 Leg. Sess. (Cal. 2016); Assemb. B. 1511, 2015-2016 Leg. Sess. (Cal. 2016); Assemb. B.
1695, 2015-2016 Leg. Sess. (Cal. 2016); Assemb. B. 857, 2015-2016 Leg. Sess. (Cal.
2016).

1 course of several months.

2 5. On November 8, 2016, California voters approved Proposition 63, which
3 included, among other provisions, a new regulatory scheme for the sale or transfer of
4 ammunition in California, a prohibition on the possession of magazines capable of
5 holding more than ten rounds, new procedures for courts to ensure prohibited individuals
6 do not possess firearms or ammunition, and new requirements for individuals to report
7 the theft or loss of a firearm to law enforcement.² Many of Proposition 63's provisions
8 were largely duplicative of the laws passed by the Legislature, but with significant
9 distinctions.

10 6. Prior to the November 8, 2016, election, our office prepared a number of
11 informational bulletins for prosecutors, gun owners, law enforcement, and members of
12 the general public regarding Proposition 63.³ These bulletins informed the public of the
13 potential ramifications on different groups of gun owners by Proposition 63.

14 7. Following the enactment of Proposition 63, because it has provisions that differ
15 from those of some of the bills passed by the Legislature addressing the same subject
16 matter, it was unclear to many of those affected by the laws which provisions would
17 control.

18 8. Because of the substantial overlap between Proposition 63 and the new laws,
19 our office was contacted by a number of clients (organizational, business, and
20 individuals) law enforcement officials and members of the public with questions
21 regarding the effects and requirements of the new laws. To this day, our office still
22 receives questions from various individuals and entities regarding this subject.

23 9. To assist members of the public and our clients in avoiding prosecution, and to
24 help them understand the overlap between Proposition 63 and the new laws, our office
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26 ² The full text of Proposition 63 can be viewed online at
27 [https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20\(Firearms\)_0.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20(Firearms)_0.pdf).

28 ³ These bulletins are available online at <http://stoptheammograb.com/resources/>.

1 immediately began the process of reviewing and analyzing its provisions. This process
2 took a substantial amount of time and effort from multiple attorneys in our office over the
3 course of several months.

4 10. On August 19, 2016, our office held a live webinar discussing in detail all of the
5 new laws and requirements regarding “assault weapons” and home-built firearms. Many
6 of these provisions were set to take effect on January 1, 2017, and would have a drastic
7 impact on the ability to sell or transfer certain firearms in the state of California, and
8 carry a potential felony conviction if violated.

9 11. On August 24, 2016, our office held a live webinar discussing in detail all of the
10 new laws and requirements regarding the sale or transfer of ammunition in the state of
11 California. Many of these provisions will be phased in over the next few years, and carry
12 potential criminal penalties, including jail time, if violated.

13 12. On October 18, 2016, our office held a live webinar discussing in detail
14 Proposition 63 and its provisions regarding the mandatory reporting of lost or stolen
15 firearms, the prohibition on the possession of magazines capable of holding more than ten
16 rounds, the new restrictions on the sale or transfer of ammunition in the state of
17 California, new provisions regarding the seizure of firearms from a prohibited person by
18 the courts, and the modification of Proposition 47 concerning the theft of firearms. As a
19 voter initiative, Proposition 63 would take effect immediately if enacted by voters, and
20 several of its provisions carry potential criminal penalties, including jail time, if violated.

21 13. On November 2, 2016, our office held a live webinar discussing in detail all of
22 the new laws and requirements for loaning firearms in California, as well as the
23 prohibition on possession of magazines capable of holding more than ten rounds and the
24 false reporting of a firearm as lost or stolen. Many of these provisions would take effect
25 January 1, 2017, and carry potential criminal penalties, including jail time, if violated.

26 14. Our office also held a live webinar discussing in detail the new laws and
27 requirements for loaning firearms in California, and how those laws affect the loan of a
28 firearm through a licensed firearms dealer and the loan of a firearm to a minor for the

1 purposes of engaging in lawful shooting activities. These provisions would take effect
2 January 1, 2017, and carry potential criminal penalties, including jail time, if violated.⁴

3 15. On December 14, 2016, our office submitted a letter to Defendants regarding its
4 failure to provide adequate information to California gun owners and firearm retailers
5 regarding newly classified “assault weapons.”⁵ This letter was necessary because
6 Defendants failed to provide any guidance on the new law, which was set to take effect
7 January 1, 2017. Included with the letter was a comprehensive memorandum regarding
8 the definition of key terms used in the new laws for the purpose of clarifying our position
9 and providing Defendants with a suggested definition.

10 16. On December 16, 2016, Defendant submitted proposed regulations regarding
11 magazines capable of holding more than ten rounds. On December 23, Defendant
12 officially noticed those proposed regulations under the “emergency” rulemaking
13 procedure of the California Administrative Procedure Act to the Office of Administrative
14 Law, giving members of the public only 5-days to comment on the proposal.⁶

15 17. To assist members of the public in submitting comments on Defendant’s
16 proposed regulations regarding magazines capable of holding more than ten rounds, our
17 office prepared a comprehensive analysis of the proposal, which was made available to
18 the public on December 23, 2016.⁷

19 18. On December 28, 2016, our office submitted a formal opposition to
20 Defendants’ proposed regulations regarding magazines capable of holding more than ten
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23 ⁴ Each of these webinars is publicly available at www.crpa.org/webinars.

24 ⁵ A copy of this letter is available at <http://michellawyers.com/wp-content/uploads/2016/12/286244864.pdf>.

25 ⁶ *Emergency Rulemaking*, Office of Administrative Law,
26 http://oal.blogs.ca.gov/files/2016/08/Emergency-Rulemaking-Flowchart_FINAL_June-2014.pdf (June 2014).

27 ⁷ This analysis can be viewed on the CRPA’s website at <http://crpa.org/doj-proposed-regs-large-capacity-magazines/>.
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1 rounds to the Office of Administrative Law.⁸

2 19. On December 28, 2016, Defendants informed certified Firearm Safety
3 Certificate instructors that it had improperly released their personal information—
4 including their name, date of birth, California Driver's License number, and/or California
5 Identification Card number—to an unknown third party in a response to a public records
6 act request.⁹ To assist certified Firearm Safety Certificate affected by this data breach,
7 our office prepared a comprehensive bulletin, which included a discussion on how to
8 protect their identity and credit rating.¹⁰

9 20. On December 29, 2016, Defendant formally withdrew from the OAL's
10 consideration his proposed regulations regarding magazines capable of holding more than
11 ten rounds.

12 21. The very next day, on December 30, 2016, Defendant submitted proposed
13 regulations regarding the registration of newly classified "assault weapons" to the Office
14 of Administrative Law. These regulations were proposed as a direct result of Senate Bill
15 No. 880 and Assembly Bill No. 1135. Defendant submitted the proposed regulations as
16 "file and print only," claiming that their proposed regulations were exempt from the
17 California Administrative Procedure Act. By claiming an exemption, Defendant's
18 proposed regulations would not be subject to public comment while under review by the
19 Office of Administrative Law.

21 ⁸ A copy of this letter is available at [http://michellawyers.com/wp-](http://michellawyers.com/wp-content/uploads/2016/12/Oppo-to-Proposed-Emergency-Regs-re-Lg-Capacity-Mags-Conversion-Kits_12.28.16.pdf)
22 [content/uploads/2016/12/Oppo-to-Proposed-Emergency-Regs-re-Lg-Capacity-Mags-](http://michellawyers.com/wp-content/uploads/2016/12/Oppo-to-Proposed-Emergency-Regs-re-Lg-Capacity-Mags-Conversion-Kits_12.28.16.pdf)
23 [Conversion-Kits_12.28.16.pdf](http://michellawyers.com/wp-content/uploads/2016/12/Oppo-to-Proposed-Emergency-Regs-re-Lg-Capacity-Mags-Conversion-Kits_12.28.16.pdf).

24 ⁹ Defendants notified those affected via mail. A copy of the letter can be viewed at
25 [http://michellawyers.com/wp-content/uploads/2017/01/Letter-DOJ-Firearm-Safety-](http://michellawyers.com/wp-content/uploads/2017/01/Letter-DOJ-Firearm-Safety-Instructor-Breach-2016-2.pdf)
26 [Instructor-Breach-2016-2.pdf](http://michellawyers.com/wp-content/uploads/2017/01/Letter-DOJ-Firearm-Safety-Instructor-Breach-2016-2.pdf).

27 ¹⁰ This bulletin can be viewed online at
28 [http://213ajq29v6vk19b76q3534cx.wpengine.netdna-cdn.com/wp-](http://213ajq29v6vk19b76q3534cx.wpengine.netdna-cdn.com/wp-content/uploads/2016/06/CRPA-Information-Bulletin-re-DOJ-Data-Breach-930701-v-6.pdf)
[content/uploads/2016/06/CRPA-Information-Bulletin-re-DOJ-Data-Breach-930701-v-](http://213ajq29v6vk19b76q3534cx.wpengine.netdna-cdn.com/wp-content/uploads/2016/06/CRPA-Information-Bulletin-re-DOJ-Data-Breach-930701-v-6.pdf)
[6.pdf](http://213ajq29v6vk19b76q3534cx.wpengine.netdna-cdn.com/wp-content/uploads/2016/06/CRPA-Information-Bulletin-re-DOJ-Data-Breach-930701-v-6.pdf).

1 22. On or about December 30, 2016, our office attempted to obtain a copy of
2 Defendant's proposed regulations regarding the registration of newly classified "assault
3 weapons." The DOJ informed our office, however, that they would not release the
4 proposed text of the regulations.

5 23. On or about December 30, 2016, our office contacted the Office of
6 Administrative Law requesting a copy of the text of Defendant's proposed regulations
7 regarding the registration of newly classified "assault weapons." Shortly thereafter, the
8 Office of Administrative Law provided our office with a copy of the proposed text.

9 24. Because Defendant's proposed regulations went far beyond what was necessary
10 to register a firearm as an "assault weapon," our office submitted a formal request to the
11 Office of Administrative Law that they reject Defendant's proposal on January 9, 2017.¹¹

12 25. In addition to our office submitting a formal request to the Office of
13 Administrative Law, our office submitted a pre-litigation demand letter to Defendant to
14 withdraw his proposed regulations regarding the registration of newly classified "assault
15 weapons" on January 9, 2017.¹²

16 26. On January 10, 2017, our office held a live webinar discussing in detail
17 Defendant's proposed regulations regarding the registration of newly classified "assault
18 weapons." If approved by the Office of Administrative Law, the regulations would
19 become effective no later than February 13, 2017. Failure to properly register a firearm
20 could result in a potential conviction for being in possession of an unregistered assault
21 weapon, which is a potential felony in California. So getting the registration process right
22 is very important to California gun owners staying on the right side of the law.

23 27. On or about January 12, 2017, our office submitted a Public Records Act
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26 ¹¹ A copy of this letter is available online at http://michellawyers.com/wp-content/uploads/2017/01/Letter-to-OAL-re-Bullet-Button-Assault-Weapons_1.9.17.pdf.

27 ¹² A copy of this letter is available online at http://michellawyers.com/wp-content/uploads/2017/01/Letter-to-DOJ-re-Bullet-Button-Assault-Weapons_1.9.17.pdf.
28

1 request to DOJ requesting any and all communications with the Office of Administrative
2 Law regarding Defendant's proposed regulations for magazines capable of holding more
3 than ten rounds and the registration of newly classified "assault weapons."

4 28. On February 13, 2017, Defendant formally withdrew his proposed regulations
5 regarding the registration of newly classified "assault weapons."

6 29. Prior to Defendant withdrawing his proposed regulations regarding the
7 registration of newly classified "assault weapons," our office was in the final stages of
8 preparing a lawsuit to challenge the regulations to prevent them from being officially
9 published in the California Code of Regulations. Defendant's withdrawal of the proposal
10 made it unnecessary to proceed with the lawsuit at that time, but not after Plaintiffs'
11 attorneys spent many days and resources preparing for the anticipated lawsuit.

12 30. On April 6, 2017, Defendants responded to the public records request our office
13 submitted on January 12, 2017. Included in this response were emails between the Office
14 of Administrative Law and Jacqueline Dosch, Legislative and Public Records Act
15 Analyst for Defendant.

16 31. In one email dated December 29, 2016, Jacqueline Dosch states that DOJ has "a
17 few questions in light of the fact that we will most likely receive a formal rejection next
18 week" with regards to Defendant's proposed regulations regarding magazines capable of
19 holding more than ten rounds. Jacqueline Dosch also inquired about "any time constraints
20 on following this up with regular, permanent regulations." *Id.*

21 32. Based off this email, our office concluded that our belief that Defendants would
22 soon attempt to re-submit regulations regarding magazines capable of holding more than
23 ten rounds was accurate.

24 33. In anticipation of Defendant's renewed attempt to adopt regulations regarding
25 magazines capable of holding more than ten rounds—based on Defendant's identifying
26 the previous ones as "emergency" regulations and the looming deadline for the law to
27 take effect—our office withheld filing this lawsuit and monitored the situation in the
28 interests of saving time and preventing the waste of precious judicial resources, in case

1 such proposed regulations would might affect our challenge to Penal Code section 32310.
 2 However, with the deadline for gun owners to dispossess themselves of their magazines
 3 fast approaching, our office was left with no choice but to file this lawsuit and seek
 4 injunctive relief. At the time of this filing, Defendant has yet to submit revised
 5 regulations regarding magazines capable of holding more than ten rounds.

6 34. Recent developments regarding California's new firearm laws have continued
 7 to require our office's immediate attention.

8 35. In April, the Judicial Council of California forwarded our office and members
 9 of the public an invitation to comment on the implementation of Proposition 63.¹³ Our
 10 office is drafting and will be submitting a letter of comment which is currently due May
 11 31, 2017.

12 36. On May 15, 2017, Defendants submitted revised regulations regarding the
 13 registration of newly classified "assault weapons" to the office of administrative law,
 14 again labeling the submission as "file and print only."¹⁴ Once again, Defendants refused
 15 to provide a copy of the proposed regulations to the public for review.

16 37. On May 18, 2018, our office obtained a copy of the text of Defendants'
 17 proposed regulations regarding the registration of newly classified "assault weapons"
 18 from the Office of Administrative Law. Defendants' proposed regulations remain
 19 substantially unchanged from its original proposal in December 2016. To assist our
 20 client's and California gun owners, our office will be hosting another live webinar
 21 discussing Defendants' proposed regulations in detail on May 25, 2017.

22 38. In addition to the above workload, our office is currently involved in other
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 25 ¹³ See *Invitation to Comment: SP17-03*, Judicial Council of California,
 26 <http://www.courts.ca.gov/documents/SP17-03.pdf>.

27 ¹⁴ A copy of Defendants' proposed regulations are available online at
 28 <http://michellawyers.com/wp-content/uploads/2017/05/DOJ-Submission-of-Regulation-.pdf>.

1 ongoing firearm-related litigation on behalf of our clients, which have all required
2 significant attorney time and effort following the enactment of California's new laws,
3 some of it *because* of their enactment.

4 39. In December 2016, our office responded to a motion to dismiss in the case of
5 *Flanagan v. Becerra* (formerly *Flanagan v. Harris*), Case No. 16-06164, which is
6 currently pending in the Western Division of the Central District of the United States
7 District Court. And in February 2017, our office filed a required joint Rule 16(b)/26(f)
8 report, and prepared for and attended a hearing regarding the motion to dismiss. During
9 this hearing, the court also held a scheduling conference and set deadlines for discovery,
10 which included cut-off dates as early as June 1, 2017. Discovery has been ongoing since.

11 40. Our office assisted in the preparation of a petition for *certiorari* to the United
12 States Supreme Court in *Peruta v. California* (formerly *Peruta v. San Diego*), Case No.
13 16-894, which was filed in January 2017. And on March 7, 2017, our office assisted in
14 the preparation of a reply to the respondents' brief in opposition to that petition. These
15 were both statutory deadlines before the U.S. Supreme Court.

16 41. On April 19, 2017, oral arguments were held before the Ninth Circuit in the
17 case of *Bauer v. Becerra* (formerly *Bauer v. Harris*), Case No. 15-15428. Attorneys from
18 our office assisted in preparation for and one attended these arguments.

19 42. Our office is also currently involved in discovery in the case of *Gentry v.*
20 *Becerra* (formerly *Gentry v. Harris*), Case No. 34-2013-80001667-CU-WM-GDS, which
21 is pending in California Superior Court in the County of Sacramento.

22 43. Our office is also currently litigating the recovering of attorney fees in
23 *Belemjian v. Becerra* (formerly *Belemjian v. Harris*), California Superior Court Case No.
24 15-CE-CG-00029. The case challenged Defendant's refusal to properly enact necessary
25 regulations for the implementation of California's Firearm Safety Certificate Program.
26 After the trial court judge denied our fee motion on February 18, 2016, we filed a timely
27 appeal. On August 24, 2016, we filed Appellants' Opening Brief in the Fifth District
28 Court of Appeal. Respondents filed their brief on December 29, 2016. And we filed

1 Appellants' Reply Brief on March 15, 2017. We are currently waiting for the appellate
2 court to set a date for oral argument.

3 44. Our office is also currently litigating to recover attorneys' fees in the case of
4 *Parker v. California*, California Supreme Court Case No. S215265, in both the Superior
5 Court and the California Court of Appeals. Defendants petitioned the California Supreme
6 Court to rehear the case after the Court of Appeals ruled in favor of our clients. While
7 pending oral arguments, Senate Bill No. 1235 was enacted by the California Legislature,
8 and California voters approved Proposition 63. As a result, the Supreme Court dismissed
9 the case as moot, but not before ordering supplemental briefing on the effects of Senate
10 Bill No. 1235.

11 45. All of the above lawsuits were pending prior to the enactment of California's
12 new firearm laws—except for *Flanagan*, which was filed in August, shortly after the
13 Legislature enacted the laws at issue, but which was already being developed much
14 before then—and we had little or no control over certain deadlines.

15 46. On April 24, our office filed a new lawsuit, *Rupp v. Becerra*, Case No. 17-
16 00746, in federal district court in Orange County, which challenges California's "Assault
17 Weapons Control Act" on the grounds that it violates the Second Amendment, the due
18 process clause, and the takings clause of the United States Constitution. This case was
19 filed in direct response to Senate Bill No. 880 and Assembly Bill No. 1135, both of
20 which classify commonly owned, semiautomatic firearms as "assault weapons," and
21 require such firearms currently owned by California residents to be registered with the
22 Department of Justice. The law took effect on January 1, 2017, and impacts thousands of
23 California gun owners.

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1 47. All of the above lawsuits required attorneys in our office to expend significant
2 time and resources necessary to adequately and effectively represent the interests of our
3 clients.

4
5 I declare under penalty of perjury that the foregoing is true and correct. Executed
6 within the United States on May 25, 2017.

7
8 
9 Sean Brady
Declarant

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

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

Plaintiffs,

v.

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

Defendant.

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

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least 18 years of 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.

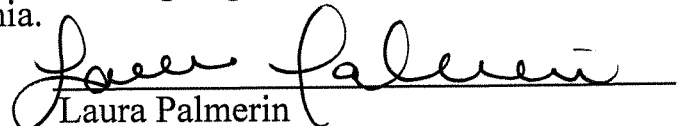
I have cause service of the following documents, described as:

**DECLARATION OF SEAN BRADY IN SUPPORT OF PLAINTIFFS' EX
PARTE APPLICATION FOR ORDER SHORTENING TIME**

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

Ms. Alexandra Robert Gordon
alexandra.robertgordon@doj.ca.gov
Mr. Anthony P. O'Brien
anthony.obrien@doj.ca.gov
California Department of Justice
1300 I Street, Suite 125
Sacramento, CA 95814

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


Laura Palmerin