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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VIRGINIA DUNCAN, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of the State
of California,

Defendant.

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

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT**

Hearing Date: April 30, 2018
Hearing Time: 10:30 a.m.
Judge: Hon. Roger T. Benitez
Courtroom: 5A

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Please take notice that on April 30, 2018, at 10:30 a.m. or as soon thereafter as counsel may be heard in Courtroom 5A of the above-captioned court, located at 221 West Broadway, San Diego, California 92101, Plaintiffs Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell, and California Rifle and Pistol Association, Incorporated (CRPA), will and hereby do move for summary judgment under Rule 56 of the Federal Rules of Civil Procedure as to each claim asserted in Plaintiffs' Complaint for Declaratory and Injunctive Relief. Alternatively, Plaintiffs

1 move for partial summary judgment under Rule 56 as to those claims arising from the
2 Takings and Due Process Clauses of the United States Constitution.

3 Plaintiffs bring this motion because there is no genuine dispute that (1) Second
4 Amendment to the United States Constitution protects the individual right of every
5 law-abiding citizen to possess and acquire magazines over ten rounds, which are
6 typically possessed for lawful purposes; and (2) the state of California cannot establish
7 the required “reasonable fit” between its flat ban on such magazines and its interests in
8 public safety. The state’s magazine ban thus cannot survive constitutional scrutiny,
9 and Plaintiffs are entitled to judgment as a matter of law.

10 Summary judgment is also undoubtedly proper as to Plaintiffs’ claims that the
11 state’s confiscatory and retrospective ban on the possession of magazines over ten
12 rounds without government compensation constitutes an unconstitutional taking and
13 violates due process. These claims each involve pure questions of law. To the extent
14 the Court finds some genuine issue as to any material fact related to Plaintiffs’ Second
15 Amendment claim, and is thus inclined to deny summary judgment, Plaintiffs seek
16 partial summary judgment on their takings and due process claims.

17 This motion is based on this notice, as well as the memorandum of points and
18 authorities, the declaration of Anna M. Barvir and attached exhibits, and the
19 declarations of Virginia Duncan, Patrick Lovette, David Marguglio, Christopher
20 Waddell, and CRPA, filed simultaneously herewith. This motion is also based on the
21 papers and pleadings already on file in this motion and such matters as may be
22 presented to the Court at the hearing.

23 Dated: March 5, 2018

MICHEL & ASSOCIATES, P.C.

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25 /s/ Anna M. Barvir

26 Anna M. Barvir

27 Email: abarvir@michellawyers.com

28 Attorneys for Plaintiffs