

**SEILER EPSTEIN ZIEGLER & APPEGATE LLP**  
Attorneys at Law

1 George M. Lee (SBN 172982)  
Douglas A. Applegate (SBN 142000)  
2 **SEILER EPSTEIN ZIEGLER & APPEGATE LLP**  
601 Montgomery Street, Suite 2000  
3 San Francisco, California 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Raymond M. DiGuseppe (SBN 228457)  
**LAW OFFICES OF RAYMOND MARK DIGUISEPPE, PLLC**  
6 4002 Executive Park Blvd., Suite 600  
Southport, NC 28461  
7 Phone: (910) 713-8804  
Fax: (910) 672-7705

8 Attorneys for Plaintiffs  
9 WILLIAM WIESE, JEREMIAH MORRIS,  
LANCE COWLEY, SHERMAN MACASTON,  
10 CLIFFORD FLORES, L.Q. DANG, FRANK FEDERAU,  
ALAN NORMANDY, TODD NIELSEN,  
11 THE CALGUNS FOUNDATION, FIREARMS POLICY  
COALITION, FIREARMS POLICY FOUNDATION,  
12 and SECOND AMENDMENT FOUNDATION

13 UNITED STATES DISTRICT COURT

14 FOR THE EASTERN DISTRICT OF CALIFORNIA

16 WILLIAM WIESE, an individual; JEREMIAH  
17 MORRIS, an individual; LANCE COWLEY, an  
individual; SHERMAN MACASTON, an  
18 individual; CLIFFORD FLORES, individually  
and as trustee of the Flores Family Trust; L.Q.  
19 DANG, an individual; FRANK FEDERAU, an  
individual; ALAN NORMANDY, an  
20 individual; TODD NIELSEN, an individual;  
21 THE CALGUNS FOUNDATION; FIREARMS  
POLICY COALITION; FIREARMS POLICY  
22 FOUNDATION; SECOND AMENDMENT  
FOUNDATION,

23  
24 Plaintiffs,

25 vs.

26  
27 XAVIER BECERRA, in his official capacity as  
Attorney General of California; MARTHA  
28 SUPERNOR, in her official capacity as Acting

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

**SECOND AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

1 Chief of the Department of Justice Bureau of  
2 Firearms,

3 Defendants.

4  
5 COME NOW the plaintiffs WILLIAM WIESE, JEREMIAH MORRIS, LANCE  
6 COWLEY, SHERMAN MACASTON, CLIFFORD FLORES, L.Q. DANG, FRANK  
7 FEDERAU, ALAN NORMANDY, TODD NIELSEN, THE CALGUNS FOUNDATION,  
8 FIREARMS POLICY COALITION, FIREARMS POLICY FOUNDATION, and SECOND  
9 AMENDMENT FOUNDATION (collectively, “Plaintiffs”), by and through their undersigned  
10 counsel, who hereby complain and allege as follows:

11  
12 **INTRODUCTION**

13 1. This is a facial and as-applied constitutional challenge to California Penal Code §  
14 32310, as recently amended by Senate Bill 1446 and Proposition 63, and Penal Code § 32390  
15 (collectively, the “Large-Capacity Magazine Ban”), which would, if enforced, and as applied,  
16 individually and collectively prohibit Plaintiffs and other law-abiding citizens from continuing to  
17 possess, use, or acquire lawfully-owned firearms, in common use for lawful purposes such as  
18 self-defense (inside and outside the home), competition, sport, and hunting.

19 2. This action further challenges the Large-Capacity Magazine Ban statutory scheme  
20 which would, if enforced, effective as of July 1, 2017, subject thousands of law-abiding gun  
21 owners to criminal liability and sanctions, and subject their lawfully-possessed personal property  
22 to forfeiture, seizure and permanent confiscation, without due process or compensation.

23 3. Moreover, the Large-Capacity Magazine Ban is hopelessly vague and ambiguous,  
24 as it fails to provide fair or even adequate notice to law-abiding gun owners of what they may do  
25 with their personal property without being subject to criminal sanctions, fails to fairly or  
26 adequately inform them of which version of the statutory scheme may apply, fails to fairly or  
27 adequately inform them whether they are subject to an exception thereunder, and encourages or  
28

1 authorizes arbitrary or discriminatory enforcement.

2 4. The Large-Capacity Magazine Ban is also unconstitutionally overbroad because  
3 its provisions capture a substantial amount of constitutionally-protected activity, the prohibition  
4 of which does not advance the stated justification for the ban, and the law is not readily  
5 susceptible to a limiting construction that would render it constitutional.

6 5. The possession of all ammunition magazines, which are intrinsic operating parts  
7 of modern, constitutionally-protected semi-automatic firearms, has heretofore been legal. In  
8 1999, through passage of Senate Bill 23 (“SB23”), California enacted legislation banning the  
9 importation, sale or manufacture of standard-capacity ammunition feeding devices that can hold  
10 more than ten rounds of ammunition (so-called “large-capacity magazines” as the Legislature  
11 called and defined them in Cal. Penal Code § 16740). However, as a part of SB23, possession of  
12 lawfully-acquired “large capacity magazines” was not prohibited and continued to be legal.  
13 Therefore, millions of these “grandfathered” large-capacity magazines have existed and currently  
14 are lawfully possessed by law-abiding California gun owners. More to the point, they are  
15 inherent, operating parts of handguns and other firearms that are lawfully owned and protected  
16 under the United States Constitution. The Large-Capacity Magazine Ban is, effectively and now,  
17 actually, a confiscation, in part, of bearable arms, protected by the United States Constitution.

18 6. This action therefore seeks to vindicate the right of the people of the State of  
19 California, including Plaintiffs, and others similarly situated, to keep and bear arms under the  
20 Second Amendment, as incorporated to the states, which prohibits infringement of a core right to  
21 keep and use commonly-possessed firearms for lawful purposes, including self-defense.

22 7. This action is brought by individual and organizational plaintiffs, both on their  
23 own behalves, and as representatives on behalf of the class of individuals who are or would be  
24 affected by the Large-Capacity Magazine Ban, that is, those law-abiding California residents,  
25 who are not otherwise exempt, who have lawfully and legally possessed Large-Capacity  
26 Magazines in this state, prior to December 31, 1999.  
27  
28

**PARTIES**

1  
2           8.       Plaintiff William Wiese is a natural person and a law-abiding California resident  
3 who resides in the City of San Jose, California. Wiese has lawfully owned and possesses large-  
4 capacity magazines, as defined by statute, before 2000. Wiese is a board member and supporter  
5 of The Calguns Foundation. Wiese is a member and supporter of Second Amendment  
6 Foundation, Firearms Policy Coalition, and Firearms Policy Foundation.

7           9.       Plaintiff Jeremiah Morris is an individual, and a law-abiding resident of the  
8 County of Kern, California. Morris has possessed, and continues to lawfully possess a so-called  
9 large-capacity magazine for an AR-type rifle, chambered in 5.56 x 45 mm, since before the ban  
10 on the importation and sale of such magazines in 2000. Morris holds an active license to carry a  
11 concealed weapon (“CCW”) issued by his county sheriff, issued to him only after proving “good  
12 cause” and his “good moral character” to his licensing authority, successfully completing a  
13 course of training on the law and firearms proficiency, passing an extensive Live Scan-based  
14 background check<sup>1</sup> and placement into the State’s “Rap Back” system for monitoring law  
15 enforcement contact, arrests, and criminal convictions. Morris has maintained an active CCW  
16 license, requiring additional training and background checks, since 2010.

17           10.      Plaintiff Lance Cowley is an individual, and a law-abiding resident of the County  
18 of Placer, California. Plaintiff Cowley is the lawful possessor of one or more large-capacity  
19 magazines, as defined by statute, which he legally acquired before 2000. Cowley is a member  
20 and supporter of The Calguns Foundation, Second Amendment Foundation, Firearms Policy  
21 Coalition, and Firearms Policy Foundation.

22           11.      Plaintiff Sherman Macaston is an individual, and law-abiding resident of the  
23 County of Sonoma, California. Plaintiff Macaston was born and raised in California, and has  
24 honorably served his country, serving two combat tours of duty in Vietnam. After being  
25 honorably discharged from the United States Army in 1978, Plaintiff Macaston returned to  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Laws relating to licenses to carry a concealed handgun are set forth in California Penal Code §  
26150, *et seq.*

1 California, and here he lawfully acquired, prior to 2000, large-capacity magazines for a  
2 Browning Hi-Power pistol, chambered in 9mm, and large-capacity magazines for a Smith &  
3 Wesson Model 59 pistol, also chambered in 9mm. In fact, the large-capacity magazines that  
4 Plaintiff Macaston acquired for the Smith & Wesson Model 59 pistol are the only magazines that  
5 he has for that particular pistol, and as far as plaintiff Macaston is aware, and on information and  
6 belief, no 10-round OEM magazines were ever produced by the original manufacturer,  
7 specifically for that particular pistol, before its production was discontinued in 1988.

8           12. Plaintiff Clifford Flores is an individual and law-abiding resident of the County of  
9 Santa Clara, California. Plaintiff Flores has possessed, and continues to possess, large-capacity  
10 magazines as defined by statute, since before 2000, which includes a large capacity magazine  
11 originally manufactured for, and made a part of a Pistole Parabellum 1908 Luger pistol,  
12 chambered in 9mm Luger. On information and belief, this pistol is a World War I-era pistols,  
13 manufactured in 1917 or before, and imported into the United States thereafter for legal sale and  
14 acquisition by collectors. On information and belief, the large-capacity magazines that are a part  
15 of this pistol has substantial historical and financial value, and is irreplaceable – especially in  
16 California, where the transfer of large-capacity magazines by ordinary citizens has been  
17 generally prohibited since 2000. Plaintiff Flores would like to pass this pistol on to his son, a  
18 law-abiding California resident, but is prevented from doing so due to the prohibition on the  
19 transfer of large-capacity magazines within this state, as described herein, and he would be  
20 deprived of any opportunity to pass the same onto any family member, or anyone else, should he  
21 be forced to dispose of the magazine pursuant to the Large-Capacity Magazine Ban. Plaintiff  
22 Flores is suing in his capacity as an individual and as the trustee of the Flores Family Trust, a  
23 testamentary trust established in approx. 2008 to bequeath all personal property to his children,  
24 successors, issue and heirs, including his son.

26           13. Plaintiff L.Q. Dang is an individual, and law-abiding resident of the County of  
27 Alameda, California. Plaintiff Dang has lawfully owned, since before 2000, two large-capacity  
28 magazines as defined by statute for a Steyr GB pistol, chambered in 9mm Luger. The large-

1 capacity magazines which plaintiff Dang owns are solely for use with that pistol, and on  
2 information and belief, no other magazine that holds ten or fewer rounds of ammunition was  
3 manufactured or is otherwise compatible with that firearm. Plaintiff Dang is a supporter of the  
4 Calguns Foundation.

5 14. Plaintiff Frank Federau is an individual, and law-abiding resident of the County of  
6 San Francisco, California. Plaintiff is the lawful possessor of large-capacity magazines,  
7 including one or more magazines that are currently working and intrinsic parts of a lawfully  
8 possessed AR-15 platform model rifle, chambered in .458 SOCOM caliber. Said magazines hold  
9 10 rounds of .458 SOCOM ammunition for the firearm as it is currently chambered and used.  
10 However, such magazine also holds 30 rounds of 5.56 x 45mm ammunition, and is therefore  
11 classified as a large-capacity magazine under California law, even though plaintiff's firearm does  
12 not accept that round. On information and belief, plaintiff Federau is one of many other persons  
13 in a similar situation regarding the use of firearm magazines that are capable of accepting more  
14 than 10 rounds of a different caliber ammunition. Federau is a member and supporter of The  
15 Calguns Foundation, Second Amendment Foundation, Firearms Policy Coalition, and Firearms  
16 Policy Foundation.

17 15. Plaintiff Lt. Alan Normandy (retired) is an individual and law-abiding resident of  
18 Prescott, Arizona. Normandy has family in California and visits them often. Normandy is an  
19 honorably retired police officer who faithfully served the people of California in the South San  
20 Francisco Police Department for over 28 years. Normandy competes in shooting competitions  
21 and conducts and participates in firearms training, and would like to do so in California.  
22 Normandy is a former S.W.A.T. and tactical firearms instructor, and a firearms expert.  
23 Normandy was a firearms consultant for the "Mythbusters" television program produced for and  
24 broadcast on the Discovery Channel. Normandy is an individual member, member of the board  
25 of directors, and the current vice-president of Firearms Policy Coalition. Normandy is a member  
26 and supporter of The Calguns Foundation, Second Amendment Foundation, and Firearms Policy  
27 Foundation.  
28

1           16. Plaintiff Todd Nielsen is an individual and a law-abiding resident of Mapleton,  
2 Utah. Nielsen is an honorably retired peace officer and a 20+ year veteran of the San Jose Police  
3 Department. Nielsen competes in shooting competitions and conducts and participates in  
4 firearms training through his firm, Nielsen Training and Consulting. Nielsen is a member and  
5 supporter of The Calguns Foundation, Second Amendment Foundation, Firearms Policy  
6 Coalition, and Firearms Policy Foundation.

7           17. Plaintiff The Calguns Foundation, Inc. (CGF) is a non-profit membership  
8 organization incorporated under the laws of California with its principal place of business in  
9 Sacramento, California, with members residing both within and outside of this state, dedicated to  
10 promoting education for all of its stakeholders about California and federal firearm laws, rights  
11 and privileges, and defending and protecting the civil rights of California gun owners. CGF  
12 represents these members and supporters, who include California firearm retailers and  
13 consumers. CGF brings this action on behalf of itself, its members, and supporters, who possess  
14 all the indicia of membership, and similarly situated members of the public.

15           18. Plaintiff Firearms Policy Coalition, Inc. (FPC) is a non-profit membership  
16 organization incorporated under the laws of Delaware with its principal place of business in  
17 Sacramento, California, with members residing both within and outside of this state, that serves  
18 its members and the public through direct and grassroots advocacy, legal efforts, and education.  
19 The purposes of FPC include defending the United States Constitution and the People's rights,  
20 privileges and immunities deeply rooted in the Nation's history and tradition, especially the  
21 fundamental right to keep and bear arms. FPC represents these members and supporters, who  
22 include California firearm retailers and consumers. FPC brings this action on behalf of itself, its  
23 members, and supporters, who possess all the indicia of membership, and similarly situated  
24 members of the public.

25           19. Plaintiff Firearms Policy Foundation, Inc. (FPF) is a non-profit membership  
26 organization incorporated under the laws of Delaware with its principal place of business in  
27 Sacramento, California, with members residing both within and outside of this state, that serves  
28

1 to defend and advance constitutional rights through charitable purposes, with a focus on the  
2 fundamental, individual right to keep and bear arms. FPF represents these members and  
3 supporters, who include California firearm retailers and consumers. FPF brings this action on  
4 behalf of itself, its members, and supporters, who possess all the indicia of membership, and  
5 similarly situated members of the public.

6 20. Plaintiff Second Amendment Foundation, Inc. (SAF) is a non-profit membership  
7 organization incorporated under the laws of Washington with its principal place of business in  
8 Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including  
9 California. The purposes of SAF include education, research, publishing and legal action  
10 focusing on the Constitutional right to privately own and possess firearms, and the consequences  
11 of gun control. SAF brings this action on behalf of itself, its members, and supporters, who  
12 possess all the indicia of membership, and similarly situated members of the public.

13 21. Individual plaintiffs Wiese, Morris, Cowley, Macaston, Flores and Dang are  
14 bringing this claim on behalf of themselves, and as representatives of the class of similar  
15 individuals consisting of law-abiding California residents, who are not otherwise prohibited nor  
16 exempt, who lawfully and have legally possessed Large-Capacity Magazines in this state, prior  
17 to December 31, 1999. Organizational plaintiffs CGF, FPC, FPF and SAF are bringing this  
18 claim as public interest organizations, whose California members similarly have lawfully  
19 possessed Large-Capacity Magazines in this state, prior to December 31, 1999. As to all claims  
20 made in a representative capacity herein, there are common questions of law and fact that  
21 substantially affect the rights, duties and liabilities of a large number of California residents who  
22 knowingly or unknowingly are subject to the Large-Capacity Magazine Ban. The relief sought  
23 in this action is declaratory and injunctive in nature, and is a matter of substantial public interest.

24 22. Individual plaintiff and California resident Flores, in addition to any other  
25 capacity designated herein, is suing as the trustee of a trust created under California law. The  
26 creator of said trust has evidenced an intention to pass along such lawfully-acquired and held  
27 personal property to the beneficiaries, or their children, issue or heirs, but are or would be  
28



1 prevented from doing so by the prohibition on the transfer of personal property represented by  
2 the Large-Capacity Magazine Ban.

3 23. Individual plaintiffs and California residents Wiese, Morris, Cowley, Macaston,  
4 Flores, Dang and Federau also seek to acquire, and would acquire, additional large-capacity  
5 magazines for lawful use and purposes such as self-defense, recreation and competition, as  
6 would many of the members of CGF, FPC, FPF, and SAF, but they would be further prevented  
7 from doing so by the Large-Capacity Magazine Ban, if it is enforced.

8 24. Defendant Xavier Becerra is the Attorney General of the State of California, and  
9 is sued herein in his official capacity. The Attorney General is the chief law enforcement officer  
10 of the state, and it is his duty to ensure that California's laws are uniformly and adequately  
11 enforced. The Attorney General is the head of the California Department of Justice ("DOJ").  
12 The DOJ and its Bureau of Firearms regulate and enforce state law related to the sales,  
13 ownership, and transfer of firearms, including the licensing and regulation of firearms dealers.  
14 The Attorney General maintains an office in Fresno.

15 25. Defendant Martha Supernor is the Acting Chief of the DOJ Bureau of Firearms.  
16 Upon information and belief, Ms. Supernor reports to Attorney General Becerra, and is  
17 responsible for overseeing the licensing and regulation of firearms and firearms dealers. She is  
18 sued herein in her official capacity.

19  
20  
21 **JURISDICTION AND VENUE**

22 26. This court has jurisdiction over all claims for relief pursuant to 28 U.S.C. § 1331,  
23 as this action arises under the Constitution and laws of the United States, and under 28 U.S.C. §§  
24 1343 and 42 U.S.C. § 1983. All Plaintiffs herein are seeking relief under the Declaratory  
25 Judgment Act, 28 U.S.C. §§ 2201-2202. To the extent that the court determines that Plaintiffs  
26 are asserting state law claims, this court has supplemental jurisdiction under 28 U.S.C. § 1367(a).

27 27. Venue is proper under 28 U.S.C. § 1391(b). Assignment to the Fresno Division is  
28 proper pursuant to Local Rule 120(d) because the Attorney General and Department of Justice

1 maintain an office in Fresno and at least one of the named plaintiffs in this action resides in this  
2 jurisdiction.

3  
4 **BACKGROUND AND FACTS COMMON TO ALL COUNTS**

5 ***The Second Amendment***

6 28. The Second Amendment to the United States Constitution states, in pertinent part,  
7 that “the right of the people to keep and bear arms, shall not be infringed.” U.S. Const., Amend  
8 II. The Second Amendment further “elevates above all other interests the right of law-abiding,  
9 responsible citizens to use arms in defense of hearth and home.” *District of Columbia v. Heller*,  
10 554 U.S. 570, 635 (2008). The Second Amendment protects “arms....of the kind in common  
11 use.... for lawful purposes like self-defense.” *Id.*, 554 U.S. at 624.

12 29. California is unique in that its state constitution contains no provision securing the  
13 right to keep and bear arms. Without any express right to keep and bear arms within its  
14 constitution, the political branches of the State were effectively given free rein to restrict the  
15 rights of law-abiding people for decades, creating one of the most onerous and burdensome gun  
16 control schemes in the country.

17 30. Indeed, until the U. S. Supreme Court decided *McDonald v. City of Chicago*, 561  
18 U.S. 742, 130 S.Ct. 3020 (2010), and incorporated the Second Amendment’s guarantees as  
19 against states and local governments through the Fourteenth Amendment, law-abiding California  
20 residents and visitors were not able to enjoy the freedoms and benefits of an enduring and  
21 substantive protection of the fundamental, individual right to keep and bear arms.

22 31. The Second Amendment is not a second-class guarantee buried at the bottom of  
23 our Constitution. As the Court held in *McDonald*, “it is clear that the Framers and ratifiers of the  
24 Fourteenth Amendment counted the right to keep and bear arms among those *fundamental* rights  
25 necessary to our system of ordered liberty.” 130 S.Ct. at 3043 (emphasis added.)  
26

27 //

28 //

*Ammunition Magazines and the California Magazine Ban*

1  
2 32. Ammunition magazines and feeding devices are an intrinsic part of all semi-  
3 automatic firearms, which were designed, developed, produced and sold in large quantities  
4 starting in the early 20<sup>th</sup> Century and continuing through today. Today, a vast majority of  
5 firearms, including handguns, are self-loading semi-automatic firearms that require a magazine  
6 to feed each round of ammunition. Of these semi-automatic firearms, a vast majority in  
7 existence use spring-loading magazines which load each successive round of ammunition. A  
8 magazine is therefore an inherent part of, and inseparable from, a modern firearm. In fact, most,  
9 if not all semi-automatic firearms sold at retail by all manufacturers today are sold with at least  
10 one magazine included as an inherent part of that firearm. A modern, semi-automatic firearm is  
11 essentially inoperable without a magazine, or other ammunition feeding device.

12 33. Although an exact number is not known at this time, as will be shown at trial,  
13 over the past century, many millions of magazines have existed, lawfully within the United  
14 States, as inherent parts of semi-automatic firearms commonly held and used by Americans for  
15 lawful purposes like self-defense, competition, training, and sport.

16 34. Likewise, and up through 1999, millions of California citizens lawfully acquired,  
17 possessed and continued to possess semi-automatic firearms that contained, as a part of such  
18 firearms, magazines, many of which were only *later* legislatively branded as “large-capacity  
19 magazines,” though they were never described as such before 1999.

20 35. In 1999, through passage of Senate Bill 23, California enacted legislation  
21 generally banning methods of acquiring standard-capacity ammunition feeding devices that can  
22 hold more than ten rounds (so-called “large-capacity magazines,” as defined in Penal Code §  
23 16740). However, as a part of Sen. Bill 23, as enacted, possession of lawfully-acquired “large  
24 capacity magazines” was not prohibited and continued to be lawful. Individual Plaintiffs Wiese,  
25 Morris, Cowley, Macaston, Flores and Dang, and the members of the putative class of persons  
26 on whose behalf this action is brought, are law-abiding citizens, who are neither prohibited nor  
27 exempt, and who have lawfully possessed such large-capacity magazines through December 31,  
28

1 1999.

2 36. California gun owners, in trusting and justifiable reliance upon the legislative  
3 compromise and the continued lawful possession of large-capacity magazines, owned, continued  
4 to own, and acquired new firearms which included firearms capable of accepting large-capacity  
5 magazines. Furthermore, many California gun owners made choices regarding firearms based  
6 upon the reasonable assumption that they would be able to use, and continue to use, lawfully-  
7 acquired magazines, including large-capacity magazines.

8 37. The California Department of Justice acknowledges, in its recently-issued  
9 “Finding of Emergency” for regulations it had sought to promulgate related to the Large  
10 Capacity Magazine Ban, that “[t]here are likely hundreds of thousands of large-capacity  
11 magazines in California at this time. In recent years, there has been an increase in these types of  
12 firearms on the market. The Department therefore expects many gun owners to be affected by the  
13 new ban.”<sup>2</sup> The California Department of Justice likely understates the number of large-capacity  
14 magazines in this state. On information and belief, the true number of magazines well exceeds  
15 the Attorney General’s estimates. A true and correct copy of the Department’s “Finding of  
16 Emergency” promulgated on or about December 16, 2016 (less exhibits thereto) is attached  
17 hereto as **Exhibit A**.

18 38. As a further matter of scale, moreover, this is not simply a matter of prohibiting  
19 ownership of one or two items of personal property. Many of California’s gun owners, including  
20 some members and constituents of the organization plaintiffs, own many magazines, worth  
21 substantial amounts of value, for many different types of firearms. For example, plaintiff Flores  
22 has a large-capacity magazine as part of a World War I-era Luger pistol, the value of which is  
23 substantial, and which is irreplaceable, given the current state of California law. Plaintiff  
24 Macaston has grandfathered large-capacity magazines for a Smith & Wesson Type 59 pistol, for  
25

26 \_\_\_\_\_  
27 2 The use of “firearms” interchangeably with “large-capacity magazines” in this statement, as if  
28 they are one and the same, shows the Department also recognizes the reality that such magazines  
are fundamentally integral to the functionality of the firearms of which they are part.

1 which Smith and Wesson never created original magazines capable of accepting ten or fewer  
2 rounds, specifically to be used with that pistol. And plaintiff Dang has two grandfathered large-  
3 capacity magazines for use with a Steyr GB pistol, which are very rare and difficult to obtain  
4 (and again, are impossible to obtain lawfully in California.) The financial impact for the loss of  
5 these intrinsic firearm parts would be substantial, as plaintiffs will demonstrate at trial.

6 39. On July 1, 2016, Governor Brown signed into law the provisions of Senate Bill  
7 1446, which amended Penal Code § 32310(b), to make it a criminal offense to possess large-  
8 capacity magazines effective July 1, 2017, “regardless of the date the magazine was acquired[.]”  
9 The law as signed would also require a person in lawful possession of any large-capacity  
10 magazines prior to July 1, 2017, to dispose of such magazine(s) only as provided by the statute.  
11 SB 1446 became effective January 1, 2017, and was intended to “pre-amend” the provisions of  
12 Proposition 63. (Exhibit A, at p. 1.)

13 40. Proposition 63 (the “Safety for All Act”)<sup>3</sup>, a measure that was sponsored and  
14 heavily promoted as a “gun safety” measure by Lt. Gov. Gavin Newsom, was enacted on  
15 November 8, 2016. It also was designed to totally prohibit and criminalize the possession of  
16 “large-capacity magazines” as of July 1, 2017, for Plaintiffs and others similarly situated,  
17 although with broader applicability than SB 1446. Proposition 63 took effect the day after the  
18 election, on November 9, 2016. (Cal. Const., Art. II, § 10(a): “An initiative statute or  
19 referendum approved by a majority of votes thereon takes effect the day after the election unless  
20 the measure provides otherwise.”)

21 41. Absolutely no financial impact statement or report about the costs of enforcement  
22 of this scheme was ever conducted in conjunction with either SB 1446, or Proposition 63,  
23 because both the bill’s sponsors, and the initiative’s promoters, simply assumed that the state, via  
24 local law enforcement agencies, had the power to confiscate the magazines without providing  
25 compensation therefor.  
26

27 \_\_\_\_\_  
28 <sup>3</sup>The full text of Proposition 63 can be viewed or downloaded at:  
[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).

1           42. In fact, in enacting the provisions of SB 1446, and/or Proposition 63, neither the  
2 sponsors of the bill, nor the proponents of the initiative, considered such statutory scheme to  
3 implicate any takings violation at all. (See Senate Rules Committee Analysis dated 5/19/16  
4 regarding SB 1446, at pp. 4-5 (summarily concluding that "courts have held that prohibiting  
5 possession of dangerous weapons is a valid exercise of the government's police power not to be  
6 confused with the power of eminent domain [*sic*][,]" a copy of which is attached hereto as  
7 **Exhibit B**.) Therefore, the State has neither created nor established, nor has there even been any  
8 established process, remedy or administrative body through which one may seek compensation  
9 for the surrender/takings of the firearm parts at issue. Accordingly, Plaintiffs are not required to  
10 exhaust any administrative remedies, as there are no such administrative remedies available at  
11 all, and any request for compensation by individual magazine holders – individually and  
12 collectively – would be futile.

13           43. Plaintiffs simply wish to continue to hold and otherwise exercise their Second  
14 Amendment right to possess, keep, use and acquire firearms and standard-capacity magazines,  
15 which are in common use, and for lawful purposes, but cannot do so should this total, categorical  
16 Large-Capacity Magazine Ban be enforced.

17           44. Plaintiffs further wish, on their own behalves, on behalf of all similarly-situated  
18 individuals lawfully possessing large-capacity magazines, to prevent the state from enforcing its  
19 statutory scheme which amounts to a taking of constitutionally-protected arms, without just  
20 compensation, by declaring the entire statutory scheme to be invalid.

21           45. The ammunition magazines that Plaintiffs wish to continue to lawfully possess,  
22 use and/or acquire—those items prohibited through California's Large-Capacity Magazine  
23 Ban—are exactly the type of instruments that are afforded protection under the Second  
24 Amendment for the acquisition, protection, and use by law-abiding people for the preservation of  
25 self and the state in times of unjust force. They are inherent parts of lawfully acquired and  
26 possessed firearms including most handguns, that are now subject to confiscation, i.e., through  
27 "surrender" to the state, should the ban be enforced.  
28

1           46.     Such magazines are, in virtually every other state of the Union, exactly the sorts  
2 of lawful weapons in common use that law-abiding people possess at home for lawful purposes—  
3 and exactly what they would bring to service in militia duty should such cause be necessary.  
4 *See, e.g., Heller II*, 670 F.3d at 1261 (“We think it clear enough in the record that semi-automatic  
5 rifles and magazines holding more than ten rounds are indeed in ‘common use,’ as the plaintiffs  
6 contend.”); *Colorado Outfitters Ass’n v. Hickenlooper*, 24 F. Supp. 3d 1050, 1068 (D. Colo.  
7 2014) (concluding that statute “affects the use of firearms that are both widespread and  
8 commonly used for self-defense,” in view of the fact that “lawfully owned semi-automatic  
9 firearms using a magazine with the capacity of greater than 15 rounds number in the tens of  
10 millions”); *Shew v. Malloy*, 994 F. Supp. 2d 234, 246 (D. Conn. 2014) (concluding that semi-  
11 automatic rifles such as the AR-15 as well as magazines with a capacity greater than 10 rounds  
12 “are ‘in common use’ within the meaning of *Heller* and, presumably, used for lawful purposes”).

13           47.     Despite California’s apparent legislative policy preferences and animus towards  
14 Second Amendment rights (and, by extension, those who would lawfully seek to assert and  
15 exercise them), “[T]he enshrinement of constitutional rights necessarily takes certain policy  
16 choices off the table.” *Heller*, 554 U.S., at 636, 128 S.Ct., at 2822. Indeed, the Court “expressly  
17 rejected the argument that the scope of the Second Amendment right should be determined by  
18 judicial interest balancing[.]” *McDonald v. City of Chicago*, 561 U.S. at 785, 130 S.Ct. at 3047  
19 quoting *District of Columbia v. Heller*, 554 U.S., at 634-636, 128 S.Ct., at 2820-21.

20           48.     Millions of semi-automatic firearms in common use for lawful purposes are  
21 possessed by law-abiding people throughout the United States, including in California. Those  
22 firearms include, but are not limited to, highly-popular makes and models of handguns like the  
23 Glock models 17, 19, 22, and 23, the Smith & Wesson M&P series models, the Springfield  
24 Armory XD series models, and many others, including some pistols that have now been  
25 discontinued.  
26

27           49.     Millions of such firearms, including those handguns, are commonly possessed by  
28 law-abiding people for lawful purposes including target shooting, training, sport shooting,

1 competition, and self-defense.

2 50. Millions of such firearms, including those handguns, were designed with and  
3 were intended to be used with magazine capacities exceeding 10 rounds. For example, one of  
4 the most common and popular models of handgun commonly used and possessed for self-  
5 defense, the Glock model 17 9mm, was designed with a 17-round magazine.

6 51. Many of these handguns that were designed for factory-standard large-capacity  
7 magazines that hold more than 10 rounds, including the Glock model 17 handgun, are available  
8 for sale in the State of California to law-abiding people and on the Roster of Handguns Certified  
9 for Sale (Roster) promulgated and maintained by the California Department of Justice.<sup>4</sup>

10 52. Some handguns were designed, equipped and sold *only* with Large-Capacity  
11 Magazines, and for which no magazines holding ten or fewer rounds were ever produced by the  
12 original manufacturer. For example, manufacturer Smith & Wesson, on information and belief,  
13 never produced or sold OEM magazines holding ten or fewer rounds specifically for use with its  
14 Model 59 pistol, the type that is owned by plaintiff Macaston. On information and belief, the  
15 Steyr GB 9mm pistol owned by plaintiff Dang was manufactured only with large-capacity  
16 magazines, and no compatible magazines were ever made or are otherwise available for said  
17 firearm.

18 53. The State of California expressly recognizes that the large-capacity magazines  
19 prohibited under the Large-Capacity Magazine Ban as to normal, law-abiding people who  
20 possess them for lawful purposes have intrinsic value for self-defense in its exemption for  
21 armored vehicle companies and their employees, Cal. Penal Code § 32435, as armored vehicle  
22 companies and personnel are only legally authorized for defensive, rather than offensive, actions  
23 using such large-capacity magazines to preserve life and property from violent attackers. Other  
24 statutory exemptions make it clear that California fully recognizes that large-capacity magazines  
25 have intrinsic value as parts of semi-automatic pistols, per the exemptions that it allows. (See  
26

27 \_\_\_\_\_  
28 <sup>4</sup> The Roster can be viewed online at <http://certguns.doj.ca.gov>.



1 list of statutory exemptions, found at Penal Code Part 6, Title 4, Div. 10, Chapter 5, Article 2, at  
2 §§ 32400, *et seq.*)

3 54. As alleged herein, the legislative prohibition on the possession of a fundamental  
4 part of most lawfully-owned handguns and rifles amounts to a de facto confiscation of firearms,  
5 or parts thereof, which are in common use for lawful purposes. As Plaintiffs will demonstrate at  
6 trial, the so-called large capacity magazines are widely owned, used, and are inherent parts of  
7 operating and lawfully-possessed firearms. The state may not enact nor enforce a statutory  
8 scheme which amounts to confiscation of constitutionally-protected bearable arms, either with or  
9 without compensation.

10 55. Plaintiffs must now appeal to the third branch of government and seek declaratory  
11 and injunctive relief to invalidate the statutory provisions and enjoin any further action by the  
12 Attorney General of California and the California Department of Justice Bureau of Firearms to  
13 confiscate and take, or to allow confiscation and taking by local law enforcement agencies, their  
14 lawfully-possessed and constitutionally-protected property, and infringe their right to keep and  
15 bear lawfully-acquired arms, in common use, which are not dangerous and unusual.

16  
17 **CLAIMS FOR RELIEF**

18 **COUNT I: VIOLATION OF U.S. CONST., AMEND. II**

19 56. Plaintiffs incorporate herein by reference paragraphs 1 through 55 as if fully set  
20 forth herein.

21 57. Large capacity magazines, as so called and defined by the Legislature, are  
22 commonly possessed by law-abiding citizens in California, and throughout the United States, for  
23 self-defense, target shooting, hunting, and other lawful purposes. Most modern semi-automatic  
24 firearms are designed for, and commonly sold with magazines that hold more than 10 rounds of  
25 ammunition.

26 58. The need for, and usefulness of such large-capacity magazines, as so defined by  
27 the Legislature, is demonstrated by the fact that they are issued to civilian law enforcement  
28

1 officers, presumably for self-defense purposes. Criminals and other prohibited persons have and  
2 will use magazines against the unarmed and the armed, without any limitation in capacity. The  
3 Large-Capacity Magazine Ban’s prohibition on the possession of large-capacity magazines –  
4 “regardless of the date the magazine was acquired” – puts law abiding citizens such as Plaintiffs  
5 at a severe disadvantage to those intending to do them harm.

6 59. The arbitrarily-defined large capacity magazines, as so defined by the Legislature,  
7 are not merely individual pieces of personal property, but rather, are intrinsic and inherent  
8 constitutionally-protected parts of constitutionally-protected firearms, which are lawfully  
9 possessed and used by millions of California citizens, including Plaintiffs affected herein.

10 60. California Penal Code section 32310, subdiv. (b), as amended by the Large-  
11 Capacity Magazine Ban, would prohibit as of July 1, 2017 the possession of large-capacity  
12 magazine, “regardless of the date the magazine was acquired,” including previously and  
13 lawfully-owned magazines as described above, and in substantial quantities to be proven at trial.

14 61. California Penal Code section 32310, subdiv. (d), as amended by Proposition 63,  
15 would require a person who, prior to July 1, 2017, legally possesses a large-capacity magazine to  
16 “dispose” of the magazine, by one of only three specific methods, which are: (1) *personal*  
17 physical removal of the magazine from the state (since giving/arranging for or otherwise selling  
18 to someone out of state is still prohibited); (2) sale of the magazine to a “licensed firearms  
19 dealer,” and (3) surrender of the magazine to a law enforcement agency for destruction.

20 However, and as alleged further below (*infra* at ¶¶ 96-98), the first two of these purported  
21 options are illusory, as they are not viable means of recovering the value of their personal  
22 property, leaving only the third “option,” i.e., “surrender” of the magazine to law enforcement,  
23 for which no compensation is provided for or appropriated. SB 1446 contains similar mandates.

24 62. Furthermore, California Penal Code § 32390, which has already been enacted,  
25 provides that any large-capacity magazine is a “nuisance” and is subject to an injunction against  
26 its possession, manufacture, or sale, and is subject to confiscation and summary destruction.

27 However, neither the statute nor the regulations that pertain to it provide for compensation to be  
28

1 provided to the owner of a legally-owned large capacity magazine.

2 63. As an added burden, any person who has lawfully owned one or more firearms  
3 with a large-capacity magazine as the *only* ammunition feeding device for such firearm would  
4 have to acquire – presumably through the added expense of purchasing – at least one, if not  
5 more, reduced-capacity (non-large-capacity) magazine for each such firearm owned. This is an  
6 expense that could cost every such California gun owner hundreds, if not thousands of dollars, a  
7 burden which disarms the owner of the use of such firearms until a suitable replacement  
8 magazine can be obtained.

9 64. All of the individual Plaintiffs herein, and organizational Plaintiffs on behalf of  
10 their California members and similarly-situated individuals who lawfully possess large-capacity  
11 magazines, are suing to enjoin enforcement of the Large-Capacity Magazine Ban on the grounds  
12 that the Ban violates their rights to own, possess, and use firearms as guaranteed by the Second  
13 Amendment, and that the Ban, if enforced, would constitute an illegal taking of their  
14 constitutionally-protected firearms.

15 65. First, the Large Capacity Magazine Ban would infringe upon the right of the  
16 people, including Plaintiffs, to keep and bear arms, as guaranteed by the Second Amendment,  
17 and made applicable to the States by the Fourteenth Amendment, of the United States  
18 Constitution. The arms include handguns which, as *Heller* observed, are the “quintessential self-  
19 defense weapon,” *Heller*, 554 U.S. at 629, 128 S. Ct. at 2818, and are therefore widely,  
20 commonly and lawfully possessed in California and in all other states in the Union.

21 66. The Large Capacity Magazine Ban would further amount to a total, confiscatory  
22 taking of lawfully-held, common, and constitutionally-protected arms, or intrinsic parts thereof,  
23 from law-abiding people who possess them for lawful purposes and therefore violates the Second  
24 Amendment.

25 67. By maintaining and enforcing a set of laws that restrict law-abiding people from  
26 acquiring or possessing arms in common use for lawful purposes like self-defense, Defendants,  
27 acting under color of state law, are propagating customs, policies, and practices that violate the  
28

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1 Second Amendment to the United States Constitution, facially and as applied against the  
2 individual Plaintiffs, depriving Plaintiffs of civil rights and damaging Plaintiffs in violation of 42  
3 U.S.C. § 1983.

4 68. Because California’s Large-Capacity Magazine Ban Laws would constitute a total  
5 ban on the possession and acquisition of constitutionally-protected instruments to keep in the  
6 home, strict scrutiny should apply. The prohibition and taking of heretofore lawful and integral  
7 firearms parts implicates a core protection of the Second Amendment right to keep and bear  
8 arms, and severely burdens such right without any stated governmental objective that could  
9 legitimately justify the burden, as will be demonstrated at trial. Thus, this would-be ban and  
10 taking are categorially unconstitutional under any level of heightened scrutiny.

11 69. Plaintiffs are entitled to injunctive relief against such infringing customs, policies,  
12 and practices. Plaintiffs and all of them, on their own behalves and on behalf of the class of all  
13 similarly-situated persons, seek declaratory and injunctive relief, in a specific manner according  
14 to proof at trial.

15 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

16  
17 **COUNT II: VIOLATION OF U.S. CONST., AMENDS. V and XIV;**  
18 **CAL. CONST. ART. I, § 19**  
19 **(Due Process and Takings)**

20 70. Plaintiffs incorporate herein by reference paragraphs 1 through 69 as if fully set  
21 forth herein.

22 71. The Fifth Amendment to the United States Constitution provides that no person  
23 shall be deprived of life, liberty, or property, without due process of law; nor shall private  
24 property be taken for public use, without just compensation.

25 72. The Fourteenth Amendment to the United States Constitution provides that no  
26 State shall deprive any person of life, liberty, or property without due process of law.

27 73. Article I, section 19 of the California Constitution provides that “Private property  
28 may be taken or damaged for a public use and only when just compensation, ascertained by a

1 jury unless waived, has first been paid to, or into court for, the owner.”

2 74. Aside from the violation of the Second Amendment, as applied to the states, as set  
3 forth above, that the statutory scheme represents, Defendants’ enforcement of the Large-  
4 Capacity Magazine Ban would violate additional rights of Plaintiffs, and the class of persons  
5 they represent, specifically: their rights to compensation and/or due process as guaranteed by the  
6 Fifth and Fourteenth Amendments to the United States Constitution, and the California  
7 Constitution, in that the Laws would, if enforced, completely dispossess them of their lawfully-  
8 owned, constitutionally-protected personal property. Moreover, the manner in which Plaintiffs  
9 and the class have kept, bore and possessed such property represents a substantial,  
10 constitutionally-protected liberty interest.

11 75. Penal Code section 32310, subdiv. (d) as amended by Proposition 63, provides for  
12 three and only three enumerated ways of disposing of a lawfully-possessed magazine, owned  
13 prior to July 1, 2017, and would , if enforced, constitute a taking of the entire bundle of said  
14 Plaintiffs’ rights to possess, use and dispose of the property in the manner as they see fit.<sup>5</sup>  
15 Subdivision (d)(3) provides for the purported option of the property owner to “surrender” a  
16 large-capacity magazine to any law enforcement agency for destruction, without stating any  
17 means of recompensing the property owner for such statutorily-mandated “surrender.”  
18 Subdivision (d)(2) provides for the purported option of the property owner to sell the magazine  
19 to a licensed firearms dealer, without providing for the fact that not every firearms dealer (in fact  
20 very few) will or are otherwise permitted to receive large-capacity magazines, leaving this as not  
21 a valid option. The purported option to “sell the large-capacity magazine to a licensed firearms  
22 dealer” set forth in section 32310, subdiv. (d)(2) as amended, is illusory, and not really an option  
23 at all. As will be demonstrated at trial, and on information and belief, a substantial number of  
24 licensed firearms dealers refuse or will refuse to accept for sale any large-capacity magazines  
25 because, among other reasons, economics, vagueness of risk, and personal choices relating to  
26 \_\_\_\_\_

27  
28 <sup>5</sup>SB 1446 also mandates disposal by these specifically enumerated methods or by personal  
destruction of the magazine. § 32310, subd. (c), SB 1446 version.

1 their views of the unconstitutionality that SB 1446/Proposition 63 presents, and refuse to  
2 participate in an undertaking that amounts to a de facto taking, and the legal and financial risks  
3 associated with receiving “large capacity magazines” under a vague law. The inability and/or  
4 refusal of California firearms dealers to accept the large-capacity magazines for sale, effectively  
5 means there is no market for the sale of Plaintiffs’ personal property, as will be demonstrated at  
6 trial.

7 76. Penal Code § 32390 (previously codified at § 12029), provides that any large-  
8 capacity magazine is considered to be a “nuisance,” and is subject to summary confiscation and  
9 disposal, even those that were and continue to be lawfully possessed. Under Pen. Code §  
10 18010(b), such items are “subject to confiscation and summary destruction whenever found  
11 within the state.” Neither the statute, nor any regulations promulgated that pertain to such  
12 statute, provide for any means by lawfully-possessing large-capacity magazine owners to  
13 challenge, petition, or even address the fact that such personal property is legally owned, and  
14 therefore may not be detained or destroyed by an arm of the state, with or without compensation.

15 77. The Large Capacity Magazine Ban, as a whole, is a regulatory scheme which, if  
16 enforced, would completely deprive the owners of all economically beneficial uses of their  
17 lawfully-owned property, and therefore, constitutes a regulatory taking. See, *Lucas v. S.C.*  
18 *Coastal Council*, 505 U.S. 1003, 1019, 112 S.Ct. 2886 (1992). Certain regulations, such as the  
19 Large-Capacity Magazine Ban moreover, are so onerous that their effect is tantamount to a direct  
20 appropriation of property, and therefore, a compensable taking under the Fifth Amendment. See,  
21 *e.g., Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538, 125 S.Ct. 2074, 2081 (2005). In essence,  
22 this statutory scheme would eviscerate the full bundle of rights, i.e., the rights to possess, use and  
23 dispose of the property in a manner that plaintiffs may choose, which includes personal property.  
24 *Horne v. Dept. of Agriculture*, \_\_ U.S. \_\_ 135 S.Ct. 2419, 2427 (2015).

25 78. Individual plaintiffs and California residents Wiese, Morris, Cowley, Macaston,  
26 Flores and Dang would like to pass along firearms to their children, issue and heirs, but would be  
27 prevented from doing so by the Large-Capacity Magazine Ban provisions which prohibit transfer  
28

1 to another person. This is, in essence, deprivation of the right to pass on lawfully-owned – and  
2 we might add, constitutionally-protected – personal property.

3 79. And to the extent that the statutory scheme is otherwise and essentially  
4 compelling owners of lawfully-owned large capacity magazines to permanently alter those  
5 magazines in order to keep them, thereby destroying their functionality and usefulness, such  
6 regulations amount to a compelled physical invasion of the personal property of Plaintiffs, and  
7 those similarly situated, and therefore amount to a taking under both the U.S. Constitution, and  
8 the California Constitution, art. I, § 19, the latter of which specifically prohibits both takings *or*  
9 *damage* to property without providing for just compensation.

10 80. By enacting and enforcing the Large-Capacity Magazine Ban, defendants are  
11 thereby propagating customs, policies, and practices which violate the Fifth and Fourteenth  
12 Amendment to the United States Constitution, facially and as applied against the individual  
13 Plaintiffs in this action, damaging Plaintiffs in violation of 42 U.S.C. § 1983. Plaintiffs are  
14 therefore entitled to declaratory and permanent injunctive relief against such customs, policies,  
15 and practices.

16 81. Plaintiffs are entitled to injunctive relief against such infringing customs, policies,  
17 and practices. Plaintiffs and all of them, on their own behalves and on behalf of the class of all  
18 similarly-situated persons, seek declaratory and injunctive relief, in a specific manner according  
19 to proof at trial.

20 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.  
21

22  
23 **COUNT III: VIOLATION OF U.S. CONST., AMENDS. V & XIV**  
24 **(Vagueness)**

25 82. Plaintiffs incorporate herein by reference paragraphs 1 through 81 as if fully set  
26 forth herein.

27 83. As noted, the enactment of this ban through two different statutory schemes with  
28 different effective dates – SB 1446 through the Legislature and Proposition 63 through voter

1 initiative – has resulted in the chaptering of two different versions of what exactly this ban  
2 purports to prohibit. More specifically, SB 1446 was enacted and chaptered into law on July 1,  
3 2016 (Stats. 2016, c. 58), more than three months before Proposition 63 was enacted, and it  
4 *became effective* January 1, 2017, almost two months *after* Proposition 63 became effective on  
5 November 9, 2016. Nothing in the legislative history of SB 1446 indicates its effectiveness was  
6 dependent upon Proposition 63’s fate with the voters, or that passage of the voter initiative would  
7 repeal SB 1446, and the Legislature has not separately repealed SB 1446.

8 84. Rather, insofar as one version was intended to modify the other, SB 1446 was  
9 intended to modify Proposition 63, not the other way around. As the California Department of  
10 Justice itself explained the situation in its “Finding of Emergency”: “Proposition 63, a measure  
11 banning the possession of large-capacity magazines, was approved by the voters on November 8,  
12 2016 and took effect November 9, 2016. *In anticipation of its passages, the Legislature pre-*  
13 *amended Proposition 63 with the passage of Senate Bill 1446* (Chapter 48, Statutes of 2016).  
14 The clarifying amendments take effect on January 1, 2017.” (Exhibit A, at p. 1 (italics added).)  
15 The Department’s Finding of Emergency was issued on December 15, 2016, *after* Proposition 63  
16 became effective, indicating the Department still saw SB 1446 as operative, and controlling. In  
17 fact, the Department further relied upon SB 1446 here in explaining why no reimbursement is  
18 required even though the ban’s implementation would cause the State to incur costs. (Exhibit A,  
19 at 3-4.)

20  
21 85. The available statutory history further supports this interpretation of the law.  
22 While Proposition 63 was enacted in November 2016, its final version had been established since  
23 December 2015.<sup>6</sup> So the Legislature was fully aware of the initiative’s final content in crafting  
24 the content of SB 1446, which, again, it never repealed or otherwise expressly limited through  
25 the passage of Proposition 63. This is consistent with an intent for SB 1446 to “pre-amend”  
26 Proposition 63. At the least, these circumstances generate a real debate about which version of  
27

28 <sup>6</sup>See, [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)



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1 the law is controlling or whether both are simultaneously live and effective, particularly with  
2 respect to those separately chaptered conflicting provisions like section 32406, which establishes  
3 the crucial exemptions to the general prohibition against possession of large-capacity magazines.  
4 In the end, the Legislature simply chaptered two live, parallel versions of section 32406, which  
5 are both active and on the books. True and correct copies of Penal Code section 32406, certified  
6 by the State of California Legislative Counsel Bureau, are attached hereto as **Exhibits C and D**.

7 86. The difference is significant. For example, plaintiff Dang, and others similarly  
8 situated, are or would be subject to the exemptions set forth in Pen. Code § 32406, subdiv. (f)  
9 under the SB 1446 version, because they have lawfully possessed a Steyr GB firearm, since  
10 before 2000, which is a firearm for which there are no magazines holding ten rounds or fewer  
11 available, and plaintiff Dang possesses a large-capacity magazine solely for use with that  
12 firearm. By contrast, no such protection is afforded under the Proposition 63 version.

13 87. Additionally, those who hold large-capacity magazines in the capacity of a trustee  
14 of a trust established to hold and keep such magazines within this state would be subject to the  
15 exemption set forth in Pen. Code § 32406, subdiv. (e) under the SB 1446 version that affords  
16 protection for such individuals, whereas the Proposition 63 version provides no such protection.

17 88. Similarly, plaintiff Flores possesses a rare and irreplaceable large-capacity  
18 magazine currently, for himself and also as a trustee of the Flores Family Trust, through which  
19 he seeks to bequeath most or all of his personal property to his son, a California resident, but is  
20 prevented from doing so under the current law. As a trustee of a duly-established trust, plaintiff  
21 Flores and others similarly situated are subject to the exemptions set forth in Pen. Code § 32406,  
22 subdiv. (e), although only under the SB 1446 version.

23 89. By running two “parallel” versions of Pen Code § 32406, with significant  
24 substantive differences between them, the state has enacted vague and conflicting laws, with no  
25 certainty as to which version applies. The entire Large Capacity Magazine Ban, including §§  
26 32310(b) and (c) to which the exceptions of 32406 appear on their face to apply, is therefore  
27 vague and unenforceable, because it fails to provide adequate notice to plaintiffs, others similarly  
28

1 situated, or anyone else of ordinary intelligence as to whether they and others similarly situated  
2 are or would be subject to or exempt from its provisions. This state of affairs, in which the  
3 average citizen cannot reasonably be expected to understand which of these two versions of the  
4 ban is actually controlling, is particularly troubling given that the two schemes even conflict on  
5 the fundamental matter of the applicable punishment with their differing versions of section  
6 32310.

7 90. Moreover, aside from the inherent vagueness engendered by the conflicting  
8 versions of this law, the Department of Justice’s own Finding of Emergency demonstrates that  
9 the entire scheme is unconstitutionally vague under either version because the core provisions  
10 are insufficiently definite on their face and invite arbitrary or discriminatory enforcement. The  
11 urgency behind the issuance of the Finding of Emergency was the Department’s conclusion that  
12 “emergency regulations” are necessary to “provide guidance to California residents on how to  
13 comply with the ban, including the “options for disposal of large-capacity magazines” and  
14 “instructions for reducing the capacity of a large-capacity magazine” in the manner that the  
15 Department “has determined to be the acceptable minimum level of permanence.” (Exhibit A, at  
16 1-2, 3, 5.) The Department expressed grave concern about the need for such regulations, stating  
17 that issuing them through this “emergency process” would “avert serious harm to public peace,  
18 health, safety, or general welfare.” (*Id.* at 2.) The Department initially did issue regulations, but  
19 later withdrew them after drawing objections for failing to comply with the ordinary notice and  
20 comment period. To date, the Department has not issued any further regulations. Yet, it has not  
21 publicly retracted its previous statements that such regulations are “necessary” for Californians  
22 to know how to “comply with the ban.”

24 91. The Department’s public position on this matter shows that the very agency  
25 charged with the implementation and enforcement of the ban has concluded that the face of the  
26 statutory scheme does *not* adequately explain how to comply with the most central provisions  
27 and therefore requires *further* clarification in order to ensure proper “implementation and on-  
28 going enforcement of the ban on large-capacity magazines.” (Exhibit A, at 1.) So, in the absence

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1 of these “necessary” regulations explaining “the options” for compliance, the Department’s own  
2 serious concerns about the face of this scheme necessarily render it unconstitutionally vague. As  
3 just one case in point, without further explication, it is unclear what, if anything, those like  
4 Plaintiff Federau are supposed to do when the magazine itself is capable of holding certain types  
5 of ammunition that would exceed ten rounds at full capacity but the firearm that the person uses  
6 with the magazine does not actually accept that type of ammunition.

7 92. Defendants are therefore thereby propagating customs, policies, and practices that  
8 violate the Fifth and Fourteenth Amendment to the United States Constitution, facially and as  
9 applied against the individual plaintiffs in this action, damaging Plaintiffs in violation of 42  
10 U.S.C. § 1983. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief  
11 against such customs, policies, and practices.

12 93. Plaintiffs are entitled to injunctive relief against such infringing customs, policies,  
13 and practices. Plaintiffs and all of them, on their own behalves and on behalf of the class of all  
14 similarly-situated persons, seek declaratory and injunctive relief, in a specific manner according  
15 to proof at trial.

16 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

17  
18 **COUNT IV: VIOLATION OF U.S. CONST., AMENDS. V & XIV**  
19 **(Vagueness and Overbreadth)**

20 94. Plaintiffs incorporate herein by reference paragraphs 1 through 93 as if fully set  
21 forth herein.

22 95. Based on the additional grounds set forth below, the Large-Capacity Magazine  
23 Ban further fails to provide adequate notice and is unconstitutionally vague and overbroad, in  
24 violation of the Due Process Clause of the Fifth and Fourteenth Amendments, on its face and as  
25 applied to one or more of the individual plaintiffs herein.

26 96. As asserted above, the purported option to “sell the large-capacity magazine to a  
27 licensed firearms dealer” under either version of section 32310 is illusory, and not really an  
28

1 option at all. As will be demonstrated at trial, a substantial number of licensed firearms dealers  
2 refuse or will refuse to accept for sale any large-capacity magazines due to, among other reasons,  
3 economics concerns, the legal and financial risks of receiving “large-capacity magazines” under  
4 a vague law, and personal choices relating to their views about the unconstitutional implications  
5 of this statutory scheme. Both the vagueness of the law as amended, and the refusal of  
6 California firearms dealers to accept the large-capacity magazines for sale, effectively means  
7 there is no market for the sale of Plaintiffs’ personal property, as will be demonstrated at trial.  
8 Also, given that the seizure and destruction mandate of the “nuisance” designation under section  
9 32390 purportedly applies to any large-capacity magazine “wherever found” with no apparent  
10 limitation on who may initiate such a seizure, a dealer who takes possession of such a magazine  
11 from someone trying to sell it might decide to just seize it and turn it over to a law enforcement  
12 agency, leaving the owner with no recourse for seeking or obtaining compensation before the  
13 magazine is destroyed as a “nuisance.”

14           97. As will also be demonstrated at trial, and as applied to the Plaintiffs herein, the  
15 purported option under either version of Penal Code § 32310 to “remove the large-capacity  
16 magazine from the state,” is not a viable option and is also vague. In the first place, there is no  
17 provision which allows the holder of a large-capacity magazine to sell, or arrange a sale of the  
18 magazine to a willing buyer, out of state. Indeed, section 32310, subdiv. (a), makes no such  
19 exception, and expressly criminalizes the offering or exposure for sale of such magazines by any  
20 person in the state. Therefore, arranging an out-of-state sale of the large-capacity magazine  
21 itself, while the magazine holder is within this state, is expressly prohibited. As such, section  
22 32310 does not provide any avenue by which a lawful large-capacity magazine holder, including  
23 Plaintiffs, can or will recover any portion of the value of his or her property in this way.  
24 Physical transfer of the magazines to an out of state recipient, without arranging for the transfer  
25 beforehand, is impractical if not implausible. And, moreover, any such *forced* sales would not  
26 result in fair or just compensation in any event.

27           98. Therefore, the purported sale and removal options under Penal Code § 32310 are  
28

1 impermissibly vague, utterly impractical, and amount to no real option that does not expose  
2 Plaintiffs and other large-capacity magazine holders to criminal liability; nor do they provide any  
3 viable mechanism for large-capacity magazine holders to recover any portion, in whole or in  
4 part, of the value of their lawfully-owned property. The only option, therefore, as will be  
5 demonstrated at trial, is to “surrender” the large-capacity magazine to a law enforcement agency  
6 for destruction, effectively rendering it a taking for which compensation is not provisioned or  
7 required.

8 99. Moreover, as to plaintiffs Normandy and Nielsen, and similarly-situated  
9 individuals, the statutory scheme is further vague, in that it purports to exempt “honorably retired  
10 peace officers” and retired federal officers from the new prohibitions on possession of large-  
11 capacity magazines, but such retired peace officers and retired federal officers continue to be  
12 prohibited from the importation restrictions of section 32310. And thus, the scheme results in  
13 the absurdity of allowing retired peace officers and retired federal officers to possess large-  
14 capacity magazines in this state, for lawful purposes, but prohibits them from bringing them in,  
15 even temporarily. And therefore, retired peace officers such as plaintiffs Normandy and Nielsen,  
16 and similarly-situated individuals, who often participate in, or are asked to join or conduct, or  
17 instruct in firearms training programs for law enforcement agencies and civilians are legally  
18 prohibited from bringing large-capacity magazines into the state, though once here, they may  
19 possess them.

20 100. Similarly, the exemption designed to protect trustees of a trust or administrators  
21 of estates (unique to the SB 1446 version under that version’s section 32406(e)) similarly fails to  
22 provide sufficient definiteness and protection against arbitrary or discriminatory enforcement. It  
23 too protects against liability for possession only, leaving these individuals subject to prosecution  
24 for every other form of prohibited conduct. This includes the acts of giving and receiving under  
25 section 32310(a), conduct necessarily inherent in the handling of any property as a trustee or  
26 estate administrator.

27 101. The inherent absurdity subsisting within these purported exemptions not only  
28

1 necessarily results in a failure to provide persons of ordinary intelligence with fair and adequate  
2 notice of what is and is not truly permissible or prohibited conduct, but it effectively defeats the  
3 very purposes for which the purported exemptions were ostensibly designed. The two parallel  
4 Penal Code sections 32406 as enacted by SB 1446 and Proposition 63 therefore render the  
5 statutory scheme unconstitutionally vague.

6 102. The Large-Capacity Magazine Ban, taken in total, is vague because it fails to  
7 provide adequate notice to a person of ordinary intelligence what they can do with a lawfully-  
8 held large-capacity magazine, nor does it provide them with viable, practical options. Therefore,  
9 on the face of its provisions, and as applied, for the reasons stated herein, the Large-Capacity  
10 Magazine Ban violates the Due Process Clause of the Fifth and Fourteenth Amendments.

11 103. The Large-Capacity Magazine Ban further violates the Due Process Clause of the  
12 Fifth and Fourteenth Amendments for the related reason that it is unconstitutionally overbroad.  
13 As written, the ban requires all current owners of large-capacity magazines in California (who  
14 presumably number into the thousands, if not tens of thousands) to dispose of their magazines by  
15 July 1, 2017. As will be demonstrated at trial, there can be no legitimate claim that the ban's  
16 *retroactive* application to current, legal owners of such magazines advances the stated objectives  
17 of the law – to reduce the prevalence of “mass shootings” or the extent of harm inflicted during  
18 those (fortunately) rare tragic incidents, and to make the current regulations upon large-capacity  
19 magazines less “difficult to enforce.” Accordingly, the ban sweeps up a substantial amount of  
20 constitutionally-protected conduct under the Second Amendment. And given that the entire  
21 statutory scheme is designed around this forced extraction of property, it is not readily  
22 susceptible to a limiting construction that would render it constitutional. Rather, the  
23 constitutional infirmity infects the entire statutory scheme, rendering it hopelessly overbroad.

24 104. Defendants are thereby propagating customs, policies, and practices that violate  
25 the Fifth and Fourteenth Amendment to the United States Constitution, facially and as applied  
26 against the individual plaintiffs in this action, damaging Plaintiffs in violation of 42 U.S.C. §  
27 1983. Plaintiffs are therefore entitled to permanent injunctive relief against such customs,  
28

1 policies, and practices.

2 105. Plaintiffs are entitled to injunctive relief against such infringing customs, policies,  
3 and practices. Plaintiffs and all of them, on their own behalves and on behalf of the class of all  
4 similarly-situated persons, seek declaratory and injunctive relief, in a specific manner according  
5 to proof at trial.

6 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

7  
8 **COUNT V: VIOLATION OF U.S. CONST. AMEND. XIV; CAL. CONST. ART. I, § 7**  
9 **(Equal Protection)**

10 106. Plaintiffs incorporate herein by reference paragraphs 1 through 106 as if fully set  
11 forth herein.

12 107. The Fourteenth Amendment to the United States Constitution provides that no  
13 State shall deny to any person the equal protection of the laws.

14 108. Article I, section 7 of the California Constitution provides that “A person may  
15 not be deprived of life, liberty, or property without due process of law or denied equal protection  
16 of the laws....”, and that “A citizen or class of citizens may not be granted privileges or  
17 immunities not granted on the same terms to all citizens.”

18 109. And Article I, section 24 of the California Constitution provides that “Rights  
19 guaranteed by this Constitution are not dependent on those guaranteed by the United States  
20 Constitution.”

21 110. Penal Code § 32445 provides that section 32310 “does not apply to the loan of a  
22 large-capacity magazine for use solely as a prop for a motion picture, television, or video  
23 production.” Furthermore, Penal Code § 32450, subdiv. (a), provides that section 32310 “does  
24 not apply to the purchase or possession of a large-capacity magazine by the holder of a special  
25 weapons permit [...] For use solely as a prop for a motion picture, television, or video  
26 production.”  
27  
28

1           111. In order to use a proscribed large-capacity magazine as a prop for a motion  
2 picture, television, or video production, an exempted holder of a special weapons permit  
3 (operating under section 32450(a)) would necessarily need to give possession of a proscribed  
4 magazine to a non-exempted actor or actress (under section 32445) – in order words, someone  
5 just like the average law-abiding California gun owner or visitor. However, under this section,  
6 the receiver of the large-capacity magazine may even be a prohibited person since there is no  
7 requirement of a background check through the Department of Justice, or even any other form of  
8 evidencing the statutorily-exempted receiver’s eligibility to possess or acquire firearms or  
9 firearm parts – indeed, placing everyone on the same footing.

10           112. California has long catered to its privileged, rich elite, concentrating in film and  
11 television hubs in Hollywood and the Los Angeles area. This law, and the exception that it  
12 provides to actors and actresses, and other studio employees and contractors, provides just such  
13 an example.

14           113. Plaintiffs assert that all firearms laws and regulations that affect law-abiding  
15 people should be measured using categorical scrutiny, or at least the strict scrutiny standard of  
16 review, particularly those that directly infringe upon a core exercise of the right, as alleged in  
17 Count I above. However, the exceptions to the Large-Capacity Magazine Ban, enumerated in  
18 this Count, cannot survive scrutiny under any standard of review. Simply stated, there is no  
19 rational basis to allow a Hollywood actor, temporarily or otherwise, to possess large-capacity  
20 magazines, by virtue of his or her status as a contractor or employee of a movie or television  
21 production studio, while denying the right to effective self-defense to millions of not-as-  
22 privileged and politically unfavored California citizens and visitors, especially highly-trained and  
23 honorably retired peace officers like individual plaintiffs Normandy and Nielsen.

24           114. And, because the regulation of large-capacity magazines implicates Second  
25 Amendment rights of law-abiding people – as here – this court must apply heightened scrutiny in  
26 its review of the law’s unequal application to the law-abiding class of persons, such as Plaintiffs  
27  
28



1 here, who are in all relevant ways similarly situated to those exempted under §§ 32445 and  
2 32450(a).

3 115. Defendant's policies that it seeks to enforce are therefore discriminatory, in  
4 favor of the selected few politically favored citizens, and against the great majority of California  
5 citizens who have a true need, and demonstrable utility for using all legal firearms, including  
6 those that can accept large-capacity magazines as they are intended.

7 116. Plaintiffs are entitled to injunctive relief against such infringing customs,  
8 policies, and practices. Plaintiffs and all of them, on their own behalf and on behalf of similarly-  
9 situated persons, seek declaratory and injunctive relief, in a specific manner according to proof at  
10 trial.

11 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

12  
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs request that judgment be entered in their favor and against  
15 Defendants, and pray for relief as follows:

16 1. For declaratory judgment and relief, pursuant to 28 U.S.C. § 2201, that California  
17 Penal Code sections 32310, 32390, and sections 32445 and 32450 are unconstitutional and  
18 violate the Second Amendment;

19 2. For declaratory judgment and relief, pursuant to 28 U.S.C. § 2201, that California  
20 Penal Code sections 32310, 32390, and sections 32445 and 32450 are unconstitutional and  
21 violate the Fifth and Fourteenth Amendments of the U.S. Constitution, and Art. I, section 19 of  
22 the California Constitution;

23 3. For declaratory judgment and relief, pursuant to 28 U.S.C. § 2201, that California  
24 Penal Code sections 32310, 32390, and sections 32445 and 32450 are indefinite, vague,  
25 uncertain, and overbroad, and therefore unenforceable, and also, on the grounds that it is not  
26 clear which version of these statutes (i.e., the version passed pursuant to SB 1446 or Prop. 63),  
27 and the exceptions thereto, may apply, among other grounds;  
28

1           4.       For declaratory judgment and relief, pursuant to 28 U.S.C. § 2201, that California  
2 Penal Code sections 32310, 32440 and 32445 are unconstitutional and violate the Equal  
3 Protection Clauses of the U.S. Constitution, and the California Constitution, by politically  
4 favoring one similarly-situated group over another, among other grounds;

5           5.       For injunctive relief, consistent with declaratory relief sought herein, enjoining  
6 defendants, and their officers, agents and employees, from enforcing any of the provisions of  
7 California Penal Code sections 32310, 32390, and sections 32445 and 32450;

8           6.       For costs of suit, including attorneys' fees and costs under 42 U.S.C. § 1988 and  
9 any other applicable law; and

10          7.       For all such relief to which Plaintiffs may be justly entitled.

11  
12 Dated: July 27, 2017

**SEILER EPSTEIN ZIEGLER & APPELATE LLP**

/s/ George M. Lee \_\_\_\_\_

George M. Lee

Attorneys for Plaintiffs

**SEILER EPSTEIN ZIEGLER & APPELATE LLP**  
Attorneys at Law

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**EXHIBIT A**

## Finding of Emergency

The Department of Justice (Department or DOJ) finds that an emergency exists, and that the immediate adoption of sections within Chapter 39, of Division 5, of Title 11 is necessary to avoid serious harm to the public peace, health, safety, or general welfare.

### Specific Facts Demonstrating the Need for Immediate Action

Proposition 63, a measure banning the possession of large-capacity magazines, was approved by the voters on November 8, 2016 and took effect November 9, 2016. In anticipation of its passages, the Legislature pre-amended Proposition 63 with the passage of Senate Bill 1446 (Chapter 48, Statutes of 2016). The clarifying amendments take effect on January 1, 2017.

Pursuant to Proposition 63, as amended, beginning July 1, 2017, it will be an infraction punishable by a fine for a person to possess any large-capacity magazine, regardless of the date the magazine was acquired. (Penal Code, § 32310, subdivision (b).) The new law requires a person in lawful possession of a large-capacity magazine prior to July 1, 2017 to dispose of the magazine. Some persons are exempt from the ban, including active and retired law enforcement, armored car entities, and licensed gun dealers. (Penal Code, §§ 32400, 32405, 32406, 32410, 32430, 32435, 32450.) Starting July 1, 2017, anyone who violates the ban is subject to a year in jail, and a \$100 fine for a first offence, \$250 fine for a second offense, and a \$500 fine for a third offense. (Penal Code § 32310, subdivision (b).)

These emergency regulations are necessary for the implementation and on-going enforcement of the ban on large-capacity magazines. The proposed regulations provide guidance to California residents on how to comply with the ban. These regulations need to be established as soon as possible so the Department has time to notify gun owners and gun owners have time to make the necessary changes to comply with the ban.

There are likely hundreds of thousands of large-capacity magazines in California at this time. In recent years, there has been an increase in these types of firearms on the market. The Department therefore expects many gun owners to be affected by the new ban. Under the new law, gun owners have six months to dispose of or permanently alter their large-capacity magazines. Pursuant to Penal Code section 32310, subdivision (c), a person who legally possesses a large-capacity magazine shall dispose of that magazine by any of the following means prior to July 1, 2017: (1) remove the large-capacity magazine from the state; (2) sell the large-capacity magazine to a licensed firearms dealer; (3) destroy the large-capacity magazine; or (4) surrender the large-capacity magazine to a law enforcement agency for destruction.

Alternatively, gun owners may permanently alter large-capacity magazines by reducing their ammunition capacity so that it no longer meets the definition of a “large-capacity magazine.” Penal Code section 16740 defines “large-capacity magazine” to mean any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds. If a gun owner chooses to permanently reduce the capacity of their large-capacity

magazines, these emergency regulations provide guidance for doing so with what the Department has determined to be the acceptable minimum level of permanence.

By providing this information to the public in a timely manner, through the emergency process, the Department will avert serious harm to public peace, health, safety, or general welfare.

**Technical, Theoretical, and Empirical Study, Report, or Similar Document, if any, Upon Which the Department Relied**

In addition to existing regulations forming the basis of these proposed regulations, the following documents were used:

UTAS MAKINE LTD., UTS-15 owners manual, attached for reference  
KEL TEC, KSG owners manual, Rev 042814, attached for reference  
Standard MFG. DP-12 shotgun owners manual, attached for reference

**Authority and Reference Citations**

Authority: Penal Code sections 26905, 26910, 32310, 32311, 32315.

Reference: Penal Code sections 16740, 32310, 32311, 32315, 32400, 32405, 32406, 32410, 32415, 32425, 32430, 32435, 32440, 32445, 32450.

Repealed: Penal Code section 32420 was removed from the authority of section 5480 because SB 1446 repealed that section.

**Informative Digest/Policy Statement Overview**

Existing law prohibits the sale, gift, and loan of a large-capacity magazine. A violation of this prohibition is punishable as a misdemeanor with specified penalties, or as a felony. The new law goes further and provides that possession of large-capacity magazines by a non exempt person is an infraction punishable by a fine not to exceed \$100 for the first offense, by a fine not to exceed \$250 for the second offense, and by a fine not to exceed \$500 for the third or subsequent offense, regardless of the date the magazine was acquired. The law requires a person in lawful possession of a large-capacity magazine prior to July 1, 2017, to dispose of the magazine as provided. By creating a new crime, this law imposes a state-mandated local program.

Existing law creates various exceptions to the prohibition on the sale, gift or loan of a large-capacity magazine including, but not limited to, the sale of, giving of, lending of, importation into this state, or purchase of, any large-capacity magazine to, or by the holder, of a special weapons permit for use as a prop for a motion picture or any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties. The new law makes conforming changes to those exceptions by including possession of a large-capacity magazine in those provisions and would establish additional exceptions, including exceptions to allow

licensed gunsmiths and honorably retired sworn peace officers to possess large-capacity magazines.

The objective of the proposed regulations is to inform California gun owners of their options for complying with new California laws while maintaining public safety.

#### Article 4. Large-Capacity Magazine Permits

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

This section is amended to state that a separate Large-Capacity Magazine Permit is needed for each licensed location. The permit will automatically transfer with an existing California Firearms Dealer if their physical store moves and they notify the Department prior to moving. Large-Capacity Magazine Permit applications can only be submitted online.

§ 5483. Large-Capacity Magazine Permit Record Keeping.

This section is amended to include instructions on how permittees shall document the Large-Capacity Magazine Permit records, which form to use, any additional documentation to be kept with the form, and timeframe for completing the documentation.

§ 5484. Large-Capacity Magazine Permit Revocations.

This section is amended to include the grounds for revocation of a Large-Capacity Magazine Permit, and the factors surrounding the revocation.

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

§ 5490. Large-Capacity Magazine; manufacturing

This section has been added to inform gun owners who legally possess a large-capacity magazine that they may disassemble and clean the magazine without triggering the ban.

§ 5491. Large-Capacity Magazine; capacity

This section has been added to inform gun owners of the legal definition of a large-capacity magazine and provide guidance on reducing the capacity on their large-capacity magazines.

§ 5492. Large-Capacity Magazine Conversion Kits.

This section has been added to clarify the definition of large-capacity magazine conversion kits.

#### **Government Code Section 11346.5(a)(3)(D) Evaluation**

The proposed regulations are not inconsistent or incompatible with existing state regulations.

#### **Mandate on Local Agencies or School Districts**

The Department has determined the proposed emergency regulations do impose a state-mandated local program or a mandate requiring reimbursement by the State pursuant to Chapter 58, Statutes of 2016, because it creates a new crime. However, SB 1446 states that no reimbursement

is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction.

**Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations**

None.

**Nonduplication of State Statutes as Necessary To Satisfy Government Code Section 11349.1(a)(6)**

To satisfy the requirements of Government Code section 11349.1(a)(6), the text of the proposed regulations are nonduplicative.

**Forms Incorporated by Reference**

Large-Capacity Magazine Permit Application, BOF 050 (Rev. 12/2016)  
Large Capacity Magazine Report, BOF 1002 (Rev. 12/2016)

**Cost Estimates**

The Department has assessed the potential for significant adverse impact that might result from the proposed emergency action and has determined:

- There will be no non-discretionary costs or savings to local agencies
- There will be no costs to school districts
- There will be no costs or savings in federal funding to the State

As detailed on the attachment to the Economic and Fiscal Impact Statement (STD. 399), the Department estimates its costs (state agency) directly related to the large-capacity magazine permit and enforcement of the large-capacity magazine laws and regulations will be insignificant.

**Finding of Emergency**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, 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 Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

**Explanation of Failure to Adopt Nonemergency Regulations**

The Department is unable to develop regulations in the standard manner because of the short timeframes provided in the legislation. The legislation was signed into law on July 1, 2016, and the ban commences on July 1, 2017. It is the Department's intention to provide guidance to California's gun owners so that by July 1, 2017, they will be in compliance with the law. The proposed regulations provide options for disposal of large-capacity magazines, as well as instructions for reducing the capacity of a large-capacity magazine, and need to be formalized and provided to California residents as soon as possible.



**EXHIBIT B**

Office of Senate Floor Analyses  
(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: SB 1446  
Author: Hancock (D), et al.  
Amended: 3/28/16  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 4-3, 4/19/16  
AYES: Hancock, Leno, Liu, Monning  
NOES: Anderson, Glazer, Stone

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

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**SUBJECT:** Firearms: magazine capacity

**SOURCE:** Author

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**DIGEST:** This bill, commencing July 1, 2017, prohibits the possession of large-capacity magazines, as specified.

**ANALYSIS:**

Existing law:

- 1) Banned the possession of “assault weapons” and “large capacity ammunition feeding devices,” defined as a magazine capable of holding more than 10 rounds of ammunition, manufactured after that date. That law, the federal assault weapons law (the Violent Crime Control and Law Enforcement Act, H.R. 3355, Pub.L. 103-322,) became effective on September 13, 1994, expired in 2004 and has not been reenacted.
- 2) Defines a “large-capacity magazine” as any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:
  - a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

- b) A .22 caliber tube ammunition feeding device.
  - c) A tubular magazine that is contained in a lever-action firearm. (Penal Code § 16740.)
- 3) Provides that, except as specified, commencing January 1, 2000, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment for 16 months, two or three years pursuant to Penal Code Section 1170(h). “Manufacturing” includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine. (Penal Code § 32310.)
  - 4) Provides that, commencing January 1, 2014, any person in this state who knowingly manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large capacity magazine conversion kit is punishable by a fine of not more than \$1,000 or imprisonment in a county jail not to exceed six months, or by both that fine and imprisonment. This section does not apply to a fully assembled large-capacity magazine. A “large capacity magazine conversion kit” is a device or combination of parts of a fully functioning large-capacity magazine, including, but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a large-capacity magazine. (Penal Code § 32311.)
  - 5) Provides that, upon a showing that good cause exists, the Department of Justice may issue permits for the possession, transportation, or sale between a licensed firearms dealer and an out-of-state client, of large-capacity magazines. (Penal Code § 32315.)
  - 6) Provides that, except as specified, any large-capacity magazine is a nuisance and is subject to an injunction against its possession, manufacture or sale, and is subject to confiscation and summary destruction. (Penal Code § 32390.)

This bill:

- 1) Provides that, except as specified, commencing July 1, 2017, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to

exceed \$100 upon the first offense, by a fine not to exceed \$500 upon the third or subsequent offense.

- 2) Requires that a person who, prior to July 1, 2017, legally possesses a large-capacity magazine dispose of that magazine by any of the following means:
  - a) Remove the large-capacity magazine from the state.
  - b) Prior to July 1, 2017, sell the large-capacity magazine to a licensed firearms dealer.
  - c) Destroy the large-capacity magazine.
  - d) Surrender the large-capacity magazine to a law enforcement agency for destruction.
- 3) Exempts the following:
  - a) An individual who honorably retired from being a sworn peace officer, as specified or an individual who honorably retired from being a sworn federal law enforcement officer, who was authorized to carry a firearm in the course of scope of that officer's duties, as specified.
  - b) A licensed gunsmith for the purpose of maintenance, repair or modification of the large-capacity magazine, as specified.
  - c) Any federal, state or local historical society, museum or institutional society, museum or institutional collection which is open to the public, provided that the large-capacity magazine is property housed, secured from unauthorized handling and unloaded.
  - d) Any person who finds the large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possessed the large-capacity magazine no longer than necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to the law.
  - e) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.
  - f) The receipt or disposition of a large-capacity magazine by a trustee of a trust, or an executor or administrator of an estate, including an estate that is subject to probate, that includes a large-capacity magazine.
  - g) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000 if no magazine that holds 10 or less rounds of

ammunition is compatible with that firearm and that person possesses the large-capacity magazine solely for use with that firearm.

- 4) Makes a number of conforming changes to the Penal Code.

## **Background**

Since January 1, 2000, California has banned the importation, manufacture or sale of high capacity magazines. (Penal Code §§ 32310, 32390.) These magazines have also been deemed a public nuisance and are, therefore, subject to confiscation and destruction, although this requires a prosecutor to obtain a civil injunction, which is costly and time-consuming. (Penal Code § 18010.) This bill imposes criminal penalties for possession of high capacity magazines in California.

According to a report released by the Violence Policy Center in December of 2015:

Since 1980, there have been at least 50 mass shootings (3 or more fatalities) where the shooter used high-capacity ammunition magazines. A total of 436 people were killed in these shootings and 425 were wounded. This number is likely a significant undercount of actual incidents since there is no consistent collection or reporting of this data. Even in many high-profile shootings information on magazine capacity is not released or reported.

([http://www.vpc.org/fact\\_sht/VPCshootinglist.pdf](http://www.vpc.org/fact_sht/VPCshootinglist.pdf).)

There were at least three mass shootings involving large-capacity magazines in 2015. On December 2, 2015, 14 people were killed and 21 were seriously injured in a mass shooting at the Inland Regional Center in San Bernardino, California. The perpetrators of this mass shooting used four high capacity magazines. In July of 2015, six people were killed (including the shooter) and two were wounded in a shooting at the Navy Operational Support Center and Marine Corps Reserve Center, in Chattanooga, Tennessee. The perpetrator used multiple 30-round magazines. On June 17, 2015, a shooting at the Emanuel African Methodist Episcopal Church, in Charleston, South Carolina, left nine people dead. The perpetrator used 13-round magazines. (*Id.*)

## **Comments**

### ***The Fifth Amendment “Takings” Clause***

The “takings clause” of the Fifth Amendment to the United States Constitution states: “nor shall private property be taken for public use without just compensation.” California law already bans the import, manufacture and sale of

high capacity ammunition magazines, and has declared them a nuisance and subject to confiscation and destruction. (Penal Code §§ 32310, 32390, 18010.) Nonetheless, the question has been raised whether adding criminal penalties for possession of these ammunition magazines would constitute a “taking of private property for public use without just compensation,” in violation of the Fifth Amendment.

The U.S. Supreme Court has recognized for well over a century a difference between legislative action that results in a taking of private property for public use through a process of eminent domain and a legitimate use of the police power of the state to protect the public health and welfare. In upholding a statute prohibiting the sale of alcohol, the Court stated:

The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner.

(*Mugler v. Kansas*, 123 U.S. 623, 668-669 (1887).)

Specifically in the context of the regulation of firearms, courts have held that prohibiting possession of dangerous weapons is a valid exercise of the government’s police power not to be confused with the power of eminent domain. In 1978, Washington, D.C. passed a law prohibiting the ownership of certain types of weapons, including those that could fire more than 13 rounds without reloading. The law was quickly challenged by a several gun owners who had legally purchased such weapons before the law went into effect and were thus required to dispose of them or be in violation of the law. They claimed this amounted to a taking by the government, without just compensation, in violation of the Fifth Amendment. The Court of Appeals for the District of Columbia held:

Petitioners’ third constitutional challenge alleges that D.C. Code 1978 Supp., § 6-1820(c) provides for a taking of their property without just compensation in violation of the Fifth Amendment. That section of the Code provides three alternatives for disposition within seven days of a firearm denied registration. The unsuccessful applicant may (1) “peaceably surrender” the firearm to the chief of police, (2) “lawfully remove” the firearm from the District for as long as he retains an interest in the firearm, or (3) “lawfully dispose” of his interest in the firearm. Petitioners’ argument is that the second and third alternatives require, under the terms imposed by the Federal Gun Control Act of 1968, 18

U.S.C. § 922 (1970), a quick “forced sale” of the firearms at less than fair market value to a dealer in firearms, while the first alternative would provide not even a salvage value return.

Assuming, arguendo, that the statute authorized a “taking,” we note that the Fifth Amendment prohibits taking of “private property . . . for public use, without just compensation.” Such a taking for the public benefit under a power of eminent domain is, however, to be distinguished from a proper exercise of police power to prevent a perceived public harm, which does not require compensation. *Lamm v. Volpe*, 449 F.2d 1202, 1203 (10th Cir. 1971). That the statute in question is an exercise of legislative police power and not of eminent domain is beyond dispute. The argument of petitioner, therefore, lacks merit.

(*Fesjian v. Jefferson*, 399 A.2d 861, 865-866 (1979).)

#### *Exception for Retired Peace Officers*

The assault weapons ban in California (AWCA) allowed law enforcement agencies to sell or transfer assault weapons to a sworn peace officer upon that officer’s retirement. This provision was challenged in *Silveira v. Lockyer*, 312 F.3d 1052 (9<sup>th</sup> Cir. 2002). The Ninth Circuit held:

We thus can discern no legitimate state interest in permitting retired peace officers to possess and use for their personal pleasure military-style weapons. Rather, the retired officers exception arbitrarily and unreasonably affords a privilege to one group of individuals that is denied to others, including plaintiffs.

In sum, not only is the retired officers’ exception contrary to the legislative goals of the AWCA, it is wholly unconnected to any legitimate state interest. A statutory exemption that bears no logical relationship to a valid state interest fails constitutional scrutiny. The 1999 AWCA amendments include, however, a severability provision providing that should any portion of the statute be found invalid, the balance of the provisions shall remain in force. Accordingly, because the retired officers’ exception is an arbitrary classification in violation of the Fourteenth Amendment, we sever that provision, § 12280(h)-(i), from the AWCA.

(*Id.* at 1091-92.)

Like the AWCA, this bill exempts retired sworn peace officers from the ban on the possession of large-capacity magazines.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

**SUPPORT:** (Verified 5/17/16)

American Academy of Pediatrics, California  
California Academy of Family Physicians  
California Chapter of the American College of Emergency Physicians  
California Chapters of the Brady Campaign to Prevent Gun Violence  
California Church IMPACT  
City of Long Beach  
City of Oakland  
City of Santa Monica  
Cleveland School Remembers  
Coalition Against Gun Violence  
Courage Campaign  
David Alvarez, Councilmember, City of San Diego  
Eric Garcetti, Mayor of the City of Los Angeles  
Law Center to Prevent Gun Violence  
Physicians for Social Responsibility  
Rabbis Against Gun Violence  
Violence Prevention Coalition of Greater Los Angeles  
Youth ALIVE!

**OPPOSITION:** (Verified 5/17/16)

California State Sheriffs' Association  
Firearms Policy Coalition  
Gun Owners of California  
National Rifle Association  
Outdoor Sportsman's Coalition of California  
Safari Club International Foundation  
The California Sportsman's Lobby

**ARGUMENTS IN SUPPORT:** According to the California Chapters of the Brady Campaign to Prevent Gun Violence:

Since January 2000, California law has prohibited the manufacture, importation, sale, gift, or loan of any large capacity ammunition magazine capable of holding more than ten rounds. SB 1446 is a narrow



bill that would add a prohibition on *possessing* large capacity magazines, as defined in the bill, regardless of the date the magazine was acquired. Current and retired police officers would be exempt from the prohibition.

Mass shootings involving large capacity magazines have demonstrated the tragic carnage caused by these magazines. The shooters in the recent San Bernardino tragedy as well as the gunmen in Santa Monica (2013), Fort Hood, Tucson, Aurora, and Newtown were able to injure or kill large numbers of people very quickly because of their ability to shoot a large number of bullets in a very short period of time. Jared Loughner, who was able to rapidly fire 31 bullets in 15 seconds without reloading, killed six people and wounded thirteen others in Tucson. The shooting ended when bystanders tackled the gunman while he was reloading. Nine year old Christina-Taylor Green was shot by the thirteenth bullet – had there been a magazine limit of ten rounds, she might be alive today.

California had a number of mass shootings involving large capacity ammunition magazines before the ban on their sale and transfer in year 2000 (in San Ysidro, Stockton, San Francisco and Orange). Other rampage shootings involving large capacity magazines have happened since then - and will happen again - because of the prevalence of large capacity magazines and the difficulty of enforcing existing law. It is nearly impossible to prove when a large capacity magazine was acquired or whether the magazine was illegally purchased after the 2000 ban. Furthermore, until 2014, magazine conversion kits were being sold in California. These kits, containing parts to repair large capacity magazines, were legally purchased and later assembled into new large capacity magazines. Since the possession of large capacity magazines is permissible, this practice, which clearly evaded the intent of the law, was able to increase the proliferation of large capacity magazines in the state. SB 1446 would enable the enforcement of existing law regarding large capacity magazines.

With average use, magazines typically last about twelve years. It is now time to end the grandfathering of large capacity magazines and exploitation of the law by prohibiting their possession. Serious hunters do not use large capacity magazines. A prohibition on the sale, transfer, and *possession* of large capacity magazines clearly furthers public

safety. The California Brady Campaign Chapters appreciate your introduction of SB 1446 and are in full support.

**ARGUMENTS IN OPPOSITION:** The Firearms Policy Coalition states in opposition to this bill:

Most firearms sold in America today, and certainly the highest by volume sold, such as AR-15s and semi-automatic handguns, come standard from the factory with magazines that hold more than ten rounds. Law enforcement agencies and peace officers purchase those same firearms with those same magazines because they are standard kit -- and, most importantly, because no one wants to be under-armed in a self-defense situation.

Furthermore, many magazines are altered and made "California Legal" at some point of manufacture. Given this, SB 1446 would immediately make most full size handguns inoperable as it bans any magazine that has been permanently altered to only accept 10 rounds or less, creating a taking of constitutionally protected property.

Many people have purchased permanently altered magazines to be compliant with California's ever growing body of law surrounding firearms and have based their consumer choices on this being the law of the land. Now the goal posts would appear to be moving yet again.

SB 1446 is simply an unconstitutional taking of personal property and an express infringement on the fundamental civil rights of all Californians. The measure creates significant criminal liability for items currently -- and lawfully -- possessed by hundreds of thousands, if not millions, of Californians. Depriving people of Constitutionally-protected civil rights by criminalizing the possession of items commonplace to gun owners is poor policy and invites litigation.

Even more disturbing, SB 1446 invites a deepening wedge between the police and non-police as it protects "honorably retired peace officers" from the dispossession of their personal property. This wanton violation of the 14th amendment to the United States Constitution creates a caste system of civilians- those who used to be police officers and those who weren't.

According to the federal civil rights case *Silveira v. Lockyer* (9th Cir. 2002), 312 F.3d 1052, retired peace officers are not allowed to maintain

the “assault weapons” they acquired through exemptions they held as active duty peace officers. When they became non-peace officers through separation from their employer, they became civilians.

The State will need to track all of the magazines purchased by peace officers, should they become former, retired or “honorably retired” to ensure the state’s expressed interest in controlling these firearms parts is met and can confiscate magazines from peace officers who retire early, resign, are fired or are otherwise not deemed “honorably retired”.

With no appropriation for outreach in SB 1446, and the untold millions of magazines in circulation, we fear widespread, inadvertent non-compliance and a revolving door of lives upended by the deluge of criminal prosecutions in every courthouse in the state as everyday people become overnight criminals. An appropriation today may save millions of dollars later as the inventory of these parts is significant and the outreach is non-existent, creating a potential wave of prosecutions of otherwise law abiding person whose only “crime” was possession of ammunition feeding devices (including those of 10 rounds or less) that were lawfully acquired.

Without pre-emption, firearms parts owners may be subject to a withering hail of statutes and ordinances aimed at them with different penalties depending on which jurisdiction prosecutes first. Ironically, some local laws are more severe than the proposed state statute.

Prepared by: Jessica Devencenzi / PUB. S. /  
5/19/16 10:37:24

\*\*\*\* END \*\*\*\*

**EXHIBIT C**



**State of California**

**PENAL CODE**

**Section 32406**

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32406. Subdivisions (b) and (c) of Section 32310 do not apply to the following:

(a) An individual who honorably retired from being a sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or an individual who honorably retired from being a sworn federal law enforcement officer, who was authorized to carry a firearm in the course and scope of that officer's duties. For purposes of this section, "honorably retired" has the same meaning as provided in Section 16690.

(b) A federal, state, or local historical society, museum or institutional society, or museum or institutional collection, that is open to the public, provided that the large-capacity magazine is unloaded, properly housed within secured premises, and secured from unauthorized handling.

(c) A person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition, and possessed it no longer than necessary to deliver or transport it to the nearest law enforcement agency.

(d) A forensic laboratory, or an authorized agent or employee thereof in the course and scope of his or her authorized activities.

(e) The receipt or disposition of a large-capacity magazine by a trustee of a trust, or an executor or administrator of an estate, including an estate that is subject to probate, that includes a large-capacity magazine.

(f) A person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds 10 or fewer rounds of ammunition is compatible with that firearm and the person possesses the large-capacity magazine solely for use with that firearm.

(Added by Stats. 2016, Ch. 58, Sec. 4. (SB 1446) Effective January 1, 2017. See same-numbered section added November 8, 2016, by Proposition 63.)

**EXHIBIT D**



**State of California**

**PENAL CODE**

**Section 32406**

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32406. Subdivision (c) of Section 32310 does not apply to an honorably retired sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or honorably retired sworn federal law enforcement officer, who was authorized to carry a firearm in the course and scope of that officer's duties. "Honorably retired" shall have the same meaning as provided in Section 16690.

(Added November 8, 2016, by initiative Proposition 63, Sec. 6.4. See same-numbered section added by Stats. 2016, Ch. 58.)