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9 WILLIAM WIESE, JEREMIAH MORRIS,
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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

**THIRD 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.
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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 check¹ 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 _____

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28 ¹ 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 Supenor is the Acting Chief of the DOJ Bureau of Firearms.
16 Upon information and belief, Ms. Supenor 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.

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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 20th 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.”² 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”)³, 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. The sole justification for the new restrictions on large-capacity magazines as
22 advanced by Proposition 63 is found in paragraphs 11 and 12 of the so-called “Findings and
23 Declarations,” which state:

24
25 11. Military–style large-capacity ammunition magazines—some capable of
26 holding more than 100 rounds of ammunition—significantly increase a shooter’s
27 ability to kill a lot of people in a short amount of time. That is why these large

28 ³The 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 capacity ammunition magazines are common in many of America’s most horrific
2 mass shootings, from the killings at 101 California Street in San Francisco in
3 1993 to Columbine High School in 1999 to the massacre at Sandy Hook
Elementary School in Newtown, Connecticut in 2012.

4 12. Today, California law prohibits the manufacture, importation and sale of
5 military-style, large capacity ammunition magazines, but does not prohibit the
6 general public from possessing them. We should close that loophole. No one
except trained law enforcement should be able to possess these dangerous
ammunition magazines.

7 (Prop. 63, Sec. 2, ¶¶ 11-12.) And the “Purpose and Intent” as expressly stated is: “To make it
8 illegal in California to possess the kinds of military-style ammunition magazines that enable
9 mass killings like those at Sandy Hook Elementary School; a movie theater in Aurora, Colorado;
10 Columbine High School; and an office building at 101 California Street in San Francisco,
11 California.” (Id., Sec. 3, ¶ 8.)⁴² But as alleged further below, a retroactive ban that
12 encompasses property that has been lawfully held for 18 or more years will not, in fact, reduce
13 the incidence or lethality of mass shootings. A study conducted by plaintiffs, and as will be
14 proven at trial, concludes that “pre-ban” (that is, lawfully held, since before 2000) large capacity
15 magazines have simply not been used in mass shootings within this state since the prohibition on
16 the importation and acquisition went into effect. Plaintiffs will demonstrate that there is no
17 current evidence that legally-possessed large-capacity magazines are involved in mass shooting
18 incidents in California since 2000.

19
20 43. Moreover, absolutely no financial impact statement or report about the costs of
21 enforcement of this scheme was ever conducted in conjunction with either SB 1446, or
22 Proposition 63, because both the bill’s sponsors, and the initiative’s promoters, simply assumed
23 that the state, via local law enforcement agencies, had the power to confiscate the magazines
24 without providing compensation therefor.

25 44. In fact, in enacting the provisions of SB 1446, and/or Proposition 63, neither the
26 sponsors of the bill, nor the proponents of the initiative, considered such statutory scheme to
27 implicate any takings violation at all. (See Senate Rules Committee Analysis dated 5/19/16
28 regarding SB 1446, at pp. 4-5 (summarily concluding that “courts have held that prohibiting

1 possession of dangerous weapons is a valid exercise of the government’s police power not to be
2 confused with the power of eminent domain [*sic*][,]” a copy of which is attached hereto as
3 **Exhibit B.**) Therefore, the State has neither created nor established, nor has there even been any
4 established process, remedy or administrative body through which one may seek compensation
5 for the surrender/takings of the firearm parts at issue. Accordingly, Plaintiffs are not required to
6 exhaust any administrative remedies, as there are no such administrative remedies available at
7 all, and any request for compensation by individual magazine holders – individually and
8 collectively – would be futile.

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

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

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

24 48. Such magazines are, in virtually every other state of the Union, exactly the sorts
25 of lawful weapons in common use that law-abiding people possess at home for lawful purposes—
26 and exactly what they would bring to service in militia duty should such cause be necessary.
27 *See, e.g., Heller II*, 670 F.3d at 1261 (“We think it clear enough in the record that semi-automatic
28

1 rifles and magazines holding more than ten rounds are indeed in ‘common use,’ as the plaintiffs
2 contend.”); *Colorado Outfitters Ass’n v. Hickenlooper*, 24 F. Supp. 3d 1050, 1068 (D. Colo.
3 2014) (concluding that statute “affects the use of firearms that are both widespread and
4 commonly used for self-defense,” in view of the fact that “lawfully owned semi-automatic
5 firearms using a magazine with the capacity of greater than 15 rounds number in the tens of
6 millions”); *Shew v. Malloy*, 994 F. Supp. 2d 234, 246 (D. Conn. 2014) (concluding that semi-
7 automatic rifles such as the AR-15 as well as magazines with a capacity greater than 10 rounds
8 “are ‘in common use’ within the meaning of *Heller* and, presumably, used for lawful purposes”).

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

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

22 51. Millions of such firearms, including those handguns, are commonly possessed by
23 law-abiding people for lawful purposes including target shooting, training, sport shooting,
24 competition, and self-defense.

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

2 53. Many of these handguns that were designed for factory-standard large-capacity
3 magazines that hold more than 10 rounds, including the Glock model 17 handgun, are available
4 for sale in the State of California to law-abiding people and on the Roster of Handguns Certified
5 for Sale (Roster) promulgated and maintained by the California Department of Justice.⁴

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

14 55. The State of California expressly recognizes that the large-capacity magazines
15 prohibited under the Large-Capacity Magazine Ban as to normal, law-abiding people who
16 possess them for lawful purposes have intrinsic value for self-defense in its exemption for
17 armored vehicle companies and their employees, Cal. Penal Code § 32435, as armored vehicle
18 companies and personnel are only legally authorized for defensive, rather than offensive, actions
19 using such large-capacity magazines to preserve life and property from violent attackers. Other
20 statutory exemptions make it clear that California fully recognizes that large-capacity magazines
21 have intrinsic value as parts of semi-automatic pistols, per the exemptions that it allows. (See
22 list of statutory exemptions, found at Penal Code Part 6, Title 4, Div. 10, Chapter 5, Article 2, at
23 §§ 32400, *et seq.*)

24
25 56. As alleged herein, the legislative prohibition on the possession of a fundamental
26 part of most lawfully-owned handguns and rifles amounts to a de facto confiscation of firearms,

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

1 or parts thereof, which are in common use for lawful purposes. As Plaintiffs will demonstrate at
2 trial, the so-called large capacity magazines are widely owned, used, and are inherent parts of
3 operating and lawfully-possessed firearms. The state may not enact nor enforce a statutory
4 scheme which amounts to confiscation of constitutionally-protected bearable arms, either with or
5 without compensation.

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

12
13 **CLAIMS FOR RELIEF**

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

15 58. Plaintiffs incorporate herein by reference paragraphs 1 through 57 as if fully set
16 forth herein.

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

22 60. The need for, and usefulness of such large-capacity magazines, as so defined by
23 the Legislature, is demonstrated by the fact that they are issued to civilian law enforcement
24 officers, presumably for self-defense purposes. Criminals and other prohibited persons have and
25 will use magazines against the unarmed and the armed, without any limitation in capacity. The
26 Large-Capacity Magazine Ban’s prohibition on the possession of large-capacity magazines –
27 “regardless of the date the magazine was acquired” – puts law abiding citizens such as Plaintiffs
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1 at a severe disadvantage to those intending to do them harm.

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

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

10 63. California Penal Code section 32310, subdiv. (d), as amended by Proposition 63,
11 would require a person who, prior to July 1, 2017, legally possesses a large-capacity magazine to
12 “dispose” of the magazine, by one of only three specific methods, which are: (1) *personal*
13 physical removal of the magazine from the state (since giving/arranging for or otherwise selling
14 to someone out of state is still prohibited); (2) sale of the magazine to a “licensed firearms
15 dealer,” and (3) surrender of the magazine to a law enforcement agency for destruction.
16 However, and as alleged further below (*infra* at ¶¶ 96-98), the first two of these purported
17 options are illusory, as they are not viable means of recovering the value of their personal
18 property, leaving only the third “option,” i.e., “surrender” of the magazine to law enforcement,
19 for which no compensation is provided for or appropriated. SB 1446 contains similar mandates.
20

21 64. Furthermore, California Penal Code § 32390, which has already been enacted,
22 provides that any large-capacity magazine is a “nuisance” and is subject to an injunction against
23 its possession, manufacture, or sale, and is subject to confiscation and summary destruction.
24 However, neither the statute nor the regulations that pertain to it provide for compensation to be
25 provided to the owner of a legally-owned large capacity magazine.

26 65. As an added burden, any person who has lawfully owned one or more firearms
27 with a large-capacity magazine as the *only* ammunition feeding device for such firearm would
28 have to acquire – presumably through the added expense of purchasing – at least one, if not

1 more, reduced-capacity (non-large-capacity) magazine for each such firearm owned. This is an
2 expense that could cost every such California gun owner hundreds, if not thousands of dollars, a
3 burden which disarms the owner of the use of such firearms until a suitable replacement
4 magazine can be obtained.

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

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

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

21 69. By maintaining and enforcing a set of laws that restrict law-abiding people from
22 acquiring or possessing arms in common use for lawful purposes like self-defense, Defendants,
23 acting under color of state law, are propagating customs, policies, and practices that violate the
24 Second Amendment to the United States Constitution, facially and as applied against the
25 individual Plaintiffs, depriving Plaintiffs of civil rights and damaging Plaintiffs in violation of 42
26 U.S.C. § 1983.

27 70. Because California’s Large-Capacity Magazine Ban Laws would constitute a total
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Attorneys at Law

1 ban on the possession and acquisition of constitutionally-protected instruments to keep in the
2 home, strict scrutiny should apply. The prohibition and taking of heretofore lawful and integral
3 firearms parts implicates a core protection of the Second Amendment right to keep and bear
4 arms, and severely burdens such right without any stated governmental objective that could
5 legitimately justify the burden, as will be demonstrated at trial. Thus, and to the extent that this
6 court does not find that the ban is an impermissible categorical ban on a protected class of
7 firearms under *Heller*, this would-be ban and taking are categorially unconstitutional under any
8 level of heightened scrutiny. To the extent that the court determines that the law should be
9 reviewed under an *actual* intermediate scrutiny standard, the law would not survive such review
10 either, because it unquestionably burdens activity protected by the Second Amendment, and the
11 government cannot show – as it must – a reasonable fit between the law and the substantial
12 objective that the law ostensibly advances, i.e., the incidence of mass shootings. Not only would
13 the government not be able to meet its burden, as it must, plaintiffs will actively demonstrate at
14 trial that the restriction will not alleviate the stated problem (i.e., the incidence and lethality of
15 mass shootings) to any material degree. No current evidence exists, for starters, that legally-
16 possessed large-capacity magazines have been involved in mass shooting incidents in California
17 since 2000, to justify the wide, confiscatory breadth of the law. Plaintiffs will further show at
18 trial, contrary to the express findings of “the People” through its enactment of Proposition 63,
19 that large capacity magazines are not “military-style[d],” but in fact, are widely and
20 predominantly held in civilian hands, and that the vast majority of large-capacity magazines hold
21 far less than 100 rounds of ammunition, contrary to the misleading suggestion that the drafters of
22 Proposition 63 have used to advance this overreaching law infringing upon the rights of citizens.

24 71. Plaintiffs are entitled to injunctive relief against such infringing customs, policies,
25 and practices. Plaintiffs and all of them, on their own behalves and on behalf of the class of all
26 similarly-situated persons, seek declaratory and injunctive relief, in a specific manner according
27 to proof at trial.

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

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

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72. Plaintiffs incorporate herein by reference paragraphs 1 through 71 as if fully set forth herein.

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

10
11
74. The Fourteenth Amendment to the United States Constitution provides that no State shall deprive any person of life, liberty, or property without due process of law.

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75. Article I, section 19 of the California Constitution provides that “Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.”

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

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77. Penal Code section 32310, subdiv. (d) as amended by Proposition 63, provides for three and only three enumerated ways of disposing of a lawfully-possessed magazine, owned prior to July 1, 2017, and would, if enforced, constitute a taking of the entire bundle of said

1 Plaintiffs’ rights to possess, use and dispose of the property in the manner as they see fit.⁵
2 Subdivision (d)(3) provides for the purported option of the property owner to “surrender” a
3 large-capacity magazine to any law enforcement agency for destruction, without stating any
4 means of recompensing the property owner for such statutorily-mandated “surrender.”
5 Subdivision (d)(2) provides for the purported option of the property owner to sell the magazine
6 to a licensed firearms dealer, without providing for the fact that not every firearms dealer (in fact
7 very few) will or are otherwise permitted to receive large-capacity magazines, leaving this as not
8 a valid option. The purported option to “sell the large-capacity magazine to a licensed firearms
9 dealer” set forth in section 32310, subdiv. (d)(2) as amended, is illusory, and not really an option
10 at all. As will be demonstrated at trial, and on information and belief, a substantial number of
11 licensed firearms dealers refuse or will refuse to accept for sale any large-capacity magazines
12 because, among other reasons, economics, vagueness of risk, and personal choices relating to
13 their views of the unconstitutionality that SB 1446/Proposition 63 presents, and refuse to
14 participate in an undertaking that amounts to a de facto taking, and the legal and financial risks
15 associated with receiving “large capacity magazines” under a vague law. The inability and/or
16 refusal of California firearms dealers to accept the large-capacity magazines for sale, effectively
17 means there is no market for the sale of Plaintiffs’ personal property, as will be demonstrated at
18 trial.

19
20 78. Penal Code § 32390 (previously codified at § 12029), provides that any large-
21 capacity magazine is considered to be a “nuisance,” and is subject to summary confiscation and
22 disposal, even those that were and continue to be lawfully possessed. Under Pen. Code §
23 18010(b), such items are “subject to confiscation and summary destruction whenever found
24 within the state.” Neither the statute, nor any regulations promulgated that pertain to such
25 statute, provide for any means by lawfully-possessing large-capacity magazine owners to
26 challenge, petition, or even address the fact that such personal property is legally owned, and

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

1 therefore may not be detained or destroyed by an arm of the state, with or without compensation.

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

12 80. Individual plaintiffs and California residents Wiese, Morris, Cowley, Macaston,
13 Flores and Dang would like to pass along firearms to their children, issue and heirs, but would be
14 prevented from doing so by the Large-Capacity Magazine Ban provisions which prohibit transfer
15 to another person. This is, in essence, deprivation of the right to pass on lawfully-owned – and
16 we might add, constitutionally-protected – personal property.

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

24 82. In enacting the confiscatory ban at issue, the State neither created, established, or
25 otherwise provided for any established process, remedy or administrative body through which
26 one could seek compensation for the surrender/takings, compelled destruction or damage to
27 plaintiffs' legally-owned firearm parts at issue. The State simply assumed that it could do so,
28

1 under the auspices of its so-called “police powers.” This does not comport with due process for
2 the deprivation of property, lawfully held, and accordingly, injunctive relief is appropriate unless
3 and until such time as the State establishes such processes, procedures, or otherwise provides for
4 due process for the compelled destruction/damage to the property of plaintiffs, and those
5 similarly situated.

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

12 84. 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 III: VIOLATION OF U.S. CONST., AMENDS. V & XIV**
19 **(Vagueness)**

20 85. Plaintiffs incorporate herein by reference paragraphs 1 through 84 as if fully set
21 forth herein.

22 86. As noted, the enactment of this ban through two different statutory schemes with
23 different effective dates – SB 1446 through the Legislature and Proposition 63 through voter
24 initiative – has resulted in the chaptering of two different versions of what exactly this ban
25 purports to prohibit. More specifically, SB 1446 was enacted and chaptered into law on July 1,
26 2016 (Stats. 2016, c. 58), more than three months before Proposition 63 was enacted, and it
27 *became effective* January 1, 2017, almost two months *after* Proposition 63 became effective on
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1 November 9, 2016. Nothing in the legislative history of SB 1446 indicates its effectiveness was
2 dependent upon Proposition 63’s fate with the voters, or that passage of the voter initiative would
3 repeal SB 1446, and the Legislature has not separately repealed SB 1446.

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

16 88. The available statutory history further supports this interpretation of the law.
17 While Proposition 63 was enacted in November 2016, its final version had been established since
18 December 2015.⁶ So the Legislature was fully aware of the initiative’s final content in crafting
19 the content of SB 1446, which, again, it never repealed or otherwise expressly limited through
20 the passage of Proposition 63. This is consistent with an intent for SB 1446 to “pre-amend”
21 Proposition 63. At the least, these circumstances generate a real debate about which version of
22 the law is controlling or whether both are simultaneously live and effective, particularly with
23 respect to those separately chaptered conflicting provisions like section 32406, which establishes
24 the crucial exemptions to the general prohibition against possession of large-capacity magazines.
25 In the end, the Legislature simply chaptered two live, parallel versions of section 32406, which
26

27 _____
28 ⁶See, [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 are both active and on the books. True and correct copies of Penal Code section 32406, certified
2 by the State of California Legislative Counsel Bureau, are attached hereto as **Exhibits C and D**.

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

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

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

19 92. By running two “parallel” versions of Pen Code § 32406, with significant
20 substantive differences between them, the state has enacted vague and conflicting laws, with no
21 certainty as to which version applies. The entire Large Capacity Magazine Ban, including §§
22 32310(b) and (c) to which the exceptions of 32406 appear on their face to apply, is therefore
23 vague and unenforceable, because it fails to provide adequate notice to plaintiffs, others similarly
24 situated, or anyone else of ordinary intelligence as to whether they and others similarly situated
25 are or would be subject to or exempt from its provisions. This state of affairs, in which the
26 average citizen cannot reasonably be expected to understand which of these two versions of the
27 ban is actually controlling, is particularly troubling given that the two schemes even conflict on
28

1 the fundamental matter of the applicable punishment with their differing versions of section
2 32310.

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

19 94. The Department’s public position on this matter shows that the very agency
20 charged with the implementation and enforcement of the ban has concluded that the face of the
21 statutory scheme does *not* adequately explain how to comply with the most central provisions
22 and therefore requires *further* clarification in order to ensure proper “implementation and on-
23 going enforcement of the ban on large-capacity magazines.” (Exhibit A, at 1.) So, in the absence
24 of these “necessary” regulations explaining “the options” for compliance, the Department’s own
25 serious concerns about the face of this scheme necessarily render it unconstitutionally vague. As
26 just one case in point, without further explication, it is unclear what, if anything, those like
27 Plaintiff Federau are supposed to do when the magazine itself is capable of holding certain types
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1 of ammunition that would exceed ten rounds at full capacity but the firearm that the person uses
2 with the magazine does not actually accept that type of ammunition.

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

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

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

13
14 **COUNT IV: VIOLATION OF U.S. CONST., AMENDS. V & XIV**
15 **(Vagueness and Overbreadth)**

16 97. Plaintiffs incorporate herein by reference paragraphs 1 through 96 as if fully set
17 forth herein.

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

22 99. As asserted above, the purported option to “sell the large-capacity magazine to a
23 licensed firearms dealer” under either version of section 32310 is illusory, and not really an
24 option at all. As will be demonstrated at trial, a substantial number of licensed firearms dealers
25 refuse or will refuse to accept for sale any large-capacity magazines due to, among other reasons,
26 economics concerns, the legal and financial risks of receiving “large-capacity magazines” under
27 a vague law, and personal choices relating to their views about the unconstitutional implications
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1 of this statutory scheme. Both the vagueness of the law as amended, and the refusal of
2 California firearms dealers to accept the large-capacity magazines for sale, effectively means
3 there is no market for the sale of Plaintiffs’ personal property, as will be demonstrated at trial.
4 Also, given that the seizure and destruction mandate of the “nuisance” designation under section
5 32390 purportedly applies to any large-capacity magazine “wherever found” with no apparent
6 limitation on who may initiate such a seizure, a dealer who takes possession of such a magazine
7 from someone trying to sell it might decide to just seize it and turn it over to a law enforcement
8 agency, leaving the owner with no recourse for seeking or obtaining compensation before the
9 magazine is destroyed as a “nuisance.”

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

23 101. Therefore, the purported sale and removal options under Penal Code § 32310 are
24 impermissibly vague, utterly impractical, and amount to no real option that does not expose
25 Plaintiffs and other large-capacity magazine holders to criminal liability; nor do they provide any
26 viable mechanism for large-capacity magazine holders to recover any portion, in whole or in
27 part, of the value of their lawfully-owned property. The only option, therefore, as will be
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1 demonstrated at trial, is to “surrender” the large-capacity magazine to a law enforcement agency
2 for destruction, effectively rendering it a taking for which compensation is not provisioned or
3 required.

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

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

23 104. The inherent absurdity subsisting within these purported exemptions not only
24 necessarily results in a failure to provide persons of ordinary intelligence with fair and adequate
25 notice of what is and is not truly permissible or prohibited conduct, but it effectively defeats the
26 very purposes for which the purported exemptions were ostensibly designed. The two parallel
27 Penal Code sections 32406 as enacted by SB 1446 and Proposition 63 therefore render the
28

1 statutory scheme unconstitutionally vague.

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

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

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

26 108. Plaintiffs are entitled to injunctive relief against such infringing customs, policies,
27 and practices. Plaintiffs and all of them, on their own behalves and on behalf of the class of all
28 similarly-situated persons, seek declaratory and injunctive relief, in a specific manner according

1 to proof at trial.

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

3
4 **COUNT V: VIOLATION OF U.S. CONST. AMEND. XIV; CAL. CONST. ART. I, § 7**
5 **(Equal Protection)**

6 109. Plaintiffs incorporate herein by reference paragraphs 1 through 108 as if fully set
7 forth herein.

8 110. The Fourteenth Amendment to the United States Constitution provides that no
9 State shall deny to any person the equal protection of the laws.

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

14 112. And Article I, section 24 of the California Constitution provides that “Rights
15 guaranteed by this Constitution are not dependent on those guaranteed by the United States
16 Constitution.”

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

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

5 115. California has long catered to its privileged, rich elite, concentrating in film and
6 television hubs in Hollywood and the Los Angeles area. This law, and the exception that it
7 provides to actors and actresses, and other studio employees and contractors, provides just such
8 an example.

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

19 117. And, because the regulation of large-capacity magazines implicates Second
20 Amendment rights of law-abiding people – as here – this court must apply heightened scrutiny in
21 its review of the law's unequal application to the law-abiding class of persons, such as Plaintiffs
22 here, who are in all relevant ways similarly situated to those exempted under §§ 32445 and
23 32450(a).

24 118. Defendants' policies that they seek to enforce are therefore discriminatory, in
25 favor of the selected few politically favored citizens, and against the great majority of California
26 citizens who have a true need, and demonstrable utility for using all legal firearms, including
27 those that can accept large-capacity magazines as they are intended.
28

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

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

6
7 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

4 7. For all such relief to which Plaintiffs may be justly entitled.
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6 Dated: February 26, 2018

SEILER EPSTEIN ZIEGLER & APPLGATE LLP

7
8 /s/ George M. Lee _____

9 George M. Lee

10 Attorneys for Plaintiffs
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