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6 LANCE COWLEY, SHERMAN MACASTON,
FRANK FEDEREAU, ALAN NORMANDY,
7 TODD NIELSEN, THE CALGUNS FOUNDATION,
FIREARMS POLICY COALITION,
8 FIREARMS POLICY FOUNDATION,
and SECOND AMENDMENT FOUNDATION

9
10 UNITED STATES DISTRICT COURT

11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12
13 WILLIAM WIESE, an individual; JEREMIAH
MORRIS, an individual; LANCE COWLEY, an
14 individual; SHERMAN MACASTON, an
individual; FRANK FEDEREAU, an individual;
15 ALAN NORMANDY, an individual; TODD
16 NIELSEN, an individual; THE CALGUNS
FOUNDATION; FIREARMS POLICY
17 COALITION; FIREARMS POLICY
FOUNDATION; SECOND AMENDMENT
18 FOUNDATION,

19 Plaintiffs,

20 vs.

21
22 XAVIER BECERRA, in his official capacity as
Attorney General of California; MARTHA
23 SUPERNOR, in her official capacity as Acting
Chief of the Department of Justice Bureau of
24 Firearms,

25 Defendants.
26

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

27 //

28 //

SEILER EPSTEIN ZIEGLER & APPLGATE LLP
Attorneys at Law

1 COME NOW the plaintiffs WILLIAM WIESE, JEREMIAH MORRIS, LANCE
2 COWLEY, SHERMAN MACASTON, FRANK FEDEREAU, ALAN NORMANDY, TODD
3 NIELSEN, THE CALGUNS FOUNDATION, FIREARMS POLICY COALITION, FIREARMS
4 POLICY FOUNDATION, and SECOND AMENDMENT FOUNDATION (collectively,
5 “Plaintiffs”), by and through their undersigned counsel, who hereby complain and allege as
6 follows:

7
8 **INTRODUCTION**

9 1. This is a facial and as-applied constitutional challenge to California Penal Code §
10 32310, as recently amended by Senate Bill 1446 and Proposition 63, and Penal Code § 32390
11 (collectively, the “Large-Capacity Magazine Ban”), which would, if enforced, and as applied,
12 individually and collectively prohibit Plaintiffs and other law-abiding citizens from continuing to
13 possess, use, or acquire lawfully-owned firearms, in common use for lawful purposes such as
14 self-defense (inside and outside the home), competition, sport, and hunting.

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

19 3. Moreover, the Large-Capacity Magazine Ban is hopelessly vague and ambiguous,
20 as it fails to provide fair or even adequate notice to law-abiding gun owners of what they may do
21 with their personal property without being subject to criminal sanctions, and fails to inform them
22 of which version of the statutes may apply, or whether they are subject to an exception
23 thereunder.

24 4. The possession of all ammunition magazines, which are intrinsic operating parts
25 of modern, constitutionally-protected semi-automatic firearms, has heretofore been legal. In
26 1999, through passage of Senate Bill 23 (“SB23”), California enacted legislation banning the
27 importation, sale or manufacture of standard-capacity ammunition feeding devices that can hold
28

1 more than ten rounds of ammunition (so-called “large-capacity magazines” as the Legislature
2 called and defined them in Cal. Penal Code § 16740). However, as a part of SB23, possession of
3 lawfully-acquired “large capacity magazines” was not prohibited and continued to be legal.
4 Therefore, millions of these “grandfathered” large-capacity magazines have existed and currently
5 are lawfully possessed by law-abiding California gun owners. More to the point, they are
6 inherent, operating parts of handguns and other firearms that are lawfully owned and protected
7 under the United States Constitution. The Large-Capacity Magazine Ban is, effectively and now,
8 actually, a confiscation, in part, of bearable arms, protected by the United States Constitution.

9 5. This action therefore seeks to vindicate the right of the people of the State of
10 California, including Plaintiffs, and others similarly situated, to keep and bear arms under the
11 Second Amendment, as incorporated to the states, which prohibits infringement of a core right to
12 keep commonly-possessed firearms.

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

18
19
20 **PARTIES**

21 7. Plaintiff William Wiese is a natural person and a law-abiding California resident
22 who resides in the City of San Jose, California. Wiese has lawfully owned and possesses large-
23 capacity magazines, as defined by statute, before 2000. Wiese is a board member and supporter
24 of The Calguns Foundation. Wiese is a member and supporter of Second Amendment
25 Foundation, Firearms Policy Coalition, and Firearms Policy Foundation.

26 8. Plaintiff Jeremiah Morris is an individual, and a law-abiding resident of the
27 County of Kern, California. Morris has possessed, and continues to lawfully possess a so-called
28 large-capacity magazine for an AR-type rifle, chambered in 5.56 x 45 mm, since before the ban

1 on the importation and sale of such magazines in 2000. Morris holds an active license to carry a
2 concealed weapon (“CCW”) issued by his county sheriff, issued to him only after proving “good
3 cause” and his “good moral character” to his licensing authority, successfully completing a
4 course of training on the law and firearms proficiency, passing an extensive Live Scan-based
5 background check¹ and placement into the State’s “Rap Back” system for monitoring law
6 enforcement contact, arrests, and criminal convictions. Morris has maintained an active CCW
7 license, requiring additional training and background checks, since 2010.

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

13 10. Plaintiff Sherman Macaston is an individual, and law-abiding resident of the
14 County of Sonoma, California. Plaintiff Macaston was born and raised in California, and has
15 honorably served his county, serving two combat tours of duty in Vietnam. After being
16 honorably discharged from the United States Army in 1978, Plaintiff Macaston returned to
17 California, and here he lawfully acquired, prior to 2000, large-capacity magazines for a
18 Browning Hi-Power pistol, chambered in 9mm, and large-capacity magazines for a Smith &
19 Wesson Model 59 pistol, also chambered in 9mm. In fact, the large-capacity magazines that
20 Plaintiff Macaston acquired for the Smith & Wesson Model 59 pistol are the only magazines that
21 he has for that particular pistol, and as far as plaintiff Macaston is aware, and on information and
22 belief, no 10-round OEM magazines were ever produced by the original manufacturer,
23 specifically for that particular pistol, before its production was discontinued in 1988.

24 11. Plaintiff Frank Federau is an individual, and law-abiding resident of the County of
25 San Francisco, California. Plaintiff is the lawful possessor of large-capacity magazines,
26

27 _____
28 ¹ Laws relating to licenses to carry a concealed handgun are set forth in California Penal Code §
26150, *et seq.*

1 including one or more magazines that are currently working and intrinsic parts of a lawfully
2 possessed AR-15 platform model rifle, chambered in .458 SOCOM caliber. Said magazines hold
3 10 rounds of .458 SOCOM ammunition for the firearm as it is currently chambered and used.
4 However, such magazine also holds 30 rounds of 5.56 x 45mm ammunition, and is therefore
5 classified as a large-capacity magazine under California law, even though plaintiff's firearm does
6 not accept that round. On information and belief, plaintiff Federau is one of many other persons
7 in a similar situation regarding the use of firearm magazines that are capable of accepting more
8 than 10 rounds of a different caliber ammunition. Federau is a member and supporter of The
9 Calguns Foundation, Second Amendment Foundation, Firearms Policy Coalition, and Firearms
10 Policy Foundation.

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

22 13. Plaintiff Todd Nielsen is an individual and a law-abiding resident of Mapleton,
23 Utah. Nielsen is an honorably retired peace officer and a 20+ year veteran of the San Jose Police
24 Department. Nielsen competes in shooting competitions and conducts and participates in
25 firearms training through his firm, Nielsen Training and Consulting. Nielsen is a member and
26 supporter of The Calguns Foundation, Second Amendment Foundation, Firearms Policy
27 Coalition, and Firearms Policy Foundation.
28

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

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

19 16. Plaintiff Firearms Policy Foundation, Inc. (FPF) is a non-profit membership
20 organization incorporated under the laws of Delaware with its principal place of business in
21 Sacramento, California, with members residing both within and outside of this state, that serves
22 to defend and advance constitutional rights through charitable purposes, with a focus on the
23 fundamental, individual right to keep and bear arms. FPF represents these members and
24 supporters, who include California firearm retailers and consumers. FPF brings this action on
25 behalf of itself, its members, supporters, who possess all the indicia of membership, and
26 similarly situated members of the public.

27 17. Plaintiff Second Amendment Foundation, Inc. (SAF) is a non-profit membership
28

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1 organization incorporated under the laws of Washington with its principal place of business in
2 Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including
3 California. The purposes of SAF include education, research, publishing and legal action
4 focusing on the Constitutional right to privately own and possess firearms, and the consequences
5 of gun control. SAF brings this action on behalf of itself, its members, supporters, who possess
6 all the indicia of membership, and similarly situated members of the public.

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

18 19. Individual plaintiffs and California residents Wiese, Morris, Cowley, Macaston
19 and Federau also seek to acquire, and would acquire, additional large-capacity magazines for
20 lawful use and purposes such as self-defense, recreation and competition, but are and have been
21 further prevented from doing so by the Large-Capacity Magazine Ban.

22 20. Defendant Xavier Becerra is the Attorney General of the State of California, and
23 is sued herein in his official capacity. The Attorney General is the chief law enforcement officer
24 of the state, and it is his duty to ensure that California's laws are uniformly and adequately
25 enforced. The Attorney General is the head of the California Department of Justice ("DOJ").
26 The DOJ and its Bureau of Firearms regulate and enforce state law related to the sales,
27 ownership, and transfer of firearms, including the licensing and regulation of firearms dealers.
28

1 The Attorney General maintains an office in Fresno.

2 21. Defendant Martha Supernor is the Acting Chief of the DOJ Bureau of Firearms.
3 Upon information and belief, Ms. Supernor reports to Attorney General Becerra, and is
4 responsible for overseeing the licensing and regulation of firearms and firearms dealers. She is
5 sued herein in her official capacity.

6
7 **JURISDICTION AND VENUE**

8 22. This court has jurisdiction over all claims for relief pursuant to 28 U.S.C. § 1331,
9 as this action arises under the Constitution and laws of the United States, and under 28 U.S.C. §§
10 1343 and 42 U.S.C. § 1983. All Plaintiffs herein are seeking relief under the Declaratory
11 Judgment Act, 28 U.S.C. §§ 2201-2202. To the extent that the court determines that Plaintiffs
12 are asserting state law claims, this court has supplemental jurisdiction under 28 U.S.C. § 1367(a).

13 23. Venue is proper under 28 U.S.C. § 1391(b). Assignment to the Fresno Division is
14 proper pursuant to Local Rule 120(d) because the Attorney General and Department of Justice
15 maintain an office in Fresno and at least one of the named plaintiffs in this action resides in this
16 jurisdiction.

17
18 **BACKGROUND AND FACTS COMMON TO ALL COUNTS**

19
20 *The Second Amendment*

21 24. The Second Amendment to the United States Constitution states, in pertinent part,
22 that “the right of the people to keep and bear arms, shall not be infringed.” U.S. Const., Amend
23 II. The Second Amendment further “elevates above all other interests the right of law-abiding,
24 responsible citizens to use arms in defense of hearth and home.” *District of Columbia v. Heller*,
25 554 U.S. 570, 635 (2008). The Second Amendment protects “arms....of the kind in common
26 use.... for lawful purposes like self-defense.” *Id.*, 554 U.S. at 624.

27 25. California is unique in that its state constitution contains no provision securing the
28 right to keep and bear arms. Without any express right to keep and bear arms within its

1 constitution, the political branches of the State were effectively given free rein to restrict the
2 rights of law-abiding people for decades, creating one of the most onerous and burdensome gun
3 control schemes in the country.

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

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

13
14 ***Ammunition Magazines and the California Magazine Ban***

15 28. Ammunition magazines and feeding devices are an intrinsic part of all semi-
16 automatic firearms, which were designed, developed, produced and sold in large quantities
17 starting in the early 20th Century and continuing through today. Today, a vast majority of
18 firearms, including handguns, are self-loading semi-automatic firearms that require a magazine
19 to feed each round of ammunition. Of these semi-automatic firearms, a vast majority in
20 existence use spring-loading magazines which load each successive round of ammunition. A
21 magazine is therefore an inherent part of, and inseparable from, a modern firearm. In fact, most,
22 if not all all semi-automatic firearms sold at retail by all manufacturers today are sold with at
23 least one magazine included as an inherent part of that firearm. A modern, semi-automatic
24 firearm is essentially inoperable without a magazine, or other ammunition feeding device.

25
26 29. Although an exact number is not known at this time, as will be shown at trial,
27 over the past century, many millions of magazines have existed, lawfully within the United
28 States, as inherent parts of semi-automatic firearms commonly held and used by Americans for

1 lawful purposes like self-defense, competition, training, and sport.

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

6 31. In 1999, through passage of Senate Bill 23, California enacted legislation
7 generally banning methods of acquiring standard-capacity ammunition feeding devices that can
8 hold more than ten rounds (so-called “large-capacity magazines”, as defined in Penal Code §
9 16740). However, as a part of Sen. Bill 23, as enacted, possession of lawfully-acquired “large
10 capacity magazines” was not prohibited and continued to be lawful. Individual Plaintiffs Wiese,
11 Morris, Cowley, and Macaston, and the members of the putative class of persons on whose
12 behalf this action is brought, are law-abiding citizens, who are neither prohibited nor exempt,
13 and who have lawfully possessed such large-capacity magazines through December 31, 1999.

14 32. California gun owners, in trusting and justifiable reliance upon the legislative
15 compromise and the continued lawful possession of large-capacity magazines, owned, continued
16 to own, and acquired new firearms which included firearms capable of accepting large-capacity
17 magazines. Furthermore, many California gun owners made choices regarding firearms based
18 upon the assumption that they would be able to use, and continue to use, lawfully-acquired
19 magazines, including large-capacity magazines.

20 33. The California Department of Justice acknowledges, in its recently-issued
21 “Finding of Emergency” for regulations it had sought to promulgate related to the Large
22 Capacity Magazine Ban, that “[t]here are likely hundreds of thousands of large-capacity
23 magazines in California at this time. In recent years, there has been an increase in these types of
24 firearms on the market. The Department therefore expects many gun owners to be affected by the
25 new ban.” The California Department of Justice likely understates the number of large-capacity
26 magazines in this state. On information and belief, the true number of magazines well exceeds
27 the Attorney General’s estimates. A true and correct copy of the Department’s “Finding of
28

1 Emergency” promulgated on or about December 16, 2016 (less exhibits thereto) is attached
2 hereto as **Exhibit A**.

3 34. As a further matter of scale, moreover, this is not simply a matter of prohibiting
4 ownership of one or two items of personal property. Many of California’s gun owners, including
5 some members and constituents of the organization plaintiffs, own many magazines, worth
6 substantial amounts of value, for many different types of firearms. The financial impact to the
7 loss of these intrinsic firearm parts would be substantial, as will be demonstrated at trial.

8 35. On July 1, 2016, Governor Brown signed into law the provisions of Senate Bill
9 1446, which amended and will amend Penal Code § 32310(b), to make it a criminal offense to
10 possess large-capacity magazines starting on July 1, 2017, “regardless of the date the magazine
11 was acquired[.]” The law as signed would also require a person in lawful possession of any
12 large-capacity magazines prior to July 1, 2017, to dispose of such magazine(s) only as provided
13 by the statute.

14 36. Furthermore, on November 8, 2016, California voters enacted Proposition 63 (the
15 “Safety for All Act”)², a measure that was sponsored and heavily promoted as a “gun safety”
16 measure by Lt. Gov. Gavin Newsom. Proposition 63 amended Penal Code §§ 32310, 32400,
17 32405, 32410, 32425, 32435, 32450, added section 32406, and repealed section 32420 by
18 initiative statute, which changed the law to totally prohibit and criminalize the possession of
19 “large-capacity magazines” as of July 1, 2017, for Plaintiffs and others similarly situated.
20 Proposition 63 took effect on the day after the election. (Cal. Const., Art. II, § 10(a): “An
21 initiative statute or referendum approved by a majority of votes thereon takes effect the day after
22 the election unless the measure provides otherwise.”)

23 37. Absolutely no financial impact statement or report about the costs of enforcement
24 of this scheme was ever conducted in conjunction with either SB 1446, or Proposition 63,
25 because both the bill’s sponsors, and the initiative’s promoters, simply assumed that the state, via
26 _____

27
28 ²The 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 local law enforcement agencies, had the power to confiscate the magazines without providing
2 compensation therefor.

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

15 39. Plaintiffs simply wish to continue to hold and otherwise exercise their Second
16 Amendment right to possess, keep, use and acquire firearms and standard-capacity magazines,
17 which are in common use, and for lawful purposes, but cannot because of the total, categorical
18 ban presently and soon to be imposed by the Large-Capacity Magazine Ban.

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

23 41. The ammunition magazines that Plaintiffs wish to continue to lawfully possess,
24 use and/or acquire—those items prohibited through California's Large-Capacity Magazine
25 Ban—are exactly the type of instruments that are afforded protection under the Second
26 Amendment for the acquisition, protection, and use by law-abiding people for the preservation of
27 self and the state in times of unjust force. They are inherent parts of lawfully acquired and
28

1 possessed firearms including most handguns, that are now subject to confiscation, i.e., through
2 “surrender” to the state.

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

15 43. Despite California’s apparent legislative policy preferences and animus towards
16 Second Amendment rights (and, by extension, those who would lawfully seek to assert and
17 exercise them), “[T]he enshrinement of constitutional rights necessarily takes certain policy
18 choices off the table.” *Heller*, 554 U.S., at 636, 128 S.Ct., at 2822. Indeed, the Court “expressly
19 rejected the argument that the scope of the Second Amendment right should be determined by
20 judicial interest balancing[.]” *McDonald v. City of Chicago*, 561 U.S. at 785, 130 S.Ct. at 3047
21 quoting *District of Columbia v. Heller*, 554 U.S., at 634-636, 128 S.Ct., at 2820-2821.

22 44. Millions of semi-automatic firearms in common use for lawful purposes are
23 possessed by law-abiding people throughout the United States, including in California. Those
24 firearms include, but are not limited to, highly-popular makes and models of handguns like the
25 Glock models 17, 19, 22, and 23, the Smith & Wesson M&P series models, the Springfield
26 Armory XD series models, and many others, including some pistols that have now been
27 discontinued.
28

1 45. Millions of such firearms, including those handguns, are commonly possessed by
2 law-abiding people for lawful purposes including target shooting, training, sport shooting,
3 competition, and self-defense.

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

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

12 48. Some handguns were designed, equipped and sold *only* with Large-Capacity
13 Magazines, and for which no magazines holding ten or fewer rounds were ever produced by the
14 original manufacturer. For example, manufacturer Smith & Wesson, on information and belief,
15 never produced or sold OEM magazines holding ten or fewer rounds specifically for use with its
16 Model 59 pistol, the type that is owned by plaintiff Macaston.

17 49. The State of California expressly recognizes that the large-capacity magazines
18 prohibited under the Large-Capacity Magazine Ban to normal, law-abiding people who possess
19 them for lawful purposes have intrinsic value for self-defense in its exemption for armored
20 vehicle companies and their employees, Cal. Penal Code § 32435, as armored vehicle companies
21 and personnel are only legally authorized for defensive, rather than offensive, actions using such
22 large-capacity magazines to preserve life and property from violent attackers. Other statutory
23 exemptions make it clear that California fully recognizes that large-capacity magazines have
24 intrinsic value as parts of semi-automatic pistols, per the exemptions that it allows. (See list of
25 statutory exemptions, found at Penal Code Part 6, Title 4, Div. 10, Chapter 5, Article 2, at §§
26

27 _____
28 ³ The Roster can be viewed online at <http://certguns.doj.ca.gov>.

1 32400, *et seq.*)

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

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

15
16 **CLAIMS FOR RELIEF**

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

18 52. Plaintiffs incorporate herein by reference paragraphs 1 through 51 as if fully set
19 forth herein.

20
21 53. 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 54. 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 officers, presumably for self-defense purposes. Criminals and other prohibited persons have and

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

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

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

14 57. California Penal Code section 32310, subdiv. (d), as amended by Proposition 63,
15 requires a person who, prior to July 1, 2017, legally possesses a large-capacity magazine to
16 “dispose” or the magazine, only by three specific methods, which are: (1) *personal* physical
17 removal of the magazine from the state (since giving/arranging for or otherwise selling to
18 someone out of state is still prohibited); (2) sale of the magazine to a “licensed firearms dealer,”
19 and (3) surrender of the magazine to a law enforcement agency for destruction. However, and as
20 alleged further below (*infra* at ¶¶ 77-79), the first two of these purported options are illusory, as
21 they do not reflect viable means of recovering the value of their personal property, leaving only
22 the third “option,” i.e., “surrender” of the magazine to law enforcement, for which no
23 compensation is provided for or appropriated.

24 58. 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
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1 provided to the owner of a legally-owned large capacity magazine.

2 59. 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 will now
4 have to acquire – usually through the added expense of purchasing – at least one, if not more,
5 reduced-capacity (non-large-capacity) magazine for each such firearm owned. This is an
6 expense that could cost California gun owners hundreds, if not thousands of dollars, a burden
7 which disarms the owner of the use of such firearms until a suitable replacement magazine can
8 be obtained.

9 60. The individual Plaintiffs herein, and organizational Plaintiffs on behalf of their
10 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 and possess firearms as guaranteed by the Second
13 Amendment, and that the Ban constitutes an illegal taking of their constitutionally-protected
14 firearms.

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

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

25 63. By maintaining and enforcing a set of laws that restrict law-abiding people from
26 acquiring arms in common use for lawful purposes like self-defense, Defendants, acting under
27 color of state law, are propagating customs, policies, and practices that violate the Second
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1 Amendment to the United States Constitution, facially and as applied against the individual
2 Plaintiffs, depriving Plaintiffs of civil rights and damaging Plaintiffs in violation of 42 U.S.C. §
3 1983.

4 64. Because California's Large-Capacity Magazine Ban Laws constitute a total ban
5 on the possession and acquisition of constitutionally-protected instruments to keep in the home,
6 strict scrutiny should apply. The prohibition and taking of heretofore lawful firearms parts
7 implicates a core protection of the Second Amendment right to keep and bear arms, and severely
8 burdens such right, as will be demonstrated at trial, which makes such ban and taking
9 categorially unconstitutional under any level of heightened scrutiny.

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

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

15
16 **COUNT II: VIOLATION OF U.S. CONST., AMENDS. V and XIV**
17 **(Due Process and Takings)**

18 66. Plaintiffs incorporate herein by reference paragraphs 1 through 65 as if fully set
19 forth herein.

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

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

25 69. Aside from the violation of the Second Amendment, as applied to the states, as set
26 forth above, that the statutory scheme represents, defendants' enforcement of the Large-Capacity
27 Magazine Ban violates additional rights of Plaintiffs, and the class of persons they represent,
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1 specifically: their rights to compensation and/or due process as guaranteed by the Fifth and
2 Fourteenth Amendments to the United States Constitution, in that the Laws completely
3 dispossess them of their lawfully-owned, constitutionally-protected personal property.
4 Moreover, the manner in which Plaintiffs and the class have kept, bore and possessed such
5 property was a substantial, constitutionally-protected liberty interest.

6 70. Penal Code section 32310, subdiv. (d) as amended by Proposition 63, provides for
7 three and only three enumerated ways of disposing of a lawfully-possessed magazine, owned
8 prior to July 1, 2017, and is therefore a taking of the entire bundle of said Plaintiffs' rights to
9 possess, use and dispose of the property in the manner as they see fit. Subdivision (d)(3)
10 provides for the purported option of the property owner to "surrender" a large-capacity magazine
11 to any law enforcement agency for destruction, without stating any means of recompensing the
12 property owner for such statutorily-mandated "surrender." Subdivision (d)(2) provides for the
13 purported option of the property owner to sell the magazine to a licensed firearms dealer, without
14 providing for the fact that not every firearms dealer (in fact very few) will or are otherwise
15 permitted to receive large-capacity magazines, leaving this as not a valid option. The purported
16 option to "sell the large-capacity magazine to a licensed firearms dealer" set forth in section
17 32310, subdiv. (d)(2) as amended, is illusory, and not really an option at all. As will be
18 demonstrated at trial, and on information and belief, a substantial number of licensed firearms
19 dealers refuse or will refuse to accept for sale any large-capacity magazines because, among
20 other reasons, economics, vagueness of risk, and personal choices relating to their views of the
21 unconstitutionality that SB 1446/Proposition 63 presents, and refuse to participate in an
22 undertaking that amounts to a de facto taking, and the legal and financial risks associated with
23 receiving "large capacity magazines" under a vague law. The inability and/or refusal of
24 California firearms dealers to accept the large-capacity magazines for sale, effectively means
25 there is no market for the sale of Plaintiffs' personal property, as will be demonstrated at trial.

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27 71. Penal Code § 32390 (previously codified at § 12029), provides that any large-
28 capacity magazine is considered to be a "nuisance," and is subject to summary confiscation and

1 disposal, even those that were and continue to be lawfully possessed. Under Pen. Code §
2 18010(b), such items are “subject to confiscation and summary destruction whenever found
3 within the state.” Neither the statute, nor any regulations promulgated that pertain to such
4 statute, provide for any means by lawfully-possessing large-capacity magazine owners to
5 challenge, petition, or even address the fact that such personal property is legally owned, and
6 therefore may not be detained or destroyed by an arm of the state, with or without compensation.

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

17 73. By enacting and enforcing the Large-Capacity Magazine Ban, defendants are
18 thereby propagating customs, policies, and practices which violate the Fifth and Fourteenth
19 Amendment to the United States Constitution, facially and as applied against the individual
20 Plaintiffs in this action, damaging Plaintiffs in violation of 42 U.S.C. § 1983. Plaintiffs are
21 therefore entitled to declaratory and permanent injunctive relief against such customs, policies,
22 and practices.

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

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

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COUNT III: VIOLATION OF U.S. CONST., AMEND. XIV
(Vagueness)

75. Plaintiffs incorporate herein by reference paragraphs 1 through 74 as if fully set forth herein.

76. The Large-Capacity Magazine Ban fails to provide adequate notice and is vague, in violation of the Due Process Clause of the Fourteenth Amendment. The Large-Capacity Magazine Ban is unconstitutionally vague both on its face, and as applied to one or more of the individual plaintiffs herein.

77. As asserted above, the purported option to “sell the large-capacity magazine to a licensed firearms dealer” set forth in section 32310, subdiv. (d)(2) as amended, is illusory, and not really an option at all. As will be demonstrated at trial, a substantial number of licensed firearms dealers refuse or will refuse to accept for sale any large-capacity magazines because, among other reasons, economics, vagueness of risk, and personal choices relating to their views of the unconstitutionality that SB 1446/Proposition 63 presents, and refuse to participate in an undertaking that amounts to a de facto taking, and the legal and financial risks associated with receiving “large capacity magazines” under a vague law. Both the vagueness of the law as amended, and the refusal of California firearms dealers to accept the large-capacity magazines for sale, effectively means there is no market for the sale of Plaintiffs’ personal property, as will be demonstrated at trial.

78. As will be demonstrated at trial, and as applied to the Plaintiffs herein, the purported option under Penal Code § 32310, subdiv. (d)(1) to “remove the large-capacity magazine from the state,” is not a viable option and is also vague. In the first place, there is no provision which allows the holder of a large-capacity magazine to sell, or arrange a sale of the magazine to a willing buyer, out of state. Indeed, section 32310, subdiv. (a), makes no such exception, and expressly criminalizes the offering or exposure for sale of such magazines by any person in the state. Therefore, arranging an out-of-state sale of the large-capacity magazine

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1 itself, while the magazine holder is within this state, is expressly prohibited. Therefore, section
2 32310, subdiv. (d)(1) does not provide any avenue by which a lawful large-capacity magazine
3 holder, including Plaintiffs, can or will recover any portion of the value of his or her property.
4 Physical transfer of the magazines to an out of state recipient, without arranging for the transfer
5 beforehand, is impractical if not implausible.

6 79. Therefore, Penal Code § 32310, subdivisions (d)(1) and (d)(2) are impermissibly
7 vague, and utterly impractical, and amount to no real option that does not expose Plaintiffs and
8 other large-capacity magazine holders to criminal liability, nor does it provide any relief to large-
9 capacity magazine holders to recover any portion, in whole or in part, of the value of their
10 lawfully-owned property. The only option, therefore, as will be demonstrated at trial, is to
11 “surrender” the large-capacity magazine to a law enforcement agency for destruction, effectively
12 rendering it a taking for which compensation is not provisioned or required.

13 80. Furthermore, at present, the Legislature’s passing of Sen. Bill 1446, and the
14 passage of Proposition 63 has resulted in two parallel versions of the relevant statutes herein,
15 further leading to confusion as to which version controls. For example, it is unclear whether
16 certain California gun owners may arguably be exempt from the Large Capacity Magazine Ban,
17 since Pen. Code § 32406, subdiv. (f), as chaptered, states that “[a] person lawfully in possession of
18 a firearm that the person obtained prior to January 1, 2000, if no magazine that holds 10 or fewer
19 rounds of ammunition is compatible with that firearm and the person possesses the large-
20 capacity magazine solely for use with that firearm.” On information and belief, some California
21 gun owners may benefit from this provision depending on whether the phrase “compatible with
22 that firearm” refers to an originally-manufactured magazine, or whether it means something else
23 (even potentially inferior, unreliable products). However, this exemption set forth in section
24 32406, subdiv. (f) appears only in the version that was passed by the Senate in enacting SB 1446.
25 (Added by Stats.2016, c. 58 (S.B.1446), § 4, eff. Jan. 1, 2017.) This exemption does not,
26 however, appear in the “parallel” version of the statute enacted pursuant to the passage of
27 Proposition 63. In essence, the state is running two parallel criminal statutes, subjecting its
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1 citizens to liability thereunder, with absolutely no clarity or certainty as to which version
2 controls, or which exemptions may apply to Plaintiffs and others similarly situated.

3 81. Such differences between these versions cannot simply be fixed by legislative fiat.
4 The Legislature may only “amend or repeal an initiative statute by another statute that becomes
5 effective only when approved by the electors unless the initiative statute permits amendment or
6 repeal without their approval.” Cal. Cont. Art. II, § 10(c). Proposition 63 expressly provides
7 that its provisions “may be amended [only] by a vote of 55 percent of the members of each house
8 of the Legislature and signed by the Governor,” and only “so long as such amendments are
9 consistent with and further the intent of this Act.” California Proposition 63 (2016), § 13.

10 82. Therefore, by running two “parallel” versions of the Large-Capacity Magazine
11 Ban statutes, with substantive differences, the state has enacted vague and conflicting laws, with
12 no certainty as to which version applies. These statutes are therefore vague and unenforceable,
13 because they fail to provide adequate notice to persons of ordinary intelligence as to whether
14 they are subject or exempt from its provisions.

15 83. Furthermore, as to plaintiffs Normandy and Nielsen, and similarly-situated
16 individuals, the statute as amended by Proposition 63 is further vague, in that it purports to
17 exempt “honorably retired peace officers” and retired federal officers from the new prohibitions
18 on possession of large-capacity magazines, but such retired peace officers and retired federal
19 officers continue to be prohibited from the importation restrictions of section 32310(a). And
20 thus, the statute as amended results in the absurdity of allowing a retired peace officer or retired
21 federal officer to possess large-capacity magazines in this state, for lawful purposes, but
22 prohibits them from bringing them in, even temporarily. And therefore, retired peace officers
23 such as plaintiffs Normandy and Nielsen, and similarly-situated individuals, who often
24 participate in, or are asked to join or conduct, or instruct in firearms training programs for law
25 enforcement agencies and civilians are legally prohibited from bringing large-capacity
26 magazines into the state, though once here, they may possess them. The two parallel Penal Code
27 sections 32406 as enacted by SB 1446 and Proposition 63 are therefore unconstitutionally vague,
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1 and section 32310 as amended defeats the purpose of such exemptions.

2 84. 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 Fourteenth Amendment.

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

12 86. 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 **PRAYER FOR RELIEF**

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

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

24 2. For declaratory judgment and relief, pursuant to 28 U.S.C. § 2201, that California
25 Penal Code sections 32310, 32390, and sections 32445 and 32450 are unconstitutional and
26 violate the Fifth and Fourteenth Amendments;

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

5 4. 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 5. For costs of suit, including attorneys' fees and costs under 42 U.S.C. § 1988 and
9 any other applicable law; and

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

11
12 Dated: April 28, 2017

SEILER EPSTEIN ZIEGLER & APPELATE LLP

13
14 /s/ George M. Lee

15 George M. Lee
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