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8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
11

12  
13 **WILLIAM WIESE, et al.,**

14 Plaintiff,

15 v.

16 **XAVIER BECERRA, et al.,**

17 Defendant.  
18

2:17-cv-00903-WBS-KJN

**DECLARATION OF JOHN D.  
ECHEVERRIA IN SUPPORT OF  
DEFENDANTS' SUPPLEMENTAL  
BRIEF IN FURTHER OPPOSITION TO  
RENEWED MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND ISSUANCE OF PRELIMINARY  
INJUNCTION**

19 Date: June 29, 2017  
Time: 9:00 a.m.  
20 Dept: 5, 14th Floor  
Judge: Hon. William B. Shubb  
21 Trial Date: None Set  
Action Filed: April 28, 2017  
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1 I, John D. Echeverria, declare:

2 1. I am a Deputy Attorney General at the California Department of Justice and serve  
3 as counsel to Defendants Xavier Becerra and Martha Supenor (together, "Defendants") in the  
4 above-titled matter. I have personal knowledge of the facts set forth in this declaration, and if  
5 called upon as a witness, I could testify competently as those facts. I make this declaration in  
6 support of Defendants' Supplemental Brief in Further Opposition to Renewed Motion for  
7 Temporary Restraining Order and Issuance of Preliminary Injunction.

8 2. A true and correct copy of the Order re Demurrers of the State Defendants and the  
9 Defendant-Intervenors, issued by the Superior Court of the County of San Francisco in *Asian*  
10 *American Rights Committee of California v. Brown*, No. CGC 12-517723 (Cal. Super. Ct. July  
11 20, 2012), is annexed hereto as Exhibit A.

12 I declare under penalty of perjury under the laws of the United States of America that the  
13 foregoing is true and correct.

14 Executed on June 23, 2017, at Los Angeles, California.

15 s/ John D. Echeverria  
16 John D. Echeverria

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# **EXHIBIT A**



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

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Jul-23-2012 3:24 pm

Case Number: CGC-12-517723

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ORDER

ASIAN AMERICAN RIGHTS COMMITTEE OF CALIFORNIA, AN VS. EDMUND  
BROWN, IN HIS OFFICIAL CAPACITY AS et al

001C03696237

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1 Prepared by the Court

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Deputy Clerk

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**SUPERIOR COURT OF CALIFORNIA**

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**County Of San Francisco**

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Department No. 302

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12-517723

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ASIAN AMERICAN RIGHTS COMMITTEE  
OF CALIFORNIA,

No. CGC-10-501014

13

Plaintiff,

ORDER RE DEMURRERS OF THE STATE  
DEFENDANTS AND THE DEFENDANT-  
INTERVENORS

14

v.

15

EDMUND BROWN, et al,

16

Defendants

17

and

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THE HUMANE SOCIETY OF THE UNITED  
STATES, et al,

19

Defendant-Intervenors.

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On May 2, 2012 a hearing was held on the demurrers filed by the State Defendants

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(Governor Brown, Attorney General Harris and the State of California) and the Defendant-

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1 Intervenor to all three causes of action alleged by the plaintiff in its complaint. At the  
2 conclusion of the hearing I took the demurrers under submission so that I could more fully  
3 consider the parties' oral and written arguments as well as review the large quantity of case law  
4 that I was given at the hearing. Having completed my further consideration, I sustain the  
5 demurrer without leave to amend as to the defendant State of California, overrule the demurrers  
6 as to the first cause of action for declaratory relief for the alleged violation of the Commerce  
7 Clause and the third cause of action for injunctive relief, and sustain the demurrers without leave  
8 to amend as to the second cause of action for declaratory relief for the alleged violation of the  
9 Takings Clause.

10 Plaintiff does not contest the portion of the State Defendants' demurrer contending that  
11 the State of California is not a proper party. This aspect of the State Defendants' demurrer is  
12 well-taken.

13 Defendant-Intervenors' demurrer on ripeness grounds to the first and third causes of  
14 action alleging a violation of the Commerce Clause is overruled. Plaintiff's dormant Commerce  
15 Clause claims are ripe because the challenged law, California Fish and Game Code sections 2021  
16 and 2021.5 (the "Shark Fin Prohibition"), eliminated the California market for shark fins as of  
17 January 1, 2012 by banning the purchase or acquisition of shark fins, and therefore plaintiff's  
18 members are currently faced with the dilemma of either violating the Shark Fin Prohibition or  
19 standing aside as it diminishes the value of their businesses and property. (*MedImmune, Inc. v.*  
20 *Genentech, Inc.* (2007) 549 U.S. 118, 129; *Pacific Legal Foundation v. California Coastal*  
21 *Commission* (1982) 33 Cal. 3d 158, 172-73).

22 The State Defendants' demurrer on the basis of failure to allege a cognizable claim to the  
23 first and third causes of action alleging a violation of the Commerce Clause is overruled. Plaintiff  
24 alleges that the Shark Fin Prohibition imposes "a burden on interstate commerce that is excessive  
25

1 in relation to its putative local benefits.” Resolution of this allegation, at least for this case,  
2 requires a factual record developed in the context of the balancing test set forth in *Pike v. Bruce*  
3 *Church, Inc.* (1970) 397 US 137, 142. (*Bronco Wine Company v. Jolly* (2005) 129 Cal. App. 4<sup>th</sup>  
4 988, 1027).

5 The State Defendants’ demurrer on the basis of failure to allege a cognizable claim to the  
6 second cause of action alleging a violation of the Takings Clause is sustained without leave to  
7 amend. Accepting the truth of plaintiff’s allegations that the Shark Fin Prohibition deprives  
8 plaintiff’s members of all economically beneficial use of any shark fins that they have acquired  
9 or will acquire, plaintiff nonetheless fails to state a claim for violation of the Takings Clause.  
10 Plaintiff has not cited any case, nor am I aware of any case, that holds that a government violates  
11 the Takings Clause when it imposes a complete ban on a product that it determines is harmful.  
12 The alcohol prohibition cases discussed in *Andrus v. Allard* (1979) 441 US 51, 67-68 hold that  
13 such a ban does not violate the Takings Clause. My determination that the second cause of action  
14 fails to state a cognizable claim makes it unnecessary to decide the Intervenor-Defendants’  
15 demurrer to that cause of action on ripeness grounds.

16 The State Defendants and Defendant-Intervenors have fifteen days from entry of this  
17 order to file answers to the complaint.

18 IT IS SO ORDERED.

19 Dated: July 20, 2012

20  
21 

22 Harold Kahn  
23 Superior Court Judge  
24  
25

**SUPERIOR COURT OF CALIFORNIA**  
**County of San Francisco**

ASIAN AMERICAN RIGHTS COMMITTEE OF  
CALIFORNIA,

Plaintiff(s)

vs.

EDMUND BROWN, et al

Defendant(s)

And  
THE HUMANE SOCIETY OF THE UNITED  
STATES, et al,

Defendant-Intervenor(s)

Case Number: CGC-12-517723

**CERTIFICATE OF MAILING**  
(CCP 1013a (4))

I, L. FISCELLA, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On JUL-23-2012 I served the attached ORDER RE: DEMURRERS OF THE STATE DEFENDANTS AND THE DEFENDANT-INTERVENORS by placing a copy thereof in a sealed envelope, addressed as follows:

CHRISTOPHER H. CARR  
WILLIAM F. TARANTINO  
SUSAN L. LANDSITTEL  
MORRISON & FORESTER LLP  
425 MARKET STREET  
SAN FRANCISCO, CA 94105

JOHN S. WORDEN  
BRUCE WAGMAN  
SCHIFF HARDIN LLP  
ONE MARKET, SPEAR STREET TOWER  
32<sup>ND</sup> FLOOR  
SAN FRANCISCO, CA 94105

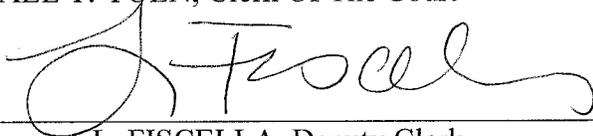
KAMALA D. HARRIS  
TAMAR PACHTER  
ALEXANDRA ROBERT GORDON  
ATTORNEY GENERAL OF CALIFORNIA  
455 GOLDEN GATE AVENUE  
SUITE 11000  
SAN FRANCISCO, CA 94102

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: JUL-23-2012

MICHAEL T. YUEN, Clerk Of The Court

By:

A handwritten signature in cursive script, appearing to read "L. Fiscella", written over a horizontal line.

L. FISCELLA, Deputy Clerk