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California Department Of Justice, and Acting
 8 *Bureau Chief Steve Lindley*

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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
 12 SACRAMENTO DIVISION

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 14 **OWNER-OPERATOR INDEPENDENT**
DRIVERS ASSOCIATION, INC., ERIK
 15 **ROYCE, BRANDON ELIAS, FOLSOM**
SHOOTING CLUB, INC., THE CALGUNS
 16 **FOUNDATION, INC., and NATIONAL**
RIFLE ASSOCIATION, INC.,

17
18 Plaintiffs,

19 v.

20 **STEVE LINDLEY; THE STATE OF**
CALIFORNIA; THE CALIFORNIA
 21 **DEPARTMENT OF JUSTICE; and DOES**
 22 **1-10,**

23 Defendants.

Case No. 10-CV-02010 -MCE-KJN

NOTICE OF MOTION AND MOTION
OF DEFENDANTS TO DISMISS THE
COMPLAINT OR, IN THE
ALTERNATIVE, TO STAY THE
ACTION

Date: November 18, 2010
 Time: 2:00 p.m.
 Ctrm: No. 7 - 14th Floor
 Judge: Hon. Morrison C. England, Jr.
 Trial Date: None
 Action Filed: 7/28/2010

NOTICE OF MOTION

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 18, 2010, at 2:00 p.m. or as soon thereafter as this matter may be heard in Courtroom 7 of the above-entitled court, located at 501 I Street, Sacramento, California 95814, defendants Steve Lindley, the State of California, and the California Department of Justice will and hereby do move the Court for an order (1) dismissing the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, (2) dismissing the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, and (3) in the alternative, staying the action. This Motion is made on the following grounds:

1. The Court lacks subject matter jurisdiction over the claims alleged in the Complaint because the issues presented are not ripe and certain plaintiffs lack standing to prosecute the action. (Fed. R. Civ. P. 12(b)(1));

2. The Court lacks subject matter jurisdiction over the claims alleged in the Complaint under the Eleventh Amendment of the United States Constitution, which prohibits suits against states and their instrumentalities in federal court. (Fed. R. Civ. P. 12(b)(1));

3. The Complaint fails to state a claim upon which relief can be granted because Penal Code section 12318's effect upon the rates, routes and services of motor carriers is too tenuous, remote or peripheral. (Fed. R. Civ. P. 12(b)(6)); and

4. If any portion of the complaint survives dismissal, the Court should exercise its discretion to stay the action pending a decision in the related case of *Parker v. State of California, et al.*, Superior Court of California, County of Fresno, Case No. 10CECG02116, which involves a constitutional challenge to AB 962, including Penal Code section 12318, the statute at issue in this case.

This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities and Request for Judicial Notice filed concurrently herewith, all

1 pleadings, records, and files herein, those matters of which the Court may take judicial
2 notice, and upon such oral argument as may be made at the hearing on this Motion.

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4 Dated: September 17, 2010

Respectfully Submitted,

5 EDMUND G. BROWN JR.
6 Attorney General of California
7 JONATHAN K. RENNER
8 Senior Assistant Attorney General

/s/ Peter A. Krause

9 PETER A. KRAUSE
10 Deputy Attorney General
11 *Attorneys for Defendants Steve Lindley,*
12 *the State Of California, and the*
13 *California Department Of Justice*

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