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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO
12

13
14 **POWAY WEAPONS & GEAR, INC. and**
15 **SGR VENTURES LLC (D/B/A**
SACRAMENTO GUN RANGE),

16 Plaintiffs,

17 v.

18 **CALIFORNIA DEPARTMENT OF TAX**
19 **AND FEE ADMINISTRATION; TRISTA**
20 **GONZALEZ, in her official capacity as**
21 **Director of the California Department of**
Tax and Fee Administration,

22 Defendants.
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28

**Exempt from filing fees per Government
Code § 6103**

Case No. 25CV018964

**DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF DEMURRER TO
COMPLAINT**

Date: July 20, 2026

Time: 9:00 a.m.

Dept: 54

Judge: The Honorable Christopher E.
Krueger

Reservation ID: 938375010708

Trial Date: Not Set

Action Filed: August 11, 2025

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INTRODUCTION

California’s Gun Violence Prevention and School Safety Act (AB 28) requires qualifying firearms and ammunition retailers to pay an 11 percent excise tax on sales of firearms, certain firearm precursor parts, and ammunition. Revenue from the tax is deposited in the Gun Violence Prevention and School Safety Fund and allocated to gun violence prevention, healing, and recovery programs for families and communities across California.

Plaintiffs are two firearm retailers who seek to enjoin AB 28 and allege that the 11 percent tax on the retailers’ gross receipts violates the Second Amendment of the United States Constitution.

The California Department of Tax and Fee Administration (the Department) and its director, Trista Gonzalez, demur to Plaintiffs’ complaint on the basis that Plaintiffs’ complaint fails to allege facts adequate to state a violation of the Second Amendment. Under *Bruen*, the Second Amendment’s plain text does not cover the regulated conduct at issue here. (*New York State Rifle & Pistol Assn., Inc. v. Bruen* (2022) 597 U.S. 1.) Therefore, Plaintiffs’ demurrer should be sustained without leave to amend, and this action should be dismissed.

BACKGROUND

I. CALIFORNIA’S FIREARM RETAILER EXCISE TAX

In 2023, the California Legislature enacted AB 28, the Gun Violence Prevention and School Safety Act. (Stats. 2023, ch. 231.) Effective July 1, 2024, AB 28 established “an excise tax upon licensed firearms dealers, firearms manufacturers, and ammunition vendors, at the rate of 11 percent of the gross receipts from the retail sale in this state of any firearm, firearm precursor part, or ammunition.” (Rev. & Tax. Code, § 36011.)¹ Revenue from the tax is deposited into the Gun Violence Prevention and School Safety Fund and allocated to gun violence prevention, healing, and recovery programs for families and communities across California, especially those communities disproportionately impacted by gun violence. (§§ 36005, 36041; Stats. 2023, ch. 231, § 2(m).) The tax exempts sales by firearms dealers, firearms manufacturers, and ammunition vendors whose quarterly gross receipts from sales of covered products amount to

¹ All citations are to the Revenue and Taxation Code unless otherwise indicated.

1 less than five thousand dollars. (§ 36021.) The tax also exempts any sales to active and retired
2 peace officers. (*Ibid.*) Other firearm and ammunition sales are also not subject to the tax,
3 including transfers for which no firearm dealer transaction is required as well as private party
4 transfers between unlicensed sellers in California if the dealer merely processes the sale record
5 and background check and does not take title of the firearm or ammunition. (Request for Judicial
6 Notice (RJN), Ex. 1)

7 The Department administers AB 28's excise tax. (§§ 36001, 36021, 36031.) The tax applies
8 to sellers, not the individual firearms buyer. (§ 36011.) Retailers must pay the tax to the
9 Department quarterly. (§ 36032.)

10 AB 28's tax is distinct from and is applied in addition to the state sales tax. (§§ 6051,
11 36011.) California imposes sales tax upon retailers' gross receipts from sales of tangible personal
12 property in the state, including firearms, firearm precursor parts, and ammunition. (§§ 6051,
13 6007, 6012; see Pen. Code, § 26705, subd. (b)(2).) The Legislature has also enacted special excise
14 taxes on transactions involving certain tangible goods, such as fuel (§§ 7360, 60050), alcohol
15 (§§ 32151, 32201, 32220), and cigarettes (§§ 30101, 30123, 30130.51).

16 **II. ANALOGOUS FEDERAL FIREARM TAXES**

17 The federal government has imposed an excise tax on firearm and ammunition industry
18 participants for over a hundred years. During World War I, Congress established the federal
19 excise tax on firearms and ammunition to help fund wartime spending. (See Revenue Act of
20 1918, Pub. L. No. 254, 40 Stat. 1057, § 900(10).) And in 1937, Congress enacted the Federal Aid
21 in Wildlife Restoration Act (also known as the Pittman-Robertson Act), which reallocated federal
22 excise taxes on firearms and ammunition to fund wildlife conservation programs. (Pub. L. No.
23 75-415, 50 Stat. 917, codified at: 16 U.S.C. § 669 et seq.) Still in effect today, the federal excise
24 tax is 10 percent for pistols and revolvers and 11 percent for other firearms, cartridges, and shells,
25 upon the sale "by the manufacturer, producer, or importer." (26 U.S.C. § 4181; see U.S.C. § 4182
26 [noting exemptions].)

27 Since 1934, the National Firearms Act (NFA) has also imposed a \$200 tax on the making
28 and transfer of firearms. (See National Firearms Act of 1934, Pub. L. No. 73-474, 48 Stat. 1236

(codified as amended at 26 U.S.C. §§ 5801–5872).) Beginning on January 1, 2026, only machine guns and “destructive devices,” as defined by the NFA, will be subject to the NFA’s tax. (See One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 § 70436. (2025).)

In enacting AB 28, the Legislature explained, “[t]he excise tax on firearm and ammunition retailers proposed in [AB 28] is analogous to longstanding federal law, which has, since 1919, placed a 10-percent to 11-percent excise tax on the sale of firearms and ammunition by manufacturers, producers, and importers.” (RJN, Ex. 2 {Stats. 2023, ch. 231, § 2(j)}) The Legislature recognized that “[t]he modest tax proposed in [AB 28] mirrors the Pittman-Robertson federal excise tax on firearm and ammunition industry participants, is similarly dedicated to funding programs to remediate the harmful externalities of firearm industry commerce, and is similarly unlikely to discourage lawful sales and commerce in firearms or ammunition.” (RJN, Ex. 2 [citing Stats. 2023, ch. 231, § 2(p)].)

III. SUMMARY OF PLAINTIFFS’ ALLEGATIONS

Plaintiffs are licensed dealers of firearms and ammunition, which they sell at their shooting ranges and retail locations. (Compl., ¶¶ 10, 20.) As of July 1, 2024, both dealers began collecting AB’s 28 tax from customers, adding it as a line item on receipts. (Compl., ¶¶ 11, 21.) Both allege that they submitted payment for the tax with their excise tax returns for the third quarter of 2024 and then submitted claims for tax refunds with the Department. (*Id.*, ¶¶ 12–13, 17, 22–23, 25.) Both allege that the Department denied their claims for refund. (*Id.*, ¶¶ 23, 25.) Both allege that they exhausted administrative remedies and continue to submit payments of the tax quarterly as required by state law. (*Id.*, ¶¶ 18–19, 27–28.)

Plaintiffs allege that AB 28 violates the Second Amendment because it “implicates conduct protected by the Second Amendment’s plain text—acquiring firearms and ammunition—and is not part of this Nation’s history of gun or arms regulation.” (Compl., ¶ 42, citing *Bruen*, *supra*, 597 U.S. 1.) Plaintiffs further allege that “the excise tax impermissibly singles out the exercise of a constitutional right for special taxation.” (*Id.*, ¶ 43.)

Plaintiffs seek “a declaratory judgment stating that California’s 11% excise tax on firearms and ammunition violates the right to keep and bear arms secured by the Second Amendment to

1 the United States Constitution, both facially and as-applied.” (Compl., Prayer 1.) They also seek a
2 permanent injunction “enjoining enforcement of § 36011 and associated provisions established by
3 AB 28, including collection of the 11% excise tax from licensed firearms dealers, firearms
4 manufacturers, and ammunition vendors and any revocations of dealer, manufacturer, or vendors’
5 certificates of registration from failure to remit the tax. (Compl., Prayer 2.) In addition, Plaintiffs
6 seek a refund of all the excise taxes they have paid pursuant to the tax, “whether paid before or
7 after the filing of this complaint” and “costs of suit, including reasonable attorney’s fees pursuant
8 to applicable law.” (Compl., Prayer 3–4.)

9 Plaintiff Poway previously filed a separate action challenging AB 28 on constitutional
10 grounds in the Superior Court for the County of San Diego, which was voluntarily dismissed in
11 March 2025. (Compl., ¶ 15; *Jaymes v. Maduros*, No. 37-2024-00031147-CU-MC-CTL (Super.
12 Ct. S.D. County. Mar. 19, 2025).)

13 LEGAL STANDARD

14 “A demurrer tests the legal sufficiency of the factual allegations in a complaint.” (*Regina v.*
15 *State* (2023) 89 Cal.App. 5th 386, 396.) A demurrer is properly sustained where the complaint
16 fails to state facts sufficient to state a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) The
17 Court treats a demurrer “as admitting all material facts properly pleaded” in the complaint, “but
18 not contentions, deductions, or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d
19 311, 318.) In assessing a constitutional challenge, the Court begins by presuming that the law is
20 valid and resolves all doubts in favor of the Legislature’s action. (*Doe v. Finke* (2022) 86
21 Cal.App.5th 913, 922, citing *Wilson v. State Bd. of Ed.* (1999) 75 Cal.App.4th 1125, 1134.)

22 A demurrer may be sustained without leave to amend where the facts are not in dispute and
23 the nature of the plaintiff’s claim is clear but, under substantive law, no liability exists. (*Keyes v.*
24 *Bowen* (2010) 189 Cal.App.4th 647, 655.) It is the plaintiff’s burden to show in what manner they
25 can amend the complaint to state a cause of action, and how that will change the legal effect of
26 the pleading. (See *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.)

27 Plaintiffs raise both facial and as-applied challenges. A facial challenge is “‘the most
28 difficult challenge to mount successfully,’ because it requires a [challenger] to ‘establish that no

1 set of circumstances exists under which the [law] would be valid.’” (*United States v. Rahimi*
2 (2025) 602 U.S. 680, 693 (*Rahimi*)); citing *United States v. Salerno* (1987) 481 U.S. 739, 745
3 (*Salerno*).) To prevail in a facial challenge, “the Government need only demonstrate that [the
4 law] is constitutional in some of its applications.” (*Ibid.*) Facial challenges are also “disfavored”
5 because “a ruling of unconstitutionality frustrates the intent of the elected representatives of the
6 people.” (*Wash. State Grange v. Wash. State Republican Party* (2008) 552 U.S. 442, 449.) “ ‘The
7 courts will presume a statute is constitutional unless its constitutionality clearly, positively, and
8 unmistakably appears; all presumptions and intendments favor its validity.’ ”(*People v. Fuiava*
9 (2012) 53 Cal.4th 622, 696, quoting *People v. Falsetta* (1999) 21 Cal.4th 903, 912–13.)

10 An as-applied challenge, on the other hand, challenges the application of the statute to a
11 specific circumstance or the way it was applied to the particular facts of the plaintiffs’ case. (See,
12 e.g., *Salerno*, 481 U.S. at p. 751, fn. 3.) When evaluating either facial or as-applied challenges
13 under the Second Amendment, courts apply the *Bruen* framework, described below. (See *Rahimi*,
14 *supra*, 602 U.S. at pp. 690–91.)

15 ARGUMENT

16 I. PLAINTIFFS FAIL TO ADEQUATELY ALLEGE AB 28 VIOLATES THE SECOND 17 AMENDMENT UNDER THE *BRUEN* FRAMEWORK

18 The Second Amendment provides: “A well regulated Militia, being necessary to the
19 security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”
20 (U.S. Const., 2nd Amend.) The Second Amendment “protect[s] an individual right to keep and
21 bear arms for self-defense.” (*Bruen, supra*, 597 U.S. at p. 17.) But the constitutional right to bear
22 arms is “not unlimited.” (*Bruen, supra*, 597 U.S. at p. 21, quoting *District of Columbia v. Heller*
23 (2008) 554 U.S. 570, 626 (*Heller*).) Rather, as the Court recognized in *Bruen*, certain regulations
24 on firearms and ammunition have long survived constitutional scrutiny. (*Bruen, supra*, 597 U.S.
25 at p. 21 [noting historical evidence that Second Amendment rights are not unlimited].) These
26 include “longstanding prohibitions on the possession of firearms by felons and the mentally ill”
27 (*Heller, supra*, 554 U.S. at p. 626), laws forbidding firearms in schools and government buildings
28 (*ibid.*), “shall-issue” licensing regimes (*Bruen, supra*, 597 U.S. at p. 636, fn. 9), and “conditions

1 and qualifications on the commercial sale of arms” (*Heller*, 554 U.S. at p. 627) —among them,
2 taxes and fees.

3 In determining whether a state law violates the Second Amendment, the Supreme Court
4 uses an approach “centered on constitutional text and history.” (*Bruen*, *supra*, 597 U.S. at pp. 22–
5 23.) The analysis asks, “whether the Second Amendment’s plain text covers an individual’s
6 conduct” considering the text’s “normal and ordinary meaning” and “historical background.” (*Id.*
7 at pp. 17, 20 (internal quotation marks omitted).)

8 At *Bruen*’s first step, Plaintiffs have the initial burden to demonstrate that they are “among
9 ‘the people’ within the plain meaning of the Second Amendment[,]” and “the plain text of the
10 Amendment encompasses the individuals’ proposed course of conduct.” (*United States v. Perez-*
11 *Garcia* (9th Cir. 2024) 96 F.4th 1166, 1178 [citing *Bruen*, 597 U.S. at p. 24].) If the text covers
12 the conduct at issue, the Second Amendment presumptively protects it. (*Id.* at p. 24.) The
13 Government must then justify its regulation by demonstrating that it is consistent with the
14 Nation’s historical tradition of firearm regulation. (*Ibid.*) Plaintiffs’ claims fail at the first step.

15 **A. Plaintiffs Cannot Establish That Retailers Are Among “the People”**
16 **Accorded Second Amendment Rights**

17 The Second Amendment provides for the “right of the people to keep and bear Arms.” (U.S.
18 Const. 2nd Amend.) In *Heller*, the Supreme Court analyzed the meaning of the phrase “the right
19 of the people to keep and bear Arms” and determined that it “guarantee[s] the individual right to
20 possess and carry weapons in case of confrontation.” (*Heller*, *supra*, 554 U.S. at p. 592.) The
21 *Heller* court defined “the people” as “‘a class of persons who are part of the national community
22 or who have otherwise developed sufficient connection with this country to be considered part of
23 that community.’” (*Heller*, *supra*, 554 U.S. at pp. 580-81; quoting *United States v. Verdugo-*
24 *Urquidez* (1990) 494 U.S. 259, 265.) Both *Heller* and *Bruen* repeatedly described this Second
25 Amendment right as belonging to “law-abiding, responsible citizens” and “individuals” (*Heller*,
26 *supra*, 554 U.S. at pp. 626-27, 635; *Bruen*, *supra*, 597 U.S. at pp. 8, 26, 29, 30.) As Justice
27 Thomas explained in *Bruen*, “*Heller* [] confirmed that the right to ‘bear arms’ refers to the right to
28 ‘wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of

1 being armed and ready for offensive or defensive action in a case of conflict with another
2 person.” (*Bruen*, at p. 32, quoting *Heller*, at p. 584.)

3 Plaintiffs fail to allege facts showing that retailers are among “the people” that the Second
4 Amendment protects. Nor could they amend the complaint to do so. Retailers such as Poway and
5 SGR are companies; they cannot wear, bear, or carry arms upon their person, in clothing, or in a
6 pocket. It is impossible for retailers to physically arm themselves for conflict with another person.
7 Since the Second Amendment protects only the rights of individuals to possess and carry
8 weapons, retailers do not have an independent constitutional right to possess arms. (See *Teixeira*
9 *v. County of Alameda* (9th Cir. 2017) 873 F.3d 670, 687 (in bank).)

10 **B. Plaintiffs Have Not Sufficiently Alleged That the Second Amendment’s**
11 **Plain Text Protects the Rights of Retailers to Sell Firearms and**
Ammunition Without a Tax

12 Even if Plaintiffs, as businesses, could be considered among the people protected by the
13 Second Amendment, the complaint fails to establish that the plain text of the Second Amendment
14 covers their proposed conduct. (*B&L Productions, Inc. v. Newsom* (9th Cir. 2024) 104 F.4th 108,
15 117, fn.17 (*B&L*).)

16 The U.S. Supreme Court has repeatedly characterized “laws imposing conditions and
17 qualifications on the commercial sale of arms” as “presumptively lawful.” (*Heller, supra*, 554
18 U.S. at pp. 626-627 & fn. 26; see *Bruen, supra*, 597 U.S. at p. 80.) And the Ninth Circuit has
19 clarified that “commercial restrictions presumptively do not implicate the plain text of the Second
20 Amendment at the first step of the *Bruen* test.” (*B&L, supra*, 104 F.4th 108 at p. 119.) Because
21 AB 28 requires retailers to pay an 11 percent tax on sales of firearms and ammunition, it imposes
22 a condition on the commercial sale of arms. AB 28 thus presumptively does not implicate the
23 plain text of the Second Amendment. (*Ibid.*)

24 Plaintiffs allege that AB 28 “implicates conduct protected by the Second Amendment’s
25 plain text—selling and acquiring protected firearms and ammunition.” (Compl. ¶ 42.) But as the
26 Ninth Circuit has recognized, a reviewing court need not defer to a plaintiff’s allegations that a
27 challenged statute implicates the text of the Second Amendment if that conduct is not actually
28 regulated by the statute—rather, the analysis turns on “what the challenged law prevented them

1 from doing.” (*Doe v. Bonta* (9th Cir. 2024) 101 F.4th 633, 639 [affirming grant of motion to
2 dismiss; citing *Bruen*, *supra*, 597 U.S. at p. 32].) For instance, in *B&L*, the court rejected
3 plaintiff’s allegations that its proposed conduct was the general “purchase of firearms,” because
4 “such a definition is not attuned to the actual activity that the Challenged Statutes regulate:
5 namely, the sale and purchase of firearms and ammunition on state property.” (*B&L*, *supra*, 104
6 F.4th at p. 117 & fn.17) Instead, the court held that *B&L*’s proposed conduct was “consummating
7 a formal contract for firearms or ammunition on state property.” (*Ibid.* [affirming grant of motion
8 to dismiss].) Here, the proposed conduct AB 28 restricts is selling firearms and ammunition
9 without an 11 percent excise tax. As the plain text of the Second Amendment does not cover the
10 sale of firearms and ammunition without an 11 percent excise tax, Plaintiff’s argument
11 necessarily fails.

12 But even if the Plaintiffs’ proposed conduct is understood to include the selling or acquiring
13 of arms, the plain text of the Second Amendment still says nothing about selling and acquiring
14 firearms and ammunition on its face. (*B&L*, *supra*, 104 F.4th 108 at p. 117.) “[T]he Second
15 Amendment does not confer a freestanding right, wholly detached from any customer’s ability to
16 acquire firearms, upon a proprietor of a commercial establishment to sell firearms.” (*Teixeira*,
17 873 F.3d at 682.) Plaintiffs allege that “the Second Amendment’s protections extend to
18 ‘necessary’ ‘ancillary rights,’ “including the right to acquire and sell firearms and ammunition for
19 lawful purposes.” (Compl. ¶ 41). While the Second Amendment does protect “ancillary rights
20 necessary to the realization of the core right to possess a firearm for self-defense,” the right to sell
21 firearms is not a protected ancillary right. (*B&L*, *supra*, 104 F.4th at p. 118; citing *Teixeira*,
22 *supra*, 873 F.3d at pp. 677, 683.) Therefore, retailers’ right to sell firearms and ammunition
23 without a tax is not protected by the Second Amendment’s plain text.

24 **C. Plaintiffs Cannot Allege That AB 28’s Tax Meaningfully Constrains the**
25 **Rights of Individuals to Keep and Bear Arms.**

26 The right to acquire firearms “only implicates the Second Amendment in limited
27 circumstances” when the regulations “‘meaningfully constrain[]’ the right to keep and bear arms
28 for the purpose of self-defense.” (*B&L*, *supra*, 104 F.4th at pp. 118–19; quoting *Teixeira*, 873

1 F.3d at p. 680.) “A vendor challenging a firearms regulation must be able to demonstrate that the
2 would-be purchasers’ core right of possession is being meaningfully constrained.” (*United States*
3 *v. Vlha* (9th Cir. 2025) 142 F.4th 1194, 1198.) The Ninth Circuit has confirmed that the
4 meaningful constraint test “remains appropriate” after *Bruen*, because it “faithfully tracks the
5 Second Amendment’s plain text.” (*B&L, supra*, 104 F.4th at p. 119.) This test is applied at “step
6 one of the *Bruen* analysis to determine whether the conduct at issue is presumptively protected by
7 the Second Amendment.” (*Vlha, supra*, 142 F.4th at p. 1198.) “Establishing a violation would
8 require evidence that a statute impedes ...residents from acquiring firearms.” (*Chavez v. Bonta*
9 (S.D. Cal. 2025) 773 F.Supp.3d 1028, 1037, appeal pending, No. 25-2509 (*Chavez*), quoting
10 *Teixeira, supra*, 873 F.3d at p. 678 (internal quotation marks omitted).

11 Courts have upheld a wide array of regulations on the sale and purchase of firearms that do
12 not meaningfully constrain the individual right to bear arms. (See *Vlha, supra*, 142 F.4th at p.
13 1200 [held a federal law requiring firearm manufacturers to obtain licenses did not meaningfully
14 constrain would-be purchasers from obtaining firearms.]; *B&L, supra*, 104 F.4th at p. 119 [upheld
15 a law restricting firearm sales on government property because “[m]erely eliminating one
16 environment where individuals may purchase guns does not constitute a meaningful constraint on
17 Second Amendment rights when they can acquire the same firearms down the street.”]; *Teixeira,*
18 *supra*, 873 F.3d at pp. 676, 679 [held a county zoning ordinance that restricted gun stores from
19 operating in certain areas did not meaningfully impair buyers’ rights.]; *Chavez, supra*, 773
20 F.Supp.3d at p. 1038 [state law which prohibited firearms dealers from selling firearms to persons
21 under 21 years of age “does not meaningfully impair 18-to-20-year-olds’ access to firearms and is
22 therefore not covered by the Second Amendment’s plain text at the first step of the *Bruen* test.”];
23 *Gazzola v. Hochul* (2d. Cir. 2023) 88 F.4th 186, 192, 197, cert. denied (2024) 144 S. Ct. 2659 [in
24 affirming a preliminary injunction denial, the court held plaintiffs were unlikely to succeed in
25 challenging a law requiring firearm retailers to adopt certain security measures because the law
26 would not “threaten[] a citizen’s right to acquire firearms.”].] As the Court recognized in
27 *Teixeira*, “the Second Amendment does not elevate convenience and preference over all other
28

1 considerations,” nor does it “guarantee[] a certain type of retail experience.” (*Teixeira, supra*,
2 873 F.3d at p. 680 & fn.13.)

3 By contrast, “[p]rohibiting an entire group from purchasing firearms—if the members of the
4 group have the right to possess firearms—would meaningfully constrain their rights.” (*Vlha*,
5 *supra*, 142 F.4th at p. 1198.) And “a ban on all sales of a certain type of gun or ammunition in a
6 region generally implicates the Second Amendment.” (*Ibid*, citing *B&L, supra*, 104 F.4th at p.
7 119.)

8 Here, Plaintiffs fail to allege facts to meet their burden to demonstrate that AB 28’s tax
9 meaningfully constrains the purchasers’ “right to keep and bear arms for the purpose of self-
10 defense.” (*B&L, supra*, 104 F.4th 108 at pp. 118–19.) AB 28 does not prohibit any group from
11 purchasing firearms, nor does it ban sales of any type of gun or ammunition. AB 28’s 11 percent
12 tax is modest and mirrors federal excise taxes (10 to 11 percent) on firearms and ammunition.
13 (See 26 U.S.C. § 4181, Background § II, *supra*.) Plaintiffs have not shown that any would-be
14 purchasers have been prevented from acquiring arms or ammunition because of AB 28’s tax.

15 Plaintiffs allege that the 11 percent tax is passed onto the purchasers of firearms and
16 ammunition through a line item to customer receipts reflecting the tax. (Compl. ¶¶ 1, 35–36.) But
17 the law imposes a tax on the seller, not the buyer of arms. (§ 36011.) Retailers are permitted—but
18 not required—to obtain reimbursement for their tax liability from the consumer at the time of
19 sale. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1108.) The tax relationship at all times
20 remains “‘between the retailer only and the state; and is a direct obligation of the former.’” (*Id.* at
21 p. 1104, quoting *Livingston Rock & Gravel Co. v. De Salvo* (1955) 136 Cal.App.2d 156, 160.) “A
22 seller’s discretionary decision to pass that fee to the purchaser cannot be attributed as government
23 action.” (*New York State Firearms Association v. James* (2nd Cir., Oct. 15, 2025, No. 24-1290-
24 CV) 2025 WL 2921746, citing *McRorey v. Garland* (5th Cir. 2024) 99 F.4th 831, 839 “[A] third
25 party’s legitimate discretion breaks the chain of constitutional causation.” (internal quotation
26 marks and citation omitted)].)

27 AB 28 also does not meaningfully infringe on the right to bear arms because individuals
28 have the option of purchasing firearms from a retailer that chooses not to pass along the cost of

1 the tax, or from a retailer with quarterly sales of less than \$5,000, that is exempt from the tax. (§
2 36021.) Individuals may also purchase firearms and ammunition from a private party through a
3 transaction in which a licensed firearm dealer serves as the intermediary and processes the
4 background check and registration requirements for the unlicensed private party seller. (RJN, Ex.
5 1.) In those transactions, private party sellers are not subject to AB 28's tax. (*Ibid.*) And the
6 licensed firearms dealer is also not subject to the tax when certain requirements are met.²

7 Individuals also have the option of acquiring firearms through intrafamilial and operation-
8 of-law transfers and loans that do not require a dealer intermediary and would not be subject to
9 the tax (e.g., spousal transfers, gifts from family members, or inheritance). (*Chavez, supra*, 773
10 F.Supp.3d at p. 1037, citing Cal. Pen. Code, § 27875, subd. (a), 27920, subd. (a)(2); see also *id.* §
11 16960, subd. (g) (defining "operation of law"), Cal. Fam. Code, § 850.)

12 Because AB 28's tax is a presumptively lawful commercial regulation that does not
13 meaningfully constrain the rights of individuals to keep and bear arms commonly used for self-
14 defense, the plain language of the Second Amendment does not implicate AB 28. Therefore,
15 Plaintiffs fail to state a claim for relief.

16 Since Plaintiffs have failed to meet their burden at step one of *Bruen*, the Court need not
17 reach the second step. If the plain text of the Second Amendment covers an individual's course of
18 conduct, the government must show the regulation is consistent with the Nation's historical
19 tradition of firearm regulation. (*Bruen, supra*, 597 U.S. at 8.) But as explained above, the plain
20 text of the Second Amendment does not cover Plaintiffs' proposed conduct. As the Ninth Circuit
21 and other circuits have recognized, *Bruen* did not hold "that every requirement making it slightly
22 more difficult to possess a firearm demands a full historical inquiry into its origin." (*United States*
23 *v. Manney* (9th Cir. 2024) 114 F.4th 1048, 1052, cert. denied, 145 S. Ct. 1151 (2025); *Oakland*
24 *Tactical Supply, LLC v. Howell Twp.* (6th Cir. 2024) 103 F.4th 1186, 1195, cert. denied, 145 S.

25 _____
26 ² A licensed firearms dealer is not subject to AB 28's tax when the dealer completes the
27 registration paperwork for a California private party who is selling a firearm to a California
28 purchaser, the seller and purchaser have negotiated the terms of sale in advance, the seller brings
the firearm to the firearm dealer to meet the statutory requirements for the documentation and
registration, and the firearm dealer does not take title of the firearm at any time during the
transaction. (RJN, Ex. 1.)

1 Ct. 603 (2024) (“*Bruen* does not say that any regulation that affects firearms must satisfy the
2 historical-regulation test.”).) See also *Maryland Shall Issue Inc. v. Moore* (4th Cir. 2024) 116
3 F.4th 211, 223, cert. denied, No. 24-373 (Jan. 13, 2025) (licensing scheme that did not
4 “effectively den[y]” the right to keep and bear arms was not subject to historical scrutiny);
5 *McRorey v. Garland* (5th Cir. 2024) 99 F.4th 831, 838 & fn.18 (“regulations on purchase” that
6 are not “de facto prohibitions on acquisition” or “functional prohibitions on keeping” fire-arms
7 are not subject to “*Bruen*’s rigorous historical requirement.”) Because Plaintiffs have failed to
8 state a claim at the first step of the *Bruen*, there is no reason for the court to engage in the
9 historical analysis at step two. Accordingly, the complaint fails to allege sufficient facts to
10 support facial and as-applied challenges.

11 **II. PLAINTIFFS’ UNCONSTITUTIONAL-TAX ARGUMENT IS BARRED BY *BRUEN*’S** 12 **REJECTION OF MEANS-END SCRUTINY**

13 Plaintiffs also allege that, under Supreme Court First Amendment precedent, the California
14 excise tax impermissibly singles out the exercise of a constitutional right for special taxation.
15 (Compl. ¶43; citing U.S. Const., 1st Amend.; *Murdock v. Pennsylvania* (1943) 319 U.S. 105,
16 114.) In *Murdock*, the Supreme Court established “fee jurisprudence”— the principle that the
17 government “may not impose a charge for the enjoyment of a right granted by the federal
18 constitution,” although it may obtain a fee to cover costs associated with the exercise of a
19 constitutional right such as “to defray the expense of protecting those on the streets and at homes
20 against the abuses of solicitors.” (*Murdock*, 319 U.S. at pp. 113, 116.) The Supreme Court has
21 recognized that fee jurisprudence involves means-end scrutiny since “the tax at issue in *Murdock*
22 was invalid because it was unrelated to any legitimate state interest.” (*Forsyth County v.*
23 *Nationalist Movement* (1992) 505 U.S. 123, 137.) And in *Bruen*, the Supreme Court expressly
24 rejected applying means-end scrutiny in Second Amendment cases. (*Bruen*, *supra*, 597 U.S. at pp.
25 17, 19; *California Rifle & Pistol Assn., Inc. v. Los Angeles County Sheriff’s Dept.* (C.D. Cal.
26 2024) 745 F.Supp.3d 1037, 1049, fns. 25, 27.) As an implementation of means-end scrutiny, fee
27 jurisprudence conflicts with the *Bruen* framework and should not be applied in this case. (*United*
28 *States v. Robinson* (11th Cir., Mar. 20, 2025, No. 23-12551) 2025 WL 870981.)

1 Even if this court applies fee jurisprudence, “the Supreme Court in *Bruen* expressly
2 contemplated regulations that may permissibly include fee payments, so long as the fees were not
3 so ‘exorbitant [so as to] deny ordinary citizens their right to public carry.’ ” (*Nat. Assn. for Gun*
4 *Rights, Inc. v. City of San Jose* (N.D. Cal., July 13, 2023 No. 22-0501) 2023 WL 452284 at *8,
5 citing *Bruen, supra*, 597 U.S. at p. 39.) And Plaintiffs make no showing that AB 28’s tax is
6 exorbitant. Courts have upheld a wide range of costs associated with firearm purchases. (See
7 *Kwong v. Bloomberg* (2d Cir. 2013) 723 F.3d 160, 165-69, cert. den. (2014) 572 U.S. 1149.
8 [upholding \$340 handgun licensing fee]; *Watterson v. Bureau of Alcohol, Tobacco, Firearms &*
9 *Explosives* (E.D. Tex. Mar. 1, 2024, No. 4:23-CV-00080) 2024 WL 897595, at *19 [the
10 challenger “cannot show that a \$200 tax is so exorbitant that he is effectively denied his Second
11 Amendment right to bear arms.”]; *Nat.l Assn. for Gun Rights, Inc., supra*, WL 4552284, at *8
12 [upholding ordinance imposing annual \$25 Gun Harm Reduction Fee on gun owners]; *Bauer v.*
13 *Becerra* (9th Cir. 2017) 858 F.3d 1216, 1222 [a \$19 fee on firearms transfers does not “ha[ve]
14 any impact on the plaintiffs’ actual ability to obtain and possess a firearm”].)

15 Further, the Legislature imposes special excise taxes on the sale of other items such as fuel
16 (§§ 7360, 60050), alcohol (§§ 32151, 32201, 32220), and cigarettes (§§ 30101, 30123, 30130.51).
17 Firearms are not singled out for special taxation and furthermore, “[t]he modest tax proposed in
18 this measure mirrors the Pittman-Robertson federal excise tax on firearm and ammunition
19 industry participants, is similarly dedicated to funding programs to remediate the harmful
20 externalities of firearm industry commerce and is similarly unlikely to discourage lawful sales
21 and commerce in firearms or ammunition.” (RJN, Ex. 2.)

22 **III. DIRECTOR GONZALEZ IS NOT A PROPER DEFENDANT**

23 Director Gonzalez is not a proper defendant in this action. Section 55243 requires that an
24 action for refund of excise tax must be brought against the Department. (§ 55243; *McClain v.*
25 *Sav-On Drugs* (2019) 6 Cal.5th 951, 957.) Director Gonzalez should be dismissed from this
26 action.

1 **IV. THE DEMURRER SHOULD BE SUSTAINED WITHOUT LEAVE TO AMEND**

2 Plaintiffs cannot meet their heavy burden for a facially unconstitutional challenge of
3 showing that there is “no set of circumstances” under which AB 28’s tax would be valid.
4 (*Salerno, supra*, 481 U.S. at p. 745.) Plaintiffs also fail to allege facts to support a claim that AB
5 28’s tax is unconstitutional as applied. AB 28’s tax is a presumptively lawful commercial
6 regulation. At *Bruen*’s first step, the plain text of the Second Amendment does not cover the right
7 to sell firearms and ammunition without a tax, and as a tax on retailers, AB 28 does not
8 meaningfully infringe on the rights of citizens to keep and bear arms.

9 Therefore, Plaintiffs’ complaint fails to allege facts to state a cause of action, and
10 amendment cannot resolve the lack of violation of constitutional rights. Because Plaintiffs cannot
11 cure the complaint’s defects by amendment, the demurrer should therefore be sustained without
12 leave to amend. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

13 **CONCLUSION**

14 For the foregoing reasons, the Department and the Director respectfully request that the
15 Court sustain this demurrer and order that this action be dismissed without leave to amend.

1 Dated: October 27, 2025

Respectfully submitted,

2 ROB BONTA
3 Attorney General of California
4 ANNA FERRARI
5 Supervising Deputy Attorney General

6 /s/ Asha Albuquerque
7 ASHA ALBUQUERQUE
8 Deputy Attorney General
9 *Attorneys for Defendants*
10 *California Department of Tax and Fee*
11 *Administration and Trista Gonzalez, in her*
12 *official capacity as Director of the*
13 *California Department of Tax and Fee*
14 *Administration*

DECLARATION OF SERVICE BY E-MAIL and U.S. MAIL

Case Name: ***Poway Weapons & Gear, Inc., et al. v. California Department of Tax and Fee Administration, et al.***

Case No.: **25CV018964**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. My business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. My electronic service address is Darcy.Woo@doj.ca.gov. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 27, 2025, I served the attached

- **DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO COMPLAINT**
- **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' DEMURRER TO COMPLAINT**
- **DEFENDANTS' NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT**
- **DECLARATION OF ASHA ALBUQUERQUE IN SUPPORT OF DEFENDANTS' DEMURRER TO COMPLAINT**
- **[PROPOSED] ORDER SUSTAINING DEFENDANT STATE OF CALIFORNIA'S DEMURRER**

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

C. D. Michel – SBN 144258
Joshua Robert Dale – SBN 209942
Anna M. Barvir – SBN 268728
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 27, 2025, at San Francisco, California.

D. Woo
Declarant

dw
Signature