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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
04/08/2026
By: A. Macias Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION; TRISTA
GONZALES, in her official capacity as
Director of the California Department of Tax
and Fee Administration,

Defendants.

Case No.: 25CV018964

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF SUMMARY JUDGMENT**

Date: August 25, 2026
Time: 9:00 AM
Dept: 54
Judge: The Honorable Christopher E.
Krueger
Reservation ID: 896085839851
Trial Date: Not Set
Action Filed: August 11, 2025

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on August 25, 2026, at 9:00 AM, or as soon thereafter as the
4 matter may be heard, in Department 54 of this Court, located at 813 6th Street Sacramento, CA
5 95814, Plaintiffs Poway Weapons & Gear, Inc. and SGR Ventures LLC (d/b/a Sacramento Gun
6 Range) will and hereby do move this Court for an order granting summary judgment in their favor.

7 This motion is made pursuant to Code of Civil Procedure section 437c, on the ground that
8 there is no genuine issue as to any material fact and Plaintiffs are entitled to judgment as a matter
9 of law because the Second Amendment to the United States Constitution, incorporated against the
10 State under the Fourteenth Amendment, precludes the State's effort to single out for special
11 taxation the exercise of conduct protected by the Second Amendment.

12 This motion is based on this Notice of Motion and Motion, the accompanying
13 Memorandum of Points and Authorities, the Separate Statement of Undisputed Facts, the Exhibits
14 attached thereto, the pleadings and records on file, and any further argument or evidence that may
15 be presented to the Court at the time of the hearing.

16 Pursuant to Local Rule 1.06(A), the Court will make a tentative ruling on the merits of this
17 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for
18 the department may be downloaded from the public portal. If you do not have online access, you
19 may call the dedicated phone number for the department as referenced in the local telephone
20 directory, between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and
21 listen to the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. on the
22 court day before the hearing, no hearing will be held. Tentative Rulings will be available after 2:00
23 p.m. the day before the hearing on the Court's public portal.

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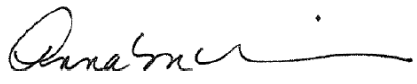
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Any party desiring to be heard must call the Law and Motion Oral Argument Request Line at (916) 874-2615 by 4:00 p.m. the Court day before the hearing and advise opposing counsel of its intention to appear. If no request for appearance is made, the tentative ruling will become the final order of the Court pursuant to Local Rule 1.06 (B).

Dated: April 8, 2026

MICHEL & ASSOCIATES, P.C.



Anna M. Barvir
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs Poway Weapons & Gear, Inc. (“PWG”) and SGR Ventures LLC (d/b/a Sacramento
3 Gun Range) (“SGR”), respectfully submit the following memorandum of points and authorities in
4 support of their motion for summary judgment.

5 **I. INTRODUCTION**

6 The United States Supreme Court has a long history of striking down state efforts to tax the
7 exercise of a fundamental constitutional right. *See Minneapolis Star & Trib. Co. v. Minn. Comm’r*
8 *of Revenue*, 460 U.S. 575, 592–93 (1983). The Supreme Court also has emphasized time and again
9 that the Second Amendment is a fundamental constitutional right that may not be treated as
10 second-class. *See, e.g., McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality op.);
11 *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 70 (2022). It should follow that the
12 government cannot target the Second Amendment with special taxation.

13 Undeterred, the Legislature pushed forward with Assembly Bill 28, which imposes an 11%
14 excise tax on the retail sale of all firearms and ammunition—a naked tax on the exercise of
15 Californians’ Second Amendment rights. *See* SSUF No. 1; Assem. Bill No. 28, 2023–2024 Reg.
16 Sess. (Cal. 2023) (“AB 28”); CAL. REV. & TAX. CODE § 36001 et seq.; CAL. PENAL CODE §§
17 26700, 26705, 30395, 34400.

18 Plaintiffs sued to challenge the constitutionality of the State’s tax on the fundamental right
19 to keep and bear arms protected by the Second Amendment. Plaintiffs PWG and SGR are licensed
20 firearm dealers in California who sell firearms and ammunition to their customers and are
21 taxpayers of the 11% excise tax. SSUF No. 2; CAL. REV. & TAX. CODE § 36011 et seq. They have
22 sold and will continue legally selling firearms and ammunition in California and have been and
23 will continue to be subject to the 11% excise tax absent relief from this Court. SSUF No. 3.
24 Defendants wrongly contend that the State’s taxation of firearms passes constitutional muster. This
25 dispute over the constitutionality of the State’s effort to tax constitutionally protected conduct
26 presents a question of law ripe for this Court’s resolution, and the Court should grant summary
27 judgment in Plaintiffs’ favor. “There being no dispute as to the operative facts here, the question is
28 purely a legal one for [the Court] to resolve.” *Tucci v. Club Mediterranee, S.A.*, 89 Cal. App. 4th

1 180, 185 (2001).

2 The State’s tax on firearms and ammunition violates the Constitution under the United
3 States Supreme Court’s decision in *Bruen*, and the Supreme Court’s broader Second Amendment
4 jurisprudence. An excise tax on firearms and ammunition implicates conduct protected by the
5 Second Amendment’s plain text and is not part of this Nation’s history of firearm regulation. The
6 Second Amendment is not special in this regard. The United States Supreme Court has repeatedly
7 held that conduct protected by a constitutional right cannot be singled out for special taxation. *See*,
8 *e.g.*, *Murdock v. Pennsylvania*, 319 U.S. 105, 114 (1943); *Harper v. Va. Bd. of Elections*, 383 U.S.
9 663, 668 (1966); *Minneapolis Star & Trib. Co.*, 460 U.S. at 591. The State’s excise tax plainly
10 singles out Second Amendment rights for disfavored treatment and thus cannot stand.

11 For these reasons, summary judgment should be granted in favor of Plaintiffs.

12 **II. STATEMENT OF FACTS**

13 **A. The State’s Tax on Firearms**

14 California enacted AB 28 on September 26, 2023. Pls.’ Separate Statement Undisputed
15 Facts (“SSUF”) No. 1 (citing CAL. REV. & TAX CODE § 36011). The excise tax on firearms took
16 effect on July 1, 2024. *Id.* In relevant part, AB 28 adds Section 36011 to the California Revenue
17 and Taxation Code, which imposes an 11% excise tax on the “gross receipts from the retail sale . .
18 . of any firearm, firearm precursor part, or ammunition” sold by “licensed firearms dealers,
19 firearms manufacturers, and ammunition vendors.” SSUF No. 5 (citing CAL. REV. & TAX CODE
20 § 36011). Proceeds from the excise tax “shall be deposited in the Gun Violence Prevention and
21 School Safety Fund,” *id.* (citing CAL. REV. & TAX CODE § 36041), which exists to fund various
22 California political initiatives, *id.* (citing CAL. REV. & TAX CODE § 36005).

23 As the Senate Public Safety Committee recognized during consideration of AB 28, this
24 excise tax will likely “get passed to the consumer via a higher retail price for the good in question”
25 because “nothing in the bill precludes dealers and manufacturers from raising their prices to offset
26 the tax and functionally passing the tax on to the consumers.” *See* SSUF No. 6 (citing Request for
27 Judicial Notice Ex. A—*Firearms and Ammunition: Excise Tax, Hearing on AB-28 Before the Sen.*
28 *Comm. on Pub. Safety*, 2023–2024 Reg. Sess. 9 (Cal. 2023), <https://perma.cc/58FR-3FAH>). In

1 fact, sellers of firearms and ammunition have added a line item to customer receipts reflecting that
2 the 11% tax is passed on to the purchaser of firearms and ammunition. SSUF No. 7 (citing
3 Verified Compl. ¶ 11 (Aug. 11, 2025)).

4 Taxpayers also face the administrative burden of complying with the tax, and risk facing
5 penalties for even accidental non-compliance or delay. *See* SSUF No. 8. For example, AB 28
6 dictates that “[e]ach licensed firearms dealer, firearms manufacturer, or ammunition vendor subject
7 to the excise tax imposed . . . shall register for a certificate of registration with the department
8 using electronic media in a form prescribed by the department” including identifying information
9 about the business and “any other information as the department may require.” SSUF No. 8;
10 Verified Compl. ¶ 37 (citing CAL. REV. & TAX. CODE § 36035). “The department may, after notice
11 and hearing, revoke a certificate of registration for any . . . violation or omission” of AB 28, and
12 will “notify the Department of Justice of the revocation.” *Id.* (citing CAL. REV. & TAX CODE
13 § 36037). Taxpayers such as plaintiffs also face “interest and penalties” beyond the 11% excise
14 tax. *Id.* (citing CAL. REV. & TAX CODE § 36039(a)).

15
16 **B. Plaintiffs Comply with the State’s Tax and Exhausted All State Administrative Remedies**

17 PWG is a licensed dealer of firearms and ammunition, which it sells at its shooting range
18 and retail location in Poway, California. SSUF Nos. 2, 10 (citing Verified Compl. ¶ 10). On July 1,
19 2024, PWG began collecting from its customers California’s 11% excise tax on qualifying sales of
20 firearms, firearm precursor parts, and ammunition by adding the 11% excise tax as a line item on
21 its customers’ receipts. *Id.* (citing Verified Compl. ¶ 11). On October 1, 2024, PWG submitted
22 payment of the 11% excise tax for its sales during the third quarter of 2024 (July 1, 2024 through
23 September 30, 2024) to the California Department of Tax and Fee Administration (“CDTFA”).
24 Livas Decl., Ex. 4. The amount of the payment was \$34,666.00. SSUF No. 11 (citing Ex. 4).

25 On October 22, 2024, PWG sought a refund of that payment. SSUF No. 12 (citing Ex. 5).
26 On November 6, 2024, CDTFA denied PWG’s refund request. *Id.* In an explanation issued on
27 November 19, 2024, the CDTFA confirmed that it “lacks the authority” to refund a tax payment
28 based on an argument that a statute is unconstitutional “unless an appellate court has made a

1 determination that such statute is unconstitutional.” *Id.* (citing Ex. 11). PWG administratively
2 appealed the refund denial. On February 11, 2025, the CDTFA notified PWG that because of
3 litigation over the excise tax, the CDTFA was holding PWG’s administrative “claim for refund
4 case . . . stayed in abeyance pending the litigation.” Livas Decl., Ex. 2.

5 A group of Plaintiffs had previously challenged AB 28 on constitutional grounds in the
6 Superior Court for the County of San Diego on July 2, 2024. SSUF No. 21 (citing Compl., *Jaymes*
7 *v. Maduros*, No. 37-2024-00031147-CU-MC-CTL (Cal. Super. Ct. July 2, 2024)). That suit largely
8 mirrored this one, with plaintiffs who were California buyers of firearms and Second Amendment
9 groups. *Id.* Because the CDTFA would not proceed with the administrative proceedings while
10 litigation was pending, *Jaymes* Plaintiffs requested dismissal on March 21, 2025, which the Court
11 entered on April 1, 2025. PWG informed CDTFA of the dismissal, and the CDTFA resumed the
12 administrative process in April 2025. SSUF No. 22 (citing Ex. 3).

13 CDTFA “fully denied” PWG’s refund claim on May 14, 2025. SSUF No. 13 (citing Ex. 1).
14 PWG has exhausted all administrative remedies. PWG remains subject to the unconstitutional
15 excise tax, submitting payments quarterly as required by state law. SSUF No. 14 (citing Ex. 6). On
16 January 31, 2025, PWG was charged and remitted payment for \$54,990 under the excise tax. *Id.*
17 On March 31, 2025, PWG was charged and remitted payment for \$39,841 under the excise tax.
18 SSUF No. 23 (citing Ex. 12). On June 30, 2025, PWG was charged and remitted payment for
19 \$30,223 under the excise tax. SSUF No. 24 (citing Ex. 13). On September 30, 2025, PWG was
20 charged and remitted payment for \$34,004 under the excise tax. SSUF No. 25 (citing Ex. 14). On
21 December 31, 2025, PWG was charged and remitted payment for \$49,742 under the excise tax.
22 SSUF No. 26 (citing Ex. 15).

23 Plaintiff SGR is also a licensed dealer of firearms and ammunition, which it sells at its
24 shooting range and retail location in Sacramento, California. SSUF No. 15 (citing Verified Compl.
25 ¶¶ 20–21). On July 1, 2024, Plaintiff SGR began collecting California’s 11% excise tax on
26 qualifying sales of firearms, firearm precursor parts, and ammunition by adding the 11% excise tax
27 as a line item on its customers’ receipts. *Id.* On October 2, 2024, Plaintiff SGR submitted payment
28 of the 11% excise tax for its sales during the third quarter of 2024 (July 1, 2024 through September

1 30, 2024) to the CDTFA. SSUF No. 16 (citing Verified Compl. ¶ 22). The amount of the payment
2 was \$24,640.00. *Id.* (citing Ex. 9). On October 22, 2024, Plaintiff SGR sought a refund of that
3 payment of \$24,640.00 from the CDTFA. SSUF No. 17 (citing Ex. 9). On November 19, 2024, the
4 CDTFA recommended full denial of Plaintiff SGR’s refund request, stating: “CDTFA lacks the
5 authority to make such a determination or to order any relief.” *Id.* (citing Ex. 10).

6 On May 14, 2025, CDTFA likewise “fully denied” SGR’s refund request. SSUF No. 18
7 (citing Ex. 7). SGR therefore has completed the administrative refund process. *Id.* SGR remains
8 subject to the unconstitutional excise tax, submitting payments quarterly as required by state law.
9 SSUF No. 14 (citing Verified Compl. ¶ 28). On March 31, 2025, SGR was charged and remitted
10 payment for \$44,950 under the excise tax. SSUF No. 27 (citing Ex. 16). On June 30, 2025, SGR
11 was charged and remitted payment for \$33,065 under the excise tax. SSUF No. 28 (citing Ex. 17).
12 On September 30, 2025, SGR was charged and remitted payment for \$35,857 under the excise tax.
13 SSUF No. 29 (citing Ex. 18). And on December 31, 2025, SGR was charged and remitted payment
14 for \$49,647 under the excise tax. SSUF No. 30 (citing Ex. 19).

15 The CDTFA is charged with administering and collecting the 11% excise tax. SSUF No. 19
16 (citing CAL. REV. & TAX. CODE § 36031(a)). A taxpayer may bring an action “against the board”
17 “[w]ithin 90 days after the mailing of the notice of the board’s action upon a claim for refund.”
18 CAL. REV. & TAX. CODE § 55243. The term “board” refers to the California Department of Tax
19 and Fee Administration. *Id.* § 20(a). Defendant Trista Gonzales is the Director of the CDTFA and
20 enforces the 11% excise tax in her official capacity as Director. SSUF No. 20 (citing CAL. REV. &
21 TAX. CODE § 36031).

22 **III. LEGAL STANDARD**

23 “Summary judgment should be granted when there is no triable issue as to any material fact
24 and the moving party is entitled to judgment as a matter of law.” *Cassady v. Morgan, Lewis &*
25 *Bockius LLP*, 145 Cal. App. 220, 230 (2006), *as modified* (Dec. 21, 2006).

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1 **IV. ARGUMENT**

2 **A. The Supreme Court’s Second Amendment Precedents Render the State’s**
3 **Firearm Tax Unconstitutional.**

4 The Second Amendment provides: “A well regulated Militia, being necessary to the
5 security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S.
6 CONST. amend. II.

7 In *District of Columbia v. Heller*, the Supreme Court confirmed that the Second
8 Amendment to the United States Constitution protects an individual right to keep and bear arms
9 and that a “central component” of that right is “individual self-defense.” 554 U.S. 570, 599 (2008)
10 (emphasis omitted). Following *Heller*, the Supreme Court in *McDonald* held that the Second
11 Amendment right is fundamental and that it is fully applicable to the States via incorporation by
12 the Fourteenth Amendment. *See McDonald*, 561 U.S. at 750 (plurality op.); *id.* at 805 (Thomas, J.,
13 concurring in part and concurring in judgment). And in *Bruen*, the Supreme Court again reaffirmed
14 the fundamental individual right to keep and bear arms and provided further elaboration of the
15 relevant test for courts to determine whether a state action violates that fundamental right.

16 *Bruen*’s test has two parts. The threshold task when confronting a Second Amendment
17 claim is to determine whether “the Second Amendment’s plain text covers an individual’s
18 conduct.” *Bruen*, 597 U.S. at 24. As the Supreme Court has explained, an “arm[]” includes “any
19 thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike
20 another.” *Heller*, 554 U.S. at 581 (quoting *Arms*, 1 A NEW AND COMPLETE LAW DICTIONARY).
21 What is more, the Second Amendment as a matter of plain text covers “all instruments that
22 constitute bearable arms, even those that were not in existence at the time of the founding.” *Bruen*,
23 597 U.S. at 28 (quoting *Heller*, 554 U.S. at 582). The Supreme Court has defined “arms” under the
24 Second Amendment broadly with a “general definition” that includes all “modern instruments that
25 facilitate armed self-defense.” *Id.* The second part of the *Bruen* analysis is historical. “[W]hen the
26 Second Amendment’s plain text covers an individual’s conduct, the Constitution *presumptively*
27 *protects* that conduct.” *Id.* at 17 (emphasis added). “The government must then justify its
28 regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm

1 regulation.” *Id.* at 24.

2 Applying the Supreme Court’s two-part test here, the State’s 11% excise tax on firearms
3 and ammunition implicates the Second Amendment’s plain text because it implicates conduct
4 protected by the Second Amendment’s plain text—the acquisition of protected firearms and
5 ammunition. *Id.* at 1, 33–34. Defendants do not attempt to meet their burden under the historical
6 part of the *Bruen* inquiry. Rather, they attempt to argue that the Second Amendment simply has
7 nothing to say about a state excise tax on the sale of all firearms, firearm parts, and ammunition,
8 and therefore that Plaintiffs’ challenge fails the first part of *Bruen*. That is mistaken.

9 Defendants’ highly circumscribed characterization of the rights and attendant conduct
10 protected by the Second Amendment is wrong. “Constitutional rights . . . implicitly protect those
11 closely related acts necessary to their exercise.” *Luis v. United States*, 578 U.S. 5, 26 (2016)
12 (Thomas, J., concurring in judgment). The Second Amendment protects “the individual right to
13 possess and carry weapons in case of confrontation.” *Heller*, 554 U.S. at 592. To do either of these
14 things, it is necessary that a person first be able to acquire a firearm. Because the right to keep and
15 bear arms “wouldn’t mean much without the ability to acquire arms,” *Nguyen v. Bonta*, 140 F.4th
16 1237, 1241 (9th Cir. 2025) (cleaned up), the Second Amendment covers the right to purchase
17 them. In other words, just as “the First Amendment right to speak would be largely ineffective if it
18 did not include the right to engage in financial transactions that are the incidents of its exercise,”
19 the Second Amendment “right to keep and bear arms would be toothless” “[w]ithout
20 protection for [the] closely related rights” of acquiring firearms and ammunition. *Luis*, 578 U.S. at
21 26–27 (Thomas, J., concurring in judgment) (cleaned up).

22 Indeed, the right to acquire a firearm is the “*most fundamental* prerequisite of legal gun
23 ownership[,]” *Ill. Ass’n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 938 (N.D.
24 Ill. 2014). *See also, e.g., United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010)
25 (recognizing the commercial sale of firearms as protected by *Heller*). Just as “the First
26 Amendment right to speak would be largely ineffective if it did not include the right to engage in
27 financial transactions that are the incidents of its exercise,” the Second Amendment “right to keep
28 and bear arms would be toothless” “[w]ithout protection for [the] closely related rights” of

1 acquiring firearms. *Luis*, 578 U.S. at 26–27 (Thomas, J., concurring in judgment) (cleaned up).

2 The same is true for the commercial sale of ammunition, which is also subject to the State’s
3 taxation regime. Courts have consistently held that the right to possess firearms for protection
4 “implies a corresponding right to obtain the bullets necessary to use them.” *Id.* at 26 (quotation
5 marks omitted); *see also Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Grewal*, No. 3:17-cv-10507-
6 PGS-LHG, 2018 WL 4688345, at *9 (D.N.J. Sep. 28, 2018) (holding that “the Second Amendment
7 protects firearms and the ammunition and magazines that enable arms to fire” because “a
8 regulation eliminating a person’s ability to obtain or use ammunition could . . . make it impossible
9 to use firearms for their core purpose” (cleaned up)); *Duncan v. Becerra*, 265 F. Supp. 3d 1106,
10 1117 (S.D. Cal. 2017), *aff’d*, 742 Fed. App’x 218 (9th Cir. 2018) (“Without protection for the
11 closely related right to keep and bear ammunition magazines for use with the arms designed to use
12 such magazines, ‘the Second Amendment would be toothless.’” (quoting *Luis*, 578 U.S. at 27
13 (Thomas, J., concurring)); *accord United States v. Miller*, 307 U.S. 174, 180 (1939); *Ezell v. City*
14 *of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011).

15 These modern precedents are in accord with historical practice—which has long
16 recognized the right to purchase firearms and ammunition as necessary to the act of keeping and
17 bearing them. “The right to keep arms, necessarily involves the right to purchase them . . . and to
18 purchase and provide ammunition suitable for such arms.” *Andrews v. State*, 50 Tenn. (3 Heisk.)
19 165, 178 (1871); *Heller*, 554 U.S. at 583 n.7 (collecting historical sources).

20 This rule makes sense. Were it otherwise, a state seeking to diminish the Second
21 Amendment could all too easily enact a de facto ban on possessing firearms by prohibiting anyone
22 from buying firearms or the ammunition needed to operate them. Nor is an excise tax on firearms
23 and ammunition any more constitutional under the Second Amendment than is a use tax on a
24 newspaper’s paper and ink under the First. *See Minneapolis Star & Trib.*, 460 U.S. at 591–93.

25 To be clear, Plaintiffs have the authority to assert these rights. The Ninth Circuit has
26 explained that “vendors and those in like positions have been *uniformly permitted* to resist efforts
27 at restricting their operations by acting as advocates of the rights of third parties who seek access
28 to their market or function.” *Teixeira v. County of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (en

1 banc) (quoting *Craig v. Boren*, 429 U.S. 190, 195 (1976)) (emphasis added) (brackets omitted).
2 Thus, for example, a gun store operator may “assert the subsidiary right to acquire arms on behalf
3 of his potential customers.” *Id.*; see also *Carey v. Population Servs., Int’l*, 431 U.S. 678, 683–84
4 (1977); *Ezell*, 651 F.3d at 693, 696 (supplier of firing range facilities had standing to challenge
5 Chicago ordinance banning firing ranges on behalf of potential customers).

6 Because the State’s tax implicates conduct covered by the text of the Second Amendment,
7 the Constitution presumptively protects the conduct the State seeks to regulate, and the State bears
8 the burden to justify its law as consistent with our Nation’s history of firearm regulation. The State
9 cannot do so. Indeed, history and precedent militate strongly *against* any tradition of singling out
10 fundamental, constitutional rights for special taxation. The United States Supreme Court has
11 repeatedly held that the exercise of constitutional rights cannot be singled out or targeted through
12 taxation. See, e.g., *Murdock*, 319 U.S. at 114 (striking down tax on religious activities under the
13 First Amendment’s Free Exercise Clause); *Harper*, 383 U.S. at 668 (striking down \$1.50 poll tax
14 under the Fourteenth Amendment’s Equal Protection Clause); *Minneapolis Star & Trib.*, 460 U.S.
15 at 591 (striking down use tax on the paper and ink products used by a newspaper under the First
16 Amendment’s Free Press Clause). As the Court put it in 1944, law-abiding citizens cannot “be
17 required to pay a tax for the exercise of . . . a high constitutional privilege.” *Follett v. Town of*
18 *McCormick*, 321 U.S. 573, 578 (1944).

19 These decisions underscore a deep principle: the State cannot restrict the exercise of a
20 constitutional right by making it more expensive through targeted taxation. In *Grosjean v.*
21 *American Press Co.*, for example, the Supreme Court struck down a state tax on the publication of
22 advertisements in newspapers or magazines, which, it concluded, amounted to “a deliberate and
23 calculated device in the guise of a tax to limit the circulation of information.” 297 U.S. 233, 250
24 (1936). The Court reaffirmed its holding more recently, in *Minneapolis Star & Tribune*, where it
25 struck down a state tax on the paper and ink used by newspapers. 460 U.S. at 591–93. That tax, the
26 Court explained, was suspect because it “singled out the press for special treatment.” *Id.* at 582.
27 The Supreme Court has also held unconstitutional poll taxes imposed on voting in elections. See
28 *Harper*, 383 U.S. 663.

1 Meanwhile, it is beyond dispute that the right to keep and bear arms is “fundamental to our
2 scheme of ordered liberty” and cannot “be singled out for special—and specially unfavorable—
3 treatment.” *McDonald*, 561 U.S. at 767, 778–79 (emphasis omitted). And, as detailed above, the
4 State’s tax implicates the purchase of protected firearms and ammunition, which is squarely within
5 the protections of the Second Amendment. As the Second Amendment “is not ‘a second-class
6 right, subject to an entirely different body of rules than the other Bill of Rights guarantees,’”
7 *Bruen*, 597 U.S. at 70 (quoting *McDonald*, 561 U.S. at 780), these long-held precedents apply with
8 equal force to California’s excise tax.

9 Moreover, calling upon the courts to decide how much tax is too much would be an
10 exercise in arbitrary line-drawing—something the Supreme Court does not permit when it comes
11 to the taxation of constitutionally protected conduct. *See Harper*, 383 U.S. at 668. If this tax is
12 permitted, there is nothing stopping California from imposing a 50% or even 100% tax on a
13 constitutional right it disfavors—whether it be the right to keep and bear arms, the right to free
14 exercise of religion, or any other fundamental right.

15 As the Supreme Court famously cautioned, “[a] right to tax, without limit or control, is
16 essentially a power to destroy.” *McCulloch v. Maryland*, 17 U.S. 316, 391 (1819). Here, California
17 effectively seeks to diminish a constitutional right by singling it out for special taxation.

18 Nor is it an excuse that the State’s tax on firearms is “only” an additional 11 percent—a
19 significant sum on top of the State’s existing 7.25 percent sales tax. The Illinois Supreme Court’s
20 reasoning in *Boynton v. Kusper* demonstrates why. In striking down a \$10 tax on the issuance of
21 marriage licenses, the Court acknowledged that “[i]t may be argued that the amount of the tax . . .
22 does not . . . impose a significant interference with the fundamental right to marry.” *Boynton v.*
23 *Kusper*, 494 N.E.2d 135, 141 (Ill. 1986). But that was *irrelevant* since once “it is conceded that the
24 State has the *power* to . . . single out [a right] for special tax consideration, there is no limit on the
25 amount of the tax that may be imposed.” *Id.*; *see also Harper*, 383 U.S. at 668 (holding that the
26 government may not tax the right to vote and that “[t]he degree of the discrimination is
27 irrelevant”). Further support is provided by *Minneapolis Star & Tribune*, where the dissent alleged
28 that the challenged use tax was “significantly less burdensome” financially than the generally

1 applicable sales tax that all agreed would have been constitutionally permissible. 460 U.S. at 598
2 (Rehnquist, J., dissenting). The majority nevertheless invalidated the tax, reasoning that it was the
3 *fact* of “differential treatment” of the press, not the relative burden of the tax at any particular time,
4 that was the source of the constitutional infirmity. *Id.* at 583 (majority op.).

5 The Third Circuit’s now-vacated decision in *Koons v. Attorney General of New Jersey* is
6 also instructive. There, a panel of the Third Circuit held that a \$50 fee imposed on handgun-carry-
7 permit applicants, which went beyond defraying the costs of administering the permitting program,
8 was likely unconstitutional. *Koons v. Att’y Gen. N.J.*, 156 F.4th 210, 246–47 (3d Cir. 2025), *reh’g*
9 *en banc granted, vacated by* 162 F.4th 100 (3d Cir. 2025) (mem.). Because the fee served a
10 purpose beyond administration of the licensing program itself, it effectively was a tax targeting
11 constitutional conduct. *Id.* The part of the Third Circuit panel’s decision holding the “fee” likely
12 unconstitutional was unanimous, *see id.* at 274 (Porter, J., concurring the judgment in part and
13 dissenting in part), and the rehearing petitions targeted other aspects of the panel’s ruling, Pls.-
14 Appellees’ Pets. for Reh’g En Banc, *Koons v. Att’y Gen. N.J.*, 162 F.4th 100 (3d Cir. Oct. 8, 2025)
15 (No. 23-2043), ECF Nos. 126, 127. It therefore seems unlikely that the en banc court will disturb
16 it. The Third Circuit’s persuasive opinion in *Koons* stands for the proposition that States may not
17 place a targeted tax on the exercise of protected Second Amendment conduct.

18 Finally, federal taxation on certain firearm-related products cannot justify the State’s excise
19 tax on all firearms and ammunition here. There were no federal firearm taxes before the 20th
20 Century, so they all come too late to establish a tradition of regulation under *Bruen*.

21 Further, federal taxes on firearms are only constitutional to the extent individuals do not
22 have a right to possess the taxed arms under the Second Amendment. In *Heller*, the United States
23 Supreme Court explained that certain aspects of the National Firearms Act (“NFA”) were
24 constitutional where “the *type of weapon at issue* was not eligible for Second Amendment
25 protection[.]”¹ 554 U.S. at 622 (emphasis in original) (discussing *Miller*, 307 U.S. 174). And the
26

27 ¹ The federal National Firearms Act tax has since been limited to only machine guns and
28 “destructive device[s].” *See One Big Beautiful Bill Act*, Pub. L. No. 119-21, 139 Stat. 72, § 70436
(2025) (to be codified at 26 U.S.C. § 5811).

1 Court reasoned that *if* a certain type of firearm *were* protected by the Second Amendment, the
2 NFA’s restrictions—which include taxation—would raise constitutional concerns. *See id.* at 624
3 (explaining that if machineguns were covered by the Second Amendment, “it would mean that the
4 National Firearms Act’s restrictions on machineguns . . . might be unconstitutional”). Here, by
5 contrast, the State’s tax applies to ammunition and *all* firearms, which are indisputably covered by
6 the Second Amendment. Thus, on the Supreme Court’s reasoning, such arms could not be
7 constitutionally taxed. *See id.* at 624–25.

8 **V. CONCLUSION**

9 For the reasons set out above, the State’s 11% excise tax on firearms and ammunition
10 violates the Second and Fourteenth Amendments of the United States Constitution. The tax
11 implicates conduct protected by the Second Amendment’s plain text—acquiring firearms and
12 ammunition—and Defendants will not be able to show that a state tax on firearms is part of this
13 Nation’s history of firearm regulation. These are pure issues of law, and no issues remain for trial.
14 The Court should grant summary judgment.

15 Dated: April 8, 2026

MICHEL & ASSOCIATES, P.C.

17 

18 _____
19 Anna M. Barvir
20 Attorneys for Plaintiffs
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PROOF OF SERVICE

1 STATE OF CALIFORNIA
2 COUNTY OF SACRAMENTO

3 I, Laura Fera, am employed in the City of Long Beach, Los Angeles County, California. I
4 am over the age of eighteen (18) and am not a party to the within action. My business address is
180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

5 On April 8, 2026, I served the foregoing document described as:

6 **PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
7 **AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SUMMARY**
8 **JUDGMENT**

9 on the interested parties in this action by placing

10 the original

11 a true and correct copy

12 thereof by the following means, addressed as follows:

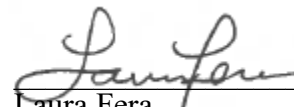
13 Asha Albuquerque
14 Deputy Attorney General
15 455 Golden Gate Ave., Suite 11000
16 San Francisco, CA 94102
17 Asha.Albuquerque@doj.ca.gov
18 *Attorneys for Defendants California*
19 *Department of Tax and Fee Administration*
20 *and Trista Gonzalez*

21 (BY MAIL) As follows: I am “readily familiar” with the firm’s practice of collection and
22 processing correspondence for mailing. Under the practice it would be deposited with the U.S.
23 Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in
24 the ordinary course of business. I am aware that on motion of the party served, service is presumed
25 invalid if postal cancellation date is more than one day after date of deposit for mailing an
26 affidavit.

27 (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic
28 transmission. Said transmission was reported and completed without error.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on April 8, 2026, at Long Beach, California.



Laura Fera