

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
Introduction	7
Argument	8
I. The Complaint Fails to State a Cause of Action Under the Second Amendment To The United States Constitution	8
A. Plaintiffs Cannot Show that the Plain Text of the Second Amendment Covers Them as Retailers or Their Proposed Conduct	8
B. The Challenged Laws Are Presumptively Lawful Regulations on the Commercial Sale of Firearms.....	10
C. The Challenged Laws Do Not Meaningfully Constrain Individuals' Rights to Keep and Bear Arms.....	12
D. The Court Does Not Need to Determine if the Challenged Regulations Are Consistent with the Nation's Historical Tradition of Firearm Regulation	14
E. Plaintiffs Fail to Establish a Claim that the Challenged Laws Impose a Tax on a Fundamental Right	14
II. Defendant Gonzalez Is Not A Proper Defendant.....	16
Conclusion	16

1 **TABLE OF AUTHORITIES**

2 **Page**

3 **CASES**

4 *B&L Prods., Inc. v. Newsom*
5 (9th Cir. 2024) 104 F.4th 108 *passim*

6 *Bauer v. Becerra*
7 (9th Cir. 2017) 858 F.3d 1216..... 13, 15

8 *Beckwith v. Frey*
9 (1st Cir. 2026) 171 F.4th 560..... 11

10 *Boynton v. Kusper*
11 (Ill. 1986) 494 N.E.2d 135, 141 16

12 *Bowman v. Continental Oil Co.*
13 (1921) 256 U.S. 642..... 16

14 *California Rifle & Pistol Assn., Inc. v. Los Angeles County Sheriff's Dept.*
15 (C.D. Cal. 2024) 745 F.Supp.3d 1037 15

16 *Cox v. New Hampshire*
17 (1941) 312 U.S. 569..... 16

18 *District of Columbia v. Heller*
19 (2008) 554 U.S. 570..... 8, 10, 15

20 *Dittus v. Cranston*
21 (1959) 53 Cal.2d 284 11

22 *Doe v. Bonta*
23 (9th Cir. 2024) 101 F.4th 633 8, 9

24 *Ezell v. City of Chicago*
25 (7th Cir. 2011) 651 F.3d 684..... 10

26 *Giambalvo v. Suffolk County, New York*
27 (2d Cir. 2025) 155 F.4th 163..... 11

28 *Hirschfeld v. ATF*
(4th Cir. 2021) 5 F.4th 407 11

King v. CompPartners, Inc.
(2018) 5 Cal.5th 1039 8

Kwong v. Bloomberg
(2d Cir. 2013) 723 F.3d 160..... 15

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

<i>McClain v. Sav-On Drugs</i> (2019) 6 Cal.5th 951	16
<i>McDonald v. City of Chicago, Ill.</i> (2010) 561 U.S. 742	10, 15
<i>McRorey v. Garland</i> (5th Cir. 2024) 99 F.4th 831	11
<i>Murdock v. Pennsylvania</i> (1943) 319 U.S. 105	15
<i>N.Y. State Firearms Assn. v. James</i> (2d Cir. 2025) 157 F.4th 232	10, 11, 13
<i>N.Y. State Rifle & Pistol Assn., Inc. v. Bruen</i> (2022) 597 U.S. 1.	<i>passim</i>
<i>Nat’l Assn. for Gun Rights, Inc. v. City of San Jose</i> (N.D. Cal. 2022) 632 F. Supp. 3d 1088	13
<i>Norton v. Norton’s Estate</i> (1919) 41 Cal.App. 614.....	8
<i>Nguyen v. Bonta</i> (9th Cir. 2025) 140 F.4th 1237.	9
<i>Ortwein v. Schwab</i> (1973) 410 U.S. 656.....	16
<i>People v. Crenshaw</i> (2025) 116 Cal.App.5th 1169	12
<i>People v. Fuiava</i> (2012) 53 Cal.4th 622	11, 12
<i>People v. Hardy</i> (Cal. Ct. App., Apr. 22, 2026, No. 2D CRIM. B343746) 2026 WL 1102265.....	9, 12
<i>Rocky Mountain Gun Owners v. Polis</i> (10th Cir. 2024) 121 F.4th 96	11
<i>Selevan v. N.Y. Thruway Auth.</i> (2d Cir. 2013) 711 F.3d 253.....	16

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
3	<i>Sonzinsky v. United States</i>	
4	(1937) 300 U.S. 506.....	16
5	<i>Teixeira v. County of Alameda</i>	
6	(9th Cir. 2017) 873 F.3d 670	8, 9, 10, 12
7	<i>United States v. Cox</i>	
8	(10th Cir. 2018) 906 F.3d 1170.....	15
9	<i>United States v. Manney</i>	
10	(9th Cir. 2024) 114 F.4th 1048	14
11	<i>United States v. Marzzarella</i>	
12	(3d Cir. 2010) 614 F.3d 85.....	10
13	<i>United States v. Robinson</i>	
14	(11th Cir., Mar. 20, 2025, No. 23-12551) 2025 WL 870981.....	15
15	<i>United States v. Rush</i>	
16	(7th Cir. 2025) 130 F.4th 633	16
17	<i>United States v. Vlha</i>	
18	(9th Cir. 2025) 142 F.4th 1194	10, 12
19	<i>Watterson v. ATF</i>	
20	(E.D. Tex. Mar. 1, 2024, No. 4:23-CV-00080) 2024 WL 897595	13, 14
21	STATUTES	
22	United States Code, Title 28	
23	§ 1914 (a)	16
24	National Firearms Act.....	16
25	Revenue and Taxation Code	
26	§ 36005.....	15
27	§ 36021.....	7
28	§ 36031, subd. (a).....	16
	§ 36041.....	15
	§ 55243.....	16
	Stats. 2023, ch. 231	
	§ 2, subd. (m)	15
	§ 2, subd. (p)	15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

United States Constitution
 First Amendment..... 7, 14, 15
 Second Amendment *passim*
 Fourteenth Amendment..... 14

OTHER AUTHORITIES

Assembly Bill 28 (2023-2024 Reg. Sess.; 2023 Cal. Stat., ch. 231)..... *passim*
Jaymes v. Maduros
 (Cal. Super. Ct. Feb. 18, 2025, No. 37-2024-00031147-CU-MC-CTL) 9

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants, the California Department of Tax and Fee Administration and Director, Trista
3 Gonzalez¹ (the State), respectfully submit this reply brief in support of Defendants’ Demurrer.

4 **INTRODUCTION**

5 The plain text of the Second Amendment does not protect the right of retailers to sell
6 firearms without a tax. Plaintiffs’ opposition relies upon an overly expansive interpretation of the
7 Second Amendment that conflicts with established U.S. Supreme Court precedent. In their view,
8 any state and federal tax on firearms or ammunition that are legal to possess, including a sales tax,
9 would be unconstitutional regardless of the amount. (Plaintiffs’ Opposition (“Opp.”) at pp. 13–
10 14.) But Plaintiffs misunderstand the Second Amendment analysis in several respects.

11 Plaintiffs, two firearm retailers, fail to rebut the showing that they are not “People” within
12 the meaning of the Second Amendment, and that Plaintiffs’ proposed conduct of selling firearms
13 without a tax is not covered by the Second Amendment’s plain text. Further, Plaintiffs fail to
14 allege that the tax meaningfully constrains any individual’s right to keep and bear arms. This law
15 does not prohibit the purchase or sale of firearms. Nor does it prohibit any individual from
16 exercising the core right of keeping or bearing arms for self-defense. To be sure, the law requires
17 firearm retailers whose quarterly gross receipts from sales of firearms, ammunition, and firearm
18 precursor parts amount to more than five thousand dollars to remit an 11% tax. (Assembly Bill 28
19 (2023-2024 Reg. Sess.; 2023 Cal. Stat., ch. 231) (AB 28); Rev. & Tax. Code, § 36021.)² But
20 there is no requirement that individual buyers of firearms or ammunition pay any tax at all.
21 Plaintiffs’ choice to pass on the cost of the tax to their customers is their own decision, and not a
22 violation of any right. Plaintiffs’ reliance on First Amendment cases involving means-end
23 scrutiny of newspapers and poll taxes is simply untenable in the Second Amendment context
24 where means-end scrutiny has been expressly abrogated. As explained in the Demurrer and
25 below, Plaintiffs’ claims fail to state a cause of action, and the Demurrer should be sustained.

26
27 ¹ Plaintiffs mistakenly refer to Defendant Trista Gonzalez as Gonzales in their complaint
and opposition brief. Defendants use the correct spelling of Ms. Gonzalez’s name.

28 ² All statutory citations are to the Revenue and Taxation Code unless otherwise indicated.

1 **ARGUMENT**

2 **I. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION UNDER THE SECOND**
3 **AMENDMENT TO THE UNITED STATES CONSTITUTION**

4 **A. Plaintiffs Cannot Show that the Plain Text of the Second Amendment**
5 **Covers Them as Retailers or Their Proposed Conduct**

6 Plaintiffs’ Opposition fails to establish that Plaintiffs are “People” within the scope of the
7 Second Amendment or that AB 28 regulates conduct protected by the Second Amendment’s plain
8 text. (*N.Y. State Rifle & Pistol Assn., Inc. v. Bruen* (2022) 597 U.S. 1. (*Bruen*); *Doe v. Bonta* (9th
9 Cir. 2024) 101 F.4th 633, 639–40 (*Doe*) [dismissing case where plaintiffs failed to allege that the
10 Second Amendment’s plain text applied].) As an initial matter, the Opposition has not established
11 that the Second Amendment extends to retailers. It offers a generalized argument that the Second
12 Amendment protects the right to acquire firearms but ignores how, under the plain text, that right
13 is held by the acquiror of firearms, rather than the dealer. (Opp. at p. 10; *Teixeira v. County of*
14 *Alameda* (9th Cir. 2017) 873 F.3d 670, 683 (*Teixeira*) (en banc), cert den. (2018) 138 S.Ct. 1988.)
15 In response to this merits issue, Plaintiffs cite *Teixeira*—a standing case—for the proposition that
16 “a gun store operator ‘may assert the subsidiary right to acquire arms on behalf of his potential
17 customers.’” (Opp. at p. 11, citing *Teixeira*, p. 678.) But the complaint does not allege that
18 Plaintiffs challenge the constitutionality of the tax on the ground that it violates the constitutional
19 rights of their third-party customers. (Cf. Compl. ¶¶ 31–48 with Opp. at p. 11.)³ In other words,
20 Plaintiffs’ claim rests solely on their alleged independent right to sell firearms, but “[n]othing in
21 the text of the Amendment, as interpreted authoritatively in [*District of Columbia v. Heller* (2008)
22 554 U.S. 570], suggests the Second Amendment confers an independent right to sell or trade
23 weapons.” (*Teixeira*, p. 683.)

24 Plaintiffs allege a supposed “Catch-22” that “sellers cannot challenge the tax because the
25 right belongs to their customers, and firearm buyers cannot challenge the tax because its

26 ³ Plaintiffs argue in opposition that “the State’s tax *does* burden ordinary, law-abiding
27 adult citizens seeking to use firearms for self-defense by artificially increasing the price of
28 firearms and ammunition. And the long-recognized principle of allowing retailers targeted by a
law to assert the rights of their customers applies.” (Opp. at pp. 5, 11.) These new, unpled
allegations are not properly considered on demurrer. (See *Norton v. Norton’s Estate* (1919) 41
Cal.App. 614, 617; see also *King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1049, fn. 2
[[declining to consider factual allegations made in briefing but not pled in complaint].)

1 incidence is on the sellers.” (Opp. at pp. 11–12.) Plaintiffs’ protestations are grounded in
2 Defendants’ standing arguments made in a separate lawsuit, *Jaymes v. Maduros* (Cal. Super. Ct.
3 Feb. 18, 2025.) No. 37-2024-00031147-CU-MC-CTL, in which Defendants asserted that Plaintiff
4 Poway lacked standing to bring a tax refund action because it sought a refund without alleging to
5 have paid the subject tax or exhausted its administrative remedies with the Department.
6 (*Jaymes*).⁴ However, the issue of standing to bring a tax refund action in *Jaymes* is not at issue
7 here as Defendants do not dispute that Poway has exhausted its administrative remedies. Indeed,
8 Plaintiffs are proceeding with a merits-based challenge here.

9 Plaintiffs wholly disregard the State’s argument that the proposed conduct AB 28 restricts
10 is selling firearms and ammunition without an 11% excise tax. (Demurrer at pp. 14–15.) In
11 defining a plaintiff’s proposed conduct, courts look at “what the plaintiffs wanted to do and what
12 the challenged law prevented them from doing.” (*Doe, supra*, 101 F.4th at p. 639; *B&L Prods.,*
13 *Inc. v. Newsom* (9th Cir. 2024) 104 F.4th 108, 117 & fn.17, cert den. (2025) 145 S.Ct. 1958
14 (*B&L*) [same].) Plaintiffs’ constitutional challenge fails because the Second Amendment does not
15 protect the conduct at issue—an unqualified right for a retailer to sell firearms without a tax.⁵ AB
16 28 thus falls outside the ambit of the Second Amendment.

17 Plaintiffs also fail to establish that the Second Amendment covers the right to sell firearms
18 and ammunition. They allege that the right to keep and bear arms “wouldn’t mean much without
19 the ability to acquire arms.” (Opp. at pp. 10–11, citing *Nguyen v. Bonta* (9th Cir. 2025) 140 F.4th
20 1237, 1241.) To be sure, the ancillary right of purchasers to *acquire* firearms does exist. (*B&L,*
21 *supra*, 104 F.4th at pp. 118–119.) But Plaintiffs offer no authority supporting an ancillary right to
22 *sell* firearms under the Second Amendment. And they ignore California and Ninth Circuit
23 precedent holding the converse is true. (See *People v. Hardy* (Cal. Ct. App., Apr. 22, 2026, No.
24 2D CRIM. B343746) 2026 WL 1102265 *4 [“The Second Amendment is silent as to the sale or
25 purchase of arms.”] (*Hardy*); *Teixeira, supra*, 873 F.3d at p. 683. [“Keep and bear” does not
26 include “sell or trade.”]; see also *id.* at p. 689 [“the act of selling firearms is not part or parcel of

27 ⁴ Due to the plaintiffs’ voluntary dismissal, the *Jaymes* court did not reach these issues.

28 ⁵ Plaintiffs concede they are only raising an as applied challenge. (Opp. at p. 8, fn. 1.)
However, any facial challenge to AB 28 would fail for the same reasons discussed in this section.

1 the right to ‘keep and bear arms’].) Since *Bruen*, federal courts confirmed in multiple cases that
2 “[t]here is not a ‘freestanding right’ to sell firearms that is “wholly detached from any customer’s
3 ability to acquire firearms” (*United States v. Vlha* (9th Cir. 2025) 142 F.4th 1194, 1198, cert.
4 den. (2025) 146 S.Ct. 625, internal quotation omitted (*Vlha*); see also *B&L, supra*, 104 F.4th at p.
5 118 [stating that “the right to sell firearms is not a protected ancillary right” under the Second
6 Amendment]; *N.Y. State Firearms Assn. v. James* (2d Cir. 2025) 157 F.4th 232, 249 (*James*) [“we
7 did not suggest that there is a separate right to sell ammunition under the Second Amendment.”].)

8 Plaintiffs’ contention that the commercial sale of firearms is protected by *Heller* rests on
9 dicta from a non-controlling Third Circuit precedent (Opp. at p. 10, citing *United States v.*
10 *Marzzarella* (3d Cir. 2010) 614 F.3d 85, 92, fn. 8), among other cases that pre-date *Bruen*. (Opp.
11 at p. 11, citing *Ezell v. City of Chicago* (7th Cir. 2011) 651 F.3d 684, 704.) As explained in the
12 Demurrer, the plain text of the Second Amendment does not protect retailers who are not among
13 “the People” as they cannot wear, bear, or carry arms upon their person for self-defense.
14 (Demurrer at pp. 13–14.) Plaintiffs recognize that the Second Amendment “guarantee[s] the
15 individual right to possess and carry weapons in case of confrontation.” (Opp. at p. 10, citing
16 *District of Columbia v. Heller* (2008) 554 U.S. 570, 592.) This individual right does not extend to
17 “those desiring to sell” firearms. (*Teixeira, supra*, 873 F.3d at p. 683.) Because Plaintiffs have not
18 shown their right to sell firearms is protected by the Second Amendment’s plain text and have not
19 asserted their customers’ rights are infringed in their complaint, they have failed to state a claim.
20 Even if they had, Plaintiffs’ argument would fail as a matter of law as described below.

21 **B. The Challenged Laws Are Presumptively Lawful Regulations on the**
22 **Commercial Sale of Firearms**

23 The Supreme Court has repeatedly recognized that its Second Amendment opinions
24 “should not be taken to cast doubt . . . on laws imposing conditions and qualifications on the
25 commercial sale of arms.” (*Heller, supra*, 554 U.S. at pp. 626–27; *McDonald v. City of Chicago,*
26 *Ill.* (2010) 561 U.S. 742, 787; *Bruen, supra*, 597 U.S. at p. 80 (conc. opn. of Kavanaugh, J.) As a
27 tax on retailers’ firearm sales in California, AB 28 imposes a condition or qualification on the
28 commercial sale of firearms. Plaintiffs contend that the tax is not a condition or qualification on

1 the commercial sale of arms because the law does not require sellers to “pass through certain
2 hoops” before being allowed to deal in firearms. (Opp. at p. 12.) But Plaintiffs cite no authority
3 that the “condition or qualification” requirement is so limited. Nor can they.

4 As the Fourth Circuit has held, “a law’s substance, not its form, determines whether it
5 qualifies as a condition on commercial sales.” (*Hirschfeld v. ATF* (4th Cir. 2021) 5 F.4th 407, 416
6 (citation omitted), *vacated on other grounds*, (4th Cir. 2021) 14 F.4th 322.) Indeed, courts have
7 recognized a wide array of regulations as conditions or qualifications on the commercial sale of
8 firearms, including many that impose conditions at the point of sale. (See *B&L, supra*, 104 F.4th
9 at p. 119 [holding law barring firearm sales on state property is a presumptively lawful condition
10 or qualification]; *James, supra*, 157 F.4th at pp. 245–46 [holding law requiring firearms retailer to
11 conduct background checks on potential ammunition purchasers, imposing a fee on the retailer
12 for utilizing the state’s background check system, and penalizing retailers for failure to comply is
13 a presumptively lawful condition or qualification]; *Rocky Mountain Gun Owners v. Polis* (10th
14 Cir. 2024) 121 F.4th 96, 122 [holding minimum age requirement of 21 is a presumptively lawful
15 condition or qualification]; *Beckwith v. Frey* (1st Cir. 2026) 171 F.4th 560, 568 [holding 72-hour
16 waiting period prior to firearms sales is a presumptively lawful condition or qualification];
17 *Giambalvo v. Suffolk County, New York* (2d Cir. 2025) 155 F.4th 163, 181 [holding firearms
18 training requirement is a presumptively lawful condition or qualification]; and *McRorey v.*
19 *Garland* (5th Cir. 2024) 99 F.4th 831, 838–39 [holding expanded background checks for 18-to-
20 20-year-olds is a presumptively lawful condition or qualification].)

21 Moreover, AB 28 is presumed constitutional under California precedent. (*People v.*
22 *Fuiava* (2012) 53 Cal.4th 622, 696.) California courts have long held that “[c]ourts should
23 exercise judicial restraint in passing upon the acts of coordinate branches of government; the
24 presumption is in favor of constitutionality, and the invalidity of the legislation must be clear
25 before it can be declared unconstitutional.” (*Dittus v. Cranston* (1959) 53 Cal.2d 284, 286.)
26 Plaintiffs, having elected to press their federal law claims in superior court, attempt to sidestep
27 this bedrock legal principle by arguing, incorrectly, that the State’s precedents concern claims
28 arising solely under the state Constitution and are thus distinguishable. (See Opp. at p. 9;

1 Demurrer at pp. 11–12; citing *People v. Fuiava*, *supra*, 53 Cal.4th at p. 696 [concerning federal
2 constitutional due process challenge to state law].) Plaintiffs are doubly wrong. *Fuiava* and
3 *Falsetta* both involved federal constitutional claims. And even when assessing Second
4 Amendment challenges, California courts have consistently held that state laws are presumed not
5 to violate the Second Amendment, and that the challenger bears the burden of showing otherwise.
6 (See, e.g., *People v. Crenshaw* (2025) 116 Cal.App.5th 1169, 1174–75, review den. Mar. 18,
7 2026.) Accordingly, AB 28 is a presumptively lawful condition on the commercial sale of arms.

8 **C. The Challenged Laws Do Not Meaningfully Constrain Individuals’ Rights**
9 **to Keep and Bear Arms**

10 Plaintiffs fail to establish a claim for relief because they do not allege AB 28 meaningfully
11 constrains the right to keep and bear arms. (See *Hardy*, *supra*, 2026 WL 1102265 at p. *4 [citing
12 *B&L*, concluding that “inconveniences” like fees and travel to obtain a firearm “do not rise to the
13 level of a meaningful constraint on the right to keep and bear arms”].) Indeed, they do not
14 respond to the entirety of the State’s meaningful constraint demurrer section, thereby tacitly
15 conceding it. Under the first step of the *Bruen* framework, laws regulating the ancillary right of
16 acquiring firearms “only implicates the Second Amendment in limited circumstances.” (*B&L*,
17 *supra*, 104 F.4th at p. 118.) The presumption of lawfulness that ordinarily applies to conditions
18 and qualifications on the commercial sale of arms is rebutted only if the law meaningfully
19 constrains “the right to keep and bear arms for the purpose of self-defense.” (*Id.* at p. 19.) A law
20 “meaningfully constrains” the right to keep and bear arms only if it “effectively constrain[s]
21 ‘access’ to firearms or ammunition.” (*Teixeira*, *supra*, 873 F.3d at p. 680.) California courts also
22 assess whether the regulation meaningfully constrains the core individual possessory right.
23 (*Hardy*, at p. *4, citing *Vlha*, *supra*, 142 F.4th at p. 1198.) In *Hardy*, the court held a California
24 law requiring that firearm sales between two unlicensed individuals be processed by a licensed
25 dealer did not meaningfully constrain the right to keep and bear arms when it regulated the sale,
26 loan, and transfer of a firearm and included fees of less than \$50. (*Ibid.*)

27 Plaintiffs contend in their Opposition that California’s tax “burdens ordinary, law-abiding
28 adult citizens seeking to use firearms for self-defense by increasing the price of firearms and

1 ammunition.” (Opp. at p. 11.) But they do not make this allegation in their complaint. And, they
2 have failed to identify any adult law-abiding citizens impacted by the price increases or specified
3 the firearms these individuals are attempting to access. Even if this Court were to consider this
4 new, unpled theory, it would not hold water. Plaintiffs have not alleged that any price increases
5 attributed to AB 28’s tax effectively constrain individuals’ access to firearms or ammunition. (Cf.
6 *Bauer v. Becerra* (9th Cir. 2017) 858 F.3d 1216, 1222, cert den. (2018) 583 U.S. 1116 (*Bauer*) [a
7 \$19 fee on firearms transfers does not “ha[ve] any impact on the plaintiffs’ actual ability to obtain
8 and possess a firearm”].) The fact that Plaintiffs have paid and continue to pay taxes on firearms
9 and ammunition sales (Opp. at p. 5) means that their customers continue to purchase and acquire
10 firearms and ammunition in spite of AB 28. As retailers, Plaintiffs set the prices for the firearms
11 and ammunition they sell and decided to pass on the tax to their customers. Plaintiffs further
12 ignore precedent that a seller’s discretionary decision to pass firearms fees to the purchaser
13 cannot be attributed as state action. (Demurrer at p. 17, citing *James, supra*, 157 F.4th at p. 248.)

14 By Plaintiffs’ logic, any law that results in even a nominal increase in the price of firearms
15 would burden the right to use firearms for self-defense, whether it be a sales tax, tariff, import
16 duty, or other regulation that imposes costs on commercial sales in California. But that cannot be
17 the case. *Bruen* provided specific guidance on evaluating fees in Second Amendment cases: fees
18 violate the Second Amendment if they are “exorbitant” and “deny ordinary citizens their right to
19 public carry.” (*Bruen, supra*, 597 U.S. at p. 38, fn. 9; see *Nat’l Assn. for Gun Rights, Inc. v. City*
20 *of San Jose* (N.D. Cal. 2022) 632 F. Supp. 3d 1088, 1105 (*Bruen* “tacitly acknowledged that
21 reasonable and non-exorbitant fees are permissible”). Plaintiffs have not shown that AB 28’s 11
22 percent tax is exorbitant or denies ordinary citizens the right to bear arms.

23 Plaintiffs claim that if AB 28’s tax is upheld under the Second Amendment, it would open
24 the door to additional taxes that are many orders of magnitude higher. (Opp. at p. 14.) That
25 hypothetical contention is not at issue here. And, any future tax would be evaluated under *Bruen*
26 on its own merits. By not ruling out constitutional challenges to firearms regulations that present
27 “abusive ends” or “exorbitant fees,” the Supreme Court already imposes guardrails to foreclose
28 that conjecture. (*Bruen, supra*, 597 U.S. at p. 38, fn. 9; see, e.g., *Watterson v. ATF* (E.D. Tex.

1 Mar. 1, 2024, No. 4:23-CV-00080) 2024 WL 897595, *19 [the challenger “cannot show that a
2 \$200 tax is so exorbitant that he is effectively denied his Second Amendment right to bear
3 arms.”].) AB 28’s modest 11 percent tax is neither exorbitant nor abusive, nor have Plaintiffs
4 alleged it is so. Therefore, Plaintiffs have failed to show that AB 28 is a meaningful constraint to
5 the right to keep and bear arms for the purpose of self-defense.

6 **D. The Court Does Not Need to Determine if the Challenged Regulations Are**
7 **Consistent with the Nation’s Historical Tradition of Firearm Regulation**

8 Since Plaintiffs have failed to meet their burden at step one of *Bruen*, the Court need not reach
9 the second step. *Bruen* did not hold every analysis of a firearms regulation requires the court to
10 proceed to *Bruen* step two.⁶ (*United States v. Manney* (9th Cir. 2024) 114 F.4th 1048, 1052, cert.
11 den., 145 S. Ct. 1151 (2025).) Commercial regulations are subject to historical analysis under
12 *Bruen* if—and only if—plaintiffs first demonstrate that the challenged regulation “meaningfully
13 impairs an individual’s ability to access firearms.” (*B&L, supra*, 104 F.4th at p. 119.)
14 “[O]therwise, the Second Amendment is not implicated” and a plaintiff’s challenge “necessarily
15 fails.” (*Id.* at pp. 117–18.) As a commercial regulation, California’s firearms tax is presumptively
16 constitutional. (See Argument I, (B).) And, because Plaintiffs have failed to adequately rebut the
17 presumption of AB 28’s constitutionality, the historical analysis is not yet at issue.

18 **E. Plaintiffs Fail to Establish a Claim that the Challenged Laws Impose a Tax**
19 **on a Fundamental Right**

20 Plaintiffs contend that AB 28 violates the Second Amendment because the tax it imposes
21 “singles out Second Amendment rights for disfavored treatment.” (Opp. at pp. 13–14.) The
22 Supreme Court did not apply these fee jurisprudence principles to Second Amendment challenges
23 before *Bruen*, and the argument is foreclosed following *Bruen*, which made clear that text and
24 history control, not the means-end scrutiny used in the First and Fourteenth Amendment cases
25 that Plaintiffs cite. (Opp. at p. 13.) The means-end scrutiny analysis requires courts to weigh the
26 importance of the government’s interest and the means the government uses to achieve that

27 _____
28 ⁶ The State has the burden of proof under *Bruen* Step 2, and the right to argue it if this case reaches summary judgment is expressly reserved.

1 interest. But the Supreme Court expressly disavowed means-end scrutiny in *Bruen*. (*Bruen*,
2 *supra*, 597 U.S. at 19 [“*Heller* and *McDonald* do not support applying means-end scrutiny in the
3 Second Amendment context.”].) And, several jurisdictions expressly declined applying fee
4 jurisprudence principles to fees in the Second Amendment context. (See, e.g., *United States v.*
5 *Robinson* (11th Cir., Mar. 20, 2025, No. 23-12551) 2025 WL 870981, at *6 [declining to apply
6 First Amendment fee jurisprudence because it involves means-end scrutiny that conflicts with the
7 established Second Amendment framework.]; *California Rifle & Pistol Assn., Inc. v. Los Angeles*
8 *County Sheriff’s Dept.* (C.D. Cal. 2024) 745 F.Supp.3d 1037, 1061–1063 [same]; *Bauer, supra*,
9 858 F.3d at p. 1216 [in upholding a \$19 fee on firearms transfers, the court recognized “we need
10 not—and do not—decide whether First Amendment fee jurisprudence applies here”].)

11 Even if this Court were to apply First Amendment fee jurisprudence in the Second
12 Amendment context, Plaintiffs still fail to state a claim for relief. Plaintiffs ignore the fact that the
13 Supreme Court has recognized that fees that implicate First Amendment rights may include costs
14 “incident to the . . . maintenance of public order in the matter licensed.” (*Cox v. New Hampshire*
15 (1941) 312 U.S. 569, 577; see *Murdock v. Pennsylvania* (1943) 319 U.S. 105, 113–14 [fees may
16 reflect “expenses of policing the activities in question”].)

17 Here, the AB 28 tax funds gun violence prevention and victim service programs, which
18 are “incident” to the “maintenance of public order” through efforts to mitigate the collateral
19 harms associated with firearm and ammunition sales and the fact that retailers profit from the sale
20 of both lawfully and unlawfully used firearms and ammunition alike. (§§ 36005, 36041; Stats.
21 2023, ch. 231, § 2(m), (p).) California’s AB 28 tax is therefore similar to the fees upheld in the
22 few pre-*Bruen* or out-of-state Second Amendment cases in which First Amendment fee
23 jurisprudence was applied. (See *Bauer, supra*, 858 F.3d at p. 1226 [assuming, but not deciding
24 that fee jurisprudence applied, holding that a portion of the fee for all firearm sales that was used
25 for ongoing enforcement costs was permissible under *Murdock* and *Cox*]; *Kwong v. Bloomberg*
26 (2d Cir. 2013) 723 F.3d 160, 165–69, cert. den. (2014) 572 U.S. 1149. [upholding \$340 handgun
27 licensing fee as it was designed to defray (and did not exceed) the administrative costs of
28 regulating the protected activity and did not place more than a marginal burden].)

1 While Plaintiffs also point to an Illinois court’s repeal of a marriage tax that did not
2 interfere with the right to marriage, they fail to explain what relevance this has to their Second
3 Amendment claim. (Opp. at p. 15, citing *Boynton v. Kusper* (Ill. 1986) 494 N.E.2d 135, 141.)
4 Plaintiffs also ignore a longstanding constitutional tradition of allowing fees in a variety of
5 contexts that implicate fundamental rights. For example, there is a fundamental constitutional
6 right to sue and to access the courts, but federal law requires civil plaintiffs to pay to do so. (See
7 28 U.S.C. § 1914(a); cf. *Ortwein v. Schwab* (1973) 410 U.S. 656 (civil filing fees do not violate
8 due process).) Additionally, courts have upheld the constitutionality of reasonable tolls on roads
9 and bridges and excise taxes on gasoline, despite their impact on the fundamental constitutional
10 right to travel. (See, e.g., *Selevan v. N.Y. Thruway Auth.* (2d Cir. 2013) 711 F.3d 253, 257–61;
11 *Bowman v. Continental Oil Co.* (1921) 256 U.S. 642, 648–49.) And, the federal National
12 Firearms Act tax has consistently survived constitutional challenges. (See, e.g., *Sonzinsky v.*
13 *United States* (1937) 300 U.S. 506; *United States v. Rush* (7th Cir. 2025) 130 F.4th 633, cert. den.
14 (2025) 146 S.Ct. 985; *United States v. Cox* (10th Cir. 2018) 906 F.3d 1170.)

15 Because the means-end scrutiny cases that Plaintiffs reference are incompatible with *Bruen*,
16 they should not be applied in this case. Fees and taxes in the Second Amendment context have
17 long been upheld, and Plaintiffs show no justification for departing from well-established
18 precedent. Plaintiffs thus fail to state a claim for relief.

19 **II. DEFENDANT GONZALEZ IS NOT A PROPER DEFENDANT**

20 Although Plaintiffs concede that the Director is not a proper defendant with respect to their
21 tax refund claim, which is directed at CDTFA (Opp. at p. 16), they contend that she is made a
22 proper defendant through their prayer for declaratory and injunctive relief. This is not the case.
23 Section 55243 requires that an action for refund of excise tax be brought against the Department.
24 (§ 55243; *McClain v. Sav-On Drugs* (2019) 6 Cal.5th 951, 957.) Although Plaintiffs reference
25 Section 36031(a), that statute provides no authority for the Director to provide declaratory and
26 injunctive relief. Accordingly, Director Gonzalez should be dismissed from this action.

27 **CONCLUSION**

28 This Court should sustain Defendants’ demurrer.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: May 6, 2026

Respectfully submitted,

ROB BONTA
Attorney General of California
ANNA FERRARI
Supervising Deputy Attorney General

/s/ Asha Albuquerque
ASHA ALBUQUERQUE
Deputy Attorney General
Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE BY E-MAIL

Case Name: **POWAY WEAPONS & GEAR, INC. and SGR VENTURES LLC (D/B/A SACRAMENTO GUN RANGE) v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION; TRISTA GONZALEZ**
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.

On May 6, 2026, I served the attached:

- **DEFENDANTS’ REPLY IN SUPPORT OF DEMURRER TO PLAINTIFFS’ COMPLAINT**

by transmitting true copies via electronic mail, addressed as follows:

C. D. Michel, CEO, Founding Partner
Anna M. Barvir, Partner
Tiffany D. Chevront, Managing Partner
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802
Emails: cmichel@michellawyers.com; ABarvir@michellawyers.com;
TChevront@michellawyers.com

David H. Thompson,* Managing Partner
Peter A. Patterson,* Partner
Megan M. Wold,* Partner
Nicholas A. Varone,* Associate
Athanasia O. Livas,* Associate
COOPER & KIRK, PLLC
1523 New Hampshire Ave., N.W.
Washington, D.C. 20036
Emails: dthompson@cooperkirk.com; ppatterson@cooperkirk.com;
mwold@cooperkirk.com; nvarone@cooperkirk.com; alivas@cooperkirk.com

*Admitted *pro hac vice*

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

Executed on May 6, 2026, at San Francisco, California.

/s/ Darcy Woo