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*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

Lana Rae Renna; Danielle Jaymes;  
Laura Schwartz; Michael Schwartz;  
John Klier; Justin Smith; John Phillips;  
Cheryl Prince; Darin Prince; Ryan  
Peterson; PWGG, L.P.; North County  
Shooting Center, Inc.; Gunfighter  
Tactical, LLC; Firearms Policy  
Coalition, Inc.; San Diego County Gun  
Owners PAC; Citizens Committee for  
the Right to Keep and Bear Arms; and  
Second Amendment Foundation,  
Plaintiffs,

vs.

Robert Bonta, Attorney General of  
California; and Blake Graham,<sup>1</sup>  
Director of the California Department  
of Justice Bureau of Firearms,  
Defendants.

Case No.: 20-cv-2190-DMS-DEB

**THIRD AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

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<sup>1</sup> Blake Graham is substituted for Luis Lopez. *See* Fed. R. Civ. P. 25(d).

1 Plaintiffs Lana Rae Renna, Danielle Jaymes, Laura Schwartz, Michael  
 2 Schwartz, John Klier, Justin Smith, John Phillips, Cheryl Prince, Darin Prince, and  
 3 Ryan Peterson (collectively the “Individual Plaintiffs”), PWGG, L.P., North County  
 4 Shooting Center, Inc., and Gunfighter Tactical, LLC, (collectively, the “Retailer  
 5 Plaintiffs”), Firearms Policy Coalition, Inc., San Diego County Gun Owners PAC,  
 6 Citizens Committee for the Right to Keep and Bear Arms, and Second Amendment  
 7 Foundation (collectively the “Institutional Plaintiffs”) (altogether collectively  
 8 “Plaintiffs”), by and through counsel of record, bring this complaint for injunctive  
 9 and declaratory relief against Individual Defendants California Attorney General  
 10 Robert Bonta and California Department of Justice Bureau of Firearms Director  
 11 Blake Graham (collectively “Defendants”), and allege as follows:

## 12 **INTRODUCTION**

13 1. The Second Amendment to the United States Constitution guarantees  
 14 “the right of the people to keep and bear Arms.” U.S. CONST. AMEND. II. Plaintiffs,  
 15 and all similarly situated members of Institutional Plaintiffs, who are all eligible to  
 16 exercise their Second Amendment rights, wish to keep and bear constitutionally  
 17 protected arms for self-defense and other lawful purposes.

18 2. But because of Defendants’ enforcement of the laws, regulations,  
 19 policies, practices, and customs underlying the State of California’s ban on the  
 20 purchase (Cal. Penal Code §§ 31900, *et seq.* and 32000, *et seq.*)<sup>2</sup> of common and  
 21 constitutionally protected handguns that the State deems presumptively “unsafe” and  
 22 thus illegal for commercial sale under its “roster” of “Handguns Certified for Sale”  
 23 (“Handgun Roster”), Plaintiffs, and all similarly situated members of Institutional  
 24 Plaintiffs, cannot purchase new constitutionally protected arms without suffering  
 25 criminal liability (the “Handgun Ban”), in violation of the Second and Fourteenth  
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27 <sup>2</sup> All Penal Code references are to the California Penal Code except where otherwise  
 28 indicated.

1 Amendments to the United States Constitution.

2 3. In *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, the United  
3 States Supreme Court expressly rejected all interest balancing and the Ninth  
4 Circuit’s prior “two-step” approach in the context of Second Amendment claims.

5 4. Indeed, “*Heller* and *McDonald* do not support applying means-end  
6 scrutiny in the Second Amendment context. Instead, the government must  
7 affirmatively prove that its firearms regulation is part of the historical tradition that  
8 delimits the outer bounds of the right to keep and bear arms.” 142 S. Ct. at 2127.  
9 Ultimately, “*Heller* ... demands a test rooted in the Second Amendment’s text, as  
10 informed by history.” *Id.*

11 5. *Bruen* did not create a new test but instead applied the very test the  
12 Court established in *Heller* in 2008. “The test that we set forth in *Heller* and apply  
13 today requires courts to assess whether modern firearms regulations are consistent  
14 with the Second Amendment’s text and historical understanding.” *Id.*, at 2131.

15 6. “*Heller*’s methodology centered on constitutional text and history.  
16 Whether it came to defining the character of the right (individual or militia  
17 dependent), suggesting the outer limits of the right, or assessing the constitutionality  
18 of a particular regulation, *Heller* relied on text and history. It did not invoke any  
19 means-end test such as strict or intermediate scrutiny.” *Id.* at 2128-29.

20 7. The plain text of the Second Amendment covers the conduct Plaintiffs,  
21 and all similarly situated members of Institutional Plaintiffs, wish to engage in  
22 (“keep and bear arms”) and the arms they wish to keep and bear. *Id.* at 2132 (“the  
23 Second Amendment extends, prima facie, to all instruments that constitute bearable  
24 arms”).

25 8. Since the conduct is covered by the Second Amendment’s plain text,  
26 the government must justify its regulations as consistent with this Nation’s tradition  
27 of firearm regulation.

28 9. “When the Second Amendment’s plain text covers an individual’s

1 conduct, the Constitution presumptively protects that conduct. To justify its  
2 regulation, the government . . . must demonstrate that the regulation is consistent  
3 with this Nation’s tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2126.

4 10. *Heller* has already established the relevant contours of the tradition:  
5 Bearable arms that are presumptively protected by the Second Amendment cannot  
6 be banned unless they are both dangerous *and* unusual. *District of Columbia v.*  
7 *Heller*, 554 U.S. 570, 627 (2008).

8 11. And the Second Amendment’s “reference to ‘arms’ does not apply  
9 ‘only [to] those arms in existence in the 18th century.’ ” *Bruen*, 142 S. Ct. at 2132  
10 (quoting *Heller*, 554 U.S. at 582). “Just as the First Amendment protects modern  
11 forms of communications, and the Fourth Amendment applies to modern forms of  
12 search, the Second Amendment extends, *prima facie*, to all instruments that  
13 constitute bearable arms, even those that were not in existence at the time of the  
14 founding.” *Id.* (citations omitted).

15 12. “Semiautomatic weapons,” such as those proscribed under the Handgun  
16 Ban, “traditionally have been widely accepted as lawful possessions.” *Staples v.*  
17 *United States*, 511 U.S. 600, 612 (1994)).

18 13. And “[w]hatever the likelihood that handguns were considered  
19 dangerous and unusual during the colonial period, they are indisputably in common  
20 use for self-defense today. They are, in fact, the quintessential self-defense weapon.”  
21 *Bruen*, 142 S. Ct. at 2143 (quoting *Heller*, 554 U.S. at 629) (cleaned up).

22 14. “Thus, even though the Second Amendment’s definition of ‘arms’ is  
23 fixed according to its historical understanding, that general definition covers modern  
24 instruments that facilitate armed self-defense.” *Id.* (citing *Caetano v. Massachusetts*,  
25 577 U.S. 411, 411-412 (2016) (*per curiam*), concerning stun guns).

26 15. In *Bruen*, the Supreme Court made clear that the Ninth Circuit’s former  
27 two-step approach and interest-balancing applied in *Peña v. Lindley*, 898 F.3d 969  
28 (9th Cir. 2018), which previously upheld a prior version of some of the laws

1 challenged herein, are inapplicable and improper in Second Amendment cases.

2 16. In this case, the analysis is straightforward: Plaintiffs, and all similarly  
3 situated members of Institutional Plaintiffs, are not prohibited from exercising their  
4 right to keep and bear arms. The Second Amendment's text covers the conduct  
5 Plaintiffs, and all similarly situated members of Institutional Plaintiffs, wish to  
6 engage in and the arms they wish to acquire and possess. The arms that Plaintiffs,  
7 and all similarly situated members of Institutional Plaintiffs, wish to acquire but that  
8 the State seeks to ban are not dangerous and unusual today and are in fact in common  
9 use for lawful purposes. There is no analogous history supportive of the State's ban.  
10 Under the Supreme Court's precedents, the constitutionally relevant history, and the  
11 proper analysis, Plaintiffs, and all similarly situated members of Institutional  
12 Plaintiffs, must prevail.

### 13 **PARTIES**

#### 14 **Individual Plaintiffs**

##### 15 ***Plaintiff Renna***

16 17. Plaintiff Lana Rae Renna is a natural person and a citizen of the State  
17 of California, residing in San Diego County, California. Plaintiff Renna is not  
18 disqualified from exercising Second Amendment rights nor prohibited under state or  
19 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff  
20 Renna is a member and supporter of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

21 18. Plaintiff Renna has a damaged tendon in her right thumb that impacts  
22 her ability to apply physical force. The Smith & Wesson M&P® 380 SHIELD™  
23 EZ® is specifically designed for those with limited hand strength. On the website  
24 for the Smith & Wesson M&P® 380 SHIELD™ EZ®, online at [https://www.smith-](https://www.smith-wesson.com/firearms/mp-380-shield-ez-0)  
25 [wesson.com/firearms/mp-380-shield-ez-0](https://www.smith-wesson.com/firearms/mp-380-shield-ez-0), it states that the firearm is “Built for  
26 personal protection and every-day carry, the M&P380 Shield EZ is chambered in  
27 380 Auto and is designed to be easy to use, featuring an easy-to-rack slide, easy-to-  
28 load magazine, and easy-to-clean design. Built for personal and home protection, the

1 innovative M&P380 Shield EZ pistol is the latest addition to the M&P M2.0 family  
 2 and provides an easy-to-use protection option for both first-time shooters and  
 3 experienced handgunners alike.” The Smith & Wesson M&P® 380 SHIELD™ EZ®  
 4 that Plaintiff Renna wishes to purchase is a constitutionally protected handgun that  
 5 is in common use for self-defense and other lawful purposes and widely sold and  
 6 possessed outside of California.

7 19. But for the Handgun Ban and Defendants’ active enforcement thereof,  
 8 Plaintiff Renna would, for self-defense and other lawful purposes, purchase new  
 9 from a licensed retailer a constitutionally protected handgun not currently on or  
 10 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,  
 11 including but not limited to a Smith & Wesson M&P® 380 SHIELD™ EZ®.

12 ***Plaintiff Jaymes***

13 20. Plaintiff Danielle Jaymes is a natural person and a citizen of the State  
 14 of California, residing in San Diego County, California. Plaintiff Jaymes is not  
 15 disqualified from exercising Second Amendment rights nor prohibited under state or  
 16 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff  
 17 Jaymes possesses a valid COE issued by the Defendants’ Department of Justice  
 18 Bureau of Firearms. Plaintiff Jaymes is a member and supporter of Plaintiffs FPC,  
 19 SDCGO, CCRKBA, and SAF.

20 21. But for the Handgun Ban and Defendants’ active enforcement thereof,  
 21 Plaintiff Jaymes would, for self-defense and other lawful purposes, purchase new  
 22 from a licensed retailer a constitutionally protected handgun not currently on or  
 23 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,  
 24 including but not limited to a Sig 365, G43X, Glock 19 Gen5, Sig P320, and/or  
 25 Nighthawk Lady Hawk, which is a constitutionally protected handgun in common  
 26 use for self-defense and lawful purposes.

27 ***Plaintiff L. Schwartz***

28 22. Plaintiff Laura Schwartz (“L. Schwartz”) is a natural person and a

1 citizen of the State of California, residing in San Diego County, California. Plaintiff  
 2 L. Schwartz is not disqualified from exercising Second Amendment rights nor  
 3 prohibited under state or federal law from possessing, receiving, owning, or  
 4 purchasing a firearm. Plaintiff L. Schwartz holds an active license to carry a  
 5 concealed weapon (“CCW”) issued by her county sheriff, after proving “good cause”  
 6 and “good moral character” to her licensing authority, successfully completing a  
 7 course of training on the law and firearms proficiency under California Penal Code  
 8 section 26165, and passing an extensive Live Scan-based background check and  
 9 placement into the State’s system for monitoring law enforcement contact, arrests,  
 10 and criminal convictions (“Rap Back”). Plaintiff L. Schwartz is a member and  
 11 supporter of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

12 23. But for the Handgun Ban and Defendants’ active enforcement thereof,  
 13 Plaintiff L. Schwartz would, for self-defense and other lawful purposes, purchase  
 14 new from a licensed retailer a constitutionally protected handgun not currently on or  
 15 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,  
 16 including but not limited to a Glock 19 Gen5 and/or Springfield Armory Hellcat,  
 17 which are constitutionally protected handguns in common use for self-defense and  
 18 lawful purposes.

19 ***Plaintiff M. Schwartz***

20 24. Plaintiff Michael Schwartz (“M. Schwartz”) is a natural person and a  
 21 citizen of the State of California, residing in San Diego County, California. Plaintiff  
 22 M. Schwartz is not disqualified from exercising Second Amendment rights nor  
 23 prohibited under state or federal law from possessing, receiving, owning, or  
 24 purchasing a firearm. Plaintiff M. Schwartz holds an active license to carry a  
 25 concealed weapon (“CCW”) issued by his county sheriff, after proving “good cause”  
 26 and “good moral character” to his licensing authority, successfully completing a  
 27 course of training on the law and firearms proficiency under California Penal Code  
 28 section 26165 and passing an extensive Live Scan-based background check and



1 placement into the State’s system for monitoring law enforcement contact, arrests,  
 2 and criminal convictions (“Rap Back”). Plaintiff M. Schwartz is the Executive  
 3 Director of Plaintiff San Diego County Gun Owners PAC. Plaintiff M. Schwartz is  
 4 a member and supporter of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

5 25. But for the Handgun Ban and Defendants’ active enforcement thereof,  
 6 Plaintiff M. Schwartz would, for self-defense and other lawful purposes, purchase  
 7 new from a licensed retailer a constitutionally protected handgun not currently on or  
 8 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,  
 9 including but not limited to a Glock 19 Gen5 and/or Springfield Armory Hellcat,  
 10 which are constitutionally protected handguns in common use for self-defense and  
 11 other lawful purposes.

12 ***Plaintiff Klier***

13 26. Plaintiff John Klier is a natural person and a citizen of the State of  
 14 California, residing in San Diego County, California. Plaintiff Klier is not  
 15 disqualified from exercising Second Amendment rights nor prohibited under state or  
 16 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff  
 17 Klier is a veteran of the Navy, having been disabled and honorably discharged after  
 18 serving in Iraq as a “Seabee” member of the United States Naval Construction  
 19 Battalions. Plaintiff Klier is a trained firearms instructor who owns and operates  
 20 Active Shooter Defense School (“ASDS”), which “employs the best instructors in  
 21 the industry,” with “former [Navy] SEALs, Rangers, engineers, SWAT officers,  
 22 combatives instructors and current top performing competitive shooters on staff to  
 23 ensure students master each technique being taught.” ASDS’s “mission is to provide  
 24 the most up to date tactical weapons training available to the public, law enforcement  
 25 and military.”<sup>3</sup> Plaintiff Klier is a member and supporter of Plaintiffs FPC, SDCGO,  
 26

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27 <sup>3</sup> See “Meet our Team” on ASDS’s website, online at [https://asdschool.com/asds-](https://asdschool.com/asds-instructors)  
 28 instructors.



1 CCRKBA, and SAF.

2 27. But for Handgun Ban and Defendants' active enforcement thereof,  
3 Plaintiff Klier would, for self-defense and other lawful purposes, purchase new from  
4 a licensed retailer a constitutionally protected handgun not currently on or eligible  
5 under Handgun Ban to be added to Defendants' Handgun Roster, including but not  
6 limited to a Glock 19 Gen5, which is a constitutionally protected handgun in  
7 common use for self-defense and other lawful purposes.

8 ***Plaintiff Smith***

9 28. Plaintiff Justin Smith is a natural person and a citizen of the State of  
10 California, residing in San Diego County, California. Plaintiff Justin Smith is not  
11 disqualified from exercising Second Amendment rights nor prohibited under state or  
12 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff  
13 Smith is a member and supporter of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

14 29. But for the Handgun Ban and Defendants' active enforcement thereof,  
15 Plaintiff Smith would, for self-defense and other lawful purposes, purchase new  
16 from a licensed retailer a constitutionally protected handgun not currently on or  
17 eligible under the Handgun Ban to be added to Defendants' Handgun Roster,  
18 including but not limited to a CZ P10, Walther Q5 SF, and/or Glock 19 Gen4 and/or  
19 Gen5, which are constitutionally protected handguns in common use for self-defense  
20 and other lawful purposes.

21 ***Plaintiff Phillips***

22 30. Plaintiff John Phillips is a natural person and a citizen of the State of  
23 California, residing in San Diego County, California. Plaintiff Phillips is not  
24 disqualified from exercising Second Amendment rights nor prohibited under state or  
25 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff  
26 Phillips possesses a current COE issued by the Defendants' Department of Justice  
27 Bureau of Firearms. Plaintiff Phillips is the President of Plaintiff PWG, a proprietor  
28 of the business, and the individual licensee associated with the dealership and range

1 facility, including by and through Defendants and their Bureau of Firearms. Plaintiff  
 2 Phillips holds an active license to carry a concealed weapon (“CCW”) issued by his  
 3 county sheriff, after proving “good cause” and “good moral character” to his  
 4 licensing authority, successfully completing a course of training on the law and  
 5 firearms proficiency under Penal Code section 26165, and passing an extensive Live  
 6 Scan-based background check and placement into the State’s system for monitoring  
 7 law enforcement contact, arrests, and criminal convictions (“Rap Back”). Plaintiff  
 8 Phillips is a trained firearms instructor. Plaintiff Phillips is a member and supporter  
 9 of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

10 31. But for the Handgun Ban and Defendants’ active enforcement thereof,  
 11 Plaintiff Phillips would, for self-defense and other lawful purposes, purchase new  
 12 from a licensed retailer a constitutionally protected handgun not currently on or  
 13 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,  
 14 including but not limited to a Sig Sauer P365, Sig Sauer P320 M17, Glock 17 Gen5  
 15 MOS, Fabrique National Herstal 509, and/or Fabrique National Herstal FNX-9,  
 16 which are constitutionally protected handguns in common use for self-defense and  
 17 other lawful purposes.

18 ***Plaintiff C. Prince***

19 32. Plaintiff Cheryl Prince (“C. Prince”) is a natural person and a citizen of  
 20 the State of California, residing in San Diego County, California. Plaintiff C. Prince  
 21 is not disqualified from exercising Second Amendment rights nor prohibited under  
 22 state or federal law from possessing, receiving, owning, or purchasing a firearm.  
 23 Plaintiff C. Prince holds an active license to carry a concealed weapon (“CCW”) issued by her county sheriff, after proving “good cause” and “good moral character”  
 24 to her licensing authority, successfully completing a course of training on the law  
 25 and firearms proficiency under Penal Code section 26165, and passing an extensive  
 26 Live Scan-based background check and placement into the State’s system for  
 27 monitoring law enforcement contact, arrests, and criminal convictions (“Rap Back”).  
 28

1 Plaintiff C. Prince is a member and supporter of Plaintiffs FPC, SDCGO, CCRKBA,  
2 and SAF.

3 33. But for the Handgun Ban and Defendants' active enforcement thereof,  
4 Plaintiff C. Prince would, for self-defense and other lawful purposes, purchase new  
5 from a licensed retailer a constitutionally protected handgun not currently on or  
6 eligible under the Handgun Ban to be added to Defendants' Handgun Roster,  
7 including but not limited to a Sig Sauer P365, which is a constitutionally protected  
8 handgun in common use for self-defense and other lawful purposes.

9 ***Plaintiff D. Prince***

10 34. Plaintiff Darin Prince ("D. Prince") is a natural person and a citizen of  
11 the State of California, residing in San Diego County, California. Plaintiff D. Prince  
12 is not disqualified from exercising Second Amendment rights nor prohibited under  
13 state or federal law from possessing, receiving, owning, or purchasing a firearm.  
14 Plaintiff D. Prince possesses a current COE issued by the Defendants' Department  
15 of Justice Bureau of Firearms. Plaintiff D. Prince is an owner and manager of  
16 Plaintiff NCSC, the proprietor of the business, and the individual licensee associated  
17 with the dealership, including by and through the Defendants and their Bureau of  
18 Firearms. Plaintiff D. Prince holds an active license to carry a CCW issued by his  
19 county sheriff under Penal Code section 26150, *et seq.*, after proving "good cause"  
20 and "good moral character" to that licensing authority, successfully completing a  
21 course of training on the law and firearms proficiency under section 26165, passing  
22 an extensive Live Scan-based Department of Justice background check, and  
23 placement into the "Rap Back" system for monitoring law enforcement contact,  
24 arrests, and criminal convictions. Plaintiff D. Prince is a member of Plaintiffs FPC,  
25 SDCGO, CCRKBA, and SAF.

26 35. But for the Handgun Ban and Defendants' active enforcement thereof,  
27 Plaintiff D. Prince would, for self-defense and other lawful purposes, purchase new  
28 from a licensed retailer a constitutionally protected handgun not currently on or

1 eligible under the Handgun Ban to be added to Defendants' Handgun Roster,  
2 including but not limited to a Sig Sauer P320 AXG Scorpion, which is a  
3 constitutionally protected handgun in common use for self-defense and other lawful  
4 purposes.

5 ***Plaintiff Peterson***

6 36. Plaintiff Ryan Peterson is a natural person and a citizen of the State of  
7 California, residing in San Diego County, California. Plaintiff Peterson is not  
8 disqualified from exercising Second Amendment rights nor prohibited under state or  
9 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff  
10 Peterson possesses a current COE issued by the Defendants' Department of Justice  
11 Bureau of Firearms. Plaintiff Peterson is the proprietor of and an individual licensee  
12 associated with Plaintiff Gunfighter Tactical. Plaintiff Peterson is a DOJ Certified  
13 Instructor. Plaintiff Peterson is a member and supporter of Plaintiffs FPC, SDCGO,  
14 CCRKBA, and SAF.

15 37. Ironically, Plaintiff Peterson, who owns and operates a gun store  
16 (Plaintiff Gunfighter Tactical), is highly trained in the safe handling of firearms, is a  
17 DOJ Certified Instructor, sells handguns not on the Defendants' Roster to those who  
18 can lawfully purchase them (which excludes Individual Plaintiffs), and keeps for  
19 lawful purposes including self-defense a Fabrique Nationale 509 Tactical handgun  
20 while physically inside Gunfighter Tactical. However, he cannot lawfully transfer  
21 that same firearm to himself—or to any other law-abiding citizen not exempt from  
22 the Handgun Ban—even for self-defense in the home.

23 38. But for the Handgun Ban and Defendants' active enforcement thereof,  
24 Plaintiff Peterson would, for self-defense and other lawful purposes, purchase new  
25 from a licensed retailer a constitutionally protected handgun not currently on or  
26 eligible under the Handgun Ban to be added to Defendants' Handgun Roster,  
27 including but not limited to a Fabrique National Herstal 509 Tactical, Sig Sauer P220  
28 Legion (10mm), Staccato 2011, Glock 19 Gen5, Glock 17 Gen5 MOS, and Wilson

1 Combat Elite CQB 1911 (9mm), which are constitutionally protected handguns in  
 2 common use for self-defense and other lawful purposes.

### 3 **Retailer Plaintiffs**

#### 4 ***Plaintiff PWG***

5 39. Plaintiff PWGG, L.P. (“PWG”), a California limited partnership doing  
 6 business as “Poway Weapons & Gear” and “PWG Range,” is a licensed firearms  
 7 retailer, shooting range, and training facility in the City of Poway, within San Diego  
 8 County, California. Plaintiff PWG is a member and supporter of Plaintiffs FPC,  
 9 SDCGO, CCRKBA, and SAF.

10 40. Plaintiffs Phillips and PWG are a firearms dealer in Defendants’  
 11 Department of Justice Centralized List of Firearms Dealers, and are federally  
 12 licensed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) as  
 13 a Federal Firearms Licensee (“FFL”).

14 41. Many customers and prospective customers of Plaintiffs Phillips and  
 15 PWG are interested in, have, and continue to seek to purchase for self-defense and  
 16 other lawful purposes constitutionally protected handguns not currently on or  
 17 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster.

18 42. But for the Handgun Ban and Defendants’ active enforcement thereof,  
 19 Plaintiffs Phillips and PWG would make available for sale to their adult customers  
 20 all of the constitutionally protected new handguns on the market that are available  
 21 outside of California but not currently on or eligible under the Handgun Ban to be  
 22 added to Defendants’ Handgun Roster, and sell and transfer them to their adult  
 23 customers who are not disqualified from exercising Second Amendment rights.

#### 24 ***Plaintiff NCSC***

25 43. Plaintiff North County Shooting Center, Inc. (“NCSC”), a California  
 26 corporation, is a licensed firearms retailer, shooting range, and training facility in the  
 27 City of San Marcos, within San Diego County, California. Plaintiff NCSC is a  
 28 federally and state-licensed firearms retailer in San Marcos, California. Plaintiff

1 NCSC is a member of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

2 44. Plaintiffs D. Prince and NCSC are a firearms dealer in Defendants'  
3 Department of Justice Centralized List of Firearms Dealers, and are federally  
4 licensed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") as  
5 a Federal Firearms Licensee ("FFL").

6 45. Many customers and prospective customers of Plaintiffs D. Prince and  
7 NCSC are interested in, have, and continue to seek to purchase for self-defense and  
8 other lawful purposes constitutionally protected handguns not currently on or  
9 eligible under the Handgun Ban to be added to Defendants' Handgun Roster.

10 46. But for the Handgun Ban and Defendants' active enforcement thereof,  
11 Plaintiffs D. Prince and NCSC would make available for sale to their adult customers  
12 all of the constitutionally protected new handguns on the market that are available  
13 outside of California but not currently on or eligible under the Handgun Ban to be  
14 added to Defendants' Handgun Roster, and sell and transfer them to their adult  
15 customers who are not disqualified from exercising Second Amendment rights.

16 ***Plaintiff Gunfighter Tactical***

17 47. Plaintiff Gunfighter Tactical, LLC ("Gunfighter Tactical"), a California  
18 limited liability corporation doing business as "Gunfighter Tactical," is a licensed  
19 firearms retailer in the City of San Diego within San Diego County, California.  
20 Plaintiff Gunfighter Tactical is a member of Plaintiffs FPC, SDCGO, CCRKBA, and  
21 SAF.

22 48. Plaintiffs Peterson and Gunfighter Tactical are a firearms dealer in  
23 Defendants' Department of Justice Centralized List of Firearms Dealers, and are  
24 federally licensed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives  
25 ("ATF") as a Federal Firearms Licensee ("FFL").

26 49. Many customers and prospective customers of Plaintiffs Peterson and  
27 Gunfighter Tactical are interested in, have, and continue to seek to purchase for self-  
28 defense and other lawful purposes constitutionally protected handguns not currently



1 on or eligible under the Handgun Ban to be added to Defendants' Handgun Roster.

2 50. But for the Handgun Ban and Defendants' active enforcement thereof,  
3 Plaintiffs Peterson and Gunfighter Tactical would make available for sale to their  
4 adult customers all of the constitutionally protected new handguns on the market that  
5 are available outside of California but not currently on or eligible under the Handgun  
6 Ban to be added to Defendants' Handgun Roster, and sell and transfer them to their  
7 adult customers who are not disqualified from exercising Second Amendment rights.

### 8 **Institutional Plaintiffs**

#### 9 ***Plaintiff FPC***

10 51. Plaintiff Firearms Policy Coalition, Inc. ("FPC") is a nonprofit  
11 organization incorporated under the laws of Delaware with a place of business in  
12 Clark County, Nevada. The purposes of FPC include defending and promoting the  
13 People's rights, especially First and Second Amendment rights, advancing  
14 individual liberty, and restoring freedom. FPC serves its members and the public  
15 through legislative advocacy, grassroots advocacy, litigation and legal efforts,  
16 research, education, outreach, and other programs. FPC has members in the State of  
17 California, including Individual Plaintiffs who desire to purchase new  
18 constitutionally protected arms for self-defense or other lawful purposes which are  
19 not currently on or eligible under the Handgun Ban to be added to Defendants'  
20 Handgun Roster, and Retailer Plaintiffs who desire to sell the same to their eligible  
21 law-abiding customers. These members would each undertake the desired and  
22 protected activity but for the criminal liability that they face under the laws,  
23 regulations, policies, practices, and customs being challenged in this action. The  
24 interests that FPC seeks to protect in this lawsuit are germane to the organization's  
25 purposes.

#### 26 ***Plaintiff SDCGO***

27 52. Plaintiff San Diego County Gun Owners PAC ("SDCGO") is a local  
28 political organization whose purpose is to protect and advance the Second



Amendment rights of residents of San Diego County, California, through their efforts to support and elect local and state representatives who support the Second Amendment right to keep and bear arms. SDCGO's membership and donors consist of Second Amendment supporters, people who own guns for self-defense and sport, firearms dealers, shooting ranges, and elected officials who want to restore and protect the right to keep and bear arms in California. SDCGO's members include Individual Plaintiffs who desire to purchase new constitutionally protected arms for self-defense or other lawful purposes which are not currently on or eligible under the Handgun Ban to be added to Defendants' Handgun Roster, and Retailer Plaintiffs who desire to sell the same to their eligible law-abiding customers. These members would each undertake the desired and protected activity but for the criminal liability that they face under the laws, regulations, policies, practices, and customs being challenged in this action. The interests that SDCGO seeks to protect in this lawsuit are germane to the organization's purposes.

***Plaintiff CCRKBA***

53. Plaintiff Citizens Committee for the Right to Keep and Bear Arms ("CCRKBA") is a nonprofit organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. CCRKBA is dedicated to promoting the benefits of the right to bear arms. CCRKBA has members and supporters nationwide, including thousands of members in California and in the County of San Diego, California. CCRKBA's members include Individual Plaintiffs who desire to purchase new constitutionally protected arms for self-defense or other lawful purposes which are not currently on or eligible under the Handgun Ban to be added to Defendants' Handgun Roster and Retailer Plaintiffs who desire to sell the same to their eligible law-abiding customers. These members would each undertake the desired and protected activity but for the criminal liability that they face under the laws, regulations, policies, practices, and customs being challenged in this action. The interests that CCRKBA seeks to protect in this lawsuit are germane to the

1 organization's purposes.

2 ***Plaintiff SAF***

3 54. Plaintiff Second Amendment Foundation ("SAF") is a nonprofit  
 4 educational foundation incorporated under the laws of Washington with its principal  
 5 place of business in Bellevue, Washington. SAF seeks to preserve the effectiveness  
 6 of the Second Amendment through education, research, publishing, and legal action  
 7 programs focused on the Constitutional right to possess firearms, and the  
 8 consequences of gun control. SAF has over 650,000 members and supporters  
 9 nationwide, including thousands of members in California and in the County of San  
 10 Diego, California. SAF's members include Individual Plaintiffs who desire to  
 11 purchase new constitutionally protected arms for self-defense or other lawful  
 12 purposes which are not currently on or eligible under the Handgun Ban to be added  
 13 to Defendants' Handgun Roster, and Retailer Plaintiffs who desire to sell the same  
 14 to their eligible law-abiding customers. These members would each undertake the  
 15 desired and protected activity but for the criminal liability that they face under the  
 16 laws, regulations, policies, practices, and customs being challenged in this action.  
 17 The interests that SAF seeks to protect in this lawsuit are germane to the  
 18 organization's purposes.

19 **Defendants**

20 ***Defendant Bonta***

21 55. Defendant Robert Bonta is the Attorney General of the State of  
 22 California, and is sued herein in his official capacity. Under Article 5, § 13 of the  
 23 California Constitution, Attorney General Bonta is the "chief law officer of the  
 24 State," with a duty "to see that the laws of the state are uniformly and adequately  
 25 enforced." Defendant Bonta is the head of the California Department of Justice  
 26 ("DOJ"). Defendant Bonta's DOJ and its Bureau of Firearms regulate and enforce  
 27 state law related to the sales, transfer, possession and ownership of firearms. The  
 28 Attorney General and DOJ maintain an office in San Diego, California.

***Defendant Graham***

56. Defendant Blake Graham is the Director of the DOJ's Bureau of Firearms. On information and belief, Defendant Graham reports to Attorney General Bonta, and he is responsible for the various operations of the Bureau of Firearms, including the implementation and enforcement of the statutes, regulations, and policies regarding firearm and ammunition sales, possession, and transfers. Defendant Graham is sued in his official capacity.

**JURISDICTION AND VENUE**

57. This Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. §§ 1331, 1343, 2201, and 2202, and 42 U.S.C. §§ 1983 and 1988, as this action seeks to redress the deprivation under color of the laws, statutes, ordinances, regulations, customs, and usages of the State of California, of the rights, privileges, or immunities secured by the United States Constitution.

58. Venue lies in this Court under 28 U.S.C. § 1391, as the events giving rise to Plaintiffs' causes of action arose or exist in this District in which the action is brought. Further, the venue rules of this State specifically would permit this action to be filed in San Diego, since the Attorney General and California Department of Justice maintain an office within this District; Cal. Code of Civ. Pro. § 401(1).

**STATEMENT OF FACTS****I. California's Ban on Handguns**

59. The Handgun Ban and Defendants' regulations, policies, and practices enforcing the same, individually and collectively prevent Plaintiffs, and all similarly situated members of Institutional Plaintiffs, who are not prohibited from possessing or acquiring firearms, from purchasing handguns that are categorically in common use for self-defense and other lawful purposes, and thus violate the Second and Fourteenth Amendments to the United States Constitution.

**A. The General Regulatory Scheme**

60. In California, individuals are required to purchase and transfer firearms

1 and ammunition through state and federally licensed dealers, like Retailer Plaintiffs,  
2 in face-to-face transactions, or face serious criminal penalties.

3 61. Because of an onerous regulatory scheme, which is designed to deny,  
4 chill, suppress, and/or burden the exercise of fundamental, individual rights, people  
5 in California cannot exercise their Second Amendment right to keep and bear arms  
6 without going in person to retailers that must comply with the State’s regulatory  
7 scheme on pain of criminal liability—a misdemeanor at a minimum, Pen. Code, §  
8 19.4 (providing that, unless otherwise specified, a violation of a criminal statute  
9 constitutes a misdemeanor)—as well as loss of the necessary licenses to engage in  
10 any lawful firearm-related business.

11 62. “Where neither party to [a] [firearm] transaction holds a dealer’s license  
12 issued pursuant to Sections 26700 to 26915, inclusive, the parties to the transaction  
13 shall complete the sale, loan, or transfer of that firearm through a licensed firearms  
14 dealer pursuant to Chapter 5 (commencing with Section 28050).” Pen. Code §  
15 27545.

16 63. A license to transact in firearms “is subject to forfeiture for a breach of  
17 any of the prohibitions and requirements of [Article 2, Penal Code §§ 26800 –  
18 26915]” (with some exceptions that do not apply in the instant matter). Pen. Code §  
19 26800.

20 64. Penal Code § 28220(a) states: “Upon submission of firearm purchaser  
21 information, the Department of Justice shall examine its records, as well as those  
22 records that it is authorized to request from the State Department of State Hospitals  
23 pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine  
24 if the purchaser is a person described in subdivision (a) of Section 27535, or is  
25 prohibited by state or federal law from possessing, receiving, owning, or purchasing  
26  
27  
28

1 a firearm.”<sup>4</sup>

2 65. Defendants’ Department of Justice participates in the National Instant  
3 Criminal Background Check System (NICS). Pen. Code § 28220(a).

4 66. A “Certificate of Eligibility” (“COE”) “means a certificate which states  
5 that the Department has checked its records and the records available to the  
6 Department in the National Instant Criminal Background Check System and  
7 determined that the applicant is not prohibited from acquiring or possessing firearms  
8 pursuant to Penal Code sections 18205, 29800, 29805, 29815 through 29825, and  
9 29900, or Welfare and Institutions Code sections 8100 and 8103, or Title 18, sections  
10 921 and 922 of the United States Code, or Title 27, Part 478.32 of the Code of  
11 Federal Regulations at the time the check was performed and which ensures that a  
12 person who handles, sells, delivers, or has under his or her custody or control any  
13 ammunition, is eligible to do so pursuant to Penal Code section 30347.” 11 CCR §  
14 4031(d). *See also* Pen. Code § 26710 and 11 CCR § 4030, *et seq.*

15 67. “The initial COE application process includes a firearms eligibility  
16 criminal background check and issuance of a certificate, which is valid for one year.  
17 Thereafter, the COE must be renewed annually. A COE can be revoked, at any time,  
18 if the COE holder becomes prohibited from owning/possessing firearms and  
19 ammunition.” *See* Defendants’ website at [https://oag.ca.gov/firearms/cert-](https://oag.ca.gov/firearms/cert-eligibility)  
20 [eligibility](https://oag.ca.gov/firearms/cert-eligibility).

21 68. On information and belief, a COE issued by Defendants’ Department  
22 of Justice Bureau of Firearms places the certificate holder in their “Rap Back” file,  
23 which would notify them immediately should the certificate holder be arrested or  
24 otherwise prohibited from purchasing or possessing firearms.

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26  
27 <sup>4</sup> The DOJ’s multi-step, acronym-heavy background check process for firearms is  
28 detailed in *Silvester v. Harris*, 41 F.Supp.3d 927, 947–952 (E.D. Cal. 2014).

1 **B. The Handgun Ban and “Roster”**

2 69. Defendants’ California Department of Justice compiles, publishes, and  
3 maintains “a roster listing all of the handguns that have been tested by a certified  
4 testing laboratory, have been determined not to be unsafe handguns, and may be sold  
5 in this state pursuant to this part.” Pen Code § 32015.

6 70. Additional information on the Handgun Roster can be found in  
7 Defendants’ regulations at California Code of Regulations, title 11, section 4070.

8 71. On information and belief, Defendants’ Roster of Certified Handguns  
9 available for sale to law-abiding citizens not exempt from the Handgun Purchase  
10 Ban is a small fraction of the total number of handgun makes and models  
11 commercially available throughout the vast majority of the United States, all of  
12 which are constitutionally protected arms in common use for lawful purposes.

13 72. On information and belief, at the end of 2013, there were 1,273 makes  
14 and models of approved handguns, including 883 semiautomatics, on Defendants’  
15 Roster. Since then, the Defendants’ Roster has continued to shrink because of the  
16 Defendants’ enforcement of the Handgun Purchase Ban.

17 73. As of October 24, 2022, there were only “815 handguns found”—*total*,  
18 of all makes, models, and permutations—on Defendants’ Roster.

19 74. Inevitably hastening the rate of shrinkage, effective January 1, 2021,  
20 the State amended California’s Handgun Ban under Assembly Bill No. 2847 (2019  
21 – 2020 Reg. Sess.) (“AB 2847”), which now expressly requires that, for every single  
22 new firearm added to the Roster, Defendants’ Department of Justice must *remove*  
23 three firearms added before July 1, 2022, that are not compliant with its current  
24 requirements.<sup>5</sup> Pen. Code. § 31910(b)(7).

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25  
26  
27 <sup>5</sup> See Alexei Koseff, “Bullet-tracing bill by [California Assembly-member] David  
28 Chiu aims to force issue on gunmakers,” San Francisco Chronicle (March 16,

1           75. Moreover, of the handguns “certified” for Roster inclusion, on  
 2 information and belief, “about one-third of the Roster’s total listings are comprised  
 3 of makes and models that do not offer consumers substantive and material choices  
 4 in the physical attributes, function, or performance of a handgun relative to another  
 5 listing (*i.e.*, a base model),” because many of the approved handguns are merely the  
 6 same handgun make and model as another approved model with cosmetic  
 7 difference(s). *See, e.g., California’s Handgun Roster: How big is it, really?*, online  
 8 at <https://www.firearmspolicy.org/california-handgun-roster> (showing the results of  
 9 a detailed analysis of the Roster as of January 30, 2019).

10           76. The Handgun Ban, as it stands today, not only forces and requires the  
 11 Handgun Roster to virtually shrink into oblivion, but, on information and belief, even  
 12 minor changes to manufacturing processes, materials, and suppliers will cause a  
 13 previously certified handgun to be removed from the Handgun Roster by Defendants  
 14 under the State’s laws and Defendants’ policies and enforcement practices.

15           77. Worse, certified handgun models are removed from the Roster by  
 16 Defendants if the manufacturer does not pay an annual fee to maintain the model on  
 17 the Roster. Penal Code § 32015(b)(2). On information and belief, due to the Handgun  
 18 Ban, just as hundreds of handgun makes and models have already been removed  
 19 from Defendants’ Roster, more handgun makes and models will “drop off” the  
 20 Roster as manufacturers choose to update their products—as well as their materials,  
 21 processes, and supply chains—to make them more competitive in the broader  
 22 civilian market throughout the United States and/or refusing to continue to pay

23 \_\_\_\_\_  
 24 2020), at [https://www.sfchronicle.com/politics/article/Assemblyman-Chiu-pushes-](https://www.sfchronicle.com/politics/article/Assemblyman-Chiu-pushes-firearms-industry-to-15132278.php)  
 25 [firearms-industry-to-15132278.php](https://www.sfchronicle.com/politics/article/Assemblyman-Chiu-pushes-firearms-industry-to-15132278.php).

26 *See also* Alexei Koseff, “[California Governor] Newsom signs bill that compels  
 27 gunmakers to adopt bullet-tracing technology,” *San Francisco Chronicle* (Sept. 29,  
 28 2020), at [https://www.sfchronicle.com/politics/article/Newsom-signs-bill-that-](https://www.sfchronicle.com/politics/article/Newsom-signs-bill-that-compels-gunmakers-to-adopt-15607657.php)  
[compels-gunmakers-to-adopt-15607657.php](https://www.sfchronicle.com/politics/article/Newsom-signs-bill-that-compels-gunmakers-to-adopt-15607657.php).



1 California's extortive annual renewal fees, making them ineligible to renew on the  
2 Roster, further reducing the availability of constitutionally protected arms that  
3 individual adults not disqualified from exercising Second Amendment rights have a  
4 fundamental right to acquire and possess.

5 78. Indeed, Defendants' list of "De-Certified Handguns" shows hundreds  
6 of handgun models have been removed from the Roster since December of 2001,  
7 including 33 this year alone, <https://oag.ca.gov/firearms/de-certified-handguns> (last  
8 visited October 24, 2022), whereas just one handgun model has been "recently  
9 added" this month according to Defendants' list of "Recently Added Handgun  
10 Models," <https://oag.ca.gov/firearms/certified-handguns/recently-added> (last visited  
11 October 24, 2022).

12 79. Handguns that have passed California's tests and were certified by  
13 Defendants do not become "unsafe"—much less lose their constitutional  
14 protection—simply because a manufacturer does not pay an annual fee.

15 80. Handguns that do not have one or all of the "safety" devices as required  
16 under the Handgun Ban are neither "dangerous" nor "unusual" and are instead in  
17 common use for lawful purposes throughout the United States.

18 81. Handguns that do not have chamber load indicators are neither  
19 "dangerous" nor "unusual" and are instead in common use for lawful purposes  
20 throughout the United States.

21 82. Handguns that do not have magazine disconnect mechanisms are  
22 neither "dangerous" nor "unusual" and are instead in common use for lawful  
23 purposes throughout the United States.

24 83. Handguns that do not have "microstamping" technology are neither  
25 "dangerous" nor "unusual" and are instead in common use for lawful purposes  
26 throughout the United States.

27 84. Any of the attributes, systems, and "safety" devices required under the  
28 Handgun Ban can fail or be altered or removed by a handgun's possessor, and the

1 absence of one or all of them does not strip the protection for otherwise  
2 constitutionally protected arms.

3 85. The attributes, systems, and “safety” devices required under  
4 California’s Handgun Ban are not sufficient to guarantee a handgun’s safe use.

5 86. The attributes, systems, and “safety” devices required under the  
6 Handgun Ban cannot replace safe and responsible gun handling.

7 87. Microstamping technology is not a safety device.

8 88. Microstamping technology has not been shown to viably support any  
9 law enforcement purpose.

10 89. On information and belief, as of November 8, 2020, there were no  
11 commercially available semiautomatic handguns manufactured in the United States  
12 that have the microstamping technology required under the Handgun Ban.

13 90. On information and belief, as of January 4, 2021, there are no  
14 commercially available semiautomatic handguns manufactured in the United States  
15 that have the microstamping technology required under the Handgun Ban.

16 91. On information and belief, as of November 8, 2020, there were no  
17 commercially available semiautomatic handguns manufactured in the United States  
18 that met all of the requirements under the Handgun Ban.

19 92. On information and belief, as of January 4, 2021, there were no  
20 commercially available semiautomatic handguns manufactured in the United States  
21 that meet all of the requirements under the Handgun Ban.

22 93. On information and belief, as of October 24, 2022, there are still no  
23 commercially available semiautomatic handguns manufactured in the United States  
24 that meet all of the requirements under the Purchase Ban.

25 94. California law requires that handgun purchasers successfully complete  
26 a test, pay a fee, and acquire a valid FSC before they purchase and take possession  
27  
28

1 of any firearm, including handguns. Penal Code § 31610, *et seq.*<sup>6</sup>

2 95. Defendants’ publicly available Firearms Safety Certificate (“FSC”) Study Guide, a document published by the Office of the Attorney General and  
3 California Department of Justice Bureau of Firearms, Defendants’ Spanish-language  
4 version of the FSC Study Guide, and Defendants’ FSC “MANUAL for California  
5 Firearms Dealers and DOJ Certified Instructors” are available on Defendants’  
6 website at <https://oag.ca.gov/firearms/fsc>.  
7

8 96. In their publicly available FSC Study Guide, Defendants state, in red  
9 type: “**REMEMBER: Ignorance and carelessness can result in firearm accidents.**  
10 **Basic gun safety rules must be applied ALL OF THE TIME.**” (Color and  
11 capitalization in original.)

12 97. In the first section of Chapter 1 of Defendants’ FSC Study Guide  
13 (captioned “THE SIX BASIC GUN SAFETY RULES”), the Guide states: “There  
14 are six basic gun safety rules for gun owners to understand and practice at all times:  
15 1. Treat all guns as if they are loaded. 2. Keep the gun pointed in the safest possible  
16 direction. 3. Keep your finger off the trigger until you are ready to shoot. 4. Know  
17 your target, its surroundings, and beyond. 5. Know how to properly operate your  
18 gun. 6. Store your gun safely and securely to prevent unauthorized use. Guns and  
19 ammunition should be stored separately.” (Line breaks removed.)

20 98. Under common rules of firearm safety, and within the knowledge  
21 required for the State’s FSC and safe handling demonstration, is the fundamental  
22 rule that all firearms must always be treated as though they are loaded.

23 99. It is irresponsible and unsafe to rely on “safety” devices required under  
24 the Handgun Ban.

25 100. Additionally, Defendants’ require firearm purchasers, the retailer, and  
26

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27 <sup>6</sup> See also 11 CCR § 4250, *et seq.*, and Defendants’ website at  
28 <https://oag.ca.gov/firearms/fscfaqs>.

1 the DOJ Certified Instructor licensed and permitted to proctor the test, to conduct,  
 2 successfully pass, and certify in a “Safe Handling Demonstration Affidavit” (online  
 3 at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/hscaff.pdf>) signed  
 4 under penalty of perjury, that the purchaser or transferee “performed the safe  
 5 handling demonstration as required in Penal Code sections 26850, 26853, 26856,  
 6 26859, or 26860, as applicable, with the firearm (or one of the same make and model)  
 7 referenced” on the Dealer’s Record of Sale (DROS) number associated with the  
 8 purchase or transfer.

9  
 10 **COUNT ONE**  
**42 U.S.C. § 1983**  
**RIGHT TO KEEP AND BEAR ARMS**  
**U.S. CONST., AMENDS. II AND XIV**  
 12

13 101. Plaintiffs incorporate herein by reference the foregoing paragraphs as if  
 14 fully set forth herein.

15 102. There is an actual and present controversy between the parties.

16 103. The Second Amendment to the United States Constitution guarantees  
 17 “the right of the people to keep and bear Arms.” U.S. CONST. AMEND. II.  
 18 Plaintiffs, and all similarly situated members of Institutional Plaintiffs, who are all  
 19 eligible to exercise their Second Amendment rights, wish to keep and bear  
 20 constitutionally protected arms for self-defense and other lawful purposes.

21 104. The Fourteenth Amendment to the United States Constitution provides  
 22 in pertinent part:

23  
 24 No state shall make or enforce any law which shall abridge the  
 25 privileges or immunities of citizens of the United States; nor shall any  
 26 state deprive any person of life, liberty, or property, without due process  
 27 of law; nor deny to any person within its jurisdiction the equal  
 28 protection of the laws.

105. The Second Amendment is fully applicable to the States through the

1 Fourteenth Amendment’s Due Process and Privileges or Immunities Clauses.  
 2 *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *id.* at 805 (Thomas, J.,  
 3 concurring).

4 106. Because of the Defendants’ enforcement of the laws, regulations,  
 5 policies, practices, and customs underlying the purchase prohibitions of the Handgun  
 6 Ban, Plaintiffs, and all similarly situated members of Institutional Plaintiffs, cannot  
 7 purchase new constitutionally protected arms without suffering criminal liability.

8 107. Nothing in the “Nation’s historical tradition of firearm regulation”  
 9 supports the heavy-handed purchase restrictions here. *Bruen*, 142 S. Ct. at 2130.

10 108. Individuals in California have a right to keep and bear arms, including  
 11 but not limited to, buying, selling, transferring, self-manufacturing or assembling,  
 12 transporting, carrying, and practicing safety and proficiency with, firearms,  
 13 ammunition, magazines, and appurtenances, under the Second and Fourteenth  
 14 Amendments to the United States Constitution.

15 109. This fundamental, individual right to keep and bear firearms includes  
 16 the right to acquire modern handguns in common use for lawful purposes—indeed,  
 17 arms that are lawfully sold and possessed throughout the United States—such as  
 18 those the Handgun Ban prevents common law-abiding citizens from purchasing at a  
 19 licensed retailer.

20 110. The text of the Second Amendment, which guarantees “the right of the  
 21 people to keep and bear Arms,” implicitly includes the right to so acquire firearms.  
 22 Further, the “right to keep arms, necessarily involves the right to purchase them, to  
 23 keep them in a state of efficiency for use, and to purchase and provide ammunition  
 24 suitable for such arms.” *See Andrews v. State*, 50 Tenn. 165, 178 (1871); *accord*  
 25 *Teixeira v. County of Alameda*, 873 F.3d 670, 678 (2017).

26 111. Further, without constitutional protections for the acquisition as well as  
 27 the manufacturing of firearms, the “right of the people to keep and bear Arms” would  
 28 be in jeopardy. *See Ezell*, 651 F.3d at 704 (clarifying that “[t]he right to possess

1 firearms for protection implies a corresponding right to acquire and maintain  
 2 proficiency in their use; the core right wouldn't mean much without the training and  
 3 practice that make it effective.”); *Ill. Ass’n of Firearms Retailers v. City of Chicago*,  
 4 961 F. Supp. 2d 928, 930, 938 (N.D. Ill. 2014) (holding that “the right to keep and  
 5 bear arms for self-defense under the Second Amendment . . . must also include the  
 6 right to acquire a firearm . . .”).

7 112. Contrary to the regulations like those in Penal Code sections 31900, *et*  
 8 *seq.* and 32000, *et seq.*, underlying the Handgun Ban and related Handgun Roster,  
 9 no founding era precedent exists for declaring “unsafe” and prohibiting the  
 10 commercial sale of firearms otherwise widely available and in common use for  
 11 lawful purposes among ordinary law-abiding citizens; such regulations only exist in  
 12 a handful of jurisdictions and all of them are of recent origin—the *earliest* was  
 13 Maryland’s, enacted in 1988. Md. Code Ann., Pub. Safety § 5-405.

14 113. The purchase prohibitions of the Handgun Ban prevent law-abiding  
 15 citizens, like and including Plaintiffs, and all similarly situated members of  
 16 Institutional Plaintiffs, from acquiring and thus possessing for lawful purposes  
 17 “instruments that constitute bearable arms” protected under the Second Amendment.

18 114. These unprecedented regulations are plainly inconsistent with the  
 19 “Nation’s historical tradition of firearm regulation.” *See Bruen*, 142 S. Ct. at 2130.  
 20 Accordingly, these restrictions on the purchase and acquisition of firearms fall  
 21 directly within—and are proscribed by—the Second Amendment’s “unqualified  
 22 command.” *Bruen*, 142 S. Ct. at 2130 (quoting *Konigsberg*, 366 U.S. at 50, n.10).

23 115. The Handgun Ban’s prohibition on the purchase of constitutionally  
 24 protected arms and maintenance of the Roster for purposes of enforcing this  
 25 proscription in the absence of the necessary historical precedent fails full stop under  
 26 *Bruen*, rendering them unconstitutional both facially and as applied in this case.

27 116. “The very enumeration of the [Second Amendment] right takes out of  
 28 the hands of government . . . the power to decide on a case-by-case basis whether

1 the right is *really worth* insisting upon.” *Heller*, 554 U.S. at 635 (emphasis in  
2 original).

3 117. The Second Amendment is not a “second-class right, subject to an  
4 entirely different body of rules than the other Bill of Rights guarantees,” *McDonald*,  
5 561 U.S. 742, 780, and it cannot “be singled out for special—and especially  
6 unfavorable—treatment.” *Id.* at 778–79.

7 118. *Bruen*, 142 S. Ct. 2111, made this clear by expressly rejecting all  
8 interest balancing and the Ninth Circuit’s prior “two-step” approach in the context  
9 of Second Amendment claims.

10 119. “*Heller* and *McDonald* do not support applying means-end scrutiny in  
11 the Second Amendment context. Instead, the government must affirmatively prove  
12 that its firearms regulation is part of the historical tradition that delimits the outer  
13 bounds of the right to keep and bear arms.” 142 S. Ct. at 2127. Rather, “*Heller* ...  
14 demands a test rooted in the Second Amendment’s text, as informed by history.” *Id.*

15 120. Thus, *Bruen* makes clear that the Ninth Circuit’s former two-step  
16 approach and interest-balancing applied in *Peña v. Lindley*, 898 F.3d 969 (9th Cir.  
17 2018), which previously upheld a prior version of some of the laws challenged  
18 herein, are inapplicable and improper in Second Amendment cases.

19 121. *Bruen* did not create a new test but instead applied the very test the  
20 Court established in *Heller* in 2008. “The test that we set forth in *Heller* and apply  
21 today requires courts to assess whether modern firearms regulations are consistent  
22 with the Second Amendment’s text and historical understanding.” *Id.*, at 2131.

23 122. “*Heller*’s methodology centered on constitutional text and history.  
24 Whether it came to defining the character of the right (individual or militia  
25 dependent), suggesting the outer limits of the right, or assessing the constitutionality  
26 of a particular regulation, *Heller* relied on text and history. It did not invoke any  
27 means-end test such as strict or intermediate scrutiny.” *Id.*, at 2128–29.

28 123. The plain text of the Second Amendment covers the conduct the



1 Plaintiffs, and all similarly situated members of Institutional Plaintiffs, wish to  
 2 engage in (“keep and bear arms”) and the arms they wish to keep and bear. “[T]he  
 3 Second Amendment extends, prima facie, to all instruments that constitute bearable  
 4 arms,” *Bruen*, 142 S. Ct., at 2132 (quoting *Heller*, 554 U. S., at 582).

5 124. Since the conduct is covered by the Second Amendment’s plain text,  
 6 “the Constitution presumptively protects that conduct. To justify its regulation, the  
 7 government . . . must demonstrate that the regulation is consistent with this Nation’s  
 8 tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2126.

9 125. *Heller* has already established the relevant contours of the tradition:  
 10 Bearable arms that are presumptively protected by the Second Amendment cannot  
 11 be banned unless they are both dangerous *and* unusual.

12 126. The Second Amendment’s “reference to ‘arms’ does not apply ‘only  
 13 [to] those arms in existence in the 18<sup>th</sup> century.’ ” *Bruen*, 142 S. Ct., at 2132 (quoting  
 14 *Heller*, 554 U. S., at 582). “Just as the First Amendment protects modern forms of  
 15 communications, and the Fourth Amendment applies to modern forms of search, the  
 16 Second Amendment extends, prima facie, to all instruments that constitute bearable  
 17 arms, even those that were not in existence at the time of the founding.” *Id.* (citations  
 18 omitted).

19 127. And “[w]hatever the likelihood that handguns were considered  
 20 dangerous and unusual during the colonial period, they are indisputably in common  
 21 use for self-defense today. They are, in fact, the quintessential self-defense weapon.”  
 22 *Bruen*, 142 S. Ct. 2111, at 2143 (quoting *Heller*, 554 U. S., at 629, 128 S. Ct. 2783,  
 23 171 L. Ed. 2d 637) (cleaned up).

24 128. “Thus, even though the Second Amendment’s definition of ‘arms’ is  
 25 fixed according to its historical understanding, that general definition covers modern  
 26 instruments that facilitate armed self-defense. *Cf. Caetano v. Massachusetts*, 577 U.  
 27 S. 411, 411-412, 136 S. Ct. 1027, 194 L. Ed. 2d 99 (2016) (*per curiam*) (stun guns).”  
 28 *Id.*

1           129. Millions of handguns prohibited for sale to the State's law-abiding  
2 citizens are commonly possessed and used for self-defense and other lawful purposes  
3 in the vast majority of states, securing their protection from such regulation.

4           130. In the approximately 400-year history of the colonies and later the  
5 United States, no regulations at all like the Handgun Ban appeared until recently in  
6 only a few states. That is hardly a historical tradition of such regulations.

7           131. To reiterate, the Second Amendment to the United States Constitution  
8 provides: "A well-regulated Militia being necessary to the security of a free State,  
9 the right of the people to keep and bear Arms *shall not* be infringed."

10           132. Defendants are individually and collectively responsible for the  
11 formulation, issuance, implementation, and/or enforcement of the laws, regulations,  
12 policies, practices, and customs underlying the purchase prohibitions of the Handgun  
13 Ban.

14           133. Defendants have enforced and will continue to enforce the purchase  
15 prohibitions under the Handgun Ban against Individual Plaintiffs, Retailer Plaintiffs  
16 and their customers, and similarly situated Institutional Plaintiffs' members.

17           134. Defendants' enforcement of the purchase prohibitions under the  
18 Handgun Ban has prevented and continues to prevent Individual Plaintiffs, Retailer  
19 Plaintiffs' customers, and similarly situated Institutional Plaintiffs' members from  
20 purchasing new constitutionally protected handguns in violation of their rights  
21 protected under the Second and Fourteenth Amendments to the United States  
22 Constitution.

23           135. Individual Plaintiffs, Retailer Plaintiffs and their customers, and  
24 similarly situated Institutional Plaintiffs' members reasonably fear that Defendants  
25 will enforce the purchase prohibitions under the Handgun Ban, including associated  
26 criminal laws and civil penalties, against them should they violate the same.

27           136. 42 U.S.C. § 1983 creates a cause of action against state actors who  
28 deprive individuals of federal constitutional rights under color of state law.

137. Defendants, individually and collectively, and under color of State law at all relevant times, have deprived the fundamental constitutional rights, privileges, and immunities of citizenship of adult persons in the State of California not disqualified from exercising their fundamental, individual right to keep and bear arms, including Individual Plaintiffs, Retailer Plaintiffs' customers, and similarly situated Institutional Plaintiffs' members, through Defendants' enforcement and implementation of the purchase prohibitions under the Handgun Ban, which has denied, and will continue to infringe upon and prevent by criminal sanction, the exercise of the fundamental right to keep and bear arms unless and until redressed through the relief Plaintiffs seek herein.

138. For all the reasons asserted herein, Defendants have acted in violation of, and continue to act in violation of, 42 U.S.C. § 1983, compelling the relief Plaintiffs seek.

139. Because Defendants' enforcement of the purchase prohibitions under the Handgun Ban violates Plaintiffs' rights under the Second and Fourteenth Amendments to the United States Constitution, Plaintiffs are entitled to declaratory and injunctive relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

1. A declaratory judgment that Defendants' enforcement of the laws, regulations, policies, practices, and customs underlying the purchase prohibitions of the Handgun Ban prevent Individual Plaintiffs, Retailer Plaintiffs' customers, and similarly situated Institutional Plaintiffs' members who are not disqualified from exercising Second Amendment rights from purchasing new constitutionally protected arms, in violation of their right to keep and bear arms protected under the Second and Fourteenth Amendments to the United States Constitution;

1           2.     An injunction restraining Defendants and their officers, agents,  
2 servants, employees, and all persons in concert or participation with them, and all  
3 persons who have notice of the injunction, from enforcing the purchase prohibitions  
4 of the Handgun Ban;

5           3.     Attorney's fees and costs pursuant to 42 U.S.C. § 1988 and any other  
6 applicable law;

7           4.     That this Court retain jurisdiction after judgment for the purposes of  
8 resolving any future fee disputes between the parties and issuing further appropriate  
9 injunctive relief if the Court's declaratory judgment(s) is/are violated; and,

10          5.     All other and further legal and equitable relief, including injunctive  
11 relief, against Defendants as necessary to effectuate the Court's judgment, or as the  
12 Court otherwise deems just and equitable.

13           Respectfully submitted this 31st day of October 2022.

14  
15                               /s/Raymond M. DiGuiseppe  
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