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*official capacity as Attorney General of*  
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*Mendoza in her Official Capacity as*  
 10 *Director of the Bureau of Firearms*

11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA  
 13 SACRAMENTO DIVISION  
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15 **WILLIAM WIESE, et al.,**  
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 Plaintiffs,  
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 v.  
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 19 **ROB BONTA, et al.,**  
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 Defendants.

Case No. 2:17-cv-00903-WBS-KJN

**DEFENDANTS' STATEMENT OF  
 DISPUTED FACTS IN SUPPORT OF  
 DEFENDANTS' OPPOSITION TO  
 MOTION FOR SUMMARY JUDGMENT**

Date: July 10, 2023  
 Time: 1:30 p.m.  
 Courtroom: 5, 14<sup>th</sup> Floor  
 Judge: Hon. William B. Shubb

1 In accordance with Local Rule 260 and this Court's  
 2 procedures, Defendants Rob Bonta, Attorney General of the State  
 3 of California, and Allison Mendoza, Director of the Bureau of  
 4 Firearms, sued in their official capacities ("Defendants"),  
 5 submit the following Statement of Genuine Disputes of Material  
 6 Fact in support of their Opposition to Plaintiffs' Motion for  
 7 Summary Judgment and Counter-Motion for Summary Judgment, filed  
 8 concurrently herewith (Defendant's Opposition and Counter-  
 9 Motion).

10 While Defendants dispute certain material facts herein,  
 11 resolution of these facts does not require trial. *See, generally,*  
 12 Defendants' Opposition and Counter-Motion. In addition,  
 13 Defendants object that Plaintiffs' Memorandum of Points and  
 14 Authorities in Support of their Motion for Summary Judgment, Dkt.  
 15 123-1, makes numerous factual assertions which were not included  
 16 in Plaintiffs' Statement of Undisputed Material Facts in Support  
 17 of their Motion for Summary Judgment, 123-2, and which have no  
 18 supporting evidence for them. *See* Defendants' Opposition and  
 19 Counter-Motion, 15-19.

	<b>Plaintiffs' Statement of Uncontroverted Facts and Conclusions of Law</b>	<b>Defendants' Response</b>
1	Defendant Rob Bonta is the head of the California Department of Justice ("DOJ") which, along	Undisputed.

1		with its Bureau of Firearms, regulates and enforces state law related to the sales, transfer, possession and ownership of firearms.	
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7	<b>2</b>	Defendant Allison Mendoza is sued in her official capacity as the Acting Director of the Bureau of Firearms.	Undisputed.
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12	<b>3</b>	California law defines a "large capacity magazine" ("LCM") as "any ammunition feeding device with the capacity to accept more than 10 rounds" of ammunition.	Disputed. The complete definition of a "large-capacity magazine" ("LCM") is set forth in California Penal Code section 16740: "[L]arge-capacity magazine' means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following: (a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds. (b) A .22 caliber tube ammunition feeding device. (c) A tubular magazine that is contained in a lever-action firearm."
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19	<b>4</b>	Since 1999, through passage of Sen. Bill 23, California prohibited the manufacture, importation, sale, or receipt of LCMs.	Disputed. 1999 Cal. Stat. 1781, §§ 3, 3.5 (S.B. 23), became effective in 2000. See <i>Duncan v. Bonta</i> , 19 F.4th 1087, 1141 (9th Cir. 2021) (Bumatay, J., dissenting). S.B. 23 prohibited any person from manufacturing or causing to be manufactured, importing into the State, keeping for sale, offering to expose for sale, giving, or lending any LCM, subject to exceptions.
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24	<b>5</b>	California law did not prohibit persons from acquiring LCMs that had been legally acquired, prior to Jan. 1, 2000.	Disputed. California Penal Code section 32310 (formerly section 12020) prohibited the manufacture, importation, sale, keeping for sale, offering or exposing for sale, giving, and lending of any large-capacity magazines. <i>Id.</i> at (a). Prior to 2017, California Penal Code section 32310 did not prohibit persons from possessing LCMs that they
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Defendants' Statement of Disputed Facts in Support of Defendants' Opposition to Motion for Summary Judgment  
(Case No. 2:17-cv-00903-WBS-KJN)

1		had legally acquired prior to January 1, 2000.
2	<b>6</b>	In 2016, the Legislature passed Sen. Bill 1446, which amended Pen. Code § 32310(b) to make it a criminal offense to possess a LCM, effective Jan. 1, 2017.
3		Undisputed.
4	<b>7</b>	Proposition 63, a measure banning the possession of LCMs, was approved by the voters in an election on November 9, 2016.
5		Disputed. The election in question was held on November 8, 2016. <a href="https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/general-election-november-8-2016">https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/general-election-november-8-2016</a> . Proposition 63 was approved by 63.1% of the vote. <a href="https://elections.cdn.sos.ca.gov/sov/2016-general/sov/06-sov-summary.pdf">https://elections.cdn.sos.ca.gov/sov/2016-general/sov/06-sov-summary.pdf</a> .
6	<b>8</b>	Proposition 63 amended Pen. Code § 32310 to impose criminal penalties on persons possessing LCMs on or after July 1, 2017.
7		Undisputed.
8	<b>9</b>	Plaintiffs Wiese, Morris, Cowley, Macaston, Flores, Dang, Federau, Normandy, and Nielsen ("Individual Plaintiffs") all acquired LCMs for firearms, in California, prior to 2000.
9		Disputed. No discovery occurred in this case. Defendants cannot "present facts essential to justify [their] opposition" because they have not conducted discovery on this fact. Fed. R. Civ. P. 56(d). As such, Plaintiffs' motion for summary judgment cannot be granted unless and until Defendants take discovery relating to this fact. See <i>id.</i>
10	<b>10</b>	Individual Plaintiffs would
11		Disputed. No discovery occurred in this case. Defendants cannot "present facts

1		otherwise	essential to justify [their] opposition”
2		acquire	because they have not conducted discovery
3		additional LCMs	on this fact. Fed. R. Civ. P. 56(d). As
4		for their	such, Plaintiffs’ motion for summary
5		existing	judgment cannot be granted unless and
6		firearms for	until Defendants take discovery relating
7		lawful purposes.	to this fact. See <i>id.</i>
8	<b>11</b>	A magazine is a	Undisputed.
9		receptacle for a	
10		firearm that	
11		holds cartridges	
12		or shells under	
13		spring pressure	
14		preparatory for	
15		feeding into the	
16		chamber of a	
17		firearm.	
18	<b>12</b>	Magazines may	Undisputed.
19		take many forms,	
20		such as box,	
21		drum, rotary, or	
22		tubular, and may	
23		be fixed or	
24		removable.	
25	<b>13</b>	Modern, semi-	Undisputed.
26		automatic	
27		firearms today	
28		are designed to	
		be used, and are	
		sold with	
		magazines.	
	<b>14</b>	A magazine is an	Disputed. See Busse Decl. ¶ 127 (many
		inherent	functioning firearms do not have
		operating part	magazines).
		of a functioning	
		firearm.	
	<b>15</b>	Many new	Undisputed.
		handguns sold by	
		retailers in	
		California	
		cannot be fired	
		without a	
		magazine	
		inserted,	
		according to	
		California law.	
	<b>16</b>	In most other	Disputed. Many semiautomatic firearms sold
		states,	in other states are sold with magazines

Defendants’ Statement of Disputed Facts in Support of  
Defendants’ Opposition to Motion for Summary Judgment  
(Case No. 2:17-cv-00903-WBS-KJN)

1	firearms,	capable of holding more than ten rounds.
2	including many	See Statement of Undisputed Facts, No. 17,
3	of the most	<i>infra</i> . Magazines do not have a "standard
4	popular pistols	capacity."
5	and rifles, are	
6	sold with	
7	standard	
8	capacity	
9	magazines.	
10	<b>17</b> Examples of such	Undisputed.
11	firearms	
12	include: the	
13	Glock 17 pistol	
14	(with 17-round	
15	magazines); the	
16	Glock 19 pistol	
17	(with 15-round	
18	magazines), the	
19	SIG Sauer P226	
20	pistol (with 15-	
21	round 9mm	
22	magazines), and	
23	the Beretta 92-	
24	series pistol	
25	(with 15, or 17-	
26	round	
27	magazines).	
28	<b>18</b> The most popular	Disputed. The cited source does not
	rifle in	provide evidentiary support for this
	American history	assertion. See David B. Kopel, <i>The History</i>
	is the AR-15	<i>of Firearm Magazines and Magazine</i>
	platform, a	<i>Prohibitions</i> , 88 Alb. L. Rev. 849, 859
	semiautomatic	n.90 (2015). In addition, the original AR-
	rifle with	15 was sold with a five-round magazine.
	standard	See Klarevas Decl., ¶ 49.
	magazines of	
	twenty or thirty	
	rounds.	
	<b>19</b> A study by the	Disputed.
	National	
	Shooting Sports	Plaintiffs' estimate includes assault
	Foundation	rifles acquired by law enforcement.
	(NSSF) estimated	(Pls. Exh. 17 at 2 ("An important
	that there were	note: The NSSF report includes
	over 24 million	weapons produced for law
	"modern sporting	enforcement.").
	rifles" (MSRs)	
	in circulation	

1		in the United States as of 2022.	
2			
3	20	A 2022 NSSF survey of MSR owners showed that over half (52%) of MSR owners reported they possessed magazines with 30 round capacities, followed by 17% who said they owned magazines with 20 round capacities. When asked why they chose their respective capacity, most frequent responses were related to their popularity/standard and being readily available.	Disputed. The survey does not claim that 52% of respondents reported that they possessed magazines with 30 round capacities, or that 17% said they owned magazines with 20 round capacities. Instead, the survey claims that 52% of respondents reported that the "magazine capacity" of their most recently-purchased rifle was 30 rounds, and that another 17% reported that the "magazine capacity" of their most recently-purchased rifle was 20 rounds. See Lee Decl., Ex. F at 31. Moreover, the rifles discussed in the survey do not themselves have a magazine capacity, as they are capable of using magazines capable of holding 10 or fewer rounds, see Busse Decl. ¶¶ 28-29, so this statement is unclear and ambiguous.
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18	21	Magazines holding more than 10 rounds of ammunition are, in virtually every other state of the Union, in common use by law-abiding for lawful purposes.	Disputed. Whether a weapon accessory is in "common use" for self-defense is a question of law. LCMs are not in common use for self-defense. See, e.g., Allen Decl. ¶¶ 11, 18 (individuals rarely fire more than 10 rounds in self-defense, with the average being approximately 2.2 rounds). Numerous courts have held that they are not, based on substantially similar records. See, e.g., <i>Hanson v. District of Columbia</i> , ___ F. Supp. 3d ___, 2023 WL 3019777, at *10-12 (N.D. Ill. Apr. 20, 2023) (holding that LCMs "are not in fact commonly used for self-defense" or "typically possessed for self-defense"); <i>Ocean State Tactical, LLC v. State of Rhode Island</i> , 2022 WL 17721175, at *15 (D.R.I. Dec. 14, 2022) ("[P]laintiffs have failed to establish that they have a
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		<p>likelihood of success in demonstrating that LCMs are weapons of self-defense, such that they would enjoy Second Amendment protection.”); <i>Or. Firearms Fed’n, Inc. v. Brown</i>, ___ F. Supp. 3d ___, 2022 WL 17454829, at *11 (D. Or. Dec. 6, 2022) (“Plaintiffs have not shown that large-capacity magazines are weapons ‘in common use . . . for lawful purposes like self-defense’ such that they fall within the plain text of the Second Amendment.” (citation omitted)); see also <i>Or. Firearms Fed’n, Inc.</i>, 2022 WL 17454829, at *11 (“The Ninth Circuit has noted, without explicitly holding, that there is ‘significant merit’ to the argument that large-capacity magazines are not firearms commonly used for lawful purposes like self-defense, and therefore are not covered by the plain text of the Second Amendment.” (quoting <i>Duncan v. Bonta</i>, 19 F.4th 1087, 1102 (9th Cir. 2021) (en banc))).</p>
<p><b>22</b></p>	<p>It is generally well-known, well-accepted, and generally indisputable that magazines capable of holding more than 10 rounds are commonly owned by millions of persons in the United States, for a variety of lawful purposes, including recreational target shooting, competition, home defense, collecting and hunting.</p>	<p>Disputed. The cited source does not provide evidentiary support for this assertion. See Youngman Decl. ¶ 9 (Dkt. 11); see also Klarevas Decl., ¶ 40 (“The current number of LCMs in American society is unknown.”)</p>



1 2 3 4 5 6 7 8 9 10 11 12 13 14	<b>23</b> The NSSF estimated that between 1990 and 2015 there were 230 million pistol and rifle magazines in the possession of United States consumers generally, and that magazines capable of holding more than 10 rounds of ammunition accounted for approx. 115 million, or half of all magazines owned, during this time period.	Disputed. Mr. Curcuruto acknowledges that the NSSF estimate is "based on extrapolation from indirect sources and cannot be confirmed as unequivocally accurate." Lee Decl., Ex. B ¶ 13; see also Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs' assertions). Moreover, to the extent the NSSF Magazine Chart was based on AFMER reports, those reports do not exclude production of firearms for purchase by law enforcement, and they do not provide manufacturing data on ammunition magazines. See ATF, Annual Firearms Manufacturing and Export Report (2020), <a href="https://www.atf.gov/firearms/docs/report/afmer-2020-final-report-cover-sheet/download">https://www.atf.gov/firearms/docs/report/afmer-2020-final-report-cover-sheet/download</a>  Objection: Speculative testimony. Fed. R. Evid. 702.
15 16 17 18 19 20 21 22 23 24 25 26 27 28	<b>24</b> It is likely that tens of millions of magazines capable of holding 10 or more rounds were in the hands of United States consumers generally between 1990 and 2015.	Disputed. Mr. Curcuruto acknowledges that the NSSF estimate is "based on extrapolation from indirect sources and cannot be confirmed as unequivocally accurate." Lee Decl., Ex. B ¶ 13; see also Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs' assertions). Moreover, to the extent Mr. Curcuruto's NSSF source was based on ATF AFMER reports, see <i>id.</i> , Ex. A (NSSF Magazine Chart), those reports do not exclude production of firearms for purchase by law enforcement, and they do not provide manufacturing data on ammunition magazines. See ATF, Annual Firearms Manufacturing and Export Report (2020), <a href="https://www.atf.gov/firearms/docs/report/afmer-2020-final-report-cover-sheet/download">https://www.atf.gov/firearms/docs/report/afmer-2020-final-report-cover-sheet/download</a> .  Objection: Speculative testimony. Fed. R. Evid. 702.

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<p><b>25</b></p>	<p>An analysis of a survey performed in 2021 found that 48% of gun owners in the United States have at one point or another owned magazines that are capable of holding more than 10 rounds.</p>	<p>Disputed. Whatever the percentage of gun owners who reported owning an LCM, only 3.56% of respondents to the survey reported being in "a situation . . . in which it would have been useful for defensive purposes to have a firearm with a magazine capacity in excess of 10 rounds" (550 out of 15,450 respondents). Lee Decl., Ex. C at 26-28; see also Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs' assertion). And in 81.9% of defensive incidents, no shots were fired. <i>Id.</i> at 13.</p> <p>Objection: Hearsay. Fed. R. Evid. 801.</p>
<p><b>26</b></p>	<p>According to the <i>Survey</i>, approx. 39 million Americans have at some point owned at least one magazine that holds more than 10 rounds.</p>	<p>Disputed. Whatever the percentage of gun owners who reported owning an LCM, only 3.56% of respondents to the survey reported being in "a situation . . . in which it would have been useful for defensive purposes to have a firearm with a magazine capacity in excess of 10 rounds" (550 out of 15,450 respondents). Lee Decl., Ex. C at 26-28; see also Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs' assertion). And in 81.9% of defensive incidents, no shots were fired. <i>Id.</i> at 13.</p> <p>Objection: Hearsay. Fed. R. Evid. 801.</p>
<p><b>27</b></p>	<p>According to the <i>Survey</i>, American gun owners have owned as many as 269 million handgun magazines that hold over 10 rounds.</p>	<p>Disputed. Whatever the percentage of gun owners who reported owning an LCM, only 3.56% of respondents to the survey reported being in "a situation . . . in which it would have been useful for defensive purposes to have a firearm with a magazine capacity in excess of 10 rounds" (550 out of 15,450 respondents). Lee Decl., Ex. C at 26-28; see also Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs' assertion). And in 81.9% of defensive incidents, no shots were fired. <i>Id.</i> at 13.</p> <p>Objection: Hearsay. Fed. R. Evid. 801.</p>

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<p><b>28</b></p>	<p>According to the <i>Survey</i>, American gun owners have owned as many as 273 million rifle magazines that hold over 10 rounds.</p>	<p>Disputed. Whatever the percentage of gun owners who reported owning an LCM, only 3.56% of respondents to the survey reported being in "a situation . . . in which it would have been useful for defensive purposes to have a firearm with a magazine capacity in excess of 10 rounds" (550 out of 15,450 respondents). Lee Decl., Ex. C at 26-28; see also Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs' assertion). And in 81.9% of defensive incidents, no shots were fired. <i>Id.</i> at 13.</p> <p>Objection: Hearsay. Fed. R. Evid. 801.</p>
<p><b>29</b></p>	<p>According to the <i>Survey</i>, individuals who own magazines that hold more than 10 rounds most commonly cite the following as the reasons for owning such devices: recreational target shooting, home defense, hunting, and defense outside the home.</p>	<p>Disputed. Self-defense is not the primary reason cited for owning an LCM. See Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs' assertion).</p> <p>Objection: Hearsay. Fed. R. Evid. 801.</p>
<p><b>30</b></p>	<p>In California, the California DOJ estimated that as of December 16, 2016, "[t]here are likely hundreds of thousands of large capacity magazines in California at this time."</p>	<p>Undisputed.</p>

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31	The DOJ expected that "many gun owners" would be affected by a new ban on LCMs.	Undisputed.
32	Prior to passage of SB 1446, the Senate Public Safety Committee considered and rejected the idea that the LCM ban would constitute a "takings" under the Fifth Amendment's Takings Clause.	Undisputed.
33	Under the new law, owners of LCMs in the State of California, unless exempt, must: (1) Remove the large-capacity magazine from the state; (2) Sell the large-capacity magazine to a licensed firearms dealer; or (3) Surrender the large-capacity magazine to a law enforcement agency for destruction.	Disputed. Owners of LCMs may continue to possess them if they modify the magazines permanently to no longer hold more than ten rounds of ammunition. See Cal. Penal Code Section 17460; see also <i>Duncan v. Bonta</i> , 19 F.4th 1087, 1113 (9th Cir. 2021), cert. granted, judgment vacated, 142 S. Ct. 2895 (2022), vacated and remanded, 49 F.4th 1228 (9th Cir. 2022).
34	The law does not offer to compensate owners of LCMs for their surrender to a	Undisputed.

1		LCM for destruction.	
2	35	Individual Plaintiffs are unwilling to destroy or surrender their lawfully-acquired LCMs in their possession.	Disputed. Defendants cannot “present facts essential to justify [their] opposition” because they have not conducted discovery on this fact. Fed. R. Civ. P. 56(d). As such, Plaintiffs’ motion for summary judgment cannot be granted unless and until Defendants take discovery relating to this fact. <i>See id.</i>
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6	36	Unless enjoined, enforcement of Pen. Code § 32310(c) will cause Individual Plaintiffs to suffer permanent physical deprivation of their personal property.	Disputed. Owners of LCMs may continue to possess them if they modify the magazines permanently to no longer hold more than ten rounds of ammunition. <i>See Cal. Penal Code Section 17460; see also Duncan v. Bonta</i> , 19 F.4th 1087, 1113 (9th Cir. 2021), <i>cert. granted, judgment vacated</i> , 142 S. Ct. 2895 (2022), <i>vacated and remanded</i> , 49 F.4th 1228 (9th Cir. 2022).
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11	37	Some Individual Plaintiffs have “pre-ban” magazines of substantial value, either intrinsically or because they have historical value.	Disputed. Defendants cannot “present facts essential to justify [their] opposition” because they have not conducted discovery on this fact. Fed. R. Civ. P. 56(d). As such, Plaintiffs’ motion for summary judgment cannot be granted unless and until Defendants take discovery relating to this fact. <i>See id.</i>
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19	38	Some of these magazines are the only magazines that these Individual Plaintiffs may have for that particular firearm.	Disputed. Defendants cannot “present facts essential to justify [their] opposition” because they have not conducted discovery on this fact. Fed. R. Civ. P. 56(d). As such, Plaintiffs’ motion for summary judgment cannot be granted unless and until Defendants take discovery relating to this fact. <i>See id.</i>  Firearms that use LCMs are capable of operating with magazines holding ten rounds or less. <i>See Busse Decl.</i> ¶¶ 28-29.
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26	39	Some of these magazines are the only magazines that	Disputed. Defendants cannot “present facts essential to justify [their] opposition” because they have not conducted discovery on this fact. Fed. R. Civ. P. 56(d). As
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Defendants’ Statement of Disputed Facts in Support of Defendants’ Opposition to Motion for Summary Judgment  
(Case No. 2:17-cv-00903-WBS-KJN)

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	were ever made for that particular firearm.	such, Plaintiffs' motion for summary judgment cannot be granted unless and until Defendants take discovery relating to this fact. See <i>id.</i>  Firearms that use LCMs are capable of operating with magazines holding ten rounds or less. See Busse Decl. ¶¶ 28-29.
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Dated: May 1, 2023

Respectfully submitted,

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as Attorney General of the  
State of California and  
Allison Mendoza in her  
Official Capacity as Director  
of the Bureau of Firearms*