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6 **NATIONAL SHOOTING SPORTS FOUNDATION, INC.**  
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11 SPORTS FOUNDATION, INC. and SPORTING  
ARMS AND AMMUNITION MANUFACTUR-  
12 ERS' INSTITUTE, INC.

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF FRESNO  
16

17 NATIONAL SHOOTING SPORTS  
FOUNDATION, INC., a nonprofit trade  
18 association; and SPORTING ARMS AND  
AMMUNITION MANUFACTURERS'  
19 INSTITUTE, INC., a nonprofit trade  
association,  
20  
Plaintiffs,  
21  
vs.  
22  
STATE OF CALIFORNIA, acting by and  
23 through its Attorney General, KAMALA D.  
HARRIS; and DOES 1 through 100, inclusive,  
24  
Defendants.  
25

CASE NO.  
**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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1 Plaintiffs National Shooting Sports Foundation, Inc. (“NSSF”) and Sporting Arms and  
2 Ammunition Manufacturers’ Institute, Inc. (“SAAMI”), complain and allege as follows:

3 1. NSSF is a Connecticut-based, nonprofit trade association for America’s firearms,  
4 ammunition, hunting and recreational shooting sports industries. NSSF is exempt from taxation  
5 under 26 U.S.C. § 501(c)(6). NSSF’s mission is to promote, protect and preserve hunting and the  
6 shooting sports. Founded in 1961, NSSF’s membership includes more than 10,000 federally  
7 licensed firearms and ammunition manufacturers, distributors and retailers, companies that  
8 manufacture, distribute and sell shooting and hunting-related goods and services, public and  
9 private shooting ranges, and sportsmen’s organizations, individual hunters and recreational target  
10 shooters. Some of NSSF’s members reside in the State of California. NSSF’s members sell the  
11 firearms and ammunition used by the United States military and by federal, state and local law  
12 enforcement personnel, including California state law enforcement agencies, to protect the  
13 national security of the United States and to keep American communities safe. NSSF’s members  
14 also sell to hunters, sportsmen and gun owners throughout the United States, including many who  
15 reside in the State of California, semi-automatic pistols and other firearms, and the ammunition  
16 that they use, for lawful purposes.

17 2. SAAMI is a Connecticut-based, nonprofit technical trade association whose  
18 membership includes the United States’ leading manufacturers of sporting firearms, ammunition,  
19 and firearm and ammunition components, at least one of whom is California-based. SAAMI is  
20 exempt from taxation under 26 U.S.C. § 501(c)(6). Founded in 1926 at the request of the federal  
21 government, SAAMI has for more than eighty-five years developed and published industry  
22 recommended practices and voluntary standards pertaining to the safety, interchangeability,  
23 reliability and quality of firearms and ammunition, provided assistance and expert advice to  
24 government agencies on issues relating to the design, operability and interchangeability of  
25 firearms and ammunition, and promoted safe and responsible use and ownership of firearms and  
26 ammunition. SAAMI members include manufacturers of semi-automatic pistols who sell products  
27 into the California market either directly to licensed firearms retailers or to licensed wholesale  
28 firearms distributors who then sell the products to licensed firearms retailers. SAAMI is an



1 accredited standards developer for the American National Standards Institute (“ANSI”), and it has  
2 published more than 700 voluntary standards related to the quality and safety of firearms and  
3 ammunition. Virtually all new firearms sold in the United States adhere to the SAAMI standards,  
4 and the United States military, the Federal Bureau of Investigation, and other state and local  
5 agencies (including many located in California) require that their suppliers manufacture firearms  
6 and ammunition according to SAAMI specifications. SAAMI is the only trade association whose  
7 member companies manufacture and set standards for the high-performance ammunition used by  
8 law enforcement agencies. Recognizing SAAMI’s contribution to public safety in the United  
9 States, the United Nations accredited SAAMI as an Economic and Social Council Non-  
10 Government Organization.

11 3. NSSF and SAAMI have standing to bring this action in their representative  
12 capacities on behalf of their aforementioned manufacturer, distributor, retailer and individual  
13 hunter and recreational target shooter members.

14 4. Defendant State of California is a public entity as defined in California  
15 Government Code section 811.2. Pursuant to Article V, section 13, of its Constitution, the State of  
16 California enforces its laws by and through its Attorney General, Kamala D. Harris (the “Attorney  
17 General”). Pursuant to California Government Code section 955, any action against the State of  
18 California other than those for the taking or damaging of private property for public use may be  
19 tried in Sacramento County, and pursuant to California Code of Civil Procedure section 401,  
20 subdivision (1), any action against the State of California that may be tried in Sacramento County  
21 may also be tried in any county in which the Attorney General has an office. The Attorney  
22 General has an office in Fresno County.

23 5. NSSF and SAAMI are currently unaware of the true names and capacities of  
24 defendants named herein as Does 1 through 100, inclusive, so NSSF and SAAMI sue those  
25 defendants by those fictitious names, pursuant to California Code of Civil Procedure section 474.  
26 NSSF and SAAMI will amend this complaint to state their true names and capacities when it  
27 ascertains them. NSSF and SAAMI allege on information and belief that each such fictitiously  
28 named defendant is in some manner responsible for the acts alleged herein. NSSF and SAAMI

1 further allege on information and belief that each of the defendants named herein, whether by  
2 fictitious name or otherwise, was the agent and employee of each of the remaining defendants, and  
3 was, in doing the things alleged herein, acting within the course and scope of that agency and  
4 employment.

5         6.       On or about August 27, 2010, the Legislature of the State of California passed  
6 Senate Bill No. 1080, which the Governor of the State of California thereafter signed into law on  
7 or about September 30, 2010. Senate Bill No. 1080 was an act to reorganize certain statutes of the  
8 State of California concerning the regulation of firearms, and pursuant thereto, Penal Code section  
9 12126 was repealed and reenacted in substantially unchanged form as Penal Code section 31910.  
10 Penal Code section 12126 had previously been enacted pursuant to Assembly Bill No. 1471,  
11 which was passed by the California Legislature on or about September 10, 2007 and signed into  
12 law by the Governor of the State of California on or about October 13, 2007.

13         7.       California Penal Code section 31910, subdivision (b)(7)(A), as currently codified  
14 provides as follows:

15

16                   As used in this part, “unsafe handgun” means any pistol,  
17 revolver, or other firearm capable of being concealed upon the  
18 person, for which any of the following is true:

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\* \* \*

19

(b) For a pistol:

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\* \* \*

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(7) (A) Commencing January 1, 2010, for all semiautomatic pistols that are not already listed on the roster pursuant to Section 32015, it is not designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired, provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.



1           8.       On or about May 17, 2013, the California Department of Justice certified that the  
2 technology used to create the imprint of the microscopic array of characters required by the  
3 provisions of California Penal Code section 31910, subdivision (b)(7)(A), is available to more  
4 than one manufacturer unencumbered by any patent restrictions. A copy of that certification is  
5 attached hereto as Exhibit A and incorporated herein by this reference.

6           9.       California Penal Code section 32000, subdivision (a), as currently codified  
7 provides as follows:

8  
9                       Commencing January 1, 2001, any person in this state who  
10 manufactures or causes to be manufactured, imports into the state  
11 for sale, keeps for sale, offers or exposes for sale, gives, or lends any  
12 unsafe handgun shall be punished by imprisonment in a county jail  
13 not exceeding one year.

14           10.       An actual controversy has arisen and now exists between NSSF and SAAMI, and  
15 the manufacturer, distributor and retailer members they represent, on the one hand, and the State  
16 of California, on the other hand, concerning their respective rights and duties pursuant to the  
17 provisions of California Penal Code section 31910, subdivision (b)(7)(A). NSSF and SAAMI  
18 contend that the provisions of California Penal Code section 31910, subdivision (b)(7)(A), are  
19 invalid as a matter of law and cannot be enforced because it is impossible for a firearm  
20 manufacturer to implement microstamping technology in compliance therewith, since no semi-  
21 automatic pistol can be designed or equipped with a microscopic array of characters identifying  
22 the make, model and serial number of the pistol that are etched or otherwise imprinted in two or  
23 more places on the interior surface or internal working parts of the pistol, and that can be legibly,  
24 reliably, repeatedly, consistently and effectively transferred from both such places to a cartridge  
25 case when the firearm is fired. NSSF and SAAMI allege on information and belief that the State  
26 of California contends to the contrary that the provisions of California Penal Code section 31910,  
27 subdivision (b)(7)(A), are nevertheless valid and should be enforced, notwithstanding the  
28 impossibility for a firearms manufacturer to implement microstamping technology in compliance  
therewith.

1           11. Scientific literature highlights the existence of the aforementioned actual  
2 controversy regarding the unproven and unreliable firearm microstamping technology. As the  
3 inventor of firearm microstamping technology, Todd Lizotte, himself conceded in his article,  
4 “Clarity of Microstamped Identifiers as a Function of Primer Hardness and Type of Firearm  
5 Action,” which appeared in the Spring 2012 edition of the AFTE Journal (Volume 44 Number 2),  
6 approximately a year and a half after Penal Code section 31910, subdivision (b)(7)(A) was  
7 enacted, “it is apparent that legitimate questions exist related both to the technical aspects,  
8 production costs, and database management associated with microstamping that should be  
9 addressed before wide scale implementation is legislatively mandated.” Thus, according to Mr.  
10 Lizotte, as he stated in an article entitled “Gear Code Extraction from Microstamped Cartridges,”  
11 which recently appeared in the Winter 2013 edition of the AFTE Journal (Volume 45, Number 1),  
12 *“complete recognition is still not possible in all cases.”*

13           12. Independent forensic firearm examiners confirm Mr. Lizotte’s findings. In an  
14 April, 2008 article entitled “What Micro Serialized Firing Pins Can Add to Firearm Identification  
15 in Forensic Science: How Viable Are Micro-Marked Firing Pin Impressions as Evidence?,”  
16 David Howitt, Ph.D., Frederic A. Tulleners and Michael T. Beddow of the Forensic Science  
17 Graduate Group at the University of California at Davis stated that “because its forensic potential  
18 has yet to be fully assessed, a mandate for the implementation of this technology in all new semi-  
19 automatic handguns sold in the State of California is counter-indicated.” In addition, as stated by  
20 George G. Krivosta of the Suffolk County, New York, Crime Laboratory in his article, “NanoTag  
21 Markings From Another Perspective,” which appeared in the Winter 2006 edition of the AFTE  
22 Journal (Volume 38, Number 1), “the weapon producing the highest percentage of readable  
23 impressions was incapable of firing three shots in a row. Certainly this research has shown that  
24 implementing this technology will be much more complicated than burning a serial number on a  
25 few parts and dropping them into firearms being manufactured.” Finally, as stated in a March 5,  
26 2008 paper entitled “Ballistic Imaging,” which released by the National Research Council of the  
27 National Academies’ Committee to Assess the Feasibility, Accuracy and Technical Capability of a  
28 National Ballistics Database,



1 for such a technology to be implemented successfully, in-depth  
2 investigations on several topics are needed. These topics include the  
3 reliability and durability of the marks in a variety of firing  
4 conditions, their susceptibility to tampering and countermeasures,  
5 whether it would be best to place them on guns or ammunition or  
6 both, and the cost considerations and feasibility of adding a  
7 microstamping process to established manufacturing processes.

8 13. Pursuant to California Code of Civil Procedure section 1060, NSSF and SAAMI  
9 seek a judicial declaration of the respective rights and duties of the parties with respect to this  
10 controversy. In particular, NSSF and SAAMI seek a judicial declaration that the provisions of  
11 California Penal Code section 31910, subdivision (b)(7)(A), are invalid and cannot be enforced  
12 because it is impossible for a firearm manufacturer to implement microstamping technology in  
13 compliance therewith, since no semi-automatic pistol can be designed or equipped with a  
14 microscopic array of characters identifying the make, model and serial number of the pistol that  
15 are etched or otherwise imprinted in two or more places on the interior surface or internal working  
16 parts of the pistol, and that can be legibly, reliably, repeatedly, consistently and effectively  
17 transferred from both such places to a cartridge case when the firearm is fired. Such a judicial  
18 declaration is necessary and appropriate at this time under the circumstances so that NSSF,  
19 SAAMI and the State of California can ascertain their respective rights and duties pursuant to the  
20 provisions of California Penal Code section 31910, subdivision (b)(7)(A).

21 14. The application of California Penal Code section 31910, subdivision (b)(7)(A), to  
22 NSSF's and SAAMI's manufacturer, distributor and retailer members is currently preventing  
23 those manufacturer, distributor and retailer members from selling any semi-automatic pistols in  
24 the State of California that do not comply therewith, because any such sales would subject them to  
25 criminal prosecution under California Penal Code section 32000, subdivision (a). That in turn is  
26 preventing NSSF's and SAAMI's manufacturer, distributor and retailer members from obtaining  
27 significant financial returns on the investments they have made in the development of such semi-  
28 automatic pistols. NSSF's and SAAMI's manufacturer, distributor and retailer members will  
never be able to obtain pecuniary compensation for their current and anticipated future losses of  
those financial returns from the State of California or from any other source, and the State of

1 California's enforcement of California Penal Code section 31910, subdivision (b)(7)(A), is thus  
2 causing those manufacturer, distributor and retailer members to suffer irreparable injury. The  
3 irreparable injury being suffered by NSSF's and SAAMI's manufacturer, distributor and retailer  
4 members is current and ongoing.

5 15. The application of California Penal Code section 31910, subdivision (b)(7)(A), to  
6 NSSF's individual hunter and recreational target shooter members is preventing those individual  
7 members from purchasing newly developed semi-automatic pistol models that incorporate the  
8 latest safety features. Pecuniary compensation would not afford adequate relief for injuries  
9 suffered by those individual hunter and recreational target shooter members who are forced to use  
10 older semi-automatic pistols that do not incorporate the latest safety features, and the State of  
11 California's enforcement of California Penal Code section 31910, subdivision (b)(7)(A), is thus  
12 causing those individual members to suffer irreparable injury. The irreparable injury being  
13 suffered by NSSF's individual hunter and recreational target shooter members is current and  
14 ongoing.

15 16. The State of California should therefore be enjoined from taking any action to  
16 enforce the provisions of California Penal Code section 31910, subdivision (b)(7)(A). The  
17 injunction should prohibit the prosecution of any person or entity under California Penal Code  
18 section 32000, subdivision (a), for any violation of California Penal Code section 31910,  
19 subdivision (b)(7)(A). Such injunctive relief is the only adequate remedy for determining the  
20 rights and duties of the parties herein.

21  
22 WHEREFORE, NSSF and SAAMI pray for judgment against defendants, and each of  
23 them, as follows:

24 1. For a judicial declaration that the provisions of California Penal Code section  
25 31910, subdivision (b)(7)(A), are invalid as a matter of law and cannot be enforced because it is  
26 impossible for a firearm manufacturer to implement microstamping technology in compliance  
27 therewith, since no semi-automatic pistol can be designed or equipped with a microscopic array of  
28 characters identifying the make, model and serial number of the pistol that are etched or otherwise



1 imprinted in two or more places on the interior surface or internal working parts of the pistol, and  
2 that can be legibly, reliably, repeatedly, consistently and effectively transferred from both such  
3 places to a cartridge case when the firearm is fired;

4         2.       That the State of California be enjoined both preliminarily and permanently from  
5 taking any action to enforce the provisions of California Penal Code section 31910, subdivision  
6 (b)(7)(A), and from taking any action to prosecute any person or entity under California Penal  
7 Code section 32000, subdivision (a), for any violation of California Penal Code section 31910,  
8 subdivision (b)(7)(A);

9         3.       For attorney's fees pursuant to California Code of Civil Procedure section 1021.5  
10 and any other applicable provision or principle of law;

11         4.       For costs of suit incurred in this action; and

12         5.       For such other and further relief as the Court deems just and proper.

13  
14 DATED: January 9, 2014.

DANIEL C. DECARLO  
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17 By: Lance A. Selfridge  
18 Lance A. Selfridge  
19 Attorneys for Plaintiffs NATIONAL SHOOTING  
20 SPORTS FOUNDATION, INC., and SPORTING  
21 ARMS AND AMMUNITION MANUFACTUR-  
22 ERS' INSTITUTE, INC.  
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STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
ROCHELLE C. EAST  
CHIEF DEPUTY ATTORNEY GENERAL, LEGAL AFFAIRS

CERTIFICATION UNDER  
CALIFORNIA PENAL CODE § 31910, SUBDIVISION (b)(7)(A)

Under California Penal Code § 31910, subdivision (b)(7)(A), a semiautomatic pistol not already listed on the firearm roster pursuant to California Penal Code § 32015 is an "unsafe handgun" unless it is "designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired, provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions."

The California Department of Justice has conducted a review of the known and available patent restrictions applicable to the microscopic-imprinting technology described in § 31910, subdivision (b)(7)(A). Based on this review, the Department certifies that, as of May 17, 2013, this technology is available to more than one manufacturer unencumbered by any patent restrictions.

  
Rochelle C. East  
Chief Deputy Attorney General