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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF FRESNO

10
11
12
13 **NATIONAL SHOOTING SPORTS
FOUNDATION, INC., a nonprofit trade
14 association; and SPORTING ARMS AND
AMMUNITION MANUFACTURERS'
15 INSTITUTE, INC., a nonprofit trade
association,**

16 Plaintiff,

17 v.

18
19 **STATE OF CALIFORNIA, acting by and
through its Attorney General, KAMALA D.
20 HARRIS; and DOES 1 through 100,
inclusive,**

21 Defendant.
22

Case No. 14CECG00068

**NOTICE OF HEARING ON DEMURRER
AND DEMURRER TO COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: April 30, 2014
Time: 3:30 p.m.
Dept: 502
Judge: Donald M. Black
Trial Date: None
Action Filed: 1/09/2014

23 PLEASE TAKE NOTICE that on April 30, 2014, at 3:30 p.m., or as soon thereafter as the
24 matter may be heard, in Department 502 of the above-entitled court located at the B.F. Sisk
25 Courthouse, 1130 "O" Street, Fresno, California, Defendants State of California and Kamala D.
26 Harris, in her capacity as Attorney General of California, shall demur, and hereby do demur, to
27
28

1 the complaint of plaintiffs National Shooting Sports Foundation, Inc. ("NSSF") and Sporting
2 Arms and Ammunition Manufacturers' Institute, Inc. ("SAAMI") (collectively "plaintiffs").

3 **DEMURRER TO COMPLAINT**

4 The demurrer shall be to the entire complaint as there are no individual causes of action,
5 and is made on the ground that the plaintiffs do not have standing. (Code Civ. Proc. § 430.10,
6 subd. (e).)

7 The demurrer shall be to the entire complaint as there are no individual causes of action,
8 and is made on the ground that the complaint does not state facts sufficient to constitute a cause
9 of action. (Code Civ. Proc. § 430.10, subd. (e).)

10 The demurrer shall be based on this notice of demurrer, on the accompanying memorandum
11 of points and authorities, on the pleadings and papers on file in this action, and upon such further
12 argument as may be offered at the time of the hearing.

13 Dated: March 14, 2014

Respectfully Submitted,

14 KAMALA D. HARRIS
15 Attorney General of California
16 MARK R. BECKINGTON
17 Supervising Deputy Attorney General

18 

19 SUSAN K. SMITH
20 Deputy Attorney General
21 *Attorneys for Defendants*
22 *Attorney General Kamala D. Harris and*
23 *State of California*

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **INTRODUCTION**

3 Two firearms trade associations have brought this action against the State of California and
4 Attorney General Kamala D. Harris (“Defendants”) to enjoin the “microstamping” provisions of
5 the California Unsafe Handgun Act (“UHA”), alleging that it is impossible to comply with the
6 provisions. They also seek a judicial declaration that is impossible to comply with the
7 microstamping provisions. It is unclear under what theory this claim is asserted.

8 The microstamping provisions of the UHA require that all semiautomatic pistols that are
9 not already listed on an approved California roster must be designed and equipped with a
10 microscopic array of characters that identify the make, model, and serial number of the pistol, and
11 that are transferred to the spent casing when the firearm is fired.

12 In their complaint, plaintiffs National Shooting Sports Foundation, Inc. (“NSSF”) and the
13 Sporting Arms and Ammunition Manufacturers’ Institute (“SAAMI”) fail to allege a viable cause
14 of action because there are no allegations specifying what type of claim is alleged, i.e. a
15 constitutional violation of rights, a breach of contract, or a tort. If plaintiffs are trying to assert a
16 constitutional violation, no facts have been alleged asserting that plaintiffs’ constitutional rights
17 have been infringed. Moreover, plaintiffs lack standing to assert these claims as they are trade
18 associations that do not possess a Second Amendment right to keep and bear arms.

19 Defendants demur to the entire complaint for failing to state a claim and respectfully
20 request that this Court sustain the demurrers.

21 **LEGAL BACKGROUND**

22 **I. CALIFORNIA'S UNSAFE HANDGUN ACT**

23 The UHA prohibits the manufacture or sale of any “unsafe handgun” in California, making
24 a violation punishable by imprisonment in a county jail for not more than one year. (Penal Code,
25 § 32000, subd. (a).)¹

26
27 ¹Further statutory references are to the California Penal Code unless otherwise indicated.

1 Under the Act, an unsafe handgun is “any pistol, revolver, or other firearm capable of being
2 concealed upon the person” which does not have a specified safety device, fails to meet certain
3 firing criteria, or does not meet drop safety requirements. (§ 31910; See *Fiscal v. City and*
4 *County of San Francisco* (2008) 158 Cal.App.4th 895, 912 “[T]he UHA requires that all models
5 of handguns meet certain quality assurance tests and other standards before being approved for
6 sale in this state, including specified standards relating to the safe firing of the handgun and the
7 ability to drop the handgun without it firing accidentally.”) The required safety devices for
8 revolvers and pistols are specified at sections 31910, subdivision (a)(1) and 31910, subdivision
9 (b)(1), respectively.

10 In January 2010, the definition of an unsafe handgun was amended to impose a
11 microstamping requirement on new additions to the DOJ’s handgun roster. Specifically, under
12 the amended definition, an unsafe handgun is now defined to include “all semiautomatic pistols
13 that are not already listed on the roster . . . not designed and equipped with a microscopic array of
14 characters that identify the make, model, and serial number of the pistol, etched or otherwise
15 imprinted in two or more places on the interior surface or internal working parts of the pistol, and
16 that are transferred by imprinting on each cartridge case when the firearm is fired, provided that
17 the Department of Justice certifies that the technology used to create the imprint is available to
18 more than one manufacturer unencumbered by any patent restrictions.” (§ 31910, subd. (b)(7)(A)
19 [this is referred to as “microstamping”].²) Additionally, the Department of Justice has
20 promulgated detailed regulations regarding the microstamping process, including how
21 manufacturers are to submit pistols for testing in order to demonstrate that the pistol meets the
22 standards required. (11 Cal. Code of Regs. §§ 4050 et seq., 4060, 4071, 4075). The regulations
23 regarding microstamping are not challenged in this lawsuit.

24 There are exceptions to the definition of an unsafe handgun. (See §§ 32000(b), 32105,
25 32110, 32100.) For example, firearms sold to police departments and certain curios or relics are

26
27 ² A “semiautomatic pistol” is defined as “a pistol with an operating mode that uses the
28 energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh
cartridge with each single pull of the trigger.” (§ 17410.)

1 exempt. (§ 32000, subd. (b)(3) (4).) Certain single action revolvers and single shot pistols are
2 exempt. (§ 32100.) Firearms delivered for consignment sale or as collateral for a pawnbroker
3 loan are also exempt, (*see* § 32110, subd. (f)).

4 **II. THE ROSTER OF HANDGUNS CERTIFIED FOR SALE**

5 The UHA directs that DOJ “shall compile, publish, and thereafter maintain a roster listing
6 all of the pistols, revolvers, and other firearms capable of being concealed upon the person that
7 have been tested by a certified testing laboratory, have been determined not to be unsafe
8 handguns, and may be sold in this state pursuant to this title.” (§ 32015, subd. (a).)

9 The Act also allows DOJ to collect an annual fee from manufacturers or sellers to cover the
10 costs of maintaining the roster and other costs necessary to implement the Act. (§ 32015, subd.
11 (b)(1).) DOJ may exclude a firearm from the roster if the manufacturer or seller fails to pay the
12 annual fee. (§ 32015, subd. (b)(2).)

13 Under the Act, a firearm shall be deemed to satisfy the roster requirements if a similar
14 firearm is already listed. Specifically, a firearm satisfies the requirements if another firearm made
15 by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm
16 only in one or more of the following features: (1) finish; (2) the material from which the grips are
17 made; (3) the shape or texture of the grips, so long as the difference “does not in any way alter the
18 dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or
19 any of the components of the firing mechanism of the firearm”; and (4) “[a]ny other purely
20 cosmetic feature” that does not result in such an alteration. (§ 32030.)

21 **III. FACTS ALLEGED IN THE COMPLAINT**

22 Plaintiffs filed their complaint on January 9, 2014 (“Complaint”). NSSF is a Connecticut-
23 based, nonprofit trade association for firearms, ammunition, hunting and recreational shooting
24 sports industries. (Compl. ¶ 1.) NSSF’s members sell the firearms and ammunition used by the
25 United States military and by federal, state and local law enforcement personnel, including
26 California state law enforcement agencies, and some NSSF members reside in California. (*Ibid.*)
27 SAAMI is also a Connecticut-based, nonprofit entity. (Comp. ¶ 2.) SAAMI members include
28 manufacturers of semi-automatic pistols who sell products into the California market either

1 directly to licensed firearms retailers or to licensed wholesale firearms distributors who then sell
2 the products to licensed firearms retailers. (*Ibid.*) SAAMI is an accredited standards developer
3 for the American National Standards Institute, and it has published more than 700 voluntary
4 standards related to the quality and safety of firearms and ammunition. (*Ibid.*)

5 Plaintiffs allege that “NSSF and SAAMI have standing to bring this action in their
6 representative capacities on behalf of their aforementioned manufacturer, distributor, retailer and
7 individual hunter and recreational target shooter members.” (Compl. ¶ 3.)

8 Plaintiffs allege that provisions of California Penal Code section 31910, subdivision
9 (b)(7)(A), are invalid as a matter of law and cannot be enforced because “it is impossible for a
10 firearm manufacturer to implement microstamping technology in compliance therewith, since no
11 semi-automatic pistol can be designed or equipped with a microscopic array of characters
12 identifying the make, model and serial number of the pistol that are etched or otherwise imprinted
13 in two or more places on the interior surface or internal working parts of the pistol, and that can
14 be legibly, reliably, repeatedly, consistently and effectively transferred from both such places to a
15 cartridge case when the firearm is fired.” (Compl. ¶ 10.) Plaintiffs cite to various quotations
16 from literature to support these allegations. (Compl. ¶¶ 11-12.) Specifically, plaintiffs cite
17 articles written by Todd Lizotte, the “inventor of firearm microstamping technology” which state
18 that “legitimate questions exist related both to the technical aspects, production costs, and
19 database management associated with microstamping” and in a separate article, “complete
20 recognition is still not possible in all cases.” (Compl. ¶ 11.)

21 Additional quotations are cited by plaintiffs including this one from 2008: “because its
22 forensic potential has yet to be fully assessed, a mandate for the implementation of this
23 technology in all new semi-automatic handguns sold in the State of California is counter-
24 indicated.” (Compl. ¶ 12.) This one from 2006: “the weapon producing the highest percentage
25 of readable impressions was incapable of firing three shots in a row.” (*Ibid.*) And this one from
26 2008: “for such a technology to be implemented successfully, in-depth investigations on several
27 topics are needed.” (*Ibid.*)
28

1 Plaintiffs seek a judicial declaration that the provisions of Penal Code section 31910,
2 subdivision (b)(7(a) “are invalid and cannot be enforced” based on the alleged impossibility of
3 implementing microstamping technology. (Compl. ¶ 13.) Additionally, plaintiffs claim that the
4 application of Penal Code section 31910, subdivision (b)(7(a) is “currently preventing those
5 manufacturer, distributor and retailer members from selling *any* semi-automatic pistols in the
6 State of California that do not comply therewith. . . .” (Compl. ¶ 14 [emphasis added].) This, in
7 turn, allegedly prevents plaintiffs’ members from obtaining significant financial returns on the
8 investments they made in the development of such semi-automatic pistols. (*Ibid.*) Additionally,
9 plaintiffs allege that NSSF’s individual hunter and recreational target shooter members are
10 prevented from purchasing newly developed semi-automatic pistol models that incorporate the
11 latest safety features, thus causing irreparable injury. (Compl. ¶ 15.)

12 ARGUMENT

13 I. STANDARD OF REVIEW ON DEMURRER

14 A defendant may object to a whole complaint or to any of the purported causes of action
15 within a complaint by demurrer. (Code Civ. Proc., § 430.50, subd. (a).) On demurrer, the trial
16 court considers the properly pled material facts and those matters which may be judicially noticed
17 and tests their sufficiency. (*California Alliance for Utility etc. Education v. City of San Diego*
18 (1997) 56 Cal.App.4th 1024, 1028.) Courts treat as true all of the complaint's material factual
19 allegations, but not the contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan*
20 (1985) 39 Cal.3d 311, 318.) The court determines if the complaint sufficiently states a cause of
21 action, assuming the truth of the facts set forth by the pleading, when ruling on demurrer. (*Picton*
22 *v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.)

23 II. PLAINTIFFS FAIL TO ALLEGE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF 24 ACTION AGAINST DEFENDANTS

25 The crux of plaintiffs’ complaint is that it is impossible to comply with the microstamping
26 provisions of the Unsafe Handgun Act. (Complaint ¶ 10, pp. 8-9.) As alleged by plaintiffs,
27 Penal Code section 31910, subdivision (b)(7(A), is invalid as a matter of law “and cannot be
28 enforced because it is impossible for a firearm manufacturer to implement microstamping

1 technology in compliance therewith.” (Complaint ¶ 10.) There are no allegations, however,
2 specifying what type of claim is alleged, i.e. a constitutional violation of rights, a breach of
3 contract, a tort. Rather, plaintiffs’ complaint merely asserts that it is impossible for firearm
4 manufacturers to comply with the law. They seek a declaration that the law is invalid and an
5 injunction enjoining the State of California from taking any action to enforce the law. (Complaint
6 at p. 9:4-8.) This does not state a cause of action against defendants.

7 An action for declaratory and injunctive relief is a proper means of “challenging a statute’s
8 constitutionality.” (*California Restaurant Assn. v. Henning* (1985) 173 Cal.App.3d 1069, 1073
9 [internal citations omitted].) However, here, plaintiffs have failed to allege that the statute is
10 unconstitutional. Rather, plaintiffs merely allege that firearm manufacturers are unable to comply
11 with the statute, an allegation that fails to signify any actionable claim. Presumably, some
12 manufacturers can or will be able to comply with the statute, and the allegation that
13 manufacturers cannot comply does not allege a valid cause of action under any theory.

14 Although they demand declaratory relief, plaintiffs have not alleged that a declaratory
15 action is appropriate pursuant to any specific provision in the Code of Civil Procedure. (See Civ.
16 Proc. Code, § 1060 [right of action for declaratory relief pursuant to a written instrument]; 5
17 Witkin, Cal. Procedure (5th Ed. 2008) Pleading, § 856, pp. 270-71 [listing special kinds of
18 declaratory relief]. The Complaint does not specify a legal theory by which plaintiffs seek such
19 relief. “The plaintiff must show the complaint alleges facts sufficient to establish every element
20 of each cause of action.” (*Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39,
21 43.) Here, no cause of action has been specified and thus, no elements have been alleged.

22 “Doubt in the complaint may be resolved against plaintiff and facts not alleged are
23 presumed not to exist.” (*Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578.) Here, plaintiffs
24 have failed to state a cause of action, instead merely asserting that compliance with certain
25 portions of the Penal Code is impossible. (Complaint ¶ 10, pp. 8-9.) Certain facts and allegations,
26 which have not been specified in the Complaint, would have to be assumed in order to find a
27 valid cause of action. For example, if plaintiffs are trying to assert a constitutional claim, they
28 have not done so in this Complaint as they have not asserted that their Second Amendment rights

1 have been infringed. It is not proper to resolve doubts or facts not alleged in favor of plaintiffs.
2 For all these reasons, this Court should sustain defendants' demurrers to the Complaint for
3 declaratory and injunctive relief.

4 **III. PLAINTIFFS HAVE NOT ALLEGED A CONSTITUTIONAL VIOLATION UNDER THE**
5 **SECOND AMENDMENT, NOR COULD THEY HERE.**

6 Although it is not clear what claim plaintiffs allege in their complaint, to the extent that
7 they are trying to allege a violation of the Second Amendment, they have failed to do so. The
8 Second Amendment provides: "A well regulated Militia, being necessary to the security of a free
9 State, the right of the people to keep and bear Arms, shall not be infringed." (U.S. Const. amend.
10 II.) The Supreme Court has held that the Second Amendment protects an individual right, not a
11 collective one: "There seems to us no doubt, on the basis of both text and history, that the Second
12 Amendment conferred an individual right to keep and bear arms." (*District of Columbia v. Heller*
13 (2008) 554 U.S. 570, 595; see also *United States v. Chovan* (9th Cir. 2013) 735 F.3d 1127, 1133.)
14 The Court further held, however, that "[l]ike most rights, the right secured by the Second
15 Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators
16 and courts routinely explained that the right was not a right to keep and carry any weapon
17 whatsoever in any manner whatsoever and for whatever purpose." (*District of Columbia v.*
18 *Heller, supra*, 554 U.S. at p. 626 [citations omitted].) Thus, while *Heller* did uphold the
19 invalidation of a very strict law of the District of Columbia that generally prohibited the
20 possession of handguns (*id.* at pp. 576, 636), *Heller* took care to provide an expressly non-
21 exhaustive list of "presumptively lawful regulatory measures," "a variety of tools" that "the
22 Constitution leaves . . . for combating" the problem of firearm violence in the United States.
23 (*Id.* at p. 636.) That list includes prohibitions on the possession of "weapons not typically
24 possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns" (*id.* at p.
25 625), as well as "longstanding prohibitions on the possession of firearms by felons and the
26 mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and
27 government buildings, or laws imposing conditions and qualifications on the commercial sale of
28

1 arms.” (*Id.* at 626-27 [emphasis added].³)

2 *Heller* concerned a total ban on handguns: “the law totally bans handgun possession in the
3 home. It also requires that any lawful firearm in the home be disassembled or bound by a trigger
4 lock at all times, rendering it inoperable.” (*District of Columbia v. Heller, supra*, 554 U.S. at p.
5 628.) In finding the total ban on handguns unconstitutional, the Court explained:

6 [T]he inherent right of self-defense has been central to the Second Amendment
7 right. The handgun ban amounts to a prohibition of an entire class of “arms” that
8 is overwhelmingly chosen by American society for that lawful purpose. The
9 prohibition extends, moreover, to the home, where the need for defense of self,
10 family, and property is most acute. Under any of the standards of scrutiny that we
11 have applied to enumerated constitutional rights, banning from the home “the most
12 preferred firearm in the nation to ‘keep’ and use for protection of one’s home and
13 family,” would fail constitutional muster.

14 (*Id.* at pp. 628-29 [footnote and citation omitted].) It is unclear what the gist of plaintiffs’ claim is
15 in this case. But if plaintiffs are trying to assert a Second Amendment claim without stating it
16 explicitly, the provisions regarding microstamping are completely distinguishable from the
17 sweeping ban at issue in *Heller*. Plaintiffs do not allege that the law on microstamping acts as a
18 total ban on an entire class of weapons. (*Id.* at p. 628.) It is not aimed at possession of handguns in
19 the home, or the possession of handguns anywhere. (*Ibid.*) Indeed, under the private-party

20 ³The Supreme Court has held that the Second Amendment is fully incorporated against the
21 states via the Fourteenth Amendment. (*McDonald v. City of Chicago* (2010) 130 S.Ct. 3020,
22 3042.) Yet the Court explained that “incorporation does not imperil every law regulating
23 firearms.” (*Id.* at p. 3047.) In doing so, the Court was careful to re-state the critical language
24 from *Heller*:

25 It is important to keep in mind that *Heller*, while striking down a law that
26 prohibited the possession of handguns in the home, recognized that the right to
27 keep and bear arms is not “a right to keep and carry any weapon whatsoever in any
28 manner whatsoever and for whatever purpose.” [Citation.] We made it clear in
Heller that our holding did not cast doubt on such longstanding regulatory
measures as “prohibitions on the possession of firearms by felons and the mentally
ill,” “laws forbidding the carrying of firearms in sensitive places such as schools
and government buildings, or laws imposing conditions and qualifications on the
commercial sale of arms.” [Citation.] *We repeat those assurances here.*
(*Ibid.* [emphasis added].)

(*Ibid.*)

1 transfer exception of the Unsafe Handgun Act, individuals may lawfully purchase his or her
2 desired firearm from a private party in California. (§ 32110, subd. (a); see also § 28050 et seq.)
3 The provisions regarding microstamping do not impede in any fashion a person's ability to
4 defend himself or herself in the home, the "central component" of the Second Amendment.
5 (*District of Columbia v Heller*, *supra*, 554 U.S. at p. 599.)

6 Far from impeding Second Amendment rights, the provisions requiring microstamping are
7 one of the "presumptively lawful" regulations envisioned by *Heller*. By requiring certain
8 technology in certain handguns in order to sell those handguns in California, the microstamping
9 law is one "imposing conditions and qualifications on the commercial sale of arms." (*District of*
10 *Columbia v. Heller*, *supra*, 554 U.S. at pp. 626-27 & n.26.) By regulating access to certain
11 handguns with unsafe, dangerous features, it is also akin to the kinds of safety laws that *Heller*
12 expressly endorsed, such as gunpowder-storage laws designed to prevent fires and laws regulating
13 the storage of firearms to prevent accidents. (*Id.* at p. 632.) Moreover, nothing in the Second
14 Amendment guarantees an individual the right to purchase whatever kind of handgun one desires
15 from whomever he or she desires. (*Id.* at p. 626.)

16 Thus, even if the Court assumes that plaintiffs are attempting to assert a constitutional claim
17 under the Second Amendment, even though one was not alleged, plaintiffs failed to specify how
18 the microstamping regulations violate an individual's Second Amendment rights.

19 **IV. EVEN IF A VALID CLAIM IS ASSERTED, PLAINTIFFS LACK STANDING TO ASSERT A** 20 **CLAIM IN THIS PROCEEDING**

21 Plaintiffs allege that "NSSF and SAAMI have standing to bring this action in their
22 representative capacities on behalf of their aforementioned manufacturer, distributor, retailer and
23 individual hunter and recreational target shooter members." (Compl. ¶ 3.) No individual
24 members are named. (See generally Compl.)

25 Plaintiffs are not real parties in interest and lack the standing to sue under the theories
26 asserted in this Complaint. (*Klopstock v. Superior Court* (1941) 17 Cal.2d 13, 18.) As discussed,
27 *supra*, it is unclear what type of claim is raised in this Complaint, but if plaintiffs are trying to
28 assert a constitutional claim, the Associations themselves do not possess a Second Amendment

1 right, thus they lack standing to bring this lawsuit. (See e.g., *Heller*, 554 U.S. at 595 [Second
2 Amendment confers a individual right to keep and bear arms].) A demurrer is proper where the
3 plaintiff does not have standing to sue for the relief requested. (*Friendly Village Community*
4 *Assoc. v. Silva & Hill Construction Co.* (1973) 31 Cal.App.3d 220, 224-25 [a non-profit
5 governing board of a condominium does not have standing to sue for a cause of action for injury
6 to real property because the board does not possess or have right to possess the property]; see also
7 *Carsten v. Psychology Examining Comm. of the Bd. of Medical Quality Assurance* (1980) 27
8 Cal.3d 793, 796-97 [plaintiff lacks standing to bring writ of mandate because she was not a
9 “beneficially interested” party as required by Code Civil Procedure section 1086].)

10 Nor do plaintiffs seem to be suing under an “associational standing” theory. (See
11 *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993,
12 1003-04 [stating that an association that does not have standing in its own right may nevertheless
13 have standing to bring a lawsuit on behalf of its members if it meets a three part test].)
14 Associational standing exists when “(a) [the association’s] members would otherwise have
15 standing to sue in their own right; (b) the interest [the association] seeks to protect are germane to
16 the organizations’ purpose; and (c) neither the claim asserted nor the relief requested requires the
17 participation of individual members in the lawsuit.” (*Id.* at 1004, citing *Hunt v. Washington*
18 *Apple Advertising Comm’n* (1977) 432 U.S. 333, 343.)

19 Here, plaintiffs fail to allege the elements of standing specified for associational standing.
20 First, it is not clear who (or what members) would have standing as it is not clear what type of
21 cause of action is asserted. Second, plaintiffs assert that it is impossible to comply with
22 microstamping requirements, but does not specify what type of interest they are asserting – an
23 economic one, a constitutional one, etc. Thus, it is impossible to state that the interest asserted is
24 germane to “the organizations’ purpose” because it is not clear what type of interest is at stake.
25 Third, “impossibility” is the crux of plaintiffs complaint, and it seems imperative that individual
26 members of plaintiffs will have to assert that they cannot comply with the microstamping
27 provisions. Thus, members’ participation in asserting “impossibility” will be necessary. For all
28 these reasons, it appears that plaintiffs do not have associational standing.

1 Plaintiffs lack standing to sue, and thus, have failed to state a cause of action. The demurrer
2 should be sustained for this entirely separate reason.

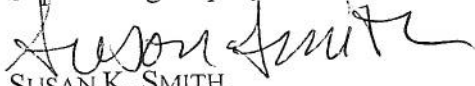
3 **CONCLUSION**

4 For all the foregoing reasons, defendants respectfully request that this Court sustain their
5 demurrers to plaintiffs' Complaint for declaratory and injunctive relief.

6 Dated: March 14, 2014

Respectfully Submitted,

7 KAMALA D. HARRIS
8 Attorney General of California
9 MARK R. BECKINGTON
10 Supervising Deputy Attorney General


11 SUSAN K. SMITH
12 Deputy Attorney General
13 *Attorneys for Defendants Attorney General*
14 *Kamala D. Harris and State of California*

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **National Shooting Sports Foundation v. State of California**

No.: **14CECG00068**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On March 14, 2014, I served the attached **NOTICE OF HEARING ON DEMURRER AND DEMURRER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope with the **FEDERAL EXPRESS**, addressed as follows:

Daniel C. DeCarlo
Lewis Brisbois Bisgaard & Smith LLP
221 North Figueroa St., Suite 1200
Los Angeles, CA 90012
Attorney for Plaintiff
National Shooting Sports Foundation, and
Sporting Arms and Ammunition
Manufacturers' Institute, Inc.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 14, 2014, at Los Angeles, California.

Zenaida Bigno
Declarant


Signature