

1 KAMALA D. HARRIS
Attorney General of California
2 STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
3 JEFFREY A. RICH
Deputy Attorney General
4 State Bar No. 108589
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5154
Fax: (916) 324-8835
7 E-mail: Jeffrey.Rich@doj.ca.gov
Attorneys for Defendants Kamala D. Harris and
8 *Stephen J. Lindley*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

13 ALVIN DOE and PAUL A. GLADDEN,

14 Plaintiffs,

15 v.

16
17 KAMALA D. HARRIS, in her official
capacity as Attorney General of California;
18 and STEPHEN J. LINDLEY, in his official
capacity as Chief of the California
19 Department of Justice Bureau of Firearms,

20 Defendants.

Case No. 34-2014-00163821

**DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

Date: July 8, 2014
Time: 2:00 p.m.
Dept: 53
Judge: The Honorable David I Brown
Trial Date: None
Action Filed: May 20, 2014

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1 Defendants Kamala D. Harris, in her official capacity as Attorney General of California and
2 Stephen J. Lindley, in his official capacity as Chief of the Bureau of Firearms, California
3 Department of Justice submit the following memorandum of points and authorities in opposition
4 to plaintiffs' motion for preliminary injunction.

5 INTRODUCTION

6 Under California law, individuals may only purchase one handgun in a 30-day period.
7 (Penal Code § 27535, subd. (a).) This law prevents individuals from amassing large arsenals of
8 weapons in a short period of time. The proliferation of mass shootings, and the use of guns in the
9 commission of crimes, is common knowledge and demonstrates that this restriction is important
10 to public safety. However, the Penal Code provides a modest exemption to the "1-in-30 Rule" for
11 purchases of curio and relic guns ("C&R Exemption"). (Penal Code, § 27535, subd. (b)(9).) In
12 this case, plaintiffs challenge the obvious proposition that the curio and relic exemption applies to
13 curios and relics. Under their view, the curio and relic exemption authorizes unlimited purchases
14 of modern deadly handguns.

15 Accordingly, plaintiffs seek to enjoin enforcement of the Bureau of Firearms' ("BOF")
16 construction of the C&R Exemption, as set forth in a May 8, 2014, letter from Bureau Chief
17 Stephen Lindley to California Firearms Dealers ("Notice"), which merely limits the curio and
18 relics exemption to curios and relics. But because the loophole plaintiffs seek to create cannot be
19 opened wide enough, or soon enough, they seek preliminary relief to enjoin BOF immediately
20 from enforcing the Notice before litigating the merits of their claims.

21 However, plaintiffs have not met their initial burden to show that they will suffer significant
22 irreparable harm if a preliminary injunction does not issue. Most notably, plaintiffs premise their
23 motion on mere speculation of future harm they might suffer if BOF is not immediately enjoined
24 from enforcing the Notice. On this basis alone plaintiffs' motion should be denied.

25 Even assuming that plaintiffs could show significant irreparable harm resulting from the
26 Notice, which they have not, plaintiffs have not and cannot show that the balance of harms tips in
27 their favor. Public policy opposes injunctions against public officers performing their duties. In
28 this case, an injunction would affirmatively harm public safety by opening a loophole in the

1 State's firearms laws that would allow plaintiffs and others to amass large arsenals of handguns
2 potentially landing in the hands of persons likely to commit crimes.

3 Finally, plaintiffs will likely fail on the merits of their claims because BOF's construction
4 of the statute is the only reasonable interpretation. Plaintiffs' case is based upon a hyper-
5 technical and counterintuitive reading of the C&R Exemption, that would truly render the 1-in-30
6 Rule meaningless and undermine the Legislature's intent. Plaintiffs failed to meet their heavy
7 burden to show that defendants should be enjoined from enforcing the Notice, and so the motion
8 must be denied.

9 **STATEMENT OF FACTS**

10 **The Legislature's Enactment of the 1-in-30 Rule**

11 At issue here is the restriction on handgun purchases set forth in Penal Code section 27535,
12 subdivision (a): "No person shall make an application to purchase more than one handgun within
13 any 30-day period" ("1-in-30 Rule") and the exemption from that rule set forth in subdivision
14 (b)(9) ("C&R Exemption"). That exemption applies to: "Any person who is licensed as a
15 collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States
16 Code and the regulations issued pursuant thereto, and has a current certificate of eligibility issued
17 by the Department of Justice pursuant to Article 1 (commencing with Section 26700) of Chapter
18 2." (Pen. Code, § 27535, subd. (b)(9).) "Chapter 44 (commencing with Section 921) of Title 18
19 of the United States Code and the regulations issued pursuant thereto" referred to in section
20 27535, subdivision (b)(9) concerns firearms that are "curios or relics." (See 18 U.S.C. § 923.)
21 Curios and relics are firearms which are of special interest to collectors by reason of some quality
22 other than is associated with firearms intended for sporting use or as offensive or defensive
23 weapons. (27 C.F.R. § 478.11.)¹

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25
26 ¹ To be recognized as curios or relics, firearms must fall within one of the following
categories:

27 (a) Firearms which were manufactured at least 50 years prior to the current
28 date, but not including replicas thereof;

(continued...)

1 The 1-in-30 Rule established by section 27535 is derived from former section 12072,
2 subdivision (a)(9)(A), which was enacted in 1999. (Stats. 1999, ch. 128, § 2 (AB 202).)² The
3 Legislature's purpose in enacting AB 202 is set forth in an Assembly Committee on Public Safety
4 report on AB 202, which states in pertinent part:

5 1) Author's Statement. According to the author, "There is no limit on the
6 number of handguns that may be purchased from a dealer. This makes it easy for
7 straw purchasers to acquire guns for another person or for street dealers to acquire
8 guns legitimately. Handguns make up an overwhelming share of crime guns and a
9 significant number are traceable to dealer transactions. AB 202 will curtail the
illegal gun market, disarm criminals, and save lives by preventing multiple
purchases of handguns through legitimate channels. Preventing multiple
purchases takes the profit out of black market sales and puts gun traffickers and
straw purchasers out of business."

10 2) Limiting Bulk Purchases to Cut Down on Straw Transactions. The goal
11 of this bill is to stop one gun purchaser from buying several firearms and
12 transferring a firearm to another person who does not have the legal ability to buy
a gun him/herself. Such a transfer is referred to as a "straw transaction."

13 (...continued)

14 (b) Firearms which are certified by the curator of a municipal, State, or
Federal museum which exhibits firearms to be curios or relics of museum interest;
and

15 (c) Any other firearms which derive a substantial part of their monetary
16 value from the fact that they are novel, rare, bizarre, or because of their association
with some historical figure, period, or event. Proof of qualification of a particular
17 firearm under this category may be established by evidence of present value and
evidence that like firearms are not available except as collector's items, or that the
18 value of like firearms available in ordinary commercial channels is substantially
less. [Line up indents on paragraphs above.]

19 (27 C.F.R. § 478.11.)

20 ² Former Penal Code section 12072, subdivision (a)(9)(A) as added by AB 202 provided:

21 (9)(A) No person shall make an application to purchase more than one
22 pistol, revolver, or other firearm capable of being concealed upon the person
within any 30-day period.

23 AB 202 included the C&R Exemption in former Penal Code section 12072, subdivision
24 (a)(9)(A)(x) which provided:

25 (x) Any person who is licensed as a collector pursuant to Chapter 44
(commencing with Section 921) of Title 18 of the United States Code and the
26 regulations issued pursuant thereto and who has a current certificate of eligibility
issued by the Department of Justice pursuant to Section 12071.

27 Former Penal Code section 12072, including subdivision (a)(9), was reorganized in 2010
28 resulting in new Penal Code section 27535. (See Stats. 2010, ch. 711, § 6.

1 Typically, straw transactions involve a third party who is under 21 years of age,
2 has a disqualifying prior conviction, has a mental disorder, or is not a resident.

3 (Assem. Com. on Public Safety, Analysis of AB 202 (2009-2010 Reg. Sess.), March 10, 1999.)³

4 **Background Regarding the Notice**

5 Prior to the issuance of the Notice, BOF had been aware that a number of firearms dealers
6 were selling multiple handguns that are not “curios and relics” with fewer than 30-days between
7 each handgun sale. For example, DROS transactions evidenced a simultaneous sale of multiple
8 mass manufactured handguns, such as the Glock Generation 4 semi-automatic centerfire firearm,
9 to a single buyer who possessed both a curio and relic and certificate of eligibility license. In
10 reviewing these transactions, BOF learned that more often than not, persons using the C&R
11 Exemption did not own a single curio and relic firearm, and were instead using the exemption to
12 acquire mass quantities of modern handguns, contrary to the express legislative intent of the 1-in-
13 30 Rule. (Declaration of Stephen J. Lindley, submitted herewith (“Lindley Decl.”) ¶ 7.)

14 **STANDARD FOR ISSUANCE OF A PRELIMINARY INJUNCTION**

15 Injunction is an extraordinary power, to be exercised always with great caution and rarely,
16 if ever, exercised in a doubtful case. “The right must be clear, the injury impending and
17 threatened, so as to be averted only by the protective preventive process of injunction.” (*City of*
18 *Tiburon v. Northwestern Pac R. Co.* (1970) 4 Cal.App.3d 160, 179, quoting *Schwartz v. Arata*
19 (1920) 45 Cal.App. 596, 601.) As one court observed, “[I]t is clear that a plaintiff must make
20 some showing which would support the exercise of the rather *extraordinary* power to restrain the
21 defendant’s actions prior to a trial on the merits.” (*Tahoe Keys Property Owners’ Ass’n. v. State*
22 *Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471 (*Tahoe Keys*), emphasis added.)

23 When deciding whether to grant preliminary injunctive relief, the trial court considers two
24 interrelated factors: (1) the interim harm that the applicant will sustain if the injunction is denied
25 as compared to the harm to the defendant if the injunction issues; and (2) the likelihood of success

26
27 ³ A copy of this report is attached as Exhibit 1 to the declaration of Jeffrey A. Rich,
28 submitted herewith. Defendants request the court to take judicial notice of the report pursuant to
their separate request for judicial notice also submitted herewith.

1 on the merits at trial. (*Choice-In-Education League v. Los Angeles Unified School Dist.* (1993)
2 17 Cal.App.4th 415, 422.) The court may deny a preliminary injunction either (1) on its finding
3 that irreparable injury will not result to the party seeking the injunction, or (2) that the party has
4 failed to demonstrate a reasonable probability of success on the merits. (*People v. Pacific Land*
5 *Research Co.* (1977) 20 Cal.3d 10, 21.) “However before the trial court can exercise its
6 discretion the applicant must make a prima facie showing of entitlement to injunctive relief. The
7 applicant must demonstrate a real threat of immediate and irreparable injury [citations] due to the
8 inadequacy of legal remedies.” (*Triple A Machine Shop, Inc., v. State of California* (1989) 213
9 Cal.App.3d 131, 138); see also *Tahoe Keys, supra*, 23 Cal.App.4th at p. 1471 [before addressing
10 the potential merits, the court will first address the claim of interim harm by denial of preliminary
11 injunctive relief].)

12 The plaintiff must overcome a higher burden when seeking to enjoin public officers from
13 performing their duties. The moving party must make a higher showing of irreparable injury
14 because “[t]here is a general rule against enjoining public officers or agencies from performing
15 their duties.” (*Tahoe Keys, supra*, 23 Cal.App.4th at p. 1471; see also *Agricultural Labor*
16 *Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401 [“The codes, embodying a settled
17 principle of equity jurisprudence, prohibit the granting of injunctive relief [t]o prevent the
18 execution of a public statute by officers of the law for the public benefit”].)⁴ “[T]o support a
19 request for such relief the plaintiff must make a *significant* showing of irreparable injury.”
20 (*Tahoe Keys*, at p. 1471, emphasis added.) For the reasons discussed below, plaintiffs fail to meet
21 this burden. Therefore, their motion for preliminary injunction should be denied.

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27 ⁴ This principle is codified in Civil Code section 3423, subdivision (d) and Code of Civil
28 Procedure section 526, subdivision (b)(4).

ARGUMENT

I. THE BALANCE OF HARMS TIPS TOTALLY IN DEFENDANTS' FAVOR

A. Plaintiffs Have Failed to Meet Their Initial Burden to Show Significant Interim Irreparable Injury If Defendants Are Not Enjoined From Enforcing the Notice

As discussed above, the plaintiff's burden is much higher when the plaintiff argues for an exception to the general rule against enjoining public officers or agencies from performing their duties. (*Tahoe Keys, supra*, 23 Cal. App. 4th at p. 1471.) It is also well settled that the plaintiff bears the burden of producing *evidence* of irreparable interim injury. (*Loder v. City of Glendale* (1989) 216 Cal.App.3d 777, 782-783, emphasis added.) "To entitle a plaintiff to injunctive relief the burden is upon him to prove actual or threatened injury and a court may not infer this from mere proof of acts intended to harm." (*E.H. Renzel Co. v. Warehousemen's Union* (1940) 16 Cal.2d 369, 373.) The applicant must offer more than mere conclusory allegations that such injury will result. (*Ibid.*)

Plaintiffs are not entitled to interim injunctive relief because they have not shown by admissible evidence any interim harm they will suffer, and have certainly not demonstrated that they will suffer significant irreparable injury. Plaintiffs offer mere conclusory assertions of alleged interim irreparable injury: "But for the fear of prosecution or other adverse action by the DOJ or law enforcement agencies, I would submit additional applications to purchase non-curio or relic handguns that would violate the DOJ's enforcement policy." (Declaration of Alvin Doe ¶ 6; Declaration of Paul A. Gladden ¶ 5.) Similarly, the verified complaint simply asserts: "If DOJ's enforcement policy is not enjoined, Plaintiffs will continue to face the threat of criminal sanctions for engaging in lawful activity or otherwise be prevented from lawfully purchasing firearms under the exemption provided in Section 27535(b)(9)." (Verified Complaint ¶ 26.) Such conclusory and inadmissible statements are insufficient to show irreparable interim harm. (*E.H. Renzel Co. v. Warehousemen's Union, supra*, 16 Cal.2d at p. 373.)⁵ Plaintiffs' motion for

⁵ Unsubstantiated legal conclusions and statements based on mere speculation such as those made by plaintiffs are inadmissible and do not have any evidentiary value. (Evid. Code, §§ 702, 800; *Marrow v. Los Angeles Unified School District* (2007) 149 Cal.App.4th 1424, 1444-1445.) Defendants have objected to plaintiffs' declarations and the verified complaint. These

(continued...)

1 preliminary injunction is fatally defective because plaintiffs have not established with admissible
2 evidence that they will suffer significant interim harm as a result of defendants' future actions.
3 (*Id.* at pp. 372-373.)

4 Plaintiffs' reliance upon *Common Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432 to seek
5 a preliminary injunction based solely on the merits of their case underscores plaintiffs' inadequate
6 showing of harm. Specifically, the *Common Cause* court simply observed that "if the party
7 seeking the injunction can make a sufficiently strong showing of likelihood of success on the
8 merits, the trial court has discretion to issue the injunction notwithstanding that party's inability to
9 show that the balance of harms tips in his favor." (*Id.* at p. 447.) The court's statement does not
10 purport to relieve the party seeking the injunction of the initial burden to show irreparable injury.
11 As mentioned above, before the trial court can exercise its discretion, the applicant must make a
12 prima facie showing of entitlement to injunctive relief by demonstrating a real threat of
13 immediate and irreparable injury due to the inadequacy of legal remedies. (*Triple A Machine*
14 *Shop, Inc., v. State of California, supra*, 213 Cal.App.3d at p. 138.) Moreover, in any event, in
15 *Common Cause*, unlike here, the case presented did not require the court to address interim
16 irreparable harm. There, the court denied plaintiffs' request for a preliminary injunction because
17 plaintiffs could not demonstrate likely success on the merits of their case. (*Common Cause v. Bd.*
18 *of Supervisors, supra*, at p. 447 ["In this case, however, there is no likelihood that plaintiffs will
19 prevail on their claim for specific injunctive relief under either of their asserted theories"].)

20 Because plaintiffs failed to demonstrate a real threat of immediate and irreparable injury
21 due to the inadequacy of legal remedies if their requested preliminary injunction is denied, the
22 court need not consider whether and to what extent enjoining the defendants from enforcing the
23 Notice will harm the public. (See *Triple A Machine Shop, Inc., v. State of California, supra*, 213
24 Cal.App.3d at p. 138 [before the trial court can exercise its discretion the applicant must make a
25 prima facie showing of entitlement to injunctive relief].) Nonetheless, as demonstrated below,
26

27 (...continued)

28 objections are set forth in defendants' separate written evidentiary objections submitted herewith.

1 enjoining the defendants from enforcing the Notice during the litigation of this action will
2 jeopardize the public's safety.

3 **B. Enjoining Defendants' Enforcement of the Notice Will Harm the Public**

4 When injunctive relief is sought, courts may and must consider public policy. (*O'Connell*
5 *v. Superior Court* (2006) 141 Cal.App.4th 1452, 1471, citing *Teamsters Agricultural Workers*
6 *Union v. International Brotherhood of Teamsters* (1983) 140 Cal.App.3d 547, 555.) Granting
7 plaintiffs' motion for preliminary injunction will undermine the state's clear public policy
8 articulated by the 1-in-30 Rule and will threaten public safety with the prospect of large arsenals
9 of handguns amassing very quickly into the hands of persons likely to commit crimes and whose
10 intentions and background could bring forth the hazards Penal Code section 27535, subdivision
11 (a), was enacted to prevent. (Lindley Decl. ¶ 8; see also Lindley Decl. ¶ 7 ["In reviewing these
12 transactions, BOF has learned that more often than not, persons using the exception under Penal
13 Code section 27535, subdivision (b)(9), do not own a collection of curio and relic handguns and
14 are instead likely using this exception to acquire mass quantities of modern handguns for resale—
15 straw purchasing—which is contrary to the express legislative intent of the 1-in-30 days law"].)

16 Consideration of public policy in determining the balance of harms test is mandatory. In
17 this case the obvious public policy considerations that prevent injunctive relief also implicate a
18 serious threat to public safety.

19 **II. PLAINTIFFS HAVE NO LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CLAIMS**

20 In addition, the Court should deny plaintiffs' request for preliminary injunction because
21 they have no likelihood of success on the merits of their claims for declaratory relief. Courts will
22 deny a preliminary injunction unless there is a reasonable probability that the plaintiff will be
23 successful in his assertion of rights. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.)
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1 **A. BOF Correctly Construes the C&R Exemption**

2 **1. BOF Construed the C&R Exemption Consistent With the Rules of**
3 **Statutory Interpretation**

4 BOF construed the C&R Exemption consistent with its plain meaning. Under the plain
5 meaning rule, the courts give the words of the statute “a plain and commonsense meaning” unless
6 the statute specifically defines the words to give them a special meaning. (*Flannery v. Prentice*
7 (2001) 26 Cal.4th 572, 577.) Plaintiffs urge an interpretation of the C&R Exemption that elevates
8 a mere curio and relic license (“C&R license”), when combined with a certificate of eligibility,
9 into a license to buy any handgun, even the most lethal, in unlimited quantities and with unlimited
10 frequency. That interpretation is not the plain meaning of the C&R Exemption. There is nothing
11 plain about extrapolating from a reference to a C&R license an interpretation that extends to any
12 modern handgun, not just curios and relics. The “plain meaning” rule does not prevent a court
13 from determining whether the literal meaning of the statute comports with its purpose.
14 (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340; *Katz v. Los*
15 *Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 54.) Instead, the plain
16 meaning of the C&R Exemption naturally recognizes that C&R licenses are about curios and
17 relics, not mass manufactured modern handguns, and that an exemption from the 1 in 30 Rule
18 based on possession of a C&R license similarly extends to curios and relics only.

19 In addition to its plain meaning, statutory context and purposes support interpreting the
20 C&R Exemption narrowly to extend only to curios and relics. Courts do not construe particular
21 provisions in isolation and without regard to the rest of the statute. (*Flannery v. Prentice, supra*,
22 26 Cal.4th at p. 578.) Rather, the courts construe the words of the statute in context, keeping in
23 mind the statutory purpose. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) Particular
24 provisions should be interpreted to conform to the spirit of the act. (*Lungren v. Deukmejian*
25 (1988) 45 Cal.3d 727, 735.) The courts will not interpret provisions in ways that would frustrate
26 the manifest purposes of the legislation as a whole. (*California School Employees Assn., supra*,
27 at p. 340, citing *People v. Belleci* (1979) 24 Cal.3d 879, 884.) Instead, a court will “interpret
28 legislation reasonably and . . . attempt to give effect to the apparent purpose of the statute.”

1 (*American Tobacco Co. v. Superior Court* (1989) 208 Cal.App.3d 480, 490, quoting *Zidell v.*
2 *Bright* (1968) 264 Cal.App.2d 867, 869.)

3 As mentioned above, the Legislature's enacted AB 202 intending to curtail the illegal gun
4 market, disarm criminals, and save lives by preventing multiple purchases of handguns, even
5 through legitimate channels. (Assem. Com. on Public Safety, Analysis of AB 202 (2009-2010
6 Reg. Sess.), March 10, 1999.) Plaintiffs' broad interpretation of the C&R Exemption ignores the
7 statutory context and frustrates the purpose of the 1-in-30 Rule. In contrast, the Notice's
8 interpretation of the C&R Exemption is consistent with both the plain meaning and purposes of
9 the statute.

10 Notwithstanding Plaintiff's interpretation, nothing in the state statute or federal law
11 supports a special level of trust or confidence that C&R license holders will refrain from the
12 dangers the Legislature hoped to avoid by enacting the 1 in 30 Rule. Unsurprisingly, the
13 particulars of weapons licensing do not support any special trust or confidence either. Notably,
14 the background check conducted by the federal Bureau of Alcohol, Tobacco, Firearms and
15 Explosives ("BATFE") prior to a person receiving a curio and relic license ("C&R license") is not
16 very extensive. In sum, the BATFE simply checks its databases to determine whether a person
17 has a prohibiting offense, such as a felony conviction or is considered a "mental defective" under
18 federal law (i.e., a person who has been held on a 14-day hold pursuant to Welfare and
19 Institutions Code section 5250). And the background check conducted by BOF for the issuance
20 of a Certificate of Eligibility ("COE") (which authorizes the purchase of a single firearm) is also
21 not as extensive as the other background checks that BOF conducts for other types of license. For
22 the COE background check, BOF is only able to conduct a search of its databases to determine if
23 the person has a prohibiting circumstance, such as being a violent misdemeanor, felon, subject of
24 a restraining order, or having been held involuntarily at a mental health facility (i.e., a 72-hour
25 hold pursuant to Welfare and Institutions Code section 5150). Comparatively, when BOF
26 conducts a background check for a holder of a dangerous weapons permit, a special agent
27 interviews the applicant as well as his/her business associates, family members, neighbors, and
28 conducts an extensive search of other public records. Accordingly, the background check for

1 curios and relics does not provide more intensive scrutiny of a prospective purchaser; in fact this
2 background check is relatively superficial. (Lindley Decl. ¶ 5.)

3 In sum, BOF construed the C&R Exemption consistent with its plain meaning by
4 recognizing that the reference to C&R licenses naturally limits the provision to curio and relic
5 purchases. Construing the C&R Exemption as applying to all types of handguns and not limited
6 to only curio and relic firearms renders the 1-in-30 Rule meaningless, thwarting the statute's
7 purpose. Instead, this Court should interpret the C&R Exemption to extend only to curio and
8 relic purchases and thereby give effect to the apparent purpose of the statute as a whole.

9 **2 The Court Should Give Deference to BOF's Interpretation of the C&R** 10 **Exemption**

11 Courts must give great weight and respect to an administrative agency's interpretation of a
12 statute governing its powers and responsibilities. (*Ste. Marie v. Riverside County Regional Park*
13 *and Open-Space District* (2009) 46 Cal.4th 282, 292.) This principle is another factor the Court
14 should consider in determining whether plaintiffs have met their burden to establish a reasonable
15 probability that they will prevail on the merits of their claims for declaratory relief.

16 **3. Plaintiffs' Interpretation Leads to Absurd Results**

17 This Court should reject Plaintiffs' interpretation of the C&R Exemption because it leads to
18 absurd results that potentially threaten public safety. The courts will not interpret provisions in
19 ways that would lead to absurd results. (*California School Employees Assn., supra*, at p. 340,
20 citing *People v. Belleci* (1979) 24 Cal.3d 879, 884.) Plaintiffs' interpretation leads to the absurd
21 result that C&R license holders could quickly access large quantities of high-threat weapons
22 based on a license granted for lower-threat weapons. True curio and relic firearms pose less of a
23 threat to public safety in part because of their limited availability due to their expense and market
24 demands. In addition, true curio and relic firearms are not the type of weapons used by persons to
25 commit violent crimes, and often require the use of specialized ammunition that is expensive and
26 not easily obtained in the market. In contrast, the mass sale of handguns generally prohibited by
27 Penal Code section 27535, subdivision (a), poses a much more serious and imminent threat to
28 public safety because modern weapons are more reliable and can be readily accessorized with

1 lasers, scopes, and night sights, which makes the weapon more accurate and lethal. And modern
2 weapons require the use of modern ammunition, which is more powerful because it contains more
3 powder and higher pressure. Mass quantity sales of modern weapons could provide large arsenals
4 in short order to persons without rigorous background checks mitigating the concerns for public
5 safety underlying the 30-day prohibition. (Lindley Decl. ¶ 6.) Plaintiffs' interpretation grants
6 equal and liberal access to large and highly-threatening modern arsenals based on a license for
7 weapons that present a smaller threat. That incongruity is an absurd result that this Court should
8 reject.

9 **B. The Notice Is Not an Underground Regulation Because It Is Exempt From**
10 **APA Rulemaking Procedures**

11 The Administrative Procedures Act's (Gov. Code, § 11340 et seq.) procedural requirements
12 do not apply where, as here, an agency's interpretation of a statute represents "the only legally
13 tenable interpretation of a provision of law." (Gov. Code, § 11340.9, subd. (f).) As demonstrated
14 above, BOF has correctly construed the C&R Exemption to extend only to curios and relics. That
15 interpretation, as set forth in the Notice, is the only legally tenable interpretation. Thus,
16 Plaintiffs' underground regulation claim for declaratory relief is without merit.

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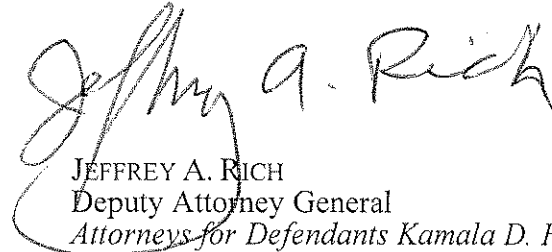
1 **CONCLUSION**

2 For the reasons set forth above plaintiffs' motion for preliminary injunction should be
3 denied.

4 Dated: June 24, 2014

Respectfully Submitted,

5 KAMALA D. HARRIS
6 Attorney General of California
7 STEPAN A. HAYTAYAN
8 Supervising Deputy Attorney General

9 
10 JEFFREY A. RICH
11 Deputy Attorney General
12 *Attorneys for Defendants Kamala D. Harris*
13 *and Stephen J. Lindley*

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Doe, Alvin et al. v. Kamala D. Harris, et al**

No.: **34-2014-00163821**

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: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On June 24, 2014, I served the attached

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF STEPHAN J. LINDLEY IN SUPPORT OF OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF JEFFREY A. RICH IN SUPPORT OF OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

DEFENDANTS' WRITTEN OBJECTIONS TO PLAINTIFFS' EVIDENCE IN SUPPORT OF OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

by placing a true copy thereof enclosed in a sealed envelope with the Golden State overnight courier service, addressed as follows:

Bradley A. Benbrook
Stephen M. Duvernay
Benbrook Law Group, PC
400 Capitol Mall, Suite 1610
Sacramento, CA 95814
Attorneys for Plaintiffs
Alvin Doe and Paul A. Gladden

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 June 24, 2014, at Sacramento, California.

Brenda Apodaca

Declarant

Brenda Apodaca

Signature