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9 ALVIN DOE and PAUL A. GLADDEN
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

ALVIN DOE and PAUL A. GLADDEN,
Plaintiffs,

v.

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

Defendants.

Case No.:

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1 Plaintiffs Alvin Doe and Paul A. Gladden complain of Defendants and allege:

2 **INTRODUCTION**

3 1. California Penal Code section 27535 (“Section 27535”) generally prohibits a person
4 from applying to purchase multiple handguns in any thirty-day period. Cal. Penal Code §
5 27535(a). The statute exempts several types of organizations and classes of people from the one-
6 handgun-per-thirty-day limit, however. The exemption at the heart of this lawsuit provides that
7 Section 27535’s prohibition does not apply to any person who is both (a) licensed under federal
8 law as a collector of curios and relics and (b) possesses a current certificate of eligibility to possess
9 and purchase firearms issued by the California Department of Justice (“DOJ”). *Id.*, § 27535(b)(9).

10 2. The DOJ Bureau of Firearms recently notified the state’s firearms dealers that it had
11 adopted an enforcement policy interpreting the licensed collectors’ exemption to apply only to
12 purchases involving curios or relics. The Department directed dealers to cancel and refuse to
13 process any transactions in which persons falling within the Section 27535(b)(9) exemption
14 proposed to purchase a handgun *other than* a curio or relic. It also notified dealers that it would
15 cancel transactions that did not conform to this new policy.

16 3. The DOJ’s new restriction is contrary to the plain text of the statute, which places
17 no restriction on the scope of the exemption. Licensed collectors are exempt from the one-
18 handgun-per-thirty-day prohibition regardless of the type of handgun purchased. Because the
19 Department does not have the authority to alter or amend a statute, or enlarge or impair its scope,
20 its new policy is void. It is this Court’s obligation to strike it down. *Morris v. Williams*, 67 Cal.2d
21 733, 748 (1967).

22 4. Moreover, DOJ’s enforcement policy must be struck down because it is an invalid
23 underground regulation. The policy creates a rule of general application concerning the
24 interpretation and enforcement of Section 27535, thereby making it a “regulation” under the
25 Administrative Procedure Act. But DOJ did not provide the “basic minimum procedural
26 requirements” (public notice, comment, and review by the state Office of Administrative Law)
27 before its adoption. The enforcement policy is therefore invalid and unenforceable. *Morning Star*
28 *Co. v. State Bd. of Equalization*, 38 Cal.4th 324, 332-36 (2006); Gov. Code § 11342.2.

THE PARTIES

5. Plaintiff Alvin Doe¹ is a California resident who holds a federal firearms license as a collector of curios and relics and possesses a current certificate of eligibility issued by the DOJ.

6. Plaintiff Paul Anthony Gladden is a California resident who holds a federal firearms license as a collector of curios and relics and possesses a current certificate of eligibility issued by the DOJ. Plaintiff Gladden has a valid license to carry a concealed weapon issued by the sheriff in his county of residence.

7. Defendant Kamala Harris is the Attorney General of the State of California. The Attorney General is the chief law enforcement officer of the state, and it is her duty to ensure that California's laws are uniformly and adequately enforced. The Attorney General is the head of the DOJ. The DOJ and its Bureau of Firearms regulate and enforce state law related to the sales, ownership, and transfer of firearms. Attorney General Harris is sued in her official capacity. The Attorney General maintains an office in Sacramento.

8. Defendant Stephen J. Lindley is the Chief of the DOJ Bureau of Firearms. Upon information and belief, Lindley reports to Harris and is responsible for promulgating and announcing Department policy regarding the sale, ownership, and transfer of firearms, including the enforcement policy challenged in this case. He is sued in his official capacity. The Bureau of Firearms maintains an office in Sacramento.

JURISDICTION

9. This Court has jurisdiction over this action and authority to issue declaratory relief pursuant to Code of Civil Procedure section 1060 and Government Code section 11350. Statutory interpretation "is a particularly appropriate subject for judicial resolution," and "judicial economy strongly supports the use of declaratory relief to avoid duplicative actions to challenge an agency's statutory interpretation or alleged policies." *Cal. Sch. Bds. Ass'n v. State of Cal.*, 192 Cal.App.4th

¹ Plaintiff Alvin Doe proceeds under a fictitious name to protect his or her privacy because of a fear of criminal prosecution and retaliation based on the activities described in this complaint, *Doe v. Lincoln Unified Sch. Dist.*, 188 Cal.App.4th 758, 765-67 (2010), and has verified the complaint under the fictitious name as permitted under California law, *Doe v. Super. Ct.*, 194 Cal.App.4th 750, 754-55 (2011).

1 770, 790 (2011) (citations omitted). This Court has jurisdiction to enter injunctive relief pursuant
2 to Code of Civil Procedure sections 526 and 527, et seq.

3 GENERAL ALLEGATIONS

4 10. Section 27535(a) of the Penal Code provides that “[n]o person shall make an
5 application to purchase more than one handgun within any 30-day period.” Plaintiffs are informed
6 and believe that California is one of only three states in the Country that imposes such a limitation,
7 and Federal law imposes no similar prohibition. The first two violations of Section 27535 are
8 infractions punishable by fines of \$50 and \$100; subsequent violations constitute misdemeanors.
9 Penal Code § 27590(e).

10 11. Subdivision (b) of the statute lists thirteen exemptions from the one-handgun-per-
11 thirty-day limit. As relevant here, it states that “[s]ubdivision (a) shall not apply to” “[a]ny person
12 who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18
13 of the United States Code² and the regulations issued pursuant thereto, and has a current certificate
14 of eligibility issued by the Department of Justice.” Penal Code § 27535(b)(9). A certificate of
15 eligibility (“COE”) issued by the DOJ confirms a person’s eligibility to lawfully possess and/or
16 purchase firearms under state law.

17 12. A federal collector’s license allows the licensee to purchase, transport, and transfer
18 curios and relics in interstate commerce; a license, standing alone, does not affect a person’s
19 ability to possess, purchase, or transfer a firearm, which is generally controlled by state law. *See*
20 47 C.F.R. § 478.41(c), (d); 27 C.F.R. § 478.93. Federal collector licensees are vetted by the
21 Bureau of Alcohol, Tobacco, Firearms and Explosives, and are subject to reporting, recordkeeping,
22 and inventory inspection requirements. 18 U.S.C. § 923.

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24 ² 18 U.S.C. § 921 *et seq.*, the Gun Control Act of 1968, defines “collector” as “any person
25 who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by
26 regulation define.” Federal regulations define “[c]urios or relics” as “[f]irearms which are of
27 special interest to collectors by reason of some quality other than is associated with firearms
28 intended for sporting use or as offensive or defensive weapons.” 27 C.F.R. § 478.11. This
includes “[f]irearms which were manufactured at least 50 years prior to the current date,”
“[f]irearms 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 “[a]ny other firearms which derive
a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because
of their association with some historical figure, period, or event.” *Id.*

1 13. On or about May 8, 2014 Defendant Lindley, on behalf of the DOJ's Bureau of
2 Firearms, sent a letter notifying licensed firearms dealers in the state of a new enforcement policy
3 interpreting Section 27535(b)(9)'s licensed collectors' exemption to apply only if the purchaser
4 applies to purchase a handgun that is a curio or relic:

5 It has come to the attention of the California Department of Justice, Bureau of
6 Firearms that dealers are selling handguns that are not defined as curio and relics
7 under federal law to persons holding the license and certificate described in Penal
8 Code section 27535, subdivision (b)(9) under this exemption. By doing so, these
dealers are allowing the buyers to purchase multiple, non curio and relic handguns
at one time, which violates both state and federal law.

9 The letter concluded:

10 [T]he exemption provided in Penal Code section 27535, subdivision (b)(9), shall
11 not be used for the sale of any handguns other than those defined as curio and relics
12 under federal law, and any such transaction shall be discontinued immediately.
13 Any transactions violating California or federal law that are not canceled by the
dealer will be canceled by the California Department of Justice, Bureau of
Firearms.

14 A copy of the DOJ's May 8 letter is attached as Exhibit A.

15 14. Plaintiffs are licensed collectors of curios and relics and have current certificates of
16 eligibility issued by the DOJ. They are therefore exempt from the one-handgun-per-thirty-day
17 limit imposed by Section 27535. However, the DOJ has enforced, and threatens to enforce, its
18 interpretation of Section 27535 in a manner that prevents Plaintiffs from lawfully purchasing
19 firearms under the licensed collectors' exemption provided by Section 27535(b)(9).

20 15. On prior occasions, Plaintiff Alvin Doe applied to purchase multiple non-curio or
21 relic handguns within a thirty-day period and has been allowed to complete those purchases based
22 on the statutory exemption in Section 27535(b)(9). On April 24, 2014, Plaintiff Alvin Doe applied
23 to purchase multiple non-curio or relic handguns from a licensed firearms dealer in Orange
24 County. On or about May 1, 2014, the DOJ cancelled all but one of the applications based on its
25 new enforcement policy. But for the fear of prosecution, Plaintiff Alvin Doe would submit
26 additional applications to purchase non-curio or relic handguns that would violate the DOJ's new
27 policy.

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1 16. On prior occasions, Plaintiff Gladden applied to purchase multiple non-curio or
2 relic handguns within a thirty-day period and has been allowed to complete those purchases based
3 on the statutory exemption in Section 27535(b)(9). But for the fear of prosecution, Plaintiff
4 Gladden would submit additional applications to purchase non-curio or relic handguns that would
5 violate the Department of Justice's new policy.

6 **The DOJ's New Enforcement Policy Illegally Blocks Collectors**
7 **From Using The Section 27535(b)(9) Exemption**

8 17. The DOJ's new enforcement policy is contrary to the plain language of Section
9 27535(b)(9)'s exemption, which takes eligible collectors outside of Section 27535(a)'s prohibition
10 on the purchase of more than one handgun of *any* type in a 30-day period. Subsection (b)(9) does
11 not restrict the licensed collectors' exemption to transactions involving curios or relics. Because
12 "there is no ambiguity in the language of the statute," "the Legislature is presumed to have meant
13 what it said, and the plain meaning of the language governs." *Lennane v. Franchise Tax Bd.*, 9
14 Cal.4th 263, 268 (1994).

15 18. Indeed, the firearms industry has generally understood the statute to mean what it
16 says since the enactment of the prohibition and the exemption. Plaintiffs are informed and believe
17 that licensed collectors such as themselves who possess COEs have routinely purchased non-curio
18 or relic handguns in a manner that would violate Section 27535(a) were it not for Section
19 27535(b)(9)'s exemption.

20 19. Even though resort to extrinsic aids is unnecessary given the unambiguous language
21 of the statute, the legislative history of Section 27535 confirms that a licensed collector is exempt
22 from the one-handgun limit without respect to whether the collector is purchasing a new handgun
23 or a curio or relic.

24 20. Section 27535 was enacted by the Legislature in 1999 as part of Assembly Bill 202.
25 The committee analyses of AB 202 state that licensed collectors are exempt without limitation.
26 Assem. Comm. on Public Safety, Analysis of Assem. Bill 202 (1999-2000 Reg. Sess.) as amended
27 March 10, 1999, at 3 ("exempt institutions, persons and situations include" "[a]ny licensed
28 collector"); Sen. Comm. on Public Safety, Analysis of Assem. Bill 202 (1999-2000 Reg. Sess.) as

1 amended April 6, 1999, at 2 (“Exempts . . . licensed collectors”); Assem. Comm. on
2 Appropriations, Analysis of Assem. Bill 202 (1999-2000 Reg. Sess.) as amended March 10, 1999,
3 at 1 (“The bill also provides specified exemptions for law enforcement, licensed collectors, etc.”).
4 *See also* Office of Criminal Justice Planning, Enrolled Bill Report, Assem. Bill. 202 (1999-2000
5 Reg. Sess.) as amended April 6, 1999, at 3 (“This bill will exempt . . . licensed collectors”).

6 21. That the licensed collectors’ exemption is not limited to purchases of curios or
7 relics is further confirmed by the legislative history of a predecessor bill introduced the previous
8 session by the same author. Assembly Bill 532 (1997-1998 Reg. Sess.) contained a one-handgun-
9 per-month scheme virtually identical to the one adopted in AB 202. The initial draft of AB 532
10 did not include an exemption for licensed collectors. When the Assembly Committee on Public
11 Safety considered the proposed amendment adding language identical to the exemption in Section
12 27535(b)(9), it observed that “[a]s drafted and proposed to be amended, the bill does not affect”
13 “[t]he 400 some odd California federally licensed collectors *as to any firearm acquisition*.”
14 Assem. Comm. on Public Safety, Analysis of Assem. Bill 532 for April 8, 1997 hearing (1997-
15 1998 Reg. Sess.), at 5 (emphasis added).

16 22. To that same end, the author’s notes for the hearing on the proposed amendment
17 explain that the collectors’ exemption applies to purchases of new handguns:

18 What effect does exempting collectors of curios and relics licensed under federal
19 [law] have?

20 It permits serious collectors of *new handguns* [to] go through the federal
21 licensing process – including undergoing scrutiny of a background check
and payment of a \$30 fee – to qualify as an exempt party under AB 532.

22 Author’s file, Assem. Bill 532 (1997-1998 Reg. Sess.), Notes re: April 8, 1997 Hearing of Assem.
23 Comm. on Public Safety, at 2 (emphasis added).

24 23. Finally, the enforcement policy relies on an erroneous interpretation of federal law.
25 Specifically, it states that “dealers are allowing [licensed collectors] to purchase multiple, non
26 curio and relic handguns at one time, which violates both statute and federal law.” Ex. A at 1. Not
27 so. Federal law does not prohibit responsible, law-abiding citizens—whether or not they possess a
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collectors' license—from purchasing multiple handguns, and citizens are free to do so in the 47 states that do not impose monthly limits.

24. In sum, there is not a shred of evidence to support the DOJ's claim that the licensed collectors' exemption only applies to purchases of curios or relics. The enforcement policy is void because it enlarges the scope of Section 27535(a)'s prohibition by preventing eligible citizens from qualifying under Section 27535(b)(9)'s exemption. "[A]n agency does not have discretion to promulgate regulations that are inconsistent with the governing statute, alter or amend the statute, or enlarge its scope." *Cal. Sch. Bds. Assn.*, 191 Cal.App.4th at 544. And "[w]here regulations are void because of inconsistency or conflict with the governing statute, a court has a duty to strike them down." *Id.*

25. The DOJ's enforcement policy purports to interpret Penal Code section 27535 and is a rule of general application that applies to any transaction involving collectors who are otherwise eligible under Section 27535(b)(9) to purchase more than one handgun in a 30-day period. It therefore qualifies as a "regulation" under the Administrative Procedure Act, and cannot be adopted without "basic minimum procedural requirements," that is, "public notice, opportunity for comment, agency response to comment, and review by the state Office of Administrative Law." *Clovis Unified Sch. Dist. v. Chang*, 188 Cal.App.4th 794, 799-800 (2010); *accord Morning Star Co.*, 38 Cal.4th at 333. The DOJ adopted its enforcement policy without these basic minimum procedural requirements. The policy is therefore invalid as an underground regulation. Gov. Code §§ 11342.1, .2.

26. 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). Plaintiffs do not have a plain, speedy, and adequate remedy in the ordinary course of law.

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1 **CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

3 **(Declaratory Relief – Code of Civil Procedure § 1060)**

4 27. Plaintiffs incorporate here by reference paragraphs 1 through 26, *supra*, as if fully
5 set forth herein.

6 28. An actual and judicially cognizable controversy exists between Plaintiffs and
7 Defendants regarding whether the interpretation of Section 27535, in that Plaintiffs contend they
8 are generally exempt from Section 27535(a)'s one-handgun-per-thirty-day limit, and Defendants
9 contend that the exemption only applies to purchases involving curios or relics.

10 **SECOND CAUSE OF ACTION**

11 **(Declaratory Relief – Government Code § 11350)**

12 29. Plaintiffs incorporate here by reference paragraphs 1 through 28, *supra*, as if fully
13 set forth herein.

14 30. Plaintiffs seek a judicial declaration as to the validity of the DOJ's enforcement
15 policy regarding Section 27535, which it adopted without the basic minimum procedural
16 requirements of the Administrative Procedure Act.

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiffs pray for judgment as follows:

19 1. Plaintiffs respectfully request that this Court construe Penal Code section 27535
20 and enter a declaratory judgment stating that the licensed collectors' exemption is not limited to
21 applications to purchase curios or relics.

22 2. Plaintiffs respectfully request that this Court issue a declaratory judgment stating
23 that the DOJ's enforcement policy regarding Penal Code section 27535 is invalid.

24 3. Plaintiffs respectfully request that this Court enter a preliminary and permanent
25 injunction preventing Defendants from enforcing DOJ's policy that the licensed collectors'
26 exemption in Penal Code section 27535(b)(9) applies only to the purchase of curios and relics.

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1 4. Plaintiffs respectfully request costs of suit, including reasonable attorneys' fees
2 available pursuant to applicable law, and all further relief to which Plaintiffs may be justly entitled.
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4 Dated: May 20, 2014

BENBROOK LAW GROUP, PC

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6 By



BRADLEY A. BENBROOK

Attorneys for Plaintiffs

ALVIN DOE and PAUL A. GLADDEN
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Verification of Complaint

I certify under penalty of perjury under the laws of the State of California that the factual statements concerning myself, my activities, and my intentions are true and correct.

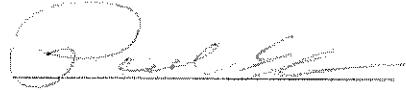
Dated: 5/20/14

Alvin Doe
Alvin Doe

Verification of Complaint

I certify under penalty of perjury under the laws of the State of California that the factual statements concerning myself, my activities, and my intentions are true and correct.

Dated: 5-20-14



Paul A. Gladden

EXHIBIT A



Bureau of Firearms
P.O. Box 160487
Sacramento, CA 95816-0487

May 8, 2014

California Firearms Dealer

Re: Penal Code section 27535, Subdivision (a) – Proper Use

Dear California Firearms Dealer:

The purpose of this information letter is to advise you regarding the proper use of a particular exemption from the one-handgun-every-thirty-days law as provided in Penal Code section 27535.

Penal Code section 27535, subdivision (a), states that "[n]o person shall make an application to purchase more than one handgun within any 30-day period." Subdivision (b)(9) of that section states as follows:

Subdivision (a) shall not apply to any of the following: ...

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 regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice pursuant to Article 1 (commencing with Section 26700) of Chapter 2.

It has come to the attention of the California Department of Justice, Bureau of Firearms that dealers are selling handguns that are not defined as curio and relics under federal law to persons holding the license and certificate described in Penal Code section 27535, subdivision (b)(9) under this exemption. By doing so, these dealers are allowing the buyers to purchase multiple, non curio and relic handguns at one time, which violates both state and federal law. Specifically, the Code of Federal Regulations states as follows regarding the proper use of a curio and relic license:

Authorized operations by a licensed collector. The license issued to a collector of curios or relics under the provisions of this part shall cover only transactions by the licensed collector in curios and relics. The collector's license is of no force or effect and a licensed collector is of the same status under the Act and this part as a nonlicensee with respect to (a) any acquisition or disposition of firearms other than curios or relics, or any transportation, shipment, or receipt of firearms other than curios or relics in interstate or foreign commerce, and (b) any transaction with a nonlicensee involving any firearm other than a curio or relic. (See also §478.50.) A collectors license is not

May 8, 2014

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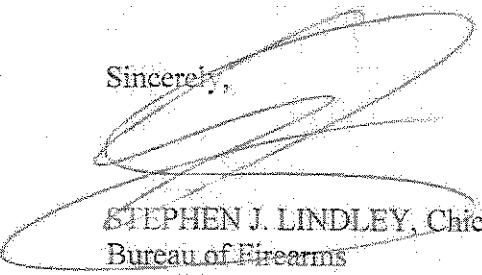
necessary to receive or dispose of ammunition, and a licensed collector is not precluded by law from receiving or disposing of armor piercing ammunition. However, a licensed collector may not dispose of any ammunition to a person prohibited from receiving or possessing ammunition (see §478.99(c)). Any licensed collector who disposes of armor piercing ammunition must record the disposition as required by §478.125 (a) and (b). (27 C.F.R. § 478.93) (emphasis added).

Based on this regulation, it is clear that federal law does not permit the licensee to use the curio and relic license in transactions other than those involving curio and relic firearms, nor grants them any other special status over a non licensee when the transaction involves non curio and relic firearms. These provisions of federal law are specifically referenced in Penal Code section 27535, subdivision (b)(9).

Therefore, the exemption provided in Penal Code section 27535, subdivision (b)(9), shall not be used for the sale of any handguns other than those defined as curio and relics under federal law, and any such transaction shall be discontinued immediately. Any transactions violating California or federal law that are not canceled by the dealer will be canceled by the California Department of Justice, Bureau of Firearms.

Should you have any questions, please contact the DROS Entry System Customer Support Center at 1-855-DOJ-DROS (1-855-365-3767).

Sincerely,



STEPHEN J. LINDLEY, Chief
Bureau of Firearms

For KAMALA D. HARRIS
Attorney General