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10 Justice*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF FRESNO

13  
14  
15 KIM BELEMJIAN; JONATHAN  
16 FAIRFIELD; T.J. JOHNSTON; MATTHEW  
PIMENTEL; STANLEY ROY; FFLGUARD,  
17 INC.; CALIFORNIA RIFLE AND PISTOL  
ASSOCIATION,

18 Plaintiffs,

19 vs.

20  
21 KAMALA D. HARRIS, IN HER OFFICIAL  
CAPACITY AS ATTORNEY GENERAL FOR THE  
22 STATE OF CALIFORNIA; STEPHEN LINDLEY,  
IN HIS OFFICIAL CAPACITY AS CHIEF OF THE  
23 CALIFORNIA DEPARTMENT OF JUSTICE  
BUREAU OF FIREARMS; CALIFORNIA  
24 DEPARTMENT OF JUSTICE; AND DOES 1-  
10,

25 Defendants.  
26  
27  
28

FILED

JAN - 7 2015

FRESNO SUPERIOR COURT

By \_\_\_\_\_  
DEPT. 402 - DEPT. 7

Case No. 15-CE-CG-020029

**DEFENDANTS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO PLAINTIFFS'  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER  
TO SHOW CAUSE AS TO WHY A  
PRELIMINARY INJUNCTION SHOULD  
NOT ISSUE**

Date: January 7, 2015  
Time: 3:30 p.m.  
Dept: 402  
Judge: Hon. Jeff Hamilton  
Trial Date: None  
Action Filed: January 6, 2015

1 Defendants Kamala D. Harris, in her official capacity as Attorney General of the State of  
2 California, Stephen Lindley, in his official capacity as Chief of the California Department of  
3 Justice Bureau of Firearms, and the California Department of Justice submit the following  
4 memorandum of points and authorities in opposition to plaintiffs' ex parte application for  
5 issuance of a temporary restraining order and an order to show cause as to why a preliminary  
6 injunction should not be issued.

### 7 INTRODUCTION

8 Plaintiffs are not entitled to injunctive relief because they fail to make a prima facie  
9 showing by offering admissible evidence. Specifically, plaintiffs have not demonstrated a real  
10 threat of immediate and irreparable injury due to the inadequacy of their legal remedies. As such,  
11 the Court may deny plaintiffs' application because defendants' future conduct will not irreparably  
12 injure plaintiffs. Further, plaintiffs are not entitled to seek to enjoin defendants' enforcement of a  
13 valid statute, Penal Code section 26860.

14 Defendants accordingly request that the Court deny plaintiffs' application in its entirety.

### 15 STANDARD FOR ISSUANCE OF A PRELIMINARY INJUNCTION

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

25 When deciding whether to grant preliminary injunctive relief, the trial court considers two  
26 interrelated factors: (1) the interim harm that the applicant will sustain if the injunction is denied  
27 as compared to the harm to the defendant if the injunction issues; and (2) the likelihood of success  
28 on the merits at trial. (*Choice-In-Education League v. Los Angeles Unified School District* (1993)

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

10 It is also well settled that the plaintiff bears the burden of producing *evidence of*  
11 irreparable interim injury. (*Loder v. City of Glendale* (1989) 216 Cal.App.3d 777, 782-783,  
12 emphasis added.) “To entitle a plaintiff to injunctive relief the burden is upon him to prove actual  
13 or threatened injury and a court may not infer this from mere proof of acts intended to harm.”  
14 (*E.H. Renzel Co. v. Warehousemen’s Union* (1940) 16 Cal.2d 369, 373.) Mere conclusory  
15 allegations that such injury will result is not sufficient. (*Ibid.*)

16 The plaintiff faces a higher burden where, as here, he or she seeks to enjoin public officers  
17 from performing their duties. The moving party must make a higher showing of irreparable  
18 injury because “[t]here is a general rule against enjoining public officers or agencies from  
19 performing their duties.” (*Tahoe Keys, supra*, 23 Cal.App.4th at p. 1471; see also *Agricultural*  
20 *Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401 [“The codes, embodying a  
21 settled principle of equity jurisprudence, prohibit the granting of injunctive relief [t]o prevent the  
22 execution of a public statute by officers of the law for the public benefit”].) This principle is  
23 codified in Civil Code section 3423, subdivision (d) and Code of Civil Procedure section 526,  
24 subdivision (b)(4).

1 **ARGUMENT**

2 **I. PLAINTIFFS FAIL TO MAKE A HIGHER SHOWING OF IRREPARABLE INJURY**

3 Plaintiffs are not entitled to interim injunctive relief because they cannot show by  
4 admissible evidence any interim injury they will suffer, let alone that they will suffer significant  
5 irreparable injury. Further, plaintiffs fail to even argue the inadequacy of legal remedies. In that  
6 regard, plaintiffs fail to cite any authority for the proposition that their declaratory relief causes of  
7 action under Government Code section 11350 are inadequate legal remedies.

8 Plaintiffs offer solely conclusory and irrelevant assertions in support of their alleged interim  
9 irreparable injury. Conclusory and inadmissible statements are insufficient to show irreparable  
10 interim harm. (*E.H. Renzel Co. v. Warehousemen's Union, supra*, 16 Cal.2d at p. 373.)

11 Plaintiffs' application is entirely fatally defective because plaintiffs have not established  
12 with admissible evidence that they will suffer significant interim irreparable harm as a result of  
13 defendants' future actions. (*Id.* at pp. 372-373.)

14 **II. PLAINTIFFS ARE NOT ENTITLED TO A PRELIMINARY INJUNCTION ENJOINING**  
15 **DEFENDANTS' ENFORCEMENT OF PENAL CODE SECTION 26860**

16 Plaintiffs seek to enjoin defendants from enforcing Penal Code section 26860, subdivisions  
17 (a), (c) and (d) based upon their putative fifth cause of action for injunctive relief. However,  
18 injunction is a remedy, not a cause of action. (*McDowell v. Watson* (1997) 59 Cal.App.4th 1155,  
19 1159.) Accordingly, plaintiffs cannot demonstrate the likelihood of success on the merits of their  
20 putative fifth cause of action. Courts will deny a preliminary injunction unless there is a  
21 reasonable probability that the plaintiff will be successful in his assertion of rights. (*Continental*  
22 *Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.)

23 More importantly, under Code of Civil Procedure section 526, subdivision (b),  
24 paragraph (4), and Civil Code section 3423, subdivisions (d) and/or (f), this Court may not grant  
25 an injunction against defendants simply for executing the duties of their public office. Ordinarily,  
26 an injunction cannot be granted to prevent execution of a constitutional and valid statute by law  
27 officers. (*Merandette v. City and County of San Francisco* (1979) 88 Cal.App.3d 105, 110; *City*  
28

1 of *Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 869.) Plaintiffs have not shown and cannot  
2 show that Penal Code section 26860 is unconstitutional or otherwise invalid.

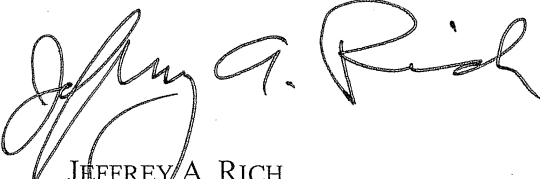
3 **CONCLUSION**

4 For the reasons stated above, defendants respectfully request that the Court deny plaintiffs'  
5 application in its entirety.

6 Dated: January 7, 2015

Respectfully Submitted,

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10 

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18 *and the California Department of Justice*