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FRESNO COUNTY SUPERIOR COURT
By: R. Faccinto, Deputy

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

DANNY VILLANUEVA, NIALL
STALLARD, RUBEN BARRIOS,
CHARLIE COX, MARK STROH,
ANTHONY MENDOZA, and
CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity
as Attorney General for the State of
California, STEPHEN LINDLEY, in his
official capacity as Chief of the California
Department of Justice, Bureau of Firearms;
CALIFORNIA DEPARTMENT OF
JUSTICE, and DOES 1-10,

Defendants.

Case No.: 17CECG03093

[Assigned for All Purposes to the Honorable
Judge Mark Snauffer; Dept.: 501]

**DECLARATION OF SEAN A. BRADY IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Hearing Date: January 30, 2018
Hearing Time: 3:30 PM
Judge: Mark Snauffer
Department: 501

Action Filed: September 7, 2017

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1. I am an attorney licensed to practice law before the courts of the State of California. I am an associate attorney of the law firm Michel & Associates, P. C., attorneys of record for Plaintiffs in this action. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

3. As a result of DOJ's refusal to release the text of their proposed regulations, Plaintiffs' counsel contacted the OAL to request a copy. Shortly thereafter, the OAL provided Plaintiffs' counsel with a copy. After reviewing their text, Plaintiffs' counsel submitted a formal request to the Office of Administrative Law on January 9, 2017 to reject DOJ's proposed regulations.

5. On May 12, 2017, DOJ submitted a new set of regulations regarding “bullet-button assault weapons” to OAL. Once again, DOJ submitted the regulations as “file and print only,” claiming they were exempt from public comment and otherwise refusing to release the text to the public. Plaintiffs’ counsel was again forced to seek a copy of the

1 proposed regulations from the OAL. These proposed regulations were virtually identical to
2 those that DOJ previously submitted to the OAL on December 30, 2016 and subsequently
3 withdrew on February 10, 2017. And, like the previous proposal, DOJ improperly sought to
4 shoehorn these proposed regulations into the exemption provided by section 30900,
5 subdivision (b)(5).

6 6. In addition to the second set of proposed regulations, DOJ included a cover
7 letter which attempted to counter the opposition letter and pre-litigation demand letter
8 submitted by Plaintiffs' counsel in response to the first set of proposed regulations. In
9 response to this cover letter, Plaintiffs' counsel submitted a comprehensive opposition letter
10 addressing all of the arguments raised by DOJ as well as highlighting in detail all of the legal
11 and practical issues with DOJ's second set of proposed regulations.

12 7. After reviewing DOJ's cover letter and the comprehensive opposition letter
13 from Plaintiffs' counsel, OAL officially denied DOJ's request to file and publish the
14 regulations. No specific reason for the denial was provided. And because the regulations
15 were submitted "pursuant to Government Code section 11343.8," no notice specifying the
16 reasons for the denial (as usually required) were provided.

17 8. On June 27, 2017, Governor Jerry Brown signed Assembly Bill No. 103 ("AB
18 103") into law—a public safety omnibus package that included, among other things, a 6-
19 month extension of the registration period for newly classified "assault weapons" pursuant to
20 SB 880 and AB 1135 from January 1, 2018 to July 1, 2018.

21 9. On or about July 21, 2017, DOJ once again submitted proposed regulations to
22 OAL for the registration of newly-classified "assault weapons." As with DOJ's prior
23 proposals, DOJ submitted the regulations as "File and Print Only," and refused to release a
24 copy of the text to the public. As a result, Plaintiffs' counsel was once again forced to request
25 a copy from OAL, which they again provided.

26 10. There were only two substantive changes made from DOJ's prior two
27 proposals to this most recent set of proposed regulations. First, section 5471's list of
28 definition no longer referenced Penal Code section 30515. As stated now in Section 5471:

1 “[f]or the purposes of Penal Code section 30900 and Articles 2 and 3 of this Chapter the
2 following definitions shall apply: . . .” Second, the dates for the deadline to register a newly
3 classified “assault weapon” were changed to reflect the recent amendment as a result of AB
4 103 (which extended the deadline to register from January 1, 2018 to July 1, 2018).

5 11. Other than the above mentioned changes, DOJ’s third proposal was
6 substantively identical to its previous proposals, including the proposal that was denied by
7 OAL just one month earlier on June 26. Despite being substantively identical, however, OAL
8 officially approved DOJ’s regulations on August 2, 2017, nearly a full month before OAL
9 was required to make its decision on August 30, 2017. As a result, DOJ’s regulations have
10 now been published in the California Code of Regulations and are currently being
11 administered and enforced by DOJ.

12 12. On November 24, 2017, DOJ posted notice of a proposed regulation regarding
13 “assault weapon” definitions. The text of the proposed regulation simply states that the
14 “definitions of terms in section 5471 of this chapter shall apply to the identification of assault
15 weapons pursuant to Penal Code section 30515.” The definitions in section 5471 are those
16 same definitions that were adopted pursuant to DOJ’s third set of regulations that were
17 submitted on July 21 and subsequently approved by OAL after removing the reference to
18 Penal Code section 30515. As stated in the accompanying “Initial Statement of Reasons,”
19 DOJ claims the regulation is “necessary to promote a clear understanding of PC section
20 30515 for all purposes” under the AWCA, and that because “DOJ has already promulgated
21 one set of definitions . . . the adoption of those preexisting definitions for all purposes under
22 the assault weapons law will ensure that a single set of definitions applies across the entire
23 assault weapons law.”

24 13. Defendants also continue to enforce numerous illegal “underground
25 regulations,” have failed to implement statutorily required regulations in a timely manner—if
26 at all, and have otherwise ignored comments from stakeholders when proposing firearm
27 related regulations.

28 14. In 1999, California implemented statutory requirements for the manufacturing

1 of firearms, and required DOJ to adopt regulations for the purpose of administering these
2 requirements. (Pen. Code, §§ 29010-29184; See also Pen. Code, § 29055 (requiring DOJ to
3 adopt regulations).) To date—over 18 years later—DOJ has failed to adopt, let alone propose,
4 regulations regarding the manufacturing of firearms in California. Nevertheless, DOJ has
5 created an application form and is happy to charge an annual fee of \$600 for manufacturers
6 that produce over 500 firearms a year—absent any support from the Penal Code or California
7 Code of Regulations for such a fee.¹

8 15. DOJ has also attempted to prohibit firearms equipped with “bullet-buttons” on
9 several occasions. In 2006, DOJ proposed regulations to redefine the term “capacity to accept
10 a detachable magazine,” despite the lack of any substantive change to the phrase as it is used
11 in the Penal Code.² Shortly after the proposal was dropped, DOJ attempted to restrict
12 possession of such firearms by adding them to California’s list of “assault weapons”
13 prohibited by make and model. And after this second attempt to ban such firearms failed,
14 DOJ attempted to effectively rewrite the existing regulations by establishing a “policy” to
15 ban rifles equipped with “bullet-buttons.” It was only in the wake of enormous opposition to
16 such actions—including opposition from Plaintiff California Rifle & Pistol Association, Inc.—
17 that DOJ abandon this third attempt at labeling rifles equipped with “bullet-buttons” as
18 “assault weapons.”

19 16. In addition to the “assault weapon” restrictions adopted by California in 1999,
20 California also adopted new restrictions for the manufacture of firearms in the state. (See Cal.
21 Pen. Code, §§ 29010-29184.) These new provisions required DOJ to “adopt regulations to
22 administer” the newly imposed requirements, and also permitted DOJ to charge an annual fee
23 for the “actual costs” of the program. (Cal. Pen. Code, § 29055.) But to this day—over 17
24 years later—DOJ has still failed to adopt these necessary regulations. What’s more, DOJ

25 ¹ See *BOF 017 (Rev. 10/2016): Application for License to Manufacture Firearms and Centralized*
26 *List of Firearms Manufacturers*, California Department of Justice, Bureau of Firearms,
27 [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/bof-017-app--lic-manufacture-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/bof-017-app--lic-manufacture-firearms.pdf)
28 [firearms.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/bof-017-app--lic-manufacture-firearms.pdf) (Oct. 2016).

² Cal. Code Regs, tit. 11 §§ 5469; 5471, subd. (d); 5472 subds. (f)-(g); 5474, subds. (a) & (c);
5474.1, subds. (b)-(c); 5474.2; 5473, subd. (b)(1); 5478, subd. (a)(2).

1 arbitrarily decide that any business manufacturing more than 500 firearms per year is
2 required to pay over \$600 in annual fees for the purpose of maintaining the license—all
3 without any input from the public or anything suggesting that the \$600 fee is no more than
4 the “actual costs” for administering the program.³

5 17. On several occasions, DOJ has also completely ignored comments from
6 stakeholders when seeking to enact firearm related regulations. One such example is DOJ’s
7 regulations regarding California’s Firearm Safety Certificate (“FSC”) program. The program,
8 enacted in 2013 and effective as of January 1, 2015, generally prohibits any non-exempt
9 person from purchasing or receiving any firearm without a valid FSC. (See Pen. Code, §§
10 31610-31835.) In late 2014, DOJ sent two letters to various businesses and individuals
11 informing them of several new rules and procedures for the administration of the FSC
12 program.⁴ Those new rules and procedures, however, had not been adopted pursuant to any
13 of the typical rulemaking procedures, and did not provide any opportunity for recipients of
14 the letter to comment.

15 18. In response, attorneys for Plaintiffs filed a lawsuit and sought a temporary
16 restraining order against enforcement of these rules and procedures.⁵ Shortly after the lawsuit
17 was filed, DOJ stated that it was “in the process of preparing emergency regulations and final
18 regulations pursuant to the Administrative Procedures [sic] Act . . .” The lawsuit was
19 subsequently dismissed as moot on June 26, 2016.

20 19. But DOJ’s emergency regulations were not adopted until March 2015—more
21 than two months after the program took effect. And it wasn’t until March 23, 2016, that the
22

23 ³ See *BOF 017 (Rev. 10/2016): Application for License to Manufacture Firearms and Centralized*
24 *List of Firearms Manufacturers*, California Department of Justice, Bureau of Firearms,
25 [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/bof-017-app--lic-manufacture-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/bof-017-app--lic-manufacture-firearms.pdf)
26 [firearms.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/bof-017-app--lic-manufacture-firearms.pdf) (Jan. 1, 2016).

27 ⁴ Copies of both letters are attached to Plaintiffs’ attorney’s opposition to the “emergency”
28 regulations as submitted to OAL on March 2, 2015. This opposition letter is viewable online at <
[http://www.calgunlaws.com/wp-content/uploads/2012/07/March-2-2015-Proposed- Emergency -](http://www.calgunlaws.com/wp-content/uploads/2012/07/March-2-2015-Proposed-Emergency-Regulations-Regarding-FSC-and-Safe-Handling-Demonstration-Currently-Under-OAL-Review-Opposition.pdf)
[Regulations-Regarding-FSC-and-Safe-Handling-Demonstration-Currently-Under-OAL-Review-](http://www.calgunlaws.com/wp-content/uploads/2012/07/March-2-2015-Proposed-Emergency-Regulations-Regarding-FSC-and-Safe-Handling-Demonstration-Currently-Under-OAL-Review-Opposition.pdf)
[Opposition.pdf](http://www.calgunlaws.com/wp-content/uploads/2012/07/March-2-2015-Proposed-Emergency-Regulations-Regarding-FSC-and-Safe-Handling-Demonstration-Currently-Under-OAL-Review-Opposition.pdf)>.

⁵ *Belemjian v. Harris*, Case No. 15-CE-CG-00029 (Filed Jan. 6, 2015)

1 emergency regulations were officially adopted as final—well over a year after the FSC
2 program took effect. What’s more, DOJ’s final regulations remained substantively
3 unchanged from the original “policies” created by DOJ prior to the enforcement of the FSC
4 program—despite having received over 52 substantively different comments from over 400
5 individuals and businesses affected by the program.⁶ In other words, the APA rulemaking
6 process was treated as nothing more than a “formality” that it had originally overlooked.

7 20. In 2014, DOJ informed California licensed firearms dealers of a new DOJ
8 “policy” prohibiting licensed collectors from purchasing more than one handgun a month if
9 the handgun is not specifically a “curio or relic” as defined under federal law. This “policy,”
10 however, was not supported by any provision of the California Penal Code or appropriate
11 regulation. In fact, the “policy” actually contradicts existing state law. Another lawsuit, titled
12 *Doe v. Becerra* (Case No. C081994, currently pending before the 3rd Appellate District of the
13 California Court of Appeals), challenges the “policy” on the grounds that it violates the
14 APA’s rulemaking requirements.

15 21. More recently, attorneys for Plaintiffs petitioned OAL in 2016 to declare
16 DOJ’s prohibition against out of state sellers from engaging in lawful, private party transfers
17 of firearms through a California licensed firearms dealer as an illegal “underground
18 regulation.” While OAL ultimately decided to take no action on the petition, further legal
19 action is being considered.

20 22. DOJ also proposed regulations for laws relating to “large-capacity” magazines
21 in late 2016, around the same time DOJ first proposed its regulations regarding “bullet-button
22 assault weapons.” California law has generally restricted the sale or transfer of magazines
23 capable of holding more than 10 rounds since 2000. Nearly seventeen years later, DOJ
24 proposed “emergency” regulations relating to such magazines. Attorneys for Plaintiffs
25 challenged the proposed regulations, and after DOJ was notified by OAL that it would likely
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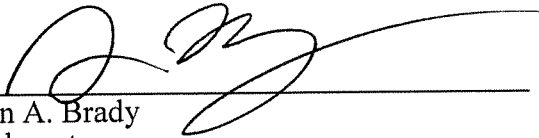
27 ⁶ California Department of Justice, *Final Statement of Reasons: Permanent Regulations*
28 *Regarding Firearm Safety Certifications (FSC) and Safe Handling Demonstrations*,
<https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/fsor-attachment-a-b.pdf>.

1 reject the proposal, DOJ voluntarily withdrew those regulations.

2 23. More recently, Defendants were required under the provisions of Proposition
3 63 and Senate Bill No. 1235 to enact necessary regulations for the issuance of ammunition
4 vendor licenses by July 1, 2017. Defendants failed to even propose those regulations until
5 late July. And because the proposed regulations must still be submitted to OAL for review (a
6 process which can take an additional 30 days and one which DOJ has yet to do at the time of
7 this filing), it will likely be impossible to comply with the requirements of the new law
8 beginning January 1, 2018.

9 24. The above are just a few examples of Defendants' disregard of their duties and
10 obligations under both California law and the requirements of the APA. If an injunction does
11 not issue, Defendants' will continue to cause irreparable harm to Plaintiffs and members of
12 the public, both now and in the future, when it comes to regulations firearms under California
13 law.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct. Executed this 5th day of January, 2018, at Long Beach,
16 California.

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18 Sean A. Brady
19 Declarant
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF FRESNO

4 I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County,
5 California. I am over the age eighteen (18) years and am not a party to the within action. My
6 business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

7 On January 5, 2018, I served the foregoing document(s) described as:

8 **DECLARATION OF SEAN A. BRADY IN SUPPORT OF**
9 **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

10 on the interested parties in this action by placing

11 [] the original
12 [X] a true and correct copy


13 thereof by the following means, addressed as follows:

14 P. Patty Li *Attorneys for Defendants*
15 patty.li@doj.ca.gov
16 Deputy Attorney General
17 California Department of Justice
18 Office of the Attorney General
19 455 Golden Gate Ave., Suite 11000
20 San Francisco, CA 94102

21 X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by
22 electronic transmission through OneLegal. Said transmission was reported and completed without
23 error.

24 X (STATE) I declare under penalty of perjury under the laws of the State of
25 California that the foregoing is true and correct.

26 Executed on January 5, 2018, at Long Beach, California.

27 
28 LAURA PALMERIN