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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF FRESNO

11
12 **DANNY VILLANUEVA, NIALL
STALLARD, RUBEN BARRIOS,
13 CHARLIE COX, MARK STROH,
ANTHONY MENDOZA, AND
14 CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED,**

15
16 Plaintiffs,

17 **v.**

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

22 Defendants.
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Case No. 17CECG03093

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' DEMURRER**

Date: 3:30 p.m.
Time: December 14, 2017
Dept.: 501
Judge: Hon. Mark W. Snauffer
Action Filed: Sept. 7, 2017

TABLE OF CONTENTS

	Page
Introduction	6
Background	6
A. The Assault Weapons Control Act and Bullet-Button Assault Weapons	6
B. DOJ's Promulgation of APA-Exempt Regulations.....	7
Legal Standards Applicable to a Demurrer	8
Argument	8
I. Plaintiffs' Claims Are Cognizable Only in Mandamus	8
II. All of the Regulations Are Within DOJ's Rulemaking Authority and Are Reasonably Necessary to Implement the Registration Process.....	9
A. Legal Standard for Regulatory Challenges	9
B. The Regulations Are Within the Scope of the Authority Delegated by the Legislature and Are Reasonably Necessary to Implement the Registration	10
1. Definitions of Statutory and Registration Terms (Third Cause of Action)	11
2. Reorganization of Regulatory Definitions (First Cause of Action).....	13
3. Bullet-Button Shotgun Registration (Second Cause of Action).....	13
4. Removal of Magazine Release Device (Eighth Cause of Action).....	16
5. Regulations for the Administration of the Registration Process	17
a. Requirement for Serial Numbers (Fourth Cause of Action).....	17
b. Eligibility Check and Supporting Information (Fifth and Seventh Causes of Action)	18
c. Requirement for Photos (Fifth Cause of Action)	19
d. Joint Registration (Sixth Cause of Action)	19
e. Non-Liability Clause (Ninth Cause of Action)	20
CONCLUSION	20

TABLE OF AUTHORITIES

Page

CASES

<i>Association of California Insurance Companies v. Jones</i> (2017) 2 Cal.5th 376	<i>passim</i>
<i>California Alliance for Utility etc. Education v. City of San Diego</i> (1997) 56 Cal.App.4th 1024	8
<i>California Assn of Medical Products Suppliers v. Maxwell-Jolly</i> (2011) 199 Cal.App.4th 286	10, 17
<i>City of Pasadena v. Cohen</i> (2014) 228 Cal.App.4th 1461	9
<i>Howard Jarvis Taxpayers Assn. v. Padilla</i> (2016) 62 Cal.4th 486	14
<i>Moore v. Regents of University of California</i> (1990) 51 Cal.3d 120	8
<i>Ornelas v. Randolph</i> (1993) 4 Cal.4th 1095	15
<i>PaintCare v. Mortensen</i> (2015) 233 Cal.App.4th 1292	10, 20
<i>People v. Arnold</i> (2006) 145 Cal.App.4th 1408	15
<i>San Francisco Fire Fighters Local 798 v. City & County of San Francisco</i> (2006) 38 Cal.4th 653	10
<i>Sierra Club v. Superior Court</i> (2013) 57 Cal.4th 157	14
<i>Sims v. Department of Corrections and Rehabilitation</i> (2013) 216 Cal.App.4th 1059	8
<i>State v. Superior Court</i> (1974) 12 Cal.3d 237	9
<i>Tejon Real Estate, LLC v. City of Los Angeles</i> (2014) 223 Cal.App.4th 149	9
<i>Yamaha Corp. of America v. State Bd. of Equalization</i> (1998) 19 Cal.4th 1	9, 10, 13

TABLE OF AUTHORITIES
(continued)

	Page
STATUTES	
18 U.S.C.	
§ 922(g)(5)	18
Administrative Procedures Act	<i>passim</i>
Assault Weapons Control Act.....	<i>passim</i>
California Code of Regulations.	
Title 1 § 6, subd. (b)	7
Title 11 § 5469 (2016).....	7, 13
Title 11 § 5471	8, 11, 12, 17
Title 11 § 5471, subd. (d)	12
Title 11 § 5471, subd. (e)	11
Title 11 § 5471, subd. (f).....	11
Title 11 § 5471, subd. (i).....	11
Title 11 § 5471, subd. (m).....	11
Title 11 § 5471, subd. (s)	11
Title 11 § 5471, subd. (t).....	13
Title 11 § 5471, subd. (x).....	12
Title 11 § 5471, subd. (cc)	11
Title 11 § 5471, subd. (kk)	11, 17
Title 11 § 5471, subd. (qq).....	13
Title 11 § 5473, subd. (b)(1)	20
Title 11 § 5474, subd. (a)	18
Title 11 § 5474, subd. (b).....	18
Title 11 § 5474, subd. (c)	19
Title 11 § 5472, subd. (f).....	17
Title 11 § 5472, subd. (g).....	17
Title 11 § 5474.1, subd. (b).....	19
Title 11 § 5474.1, subd. (c)	19
Title 11 § 5474.2, subd. (a)(2).....	17
Title 11 § 5476, subd. (d)	18
Title 11 § 5476, subd. (e)	18
Title 11 § 5478, subd. (a)(2)	19
Title 22 § 10005	19
Title 23 § 2814.20	19
Title 25 § 12002, subd. (o).....	19
Civil Code	
§§ 1798 et seq.	20
Code of Civil Procedure	
§ 430.10, subd. (e).....	8

TABLE OF AUTHORITIES
(continued)

		Page
3	Government Code	
4	§ 11343.8.....	7
4	§ 11350.....	8
5	Penal Code	
6	§ 11106, subd. (b)(2)(D)	12
6	§ 12001, subd. (b)	15
7	§ 12276.1 (2000)	16
8	§ 12285, subd. (a) (1990)	13
8	§ 12285, subd. (a) (2000)	16
9	§ 16520, subd. (a).....	15
9	§ 16520, subd. (b)	15
10	§ 29180.....	17
11	§§ 30500, et seq.	6
11	§ 30515.....	8, 14
12	§ 30515, subd. (a)(1)	6, 7, 11
12	§ 30515, subd. (a)(3)	12
13	§ 30515, subd. (a)(4)	6, 7, 11
13	§ 30515, subd. (a)(7)	13
14	§ 30515, subd. (b)	7, 11
14	§ 30675, subd. (b)(1).....	6
15	§ 30680.....	7
16	§ 30900.....	8, 12
16	§ 30900, subd. (a)(2)	16
17	§ 30900, subd. (b)(1).....	7, 14, 15, 16
17	§ 30900, subd. (b)(3).....	17, 19
18	§ 30900, subd. (b)(5).....	7
18	§ 30950.....	18
19	§ 30955.....	19
20	CONSTITUTIONAL PROVISIONS	
21	California Constitution	
22	Art. I, § 1	20
23	OTHER AUTHORITIES	
24	Stats.2016, c. 40 (A.B. 1135)	6
25	Stats.2016, c. 48 (S.B. 880).....	6

1 Defendants Xavier Becerra, Stephen Lindley, and the California Department of Justice
2 (collectively, “DOJ”), submit this memorandum in support of their demurrer to the Complaint.

3 INTRODUCTION

4 Plaintiffs challenge numerous regulations implementing the registration process for a new
5 category of assault weapons, arguing that they conflict with the authorizing assault weapons law
6 because it does not require the regulations. These objections fail for two reasons. First, any
7 challenge by Plaintiffs must be through a writ proceeding, not through a declaratory relief action.
8 Second, it is a basic principle of administrative law that an administrative agency’s rulemaking
9 power allows it to issue regulations that are not specifically required by the authorizing statute.
10 None of the regulations here conflict with the assault weapons law, and all are reasonably
11 necessary for the registration process. The Court therefore should sustain Defendants’ demurrer.

12 BACKGROUND

13 A. The Assault Weapons Control Act and Bullet-Button Assault Weapons

14 The Assault Weapons Control Act (“assault weapons law”) (Pen. Code, §§ 30500, et seq.)
15 restricts the possession, purchase, sale, manufacture, and distribution of assault weapons. The
16 law prohibits the new entry of assault weapons on the market while grandfathering the possession
17 of previously-owned assault weapons, so long as they are registered with DOJ. Registered
18 owners may lawfully possess and sell those weapons, notwithstanding the general restrictions on
19 such activities. (See, e.g., Pen. Code, § 30675, subd. (b)(1).)

20 Recent amendments to the assault weapons law established a new registration process for
21 “bullet-button” assault weapons.¹ A bullet button is a magazine release device on a firearm that
22 requires the use of a tool (which can be a bullet or ammunition cartridge) to remove the magazine
23 from the firearm.² Previously, such weapons did not fall within the statutory definition of an
24 assault weapon, which included a weapon with “the capacity to accept a detachable magazine,” in
25 addition to one of several specified attributes. (Former Pen. Code, § 30515, subds. (a)(1), (a)(4)

26 ¹ Stats.2016, c. 40 (A.B. 1135), §§ 1, 3; Stats.2016, c. 48 (S.B. 880), §§ 1, 3.

27 ² Plaintiffs attempt to replace the term “bullet button” with “magazine lock,” but “bullet button” is much more
28 commonly used. (See, e.g., Request for Judicial Notice (“RJN”), Exs. 1-9 [legislative history].)

(2016).)³ As of January 1, 2017, an assault weapon now includes a weapon that “does not have a fixed magazine,” and “fixed magazine” is defined as “an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.” (Pen. Code, § 30515, subds. (a)(1), (a)(4), (b).) Weapons equipped with a bullet button do not have a “fixed magazine,” and are considered assault weapons if they also have one of several specified attributes. (*Id.*, § 30515, subds. (a)(1), (a)(4).) Weapons lawfully possessed before January 1, 2017 may be grandfathered if they are registered by July 1, 2018. (*Id.*, §§ 30900, subd. (b)(1), 30680.)

B. DOJ’s Promulgation of APA-Exempt Regulations

DOJ may promulgate “regulations for the purpose of implementing” the new registration process, and such regulations “are exempt from the requirements of the Administrative Procedures Act[.]” (Pen. Code, § 30900, subd. (b)(5).) When issuing regulations pursuant to an exemption from the Administrative Procedures Act (“APA”), DOJ nevertheless submits them to the Office of Administrative Law (“OAL”), for publication in the California Code of Regulations, as a “file and print” submission. (See Gov. Code, § 11343.8; Cal. Code Regs., tit. 1, § 6, subds. (b)(3)(F), (G).) OAL reviews “file and print” regulations for compliance with the APA exemption. (*Ibid.*)⁴

DOJ first submitted its file-and-print regulations for the registration process on December 29, 2016, and subsequently withdrew them from consideration on February 10, 2017. (RJN, Exs. 10, 11.) On May 12, 2017, DOJ submitted another set of regulations, which were substantially the same as those submitted in December 2016. (*Id.*, Ex. 12.) On June 26, 2017, OAL denied DOJ’s file-and-print request. (*Id.*, Ex. 13.) On July 19, 2017, DOJ resubmitted the regulations, which were substantially the same as those previously submitted, except the definitions of terms

³ Implementing regulations defined a “detachable magazine” as “any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action *nor use of a tool* being required.” (Former Cal. Code Regs., tit. 11, § 5469, subd. (a) (2016), emphasis added.) The regulations also specified that “[a] bullet or ammunition cartridge is considered a tool.” (*Ibid.*)

⁴ See also OAL Checklist, File & Print/Print Only, Revised 7-09, available at <https://www.oal.ca.gov/wp-content/uploads/sites/28/2017/05/PrintOnlyChecklist.pdf>.

1 in proposed California Code of Regulations, Title 11, section 5471 were “[f]or purposes of Penal
2 Code section 30900 [the registration provision] and Articles 2 and 3 of this Chapter [the
3 regulations regarding registration of assault weapons].” (*Id.*, Ex. 14.)⁵ OAL approved these
4 regulations on July 31, 2017. (*Id.*, Ex. 15.) Plaintiffs filed this lawsuit on September 7, 2017.

5 **LEGAL STANDARDS APPLICABLE TO A DEMURRER**

6 A defendant may demur to a complaint for failure to state facts sufficient to constitute a
7 cause of action. (Code Civ. Proc., § 430.10, subd. (e).) In reviewing a demurrer, the court
8 considers the properly pled material facts and those matters which may be judicially noticed, and
9 tests their sufficiency. (*California Alliance for Utility etc. Education v. City of San Diego* (1997)
10 56 Cal.App.4th 1024, 1028, citation omitted.) The court is only required to assume the truth of
11 material facts properly pleaded, not “contentions, deductions, or conclusions of fact or law.”
12 (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125, citation omitted.)

13 **ARGUMENT**

14 **I. PLAINTIFFS’ CLAIMS ARE COGNIZABLE ONLY IN MANDAMUS**

15 Plaintiffs seek relief pursuant to a right of action for declaratory relief within the APA
16 (Gov. Code, § 11350), but DOJ’s registration-related regulations are exempt from the APA.
17 Although declaratory relief may be available “as to the validity of any regulation,” the “grounds
18 for declaration of invalidity” as set forth in the statute all relate to the APA. (*Ibid.*) A regulation
19 may be declared invalid based on “a substantial failure to comply with” the APA, a lack of
20 substantial evidence, or a conflict with substantial evidence in the record (*id.*, subds. (a), (b)(1),
21 (b)(2)). These are references to APA requirements; there is no rulemaking record or requirement
22 for substantial evidence when an agency acts pursuant to an APA exemption. This right of action
23 therefore assumes the applicability of the APA. (See, e.g., *Sims v. Department of Corrections*
24 *and Rehabilitation* (2013) 216 Cal.App.4th 1059, 1083 [affirming trial court’s invalidation of
25 regulations under section 11350 for substantial failure to comply with APA].)

26
27
28 ⁵ As previously proposed, section 5471 would have applied “to terms used in the identification of assault weapons
pursuant to Penal Code section 30515, and for purposes of Articles 2 and 3 of this Chapter.” (RJN, Ex. 12.)

1 But Plaintiffs must first establish that the regulations should have been promulgated under
2 the APA, through a writ petition challenging DOJ’s administrative decision to use an APA-
3 exempt process. Administrative determinations can only be challenged in a writ proceeding, as
4 “[i]t is settled that an action for declaratory relief is not appropriate to review an administrative
5 decision.” (*State v. Superior Court* (1974) 12 Cal.3d 237, 249.) “Declaratory relief also cannot
6 be joined with a writ of mandate reviewing an administrative determination.” (*City of Pasadena*
7 *v. Cohen* (2014) 228 Cal.App.4th 1461, 1467.) A court may sustain a demurrer solely on the
8 ground that the complaint attempts to obtain review of an agency action via declaratory relief,
9 instead of mandamus review. (See *Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223
10 Cal.App.4th 149, 155.) This Court should do so here. For this reason alone, the Court should
11 sustain the demurrer to the entire complaint.

12 **II. ALL OF THE REGULATIONS ARE WITHIN DOJ’S RULEMAKING AUTHORITY AND**
13 **ARE REASONABLY NECESSARY TO IMPLEMENT THE REGISTRATION PROCESS**

14 **A. Legal Standard For Regulatory Challenges**

15 Should the Court choose to reach the substance of Plaintiffs’ claims, the following legal
16 standards apply. An administrative agency’s regulations are “quasi-legislative rules,” which are
17 “an authentic form of substantive lawmaking” based on the Legislature’s delegation of its
18 lawmaking power to the agency. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998)
19 19 Cal.4th 1, 10.) As the Supreme Court has explained:

20 Because agencies granted such substantive rulemaking power are truly “making
21 law,” their quasi-legislative rules have the dignity of statutes. When a court
22 assesses the validity of such rules, the scope of its review is narrow. If satisfied
23 that the rule in question lay within the lawmaking authority delegated by the
Legislature, and that it is reasonably necessary to implement the purpose of the
statute, judicial review is at an end.

24 (*Id.*, at pp. 10–11; see also *Association of California Insurance Companies v. Jones* (2017) 2
25 Cal.5th 376, 396 [quoting *Yamaha*].) Plaintiffs must therefore show either that (1) the regulations
26 are outside “the lawmaking authority delegated by the Legislature”—i.e., outside the scope of the
27 APA exemption, or (2) even if the regulations are within the APA-exempt rulemaking authority,
28 they are not reasonably necessary to effectuate the registration requirement.

1 When considering whether a challenged regulation is “within the scope of the authority
2 conferred,” the court reviews “for consistency with controlling law.” (*California Assn of Medical*
3 *Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 312 [citations omitted].) “An
4 administrative agency is not limited to the exact provisions of a statute in adopting regulations to
5 enforce its mandate,” and the “absence of any specific statutory provisions regarding the
6 regulation of an issue does not mean that such a regulation exceeds statutory authority,” because
7 the agency is “authorized to ‘fill up the details’ of the statutory scheme.” (*PaintCare v.*
8 *Mortensen* (2015) 233 Cal.App.4th 1292, 1298-99, 1307-08 [regulations requiring information
9 not required by statute did not conflict with authorizing statute], brackets omitted, quoting *Ford*
10 *Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 362.)

11 When considering whether the challenged regulation is reasonably necessary to effectuate
12 the purpose of the statute, the standard of review is “much more deferential” because reasonable
13 necessity implicates the agency’s expertise. (*Maxwell-Jolly, supra*, 199 Cal.App.4th at pp. 315,
14 citations omitted.) “The question is whether the agency’s action was arbitrary, capricious, or
15 without reasonable or rational basis.” (*Ibid.*) There is a “strong presumption of regularity” for an
16 agency’s determination that a regulation is reasonably necessary (*Yamaha, supra*, 19 Cal.4th at
17 p. 11), “out of deference to the separation of powers between the Legislature and the judiciary, to
18 the legislative delegation of administrative authority to the agency, and to the presumed expertise
19 of the agency within its scope of authority.” (*San Francisco Fire Fighters Local 798 v. City &*
20 *County of San Francisco* (2006) 38 Cal.4th 653, 667.)

21 **B. The Regulations Are Within the Scope of the Authority Delegated by the**
22 **Legislature and Are Reasonably Necessary to Implement the Registration**

23 Plaintiffs’ challenges are based on two premises: (1) the regulations contain requirements
24 not set forth in the assault weapons law; and (2) the regulations are not related to the registration
25 process. These contentions are incorrect. The authorizing statute need not set forth every
26 component of an agency’s implementing regulations. “To conclude that . . . the Legislature
27 [must] define in advance every problem it expects an agency to address is to suggest that the
28 Legislature had little need for agencies in the first place.” (*Jones, supra*, 2 Cal.5th at p. 398.)

1 And, all of the regulations are directly related to the registration process, and thus are reasonably
2 necessary to implement the registration.

3 **1. Definitions of Statutory and Registration Terms (Third Cause of**
4 **Action)**

5 Plaintiffs allege that forty of the forty-four definitions in section 5471 of title 11 of the
6 Code of California Regulations⁶ “apply to terms that have nothing to do with the firearm
7 characteristics affected by” the bullet-button amendments, and that “most of these forty terms
8 have existed since 2000” such that DOJ lacks authority to define them now. (Compl. ¶ 96.)
9 Plaintiffs allege that some (or perhaps all) of the forty-four definitions reclassify “firearms
10 lawfully possessed pre-2017” because “countless firearms were already acquired, registered, or
11 prohibited years ago based on those terms as previously defined by statute or regulation.” (*Ibid.*)

12 The definitions are designed to help potential registrants understand which characteristics
13 require that the firearm be registered, and how to register. The terms either appear in the statutory
14 provisions that were amended to include bullet-button weapons or in the subdivisions for those
15 provisions,⁷ or they appear elsewhere in the proposed regulations. For example, the regulations
16 define “Detachable magazine” (§ 5471, subd. (m)) because it appears in the statutory provision
17 referring to “the capacity to accept a detachable magazine at a location outside of the pistol grip”
18 (Pen. Code, § 30515 subd. (a)(4)(D)). A semiautomatic pistol that has this feature, and lacks a
19 fixed magazine, is a bullet-button assault weapon. (*Ibid.*) Several definitions are for terms
20 referenced by other definitions. For example, “Bullet” is part of the term “Bullet-button,” and is
21 defined differently from “cartridge,” which helps to distinguish bullets and cartridges when that
22 information is requested as part of the registration process.⁸ (§ 5471, subds. (e), (f), (i).)

23 ⁶ Unless otherwise specified, all future references to a section are to a section within title 11 of the California Code of
24 Regulations.

25 ⁷ Pen. Code, § 30515, subds. (a)(1)(A)-(F), (a)(4)(A)-(D), (b).

26 ⁸ Another defined term that does not appear in the assault weapons law is “Spigot.” (§ 5471, subd. (kk).) The
27 definition informs applicants that some muzzle devices are also spigots, which can be used to fire grenades. A
28 firearm with a spigot is likely to have a grenade launcher, which may qualify it as an assault weapon. (Pen. Code,
§ 30515, subd. (a)(1)(D).) The regulations also define “Receiver, unfinished” because that is the initial form of a
Firearm Manufactured By Unlicensed Subject (“FMBUS”), which is a type of potentially registrable weapon.
(§ 5471, subds. (cc), (s).) A “Receiver” is defined as “the basic unit of a firearm which houses the firing and breech

1 Other definitions support the collection of information required for the registration process.
2 The definitions of “Barrel length” and “Overall length of less than 30 inches” provide instructions
3 for measuring a weapon’s length, for registration purposes. (§ 5471, subds. (d), (x).) “Barrel
4 length” is a basic piece of identifying information collected for every weapon reported to or
5 registered with DOJ, much like information about a weapon’s manufacturer or model. In
6 addition, DOJ’s registry “shall consist of” specified information, including barrel length of the
7 firearm. (Pen. Code, § 11106, subd. (b)(2)(D).) The definition of “Overall length of less than 30
8 inches” pertains to the statutory definition of an assault weapon as “[a] semiautomatic, centerfire
9 rifle that has an overall length of less than 30 inches.” (*Id.*, § 30515, subd. (a)(3).) Weapons
10 meeting this definition should have been previously registered, with or without a bullet button,
11 and DOJ will reject any attempt to register those weapons now.

12 These definitions apply “[f]or purposes of Penal Code section 30900,” which is the
13 statutory provision regarding registration of assault weapons; and for purposes of “Articles 2 and
14 3 of this Chapter,” which refers to the portions of the California Code of Regulations regarding
15 the registration of assault weapons. (§ 5471.) All of the definitions fall within DOJ’s rulemaking
16 authority because they are directly related to, and apply only during, the registration process.

17 Contrary to Plaintiffs’ assertions, there is no requirement that the authorizing statute set
18 forth every component of an agency’s implementing regulations. (See *Jones, supra*, at pp. 393,
19 398 [where statute defined specific activities as “unfair or deceptive acts or practices,” regulation
20 defining additional activity as such was within agency’s rulemaking authority].) Nor does DOJ
21 need to show changed circumstances before defining preexisting statutory terms through
22 regulations. DOJ’s APA-exempt rulemaking authority includes the power to define terms that
23 must be interpreted in order to understand and comply with the registration requirements.
24 Because the definitions apply only for the purpose of this registration process, they will not
25 impact weapons registered during previous registration periods and so will not “redefine” what
26 constitutes an “assault weapon.”

27
28 _____
mechanisms and to which the barrel and stock are assembled.” (*Id.*, subd. (aa).)

1 The definitions are also reasonably necessary to effectuate the purpose of the registration
2 requirement. When conducting the reasonable necessity analysis, courts defer to the agency's
3 expertise and apply a "strong presumption of regularity" to the agency's determination that a
4 regulation is reasonably necessary. (*Yamaha, supra*, 19 Cal.4th at p. 11.) These definitions
5 reflect DOJ's judgment that this information will assist firearms owners in navigating the
6 registration process, as well as help DOJ carry out the registration process most efficiently.
7 Deference to DOJ's expertise is warranted here, because DOJ has maintained a registry of
8 grandfathered assault weapons since at least 1991.⁹ The definitions give firearms owners detailed
9 guidance on the registration requirement, and so are within DOJ's APA-exempt rulemaking
10 authority, as well as reasonably necessary to implement the registration process.

11 **2. Reorganization of Regulatory Definitions (First Cause of Action)**

12 Plaintiffs contend that DOJ improperly repealed five definitions originally promulgated in
13 2000. (Compl. ¶ 78; former § 5469 (2016).) These definitions were actually transferred to a new
14 section containing all of the registration definitions.¹⁰ This reorganization of the assault weapons
15 registration regulations helps to avoid confusion from two sets of overlapping definitions, is
16 consistent with the assault weapons law, and so is within DOJ's power to make rules relating to
17 registration. It is also reasonably necessary for the registration process.

18 **3. Bullet-Button Shotgun Registration (Second Cause of Action)**

19 Plaintiffs object that because bullet-button shotguns do not come within the statutory
20 definition of "assault weapon," the regulations providing for registration of such weapons conflict
21 with the assault weapons law. This is based on an alleged conflict with the definition of "assault
22 weapon,"¹¹ not with the statutory registration requirement, which provides as follows:

23 ⁹ Former Pen. Code, § 12285, subd. (a) (1990) (requiring assault weapon registration by January 1, 1991).

24 ¹⁰ Two of the previous definitions ("Forward pistol grip" and "Thumbhole stock") were incorporated exactly as they
25 previously existed. (§ 5471, subds. (t), (qq).) The new versions of the remaining three (for "Detachable magazine,"
26 "Flash suppressor," and "Pistol grip that protrudes conspicuously beneath the action of the weapon") consist of the
preexisting definitions plus examples of items that would fall within those definitions. (§ 5471, subds. (m), (r), (z).)

27 ¹¹ A semiautomatic shotgun "that has the ability to accept a detachable magazine" is an assault weapon. (Pen. Code,
28 § 30515, subd. (a)(7).) As discussed above, a bullet-button weapon does not have the ability to accept a detachable
magazine.

1 Any person who, from January 1, 2001, to December 31, 2016, inclusive, lawfully
2 possessed an assault weapon that does not have a fixed magazine, as defined in
3 Section 30515, including those weapons with an ammunition feeding device that
4 can be readily removed from the firearm with the use of a tool, shall register the
firearm before July 1, 2018[.]

5 (Pen. Code, § 30900, subd. (b)(1).) The category of weapons required to be registered
6 “include[es] those weapons with an ammunition feeding device that can be readily removed from
7 the firearm with the use of a tool,” that is, “weapons” with a bullet button. As commonly
8 understood and as used in the assault weapons law, the term “weapons” encompasses shotguns.
9 Part of the law provides that “‘assault weapon’ means the following designated semiautomatic
10 firearms,” and then lists various rifles, pistols, and shotguns. (*Id.*, § 30510, subds. (a)-(c).) The
11 law also describes “assault weapons” as comprising of certain rifles, pistols, and shotguns. (*Id.*,
12 § 30515, subds. (a)(1)-(8).) And, various other references in the Penal Code indicate that a
13 shotgun is a type of weapon. (See, e.g., *id.*, § 17190 [“‘shotgun’ means a weapon...intended to
14 be fired from the shoulder”]; § 16590, subd. (t) [“generally prohibited weapon” includes “short-
15 barreled shotgun”].)

16 The registration requirement uses a term (“weapons”) that includes rifles, pistols, and
17 shotguns. The statute must be interpreted to “giv[e] significance to every word, phrase, sentence,
18 and part of an act in pursuance of the legislative purpose.” (*Sierra Club v. Superior Court* (2013)
19 57 Cal.4th 157, 166, citation omitted.) Bullet-button shotguns are “weapons with an ammunition
20 feeding device that can be readily removed from the firearm with the use of a tool,” and are thus
21 required to be registered. (Pen. Code, § 30900, subd. (b)(1).)

22 This is so even though bullet-button shotguns are not statutorily defined as assault weapons.
23 The Legislature has the power to require the registration of weapons that are not considered
24 assault weapons under the statute, and the plain language of the registration requirement is *not*
25 limited to statutorily defined assault weapons. (See *Howard Jarvis Taxpayers Assn. v. Padilla*
26 (2016) 62 Cal.4th 486, 497-98 [discussing plenary power of Legislature].) The registration
27 requirement applies to any person in lawful possession of “an assault weapon that does not have a
28 fixed magazine, as defined in Section 30515, *including those weapons* with an ammunition

1 feeding device that can be readily removed from the firearm with the use of a tool.” (Pen. Code,
2 § 30900, subd. (b)(1), emphasis added.) The phrase “including those weapons” indicates that the
3 second category expands upon what is already encompassed by the first, such that the registration
4 requirement also applies to bullet-button “weapons,” such as bullet-button shotguns. This is
5 because “[i]ncludes’ [is] ordinarily a term of enlargement rather than limitation.” (*Ornelas v.*
6 *Randolph* (1993) 4 Cal.4th 1095, 1101.)

7 The Court of Appeal has applied this principle in the context of a Penal Code provision
8 making it a felony for anyone convicted of a felony to possess a “firearm.” (*People v. Arnold*
9 (2006) 145 Cal.App.4th 1408, 1413–14.) The Court considered the following language: “As used
10 in this title, ‘firearm’ means any device, designed to be used as a weapon, from which is expelled
11 through a barrel a projectile by the force of any explosion or other form of combustion.” (Former
12 Pen. Code, § 12001, subd. (b) (2006).)¹² A subsequent provision states, in relevant part, that “the
13 term ‘firearm’ *includes* the frame or receiver of the weapon.” (*Id.*, subd. (c), emphasis added.)¹³
14 The Court concluded that the latter provision “*enlarges*, rather than limits, the definition of
15 ‘firearm’” in the former provision. (*Arnold*, supra, 145 Cal.App.4th at p. 1414.) For purposes of
16 this offense, possession of a “frame or receiver”—a device in the second category—“is *sufficient*
17 to constitute possession of a ‘firearm,’ *regardless* of whether a ‘device’ with a ‘barrel’”—the first
18 category—is also possessed. (*Ibid.*) The same principle applies here: bullet-button “weapons” in
19 the second category are subject to the registration requirement, regardless of whether they fall
20 into the first category.

21 Because the plain language of the registration requirement calls for the registration of
22 bullet-button shotguns, there is no conflict between the assault weapons law and the regulations
23 requiring the registration of these weapons. And, because the regulations provide specific
24 guidance on the registration of bullet-button shotguns, they are reasonably necessary for the
25 registration process.

26
27 ¹² This provision is currently in Penal Code section 16520, subdivision (a).

28 ¹³ This current form of this provision is in Penal Code section 16520, subdivision (b).

1 **4. Removal of Magazine Release Device (Eighth Cause of Action)**

2 Plaintiffs also challenge a regulation prohibiting any post-registration alteration to the bullet
3 button.¹⁴ (Compl. ¶¶ 168-175.) This regulation helps to maintain the integrity of the current
4 registration process, by preventing registrants from converting registered weapons into weapons
5 that are not eligible for registration. The release mechanism for a weapon’s ammunition feeding
6 device—i.e., the bullet button—is an essential feature for registration purposes. Only weapons
7 with a particular kind of release mechanism may be registered at this time. An alteration to this
8 feature creates a registered weapon that is ineligible for registration.

9 Removal of the bullet-button also converts the weapon into an assault weapon that,
10 according to its features, should have been registered by January 1, 2001.¹⁵ (Pen. Code, § 30900,
11 subd. (a)(2).) This would expand the number of weapons in a category of assault weapons
12 previously closed to registration. The regulation will thus help prevent the new registration
13 process from being used to circumvent longstanding restrictions on the sale and possession of
14 weapons that have previously been classified as assault weapons.

15 Plaintiffs claim that the regulation is not related to registration because it regulates conduct
16 that occurs after registration. Plaintiffs also object that the regulation conflicts with the assault
17 weapons law because “nothing in the [assault weapons law] precludes individuals from
18 modifying a properly registered ‘assault weapon’ so long as the modification does not trigger
19 another prohibition unrelated to the [assault weapons law].” (Compl. ¶ 174.) But the regulation
20 does *not* prohibit all post-registration modifications; rather, it prohibits modification of the
21 specific feature of the weapon that qualifies it for this particular registration process. Such a

22 ¹⁴ Section 5477, subdivision (a) provides, “The release mechanism for an ammunition feeding device on an assault
23 weapon registered pursuant to Penal Code section 30900, subdivision (b)(1), shall not be changed after the assault
24 weapon is registered. A weapon’s eligibility for registration pursuant to Penal Code section 30900, subdivision
25 (b)(1) depends, in part, on its release mechanism. Any alteration to the release mechanism converts the assault
26 weapon into a different weapon from the one that was registered.”

27 ¹⁵ Removal of the bullet button would transform the weapon into a true quick-release weapon, with “the capacity to
28 accept a detachable magazine,” as previously defined under the assault weapons law. If the weapon still has one of
the additional qualifying features, it would fall into the category of assault weapons originally subject to restrictions
on sale and possession as of January 1, 2000, which were required to have been registered by January 1, 2001. (See
former Penal Code §§ 12276.1 (2000) [introduction of feature-based definitions of assault weapon, effective January
1, 2000], 12285, subd. (a) (2000) [requiring registration of assault weapons as defined under former section 12276.1
within one year].)

1 modification is akin to the manufacture of a prohibited weapon, and nothing in the assault
2 weapons law allows the registration process to be used for manufacturing prohibited weapons.

3 These regulations safeguard the registration process and thus fall within DOJ's APA-
4 exempt rulemaking authority, and are reasonably necessary to effectuate the registration
5 requirement as well. The Court should defer to DOJ's judgment on what is necessary to prevent
6 abuse of the registration process. (*Maxwell-Jolly, supra*, 199 Cal.App.4th at pp. 315.)

7 **5. Regulations for the Administration of the Registration Process**

8 The other challenged regulations concern various registration procedures. These
9 regulations are also consistent with the statutory registration provision, and many are directly
10 related to the statutory requirement that the registration application to include "a description of
11 the firearm that identifies it uniquely." (Pen. Code, § 30900, subd. (b)(3).)

12 **a. Requirement for Serial Numbers (Fourth Cause of Action)**

13 Plaintiffs challenge regulations requiring a registered weapon to "have a serial number
14 applied pursuant to federal law," or to have a DOJ-issued serial number applied to a homemade
15 weapon.¹⁶ (§ 5472, subds. (f), (g); Compl. ¶¶ 108-114.) These requirements are directly related
16 to the statutory directive that registered weapons be identified uniquely. (Pen. Code, § 30900,
17 subd. (b)(3).) The only way DOJ can verify that homemade bullet-button assault weapons are
18 uniquely identified is to require application of a DOJ-issued serial number, as those weapons are
19 not subject to a federal serial-number requirement.

20 Plaintiffs contend that because a separate statute requiring serial numbers for homemade
21 weapons applies after this registration period closes, DOJ cannot impose such a requirement
22 here.¹⁷ But DOJ's authority to promulgate regulations for this registration process is not limited

23 ¹⁶ An applicant "may" contact a federally-licensed firearms manufacturer ("type 07") to apply the serial number,
24 (§ 5474.2, subd. (a)(2)), but there is no requirement to make such an arrangement. The regulations also provide that
25 a weapon with the upper and lower receivers completely detached from one another is not a semiautomatic firearm,
26 and does not constitute an assault weapon. (§ 5471, subd. (hh)(3).) A person who does not have a "dangerous
27 weapon" permit (as described in section 4128 of title 11 of the California Code of Regulations) may apply the serial
28 number and other required information to a firearm in this condition, so long as the owner does not leave the firearm
unattended during the engraving process.

¹⁷ Penal Code section 29180 requires DOJ-issued serial numbers for (1) the manufacture of homemade firearms as of
July 1, 2018, and (2) pre-existing homemade firearms by January 1, 2019.

1 by a separate statute. Rather, DOJ’s authority is limited to regulations that do not conflict with
2 the authorizing statute, and that are reasonably necessary to effectuate the statutory purpose.
3 (*Jones, supra*, 2 Cal.5th at p. 398.) The serial number regulations satisfy both requirements
4 because they directly support the registration process.

5 **b. Eligibility Check and Supporting Information (Fifth and**
6 **Seventh Causes of Action)**

7 Plaintiffs object that because the registration requirement does not mention an eligibility
8 check, DOJ cannot require one in its regulations.¹⁸ (Compl. ¶ 159-160.) However, the assault
9 weapons law requires DOJ to perform an eligibility check prior to accepting a registration for an
10 assault weapon. Penal Code section 30950 provides, “No person who is under the age of 18
11 years, and no person who is prohibited by state or federal law from possessing, receiving, owning,
12 or purchasing a firearm, may register or possess an assault weapon or .50 BMG rifle.” DOJ must
13 confirm that applicants are not prohibited from registering an assault weapon.

14 Plaintiffs challenge the regulation requiring applicants to provide “U.S. citizenship status,
15 place of birth, country of citizenship, and alien registration number” on the same grounds, i.e.,
16 lack of a specific requirement for this information in the assault weapons law. (§ 5474, subd. (a);
17 Compl. ¶ 128.) As previously explained, there is no merit to Plaintiffs’ contention that
18 regulations may only repeat language from the authorizing statute.¹⁹ Citizenship information is
19 required to confirm eligibility to possess a firearm under federal law, in accordance with 18
20 U.S.C. § 922(g)(5).²⁰ The eligibility check regulations are thus consistent with, and actually
21 compulsory under, the registration requirement, and are reasonably necessary to carry out the
22 registration in accordance with the assault weapons law.

23
24
25 ¹⁸ Applicants registering their assault weapons will undergo a “firearms eligibility check,” and those that successfully
complete this check will receive “an assault weapon registration disposition letter.” (§ 5476, subds. (d), (e).)

26 ¹⁹ Indeed, the regulations call for various pieces of information that are not listed in the statute and that Plaintiffs
27 have not objected to, including firearm type, make, model, caliber, firearm color, serial number, and firearm country
of origin/manufacture. (§ 5474, subd. (b).)

28 ²⁰ This provision prohibits the possession of firearms by aliens illegally or unlawfully in the United States or admitted
under a nonimmigrant visa.

1 **c. Requirement for Photos (Fifth Cause of Action)**

2 The regulations require persons seeking to register a weapon to submit “clear digital
3 photos” of the weapon (§ 5474, subd. (c)), and also require a person seeking to de-register a
4 weapon to submit a written application attaching “one or more photographs clearly depicting the
5 firearm” (§ 5478, subd. (a)(2)). Such photos will help to uniquely identify a registered firearm
6 (Pen. Code § 30900, subd. (b)(3)), as well as allow DOJ to confirm the accuracy of the weapon
7 description submitted by the applicant. This requirement is thus within DOJ’s APA-exempt
8 rulemaking authority, and also reasonably necessary to effectuate the registration process.
9 Plaintiffs’ objection that the assault weapons law does not contain the text of these regulations is,
10 once again, without merit. (See *Jones, supra*, 2 Cal.5th at p. 398.)

11 **d. Joint Registration (Sixth Cause of Action)**

12 Penal Code section 30955 provides for joint registration of assault weapons “owned by
13 family members residing in the same household.” Regulations regarding the family relationships
14 that qualify for joint registration and the acceptable forms of proof of address (§ 5474.1, subds.
15 (b), (c)) are quintessential examples issues that should be spelled out in implementing regulations.

16 Plaintiffs complain that DOJ does not permit joint registration based on every conceivable
17 family relationship.²¹ (Compl. ¶¶ 142-143.) But nothing in the assault weapons law requires
18 DOJ to recognize certain or all family relationships for joint registration. The fact that joint
19 registration is available to “family members residing in the same household” does not mean it is
20 available to *every* member of a household with some family relationship. “Family members” is a
21 subset of those “residing in the same household,” and it is well within DOJ’s delegated
22 rulemaking authority to define “family members” for the purposes of this registration process.²²

23
24 ²¹ Plaintiffs claim that DOJ “originally” proposed more stringent joint-registration regulations only to relax those
25 requirements later. (Compl. ¶ 149.) This refers to the rulemaking for a prior registration cycle, in 2000, which has
no relevance to this rulemaking.

26 ²² Other state agencies have promulgated various definitions of “family member.” (See Cal. Code Regs., tit. 22,
27 § 10005 [Department of Health Services definition applicable to “Displaced Homemakers Program”]; Cal. Code
28 Regs., tit. 23, § 2814.20 [State Water Resources Control Board definition applicable to “Underground Storage Tank
Petroleum Contamination Orphan Site Cleanup Fund”]; Cal. Code Regs., tit. 25, § 12002, subd. (o) [California
Housing Finance Agency definition in the context of “Restrictions on Agency Public Benefits to Aliens”].)

1 Plaintiffs also object that DOJ cannot require joint registrants to provide proof of address
2 (Compl. ¶ 148), because the assault weapons law does not so require. But even if a statutory
3 requirement can be considered “self-executing, an administrative agency nonetheless has
4 authority to promulgate rules and regulations as reasonably necessary to administer it.” (*Jones*,
5 *supra*, 2 Cal.5th at p. 393.) These requirements are all well within DOJ’s authority to “fill up the
6 details” of the statutory scheme (*PaintCare, supra*, 233 Cal.App.4th at p. 1307), and are also
7 reasonably necessary to effectuate the registration process.

8 **e. Non-Liability Clause (Ninth Cause of Action)**

9 Finally, Plaintiffs object to a regulation establishing a non-liability clause as part of the
10 terms of use for the mandatory electronic registration system (§ 5473, subd. (b)(1)), arguing that
11 the clause is not necessary and conflicts with the California Constitution and the Information
12 Practices Act (Compl. ¶¶ 183-192). But DOJ does not need to provide “facts, studies, or expert
13 opinions supporting the need for the regulation” (Compl. ¶ 186), because DOJ’s registration-
14 related regulations are exempt from the APA. And, Plaintiffs’ argument that “removing the
15 regulation would have no effect on the ability of an individual to register” (*ibid.*) a weapon lacks
16 any grounding in administrative law. This is not an accepted test for whether a regulation is
17 within the scope of an agency’s delegated rulemaking power. Furthermore, there is no conflict
18 with the California Constitution (art. I, § 1) or the Information Practices Act (Civ. Code, §§ 1798
19 et seq.), because the non-liability clause applies “[e]xcept as may be required by law.” (§ 5473,
20 subd. (b)(1).)

21 To the extent Plaintiffs’ objection is really that the regulation conflicts with the assault
22 weapons law and/or is not reasonably necessary to effectuate the registration process, the
23 objection is unavailing. Having a non-liability clause as part of the terms of use for a statutorily
24 mandated electronic registration system directly supports the registration process, and is therefore
25 consistent with and reasonably necessary for the registration process.

26 **CONCLUSION**

27 For the foregoing reasons, the demurrer should be sustained.
28

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Respectfully Submitted,

2
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