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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No.: 3:18-cv-00802-BEN-JLB

KIM RHODE, GARY BRENNAN,
CORY HENRY, EDWARD JOHNSON,
SCOTT LINDEMUTH, RICHARD
RICKS, DENISE WELVANG, ABLE'S
SPORTING, INC., a Texas corporation,
AMDEP HOLDINGS, LLC, a Florida
limited liability company d/b/a
AMMUNITION DEPOT, R & S
FIREARMS, INC., an Arizona
corporation d/b/a SAM's SHOOTERS
EMPORIUM, and CALIFORNIA
RIFLE & PISTOL ASSOCIATION,
INCORPORATED, a California
corporation,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of the State
of California; and DOES 1-10,

Defendants.

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiffs Kim Rhode, Gary Brennan, Cory Henry, Edward Johnson, Scott
 2 Lindemuth, Richard Ricks, Denise Welvang, Able's Sporting, Inc., a Texas
 3 corporation, AMDEP Holdings, LLC, a Florida limited liability company d/b/a
 4 Ammunition Depot, R&S Firearms, Inc., an Arizona corporation d/b/a Sam's Shooters'
 5 Emporium, and California Rifle & Pistol Association, Incorporated, a California
 6 corporation, through their counsel, bring this action against Defendant California
 7 Attorney General Xavier Becerra, in his official capacity, and make the following
 8 allegations.

9 INTRODUCTION AND SUMMARY OF CLAIMS

10 1. In 2016, California enacted a sweeping series of criminal statutes that
 11 place unprecedented and overreaching restraints on the purchase and sale of
 12 ammunition.

13 2. These statutes, in conjunction with some of their implementing
 14 regulations, (collectively, the "Challenged Provisions") outright ban millions of
 15 constitutionally protected ammunition transfers and heavily burden countless millions
 16 more.

17 3. Among other effects, the Challenged Provisions completely ban direct
 18 mail order ammunition purchases, implement a costly vendor-licensing system, subject
 19 countless ammunition purchases to a burdensome registration scheme, place numerous
 20 restrictions on ammunition vendors, and impose multiple costly fees and prohibitive
 21 price increases on ammunition purchasers.

22 4. One effect of the Challenged Provisions is to block any ammunition
 23 vendor that does not have a physical presence in California from participating in the
 24 California market, unless it has an ammunition vendor with a physical presence in
 25 California broker the sale. But the in-state vendor can charge the purchaser whatever
 26 fee it wants to process the transaction or flat out refuse to process it. Such
 27 discrimination against out-of-state economic interests and impermissible regulation of
 28 out-of-state transactions is a violation of the Dormant Commerce Clause. These

1 excessive restraints on the purchase, sale, and transfer of ammunition also violate
2 individuals' right to keep and bear arms as guaranteed by the Second Amendment.

3 5. The Challenged Provisions also are preempted by 18 U.S.C. §926A,
4 which ensures that a person may carry a firearm "from any place where he may
5 lawfully possess and carry such firearm to any other place where he may lawfully
6 possess and carry such firearm," provided the person properly stores the firearm.
7 Section 926A preempts similar prohibitions on ammunition, as it expressly
8 contemplates that "ammunition" will be "transported" along with the firearm. By
9 preventing law-abiding citizens from transporting ammunition from another state into
10 California, the California law conflicts with and stands as an obstacle to the purposes
11 of federal law.

12 6. The plaintiffs in this lawsuit are a collection of law-abiding individuals—
13 including Olympic and competitive shooters, hunters, and practitioners of self-
14 defense—who are seeking to exercise their fundamental Second Amendment right to
15 acquire ammunition for self-defense and other lawful purposes; out-of-state businesses
16 who act as the purveyors of that right that are unconstitutionally burdened by the
17 Challenged Provisions; and a civil rights membership organization dedicated to
18 protecting its members' Second Amendment rights.

19 7. Plaintiffs seek declaratory and injunctive relief to prevent the State of
20 California, including Defendant Becerra and all his agents from enforcing the
21 Challenged Provisions against Plaintiffs in violation of their constitutional rights.

22 **JURISDICTION AND VENUE**

23 8. The Court has original jurisdiction of this civil action under 28 U.S.C.
24 §1331, because the action arises under the Constitution and laws of the United States,
25 thus raising federal questions. The Court also has jurisdiction under 28 U.S.C.
26 §1343(a)(3) and 42 U.S.C. §1983 since this action seeks to redress the deprivation,
27 under color of the laws, statutes, ordinances, regulations, customs and usages of the
28

1 State of California and political subdivisions thereof, of rights, privileges or
2 immunities secured by the United States Constitution and by Acts of Congress.

3 9. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28
4 U.S.C. §§2201-2202, and their claim for attorneys' fees is authorized by 42 U.S.C.
5 §1988.

6 10. Venue in this judicial district is proper under 28 U.S.C. §1391(b)(2),
7 because a substantial part of the events or omissions giving rise to Plaintiffs' claims
8 occurred in this district.

9 **PARTIES**

10 **Plaintiffs**

11 11. Plaintiff Kimberly Rhode Harryman ("Kim Rhode") is a resident of San
12 Bernardino County, California and a citizen of the United States. Plaintiff Rhode is not
13 prohibited from owning or possessing firearms or ammunition under federal or
14 California law. She is a competitive skeet and double trap shooter who has earned six
15 Olympic medals, three World Championship medals, and five Pan American Games
16 medals. The primary way Plaintiff Rhode obtains her specialized competition
17 ammunition (which she is mandated to use in competitions by the International
18 Shooting Sports Federation) is by receiving shipments of it from USA Shooting (the
19 National Governing Body for the sport of shooting chartered by the United States
20 Olympic Committee). These shipments are often delivered to a training facility in
21 Arizona, from where Plaintiff Rhode retrieves the ammunition and brings it into
22 California for training and competition purposes. Plaintiff Rhode also regularly has
23 ammunition that she uses for marksmanship practice for shooting competitions and
24 self-defense training shipped by her ammunition sponsor directly to her home in
25 California and to various shooting ranges located both inside and outside of California.
26 She regularly transports ammunition that she takes receipt of at these ranges back to
27 her home, her coach's (parents') home, and to other shooting ranges and competitive
28 event venues. Plaintiff Rhode is the sole financial supporter of her family, which

1 depends on her ability to train and compete. As such, she seeks to continue engaging in
2 these practices without being subjected to the unconstitutional restraints California has
3 imposed on the transfer of ammunition under the Challenged Provisions that prohibit
4 and restrict her ability to do so. But for the enactment of the Challenged Provisions,
5 and her reasonable fear of prosecution for violating them, Plaintiff Rhode would
6 immediately resume receiving ammunition via direct shipments to her home and her
7 coach's home and would further transport ammunition from in-state and out-of-state
8 shooting ranges to her home and to other shooting ranges and competitive events.

9 12. Plaintiff Gary Brennan is a resident of San Diego County, California and a
10 citizen of the United States. Plaintiff Brennan is not prohibited from owning or
11 possessing firearms or ammunition under federal or California law. He is president of
12 the San Diego County Wildlife Federation, a Bureau of Security and Investigative
13 Services ("BSIS") certified Firearms Training Instructor, and volunteers his time as a
14 Master Hunter Education Instructor and Master Bowhunting Education Instructor
15 under the California Department of Fish and Wildlife's Hunter Education Program.
16 Plaintiff Brennan purchases ammunition from both online sources and licensed
17 California vendors. Some of the ammunition Plaintiff Brennan purchases is extremely
18 difficult to find and must generally be purchased through online sources. Plaintiff
19 Brennan also visits other states annually for hunting and regularly purchases
20 ammunition while hunting outside of California. He seeks to resume purchasing
21 ammunition from both direct shipment sources and brick and mortar retail stores in
22 California and other states without being subject to the unconstitutional restraints
23 California has imposed on the transfer of ammunition under the Challenged Provisions.
24 But for the enactment of the Challenged Provisions and his reasonable fear of criminal
25 prosecution for violating them, Plaintiff Brennan would immediately purchase, and
26 continue to purchase, ammunition for self-defense and other lawful purposes via direct
27 shipment to his home from out of state ammunition vendors or through brick and
28 mortar retail stores in California and other states.

1 13. Plaintiff Cory Henry is a resident of San Diego County, California and a
2 citizen of the United States. Plaintiff Henry is not prohibited from owning or
3 possessing firearms or ammunition under federal or California law. He is a former
4 active duty U.S. Army Officer now serving as a drilling reservist with the rank of
5 Colonel. Plaintiff Henry purchases ammunition from both online sources and licensed
6 California vendors. He seeks to resume purchasing ammunition from both direct
7 shipment sources and brick and mortar retail stores in California and other states
8 without being subject to the unconstitutional restraints California has imposed on the
9 transfer of ammunition under the Challenged Provisions. But for the enactment of the
10 Challenged Provisions and his reasonable fear of criminal prosecution for violating
11 them, Plaintiff Henry would immediately purchase, and continue to purchase,
12 ammunition for self-defense and other lawful purposes via direct shipment to his home
13 from out of state ammunition vendors or through brick and mortar retail stores in
14 California and other states.

15 14. Plaintiff Edward Allen Johnson is a resident of San Diego County,
16 California and a citizen of the United States. Plaintiff Johnson is not prohibited from
17 owning or possessing firearms or ammunition under federal or California law. He is
18 currently retired and serves as a volunteer Range Safety Officer for a local firing range,
19 and regularly visits the state of Oregon where he purchases ammunition for personal
20 use. Plaintiff Johnson also purchases ammunition from both online sources and local
21 California licensed vendors. He seeks to resume purchasing ammunition from both
22 direct shipment sources and brick and mortar retail stores in California and other states
23 without being subject to the unconstitutional restraints California has imposed on the
24 transfer of ammunition under the Challenged Provisions. But for the enactment of the
25 Challenged Provisions and his reasonable fear of criminal prosecution for violating
26 them, Plaintiff Johnson would immediately purchase, and continue to purchase,
27 ammunition for self-defense and other lawful purposes via direct shipment to his home
28

1 from out of state ammunition vendors or through brick and mortar retail stores in
2 California and other states.

3 15. Plaintiff Scott Lindemuth is a resident of San Diego County, California
4 and also owns a private residence in North Carolina. He is a citizen of the United
5 States. Plaintiff Lindemuth is not prohibited from owning or possessing firearms or
6 ammunition under federal or California law. Plaintiff Lindemuth was honorably
7 discharged from the United States Navy after more than 13 years of service. Plaintiff
8 Lindemuth purchases ammunition from online sources, as well as brick and mortar
9 stores in North Carolina and California. He seeks to resume purchasing ammunition
10 from both direct shipment sources and brick and mortar retail stores in North Carolina
11 and California without being subject to the unconstitutional restraints California has
12 imposed on the transfer of ammunition under the Challenged Provisions. But for the
13 enactment of the Challenged Provisions and his reasonable fear of criminal prosecution
14 for violating them, Plaintiff Lindemuth would immediately purchase, and continue to
15 purchase, ammunition for self-defense and other lawful purposes via direct shipment to
16 his home from out of state ammunition vendors or through brick and mortar retail
17 stores in California and other states.

18 16. Plaintiff Richard Randall Ricks is a resident of San Diego County,
19 California and a citizen of the United States. Plaintiff Ricks is not prohibited from
20 owning or possessing firearms or ammunition under federal or California law. He is a
21 Certified Public Accountant and also owns property in Oregon. Plaintiff Ricks
22 purchases ammunition from both online sources, as well as brick and mortar stores in
23 Oregon and California. He seeks to resume purchasing ammunition from both direct
24 shipment sources and brick and mortar retail stores in California and Oregon without
25 being subject to the unconstitutional restraints California has imposed on the transfer
26 of ammunition under the Challenged Provisions. But for the enactment of the
27 Challenged Provisions and his reasonable fear of criminal prosecution for violating
28 them, Plaintiff Ricks would immediately purchase, and continue to purchase,

1 ammunition for self-defense and other lawful purposes via direct shipment to his home
2 from out of state ammunition vendors or through brick and mortar retail stores in
3 California and other states.

4 17. Plaintiff Denise Welvang is a resident of Los Angeles County, California
5 and a citizen of the United States. Plaintiff Welvang is not prohibited from owning or
6 possessing firearms or ammunition under federal or California law. Plaintiff Welvang
7 purchases ammunition from both online sources and California licensed vendors. She
8 seeks to resume purchasing ammunition from both direct shipment sources and brick
9 and mortar retail stores in California without being subject to the unconstitutional
10 restraints California has imposed on the transfer of ammunition under the Challenged
11 Provisions. But for the enactment of the Challenged Provisions and her reasonable fear
12 of criminal prosecution for violating them, Plaintiff Welvang would immediately
13 purchase, and continue to purchase, ammunition for self-defense and other lawful
14 purposes via direct shipment to her home from out of state ammunition vendors or
15 through brick and mortar retail stores in California and other states.

16 18. Plaintiff Able's Sporting, Inc. ("Able's") is a business engaged in the
17 retail sale of ammunition. Able's is located outside of California in Huntsville, TX.
18 Prior to the Challenged Provisions taking effect, Able's regularly sold ammunition to
19 California residents via online purchases and shipped the ammunition directly to the
20 purchaser's California address. Able's seeks to resume selling ammunition directly to
21 California residents, but it is prohibited from doing so under the Challenged Provisions
22 as of January 1, 2018, unless the purchased ammunition is first shipped to a California
23 Ammunition Vendor to process the transfer before being delivered to the purchaser,
24 and the California Ammunition Vendor has the discretion to refuse the transaction or
25 charge a processing fee of any amount it chooses. But for the enactment of the
26 Challenged Provisions and its reasonable fear of being prosecuted or having its
27 customers prosecuted for violating them, Able's would immediately resume shipping
28 ammunition directly to California residents to the extent permitted by law.

1 19. Plaintiff AMDEP Holdings, LLC (“Ammunition Depot”) is a business
2 engaged in the retail sale of ammunition. Ammunition Depot is located outside of
3 California in Boca Raton, Florida. Prior to the Challenged Provisions taking effect,
4 Ammunition Depot regularly sold ammunition to California residents via online
5 purchases and shipped the ammunition directly to the purchaser’s California address.
6 Ammunition Depot seeks to resume selling ammunition directly to California
7 residents, but it is prohibited from doing so under the Challenged Provisions as of
8 January 1, 2018, unless the purchased ammunition is first shipped to a California
9 Ammunition Vendor to process the transfer before being delivered to the purchaser,
10 and the California Ammunition Vendor has the discretion to refuse the transaction or
11 charge a processing fee of any amount it chooses. But for the enactment of the
12 Challenged Provisions and its reasonable fear of being prosecuted or having its
13 customers prosecuted for violating them, Ammunition Depot would immediately
14 resume shipping ammunition directly to California residents to the extent permitted by
15 law.

16 20. Plaintiff R & S Firearms, Inc. (“Sam’s Shooters’ Emporium”) is a brick
17 and mortar business located less than two miles outside of California in Lake Havasu
18 City, Arizona. It engages in the retail sale of ammunition with a significant amount of
19 its business coming from California given the proximity to California’s border. Prior to
20 the Challenged Provisions taking effect, Sam’s Shooters Emporium serviced California
21 residents’ ammunition needs in two ways: (1) selling it online and shipping it directly
22 to the purchasers’ California address; or (2) selling it directly to those individuals who
23 come to the store in person with the intention of returning with it to California. Sam’s
24 Shooters Emporium seeks to resume shipping ammunition directly to California
25 residents, but it is prohibited from doing so under the Challenged Provisions as of
26 January 1, 2018, unless the purchased ammunition is first shipped to a California
27 Ammunition Vendor to process the transfer before being delivered to the purchaser,
28 and the California Ammunition Vendor has the discretion to refuse the transaction or

1 charge a processing fee of any amount it chooses. But for the enactment of the
2 Challenged Provisions and its reasonable fear of being prosecuted or having its
3 customers prosecuted for violating them, Sam's Shooters Emporium would
4 immediately resume shipping ammunition directly to California residents to the extent
5 permitted by law. Additionally, Sam's Shooters Emporium seeks to resume selling
6 ammunition to California residents who come to its location with the desire to return to
7 California with the ammunition they purchase there. The Challenged Provisions
8 prohibit California residents from doing so, causing Sam's Shooters Emporium to lose
9 revenue from their business.

10 21. Plaintiff California Rifle & Pistol Association, Incorporated ("CRPA"), is
11 a nonprofit membership and donor-support organization qualified as tax-exempt under
12 26 U.S.C. § 501(c)(4) with its headquarters in Fullerton, California. Founded in 1875,
13 CRPA seeks to defend the civil rights of all law-abiding individuals, including the
14 fundamental right to acquire and possess commonly owned firearm magazines. CRPA
15 regularly provides guidance to California gun owners regarding their legal rights and
16 responsibilities. In addition, CRPA is dedicated to promoting the shooting sports and
17 providing education, training, and organized competition for adult and junior shooters.
18 CRPA members include law enforcement officers, prosecutors, professionals, firearm
19 experts, and the public.

20 22. In this suit, CRPA represents the interests of the tens of thousands of its
21 members who reside in the state of California, including in San Diego County, and
22 who are too numerous to conveniently bring this action individually. Specifically,
23 CRPA represents the interests of those who are affected by the Challenged Provisions.
24 In addition to their standing as citizens and taxpayers, those members' interests include
25 their intent to exercise their constitutionally protected right to acquire and otherwise
26 transact in ammunition without being subjected to criminal prosecution. But for the
27 enactment of the Challenged Provisions and their reasonable fear of prosecution for
28 violating these statutes, CRPA members would immediately purchase, sell, and

1 transfer ammunition without complying with each of the onerous restrictions imposed
2 by the Challenged Provisions.

3 **Defendants**

4 23. Defendant Xavier Becerra is the Attorney General of California. He is the
5 chief law enforcement officer of California. Defendant Becerra is charged by Article
6 V, Section 13 of the California Constitution with the duty to see that the laws of
7 California are uniformly and adequately enforced. Defendant Becerra also has direct
8 supervision over every district attorney and sheriff in all matters pertaining to the
9 duties of their respective officers. Defendant Becerra's duties also include informing
10 the public, local prosecutors, and law enforcement regarding the meaning of the laws
11 of California, including restrictions on the transfer of ammunition under the
12 Challenged Provisions. He is sued in his official capacity.

13 24. The true names or capacities—whether individual, corporate, associate, or
14 otherwise—of the Defendants named herein as Does 1-10, are presently unknown to
15 Plaintiffs, and are therefore sued by these fictitious names. Plaintiffs pray for leave to
16 amend this Complaint to show the true names or capacities of these Defendants if and
17 when they have been determined.

18 25. Defendants Becerra and Does 1-10 are responsible for formulating,
19 executing, and administering California's restrictions on ammunition transfers under
20 the Challenged Provisions and they are in fact presently enforcing those provisions that
21 have already taken effect and will in fact be enforcing those provisions that will soon
22 take effect.

23 26. Defendants enforce California's restrictions on ammunition transfers
24 under the Challenged Provisions against Plaintiffs and other California citizens under
25 color of state law within the meaning of 42 U.S.C. §1983.

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GENERAL ALLEGATIONS

California's Novel and Expansive Ammunition Scheme

27. In 2016, California enacted and amended a lengthy list of statutes that, subject to very limited exceptions, place sweeping restrictions on the purchase, sale, transfer, and importation of ammunition. *See* SAFETY FOR ALL ACT, 2016 Cal. Legis. Serv. Prop. 63 (“Proposition 63”) (West); 2016 California Senate Bill No. 1235, California 2016-2017 Regular Session.

28. In California, beginning January 1, 2018, “the sale of ammunition by any party must be conducted by or processed through a licensed ammunition vendor.” Cal. Penal Code § 30312(a) (West 2017). To become a “licensed ammunition vendor” one must either apply with the California Department of Justice, unless already a California licensed firearm dealer. Cal. Penal Code §§ 30342; 30385(d) (West 2017).

29. Any individual who wishes to sell more than 500 rounds of ammunition in a 30-day period does not have the option to process the transfer through a “licensed ammunition vendor,” but rather must become one. Cal. Penal Code § 30342(a).

30. When neither party to an ammunition sale is a licensed vendor in California, the seller must deliver the ammunition to a licensed vendor to process the transaction. Cal. Penal Code § 30312(b). The licensed California vendor may charge the purchaser an additional fee for processing the private party transaction. Cal. Penal Code § 30312(c). “If the purchaser will be present for immediate delivery of the ammunition, the fee shall not exceed five dollars (\$5).” Cal. Code Regs. tit. 11 § 4263(a) (2018). “If the purchaser will not be present for immediate delivery of the ammunition, the vendor may charge an additional storage fee as agreed upon with the purchaser prior to the vendor receiving the ammunition.” Cal. Code Regs. tit. 11 § 4263(b) (2018). In other words, there is no cap on what the licensed vendor can charge a private party purchaser who is not present for immediate delivery, which, as a practical matter, includes all transactions originating from out-of-state. What’s more,

1 the in-state vendor is not required by any law to process transactions for out-of-state
2 vendors who wish to sell to California consumers.

3 31. Thus, ammunition vendors that do not have a physical presence in
4 California operate at the whim of licensed vendors that do, as they may either
5 completely price them out of the market by charging the purchaser an unlimited fee or
6 outright refuse to process the transaction.

7 32. Beginning January 1, 2018, subject to some narrow exemptions, a resident
8 of California may not bring or transport into California any ammunition that he or she
9 acquired outside of the state, unless it is first shipped to a licensed vendor in California
10 to process the transaction. Cal. Penal Code § 30314, subds. (a),(b) (West 2017). This
11 transaction would also be completely subject to the in-state vendor's discretion to
12 charge the purchaser a fee in any amount or to simply refuse to process it. Cal. Penal
13 Code § 30312(a).

14 33. Licensed ammunition vendors must require all their employees who
15 handle or oversee ammunition to obtain a certificate of eligibility ("COE") from the
16 Department of Justice

17 34. The sale of ammunition by a licensed vendor may only be conducted at
18 the location listed on the vendor's license and at gun shows in limited circumstances,
19 effectively prohibiting organizations and foundations, like Plaintiff CRPA, from
20 engaging in the common practice of auctioning off ammunition at fundraising events
21 that take place in various locations, even if they become licensed ammunition vendors.
22 Cal. Penal Code § 30348 (West 2017).

23 35. Ammunition vendors must restrict the display of ammunition so that it
24 cannot be accessed by customers without the assistance of the vendor. Cal. Penal Code
25 § 30350 (West 2017).

26 36. Beginning January 1, 2019, ammunition vendors must register the sale of
27 every individual ammunition purchase by recording and submitting to the Department
28 the following information: the date of sale; the purchaser's driver's license or state

1 identification number; the brand, type, and amount of ammunition sold; the purchaser's
2 full name and signature; the salesperson's name; the purchaser's full residential
3 address and telephone number; and the purchaser's or transferee's date of birth. Cal.
4 Penal Code § 30352 (West 2017). This process is also required for private party
5 ammunition sales that must be completed through a licensed ammunition vendor. *Id.*, §
6 30352.

7 37. An ammunition vendor must report the loss or theft of any ammunition to
8 an appropriate law enforcement agency in the city, county, or city and county where
9 the vendor's business premises is located within 48 hours of discovery. Cal. Penal
10 Code § 30363 (West 2017).

11 38. Beginning July 1, 2019, every individual ammunition sale must be pre-
12 approved by the California Department of Justice before the purchaser can take
13 possession of the ammunition. The Department will only approve an ammunition sale
14 to an individual who already has either a firearm registered in the Automated Firearms
15 System or who possesses a COE previously issued by the Department. All other
16 purchasers must obtain a special authorization from the Department, according to
17 procedures that it must develop, to confirm that the purchaser is not prohibited from
18 owning firearms or ammunition. The Department will charge a \$1 fee for every
19 ammunition purchase by individuals who either already have a firearm registered in
20 AFS or possess a COE. Cal. Penal Code § 30370(e) (West 2017). For all others, the
21 Department will charge an additional fee not to exceed DOJ's Dealers' Record of Sale
22 (DROS) process, and not to exceed DOJ's reasonable costs. Cal. Penal Code §
23 30370(c). Penal Code section 28225 established the DROS fee at \$14, but it was raised
24 to \$19 by DOJ pursuant to its own regulations. See Cal. Code Regs. tit. 11, § 4001
25 (2017).

26 39. DOJ was required to begin accepting applications for ammunition vendor
27 licenses on July 1, 2017. Cal. Pen. Code § 30385(a). DOJ failed to meet that deadline
28 and began issuing licenses after January 1, 2018.

1 40. According to DOJ's regulations, the "term of an ammunition vendor
2 license is from January 1 through December 31, regardless of the date the initial
3 license is issued. Cal. Code Regs. tit. 11 § 4261(b) (2018). Penal Code section
4 30385(b), however, states that any ammunition vendor license "shall be valid for a
5 period of one year," with no limitation on the date the license is acquired.

6 41. Ammunition vendors are required to pay a fee to be set by the Department
7 to cover the costs of California's expansive ammunition licensing and registration
8 scheme. Cal. Penal Code § 30390 (West 2017).

9 42. The Department is authorized to issue vendor licenses to qualified
10 California ammunition vendors, Cal. Penal Code § 30395(a) (West 2017), and must
11 maintain a registry of all licensed ammunition vendors for law enforcement review, *Id.*,
12 § 30395(b).

13 43. The Challenged Provisions carry misdemeanor criminal penalties for
14 violations, including fines and incarceration.¹

15 44. Any ammunition vendor who violates any of the comprehensive
16 restrictions enacted by Proposition 63 and Senate Bill 1235 is also subject to forfeiture
17 of its vendor license. Cal. Penal Code section 30395(c).

18 45. The requirement that ammunition sales be conducted by or processed
19 through a licensed ammunition vendor in a face-to-face transaction, beginning January
20 1, 2018, does not apply to law enforcement, licensed importers or manufacturers of
21 firearms, California licensed firearm retailers, out of state licensed firearm dealers and
22 collectors, licensed collectors who possess a valid certificate of eligibility issued by
23 DOJ, licensed ammunition vendors, consultant evaluators, persons who receive
24 ammunition at a target facility holding a business or other regulatory licenses provided
25 that the ammunition is at all times kept within the facility's premises, persons who
26

27
28 ¹ Section 30314 is punishable as an infraction for the first offense. All
subsequent violations are punishable as a misdemeanor.

1 receive ammunition from certain family members, and persons involved in law
2 enforcement training. Cal. Penal Code § 30312(a),(c).

3 46. Although some portions of the Challenged Provisions were once adopted
4 in New York and at the federal level, these restrictions were found to be ineffective
5 and too costly and difficult to implement. As a result, even those less burdensome
6 restrictions were, respectively, never implemented and effectively repealed.

7 **Dormant Commerce Clause and Equal Protection Clause Violations**

8 47. The Commerce Clause, as set forth in Article I, Section 8 of the United
9 States Constitution, expressly grants Congress the power “[t]o regulate commerce with
10 foreign Nations, among the several States, and with the Indian Tribes.”

11 48. The Dormant Commerce Clause is inherent in the power granted to
12 Congress under the Commerce Clause and provides that, even if federal law is silent on
13 an area of interstate commerce, states may not enact legislation that discriminates
14 against or impermissibly burdens interstate commerce. *See, e.g., United Haulers Ass’n*
15 *v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007).

16 49. States also may not enact legislation that renders unlawful a transaction
17 that occurred wholly out of state. *See Sam Francis Found. v. Christies*, 784 F.3d 120
18 (9th Cir. 2015) (en banc); *W. Lynn Creamery v. Healy*, 512 U.S. 186, 194-95 (1994).

19 50. State laws that discriminate against interstate commerce face a virtually
20 per se rule of invalidity under the Commerce Clause. The Supreme Court has
21 explained that “discrimination” in this context “simply means differential treatment of
22 in-state and out-of-state economic interests that benefits the former and burdens the
23 latter.” *Or. Waste Sys., Inc. v. Dep’t of Env’tl. Quality*, 511 U.S. 93, 99 (1994).

24 51. State laws that are facially neutral nevertheless violate the Commerce
25 Clause if they impermissibly burden interstate commerce in practice. *See Healy*, 512
26 U.S. at 194-95.

27 52. The Supreme Court has repeatedly held that, in all but the narrowest of
28 circumstances, state laws violate the Commerce Clause if they mandate differential

1 treatment of in-state and out-of-state economic interests. *Granholm v. Heald*, 544 U.S.
 2 460, 466 (2005); *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994).

3 53. States may not enact statutory schemes that grant in-state businesses
 4 access to that state's consumers on preferential terms, nor can states deprive citizens of
 5 their right to have access to other states' markets on equal terms.

6 54. The Equal Protection Clause, as set forth in the Fourteenth Amendment,
 7 prohibits a state from denying its residents equal protection under the law; particularly,
 8 it prohibits a state from classifying people in a way that restrains fundamental rights,
 9 such as the right to acquire ammunition under the Second Amendment, without
 10 meeting heightened scrutiny. *See Hussey v. City of Portland*, 64 F.3d 1260, 1265 (9th
 11 Cir. 1995).

12 55. Sections 30312, 30314, 30370, 30385 violate the Dormant Commerce
 13 Clause because they regulate out-of-state transactions. First, they prohibit out of state
 14 ammunition vendors, including Plaintiffs Able's, Ammunition Depot, and Sam's
 15 Shooters' Emporium from selling ammunition directly to California consumers via
 16 mail-order, including to Plaintiffs Rhode, Brennan, Henry, Johnson, Lindemuth, Ricks,
 17 Welvang, and members of CRPA. Second, they effectively prohibit out-of-state
 18 companies from selling ammunition to California residents who intend to return to
 19 California with the purchased ammunition. Together, these provisions provide no way
 20 for a California resident to engage in an out-of-state ammunition transaction for the
 21 purpose of bringing the ammunition back into California.

22 56. In doing so, Sections 30312, 30314, 30370, and 30385 further violate the
 23 Dormant Commerce Clause because they facially discriminate against out-of-state
 24 ammunition vendors, mandating differential treatment of out-of-state economic
 25 interests and in-state economic interests by expressly limiting out-of-state vendors'
 26 access to California consumers. As explained above, under those provisions, out-of-
 27 state ammunition vendors cannot ship ammunition directly to California consumers.
 28 Nor can California residents, including plaintiffs Rhode, Brennan, Henry, Johnson,

1 Lindemuth, Ricks, Welvang, and members of CRPA, purchase ammunition in person
 2 out-of-state and return to California with the ammunition. Instead, in both situations,
 3 the out-of-state vendor must have the ammunition shipped to a licensed California
 4 ammunition vendor to process the transfer as an intermediary between the out-of-state
 5 vendor and the California customer.

6 57. Even if sections 30312, 30314, 30370, and 30385 did not facially
 7 discriminate against out of state ammunition vendors, these sections, in conjunction
 8 with California Code of Regulations, tit. 11 § 4263, nonetheless have the effect of
 9 improperly favoring businesses with a physical presence in California, in violation of
 10 the Dormant Commerce Clause. As explained, ammunition vendors without a physical
 11 presence in California do not have direct access to California consumers, while those
 12 with a physical presence in California do. And the licensed California vendor can
 13 either refuse to process the transaction or charge the purchaser any fee it wishes to
 14 receive the ammunition, store it, and process the transaction.

15 58. These Challenged Provisions, therefore, improperly grant in-state
 16 ammunition vendors access to California consumers on preferential terms over out-of-
 17 state ammunition vendors, both facially and in effect, rendering unlawful transactions
 18 that occurred wholly out of state, and depriving California residents of their right to
 19 access other States' ammunition markets on equal terms.

20 59. Section California Penal Code section 30314 additionally violates the
 21 Equal Protection Clause by unjustifiably denying Plaintiffs, as California residents,
 22 equal treatment as out-of-state residents in their exercise of the fundamental right to
 23 acquire ammunition, solely based on state residency.

24 **Violations of the Right to Keep and Bear Arms**

25 60. The Second Amendment to the United States Constitution declares that
 26 "A well regulated militia, being necessary to the security of a free state, the right of the
 27 people to keep and bear arms shall not be infringed." U.S. CONST. amend. II.

28 61. The United States Supreme Court has confirmed that not only does it

1 protect an individual—as opposed to collective—right, but that “individual self-
2 defense is ‘the central component’ of the Second Amendment right.” *McDonald v. City*
3 *of Chicago*, 561 U.S. 742, 767 (2010) (quoting *Heller*, 554 U.S. at 628).

4 62. The Supreme Court has also held that the Second Amendment right to
5 keep and bear arms is incorporated into the Due Process Clause of the Fourteenth
6 Amendment and may not be infringed by state and local governments. *McDonald*, 561
7 U.S. at 750.

8 63. The Second Amendment necessarily protects the right to purchase, sell,
9 transfer and possess the ammunition necessary to meaningfully keep and bear arms for
10 self-defense. *See Jackson v. City and County of San Francisco*, 746 F.3d at 967-68
11 (2014).

12 64. State and local restrictions that suppress or impermissibly burden the right
13 to purchase, sell, or transfer ammunition violate the Second Amendment.

14 65. The Challenged Provisions impose unprecedented and overreaching
15 restraints on the right of law-abiding citizens, including plaintiffs, to acquire
16 ammunition for self-defense and other lawful purposes, both directly and by imposing
17 costly and unreasonable burdens on the purveyors of that constitutional right.

18 66. In the aggregate, the Challenged Provisions operate to unduly oppress the
19 exercise of the right to transact in ammunition in violation of the Second Amendment
20 right to keep and bear arms.

21 67. Specifically, California’s sweeping ammunition statutes collectively
22 operate to: ban a major source of ammunition (i.e., direct mail order sales); prohibit
23 importation of ammunition purchased out-of-state—thereby banning another source;
24 authorizing in-state vendors to control a purchase from out-of-state by either outright
25 refusing to process it or charging a prohibitive fee in any amount to process the
26 transaction; require vendors to obtain costly special licensing and employee
27 certifications annually; ban sales from trailers common at trade events; impose onerous
28 and costly storage and display requirements; mandate detailed registration

1 requirements for all the countless millions of ammunition purchases that take place
2 annually; impose liability on ammunition vendors if a single cartridge of ammunition
3 is not accounted for; mandate costly background checks and special purchase
4 authorizations for millions of ammunition purchasers each time they make a single
5 ammunition purchase; and subject vendors to loss of their licenses if they ever fail to
6 comply with any of these restrictions.

7 68. These novel and complex restrictions add to California's byzantine
8 restrictions on the ability to purchase a firearm. Under California's new ammunition
9 laws, many individuals will purportedly be authorized to purchase ammunition if they
10 already own a firearm that is registered to them in the Automated Firearms System.
11 Thus these individuals who will have already been required to pay a fee for a
12 background check, undergo a background check, and make multiple trips to the seller
13 to begin and conclude the firearms purchase process, are required to again go through
14 the same background check process numerous times in order to be able to place
15 ammunition into that firearm.

16 69. The collective burden imposed by these restrictions on countless annual
17 ammunition transactions will substantially impede lawful ammunition sales.

18 70. The aggregate burdens that the Challenged Provisions impose on law-
19 abiding citizens and ammunition vendors, on top of California's existing firearm
20 restrictions cannot be justified under any level of heightened scrutiny.

21 71. Even if the Challenged Provisions are not collectively stricken as an
22 improper violation of the Second Amendment, Penal Code sections 30312, 30314,
23 30352, 30370, as well as California Code of Regulations, tit. 11 § 4263, each
24 individually violate the Second Amendment.

25 72. Penal Code section 30312's prohibition on direct mail-order ammunition
26 sales severely burdens the purchase and sale of ammunition by banning a major source
27 of transacting in ammunition, and by requiring individuals to travel and expend
28 additional time and resources to obtain ammunition. These burdens cannot be justified

1 by the State's purported interests.

2 73. Penal Code section 30314's prohibition on the importation of ammunition
3 severely burdens the right to purchase, sell, and transport ammunition by preventing
4 individuals from purchasing ammunition outside of California and returning to
5 California with ammunition they lawfully purchased. This is particularly problematic
6 for individuals, including members of CRPA, who reside near the state border and
7 have a much closer proximity to an out-of-state vendor. These burdens cannot be
8 justified by the State's purported interests.

9 74. Penal Code section 30352's registration, record keeping, and purchaser
10 authorization requirements likewise severely burden the purchase and sale of
11 ammunition by overburdening consumers who have already complied with numerous
12 California laws to obtain a firearm and established that they are not prohibited from
13 owning firearms or ammunition. These requirements further place unprecedented and
14 costly burdens on the purveyors of the fundamental right to keep and bear arms. They
15 cannot be justified by the State's purported interests.

16 75. Penal Code section 30370's unprecedented background checks, fees, and
17 purchaser authorizations requirements severely burden the purchase, sale, and transfer
18 of ammunition by overburdening consumers who have already complied with
19 numerous California laws to obtain a firearm and established that they are not
20 prohibited from owning firearms or ammunition. These requirements further place
21 unprecedented, costly, duplicative burdens on the purveyors of the fundamental right to
22 keep and bear arms. They cannot be justified by the State's purported interests.

23 76. California Code of Regulations, tit. 11 § 4263(b) confers on a licensed
24 California vendor full control over whether a purchaser will have access to ammunition
25 from out-of-state. This is effectively the power to decide whether a person can exercise
26 his or her right to acquire ammunition under the Second Amendment; particularly,
27 when there is no requirement that a licensed California vendor process a private party
28 transfer at all.

Preemption Under 18 U.S.C. §926A

77. 18 U.S.C. §926A, expressly permits a person to carry a firearm “from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm,” provided the person properly stores the firearm. Section 926A expressly contemplates that “ammunition” will be[] transported” along with the firearm, and thus establishes a federal right to transport ammunition too.

78. Penal Code sections 30312 and 30314 make it unlawful for a California resident to transport into the state any ammunition obtained out of state without first delivering the ammunition to a licensed in-state vendor.

79. This requirement operates to prohibit a person from traveling with ammunition from a state where he may lawfully possess the ammunition to another place where he may lawfully possess the ammunition, and accordingly is preempted by Section 926A.

DECLARATORY JUDGMENT IS NECESSARY

80. There is an actual and present controversy between the parties. Plaintiffs contend that the Challenged Provisions infringe on Plaintiffs’ right to keep and bear arms under the Second and Fourteenth Amendments to the United States Constitution. Plaintiffs also contend that sections 30312, 30314, 30352, 30363 and 30385 violate the Dormant Commerce Clause by discriminating against out of state economic interests and otherwise improperly burdening interstate commerce. Defendants deny these contentions. Plaintiffs desire a judicial declaration that the Challenged Provisions violate Plaintiffs’ constitutional rights. Plaintiffs should not be forced to choose between risking criminal prosecution or economic sanctions and exercising their constitutional rights.

INJUNCTIVE RELIEF IS NECESSARY

81. Plaintiffs are presently and continuously injured by Defendants’ enforcement of the Challenged Provisions insofar as they violate Plaintiffs’ rights

under the Second and Fourteenth Amendments and the Dormant Commerce Clause. If not enjoined by this Court, Defendants will continue to enforce the Challenged Provisions in derogation of Plaintiffs' constitutional rights. Plaintiffs have no plain, speedy, and adequate remedy at law. Damages are indeterminate or unascertainable and, in any event, would not fully redress any harm suffered by Plaintiffs because they are unable to engage in constitutionally protected activity due to California's ongoing enforcement of the Challenged Provisions.

FIRST CLAIM FOR RELIEF
Violation of the Dormant Commerce Clause
 (U.S. Const., Art. I, § 8)
 Against All Defendants

82. Paragraphs 1-81 are realleged and incorporated by reference.

83. Penal Code sections 30312, 30314, 30370, and 30385 violate the Dormant Commerce Clause.

84. Penal Code sections 30312, 30314, 30370, and 30385 unconstitutionally prohibit wholly out-of-state transactions by expressly prohibiting out-of-state vendors from engaging in direct-to-consumer sales to California residents, and by prohibiting California residents from purchasing ammunition out of state and returning to California with that ammunition.

85. Penal Code sections 30312, 30314, 30370, and 30385 unconstitutionally discriminate against out-of-state ammunition vendors by restricting their access to the California ammunition market.

86. Sections 30312, 30314, 30370, and 30385, as well as California Code of Regulations, tit. 11 § 4263, unconstitutionally grant in-state ammunition vendors access to California consumers on preferential terms by expressly prohibiting out-of-state vendors from engaging in direct-to-consumer sales and subjecting purchases to fees that may be charged at the whim of in-state vendors as a condition of selling indirectly to California consumers. Penal Code section 30314 furthers this monopoly by prohibiting California residents from purchasing ammunition from an out-of-state

1 vendor and returning to California with the ammunition.

2 87. Although California could do so if it chose to, it refuses to allow out-of-
3 state ammunition vendors, including the identified Plaintiffs and vendors similarly-
4 situated to Plaintiffs, to register and participate in the state's ammunition background
5 check program. Because it would be easy to allow out-of-state vendors to participate
6 in the background check system on the same terms and conditions as in-state vendors,
7 California has no justification for excluding out-of-state vendors from participating in
8 direct sales to California consumers.

9 88. Even if sections 30312, 30314, 30370, and 30385 did not facially
10 discriminate against out of state ammunition vendors, these sections, in conjunction
11 with California Code of Regulations, tit. 11 § 4263, nonetheless have the effect of
12 improperly favoring businesses with a physical presence in California, in violation of
13 the Dormant Commerce Clause. As explained, ammunition vendors without a physical
14 presence in California do not have direct access to California consumers, while those
15 with a physical presence in California do. And the licensed California vendor can
16 either refuse to process the transaction or charge the purchaser any fee it wishes to
17 receive the ammunition, store it, and process the transaction, thereby granting in-state
18 vendors an effective monopoly over the California ammunition market.

19 89. Sections 30312, 30314, 30370, and 30385 further violate the Dormant
20 Commerce Clause by depriving California residents of their right to have access to
21 other States' ammunition markets on equal terms. These statutes completely prohibit
22 California residents from purchasing and receiving ammunition directly from out-of-
23 state vendors for the purpose of using that ammunition in California and subject
24 already limited indirect purchases from out-of-state vendors to additional fees charged
25 by in-state vendors.

26 90. Section 30370 further violates the Dormant Commerce Clause by
27 imposing an unreasonable fee on non-residents who purchase ammunition in California
28 for the first time, an amount up to five times the actual cost of the ammunition itself.

1 Such fee is not imposed upon residents of California who have previously purchased
2 ammunition or firearms from California, and those residents are subject to a fee 19
3 times less than first-time non-resident purchasers.

4 91. Defendants cannot justify the burden on interstate commerce imposed by
5 sections 30312, 30314, 30370, and 30385.

6 **SECOND CLAIM FOR RELIEF**

7 **Section 30312's Violation of the Right to Keep and Bear Arms**
8 **By the Restriction on the Acquisition of Ammunition by Mail**

9 (U.S. Const., amends. II and XIV)

Against All Defendants

10 92. Paragraphs 1-91 are realleged and incorporated by reference.

11 93. Penal Code section 30312 mandates that all ammunition sales be
12 conducted in a face-to-face transaction, thus prohibiting direct-to-consumer mail order
13 purchases and sales of ammunition.

14 94. Penal Code section 30312 places an unconstitutional burden on the
15 purchase and sale of ammunition under the Second Amendment by banning and
16 criminalizing a major means of buying and selling ammunition in the United States.
17 For those who do not have access to a nearby ammunition vendor or FFL, Section
18 30312 bans and criminalizes the *only* method by which those affected persons can
19 obtain ammunition for self-defense.

20 95. Defendant cannot justify the burden imposed by Section 30312 on
21 Plaintiffs' Second Amendment rights under heightened scrutiny.

22 **THIRD CLAIM FOR RELIEF**

23 **Section 30314's Violation of the Right to Keep and Bear Arms**
24 **By Restricting Interstate Commerce in Ammunition**

25 (U.S. Const., amends. II and XIV)

Against All Defendants

26 96. Paragraphs 1-95 are realleged and incorporated by reference.

27 97. Penal Code section 30314 prohibits California residents from bringing
28 into California any ammunition that they purchase from outside the state.

1 98. By prohibiting Californians from returning to California with ammunition
2 that they lawfully purchased out of state, Penal Code section 30314 denies them a
3 major source of ammunition. Penal Code section 30314 violates the Second
4 Amendment by placing an unconstitutional burden on the right to obtain ammunition.

5 99. Defendant cannot justify the burden imposed by Section 30314 on
6 Plaintiffs' Second Amendment rights under heightened scrutiny.

7 **FOURTH CLAIM FOR RELIEF**

8 **Section 30352's Violation of the Right to Keep and Bear Arms** 9 **By Requiring Recordkeeping Burdening the Sale and Transfer of Ammunition** 10 (U.S. Const., amends. II and XIV) Against All Defendants

11 100. Paragraphs 1-99 are realleged and incorporated by reference.

12 101. Penal Code section 30352(c) prohibits vendors from transferring
13 ammunition to anyone other than individuals who have been expressly authorized to
14 purchase ammunition pursuant to this section. Section 30352(a) and (b) further require
15 ammunition vendors to register the sale of every individual ammunition purchase by
16 recording and electronically transmitting to the Department of Justice detailed
17 information about every transaction and purchaser.

18 102. Penal Code section 30352's massive registration, record keeping, and
19 purchaser authorization requirements severely burden the purchase and sale of
20 ammunition in violation of the Second Amendment. Such requirements impose upon
21 Plaintiffs and similarly-situated vendors the obligation to devote employee time, floor
22 space, storage space, and other resources to preparing and keeping records of each
23 individual ammunition sale, of which sales some vendors engage in hundreds of
24 transactions per day.

25 103. Defendants cannot justify the burden imposed by Section 30352 on
26 Plaintiffs' Second Amendment rights.

27 ///

28 ///

FIFTH CLAIM FOR RELIEF
Section 30370's Violation of the Right to Keep and Bear Arms
By Requiring a Fee and Background Check
to Acquire Ammunition for Self-Defense
(U.S. Const., amends. II and XIV)
Against All Defendants

104. Paragraphs 1-103 are realleged and incorporated by reference.

105. Penal Code section 30370 prohibits ammunition sales to any individual unless pre-approved by the California Department of Justice as an authorized ammunition purchaser prior to receiving the ammunition.

106. Section 30370 also requires ammunition purchasers to pay a fee of up to \$20 for each ammunition purchase, according to fees to be set by the Department of Justice under its implementing regulations.

107. Penal Code section 30370's unprecedented background check, fee, and purchaser authorization requirements for countless annual ammunition purchases violate the Second Amendment because they severely burden the purchase, sale, and transfer of ammunition. The fee imposed is in some instances up to 25 percent of the total cost of the ammunition being purchased. For individual purchasers who are not in DOJ's Automated Firearms System, i.e., persons who have not previously purchased a firearm or ammunition within the state, the DOJ is authorized to charge a fee for a singular purchase that can be as high as *five times* the cost of the ammunition being purchased.²

108. The collective burden imposed by these restrictions on countless annual ammunition transactions will substantially impede lawful ammunition sales.

109. The aggregate burdens that the Challenged Provisions impose on law-abiding citizens and ammunition vendors, on top of California's existing firearm

² E.g., for an out-of-state visitor who has never purchased ammunition or a firearm in California, Section 30370 authorizes DOJ to charge a \$19 fee for the purchase of a \$4 box of ammunition.

1 restrictions cannot be justified under any level of heightened scrutiny.

2 110. Defendants cannot justify the burden imposed by Section 30370 on
3 Plaintiffs' Second Amendment rights.

4 **SIXTH CLAIM FOR RELIEF**

5 **California Code of Regulations, tit. 11 § 4263**
6 **Violation of the Right to Keep and Bear Arms**
7 **Authorizing Licensed Vendors in California to Charge Purchasers Any Fee**
8 **to Acquire Ammunition from Out-of-State for Self-Defense**
9 (U.S. Const., amends. II and XIV)
Against All Defendants

10 111. Paragraphs 1-110 are realleged and incorporated by reference.

11 112. California Code of Regulations, tit. 11 § 4263(b) confers on a licensed
12 California vendor full control over whether a purchaser will have access to ammunition
13 from out-of-state. This is effectively the power to decide whether a person can exercise
14 his or her right to acquire ammunition under the Second Amendment, particularly
15 when there is no requirement that a licensed California vendor process a private party
16 transfer at all.

17 113. Defendant cannot justify the burden imposed by California Code of
18 Regulations, tit. 11 § 4263(b) on Plaintiffs' Second Amendment rights under any form
19 of heightened scrutiny.

20 **SEVENTH CLAIM FOR RELIEF**

21 **Violation of Right to Keep and Bear Arms by the Licensing, Sales, and Transfer**
22 **Scheme Enacted under Proposition 63 and Senate Bill 1235**
23 (U.S. Const., amends. II and XIV)
Against All Defendants

24 114. Paragraphs 1-113 are realleged and incorporated by reference.

25 115. Penal Code sections 30312, 30314, 30342, 30347, 30348, 30350, 30352,
26 30363, 30370, 30385, 30390, and 30395, enacted through portions of Senate Bill 1235
27 and Proposition 63, impose unprecedented restrictions on the purchase, sale, transfer,
28 and importation of ammunition for self-defense and other lawful purposes.

1 116. In doing so, the Challenged Provisions unduly oppress the exercise of the
2 right to transact in ammunition in violation of the Second Amendment right to keep
3 and bear arms.

4 117. The aggregate burdens that the Challenged Provisions impose on law-
5 abiding citizens and ammunition vendors, on top of California's existing firearm
6 restrictions cannot be justified under any level of heightened scrutiny.

7 118. The Challenged Provisions unconstitutionally impede and restrict the
8 ability of law-abiding citizens to acquire and transact in ammunition by effectively
9 banning a major means of purchasing ammunition, imposing a massive and costly
10 licensing and registration scheme, banning personal ammunition importation,
11 restricting the ability to transfer ammunition to and from shooting ranges and
12 prohibiting individuals who are returning from hunting trips to return to California
13 with ammunition acquired out of state.

14 119. The Challenged Provisions violate the Second Amendment by imposing
15 numerous costly and unnecessary restraints on ammunition vendors via its numerous
16 ammunition vendor license requirements.

17 120. Defendant Becerra cannot justify the excessive burdens imposed by the
18 Challenged Provisions on the Second Amendment rights of law-abiding citizens and
19 ammunition vendors under heightened scrutiny.

20 121. Further, to the extent that Sections 30312, 30314, 30370, and 30385
21 violate the Dormant Commerce Clause as alleged hereinabove, Sections 30342, 30347,
22 30348, 30350, 30385, 30390, and 30395 are integral to the execution and enforcement
23 of Sections 30312, 30314, 30370, and 30385, and therefore should be stricken.

24 122. Further, to the extent that Sections 30312, 30314, 30352, and 30370
25 violate the Right to Keep and Bear Arms as alleged hereinabove, Sections 30342,
26 30347, 30348, 30350, 30385, 30390, and 30395 are integral to the execution and
27 enforcement of Sections 30312, 30314, 30352, and 30370, and therefore should be
28 stricken.

EIGHTH CLAIM FOR RELIEF
Violation of Equal Protection
(Penal Code § 30314)
(U.S. Const., amend. XIV)
Against All Defendants

123. Paragraphs 1-122 are realleged and incorporated by reference.

124. The Fourteenth Amendment to the United States Constitution provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

125. The government bears the burden of justifying restrictions on the exercise of fundamental rights by a particular class or classes of individuals.

126. All law-abiding, competent adults are similarly situated in that they are equally entitled to exercise the constitutional right to keep and bear arms, including ammunition.

127. The Challenged Provisions prohibit California residents from obtaining ammunition directly from out-of-state ammunition vendors and bringing that ammunition back into California.

128. Conversely, the Challenged Provisions do not prohibit non-California residents from obtaining ammunition directly from out-of-state ammunition vendors and bringing that ammunition into California. In other words, if two individuals (only one of whom is a California resident) were to purchase ammunition outside of California from the same business and then bring that ammunition into California, only the California resident would be in violation of Penal Code section 30314.

129. Because the Challenged Provisions bar California residents from acquiring ammunition in another state, while simultaneously allowing non-California residents to acquire ammunition in another state, Defendants have created a classification of persons, including Plaintiffs, who are treated unequally through the denial of their Second Amendment rights to keep and bear arms.

130. Defendant Becerra cannot justify this classification which unequally

1 deprives Plaintiffs of their right to bear arms. Therefore, Defendants are depriving
2 Plaintiffs and similarly situated individuals of their right to equal protection under the
3 law as guaranteed by the Fourteenth Amendment.

4 **NINTH CLAIM FOR RELIEF**

5 **Preemption**

6 **(Penal Code § 30314)**

7 **(18 U.S.C. §926A)**

8 **Against All Defendants**

9 131. Paragraphs 1-130 are realleged and incorporated by reference.

10 132. The Challenged Provisions are preempted by 18 U.S.C. §926A, which
11 ensures that a person may carry a firearm “from any place where he may lawfully
12 possess and carry such firearm to any other place where he may lawfully possess and
13 carry such firearm,” provided the person properly stores the firearm. This law
14 preempts similar prohibitions on ammunition, as it expressly contemplates that
15 “ammunition” will “be[] transported” along with the firearm.

16 133. The Challenged Provisions conflict with and stand as an obstacle to the
17 accomplishment of 18 U.S.C. §926A’s purposes, which include the free transport of
18 firearms and ammunition across state lines.

19 **PRAYER FOR RELIEF**

20 Plaintiffs pray that the Court:

- 21 1. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal
22 Code sections 30312, 30314, 30342, 30347, 30348, 30350, 30352, 30370,
23 30385, 30390, and 30395, as well as California Code of Regulations, tit. 11 §
24 4263, are unconstitutional on their face or, alternatively, as applied to
25 plaintiffs, because these sections violate the Second and Fourteenth
26 Amendments to the United States Constitution.
- 27 2. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal
28 Code sections 30312, 30314, 30352, 30363, 30370, and 30385, as well as
California Code of Regulations, tit. 11 § 4263, are unconstitutional on their

- 1 face or, alternatively, as applied to Plaintiffs, because they discriminate
 2 against interstate commerce in violation of the Dormant Commerce Clause,
 3 Article I, § 8 of the United States Constitution.
- 4 3. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal
 5 Code section 30314 is unconstitutional on its face or, alternatively, as applied
 6 to Plaintiffs, under the Equal Protection Clause of the United States
 7 Constitution, because it unjustifiably denies Plaintiffs, as California residents,
 8 of equal treatment to out-of-state residents in their exercise of the
 9 fundamental right to acquire ammunition.
- 10 4. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal
 11 Code section 30314 is unlawful on its face or, alternatively, as applied to
 12 Plaintiffs, because it conflicts with and is thus preempted by 18 U.S.C.
 13 §926A.
- 14 5. Issue an injunction enjoining Defendants and their officers, agents, and
 15 employees from enforcing California Penal Code sections 32310 30314,
 16 30342, 30347, 30348, 30350, 30352, 30363, 30370, 30385, 30390, and
 17 30395, as well as California Code of Regulations, tit. 11 § 4263.
- 18 6. Award remedies available under 42 U.S.C. §1983 and all reasonable
 19 attorneys' fees, costs, and expenses under 42 U.S.C. §1988, or any other
 20 applicable law; and,
- 21 7. Grant any other relief the Court deems just and proper.

22
 23 Dated: June 11, 2018

MICHEL & ASSOCIATES, P.C.

24
 25 s/C. D. Michel
 26 C.D. Michel
 27 *Counsel for Plaintiffs*
 28

CERTIFICATE OF SERVICE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Rhode, et al. v. Becerra*

Case No.: 3:18-cv-802-JM-JMA

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

on the following parties by electronically filing the foregoing on June 11, 2018, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Nelson R. Richards
Deputy Attorney General
2550 Mariposa Mall, Room 5090
Fresno, CA 93721
E-mail: Nelson.Richards@doj.ca.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 11, 2018, at Long Beach, CA.

/s/Laura Palmerin

Laura Palmerin