

20-55437

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KIM RHODE, et al.,

Plaintiffs-Appellees,

v.

**XAVIER BECERRA, in his official capacity as
Attorney General of the State of California,**

Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of California

No. 3:18-cv-00802 BEN JLB
The Honorable Roger T. Benitez, Judge

APPELLANT'S EXCERPTS OF RECORD

VOLUME 7 OF 7

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Pursuant to Federal Rules of Appellate Procedure for the Ninth Circuit, Rule 30-1, Appellant Xavier Becerra, by and through his attorney of record, Nelson R. Richards, hereby confirms the contents and form of Appellant's Excerpts of Record on Appeal.

Dated: June 12, 2020

Respectfully submitted,

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S/ NELSON R. RICHARDS
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KIM RHODE, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of the State
of California,

Defendant.

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

**DECLARATION OF RICHARD
TRAVIS**

Hearing Date: August 19, 2019
Hearing Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez

DECLARATION OF RICK TRAVIS

1. I, Richard Travis, make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I am the Executive Director of the California Rifle & Pistol Association, Incorporated (“CRPA”), a nonprofit membership and donor-supported organization qualified as a tax-exempt under 26 U.S.C. § 501(c)(4) with its headquarters in Fullerton, California. CRPA is a plaintiff in this action.

3. Founded in 1875, CRPA seeks to defend the civil rights of all law-abiding individuals, including the fundamental right to acquire and possess ammunition. CRPA regularly provides guidance to California gun owners regarding their legal rights and responsibilities. In addition, CRPA is dedicated to promoting the shooting sports and providing education, training, and organized competition for adult and junior shooters. CRPA members include law enforcement officers, prosecutors, professionals, firearm experts, and the public.

4. In this suit, CRPA represents the interest of the tens of thousands of its members who reside in or visit the state of California, including in San Diego County, and who are too numerous to conveniently bring in this action individually. Those members’ interests include their intent to exercise their constitutionally protected right to acquire and otherwise transact in ammunition.

5. Many of CRPA’s members have been adversely affected by California’s new ammunition sales restrictions, including those that took effect on January 1, 2018, and more recently on July 1, 2019.

6. I am aware of CRPA members who were not provided any guidance from DOJ regarding the July 1, 2019.

7. I am aware of CRPA members who have been denied an ammunition sale because their driver’s license or identification card have a “FEDERAL LIMITS APPLY” notation and they lacked the required supplemental documentation.

8. I am aware of CRPA members who have been denied ammunition purchases as of July 1, 2019, because their California issued identification contains a “FEDERAL LIMITS APPLY” notation and they did not or do not otherwise have the ability to provide supplemental proof of lawful U.S. presence as required by DOJ’s new emergency regulation.

9. I am aware of CRPA members who are unable to renew their existing Certificate of Eligibility issued by DOJ because their California issued identification contains a “FEDERAL LIMITS APPLY” notation and they do not otherwise have the ability to provide supplemental proof of lawful U.S. presence, as required by DOJ’s new emergency regulation.

10. I am aware of CRPA members who are reporting ammunition transaction processing times ranging anywhere from 20-30 minutes—often longer—as a result of the new July 1, 2019, ammunition transaction requirements.

11. I am aware of CRPA members who have been have been denied an ammunition transaction that are not prohibited from owning or possessing firearms.

12. I am aware of CRPA members who are not California residents but who visit California.

13. I am aware of CRPA members who, to correct any issues with their AFS records for purposes of purchasing ammunition, have been forced to request a copy of their AFS records. These same individuals have reported times as long as three to four months before DOJ has responded with a copy of their AFS records.

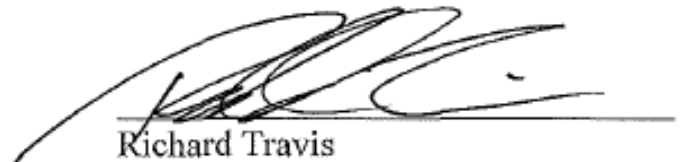
14. I am aware of CRPA members and employees who have submitted Certificate of Eligibility applications which have taken several weeks to process and costs over \$71 when submitting an initial application.

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I declare under penalty of perjury that the foregoing is true and correct. Executed within the United States on July 22, 2019.



Richard Travis
Declarant

CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Rhode, et al. v. Becerra*
Case No.: 3:18-cv-00802-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:

DECLARATION OF RICHARD TRAVIS

on the following parties by electronically filing the foregoing on July 22, 2019, with the Clerk of the District Court using its ECF System, which electronically notifies them.

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*Attorneys for Defendant Attorney General
Xavier Becerra*

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 22, 2019, at Long Beach, CA.

s/ Laura Palmerin
Laura Palmerin

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KIM RHODE, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of the State
of California,

Defendant.

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

DECLARATION OF SEAN A. BRADY

Hearing Date: August 19, 2019
Hearing Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez

DECLARATION OF SEAN A. BRADY

1. I am an attorney at the law firm of Michel & Associates, P.C., attorneys of record for plaintiffs in this action. I am licensed to practice law before the United States Court for the Southern District of California. I am also admitted to practice before the Central, Northern, and Eastern District Courts of California, superior courts of the state of California, and the United States Supreme Court. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

2. On January 31, 2019, our office, on behalf of Plaintiff California Rifle & Pistol Association, Incorporated, (“CRPA”) submitted a letter of comment on the California Department of Justice’s proposed regulations regarding “Ammunition Purchases or Transfers – OAL File No. Z-2018-1204-08.” A true and correct copy of this letter of comment is attached as **Exhibit 35**.

3. On May 8, 2019, our office, on behalf of Plaintiff CRPA submitted a second letter of comment on the California Department of Justice’s proposed regulations regarding “Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11 (OAL File No. Z-2018-1204-08).” A true and correct copy of this second letter of comment is attached as **Exhibit 36**.

4. On June 20, 2019, our office, on behalf of Plaintiff CRPA submitted a letter of comment on the California Department of Justice’s proposed emergency regulations regarding “Identification Requirements for Firearms and Ammunition Eligibility Checks – Title 11, Division 5, Chapter 4.” A true and correct copy of this letter of comment is attached as **Exhibit 37**.

5. On June 26, 2019, Plaintiff CRPA hosted a webinar presented by our office regarding “Ammunition Background Checks: Prop 63, SB 1235, and DOJ’s Regulations.” A recording of this webinar can be viewed online at <https://crpa.org/resources/crpa-webinars/>.

6. On October 18, 2016, Plaintiff CRPA hosted a webinar presented by our office regarding “Newsom Ballot Initiative (Proposition 63): What Does it Do? How Will it Change California’s Firearms Laws?” A recording of this webinar can be viewed online at <https://crpa.org/resources/crpa-webinars/>.

7. On April 24, 2016, Plaintiff CRPA hosted a webinar presented by our office regarding “California Legal Update: SB 1235 (Ammunition).” A recording of this webinar can be viewed online at <https://crpa.org/resources/crpa-webinars/>.

8. On July 10, 2019, I emailed opposing counsel asking DOJ’s position whether out-of-state persons can ship ammunition directly to a California resident if that resident has both a valid Certificate of Eligibility (“COE”) issued by DOJ and a Curio/Relic license (Type 03 FFL) (“C&R”) issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“BATFE”). On July 12, 2019, opposing counsel responded that it was DOJ’s position that out-of-state persons **cannot** ship ammunition directly to COE and C&R holders.

9. On July 10, 2019, I emailed opposing counsel asking DOJ’s position whether California-based ammunition vendors are required to process private party ammunition transactions. On July 12, 2019, opposing counsel responded that it was DOJ’s position that California-based ammunition vendors are **not required** to process private party ammunition transactions.

10. On July 19, 2019, our office received a letter from DOJ’s Certificate of Eligibility Unit on behalf of Plaintiff CRPA stating that the COE applications submitted by CRPA employees “cannot be processed” because DOJ is no longer accepting COE applications via mail as a result of a recently adopted regulation that took effect on July 1, 2019. CRPA employees originally submitted their applications and paid all associated application fees in June 2019.

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I declare under penalty of perjury that the foregoing is true and correct. Executed within the United States on July 22, 2019.

s/ Sean A. Brady

Sean A. Brady

Declarant

EXHIBIT 35

SENIOR PARTNER
C. D. MICHEL*

MANAGING PARTNER
JOSHUA ROBERT DALE

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* ALSO ADMITTED IN TEXAS AND THE
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January 31, 2019

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VIA EMAIL AND U.S. MAIL

**Re: Comments Regarding Proposed Regulations Regarding Ammunition
Purchases or Transfers – OAL File No. Z-2018-1204-08**

To Whom It May Concern:

We write on behalf of our clients, the National Rifle Association of America (“NRA”) and the California Rifle & Pistol Association, Incorporated (“CRPA”), as well as their respective members throughout California, in opposition to the proposed regulations regarding “Ammunition Purchases or Transfers,” which if adopted would add sections 4300-4309 to Title 11 of the California Code of Regulations (“C.C.R”).

For the reasons discussed below, our clients oppose the regulations as currently drafted.

I. CALIFORNIA’S ADMINISTRATIVE PROCEDURES ACT

The APA is designed to provide the public with a meaningful opportunity to participate in the making of regulations by California state agencies and to ensure the creation of an adequate record for review.¹ Every regulation is subject to the rulemaking procedures of the APA unless expressly exempted by statute.²

¹ Office of Administrative Law, *Guide to Public Participation in the Regulatory Process*, <https://www.oal.ca.gov/wp-content/uploads/sites/166/2017/05/How-2-Participate-102016.pdf> (Oct. 2016).

² A “regulation” is defined as every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order or standard adopted by any state

Under to the APA, California's Office of Administrative Law ("OAL") is tasked with reviewing all regulations that have been submitted to it for publication in the California Code of Regulations Supplement and for transmittal to the Secretary of State.³ Specifically, OAL will review any proposed regulation to ensure it satisfies the following criteria:

- **Necessity** – meaning the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of the law that the regulation implements, interprets, or makes specific, taking into account the totality of the record (where evidence includes, but is not limited to, facts, studies, and expert opinion);
- **Authority** – meaning the provision of law which permits or obligates the agency to adopt, amend, or repeat a regulation;
- **Clarity** – meaning written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them;
- **Consistency** – meaning being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law;
- **Reference** – meaning the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation; and,
- **Nonduplication** – meaning that a regulation does not serve the same purpose as a state or federal statute or another regulation.⁴

Should a regulation fail to comply with the above requirements, OAL may disapprove the regulation.⁵ And any person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief.⁶

II. DOJ'S PROPOSED REGULATIONS ARE INCOMPLETE AND LACK SUFFICIENT CLARITY AS REQUIRED BY THE APA

As a threshold matter, DOJ's proposed regulations are incomplete. Key aspects of the proposal are missing, such as how licensed ammunition vendors are to determine which proposed background check process to use for a particular customer due to the varying options. Both our clients and our office have been informed by multiple DOJ representatives that DOJ intends to propose additional

agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. Cal. Gov. Code § 11342.600.

³ Cal. Gov. Code § 11349.1.

⁴ Cal. Gov. Code §§ 11349, 11349.1(a)(1-6). OAL may also consider the clarity of the proposed regulation in the context of related regulations already in existence. Cal. Gov. Code § 11349.1(b).

⁵ Cal. Gov. Code § 11349.3.

⁶ Cal. Gov. Code § 11350.

regulations regarding the sale or transfer of ammunition beyond this proposal. Presumably, those regulations will address the many gaps in this current proposal.

Under the APA, the clarity of a proposed regulation may be considered in the context of related regulations already in existence.⁷ Following that same logic, the clarity of a proposed regulation may be considered in the context of related regulations that have yet to be proposed. Without the anticipated additional regulations that have yet to be proposed, the meaning of the regulations cannot be said to be easily understood by those persons directly affected by them.

As a result, DOJ's proposal as currently written fails to satisfy the clarity requirement of the APA. The public is entitled to see the entire regulatory package together, not in this piecemeal fashion. DOJ should amend the proposal to include any and all additional regulations to ensure the proposal satisfies the clarity requirement of the APA as well as providing members of the public a meaningful opportunity to comment.

III. PROPOSED SECTION 4301 – DEFINITIONS: AFS RECORDS DO *NOT* IDENTIFY AN INDIVIDUAL AS AN OWNER OF A FIREARM

Included with DOJ's proposed regulations are definitions for terms used throughout. One such definition is provided for the term "AFS Record," which reads:

[A] firearm record on file with the Department that identifies an individual as an owner of a firearm. An AFS record has been established with the Department when an individual has purchased or transferred a rifle or shotgun from a firearms dealer on or after January 1, 2014, or an individual that has purchased or transferred a handgun from a firearms dealer at any time. An AFS record may also be established after the Department processes an individual's assault weapon registration or an individual's report of firearm ownership.

But there is a fundamental flaw in DOJ's proposed definition—AFS records do *not* identify an individual as an owner of a firearm. Indeed, the former head of DOJ's Bureau of Firearms Division, Stephen Lindley, recently testified as an expert witness to that effect. In his report, Mr. Lindley stated that "no local law enforcement agency should rely upon AFS as the sole basis for establishing ownership of a firearm or rejecting a claim of ownership" because "AFS merely serves as a database of transaction records related to a firearm."

Mr. Lindley's testimony echoes a prior information bulletin authored by DOJ's Division of Law Enforcement submitted to all California Sheriffs and Chiefs of Police.⁸ As noted by DOJ in this bulletin, it is likely that many long guns are not recorded in AFS for various reasons. And because not all handguns were required to be sold through a California licensed firearms dealer prior to 1991, there are a great number of lawfully owned handguns that were not subject to any requirement that the transaction be recorded in AFS. As a result, DOJ's bulletin emphasizes that:

⁷ Cal. Gov. Code § 11349.1(b).

⁸ 2009-BOF-03: *Critical Changes to the Law Enforcement Gun Release (LEGR) Program*, California Department of Justice, Division of Law Enforcement, <http://michellawyers.com/wp-content/uploads/2019/01/Info-Bulletin-re-Changes-to-LEGR-Program.pdf> (Jan. 4, 2010).

[An] AFS transaction record simply means that on the date of transaction (DOT), the individual was eligible to own/possess firearms. It does not indicate ownership of the firearm.

DOJ's Initial Statement of Reasons ("ISOR") claims the proposed definitions "will help to eliminate any misunderstandings between the Department and the public." Given DOJ's clear, prior interpretations (at least one of which was expressed to all California law enforcement professionals), DOJ should ensure consistency to help eliminate any misunderstanding. To that end, we suggest the definition for "AFS Record" instead read:

[A] firearm record on file with the Department that indicates on the date of the transaction, the individual was eligible to own and possess firearms. An AFS record has been established with the Department when an individual has either purchased or transferred a rifle or shotgun through a California licensed firearms dealer on or after January 1, 2014, or an individual has purchased or transferred a handgun through a California licensed firearms dealer at any time. An AFS record may also be established after the Department processes an individual's assault weapon registration or an individual's report of firearm ownership.

IV. PROPOSED SECTION 4302 - "STANDARD AMMUNITION ELIGIBILITY CHECK"

Proposed section 4302 concerns what DOJ refers to as the "Standard Ammunition Eligibility Check." As stated in proposed subsection (a), "the fee for a Standard Ammunition Eligibility Check is \$1.00." In addition to citing subdivision (e) of Penal Code section 30370 for authority, DOJ states in their ISOR that subdivision (a) is necessary to specify the fee assessed and to recover the total cost of implementation.

Section (e) of Penal Code section 30370 states that DOJ "shall recover the reasonable cost of regulatory and enforcement activities related to this article by charging ammunition purchasers and transferees a per transaction fee not to exceed one dollar (\$1)" and "not to exceed the reasonable regulatory and enforcement costs."⁹ In its ISOR, DOJ states that the fees collected pursuant to this subsection "will be used to repay the loan for start up costs" as well as "salaries of the 73 permanent employees." DOJ has not specified, however, if the fee will be reduced once the initial loan for start up costs is paid in full. What's more, DOJ has not specified how the 73 employees will be used, if at all, when processing what is presumably a fully automated check of the AFS system.

As a result, the proposed \$1 fee exceeds DOJ's regulatory authority as it is not consistent with the authorizing statute.

⁹ DOJ's authority to impose a fee is also generally limited by subsection (b)(1) of Government Code section 11010, which states that no state agency "shall levy or collect any fee or charge in an amount that exceeds the estimated actual or reasonable cost of providing the service, inspection, or audit for which the fee or charge is levied or collected."

A. Lack of Established Procedures for Licensed Ammunition Vendors

The proposed regulations lack crucial information as to when or how a licensed ammunition vendor must use the Standard Ammunition Eligibility Check process. As discussed below, potential ammunition purchasers may also undergo a “One-Time Ammunition Transaction” involving a more comprehensive “Basic Ammunition Eligibility Check,” or a “COE Verification Process” in addition to the Standard Ammunition Eligibility Check when attempting to purchase ammunition. Yet the proposed regulations are silent as to how a licensed ammunition vendor is to determine what procedure to use.

The proposed regulations also state that DOJ “shall instruct the ammunition vendor to approve or reject the purchase or transfer,” and that if rejected, “the ammunition vendor shall provide the purchaser or transferee with an ATN that can be used to obtain the reason for the rejection.” What the proposed regulations do not specify, however, is how DOJ determines whether to approve or reject a Standard Ammunition Eligibility check. There are no criteria a prospective purchaser or licensed ammunition vendor can refer to.¹⁰

As a result, both licensed ammunition vendors and their customers are incapable of easily understanding the effects of the proposed regulations as currently drafted. DOJ should amend its proposal to address these lack of clarity concerns before moving forward.

i. Use of Out-of-State or Other Identification

In connection with the proposed regulation requiring additional purchaser information, purchasers will be required to provide their driver license or other government identification number “in the manner described in Penal Code section 28180.” Penal Code section 28180 requires purchasers to provide this information electronically from the magnetic strip on the purchaser’s driver’s license or identification.¹¹ The only exceptions to this requirement are for military IDs or when the magnetic strip reader is unable to obtain the required information.¹²

The proposed regulation lacks crucial information as to how exactly licensed ammunition vendors are to process ammunition transactions for out-of-state residents and individuals providing government ID that may not be compatible with DOJ’s electronic system. For example, the current firearm background check system in California will generate a “DMV Reject Notice” when the driver’s license or identification card used is not valid, or when the information provided is in conflict

¹⁰ While it is true that an individual can request a copy of their AFS records from DOJ, the process for obtaining those records requires individuals to submit a notarized form with a copy of a valid identification card. It is our understanding, however, that the current processing time for obtaining such records is between 3 and 4 months, well beyond that which would make this a feasible option for prospective purchasers to determine if they have a valid AFS record.

¹¹ Cal. Penal Code § 28180(a).

¹² Cal. Penal Code § 28180(b)(1-2).

with the files maintained by the California Department of Motor Vehicles (“DMV”).¹³ Because DOJ has stated the ammunition background check process will be “essentially the same” as a firearms eligibility check, it can only be assumed individuals with out-of-state or other identification not compatible will result in similar “DMV Reject Notices.” What’s more, nothing in either the Penal Code or DOJ’s proposed regulations require licensed ammunition vendors who are not otherwise California licensed *firearms* dealers to possess a magnetic strip reader.

DOJ’s proposed regulations need to clarify how licensed ammunition vendors are to process transactions involving individuals from out of state who may not have a government identification compatible with DOJ’s electronic system, and how DOJ intends to conduct a background check on individuals with out-of-state identification to ensure they are not automatically rejected as would occur under DOJ’s current system. Otherwise, this regulation is void for lack of clarity.

V. PROPOSED SECTION 4303 - “ONE-TIME AMMUNITION TRANSACTIONS”

For unknown reasons, DOJ has chosen to label proposed section 4303 as “One-Time Ammunition Transactions.” But DOJ’s chosen label is likely to create unnecessary confusion. This is because Standard Ammunition Eligibility Checks, as described and labeled in proposed section 4302, are also “one-time” transactions which are used for purposes of conducting a single transaction. As a result, DOJ should instead label this section “Basic Ammunition Eligibility Check” to be consistent with section 4302, and otherwise remove the unnecessary “One-Time Ammunition Transaction” definition and other uses of the term throughout the proposal.

The proposed regulation concerning One-Time Ammunition Transactions also suffers from the same flaws as the Standard Ammunition Eligibility Check in that it lacks crucial procedural information. This includes when and how licensed ammunition vendors are to utilize the One-Time Ammunition Transaction process and how to handle out-of-state identification. Without this crucial information, both licensed ammunition vendors and their customers are incapable of easily understanding the effects of the proposed regulations as currently drafted, making Section 4303 void for lack of clarity.

A. Conflict with Federal Law

At the outset, the proposed regulation conflicts with federal law and regulations. Under federal law, access to federal databases for purposes of conducting a background check is strictly limited to *firearm* transactions. Accessing these databases “for any other purpose,” including ammunition transactions, is “strictly prohibited.”¹⁴

Because California is a “Point-of-Contact” state, California has agreed to implement and maintain its own background check system and conduct the required background checks by accessing federal databases on behalf of California licensed firearm dealers. But California is prohibited from

¹³ See *DROS Entry System (DES) Firearms Dealership User Guide*, California Department of Justice, Bureau of Firearms at 36 (12/29/2017 Rev. 3), available online at https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/dros_entry_guide.pdf.

¹⁴ See 28 C.F.R. § 25.6.

accessing these federal databases for purposes other than conducting a background check in connection with a firearm transaction.

B. Proposed \$19 Fee

Proposed subdivision (a) of section 4303 would establish a \$19 fee for a Basic Ammunition Eligibility Check. DOJ states in their ISOR that this check “is essentially the same background check as a firearms eligibility check” and that the proposed fee “is consistent with the fee paid for a firearms eligibility check.” DOJ also cites to subdivision (c) of Penal Code section 30370 for authorization, which reads in part:

*The department shall recover the cost of processing and regulatory and enforcement activities related to this section by charging the ammunition transaction or purchase applicant a fee **not to exceed the fee charged for the department’s Dealers’ Record of Sale (DROS) process**, as described in Section 28225 and not to exceed the department’s reasonable costs.*¹⁵

In 2017, the Sacramento County Superior Court issued a decision affirming DOJ’s ministerial duty under Penal Code section 28225 to perform a reassessment of the Dealers’ Record of Sale (“DROS”) fee.¹⁶ That fee, which is currently set at \$19 per DOJ’s regulations, has remained unchanged for over 15 years since 2004.¹⁷ During litigation, DOJ failed to identify any internal process that would trigger the mandatory review of the current fee, and failed to produce any documentation to substantiate its claim that it performs “regular monitoring” of the DROS fee as required by law. What’s more, DOJ’s DROS account “amassed a surplus of over \$35 million, primarily consisting of DROS Fee revenues at the time the case was originally filed.”¹⁸

The fact that the current DROS fee is generating such a substantial surplus is clear evidence that DOJ’s proposed \$19 fee exceeds DOJ’s regulatory authority for two important reasons. First, it is wholly improper for DOJ to propose a fee based on that which a court has ordered DOJ to reassess. To do so otherwise demonstrates a clear disregard for the Court’s ruling

Notwithstanding that ruling, the proposed \$19 fee far exceeds DOJ’s reasonable costs for the proposed Basic Ammunition Eligibility Check. As DOJ has expressly stated, the process is “essentially the same” as a firearms eligibility check. And because the fee for a firearms eligibility check has consistently generated a surplus, it cannot be said the proposed fee does not exceed DOJ’s “reasonable costs.” Indeed, if the process is so substantially similar, the proposed fee will generate a similar surplus.

¹⁵ Emphasis added.

¹⁶ *Gentry v. Harris*, Case No. 34-2013-80001667. A copy of the Court’s ruling can be viewed online at <http://michellawyers.com/wp-content/uploads/2017/08/2017-08-09-Ruling-re-Mtns-for-Adjudication.pdf>.

¹⁷ 11 C.C.R. § 4001.

¹⁸ See http://michellawyers.com/wp-content/uploads/2013/12/Gentry_Complaint-for-Declaratory-and-Injunctive-Relief-and-Petition-for-Writ-of-Mandamus.pdf

To date, DOJ has yet to perform the required reassessment of the DROS fee as ordered by the Court. But the fact remains that the proposed \$19 fee clearly exceeds DOJ's reasonable costs, and for that reason exceeds DOJ's regulatory authority under the APA.

C. Proposed Purchaser Information to Be Collected

Subdivision (b) of proposed section 4303 concerns the required information a licensed ammunition vendor must collect from the purchaser when processing an ammunition transaction. Penal Code section 30352 expressly states what information is to be collected, which includes:

- The date of the sale or other transfer;
- The purchaser's driver's license or other identification number and the state in which it was issued;
- The brand, type, and amount of ammunition sold or otherwise transferred;
- The purchaser's full name and signature;
- The name of the salesperson who processed the sale or other transaction;
- The purchaser's full residential address and telephone number; and,
- The purchaser's date of birth.¹⁹

The information required under Penal Code section 30352 is exclusive and does not allow for the collection of additional information to be collected by the licensed ammunition vendor. Any information collected in addition to this information, therefore, would be in violation of Penal Code section 30352.²⁰ Yet DOJ's proposed regulation requires the following information to be collected in addition to the above:

- Gender;
- Hair color;
- Eye color;
- Height;
- Weight;
- United States citizenship status;
- Federal Alien Registration Number or I-94 (if applicable);
- Place of birth;
- Alias name(s); and,
- Race.²¹

¹⁹ Cal. Penal Code § 30352(a)(1-7).

²⁰ This is due to the doctrine of statutory construction *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other). Because the legislature has specifically listed what information must be collected, without providing for any additional information to be collected by the licensed ammunition vendor, it is presumed the legislature intended only this information to be collected.

²¹ 11 C.C.R. § 4303(b) (proposed).

Given the exclusive nature of Penal Code section 30352, the proposed regulation as written exceeds DOJ's statutory authority and is otherwise inconsistent with the statute it purports to implement. And because DOJ has expressly stated the process is "essentially the same" as a firearms eligibility check, it can only be assumed the reason for collecting a purchaser's citizenship status, federal alien registration number, and place of birth are for purposes of accessing these federal databases. As explained above, to do so for purposes of conducting an ammunition background check would violate federal law.²²

DOJ's proposed requirement for citizenship information also violates recently enacted state laws pertaining to immigration enforcement. In 2017, the California Legislature enacted Senate Bill No. 54 ("SB 54"), prohibiting state agencies from using funds or personnel to "investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes," including "[i]nquiring into an individual's immigration status."²³ None of the exceptions to this restriction allow DOJ to inquire into an individual's citizenship status for purposes of conducting an ammunition background check.²⁴ As a result, the proposed regulation requiring additional information regarding a person's immigration status is in direct violation of existing state law, thereby exceeding DOJ's regulatory authority.

D. Proposed ATN Numbers

Subdivision (c) of proposed section 4303 states that the ammunition vendor will provide the purchaser or transferee with an Ammunition Transaction Number ("ATN") "to monitor the status of the Basic Ammunition Eligibility Check through the Department's CFARS website. DOJ's ISOR states this subdivision is necessary "to inform an individual how to use an ATN to obtain the status for the Basic Ammunition Eligibility Check from the Department."

This subdivision, however, directly conflicts with the Penal Code it purports to implement. Specifically, subdivision (a) of Penal Code section 30370 requires DOJ to "electronically approve the purchase or transfer of ammunition through a vendor" but that "[t]his approval *shall occur at the time of purchase or transfer*."²⁵ In other words, the decision on whether to approve or deny a particular transaction must be made at the time of transfer, thereby precluding DOJ from enacting any system that would delay a transaction beyond the time of purchase or transfer.²⁶

²² It is our understanding that DOJ is aware of this issue and has been expressly instructed by the Bureau of Alcohol, Tobacco, Firearms and Explosives and/or the Federal Bureau of Investigation that accessing the federal databases for purposes of conducting ammunition background checks is prohibited.

²³ Cal. Govt. Code § 7284.6(a)(1)(A) (emphasis added). Notably, Attorney General Xavier Becerra has publicly stated that DOJ is not in the business of deportation and should not be "doing the job of federal immigration agents." https://www.washingtonpost.com/world/national-security/california-tells-local-law-enforcement-to-follow-federal-law--but-dont-be-immigration-enforcers/2018/03/28/bee713f4-32b2-11e8-94fa-32d48460b955_story.html?utm_term=.076e8c8b4e71.

²⁴ See Cal. Govt. Code § 7284.6(b).

²⁵ Emphasis added.

²⁶ The legislative history of SB 1235 also makes this quite clear. For example, according to the Senate Appropriations Committee, the \$25 million start-up loan issued to DOJ was to, among other

As a result, DOJ's proposed regulation issuing an ATN to a prospective purchaser for no other purpose than to monitor the status of the Basic Ammunition Eligibility Check is in direct conflict with the Penal Code section it seeks to implement and otherwise exceeds DOJ's regulatory authority.

VI. PROPOSED SECTION 4304 – “FIREARMS ELIGIBILITY CHECK”

Proposed section 4304 concerns the purchase of ammunition in connection with the purchase of a firearm, which as noted is already subject to an eligibility check. Subdivision (b) of proposed section 4304, however, is poorly worded in that it assumes an individual with an AFS record or Certificate of Eligibility (“COE”) will automatically be approved upon paying a \$1 fee for the Standard Ammunition Eligibility Check. To that end, the proposed regulation should instead simply read that if a person wants to take possession of the ammunition before the Department completes the firearms eligibility check, a Standard Ammunition Eligibility Check, Basic Ammunition Eligibility Check, or COE Verification Process must be conducted prior to the transfer of the ammunition. But DOJ needs to clarify how licensed ammunition vendors are to determine which procedure to follow for a customer.

What's more, nothing in the proposed regulation specifies how a licensed ammunition vendor is supposed to collect the required information regarding the transfer of ammunition as called for under Penal Code section 30352. As a result, DOJ needs to amend this proposed regulation to ensure consistency and clarity with existing law as required by the APA.

VII. PROPOSED SECTION 4305 – “COE VERIFICATION PROCESS”

Proposed section 4305 addresses the procedure for verifying a purchaser's COE as an alternative to the Standard Ammunition Eligibility Check and Basic Ammunition Eligibility Check. DOJ has proposed a \$1 fee for this type of check, while also proposing ammunition vendors collect the following information about the purchaser in connection with the transfer:

- Name;
- Date of birth;
- Current address; and,
- Driver license or other government identification number.²⁷

As a threshold matter, the proposed regulation fails to include the required information as called for in the Penal Code. Specifically, subdivision (a) of Penal Code section 30352 requires licensed ammunition vendors to collect the following information in addition to what DOJ has proposed:

- The date of the sale or other transfer;
- The state in which the purchaser's driver's license or other identification was issued;

requirements, “develop the system *enabling real-time review and approval* of transactions at the point of sale/transfer.” *SB 1235, Third Reading*, Senate Rules Committee, Office of Senate Floor Analyses at 12 (emphasis added).

²⁷ 11 C.C.R. § 4305(a-b) (proposed). DOJ's proposed regulation

- The brand, type, and amount of ammunition sold or otherwise transferred;
- The purchaser's signature;
- The name of the salesperson who processed the sale or transaction; and,
- The purchaser's telephone number.²⁸

Because Penal Code section 30352 requires this information to be collected at the time of delivery “on a form to be prescribed the Department of Justice,” DOJ needs to amend its regulation to clarify that the above information needs to be collected when transferring ammunition pursuant to the proposed COE Verification Process. Doing so will ensure consistency and clarity with existing law as required by the APA.

In addition to the above, DOJ has again chosen a fee amount of \$1, stating in their ISOR that this “will contribute toward start up costs and ongoing system maintenance, including employee salaries.” But that is not the appropriate standard in which to select the fee. As clearly stated in subdivision (e) of Penal Code section 30370, the fee selected by DOJ must not “exceed the reasonable regulatory and enforcement costs.” What’s more, DOJ has demonstrated in other respects that it can verify a person’s COE without cost.²⁹ As a result, DOJ needs to clarify how the proposed \$1 fee does not exceed the reasonable regulatory and enforcement costs in processing COE verifications as required under the Penal Code.

VIII. PROPOSED SECTION 4306 – “AMMUNITION PURCHASES OR TRANSFERS FOR EXEMPTED INDIVIDUALS”

Proposed section 4306 lists specific types of identification that will identify an individual as exempt from the requirement that licensed ammunition vendors must first obtain DOJ approval. Specifically, proposed subdivision (a) lists the following:

- A valid FFL;
- An authorized law enforcement representative’s written authorization from the head of the agency authorizing the ammunition purchase or transfer;
- A centralized list of exempted FFLs DOJ-issued certificate indicating the individual is on the centralized list of exempted FFLs;
- A sworn state, or local peace officer’s credential and verifiable written certification from the head of the agency; or,
- A sword federal law enforcement officer’s credential and verifiable written certification from the head of the agency.³⁰

²⁸ Cal. Penal Code § 30352(a)(1-7).

²⁹ For example, employees of California licensed firearm dealers must generally possess a valid COE as a condition of employment. DOJ recently proposed regulations modifying the DROS Entry System (“DES”) which includes a procedure for verifying a prospective employee’s COE, yet there is no cost associated with this procedure. See <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/dros-text-of-regs-120718.pdf>.

³⁰ 11 C.C.R. § 4306(a)(1-5) (proposed).

DOJ cites Penal Code section 30352 as authority for this proposed regulation. But the proposed list fails to include both licensed ammunition vendors and persons who purchase or receive ammunition at a target facility as expressly listed in Penal Code section 30352.³¹

As a result, DOJ should amend its proposed regulation to include these individuals, and what procedures a licensed ammunition vendor should follow when transferring ammunition to them in order to satisfy the consistency and clarity requirements of the APA.

IX. PROPOSED SECTION 4307 – “TELEPHONIC ACCESS FOR AMMUNITION VENDORS”

Proposed section 4307 addresses the required telephonic access for ammunition vendors without accessibility to an internet connection due to their location not allowing for internet service. Our primary concern with the proposed regulation, however, is the hours of operation of DOJ’s telephonic system. Presumably, retail businesses such as ammunition vendors will be open outside of a typical 9-5 workday and otherwise open 7 days a week. DOJ’s proposed regulation does not specify if the telephonic access system will be available during such times. For this reason, DOJ needs to clarify when the system will be operational to ensure clarity for existing ammunition retail businesses.

X. DOJ’S ECONOMIC IMPACT ANALYSIS IN THEIR INITIAL STATEMENT OF REASONS IS SEVERELY FLAWED AND OTHERWISE FACTUALLY INACCURATE

In addition to the text of the proposed regulations, DOJ has made several inaccurate and/or misleading claims and statements in its ISOR warranting attention.

First, DOJ estimates there will be approximately 13 million ammunition purchases or transfers conducted each year pursuant to a Standard Ammunition Eligibility Check. This estimation appears to have been calculated based on 931,037 background checks conducted in California in 2014 for firearm transactions. But the basis for this estimation is fundamentally flawed, as DOJ is referencing background checks—not actual gun sales. A single background check could incorporate more than one firearm. And using background check numbers for a single year fails to account for firearms already owned by California residents.³² DOJ also fails to describe how it selected 40 rounds as the number of rounds in each box of ammunition. A simple web search of available ammunition yields wildly varying numbers of rounds per box, with the most common quantities either 50 or 20 rounds per box.

DOJ claims “there is no evidence that these regulations will deter ammunition sales or be a significant burden to ammunition purchases.” Yet DOJ’s own statements directly contradict this point. It states that “ammunition purchases are considered a leisurely activity, and oftentimes done while out shopping for other items or browsing for future purchases, which is beneficial to both parties.” What’s more, DOJ also states that costs are “minimal because although it takes time for the Department to process an ammunition eligibility check, ammunition purchasers will be shopping for other products in the store, allowing the ammunition vendor to sell more items to the public.” Notwithstanding the fact

³¹ See Cal. Penal Code §§ 30352(e)(1), 30352(e)(3).

³² Indeed, perhaps a better method of estimating the actual number of firearms currently owned by California residents would be to simply refer to the total number of records currently in DOJ’s AFS database, some of which go as far back as the early 1900’s.

that DOJ is obligated to process transactions in real-time and without any delay (contrary to DOJ's assertions), such statements make it clear that there is indeed a significant burden.

DOJ's analysis also ignores attempts by other states at implementing similar legislation. In 2013, New York enacted identical ammunition background check requirements. But before the law could be implemented, New York's Governor issued a memorandum of understanding suspending enforcement of the ammunition background check requirements. That memorandum cited "the lack of adequate technology" while also stating that the database "cannot be established and/or function in the manner originally intended at this time."³³ New York's Governor has also issued a statement that "the ammunition sales database *will not be prematurely introduced until the technology is ready and it does not create an undue burden for business owners*."³⁴ To date, New York has yet to implement the ammunition sales database.

XI. CONCLUSION

As currently drafted, the proposed regulations are incomplete and lack key substantive provisions that would allow members of the public to easily understand them and provide meaningful opportunity to comment. They also raise serious issues as to the required authority, clarity, and consistency required under the APA. For these reasons, we respectfully request DOJ revise the proposal accordingly and address the concerns identified above.

Should you have any questions regarding this letter, please do not hesitate to contact our office at your convenience.

Sincerely,
Michel & Associates, P.C.



Matthew D. Cubeiro

³³ See <https://www.nytimes.com/2015/07/11/nyregion/plan-to-require-background-checks-for-ammunition-sales-is-suspended-in-new-york.html>.

³⁴ See https://www.syracuse.com/state/index.ssf/2015/07/cuomo_agrees_to_changes_to_ny_safe_act_regarding_ammunition_sales.html (emphasis added).

EXHIBIT 36

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**Re: Proposed Regulations Regarding Ammunition Purchases or
Transfers – Title 11, Division 5, Chapter 11 (OAL File No. Z-
2018-1204-08)**

To whom it may concern:

We write on behalf of our clients, the National Rifle Association of America (“NRA”) and the California Rifle & Pistol Association, Incorporated, as well as their respective members throughout California, in opposition to the proposed regulations regarding “Ammunition Purchases or Transfers” (the “proposed regulations”), which if adopted would add sections 4300-4309 to Title 11 of the California Code of Regulations (“C.C.R.”).

On January 31, 2019, our office submitted a letter of comment concerning the California Department of Justice’s (“DOJ”) original text of the proposed regulations.¹ That letter addressed the general requirements of California’s Administrative Procedure Act (“APA”) and several key deficiencies thereunder with DOJ’s proposal. For the sake of brevity, those concerns will not be repeated here. Although DOJ has addressed some of our clients’ concerns with this revised proposal, many substantial problems remain.

For these reasons and those discussed below, our clients still oppose the regulations as currently drafted.

¹ A copy of this comment letter can be viewed online at <http://michellawyers.com/wp-content/uploads/2019/01/Ltr-to-DOJ-re-Ammo-Background-Check-Regs.pdf>.

I. DOJ'S MARCH 14, 2019, STAKEHOLDERS MEETING

As an initial matter, we were recently informed that DOJ held a stakeholder's meeting on March 14, 2019, with several licensed ammunition vendors regarding the upcoming background check requirements the proposed regulations purport to implement. Among statements made by DOJ officials during this meeting, stakeholders were informed that the ammunition background check system had already been developed and was currently undergoing testing.

It is of great concern that DOJ has already created the system for which ammunition transactions will be processed beginning July 1, when *the required regulations implementing that system have yet to be formally adopted*. In this and other firearm-related rulemaking activities, our clients have repeatedly informed DOJ of one of the core tenants of the APA, namely to provide members of the public a meaningful opportunity to comment on proposed regulations. By creating a system before members of the public have been provided a meaningful opportunity to comment on regulations required to implement that system, DOJ is once again displaying its utter disregard for the rulemaking process and the public itself.

Because of this, we have little doubt DOJ will ignore the comments it receives. What's more, DOJ has taken a wholly unnecessary gamble using taxpayer funds on a system that has yet to be formally approved. DOJ owes stakeholders, members of the public, and California's Office of Administrative Law ("OAL") an explanation for this action.

A. DOJ's Statements to Stakeholders Regarding Out-of-State Driver's Licenses

DOJ also informed stakeholders during the March 14, 2019, meeting that the proposed system will not be able to accept out-of-state driver's licenses or IDs. If true, such a restriction would not only illegally constrain the scope of Penal Code section 28180, but would also amount to a violation of various constitutional provisions.

DOJ has stated in its Initial Statement of Reasons ("ISOR") Addendum that the information to be collected from a prospective purchaser "must be collected in the manner described in Penal Code section 28180." Penal Code section 28180 requires firearm dealers to collect a purchaser's name, date of birth, and driver's license or identification number "from the magnetic strip on the purchaser's driver's license or identification and shall not be supplied by any other means, except as authorized."² But Penal Code section 28180 also states that if the magnetic strip reader is unable to obtain the required information, the firearms dealer "shall obtain a photocopy of the identification as proof of compliance."³ And while it may be true that California's new ammunition sales restrictions require ammunition vendors to collect a purchaser's information "as described in Section 28180," the law also makes clear that out-of-state identification may be used when purchasing ammunition. See Cal. Penal Code § 30370(b) (requiring information to be collected pursuant to Penal Code section 28180); Cal. Penal Code § 30352(a)(2) (requiring the purchaser's driver's license or other identification number "*and the state in which it was issued*" to be recorded upon delivery of the ammunition).

² Cal. Penal Code § 28180(a).

³ Cal. Penal Code § 28180(b)(2).

Regardless, denying non-California-residents their right to acquire ammunition would run afoul of multiple constitutional guarantees. The Second Amendment “implies a corresponding right to obtain the bullets necessary to use them” and a “regulation eliminating a person’s ability to obtain or use ammunition could thereby make it impossible to use firearms for their core purpose” thus violating that right. *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 967-68 (9th Cir. 2014). The right to travel guarantees that “a citizen of one State who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the ‘Privileges and Immunities of Citizens in the several States’ that he visits.” *Saenez v. Roe*, 502 U.S. 489, 501 (1999) (quoting U.S. Const. Art. IV, §2, cl. 1). Facially discriminatory regulations violate the Commerce Clause, regardless of whether they have a discriminatory purpose. *See United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007). And, finally, “where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which invade or restrain them must be closely scrutinized” and be necessary to serve a compelling government interest. *City of Cleburne, Tex., v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). For these reasons, DOJ needs to clarify whether out-of-state identification can be used to purchase ammunition under the proposed regulation. Failure to do so would, at minimum, constitute a lack of the clarity required of a regulation under the APA.

B. Additional Statements Made By DOJ to Stakeholders

Several other problematic statements made by DOJ to stakeholders during the March 14, 2019 meeting, include:

- Large retailers will have access to the system as of June 1, 2019, whereas others would only have access beginning July 1, 2019—the day the background check process is scheduled to begin.
- DOJ plans on creating training materials and a step-by-step webinar for licensed ammunition vendors regarding the ammunition background check process.
- A full-scale background check for a customer is anticipated to take anywhere from several hours to several days, whereas an AFS/COE check should take a few minutes.
- A purchaser’s Driver’s License must match their AFS/COE records in order to be approved for a purchase.
- A full-scale background check will only rely on a person’s state records—federal databases will not be included as part of the background check process.

As stated by Government Code section 11342.600 and OAL, a “regulation” is “every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.”⁴ Unless expressly exempted by statute, every regulation is subject to the APA’s rulemaking procedures.⁵

⁴ Cal. Gov. Code § 11342.600; See also https://www.oal.ca.gov/wp-content/uploads/sites/166/2017/05/What_Is_a_Regulation.pdf.

⁵ Cal. Gov. Code § 11346.

Assuming the above statements are accurate, these amount to “regulations” within the meaning of the APA, thereby requiring DOJ to provide members of the public a meaningful opportunity to comment on them or else they are void as illegal underground regulations.⁶ Yet, nowhere in the proposed regulations or their revised text does DOJ discuss access by large retailers, training materials and webinars, or the time DOJ estimates it will need to conduct the required background check.⁷

DOJ has also failed to provide any clarifying information as to what constitutes a “match” for purposes of the Standard Ammunition Eligibility Check, despite this issue being raised in our prior comment letter. It is also unclear why DOJ has simply stated that it has “exercised no discretion” as to this requirement when it has shown itself to be more than capable of adopting regulations that help clarify requirements elsewhere. In sum, to the extent DOJ intends to implement the actions described in the above statements it must at least amend the proposal to include them as part of the proposed regulations.

i. Use of Federal Databases

In the ISOR Addendum, DOJ states that a purchaser’s citizenship status and federal Alien Registration Number or I-94 (if applicable) are required to conduct the Basic Ammunition Eligibility Check. DOJ’s basis for this assertion is that Penal Code section 30370, subdivision (c), requires DOJ to develop a procedure in which “a person who is not prohibited from purchasing or possessing ammunition may be approved.” In reaching this conclusion, DOJ states that it “has determined that it would be counter to the legislative intent . . . to approve purchases of ammunition by individuals who may be prohibited from doing so under either state or federal law.” DOJ nevertheless recognizes it is not permitted to use federal databases to ensure a person is not prohibited (as discussed in our prior comment letter).

But DOJ is incorrect in its assumptions for several reasons. First, DOJ makes no mention in the ISOR Addendum regarding the prohibitions under existing state laws adopted pursuant to Senate Bill No. 54 (“SB 54”).⁸ These provisions, clearly reflect the California legislature’s intent, which has also been recognized by Attorney General Becerra himself, prohibit state agencies—including DOJ—from inquiring into an individual’s immigration status.⁹ What’s

⁶ Cal. Gov. Code § 11340.5(a) (prohibiting DOJ from enforcing any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a “regulation” under the APA unless it has been adopted as such and filed with the Secretary of State pursuant to the APA).

⁷ What’s more, as noted in our prior comment letter, DOJ is statutorily obligated to approve or deny the required background check “at the time of purchase or transfer.” Cal. Penal Code § 30370(a). In other words, DOJ is statutorily prohibited from delaying ammunition background checks for any amount of time.

⁸ These restrictions were raised in our prior comment letter, but DOJ makes no mention of them in its ISOR Addendum or revised regulations.

⁹ Cal. Govt. Code § 7284.6(a)(1)(A).

more, the California Legislature's "intent" is irrelevant as applied to a voter approved initiative, which is what created the controlling law here.¹⁰

DOJ also argues that both the Standard Ammunition Eligibility Check and the COE Verification methods involve a check of a person's immigration status. But that is irrelevant because neither is specifically required for the purposes of lawfully acquiring ammunition in California. Individuals need only to have submitted immigration information in connection with their original COE application or firearm purchase.¹¹ And DOJ already administers the Armed Prohibited Person System as a means to disarm individuals who later become prohibited and revoke any previously issued COE.

In any event, DOJ prohibited from accessing federal databases for purposes of conducting ammunition background checks. It cannot simply add a layer to the background check process (i.e. referencing its Prohibited Armed Persons File) and access federal databases through other means as a way of circumventing this restriction. For these reasons, DOJ's collection and use of a person's citizenship information in connection with an ammunition background check is strictly prohibited by federal and state law and lacks the necessity, authority, and consistency required by the APA.

II. DOJ'S REVISED ECONOMIC AND FISCAL IMPACT STATEMENT AND PROPOSED FEES

In addition to the revised text of the proposed regulations and ISOR addendum, DOJ has also included a revised Economic and Fiscal Impact Statement that goes into additional detail concerning the expected cost and revenue of administering the required ammunition background check program. The information serves to justify DOJ's selected fees. But as discussed below, there are serious flaws with DOJ's estimations.

A. DOJ's Estimated Costs to Businesses Are Grossly Understated

DOJ's cost estimate for vendor staff processing time is based on California's minimum wage (\$11/hour). This is an unreasonable assessment given that COEs are required for every vendor employee and the required training for such employees. Using minimum wage also ignores management level positions necessary to oversee employees and assumes a two-minute processing time for each transaction. Given the oversight necessary to ensure compliance with California law (which can result in license revocation and potential criminal penalties for any

¹⁰ Although it is true that Senate Bill No. 1235 was adopted in connection with Proposition 63, Proposition 63 controls and is the actual source for these requirements. See also *In re Espinoza*, 192 Cal.App. 4th 97 (4th Dist. 2011) (prohibiting state agencies from offering an interpretation that cannot be "construed in context of the nature and obvious purpose . . . that does not harmoniz[e] [with] all [the] provisions relating to the subject matter").

¹¹ To further illustrate this point, the COE application does not even contemplate ammunition purchases as a reason for seeking a COE, as the application and COE requirements have long been in place well before the adoption of the ammunition sales restrictions. See *BOF 4008 (Rev. 10/2014): Certificate of Eligibility Application*, California Department of Justice, Bureau of Firearms, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/coeapp.pdf> (Oct. 2014).

violation), it is wholly unreasonable for DOJ to assume costs based on California's minimum wage and such a short time estimation for each transaction, not to mention the cost of legal counsel to guide vendors through compliance.

This gross understatement is further illustrated when compared to DOJ's salaries for the "59 new positions" that are responsible for processing ammunition transactions on DOJ's end. These salaries total \$5,839,347 in the first year (an average of \$98,971 per employee), and \$4,515,371 for every year thereafter (an average of \$76,531 per employee). Even assuming the national standard of 2,087 hours per year, this amounts to approximately \$36 per hour at least per DOJ employee tasked with processing ammunition transactions—excluding any additional costs such as training. For DOJ to assume a minimum wage employee will be responsible for administering a vendor's program, when DOJ's own employees earn more than double that, raises serious questions as to its projected costs to businesses.

For these reasons, DOJ needs to revise its Economic and Fiscal Impact Statement to better account for ammunition vendor wages and related costs.

B. DOJ's Proposed Fees Exceed Its Reasonable Cost of Regulatory and Enforcement Activities

DOJ states that the proposed fees of \$1 for Standard Ammunition Background Checks and COE Verifications are "necessary to recover the reasonable costs of regulatory and enforcement activities." Yet, DOJ also states that it intends to "build a reserve for economic uncertainties." Not only is such a reserve contrary to both the express limitations of the Penal Code and the California Constitution,¹² but DOJ provides no information as to how much of a reserve it intends to maintain.

For the first year the system is scheduled to launch, DOJ has estimated it will incur \$12,844,697 in expenses while taking in \$14,104,000 in revenue. And in fiscal years thereafter, DOJ estimates an average of \$9,886,506 in expenses while taking in the same amount of revenue. The reasons for the initial costs in the first year "include personal services, operating expenses and equipment, system enhancements, infrastructure, and other costs."

Taking DOJ's estimates at face value, the proposed fees exceed 9% of its costs in the first fiscal year and nearly 30% of its overall costs in the years thereafter.

As stated in Penal Code section 30370, DOJ is only authorized to "recover the reasonable cost of regulatory and enforcement activities," and is only authorized to charge a fee that **cannot exceed** those costs.¹³ In other words, DOJ is not authorized to charge a fee that would allow it to

¹² See Cal. Const. art. XIII A, § 3(a)(1), (d) (when charging a fee, an agency must show "that the amount is no more than necessary to cover the reasonable costs of the governmental activity[.]")

¹³ Cal. Penal Code § 30370(e); See also Cal. Penal Code § 30370(c) (allowing DOJ to "recover the cost of processing and regulatory and enforcement activities" related to the full-scale background check procedure which cannot "exceed the fee charged for [DOJ's] Dealers' Record of Sale (DROS) process").

“build a reserve” and then adjust the fee at a later date. But DOJ’s proposed fee does just that, and therefore violates the necessity, authority, and consistency requirements of the APA, as well as the California Constitution.

III. REVISED SECTION 4306 – EXEMPTED INDIVIDUALS

DOJ has revised the list of individuals it considers exempt from DOJ approval to purchase or transfer ammunition. In the revised text, DOJ states that these individuals are exempt “pursuant to Penal Code section 30352, subdivision (e).” But there is a fundamental problem with this statement. Penal Code section 30352, subdivision (e) *only* exempts those listed individuals *as applied to subdivisions (a) and (d) of Penal Code section 30352*. It does not provide an exception to the requirements of Penal Code section 30370, a wholly separate Penal Code provision which ammunition vendors must abide by when processing ammunition transactions. While we recognize this as an oversight on the part of the author of the law, DOJ is nevertheless prohibited under the APA from expanding the exception to apply to both provisions absent further legislation.

IV. CONCLUSION

DOJ states that it would be “unduly burdensome” and “unnecessarily expensive” to develop and use a system separate from California’s Dealer Record of Sale (“DROS”) Entry System (“DES”). Yet DOJ was given a loan of \$25 million from the California Legislature for this express purpose, which appears to have not even been utilized.¹⁴ Coupled with the serious issues concerning the required authority, clarity, and consistency under the APA, and the fact that DOJ has prematurely developed the system which these regulations are purportedly designed to implement, our clients respectfully request DOJ revise the proposal accordingly. Should DOJ refuse to do so, our clients are prepared to take any action available under the law to compel DOJ’s compliance, including litigation.

Should you have any questions regarding this letter or its contents, please do not hesitate to contact our office at your convenience.

Sincerely,
Michel & Associates, P.C.



Matthew D. Cubeiro

¹⁴ As noted in DOJ’s Revised Economic and Fiscal Impact Statement, DOJ estimates it will incur \$12,844,697 in expenses for the first fiscal and \$9,886,506 in expenses every year thereafter. The larger first year expenses are due to initial program costs which, presumably, include the creation of the new system. In other words, DOJ has only spent \$2,958,191 of the initial \$25 million start-up loan it received from the California legislature. What’s more, these costs are being incurred during the first fiscal year in which DOJ expects to earn revenue from the new system, raising a question as to why the initial loan was even necessary.

EXHIBIT 37

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**Re: Proposed Emergency Regulations Regarding Identification
Requirements for Firearms and Ammunition Eligibility
Checks – Title 11, Division 5, Chapter 4.**

To whom it may concern:

We write on behalf of our clients, the National Rifle Association of America and the California Rifle & Pistol Association, Incorporated, as well as their respective members and clients throughout California and the United States, in opposition to the California Department of Justice's ("DOJ") proposed emergency regulations regarding "Identification Requirements for Firearms and Ammunition Eligibility Checks – Title 11, Division 5, Chapter 4."¹ If adopted, the proposed regulations would generally require federally compliant identification cards ("IDs") for all firearm and ammunition transactions that require an eligibility check.

For the following reasons, the Office of Administrative Law ("OAL") should reject the proposed emergency regulations and require DOJ to follow the standard rulemaking process:

1. The Bureau of Alcohol, Tobacco, Firearms and Explosives ("BATFE") has expressly stated that federally compliant ID's are not required to satisfy federal background check laws when purchasing a firearm or ammunition;

¹ The proposed emergency regulations were noticed to the public on or about June 10, 2019. A copy of the posted notice can be viewed online at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-notice-proposed-emergency-061019.pdf?>. Documents relating to the proposed emergency rulemaking can also be viewed online at <https://oag.ca.gov/firearms/regs>.

2. California statutes concerning ID requirements for firearm and ammunition transactions are in direct conflict with DOJ's proposed "emergency" regulations;
3. Federal laws concerning ID requirements for firearm transactions specifically contemplate the use of federal non-compliant IDs for legitimate firearm transactions;
4. No "emergency" exists, and DOJ's findings are otherwise insufficient and based on speculation;
5. DOJ's proposed "emergency" regulations would impose significant financial and time-related costs for businesses and individuals alike, costs which DOJ completely fails to address in its Economic and Fiscal Impact Statement; and,
6. DOJ's proposed "emergency" regulations significantly impact other pending regulatory matters which, when combined, raise serious inconsistency concerns.

Both the content and timing of DOJ's proposed "emergency" regulations are highly suspect. Our clients are gravely concerned with this latest in a series of attempts by DOJ's to circumvent the notice and hearing requirements of California's Administrative Procedure Act ("APA") at a time when California licensed firearm dealers and retailers are already facing substantial changes to their business in connection with other pending regulations from DOJ regarding ammunition purchases and transfers.²

As explained below, no emergency exists justifying the proposed regulations being submitted on an "emergency" basis under the APA. Indeed, BATFE has expressly stated that federally compliant IDs are not necessary for purposes of firearm and ammunition eligibility checks. Coupled with other pending significant changes to ammunition transactions scheduled to take effect on July 1, 2019, the shortened notice and comment period DOJ seeks will only lead to hardship for thousands of lawful California businesses and California residents.

I. THE REAL ID ACT OF 2005 AND BATFE POLICIES CONCERNING THE USE OF FEDERAL NON-COMPLIANT IDs FOR FIREARM TRANSACTIONS

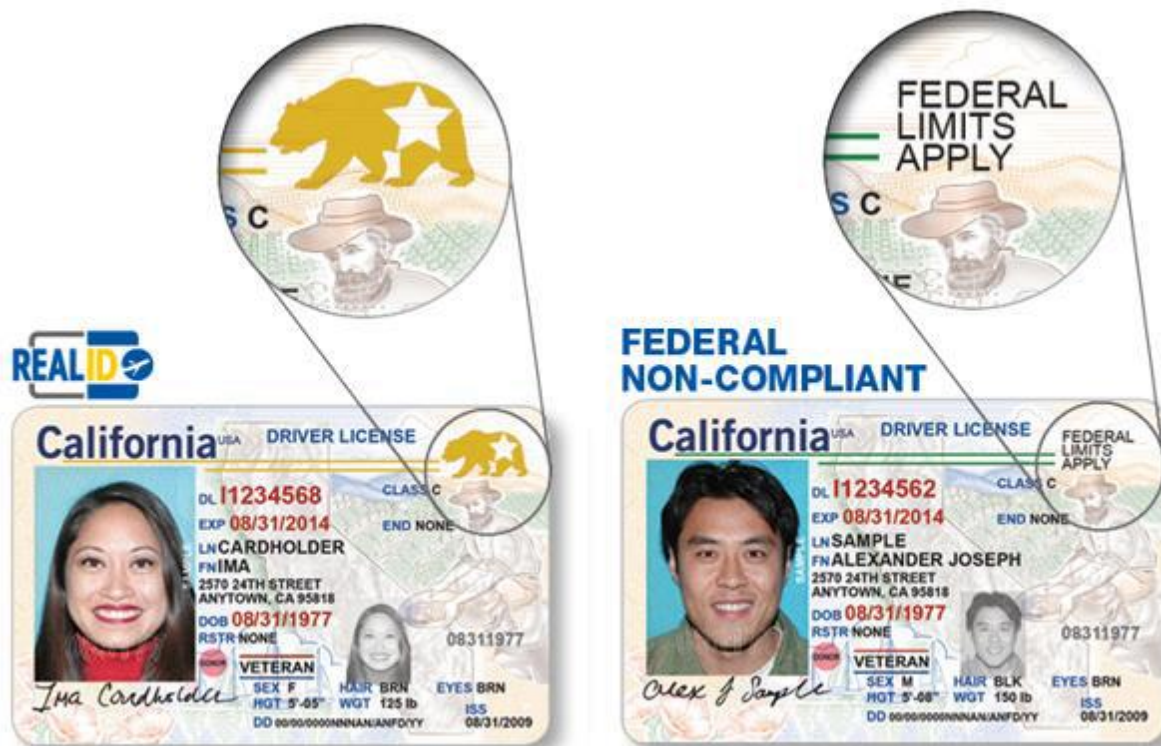
In 2005, Congress enacted the REAL ID Act which, among other provisions, requires federally compliant IDs ("REAL ID") to board any airplane, enter any military base, or enter any federal facility as of October 1, 2020.³ But it was originally unclear if such IDs would also be necessary when purchasing a firearm. BATFE ultimately clarified this ambiguity in 2012 by stating such IDs would not be required for firearm-related transactions.⁴

² See OAL File No. 2019-0517-07, "Ammunition Purchases or Transfers," currently scheduled for a decision from OAL by July 1, 2019.

³ H.R. 418, 109th Cong.

⁴ *FFL Newsletter: Federal Firearms Licensee Information Service*, U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensees-newsletter-may-2012/download> (May 2012).

The following year, California enacted Assembly Bill No. 60 (“AB 60”), which required DMV to issue IDs to individuals who could not provide proof of their lawful presence in the United States.⁵ Shortly after the adoption of AB 60, BATFE issued an open letter clarifying its position, stating that AB 60 type IDs could not be used to purchase a firearm.



Example of a REAL ID (left), versus a non-REAL ID (right).⁶

Initially, BATFE’s restriction had no effect on lawful California residents’ ability to purchase a firearm because, presumably, they were not issued an AB 60 license. But in January 2018, DMV began issuing federal non-compliant IDs with the same “FEDERAL LIMITS APPLY” language printed on the front of the license to lawful residents of California. As a result, any lawful resident issued a federal non-compliant ID was, pursuant to BATFE’s policy, prohibited from purchasing a firearm or ammunition despite the person’s lawful presence in the United States.

⁵ Such IDs have the notation “FEDERAL LIMITS APPLY” printed on the front. As applied to firearm transactions, federal law generally prohibits individuals who are not lawful residents from purchasing or possessing any firearm or ammunition. See, e.g., 18 U.S.C. § 922(d)(5). Licensed firearm dealers “must establish the identity, place of residence, and age of the transferee/buyer,” who must also “provide a valid government-issued photo identification document to the transferor/seller that contains the transferee’s/buyer’s name, residence address, and date of birth.” See *ATF E-Form 4473 (5300.0)*, <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download> (Oct. 2016).

⁶ See also <https://www.dmv.ca.gov/portal/dmv/detail/realid>.

After the issue was brought to BATFE's attention, BATFE de-published its previously stated position, replacing it with a new letter which stated California licensed firearm dealers:

*may accept . . . licenses/identification documents that meet the definition in 18 U.S.C. 1028(d) in fulfilling their requirements under 18 U.S.C. 922(t)(1)(C) and 27 CFR 478.124(c)(3)(i). However, licensees may consider asking for additional documentation (e.g. passport) so that the transfer is not further delayed.*⁷

BATFE's policy revision effectively meant California residents who were issued federally non-compliant IDs by DMV could continue to lawfully exercise their rights and use their ID when purchasing a firearm, even if the ID states "FEDERAL LIMITS APPLY" on the front. This position was later echoed by DOJ, who stated:

*Going forward, [DOJ] will inform interested parties that any valid California driver's license or identification card may be used as "clear evidence of the person's identity and age," including REAL ID and "FEDERAL LIMITS APPLY" versions.*⁸

Both BATFE's updated policy and DOJ's statement were made in early 2018, well over a year ago. Yet now DOJ is claiming an "emergency" exists to reverse that policy. While DOJ does mention recent changes to California law pursuant to Senate Bill 244 ("SB 244") (effective January 1, 2019), SB 244 did not change the fact that AB 60 licenses are otherwise indistinguishable from a federal non-compliant ID issued by DMV. In fact, the "guidance" issued by DOJ to California firearm dealers following the adoption of SB 244 was essentially the same as that mentioned above following BATFE's updated policy.

II. CALIFORNIA'S EXISTING LAWS CONCERNING "CLEAR EVIDENCE OF THE PERSON'S IDENTITY AND AGE" AND "BONE FIDE EVIDENCE OF IDENTITY" ARE IN DIRECT CONFLICT WITH DOJ'S PROPOSED "EMERGENCY" REGULATIONS

When purchasing a firearm in California, purchasers must present "clear evidence of the person's identity and age" to a California licensed firearms dealer.⁹ California law defines the term "clear evidence of the person's identity and age" as either:

- 1) A "valid California driver's license;" or,
- 2) A "valid California identification card issued by the Department of Motor Vehicles."¹⁰

⁷ See <http://michellawyers.com/wp-content/uploads/2019/06/Email-from-ATF-re-Purchase-of-Firearms-Using-CA-Drivers-Licenses-or-ID-Cards.pdf>.

⁸ See <http://michellawyers.com/wp-content/uploads/2019/06/DOJ-Letter-re-Purchase-of-Firearms-Using-CA-Drivers-Licenses-or-ID-Cards-Red.pdf>.

⁹ Cal. Penal Code § 26815(c).

¹⁰ Cal. Penal Code § 16400.

As applied to ammunition transactions, California law simply requires individuals to provide their “driver’s license or other identification number and the state in which it was issued,” or, in the case of a person meeting an exception to the ammunition transfer requirements, “bona fide evidence of identity.”¹¹ As defined under California law, “bona fide evidence of identity” is “a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator’s license, state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.”¹²

Neither firearm nor ammunition transactions, therefore, require individuals to provide federally compliant IDs or any supplemental documentation demonstrating a person’s lawful presence in the United States under California law. A driver’s license or ID issued by DMV, regardless if issued pursuant to AB 60, is still a “valid” ID within the meaning of California law as applied to firearm transactions. Likewise, a federal non-compliant ID sufficiently provides a person’s name, date of birth, description, and picture as required for ammunition transactions.¹³ What’s more, having been aware of the issues concerning federal non-compliant IDs for over a year, DOJ failed to include any proposed regulatory changes requiring federally compliant IDs in their proposed regulations regarding “Ammunition Purchases or Transfers” which are currently pending before OAL.¹⁴

III. FEDERAL ID REQUIREMENTS SPECIFICALLY CONTEMPLATE THE USE OF FEDERAL NON-COMPLIANT IDs FOR FIREARM AND AMMUNITION TRANSACTIONS

Under federal law, firearm purchasers must provide a “valid identification document” containing a photograph of the purchaser.¹⁵ Such documents must be “made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a sponsoring entity of an event designated as a special event of national significance, *a foreign government, political subdivision of a foreign government, an international government or and international quasi-governmental organization* which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.”¹⁶

Federal regulations also require licensed firearm dealers to “verify the identity of the transferee by examining the identification document.”¹⁷ As defined under federal regulations, such documents must contain “the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government,

¹¹ See Cal. Penal Code §§ 30352(a)(2), 30352(c), 30352(e)(8)(B)(ii).

¹² Cal. Penal Code § 16300.

¹³ See Cal. Penal Code § 16300.

¹⁴ See OAL File No. 2019-0517-07.

¹⁵ 18 U.S.C. § 922(t)(1)(C).

¹⁶ 18 U.S.C. § 1028(d)(3) (emphasis added).

¹⁷ 27 C.F.R. § 478.124(c)(3)(i).

a State, a political subdivision of a State, *a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization* which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.”¹⁸

This shows that federal law specifically contemplates the use of federal non-compliant IDs for purposes of firearm transactions, *including IDs issued by foreign governments*. And for good reason. There are several exceptions to the federal restrictions against non-U.S. citizens acquiring or possessing firearms. Such exceptions include aliens who have been lawfully admitted to the United States under a nonimmigrant visa who have either: 1) Been admitted to the United States for lawful hunting or sporting purposes; or, 2) Are in possession of a hunting license or permit lawfully issued in the United States.¹⁹ Such individuals are incapable of obtaining a federally compliant REAL ID by nature of their immigration status, yet are *not* also prohibited under federal law from acquiring or possessing firearms.

IV. DOJ’S CLAIM OF “EMERGENCY” IS A DIRECT RESULT OF ITS OWN POLICY AGENDA REGARDING IMMIGRATION, AND ITS FINDINGS FAIL TO ADEQUATELY DEMONSTRATE THE EXISTENCE OF AN EMERGENCY

An “emergency” in the context of the APA is a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.²⁰ Unless a situation is expressly deemed by statute as an emergency, state agencies must make a finding of emergency by describing specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation. But if the emergency existed and was known by the agency with sufficient time to have been addressed through nonemergency regulations, the finding of emergency must also include facts explaining the failure to address the situation. Findings based only upon expediency, convenience, best interest, general public need, or speculation, are not adequate to demonstrate the existence of an emergency under the APA.²¹

As a threshold matter, DOJ has been aware of this issue long enough to have sought adoption of regulations using the regular rulemaking process. One of the key points DOJ raises in its “Finding of Emergency” is the adoption of SB 244 by the California Legislature in 2018.²²

¹⁸ 27 C.F.R. § 478.11 (emphasis added).

¹⁹ 18 U.S.C. § 922(y)(2)(A).

²⁰ Gov’t Code § 11342.545.

²¹ Gov’t Code § 11346.1(b)(2).

²² See <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-finding-emergency.pdf?>; See also Senate Bill No. 244 (2017-2018 Reg. Sess.) https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB244. DOJ also references a “California Special Alert” our clients presented to their members concerning the use of non-REAL IDs for firearm purchases. But DOJ fails to note that this alert is outdated and has been replaced with more recent information. The most recent information can be found online at <https://crpa.org/news/crpa/information-bulletin-real-ids-non-real-ids-and-ab-60-type-licenses->

DOJ states that SB 244, as well as other recently adopted California laws regarding driver's licenses and identification cards, have caused "significant changes . . . governing their use as evidence of citizenship or immigration status."²³ These changes, according to DOJ, "have affected the eligibility check process and have left firearm dealers and ammunition vendors, as well as law enforcement agencies, unable to rely on federal non-compliant licenses."²⁴ But DOJ was clearly aware of the adoption of SB 244 and its effect, and still waited nearly six months after it took effect to propose their "emergency" regulations.

What is not stated by DOJ is that it failed to mention any of these concerns to the California Legislature while SB 244 and other related bills were being considered. In fact, California's Attorney General has often expressed support for California's efforts in these regards.²⁵ As a result, DOJ's claimed "emergency" is of its own making. DOJ could have raised its concerns at any point during the legislative process for the bills it mentions—yet it chose not to do so in favor of supporting its unrelated immigration agenda. What's more, DOJ's findings amount to nothing more than a general public need or speculation, as demonstrated by the fact that it has not described a single instance where a prohibited person was able to obtain firearms or ammunition as a result of these issues. DOJ's findings are therefore not adequate to demonstrate the existence of an emergency as required by the APA.

V. DOJ'S PROPOSED "EMERGENCY" REGULATIONS WILL RESULT IN SIGNIFICANT TIME AND MONETARY COSTS FOR LICENSED BUSINESSES AND THEIR CUSTOMERS

DOJ's "Estimated Private Sector Cost Impacts" information provided in its Economic and Fiscal Impact Statement grossly mischaracterizes the impact these proposed regulations will have on lawful private businesses. DOJ states that no businesses or jobs are affected because the proposal only "specif[ies] the documentation used to identify yourself when submitting a form or

[for-purchasing-a-firearm/](#). As you can see, this information was distributed in October 2018, *nearly seven months after the alert referenced by DOJ*. At the very least, DOJ's reference to outdated information highlights the lack of a true emergency, for DOJ appears to have itself relied on information provided by our client as a basis for its claim.

²³ <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-finding-emergency.pdf?>.

²⁴ *Id.*

²⁵ See, e.g., presentation by Jonathan Blazer, Special Assistant to the Attorney General, California Department of Justice, http://www.cpcannualconference.com/uploads/8/1/4/9/81491828/bs3a_-_impact_of_immigration_policies_on_health_centers_-_2slides.pdf (Oct. 2017) (noting DOJ's "Overall commitment" to "Protect and Advance the Rights and Safety of all Californians – Including Immigrants" while also "Defend[ing] the Ability of Law Enforcement and other State/Local Agencies to Focus on Core Missions (Public health and *Safety*)" (emphasis added)). What's more, DOJ issued a press release as early as 2014 concerning licenses issued pursuant to AB 60, illustrating just how long DOJ has been aware of such licenses. See <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-issues-consumer-alert-driver-license-scams>.

application that is already in regulation.” But all California licensed firearm dealer and licensed ammunition vendors employees must possess a valid Certificate of Eligibility (“COE”) which must be renewed annually.²⁶ Yet DOJ makes no mention of the potential impacts on the thousands of business owners and employees who may have difficulty in renewing the required licenses as a result of the proposed regulations. In fact, many younger employees of firearm businesses could find themselves out of work should they be unable to obtain the required documentation in time for the required annual renewal of their COE.

DOJ also fails to mention any of the related costs associated with obtaining the required documentation. As discussed in greater detail below, there are significant time and monetary expenses involved in obtaining the required forms of identification and/or supplemental documentation. Nowhere in DOJ’s Economic and Fiscal Impact Statement are these mentioned or even alluded to.

What’s more, DOJ makes no mention of the potential lost revenue to businesses should their customers not have the required documentation at hand when attempting to purchase a firearm or ammunition, let alone the additional time it may take to process a transaction. DOJ’s failure to address these concerns should be cause enough for OAL to disapprove of the proposed “emergency” regulations.

a. Obtaining a REAL ID in California

To obtain a REAL ID in California, individuals must present an original or certified copy of an appropriate “Identity Document,” a certified legal document supporting a name change (if applicable), proof of Social Security Number (photocopies are not accepted), and at least two different documents establishing proof of California residency.²⁷ The required “Identity Document” can include a U.S passport or U.S. birth certificate, as well as other types of identification. Application fees for a REAL ID are \$36 for a driver’s license and \$31 for an identification card, with an unspecified processing time.²⁸

While it is true some California gun owners have already obtained a REAL ID, many of those IDs are in fact federally non-compliant as a result of DMV’s failure to properly implement the REAL ID program. As stated on DMV’s website, DMV “followed the process” of Wisconsin, but several months later was informed by the federal government that those processes were inadequate.²⁹ DOJ’s proposed “emergency” regulations, however, make no mention of this issue—*let alone how a California licensed firearms dealer will be able to distinguish between*

²⁶ See, generally, <https://oag.ca.gov/firearms/cert-eligibility>. See also 11 C.C.R. § 4045.1(d)(1) (apply DOJ’s proposed “emergency” regulations to “Certificate of Eligibility applications, pursuant to Penal Code section 26710”).

²⁷ See https://www.dmv.ca.gov/portal/wcm/connect/2db22455-e270-47a3-819c-d7c7716d5194/List_of_Docs_REALID.pdf?MOD=AJPERES&CVID=.

²⁸ <https://www.dmv.ca.gov/portal/dmv/detail/realid>.

²⁹ See <https://www.dmv.ca.gov/portal/dmv/detail/realid/residencyfaqs> (last visited June 19, 2019).

a REAL ID that is federally compliant and a REAL ID that was issued prior to DMV amending its application process to be federally compliant.

b. Required “Identity Document” for REAL IDs and DOJ’s Proposed “Emergency” Regulations as Both Applied to U.S. Citizens

Although DOJ’s proposed “emergency” regulations list several alternative documents that can be provided in support of a federally non-compliant ID, only some of these can be obtained by a U.S. citizen.³⁰ The same is true for the required “Identity Document” when applying for a REAL ID. A foreign passport with a valid U.S. immigrant visa, for example, would not be available to U.S. citizens by nature of their citizenship. This generally leaves the option of obtaining a U.S. passport or certified copy of a U.S. birth certificate, which can be both costly and time consuming.

To obtain a U.S. Passport, initial applicants must provide “primary evidence of U.S. citizenship,” which for U.S. born individuals can only be a U.S. birth certificate.³¹ Absent any expedited processing costs, initial applicants must also pay at least \$145 in fees, \$110 of which is non-refundable whether or not the passport is issued. It will also take anywhere between 6-8 weeks to process the application. Expedited processing is available, but at a cost of \$60 in addition to the \$145 fee.³² And should the individual be unable to provide a birth certificate, a file search will be necessary, requiring an additional \$150 fee.³³

Obtaining a certified copy of a U.S. birth certificate can be equally time consuming, depending on the person. Consider, for example, a California adult resident who was adopted at a young age from a different state. Not only may this person not know for certain his or her county or city of birth, but he or she may not also know the name of their biological parents—information that is often required when seeking a certified copy of a birth certificate.³⁴ While lacking this information may not ultimately prohibit the individual from obtaining a certified copy of their birth certificate, it will most certainly delay the application. Setting aside those delays, some states take up to 22 weeks to process applications and charge up to \$34 in standard processing fees (with up to an additional \$46 for “expedited” processing).³⁵

³⁰ See 11 C.C.R. § 4045.1(b) (proposed).

³¹ See <https://travel.state.gov/content/travel/en/passports/requirements/citizenship-evidence.html>.

³² See https://travel.state.gov/content/dam/passports/forms-fees/Passport%20Fees%20Chart_TSG.pdf.

³³ Id. It should also be noted that individuals must provide a 2” x 2” color photo taken within the past six months, necessitating the individual possess the equipment to do so or pay an additional fee to have the photo taken (usually \$15 if taken at a U.S. Post Office).

³⁴ See, e.g., Vital Records “Certified Copy of Birth” application, available online at <https://www.vitalrecordsonline.com/birth-certificate/application>.

³⁵ See <https://www.vitalrecordsonline.com/state-fees-vital-records>.

In sum, expediting a U.S. Passport application for a person who also lacks a birth certificate will require over \$355 in fees, at minimum, just to be able to satisfy DOJ's proposed emergency regulations when purchasing a firearm or ammunition in California. And the least-costly alternative (obtaining a certified copy of a birth certificate) can take up to 22 weeks depending on the person's place of birth.

But the person's difficulties may not end here. Should the person's name appear differently on his or her federal non-compliant ID (or the chosen "Identity Document" when applying for a REAL ID), the individual will also be required to provide an additional certified document. Such documents include adoption paperwork or a marriage certificate. Obtaining any of these documents are likely to require a fee and additional processing time in addition to the above.³⁶

VI. EFFECT OF DOJ'S PROPOSED "EMERGENCY" REGULATIONS ON OTHER PENDING REGULATORY ACTIONS (AMMUNITION PURCHASES OR TRANSFERS)

Finally, the effect DOJ's proposed "emergency" regulations have on a currently pending regulatory proposal should be considered. As noted above, OAL is currently reviewing a standard rulemaking proposal from DOJ concerning "Ammunition Purchases or Transfers."³⁷ At the time of drafting this letter, OAL is still reviewing this proposal and is scheduled to issue a decision by July 1, 2019. Significant portions of this pending proposal address the required identification and background check requirements regarding ammunition transactions. DOJ's proposed "emergency" regulations, therefore, should be considered in connection with the pending ammunition transaction proposal.

For example, in "Attachment A" to DOJ's Economic and Fiscal Impact Statement for the related ammunition transactions proposal, DOJ states that it "estimates that it will take approximately two minutes to process a Standard Ammunition Eligibility Check or Certificate of Eligibility (COE) verification, so the direct costs for an ammunition vendor can be derived from taking the approximate two-minute processing time and multiplying it by the 13 million transactions while valuing ammunition vendor staff time at \$11 per hour."³⁸ Yet nowhere in this estimation does DOJ appear to consider the time it will take for vendors to verify the person's federally-compliant ID or any of the related documentation that may be necessary should the proposed "emergency" regulations be enacted. Nor does the proposal consider any of the costs or times associated with obtaining the necessary ID or related documents.

In sum, DOJ's Economic and Fiscal Impact Statement for the proposed regulations regarding ammunition transactions previously submitted to OAL is erroneous or, at best, incomplete, and should not be considered absent further clarification from DOJ that these issues were considered. Even then, the question remains why DOJ's Economic and Fiscal Impact

³⁶ See, e.g., <https://www.vitalrecordsonline.com/state-fees-vital-records> (listing fees for marriage certificates and processing times up to 22 weeks for standard processing).

³⁷ OAL File No. 2019-0517-07.

³⁸ <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-std399-15day-041819.pdf?>

Statement for the proposed “emergency” regulations at issue are silent on the matter. As a result, should DOJ wish to have its “emergency” regulations adopted, consistency and fairness demands that DOJ revise its related ammunition transaction proposal accordingly.

VII. CONCLUSION

Only in the most urgent circumstances should a state agency be permitted to circumvent the strict procedural requirements of the APA through the emergency rulemaking process. As illustrated above, no such emergency exists here. What’s more, any issues are a direct result of the California Legislature and Attorney General’s policy agenda relating to immigration. Given the express guidance from BATFE allowing the use of non-REAL IDs for firearm-related transactions, as well as the many significant problems this proposal creates for existing laws and other pending regulations, it is wholly improper for DOJ to mandate their use via regulation.

Should you have any questions concerning the contents of this letter, please do not hesitate to contact our office.

Sincerely,
Michel & Associates, P.C.

A handwritten signature in black ink, appearing to read 'MC', with a stylized flourish extending from the end.

Matthew D. Cubeiro

CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Rhode, et al. v. Becerra*
Case No.: 3:18-cv-00802-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:

DECLARATION OF SEAN A. BRADY

on the following parties by electronically filing the foregoing on July 22, 2019, with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on July 22, 2019, at Long Beach, CA.

s/ Laura Palmerin
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KIM RHODE, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of the State
of California,

Defendant.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: August 19, 2019
Hearing Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez

[Filed concurrently with Notice of Motion
and Motion for Preliminary Injunction,
Request for Judicial Notice, Declarations
Sean A. Brady, Richard Travis, James
Gilhousen, Dan Wolgin, Denise Welvang,
Scott Lindemuth, Bill Ortiz, David
Burwell, Chris Puehse, Travis Morgan,
Ethan Bartel, Myra Lowder, Daniel Gray,
Christina McNab, and George Dodd]

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INTRODUCTION

California has enacted unprecedented restraints on the acquisition and transfer of ammunition. The scheme purports to funnel everyone seeking to exercise their Second Amendment right to acquire ammunition into a single, controlled source, an in-state licensed vendor, for the purpose of confirming purchasers' legal eligibility to possess ammunition and to keep track of all purchases. While making sure dangerous people do not obtain weapons is a laudable goal for government, California's scheme goes too far and must be enjoined. California ammunition vendors have reported as high as 60% of people who undergo California's background check do not pass. And California has placed the additional, absurd requirement that the very identification it issues is insufficient to undergo the background check, resulting in countless other eligible people being unable to exercise their rights. These two phenomena alone are enough to justify a preliminary injunction to stop the irreparable harm to the public. But there are even more burdens caused by California's scheme that make it undeniable. What's more, these laws unlawfully burden interstate commerce, resulting in out-of-state vendors being wholly precluded from the California ammunition market. For these reasons, the Court should return California to the status quo of two years ago, along with the rest of the country, while the parties litigate the merits.

FACTUAL BACKGROUND

I. CALIFORNIA'S AMMUNITION SCHEME

California's new ammunition restrictions are the product of Senate Bill No. 1235, enacted July 1, 2016, and Proposition 63, approved by voters during the November 2016 General Election. As a result, with few exceptions, "the sale of ammunition by any party must be conducted by or processed through a licensed ammunition vendor." Cal. Penal Code § 30312(a)(1). All persons wishing to sell ammunition must either have an "ammunition vendor license" from the California Department of Justice, or already be California licensed firearm dealers ("Vendors"). *Id.* §§ 16151, 30342, 30385(d). Vendors cannot display ammunition in a manner that allows it to be accessible to a prospective

purchaser. *Id.* § 30350; *see also* Cal. Code Regs. tit. 11, §§ 4260-4262.

When neither party to an ammunition sale is a Vendor, the seller must first “deliver the ammunition to a [V]endor to process the transaction,” who will then “promptly and properly deliver the ammunition to the purchaser, if the sale is not prohibited, as if the ammunition were the [V]endor’s own merchandise.” *Id.* § 30312(a)(2). Any person who wishes to sell more than 500 rounds of ammunition in a 30-day period, however, cannot process the transfer through a Vendor, but rather must become one. *Id.* § 30342(a). Vendors may charge purchasers a fee to process private party transactions. *Id.* § 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). “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.” *Id.* § 4263(b). In other words, there is no cap on what a 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, DOJ has taken the position that Vendors are not required to process private-party transactions, including from out-of-state vendors selling to California consumers. Decl. Sean A. Brady Supp. Mot. Prelim. Inj. (“Brady Decl.”) ¶ 9. Thus, ammunition vendors that do not have a physical presence in California operate at the whim of Vendors that do.

With few exceptions, all ammunition transactions must occur “face-to-face” with the seller and buyer physically present. Cal. Penal Code § 30312(b). Ammunition may still be “acquired over the internet or through other means of remote ordering if a licensed ammunition vendor initially receives the ammunition and processes the transaction.” *Id.* Other than sales to law enforcement and certain firearm related businesses, exceptions to the vendor processing and “face-to-face” requirements include (1) persons who purchase or receive ammunition at a target facility holding a business or other regulatory license, provided the ammunition stays on the facility’s premises; or (2) persons who purchase or receive ammunition from a spouse, registered domestic partner,

or immediate family member. *Id.* §§ 30312(c)(6), 30312(c)(9)-(10). DOJ has taken the position that federally licensed collectors who possess a Certificate of Eligibility (“COE”) are *not* exempt. Brady Decl. ¶ 8; *but see* Cal. Penal Code § 30312(c)(6).

And subject to some narrow exemptions, a resident of California may not bring into California any ammunition acquired outside of the state, unless it is first shipped to a licensed vendor in California to process the transaction. Cal. Penal Code § 30314(a)-(b). This transaction would also be completely subject to the in-state vendor’s discretion to charge the purchaser a fee in any amount or to simply refuse to process it. *Id.* § 30312(a).

DOJ must electronically approve all ammunition sales processed by a Vendor in a manner proscribed by DOJ regulations before a transferee may take possession of any ammunition as of July 1, 2019. *Id.* § 30370(a). DOJ can “recover the reasonable cost of regulatory and enforcement activities” related to this electronic approval requirement by charging ammunition transferees a per transaction fee not to exceed \$1 for the first two options, and up to “the fee charged for the department’s Dealers’ Record of Sale (DROS) process” (\$19) for the third option. *Id.* § 30370(c), (e).

Once approved, all ammunition sales are also electronically recorded with DOJ at the time of delivery, including: (1) the date of transfer, (2) the transferee’s driver’s license or other identification number and the state in which it was issued, residential address and telephone number, date of birth, full name and signature; (3) the brand, type, and amount of ammunition being sold or transferred; and (4) the name of the salesperson. *Id.* § 30352(a)(1)-(7). The only exception for this requirement is for persons who receive ammunition at a target facility holding a business or other regulatory license, provided the ammunition stays on the facility’s premises. *Id.* § 30352(e)(3).

II. DOJ’S AMMUNITION PURCHASE AND TRANSFER REGULATIONS

On June 24, 2019, a mere week before they took effect, DOJ adopted regulations establishing the procedures for obtaining the required electronic DOJ approval and record-keeping requirements (the “System”). *See* Cal. Code Regs. tit. 11, §§ 4300-4309. The regulations provide four methods Vendors can use to obtain electronic approval:

1. A check of the transferee's information to ensure it matches an entry in the Automated Firearms System ("AFS") and matches no entry in the Prohibited Armed Persons File (called the "Standard Ammunition Eligibility Checks (AFS Match)");
2. A check to ensure the transferee is not prohibited from purchasing or possessing ammunition (called the "Basic Ammunition Eligibility Check (Single Transaction or Purchase)");
3. A purchase or transfer of ammunition as part of a firearm transaction (called the "Firearms Eligibility Check"); *or*,
4. Verification of the transferee's current COE (called the "COE Verification Process").

Cal. Code Regs. tit. 11, §§ 4302-4305.

A. Standard Ammunition Eligibility Check (AFS Match)

To submit a Standard Ammunition Eligibility Check, the System requires Vendors to collect a transferee's "name, date of birth, current address, and driver's license or other government identification number in the manner described in Penal Code section 28180,"¹ as well as a telephone number. Cal. Code Regs. tit. 11, § 4302(c); *see also* Decl. David Burwell Supp. Pls.' Mot. Prelim. Inj. ("Burwell Decl.") ¶ 3; Decl. Chris Puehse Supp. Pls.' Mot. Prelim. Inj. ("Puehse Decl.") ¶ 5; Decl. Travis Morgan Supp. Pls.' Mot. Prelim. Inj. ("Morgan Decl.") ¶ 3; Decl. Ethan Bartel Supp. Pls.' Mot. Prelim. Inj. ("Bartel Decl.") ¶ 3; Decl. Myra Lowder Supp. Pls.' Mot. Prelim. Inj. ("Lowder Decl.") ¶ 3; Decl. Daniel Gray Supp. Pls.' Mot. Prelim. Inj. ("Gray Decl.") ¶ 3; Decl. Bill Ortiz Supp. Pls.' Mot. Prelim. Inj. ("Ortiz Decl.") ¶ 5. This information must be uploaded to DOJ's Dealer Record of Sale Entry System ("DES"). *Id.*; *see also* Decl. Christy McNab

¹ Penal Code section 28180 requires the purchaser's name, date of birth, and driver's license or identification number to "be obtained electronically from the magnetic strip on the purchaser's driver's license or identification and shall not be supplied by any other means except as authorized by the department." The only exceptions are when the purchaser's identification consists of a military identification card or, because of technical limitations, the magnetic strip reader cannot obtain the required information (in which case the vendor must "obtain a photocopy of the identification as proof of compliance"). Cal. Penal Code § 28180(a),(b).

Supp. Pls.’ Mot. Prelim. Inj. (“McNab Decl.”) ¶ 4. Upon completion of the check, DOJ will update the submitted DES record to instruct the Vendor to either approve or reject the transaction. Cal. Code Regs. tit. 11, § 4302(d). The fee for this option is \$1. Cal. Code Regs. tit. 11, § 4302(b). On its website, DOJ states that a determination can be made by DOJ in about 2 minutes. Ex 26. And in a bulletin released only to Vendors, DOJ states that an approval for this option is only valid for a period of 18 hours. Ex. 22.

DOJ also created a means to update AFS records so that purchasers may submit a Standard Ammunition Eligibility Check. *See* Cal. Code Regs. tit. 11, §§ 4350-4353. But to update an AFS record, individuals must provide their personal information “as it was, at the time when a firearm was purchased or transferred into his or her ownership, as reported to” DOJ. Cal. Code Regs. tit. 11, § 4353(c). Failing to provide this or other required information will result in a rejection for the requested change. *See* Cal. Code Regs. tit. 11, § 4353(i). In practice, this means the information must match exactly what was submitted to DOJ as part of the original transaction. Individuals lacking it must request a copy of their existing AFS records by submitting an “Automated Firearms System (AFS) Request for Firearm Records Form.”² In addition to the notarization requirement, DOJ’s processing time for this form has been reported to be as long as four months. Decl. Rick Travis Supp. Pls.’ Mot. Prelim. Inj. (“Travis Decl.”) ¶ 13.

B. Basic Ammunition Eligibility Check (Single Transaction or Purchase)

To submit a Basic Ammunition Eligibility Check, the System requires Vendors to collect the transferee’s “name, date of birth, current address, gender, hair color, eye color, height, weight, and driver’s license or other government identification number in the manner described in Penal Code section 28180, and telephone number, United States citizenship status, federal Alien Registration Number or I-94 (if applicable), place of birth, alias name(s), and race.” Cal. Code Regs. tit. 11, § 4303(c). This information must

² See Ex. 28. A copy of this form is available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/AFSPriateCitizen.pdf>.

be uploaded to DES and the Vendor must provide the transferee with an Ammunition Transaction Number “to monitor the status” of the check. Cal. Code Regs. tit. 11, § 4303(c)-(d); *see also* McNab Decl. ¶ 12. Once the check is complete, DOJ will update the submitted DES record instructing the Vendor to either approve or reject the transaction. Cal. Code Regs. tit. 11, § 4303(e). The fee is \$19 and any approval expires 30 calendar days from when it is issued. Cal. Code Regs. tit. 11, § 4303(b), (d)(1). On its website, DOJ states that a determination “may take days to complete.” Ex 26.

C. Firearms Eligibility Check

The System also establishes a procedure for individuals who are purchasing a firearm from a California licensed firearm dealer to also purchase ammunition at the same time. Cal. Code Regs. tit. 11, § 4304. For this option, a transferee “shall only pay the fee for the firearms eligibility check.” Cal. Code Regs. tit. 11, § 4304(b). But if trying to take possession of ammunition before completion of the firearms eligibility check, the transferee must conduct a separate transaction using one of the other available options to obtain the necessary electronic DOJ approval. Cal. Code Regs. tit. 11, § 4304(c).

D. COE Verification Process

To submit a COE Verification, the System requires Vendors to collect the transferee’s “name, date of birth, current address, and driver’s license or other government identification number in the manner described in Penal Code section 28180, telephone number, and COE number” and upload this information to DES. Cal. Code Regs. tit. 11, § 4305(c). *Id.*; *see also* McNab Decl. ¶ 4. DOJ will then update the submitted DES record instructing the Vendor to either approve or reject the transaction. Cal. Code Regs. tit. 11, § 4305(d). The fee for this option is \$1. Cal. Code Regs. tit. 11, § 4305(b). On its website, DOJ states that a COE verification can be made by DOJ in about 2 minutes. Ex 26. And in a bulletin released only to Vendors, DOJ states that an approval for the COE verification is only valid for 18 hours. Ex. 22. A COE can only be obtained by applying to DOJ via the California Firearms Application Reporting System. Ex. 32. The initial application process “includes a firearms eligibility criminal background

check” following the submission of the applicant’s fingerprints through a Live Scan. *Id.* Initial applications require a \$71 fee be paid to DOJ, as well as any fee charged by the Live Scan Operator during the required fingerprint submission. *Id.* Once issued, a COE is valid for one year and must be renewed annually for a \$22 fee. *Id.*

III. DOJ’S EMERGENCY REGULATIONS REGARDING IDENTIFICATION REQUIREMENTS FOR FIREARMS AND AMMUNITION ELIGIBILITY CHECKS

DOJ now requires individuals undergoing any firearm or ammunition eligibility check—which includes both ammunition purchases and COE applications—to present federally compliant identification or supplemental proof of lawful U.S. presence. Cal. Code Regs. tit. 11, § 4045.1.³ All California residents are issued a driver license or identification card with the notation “FEDERAL LIMITS APPLY” (“FLA ID”), unless the individual expressly requests a REAL ID and meets the requirements for one. *See* Ex. 29. If the proof of lawful U.S. presence differs from the person’s name, individuals must also provide a certified legal document supporting the reasons for the name change. *Id.*

Under DOJ’s regulation, a California driver license or identification card with the notation “FEDERAL LIMITS APPLY” is sufficient for virtually all other purposes, yet not to acquire ammunition. Cal. Code Regs. tit. 11, § 4045.1. While this form of ID is issued by the State itself, as proof of both identity and residence, individuals possessing this state-issued ID must nonetheless present additional documentation (such as a valid U.S. passport or certified copy of a U.S. birth certificate) to purchase ammunition. Cal. Code Regs. tit. 11, § 4045.1(b). Should this additional proof not match precisely the name appearing on the California ID, additional documentation must be provided explaining the reason for the name change. Cal. Code Regs. tit. 11, § 4045.1(c).

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³ In general, “federally compliant identification” in California consists of a REAL ID issued by the California Department of Motor Vehicles. *See* Ex. 34. Driver’s licenses or identification cards with the notation “FEDERAL LIMITS APPLY” do not constitute “federally compliant identification.” *Id.*

IV. IMPLEMENTATION OF DOJ'S AMMUNITION REGULATIONS

On July 1, 2019, the System took effect. Before its implementation, however, the only guidance DOJ provided to Vendors came in an "Important Notice" transmitted only through DES on June 28, 2019, which for the first time specified the equipment Vendors must possess to access the System. McNab Decl. ¶¶ 5, 9. Vendors who tried to prepare for the new requirements were only able to review the "proposed" text from earlier DOJ regulatory actions, as DOJ had not disclosed the adopted text to Vendors. McNab Decl. ¶ 6. Upon logging in to the System through DES for the first time on July 1, 2019, Vendors who were not already California licensed firearm dealers were forced to review and acknowledge over 65 bulletins, totaling over 400 pages, before being able to access DES and begin processing transactions. McNab Decl. ¶¶ 7, 10; Puehse Decl. ¶¶ 3-4.

For every background check option, DES requires Vendors to collect a purchaser's gender, race, eye color, hair color, height, weight, date of birth, place of birth, U.S. Citizenship status, and phone number in addition to the information collected from the purchaser's ID—despite DOJ's regulations requiring this information only for Basic Ammunition Eligibility Checks. Cal. Code Regs. tit. 11, § 4303(c); *see also* McNab Decl. ¶ 12. At least one Vendor has been unable to obtain the required personal information for any one purchaser by swiping the ID through the magnetic strip reader as required by DOJ—and has instead been forced to manually edit some or all of the required entries. McNab Decl. ¶ 12. And sometimes DES provides Vendors a choice for some required information where selecting the incorrect one results in a rejection. McNab Decl. ¶ 13.⁴

But this is only the first half of the process. Once a transferee's eligibility check has been approved, the Vendor must then help the customer select the ammunition to be purchased and begin entering this information into DES. McNab Decl. ¶¶ 20-21. DOJ has instructed all Vendors to print any pages associated with the transaction, have both the

⁴ For example, in one transaction for the customer's residence DES listed both "Huntington Beach" and Huntington BCH" as selectable options. *Id.*

recipient and salesperson sign each page, and keep copies of the pages for up to 5 years. McNab Decl. ¶¶ 23, 33; Cal. Penal Code § 30355; Ex. 22 at 13. Before the System's implementation, a typical ammunition transaction could take less than a minute to complete. McNab Decl. ¶ 25. But it now can take 20 minutes—*often more*—just to enter and process the required information through DES, in addition to the time necessary for DOJ to approve or reject the transaction. McNab Decl. ¶ 26; Gray Decl. ¶ 8; Lowder Decl. ¶ 8; Bartel Decl. ¶ 8; Morgan Decl. ¶ 8; Puehse Decl. ¶ 10.⁵ Vendors are also often forced to spend time educating customers on the new requirements and background check options to avoid unnecessary rejections of their transactions. McNab Decl. ¶¶ 30-31.

Following implementation of the System, some Vendors have reported estimated losses of nearly half the daily revenues they enjoyed before the new restrictions took effect. McNab Decl. ¶ 32. Some Vendors have also expressed a genuine fear that the added costs to their business will result in them being unable to maintain a profitable business moving forward. McNab Decl. ¶¶ 33, 38; Gray Decl. ¶ 13; Lowder Decl. ¶ 13; Bartel Decl. ¶ 13; Morgan Decl. ¶ 13; Puehse Decl. ¶ 15.

The System has also resulted in significantly higher denials for ammunition transactions when compared to that of denials for firearm purchases. Vendors have experienced rejection rates between 10% and 60% for all ammunition transactions submitted on or after the System took effect. Burwell Decl. ¶ 9; Puehse Decl. ¶ 11; Morgan Decl. ¶ 9; Bartel Decl. ¶ 9; Lowder Decl. ¶ 9; Gray Decl. ¶ 9; McNab Decl. ¶ 31; Ortiz Decl. ¶ 13. Typical rejection rates for firearm purchases, on the other hand, average around 1%. Ortiz Decl. ¶ 14. In addition to these rejections, many Vendors have been forced to turn away potential customers because they refused to pay for the background check, were unsure if they possessed the necessary documentation, or were unsure if they had records on file with DOJ to obtain the required electronic approval. Burwell Decl. ¶¶

⁵ Some Vendors have reported wait times as high as over a half hour before DOJ responds to a Standard Check or COE Verification—significantly greater than the 2 minutes DOJ has estimated it would take. Ortiz Decl. ¶ 12; *see also* Ex. 26.

10; Puehse Decl. ¶¶ 12-13; Morgan Decl. ¶¶ 10-11; Bartel Decl. ¶¶ 10-11; Lowder Decl. ¶¶ 10-11; Gray Decl. ¶¶ 10-11; McNab Decl. ¶¶ 27-30; Ortiz Decl. ¶¶ 15-16.

V. IMPLEMENTATION OF DOJ’S FEDERALLY COMPLIANT ID REGULATIONS

Following implementation of DOJ’s emergency regulation requiring federally compliant identification for firearm and ammunition eligibility checks, some Vendors have reported that they have been forced to turn away about half of their customers in a given day for lacking a federally compliant ID or supplemental documentation. McNab Decl. ¶¶ 27-28. In fact, Vendors are being forced to turn away customers whose job entails gun use, including some serving in the United States military and a Department of Defense firearms instructor, because of issues with their ID. McNab Decl. ¶¶ 29, 34-35.⁶

Customers of Vendors are not the only victims of DOJ’s emergency regulation. Employees of both California licensed firearm dealers and Vendors who lack the required federally compliant ID or supplemental documentation may soon be unemployed if they cannot obtain at least one. *See, e.g.*, Ortiz Decl. ¶ 17; Decl. George Dodd Supp. Pls.’ Mot. Prelim. Inj. (“Dodd Decl.”) ¶ 7-12. They are now unable to acquire ammunition or keep their job, despite having already been cleared by DOJ to do both.

A. Obtaining a U.S. Passport or U.S. Birth Certificate

Those with a FLA ID only must obtain supporting documentation, e.g., a passport or birth certificate. To obtain a U.S. passport, one must provide “primary evidence of U.S. citizenship,” which for U.S. born individuals is generally limited to a U.S. birth certificate. Ex. 30. Absent expediting costs, individuals must also pay at least \$145 in fees, \$110 of which is non-refundable. Ex. 31. Processing times range anywhere between 6-8 weeks.⁷ Obtaining a certified copy of a U.S. birth certificate will require a search of

⁶ Other than an “Important Notice” transmitted only to Vendors, DOJ has provided no official notice to the public of its adoption. *See* Ex. 20.

⁷ *See* <https://travel.state.gov/content/travel/en/passports/requirements/processing-times.html>. It is possible to expedite the processing of a U.S. Passport application for an additional \$60 fee. Ex. 31. And should the individual be unable to provide a U.S. birth certificate, a file search will be necessary, requiring an additional \$150 fee. *Id.*

county records which can cost up to \$34 and take up to 22 weeks to process.⁸

B. Impact on out-of-state vendors

While the provisions of California's scheme that just took effect on July 1, 2019, only directly affect Vendors, they have also reached out-of-state vendors. Since that time, at least some have noticed an even further decrease in their business with California. Decl. James Gilhousen Supp. Pls.' Mot. Prelim. Inj. ("Gilhousen Decl.") ¶¶ 3, 6-8; Decl. Dan Wolgin Supp. Pls.' Mot. Prelim. Inj. ("Wolgin Decl.") ¶¶ 3-7. Plaintiff Able Ammo has yet to make a single sale to California following July 1, 2019. Gilhousen Decl. ¶ 8.

LEGAL STANDARD

"The purpose of a preliminary injunction is to preserve the status quo pending a determination of the action on the merits." *Chalk v. U.S. Dist. Ct. (Orange Cty. Superin. of Schs.)*, 840 F.2d 701, 704 (9th Cir. 1998). To obtain preliminary injunctive relief, the moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent preliminary relief; (3) that the balance of equities tips in favor of injunction; and (4) that an injunction is in the public interest. *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 55 U.S. 7, 20 (2008)).

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

A. California's Ammunition Scheme Violates the Second Amendment

The Second Amendment provides that "the right of the people to keep and bear Arms . . . shall not be infringed." After conducting an extensive textual and historical analysis, the Supreme Court confirmed in *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), that the Second Amendment protects an "individual right to possess and carry weapons" for self-defense. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010),

⁸ See <https://www.vitalrecordsonline.com/state-fees-vital-records>. It is possible to expedite the search at an additional cost of up to \$46.

the Court held that the “right to keep and bear arms for the purpose of self-defense” recognized in *Heller* is “fully applicable to the States,” *id.* at 750, because it is “among those fundamental rights necessary to our system of ordered liberty,” *id.* at 778. Thus, states and municipalities must protect the individual right protected by the Second Amendment and may not “enact any gun control law that they deem to be reasonable.” *Id.* at 783 (plurality opinion); *see also Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016).

The Ninth Circuit has developed a multi-step framework for adjudicating Second Amendment claims. A court first “asks whether the challenged law burdens conduct protected by the Second Amendment,” and, if so, then analyzes the law under heightened scrutiny. *United States v. Chovan* (9th Cir. 2013) 735 F.3d 1127, 1136. Whether strict or intermediate scrutiny is applied depends on “(1) how close the law comes to the core of the Second Amendment right, and (2) the severity of the law’s burden on the right.” *Id.* at 1138 (citations omitted). “The result is a sliding scale.” *Silvester*, 843 F.3d at 821; *see also Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1119 (S.D. Cal. 2017). If the law “imposes such a severe restriction . . . that it amounts to a destruction of the Second Amendment right,” it is “unconstitutional “under any level of scrutiny.” *Silvester*, 843 F.3d at 821. Under Ninth Circuit precedent, a “law that implicates the core of the Second Amendment right and severely burdens that right warrants strict scrutiny.” *Chovan*, 735 F.3d at 1138. Otherwise, intermediate scrutiny applies. *Silvester*, 843 F.3d at 821.

1. California’s Ammunition Scheme Plainly Implicates Second Amendment Conduct

The Second Amendment protects the possession and acquisition of “arms” that are “typically possessed by law-abiding citizens for lawful purposes.” *Heller*, 554 U.S. at 624-25. It is settled that the Second Amendment protects rights to transfer, acquire, and possess ammunition necessary to keep and bear arms for self-defense. *See Jackson*, 746 F.3d at 967-68. “Constitutional rights . . . implicitly protect those closely related acts necessary to their exercise. . . . The right to bear arms, for example, ‘implies a corresponding right to obtain the bullets necessary to use them.’ ” *Luis v. United States*,

136 S. Ct. 1083, 1097 (2016) (Thomas, J., concurring) (quoting *Jackson*, 746 F.3d at 967 (recognizing that “without bullets, the right to bear arms would be meaningless”)). Indeed, “[a] regulation eliminating a person’s ability to obtain or use ammunition could thereby make it impossible to use firearms for their core purpose.” *Jackson*, 746 F.3d at 967 (citing *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)). The scheme, which imposes a burden on the acquisition of all ammunition in California, is thus subject to heightened scrutiny. *Chovan*, 735 F.3d at 1134.

2. California’s Ammunition Scheme Fails Heightened Scrutiny

Because California’s scheme imposes severe burdens on exercising the right to acquire ammunition, including effectively barring some from acquiring ammunition necessary to exercise their right to armed defense at all, the Court should apply strict scrutiny. *See, e.g., id.* at 1284-85; *Tucson Woman’s Clinic v. Eden*, 379 F.3d 531, 544 (9th Cir. 2004) (“[A] law is subject to strict scrutiny . . . when that law impacts a fundamental right, not when it infringes it.”); *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 54 (1983) (similar). Ultimately, however, it matters not because, even under intermediate scrutiny, the law must be presumed unconstitutional, and the government bears the burden of justifying it. *See, e.g., R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992) (content-based speech regulations are presumptively invalid). The State cannot meet that burden here. To do so, it must make two showings. First, it must prove that the System is “substantially related” to an important government interest. *Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993); *see Chovan*, 735 F.3d at 1139-40. Second, it must prove that its chosen means are “closely drawn” to achieve that end without “unnecessary abridgment” of constitutionally protected conduct. *McCutcheon v. FEC*, 134 S. Ct. 1434, 1456-57 (2014) (quoting *Buckley v. Valeo*, 424 U.S. 1, 25 (1976)); *see Jackson*, 746 F.3d at 961 (noting that Second Amendment heightened scrutiny is “guided by First Amendment principles”). California’s ammunition scheme is neither.

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a. California’s ammunition scheme is not “substantially related” to any public safety interest.

The State will no doubt argue that its scheme furthers public safety by keeping ammunition away from dangerous people, *see* Def.’s Mot. Dismiss First Am. Compl. 1; *see also* Prop 63 sec. 3; SB 1235 Sec. 19—a valid interest, to be sure. But, “it would be hard to persuasively say that the government has an interest sufficiently weighty to justify a regulation that infringes constitutionally guaranteed Second Amendment rights if the Federal Government and the states have not traditionally imposed—and even now do not commonly impose—such a regulation.” *Heller II*, 670 F.3d at 1294 (Kavanaugh, J., dissenting). As explained above, that is precisely the case here: only one other state in the country has adopted an ammunition scheme even remotely comparable to California’s, and that law was never even implemented because it was infeasible.⁹ Surely more states would have adopted such a scheme if it even appeared to work or could be feasibly implemented.

Even accepting that certain ammunition background check and registration systems may substantially further public safety, the question is whether *this* one does. *See Heller v. District of Columbia (Heller III)*, 801 F.3d 264, 297 (D.C. Cir. 2015) (upholding firearm registration but striking specific registration requirements because the District failed to provide “substantial evidence” that they would promote public safety). More specifically, the question is whether the particulars of the System’s excessive burdens on purchasers and Vendors are substantially related to the State’s interest. *Id.* They are not.

Currently, anyone possessing a FLA ID cannot even undergo a background check to purchase ammunition without first providing the additional documentation required

⁹ See Teri Weaver, *Cuomo Agrees to Changes to NY Safe Act Regarding Ammunition Sales*, https://www.syracuse.com/state/2015/07/cuomo_agrees_to_changes_to_ny_safe_act_regarding_ammunition_sales.html (July 10, 2015) (noting that the “ammunition sales database will not be prematurely introduced *until the technology is ready and it does not create an undue burden for business owners*” (emphasis added)).

under Cal. Code Regs. tit. 11, § 4045.1. In other words, the State contends that the identification that California issues as a default and thus implicitly deems sufficient for all other purposes is insufficient for purchasing ammunition—a constitutional right! No court would ever uphold a state law requiring that some form of identification be presented to vote but that the form standard supplied by the state itself is somehow insufficient. *See N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 236 (4th Cir. 2016), *cert. denied*, *North Carolina v. N.C. State Conf. of NAACP*, 137 S. Ct. 1399 (2017). Making matters worse, the State does not even have the excuse here that federal law compels its extra identification requirement because the federal government accepts FLA IDs as sufficient for its own purposes—including to pass background checks to purchase a *firearm*. *See* 27 C.F.R. § 478.11; Brady Decl. ¶ 4. There is simply no plausible basis on which a state can claim that an ID issued by the state itself, and accepted as sufficient by the federal government, is nonetheless insufficient even to allow an individual to undergo a *background check* to determine whether he may exercise his Second Amendment rights.

Compounding these threshold problems, would-be ammunition purchasers with adequate identification are being denied passage of the AFS Match background checks at an alarming rate—in some cases as high as 60 percent. Burwell Decl. ¶ 9; Puehse Decl. ¶ 11; Morgan Decl. ¶ 9; Bartel Decl. ¶ 9; Lowder Decl. ¶ 9; Gray Decl. ¶ 9; McNab Decl. ¶ 31; Ortiz Decl. ¶ 13. Whatever the general denial rate actually is, it is certainly many times that of denials for firearm background checks, according to licensed firearm dealers who have been in business for decades. Ortiz Decl. ¶ 14 (noting firearm denial rates are less than 1%). Such a high (and disproportionate) denial rate cannot accurately reflect the number of persons who are prohibited from possessing a firearm, meaning that many law-abiding people are being unjustifiably denied the ability to obtain ammunition for the firearms that they are constitutionally entitled to keep and bear.

For those successful in overcoming the identification and background check hurdles, the System requires a Vendor to record details of ammunition purchases that

must then be uploaded to a DOJ database. Cal. Penal Code § 30352(a)(1-7); Cal. Code Regs. tit. 11, § 4308(c)(2). DOJ also requires Vendors to print the details of each transaction, sign the printout, have the purchaser sign it, and retain the signed documents in some format for a period of five years. McNab Decl. ¶ 23; Gray Decl. ¶¶ 6-7; Lowder Decl. ¶¶ 6-7; Bartel Decl. ¶¶ 6-7; Morgan Decl. ¶¶ 6-7 Puehse Decl. ¶¶ 8-9; Burwell Decl. ¶¶ 6-7; Decl. Denise Welvang Supp. Pls.’ Mot. Prelim. Inj. (“Welvang Decl.”) ¶ 4.; Ex. 22; Cal. Pen. Code § 30355. To Plaintiffs’ knowledge, the State has identified no interest in its maintaining records about what ammunition people purchase. Indeed, the State has failed to connect the time-consuming and costly task for Vendors of compiling details for every single ammunition purchase to any law enforcement function; especially when such records cannot even be relied on as accurate. See, e.g., McNab Decl. ¶¶ 13, 15 (DES providing different options for the same city and DOJ instructing Vendors to manually edit a purchaser’s personal information); Ortiz Decl. ¶¶ 18-19 (DES unable to match existing Firearm Safety Certificate (“FSC”) records because of purchaser’s suffix).

And given that such records are already being recorded in the “Ammunition Purchase Records File” maintained by DOJ, it is hard to imagine any interest at all in burdening vendors by requiring that they also keep those records. See Cal. Pen. Code § 30352(b). Indeed, Congress repealed a federal law requiring ammunition vendors to maintain copies of transactions after the BATFE Director testified to Congress that those “recordkeeping requirements for ammunition have no substantial law enforcement value.” *Legislation to Modify the 1968 Gun Control Act*, Hearing Report, Committee on the Judiciary, U.S. House of Representatives, October 38, 30, Nov. 8, 1985, and February 19 and 27, 1986. The State has made no findings to the contrary.

b. California’s ammunition scheme lacks a reasonable “fit” with the State’s interest in preventing criminal misuse.

Even assuming this scheme did substantially further the State’s interests, “intermediate scrutiny requires a ‘reasonable fit’ between the law’s ends and means.” *Silvester v. Becerra*, No. 17-342, 2018 WL 943032 *4 (U.S. Sup. Ct. Feb. 20, 2018)

(Thomas, J., dissenting from denial of certiorari) (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 416 (1993)); *see also Chovan*, 735 F.3d at 1136, 1139. The fit requirement seeks to ensure that the encroachment on constitutional rights is “not more extensive than necessary” to serve the government’s interest. *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 816 (9th Cir. 2013). The government thus bears the burden of establishing that the law is “closely drawn to avoid unnecessary abridgment” of constitutional rights, *McCutcheon*, 572 U.S. at 197; *see Ward v. Rock Against Racism*, 491 U.S. 781, 782-83 (1989). Government is entitled to *no deference* when assessing the fit between its purported interests and the means selected to advance them. *See Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 214 (1997). Instead, it must *prove* that those means do not burden “substantially more” constitutionally protected conduct than “necessary to further [its important] interest.” *Id.*

Here, the System results in countless people being unable to even begin the State-mandated process for exercising the constitutional right to acquire ammunition, simply because they only have the ID that California itself issued them! “This ‘prophylaxis-upon-prophylaxis approach’ requires that [the Court] be particularly diligent in scrutinizing the law’s fit.” *McCutcheon*, 572 U.S. at 221. The State cannot require that an ammunition purchaser present a California ID, and then reject the very ID that California itself standardly issues and accepts for virtually all other purposes. *See Ezell*, 651 F.3d 690 (city ordinance that mandated firing-range training as prerequisite to permit to own a firearm yet prohibited all shooting ranges in city violated the Second Amendment). And the State certainly cannot do so when the federal government accepts the very same state-issued ID for purposes of running background checks on firearm purchasers. Simply put, the State cannot deem the same ID that both the state and federal government accept as sufficient for virtually all other purposes somehow insufficient when it comes to the exercise of Second Amendment rights.

Worse still is that residents of other states are barred from acquiring ammunition while within the state at all, unless they have a valid COE. It is unreasonable to expect a

non-resident of California to have a COE or even know that a COE will be needed to acquire ammunition once in the state—particularly when obtaining a COE is about a month-long process and around \$90 in fees. This is effectively a ban on non-California-residents acquiring ammunition. That is the opposite of tailoring.

Further, the System results in prospective ammunition purchasers being denied clearance under the AFS Match form of background check *up to 60%* of the time. Burwell Decl. ¶ 9; Puehse Decl. ¶ 11; Morgan Decl. ¶ 9; Bartel Decl. ¶ 9; Lowder Decl. ¶ 9; Gray Decl. ¶ 9; McNab Decl. ¶ 31; Ortiz Decl. ¶ 13. It is inconceivable that such a high number of purchasers are legitimately failing because they are actually prohibited persons. Recall, the average denial rate for *firearms* according to at least some Vendors is less than 1%. Ortiz Decl. ¶ 14. That such a large number of people are improperly denied ammunition under the System is unacceptable for a system that acts as a gatekeeper to the exercise of a fundamental right. Even if these purchasers are ultimately able to acquire ammunition at a later time by remedying any discrepancy, that the State precludes them from doing so indefinitely until the purchaser can prove that they are not prohibited persons, flips constitutional order on its head. The State has the burden to prove that a person is not entitled to exercise a right—not the other way around. This background check is the polar opposite of sufficiently tailored.

Finally, the State cannot justify the System's time-consuming nature. There must be a way of conducting a background check that does not require a Vendor to regularly dedicate a *half hour to each customer*. See, e.g., McNab Decl. ¶ 26; Gray Decl. ¶ 8; Lowder Decl. ¶ 8; Bartel Decl. ¶ 8; Morgan Decl. ¶ 8; Puehse Decl. ¶ 10; Ortiz Decl. ¶¶ 10-12. Purchasers are foregoing the process because of the time commitment or uncertainty about their records with DOJ. Burwell Decl. ¶¶ 10; Puehse Decl. ¶¶ 12-13; Morgan Decl. ¶¶ 10-11; Bartel Decl. ¶¶ 10-11; Lowder Decl. ¶¶ 10-11; Gray Decl. ¶¶ 10-11; McNab Decl. ¶¶ 27-30; Ortiz Decl. ¶¶ 15-16. The System is also a significant barrier to entry for those newly exercising their Second Amendment rights. It requires people to either purchase a firearm and register it in AFS or pay \$19 just to be able to purchase a

box of ammunition that may cost only \$5. Some are opting to do neither. *Id.*

Several Vendors have explained that these delays result in significant lost business. McNab Decl. ¶¶ 32-33, 37-38. This is in addition to all of the other costs Vendors must incur under the scheme, including the fee to acquire a vendor license, wages for additional employees necessary to serve customers by being the intermediary between them and the product, the cost of a COE for each of their employees, and the costs of creating and storing the required records of each transaction. McNab Decl. ¶¶ 3, 9, 23, 33, 37. In aggregate, these restrictions result in a severe burden not only on those seeking to exercise their right, but on Vendors, the purveyors of the right. Some Vendors have even expressed fear that these burdens could result in shutting their business down. Burwell Decl. ¶ 12; Puehse Decl. ¶ 15; Morgan Decl. ¶ 13; Bartel Decl. ¶ 13; Lowder Decl. ¶ 13; Gray Decl. ¶ 13; McNab Decl. ¶ 38. Doing so would mean they would be unable to provide the public the means to exercise their rights. When Vendors are saying they may close their doors because of this scheme, something is wrong, the law cannot be sufficiently tailored.

In sum, the State has created a screening system that: (1) prevents a significant portion of people from even undergoing the screen because California does not recognize the very ID it issues residents as sufficient to even undergo a background check under this system; (2) results in a significant number of people being denied exercise of their right without cause; and (3) imposes time-consuming, costly burdens on Vendors and purchasers that could easily be avoided. A system that is so hyper-technical and sensitive to common variables is unacceptable as a gatekeeper to exercising constitutional rights.

Finally, California's restrictions on acquiring ammunition directly from out-of-state vendors or importing it also imposes a constitutionally impermissibly burden because it eliminates a significant source of ammunition for California purchasers, especially those people far away from any Vendor. Decl. Scott Lindemuth Supp. Pls.' Mot. Prelim. Inj. ("Lindemuth Decl.") ¶ 3. In any event, if the Court finds it appropriate to enjoin the System, it should also enjoin the face-to-face requirement and importation

restriction as well, for the only interest the State has articulated in enforcing those provisions is that they further its professed interest in conducting background checks. Accordingly, if the State is enjoined from requiring individuals to engage in a distinct, and largely inaccurate, background check system to purchase ammunition, then no purpose would be served by requiring individuals to engage in face-to-face transactions that the State has defended only as a means to facilitating its background check scheme.

B. California’s Ammunition Scheme Also Violates the Dormant Commerce Clause

The Commerce Clause limits states’ ability to regulate interstate commerce, even where federal law is silent on the issue. *U. Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007). The Supreme Court recently affirmed its commitment to this “dormant” aspect of the Commerce Clause as a tool to “preserve[] a national market for goods and services.” *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, ___ U.S. ___, 139 S. Ct. 2449, 2459 (2019). It prohibits a state from regulating commercial transactions that take place wholly outside of the state’s border, “whether or not the commerce has effects within the State.” *Healy v. Beer Instit.*, 491 U.S. 324, 336 (1989); *see also W. Lynn Creamery v. Healy*, 512 U.S. 186, 194-95 (1994). “[W]hen a state law directly affects transactions that ‘take place across state lines’ or entirely outside of the state’s borders,” the law is “invalid per se.” *Valley Bank of Nev. v. Plus Sys., Inc.*, 914 F. 2d 1186, 1189-90 (9th Cir. 1990) (citations omitted). What’s more, as this Court has noted, the Supreme Court has held “time and again” that, “in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” Order Re: Defendant’s Motion to Dismiss (“Order”) 3 (quoting *Granholm v. Heald*, 544 U.S. 460, 472 (2005)). “State laws that directly discriminate against out-of-state entities can survive only if the state demonstrates both that the statute serves a legitimate local purpose, and that this purpose could not be served as well by available nondiscriminatory means.” *Nationwide Biweekly Admin., Inc. v. Owen*, 873 F.3d 716, 736 (9th Cir. 2017), *cert. denied sub nom., Nationwide Biweekly Admin., Inc. v.*

Hubanks, 138 S. Ct. 1698 (2018) (citing *Maine v. Taylor*, 477 U.S. 131, 138 (1986)).¹⁰ California’s ammunition scheme violates both of these precepts.

As this Court observed in denying the State’s motion to dismiss Plaintiffs’ Dormant Commerce Clause claim, California generally “prohibits a seller of ammunition physically located outside of the state from selling directly to customers in California.” Order 4; *see* Cal. Penal Code § 30312(b); Brady Decl. ¶ 8. As a result, out-of-state vendors seeking to sell ammunition to California residents can do so only if they first ship it to an in-state vendor who then completes the transfer to the purchaser—with the limited exception of California law enforcement purchasers and other firearm and ammunition businesses. Cal. Pen. Code §§ 30312(a),(b), (e)(1)-(11), 30314(a); Cal. Code Regs. tit. 11 § 4306. But DOJ has taken the view that Vendors may refuse to receive and process third-party ammunition transfers. Brady Decl. ¶ 9. And various California Vendors are, in fact, refusing to process these transactions from out-of-state vendors. Gilhousen Decl. ¶¶ 3-4; Wolgin Decl. ¶ 9. For those out-of-state vendors fortunate enough to find a California Vendor willing to process the transaction, the Vendor may charge the California resident any fee amount it wishes to do so. *See* Cal. Penal Code § 3031(b); Cal. Code Regs. tit. 11, § 4263. A California resident seeking to acquire ammunition from an out-of-state vendor cannot even escape the reach of in-state Vendors’ control by physically leaving the state. To bring the ammunition home, the California resident would have to, *while out-of-state*, ship it to a Vendor and retrieve it once back in-state. Just as with businesses shipping into California, however, the in-state Vendor may refuse to accept the shipment or charge excessively to accept it.

In sum, California’s ammunition scheme not only prevents out-of-state vendors, like Plaintiffs Able’s Sporting, Inc. and AMDEP Holdings, LLC, from accessing California customers in a particular manner, but it authorizes, and has in fact resulted in,

¹⁰ A state law that regulates even-handedly still violates the Commerce Clause if it impermissibly burdens interstate commerce in relation to local interest. *See Healy*, 512 U.S. at 194-95. Plaintiffs do not, at this time, assert such a claim, pending discovery.

in-state Vendors completely excluding them from accessing the California market. Gilhousen Decl. ¶¶ 3-4; Wolgin Decl. ¶ 9; Brady Decl. ¶¶ 8-9. It renders out-of-state vendors' ability to do business in California *entirely* dependent on the discretion of their in-state competitors. The "practical effect" is to nullify, or at least control the terms of, transactions occurring wholly out of state, i.e., extraterritorially, which the Commerce Clause absolutely forbids. *See Healy*, 512 U.S. at 339.

California's scheme, at minimum, impermissibly discriminates against out-of-state ammunition commerce. It is just like the constraints on interstate commerce struck down in *Nationwide Biweekly*, 873 F.3d at 736-37. Order 5. There, the Ninth Circuit held that a California statute does precisely what the Supreme Court says cannot be done except in the "narrowest circumstances"—i.e., requiring anyone wanting to engage in a certain kind of business within the state to become a resident. *Nationwide Biweekly*, 873 F.3d at 736-37 (citing *Heald*, 544 U.S. at 472). The effect of California's scheme is to force companies located out-of-state to have a physical in-state presence as a condition to having secure and equal access to its ammunition market. Such a dynamic, by definition, favors in-state economic interests over out-of-state interests. It thus also necessarily "deprive[s] citizens of their right to have access to the markets of other states on equal terms," *Granholm*, 544 U.S. at 473, violating the dormant Commerce Clause.

A court "need not inquire into the purpose or motivation behind a law to determine that in actuality it impermissibly discriminates against interstate commerce." *Associated Indus. of Mo. v. Lohman*, 511 U.S. 641, 653 (1994). Even if California does not intend to benefit its in-state economic interests, it does in fact broadly discriminate against interstate commerce. Given the law's sweeping discriminatory impact, the State cannot meet its heavy burden to establish that it falls within the "narrowest [of] circumstances" where the discrimination should be allowed to persist. *Granholm*, 544 U.S. at 472. To do so, the State would have to show that the law both " 'serves a legitimate local purpose,' and that this purpose could not be served as well by available nondiscriminatory means." *Nationwide Biweekly*, 873 F.3d at 736 (citing *Maine v. Taylor*, 477 U.S. 131, 138

(1986)). The State has failed to explain why it is necessary for vendors located out-of-state to use an in-state Vendor as an intermediary to access the California ammunition market. Because the State cannot meet its burden to justify California's extraterritorial effects and discrimination against out-of-state vendors, Plaintiffs are likely to succeed on the merits of their Dormant Commerce Clause challenge.

II. THE REMAINING PRELIMINARY INJUNCTION FACTORS WARRANT RELIEF

A. Plaintiffs Will Suffer Irreparable Harm if the Court Denies Relief

If this Court concludes that Plaintiffs are likely to succeed on one or both of their alleged constitutional violations, the remaining preliminary injunction factors follow readily. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.' " *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). The Ninth Circuit has imported the First Amendment "irreparable-if-only-for-a-minute" rule to other rights and, in doing so, has held deprivation of those rights is irreparable harm per se. *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997). The Second Amendment should be treated no differently. *See McDonald*, 561 U.S. at 780; *see also Ezell*, 651 F.3d at 700 (a deprivation of the right to arms is "irreparable and having no adequate remedy at law"). The same is true for Commerce Clause violations. *See Rocky Mountain Farmers Union v. Goldstene*, 843 F. Supp. 2d 1071 (E.D. Cal. 2011) (citing *Am. Libraries Ass'n v. Pataki*, 969 F.Supp. 160, 168 (S.D.N.Y.1997)), *Rev'd on other grounds sub nom., Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070 (9th Cir. 2013).

The constitutional violations alone are enough to satisfy the irreparable harm factor, but the circumstances here make the irreparable harm unmistakable. Because continued enforcement of the scheme not only unjustly denies individuals their Second Amendment rights, but also jeopardizes the existence of some Vendors, who are the

purveyors of those rights, the need to “preserve the status quo pending a determination of the action on the merits”—the fundamental purpose of a preliminary injunction—is particularly strong. *Chalk*, 840 F.2d at 704.

B. Granting Preliminary Injunctive Relief Is in the Public Interest

For similar reasons, granting preliminary injunctive relief is clearly in the public interest. When challenging government action that affects the exercise of constitutional rights, “[t]he public interest . . . tip[s] sharply in favor of enjoining the” law. *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). Here, Plaintiffs seek to vindicate their fundamental Second Amendment rights, as well as their rights under the Commerce Clause. As the Ninth Circuit has made clear, “all citizens have a stake in upholding the Constitution” and have “concerns [that] are implicated when a constitutional right has been violated.” *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Thus, not only Plaintiffs’ rights are at stake, but so are the rights of any law-abiding Californian who is unduly burdened by the State’s ammunition scheme. The public interest thus tips sharply in Plaintiffs’ favor. *Klein*, 584 F.3d at 1208. Moreover, the State has no plausible argument that enjoining enforcement of its ammunition scheme will unduly endanger public safety. After all, doing so would merely return California to the status quo, which is the same for every other state in the union.

C. The Balance of Equities Tips Sharply in Plaintiffs’ Favor

Finally, the balance of hardships tips sharply in Plaintiffs’ favor. This factor considers “the balance of hardships between the parties.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1137 (9th Cir. 2011). In contrast to Plaintiffs’ and the public’s many injuries, the State will suffer no concrete harm from a preliminary injunction. The State “cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); see *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (“[I]t is clear that it would not be equitable . . . to allow the state . . . to violate the requirements of federal law.” (citations omitted)). Even absent the

constitutional dimension of this lawsuit, the balance of harms tips in Plaintiffs' favor. Denying or severely hindering law-abiding people from acquiring ammunition cannot plausibly be understood to serve any public safety interest. To the contrary, California's ammunition scheme makes the public *less* secure by making it more difficult for Plaintiffs and the law-abiding public to defend themselves.

The balance of equities also favors litigants seeking only "to preserve, rather than alter, the status quo while they litigate the merits of th[eir] action." *Rodde v. Bonta*, 357 F.3d 988, 999 n.14 (9th Cir. 2004). Granting the relief Plaintiffs seek will merely preserve the over century-long status quo from before the scheme took effect, while the case moves forward on the merits. This further "strengthens [Plaintiffs'] position" in the analysis of the equitable injunction factors. *Id.* On the other hand, granting an injunction will end the ongoing violation of Plaintiffs' rights, allowing them and the public the freedom to exercise those rights without fear of prosecution.

CONCLUSION

For all these reasons, the Court should grant Plaintiffs' motion and enjoin enforcement of California Penal Code sections 30312(a), 30312(b), 30314(a), 30370, and 30352(a-d) while this case goes on to resolution on the merits.

Dated: July 22, 2019

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady

Sean A. Brady

Email: sbrady@michellawyers.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Rhode, et al. v. Becerra*
Case No.: 3:18-cv-00802-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:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

on the following parties by electronically filing the foregoing on July 22, 2019, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Nelson R. Richards
Deputy Attorney General
nelson.richards@doj.ca.gov
2550 Mariposa Mall, Room 5090
Fresno, CA 93721

*Attorneys for Defendant Attorney General
Xavier Becerra*

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 22, 2019, at Long Beach, CA.

s/ Laura Palmerin
Laura Palmerin

C.D. Michel – SBN 144258
Sean A. Brady – SBN 262007
Matthew D. Cubeiro – SBN 291519
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KIM RHODE, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of the State
of California,

Defendant.

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

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: August 19, 2019
Hearing Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez

[Filed concurrently with Memorandum of
Points and Authorities, Request for
Judicial Notice, Declarations Sean A.
Brady, Richard Travis, James Gilhousen,
Dan Wolgin, Denise Welvang, Scott
Lindemuth, Bill Ortiz, David Burwell,
Chris Puehse, Travis Morgan, Ethan
Bartel, Myra Lowder, Daniel Gray,
Christina McNab, and George Dodd]

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 19, 2019 at 10:30 a.m. in Courtroom 5A of above-captioned court, located at 221 West Broadway, San Diego, California 92101, Plaintiffs 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"), through their counsel, will move for a preliminary injunction under rule 65(a) of the Federal Rules of Civil Procedure. Specifically, Plaintiffs will seek an order temporarily enjoining Defendant Xavier Becerra, in his official capacity as Attorney General of the State of California, and his agents, servants, employees, and those working in active concert with him, from enforcing or giving effect to California Penal Code sections 30312(a), 30312(b), 30370, and 30352(a-d) during the pendency of this action.

Plaintiffs bring this motion because sections 30312(a), 30312(b), 30314(a), 30370, and 30352(a-d) violate the Second Amendment right to acquire and possess ammunition by placing undue and unjustified barriers to the exercise that right and California Penal Code sections 30312(b) and 30314(a) also violate the Commerce Clause by regulating extraterritorially and in a discriminatory fashion against non-California commerce. Unless this Court orders the requested preliminary relief, Defendant Becerra will continue to enforce sections 30312(a), 30312(b), 30370, and 30352(a-d), and irreparable injury will continue to result to the Plaintiffs as described in the memorandum of points and authorities filed simultaneously herewith.

This motion is based on this notice, the memorandum of points and authorities filed in support, the supporting declarations of Richard Travis, James Gilhousen, Dan Wolgin, Denise Welvang, Scott Lindemuth, Bill Ortiz, David Burwell, Chris Puehse, Travis Morgan, Ethan Bartel, Myra Lowder, Daniel Gray, Christina McNab, and George

Dodd, as well as any exhibits attached thereto. This motion is also based on the pleadings and records already on file, and on any further matters the Court deems appropriate.

Dated: July 22, 2019

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady

Sean A. Brady

Email: sbrady@michellawyers.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Rhode, et al. v. Becerra*
Case No.: 3:18-cv-00802-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:

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY
INJUNCTION**

on the following parties by electronically filing the foregoing on July 22, 2019, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Nelson R. Richards
Deputy Attorney General
nelson.richards@doj.ca.gov
2550 Mariposa Mall, Room 5090
Fresno, CA 93721

*Attorneys for Defendant Attorney General
Xavier Becerra*

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 22, 2019, at Long Beach, CA.

s/ Laura Palmerin
Laura Palmerin

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Kim Rhode, et al.,

Plaintiffs,

v.

Xavier Becerra, et al.,

Defendants.

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

ORDER:

**(1) GRANTING JOINT MOTION TO
AMEND SCHEDULING ORDER;
AND**

**(2) ISSUING AMENDED
SCHEDULING ORDER**

[ECF Nos. 25, 26]

Before the Court is the parties' Joint Motion to Amend Scheduling Order. (ECF No. 26.) For good cause shown, the parties' joint motion is **GRANTED**, and the operative Scheduling Order (ECF No. 25) is amended as follows:

1. An in-person Status Conference shall be held on **July 15, 2019**, at **8:30 AM** before the **Honorable Roger T. Benitez** in Courtroom 5A of the Edward J. Schwartz U.S. Courthouse, 221 West Broadway, San Diego, California 92101.

2. All fact discovery shall be completed by all parties by **November 4, 2019**. "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of

time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking into account the times for service, notice and response as set forth in the Federal Rules of Civil Procedure. **Counsel shall promptly and in good faith meet and confer with regard to all discovery disputes in compliance with Civil Local Rule 26.1(a).** The Court expects counsel to make every effort to resolve all disputes without court intervention through the meet and confer process. If the parties reach an impasse on any discovery issue, counsel shall file an appropriate motion within the time limit and procedures outlined in the undersigned magistrate judge's chambers rules. **A failure to comply in this regard will result in a waiver of a party's discovery issue. Absent an order of the court, no stipulation continuing or altering this requirement will be recognized by the court.**

Discovery motions must be filed in the time and manner directed by Magistrate Judge Burkhardt (*see* Judge Burkhardt's Civil Chambers Rules on Discovery Disputes available on the Court's website). All discovery motions must be filed within 30 days of the service of an objection, answer, or response which becomes the subject of dispute, or the passage of a discovery due date without response or production, and only after counsel (and any unrepresented parties) have met and conferred to resolve the dispute **and** complied with Section IV.B. of Judge Burkhardt's Civil Chambers Rules.

3. The parties shall designate their respective experts in writing by **November 18, 2019**. Pursuant to Federal Rule of Civil Procedure 26(a)(2)(A), the parties must identify any person who may be used at trial to present evidence pursuant to Rules 702, 703 or 705 of the Federal Rules of Evidence. This requirement is not limited to retained experts. The date for exchange of rebuttal experts shall be by **December 30, 2019**. The written designations shall include the name, address and telephone number of the expert and a reasonable summary of the testimony the expert is expected to provide. The list shall also include the normal rates the expert charges for deposition and trial testimony.

4. By **November 18, 2019**, each party shall comply with the disclosure provisions in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure requirement applies to all persons retained or specially employed to provide

expert testimony, or whose duties as an employee of the party regularly involve the giving of expert testimony. **Except as provided in the paragraph below, any party that fails to make these disclosures shall not, absent substantial justification, be permitted to use evidence or testimony not disclosed at any hearing or at the time of trial. In addition, the Court may impose sanctions as permitted by Federal Rule of Civil Procedure 37(c).**

5. Any party shall supplement its disclosure regarding contradictory or rebuttal evidence under Federal Rules of Civil Procedure 26(a)(2)(D) and 26(e) by **December 30, 2019**.

6. All expert discovery shall be completed by all parties by **January 27, 2020**. The parties shall comply with the same procedures set forth in the paragraph governing fact discovery. Failure to comply with this section or any other discovery order of the court may result in the sanctions provided for in Federal Rule of Civil Procedure 37, including a prohibition on the introduction of experts or other designated matters in evidence.

7. All other pretrial motions must be filed by **January 20, 2020**. Counsel for the moving party must obtain a motion hearing date from the law clerk of the judge who will hear the motion. The period of time between the date you request a motion date and the hearing date may vary from one district judge to another. Please plan accordingly. Failure to make a timely request for a motion date may result in the motion not being heard. Deadlines for filing motions in limine will be set by the district judge at the final Pretrial Conference.

8. When filing a Motion for Summary Judgment and/or Adjudication, the parties need not file a separate statement of material facts absent prior leave of court.

9. A Mandatory Settlement Conference shall be conducted on **February 14, 2020**, at **9:00 AM** in the chambers of **Magistrate Judge Jill L. Burkhardt**, Edward J. Schwartz U.S. Courthouse, 221 West Broadway, Suite 5140, San Diego, California 92101. Counsel or any party representing himself or herself shall lodge confidential settlement

briefs directly to chambers by **February 4, 2020**. All parties are ordered to read and to fully comply with the Chamber Rules of the assigned magistrate judge.

The **confidential** settlement statements should be lodged by e-mail to `efile_Burkhardt@casd.uscourts.gov`. Each party's settlement statement shall concisely set forth the following: (1) the party's statement of the case; (2) the controlling legal issues; (3) issues of liability and damages; (4) the party's settlement position, including the last offer or demand made by that party; (5) a separate statement of the offer or demand the party is prepared to make at the settlement conference; and (6) a **list of all attorney and non-attorney conference attendees** for that side, including the name(s) and title(s)/position(s) of the party/party representative(s) who will attend and have settlement authority at the conference. If exhibits are attached and the total submission amounts to more than 20 pages, a hard copy must also be delivered directly to Magistrate Judge Burkhardt's chambers. **Settlement conference statements shall not be filed with the Clerk of the Court. Settlement conference statements may be exchanged confidentially with opposing counsel within the parties' discretion.**

Pursuant to Civil Local Rule 16.3, all party representatives and claims adjusters for insured defendants with full and unlimited authority¹ to negotiate and enter into a binding settlement, as well as the principal attorney(s) responsible for the litigation, must be present and legally and factually prepared to discuss and resolve the case at the mandatory settlement conference. In the case of an entity, an authorized representative of the entity who is not retained outside counsel must be present and must have discretionary authority to commit the entity to pay an amount up to the amount of the Plaintiff's prayer (excluding

¹ "Full authority to settle" means that the individuals at the settlement conference must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes that the person's view of the case may be altered during the face to face conference. *Id.* at 486. A limited or a sum certain of authority is not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595-97 (8th Cir. 2001).

punitive damages prayers). The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior.

Counsel for a United States government entity may be excused from this requirement so long as the government attorney who attends the MSC conference (1) has primary responsibility for handling the case, and (2) may negotiate settlement offers which the attorney is willing to recommend to the government official having ultimate settlement authority.

Failure to attend the conference or obtain proper excuse will be considered grounds for sanctions.

10. For bench trials before the Honorable Roger T. Benitez, counsel shall file their Memoranda of Contentions of Fact and Law and take any other action required by Civil Local Rule 16.1(f)(2) by **May 18, 2020**.

11. Counsel shall comply with the pretrial disclosure requirements of Federal Rule of Civil Procedure 26(a)(3) by **May 18, 2020**. Failure to comply with these disclosure requirements could result in evidence preclusion or other sanctions under Federal Rule of Civil Procedure 37.

12. Counsel shall meet and take the action required by Civil Local Rule 16.1(f)(4) by **May 25, 2020**. At this meeting, counsel shall discuss and attempt to enter into stipulations and agreements resulting in simplification of the triable issues. Counsel shall exchange copies and/or display all exhibits other than those to be used for impeachment. The exhibits shall be prepared in accordance with Civil Local Rule 16.1(f)(4)(c). Counsel shall note any objections they have to any other parties' Pretrial Disclosures under Federal Rule of Civil Procedure 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference order.

13. Counsel for Plaintiff will be responsible for preparing the pretrial order and arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **June 1, 2020**, Plaintiff's counsel must provide opposing counsel with the proposed pretrial order for

review and approval. Opposing counsel must communicate promptly with Plaintiff's attorney concerning any objections to form or content of the pretrial order, and both parties shall attempt promptly to resolve their differences, if any, concerning the order.

14. The Proposed Final Pretrial Conference Order, including objections to any other parties' Federal Rule of Civil Procedure 26(a)(3) Pretrial Disclosures shall be prepared, served and lodged with the assigned district judge by **June 8, 2020**, and shall be in the form prescribed in and comply with Civil Local Rule 16.1(f)(6).

15. The final Pretrial Conference is scheduled on the calendar of the **Honorable Roger T. Benitez** on **June 15, 2020**, at **10:30 AM**.

16. The parties must review the chambers' rules for the assigned district judge and magistrate judge.

17. A post trial settlement conference before a magistrate judge may be held within 30 days of verdict in the case.

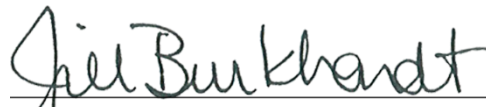
18. The dates and times set forth herein will not be modified except for good cause shown.

19. Briefs or memoranda in support of or in opposition to any pending motion shall not exceed twenty-five (25) pages in length without leave of a district court judge. No reply memorandum shall exceed ten (10) pages without leave of a district court judge. Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents and a table of authorities cited.

20. Plaintiff's counsel shall serve a copy of this order on all parties that enter this case hereafter.

IT IS SO ORDERED.

Dated: July 2, 2019


Hon. Jill L. Burkhardt
United States Magistrate Judge

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Xavier Becerra

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
11

12
13 **Kim Rhode et al.,**

14 Plaintiffs,

15 v.

16 **Xavier Becerra, in his official**
17 **capacity as Attorney General of the**
18 **State of California, et al.,**

19 Defendants.
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3:18-cv-00802-BEN-JLB

**ANSWER TO THE FIRST
AMENDED COMPLAINT**

Judge: The Honorable Roger T.
Benitez

Action Filed: 4/27/2018

Defendant Xavier Becerra, in his official capacity as Attorney General of California, answers the First Amended Complaint, ECF No. 9, in paragraphs that correspond to the First Amended Complaint's, as follows:

1. Denies.

2. Denies.

3. The allegations contained in Paragraph 3 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

4. The allegations contained in Paragraph 4 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

5. The allegations contained in Paragraph 5 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

6. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 6, and basing his denial on this ground, denies each and every allegation thereof.

7. The allegations contained in Paragraph 7 are Plaintiffs' characterization of their case, to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

8. The allegations contained in Paragraph 8 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

9. The allegations contained in Paragraph 9 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

10. The allegations contained in Paragraph 10 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of

fact, they are denied.

11. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 11, and basing his denial on this ground, denies each and every allegation thereof.

12. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 12, and basing his denial on this ground, denies each and every allegation thereof.

13. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 13, and basing his denial on this ground, denies each and every allegation thereof.

14. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 14, and basing his denial on this ground, denies each and every allegation thereof.

15. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 15, and basing his denial on this ground, denies each and every allegation thereof.

16. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 16, and basing his denial on this ground, denies each and every allegation thereof.

17. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 17, and basing his denial on this ground, denies each and every allegation thereof.

18. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 18, and basing his denial on this ground, denies each and every allegation thereof.

19. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 19, and basing his denial on this ground, denies each and every allegation thereof.

20. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 20, and basing his denial on this ground, denies each and every allegation thereof.

21. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 21, and basing his denial on this ground, denies each and every allegation thereof.

22. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 22, and basing his denial on this ground, denies each and every allegation thereof.

23. Admits that he is the Attorney General of California; otherwise the allegations in Paragraph 23 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

24. The Attorney General lacks information or belief sufficient to answer the allegations contained in Paragraph 24, and basing his denial on this ground, denies each and every allegation thereof.

25. Admits that he is carrying out his statutory duties under the Safety for All Act (Proposition 63) and that he intends to carry out any additional duties as they take effect; otherwise the allegations contained in Paragraph 25 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

26. The allegations contained in Paragraph 26 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

27. Admits that the Safety for All Act (Proposition 63) was adopted in 2016; otherwise the allegations contained in Paragraph 27 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

28. The allegations contained in Paragraph 28 constitute conclusions of

1 law to which no answer is required; to the extent they may be deemed allegations of
2 fact, they are denied.

3 29. The allegations contained in Paragraph 29 constitute conclusions of
4 law to which no answer is required; to the extent they may be deemed allegations of
5 fact, they are denied.

6 30. The allegations contained in Paragraph 30 constitute conclusions of
7 law to which no answer is required; to the extent they may be deemed allegations of
8 fact, they are denied.

9 31. The allegations contained in Paragraph 31 constitute conclusions of
10 law to which no answer is required; to the extent they may be deemed allegations of
11 fact, they are denied.

12 32. The allegations contained in Paragraph 32 constitute conclusions of
13 law to which no answer is required; to the extent they may be deemed allegations of
14 fact, they are denied.

15 33. The allegations contained in Paragraph 33 constitute conclusions of
16 law to which no answer is required; to the extent they may be deemed allegations of
17 fact, they are denied.

18 34. The allegations contained in Paragraph 34 constitute conclusions of
19 law to which no answer is required; to the extent they may be deemed allegations of
20 fact, they are denied.

21 35. The allegations contained in Paragraph 35 constitute conclusions of
22 law to which no answer is required; to the extent they may be deemed allegations of
23 fact, they are denied.

24 36. The allegations contained in Paragraph 36 constitute conclusions of
25 law to which no answer is required; to the extent they may be deemed allegations of
26 fact, they are denied.

27 37. The allegations contained in Paragraph 37 constitute conclusions of
28 law to which no answer is required; to the extent they may be deemed allegations of

1 fact, they are denied.

2 38. The allegations contained in Paragraph 38 constitute conclusions of
3 law to which no answer is required; to the extent they may be deemed allegations of
4 fact, they are denied.

5 39. Admits that the Department of Justice began issuing licenses on
6 January 2, 2018; otherwise the remaining allegations contained in Paragraph 39
7 constitute conclusions of law to which no answer is required; to the extent they may
8 be deemed allegations of fact, they are denied.

9 40. The allegations contained in Paragraph 40 constitute conclusions of
10 law to which no answer is required; to the extent they may be deemed allegations of
11 fact, they are denied.

12 41. The allegations contained in Paragraph 41 constitute conclusions of
13 law to which no answer is required; to the extent they may be deemed allegations of
14 fact, they are denied.

15 42. The allegations contained in Paragraph 42 constitute conclusions of
16 law to which no answer is required; to the extent they may be deemed allegations of
17 fact, they are denied.

18 43. The allegations contained in Paragraph 43 constitute conclusions of
19 law to which no answer is required; to the extent they may be deemed allegations of
20 fact, they are denied.

21 44. The allegations contained in Paragraph 44 constitute conclusions of
22 law to which no answer is required; to the extent they may be deemed allegations of
23 fact, they are denied.

24 45. The allegations contained in Paragraph 45 constitute conclusions of
25 law to which no answer is required; to the extent they may be deemed allegations of
26 fact, they are denied.

27 46. The Attorney General lacks information or belief sufficient to answer
28 the allegations contained in Paragraph 46, and basing his denial on this ground,

1 denies each and every allegation thereof.

2 47. The allegations contained in Paragraph 47 constitute conclusions of
3 law to which no answer is required; to the extent they may be deemed allegations of
4 fact, they are denied.

5 48. The allegations contained in Paragraph 48 constitute conclusions of
6 law to which no answer is required; to the extent they may be deemed allegations of
7 fact, they are denied.

8 49. The allegations contained in Paragraph 49 constitute conclusions of
9 law to which no answer is required; to the extent they may be deemed allegations of
10 fact, they are denied.

11 50. The allegations contained in Paragraph 50 constitute conclusions of
12 law to which no answer is required; to the extent they may be deemed allegations of
13 fact, they are denied.

14 51. The allegations contained in Paragraph 51 constitute conclusions of
15 law to which no answer is required; to the extent they may be deemed allegations of
16 fact, they are denied.

17 52. The allegations contained in Paragraph 52 constitute conclusions of
18 law to which no answer is required; to the extent they may be deemed allegations of
19 fact, they are denied.

20 53. The allegations contained in Paragraph 53 constitute conclusions of
21 law to which no answer is required; to the extent they may be deemed allegations of
22 fact, they are denied.

23 54. The allegations contained in Paragraph 54 constitute conclusions of
24 law to which no answer is required; to the extent they may be deemed allegations of
25 fact, they are denied.

26 55. The allegations contained in Paragraph 55 constitute conclusions of
27 law to which no answer is required; to the extent they may be deemed allegations of
28 fact, they are denied.

1 56. The allegations contained in Paragraph 56 constitute conclusions of
2 law to which no answer is required; to the extent they may be deemed allegations of
3 fact, they are denied.

4 57. The allegations contained in the first and third sentences of
5 Paragraph 57 constitute conclusions of law to which no answer is required; to the
6 extent they may be deemed allegations of fact, they are denied. Denies the second
7 sentence of paragraph 57.

8 58. The allegations contained in Paragraph 58 constitute conclusions of
9 law to which no answer is required; to the extent they may be deemed allegations of
10 fact, they are denied.

11 59. The allegations contained in Paragraph 59 constitute conclusions of
12 law to which no answer is required; to the extent they may be deemed allegations of
13 fact, they are denied.

14 60. The allegations contained in Paragraph 60 constitute conclusions of
15 law to which no answer is required; to the extent they may be deemed allegations of
16 fact, they are denied.

17 61. The allegations contained in Paragraph 61 constitute conclusions of
18 law to which no answer is required; to the extent they may be deemed allegations of
19 fact, they are denied.

20 62. The allegations contained in Paragraph 62 constitute conclusions of
21 law to which no answer is required; to the extent they may be deemed allegations of
22 fact, they are denied.

23 63. The allegations contained in Paragraph 63 constitute conclusions of
24 law to which no answer is required; to the extent they may be deemed allegations of
25 fact, they are denied.

26 64. The allegations contained in Paragraph 64 constitute conclusions of
27 law to which no answer is required; to the extent they may be deemed allegations of
28 fact, they are denied.

65. The allegations contained in Paragraph 65 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

66. The allegations contained in Paragraph 66 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

67. The allegations contained in Paragraph 67 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

68. The allegations contained in Paragraph 68 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

69. The allegations contained in Paragraph 69 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

70. The allegations contained in Paragraph 70 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

71. The allegations contained in Paragraph 71 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

72. The allegations contained in Paragraph 72 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

73. The allegations contained in Paragraph 73 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

74. The allegations contained in Paragraph 74 constitute conclusions of

1 law to which no answer is required; to the extent they may be deemed allegations of
2 fact, they are denied.

3 75. The allegations contained in Paragraph 75 constitute conclusions of
4 law to which no answer is required; to the extent they may be deemed allegations of
5 fact, they are denied.

6 76. The allegations contained in Paragraph 76 constitute conclusions of
7 law to which no answer is required; to the extent they may be deemed allegations of
8 fact, they are denied.

9 77. The allegations contained in Paragraph 77 constitute conclusions of
10 law to which no answer is required; to the extent they may be deemed allegations of
11 fact, they are denied.

12 78. The allegations contained in Paragraph 78 constitute conclusions of
13 law to which no answer is required; to the extent they may be deemed allegations of
14 fact, they are denied.

15 79. The allegations contained in Paragraph 79 constitute conclusions of
16 law to which no answer is required; to the extent they may be deemed allegations of
17 fact, they are denied.

18 80. The allegations contained in Paragraph 80 constitute conclusions of
19 law to which no answer is required; to the extent they may be deemed allegations of
20 fact, they are denied.

21 81. The allegations contained in Paragraph 81 constitute conclusions of
22 law to which no answer is required; to the extent they may be deemed allegations of
23 fact, they are denied.

24 82. The Attorney General incorporates his answers to Paragraphs 1
25 through 81 in answer to Paragraph 82.

26 83. The allegations contained in Paragraph 83 constitute conclusions of
27 law to which no answer is required; to the extent they may be deemed allegations of
28 fact, they are denied.

84. The allegations contained in Paragraph 84 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

85. The allegations contained in Paragraph 85 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

86. The allegations contained in Paragraph 86 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

87. Denies.

88. The allegations contained in the first and third sentences of Paragraph 88 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied. Denies the second sentence of paragraph 88.

89. The allegations contained in Paragraph 89 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

90. The allegations contained in Paragraph 90 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

91. The allegations contained in Paragraph 91 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

92. The Attorney General incorporates his answers to Paragraphs 1 through 91 in answer to Paragraph 92.

93. The allegations contained in Paragraph 93 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

94. The allegations contained in Paragraph 94 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

95. The allegations contained in Paragraph 95 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

96. The Attorney General incorporates his answers to Paragraphs 1 through 95 in answer to Paragraph 96.

97. The allegations contained in Paragraph 97 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

98. The allegations contained in Paragraph 98 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

99. The allegations contained in Paragraph 99 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

100. The Attorney General incorporates his answers to Paragraphs 1 through 99 in answer to Paragraph 100.

101. The allegations contained in Paragraph 101 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

102. The allegations contained in Paragraph 102 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

103. The allegations contained in Paragraph 103 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

1 104. The Attorney General incorporates his answers to Paragraphs 1
2 through 103 in answer to Paragraph 104.

3 105. The allegations contained in Paragraph 105 constitute conclusions of
4 law to which no answer is required; to the extent they may be deemed allegations of
5 fact, they are denied.

6 106. The allegations contained in Paragraph 106 constitute conclusions of
7 law to which no answer is required; to the extent they may be deemed allegations of
8 fact, they are denied.

9 107. The allegations contained in Paragraph 107 constitute conclusions of
10 law to which no answer is required; to the extent they may be deemed allegations of
11 fact, they are denied.

12 108. Denies.

13 109. The allegations contained in Paragraph 109 constitute conclusions of
14 law to which no answer is required; to the extent they may be deemed allegations of
15 fact, they are denied.

16 110. The allegations contained in Paragraph 110 constitute conclusions of
17 law to which no answer is required; to the extent they may be deemed allegations of
18 fact, they are denied.

19 111. The Attorney General incorporates his answers to Paragraphs 1
20 through 110 in answer to Paragraph 111.

21 112. The allegations contained in Paragraph 112 constitute conclusions of
22 law to which no answer is required; to the extent they may be deemed allegations of
23 fact, they are denied.

24 113. The allegations contained in Paragraph 113 constitute conclusions of
25 law to which no answer is required; to the extent they may be deemed allegations of
26 fact, they are denied.

27 114. The Attorney General incorporates his answers to Paragraphs 1
28 through 113 in answer to Paragraph 114.

115. The allegations contained in Paragraph 115 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

116. The allegations contained in Paragraph 116 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

117. The allegations contained in Paragraph 117 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

118. The allegations contained in Paragraph 118 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

119. The allegations contained in Paragraph 119 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

120. The allegations contained in Paragraph 120 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

121. The allegations contained in Paragraph 121 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

122. The allegations contained in Paragraph 122 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

123. The Attorney General incorporates his answers to Paragraphs 1 through 122 in answer to Paragraph 123.

124. No response to Paragraph 124 is required because it is made in support of a claim that the Court dismissed in its October 17, 2018 Order, ECF No. 16.

1 125. No response to Paragraph 125 is required because it is made in support
2 of a claim that the Court dismissed in its October 17, 2018 Order, ECF No. 16.

3 126. No response to Paragraph 126 is required because it is made in support
4 of a claim that the Court dismissed in its October 17, 2018 Order, ECF No. 16.

5 127. No response to Paragraph 127 is required because it is made in support
6 of a claim that the Court dismissed in its October 17, 2018 Order, ECF No. 16.

7 128. No response to Paragraph 128 is required because it is made in support
8 of a claim that the Court dismissed in its October 17, 2018 Order, ECF No. 16.

9 129. No response to Paragraph 129 is required because it is made in support
10 of a claim that the Court dismissed in its October 17, 2018 Order, ECF No. 16.

11 130. No response to Paragraph 130 is required because it is made in support
12 of a claim that the Court dismissed in its October 17, 2018 Order, ECF No. 16.

13 131. The Attorney General incorporates his answers to Paragraphs 1
14 through 130 in answer to Paragraph 131.

15 132. The allegations contained in Paragraph 132 constitute conclusions of
16 law to which no answer is required; to the extent they may be deemed allegations of
17 fact, they are denied.

18 133. The allegations contained in Paragraph 133 constitute conclusions of
19 law to which no answer is required; to the extent they may be deemed allegations of
20 fact, they are denied.

21 The Attorney General denies each and every allegation not previously
22 admitted or otherwise qualified.

23 The Attorney General denies that Plaintiffs are entitled to the relief set forth in
24 the prayer for relief immediately following Paragraph 133, or to any relief
25 whatsoever.

26
27 In addition, without admitting any allegations contained in the First Amended
28 Complaint, the Attorney General asserts the following defenses based on

1 information and belief:

2 **FIRST DEFENSE**

3 The First Amended Complaint, and the claims for relief alleged therein, fails
4 to state facts sufficient to constitute a cause of action.

5 **SECOND DEFENSE**

6 Plaintiffs' claims in this action are barred in that they do not have standing to
7 bring them.

8 **THIRD DEFENSE**

9 The Attorney General has not knowingly or intentionally waived any
10 applicable defense or affirmative defense. The Attorney General reserves the right
11 to assert and rely upon other such defenses as may become available or apparent
12 during discovery proceedings or as may be raised or asserted by others in this case,
13 and to amend the Answer, defenses, and/or affirmative defenses accordingly. The
14 Attorney General further reserves the right to amend the Answer to delete defenses
15 and/or affirmative defenses that he determines are not applicable after subsequent
16 discovery.

WHEREFORE, the Attorney General prays that:

1. Plaintiffs take nothing by reason of their complaint;
2. Judgment be entered in favor of the Attorney General;
3. The Attorney General be awarded his costs incurred in defending this action; and
4. The Attorney General be awarded such further relief that the Court may deem just and proper.

Dated: October 31, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
TAMAR PACHTER
Supervising Deputy Attorney General

/s/ Nelson Richards
NELSON R. RICHARDS
Deputy Attorney General
*Attorneys for Defendant Attorney
General Xavier Becerra*

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 KIM RHODE, et al.,

13 Plaintiffs,

14 v.

15 XAVIER BECERRA, in his official
16 capacity as Attorney General of the State
of California,

17 Defendant.

Case No.: 18-cv-802-BEN

ORDER RE: DEFENDANT'S
MOTION TO DISMISS and
REQUEST FOR JUDICIAL NOTICE

18 Plaintiffs set out nine claims for relief in an Amended Complaint
19 (“Complaint”). Defendant Xavier Becerra filed a Federal Rule of Civil Procedure
20 12(b)(6) motion to dismiss three of those claims: Claim 1 alleging a violation of
21 U.S. Const. Art, I, § 8, Clause 3 (the “Commerce Clause”), Claim 8 alleging a
22 violation of the Equal Protection Clause, and Claim 9 alleging federal preemption.
23 This motion to dismiss does not address the Plaintiffs’ other six claims alleging
24 violations of the Second Amendment. Defendant also asks the Court to take judicial
25 notice of two exhibits, the Proposition 63 ballot measure and his web page titled
26 Certificate of Eligibility. The motion to dismiss is denied as to Claim 1 (Commerce
27 Clause), granted as to Claim 8 (Equal Protection Clause), and denied as to Claim 9
28 (Federal Preemption). The request for judicial notice is granted.

BACKGROUND

State Proposition 63 (the “Safety for All Act of 2016”) amended the California Penal Code to regulate the sale of ammunition in some ways that are similar to the State’s regulations on the sale of firearms. For example, like firearms, ammunition sales, deliveries, or transfers in California must now be processed through a state-licensed ammunition vendor in a face-to-face transaction. Cal. Penal Code § 30312(a)-(b). If California residents make ammunition purchases from sellers outside of California, the purchases must be received and processed by a California-licensed ammunition vendor in a face-to-face transaction. *Id.* California residents who obtain ammunition while outside California and desire to bring that ammunition back with them into California must first somehow deliver it to a licensed ammunition vendor and receive it from the vendor in a face-to-face transaction. *Id.* § 30314. Plaintiffs are a group of California residents, out-of-state ammunition sellers, and the California Rifle & Pistol Association. Defendant is the Attorney General of the State of California.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a claim may be dismissed if the complaint fails to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007). Dismissal is appropriate if the complaint fails to state enough facts to raise a reasonable expectation that discovery will reveal evidence of the matter complained of, or if the complaint lacks a cognizable legal theory under which relief may be granted. *Twombly*, 550 U.S. at 556.

“A claim is facially plausible ‘when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678). Reasonable inferences may be drawn in the non-movant’s favor. A court need not, however, “necessarily assume the truth of legal

1 conclusions merely because they are cast in the form of factual allegations.”
2 *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003)
3 (internal quotations omitted). “The plausibility standard is not akin to a ‘probability
4 requirement,’ but it asks for more than a sheer possibility that a defendant has acted
5 unlawfully.” *Mashiri v. Epstein Grinnell & Howell*, 845 F.3d 984, 988 (9th Cir.
6 2017) (quoting *Iqbal*, 556 U.S. at 678).

7 DISCUSSION

8 **Claim One – Commerce Clause, U.S. Const. Art, I, § 8, Clause 3**

9 Plaintiffs claim that Proposition 63, codified at California Penal Code
10 §§ 30312, 30314, 30370, and 30385, violates the Interstate Commerce Clause of the
11 United States Constitution because it favors businesses in California and
12 unjustifiably burdens interstate commerce. Defendant argues that Proposition 63 is
13 a permissible in-state regulation.

14 The United States Supreme Court reminds us that, “[t]ime and again this
15 Court has held that, in all but the narrowest circumstances, state laws violate the
16 Commerce Clause if they mandate differential treatment of in-state and out-of-state
17 economic interests that benefits the former and burdens the latter.” *Granholm v.*
18 *Heald*, 544 U.S. 460, 472 (2005) (quotation marks and citations omitted).
19 Nonresidence ought not foreclose a merchant in one state from access to markets in
20 other states. *Id.* (citation omitted). “States may not enact laws that burden
21 out-of-state producers or shippers simply to give a competitive advantage to in-state
22 businesses.” *Id.* “State laws that directly discriminate against out-of-state entities
23 can survive only if the state demonstrates both that the statute serves a legitimate
24 local purpose, and that this purpose could not be served as well by available
25 nondiscriminatory means.” *Nationwide Biweekly Admin., Inc. v. Owen*, 873 F.3d
26 716, 736 (9th Cir. 2017), *cert. denied sub nom. Nationwide Biweekly Admin., Inc. v.*
27 *Hubanks*, 138 S. Ct. 1698, 200 L. Ed. 2d 953 (2018) (citing *Maine v. Taylor*, 477
28 U.S. 131, 138 (1986). “This rule reflects the Framers’ concern that in order to

1 succeed, the new Union would have to avoid the tendencies toward economic
2 Balkanization that had plagued relations among the Colonies and later among the
3 States under the Articles of Confederation.” *Id.* (citing *Hughes v. Oklahoma*, 441
4 U.S. 322, 325 (1979)).

5 Relying on *Chinatown Neighborhood Ass'n v. Harris*, 794 F.3d 1136, 1139
6 (9th Cir. 2015), Defendant argues that Proposition 63 is permissible because it
7 regulates only sales or transfers to Californians within the State. Def. Mem. of P.A.
8 in Supp., 14. But unlike the shark fin prohibition in *Chinatown*, Proposition 63's
9 reach goes beyond California's borders. *Id.* (“California's ‘Shark Fin Law’ makes it
10 ‘unlawful for any person to possess, sell, offer for sale, trade, or distribute a shark
11 fin’ *in the state.*”) (emphasis added). Proposition 63 now prohibits a seller of
12 ammunition physically located outside of the state from selling directly to customers
13 in California. *See* § 30312(b). Thus, prior to January 1, 2018, any merchant
14 physically located outside California was permitted to sell ammunition directly to a
15 customer in California, whether the transaction was accomplished by U.S. Mail,
16 email, an internet web store, telephone text message, or telephone. Shipping
17 arrangements were left up to the seller and buyer.

18 Since January 1, 2018, Proposition 63 criminalizes all of those transactions
19 with merchants conducting business in other states, for example: Plaintiff Able's
20 Sporting, Inc. (Texas), Plaintiff AMDEP Holdings, LLC (Florida), and Plaintiff
21 R&S Firearms, Inc. (Arizona). These direct transactions are permitted now only if
22 the out-of-state merchant opens a physical store in California and obtains, *inter alia*,
23 a California ammunition vendor license. Def. Mem. of P. & A., 11 (“And an out-of-
24 state ammunition vendor that has a physical store in California may obtain a license
25 and sell ammunition in California.”). The only alternative appears to be if a third-
26 party California-based and California-licensed intermediary is hired to complete the
27 delivery. Even then, the out-of-state product must be delivered to the customer in a
28 face-to-face hand-off. Unless shippers like United Parcel Service, FedEx, and DHL

1 obtain ammunition vendor licenses, a California consumer will no longer be able to
2 receive ammunition products from out-of-state sellers at their home. Consumers
3 will have to travel from their homes to a California-licensed ammunition vendor –
4 whether the vendor does business one mile away or one hundred miles away. As a
5 result, out-of-state businesses who want to continue to sell directly to their
6 California customers will have to open not just one store front inside California, but
7 store fronts in every local market inside California in which they seek to sell
8 ammunition.

9 Proposition 63’s restrictions on out-of-state business firms are similar to the
10 constraint on interstate commerce struck down in *Nationwide Biweekly*. In
11 *Nationwide Biweekly*, the Ninth Circuit held,

12 Thus, California’s statute does precisely what the
13 Supreme Court says cannot be done except in the
14 “narrowest circumstances,” it requires any corporation that
wants to engage in a certain kind of business within the
state to become a resident.

15 If states were allowed to require local incorporation
16 as a condition of engaging in interstate commerce, then
national corporations could be required to incorporate in
17 all 50 states in order to do business—either by creating an
individual subsidiary for each state or by some similar
18 means. No matter the specific approach taken, requiring
incorporation under the laws of each individual state in
19 order to operate a national business would contribute
toward precisely the “Balkanization” the Dormant
Commerce Clause is meant to prevent.

20 873 F.3d at 736-37 (citing *Heald*, 544 U.S. at 472); *c.f.*, *American Fuel &*
21 *Petrochemical Manufacturers v. O’Keefe*, 903 F.3d 903, 914 (9th Cir. 2018) (no
22 Commerce Clause violation in Oregon fuel carbon tax scheme because, “the
23 Program does not require or even incentivize an out-of-state operator to become a
24 resident in order to compete on equal terms.”); *see also Philadelphia v. New Jersey*,
25 437 U.S. 617, 628 (1978) (“The New Jersey law at issue in this case falls squarely
26 within the area that the Commerce Clause puts off limits to state regulation. . . .
27 What is crucial is the attempt by one State to isolate itself from a problem common
28 to many by erecting a barrier against the movement of interstate trade.”).

1 Defendant argues that it is wrong to compare out-of-state, online ammunition
2 businesses with in-state brick-and-mortar stores.¹ Def. Mem. of P. & A., 10.
3 Defendant argues that the correct comparison is between out-of-state online sellers
4 and in-state online sellers. Defendant says that both must complete a sale through a
5 third-party ammunition vendor and that therefore, the regulation is even handed.
6 But how a state disfavors its resident online sellers compared to its resident brick-
7 and-mortar sellers is of no moment for commerce clause analysis. What is
8 important is that California's resident businesses are the only businesses that may
9 sell directly to ammunition consumers. Sales of any quantity, by all other sellers,
10 anywhere else in the country, must be funneled through a California resident vendor
11 licensed to sell ammunition. *Nationwide Biweekly*, 873 F.3d at 737 ("The correct
12 comparison, however, is between California corporations that are organized for the
13 purpose of being [insurance] proraters and out-of-state corporations that are
14 organized for the purpose of being proraters. . . . [t]he out-of-state corporation must

15
16 ¹In the current world of e-commerce, older concepts of a place of contracting or
17 a place of purchase strain traditional legal theories, as the U.S. Supreme Court observes
in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2095 (2018).

18 "Modern e-commerce does not align analytically with a test that relies on
19 the sort of physical presence defined in *Quill*. . . . For example, a company
20 with a website accessible in South Dakota may be said to have a physical
21 presence in the State via the customers' computers. A website may leave
22 cookies saved to the customers' hard drives, or customers may download
23 the company's app onto their phones. Or a company may lease data
24 storage that is permanently, or even occasionally, located in South
25 Dakota. What may have seemed like a 'clear,' 'bright-line test' when
26 *Quill* was written now threatens to compound the arbitrary consequences
27 that should have been apparent from the outset. The 'dramatic
28 technological and social changes' of our 'increasingly interconnected
economy' mean that buyers are 'closer to most major retailers' than ever
before — 'regardless of how close or far the nearest storefront.' Between
targeted advertising and instant access to most consumers via any
internet-enabled device, 'a business may be present in a State in a
meaningful way without' that presence 'being physical in the traditional
sense of the term.' A virtual showroom can show far more inventory, in
far more detail, and with greater opportunities for consumer and seller
interaction than might be possible for local stores."

Id. (citations omitted).

1 either incorporate in California or create a subsidiary incorporated in California.
2 The statute therefore discriminates against out-of-state economic interests.”).

3 This is similar to the New York law prohibiting direct sales from out-of-state
4 wineries which was struck down for violating the Interstate Commerce Clause in
5 *Heald*. There, the U.S. Supreme Court observed, “[w]e have viewed with particular
6 suspicion state statutes requiring business operations to be performed in the home
7 State that could more efficiently be performed elsewhere. New York’s in-state
8 presence requirement runs contrary to our admonition that States cannot require an
9 out-of-state firm to become a resident in order to compete on equal terms.” *Heald*,
10 544 U.S. at 474–75 (quotation marks and citations omitted); *but see Brown &*
11 *Williamson Tobacco Corp. v. Pataki*, 320 F.3d 200 (2nd Cir. 2002) (statute
12 requiring in-state face-to-face sales of more than four cartons of cigarettes did not
13 violate Commerce Clause).

14 Finally, Defendant argues that the Complaint does not allege facts showing a
15 substantial burden on interstate commerce and that even if it does, Proposition 63’s
16 benefits eclipse any burden. Def. Mem. of P. & A., 15-17. Where a statute
17 regulates even-handedly to effectuate a local public interest and has only incidental
18 effects on interstate commerce, courts weigh whether the burden on commerce is
19 excessive in relation to the putative local benefit. *Pike v. Bruce Church, Inc.*, 397
20 U.S. 137, 142 (1970). To the extent that the burden is not specifically described by
21 the Complaint, on a Rule 12(b)(6) motion, the court draws inferences in the non-
22 movant’s favor. Certainly in this case, there is a reasonable inference to be drawn in
23 Plaintiffs’ favor that Proposition 63 significantly burdens interstate commerce.
24 Moreover, the degree of burden and how it compares to the benefits of Proposition
25 63 are predominantly fact questions that are not ripe for a motion to dismiss. As the
26 U.S. Supreme Court teaches, “[w]e generally leave the courtroom door open to
27 plaintiffs invoking the rule in *Pike*, that even nondiscriminatory burdens on
28 commerce may be struck down on a showing that those burdens clearly outweigh

1 the benefits of a state or local practice.” *Dep’t of Revenue of Kentucky v. Davis*,
2 533 U.S. 328, 353 (2008). At the pleading stage, Plaintiffs have stated a plausible
3 claim for relief that Proposition 63 violates the Commerce Clause. Therefore,
4 Defendant’s motion to dismiss Claim 1 is denied.

5 **Claim Eight – Equal Protection Clause**

6 Plaintiffs claim that Proposition 63, codified at § 30314, violates the Equal
7 Protection Clause because it applies *only* to California residents. As a result, a non-
8 resident may bring ammunition directly into California, while a resident must first
9 have ammunition delivered to an in-state licensed ammunition vendor.

10 Defendant argues that the Ninth Circuit has held that where an “equal protection
11 challenge is no more than a Second Amendment claim dressed in equal protection
12 clothing, it is subsumed by, and coextensive with the former, and therefore not
13 cognizable under the Equal Protection Clause.” *Teixeira v. County of Alameda*, 822
14 F.3d 1047, 1052 (9th Cir. 2016), *vacated in part by*, 854 F.3d 1046 (9th Cir. 2016),
15 *and reh’g en banc*, 873 F.3d 670 (9th Cir. 2017), *cert. denied*, No. 17-982 (U.S.
16 May 14, 2018).

17 Plaintiffs’ claim is primarily a Second Amendment claim. The equal or
18 unequal treatment of state residents and non-residents regarding firearm
19 ammunition may be addressed in Plaintiffs’ other claims for relief alleging
20 violations of Second Amendment rights. Therefore, Defendant’s motion to dismiss
21 Claim 8 is granted.

22 **Claim Nine – Federal Preemption**

23 Plaintiffs allege 18 U.S.C. § 926A permits lawful travel with a firearm and
24 ammunition through and to California and preempts California Penal Code
25 § 30314(a). They seek a declaration that § 926A preempts § 30314. The
26 Supremacy Clause invalidates state laws that interfere with, or are contrary to
27 federal law. “The Supreme Court has stated that ‘even though that [Supremacy]
28 Clause is not a source of any federal rights, it does ‘secure’ federal rights by

1 according them priority whenever they come in conflict with state law.” *Pac. Bell*
2 *Tel. Co. v. City of Hawthorne*, 188 F. Supp. 2d 1169, 1175 (C.D. Cal. 2001)
3 (citation omitted). Plaintiffs may “sue under the Supremacy Clause for declaratory
4 relief that a state law is preempted by federal law -- even when the federal law does
5 not authorize a private right of action.” *Id.* (citations omitted).

6 Section 926A provides, in essence, that anyone may transport firearms from
7 one state in which they are legal, through other states in which they are illegal, to a
8 destination state in which they are legal, provided the firearms are transported in a
9 prescribed, safe manner. Specifically, § 926A provides a safe harbor,

10 Notwithstanding any other provision of any law or any rule or
11 regulation of a State or any political subdivision thereof, any person
12 who is not otherwise prohibited by this chapter from transporting,
13 shipping, or receiving a firearm shall be entitled to transport a firearm
14 for any lawful purpose from any place where he may lawfully possess
15 and carry such firearm to any other place where he may lawfully
16 possess and carry such firearm if, during such transportation the
17 firearm is unloaded, and neither the firearm nor any *ammunition* being
18 transported is readily accessible or is directly accessible from the
19 passenger compartment of such transporting vehicle: Provided, That in
20 the case of a vehicle without a compartment separate from the driver's
21 compartment the firearm or *ammunition* shall be contained in a locked
22 container other than the glove compartment or console.

23 18 U.S.C.A. § 926A (emphasis added). California’s § 30314(a), in contrast,
24 criminalizes bringing ammunition into the state that was purchased or obtained
25 outside the state, when accomplished by a resident. Section 30314(a) provides,

26 Commencing January 1, 2018, a resident of this state shall not bring or
27 transport into this state any *ammunition* that he or she purchased or
28 otherwise obtained from outside of this state unless he or she first has
that *ammunition* delivered to a licensed ammunition vendor for
delivery to that resident pursuant to the procedures set forth in Section
30312.

Cal. Penal Code § 30314(a) (emphasis added).

All agree that a California resident (who is not otherwise prohibited) may
lawfully possess ammunition within the state, regardless of where the resident
purchased or obtained the ammunition prior to January 1, 2018. In fact, § 30314
says nothing about simple possession of ammunition. Section 30314 criminalizes

1 the *bringing* of foreign ammunition into the state by a resident.² Congress added
2 § 927 to clarify that § 926A was not intended to occupy the field. Thus, § 926A
3 only preempts state law where “there is a direct and positive conflict between [§
4 926A] and the law of the State so that the two cannot be reconciled or consistently
5 stand together.” *See* 18 U.S.C. § 927.

6 Because California prohibits a resident from bringing foreign-bought
7 ammunition back into the state, while federal law entitles a person to transport a
8 firearm (and its ammunition) for any lawful purpose from any place where he may
9 lawfully possess and carry such firearm to any other place where he may lawfully
10 possess and carry such firearm, there appears to be a direct and positive conflict
11 between the two laws. The direct conflict is at the point of coming into the state.
12 Section 30314 prohibits travel (or bringing) into the state foreign-bought
13 ammunition; § 926A affirmatively entitles a person to transport into the state a
14 firearm and ammunition – regardless of where it is obtained. The state statute
15 criminalizes the same act that the federal statute makes permissible.

16 “In considering the preemptive scope of a statute, congressional intent is the
17 ultimate touchstone.” With express preemption, “we focus first on the statutory
18 language, which necessarily contains the best evidence of Congress’ preemptive
19 intent.” *California Trucking Ass’n v. Su*, 903 F.3d 953, 959 (9th Cir. 2018)
20 (quoting *Dan’s City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013)) (citation
21 and internal quotation marks omitted). When the task has “nuance,” a court may
22 turn to the legislative history and broader statutory framework of the statute “to
23 better glean Congress’ intent.” *California Trucking*, 903 F.3d at 960.

24 Congress enacted § 926A as part of the Firearms Owners’ Protection Act,

25
26 ²One can imagine new border state businesses springing up along interstate
27 highways as a result of § 30314. Since § 30314 does not apply to non-residents, a
28 resident of California might buy foreign ammunition outside the state. On the trip
back, the California resident might stop just outside the border and deliver the
ammunition to a non-resident crosser, whereupon both would cross into California.
The non-resident crosser would then re-deliver the ammunition to the resident, thus
avoiding § 30314.

1 Pub. L. No. 99–308, § 107(a), 100 Stat. 449 (May 19, 1986), amended by Pub. L.
2 No. 99–360, § 1(a), 100 Stat. 766 (July 8, 1986). “The statute is the product of a
3 tortured legislative history.” *Torraco v. Port Auth. of New York & New Jersey*, 615
4 F.3d 129, 143 (2d Cir. 2010) (Wesley, C.J., concurring). “The record from the
5 Senate debate regarding this provision contains a memorandum stating that the
6 language of Senator Dole’s proposal was ‘unambiguous in its creation of a federal
7 right,’ but ‘far too vague to serve as the basis for preempting state laws coming into
8 conflict with that right.’” *Id.* (quoting 131 Cong. Rec. S9101–05 (July 9, 1985)).
9 That was addressed in a revised bill, enacted as part of the Firearm Owners
10 Protection Act. *Id.* Soon after its enactment, § 926A was amended to its current
11 form. *Id.* “The ‘teeth’ of this negative statutory right and the criminal defense that
12 it makes available come from the Supremacy Clause. In other words, when the right
13 arising out of § 926A applies, the state law in question must yield to the federal law
14 that Congress enacted to create this safe harbor. This characteristic of the statute
15 was acknowledged, and its efficacy as a policy decision was debated, throughout the
16 legislative history of § 926A.” *Id.* at 147–48 (citing H. Rep. No. 99–495, at 8, 28
17 (Mar. 14, 1986), reprinted in 1986 U.S.C.C.A.N. 1327, 1334, 1354; *see also* 131
18 Cong. Rec. E5359–02 (Dec. 3, 1985) (memorandum from the staff of the House
19 Judiciary Committee); 131 Cong. Rec. S8686–01 (June 24, 1985) (statement of Sen.
20 Hatch)).

21 It appears that the safe harbor provision of § 926A and the Firearms Owners’
22 Protection Act evinces a Congressional intent to protect a firearm owner when
23 traveling from the complexities and vagueries of state and local firearms laws.
24 Implicit in § 926A’s double mention of “ammunition” is the idea that the federal
25 safe harbor was for traveling with both firearm and ammunition. Because
26 California’s law criminalizes bringing certain ammunition into the state at the same
27
28

1 place that Congress has designed a safe harbor,³ Plaintiffs have made a plausible
2 claim for declaratory judgment relief based on preemption. As Defendant sought
3 dismissal under Rule 12(b)(6), rather than a judgment on the pleadings under Rule
4 12(c), further factual development may take place for resolution by summary
5 judgment or trial. *See e.g., Equal Access Educ. v. Merten*, 305 F. Supp. 2d 585, 608
6 (E.D. Va. 2004) (“If plaintiffs can adduce facts to prove this allegation, they may
7 establish a conflict with federal law and hence a Supremacy Clause bar. Thus,
8 [Rule 12(b)(6)] dismissal on this issue is not warranted at this point in the litigation.
9 Resolution of this issue must await a more fully developed factual record at
10 summary judgment or trial.”).

11 CONCLUSION

12 The motion to dismiss is denied as to Claim 1 (Commerce Clause), granted
13 as to Claim 8 (Equal Protection Clause), and denied as to Claim 9 (Federal
14 Preemption).

15 DATED: October 17, 2018

16
17 
18 Hon. Roger T. Benitez
United States District Judge

19
20
21
22
23
24
25 ³California’s statute is unlike the Chicago, Illinois ordinance that was challenged
26 under the supremacy clause in *Second Amendment Arms v. City of Chicago*, 2012 WL
27 4464900 *6 (N.D. Ill. 2012). In that case, the court granted a motion to dismiss
28 finding no federal preemption by § 926A. But the Chicago ordinance included
specific language designed to avoid a federal conflict. Section 8–20–090 of the
Chicago ordinance, entitled “interstate transportation of firearms,” provided: “It shall
not be a violation of this chapter if a person transporting a firearm or ammunition while
engaged in interstate travel is in compliance with 18 U.S.C.A. § 926A.” *Id.*
California’s statute has no such language.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KIM RHODE et al.,

Plaintiffs,

v.

**XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California, et al.,**

Defendants.

3:18-cv-00802-BEN-JLB

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEFENDANT XAVIER
BECERRA'S MOTION TO
DISMISS THE FIRST AMENDED
COMPLAINT; DECLARATION
OF NELSON R. RICHARDS**

Judge: Hon. Roger T. Benitez
Date: Sept. 20, 2018
Time: 10:00 a.m.
Courtroom: 5A
Action Filed: April 26, 2018

REQUEST FOR JUDICIAL NOTICE

Defendant Xavier Becerra, sued in his official capacity as the Attorney General of California, respectfully requests that this Court take judicial notice, pursuant to Federal Rule of Evidence 201(c)(2), of the documents attached to the accompanying declaration of counsel. Exhibit 1 to the declaration is relevant to the claims in this case because it is an excerpt of the Official Voter Information Guide for the November 8, 2016 election that provides the full text of Proposition 63, several codified sections of which are challenged in this case. Exhibit 2 is relevant to the claims in this case because it is the Department of Justice's description of a component of the process being challenged in the complaint.

Federal Rule of Evidence 201(b) provides that a judicially noticed fact must be one "not subject to reasonable dispute" because it is either (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be readily questioned. Fed. R. Evid. 201(b). "[A] federal court must take judicial notice of state statutes 'without plea or proof.'" *Getty Petroleum Mktg., Inc. v. Capital Terminal Co.*, 391 F.3d 312, 323 (1st Cir. 2004) (citing *Lamar v. Micou*, 114 U.S. 218, 223 (1885)). Ballot measures that have been adopted by the voters, such as Proposition 63, are to be published in the official California Statutes. *See* Cal. Gov. Code § 9766(d)-(e). As part of California law, Exhibit 1 is therefore a proper subject of judicial notice. *See also Wishnev v. Nw. Mut. Life Ins. Co.*, 162 F. Supp. 3d 930, 936 (N.D. Cal. 2016) ("Ballot materials are a proper subject of judicial notice.").

"Under Rule 201, the court can take judicial notice of public records and government documents available from reliable sources on the Internet, such as websites run by governmental agencies." *Gerritsen v. Warner Bros. Entm't Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015) (quotation marks and brackets

omitted). Exhibit 2 is thus judicially noticeable because it is a copy of the portion of the California Department of Justice's website on Certificates of Eligibility.

Dated: July 18, 2018

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
TAMAR PACHTER
Supervising Deputy Attorney General

/s/ Nelson Richards
NELSON R. RICHARDS
Deputy Attorney General
*Attorneys for Defendant Attorney
General Xavier Becerra*

DECLARATION OF NELSON R. RICHARDS

I, NELSON R. RICHARDS, declare:

1. I am a Deputy Attorney General with the California Department of Justice, Office of the Attorney General, and an attorney for Defendant Xavier Becerra, Attorney General of California, in this matter. I am an attorney at law duly licensed to practice before all courts of the State of California and admitted to practice before the United States District Court for the Southern District of California. I have personal knowledge of the facts set forth below and if called as a witness, I could and would competently testify to them.

2. This declaration is made in connection with the request for judicial notice in support of Defendant Xavier Becerra's motion to dismiss the first amended complaint.

3. Exhibit 1 is a true and correct copy of an excerpt of the Official Voter Information Guide for the November 8, 2016 election that provides the full text of Proposition 63, several codified sections of which are challenged in this case. The complete document is available on the California Secretary of State's website at: <http://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf>.

4. Exhibit 2 is a true and correct copy of the California Department of Justice's webpage on Certificates of Eligibility, as accessed on July 18, 2018. The webpage is available at: <https://oag.ca.gov/firearms/cert-eligibility>.

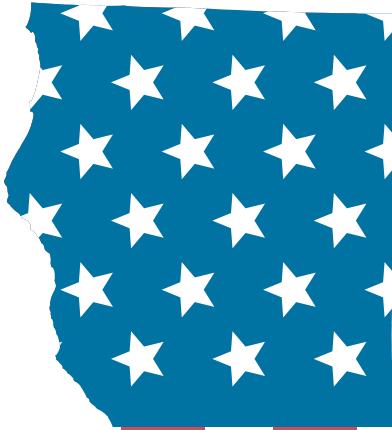
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 18, 2018

/s/ Nelson Richards
NELSON R. RICHARDS
Deputy Attorney General

EXHIBIT 1

California General Election Tuesday November 8, 2016



Polls Are Open From 7:00 a.m. to 8:00 p.m. on Election Day!

★ ★ ★ ★ ★ OFFICIAL VOTER INFORMATION GUIDE ★ ★ ★ ★ ★



Certificate of Correctness

I, Alex Padilla, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 8, 2016, and that this guide has been correctly prepared in accordance with the law. Witness my hand and the Great Seal of the State in Sacramento, California, this 15th day of August, 2016.



A handwritten signature in blue ink that reads "Alex Padilla".

Alex Padilla, Secretary of State

VOTER BILL OF RIGHTS

YOU HAVE THE FOLLOWING RIGHTS:

- 1** **The right to vote if you are a registered voter.**
You are eligible to vote if you are:
 - a U.S. citizen living in California
 - at least 18 years old
 - registered where you currently live
 - not in prison or on parole for a felony
- 2** **The right to vote if you are a registered voter even if your name is not on the list.** You will vote using a provisional ballot. Your vote will be counted if elections officials determine that you are eligible to vote.
- 3** **The right to vote if you are still in line when the polls close.**
- 4** **The right to cast a secret ballot** without anyone bothering you or telling you how to vote.
- 5** **The right to get a new ballot if you have made a mistake,** if you have not already cast your ballot. You can:
 - Ask an elections official at a polling place** for a new ballot; or
 - Exchange your vote-by-mail ballot** for a new one at an elections office, or at your polling place; or
 - Vote using a provisional ballot,** if you do not have your original vote-by-mail ballot.
- 6** **The right to get help casting your ballot** from anyone you choose, except from your employer or union representative.
- 7** **The right to drop off your completed vote-by-mail ballot at any polling place** in the county where you are registered to vote.
- 8** **The right to get election materials in a language other than English** if enough people in your voting precinct speak that language.
- 9** **The right to ask questions to elections officials about election procedures** and watch the election process. If the person you ask cannot answer your questions, they must send you to the right person for an answer. If you are disruptive, they can stop answering you.
- 10** **The right to report any illegal or fraudulent election activity** to an elections official or the Secretary of State's office.
 - 🖥 On the web at **www.sos.ca.gov**
 - ☎ By phone at **(800) 345-VOTE (8683)**
 - ✉ By email at **elections@sos.ca.gov**

**IF YOU BELIEVE YOU HAVE BEEN DENIED ANY OF THESE RIGHTS, CALL THE SECRETARY OF STATE'S
CONFIDENTIAL TOLL-FREE VOTER HOTLINE AT (800) 345-VOTE (8683).**

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Assistance for Voters with Disabilities

State and federal laws require polling places to be physically accessible to voters with disabilities. County elections officials inspect each site and often make temporary modifications for Election Day. Every person who works in a polling place is trained in election laws and voter rights, including the need to make reasonable modifications of policies and procedures to ensure equal access.

State and federal laws require that all voters be able to cast their ballots privately and independently. Each polling place must have at least one voting machine that allows all voters, including those who are blind or visually impaired, to cast a ballot without assistance. The voting machine permits voters to verify their vote choices and, if there is an error, allows voters to correct those choices before submitting their ballot.

Check your sample ballot



Your county sample ballot booklet will:

- Describe how persons with disabilities can vote privately and independently
- Display a wheelchair symbol if your polling place is accessible to voters with disabilities

At the polling place

If you need help marking your ballot, you may choose up to two people to help you. This person cannot be:

- Your employer or anyone who works for your employer
- Your labor union leader or anyone who works for your labor union

Curbside voting allows you to park as close as possible to the voting area. Elections officials will bring you a roster to sign, a ballot, and any other voting materials you may need, whether you are actually at a curb or in a car.

Contact your county elections office to see if curbside voting is available at your polling place.

Voter Registration

If you have already registered to vote, you do not need to reregister **unless** you change your name, home address, mailing address or if you want to change or select a political party.

You can register to vote online at RegisterToVote.ca.gov. Or call the Secretary of State's *free* Voter Hotline at (800) 345-VOTE (8683) to get a form mailed to you.

Voter registration forms can be found at most post offices, libraries, city and county government offices, county elections offices, and the California Secretary of State's Office.

Voter Registration Privacy Information

Safe at Home Confidential Voter Registration Program: Certain voters facing life-threatening (i.e. domestic violence, stalking victims) situations may qualify for confidential voter status. For more information, contact the Secretary of State's Safe at Home program toll-free at (877) 322-5227 or visit <http://www.sos.ca.gov/registries/safe-home/>.

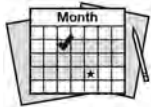
Voter Information Privacy: Information on your voter registration affidavit will be used by elections officials to send you official information on the voting process, such as the location of your polling place and the issues and candidates that will appear on the ballot. Commercial use of voter registration information is prohibited by law and is a misdemeanor. Voter information may be provided to a candidate for office, a ballot measure committee, or other person for election, scholarly, journalistic, political, or governmental purposes, as determined by the Secretary of State. Driver license and social security numbers, or your signature as shown on your voter registration card, cannot be released for these purposes. If you have any questions about the use of voter information or wish to report suspected misuse of such information, please call the Secretary of State's Voter Hotline at (800) 345-VOTE (8683).

Ways to Vote



Vote by Mail

- Request a vote-by-mail ballot by **November 1**.
- Return by mail—must be postmarked on or before **November 8** and received by your county elections office no later than **November 14**.
- Return in person—to your county elections office or any polling place in your county before 8:00 p.m. on **November 8**.



Vote Early in Person

Some counties offer early voting at a few locations before Election Day. Contact your county elections office to see if they offer early voting. County contact information can be found at: <http://www.sos.ca.gov/elections/voting-resources/county-elections-offices/>.



Vote at the Polls on Election Day

- Polls are open on Election Day: **November 8 from 7:00 a.m. to 8:00 p.m.**
- The location of your polling place is printed on the back page of the sample ballot booklet your county elections official mailed to you. You can also find your polling place:
 - 📞 By calling (800) 345-VOTE (8683)
 - 💻 Online at www.sos.ca.gov/elections/polling-place
 - 📱 By texting *Vote* to GOVOTE (468683)

Provisional Voting

If your name is not on the voter list at your polling place, you have the right to vote a provisional ballot.

What Is a Provisional Ballot?

A provisional ballot is a regular ballot that is placed in a special envelope prior to being put in the ballot box.

Who Casts a Provisional Ballot?

Provisional ballots are ballots cast by voters who:

- Believe they are registered to vote even though their names are not on the official voter registration list at the polling place.
- Vote by mail but did not receive their ballot or do not have their ballot with them, and instead want to vote at a polling place.

Will My Provisional Ballot Be Counted?

Your provisional ballot will be counted after elections officials have confirmed that you are registered to vote in that county and you did not already vote in that election.

You may vote a provisional ballot at any polling place in the county in which you are registered to vote, however, only the elections contests you are eligible to vote for will be counted.

How Can You Check the Status of Your Provisional Ballot?

Every voter who casts a provisional ballot has the right to find out from their county elections official if the ballot was counted and, if not, the reason why it was not counted.



Visit <http://www.sos.ca.gov/elections/ballot-status/> for a list of county contacts and information on how to check the status of your provisional ballot.



Secretary of State

Dear Fellow Californians,

There is no greater right than the right to vote. Through voting, you help select your local, state, and national leaders, and ensure that your voice is heard. The Presidential General Election is fast approaching. I encourage you to participate in your most fundamental right as a citizen of the United States of America.

This Voter Guide can help you make informed decisions. It includes impartial analysis, arguments in favor and against the many ballot measures, declarations of the candidates, the Voter Bill of Rights, and other important information.

All of the information is presented here as a reference for you. This guide is also available online on the California Secretary of State website: www.voterguide.sos.ca.gov.

Please take the time to read the information in this guide carefully as we approach Election Day. If you would like to know who is financing each of the campaigns, you can search campaign finance information at: <http://powersearch.sos.ca.gov/>.

If you have any questions about how to vote, or how to register to vote, you can contact the office of the Secretary of State by calling toll-free 1-800-345-VOTE (8683). To obtain the contact information of your local county elections officials, you can visit the Secretary of State website at: www.sos.ca.gov/county-elections-offices.

Thank you for your commitment to the future of both our state and nation. The Presidential General Election is Tuesday, November 8. Your vote is important. Remember that your vote is your voice. Be heard. VOTE!

QUICK-REFERENCE GUIDE

PROP 63 FIREARMS. AMMUNITION SALES. INITIATIVE STATUTE.

SUMMARY

Requires background check and Department of Justice authorization to purchase ammunition. Prohibits possession of large-capacity ammunition magazines. Establishes procedures for enforcing laws prohibiting firearm possession by specified persons. Requires Department of Justice's participation in federal National Instant Criminal Background Check System. Fiscal Impact: Increased state and local court and law enforcement costs, potentially in the tens of millions of dollars annually, related to a new court process for removing firearms from prohibited persons after they are convicted.

WHAT YOUR VOTE MEANS

YES A YES vote on this measure means: A new court process would be created for the removal of firearms from individuals upon conviction of certain crimes. New requirements related to the selling or purchasing of ammunition would be implemented.

NO A NO vote on this measure means: No new firearm- or ammunition-related requirements would be implemented.

ARGUMENTS

PRO Proposition 63 will improve public safety by keeping guns and ammunition out of the wrong hands. Law enforcement and public safety leaders support Prop. 63 because it will reduce gun violence by preventing violent felons, domestic abusers, and the dangerously mentally ill from obtaining and using deadly weapons and ammo.

CON Law enforcement, anti-terrorism experts, and civil liberties groups overwhelmingly oppose Prop. 63. It was written by a politician seeking to make a name for himself, not the public safety community. It imposes costly burdens on law enforcement and the taxpayer and only affects the law-abiding.

FOR ADDITIONAL INFORMATION

FOR

Lindsey Cobia
Safety for All
268 Bush Street #222
San Francisco, CA 94104
(415) 735-5192
safetyforall@safetyforall.com
www.safetyforall.com

AGAINST

Coalition for Civil Liberties
info@coalitionforcivil liberties.com
www.stoptheammograb.com

PROP 64 MARIJUANA LEGALIZATION. INITIATIVE STATUTE.

SUMMARY

Legalizes marijuana under state law, for use by adults 21 or older. Imposes state taxes on sales and cultivation. Provides for industry licensing and establishes standards for marijuana products. Allows local regulation and taxation. Fiscal Impact: Additional tax revenues ranging from high hundreds of millions of dollars to over \$1 billion annually, mostly dedicated to specific purposes. Reduced criminal justice costs of tens of millions of dollars annually.

WHAT YOUR VOTE MEANS

YES A YES vote on this measure means: Adults 21 years of age or older could legally grow, possess, and use marijuana for nonmedical purposes, with certain restrictions. The state would regulate nonmedical marijuana businesses and tax the growing and selling of medical and nonmedical marijuana. Most of the revenue from such taxes would support youth programs, environmental protection, and law enforcement.

NO A NO vote on this measure means: Growing, possessing, or using marijuana for nonmedical purposes would remain illegal. It would still be legal to grow, possess, or use marijuana for medical purposes.

ARGUMENTS

PRO Prop. 64 creates a safe, legal system for adult use of marijuana. It controls, regulates and taxes marijuana use, and has the nation's strictest protections for children. It provides billions for afterschool programs, job training, drug treatment, and cracking down on impaired driving. Fix our approach to marijuana. Visit YesOn64.org!

CON Proposition 64 purposely omits DUI standard to keep marijuana-impaired drivers off our highways. California Association of Highway Patrolmen and Senator Dianne Feinstein strenuously oppose. Legalizes ads promoting smoking marijuana, Gummy candy and brownies on shows watched by millions of children and teens. Shows reckless disregard for child health and safety. Opposed by California Hospital Association. Vote "No".

FOR ADDITIONAL INFORMATION

FOR

Dustin Moore
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AGAINST

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PROPOSITION **FIREARMS. AMMUNITION SALES.**
63 INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

63

- Requires individuals to pass a background check and obtain Department of Justice authorization to purchase ammunition.
- Prohibits possession of large-capacity ammunition magazines, and requires their disposal, as specified.
- Requires most ammunition sales be made through licensed ammunition vendors and reported to Department of Justice.
- Requires lost or stolen firearms and ammunition be reported to law enforcement.
- Prohibits persons convicted of stealing a firearm from possessing firearms.
- Establishes new procedures for enforcing laws prohibiting firearm possession.
- Requires Department of Justice to provide information about prohibited persons to federal

National Instant Criminal Background Check System.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Increased state and local court and law enforcement costs, potentially in the tens of millions of dollars annually, related to a new court process for removing firearms from prohibited persons after they are convicted.
- Potential increase in state costs, not likely to exceed the millions of dollars annually, related to regulating ammunition sales. These costs would likely be offset by fee revenues.
- Potential net increase in state and local correctional costs, not likely to exceed the low millions of dollars annually, related to changes in firearm and ammunition penalties.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Restrictions on Firearm and Ammunition Possession

Under federal and state law, certain individuals are not allowed to have firearms. These "prohibited persons" include individuals (1) convicted of felonies and some misdemeanors (such as assault or battery), (2) found by a court to be a danger to themselves or others due to mental illness, and (3) with a restraining order against them. In California, individuals who are not allowed to have firearms are also not allowed to have ammunition.

Regulation of Firearm Sales

Both federal and state law include various regulations related to firearm sales, including the licensing of firearm dealers. Such regulations include:

- **Background Checks.** Under federal law, firearm dealers must request background checks of individuals seeking to buy firearms from the National Instant Criminal Background

Check System (NICS). The NICS searches a number of federal databases to ensure that the buyer is not a prohibited person. As allowed by federal law, California processes all background check requests from firearm dealers in the state directly by using NICS and various state databases.

- **Removal of Firearms From Prohibited Persons.** The California Department of Justice (DOJ) maintains a database of individuals who have legally bought or registered a firearm with the state. DOJ agents use this information to remove firearms from individuals who are no longer allowed to have firearms.
- **Other Regulations.** Other state regulations related to firearms include: limits on the type of firearms that can be bought, a ten-day waiting period before a dealer may give a firearm to a buyer, and requirements for recording and reporting firearm sales.

Fees charged to firearm dealers and buyers generally offset the state's costs to regulate firearm sales.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Regulation of Ammunition Sales

Prior to this year, the state did not regulate ammunition sales in the same manner as firearms. In July 2016, the state enacted legislation to increase the regulation of ammunition sales. Such regulations include:

- **Licenses to Sell Ammunition.** Beginning January 2018, individuals and businesses will be required to obtain a one-year license from DOJ to sell ammunition. Certain individuals and businesses would not be required to obtain a license, such as licensed hunters selling less than 50 rounds of ammunition per month to another licensed hunter while on a hunting trip. In order to obtain a license, ammunition dealers will need to demonstrate that they are not prohibited persons. In addition, certain entities will be able to automatically receive an ammunition license, such as firearm dealers licensed by both the state and federal government and firearm wholesalers. A vendor who fails to comply with ammunition sale requirements three times would have their ammunition dealer's license permanently revoked. DOJ could charge a fee to individuals and businesses seeking a license to sell ammunition to support its administrative and enforcement costs.
- **DOJ Approval to Buy Ammunition.** Beginning July 2019, ammunition dealers will be required to check with DOJ at the time of purchase that individuals seeking to buy ammunition are not prohibited persons. This requirement would not apply to some individuals, such as persons permitted to carry concealed weapons. In addition, ammunition dealers will generally be required to collect and report information—such as the date of the sale, the buyers' identification information, and the type of ammunition purchased—to DOJ for storage in a database for two years. Failure to comply with these requirements is a misdemeanor (punishable by a fine and/or imprisonment in county jail). DOJ could generally charge an individual seeking to purchase ammunition a fee of up to \$1 per

transaction to support its administrative and enforcement costs. DOJ could adjust this fee cap annually for inflation.

- **Other Regulations.** Beginning January 2018, state law generally will require that most ammunition sales (including Internet and out-of-state sales) take place through a licensed ammunition dealer. In addition, beginning July 2019, most California residents will be prohibited from bringing ammunition into the state without first having the ammunition delivered to a licensed ammunition dealer. Failure to comply with these requirements is a misdemeanor.

Status of Recent Legislation

As discussed above, the state recently enacted legislation to increase the regulation of ammunition sales. The state also recently enacted legislation to further limit the ownership of large-capacity magazines and to create a penalty for filing a false lost or stolen firearm report to law enforcement. These laws will take effect unless they are placed before the voters as referenda. If that occurs, voters will determine whether the laws take effect.

PROPOSAL

Proposition 63 (1) changes state regulation of ammunition sales, (2) creates a new court process to ensure the removal of firearms from prohibited persons after they are convicted of a felony or certain misdemeanors, and (3) implements various other provisions. Additionally, Proposition 63 states that the Legislature can change its provisions if such changes are "consistent with and further the intent" of the measure. Such changes can only be made if 55 percent of the members of each house of the Legislature passes them and the bill is enacted into law.

Changes to State Regulation of Ammunition Sales

Proposition 63 includes various regulations related to the sale of ammunition. Some of the regulations would replace existing law with similar provisions. However, other regulations proposed by Proposition 63 are different, as discussed below.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Requirements to Buy Ammunition. Proposition 63 includes various requirements for individuals seeking to buy ammunition and for DOJ to regulate such purchases. Specifically, the measure:

- Requires individuals to obtain a four-year permit from DOJ to buy ammunition and for ammunition dealers to check with DOJ that individuals buying ammunition have such permits.
- Requires DOJ to revoke permits from individuals who become prohibited.
- Allows DOJ to charge each person applying for a four-year permit a fee of up to \$50 to support its various administrative and enforcement costs related to ammunition sales.

The state, however, enacted legislation in July 2016 to replace the above provisions with alternative ones if Proposition 63 is approved by the voters. (This legislation was enacted pursuant to the provision of Proposition 63 allowing for changes that are “consistent with and further the intent” of the proposition, as described earlier.) Specifically, under the legislation: (1) ammunition dealers would be required to check with DOJ that individuals seeking to buy ammunition are not prohibited persons at the time of purchase and (2) DOJ could generally charge such individuals up to \$1 per transaction. These provisions are similar to current law. Fewer individuals, however, would be exempt from this check than under current law. For example, individuals permitted to carry concealed weapons would be subject to this check.

Licenses to Sell Ammunition. Similar to current law, Proposition 63 requires individuals and businesses to obtain a one-year license from DOJ to sell ammunition. However, the measure changes the types of individuals and businesses that would be exempt from obtaining a license. For example, the measure generally exempts individuals and businesses that sell a small number of rounds of ammunition from the requirement to get a license. The measure also makes various changes in the penalties for failure to follow ammunition sale requirements. For example, it establishes a new criminal penalty—specifically, a misdemeanor—for failing to follow vendor licensing requirements.

Other Ammunition Requirements. This measure prohibits most California residents from bringing ammunition into the state without first having the ammunition delivered to a licensed ammunition dealer beginning in January 2018—a year and a half earlier than under current law. Additionally, failure to comply with this requirement would change from a misdemeanor to an infraction (punishable by a fine) for the first offense and either an infraction or a misdemeanor for any additional offense. The measure also requires DOJ to store certain ammunition sales information in a database indefinitely, rather than for two years.

Creates New Court Process for Removal of Firearms

This measure creates a new court process to ensure that individuals convicted of offenses that prohibit them from owning firearms do not continue to have them. Beginning in 2018, the measure requires courts to inform offenders upon conviction that they must (1) turn over their firearms to local law enforcement, (2) sell the firearms to a licensed firearm dealer, or (3) give the firearms to a licensed firearm dealer for storage. The measure also requires courts to assign probation officers to report on what offenders have done with their firearms. If the court finds that there is probable cause that an offender still has firearms, it must order that the firearms be removed. Finally, local governments or state agencies could charge a fee to reimburse them for certain costs in implementing the measure (such as those related to the removal or storage of firearms).

Implements Other Provisions

Reporting Requirements. The measure includes a number of reporting requirements related to firearms and ammunition. For example, the measure requires that ammunition dealers report the loss or theft of ammunition within 48 hours. It also requires that most individuals report the loss or theft of firearms within five days to local law enforcement. An individual who does not make such a report within five days would be guilty of an infraction for the first two violations. Additional violations would be a misdemeanor. This measure

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

also reduces the penalty for an individual who knowingly submits a false report to local law enforcement from a misdemeanor to an infraction and eliminates the prohibition from owning firearms for ten years for such an individual. This measure also requires DOJ to submit the name, date of birth, and physical description of any newly prohibited person to NICS.

Large-Capacity Magazines. Since 2000, state law has generally banned individuals from obtaining large-capacity magazines (defined as those holding more than ten rounds of ammunition). The law, however, allowed individuals who had large-capacity magazines before 2000 to keep them for their own use. Beginning July 2017, recently enacted law will prohibit most of these individuals from possessing these magazines. Individuals who do not comply are guilty of an infraction. However, there are various individuals who will be exempt from this requirement—such as an individual who owns a firearm (obtained before 2000) that can only be used with a large-capacity magazine. Proposition 63 eliminates several of these exemptions, as well as increases the maximum penalty for possessing large-capacity magazines. Specifically, individuals who possess such magazines after July 2017 would be guilty of an infraction or a misdemeanor.

Penalty for Theft of Firearms. Under current state law, the penalty for theft of firearms worth \$950 or less is generally a misdemeanor punishable by up to one year in county jail. Under this measure, such a crime would be a felony and could be punishable by up to three years in state prison. Additionally, individuals previously convicted of a misdemeanor for the theft of a firearm would be prohibited from owning firearms for ten years. Currently, there is no such prohibition for a misdemeanor conviction for theft of firearms.

FISCAL EFFECTS

Increased Court and Law Enforcement Costs. The new court process for removing firearms from prohibited persons after they are convicted would result in increased workload for the state and local governments. For example, state courts and county probation departments would have some increased

workload to determine whether prohibited persons have firearms and whether they have surrendered them. In addition, state and local law enforcement would have new workload related to removing firearms from offenders who fail to surrender them as part of the new court process. They could also have increased costs related to the storage or return of firearms. Some of the increased law enforcement costs related to the removal, storage, or return of firearms would be offset to the extent that local governments and state agencies charge and collect fees for these activities, as allowed by this measure. The total magnitude of these state and local costs **could be in the tens of millions of dollars annually.** Actual costs would depend on how this measure was implemented.

Potential Increased State Regulatory Costs. On balance, the measure's changes to the regulation of ammunition sales could increase state costs. For example, more individuals or businesses would likely be subject to state ammunition requirements under the measure. The actual fiscal effect of the changes would depend on how they are implemented and how individuals respond to them. We estimate that the potential increase in state costs would not likely exceed the millions of dollars annually. These costs would likely be offset by the various fees authorized by the measure and existing state law.

Potential Net Increased Correctional Costs. This measure makes various changes to penalties related to firearms and ammunition. While some changes reduce penalties for certain offenses, other changes increase penalties for certain offenses. On net, these changes could result in increased correctional costs to state and local governments, such as to house individuals in prison and jail. The magnitude of such costs would depend primarily on the number of violations and how the measure is enforced. The potential net increase in correctional costs would **likely not exceed the low millions of dollars annually.**

Visit <http://www.sos.ca.gov/measure-contributions> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html> to access the committee's top 10 contributors.

★ ARGUMENT IN FAVOR OF PROPOSITION 63 ★

PROPOSITION 63 WILL KEEP US SAFER BY REDUCING GUN VIOLENCE

Police in Dallas doing their job . . . A nightclub in Orlando . . . An office holiday party in San Bernardino . . . A church in Charleston . . . A movie theater in Aurora . . . An elementary school in Newtown . . .

What's next? How many more people need to die from gun violence before we take bold action to save lives?

More than 300 Americans are shot each day, more than 80 of them fatally.

More than 1 million Americans were killed or seriously injured by guns from 2004–2014.

ENOUGH!

It's time to take action to keep guns and ammo out of the wrong hands.

Proposition 63—the Safety for All Act—will save lives by closing loopholes to prevent dangerous criminals, domestic abusers, and the dangerously mentally ill from obtaining and using deadly weapons.

PROPOSITION 63 WILL:

- Remove illegal guns from our communities by ensuring that dangerous criminals and domestic abusers sell or transfer their firearms after they're convicted.
- Require any business that sells ammunition to report if their ammunition is lost or stolen.
- Require people to notify law enforcement if their guns are lost or stolen, before the weapons end up in the wrong hands.
- Ensure people convicted of gun theft are ineligible to own guns.
- Strengthen our background check systems and ensure that California law enforcement shares data about dangerous people with the FBI.

Proposition 63 keeps guns and ammo out of the wrong hands, while protecting the rights of law-abiding

Californians to own guns for self-defense, hunting, and recreation.

Right now, thousands of dangerous felons remain illegally armed because we don't ensure that people convicted of violent crimes actually relinquish their guns after conviction. The Department of Justice identified more than 17,000 felons and other dangerous people with more than 34,000 guns, including more than 1,400 assault weapons.

Passing Proposition 63 will represent a historic and unprecedented step forward for gun safety.

LEADERS FROM ACROSS CALIFORNIA SUPPORT PROPOSITION 63, INCLUDING:

• Lieutenant Governor Gavin Newsom • U.S. Senator Dianne Feinstein • Law Center to Prevent Gun Violence • California Democratic Party • California Secretary of State Alex Padilla • Speaker Emeritus of the Assembly Toni Atkins • Speaker Emeritus of the Assembly John Pérez • Sheriff Vicki Hennessy, San Francisco • Former Police Chief Ken James, Emeryville • SEIU • League of Women Voters of California • California Young Democrats • California Federation of Teachers • San Francisco Board of Education • Equality California • Courage Campaign • California American College of Physicians • California American College of Emergency Physicians • Southern California Public Health Association • Clergy and Laity United for Economic Justice • Coalition Against Gun Violence • Rabbis Against Gun Violence • States United to Prevent Gun Violence • Stop Handgun Violence • Stop Our Shootings • Women Against Gun Violence • Youth Alive!

To learn more please visit www.SafetyforAll.com.

GAVIN NEWSOM, Lieutenant Governor of California

DIANNE FEINSTEIN, United States Senator

ROBYN THOMAS, Executive Director
Law Center to Prevent Gun Violence

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 63 ★

Terrorists don't follow the law!

Gavin Newsom refuses to acknowledge that the Orlando and San Bernardino attacks were ISIS inspired Islamic radicalism. It is the same ideology that motivated the 9/11 terror attacks that killed 2,996 innocents.

Exploiting terrorist attacks to push sweeping laws affecting law-abiding peoples' civil liberties is misleading, wrong, and dangerous.

None of the proposed laws would prevent terrorist attacks. The reality is terrorists can always find the means to wreak havoc, a box cutter in a plane on 9/11, a homemade bomb in Boston, or a truck in Nice, France. Terrorists and criminals get weapons from the black market, make them, or steal them from law-abiding citizens.

Everyone agrees that preventing weapons from falling into the wrong hands is crucial. We all share the concern about the growing trends of terrorism and radicalization.

But, Prop. 63 is NOT the answer.

Spending tens of millions of taxpayer dollars year after year on useless lists of everyone who buys and sells

ammunition diverts critical resources and focus away from effective anti-terrorism efforts, leaving the public more vulnerable to attack and **LESS SAFE**.

There's a reason law enforcement overwhelmingly opposes Prop. 63.

The public interest would be better served if these resources were used to educate more Californians about what they can do to protect their families and communities from terrorist attacks or to further train law enforcement to do so.

Stop this dangerous abuse of public resources.

Vote NO on Prop. 63!

ALON STIVI, President

Direct Measures International, Inc.

WILLIAM "BILLY" BIRDZELL, U.S. Special Operations
Command Anti-Terrorism Instructor

RICHARD GRENNELL, Longest serving U.S. Spokesman at
the United Nations

★ ARGUMENT AGAINST PROPOSITION 63 ★

Prop. 63 is overwhelmingly opposed by the law enforcement community and civil rights groups because it will burden law abiding citizens without keeping violent criminals and terrorists from accessing firearms and ammunition.

The California State Sheriffs' Association, Association of Deputy District Attorneys for Los Angeles County, California Correctional Peace Officers Association, California Fish & Game Wardens' Association, California Reserve Peace Officers Association, and numerous other law enforcement and civic groups, representing tens of thousands of public safety professionals throughout California, are united in their opposition to this ineffective, burdensome, and costly proposal.

Prop. 63 would divert scarce law enforcement resources away from local law enforcement and overburden an already overcrowded court system with the enforcement of flawed laws that will turn harmless, law-abiding citizens into criminals. In fact, New York recently abandoned its enforcement of a similar proposal after it was passed, finding that it was impossible to implement and effectively maintain.

Doing what actually works to keep the public safe is the highest priority of law enforcement professionals who dedicate their lives to protecting Californians. Unfortunately, Prop. 63 will not make anyone safer. To the contrary, by directing resources away from measures that are truly effective at preventing the criminal element from acquiring guns and ammunition, it would make us all less safe. The immense public resources that Prop. 63

would waste should be used to hire more officers and to target, investigate, and prosecute dangerous individuals and terrorists.

After closely analyzing the language of Prop. 63, the law enforcement community found many problems in the details. Due to strict limitations on the Legislature's ability to amend voter-enacted propositions, most of these problems will be difficult or impossible for the Legislature to fix if Prop. 63 passes, saddling California with the burdens and costs of this flawed proposal forever.

By going around the Legislature, this initiative limits public safety professionals in developing future legislation that would truly promote public safety. California taxpayers should not waste hundreds of millions of their dollars on ineffective laws that have no value to law enforcement and will harm public safety by diverting resources away from effective law enforcement activities that are critical to public safety.

Please visit WWW.WHERESMYAMMO.COM for more information.

PLEASE VOTE NO ON PROP. 63.

DONNY YOUNGBLOOD, President
 California State Sheriffs' Association

KEVIN BERNZOTT, Chief Executive Officer
 California Reserve Peace Officers Association

TIFFANY CHEUVRONT, Principal Officer
 Coalition for Civil Liberties

63

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 63 ★

As law enforcement and public safety officials, we're not surprised that groups such as the NRA and its affiliates oppose Proposition 63. Make no mistake, the so-called "Coalition for Civil Liberties" is actually an NRA front group.

The gun lobby often claims we should focus on enforcing existing gun laws, and that's exactly what this initiative does—*Prop. 63 closes loopholes and helps enforce existing laws to keep guns and ammo out of the wrong hands.*

For example, Prop. 63 *ensures dangerous convicts prohibited from owning weapons follow the law and get rid of their firearms.* Law enforcement professionals have found that felons and dangerous people currently possess thousands of guns illegally—so closing this loophole will save lives.

Prop. 63 also *requires reporting lost and stolen firearms*, to help police shut down gun trafficking rings and locate caches of illegal weapons. Prop. 63 will help police recover stolen guns before they're used in crimes and return them to their lawful owners.

Prop. 63 also *improves background check systems* so that law enforcement can prevent people banned from owning weapons—such as violent felons—from buying guns and ammo.

And Prop. 63 clarifies existing law so that any gun theft is a felony, *ensuring that people who steal guns can't own guns.* That's another common-sense reform to save lives overwhelmingly supported by law enforcement professionals.

Prop. 63 will close loopholes in our existing laws and prevent dangerous criminals, domestic abusers, and the dangerously mentally ill from obtaining and using deadly weapons.

NANCY O'MALLEY, District Attorney
 Alameda County

JEFF ROSEN, District Attorney
 Santa Clara County

VICKI HENNESSY, Sheriff
 San Francisco

TEXT OF PROPOSED LAWS

PROPOSITION 62 CONTINUED

subdivision (h) of Section 1170, in connection with a civil action brought against a federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of the award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivisions (e) and (i). The Department of Corrections and Rehabilitation shall make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages. For any prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency is authorized to make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

(o) (1) Amounts transferred to the California Victim Compensation Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation Board. If the restitution payment to a victim is less than twenty-five dollars (\$25), then payment need not be forwarded to that victim until the payment reaches twenty-five dollars (\$25) or when the victim requests payment of the lesser amount.

(2) If a victim cannot be located, the restitution revenues received by the California Victim Compensation Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) (A) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the Department of Corrections and Rehabilitation, which shall verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the Department of Corrections and Rehabilitation, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (c) or (h).

(B) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the agency designated by the board of supervisors in the county where the prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 is incarcerated, which may verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the agency, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (d) or (h).

SEC. 10. Retroactive Application of Act.

(a) In order to best achieve the purpose of this act as stated in Section 3 and to achieve fairness, equality, and uniformity in sentencing, this act shall be applied retroactively.

(b) In any case where a defendant or inmate was sentenced to death prior to the effective date of this act, the sentence

shall automatically be converted to imprisonment in the state prison for life without the possibility of parole under the terms and conditions of this act. The State of California shall not carry out any execution following the effective date of this act.

(c) Following the effective date of this act, the Supreme Court may transfer all death penalty appeals and habeas petitions pending before the Supreme Court to any district of the Court of Appeal or superior court, in the Supreme Court's discretion.

SEC. 11. Effective Date.

This act shall become effective on the day following the election at which it was approved, pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

SEC. 12. Severability.

The provisions of this act are severable. If any provision of this act or its application is held invalid, including but not limited to Section 10, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

PROPOSITION 63

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The Safety for All Act of 2016

SECTION 1. Title.

This measure shall be known and may be cited as "The Safety for All Act of 2016."

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

1. Gun violence destroys lives, families and communities. From 2002 to 2013, California lost 38,576 individuals to gun violence. That is more than seven times the number of U.S. soldiers killed in combat during the wars in Iraq and Afghanistan combined. Over this same period, 2,258 children were killed by gunshot injuries in California. The same number of children murdered in the Sandy Hook elementary school massacre are killed by gunfire in this state every 39 days.

2. In 2013, guns were used to kill 2,900 Californians, including 251 children and teens. That year, at least 6,035 others were hospitalized or treated in emergency rooms for non-fatal gunshot wounds, including 1,275 children and teens.

3. Guns are commonly used by criminals. According to the California Department of Justice, in 2014 there were 1,169 firearm murders in California, 13,546 armed robberies involving a firearm, and 15,801 aggravated assaults involving a firearm.

4. This tragic violence imposes significant economic burdens on our society. Researchers conservatively estimate that gun violence costs the economy at least \$229 billion every year, or more than \$700 per American

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per year. In 2013 alone, California gun deaths and injuries imposed \$83 million in medical costs and \$4.24 billion in lost productivity.

5. California can do better. Reasonable, common-sense gun laws reduce gun deaths and injuries, keep guns away from criminals and fight illegal gun trafficking. Although California has led the nation in gun safety laws, those laws still have loopholes that leave communities throughout the state vulnerable to gun violence and mass shootings. We can close these loopholes while still safeguarding the ability of law-abiding, responsible Californians to own guns for self-defense, hunting and recreation.

6. We know background checks work. Federal background checks have already prevented more than 2.4 million gun sales to convicted criminals and other illegal purchasers in America. In 2012 alone, background checks blocked 192,043 sales of firearms to illegal purchasers including 82,000 attempted purchases by felons. That means background checks stopped roughly 225 felons from buying firearms every day. Yet California law only requires background checks for people who purchase firearms, not for people who purchase ammunition. We should close that loophole.

7. Right now, any violent felon or dangerously mentally ill person can walk into a sporting goods store or gun shop in California and buy ammunition, no questions asked. That should change. We should require background checks for ammunition sales just like gun sales, and stop both from getting into the hands of dangerous individuals.

8. Under current law, stores that sell ammunition are not required to report to law enforcement when ammunition is lost or stolen. Stores should have to report lost or stolen ammunition within 48 hours of discovering that it is missing so law enforcement can work to prevent that ammunition from being illegally trafficked into the hands of dangerous individuals.

9. Californians today are not required to report lost or stolen guns to law enforcement. This makes it difficult for law enforcement to investigate crimes committed with stolen guns, break up gun trafficking rings, and return guns to their lawful owners. We should require gun owners to report their lost or stolen guns to law enforcement.

10. Under current law, people who commit felonies and other serious crimes are prohibited from possessing firearms. Yet existing law provides no clear process for those people to relinquish their guns when they become prohibited at the time of conviction. As a result, in 2014, the Department of Justice identified more than 17,000 people who possess more than 34,000 guns illegally, including more than 1,400 assault weapons. We need to close this dangerous loophole by not only requiring prohibited people to turn in their guns, but also ensuring that it happens.

11. Military-style large-capacity ammunition magazines—some capable of holding more than 100 rounds of ammunition—significantly increase a shooter's ability to kill a lot of people in a short amount of time. That is why these large capacity ammunition magazines are common in many of America's most horrific mass shootings, from the killings at 101 California Street in San Francisco in 1993 to Columbine High School in 1999 to the massacre at Sandy Hook Elementary School in Newtown, Connecticut in 2012.

12. Today, California law prohibits the manufacture, importation and sale of military-style, large capacity

ammunition magazines, but does not prohibit the general public from possessing them. We should close that loophole. No one except trained law enforcement should be able to possess these dangerous ammunition magazines.

13. Although the State of California conducts background checks on gun buyers who live in California, we have to rely on other states and the FBI to conduct background checks on gun buyers who live elsewhere. We should make background checks outside of California more effective by consistently requiring the state to report who is prohibited from possessing firearms to the federal background check system.

14. The theft of a gun is a serious and potentially violent crime. We should clarify that such crimes can be charged as felonies, and prevent people who are convicted of such crimes from possessing firearms.

SEC. 3. Purpose and Intent.

The people of the State of California declare their purpose and intent in enacting "The Safety for All Act of 2016" (the "Act") to be as follows:

1. To implement reasonable and common-sense reforms to make California's gun safety laws the toughest in the nation while still safeguarding the Second Amendment rights of all law-abiding, responsible Californians.

2. To keep guns and ammunition out of the hands of convicted felons, the dangerously mentally ill, and other persons who are prohibited by law from possessing firearms and ammunition.

3. To ensure that those who buy ammunition in California—just like those who buy firearms—are subject to background checks.

4. To require all stores that sell ammunition to report any lost or stolen ammunition within 48 hours of discovering that it is missing.

5. To ensure that California shares crucial information with federal law enforcement by consistently requiring the state to report individuals who are prohibited by law from possessing firearms to the federal background check system.

6. To require the reporting of lost or stolen firearms to law enforcement.

7. To better enforce the laws that require people to relinquish their firearms once they are convicted of a crime that makes them ineligible to possess firearms.

8. To make it illegal in California to possess the kinds of military-style ammunition magazines that enable mass killings like those at Sandy Hook Elementary School; a movie theater in Aurora, Colorado; Columbine High School; and an office building at 101 California Street in San Francisco, California.

9. To prevent people who are convicted of the theft of a firearm from possessing firearms, and to effectuate the intent of Proposition 47 that the theft of a firearm is felony grand theft, regardless of the value of the firearm, in alignment with Sections 25400 and 1192.7 of the Penal Code.

SEC. 4. Lost or Stolen Firearms.

SEC. 4.1. Division 4.5 (commencing with Section 25250) is added to Title 4 of Part 6 of the Penal Code, to read:

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DIVISION 4.5. LOST OR STOLEN FIREARMS

25250. (a) Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.

(b) Every person who has reported a firearm lost or stolen under subdivision (a) shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days if the firearm is subsequently recovered by the person.

(c) Notwithstanding subdivision (a), a person shall not be required to report the loss or theft of a firearm that is an antique firearm within the meaning of subdivision (c) of Section 16170.

25255. Section 25250 shall not apply to the following:

(a) Any law enforcement agency or peace officer acting within the course and scope of his or her employment or official duties if he or she reports the loss or theft to his or her employing agency.

(b) Any United States marshal or member of the Armed Forces of the United States or the National Guard, while engaged in his or her official duties.

(c) Any person who is licensed, pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and who reports the theft or loss in accordance with Section 923(g)(6) of Title 18 of the United States Code, or the successor provision thereto, and applicable regulations issued thereto.

(d) Any person whose firearm was lost or stolen prior to July 1, 2017.

25260. Pursuant to Section 11108, every sheriff or police chief shall submit a description of each firearm that has been reported lost or stolen directly into the Department of Justice Automated Firearms System.

25265. (a) Every person who violates Section 25250 is, for a first violation, guilty of an infraction, punishable by a fine not to exceed one hundred dollars (\$100).

(b) Every person who violates Section 25250 is, for a second violation, guilty of an infraction, punishable by a fine not to exceed one thousand dollars (\$1,000).

(c) Every person who violates Section 25250 is, for a third or subsequent violation, guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.

25270. Every person reporting a lost or stolen firearm pursuant to Section 25250 shall report the make, model, and serial number of the firearm, if known by the person, and any additional relevant information required by the local law enforcement agency taking the report.

25275. (a) No person shall report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false. A violation of this section is an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250) for a first offense, and by a fine not exceeding one thousand dollars (\$1,000) for a second or subsequent offense.

(b) This section shall not preclude prosecution under any other law.

SEC. 4.2. Section 26835 of the Penal Code is amended to read:

26835. A licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(a) "IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(b) "IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(c) "IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS (\$5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(d) "IF YOU NEGLIGENTLY STORE OR LEAVE A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, WHERE A PERSON UNDER 18 YEARS OF AGE IS LIKELY TO ACCESS IT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO ONE THOUSAND DOLLARS (\$1,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(e) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(f) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM."

(g) "NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD."

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(h) *"IF A FIREARM YOU OWN OR POSSESS IS LOST OR STOLEN, YOU MUST REPORT THE LOSS OR THEFT TO A LOCAL LAW ENFORCEMENT AGENCY WHERE THE LOSS OR THEFT OCCURRED WITHIN FIVE DAYS OF THE TIME YOU KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE FIREARM HAD BEEN LOST OR STOLEN."*

SEC. 5. Strengthening the National Instant Criminal Background Check System.

SEC. 5.1. Section 28220 of the Penal Code is amended to read:

28220. (a) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(b) ~~To the extent that funding is available, the~~ The Department of Justice ~~may shall~~ participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, ~~if that participation is implemented,~~ shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(c) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subdivision (a) of Section 27535, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(d) If the department determines that the copies of the register submitted to it pursuant to subdivision (d) of Section 28210 contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the handgun or other firearm to be purchased, or if any fee required pursuant to Section 28225 is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to Section 28225, or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(e) If the department determines that the information transmitted to it pursuant to Section 28215 contains inaccurate or incomplete information preventing identification of the purchaser or the handgun or other firearm to be purchased, or if the fee required pursuant to Section 28225 is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of

that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(f) (1) (A) The department shall immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in the National Instant Criminal Background Check System, indicate one of the following:

(i) The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(ii) The purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(iii) The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in fact, is a person described in subdivision (a) of Section 27535, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(B) The dealer shall provide the purchaser with information about the manner in which he or she may contact the department regarding the delay described in subparagraph (A).

(2) The department shall notify the purchaser by mail regarding the delay and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser shall report any inaccuracies or incompleteness to the department on an approved form.

(3) If the department ascertains the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), after the waiting period described in Sections 26815 and 27540, but within 30 days of the dealer's original submission of the purchaser information to the department pursuant to this section, the department shall do the following:

(A) If the purchaser is not a person described in subdivision (a) of Section 27535, and is not prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer of that fact and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or

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record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

(B) If the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer and the chief of the police department in the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact in compliance with subdivision (c) of Section 28220.

(4) If the department is unable to ascertain the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

(g) Commencing July 1, 2017, upon receipt of information demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law, the department shall submit the name, date of birth, and physical description of the person to the National Instant Criminal Background Check System Index, Denied Persons Files. The information provided shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state firearms laws.

SEC. 6. Possession of Large-Capacity Magazines.

SEC. 6.1. Section 32310 of the Penal Code is amended to read:

32310. (a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing January 1, 2000, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.

(b) For purposes of this section, "manufacturing" includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.

(c) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing July 1, 2017, any person in this state who

possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who may not lawfully possess a large-capacity magazine commencing July 1, 2017 shall, prior to July 1, 2017:

- (1) Remove the large-capacity magazine from the state;*
- (2) Sell the large-capacity magazine to a licensed firearms dealer; or*
- (3) Surrender the large-capacity magazine to a law enforcement agency for destruction.*

SEC. 6.2. Section 32400 of the Penal Code is amended to read:

32400. Section 32310 does not apply to the sale of, giving of, lending of, *possession of*, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

SEC. 6.3. Section 32405 of the Penal Code is amended to read:

32405. Section 32310 does not apply to the sale to, lending to, transfer to, purchase by, receipt of, *possession of*, or importation into this state of, a large-capacity magazine by a sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of that officer's duties.

SEC. 6.4. Section 32406 is added to the Penal Code, to read:

32406. Subdivision (c) of Section 32310 does not apply to an honorably retired sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or honorably retired sworn federal law enforcement officer, who was authorized to carry a firearm in the course and scope of that officer's duties. "Honorably retired" shall have the same meaning as provided in Section 16690.

SEC. 6.5. Section 32410 of the Penal Code is amended to read:

32410. Section 32310 does not apply to the sale, or purchase, *or possession* of any large-capacity magazine to or by a person licensed pursuant to Sections 26700 to 26915, inclusive.

SEC. 6.6. Section 32420 of the Penal Code is repealed.

~~32420. Section 32310 does not apply to the importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the same large-capacity magazine.~~

SEC. 6.7. Section 32425 of the Penal Code is amended to read:

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32425. Section 32310 does not apply to either *any* of the following:

(a) The lending or giving of any large-capacity magazine to a person licensed pursuant to Sections 26700 to 26915, inclusive, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(b) *The possession of any large-capacity magazine by a person specified in subdivision (a) for the purposes specified in subdivision (a).*

(c) The return to its owner of any large-capacity magazine by a person specified in subdivision (a).

SEC. 6.8. Section 32435 of the Penal Code is amended to read:

32435. Section 32310 does not apply to any of the following:

(a) The sale of, giving of, lending of, *possession of*, importation into this state of, or purchase of, any large-capacity magazine, to or by any entity that operates an armored vehicle business pursuant to the laws of this state.

(b) The lending of large-capacity magazines by an entity specified in subdivision (a) to its authorized employees, while in the course and scope of employment for purposes that pertain to the entity's armored vehicle business.

(c) *The possession of any large-capacity magazines by the employees of an entity specified in subdivision (a) for purposes that pertain to the entity's armored vehicle business.*

(d) The return of those large-capacity magazines to the entity specified in subdivision (a) by those employees specified in subdivision (b).

SEC. 6.9. Section 32450 of the Penal Code is amended to read:

32450. Section 32310 does not apply to the purchase *or possession* of a large-capacity magazine by the holder of a special weapons permit issued pursuant to Section 31000, 32650, or 33300, or pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or pursuant to Article 4 (commencing with Section 32700) of Chapter 6 of this division, for any of the following purposes:

(a) For use solely as a prop for a motion picture, television, or video production.

(b) For export pursuant to federal regulations.

(c) For resale to law enforcement agencies, government agencies, or the military, pursuant to applicable federal regulations.

SEC. 7. Firearms Dealers.

SEC. 7.1. Section 26885 of the Penal Code is amended to read:

26885. (a) Except as provided in subdivisions (b) and (c) of Section 26805, all firearms that are in the inventory of a licensee shall be kept within the licensed location.

(b) Within 48 hours of discovery, a licensee shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located:

(1) Any firearm *or ammunition* that is merchandise of the licensee.

(2) Any firearm *or ammunition* that the licensee takes possession of pursuant to Chapter 5 (commencing with Section 28050), *or pursuant to Section 30312.*

(3) Any firearm *or ammunition* kept at the licensee's place of business.

SEC. 7.2. Section 26915 of the Penal Code is amended to read:

26915. (a) *Commencing January 1, 2018, a* A firearms dealer ~~may~~ *shall* require any agent *or employee* who handles, sells, or delivers firearms to obtain and provide to the dealer a certificate of eligibility from the Department of Justice pursuant to Section 26710. On the application for the certificate, the agent or employee shall provide the name and California firearms dealer number of the firearms dealer with whom the person is employed.

(b) The department shall notify the firearms dealer in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing firearms.

(c) If the local jurisdiction requires a background check of the agents or employees of a firearms dealer, the agent or employee shall obtain a certificate of eligibility pursuant to subdivision (a).

(d) (1) Nothing in this section shall be construed to preclude a local jurisdiction from conducting an additional background check pursuant to Section 11105. The local jurisdiction may not charge a fee for the additional criminal history check.

(2) Nothing in this section shall be construed to preclude a local jurisdiction from prohibiting employment based on criminal history that does not appear as part of obtaining a certificate of eligibility.

(e) The licensee shall prohibit any agent who the licensee knows or reasonably should know is within a class of persons prohibited from possessing firearms pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, from coming into contact with any firearm that is not secured and from accessing any key, combination, code, or other means to open any of the locking devices described in subdivision (g).

(f) Nothing in this section shall be construed as preventing a local government from enacting an ordinance imposing additional conditions on licensees with regard to agents *or employees.*

(g) For purposes of this article, "secured" means a firearm that is made inoperable in one or more of the following ways:

(1) The firearm is inoperable because it is secured by a firearm safety device listed on the department's roster of approved firearm safety devices pursuant to subdivision (d) of Section 23655.

(2) The firearm is stored in a locked gun safe or long-gun safe that meets the standards for department-approved gun safes set forth in Section 23650.

(3) The firearm is stored in a distinct locked room or area in the building that is used to store firearms, which can only be unlocked by a key, a combination, or similar means.

(4) The firearm is secured with a hardened steel rod or cable that is at least one-eighth of an inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has

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a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

SEC. 8. Sales of Ammunition.

SEC. 8.1. Section 16150 of the Penal Code is amended to read:

16150. (a) ~~As used in Section 30300, "ammunition" means handgun ammunition as defined in Section 16650. As used in this part, except in subdivision (a) of Section 30305 and in Section 30306, "ammunition" means one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. "Ammunition" does not include blanks.~~

(b) As used in subdivision (a) of Section 30305 and in Section 30306, "ammunition" includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. "Ammunition" does not include blanks.

SEC. 8.2. Section 16151 is added to the Penal Code, to read:

16151. (a) *As used in this part, commencing January 1, 2018, "ammunition vendor" means any person, firm, corporation, or other business enterprise that holds a current ammunition vendor license issued pursuant to Section 30385.*

(b) *Commencing January 1, 2018, a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Articles 2 (commencing with Section 30300) and 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4.*

SEC. 8.3. Section 16662 of the Penal Code is repealed.

~~16662. As used in this part, "handgun ammunition vendor" means any person, firm, corporation, dealer, or any other business enterprise that is engaged in the retail sale of any handgun ammunition, or that holds itself out as engaged in the business of selling any handgun ammunition.~~

SEC. 8.4. Section 17315 of the Penal Code is amended to read:

17315. ~~As used in Article 3 (commencing with Section 30345) Articles 2 through 5 of Chapter 1 of Division 10 of Title 4, "vendor" means a handgun ammunition vendor.~~

SEC. 8.5. Section 30306 of the Penal Code is amended to read:

30306. (a) Any person, corporation, ~~or~~ firm, *or other business enterprise* who supplies, delivers, sells, or gives possession or control of, any ammunition to any person who he or she knows or using reasonable care should know is prohibited from owning, possessing, or having under custody or control, any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of Section 30305, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) *Any person, corporation, firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person whom the person, corporation, firm, or other business enterprise*

knows or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe that the ammunition is to be subsequently sold or transferred to a person who is prohibited from owning, possessing, or having under custody or control any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of Section 30305, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

~~(b)~~ (c) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and another provision of law shall not be punished under more than one provision.

SEC. 8.6. Section 30312 of the Penal Code is amended to read:

30312. (a) ~~Commencing February 1, 2011, the~~ (1) *Commencing January 1, 2018, the sale of ammunition by any party shall be conducted by or processed through a licensed ammunition vendor.*

(2) *When neither party to an ammunition sale is a licensed ammunition vendor, the seller shall deliver the ammunition to a vendor to process the transaction. The ammunition vendor shall then promptly and properly deliver the ammunition to the purchaser, if the sale is not prohibited, as if the ammunition were the vendor's own merchandise. If the ammunition vendor cannot legally deliver the ammunition to the purchaser, the vendor shall forthwith return the ammunition to the seller. The ammunition vendor may charge the purchaser an administrative fee to process the transaction, in an amount to be set by the Department of Justice, in addition to any applicable fees that may be charged pursuant to the provisions of this title.*

(b) *Commencing January 1, 2018, the sale, delivery or transfer of ownership of handgun ammunition by any party may only occur in a face-to-face transaction with the seller, deliverer, or transferor being provided bona fide evidence of identity from the purchaser or other transferee, provided, however, that ammunition may be purchased or acquired over the Internet or through other means of remote ordering if a licensed ammunition vendor initially receives the ammunition and processes the transaction in compliance with this section and Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of this part.*

~~(b)~~ (c) ~~Subdivision~~ Subdivisions (a) and (b) shall not apply to or affect the sale, delivery, or transfer of handgun ammunition to any of the following:

(1) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale, delivery, or transfer is for exclusive use by that government agency and, prior to the sale, delivery, or transfer of the handgun ammunition, written authorization from the head of the agency employing the purchaser or transferee is obtained, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency employing the individual.

(2) A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

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(3) An importer or manufacturer of handgun ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

(5) A person whose licensed premises are outside this state and who is licensed as a dealer or collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(6) A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, and who has a current certificate of eligibility issued by the Department of Justice pursuant to Section 26710.

(7) A handgun. An ammunition vendor.

(8) A consultant-evaluator.

(9) A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.

(10) A person who purchases or receives ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.

(e) (d) A violation of this section is a misdemeanor.

SEC. 8.7. Section 30314 is added to the Penal Code, to read:

30314. (a) Commencing January 1, 2018, a resident of this state shall not bring or transport into this state any ammunition that he or she purchased or otherwise obtained from outside of this state unless he or she first has that ammunition delivered to a licensed ammunition vendor for delivery to that resident pursuant to the procedures set forth in Section 30312.

(b) Subdivision (a) does not apply to any of the following:

(1) An ammunition vendor.

(2) A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(3) An importer or manufacturer of ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6.

(5) A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, and who has a current certificate of

eligibility issued by the Department of Justice pursuant to Section 26710.

(6) A person who acquired the ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.

(c) A violation of this section is an infraction for any first time offense, and either an infraction or a misdemeanor for any subsequent offense.

SEC. 8.8. The heading of Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code is amended to read:

Article 3. Handgun Ammunition Vendors

SEC. 8.9. Section 30342 is added to the Penal Code, immediately preceding Section 30345, to read:

30342. (a) Commencing January 1, 2018, a valid ammunition vendor license shall be required for any person, firm, corporation, or other business enterprise to sell more than 500 rounds of ammunition in any 30-day period.

(b) A violation of this section is a misdemeanor.

SEC. 8.10. Section 30347 of the Penal Code is amended to read:

30347. (a) An ammunition vendor shall require any agent or employee who handles, sells, delivers, or has under his or her custody or control any ammunition, to obtain and provide to the vendor a certificate of eligibility from the Department of Justice issued pursuant to Section 26710. On the application for the certificate, the agent or employee shall provide the name and address of the ammunition vendor with whom the person is employed, or the name and California firearms dealer number of the ammunition vendor if applicable.

(b) The department shall notify the ammunition vendor in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing ammunition under subdivision (a) of Section 30305 or federal law.

(c) A An ammunition vendor shall not permit any agent or employee who the vendor knows or reasonably should know is a person described in Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title or Section 8100 or 8103 of the Welfare and Institutions Code to handle, sell, or deliver, or have under his or her custody or control, any handgun ammunition in the course and scope of employment.

SEC. 8.11. Section 30348 is added to the Penal Code, to read:

30348. (a) Except as provided in subdivision (b), the sale of ammunition by a licensed vendor shall be conducted at the location specified in the license.

(b) A vendor may sell ammunition at a gun show or event if the gun show or event is not conducted from any motorized or towed vehicle.

(c) For purposes of this section, "gun show or event" means a function sponsored by any national, state, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

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(d) Sales of ammunition at a gun show or event shall comply with all applicable laws including Sections 30347, 30350, 30352, and 30360.

SEC. 8.12. Section 30350 of the Penal Code is amended to read:

30350. A An ammunition vendor shall not sell or otherwise transfer ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or display for transfer of ownership of any handgun ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor.

SEC. 8.13. Section 30352 of the Penal Code is amended to read:

30352. (a) Commencing February 1, 2011, a July 1, 2019, an ammunition vendor shall not sell or otherwise transfer ownership of any handgun ammunition without, at the time of delivery, legibly recording the following information on a form to be prescribed by the Department of Justice:

(1) The date of the sale or other transaction transfer.

(2) The purchaser's or transferee's driver's license or other identification number and the state in which it was issued.

(3) The brand, type, and amount of ammunition sold or otherwise transferred.

(4) The purchaser's or transferee's full name and signature.

(5) The name of the salesperson who processed the sale or other transaction.

~~(6) The right thumbprint of the purchaser or transferee on the above form.~~

~~(7) (6) The purchaser's or transferee's full residential address and telephone number.~~

~~(8) (7) The purchaser's or transferee's date of birth.~~

(b) Commencing July 1, 2019, an ammunition vendor shall electronically submit to the department the information required by subdivision (a) for all sales and transfers of ownership of ammunition. The department shall retain this information in a database to be known as the Ammunition Purchase Records File. This information shall remain confidential and may be used by the department and those entities specified in, and pursuant to, subdivision (b) or (c) of Section 11105, through the California Law Enforcement Telecommunications System, only for law enforcement purposes. The ammunition vendor shall not use, sell, disclose, or share such information for any other purpose other than the submission required by this subdivision without the express written consent of the purchaser or transferee.

(c) Commencing on July 1, 2019, only those persons listed in this subdivision, or those persons or entities listed in subdivision (e), shall be authorized to purchase ammunition. Prior to delivering any ammunition, an ammunition vendor shall require bona fide evidence of identity to verify that the person who is receiving delivery of the ammunition is a person or entity listed in subdivision (e) or one of the following:

(1) A person authorized to purchase ammunition pursuant to Section 30370.

(2) A person who was approved by the department to receive a firearm from the ammunition vendor, pursuant to Section 28220, if that vendor is a licensed firearms dealer,

and the ammunition is delivered to the person in the same transaction as the firearm.

(d) Commencing July 1, 2019, the ammunition vendor shall verify with the department, in a manner prescribed by the department, that the person is authorized to purchase ammunition by comparing the person's ammunition purchase authorization number to the centralized list of authorized ammunition purchasers. If the person is not listed as an authorized ammunition purchaser, the vendor shall deny the sale or transfer.

~~(b) (e) Subdivision~~ Subdivisions (a) and (d) shall not apply to or affect sales or other transfers of ownership of handgun ammunition by handgun ammunition vendors to any of the following, if properly identified:

~~(1) A person licensed pursuant to Sections 26700 to 26915, inclusive.~~

~~(2) (1) A handgun~~ An ammunition vendor.

~~(3) (2) A person who is on the centralized list of exempted federal firearms licensees~~ maintained by the department pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

~~(4) (3) A target facility that holds a business or regulatory license~~ person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.

~~(5) (4) A gunsmith.~~

~~(6) (5) A wholesaler.~~

~~(7) (6) A manufacturer or importer of firearms or ammunition~~ licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

~~(8) (7) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer of ownership is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the handgun ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed.~~

~~(8) A properly identified sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or properly identified sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.~~

(f) (1) Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a full-time paid peace officer who is authorized to carry a firearm in the course and scope of the officer's duties.

(2) The certification shall be delivered to the vendor at the time of purchase or transfer and the purchaser or transferee shall provide bona fide evidence of identity to verify that he or she is the person authorized in the certification.

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(3) The vendor shall keep the certification with the record of sale and submit the certification to the department.

(g) The department is authorized to adopt regulations to implement the provisions of this section.

SEC. 8.14. Section 30363 is added to the Penal Code, to read:

30363. Within 48 hours of discovery, an ammunition vendor shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the vendor's business premises are located:

(1) Any ammunition that is merchandise of the vendor.

(2) Any ammunition that the vendor takes possession of pursuant to Section 30312.

(3) Any ammunition kept at the vendor's place of business.

SEC. 8.15. Article 4 (commencing with Section 30370) is added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code, to read:

Article 4. Ammunition Purchase Authorizations

30370. (a) (1) Commencing on January 1, 2019, any person who is 18 years of age or older may apply to the Department of Justice for an ammunition purchase authorization.

(2) The ammunition purchase authorization may be used by the authorized person to purchase or otherwise seek the transfer of ownership of ammunition from an ammunition vendor, as that term is defined in Section 16151, and shall have no other force or effect.

(3) The ammunition purchase authorization shall be valid for four years from July 1, 2019, or the date of issuance, whichever is later, unless it is revoked by the department pursuant to subdivision (b).

(b) The ammunition purchase authorization shall be promptly revoked by the department upon the occurrence of any event which would have disqualified the holder from being issued the ammunition purchase authorization pursuant to this section. If an authorization is revoked, the department shall upon the written request of the holder state the reasons for doing so and provide the holder an appeal process to challenge that revocation.

(c) The department shall create and maintain an internal centralized list of all persons who are authorized to purchase ammunition and shall promptly remove from the list any persons whose authorization was revoked by the department pursuant to this section. The department shall provide access to the list by ammunition vendors for purposes of conducting ammunition sales or other transfers, and shall provide access to the list by law enforcement agencies for law enforcement purposes.

(d) The department shall issue an ammunition purchase authorization to the applicant if all of the following conditions are met:

(1) The applicant is 18 years of age or older.

(2) The applicant is not prohibited from acquiring or possessing ammunition under subdivision (a) of Section 30305 or federal law.

(3) The applicant pays the fees set forth in subdivision (g).

(e) (1) Upon receipt of an initial or renewal application, the department shall examine its records, and the records it is authorized to request from the State Department of State Hospitals, pursuant to Section 8104 of the Welfare

and Institutions Code, and if authorized, the National Instant Criminal Background Check System, as described in Section 922(t) of Title 18 of the United States Code, in order to determine if the applicant is prohibited from possessing or acquiring ammunition under subdivision (a) of Section 30305 or federal law.

(2) The applicant shall be approved or denied within 30 days of the date of the submission of the application to the department. If the application is denied, the department shall state the reasons for doing so and provide the applicant an appeal process to challenge that denial.

(3) If the department is unable to ascertain the final disposition of the application within 30 days of the applicant's submission, the department shall grant authorization to the applicant.

(4) The ammunition purchase authorization number shall be the same as the number on the document presented by the person as bona fide evidence of identity.

(f) The department shall renew a person's ammunition purchase authorization before its expiration, provided that the department determines that the person is not prohibited from acquiring or possessing ammunition under subdivision (a) of Section 30305 or federal law, and provided the applicant timely pays the renewal fee set forth in subdivision (g).

(g) The department may charge a reasonable fee not to exceed fifty dollars (\$50) per person for the issuance of an ammunition purchase authorization or the issuance of a renewal authorization, however, the department shall not set these fees any higher than necessary to recover the reasonable, estimated costs to fund the ammunition authorization program provided for in this section and Section 30352, including the enforcement of this program and maintenance of any data systems associated with this program.

(h) The Ammunition Safety and Enforcement Special Fund is hereby created within the State Treasury. All fees received pursuant to this section shall be deposited into the Ammunition Safety and Enforcement Special Fund of the General Fund, and, notwithstanding Section 13340 of the Government Code, are continuously appropriated for purposes of implementing, operating and enforcing the ammunition authorization program provided for in this section and Section 30352, and for repaying the start-up loan provided for in Section 30371.

(i) The department shall annually review and may adjust all fees specified in subdivision (g) for inflation.

(j) The department is authorized to adopt regulations to implement the provisions of this section.

30371. (a) There is hereby appropriated twenty-five million dollars (\$25,000,000) from the General Fund as a loan for the start-up costs of implementing, operating and enforcing the provisions of the ammunition authorization program provided for in Sections 30352 and 30370.

(b) For purposes of repaying the loan, the Controller shall, after disbursing moneys necessary to implement, operate and enforce the ammunition authorization program provided for in Sections 30352 and 30370, transfer all proceeds from fees received by the Ammunition Safety and Enforcement Special Fund up to the amount of the loan provided by this section, including interest at the pooled money investment account rate, to the General Fund.

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SEC. 8.16. Article 5 (commencing with Section 30385) is added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code, to read:

Article 5. Ammunition Vendor Licenses

30385. (a) *The Department of Justice is authorized to issue ammunition vendor licenses pursuant to this article. The department shall, commencing July 1, 2017, commence accepting applications for ammunition vendor licenses. If an application is denied, the department shall inform the applicant of the reason for denial in writing.*

(b) *The ammunition vendor license shall be issued in a form prescribed by the department and shall be valid for a period of one year. The department may adopt regulations to administer the application and enforcement provisions of this article. The license shall allow the licensee to sell ammunition at the location specified in the license or at a gun show or event as set forth in Section 30348.*

(c) (1) *In the case of an entity other than a natural person, the department shall issue the license to the entity, but shall require a responsible person to pass the background check pursuant to Section 30395.*

(2) *For purposes of this article, "responsible person" means a person having the power to direct the management, policies, and practices of the entity as it pertains to ammunition.*

(d) *Commencing January 1, 2018, a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Article 2 (commencing with Section 30300) and Article 3 (commencing with Section 30342).*

30390. (a) *The Department of Justice may charge ammunition vendor license applicants a reasonable fee sufficient to reimburse the department for the reasonable, estimated costs of administering the license program, including the enforcement of this program and maintenance of the registry of ammunition vendors.*

(b) *The fees received by the department pursuant to this article shall be deposited in the Ammunition Vendors Special Account, which is hereby created. Notwithstanding Section 13340 of the Government Code, the revenue in the fund is continuously appropriated for use by the department for the purpose of implementing, administering and enforcing the provisions of this article, and for collecting and maintaining information submitted pursuant to Section 30352.*

(c) *The revenue in the Firearms Safety and Enforcement Special Fund shall also be available upon appropriation to the department for the purpose of implementing and enforcing the provisions of this article.*

30395. (a) *The Department of Justice is authorized to issue ammunition vendor licenses to applicants who the department has determined, either as an individual or a responsible person, are not prohibited from possessing, receiving, owning, or purchasing ammunition under subdivision (a) of Section 30305 or federal law, and who provide a copy of any regulatory or business license required by local government, a valid seller's permit issued by the State Board of Equalization, a federal firearms license if the person is federally licensed, and a certificate of eligibility issued by the department.*

(b) *The department shall keep a registry of all licensed ammunition vendors. Law enforcement agencies shall be*

provided access to the registry for law enforcement purposes.

(c) *An ammunition vendor license is subject to forfeiture for a breach of any of the prohibitions and requirements of Article 2 (commencing with Section 30300) or Article 3 (commencing with Section 30342).*

SEC. 9. Nothing in this Act shall preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to the sale or transfer of ammunition.

SEC. 10. Securing Firearms From Prohibited Persons.

SEC. 10.1. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.

(4) When the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(9) When the property or things to be seized include a firearm or other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250.

(10) When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

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(11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.

(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(15) Beginning January 1, 2018, the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 29800 or 29805, and the court has made a finding pursuant to paragraph (3) of subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law.

~~(15)~~ (16) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.

~~(16)~~ (17) (A) When all of the following apply:

(i) A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d),

(e), or (f) of Section 655 of the Harbors and Navigation Code.

(ii) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 655.1 of the Harbors and Navigation Code.

(iii) The sample will be drawn from the person in a reasonable, medically approved manner.

(B) This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) (A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

(B) At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make motions or present evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case, the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for

determination by the court, any item that appears to be privileged as provided by law.

(d) (1) As used in this section, a “special master” is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

(2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee may not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, “documentary evidence” includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in-camera hearing pursuant to the holding of the Supreme Court of California in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703.

(j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute evidence that tends to show a violation of Section 530.5, the magistrate may

issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

(k) This section shall not be construed to create a cause of action against any foreign or California corporation, its officers, employees, agents, or other specified persons for providing location information.

SEC. 10.2. Section 27930 of the Penal Code is amended to read:

27930. Section 27545 does not apply to deliveries, transfers, or returns of firearms made pursuant to any of the following:

(a) Sections 18000 and 18005.

(b) Division 4 (commencing with Section 18250) of Title 2.

(c) Chapter 2 (commencing with Section 33850) of Division 11.

(d) Sections 34005 and 34010.

(e) *Section 29810.*

SEC. 10.3. Section 29810 of the Penal Code is amended to read:

29810. (a) For any person who is subject to Section 29800 or 29805, the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this chapter from owning, purchasing, receiving, possessing, or having under custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. If the prohibition on owning or possessing a firearm will expire on a date specified in the court order, the form shall inform the defendant that he or she may elect to have his or her firearm transferred to a firearms dealer licensed pursuant to Section 29830.

(b) Failure to provide the notice described in subdivision (a) is not a defense to a violation of this chapter.

(c) *This section shall be repealed effective January 1, 2018.*

SEC. 10.4. Section 29810 is added to the Penal Code, to read:

29810. (a) (1) *Upon conviction of any offense that renders a person subject to Section 29800 or Section 29805, the person shall relinquish all firearms he or she owns, possesses, or has under his or her custody or control in the manner provided in this section.*

(2) *The court shall, upon conviction of a defendant for an offense described in subdivision (a), instruct the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and shall order the defendant to relinquish all firearms in the manner provided in this section. The court shall also provide the defendant with a Prohibited Persons Relinquishment Form developed by the Department of Justice.*

(3) *Using the Prohibited Persons Relinquishment Form, the defendant shall name a designee and grant the designee power of attorney for the purpose of transferring or disposing of any firearms. The designee shall be either a local law enforcement agency or a consenting third party*

TEXT OF PROPOSED LAWS

PROPOSITION 63 CONTINUED

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who is not prohibited from possessing firearms under state or federal law. The designee shall, within the time periods specified in subdivisions (d) and (e), surrender the firearms to the control of a local law enforcement agency, sell the firearms to a licensed firearms dealer, or transfer the firearms for storage to a firearms dealer pursuant to Section 29830.

(b) The Prohibited Persons Relinquishment Form shall do all of the following:

(1) Inform the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and that he or she shall relinquish all firearms through a designee within the time periods set forth in subdivision (d) or (e) by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830.

(2) Inform the defendant that any cohabitant of the defendant who owns firearms must store those firearms in accordance with Section 25135.

(3) Require the defendant to declare any firearms that he or she owned, possessed, or had under his or her custody or control at the time of his or her conviction, and require the defendant to describe the firearms and provide all reasonably available information about the location of the firearms to enable a designee or law enforcement officials to locate the firearms.

(4) Require the defendant to name a designee, if the defendant declares that he or she owned, possessed, or had under his or her custody or control any firearms at the time of his or her conviction, and grant the designee power of attorney for the purpose of transferring or disposing of all firearms.

(5) Require the designee to indicate his or her consent to the designation and, except a designee that is a law enforcement agency, to declare under penalty of perjury that he or she is not prohibited from possessing any firearms under state or federal law.

(6) Require the designee to state the date each firearm was relinquished and the name of the party to whom it was relinquished, and to attach receipts from the law enforcement officer or licensed firearms dealer who took possession of the relinquished firearms.

(7) Inform the defendant and the designee of the obligation to submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within the time periods specified in subdivisions (d) and (e).

(c) (1) When a defendant is convicted of an offense described in subdivision (a), the court shall immediately assign the matter to a probation officer to investigate whether the Automated Firearms System or other credible information, such as a police report, reveals that the defendant owns, possesses, or has under his or her custody or control any firearms. The assigned probation officer shall receive the Prohibited Persons Relinquishment Form from the defendant or the defendant's designee, as applicable, and ensure that the Automated Firearms System has been properly updated to indicate that the defendant has relinquished those firearms.

(2) Prior to final disposition or sentencing in the case, the assigned probation officer shall report to the court whether

the defendant has properly complied with the requirements of this section by relinquishing all firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form, and by timely submitting a completed Prohibited Persons Relinquishment Form. The probation officer shall also report to the Department of Justice on a form to be developed by the department whether the Automated Firearms System has been updated to indicate which firearms have been relinquished by the defendant.

(3) Prior to final disposition or sentencing in the case, the court shall make findings concerning whether the probation officer's report indicates that the defendant has relinquished all firearms as required, and whether the court has received a completed Prohibited Persons Relinquishment Form, along with the receipts described in paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e). The court shall ensure that these findings are included in the abstract of judgment. If necessary to avoid a delay in sentencing, the court may make and enter these findings within 14 days of sentencing.

(4) If the court finds probable cause that the defendant has failed to relinquish any firearms as required, the court shall order the search for and removal of any firearms at any location where the judge has probable cause to believe the defendant's firearms are located. The court shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

(5) Failure by a defendant to timely file the completed Prohibited Persons Relinquishment Form with the assigned probation officer shall constitute an infraction punishable by a fine not exceeding one hundred dollars (\$100).

(d) The following procedures shall apply to any defendant who is a prohibited person within the meaning of paragraph (1) of subdivision (a) who does not remain in custody at any time within the five-day period following conviction:

(1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within five days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.

(2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within five days following the conviction, along with the receipts described in paragraph (1) of subdivision (d) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.

(3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within five days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

TEXT OF PROPOSED LAWS

PROPOSITION 63 CONTINUED

(e) The following procedures shall apply to any defendant who is a prohibited person within the meaning of paragraph (1) of subdivision (a) who is in custody at any point within the five-day period following conviction:

(1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within 14 days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.

(2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, within 14 days following conviction, along with the receipts described in paragraph (1) of subdivision (e) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.

(3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within 14 days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

(4) If the defendant is released from custody during the 14 days following conviction and a designee has not yet taken temporary possession of each firearm to be relinquished as described above, the defendant shall, within five days following his or her release, relinquish each firearm required to be relinquished pursuant to paragraph (1) of subdivision (d).

(f) For good cause, the court may shorten or enlarge the time periods specified in subdivisions (d) and (e), enlarge the time period specified in paragraph (3) of subdivision (c), or allow an alternative method of relinquishment.

(g) The defendant shall not be subject to prosecution for unlawful possession of any firearms declared on the Prohibited Persons Relinquishment Form if the firearms are relinquished as required.

(h) Any firearms that would otherwise be subject to relinquishment by a defendant under this section, but which are lawfully owned by a cohabitant of the defendant, shall be exempt from relinquishment, provided the defendant is notified that the cohabitant must store the firearm in accordance with Section 25135.

(i) A law enforcement agency shall update the Automated Firearms System to reflect any firearms that were relinquished to the agency pursuant to this section. A law enforcement agency shall retain a firearm that was relinquished to the agency pursuant to this section for 30 days after the date the firearm was relinquished. After the 30-day period has expired, the firearm is subject to destruction, retention, sale or other transfer by the agency, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of the firearm is necessary or proper to the ends of justice,

or if the defendant provides written notice of an intent to appeal a conviction for an offense described in subdivision (a), or if the Automated Firearms System indicates that the firearm was reported lost or stolen by the lawful owner. If the firearm was reported lost or stolen, the firearm shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4. The agency shall notify the Department of Justice of the disposition of relinquished firearms pursuant to Section 34010.

(j) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of a firearm pursuant to Section 33880.

(k) This section shall become operative on January 1, 2018.

SEC. 11. Theft of Firearms.

SEC. 11.1. Section 490.2 of the Penal Code is amended to read:

(a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

(c) This section shall not apply to theft of a firearm.

SEC. 11.2. Section 29805 of the Penal Code is amended to read:

29805. Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, Section 490.2 if the property taken was a firearm, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not

TEXT OF PROPOSED LAWS

PROPOSITION 63 CONTINUED

exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

SEC. 12. Interim Standards.

Notwithstanding the Administrative Procedure Act (APA), and in order to facilitate the prompt implementation of the Safety for All Act of 2016, the California Department of Justice may adopt interim standards without compliance with the procedures set forth in the APA. The interim standards shall remain in effect for no more than two years, and may be earlier superseded by regulations adopted pursuant to the APA. "Interim standards" means temporary standards that perform the same function as "emergency regulations" under the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), except that in order to provide greater opportunity for public comment on permanent regulations, the interim standards may remain in force for two years rather than 180 days.

SEC. 13. Amending the Measure.

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a vote of 55 percent of the members of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act.

SEC. 14. Conflicting Measures.

(a) In the event that this measure and another measure on the same subject matter, including but not limited to the regulation of the sale or possession of firearms or ammunition, shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 15. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstance, is for any reason held to be invalid or unconstitutional, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 16. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this Act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this Act for the purpose of defending its constitutionality, whether such action is in trial court, on appeal, or on discretionary review by the Supreme Court

of California or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

PROPOSITION 64

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Business and Professions Code, the Food and Agricultural Code, the Health and Safety Code, the Labor Code, the Revenue and Taxation Code, and the Water Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title.

This measure shall be known and may be cited as the Control, Regulate and Tax Adult Use of Marijuana Act ("the Adult Use of Marijuana Act").

SEC. 2. Findings and Declarations.

A. Currently in California, nonmedical marijuana use is unregulated, untaxed, and occurs without any consumer or environmental protections. The Control, Regulate and Tax Adult Use of Marijuana Act will legalize marijuana for those over 21 years old, protect children, and establish laws to regulate marijuana cultivation, distribution, sale and use, and will protect Californians and the environment from potential dangers. It establishes the Bureau of Marijuana Control within the Department of Consumer Affairs to regulate and license the marijuana industry.

B. Marijuana is currently legal in our state for medical use and illegal for nonmedical use. Abuse of the medical marijuana system in California has long been widespread, but recent bipartisan legislation signed by Governor Jerry Brown is establishing a comprehensive regulatory scheme for medical marijuana. The Control, Regulate and Tax Adult Use of Marijuana Act (hereafter called the Adult Use of Marijuana Act) will consolidate and streamline regulation and taxation for both nonmedical and medical marijuana.

C. Currently, marijuana growth and sale is not being taxed by the State of California, which means our state is missing out on hundreds of millions of dollars in potential tax revenue every year. The Adult Use of Marijuana Act will tax both the growth and sale of marijuana to generate hundreds of millions of dollars annually. The revenues will cover the cost of administering the new law and will provide funds to: invest in public health programs that educate youth to prevent and treat serious substance abuse; train local law enforcement to enforce the new law with a focus on DUI enforcement; invest in communities to reduce the illicit market and create job opportunities; and provide for environmental cleanup and restoration of public lands damaged by illegal marijuana cultivation.

D. Currently, children under the age of 18 can just as easily purchase marijuana on the black market as adults can. By legalizing marijuana, the Adult Use of Marijuana Act will incapacitate the black market, and move marijuana purchases into a legal structure with strict safeguards against children accessing it. The Adult Use of Marijuana Act prohibits the sale of nonmedical marijuana to those

EXHIBIT 2

**XAVIER BECERRA***Attorney General*

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Certificate of Eligibility

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What is a Certificate of Eligibility (COE)?

A "Certificate of Eligibility" certifies the Department of Justice (DOJ) has checked its records and determined the recipient is not prohibited from acquiring or possessing firearms at the time the firearms eligibility criminal background check was performed. A COE is a pre-requisite licensing/permit requirement for all prospective licensed firearms dealers, licensed ammunition vendors, manufacturers, certified instructors, gun show promoters, explosive permit holders, and other firearm related employment activities, including, effective January 1, 2018, any agent or employee of a vendor who handles, sells, or delivers firearms and ammunition. The initial COE application process includes a firearms eligibility criminal background check and issuance of a certificate, which is valid for one year. Thereafter, the COE must be renewed annually. A COE can be revoked, at anytime, if the COE holder becomes prohibited from owning/possessing firearms and ammunition.

Bureau of Firearms

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How do I apply for a new COE (You have never had a COE or your current COE has been expired for more than 90 days)?

You can apply for a new COE through the California Firearms Application Reporting System (CFARS). The CFARS is a web-based application system that enables individuals to apply for, and receive their COE electronically from the DOJ. You can access the electronic application by accessing the following URL <https://cfars.doj.ca.gov/login.do>. Please note: prior to submitting your COE application through the CFARS, you must first submit your fingerprint impressions to the DOJ. To submit fingerprint impressions, you must take a completed Request for Live Scan Service form (BCIA 8016) to a Live Scan station and pay the designated fees. Please refer to the live scan station location information. The Live Scan operator will provide an Applicant Tracking Identifier (ATI) number on your copy of the Request for Live Scan Service form (BCIA 8016). The ATI number documents your fingerprint submissions. (You must enter your ATI number on the designated space of the COE application). Once you have completed your fingerprint submission requirements, you can complete the electronic COE application process using the CFARS.

You can also apply by completing a Certificate of Eligibility Application (BOF 4008) which is a manual form. The application must be mailed to the DOJ.

If you are an out-of-state resident applying for a COE and you are unable to provide your fingerprints via Live Scan, you must

and
Comparable
Entities

Certificate of
Eligibility
Information
and
Application
Process

Bullet Button
Assault
Weapon
Information
and
Registration
Process

Firearms
Reporting &
Law
Enforcement
Gun Release
Application

Firearm
Regulations/Rulemak
Activities

California Code
of Regulations

Roster of
Firearm Safety
Devices
Certified for
Sale

Roster of

use the "hard card" fingerprint method by having your fingerprints taken on two hard cards at a local law enforcement agency in your state of residence.

You can then elect to use either method described above to submit your COE application and remit a check for \$71 made payable to the DOJ along with the two completed fingerprint hard cards to:

Department of Justice
Bureau of Firearms – COE
P.O. Box 160487
Sacramento, CA 95816-0487

Handguns
Certified for
Sale

Unique Serial
Number
Application
(USNA) Process

Contact Us

How do I renew my COE (Your current COE is set to expire in the near future or has already expired)?

You can renew your COE through the CFARS. Fingerprint submissions are not required for a COE renewal.

Please note: you must renew your COE no later than 90 days after it's expiration date, otherwise you must re-apply for a new COE, which will require you to re-submit fingerprint impressions.

You can also renew your COE by completing a manual Certificate of Eligibility Application (BOF 4008). The application must be mailed to the DOJ along with a check for the appropriate fee.

What are the fees associated with a new and renewal COE application?

- Initial COE Application – The fee is \$71 which is collected by the Live Scan Operator during the required fingerprint submission. If you reside outside of the State of California and have your fingerprint images taken by your local law enforcement agency using hard cards, you must remit a check made payable to the DOJ in the amount of \$71.
- Renewal COE Application – The fee is \$22 which is paid when the application is submitted. If you renew your COE through the CFARS, your payment can be submitted electronically. If you renew your application using the manual COE application, you must remit a check made payable to the DOJ.

Benefits of Using CFARS:

Creating a CFARS account is quick and free! Take advantage of the following benefits when you use the CFARS.

- **Convenience**– The online application eliminates the need to mail an application and/or forms to the DOJ and saves time. You have the ability to apply, renew or modify your COE as well as report any change in employment with a firearms dealer or ammunition vendor through the online application.
- **E-mail notifications** – With an account, you will receive electronic (complete, incomplete, and reject) notifications for your COE submission.
- **Pay by credit card** – The system accepts major credit cards such as Visa, Master Card, American Express and Discover.
- **Save time and money** – By applying/renewing online, you'll save time by not having to mail in an application and

also save money on postage.

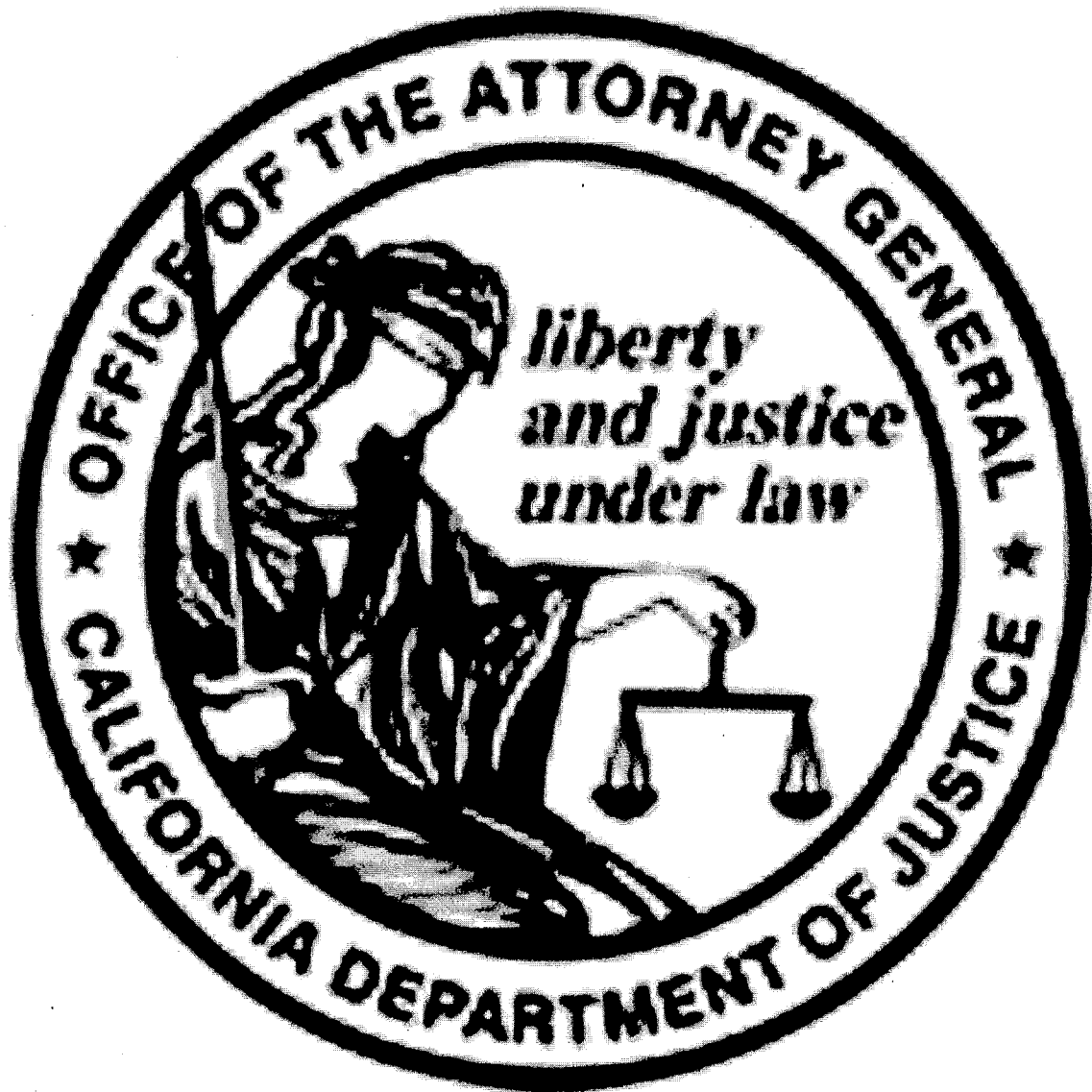
- **Check your COE status** – Due to the sheer volume of COE applications and renewals, the process can take anywhere between 6-8 weeks. By applying online you can log in and check the status of your application at any time.
- **View and print your Certificate of Eligibility** – Once your application is approved, you can download and print your Certificate of Eligibility directly from the CFARS.
- **View your COE account history** – You can view your account history (including notices) by logging on to your CFARS account.
- **Submit an issue** – With an account, you may submit an issue by accessing "Report an Issue."
- **Streamlined processing** – Save time completing future renewal applications as your personal information is encrypted and securely stored. Thus, there is no longer the requirement to re-type your personal information.
- **Manage employee privileges** – As a business owner, you can confirm/track employee COE status', manage DOJ notifications, submit reports, submit payment for your employees' COEs, or delegate said administrative responsibilities to a designated employee.

Additional Bureau of Firearms Links

- California Firearms Application Reporting System (CFARS)
- Frequently Asked Questions
- Forms and Publications
- Firearms Reporting & Law Enforcement Gun Release Application

- Assault Weapons Identification Guide
- California Firearms Laws Summary
- Firearms Information for New California Residents
- Contact Us

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KIM RHODE et al.,

Plaintiffs,

v.

**XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California, et al.,**

Defendants.

3:18-cv-00802-BEN-JLB

**DEFENDANT XAVIER
BECERRA'S NOTICE OF
MOTION AND MOTION TO
DISMISS THE FIRST AMENDED
COMPLAINT**

Judge: Hon. Roger T. Benitez
Date: Sept. 20, 2018
Time: 10:00 a.m.
Courtroom: 5A
Action Filed: April 26, 2018

NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE THAT on September 20, 2018 at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Roger T. Benitez in Courtroom 5A of the Edward J. Schwartz U.S. Courthouse, located at 221 West Broadway, San Diego, California 92101, the Court will hear the motion filed by Defendant Xavier Becerra, in his official capacity as Attorney General of the State of California, to dismiss portions of the First Amended Complaint for Declaratory and Injunctive Relief (FAC), ECF No. 9.

The Attorney General moves to dismiss under to Federal Rule of Civil Procedure 12(b)(6) on the grounds that:

1. The first claim for relief for alleged violations of the dormant Commerce Clause of the United States Constitution (FAC ¶¶ 82-91) fails to state a claim upon which relief can be granted;
2. The eighth claim for relief for alleged violations of the Equal Protection Clause of the United States Constitution (FAC ¶¶ 123-30) fails to state a claim upon which relief can be granted; and
3. The ninth claim for relief for alleging that California Penal Code section 30314 is preempted by 18 U.S.C. § 926A (FAC ¶¶ 131-33) fails to state a claim upon which relief can be granted.

This motion is based on this filing, the concurrently filed memorandum of points and authorities and request for judicial notice, the papers and pleadings on file in this action, and upon such matters as may be presented to the Court at the time of the hearing.

Dated: July 18, 2018

Respectfully Submitted,

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/s/ Nelson Richards
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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.

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

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

Plaintiffs 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, through their counsel, bring this action against Defendant California Attorney General Xavier Becerra, in his official capacity, and make the following allegations.

INTRODUCTION AND SUMMARY OF CLAIMS

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

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

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

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

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

5. The Challenged Provisions also are preempted by 18 U.S.C. §926A, which ensures that a person may 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 preempts similar prohibitions on ammunition, as it expressly contemplates that “ammunition” will be “transported” along with the firearm. By preventing law-abiding citizens from transporting ammunition from another state into California, the California law conflicts with and stands as an obstacle to the purposes of federal law.

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

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

JURISDICTION AND VENUE

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

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

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

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

PARTIES

Plaintiffs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Defendants

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

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

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

26. Defendants enforce California's restrictions on ammunition transfers under the Challenged Provisions against Plaintiffs and other California citizens under 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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dormant Commerce Clause and Equal Protection Clause Violations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Violations of the Right to Keep and Bear Arms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

vendor and returning to California with the ammunition.

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF
Section 30312's Violation of the Right to Keep and Bear Arms
By the Restriction on the Acquisition of Ammunition by Mail
(U.S. Const., amends. II and XIV)
Against All Defendants

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

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

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

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

THIRD CLAIM FOR RELIEF
Section 30314's Violation of the Right to Keep and Bear Arms
By Restricting Interstate Commerce in Ammunition
(U.S. Const., amends. II and XIV)
Against All Defendants

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

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

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

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

FOURTH CLAIM FOR RELIEF

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

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

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

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

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

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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.

restrictions cannot be justified under any level of heightened scrutiny.

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

SIXTH CLAIM FOR RELIEF

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

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

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

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

SEVENTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

NINTH CLAIM FOR RELIEF

Preemption

(Penal Code § 30314)

(18 U.S.C. §926A)

Against All Defendants

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

132. The Challenged Provisions are preempted by 18 U.S.C. §926A, which ensures that a person may 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. This law preempts similar prohibitions on ammunition, as it expressly contemplates that “ammunition” will “be[] transported” along with the firearm.

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

PRAYER FOR RELIEF

Plaintiffs pray that the Court:

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

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

Dated: June 11, 2018

MICHEL & ASSOCIATES, P.C.

s/C. D. Michel

C.D. Michel

Counsel for Plaintiffs

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

**United States District Court**
SOUTHERN DISTRICT OF CALIFORNIA**FILED**

Rhode et al

Plaintiff,

V.

Becerra et al

Defendant.

Case No. 18cv0802-BEN-JLB MAY 9 PM 3:45

**REPORT OF CLERK AND ORDER
OF TRANSFER PURSUANT TO
"LOW-NUMBER" RULE****REPORT OF CLERK PURSUANT TO LOW NUMBER RULE**

Re: "Low-Numbered Case No.: 17cv1017-BEN-JLB

Title: Duncan et al v. Becerra et al

Nature of Case: 950 Constitutional - State Statute

The above "low-numbered" case and the present case appear:

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | (1) to arise from the same or substantially identical transactions, happenings or events; or |
| <input checked="" type="checkbox"/> | (2) involve the same or substantially the same parties or property; or |
| <input type="checkbox"/> | (3) involve the same patent or trademark or different patents or trademarks covering the same or substantially identical things; or |
| <input checked="" type="checkbox"/> | (4) call for determination of the same or substantially identical questions of law; or |
| <input type="checkbox"/> | (5) where a case is refiled within one year of having previously been terminated by the Court; or |
| <input checked="" type="checkbox"/> | (6) for other reasons would entail unnecessary duplication of labor if heard by different judges. |

New Case #: 18cv0802-BEN-JLB

This case was transferred pursuant to the Low-Number Rule. The related cases have been assigned to the same judge and magistrate judge but they are NOT CONSOLIDATED at this point; all pleadings must still be filed separately in each case.

John Morrill, Clerk of Court,

Dated: 4/27/18

By: s/M. Niebla

M. Niebla, Deputy

ORDER OF TRANSFER PURSUANT TO "LOW-NUMBER" RULE

I hereby consent to transfer of the above-entitled case to my calendar pursuant to Local Rule 40.1, Transfer of Civil Cases under "Low-Number" Rule.

Dated: 5/07/2018

Roger T. Benitez

United States District Judge

It appearing that the above-entitled case is properly transferable in accordance with the provisions of the Low-Number Rule, IT IS HEREBY ORDERED that this case is transferred to the calendar of Judge Roger T. Benitez and Magistrate Judge Jill L. Burkhardt for all further proceedings.

Dated: 5/9/18

Jeffrey T. Miller

United States District Judge

C.D. Michel – SBN 144258
Sean A. Brady – SBN 262007
Anna M. Barvir – SBN 268728
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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,

Defendant.

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

**PLAINTIFFS' NOTICE OF
RELATED CASES**

Pursuant to Local Rule 40.1(f), Plaintiffs 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"), through their counsel, note the following as potentially related case: *Duncan v. Becerra*, Case No. 17-cv-1017-BEN-JLB, filed in the Southern District of California, on May 17, 2017.

Duncan is a case that was filed and is being litigated by Plaintiffs' counsel in this matter, on behalf of several individuals and the same organizational plaintiff as in this matter, the California Rifle & Pistol Association, Incorporated, against the same defendant, California Attorney General Xavier Becerra. Like Plaintiffs here, the *Duncan* plaintiffs assert Second Amendment challenges to California's statutory restrictions not on firearms themselves, but on accessories necessary to the function of firearms, i.e., magazines (*Duncan*) and ammunition (this case). Assignment of these cases to a single district judge might effect a saving of judicial effort or other economies, as they involve "some of the same parties and are based on . . . similar claims." Local Rule 40.1(g)(1).

For the same reasons as *Duncan*, a case currently on file in the Eastern District, *Weise v. Becerra*, No. 2:17-cv-0903 WBS KJN (E.D. Cal. Jun. 13, 2017), is also potentially related to this case, as it involves similar claims to those in *Duncan*.

Likewise, the state court case of *Parker v. State of California*, Superior Court Case No. 10CECG02116, (Complaint filed in Fresno June 17, 2010), is potentially related, as it involved challenges to identical restrictions as those at issue in this case, but on different legal theories. Namely, it challenged those restrictions as being unconstitutionally vague under the Fourteenth Amendment, because they only applied to the vague term "handgun ammunition." Plaintiffs in that case, which included the CRPA Foundation, prevailed in both the trial and appellate courts. Attorney General Becerra's petition to the California Supreme Court was mooted by adoption of the laws at issue in this case, which remedied

the vagueness problem by applying to all ammunition. *Parker*, 384 P.3d 1242 (Cal. 2016) (dismissing review as moot). The case remains alive only on the issue of attorneys' fees.

Cases that have been terminated that are also potentially related for the same reasons as *Duncan* and *Wiese* include:

- 1) *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th Cir. 2015). Filed in the Northern District of California, San Jose Division, on December 16, 2013, the case was voluntarily dismissed without prejudice on November 30, 2016.
- 2) *S.F. Veteran Police Officers' Ass'n v. City and County of San Francisco*, 18 F. Supp. 3d 997 (N.D. Cal. 2014). Filed in the Northern District of California, San Francisco Division, on November 19, 2013, the case was voluntarily dismissed without prejudice on March 14, 2014.
- 3) *Jackson v. City and County of San Francisco*, 746 F.3d 953 (2014) – Complaint filed in Northern District on May 15, 2009. Appeal filed on December 21, 2012.

Dated: April 26, 2018

MICHEL & ASSOCIATES, P.C.

s/C.D. Michel

C.D. Michel

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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.

Case No.: '18CV0802 JM JMA

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs 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, through their counsel, bring this action against Defendant California Attorney General Xavier Becerra, in his official capacity, and make the following allegations.

INTRODUCTION AND SUMMARY OF CLAIMS

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

2. These statutes (collectively, the "Challenged Provisions") will ban millions of constitutionally protected ammunition transfers and heavily burden countless millions more.

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

4. One effect of the Challenged Provisions is to block any out-of-state ammunition vendor from the California market unless it pays an in-state business to broker the sale, thereby discriminating against out-of-state economic interests, impermissibly regulating out-of-state transactions, and otherwise burdening interstate commerce in violation of the Dormant Commerce Clause. These excessive restraints on the purchase, sale, and transfer of ammunition also violate individuals' right to keep and bear arms as guaranteed by the Second Amendment.

5. The Challenged Provisions also are preempted by 18 U.S.C. §926A, which ensures that a person may 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 preempts similar prohibitions on ammunition, as it expressly contemplates that “ammunition” will be “transported” along with the firearm. By preventing law-abiding citizens from transporting ammunition from another state into California, the California law conflicts with and stands as an obstacle to the purposes of federal law.

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

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

JURISDICTION AND VENUE

7. The Court has original jurisdiction of this civil action under 28 U.S.C. §1331, because the action arises under the Constitution and laws of the United States, thus raising federal questions. The Court also has jurisdiction under 28 U.S.C. §1343(a)(3) and 42 U.S.C. §1983 since this action seeks to redress the deprivation, under color of the laws, statutes, ordinances, regulations, customs and usages of the State of California and political subdivisions thereof, of rights, privileges or immunities secured by the United States Constitution and by Acts of Congress.

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

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

PARTIES

Plaintiffs

10. Plaintiff Kimberly Rhode Harryman ("Kim Rhode") is a resident of San Bernardino County, California and a citizen of the United States. Plaintiff Rhode is not prohibited from owning or possessing firearms or ammunition under federal or California law. She is a competitive skeet and double trap shooter who has earned six Olympic medals, three World Championship medals, and five Pan American Games medals. The primary way Plaintiff Rhode obtains her specialized competition ammunition (which she is mandated to use in competitions by the International Shooting Sports Federation) is by receiving shipments of it from USA Shooting (the National Governing Body for the sport of shooting chartered by the United States Olympic Committee). These shipments are often delivered to a training facility in Arizona, from where Plaintiff Rhode retrieves the ammunition and brings it into California for training and competition purposes. Plaintiff Rhode also regularly has ammunition that she uses for marksmanship practice for shooting competitions and self-defense training shipped by her ammunition sponsor directly to her home in California and to various shooting ranges located both inside and outside of California. She regularly transports ammunition that she takes receipt of at these ranges back to her home, her coach's (parents') home, and to other shooting ranges and competitive event venues. Plaintiff Rhode is the sole financial supporter of her family, which depends on her ability to train and compete. As such, she seeks to continue engaging in these practices without being subjected to the unconstitutional restraints California has

imposed on the transfer of ammunition under the Challenged Provisions that prohibit and restrict her ability to do so. But for the enactment of the Challenged Provisions, and her reasonable fear of prosecution for violating them, Plaintiff Rhode would immediately resume receiving ammunition via direct shipments to her home and her coach's home and would further transport ammunition from in-state and out-of-state shooting ranges to her home and to other shooting ranges and competitive events.

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

12. Plaintiff Cory Henry is a resident of San Diego County, California and a citizen of the United States. Plaintiff Henry is not prohibited from owning or

possessing firearms or ammunition under federal or California law. He is a former active duty U.S. Army Officer now serving as a drilling reservist with the rank of Colonel. Plaintiff Henry purchases ammunition from both online sources and licensed California vendors. He seeks to resume purchasing ammunition from both direct shipment sources and brick and mortar retail stores in California and other states without being subject to the unconstitutional restraints California has imposed on the transfer of ammunition under the Challenged Provisions. But for the enactment of the Challenged Provisions and his reasonable fear of criminal prosecution for violating them, Plaintiff Henry would immediately purchase, and continue to purchase, ammunition for self-defense and other lawful purposes via direct shipment to his home from out of state ammunition vendors or through brick and mortar retail stores in California and other states.

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

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

15. Plaintiff Richard Randall Ricks is a resident of San Diego County, California and a citizen of the United States. Plaintiff Ricks is not prohibited from owning or possessing firearms or ammunition under federal or California law. He is a Certified Public Accountant and also owns property in Oregon. Plaintiff Ricks purchases ammunition from both online sources, as well as brick and mortar stores in Oregon and California. He seeks to resume purchasing ammunition from both direct shipment sources and brick and mortar retail stores in California and Oregon without being subject to the unconstitutional restraints California has imposed on the transfer of ammunition under the Challenged Provisions. But for the enactment of the Challenged Provisions and his reasonable fear of criminal prosecution for violating them, Plaintiff Ricks would immediately purchase, and continue to purchase, ammunition for self-defense and other lawful purposes via direct shipment to his home

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

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

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

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

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

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

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

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

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

Defendants

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

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

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

25. Defendants enforce California's restrictions on ammunition transfers under the Challenged Provisions against Plaintiffs and other California citizens under 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

26. 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.

27. 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).

28. Any individual who wishes to sell more than 500 rounds of ammunition in a 30-day period must first become a “licensed ammunition vendor.” Cal. Penal Code § 30342(a).

29. 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 to receive the ammunition, store it, and process the transaction. Cal. Penal Code § 30312(c). It is unclear whether the in-state vendor is required to process transactions for out-of-state vendors who wish to sell to California consumers. The in-state vendor, however, is expressly authorized by regulation to charge the purchaser any amount it wishes for this service.

30. Thus, out of state vendors operate at the whim of California vendors who may price them out of the market by charging the purchaser an unlimited fee.

31. Beginning January 1, 2018, a resident of California may not bring or transport into California any ammunition that he or she purchased outside of the state. Cal. Penal Code § 30314(a) (West 2017). The only way that a California resident can

bring ammunition that was purchased outside of California into the state is to have it shipped to a licensed vendor in California to process the transaction, again subject to an additional and unlimited fee charged by the in-state vendor. Cal. Penal Code § 30312(b).

32. Licensed ammunition vendors must require all their employees who handle or oversee ammunition to obtain a certificate of eligibility (“COE”) from the Department of Justice

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

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

35. Beginning January 1, 2019, ammunition vendors must register the sale of every individual ammunition purchase by recording and submitting to the Department the following information: the date of sale; the purchaser’s driver’s license or state identification number; the brand, type, and amount of ammunition sold; the purchaser’s full name and signature; the salesperson’s name; the purchaser’s full residential address and telephone number; and the purchaser’s or transferee’s date of birth. Cal. Penal Code § 30352 (West 2017). This process is also required for private party ammunition sales that must be completed through a licensed ammunition vendor. *Id.*, § 30352.

36. An ammunition vendor must report the loss or theft of any ammunition to an appropriate law enforcement agency in the city, county, or city and county where the vendor’s business premises is located within 48 hours of discovery. Cal. Penal

Code § 30363 (West 2017).

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

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

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

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

41. The Department is authorized to issue vendor licenses to qualified

California ammunition vendors, Cal. Penal Code § 30395(a) (West 2017), and must maintain a registry of all licensed ammunition vendors for law enforcement review, *Id.*, § 30395(b).

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

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

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

45. Beginning January 1, 2018, the sale or ammunition must be conducted by or processed through a licensed ammunition vendor in a face-to-face transaction. Cal. Penal Code § 30312 (West 2017). This restriction does not apply to law enforcement, licensed importers or manufacturers of firearms, California licensed firearm retailers, out of state licensed firearm dealers and collectors, licensed collectors who possess a valid certificate of eligibility issued by DOJ, licensed ammunition vendors, consultant evaluators, persons who receive ammunition at a target facility holding a business or other regulatory licenses provided that the ammunition is at all times kept within the facility's premises, persons who receive ammunition from certain family members, and persons involved in law enforcement training. Cal. Penal Code § 30312(c).

Dormant Commerce Clause and Equal Protection Clause Violations

46. The Commerce Clause, as set forth in Article I, Section 8 of the United States Constitution, expressly grants Congress the power “[t]o regulate commerce with

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

foreign Nations, among the several States, and with the Indian Tribes.”

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

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

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

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

51. The Supreme Court has repeatedly held that, in all but the narrowest of circumstances, state laws violate the Commerce Clause if they mandate differential treatment of in-state and out-of-state economic interests. *Granholm v. Heald*, 544 U.S. 460, 466 (2005); *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994).

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

53. The Equal Protection Clause, as set forth in the Fourteenth Amendment, prohibits a state from denying its residents equal protection under the law; particularly, it prohibits a state from classifying people in a way that restrains fundamental rights, such as the right to acquire ammunition under the Second Amendment, without

meeting heightened scrutiny. *Hussey v. City of Portland*, 64 F.3d 1260, 1265 (9th Cir. 1995).

54. Sections 30312, 30314, 30370, 30385 violate the dormant Commerce Clause because they regulate out-of-state transactions. First, they prohibit out of state ammunition vendors, including Plaintiffs Able's, Ammunition Depot, and Sam's Shooters' Emporium from selling ammunition directly to California consumers via mail-order, including to Plaintiffs Rhode, Brennan, Henry, Johnson, Lindemuth, Ricks, Welvang, and members of CRPA. Second, they effectively prohibit out-of-state companies from selling ammunition to California residents who intend to return to California with the purchased ammunition.

55. In doing so, Sections 30312, 30314, 30370, and 30385 further violate the dormant Commerce Clause because they facially discriminate against out-of-state ammunition vendors, mandating differential treatment of out-of-state economic interests and in-state economic interests by expressly limiting out-of-state vendors' access to California consumers. As explained above, under those provisions, out-of-state ammunition vendors cannot ship ammunition directly to California consumers. Nor can California residents, including plaintiffs Rhode, Brennan, Henry, Johnson, Lindemuth, Ricks, Welvang, and members of CRPA, purchase ammunition in person out-of-state and return to California with the ammunition. Instead, in both situations, the out-of-state vendor must have the ammunition shipped to a licensed California ammunition vendor to process the transfer as an intermediary between the out-of-state vendor and the California customer. And the licensed California vendor can either refuse to process the transaction or charge the out-of-state vendor any fee it wishes to receive the ammunition, store it, and process the transaction.

56. Even if sections 30312, 30314, 30370, and 30385 did not facially discriminate against out of state ammunition vendors, these sections nonetheless improperly burden interstate commerce in practice in violation of the Dormant Commerce Clause.

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

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

Violations of the Right to Keep and Bear Arms

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

60. The United States Supreme Court has confirmed that not only does it protect an individual—as opposed to collective—right, but that “individual self-defense is ‘the central component’ of the Second Amendment right.” *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (quoting *Heller*, 554 U.S. at 628).

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

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

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

64. The Challenged Provisions impose unprecedented and overreaching

restraints on the right of law-abiding citizens, including plaintiffs, to acquire ammunition for self-defense and other lawful purposes, both directly and by imposing costly and unreasonable burdens on the purveyors of that constitutional right.

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

66. Specifically, California's sweeping ammunition statutes collectively operate to: ban a major source of ammunition (i.e., direct mail order sales); prohibit importation of ammunition purchased out-of-state—thereby banning another source; require vendors to obtain costly special licensing and employee certifications annually; ban sales from trailers common at trade events; impose onerous and costly storage and display requirements; mandate detailed registration requirements for all the countless millions of ammunition purchases that take place annually; impose liability on ammunition vendors if a single cartridge of ammunition is not accounted for; mandate costly background checks and special purchase authorizations for millions of ammunition purchasers each time they make a single ammunition purchase; and subject vendors to loss of their licenses if they ever fail to comply with any of these restrictions.

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

68. The collective burden imposed by these restrictions on countless annual

ammunition transactions will substantially impede lawful ammunition sales.

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

70. Even if the Challenged Provisions are not collectively stricken as an improper violation of the Second Amendment, Penal Code sections 30312, 30314, 30352, 30370, each individually violate the Second Amendment.

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

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

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

74. Penal Code section 30370's unprecedented background checks, fees, and purchaser authorizations requirements severely burden the purchase, sale, and transfer

of ammunition by overburdening consumers who have already complied with numerous California laws to obtain a firearm and established that they are not prohibited from owning firearms or ammunition. These requirements further place unprecedented, costly, duplicative burdens on the purveyors of the fundamental right to keep and bear arms. They cannot be justified by the State's purported interests.

Preemption Under 18 U.S.C. §926A

74. 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.

75. 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.

76. 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

75. 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

76. 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

77. Paragraphs 1-76 are realleged and incorporated by reference.

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

79. Penal Code sections 30312, 30314, 30370, and 30385 unconstitutionally prohibits 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.

79. 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.

80. Sections 30312, 30314, 30370, and 30385 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 vendor and returning to California with the ammunition.

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

82. Even if sections 30312, 30314, 30370, and 30385 did not facially discriminate against out of state ammunition vendors, these sections nonetheless improperly burden interstate commerce in practice by so restricting out-of-state ammunition vendors from the California marketplace, thereby granting in-state vendors an effective monopoly over the California ammunition market.

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

84. Section 30370 further violates the Dormant Commerce Clause by imposing an unreasonable fee on non-residents who purchase ammunition in California for the first time, an amount up to five times the actual cost of the ammunition itself. Such fee is not imposed upon residents of California who have previously purchased

ammunition or firearms from California, and those residents are subject to a fee 19 times less than first-time non-resident purchasers.

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

SECOND CLAIM FOR RELIEF
Section 30312's Violation of the Right to Keep and Bear Arms
By the Restriction on the Acquisition of Ammunition by Mail
(U.S. Const., amends. II and XIV)
Against All Defendants

86. Paragraphs 1-85 are realleged and incorporated by reference.

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

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

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

THIRD CLAIM FOR RELIEF
Section 30314's Violation of the Right to Keep and Bear Arms
By Restricting Interstate Commerce in Ammunition
(U.S. Const., amends. II and XIV)
Against All Defendants

90. Paragraphs 1-89 are realleged and incorporated by reference.

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

92. By prohibiting Californians from returning to California with ammunition

that they lawfully purchased out of state, Penal Code section 30314 denies them a major source of ammunition. Penal Code section 30314 violates the Second Amendment by placing an unconstitutional burden on the right to obtain ammunition.

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

FOURTH CLAIM FOR RELIEF

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

94. Paragraphs 1-93 are realleged and incorporated by reference.

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

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

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

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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

98. Paragraphs 1-97 are realleged and incorporated by reference.

99. 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.

100. 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.

101. 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

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

103. 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.

restrictions cannot be justified under any level of heightened scrutiny.

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

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

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

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

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

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

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

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

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

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

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

SEVENTH CLAIM FOR RELIEF

Violation of Equal Protection

(Penal Code § 30314)

(U.S. Const., amend. XIV)

Against All Defendants

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

115. 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.

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

117. 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.

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

119. 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.

120. 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.

121. Defendant Becerra cannot justify this classification which unequally deprives Plaintiffs of their right to bear arms. Therefore, Defendants are depriving Plaintiffs and similarly situated individuals of their right to equal protection under the law as guaranteed by the Fourteenth Amendment.

EIGHTH CLAIM FOR RELIEF

Preemption

(Penal Code § 30314)

(18 U.S.C. §926A)

Against All Defendants

122. Paragraphs 1-121 are realleged and incorporated by reference.

123. The Challenged Provisions are preempted by 18 U.S.C. §926A, which ensures that a person may 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. This law preempts similar prohibitions on ammunition, as it expressly contemplates that “ammunition” will be[] transported” along with the firearm.

124. The Challenged Provisions conflict with and stand as an obstacle to the accomplishment of 18 U.S.C. §926A’s purposes, which include the free transport of

firearms and ammunition across state lines.

PRAYER FOR RELIEF

Plaintiffs pray that the Court:

1. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal Code sections 30312, 30314, 30342, 30347, 30348, 30350, 30352, 30370, 30385, 30390, and 30395 are unconstitutional on their face or, alternatively, as applied to plaintiffs, because these sections violate the Second and Fourteenth Amendments to the United States Constitution.
2. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal Code sections 30312, 30314, 30352, 30363, 30370, and 30385 are unconstitutional on their face or, alternatively, as applied to Plaintiffs, because they discriminate against interstate commerce in violation of the Dormant Commerce Clause, Article I, § 8 of the United States Constitution.
3. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal Code section 30314 is unconstitutional on its face or, alternatively, as applied to Plaintiffs, under the Equal Protection Clause of the United States Constitution, because it unjustifiably denies Plaintiffs, as California residents, of equal treatment to out-of-state residents in their exercise of the fundamental right to acquire ammunition.
4. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal Code section 30314 is unlawful on its face or, alternatively, as applied to Plaintiffs, because it conflicts with and is thus preempted by 18 U.S.C. §926A.
5. Issue an injunction enjoining Defendants and their officers, agents, and employees from enforcing California Penal Code sections 32310 30314, 30342, 30347, 30348, 30350, 30352, 30363, 30370, 30385, 30390, and 30395.
6. Award remedies available under 42 U.S.C. §1983 and all reasonable

attorneys' fees, costs, and expenses under 42 U.S.C. §1988, or any other applicable law; and,

7. Grant any other relief the Court deems just and proper.

Dated: April 26, 2018

MICHEL & ASSOCIATES, P.C.

s/C. D. Michel

C.D. Michel

Counsel for Plaintiffs

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Kim Rhode, Gary Brennan, Cory Henry, Edward Johnson, Scott Lindemuth, Richard Ricks, Denise Welvang, Able's Sporting, Inc., Ammunition Depot, Sam's Shooters' Emporium, and California Rifle & Pistol Association, Incorporated

(b) County of Residence of First Listed Plaintiff San Bernardino
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

C.D. Michel (S.B.N. 144258)
Michel & Associates, P.C.
180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802
(562) 216-4444

DEFENDANTS

Xavier Becerra, in his official capacity as Attorney General of the State of California

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'18CV0802 JM JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

U.S. Const., Art. I, section 8; U.S. Const. amends. II and XIV; 18 U.S.C. section 926A

Brief description of cause:

Constitutional challenges under 2nd & 14th Amendments and the Commerce Clause to ammunition laws.

VII. REQUESTED IN COMPLAINT:

- ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE See Notice filed herewith.

DOCKET NUMBER _____

DATE April 26, 2018 SIGNATURE OF ATTORNEY OF RECORD

s/C.D. Michel

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ER 1786

JS-44

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APPEAL,ENE,LNO

**U.S. District Court
Southern District of California (San Diego)
CIVIL DOCKET FOR CASE #: 3:18-cv-00802-BEN-JLB**

Rhode et al v. Becerra et al
Assigned to: Judge Roger T. Benitez
Referred to: Magistrate Judge Jill L. Burkhardt
Related Case: [3:17-cv-01017-BEN-JLB](#)
Case in other court: USCA, 20-55437
Cause: 28:1331cm Fed. Question: Interstate Commerce Act

Date Filed: 04/26/2018
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Kim Rhode

represented by **Carl D. Michel**
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Plaintiff

Cory Henry

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Plaintiff

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a Texas corporation

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Sean Brady
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LEAD ATTORNEY
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Plaintiff

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doing business as
Ammunition Depot

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Sean Brady
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Plaintiff

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Sean Brady
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Plaintiff

**California Rifle & Pistol Association,
Incorporated**
a California corporation

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V.

Defendant

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*in his official capacity as Attorney General
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Defendant

DOES 1-10

Amicus

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Date Filed	#	Docket Text
04/26/2018	<u>1</u>	COMPLAINT against Xavier Becerra, DOES 1-10 (Filing fee \$ 400 receipt number 0974-11155858), filed by Richard Ricks, Gary Brennan, Edward Johnson, Scott Lindemuth, AMDEP Holdings, LLC, R&S Firearms, Inc., Able's Sporting, Inc., Kim Rhode, Denise Welvang, California Rifle & Pistol Association, Incorporated, Cory Henry. (Attachments: # <u>1</u> Civil Cover Sheet) The new case number is 3:18-cv-802-JM-JMA. Judge Jeffrey T. Miller and Magistrate Judge Jan M. Adler are assigned to the case. (Michel, Carl)(jms) (jao). (Entered: 04/26/2018)
04/26/2018	<u>2</u>	Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (jms) (jao). (Entered: 04/26/2018)
04/26/2018	<u>3</u>	NOTICE OF RELATED CASE(S) by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang of case(s) 17-cv-1017-BEN-JLB . (Michel, Carl)(mxn). (Entered: 04/26/2018)
04/26/2018	<u>4</u>	NOTICE of Appearance of <i>Sean A. Brady</i> by Sean Brady on behalf of AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang (Brady, Sean)Attorney Sean Brady added to party AMDEP Holdings, LLC(pty:pla), Attorney Sean Brady added to party Able's Sporting, Inc.(pty:pla), Attorney Sean Brady added to party Gary Brennan(pty:pla), Attorney Sean Brady added to party California Rifle & Pistol Association, Incorporated(pty:pla), Attorney Sean Brady added to party Cory Henry(pty:pla), Attorney Sean Brady added to party Edward Johnson(pty:pla), Attorney Sean Brady added to party Scott Lindemuth(pty:pla), Attorney Sean Brady added to party R&S Firearms, Inc.(pty:pla), Attorney Sean Brady added to party Kim Rhode(pty:pla), Attorney Sean Brady added to party Richard Ricks(pty:pla), Attorney Sean Brady added to party Denise Welvang(pty:pla)(mxn). (Entered: 04/26/2018)
04/27/2018	<u>5</u>	Amended Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (jms) (Entered: 04/27/2018)
05/08/2018	<u>6</u>	SUMMONS Returned Executed by Richard Ricks, Gary Brennan, Edward Johnson, Scott Lindemuth, AMDEP Holdings, LLC, R&S Firearms, Inc., Able's Sporting, Inc.,

		Kim Rhode, Denise Welvang, California Rifle & Pistol Association, Incorporated, Cory Henry. Xavier Becerra served. (Brady, Sean) (jpp). (Entered: 05/08/2018)
05/09/2018	<u>7</u>	ORDER OF TRANSFER PURSUANT TO LOW NUMBER RULE. Case reassigned to Judge Roger T. Benitez and Magistrate Judge Jill L. Burkhardt for all further proceedings. Judge Jeffrey T. Miller, Magistrate Judge Jan M. Adler no longer assigned to case. Create association to 3:17-cv-01017-BEN-JLB. The new case number is 18CV0802-BEN(JLB).. Signed by Judge Jeffrey T. Miller on 5/09/2018. Signed by Judge Roger T. Benitez on 5/07/2018.(jpp) (Entered: 05/10/2018)
05/18/2018	<u>8</u>	MOTION to Dismiss for Failure to State a Claim by Xavier Becerra. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Request for Judicial Notice, # <u>3</u> Proof of Service) (Richards, Nelson)Attorney Nelson Richards added to party Xavier Becerra(pty:dft) (anh). (Entered: 05/18/2018)
06/11/2018	<u>9</u>	AMENDED COMPLAINT (<i>First</i>) against All Defendants, filed by Richard Ricks, Gary Brennan, Edward Johnson, Scott Lindemuth, AMDEP Holdings, LLC, R&S Firearms, Inc., Able's Sporting, Inc., Kim Rhode, Denise Welvang, California Rifle & Pistol Association, Incorporated, Cory Henry. (Michel, Carl) (anh). (Entered: 06/11/2018)
06/18/2018	<u>10</u>	ORDER denying as moot with leave to file <u>8</u> Motion to Dismiss. Defendant is granted leave to file a new motion to dismiss or to otherwise plead within 30 days of this Order. Signed by Judge Roger T. Benitez on 6/18/2018. (anh) (Entered: 06/19/2018)
07/18/2018	<u>11</u>	MOTION to Dismiss for Failure to State a Claim by Xavier Becerra. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Request for Judicial Notice, # <u>3</u> Proof of Service) (Richards, Nelson) (anh). (Entered: 07/18/2018)
09/06/2018	<u>12</u>	RESPONSE in Opposition re <u>11</u> MOTION to Dismiss for Failure to State a Claim filed by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (ajs). (Entered: 09/06/2018)
09/13/2018	<u>13</u>	REPLY to Response to Motion re <u>11</u> MOTION to Dismiss for Failure to State a Claim filed by Xavier Becerra. (Attachments: # <u>1</u> Proof of Service)(Richards, Nelson) (anh). (Entered: 09/13/2018)
09/20/2018	<u>14</u>	Minute Entry for proceedings held before Judge Roger T. Benitez: Motion Hearing held on 9/20/2018 re <u>11</u> MOTION to Dismiss for Failure to State a Claim filed by Xavier Becerra. Court to issue written Order. (Court Reporter/ECR Dana Peabody). (Plaintiff Attorney Sean Brady, Clint B. Monfort). (Defendant Attorney Nelson Richards, Mark Beckington). (no document attached) (gxr) (Entered: 09/21/2018)
09/27/2018	<u>15</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT (Motion to Dismiss) held on 9/20/2018 before Judge Roger T. Benitez. Court Reporter/Transcriber: Dana Peabody. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 10/18/2018. Redacted Transcript Deadline set for 10/29/2018.

		Release of Transcript Restriction set for 12/26/2018. (akr) (Entered: 09/27/2018)
10/17/2018	16	ORDER Re: Defendant's Motion to Dismiss and Request for Judicial Notice. Signed by Judge Roger T. Benitez on 10/17/2018. (anh) (Entered: 10/17/2018)
10/31/2018	17	ANSWER to 9 Amended Complaint, by Xavier Becerra. (Attachments: # 1 Proof of Service)(Richards, Nelson) (anh). (Entered: 10/31/2018)
11/06/2018	18	NOTICE AND ORDER: (1) For Telephonic Counsel-Only Rule 26 Compliance and Case Management Conference; (2) For In-Person Early Neutral Evaluation Conference. Early Neutral Evaluation set for 1/9/2019 02:00 PM before Magistrate Judge Jill L. Burkhardt. Case Management Conference set for 12/4/2018 11:30 AM before Magistrate Judge Jill L. Burkhardt. Joint Discovery Plan due 11/27/2018. Signed by Magistrate Judge Jill L. Burkhardt on 11/6/2018.(anh) (Entered: 11/06/2018)
11/27/2018	19	REPORT of Rule 26(f) Planning Meeting. (Brady, Sean) (anh). (Entered: 11/27/2018)
12/04/2018	20	MINUTE ORDER for proceedings held before Magistrate Judge Jill L. Burkhardt: Case Management Conference held on 12/4/2018. Scheduling Order to follow. Additionally, pursuant to the Conference, the in-person Early Neutral Evaluation Conference previously set for 1/9/2019 (ECF No. 18) is hereby VACATED. (Plaintiff Attorney Sean Brady). (Defendant Attorney Nelson Richards). (no document attached) (mjg) (Entered: 12/04/2018)
12/06/2018	21	SCHEDULING ORDER Regulating Discovery and Other Pretrial Proceedings. A Mandatory Settlement Conference is set for 9/17/2019 at 02:00 PM before Magistrate Judge Jill L. Burkhardt. The Memorandum of Contentions of Fact and Law is due by 1/13/2020. The Proposed Final Pretrial Conference Order is due by 2/3/2020. The Final Pretrial Conference is set for 2/10/2020 at 10:30 AM before Judge Roger T. Benitez. Signed by Magistrate Judge Jill L. Burkhardt on 12/6/2018.(aef) (Entered: 12/07/2018)
04/12/2019	22	Joint MOTION to Amend/Correct 21 Scheduling Order, by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (anh). (Entered: 04/12/2019)
04/15/2019	23	MINUTE ORDER by Magistrate Judge Jill L. Burkhardt: The Court hereby SETS a telephonic, counsel-only Status Conference for 4/19/2019 , at 9:00 AM before Judge Burkhardt regarding the parties' Joint Motion to Amend Scheduling Order (ECF No. 22). For purposes of the Conference, counsel for the parties shall place a joint call to Judge Burkhardt's chambers will all participating counsel already on the line. (mjg) (Entered: 04/15/2019)
04/19/2019	24	Minute Entry for proceedings held before Magistrate Judge Jill L. Burkhardt: Telephonic, counsel-only Status Conference held on 4/19/2019 regarding the parties' Joint Motion to Amend Scheduling Order. (ECF Nos. 22 , 23 .) Order to follow. (Plaintiff Attorney Matthew Cuberio). (Defendant Attorney Nelson Richards). (no document attached) (mjg) (Entered: 04/19/2019)
04/23/2019	25	ORDER: (1) Granting Joint Motion to Amend Scheduling Order and (2) Issuing Amended Scheduling Order. (ECF Nos. 21 , 22) Mandatory Settlement Conference set for 11/15/2019 09:00 AM before Magistrate Judge Jill L. Burkhardt. Memorandum of Contentions of Fact and Law due by 2/17/2020. Proposed Pretrial Order due by 3/9/2020. Final Pretrial Conference set for 3/16/2020 10:30 AM before Judge Roger T. Benitez.Signed by Magistrate Judge Jill L. Burkhardt on 4/22/2019. (tcf)(jrd) (Entered: 04/23/2019)

		04/23/2019)
07/01/2019	26	Joint MOTION to Amend/Correct <i>Scheduling Order</i> by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (tcf). (Entered: 07/01/2019)
07/03/2019	27	ORDER (1) Granting Joint Motion to Amend Scheduling Order; and (2) Issuing Amended Scheduling Order [ECF. Nos. 25 ; 26] Proposed Pretrial Order due by 6/8/2020. Final Pretrial Conference set for 6/15/2020 10:30 AM before Judge Roger T. Benitez. Mandatory Settlement Conference set for 2/14/2020 09:00 AM before Magistrate Judge Jill L. Burkhardt. Status Conference set for 7/15/2019 08:30 AM before Judge Roger T. Benitez.. Signed by Magistrate Judge Jill L. Burkhardt on 7/2/2019. (anh) (Entered: 07/03/2019)
07/08/2019	28	NOTICE of Change of Hearing: Status Conference reset for 7/15/2019 10:30 AM in Courtroom 5A before Judge Roger T. Benitez. (no document attached) (gxr) (Entered: 07/08/2019)
07/12/2019	29	Joint MOTION for Order to <i>Appear Telephonically at July 15, 2019 Status Conference</i> by Xavier Becerra. (Attachments: # 1 Proof of Service)(Richards, Nelson) (jrm). (Entered: 07/12/2019)
07/12/2019	30	MINUTE ORDER issued by the Honorable Roger T. Benitez: Granting 29 Joint Motion for Order to Appear Telephonically at July 15, 2019 Status Conference. The Court hereby orders that one (1) toll-free telephone number and conference access code be emailed to the following email address no later than 8:00AM on 7/15/2019: efile_benitez@casd.uscourts.gov. (no document attached) (gxr) (Entered: 07/12/2019)
07/15/2019	31	Minute Entry for proceedings held before Judge Roger T. Benitez: Status Conference held on 7/15/2019. All parties appearing telephonically.(Court Reporter/ECR Melinda Setterman). (Plaintiff Attorney Sean Brady). (Defendant Attorney Nelson Richards). (no document attached) (gxr) (Entered: 07/16/2019)
07/22/2019	32	MOTION for Preliminary Injunction by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Sean A. Brady, # 3 Declaration of Richard Travis, # 4 Declaration of James Gilhousen, # 5 Declaration of Dan Wolgin, # 6 Declaration of Denise Welvang, # 7 Declaration of Scott Lindemuth, # 8 Declaration of Bill Ortiz, # 9 Declaration of David Burwell, # 10 Declaration of Chris Puehse, # 11 Declaration of Travis Morgan, # 12 Declaration of Ethan Bartel, # 13 Declaration of Myra Lowder, # 14 Declaration of Daniel Gray, # 15 Declaration of Christine McNab, # 16 Declaration of George Dodd)(Brady, Sean) (jrm). (Entered: 07/22/2019)
07/22/2019	33	Request for Judicial Notice by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang re 32 MOTION for Preliminary Injunction . (Attachments: # 1 Request for Judicial Notice)(Brady, Sean) QC Mailer sent re incorrect event (jrm). (Entered: 07/22/2019)

08/05/2019	34	RESPONSE in Opposition re 32 MOTION for Preliminary Injunction filed by Xavier Becerra. (Attachments: # 1 Declaration of Mayra G.Morales, # 2 Exhibit Exhibit s 1-5 to Dec of Morales, # 3 Exhibit Exhibit 6 to Dec of Morales, # 4 Exhibit Exhibit 7 (part 1) to Dec of Morales, # 5 Exhibit Exhibit 7 (part 2) to Dec of Morales, # 6 Exhibit Exhibits 8-12 to Dec of Morales, # 7 Request for Judicial Notice)(Richards, Nelson) (jrm). (Entered: 08/05/2019)
08/09/2019	35	MOTION for Order <i>for Leave to Participate As Amici Curiae</i> by Giffords Law Center to Prevent Gun Violence & Brady, Brady. (Attachments: # 1 Memo of Points and Authorities)(Burke, Thomas)Attorney Thomas Rohlf's Burke added to party Giffords Law Center to Prevent Gun Violence & Brady(pty:am), Attorney Thomas Rohlf's Burke added to party Brady(pty:am) (anh). (Entered: 08/09/2019)
08/09/2019	36	MOTION for Order <i>for Leave to Participate As Amici Curiae</i> by Everytown for Gun Safety Support Fund. (Attachments: # 1 Brief Of Amicus Curiae Everytown For Gun Safety Support Fund In Support Of Defendants Opposition To Plaintiffs Motion For Preliminary Injunction, # 2 Appendix Volume 1, # 3 Appendix Volume 2)(Tako, Matthew)Attorney Matthew John Tako added to party Everytown for Gun Safety Support Fund(pty:am) (anh). (Entered: 08/09/2019)
08/12/2019	37	REPLY - Other re 34 Response in Opposition to Motion, <i>for Preliminary Injunction</i> filed by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Attachments: # 1 Declaration of Matthew D. Cubeiro)(Brady, Sean) (anh). (Entered: 08/12/2019)
08/19/2019	38	Minute Order. for proceedings held before Judge Roger T. Benitez: Motion Hearing held on 8/19/2019. Submitting 32 MOTION for Preliminary Injunction. Court to issue written Order. (Court Reporter/ECR James Pence). (Plaintiff Attorney Sean Brady). (Defendant Attorney Nelson Richards). (no document attached) (gxr) (Entered: 08/20/2019)
09/03/2019	39	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 8/19/2019 before Judge Roger T. Benitez. Court Reporter/Transcriber: James C. Pence-Aviles. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 9/24/2019. Redacted Transcript Deadline set for 10/4/2019. Release of Transcript Restriction set for 12/2/2019. (akr) (Entered: 09/03/2019)
09/25/2019	40	NOTICE of Hearing: Telephonic Status Conference set for 10/1/2019 01:00 PM in Courtroom 5A before Judge Roger T. Benitez. Plaintiff counsel to email Judge Benitez's chambers (efile_benitez@casd.uscourts.gov) by 5:00PM on 9/30/2019 one toll-free telephone number and pass code to allow the Court to access the conference call. (no document attached) (gxr) (Entered: 09/25/2019)
09/25/2019	41	NOTICE of Appearance by Noreen Patricia Skelly on behalf of Xavier Becerra (Skelly, Noreen)Attorney Noreen Patricia Skelly added to party Xavier Becerra(pty:dft) (mme). (Entered: 09/25/2019)

09/27/2019	42	DECLARATION <i>Supplemental Declaration of Mayra G. Morales in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction</i> by Defendant Xavier Becerra. (Richards, Nelson) (mme). (Entered: 09/27/2019)
09/30/2019	43	Request to Appear Pro Hac Vice (Filing fee received: \$ 206 receipt number 0974-13002934.)(Application to be reviewed by Clerk.)(Francis, Rebecca)(jrd) (Entered: 09/30/2019)
10/01/2019	44	Minute Entry for proceedings held before Judge Roger T. Benitez: Status Conference held on 10/1/2019. All parties appearing telephonically.(Court Reporter/ECR Cynthia Ott). (Plaintiff Attorney Sean Brady). (Defendant Attorney Nelson Richards). (no document attached) (gxr) (Entered: 10/02/2019)
10/23/2019	45	NOTICE OF FILING OF OFFICIAL TRANSCRIPT (Status Conference) held on 10/1/2019 before Judge Roger T. Benitez. Court Reporter/Transcriber: Cynthia R. Ott. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 11/13/2019. Redacted Transcript Deadline set for 11/25/2019. Release of Transcript Restriction set for 1/21/2020. (akr) (Entered: 10/23/2019)
10/29/2019	46	SUPPLEMENTAL BRIEFING by Plaintiffs AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang re 32 MOTION for Preliminary Injunction . (Attachments: # 1 Request for Judicial Notice, # 2 Declaration of Edward Allen Johnson, # 3 Declaration of William D. Shepard, # 4 Declaration Nandu Ionescu)(Brady, Sean) (mme). (Entered: 10/29/2019)
11/07/2019	47	STATUS REPORT (<i>Joint</i>) by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (mme). (Entered: 11/07/2019)
11/18/2019	48	DECLARATION re 42 Declaration, 34 Response in Opposition to Motion, <i>Second Supplemental Declaration of Mayra G. Morales in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction</i> by Defendant Xavier Becerra. (Richards, Nelson) (mme). (Entered: 11/18/2019)
01/08/2020	49	MINUTE ORDER by Magistrate Judge Jill L. Burkhardt: Due to a conflict in the Court's calendar, the Mandatory Settlement Conference previously set for 2/14/2020 (ECF No. 27) is hereby RESET for <u>2/21/2020</u> , at <u>9:00 AM</u> in the chambers of Judge Burkhardt. The deadline to lodge confidential settlement statements with the Court is hereby RESET to <u>2/11/2020</u> . This Order does not otherwise alter the Scheduling Order (ECF No. 27). (no document attached) (mjg) (Entered: 01/08/2020)
01/15/2020	50	Joint MOTION to Vacate <i>the Mandatory Settlement Conference</i> by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (mme). (Entered: 01/15/2020)

01/17/2020	<u>51</u>	ORDER: (1) GRANTING JOINT MOTION TO VACATE MANDATORY SETTLEMENT CONFERENCE; AND (2) VACATING MANDATORY SETTLEMENT CONFERENCE <u>50</u> Joint MOTION to Vacate <i>the Mandatory Settlement Conference</i> filed by Edward Johnson, Cory Henry, Kim Rhode, Denise Welvang, Scott Lindemuth, R&S Firearms, Inc., Richard Ricks, Gary Brennan, AMDEP Holdings, LLC, Able's Sporting, Inc., California Rifle & Pistol Association, Incorporated. Signed by Magistrate Judge Jill L. Burkhardt on 1/16/2020.(sjm) (Entered: 01/17/2020)
02/14/2020	<u>52</u>	ORDER. Defendant Attorney General Xavier Becerra is ordered to update the Court and parties on the statewide results of ammunition sales background checks for the months of November 2019, December 2019, and January 2020. The updated information shall be filed on or before March 13, 2020. Signed by Judge Roger T. Benitez on 2/14/2020.(mme) (Entered: 02/14/2020)
02/28/2020	<u>53</u>	DECLARATION <i>Third Supplemental Declaration of Mayra G. Morales in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction</i> by Defendant Xavier Becerra. (Richards, Nelson) (mme). (Entered: 02/28/2020)
03/30/2020	54	NOTICE of Hearing: Telephonic Status Conference set for 4/1/2020 01:15 PM in Courtroom 5A before Judge Roger T. Benitez. (no document attached) (gxr) (Entered: 03/30/2020)
04/01/2020	55	Minute Entry for proceedings held before Judge Roger T. Benitez: Telephonic Status Conference held on 4/1/2020.(Court Reporter/ECR Ellen Simone). (Plaintiff Attorney Sean Brady). (Defendant Attorney Nelson Richards). (no document attached) (gxr) (Entered: 04/01/2020)
04/01/2020	<u>56</u>	ORDER Denying <u>35</u> , <u>36</u> Leave to Participate as Amici Curiae. Signed by Judge Roger T. Benitez on 4/1/2020. (mme) (Entered: 04/01/2020)
04/06/2020	<u>57</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 4/1/2020 before Judge Roger T. Benitez. Court Reporter/Transcriber: Ellen L. Simone. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 4/27/2020. Redacted Transcript Deadline set for 5/7/2020. Release of Transcript Restriction set for 7/6/2020. (akr) (Entered: 04/07/2020)
04/10/2020	<u>58</u>	RESPONSE re 55 Status Conference <i>Defendant's Response to Court's Inquiry at April 1, 2020, Status Conference</i> filed by Xavier Becerra. (Richards, Nelson) (mme). (Entered: 04/10/2020)
04/10/2020	<u>59</u>	DECLARATION <i>Fourth Supplemental Declaration of Mayra G. Morales in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction</i> by Defendant Xavier Becerra. (Richards, Nelson) (mme). (Entered: 04/10/2020)
04/23/2020	<u>60</u>	ORDER Granting <u>32</u> Plaintiff's Motion for Preliminary Injunction. Signed by Judge Roger T. Benitez on 4/23/2020. (mme) (Entered: 04/23/2020)

04/24/2020	61	Emergency MOTION to Stay <i>Order Granting Preliminary Injunction to Allow for Interlocutory Appeal</i> by Xavier Becerra. (Richards, Nelson) (mme). (Entered: 04/24/2020)
04/24/2020	62	ORDER Denying 61 Ex Parte Motion for Stay. Signed by Judge Roger T. Benitez on 4/24/2020. (mme) (Entered: 04/24/2020)
04/24/2020	63	***Document has been re-filed by the filer as 64 Notice of Interlocutory Appeal to the 9th Circuit***: NOTICE of Appeal from Order by Xavier Becerra re 60 Order on Motion for Preliminary Injunction (Richards, Nelson). (Modified on 4/24/2020: On 4/24/2020, the filer re-filed this document as 64 Notice of Interlocutory Appeal to the 9th Circuit.) (akr). (Entered: 04/24/2020)
04/24/2020	64	NOTICE OF INTERLOCUTORY APPEAL to the 9th Circuit as to 60 Order Granting Plaintiff's Motion for Preliminary Injunction by Xavier Becerra. (Filing fee \$ 505 receipt number ACASDC-13790512.) (Richards, Nelson). (Modified on 4/24/2020: Edited docket text re linked Order.) (akr). (Entered: 04/24/2020)
04/24/2020	65	USCA Case Number 20-55437 for 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. (akr) (Entered: 04/24/2020)
04/24/2020	66	ORDER of USCA as to 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. The USCA has received appellant's emergency motion for a stay. The request for an immediate administrative stay is granted. The USDC's April 23, 2020 preliminary injunction order is temporarily stayed pending further court order. The USCA will address the emergency stay motion by separate order. (akr) (Entered: 04/24/2020)
05/13/2020	67	ORDER of USCA as to 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. The opposed motion for an extension of time to file the opening brief and excerpts of record is granted. Briefing schedule issued. (akr) (Entered: 05/13/2020)
05/14/2020	68	ORDER of USCA as to 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. This appeal challenges the USDC's preliminary injunction prohibiting the enforcement of California restrictions on the purchase of ammunition on Second Amendment and dormant Commerce Clause grounds. The California Attorney General moves for a stay of the injunction pending appeal... We therefore grant appellant's emergency motion for a stay of the USDC's April 23, 2020 preliminary injunction pending appeal. (See Order for full text.) (akr) (Entered: 05/14/2020)
06/09/2020	69	Minute Order issued by the Honorable Roger T. Benitez: The Court hereby vacates the Final Pretrial Conference hearing date of 6/15/2020.(no document attached) (gxr) (Entered: 06/09/2020)

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