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8
9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11
12 THE UNITED STATES
SPORTSMEN’S ALLIANCE
13 FOUNDATION, an Ohio nonprofit
corporation; SAFARI CLUB
14 INTERNATIONAL, an Arizona
nonprofit corporation; and
15 CONGRESSIONAL SPORTSMEN’S
FOUNDATION, a Washington, D.C.
16 nonprofit corporation,

17 Plaintiffs,

18 v.

19 ROB BONTA, in his official capacity as
Attorney General of the State of
20 California; and DOES 1-25, inclusive,

21 Defendants.

Case No. 2:22-cv-01395-DAD-JDP

**Plaintiffs’ Notice of Motion and
Motion for Preliminary Injunction;
Supporting Memorandum of Points
and Authorities**

*[Filed concurrently with Request for
Judicial Notice, and Declarations of
Evan Heusinkveld, Ben Cassidy, and
Jeff Crane and Proposed Order]*

Hearing Information

Date: December 1, 2022
Time: 1:30 p.m.
Ctrm: Via Zoom

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


3 **PLEASE TAKE NOTICE** that on December 1, 2022 at 1:30 p.m., via
4 Zoom, Plaintiffs The United States Sportsmen’s Alliance Foundation, Safari Club
5 International, and Congressional Sportsmen’s Foundation (collectively,
6 “Plaintiffs”) will and hereby do move the Court for a preliminary injunction
7 enjoining Rob Bonta, in his official capacity as Attorney General of the State of
8 California (“Defendant” and/or the “Attorney General”) from enforcing California
9 Business & Professions Code section 22949.80 (“Section 22949.80”), added by
10 Assembly Bill 2571 (“AB 2571”), 2022 Cal. Stats., Ch. 77, § 2, and amended by
11 Assembly Bill 160 (“AB 160”), 2022 Cal. Stats., Ch. 771, § 1.

12 This motion (the “Motion”) is made under Rule 65 of the Federal Rules of
13 Civil Procedure, and the First, Fifth and Fourteenth Amendments to the United
14 States Constitution. This Motion is based on this Notice of Motion, the supporting
15 Memorandum of Points and Authorities attached hereto, the concurrently filed
16 Request for Judicial Notice and Declarations of Evan Heusinkveld, Ben Cassidy,
17 and Jeff Crane, the papers and pleadings from this case on file with the Court, all
18 other matters of which this Court may take judicial notice, any further evidence or
19 argument offered to the Court at any hearing on this Motion, and any other matters
20 that the Court may consider.

21 Plaintiffs do not anticipate presenting oral testimony at the hearing.

22
23 Dated: October 21, 2022

Respectfully submitted,
SNELL & WILMER L.L.P.

24
25
26 By: 
27 Michael B Reynolds
28 Colin R. Higgins
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 California has for years attempted unconstitutionally to restrict firearm
5 industry members’ First Amendment rights. This Court previously struck down a
6 similar advertising restriction in 2018. *Tracy Rifle & Pistol LLC v. Harris*, 339 F.
7 Supp. 3d 1007 (E.D. Cal. 2018). Now, through Section 22949.80, California seeks
8 to preclude truthful speech concerning the lawful use of firearms by adults and
9 minors. Wearing its animus on its sleeve, California’s Legislature openly declared
10 its purpose: to stamp out a way of life it disdains, by preventing Second
11 Amendment advocates from “attract[ing] future legal gun owners” and “recruiting
12 children into gun culture.”¹

13 Section 22949.80, on its face, is unconstitutional because it:

- 14
- 15 • Is unduly vague in violation of the Fifth and Fourteenth Amendments;
 - 16 • Imposes content- and speaker-based restrictions on lawful commercial
17 speech in violation of the First Amendment;
 - 18 • Regulates nonmisleading commercial speech concerning lawful
19 activity but does not advance any legitimate State interest;
 - 20 • Infringes Plaintiffs’ right to freely assemble and associate; and
 - 21 • Discriminates against Second Amendment advocates without any
22 constitutionally permissible justification.

23 Plaintiffs will be irreparably harmed without an injunction. An injunction is
24 also in the public interest. The Court should therefore enjoin enforcement of
25 Section 22949.80 *pendente lite*.

26 _____
27 ¹ RJN, ¶ 3 & Ex. 3 (California Senate Judiciary Committee, AB 2571 (Bauer-
28 Kahan) (June 14, 2022) at 7–8 (quoting Josh Sugarman, Violence Policy Center,
*“Start Them Young”: How the Firearms Industry and Gun Lobby Are Targeting
Your Children*, VPC (Feb. 2016)).

1 II.

2 STATEMENT OF FACTS

3 A. Section 22949.80.

4 On June 30, 2022, “to further restrict the marketing and advertising of
5 firearms to minors,” the California Legislature passed, and Governor Newsom
6 signed into law, AB 2571, which took effect immediately. 2022 Cal. Stats., Ch. 77,
7 §§ 1(b) & 3. AB 2571 added Section 22949.80, then in August 2022, AB 160 was
8 signed into law amending Section 22949.80. As amended, Section 22949.80 makes
9 it unlawful for any “*firearm industry member*” to “advertise, market, or arrange for
10 placement of an *advertising or marketing* communication offering or promoting
11 any *firearm-related product* in a manner that is designed, intended, *or reasonably*
12 *appears to be attractive to minors.*” Cal. Bus. & Prof. Code § 22949.80(a)(1)
13 (emphasis added).

14 The term “firearm industry member” includes, in relevant part, any person or
15 entity whose purpose is “promoting, encouraging, or advocating for the purchase,
16 use, or ownership of firearm-related products” that:

- 17 (i) advertises firearm-related products[;] (ii) advertises
18 events where firearm-related products are sold or used[;]
19 (iii) endorses specific firearm-related products[;] [or] (iv)
20 sponsors or otherwise promotes events at which firearm-
related products are sold or used.

21 *Id.* § 22949.80(c)(4).

22 The statute defines “firearm-related product” as including “a firearm,
23 ammunition, reloaded ammunition, a firearm precursor part, a firearm component,
24 or a *firearm accessory*” sold in California or directed in some way towards
25 California residents. *Id.* § 22949.80(c)(5) (emphasis added).

26 “Firearm accessory” is, in turn, defined as “an attachment or device designed
27 or adapted to be inserted into, affixed onto, or used in conjunction with, a firearm
28 which is designed, intended, or functions to alter or enhance the firing capabilities

1 of a firearm, the lethality of the firearm, *or a shooter’s ability to hold, carry, or use*
2 a firearm.” *Id.* § 22949.80(c)(3) (emphasis added). This definition inherently
3 encompasses a broad range of products, from backpacks and hunting vests to
4 protective gear like eyewear and earplugs.

5 The phrase “marketing or advertising” means:

6 [I]n exchange for monetary compensation, to make a
7 communication to one or more individuals, or to arrange
8 for the dissemination to the public of a communication,
9 about a product *or service* the primary purpose of which is
10 to encourage recipients of the communication to purchase
or use the product *or service*.

11 *Id.* § 22949.80(c)(6) (emphasis added).

12 Finally, the determination of whether “marketing or advertising of a firearm-
13 related product is attractive to minors”—and, thus, whether a particular marketing
14 or advertising violates Section 22949—is delegated the “court[s],” which the statute
15 directs to consider six *nonexclusive* factors:

16 *[T]he totality of the circumstances*, including, *but not*
17 *limited to*, whether the marketing or advertising:

18 (A) Uses caricatures that reasonably appear to be minors or
19 cartoon characters to promote firearm-related products.

20 (B) Offers brand name merchandise for minors, including,
21 but not limited to, hats, t-shirts, or other clothing, or toys,
22 games, or stuffed animals, that promotes a firearm industry
23 member or firearm-related product.

24 (C) Offers firearm-related products in sizes, colors, or
25 designs that are specifically designed to be used by, or
26 appeal to, minors.

27 (D) Is part of a marketing or advertising campaign
28 designed with the intent to appeal to minors.

(E) Uses images or depictions of minors in advertising and
marketing materials to depict the use of firearm-related
products.

1 (F) Is placed in a publication created for the purpose of
 2 reaching an audience that is predominately composed of
 3 minors and not intended for a more general audience
 composed of adults.

4 *Id.* § 22949.80(a)(2) (emphasis added).²

5 Violations of Section 22949.80 are punishable by a civil penalty of up to
 6 \$25,000 for *each copy* of an offending advertisement, recovered through a civil
 7 action brought by the Attorney General or by any district, county, or city attorney.

8 *Id.* § 22949.80(e)(1). The statute also authorizes private actions by any “person
 9 harmed by a violation” of the statute, injunctive relief, and an award of attorney’s
 10 fees and costs, but *only to a prevailing plaintiff*. *Id.* § 22949.80(e)(3)–(5).

11
 12 **B. Actual and Potential Injury to Plaintiffs.**

13 Plaintiffs engage in, or facilitate, a broad range of advertising
 14 communications concerning lawful Second Amendment conduct—advertising that
 15 is now prohibited by Section 22949.80. Sportsmen’s Alliance, Safari Club, and
 16 CSR, for example, publish communications featuring articles and images that
 17 depict minors lawfully using firearms and firearm-related products.³ They also sell
 18 space for traditional advertising concerning firearm-related products that California
 19 law allows minors to use and possess.⁴

20 Plaintiffs also sell and provide branded merchandise featuring caricatures and
 21 cartoons—many of which may appeal to youths and adults—to promote their

22 ² As amended, Section 22949.80 exempts from its scope communications “offering
 23 or promoting any firearm safety program, hunting safety or promotional program,
 24 firearm instructional course, sport shooting event or competition, or any similar
 25 program, course, or event, nor does it apply to a communication offering or
 26 promoting membership in any organization, or promotion of lawful hunting
 activity, including, but not limited to, any fundraising event, youth hunting
 program, or outdoor camp.” *Id.* § 22949.80(a)(3), 2022 Cal. Stats. Ch. 771, § 1.

27 ³ Heusinkveld Decl., ¶¶ 8–10, 13 & Exs. 1–4; Cassidy Decl., ¶¶ 6–15 & Exs. 1–2;
 Crane Decl., ¶¶ 13–15 & Exs. 1–3.

28 ⁴ *See id.*

1 organizations, solicit membership and other support, and promote pro-Second
2 Amendment messages and ideas.⁵

3 Finally, Plaintiffs advertise, market, promote, sponsor, and facilitate lawful
4 recreational youth shooting events, educational programs and safety courses, or gun
5 shows where youths are likely to attend.⁶ These events often involve the handling
6 or use of firearms and firearm-related products, and exhibitors or advertising by
7 third parties promoting membership in their organizations, distributing of branded
8 merchandise, or engaging in speech promoting the safe and lawful use of firearms.⁷

9 Irreparable injury to Plaintiffs is imminent. Unless enjoined, Defendant will
10 enforce Section 22949.80 in derogation of Plaintiffs' constitutional rights. Because
11 Section 22949.80 took effect upon being signed into law (as an "emergency
12 measure"), Plaintiffs and similarly situated "firearm industry members" have
13 curtailed their constitutionally-protected speech out of fear of liability under
14 Section 22949.80's unconstitutional provisions.⁸

16 III.

17 **THE PRELIMINARY INJUNCTION STANDARD**

18 A preliminary injunction is warranted where the movant demonstrates "(1) a
19 combination of probable success on the merits and a possibility of irreparable
20 injury, or (2) that its claims raise serious questions as to the merits and that the
21 balance of the hardships tips in its favor." *Connecticut Gen. Life Ins. Co. v. New*
22 *Images of Beverly Hills*, 321 F.3d 878, 881 (9th Cir. 2003); *see also Alliance of the*
23 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). The Ninth Circuit
24 utilizes a sliding scale approach under which the elements of the test are balanced,
25

26 ⁵ Heusinkveld Decl., ¶¶ 8–10; Cassidy Decl., ¶¶ 6–15, 23; Crane Decl., ¶¶ 14, 18.

27 ⁶ Heusinkveld Decl., ¶ 7; Cassidy Decl., ¶¶ 16–20; Crane Decl., ¶¶ 10–12.

28 ⁷ Cassidy Decl., ¶¶ 16–20, 26–27; Crane Decl., ¶¶ 10–12, 20.

⁸ Heusinkveld Decl., ¶ 12–16; Cassidy Decl., ¶¶ 23–27; Crane Decl., ¶¶ 17–20.

1 “so that a stronger showing of one element may offset a weaker showing of
2 another.” *Alliance*, 632 F.3d at 1131.

3 **IV.**

4 **PLAINTIFFS WILL PREVAIL ON THE MERITS**

5 Plaintiffs assert numerous constitutional challenges to Section 22949.80. As
6 discussed below, Plaintiffs are likely to prevail on each.

7
8 **A. Section 22949.80 is Unconstitutionally Vague.**

9 The void for vagueness doctrine is rooted in the basic due process principle
10 that a law is unconstitutional “if its prohibitions are not clearly defined.” *Grayned v.*
11 *City of Rockford*, 408 U.S. 104, 108 (1972); *see also Pacific Mut. Life Ins. Co. v.*
12 *Haslip*, 499 U.S. 1, 44 (1991) (“Due process requires that a State provide
13 meaningful standards to guide the application of its laws.”). There are two
14 independent means by which a statute can operate in an unconstitutionally vague
15 manner. First, a statute is unconstitutionally vague if it fails to provide “fair
16 warning” of what conduct will subject a person to liability. *See, e.g., Grayned*, 408
17 U.S. at 108–09; *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926).
18 Second, and “most important,” *Kolender v. Lawson*, 461 U.S. 352, 358 (1983), a
19 law is unconstitutionally vague if it “impermissibly delegates basic policy matters
20 to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis,
21 with the attendant dangers of arbitrary and discriminatory application,” *Grayned*,
22 408 U.S. at 108–09. To prevent those dangers, statutes “must provide explicit
23 standards for those who apply them.” *Id.*

24 The most important factor affecting the degree of clarity that the Constitution
25 requires is whether constitutional rights are at stake. *See Village of Hoffman Estates*
26 *v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498–99 (1982). Laws that intrude
27 upon “basic First Amendment Freedoms”—like Section 22949.80—require a
28 higher degree of clarity because “[u]ncertain meanings inevitably lead citizens to

1 steer far wider of the unlawful zone . . . than if the boundaries of the forbidden
 2 areas were clearly marked.” *Grayned*, 408 U.S. at 109 (citations and internal
 3 quotation marks omitted); *see also N.A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963);
 4 *Cohen v. San Bernardino Valley College*, 92 F.3d 968, 972 (9th Cir. 1996)
 5 (“[w]here the guarantees of the First Amendment are at stake the [Supreme] Court
 6 applies its vagueness analysis strictly”).⁹

7 Due to the restraints on protected expression that Section 22949.80 imposes,
 8 the statute’s penal nature, and the high potential for arbitrary enforcement and
 9 abuse, the Constitution requires stringent review.

10
 11 1. Section 22949.80 Is Subject to Strict Review Because It Infringes First
 12 Amendment Rights.

13 Section 22949.80 intrudes on First Amendment rights in at least three ways.
 14 First, it is unconstitutionally overbroad because it penalizes the marketing of lawful
 15 items and brings protected speech within its sweep. *See* Section IV.B., *infra*; *Coates*
 16 *v. City of Cincinnati*, 402 U.S. 611, 614–15 (1971).

17 Second, the statute infringes protected symbolic speech. A symbol is as
 18 powerful a statement of an idea as a word and is afforded the same constitutional
 19 protection. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 632–33 (1943).
 20 One consideration, among others, that Section 22949.80 prescribes to determine
 21 whether an advertising communication is “attractive to minors” is whether it
 22 “[o]ffers brand name merchandise for minors” such as “hats, t-shirts, or other
 23 clothing, or toys, games, or stuffed animals, that promotes a firearm industry
 24 member or firearm-related product.” Cal. Bus. & Prof. Code § 22949.80(a)(2)(B).
 25 Because Plaintiffs are “firearm industry members,” Section 22949.80 prohibits this
 26

27 ⁹ The degree of permissible vagueness depends in part on the nature of the
 28 enactment. *Village of Hoffman Estates*, 455 U.S. at 498. Statutes with criminal
 rather than civil penalties generally are subject to a stricter vagueness test. *Id.*

1 protected speech. *See* Cal. Bus. & Prof. Code § 22949.80(a)(1) & (a)(2)(B). *Cf.*
 2 *Hunt v. City of Los Angeles*, 601 F. Supp. 2d 1158 (C.D. Cal. 2009), *aff'd* 638 F.3d
 3 703 (9th Cir. 2011) (“The sale of merchandise inextricably intertwined with a
 4 religious, political, ideological, or philosophical message is fully protected by the
 5 First Amendment.”).

6 Third, Section 22949.80 restrains truthful commercial advertising concerning
 7 lawful products if such advertising might be subjectively deemed “reasonably . . .
 8 attractive to minors,” and despite that it may be equally appealing to adults. *See*
 9 Section IV.C., *infra*.

11 2. Section 22949.80 Fails to Provide Fair Notice and Creates an Extreme
 12 Risk of Abuse and Arbitrary Enforcement.

13 Section 22949.80 is unduly vague in multiple respects. First, its definition of
 14 “firearm-related product” encompasses more than just the sale of firearms. As
 15 discussed above, the term includes “firearm-related accessories”, which is defined
 16 so vaguely as to encompass an entire panoply of products that are useful for both
 17 firearm-related activities and non-firearm-related activities (such as backpacks,
 18 vests, earplugs and safety goggles)—none of which are unlawful for minors to
 19 possess. That, coupled with the statute’s use of the word “promoting,” makes it
 20 impossible to know what communications Section 22949.80 prohibits. *Cf. Coates*,
 21 402 U.S. at 614–15.

22 Moreover, Section 22949.80 invites arbitrary enforcement and abuse because
 23 it requires judges to determine subjectively whether a particular advertisement is
 24 “attractive to minors” based on the “totality of the circumstances,” including
 25 consideration of six *non-exclusive* factors. Cal. Bus. & Prof. Code
 26 § 22949.80(a)(2). This enforcement provision is clothed in subjectivity. What may
 27 be considered “attractive to minors” varies from person to person, including the
 28 judges tasked with applying the statute. Section 22949.80 fails to provide any

1 standard capable of objective application as the Constitution requires. Worse, the
 2 six non-exclusive factors are themselves permeated by subjectivity, turning upon
 3 words and phrases like “reasonably appear” and “appeal,” the meaning of which
 4 depends on the particular judge’s idiosyncratic interpretation of the advertisement
 5 at bar. *Id.* § 22949.80(a)(2)(A), (C), & (D).

6 This extreme risk of arbitrary enforcement has already caused Plaintiffs and
 7 others to refrain from speech that might arguably fall within the statute’s
 8 indeterminable unlawful zone.¹⁰ *Grayned*, 408 U.S. at 109. The Supreme Court has
 9 consistently struck down similarly subjective statutes as unconstitutional. *See, e.g.*,
 10 *Coates*, 402 U.S. at 614; *Cox v. Louisiana*, 379 U.S. 536, 551–52 (1965); *see also*
 11 *Carter v. Welles-Bowen Realty, Inc.*, 719 F. Supp. 2d 846, 852 (N.D. Ohio 2010),
 12 *aff’d*, 736 F.3d 722 (6th Cir. 2013) (HUD’s ten factor test for distinguishing “sham”
 13 and “bona fide” providers, for purposes of an exception to the RESPA, was void for
 14 vagueness because the factors themselves were vague, and that vagueness was
 15 compounded by the inherently subjective balancing test). And it has likewise
 16 condemned broadly worded licensing ordinances granting such standardless
 17 discretion to public officials that they are free to censor ideas and enforce their own
 18 personal preferences. *See, e.g.*, *Shuttlesworth v. Birmingham*, 394 U.S. 147, 153–
 19 55, 158–59 (1969); *Staub v. City of Baxley*, 355 U.S. 313, 322, 325 (1958); *Saia v.*
 20 *New York*, 334 U.S. 558, 560–62 (1948).

21 Like the laws in *Shuttlesworth*, *Staub*, and *Saia*, Section 22949.80 is
 22 impermissibly vague and must be stricken.

23
 24 **B. Section 22949.80 is Unconstitutionally Overbroad.**

25 Under the First Amendment overbreadth doctrine, “a statute is facially
 26 invalid if it prohibits a substantial amount of protected speech.” *United States v.*
 27 *Williams*, 553 U.S. 285, 292 (2008). “An overbroad statute infringes on a

28 ¹⁰ Heusinkveld Decl., ¶ 12–16; Cassidy Decl., ¶¶ 23–27; Crane Decl., ¶¶ 17–20.

1 substantial amount of constitutionally protected speech where there is ‘a realistic
2 danger that the statute itself will significantly compromise recognized First
3 Amendment protections of parties not before the Court,’ or the statute is
4 ‘susceptible of regular application to protected expression.’” *United States v.*
5 *Hansen*, 25 F.4th 1103, 1106 (9th Cir. 2022). “An overbroad statute might serve to
6 chill protected speech. First Amendment interests are fragile interests, and a person
7 who contemplates protected activity might be discouraged by the in terrorem effect
8 of the statute.” *Bates v. State Bar of Arizona*, 433 U.S. 350, 380 (1977).

9 Section 22949.80 prohibits a substantial amount of lawful, constitutionally
10 protected speech. *See United States v. Stevens*, 559 U.S. 460, 475–77 (2010)
11 (focusing heavily on the requirement that the underlying act of animal cruelty be
12 illegal but nevertheless invalidating a statute banning depictions of animal cruelty
13 under the overbreadth doctrine). It encompasses *all* communications “offering or
14 promoting any firearm-related product” made by “firearm industry members” “in
15 exchange for monetary compensation” that are “designed, intended, or reasonably
16 appear[] to be attractive to minors”—even communications concerning lawful and
17 constitutionally protected products as well as communications that are equally
18 attractive to adults who have a right to obtain information about those products.

19 Additionally, by restricting advertising that promotes the sale of “firearm-
20 related products” to minors, Section 22949.80 burdens a vast amount of pure
21 speech. For example, Section 22949.80 bans advertising and marketing of “firearm-
22 related products” in any manner that may relate to youth shooting events,
23 competitions and education programs designed to instill students with an
24 appreciation of the history, text and tradition of the Second Amendment and
25 firearms ownership in the United States. It will also prohibit or discourage firearms-
26 related organizations from soliciting youth members through marketing and
27 providing youth memberships.
28

1 Regardless of the intent underlying Section 22949.80, which is irrelevant in
 2 an overbreadth challenge because “[t]he First Amendment itself reflects a judgment
 3 by the American people that the benefits of its restrictions on the Government
 4 outweigh the costs,” *Stevens*, 559 U.S. at 470, the statute will have the effect of
 5 chilling constitutionally protected speech and activities. In fact, Plaintiffs have
 6 already started to curtail speech that *might* fall under Section 22949.80’s overly
 7 broad ban.¹¹ This chilling of speech itself offends the First Amendment. *See, e.g.*,
 8 *Coates*, 402 U.S. at 614–15; *Cox*, 379 U.S. at 551–52; *Button*, 371 U.S. at 433.

9
 10 **C. Section 22949.80 Violates the First Amendment.**

11 Putting Section 22949.80’s vagueness and overbreadth aside, the statute is
 12 unconstitutional because it prohibits firearm industry members from disseminating
 13 truthful, non-misleading commercial information about lawful, constitutionally
 14 protected products and activities.

15
 16 1. The First Amendment Protects Commercial Speech that is Inextricably
 17 Intertwined with Protected Activity.

18 When an advertisement is “inextricably intertwined with core political and
 19 economic messages,” the statute regulates core political speech, not just
 20 commercial speech, and is subject to heightened scrutiny. *Valle Del Sol Inc. v.*
 21 *Whiting*, 709 F.3d 808, 818 (9th Cir. 2013) (citing *Riley v. Nat’l Fed’n of the Blind*
 22 *of N.C., Inc.*, 487 U.S. 781, 796 (1988)). For instance, the Supreme Court has struck
 23 down bans on advertising of contraceptives, partly because “the information
 24 suppressed by this statute ‘related to activity with which, at least in some respects,
 25 the State could not interfere.’” *Carey v. Population Servs. Int’l*, 431 U.S. 678, 700–
 26 01 (1977) (citation omitted); *Bolger v. Youngs Drug Prods.*, 463 U.S. 60, 69 (1983)
 27 (striking down ban on mailing contraceptive advertisements, partly because

28 ¹¹ Heusinkveld Decl., ¶ 12–16; Cassidy Decl., ¶¶ 23–27; Crane Decl., ¶¶ 17–20.

1 “advertising for contraceptives . . . relates to activity which is protected from
 2 unwarranted state interference”). The same heightened constitutional protection
 3 extends to the lawful possession and use of firearms, which the Second Amendment
 4 protects against unwarranted state interference. *N.Y. State Rifle & Pistol Ass’n, Inc.*
 5 *v. Bruen*, 142 S. Ct. 2111, 2127, 2129–30 (2022); *District of Columbia v. Heller*,
 6 554 U.S. 570, 628–29, 635 (2008).

7
 8 2. Section 22949.80 Violates Constitutional Protections on Strictly
 9 Commercial Speech.

10 Though the First Amendment’s protection of commercial speech is strongest
 11 where the speech concerns constitutionally protected products and activities, it also
 12 protects commercial speech about products and activities that are not themselves
 13 constitutionally protected. *See, e.g., Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525
 14 (2001) (outdoor and point-of-sale tobacco advertising); *44 Liquormart, Inc. v*
 15 *Rhode Island*, 517 U.S. 484 (1996) (advertising of alcohol prices); *Rubin v. Coors*
 16 *Brewing Co.*, 514 U.S. 476 (1995) (disclosure of alcohol content on beer labels).

17 The Supreme Court has articulated two different tests for commercial speech
 18 restrictions. Under each, the State bears the burden of proving the constitutionality
 19 of a commercial speech restriction. *Thompson v. Western States Medical Center*,
 20 535 U.S. 357, 373 (2002); *Edenfield v. Fane*, 507 U.S. 761, 770 (1993). Here, both
 21 tests yield the same result:

- 22 • First, Section 22949.80 fails heightened scrutiny for content-
 23 and speaker-based restrictions. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552,
 24 577 (2011); *Thompson*, 535 U.S. at 374.
- 25 • Second, even assuming *arguendo* that Section 22949.80
 26 survives scrutiny under *Sorrell* and *Thompson*, it fails the commercial speech
 27 test articulated in *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*
 28 *of New York*, 447 U.S. 557 (1980).

1 Furthermore, Section 22949.80 requires judges to “evaluate the substantive content
 2 of a message to know whether the [law] applies” based on the totality of the
 3 circumstances. *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784, 796 n.12
 4 (9th Cir. 2006) (summarizing and distinguishing Ninth Circuit precedent); *see also*
 5 *Stevens*, 559 U.S. at 468. Indeed, the determination of “whether marketing or
 6 advertising of a firearm-related product is attractive to minors” cannot be made
 7 without a judge evaluating the content of the message to decide whether the law
 8 applies. Cal. Bus. & Prof. Code § 22949.80(a)(2).

9 Section 22949.80 also engages in speaker-based discrimination by singling
 10 out “firearm industry member[s].” Cal. Bus. & Prof. Code § 22949.80(a) & (c)(4).
 11 For example, Section 22949.80 prohibits Plaintiffs from advertising and
 12 advocating, even indirectly, the possession and use of a “firearm-related product,”
 13 such as by soliciting or promoting pro-Second Amendment activity using branded
 14 merchandise. The statute does not, however, prohibit non-firearm industry members
 15 from engaging in the same speech—using similar imagery irrespective of the
 16 content of the message—to promote their organizations, solicit support, and spread
 17 political ideas.

18 Because Section 22949.80 imposes a content- and speaker-based burden on
 19 protected speech, it is “presumptively invalid.” *Sorrell*, 564 U.S. at 571 (“the
 20 outcome is the same whether a special commercial speech inquiry or a stricter form
 21 of judicial scrutiny is applied” (quoting *R.A.V.*, 505 U.S. at 382)).

22
 23 *b. Section 22949.80 Fails the Central Hudson Test.*

24 The First Amendment protects commercial speech—speech that “does no
 25 more than propose a commercial transaction” or relates solely to the economic
 26 interests of the speaker and audience—provided it is not misleading and concerns
 27 lawful activity. *Cent. Hudson*, 447 U.S. at 563. Under *Central Hudson*, a court first
 28 inquires “whether the expression [being restricted] is protected by the First

1 Amendment,” which means that “it at least must concern lawful activity and not be
 2 misleading.” *Id.* at 566. Second, the State must show that the “asserted
 3 governmental interest is substantial.” *Id.* Then, “[i]f both inquiries yield positive
 4 answers,” a court “must determine whether the regulation directly advances the
 5 governmental interest asserted, and whether it is not more extensive than is
 6 necessary to serve that interest.” *Id.*

7
 8 (i) Section 22949.80 Restricts Truthful Speech Concerning
 9 Lawful Activity.

10 On its face, Section 22949.80 restricts a broad range of truthful speech
 11 concerning lawful activity. “An offer to sell firearms or ammunition” is
 12 constitutionally protected commercial speech. *Nordyke v. Santa Clara*, 110 F.3d
 13 707, 710 (9th Cir. 2009). And the Second Amendment protects the right of minors
 14 to bear arms and maintain proficiency in their use, subject to limited and well-
 15 established historical regulations such as those requiring adult approval and
 16 supervision. *See Jones v. Bonta*, 34 F.4th 704, 720–23 (9th Cir. 2022) (“young
 17 adults have Second Amendment protections”); *Ezell v. City of Chicago*, 846 F.3d
 18 684, 896 (7th Cir. 2011) (recognizing these rights are protected by the Second
 19 Amendment); *see also Bruen*, 142 S. Ct. at 2127, 2129–30.

20 As discussed, Plaintiffs engage in a range of speech that Section 22949.80
 21 now prohibits. Plaintiffs widely distribute printed and electronic communications
 22 promoting their events and programs, including images and/or depictions of minors
 23 handling or “using firearm-related products.”¹² Furthermore, their lawful activities
 24 regularly involve signage, flyers, discussions, branded merchandise and giveaways,
 25 and/or other communications depicting minors exercising, or otherwise
 26
 27

28 ¹² Heusinkveld Decl., ¶¶ 8–10, 13; Cassidy Decl., ¶¶ 6–15; Crane Decl., ¶¶ 13–15.

1 encouraging minors to exercise, their Second Amendment right to possess and use
2 lawful firearms for lawful purposes.¹³

3 Section 22949.80 is not limited to commercial sales of firearms. Instead, the
4 statute’s broad definitions of “firearm accessory,” “firearm-related product,” and
5 “marketing or advertising” encompass much more than just the sale of firearms. *See*
6 Cal. Bus. & Prof. Code § 22949.80(c)(3), (5), & (6); *Hibbs v. Winn*, 542 U.S. 88,
7 101 (2004) (a statute must be interpreted “so that effect is given to all its provisions,
8 so that no part will be inoperative or superfluous, void or insignificant”). Read
9 together with its constituent parts, Section 22949.80 prohibits advertising of not
10 only firearms, but also a wide range of “firearm-related products.” Cal. Bus. &
11 Prof. Code §§ 22949.80(a), (c)(3), (5), & (6). That construction is consistent with
12 the “evidence” that lawmakers cited in support of the statute, which shows the
13 statute’s purpose is to prevent firearm industry members from “attract[ing] future
14 legal gun owners” and “recruiting children into gun culture.”¹⁴

15 Further to this point, although minors cannot lawfully purchase firearms in
16 California, the law allows them to possess and use firearms under certain
17 circumstances with adult supervision—indeed, they have a constitutional right to do
18 so. *See Jones*, 34 F.4th 720–23; *Ezell*, 846 F.3d at 896; *see also Bruen*, 142 S. Ct. at
19 2127, 2129–30; Cal. Penal Code §§ 29615, 29655. The State therefore cannot rely
20 on the principle that “offers to give or receive what it is unlawful to possess . . .
21 enjoy no First Amendment protection.” *United States v. Williams*, 553 U.S. 285,
22 298 (2008). And even in cases involving unlawful items, an intent to “initiat[e] the
23 transfer” of the unlawful product is required. *Id.* at 300. However, Section
24 22949.80’s scienter element requires only that the advertisement be “intended . . . to
25 be attractive to minors.” Cal. Bus. & Prof. Code § 22949.80(a). The statute does not
26 require that intent to initiate an unlawful transfer be proven. *Cf. Stevens*, 559 U.S. at

27 _____
28 ¹³ Cassidy Decl., ¶¶ 16–20, 26–27; Crane Decl., ¶¶ 10–12, 20.

¹⁴ *See* California Senate Judiciary Committee, *supra* note 1, at 7–8.

1 474 (statute was overbroad because its “ban on a ‘depiction of animal cruelty’
2 nowhere requires that the depicted conduct be cruel.”); *see also id.* at 475 (although
3 the statute did require the that the depicted conduct be “illegal,” it did not
4 distinguish “based on the reason the . . . killing of an animal is made illegal”).

5
6 (ii) The State Has No Interest in Banning Plaintiffs’ Protected
7 Speech.

8 AB 2571 claims to advance two “compelling” state interests: (1) “ensuring
9 that minors do not possess these dangerous weapons,” (i.e., firearms); and (2)
10 “protecting its citizens, especially minors, from gun violence and from intimidation
11 by persons brandishing these weapons.” Plaintiffs dispute the genuineness of these
12 interests and contend that Section 22949.80 does nothing to advance them. *See*
13 Section IV.C.2.b(ii), *infra*. The Supreme Court has repeatedly said that “bans that
14 target truthful, nonmisleading commercial messages rarely protect consumers from
15 [commercial] harms. Instead, such bans often serve only to obscure an ‘underlying
16 governmental policy’ that could be implemented without regulating speech.” *44*
17 *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 502–03 (1996).

18
19 (iii) The State Cannot Establish That Section 22949.80
20 Directly and Materially Advances a Legitimate
21 Government Interest.

22 The third *Central Hudson* prong requires the government to show “that the
23 speech restriction directly and materially advances the asserted governmental
24 interest[s].” *Greater New Orleans Broad. Ass’n v. United States*, 528 U.S. 173, 188
25 (1999). This requires more than “mere speculation or conjecture; rather, a
26 governmental body seeking to restrain a restriction on commercial speech must
27 demonstrate that the harms it recites are real and that its restriction will in fact
28

1 alleviate them to a material degree.” *Tracy Rifle & Pistol LLC v. Harris*, 339 F.
2 Supp. 3d 1007, 1013 (E.D. Cal. 2018) (quoting *Edenfield*, 507 U.S. at 770–71).

3 The direct advancement prong requires the government to advance its goals
4 “in a permissible way,” not by operating based on “the ‘fear that people would
5 make bad decisions if given truthful information.’” *Sorrell*, 564 U.S. at 570
6 (quoting *Thompson*, 535 U.S. at 374); see also *Ashcroft v. Free Speech Coal.*, 535
7 U.S. 234, 245 (2002). And the “not more extensive than is necessary” prong reflects
8 the principle that, “[i]f the First Amendment means anything, it means that
9 regulating speech must be a last—not first—resort.” *Thompson*, 535 U.S. at 373.

10 Thus, regulations that “only indirectly advance the state interest involved”
11 have consistently been declared unconstitutional. *Cent. Hudson*, 447 U.S. at 564.
12 For example, in *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*,
13 the Supreme Court invalidated a law declaring it unprofessional for a pharmacist to
14 advertise prescription drug prices because “[t]he advertising ban [did] not directly
15 affect professional standards one way or the other.” 425 U.S. at 769. Likewise, in
16 *Bates v. State Bar of Arizona*, the Court invalidated an advertising prohibition
17 designed to protect the “quality” of a lawyer’s work, finding that “[r]estraints on
18 advertising . . . are an ineffective way of deterring shoddy work.” 433 U.S. at 378.

19 Section 22949.80 is even more attenuated from the State’s declared interests.
20 The Legislature found that “the proliferation of firearms to and among minors poses
21 a threat to the health, safety, and security of all residents of, and visitors to, this
22 state,” 2022 Cal. Stats., Ch. 77, § 1(a), based in part on the fact that “[i]n 2021 there
23 were approximately 259 *unintentional shootings* by children, resulting in 104
24 deaths and 168 injuries.”¹⁵ It then declared that “[f]irearms marketing contributes to
25 the unlawful sale of firearms to minors, as well as the unlawful transfer of firearms
26 to minors by adults who may possess those weapons lawfully.” *Id.* The Legislature,
27 in effect, speculates that prohibiting a broad category of speech promoting firearms

28 ¹⁵ California Senate Judiciary Committee, *supra* note 1, at 7–8.

1 and “firearm-related products” in a manner that *might* be attractive to minors will
2 reduce demand for firearms. The Legislature then concludes by drawing another
3 attenuated (or more likely nonexistent) connection between this speculative
4 reduction in demand and the interest in protecting minors from gun violence.

5 As discussed, Section 22949.80 prohibits advertising of a wide range of
6 “firearm-related products,” not just firearms. Cal. Bus. & Prof. Code §§
7 22949.80(a), (c)(3), (5), & (6). That notwithstanding, the advertising ban does not
8 directly affect the unlawful sale of firearms to minors, nor can it directly affect the
9 number of shootings involving minors. *Cf. New York v. Ferber*, 458 U.S. 747, 759,
10 761 (1982) (the market for child pornography was “intrinsically related” to the
11 underlying abuse, and was therefore “an integral part of the production of such
12 materials, an activity illegal throughout the Nation”); *Stevens*, 559 U.S. at 470–72.
13 Moreover, there is no finding or evidence tying these unintentional shootings to the
14 unlawful sale of a firearm, let alone to advertising related to any such unlawful sale.
15 The state cannot point to a single instance showing that a “firearm industry
16 member” would advertise an illegal sale of a firearm to a minor. Instead, to the
17 extent any commercial transaction is proposed, it is a lawful transaction to be
18 consummated by an adult through a licensed firearms dealer.

19 Nor does the advertising ban conceivably affect “the unlawful transfer of
20 firearms to minors by adults who may possess those weapons lawfully.” 2022 Cal.
21 Stats., Ch. 77, § 1(a). Notwithstanding the Legislature’s failure to relate these
22 purported unlawful transfers to minors with the cited incidences of unintentional
23 shootings involving minors, any such transfer is too attenuated from the
24 commercial transaction for the advertising ban to reduce the instances of these
25 unlawful transfers from adults to minors.

26 Moreover, the State lacks an interest “in preventing the dissemination of
27 truthful commercial information in order to prevent members of the public from
28 making bad decisions with the information.” *Thompson*, 535 U.S. at 374; *Sorrell*,

1 564 U.S. at 577. Thus, to the extent Section 22949.80 aims to reduce demand for
 2 firearms—not just among minors, but also adults (i.e., the finding that adults may
 3 transfer *lawfully-owned* firearms)—it does what the Supreme Court has
 4 condemned: prevent consumers’ supposedly “bad” but perfectly lawful “decisions”
 5 by denying them “truthful commercial information.” A state “may not seek to
 6 remove a popular but disfavored product from the marketplace by prohibiting
 7 truthful, nonmisleading advertisements.” *Sorrell*, 564 U.S. at 577–78.

8
 9 (iv) Section 22949.80 Is More Extensive than Necessary.

10 Section 22949.80 also fails the final step of the *Central Hudson* analysis, in
 11 which the government must prove “the speech restriction is not more extensive than
 12 necessary to serve the interests that support it.” *Lorillard Tobacco*, 533 U.S. at 556
 13 (citation and quotation marks omitted). This step reflects the view that, “[i]f the
 14 First Amendment means anything, it means that regulating speech must be a last—
 15 not first—resort.” *Thompson*, 535 U.S. at 373. “[I]f the Government could achieve
 16 its interests in a manner that does not restrict speech, or that restricts less speech,
 17 the Government must do so.” *Id.* at 371–72.

18 The Supreme Court has consistently struck down broadly based bans on
 19 truthful, nonmisleading commercial speech designed to serve ends unrelated to
 20 consumer protection. *44 Liquormart*, 517 U.S. at 497–98. Although the Court has
 21 recognized that States may require commercial messages to “appear in such a form,
 22 or include such additional information, warnings, and disclaimers, as are necessary
 23 to prevent its being deceptive,” *Va. Bd. of Pharmacy*, 425 U.S. at 772 n.24, the
 24 State has far less regulatory authority “when its commercial speech restrictions
 25 strike at ‘the substance of the information communicated’ rather than the
 26 ‘commercial aspect of [it]—with offerors communicating offers to offerees.’” *44*
 27 *Liquormart*, 517 U.S. at 498 (quoting *Linmark Assocs., Inc. v. Willingboro Twp.*,
 28 431 U.S. 85, 96 (1977)).

1 The Ninth Circuit has likewise invalidated commercial speech regulations as
2 overinclusive where enforcement of preexisting laws would serve its interest
3 without burdening speech. *Valle Del Sol*, 709 F.3d at 826–27; *Project 80’s, Inc. v.*
4 *City of Pocatello*, 942 F.2d 635, 638 (9th Cir. 1991) (“restrictions which disregard
5 far less restrictive and more precise means are not narrowly tailored”).

6 In *Valle Del Sol*, the plaintiffs challenged an Arizona law barring in-street
7 solicitation of day laborers, which the state claimed was justified by its interest in
8 traffic safety. The court held that the solicitation ban failed the fourth step of the
9 *Central Hudson* test because Arizona could serve its interest without burdening
10 speech by enforcing its existing traffic safety regulations and by enacting additional
11 speech-neutral regulations. 709 F.3d at 826–27; *see Stevens*, 559 U.S. at 474–77.

12 Section 22949.80 fails the fourth prong of the *Central Hudson* test for the
13 same reasons. California comprehensively regulates the sale, purchase, and
14 possession of firearms, particularly by minors. It could achieve its interest in
15 preventing unlawful sales or transfers to minors by enforcing existing laws and
16 regulations. If such enforcement is insufficient, the Legislature can pass additional
17 direct regulations (within constitutionally permissible boundaries). *See Valle Del*
18 *Sol*, 709 F.3d at 826–27. The State could also take steps to achieve its asserted
19 interest that do not involve restricting protected speech. California could, for
20 example, conduct educational campaigns promoting responsible firearm use by
21 minors. Indeed, State agencies already promote such campaigns.¹⁶

22 California thus has ample alternative means to advance any legitimate state
23 interest without restricting speech. But Section 22949.80 restricts more speech than
24 necessary. The statute thus violates the First Amendment.

25
26
27
28

¹⁶ *See, e.g., California’s In-Person Hunter Education Instruction Returns; Online Courses Remain a Permanent Option*, CAL. DEP’T OF FISH & WILDLIFE (Apr. 15, 2022), available at <https://wildlife.ca.gov/News/californias-in-person-hunter-education-instruction-returns-online-courses-remain-a-permanent-option>.

D. Section 22949.80 Impermissibly Infringes Plaintiffs’ Right to Associate.

The First Amendment protects not only the right of free speech, but also “the right of the people peaceably to assemble.” U.S. CONST., amend. I. The right to assemble is closely associated, and often merges, with the right to free expression. *Buckley v. Valeo*, 424 U.S. 1, 25 (1976); *Shelton v. Tucker*, 364 U.S. 479, 486 (1960). Because the “threat of sanctions may deter” the exercise of First Amendment freedoms “as potently as the actual application of sanctions,” government may regulate expressive and associational conduct “only with narrow specificity.” *Button*, 371 U.S. at 433; see *NAACP v. Patterson*, 357 U.S. 449, 461–62 (1958). The State must prove that the regulation is “necessary” to achieve a “compelling” and “legitimate” state interest. *Button*, 371 U.S. at 433, 438–39.

Section 22949.80 burdens associational conduct and, for the reasons discussed in preceding sections, the State cannot prove that the regulation is necessary to achieve a compelling and legitimate interest. Section 22949.80 infringes Plaintiffs’ right to freely associate and assemble because it prohibits them from advertising or marketing their various firearm-related programs, where Plaintiffs and members of the public, including youths, peacefully and lawfully assemble and associate with each other. Likewise, it prohibits Plaintiffs from advertising or marketing events that they sponsor where firearm-related products are exhibited and sold—core Second Amendment-related activity—and where members of the public and youths often assemble with each other.

There is no compelling (or legitimate) government interest in prohibiting “firearm industry members” from advertising or marketing their firearm-related youth programming and services and the “firearm-related products” used, sold, endorsed, recommended, or advertised at such events. Section 22949.80 effectively puts an end to such events and, by extension, the rights of Plaintiffs to associate and assemble at them. See *Button*, 371 U.S. at 433–34. Even if the State’s interests were compelling, they could be achieved through less drastic means. See *Wooley v.*

1 *Maynard*, 430 U.S. 705, 716–17 (1977) (“The breadth of legislative abridgement
2 must be viewed in the light of less drastic means for achieving the same purpose.”).

3
4 **E. Section 22949.80 Denies Plaintiffs Equal Protection of the Laws.**

5 The Fourteenth Amendment provides that no state shall deny to any person
6 within its jurisdiction the equal protection of the laws. Singling out speakers
7 because of the content of their speech violates their fundamental rights under the
8 Equal Protection Clause. U.S. CONST., amend. XIV. If unequal treatment occurs in
9 the context of exercising a fundamental right, or the government is motivated by
10 animus toward a disfavored group, courts apply heightened scrutiny. *See City of*
11 *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985). Indeed, “[b]ecause the
12 right to engage in political expression is fundamental to our constitutional system,
13 statutory classifications impinging upon that right must be narrowly tailored to
14 serve a compelling governmental interest.” *Austin v. Mich. Chamber of Commerce*,
15 494 U.S. 652, 666 (1990), *rev’d on other grounds, Citiz. United v. Fed. Elec.*
16 *Comm’n*, 558 U.S. 310 (2010).

17 As discussed, Section 22949.80 is a content- and speaker-based restriction on
18 Plaintiffs’ protected speech that serves no compelling governmental interest. The
19 legislative history of Section 22949.80 evinces an intent to thwart the promotion
20 and preservation of the nation’s historical tradition of firearms ownership in
21 California through the passing down of pro-gun attitudes and traditions to future
22 generations. Section 22949.80 does not apply to similar or opposing speech made
23 by businesses, organizations, or people who are not considered “firearm industry
24 members.” There is no legitimate interest in singling out politically disfavored
25 “firearm industry members,” while leaving members of other industries, like the
26 popular entertainment and video game industries, as well as anti-gun organizations,
27 free to engage in similar or identical speech.
28

V.

PLAINTIFFS WILL SUFFER IRREPARABLE HARM

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3 Plaintiffs have “established a threatened and imminent irreparable harm that
4 cannot be adequately compensated at a later time,” so as to warrant injunctive
5 relief. *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1052 (S.D. Cal. 2006).
6 “Both [the Ninth Circuit] and the Supreme Court have repeatedly held that ‘[t]he
7 loss of First Amendment freedoms, for even minimal periods of time,
8 unquestionably constitutes irreparable injury.’” *Klein v. City of San Clemente*, 584
9 F.3d 1196, 1207–08 (9th Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373
10 (1976)). Furthermore, “constitutional violations cannot be adequately remedied
11 through damages and therefore generally constitute irreparable harm.” *Stormans,*
12 *Inc. v. Stelecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) (quotation marks omitted).

VI.

THE BALANCE OF THE EQUITIES TIPS IN PLAINTIFFS’ FAVOR

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16 The balance of equities tips in Plaintiffs’ favor “because they have a
17 significant First Amendment and economic interest in engaging in [the prohibited]
18 speech,” and California “need not impede that speech in order to pursue its”
19 interests. *Valle Del Sol Inc.*, 709 F.3d at 828–29. If Section 22949.80 is not
20 enjoined, Defendants will enforce this unconstitutional law against Plaintiffs, who
21 will be forced to choose between sacrificing their First Amendment rights or
22 incurring devastating financial penalties.

23 Conversely, an injunction would impose no administrative burden on the
24 Defendants, nor threaten public safety since California’s direct restrictions on the
25 unlawful purchase, sale or possession of firearms would remain intact. Finally,
26 California is not harmed by an injunction preventing it from enforcing an
27 unconstitutional statute. See *Legend Night Club v. Miller*, 637 F.3d 291, 302–03
28 (4th Cir. 2011); *Joelner v. Vill. of Wash. Park*, 378 F.3d 613, 620 (7th Cir. 2004).

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VII.

AN INJUNCTION IS IN THE PUBLIC INTEREST

The Ninth Circuit has “consistently recognized the ‘significant public interest’ in upholding free speech principles, as the ‘ongoing enforcement of the potentially unconstitutional regulations . . . would infringe not only the free expression interests of plaintiffs, but also the interests of other people subjected to the same restrictions.” *Klein*, 584 F.3d at 1208 (quoting *Sammartano v. First Judicial Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002)). Conversely, enforcement of an unconstitutional law is against the public interest. *See e.g., Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *ACLU v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012). In fact, a preliminary injunction would promote the public interest by allowing for the free flow of commercial information, the value of which has been repeatedly recognized by the Supreme Court. *See e.g., Bates*, 433 U.S. at 364; *Va. Bd. of Pharmacy*, 425 U.S. at 765.


VIII.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that a preliminary injunction be entered enjoining enforcement of Section 22949.80. Plaintiffs further request such other and additional relief as the Court deems just and proper.

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Respectfully submitted,
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