

Raymond M. DiGuiseppe
THE DIGUISEPPE LAW FIRM, P.C.
4320 Southport-Supply Road, Suite 300
Southport, NC 28461
P: 910-713-8804
E: law.rmd@gmail.com

Michael P. Sousa
LAW OFFICES OF MICHAEL P. SOUSA, APC
3232 Governor Dr., Suite A
San Diego, CA 92122
P: 858-453-6122
E: msousa@msousalaw.com

William A. Sack
FIREARMS POLICY COALITION
426 Campbell Avenue
Havertown, PA 19083
P: 916-596-3492
E: Wsack@fpclaw.org

Attorneys for Plaintiffs

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

Lana Rae Renna; Danielle Jaymes;
Laura Schwartz; Michael Schwartz;
John Klier; Justin Smith; John Phillips;
Cheryl Prince; Darin Prince; Ryan
Peterson; PWGG, L.P.; North County
Shooting Center, Inc.; Gunfighter
Tactical, LLC; Firearms Policy
Coalition, Inc.; San Diego County Gun
Owners PAC; Citizens Committee for
the Right to Keep and Bear Arms; and
Second Amendment Foundation,
Plaintiffs,

vs.

Robert Bonta, Attorney General of
California; and Blake Graham,¹
Director of the California Department
of Justice Bureau of Firearms,
Defendants.

Case No.: 20-cv-2190-DMS-DEB

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

¹ Blake Graham is substituted for Luis Lopez. *See* Fed. R. Civ. P. 25(d).

1 Plaintiffs Lana Rae Renna, Danielle Jaymes, Laura Schwartz, Michael
2 Schwartz, John Klier, Justin Smith, John Phillips, Cheryl Prince, Darin Prince, and
3 Ryan Peterson (collectively the “Individual Plaintiffs”), PWGG, L.P., North County
4 Shooting Center, Inc., and Gunfighter Tactical, LLC, (collectively, the “Retailer
5 Plaintiffs”), Firearms Policy Coalition, Inc., San Diego County Gun Owners PAC,
6 Citizens Committee for the Right to Keep and Bear Arms, and Second Amendment
7 Foundation (collectively the “Institutional Plaintiffs”) (altogether collectively
8 “Plaintiffs”), by and through counsel of record, bring this complaint for injunctive
9 and declaratory relief against Individual Defendants California Attorney General
10 Robert Bonta and California Department of Justice Bureau of Firearms Director
11 Blake Graham (collectively “Defendants”), and allege as follows:

12 **INTRODUCTION**

13 1. The Second Amendment to the United States Constitution guarantees
14 “the right of the people to keep and bear Arms.” U.S. CONST. AMEND. II. Plaintiffs,
15 and all similarly situated members of Institutional Plaintiffs, who are all eligible to
16 exercise their Second Amendment rights, wish to keep and bear constitutionally
17 protected arms for self-defense and other lawful purposes.

18 2. But because of Defendants’ enforcement of the laws, regulations,
19 policies, practices, and customs underlying the State of California’s ban on the
20 purchase (Cal. Penal Code §§ 31900, *et seq.* and 32000, *et seq.*)² of common and
21 constitutionally protected handguns that the State deems presumptively “unsafe” and
22 thus illegal for commercial sale under its “roster” of “Handguns Certified for Sale”
23 (“Handgun Roster”), Plaintiffs, and all similarly situated members of Institutional
24 Plaintiffs, cannot purchase new constitutionally protected arms without suffering
25 criminal liability (the “Handgun Ban”), in violation of the Second and Fourteenth

26 _____

27 ² All Penal Code references are to the California Penal Code except where otherwise
28 indicated.

1 Amendments to the United States Constitution.

2 3. In *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, the United
3 States Supreme Court expressly rejected all interest balancing and the Ninth
4 Circuit’s prior “two-step” approach in the context of Second Amendment claims.

5 4. Indeed, “*Heller* and *McDonald* do not support applying means-end
6 scrutiny in the Second Amendment context. Instead, the government must
7 affirmatively prove that its firearms regulation is part of the historical tradition that
8 delimits the outer bounds of the right to keep and bear arms.” 142 S. Ct. at 2127.
9 Ultimately, “*Heller* ... demands a test rooted in the Second Amendment’s text, as
10 informed by history.” *Id.*

11 5. *Bruen* did not create a new test but instead applied the very test the
12 Court established in *Heller* in 2008. “The test that we set forth in *Heller* and apply
13 today requires courts to assess whether modern firearms regulations are consistent
14 with the Second Amendment’s text and historical understanding.” *Id.*, at 2131.

15 6. “*Heller*’s methodology centered on constitutional text and history.
16 Whether it came to defining the character of the right (individual or militia
17 dependent), suggesting the outer limits of the right, or assessing the constitutionality
18 of a particular regulation, *Heller* relied on text and history. It did not invoke any
19 means-end test such as strict or intermediate scrutiny.” *Id.* at 2128-29.

20 7. The plain text of the Second Amendment covers the conduct Plaintiffs,
21 and all similarly situated members of Institutional Plaintiffs, wish to engage in
22 (“keep and bear arms”) and the arms they wish to keep and bear. *Id.* at 2132 (“the
23 Second Amendment extends, prima facie, to all instruments that constitute bearable
24 arms”).

25 8. Since the conduct is covered by the Second Amendment’s plain text,
26 the government must justify its regulations as consistent with this Nation’s tradition
27 of firearm regulation.

28 9. “When the Second Amendment’s plain text covers an individual’s

1 conduct, the Constitution presumptively protects that conduct. To justify its
2 regulation, the government . . . must demonstrate that the regulation is consistent
3 with this Nation’s tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2126.

4 10. *Heller* has already established the relevant contours of the tradition:
5 Bearable arms that are presumptively protected by the Second Amendment cannot
6 be banned unless they are both dangerous *and* unusual. *District of Columbia v.*
7 *Heller*, 554 U.S. 570, 627 (2008).

8 11. And the Second Amendment’s “reference to ‘arms’ does not apply
9 ‘only [to] those arms in existence in the 18th century.’ ” *Bruen*, 142 S. Ct. at 2132
10 (quoting *Heller*, 554 U.S. at 582). “Just as the First Amendment protects modern
11 forms of communications, and the Fourth Amendment applies to modern forms of
12 search, the Second Amendment extends, *prima facie*, to all instruments that
13 constitute bearable arms, even those that were not in existence at the time of the
14 founding.” *Id.* (citations omitted).

15 12. “Semiautomatic weapons,” such as those proscribed under the Handgun
16 Ban, “traditionally have been widely accepted as lawful possessions.” *Staples v.*
17 *United States*, 511 U.S. 600, 612 (1994)).

18 13. And “[w]hatever the likelihood that handguns were considered
19 dangerous and unusual during the colonial period, they are indisputably in common
20 use for self-defense today. They are, in fact, the quintessential self-defense weapon.”
21 *Bruen*, 142 S. Ct. at 2143 (quoting *Heller*, 554 U.S. at 629) (cleaned up).

22 14. “Thus, even though the Second Amendment’s definition of ‘arms’ is
23 fixed according to its historical understanding, that general definition covers modern
24 instruments that facilitate armed self-defense.” *Id.* (citing *Caetano v. Massachusetts*,
25 577 U.S. 411, 411-412 (2016) (*per curiam*), concerning stun guns).

26 15. In *Bruen*, the Supreme Court made clear that the Ninth Circuit’s former
27 two-step approach and interest-balancing applied in *Peña v. Lindley*, 898 F.3d 969
28 (9th Cir. 2018), which previously upheld a prior version of some of the laws

1 challenged herein, are inapplicable and improper in Second Amendment cases.

2 16. In this case, the analysis is straightforward: Plaintiffs, and all similarly
3 situated members of Institutional Plaintiffs, are not prohibited from exercising their
4 right to keep and bear arms. The Second Amendment’s text covers the conduct
5 Plaintiffs, and all similarly situated members of Institutional Plaintiffs, wish to
6 engage in and the arms they wish to acquire and possess. The arms that Plaintiffs,
7 and all similarly situated members of Institutional Plaintiffs, wish to acquire but that
8 the State seeks to ban are not dangerous and unusual today and are in fact in common
9 use for lawful purposes. There is no analogous history supportive of the State’s ban.
10 Under the Supreme Court’s precedents, the constitutionally relevant history, and the
11 proper analysis, Plaintiffs, and all similarly situated members of Institutional
12 Plaintiffs, must prevail.

13 **PARTIES**

14 **Individual Plaintiffs**

15 ***Plaintiff Renna***

16 17. Plaintiff Lana Rae Renna is a natural person and a citizen of the State
17 of California, residing in San Diego County, California. Plaintiff Renna is not
18 disqualified from exercising Second Amendment rights nor prohibited under state or
19 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff
20 Renna is a member and supporter of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

21 18. Plaintiff Renna has a damaged tendon in her right thumb that impacts
22 her ability to apply physical force. The Smith & Wesson M&P® 380 SHIELD™
23 EZ® is specifically designed for those with limited hand strength. On the website
24 for the Smith & Wesson M&P® 380 SHIELD™ EZ®, online at [https://www.smith-](https://www.smith-wesson.com/firearms/mp-380-shield-ez-0)
25 [wesson.com/firearms/mp-380-shield-ez-0](https://www.smith-wesson.com/firearms/mp-380-shield-ez-0), it states that the firearm is “Built for
26 personal protection and every-day carry, the M&P380 Shield EZ is chambered in
27 380 Auto and is designed to be easy to use, featuring an easy-to-rack slide, easy-to-
28 load magazine, and easy-to-clean design. Built for personal and home protection, the

1 innovative M&P380 Shield EZ pistol is the latest addition to the M&P M2.0 family
2 and provides an easy-to-use protection option for both first-time shooters and
3 experienced handgunners alike.” The Smith & Wesson M&P® 380 SHIELD™ EZ®
4 that Plaintiff Renna wishes to purchase is a constitutionally protected handgun that
5 is in common use for self-defense and other lawful purposes and widely sold and
6 possessed outside of California.

7 19. But for the Handgun Ban and Defendants’ active enforcement thereof,
8 Plaintiff Renna would, for self-defense and other lawful purposes, purchase new
9 from a licensed retailer a constitutionally protected handgun not currently on or
10 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,
11 including but not limited to a Smith & Wesson M&P® 380 SHIELD™ EZ®.

12 ***Plaintiff Jaymes***

13 20. Plaintiff Danielle Jaymes is a natural person and a citizen of the State
14 of California, residing in San Diego County, California. Plaintiff Jaymes is not
15 disqualified from exercising Second Amendment rights nor prohibited under state or
16 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff
17 Jaymes possesses a valid COE issued by the Defendants’ Department of Justice
18 Bureau of Firearms. Plaintiff Jaymes is a member and supporter of Plaintiffs FPC,
19 SDCGO, CCRKBA, and SAF.

20 21. But for the Handgun Ban and Defendants’ active enforcement thereof,
21 Plaintiff Jaymes would, for self-defense and other lawful purposes, purchase new
22 from a licensed retailer a constitutionally protected handgun not currently on or
23 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,
24 including but not limited to a Sig 365, G43X, Glock 19 Gen5, Sig P320, and/or
25 Nighthawk Lady Hawk, which is a constitutionally protected handgun in common
26 use for self-defense and lawful purposes.

27 ***Plaintiff L. Schwartz***

28 22. Plaintiff Laura Schwartz (“L. Schwartz”) is a natural person and a

1 citizen of the State of California, residing in San Diego County, California. Plaintiff
2 L. Schwartz is not disqualified from exercising Second Amendment rights nor
3 prohibited under state or federal law from possessing, receiving, owning, or
4 purchasing a firearm. Plaintiff L. Schwartz holds an active license to carry a
5 concealed weapon (“CCW”) issued by her county sheriff, after proving “good cause”
6 and “good moral character” to her licensing authority, successfully completing a
7 course of training on the law and firearms proficiency under California Penal Code
8 section 26165, and passing an extensive Live Scan-based background check and
9 placement into the State’s system for monitoring law enforcement contact, arrests,
10 and criminal convictions (“Rap Back”). Plaintiff L. Schwartz is a member and
11 supporter of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

12 23. But for the Handgun Ban and Defendants’ active enforcement thereof,
13 Plaintiff L. Schwartz would, for self-defense and other lawful purposes, purchase
14 new from a licensed retailer a constitutionally protected handgun not currently on or
15 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,
16 including but not limited to a Glock 19 Gen5 and/or Springfield Armory Hellcat,
17 which are constitutionally protected handguns in common use for self-defense and
18 lawful purposes.

19 ***Plaintiff M. Schwartz***

20 24. Plaintiff Michael Schwartz (“M. Schwartz”) is a natural person and a
21 citizen of the State of California, residing in San Diego County, California. Plaintiff
22 M. Schwartz is not disqualified from exercising Second Amendment rights nor
23 prohibited under state or federal law from possessing, receiving, owning, or
24 purchasing a firearm. Plaintiff M. Schwartz holds an active license to carry a
25 concealed weapon (“CCW”) issued by his county sheriff, after proving “good cause”
26 and “good moral character” to his licensing authority, successfully completing a
27 course of training on the law and firearms proficiency under California Penal Code
28 section 26165 and passing an extensive Live Scan-based background check and

1 placement into the State’s system for monitoring law enforcement contact, arrests,
2 and criminal convictions (“Rap Back”). Plaintiff M. Schwartz is the Executive
3 Director of Plaintiff San Diego County Gun Owners PAC. Plaintiff M. Schwartz is
4 a member and supporter of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

5 25. But for the Handgun Ban and Defendants’ active enforcement thereof,
6 Plaintiff M. Schwartz would, for self-defense and other lawful purposes, purchase
7 new from a licensed retailer a constitutionally protected handgun not currently on or
8 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,
9 including but not limited to a Glock 19 Gen5 and/or Springfield Armory Hellcat,
10 which are constitutionally protected handguns in common use for self-defense and
11 other lawful purposes.

12 ***Plaintiff Klier***

13 26. Plaintiff John Klier is a natural person and a citizen of the State of
14 California, residing in San Diego County, California. Plaintiff Klier is not
15 disqualified from exercising Second Amendment rights nor prohibited under state or
16 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff
17 Klier is a veteran of the Navy, having been disabled and honorably discharged after
18 serving in Iraq as a “Seabee” member of the United States Naval Construction
19 Battalions. Plaintiff Klier is a trained firearms instructor who owns and operates
20 Active Shooter Defense School (“ASDS”), which “employs the best instructors in
21 the industry,” with “former [Navy] SEALs, Rangers, engineers, SWAT officers,
22 combatives instructors and current top performing competitive shooters on staff to
23 ensure students master each technique being taught.” ASDS’s “mission is to provide
24 the most up to date tactical weapons training available to the public, law enforcement
25 and military.”³ Plaintiff Klier is a member and supporter of Plaintiffs FPC, SDCGO,
26

27 ³ See “Meet our Team” on ASDS’s website, online at [https://asdschool.com/asds-](https://asdschool.com/asds-instructors)
28 instructors.

1 CCRKBA, and SAF.

2 27. But for Handgun Ban and Defendants' active enforcement thereof,
3 Plaintiff Klier would, for self-defense and other lawful purposes, purchase new from
4 a licensed retailer a constitutionally protected handgun not currently on or eligible
5 under Handgun Ban to be added to Defendants' Handgun Roster, including but not
6 limited to a Glock 19 Gen5, which is a constitutionally protected handgun in
7 common use for self-defense and other lawful purposes.

8 ***Plaintiff Smith***

9 28. Plaintiff Justin Smith is a natural person and a citizen of the State of
10 California, residing in San Diego County, California. Plaintiff Justin Smith is not
11 disqualified from exercising Second Amendment rights nor prohibited under state or
12 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff
13 Smith is a member and supporter of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

14 29. But for the Handgun Ban and Defendants' active enforcement thereof,
15 Plaintiff Smith would, for self-defense and other lawful purposes, purchase new
16 from a licensed retailer a constitutionally protected handgun not currently on or
17 eligible under the Handgun Ban to be added to Defendants' Handgun Roster,
18 including but not limited to a CZ P10, Walther Q5 SF, and/or Glock 19 Gen4 and/or
19 Gen5, which are constitutionally protected handguns in common use for self-defense
20 and other lawful purposes.

21 ***Plaintiff Phillips***

22 30. Plaintiff John Phillips is a natural person and a citizen of the State of
23 California, residing in San Diego County, California. Plaintiff Phillips is not
24 disqualified from exercising Second Amendment rights nor prohibited under state or
25 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff
26 Phillips possesses a current COE issued by the Defendants' Department of Justice
27 Bureau of Firearms. Plaintiff Phillips is the President of Plaintiff PWG, a proprietor
28 of the business, and the individual licensee associated with the dealership and range

1 facility, including by and through Defendants and their Bureau of Firearms. Plaintiff
2 Phillips holds an active license to carry a concealed weapon (“CCW”) issued by his
3 county sheriff, after proving “good cause” and “good moral character” to his
4 licensing authority, successfully completing a course of training on the law and
5 firearms proficiency under Penal Code section 26165, and passing an extensive Live
6 Scan-based background check and placement into the State’s system for monitoring
7 law enforcement contact, arrests, and criminal convictions (“Rap Back”). Plaintiff
8 Phillips is a trained firearms instructor. Plaintiff Phillips is a member and supporter
9 of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

10 31. But for the Handgun Ban and Defendants’ active enforcement thereof,
11 Plaintiff Phillips would, for self-defense and other lawful purposes, purchase new
12 from a licensed retailer a constitutionally protected handgun not currently on or
13 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,
14 including but not limited to a Sig Sauer P365, Sig Sauer P320 M17, Glock 17 Gen5
15 MOS, Fabrique National Herstal 509, and/or Fabrique National Herstal FNX-9,
16 which are constitutionally protected handguns in common use for self-defense and
17 other lawful purposes.

18 ***Plaintiff C. Prince***

19 32. Plaintiff Cheryl Prince (“C. Prince”) is a natural person and a citizen of
20 the State of California, residing in San Diego County, California. Plaintiff C. Prince
21 is not disqualified from exercising Second Amendment rights nor prohibited under
22 state or federal law from possessing, receiving, owning, or purchasing a firearm.
23 Plaintiff C. Prince holds an active license to carry a concealed weapon (“CCW”) issued by her county sheriff, after proving “good cause” and “good moral character”
24 to her licensing authority, successfully completing a course of training on the law
25 and firearms proficiency under Penal Code section 26165, and passing an extensive
26 Live Scan-based background check and placement into the State’s system for
27 monitoring law enforcement contact, arrests, and criminal convictions (“Rap Back”).
28

1 Plaintiff C. Prince is a member and supporter of Plaintiffs FPC, SDCGO, CCRKBA,
2 and SAF.

3 33. But for the Handgun Ban and Defendants’ active enforcement thereof,
4 Plaintiff C. Prince would, for self-defense and other lawful purposes, purchase new
5 from a licensed retailer a constitutionally protected handgun not currently on or
6 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,
7 including but not limited to a Sig Sauer P365, which is a constitutionally protected
8 handgun in common use for self-defense and other lawful purposes.

9 ***Plaintiff D. Prince***

10 34. Plaintiff Darin Prince (“D. Prince”) is a natural person and a citizen of
11 the State of California, residing in San Diego County, California. Plaintiff D. Prince
12 is not disqualified from exercising Second Amendment rights nor prohibited under
13 state or federal law from possessing, receiving, owning, or purchasing a firearm.
14 Plaintiff D. Prince possesses a current COE issued by the Defendants’ Department
15 of Justice Bureau of Firearms. Plaintiff D. Prince is an owner and manager of
16 Plaintiff NCSC, the proprietor of the business, and the individual licensee associated
17 with the dealership, including by and through the Defendants and their Bureau of
18 Firearms. Plaintiff D. Prince holds an active license to carry a CCW issued by his
19 county sheriff under Penal Code section 26150, *et seq.*, after proving “good cause”
20 and “good moral character” to that licensing authority, successfully completing a
21 course of training on the law and firearms proficiency under section 26165, passing
22 an extensive Live Scan-based Department of Justice background check, and
23 placement into the “Rap Back” system for monitoring law enforcement contact,
24 arrests, and criminal convictions. Plaintiff D. Prince is a member of Plaintiffs FPC,
25 SDCGO, CCRKBA, and SAF.

26 35. But for the Handgun Ban and Defendants’ active enforcement thereof,
27 Plaintiff D. Prince would, for self-defense and other lawful purposes, purchase new
28 from a licensed retailer a constitutionally protected handgun not currently on or

1 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,
2 including but not limited to a Sig Sauer P320 AXG Scorpion, which is a
3 constitutionally protected handgun in common use for self-defense and other lawful
4 purposes.

5 ***Plaintiff Peterson***

6 36. Plaintiff Ryan Peterson is a natural person and a citizen of the State of
7 California, residing in San Diego County, California. Plaintiff Peterson is not
8 disqualified from exercising Second Amendment rights nor prohibited under state or
9 federal law from possessing, receiving, owning, or purchasing a firearm. Plaintiff
10 Peterson possesses a current COE issued by the Defendants’ Department of Justice
11 Bureau of Firearms. Plaintiff Peterson is the proprietor of and an individual licensee
12 associated with Plaintiff Gunfighter Tactical. Plaintiff Peterson is a DOJ Certified
13 Instructor. Plaintiff Peterson is a member and supporter of Plaintiffs FPC, SDCGO,
14 CCRKBA, and SAF.

15 37. Ironically, Plaintiff Peterson, who owns and operates a gun store
16 (Plaintiff Gunfighter Tactical), is highly trained in the safe handling of firearms, is a
17 DOJ Certified Instructor, sells handguns not on the Defendants’ Roster to those who
18 can lawfully purchase them (which excludes Individual Plaintiffs), and keeps for
19 lawful purposes including self-defense a Fabrique Nationale 509 Tactical handgun
20 while physically inside Gunfighter Tactical. However, he cannot lawfully transfer
21 that same firearm to himself—or to any other law-abiding citizen not exempt from
22 the Handgun Ban—even for self-defense in the home.

23 38. But for the Handgun Ban and Defendants’ active enforcement thereof,
24 Plaintiff Peterson would, for self-defense and other lawful purposes, purchase new
25 from a licensed retailer a constitutionally protected handgun not currently on or
26 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster,
27 including but not limited to a Fabrique National Herstal 509 Tactical, Sig Sauer P220
28 Legion (10mm), Staccato 2011, Glock 19 Gen5, Glock 17 Gen5 MOS, and Wilson

1 Combat Elite CQB 1911 (9mm), which are constitutionally protected handguns in
2 common use for self-defense and other lawful purposes.

3 **Retailer Plaintiffs**

4 ***Plaintiff PWG***

5 39. Plaintiff PWGG, L.P. (“PWG”), a California limited partnership doing
6 business as “Poway Weapons & Gear” and “PWG Range,” is a licensed firearms
7 retailer, shooting range, and training facility in the City of Poway, within San Diego
8 County, California. Plaintiff PWG is a member and supporter of Plaintiffs FPC,
9 SDCGO, CCRKBA, and SAF.

10 40. Plaintiffs Phillips and PWG are a firearms dealer in Defendants’
11 Department of Justice Centralized List of Firearms Dealers, and are federally
12 licensed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) as
13 a Federal Firearms Licensee (“FFL”).

14 41. Many customers and prospective customers of Plaintiffs Phillips and
15 PWG are interested in, have, and continue to seek to purchase for self-defense and
16 other lawful purposes constitutionally protected handguns not currently on or
17 eligible under the Handgun Ban to be added to Defendants’ Handgun Roster.

18 42. But for the Handgun Ban and Defendants’ active enforcement thereof,
19 Plaintiffs Phillips and PWG would make available for sale to their adult customers
20 all of the constitutionally protected new handguns on the market that are available
21 outside of California but not currently on or eligible under the Handgun Ban to be
22 added to Defendants’ Handgun Roster, and sell and transfer them to their adult
23 customers who are not disqualified from exercising Second Amendment rights.

24 ***Plaintiff NCSC***

25 43. Plaintiff North County Shooting Center, Inc. (“NCSC”), a California
26 corporation, is a licensed firearms retailer, shooting range, and training facility in the
27 City of San Marcos, within San Diego County, California. Plaintiff NCSC is a
28 federally and state-licensed firearms retailer in San Marcos, California. Plaintiff

1 NCSC is a member of Plaintiffs FPC, SDCGO, CCRKBA, and SAF.

2 44. Plaintiffs D. Prince and NCSC are a firearms dealer in Defendants'
3 Department of Justice Centralized List of Firearms Dealers, and are federally
4 licensed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") as
5 a Federal Firearms Licensee ("FFL").

6 45. Many customers and prospective customers of Plaintiffs D. Prince and
7 NCSC are interested in, have, and continue to seek to purchase for self-defense and
8 other lawful purposes constitutionally protected handguns not currently on or
9 eligible under the Handgun Ban to be added to Defendants' Handgun Roster.

10 46. But for the Handgun Ban and Defendants' active enforcement thereof,
11 Plaintiffs D. Prince and NCSC would make available for sale to their adult customers
12 all of the constitutionally protected new handguns on the market that are available
13 outside of California but not currently on or eligible under the Handgun Ban to be
14 added to Defendants' Handgun Roster, and sell and transfer them to their adult
15 customers who are not disqualified from exercising Second Amendment rights.

16 ***Plaintiff Gunfighter Tactical***

17 47. Plaintiff Gunfighter Tactical, LLC ("Gunfighter Tactical"), a California
18 limited liability corporation doing business as "Gunfighter Tactical," is a licensed
19 firearms retailer in the City of San Diego within San Diego County, California.
20 Plaintiff Gunfighter Tactical is a member of Plaintiffs FPC, SDCGO, CCRKBA, and
21 SAF.

22 48. Plaintiffs Peterson and Gunfighter Tactical are a firearms dealer in
23 Defendants' Department of Justice Centralized List of Firearms Dealers, and are
24 federally licensed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives
25 ("ATF") as a Federal Firearms Licensee ("FFL").

26 49. Many customers and prospective customers of Plaintiffs Peterson and
27 Gunfighter Tactical are interested in, have, and continue to seek to purchase for self-
28 defense and other lawful purposes constitutionally protected handguns not currently

1 on or eligible under the Handgun Ban to be added to Defendants’ Handgun Roster.
2 50. But for the Handgun Ban and Defendants’ active enforcement thereof,
3 Plaintiffs Peterson and Gunfighter Tactical would make available for sale to their
4 adult customers all of the constitutionally protected new handguns on the market that
5 are available outside of California but not currently on or eligible under the Handgun
6 Ban to be added to Defendants’ Handgun Roster, and sell and transfer them to their
7 adult customers who are not disqualified from exercising Second Amendment rights.

8 **Institutional Plaintiffs**

9 ***Plaintiff FPC***

10 51. Plaintiff Firearms Policy Coalition, Inc. (“FPC”) is a nonprofit
11 organization incorporated under the laws of Delaware with a place of business in
12 Clark County, Nevada. The purposes of FPC include defending and promoting the
13 People’s rights, especially First and Second Amendment rights, advancing
14 individual liberty, and restoring freedom. FPC serves its members and the public
15 through legislative advocacy, grassroots advocacy, litigation and legal efforts,
16 research, education, outreach, and other programs. FPC has members in the State of
17 California, including Individual Plaintiffs who desire to purchase new
18 constitutionally protected arms for self-defense or other lawful purposes which are
19 not currently on or eligible under the Handgun Ban to be added to Defendants’
20 Handgun Roster, and Retailer Plaintiffs who desire to sell the same to their eligible
21 law-abiding customers. These members would each undertake the desired and
22 protected activity but for the criminal liability that they face under the laws,
23 regulations, policies, practices, and customs being challenged in this action. The
24 interests that FPC seeks to protect in this lawsuit are germane to the organization’s
25 purposes.

26 ***Plaintiff SDCGO***

27 52. Plaintiff San Diego County Gun Owners PAC (“SDCGO”) is a local
28 political organization whose purpose is to protect and advance the Second

1 Amendment rights of residents of San Diego County, California, through their
2 efforts to support and elect local and state representatives who support the Second
3 Amendment right to keep and bear arms. SDCGO’s membership and donors consist
4 of Second Amendment supporters, people who own guns for self-defense and sport,
5 firearms dealers, shooting ranges, and elected officials who want to restore and
6 protect the right to keep and bear arms in California. SDCGO’s members include
7 Individual Plaintiffs who desire to purchase new constitutionally protected arms for
8 self-defense or other lawful purposes which are not currently on or eligible under the
9 Handgun Ban to be added to Defendants’ Handgun Roster, and Retailer Plaintiffs
10 who desire to sell the same to their eligible law-abiding customers. These members
11 would each undertake the desired and protected activity but for the criminal liability
12 that they face under the laws, regulations, policies, practices, and customs being
13 challenged in this action. The interests that SDCGO seeks to protect in this lawsuit
14 are germane to the organization’s purposes.

15 ***Plaintiff CCRKBA***

16 53. Plaintiff Citizens Committee for the Right to Keep and Bear Arms
17 (“CCRKBA”) is a nonprofit organization incorporated under the laws of Washington
18 with its principal place of business in Bellevue, Washington. CCRKBA is dedicated
19 to promoting the benefits of the right to bear arms. CCRKBA has members and
20 supporters nationwide, including thousands of members in California and in the
21 County of San Diego, California. CCRKBA’s members include Individual Plaintiffs
22 who desire to purchase new constitutionally protected arms for self-defense or other
23 lawful purposes which are not currently on or eligible under the Handgun Ban to be
24 added to Defendants’ Handgun Roster and Retailer Plaintiffs who desire to sell the
25 same to their eligible law-abiding customers. These members would each undertake
26 the desired and protected activity but for the criminal liability that they face under
27 the laws, regulations, policies, practices, and customs being challenged in this action.
28 The interests that CCRKBA seeks to protect in this lawsuit are germane to the

1 organization’s purposes.

2 ***Plaintiff SAF***

3 54. Plaintiff Second Amendment Foundation (“SAF”) is a nonprofit
4 educational foundation incorporated under the laws of Washington with its principal
5 place of business in Bellevue, Washington. SAF seeks to preserve the effectiveness
6 of the Second Amendment through education, research, publishing, and legal action
7 programs focused on the Constitutional right to possess firearms, and the
8 consequences of gun control. SAF has over 650,000 members and supporters
9 nationwide, including thousands of members in California and in the County of San
10 Diego, California. SAF’s members include Individual Plaintiffs who desire to
11 purchase new constitutionally protected arms for self-defense or other lawful
12 purposes which are not currently on or eligible under the Handgun Ban to be added
13 to Defendants’ Handgun Roster, and Retailer Plaintiffs who desire to sell the same
14 to their eligible law-abiding customers. These members would each undertake the
15 desired and protected activity but for the criminal liability that they face under the
16 laws, regulations, policies, practices, and customs being challenged in this action.
17 The interests that SAF seeks to protect in this lawsuit are germane to the
18 organization’s purposes.

19 **Defendants**

20 ***Defendant Bonta***

21 55. Defendant Robert Bonta is the Attorney General of the State of
22 California, and is sued herein in his official capacity. Under Article 5, § 13 of the
23 California Constitution, Attorney General Bonta is the “chief law officer of the
24 State,” with a duty “to see that the laws of the state are uniformly and adequately
25 enforced.” Defendant Bonta is the head of the California Department of Justice
26 (“DOJ”). Defendant Bonta’s DOJ and its Bureau of Firearms regulate and enforce
27 state law related to the sales, transfer, possession and ownership of firearms. The
28 Attorney General and DOJ maintain an office in San Diego, California.

1 ***Defendant Graham***

2 56. Defendant Blake Graham is the Director of the DOJ's Bureau of
3 Firearms. On information and belief, Defendant Graham reports to Attorney General
4 Bonta, and he is responsible for the various operations of the Bureau of Firearms,
5 including the implementation and enforcement of the statutes, regulations, and
6 policies regarding firearm and ammunition sales, possession, and transfers.
7 Defendant Graham is sued in his official capacity.

8 **JURISDICTION AND VENUE**

9 57. This Court has jurisdiction over all claims for relief pursuant to 28
10 U.S.C. §§ 1331, 1343, 2201, and 2202, and 42 U.S.C. §§ 1983 and 1988, as this
11 action seeks to redress the deprivation under color of the laws, statutes, ordinances,
12 regulations, customs, and usages of the State of California, of the rights, privileges,
13 or immunities secured by the United States Constitution.

14 58. Venue lies in this Court under 28 U.S.C. § 1391, as the events giving
15 rise to Plaintiffs' causes of action arose or exist in this District in which the action is
16 brought. Further, the venue rules of this State specifically would permit this action
17 to be filed in San Diego, since the Attorney General and California Department of
18 Justice maintain an office within this District; Cal. Code of Civ. Pro. § 401(1).

19 **STATEMENT OF FACTS**

20 **I. California's Ban on Handguns**

21 59. The Handgun Ban and Defendants' regulations, policies, and practices
22 enforcing the same, individually and collectively prevent Plaintiffs, and all similarly
23 situated members of Institutional Plaintiffs, who are not prohibited from possessing
24 or acquiring firearms, from purchasing handguns that are categorically in common
25 use for self-defense and other lawful purposes, and thus violate the Second and
26 Fourteenth Amendments to the United States Constitution.

27 **A. The General Regulatory Scheme**

28 60. In California, individuals are required to purchase and transfer firearms

1 and ammunition through state and federally licensed dealers, like Retailer Plaintiffs,
2 in face-to-face transactions, or face serious criminal penalties.

3 61. Because of an onerous regulatory scheme, which is designed to deny,
4 chill, suppress, and/or burden the exercise of fundamental, individual rights, people
5 in California cannot exercise their Second Amendment right to keep and bear arms
6 without going in person to retailers that must comply with the State’s regulatory
7 scheme on pain of criminal liability—a misdemeanor at a minimum, Pen. Code, §
8 19.4 (providing that, unless otherwise specified, a violation of a criminal statute
9 constitutes a misdemeanor)—as well as loss of the necessary licenses to engage in
10 any lawful firearm-related business.

11 62. “Where neither party to [a] [firearm] transaction holds a dealer’s license
12 issued pursuant to Sections 26700 to 26915, inclusive, the parties to the transaction
13 shall complete the sale, loan, or transfer of that firearm through a licensed firearms
14 dealer pursuant to Chapter 5 (commencing with Section 28050).” Pen. Code §
15 27545.

16 63. A license to transact in firearms “is subject to forfeiture for a breach of
17 any of the prohibitions and requirements of [Article 2, Penal Code §§ 26800 –
18 26915]” (with some exceptions that do not apply in the instant matter). Pen. Code §
19 26800.

20 64. Penal Code § 28220(a) states: “Upon submission of firearm purchaser
21 information, the Department of Justice shall examine its records, as well as those
22 records that it is authorized to request from the State Department of State Hospitals
23 pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine
24 if the purchaser is a person described in subdivision (a) of Section 27535, or is
25 prohibited by state or federal law from possessing, receiving, owning, or purchasing
26
27
28

1 a firearm.”⁴

2 65. Defendants’ Department of Justice participates in the National Instant
3 Criminal Background Check System (NICS). Pen. Code § 28220(a).

4 66. A “Certificate of Eligibility” (“COE”) “means a certificate which states
5 that the Department has checked its records and the records available to the
6 Department in the National Instant Criminal Background Check System and
7 determined that the applicant is not prohibited from acquiring or possessing firearms
8 pursuant to Penal Code sections 18205, 29800, 29805, 29815 through 29825, and
9 29900, or Welfare and Institutions Code sections 8100 and 8103, or Title 18, sections
10 921 and 922 of the United States Code, or Title 27, Part 478.32 of the Code of
11 Federal Regulations at the time the check was performed and which ensures that a
12 person who handles, sells, delivers, or has under his or her custody or control any
13 ammunition, is eligible to do so pursuant to Penal Code section 30347.” 11 CCR §
14 4031(d). *See also* Pen. Code § 26710 and 11 CCR § 4030, *et seq.*

15 67. “The initial COE application process includes a firearms eligibility
16 criminal background check and issuance of a certificate, which is valid for one year.
17 Thereafter, the COE must be renewed annually. A COE can be revoked, at any time,
18 if the COE holder becomes prohibited from owning/possessing firearms and
19 ammunition.” *See* Defendants’ website at [https://oag.ca.gov/firearms/cert-](https://oag.ca.gov/firearms/cert-eligibility)
20 [eligibility](https://oag.ca.gov/firearms/cert-eligibility).

21 68. On information and belief, a COE issued by Defendants’ Department
22 of Justice Bureau of Firearms places the certificate holder in their “Rap Back” file,
23 which would notify them immediately should the certificate holder be arrested or
24 otherwise prohibited from purchasing or possessing firearms.

25

26

27 ⁴ The DOJ’s multi-step, acronym-heavy background check process for firearms is
28 detailed in *Silvester v. Harris*, 41 F.Supp.3d 927, 947–952 (E.D. Cal. 2014).

1 **B. The Handgun Ban and “Roster”**

2 69. Defendants’ California Department of Justice compiles, publishes, and
3 maintains “a roster listing all of the handguns that have been tested by a certified
4 testing laboratory, have been determined not to be unsafe handguns, and may be sold
5 in this state pursuant to this part.” Pen Code § 32015.

6 70. Additional information on the Handgun Roster can be found in
7 Defendants’ regulations at California Code of Regulations, title 11, section 4070.

8 71. On information and belief, Defendants’ Roster of Certified Handguns
9 available for sale to law-abiding citizens not exempt from the Handgun Purchase
10 Ban is a small fraction of the total number of handgun makes and models
11 commercially available throughout the vast majority of the United States, all of
12 which are constitutionally protected arms in common use for lawful purposes.

13 72. On information and belief, at the end of 2013, there were 1,273 makes
14 and models of approved handguns, including 883 semiautomatics, on Defendants’
15 Roster. Since then, the Defendants’ Roster has continued to shrink because of the
16 Defendants’ enforcement of the Handgun Purchase Ban.

17 73. As of October 24, 2022, there were only “815 handguns found”—*total*,
18 of all makes, models, and permutations—on Defendants’ Roster.

19 74. Inevitably hastening the rate of shrinkage, effective January 1, 2021,
20 the State amended California’s Handgun Ban under Assembly Bill No. 2847 (2019
21 – 2020 Reg. Sess.) (“AB 2847”), which now expressly requires that, for every single
22 new firearm added to the Roster, Defendants’ Department of Justice must *remove*
23 three firearms added before July 1, 2022, that are not compliant with its current
24 requirements.⁵ Pen. Code. § 31910(b)(7).

25

26

27 ⁵ See Alexei Koseff, “Bullet-tracing bill by [California Assembly-member] David
28 Chiu aims to force issue on gunmakers,” San Francisco Chronicle (March 16,

1 75. Moreover, of the handguns “certified” for Roster inclusion, on
2 information and belief, “about one-third of the Roster’s total listings are comprised
3 of makes and models that do not offer consumers substantive and material choices
4 in the physical attributes, function, or performance of a handgun relative to another
5 listing (*i.e.*, a base model),” because many of the approved handguns are merely the
6 same handgun make and model as another approved model with cosmetic
7 difference(s). *See, e.g., California's Handgun Roster: How big is it, really?*, online
8 at <https://www.firearmspolicy.org/california-handgun-roster> (showing the results of
9 a detailed analysis of the Roster as of January 30, 2019).

10 76. The Handgun Ban, as it stands today, not only forces and requires the
11 Handgun Roster to virtually shrink into oblivion, but, on information and belief, even
12 minor changes to manufacturing processes, materials, and suppliers will cause a
13 previously certified handgun to be removed from the Handgun Roster by Defendants
14 under the State’s laws and Defendants’ policies and enforcement practices.

15 77. Worse, certified handgun models are removed from the Roster by
16 Defendants if the manufacturer does not pay an annual fee to maintain the model on
17 the Roster. Penal Code § 32015(b)(2). On information and belief, due to the Handgun
18 Ban, just as hundreds of handgun makes and models have already been removed
19 from Defendants’ Roster, more handgun makes and models will “drop off” the
20 Roster as manufacturers choose to update their products—as well as their materials,
21 processes, and supply chains—to make them more competitive in the broader
22 civilian market throughout the United States and/or refusing to continue to pay

23 _____
24 2020), at [https://www.sfchronicle.com/politics/article/Assemblyman-Chiu-pushes-](https://www.sfchronicle.com/politics/article/Assemblyman-Chiu-pushes-firearms-industry-to-15132278.php)
25 [firearms-industry-to-15132278.php](https://www.sfchronicle.com/politics/article/Assemblyman-Chiu-pushes-firearms-industry-to-15132278.php).

26 *See also* Alexei Koseff, “[California Governor] Newsom signs bill that compels
27 gunmakers to adopt bullet-tracing technology,” *San Francisco Chronicle* (Sept. 29,
28 2020), at [https://www.sfchronicle.com/politics/article/Newsom-signs-bill-that-](https://www.sfchronicle.com/politics/article/Newsom-signs-bill-that-compels-gunmakers-to-adopt-15607657.php)
[compels-gunmakers-to-adopt-15607657.php](https://www.sfchronicle.com/politics/article/Newsom-signs-bill-that-compels-gunmakers-to-adopt-15607657.php).

1 California’s extortive annual renewal fees, making them ineligible to renew on the
2 Roster, further reducing the availability of constitutionally protected arms that
3 individual adults not disqualified from exercising Second Amendment rights have a
4 fundamental right to acquire and possess.

5 78. Indeed, Defendants’ list of “De-Certified Handguns” shows hundreds
6 of handgun models have been removed from the Roster since December of 2001,
7 including 33 this year alone, <https://oag.ca.gov/firearms/de-certified-handguns> (last
8 visited October 24, 2022), whereas just one handgun model has been “recently
9 added” this month according to Defendants’ list of “Recently Added Handgun
10 Models,” <https://oag.ca.gov/firearms/certified-handguns/recently-added> (last visited
11 October 24, 2022).

12 79. Handguns that have passed California’s tests and were certified by
13 Defendants do not become “unsafe”—much less lose their constitutional
14 protection—simply because a manufacturer does not pay an annual fee.

15 80. Handguns that do not have one or all of the “safety” devices as required
16 under the Handgun Ban are neither “dangerous” nor “unusual” and are instead in
17 common use for lawful purposes throughout the United States.

18 81. Handguns that do not have chamber load indicators are neither
19 “dangerous” nor “unusual” and are instead in common use for lawful purposes
20 throughout the United States.

21 82. Handguns that do not have magazine disconnect mechanisms are
22 neither “dangerous” nor “unusual” and are instead in common use for lawful
23 purposes throughout the United States.

24 83. Handguns that do not have “microstamping” technology are neither
25 “dangerous” nor “unusual” and are instead in common use for lawful purposes
26 throughout the United States.

27 84. Any of the attributes, systems, and “safety” devices required under the
28 Handgun Ban can fail or be altered or removed by a handgun’s possessor, and the

1 absence of one or all of them does not strip the protection for otherwise
2 constitutionally protected arms.

3 85. The attributes, systems, and “safety” devices required under
4 California’s Handgun Ban are not sufficient to guarantee a handgun’s safe use.

5 86. The attributes, systems, and “safety” devices required under the
6 Handgun Ban cannot replace safe and responsible gun handling.

7 87. Microstamping technology is not a safety device.

8 88. Microstamping technology has not been shown to viably support any
9 law enforcement purpose.

10 89. On information and belief, as of November 8, 2020, there were no
11 commercially available semiautomatic handguns manufactured in the United States
12 that have the microstamping technology required under the Handgun Ban.

13 90. On information and belief, as of January 4, 2021, there are no
14 commercially available semiautomatic handguns manufactured in the United States
15 that have the microstamping technology required under the Handgun Ban.

16 91. On information and belief, as of November 8, 2020, there were no
17 commercially available semiautomatic handguns manufactured in the United States
18 that met all of the requirements under the Handgun Ban.

19 92. On information and belief, as of January 4, 2021, there were no
20 commercially available semiautomatic handguns manufactured in the United States
21 that meet all of the requirements under the Handgun Ban.

22 93. On information and belief, as of October 24, 2022, there are still no
23 commercially available semiautomatic handguns manufactured in the United States
24 that meet all of the requirements under the Purchase Ban.

25 94. California law requires that handgun purchasers successfully complete
26 a test, pay a fee, and acquire a valid FSC before they purchase and take possession
27

28

1 of any firearm, including handguns. Penal Code § 31610, *et seq.*⁶

2 95. Defendants’ publicly available Firearms Safety Certificate (“FSC”) Study Guide, a document published by the Office of the Attorney General and
3 California Department of Justice Bureau of Firearms, Defendants’ Spanish-language
4 version of the FSC Study Guide, and Defendants’ FSC “MANUAL for California
5 Firearms Dealers and DOJ Certified Instructors” are available on Defendants’
6 website at <https://oag.ca.gov/firearms/fsc>.
7

8 96. In their publicly available FSC Study Guide, Defendants state, in red
9 type: “**REMEMBER: Ignorance and carelessness can result in firearm accidents.**
10 **Basic gun safety rules must be applied ALL OF THE TIME.**” (Color and
11 capitalization in original.)

12 97. In the first section of Chapter 1 of Defendants’ FSC Study Guide
13 (captioned “THE SIX BASIC GUN SAFETY RULES”), the Guide states: “There
14 are six basic gun safety rules for gun owners to understand and practice at all times:
15 1. Treat all guns as if they are loaded. 2. Keep the gun pointed in the safest possible
16 direction. 3. Keep your finger off the trigger until you are ready to shoot. 4. Know
17 your target, its surroundings, and beyond. 5. Know how to properly operate your
18 gun. 6. Store your gun safely and securely to prevent unauthorized use. Guns and
19 ammunition should be stored separately.” (Line breaks removed.)

20 98. Under common rules of firearm safety, and within the knowledge
21 required for the State’s FSC and safe handling demonstration, is the fundamental
22 rule that all firearms must always be treated as though they are loaded.

23 99. It is irresponsible and unsafe to rely on “safety” devices required under
24 the Handgun Ban.

25 100. Additionally, Defendants’ require firearm purchasers, the retailer, and
26

27 ⁶ See also 11 CCR § 4250, *et seq.*, and Defendants’ website at
28 <https://oag.ca.gov/firearms/fscfaqs>.

1 the DOJ Certified Instructor licensed and permitted to proctor the test, to conduct,
2 successfully pass, and certify in a “Safe Handling Demonstration Affidavit” (online
3 at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/hscaff.pdf>) signed
4 under penalty of perjury, that the purchaser or transferee “performed the safe
5 handling demonstration as required in Penal Code sections 26850, 26853, 26856,
6 26859, or 26860, as applicable, with the firearm (or one of the same make and model)
7 referenced” on the Dealer’s Record of Sale (DROS) number associated with the
8 purchase or transfer.

9
10 **COUNT ONE**
11 **42 U.S.C. § 1983**
12 **RIGHT TO KEEP AND BEAR ARMS**
13 **U.S. CONST., AMENDS. II AND XIV**

14 101. Plaintiffs incorporate herein by reference the foregoing paragraphs as if
15 fully set forth herein.

16 102. There is an actual and present controversy between the parties.

17 103. The Second Amendment to the United States Constitution guarantees
18 “the right of the people to keep and bear Arms.” U.S. CONST. AMEND. II.
19 Plaintiffs, and all similarly situated members of Institutional Plaintiffs, who are all
20 eligible to exercise their Second Amendment rights, wish to keep and bear
21 constitutionally protected arms for self-defense and other lawful purposes.

22 104. The Fourteenth Amendment to the United States Constitution provides
23 in pertinent part:

24 No state shall make or enforce any law which shall abridge the
25 privileges or immunities of citizens of the United States; nor shall any
26 state deprive any person of life, liberty, or property, without due process
27 of law; nor deny to any person within its jurisdiction the equal
28 protection of the laws.

105. The Second Amendment is fully applicable to the States through the

1 Fourteenth Amendment’s Due Process and Privileges or Immunities Clauses.
2 *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *id.* at 805 (Thomas, J.,
3 concurring).

4 106. Because of the Defendants’ enforcement of the laws, regulations,
5 policies, practices, and customs underlying the purchase prohibitions of the Handgun
6 Ban, Plaintiffs, and all similarly situated members of Institutional Plaintiffs, cannot
7 purchase new constitutionally protected arms without suffering criminal liability.

8 107. Nothing in the “Nation’s historical tradition of firearm regulation”
9 supports the heavy-handed purchase restrictions here. *Bruen*, 142 S. Ct. at 2130.

10 108. Individuals in California have a right to keep and bear arms, including
11 but not limited to, buying, selling, transferring, self-manufacturing or assembling,
12 transporting, carrying, and practicing safety and proficiency with, firearms,
13 ammunition, magazines, and appurtenances, under the Second and Fourteenth
14 Amendments to the United States Constitution.

15 109. This fundamental, individual right to keep and bear firearms includes
16 the right to acquire modern handguns in common use for lawful purposes—indeed,
17 arms that are lawfully sold and possessed throughout the United States—such as
18 those the Handgun Ban prevents common law-abiding citizens from purchasing at a
19 licensed retailer.

20 110. The text of the Second Amendment, which guarantees “the right of the
21 people to keep and bear Arms,” implicitly includes the right to so acquire firearms.
22 Further, the “right to keep arms, necessarily involves the right to purchase them, to
23 keep them in a state of efficiency for use, and to purchase and provide ammunition
24 suitable for such arms.” *See Andrews v. State*, 50 Tenn. 165, 178 (1871); *accord*
25 *Teixeira v. County of Alameda*, 873 F.3d 670, 678 (2017).

26 111. Further, without constitutional protections for the acquisition as well as
27 the manufacturing of firearms, the “right of the people to keep and bear Arms” would
28 be in jeopardy. *See Ezell*, 651 F.3d at 704 (clarifying that “[t]he right to possess

1 firearms for protection implies a corresponding right to acquire and maintain
2 proficiency in their use; the core right wouldn't mean much without the training and
3 practice that make it effective.”); *Ill. Ass'n of Firearms Retailers v. City of Chicago*,
4 961 F. Supp. 2d 928, 930, 938 (N.D. Ill. 2014) (holding that “the right to keep and
5 bear arms for self-defense under the Second Amendment . . . must also include the
6 right to acquire a firearm . . .”).

7 112. Contrary to the regulations like those in Penal Code sections 31900, *et*
8 *seq.* and 32000, *et seq.*, underlying the Handgun Ban and related Handgun Roster,
9 no founding era precedent exists for declaring “unsafe” and prohibiting the
10 commercial sale of firearms otherwise widely available and in common use for
11 lawful purposes among ordinary law-abiding citizens; such regulations only exist in
12 a handful of jurisdictions and all of them are of recent origin—the *earliest* was
13 Maryland's, enacted in 1988. Md. Code Ann., Pub. Safety § 5-405.

14 113. The purchase prohibitions of the Handgun Ban prevent law-abiding
15 citizens, like and including Plaintiffs, and all similarly situated members of
16 Institutional Plaintiffs, from acquiring and thus possessing for lawful purposes
17 “instruments that constitute bearable arms” protected under the Second Amendment.

18 114. These unprecedented regulations are plainly inconsistent with the
19 “Nation's historical tradition of firearm regulation.” *See Bruen*, 142 S. Ct. at 2130.
20 Accordingly, these restrictions on the purchase and acquisition of firearms fall
21 directly within—and are proscribed by—the Second Amendment's “unqualified
22 command.” *Bruen*, 142 S. Ct. at 2130 (quoting *Konigsberg*, 366 U.S. at 50, n.10).

23 115. The Handgun Ban's prohibition on the purchase of constitutionally
24 protected arms and maintenance of the Roster for purposes of enforcing this
25 proscription in the absence of the necessary historical precedent fails full stop under
26 *Bruen*, rendering them unconstitutional both facially and as applied in this case.

27 116. “The very enumeration of the [Second Amendment] right takes out of
28 the hands of government . . . the power to decide on a case-by-case basis whether

1 the right is *really worth* insisting upon.” *Heller*, 554 U.S. at 635 (emphasis in
2 original).

3 117. The Second Amendment is not a “second-class right, subject to an
4 entirely different body of rules than the other Bill of Rights guarantees,” *McDonald*,
5 561 U.S. 742, 780, and it cannot “be singled out for special—and especially
6 unfavorable—treatment.” *Id.* at 778–79.

7 118. *Bruen*, 142 S. Ct. 2111, made this clear by expressly rejecting all
8 interest balancing and the Ninth Circuit’s prior “two-step” approach in the context
9 of Second Amendment claims.

10 119. “*Heller* and *McDonald* do not support applying means-end scrutiny in
11 the Second Amendment context. Instead, the government must affirmatively prove
12 that its firearms regulation is part of the historical tradition that delimits the outer
13 bounds of the right to keep and bear arms.” 142 S. Ct. at 2127. Rather, “*Heller* ...
14 demands a test rooted in the Second Amendment’s text, as informed by history. *Id.*

15 120. Thus, *Bruen* makes clear that the Ninth Circuit’s former two-step
16 approach and interest-balancing applied in *Peña v. Lindley*, 898 F.3d 969 (9th Cir.
17 2018), which previously upheld a prior version of some of the laws challenged
18 herein, are inapplicable and improper in Second Amendment cases.

19 121. *Bruen* did not create a new test but instead applied the very test the
20 Court established in *Heller* in 2008. “The test that we set forth in *Heller* and apply
21 today requires courts to assess whether modern firearms regulations are consistent
22 with the Second Amendment’s text and historical understanding.” *Id.*, at 2131.

23 122. “*Heller*’s methodology centered on constitutional text and history.
24 Whether it came to defining the character of the right (individual or militia
25 dependent), suggesting the outer limits of the right, or assessing the constitutionality
26 of a particular regulation, *Heller* relied on text and history. It did not invoke any
27 means-end test such as strict or intermediate scrutiny.” *Id.*, at 2128–29.

28 123. The plain text of the Second Amendment covers the conduct the

1 Plaintiffs, and all similarly situated members of Institutional Plaintiffs, wish to
2 engage in (“keep and bear arms”) and the arms they wish to keep and bear. “[T]he
3 Second Amendment extends, prima facie, to all instruments that constitute bearable
4 arms,” *Bruen*, 142 S. Ct., at 2132 (quoting *Heller*, 554 U. S., at 582).

5 124. Since the conduct is covered by the Second Amendment’s plain text,
6 “the Constitution presumptively protects that conduct. To justify its regulation, the
7 government . . . must demonstrate that the regulation is consistent with this Nation’s
8 tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2126.

9 125. *Heller* has already established the relevant contours of the tradition:
10 Bearable arms that are presumptively protected by the Second Amendment cannot
11 be banned unless they are both dangerous *and* unusual.

12 126. The Second Amendment’s “reference to ‘arms’ does not apply ‘only
13 [to] those arms in existence in the 18th century.’ ” *Bruen*, 142 S. Ct., at 2132 (quoting
14 *Heller*, 554 U. S., at 582). “Just as the First Amendment protects modern forms of
15 communications, and the Fourth Amendment applies to modern forms of search, the
16 Second Amendment extends, prima facie, to all instruments that constitute bearable
17 arms, even those that were not in existence at the time of the founding.” *Id.* (citations
18 omitted).

19 127. And “[w]hatever the likelihood that handguns were considered
20 dangerous and unusual during the colonial period, they are indisputably in common
21 use for self-defense today. They are, in fact, the quintessential self-defense weapon.”
22 *Bruen*, 142 S. Ct. 2111, at 2143 (quoting *Heller*, 554 U. S., at 629, 128 S. Ct. 2783,
23 171 L. Ed. 2d 637) (cleaned up).

24 128. “Thus, even though the Second Amendment’s definition of ‘arms’ is
25 fixed according to its historical understanding, that general definition covers modern
26 instruments that facilitate armed self-defense. *Cf. Caetano v. Massachusetts*, 577 U.
27 S. 411, 411-412, 136 S. Ct. 1027, 194 L. Ed. 2d 99 (2016) (*per curiam*) (stun guns).”
28 *Id.*

1 129. Millions of handguns prohibited for sale to the State’s law-abiding
2 citizens are commonly possessed and used for self-defense and other lawful purposes
3 in the vast majority of states, securing their protection from such regulation.

4 130. In the approximately 400-year history of the colonies and later the
5 United States, no regulations at all like the Handgun Ban appeared until recently in
6 only a few states. That is hardly a historical tradition of such regulations.

7 131. To reiterate, the Second Amendment to the United States Constitution
8 provides: “A well-regulated Militia being necessary to the security of a free State,
9 the right of the people to keep and bear Arms *shall not* be infringed.”

10 132. Defendants are individually and collectively responsible for the
11 formulation, issuance, implementation, and/or enforcement of the laws, regulations,
12 policies, practices, and customs underlying the purchase prohibitions of the Handgun
13 Ban.

14 133. Defendants have enforced and will continue to enforce the purchase
15 prohibitions under the Handgun Ban against Individual Plaintiffs, Retailer Plaintiffs
16 and their customers, and similarly situated Institutional Plaintiffs’ members.

17 134. Defendants’ enforcement of the purchase prohibitions under the
18 Handgun Ban has prevented and continues to prevent Individual Plaintiffs, Retailer
19 Plaintiffs’ customers, and similarly situated Institutional Plaintiffs’ members from
20 purchasing new constitutionally protected handguns in violation of their rights
21 protected under the Second and Fourteenth Amendments to the United States
22 Constitution.

23 135. Individual Plaintiffs, Retailer Plaintiffs and their customers, and
24 similarly situated Institutional Plaintiffs’ members reasonably fear that Defendants
25 will enforce the purchase prohibitions under the Handgun Ban, including associated
26 criminal laws and civil penalties, against them should they violate the same.

27 136. 42 U.S.C. § 1983 creates a cause of action against state actors who
28 deprive individuals of federal constitutional rights under color of state law.

1 137. Defendants, individually and collectively, and under color of State law
2 at all relevant times, have deprived the fundamental constitutional rights, privileges,
3 and immunities of citizenship of adult persons in the State of California not
4 disqualified from exercising their fundamental, individual right to keep and bear
5 arms, including Individual Plaintiffs, Retailer Plaintiffs' customers, and similarly
6 situated Institutional Plaintiffs' members, through Defendants' enforcement and
7 implementation of the purchase prohibitions under the Handgun Ban, which has
8 denied, and will continue to infringe upon and prevent by criminal sanction, the
9 exercise of the fundamental right to keep and bear arms unless and until redressed
10 through the relief Plaintiffs seek herein.

11 138. For all the reasons asserted herein, Defendants have acted in violation
12 of, and continue to act in violation of, 42 U.S.C. § 1983, compelling the relief
13 Plaintiffs seek.

14 139. Because Defendants' enforcement of the purchase prohibitions under
15 the Handgun Ban violates Plaintiffs' rights under the Second and Fourteenth
16 Amendments to the United States Constitution, Plaintiffs are entitled to declaratory
17 and injunctive relief.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for the following relief:

20 1. A declaratory judgment that Defendants' enforcement of the laws,
21 regulations, policies, practices, and customs underlying the purchase prohibitions of
22 the Handgun Ban prevent Individual Plaintiffs, Retailer Plaintiffs' customers, and
23 similarly situated Institutional Plaintiffs' members who are not disqualified from
24 exercising Second Amendment rights from purchasing new constitutionally
25 protected arms, in violation of their right to keep and bear arms protected under the
26 Second and Fourteenth Amendments to the United States Constitution;

27
28

1 2. An injunction restraining Defendants and their officers, agents,
2 servants, employees, and all persons in concert or participation with them, and all
3 persons who have notice of the injunction, from enforcing the purchase prohibitions
4 of the Handgun Ban;

5 3. Attorney’s fees and costs pursuant to 42 U.S.C. § 1988 and any other
6 applicable law;

7 4. That this Court retain jurisdiction after judgment for the purposes of
8 resolving any future fee disputes between the parties and issuing further appropriate
9 injunctive relief if the Court’s declaratory judgment(s) is/are violated; and,

10 5. All other and further legal and equitable relief, including injunctive
11 relief, against Defendants as necessary to effectuate the Court’s judgment, or as the
12 Court otherwise deems just and equitable.

13 Respectfully submitted this 31st day of October 2022.

14
15 /s/ Raymond M. DiGuiseppe
16 Raymond M. DiGuiseppe
17 The DiGuiseppe Law Firm, P.C.
18 4320 Southport-Supply Road, Suite 300
19 Southport, NC 28461
20 Tel.: 910-713-8804
21 Email: law.rmd@gmail.com
22 Attorney for Plaintiffs
23
24
25
26
27
28