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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **EASTERN DISTRICT OF CALIFORNIA**

16 -----x  
17 MARK BAIRD and  
18 RICHARD GALLARDO,

19 Plaintiffs,

20 **Case No.: 2:19-cv-00617-KJM-AC**

21 v.

22 **SECOND AMENDED COMPLAINT**  
23 **FOR DECLARATORY AND**  
24 **INJUNCTIVE RELIEF**

25 ROB BONTA, in his official capacity  
26 as Attorney General of the State of California,

27 Defendant.  
28 -----x

29 NOW COME Plaintiffs, MARK BAIRD and RICHARD GALLARDO, by and through  
30 their counsel, and allege against Defendant California Attorney General Rob Bonta as follows:

31 **NATURE OF THE ACTION**

32 1. This is an action for declaratory and injunctive relief proximately caused by the actions  
33 of the defendant for violations of the plaintiffs' Second and Fourteenth Amendments to the United  
34 States Constitution pursuant to 42 U.S.C. § 1983. This action seeks to turn back the hands of time  
35 to pre-Mulford Act California and the free exercise of the Right to open carry a handgun for self-  
36 defense, consistent with this Nation's history and Second Amendment traditions.

1           2.       In *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, the Supreme Court declared,  
2 “In keeping with *Heller*, we hold that when the Second Amendment’s plain text covers an  
3 individual’s conduct, the Constitution presumptively protects that conduct.” 142 S. Ct. 2111, 2126  
4 (2022).

5           3.       Plaintiffs’ right to carry a handgun open and exposed throughout the State of  
6 California, loaded or unloaded, is conduct covered by the plain text of the Second Amendment and  
7 presumptively protected by the U.S. Constitution.

8           4.       The *Bruen* Court continued, “To justify its regulation, the government may not  
9 simply posit that the regulation promotes an important interest. Rather, the government must  
10 demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm  
11 regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a  
12 court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified  
13 command.” *Id.* citing, *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n. 10 (1961).<sup>1</sup>

14           5.       Firearms have been part of this Nation’s history since the colonists arrived.<sup>2</sup> The  
15 colonists would not have been able to defeat the English military in the Revolutionary War had the  
16 colonists not possessed and had access to firearms and ammunition – the colonists had no ‘military’  
17 and, as *Heller* confirmed, the right to keep and bear arms is an *individual* right, not the collective  
18 right of some type of militia or otherwise. *D.C. v. Heller*, 554 U.S. 570, 591 (2008) (“...even if  
19 ‘keep and bear Arms’ were a unitary phrase, we find no evidence that it bore a military  
20 meaning...Putting all of these textual elements together, we find that they guarantee the individual  
21 right to possess and carry weapons in case of confrontation.”).

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23 <sup>1</sup> “Rather than begin with its view of the governing legal framework, the dissent chronicles, in painstaking detail,  
24 evidence of crimes committed by individuals with firearms. See post, at 2163 - 2168 (opinion of BREYER, J.). The  
25 dissent invokes all of these statistics presumably to justify granting States greater leeway in restricting firearm  
26 ownership and use. But, as Members of the Court have already explained, “[t]he right to keep and bear arms ... is not  
27 the only constitutional right that has controversial public safety implications.” *McDonald v. Chicago*, 561 U.S. 742,  
28 783, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010) (plurality opinion).” *Bruen*, 142 S. Ct. at 2126, n. 3.

26 <sup>2</sup> <https://www.guns.com/news/2011/07/06/who-were-the-colonists-and-what-were-they-firing-guns-of-the-american-revolution>;  
27 <http://www.revolutionarywarjournal.com/rifles-in-the-revolutionary-war/#:~:text=Settlers%20who%20moved%20west%20of%20the%20Cumberland%20Mountains,making%20it%20the%20rifle-making%20center%20of%20the%20colonies.>



**THE PARTIES**

1  
2 13. Plaintiff, MARK BAIRD (“Plaintiff” or “Mr. Baird”) is a United States citizen and  
3 a resident of Siskiyou County, California which, according to the most recent census, has a  
4 population under 200,000.

5 14. Plaintiff, RICHARD GALLARDO (“Plaintiff” of “Mr. Gallardo”) is a United States  
6 citizen and a resident of Shasta County, California which, according to the most recent census, has  
7 a population under 200,000.

8 15. Defendant ROB BONTA (“Defendant” or “Defendant Bonta”) is the Attorney  
9 General of the State of California. Defendant Bonta is sued herein in his official capacity only.  
10 Pursuant to California State Constitution Article V, Section 13, as the Attorney General for the  
11 State of California, Defendant is the chief law enforcement officer of the State whose duty it is to  
12 ensure that the laws of the State are uniformly and adequately enforced.

13 16. Defendant Bonta has direct supervision over every district attorney and sheriff and  
14 over such other law enforcement officers as may be designated by law, in all matters pertaining to  
15 the duties of their respective offices and may require any of said officers to make reports concerning  
16 the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions  
17 as to Defendant may seem advisable.

18 17. Whenever in the opinion of the Defendant any law of the State is not being  
19 adequately enforced in any county, it shall be Defendant’s duty to prosecute any violations of law  
20 of which the superior court shall have jurisdiction. In such cases Defendant shall have all the powers  
21 of a district attorney. When required by the public interest or directed by the Governor, Defendant  
22 shall assist any district attorney in the discharge of the duties of that office.

23 **STATEMENT OF FACTS**

24 ***Plaintiff Mark Baird***

25 18. Mark Baird is an individual of unquestionably good moral character, a law-abiding  
26 citizen, and has never been charged with, summoned, or arrested for any violation of the California  
27 Penal Code or any other criminal offense.  
28

1           19. Mr. Baird is not prohibited by state or federal law from possessing, receiving,  
2 owning, or purchasing a firearm. Mr. Baird lawfully possesses firearms (handguns and long guns)  
3 in his home for self-defense.

4           20. Mr. Baird does not hold a California firearm license and does not fall within any of  
5 the exemptions to California Penal Code sections 25850 and 26350 criminalizing the possession of  
6 firearms.

7           21. Mr. Baird has a present intention to carry a handgun open and exposed for self-  
8 defense, loaded or unloaded, throughout the State of California, today and every day for the  
9 remainder of his natural life.

10           22. Mr. Baird intends to exercise the rights protected by the Second and Fourteenth  
11 Amendments without seeking permission from the government, including applying for and  
12 obtaining a license under California's licensing scheme, Penal Code sections 26150 and 26155.

13           23. Mr. Baird presently faces imminent arrest, prosecution, fines, and other criminal  
14 penalties for carrying a handgun in public without a license under Penal Code sections 25850 and  
15 26350, as well as other civil penalties including loss of property.

16           24. On more than one occasion, Mr. Baird has tried to apply for an open carry license  
17 in Siskiyou County, but there is no Open Carry license application available from the DOJ and,  
18 even if there were, no open carry licenses are issued anywhere in California, and he has been  
19 advised by the licensing authority in his county that no open carry licenses will be issued.

20           25. The County of Siskiyou, California, according to the most recent federal census, has  
21 a population of less than 200,000 people. As a resident of the County of Siskiyou, Mr. Baird is  
22 prohibited from applying for a handgun carry license in any other county in California. Even if  
23 issued an open carry license, such license would be invalid outside of Siskiyou County under Penal  
24 Code sections 26150 (b)(2) and 26155(b)(2). If Mr. Baird were to carry open and exposed outside  
25 of Siskiyou County with or without a license, he would be arrested, prosecuted, and subject to other  
26 criminal and civil penalties.

27           26. Upon information and belief, the licensing authorities' described conduct is  
28 performed at the direction of and/or with the knowledge and approval of Defendant Bonta.

1           27.     There is no administrative appeal process available for challenging the denial of an  
2 application for an open carry license. Even if there were an available administrative appeal process  
3 to challenge the denial of Mr. Baird’s application for an open carry license, such ‘process’ would  
4 have been futile because Mr. Baird has been informed that no open carry licenses will be issued.

5           28.     More importantly, there is no historical tradition in this Nation of requiring a license  
6 or other permission to open carry a handgun outside of one’s home for self-defense. Requiring any  
7 such license violates the Second and Fourteenth Amendments.

8 ***Plaintiff Richard Gallardo***

9           29.     Richard Gallardo is an individual of unquestionably good moral character, a law-  
10 abiding citizen, and has never been charged with, summoned, or arrested for any violation of the  
11 California Penal Code or any other criminal offense.

12           30.     Mr. Gallardo is not prohibited by state or federal law from possessing, receiving,  
13 owning, or purchasing a firearm.

14           31.     Mr. Gallardo does not hold a California firearm license and does not fall within any  
15 of the exemptions to the California Penal Code sections criminalizing the open carriage of a  
16 handgun firearms, whether loaded or unloaded.

17           32.     Mr. Gallardo lawfully possesses firearms (handguns and long guns) in his home for  
18 self-defense.

19           33.     Mr. Gallardo has a present intention to carry a handgun open and exposed for self-  
20 defense, loaded or unloaded, throughout the State of California, today and every day for the  
21 remainder of his natural life.

22           34.     Mr. Gallardo intends to exercise the rights protected by the Second and Fourteenth  
23 Amendments without seeking permission from the government, including applying for and  
24 obtaining a license under Penal Code sections 26150 and 26155.

25           35.     Mr. Gallardo presently faces imminent arrest, prosecution, fines, and other criminal  
26 penalties for carrying a handgun in public without a license under Penal Code sections 25850 and  
27 26350, as well as other civil penalties including loss of property.

28



1 the event of a violent confrontation. *Heller*, supra; *McDonald*, supra; *Caetano v. Massachusetts*,  
2 577 U.S. (2016).

3 43. “Individual self-defense is the central component of the Second Amendment right.”  
4 *McDonald*, 561 U.S. at 767, citing, *Heller*, 554 U.S. at 599 (internal quotations omitted). The  
5 Second Amendment protects the core right of the individual to self-protection. *Heller*, 554 U.S. at  
6 595-599, 628.

7 44. The Second Amendment is “deeply rooted in this Nation’s history and tradition”  
8 and fundamental to our scheme of ordered liberty”. *McDonald*, 561 U.S. at 768. The Second  
9 Amendment’s protections are fully applicable to the states through the Fourteenth Amendment.  
10 *McDonald*, 130 S. Ct. at 3026.

11 45. The “Second Amendment extends, prima facie, to all instruments that constitute  
12 bearable arms, even those that were not in existence at the time of the founding ...” *Caetano v.*  
13 *Massachusetts*, 577 U.S. at 411.

14 46. Handguns are ‘bearable arms’ in common use for self-defense and therefore are  
15 presumptively protected by the Second Amendment. *Heller*, 554 U.S. at 629; *Caetano*, supra.

16 ***The “People” Protected By the Constitution***

17 47. *Heller* explained, “in all six other provisions of the Constitution that mention ‘the  
18 people,’ the term unambiguously refers to all members of the political community, not an  
19 unspecified subset.” *Heller*, at 580. “[T]he people’ ... refers to a class of persons who are part of a  
20 national community or who have otherwise developed sufficient connection with this country to be  
21 considered part of that community.” *Id.* (citation omitted).

22 48. Plaintiffs are members of the national community with no prohibitors to the  
23 possession of firearms and are entitled to the full and unabridged protections of the Second and  
24 Fourteenth Amendments.

1 *The Bruen Test for Second Amendment Challenges*

2 49. The Second Amendment “guarantee[s] the individual right to possess and carry  
3 weapons in case of confrontation.” *Heller*, at 592.

4  
5 “Putting all of these textual elements together, we find that they  
6 *guarantee* the individual right to possess and carry weapons in case  
7 of confrontation. This meaning is strongly confirmed by the  
8 historical background of the Second Amendment. We look to this  
9 because it has always been widely understood that the Second  
10 Amendment, like the First and Fourth Amendments, codified a pre-  
11 existing right. The very text of the Second Amendment implicitly  
12 recognizes the pre-existence of the right and declares only that it  
13 ‘shall not be infringed.’ As we said in *United States v. Cruikshank*,  
14 92 U.S. 542, 553, 23 L.Ed. 588 (1876), ‘[t]his is not a right granted  
15 by the Constitution. Neither is it in any manner dependent upon that  
16 instrument for its existence. The second amendment declares that it  
17 shall not be infringed ....”

18 *Id.* (emphasis added).

19 50. In *Bruen*, the Supreme Court flatly rejected the tripartite, intermediate scrutiny,  
20 ‘means-end’ public safety balancing test<sup>4</sup> improperly created and applied by the Ninth Circuit<sup>5</sup> and  
21 others. Rather, the test that must be applied to Second Amendment challenges is as follows:

22 “we hold that when the Second Amendment's plain text covers an  
23 individual’s conduct, the Constitution **presumptively** protects that  
24 conduct.

25 To justify its regulation, the government may not simply posit that  
26 the regulation promotes an important interest.

27 Rather, **the government must demonstrate** that the regulation is  
28 consistent with this Nation's historical tradition of firearm regulation.

---

24 <sup>4</sup> Core Second Amendment rights, like the right to possess firearms in the home for self-defense, are not subject to  
25 ‘interest balancing’. *Heller*, 554 U.S. at 634 (“We know of no other enumerated constitutional right whose core  
26 protection has been subjected to a freestanding ‘interest-balancing’ approach. The very enumeration of the right takes  
27 out of the hands of government--even the Third Branch of Government--the power to decide on a case-by-case basis  
28 whether the right is really worth insisting upon.”).

<sup>5</sup> “Despite the popularity of this two-step approach, it is one step too many. Step one of the predominant framework  
is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by  
history. But *Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context.  
Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that  
delimits the outer bounds of the right to keep and bear arms.” *Bruen*, at 2127.

1           Only if a firearm regulation is consistent with this Nation's historical  
2           tradition may a court conclude that the individual's conduct falls  
3           outside the Second Amendment's "unqualified command."

4           *Bruen*, at 2126 (emphasis added) citing, *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n. 10  
5           (1961).

6                           ***Bruen Defined and Limited the Relevant Historical Time Period***

7           51.     Because "not all history is created equal," the *Bruen* Court held that, when deciding  
8           whether the government's regulation is consistent with this Nation's historical tradition,

9                           the only appropriate inquiry is what the public understanding of the  
10                          right to keep and bear arms was during the ratification of the Second  
11                          Amendment in 1791, and perhaps during ratification of the  
12                          Fourteenth Amendment in 1868.

13           *Bruen*, at 2138.

14           52.     "Post-ratification adoption or acceptance of laws that are inconsistent with the  
15           original meaning of the constitutional text obviously cannot overcome or alter that text." *Bruen*, at  
16           2137 (emphasis supplied) citing, *Heller*, 670 F.3d at 1274, n. 6 (Kavanaugh, J., dissenting);  
17           *Espinoza v. Montana Dept. of Revenue*, 591 U.S. —, —, 140 S.Ct. 2246, 2258–2259 (2020).

18                           ***The Challenged Regulations Violate the Second and Fourteenth Amendments***

19           53.     The plain text of the Second Amendment presumptively protects Plaintiffs' conduct:  
20           the open carriage of a handgun in public for self-defense.

21           54.     Defendants "must demonstrate that their regulations are consistent with this  
22           Nation's historical tradition of firearm regulation. *Bruen*, at 2126. Only if a firearm regulation is  
23           consistent with this Nation's historical tradition may a court conclude that the individual's conduct  
24           falls outside the Second Amendment's 'unqualified command'." *Bruen*, at 2126.

25           55.     Defendants cannot meet that burden.  
26  
27  
28

CALIFORNIA’S REGULATIONS

*Penal Code Sections 25850 and 26350 Violate the Second and Fourteenth Amendments*

56. In California, the possession of a handgun in one’s home is lawful and requires no license or permission from the government. But the ‘mere possession’ of a handgun in public is a crime. An average citizen who steps outside of his home armed with a handgun for self-defense risks arrest, incarceration, prosecution, fines, and other criminal and civil penalties, including permanent loss of Second Amendment rights and loss of property (firearms).

Penal Code § 25850

57. Under California Penal Code section 25850, a person is guilty of carrying a loaded firearm when he carries a loaded firearm on his person or in a vehicle while in any public place or on any public street in an incorporated city or in a prohibited area of unincorporated territory. (emphasis added).

58. Section 25850 allows the police the unfettered ability to stop an individual to inspect their firearm to determine whether the firearm is or is not loaded; refusal to allow a peace officer to inspect a firearm constitutes probable cause for arrest.

Penal Code § 26350

59. Under California Penal Code section 26350, a person is guilty of openly carrying an unloaded handgun for carrying upon his person an exposed and unloaded handgun outside a vehicle while in a public place or public street in an incorporated city or city and county, a public street in a prohibited area of an unincorporated area of a county or city and county, or a public place in a prohibited area of a county or city and county. (emphasis added).

60. Penal Code sections 25850 and 26350 criminalize the mere possession of a handgun for self-defense – a right protected by the Second Amendment and enforced against the states through the Fourteenth Amendment.

61. In *Bruen*, the Supreme Court reaffirmed that the right to carry firearms outside of the home is protected by the Second and Fourteenth Amendments. *Bruen*, supra.

1 “In this case, petitioners and respondents agree that ordinary, law-  
2 abiding citizens have a similar right to carry handguns publicly for  
3 their self-defense. We too agree, and now hold, consistent with  
4 *Heller* and *McDonald*, that the Second and Fourteenth Amendments  
5 protect an individual’s right to carry a handgun for self-defense  
6 outside the home.”

7 *Bruen*, 142 S. Ct. at 2122.

8 62. There is no American historical tradition of banning open carry, criminalizing the  
9 exercise thereof, or requiring a license or permission from the government exists. Indeed, while  
10 licensing schemes popped up in few areas of the country in the early 1900s, “post-ratification  
11 adoption or acceptance of laws that are inconsistent with the original meaning of the constitutional  
12 text obviously cannot overcome or alter that text.” *Bruen*, at 2137.

13 63. Until 1967 open carry was a widely accepted, and largely unremarkable, practice  
14 right here in California until the racially motivated Mulford Act outlawed possessing a loaded  
15 handgun in public, followed by banning the open carriage of an unloaded handgun in 2012.<sup>6</sup>

16 64. In 2016, an en banc panel of the Ninth Circuit proclaimed that the “uncontradicted  
17 historical evidence overwhelmingly shows, the Second Amendment does not protect, in any degree,  
18 the right of a member of the general public to carry a concealed weapon in public. The Second  
19 Amendment may or may not protect to some degree a right of a member of the general public to  
20 carry a firearm in public.”<sup>7</sup> The en banc Court continued,

21 **“If there is such a right, it is only a right to carry a firearm openly.”**

22 *Peruta II*, at 942.

23 65. Well, there *is* such a Right. *Heller* put that issue to bed in 2008:

24 “Putting all of these textual elements together, we find that they  
25 **guarantee the individual right to possess and carry weapons...**”

26 \_\_\_\_\_  
27 <sup>6</sup> Even if open carry licenses were issued (and constitutional), which they are not, under a “may issue” licensing scheme,  
28 they can only be applied for and issued in counties with a population under 200,000 and are invalid outside of the  
county of issuance. Penal Code sections 26150, 26155.

<sup>7</sup> *Peruta v. County of San Diego*, 824 F.3d 919, 942 (9th Cir. 2016) (emphasis added).

1 *Heller*, at 592.

2 66. In *Peruta II*, a Declaration “submitted by the County of San Diego indicates that *the*  
3 *point* of the concealed weapons licensing policy was to make concealed carry ‘a very rare  
4 privilege.’” *Id.* at n. 9 (emphasis added).

5 67. After the *Bruen* decision was published, California rushed to create even more  
6 restrictions on what is deemed the ‘privilege’ to carry concealed; “good cause” having been found  
7 unconstitutional by *Bruen*, Defendant and others pushed a massive bundle of restrictions in SB918  
8 to further restrict and prevent ‘the People’ - even those with a concealed carry license - from  
9 carrying a handgun in public for self-defense.

10 68. Lest there be any doubt, California’s zealous anti-Second Amendment agenda was  
11 revealed in the 7+ page preamble to SB918 railing public policy and ‘means end’ lamentations that  
12 the Supreme Court has repeatedly rejected since *Heller* in 2008.

13 “After an exhaustive discussion of the arguments for and against gun  
14 control, Justice BREYER arrives at his interest-balanced answer: Because handgun violence is a problem, because the law is limited  
15 to an urban area, and because there were somewhat similar restrictions in the founding period (a false proposition that we have  
16 already discussed), the interest-balancing inquiry results in the constitutionality of the handgun ban. QED.

17 To which the majority responded,

18 “We know of no other enumerated constitutional right whose core  
19 protection has been subjected to a freestanding “interest-balancing”  
20 approach. The very enumeration of the right takes out of the hands  
21 of government—even the Third Branch of Government—the power  
22 to decide on a case-by-case basis whether the right is *really worth*  
23 insisting upon. A constitutional guarantee subject to future judges’  
24 assessments of its usefulness is no constitutional guarantee at all.

25 Constitutional rights are enshrined with the scope they were  
26 understood to have when the people adopted them, whether or not  
27 future legislatures or (yes) even future judges think that scope too  
28 broad.”

29 *Heller*, at 634–35 (emphasis supplied).

30 69. *Bruen* confirmed the unconditional rejection of balancing emotions related to  
31 criminal acts against individual rights.

1 “Like that dissent in *Heller*, the real thrust of today’s dissent is that  
2 guns are bad and that States and local jurisdictions should be free to  
3 restrict them essentially as they see fit. That argument was rejected  
4 in *Heller*, and while the dissent protests that it is not rearguing *Heller*,  
5 it proceeds to do just that. See post, at 2176 - 2178.”

6 *Bruen*, at 2160–61.

7 70. Under this Nation’s historical traditions – and this State’s historical traditions - open  
8 carry is a Right covered by the Second Amendment and it *shall not be infringed*.

9 71. Exercising the right to carry handguns publicly for self-defense cannot, therefore,  
10 be punished by criminal penalties, including Penal Code sections 25850 and 26350. Non-prohibited  
11 individuals can no longer be punished for the ‘mere possession’ of a handgun for self-defense.

12 72. It is well-settled by a long line of decisions of the Supreme Court that an ordinance  
13 which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees  
14 contingent upon the uncontrolled will of an official—as by requiring a permit or license which may  
15 be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior  
16 restraint upon the enjoyment of those freedoms. *Shuttlesworth v. City of Birmingham, Ala.*, 394  
17 U.S. 147, 151 (1969) quoting, *Staub v. City of Baxley*, 355 U.S. 313, 322.

18 “And our decisions have made clear that a person faced with such an  
19 unconstitutional licensing law may ignore it and engage with  
20 impunity in the exercise of the right of free expression for which the  
21 law purports to require a license.”

22 *Id.* see also, *People v. Tony Diaz*, (Case No. 21FE019850, Sup. Ct. Sacramento) (sustaining  
23 demurrer of felony charges post-*Bruen* holding § 25850, which “subjects anyone in a public place  
24 carrying a loaded firearm on the person or in a vehicle to criminal prosecution... amounts to a total  
25 ban on public carry...cannot survive *Bruen*’s holding that public carry is presumptively legal.” “As  
26 *Bruen* stated: The constitutional right to bear arms in public for self-defense is not a ‘second-class  
27 right, subject to an entirely different body of rules than other Bill of Rights Guarantees’.” (citation  
28 omitted).

73. An individual cannot be prosecuted for exercising a constitutionally protected right.

*Id.*

**DECLARATORY JUDGMENT ALLEGATIONS**

74. There is an actual and present controversy between the parties.

75. Plaintiffs' Second and Fourteenth Amendment rights are being violated and will continue to be violated by the enforcement of (i) Penal Code section 25850 makes it illegal to carry a loaded firearm when he carries a loaded firearm on his person or in a vehicle while in any public place or on any public street in an incorporated city or in a prohibited area of unincorporated territory; and allows the police the unfettered ability to stop an individual to inspect their firearm to determine whether the firearm is or is not loaded; refusal to allow a peace officer to inspect a firearm constitutes probable cause for arrest; (ii) Penal Code section 26350 makes it illegal to openly carry an unloaded handgun for carrying upon his person an exposed and unloaded handgun outside a vehicle while in a public place or public street in an incorporated city or city and county, a public street in a prohibited area of an unincorporated area of a county or city and county, or a public place in a prohibited area of a county or city and county.

76. Penal Code sections 25850 and 26350 regulate conduct that is protected by the plain language of the Second Amendment.

77. Penal Code sections 25850 and 26350 have no historical analogue.

78. Plaintiffs seek a judicial declaration that Penal Codes sections 25850 and 26350 violate the Second and Fourteenth Amendments.

**INJUNCTIVE RELIEF ALLEGATIONS**

79. Mr. Baird and Mr. Gallardo have a present intention to carry a handgun open and exposed for self-defense, loaded or unloaded, throughout the State of California including those areas that were not designated 'sensitive areas' prior to the enactment of the Mulford Act of 1967, today and every day for the remainder of their natural lives.

80. Plaintiffs intend to exercise the rights protected by the Second and Fourteenth Amendments without seeking permission from the government, including applying for and obtaining a license under California's licensing scheme under Penal Code sections 26150 and 26155.

1 81. Plaintiffs face imminent arrest, prosecution, fines, and other criminal penalties for  
2 carrying a handgun open and exposed, loaded or unloaded, in public without a license, as well as  
3 other civil penalties including loss of property (firearms).

4 82. Plaintiffs' conduct is protected by the plain language of the Second Amendment.

5 83. The burden is exclusively on Defendant to demonstrate that the challenged  
6 regulations are consistent with the Nation's historical tradition of firearm regulation. Only then may  
7 this Court conclude that Plaintiffs' conduct falls outside the Second Amendment's 'unqualified  
8 command.' *Bruen*, supra.

9 84. There is no historical analogue for the challenged regulations.

10 85. Plaintiffs are being continuously injured, in fact, and will continue to be injured by  
11 the violation of their preexisting rights protected by the Second and Fourteenth Amendments by  
12 Defendant's enforcement of Penal Code sections 25850 and 26350 for the open carriage of a  
13 handgun, whether loaded or unloaded, outside of their home, including those areas of California  
14 not designated 'sensitive areas' prior to the Mulford Act of 1967.

15 86. California's criminal statutes are inconsistent with the Nation's historical tradition  
16 of firearm regulation and should be temporarily and permanently enjoined.

17 87. Plaintiffs should not have to risk criminal prosecution in the exercise of their  
18 fundamental right to self-protection outside of the home.

19 **COUNT I**

20 **Penal Code § 25850 Violates the Second and Fourteenth Amendments**

21 88. Repeat and reallege paragraphs "1" through and including "87" as if set forth in their  
22 entirety herein.

23 89. Defendant's enforcement of Penal Code § 25850 against individuals for carrying a  
24 handgun open and exposed on their person violates the Second and Fourteenth Amendments.  
25 42 U.S.C. § 1983.

**COUNT II**

**Penal Code § 26350 Violates the Second and Fourteenth Amendments**

90. Repeat and reallege paragraphs “1” through and including “89” as if set forth in their entirety herein.

91. Defendant’s enforcement of Penal Code § 26350 against individuals for carrying a handgun open and exposed on their person violates the Second and Fourteenth Amendments. 42 U.S.C. § 1983.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendant as follows:

- A judicial declaration that the enforcement of California Penal Code § 25850 against individuals for carrying a handgun open and exposed on their person throughout California violates the Second and Fourteenth Amendments;
- A judicial declaration that the enforcement of California Penal Code § 26350 against individuals for carrying a handgun open and exposed on their person throughout California violates the Second and Fourteenth Amendments;
- An order temporarily and permanently enjoining Defendant, his officers, agents, servants, employees, and all persons acting in concert with Defendant who receive actual notice of the injunction, from enforcing Penal Code sections 25850 and 26350 against individuals who carry a handgun open and exposed on their person throughout the State of California;
- Reasonable statutory attorney’s fees, costs, and disbursements, under 42 U.S.C. § 1988 and any other applicable law; and
- Grant such further and alternative relief as the Court deems just and proper.

