

1 Raymond M. DiGuseppe
2 The DiGuseppe Law Firm, P.C.
3 4320 Southport-Supply Road, Suite 300
4 Southport, NC 28461
5 P: 910-713-8804
6 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

Bradley A. Benbrook
Stephen M. Duvernay
Benbrook Law Group, PC
701 University Avenue, Suite 106
Sacramento, CA 95825
P: 916-447-4900
E: brad@benbrooklawgroup.com

William A. Sack
Firearms Policy Coalition
426 Campbell Avenue
Havertown, PA 19083
P: 916-596-3492
E: Wsack@fpclaw.org

11 Attorneys for Plaintiffs

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

15 Lana Rae Renna; Danielle Jaymes; Laura
16 Schwartz; Michael Schwartz; Robert
17 Macomber; Clint Freeman; John Klier;
18 Justin Smith; John Phillips; Cheryl
19 Prince; Darin Prince; Ryan Peterson;
20 PWGG, L.P.; North County Shooting
21 Center, Inc.; Gunfighter Tactical, LLC;
22 Firearms Policy Coalition, Inc.; San
23 Diego County Gun Owners PAC;
24 Citizens Committee for the Right to
25 Keep and Bear Arms; and Second
26 Amendment Foundation,

27 Plaintiffs,

28 v.

Robert Bonta, Attorney General of
California; and Luis Lopez, Director of
the California Department of Justice
Bureau of Firearms,

Defendants.

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

**DECLARATION OF JOHN
PHILLIPS IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Date: TBD
Time: TBD
Courtroom 13A (13th Floor)
Hon. Dana M. Sabraw

1 I, John Phillips, declare:

2 1. I have personal knowledge of the matters set forth in this declaration, and
3 would be able to testify competently to these facts if called as a witness.

4 2. I am the President and Founder of PWGG L.P., doing business as Poway
5 Weapons & Gear and PWG Range (“PWGG”), a firearms dealership in Poway,
6 California. PWGG is listed as a firearms dealer in the California Department of
7 Justice’s Centralized List of Firearms Dealers, and I am an individual licensee
8 associated with the dealership. PWGG operates one of the largest indoor gun ranges
9 in the country. We serve over 200,000 people a year in our retail store, over 80,000
10 on our ranges, and over 8,000 students receive training and education related to
11 firearms safety and utilization. PWGG also serves federal, state, and local law
12 enforcement agencies and military personnel.

13 3. Through my work in the firearms business, I have become very familiar
14 with the California handgun roster’s ban on hundreds of models of handguns in
15 common use throughout the rest of the nation.

16 4. I have obtained this knowledge in multiple ways.

17 5. For example, I am a member of a nationwide buying group called Nations
18 Best Sporting (“NBS”), which consists of more than 450 retail members from all 50
19 states; NBS members order more than \$1 billion in firearms annually. I regularly
20 attend the two large shows that NBS organizes each year. All major firearms
21 manufacturers participate in these shows by displaying their products and talking to
22 members about them. I make over 80% of my inventory orders for PWGG at these
23 shows.

24 6. I also serve on the retail advisory board for Smith & Wesson Brands, Inc.
25 The retail advisory board consists of diverse dealers from across the county
26 representing the various geographic locations of their range or retail stores. The
27 advisory board is use by Smith & Wesson to better understand the market needs,
28 challenges and future purchasing trends from the retail level. The board meets four

1 times a year, twice in person and twice via video conference. Through my service on
2 this board, I have become intimately familiar with the fact that California’s roster
3 allows the sale of only one Smith & Wesson semiautomatic handgun in California. I
4 am further aware that since 2014, Smith & Wesson has created approximately 650
5 new semi-automatic handgun SKUs that were ineligible to be added to the Roster due
6 to the lack of feature(s) required by California state law. These SKUs cover a total of
7 31 unique models of semi-automatic handguns.

8 7. I routinely meet with manufacturer representatives of all major firearms
9 manufacturers who visit PWGG to sell their products. We regularly discuss the
10 limitations imposed by California’s roster on the availability of handguns in California
11 compared to the rest of the nation. In addition, I have access to retailers’ online sales
12 portals, which allows me to view the handguns that are offered for sale outside of
13 California.

14 8. I regularly review publications describing handguns available and
15 commonly used throughout the nation. Included among these are industry magazines
16 such as Shot Business and Shooting Retailer, each of which lists firearms available
17 and in common use throughout the nation. I also receive and read a magazine called
18 Concealed Carry (published by the U.S. Concealed Carry Association, which provides
19 insurance, education, and training on concealed-carry and armed self-defense) that
20 includes advertising from all major manufacturers.

21 9. I am aware that California law now imposes a microstamping
22 requirement (in addition to the chamber load indicator (“CLI”) and magazine
23 disconnect mechanism (“MDM”) requirements) in order for a new handgun model to
24 be added to the Roster. But there are no commercially available semiautomatic
25 handguns manufactured in the United States that have all three requirements (the
26 microstamping technology, CLI, and MDM). As a result, literally no new *models* of
27 handguns have been added to the Roster since 2013. And since any change to a
28 handgun design requires a new approval to be added to the roster, the few additions

1 to the roster in recent years have consisted of slight (mostly cosmetic) changes to
2 models of handguns that have already been approved.

3 10. Overall, there has been a dramatic shrinkage of guns listed on the roster
4 since 2013. To the best of my recollection, there were nearly 1,300 makes, models,
5 and permutations of approved handguns on the Roster, but the list has steadily
6 declined over the past decade. The total number of approved handguns now stands at
7 just over 800.

8 11. While gun manufacturers innovate and release newer firearm models
9 with improved features that are freely purchased throughout the country, Californians
10 are left to choose from a shrinking list of aging handgun models that may not be
11 suitable for their self-defense needs.

12 12. Glock products provide an example of the perverse impact of the roster.
13 No Glock semiautomatic handguns after Glock’s “Generation 3” line are available
14 because they are not on the roster. (Generation 3 was first introduced to the market in
15 the late 1990s.) Glock has already released and moved on from its very popular
16 “Generation 4” series of semiautomatic handguns (first released in 2010), and is now
17 producing a series of very popular “Generation 5” semiautomatic handguns, none of
18 which are available in California. This means, among other things, that as Glock
19 makes safety and other technical improvements with its new lines, Californians are
20 unable to benefit from those improvements. The Gen5 handguns are much safer than
21 the Gen3. The Gen5 is also much more reliable and has better ergonomics than the
22 Gen3. The Glock G43 is one of the top-selling firearms designed for concealed carry
23 that is in common use throughout the country, but it is banned from the Roster. I have
24 been told by Glock representatives that the only reason it keeps making the Generation
25 3 weapons is that they are the only Glock weapons that Californians can purchase.

26 13. I am further aware that the Sig Sauer 320 is the most popular carry gun
27 in the nation, but it is not available to Californians because it is not on the Roster. The
28 Sig 32 and Sig 365 are better than any concealed carry weapon on Defendants’ Roster.

1 They both have much newer technology and better ergonomics than any concealed
2 carry weapon on the Roster. The newer technology includes additional safety features
3 that help the functionality of both firearms. Likewise, the Springfield Armory
4 Hellcat—one of the most popular semiautomatic firearms in the country for concealed
5 carry—is not available in California.

6 14. There is nothing currently on Defendants’ Roster like the Fabrique
7 National Herstal 509 and FNX-9. These are home protection and concealed carry
8 firearms. There is no gun on Defendants’ Roster that is comparable in size and
9 functionality to the FN 509 and FNX-9. These guns have better ergonomics than the
10 guns on the Roster. This is a unique and high-end firearm. The FN 5.7 is the only FN
11 pistol available on the Roster and it is not a common caliber of gun.

12 15. The Roster’s requirements have also prohibited newer models of
13 semiautomatic handguns that have ambidextrous configurations, which make them
14 more suitable for left-handed customers. The Roster’s restrictions pose particular
15 constraints for females, who are the fastest-growing demographic of new gun
16 purchasers, but are unable to purchase new models designed primarily for females.

17 16. But for California’s handgun ban and Defendants’ active enforcement
18 thereof, I would purchase for self-defense and other lawful purposes a Sig 365, Sig
19 320 M17, Glock 17 Gen 5 MOS, FN 509, and/or FNX-9, all of which are handguns
20 in common use for self-defense and lawful purposes and widely sold and possessed
21 outside of California.

22 17. Because the handguns that I seek to purchase for lawful purposes are
23 currently excluded from Defendants’ Roster of purportedly “safe” handguns,
24 California’s Handgun Ban bars me from purchasing and taking possession of such
25 handguns from a licensed retailer, who are likewise prohibited from selling them to
26 me on pain of criminal sanction. I have no other lawful method of purchasing these
27 handguns in California.

1 18. Aside from the particular guns that I would like to purchase but cannot,
2 I am aware that the roster bans many hundreds, and likely thousands, of other models
3 of handguns in common use throughout the United States, as discussed above.

4 19. Further, as the proprietor of Plaintiff PWGG, but for California’s
5 Handgun Ban and Defendants’ active enforcement thereof, I would make
6 commercially available all handguns in common use for self-defense and other lawful
7 purposes that are widely sold and possessed outside of California, which are currently
8 excluded from Defendants’ handgun roster, and sell and transfer them to law-abiding
9 customers.

10 20. Prospective customers regularly visit PWGG and seek weapons to fit
11 their particularized needs—as a result of physical disabilities and other limitations,
12 including strength, size, and build—for weapons that are not available in California
13 due to the roster.

14 21. I hold an active license to carry a CCW issued by my county sheriff under
15 Penal Code § 26150, *et seq.*, after proving “good cause” and “good moral character”
16 to that licensing authority, successfully completing a course of training on the law and
17 firearms proficiency under § 26165, passing an extensive Live Scan-based
18 Department of Justice background check, and placement into the “Rap Back” system
19 for monitoring law enforcement contact, arrests, and criminal convictions. I also
20 possess a current COE issued by the Defendants’ Department of Justice Bureau of
21 Firearms. I am also a trained firearms instructor.

22 I declare under penalty of perjury under the laws of the United States America
23 and State of California that the foregoing is true and correct. Executed December 22,
24 2022.

25 DocuSigned by:
26 *John Phillips*
27 783A8B838CD1479
28 JOHN PHILLIPS