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11 Attorneys for Plaintiffs

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

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

20 Plaintiffs,

21 v.

22 Robert Bonta, Attorney General of
23 California; and Allison Mendoza,
Director of the California Department of
24 Justice Bureau of Firearms,

25 Defendants.
26

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

**REPLY SEPARATE STATEMENT
OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

Date: February 10, 2023
Time: 1:30 p.m.
Courtroom 13A (13th Floor)
Hon. Dana M. Sabraw

1 Plaintiffs submit this Separate Statement of Undisputed Material Facts to the
 2 extent the Court elects to treat this motion as a Motion for Summary Judgment:

Undisputed Fact and Evidence	Defendants’ Response and Evidence	Response
3 4 5 1. California’s Unsafe 6 Handgun Act (“UHA”) 7 prohibits the retail sale of 8 any handgun that falls 9 within the statutory 10 definition of an “unsafe 11 handgun.” 12 13 Cal. Penal Code §§ 14 32000, 31910. 15 Defendants’ Answer to 16 TAC ¶¶ 69, 70	Plaintiffs assert a legal conclusion, not a fact.	Defendants’ response does not dispute the fact cited. Therefore, they have failed to establish a genuine dispute of fact.
17 2. The UHA mandates 18 that DOJ maintain “a 19 roster listing all of the 20 handguns that have been 21 tested by a certified 22 testing laboratory, have 23 been determined not to be 24 unsafe handguns, and 25 may be sold” in 26 California, commonly 27 known as the “Roster of	Undisputed.	Undisputed.

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Undisputed Fact and Evidence	Defendants’ Response and Evidence	Response
<p>Certified Handguns Certified for Sale.”</p> <p>Cal. Penal Code §§ 32015(a)</p> <p>State of California Department of Justice, <i>Handguns Certified for Sale</i>, https://oag.ca.gov/firearms/certified-handguns/search.</p> <p>Defendants’ Answer to TAC ¶¶ 69, 70</p>		
<p>3. Pursuant to the UHA, licensed firearm dealers may only sell at retail those handguns that appear on the Roster of Handguns Certified for Sale.</p> <p>Cal. Penal Code § 32000(a).</p>	<p>Plaintiffs assert a legal conclusion, not a fact.</p>	<p>Defendants’ response does not dispute the fact cited. Therefore, they have failed to establish a genuine dispute of fact.</p>

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Undisputed Fact and Evidence	Defendants’ Response and Evidence	Response
Defendants’ Answer to TAC ¶¶ 69, 70 Defendants’ Answer to TAC ¶ 71 (admitting “the Roster contains less than all of the handgun makes and models commercially available throughout the United States”)		
4. As of October 24, 2022, the Roster included 815 models of handgun. Defendants’ Answer to TAC ¶ 73	Undisputed.	Undisputed.
5. As of November 9, 2022, the Bureau of Firearm’s online list of de-certified handgun models showed that hundreds of models have been decertified since December 31, 2001, and that 33 models have been de-certified in 2022.	Undisputed.	Undisputed.

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Undisputed Fact and Evidence	Defendants' Response and Evidence	Response
<p>State of California Department of Justice, <i>De-Certified Handgun Models</i>, https://oag.ca.gov/firearms/de-certified-handguns Defendants' Answer to TAC ¶ 78</p>		
<p>6. Individual Plaintiffs are law-abiding, responsible citizens who may lawfully possess firearms. ECF No. 13-14, C. Prince Decl., ¶ 3 ECF No. 13-15, Jaymes Decl., ¶ 3 ECF No. 13-16, D. Prince Decl., ¶ 3 ECF No. 13-17, Spousta Decl., ¶ 3 ECF No. 13-18, Klier Decl., ¶ 3</p>	<p>Discovery deadlines in this action have been vacated and discovery is ongoing. Defendants have not been afforded the opportunity to develop evidence to dispute fact no. 6.</p>	<p>Defendants' response does not dispute the fact cited. Defendants have failed to meet Fed. R. Civ. P. 56(d)'s requirements to demonstrate the need for additional discovery, nor could they meet the standard. This case was filed in November 2020; Defendants have had over two years to seek discovery but have not done so, and even now they do not identify how</p>

Undisputed Fact and Evidence	Defendants’ Response and Evidence	Response
<p>ECF No. 13-19, Phillips Decl., ¶ 3</p> <p>ECF No. 13-20, Smith Decl., ¶ 3</p> <p>ECF No. 13-21, L. Schwartz Decl., ¶ 3</p> <p>ECF No. 13-22, M. Schwartz Decl., ¶ 3</p> <p>ECF No. 13-23, Bailey Decl., ¶ 3</p> <p>ECF No. 13-25, R. Peterson Decl., ¶ 3</p>		<p>discovery would preclude summary judgment.</p> <p>Furthermore, Defendants’ records (through certificates of eligibility and concealed-carry licenses) confirm that Plaintiffs may lawfully possess firearms.</p> <p>Defendants have therefore failed to establish a genuine dispute of fact.</p>
<p>7. The individual Plaintiffs want to purchase handguns that are not on the Roster of Certified Handguns Certified for Sale (<i>i.e.</i>, “off-Roster handguns”) for lawful purposes that are protected by the Second Amendment. Individual Plaintiffs would purchase these off-</p>	<p>Plaintiffs’ assertion regarding “purposes that are protected by the Second Amendment” is a legal conclusion, not a fact.</p> <p>Discovery deadlines in this action have been vacated and discovery is ongoing. Defendants have not been afforded the opportunity to develop</p>	<p>Defendants’ response does not dispute the fact cited. Defendants have failed to meet Fed. R. Civ. P. 56(d)’s requirements to demonstrate the need for additional discovery, nor could they meet the standard. This case was filed in November 2020; Defendants have had over</p>

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Undisputed Fact and Evidence	Defendants’ Response and Evidence	Response
<p>Roster handguns but for the UHA’s restriction on their sale.</p> <p>ECF No. 13-14, C. Prince Decl., ¶¶ 6–8</p> <p>ECF No. 13-15, Jaymes Decl., ¶¶ 7–11</p> <p>ECF No. 13-16, D. Prince Decl., ¶¶ 8–10</p> <p>ECF No. 13-17, Spousta Decl., ¶¶ 6–8</p> <p>ECF No. 13-18, Klier Decl., ¶¶ 7–10</p> <p>ECF No. 13-19, Phillips Decl., ¶¶ 10–15</p> <p>ECF No. 13-20, Smith Decl., ¶¶ 5–10</p> <p>ECF No. 13-21, L. Schwartz Decl., ¶¶ 6–10</p> <p>ECF No. 13-22, M. Schwartz Decl., ¶¶ 7–12</p> <p>ECF No. 13-23, Bailey Decl., ¶¶ 6–8</p>	<p>evidence to dispute the remaining assertions in fact no. 7.</p>	<p>two years to seek discovery but have not done so, and even now they do not identify how discovery would preclude summary judgment.</p> <p>Plaintiffs’ declarations establish that they wish to acquire handguns for “purposes that are protected by the Second Amendment” and that they would purchase off-Roster handguns if the UHA did not restrict their sale. Defendants have failed to offer any evidence to call this fact into question. Defendants have failed to establish a genuine dispute of fact.</p>

Undisputed Fact and Evidence	Defendants' Response and Evidence	Response
<p>ECF No. 13-25, R. Peterson Decl., ¶¶ 8–16</p> <p>8. The retailer Plaintiffs have customers who are interested in purchasing off-Roster handguns and, but for the UHA, these firearms dealers would sell off-Roster handguns to eligible customers consistent with state and federal law.</p> <p>ECF No. 13-16, D. Prince Decl., ¶ 11</p> <p>ECF No. 13-19, Phillips Decl., ¶ 16</p> <p>ECF No. 13-25, R. Peterson Decl., ¶ 17</p> <p>Phillips Decl. ISO Prelim. Inj., ¶¶ 19–20</p>	<p>Discovery deadlines in this action have been vacated and discovery is ongoing. Defendants have not been afforded the opportunity to develop evidence to dispute the remaining assertions in fact no. 8.</p>	<p>Defendants' response does not dispute the fact cited. Defendants have failed to meet Fed. R. Civ. P. 56(d)'s requirements to demonstrate the need for additional discovery, nor could they meet the standard. This case was filed in November 2020; Defendants have had over two years to seek discovery but have not done so, and even now they do not identify how discovery would preclude summary judgment. Defendants have failed to establish a genuine dispute of fact.</p>
<p>9. The individual Plaintiffs and retailer</p>	<p>Plaintiffs' assertion regarding</p>	<p>Defendants' response does not dispute the fact</p>

Undisputed Fact and Evidence	Defendants’ Response and Evidence	Response
<p>1 Plaintiffs are members of</p> <p>2 each of the organizational</p> <p>3 Plaintiffs. The</p> <p>4 organizational Plaintiffs’</p> <p>5 members desire to</p> <p>6 purchase (or, in the case</p> <p>7 of retailers, sell)</p> <p>8 constitutionally protected</p> <p>9 arms for self-defense or</p> <p>10 other lawful purposes are</p> <p>11 not currently on, or are</p> <p>12 not eligible to be added</p> <p>13 to, the Roster.</p> <p>14</p> <p>15 ECF No. 13-14, C. Prince</p> <p>16 Decl., ¶ 4</p> <p>17 ECF No. 13-15, Jaymes</p> <p>18 Decl., ¶ 5</p> <p>19 ECF No. 13-16, D. Prince</p> <p>20 Decl., ¶¶ 4–5</p> <p>21 ECF No. 13-17, Spousta</p> <p>22 Decl., ¶ 5</p> <p>23 ECF No. 13-18, Klier</p> <p>24 Decl., ¶ 6</p>	<p>“constitutionally</p> <p>protected arms” is a legal</p> <p>conclusion, not a fact.</p> <p>Discovery deadlines in</p> <p>this action have been</p> <p>vacated and discovery is</p> <p>ongoing. Defendants have</p> <p>not been afforded the</p> <p>opportunity to develop</p> <p>evidence to dispute the</p> <p>remaining assertions in</p> <p>fact no. 9</p>	<p>cited. Defendants have</p> <p>failed to meet Fed. R.</p> <p>Civ. P. 56(d)’s</p> <p>requirements to</p> <p>demonstrate the need for</p> <p>additional discovery, nor</p> <p>could they meet the</p> <p>standard. This case was</p> <p>filed in November 2020;</p> <p>Defendants have had over</p> <p>two years to seek</p> <p>discovery but have not</p> <p>done so, and even now</p> <p>they do not identify how</p> <p>discovery would preclude</p> <p>summary judgment.</p> <p>Defendants have failed to</p> <p>establish a genuine</p> <p>dispute of fact.</p>

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Undisputed Fact and Evidence	Defendants’ Response and Evidence	Response
<p>ECF No. 13-19, Phillips Decl., ¶¶ 4, 6</p> <p>ECF No. 13-20, Smith Decl., ¶ 4</p> <p>ECF No. 13-21, L. Schwartz Decl., ¶ 5</p> <p>ECF No. 13-22, M. Schwartz Decl., ¶ 6</p> <p>ECF No. 13-23, Bailey Decl., ¶ 5</p> <p>ECF No. 13-25, R. Peterson Decl., ¶¶ 4–5</p> <p>Phillips Decl. ISO Prelim. Inj., ¶¶ 19–20</p> <p>Combs Decl. ISO Prelim. Inj., ¶ 5</p> <p>Gottlieb Decl. ISO Prelim. Inj., ¶¶ 3–4</p> <p>M. Schwartz Decl. ISO Prelim. Inj., ¶ 4</p>		
<p>10. The off-Roster handguns that the individual Plaintiffs want to purchase and that the retailer Plaintiffs wish to</p>	<p>Disputed. Plaintiffs’ cited evidence is insufficient to meet their burden to produce prima facie evidence of purported</p>	<p><i>Heller</i> has already established that the off-Roster handguns are in common use because it established that the entire</p>

Undisputed Fact and Evidence	Defendants’ Response and Evidence	Response
<p>1 sell are in common use</p> <p>2 for lawful purposes in the</p> <p>3 United States outside of</p> <p>4 California.</p> <p>5</p> <p>6</p> <p>7</p> <p>8 ECF No. 13-12, Ostini</p> <p>9 Decl., pp. 1–9</p> <p>10 ECF No. 13-13, Ostini</p> <p>11 Decl., Ex. 1</p> <p>12 Phillips Decl. ISO Prelim.</p> <p>13 Inj., ¶¶ 3–15</p> <p>14 This factual allegation is</p> <p>15 not subject to genuine or</p> <p>16 reasonable dispute. <i>Far</i></p> <p>17 <i>Out Productions, Inc. v.</i></p> <p>18 <i>Oskar</i>, 247 F.3d 986, 992</p> <p>19 (9th Cir. 2001) (citing</p> <p>20 <i>Anderson v. Liberty</i></p> <p>21 <i>Lobby, Inc.</i>, 477 U.S. 242,</p> <p>22 248-49 (1986) (“An issue</p> <p>23 is ‘genuine’ only if there</p> <p>24 is sufficient evidence for</p> <p>25 a reasonable fact finder to</p> <p>26 find for the non-moving</p> <p>27 party”).</p>	<p>fact. <i>See Jacobson v.</i></p> <p><i>Schwarzenegger</i>, 650 F.</p> <p>Supp. 2d 1032, 1044</p> <p>(C.D. Cal. 2009) (“When</p> <p>the moving party has the</p> <p>burden of proof on an</p> <p>issue, e.g., when a</p> <p>plaintiff seeks summary</p> <p>judgment on a claim for</p> <p>relief . . . the moving</p> <p>party's showing must be</p> <p>sufficient for the court to</p> <p>hold that no reasonable</p> <p>trier of fact could find</p> <p>other than for the moving</p> <p>party”); <i>Maynard v. State</i></p> <p><i>Farm Mut. Auto. Ins. Co.</i>,</p> <p>499 F. Supp. 2d 1154,</p> <p>1159 (C.D. Cal. 2007);</p> <p>see also <i>Calderone v.</i></p> <p><i>United States</i>, 799 F.2d</p> <p>254, 258– 59 (6th</p> <p>Cir.1986) (quoting <i>W.</i></p> <p><i>Schwarzer</i>, Summary</p> <p>Judgment Under the</p>	<p>category of handguns is in</p> <p>common use. <i>District of</i></p> <p><i>Columbia v. Heller</i>, 554</p> <p>U.S. 570, 627 (2008).</p> <p>Thus, while it was not</p> <p>necessary, Plaintiffs’</p> <p>evidence confirms that</p> <p>the off-Roster handguns</p> <p>are in common use for</p> <p>lawful purposes in the</p> <p>United States outside of</p> <p>California. Not only is</p> <p>this factual allegation not</p> <p>subject to reasonable</p> <p>dispute—several of the</p> <p>firearms identified in</p> <p>Plaintiffs’ declarations are</p> <p>among the best-selling</p> <p>semiautomatic firearms in</p> <p>the country—the Phillips</p> <p>Declaration establishes a</p> <p>foundation for John</p> <p>Phillips’ knowledge that</p> <p>Roster-banned semi-</p> <p>automatic handguns are</p>

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Undisputed Fact and Evidence	Defendants’ Response and Evidence	Response
	<p>Federal Rules: Defining Genuine Issues of Material Fact, 99 F.R.D. 465, 487–88 (1984)); see also Defs.’ Obj. Nos. 1, 7, 12-15, 17.</p>	<p>commonly sold and used outside of California (¶¶ 3-19, establishing, among other things, Phillips’ participation as a member of Nations Best Sporting, a nationwide buying group that consists of 450 members from all 50 states, and which orders more than \$1 billion in firearms annually; his service on the retail advisory board for Smith & Wesson Brands, Inc., which includes dealers from across the country and confirms his knowledge of Smith & Wesson’s products and distribution; and his work as a firearms dealer, which includes routinely meeting with representative of all major</p>

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Undisputed Fact and Evidence	Defendants’ Response and Evidence	Response
		<p>firearms manufacturers). The Ostini Declaration likewise establishes a foundation for firearms from 40 manufacturers that are excluded from the Roster (pp.2–5, based on his review of publicly available information about the major firearms manufacturers within the United States and which cross-references the sources for his analysis of on- and off-Roster handguns).</p> <p>Defendants make no effort to actually dispute with its own evidence that the Roster-banned handguns are commonly used, despite having submitted declarations from both Professor Saul</p>

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Undisputed Fact and Evidence	Defendants' Response and Evidence	Response
		Cornell (who they proffer as an expert in legal history and firearms law) and Salvador Gonzalez (the Special Agent Supervisor at the California Department of Justice in charge of overseeing the Roster).

Dated: February 3, 2023

The DiGuiseppe Law Firm, P.C. Benbrook Law Group, PC

By s/ Raymond M. DiGuiseppe By s/ Bradley A. Benbrook
 Raymond M. DiGuiseppe Bradley A. Benbrook
 Attorneys for Plaintiffs Attorneys for Plaintiffs