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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

LANCE BOLAND, ET AL.,

Plaintiffs,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, ET AL.,

Defendants.

Case No. 8:22-cv-01421-CJC-ADS

DEFENDANT'S SECOND CLOSING BRIEF FOLLOWING EVIDENTIARY HEARING ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Courtroom: 9B
Judge: Hon. Cormac J. Carney
Trial Date: None set
Action Filed: August 1, 2022

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INTRODUCTION

Plaintiffs' first closing brief is simply another effort to evade their burden to show they are entitled to the extraordinary remedy of a preliminary injunction. First, they argue that the threshold plain text inquiry, which is their burden to meet, is not required under *New York State Rifle & Pistol Association, Inc., v. Bruen*, __ U.S. __, 142 S. Ct. 2111 (2022). Pls.' First Closing Br. ("Pls.' Br."), ECF No. 57, at 1-3. This is a misreading of *Bruen* and cases that have since applied *Bruen*. Plaintiffs also demand a historical twin for the challenged requirements, a demand that *Bruen* explicitly rejects. Further, Plaintiffs assert, contrary to Supreme Court precedent, that they need only show a likelihood of success on the merits under *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Pls.' Br. 18-19. They try to shift the burden of showing the other factors, arguing the Defendant should provide evidence that the balance of equities and public interest weigh against a preliminary injunction. *Id.* at 20. This turns *Winter* on its head. Under a proper application of *Winter*, Plaintiffs have failed to meet their burden to establish that equitable considerations weigh in favor of an injunction and upending the status quo.

ARGUMENT

I. PLAINTIFFS FAIL TO SHOW THEY ARE LIKELY TO SUCCEED ON THE MERITS BECAUSE THEY MISCONSTRUE AND MISAPPLY *BRUEN*

A. Plaintiffs argue the plain text inquiry is nonexistent or should be applied broadly, ignoring *Bruen* and cases applying the inquiry

Plaintiffs endorse an approach that skips the plain text analysis, claiming that some post-*Bruen* courts "subject all laws directly involving firearms to the historical inquiry test." Pls.' Br. 2. This contradicts Plaintiffs' argument at the hearing, PI Day2 Tr. 62, and more importantly, *Bruen*. Before conducting the historical analysis in *Bruen*, the Supreme Court first "turn[ed] to whether the plain text of the Second Amendment protect[ed]" the proposed course of conduct. 142 S. Ct. at 2134. Only after concluding that it did so did the Supreme Court move to the

historical inquiry. *Id.* at 2134-35. This is how numerous district courts have since applied the framework. Def.'s First Closing Br. ("Def.'s Br."), ECF No. 56, at 3-4.

Plaintiffs ask this Court to ignore the Supreme Court's application of its own framework and instead offer inapposite language from vacated and unpublished opinions. Pls.' Br. 2-3 (citing *Range v. Att'y Gen. United States*, 53 F.4th 262 (3rd Cir. 2022), *vacated and reh'g granted*, 56 F.4th 992 (3rd Cir. 2023); *Miller v. Smith*, 2023 WL 334788, at *1 (7th Cir. Jan. 20, 2023); *United States v. Gonzalez*, 2022 WL 4376074, at *2 (7th Cir. Sept. 22, 2022)). None of these cases support Plaintiffs' view and, even if they did, *Bruen* overrides them. Putting aside that *Range* is a vacated opinion, the court there actually "beg[a]n [the] analysis with the text of the Second Amendment" to evaluate whether a felon was protected by the Amendment. 53 F.4th at 271. *Miller* did not even apply *Bruen*'s methodology, but merely remanded so the district court could "evaluate any subsequent motions under *Bruen*'s text, history, and tradition framework." 2023 WL 334788, at *1. *Gonzalez*'s discussion of the Second Amendment claim is cursory because appellant's own counsel believed the claim to be "frivolous," and the *Bruen* citation within refers only to the disapproval of means-end scrutiny. 2022 WL 4376074, at *2. These three cases thus carry no persuasive value here.

Alternatively, Plaintiffs seek to skip the plain text inquiry by rendering it meaningless through an overly broad definition of the proposed course of conduct. Pls.' Br. 4-6. Plaintiffs rely on four district court decisions finding that the Second Amendment's plain text covered the same proposed course of conduct—a prohibited person's possession of a firearm. Pls.' Br. 3-6. In all four cases, the courts concluded that a prohibited person, whether as a felon or a restrained person, fell within the plain meaning of "the people" in the Second Amendment. *See, e.g.*, *United States v. Coombes*, 2022 WL 4367056, at *3-4 (N.D. Okla. Sept. 21, 2022).

These cases actually support Defendant's position that the conduct must be specifically delineated. Def.'s Br. 4, 7. If these cases supported a "broad"

approach, then they would have defined the conduct as simply "possession of a firearm" and not analyzed the meaning of "the people." But they did not do so. Instead, they each essentially defined the proposed conduct as "possession of a firearm *by a prohibited person*" and conducted the plain text analysis accordingly. This is akin to the approach taken in *United States v. Reyna*, 2022 WL 17714376, at *4 (N.D. Ind. Dec. 15, 2022), which characterized the proposed course of conduct as "possession of a firearm *with an obliterated serial number*," and not more generally as "mere possession [of a firearm]."

The proposed conduct must be conduct the challenged regulation actually prohibits. *Oakland Tactical Supply, LLC v. Howell Twp.*, 2023 WL 2074298, at *3 (E.D. Mich. Feb. 17, 2023), *notice of appeal filed*, No. 23-1179 (6th Cir. Mar. 1, 2023) ("The proposed conduct could not be simply 'training with firearms' because the zoning ordinance does not prohibit 'training with firearms.'"). The proposed conduct thus cannot simply be "acquiring a handgun" because the UHA does not prohibit such conduct. Rather, the proposed conduct is to purchase off-Roster semiautomatic pistols without a CLI, MDM, or microstamping that are available for purchase in other states. Def.'s Br. 7. Defining the proposed conduct as such is not a backdoor revival of means-end scrutiny, as Plaintiffs suggest. Pls.' Br. 7-9. Specifically defining the conduct is instead the approach most consistent with *Bruen* and *District of Columbia v. Heller*, 554 U.S. 570 (2008). *Reyna*, 2022 WL 17714376, at *4 (explaining that *Bruen* "defined the regulated conduct as publicly carrying a handgun" and *Heller* "defined the regulated conduct as handgun possession in the home"). It is also the only approach that would ensure the plain text inquiry has any meaning. *Id.* (broadly defining the proposed conduct would cause any regulation concerning the same topic to automatically advance to the historical inquiry); *Oakland Tactical Supply*, 2023 WL 2074298, at *3, n.4 (same, calling this an "absurd result").

Plaintiffs also argue that the plain text inquiry should not consider whether the challenged law regulates a person's ability to defend themselves. Pls.' Br. 9. But that squarely contradicts *Bruen*, which evaluated whether the conduct fell within the Second Amendment's operative clause that "'guarantee[s] the individual right to possess and carry weapons in case of confrontation.'" *Bruen*, 142 S. Ct. at 2134 (quoting *Heller*, 554 U.S. at 592). Here, the plain text does not cover the proposed conduct because the right to "keep . . . Arms" (to have or possess weapons) or to "bear Arms" (to carry weapons for the purpose of confrontation) does not encompass a right to avoid public-safety requirements for commercial purchase transactions. *Id.* at 2134; *Heller*, 554 U.S. at 582-84. It is not a plain text analysis to say the proposed conduct "implicates the Second Amendment" or is impliedly protected by the Second Amendment, as Plaintiffs assert. Def.'s Br. 7-8.

Plaintiffs therefore cannot avoid (and fail to meet) their burden to establish the Second Amendment's plain text covers the proposed conduct. Def.'s Br. 7-11.

B. The historical inquiry requires analogical reasoning, not a "historical twin"

Plaintiffs' approach to the historical inquiry would effectively require a "historical twin" or "dead ringer" as an analogous restriction—an approach that *Bruen* explicitly rejected. *See* 142 S. Ct. at 2133; Pls.' Br. 16-18.[1] First, Plaintiffs argue that analogical reasoning can be used only when the historical inquiry requires a "more nuanced approach," but not when the analysis is "fairly straightforward." Pls.' Br. 14-15. In the latter analysis, Plaintiffs assert "the historical laws need to practically mirror the modern law." *Id.* 15. This position belies *Bruen*, which made clear that analogical reasoning is to be used in both types

[1] Plaintiffs refer to a Prof. Cornell declaration in another lawsuit challenging the UHA, claiming it contradicts his testimony that more time is needed to conduct a complete historical review. Pls.' Br. 16, n.6. Defendant did not represent there, nor does it represent here, that a declaration constitutes the full historical analysis contemplated by Prof. Cornell in his testimony. Plaintiffs' expert agreed that a full historical analysis "does take a very long time" and is a "slow and laborious process." PI Day2 Tr. 49.

of historical inquiries. 142 S. Ct. at 2131. *Heller* and *Bruen* "exemplifie[d]" the straightforward inquiry and still relied on "historical analogies," which were "relatively simple to draw." *Bruen*, 142 S. Ct. at 2131-32. But drawing simple analogies is not equivalent to no analogical reasoning at all, as Plaintiffs contend.

Moreover, Plaintiffs assert that the historical analogues must be "widespread" and "common," but this is contrary to *Bruen*. Pls.' Br. 14. Rather, *Bruen* explained that "analogical reasoning requires only that the government identify a *well-established and representative* historical analogue." *Id.* at 2133. *Bruen* did not impose a numeric threshold for how many states must have adopted the relevant historical analogues. In the context of a "fairly straightforward" historical analysis for public carry laws, *Bruen* indicated that one law from Texas was insufficient, as were laws from the Western Territories when they conflicted with earlier evidence, but *Bruen* in no way imposed a requirement that the historical analogues had to exist in a majority of jurisdictions to be relevant.[2] *Id.* at 2153-54.

Notwithstanding Plaintiffs' inaccurate account of the "fairly straightforward" version of the historical analysis, it is the "more nuanced" historical analysis that applies here. The challenged requirements address "unprecedented societal concerns" and "dramatic technological changes" relating to the spread of semiautomatic pistols in the 20th century. Def.'s Br. 12. Single shot, muzzle-loaded weapons were the ubiquitous firearm until after the Civil War, and semiautomatic firearms, which reflect dramatically different firearm technologies than those that were widely available in 1791 or 1868, did not circulate appreciably until after World War I. Decl. of Robert Spitzer at ¶¶ 26-31, *Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB (S.D. Cal. Nov. 10, 2022) (ECF No. 137-8). Further, the high rate of gun violence and homicides is a more recent phenomenon due in part to technological advances that have increased the lethality of firearms. Def.'s Br. 12.

[2] Contrary to Plaintiffs' claim, Pls.' Br. 15, there can be no debate here that the period around the adoption of the Fourteenth Amendment is relevant to the historical analysis because their expert admitted as much. PI Day2 Tr. 49-50.

The challenged requirements thus address "regulatory challenges posed by firearms today," which "are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868." *Bruen*, 142 S. Ct. at 2132.

Even if the historical analysis were a "fairly straightforward" one, the firearm and ammunition inspection laws as well as the firearm and gunpowder storage laws previously highlighted by Defendant are relevantly similar to the CLI and MDM requirements. Def.'s Br. 12-16.[3] And, the historical analogues supporting federal serial number laws are relevantly similar to the microstamping requirement. Def.'s Br. 15-16. Plaintiffs take issue with many of these historical analogues because how those laws regulated the conduct is different from the means used by the challenged requirements. Pls.' Br. 17-18. But the *means* by which a restriction burdens a Second Amendment right is not determinative; rather, what is determinative is the *degree* to which the restriction does so (and why). *See, e.g.*, *Bruen*, 142 S. Ct. at 2145 (distinguishing historical restrictions from challenged statute where "[n]one of these [historical] restrictions imposed a *substantial burden* on public carry *analogous to the burden* created by New York's restrictive licensing regime") (emphases added).

As Defendant previously explained, the burdens from the inspection and storage laws were greater than those imposed by the CLI and MDM requirements. Def.'s Br. 14-16.[4] And, the justifications behind the historical analogues and CLI and MDM requirements are similar: to help protect gun owners and those around them from unintended injuries resulting from the inherent dangers of firearms and ammunition. *Id.* As to microstamping, the burden is as "negligible" as that of a serial number, whereas the historical analogues for serial numbers ("sale

[3] Plaintiffs' suggestion that Defendant admitted otherwise misreads the hearing transcript. Pls.' Br. 18.

[4] Plaintiffs agree that the lack of some ergonomically enhanced semiautomatic pistols on the Roster imposes no burden because "the size and functionality of the different generation models is essentially the same" as those on the Roster. Decl. of Brian Marvel ("Marvel Decl."), ECF No. 57-2, ¶ 7.

restrictions, mandatory firearm registration, and taxes on personally held firearms"), and by extension microstamping, "imposed greater burdens on firearm owners and sellers." *United States v. Holton*, 2022 WL 16701935, at *5 (N.D. Tex. Nov. 3, 2022). And, "while effected by different means," these analogues address similar goals as those addressed by serial numbers and microstamping: tracing firearms to track how dangerous individuals use them. *Id.*

Plaintiffs demand a near perfect match, but that is unnecessary under *Bruen* because what matters is whether the historical law is "analogous enough" by "impos[ing] a comparable burden on the right of armed self-defense" that is "comparably justified." 142 S. Ct. at 2133. The currently identified historical analogues for the challenged requirements meet this standard.

II. PLAINTIFFS FAIL TO ESTABLISH THE REMAINING *WINTER* FACTORS, WHICH THEY TRY TO SHIFT THE BURDEN OF SHOWING TO DEFENDANT

Plaintiffs contend that they need only establish a likelihood of success on the merits to obtain a preliminary injunction, asserting that "in a fundamental rights context," the remaining *Winter* factors are meaningless if there is a likelihood of success on the merits. Pls.' Br. 19. But Plaintiffs cite nothing establishing that they are immune from *Winter*'s requirements simply because they seek an injunction based on a constitutional right. Nor could they, because pre- and post-*Bruen* precedent demonstrates that *Winter* applies here.

The Supreme Court has made clear that "a preliminary injunction does not follow as a matter of course from a plaintiff's showing of a likelihood of success on the merits." *Benisek v. Lamone*, 138 S. Ct. 1942, 1943-44 (2018) (affirming denial of a preliminary injunction for a First Amendment political gerrymandering claim). In the context of another constitutional right, the First Amendment's right to free speech, the Ninth Circuit has also made clear that a plaintiff must demonstrate the remaining *Winter* factors even after showing a likelihood of success on the merits. *Doe v. Harris*, 772 F.3d 563, 582 (9th Cir. 2014); *see also Gitlow v. New York*, 268

U.S. 652, 666 (1925) (freedom of speech is a fundamental right). The Ninth Circuit warned that courts cannot "simply assume" the remaining factors collapse into the likelihood of success factor, which is exactly what Plaintiffs urge for here. *Doe*, 772 F.3d at 582-83; *see also DISH Network Corp. v. F.C.C.*, 653 F.3d 771, 776 (9th Cir. 2011) (rejecting the argument that showing a likelihood of success on a First Amendment claim relieves the need to satisfy the other *Winter* factors); *Klein v. City of San Clemente*, 584 F.3d 1196, 1207 (9th Cir. 2009) (requiring a showing of the remaining *Winter* factors even when the plaintiff was likely to succeed on the merits of his First Amendment claim); *Tracy Rifle & Pistol LLC v. Harris*, 637 Fed.App'x 401, 402 (9th Cir. 2016) (affirming denial of preliminary injunction for a First Amendment claim even though likelihood of success was established).

Bruen did not upend these well-settled standards governing interim injunctive relief and, since *Bruen*, district courts have denied such relief for First and Second Amendment claims when the plaintiffs failed to establish *all* four *Winter* factors. *See, e.g.*, *Baird v. Bonta*, 2022 WL 17542432, at *8 (E.D. Cal. Dec. 8, 2022); *Or. Firearms Fed'n, Inc. v. Brown*, 2022 WL 17454829, at *9 (D. Or. Dec. 6, 2022); *Safari Club Int'l v. Bonta*, 2023 WL 184942, at *5-6, *21 (E.D. Cal. Jan. 12, 2023); *Junior Sports Mag. Inc. v. Bonta*, 2022 WL 14365026, at *5-6, *30-31 (C.D. Cal. Oct. 24, 2022). Plaintiffs thus cannot avoid showing the remaining *Winter* factors.

A. There is no evidence of irreparable harm

The only irreparable harm identified by Plaintiffs continues to be an alleged Second Amendment violation. Pls.' Br. 20-21. Arguing that "an intrusion into a Constitutional right" is sufficient, they also discount the fact that Mr. Boland and Mr. May can each defend themselves with the handguns they currently own and can purchase prior to judgment. Pls.' Br. 20-21; Def.'s Br. 17-18. But "[i]rreparable harm is harm that is immediate, rather than remote or speculative." *Or. Firearms Fed'n*, 2022 WL 17454829, at *18 (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) and *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668,

674 (9th Cir. 1988)). Moreover, unlike First Amendment violations, neither the Supreme Court nor Ninth Circuit has held that "deprivation of Second Amendment rights alone, even for an instant, constitutes irreparable harm," which is what Plaintiffs assert here. *Or. Firearms Fed'n*, 2022 WL 17454829, at *18. The UHA does not deprive Plaintiffs of the semiautomatic handguns, including the off-Roster ones, that they already possess. And, Plaintiffs provide no evidence that the semiautomatic pistols they already own "would be so ineffective for use in self-defense as to constitute immediate and irreparable harm." *Id.* at *19. The State, however, would be harmed by an injunction. Def.'s Br. 18.

B. Plaintiffs incorrectly seek to shift the equitable factors burden onto Defendant and, in any event, cannot meet it

Perhaps recognizing their failure to present evidence showing the balance of equities and public interest weigh in their favor, Plaintiffs now mistakenly argue this burden falls to Defendant. Pls.' Br. 20. But caselaw makes clear that it is the *moving party* that bears the burden of demonstrating the equitable factors weigh toward an injunction. *Baird*, 2022 WL 17542432, at *8 ("[P]reliminary assessments of the merits can turn out to be incorrect [citations]. . . . The moving plaintiff must persuade the court that the benefits of a potential mistake outweigh the costs."); *see also Winter*, 555 U.S. at 32 ("[T]he balance of equities and consideration of the public interest—are pertinent in assessing the propriety of any injunctive relief, preliminary or permanent."). Plaintiffs bear the burden and, because they seek an injunction that would change the status quo, must also show "this is not a 'doubtful' case and that the preliminary injunction they propose is necessary to avoid 'extreme or very serious damage.'" *Baird*, 2022 WL 17542432, at *8 (quoting *Doe v. Snyder*, 28 F.4th 103, 111 (9th Cir. 2022)).

Plaintiffs have not met this burden. They posit that accidental firearm injuries and deaths in California have not decreased because of the CLI and MDM requirements, citing a 2020 study on nonfatal firearm injuries in California from

2005 to 2015. Pls.' Br. 20, n.13 (citing Frank Decl., Ex. 1). But the study actually shows that unintentional firearm injuries decreased by 12.7 percent from 2005 to 2015, and the lethality rate of such injuries decreased "significantly" from 5.3 percent to 1.1. percent. Frank Decl., Ex. 1 at 1, 5, 9. The study is thus consistent with Defendant's showing that CLI and MDM requirements reduce accidental firearm injuries and deaths. Def.'s Br. 18.

Plaintiffs also point to a declaration from the Peace Officers Research Association of California ("PORAC") president, Mr. Marvel. Pls.' Br. 20. Putting aside the fact that Plaintiffs failed to make this witness available at the hearing for cross-examination, the declaration adds nothing to the analysis. Mr. Marvel's personal opinions about the UHA's effectiveness—and other, different pending legislation—merely reflect his policy preferences, which can be communicated to the Legislature via PORAC's "significant" lobbying presence. Marvel Decl. ¶ 2-17. But it is not the court's role to "re-litigate a policy disagreement that the California legislature already settled."[5] *Pena v. Lindley*, 898 F.3d 969, 980 (9th Cir. 2018). Defendant has contemporaneously filed objections to this declaration.

Plaintiffs have thus failed to meet their heightened burden, whereas Defendant—without having the burden to do so—has shown the equitable factors weigh against a preliminary injunction. Def.'s Br. 18-20.[6]

CONCLUSION

The Court should deny Plaintiffs' Motion for a Preliminary Injunction.[7]

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[5] Mr. Marvel also comments on the UHA's peace officer exemptions, Marvel Decl. ¶ 4, which are irrelevant because Plaintiffs do not bring an equal protection claim and, in any event, was rejected by the Ninth Circuit. *Pena*, 898 F.3d at 987.

[6] As Defendant warned at the hearing, PI Day2 Tr. 127, Plaintiffs continue to change the scope of the injunction they seek. Pls.' Br. 21, n.15. Plaintiffs assert that the three-for-one provision should also be enjoined. *Id.* (citing Cal. Penal Code § 31910(b)(7)). But Plaintiffs failed to present any evidence or argument—at the hearing or otherwise—as to why the *Winter* factors favor enjoining this provision.

[7] If the Court were to grant Plaintiffs' Motion in any form, Defendant again asks the Court to immediately stay the order pending appeal. PI Day2 Tr. 152.

Dated: March 10, 2023

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant, certifies that this brief contains 3,810 words, which:

X complies with the word limit of L.R. 11-6.1.

__ complies with the word limit set by court order dated .

Dated: March 10, 2023

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CERTIFICATE OF SERVICE

Case Name: ***Boland, Lance, et al. v. Robert Bonta, et al.*** Case No. **8:22-cv-01421-CJC-ADS**

I hereby certify that on March 10, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **DEFENDANT'S SECOND CLOSING BRIEF FOLLOWING EVIDENTIARY HEARING ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**
- **DEFENDANT'S OBJECTIONS TO DECLARATION OF BRIAN R. MARVEL SUPPORTING PLAINTIFFS' FIRST CLOSING BRIEF FOLLOWING EVIDENTIARY HEARING ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 10, 2023, at San Francisco, California.

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Declarant

Signature

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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

LANCE BOLAND, ET AL., Plaintiffs, **v.** **ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, ET AL.,** Defendants.	Case No. 8:22-cv-01421-CJC-ADS **DEFENDANT'S OBJECTIONS TO DECLARATION OF BRIAN R. MARVEL SUPPORTING PLAINTIFFS' FIRST CLOSING BRIEF FOLLOWING EVIDENTIARY HEARING ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION** Courtroom: 9B Judge: Hon. Cormac J. Carney Trial Date: None set Action Filed: August 1, 2022

Defendant California Attorney General Rob Bonta hereby submits the following objections to the Declaration of Brian R. Marvel, president of the Peace Officers Research Association of California ("PORAC"), ECF No. 57-2, which was filed in support of Plaintiffs' first closing brief following the preliminary injunction hearing.

1. Defendant objects to the **entirety** of the declaration because Plaintiffs failed to make Mr. Marvel available at the evidentiary hearing for cross-examination. There is no explanation in Mr. Marvel's declaration for why he could not have testified at the hearing, and Plaintiffs were capable of doing so given that they made six other witnesses available for testimony both in person and via video conference. *See* ECF Nos. 41, 47.

2. Defendant objects to the **entirety** of the declaration because it constitutes improper opinion evidence. Fed. R. Evid. 701. Mr. Marvel is not testifying as an expert, and the statements in his declaration are not "helpful to . . . determining a fact in issue." Fed. R. Evid. 701(b). As the drafters of Rule 701 noted, "meaningless assertions which amount to little more than choosing up sides" should be excluded for lack of helpfulness. Fed. R. Evid. 701 advisory committee's note. Mr. Marvel acknowledges that the declaration's sole purpose is merely to take Plaintiffs' side in this case when he states in paragraph 18 that "PORAC would like the Court to be aware of its position" because it failed to file an amicus brief.

3. Defendant objects to **paragraphs 4, 5, 6, and 15** of the declaration for lack of relevance, because Mr. Marvel's and PORAC's views on the Unsafe Handgun Act ("UHA") are not "fact[s] [] of consequence in determining the action." Fed. R. Evid. 401(b).

4. Defendant objects to **paragraph 5** of the declaration for lack of foundation. Fed. R. Evid. 602. The declaration does not establish Mr. Marvel's basis for opining on the effectiveness of the UHA's chamber load indicator, magazine disconnect mechanism, and microstamping requirements.

5. Defendant objects to **lines 17 through 19 of paragraph 7** of the declaration for lack of foundation. Fed. R. Evid. 602. The declaration does not establish Mr. Marvel's basis for opining that "many officers are issued 4th or 5th-generation Glock pistols."

6. Defendant objects to **paragraphs 8 and 9** of the declaration for lack of relevance, because Mr. Marvel's and PORAC's views on the Second Amendment are not "fact[s] [] of consequence in determining the action." Fed. R. Evid. 401(b).

7. Defendant objects to **lines 3 through 6 of paragraph 9** of the declaration for lack of foundation. Fed. R. Evid. 602. The declaration does not establish Mr. Marvel's basis for opining that off-Roster handguns are "commonly issued to approximately 77,000 peace officers while they are on-duty in California."

8. Defendant objects to **paragraphs 11, 12, 13, and 14** of the declaration for lack of relevance, because Mr. Marvel's and PORAC's position on Senate Bill 377—a bill currently pending in the Legislature that is not before this Court and not relevant to the chamber load indicator, magazine disconnect mechanism, or microstamping requirements at issue here—are not "fact[s] [] of consequence in determining the action." Fed. R. Evid. 401(b).

Dated: March 10, 2023

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