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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
12 CIVIL DIVISION
13

14 **KIM RHODE et al.,**
15
16 Plaintiffs,
17
18 **v.**
19 **ROB BONTA, in his official capacity**
as Attorney General of the State of
California, et al.,
20 Defendant.

Case No. 3:18-cv-00802-BEN-JLB

DEFENDANT'S OMNIBUS BRIEF

Dept: 5A
Judge: Hon. Roger T. Benitez
Action Filed: April 26, 2018

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INTRODUCTION

The Court should uphold the challenged Ammunition Laws for reasons discussed in the Attorney General’s prior briefing in this matter and based on the evidence presented in this case.¹ Each of Plaintiffs’ claims fails as a matter of law.²

First, the Ammunition Laws comport fully with the Second Amendment and satisfy the text-and-history standard announced in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). The Ammunition Laws’ requirements for the purchase, transport, and possession of ammunition are constitutional at both stages of the *Bruen* inquiry. Plaintiffs cannot meet their threshold burden because the laws are presumptively lawful conditions and qualifications on the sale of arms—not presumptively unconstitutional requirements. Even if Plaintiffs could show that the laws burden presumptively protected conduct, the laws are consistent with the Nation’s tradition of firearm regulation. They are comparable to background checks used in “shall-issue” States that do not violate the Second Amendment. *See Bruen*, 597 U.S. at 38 n.9. Background checks can be traced back to the early

¹ The Attorney General uses “Ammunition Laws” to refer to statutory and regulatory provisions challenged in Plaintiffs’ First Amended Complaint: California Penal Code sections 30312, 30314, 30342, 30347, 30348, 30350, 30352, 30363, 30370, 30385, 30390, and 30395, and California Code of Regulations, tit. 11, § 4263. Dkt. 9 at 31. The statutory provisions were enacted by Proposition 63, as amended by Senate Bill 1235. 2016 Cal. Stat., ch. 55. The Attorney General incorporates by reference his prior submissions in this matter. *See* Dkt. 11, 13, 34, 42, 48, 53, 59, 79, 81, 82, 86, 92, 100. As discussed, Plaintiffs cannot show that the Ammunition Laws are facially unconstitutional, *see* Dkt. 81 at 11-13, and any constitutional infirmity of part of the Ammunition Laws would not warrant invalidation of them all, *cf.* 2016 Cal. Legis. Serv. Prop. 63, § 15 (severability clause). Moreover, Plaintiffs have failed to present evidence that any of the individual Plaintiffs have been unable to acquire ammunition as a result of the Ammunition Laws. *See* Dkt. 81 at 10; Dkt. 93-1–93-5 (declarations of Plaintiffs Rhode, Brennan, Henry, Johnson, and Welvang).

² The Court previously dismissed Plaintiffs’ equal protection claim (Count 8). Dkt. 16 at 8.

1 twentieth century and are consistent with restrictions enacted during the founding
 2 and Reconstruction. California’s ammunition background checks “are designed to
 3 ensure only that those bearing arms” in California “are, in fact, ‘law-abiding,
 4 responsible citizens,’” and the laws employ “narrow, objective, and definitive
 5 standards” for determining when someone is eligible to purchase ammunition. *Id.*
 6 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)).

7 **Second**, Plaintiffs cannot show that the Ammunition Laws violate the dormant
 8 Commerce Clause. U.S. Const. art. I, § 8, cl. 3. Under the Supreme Court’s recent
 9 decision in *National Pork Producers Council v. Ross* (*National Pork*), 598 U.S. 356
 10 (2023), the Ammunition Laws do not discriminate against out-of-state vendors, nor
 11 are they designed to benefit in-state vendors. The Ammunition Laws are generally
 12 applicable and seek to protect the public from prohibited persons and unserialized
 13 firearms. And any out-of-state burdens are not clearly in excess of the putative (and
 14 actual) in-state, public-safety benefits.

15 **Finally**, Plaintiffs cannot show that 18 U.S.C. § 926A preempts California
 16 Penal Code section 30314(a). Section 926A provides a safe harbor for transporting
 17 a firearm from one location where the individual may lawfully possess that firearm
 18 to another place where the individual may lawfully possess that firearm. That
 19 limited protection does not, by its terms, extend to ammunition, and thus there is no
 20 “direct and positive conflict” such that the federal and state laws “cannot be
 21 reconciled.” 18 U.S.C. § 927.

22 **ARGUMENT**

23 **I. THE AMMUNITION LAWS COMPORT WITH THE SECOND AMENDMENT**

24 Plaintiffs’ Second through Seventh Claims for Relief challenge the
 25 Ammunition Laws under the Second Amendment.³ Those claims fail because the

26 ³ Plaintiffs’ Second Amendment claims challenge the requirement that all
 27 ammunition sales be conducted in face-to-face transactions, Cal. Penal Code
 28 § 30312 (Count 2); the prohibition on importing ammunition acquired out-of-state

1 Ammunition Laws are constitutional under *Bruen*'s text-and-history standard. That
 2 standard requires courts to first determine whether "the Second Amendment's plain
 3 text covers an individual's conduct" regulated by the challenged law. *Bruen*, 597
 4 U.S. at 17. If it does, the Second Amendment "presumptively protects that
 5 conduct," and only "then" does the burden shift to the government to "demonstrate
 6 that the regulation is consistent with this Nation's historical tradition of firearm
 7 regulation." *Id.* None of the challenged Ammunition Laws violate the Second
 8 Amendment.

9 **A. Plaintiffs Cannot Show that the Ammunition Laws Burden**
 10 **Conduct that Is Presumptively Protected by the Second**
 11 **Amendment**

12 The threshold question under the *Bruen* framework is whether plaintiffs have
 13 carried their burden to establish that "the Constitution presumptively protects" their
 14 proposed course of conduct. *Bruen*, 597 U.S. at 17; *cf. Schaffer ex rel. Schaffer v.*
 15 *Weast*, 546 U.S. 49, 56-57 (2005); *Clark v. Cmty. for Creative Non-Violence*, 468
 16 U.S. 288, 293 n.5 (1984). To answer that question, the Court addresses whether
 17 "the Second Amendment's plain text covers [the] conduct." *Bruen*, 597 U.S. at 24.
 18 That inquiry considers "the normal and ordinary meaning of the Second
 19 Amendment" as well as its "historical background." *Id.* at 20 (internal quotation
 20 marks omitted). Plaintiffs cannot meet their burden at the threshold stage of the
 21 *Bruen* inquiry. *See* Dkt. 81 at 15-18.

22 The plain text of the Second Amendment protects a right to "keep and bear
 23 Arms." U.S. Const. amend. II. Even though the Second Amendment does not

24 _____
 25 without delivering the ammunition to a licensed ammunition vendor, *id.* § 30314
 26 (Count 3); the record-keeping and reporting requirements imposed on licensed
 27 vendors, *id.* § 30352 (Count 4); the requirement that all ammunition purchasers
 28 pass a background check prior to taking possession of ammunition purchased in a
 transaction, *id.* § 30370 (Count 5); the authorization for licensed vendors to charge
 a fee to store ammunition, Cal. Code Regs., tit. 11, § 4263(a)(2) (Count 6); and the
 cumulative effect of the Ammunition Laws (Count 7).

1 reference a right to acquire or purchase Arms or mention ammunition, it “protects
 2 ancillary rights necessary to the realization of the core right to possess a firearm for
 3 self-defense.” *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017).
 4 That would include a “corresponding right” to “obtain bullets necessary to use”
 5 firearms for self-defense. *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953,
 6 967 (9th Cir. 2014), *abrogated on other grounds by Bruen*, 597 U.S. 1. Nothing in
 7 the Ammunition Laws, however, prevents law-abiding citizens from acquiring
 8 ammunition. Instead, those laws impose certain conditions on the lawful
 9 acquisition of ammunition. Plaintiffs’ proposed course of conduct—e.g.,
 10 purchasing ammunition without a background check and without engaging in an in-
 11 person transaction—is not covered by the “plain text” of the Second Amendment or
 12 any ancillary right. *See* Dkt. 81 at 15-17; *see also Rocky Mountain Gun Owners v.*
 13 *Polis (Rocky Mountain)*, __ F. Supp. 3d __, 2023 WL 8446495, at *8 (D. Colo.
 14 Nov. 13, 2023) (concluding that “the relevant conduct impacted by [a firearm-
 15 purchase] waiting period—the receipt of a paid-for firearm without delay—is not
 16 covered” by the plain text, even though the law applies to firearm sales).

17 Even if the plain text covers Plaintiffs’ proposed course of conduct, they still
 18 cannot meet their threshold burden under *Bruen* because “laws imposing conditions
 19 and qualifications on the commercial sale of arms” are “presumptively lawful
 20 regulatory measures.” *Heller*, 554 U.S. at 626-27 & n.26; *accord McDonald v. City*
 21 *of Chicago*, 561 U.S. 742, 787 (2010). This limitation on the scope of the Second
 22 Amendment was not called into question by *Bruen*. *See Bruen*, 597 U.S. at 80-81
 23 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626-27 & n.26); *see also*
 24 *United States v. Perez-Garcia*, 2022 WL 17477918, at *4 (S.D. Cal. Dec. 6, 2022)
 25 (*Heller*’s non-exhaustive examples of “‘presumptively lawful’ regulations are
 26 consistent with *Bruen*’s reasoning”). Conditions and qualifications on the sale of
 27 arms or ammunition are presumptively lawful at the threshold stage of the *Bruen*
 28 inquiry. *See, e.g., Rocky Mountain*, 2023 WL 8446495, at *11 (holding that a

1 waiting period to deliver firearms after purchase is a “condition on the commercial
2 sale of a firearm” that is “presumptively lawful under *Heller*”).

3 The Ammunition Laws’ background check and related requirements are—like
4 waiting-periods—presumptively lawful conditions and qualifications on the sale of
5 arms. *See* Dkt. 81 at 16-17.⁴ California is not alone in extending the use of
6 background checks to ammunition sales. New York recently implemented its
7 background check requirements for ammunition purchases, including the
8 imposition of fees associated with the costs of administering the background check
9 system. *See* N.Y. Penal Law §§ 400.02, 400.03; N.Y. Exec. Law § 228. A district
10 court determined that a Second Amendment challenge to those new requirements
11 was unlikely to succeed on the merits. *See N.Y. State Firearms Ass’n v. Nigrelli*,
12 2023 WL 8495198, at *4 (W.D.N.Y. Sept. 21, 2023) (denying motion for
13 temporary restraining order). The court held that New York’s background checks
14 for ammunition sales are “comparable to the ‘shall-issue’ regimes sanctioned by
15 *Bruen*” because “licensed dealers and sellers of ammunition have no discretion to
16 withhold ammunition based on any ‘formation of an opinion’” if the purchaser
17 passes the background check. *Id.* at *3 (citation omitted). It did not matter that
18 background checks for ammunition sales are administered more frequently than
19 background checks for firearm purchases or carry permits because the frequency of
20 the checks is “determined by the purchaser and not the government.” *Id.* The court
21 observed that there was nothing “novel” or uniquely “burdensome” about extending
22 background checks to ammunition sales. *Id.* Finally, the court held that the Second
23 Amendment is not a “legal impediment” to the imposition of fees for ammunition
24

25 ⁴ In addition, the recordkeeping and reporting requirements applicable to
26 licensed ammunition vendors, *see* Cal. Penal Code § 30352, do not burden conduct
27 covered by the plain text of the Second Amendment. *See Bruen*, 597 U.S. at 17;
28 Dkt. 81 at 24. Even if they did, they are presumptively lawful conditions on the
sale of ammunition.

1 sales. *Id.* at *4. The court observed that the fees defrayed the costs of
 2 administering the background check system, though it noted that “exorbitant fees”
 3 can “deny ordinary citizens” their Second Amendment rights and can be challenged
 4 “on a case-by-case basis.” *Id.* at *4 (quoting *Bruen*, 597 U.S. at 38 n.9).

5 As with New York’s ammunition-sale requirements, California’s Ammunition
 6 Laws do not burden conduct covered by the plain text of the Second Amendment
 7 and are presumptively lawful conditions on firearm-related sales. The background
 8 checks are based on objective criteria. *See* Dkt. 81 at 3-7. Over 99 percent of all
 9 ammunition background checks utilize standard AFS checks, which cost \$1 and are
 10 completed in mere seconds. Dkt. 92-11 ¶¶ 11-12. The fees required to conduct the
 11 background checks are de minimis and defray the costs of administering the
 12 background check system. *See* Cal. Penal Code § 30370(c) (authorizing the
 13 Department to recover “the cost of processing and regulatory and enforcement
 14 activities related to this section by charging the ammunition transaction or purchase
 15 applicant a fee not to exceed the fee charged for” firearm sales); *id.* § 30370(e)
 16 (charging ammunition purchasers and transferees \$1 per transaction to cover “the
 17 reasonable cost of regulatory and enforcement activities”). Courts routinely uphold
 18 firearm-related taxes and fees at the threshold stage of the *Bruen* inquiry—without
 19 any historical analysis—provided the fee is not so exorbitant as to functionally deny
 20 the right to keep and bear arms. *See, e.g., United States v. Saleem*, __ F. Supp. 3d
 21 __, 2023 WL 2334417, at *11 n.9 (W.D.N.C. Mar. 2, 2023); *Nat’l Ass’n for Gun*
 22 *Rights, Inc. v. City of San Jose*, 2023 WL 4552284, at *8 (N.D. Cal. July 13, 2023);
 23 *Koons v. Platkin*, 2023 WL 3478604, at *32-33 (D.N.J. May 16, 2023); *Williams v.*
 24 *McFadden*, __ F. Supp. 3d __, 2023 WL 4919691, at *6 (W.D.N.C. Aug. 1, 2023).

25 Whatever technical problems individuals may encounter in certain
 26 ammunition transactions, such problems cannot support the facial invalidation of
 27 the Ammunition Laws. *See Nigrelli*, 2023 WL 8495198, at *4 (“Technical glitches
 28 cannot serve to undermine constitutionally permissible regulatory regimes.”). And

1 Plaintiffs fail to produce evidence that the Ammunition Laws were enacted or are
 2 implemented in bad faith, or that the system has deprived them of the ability to
 3 acquire ammunition. *See id.* (“There is no allegation of bad faith on the part of the
 4 State, and [plaintiff] has not alleged that the system has been down for any
 5 excessively lengthy period of time that would warrant the Court’s intervention.”);
 6 *Bruen*, 597 U.S. at 38 n.9 (authorizing challenges to shall-issue regimes “put
 7 toward abusive ends” for example, where “lengthy wait times in processing license
 8 applications or exorbitant fees deny ordinary citizens their right to public carry”).
 9 California’s Ammunition Laws’ background check and related requirements are
 10 constitutional at the threshold stage of the *Bruen* inquiry.

11 **B. The Ammunition Laws Are Consistent with the Nation’s**
 12 **Historical Tradition of Firearm Regulation**

13 Even if Plaintiffs could establish that the conditions on the sale of ammunition
 14 imposed by the Ammunition Laws burden conduct presumptively protected by the
 15 Second Amendment, California’s restrictions are justified because they are
 16 consistent with “the historical tradition that delimits the outer bounds of the right to
 17 keep and bear arms.” *Bruen*, 597 U.S. at 19. The government must justify a
 18 regulation by establishing that it falls within a historical tradition of laws that are
 19 “relevantly similar,” in the sense that they “impose a comparable burden on the
 20 right of armed self-defense” that “is comparably justified.” *Id.* at 28-29. There is
 21 no need to identify “a historical *twin*” or “a dead ringer” for purposes of that
 22 “analogical inquiry.” *Id.* at 29-30. And when the challenged regulation
 23 “implicat[es] unprecedented societal concerns or dramatic technological changes,”
 24 that “may require a more nuanced approach.” *Id.* at 27. The historical analysis
 25 required under *Bruen* does not impose “a regulatory straightjacket” on government
 26 regulations. *Id.* at 30. States may regulate arms in different ways and
 27 “experiment[.]” with reasonable weapon restrictions. *McDonald*, 561 U.S. at 785
 28 (plurality opinion).

Here, a more nuanced approach to the historical analysis is required because the type of background checks required under the Ammunition Laws—or those required to purchase a firearm or to obtain a permit to carry in public, for that matter—were not possible during the founding or Reconstruction due to obvious technological limitations. *See* Dkt. 81 at 18-19; Dkt. 92-1 ¶ 15.⁵ The ability to conduct “wide-ranging and rapid background checks” did not exist until the end of the nineteenth century, and the first background check requirement for firearm purchases was not enacted until 1911. Dkt. 92-1 ¶¶ 15, 18. Rapid background checks were not possible until the development of computers and the rise of the Internet in the 1990s, *id.* ¶ 21, during which the federal background check system for firearm purchases was enacted with the passage of the Brady Handgun Violence Prevention Act in 1993. *Id.* ¶ 20. Therefore, it is not surprising that background check requirements did not exist during the founding or Reconstruction.⁶ Unlike *Bruen* and *Heller*, this is not a “straightforward case,” because “firearm access and technology, along with violent crime, was drastically different” during the eighteenth and nineteenth centuries. *Rocky Mountain*, 2023 WL 8446495, at *19.

Under a more nuanced approach, California’s ammunition background check system is consistent with the Nation’s regulatory tradition. As with shall-issue permitting schemes, the background checks “are designed to ensure only that those bearing arms in a jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” *Bruen*, 597 U.S. at 38 n.9. They are consistent with the Nation’s historical tradition

⁵ A more nuanced approach is also warranted here for the independent reason that the Ammunition Laws address the unprecedented societal concern of “ghost guns,” which can be built without passing a background check. *See* Dkt. 81 at 19.

⁶ It is also unsurprising that legislatures during those times did not require firearm purchases to be in-person. Dkt. 92-1 ¶ 16 (explaining the rise of mail-order firearm purchases in the late nineteenth century); *cf. Rocky Mountain*, 2023 WL 8446495, at *16 (noting that it was “logical that waiting-period laws were not adopted” during “the founding and in the century that followed” because “firearms were not as readily available for purchase”).

1 of limiting access to firearms and ammunition by individuals deemed to pose a
 2 danger to society. Dkt. 79 (surveys of historical laws); Dkt. 81 at 20-25; Dkt. 82 at
 3 4-5; Dkt. 92-1 ¶¶ 24-69; Dkt. 92-9 ¶¶ 8-9; *see United States v. Jackson*, 69 F.4th
 4 495, 502-05 (8th Cir. 2023) (describing the history of laws preventing certain
 5 groups from possessing arms); *United States v. White*, 2023 WL 6066201, at *6
 6 (S.D.N.Y. Sept. 18, 2023) (crediting “compelling evidence of a tradition” “barring
 7 those deemed dangerous from possessing ammunition”); *United States v. Young*,
 8 639 F. Supp. 3d 515, 525 (W.D. Pa. 2022) (noting that “it was not only firearms,
 9 but also ammunition and other associated accessories that had been historically
 10 regulated”).⁷ There is also a long tradition of using licenses and permits to “limit
 11 (and not categorically prohibit) those who may engage in certain firearms-related
 12 activities.” Dkt. 92-1 ¶ 33; *see id.* ¶¶ 24-75.

13 During the founding era, the Continental Congress and numerous States also
 14 enacted laws disarming loyalists and other citizens who opposed the American
 15 cause or refused to swear allegiance to the new Republic. *See 4 Journals of the*
 16 *Continental Congress 1774-1789*, at 205 (Worthington Chauncey Ford ed., 1906)
 17 (Mar. 14, 1776) (recommending that the colonies “disarm[]” all persons “who are
 18 notoriously disaffected to the cause of America, or who have not associated, and
 19 shall refuse to associate, to defend, by arms, these United Colonies”).⁸ These laws

21 ⁷ This tradition is squarely at issue in *United States v. Rahimi*, No. 22-915,
 22 pending before the U.S. Supreme Court. That case was argued and submitted on
 23 November 7, 2023, and a decision is forthcoming. This Court may wish to defer its
 decision in this case until the issuance of the *Rahimi* opinion.

24 ⁸ *See* Dkt. 79-1 at 10-11 (oath requirements in Pennsylvania, Virginia, and
 25 Massachusetts); *see also* Act of Dec. 1775, *The Public Records of the Colony of*
 26 *Connecticut from May, 1775 to June, 1776, inclusive* 193 (Charles J. Hoadly ed.,
 27 1890) (disarming any person “duly convicted” of “libel or defam[ation]” of the
 28 resolutions of the “Congress of the United Colonies, or the General Assembly of
 this Colony”); Act of Sept. 20, 1777, ch. 40, § 20, *Acts of the General Assembly of*
the State of New Jersey 90 (1777) (authorizing officials to deprive and take from

are “compelling evidence of a tradition of barring those deemed dangerous from possessing ammunition.” *White*, 2023 WL 6066201, at *6. Loyalty oaths were again imposed during Reconstruction as a condition to exercise a range of constitutional rights, including accessing firearms and ammunition. Dkt. 92-7 ¶¶ 7-20. “Ironclad oaths” were sometimes imposed to require people to swear that they, in the past, had not borne arms against the United States or participated in rebellion. *Id.* ¶ 20; *cf.* An Act Regulating Crimes and Punishments, § 282, 1868 Kan. Sess. Laws 317, 378 (prohibiting any person “who has ever borne arms against the government of the United States” from carrying “any pistol, bowie-knife, dirk or other deadly weapon”).⁹

The Ammunition Laws are consistent with this history of firearm and ammunition regulation.¹⁰ They impose a comparable burden on the right to armed

“Persons as they shall judge disaffected and dangerous to the present government, all the Arms, Accoutrements and Ammunition which they own or possess”); Act of 1777, ch. 6, § 9, 24 *The State Records of North Carolina* 89 (Walter Clark ed., 1905) (providing that all persons who “fail[] or refus[e] to take the Oath of Allegiance” “shall not keep Guns or other Arms within his or their house”); Act of 1776, 7 *Records of the Colony of Rhode Island & Province Plantations in New England* 567 (John Rossell Bartlett ed., 1862) (authorizing the taking of “all arms, ammunition and warlike stores” from any person who refused to take an oath of allegiance to the United American Colonies); Act of Feb. 16, 1787, §§ 1-3, 1 *Private & Special Statutes of the Commonwealth of Massachusetts* 145-47 (1805) (disarming participants in Shays’ Rebellion for three years as a condition to being pardoned).

⁹ Reconstruction-era analogues are relevant to the *Bruen* analysis. *See Antonyuk v. Chiumento*, __ F.4th __, 2023 WL 8518003, at *15-16 (2d Cir. Dec. 8, 2023) (explaining why “the prevailing understanding of the right to bear arms in 1868 and 1791 are both focal points”).

¹⁰ It does not matter that an alternative background check system might be preferable to Plaintiffs, *see* July 17, 2023 Hrg. Tr. at 33, because the “how” and “why” of the Ammunition Laws are comparable to historical analogues. *See Rocky Mountain*, 2023 WL 8446495, at *19 (“Perhaps the state could impose a more narrowly tailored requirement, but that is not the inquiry here.”).

1 self-defense, as shown by the fact that none of the Plaintiffs have been unable to
 2 acquire ammunition. *See* Dkt. 93-1–93-5. That burden is no more severe than the
 3 burden imposed by the categorical disarmament laws and practices of the founding
 4 or Reconstruction eras. Moreover, the Ammunition Laws’ modest burden is
 5 comparably justified because the laws prohibit individuals deemed under state and
 6 federal law to pose public-safety risks from purchasing ammunition. *Cf. Rocky*
 7 *Mountain*, 2023 WL 8446495, at *19 (holding that a waiting period was relevantly
 8 similar to licensing laws).¹¹

9 In addition to the background check requirement, the Ammunition Laws
 10 include attendant requirements that are necessary to effectuate the background
 11 check system, including fees and importation restrictions. These requirements
 12 should be assessed as part of the background check system. Nevertheless, they also
 13 have independent historical analogues. There is a robust tradition of governments
 14 imposing fees related to ammunition. *See, e.g.,* Laws, Statutes, Ordinances and
 15 Constitutions, Ordained, Made and Established, by the Mayor, Alderman, and
 16 Commonality, of the City of New York 19 (1763) (charging fee for the
 17 transportation of gunpowder); 1776 N.J. Acts 6-7, § 6 (charging fee for inspection
 18 of gunpowder for sale); 1820 N.H. Laws 275, § 7 (same). Record-keeping
 19 requirements also have historical precedent. *See* Dkt. 92-1 ¶¶ 52-54. In 1881, for
 20 example, Illinois created a system of recordkeeping for all sales of deadly weapons,
 21 requiring each seller to maintain a register detailing each transaction that was made
 22 open to the public, subject to a fine of up to \$200 (the equivalent of \$6,000 today)
 23 for failing to comply. 1881 Ill. Laws 73-74, § 3.

24
 25 ¹¹ Notably, the district court in *Rocky Mountain* received testimony from
 26 Professor Spitzer, 2023 WL 8446495, at *9, who provided similar testimony in this
 27 case, *see* Dkt. 92-1. That court also considered testimony from Professor Cramer,
 28 but found “his testimony had significant shortcomings in persuasiveness and
 credibility.” *Rocky Mountain*, 2023 WL 8446495, at *6.

1 Because the Ammunition Laws are consistent with the Nation’s tradition of
 2 firearm regulation, they do not violate the Second Amendment. Accordingly,
 3 Counts 2 through 7 fail as a matter of law.

4 **II. THE AMMUNITION LAWS DO NOT VIOLATE THE DORMANT COMMERCE** 5 **CLAUSE**

6 Plaintiffs’ First Claim for Relief contends that California Penal Code sections
 7 30312, 30314, 30370, and 30385 violate the dormant Commerce Clause. Dkt. 9
 8 ¶¶ 83-91. This claim fails as a matter of law.

9 **A. Courts Exercise Extreme Caution in Evaluating Dormant** 10 **Commerce Clause Claims**

11 The Supreme Court has long observed that “[e]xtreme caution’ is warranted”
 12 in cases such as this one involving claims that a state law violates the dormant
 13 Commerce Clause. *Nat’l Pork*, 598 U.S. at 390 (quoting *Gen. Motors Corp. v.*
 14 *Tracy*, 519 U.S. 278, 310 (1997)). “Preventing state officials from enforcing a
 15 democratically adopted state law in the name of the dormant Commerce Clause is a
 16 matter of ‘extreme delicacy,’ something courts should do only ‘where the infraction
 17 is clear.’” *Id.* (quoting *Conway v. Taylor’s Executor*, 66 U.S. 603, 634 (1861)).

18 In *National Pork*, the Supreme Court reaffirmed that the “concern with
 19 preventing purposeful discrimination against out-of-state economic interests” is
 20 what lies at the “very core” of dormant Commerce Clause jurisprudence. *Id.* at 369,
 21 371; *see id.* at 374-76. The Ammunition Laws are not discriminatory, and under
 22 *National Pork*, that is the end of the inquiry. Yet even if the Ammunition Laws
 23 imposed a substantial burden on interstate commerce, the laws must be upheld
 24 under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), because Plaintiffs cannot
 25 show that the purported burden clearly exceeds the laws’ safety benefits.

26 **B. The Ammunition Laws Are Not Discriminatory**

27 Laws that apply equally to in-state and out-of-state entities do not discriminate
 28 against interstate commerce and therefore do not violate the Commerce Clause.

1 *Nat'l Pork*, 598 U.S. at 369-70; *Pharm. Research & Mfrs. of Am. v. Cnty. of*
 2 *Alameda*, 768 F.3d 1037, 1042 (9th Cir. 2014) (laws that treat “all private
 3 companies exactly the same” do not discriminate against interstate commerce
 4 (quoting *United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550
 5 U.S. 330, 342 (2007))); *Nat’l Ass’n of Optometrists & Opticians LensCrafters, Inc.*
 6 *v. Brown*, 567 F.3d 521, 525 (9th Cir. 2009) (same). Here, the Ammunition Laws
 7 do not have a discriminatory purpose nor are they discriminatory on their face or in
 8 their application. They were not passed to disadvantage out-of-state ammunition
 9 vendors or benefit in-state vendors; rather, they were passed with the express goal
 10 of reducing gun violence and keeping Californians safe. 2016 Cal. Legis. Serv.
 11 Prop. 63 § 3 (Purpose and Intent). And by their terms, they apply equally to all
 12 entities, regardless of their location. The Ammunition Laws’ requirements are not
 13 determined by vendors’ locations, but instead impose uniform requirements on all
 14 ammunition purchases to achieve the aim of keeping ammunition out of the hands
 15 of dangerous individuals.

16 Plaintiffs allege that, as a practical matter, the Ammunition Laws discriminate
 17 against out-of-state vendors and subject them to disparate burdens. Dkt. 9 ¶¶ 82-91.
 18 These conclusory allegations, however, are belied by the fact that *all* vendors—
 19 whether they are in-state or out-of-state—are subject to the *same* burdens.

20 First, Plaintiffs allege that the Ammunition Laws prohibit out-of-state vendors
 21 from engaging in direct-to-consumer sales to California residents and restrict their
 22 access to the California ammunition market. Dkt. 9 ¶¶ 84-85. Not so. Out-of-state
 23 vendors are permitted to sell ammunition to California residents; if they do not have
 24 a physical presence and license in California themselves, out-of-state vendors are
 25 simply required to process the sale through a licensed ammunition vendor in
 26 California. Cal. Penal Code § 30312. This requirement applies to *all* vendors,
 27 including, for example, in-state vendors who lack a license and/or a brick-and-
 28 mortar location to process transactions in person; it is not a special condition

1 imposed only on out-of-state vendors. *Id.* To the extent Plaintiffs complain that
2 out-of-state vendors are barred from selling to California residents in direct-to-
3 consumer sales via mail-order, Dkt. 9 ¶ 55-56, this too is a restriction that applies to
4 all vendors. Under section 30312(b), no vendor anywhere in the United States, in
5 or out of California, is permitted to sell and ship ammunition via mail-order
6 because all sales are required to take place in face-to-face transactions.

7 Second, Plaintiffs allege that the Ammunition Laws discriminate against out-
8 of-state vendors because the laws authorize licensed vendors to charge a fee to
9 process out-of-state transactions. Dkt. 9 ¶ 86. But Section 30312 does not impose
10 a special fee on out-of-state vendors. Rather, it requires any in-state or out-of-state
11 vendor who lacks a license to process its ammunition sales through a licensed
12 ammunition vendor and authorizes licensed ammunition vendors to charge the
13 purchaser an “administrative fee . . . in an amount to be set by the Department of
14 Justice” for processing those transactions. Cal. Penal Code § 30312(a)(2).

15 Third, Plaintiffs contend that section 30314 discriminates against out-of-state
16 vendors by prohibiting California residents from transporting ammunition
17 purchased out-of-state back into California. Dkt. 9 ¶ 84. To begin, section 30314
18 does not in fact prohibit out-of-state vendors from selling to California residents.
19 Cal. Penal Code § 30314. California residents are free to purchase ammunition out-
20 of-state, use it out-of-state, and then return to California, and section 30314 does
21 not regulate that sale or any of the related conduct. *See id.* California residents are
22 also permitted to bring ammunition they purchase out-of-state back into California,
23 provided they first deliver it to a licensed vendor to be processed in the same
24 manner as every other in-state ammunition sale. *Id.* In either case, the law does not
25 bar or discriminate against out-of-state sales. To the contrary, section 30314
26 ensures that all ammunition possessed in California is held to the same standard for
27 lawful possession, regardless of where it is purchased.
28

1 Finally, Plaintiffs allege that section 30370 of the Ammunition Laws imposes
 2 “an unreasonable fee on non-residents who purchase ammunition in California for
 3 the first time” and that “[s]uch fee is not imposed upon residents of California who
 4 have previously purchased ammunition or firearms from California.” Dkt. 9 ¶ 90.
 5 As the individual Plaintiffs are all California residents and the non-resident vendor
 6 Plaintiffs do not claim to have attempted to purchase ammunition and been
 7 subjected to such a fee (and do not purport to have imminent plans to do so in the
 8 future), Plaintiffs do not have standing to bring such a challenge. *United States v.*
 9 *Chovan*, 735 F.3d 1127, 1135 (9th Cir. 2013) (“A person to whom a statute
 10 properly applies can’t obtain relief based on arguments that a differently situated
 11 person might present.” (internal quotation marks and citation omitted)), *abrogated*
 12 *on other grounds by Bruen*, 597 U.S. 1. Setting aside this standing issue, Plaintiffs’
 13 complaint about fees on non-residents is not an accurate description of the law.
 14 Section 30370 provides for different types of background checks and their
 15 associated fees, but it differentiates between the circumstances of the background
 16 check and ammunition purchase, not whether the purchaser is a California resident.
 17 The statute applies equally to all purchasers regardless of their residence. *See* Cal.
 18 Penal Code § 30370.

19 Because the Ammunition Laws “impose[] the same burdens on in-state
 20 [vendors] that [they] impose[] on out-of-state ones,” they are not discriminatory.
 21 *Nat’l Pork*, 598 U.S. at 370; *see also id.* at 378 (“the presence or absence of
 22 discrimination in practice prove[s] decisive”). Although the Court previously drew
 23 comparisons between this case and *Nationwide Biweekly Administration, Inc. v.*
 24 *Owen*, 873 F.3d 716 (9th Cir. 2017), *see* Dkt. 16 at 3-6; Dkt. 60 at 100-03, that
 25 comparison should be reexamined. Unlike in *Nationwide*, where the challenged
 26 law was discriminatory on its face because it required businesses to incorporate in
 27 California, 873 F.3d at 736-37, the Ammunition Laws do not include a similar
 28 requirement. Instead, they affirmatively provide unlicensed and out-of-state

1 vendors a means to legally sell ammunition to California residents. Because the
 2 Ammunition Laws are not discriminatory, they do not violate the dormant
 3 Commerce Clause.

4 **C. The Ammunition Laws Should Be Upheld Under *Pike***

5 While “no clear line separates the *Pike* line of cases from [the Supreme
 6 Court’s] core antidiscrimination precedents,” *Nat’l Pork*, 598 U.S. at 377 (internal
 7 quotation marks and citation omitted), the *Pike* inquiry can serve to illuminate
 8 hidden protectionism, *id.* at 378-79; *see also id.* at 391 (Sotomayor, J., concurring
 9 in part); *id.* at 393 (Barrett, J., concurring in part). The five justices in the *National*
 10 *Pork* majority did not agree on a single approach “to [*Pike*] challenges premised
 11 on . . . nondiscriminatory burdens,” *id.* at 379 (internal quotation marks omitted),
 12 but all five agreed that such challenges face a high bar and have rarely, if ever,
 13 succeeded, *id.* at 379 & n.2. Four of those five justices—Justices Thomas,
 14 Sotomayor, Kagan, and Gorsuch—ultimately applied a standard essentially
 15 identical to the standard applied by the Ninth Circuit. *Id.* at 383-85 (plurality
 16 opinion). Under that approach, a plaintiff must demonstrate that the “challenged
 17 law imposes ‘substantial burdens’ on interstate commerce *before* a court may assess
 18 the law’s competing benefits or weigh the two sides against each other.” *Id.* at 383
 19 (emphasis in original); *cf. Nat’l Pork Producers Council v. Ross*, 6 F.4th 1021,
 20 1032 (9th Cir. 2021). Three of those five justices—Justices Thomas, Gorsuch, and
 21 Barrett—would have gone even further. They would have barred *Pike* claims
 22 altogether when the State’s proffered interests in support of the challenged law and
 23 the plaintiffs’ asserted burdens from compliance are “incommensurable.” *Nat’l*
 24 *Pork*, 598 U.S. at 382. “In a functioning democracy,” those three justices
 25 explained, “policy choices” about how to “weigh the relevant ‘political and
 26 economic’ costs and benefits” properly “belong to the people and their elected
 27 representatives.” *Id.*

1 The upshot is that Ninth Circuit precedent requiring a threshold showing that
 2 the challenged law imposes a substantial burden on interstate commerce remains
 3 good law. The *Pike* standard does not protect a business’s preferred “methods of
 4 operation.” *Nat’l Pork*, 598 U.S. at 384 (plurality opinion) (quoting *Exxon Corp. v.*
 5 *Governor of Maryland*, 437 U.S. 117, 127 (1978)). Nor does a state regulation
 6 violate the dormant Commerce Clause “merely because it affects interstate
 7 commerce.” *Nat’l Ass’n of Optometrists & Opticians v. Harris*, 682 F.3d 1144,
 8 1148 (9th Cir. 2012).

9 Plaintiffs complain of two categories of purported “burdens.” First, Plaintiffs
 10 allege that the Ammunition Laws prevent out-of-state vendors from selling
 11 ammunition to California consumers via mail-order, Dkt. 9 ¶ 55-56; Cal. Penal
 12 Code § 30312, but the dormant Commerce Clause does not protect “the particular
 13 structure or methods of operation in a retail market.” *Exxon*, 437 U.S. at 127. The
 14 ban on mail-order sales that stems from the Ammunition Laws’ requirement that
 15 sales occur in face-to-face transactions—which, as already discussed, applies
 16 equally to all vendors—simply forecloses one method of operation. It does not
 17 substantially burden all interstate commerce.

18 Second, Plaintiffs complain that the requirement that out-of-state vendors
 19 process their transactions through licensed vendors burdens interstate commerce
 20 and that the Ammunition Laws put out-of-state vendors that do not have a physical
 21 presence in California “at the whim of licensed vendors that do.” Dkt. 9 ¶¶ 31,
 22 57.¹² Plaintiffs’ allegations regarding this burden are not borne out by the evidence
 23 they have submitted. Although Plaintiffs’ declarations indicate that some
 24

25 ¹² To the extent Plaintiffs’ alleged burden on this front also relies on the fees
 26 that out-of-state vendors may incur in the course of processing their transactions
 27 through licensed vendors, “the mere loss of profits” is not a sufficient burden on
 28 interstate commerce. *Nat’l Ass’n of Optometrists & Opticians*, 682 F.3d at 1152
 n.11 (citing *Exxon*, 437 U.S. at 127).

1 California vendors may have refused to process certain transactions, they do not
 2 establish that this requirement has the practical effect of preventing out-of-state
 3 vendors from doing business in California. Dkt. 93-6 ¶¶ 8-9 (stating that some
 4 California vendors have processed orders for Able’s Sporting, Inc., which made, on
 5 average, a few sales per month to California consumers); Dkt. 93-7 ¶ 9 (stating that
 6 some California vendors have agreed to process transactions for Ammunition
 7 Depot).¹³

8 Although this Court left the door open at the pleading stage for Plaintiffs to
 9 develop evidence showing a substantial burden, they have failed to do so. *See*
 10 Dkt. 16 at 7-8. But even if the Ammunition Laws were to impose a substantial
 11 burden on interstate commerce—a showing that Plaintiffs have not made here—
 12 *Pike* balancing favors upholding those laws. The standard under *Pike* is exacting:
 13 “[a]bsent discrimination,” a law “will be upheld unless the burden imposed on
 14 [interstate] commerce is *clearly excessive* in relation to the putative local benefits.”
 15 *Dep’t of Revenue of Ky. v. Davis*, 553 U.S. 328, 338-39 (2008) (quoting *Pike*, 397
 16 U.S. at 142 (emphasis added)). Burdens on commerce that result from regulations
 17 pursuant to the State’s police power to protect public safety are generally not
 18 regarded as significant even if they involve some loss of trade. *See Nat’l Ass’n of*
 19 *Optometrists & Opticians*, 682 F.3d at 1148 (citing *Great Atl. & Pac. Tea Co. v.*
 20 *Cottrell*, 424 U.S. 366, 371 (1976)).

21 Here, the State has an overriding interest in public safety and preventing crime
 22 that supports the Ammunition Laws. Dkt. 60 at 64 (“Few would dispute that the
 23

24 ¹³ Even if some application of the Ammunition Laws as to out-of-state
 25 vendors imposes a significant burden on interstate commerce, that would render the
 26 laws unconstitutional only as applied in that scenario; it would not amount to a
 27 facial claim that the Laws violate the dormant Commerce Clause in all
 28 circumstances. *See S.D. Myers, Inc. v. City & Cnty. of San Francisco*, 253 F.3d
 461, 471 (9th Cir. 2001) (considering whether an ordinance that was not facially
 invalid may nonetheless “be invalidated as applied” under *Pike*).

1 state has a legitimate interest in increasing public safety and preventing crime.”).
 2 Proposition 63 advanced this interest and was intended to keep “ammunition out of
 3 the hands of convicted felons, the dangerously mentally ill, and other persons who
 4 are prohibited by law from possessing firearms and ammunition.” 2016 Cal. Legis.
 5 Serv. Prop. 63 § 3, ¶ 2. Although *Pike* simply considers the regulation’s “putative
 6 benefits,” see *Nat’l Ass’n of Optometrists & Opticians*, 682 F.3d at 1155, evidence
 7 shows that the Ammunition Laws have been effective at achieving their aim. See,
 8 e.g., Dkt. 53 ¶¶ 54-56; Dkt. 92-11 ¶ 56 & tbl. 1.1, 2.1; Dkt. 92-12 ¶ 4.

9 The Ammunition Laws’ purpose and benefits are deserving of significant
 10 weight in the *Pike* analysis because they are rooted in safety, rather than motivated
 11 by the interests in economic protectionism that the dormant Commerce Clause is
 12 traditionally concerned with preventing. Compare *Granholm v. Heald*, 544 U.S.
 13 460, 472 (2005) (“States may not enact laws that burden out-of-state producers or
 14 shippers simply to give a competitive advantage to in-state businesses.”), with *Pike*,
 15 397 U.S. at 143 (“We are not, then, dealing with ‘state legislation in the field of
 16 safety where the propriety of local regulation has long been recognized’” (citation
 17 omitted)). “[R]egulations that touch upon safety are those that the [Supreme] Court
 18 has been most reluctant to invalidate” under the dormant Commerce Clause and
 19 such laws receive a “strong presumption of validity.” *Pharm. Research & Mfrs. of*
 20 *Am.*, 768 F.3d at 1045 (ellipsis and citation omitted). Under *Pike*, the Ammunition
 21 Laws should be upheld. See *Nat’l Pork*, 598 U.S. at 382 (plurality opinion) (“In a
 22 functioning democracy, policy choices like these usually belong to the people and
 23 their elected representatives.”).

24 **III. THE AMMUNITION LAWS ARE NOT PREEMPTED BY FEDERAL LAW**

25 Plaintiffs’ Ninth Claim for Relief challenges Penal Code section 30314 on the
 26 grounds that it is preempted by 18 U.S.C. § 926A. Dkt. 9 ¶¶ 131-33. By its plain
 27 language, and as evidenced by congressional intent, § 926A’s safe harbor does not
 28 extend to ammunition, and thus cannot preempt section 30314, which applies only

1 to ammunition. Even if § 926A were construed to extend the safe harbor to the
 2 transportation of ammunition, it does not directly conflict with section 30314 and
 3 thus does not preempt that statute.

4 Section 926A provides a safe harbor for any law-abiding citizen “to transport a
 5 firearm for any lawful purpose from any place where he may lawfully possess and
 6 carry such firearm to any other place where he may lawfully possess and carry such
 7 firearm.” California’s section 30314, meanwhile, provides that “a resident of this
 8 state shall not bring or transport into this state any ammunition that he or she
 9 purchased or otherwise obtained from outside of this state unless he or she first has
 10 that ammunition delivered to a licensed ammunition vendor for delivery to that
 11 resident pursuant to the procedures set forth in Section 30312.”

12 Congress did not intend for § 926A to occupy the field of firearms regulation.
 13 18 U.S.C. § 927 (“No provision of this chapter shall be construed as indicating an
 14 intent on the part of the Congress to occupy the field in which such provision
 15 operates to the exclusion of the law of any State on the same subject matter”).
 16 Section 926A does not preempt any state law, except in the narrow circumstance in
 17 which “there is a *direct and positive conflict* between” the two laws, such that “the
 18 two cannot be reconciled or consistently stand together.” *Id.* (emphasis added).
 19 Here, Plaintiffs have failed to demonstrate the existence of such a conflict.

20 **A. Section 926A Applies Only to Firearms, Not Ammunition**

21 Section 926A authorizes an individual “to transport a firearm for any lawful
 22 purpose from any place where he may lawfully possess and carry such firearm to
 23 any other place where he may lawfully possess and carry such firearm.” 18 U.S.C.
 24 § 926A. Section 926A’s definition of “firearm” does not include ammunition. 18
 25 U.S.C. § 921(a)(3) (defining “firearm”); *see also id.* § 921(a)(17)(A) (separately
 26 defining “ammunition”). Section 926A’s safe harbor thus addresses only firearms,
 27 not ammunition. *See Burgess v. United States*, 553 U.S. 124, 129-30 (2008)
 28 (“Statutory definitions control the meaning of statutory words in the usual case. . . .

1 As a rule, a definition which declares what a term means excludes any meaning that
 2 is not stated.” (cleaned up)); *see also Meese v. Keene*, 481 U.S. 465, 484 (1987) (“It
 3 is axiomatic that the statutory definition of the term excludes unstated meanings of
 4 that term.”).

5 Plaintiffs contend that because § 926A references ammunition in a later
 6 clause, the safe harbor protects ammunition as well. Dkt. 12 at 18. But this reading
 7 is not consistent with the statute’s plain language. After limiting the safe harbor to
 8 the transportation of firearms, § 926A imposes prerequisites to invoking its
 9 protections, namely that ammunition transported with a firearm, if any, must be
 10 stored outside the firearm and in a secure container. *See* 18 U.S.C. § 926A. This is
 11 a *limitation* on the safe harbor, ensuring that any ammunition being transported
 12 cannot readily be used with a firearm, not an extension of its protections to cover
 13 the transportation of ammunition. Plaintiffs’ reading expands the statute in a
 14 manner that is unsupported by its text, and the Court should decline to adopt it. *See*
 15 *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (“[W]hen the statute’s language is
 16 plain, the sole function of the courts . . . is to enforce it according to its terms.”
 17 (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1,
 18 6 (2000))).

19 That § 926A’s safe harbor extends only to firearms is reinforced by the
 20 legislative history and Congress’s purpose, which is “‘the ultimate touchstone’ in
 21 every pre-emption case.” *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008)
 22 (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Like the statute’s
 23 plain text, the legislative history references only firearms within § 926A’s safe
 24 harbor, and the only references to ammunition are those discussing § 926A’s new
 25 requirement that any firearms being transported must be unloaded. *See* 132 Cong.
 26 Rec. S8215-01 (June 24, 1986) (“only persons able to lawfully possess firearms
 27 under Federal law can rely upon the safe harbor provisions in 926A to transport
 28 firearms in interstate commerce” (statement of Sen. Thurmond)). While the

1 original version of § 926A was meant to “allow travelers who lawfully possessed
 2 weapons to travel to hunting grounds in other States,” a subsequent amendment was
 3 necessary to clarify that a person transporting a firearm was entitled to take
 4 advantage of the safe harbor only if “the possession is lawful where the traveler
 5 starts and is lawful in the destination State.” 132 Cong. Rec. H4102-03 (June 24,
 6 1986) (statement of Rep. Hughes). And the provision addressing ammunition on
 7 which Plaintiffs rely was added only “to protect law enforcement officers who may
 8 be making traffic stops by requiring that the weapon be unloaded and clarifying that
 9 it not be readily accessible.” *Id.* It was not added to extend the safe harbor to the
 10 transportation of ammunition.

11 If Congress had intended for the safe harbor to include ammunition, it could
 12 have written the statute to allow persons “to transport a firearm *and ammunition* for
 13 any lawful purpose.” It chose not to, evidencing an intent that § 926A should not
 14 apply to ammunition. Where Congress intended a statute to protect both firearms
 15 and ammunition, it stated so explicitly. *See, e.g.*, 18 U.S.C. § 923(c) (providing
 16 that a license issued by the Attorney General “shall entitle the licensee to transport,
 17 ship, and receive firearms *and ammunition*” (emphasis added)); *id.* § 925(a)(1)
 18 (providing that the chapter’s provisions shall not apply to “any firearm *or*
 19 *ammunition* imported for, sold or shipped to, or issued for the use of, the United
 20 States or any department or agency thereof” (emphasis added)).

21 A narrow reading of § 926A’s safe harbor is also consistent with § 927, in
 22 which Congress made clear that it did *not* intend for § 926A to occupy the field and
 23 that it should preempt conflicting state laws only in the narrowest circumstances—
 24 where “there is a direct and positive conflict between” state and federal law so great
 25 that “the two cannot be reconciled or consistently stand together.” 18 U.S.C. § 927.
 26 In passing § 927, Congress sought to correct a problem of “widespread traffic in
 27 firearms moving in or otherwise affecting interstate or foreign commerce, and that
 28 the existing Federal controls over such traffic do not adequately enable the States to

1 control this traffic within their borders through exercise of their police power.”
 2 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351,
 3 § 901(a)(1), 82 Stat. 197, 225 (1968). Congress also found that “the acquisition on
 4 a mail-order basis of firearms other than a rifle or shotgun by nonlicensed
 5 individuals, from a place other than their State of residence, has materially tended
 6 to thwart the effectiveness of State laws and regulations, and local ordinances.” *Id.*
 7 § 901(a)(4), 82 Stat. at 225. Congress thus intended to give power back to the
 8 States to enact the sort of laws at issue here—which protect public safety by
 9 regulating the trafficking of arms into the State and restrict the ordering of arms and
 10 ammunition by mail. Reading § 926A’s safe harbor narrowly to apply only to
 11 firearms is thus consistent with Congress’s intent. *See United State v. Ramirez*,
 12 2014 WL 4365075, at *3 (S.D. Tex. Sept. 2, 2014) (§ 927 acknowledges “a general
 13 presumption against federal preemption of state laws”).

14 When read in this manner, section 30314 and § 926A do not conflict. A
 15 California resident transporting a firearm into California from a neighboring state
 16 can comply with section 30314 by not traveling with any ammunition while also
 17 satisfying the prerequisites for § 926A’s safe harbor—the firearm would be
 18 unloaded and the ammunition storage requirement would not apply (because there
 19 would not be “any ammunition”). 18 U.S.C. § 926A. But even if the Court were
 20 inclined to read the safe harbor as protecting the transportation of ammunition, the
 21 Court should decline to do so under basic principles of preemption and statutory
 22 construction. When considering a preemption challenge involving a statute that “is
 23 susceptible of more than one plausible reading, courts ordinarily ‘accept the reading
 24 that disfavors pre-emption.’” *Altria Grp., Inc.*, 555 U.S. at 77 (quoting *Bates v.*
 25 *Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)). Indeed, the Supreme Court has
 26 explained that courts have a “duty to accept the reading that disfavors pre-emption.”
 27 *Bates*, 544 U.S. at 449 (emphasis added). This approach is consistent with the
 28 “elementary rule” that “every reasonable construction must be resorted to, in order

1 to save a statute from unconstitutionality.” *Edward J. DeBartolo Corp. v. Florida*
 2 *Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988) (citation
 3 omitted).

4 The plain text of § 926A, congressional intent, and canons of statutory
 5 construction support a determination that § 926A’s safe harbor does not extend to
 6 ammunition and thus does not directly and positively conflict with section 30314.

7 **B. Even if § 926A Covers Ammunition, Section 30314 Is Not**
 8 **Preempted**

9 Even if § 926A’s safe harbor protects a right to transport ammunition, there is
 10 still no “direct and positive conflict” between it and section 30314. Both on its face
 11 and as applied to Plaintiffs, section 30314 can be harmonized with § 926A. Section
 12 926A does not permit unfettered interstate transport of firearms without exception.
 13 It has “two important qualifications”: the person transporting the weapon must be
 14 both (1) entitled, by law, to possess the weapon in the place from which the person
 15 is transporting it; and (2) entitled, by law, to possess it in the place to which it is
 16 being transported. *Fresno Rifle & Pistol Club, Inc. v. Van de Kamp*, 746 F. Supp.
 17 1415, 1427 (E.D. Cal. 1990) (holding California’s ban on the transport or import of
 18 assault weapons in the state was not preempted by § 926A). Under sections 30312
 19 and 30314, residents may not lawfully possess ammunition if it has not been
 20 processed through a licensed ammunition vendor. Therefore, residents who do not
 21 comply with the Ammunition Laws’ requirement that they first deliver their out-of-
 22 state ammunition to a licensed ammunition vendor are not “legally entitled to
 23 possess it in the place to which it is being transported” and are ineligible for
 24 § 926A’s safe harbor. *See id.* at 1427. In contrast, if a resident complies with the
 25 Ammunition Laws’ requirements, he may lawfully possess it and transport it into
 26 California, consistent with § 926A. In this manner, an individual either complies
 27 with both statutes or neither. The two are in alignment and do not conflict.
 28

At the motion to dismiss phase, the Court gave Plaintiffs the chance to engage in “further factual development” to establish a conflict. Dkt. 16 at 12. But even after submitting numerous factual declarations, *see* Dkt. 93-1–93-14, Plaintiffs have been unable to develop facts that would establish a conflict between sections 926A and 30314 as applied to them. The Plaintiffs who indicate an intent to transport out-of-state ammunition into California state that they wish to bring it back to their home in California. *See, e.g.*, Dkt. 93-1 ¶¶ 4, 9; Dkt. 93-4 ¶ 6. Because Plaintiffs cannot legally possess the ammunition they seek to transport in California without complying with the Ammunition Laws, these declarations do not create a conflict as applied any more than one exists on the face of the statute. To comply with both § 926A and section 30314, Plaintiffs need only ship their out-of-state ammunition to a licensed ammunition vendor to be processed lawfully.¹⁴

Even if the term “firearm” in § 926A encompasses ammunition—and the better interpretation of the statute confirms it does not, *supra*—Plaintiffs have failed to show the “direct and positive conflict” required to establish that § 926A preempts section 30314, and their Ninth Claim for Relief fails as a matter of law.

CONCLUSION

The Court should uphold the Ammunition Laws and enter judgment in the Attorney General’s favor.

¹⁴ To the extent Plaintiffs contend that section 30314 would be preempted in the hypothetical scenario of a Californian transporting ammunition *through* California, that would also be insufficient. “For conflict preemption to apply, the conflict must be an *actual* conflict, not merely a hypothetical or potential conflict.” *Chicanos Por La Causa, Inc. v. Napolitano*, 558 F.3d 856, 863 (9th Cir. 2009) (emphasis added and citation omitted). Plaintiffs have declared that they seek to bring ammunition *into* California *to stay*; none declare they seek merely to bring ammunition *through* the State. Dkt. 93-1–93-14. Plaintiffs cannot establish preemption based on an unfounded hypothetical conflict. *Chicanos Por La Causa, Inc.*, 558 F.3d at 863.

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