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 8 capacity as Attorney General of the State of
 California*

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 **JUNIOR SPORTS MAGAZINES**
 14 **INC. et al.,**

2:22-CV-04663-CAS-JCx

15 Plaintiffs,

JOINT STATUS REPORT

16 v.

17 **ROB BONTA, in his official capacity**
 18 **as Attorney General of the State of**
 19 **California et al.,**

Date: May 15, 2024
 Time: 11:30 a.m.
 Dept: 8D (Status Conference by Zoom)
 Judge: Hon. Christina A. Snyder
 Trial Date: None set
 Action Filed: July 8, 2022

20 Defendants.

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 22
 23
 24 Plaintiffs and Defendant respectfully submit this joint status report pursuant
 25 to the Court’s order at the April 8, 2024 statute conference. *See* ECF No. 55 (Status
 26 Conference Minutes). The parties submit below their respective statements
 27 regarding next steps in the litigation.
 28

1 **I. Plaintiffs' Statement**

2 **A. History of the Case**

3 On September 13, 2023, the Ninth Circuit reversed the denial of Plaintiffs'
4 motion for preliminary injunction in a unanimous decision. *Jr. Sports Mags. Inc., v.*
5 *Bonta*, 80 F.4th 1109 (9th Cir. 2023). Its mandate to this Court is set forth in the
6 conclusion of that opinion: "In sum, we hold that [California Business &
7 Professions Code] § 22949.80 is likely unconstitutional under the First
8 Amendment, and we thus REVERSE the district court's denial of a preliminary
9 injunction and REMAND for further proceedings consistent with this opinion." *Id.*
10 at 1121.

11 Thereafter, the State notified the Ninth Circuit that it intended to move for a
12 rehearing, and Junior Sports Magazines requested an injunction against
13 enforcement of section 22949.80 while that petition was pending. The three-judge
14 panel denied the injunction request. 2023 U.S. App. LEXIS 27018 (9th Cir. Oct. 11,
15 2023). But after no judge in the Ninth Circuit called for a vote to rehear the case en
16 banc, the State's petition for rehearing en banc was denied. 2024 U.S. App. LEXIS
17 3878 (9th Cir. Feb. 20, 2024). The Ninth Circuit issued the mandate on February
18 28, 2024. ECF No. 51.

19 Once the case returned to this Court, the parties agreed to an extension of
20 time for the State to file an answer up to April 22, 2024, on the grounds that it
21 needed more time to consider its options for potential early resolution of this case.
22 ECF No. 52. This Court granted the stipulated extension. ECF No. 53. This Court
23 also entered an order setting a status conference regarding filing and spreading the
24 Ninth Circuit Mandate. ECF No. 54.

25 During the April 8, 2024, status conference, this Court granted a further
26 extension for the State to respond to the Complaint to and including May 22, 2024.
27 It also set another status conference for May 13, 2024, with a joint status
28 conference statement due on May 6, 2024. The Court orally encouraged the parties

1 to continue to meet and confer to resolve the case and, if possible, enter any order
2 necessary to address the mandate.

3 **B. Plaintiffs' Position**

4 The parties have met and conferred via teleconference, videoconference, and
5 email to explore avenues for the final disposition of this case and regarding the
6 entry of a preliminary injunction pursuant to the opinion and mandate issued by the
7 Ninth Circuit in this matter. *See Jr. Sports Mags.*, 80 F.4th 1109. The parties have
8 not been able to agree on the terms of any settlement or preliminary injunction, with
9 the present controversy being the scope of the order. In spite of the plain language
10 of the Ninth Circuit opinion, *id.* at 1121, the State contends that the Ninth Circuit's
11 opinion was limited to subsection (a) of Business and Professions Code § 22949.80,
12 also known and cited throughout this litigation as AB 2571.

13 Plaintiffs disagree. The plain text of the Ninth Circuit's opinion—which is
14 now the law of the case—contradicts the State's claim. *Jr. Sports Mags.*, 80 F.4th at
15 1120-21 (“In sum, we hold that § 22949.80 is likely unconstitutional under the First
16 Amendment, and we thus REVERSE the district court's denial of a preliminary
17 injunction and REMAND for further proceedings consistent with this opinion.”)
18 The Ninth Circuit did not limit its ruling to any particular subsection—for good
19 reason. The complaint challenges the entirety of § 22949.80. *See* ECF No. 1 at 37
20 (“Prayer for Remedy” repeatedly referring to “AB 2571, codified at California
21 Business & Professions Code section 22949.80”). And Plaintiffs' motion sought to
22 preliminarily enjoin the entirety of § 22949.80. ECF No. 12-14 (proposed order for
23 a preliminary injunction enjoining Defendants and others “from engaging in,
24 committing, or performing, directly or indirectly, by any means whatsoever, any
25 enforcement of AB 2571, codified at Business & Professions Code section
26 22949.80”). This Court denied Plaintiffs' express request to preliminarily enjoin the
27 entire law. ECF No. 35 at 51. And the Ninth Circuit expressly reversed that
28 decision. *Jr. Sports Mags.*, 80 F.4th at 1120-21. What's more, when petitioning the

1 Ninth Circuit for rehearing en banc, the State itself acknowledged that Plaintiffs
2 “moved for a preliminary injunction against Section 22949.80 *in its entirety*.”
3 Appellees’ Petition for Rehearing En Banc 6, *Jr. Sports Mags., Inc. v. Bonta*, 80
4 F.4th 1109 (9th Cir. 2023), ECF No. 49 (emphasis added). The State’s post-remand
5 position that Plaintiffs have not yet established that subsection (b) likely violates
6 the First Amendment is a matter of mere opinion that is not supported by the Ninth
7 Circuit’s clear command “that § 22949.80 is likely unconstitutional under the First
8 Amendment.” *Jr. Sports Mags.*, 80 F.4th at 1120-21.

9 Even still, the State claims that “[t]hroughout the litigation, the parties and
10 courts have referred to the law challenged in this action as ‘section 22949.80,’ as a
11 convenient shorthand for the provision at issue.” *See infra*. But that is simply not
12 true. Plaintiffs have never adopted “section 22949.80” as shorthand for anything—
13 let alone section 22949.80(a). On the contrary, they have consistently referred to
14 “AB 2571” as shorthand for their challenge to the *entirety* of § 22949.80, including
15 the amendments made to subsections (a) and (c) by AB 160. *See, e.g.*, ECF No. 1 at
16 14, fn. 3 (“Throughout this complaint, Plaintiffs refer to the challenged law,
17 California Business & Professions Code section 22949.80, as ‘AB 2571.’”); ECF
18 No. 12-1 (“Throughout this motion, Plaintiffs refer to section 22949.80 as AB
19 2571.”); ECF No. 30 at 1, fn. 2 (“For continuity, Plaintiffs refer to the challenged
20 law—Business & Professions Code section 22949.80—as AB 2571.”); *see also*
21 Appellants’ Opening Brief 2, fn. 1, *Jr. Sports Mags., Inc. v. Bonta*, 80 F.4th 1109
22 (9th Cir. 2023), ECF No. 7 (“For ease of reference, Appellants refer to AB 2571 (as
23 adopted and as later amended by AB 160) and California Business & Professions
24 Code § 22949.80 as ‘AB 2571.’”). This Court adopted a similar naming protocol.
25 ECF No. 35 at 3 (“Governor Gavin Newsom signed many [gun laws] into law,
26 including Business & Professions Code § 22949.80 (referred to hereinafter as “AB
27 2571”), challenged in this litigation.”). The State, for its part, has never indicated in
28 any brief that it was adopting “Section 22949.80” as shorthand for “Section

1 22949.80(a).”

2 **C. Plaintiffs’ Proposals for Moving the Case Forward**

3 Plaintiffs have filed a Motion to Enforce the Mandate and Issue Preliminary
4 Injunction. ECF No. 59. The motion is set to be heard on June 10, 2024, at 10:00
5 AM. If this Court does not enter a preliminary injunction enjoining the entirety of
6 § 22949.80, Plaintiffs will seek interlocutory relief from the Ninth Circuit. Under
7 Ninth Circuit General Order 3.6, this matter would qualify as a “Comeback Case.”
8 If this Court does enter an order enjoining the entirety of § 22949.80—and not just
9 subsection (a)—Plaintiffs are prepared to proceed in one of the following ways:

- 10 1. Stipulated judgment for entry of a permanent injunction enjoining
11 enforcement of Business and Professions Code § 22949.80, with
12 specific terms to be determined as part of any negotiated settlement.
- 13 2. If settlement is not an option, Plaintiffs intend to file a motion for
14 summary judgment.
- 15 3. If the motion for summary judgment does not resolve the matter,
16 Plaintiffs are prepared to take the case to trial.

17 Additionally, before ruling on the Plaintiffs’ Motion to Enforce the Mandate,
18 this Court could order the parties to a mandatory settlement conference on the first
19 available date, so as not to prejudice the Plaintiffs. Plaintiffs believe that this Court
20 has the authority to expand the scope of such a settlement conference to include
21 resolution of the entire case, including the terms of final judgment and award of any
22 attorney fees and costs. If efforts to resolve the matter without further litigation are
23 unsuccessful, Plaintiffs ask this Court to issue a scheduling order that would
24 include deadlines for Rule 26 disclosures, discovery cutoffs, and a briefing schedule
25 on cross-motions for summary judgment.

26 **D. Related Case**

27 Plaintiffs have already filed a notice of the preliminary injunction issued in the
28 coordinated case of *Safari Club Int’l v. Bonta*, No.: 222-cv-01395-DAD-JDP (E.D.

1 Cal.) enjoining the entirety of Business & Professions Code section 22949.80. ECF
2 No. 56.

3 **II. Defendant's Statement**

4 Since the last status conference, the parties have not agreed on settlement
5 terms. Plaintiff has now filed a motion for preliminary injunction. ECF No. 59.
6 Defendant intends to oppose the motion, but only to the extent that the requested
7 injunction goes beyond the scope of the Ninth Circuit's ruling, including by seeking
8 to enjoin enforcement of California Business and Professions Code section
9 22940.80 in its entirety, and by seeking to enjoin the conduct of parties not before
10 the Court.

11 Throughout the litigation, the parties and courts have referred to the law
12 challenged in this action as "section 22949.80," as a convenient shorthand for the
13 provision at issue. To be precise, however, only the requirements of *subdivision (a)*
14 of section 22949.80 have been challenged by Plaintiff, and those are the only
15 requirements that have been considered and ruled on by this Court and Ninth
16 Circuit. Plaintiffs have never shown and neither court has even considered whether
17 the separate requirements of subdivision (b) are unconstitutional, and certainly no
18 court has ruled on the validity of subdivision (b). Indeed, subdivision (b) is
19 severable from the rest of the statute. *See id.*, subd. (f) (severability clause). For
20 these reasons, Defendant intends to oppose Plaintiff's latest motion to ensure that
21 any preliminary injunction issued by this Court is limited to the enforcement of
22 subdivision (a) only.

23 As mentioned at the outset, Defendant's opposition will also argue that any
24 preliminary injunction should be limited to the conduct of parties actually before
25 the Court, not the conduct of anyone not a party to this action. *See* ECF No. 59-3 at
26 2 (Plaintiffs' proposed order applying injunction to various nonparty local and state
27 officials).

28 Resolution of the scope of any preliminary injunction will likely affect next

1 steps in the litigation. Defendant therefore suggests that the Court rule on the
2 motion and then set a status conference shortly thereafter.

3 Finally, Defendant asks that the Court grant an extension of time to file his
4 response to the Complaint. The current deadline is May 22, 2024, which is two
5 days after Defendant’s deadline to file his opposition to Plaintiff’s motion for
6 preliminary injunction. Defendant therefore requests a 28-day extension to June 19,
7 2024. Plaintiffs have communicated to Defendant that they “take no position on
8 Defendants’ latest request for an extension of time to file a responsive pleading.”

9
10 Dated: May 6, 2024

Respectfully Submitted,

11 ROB BONTA
12 Attorney General of California
13 MARK. R. BECKINGTON
14 Supervising Deputy Attorney General

15 *s/ Gabrielle D. Boutin*
16 Deputy Attorney General
17 Attorneys for Defendant Rob Bonta, in
his official capacity as Attorney
General of the State of California

18 Dated: May 6, 2024

Respectfully Submitted,

19 MICHEL & ASSOCIATES, P.C.

20
21 *s/ Anna M. Barvir*
22 ANNA M. BARVIR
23 Attorney for Plaintiffs Junior Sports
24 Magazines Incorporated, Raymond
25 Brown, California Youth Shooting
26 Sports Association, Inc. Redlands
27 California Youth Clay Shooting
28 Sports Inc., California Rifle & Pistol
Association, Inc., The CRPA
Foundation, and Gun Owners of
California

1 Dated: May 6, 2024

Respectfully Submitted,

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LAW OFFICES OF DONALD KILMER,
APC

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s/ Donald Kilmer
DONALD KILMER
*Attorney for Plaintiff Second
Amendment Foundation*

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ATTESTATION OF E-FILED SIGNATURES

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I, Gabrielle D. Boutin, am the ECF User whose ID and password are being used to file this JOINT STATUS REPORT. In compliance with Central District of California L.R. 5-4.3.4, I attest that all signatories are registered CM/ECF filers and have concurred in this filing.

13

Dated: May 6, 2024

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s/ Gabrielle D. Boutin

Gabrielle D. Boutin

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CERTIFICATE OF SERVICE

Case Name: **Junior Sports Magazines Inc.,
et al. v. Rob Bonta, et al.**

Case Number: **2:22-cv-04663-CAS-JC**

I hereby certify that on May 6, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

JOINT STATUS REPORT

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 May 6, 2024, at Los Angeles, California.

Dora Mora
Declarant

Dora Mora
Signature