

No. 24-542

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

KIM RHODE, ET AL.,
Plaintiffs and Appellees,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Defendant and Appellant.

**On Appeal from the United States District Court
for the Southern District of California**
No. 3:18-cv-00802-BEN-JLB
The Honorable Roger T. Benitez, Judge

**APPELLANT'S EXCERPTS OF RECORD
VOLUME 4 OF 4**

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

14 **Kim Rhode et al.,**

15 Plaintiffs,

16 v.

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

20 Defendants.

3:18-cv-00802-BEN-JLB

**THIRD SUPPLEMENTAL
DECLARATION OF MAYRA G.
MORALES IN SUPPORT OF
DEFENDANT XAVIER
BECERRA'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

21 Dept: 5A
Judge: Hon. Roger T. Benitez
22 Action Filed: 4/27/2018

1 **THIRD SUPPLEMENTAL DECLARATION OF MAYRA G. MORALES**

2 I, MAYRA G. MORALES, declare:

3 1. I am a Staff Services Manager III for the California Department of
4 Justice, Bureau of Firearms (hereafter generally referred to together as the
5 “Department”). I make this declaration of my own personal knowledge and
6 experience and, if called as a witness, I could and would testify competently to the
7 truth of the matters set forth herein.

8 2. To date, I have prepared three declarations for submission to the Court:

- 9 • The August 5, 2019 Declaration of Mayra G. Morales in Support of
10 Defendant Xavier Becerra’s Opposition to Plaintiffs’ Motion for
11 Preliminary Injunction, ECF No. 34-1;
12 • The September 27, 2019 Supplemental Declaration of Mayra G. Morales
13 in Support of Defendant Xavier Becerra’s Opposition to Plaintiffs’
14 Motion for Preliminary Injunction, ECF No. 42; and
15 • The November 18, 2019 Second Supplemental Declaration of Mayra G.
16 Morales in Support of Defendant Xavier Becerra’s Opposition to
17 Plaintiffs’ Motion for Preliminary Injunction, ECF No. 48.

18 3. This third supplemental declaration updates the tables in my November
19 28 Second Supplemental Declaration for July through October 2019, and adds data
20 for November 2019 through January 2020. To aid in readability, the tables are
21 presented following my signature.

22 4. Section I of this declaration provides a narrative summary of the
23 information on Basic Ammunition Eligibility Check (which I will refer to as “Basic
24 Checks”) from July 1, 2019, through January 31, 2020. The data underlying this
25 summary appears in Tables 1.1 through 1.3. This declaration adds new entries into
26 Tables 1.2 and 1.3 to show median processing times for Basic Checks.

1 5. Section II provides a narrative summary of information on Standard
2 Ammunition Eligibility Checks (which I will refer to as “AFS Checks”) for July 1,
3 2019, through January 31, 2020. The data underlying this summary appears in
4 Tables 2.1 through 2.4. This section contains three noteworthy updates from my
5 November 18 Second Supplemental Declaration. First, the numbers in Table 2.2,
6 which lists the reasons for AFS Check rejections, have been corrected to account
7 for a misallocation of certain rejections in the reported reasons. This misallocation
8 did not affect the total number of rejections or the actual reason for any rejection.
9 Second, I have recently become aware of a potential source of slight discrepancies
10 in the numbers reported in Table 2.2 going forward that I want to bring to the
11 Court’s and parties’ attention now. Third, this declaration adds a new Table 2.4,
12 which lists the weekly AFS Check rejection rate from July 1, 2019, through
13 February 23, 2020.

14 6. Section III of this declaration updates information about purchasers who
15 had been denied as prohibited, but who, upon additional review, were determined to
16 be not prohibited. The Department has now reviewed a majority of the 770
17 transactions where a purchaser was denied as prohibited, and it has determined that
18 16 of those purchasers were in fact eligible.

19 **I. BASIC AMMUNITION ELIGIBILITY CHECK INFORMATION FOR JULY 2019**
20 **THROUGH JANUARY 2020**

21 7. The Basic Check is described in California Code of Regulations, title 11,
22 section 4303. This check can be used irrespective of whether a purchaser or
23 transferee (I will generally refer to these together as “purchaser”) can take
24 advantage of one of the other eligibility checks.

25 8. Under section 4303(b), a Basic Check costs \$19 and entails submitting
26 identifying information, including the purchaser’s name, date of birth, current
27 address, and ID number, to the Department’s Dealer Record of Sale (DROS) Entry
28 System (DES). The process proceeds in two steps. First, the Department

1 automatically checks the person's ID or driver license number (I will generally
2 refer to IDs and driver licenses as "IDs"), name, and date of birth, against DMV
3 records to confirm the information submitted matches a DMV record and that the
4 ID is valid. If the information matches, then the submitted information is
5 automatically run through four state databases: (1) Automated Criminal History
6 Record System (ACHS); (2) Mental Health Firearms Prohibition System (MHFPS);
7 (3) California Restraining and Protective Order System (CARPOS); and (4) Wanted
8 Persons System (WPS).

9 9. If a purchaser's information results in no hits in the system, the Basic
10 Check is processed automatically, meaning that Department employees are not
11 directly involved in the process. If the purchaser's information results in a hit in
12 one of the four systems, the eligibility check will require manual review by a
13 Department analyst. A manual review can take anywhere from a few minutes to
14 days or weeks depending on the nature of the hit in the database. For instance, if
15 the ACHS shows the purchaser was charged with a felony, but does not have a
16 disposition of that felony, the manual check would entail tracking down the
17 disposition, which can take at least several business days.

18 10. Table 1.1 lists the Basic Check approvals, rejections, and denials for July
19 1, 2019, through January 31, 2020.

20 11. From July 1, 2019, through January 31, 2020, the Department has
21 processed 19,599 Basic Checks. Of those, 95.3% have been approved and about
22 1.7% have been rejected because the purchaser's information does not match
23 Department of Motor Vehicle records or the records used to make a determination
24 were incomplete, thereby preventing Department analysts from ascertaining
25 whether the purchaser was prohibited.

26 12. Over 570 people, or 2.9% of the total processed, have been denied
27 because the Department's records show them to be prohibited persons.
28

1 13. Table 1.2 sets forth the average processing times for Basic Checks that
2 were submitted to the Department, by month, from July 2019 through January 2020
3 that had eligibility determinations made on or before January 31, 2020. As I
4 explained in my November 18 Second Supplemental Declaration, the average
5 processing times for previously reported months tends to increase due to a small
6 number of transactions skewing the average upward. *See* Second Supp. Decl. ¶ 14
7 & p. 10 n.3, ECF No. 48. These longer transaction times affected the averages for
8 those months. A Basic Check can be delayed for many reasons, most often it is
9 because a Department analyst must conduct additional research on an arrest cycle
10 for a prohibiting event with missing disposition. The Department will do its due
11 diligence to obtain the necessary information. However, if the Department is
12 unable to obtain the information, it will ultimately reject the transaction because an
13 eligibility determination could not be made.

14 14. For the typical purchaser, the Basic Check processing time takes an
15 average of one to two days. In July, it took 1 day and 17.5 hours for the typical
16 purchaser (though, as discussed in the footnotes to Tables 1.2 and 1.3, the average
17 time is higher). By October, the processing time had decreased to 1 day and 4
18 hours. The processing times for the typical purchaser in November, December, and
19 January were roughly the same.

20 15. Another way to assess the experience of ammunition purchasers is to
21 look at the median processing time—the processing time at which 50% of the
22 transactions in the month took less time and 50% took more time. The median will
23 provide additional information on how long the majority of the transactions are
24 actually taking. Table 1.2 now includes the median processing time for Basic
25 Checks. For example, for July Basic Checks all decisions average (mean) time was
26 73 hours (or 3 days) but the median of those decisions is 27 hours. That gives a
27 sense of how much the outlier cases affect the average.
28

1 16. Table 1.3 lists the average processing times for Basic Checks that were
2 approved manually and automatically for the months of July 2019 through January
3 2020. These numbers are a subset of the Basic Checks that were submitted during
4 those months and that had eligibility determinations made on or before January 31,
5 2020. This table also lists median processing times.

6 17. Just under one-quarter of the approved Basic Checks were processed
7 automatically. The average processing time across all seven months was roughly
8 2 hours.

9 18. Just over three-quarters of the approved Basic Checks were processed
10 manually. Subject to the observation above that some outliers affected the average,
11 the typical approved Basic Check that is manually processed takes about two
12 business days.

13 **II. AFS CHECK (STANDARD AMMUNITION ELIGIBILITY CHECK)**
14 **INFORMATION FOR JULY THROUGH JANUARY 2020**

15 19. This section of my declaration provides the information that the
16 Department has collected as of January 31, 2020, regarding AFS Check rejections.
17 The AFS Check is described in more detail in my September 27 Supplemental
18 Declaration. Suppl. Decl. ¶¶ 19-25, 28-31, ECF No. 42. The regulation outlining
19 the AFS Check is located in California Code of Regulations, title 11, section 4302.

20 20. Section II.A of this declaration provides the data on AFS Checks for July
21 1, 2019, through January 31, 2020. Section II.B sets forth the reasons for AFS
22 Check rejections in those months. The section also contains two new subsections.
23 Subsection II.B.1 explains a correction to previously reported data on this topic.
24 Subsection II.B.2 discusses small discrepancies in the data reporting the reasons for
25 the rejections (but not the actual reasons themselves) that have arisen, or will likely
26 arise, as that data is re-tabulated over time. Section II.C provides information on
27 purchasers who were rejected in an AFS Check, but who later purchased
28 ammunition on or before January 31, 2020.

1 **A. AFS Check Approvals, Denials, and Rejections for July 2019**
 2 **Through January 2020**

3 21. Table 2.1 sets forth the AFS Check approvals, denials, and rejections for
 4 July 1, 2019 through January 31, 2020. As noted in my September 27
 5 Supplemental Declaration, Suppl. Decl. ¶ 27, ECF No. 42, denials occur when
 6 official records identify the purchaser as a prohibited person who cannot lawfully
 7 possess a firearm or ammunition. *See also* Second Supp. Decl. ¶ 21, ECF No. 48.
 8 Rejections occur when the purchaser’s information does not match an AFS record.

9 22. From July 1, 2019, through January 31, 2020, the Department has
 10 processed 616,257 AFS Checks. It has approved 515,022 (83%), rejected 101,047
 11 (16.4%) because the information submitted by the purchaser does not match an
 12 AFS entry, and denied 188 (0.03%) because the Department’s information shows
 13 the purchaser to be on the Armed Prohibited Persons System (APPS) list.

14 23. The monthly rate of AFS Check rejections is set forth in the following
 15 chart:

Month	Rejections as Percent of Total AFS Checks by Month
July 2019	18.8%
August 2019	20.0%
September 2019	17.3%
October 2019	15.6%
November 2019	15.3%
December 2019	14.5%
January 2020	13.2%
February 1 through 23, 2020	13.1%

1 24. This declaration adds a new Table 2.4 that charts the weekly rejection
2 rate from July 2019 through the week ending February 23, 2020.¹ As the table in
3 the previous paragraph and new Table 2.4 show, the rejection rate has been steadily
4 declining since its high of 20% in August 2019. In some recent weeks, the rate has
5 dipped below 13%.

6 **B. Information on AFS Check Rejections for July 2019 Through**
7 **January 2020**

8 25. To recap from my September 27 Supplemental Declaration and
9 November 18 Second Supplemental Declaration, AFS Checks are a streamlined
10 eligibility check that rely on the purchaser already having undergone a firearms
11 background check and being subject to inclusion in APPS, in the event they later
12 become prohibited. By definition, an AFS Check will work only for those who
13 have an AFS record, and whose record is up to date. A purchaser without an AFS
14 record, or with an AFS record that is not current, will not be able to obtain an
15 eligibility determination; the system will reject that submission. Suppl. Decl. ¶ 28,
16 ECF No. 42; Second Supp. Decl. ¶ 24, ECF No. 48.

17 26. It again bears noting that an AFS Check rejection, due to the purchaser's
18 information not matching a record in AFS, is not a determination that the purchaser
19 is ineligible to purchase ammunition. It means that the purchaser cannot avail
20 themselves of that streamlined eligibility check. They may still use a Basic Check,
21 or, in certain situations, a Certificate of Eligibility Verification Check (California
22 Code of Regulations, title 11, section 4305) or Firearms Eligibility Check
23 (California Code of Regulations, title 11, section 4304). *See also* Suppl. Decl.
24 ¶¶ 21-25, ECF No. 42; Second Supp. Decl. ¶ 25, ECF No. 48.

25 _____
26 ¹ I am able to obtain data on weekly rejection rates quickly, allowing me to
27 provide the rejection rates through the week prior to the filing of this Third
28 Supplemental Declaration. Obtaining data on the reasons for the rejections—the
data in Table 2.2 and the following section—takes significantly more time and
resources. As a result, I am currently able to report that data only through January
31, 2020.

1 27. An AFS Check will be rejected if the purchaser's name, address, date of
2 birth, or ID number, or some combination of that information, does not match an
3 AFS record. Suppl. Decl. ¶ 30, ECF No. 42; Second Supp. Decl. ¶ 26, ECF No. 48.

4 28. Table 2.2 summarizes the reasons for the AFS Check rejections for
5 July 1, 2019 through January 31, 2020. This revised Table 2.2 corrects the
6 misallocation of some rejections resulting from a prospective ammunition purchaser
7 having transferred the firearm associated with their AFS record or a law
8 enforcement event pertaining to the firearm associated with their AFS records being
9 entered.

10 **1. Correction to previously reported data in Table 2.2.**

11 29. Prior versions of Table 2.2 have listed a category of rejections called
12 "AFS Entry No Longer Valid." Second Supp. Decl. Table 2.2 at p. 16, ECF
13 No. 48. This rejection occurs because although the purchaser's name, date of birth,
14 ID number, and address match an AFS record, the record is no longer active,
15 usually because the owner has transferred the firearm to someone else. A person
16 with an inactive AFS record cannot use that record to purchase ammunition using
17 an AFS Check because the firearm associated with the inactive record is no longer
18 associated with that individual.

19 30. When tabulating data for my previous declarations, Department staff
20 have relied on mirrored backups of the AFS database to determine the reason for
21 AFS Check rejections. This approach has avoided potential disruptions to the
22 system (including delays to ammunition transactions) that pulling data from the
23 active system can create. However, using the mirrored backup caused some
24 reporting inaccuracies attributable to the differences between real-time resolution of
25 ammunition transactions in the active system, and the information in the system at
26 the time it was last mirrored.

27 31. For instance, in my September 27 Supplemental Declaration, the
28 rejection information for the July AFS Checks was taken from a mirror of the AFS

1 database created in late May 2019. *See* Suppl. Decl. ¶ 34 & Table 2.2, ECF No. 42.
2 Thus, a person who had an active AFS record in late May 2019, when the system
3 was mirrored, but who transferred the firearm associated with that record, making it
4 inactive, before attempting to purchase ammunition in July, would have their
5 transaction rejected. That rejection would have been properly accounted for in the
6 numbers that I reported in Table 2.1. *See* Suppl. Decl. ¶ 26 & Table 2.1, ECF
7 No. 42. But the reported *reason* for that rejection reported in Table 2.2 may not
8 have been accurate because, in the mirrored system, the person had an active AFS
9 record. *See* Suppl. Decl. ¶ 34 & Table 2.2, ECF No. 42. Transactions like the one
10 in the hypothetical were reported largely as “No Identifiable AFS Entry,” though
11 they may have been listed in another category.

12 32. Table 2.2 in this declaration corrects these misallocated rejections, and
13 now allocates them to a more accurate reason for the rejection. To be clear, the
14 number of rejections reported was accurate and has not changed. Nor does any
15 correction change the actual reason any AFS Check was rejected. It simply corrects
16 how I reported the rejection in my September 27 Supplemental Declaration and
17 November 18 Second Supplemental Declaration.

18 33. I first became aware of the need for this correction in mid-January, as I
19 was gathering and reviewing data for November and December 2019. Acting as
20 quickly as practicable, I prepared an earlier draft of this declaration, which did not
21 include data for January 2020. That draft was in the process of being finalized for
22 filing on February 14, 2020, when this Court issued an order, ECF No. 52,
23 requesting data through January 2020. Since receiving that order, I have gathered
24 the data for January and incorporated it into this declaration. During this process, I
25 have learned of the potential for slight discrepancies in the reported reasons for
26 AFS Check rejections, which I discuss in the section that follows.

27
28

1 **2. Potential for slight discrepancies in data.**

2 34. The systems that the Department uses to tabulate the reasons for
3 rejections are dynamic, not static. New events or entries are added to AFS records
4 on a daily basis. Modifications to AFS records also occur on a daily basis. This
5 means that if, for instance, data sets are run on the reasons for the rejections in July
6 2019 six different times spread out over a year, they may change slightly because
7 individual AFS records have changed over that time.

8 35. A hypothetical example shows one way that this could play out: a person
9 has an AFS entry associated with a firearm, and the name, date of birth, and address
10 on their ID all match the AFS record, but the ID number does not match. On
11 August 1, 2019, the person attempts to purchase ammunition using an AFS Check
12 and is rejected because of the ID number. If the Department tabulates data on
13 rejections for August on October 1, 2019, the reason for that rejection would be
14 reported as an “ID number mismatch” in Table 2.2. But if the record is modified to
15 update the ID number on October 15, 2019, and the Department re-tabulates the
16 data on November 1, 2019, the reason for the rejection may be reported differently
17 in a later version of Table 2.2. This difference would not change the fact that the
18 August 1 AFS Check was rejected because of an ID number mismatch.

19 36. Potential discrepancies like the one in the hypothetical are likely to affect
20 reported reasons for rejections of a small number of transactions.

21 37. As with the correction described above, the potential for slight
22 discrepancies in the reported reasons for rejections in Table 2.2 does not change the
23 total number of rejections reported in Table 2.1 or the actual reason for any
24 rejection. Nor is it likely to prevent a Department analyst from ascertaining the
25 actual reason for a rejection of a specific transaction. From conferring with the
26 Department’s technical staff, I understand that these discrepancies are simply a
27 byproduct of aggregating and reporting data from a dynamic system.

1 38. All this is to say that data on the reasons for rejections that I have
2 reported reflect a snapshot that may change slightly over time. Currently, there
3 does not appear to be a way to avoid these minute discrepancies. But because they
4 likely will occur if the Department re-tabulates the numbers again in the future, I
5 am identifying the issue now, so the Court and parties will know the reason for any
6 small discrepancies they may note in my reporting over time.

7 **3. Reasons for AFS Check rejections.**

8 39. Having made these observations, the percentage breakdown of the
9 reasons for the rejections across the seven months from July 2019 through January
10 2020 remain consistent with what was previously reported. *See* Suppl. Decl. ¶¶ 31-
11 34 & Table 2.2, ECF No. 42 Second Suppl. Decl. ¶¶ 27-33 & Table 2.2, ECF
12 No. 48. Across all seven months, the most common reason AFS Checks were
13 rejected was that the purchaser's address did not match the address in an AFS
14 record. These purchasers' name, ID number, and date of birth matched an entry,
15 but their address did not match an entry. This accounted for about 38% (previously
16 reported as 36%) of the rejections over the four-month period. Second Suppl. Decl.
17 ¶ 28, ECF No. 48.

18 40. The next most common reason AFS Checks were rejected was that the
19 purchaser could not be associated with an AFS entry at all. In most cases, this
20 likely occurred because either the purchaser or the ammunition vendor mistakenly
21 chose to run an AFS Check where the purchaser did not have an AFS record. This
22 accounted for roughly one-quarter (previously reported as one-third) of all AFS
23 Check rejections. Second Suppl. Decl. ¶ 29, ECF No. 48. For instance, in October,
24 the Department rejected 3,497 AFS Checks, about 26% (previously reported as
25 4,288 and 32%, respectively) of all 13,498 rejections, for this reason. Second Suppl.
26 Decl. ¶ 29, ECF No. 48.

1 41. Name mismatches were another significant source of rejections. Across
2 the seven months, about 17% of AFS Checks were rejected for this reason
3 (previously reported as 13%). Second Supp. Decl. ¶ 30, ECF No. 48

4 42. These three reasons for rejections—address mismatches, no apparent
5 AFS entry, and name mismatches—accounted for about 82% of all rejections. The
6 remaining 18% or so of rejections occurred for various other reasons listed in Table
7 2.2.

8 **C. Information on Purchasers Rejected in an AFS Check Who**
9 **Later Purchased Ammunition on or before January 31, 2020**

10 43. At the Court's request, my September 27 Supplemental Declaration
11 included information on whether purchasers who were rejected in an AFS Check
12 had subsequently purchased ammunition. Suppl. Decl. ¶¶ 36-39, ECF No. 42.

13 44. Table 2.3 lists information on purchasers who were rejected who later
14 purchased ammunition by month.

15 45. As explained in my September 27 Supplemental Declaration, there is a
16 difference between the total number of rejections each month and the unique
17 individuals rejected. Suppl. Decl. ¶ 38, ECF No. 42; *see also* Second Supp. Decl.
18 ¶ 34, ECF No. 48. I understand that the primary difference between rejections and
19 denials and unique ID numbers is largely because some individual purchasers
20 attempted to use the AFS Check procedure more than once and were rejected or
21 denied on more than one occasion.

22 46. In my September 27 Supplemental Declaration, I reported that of the
23 9,027 unique purchasers rejected in July, 3,468 (38.41%) had purchased
24 ammunition as of August 31, 2019. Suppl. Decl. ¶ 39, Table 2.3, ECF No. 42. By
25 January 31, 2020, 4,295 (47.5%) unique purchasers in July had purchased
26 ammunition. That means that 827 additional people who had an AFS Check
27 rejected in July purchased ammunition between August 31, 2019, and January 31,
28 2020.

1 47. A similar trend occurred for the August numbers. In my September 27
2 Supplemental Declaration, I reported that of the 16,037 unique purchasers rejected
3 in August, 4,923 (30.69%) had purchased ammunition as of August 31, 2019.
4 Suppl. Decl. ¶ 39, Table 2.3, ECF No. 42. By January 31, 2020, that number had
5 increased to 7,276 (45.3%), meaning an additional 2,353 people who had an AFS
6 Check rejected in August purchased ammunition between August 31, 2019, and
7 January 31, 2020.

8 48. Of the 14,008 individuals who had an AFS Check rejected in September,
9 6,189 (44.1%) had purchased ammunition by January 31, 2020.

10 49. Of the 10,896 individuals who had an AFS Check rejected in October,
11 4,733 (43.4%) had purchased ammunition by January 31, 2020.

12 50. Of the 11,653 individuals who had an AFS Check rejected in November,
13 4,976 (42.7%) had purchased ammunition by January 31, 2020.

14 51. Of the 11,034 individuals who had an AFS Check rejected in December,
15 4,441 (40.2%) had purchased ammunition by January 31, 2020.

16 52. And of the 8,457 individuals who had an AFS Check rejected in January,
17 3,384 (40%) had purchased ammunition by January 31, 2020.

18 **III. PERSONS PREVENTED FROM PURCHASING AMMUNITION AND**
19 **SUBSEQUENTLY DEEMED ELIGIBLE**

20 53. In my September 27 Supplemental Declaration, I provided information in
21 response to the Court's inquiry about purchasers who had been denied approval to
22 purchase ammunition because they were prohibited, but who were later determined
23 to not be prohibited. Suppl. Decl. ¶ 40, ECF No. 42.

24 54. I updated that information in my November 18 Second Supplemental
25 Declaration. Second Supp. Decl. ¶¶ 39-42, ECF No. 48. I reported that between
26 July 1 and October 31, 2019, the Department had reviewed over 400 ammunition
27 purchase denials based on the purchaser being prohibited, and that 13 of those
28

1 purchasers had since been determined to be eligible to purchase ammunition.

2 Second Supp. Decl. ¶ 41, ECF No. 48.

3 55. At this point, the Department has reviewed over 590 of the transactions
4 where the purchaser was denied as prohibited. From July 1, 2019 through January
5 31, 2020, a total of six purchasers were denied on the grounds of a prohibiting
6 offense, mental health commitment, or restraining order, but was, ased on the face
7 of the official records, subsequently determined to have been eligible to purchase
8 ammunition at the time of purchase. A total of ten purchasers who where ineligible
9 to purchase ammunition on the face of their official records, were later determined
10 to be eligible after Department staff investigated the matter.

11 56. To summarize, with over three quarters of the 770 denials from July 1,
12 2019, through January 31, 2020, reviewed, 16 of the purchasers who were denied as
13 prohibited persons have since been determined to be eligible.

14
15
16 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
17 is true and correct.

18
19 Executed on: February 28, 2020

20
21 
22 MAYRA G. MORALES

TABLE 1 – Basic Ammunition Eligibility Checks

TABLE 1 – BASIC AMMUNITION ELIGIBILITY CHECKS

TABLE 1 – Basic Ammunition Eligibility Checks

Table 1.1: Basic Checks — Approvals, Denials, & Rejections as of January 31, 2020²								
	July 2019	August 2019	September 2019	October 2019	November 2019	December 2019	January 2020	Total
Basic Checks ³ Received	3,798	5,066	3,213	2,400	1,946	1,908	1,422	19,753
Basic Checks Processed	3,798	5,066	3,213	2,400	1,945	1,889	1,288	19,599
Approved ⁴	3,607	4,852	3,056	2,287	1,857	1,796	1,230	18,685
Denied (Prohibited Persons)	119	130	88	76	57	62	40	572
Rejected (no match with DMV records)	22	17	24	10	10	14	10	107
Rejected (incomplete history)	50	67	45	27	21	17	8	235

² This table is based on data available on January 31, 2020, and updates the numbers in Table 1.1 in my November 18 Second Supplemental Declaration, which were based on data available on October 31, 2019. See Second Supp. Decl. at p. 9, Table 1.1, ECF No. 48. To provide one example of the change, the earlier table recorded that 60 Basic Check transactions submitted in October 2019 were denied because the purchaser was prohibited. *Id.* As of January 31, 2020, that number increased to 76, meaning that 16 additional Basic Check transactions submitted in October 2019 were denied between October 31, 2019, and January 31, 2020, because the purchaser was prohibited.

³ As of January 31, 2020, 1 (.05%) Basic Check received in November, 19 (.99%) Basic Checks received in December, and 36 (2.5%) Basic Checks received in January, had been delayed. In addition, 98 (6.9%) Basic Checks received in January 2020 had not yet been processed as of January 31, 2020. For example, checks received on January 31, 2020, likely would not have been processed by the time I collected data for this declaration.

⁴ Transactions that were initially denied, but later approved, are treated as approved for purposes of this table.

TABLE 1 – Basic Ammunition Eligibility Checks

Table 1.2: Basic Checks — Processing Times as of January 31, 2020							
	July 2019	August 2019	September 2019	October 2019	November 2019	December 2019	January 2020
Average Time ⁵	3 days, 1 hr., 30 mins.	2 days, 7 hrs., 59 mins.	1 day, 13 hrs., 51 mins.	2 days, 6 hrs., 2 mins.	2 days, 3 hrs., 40 mins.	1 day, 17 hrs., 12 mins.	1 day, 5 hrs., 16 mins.
Median Time	1 day, 3 hrs., 15 mins.	21 hrs., 39 mins.	14 hrs., 38 mins.	20 hrs., 33 mins.	17 hrs., 53 mins.	14 hrs., 50 mins.	18 hrs., 24 mins.

⁵ As noted in my November 18 Second Supplemental Declaration, not all Basic Check transactions receive a determination in the month the transaction is submitted. *See* Second Supp. Decl. at p. 10, Table 1.2, n.3, ECF No. 48. A small number of transactions each month require a substantial amount of processing time. This relatively small number of transactions significantly increases the average, explaining the longer average processing time for months further in the past.

TABLE 1 – Basic Ammunition Eligibility Checks

Table 1.3: Approved Basic Checks — Processing Times							
	July 2019	August 2019	September 2019	October 2019	November 2019	December 2019	January 2020
Automatically Processed	811	1,092	713	559	413	437	308
Average Time	2 hrs., 5 mins.	1 hr., 40 mins.	2 hrs., 36 mins.	2 hrs., 0 mins.	2 hrs., 30 mins.	2 hrs., 1 min.	2 hrs., 11 mins.
Median Time	9 mins.	9 mins.	9 mins.	9 mins.	9 mins.	8 mins.	8 min.
Manually Processed	2,796	3,760	2,343	1,728	1,444	1,359	922
Average Time ⁶	2 days, 12 hrs. 29 mins.	2 days, 4 hrs., 3 mins.	1 day, 6 hrs., 54 mins.	2 days, 7 hrs., 39 mins.	1 day, 21 hrs., 39 mins.	1 day, 17 hrs., 47 mins.	1 day, 11 hrs., 47 min.
Median Time	1 day, 23 hrs., 6 min.	1 day, 16 hrs.	16 hrs., 15 mins.	1 day, 3 hrs., 28 mins.	20 hrs., 48 mins.	19 hrs., 39 mins.	22 hrs., 26 mins.

⁶ For the reasons discussed in footnote 5, some of the average times do not exactly match the times reported in my prior declarations. See Second Supp. Decl. at p. 10, Table 1.3, ECF No. 48; Suppl. Decl. at p. 4, Table 1.3, ECF No. 42.

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

TABLE 2 – AFS CHECKS (STANDARD AMMUNITION ELIGIBILITY CHECKS)

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.1: AFS Checks — Approvals, Denials, & Rejections								
	July 2019	August 2019	September 2019	October 2019	November 2019	December 2019	January 2020	Total
AFS Checks Processed	57,553	101,058	100,560	86,376	94,660	95,331	80,719	616,257
Approved	46,702	80,811	83,051	72,847	80,086	81,444	70,081	515,022
Denied (Prohibited Persons)	14	28	28	31	34	30	23	188
Rejected (no match with AFS records)	10,837	20,219	17,481	13,498	14,540	13,857	10,615	101,047

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.2: AFS Checks — Reasons for Rejections as of January 31, 2020														
	July 2019		August 2019		September 2019		October 2019		November 2019		December 2019		January 2020	
Total Rejected	10,837		20,219		17,481		13,498		14,540		13,857		10,615	
Address Mismatch (name, date of birth, and ID number match)	4,256	39.27%	7,398	36.59%	6,706	38.36%	5,213	38.62%	5,681	39.07%	5,351	38.62%	4,253	40.07%
No Identifiable AFS Entry (purchaser not eligible for AFS Check)	2,900	26.76%	5,906	29.21%	4,859	27.80%	3,497	25.91%	3,805	26.17%	3,368	24.31%	2,350	22.14%
Name Mismatch (date of birth, address, and ID number match)	1,693	15.62%	2,984	14.76%	2,703	15.46%	2,295	17.00%	2,667	18.34%	2,597	18.74%	2,148	20.24%

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.2: AFS Checks — Reasons for Rejections as of January 31, 2020														
	July 2019		August 2019		September 2019		October 2019		November 2019		December 2019		January 2020	
Name and ID Number Mismatch (date of birth and address match)	373	3.44%	726	3.59%	607	3.47%	448	3.32%	448	3.08%	415	2.99%	281	2.65%
AFS Entry No Longer Valid (Name, Date of Birth, ID Number, and Address Match)	339	3.13%	606	3.00%	493	2.82%	393	2.91%	411	2.83%	472	3.41%	338	3.18%
Name and Address Mismatch (date of birth and ID number match)	278	2.57%	624	3.09%	594	3.40%	461	3.42%	452	3.11%	495	3.57%	353	3.33%

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.2: AFS Checks — Reasons for Rejections as of January 31, 2020														
	July 2019		August 2019		September 2019		October 2019		November 2019		December 2019		January 2020	
AFS Entry No Longer Valid (Partially Matched on a combination of Name, Date of Birth, ID, Address)	277	2.56%	541	2.68%	444	2.54%	329	2.44%	292	2.01%	297	2.14%	226	2.13%
ID Number and Address Mismatch (name and date of birth match)	245	2.26%	493	2.44%	370	2.12%	289	2.14%	225	1.55%	259	1.87%	187	1.76%
ID Number Mismatch (name, date of birth, and address match)	216	1.99%	415	2.05%	333	1.90%	266	1.97%	256	1.76%	274	1.98%	204	1.92%

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.2: AFS Checks — Reasons for Rejections as of January 31, 2020														
	July 2019		August 2019		September 2019		October 2019		November 2019		December 2019		January 2020	
Date of Birth Mismatch (name, address, and ID number match)	169	1.56%	290	1.43%	221	1.26%	185	1.37%	214	1.47%	213	1.54%	185	1.74%
Date of Birth and ID Number Mismatch (name and address match)	36	0.33%	121	0.60%	66	0.38%	57	0.42%	45	0.31%	76	0.55%	44	.41%
Date of Birth and Address Mismatch (name and ID number match)	33	0.30%	64	0.32%	41	0.23%	41	0.30%	15	0.10%	18	0.13%	22	.21%

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.2: AFS Checks — Reasons for Rejections as of January 31, 2020														
	July 2019		August 2019		September 2019		October 2019		November 2019		December 2019		January 2020	
Name and Date of Birth Mismatch (address and ID number match)	18	0.17%	27	0.13%	18	0.10%	18	0.13%	22	0.15%	17	0.12%	15	.14%
Name, Date of Birth, and Address Mismatch (ID number match)	4	0.04%	24	0.12%	26	0.15%	6	0.04%	7	0.05%	5	0.04%	9	.08%

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.3: Purchasers Who were Rejected on an AFS Check and Subsequently Purchased Ammunition on or before January 31, 2020							
	July 2019	August 2019	September 2019	October 2019	November 2019	December 2019	January 2020
Individuals Rejected in AFS Checks	9,027	16,037	14,008	10,896	11,653	11,034	8,457
Number Who Purchased Ammunition on or before January 31, 2020, after an AFS Check Rejection	4,295 ⁷	7,276 ⁸	6,189 ⁹	4,733 ¹⁰	4,976	4,441	3,384

⁷ As of August 31, 2019, this number was 3,468. *See* Supp. Decl. at p. 11, Table 2.3, ECF No. 42. The difference between that number and the number in this table means that 827 additional people who received an AFS Check rejection in July 2019 were able to purchase ammunition using some form of eligibility check between August 31, 2019, and January 31, 2020.

⁸ As of August 31, 2019, this number was 4,923. *See* Supp. Decl. at p. 11, Table 2.3, ECF No. 42. The difference between that number and the number in this table means that 2,353 additional people who received an AFS Check rejection in August 2019 were able to purchase ammunition using some form of eligibility check between August 31, 2019, and January 31, 2020.

⁹ As of October 31, 2019, this number was 5,371. *See* Second Supp. Decl. at p. 19, Table 2.3, ECF No. 48. The difference between that number and the number in this table means that 818 additional people who received an AFS Check rejection in September 2019 were able to purchase ammunition using some form of eligibility check between October 31, 2019, and January 31, 2020.

¹⁰ As of October 31, 2019, this number was 3,580. *See* Second Supp. Decl. at p. 19, Table 2.3, ECF No. 48. The difference between that number and the number in this table means that 1,153 additional people who received an AFS Check rejection in October 2019 were able to purchase ammunition using some form of eligibility check between October 31, 2019, and January 31, 2020.

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.4: AFS Check Rejection Rate by Week – July 1, 2019, through February 23, 2020			
Week	Total AFS Checks Submitted	AFS Check Rejections	Percent
July 1-7, 2019	11,269	1,990	17.66%
July 8- 14, 2019	12,918	2,305	17.84%
July 15-21, 2019	14,199	2,763	19.46%
July 22-28, 2019	13,859	2,725	19.66%
July 29 – August 4, 2019	16,423	3,282	19.98%
August 5-11, 2019	18,634	3,805	20.42%
August 12-18, 2019	20,597	4,212	20.45%
August 19-25, 2019	22,143	4,279	19.32%
August 26 – September 1, 2019	31,781	6,358	20.01%
September 2-8, 2019	25,872	4,719	18.24%
September 9-15, 2019	23,775	4,143	17.43%
September 16-22, 2019	23,413	3,931	16.79%
September 23-29, 2019	22,008	3,678	16.71%
September 30 – October 6, 2019	21,431	3,334	15.56%
October 7-13, 2019	19,479	3,149	16.17%
October 14-20, 2019	21,567	3,308	15.34%
October 21-27, 2019	18,436	2,872	15.58%

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.4: AFS Check Rejection Rate by Week – July 1, 2019, through February 23, 2020			
Week	Total AFS Checks Submitted	AFS Check Rejections	Percent
October 28 – November 3, 2019	17,394	2,789	16.03%
November 4-10, 2019	22,027	3,504	15.91%
November 11-17, 2019	21,005	3,221	15.33%
November 18-24, 2019	19,004	2,902	15.27%
November 25 – December 1, 2019	25,823	3,797	14.70%
December 2-8, 2019	17,542	2,577	14.69%
December 9-15, 2019	22,557	3,268	14.49%
December 16-22, 2019	22,855	3,258	14.26%
December 23-29, 2019	22,878	3,295	14.40%
December 30, 2019 – January 5, 2020	21,538	2,991	13.89%
January 6-12, 2020	18,365	2,424	13.20%
January 13-19, 2020	19,106	2,545	13.32%
January 20-26, 2020	18,142	2,317	12.77%
January 27 – February 2, 2020	15,386	1,986	12.91%
February 3-9, 2020	18,262	2,327	12.74%

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.4: AFS Check Rejection Rate by Week – July 1, 2019, through February 23, 2020			
Week	Total AFS Checks Submitted	AFS Check Rejections	Percent
February 10-16, 2020	18,283	2,405	13.15%
February 17-23, 2020	17,848	2,377	13.32%
Total	675,819	108,836	16.10%

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

14 **Kim Rhode et al.,**

15 Plaintiffs,

16 v.

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

20 Defendants.

3:18-cv-00802-BEN-JLB

**SECOND SUPPLEMENTAL
 DECLARATION OF MAYRA G.
 MORALES IN SUPPORT OF
 DEFENDANT XAVIER
 BECERRA'S OPPOSITION TO
 PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

21 Dept: 5A
 Judge: Hon. Roger T. Benitez
 22 Action Filed: 4/27/2018

1 **SECOND SUPPLEMENTAL DECLARATION OF MAYRA G. MORALES**

2 I, MAYRA G. MORALES, declare:

3 1. I am a Staff Services Manager III for the California Department of
4 Justice, Bureau of Firearms (hereafter generally referred to together as the
5 “Department”). I make this declaration of my own personal knowledge and
6 experience and, if called as a witness, I could and would testify competently to the
7 truth of the matters set forth herein.

8 2. I understand that at an October 1, 2019 status conference relating to
9 Plaintiffs’ motion for preliminary injunction, the Court requested additional
10 information from the Attorney General. I have reviewed pages 41 through 43 of the
11 transcript of the status conference. Based on that review, I see that the Court
12 requested the same information provided in my September 27 Supplemental
13 Declaration (Supp. Decl.), ECF No. 42, updated through the end of October of
14 2019.

15 3. As part of my job duties, I can request data from the Department’s
16 Application Development Bureau regarding ammunition eligibility transactions. I
17 have obtained the data that the Court requested.

18 4. This declaration updates the tables in my September 27 Supplemental
19 Declaration for July and August and adds information for September and October.
20 To aid in readability, the tables are presented following my signature.

21 5. Section I of this declaration provides a narrative summary of the
22 information on Basic Ammunition Eligibility Check (which I will refer to as “Basic
23 Checks”) from July 1, 2019, through October 31, 2019. The data underlying this
24 summary appears in Tables 1.1 through 1.3.

25 6. Section II provides a narrative summary of information on AFS Checks
26 for July 1, 2019, through October 31, 2019. The data underlying this summary
27 appears in Tables 2.1 through 2.3.

28

1 7. Section III of this declaration updates information about purchasers who
2 had been denied as prohibited, but who, upon additional review, were determined to
3 be not prohibited. The Department has now reviewed a majority of the 504
4 transactions where a purchaser was denied as prohibited, and it has determined that
5 13 of those purchasers were in fact eligible.

6 **I. BASIC AMMUNITION ELIGIBILITY CHECK INFORMATION FOR JULY**
7 **THROUGH OCTOBER 2019**

8 8. The Basic Check is described in California Code of Regulations, title 11,
9 section 4303. This check can be used irrespective of whether a purchaser or
10 transferee (I will generally refer to these together as “purchaser”) can take
11 advantage of one of the other eligibility checks.

12 9. Under section 4303(b), a Basic Check costs \$19 and entails submitting
13 identifying information, including the purchaser’s name, date of birth, current
14 address, and ID number, to the Department’s Dealer Record of Sale (DROS) Entry
15 System (DES). The process proceeds in two steps. First, the Department
16 automatically checks the person’s ID or driver license number (I will generally
17 refer to IDs and driver licenses as “IDs”), name, and date of birth, against DMV
18 records to confirm the information submitted matches a DMV record and that the
19 ID is valid. If the information matches, then the submitted information is
20 automatically run through four state databases: (1) Automated Criminal History
21 Record System (ACHS); (2) Mental Health Firearms Prohibition System (MHFPS);
22 (3) California Restraining and Protective Order System (CARPOS); and (4) Wanted
23 Persons System (WPS).

24 10. If a purchaser’s information results in no hits in the system, the Basic
25 Check is processed automatically, meaning that Department employees are not
26 directly involved in the process. If the purchaser’s information results in a hit in
27 one of the four systems, the eligibility check will require manual review by a
28 Department analyst. A manual review can take anywhere from a few minutes to

1 days or weeks depending on the nature of the hit in the database. For instance, if
2 the ACHS shows the purchaser was charged with a felony, but does not have a
3 disposition of that felony, the manual check would entail tracking down the
4 disposition, which can take at least several business days.

5 11. Table 1.1 lists the Basic Check approvals, rejections, and denials for July
6 1, 2019, through October 31, 2019.

7 12. From July 1, 2019, through October 31, 2019, the Department has
8 processed 14,331 Basic Checks. Of those, 95% have been approved and about
9 1.65% have been rejected because the purchaser's information does not match
10 Department of Motor Vehicle records or the records used to make a determination
11 were incomplete, thereby preventing Department analysts from ascertaining
12 whether the purchaser was prohibited.

13 13. Almost 400 people, or 2.8% of the total processed, have been denied
14 because the Department's records show them to be prohibited persons.

15 14. Table 1.2 sets forth the average processing times for Basic Checks that
16 were submitted in July through October that had eligibility determinations made on
17 or before October 31, 2019. The average processing times for July and August
18 have increased since my September 27 Supplemental Declaration because a small
19 number of transactions—6.9% of the total—were still pending on August 31, but
20 had been resolved by October 31. These longer transaction times affected the
21 averages for those months. A Basic Check can be delayed for many reasons, most
22 often it is because a Department analyst must conduct additional research on an
23 arrest cycle for a prohibiting event with missing disposition. The Department will
24 do its due diligence to obtain the necessary information. However, if the
25 Department is unable to obtain the information, it will ultimately reject the
26 transaction because an eligibility determination could not be made.

27 15. For the typical purchaser, the Basic Check processing time takes an
28 average of one to two days. In July, it took 1 day and 17.5 hours for the typical

1 purchaser (though, as discussed in the footnotes to Tables 1.2 and 1.3, the average
2 time is higher). By October, the processing time had decreased to 1 day and 4
3 hours.

4 16. Table 1.3 lists the average processing times for Basic Checks that were
5 manually and automatically approved for the months of July through October.
6 These numbers are a subset of the Basic Checks that were submitted during those
7 months and that had eligibility determinations made on or before October 31, 2019.

8 17. Just under one-quarter of the approved Basic Checks were processed
9 automatically. The average processing time across all four months was roughly 2
10 hours.

11 18. Just over three-quarters of the approved Basic Checks were processed
12 manually. Subject to the observation above that some outliers affected the average,
13 the typical approved Basic Check that is manually processed takes about two
14 business days.

15 **II. AFS CHECK (STANDARD AMMUNITION ELIGIBILITY CHECK)**
16 **INFORMATION FOR JULY THROUGH OCTOBER 2019**

17 19. This section of my declaration provides the information that the
18 Department has collected as of October 31, 2019, regarding AFS Check rejections.
19 The AFS Check is described in more detail in my September 27 Supplemental
20 Declaration. Suppl. Decl. ¶¶ 19-25, 28-31, ECF No. 42. The regulation outlining
21 the AFS Check is located in California Code of Regulations, title 11, section 4302.

22 20. Section II.A of this declaration provides the data on AFS Checks for July
23 1, 2019, through October 31, 2019. Section II.B sets forth the reasons for AFS
24 Check rejections in those months. Section II.C provides information on purchasers
25 who were rejected in an AFS Check, but who later purchased ammunition on or
26 before October 31, 2019.

27
28

1 **A. AFS Check Approvals, Denials, and Rejections for July**
2 **Through October 2019**

3 21. Table 2.1 sets forth the AFS Check approvals, denials, and rejections for
4 July 1, 2019 through October 31, 2019. As noted in September 27 Supplemental
5 Declaration, Suppl. Decl. ¶ 27, ECF No. 42, denials occur when official records
6 identify the purchaser as a prohibited person who cannot lawfully possess a firearm
7 or ammunition. Rejections occur when the purchaser's information does not match
8 an AFS record.

9 22. Since July 1, 2019, the Department has processed 345,547 AFS Checks.
10 It has approved 283,411 (82%), rejected 62,035 (18%) because the information
11 submitted by the purchaser does not match an AFS entry, and denied 101 (0.03%)
12 because the Department's information shows the purchaser to be on the Armed
13 Prohibited Persons System (APPS) list.

14 23. The monthly rate of AFS Check rejections was 18.8% in July, increased
15 to 20% in August, and has since decreased to 17% in September and 15.6% in
16 October. The Department expects this downward trend to continue as familiarity
17 with the system among ammunition vendors and consumers increases. The reasons
18 for the rejections in July through October 2019 are set forth in more detail in the
19 following section.

20 **B. Information on AFS Check Rejections for July Through**
21 **October 2019**

22 24. To recap from my September 27 Supplemental Declaration, AFS Checks
23 are a streamlined eligibility check that rely on the purchaser already having
24 undergone a firearms background check and being subject to inclusion in APPS, in
25 the event they later become prohibited. By definition, an AFS Check will work
26 only for those who have an AFS record, and whose record is up to date. A
27 purchaser without an AFS record, or with an AFS record that is not current, will not
28

1 be able to obtain an eligibility determination; the system will reject that submission.
2 Suppl. Decl. ¶¶ 28, ECF No. 42.

3 25. At the outset, it bears noting that an AFS Check rejection, due to the
4 purchaser's information not matching a record in AFS, is not a determination that
5 the purchaser is ineligible to purchase ammunition. It means that the purchaser
6 cannot avail themselves of that streamlined eligibility check. They may still use a
7 Basic Check, or, in certain situations, a Certificate of Eligibility Verification
8 (California Code of Regulations, title 11, section 4305) or Firearms Eligibility
9 Check (California Code of Regulations, title 11, section 4304). *See also* Suppl.
10 Decl. ¶¶ 21-25, ECF No. 42.

11 26. An AFS Check will be rejected if the purchaser's name, address, date of
12 birth, or ID number, or some combination of that information, does not match an
13 AFS record. Suppl. Decl. ¶ 30, ECF No. 42.

14 27. Table 2.2 summarizes the reasons for the AFS Check rejections for July
15 1, 2019 through October 31, 2019.

16 28. Across all four months, the most common reason AFS Checks were
17 rejected was that the purchaser's address did not match the address in an AFS
18 record. These purchasers' name, ID number, and date of birth matched an entry,
19 but their address did not match an entry. This accounted for about 36% of the
20 rejections over the four-month period.

21 29. The next most common reason AFS Checks were rejected was that the
22 purchaser could not be associated with an AFS entry at all. In most cases, this
23 likely occurred because either the purchaser or the ammunition vendor mistakenly
24 chose to run an AFS Check where the purchaser did not have an AFS record. This
25 accounted for roughly one-third of all AFS Check rejections. For instance, in
26 October, the Department rejected 4,288 AFS Checks, about 32% of all 13,498
27 rejections, for this reason.

28

1 30. Name mismatches were another significant source of rejections. Across
2 the four months, about 13% of AFS Checks were rejected for this reason.

3 31. These three reasons for rejections—address mismatches, no apparent
4 AFS entry, and name mismatches—accounted for about 80% of all rejections. The
5 remaining 20% or so of rejections occurred for various other reasons listed in Table
6 2.2.

7 **C. Information on Purchasers Rejected in an AFS Check Who**
8 **Later Purchased Ammunition on or before October 31, 2019**

9 32. At the Court’s request, my September 27 Supplemental Declaration
10 included information on whether purchasers who were rejected in an AFS Check
11 had subsequently purchased ammunition. Suppl. Decl. ¶¶ 36-39, ECF No. 42.

12 33. Table 2.3 lists information on purchasers who were rejected who later
13 purchased ammunition by month.

14 34. As explained in my September 27 Supplemental Declaration, there is a
15 difference between the total number of rejections each month and the unique
16 individuals rejected. Suppl. Decl. ¶ 38, ECF No. 42. I understand that the primary
17 difference between rejections and denials and unique ID numbers is largely because
18 some individual purchasers attempted to use the AFS Check procedure more than
19 once and were rejected or denied on more than one occasion.

20 35. In my September 27 Supplemental Declaration, I reported that of the
21 9,027 unique purchasers rejected in July, 3,468 (38.41%) had purchased
22 ammunition as of August 31, 2019. Suppl. Decl. ¶ 39, Table 2.3, ECF No. 42. By
23 October 31, 2019, 3,950 (43.75%) unique purchasers in July had purchased
24 ammunition as of October 31, 2019. That means that 482 additional people who
25 had an AFS Check rejected in July purchased ammunition between August 31,
26 2019, and October 31, 2019.

27 36. A similar trend occurred for the August numbers. In my September 27
28 Supplemental Declaration, I reported that of the 16,037 unique purchasers rejected

1 in August, 4,923 (30.69%) had purchased ammunition as of August 31, 2019.
2 Suppl. Decl. ¶ 39, Table 2.3, ECF No. 42. By October 31, 2019, that number had
3 increased to 6,563 (40.92%), meaning an additional 1,640 people who had an AFS
4 Check rejected in August purchased ammunition between August 31, 2019, and
5 October 31, 2019.

6 37. Of the 14,008 individuals who had an AFS Check rejected in September,
7 5,371 (38.34%) had purchased ammunition by October 31, 2019.

8 38. And of the 10,896 individuals who had an AFS Check rejected in
9 October, 3,580 (32.86%) had purchased ammunition by October 31, 2019.

10 **III. PERSONS PREVENTED FROM PURCHASING AMMUNITION AND**
11 **SUBSEQUENTLY DEEMED ELIGIBLE.**

12 39. In my September 27 Supplemental Declaration, I provided information in
13 response to the Court's inquiry about purchasers who had been denied approval to
14 purchase ammunition because they were prohibited, but who were later determined
15 to not be prohibited. Suppl. Decl. ¶ 40, ECF No. 42.

16 40. I reported that four purchasers were denied on the grounds of a
17 prohibiting offense, mental health commitment, or restraining order, but were
18 subsequently determined to have been eligible to purchase ammunition at the time
19 of purchase, and that an additional five purchasers were ineligible to purchase
20 ammunition on the face of their official records, but were later determined to be
21 eligible after Department staff investigated the matter. Suppl. Decl. ¶ 45, ECF
22 No. 42.

23 41. The Department has now reviewed over 400 of the transactions where the
24 purchaser was denied as prohibited. Based on that review, one additional
25 purchaser, for a total of five purchasers, was denied on the grounds of a prohibiting
26 offense, mental health commitment, or restraining order, but was, based on the face
27 of the official records, subsequently determined to have been eligible to purchase
28 ammunition at the time of purchase. Three new transactions were uncovered where

1 the purchaser was ineligible to purchase ammunition on the face of their official
2 records, but were later determined to be eligible after Department staff investigated
3 the matter. The number of those transactions stands at eight.

4 42. To summarize, with over three-quarters of the denials from July 1, 2019,
5 through October 31, 2019, reviewed, 13 purchasers who were denied as prohibited
6 persons have since been determined to be eligible.

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8

9 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
10 is true and correct.

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12 Executed on: November 18, 2019

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MAYRA G. MORALES

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TABLE 1 – Basic Ammunition Eligibility Checks

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TABLE 1 – BASIC AMMUNITION ELIGIBILITY CHECKS

TABLE 1 – Basic Ammunition Eligibility Checks

Table 1.1: Basic Checks — Approvals, Denials, & Rejections					
	July 2019	August 2019	September 2019	October 2019	Total
Basic Checks Received	3,798	5,066	3,213	2,400 ¹	14,477
Basic Checks Processed	3,798	5,066	3,201	2,266	14,331
Approved ²	3,607 (94.97%)	4,852 (95.78%)	3050 (95.28%)	2,189 (96.60%)	13,698 (95.58%)
Denied (Prohibited Persons)	119 (3.13%)	130 (2.57%)	87 (2.72%)	60 (2.65%)	396 (2.76%)
Rejected (no match with DMV records)	22 (0.58%)	17 (0.34%)	24 (0.75%)	10 (0.44%)	73 (0.51%)
Rejected (incomplete history)	50 (1.32%)	67 (1.32%)	40 (1.25%)	7 (0.31%)	164 (1.14%)

¹ As of November 1, 2019, 12 (0.37%) Basic Checks received in September and 65 (2.71%) Basic Checks received in October, had been delayed. In addition, 69 (2.88%) Basic Checks received in October had not yet been processed as of November 1, 2019. For example, requests received on October 31, 2019, likely would not have been processed by the time I collected data for this declaration.

² Transactions that were initially denied, but later approved, are treated as approved for purposes of this table.

TABLE 1 – Basic Ammunition Eligibility Checks

Table 1.2: Basic Checks — Processing Times				
	July 2019	August 2019	September 2019	October 2019
Average Time ³	3 days, 1 hr., 30 mins.	2 days, 7 hrs., 59 mins.	1 day, 10 hrs., 2 mins.	1 day, 4 hrs., 45 mins.

Table 1.3: Approved Basic Checks — Processing Times				
	July 2019	August 2019	September 2019	October 2019
Automatically Processed	811 (22.48%)	1,092 (22.51%)	713 (23.38%)	558 (25.49%)
Average Time	2 hrs., 5 mins.	1 hr., 40 mins.	2 hrs., 36 mins	1 hr., 59 mins.
Manually Processed	2,796 (77.52%)	3,760 (77.49%)	2,337 (76.62%)	1,631 (74.51%)
Average Time ⁴	2 days, 12 hrs. 29 mins.	2 days, 4 hrs., 3 mins.	1 day, 4 hrs., 25 mins.	1 day, 12 hrs., 2 mins.

³ My September 27 Supplemental Declaration used August 31, 2019, as a cut-off for calculating transaction times. *See* Suppl. Decl. ¶ 16, ECF No. 42. Not all July and August 2019 Basic Checks had determinations made by that date. When I had the calculation re-run as of October 31, 2019, all July and August Basic Checks were considered, as they all had determinations made. The longer total processing times for July and August reported in this declaration are a result of a relatively small number of transactions significantly increasing the average. Based on the times reported in my September 27 Supplemental Declaration, the typical Basic Check that required manual processing took 1 day, 17 hours, and 31 minutes, in August, and 1 day, 4 hours, and 50 minutes, in July. *See* Suppl. Decl. at p. 4, Table 1.2, ECF No. 42.

⁴ For the reasons discussed in footnote 3, the average times for July and August have increased compared with the numbers reported in my September 27 Supplemental Declaration. *See* Suppl. Decl. at p. 4, Table 1.3, ECF No. 42.

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

TABLE 2 – AFS CHECKS (STANDARD AMMUNITION ELIGIBILITY CHECKS)

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TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.1: AFS Checks — Approvals, Denials, & Rejections					
	July 2019	August 2019	September 2019	October 2019	Total
AFS Checks Processed	57,553	101,058	100,560	86,376	345,547
Approved	46,702	80,811	83,051	72,847	283,411
Denied (Prohibited Persons)	14	28	28	31	101
Rejected (no match with AFS records)	10,837	20,247	17,481	13,498	62,063

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.2: AFS Checks — Reasons for Rejections								
	July 2019		August 2019		September 2019		October 2019	
Total Rejected	10,837		20,219		17,481		13,498	
Address Mismatch (name, date of birth, and ID number match)	4,077	37.62%	7,160	35.41%	6,420	36.73%	4,925	36.49%
No Identifiable AFS Entry (purchaser not eligible for AFS Check)	3,303	30.48%	6,563	32.46%	5,609	32.09%	4,288	31.77%
Name Mismatch (date of birth, address, and ID number match)	1,452	13.40%	2,563	12.68%	2,197	12.57%	1,744	12.92%
Name and ID Number Mismatch (date of birth and address match)	423	3.90%	774	3.83%	689	3.94%	510	3.78%
AFS Entry No Longer Valid (Name, Date of Birth, ID Number, and Address Match)	322	3%	576	2.85%	443	2.53%	361	2.67%
Name and Address Mismatch (date of	301	2.78%	671	3.32%	666	3.81%	524	3.88%

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.2: AFS Checks — Reasons for Rejections								
	July 2019		August 2019		September 2019		October 2019	
birth and ID number match)								
AFS Entry No Longer Valid (Partially Matched on a combination of Name, Date of Birth, ID, Address)	258	2.38%	522	2.58%	425	2.43%	333	2.47%
ID Number and Address Mismatch (name and date of birth match)	248	2.29%	497	2.46%	392	2.24%	298	2.21%
ID Number Mismatch (name, date of birth, and address match)	209	1.93%	383	1.89%	290	1.66%	226	1.67%
Date of Birth Mismatch (name, address, and ID number match)	148	1.37%	259	1.28%	188	1.08%	154	1.14%
Date of Birth and ID Number Mismatch	41	0.38%	124	0.61%	66	0.38%	65	0.48%

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.2: AFS Checks — Reasons for Rejections								
	July 2019		August 2019		September 2019		October 2019	
(name and address match)								
Date of Birth and Address Mismatch (name and ID number match)	34	0.31%	72	0.36%	49	0.28%	45	0.33%
Name and Date of Birth Mismatch (address and ID number match)	16	0.15%	28	0.14%	19	0.11%	18	0.13%
Name, Date of Birth, and Address Mismatch (ID number match)	5	0.05%	27	0.13%	28	0.16%	7	0.05%

TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)

Table 2.3: Purchasers Who were Rejected on an AFS Check and Subsequently Purchased Ammunition on or before August 31, 2019				
	July 2019	August 2019	September 2019	October 2019
Individuals Rejected in AFS Checks	9,027	16,037	14,008	10,896
Number Who Purchased Ammunition on or before October 31, 2019, after an AFS Check Rejection	3,950 ⁵	6,563 ⁶	5,371	3,580

⁵ As of August 31, 2019, this number was 3,468. *See* Supp. Decl. at p. 11, Table 2.3, ECF No. 42. The difference between that number and the number in this table means that 482 additional people who received an AFS Check rejection in the month of July were able to purchase ammunition using some form of eligibility check between August 31 and October 31, 2019.

⁶ As of August 31, 2019, this number was 4,923. *See* Supp. Decl. at p. 11, Table 2.3, ECF No. 42. The difference between that number and the number in this table means that 1,640 additional people who received an AFS Check rejection in the month of August were able to purchase ammunition using some form of eligibility check between August 31 and October 31, 2019.

CERTIFICATE OF SERVICE

Case Name: **Rhode v. Becerra** No. 3:18-cv-00802-BEN-JLB

I hereby certify that on November 18, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

SECOND SUPPLEMENTAL DECLARATION OF MAYRA G. MORALES IN SUPPORT OF DEFENDANT XAVIER BECERRA’S OPPOSITION TO PLAINTIFFS’ MOTION FOR 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 the foregoing is true and correct and that this declaration was executed on November 18, 2019, at Sacramento, California.

 Nelson Richards

Declarant

 /s/ Nelson Richards

Signature

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14143316.docx

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

14 **Kim Rhode et al.,**

15 Plaintiffs,

16 v.

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

20 Defendants.

3:18-cv-00802-BEN-JLB

**SUPPLEMENTAL
DECLARATION OF MAYRA G.
MORALES IN SUPPORT OF
DEFENDANT XAVIER
BECERRA'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

21 Dept: 5A
Judge: Hon. Roger T. Benitez
22 Action Filed: 4/27/2018

DECLARATION OF MAYRA G. MORALES

I, MAYRA G. MORALES, declare:

1. I am a Staff Services Manager III for the California Department of Justice, Bureau of Firearms (hereafter generally referred to together as the “Department”). I make this declaration of my own personal knowledge and experience and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I understand that at the August 19, 2019 hearing on Plaintiffs’ motion for preliminary injunction, the Court requested additional information from the Attorney General. I have reviewed pages 132 through 135 of the transcript of the hearing. Based on that review, I see that the Court requested the following information:

- a. The reasons for the 10,837 Standard Ammunition Eligibility Check rejections in July 2019. (In this Declaration, I will generally refer to these checks as “AFS Checks.”)
- b. Whether those who were rejected have been able to acquire ammunition.
- c. Whether any of the prohibited persons prevented from purchasing ammunition are, in fact, not prohibited persons.
- d. The Court requested the same information for August 2019.

3. As part of my job duties, I can request data from the Department’s Application Development Bureau regarding ammunition eligibility transactions. I have obtained the data that the Court requested, with some additional data to provide context.

4. Across both July and August, the three most common reasons for AFS Check rejections were: (1) the address submitted by the vendor on the purchaser’s behalf did not match the address in the AFS system; (2) the purchaser likely did not

1 have an entry in the AFS system, meaning they elected the wrong eligibility check;
2 and (3) the name submitted by the vendor on the purchaser's behalf did not match
3 the name in the AFS system. Together, these accounted for about 80% of the
4 rejections.

5 5. The number of purchasers who appear to have incorrectly used an AFS
6 Check alone was about 30% of the total rejections in both months.

7 6. The other 50% of people who received an AFS rejection due to an
8 address or name mismatch could update or correct their AFS record via the
9 Department's website.

10 7. Of the individuals who had an AFS Check rejected in July or August,
11 between 30% and 40% had successfully purchased ammunition by August 31,
12 2019.

13 8. These numbers, and others, are set forth in more detail below.

14 9. Section I of this declaration provides additional information on Basic
15 Ammunition Eligibility Check (which I will refer to as "Basic Checks").

16 10. Section II provides information on AFS Checks for July and August
17 2019, including the total number of transactions, the number of approvals, denials,
18 and rejections, the reasons for the rejections, and the number of people who were
19 able to purchase ammunition after an AFS Check rejection.

20 11. Section III discusses the 289 people who were prevented from purchasing
21 ammunition in July and August because they were determined to be prohibited
22 based on Department records, including information that responds to the Court's
23 question about whether any of those people were mistakenly denied.

24 **I. BASIC AMMUNITION ELIGIBILITY CHECKS**

25 12. Although I understand that the Court was primarily concerned with the
26 rejection rates for AFS Checks, it bears noting that the default ammunition
27 eligibility check is the Basic Check described in California Code of Regulations,
28 title 11, section 4303. This check can be used irrespective of whether a purchaser

1 or transferee (I will generally refer to these together as “purchaser”) can take
2 advantage of one of the other eligibility checks.

3 13. Under section 4303(B), a Basic Check costs \$19 and entails submitting
4 identifying information, including the purchaser’s name, date of birth, current
5 address, and ID number, to the Department’s Dealer Record of Sale (DROS) Entry
6 System (DES). The process proceeds in two steps. First, the Department
7 automatically checks the person’s ID or driver license number (I will generally
8 refer to IDs and driver licenses as “IDs”), name, and date of birth, against DMV
9 records to confirm the information submitted matches a DMV record and that the
10 ID is valid. If the information matches, then the submitted information is
11 automatically run through four state databases: (1) Automated Criminal History
12 Record System (ACHS); (2) Mental Health Firearms Prohibition System (MHFPS);
13 (3) California Restraining and Protective Order System (CARPOS); and (4) Wanted
14 Persons System (WPS).

15 14. If a purchaser’s information results in no hits in the system, the Basic
16 Check is processed automatically, meaning that Department employees are not
17 directly involved in the process. If the purchaser’s information results in a hit in
18 one of the four systems, the eligibility check will require manual review by a
19 Department analyst. A manual review can take anywhere from a few minutes to
20 days or weeks depending on the nature of the hit in the database. For instance, if
21 the ACHS shows the purchaser was charged with a felony, but does not have a
22 disposition of that felony, the manual check would entail tracking down the
23 disposition, which can take at least several business days.

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15. Table 1.1 lists the approvals, rejections, and denials for July and August.

Table 1.1: Basic Checks — Approvals, Denials, & Rejections¹		
	July 2019	August 2019
Basic Checks Processed	3,798	5,066 ²
Approved	3,607 ³ (94.97%)	4,827 ⁴ (95.28%)
Denied (Prohibited Persons)	119 (3.13%)	125 (2.47%)
Rejected (no match with DMV records)	22 (0.58%)	17 (0.34%)
Rejected (incomplete history)	50 (1.32%)	35 (0.69%)

16. Table 1.2 sets forth the average processing times for 3,709 Basic Checks that were submitted in July, and 4,542 Basic Checks that were submitted in August, that had eligibility determinations made on or before August 31, 2019.

Table 1.2: Basic Checks — Processing Times		
	July 2019	August 2019
Average Time	1 day, 17 hrs., 31 mins.	1 day, 4 hrs., 50 mins.

¹ This information is as of September 24, 2019, for transactions submitted in July and August 2019. The July numbers are different from what was provided in my August 2, 2019 Declaration in Support of Defendant Xavier Becerra’s Opposition to Plaintiffs’ Motion for Preliminary Injunction, ECF No. 34-1 (August 2 Declaration), because subsequent action has been taken on the transactions since August 2.

² In August, 62 Basic Checks that were submitted were delayed. A Basic Check can be delayed for many reasons. Most often it is because a Department analyst must conduct additional research on an arrest cycle for a prohibiting event with a missing disposition. The Department will do its due diligence to obtain the necessary information. However, if the Department is unable to obtain the information it will ultimately deny the transaction because an eligibility determination could not be made.

³ One approved transaction was originally denied and subsequently approved. The statistic is counted only in the Approved status as to not double count.

⁴ Two approved transactions were originally denied and subsequently approved. The statistic is counted only in the Approved status as to not double count.

17. Table 1.3 lists the average processing times for Basic Checks that were manually and automatically approved in July and August. These numbers are a subset of the 3,709 Basic Checks that were submitted in July, and 4,542 Basic Checks that were submitted in August, that had eligibility determinations made on or before August 31, 2019.

Table 1.3: Approved Basic Checks — Processing Times		
	July 2019	August 2019
Automatically Processed	811 (22.63%)	1,041 (23.79%)
Average Time	2 hrs., 5 mins.	1 hr., 36 mins.
Manually Processed	2,773 (77.37%)	3,334 (76.21%)
Average Time	2 days, 2 hrs. 29 mins.	1 day, 12 hrs., 5 mins.

II. AFS CHECK (STANDARD AMMUNITION ELIGIBILITY CHECKS) INFORMATION FOR JULY AND AUGUST 2019

18. This section of my declaration provides the information that the Department has collected since the hearing regarding AFS Check rejections. Section II.A briefly recounts how the AFS Check works and provides the topline data for July and August 2019. Section II.B sets forth the reasons for the rejections. Section II.C provides information on purchasers who were rejected in an AFS Check in July or August who purchased ammunition on or before August 31, 2019.

A. AFS Check Approvals, Denials, and Rejections for July and August 2019

19. As set forth in more detail in paragraphs 13-24 of my August 2 Declaration, an AFS Check allows a person who owns a firearm and who has an entry in the State’s Automated Firearms System to use that entry to establish their eligibility to purchase ammunition, rather than relying on the databases used in a Basic Check (described in paragraph 13, above).

1 20. If all the information matches an AFS entry and the purchaser is not in
2 the Armed Prohibited Persons System, then the transaction will be approved. If the
3 person is in the armed Prohibited Persons System, the transaction will be denied.

4 21. A purchaser who has an AFS Check rejected and is otherwise eligible to
5 purchase ammunition may do one of four things.

6 22. First, in many scenarios the purchaser may use the California Firearms
7 Application Reporting System (CFARS) to update their AFS personal information
8 to correct the cause of the mismatch. This process is set forth in paragraphs 20-24
9 of my August 2 Declaration and is also described on the Department's website at:
10 <https://oag.ca.gov/firearms/afspi>.

11 23. Second, if the purchaser owns a firearm that is not in AFS, the
12 purchaser may submit a Firearms Ownership Report using the form available on the
13 Department's website at <https://oag.ca.gov/firearms/forms> or by submitting the
14 form electronically through CFARS at <https://cfars.doj.ca.gov/login.do>. Once the
15 report is processed and approved, this will result in an AFS entry for the purchaser
16 that can be used to purchase ammunition.

17 24. Third, the purchaser can purchase a new firearm, which will allow them
18 to purchase ammunition at the same time, and also create an AFS entry that can be
19 used for future ammunition purchases.

20 25. Alternatively, these purchasers may elect to rely on a Basic Check, or, if
21 they have a COE, they may rely on a COE Check.

26. Table 2.1 sets forth the July and August 2019 approvals, denials and rejections for AFS Checks.

Table 2.1: AFS Checks — Approvals, Denials, & Rejections		
	July 2019	August 2019
AFS Checks Processed	57,553	101,058
Approved	46,702	80,811
Denied (Prohibited Persons)	14	28
Rejected (no match with AFS records)	10,837	20,219

27. As noted in the tables, denials occur when official records identify the purchaser as a prohibited person who cannot lawfully possess a firearm or ammunition. A rejection occurs when the purchaser does not match an entry in AFS. The reasons for the rejections in July and August 2019 are set forth in more detail in the following section.

B. Information on AFS Check Rejections for July and August 2019

28. AFS Checks are a streamlined eligibility check that rely on the purchaser already having undergone a firearms background check and being subject to inclusion in the APPS system, in the event they later become prohibited. Determining whether a potential ammunition purchaser has an up-to-date AFS entry is therefore integral to how the AFS Checks work.

29. Under California Code of Regulations, title 11, section 4302, an AFS Check involves checking whether a purchaser has a valid entry in the State’s Automated Firearms System. Under subdivision (c) of that regulation, to run an AFS Check, a licensed ammunition vendor collects the purchaser’s name, date of birth, current address, and ID number, and submits that information to DES. The system then automatically checks whether the submitted information matches an AFS record, and, if it does, runs the purchaser’s information against the Armed

1 Prohibited Persons System (APPS) database to determine whether the purchaser is
2 a prohibited person.

3 30. If the purchaser's name, address, date of birth, or ID number, or some
4 combination of that information, do not match an AFS record, the transaction is
5 rejected. For example, a purchaser may submit an AFS Check in which their name,
6 address, and date of birth match an AFS entry, but their ID number does not. Or, a
7 purchaser might submit a check in which their date of birth and ID number
8 matches, but their name and address do not. It is also possible that none, or only
9 one piece of information matches an AFS entry.

10 31. A small number of purchasers had AFS entries, but those entries were no
11 longer valid because the purchaser had transferred the firearm associated with the
12 entry to someone else.

13 32. In both July and August, about one in three of the AFS Check rejections
14 were for purchasers who it can reasonably be concluded do not have an AFS entry.

15 33. A large number of the rejections—over 50% of the total in both
16 months—fell into one of two categories: (1) their address did not match an AFS
17 entry but their name, date of birth, and ID number did; or (2) their name did not
18 match an AFS entry but their address, date of birth, and ID number did. Both
19 categories of people may use CFARS to correct their AFS information in a
20 relatively short amount of time.

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34. Table 2.2 summarizes the reasons for the AFS Check rejections for July and August, listing the reasons from most common to least common based on July and August data:

Table 2.2: AFS Checks — Reasons for Rejections				
	July 2019		August 2019	
Total Rejected	10,837		20,219	
Address Mismatch (name, date of birth, and ID number match)	4,077	37.62%	7,160	35.41%
No Identifiable AFS Entry (purchaser not eligible for AFS Check)	3,303	30.48%	6,563	32.46%
Name Mismatch (date of birth, address, and ID number match)	1,452	13.40%	2,563	12.68%
Name and ID Number Mismatch (date of birth and address match)	423	3.90%	774	3.83%
AFS Entry No Longer Valid (Name, Date of Birth, ID Number, and Address Match)	322	3%	576	2.85%
Name and Address Mismatch (date of birth and ID number match)	301	2.78%	671	3.32%
AFS Entry No Longer Valid (Partially Matched on a combination of Name, Date of Birth, ID, Address)	258	2.38%	522	2.58%
ID Number and Address Mismatch (name and date of birth match)	248	2.29%	497	2.46%
ID Number Mismatch (name, date of birth, and address match)	209	1.93%	383	1.89%
Date of Birth Mismatch (name, address, and ID number match)	148	1.37%	259	1.28%
Date of Birth and ID Number Mismatch (name and address match)	41	0.38%	124	0.61%
Date of Birth and Address Mismatch (name and ID number match)	34	0.31%	72	0.36%

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Name and Date of Birth Mismatch (address and ID number match)	16	0.15%	28	0.14%
Name, Date of Birth, and Address Mismatch (ID number match)	5	0.05%	27	0.13%

35. The information in Table 2.2 is derived from Microsoft Excel spreadsheets that list the transaction number, date, time, place, ID type, and reason for each rejection. I understand that those spreadsheets, with individual identifying information omitted, are being produced to counsel for Plaintiffs.

C. Information on Purchasers Rejected in an AFS Check Who Later Purchased Ammunition on or before August 31, 2019

36. The Court also asked the Attorney General whether purchasers who were rejected were able to purchase ammunition later.

37. Answering that question requires determining how many unique people attempted to purchase ammunition using AFS Checks who were subsequently rejected. Given the volume of data, the best way to answer this question is to use unique ID numbers as proxies for individual people. While potentially imperfect at the margins, I believe this approach provides a reasonably accurate method for identifying individual purchasers.

38. The 10,851 rejections and denials in July correspond to 9,027 unique ID numbers. I understand that the primary difference between rejections and denials and unique ID numbers is largely because 1,824 individuals tried to use the AFS Check procedure more than once and were rejected or denied on more than one occasion. The 20,247 rejections and denials in August correspond to 16,037 unique ID numbers. As with the July numbers, I understand that the primary difference between rejections and denials and unique ID numbers is largely because 4,182 individuals tried to use the AFS Check procedure more than once and were rejected or denied on more than one occasion.

39. Table 2.3 provides the number of individuals who were rejected from an AFS Check but who were able to purchase ammunition by August 31, 2019.

Table 2.3: Purchasers Who were Rejected on an AFS Check and Subsequently Purchased Ammunition on or before August 31, 2019		
	July 2019	August 2019
Individuals Rejected in AFS Checks	9,027	16,037
Number Who Purchased Ammunition on or before August 31, 2019, after an AFS Check Rejection	3,468	4,923

III. PROHIBITED PERSONS PREVENTED FROM PURCHASING AMMUNITION IN JULY AND AUGUST 2019

40. The Court also asked the Attorney General to provide additional information about the purchasers who had been denied approval to purchase ammunition because they are prohibited. In particular, the Court expressed concern that people may have been considered prohibited who actually are not prohibited persons.

41. As reported in paragraphs 50 and 52 of my August 2 Declaration, 106 people in July were prevented from purchasing ammunition because Department records showed them to be prohibited. Since then, additional people who submitted eligibility checks in July have been prevented from purchasing ammunition bringing the total for July transactions to 134.

42. In August, the number thus far is 155, for a total of 289 persons denied from purchasing ammunition in July and August because they were prohibited.

43. The Department investigates attempts to purchase ammunition by prohibited persons. Data on specific denials is highly sensitive, and disclosing it outside the Department could impede or undermine ongoing criminal investigations.

1 44. With that concern noted, I have asked our law enforcement staff to
2 provide me with general information on the denials. To give a sense of the reasons
3 for some of the denials, I will provide a few examples. One person in the Central
4 Valley who was denied had been committed under California Welfare and
5 Institutions Code section 5150 in 2018. Another in the Central Valley had a 2016
6 misdemeanor conviction for battery on a spouse. One in southern California had a
7 felony 2008 conviction for robbery. Some of the purchasers had older convictions:
8 an attempted purchaser in the Los Angeles region with a 1984 burglary conviction,
9 another in the northern California East Bay region with 1989 assault and battery
10 conviction, and another in Orange County with 1980 conviction for assault with a
11 deadly weapon.

12 45. I have also inquired whether, to the Department's knowledge, any of the
13 people denied from purchasing ammunition because they were prohibited were, on
14 a subsequent review, determined to not be prohibited. Determining whether this is
15 the case is a labor intensive process. The Department has reviewed approximately
16 45 of the 289 purchasers that were denied in July and August on the grounds of
17 prohibiting offenses, mental health commitments, or restraining orders. Four
18 purchasers were subsequently determined to have been eligible to purchase
19 ammunition at the time of purchase. In addition, five additional purchasers were
20 ineligible on the face of their official records, but were later determined to be
21 eligible after Department staff investigated the matter, contacted the appropriate
22 courts, and requested that they update the official status of the individuals. As a
23 result of these investigations—which are unrelated to this lawsuit or the Court's
24 request for information at the August 2 hearing—those individuals are now eligible
25 to purchase ammunition.

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1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
2 is true and correct.

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Executed on: September 27, 2019


MAYRA G. MORALES

CERTIFICATE OF SERVICE

Case Name: **Rhode v. Becerra** No. _____

I hereby certify that on September 27, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**SUPPLEMENTAL DECLARATION OF MAYRA G. MORALES IN SUPPORT OF
DEFENDANT XAVIER BECERRA’S OPPOSITION TO PLAINTIFFS’ MOTION FOR
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 the foregoing is true and correct and that this declaration was executed on September 27, 2019, at Sacramento, California.

Tracie L. Campbell

Declarant

/s/ Tracie Campbell

Signature

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9 *Xavier Becerra*

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

14 **Kim Rhode et al.,**

15 Plaintiffs,

16 v.

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

20 Defendants.

3:18-cv-00802-BEN-JLB

DECLARATION OF MAYRA G. MORALES IN SUPPORT OF DEFENDANT XAVIER BECERRA'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: August 19, 2019
Time: 10:30 a.m.
Dept: 5A
Judge: Hon. Roger T. Benitez
Action Filed: 4/27/2018

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DECLARATION OF MAYRA G. MORALES

I, MAYRA G. MORALES, declare:

1. I am a Staff Services Manager III for the California Department of Justice, Bureau of Firearms. I make this declaration of my own personal knowledge and experience and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

BACKGROUND

2. I possess a Bachelor of Science Degree in Speech Pathology. I have been with the Department of Justice (Department) for over 18 years, of which 11 years have been with the Bureau of Firearms. Over that time, I have held various positions. In 2014, I became a Staff Services Manager within the Administration and Special Projects Section where I oversaw all administrative functions of the Bureau of Firearms including legislation, regulations, budgets, facilities, personnel, telecommunication, procurement, and contracts. In April of 2016, I was promoted to a Department of Justice Administrator II within the Regulatory Program Section of the Bureau of Firearms. In this capacity I planned, organized, directed and provided leadership to several programs.

3. I have served as a Staff Services Manager III over the Special Assignment Section since April 2018.

4. My primary role in this capacity has been to oversee the Reporting and Quality Assurance Section and provide oversight of the implementation of the Ammunition Purchase Authorization Program. Under the direction of the Assistant Bureau Director, I was responsible for the implementation of the Ammunition Purchase Authorization Program that was established by Proposition 63, "Safety for All Act," as amended by Senate Bill 1235. In this capacity, I was a subject-matter generalist for all regulatory sections of the Bureau of Firearms.

1 **I. THE CALIFORNIA DEPARTMENT OF JUSTICE’S REGULATIONS**
2 **GOVERNING AMMUNITION PURCHASES AND TRANSFERS**

3 5. Proposition 63 was passed by California voters on November 8, 2016.

4 6. In January 2018, the Bureau of Firearms adopted Ammunition Vendor
5 Licensing regulations, which are codified in title 11 of the California Code of
6 Regulations at sections 4260-4264. These regulations establish the process for an
7 ammunition vendor to obtain a license to sell ammunition and set the fee an
8 ammunition vendor is authorized to charge the purchaser for processing an
9 ammunition sale between two private, non-vendor parties.

10 7. As of July 31, 2019, there were 2,040 vendors licensed to sell
11 ammunition in California. Of that number, 1,760 were licensed to sell firearms and
12 ammunition and 280 were licensed to sell ammunition only.

13 8. In December 2018, the Department issued an Initial Statement of
14 Reasons outlining proposed regulations governing the purchase and transfer of
15 ammunition. A copy of that notice is attached to this declaration as Exhibit 1.

16 9. The Bureau of Firearms held a public comment period beginning on
17 December 14, 2018, and closing on January 31, 2019. (Often referenced as the 45-
18 day comment period—per the Administrative Procedure Act, the requirement is a
19 minimum of 45 days.) During this comment period, the Bureau of Firearms
20 received 219 different comments from 566 members of the public. The comments
21 and the Summary and Response to Comments are part of the rulemaking file, which
22 is publically available.

23 10. The Bureau of Firearms also held two public hearings for these
24 regulations during the comment period. The first was held on January 29, 2019, in
25 Los Angeles, and the second was held on January 31, 2019, in Sacramento. I was
26 the hearing officer at both hearings. Transcripts of both are included in the final
27 rulemaking file, which is publicly available.
28

1 11. The Bureau of Firearms held an additional public comment period
2 beginning on April 18, 2019, and closing on May 8, 2019. (Often referenced as a
3 15-day comment period—per the Administrative Procedure Act, the requirement
4 for notice of modifications is a minimum of 15 days.) The documents provided for
5 this additional comment period were a Notice of Modification, an Updated Notice
6 of Modification (correcting an incorrect e-mail address and extending the comment
7 period), modifications to the Text of Proposed Regulations, an Initial Statement of
8 Reasons Addendum, and a revised Economic and Fiscal Impact Statement (Std.
9 399). During this comment period, the Bureau of Firearms received 32 different
10 comments from 139 members of the public. The comments and the Summary and
11 Response to Comments, are all part of the rulemaking file, which is publically
12 available.

13 12. In May 2019, the Department submitted a Final Statement of Reasons to
14 the Office of Administrative Law. A copy of that final statement of reasons is
15 attached to this declaration as Exhibit 2.

16 13. The regulations were approved by the California Office of
17 Administrative Law on June 24, 2019 and went into effect on July 1, 2019.

18 14. The regulations outline the process for three eligibility checks: (1) the
19 Standard Ammunition Eligibility Check; (2) the Certificate of Eligibility
20 Verification Check; and (3) the Basic Ammunition Eligibility Check. (The
21 regulations also contemplate a fourth Firearms Eligibility Check that permits a
22 person to purchase a firearm and ammunition at the same time.)

23 15. The Standard Ammunition Eligibility Check and the Certificate of
24 Eligibility Verification Check rely on the Department's Dealer Record of Sale
25 (DROS) Entry System (DES). DES is a web-based application used by California
26 firearms dealers to submit firearm background checks to the Department to
27 determine if an individual is eligible to purchase, loan, or transfer a handgun or
28

1 long gun—and now ammunition—and subsequently receive background and
2 eligibility check determinations.

3 **A. Standard Ammunition Eligibility Checks**

4 16. Section 4302 of title 11 of the California Code of Regulations governs
5 Standard Ammunition Eligibility Checks.

6 17. To determine whether a purchaser or transferee (I will generally refer to
7 these together as “purchaser”) is eligible to purchase or possess (I will generally
8 refer to these together as “purchase”) ammunition under a Standard Ammunition
9 Eligibility Check, the Department, through an automated process in DES, cross-
10 references the purchaser’s name, date of birth, current address, and driver license or
11 other government identification number with the information maintained in the
12 Department’s Automated Firearms System.

13 18. If the purchaser’s information does not match an Automated Firearms
14 System entry, the transaction will be rejected. This usually occurs for one of two
15 reasons: (1) the purchaser’s name, date of birth, current address, driver license or
16 other identification number does not match an entry in the Automated Firearms
17 System and therefore the transaction is rejected; or (2) the purchaser does not have
18 a record in the Automated Firearms System.

19 19. If the purchaser’s information matches an Automated Firearms System
20 entry, the Department determines if the purchaser falls within a class of persons
21 who are prohibited from owning or possessing firearms and ammunition by cross-
22 referencing the Prohibited Armed Persons File (also known as the Armed
23 Prohibited Persons System). If the purchaser is prohibited from owning or
24 possessing firearms and ammunition, the transaction will be denied.

25 20. Purchasers who are rejected on a Standard Ammunition Eligibility Check
26 have the ability to electronically update one or more Automated Firearms System
27 records through the California Firearms Application Reporting System, which is
28 available on the Department’s website at: <https://cfars.doj.ca.gov>. People wishing

1 to correct their records will need to create a California Firearms Application
2 Reporting System account (if they do not already have one), log in, select the
3 “Automated Firearm System Personal Information Update” link, and then enter
4 their current personal information, firearm information, and personal information at
5 time of firearm purchase.

6 21. Address changes are systematically processed. I am informed and
7 believe that, once the application is submitted, and if a match is found in the
8 Automated Firearms System, the time it takes to update one’s address on the system
9 may take less than 10 minutes, but depending on the number of pending
10 applications, may take longer.

11 22. Name changes, identification number changes, and date of birth changes
12 require additional documentation be uploaded in order for an analyst to review and
13 validate the change. I am informed and believe that because an analyst must
14 validate the change, these transaction may take a few hours, but depending on
15 Department workload, can take several days (excluding weekends) to process and
16 subsequently update the record (assuming a match is found in the Automated
17 Firearms System).

18 23. If a person does not know the personal information that was used at the
19 time of purchase of the firearm, they can request to obtain information on all
20 firearms for which they are listed as the purchaser, transferee, or owner in the State
21 of California Automated Firearms System database by submitting an Automated
22 Firearms System Request for Firearm Records (BOF 053) application to the Bureau
23 of Firearms. That form is available on the Department’s website at: [https://oag.ca.
24 gov/firearms/forms](https://oag.ca.gov/firearms/forms).

25 24. Once the application is received by the Bureau of Firearms, the Bureau of
26 Firearms will conduct a diligent search of the Automated Firearms System for their
27 records and will provide the individual with the listing of their firearms records via
28 U.S. mail. The individual can then reference the listing (which notes their personal

1 information at time of purchase or transfer) and use it to submit an Automated
2 Firearm System Personal Information Update application to update their records.

3 **B. Basic Ammunition Eligibility Checks**

4 25. Section 4303 of title 11 of the California Code of Regulations governs
5 Basic Ammunition Eligibility Checks.

6 26. The Department was required by law to develop a procedure in which a
7 person who is not prohibited from purchasing or possessing ammunition may be
8 approved for a single ammunition transaction or purchase. In order to meet this
9 requirement, the Department developed the Basic Ammunition Eligibility Check
10 which closely mirrored the current background check for firearms (without
11 checking federal databases), thereby ensuring consistency in the eligibility checks.
12 A Department analyst manually reviews a purchaser or transferee's records to
13 ascertain the purchaser or transferor is not prohibited from owning or possessing
14 ammunition due to a felony or violent misdemeanor conviction or warrant,
15 domestic violence restraining order, mental health issue, or some combination of
16 these factors.

17 **C. COE Verification Checks**

18 27. Section 4305 of title 11 of the California Code of Regulations governs
19 Certificate of Eligibility Verification Checks.

20 28. To qualify for this type of check, a purchaser must have a current
21 Certificate of Eligibility issued by the Department. To determine if the purchaser
22 or transferee has a current Certificate of Eligibility, the Department, through an
23 automated process in DES, cross-references the Certificate of Eligibility database.
24 If the purchaser does not have a current Certificate of Eligibility, the transaction
25 will be rejected.

26 29. A Certificate of Eligibility Verification Check (COE Verification
27 Checks) may be rejected for the following reasons: (1) personal information
28 provided to the ammunition vendor and entered into DES does not match the

1 information in the Certificate of Eligibility database; (2) the Certificate of
2 Eligibility number provided to the ammunition vendor, and entered into DES does
3 not match the information in the Certificate of Eligibility database; or (3) the
4 Certificate of Eligibility for the purchaser is not current.

5 **II. THE CALIFORNIA DEPARTMENT OF JUSTICE UPGRADES THE DEALER**
6 **RECORD OF SALE ENTRY SYSTEM (DES) TO PROCESS AMMUNITION**
7 **SALES AND TRANSFERS**

8 30. Starting July 1, 2019, California ammunition vendors had access to DES
9 to submit ammunition eligibility checks to the Department, and subsequently
10 receive eligibility determinations through the system. DES also enables
11 ammunition vendors to report information relative to the sale or transfer of
12 ammunition to the Department, at the time of delivery, resulting in a systematic
13 update of the Ammunition Purchase Records File.

14 31. The Department took several steps in the lead-up to the July 1, 2019
15 implementation date. A number of updates were made to DES to implement the
16 new law. The user-facing side of these updates, and how to use them, were
17 described to licensed ammunition vendors in a series of notices and guides.

18 32. On June 7, 2019, the Bureau of Firearms distributed a notice entitled
19 “Ammunition Purchase Authorization Program.” The notice advised dealers that
20 effective July 1, 2019, ammunition vendor licensees would be prohibited from
21 providing a purchaser with ammunition without approval from the Department of
22 Justice, except as otherwise specified. It also advised that the “Ammunition
23 Purchases and Transfers” regulations were being finalized, what equipment would
24 be needed to process transactions through DES, how to enroll in DES, when full
25 access to DES would be available for licensed ammunition vendors, what
26 enhancements were made to DES, that the Department would be updating the DES
27 User Guide and creating an Ammunition Vendor User Guide and both would be
28 released at a later date, and it provided Customer Support Center hours of operation
as well as the contact number. Included with the notice was a Quick Reference

1 Guide that outlined how to create an account in DES (for licensed ammunition
2 vendors) and how to add new ammunition permissions to current users. A copy of
3 that notification and reference guides are attached to this declaration as Exhibit 3.

4 33. On June 28, 2019, the Bureau of Firearms distributed a notice entitled
5 “California Department of Justice Notification Regarding Regulations for
6 Ammunition Purchase or Transfers and Automated Firearms System Information
7 Updates.” The notice advised licensed ammunition vendors and firearms dealers
8 that effective July 1, 2019, persons seeking to purchase or transfer ammunition
9 would have to undergo an eligibility check, and be approved by the Department,
10 prior to the sale or transfer, except as otherwise specified. It also advised that
11 effective July 1, 2019, persons with an outdated Automated Firearms System record
12 would have the ability to correct or update personal information on their Automated
13 Firearms System record via the California Firearms Application Reporting System.
14 The notice provided information on where to locate the relevant regulations as well
15 as contact information for the Customer Support Center. A copy of that notice is
16 attached to this declaration as Exhibit 4.

17 34. On the same day, the Bureau of Firearms distributed a notice entitled
18 “Regarding Availability of Instructional User Guides Related to Upcoming
19 Ammunition Sale Requirements,” and a quick reference guide that provided
20 instructions on how to submit ammunition transactions. A copy of that notice and
21 quick reference guide is attached to this declaration as Exhibit 5.

22 35. Also on the same day, the Bureau of Firearms posted on its website
23 updated and new DES user guides relating to the ammunition sales requirements.
24 The user guides provide an overview of the DES functions and provide direction on
25 how to use the system in relation to ammunition transactions. Copies of those user
26 guides are attached to this declaration as Exhibits 6 and 7.

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1 **III. THE CALIFORNIA DEPARTMENT OF JUSTICE’S EMERGENCY**
2 **REGULATIONS GOVERNING THE IDENTIFICATION REQUIREMENTS FOR**
3 **FIREARMS AND AMMUNITION PURCHASES AND TRANSFERS**

4 36. As a result of my job duties, I am aware that in 2015, the California
5 Department of Motor Vehicles started issuing driver licenses and identification
6 cards with the notation “FEDERAL LIMITS APPLY” printed on the front under
7 California State Assembly Bill (AB) 60 (AB 60), Stats. 2013, Ch. 524.

8 37. I am also aware that, as of January 22, 2018 California driver licenses
9 and identification cards with the words “FEDERAL LIMITS APPLY” on the front
10 are now issued to both: (1) persons applying under AB 60; and (2) persons who are
11 able to submit satisfactory proof that their presence in the United States is
12 authorized under federal law, but choose not to apply for a “REAL ID” driver
13 license or identification card. REAL ID driver licenses comply with minimum
14 requirements for various official federal purposes, and do not bear the “FEDERAL
15 LIMITS APPLY” disclaimer.

16 38. As a result of my job duties, I have learned that some firearms dealers
17 refused to accept “FEDERAL LIMITS APPLY” licenses issued on or after January
18 22, 2018, because they have been advised by their attorneys or have heard from
19 advocacy groups that such licenses are being issued to AB 60 applicants.

20 39. For purchasers with “FEDERAL LIMITS APPLY” driver licenses issued
21 before January 22, 2018, it should be readily apparent from the face of the license
22 whether the applicant is an AB 60 license holder. For those applicants with
23 “FEDERAL LIMITS APPLY” licenses issued after January 22, 2018, however,
24 there is no practical way to determine from the face of the license whether the
25 applicant is an AB 60 license holder.

26 40. In response to these concerns, the Department issued a Finding of
27 Emergency on June 7, 2019, stating the need to promulgate an emergency
28 regulation addressing the identification requirements for firearms and ammunition

1 purchases and eligibility checks. A copy of that Finding of Emergency is attached
2 to this declaration as Exhibit 8.

3 41. The Finding of Emergency references a document titled “National Rifle
4 Association Institute for Legislative Action, California Special Alert: Update
5 Regarding Use of Non-REAL IDs for Firearm Purchases,” March 22, 2018 (NRA
6 Update). That document is part of the rulemaking file, to which I have access. A
7 true and correct copy of the NRA Update is attached to this declaration as
8 Exhibit 9.

9 42. The Finding of Emergency also references a document titled “U.S.
10 Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives,
11 Open Letter to All California Federal Firearms Licensees,” which was incorrectly
12 listed as being dated June 30, 2018. The correct date of the letter is June 30, 2016
13 (ATF June 2016 Letter). That document is part of the rulemaking file, to which I
14 have access. A true and correct copy of the ATF June 2016 Letter is attached to
15 this declaration as Exhibit 10.

16 43. Department records, to which I have access, also contain an April 9, 2018
17 letter from Michel & Associates, P.C. to Attorney General Xavier Becerra
18 regarding a Pre-Litigation Demand to Rescind Policy Prohibiting Purchase of
19 Firearms Using Non-Real IDs (Michel Letter). A true and correct copy of the
20 Michel Letter is attached to this declaration as Exhibit 11.

21 44. The Emergency Regulation was codified in the California Code of
22 Regulations at title 11, section 4045.1. It went into effect on June 27, 2019.

23 45. The same day, the Department issued an notice titled “California
24 Department of Justice Update Regarding the Use of ‘Federal Limits Apply’ Driver
25 License and Identification Cards to Perform Eligibility Checks.” A true and correct
26 copy of the notice is attached to this declaration as Exhibit 12.

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1 **IV. THE AMMUNITION ELIGIBILITY CHECK SYSTEM AND RULES GO INTO**
2 **EFFECT ON JULY 1, 2019.**

3 46. The ammunition eligibility check system went live the morning of July 1,
4 2019.

5 47. As part of my job duties, I can request data from the Department's
6 Application Development Bureau regarding ammunition eligibility transactions. I
7 have obtained data for the period starting July 1 and ending July 31, 2019—the first
8 calendar month that the ammunition eligibility check process was in place.

9 48. Total number of ammunition transactions processed, including
10 transactions that were rejected or where the purchaser was denied: 62,083.

11 49. At least 106 transactions were denied because prohibited persons had
12 attempted to purchase ammunition.

13 50. Standard Ammunition Eligibility Checks: 57,553.

14 a. Standard Ammunition Eligibility Check approvals: 46,702.

15 b. Standard Ammunition Eligibility Check rejections: 10,837.

16 c. Standard Ammunition Eligibility Check denials: 14.

17 51. COE Verification Checks: 880.

18 a. COE Verification Check approvals: 768.

19 b. COE Verification Check rejections: 112 (this number may
20 include denials).

21 52. Basic Ammunition Eligibility Checks: 3,798.

22 a. Basic Ammunition Eligibility Check approvals: 3,536.

23 b. Basic Ammunition Eligibility Check denials: 92.

24 c. Basic Ammunition Eligibility Check rejections: 22.

25 53. Average time to check a purchaser's eligibility in a Standard
26 Ammunition Eligibility Check: 1 second.

27 54. Average time check a purchaser's eligibility in a COE Verification
28 Check: 1 second.

1 55. Average time, in Standard Ammunition Eligibility Check, from when the
2 dealer submits the eligibility check to DES through when the dealer hits the
3 “Deliver” button at the end of the Submit Ammunition Purchase process (ending
4 the transaction in DES): 4 minutes, 57 seconds.

5 56. Average time, in COE Verification Check, from when the dealer submits
6 the eligibility check to DES through when the dealer hits the “Deliver” button at the
7 end of the Submit Ammunition Purchase process (ending the transaction in DES):
8 11 minutes, 5 seconds.

9 57. Based on my knowledge of DES and the ammunition eligibility check
10 process, I understand that these numbers provide a good estimate of how long the
11 average Standard Ammunition Eligibility Check and COE Verification Check take,
12 once the personal information field in DES is populated (most of which is done by
13 magnetic swipe), and excluding the time it takes to print and sign the Dealer Record
14 of Sale.

15 58. The COE Verification Check average is likely higher than the Standard
16 Ammunition Eligibility Check average because there are fewer COE Verification
17 Checks overall, and some outliers may have affected the average—e.g., transactions
18 where the eligibility check was submitted and the customer left the store and
19 returned the next day, creating a gap of several hours in the transaction.

20 59. I am aware that a number of nonparty ammunition vendors submitted
21 declarations in this matter representing the length of time it takes them to process
22 ammunition transactions. For each of these vendors, I requested and obtained data
23 from July 1 to and including July 31, 2019, showing the average time, in Standard
24 Ammunition Eligibility Check and COE Verification Checks, from when the dealer
25 submits the eligibility check to DES through when the dealer hits the “Deliver”
26 button at the end process (ending the transaction in DES).

27 60. Bill Ortiz and Turner’s Outdoorsman: 5 minutes, 17 seconds.

28 61. David Burwell and Norco Armory: 4 minutes, 31 seconds.

1 62. Chris Puehse and Foothill Ammo, Inc.: 2 minutes, 42 seconds.

2 63. Travis Morgan and Guns, Fishing and Other Stuff: 3 minutes,
3 46 seconds.

4 64. Ethan Bartel and Royal Loan: 3 minutes, 12 seconds.

5 65. Myra Lowder and Mosquito Creek Outfitters: 3 minutes, 38 seconds.

6 66. Daniel Gray and Discount Gun Mart: 6 minutes, 3 seconds.

7 67. I am also aware that Plaintiff Denise Welvang submitted a declaration in
8 this matter representing the amount of time it took to process an ammunition
9 transaction at Gun World in Burbank, California, on July 13, 2019. I requested
10 records involving Ms. Welvang be pulled for that day.

11 68. The records show that she engaged in a Standard Ammunition Eligibility
12 Check at Gun World on the afternoon of July 13. In that transaction, the time from
13 when the vendor submitted the eligibility check through when the dealer hit the
14 “Deliver” button at the end process (ending the transaction in DES) took less than a
15 minute.

16 69. The records also show that before Ms. Welvang went to Gun World she
17 purchased ammunition at American Gun Works. In that transaction, the time from
18 when the vendor submitted the eligibility check through when the dealer hit the
19 “Deliver” button at the end process (ending the transaction in DES) took just over a
20 minute.

21 **V. REPORTED ISSUES WITH THE AMMUNITION ELIGIBILITY CHECK**
22 **SYSTEM.**

23 70. Since the July 1, 2019 rollout of the ammunition eligibility check process
24 on DES, the Department has received feedback and inquiries from the public.

25 71. The Department operates a Customer Support Center, which fields calls
26 from hotlines for licensed firearms dealers and ammunition vendors, law
27 enforcement agencies, Department certified instructors, and the public. The hotline
28 for licensed firearms dealers and ammunition vendors is called the DES Customer

1 Support Center, and is available daily, 8:00 a.m. to 9:00 p.m. The center is
2 specifically intended to assist licensed firearms dealers and ammunition vendors
3 with their business needs. Firearms dealers and ammunition vendors may call the
4 center with technical questions.

5 72. During the first week of July, there was a spike in the number of calls per
6 day fielded by all members of the Customer Support Center. Most of those calls
7 related to ammunition purchases. For that first week, callers may have had to wait
8 or call back due to the high volume of calls. Since then, however, the number of
9 calls per day has dropped significantly, but remains above the monthly average.
10 The Bureau of Firearms anticipates a general increase in calls moving forward as a
11 new program has been implemented and that will continue to generate calls.

12 73. Since the ammunition eligibility check process has been in effect, the
13 Department has received notice of technical issues with DES and ammunition
14 eligibility checks. I am aware of some of the issues that have been raised, and the
15 steps that have been taken to address them. I will describe two examples of these
16 issues.

17 74. First, the week of July 1, the Department received notices that a few
18 Standard Ammunition Eligibility Checks were delayed due to the system not
19 accommodating people who have more than two first names. A fix was
20 implemented on July 25, 2019.

21 75. Second, there have been reports that the “Caliber” dropdown menu in the
22 “Transaction and Ammunition Information” step does not contain all calibers of
23 ammunition. I have been informed that the Department is currently researching
24 whether any calibers are missing and anticipates implementing a fix, if one is
25 necessary.

26 76. I am aware that a number of nonparty ammunition vendors submitted
27 declarations stating that they have been unsuccessful in having their magnetic card
28 readers populate the “gender, hair color, eye color, height, weight, place of birth,

1 and telephone number” fields in DES. Place of birth and telephone number are not
2 included on California driver licenses or identification cards, and therefore cannot
3 be populated using the magnetic card reader. With regard to the other fields, the
4 Department has not received any calls regarding the magnetic card reader not
5 populating gender, hair color, eye color, height, or weight. At this time, the
6 Department has no reason to believe that DES is preventing that information from
7 being populated by magnetic swipe.

8 77. I am aware that a number of nonparty ammunition vendors submitted
9 declarations suggesting that they cannot process ammunition transactions for
10 customers whose driver licenses or identification cards list a P.O. Box as their
11 address. I am also aware that these nonparty ammunition vendors have stated that
12 they believe that California law and Department regulations do not allow
13 ammunition vendors to manually edit a customer’s address as reflected on their
14 driver license or identification.

15 78. If the identification card or driver license has a P.O. Box listed, the dealer
16 can manually enter the current address into the “Personal Information” field in the
17 Standard Ammunition Eligibility Check. It is recommended, however, that dealers
18 obtain documentation from the purchaser with the purchaser’s current address to
19 verify what they are entering on the transaction is accurate. The Department is not
20 aware of any regulation or Penal Code that states ammunition vendors cannot
21 manually input or edit a customer’s address. The Department has issued guidance
22 regarding P.O. boxes on the Bureau of Firearms Frequently Asked Questions
23 website at: <https://oag.ca.gov/firearms/apfaqs>.

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1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
2 is true and correct.

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Executed on: August 2, 2019


MAYRA G. MORALES

CERTIFICATE OF SERVICE

Case Name: **Rhode v. Becerra** No. **3:18-cv-00802-BEN-JLB**

I hereby certify that on August 5, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DECLARATION OF MAYRA G. MORALES IN SUPPORT OF DEFENDANT XAVIER BECERRA'S OPPOSITION TO PLAINTIFFS' MOTION FOR 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 the foregoing is true and correct and that this declaration was executed on August 5, 2019, at Sacramento, California.

Tracie L. Campbell
Declarant

/s/ *Tracie Campbell*
Signature

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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

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

12 KIM RHODE, GARY BRENNAN,
13 CORY HENRY, EDWARD JOHNSON,
SCOTT LINDEMUTH, RICHARD
14 RICKS, DENISE WELVANG, ABLE'S
SPORTING, INC., a Texas corporation,
15 AMDEP HOLDINGS, LLC, a Florida
limited liability company d/b/a
16 AMMUNITION DEPOT, R & S
FIREARMS, INC., an Arizona
17 corporation d/b/a SAM's SHOOTERS
EMPORIUM, and CALIFORNIA
18 RIFLE & PISTOL ASSOCIATION,
INCORPORATED, a California
19 corporation,

20 Plaintiffs,

21 v.

22 XAVIER BECERRA, in his official
23 capacity as Attorney General of the State
of California; and DOES 1-10,

24 Defendants.
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**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiffs Kim Rhode, Gary Brennan, Cory Henry, Edward Johnson, Scott
2 Lindemuth, Richard Ricks, Denise Welvang, Able’s Sporting, Inc., a Texas
3 corporation, AMDEP Holdings, LLC, a Florida limited liability company d/b/a
4 Ammunition Depot, R&S Firearms, Inc., an Arizona corporation d/b/a Sam’s Shooters’
5 Emporium, and California Rifle & Pistol Association, Incorporated, a California
6 corporation, through their counsel, bring this action against Defendant California
7 Attorney General Xavier Becerra, in his official capacity, and make the following
8 allegations.

9 INTRODUCTION AND SUMMARY OF CLAIMS

10 1. In 2016, California enacted a sweeping series of criminal statutes that
11 place unprecedented and overreaching restraints on the purchase and sale of
12 ammunition.

13 2. These statutes, in conjunction with some of their implementing
14 regulations, (collectively, the “Challenged Provisions”) outright ban millions of
15 constitutionally protected ammunition transfers and heavily burden countless millions
16 more.

17 3. Among other effects, the Challenged Provisions completely ban direct
18 mail order ammunition purchases, implement a costly vendor-licensing system, subject
19 countless ammunition purchases to a burdensome registration scheme, place numerous
20 restrictions on ammunition vendors, and impose multiple costly fees and prohibitive
21 price increases on ammunition purchasers.

22 4. One effect of the Challenged Provisions is to block any ammunition
23 vendor that does not have a physical presence in California from participating in the
24 California market, unless it has an ammunition vendor with a physical presence in
25 California broker the sale. But the in-state vendor can charge the purchaser whatever
26 fee it wants to process the transaction or flat our refuse to process it. Such
27 discrimination against out-of-state economic interests and impermissible regulation of
28 out-of-state transactions is a violation of the Dormant Commerce Clause. These

1 excessive restraints on the purchase, sale, and transfer of ammunition also violate
2 individuals' right to keep and bear arms as guaranteed by the Second Amendment.

3 5. The Challenged Provisions also are preempted by 18 U.S.C. §926A,
4 which ensures that a person may carry a firearm "from any place where he may
5 lawfully possess and carry such firearm to any other place where he may lawfully
6 possess and carry such firearm," provided the person properly stores the firearm.
7 Section 926A preempts similar prohibitions on ammunition, as it expressly
8 contemplates that "ammunition" will be "transported" along with the firearm. By
9 preventing law-abiding citizens from transporting ammunition from another state into
10 California, the California law conflicts with and stands as an obstacle to the purposes
11 of federal law.

12 6. The plaintiffs in this lawsuit are a collection of law-abiding individuals—
13 including Olympic and competitive shooters, hunters, and practitioners of self-
14 defense—who are seeking to exercise their fundamental Second Amendment right to
15 acquire ammunition for self-defense and other lawful purposes; out-of-state businesses
16 who act as the purveyors of that right that are unconstitutionally burdened by the
17 Challenged Provisions; and a civil rights membership organization dedicated to
18 protecting its members' Second Amendment rights.

19 7. Plaintiffs seek declaratory and injunctive relief to prevent the State of
20 California, including Defendant Becerra and all his agents from enforcing the
21 Challenged Provisions against Plaintiffs in violation of their constitutional rights.

22 **JURISDICTION AND VENUE**

23 8. The Court has original jurisdiction of this civil action under 28 U.S.C.
24 §1331, because the action arises under the Constitution and laws of the United States,
25 thus raising federal questions. The Court also has jurisdiction under 28 U.S.C.
26 §1343(a)(3) and 42 U.S.C. §1983 since this action seeks to redress the deprivation,
27 under color of the laws, statutes, ordinances, regulations, customs and usages of the
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1 State of California and political subdivisions thereof, of rights, privileges or
2 immunities secured by the United States Constitution and by Acts of Congress.

3 9. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28
4 U.S.C. §§2201-2202, and their claim for attorneys' fees is authorized by 42 U.S.C.
5 §1988.

6 10. Venue in this judicial district is proper under 28 U.S.C. §1391(b)(2),
7 because a substantial part of the events or omissions giving rise to Plaintiffs' claims
8 occurred in this district.

9 **PARTIES**

10 **Plaintiffs**

11 11. Plaintiff Kimberly Rhode Harryman ("Kim Rhode") is a resident of San
12 Bernardino County, California and a citizen of the United States. Plaintiff Rhode is not
13 prohibited from owning or possessing firearms or ammunition under federal or
14 California law. She is a competitive skeet and double trap shooter who has earned six
15 Olympic medals, three World Championship medals, and five Pan American Games
16 medals. The primary way Plaintiff Rhode obtains her specialized competition
17 ammunition (which she is mandated to use in competitions by the International
18 Shooting Sports Federation) is by receiving shipments of it from USA Shooting (the
19 National Governing Body for the sport of shooting chartered by the United States
20 Olympic Committee). These shipments are often delivered to a training facility in
21 Arizona, from where Plaintiff Rhode retrieves the ammunition and brings it into
22 California for training and competition purposes. Plaintiff Rhode also regularly has
23 ammunition that she uses for marksmanship practice for shooting competitions and
24 self-defense training shipped by her ammunition sponsor directly to her home in
25 California and to various shooting ranges located both inside and outside of California.
26 She regularly transports ammunition that she takes receipt of at these ranges back to
27 her home, her coach's (parents') home, and to other shooting ranges and competitive
28 event venues. Plaintiff Rhode is the sole financial supporter of her family, which

1 depends on her ability to train and compete. As such, she seeks to continue engaging in
2 these practices without being subjected to the unconstitutional restraints California has
3 imposed on the transfer of ammunition under the Challenged Provisions that prohibit
4 and restrict her ability to do so. But for the enactment of the Challenged Provisions,
5 and her reasonable fear of prosecution for violating them, Plaintiff Rhode would
6 immediately resume receiving ammunition via direct shipments to her home and her
7 coach's home and would further transport ammunition from in-state and out-of-state
8 shooting ranges to her home and to other shooting ranges and competitive events.

9 12. Plaintiff Gary Brennan is a resident of San Diego County, California and a
10 citizen of the United States. Plaintiff Brennan is not prohibited from owning or
11 possessing firearms or ammunition under federal or California law. He is president of
12 the San Diego County Wildlife Federation, a Bureau of Security and Investigative
13 Services ("BSIS") certified Firearms Training Instructor, and volunteers his time as a
14 Master Hunter Education Instructor and Master Bowhunting Education Instructor
15 under the California Department of Fish and Wildlife's Hunter Education Program.
16 Plaintiff Brennan purchases ammunition from both online sources and licensed
17 California vendors. Some of the ammunition Plaintiff Brennan purchases is extremely
18 difficult to find and must generally be purchased through online sources. Plaintiff
19 Brennan also visits other states annually for hunting and regularly purchases
20 ammunition while hunting outside of California. He seeks to resume purchasing
21 ammunition from both direct shipment sources and brick and mortar retail stores in
22 California and other states without being subject to the unconstitutional restraints
23 California has imposed on the transfer of ammunition under the Challenged Provisions.
24 But for the enactment of the Challenged Provisions and his reasonable fear of criminal
25 prosecution for violating them, Plaintiff Brennan would immediately purchase, and
26 continue to purchase, ammunition for self-defense and other lawful purposes via direct
27 shipment to his home from out of state ammunition vendors or through brick and
28 mortar retail stores in California and other states.

1 13. Plaintiff Cory Henry is a resident of San Diego County, California and a
2 citizen of the United States. Plaintiff Henry is not prohibited from owning or
3 possessing firearms or ammunition under federal or California law. He is a former
4 active duty U.S. Army Officer now serving as a drilling reservist with the rank of
5 Colonel. Plaintiff Henry purchases ammunition from both online sources and licensed
6 California vendors. He seeks to resume purchasing ammunition from both direct
7 shipment sources and brick and mortar retail stores in California and other states
8 without being subject to the unconstitutional restraints California has imposed on the
9 transfer of ammunition under the Challenged Provisions. But for the enactment of the
10 Challenged Provisions and his reasonable fear of criminal prosecution for violating
11 them, Plaintiff Henry would immediately purchase, and continue to purchase,
12 ammunition for self-defense and other lawful purposes via direct shipment to his home
13 from out of state ammunition vendors or through brick and mortar retail stores in
14 California and other states.

15 14. Plaintiff Edward Allen Johnson is a resident of San Diego County,
16 California and a citizen of the United States. Plaintiff Johnson is not prohibited from
17 owning or possessing firearms or ammunition under federal or California law. He is
18 currently retired and serves as a volunteer Range Safety Officer for a local firing range,
19 and regularly visits the state of Oregon where he purchases ammunition for personal
20 use. Plaintiff Johnson also purchases ammunition from both online sources and local
21 California licensed vendors. He seeks to resume purchasing ammunition from both
22 direct shipment sources and brick and mortar retail stores in California and other states
23 without being subject to the unconstitutional restraints California has imposed on the
24 transfer of ammunition under the Challenged Provisions. But for the enactment of the
25 Challenged Provisions and his reasonable fear of criminal prosecution for violating
26 them, Plaintiff Johnson would immediately purchase, and continue to purchase,
27 ammunition for self-defense and other lawful purposes via direct shipment to his home
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1 from out of state ammunition vendors or through brick and mortar retail stores in
2 California and other states.

3 15. Plaintiff Scott Lindemuth is a resident of San Diego County, California
4 and also owns a private residence in North Carolina. He is a citizen of the United
5 States. Plaintiff Lindemuth is not prohibited from owning or possessing firearms or
6 ammunition under federal or California law. Plaintiff Lindemuth was honorably
7 discharged from the United States Navy after more than 13 years of service. Plaintiff
8 Lindemuth purchases ammunition from online sources, as well as brick and mortar
9 stores in North Carolina and California. He seeks to resume purchasing ammunition
10 from both direct shipment sources and brick and mortar retail stores in North Carolina
11 and California without being subject to the unconstitutional restraints California has
12 imposed on the transfer of ammunition under the Challenged Provisions. But for the
13 enactment of the Challenged Provisions and his reasonable fear of criminal prosecution
14 for violating them, Plaintiff Lindemuth would immediately purchase, and continue to
15 purchase, ammunition for self-defense and other lawful purposes via direct shipment to
16 his home from out of state ammunition vendors or through brick and mortar retail
17 stores in California and other states.

18 16. Plaintiff Richard Randall Ricks is a resident of San Diego County,
19 California and a citizen of the United States. Plaintiff Ricks is not prohibited from
20 owning or possessing firearms or ammunition under federal or California law. He is a
21 Certified Public Accountant and also owns property in Oregon. Plaintiff Ricks
22 purchases ammunition from both online sources, as well as brick and mortar stores in
23 Oregon and California. He seeks to resume purchasing ammunition from both direct
24 shipment sources and brick and mortar retail stores in California and Oregon without
25 being subject to the unconstitutional restraints California has imposed on the transfer
26 of ammunition under the Challenged Provisions. But for the enactment of the
27 Challenged Provisions and his reasonable fear of criminal prosecution for violating
28 them, Plaintiff Ricks would immediately purchase, and continue to purchase,

1 ammunition for self-defense and other lawful purposes via direct shipment to his home
2 from out of state ammunition vendors or through brick and mortar retail stores in
3 California and other states.

4 17. Plaintiff Denise Welvang is a resident of Los Angeles County, California
5 and a citizen of the United States. Plaintiff Welvang is not prohibited from owning or
6 possessing firearms or ammunition under federal or California law. Plaintiff Welvang
7 purchases ammunition from both online sources and California licensed vendors. She
8 seeks to resume purchasing ammunition from both direct shipment sources and brick
9 and mortar retail stores in California without being subject to the unconstitutional
10 restraints California has imposed on the transfer of ammunition under the Challenged
11 Provisions. But for the enactment of the Challenged Provisions and her reasonable fear
12 of criminal prosecution for violating them, Plaintiff Welvang would immediately
13 purchase, and continue to purchase, ammunition for self-defense and other lawful
14 purposes via direct shipment to her home from out of state ammunition vendors or
15 through brick and mortar retail stores in California and other states.

16 18. Plaintiff Able's Sporting, Inc. ("Able's") is a business engaged in the
17 retail sale of ammunition. Able's is located outside of California in Huntsville, TX.
18 Prior to the Challenged Provisions taking effect, Able's regularly sold ammunition to
19 California residents via online purchases and shipped the ammunition directly to the
20 purchaser's California address. Able's seeks to resume selling ammunition directly to
21 California residents, but it is prohibited from doing so under the Challenged Provisions
22 as of January 1, 2018, unless the purchased ammunition is first shipped to a California
23 Ammunition Vendor to process the transfer before being delivered to the purchaser,
24 and the California Ammunition Vendor has the discretion to refuse the transaction or
25 charge a processing fee of any amount it chooses. But for the enactment of the
26 Challenged Provisions and its reasonable fear of being prosecuted or having its
27 customers prosecuted for violating them, Able's would immediately resume shipping
28 ammunition directly to California residents to the extent permitted by law.

1 19. Plaintiff AMDEP Holdings, LLC (“Ammunition Depot”) is a business
2 engaged in the retail sale of ammunition. Ammunition Depot is located outside of
3 California in Boca Raton, Florida. Prior to the Challenged Provisions taking effect,
4 Ammunition Depot regularly sold ammunition to California residents via online
5 purchases and shipped the ammunition directly to the purchaser’s California address.
6 Ammunition Depot seeks to resume selling ammunition directly to California
7 residents, but it is prohibited from doing so under the Challenged Provisions as of
8 January 1, 2018, unless the purchased ammunition is first shipped to a California
9 Ammunition Vendor to process the transfer before being delivered to the purchaser,
10 and the California Ammunition Vendor has the discretion to refuse the transaction or
11 charge a processing fee of any amount it chooses. But for the enactment of the
12 Challenged Provisions and its reasonable fear of being prosecuted or having its
13 customers prosecuted for violating them, Ammunition Depot would immediately
14 resume shipping ammunition directly to California residents to the extent permitted by
15 law.

16 20. Plaintiff R & S Firearms, Inc. (“Sam’s Shooters’ Emporium”) is a brick
17 and mortar business located less than two miles outside of California in Lake Havasu
18 City, Arizona. It engages in the retail sale of ammunition with a significant amount of
19 its business coming from California given the proximity to California’s border. Prior to
20 the Challenged Provisions taking effect, Sam’s Shooters Emporium serviced California
21 residents’ ammunition needs in two ways: (1) selling it online and shipping it directly
22 to the purchasers’ California address; or (2) selling it directly to those individuals who
23 come to the store in person with the intention of returning with it to California. Sam’s
24 Shooters Emporium seeks to resume shipping ammunition directly to California
25 residents, but it is prohibited from doing so under the Challenged Provisions as of
26 January 1, 2018, unless the purchased ammunition is first shipped to a California
27 Ammunition Vendor to process the transfer before being delivered to the purchaser,
28 and the California Ammunition Vendor has the discretion to refuse the transaction or

1 charge a processing fee of any amount it chooses. But for the enactment of the
2 Challenged Provisions and its reasonable fear of being prosecuted or having its
3 customers prosecuted for violating them, Sam’s Shooters Emporium would
4 immediately resume shipping ammunition directly to California residents to the extent
5 permitted by law. Additionally, Sam’s Shooters Emporium seeks to resume selling
6 ammunition to California residents who come to its location with the desire to return to
7 California with the ammunition they purchase there. The Challenged Provisions
8 prohibit California residents from doing so, causing Sam’s Shooters Emporium to lose
9 revenue from their business.

10 21. Plaintiff California Rifle & Pistol Association, Incorporated (“CRPA”), is
11 a nonprofit membership and donor-support organization qualified as tax-exempt under
12 26 U.S.C. § 501(c)(4) with its headquarters in Fullerton, California. Founded in 1875,
13 CRPA seeks to defend the civil rights of all law-abiding individuals, including the
14 fundamental right to acquire and possess commonly owned firearm magazines. CRPA
15 regularly provides guidance to California gun owners regarding their legal rights and
16 responsibilities. In addition, CRPA is dedicated to promoting the shooting sports and
17 providing education, training, and organized competition for adult and junior shooters.
18 CRPA members include law enforcement officers, prosecutors, professionals, firearm
19 experts, and the public.

20 22. In this suit, CRPA represents the interests of the tens of thousands of its
21 members who reside in the state of California, including in San Diego County, and
22 who are too numerous to conveniently bring this action individually. Specifically,
23 CRPA represents the interests of those who are affected by the Challenged Provisions.
24 In addition to their standing as citizens and taxpayers, those members’ interests include
25 their intent to exercise their constitutionally protected right to acquire and otherwise
26 transact in ammunition without being subjected to criminal prosecution. But for the
27 enactment of the Challenged Provisions and their reasonable fear of prosecution for
28 violating these statutes, CRPA members would immediately purchase, sell, and

1 transfer ammunition without complying with each of the onerous restrictions imposed
2 by the Challenged Provisions.

3 **Defendants**

4 23. Defendant Xavier Becerra is the Attorney General of California. He is the
5 chief law enforcement officer of California. Defendant Becerra is charged by Article
6 V, Section 13 of the California Constitution with the duty to see that the laws of
7 California are uniformly and adequately enforced. Defendant Becerra also has direct
8 supervision over every district attorney and sheriff in all matters pertaining to the
9 duties of their respective officers. Defendant Becerra's duties also include informing
10 the public, local prosecutors, and law enforcement regarding the meaning of the laws
11 of California, including restrictions on the transfer of ammunition under the
12 Challenged Provisions. He is sued in his official capacity.

13 24. The true names or capacities—whether individual, corporate, associate, or
14 otherwise—of the Defendants named herein as Does 1-10, are presently unknown to
15 Plaintiffs, and are therefore sued by these fictitious names. Plaintiffs pray for leave to
16 amend this Complaint to show the true names or capacities of these Defendants if and
17 when they have been determined.

18 25. Defendants Becerra and Does 1-10 are responsible for formulating,
19 executing, and administering California's restrictions on ammunition transfers under
20 the Challenged Provisions and they are in fact presently enforcing those provisions that
21 have already taken effect and will in fact be enforcing those provisions that will soon
22 take effect.

23 26. Defendants enforce California's restrictions on ammunition transfers
24 under the Challenged Provisions against Plaintiffs and other California citizens under
25 color of state law within the meaning of 42 U.S.C. §1983.

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1 **GENERAL ALLEGATIONS**

2 **California’s Novel and Expansive Ammunition Scheme**

3 27. In 2016, California enacted and amended a lengthy list of statutes that,
4 subject to very limited exceptions, place sweeping restrictions on the purchase, sale,
5 transfer, and importation of ammunition. *See* SAFETY FOR ALL ACT, 2016 Cal.
6 Legis. Serv. Prop. 63 (“Proposition 63”) (West); 2016 California Senate Bill No. 1235,
7 California 2016-2017 Regular Session.

8 28. In California, beginning January 1, 2018, “the sale of ammunition by any
9 party must be conducted by or processed through a licensed ammunition vendor.” Cal.
10 Penal Code § 30312(a) (West 2017). To become a “licensed ammunition vendor” one
11 must either apply with the California Department of Justice, unless already a California
12 licensed firearm dealer. Cal. Penal Code §§ 30342; 30385(d) (West 2017).

13 29. Any individual who wishes to sell more than 500 rounds of ammunition in
14 a 30-day period does not have the option to process the transfer through a “licensed
15 ammunition vendor,” but rather must become one. Cal. Penal Code § 30342(a).

16 30. When neither party to an ammunition sale is a licensed vendor in
17 California, the seller must deliver the ammunition to a licensed vendor to process the
18 transaction. Cal. Penal Code § 30312(b). The licensed California vendor may charge
19 the purchaser an additional fee for processing the private party transaction. Cal. Penal
20 Code § 30312(c). “If the purchaser will be present for immediate delivery of the
21 ammunition, the fee shall not exceed five dollars (\$5).” Cal. Code Regs. tit. 11 §
22 4263(a) (2018). “If the purchaser will not be present for immediate delivery of the
23 ammunition, the vendor may charge an additional storage fee as agreed upon with the
24 purchaser prior to the vendor receiving the ammunition.” Cal. Code Regs. tit. 11 §
25 4263(b) (2018). In other words, there is no cap on what the licensed vendor can charge
26 a private party purchaser who is not present for immediate delivery, which, as a
27 practical matter, includes all transactions originating from out-of-state. What’s more,
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1 the in-state vendor is not required by any law to process transactions for out-of-state
2 vendors who wish to sell to California consumers.

3 31. Thus, ammunition vendors that do not have a physical presence in
4 California operate at the whim of licensed vendors that do, as they may either
5 completely price them out of the market by charging the purchaser an unlimited fee or
6 outright refuse to process the transaction.

7 32. Beginning January 1, 2018, subject to some narrow exemptions, a resident
8 of California may not bring or transport into California any ammunition that he or she
9 acquired outside of the state, unless it is first shipped to a licensed vendor in California
10 to process the transaction. Cal. Penal Code § 30314, subds. (a),(b) (West 2017). This
11 transaction would also be completely subject to the in-state vendor's discretion to
12 charge the purchaser a fee in any amount or to simply refuse to process it. Cal. Penal
13 Code § 30312(a).

14 33. Licensed ammunition vendors must require all their employees who
15 handle or oversee ammunition to obtain a certificate of eligibility ("COE") from the
16 Department of Justice

17 34. The sale of ammunition by a licensed vendor may only be conducted at
18 the location listed on the vendor's license and at gun shows in limited circumstances,
19 effectively prohibiting organizations and foundations, like Plaintiff CRPA, from
20 engaging in the common practice of auctioning off ammunition at fundraising events
21 that take place in various locations, even if they become licensed ammunition vendors.
22 Cal. Penal Code § 30348 (West 2017).

23 35. Ammunition vendors must restrict the display of ammunition so that it
24 cannot be accessed by customers without the assistance of the vendor. Cal. Penal Code
25 § 30350 (West 2017).

26 36. Beginning January 1, 2019, ammunition vendors must register the sale of
27 every individual ammunition purchase by recording and submitting to the Department
28 the following information: the date of sale; the purchaser's driver's license or state

1 identification number; the brand, type, and amount of ammunition sold; the purchaser's
2 full name and signature; the salesperson's name; the purchaser's full residential
3 address and telephone number; and the purchaser's or transferee's date of birth. Cal.
4 Penal Code § 30352 (West 2017). This process is also required for private party
5 ammunition sales that must be completed through a licensed ammunition vendor. *Id.*, §
6 30352.

7 37. An ammunition vendor must report the loss or theft of any ammunition to
8 an appropriate law enforcement agency in the city, county, or city and county where
9 the vendor's business premises is located within 48 hours of discovery. Cal. Penal
10 Code § 30363 (West 2017).

11 38. Beginning July 1, 2019, every individual ammunition sale must be pre-
12 approved by the California Department of Justice before the purchaser can take
13 possession of the ammunition. The Department will only approve an ammunition sale
14 to an individual who already has either a firearm registered in the Automated Firearms
15 System or who possesses a COE previously issued by the Department. All other
16 purchasers must obtain a special authorization from the Department, according to
17 procedures that it must develop, to confirm that the purchaser is not prohibited from
18 owning firearms or ammunition. The Department will charge a \$1 fee for every
19 ammunition purchase by individuals who either already have a firearm registered in
20 AFS or possess a COE. Cal. Penal Code § 30370(e) (West 2017). For all others, the
21 Department will charge an additional fee not to exceed DOJ's Dealers' Record of Sale
22 (DRoS) process, and not to exceed DOJ's reasonable costs. Cal. Penal Code §
23 30370(c). Penal Code section 28225 established the DRoS fee at \$14, but it was raised
24 to \$19 by DOJ pursuant to its own regulations. See Cal. Code Regs. tit. 11, § 4001
25 (2017).

26 39. DOJ was required to begin accepting applications for ammunition vendor
27 licenses on July 1, 2017. Cal. Pen. Code § 30385(a). DOJ failed to meet that deadline
28 and began issuing licenses after January 1, 2018.

1 40. According to DOJ’s regulations, the “term of an ammunition vendor
2 license is from January 1 through December 31, regardless of the date the initial
3 license is issued. Cal. Code Regs. tit. 11 § 4261(b) (2018). Penal Code section
4 30385(b), however, states that any ammunition vendor license “shall be valid for a
5 period of one year,” with no limitation on the date the license is acquired.

6 41. Ammunition vendors are required to pay a fee to be set by the Department
7 to cover the costs of California’s expansive ammunition licensing and registration
8 scheme. Cal. Penal Code § 30390 (West 2017).

9 42. The Department is authorized to issue vendor licenses to qualified
10 California ammunition vendors, Cal. Penal Code § 30395(a) (West 2017), and must
11 maintain a registry of all licensed ammunition vendors for law enforcement review, *Id.*,
12 § 30395(b).

13 43. The Challenged Provisions carry misdemeanor criminal penalties for
14 violations, including fines and incarceration.¹

15 44. Any ammunition vendor who violates any of the comprehensive
16 restrictions enacted by Proposition 63 and Senate Bill 1235 is also subject to forfeiture
17 of its vendor license. Cal. Penal Code section 30395(c).

18 45. The requirement that ammunition sales be conducted by or processed
19 through a licensed ammunition vendor in a face-to-face transaction, beginning January
20 1, 2018, does not apply to law enforcement, licensed importers or manufacturers of
21 firearms, California licensed firearm retailers, out of state licensed firearm dealers and
22 collectors, licensed collectors who possess a valid certificate of eligibility issued by
23 DOJ, licensed ammunition vendors, consultant evaluators, persons who receive
24 ammunition at a target facility holding a business or other regulatory licenses provided
25 that the ammunition is at all times kept within the facility’s premises, persons who
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28 ¹ Section 30314 is punishable as an infraction for the first offense. All
subsequent violations are punishable as a misdemeanor.

1 receive ammunition from certain family members, and persons involved in law
2 enforcement training. Cal. Penal Code § 30312(a),(c).

3 46. Although some portions of the Challenged Provisions were once adopted
4 in New York and at the federal level, these restrictions were found to be ineffective
5 and too costly and difficult to implement. As a result, even those less burdensome
6 restrictions were, respectively, never implemented and effectively repealed.

7 **Dormant Commerce Clause and Equal Protection Clause Violations**

8 47. The Commerce Clause, as set forth in Article I, Section 8 of the United
9 States Constitution, expressly grants Congress the power “[t]o regulate commerce with
10 foreign Nations, among the several States, and with the Indian Tribes.”

11 48. The Dormant Commerce Clause is inherent in the power granted to
12 Congress under the Commerce Clause and provides that, even if federal law is silent on
13 an area of interstate commerce, states may not enact legislation that discriminates
14 against or impermissibly burdens interstate commerce. *See, e.g., United Haulers Ass’n*
15 *v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007).

16 49. States also may not enact legislation that renders unlawful a transaction
17 that occurred wholly out of state. *See Sam Francis Found. v. Christies*, 784 F.3d 120
18 (9th Cir. 2015) (en banc); *W. Lynn Creamery v. Healy*, 512 U.S. 186, 194-95 (1994).

19 50. State laws that discriminate against interstate commerce face a virtually
20 per se rule of invalidity under the Commerce Clause. The Supreme Court has
21 explained that “discrimination” in this context “simply means differential treatment of
22 in-state and out-of-state economic interests that benefits the former and burdens the
23 latter.” *Or. Waste Sys., Inc. v. Dep’t of Env’tl. Quality*, 511 U.S. 93, 99 (1994).

24 51. State laws that are facially neutral nevertheless violate the Commerce
25 Clause if they impermissibly burden interstate commerce in practice. *See Healy*, 512
26 U.S. at 194-95.

27 52. The Supreme Court has repeatedly held that, in all but the narrowest of
28 circumstances, state laws violate the Commerce Clause if they mandate differential

1 treatment of in-state and out-of-state economic interests. *Granholm v. Heald*, 544 U.S.
2 460, 466 (2005); *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994).

3 53. States may not enact statutory schemes that grant in-state businesses
4 access to that state's consumers on preferential terms, nor can states deprive citizens of
5 their right to have access to other states' markets on equal terms.

6 54. The Equal Protection Clause, as set forth in the Fourteenth Amendment,
7 prohibits a state from denying its residents equal protection under the law; particularly,
8 it prohibits a state from classifying people in a way that restrains fundamental rights,
9 such as the right to acquire ammunition under the Second Amendment, without
10 meeting heightened scrutiny. *See Hussey v. City of Portland*, 64 F.3d 1260, 1265 (9th
11 Cir. 1995).

12 55. Sections 30312, 30314, 30370, 30385 violate the Dormant Commerce
13 Clause because they regulate out-of-state transactions. First, they prohibit out of state
14 ammunition vendors, including Plaintiffs Able's, Ammunition Depot, and Sam's
15 Shooters' Emporium from selling ammunition directly to California consumers via
16 mail-order, including to Plaintiffs Rhode, Brennan, Henry, Johnson, Lindemuth, Ricks,
17 Welvang, and members of CRPA. Second, they effectively prohibit out-of-state
18 companies from selling ammunition to California residents who intend to return to
19 California with the purchased ammunition. Together, these provisions provide no way
20 for a California resident to engage in an out-of-state ammunition transaction for the
21 purpose of bringing the ammunition back into California.

22 56. In doing so, Sections 30312, 30314, 30370, and 30385 further violate the
23 Dormant Commerce Clause because they facially discriminate against out-of-state
24 ammunition vendors, mandating differential treatment of out-of-state economic
25 interests and in-state economic interests by expressly limiting out-of-state vendors'
26 access to California consumers. As explained above, under those provisions, out-of-
27 state ammunition vendors cannot ship ammunition directly to California consumers.
28 Nor can California residents, including plaintiffs Rhode, Brennan, Henry, Johnson,

1 Lindemuth, Ricks, Welvang, and members of CRPA, purchase ammunition in person
2 out-of-state and return to California with the ammunition. Instead, in both situations,
3 the out-of-state vendor must have the ammunition shipped to a licensed California
4 ammunition vendor to process the transfer as an intermediary between the out-of-state
5 vendor and the California customer.

6 57. Even if sections 30312, 30314, 30370, and 30385 did not facially
7 discriminate against out of state ammunition vendors, these sections, in conjunction
8 with California Code of Regulations, tit. 11 § 4263, nonetheless have the effect of
9 improperly favoring businesses with a physical presence in California, in violation of
10 the Dormant Commerce Clause. As explained, ammunition vendors without a physical
11 presence in California do not have direct access to California consumers, while those
12 with a physical presence in California do. And the licensed California vendor can
13 either refuse to process the transaction or charge the purchaser any fee it wishes to
14 receive the ammunition, store it, and process the transaction.

15 58. These Challenged Provisions, therefore, improperly grant in-state
16 ammunition vendors access to California consumers on preferential terms over out-of-
17 state ammunition vendors, both facially and in effect, rendering unlawful transactions
18 that occurred wholly out of state, and depriving California residents of their right to
19 access other States' ammunition markets on equal terms.

20 59. Section California Penal Code section 30314 additionally violates the
21 Equal Protection Clause by unjustifiably denying Plaintiffs, as California residents,
22 equal treatment as out-of-state residents in their exercise of the fundamental right to
23 acquire ammunition, solely based on state residency.

24 **Violations of the Right to Keep and Bear Arms**

25 60. The Second Amendment to the United States Constitution declares that
26 “A well regulated militia, being necessary to the security of a free state, the right of the
27 people to keep and bear arms shall not be infringed.” U.S. CONST. amend. II.

28 61. The United States Supreme Court has confirmed that not only does it

1 protect an individual—as opposed to collective—right, but that “individual self-
2 defense is ‘the central component’ of the Second Amendment right.” *McDonald v. City*
3 *of Chicago*, 561 U.S. 742, 767 (2010) (quoting *Heller*, 554 U.S. at 628).

4 62. The Supreme Court has also held that the Second Amendment right to
5 keep and bear arms is incorporated into the Due Process Clause of the Fourteenth
6 Amendment and may not be infringed by state and local governments. *McDonald*, 561
7 U.S. at 750.

8 63. The Second Amendment necessarily protects the right to purchase, sell,
9 transfer and possess the ammunition necessary to meaningfully keep and bear arms for
10 self-defense. *See Jackson v. City and County of San Francisco*, 746 F.3d at 967-68
11 (2014).

12 64. State and local restrictions that suppress or impermissibly burden the right
13 to purchase, sell, or transfer ammunition violate the Second Amendment.

14 65. The Challenged Provisions impose unprecedented and overreaching
15 restraints on the right of law-abiding citizens, including plaintiffs, to acquire
16 ammunition for self-defense and other lawful purposes, both directly and by imposing
17 costly and unreasonable burdens on the purveyors of that constitutional right.

18 66. In the aggregate, the Challenged Provisions operate to unduly oppress the
19 exercise of the right to transact in ammunition in violation of the Second Amendment
20 right to keep and bear arms.

21 67. Specifically, California’s sweeping ammunition statutes collectively
22 operate to: ban a major source of ammunition (i.e., direct mail order sales); prohibit
23 importation of ammunition purchased out-of-state—thereby banning another source;
24 authorizing in-state vendors to control a purchase from out-of-state by either outright
25 refusing to process it or charging a prohibitive fee in any amount to process the
26 transaction; require vendors to obtain costly special licensing and employee
27 certifications annually; ban sales from trailers common at trade events; impose onerous
28 and costly storage and display requirements; mandate detailed registration

1 requirements for all the countless millions of ammunition purchases that take place
2 annually; impose liability on ammunition vendors if a single cartridge of ammunition
3 is not accounted for; mandate costly background checks and special purchase
4 authorizations for millions of ammunition purchasers each time they make a single
5 ammunition purchase; and subject vendors to loss of their licenses if they ever fail to
6 comply with any of these restrictions.

7 68. These novel and complex restrictions add to California's byzantine
8 restrictions on the ability to purchase a firearm. Under California's new ammunition
9 laws, many individuals will purportedly be authorized to purchase ammunition if they
10 already own a firearm that is registered to them in the Automated Firearms System.
11 Thus these individuals who will have already been required to pay a fee for a
12 background check, undergo a background check, and make multiple trips to the seller
13 to begin and conclude the firearms purchase process, are required to again go through
14 the same background check process numerous times in order to be able to place
15 ammunition into that firearm.

16 69. The collective burden imposed by these restrictions on countless annual
17 ammunition transactions will substantially impede lawful ammunition sales.

18 70. The aggregate burdens that the Challenged Provisions impose on law-
19 abiding citizens and ammunition vendors, on top of California's existing firearm
20 restrictions cannot be justified under any level of heightened scrutiny.

21 71. Even if the Challenged Provisions are not collectively stricken as an
22 improper violation of the Second Amendment, Penal Code sections 30312, 30314,
23 30352, 30370, as well as California Code of Regulations, tit. 11 § 4263, each
24 individually violate the Second Amendment.

25 72. Penal Code section 30312's prohibition on direct mail-order ammunition
26 sales severely burdens the purchase and sale of ammunition by banning a major source
27 of transacting in ammunition, and by requiring individuals to travel and expend
28 additional time and resources to obtain ammunition. These burdens cannot be justified

1 by the State's purported interests.

2 73. Penal Code section 30314's prohibition on the importation of ammunition
3 severely burdens the right to purchase, sell, and transport ammunition by preventing
4 individuals from purchasing ammunition outside of California and returning to
5 California with ammunition they lawfully purchased. This is particularly problematic
6 for individuals, including members of CRPA, who reside near the state border and
7 have a much closer proximity to an out-of-state vendor. These burdens cannot be
8 justified by the State's purported interests.

9 74. Penal Code section 30352's registration, record keeping, and purchaser
10 authorization requirements likewise severely burden the purchase and sale of
11 ammunition by overburdening consumers who have already complied with numerous
12 California laws to obtain a firearm and established that they are not prohibited from
13 owning firearms or ammunition. These requirements further place unprecedented and
14 costly burdens on the purveyors of the fundamental right to keep and bear arms. They
15 cannot be justified by the State's purported interests.

16 75. Penal Code section 30370's unprecedented background checks, fees, and
17 purchaser authorizations requirements severely burden the purchase, sale, and transfer
18 of ammunition by overburdening consumers who have already complied with
19 numerous California laws to obtain a firearm and established that they are not
20 prohibited from owning firearms or ammunition. These requirements further place
21 unprecedented, costly, duplicative burdens on the purveyors of the fundamental right to
22 keep and bear arms. They cannot be justified by the State's purported interests.

23 76. California Code of Regulations, tit. 11 § 4263(b) confers on a licensed
24 California vendor full control over whether a purchaser will have access to ammunition
25 from out-of-state. This is effectively the power to decide whether a person can exercise
26 his or her right to acquire ammunition under the Second Amendment; particularly,
27 when there is no requirement that a licensed California vendor process a private party
28 transfer at all.

1 under the Second and Fourteenth Amendments and the Dormant Commerce Clause. If
2 not enjoined by this Court, Defendants will continue to enforce the Challenged
3 Provisions in derogation of Plaintiffs' constitutional rights. Plaintiffs have no plain,
4 speedy, and adequate remedy at law. Damages are indeterminate or unascertainable
5 and, in any event, would not fully redress any harm suffered by Plaintiffs because they
6 are unable to engage in constitutionally protected activity due to California's ongoing
7 enforcement of the Challenged Provisions.

8 **FIRST CLAIM FOR RELIEF**
9 **Violation of the Dormant Commerce Clause**
10 (U.S. Const., Art. I, § 8)
11 Against All Defendants

12 82. Paragraphs 1-81 are realleged and incorporated by reference.

13 83. Penal Code sections 30312, 30314, 30370, and 30385 violate the Dormant
14 Commerce Clause.

15 84. Penal Code sections 30312, 30314, 30370, and 30385 unconstitutionally
16 prohibit wholly out-of-state transactions by expressly prohibiting out-of-state vendors
17 from engaging in direct-to-consumer sales to California residents, and by prohibiting
18 California residents from purchasing ammunition out of state and returning to
19 California with that ammunition.

20 85. Penal Code sections 30312, 30314, 30370, and 30385 unconstitutionally
21 discriminate against out-of-state ammunition vendors by restricting their access to the
22 California ammunition market.

23 86. Sections 30312, 30314, 30370, and 30385, as well as California Code of
24 Regulations, tit. 11 § 4263, unconstitutionally grant in-state ammunition vendors
25 access to California consumers on preferential terms by expressly prohibiting out-of-
26 state vendors from engaging in direct-to-consumer sales and subjecting purchases to
27 fees that may be charged at the whim of in-state vendors as a condition of selling
28 indirectly to California consumers. Penal Code section 30314 furthers this monopoly
by prohibiting California residents from purchasing ammunition from an out-of-state

1 vendor and returning to California with the ammunition.

2 87. Although California could do so if it chose to, it refuses to allow out-of-
3 state ammunition vendors, including the identified Plaintiffs and vendors similarly-
4 situated to Plaintiffs, to register and participate in the state's ammunition background
5 check program. Because it would be easy to allow out-of-state vendors to participate
6 in the background check system on the same terms and conditions as in-state vendors,
7 California has no justification for excluding out-of-state vendors from participating in
8 direct sales to California consumers.

9 88. Even if sections 30312, 30314, 30370, and 30385 did not facially
10 discriminate against out of state ammunition vendors, these sections, in conjunction
11 with California Code of Regulations, tit. 11 § 4263, nonetheless have the effect of
12 improperly favoring businesses with a physical presence in California, in violation of
13 the Dormant Commerce Clause. As explained, ammunition vendors without a physical
14 presence in California do not have direct access to California consumers, while those
15 with a physical presence in California do. And the licensed California vendor can
16 either refuse to process the transaction or charge the purchaser any fee it wishes to
17 receive the ammunition, store it, and process the transaction, thereby granting in-state
18 vendors an effective monopoly over the California ammunition market.

19 89. Sections 30312, 30314, 30370, and 30385 further violate the Dormant
20 Commerce Clause by depriving California residents of their right to have access to
21 other States' ammunition markets on equal terms. These statutes completely prohibit
22 California residents from purchasing and receiving ammunition directly from out-of-
23 state vendors for the purpose of using that ammunition in California and subject
24 already limited indirect purchases from out-of-state vendors to additional fees charged
25 by in-state vendors.

26 90. Section 30370 further violates the Dormant Commerce Clause by
27 imposing an unreasonable fee on non-residents who purchase ammunition in California
28 for the first time, an amount up to five times the actual cost of the ammunition itself.

1 Such fee is not imposed upon residents of California who have previously purchased
2 ammunition or firearms from California, and those residents are subject to a fee 19
3 times less than first-time non-resident purchasers.

4 91. Defendants cannot justify the burden on interstate commerce imposed by
5 sections 30312, 30314, 30370, and 30385.

6 **SECOND CLAIM FOR RELIEF**
7 **Section 30312's Violation of the Right to Keep and Bear Arms**
8 **By the Restriction on the Acquisition of Ammunition by Mail**
9 (U.S. Const., amends. II and XIV)
Against All Defendants

10 92. Paragraphs 1-91 are realleged and incorporated by reference.

11 93. Penal Code section 30312 mandates that all ammunition sales be
12 conducted in a face-to-face transaction, thus prohibiting direct-to-consumer mail order
13 purchases and sales of ammunition.

14 94. Penal Code section 30312 places an unconstitutional burden on the
15 purchase and sale of ammunition under the Second Amendment by banning and
16 criminalizing a major means of buying and selling ammunition in the United States.
17 For those who do not have access to a nearby ammunition vendor or FFL, Section
18 30312 bans and criminalizes the *only* method by which those affected persons can
19 obtain ammunition for self-defense.

20 95. Defendant cannot justify the burden imposed by Section 30312 on
21 Plaintiffs' Second Amendment rights under heightened scrutiny.

22 **THIRD CLAIM FOR RELIEF**
23 **Section 30314's Violation of the Right to Keep and Bear Arms**
24 **By Restricting Interstate Commerce in Ammunition**
25 (U.S. Const., amends. II and XIV)
Against All Defendants

26 96. Paragraphs 1-95 are realleged and incorporated by reference.

27 97. Penal Code section 30314 prohibits California residents from bringing
28 into California any ammunition that they purchase from outside the state.

1 98. By prohibiting Californians from returning to California with ammunition
2 that they lawfully purchased out of state, Penal Code section 30314 denies them a
3 major source of ammunition. Penal Code section 30314 violates the Second
4 Amendment by placing an unconstitutional burden on the right to obtain ammunition.

5 99. Defendant cannot justify the burden imposed by Section 30314 on
6 Plaintiffs' Second Amendment rights under heightened scrutiny.

7 **FOURTH CLAIM FOR RELIEF**

8 **Section 30352's Violation of the Right to Keep and Bear Arms**
9 **By Requiring Recordkeeping Burdening the Sale and Transfer of Ammunition**
10 (U.S. Const., amends. II and XIV)
11 Against All Defendants

12 100. Paragraphs 1-99 are realleged and incorporated by reference.

13 101. Penal Code section 30352(c) prohibits vendors from transferring
14 ammunition to anyone other than individuals who have been expressly authorized to
15 purchase ammunition pursuant to this section. Section 30352(a) and (b) further require
16 ammunition vendors to register the sale of every individual ammunition purchase by
17 recording and electronically transmitting to the Department of Justice detailed
18 information about every transaction and purchaser.

19 102. Penal Code section 30352's massive registration, record keeping, and
20 purchaser authorization requirements severely burden the purchase and sale of
21 ammunition in violation of the Second Amendment. Such requirements impose upon
22 Plaintiffs and similarly-situated vendors the obligation to devote employee time, floor
23 space, storage space, and other resources to preparing and keeping records of each
24 individual ammunition sale, of which sales some vendors engage in hundreds of
25 transactions per day.

26 103. Defendants cannot justify the burden imposed by Section 30352 on
27 Plaintiffs' Second Amendment rights.

28 ///

///

1 restrictions cannot be justified under any level of heightened scrutiny.

2 110. Defendants cannot justify the burden imposed by Section 30370 on
3 Plaintiffs' Second Amendment rights.

4 **SIXTH CLAIM FOR RELIEF**

5 **California Code of Regulations, tit. 11 § 4263**
6 **Violation of the Right to Keep and Bear Arms**
7 **Authorizing Licensed Vendors in California to Charge Purchasers Any Fee**
8 **to Acquire Ammunition from Out-of-State for Self-Defense**
9 (U.S. Const., amends. II and XIV)
Against All Defendants

10 111. Paragraphs 1-110 are realleged and incorporated by reference.

11 112. California Code of Regulations, tit. 11 § 4263(b) confers on a licensed
12 California vendor full control over whether a purchaser will have access to ammunition
13 from out-of-state. This is effectively the power to decide whether a person can exercise
14 his or her right to acquire ammunition under the Second Amendment, particularly
15 when there is no requirement that a licensed California vendor process a private party
16 transfer at all.

17 113. Defendant cannot justify the burden imposed by California Code of
18 Regulations, tit. 11 § 4263(b) on Plaintiffs' Second Amendment rights under any form
19 of heightened scrutiny.

20 **SEVENTH CLAIM FOR RELIEF**

21 **Violation of Right to Keep and Bear Arms by the Licensing, Sales, and Transfer**
22 **Scheme Enacted under Proposition 63 and Senate Bill 1235**
23 (U.S. Const., amends. II and XIV)
Against All Defendants

24 114. Paragraphs 1-113 are realleged and incorporated by reference.

25 115. Penal Code sections 30312, 30314, 30342, 30347, 30348, 30350, 30352,
26 30363, 30370, 30385, 30390, and 30395, enacted through portions of Senate Bill 1235
27 and Proposition 63, impose unprecedented restrictions on the purchase, sale, transfer,
28 and importation of ammunition for self-defense and other lawful purposes.

1 116. In doing so, the Challenged Provisions unduly oppress the exercise of the
2 right to transact in ammunition in violation of the Second Amendment right to keep
3 and bear arms.

4 117. The aggregate burdens that the Challenged Provisions impose on law-
5 abiding citizens and ammunition vendors, on top of California's existing firearm
6 restrictions cannot be justified under any level of heightened scrutiny.

7 118. The Challenged Provisions unconstitutionally impede and restrict the
8 ability of law-abiding citizens to acquire and transact in ammunition by effectively
9 banning a major means of purchasing ammunition, imposing a massive and costly
10 licensing and registration scheme, banning personal ammunition importation,
11 restricting the ability to transfer ammunition to and from shooting ranges and
12 prohibiting individuals who are returning from hunting trips to return to California
13 with ammunition acquired out of state.

14 119. The Challenged Provisions violate the Second Amendment by imposing
15 numerous costly and unnecessary restraints on ammunition vendors via its numerous
16 ammunition vendor license requirements.

17 120. Defendant Becerra cannot justify the excessive burdens imposed by the
18 Challenged Provisions on the Second Amendment rights of law-abiding citizens and
19 ammunition vendors under heightened scrutiny.

20 121. Further, to the extent that Sections 30312, 30314, 30370, and 30385
21 violate the Dormant Commerce Clause as alleged hereinabove, Sections 30342, 30347,
22 30348, 30350, 30385, 30390, and 30395 are integral to the execution and enforcement
23 of Sections 30312, 30314, 30370, and 30385, and therefore should be stricken.

24 122. Further, to the extent that Sections 30312, 30314, 30352, and 30370
25 violate the Right to Keep and Bear Arms as alleged hereinabove, Sections 30342,
26 30347, 30348, 30350, 30385, 30390, and 30395 are integral to the execution and
27 enforcement of Sections 30312, 30314, 30352, and 30370, and therefore should be
28 stricken.

1 **EIGHTH CLAIM FOR RELIEF**
2 **Violation of Equal Protection**
3 **(Penal Code § 30314)**
4 **(U.S. Const., amend. XIV)**
5 **Against All Defendants**

6 123. Paragraphs 1-122 are realleged and incorporated by reference.

7 124. The Fourteenth Amendment to the United States Constitution provides
8 that no state shall “deny to any person within its jurisdiction the equal protection of the
9 laws.” U.S. Const. amend. XIV, § 1.

10 125. The government bears the burden of justifying restrictions on the exercise
11 of fundamental rights by a particular class or classes of individuals.

12 126. All law-abiding, competent adults are similarly situated in that they are
13 equally entitled to exercise the constitutional right to keep and bear arms, including
14 ammunition.

15 127. The Challenged Provisions prohibit California residents from obtaining
16 ammunition directly from out-of-state ammunition vendors and bringing that
17 ammunition back into California.

18 128. Conversely, the Challenged Provisions do not prohibit non-California
19 residents from obtaining ammunition directly from out-of-state ammunition vendors
20 and bringing that ammunition into California. In other words, if two individuals (only
21 one of whom is a California resident) were to purchase ammunition outside of
22 California from the same business and then bring that ammunition into California, only
23 the California resident would be in violation of Penal Code section 30314.

24 129. Because the Challenged Provisions bar California residents from
25 acquiring ammunition in another state, while simultaneously allowing non-California
26 residents to acquire ammunition in another state, Defendants have created a
27 classification of persons, including Plaintiffs, who are treated unequally through the
28 denial of their Second Amendment rights to keep and bear arms.

1230. Defendant Becerra cannot justify this classification which unequally

1 deprives Plaintiffs of their right to bear arms. Therefore, Defendants are depriving
2 Plaintiffs and similarly situated individuals of their right to equal protection under the
3 law as guaranteed by the Fourteenth Amendment.

4 **NINTH CLAIM FOR RELIEF**

5 **Preemption**

6 **(Penal Code § 30314)**

7 **(18 U.S.C. §926A)**

8 **Against All Defendants**

9 131. Paragraphs 1-130 are realleged and incorporated by reference.

10 132. The Challenged Provisions are preempted by 18 U.S.C. §926A, which
11 ensures that a person may carry a firearm “from any place where he may lawfully
12 possess and carry such firearm to any other place where he may lawfully possess and
13 carry such firearm,” provided the person properly stores the firearm. This law
14 preempts similar prohibitions on ammunition, as it expressly contemplates that
15 “ammunition” will “be[] transported” along with the firearm.

16 133. The Challenged Provisions conflict with and stand as an obstacle to the
17 accomplishment of 18 U.S.C. §926A’s purposes, which include the free transport of
18 firearms and ammunition across state lines.

19 **PRAYER FOR RELIEF**

20 Plaintiffs pray that the Court:

- 21 1. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal
22 Code sections 30312, 30314, 30342, 30347, 30348, 30350, 30352, 30370,
23 30385, 30390, and 30395, as well as California Code of Regulations, tit. 11 §
24 4263, are unconstitutional on their face or, alternatively, as applied to
25 plaintiffs, because these sections violate the Second and Fourteenth
26 Amendments to the United States Constitution.
- 27 2. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal
28 Code sections 30312, 30314, 30352, 30363, 30370, and 30385, as well as
California Code of Regulations, tit. 11 § 4263, are unconstitutional on their

1 face or, alternatively, as applied to Plaintiffs, because they discriminate
2 against interstate commerce in violation of the Dormant Commerce Clause,
3 Article I, § 8 of the United States Constitution.

- 4 3. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal
5 Code section 30314 is unconstitutional on its face or, alternatively, as applied
6 to Plaintiffs, under the Equal Protection Clause of the United States
7 Constitution, because it unjustifiably denies Plaintiffs, as California residents,
8 of equal treatment to out-of-state residents in their exercise of the
9 fundamental right to acquire ammunition.
- 10 4. Enter a declaratory judgment under 28 U.S.C. §2201 that California Penal
11 Code section 30314 is unlawful on its face or, alternatively, as applied to
12 Plaintiffs, because it conflicts with and is thus preempted by 18 U.S.C.
13 §926A.
- 14 5. Issue an injunction enjoining Defendants and their officers, agents, and
15 employees from enforcing California Penal Code sections 32310 30314,
16 30342, 30347, 30348, 30350, 30352, 30363, 30370, 30385, 30390, and
17 30395, as well as California Code of Regulations, tit. 11 § 4263.
- 18 6. Award remedies available under 42 U.S.C. §1983 and all reasonable
19 attorneys' fees, costs, and expenses under 42 U.S.C. §1988, or any other
20 applicable law; and,
- 21 7. Grant any other relief the Court deems just and proper.

22
23 Dated: June 11, 2018

MICHEL & ASSOCIATES, P.C.

24
25 s/C. D. Michel

26 C.D. Michel

27 *Counsel for Plaintiffs*
28

1 **CERTIFICATE OF SERVICE**

2 **UNITED STATES DISTRICT COURT**

3 **SOUTHERN DISTRICT OF CALIFORNIA**

4
5 Case Name: *Rhode, et al. v. Becerra*

6 Case No.: 3:18-cv-802-JM-JMA

7 IT IS HEREBY CERTIFIED THAT:

8 I, the undersigned, declare under penalty of perjury that I am a citizen of the
9 United States over 18 years of age. My business address is 180 East Ocean Boulevard,
10 Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

11 I have caused service of the following documents, described as:

12 **FIRST AMENDED COMPLAINT FOR**
13 **DECLARATORY AND INJUNCTIVE RELIEF**

14 on the following parties by electronically filing the foregoing on June 11, 2018, with
15 the Clerk of the District Court using its ECF System, which electronically notifies
16 them.

17 Nelson R. Richards
18 Deputy Attorney General
19 2550 Mariposa Mall, Room 5090
20 Fresno, CA 93721
21 E-mail: Nelson.Richards@doj.ca.gov

22 I declare under penalty of perjury that the foregoing is true and correct. Executed
23 on June 11, 2018, at Long Beach, CA.

24 /s/Laura Palmerin

25 Laura Palmerin

1 ROB BONTA
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 10 General*

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

14
 15 **KIM RHODE et al.,**

16 Plaintiffs,

17 v.

18 **ROB BONTA, in his official capacity
 19 as Attorney General of the State of
 20 California,**

21 Defendant.

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

NOTICE OF APPEAL

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

1 **PLEASE TAKE NOTICE** that Defendant-Appellant Rob Bonta, in his
2 official capacity as Attorney General of the State of California, hereby appeals to
3 the United States Court of Appeals for the Ninth Circuit from this Court’s Decision
4 and Judgment, dated January 30, 2024, and entered January 31, 2024 (ECF Nos.
5 105, 106).

6 Dated: January 31, 2024

Respectfully submitted,

7 ROB BONTA
8 Attorney General of California
9 R. MATTHEW WISE
10 Supervising Deputy Attorney General
11 JOHN D. ECHEVERRIA
12 Deputy Attorney General
13 MEGHAN H. STRONG
14 Deputy Attorney General

s/ Christina R.B. López

15 CHRISTINA R.B. LÓPEZ
16 Deputy Attorney General
17 Attorneys for Defendant Rob Bonta,
18 in his official capacity as California
19 Attorney General

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APPEAL,CLOSED,ENE,LNO

**U.S. District Court
Southern District of California (San Diego)
CIVIL DOCKET FOR CASE #: 3:18-cv-00802-BEN-JLB**

Rhode et al v. Becerra et al
Assigned to: Judge Roger T. Benitez
Referred to: Magistrate Judge Jill L. Burkhardt
Related Case: [3:17-cv-01017-BEN-JLB](#)
Case in other court: USCA, 20-55437
USCA, 24-00542
Cause: 28:1331cm Fed. Question: Interstate Commerce Act

Date Filed: 04/26/2018
Date Terminated: 01/30/2024
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

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Sean Brady
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Scott Lindemuth

represented by **Carl D. Michel**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sean Brady
(See above for address)
LEAD ATTORNEY
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Plaintiff

Richard Ricks

represented by **Carl D. Michel**
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Sean Brady
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Plaintiff

Denise Welvang

represented by **Carl D. Michel**
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Sean Brady
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Plaintiff

Able's Sporting, Inc.
a Texas corporation

represented by **Carl D. Michel**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sean Brady
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

AMDEP Holdings, LLC
a Florida limited liability company
doing business as
Ammunition Depot

represented by **Carl D. Michel**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sean Brady
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

R&S Firearms, Inc.
an Arizona corporation
doing business as
Sam's Shooters Emporium

represented by **Carl D. Michel**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sean Brady
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

**California Rifle & Pistol Association,
Incorporated**
a California corporation

represented by **Carl D. Michel**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sean Brady
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Xavier Becerra
in his official capacity as Attorney General
of the State of California

represented by **Christina Rae Burgart Lopez**
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ATTORNEY TO BE NOTICED

Defendant**Does 1-10****Amicus**

**Giffords Law Center to Prevent Gun
 Violence & Brady**
TERMINATED: 08/24/2023

represented by **Thomas Rohlfs Burke**
 Davis Wright Tremaine LLP
 50 California Street
 Ste 23rd Floor
 San Francisco, CA 94111
 415-276-6500
 Fax: 415-276-6599
 Email: thomasburke@dwt.com
TERMINATED: 08/24/2023
LEAD ATTORNEY

Amicus**Brady**

represented by **Thomas Rohlfs Burke**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus**Everytown for Gun Safety Support Fund**

represented by **Matthew John Tako**
 Skadden Arps Slate Meagher & Flom LLP
 300 South Grand Avenue
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 213-687-5000 x5108
 Fax: 213-621-5108
 Email: matthew.tako@skadden.com
(Inactive)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/26/2018	1	COMPLAINT against Xavier Becerra, DOES 1-10 (Filing fee \$ 400 receipt number 0974-11155858), filed by Richard Ricks, Gary Brennan, Edward Johnson, Scott Lindemuth, AMDEP Holdings, LLC, R&S Firearms, Inc., Able's Sporting, Inc., Kim Rhode, Denise Welvang, California Rifle & Pistol Association, Incorporated, Cory Henry. (Attachments: # 1 Civil Cover Sheet)

		The new case number is 3:18-cv-802-JM-JMA. Judge Jeffrey T. Miller and Magistrate Judge Jan M. Adler are assigned to the case. (Michel, Carl)(jms) (jao). (Entered: 04/26/2018)
04/26/2018	2	Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (jms) (jao). (Entered: 04/26/2018)
04/26/2018	3	NOTICE OF RELATED CASE(S) by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang of case(s) 17-cv-1017-BEN-JLB . (Michel, Carl)(mxn). (Entered: 04/26/2018)
04/26/2018	4	NOTICE of Appearance of <i>Sean A. Brady</i> by Sean Brady on behalf of AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang (Brady, Sean)Attorney Sean Brady added to party AMDEP Holdings, LLC(pty:pla), Attorney Sean Brady added to party Able's Sporting, Inc.(pty:pla), Attorney Sean Brady added to party Gary Brennan(pty:pla), Attorney Sean Brady added to party California Rifle & Pistol Association, Incorporated(pty:pla), Attorney Sean Brady added to party Cory Henry(pty:pla), Attorney Sean Brady added to party Edward Johnson(pty:pla), Attorney Sean Brady added to party Scott Lindemuth(pty:pla), Attorney Sean Brady added to party R&S Firearms, Inc.(pty:pla), Attorney Sean Brady added to party Kim Rhode(pty:pla), Attorney Sean Brady added to party Richard Ricks(pty:pla), Attorney Sean Brady added to party Denise Welvang(pty:pla)(mxn). (Entered: 04/26/2018)
04/27/2018	5	Amended Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (jms) (Entered: 04/27/2018)
05/08/2018	6	SUMMONS Returned Executed by Richard Ricks, Gary Brennan, Edward Johnson, Scott Lindemuth, AMDEP Holdings, LLC, R&S Firearms, Inc., Able's Sporting, Inc., Kim Rhode, Denise Welvang, California Rifle & Pistol Association, Incorporated, Cory Henry. Xavier Becerra served. (Brady, Sean) (jpp). (Entered: 05/08/2018)
05/09/2018	7	ORDER OF TRANSFER PURSUANT TO LOW NUMBER RULE. Case reassigned to Judge Roger T. Benitez and Magistrate Judge Jill L. Burkhardt for all further proceedings. Judge Jeffrey T. Miller, Magistrate Judge Jan M. Adler no longer assigned to case. Create association to 3:17-cv-01017-BEN-JLB. The new case number is 18CV0802-BEN(JLB).. Signed by Judge Jeffrey T. Miller on 5/09/2018. Signed by Judge Roger T. Benitez on 5/07/2018.(jpp) (Entered: 05/10/2018)
05/18/2018	8	MOTION to Dismiss for Failure to State a Claim by Xavier Becerra. (Attachments: # 1 Memo of Points and Authorities, # 2 Request for Judicial Notice, # 3 Proof of Service) (Richards, Nelson)Attorney Nelson Richards added to party Xavier Becerra(pty:dft) (anh). (Entered: 05/18/2018)
06/11/2018	9	AMENDED COMPLAINT (<i>First</i>) against All Defendants, filed by Richard Ricks, Gary Brennan, Edward Johnson, Scott Lindemuth, AMDEP Holdings, LLC, R&S Firearms, Inc., Able's Sporting, Inc., Kim Rhode, Denise Welvang, California Rifle & Pistol Association, Incorporated, Cory Henry. (Michel, Carl) (anh). (Entered: 06/11/2018)
06/18/2018	10	ORDER denying as moot with leave to file 8 Motion to Dismiss. Defendant is granted leave to file a new motion to dismiss or to otherwise plead within 30 days of this Order. Signed by Judge Roger T. Benitez on 6/18/2018. (anh) (Entered: 06/19/2018)

07/18/2018	11	MOTION to Dismiss for Failure to State a Claim by Xavier Becerra. (Attachments: # 1 Memo of Points and Authorities, # 2 Request for Judicial Notice, # 3 Proof of Service) (Richards, Nelson) (anh). (Entered: 07/18/2018)
09/06/2018	12	RESPONSE in Opposition re 11 MOTION to Dismiss for Failure to State a Claim filed by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (ajs). (Entered: 09/06/2018)
09/13/2018	13	REPLY to Response to Motion re 11 MOTION to Dismiss for Failure to State a Claim filed by Xavier Becerra. (Attachments: # 1 Proof of Service)(Richards, Nelson) (anh). (Entered: 09/13/2018)
09/20/2018	14	Minute Entry for proceedings held before Judge Roger T. Benitez: Motion Hearing held on 9/20/2018 re 11 MOTION to Dismiss for Failure to State a Claim filed by Xavier Becerra. Court to issue written Order. (Court Reporter/ECR Dana Peabody). (Plaintiff Attorney Sean Brady, Clint B. Monfort). (Defendant Attorney Nelson Richards, Mark Beckington). (no document attached) (gxr) (Entered: 09/21/2018)
09/27/2018	15	NOTICE OF FILING OF OFFICIAL TRANSCRIPT (Motion to Dismiss) held on 9/20/2018 before Judge Roger T. Benitez. Court Reporter/Transcriber: Dana Peabody. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 10/18/2018. Redacted Transcript Deadline set for 10/29/2018. Release of Transcript Restriction set for 12/26/2018. (akr) (Entered: 09/27/2018)
10/17/2018	16	ORDER Re: Defendant's Motion to Dismiss and Request for Judicial Notice. Signed by Judge Roger T. Benitez on 10/17/2018. (anh) (Entered: 10/17/2018)
10/31/2018	17	ANSWER to 9 Amended Complaint, by Xavier Becerra. (Attachments: # 1 Proof of Service)(Richards, Nelson) (anh). (Entered: 10/31/2018)
11/06/2018	18	NOTICE AND ORDER: (1) For Telephonic Counsel-Only Rule 26 Compliance and Case Management Conference; (2) For In-Person Early Neutral Evaluation Conference. Early Neutral Evaluation set for 1/9/2019 02:00 PM before Magistrate Judge Jill L. Burkhardt. Case Management Conference set for 12/4/2018 11:30 AM before Magistrate Judge Jill L. Burkhardt. Joint Discovery Plan due 11/27/2018. Signed by Magistrate Judge Jill L. Burkhardt on 11/6/2018.(anh) (Entered: 11/06/2018)
11/27/2018	19	REPORT of Rule 26(f) Planning Meeting. (Brady, Sean) (anh). (Entered: 11/27/2018)
12/04/2018	20	MINUTE ORDER for proceedings held before Magistrate Judge Jill L. Burkhardt: Case Management Conference held on 12/4/2018. Scheduling Order to follow. Additionally, pursuant to the Conference, the in-person Early Neutral Evaluation Conference previously set for 1/9/2019 (ECF No. 18) is hereby VACATED. (Plaintiff Attorney Sean Brady). (Defendant Attorney Nelson Richards). (no document attached) (mjj) (Entered: 12/04/2018)
12/06/2018	21	SCHEDULING ORDER Regulating Discovery and Other Pretrial Proceedings. A Mandatory Settlement Conference is set for 9/17/2019 at 02:00 PM before Magistrate Judge Jill L. Burkhardt. The Memorandum of Contentions of Fact and Law is due by 1/13/2020. The Proposed Final Pretrial Conference Order is due by 2/3/2020. The Final

		Pretrial Conference is set for 2/10/2020 at 10:30 AM before Judge Roger T. Benitez. Signed by Magistrate Judge Jill L. Burkhardt on 12/6/2018.(aef) (Entered: 12/07/2018)
04/12/2019	22	Joint MOTION to Amend/Correct 21 Scheduling Order, by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (anh). (Entered: 04/12/2019)
04/15/2019	23	MINUTE ORDER by Magistrate Judge Jill L. Burkhardt: The Court hereby SETS a telephonic, counsel-only Status Conference for 4/19/2019 , at 9:00 AM before Judge Burkhardt regarding the parties' Joint Motion to Amend Scheduling Order (ECF No. 22). For purposes of the Conference, counsel for the parties shall place a joint call to Judge Burkhardt's chambers will all participating counsel already on the line. (mjg) (Entered: 04/15/2019)
04/19/2019	24	Minute Entry for proceedings held before Magistrate Judge Jill L. Burkhardt: Telephonic, counsel-only Status Conference held on 4/19/2019 regarding the parties' Joint Motion to Amend Scheduling Order. (ECF Nos. 22 , 23 .) Order to follow. (Plaintiff Attorney Matthew Cuberio). (Defendant Attorney Nelson Richards). (no document attached) (mjg) (Entered: 04/19/2019)
04/23/2019	25	ORDER: (1) Granting Joint Motion to Amend Scheduling Order and (2) Issuing Amended Scheduling Order. (ECF Nos. 21 , 22) Mandatory Settlement Conference set for 11/15/2019 09:00 AM before Magistrate Judge Jill L. Burkhardt. Memorandum of Contentions of Fact and Law due by 2/17/2020. Proposed Pretrial Order due by 3/9/2020. Final Pretrial Conference set for 3/16/2020 10:30 AM before Judge Roger T. Benitez.Signed by Magistrate Judge Jill L. Burkhardt on 4/22/2019. (tcf)(jrd) (Entered: 04/23/2019)
07/01/2019	26	Joint MOTION to Amend/Correct <i>Scheduling Order</i> by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (tcf). (Entered: 07/01/2019)
07/03/2019	27	ORDER (1) Granting Joint Motion to Amend Scheduling Order; and (2) Issuing Amended Scheduling Order [ECF. Nos. 25 ; 26] Proposed Pretrial Order due by 6/8/2020. Final Pretrial Conference set for 6/15/2020 10:30 AM before Judge Roger T. Benitez. Mandatory Settlement Conference set for 2/14/2020 09:00 AM before Magistrate Judge Jill L. Burkhardt. Status Conference set for 7/15/2019 08:30 AM before Judge Roger T. Benitez.. Signed by Magistrate Judge Jill L. Burkhardt on 7/2/2019. (anh) (Entered: 07/03/2019)
07/08/2019	28	NOTICE of Change of Hearing: Status Conference reset for 7/15/2019 10:30 AM in Courtroom 5A before Judge Roger T. Benitez. (no document attached) (gxr) (Entered: 07/08/2019)
07/12/2019	29	Joint MOTION for Order <i>to Appear Telephonically at July 15, 2019 Status Conference</i> by Xavier Becerra. (Attachments: # 1 Proof of Service)(Richards, Nelson) (jrm). (Entered: 07/12/2019)
07/12/2019	30	MINUTE ORDER issued by the Honorable Roger T. Benitez: Granting 29 Joint Motion for Order to Appear Telephonically at July 15, 2019 Status Conference. The Court hereby orders that one (1) toll-free telephone number and conference access code be emailed to the following email address no later than 8:00AM on 7/15/2019: efile_benitez@casd.uscourts.gov. (no document attached) (gxr) (Entered: 07/12/2019)
07/15/2019	31	Minute Entry for proceedings held before Judge Roger T. Benitez: Status Conference held on 7/15/2019. All parties appearing telephonically.(Court Reporter/ECR Melinda

		Setterman). (Plaintiff Attorney Sean Brady). (Defendant Attorney Nelson Richards). (no document attached) (gxr) (Entered: 07/16/2019)
07/22/2019	32	MOTION for Preliminary Injunction by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Sean A. Brady, # 3 Declaration of Richard Travis, # 4 Declaration of James Gilhousen, # 5 Declaration of Dan Wolgin, # 6 Declaration of Denise Welvang, # 7 Declaration of Scott Lindemuth, # 8 Declaration of Bill Ortiz, # 9 Declaration of David Burwell, # 10 Declaration of Chris Puehse, # 11 Declaration of Travis Morgan, # 12 Declaration of Ethan Bartel, # 13 Declaration of Myra Lowder, # 14 Declaration of Daniel Gray, # 15 Declaration of Christine McNab, # 16 Declaration of George Dodd)(Brady, Sean) (jrm). (Entered: 07/22/2019)
07/22/2019	33	Request for Judicial Notice by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang re 32 MOTION for Preliminary Injunction . (Attachments: # 1 Request for Judicial Notice)(Brady, Sean) QC Mailer sent re incorrect event (jrm). (Entered: 07/22/2019)
08/05/2019	34	RESPONSE in Opposition re 32 MOTION for Preliminary Injunction filed by Xavier Becerra. (Attachments: # 1 Declaration of Mayra G.Morales, # 2 Exhibit Exhibit s 1-5 to Dec of Morales, # 3 Exhibit Exhibit 6 to Dec of Morales, # 4 Exhibit Exhibit 7 (part 1) to Dec of Morales, # 5 Exhibit Exhibit 7 (part 2) to Dec of Morales, # 6 Exhibit Exhibits 8-12 to Dec of Morales, # 7 Request for Judicial Notice)(Richards, Nelson) (jrm). (Entered: 08/05/2019)
08/09/2019	35	MOTION for Order <i>for Leave to Participate As Amici Curiae</i> by Giffords Law Center to Prevent Gun Violence & Brady, Brady. (Attachments: # 1 Memo of Points and Authorities)(Burke, Thomas)Attorney Thomas Rohlfs Burke added to party Giffords Law Center to Prevent Gun Violence & Brady(pty:am), Attorney Thomas Rohlfs Burke added to party Brady(pty:am) (anh). (Entered: 08/09/2019)
08/09/2019	36	MOTION for Order <i>for Leave to Participate As Amici Curiae</i> by Everytown for Gun Safety Support Fund. (Attachments: # 1 Brief Of Amicus Curiae Everytown For Gun Safety Support Fund In Support Of Defendants Opposition To Plaintiffs Motion For Preliminary Injunction, # 2 Appendix Volume 1, # 3 Appendix Volume 2)(Tako, Matthew)Attorney Matthew John Tako added to party Everytown for Gun Safety Support Fund(pty:am) (anh). (Entered: 08/09/2019)
08/12/2019	37	REPLY - Other re 34 Response in Opposition to Motion, <i>for Preliminary Injunction</i> filed by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Attachments: # 1 Declaration of Matthew D. Cubeiro)(Brady, Sean) (anh). (Entered: 08/12/2019)
08/19/2019	38	Minute Order. for proceedings held before Judge Roger T. Benitez: Motion Hearing held on 8/19/2019. Submitting 32 MOTION for Preliminary Injunction. Court to issue written Order. (Court Reporter/ECR James Pence). (Plaintiff Attorney Sean Brady).(Defendant Attorney Nelson Richards). (no document attached) (gxr) (Entered: 08/20/2019)
09/03/2019	39	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 8/19/2019 before Judge Roger T. Benitez. Court Reporter/Transcriber: James C. Pence-Aviles. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that

		date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 9/24/2019. Redacted Transcript Deadline set for 10/4/2019. Release of Transcript Restriction set for 12/2/2019. (akr) (Entered: 09/03/2019)
09/25/2019	40	NOTICE of Hearing: Telephonic Status Conference set for 10/1/2019 01:00 PM in Courtroom 5A before Judge Roger T. Benitez. Plaintiff counsel to email Judge Benitez's chambers (efile_benitez@casd.uscourts.gov) by 5:00PM on 9/30/2019 one toll-free telephone number and pass code to allow the Court to access the conference call. (no document attached) (gxr) (Entered: 09/25/2019)
09/25/2019	41	NOTICE of Appearance by Noreen Patricia Skelly on behalf of Xavier Becerra (Skelly, Noreen) Attorney Noreen Patricia Skelly added to party Xavier Becerra(pty:dft) (mme). (Entered: 09/25/2019)
09/27/2019	42	DECLARATION <i>Supplemental Declaration of Mayra G. Morales in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction</i> by Defendant Xavier Becerra. (Richards, Nelson) (mme). (Entered: 09/27/2019)
09/30/2019	43	Request to Appear Pro Hac Vice (Filing fee received: \$ 206 receipt number 0974-13002934.)(Application to be reviewed by Clerk.)(Francis, Rebecca)(jrd) (Entered: 09/30/2019)
10/01/2019	44	Minute Entry for proceedings held before Judge Roger T. Benitez: Status Conference held on 10/1/2019. All parties appearing telephonically.(Court Reporter/ECR Cynthia Ott). (Plaintiff Attorney Sean Brady). (Defendant Attorney Nelson Richards). (no document attached) (gxr) (Entered: 10/02/2019)
10/23/2019	45	NOTICE OF FILING OF OFFICIAL TRANSCRIPT (Status Conference) held on 10/1/2019 before Judge Roger T. Benitez. Court Reporter/Transcriber: Cynthia R. Ott. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 11/13/2019. Redacted Transcript Deadline set for 11/25/2019. Release of Transcript Restriction set for 1/21/2020. (akr) (Entered: 10/23/2019)
10/29/2019	46	SUPPLEMENTAL BRIEFING by Plaintiffs AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang re 32 MOTION for Preliminary Injunction . (Attachments: # 1 Request for Judicial Notice, # 2 Declaration of Edward Allen Johnson, # 3 Declaration of William D. Shepard, # 4 Declaration Nandu Ionescu)(Brady, Sean) (mme). (Entered: 10/29/2019)
11/07/2019	47	STATUS REPORT (<i>Joint</i>) by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (mme). (Entered: 11/07/2019)
11/18/2019	48	DECLARATION re 42 Declaration, 34 Response in Opposition to Motion, <i>Second Supplemental Declaration of Mayra G. Morales in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction</i> by Defendant Xavier Becerra. (Richards, Nelson) (mme). (Entered: 11/18/2019)

01/08/2020	49	MINUTE ORDER by Magistrate Judge Jill L. Burkhardt: Due to a conflict in the Court's calendar, the Mandatory Settlement Conference previously set for 2/14/2020 (ECF No. 27) is hereby RESET for <u>2/21/2020</u> , at <u>9:00 AM</u> in the chambers of Judge Burkhardt. The deadline to lodge confidential settlement statements with the Court is hereby RESET to <u>2/11/2020</u> . This Order does not otherwise alter the Scheduling Order (ECF No. 27). (no document attached) (mjg) (Entered: 01/08/2020)
01/15/2020	50	Joint MOTION to Vacate <i>the Mandatory Settlement Conference</i> by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (mme). (Entered: 01/15/2020)
01/17/2020	51	ORDER: (1) GRANTING JOINT MOTION TO VACATE MANDATORY SETTLEMENT CONFERENCE; AND (2) VACATING MANDATORY SETTLEMENT CONFERENCE 50 Joint MOTION to Vacate <i>the Mandatory Settlement Conference</i> filed by Edward Johnson, Cory Henry, Kim Rhode, Denise Welvang, Scott Lindemuth, R&S Firearms, Inc., Richard Ricks, Gary Brennan, AMDEP Holdings, LLC, Able's Sporting, Inc., California Rifle & Pistol Association, Incorporated. Signed by Magistrate Judge Jill L. Burkhardt on 1/16/2020.(sjm) (Entered: 01/17/2020)
02/14/2020	52	ORDER. Defendant Attorney General Xavier Becerra is ordered to update the Court and parties on the statewide results of ammunition sales background checks for the months of November 2019, December 2019, and January 2020. The updated information shall be filed on or before March 13, 2020. Signed by Judge Roger T. Benitez on 2/14/2020. (mme) (Entered: 02/14/2020)
02/28/2020	53	DECLARATION <i>Third Supplemental Declaration of Mayra G. Morales in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction</i> by Defendant Xavier Becerra. (Richards, Nelson) (mme). (Entered: 02/28/2020)
03/30/2020	54	NOTICE of Hearing: Telephonic Status Conference set for 4/1/2020 01:15 PM in Courtroom 5A before Judge Roger T. Benitez. (no document attached) (gxr) (Entered: 03/30/2020)
04/01/2020	55	Minute Entry for proceedings held before Judge Roger T. Benitez: Telephonic Status Conference held on 4/1/2020.(Court Reporter/ECR Ellen Simone). (Plaintiff Attorney Sean Brady). (Defendant Attorney Nelson Richards). (no document attached) (gxr) (Entered: 04/01/2020)
04/01/2020	56	ORDER Denying 35 , 36 Leave to Participate as Amici Curiae. Signed by Judge Roger T. Benitez on 4/1/2020. (mme) (Entered: 04/01/2020)
04/06/2020	57	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 4/1/2020 before Judge Roger T. Benitez. Court Reporter/Transcriber: Ellen L. Simone. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 4/27/2020. Redacted Transcript Deadline set for 5/7/2020. Release of Transcript Restriction set for 7/6/2020. (akr) (Entered: 04/07/2020)
04/10/2020	58	RESPONSE re 55 Status Conference <i>Defendant's Response to Court's Inquiry at April 1, 2020, Status Conference</i> filed by Xavier Becerra. (Richards, Nelson) (mme). (Entered: 04/10/2020)

04/10/2020	59	DECLARATION <i>Fourth Supplemental Declaration of Mayra G. Morales in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction</i> by Defendant Xavier Becerra. (Richards, Nelson) (mme). (Entered: 04/10/2020)
04/23/2020	60	ORDER Granting 32 Plaintiff's Motion for Preliminary Injunction. Signed by Judge Roger T. Benitez on 4/23/2020. (mme) (Entered: 04/23/2020)
04/24/2020	61	Emergency MOTION to Stay <i>Order Granting Preliminary Injunction to Allow for Interlocutory Appeal</i> by Xavier Becerra. (Richards, Nelson) (mme). (Entered: 04/24/2020)
04/24/2020	62	ORDER Denying 61 Ex Parte Motion for Stay. Signed by Judge Roger T. Benitez on 4/24/2020. (mme) (Entered: 04/24/2020)
04/24/2020	63	***Document has been re-filed by the filer as 64 Notice of Interlocutory Appeal to the 9th Circuit***: NOTICE of Appeal from Order by Xavier Becerra re 60 Order on Motion for Preliminary Injunction (Richards, Nelson). (Modified on 4/24/2020: On 4/24/2020, the filer re-filed this document as 64 Notice of Interlocutory Appeal to the 9th Circuit.) (akr). (Entered: 04/24/2020)
04/24/2020	64	NOTICE OF INTERLOCUTORY APPEAL to the 9th Circuit as to 60 Order Granting Plaintiff's Motion for Preliminary Injunction by Xavier Becerra. (Filing fee \$ 505 receipt number ACASDC-13790512.) (Richards, Nelson). (Modified on 4/24/2020: Edited docket text re linked Order.) (akr). (Entered: 04/24/2020)
04/24/2020	65	USCA Case Number 20-55437 for 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. (akr) (Entered: 04/24/2020)
04/24/2020	66	ORDER of USCA as to 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. The USCA has received appellant's emergency motion for a stay. The request for an immediate administrative stay is granted. The USDC's April 23, 2020 preliminary injunction order is temporarily stayed pending further court order. The USCA will address the emergency stay motion by separate order. (akr) (Entered: 04/24/2020)
05/13/2020	67	ORDER of USCA as to 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. The opposed motion for an extension of time to file the opening brief and excerpts of record is granted. Briefing schedule issued. (akr) (Entered: 05/13/2020)
05/14/2020	68	ORDER of USCA as to 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. This appeal challenges the USDC's preliminary injunction prohibiting the enforcement of California restrictions on the purchase of ammunition on Second Amendment and dormant Commerce Clause grounds. The California Attorney General moves for a stay of the injunction pending appeal... We therefore grant appellant's emergency motion for a stay of the USDC's April 23, 2020 preliminary injunction pending appeal. (See Order for full text.) (akr) (Entered: 05/14/2020)
06/09/2020	69	Minute Order issued by the Honorable Roger T. Benitez: The Court hereby vacates the Final Pretrial Conference hearing date of 6/15/2020.(no document attached) (gxr) (Entered: 06/09/2020)
11/16/2020	70	ORDER of USCA as to 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. The parties are directed to file supplemental briefs addressing the constitutionality of the Basic Check in its own right. Instructions issued. (akr) (Entered: 11/16/2020)
03/19/2021	71	***Vacated by the USCA per 72 Order of USCA***: ORDER of USCA as to 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. Resolution of this appeal may be impacted by the en banc proceedings in <i>Duncan v. Becerra</i> , No. 19-55376.

		Accordingly, submission is vacated and this appeal shall be held in abeyance pending issuance of the mandate in <i>Duncan</i> . (akr). (Modified on 6/26/2022: This Order was vacated by the USCA on 6/24/2022.) (akr). (Entered: 03/19/2021)
06/24/2022	72	ORDER of USCA as to 64 Notice of Interlocutory Appeal to the 9th Circuit filed by Xavier Becerra. The panel's previous order, issued March 19, 2021, holding this appeal in abeyance pending issuance of the mandate in <i>Duncan v. Becerra</i> , No. 19-55376, is vacated. The parties are directed to file supplemental briefing in light of the Supreme Court's decision in <i>New York State Rifle & Pistol Association, Inc. v. Bruen</i> , No. 20-843. Instructions issued. (akr) (Entered: 06/24/2022)
11/09/2022	73	NOTICE of Hearing: Status Conference set for 12/12/2022 10:30 AM in Courtroom 5A before Judge Roger T. Benitez. The Court hereby orders all attorneys to appear in-person. (no document attached) (gxr) (Entered: 11/09/2022)
11/17/2022	74	DISPOSITIVE ORDER of USCA as to 64 Notice of Interlocutory Appeal to 9th Circuit, filed by Xavier Becerra. The district court's April 23, 2020, preliminary injunction order is vacated, and this case is remanded to the district court for further proceedings. VACATED AND REMANDED. (smy1) (Entered: 11/18/2022)
12/05/2022	75	NOTICE of Appearance by Anthony P O'Brien on behalf of Xavier Becerra (O'Brien, Anthony)Attorney Anthony P O'Brien added to party Xavier Becerra(pty:dft) (ddf). (Entered: 12/05/2022)
12/05/2022	76	NOTICE of Appearance by John Darrow Echeverria on behalf of Xavier Becerra (Echeverria, John)Attorney John Darrow Echeverria added to party Xavier Becerra(pty:dft) (ddf). (Entered: 12/05/2022)
12/12/2022	77	Minute Entry for proceedings held before Judge Roger T. Benitez: Status Conference held on 12/12/2022. The state defendants shall create, and the plaintiffs shall meet and confer regarding, a survey or spreadsheet of relevant statutes, laws, or regulations in chronological order. The listing shall begin at the time of the adoption of the Second Amendment and continue through twenty years after the Fourteenth Amendment. For each cited statute/law/regulation, the survey shall provide: (a) the date of enactment; (b) the enacting state, territory, or locality; (c) a description of what was restricted (e.g., dirks, daggers, metal knuckles, storage of gunpowder or cartridges, or use regulations); (d) what it was that the law or regulation restricted; (e) what type of weapon was being restricted (e.g., knife, Bowie Knife, stiletto, metal knuckles, pistols, rifles); (f) if and when the law was repealed and whether it was replaced; (g) whether the regulation was reviewed by a court and the outcome of the courts review (with case citation). Defendants may create a second survey covering a time period following that of the first list. If opposing parties cannot agree on the inclusion of a particular entry on the survey, the disagreement shall be indicated and described on a separate list. The survey list shall be filed within 30 days. Parties may file a brief up to 25 pages within 30 days thereafter focusing on relevant analogs. Parties may file a responsive brief within 10 days thereafter. Parties shall agree within 20 days on deposing Mr. Roth and Mr. Cramer at an agreed place and time. (Court Reporter/ECR Abigail Torres). (Plaintiff Attorney Sean Brady, Chuck Michel). (Defendant Attorney Anthony P. O'Brien). (no document attached) (gxr). (Entered: 12/15/2022)
12/20/2022	78	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Status Conference held on 12/12/2022, before Judge Roger T. Benitez. Court Reporter/Transcriber Abigail R. Torres. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if

		requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 1/10/2023. Redacted Transcript Deadline set for 1/20/2023. Release of Transcript Restriction set for 3/20/2023. (smy1)(jrd) (Entered: 12/20/2022)
01/11/2023	79	DECLARATION re 77 Status Conference,,,,,, <i>Declaration re Submission of Surveys in Response to the Court's Order Entered on December 15, 2022</i> by Defendant Xavier Becerra. (Attachments: # 1 Exhibit 1: Defendant's Survey of Relevant Statutes (Pre-Founding to 1888), # 2 Exhibit 2: Defendant's Survey of Relevant Statutes (1889 to 1930s), # 3 Exhibit 3: Plaintiffs' Disagreements re Defendant's Survey of Relevant Statutes (Pre-Founding to 1930s))(Echeverria, John) (jms). (Entered: 01/11/2023)
02/07/2023	80	MINUTE ORDER issued by the Honorable Roger T. Benitez: The State defendants are directed to file a brief which identifies the best historical regulation that is a proper analogue and relevantly similar to a statewide background check for buying ammunition. The brief shall be limited to five pages and shall be filed with the brief currently due 30 days after the filing of the law list. (no document attached) (gxr) (Entered: 02/07/2023)
02/10/2023	81	SUPPLEMENTAL BRIEFING by Defendant Xavier Becerra re 77 Status Conference,,,,,, . (Echeverria, John) (ddf). (Entered: 02/10/2023)
02/10/2023	82	SUPPLEMENTAL BRIEFING by Defendant Xavier Becerra re 80 Notice (Other), <i>IN RESPONSE TO THE COURT'S ORDER ENTERED FEBRUARY 7, 2023</i> . (Echeverria, John) (ddf). (Entered: 02/10/2023)
02/10/2023	83	SUPPLEMENTAL BRIEFING by Plaintiffs AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang re 77 Status Conference,,,,,, <i>re Relevant Analogs</i> . (Brady, Sean) (ddf). (Entered: 02/10/2023)
02/16/2023	84	NOTICE of Appearance by Christina Rae Burgart Lopez on behalf of Xavier Becerra (Lopez, Christina)Attorney Christina Rae Burgart Lopez added to party Xavier Becerra(pty:dft) (ddf). (Entered: 02/16/2023)
02/21/2023	85	SUPPLEMENTAL BRIEFING by Plaintiffs AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang re 81 Supplemental Briefing, 82 Supplemental Briefing . (Brady, Sean) (ddf). (Entered: 02/21/2023)
02/21/2023	86	REPLY - Other re 83 Supplemental Briefing, <i>Defendant's Brief in Response to Plaintiffs' Brief Filed on February 10, 2023</i> filed by Xavier Becerra. (Lopez, Christina) (ddf). (Entered: 02/21/2023)
03/15/2023	87	NOTICE of Supplemental Authority by Xavier Becerra (Lopez, Christina) (ddf). (Entered: 03/15/2023)
06/30/2023	88	ORDER Setting Hearing. Signed by Judge Roger T. Benitez on 6/30/2023.(ddf) (Entered: 06/30/2023)
07/13/2023	89	RESPONSE re 88 Order, Set Motion and R&R Deadlines/Hearings <i>Order Setting Hearing</i> filed by Xavier Becerra. (Lopez, Christina) (ddf). (Entered: 07/13/2023)
07/17/2023	90	Minute Entry for proceedings held before Judge Roger T. Benitez: Preliminary Injunction Hearing held on 7/17/2023. No objections were heard as to combining the preliminary injunction hearing with a trial on the merits. Within 30 days of today, Plaintiffs shall file a declaration(s) regarding their Article III standing. Within 30 days of today, Defendant shall name and file an expert report(s) or declaration(s) regarding the American history and tradition of background checks. Within 15 days thereafter, Plaintiffs shall decide

		whether to depose said expert(s), and within 30 days after deciding, Plaintiffs shall file a brief or expert declaration(s) in response. Additionally, within 30 days of today, Defendant shall file an updated declaration regarding ammunition purchaser background check acceptance/rejection rates and processing times, as performed previously. Additionally, within 30 days of today, Defendant shall report to the extent ascertainable, on persons described in previous declarations as persons who underwent background checks and were identified as prohibited persons and indicate whether such persons were prosecuted and whether firearms were located and seized from such persons.(Court Reporter/ECR Juliet Eichenlaub). (Plaintiff Attorney Sean Brady, Konstadinas T. Morou). (Defendant Attorney Christina R. B. Lopez, John D. Echeverria). (no document attached) (gxr) (Entered: 07/18/2023)
07/25/2023	91	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Preliminary Injunction Hearing held on 7/17/2023, before Judge Roger T. Benitez. Court Reporter/Transcriber Juliet Y. Eichenlaub. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 8/15/2023. Redacted Transcript Deadline set for 8/25/2023. Release of Transcript Restriction set for 10/23/2023. (jye) (Entered: 07/25/2023)
08/16/2023	92	RESPONSE re 90 Motion Hearing,,,,, <i>Response to the Court's Order Entered on July 18, 2023</i> filed by Xavier Becerra. (Attachments: # 1 Declaration of Robert Spitzer, # 2 Exhibit A to the Spitzer Declaration, # 3 Exhibit B to the Spitzer Declaration, # 4 Exhibit C to the Spitzer Declaration, # 5 Exhibit D to the Spitzer Declaration, # 6 Exhibit E to the Spitzer Declaration, # 7 Declaration of Michael Vorenberg, # 8 Exhibit A to the Vorenberg Declaration, # 9 Declaration of Jennifer M. McCutchen, # 10 Exhibit A to the McCutchen Declaration, # 11 Fifth Supplemental Declaration of Mayra G. Morales, # 12 Declaration of Sidney Jones, # 13 Exhibit 1 to the Jones Declaration, # 14 Exhibit 2 to the Jones Declaration, # 15 Exhibit 3 to the Jones Declaration)(Echeverria, John) (ddf). (Entered: 08/16/2023)
08/17/2023	93	RESPONSE re 90 Motion Hearing,,,,, filed by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Attachments: # 1 Declaration of Kim Rhode, # 2 Declaration of Gary Brennan, # 3 Declaration of Cory Henry, # 4 Declaration of Edward Johnson, # 5 Declaration of Denise Welvang, # 6 Declaration of James Gilhousen, # 7 Declaration of Dan Wolgin, # 8 Declaration of Richard Minnich, # 9 Declaration of Jack Mullen, # 10 Declaration of Kirk Weir, # 11 Declaration of Muhamed El-Zoghbi, # 12 Declaration of Scott Parker, # 13 Declaration of Stephen Hoover, # 14 Declaration of Steven Bayrd) (Brady, Sean) (ddf). (Entered: 08/17/2023)
08/24/2023	94	NOTICE of <i>Withdrawal of Third Party and Counsel</i> by Giffords Law Center to Prevent Gun Violence & Brady (Burke, Thomas) (ddf). (Entered: 08/24/2023)
10/02/2023	95	RESPONSE re 90 Motion Hearing,,,,, filed by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Attachments: # 1 Declaration of Clayton Cramer)(Brady, Sean) (ddf). (Entered: 10/02/2023)
10/05/2023	96	OBJECTION by Xavier Becerra re 95 Response - Other, <i>Defendant's Objection to Plaintiffs' Response to Defendant's Expert Declarations</i> . (Echeverria, John) (ddf).

		(Entered: 10/05/2023)
10/10/2023	97	RESPONSE re 96 Objection filed by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (ddf). (Entered: 10/10/2023)
10/19/2023	98	ORDER Granting Leave To File Brief And Setting Status Conference. Signed by Judge Roger T. Benitez on 10/19/2023.(ddf) (Entered: 10/19/2023)
11/02/2023	99	NOTICE of Appearance by Sebastian Brady on behalf of Xavier Becerra (Brady, Sebastian)Attorney Sebastian Brady added to party Xavier Becerra(pty:dft) (ddf). (Entered: 11/02/2023)
11/02/2023	100	REPLY - Other re 98 Order, Set Deadlines/Hearings, 95 Response - Other, <i>Defendant's Reply to Plaintiffs' Response to Defendant's Expert Declaration</i> filed by Xavier Becerra. (Brady, Sebastian) (ddf). (Entered: 11/02/2023)
11/13/2023	101	Minute Entry for proceedings held before Judge Roger T. Benitez: Status Conference held on 11/13/2023. Omnibus briefs due within 30 days with a 25-page limit.(Court Reporter/ECR Juliet Eichenlaub). (Plaintiff Attorney Sean Brady). (Defendant Attorney John D. Echeverria). (no document attached) (gxr) (Entered: 11/15/2023)
12/13/2023	102	NOTICE of Appearance by Meghan H. Strong on behalf of Xavier Becerra (Strong, Meghan)Attorney Meghan H. Strong added to party Xavier Becerra(pty:dft) (sjt). (Entered: 12/13/2023)
12/13/2023	103	RESPONSE re 101 Status Conference, <i>Defendant's Omnibus Brief</i> filed by Xavier Becerra. (Echeverria, John) (sjt). (Entered: 12/13/2023)
12/13/2023	104	RESPONSE re 101 Status Conference, <i>Plaintiffs' Omnibus Brief</i> filed by AMDEP Holdings, LLC, Able's Sporting, Inc., Gary Brennan, California Rifle & Pistol Association, Incorporated, Cory Henry, Edward Johnson, Scott Lindemuth, R&S Firearms, Inc., Kim Rhode, Richard Ricks, Denise Welvang. (Brady, Sean) (sjt). (Entered: 12/13/2023)
01/30/2024	105	Decision. Signed by Judge Roger T. Benitez on 1/30/2024.(ddf) (Entered: 01/31/2024)
01/30/2024	106	CLERK'S JUDGMENT. Defendant Attorney General Rob Bonta, and his officers, agents, servants,employees, and attorneys, and those persons in active concert or participation with him, and those duly sworn state peace officers and federal law enforcement officers who gain knowledge of this injunction order or know of the existence of this injunction order, are enjoined from implementing or enforcing the ammunition sales background check provisions found in California Penal Code §§ 30352 and 30370(a) through (e), and the ammunition anti-importation provisions found in §§ 30312(a) and (b) and 30314(a), as well as the criminal enforcement of California Penal Code §§ 30312(d), 30314(c), and 30365(a). Defendant Attorney General Rob Bonta shall provide forthwith, by personal service or otherwise, actual notice of this order to all law enforcement personnel who are responsible for implementing or enforcing the enjoined statutes. Case is closed.(ddf) (Entered: 01/31/2024)
01/31/2024	107	MOTION to Stay re 105 Order <i>Renewed Request for Stay of Decision</i> by Xavier Becerra. (Lopez, Christina) (ddf). (Entered: 01/31/2024)
01/31/2024	108	NOTICE OF APPEAL to the 9th Circuit as to 105 Order, 106 Clerk's Judgment,,, by Xavier Becerra. (Filing fee \$ 605 receipt number ACASDC-18547394.) (Notice of Appeal electronically transmitted to US Court of Appeals.) (Attachments: # 1 Representation Statement)(Lopez, Christina) (dim). (Entered: 01/31/2024)

01/31/2024	109	ORDER Denying Request For Stay 107 . Signed by Judge Roger T. Benitez on 1/31/2024. (ddf) (Entered: 01/31/2024)
01/31/2024	110	USCA Case Number 24-542 for 108 Notice of Appeal to 9th Circuit,. (Attachments: # 1 Attorney Appeal Case Opening, # 2 Pro Se Appeals Case Opening, # 3 Ninth Circuit Appellate Mentoring Program, # 4 Appellate Practice Guide)(dim) (Entered: 02/01/2024)
01/31/2024	111	USCA Time Schedule Order as to 108 Notice of Appeal to 9th Circuit,. (NOTICE TO PARTIES of deadlines regarding appellate transcripts: Appellant shall file transcript designation and ordering form with the US District Court, provide a copy of the form to the court reporter, and make payment arrangements with the court reporter on or by 3/1/2024 (see Ninth Circuit Rule 10-3.1); Due date for filing of transcripts in US District Court is 4/1/2024.) (cc: Court Reporter). (dim) (Entered: 02/01/2024)
02/05/2024	112	Order of USCA - Motion to Stay Lower Court or Agency Proceedings-Order-Judgment as to 108 Notice of Appeal to 9th Circuit. (dim)(jrd) (Entered: 02/07/2024)
02/13/2024	113	TRANSCRIPT DESIGNATION AND ORDERING FORM by Xavier Becerra for proceedings held on 9/20/18, 8/19/19, 10/1/19, 4/1/20, 12/12/22, 7/17/23, 11/13/23 re 108 Notice of Appeal to 9th Circuit,. (Strong, Meghan) (dim). (Entered: 02/13/2024)
03/04/2024	114	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Status Conference held on 11/13/2023, before Judge Roger T. Benitez. Court Reporter/Transcriber Juliet Y. Eichenlaub. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 3/25/2024. Redacted Transcript Deadline set for 4/4/2024. Release of Transcript Restriction set for 6/3/2024. (ddf) (Entered: 03/04/2024)

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