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14 Attorneys for Plaintiffs

15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF SACRAMENTO**

17 POWAY WEAPONS & GEAR, INC. and
18 SGR VENTURES LLC (D/B/A
SACRAMENTO GUN RANGE),

19 Plaintiffs,

20 v.

21 CALIFORNIA DEPARTMENT OF TAX
22 AND FEE ADMINISTRATION; TRISTA
23 GONZALES, in her official capacity as
24 Director of the California Department of
Tax and Fee Administration,

25 Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
04/08/2026
By: A. Macias Deputy

Case No.: 25CV018964

**SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Date: August 25, 2026

Time: 9:00 AM

Dept: 54

Judge: The Honorable Christopher E. Krueger

Reservation ID: 896085839851

Trial Date: Not Set

Action Filed: August 11, 2025

1 Plaintiffs Poway Weapons & Gear, Inc. and SGR Ventures LLC (d/b/a Sacramento Gun
2 Range) hereby submit this Separate Statement in Support of their Motion for Summary Judgment.

3 **COUNTS**

4 Count 1: Violation of Second and Fourteenth Amendments to the U.S. Constitution

5 Count 2: Refund of Unconstitutional Taxation

6 **ISSUES COMMON TO BOTH COUNTS**

Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Responses
<p>7 No. 1: Assembly Bill 28 imposes an 11% excise tax on the retail sale of all firearms, "firearm precursor parts," and ammunition.</p> <p>8</p> <p>9 Evidence: Assem. Bill No. 28, 2023–2024 Reg. Sess. (Cal. 2023) ("AB 28"); CAL. REV. & TAX. CODE § 36001, <i>et seq.</i>; CAL. PENAL CODE §§ 26700, 26705, 30395, 34400.</p>	
<p>10</p> <p>11 No. 2: Plaintiffs Poway Weapons & Gear, Inc. and Sacramento Gun Range are licensed firearm dealers in California who sell firearms and ammunition to their customers and are taxpayers of the 11% excise tax.</p> <p>12</p> <p>13 Evidence: Exs. 1–19 to Livas Decl.; Verified Compl. at ¶¶ 10, 11, 20, 21.</p>	
<p>14</p> <p>15 No. 3: Plaintiffs have sold and will continue legally selling firearms and ammunition in California and have been and will continue to be subject to the 11% excise tax absent relief from this Court.</p> <p>16</p> <p>17 Evidence: Exs. 1–19 to Livas Decl.; Verified Compl. at ¶ 6.</p>	
<p>18</p> <p>19 No. 4: California enacted AB 28 on September 26, 2023. The excise tax on firearms took effect on July 1, 2024.</p> <p>20</p> <p>21 Evidence: CAL. REV. & TAX. CODE § 36011.</p>	

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Plaintiffs’ Undisputed Material Facts and Supporting Evidence	Defendants’ Responses
<p>No. 5: AB 28 adds Section 36011 to the California Revenue and Taxation Code, which imposes an 11% excise tax on the “gross receipts from the retail sale . . . of any firearm, firearm precursor part, or ammunition” sold by “licensed firearms dealers, firearms manufacturers, and ammunition vendors.” Proceeds from the excise tax “shall be deposited in the Gun Violence Prevention and School Safety Fund,” which exists to fund various California political initiatives.</p> <p>Evidence: CAL. REV. & TAX. CODE §§ 36005, 36011, 36041.</p>	
<p>No. 6: The Senate Public Safety Committee recognized during consideration of AB 28 that this excise tax will likely “get passed to the consumer via a higher retail price for the good in question” because “nothing in the bill precludes dealers and manufacturers from raising their prices to offset the tax and functionally passing the tax on to the consumers.”</p> <p>Evidence: Ex. A to Request for Judicial Notice (“RJN”) at 9 (<i>Firearms and Ammunition: Excise Tax, Hearing on AB-28 Before the Sen. Comm. on Pub. Safety, 2023–2024 Reg. Sess. 9</i> (Cal. 2023), https://perma.cc/58FR-3FAH).</p>	
<p>No. 7: Sellers of firearms and ammunition have added a line item to customer receipts reflecting that the 11% tax is passed on to the purchaser of firearms and ammunition.</p> <p>Evidence: Verified Compl. ¶ 11.</p>	

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Plaintiffs’ Undisputed Material Facts and Supporting Evidence	Defendants’ Responses
<p>No. 8: AB 28 dictates that “[e]ach licensed firearms dealer, firearms manufacturer, or ammunition vendor subject to the excise tax imposed . . . shall register for a certificate of registration with the department using electronic media in a form prescribed by the department” including identifying information about the business and “any other information as the department may require.” “The department may, after notice and hearing, revoke a certificate of registration for any . . . violation or omission” of AB 38, and will “notify the Department of Justice of the revocation.” Taxpayers like Plaintiffs also face “interest and penalties” beyond the 11% excise tax.</p> <p>Evidence: Verified Compl. ¶ 37; CAL. REV. & TAX. CODE §§ 36035, 36037, 36039.</p>	
<p>No. 10: Plaintiff Poway Weapons & Gear, Inc. is a licensed dealer of firearms and ammunition, which it sells at its shooting range and retail location in, Poway, California. On July 1, 2024, Poway Weapons & Gear began collecting from its customers California’s 11% excise tax on qualifying sales of firearms, firearm precursor parts, and ammunition by adding the 11% excise tax as a line item on its customers’ receipts.</p> <p>Evidence: Verified Compl. ¶¶ 10–11.</p>	
<p>No. 11: On October 1, 2024, Poway Weapons & Gear submitted payment of the 11% excise tax for its sales during the third quarter of 2024 (July 1, 2024 through September 30, 2024) to the California Department of Tax and Fee Administration. The amount of the payment was \$34,666.00.</p> <p>Evidence: Ex. 4 to Livas Decl. at 11 (PWG Payment Record, Oct. 1, 2024).</p>	

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Plaintiffs’ Undisputed Material Facts and Supporting Evidence	Defendants’ Responses
<p>No. 12: On October 22, 2024, Poway Weapons & Gear sought a refund of that payment. On November 6, 2024, the refund request was denied. In an explanation issued on November 19, 2024, the California Department of Tax and Fee Administration confirmed that it “lacks the authority” to refund a tax payment based on an argument that a statute is unconstitutional “unless an appellate court has made a determination that such statute is unconstitutional.”</p> <p>Evidence: Ex. 5 to Livas Decl.at 13 (PWG Refund Request, Oct. 22, 2024); Ex. 11 to Livas Decl. at 30 (PWG Initial Appeal Denial Mem.).</p>	
<p>No. 13: The Department “fully denied” Poway Weapons & Gear’s refund claim on May 14, 2025.</p> <p>Evidence: Ex. 1 to Livas Decl. at 2 (PWG Final Not. of Denial).</p>	
<p>No. 14: Plaintiff Poway Weapons & Gear remains subject to the unconstitutional excise tax, submitting payments quarterly as required by state law. On January 31, 2025, Poway Weapons & Gear was charged and remitted payment for \$54,990 under the excise tax.</p> <p>Evidence: Ex. 6 to Livas Decl. at 15 (PWG Q4 2024 Excise Tax Submission); Verified Compl. ¶ 28.</p>	
<p>No. 15: Plaintiff Sacramento Gun Range is also a licensed dealer of firearms and ammunition, which it sells at its shooting range and retail location in Sacramento, California. On July 1, 2024, Plaintiff Sacramento Gun Range began collecting California’s 11% excise tax on qualifying sales of firearms, firearm precursor parts, and ammunition by adding the 11% excise tax as a line item on its customers’ receipts.</p> <p>Evidence: Verified Compl. ¶¶ 20–21.</p>	

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Responses
<p>No. 16: On October 2, 2024, Plaintiff Sacramento Gun Range submitted payment of the 11% excise tax for its sales during the third quarter of 2024 (July 1, 2024, through September 30, 2024) to the California Department of Tax and Fee Administration. The amount of the payment was \$24,640.00.</p> <p>Evidence: Verified Compl. ¶ 22; Ex. 9 to Livas Decl. at 22 (SGR Payment Record, Jan. 31, 2025)</p>	
<p>No. 17: On October 22, 2024, Plaintiff Sacramento Gun Range sought a refund of that payment of \$24,640.00 from the Department. On November 19, 2024, the Department recommended full denial of Plaintiff Sacramento Gun Range's refund request, stating: "CDTFA lacks the authority to make such a determination or to order any relief."</p> <p>Evidence: Ex. 9 to Livas Decl. at 22 (SGR Refund Claim Confirmation, Oct. 22, 2024); Ex. 10 to Livas Decl. at 26 (SGR Initial Appeal Denial Mem.).</p>	
<p>No. 18: On May 14, 2025, Plaintiff Sacramento Gun Range's refund request was likewise "fully denied."</p> <p>Evidence: Ex. 7 to Livas Decl. at 17-18 (SGR Final Not. of Denial).</p>	
<p>No. 19: The California Department of Tax and Fee Administration is charged with administering and collecting the 11% excise tax.</p> <p>Evidence: CAL. REV. & TAX. CODE §§ 36001(b), 36031(a).</p>	
<p>No. 20: Defendant Trista Gonzales is the Director of the California Department of Tax and Fee Administration and enforces the 11% excise tax in her official capacity as Director.</p> <p>Evidence: CAL. REV. & TAX. CODE § 36031(a); <i>Organization Directory</i>, CAL. DEP'T OF TAX & FEE ADMIN., https://perma.cc/VQ29-LAE8.</p>	

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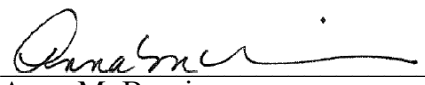
Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Responses
<p>No. 21: A group of plaintiffs had previously challenged AB 28 on constitutional grounds in the Superior Court for the County of San Diego on July 2, 2024. That suit largely mirrored this one, with plaintiffs who were California buyers of firearms and Second Amendment groups.</p> <p>Evidence: <i>Jaymes v. Maduros</i>, No. 37-2024-00031147-CU-MC-CTL.</p>	
<p>No. 22: Because the CDTFA would not proceed with the administrative proceedings while litigation was pending, <i>Jaymes</i> Plaintiffs requested dismissal on March 21, 2025, which the Court entered on April 1, 2025. PWG informed CDTFA of the dismissal, and the CDTFA resumed the administrative process in April 2025.</p> <p>Evidence: <i>Jaymes v. Maduros</i>, Request for Dismissal of Entire Action, No. 37-2024-00031147-CU-MC-CTL (March 21, 2025); <i>Jaymes v. Maduros</i>, Notice of Entry of Dismissal, No. 37-2024-00031147-CU-MC-CTL (April 1, 2025).</p>	
<p>No. 23: On March 31, 2025, PWG was charged and remitted payment for \$39,841 under the excise tax.</p> <p>Evidence: Ex. 12 to Livas Decl. at 32 (PWG March 31, 2025 payment).</p>	
<p>No. 24: On June 30, 2025, PWG was charged and remitted payment for \$30,223 under the excise tax.</p> <p>Evidence: Ex. 13 to Livas Decl. at 34 (PWG June 30, 2025 payment).</p>	
<p>No. 25: On September 30, 2025, PWG was charged and remitted payment for \$34,004 under the excise tax.</p> <p>Evidence: Ex. 14 to Livas Decl. at 36 (PWG Sep. 30, 2025 payment).</p>	

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Responses
<p>No. 26: On December 31, 2025, PWG was charged and remitted payment for \$49,742 under the excise tax.</p> <p>Evidence: Ex. 15 to Livas Decl. at 38 (PWG December 31, 2025 payment).</p>	
<p>No. 27: On March 31, 2025, SGR was charged and remitted payment for \$44,950 under the excise tax.</p> <p>Evidence: Ex. 16 to Livas Decl. at 40 (SGR March 31, 2025 payment).</p>	
<p>No. 28: On June 30, 2025, SGR was charged and remitted payment for \$33,065 under the excise tax.</p> <p>Evidence: Ex. 17 to Livas Decl. at 42 (SGR June 30, 2025 payment).</p>	
<p>No. 29: On September 30, 2025, SGR was charged and remitted payment for \$35,857 under the excise tax.</p> <p>Evidence: Ex. 18 to Livas Decl. at 44 (SGR September 30, 2025 payment).</p>	
<p>No. 30: On December 31, 2025, SGR was charged and remitted payment for \$49,647 under the excise tax.</p> <p>Evidence: Ex. 19 to Livas Decl. at 46 (SGR December 31, 2025 payment).</p>	

Dated: April 8, 2026

MICHEL & ASSOCIATES, P.C.



Anna M. Barvir
Attorneys for Plaintiffs

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

I, Laura Fera, am employed in the City of Long Beach, Los Angeles County, California. I am over the age of eighteen (18) and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

On April 8, 2026, I served the foregoing document described as:

SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

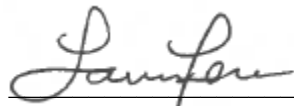
on the interested parties in this action by placing
 the original
 a true and correct copy
thereof by the following means, addressed as follows:

Asha Albuquerque
Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102
Asha.Albuquerque@doj.ca.gov
*Attorneys for Defendants California
Department of Tax and Fee Administration
and Trista Gonzalez*

- (BY MAIL) As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
- (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 8, 2026, at Long Beach, California.



Laura Fera