SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Tani G. Cantil-Sakauye Courthouse, Department 16C

JUDICIAL OFFICER: HONORABLE CHRISTOPHER E. KRUEGER

Courtroom Clerk: G. Toda
Court Attendant: G. Misasi

CSR: None

25CV018964

June 9, 2026
9:00 AM

IN THE MATTER OF: POWAY WEAPONS & GEAR, INC.

MINUTES

APPEARANCES:

Plaintiff Poway Weapons & Gear, Inc. represented by Nicholas Varone, Athansia O. Livas via virtual conference.
Plaintiff SGR Ventures LLC represented by Nicholas Varone, Athansia O. Livas via virtual conference.
Defendant California Department of Tax and Fee Administration represented by Asha Albuquerque via virtual conference.
Defendant Trista Gonzales represented by Asha Albuquerque via virtual conference.

NATURE OF PROCEEDINGS: Hearing on Demurrer to Complaint

NOTICE:

Please take notice, Department 54 has moved to Department 16C at the Tani G. Cantil-Sakauye Courthouse. The new courthouse is located at 500 G Street, Sacramento, CA 95814.

TENTATIVE RULING:

Defendants California Department of Tax and Fee Administration's ("CDTFA") and Trista Gonzalez's, in her official capacity as Director of CDTFA, (together "Defendants") demurrer to Plaintiffs Poway Weapons & Gear, Inc.'s and SGR Ventures LLC's (d/b/a Sacramento Gun Range) ("Plaintiffs") complaint is ruled on as follows.

Defendants' Notice of Demurrer stated the procedure for the Court's Presiding Judge calendar tentative ruling system pursuant to Local Rule 1.05. The Court's Law & Motion Departments use the procedures in Local Rule 1.06, which differ from Rule 1.05 in important ways. Moving counsel is directed to contact opposing counsel immediately and advise of Local Rule 1.06 and the appropriate tentative ruling procedure and manner to request a hearing. If moving counsel is unable to contact opposing counsel prior to the hearing, moving counsel is ordered to appear at the hearing in person, by Zoom or by telephone in the event opposing counsel appears without following the procedures set forth in Local Rule 1.06(B).

Defendants' unopposed request for judicial notice is GRANTED for the purposes appropriate for

judicial notice. (Evid. Code, § 453, subd. (a).) Defendants' Exhibit 1 to their request for judicial notice purports to be a "Tax Guide for Sellers of Firearm and Ammunition Products" from CDTFA's website. The Court takes notice of the document's existence but does not accept its contents as true. (*Searles Valley Minerals Operations, Inc. v. State Bd. of Equalization* (2008) 160 Cal.App.4th 514, 519.)

Background

In 2023, the California Legislature enacted Assembly Bill 28 ("AB 28"), the Gun Violence Prevention and Safety Act. (Stats. 2023, ch. 231; Defs' RJN, Exh. 2.) Among other things, AB 28 imposed "an excise tax … upon licensed firearms dealers, firearms manufacturers, and ammunition vendors, at the rate of 11 percent of the gross receipts from the retail sale in this state of any firearm, firearm precursor part, or ammunition." (AB 28, § 7 [codified at Rev. & Tax. Code, § 36011].) The excise tax became effective on July 1, 2024. (*Id.*)

Plaintiffs are licensed dealers of firearms and ammunition. (Compl, ¶¶ 10, 20.) Plaintiffs allege that they began collecting the AB 28 excise tax on July 1, 2024, and have submitted payment as required to the CDTFA. (*Id.* ¶¶ 11, 12, 21, 22.) Plaintiffs pass the cost of the tax through to their customers as a line item on customer receipts. (*Id.* ¶¶ 12, 21, 35.) Plaintiffs further allege they attempted to secure a tax refund through a CDTFA administrative process and have been fully and finally denied. (*Id.* ¶¶ 13–18, 22–27.)

On August 11, 2025, Plaintiffs filed their complaint against Defendants, arguing that the AB 28 excise tax "infringes the Second Amendment [of the United States Constitution] because it implicates conduct protected by the Second Amendment's plain text … and is not part of this Nation's history of arms regulation." (Compl., ¶ 42.) Plaintiffs also contend that AB 28 is an impermissible special tax on a constitutional right. (*Id.* ¶ 43.) Plaintiffs therefore ask the Court to declare that the excise tax violates the Second Amendment, both facially and as applied; to issue a permanent injunction against enforcement of the excise tax; and to order a refund of all AB 28 excise taxes paid by Plaintiffs. (Compl., p. 10.)

Defendants demur to the complaint on the grounds that it fails to allege facts sufficient to state a claim. Defendants argue first that Plaintiffs, as commercial retailers, are not "people" within the meaning of the Second Amendment. (Defs' Memorandum of Points & Authorities ["MPA"], at pp. 13:15–14:9.) They next argue that the AB 28 excise tax does not implicate or meaningfully constrain the rights protected by the Second Amendment. (*Id.* at pp. 14:10–18:10.) Finally, Defendants contend that Trista Gonzalez is not a proper defendant in this action. (*Id.* at pp. 20:22–26.)

Plaintiffs oppose the demurrer, arguing that the purchase and sale of firearms and ammunition are core rights protected by the Second Amendment. (Opp., at p. 10:15–27.) Therefore, Plaintiffs contend, the AB 28 excise tax is plainly unconstitutional both because it has no historical analogue and because it singles out Second Amendment rights for taxation. (*Id.* at pp. 19:13–20, 13:19–15:28.) Plaintiffs also argue that Ms. Gonzalez is a proper defendant because Plaintiffs seek injunctive relief. (*Id*. at p. 16:1–8.)

Legal Standard

The function of a demurrer is to test the sufficiency of the pleading it challenges by raising questions of law. (*Salimi v. State Comp. Ins. Fund* (1997) 54 Cal.App.4th 216, 219; *Nordlinger v. Lynch* (1990) 225 Cal.App.3d 1259, 1271.) “A demurrer tests the pleadings alone and not the evidence or other extrinsic matters.” (*SKF Farms v. Super. Ct.* (1984) 153 Cal.App.3d 902, 905.)

For the purpose of determining the effect of a complaint, its allegations are liberally construed, with a view towards substantial justice. (Code Civ. Proc. § 452; *Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140–141; *Quelimane Co., Inc. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 43, fn. 7.) In this respect, the Court treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law, and considers matters which may be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1111–1112.) The Court draws all reasonable implications and inferences in favor of upholding the complaint. (*Poseidon, supra,* 152 Cal.App.4th at p. 1112.)

A demurrer may be sustained only if the complaint lacks any sufficient allegations to entitle the plaintiff to relief. (*Financial Corp. of America v. Wilburn* (1987) 189 Cal.App.3d 764, 778.) “[P]laintiff need only plead facts showing that he may be entitled to some relief . . . [W]e are not concerned with plaintiff’s possible inability or difficulty in proving the allegations of the complaint.” (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) A demurrer admits the truth of all material facts properly pled and the sole issue raised by a general demurrer is whether the facts pled state a valid cause of action, not whether they are true. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

Analysis

The Ninth Circuit recently summarized the framework for analyzing Second Amendment challenges, incorporating recent United States Supreme Court jurisprudence:

> [W]e must begin our analysis by determining whether “the Second Amendment's plain text” covers the regulated conduct at issue. [Citation.] If it does, “the Constitution presumptively protects that conduct,” [citation], and the government must justify its regulation by demonstrating that “‘historical precedent’ from before, during, and even after the founding evinces a comparable tradition of regulation.” [Citation.] But if the text of the Second Amendment does not protect the conduct at issue, a constitutional challenge necessarily fails. [Citation.]
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> The Second Amendment ensures that “the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. This provision protects “the individual right to possess and carry weapons” for self-defense. [Citation.] Whether the Second Amendment applies depends on whether (1) the challenger is part of “the people,” (2) the instrument at issue is an “Arm[ ],” and (3) the challenger's proposed course of conduct falls within the “right ... to keep and bear Arms.” U.S. Const. amend. II, [citation].

> Where the challenger is an individual whose direct possessory right to "keep and bear Arms" is not implicated, as here, our ancillary-rights doctrine applies. Before [*N.Y. State Rifle & Pistol Association v.*] *Bruen*, we held that the Second Amendment protects some activities ancillary to the core possessory right, including the ability to acquire weapons. [Citation.] But the Second Amendment is limited in this context: it protects ancillary activities only if the regulation of such activities "meaningfully constrain[s]" the core individual possessory right. [Citation.] There is not "a freestanding right" to sell firearms that is "wholly detached from any customer's ability to acquire firearms." [Citations.] A vendor challenging a firearms regulation must be able to demonstrate that the would-be purchasers' core right of possession is being meaningfully constrained. [Citation.]
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> *Bruen* did not abrogate our ancillary-rights doctrine. [Citations.] This doctrine is based on the text of the Second Amendment, which we have interpreted as prohibiting "meaningful constraints" on the right to possess firearms. [Citation.]

(*United States v. Vlha* (9th Cir. 2025) 142 F.4th 1194, at 1197–1198 [*Vlha*].) This framework is well established. (See *Nguyen v. Bonta* (9th Cir. 2025) 140 F.4th 1237, 1241–1242; *B & L Productions, Inc. v. Newsom* (9th Cir. 2024) 104 F.4th 108, 118–119 [*B & L Productions*]; *Teixiera v. County of Alameda* (9th Cir. 2017) 873 F.3d 670, 676–678 [*Teixiera*], abrogated on other grounds by *N.Y. State Rifle & Pistol Association v. Bruen* (2022) 597 U.S. 1 [*Bruen*].)

<u>The *Bruen* Test</u>

Under the *Bruen* test, a court first determines whether the plain text of the Second Amendment covers the conduct at issue. (*Vlha, supra,* at p. 1197.) Here, Plaintiffs, commercial retailers, want to sell firearms without paying the AB 28 excise tax (whether that cost is paid by them or passed on to their customers).

Defendants argue that Plaintiffs are not among "the people" the Second Amendment protects, and thus the analysis fails at the outset. Although the Second Amendment directly protects only an "*individual* right to keep and bear arms for self-defense" (*Bruen, supra,* at p. 17 [emphasis added]), courts have consistently allowed commercial retail sellers of firearms and ammunition to assert rights on behalf of their customers in court. For example, the Ninth Circuit observed in one case that "the would-be operator of a gun store . . . has derivative standing to assert the subsidiary right to acquire arms on behalf of his potential customers." (*Teixiera, supra,* at p. 678; *B & L Productions, supra,* 104 F.4th 108 [suit by gun sellers].) The Court construes Plaintiffs' complaint to allege that the law is unconstitutional on behalf of their customers and then to assert Plaintiffs' right to a tax refund on that basis.

Plaintiffs, for their part, argue that the right to acquire and to sell firearms is within the plain text of the Second Amendment and presumptively protected. This is not correct. "On its face, [the Second Amendment] says nothing about commerce, ..." (*B & L Productions, supra,* at pp. 117–118.) The right to acquire a firearm and ammunition is ancillary to the "core individual possessory right" of the Second Amendment. (*Vlha, supra,* at p. 1198.) There is no right to sell a

firearm unconnected to the rights to keep and bear arms. (*Teixiera, supra,* at pp. 686–687; accord *Vlha, supra,* at p. 1198; *B & L Productions, supra,* at p. 118.)

The Court finds that the plain text of the Second Amendment does not cover the conduct affected by the AB 28 excise tax. The Court therefore does not progress to the second step of the *Bruen* test, historical analysis.

However, because a right to purchase and sell firearms and ammunition is ancillary to the core protections of the Second Amendment, Plaintiffs' claims do not immediately fail. The complaint may state a claim based on the "meaningful constraint" test.

Meaningful Constraint Test

The Second Amendment protects ancillary activities only if the regulation of such activities meaningfully constrains the core individual possessory right. (*Vlha, supra,* at p. 1198.) In this instance, the test is whether AB 28's excise tax has meaningfully constrained any individual's right to bear and keep arms.

Again, the Ninth Circuit recently summarized this analysis:

> We have not defined all the contours of the meaningful-constraint test. But a few examples help clarify its scope. Prohibiting an entire group from purchasing firearms—if the members of the group have the right to possess firearms—would meaningfully constrain their rights. Similarly, "a ban on all sales of a certain type of gun or ammunition in a region generally implicates the Second Amendment." *B & L Prods.*, 104 F.4th at 119. But "a minor constraint on the precise locations within a geographic area where one can acquire firearms does not." *Id.* Indeed, the plaintiffs in *Teixeira* were not permitted to open a gun store in Alameda County, California because they could not find a location for the store that was more than 500 feet away from schools, day care centers, liquor stores, other gun stores, and residential areas, as required by the local zoning ordinance. 873 F.3d at 674, 676. But we rejected their Second Amendment challenge because their complaint demonstrated that "Alameda County residents may freely purchase firearms within the County." That is, plaintiffs did not show that the core possessory right of would-be purchasers was meaningfully constrained by the zoning ordinance. *See id.* at 680–81.
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> Similarly, in *B & L Productions*, gun show operators challenged statutes restricting firearm sales on government property that functionally prohibited gun shows from being held at county fairgrounds. *See* 104 F.4th at 111–12. We also rejected their Second Amendment challenge because they did not allege "that a ban on sales on state property would impair a single individual from keeping and bearing firearms." *Id.* at 119. There were "six licensed firearm dealers" located in the relevant zip code and we reasoned that "[m]erely eliminating one environment where individuals may purchase guns does not constitute a meaningful constraint on Second Amendment rights when they can acquire the same firearms down the

> street." *Id.*
>
> Conversely, in *Nguyen* we recently held that restricting buyers to purchasing one firearm within a 30-day period meaningfully constrains the core right of possession. *Nguyen*, 140 F.4th at 1240-44. And that restriction was also invalid as to sellers. Both buyers and sellers were subject to penalties for violating the 30-day restriction and the plaintiffs in that case included both buyers and sellers. *See id.* at 1239-41.

(*Vlha, supra,* at pp. 1198–1199.) To state a claim of "meaningful constraint" according to *B & L Productions* and *Teixiera*, Plaintiffs must allege that the AB 28 excise tax has the effect at least of making it more difficult for some individual or individuals to buy firearms or ammunition.

Plaintiffs allege that they collected excise tax from their customers and remitted it to the CDTFA. (Compl., ¶¶ 11, 12, 21, 22.) But even drawing all reasonable implications and inferences in favor of upholding the complaint, the Court cannot find an allegation that any individual has been burdened, discouraged, or effectively prohibited from purchasing a firearm because of the AB 28 excise tax. Plaintiffs therefore fail to state a claim that the AB 28 excise tax imposes a meaningful constraint on individual Second Amendment rights.

<u>Impermissible Tax on a Constitutional Right</u>

Plaintiffs argue separately, outside the Bruen framework, that the AB 28 excise tax is an unconstitutional special tax that targets a constitutional right. Plaintiffs cite a line of cases in which the United States Supreme Court struck down regulations or taxes burdening constitutional rights, the "fee jurisprudence" cases. (*United States v. Robinson* (11th Cir. 2025) 2025 WL 870981, at *6.) In *Murdock v. Pa.*, the high court determined that door-to-door solicitations by Jehovah's Witnesses were religious rather than commercial in nature, and the individuals were therefore exempt from having to purchase a solicitor's license. ((1946) 319 U.S. 105). In *Harper v. Va. State Bd. of Elections*, a poll tax was held unconstitutional because wealth had no relationship to voter qualifications. ((1966) 383 U.S. 663.) And in *Minneapolis Star & Tribune Co. v. Minn. Commissioner of Revenue*, the court invalidated a use tax on paper and ink that in practical effect applied to only a few of the state's largest newspapers. ((1983) 460 U.S. 575.)

The Court is not convinced that the fee jurisprudence cases proposed by Plaintiffs fit the facts they allege regarding the AB 25 excise tax. In *Murdock, Harper,* and *Star & Tribune* the rights burdened by fees or taxes were the <u>direct</u> constitutional rights of religious and journalistic expression and voting. But as discussed above, the Constitution grants no "freestanding right to sell firearms." (*Teixiera, supra,* at p. 687.) The right to purchase firearms and ammunition is ancillary and subsidiary to the core right to keep and bear arms.

Further, the fees or taxes at issue in *Murdock, Harper,* and *Star & Tribune* impinged directly upon the person or entity exercising their rights. AB 28 instead imposes an excise tax "upon licensed firearms dealers, firearms manufacturers, and ammunition vendors." (Rev. & Tax. Code, § 36011.) Plaintiffs allege that they have passed the cost on to individuals (Compl., ¶¶ 11,

21), but Plaintiffs are not required to do so. "The *retailer* is the taxpayer, *not* the consumer." (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1108.)

Even if the Plaintiffs were directly exercising a right protected by the Second Amendment, "fee jurisprudence" does not apply in the context of the Second Amendment. This is because "fee jurisprudence" is a form of means-end scrutiny, an analysis of regulation in relation to legitimate state interests. (*United States v. Robinson, supra,* 2025 WL 870981, at p. *6 (per curiam).) The *Bruen* framework explicitly rejects means-end analysis under the Second Amendment. (*Bruen, supra,* at p. 24.)

Defendants also note that the federal government has imposed a federal excise tax on firearms and ammunition for over a hundred years. (MPA, at pp. 9:16–10:12.) Plaintiffs appear to assert that this tax is of questionable constitutionality based on recent Supreme Court opinions (Opp., at p. 13:4–18), but the Court was not able to find any opinion questioning, much less invalidating, the federal tax. (See, e.g., *United States v. Robinson, supra,* 2025 WL 870981, at p. *6.)

For these reasons, the Court finds that the AB 28 excise tax is not an impermissible special tax burdening a constitutional right.

To be sure, as Plaintiffs quote, the "right to tax, without limit or control, is essentially a power to destroy." (Opp., at p. 14:10–11 [quoting *McCulloch v. Md.* (1819) 17 U.S. 316, 319].) But Plaintiffs fail to cite authority or persuade that *any amount* of tax imposed on the sale of firearms or ammunition is impermissible. "[N]othing in our opinion should be taken to cast doubt on … laws imposing conditions and qualification on the commercial sale of arms." (*D.C. v. Heller* (2008) 554 U.S. 570, 626–627.) Rather than an absolute "no tax" rule under fee jurisprudence, the Court finds the correct analytical framework for the AB 28 excise tax is again the "meaningful constraint" test.

Facial Challenge

Plaintiffs ask the Court to declare that the excise tax violates the Second Amendment "both facially and as-applied." (Compl., p. 10.) A facial challenge asserts that "no set of circumstances exists under which the Act would be valid." (*U.S. v. Rahimi* (2024) 602 U.S. 680, 693.) Thus, if the challenged government action is shown to be permissible in its application as to Plaintiffs, the "facial" challenge must also fail. (*Ibid.*)

Because the Court has found that the AB 28 excise tax is not unconstitutional as applied against Plaintiffs, the Court must find that the AB 28 excise tax is not facially unconstitutional. Defendants' demurrer to Plaintiffs' complaint is SUSTAINED.

Defendant Trista Gonzalez

Defendants assert that Director Gonzalez is not a proper defendant because an action for the refund of excise taxes must be brought against CDTFA.

Plaintiffs' complaint does not clearly state the statutory bases for its claims. The prayer for relief

cites Revenue & Taxation Code section 36011 et seq. and Code of Civil Procedure section 526 et seq. (Compl., at p. 10.) The complaint also refers to Revenue & Taxation Code section 55243. (*Id.*, ¶ 8.) These are, respectively, portions of AB 28, the general laws of civil procedure regarding injunctions, and the statutory basis for claiming a refund of taxes. The proper defendant in an action under Section 55243 is CDTFA. (Rev. & Tax. Code, § 55243; *McClain v. Sav-On Drugs* (2019) 6 Cal.5th 951, 957.)

On demurrer the Court draws all reasonable implications and inferences in favor of upholding the complaint. Plaintiff's complaint alleges that the AB 28 excise tax is a violation of the federal Constitution and seeks declarative and injunctive relief. These are the hallmarks of a federal civil rights claim under section 1983, title 42 of the United States Code. (See *Regina v. Cal.* (2023) 89 Cal.App.5th 386, 399.) The director of an agency, in an official capacity, is a proper defendant in a federal civil rights suit for prospective injunctive relief, such as this one. (*Id.* at p. 399, fn. 10.)

To this extent only, Defendants' demurrer on the ground that Director Gonzalez is an improper defendant is OVERRULED.

Disposition

Defendants' demurrer to Plaintiffs' complaint is SUSTAINED in part and OVERRULED in part.

The Court GRANTS leave to amend to attempt to state a claim within the meaningful constraint framework. "If the plaintiff has not had an opportunity to amend the complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) Leave to amend is granted as this is Defendants' first challenge to the complaint on which the Court has ruled.

Plaintiffs may file and serve an Amended Complaint no later than June 25, 2026. Defendants shall respond as directed by Code of Civil Procedure section 471.5 and California Rules of Court rule 3.3120(j).

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc., § 1019.5; Cal. Rules of Court, rule 3.1312.)

COURT RULING:

The matter was argued and submitted. The Court affirmed the tentative ruling. The Court also vacated the two motions for summary judgment scheduled/reserved for 09/08/2026.

/s/ G. Toda

By: G. Toda, Deputy Clerk

Minutes of: 06/09/2026
Entered on: 06/09/2026