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*his official capacity as Attorney General of*  
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*in his official capacity as Interim Director of*  
 9 *the Department of Justice Bureau of*  
*Firearms*

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

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 14  
 15 **JAMES MILLER, an individual;**  
 16 **PATRICK RUSS, an individual;**  
 17 **RYAN PETERSON, an individual;**  
 18 **and SAN DIEGO COUNTY GUN**  
**OWNERS POLITICAL ACTION**  
**COMMITTEE, a membership**  
**organization,**

19-cv-1537-BEN-JLB

**DEFENDANTS' ANSWER TO  
 COMPLAINT FOR  
 DECLARATORY AND  
 INJUNCTIVE RELIEF**

19 Plaintiffs,

20 v.

Judge: Hon. Roger T. Benitez  
 Courtroom: 5A  
 Action Filed: August 15, 2019

21 **XAVIER BECERRA, in his official**  
 22 **capacity as Attorney General of**  
 23 **California; and MARTIN HORAN, in**  
 24 **his official capacity as Chief of the**  
**Department of Justice Bureau of**  
**Firearms,**

25 Defendants.

1 Defendants Xavier Becerra, in his official capacity as Attorney General of the  
2 State of California, and Brent E. Orick, in his official capacity as Interim Director  
3 of the Department of Justice Bureau of Firearms<sup>1</sup> (together, “Defendants”) submit  
4 their answer in response to Plaintiffs’ Complaint for Declaratory and Injunctive  
5 Relief (the “Complaint”) (Dkt. No. 1). Defendants hereby answer the Complaint, in  
6 paragraphs that correspond to the Complaint’s paragraphs, as follows:

## 7 INTRODUCTION<sup>2</sup>

8 1. The allegations in paragraph 1 characterize Plaintiffs’ claims and  
9 requested relief and are not averments of fact to which Defendants are required to  
10 respond. To the extent a response is required, Defendants deny the allegations in  
11 paragraph 1.

12 2. Defendants admit that the District Court in *Duncan v. Becerra*, Case  
13 No. 17-cv-1017-BEN-JLB (S.D. Cal.), issued a preliminary injunction on June 29,  
14 2017, enjoining enforcement of California Penal Code § 32310(c) and (d), *Duncan*  
15 *v. Becerra*, 265 F. Supp. 3d 1106 (S.D. Cal. 2017); that the District Court entered a  
16 final judgment on March 29, 2019, enjoining California Penal Code § 32310 in its  
17 entirety, *Duncan v. Becerra*, 366 F. Supp. 3d 1131 (S.D. Cal. 2019); that the  
18 District Court issued an order on April 4, 2019, staying the final judgment pending  
19 resolution of the appeal, *Duncan v. Becerra*, 2019 WL 1510340 (S.D. Cal. Apr. 4,  
20 2019); that the District Court’s final judgment and orders in *Duncan v. Becerra*  
21 speak for themselves; and that the judgment in *Duncan v. Becerra* is currently  
22 pending appeal before the Ninth Circuit Court of Appeals, Case No. 19-55376.  
23 Otherwise, the allegations in paragraph 2 characterize Plaintiffs’ claims and legal

24 \_\_\_\_\_  
25 <sup>1</sup> Brent E. Orick has replaced Marin Horan, former Director of the  
26 Department of Justice Bureau of Firearms. Under Federal Rule of Civil  
27 Procedure 25(d), Brent E. Orick is automatically substituted for Martin Horan as a  
28 defendant in this action.

<sup>2</sup> For the convenience of the Court and the parties, Defendants utilize certain  
headings set forth in the Complaint. In doing so, Defendants neither admit nor  
deny any allegations that may be suggested by the Complaint’s headings.

1 conclusions and are not averments of fact to which Defendants are required to  
2 respond. To the extent a response is required, and except as specifically admitted,  
3 Defendants deny the allegations in paragraph 2.

4 **THE PARTIES**

5 3. Defendants lack sufficient knowledge or information to form a belief as  
6 to the truth of the allegations in the first, second, third, fourth, fifth, and eighth  
7 sentences of paragraph 3, and on that basis, deny each and every allegation therein.  
8 The allegations in the sixth and seventh sentences of paragraph 3 characterize  
9 Plaintiffs' claims and legal conclusions and are not averments of fact to which  
10 Defendants are required to respond. To the extent a response is required,  
11 Defendants deny the allegations in the sixth and seventh sentences of paragraph 3.

12 4. Defendants lack sufficient knowledge or information to form a belief as  
13 to the truth of the allegations in the first, second, third, fourth, fifth, and eighth  
14 sentences of paragraph 4, and on that basis, deny each and every allegation therein.  
15 The allegations in the sixth and seventh sentences of paragraph 4 characterize  
16 Plaintiffs' claims and legal conclusions and are not averments of fact to which  
17 Defendants are required to respond. To the extent a response is required,  
18 Defendants deny the allegations in the sixth and seventh sentences of paragraph 4.

19 5. Defendants lack sufficient knowledge or information to form a belief as  
20 to the truth of the allegations in the first, second, third, fourth, fifth, and eighth  
21 sentences of paragraph 5, and on that basis, deny each and every allegation therein.  
22 The allegations in the sixth and seventh sentences of paragraph 5 characterize  
23 Plaintiffs' claims and legal conclusions and are not averments of fact to which  
24 Defendants are required to respond. To the extent a response is required,  
25 Defendants deny the allegations in the sixth and seventh sentences of paragraph 5.

26 6. Defendants lack sufficient knowledge or information to form a belief as  
27 to the truth of the allegations in the first and second sentences of paragraph 6, and  
28 on that basis, deny each and every allegation therein. The allegations in the third

1 sentence of paragraph 6 characterize Plaintiffs’ claims and legal conclusions and  
2 are not averments of fact to which Defendants are required to respond. To the  
3 extent a response is required, Defendants deny the allegations in the third sentence  
4 of paragraph 6.

5 7. Defendants admit that Xavier Becerra is the Attorney General of the  
6 State of California, that the Complaint names the Attorney General as a defendant  
7 in his official capacity, that the Attorney General is the chief law officer of the State  
8 of California, and that the Attorney General and the Department of Justice maintain  
9 an office in San Diego, California. Defendants also admit that article V, section 13,  
10 of the California Constitution speaks for itself. Otherwise, the allegations  
11 contained in paragraph 7 are conclusions of law and not averments of fact to which  
12 Defendants are required to respond. To the extent a response is required, and  
13 except as specifically admitted, Defendants deny the allegations in paragraph 7.

14 8. Defendants admit that Brent E. Orick is the Interim Director of the  
15 Department of Justice Bureau of Firearms and that the Complaint names him as a  
16 defendant in his official capacity. Otherwise, the allegations contained in  
17 paragraph 8 are conclusions of law and not averments of fact to which Defendants  
18 are required to respond. To the extent a response is required, and except as  
19 specifically admitted, Defendants deny the allegations in paragraph 8.

20 **JURISDICTION AND VENUE**

21 9. Defendants admit that this Court has jurisdiction over this action. Except  
22 as specifically admitted, Defendants deny the allegations in paragraph 9.

23 10. Defendants admit that venue is proper in this Court. Except as  
24 specifically admitted, Defendants deny the allegations in paragraph 10.

25 **CONSTITUTIONAL AND STATUTORY BACKGROUND**

26 11. Defendants admit that the Second Amendment to the United States  
27 Constitution and the judicial opinion referenced in paragraph 11 speak for  
28

1 themselves. Except as specifically admitted, Defendants deny the allegations in  
2 paragraph 11.

3 12. Defendants admit that the judicial opinion referenced in paragraph 12  
4 speaks for itself. Except as specifically admitted, Defendants deny the allegations  
5 in paragraph 12.

6 13. Defendants admit that the judicial opinion referenced in paragraph 13  
7 speaks for itself. Except as specifically admitted, Defendants deny the allegations  
8 in paragraph 13.

9 14. Defendants admit that the judicial opinions referenced in paragraph 14  
10 speak for themselves. Otherwise, the allegations in paragraph 14 characterize  
11 Plaintiffs’ claims and legal conclusions and are not averments of fact to which  
12 Defendants are required to respond. To the extent a response is required, and  
13 except as specifically admitted, Defendants deny the allegations in paragraph 14.

14 15. Defendants deny the allegations in paragraph 15, including the  
15 allegations in footnote 1.

16 16. The allegations in paragraph 16 characterize Plaintiffs’ claims and legal  
17 conclusions and are not averments of fact to which Defendants are required to  
18 respond. To the extent a response is required, Defendants deny the allegations in  
19 paragraph 16.

20 17. Defendants admit that the judicial opinion referenced in paragraph 17  
21 speaks for itself. Otherwise, the allegations in paragraph 17 characterize Plaintiffs’  
22 claims and legal conclusions and are not averments of fact to which Defendants are  
23 required to respond. To the extent a response is required, and except as specifically  
24 admitted, Defendants deny the allegations in paragraph 17.

25 18. Defendants admit that the judicial opinions referenced in paragraph 18  
26 speak for themselves. Otherwise, the allegations in paragraph 18 characterize  
27 Plaintiffs’ claims and legal conclusions and are not averments of fact to which  
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1 Defendants are required to respond. To the extent a response is required, and  
2 except as specifically admitted, Defendants deny the allegations in paragraph 18.

3 19. The allegations in paragraph 19 characterize Plaintiffs' claims and legal  
4 conclusions and are not averments of fact to which Defendants are required to  
5 respond. To the extent a response is required, Defendants deny the allegations in  
6 paragraph 19.

7 20. Defendants admit that the statutes, regulation, and judicial opinion  
8 referenced in paragraph 20 speak for themselves. Otherwise, the allegations in  
9 paragraph 20 characterize Plaintiffs' claims and legal conclusions and are not  
10 averments of fact to which Defendants are required to respond. To the extent a  
11 response is required, and except as specifically admitted, Defendants deny the  
12 allegations in paragraph 20.

13 21. Defendants admit that the statute and legislation referenced in  
14 paragraph 21 speak for themselves. Otherwise, the allegations in paragraph 21  
15 characterize Plaintiffs' claims and legal conclusions and are not averments of fact  
16 to which Defendants are required to respond. To the extent a response is required,  
17 and except as specifically admitted, Defendants deny the allegations in  
18 paragraph 21.

19 22. Defendants admit that the statute and legislation referenced in  
20 paragraph 22 speak for themselves. Otherwise, the allegations in paragraph 22  
21 characterize Plaintiffs' claims and legal conclusions and are not averments of fact  
22 to which Defendants are required to respond. To the extent a response is required,  
23 and except as specifically admitted, Defendants deny the allegations in  
24 paragraph 22.

25 23. Defendants admit that the legislation and Legislative Counsel's digest  
26 referenced in paragraph 23 speak for themselves. Otherwise, the allegations in  
27 paragraph 23 characterize Plaintiffs' claims and legal conclusions and are not  
28 averments of fact to which Defendants are required to respond. To the extent a

1 response is required, and except as specifically admitted, Defendants deny the  
2 allegations in paragraph 23.

3 24. Defendants admit that the statutes referenced in paragraph 24 speak for  
4 themselves. Otherwise, the allegations in paragraph 24 characterize Plaintiffs’  
5 claims and legal conclusions and are not averments of fact to which Defendants are  
6 required to respond. To the extent a response is required, and except as specifically  
7 admitted, Defendants deny the allegations in paragraph 24.

8 25. The allegations in paragraph 25 characterize Plaintiffs’ claims and legal  
9 conclusions and are not averments of fact to which Defendants are required to  
10 respond. To the extent a response is required, Defendants lack sufficient  
11 knowledge or information to form a belief as to the truth of the allegations in  
12 paragraph 25, and on that basis, deny the allegations in paragraph 25.

13 **CLAIMS FOR RELIEF**

14 **COUNT I**

15 **Challenge to Pen. Code §§ 30515(a)(2), 30515(a)(5)**  
16 **Against All Defendants**

17 26. Defendants incorporate by reference herein their responses contained in  
18 paragraphs 1 through 25, inclusive.

19 27. Defendants admit that the statute and regulation referenced in  
20 paragraph 27 speak for themselves. Otherwise, Defendants lack sufficient  
21 knowledge or information to form a belief as to the truth of the allegations in the  
22 first sentence of paragraph 27, and on that basis, and except as specifically  
23 admitted, deny each and every allegation in the first sentence of paragraph 27.  
24 Additionally, the allegations in paragraph 27 are legal conclusions and not  
25 averments of fact to which Defendants are required to respond. To the extent a  
26 response is required, and except as specifically admitted, Defendants deny the  
27 allegations in paragraph 27.  
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1           28. Defendants admit that the statute and regulation referenced in the first  
2 and second sentences of paragraph 28 speak for themselves. Otherwise, Defendants  
3 lack sufficient knowledge or information to form a belief as to the truth of the  
4 allegations in the first and second sentences of paragraph 28, and on that basis, and  
5 except as specifically admitted, deny each and every allegation therein. The  
6 allegation in the third sentence of paragraph 28 is a legal conclusion and not an  
7 averment of fact to which Defendants are required to respond. To the extent a  
8 response is required, and except as specifically admitted, Defendants deny the  
9 allegation in the third sentence of paragraph 28.

10           29. Defendants admit that the statute referenced in paragraph 29 speaks for  
11 itself. Otherwise, Defendants lack sufficient knowledge or information to form a  
12 belief as to the truth of the allegations in paragraph 29, and on that basis, and except  
13 as specifically admitted, deny each and every allegation in paragraph 29.

14           30. Defendants admit that the Penal Code and the specific sections of the  
15 Penal Code referenced in paragraph 30 speak for themselves. Otherwise, the  
16 allegations in paragraph 30 are legal conclusions and not averments of fact to which  
17 Defendants are required to respond. To the extent a response is required, and  
18 except as specifically admitted, Defendants deny the allegations in paragraph 30.

19           31. Defendants admit that the judicial opinion referenced in paragraph 31  
20 speaks for itself. Otherwise, the allegations in paragraph 31 are legal conclusions  
21 and not averments of fact to which Defendants are required to respond. To the  
22 extent a response is required, and except as specifically admitted, Defendants deny  
23 the allegations in paragraph 31.

24           32. Defendants admit that the statutes referenced in paragraph 32 speak for  
25 themselves. Otherwise, the allegations in paragraph 32 characterize Plaintiffs'  
26 claims and requested relief and are not averments of fact to which Defendants are  
27 required to respond. To the extent a response is required, and except as specifically  
28 admitted, Defendants deny the allegations in paragraph 32.



1 33. Defendants admit that the statutes referenced in paragraph 33 speak for  
2 themselves. Otherwise, the allegations in paragraph 33 characterize Plaintiffs'  
3 claims and requested relief and are not averments of fact to which Defendants are  
4 required to respond. To the extent a response is required, and except as specifically  
5 admitted, Defendants deny the allegations in paragraph 33.

6 34. Defendants admit that the statutes referenced in paragraph 34 speak for  
7 themselves. Otherwise, the allegations in paragraph 34 characterize Plaintiffs'  
8 claims and requested relief and are not averments of fact to which Defendants are  
9 required to respond. To the extent a response is required, and except as specifically  
10 admitted, Defendants deny the allegations in paragraph 34.

11 **PRAYER FOR RELIEF**

12 35. Defendants deny that Plaintiffs are entitled to the requested relief set  
13 forth in line 19 on page 18 of the Complaint through line 15 on page 19 of the  
14 Complaint, or to any relief whatsoever. To the extent the Prayer for Relief contains  
15 any allegations to which a response is required, Defendants deny them.

16 **AFFIRMATIVE DEFENSES**

17 In addition to the foregoing responses to the Complaint, and without admitting  
18 any allegations contained therein, Defendants assert the following affirmative  
19 defenses based on information and belief:

20 **FIRST AFFIRMATIVE DEFENSE**

21 The Complaint, and the claims for relief alleged therein, fails to state facts  
22 sufficient to constitute a cause of action.

23 **SECOND AFFIRMATIVE DEFENSE**

24 Plaintiffs' claims in this action are barred because Plaintiffs lack standing to  
25 bring them.

26 **THIRD AFFIRMATIVE DEFENSE**

27 The Complaint, and each claim for relief alleged therein, is improper because  
28 Plaintiffs have an adequate remedy at law.

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**FOURTH AFFIRMATIVE DEFENSE**

The Complaint, and each claim for relief alleged therein, is barred by the equitable doctrines of estoppel, laches, unclean hands, and/or waiver.

**FIFTH AFFIRMATIVE DEFENSE**

To the extent Defendants have undertaken any conduct with respect to the subjects and events underlying the Complaint, such conduct was, at all times material thereto, undertaken in good faith and in reasonable reliance on existing law.

**SIXTH AFFIRMATIVE DEFENSE**

Defendants have not knowingly or intentionally waived any applicable affirmative defense. Defendants reserve the right to assert and rely upon additional affirmative defenses to the extent they are applicable.

WHEREFORE, Defendants pray that:

1. Plaintiffs take nothing by reason of their Complaint;
2. Judgment be entered in favor of Defendants and adverse to Plaintiffs;
3. Defendants be awarded costs incurred in defending this action; and
4. Defendants be awarded such further relief that the Court may deem just and proper.

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Dated: September 6, 2019

Respectfully Submitted,

XAVIER BECERRA  
Attorney General of California  
MARK R. BECKINGTON  
Supervising Deputy Attorney General

/s/ John D. Echeverria  
JOHN D. ECHEVERRIA  
Deputy Attorney General  
*Attorneys for Defendants Xavier  
Becerra, in his official capacity as  
Attorney General of the State of  
California, and Brent E. Orick, in  
his official capacity as Interim  
Director of the Department of  
Justice Bureau of Firearms*

## CERTIFICATE OF SERVICE

Case Name: **James Miller, et al. v.  
Xavier Becerra, et al.**

Case No. **19-cv-1537 BEN-JLB**

I hereby certify that on September 6, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' ANSWER TO COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

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 6, 2019, at Los Angeles, California.

\_\_\_\_\_  
Colby Luong  
Declarant

\_\_\_\_\_  
/s/ Colby Luong  
Signature

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