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15 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT
17 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

18 JAMES MILLER; PATRICK RUSS,
19 WENDY HAUFFEN; NEIL
20 RUTHERFORD; ADRIAN SEVILLA;
21 RYAN PETERSON; GUNFIGHTER
22 TACTICAL, LLC; JOHN PHILLIPS;
23 PWGG, L.P.; SAN DIEGO COUNTY
24 GUN OWNERS PAC; CALIFORNIA
25 GUN RIGHTS FOUNDATION;
26 SECOND AMENDMENT
27 FOUNDATION; and FIREARMS
28 POLICY COALITION, INC.,
Plaintiffs,

vs.

CALIFORNIA ATTORNEY GENERAL
XAVIER BECERRA; and DOJ
BUREAU OF FIREARMS DIRECTOR
BRENT ORICK,
Defendants.

Case No. 3:19-cv-01537-BEN-JLB

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

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COMPLAINT

COME NOW the Plaintiffs, James Miller, Patrick Russ, Wendy Hauffen, Neil Rutherford, Adrian Sevilla, Ryan Peterson, Gunfighter Tactical, LLC (“Gunfighter Tactical”), John Phillips, PWGG, L.P. (“PWG”), San Diego County Gun Owners Political Action Committee (“SDCGO”), California Gun Rights Foundation (“CGF”), Second Amendment Foundation (“SAF”), and Firearms Policy Coalition, Inc. (“FPC”) (“Plaintiffs”), by and through their undersigned counsel, and complain of Defendants as follows:

THE PARTIES

1. Plaintiff James Miller is a natural person, a resident of the County of San Diego, California, and is not legally prohibited from possessing firearms. Mr. Miller holds an active license to carry a concealed weapon (“CCW”) issued by his county sheriff under California Penal Code¹ § 26150, et seq., after proving “good cause” and “good moral character” to that licensing authority, successfully completing a course of training on the law and firearms proficiency, passing an extensive Live Scan-based Department of Justice background check, and placement into the “Rap Back” system for monitoring law enforcement contact, arrests, and criminal convictions. Plaintiff Miller is a member and Board Member

¹ All further references to statutes are to the California Penal Code unless otherwise specified.

1 of Plaintiff San Diego County Gun Owners PAC. Plaintiff Miller is also a member
2 of Plaintiffs California Gun Rights Foundation, Second Amendment Foundation,
3 and Firearms Policy Coalition, Inc.
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5 2. Plaintiff Patrick Russ is a natural person, a resident of the County of
6 San Diego, California, and is not legally prohibited from possessing firearms.
7 Mr. Russ holds an active license to carry a concealed weapon (“CCW”) issued by
8 his county sheriff under Penal Code § 26150, et seq., after proving “good cause”
9 and “good moral character” to that licensing authority, successfully completing a
10 course of training on the law and firearms proficiency, passing an extensive Live
11 Scan-based Department of Justice background check, and placement into the “Rap
12 Back” system for monitoring law enforcement contact, arrests, and criminal
13 convictions. Plaintiff Russ is a member of Plaintiff San Diego County Gun Owners
14 PAC. Plaintiff Russ is also a member of Plaintiffs California Gun Rights
15 Foundation, Second Amendment Foundation, and Firearms Policy Coalition, Inc.
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20 3. Plaintiff Wendy Hauffen is a natural person, a resident of the County of San
21 Diego, California, and is not legally prohibited from possessing firearms. Plaintiff
22 Hauffen is a wife, mother, and certified firearms instructor, specializing in
23 instructing women and novice shooters in the safe and proficient use of firearms
24 for self-defense and other lawful purposes. Plaintiff Hauffen holds an active license
25 to carry a concealed weapon (“CCW”) issued by her county sheriff under Penal
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1 Code § 26150, et seq., after proving “good cause” and “good moral character” to
2 that licensing authority, successfully completing a course of training on the law and
3 firearms proficiency, passing an extensive Live Scan-based Department of Justice
4 background check, and placement into the “Rap Back” system for monitoring law
5 enforcement contact, arrests, and criminal convictions. Plaintiff Hauffen is a
6 member of Plaintiff San Diego County Gun Owners PAC. Plaintiff Hauffen is also
7 a member of Plaintiffs California Gun Rights Foundation, Second Amendment
8 Foundation, and Firearms Policy Coalition, Inc.

12 4. Plaintiff Neil Rutherford is a natural person, a resident of the County
13 of San Diego, California, and is not legally prohibited from possessing firearms.
14 Plaintiff Rutherford is a member of Plaintiff San Diego County Gun Owners PAC.
15 Plaintiff Rutherford is also a member of Plaintiffs California Gun Rights
16 Foundation, Second Amendment Foundation, and Firearms Policy Coalition, Inc.

19 5. Plaintiff Adrian Sevilla is a natural person, a resident of the County of
20 San Diego, California, and is not legally prohibited from possessing firearms.
21 Plaintiff Sevilla is a member of Plaintiff San Diego County Gun Owners PAC.
22 Plaintiff Sevilla is also a member of Plaintiffs California Gun Rights Foundation,
23 Second Amendment Foundation, and Firearms Policy Coalition, Inc.

26 6. Plaintiff Ryan Peterson is a natural person, a resident of the County of
27 San Diego, California, and is not legally prohibited from possessing firearms.
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1 Plaintiff Peterson is the owner-manager of Plaintiff Gunfighter Tactical, LLC
2 (“Gunfighter Tactical”), the proprietor of the business, and the individual licensee
3 associated with the dealership, including by and through the Defendants and their
4 Bureau of Firearms. Plaintiff Peterson holds an active license to carry a concealed
5 weapon (“CCW”) issued by his county sheriff under Penal Code § 26150, et seq.,
6 after proving “good cause” and “good moral character” to that licensing authority,
7 successfully completing a course of training on the law and firearms proficiency,
8 passing an extensive Live Scan-based Department of Justice background check,
9 and placement into the “Rap Back” system for monitoring law enforcement
10 contact, arrests, and criminal convictions. Plaintiff Peterson is a member and Board
11 Member of Plaintiff San Diego County Gun Owners PAC. Plaintiff Peterson is also
12 a member of Plaintiffs California Gun Rights Foundation, Second Amendment
13 Foundation, and Firearms Policy Coalition, Inc.

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19 7. Plaintiff Gunfighter Tactical, LLC (“Gunfighter Tactical”) is a
20 California limited liability corporation doing business as “Gunfighter Tactical.”
21 Gunfighter Tactical is a federally and state-licensed firearms retailer in San Diego,
22 California. Plaintiff Gunfighter Tactical is a Federal Firearms Licensee (“FFL”)
23 and firearms dealer in the Department’s Centralized List of Firearms Dealers.
24 Plaintiff Gunfighter Tactical is a member of Plaintiff San Diego County Gun
25 Owners PAC. Plaintiff Gunfighter Tactical is also a member of Plaintiffs California
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1 Gun Rights Foundation, Second Amendment Foundation, and Firearms Policy
2 Coalition, Inc.

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4 8. Plaintiff John Phillips is a natural person, a resident of the County of
5 San Diego, California, and is not legally prohibited from possessing firearms.
6 Plaintiff Phillips is the President of Plaintiff PWGG, L.P. (“PWG”), a proprietor of
7 the business, and the individual licensee associated with the dealership and range
8 facility, including by and through the Defendants and their Bureau of Firearms.
9 Plaintiff Phillips holds an active license to carry a concealed weapon (“CCW”)
10 issued by his county sheriff, after proving “good cause” and “good moral
11 character” to his licensing authority, successfully completing a course of training
12 on the law and firearms proficiency, and passing an extensive Live Scan-based
13 background check and placement into the State’s system for monitoring law
14 enforcement contact, arrests, and criminal convictions (“Rap Back”). Mr. Phillips
15 is a member of Plaintiff San Diego County Gun Owners PAC. Plaintiff Phillips is
16 also a member of Plaintiffs California Gun Rights Foundation, Second Amendment
17 Foundation, and Firearms Policy Coalition, Inc.

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23 9. Plaintiff PWGG, L.P. (“PWG”) is a California limited partnership
24 doing business as “Poway Weapons & Gear” and “PWG Range.” Plaintiff PWG is
25 a licensed firearms retailer and range in Poway, California. Plaintiff PWG is a
26 Federal Firearms Licensee (“FFL”) and firearms dealer in the Department’s
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1 Centralized List of Firearms Dealers. Plaintiff PWG is a member of Plaintiff San
2 Diego County Gun Owners PAC. Plaintiff PWG is also a member of Plaintiffs
3 California Gun Rights Foundation, Second Amendment Foundation, and Firearms
4 Policy Coalition, Inc.
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7 10. Plaintiff San Diego County Gun Owners PAC (“SDCGO”) is a
8 political organization whose purpose is to protect and advance the Second
9 Amendment rights of residents of San Diego County, California, through their
10 efforts to support and elect local and state representatives who support the Second
11 Amendment right to keep and bear arms. SDCGO’s membership and donors
12 consist of Second Amendment supporters, people who own guns for self-defense
13 and sport, firearms dealers, shooting ranges, and elected officials who want to
14 restore and protect the right to keep and bear arms in California. The interests that
15 SDCGO seeks to protect in this lawsuit are germane to the organization’s purposes,
16 and, therefore, SDCGO sues on its own behalf, and on behalf of its members,
17 including individual Plaintiffs herein.
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22 11. Plaintiff California Gun Rights Foundation (“CGF”) is a non-profit
23 foundation incorporated under the laws of California with its principal place of
24 business in Sacramento, California. CGF serves its members, supporters, and the
25 public through educational, cultural, and judicial efforts to defend and advance
26 Second Amendment and related rights. CGF has tens of thousands of members and
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1 supporters in California, including individual Plaintiffs herein. The interpretation
2 and enforcement of the Second Amendment directly impacts CGF's organizational
3 interests, as well as the rights of CGF's members and supporters. CGF brings this
4 action on behalf of itself, its members, supporters who possess all the indicia of
5 membership, and similarly situated members of the public. The laws, policies,
6 practices, and customs challenged in this case, and Defendants' actions and failures
7 alleged herein, have caused CGF to dedicate resources that would otherwise be
8 available for other purposes to protect the rights and property of its members,
9 supporters, and the general public, including by and through this action. CGF's
10 members and supporters have been adversely and directly harmed by Defendants'
11 enforcement of the laws, regulations, policies, practices, and customs challenged
12 herein. CGF has expended and diverted resources because of the State of
13 California's laws and Defendants' policies, practices, and customs on "large-
14 capacity" magazines and "assault weapons," including by funding or otherwise
15 supporting civil and criminal matters involving those issues on behalf of its
16 members and members of the public.

23 12. Plaintiff Firearms Policy Coalition, Inc. ("FPC") is a non-profit
24 organization incorporated under the laws of Delaware with its principal place of
25 business in Sacramento, California. The purposes of FPC include defending and
26 promoting the People's rights—especially the fundamental, individual Second
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1 Amendment right to keep and bear arms—advancing individual liberty, and
2 restoring freedom. FPC serves its members and the public through legislative
3 advocacy, grassroots advocacy, litigation and legal efforts, research, education,
4 outreach, and other programs. FPC strongly opposed the legislation (including
5 Senate Bill 1446; Senate Bill 880; and Assembly Bill 1135 (2015 – 2016 Reg.
6 Sess.)) and ballot initiative (Proposition 63, enacted Nov. 9, 2016) that enacted or
7 led to enactment of the current statutory and regulatory scheme challenged herein.
8
9 FPC’s members reside both within and outside the State of California, including
10 San Diego County, California. FPC represents its members and supporters—who
11 include gun owners, prospective gun owners, licensed California firearm retailers,
12 and others—and brings this action on behalf of itself, its members, supporters who
13 possess all the indicia of membership, and similarly situated members of the
14 public. FPC’s members and supporters have been adversely and directly harmed by
15 Defendants’ enforcement of the laws, regulations, policies, practices, and customs
16 challenged herein. FPC has expended and diverted resources because of the State
17 of California’s laws and Defendants’ policies, practices, and customs on “large-
18 capacity” magazines and “assault weapons,” including by funding or otherwise
19 supporting civil and criminal matters involving those issues on behalf of its
20 members and members of the public.
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27 13. Plaintiff Second Amendment Foundation (“SAF”) is a non-profit
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1 educational foundation incorporated under the laws of Washington with its
2 principal place of business in Bellevue, Washington. SAF seeks to preserve the
3 effectiveness of the Second Amendment through educational and legal action
4 programs. SAF has over 650,000 members and supporters nationwide, including
5 thousands of members in California. The Court’s interpretation of the Second
6 Amendment directly impacts SAF’s organizational interests, as well as the rights of
7 SAF’s members and supporters in California, including individual Plaintiffs herein.
8 SAF brings this action on behalf of itself, its members, supporters who possess all
9 the indicia of membership, and similarly situated members of the public. The laws,
10 policies, practices, and customs challenged in this case, and Defendants’ actions
11 and failures alleged herein, have caused SAF to dedicate resources—including for
12 this action—that would otherwise be available for other purposes to protect the
13 rights and property of its members, supporters, and the general public.
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19 14. As to all claims made in a representative capacity herein, there are
20 common questions of law and fact that substantially affect the rights, duties, and
21 liabilities of many similarly situated California residents and visitors who
22 knowingly or unknowingly are subject to the California statutes, regulations,
23 policies, practices, and customs in question. The relief sought in this action is
24 declaratory and injunctive in nature, and the action involves matters of substantial
25 public interest. Considerations of necessity, convenience, and justice justify relief
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1 to individual and institutional Plaintiffs in a representative capacity. Further, to the
2 extent it becomes necessary or appropriate, the institutional Plaintiffs are uniquely
3 able to communicate with and provide notice to their thousands of California
4 members and constituents who are or would be party to any identifiable class of
5 individuals for whose benefit this Court may grant such relief.
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8 15. Defendant Xavier Becerra is the Attorney General of the State of
9 California, and is sued herein in his official capacity. Under Article 5, § 13 of the
10 California Constitution, Attorney General Becerra is the “chief law officer of the
11 State,” with a duty “to see that the laws of the state are uniformly and adequately
12 enforced.” Defendant Becerra is the head of the California Department of Justice
13 (“DOJ”). The DOJ and its Bureau of Firearms (“Bureau”) regulate and enforce
14 state law related to the sales, transfer, possession, and ownership of firearms. As
15 head of the DOJ, Defendant Becerra is responsible for the creation,
16 implementation, execution, and administration of the laws, regulations, customs,
17 practices, and policies of the DOJ. He is presently enforcing the laws, regulations,
18 customs, practices, and policies complained of in this action. The Attorney General
19 and DOJ maintain an office in San Diego, California.
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24 16. Defendant Brent E. Orick is the Interim Director of the DOJ’s Bureau
25 of Firearms. On information and belief, Defendant Orick reports to Attorney
26 General Becerra, and is responsible for the various operations of the Bureau of
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1 Firearms, including the implementation and enforcement of the statutes,
2 regulations, and policies regarding weapons, including firearms and magazines. As
3 head of the Bureau, Defendant Orick is responsible for the creation,
4 implementation, execution, and administration of the laws, regulations, customs,
5 practices, and policies of the DOJ. He is presently enforcing the laws, regulations,
6 customs, practices, and policies complained of in this action. Defendant Orick is
7 sued in his official capacity.

11 **JURISDICTION AND VENUE**

12 17. This Court has jurisdiction over all claims for relief pursuant to
13 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1988, as this action
14 seeks to redress the deprivation under color of the laws, statutes, ordinances,
15 regulations, customs, and usages of the State of California, of the rights, privileges
16 or immunities secured by the United States Constitution.

17 18. Venue is proper under 28 U.S.C. § 1391(b), as the events giving rise
18 to Plaintiffs' causes of action arose or exist in this district in which the action is
19 brought. Venue is also proper under 28 U.S.C. § 1391, as the venue rules of this
20 State specifically would permit this action to be filed in San Diego, since the
21 Attorney General and California Department of Justice maintain an office within
22 this Division; Cal. Code of Civ. Pro. § 401(1).

STATEMENT OF FACTS

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19. The State of California’s numerous and notorious firearms statutes and regulations, and Defendants’ policies, practices, and customs, prevent (on pain of severe criminal penalty), *inter alia*, the sale, acquisition, keeping, transfer, possession, bearing, transport, inheritance, and other constitutionally protected conduct of constitutionally protected firearms that are in “common use for lawful purposes” and are not both “dangerous and unusual” by individuals who are not otherwise prohibited from acquiring or possessing firearms.

20. This is a straight-forward constitutional challenge to one aspect of the State’s many laws and Defendants’ various practices that infringe on the fundamental, individual right to keep and bear arms enshrined in the Constitution’s Second Amendment, and corollary rights.

21. In fact, some of these statutes and regulations define and prohibit certain firearms as “assault weapons” solely because they feature “large-capacity” magazines (those capable of holding more than ten rounds of ammunition) as defined by Pen. Code § 16740 and regulated under the now-enjoined Penal Code § 32310. *Duncan v. Becerra*, Case No. 3:17-cv-1017-BEN-JLB (ECF No. 87).

22. This Court already held the State’s prohibition on “large-capacity” magazines unconstitutional, and enjoined the enforcement of the provisions of the Penal Code that would have prohibited their possession. Both implicit and explicit

1 in this Court’s ruling was the ability to *use* such lawfully possessed magazines in
2 otherwise lawfully possessed firearms. Thus, the ban on certain firearms based on
3 their compatibility with such magazines must also be invalid.
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5 23. Plaintiffs, who are all legally eligible to acquire and possess firearms,
6 seek declaratory and injunctive relief on behalf of themselves and similarly situated
7 persons² so that they may engage in normal, peaceable, commonplace, and
8 constitutionally protected conduct with normal, commonplace, constitutionally
9 protected arms in the State of California.
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12 24. The Second Amendment to the United States Constitution states: “A
13 well regulated Militia, being necessary to the security of a free State, the right of
14 the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II.
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16 25. The Second Amendment protects the people’s fundamental, individual
17 right to keep and bear—and thus to acquire, possess, transport, and use—arms for
18 lawful purposes, including but not limited to self-defense.
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20 26. The Second Amendment “guarantee[s] the individual right to possess
21 and carry” arms, including those at issue in this case, and “elevates above all other
22 interests the right of law-abiding responsible citizens to use arms in defense of
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26 ² For the purposes of this Complaint, the term “person” means a natural person,
27 organization, corporation, limited liability company, partnership, unincorporated
28 association, and any other similar entity. *See, e.g.*, Cal. Penal Code Prelim. Prov. 7 (“[T]he word ‘person’ includes a corporation as well as a natural person...”).

1 hearth and home.” *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

2 *California’s Regulatory Scheme*

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4 27. For the purposes of California law and this complaint, “[u]se of the
5 term ‘assault weapon’ is governed by Sections 30510 and 30515.” Penal Code
6 § 16200.

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8 28. Through their regulations, Defendants maintain and enforce additional
9 definitions at Title 11, California Code of Regulations § 5471. Title 11, California
10 Code of Regulations § 5460 applies the additional definitions (at § 5471) to Penal
11 Code § 30515.

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13 29. The term “assault weapon” is a politically concocted, pejorative term
14 designed to place more and more constitutionally protected arms inside the
15 Legislature’s mercurial definitions of banned arms—and outside the reach of
16 normal, law-abiding Americans. The very term, and the State’s enforcement of it,
17 violates the fundamental, individual Second Amendment right to keep and bear
18 arms.
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22 30. To be sure, so-called “assault weapons” are merely typical semi-
23 automatic³ firearms that are not *both* dangerous and unusual, but conversely, *are in*
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25 _____
26 ³ A “semiautomatic” firearm is “a firearm functionally able to fire a single
27 cartridge, eject the empty case, and reload the chamber each time the trigger is
28 pulled and released.” 11 C.C.R. § 5471(hh). In other words, the self-loading,
magazine-fed firearms at issue in this case are not “automatic” (*i.e.*, machineguns),

1 *common use for lawful purposes.*

2 31. Penal Code §§ 30515(a), (b) (definitions), 30600 (prohibiting
3 manufacture, transportation), 30605 (prohibiting possession), 30800 (permitting
4 seizure as a “nuisance”), 30910 (prohibiting sale), 30915 (prohibiting transfer by
5 bequest/inheritance), 30925 (new resident importation), 30945 (limiting use),
6 30950 (prohibiting possession for non-prohibited people under 18), 31000
7 (requiring permits for use), and 31005 (restricting permits to make or sell);
8 Title 11, California Code of Regulations § 5471 (additional definitions) and § 5460
9 (applying definitions at § 5471 to Penal Code § 30515); and Defendants’ policies,
10 practices, customs, and enforcement of these laws individually and collectively
11 prevent normal, non-prohibited adults from acquiring, possessing, transporting, and
12 using the proscribed arms, and violate the Second Amendment to the United States
13 Constitution.
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19 32. Pen. Code § 30515(a) states:

20 (a) Notwithstanding Section 30510, “assault weapon”
21 also means any of the following:

22 (1) A semiautomatic, centerfire rifle that does not
23 have a fixed magazine but has any one of the
24 following:

25 (A) A pistol grip that protrudes

26 but those where “each pull of the trigger results in a complete firing cycle from
27 firing through loading. It is necessary that the trigger be released and pulled for
28 each firing cycle.” *Glossary*, SPORTING ARMS AND AMMUNITION MANUFACTURERS’
INSTITUTE, <https://saami.org/saami-glossary/>.

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conspicuously beneath the action of the weapon.

(B) A thumbhole stock.

(C) A folding or telescoping stock.

(D) A grenade launcher or flare launcher.

(E) A flash suppressor.

(F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

(4) A semiautomatic pistol that does not have a fixed magazine but has any one of the following:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

(6) A semiautomatic shotgun that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes

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conspicuously beneath the action of the
weapon, thumbhole stock, or vertical
handgrip.

(7) A semiautomatic shotgun that has the ability to
accept a detachable magazine.

(8) Any shotgun with a revolving cylinder.

33. Pen. Code § 30515(b) states:

For purposes of this section, “fixed magazine” means an
ammunition feeding device contained in, or permanently
attached to, a firearm in such a manner that the device
cannot be removed without disassembly of the firearm
action.

34. In California, virtually “[a]ny person who . . . manufactures or causes
to be manufactured, distributes, transports, or imports into the state, keeps for sale,
or offers or exposes for sale, or who gives or lends any assault weapon” is “guilty
of a felony, and upon conviction shall be punished by imprisonment pursuant to
subdivision (h) of Section 1170 for four, six, or eight years.” Penal Code § 30600.

35. And, generally, “[a]ny person who, within this state, possesses any
assault weapon, except as provided in this chapter, shall be punished by
imprisonment in a county jail for a period not exceeding one year, or by
imprisonment pursuant to subdivision (h) of Section 1170.” Penal Code § 30605.

36. Moreover, in spite of other statutes, “any person who commits another
crime while violating this article may receive an additional, consecutive
punishment of one year for violating this article, in addition and consecutive to the

1 punishment, including enhancements, which is prescribed for the other crime.”
2 Penal Code § 30615. In other words, someone who possesses a proscribed weapon
3 while committing even a minor, non-violent crime could be additionally and
4 consecutively punished.
5

6 37. While the Penal Code provides limited exceptions⁴ to the State’s
7 otherwise total and confiscatory ban on protected conduct and arms—*e.g.*,
8 acquisition, possession, and transportation—none of them apply to Plaintiffs,
9 Plaintiffs’ current weapons, and the arms Plaintiffs wish to have, acquire, possess,
10 and lawfully use.⁵
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12 38. But the Second Amendment “elevates above all other interests the
13 right of law-abiding, responsible citizens to use arms in defense of hearth and
14 home.” *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).
15

16 39. And the Second Amendment protects “arms . . . of the kind in
17 common use . . . for lawful purposes like”—but not limited to—“self-defense.” *Id.*
18 at 624. Indeed, it protects the very category of arms that Plaintiffs herein seek to
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23 ⁴ See generally Penal Code §§ 30605(b), 30625, 30630, 30635, 30640, 30645,
24 30650, 30655, 30660, 30665, 30670, 30675, 30680, or 30680. [Due to the passage
25 of both SB 880 (2016) and AB 1135 (2016), discussed *infra*, there are two “live”
26 versions of § 30680 enacted, enrolled, and published.]

27 ⁵ While *some* exceptions may apply to *some* FFL dealer Plaintiffs in *some*
28 circumstances – such as sale to law enforcement by a dealer with all of the required
permits and licenses – *none* of those exceptions are relevant to the parties,
including the individual Plaintiffs named herein and those similarly situated adults,

1 acquire, possess, and use for lawful purposes, including but not limited to self-
2 defense in the home.

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4 40. As the Supreme Court announced in *Heller*, “[s]ome have made the
5 argument, bordering on the frivolous, that only those arms in existence in the 18th
6 century are protected by the Second Amendment.” But “we do not interpret
7 constitutional rights that way. Just as the First Amendment protects modern forms
8 of communications, and the Fourth Amendment applies to modern forms of search,
9 the Second Amendment extends, *prima facie*, to all instruments that constitute
10 bearable arms, even those that were not in existence at the time of the founding.”
11 *Id.* at 582 (internal citations omitted) (emphasis in original).

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15 41. And “it is clear that the Framers and ratifiers of the Fourteenth
16 Amendment counted the right to keep and bear arms among those *fundamental*
17 rights necessary to our system of ordered liberty.” *McDonald v. City of Chicago*,
18 *Ill.*, 561 U.S. 742, 778 (2010) (emphasis added).

19
20 42. The firearms at issue in this case are the sorts of bearable arms in
21 common use for lawful purposes that law-abiding people possess at home by the
22 millions. And they are, moreover, exactly what they would bring to service in *e.g.*
23 militia duty, repelling violent mobs (*i.e.*, the Korean shopkeepers defending lives
24 during the Los Angeles Riots in 1992), etc., should such be necessary.
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27
28 and the relief this case seeks.

1 43. The magazines at issue in this case are the sorts of bearable arms in
2 common use for lawful purposes that law-abiding people possess at home by the
3 millions. *Duncan v. Becerra, supra*, (ECF No. 87). And they are, moreover, exactly
4 what they would bring to service in *e.g.* militia duty, repelling violent mobs (*i.e.*,
5 the Korean shopkeepers defending lives during the Los Angeles Riots in 1992),
6 etc., should such be necessary. To be sure, they too are in common use in virtually
7 every state of the Union.

10 44. Indeed, the California Department of Justice itself estimated that there
11 were as many as 250,000 gun owners with “Bullet Button Assault Weapons,”
12 possessing as many as 1.5 million such firearms⁶—the vast majority of which are
13 AR-15 style rifles—in California alone.

16 45. The true amount of semi-automatic firearms—the category of firearms
17 at issue in this case—is into the millions in California alone. Nationwide, they
18 number into the tens of millions, at least.

20 46. “In *Heller*, the Supreme Court held that handguns — the vast majority
21 of which today are semi-automatic — are constitutionally protected because they
22

23
24
25 ⁶ This estimate is merely a subset of the common variations of the firearms in
26 question, as it does not include the estimated numbers of centerfire, semiautomatic
27 fixed magazine rifles, “featureless” rifles, or centerfire semiautomatic pistols with
28 fixed magazines; all of which are expressly not defined as “Bullet-Button Assault
Weapons” lawfully possessed in California. However, all variations stated above,

1 have not traditionally been banned and are in common use by law-abiding citizens.
2 There is no meaningful or persuasive constitutional distinction between semi-
3 automatic handguns and semi-automatic rifles. Semi-automatic rifles, like semi-
4 automatic handguns, have not traditionally been banned and are in common use by
5 law-abiding citizens for self-defense in the home, hunting, and other lawful uses.
6
7 Moreover, semi-automatic handguns are used in connection with violent crimes far
8 more than semi-automatic rifles are. It follows from *Heller's* protection of semi-
9 automatic handguns that semi-automatic rifles are also constitutionally protected
10 and that D.C.'s ban on them is unconstitutional." *Heller v. D.C.*, 670 F.3d 1244,
11 1269–70 (D.C. Cir. 2011) ("*Heller II*") (Kavanaugh, J., dissenting).

12
13
14
15 47. Further, as the Supreme Court's *per curiam* opinion in *Caetano v.*
16 *Massachusetts*, 136 S. Ct. 1027, "recognizes," *Heller's* "dangerous and unusual"
17 analysis is "a conjunctive test: A weapon may not be banned unless it is *both*
18 dangerous *and* unusual." *Caetano v. Massachusetts*, 136 S. Ct. 1027, 1031 (2016)
19 (Alito, J., concurring) (emphasis in original). Indeed, if the arms are not "unusual,"
20 then there is no "need to consider" whether the arms are also "dangerous." *Id.*

21
22
23 48. Because the banned arms are so common, they are not unusual, and
24 therefore cannot be "dangerous and unusual." Indeed, the "relative dangerousness
25
26

27 have some, if not all of the regulated features in question and are virtually identical
28 in mechanical function and in their typically offered chamberings.

1 of a weapon is irrelevant when the weapon belongs to a class of arms commonly
2 used for lawful purposes.” *Id.*

3
4 49. While a “dangerousness” test “may be appropriate for applying
5 statutes criminalizing assault with a dangerous weapon,” “it cannot be used to
6 identify arms that fall outside the Second Amendment.” Because if an arm’s
7 relative “dangerousness” swallowed these classes of arms and set them outside of
8 *Heller*’s protection, then “virtually every covered arm would qualify as
9 ‘dangerous.’” *Id.*

10
11
12 50. Of course, the “pertinent Second Amendment inquiry is whether [the]
13 guns are commonly possessed by law-abiding citizens for lawful purposes today.”
14 *Id.* The arms at issue here easily satisfy that inquiry. And, to the extent it matters,
15 the arms are rarely used for unlawful purposes.

16
17
18 51. While these arms may or may not be “less popular than handguns,”
19 they are without a doubt “widely owned and accepted as a legitimate means of”
20 exercising Second Amendment rights across the country.

21
22 52. The firearms at issue in this case are not “M-16 rifles and the like”—
23 i.e., fully automatic firearms (i.e., machine guns).

24
25 53. The State’s statutory scheme, and Defendants’ policies, practices, and
26 customs, prohibiting “assault weapons” based on characteristic(s) cannot survive
27 appropriate, and appropriately applied, constitutional scrutiny since it prevents
28

1 individual Plaintiffs and others like them from acquiring, selling, transferring,
2 transporting, and using protected arms.

3
4 54. The arms described under Penal Code §§ 30515(a) and 30515(b), and
5 Title 11, California Code of Regulations §§ 5460 (application of definitions to
6 § 30515) and 5471, are protected by the Second Amendment because they are in
7
8 common use for lawful purposes and thus not dangerous *and* unusual.

9
10 55. Penal Code § 30600, 30605, 30800, 30910, 30915, 30925, 30945,
11 30950, 31000, and 31005, Title 11, California Code of Regulations §§ 5460 and
12 5471, and Defendants’ policies, practices, and customs, prohibit and criminalize
13
14 normal, law-abiding people from acquiring, keeping, bearing, transporting, and
15 using for lawful purposes protected arms, and violate the Second Amendment.

16
17 *Plaintiff James Miller*

18 56. Plaintiff Miller is the lawful owner of a semi-automatic, centerfire
19 rifle that has one or more of the characteristics listed in Penal Code § 30515(a)(1),
20 but it is not a so-called “assault weapon” under California law because it has a
21 “fixed magazine.”⁷

22
23 57. Plaintiff Miller further has legally acquired and currently possesses
24
25

26
27 ⁷ For purposes of this Complaint and the laws at issue herein, “fixed magazine”
28 means “an ammunition feeding device contained in, or permanently attached to, a
firearm in such a manner that the device cannot be removed without disassembly of

1 so-called “large-capacity” magazines, as that term is defined by Cal. Pen. Code
2 § 16740 and regulated under the now-enjoined Cal. Penal Code § 32310.

3
4 58. Some of Plaintiff Miller’s so-called “large-capacity” magazines are
5 compatible with his “fixed magazine” firearm. Accordingly, Plaintiff Miller wishes
6 to exercise his rights guaranteed by the Second Amendment to keep and bear arms
7 by using his “large-capacity” magazine(s) in and with his “fixed magazine” rifle,
8 and would, but for the State’s laws and fear of arrest, prosecution, and loss of
9 property and liberty under Defendants’ policies, practices, and customs.
10
11

12 59. Plaintiff Miller would also acquire a new semi-automatic, centerfire
13 rifle from Plaintiffs John Phillips and PWG that does not have a fixed magazine
14 but has one or more of the features listed in Penal Code § 30515(a)(1), having an
15 overall length of less than 30” but more than 26”, but for the State’s laws,
16 Defendants’ FFL dealer enforcement practices, and fear of arrest, prosecution, and
17 loss of property and liberty under Defendants’ policies, practices, and customs.
18
19

20 *Plaintiff Patrick Russ*

21
22 60. Plaintiff Russ is the lawful owner of a semi-automatic, centerfire rifle
23 that has one or more of the characteristics listed in Penal Code § 30515(a)(1). But it
24 is not an “assault weapon” under California law because it has a “fixed magazine.”
25
26

27 the firearm action.” Penal Code § 30515(b). (Compare with 11 C.C.R. § 5471(m)
28 (definition of “detachable magazine”).)

1 inches (i.e., a so-called “featureless”⁸ rifle, thus *not* an assault weapon under
2 California law). Plaintiff Hauffen desires to add to that firearm one or more of the
3 features described by Penal Code § 30515(a)(1), such as a flash hider, pistol grip,
4 or collapsible stock, and reconfigure it to an overall length of at least 26” but less
5 than 30”, to reform such firearm into a standard configuration that is in common
6 use for lawful purposes throughout the United States but not dangerous *and*
7 unusual, and would but for the State’s laws and fear of arrest, prosecution, and loss
8 of property and liberty under Defendants’ policies, practices, and customs.
9
10
11

12 65. Plaintiff Hauffen would acquire from Plaintiffs John Phillips and
13 PWG, possess, transport, and use for lawful purposes a semi-automatic, centerfire
14 rifle that does not have a fixed magazine but has one or more of the features listed
15 in Penal Code § 30515(a)(1), having an overall length of less than 30” but at least
16 than 26”, but for the State’s laws and fear of arrest, prosecution, and loss of
17 property and liberty under Defendants’ policies, practices, and customs.
18
19

20 66. Plaintiff Hauffen would acquire from Plaintiffs John Phillips and
21 PWG, possess, transport, and use for lawful purposes a semi-automatic pistol that
22 does not have a fixed magazine but has one or more of the features listed in Penal
23 Code § 30515(a)(4) but for the State’s laws and fear of arrest, prosecution, and loss
24
25

26
27
28 8 See also 11 C.C.R. § 5471(o) (defining a “featureless” firearm as “a semiautomatic firearm (rifle, pistol, or shotgun) lacking the characteristics

1 of property and liberty under Defendants’ policies, practices, and customs.

2 *Plaintiff Neil Rutherford*

3
4 67. Plaintiff Rutherford desires to acquire from Plaintiffs John Phillips
5 and PWG, possess, transport, and use for lawful purposes: (1) A semi-automatic,
6 centerfire rife with one or more characteristics listed in Penal Code § 30515(a)(1),
7
8 with an overall length of less than 30 inches but at least 26 inches; (2) A semi-
9 automatic pistol that does not have a fixed magazine but has one or more
10 characteristics listed in Penal Code § 30515(a)(4); (3) A semi-automatic shotgun
11 that has the characteristics listed in Penal Code § 30515(a)(6); and, (4) A semi-
12 automatic shotgun that has the ability to accept a detachable magazine; and would
13
14 but for the State’s laws and fear of arrest, prosecution, and loss of property and
15 liberty under Defendants’ policies, practices, and customs.
16

17 *Plaintiff Adrian Sevilla*

18
19 68. Plaintiff Sevilla does not currently own a firearm, but desires to
20 acquire from Plaintiffs John Phillips and PWG, possess, transport, and use for
21 lawful purposes: (1) A semi-automatic, centerfire rife with one or more
22 characteristics listed in Penal Code § 30515(a)(1), with an overall length of at least
23
24 26 inches; (2) A semi-automatic pistol that does not have a fixed magazine but has
25 one or more characteristics listed in Penal Code § 30515(a)(4); (3) A
26
27
28 associated with that weapon, as listed in Penal Code section 30515.”).

1 semi-automatic shotgun that has the characteristics listed in Penal Code
2 § 30515(a)(6); and (4) A semi-automatic shotgun that has the ability to accept a
3 detachable magazine; and would but for the State’s laws and fear of arrest,
4 prosecution, and loss of property and liberty under Defendants’ policies, practices,
5 and customs.
6
7

8 *Plaintiff Ryan Peterson*

9 69. Plaintiff Peterson, the owner-manager of Plaintiff Gunfighter Tactical,
10 is a Federal Firearms Licensee (“FFL”) and firearms dealer in the Department’s
11 Centralized List of Firearms Dealers. Plaintiff Peterson would like to purchase,
12 sell, and transfer firearms in common use for lawful purposes—commonly sold for
13 lawful purposes in other parts of the country, which contain some or all of the
14 features described by Penal Code § 30515(a)—to normal, non-prohibited adults
15 through his FFL dealership, Plaintiff Gunfighter Tactical, and would but for the
16 State’s laws, and Defendants’ policies, practices, customs, and enforcement of
17 same.
18
19
20
21

22 70. Plaintiff Peterson cannot acquire a permit under Penal Code § 31005
23 and use it to sell to normal, law-abiding people due to the State’s laws and
24 Defendants’ policies, practices, and customs, because he desires to acquire and sell
25 firearms to normal, law-abiding people who are not exempt, such as law
26 enforcement officers, government agencies, military agencies, or governments,
27
28

1 under the laws of the State.

2 71. Plaintiff Peterson would, through his licensed dealership Plaintiff
3 Gunfighter Tactical, acquire and sell firearms described under Penal Code
4 § 30515(a) but for the State’s laws and fear of loss of his licenses, arrest,
5 prosecution, and loss of property and liberty under Defendants’ policies, practices,
6 and customs.
7

8
9 72. Plaintiff Peterson is the also lawful owner of a semi-automatic pistol
10 that is *not* currently an “assault weapon” under California law because it has a
11 “fixed magazine”. Plaintiff Peterson is also the lawful owner of a registered
12 semi-automatic, centerfire rifle which is *not* an assault weapon under California
13 law, but is a “featureless” rifle lacking the characteristics described in Penal Code
14 section 30515(a)(1).
15

16
17 73. Plaintiff Peterson further has legally acquired and currently possesses
18 so-called “large-capacity magazines,” as that term is defined by Penal Code
19 § 16740 and regulated under the now-enjoined Penal Code § 32310.
20

21
22 74. Some of Plaintiff Peterson’s so-called “large-capacity” magazines are
23 compatible with his “fixed magazine” firearms. Accordingly, Plaintiff Peterson
24 wishes to exercise his rights guaranteed by the Second Amendment to keep and
25 bear arms by using his “large-capacity” magazine(s) in and with his “fixed
26 magazine” (“featureless”) firearms, and would, but for the State’s laws and fear of
27
28

1 arrest, prosecution, and loss of property and liberty under Defendants’ policies,
2 practices, and customs.

3
4 75. Plaintiff Peterson would also acquire a new semi-automatic, centerfire
5 rifle from his dealership, Plaintiff Gunfighter Tactical, that does not have a fixed
6 magazine but has one or more of the features listed in Penal Code § 30515(a)(1),
7 having an overall length of at least 26”, but for the State’s laws, Defendants’ FFL
8 dealer enforcement practices, and fear of arrest, prosecution, and loss of property
9 and liberty under Defendants’ policies, practices, and customs.
10
11

12 *Plaintiff Gunfighter Tactical*

13
14 76. Plaintiff Gunfighter Tactical is a firearms retailer licensed under
15 federal, state, and local laws.

16
17 77. Plaintiff Gunfighter Tactical would like to sell and purchase standard,
18 off-the-shelf firearms, commonly sold for lawful purposes in other parts of the
19 country, which contain some or all of the features described by Penal Code
20 § 30515(a), to normal, non-prohibited adults, but is prevented by California’s
21 “assault weapon” laws and Defendants policies, practices, and customs from doing
22 so.
23

24
25 78. Plaintiff Gun Fighter Tactical would acquire and sell the firearms
26 described under Penal Code § 30515(a) but for the State’s laws and fear of loss of
27 licenses, arrest, prosecution, and loss of property and liberty under Defendants’
28

1 policies, practices, and customs.

2 *Plaintiff John Phillips*

3
4 79. Plaintiff John Phillips is a Federal Firearms Licensee (“FFL”) and
5 firearms dealer in the Department’s Centralized List of Firearms Dealers.

6
7 80. Plaintiff Phillips would like to purchase, sell, and transfer firearms in
8 common use for lawful purposes—commonly sold for lawful purposes in other
9 parts of the country, which contain some or all of the features described by Penal
10 Code § 30515(a)—to normal, non-prohibited adults through his FFL dealership,
11 Plaintiff PWG, and would but for the State’s laws, and Defendants’ policies,
12 practices, customs, and enforcement of same.
13

14
15 81. Plaintiff Phillips and his dealership, Plaintiff PWG, currently hold a
16 “special weapons permit” issued and maintained by the Defendants through the
17 Department’s Bureau of Firearms. This permit allows Plaintiffs Phillips and his
18 dealership, Plaintiff PWG, to acquire and sell otherwise prohibited so-called
19 “assault weapons” to select exempted recipients. But the permit does not allow
20 Plaintiffs Phillips and his dealership, Plaintiff PWG to acquire, sell, transfer, or
21 rent so-called “assault weapons” to non-exempt agencies or individuals, such as the
22 other Individual Plaintiffs herein, the Institutional Plaintiffs and their members, and
23 the majority of their law-abiding customers (and, indeed, the majority of people),
24 or even to out-of-state FFLs for the purpose of their lawful sale or transfer to
25
26
27
28

1 law-abiding persons.

2 82. Plaintiff Phillips would, through his licensed dealership Plaintiff
3
4 PWG, acquire and sell the firearms described under Penal Code § 30515(a) but for
5 the State’s laws and fear of loss of his licenses, arrest, prosecution, and loss of
6
7 property and liberty under Defendants’ policies, practices, and customs. In addition
8
9 to violating his and his customers’ Second Amendment rights, the State’s laws and
10
11 Defendants thus further infringe on his economic liberties, causing him financial
12
13 damages because he cannot acquire and transfer to lawful persons arms that are
14
15 protected by the Second Amendment.

16
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26
27
28
Plaintiff PWG

29 83. Plaintiff PWG is a firearms retailer and shooting range licensed under
30
31 federal, state, and local laws.

32 84. Plaintiff PWG’s range facility is rated to accept fire for arms up to
33
34 .50BMG.

35 85. Plaintiff PWG currently holds a “special weapons permit” issued and
36
37 maintained by the Defendants through the Department’s Bureau of Firearms. This
38
39 allows Plaintiffs Phillips and his dealership, Plaintiff PWG, to sell otherwise
40
41 prohibited so-called “assault weapons” to select exempted recipients. But the
42
43 permit does not allow Plaintiffs Phillips and his dealership, Plaintiff PWG to sell,
44
45 transfer, or rent so-called “assault weapons” to non-exempt agencies or individuals,
46
47
48

1 such as the other individual Plaintiffs herein, the Institutional Plaintiffs and their
2 members, and the majority of their law-abiding customers (and, indeed, the
3 majority of people).
4

5 86. Plaintiff PWG would acquire, sell, and rent for training and
6 proficiency practice the firearms described under Penal Code §§ 30515(a) but for
7 the State’s laws and fear of loss of licenses, arrest, prosecution, and loss of
8 property and liberty under Defendants’ policies, practices, and customs. In addition
9 to violating Plaintiff PWG’s and its customers’ Second Amendment rights, the
10 State’s laws and Defendants thus further infringe on its economic liberties, causing
11 it financial damages because it cannot acquire and transfer to lawful persons arms
12 that are protected by the Second Amendment.
13
14
15

16 **DECLARATORY JUDGMENT ALLEGATIONS**

17 87. There is an actual and present controversy between the parties.
18 Plaintiffs contend that Penal Code §§ 30515(a), 30515(b), 30600, 30605, 30800,
19 30910, 30915, 30925, 30945, 30950, 31000, and 31005, as well as Title 11,
20 California Code of Regulations §§ 5460 and 5471, and Defendants’ policies,
21 practices, and customs, infringe on Plaintiffs’ Second Amendment rights by
22 prohibiting Plaintiffs and other law-abiding individuals from, *inter alia*, keeping,
23 bearing, buying, selling, transferring, possessing, transporting, or passing down to
24 heirs so-called “assault weapons” under California law. Plaintiffs desire a judicial
25
26
27
28

1 declaration that Penal Code sections §§ 30515(a), 30515(b), 30600, 30605, 30800,
2 30910, 30915, 30925, 30945, 30950, 31000, and 31005, as well as Title 11,
3
4 California Code of Regulations §§ 5460 and 5471, and Defendants’ policies,
5 practices, and customs, violate Plaintiffs’ constitutional rights.

6
7 **INJUNCTIVE RELIEF ALLEGATIONS**

8 88. Plaintiffs are presently and continuously injured by Defendants’
9 enforcement of Penal Code §§ 30515(a), 30515(b), 30600, 30605, 30800, 30910,
10 30915, 30925, 30945, 30950, 31000, and 31005, as well as Title 11, California
11 Code of Regulations §§ 5460 and 5471, insofar as those provisions violate
12 Plaintiffs’ rights under the Second Amendment and Fourteenth Amendment by
13 prohibiting the lawful acquisition, sale, transfer, transport, use, and ownership of
14 constitutionally protected arms, so-called “assault weapons” under California law.
15
16

17 89. If not enjoined by this Court, Defendants will continue to enforce
18 Penal Code sections §§ 30515(a), 30515(b), 30600, 30605, 30800, 30910, 30915,
19 30925, 30945, 30950, 31000, and 31005, as well as Title 11, California Code of
20 Regulations §§ 5460 and 5471, in derogation of the constitutional rights of
21 Plaintiffs and similarly situated law-abiding people. Plaintiffs have no plain,
22 speedy, and adequate remedy at law. Except for the economic damages to Plaintiffs
23 Phillips and his dealership Plaintiff PWG, and Plaintiff Peterson and his dealership
24 Plaintiff Gunfighter Tactical, damages are indeterminate or unascertainable and, in
25
26
27
28

1 any event, would not fully redress any harm suffered by Plaintiffs because they are
2 unable to engage in constitutionally protected activity due to California’s ongoing
3 enforcement of Penal Code §§ 30515(a), 30515(b), 30600, 30605, 30800, 30910,
4 30915, 30925, 30945, 30950, 31000, and 31005, and Title 11, California Code of
5 Regulations §§ 5460 and 5471.
6
7

8 **FIRST CLAIM FOR RELIEF**
9 **U.S. CONST., AMEND II, 42 U.S.C. § 1983**

10
11 90. Plaintiffs incorporate herein by reference paragraphs 1 through 89 as
12 if fully set forth herein.

13
14 91. Plaintiffs Miller and Russ wish to possess, transport, and use their
15 “large-capacity” magazines in their “fixed magazine” semi-automatic, centerfire
16 rifles for lawful purposes including but not limited to self-defense in the home, all
17 of which is protected by the Second Amendment.
18

19 92. Plaintiffs Miller and Russ wish to acquire new semi-automatic
20 firearms protected by the Second Amendment that have one or more of the
21 characteristics in Penal Code § 30515(a) and an overall length of at least 26”, —
22 which the State calls “assault weapons” — and possess, transport, and use them for
23 lawful purposes including but not limited to self-defense in the home, all of which
24 is protected by the Second Amendment.
25
26

27 93. Plaintiff Hauffen wishes to reconfigure her semi-automatic, centerfire
28

1 rifle to include one or more of the features described by Penal Code § 30515(a)(1),
2 such as a flash hider, pistol grip or collapsible stock, and reconfigure it to an
3 overall length of at least 26” — an “assault weapon” — and possess, transport, and
4 use it for lawful purposes including but not limited to self-defense in the home, all
5 of which is protected by the Second Amendment.
6
7

8 94. Plaintiff Hauffen wishes to acquire new semi-automatic firearms
9 protected by the Second Amendment that have one or more of the characteristics in
10 Penal Code § 30515(a), — “assault weapons” — for lawful purposes including but
11 not limited to self-defense in the home, all of which is protected by the Second
12 Amendment.
13

14
15 95. Plaintiff Rutherford wishes to acquire, possess, transport, and use for
16 lawful purposes a new: (1) semi-automatic, centerfire rifle with one or more
17 characteristics listed in Penal Code § 30515(a)(1), with an overall length of less
18 than 30 inches but at least 26 inches; (2) semi-automatic pistol that does not have a
19 fixed magazine but has one or more characteristics listed in Penal Code
20 § 30515(a)(4); (3) semi-automatic shotgun that has the characteristics listed in
21 Penal Code § 30515(a)(6); and, (4) semi-automatic shotgun that has the ability to
22 accept a detachable magazine.
23
24
25

26 96. Plaintiff Sevilla wishes to acquire, possess, transport, and use for
27 lawful purposes, especially self-defense in the home, a new: (1) semi-automatic,
28

1 centerfire rifle with one or more characteristics listed in Penal Code § 30515(a)(1),
2 with an overall length of less than 30 inches but at least 26 inches; (2) semi-
3 automatic pistol that does not have a fixed magazine but has one or more
4 characteristics listed in Penal Code § 30515(a)(4); (3) semi-automatic shotgun that
5 has the characteristics listed in Penal Code § 30515(a)(6); and, (4) semi-automatic
6 shotgun that has the ability to accept a detachable magazine.
7

9 97. Plaintiff Peterson wishes to possess and use his “large-capacity”
10 magazines in his semi-automatic firearms for lawful purposes, including but not
11 limited to self-defense in the home, all of which is protected by the Second
12 Amendment.
13

14 98. Plaintiffs Peterson and Gunfighter Tactical wish to acquire and sell to
15 normal, law-abiding adults semi-automatic firearms the State of California
16 classifies as “assault weapons” and compatible “large capacity” firearm magazines,
17 all of which are protected by the Second Amendment.
18

19 99. Plaintiffs Phillips and PWG wish to acquire and sell to normal, law-
20 abiding adults semi-automatic firearms the State of California classifies as “assault
21 weapons” and compatible “large capacity” firearm magazines, all of which are
22 protected by the Second Amendment.
23

24 100. Plaintiffs San Diego County Gun Owners PAC, California Gun Rights
25 Foundation, Second Amendment Foundation, and Firearms Policy Coalition, Inc.
26
27
28

1 have tens of thousands of members and supporters in California, including
2 individual Plaintiffs herein. The State’s violation of the Second Amendment
3
4 through its interpretation and enforcement state law directly impacts Plaintiffs’
5 organizational interests, as well as the rights of their members and supporters. The
6 organizational Plaintiffs bring this action on behalf of themselves, their members,
7
8 supporters who possess all the indicia of membership, and similarly situated
9 members of the public. The laws, policies, practices, and customs challenged in
10 this case, and Defendants’ actions and failures alleged herein, have caused
11 Plaintiffs San Diego County Gun Owners PAC, California Gun Rights Foundation,
12 Second Amendment Foundation, and Firearms Policy Coalition, Inc. to dedicate
13
14 resources that would otherwise be available for other purposes to protect the rights
15 and property of their members, supporters, and the general public, including by and
16 through this action. San Diego County Gun Owners PAC, California Gun Rights
17
18 Foundation, Second Amendment Foundation, and Firearms Policy Coalition, Inc.
19 members and supporters have been adversely and directly harmed by Defendants’
20 enforcement of the laws, regulations, policies, practices, and customs challenged
21 herein.
22
23

24 101. The so-called “assault weapon” firearms and “large-capacity”
25 magazines at issue in this case are categorically protected by the Second
26 Amendment to the United States Constitution.
27
28

1 102. By maintaining and enforcing a set of laws proscribing arms whose
2 possession and use are protected by the Second Amendment to the United States
3 Constitution, and related protected conduct, Defendants are propagating customs,
4 policies, and practices that violate the Constitution, facially and as applied against
5 the Plaintiffs in the action, and injuring Plaintiffs in violation of 42 U.S.C. § 1983.
6 Plaintiffs are therefore entitled to declaratory and temporary and permanent
7 injunctive relief against the Defendants, their officers, agents, servants, employees,
8 and all persons in active concert or participation with them.

9
10
11
12 103. The State of California’s laws and Defendants’ policies, practices,
13 customs, and enforcement of same, individually and collectively prohibit Plaintiffs
14 and similarly situated persons from keeping, bearing, selling, purchasing,
15 transferring, transporting, and engaging in lawful activities (including but not
16 limited to training, proficiency, self-defense, and competition) with arms in
17 common use for lawful purposes that are not dangerous *and* unusual.

18
19
20 104. The State of California’s laws and Defendants’ policies, practices,
21 customs, and enforcement of said laws and restrictions violate Plaintiffs’ and
22 Plaintiffs’ members’ right to keep and bear arms protected by the Second
23 Amendment and incorporated against the Defendants through the Fourteenth
24 Amendment.

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28

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiffs request that judgment be entered in their favor and
3
4 against Defendants as follows:

5 1. For declaratory relief adjudging that the definitions of “assault
6
7 weapon” pursuant to Penal Code §§ 30515(a) and (b), and Title 11, California
8 Code of Regulations §§ 5460 and 5471, are unconstitutional on their face and as
9 applied, and violate the Second Amendment, to the extent that the State’s laws and
10 regulations operate to prohibit or prevent Plaintiffs and similarly situated persons
11 from exercising their rights, including acquiring, keeping, bearing, transporting,
12 transferring, and using “assault weapons” for lawful purposes;
13
14

15 2. For declaratory relief adjudging that California Penal Code §§ 30600,
16 30605, 30800, 30910, 30915, 30925, 30945, 30950, 31000, and 31005 are
17 unconstitutional on their face and as applied, and in violation of the Second
18 Amendment, to the extent that the State’s laws and regulations operate to prohibit
19 or prevent Plaintiffs and similarly situated persons from exercising their rights,
20 including acquiring, keeping, bearing, transporting, transferring, and using “assault
21 weapons” for lawful purposes;
22
23

24 3. For declaratory relief supporting an injunction, and an order
25 temporarily and permanently enjoining Defendants, their officers, agents, servants,
26 employees, and all persons in active concert or participation with them, who
27
28

1 receive actual notice of the injunction, from enforcement or application of Penal
2 Code §§ 30515(a) and (b), 30600, 30605, 30800, 30910, 30915, 30925, 30945,
3 30950, 31000, and 31005, as well as Title 11, California Code of Regulations
4 §§ 5460 and 5471, against Plaintiffs on an as-applied basis, and against all
5 similarly situated persons;
6

7
8 4. For costs of suit, including attorneys’ fees and costs under
9 42 U.S.C. § 1988 and any other applicable law; and,
10

11 5. For any and all further relief to which Plaintiffs may be justly entitled.
12

13 September 27, 2019

GATZKE DILLON & BALLANCE LLP

/s John W. Dillon

John W. Dillon

17 September 27, 2019

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