

1 BENBROOK LAW GROUP, PC  
2 BRADLEY A. BENBROOK (SBN 177786)  
3 STEPHEN M. DUVERNAY (SBN 250957)  
4 701 University Avenue, Suite 106  
5 Sacramento, CA 95825  
6 Telephone: (916) 447-4900  
7 brad@benbrooklawgroup.com

8  
9 Attorneys for Plaintiffs

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 CLARE RICHARDS; ALISHA  
13 CURTIN; DAKOTA ADELPHIA;  
14 MICHAEL SCHWARTZ; DARIN  
15 PRINCE; NORTH COUNTY  
16 SHOOTING CENTER, INC.; JOHN  
17 PHILLIPS; PWGG, L.P.; SAN DIEGO  
18 COUNTY GUN OWNERS PAC;  
19 CALIFORNIA GUN RIGHTS  
20 FOUNDATION; FIREARMS POLICY  
21 COALITION, INC.; and SECOND  
22 AMENDMENT FOUNDATION,

23 *Plaintiffs,*

24 v.

25 ROB BONTA, in his official capacity as  
26 Attorney General of California; and  
27 ALLISON MENDOZA, in her official  
28 capacity as Director of the California  
Department of Justice Bureau of  
Firearms,

*Defendants.*

Case No.: '23CV0793 LAB WVG

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. A right delayed is a right denied. But denying access to fundamental  
3 rights is precisely what Defendants Attorney General Rob Bonta, and his Director of  
4 the California Department of Justice (“DOJ”) Bureau of Firearms, Allison Mendoza,  
5 do through their enforcement of California’s unconstitutional Waiting Period Laws  
6 that individually and collectively infringe upon the right to keep and bear arms.<sup>1</sup>

7 2. Typical law-abiding individuals in California cannot lawfully acquire a  
8 firearm to exercise their constitutionally protected right to keep and bear arms without  
9 first going in-person to a federally and state-licensed firearm dealer, applying for the  
10 transfer of a firearm, and suffering at least a 10-day ban on the possession of that  
11 arm—even when the State has confirmed, often within minutes of the application, that  
12 the person is eligible to acquire firearms. Then, if the Defendants affirmatively allow  
13 the transfer, the buyer must go back to the dealership to take possession of the firearm  
14 no sooner than 10 days after submitting the application.<sup>2</sup> And California’s firearm  
15 dealers must strictly comply with the State’s regulatory scheme on pain of criminal  
16 liability and loss of their license to do business.

17 3. In short, Defendants’ enforcement of the Waiting Period Laws prevents  
18 law-abiding people from taking possession of lawfully acquired firearms for  
19 immediate self-defense and other lawful purposes—even after Defendants know the  
20 individual is eligible to exercise their fundamental, constitutionally protected right to

21 \_\_\_\_\_  
22 <sup>1</sup> Cal. Penal Code §§ 26815(a), 27540, and Defendants’ regulations, policies, and  
23 enforcement practices implementing them are hereinafter collectively referred to as  
the “Waiting Period Laws” or “WPLs.”

24 <sup>2</sup> The second visit to the dealer must be at least ten (10) 24-hour periods after the  
25 Defendants receive a completed application, but may not more than thirty (30) days  
26 after the process starts, or, under federal law, the background check expires, and the  
27 process must start over. *See also* JUDGMENT GRANTING PETITION FOR WRIT OF  
28 MANDATE, *Campos v. Bonta*, San Diego Super. Ct. Case No. 37-2020-0030178 (Aug.  
8, 2022) (finding that Defendants’ practice of delaying firearms transactions beyond  
the statutorily authorized period violated state law).

1 keep and bear arms. This relegates the right to keep and bear arms to second-class  
2 status. But nearly thirteen years ago, the Supreme Court “declared that the Second  
3 Amendment is not a second-class right, subject to an entirely different body of rules  
4 than the other Bill of Rights guarantees.” *Silvester v. Becerra*, 138 S.Ct. 945, 952  
5 (2018) (Thomas, J., dissenting from denial of cert.) (quoting *McDonald v. Chicago*,  
6 561 U. S. 742, 780 (2010)) (cleaned up).

7 4. And just last year, in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S.Ct.  
8 2111 (2022) (“*Bruen*”), the Supreme Court confirmed that the “test that [it] set forth  
9 in *Heller*” was the only appropriate mode of analyzing Second Amendment  
10 challenges, and “reiterate[d] that the standard for applying the Second Amendment is  
11 as follows: When the Second Amendment’s plain text covers an individual’s conduct,  
12 the Constitution presumptively protects that conduct. The government must then  
13 justify its regulation by demonstrating that it is consistent with the Nation’s historical  
14 tradition of firearm regulation. Only then may a court conclude that the individual’s  
15 conduct falls outside the Second Amendment’s unqualified command.” *Bruen*, 142  
16 S.Ct. at 2129–30 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10  
17 (1961)) (cleaned up).

18 5. Plaintiffs wish to acquire firearms in common use for lawful purposes  
19 that are not prohibited under any of California’s myriad regulations on the types and  
20 categories of weapons that may be acquired and possessed by individuals in the State.  
21 The conduct that Plaintiffs wish to engage in—acquiring firearms to keep and bear for  
22 lawful purposes including immediate self-defense—is plainly covered by the text of  
23 the Second Amendment.

24 6. As explained in *Bruen*, the government bears the burden of  
25 “affirmatively prov[ing] that its firearm regulation is part of the historical tradition  
26 that delimits the outer bounds of the right to keep and bear arms.” 142 S.Ct. at 2127.  
27 Here, Defendants cannot possibly carry that burden. No waiting period or any  
28 analogous laws existed in the constitutionally relevant period of history. Rather, no

1 form of a waiting period law was enacted for any jurisdiction until 1923, well beyond  
2 the relevant time period the Supreme Court permits to be considered—after all, the  
3 law held unconstitutional in *Bruen* was enacted in 1911.

4 7. Adding insult to injury, Defendants broadly discriminate against the  
5 average person by allowing *nearly two dozen categories of favored individuals* to take  
6 possession of firearms and ammunition *without* being subject to those same delays  
7 and burdens. This case is thus also brought on the premise that Defendants’  
8 enforcement of California law violates the Equal Protection Clause by discriminating  
9 among its citizens in their exercise of the fundamental right to keep and bear arms.

10 8. Plaintiffs therefore bring this litigation to vindicate their rights on a  
11 simple premise: The State may not prevent a law-abiding person from taking  
12 possession of an arm after it confirms, using readily available electronic databases,  
13 that the person is not prohibited from possessing firearms.

14 9. Put differently, if the Defendants query federal and state databases and  
15 return no records showing that an applicant is prohibited from possessing arms, and  
16 have no other evidence that they are disqualified from exercising their rights, they  
17 must allow a dealer to transfer possession of the arm without further delay.<sup>3</sup>

18 10. Plaintiffs acknowledge that the relief they seek is contrary to *Silvester v.*  
19 *Harris*, 843 F.3d 816 (9th Cir. 2016). But *Silvester* has been abrogated, as *Bruen*  
20 expressly rejected the “two-step” approach used in *Silvester* to reject a similar  
21 challenge to California’s Waiting Period laws.

22 11. California’s Waiting Period Laws, and Defendants’ enforcement of  
23 them, are not analogous to any constitutionally relevant history and tradition of  
24 regulating firearms. Thus, the Waiting Period Laws must be declared unconstitutional  
25 and enjoined.

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26  
27 <sup>3</sup> Without conceding the constitutionality of such laws, Plaintiffs do not challenge in  
28 this case the federal and state statutes that prohibit certain categories of persons from  
acquiring firearms or the State’s “point of contact” background check requirement.

**THE PARTIES**

1  
2 12. Plaintiff Claire Richards is a resident of San Diego County, California.  
3 Richards is a law-abiding, responsible gun owner with a firearm registered in her name  
4 in Defendants’ Automated Firearms System (“AFS”) and Dealer’s Record of Sale  
5 (“DROS”) databases and is not prohibited under state or federal law from acquiring  
6 or possessing firearms or ammunition. Richards holds an active license to carry a  
7 concealed weapon (“CCW”) issued by the San Diego County Sheriff’s Department.  
8 She is a member of Plaintiffs SDCGO, CGF, FPC, and SAF and a customer of the  
9 Dealer Plaintiffs.

10 13. Plaintiff Alisha Curtin is a resident of San Diego County, California.  
11 Curtin is a law-abiding, responsible gun owner with a firearm registered in her name  
12 in Defendants’ AFS and DROS databases and is not prohibited under state or federal  
13 law from acquiring or possessing firearms or ammunition. Curtin holds an active  
14 CCW license issued by the San Diego County Sheriff’s Department, and also  
15 possesses a valid certificate of eligibility (“COE”) issued by DOJ. She is a member of  
16 Plaintiffs SDCGO, CGF, FPC, and SAF and a customer of the Dealer Plaintiffs.

17 14. Plaintiff Dakota Adelpia is a law-abiding, responsible gun owner with  
18 a firearm registered in her name in Defendants’ AFS and DROS databases and is not  
19 prohibited under state or federal law from acquiring or possessing firearms or  
20 ammunition. Adelpia holds an active CCW license issued by the San Diego County  
21 Sheriff’s Department, and also possesses a valid COE issued by DOJ. She is a member  
22 of Plaintiffs SDCGO, CGF, FPC and SAF and a customer of the Dealer Plaintiffs.

23 15. Plaintiff Michael Schwartz is a law-abiding, responsible gun owner with  
24 a firearm registered in his name in Defendants’ AFS and DROS databases and is not  
25 prohibited under state or federal law from acquiring or possessing firearms or  
26 ammunition. Schwartz holds an active CCW license issued by the San Diego County  
27 Sheriff’s Department, and also possesses a valid COE issued by DOJ. He is a member  
28 of Plaintiffs SDCGO, CGF, FPC and SAF and a customer of the Dealer Plaintiffs.

1           16. Plaintiffs Richards, Curtin, Adelpia, and Schwartz are hereinafter  
2 collectively referred to as the “Individual Plaintiffs.”

3           17. Plaintiff North County Shooting Center, Inc. (“NCSC”) is a California  
4 corporation, state and federally licensed firearms retailer, shooting range, and training  
5 facility in the City of San Marcos, within San Diego County.

6           18. Plaintiff Darin Prince is a natural person, a citizen of the United States,  
7 and a resident of San Diego County. Plaintiff Prince is a partner of Plaintiff NCSC, a  
8 proprietor of the business, and the individual licensee associated with the dealership  
9 and range facility, including by and through the Defendants and their Bureau of  
10 Firearms.

11           19. Plaintiff PWGG, L.P. (“PWG”) is a California limited partnership, doing  
12 business as “Poway Weapons & Gear” and “PWG Range,” and a state and federally  
13 licensed firearms retailer, shooting range, and training facility in the city of Poway,  
14 California, within San Diego County.

15           20. Plaintiff John Phillips is a natural person, a citizen of the United States,  
16 and a resident of San Diego County. Plaintiff Phillips is a partner of PWG, a proprietor  
17 of the business, and the individual licensee associated with the dealership and range  
18 facility, including by and through the Defendants and their Bureau of Firearms.  
19 Plaintiff Phillips is also a trained firearms instructor.

20           21. Plaintiffs Prince, Phillips, NCSC, and PWG are hereinafter collectively  
21 referred to as the “Dealer Plaintiffs.” The Dealer Plaintiffs bring this action on behalf  
22 of their customers and would-be customers. *See Craig v. Boren*, 429 U.S. 190, 192–  
23 97 (1976).

24           22. Plaintiff San Diego County Gun Owners PAC (“SDCGO”) is a political  
25 organization based in San Diego County, whose purpose is to protect and advance the  
26 Second Amendment rights of residents of San Diego County, through their efforts to  
27 support and elect local and state representatives who support the Second Amendment  
28 right to keep and bear arms, education, and advocacy on Second Amendment issues.

1 SDCGO's membership and donors consist of Second Amendment supporters, people  
2 who own guns for self-defense and sport, firearms dealers, shooting ranges, and  
3 elected officials who want to restore and protect the right to keep and bear arms in  
4 California. SDCGO's members are comprised of licensed firearm dealers as well as  
5 individuals who are not prohibited under state or federal law from possessing,  
6 receiving, owning, or purchasing a firearm or ammunition. SDCGO brings this action  
7 on behalf of its members and similarly situated members of the public.

8 23. Plaintiff California Gun Rights Foundation ("CGF") is a nonprofit  
9 foundation incorporated under the laws of California with a place of business in  
10 Sacramento, California. CGF serves its members, supporters, and the public through  
11 educational, cultural, and judicial efforts to defend and advance Second Amendment  
12 and related rights. CGF has thousands of members in California, including in San  
13 Diego County. CGF's members include individuals who are not prohibited under state  
14 or federal law from possessing, receiving, owning, or purchasing a firearm or  
15 ammunition, as well as licensed firearm dealers. CGF brings this action on behalf of  
16 its members and similarly situated members of the public.

17 24. Plaintiff Firearms Policy Coalition, Inc. ("FPC") is a nonprofit  
18 organization incorporated under the laws of Delaware with a place of business in Clark  
19 County, Nevada. The purposes of FPC include defending and promoting the People's  
20 rights (especially but not limited to First and Second Amendment protected rights),  
21 advancing individual liberty, and restoring freedom. FPC serves its members and the  
22 public through legislative advocacy, grassroots advocacy, litigation and legal efforts,  
23 research, education, outreach, and other programs. FPC has members in the State of  
24 California, including in San Diego County. FPC's members and supporters include  
25 gun owners, individuals who wish to acquire firearms and ammunition, licensed  
26 California firearm retailers, shooting ranges, trainers and educators, and others. FPC  
27 brings this action on behalf of its members and similarly situated members of the  
28 public.

1           25. Plaintiff Second Amendment Foundation (“SAF”) is a non-profit  
2 educational foundation incorporated under the laws of Washington with its principal  
3 place of business in Bellevue, Washington. SAF seeks to preserve the effectiveness  
4 of the Second Amendment through educational and legal action programs. SAF has  
5 over 720,000 members and supporters nationwide, including thousands of members  
6 in California. The purposes of SAF include education, research, publishing, and legal  
7 action focusing on the constitutional right to privately own and possess firearms under  
8 the Second Amendment, and the consequences of gun control. SAF’s members and  
9 supporters include gun owners, individuals who wish to acquire firearms and  
10 ammunition, licensed California firearm retailers, shooting ranges, trainers and  
11 educators, and others. SAF brings this action on behalf of its members and similarly  
12 situated members of the public.

13           26. Plaintiffs SDCGO, CGF, FPC, and SAF are hereinafter referred to as the  
14 “Institutional Plaintiffs.” The Institutional Plaintiffs’ members include individuals in  
15 California that, like Individual Plaintiffs, hold a COE, a CCW, and/or are otherwise  
16 known by the Defendants to have a firearm and be legally eligible to possess and  
17 acquire firearms. The Institutional Plaintiffs’ members also include individuals in  
18 California who have not yet acquired a firearm but intend to purchase one.

19           27. Defendant Rob Bonta is the Attorney General of the State of California.  
20 Under Article 5, § 13 of the California Constitution, Attorney General Bonta is the  
21 “chief law officer of the State,” with a duty “to see that the laws of the state are  
22 uniformly and adequately enforced.” Defendant Bonta is the head of the California  
23 Department of Justice. DOJ’s Division of Law Enforcement’s Bureau of Firearms is  
24 charged with regulation and enforcement actions regarding the manufacture, sale,  
25 ownership, safety training, and transfer of firearms and ammunition. The DOJ and its  
26 Bureau of Firearms regulate and enforce state law related to the sales, transfer,  
27 possession, and ownership of firearms. The Attorney General and DOJ maintain an  
28 office in San Diego, California. Defendant Bonta is sued in his official capacity.





1           34. In processing these transactions, firearms dealers licensed by Defendants  
2 must use Defendants’ Dealer’s Record of Sale (DROS) DROS Entry System (DES)  
3 (“DROS DES”). DES can be accessed at <https://des.doj.ca.gov>. The DROS system is  
4 the computerized, point-of-sale application system firearms dealers use to submit  
5 applications to acquire firearms to the Defendants’ Bureau of Firearms.

6           35. California law provides that “[n]o firearm shall be delivered . . . [w]ithin  
7 10 days of the application to purchase, or, after notice by the department pursuant to  
8 Section 28220, within 10 days of the submission to the department of any correction  
9 to the application, or within 10 days of the submission to the department of any fee  
10 required pursuant to Section 28225, whichever is later.” Cal. Penal Code § 26815(a).

11           36. California law further provides that “[a] dealer . . . shall not deliver a  
12 firearm to a person . . . [w]ithin 10 days of the application to purchase, or, after notice  
13 by the department pursuant to Section 28220, within 10 days of the submission to the  
14 department of any correction to the application, or within 10 days of the submission  
15 to the department of any fee required pursuant to Section 28225, whichever is later.”  
16 Cal. Penal Code § 27540(a).

17           37. Violation of these restrictions subjects the violator to criminal sanction.  
18 *See* Cal. Penal Code § 19.4 (“When an act or omission is declared by a statute to be  
19 a public offense and no penalty for the offense is prescribed in any statute, the act or  
20 omission is punishable as a misdemeanor.”). Further, a license to transact in firearms  
21 “is subject to forfeiture for a breach of any of the prohibitions and requirements of  
22 [Article 2, Penal Code §§ 26800 – 26915]” (with some exceptions not applicable  
23 here). Cal. Penal Code § 26800.

24           38. DOJ has access to and uses multiple state and federal electronic databases  
25 to investigate an acquirers’ eligibility to own a firearm.

26           39. Since 1995, California law has required that the background check  
27 consist of automated analyses of multiple law enforcement databases that are  
28 continually updated. *See* Cal. Penal Code § 28220(a) (directing DOJ to “examine its

1 records” “to determine” whether purchaser is prohibited).<sup>4</sup> Any individual who wants  
2 to purchase a firearm and does not fall into one of the WPL’s 18 exemptions must  
3 pass the background check to show that they do not fall into one of the prohibited  
4 classes.

5 40. California law prohibits several classes of people from owning a firearm.  
6 Examples of such “prohibited persons” include individuals convicted of a felony,  
7 misdemeanor crime of domestic violence, or other violent crime. Cal. Penal Code §§  
8 29800, 29805, 29905. State law likewise restricts the mentally ill from possessing  
9 firearms. Cal. Welf. & Inst. Code §§ 8100–8108.

10 41. Under Section 28220(f), DOJ has authority to delay a firearm transaction  
11 beyond the 10-day waiting period *only* in three limited and expressly enumerated  
12 circumstances where its background check reveals potentially disqualifying  
13 information and DOJ is “unable to ascertain” whether the purchaser is actually  
14 prohibited or ineligible before the waiting period concludes. If DOJ is “unable to  
15 ascertain the final disposition of the arrest or criminal charge, or the outcome of the  
16 mental health treatment or evaluation, or the purchaser’s eligibility to purchase a  
17 firearm” within 30 days from the date of purchase, it must “immediately notify” the  
18 dealer that it can transfer the firearm. Cal. Penal Code § 28220(f)(4).

19  
20  
21 <sup>4</sup> See *Silvester v. Harris*, 41 F.Supp.3d 927, 947–52 (E.D. Cal. 2014) (summarizing  
22 the background check’s various database searches). At least two additional safeguards  
23 work to prevent prohibited persons from possessing firearms. First is the Armed and  
24 Prohibited Persons System (“APPS”), “a database that cross-references persons with  
25 firearms records in the AFS, typically a DROS record, with those who have a  
26 prohibiting conviction or circumstance.” *Silvester*, 41 F. Supp. 3d at 957, *see also* Cal.  
27 Penal Code §§ 30000–30015. “The purpose behind APPS is to identify prohibited  
28 persons who have firearms and to enable law enforcement to retrieve the firearms  
before those persons can use the firearms to harm others or themselves.” *Silvester*, 41  
F. Supp. 3d at 957. Second is DOJ’s “Rap Back” system, which “is a notification that  
DOJ receives whenever someone with fingerprints on file with DOJ is the subject of  
a criminal justice agency record, *e.g.* a notification of a subsequent arrest record.” *Id.*

1           42. But upwards of 99% of all DROS applications are approved by  
2 Defendants. *Silvester*, 41 F. Supp. 3d at 953. In 2013, for example, DOJ processed  
3 960,179 DROS applications, with only 7,371 denials. *Id.*<sup>5</sup> And a large percentage of  
4 approvals occur within a matter of minutes. *Id.* (finding that “approximately 20%” of  
5 applications are “auto approved”).

6           43. Yet even after the DOJ’s systems confirm that a law-abiding firearm  
7 acquirer is eligible to possess a firearm, the acquirer must wait—and dealers must  
8 enforce and comply with—at least<sup>6</sup> a full ten-days before the acquirer may take  
9 possession of the gun. “If a background check is completed prior to 10 days, the  
10 firearm is not released because state law mandates a 10-day waiting period.” *Id.* at  
11 954.

12           44. But for Defendants’ enforcement of the Waiting Period Laws, licensed  
13 firearm dealers could transfer possession of a firearm to acquirers immediately after  
14 the Defendants electronically confirm that the acquirer is not prohibited using the  
15 DROS DES “exempt” function. Thus, no modification to the Defendants’ DROS  
16 systems would be required in order to comply with an injunction prohibiting  
17 enforcement of the Waiting Period Laws as to non-prohibited individuals. Under  
18 current law, however, dealers cannot release the gun until the DROS system releases  
19 it—either because it affirmatively approved the transaction or the purchaser’s status  
20 remains “undetermined” after 30 days under section 28220(f)(4).

21  
22  
23 \_\_\_\_\_  
24 <sup>5</sup> On information and belief, many such denials are due to unconstitutional laws and  
25 policies restricting firearm acquisition for several historically unsupported reasons,  
26 meaning that the number of denials for constitutionally sound causes is smaller than  
those prohibited under the Defendants’ laws and enforcement practices.

27 <sup>6</sup> *See, e.g.*, JUDGMENT GRANTING PETITION FOR WRIT OF MANDATE, *Campos v. Bonta*,  
28 San Diego Super. Ct. Case No. 37-2020-0030178 (Aug. 8, 2022) (invalidating DOJ  
practice of extending 10-day period).

1           ***Impact Of Defendants' Enforcement Of Waiting Period Laws On Plaintiffs***

2           45.   **Individuals:** The Individual Plaintiffs have lawfully purchased a  
3 firearm within the State of California or can otherwise demonstrate proof of  
4 ownership and lawful possession of their firearms. They would like to exercise their  
5 right to acquire and take possession of firearms from a licensed dealer after submitting  
6 the transaction through the Defendants' systems which, among other things, facilitate  
7 a background check and record the items transferred, and would immediately do so as  
8 soon as Defendants' systems confirm their status as eligible to possess firearms but  
9 for Defendants' laws, policies, and enforcement practices that prevent them from  
10 taking possession of firearms until Defendants allow a transfer to occur. Defendants'  
11 enforcement of the Waiting Period Laws against the Individual Plaintiffs violates their  
12 right to keep and bear arms, and the rights of others similarly situated to them.

13           46.   The Waiting Period Laws infringe the Second Amendment rights of  
14 Plaintiffs and all other similarly situated Californians: They prevent the delivery of a  
15 firearm for a full ten-day period even where California's firearms databases confirm  
16 that the purchaser already owns a firearm and the purchaser has passed a background  
17 check before the end of the ten-day period.

18           47.   **Institutional Plaintiffs:** The Individual Plaintiffs are each members of  
19 the Institutional Plaintiffs, whose membership includes many more individuals who  
20 are similarly situated in that they have a CCW, COE, or at least one firearm in  
21 California's AFS system. The Institutional Plaintiffs' members likewise include  
22 would-be first-time purchasers who are not prohibited from purchasing firearms.  
23 Accordingly, the Institutional Plaintiffs and their members are harmed by the Waiting  
24 Period Laws.

25           48.   **Dealer Plaintiffs:** Plaintiffs PWG and NCSC are duly licensed firearm  
26 retailers and shooting ranges listed in the DOJ's Centralized List of Firearms Dealers.  
27 Plaintiffs PWG and NCSC have received numerous firearms and ammunition  
28 purchase applications from purchasers who are not prohibited under state or federal

1 law from possessing, receiving, owning, or purchasing a firearm or ammunition; such  
2 applications have been duly submitted to Defendants. The information presented on  
3 those applications is accurate, legible, and complete. Defendants’ laws, policies, and  
4 enforcement practices prevent Plaintiffs PWG and NCSC and their staff from  
5 immediately transferring firearms or ammunition to transferees that are legally  
6 eligible to possess and receive such constitutionally protected arms. Defendants’  
7 enforcement of the Waiting Period Laws has caused, and is causing, injury and harm  
8 to Plaintiffs PWG and NCSC (and their customers) through, for example, delayed  
9 and/or cancelled sales, delayed and/or cancelled revenues, lost goodwill with  
10 purchasers, and allocation of employee time and effort to continuously check  
11 purchasers’ firearm statuses, and update/notify purchasers of their pick-up times of  
12 lawfully purchased property.

### 13 *The Right To Keep and Bear Arms*

14 49. The Second Amendment “guarantee[s] the individual right to possess  
15 and carry weapons in case of confrontation.” *District of Columbia v. Heller*, 554 U.S.  
16 570, 592 (2008). And it “elevates above all other interests”—including the  
17 Defendants’—“the right of law-abiding, responsible citizens to use arms in defense of  
18 hearth and home.” *Id.* at 635. The Second Amendment is fully applicable to the States  
19 through the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742  
20 (2010).

21 50. The fundamental, individual right to keep and bear arms includes the  
22 right of individuals to acquire and take possession of firearms and ammunition for all  
23 lawful purposes.

24 51. California, however, has placed unconstitutional and burdensome  
25 restrictions on access to and delivery of firearms, generally subjecting firearm  
26 acquirers (and dealers) to a minimum ten-day ban on the delivery of firearms, even if  
27 the individual is already known by the Defendants to be in possession of a firearm and  
28 not prohibited from possessing firearms.

1           52. When, as here, “the Second Amendment’s plain text covers an  
2 individual’s conduct, the Constitution presumptively protects that conduct. The  
3 government must then justify its regulation by demonstrating that it is consistent with  
4 the Nation’s historical tradition of firearm regulation. Only then may a court conclude  
5 that the individual’s conduct falls outside the Second Amendment’s unqualified  
6 command.” *Bruen*, 142 S.Ct. at 2129–30 (quoting *Konigsberg*, 366 U. S. at 50 n.10)  
7 (cleaned up). The government bears the burden of identifying an historical analogue  
8 to “affirmatively prove that its firearm regulation is part of the historical tradition that  
9 delimits the outer bounds of the right to keep and bear arms.” *Id.* at 2127.

10           53. *Bruen* explained that the inquiry, cabined to the constitutionally relevant  
11 history, must show “how and why the [purportedly analogous] regulations burden a  
12 law-abiding citizen’s right to armed self-defense.” *Id.* at 2133. “In some cases,” such  
13 as this one, “that inquiry will be fairly straightforward. For instance, when a  
14 challenged regulation addresses a general societal problem that has persisted since the  
15 18th century, the lack of a distinctly similar historical regulation addressing that  
16 problem is relevant evidence that the challenged regulation is inconsistent with the  
17 Second Amendment.” *Id.* at 2131.

18           54. California’s purported justifications for its Waiting Period Laws—“to  
19 allow sufficient time for law enforcement to complete a background check, and also  
20 to provide a ‘cooling off’ period (*i.e.*, a period in which weapons purchasers may  
21 reconsider, particularly when an impulsive act of violence or self harm may be  
22 contemplated),” *Silvester*, 843 F.3d at 823—seek to address general societal problems  
23 that have persisted since the 18th century. And California cannot carry its burden in  
24 any event, as no government (federal, state, or local) in the Nation imposed waiting  
25 periods on the purchase of firearms on *any* firearms acquirers—first-time or  
26 otherwise—in the constitutionally relevant period.

27           55. California did not first impose a waiting period until 1923, when it joined  
28 a few other states in doing so. 1923 Cal. Stat. ch. 339 §§ 10-11. But legislation enacted

1 132 years after the Founding is irrelevant to determining the scope of the Second  
2 Amendment. Indeed, the Supreme Court in *Bruen* refused to even “address any of the  
3 20th-century historical evidence” offered by New York and its *amici*, since it “does  
4 not provide insight into the meaning of the Second Amendment when it contradicts  
5 earlier evidence.” 142 S.Ct. at 2154 n.28.

6 56. Failing *Bruen*’s historical test from the outset, California’s Waiting  
7 Period Laws must be declared unconstitutional and enjoined.

8 ***California Law Exempts Several Favored Classes From The Waiting Period***

9 57. At the same time California law imposes unconstitutional and  
10 unnecessary restraints on the Second Amendment rights of ordinary law-abiding  
11 Californians, it carves out numerous exceptions to their waiting period laws for certain  
12 favored classes. To name just a few, destructive device collectors, movie prop houses,  
13 auction purchasers, and consultants-evaluators are all granted instant access to the  
14 firearms and ammunition they seek, while Plaintiffs and the law-abiding general  
15 public are sidelined with delays and burdens. Cal. Penal Code §§ 26950, *et seq.*;  
16 27650, *et seq.*

17 58. California Penal Code § 26950 also creates what is routinely referred to  
18 as “the Hollywood exception”—specifically, an “entertainment firearms permit,”  
19 which “authorizes the permitholder to possess firearms loaned to the permitholder for  
20 use solely as a prop in a motion picture, television, video, theatrical, or other  
21 entertainment production or event.” The holder of an entertainment firearms permit is  
22 not subject to the 10-day waiting period, among other regulations.

23 59. Plaintiffs thus challenge the following exemptions for violating the  
24 Fourteenth Amendment’s Equal Protection Clause:

- 25 a. Certain law enforcement transactions (Cal. Penal Code §§ 26950, 27050,  
26 27055, 27060, 27065 (exempting § 26815); §§ 27600, 27605, 27610,  
27 27615, and 27650 (exempting § 27540));



- b. Short barrel rifle and short barrel shotgun permittees (§§ 26965 and 21740 (exempts from § 26815); §§ 27665 and 27740 (exempts from § 27540));
- c. “Assault weapons” permittees (§ 21740 (exempts from § 26815); §27740 (exempts from § 27540));
- d. “Machinegun” permittees (§§ 26965 and 27140 (exempts from § 26815); §§ 27665 and 27740 (exempts from § 27540));
- e. “Machinegun” licensees (§ 26965 (exempts from § 26815); § 27665 (exempts from § 27540));
- f. “Destructive device” permittees (§ 26965 (exempts from § 26815); § 27665 (exempts from § 27540));
- g. Out of state sales (§ 27115 (exempts from § 26815) and § 27715 (exempts from § 27540));
- h. Loans of firearms for use as props (§ 27000 (exempts from § 26815); § 27745 (exempts from § 27540));
- i. Loans of firearms to consultants or evaluators (§ 27005 (exempts from § 26815); § 27750 (exempts from § 27540)); and,
- j. Transactions involving cane guns, firearms that are not immediately recognizable as firearms, undetectable firearms, wallet guns, unconventional pistols, and zip guns (§ 21740 (exempts from § 26815); § 27740 (exempts from § 27540)).

**COUNT I**

**42 U.S.C. §1983**

**RIGHT TO KEEP AND BEAR ARMS**

**U.S. CONST., AMENDS. II AND XIV**

60. Paragraphs 1 through 59 are incorporated as though fully stated herein.

61. The Second Amendment, which applies against Defendants by operation of the Fourteenth Amendment, *McDonald*, 561 U.S. 742, secures the right to keep and

1 bear arms for all lawful purposes, including for the purpose of immediate self-defense.  
2 *Heller*, 554 U.S. at 635.

3 62. “When the Second Amendment’s plain text covers an individual’s  
4 conduct, the Constitution presumptively protects that conduct. The government must  
5 then justify its regulation by demonstrating that it is consistent with the Nation’s  
6 historical tradition of firearm regulation. Only then may a court conclude that the  
7 individual’s conduct falls outside the Second Amendment’s unqualified command.”  
8 *Bruen*, 142 S.Ct. at 2129–30 (quoting *Konigsberg*, 366 U. S. at 50 n.10) (cleaned up).

9 63. The conduct that Individual Plaintiffs, Institutional Plaintiffs’ members,  
10 Dealer Plaintiffs’ customers and would-be customers, and similarly situated members  
11 of the public wish to engage in—acquiring arms to keep and bear for lawful purposes  
12 including but not limited to immediate self-defense—is covered by the Second  
13 Amendment’s plain text.

14 64. California Penal Code sections 26815 and 27540, and Defendants’  
15 regulations, policies, and enforcement practices applying their Waiting Period Laws,  
16 impose at least a ten-day ban, as well as other burdens and costs, on the possession of  
17 constitutionally protected arms by a legally eligible individual under pain of criminal  
18 and other penalties.

19 65. Defendants’ Waiting Period Laws individually and collectively prevent,  
20 substantially interfere with, inhibit access to, and infringe upon Plaintiffs’ right (and  
21 the rights of Institutional Plaintiffs’ members) to keep and bear arms for lawful  
22 purposes.

23 66. Dealer Plaintiffs NCSC and PWG have a corresponding interest in  
24 defending and promoting the rights of the dealerships’ patrons and would-be patrons  
25 on their behalf. Dealer Plaintiffs are subject to Defendants’ laws, policies, and  
26 enforcement practices, which include serious civil and criminal penalties, as well as  
27 the loss of their dealership, for violations thereof.

28

1           67. Under *Bruen*, Defendants must affirmatively prove that their firearms  
2 regulations challenged herein are “part of the historical tradition that delimits the outer  
3 bounds of the right to keep and bear arms.” 142 S.Ct. at 2127. But this they cannot do  
4 because no analogous waiting period laws existed in the constitutionally relevant  
5 period. Rather, waiting periods did not appear for any jurisdiction until 1923.

6           68. Because Defendants’ Waiting Period Laws, regulations, and  
7 enforcement practices violate the right to keep and bear arms, they must therefore be  
8 declared unconstitutional and enjoined.

9           69. Individual Plaintiffs desire and intend to apply for the transfer of a  
10 firearm and to take possession of it as soon as they can be electronically confirmed to  
11 not be prohibited from possessing firearms, and would do so, but for the Defendants’  
12 enforcement of the Waiting Period Laws and the risk of criminal and other penalties.

13           70. Institutional Plaintiffs’ law-abiding members in California desire and  
14 intend to apply for the transfer of a firearm and to take possession of it as soon as they  
15 can be electronically confirmed to not be prohibited from possessing firearms, and  
16 would do so, but for the Defendants’ enforcement of the Waiting Period Laws and the  
17 risk of criminal and other penalties.

18           71. Dealer Plaintiffs’ law-abiding customers and would-be customers in  
19 California desire and intend to apply for the transfer of a firearm and to take possession  
20 of it as soon as they can be electronically confirmed to not be prohibited from  
21 possessing firearms, and would do so, but for the Defendants’ enforcement of the  
22 Waiting Period Laws and the risk of criminal and other penalties.

23           72. 42 U.S.C. § 1983 creates a cause of action against state actors who  
24 deprive individuals of federal constitutional rights under color of state law. Individual  
25 Plaintiffs, Institutional Plaintiffs’ members, and Dealer Plaintiffs’ customers and  
26 would-be customers have suffered—and continue to suffer—from an unlawful and  
27 irreparable deprivation of their fundamental, constitutionally protected right to keep  
28 and bear arms.



1           78. 42 U.S.C. § 1983 creates a cause of action against state actors who  
2 deprive individuals of federal constitutional rights under color of state law. Individual  
3 Plaintiffs, Institutional Plaintiffs’ members, and Dealer Plaintiffs’ customers and  
4 would-be customers have suffered—and continue to suffer—from an unlawful and  
5 irreparable deprivation of their fundamental, constitutionally protected right to equal  
6 protection of the law.

7           79. Plaintiffs are therefore entitled to declaratory and injunctive relief.

8                           **PRAYER FOR RELIEF**

9           Plaintiffs request judgment be entered in their favor against Defendants as  
10 follows:

11           1. A declaratory judgment that Defendants’ enforcement of California’s  
12 Waiting Period Laws after such time that the Defendants timely confirm a firearm  
13 transferee is not prohibited from possessing firearms violates the right to keep and  
14 bear arms protected under the Second and Fourteenth Amendments to the United  
15 States Constitution;

16           2. A declaratory judgment that Defendants’ enforcement of California’s  
17 Waiting Period Laws to typical law-abiding individuals, while also failing to enforce  
18 those same Waiting Period Laws against the classes favored by the statutory  
19 exceptions to them, violates the right to equal protection of the law secured by the  
20 Fourteenth Amendment to the United States Constitution;

21           3. A preliminary and permanent injunction restraining Defendants, their  
22 officers, agents, servants, employees, and attorneys, and those persons in active  
23 concert or participation with them, and those who gain knowledge of the injunction  
24 order or know of the existence of the injunction order, from implementing or  
25 enforcing California’s Waiting Period Laws after such time that the Defendants  
26 timely confirm a firearm transferee is not prohibited from possessing firearms;


27           4. Attorney fees and costs pursuant to 42 U.S.C. section 1988; and,

28           5. All other relief the Court deems necessary, just, or appropriate.

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Dated: May 1, 2023

BENBROOK LAW GROUP, PC

By   
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BRADLEY A. BENBROOK  
Attorneys for Plaintiffs