

1 George M. Lee (SBN 172982)  
Douglas A. Applegate (SBN 142000)  
2 **SEILER EPSTEIN ZIEGLER & APPEGATE LLP**  
601 Montgomery Street, Suite 2000  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Raymond M. DiGuiseppe (SBN 228457)  
**LAW OFFICES OF RAYMOND MARK DIGUISEPPE, PLLC**  
6 2 North Front Street, Fifth Floor  
Wilmington, NC 28401  
7 Phone: (910) 713-8804  
8 Fax: (910) 672-7705

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF RIVERSIDE**

11  
12 GEORGE HOLT, an individual; IRVIN  
HOFF, an individual; MICHAEL LOUIE,  
13 an individual; RICK RUSSELL, an  
individual; THE CALGUNS  
14 FOUNDATION; FIREARMS POLICY  
COALITION; FIREARMS POLICY  
15 FOUNDATION; and SECOND  
AMENDMENT FOUNDATION,  
16

17 Plaintiffs and Petitioners,

18 vs.

19  
20 XAVIER BECERRA, in his official  
capacity as Attorney General of California;  
21 STEPHEN J. LINDLEY, in his official  
capacity as Chief of the Department of  
22 Justice Bureau of Firearms; the  
CALIFORNIA DEPARTMENT OF  
23 JUSTICE; DEBRA N. CORNEZ, in her  
official capacity as Director of the Office of  
24 Administrative Law; BETTY T. YEE, in her  
official capacity as the California State  
25 Controller; and DOES 1-50, inclusive,  
26  
27

28 Defendants and Respondents.

**CASE NO.**

**VERIFIED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF,  
AND VERIFIED PETITION  
FOR A WRIT OF MANDAMUS**

1 COME NOW the Plaintiffs GEORGE HOLT, IRVIN HOFF, MICHAEL LOUIE,  
2 RICK RUSSELL, THE CALGUNS FOUNDATION, FIREARMS POLICY  
3 COALITION, FIREARMS POLICY FOUNDATION, and SECOND AMENDMENT  
4 FOUNDATION (collectively, “Plaintiffs”) by and through their undersigned counsel,  
5 who hereby complain and allege as follows:  
6

7 **INTRODUCTION**

8 1. At the heart of a democratic government designed to serve and protect its  
9 citizens is “a system of checks and balances designed to prevent any governmental  
10 branch from obtaining arbitrary or inordinate power.” (*California Assn. of Retail*  
11 *Tobacconists v. California* (2003) 109 Cal.App.4th 792, 830.) This is the constitutional  
12 theory underlying the separation of powers doctrine. (*Ibid.*) “[T]ime has blurred the  
13 purity of division of governmental functions, ... particularly with the advent of  
14 administrative agencies.” (*Ibid.*) Since that advent, there has been “much more concern  
15 for *avoiding or minimizing unchecked power...*” within administrative agencies. (*Ibid.*,  
16 quoting *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 361-362.)

17 2. The California Legislature has responded to these concerns by establishing  
18 an agency rule-making oversight process under the Administrative Procedures Act (APA)  
19 (see generally, Tit. 2, Div. 3, Part 1, Ch. 3.5 of the Government Code, § 11340 *et seq.*),  
20 administered through the Office of Administrative Law (OAL) for the specific purpose of  
21 preventing, and “[c]orrecting the problems that have been caused by,” the needless or  
22 excessive expenditure of “[s]ubstantial time and public funds . . . in adopting regulations”  
23 that impose an “unnecessary burden” upon private persons and entities through  
24 regulations that are “unclear and unnecessarily complex,” are not “authorized by statute,”  
25 or are not “consistent with other law.” (Gov. Code, § 11340, subs. (b)-(f).)

26 3. As such, all administrative agencies must comply with the APA in  
27 promulgating rules designed to implement laws they are entrusted with enforcing, unless  
28 the Legislature has carved out a specific exception for certain rule-making. Any rule-  
making under such an exemption must be strictly limited to the scope of the exemption.

1 There is no “free pass” from these important proscriptions for “hot-button” or politically-  
2 charged matters of public concern – like the regulation of so-called “assault weapons” –  
3 when agency administrators believe they have a favorable political climate for pushing  
4 through unchecked “regulations” that attempt to force the law into line with one side of  
5 the debate. These limitations on agency power are of the utmost importance in such  
6 contexts, because oversight is necessary to ensure that the regulatory activity is not driven  
7 by whimsical or biased political tides that blithely ignore any competing points of view.

8 4. Today, Plaintiffs are forced to bring this action because the California  
9 Department of Justice (DOJ) has engaged in this very sort of unbridled improper exercise  
10 of power in promulgating and enforcing the broad and sweeping set of “assault weapons”  
11 regulations that it successfully pushed through OAL, with no oversight or public input at  
12 all. Under the guise of promulgating APA-exempt regulations to effectuate the new  
13 “assault weapons” registration requirement under Penal Code section 30900,<sup>1</sup> and  
14 without consulting with gun owners, users, or industry experts, the DOJ has completely  
15 revamped the existing regulatory scheme. If upheld, this new regulatory scheme would  
16 not only subvert the crucial “checks and balances” of the APA but it would effectively  
17 rewrite the statutory law by vastly expanding and significantly altering the scope of both  
18 the new and pre-existing “assault weapons” classifications. (11 Cal. Code of Regs.  
19 [“CCR”] §§ 5469; 5470, subds. (a), (b), & (d); 5471; 5472, subds. (d), (e), (f), & (g);  
20 5473, subds. (b)(1) & (b)(3); 5474; 5474.1, subd. (b); 5474.2; 5475, subds. (a) & (c);  
21 5478.). Collectively, these are the “Challenged Regulations.”

22 5. Whatever limited authority the DOJ may have been given to issue APA-  
23 exempt regulations in this area, it has greatly exceeded such authority. It unquestionably  
24 has no authority to issue any regulations, APA-compliant or not, that so fundamentally  
25 alter the statutory landscape governing “assault weapons” which the Legislature has  
26 established. Thus, the Challenged Regulations are not only procedurally and  
27

28 \_\_\_\_\_  
<sup>1</sup> Further statutory references are to the Penal Code unless otherwise indicated.

1 substantively invalid, but the DOJ’s regulatory scheme amounts to the very sort of  
2 government “waste” of public resources that the APA process was designed to prevent.

3 6. Indeed, the DOJ’s regulatory scheme is rife with irreconcilable conflicts  
4 and contradictions. These features render it hopelessly confusing for ordinary persons  
5 attempting to comply with the law because their firearms may or may not potentially be  
6 subject to the new registration requirement, or may or may not be retroactively classified  
7 as unlawfully possessed based upon how the Challenged Regulations purport to alter the  
8 new and pre-existing laws governing “assault weapons.” The DOJ’s most recent move of  
9 submitting for formal APA review a new regulation concerning what constitutes an  
10 “assault weapon” within this regulatory scheme, in apparent last-ditch effort to clean up  
11 some of this mess after the fact, spotlights the vagueness and general illegality of the  
12 scheme. Accordingly, the DOJ’s regulatory scheme is not only invalid for being in clear  
13 violation of the APA and well beyond the scope of its substantive regulatory authority,  
14 but the scheme is also unconstitutionally vague and thus cannot be enforced in any event.  
15 Any further implementation or enforcement of this illegal regulatory scheme must be  
16 enjoined through the declaratory, injunctive, and/or mandamus relief Plaintiffs seek in  
17 this action.

18  
19  
20 **JURISDICTION & VENUE**

21 7. This case raises questions under the California Constitution – specifically,  
22 Article III, section 3, Article IV, section 1, and Article VI, section 10. Thus, this Court  
23 has jurisdiction to hear and resolve all of Plaintiffs’ claims and to grant all forms of relief  
24 requested herein, including declaratory, injunctive, and mandamus relief sought as to all  
25 claims. (Cal. Const., art. VI, § 10; Code Civ. Pro. [“CCP”], §§ 525, 526, 526a, 1060 &  
26 1085; see also CCP, § 410.10.)

27 8. Venue in this judicial district is proper because some or all the Causes of  
28 Action arose in this county, and the conduct of the Defendants at issue has caused and  
will continue to cause legal injuries and deprivation of rights to individuals in this county,

1 including Plaintiffs, and those similarly situated individuals they represent, as described  
2 herein. (CCP, §§ 393, subd. (b), 395, subd. (a); Gov. Code, § 955.2.)

3  
4 **THE PARTIES**

5 **I. Individual Plaintiffs**

6 9. All individual Plaintiffs herein are natural persons, citizens of the United  
7 States, taxpayers of the State of California, and current residents of the State of  
8 California, in the counties specified below.

9 10. All individual Plaintiffs are eligible to possess firearms under applicable  
10 state and federal laws, including those firearms lawfully possessed, prior to December 31,  
11 2016, which the state now classifies as “assault weapons.”

12 11. Plaintiff George Holt is an individual law-abiding gun owner and a resident  
13 of the County of Riverside, California, and has, within the past year, paid taxes to the  
14 State of California and/or for its benefit. Plaintiff Holt is an honorably retired peace  
15 officer, having retired after 25 years of cumulative service in law enforcement. During  
16 his time in law enforcement, plaintiff Holt was a Team Leader on a full-time SWAT  
17 team, trained with the Los Angeles Police Department and Los Angeles County Sheriff’s  
18 Department, among other agencies, and was awarded the Police Star Medal twice for  
19 heroism and bravery in the line of duty, in 1996 and 2001. Prior to December 31, 2016,  
20 and as a private citizen, plaintiff Holt legally owned a Saiga-12 semiautomatic shotgun  
21 which the DOJ now labels a “bullet-button assault weapon”<sup>2</sup> and has declared, in its  
22

23  
24  
25 <sup>2</sup>A Bullet Button is a particular patented and trademarked device that functions to provide  
26 a mechanical barrier between a firearm’s normal magazine release function and the user,  
27 requiring a bullet, tool, or other object to affirmatively engage the release mechanism and  
28 allow the magazine to be removed from the firearm body. While the Challenged  
Regulations refer to such magazine locking devices generally as “bullet-button” devices,  
they are more properly considered as a class of “magazine locking devices” of which the  
Bullet Button is but one brand and type. For consistency, all references to “bullet-button”  
are generic and refer to the broader class of “magazine locking devices” invented for

1 regulations, must be registered. (11 CCR § 5470, subd. (d)). However, when the  
2 Legislature enacted SB 880 and AB 1135, and thereby changed its definition of “assault  
3 weapon” pertaining to firearms with “fixed magazines,” (see § 30515, subd. (b)), it did  
4 not alter the definition of “assault weapon” as it pertains to semiautomatic shotguns (see  
5 § 30515, subd. (a)(5)), leaving such firearms outside the scope of that definition. Thus,  
6 the DOJ’s regulation creates criminal liability or potential criminal liability for Plaintiff  
7 Holt, and similarly situated individuals, where none has heretofore existed or would  
8 otherwise exist. Therefore, the declaratory and injunctive relief, and/or mandamus relief  
9 sought in this action, are necessary to vindicate the rights at stake, as set forth herein.

10           12. Plaintiff Irvin Hoff is an individual law-abiding gun owner and a resident of  
11 the County of San Bernardino, California, and has, within the past year, paid taxes to the  
12 State of California and/or for its benefit. Plaintiff Hoff served his country as a United  
13 States Marine, and was honorably discharged in 1984. Plaintiff Hoff owns two registered  
14 “assault weapons” which were lawfully owned and registered as such in or prior to 2001.  
15 Before December 31, 2016, plaintiff Hoff also legally owned one or more firearms which  
16 the DOJ now labels “bullet-button assault weapons” and which, as configured, have been  
17 retroactively defined “assault weapons” pursuant to section 30515, subdivision (a).  
18 Plaintiff Hoff is now required to register such firearms in their configurations as “assault  
19 weapons” pursuant to section 30900, subdivision (b)(1). However, plaintiff Hoff  
20 rightfully objects to those Challenged Regulations which, in connection with the  
21 registration process, would require or compel him, the other individual plaintiffs, and  
22 others similarly situated, to supply information that is already on file with the DOJ, to  
23 pay additional fees to register such firearms that are already “registered” with the State of  
24 California, and/or to otherwise to provide information, photographs, or other  
25 documentation that is not required by statute. Declaratory and injunctive relief, and/or

26  
27  
28 compliance with prior statutes and regulations or, where the context so indicates, to the  
firearms on which such devices are installed.

1 mandamus relief, sought in this action are necessary to vindicate his rights and the rights  
2 of others similarly situated, as set forth herein.

3 13. Plaintiff Michael Louie is an individual law-abiding gun owner and a  
4 resident of the County of San Bernardino, California, and has, within the past year, paid  
5 taxes to the State of California and/or for its benefit. Plaintiff Louie owns two registered  
6 “assault weapons” which were lawfully owned and registered in or prior to 2001. Before  
7 December 31, 2016, plaintiff Louie also legally owned a firearm which the DOJ now  
8 labels a “bullet-button assault weapon” and which, as configured, had been retroactively  
9 defined as an “assault weapon” pursuant to section 30515, subdivision (a). Plaintiff Louie  
10 is now required by law to register that firearm as an “assault weapon” pursuant to section  
11 30900, subdivision (b)(1) (“shall register the firearm [...]”). However, at the present time,  
12 the specifically-described features of the firearm that made it a legally owned “assault  
13 weapon” before December 31, 2016, under section 30515, subdivision (a), have been  
14 removed, thereby making it a “featureless” rifle. (See 11 CCR, § 5471, subd. (o).)  
15 Plaintiff Louie is nevertheless required by statute to register this firearm, and desires to  
16 register this firearm, in accordance with the law. However, the Department’s own  
17 regulations (i.e., 11 CCR, § 5472, subd. (c)) prevent or would prevent plaintiff Louie  
18 from registering this legally-owned firearm as required by statute. Therefore, the  
19 declaratory and injunctive relief, and/or mandamus relief, sought in this action are  
20 necessary, as set forth herein, to vindicate his right (and obligation), and the rights (and  
21 obligations) of others similarly situated, to register this legally-owned firearm as the only  
22 available means by which to maintain lawful possession of such firearms according to the  
23 DOJ’s regulatory scheme.  
24

25 14. Plaintiff Rick Russell is an individual law-abiding gun owner and a resident  
26 of the County of Lassen, California, and has, within the past year, paid taxes to the State  
27 of California and/or for its benefit. Plaintiff Russell has held a license to carry a  
28 concealed firearm (CCW) issued to him by his county sheriff, only after proving “good

1 cause” and his “good moral character” to his licensing authority, successfully completing  
2 a course of training on the law and firearms proficiency, passing an extensive Live Scan-  
3 based background check, and obtaining placement onto the state’s “Rap Back” system for  
4 monitoring law enforcement contact, arrests, and criminal convictions. Plaintiff Russell  
5 also holds a Certificate of Eligibility (COE) to own firearms from the State of California  
6 pursuant to section 26710. Prior to December 31, 2016, plaintiff Russell legally owned a  
7 self-built firearm which the DOJ labels a “bullet-button assault weapon” and which, as  
8 configured, has been retroactively defined as an “assault weapon” pursuant to section  
9 30515, subdivision (a). After constructing this firearm, which was built from an “80%  
10 lower” receiver, plaintiff Russell engraved a serial number and other identifying  
11 information according to the requirements for licensed manufacturers (i.e., 28 C.F.R., §  
12 478.92.) Plaintiff Russell is required to register this firearm, and desires to register this  
13 firearm, in accordance with state law. However, DOJ’s regulations, promulgated after  
14 plaintiff Russell’s serialization and engravings were made in accordance with federal law,  
15 now purportedly require Department-issued serial numbers to be issued, pursuant 11  
16 CCR, section 5474.2, before such firearms may be registered under the new scheme. As a  
17 result, this regulation prevents or would prevent plaintiff Russell from registering this  
18 legally-owned firearm as required. The declaratory and injunctive relief, and/or  
19 mandamus relief, sought in this action are necessary as set forth herein, to vindicate his  
20 right (and obligation), and the rights (and obligations) of others similarly situated, to  
21 register this legally-owned firearm as the only available means by which to maintain  
22 lawful possession of such firearms according to the DOJ’s regulatory scheme.  
23

24  
25 **II. Institutional Plaintiffs**

26 15. Plaintiff The Calguns Foundation (“CGF”) is a 501(c)3 non-profit  
27 organization incorporated under the laws of California with its principal place of business  
28 in Sacramento, California. CGF is dedicated to promoting education for all stakeholders



1 about California and federal firearm laws, rights and privileges, and to defending and  
2 protecting the civil rights of California gun owners. CGF represents its members and  
3 supporters, who include California firearm retailers and consumers throughout the State,  
4 and brings this action on behalf of itself, its members, supporters who possess all the  
5 indicia of membership, and similarly situated members of the public.

6       16. Plaintiff Firearms Policy Coalition, Inc. (“FPC”) is a 501(c)4 non-profit  
7 organization incorporated under the laws of Delaware with its principal place of business  
8 in Sacramento, California, with members residing both within and outside of this state,  
9 including in Riverside County, California. FPC serves its members and the public  
10 through direct and grassroots advocacy, legal efforts, and education. The purposes of  
11 FPC include defending the United States Constitution and the People’s rights, privileges,  
12 and immunities deeply rooted in the Nation’s history and tradition, especially the  
13 fundamental right to keep and bear arms. FPC represents its members and supporters,  
14 who include California firearm retailers and consumers, and brings this action on behalf  
15 of itself, its members, supporters who possess all the indicia of membership, and  
16 similarly situated members of the public.

17       17. Plaintiff Firearms Policy Foundation, Inc. (“FPF”) is a 501(c)3 non-profit  
18 organization incorporated under the laws of Delaware with its principal place of business  
19 in Sacramento, California, with members residing both within and outside of this state,  
20 including in Riverside County, California. FPF serves to defend and advance  
21 constitutional rights through charitable purposes, with a focus on the fundamental,  
22 individual right to keep and bear arms. FPF represents its members and supporters, who  
23 include California firearm retailers and consumers, and brings this action on behalf of  
24 itself, its members, supporters who possess all the indicia of membership, and similarly  
25 situated members of the public.

26       18. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a 501(c)3 non-  
27 profit organization incorporated under the laws of Washington with its principal place of  
28

1 business in Bellevue, Washington. SAF has over 650,000 members and supporters  
2 nationwide, including many in California. The purposes of SAF include education,  
3 research, publishing, and legal action focusing on the constitutional right to privately own  
4 and possess firearms under the Second Amendment, and the consequences of gun control.  
5 SAF brings this action on behalf of itself, its members, supporters who possess all the  
6 indicia of membership, and similarly situated members of the public.

7           19. Individual plaintiffs Holt, Hoff, Louie, and Russell are bringing this claim  
8 on behalf of themselves, and as representatives of the class of similar individuals  
9 consisting of law-abiding California residents too numerous to individually name or  
10 include as parties to this action, who are not otherwise prohibited or exempt, and who  
11 lawfully and have legally possessed firearms that the State of California now classifies as  
12 “assault weapons” that must be registered. Plaintiff Holt is bringing this claim on his own  
13 behalf, and as a representative of the class of similar individuals consisting of law-  
14 abiding California residents too numerous to individually name or include as parties to  
15 this action, who are not otherwise prohibited nor exempt and who lawfully and have  
16 legally possessed semiautomatic shotguns that the DOJ has, through the Challenged  
17 Regulations, declared subject to registration as “assault weapons” in contravention of the  
18 governing statutory authority.

19           20. Institutional plaintiffs CGF, FPC, FPF, and SAF are bringing this claim as  
20 public interest organizations, whose California members similarly have lawfully  
21 possessed retroactively-defined “bullet-button assault weapons” in this state, prior to  
22 December 31, 2016, and who represent the interests of those similarly situated  
23 individuals too numerous to individually name or include as parties to this action. As to  
24 all claims made in a representative capacity herein, there are common questions of law  
25 and fact that substantially affect the rights, duties, and liabilities of many similarly  
26 situated California residents who knowingly or unknowingly are subject to the  
27 Challenged Regulations. The relief sought in this action is declaratory and injunctive in  
28

1 nature, and the action involves matters of substantial public interest.  
2

3 **III. Defendants**

4 21. Defendant Xavier Becerra is the Attorney General of the State of  
5 California, and he is sued herein in his official capacity. The Attorney General is the  
6 chief law enforcement officer of the state, and the head of the DOJ. It is his duty to  
7 ensure that California’s laws are uniformly and adequately enforced. The DOJ and its  
8 Bureau of Firearms regulate and enforce state law related to the sales, ownership, and  
9 transfer of firearms, including the licensing and regulation of firearms dealers.

10 22. Defendant Stephen J. Lindley is Chief of the DOJ’s Bureau of Firearms.  
11 Upon information and belief, Lindley reports to Attorney General Becerra, and he is  
12 responsible for the various operations of the Bureau of Firearms, including the  
13 implementation and enforcement of the Challenged Regulations. He is sued herein in his  
14 official capacity.

15 23. The California Department of Justice (DOJ) is a state agency charged with  
16 responsibility of enforcing state statutes and promulgating and enforcing rules and  
17 regulations authorized by and designed to effectuate the law, including the Challenged  
18 Regulations.

19 24. The California Office of Administrative Law (OAL) is responsible for  
20 reviewing regulations promulgated by state agencies, including the DOJ, to ensure they  
21 are clear, necessary, legally valid, and available to the public, and that they comply with  
22 the standards of the APA. Defendant Debra N. Cornez is the Director of the OAL and is  
23 thus responsible for overseeing these core functions. She is sued in her official capacity.

24 25. The State Controller’s Office (SCO) is responsible for the management,  
25 accounting, and disbursement of the State’s financial resources, including the  
26 disbursement of all funds collected for or on behalf of the state agencies. Plaintiffs are  
27 informed and believe that this responsibility of the SCO extends to the funds collected as  
28

1 “fees” for the “assault weapon” registration process at issue in this case and, thus, that the  
2 SCO bears the ultimate responsibility of allocating these funds to the DOJ as  
3 disbursements of state funds for the purpose of covering the administrative costs the DOJ  
4 claims to incur in connection with the registration process. Defendant Betty T. Yee is the  
5 State Controller, the elected head of the SCO, responsible for overseeing and controlling  
6 these core functions of the SCO. She is sued in her official capacity.<sup>3</sup>

7 26. Plaintiffs are unaware of the true names and capacities of those defendants  
8 sued herein as DOES 1 through 50 inclusive, and therefore sue such defendants by  
9 fictitious names. Plaintiffs are informed and believe and based upon such information and  
10 belief allege that each of the defendants designated as DOES 1 through 50, inclusive, is  
11 responsible in some manner for promulgating, administering, enforcing, or otherwise  
12 implementing the Challenged Regulations, or holding, controlling or disbursing funds of  
13 the State. Plaintiffs will amend this complaint to include the true names of DOES 1  
14 through 50 inclusive as soon as is practicable after such names and capacities become  
15 known to them.

16  
17 **REQUISITES FOR RELIEF AS TO ALL CLAIMS**

18 27. All Individual Plaintiffs, the class of similarly situated individuals whom  
19 they represent, all Institutional Plaintiffs, the members of Institutional Plaintiffs, and  
20 those similarly situated whose interests the Institutional Plaintiffs seek to protect and  
21 advocate as a core function of their organizational purpose, are directly affected by the  
22 actions and omissions of the Defendants in the discharge of their clear, present, and  
23 ministerial duties related to the implementation and enforcement of the Challenged  
24

25  
26  
27 <sup>3</sup>Because Defendants Becerra and Lindley are sued in their official capacities as heads of  
28 the DOJ, all references to “DOJ” should construed to include them. Similarly, all  
references herein to “OAL” and “SCO” should be construed to include the respective  
heads of those agencies being sued in their official capacities (i.e., Cornez and Yee).

1 Regulations, as more particularly described in this complaint and petition for a writ of  
2 mandamus. Thus, all Plaintiffs and such other individuals have a beneficial interest in the  
3 proper discharge of those duties. The Defendants’ failure and/or refusal to do so, as set  
4 forth herein, has caused and will continue to cause Plaintiffs and those others similarly  
5 situated to suffer irreparably injury and deprivation of rights, unless and until the conduct  
6 of the Defendants at issue is enjoined through the declaratory, injunctive, and/or  
7 mandamus relief sought herein. No other plain, speedy, and adequate remedy at law  
8 exists.

9  
10 **OVERVIEW OF THE RELEVANT STATUTORY AND**  
11 **REGULATORY SCHEMES AND SUMMARY OF PLAINTIFFS’ CLAIMS**

12 **A. The General Scheme of the AWCA**

13 28. Since the dawn of the Roberti-Roos Assault Weapons Control Act in 1989  
14 (AWCA), California gun owners have undoubtedly faced significant restrictions upon  
15 their ability to acquire and use many popular firearms, as certain lawmakers have  
16 succeeded in branding specified types or configurations of firearms as “assault weapons”  
17 and then incrementally expanding that list to include more firearms through politically-  
18 charged platforms persuading the general public that all these various firearms pose  
19 intolerable risks and dangers when left unregulated in the hands of the average citizen. (§  
20 30505, subd. (a).) The product of these “anti-gun” legislative campaigns is that subject to  
21 very limited exceptions (e.g., §§ 30625-30630, 30645-30655, 31000-31005), for the vast  
22 majority of ordinary citizens in California, it is and has been generally illegal not only to  
23 manufacture, distribute, transport, sale, give, lend, or otherwise transfer an increasingly  
24 expansive list of firearms (on pain of a felony conviction and prison time (§ 30600, subd.  
25 (a)), but even to simply “possess” one of these legislatively classified “assault weapons”  
26 (§ 30605, subd. (a)).

27 29. The State Legislature has indeed built a statutory scheme especially  
28 onerous and hostile to the countless law-abiding Californians simply seeking to exercise  
their constitutionally-protected fundamental rights to bear arms for entirely lawful

1 purposes. But along the way, the Legislature has at least engrafted into the scheme certain  
2 inherent limitations on the reach of the various prohibitions, establishing the outer-limits  
3 of the State’s statutory power to restrict the ability of private citizens in their access and  
4 use of firearms deemed “assault weapons.” Throughout it all, the Legislature has adhered  
5 to its inherently restrictive declaration in this context that “[i]t is not . . . the intent of the  
6 Legislature by this chapter to place restrictions on the use of those firearms which are  
7 primarily designed and intended for hunting, target practice, or other legitimate sports or  
8 recreational activities.” (§ 30505, subd. (a).) And, each time the anti-gun lobby has  
9 succeeded in achieving statutory amendments expanding the list of “assault weapons,”  
10 the Legislature has made the minimal concession of leaving a small “grandfathering”  
11 window for lawful owners of those guns that the legislation retroactively deemed too  
12 dangerous for them to handle responsibly – if they registered the firearm with the DOJ as  
13 an “assault weapon” within a specified period time, they could continue “possession” of  
14 it (albeit possession only).

15 **B. The Pre-Existing Categories of “Assault Weapons”**

16 30. These different phases of restrictions over time have led to the development  
17 of three generally recognized categories of “assault weapons,” the first two of which  
18 (“Category 1” and “Category 2” assault weapons) were created based upon specific  
19 makes, models, or series of firearms. (§§ 30510, 30960, subd. (a); former §§ 12275.5,  
20 12276, 12276.5; 11 CCR § 5499.)<sup>4</sup> “Category 3” firearms, established in 1999, targeted  
21 semiautomatic centerfire rifles, pistols, and shotguns based upon certain features,  
22 configurations, and/or functionalities, as opposed to certain makes, models, or series.  
23 (Pen. Code, § 30515; former § 12276.1.) Specifically, under former Penal Code section  
24

25 \_\_\_\_\_  
26 <sup>4</sup> The Category 2 classification includes certain makes and models that the DOJ itself had  
27 at one point added to the list through 11 CCR § 5499. However, in 2006, the Legislature  
28 repealed the DOJ’s authority to unilaterally add firearms to the list of “assault weapons”  
(§ 30520, subd. (b)(1), A.B. 2178, 2005-2006 Reg. Sess.), and the classification of such  
firearms by makes, models, or series has since remained static.

1 30515, subdivision (a) (and its predecessor section 12276.1, subd. (a)), these  
2 classifications were as follows:

3 Three types or configurations of semiautomatic, centerfire rifles:

- 4 (1) Those with both (i) “the capacity to accept a detachable  
5 magazine” and (ii) one or more specified features (a forward or  
6 conspicuously protruding pistol grip, thumbhole stock, folding or  
7 telescoping stock, grenade or flare launcher, or flash suppressor);  
8 (2) Those with “a fixed magazine with the capacity to accept more  
9 than 10 rounds;” and  
10 (3) Those with “an overall length of less than 30 inches.”

11 Two types or configurations of semiautomatic pistols:

- 12 (1) Those with both (i) “the capacity to accept a detachable  
13 magazine” and (ii) one or more specified features (certain threaded  
14 barrel and shrouds, a second handgrip, or the capacity to accept a  
15 detachable magazine outside the pistol grip); and  
16 (2) Those with “a fixed magazine that has the capacity to accept  
17 more than 10 rounds.”

18 Three types or configurations of semiautomatic shotguns:

- 19 (1) Those with both (i) a folding or telescoping stock and (ii) a  
20 conspicuously protruding pistol grip;  
21 (2) Those with “the ability to accept a detachable magazine;” and  
22 (3) Those with a revolving cylinder.

23 31. In 2000, through the formal rulemaking process outlined in the APA, the  
24 DOJ promulgated regulations defining a handful of terms related to the Category 3  
25 classification, including “detachable magazine,” which it defined as follows:

26 [A]ny ammunition feeding device that can be removed readily from the  
27 firearm with neither disassembly of the firearm action nor use of a tool  
28 being required. A bullet or ammunition cartridge is considered a tool.  
Ammunition feeding device includes any belted or linked ammunition, but  
does not include clips, *en bloc* clips, or stripper clips that load cartridges  
into the magazine.

1 (Former 11 CCR, § 5469, subd. (a).) The DOJ also issued an “Assault Weapon  
2 Identification Guide” in 2001, which contained the same definition for the term  
3 “magazine, detachable,” as well as a definition of the term “magazine, fixed,” as meaning  
4 a “magazine which remains affixed to the firearm during loading.” (DOJ, Assault  
5 Weapons Identification Guide, 3d Edition 2001, attached hereto as Exhibit A at p. 2.)

6 32. The “grandfathering” registration periods for this and the other categories  
7 of legislatively branded “assault weapons” have long since passed, with the Category 3  
8 period ending December 31, 2000. (See § 30900, subds. (a)(1) – (a)(2).) Therefore, any  
9 continued possession of an unregistered firearm as specifically so classified would  
10 generally be unlawful. (§ 30605, subd. (a).) However, because the definition of  
11 “detachable magazine” *excluded* magazines which required the use of “a tool” to remove,  
12 and because that definition specifically considered a bullet or ammunition cartridge to be  
13 such a tool, a magazine with a lock that required the tip of a bullet to disengage (a  
14 “bullet-button”) did not constitute a “detachable magazine” for purposes of the Category  
15 3 classification. As such, semiautomatic rifles, pistols, and shotguns fell outside an  
16 “assault weapon” classification so long as they were fitted with bullet-buttons – even if  
17 they had other features that otherwise would have rendered them as such, like flash hiders  
18 or pistol grips.

19 **C. The Registration Mandate for the New Category of “Assault Weapons”**

20 33. In June of 2016, through Assembly Bill 1135 and Senate Bill 800, the  
21 Legislature amended the AWCA statutory scheme, changing the definitional terms  
22 regarding magazines for semiautomatic rifles and pistols in section 30515 to create new  
23 “assault weapon” classifications for those firearms (“post-2001 assault weapons”), and  
24 adding sections 30680 and 30900 to create a concomitant registration requirement for any  
25 continued possession of the newly classified firearms. The amendments became effective  
26 January 1, 2017. (Stats. 2016, ch. 40 § 3 (AB 1135); Stats. 2016, ch. 48 § 3 (SB 880).) As  
27 so modified, the “assault weapon” classification now applies to any semiautomatic  
28 centerfire rifle and pistol that (1) “does not have a *fixed magazine*” and (2) possesses one



1 of the other previously specified features. (Rifles and pistols with “fixed magazines” that  
2 have the capacity to accept 10 or more rounds, and rifles of an overall length less than 30  
3 inches, are also separately prohibited as “assault weapons.”) (§ 30515, subd. (a)(1)-(5).)  
4 For these purposes, “fixed magazine” is now defined as “an ammunition feeding device  
5 contained in, or permanently attached to, a firearm in such a manner that the device  
6 cannot be removed without disassembly of the firearm action.” (§ 30515, subd. (b).)

7 34. As to semiautomatic shotguns, however, the Legislature did not alter the  
8 existing statutory definition, such that a semiautomatic shotgun still meets the  
9 classification of an “assault weapon” *only* if (1) it has both (i) a folding or telescoping  
10 stock and (ii) a conspicuously protruding pistol grip, (2) “the ability to accept a  
11 detachable magazine,” or (3) a “revolving cylinder.” (§ 30515, subd. (a)(6)-(8).) Notably,  
12 the provision does not incorporate or otherwise refer to the new definitional term of  
13 “fixed magazine” as to shotguns; nor does it modify the previous definition of a  
14 “detachable magazine” that the Legislature left intact as part of the pre-existing,  
15 statutorily-prescribed classification of what *shotguns* constitute “assault weapons.”

16 35. The Legislature specifically incorporated section 30515’s assault weapon  
17 classifications into the registration requirement of section 30900, subdivision (b)(1),  
18 which expressly states that it applies only to a “person who, from January 1, 2001, to  
19 December 31, 2016, inclusive, lawfully possessed an assault weapon that does not have a  
20 fixed magazine, *as defined in Section 30515*, including those weapons with an  
21 ammunition feeding device that can be readily removed from the firearm with the use of  
22 a tool.” (§ 30900, subd. (b)(1), italics added.) The registration window established for the  
23 continued possession of such firearms closes July 1, 2018 (after an extension of the  
24 original deadline of December 31, 2017, under AB 103 (2017)), although it does not  
25 actually open until “the effective date of the regulations” the DOJ adopts pursuant to  
26 paragraph (5) of subdivision (b). (§ 30900, subd. (b)(1).) In turn, section 30900,  
27 subdivision (b)(5), provides: the DOJ “shall adopt regulations for the purpose of  
28 implementing this subdivision. These regulations are exempt from the Administrative  
Procedure Act.”

1           36. Beyond the basic registration requirement in subdivision(b)(1), what “this  
2 subdivision” of section 30900 establishes, and thus authorizes the DOJ to validly  
3 “implement” through regulations outside the APA process, are the following:

- 4           1. A registration system that catalogues specifically identifying information  
5 about the firearm (its unique description including “all identification marks,”  
6 and the date it was acquired and from whom) and the owner (including the  
7 owner’s name, address, birth date, thumbprint, physical description, California  
8 driver’s license or identification card number, and “any other information that  
9 the department may deem appropriate”). (§ 30900, subs. (a)(3) & (b)(3).)
- 10          2. A registration system that gathers this information “electronically via the  
11 Internet utilizing a public-facing application made available by the  
12 department.” (§ 30900, subd. (b)(2).)
- 13          3. The charging of a registration fee of up to \$20 per person (which may be  
14 adjusted annually), or \$15 per person via a debit or credit card for  
15 electronically submitted applications, but in any event “not to exceed the  
16 reasonable costs of the department.” (§ 30900, subs. (a)(4) & (b)(4).)

17 **D. The Promulgation of the DOJ Regulations at Issue**

18           37. At the end of December 2016, before these statutory amendments became  
19 effective, the DOJ, Bureau of Firearms (BOF), filed with the OAL a set of proposed  
20 regulations for this scheme under a “Notice Publication / Regulations Submission,” file  
21 number 2016-1229-01FP. The BOF later withdrew the submission on February 10, 2017,  
22 without explanation. On May 12, 2017, the BOF submitted a new notice under a new a  
23 file number (2017-0512-02FP), proposing substantially the same set of regulations be  
24 issued in “file and print” form, meaning they would issue without the traditional review,  
25 oversight, and comment process under the APA. According to Martha Superior, then-  
26 Acting Director of the BOF, who contemporaneously submitted a letter explaining the  
27 BOF’s position regarding the regulations, the DOJ was authorized to promulgate these  
28 regulations ““for the purpose of implementing’ the registration requirements, and this

1 rulemaking is exempt from the APA” pursuant to section 30900, subdivision (b)(5). (Exh.  
2 B at p. 2.) The OAL, which is responsible for ensuring that any proposed agency  
3 regulations claimed to be exempt from the APA are in fact exempt, and summarily  
4 rejected the submission on June 26, 2017. (Exh. C.)<sup>5</sup> The DOJ made another such  
5 submission on July 10, 2017 (file number 2017-0719-04FP), again requesting “file and  
6 print” of substantially the same regulations, to become effective upon filing with the  
7 Secretary of State. (Exh. D.)<sup>6</sup> On July 31, 2017, the OAL approved the regulations, as  
8 they were, and filed them with the Secretary of State for publication. (Exh. E.) Plaintiffs  
9 are informed and believe that the DOJ began enforcing the regulations on or about  
10 August 3, 2017, through an Internet portal it has established for purposes of processing  
11 the new “assault weapon” registrations. A current copy of regulations as filed is attached  
12 as Exhibit F. Just recently, on November 14, 2017, the DOJ submitted for formal APA  
13 review another regulation (11 CCR section 5460) concerning the “assault weapon”  
14 definitional terms under this regulatory scheme. 11 CCR section 5460 would provide that  
15 “[t]he definitions of terms in section 5471 of this chapter shall apply to the identification  
16 of assault weapons pursuant to Penal Code section 30515” (Exh. G) – essentially the  
17 same language that the DOJ had first attempted to codify through the original preamble to  
18 section 11 CCR section 5471 itself. The public hearing will be held January 8, 2018.

19 **E. Summary of Plaintiffs’ Claims**

20 38. The new regulations substantially modify the pre-existing “assault  
21 weapons” regulatory scheme. Generally, the new regulations delete the content of two  
22 pre-existing regulations, substituting in its place entirely different content concerning the  
23

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24 <sup>5</sup> At the time, the preamble to 11 CCR section 5471 provided that this section’s  
25 definitions concerning “assault weapons” subject to the registration requirement “apply to  
26 terms used in the identification of assault weapons pursuant to Penal Code section 30515,  
and for purposes of Articles 2 and 3 of this Chapter.” (Exh. B at p. 3.)

27 <sup>6</sup> 11 CCR section 5471 was modified to provide, as it still does, that the definitions  
28 contained therein concerning “assault weapon” classifications apply “[f]or purposes of  
Penal Code section 30900 and Articles 2 and 3 of this Chapter . . .” (Exh. D at p. 7.)

1 general scope of the post-2001 “assault weapons” registration requirement and conditions  
2 of use for the online registration system. (11 CCR, §§ 5469 and 5473.) They add nine  
3 new sections on numerous subjects, including: “who must register,” “which weapons  
4 must be registered,” an “explanation of terms related to assault weapon designations,” a  
5 list of “weapons that will not be registered as assault weapons,” general requirements for  
6 online registration and processing of applications, rules for “joint registration of assault  
7 weapons,” the requirement of a DOJ-issued serial number for any “firearm manufactured  
8 by unlicensed subject” (FMBUS), prohibitions against “post-registration modification of  
9 registered assault weapons,” and a “voluntary deregistration” process for “assault  
10 weapons.” (11 CCR §§ 5470, 5471, 5472, 5474, 5474.1, 5474.2, 5474, 5476, 5478.)

11 39. These regulations should have never been sanctioned by the OAL as  
12 eligible or suitable for APA-exempt “file and print” publication. They go far beyond the  
13 narrow scope of APA-exempt rulemaking power the Legislature has granted the DOJ  
14 under section 30900, subdivision (b), which is to merely establish an Internet-based  
15 electronic registration system that collects identifying information about the firearm and  
16 the firearm’s owner in exchange for a small fee. As a result, the vast majority of the  
17 regulations are invalid and unenforceable right out of the gate – regardless of whether any  
18 of them may be consistent with and actually effectuate the purpose of the law.

19 40. Moreover, even setting aside this procedural defect fatal to the DOJ’s  
20 regulatory scheme, the Challenged Regulations are invalid and unenforceable for the  
21 separate reason that they far exceed the scope, content, and purpose of the legal authority  
22 on which they are purportedly based. In fact, at many points, they directly conflict with  
23 the specific parameters of the post-2001 “assault weapons” registration requirement, as  
24 well as the AWCA’s classification of Category 3 “assault weapons.” The regulations  
25 purportedly grant the DOJ authority to declare an array of additional firearms subject to  
26 the registration requirement and even to declare numerous firearms otherwise lawfully  
27 possessed under Category 3 as now unlawful to possess. It is evident that this unlawful  
28 and hopelessly contradictory regulatory scheme, inevitably resulting in substantial  
government “waste,” is, in large measure, a direct result of the DOJ’s failure to comply

1 with and the OAL’s failure to hold it accountable to the APA process designed to ensure  
2 necessity, clarity, and consistency in the promulgation of agency regulations. The DOJ’s  
3 recent submission for formal APA review of its newly minted 11 CCR section 5460,  
4 concerning the “assault weapons” definitions, is a testament to this subversion of process:  
5 the current regulatory scheme the DOJ succeeded in skirting past the APA review process  
6 is already designed to and would inevitably have the same effect as this new regulation  
7 that the DOJ admits is subject to the APA review process. The DOJ needs to be sent back  
8 to the drawing board, to get this right, through the APA process, and as to the entire  
9 regulatory scheme.

10 41. Lastly, to whatever extent the Challenged Regulations might be considered  
11 an enforceable exercise of regulatory power exempt from the APA, the regulatory  
12 scheme cannot stand in any event, because the numerous irreconcilable conflicts between  
13 the regulations and the governing law and among the regulations themselves, render the  
14 entire scheme unenforceable as unconstitutionally vague. Either way then, this unlawful  
15 regulatory scheme must be declared invalid any further implementation or enforcement  
16 of the Challenged Regulations must be enjoined, and the rights of the Plaintiffs and all  
17 those similarly situated must be vindicated, through the declaratory, injunctive, and/or  
18 mandamus relief sought herein.

19 **CLAIMS FOR RELIEF**

20 **FIRST CAUSE OF ACTION**

21 **FOR DECLARATORY AND INJUNCTIVE RELIEF**  
22 **(Regulations Promulgated in Violation of the APA)**

23 **(By All Plaintiffs Against Defendants)**

24 42. Plaintiffs incorporate herein by reference paragraphs 1 through 42 as if  
25 fully set forth herein.

26 43. As a preliminary matter, the Challenged Regulations suffer from the  
27 procedural defect of having been promulgated in violation of the APA. Specifically, this  
28

1 Cause of Action seeks declaratory and injunctive relief as to the following Challenged  
2 Regulations on the basis that they violate the APA: 11 CCR, sections 5469; 5470, subs.  
3 (a), (b), & (d); 5471; 5472, subs. (e), (f), & (g); 5473, subs. (b)(1) & (b)(3); 5474;  
4 5474.1, subd. (b); 5474.2; 5474; and 5478.

5  
6 **A. The Scope of the DOJ’s Rulemaking Authority**

7 44. The sole basis on which the DOJ apparently relied in promulgating these  
8 regulations as exempt from the public notice, reporting, and recordkeeping requirements  
9 of the APA is paragraph (5) of subdivision (b) of Penal Code section 30900, which  
10 permits it to adopt regulations for the purpose of implementing *this subdivision*,” and thus  
11 *only* exempts regulations “necessary or proper” to merely implement the *technical*  
12 components of an online registration system as set forth in subdivision (b) of that section  
13 (§ 30900, subs. (b)(2), (b)(3), & (b)(4) [calling for an Internet-based registration system  
14 that collects identifying information about the firearm and the firearm’s owner and that  
15 charges a fee for the service].) However, there is *no* authority for the DOJ to issue  
16 regulations outside the APA that alter, amend, or expand the substantive law concerning  
17 the firearms subject to the post-2001 “assault weapons” registration requirement or the  
18 pre-existing categories of “assault weapons” under the AWCA.

19 45. While the general rulemaking authority in section 30520 may have  
20 permitted some degree of regulations affecting the substantive law, any regulations  
21 promulgated under that authority would *not* be exempt from the APA, which should have  
22 been followed. (§ 30520, subd. (c).) As such, even assuming *arguendo* that the governing  
23 statutes legally authorize any significant changes that the Challenged Regulations purport  
24 to make in substantively altering the existing regulatory and statutory schemes regarding  
25 “assault weapons” classifications, they would plainly be invalid due to the DOJ’s failure  
26 to comply with any part of the APA’s requirements for the proper promulgation of  
27 regulations implementing statutory law, as demonstrated herein.

28 46. The DOJ’s failure or refusal to comply with, and the OAL’s failure or  
refusal to hold the DOJ accountable to, the APA subverts the important objectives of the

1 APA’s oversight process – namely, to establish “the least burdensome,” and “most cost-  
2 effective set of regulatory measures that are equally effective in achieving the purpose of  
3 the regulation in a manner that ensures full compliance with the authorizing statute or  
4 other law being implemented or made specific by the proposed regulation.” (Gov. Code,  
5 § 11346.3, subd. (e).) And this is essential to “the promotion of fairness or social equity,  
6 the increase in the openness and transparency of business and government and other  
7 nonmonetary benefits consistent with the statutory policy or other provisions of law.”  
8 (Gov. Code, §§ 11346.36, subd. (b)(1), & 11346.5, subd. (a)(3)(C); see *id.*, §§ 11346.2,  
9 subds. (a)-(b), 11346.4, 11346.5, 11346.8, subd. (a), 11346.9, 11347.3, subd. (b),  
10 11349.1, & 11349.3 [establishing specific procedures for public notice and comment,  
11 response to public commentary, and OAL review to ensure necessity, clarity, and  
12 consistency in proposed agency regulations].)

13 **B. The Regulatory Scheme’s “Assault Weapon” Definitions**

14 47. The DOJ’s handling of the laundry list of definitions it promulgated about  
15 what constitutes an “assault weapon” under this scheme starkly illustrates the problem. In  
16 conjunction with its initial submission of the Challenged Regulations for “file and print”  
17 (which the OAL ultimately rejected), the DOJ declared these definitions would be used  
18 for all purposes of regulating “assault weapons” under Penal Code section 30515,  
19 including enforcement of the criminal sanctions normally flowing from a failure to  
20 register as required: “Because the registration process is fundamental to the  
21 administration and enforcement of the AWCA as a whole, these definitions will be used  
22 to interpret Penal Code section 30515 for all purposes under the AWCA.” (Exh. B at p.  
23 3.) And, as noted, the preamble to 11 CCR section 5471 provided that the definitions  
24 “apply to terms used in the identification of assault weapons pursuant to Penal Code  
25 section 30515, and for purposes of Articles 2 and 3 of this Chapter.”<sup>7</sup> (Exh. B at p. 3.)  
26  
27

28 <sup>7</sup> The chapter referenced here is Chapter 39 of Title 11, titled “Assault Weapons and Large-Capacity Magazines.” Articles 2 and 3 of this chapter specifically relate to the

1           48. As also noted, in the version of the regulations the DOJ later submitted and  
2 the OAL approved, which were otherwise substantially the same, the preamble to the  
3 definitions under 11 CCR section 5471 now provides: “For purposes of Penal Code  
4 section 30900 and Articles 2 and 3 of this Chapter the following definitions shall apply . .  
5 .” (Exh. D at p. 7.) However, both section 30900 and 30515 are part of the same chapter  
6 of the Penal Code – Chapter 2, of Part 6, Title 4, Division 10 – and the intent of that  
7 chapter is “to place restrictions on the use of assault weapons and *to establish a*  
8 *registration and permit procedure for their lawful sale and possession.” (§ 30505, subd.  
9 (a), emphasis added.) And, under the express terms of the AWCA’s general prohibition  
10 against possession of “assault weapons,” any violation of this chapter subjects one to  
11 criminal sanction. (§ 30605, subd. (a), italics added [subjecting to criminal sanction  
12 “[a]ny person who, within this state, possesses any assault weapon, *except as provided in*  
13 *this chapter . . .*”) Thus, section 30900 is part and parcel of the AWCA’s enforcement  
14 mechanisms, such that a failure to comply with the registration requirement necessarily  
15 subjects a person to the same sanctions applicable to any other form of unlawful  
16 possession under the AWCA, despite the change to 11 CCR section 5471’s preamble.*

17           49. In its recent submission of 11 CCR section 5460 for APA review, the DOJ  
18 again proposes to codify the language of the previous preamble to 11 CCR 5471 for all  
19 purposes under the AWCA including enforcement (Exh. G, at p. 2), except this time the  
20 DOJ expressly recognizes any such regulation is subject to the APA review process (*id.*  
21 at pp. 3-4, 13). Yet, as discussed, the existing regulatory scheme and current framing of  
22 11 CCR section 5471’s preamble, which skirted the whole review process, already has  
23 the effect of applying these definitions across the board for all purposes. Thus, if the  
24 existing scheme is left to stand, the DOJ would have effectively subverted the process  
25 regardless of whether the belatedly proposed 11 CCR section 5460 is subjected to APA  
26 scrutiny.

27  
28 registration requirements and are titled, respectively, “Registration Requirements, What  
Qualifies for Registration, and Definitions,” and “Assault Weapon Registration.”



1 **C. The Pervasive Conflicts Stemming from the Failure to Comply with the APA**

2 50. Additionally, the lack of proper oversight here, in particular the public  
3 notice and comment process under the APA has not only resulted in regulations that far  
4 exceed the scope of the DOJ’s regulatory rulemaking authority, as outlined *infra* in  
5 paragraphs 61 through 96 of the Second Cause of Action, but it has also produced a series  
6 of irreconcilable conflicts between the regulations and the law and among the regulations  
7 themselves.

8 51. To illustrate, 11 CCR section 5470, subdivision (d), declares the  
9 registration requirement applies to any “shotgun with an ammunition feeding device that  
10 can be readily removed from the firearm with the use of a tool, commonly referred to as a  
11 bullet-button weapon,” and 11 CCR section 5471, subdivision (a), redefines “ability to  
12 accept a detachable magazine” so as to apply the requirement to any semiautomatic  
13 shotgun “that does not have a fixed magazine.” These regulations would therefore require  
14 the owners of every lawfully owned bullet-buttoned shotgun to register them. But this not  
15 only conflicts with the Legislature’s much more limited classifications of which firearms  
16 constitute “assault weapons” under Penal Code section 30515, as detailed more fully in  
17 the Second Cause of Action, it also conflicts internally with the DOJ’s own regulation  
18 under 11 CCR section 5471, subdivision (m). In that section, the DOJ has defined  
19 “detachable magazine” with the *old* standard for shotguns – and the one *still* applicable  
20 under *the law* – by defining it as “any ammunition feeding device that can be removed  
21 readily from the firearm without disassembly of the firearm action or use of a tool,” as if  
22 the registration requirement is *not* solely dependent upon the bullet-button feature. (*Ibid.*)

23 52. 11 CCR section 5472, subdivision (d), provides that the DOJ “will not  
24 register a firearm if the firearm has a fixed magazine that holds ten rounds or less.” This  
25 regulation also directly conflicts with the statutory law under Penal Code section 30515  
26 applying the registration requirement to certain firearms regardless of whether they have  
27 “a fixed magazine that holds ten rounds or less.” Those include any semiautomatic,  
28

1 centerfire rifle “that has an overall length of less than 30 inches” (§ 30515, subd. (a)(3)),  
2 and *all* specified classifications of shotguns, *none* of which has anything to do with the  
3 magazine’s capacity (§ 30515, subd. (a)(6)).

4 53. Similarly, 11 CCR section 5472, subdivision (e), states that the DOJ “will  
5 not register a firearm as an assault weapon unless the firearm is fully assembled and fully  
6 functional.” However, among its extensive list of new “explanatory” terms purportedly  
7 establishing which firearms are subject to the registration requirement, 11 CCR section  
8 5471, subdivision (hh), defines “semiautomatic” as including any “mechanically whole  
9 semiautomatic firearm merely lacking ammunition and a proper magazine.” (11 CCR, §  
10 5471, subd. (hh)(1)-(2).) The regulations are therefore inherently contradictory, resulting  
11 in arbitrary or discriminatory application or enforcement, because one regulation would  
12 require registration while the other would not, even as to the *same* type of firearm – i.e., a  
13 semiautomatic firearm “lacking ammunition and a proper magazine” – depending upon  
14 which one is applied and how it is interpreted.

15 54. 11 CCR section 5471, subdivision (o) (*italics added*), defines a  
16 “featureless” firearm as “a semiautomatic firearm (rifle, pistol, or shotgun) lacking *the*  
17 *characteristics* associated with that weapon, as listed in Penal Code section 30515.” The  
18 “features” qualifying a firearm as an “assault weapon” under section 30515 can vary  
19 substantially, and many of the statutorily-prescribed forms of “assault weapons” are  
20 based upon a *combination* of one or more specified features, the absence of which  
21 combination renders the firearm outside the statutory “assault weapon” classification. By  
22 failing to specify which “characteristic(s)” must be “lacking” in order to be considered an  
23 un-registerable “featureless” firearm, this definition would include any semiautomatic  
24 rifle, pistol, or shotgun that lacks *any one* of the specified features or combination of  
25 features that *would* render the firearm an “assault weapon” according to *the statute*.

26 55. 11 CCR section 5474 requires that a registrant’s application include an  
27 expansive list of detailed identifying information about the firearm and the registrant:  
28

1 “firearm type, make, model, caliber, firearm color, barrel length, serial number, all  
2 identification marks, firearm country of origin/maker, the date the firearm was  
3 acquired, the name and address of the individual from whom, or business from which, the  
4 firearm was acquired,” as well as “clear digital photos” specifically depicting “the bullet-  
5 button style magazine release installed on the firearm,” “the firearm from the end of the  
6 barrel to the end of the stock if it is a long gun or the point furthest from the end of the  
7 barrel if it is a pistol,” and “the left side of the receiver/frame and right side of the  
8 receiver/frame.” (11 CCR 5474, subs. (b) & (c).) This requirement contrasts rather  
9 starkly with the much more limited scope of descriptive information required under the  
10 governing law: “a description of the firearm that identifies it uniquely, including all  
11 identification marks, the date the firearm was acquired, the name and address of the  
12 individual from whom, or business from which, the firearm was acquired, as well as the  
13 registrant’s full name, address, telephone number, date of birth, sex, height, weight, eye  
14 color, hair color, and California driver’s license number or California identification card  
15 number.” (Pen. Code, § 30900, subd. (b)(3).) As with all of the other illustrations above,  
16 the DOJ has exceeded its rulemaking authority, both procedurally by failing to comply  
17 with the APA in promulgating this regulation and substantively by purportedly expanding  
18 the reach of the law, resulting in irreconcilable conflicts that could and should have  
19 avoided.  
20

21 56. These examples of confusing, contradictory and excessive regulations are  
22 the direct result of the DOJ’s refusal or failure to follow the required APA process in  
23 promulgating the Challenged Regulations, and the OAL’s failure to properly discharge its  
24 duty of ensuring that the regulations complied with the APA before approving them in  
25 their current form.

26 57. As such, the DOJ’s purported regulations under 11 CCR sections 5469,  
27 5470, subdivisions (a), (b), & (d); 5471; 5472, subdivision (f); 5473, subdivisions (b)(1)  
28 & (b)(3); 5474.1, subdivision (b); 5474.2; 5474; and 5478, are invalid as having been

1 promulgated and implemented in violation of the APA. (See Cal. Const., art. III, § 3, art.  
2 IV, §1; Pen. Code, §§ 30900, subd. (b), 30515, 30520, subd. (c); Gov. Code, §§ 11346.2,  
3 subds. (a) & (b), 11346.4, 11346.5, subd. (b), 11346.8, 11346.9, 11347.3, subd. (b),  
4 11349.1, 11349.3, 11350, subd. (a), 11374.)

5 58. All Individual Plaintiffs, the class of similarly situated individuals they  
6 represent, all Institutional Plaintiffs, their members, and those similarly situated  
7 individuals whose interests the Institutional Plaintiffs seek to protect and advocate as a  
8 core function of their organizational purpose, have been deprived of their statutory right  
9 to public notice and an opportunity to comment on the Challenged Regulations because  
10 of the DOJ’s refusal or failure to comply with the APA in promulgating these regulations  
11 and the OAL’s approval of the same in their invalid form.

12 59. Plaintiffs Holt, Hoff, Louis, and Russel, and Institutional Plaintiffs on  
13 behalf of their members and supporters, and all Plaintiffs as to similarly-situated  
14 individuals seek to maintain possession of firearms that, as will be demonstrated at trial,  
15 they have heretofore lawfully possessed, as either outside the purview of the statutory  
16 registration requirement or otherwise lawfully held under the pre-existing law of the  
17 AWCA, but they remain at risk of having their firearms nevertheless deemed unlawfully  
18 possessed and/or being subject to criminal prosecution so long as the DOJ is permitted to  
19 enforce the illegally promulgated regulations purporting expand the scope of the post-  
20 2001 “assault weapons” registration requirement or the scope of the pre-existing  
21 Category 3 “assault weapons” to include Plaintiffs’ firearms.

22 60. By promulgating and enforcing these regulations, Defendants, acting under  
23 color of state law, are and have been propagating customs, policies, and practices that  
24 violate the governing statutory and constitutional law, thereby damaging and depriving  
25 the rights of the Individual Plaintiffs, the class of similarly situated individuals they  
26 represent, Institutional Plaintiffs, their members, and those similarly situated individuals  
27 whose interests the Institutional Plaintiffs seek to protect and advocate as a core function  
28

1 of their organizational purpose, all of whom have firearms subject to being improperly  
2 deemed post-2001 “assault weapons” that must be registered or to being otherwise  
3 retroactively deemed unlawful to possess in contravention of the AWCA, based upon  
4 these improper regulations.

5 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

6

7 **SECOND CAUSE OF ACTION**

8 **FOR DECLARATORY AND INJUNCTIVE RELIEF**  
9 **(Regulations Promulgated in Violation of the Governing Law)**

10 61. Plaintiffs incorporate herein by reference paragraphs 1 through 60 as if  
11 fully set forth herein.

12 62. This Cause of Action seeks declaratory and injunctive relief as to the  
13 following Challenged Regulations on the grounds that they were promulgated in violation  
14 of the governing statutory law: 11 CCR sections 5469; 5470, subs. (a), (b), & (d); 5471;  
15 5472, subs. (d), (e), (f) & (g); 5473, subs. (b)(1) & (b)(3); 5474, 5474.1, subd. (b);  
16 5474.2; and 5475, subs. (a) & (c).

17 63. If allowed to stand despite their failure to comply with the APA, many of  
18 the Challenged Regulations would work individually and collectively to significantly  
19 expand or alter the new legislatively-established category of post-2001 “assault weapons”  
20 subject to the registration requirement, so as to capture a much wider range of firearms  
21 than either authorized or intended under Penal Code sections 30900 or 30515. Still others  
22 would far exceed the scope of authority the DOJ has been conferred under the law by  
23 individually and collectively working to retroactively expand the *pre-existing* class of  
24 “assault weapons” under the AWCA’s Category 3, so as to render what was lawfully  
25 possessed (and would otherwise remain lawful to possess) now unlawfully possessed and  
26 un-registerable. And all the Challenged Regulations violate the fundamental tenant that  
27 regulations must be reasonably necessary to effectuate the purposes of the law they are to  
28

1 implement. If left to stand, the net result of this regulatory scheme will be to effect an  
2 unconstitutional agency usurpation of the Legislature’s authority and obligation to  
3 establish clear, well-defined, and uniformly applied criminal laws.

4 64. Specifically then, Plaintiffs herein seek relief within this Cause of Action in  
5 three counts, as follows:

6 **Count 1**

7 **Regulations Purporting to Expand or Alter the Scope of Firearms Subject to the**  
8 **Post-2001 Assault Weapons Registration Mandate (11 CCR §§ 5469, 5470, 5471)**

9 **(By All Plaintiffs Against Defendants DOJ and OAL)**

10 65. This pattern of regulatory expansion becomes obvious from the outset of  
11 the scheme, with 11 CCR sections 5469 and 5470, subdivision (a), which restate the  
12 general registration requirement of Penal Code section 30900, subdivision (b)(1), in a  
13 manner indicating that the requirement applies to *all* semiautomatic firearms (except  
14 those the DOJ would refuse to register under 11 CCR section 5472, discussed *infra*) that  
15 do not have a “fixed magazine,” regardless of whether they have any of the other features  
16 that must be present in *combination with* a non-fixed magazine to be properly considered  
17 “assault weapons” under section 30515. (11 CCR, §§ 5469 [applying the requirement to  
18 any semiautomatic firearm “commonly referred to as a bullet-button weapon”]; 5470,  
19 subd. (a) [“an assault weapon that does not have a fixed magazine, as defined by Penal  
20 Code section 30515, must be registered . . .”].)<sup>8</sup>

21 \_\_\_\_\_  
22 <sup>8</sup>11 CCR § 5469 provides in full: “Any person who, from January 1, 2001, to December  
23 31, 2016, inclusive, lawfully possessed an assault weapon that does not have a fixed  
24 magazine, as defined in Penal Code section 30515, including those weapons with an  
25 ammunition feeding device that can be readily removed from the firearm with the use of  
26 a tool (commonly referred to as a bullet-button weapon) must register the firearm before  
[July] 1, 2018.”

27 11 CCR § 5470, subdivision (a), provides: “Except as provided in section 5472, an  
28 assault weapon that does not have a fixed magazine, as defined by Penal Code section  
30515, must be registered with the Department before [July] 1, 2018.”

1           66. Then, among the many new and different definitions that the DOJ has  
2 promulgated in 11 CCR section 5471, purportedly as an “explanation of terms related to  
3 assault weapon designations,”<sup>9</sup> it installs a new “explanation” of “bullet-button,” which  
4 states “[a] bullet-button equipped fully functional firearm does *not* meet the fixed-  
5 magazine definition under Penal Code section 30515(b).” (11 CCR, § 5471, subd. (f),  
6 italics added.) Similarly, the DOJ employs this section to define the phrase “[t]hose  
7 weapons with an ammunition feeding device that can be readily removed from the  
8 firearm with the use of a tool,” so as to include all “functional semiautomatic rifles,  
9 pistols, and shotguns with bullet-button style magazine releases,” and it goes on to  
10 specifically provide that “[t]hese weapons do not have a fixed magazine.” (11 CCR, §  
11 5471, subd. (pp).) The clear import of these regulations is that the registration  
12 requirement applies to *all* semiautomatic firearms equipped with “bullet-button style  
13 magazine releases” regardless of any other features or any combination of features that  
14 they may or may not have.

15           67. The regulatory scheme proceeds to solidify this expansion of the  
16 registration requirement specifically as to semiautomatic pistols and shotguns. 11 CCR  
17 section 5470 provides that the requirement applies to any semiautomatic pistol  
18 “*commonly referred to as a bullet-button weapon*, that has one or more specified features  
19 in Penal Code section 30515 . . . .” (11 CCR, § 5470, subd. (b), italics added), and  
20 proceeds to declare that any “semiautomatic shotgun with an ammunition feeding device  
21 that can be readily removed from the firearm with the use of a tool, commonly referred to  
22 as a bullet-button, is included in the category of firearms that must be registered” (11  
23 CCR, § 5470, subd. (d)). As noted, the latter provision clashes with the current law under  
24 section 30515 that does *not* apply the “fixed magazine” standard to shotguns but  
25 continues to apply the distinctly different prior standard for purposes classifying shotguns  
26

27 \_\_\_\_\_  
28 <sup>9</sup>These new definitional terms purport to supplant the handful of long-standing  
definitional terms under former 11 CCR section 5469, which were properly promulgated  
in accordance with the APA, and which the DOJ has now deleted.

1 as “assault weapons” based upon the nature of their magazines – i.e., whether they have  
2 “the ability to accept a detachable magazine.” (Pen. Code, § 30515, subd. (a)(6)-(8).)

3 68. The DOJ uses the new definitions in 11 CCR section 5471 in an attempt to  
4 lock in this different standard, with an “explanation” of “ability to accept a detachable  
5 magazine” as it specifically relates to semiautomatic shotguns, stating that this phrase  
6 now “means with respect to a semiautomatic shotgun, it does not have a fixed magazine.”  
7 (11 CCR, § 5471, subd. (a).) That is, the DOJ’s regulatory scheme seeks to specifically  
8 substitute, and thus directly contravenes, the Legislature’s new “fixed magazine”  
9 standard for the *legal* standard that actually applies to semiautomatic shotguns under  
10 Penal Code section 30515. Plaintiff Holt is directly affected by this regulation, and  
11 requires declaratory and injunctive relief to vindicate his rights and the rights of the class  
12 of similarly situated individuals he represents through this action.

13 69. There is no basis for this broad expansion of the registration’s requirement  
14 directly conflicting with the requirement itself and the provisions of the AWCA, in either  
15 the narrow statutory authorization of regulatory power of section 30900, subdivision  
16 (b)(1) – permitting rules that simply establish the technical elements of a registration  
17 process – or within the more general scope of section 30520, subdivision (c) – permitting  
18 rules “necessary or proper to carry out *the purposes and intent* of this chapter.” Indeed,  
19 the vast majority of the brand-new terms the DOJ has promulgated under 11 CCR section  
20 5471 redesigning the definitional characteristics of “assault weapons” not only conflict  
21 with or contravene the law but there has been no showing that they are necessary to  
22 effectuate the law; nor could there be a reasonable basis for claiming their necessity given  
23 that the “assault weapons” regulatory scheme has operated without them for the last 17  
24 years. Accordingly, the regulations under 11 CCR sections 5469, 5470, subdivisions (a),  
25 (b), and (d), 5471, are invalid as unauthorized by and in conflict with the governing  
26 statutory scheme. (Cal. Const., art. III, § 3, art. IV, § 1; Gov. Code §§ 11350, subd. (a),  
11346.5, subd. (b), 11374; Pen. Code §§ 30900, subd. (b), 30515, 30520, subd. (c)).

27 70. All Individual Plaintiffs, the class of similarly situated individuals they  
28 represent, all Institutional Plaintiffs, their members, and those similarly situated



1 individuals whose interests the Institutional Plaintiffs seek to protect and advocate as a  
2 core function of their organizational purpose, seek to maintain possession of firearms  
3 that, as will be demonstrated at trial, they have heretofore lawfully possessed, as outside  
4 the purview of the statutory registration requirement, but they remain at risk of having  
5 their firearms nevertheless deemed unlawfully possessed and/or being subject to criminal  
6 prosecution so long as the DOJ is permitted enforce the illegally promulgated regulations  
7 purporting to expand the scope of the post-2001 “assault weapons” registration  
8 requirement to include their firearms.

9         71. By promulgating and enforcing these regulations, Defendants, acting under  
10 color of state law, are and have been propagating customs, policies, and practices that  
11 violate the governing statutory and constitutional law, and are thereby damaging and  
12 depriving the rights of Individual Plaintiffs, the class of similarly situated individuals  
13 they represent, Institutional Plaintiffs, their members, and those similarly situated  
14 individuals whose interests the Institutional Plaintiffs seek to protect and advocate as a  
15 core function of their organizational purpose, all of whom have firearms that are or would  
16 potentially become subject to the registration requirement under the Challenged  
17 Regulations when those firearms would not otherwise be subject to such registration  
18 under the governing statutory law.

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**Count 2**

**Regulations Purporting to Expand or Alter the Pre-Existing Categories of “Assault Weapons” Under the AWCA (11 CCR §§ 5471, 5472, subs. (c), (f) & (g); 5474.2; 5474; 5474.1, subd. (b))**

**(By All Plaintiffs Against Defendants DOJ and OAL)**

72. Plaintiffs incorporate herein by reference paragraphs 1 through 71 as if fully set forth herein.

**A. 11 CCR § 5471**

73. The DOJ’s litany of inherently suspect “explanatory” terms under 11 CCR section 5471 glaringly illustrate how this regulatory scheme would, if enforced, also substantially expand or alter the law governing the pre-existing categories of “assault weapons,” with the net result of retroactively deeming countless firearms unlawfully possessed when their continued possession would otherwise be lawful under the AWCA. This would inevitably be the case for the innumerable people who have reasonably relied upon the previous definitional terms governing the classification of “assault weapons” over the previous 17 years but whose continued possession of the same firearms would or potentially could be unlawful according to the new regulations.

**B. 11 CCR § 5472, subd. (c)**

74. The DOJ’s regulations provide that the Department will refuse registration include its refusal to register any firearm that is “featureless, except for bullet-button shotguns as described in section 5470(d).” (11 CCR, § 5472(c).) This regulation presupposes that firearms that existed in their “assault weapon” state before December 31, 2016, cannot or would not be subsequently altered to remove those “assault weapons” features, either before or after registration.

75. There is no statutory basis for preventing or prohibiting a person, if he or she desires, from registering a “featureless” semiautomatic firearms long as he or she

1 legally owned it in an “assault weapon” configuration prior to December 31, 2016. In  
2 fact, and to the contrary, Pen. Code section 30900 expressly states:

3 Any person who, from January 1, 2001, to December 31, 2016, inclusive,  
4 lawfully possessed an assault weapon that does not have a fixed magazine,  
5 as defined in Section 30515, including those weapons with an ammunition  
6 feeding device that can be readily removed from the firearm with the use of  
7 a tool, *shall register* the firearm before July 1, 2018, but not before the  
8 effective date of the regulations adopted pursuant to paragraph (5), with the  
9 department pursuant to those procedures that the department may establish  
10 by regulation pursuant to paragraph (5).

11 (§ 30900, subd. (b)(1) (emphasis added).)

12 76. Nothing in this section therefore prevents, or should prevent, a person from  
13 registering a firearm that *was* configured as an “assault weapon” *during* this specified  
14 period, but is not or has not been so configured on or after January 1, 2017. For example,  
15 plaintiff Louie has legally owned a firearm which the DOJ now calls a “bullet-button  
16 assault weapon” and which, as configured, was retroactively defined as an “assault  
17 weapon” pursuant to section 30515, subdivision (a). Plaintiff Louie would otherwise be  
18 required by law to register that firearm as an “assault weapon” pursuant to section 30900,  
19 subdivision (b)(1), as a necessary prerequisite to maintaining his lawful possession of it.  
20 However, after December 31, 2016, Plaintiff Louie removed some of the specific features  
21 that would otherwise render it an “assault weapon” under section 30515, subdivision (a).  
22 These changes would bring the firearm within the purview of what the DOJ has deemed  
23 an un-registerable “featureless” firearm under the Challenged Regulations. (See 11 CCR,  
24 § 5471(o).) As a result, Plaintiff Louie is required to register this firearm pursuant to the  
25 Penal Code, and desires to do so in accordance with the law, but, on the other hand,  
26 DOJ’s regulations, under 11 CCR section 5472, subdivision (c), prevent or would prevent  
27 him from registering this firearm because of its so-called “featureless” status. Plaintiff  
28 Louie thus seeks and requires declaratory and injunctive relief as set forth herein.

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1 **C. 11 CCR § 5472, subd. (f)**

2 77. 11 CCR section 5472’s list of registration preclusions – prohibiting registration of  
3 specified firearms – is similarly problematic, as they pertain to the Department’s  
4 serialization requirements. Subdivision (f) of this section precludes registration of any  
5 “firearm manufactured by a federally-licensed manufacturer if the firearm does not have  
6 a serial number applied pursuant to federal law.” However, firearm serialization was not  
7 required under federal law until 1968. (Exh. H;  
8 <https://www.atf.gov/file/11711/download>.) So there are certainly some, if not many,  
9 California residents with firearms that have no such serial numbers but who have  
10 heretofore lawfully possessed such firearms because nothing in the AWCA prohibited it.  
11 But now, the new regulations are targeting this category of pre-1968 firearms as  
12 presumptively unlawful merely because they lack a particular marking not required at the  
13 time of their manufacturing – and that is still not required under state law either (Pen.  
14 Code, § 29181) – and they have no remedy to register the firearms as properly possessed  
15 since these firearms are excluded from the list of registerable firearms and no other  
16 “grandfathering” window exists.

17 **D. 11 CCR §§ 5472, subd. (g), 5474.2**

18 78. 11 CCR section 5472, subdivision (g), also effectively creates a new  
19 category of presumptively unlawful “assault weapons” for which there is now no means  
20 of acquiring, transferring, or “grandfathering” in order to maintain lawful possession in  
21 the future. This subdivision precludes registration of any “FMBUS if the firearm does not  
22 have a serial number assigned by the Department and applied by the owner or agent  
23 pursuant to section 5474.2.” (11 CCR, § 5472, subd. (g).) 11 CCR section 5474.2  
24 establishes the specific procedures by which a person is to obtain such serialization,  
25 which “is a separate process and must be done before the assault weapon application will  
26 be accepted by the Department.” (11 CCR, § 5474.2, subd. (a)(1).) Both of these sections  
27 directly conflict with Penal Code section 29180, which governs the state-issued firearm  
28 serialization requirement and specifically provides that this requirement does not

1 commence until July 1, 2018. (§ 29180, subd. (b).) Plus, section 29181 expressly  
2 excludes from this serialization requirement a series of specific firearms (those with  
3 federal-issued serial numbers; pre-1968 non-handguns; firearms on the centralized  
4 registry with certain distinguishing features; and curios, relics, and antiques), none of  
5 which is excluded from the purview of the regulations. Instead, without any reference to  
6 either section 29180 or 29181 of the Penal Code, 11 CCR sections 5472 and 5474.2  
7 sweep in and preclude from registration any and all firearms that do not *currently* have a  
8 DOJ-issued serial number.

9       79. As an illustration of this problem, plaintiff Russell, legally owned a self-  
10 built firearm, prior to December 31, 2016. As configured, this firearm has been  
11 retroactively deemed an “assault weapon” pursuant to Penal Code section 30515,  
12 subdivision (a), and the DOJ’s regulations consider it a “bullet-button assault weapon.”  
13 Like many other similarly situated Californians who own such firearms, plaintiff Russell  
14 engraved a serial number and other identifying information in accordance with federal  
15 laws or regulations, as there was no corresponding serialization requirement pursuant to  
16 any state law or regulation. Plaintiff Russell is now required to register this firearm, and  
17 desires to comply with the law. However, according to 11 CCR section 5474.2, only  
18 firearms with Department-issued serial numbers may be registered. This conflicts with  
19 both the federal laws and regulations governing serialization and California’s own laws  
20 establishing that DOJ-serialization is not required until July 1, 2018 (§ 29180, subd. (b)),  
21 and which expressly excludes from this requirement firearms with federally-issued serial  
22 numbers (§ 29181). This regulation effectively prevents or would prevent plaintiff  
23 Russell from registering this legally-owned firearm as required, thereby blocking the sole  
24 available means by which he may lawfully continue his possession of it. Plaintiff Russell  
25 therefore seeks and requires declaratory and injunctive relief as set forth herein.

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1 **E. 11 CCR § 5471, subs. (x) & (w)**

2 80. The DOJ’s new definition of the phrase “an overall length of less than 30  
3 inches” for purposes of the methodology in measuring the length of semiautomatic rifles  
4 as “assault weapons” (11 CCR § 5471, subd. (x)), is similarly problematic. It effectively  
5 modifies the definition so as to expand the scope of the prohibited firearms under the  
6 AWCA. The new regulations provide that only devices “permanently attached to” – i.e.,  
7 “welded, epoxied, or riveted” in place – (11 CCR, § 5471, subd. (w)) – can be considered  
8 for purposes of satisfying the “overall length of less than 30 inches” requirement. (§  
9 5471, subd. (x)). Yet, the governing law simply provides that semiautomatic, centerfire  
10 rifles having “an overall length of less than 30 inches” are considered “assault weapons”  
11 – there are no restrictions or limitations concerning removable or non-permanent devices  
12 for purposes of satisfying the barrel length requirement. (Pen. Code, § 30515, subd.  
13 (a)(3).) Indeed, before these new regulations, the DOJ’s itself had not even considered the  
14 barrel length at all for purposes of “assault weapon” registration schemes. (Exh. I.)

15 81. The DOJ’s list of weapons ineligible for registration under the new 11 CCR  
16 section 5472 specifically precludes registration of any firearm that was “not lawfully  
17 possessed on or before December 31, 2016.” As a result, under these new regulations,  
18 rifles previously excluded from “assault weapon” classification would be retroactively  
19 and permanently deemed unlawfully possessed, if they were held at any time before  
20 December 31, 2016, in the now-disqualifying measurement configuration, and there  
21 would be no “grandfathering” or other remedy available to seek registration for purposes  
22 of any continuing lawful possession.

23 **F. 11 CCR § 5474.1, subd. (b)**

24 82. Penal Code section 30955 provides (italics added): “The department’s  
25 registration procedures shall provide the option of joint registration for any assault  
26 weapon or .50 BMG rifle owned by *family members residing in the same household.*”  
27 However, 11 CCR section 5474.1 permits “joint registrant” applications only for “the  
28 following family relationships” – spouses, parents and children, grandparents and

1 grandchildren, domestic partners, and siblings. (11 CCR, § 5474.1, subd. (b).) There is no  
2 statutory basis or other good reason for limiting Penal Code section 30955’s legal  
3 definition of “family members residing in the same household” to this narrow group of  
4 familial relationships. Indeed, the Penal Code generally defines “*immediate* family  
5 member” to include “any spouse, whether by marriage or not, domestic partner, parent,  
6 child, any person related by consanguinity or affinity within the second degree, or any  
7 other person who regularly resides in the household, or who, within the prior six months,  
8 regularly resided in the household.” (See, e.g., §§ 293, subd. (e), 422.4, subd. (b)(3),  
9 1708.7, subd. (a)(2)(A), 18150, subd. (a)(2).) And the term *immediate* family member  
10 inherently implies membership in a narrower, less inclusive group than “family member”  
11 as used in section 30955. Yet, 11 CCR section 5474.1, subd. (b), defines the term “family  
12 member” even more narrowly, *excluding* “any person related by consanguinity or affinity  
13 within the second degree, or any other person who regularly resides in the household, or  
14 who, within the prior six months, regularly resided in the household.”

15 83. By narrowing this category to exclude from the “joint registrant”  
16 qualification so many of those in “residing in the same household” in close familial-type  
17 relationships, the regulations are setting the stage for yet another group of heretofore  
18 otherwise lawfully held firearms to be shut out of the registration process and thus  
19 ultimately deemed illegal to possess in the future. For some cohabitants who jointly hold  
20 a firearm, the real value of continued access to the firearm will be the very fact that each  
21 of them has the ability to continue possession of it, such that none would seek or benefit  
22 from an individual registration. Shutting these people out of the “joint registration”  
23 process merely because they do not fit the overly narrow definition of “family member”  
24 would leave their firearms unregistered and unlawfully possessed after the registration  
25 deadline, even though they had been lawfully possessed up to the date of that deadline.

26 84. Accordingly, the regulations promulgated under 11 CCR sections 5471,  
27 5472, subdivision (f), 5472, subdivision (g), 5474.2, 5474, 5474.1, subdivision (b), are  
28 invalid as unauthorized by and in conflict with the governing statutory scheme. (Cal.

1 Const., art. III, § 3, art. IV, § 1; Gov. Code, §§ 11350, subd. (a), 11346.5, subd. (b),  
2 11374; Pen. Code, §§ 30900, subd. (b), 30515, 30520, subd. (c)).

3 85. All Individual Plaintiffs, the class of similarly situated individuals they  
4 represent, all Institutional Plaintiffs, their members, and those similarly situated  
5 individuals whose interests the Institutional Plaintiffs seek to protect and advocate as a  
6 core function of their organizational purpose, seek to maintain possession of firearms  
7 that, as will be demonstrated at trial, they have heretofore lawfully possessed, as lawfully  
8 held under the pre-existing law of the AWCA, and/or they seek to acquire such firearms  
9 they could otherwise lawfully acquire and possess. However, they remain at risk of  
10 having their firearms nevertheless deemed unlawfully possessed and/or being subject to  
11 criminal prosecution so long as the DOJ is permitted to enforce the illegally promulgated  
12 regulations purporting to expand the scope of the pre-existing Category 3 “assault  
13 firearms” so as to include Plaintiffs’ firearms.

14 86. By promulgating and enforcing these regulations, Defendants, acting under  
15 color of state law, are and have been propagating customs, policies, and practices that  
16 violate the governing statutory and constitutional law, and are thereby damaging and  
17 depriving the rights of Plaintiffs, whose firearms are or would potentially be retroactively  
18 deemed unlawful to possess with no means to lawfully maintain possession, when those  
19 same firearms would otherwise remain lawful to possess under the AWCA.

20  
21 **Count 3**

22 **Regulations Not Reasonably Necessary to Effectuate the Law (11 CCR, §§ 5469;**  
23 **5470, subs. (a), (b), & (d); 5471; 5472, subd. (d), (e), (f), (g); 5473, subs. (b)(1) &**  
24 **(b)(3); 5474; 5474.1, subd. (b); 5474.2; 5475, subs. (a) & (c)**

25 **(By All Plaintiffs Against All Defendants)**

26 87. Plaintiffs incorporate herein by reference paragraphs 1 through 86 as if  
27 fully set forth herein.  
28



1           88.     Insofar as the Challenged Regulations discussed above illegally expand the  
2 scope of the registration requirement to enlarge the new category of weapons deemed  
3 post-2000 “assault weapons” and expand the scope of the *pre-existing* class of “assault  
4 weapons” under the AWCA’s Category 3, they are also invalid as necessarily not being  
5 “reasonably necessary to effectuate the purpose” of the governing statutes.

6           89.     And additional regulations suffer from this same defect for different  
7 reasons. As part of creating an online account for the DOJ’s online registration process,  
8 registrants are “required to agree” to certain “conditions of use,” including a “Non-  
9 Liability” provision providing that “[t]he Department is not responsible for and will have  
10 no liability for any hardware, software, information, or other items or services provided  
11 by any persons other than the Department.” (11 CCR, § 5473, subd. (b)(1).) Registrants  
12 are also required to agree that: the DOJ “shall not be liable for transaction charges  
13 fraudulently incurred. It will be the cardholder’s responsibility to pay any charges. The  
14 Department will not provide refunds after the submission of a transaction.” (11 CCR, §  
15 5473, subd. (b)(3).) There is no authority in the statutes governing the registration process  
16 for the DOJ to issue regulations conditioning registration eligibility upon a person’s  
17 agreement to waivers of liability and waivers of claims in the DOJ’s favor, and such  
18 terms of adhesion would be invalid and unenforceable in any event, necessarily rendering  
19 them not “reasonably necessary” to effectuate the registration statutory scheme.

20           90.     The DOJ also cannot justify the fee schedule that its regulations impose  
21 given the limits of the statutory scheme. As noted, the statutory scheme permits the  
22 charging of a registration fee of up to \$20 “per person” (which may be adjusted  
23 annually), or \$15 “per person” via a debit or credit card for electronically submitted  
24 applications, but in no event shall any such fee “exceed the reasonable costs of the  
25 department.” (Pen. Code § 30900, subs. (a)(4) & (b)(4).) The DOJ’s regulations,  
26 however, impose a registration fee of “\$15 per person, per transaction,” as well as a \$5  
27 fee “to obtain a copy of the original registration disposition letter.” (11 CCR, § 5475,  
28 subs. (a) & (c).) There has been no showing that the \$15 fee represents the actual or  
“reasonable” costs of the DOJ. In fact, the DOJ’s “joint registrant” regulations under 11

1 CCR section 5474.1 could permit it to claim a \$15 fee for *each registrant* on the basis  
2 that the statute calls for a \$15 fee “per *person*,” and there is no evidence such fees would  
3 be “reasonably” necessary to fund the program. This is yet another of the natural  
4 byproducts of the DOJ’s failure to go through the APA process, which would have  
5 involved an assessment of its “reasonable costs.” Moreover, nothing in the statute permits  
6 any additional fees for an “original registration disposition letter.”

7 91. The registration fees are particularly unnecessary, burdensome, and  
8 duplicative, since – at least since 2014 –the Department has already collected the  
9 requisite information regarding all long guns that were transferred (Pen. Code, §§ 28200  
10 et seq.), and plaintiffs herein (including Plaintiff Holt) have already paid DROS fees for  
11 the background checks and transfer fees in connection with acquiring those long guns.

12 92. Plaintiffs are informed and believe that the funds collected from the fees  
13 charged in connection with the “assault weapon” registration process at issue have been  
14 and are being managed or controlled by Defendant SCO, which has been and is collecting  
15 by or on behalf of, and/or allocating or disbursing those funds to, the DOJ for purposes of  
16 covering the costs that the DOJ claims to incur in connection with the registration process  
17 – without any demonstration that such fees represent the actual or even “reasonable”  
18 costs of administering the registration process.

19 93. The DOJ has also failed to show, and could not show, that the scope of the  
20 already detailed descriptive information that registrants must supply about themselves  
21 and their firearms under the law (Pen. Code, § 30900, subd. (b)(3)) is inadequate so as to  
22 justify the far more intrusive and burdensome compilation of details with which  
23 registrants are purportedly required to comply under 11 CCR section 5474, subdivisions  
24 (b) and (c). Indeed, this regulation apparently leave the DOJ with discretion to further  
25 widen its scope to include any and all other information it may deem relevant in order to  
26 satisfy registration requirements. (11 CCR, § 5474, subd. (b) [qualifying the list of  
27 required information with the preamble, “including but not limited to . . .”].)

28 94. As a result, the regulations promulgated under 11 CCR sections 5469,  
5470, subdivisions (a), (b), & (d), 5471, 5472, subdivision (f), 5473, subdivisions (b)(1)

1 & (b)(3), 5474.1, subdivisions (b), 5474.2, 5474, and 5475, subdivisions (a) & (c), are  
2 invalid as not reasonably necessary to effectuate the law they were purportedly  
3 promulgated to implement. (Cal. Const., art. III, § 3, art. IV, § 1; Gov. Code, §§ 11350,  
4 subd. (a), 11346.5, subd. (b), 11374; Pen. Code, §§ 30900, subd. (b), 30515, 30520, subd.  
5 (c)).

6 95. All Individual Plaintiffs, the class of similarly situated individuals they  
7 represent, all Institutional Plaintiffs, their members, and those similarly situated  
8 individuals whose interests the Institutional Plaintiffs seek to protect and advocate as a  
9 core function of their organizational purpose, seek to maintain possession of firearms  
10 that, as will be demonstrated at trial, they have heretofore lawfully possessed, and/or they  
11 seek to acquire such firearms they could otherwise lawfully acquire and possess, as either  
12 outside the purview of the statutory registration requirement or otherwise lawfully held  
13 under the pre-existing law of the AWCA. However, they remain at risk of having their  
14 firearms nevertheless deemed unlawfully possessed and/or being subject to criminal  
15 prosecution so long as the DOJ is permitted to enforce the illegally promulgated  
16 regulations purporting expand the scope of the post-2001 “assault weapons” registration  
17 requirement or the scope of the pre-existing Category 3 “assault firearms” to include  
18 Plaintiffs’ firearms.

19 96. By promulgating and enforcing these regulations, Defendants, acting under  
20 color of state law, are and have been propagating customs, policies, and practices that  
21 violate the governing statutory and constitutional law, and are thereby damaging and  
22 depriving the rights of all Plaintiffs and such other similarly situated individuals  
23 described herein whose firearms would either be improperly deemed subject to  
24 registration as post-2000 “assault weapons” or retroactively deemed unlawful to possess  
25 based upon these regulations that are in no way “reasonably necessary” to effectuate the  
26 statutory scheme with which they materially conflict.

27 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

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**THIRD CAUSE OF ACTION**  
**FOR DECLARATORY AND INJUNCTIVE RELIEF**  
**(WASTE)**

**(By All Plaintiffs Against All Defendants)**

97. Plaintiffs incorporate herein by reference paragraphs 1 through 96 as if fully set forth herein.

98. This Cause of Action challenges the following Challenged Regulations as constituting and resulting in governmental waste: 11 CCR section 5469; 5470, subds. (a), (b), & (d); 5471; 5472, subds. (d), (e), (f) & (g); 5473, subds. (b)(1) & (b)(3); 5474; 5474.1, subd. (b); 5474.2; 5475, subds. (a) & (c); and 5478.

99. The promulgation, implementation, and enforcement of the Challenged Regulations in violation of the governing statutory law, constitutional provisions, and procedural requirements of the APA, along with the collection and disbursement of “fees” being assessed for the ostensible purpose of covering the costs associated with the administration of this illegal regulatory scheme, amounts to an illegal and improper expenditure of public funds, resulting in waste of government money, time, and resources that otherwise would only be utilized for the public benefit through lawful agency or government action. (CCP, §§ 526, 526, subd. (a).)

100. The promulgation, implementation, and enforcement of this invalid regulatory scheme, and the collection and disbursement of “fees” for the ostensible purpose of covering the costs associated with the administration of this illegal regulatory scheme, affects all citizens of California whose taxpayer dollars are being used, have been used, or are liable to being used, for this invalid regulatory scheme, or who are being deprived, have been deprived, or would be deprived of the beneficial programs, policies, or activities that would otherwise be pursued or implemented with the same money, time, and resources. This includes all individual Plaintiffs, the class of similarly situated individuals they represent, all Institutional Plaintiffs, their members, and those

1 similarly situated individuals whose interests the Institutional Plaintiffs seek to protect  
2 and advocate as a core function of their organizational purpose.

3 101. All such Plaintiffs and such other similarly situated individuals described  
4 herein also have a beneficial interest in preventing this illegal expenditure of public funds  
5 and other resources, as well as in procuring the proper enforcement and execution of the  
6 public duties of the DOJ, OAL, and SCO to manage and expend the public funds and  
7 resources in a lawful manner and not to impair or defeat the purpose of valid laws and  
8 regulations. Thus, all such persons have proper standing to seek such a remedy through a  
9 judicial action for declaratory and injunctive relief (CCP, §§ 526, subd. (a), 526a), and  
10 there is no other plain, speedy, and adequate remedy at law. For the same reasons, all  
11 Plaintiffs and other individuals described herein are beneficially interested in preventing  
12 any further implementation or enforcement of this invalid regulatory scheme and in  
13 procuring the proper discharge of the public duties of the DOJ, OAL, and SCO  
14 concerning the implementation of such regulatory schemes, and they have no other plain,  
15 speedy, and adequate remedy at law.

16 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

17  
18 **FOURTH CAUSE OF ACTION**  
19  
20 **FOR DECLARATORY AND INJUNCTIVE RELIEF**  
21 **(VAGUENESS)**

22 (Cal. Const., art. I, § 7; U.S. Const., XIV Amend.)

23 **(By All Plaintiffs Against Defendants DOJ and OAL)**

24 102. Plaintiffs incorporate herein by reference paragraphs 1 through 101 as if  
25 fully set forth herein.

26 103. The fundamental procedural and substantive defects of the DOJ's  
27 regulatory scheme, which the OAL improperly approved and submitted for publication,  
28 make clear that the Challenged Regulations are invalid as a matter of law. But their

1 contradictory, conflicting, and hopelessly confusing nature also renders the scheme  
2 unconstitutionally vague, such that even entertaining the notion (for the sake of argument  
3 alone) that they *might* be considered an otherwise valid exercise of the DOJ’s rulemaking  
4 ability, they cannot lawfully be enforced in any event.

5 104. “The Fourteenth Amendment to the United States Constitution and article I,  
6 section 7 of the California Constitution, each guarantee that no person shall be deprived  
7 of life, liberty, or property without due process of law. This constitutional command  
8 requires a reasonable degree of certainty in legislation, especially in the criminal law . . .  
9 [A] penal statute [must] define the criminal offense with sufficient definiteness that  
10 ordinary people can understand what conduct is prohibited and in a manner that does not  
11 encourage arbitrary and discriminatory enforcement.” (*People v. Sullivan* (2007) 151  
12 Cal.App.4th 524, 542, internal citations omitted; accord *In re Newbern* (1960) 53 Cal.2d  
13 786, 792, and *Kolender v. Lawson* (1983) 461 U.S. 352, 357.)

14 105. To the extent the Challenged Regulations were considered valid and  
15 enforceable, they would effectively become part of and modify the substantive law on  
16 which they are based, and citizens would thus be forced to comply with the law in the  
17 manner that the DOJ has interpreted and intends to enforce it.

18 106. As the arm of the State entrusted with enforcing the penal laws, the DOJ  
19 can no more enforce, and the OAL can no more approve for publication, regulations that  
20 render the implemented law unconstitutionally vague than the Legislature itself could  
21 have enacted unconstitutionally vague laws in the first instance. But that would be  
22 precisely the effect of the DOJ’s regulatory scheme to the extent it is enforced. The  
23 conflicts and contradictions between the regulations and the law and among the  
24 regulations themselves create a hopelessly confusing state of affairs within the most  
25 fundamental components of the regulatory scheme, including but not limited to:

- 26 • whether semiautomatic shotguns are or are not “assault weapons” merely  
27 by virtue of having a non-fixed magazine (compare 11 CCR §§ 5470, subd.  
28 (b) & 5471, subd. (a), with 5471, subd. (m) & Pen. Code, § 30515);

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- what mechanical conditions render a firearm not “fully assembled and fully functional” so as to remove it from the otherwise broadly inclusive definition of “semiautomatic” firearm for purposes of what constitutes an “assault weapon” (compare 11 CCR §§ 5472, subd. (e), with 5471, subd. (hh)(1)-(2));
- whether semiautomatic firearms are prohibited and/or non-registerable as “featureless” whenever they lack of *any one* of the statutorily-specified characteristics of an “assault weapon” under Penal Code section 30515, as the regulations provide, or only when they possess all such specified features (compare 11 CCR, § 5471, subd. (o), with Pen. Code, § 30515);
- whether home-built or other firearms not bearing a DOJ-issued serial number must be inscribed with such a serial number, as part of the current registration process, or only later after the mandatory DOJ-serialization process actually becomes effective (compare 11 CCR, §§ 5472, subds. (f) & (g), 5472.2, with Pen. Code, §§ 29180 & 29181);
- and even the basic issue of whether a semiautomatic *with* “a fixed magazine that holds ten rounds or less,” is or is not subject to the new registration requirement as an “assault weapon” (compare 11 CCR, § 5472, subd. (d), with Pen. Code, § 30515, subd. (a)(3) & (a)(6)).

107. Indeed, there is a risk of arbitrary and/or discriminatory enforcement on an even more fundamental level with respect to the entire set of definitions under 11 CCR section 5471, purporting to delineate which firearms are “assault weapons” subject to the registration requirement. As outlined above in paragraphs 47 through 49, incorporated as fully stated herein, based upon structure and content of the AWCA itself, the registration requirement under Penal Code section 30900 is part and parcel of the AWCA’s enforcement mechanisms, such that a failure to comply with the registration requirement necessarily subjects a person to the same sanctions applicable to any other form of unlawful possession under the AWCA. And it follows that, even under the current version of the preamble to 11 CCR section 5471’s definitions, which says that section

1 applies “[f]or purposes of Penal Code section 30900,” law enforcement and prosecutorial  
2 agencies certainly could interpret and apply those definitions as still intended to directly  
3 affect “the administration and enforcement of the AWCA as a whole,” such that a failure  
4 to comply with the registration requirement in accordance with *those* definitions would  
5 constitute a violation of the AWCA’s enforcement provisions. On the other hand, some  
6 agencies might decide to take a more literal view of the preamble and read it as meaning  
7 that the DOJ’s definitions apply solely to the registration process and do not implicate the  
8 enforcement mechanisms of the AWCA.

9 108. Notably, in the Notice of Proposed Rulemaking it submitted in support of  
10 proposed 11 CCR section 5460 – which would codify the original language of 11 CCR  
11 section 5471’s preamble (such that the definitions “apply to the identification of assault  
12 weapons pursuant to Penal Code section 30515”) – the DOJ claims that incorporation of  
13 this section into the regulatory scheme is necessary to “promote a clear understanding of  
14 P[enal] C[ode] section 30515” and to “provid[e] uniform guidance on assault weapons to  
15 the public, the judiciary, district attorney’s offices, and law enforcement.” (Exh. G at pp.  
16 4, 5, 8.) Similarly, in its Economic Impact Statement concerning 11 CCR section 5460,  
17 the DOJ declares that “[t]he proposed regulatory action will clarify ambiguities in the  
18 identification of assault weapons.” (Exh. J, at pp. 1, 5.) The clear import of DOJ’s own  
19 public pronouncements about this regulatory scheme is that the core definitional terms  
20 are subject to conflicting and inconsistent applications as the scheme is currently  
21 designed. As a result, citizens subject to the registration requirement could be left at the  
22 whim of the various agencies’ interpretations of 11 CCR section 5471 as to whether a  
23 failure to register pursuant to the terms of that regulation would or would not constitute a  
24 crime.

25 109. People of ordinary intelligence seeking to comply with the law as the DOJ  
26 intends to enforce it simply could not reasonably determine how their semiautomatic  
27 firearms are actually classified for purposes of the “assault weapons” regulatory scheme  
28 or what they are or are not required to do with their firearms in order to be in compliance.  
This state of affairs also inherently invites arbitrary or discriminatory enforcement as



1 enforcement officials could, and inevitably would, interpret and apply the regulatory  
2 scheme in an inconsistent and contradictory manner in the same or similar types of cases.

3 110. All Individual Plaintiffs the class of similarly situated individuals, all  
4 Institutional Plaintiffs, their members, and those similarly situated individuals whose  
5 interests the Institutional Plaintiffs seek to protect and advocate as a core function of their  
6 organizational purpose, are in this very position, as they own semiautomatic firearms  
7 subject or potentially subject to the DOJ’s illegal regulatory scheme. They seek to  
8 comply with all applicable laws and regulations governing such firearms, and yet they  
9 cannot reasonably determine how their firearms are or may be classified as “assault  
10 weapons,” and/or what they are or not required to do to be in compliance with the law or  
11 the regulations. As a result, they remain unfairly and improperly exposed to arbitrary and  
12 discriminatory enforcement of this fundamentally contradictory scheme.

13 111. By promulgating and enforcing these regulations, Defendants, acting under  
14 color of state law, are and have been propagating customs, policies, and practices that  
15 constitute an unconstitutionally vague regulatory scheme, thereby damaging and  
16 depriving the rights of all Plaintiffs and all such other similarly situated individuals  
17 described herein, who are subject to arbitrary and discriminatory enforcement of this  
18 regulatory scheme with which they cannot reasonably determine how to comply due to  
19 the irreconcilable conflicts that the scheme creates within the “assault weapons” law.

20 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

21  
22 **FIFTH CAUSE OF ACTION**  
23 **FOR A WRIT OF MANDAMUS**

24 **Ceasing Implementation and Enforcement of the Challenged Regulations**  
25 **(Cal. Const., art. VI; § 10; CCP, §§ 526a, 1085)**

26 **(All Plaintiffs Against All Defendants)**

27 112. Plaintiffs incorporate herein by reference paragraphs 1 through 111 as if  
28 fully set forth herein.

1           113. Defendant DOJ has a clear, present, and ministerial duty to implement and  
2 enforce regulations that comply with the requirements of the APA, are within the purview  
3 of its rule-making authority, are consistent with and do not contravene the law to be  
4 implemented or any related law, and that do not otherwise violate fundamental legal  
5 principles designed to protect the rights and interests of those against whom the  
6 regulations are to be enforced. Defendant OAL has a clear, present, and ministerial duty  
7 to ensure any regulations claimed to be eligible for “file and print” as APA-exempt are in  
8 fact so eligible and are, as all regulations must be, clear, necessary, and legally valid.  
9 Defendant SCO has a clear, present, and ministerial duty to properly exercise its plenary  
10 power over the State’s public funds and to ensure that none of its resources have been or  
11 are being disbursed or allocated in a manner that facilitates, furthers, or otherwise  
12 promotes the implementation of an unlawful or wasteful agency regulatory scheme.

13           114. All Plaintiffs, and the class of similarly situated individuals described  
14 herein, have a beneficial interest in the proper discharge of the duties that the DOJ, OAL,  
15 and SCO must faithfully execute in connection with the “assault weapons” registration  
16 process. As already demonstrated, the Challenged Regulations are invalid because they  
17 were promulgated and published in violation of the APA, they exceed the rulemaking  
18 authority conferred upon the DOJ, they contravene the governing statutory law, they are  
19 tantamount to government waste, and they are unconstitutionally vague. All Plaintiffs and  
20 such similarly situated individuals have suffered and will continue to suffer irreparable  
21 harm unless and until any further implementation and enforcement of the Challenged  
22 Regulations is enjoined.

23           115. As Plaintiffs maintain, this compels the declaratory and injunctive relief  
24 requested herein. Moreover, to the extent a writ of mandamus may be deemed an  
25 appropriate form of alternative or supplemental relief, Plaintiffs also seek and are entitled  
26 to such relief in order to achieve the same essential remedy necessary to ensure cessation  
27 of any further implementation or enforcement of the Challenged Regulations.  
28 Specifically, the DOJ must be directed to cease any further implementation or  
enforcement of the Challenged Regulations; the SCO must be directed to cease any

1 further collection by or on behalf of, and/or disbursement or allocation to, the DOJ of any  
2 funds obtained through “fees” imposed or charged in connection with the registration  
3 process being implemented through the Challenged Regulations; and the OAL must be  
4 directed to withdraw its previous approval of the Challenged Regulations, to request that  
5 the Secretary of State depublish the Challenged Regulations, and to take all such other  
6 steps as may be necessary to nullify the prior approval and publication of the same.

7 116. Plaintiffs have no other plain, speedy, or other adequate remedy at law.  
8

9 **SIXTH CAUSE OF ACTION**  
10 **FOR A WRIT OF MANDAMUS**

11 **Directing Proper Review Before Promulgation and Issuance of Any Regulations**  
12 **(Cal. Const., art. VI; § 10; CCP, §§ 526a, 1085)**

13 **(All Plaintiffs Against Defendants DOJ and OAL)**

14 117. Plaintiffs incorporate herein by reference paragraphs 1 through 116 as if  
15 fully set forth herein.

16 118. To the extent a writ of mandamus may be deemed an appropriate form of  
17 alternative or supplemental relief to the declaratory and injunctive relief sought herein,  
18 Plaintiffs also seek and are entitled to such relief for purposes of directing that the DOJ  
19 conduct a proper review and analysis of the nature and scope of its authority to  
20 promulgate and enforce regulations implementing the “assault weapons” registration  
21 scheme and to ensure that any other such regulations it may propose are fully consistent  
22 with the same. Similarly, the OAL must be directed to properly discharge its duty of  
23 ensuring that any such other regulations the DOJ may propose comply with APA  
24 standards, are within the purview of the DOJ’s rulemaking authority, are consistent with  
25 the statutory law to be implemented, and are otherwise clear, necessary, and legally valid.

26 119. As demonstrated above, Plaintiffs and such other individuals as described  
27 herein have a beneficial interest in the proper discharge of these duties that the DOJ and  
28 OAL are bound to faithfully execute, they have suffered and will continue to suffer

1 irreparable harm unless and until such relief is granted, and thus they have no other plain,  
2 speedy, or adequate remedy at law.

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4 **SEVENTH CAUSE OF ACTION**  
5 **FOR A WRIT OF MANDAMUS**

6 **Directing Determination and Implementation of Appropriate Registration Fees**  
7 **(Cal. Const., art. VI; § 10; CCP, §§ 526a, 1085)**

8 **(All Plaintiffs Against Defendant DOJ)**

9 120. Plaintiffs incorporate herein by reference paragraphs 1 through 119 as if  
10 fully set forth herein.

11 121. To the extent a writ of mandamus may be deemed an appropriate form of  
12 alternative or supplemental relief to the declaratory and injunctive relief sought herein,  
13 Plaintiffs also seek and are entitled to such relief for purposes of directing that the DOJ  
14 make an accurate determination of the actual costs it has incurred and will incur in  
15 connection with implementing and administering the “assault weapon” registration  
16 process at issue, and, based on that assessment, to establish fees that do “not to exceed  
17 the reasonable costs of the department,” as required by the governing law. (§ 30900,  
18 subds. (a)(4) & (b)(4).) As demonstrated, Plaintiffs and such other individuals as  
19 described herein have a beneficial interest in a proper determination of any fee imposed  
20 or to be imposed in connection with registration, they have suffered and will continue to  
21 suffer irreparable harm unless and until such relief is granted, and thus they have no other  
22 plain, speedy, or adequate remedy at law.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for relief as follows:

25 For the following declaratory and injunctive relief:

- 26  
27 1. A declaration that the Challenged Regulations are invalid, in whole or in  
28 part, as having been promulgated, approved, and/or published in violation of the APA as  
alleged herein, and, on that basis, the Defendants, their agencies, subdivisions, and any

1 others who are or may be charged with implementing or enforcing the same are hereby  
2 preliminarily and permanently enjoined from continuing to do so.

3         2. A declaration that the Challenged Regulations are invalid, in whole or in  
4 part, as having been promulgated, approved, and/or published in excess of the DOJ’s  
5 statutorily-conferred rulemaking authority as alleged herein, and, on that basis, the  
6 Defendants, their agencies, subdivisions, and any others who are or may be charged with  
7 implementing or enforcing the same are hereby preliminarily and permanently enjoined  
8 from continuing to do so.

9         3. A declaration that the Challenged Regulations are invalid, in whole or in  
10 part, as contravening the governing statutory law they were purportedly intended to  
11 implement as alleged herein, and, on that basis, the Defendants, their agencies,  
12 subdivisions, and any others who are or may be charged with implementing or enforcing  
13 the same are hereby preliminarily and permanently enjoined from continuing to do so.

14         4. A declaration that the Challenged Regulations are invalid, in whole or in  
15 part, insofar as their promulgation, approval, implementation, and enforcement, and/or  
16 the collection, disbursement, or allocation of the related fees constitute or have resulted in  
17 government waste as alleged herein, and, on that basis, the Defendants, their agencies,  
18 subdivisions, and any others who are or may be charged with the management,  
19 disbursement, and/or allocation of such funds are hereby preliminarily and permanently  
20 enjoined from continuing to do so.

21         5. A declaration that the Challenged Regulations are invalid, in whole or in  
22 part, as being unconstitutionally vague in violation of Article I, Section 1, of the  
23 California Constitution, and/or the Due Process Clause of the Fourteenth Amendment of  
24 the United States Constitution, as alleged herein, and, on that basis, the Defendants, their  
25 agencies, subdivisions, and any others who are or may be charged with implementing or  
26 enforcing the same are hereby preliminarily and permanently enjoined from continuing to  
27 do so.  
28

1 To the extent this Court finds a writ of mandamus an appropriate alternative or  
2 supplemental form of relief, Plaintiffs pray for the following mandamus relief:

3 1. Orders directing that: (A) the DOJ cease any further implementation or  
4 enforcement of the Challenged Regulations, including the charging or assessment of any  
5 fees in connection with the registration process being implemented through the  
6 Challenged Regulations; (B) the SCO cease any further collection by or on behalf of,  
7 and/or disbursement or allocation to, the DOJ of any funds obtained through fees  
8 imposed or charged in connection with the same; and (C) the OAL withdraw its previous  
9 approval of the Challenged Regulations, request that the Secretary of State depublish the  
10 Challenged Regulations, and take all such other steps as may be necessary to nullify the  
11 prior approval and publication of the same.

12 2. Orders directing that: (A) the DOJ conduct a proper review and analysis of  
13 the nature and scope of its authority to promulgate and enforce regulations implementing  
14 the “assault weapons” registration scheme and ensure that any other such regulations it  
15 may propose are fully consistent with the same; and (B) the OAL properly discharge its  
16 duty of ensuring that any such other regulations the DOJ may propose comply with APA  
17 standards, are within the purview of the DOJ’s rulemaking authority, are consistent with  
18 the statutory law to be implemented, and are otherwise clear, necessary, and legally valid.

19 3. An order directing that, insofar as the DOJ intends to and does continue to  
20 conduct a registration process pursuant to the governing statutory scheme, that it make an  
21 accurate determination of the actual costs it has incurred and will incur in connection  
22 with the same, and, based on that assessment, establish and charge only fees that do “not  
23 to exceed the reasonable costs of the department,” as required by the governing law.


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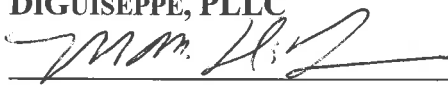
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In addition to the foregoing, Plaintiffs pray for an award of reasonable attorneys' fees, costs, and expenses pursuant to California Code of Civil Procedure § 1021.5 and/or other applicable law; and for any and all further relief to which Plaintiffs may be justly entitled.

Dated: November 30, 2017

**SEILER EPSTEIN ZIEGLER & APPEGATE LLP**

  
George M. Lee

**LAW OFFICES OF RAYMOND MARK  
DIGUISEPPE, PLLC**  
  
Raymond M. DiGuiseppe

Attorneys for Plaintiffs-Petitioners