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FILED

AUG 14 2018

CLERK OF THE SUPERIOR COURT
BY: G. HOYT, DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SHASTA

HARRY SHARP, et al.,

Plaintiffs and Petitioners,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of California,
et al.,

Defendants and Respondents.

Case No. 190350

**NOTICE OF MOTION AND MOTION OF
PLAINTIFFS FOR ISSUANCE OF A
PRELIMINARY INJUNCTION**

[CCP § 527(a)]

Date: Sept. 10, 2018
Time: 8:30 a.m.
Dept. 08
Judge: Hon. Tamara L. Wood

TO ALL PARTIES, THROUGH THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **September 10, 2018, at 8:30 a.m.**, or as soon
thereafter as the matter may be heard in Department 8 of the above-entitled court, Hon.
Tamara L. Wood presiding, plaintiffs Harry Sharp, David Ajirogi, Ryan Gilardy, Darin
Prince, Todd Feltman, David Kuehl, Terry Jahraus, The Calguns Foundation, Firearms
Policy Coalition, Firearms Policy Foundation and the Second Amendment Foundation
("plaintiffs"), by and through their counsel of record, will and hereby do move the court
for an order granting and issuing a preliminary injunction, pursuant to Cal. Code of Civil

1 Procedure §§ 526 and 527(a). Specifically, plaintiffs seek to enjoin defendants California
2 Attorney General Xavier Becerra, in his official capacity as Attorney General of the State
3 of California, Brent Orick, in his official capacity as Acting Chief of the Department of
4 Justice Bureau of Firearms, Joe Dominic, in his official capacity as Chief of the
5 Department of Justice California Justice Information Services Division, and the
6 California Department of Justice (DOJ), their officers, agents, servants, employees, and
7 attorneys, and subdivisions, including those persons in active concert or participation
8 with them, and those duly sworn state peace officers and federal law enforcement officers
9 (collectively “Defendants”) from enforcing California Penal Code sections 30600
10 (insofar as the statute would prohibit otherwise lawful transportation activities), and
11 30605 (prohibiting possession of assault weapons), against plaintiffs, the class of
12 similarly-situated individuals, and for all persons who otherwise would have been entitled
13 to register certain firearms pursuant to Cal. Penal Code § 30900(b)(1).

14 The motion is made on the grounds that plaintiffs have demonstrated a likelihood
15 of prevailing on the merits of their mandamus, declaratory and injunctive relief claims,
16 that plaintiffs and a class of similarly-situated individuals would suffer irreparable injury
17 unless and until preliminary injunctive relief is granted, pending resolution of the case,
18 and that the balance of harms tips in favor of granting the plaintiffs injunctive relief.

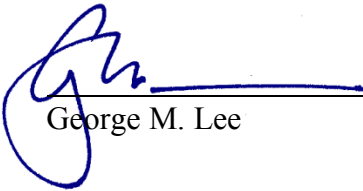
19 In support of this motion, plaintiffs and moving parties will rely upon this notice
20 of motion, the supporting memorandum of points and authorities, all declarations
21 submitted in support of the motion, and all evidentiary exhibits thereto, all matters of
22 which the court is requested to and may take judicial notice, the VERIFIED FIRST
23 AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND
24 INJUNCTIVE RELIEF (FAC), all other complete files and judicial records of the above-
25 entitled action, and any other such evidence and argument as the court may consider upon
26 the hearing of this matter.

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Dated: August 13, 2018

SEILER EPSTEIN ZIEGLER & APPEGATE LLP



George M. Lee

THE DIGUISEPPE LAW FIRM, P.C.

/s/ Raymond M. DiGuiseppe

Raymond M. DiGuiseppe

Attorneys for Plaintiffs/Petitioners

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF SHASTA**

17 HARRY SHARP, et al.,

Case No. 190350

18 Plaintiffs and Petitioners,

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PLAINTIFFS'
MOTION FOR ISSUANCE OF PRELIMINARY
INJUNCTION**

19 vs.

20 XAVIER BECERRA, in his official capacity as
21 Attorney General of California, et al.,

[CCP § 527(a)]

22 Defendants and Respondents.

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I. INTRODUCTION

This case is about the cruel irony of requiring people to comply with the law, and then depriving them of the ability to do so. The ones truly affected are those who endeavored to and desire to remain law-abiding citizens, respecting the laws of this State. The seven individual plaintiffs in this case, the untold number of similarly situated people they represent, and the many affected members of the institutional plaintiffs all share one crucial fact in common: They are law-abiding gun owners who made good faith, diligent efforts to comply with the “bullet button assault weapon” registration mandate during the open registration period, but were shut out solely because of defects and malfunctions with the online “assault weapons” registration system under the complete control and responsibility of the California Department of Justice (DOJ). By statute, this was only available means through which people could register such lawfully-owned firearms before the deadline of July 1, 2018. As a result, at 12:00 a.m. on July 1st, all plaintiffs in this case and likely thousands more across the state became subject to severe penalties and sanctions for possession of unregistered assault weapons, “criminals,” in the eyes of the law, through no legal fault of their own.

Unless and until this Court steps in, plaintiffs, and the class of law-abiding citizens they represent, will continue carrying this unduly prejudicial stigma and burden, subjecting them to prosecution, significant penalties, and deprivation of their property rights – all because the DOJ established and maintained a fundamentally defective system for processing these registrations and then shut it down – prematurely – providing no exception or mercy for any of those whose applications could not be processed due to the system’s technical defects. This Court’s immediate intervention is therefore requested to prevent the unconstitutional infliction of irreparable injury to these plaintiffs and everyone else forced into this state of legal purgatory.

II. FACTUAL AND PROCEDURAL SUMMARY

A. THE “BULLET BUTTON ASSAULT WEAPON” REGISTRATION MANDATE

For many years now, the State of California has strictly regulated the acquisition, possession, sale, and use of popular, commonly-held semiautomatic firearms through a vast and complex web of criminal statutes whose scope is ever-expanding to include more and more such

1 firearms designated with the legislative classification of “assault weapons.” Most recently, the
2 Legislature declared as “assault weapons” another large swath of popular, commonly-held
3 semiautomatic firearms – this time those with the so-called “bullet-button” as part of their
4 magazine-locking mechanism. Specifically, in 2016, through Senate Bill 880 and Assembly Bill
5 1135 (2015-2016 Reg. Sess.), the Legislature expanded the definition of “assault weapon” to
6 include many such firearms (Pen. Code § 30515) and further established a registration
7 requirement, forcing owners of these firearms to register them with the DOJ by no later than July
8 1, 2018, in order to continue lawful possession. *See*, Pen. Code §§ 30900(b)(1) (requiring
9 registration), and 30680(c) (allowing possession for those who timely register). At the same
10 time, the Legislature required the DOJ to establish and maintain a functional “public-facing”
11 Internet-based application for timely processing these registrations. Pen. Code § 30900(b)(2).

12 Hundreds of thousands of firearms likely fall within the purview of the retroactively-
13 classified “bullet button assault weapons” subject to the statutory registration requirement. (FAC,
14 ¶ 33.) In the run-up to the deadline, the Attorney General’s website emphasized the importance
15 of compliance in order to stay in line with the law, with an ominous “countdown clock” ticking
16 off the number of weeks, days, hours, minutes, and seconds to the deadline of July 1, 2018.
17 (See, FAC Exhibit A.) But besides the “countdown clock” floating in the ether of the Internet as
18 a portentous reminder to those who happened to see it on the website during the registration
19 period, the DOJ undertook little, if any, efforts to notify or educate the general public about the
20 registration mandate – even though for prior “assault weapon” registration periods the DOJ had
21 been required to “conduct a public education and notification program regarding the registration
22 of assault weapons.” *See*, Pen. Code § 31115. Plaintiff FPC took it upon itself to help fill this
23 void by devoting its own resources toward public education. (FAC, ¶ 53.) Still, untold numbers
24 of affected citizens were undoubtedly left in the dark about the registration mandate throughout
25 most or even the entire registration period. Case in point, plaintiff Jahraus only happened to
26 learn of the registration mandate coincidentally when he saw a television news report about it on
27 *June 30th*, the final day of the registration period. (Jahraus Decl., ¶ 6.)
28

1 **B. THE DOJ ESTABLISHED AND A FUNDAMENTALLY INADEQUATE AND DEFECTIVE**
2 **REGISTRATION SYSTEM – AND PROBLEMS INEVITABLY ABOUNDED.**

3 The DOJ’s registration system went “live” August 3, 2017, leaving just eleven months
4 for the numerous affected citizens to learn about and comply with the registration requirement.
5 (FAC, ¶ 34.) The DOJ set up and maintained this online registration system through the
6 California Firearms Application Reporting System (CFARS). As plaintiffs demonstrate,
7 however, this system was flawed from the outset, and during the crucial final days in the run-up
8 to the looming statutory deadline, the system repeatedly malfunctioned, ultimately blocking the
9 registration attempts of the plaintiffs, and numerous other similarly situated people, as they made
10 good faith efforts to comply with the law by registering their firearms through this portal.

11 Plaintiffs retained Michael Miyabara-McCaskey, a senior IT Systems/Enterprise
12 Architect, with twenty-one years of experience serving clients both in the private and public
13 sectors, with specific experience in building and maintaining organizational IT systems,
14 enterprise architecture, network, systems, and database administration, to examine the likely
15 causes of the inability of plaintiffs, and other members of the public, to access and/or successfully
16 submit assault weapon registration forms to the DOJ. (Miyabara-McCaskey Decl., ¶¶ 3-4.) His
17 job, in essence, includes “root cause analysis,” which is to diagnose and resolve enterprise IT
18 problems and failures, and his work specifically includes the creation, maintenance and
19 management of the data systems for the Judicial Council of California. (*Id.*, ¶¶ 5-6.) As this
20 expert explains, when the DOJ created its “public-facing application,” it did not create an
21 independent on-line registration system, but rather, elected to make an “enhancement” to its
22 already-existing and maintained CFARS web application which included, inter alia: firearm
23 registrations, ownership reports, transfer reports, serial number applications, and other firearms-
24 related data. (Miyabara-McCaskey Decl., ¶ 10; Exhibit B.) The design of the “enhancement” to
25 the CFARS system for using this system to *also* process the numerous “bullet button assault
26 weapon” registrations was inherently flawed, in that it was built on an existing system which
27 already served several other purposes without adequate quality assurance testing or profiling so
28 as to ensure proper sizing (i.e., sufficient capacity) within CFARS. (*Id.*, ¶ 13.)

1 The collective experience of the individual plaintiffs in attempting to access the DOJ's
2 CFARS servers and successfully submit firearm registration forms is illustrative of experiences
3 that were shared with many other members of the public across the state. (See, Lee Decl., ¶¶ 6-
4 7, Exhibits A and B). The commonality of these types of problems supports the conclusion that
5 these were CFARS-server side issues, and not the fault of the plaintiffs or the public. (Miyabara-
6 McCaskey Decl., ¶ 16.) Ultimately, plaintiffs have demonstrated that the problems being
7 experienced (as detailed below) were due to inadequate CFARS system resources such as
8 available memory, unavailability of external or third party connections that the CFARS
9 application depended upon for referenced data, and/or inadequate network bandwidth or network
10 routing problems within CFARS servers. (See *id.* at ¶ 18.)

11 **1. For Many, the CFARS System Was Not Accessible at All.**

12 Plaintiff Harry Sharp, a resident of Redding, was initially able to register one of four
13 firearms he intended to register on June 29, 2018. (Sharp Decl., ¶ 6). However, upon attempting
14 to register the second firearm, the system would “time out” (i.e., become unresponsive and
15 eventually quit) when he attempted to upload and submit the required photographs. The next
16 day, June 30, 2018, Mr. Sharp resumed his efforts to register, but was unable to access the
17 CFARS portal at all. (*Id.*, ¶ 7). (A video demonstrating the inaccessibility of CFARS is
18 described in his declaration, at ¶ 11 and found at: http://bit.ly/Sharp_Video_001.)

19 Likewise, plaintiff David Ajirogi, who was initially able to establish a CFARS account
20 (i.e., create a basic user name and password), was unable to access the “Assault Weapon
21 Registration Form” link at all, despite multiple attempts on June 28 and 29. (Ajirogi Decl., ¶ 6-
22 7.) Each time, the system would “time out” and become unresponsive. (*Ibid.*)

23 Plaintiff David Kuehl similarly describes an inability to access the CFARS system
24 entirely, receiving error messages about the website not being available. (Kuehl Decl., ¶ 6.)

25 Plaintiff Darin Prince tried to register on June 30, 2018, but was unable to access the site
26 for four hours. (Prince Decl., ¶ 6.) He was able to get onto the site eventually, but due to other
27 problems, he was unable to timely register all the firearms he intended to register. (*Id.*, ¶ 8.)

28 As a result of the CFARS system being completely inaccessible, these individuals (and

1 undoubtedly many others) were unable to even begin processing their registrations, and were
2 therefore unable to timely register their firearms subject to the registration mandate. (Sharp
3 Decl., ¶ 9; Ajirogi Decl., ¶ 8; Kuehl Decl., ¶ 7; Prince Decl., ¶¶ 6-8.) These connection issues
4 experienced by the plaintiffs and others across the state, were caused by either the DOJ’s CFARS
5 servers being overloaded and/or possibly by one of the State of California datacenters itself being
6 unavailable due to network routing or overload issues. (Miyabara-McCaskey Decl., ¶ 12.)

7 **2. For Many Others, the CFARS System Could Not Process Photographs.**

8 Many of the plaintiffs declare that the CFARS system timing out while attempting to
9 upload the four photographs required by the DOJ.¹ Plaintiff Sharp, for example, could not
10 complete the second registration he attempted on June 29, 2018, because the system “froze up”
11 when he attempted to upload the second batch of photographs. (Sharp Decl., ¶ 6.)

12 Plaintiff Ryan Gilardy, who actually began the registration process a *month* before the
13 Deadline by inquiring with the DOJ about the general process (Gilardy Decl., ¶ 6), experienced
14 “time outs” during his attempted submission of the photographs and documents required for joint
15 registration approximately two weeks before the Deadline. (*Id.*, ¶¶ 8-9.) (A video demonstrating
16 the CFARS system timing out after attempting to upload a simple 2.0 MB photograph is
17 described in the Gilardy Decl. at ¶ 12 and found at: http://bit.ly/Gilardy_Video_001.)

18 Plaintiff Todd Feltman got as far as submitting the required information, and uploading
19 the photographs, but when he attempted to “submit” everything, the system “timed out” and
20 crashed. (Feltman Decl., ¶¶ 6, 9 and video at: http://bit.ly/Feltman_Video_001.)

21 These problems uploading photographs were widespread. See Gallinger Decl. (attached
22 to Lee Decl. as Exhibit A) at ¶ 5; Decl. of Richard Whittier (Lee Decl. Exhibit B) at ¶ 5. DOJ’s
23

24 ¹The photographic requirement was *entirely* an invention of the DOJ itself, by and through its
25 own regulations. (Tit. 11 Cal. Code of Regs. § 5474(c) (requiring four “clear digital photos of
26 firearms listed on the application.”) Nowhere in the authorizing statute are photographs actually
27 required. (See Pen. Code § 30900(b)(3) for a list of the registration information required by
28 statute.) Had the DOJ followed the Administrative Procedures Act, and opened its regulations to
public comment before promulgating them, the predictable technical problems with its
requirement of uploading four photographs could have been exposed and avoided.

1 inability to accommodate its own photographic requirement foreclosed many from timely
2 registering their firearms. (See, Sharp Decl., ¶ 9; Gilardy Decl., ¶ 11; Feltman Decl., ¶ 10.)

3 **3. The CFARS System’s “Invalid Character” Error**

4 Others were unable to proceed and/or submit their registration forms due to a bizarre
5 “invalid character address” error they received, preventing their submission. For example,
6 plaintiff Darin Prince, who had already submitted seven of his firearms, experienced this error at
7 11:15 p.m. on June 30th after the system kicked him out, deleting his submission and requiring
8 him to start all over again. (Prince Decl., ¶ 6.) When he did log in again, the CFARS system
9 would not accept the exact same home address he had used previously, responding that there
10 were “invalid characters” in the address field. (*Ibid.*) He naturally attempted every possible
11 combination of letters and variations, to no avail. (*Ibid.*) To cut his losses, plaintiff Prince
12 checked out and paid for those submissions already in his cart, but was unable to process seven
13 of his firearms prior to the Deadline due to this error. (*Id.*, ¶ 8.) He forwarded to the DOJ a
14 screenshot of the error message he had received. (Exhibit A to Prince Decl.)

15 Similarly, plaintiff Terry Jahraus attempted to register his firearm with CFARS, only to
16 receive the “invalid characters” error message that prevented him from proceeding. (Jahraus
17 Decl., ¶ 6.) He attempted every possible variation of his home address, to no avail. (*Id.*)
18 (Exhibit A to Jahraus Decl. (Picture of the error message).) Declarant Jordan Gallinger likewise
19 experienced this error in attempting to use the registration system. (Lee Decl., Exhibit A at ¶ 5.)

20 This error prevented these individuals from registering some or all the firearms they
21 intended to register before the Deadline (Prince Decl., ¶ 8; Jahraus Decl., ¶ 7), further illustrating
22 the inadequate memory/resources of the system. (Miyabara-McCaskey Decl., ¶ 4).

23 **4. DOJ Technical Assistance Was Non-Existent.**

24 The technical issues that plaintiffs and undoubtedly many others experienced in the crush
25 of attempted registrations *might* have been mitigated, had the DOJ actually provided technical
26 support to address its problems. The DOJ knew there were issues. For example, before the
27 Deadline, the DOJ posted a warning on its website, stating, “[t]he Department is currently
28 experiencing a high volume of users attempting to register their assault weapons.” (Lee Decl.,

1 Exhibit E.)² The DOJ claimed that “staff will be available to assist with bullet button assault
2 weapon registrations and assault weapon serial number requests via email communication on
3 Saturday, June 30, 2018 until 11:59:59 pm by contacting awr@doj.ca.gov.” (*Ibid.*)

4 But this was all folly, and possibly just for show. Plaintiff Sharp, for example, followed
5 the “troubleshooting tips,” to no avail. (Sharp Decl., ¶ 8.) For his part, plaintiff Ryan Gilardy
6 had actually contacted the DOJ by phone a full month before the deadline and addressed to a
7 DOJ official questions about how to properly utilize the registration system. The DOJ official
8 said they expected a large number of online registration attempts throughout the month of June
9 and that registrants would face “time outs” due to the high traffic volume. (Gilardy Decl., ¶ 6.)
10 Nevertheless, she advised if that happened to him, he should “keep trying” and that eventually,
11 he would get through. (*Ibid.*) And when plaintiff Gilardy did experience such problems, as a
12 former IT professional, he did everything the DOJ recommended and more to try to solve them.
13 For example, he made sure he was using up-to-date computer systems and fully-updated web
14 browsers. He used different devices, Internet service providers and networks, to no avail. He
15 performed Internet speed tests to verify that his connections were strong. He attempted to reduce
16 the photograph data size to make sure that file size wasn’t the issue. (*Id.*, ¶ 9.) Notwithstanding
17 these efforts, he was unable to complete the registration process for all of the firearms. The one
18 successful registration he made came only after 14 attempts. The other two never went through,
19 due to the system “time outs.” (*Id.*, ¶ 10.) When he attempted to call the DOJ for help, there was
20 no response. (See Gilardy Decl., ¶ 12 and video at http://bit.ly/Gilardy_Video_002.)

21 Likewise, plaintiff Todd Feltman followed the DOJ “troubleshooting tips,” using
22 different browsers, devices, and Internet connections, and clearing out web caches and cookies,
23 after he experienced timeouts blocking his attempted registrations. (Feltman Decl., ¶ 7.) And he
24 attempted to contact the DOJ for assistance, but no one ever responded to his inquiry. (*Ibid.*)

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26
27 ²This same advisory also provided “Troubleshooting Tips”, including an advisory to “clear your
28 browser history. [...] Be sure to clear your Cache, Cookies and Form & Search History[,]” and
to try using different web browsers or computers networks. (*Ibid.*) However, given that these
errors were server-side errors, following these tips was futile. (Miyabara-McCaskey Decl., ¶ 17.)

1 In fact, almost all the plaintiffs attempted to contact the DOJ for assistance before the
2 Deadline, but the DOJ never responded to them, at all. (Sharp Decl., ¶ 8; Ajirogi Decl., ¶ 7;
3 Gilardy Decl., ¶ 12; Prince Decl., ¶ 6 and Exhibit A; Feltman Decl., ¶ 7.) Some were able to get
4 through the following Monday, July 2. However, the DOJ officials they reached by phone
5 uniformly told plaintiffs (and undoubtedly many others) that it was their own fault for having
6 failed to attempt registration earlier. (See, Sharp Decl., ¶ 10; Jahraus Decl., ¶ 8.) In fact, the
7 DOJ official speaking with plaintiff Jahraus blamed him, saying it had been his responsibility to
8 comply with the law and he “had all year to do so.” (Jahraus Decl., ¶ 8.)

9
10 **III. ARGUMENT**

11 **A. RELIEF REQUESTED**

12 Ultimately, plaintiffs seek mandamus, declaratory and injunctive relief as necessary,
13 proper and the only remedies to permit them a reasonable opportunity to register their firearms
14 through a functioning registration system. Today, plaintiffs are seeking injunctive relief to
15 protect them against the severe penalties and the loss of substantial liberty and property rights to
16 which they are now subject pending the outcome of this action, for merely continuing possession
17 of the “assault weapons” they attempted to register but could not. The specific statutes plaintiffs
18 seek to enjoin, as applied to them, and the class they represent, are Penal Code §§ 30600 (as it
19 pertains to lawful transportation) and 30605 (prohibiting possession of assault weapons).

20 **B. PRELIMINARY INJUNCTION STANDARDS**

21 “The general purpose of a preliminary injunction is to preserve the status quo pending a
22 determination on the merits of the action.” *SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217
23 Cal.App.4th 272, 280. ““The granting or denial of a preliminary injunction does not amount to an
24 adjudication of the ultimate rights in controversy. It merely determines that the court, balancing
25 the respective equities of the parties, concludes that, pending a trial on the merits, the defendant
26 should or ... should not be restrained from exercising the right claimed by him.”” *Ibid.* A trial
27 court must weigh two interrelated factors here: “(1) the likelihood that the plaintiff will prevail
28 on the merits at trial, and (2) the relative interim harm to the parties from the issuance or

1 nonissuance of the injunction, that is, the interim harm the plaintiff is likely to sustain if the
2 injunction is denied as compared to the harm the defendant is likely to suffer if the preliminary
3 injunction is issued.” *Ibid.*; *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1109.
4 Regarding the first factor, the plaintiff must show “a reasonable probability it will prevail on the
5 merits.” *Prigmore v. City of Redding* (2012) 211 Cal.App.4th 1322, 1333. “The latter factor
6 involves consideration of such things as the inadequacy of other remedies, the degree of
7 irreparable harm, and the necessity of preserving the status quo.” *Take Me Home Rescue v. Luri*
8 (2012) 208 Cal.App.4th 1342, 1350. Moreover, “the greater the plaintiff’s showing on one, the
9 less must be shown on the other to support an injunction.” *SB Liberty, LLC*, at 280 (quoting
10 *Butt v. State of California* (1972) 4 Cal.4th 668, 678); *Luri*, 208 Cal.App.4th at 1350. “Further,
11 if the party seeking the injunction can make a sufficiently strong showing of likelihood of
12 success on the merits, the trial court has discretion to issue the injunction notwithstanding that
13 party’s inability to show that the balance of harms tips in his [or her] favor.” *Luri*, at 1350-1351.

14 While it is generally true that “[a]n injunction cannot be granted . . . [t]o prevent the
15 execution of a public statute by officers of the law for the public benefit[.]” CCP § 526(b)(4),
16 “[t]he rule against enjoining the execution of a public statute is subject to four judicially
17 recognized exceptions: (1) where the statute is unconstitutional and there is a showing of
18 irreparable injury; (2) where the statute is valid but is enforced in an unconstitutional manner; (3)
19 where the statute is valid but, as construed, does not apply to the plaintiff; and (4) where the
20 public official’s action exceeds his or her authority.” *Alfaro v. Terhune* (2002) 98 Cal.App.4th
21 492, 501. Therefore, injunctive relief may be granted against illegal enforcement of an otherwise
22 valid statute , as “[i]t is well settled that where the enforcement of a statute may cause irreparable
23 injury, the injured party may seek to enjoin its enforcement.” *Novar Corp. v. Bureau of*
24 *Collection & Investigative Servs.* (1984) 160 Cal.App.3d 1, 6 (citing *McKay Jewelers, Inc. v.*
25 *Bowron* (1942) 19 Cal.2d 595, 599); *see also, Startrack, Inc. v. County of Los Angeles* (1976) 65
26 Cal.App.3d 451, 457 (upholding injunction where sheriff’s threatened enforcement of underlying
27 ordinances was “both mistaken and illegal.”)
28

1 **C. PLAINTIFFS HAVE SHOWN A LIKELIHOOD OF PREVAILING ON THE MERITS.**

2 **1. Plaintiffs Have Shown Entitlement to Mandamus Relief.**

3 A petition for a writ of mandate under CCP § 1085 is the proper vehicle to address an
4 individual’s claim of the loss of due process, and to compel a state agency to provide the same.
5 *Katzberg v. Regents of Univ. of California* (2002) 29 Cal.4th 300, 326 (citing *Carlsbad*
6 *Aquafarm, Inc. v. State Dept. of Health Services* (2000) 83 Cal.App.4th 809, 821). A court may
7 issue a writ of mandate to compel a public agency or officer to perform a mandatory duty.
8 *Ellena v. Department of Ins.* (2014) 230 Cal.App.4th 198, 205 (citing CCP § 1085; *City of*
9 *Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 868). “Two basic requirements are essential
10 to the issuance of the writ: (1) A clear, present and usually ministerial duty upon the part of the
11 respondent [citations]; and (2) a clear, present and beneficial right in the petitioner to the
12 performance of that duty [citation]. [Citation.]” *Ellena*, at p. 205 (citing *People ex rel. Younger v.*
13 *County of El Dorado* (1971) 5 Cal.3d 480, 491).

14 In the present case, defendants unquestionably had a statutorily-imposed duty to establish
15 and maintain a stable and reliable electronic registration system throughout the entire registration
16 period. Pen. Code § 30900(b)(2) (“Registrations shall be submitted electronically via the
17 Internet utilizing a public-facing application made available by the department”) and (b)(5)
18 (“The department shall adopt regulations for the purpose of implementing this subdivision.”) It
19 is also obvious that plaintiffs, and many others similarly situated, had a beneficial interest in
20 complying with the law. *See*, Pen. Code § 30680(c) (providing an exception to the assault
21 weapon possession statute for those who timely register in accordance with section 30900(b)(1)).

22 As shown through the supporting declarations and summarized facts above, defendants
23 have failed and refused to carry out this duty by establishing and maintaining a defective
24 registration system incapable of properly and timely processing the registration applications, by
25 failing or refusing to rectify the technical problems for which it was responsible, and by then
26 failing or refusing to make any exception or accommodation for any of the individuals whose
27 registrations were not timely processed solely due to the system’s defects.

28

1 The right and ability of plaintiffs and all those similarly situated, stemming from their
2 reasonable expectations that they could maintain lawful possession of their firearms by
3 registering them with the DOJ’s system at any time before the Deadline, implicates their
4 fundamental constitutional interests because the federal and state constitutions protect them
5 against the deprivation of life, liberty, or property without due process of law. U.S. Const., 14th
6 Amend.; Cal. Const., art. I, § 7. Their inability to register their firearms in accordance with the
7 law, through no fault of their own, and the resulting exposure to criminal sanctions and loss of
8 property interests, jeopardizes these fundamental rights, unless and until this Court intervenes.

9 Thus, the only viable remedy to protect these citizens against an unjust deprivation of
10 rights is an injunction prohibiting enforcement against them of the laws that would otherwise
11 penalize possession and transportation of registerable firearms (Pen. Code §§ 30600, 30605),
12 until such time as they have been afforded a fair and reasonable opportunity to register the
13 firearms through a functional registration system. As such, plaintiffs have demonstrated a
14 likelihood of success on the merits of their mandamus claims so as to warrant the issuance of the
15 temporary injunction essential to providing immediate relief and preserving the status quo.

16 **2. Defendants Closed the Registration Period Prematurely – Gov. Code § 6707.**

17 Furthermore, plaintiffs have shown that they will prevail at trial on the merits of their
18 claims for the simple, yet crucial reason that the DOJ closed the registration period early.
19 Government Code § 6707 provides: “When the last day for filing any instrument or document
20 with a state agency falls upon a Saturday or holiday, such act may be performed upon the next
21 business day with the same effect as if it had been performed on the day appointed.” Additional
22 provisions of law provide for such extensions when an act must be done *within* a specified period
23 of time. *See, e.g.*, CCP § 12a, subd. (a) (“If the last day for the performance of any act provided
24 or required by law to be performed within a specified period of time is a holiday, then that period
25 is hereby extended to and including the next day that is not a holiday.”) Here, by operation of
26 statute, people having “bullet button assault weapons” were required to register said firearms
27 “before July 1, 2018” (Pen. Code § 30900(b)(1) (emphasis added). Accordingly, the statute
28 set forth a defined time within which citizens were required to submit registration information to

1 a state agency, and the last day to submit the registration form electronically was June 30, 2018,
2 which the Court is requested to take judicial notice, fell on a Saturday. (Lee Decl., ¶ 8.)

3 However, is indisputable that the DOJ shut down its CFARS assault weapons registration
4 page at or about midnight on July 1, 2018. (Lee Decl., ¶ 8, Exhibit E (“REMINDER: ASSAULT
5 WEAPON REGISTRATION ENDS AT 11:59:59 P.M. ON JUNE 30, 2018. [¶] All
6 applications for assault weapon registration must be submitted by this deadline.”). Thus, the
7 DOJ effectively closed the registration window early – by two days – because it should have
8 remained open through Monday, July 2. By itself, the DOJ’s failure or refusal to keep the
9 registration period open through July 2nd entitles plaintiffs, and everyone else statewide who
10 was deprived of the opportunity to register because of this premature registration closure, to a
11 reopening of the registration window for at least the same amount it was unduly cut short – i.e.,
12 two days.³ Plaintiffs are surely entitled to preliminary injunctive relief preventing enforcement
13 of the assault weapons possession laws when the State failed to keep the registration window
14 open for the period it was legally required to provide.

15 **D. PRELIMINARY INJUNCTIVE RELIEF IS NECESSARY TO PREVENT IRREPARABLE HARM**
16 **TO INDIVIDUAL PLAINTIFFS AND ALL SIMILARLY SITUATED INDIVIDUALS.**

17 The irreparable harm in the absence of the requested temporary injunction is palpable
18 given the real risk of irreversible injury to or complete loss of the fundamental rights at stake.
19 “[B]y definition, an injunction properly issues in any case where ‘it would be extremely difficult
20 to ascertain the amount of compensation which would afford adequate relief’” or “[w]here
21 pecuniary compensation would not afford adequate relief.” *Wind v. Herbert* (1960) 186
22 Cal.App.2d 276, 285, quoting Civ. Code § 3422. “‘The term ‘irreparable injury’ . . . means that
23 species of damages, whether great or small, that ought not to be submitted to on the one hand or
24 inflicted on the other.’” *Ibid.* (quoting *Anderson v. Souza* (1952) 38 Cal.2d 825, 834). “‘The

25
26 ³Additionally, or alternatively, as plaintiffs have contended in seeking a narrower form of relief,
27 this Court could grant such relief to the narrower class of individuals who were precluded from
28 registering specifically because of the defects in the registration system, by enjoining operation
of these laws as to plaintiffs and all those similarly-situated for so long as necessary to permit a
reasonable opportunity for them to register through a functional registration system.

1 ultimate goal of any test to be used in deciding whether a preliminary injunction should issue is
2 to minimize the harm which an erroneous interim decision may cause.” *O’Connell v. Superior*
3 *Court* (2006) 141 Cal.App.4th 1452, 1458 (quoting *White v. Davis* (2003) 30 Cal.4th 528, 554).
4 In this context, a deprivation of fundamental rights for even minimal periods of time constitutes
5 such an irreparable injury. *See, Smith v. Novato Unified School Dist.* (2007) 150 Cal.App.4th.
6 1439, 1465 (quoting *Elrod v. Burns* (1976) 427 U.S. 347, 373 (“The loss of First Amendment
7 freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”)).
8 From the risk of seizure and destruction of their otherwise lawfully possessed firearms to the risk
9 of stigma as criminals and incarceration for possessing unregistered firearms, plaintiffs and all
10 those similarly situated have suffered and will continue to suffer harm beyond compensable
11 measure and which can only be meaningfully remediated by immediate injunctive relief.
12 Therefore, each of the plaintiffs has established that he would face potentially grave and
13 irreparable injury resulting in unjust deprivation of liberty and property, and potentially severe
14 criminal liabilities, due to no fault of their own, but solely due to the failure of the DOJ to allow
15 them a reasonable opportunity to comply with the law.

16 In balancing the harm that the plaintiffs will suffer should the temporary injunction be
17 denied against whatever inconvenience defendants may be required to tolerate should the
18 injunction be granted, the relative equities weigh heavily in favor of granting it. Indeed, there
19 could be no legitimate interest in enforcing the criminal statutes at issue against innocent law-
20 abiding citizens like plaintiffs who made earnest efforts to comply with the law by properly and
21 timely registering their firearms only to be shut out solely because of technical problems with a
22 registration system totally beyond their control. Plaintiffs seek only to prohibit application of
23 these laws in this specific context, where the application would be unconstitutional, and the State
24 could have no legitimate interest in pursuing any such enforcement actions. *Ayotte v. Planned*
25 *Parenthood* (2005) 546 U.S. 320, 331 (“So long as they are faithful to legislative intent, then ...
26 the lower courts can issue a declaratory judgment and an injunction prohibiting the statute’s
27 unconstitutional application”); *Alfaro v. Terhune, supra*, 98 Cal.App.4th at 501 (an injunction is
28 appropriate to prevent the execution of a public statute by public officers, even if the statute is

1 otherwise valid, where the statute would be “enforced in an unconstitutional manner”). And
2 while the injunctive relief plaintiffs require is immediate, they seek such relief for only so long
3 as this Court determines as necessary to permit them a reasonable opportunity to register their
4 firearms through a functional registration in accordance with the mandates of the law.

5 **E. REPRESENTATIVE RELIEF IS REQUESTED .**

6 As alleged in the operative complaint, injunctive relief is sought to prevent enforcement
7 of the assault weapons possession statutes, not just as to plaintiffs themselves, or as to the
8 institutional members, but also as to the class of similarly-situated individuals they represent.
9 (FAC, ¶¶ 22-24.) Specifically, such a class would consist of: all California citizens who are not
10 otherwise prohibited or exempt under the assault weapon registration laws, who lawfully and
11 legally possessed firearms that the State of California classified as “assault weapons” under
12 Penal Code § 30515(a) and must be registered as such pursuant to Penal Code sections 30680
13 and 30900(b), but who were precluded from doing so due to the Defendants’ actions and failures,
14 including but not limited to the inaccessibility, defects, and/or non-functionality of the DOJ’s
15 CFARS-based registration system during the registration period ending at midnight on June 30,
16 2018. (FAC, ¶¶ 22-23; Lee Decl., ¶ 9.)

17 Generally, the law permits plaintiffs to bring actions in a representative capacity, “based
18 upon the equitable doctrine of virtual representation which ‘rests upon considerations of
19 necessity and paramount convenience, and [...] to prevent a failure of justice.’” *Residents of*
20 *Beverly Glen, Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, 124 (plaintiffs had standing
21 to bring representative claim to challenge constitutionality of an ordinance). A primary
22 consideration in such cases is “the public nature of the question involved.” *Id.* at 127. This is
23 particularly true in mandamus actions, like the present case, “[w]here the question is one of
24 public right and the object of the mandamus is to procure the enforcement of a public duty ...”
25 *Ibid.* In such cases, it is sufficient that [the aggrieved party] is interested as a citizen in having
26 the laws executed and the duty in question enforced ...” *Ibid.* (citing *Board of Social Welfare v.*
27 *County of Los Angeles* (1945) 27 Cal.2d 98, 100-101). Generally, considerations of necessity,
28 convenience and justice justify the use of the representative procedural device. *Tenants Assn. of*

1 *Park Santa Anita v. Southers* (1990) 222 Cal.App.3d 1293, 1304. The two basic requirements
2 that must be satisfied for a representative action are an ascertainable class and a well-defined
3 community of interest in the questions of law and fact involved affecting the parties. *Market*
4 *Lofts Community Assn. v. 9th Street Market Lofts, LLC* (2014) 222 Cal.App.4th 924, 933.

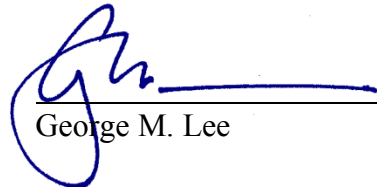
5 Here, common questions of fact affect the rights, duties and liabilities of plaintiffs and the
6 many similarly-situated people unable to comply with the registration requirement due to
7 technical issues with the system and/or simply because the DOJ shut down the registration
8 system early. Moreover, a well-defined and common community of interest exists among the
9 plaintiffs and the represented class concerning the questions of law and fact affecting their
10 interests, given that the effect of their inability to register through no fault of their own has left
11 them all exposed to severe criminal sanctions, loss of liberty interests, and deprivation of
12 substantial property rights. And this case surely presents a matter of substantial public
13 importance, as to whether innocent, law-abiding citizens should face such unduly prejudicial
14 ramifications when they attempted to but were deprived of their ability to comply with the law.

15
16 **IV. CONCLUSION**

17 Plaintiffs respectfully request preliminary injunctive relief enjoining defendants from
18 enforcing as to plaintiffs, and the class of individuals they represent, the prohibitions against
19 possession and transportation in Penal Code §§ 30600 and 30605, throughout the pendency of
20 this case, or until they have had a reasonable opportunity, as determined by the Court, to register
21 the qualifying firearms through a functional registration system.

22 Dated: August 13, 2018

SEILER EPSTEIN ZIEGLER & APPEGATE LLP

23
24 
George M. Lee

THE DIGUISEPPE LAW FIRM, P.C.

25
26
27 /s/ Raymond M. DiGuiseppe
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SHASTA**

11
12 HARRY SHARP, et al.,

13 Plaintiffs and Petitioners,

14 vs.

15 XAVIER BECERRA, in his official
16 capacity as Attorney General of California,
17 et al.,

18 Defendants and Respondents.

Case No. 190350

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR ISSUANCE
OF A PRELIMINARY INJUNCTION**

[CCP § 527(a)]

Date: Sept. 10, 2018
Time: 8:30 a.m.
Dept. 08
Judge: Hon. Tamara L. Wood

20
21 On September 10, 2018, the court heard the motion of plaintiffs Harry Sharp, et al.
22 for the issuance of a preliminary injunction, made pursuant to Code of Civil Procedure §
23 527(a), Hon. Tamara L. Wood presiding. All parties were represented by their counsel of
24 record. The court reviewed all papers submitted in support of, and in opposition to, the
25 plaintiffs' motion, and heard the argument of counsel thereon. The matter having been
26 submitted, the court finds good cause and hereby ORDERS as follows:

27 //

28 //

STATEWIDE PRELIMINARY INJUNCTIVE RELIEF GRANTED
PURSUANT TO GOV. CODE § 6707

1
2
3 1. Plaintiffs’ motion for a preliminary injunction is GRANTED. Plaintiffs
4 have shown a likelihood of prevailing on the merits of their claims, and that mandamus,
5 declaratory and injunctive relief should and likely will be granted in plaintiffs’ favor, on
6 the grounds that the California Department of Justice, charged with establishing and
7 making available a public-facing Internet registration system for certain assault weapons,
8 pursuant to Pen. Code § 30900(b)(2)-(5), closed and refused to accept any assault weapon
9 registrations beyond midnight on July 1, 2018 (the statutory deadline imposed by Pen.
10 Code §§ 30680(c) and 30900(b)(1)) (“Deadline”). The Court grants plaintiffs’ request
11 for judicial notice, and finds that the last day to submit registration forms to the DOJ fell
12 on a Saturday, June 30, 2018. Accordingly, and by operation of law, Gov. Code § 6707,
13 the last day to submit registration applications with the DOJ should have been extended
14 to and through the following Monday, July 2, 2018, which the DOJ failed and refused to
15 do. Plaintiffs have also shown that irreparable injury is threatened by the loss of
16 plaintiffs’ interests in liberty and property, in the absence of an injunction that would
17 prevent all qualified persons possessing certain assault weapons (defined below) from
18 being subject to arrest, criminal prosecution and/or civil forfeiture. This Court further
19 finds that the balance of harms tips in the plaintiffs’ favor. Accordingly, the defendants
20 in this case, California Attorney General Xavier Becerra, in his official capacity as
21 Attorney General of the State of California, Brent Orick, in his official capacity as Acting
22 Chief of the Department of Justice Bureau of Firearms, Joe Dominic, in his official
23 capacity as Chief of the Department of Justice California Justice Information Services
24 Division, and the California Department of Justice (DOJ), their officers, agents, servants,
25 employees, and attorneys, and subdivisions, including: those persons in active concert or
26 participation with them, and those duly sworn state peace officers and federal law
27 enforcement officers who learn of the existence of this injunction order (collectively
28 “Defendants”), are hereby enjoined from enforcing California Penal Code sections 30600

1 (insofar as the statute would prohibit otherwise lawful transportation activities), and
2 30605, against any and all persons within this State who: (a) are not prohibited from
3 owning firearms; and (b) lawfully possessed, from January 1, 2001, to December 31,
4 2016, an assault weapon that does not have a fixed magazine, as defined in Section
5 30515, including those weapons with an ammunition feeding device that can be readily
6 removed from the firearm with the use of a tool (i.e., “bullet button assault weapons”).
7 This injunction shall remain in force and effect, through the pendency of this case, and
8 until this Court may grant relief to the plaintiffs insofar as they seek to reopen the assault
9 weapon registrations system for a reasonable period of time, and with adequate notice, on
10 such terms that this Court may hereafter approve.

11
12 **PRELIMINARY INJUNCTIVE RELIEF GRANTED -**
13 **DUE PROCESS**

14 2. Plaintiffs have further shown a likelihood of prevailing on the merits of
15 their claims, and that mandamus, declaratory and injunctive relief should and likely will
16 be granted in plaintiffs’ favor, on the grounds that the California Department of Justice,
17 charged with establishing and making available a public-facing Internet registration
18 system for certain assault weapons, pursuant to Pen. Code § 30900(b)(2)-(5), failed in its
19 ministerial duties to establish a functional, stable electronic registration system, which
20 was not reasonably accessible to plaintiffs and a class of similarly-situated individuals
21 (defined below). Plaintiffs have established that they, and a class of similarly-situated
22 individuals, had a clear, present and beneficial right in the performance of such duties,
23 and that as a result of such failures, plaintiffs and the class were deprived of due process.
24 Plaintiffs have also shown that irreparable injury is threatened by the loss of plaintiffs’
25 interests in liberty and property, in the absence of an injunction that would prevent all
26 qualified persons possessing certain assault weapons (defined below) from being subject
27 to arrest, criminal prosecution and/or civil forfeiture. This Court further finds that the
28 balance of harms tips in the plaintiffs’ favor. Accordingly, the defendants in this case,

1 California Attorney General Xavier Becerra, in his official capacity as Attorney General
2 of the State of California, Brent Orick, in his official capacity as Acting Chief of the
3 Department of Justice Bureau of Firearms, Joe Dominic, in his official capacity as Chief
4 of the Department of Justice California Justice Information Services Division, and the
5 California Department of Justice (DOJ), their officers, agents, servants, employees, and
6 attorneys, and subdivisions, including: those persons in active concert or participation
7 with them, and those duly sworn state peace officers and federal law enforcement officers
8 who learn of the existence of this injunction order, are hereby enjoined from enforcing
9 California Penal Code sections 30600 (insofar as the statute would prohibit otherwise
10 lawful transportation activities), and 30605, against any and all persons within this State
11 who: (a) are not prohibited from owning firearms; (b) lawfully possessed, from January
12 1, 2001, to December 31, 2016, an assault weapon that does not have a fixed magazine,
13 as defined in Section 30515, including those weapons with an ammunition feeding device
14 that can be readily removed from the firearm with the use of a tool (i.e., “bullet button
15 assault weapons”); and (c) certify or otherwise attest that they attempted to register one or
16 more bullet button assault weapons with the DOJ, but were prevented from doing so due
17 to technical difficulties accessing or maintain a connection with the DOJ’s internet
18 registration system (CFARS) (“Class”). The Court finds that individual plaintiffs
19 HARRY SHARP, DAVID AJIROGI, RYAN GILARDY, DARIN PRINCE, TODD
20 FELTMAN, DAVID KUEHL, and TERRY JAHRAUS are members of this Class, and
21 this injunction shall apply to them. This injunction shall remain in force and effect,
22 through the pendency of this case, and until this Court may grant relief to the plaintiffs
23 insofar as they seek to reopen the assault weapon registrations system, with a functional
24 and accessible registration system, for a reasonable period of time, and with adequate
25 notice, on such terms that this Court may hereafter approve.

26 3. The Court shall retain jurisdiction to consider, determine, and declare
27 whether additional individuals fall within the specified class of persons protected by this
28 injunction.

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4. This injunction shall remain in force and effect through the pendency of this case, or until such other time as this Court may determine that the injunction is no longer necessary or appropriate in preventing the harm the injunction is designed to prevent.

5. This injunction shall operate as a defense to any civil enforcement action brought pursuant to Pen. Code § 30800(a), insofar as such action may pertain to assault weapons that may be registered.

6. Plaintiffs are relieved of any requirement to post a bond. [Or, the bond shall be set in the amount of \$1.00.]

7. Defendant Becerra shall provide actual notice of this order to all law enforcement personnel under his direction and control who are charged with implementing or enforcing the statutes hereby enjoined. The Attorney General shall file a declaration demonstrating proof of such notice within ten days of the date of this Order.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT