

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is now and hereby entered into by and between: HARRY SHARP, DAVID AJIROGI, RYAN GILARDY, DARIN PRINCE, TODD FELTMAN, DAVID KUEHL, TERRY JAHRAUS, THE CALGUNS FOUNDATION, FIREARMS POLICY COALITION, FIREARMS POLICY FOUNDATION, SECOND AMENDMENT FOUNDATION AND MADISON SOCIETY FOUNDATION on the one hand (collectively, “Plaintiffs”), and XAVIER BECERRA, in his official capacity as Attorney General of California, LUIS LOPEZ, in his official capacity as Director of the Department of Justice Bureau of Firearms, JOE DOMINIC, in his official capacity as Chief of the Department of Justice California Justice Information Services Division and the CALIFORNIA DEPARTMENT OF JUSTICE (“DOJ”) on the other hand (collectively, “Defendants”). Collectively, all of the parties shall be referred to herein as “Parties.”

## **RECITALS**

This Agreement is entered into with the following facts taken into consideration:

A. In 2016, through enactment of Assembly Bill 1135 and Senate Bill 880 (2015-2016 Reg. Sess.), the Legislature amended the Assault Weapons Control Act (AWCA), generally to create new “assault weapon” classifications by changing definitional terms regarding magazines for semiautomatic rifles, pistols and shotguns in California Penal Code § 30515. These changes to the law were intended to generally prohibit the new acquisition, transfer or possession of what became known as “bullet button” assault weapons.

B. In furtherance of these statutory amendments, the Legislature added Penal Code sections 30680 and 30900 to require registration for the continued possession of these classified firearms. These amendments became effective January 1, 2017. See, Stats. 2016, ch. 40 § 3 (AB 1135); Stats. 2016, ch. 48 § 3 (SB 880).

C. The Legislature specifically incorporated section 30515's new assault weapon classifications into a registration requirement set forth in section 30900, subdivision (b)(1), which expressly states that it only applies to a person "who, from January 1, 2001, to December 31, 2016, inclusive, lawfully possessed an assault weapon that does not have a fixed magazine, as defined in section 30515, including those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool." Pen. Code § 30515(b)(1).

D. Under the law as amended, assault weapons classified by these amendments could legally be kept, but must be registered in accordance with the law which required that "Registrations shall be submitted electronically via the Internet utilizing a public-facing application made available by the [DOJ]." Pen. Code § 30900(b)(2).

E. The law as amended further required the registrants to submit information uniquely identifying the firearm to be registered and information regarding the registrant (Pen. Code § 30900(b)(3)), and permitted the DOJ to charge a registration fee "not to exceed the reasonable processing costs of the department." § 30900(b)(4).

F. California residents with firearms described by these amendments originally had until January 1, 2018, to register them. However, the registration deadline

was extended to July 1, 2018, pursuant to passage of Assembly Bill 103 (2017-2018 Sess.). See Pen. Code § 30680(c).

G. Specifically, the deadline to register such firearms as “assault weapons” on the DOJ’s website was June 30, 2018 at 11:59:59 p.m. PST (the “Registration Deadline”).

H. Defendants established an Internet-based registration system to permit the required registration of those bullet-buttoned firearms now retroactively deemed as “assault weapons” pursuant to AB 1135 and SB 880. This system was created to operate within a pre-existing system created, maintained, and serviced by the DOJ—the California Firearms Application Reporting System (CFARS). The DOJ’s Assault Weapon Registration Form system, operated through CFARS, “went live” (i.e., was made available to the public) on or about August 3, 2017.

I. Plaintiffs HARRY SHARP, DAVID AJIROGI, RYAN GILARDY, DARIN PRINCE, TODD FELTMAN, DAVID KUEHL, and TERRY JAHRAUS (“Individual Plaintiffs”) allege that they were lawful possessors of bullet button assault weapons, who attempted to register their legally-owned firearms on or before the Registration Deadline.

J. Plaintiffs allege that, due to various technical problems, Individual Plaintiffs were unable to register assault weapons in compliance with the law, even though they attempted to do so. The non-individual Plaintiff foundations allege that other of their members also encountered problems registering firearms on the DOJ’s website through CFARS.

K. According to documents that have been produced in the litigation described below, hundreds of persons contacted the DOJ to seek technical help and assistance after encountering problems accessing the website and attempting to register firearms before the Registration Deadline. While some individuals reported technical problems that were easily resolvable (e.g., by logging in again, or obtaining a new password, or fixing an error in the individual's registration), other individuals reported technical problems that apparently were not resolved before the Registration Deadline.

L. On July 11, 2018, Plaintiffs filed suit for mandamus, declaratory and injunctive relief in Shasta County Superior Court, Case No. 190350 ("Shasta Action"), seeking relief to permit them a reasonable opportunity to register firearms, and to protect them from penalties for possessing assault weapons. Plaintiffs filed suit seeking relief for themselves, and on behalf of all similarly-situated individuals. Plaintiffs specifically sought to enjoin those laws prohibiting the possession and transportation of assault weapons, found at Penal Code sections 30600 and 30605, as applied to them and the class of persons they sought to represent.

M. On August 6, 2018, Plaintiffs filed a Verified First Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the Shasta Action.

N. On August 13, 2018, Plaintiffs filed a motion for preliminary injunction in the Shasta Action.

O. On August 24, 2018, Defendants filed a Notice of Removal of the action to federal court, entitled *Sharp v. Becerra, et al.*, Case No. 2:18-cv-02317-MCE-AC ("Federal Action"). The basis for the removal to federal court was subject matter

jurisdiction (federal question, 28 U.S.C. § 1441(a)) based upon Plaintiffs' asserted claim arising under the Fourteenth Amendment of the United States Constitution.

P. On September 21, 2018, Plaintiffs filed their Second Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the Federal Action [ECF No. 10]. In their Second Amended Petition, Plaintiffs asserted claims under 42 U.S.C. § 1983 (violation of Fourteenth Amendment), sought relief in the form of a writ of mandate, declaratory relief (for violation of Due Process, Fourteenth Amendment of the U.S. Constitution and Cal. Const., art. I § 7), and injunctive relief.

Q. On October 19, 2018, Defendants filed a Motion to Dismiss the Second Amended Petition under FRCP 12(b)(6) [ECF No. 14]. On November 19, 2018, Plaintiffs filed their opposition to Defendants' Motion to Dismiss [ECF No. 17]. On June 26, 2019, the district court entered its Order denying Defendants' Motion to Dismiss. [ECF No. 26]. Defendants filed their answer to the Second Amended Petition on July 12, 2019 [ECF No. 28].

R. The Parties now desire to enter into this Agreement to end all litigation pertaining to the subject matter of the Shasta County and Federal Actions, and to establish a process by which the DOJ will reopen registrations to the Individual Plaintiffs, and to all others who were eligible to register firearms under Pen. Code § 30900(b) but were unable to do so because of technical difficulties.

S. Now, and therefore, and in consideration of the mutual covenants, terms, and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows.

## AGREEMENT

1. **Incorporation of Recitals.** Each of the above Recitals are fully incorporated herein. These Recitals are intended and shall be deemed and construed to be a material and integral portion of this Agreement.

2. **Effective Date.** This Agreement shall be effective immediately upon its approval by the U.S. District Court (“Court”), and upon the approval and entry of the STIPULATED INJUNCTION AND CONSENT DECREE (hereinafter, “Stipulated Injunction”) in the form attached hereto as **Exhibit A**. The Parties agree to request and seek the Court’s approval as to both this Agreement and Stipulated Injunction.

3. **Reopening of Assault Weapon Registrations.** The Parties agree and the Department shall permit the reopening of assault weapon registrations under Penal Code section 30900(b), pursuant to the terms of the Stipulated Injunction, ¶¶ 1-8 which are incorporated into this Agreement and made a part hereof.

4. **Statewide Enforcement of Assault Weapons Laws.** Upon approval of this Agreement, entry of the Stipulated Injunction, and throughout the new Registration Period, the Parties shall be bound by the terms of the Stipulated Injunction, ¶ 9(A)-(E), which are incorporated into this Agreement and made a part hereof.

5. **Attorneys’ Fees and Costs.** Upon the submission of billing summaries and information reasonably required to summarize that such costs and fees were incurred, Plaintiffs shall recover from the Department the sum of **\$151,821.42**, payment to be received by counsel for the Plaintiffs, and made payable to “Seiler Epstein LLP Client Trust Account,” within sixty (60) days from the date that this Agreement is approved by

the Court. Except as otherwise and expressly set forth herein, the Parties shall bear their own costs and fees.

6. **Termination of Litigation.** By and through entry of the Stipulated Injunction, the Parties agree that this Agreement and entry of the Stipulated Injunction shall constitute a voluntary dismissal of the Shasta and Federal Actions, except as to: (a) the enforcement of any obligations created under this Agreement or the Stipulated Injunction; (b) any reconsideration or appellate review of the Court's action taken upon or in relation to the Stipulated Injunction.

7. **Court's Jurisdiction to Enforce Settlement.** The Court shall retain jurisdiction to enforce the terms of this Agreement and the Stipulated Injunction.

8. **Sole and Entire Agreement.** This Agreement constitutes the entire Agreement made by the Parties hereto pertaining to the subject matter hereof, this Agreement shall supersede any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the Parties hereto or their representatives pertaining to the subject matter hereof.

9. **Authority.** All Parties executing this Agreement, whether on behalf of themselves or on behalf of any legal entity, hereby represent and warrant that they are entitled and authorized to execute this Agreement in settlement of the claims raised herein.

10. **Severability.** The Parties hereby acknowledge and agree that if any part of this Agreement is ever found, ruled or held, by any court to be void or unenforceable or otherwise invalid, the invalid, illegal, or unenforceable provisions shall be deemed not

part of this Agreement, but the remaining parts of this Agreement shall continue in full force and effect.

11. **Approval by the Court.** This Agreement is subject to approval of the Stipulated Injunction by the U.S. District Court in the Federal Action. Should the District Court modify the Stipulated Injunction, and the Parties' counsel agree in writing to such modifications, the material terms of this Agreement shall continue in full force and effect, and this Agreement shall be deemed to incorporate such modifications by the Court.

12. **Construction.** In construing this Agreement and Stipulated Injunction, the following provisions shall govern: (a) This Agreement shall be construed in accordance with the laws of the State of California; and (b) neither this Agreement nor the Stipulated Injunction shall be construed either favorably or adversely against any party merely because of that party or their counsel's involvement in its preparation.

13. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. The Parties agree that signatures on this Agreement transmitted via electronic means, such as by email, shall be deemed an original, binding signature with the same force and effect as the originals.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth below.

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**EXHIBIT A**

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2 **SEILER EPSTEIN LLP**  
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4 San Francisco, California 94111  
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14 Stephen M. Duvernay (SBN 250957)  
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18 Telephone: (916) 447-4900  
19 Attorneys for Plaintiffs

20 **UNITED STATES DISTRICT COURT**  
21 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

22 HARRY SHARP; DAVID AJIROGI; RYAN  
23 GILARDY; DARIN PRINCE; TODD  
24 FELTMAN; DAVID KUEH; TERRY  
25 JAHRAUS; THE CALGUNS FOUNDATION;  
26 FIREARMS POLICY COALITION;  
27 FIREARMS POLICY FOUNDATION;  
28 SECOND AMENDMENT FOUNDATION;  
and MADISON SOCIETY FOUNDATION,

Plaintiffs and Petitioners,

vs.

XAVIER BECERRA, in his official capacity as  
Attorney General of California; LUIS LOPEZ,  
in his official capacity as Director of the  
Department of Justice Bureau of Firearms; JOE  
DOMINIC, in his official capacity as Chief of  
the Department of Justice California Justice  
Information Services

Case No. 2:18-cv-02317-MCE-AC

**[PROPOSED] STIPULATED  
INJUNCTION AND CONSENT  
DECREE**

1 Division; CALIFORNIA DEPARTMENT OF  
2 JUSTICE; and DOES 1 through 20, inclusive,  
3 Defendants and Respondents.

4  
5 **STIPULATED INJUNCTION AND CONSENT DECREE**

6 The above-captioned Plaintiffs and Defendants, by and through their respective counsel,  
7 hereby enter into this Stipulated Injunction and Consent Decree.

8 Through this action—filed in state court and later removed to this Court on federal  
9 question grounds—Plaintiffs alleged that the California Department of Justice’s online program  
10 for registering “bullet button” firearms, as required by a 2016 amendment to California’s  
11 Roberti-Roos Assault Weapons Control Act (“ACWA”), *inter alia*, subjected them and those  
12 similarly situated to constitutional due process violations by failing to afford them adequate  
13 opportunity to complete the registration necessary for purposes of maintaining lawful possession  
14 of such firearms.

15 Defendants moved to dismiss Plaintiffs’ complaint for failure to state a claim, which this  
16 Court denied. Since then, Defendants have answered Plaintiffs’ Second Amended Complaint and  
17 the parties have conducted various forms of discovery.

18 The parties have now entered into a Settlement Agreement, by which the parties also  
19 have agreed to enter into this stipulated injunction, and mutually consent to the judicial decrees  
20 necessary to effectuate the same.

21 The terms and conditions of this Stipulated Injunction and Consent Decree are as follows:

22 **Reopening of Assault Weapons Registrations Under Pen. Code § 30900(b)**

23 1. Defendants shall re-open the registration period, for individuals who possessed  
24 eligible firearms (Cal. Penal Code § 30900, subdiv. (b)) and started the process of submitting  
25 applications to the Department of Justice (“Department”), Bureau of Firearms (“Bureau”), before  
26 July 1, 2018, but who were unable to complete the submission process because of technical  
27 difficulties. This re-opened registration period shall be available only to persons meeting all of  
28 the following requirements: (1) prior to January 1, 2017, the person would have been eligible to

1 register an assault weapon pursuant to subdivision (b) of Penal Code § 30900; (2) the person  
2 lawfully possessed each assault weapon to be registered, prior to January 1, 2017; (3) the person  
3 attempted to register the assault weapon prior to the original registration deadline of midnight on  
4 July 1, 2018, but was unable to do so because of technical difficulties; and (4) the person timely  
5 registers the assault weapon(s) in accordance with the terms of this Stipulation. Collectively,  
6 these four requirements shall be referred to herein as “the Registration Requirements.”

7         2. All new assault weapons registrations shall be implemented by and through the  
8 Bureau, through a notice period and a registration window. The notice period, during which time  
9 defendants shall make efforts to notify the public of this settlement and the new assault weapons  
10 registration period, shall be at least 120 days from the date that this stipulated injunction is  
11 entered by the Court, but may be longer if needed by the Department to prepare and implement  
12 its systems (“Notice Period”). Following this minimum 120-day Notice Period, the Department,  
13 through the Bureau’s website, shall open a website page for new registrations, and thereafter,  
14 shall accept registrations for assault weapons, if the applicant meets the Registration  
15 Requirements, for a period of 90 days (the “Registration Period”). At the end of the last day of  
16 the Registration Period, the system shall be closed to any new registrations, except that the  
17 Department will accept as timely paper registrations that are postmarked by the last day of the  
18 Registration Period, pursuant to the paper option described in paragraph 5 below.

19         3. Once this stipulated injunction is approved, the Department shall perform the  
20 following to begin the Notice Period:

- 21                 (a) The Department shall announce and feature the re-opened Registration Period  
22                         on the Bureau of Firearms website;
- 23                 (b) The Department shall provide notice of the re-opened Registration Period to  
24                         other known firearms rights groups and law firms;
- 25                 (c) The Department shall provide notice of the re-opened Registration Period to  
26                         every person that called or emailed them to complain about not being able to  
27                         register before or after the original deadline of July 1, 2018, to the extent that  
28                         information is reasonably available; and

1 (d) The Department will conduct a public outreach campaign (Internet and  
2 traditional news) to notify the public about the re-opened Registration Period.

3 (e) The organizational Plaintiffs shall also endeavor to provide notice to their  
4 members about the re-opened Registration Period.

5 4. Pursuant to California Penal Code section 30900(b)(2), the Department shall  
6 permit persons meeting the Registration Requirements to submit electronically via the Internet,  
7 utilizing a public-facing application made available by the Department throughout the  
8 Registration Period.

9 5. The Department shall also and alternatively accept paper submissions from  
10 persons otherwise meeting the Registration Requirements, on a form that shall incorporate  
11 substantially all of the information that is required to be submitted electronically pursuant to  
12 California Penal Code section 30900(b)(2). Paper forms submitted in this manner shall be  
13 accepted by mail or overnight carrier delivery if accompanied by a postmark or other evidence of  
14 submission on or before the last day of the Registration Period.

15 6. For all assault weapon registration submitted in the Registration Period, whether  
16 submitted electronically or by paper, the Department may require different or additional  
17 information from persons who present, along with their submission, a form of identification that  
18 states "FEDERAL LIMITS APPLY."

19 7. Any other substantive issues with a registration should be handled using  
20 substantially the same procedures that the Department used for registrations submitted before  
21 July 1, 2018, that is, the Department will provide registrants timely submitting registrations  
22 during the Registration Period with the same ability to cure any defects in their submissions,  
23 whether submitted electronically or by paper. Such defects may include but are not limited to:  
24 incomplete or missing information, typographical errors, information that does not match the  
25 information in the Department's records, and incomplete or unclear photographs.

26 8. During the Registration Period, the Department may require registrants to verify  
27 under penalty of perjury that they attempted to register their weapon(s) before July 1, 2018, but  
28 were unable to do so because of technical difficulties, by checking a box (or similar mechanism)

1 contained as a part of their registration submission. The Department shall clearly notify any  
2 individuals registering firearms during the new Registration Period of the following: (a) that the  
3 Department may attempt to verify whether any particular registrant attempted to register their  
4 weapon(s) before July 1, 2018; (b) the potential consequences of providing false statements in  
5 connection with such registrations; and (c) that if they submit a weapon that was not attempted to  
6 be registered before July 1, 2018, they could be subject to consequences as prescribed by law.

7  
8 **Statewide Enforcement of Assault Weapons Laws**

9 9. Upon approval and entry of this stipulated injunction by the Court, and throughout  
10 the reopened Registration Period, the following shall apply:

11 A. The Department will provide registrants with the same conditions and  
12 considerations as during the original registration period. For the duration of the Notice Period  
13 and the Registration Period, the Department shall forebear from prosecuting individuals for the  
14 charge of possession of an unregistered assault weapon under Penal Code sections 30600 or  
15 30605 if they satisfy the Registration Requirements by the end of the Registration Period.

16 B. Persons eligible to register under the Registration Requirements shall be  
17 accorded protection under Penal Code section 30680 and may raise their eligibility as an  
18 affirmative defense to any and all prosecutions throughout this State for which the valid  
19 registration of an assault weapon is or may be a defense.

20 C. In response to any and all inquiries from law enforcement agencies  
21 pertaining to requests for information regarding the status of any assault weapon registration(s),  
22 the Department shall provide information referencing this injunction providing for the  
23 Registration Period.

24 D. The Attorney General shall inform all district attorneys' offices, sheriffs'  
25 offices, and other law enforcement agencies in California of this Stipulated Injunction and  
26 Consent Decree, and advise that all pending investigations and prosecutions for Penal Code  
27 sections 30600 and/or 30605 for which valid registration of an assault weapon is or may be a  
28 defense should be stayed or postponed if there is reason to believe the subject would be able to

1 meet the Registration Requirements and register the firearms appropriately. Upon proof that the  
2 subject has successfully completed the Registration Requirements, any pending investigation or  
3 prosecution as to a violation of section 30600 and/or 30605 for which valid registration of an  
4 assault weapon is a defense shall be ceased and any pending charges dismissed as to those  
5 violations.

6 E. Anyone who has a firearm being detained or held by a law enforcement  
7 agency, and who is not otherwise prohibited from owning or possessing firearms (see  
8 <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/pdf/prohibcatmisd.pdf>), shall not be  
9 barred from registering said firearm(s) if the person is otherwise eligible to register the firearm(s)  
10 under the Registration Requirements and can satisfy the Registration Requirements during the  
11 Registration Period.

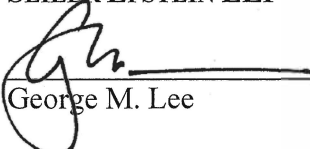
12 10. Approval of this stipulation and entry of the injunction shall constitute a voluntary  
13 dismissal of the cases pending in this Court and in Shasta County Superior Court, except as may  
14 be necessary to enforce the injunction and the parties' settlement. The Court shall retain  
15 jurisdiction to enforce the terms of this stipulation, and the parties' settlement.

16 11. Plaintiffs shall recover from Defendants the sum of \$151,821.42, payment to be  
17 received by counsel for the Plaintiffs within sixty (60) days from the date that this Stipulated  
18 Injunction and Consent Decree is entered by the Court below.

19 ■ ■ ■

20 By the signatures of their counsel below, the parties stipulate and agree to be bound by  
21 the foregoing terms and conditions of the foregoing stipulation, and request the Court to enter the  
22 injunction and consent decree accordingly.

23 SEILER EPSTEIN LLP

24   
25 George M. Lee

26 Attorneys for Plaintiffs  
27 HARRY SHARP, DAVID AJIROGI, RYAN  
28 GILARDY, DARIN PRINCE, TODD  
FELTMAN, DAVID KUEHL, TERRY

OFFICE OF THE ATTORNEY GENERAL

24   
25 John W. Killeen  
26 Deputy Attorney General

Attorneys for Defendants  
XAVIER BECERRA, in his official capacity  
as Attorney General of California; LUIS

1 JAHRAUS, THE CALGUNS  
2 FOUNDATION, FIREARMS POLICY  
3 COALITION, FIREARMS POLICY  
4 FOUNDATION, SECOND AMENDMENT  
5 FOUNDATION and MADISON SOCIETY  
6 FOUNDATION

LOPEZ, in his official capacity as Director of  
the Department of Justice Bureau of Firearms,  
JOE DOMINIC, in his official capacity as  
Chief of the Department of Justice California  
Justice Information Services Division and the  
CALIFORNIA DEPARTMENT OF  
JUSTICE

6 **ORDER OF INJUNCTION AND CONSENT DECREE**

7 It is hereby ORDERED that the Stipulated Injunction and Consent Decree is GRANTED  
8 AND APPROVED.

9 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the parties  
10 are bound by the Stipulated Injunction and Consent Decree as set forth above, which shall  
11 resolve and dispose of this matter in accordance with the terms and conditions of the same, with  
12 the Court to retain jurisdiction in this matter as to the enforcement of this injunction, and the  
13 parties' settlement agreement.

14 SO ORDERED.

15 Dated: \_\_\_\_\_

\_\_\_\_\_  
16 HONORABLE MORRISON C. ENGLAND, JR.  
17 UNITED STATES DISTRICT JUDGE  
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