

1 XAVIER BECERRA  
 Attorney General of California  
 State Bar No. 118517  
 2 MARK R. BECKINGTON  
 Supervising Deputy Attorney General  
 State Bar No. 126009  
 3 JOHN D. ECHEVERRIA  
 Deputy Attorney General  
 State Bar No. 268843  
 4 300 South Spring Street, Suite 1702  
 Los Angeles, CA 90013  
 Telephone: (213) 269-6249  
 5 Fax: (916) 731-2124  
 E-mail: John.Echeverria@doj.ca.gov  
 6 *Attorneys for Defendants Xavier Becerra, in  
 his official capacity as Attorney General of  
 the State of California, and Brent E. Orick,  
 in his official capacity as Interim Director of  
 the Department of Justice Bureau of  
 7 Firearms*

11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
 13

14  
 15 **JAMES MILLER; PATRICK RUSS;  
 WENDY HAUFFEN; NEIL  
 16 RUTHERFORD; ADRIAN  
 SEVILLA; RYAN PETERSON;  
 17 GUNFIGHTER TACTICAL, LLC;  
 JOHN PHILLIPS; PWGG, L.P.; SAN  
 18 DIEGO COUNTY GUN OWNERS  
 PAC; CALIFORNIA GUN RIGHTS  
 19 FOUNDATION; SECOND  
 AMENDMENT FOUNDATION; and  
 20 FIREARMS POLICY COALITION,  
 INC.,**

21 Plaintiffs,

22 v.

23  
 24 **CALIFORNIA ATTORNEY  
 GENERAL XAVIER BECERRA;  
 25 and DOJ BUREAU OF FIREARMS  
 DIRECTOR BRENT ORICK,**

26 Defendants.  
 27  
 28

19-cv-1537 BEN-JLB

**DEFENDANTS' NOTICE OF  
 MOTION AND MOTION TO  
 DISMISS CERTAIN CLAIMS IN  
 FIRST AMENDED COMPLAINT**

[Fed. R. Civ. P. 12(b)(1), 12(b)(6)]

Date: December 16, 2019  
 Time: 10:30 a.m.  
 Courtroom: 5A  
 Judge: Hon. Roger T. Benitez  
 Trial Date: None Set  
 Action Filed: August 15, 2019

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NOTICE OF MOTION AND MOTION TO DISMISS**

PLEASE TAKE NOTICE that, on December 16, 2019, at 10:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Roger T. Benitez in Courtroom 5A of the Edward J. Schwartz U.S. Courthouse, located at 221 West Broadway, San Diego, California 92101, Defendants Xavier Becerra, in his official capacity as Attorney General of the State of California, and Brent E. Orick, in his official capacity as Interim Director of the Department of Justice Bureau of Firearms (together, “Defendants”) will and presently do move this Court to dismiss certain claims asserted in the First Amended Complaint for Declaratory and Injunctive Relief (the “FAC”) (Dkt. 9), filed on September 27, 2019 by Plaintiffs James Miller, Patrick Russ, Wendy Hauffen, Neil Rutherford, Adrian Sevilla, Ryan Peterson, Gunfighter Tactical, LLC, John Phillips, PWGG, L.P., San Diego County Gun Owners PAC, California Gun Rights Foundation, Second Amendment Foundation, and Firearms Policy Coalition, Inc. (collectively, “Plaintiffs”).

Defendants move to dismiss Plaintiffs’ Second Amendment claim under Federal Rule of Civil Procedure 12(b)(1) for lack of standing under Article III of the United States Constitution to the extent Plaintiffs seek to declare as unconstitutional and to enjoin California Penal Code sections 30800, 30915, 30925, 30945, 30950, 31000, and 31005.

Defendants also move to dismiss Plaintiffs’ Second Amendment claim under Federal Rule of Civil Procedure 12(b)(6) to the extent Plaintiffs seek to declare as unconstitutional and to enjoin California Penal Code sections 30800, 30915, 30925, 30945, 30950, 31000, and 31005 on the ground that the FAC fails to state a claim upon which relief can be granted.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

This motion is based on this filing, the concurrently filed Memorandum of Points and Authorities in Support of Defendants’ Motion to Dismiss Certain Claims in First Amended Complaint, and the papers and pleadings on file in this action.

Dated: October 25, 2019

Respectfully Submitted,

XAVIER BECERRA  
Attorney General of California  
MARK R. BECKINGTON  
Supervising Deputy Attorney General

*/s/ John D. Echeverria*  
JOHN D. ECHEVERRIA  
Deputy Attorney General  
*Attorneys for Defendants Xavier Becerra, in his official capacity as Attorney General of the State of California, and Brent E. Orick, in his official capacity as Interim Director of the Department of Justice Bureau of Firearms*

1 XAVIER BECERRA  
 Attorney General of California  
 State Bar No. 118517  
 2 MARK R. BECKINGTON  
 Supervising Deputy Attorney General  
 State Bar No. 126009  
 3 JOHN D. ECHEVERRIA  
 Deputy Attorney General  
 State Bar No. 268843  
 4 300 South Spring Street, Suite 1702  
 Los Angeles, CA 90013  
 Telephone: (213) 269-6249  
 5 Fax: (916) 731-2124  
 E-mail: John.Echeverria@doj.ca.gov  
 6 *Attorneys for Defendants Xavier Becerra, in  
 his official capacity as Attorney General of  
 the State of California, and Brent E. Orick,  
 in his official capacity as Interim Director of  
 the Department of Justice Bureau of  
 7 Firearms*

11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 **JAMES MILLER; PATRICK RUSS;  
 WENDY HAUFFEN; NEIL  
 16 RUTHERFORD; ADRIAN  
 SEVILLA; RYAN PETERSON;  
 17 GUNFIGHTER TACTICAL, LLC;  
 JOHN PHILLIPS; PWGG, L.P.; SAN  
 18 DIEGO COUNTY GUN OWNERS  
 PAC; CALIFORNIA GUN RIGHTS  
 19 FOUNDATION; SECOND  
 AMENDMENT FOUNDATION; and  
 20 FIREARMS POLICY COALITION,  
 INC.,**

21 Plaintiffs,

22 v.

24 **CALIFORNIA ATTORNEY  
 GENERAL XAVIER BECERRA;  
 25 and DOJ BUREAU OF FIREARMS  
 DIRECTOR BRENT ORICK,**

26 Defendants.  
 27

19-cv-1537 BEN-JLB

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 DEFENDANTS' MOTION TO  
 DISMISS CERTAIN CLAIMS IN  
 FIRST AMENDED COMPLAINT**

[Fed. R. Civ. P. 12(b)(1), 12(b)(6)]

Date: December 16, 2019  
 Time: 10:30 a.m.  
 Courtroom: 5A  
 Judge: Hon. Roger T. Benitez  
 Trial Date: None Set  
 Action Filed: August 15, 2019

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## TABLE OF CONTENTS

	<b>Page</b>
INTRODUCTION .....	1
BACKGROUND .....	2
I. Overview of California’s Restrictions on Assault Weapons .....	2
II. Procedural History .....	4
LEGAL STANDARD .....	6
ARGUMENT .....	8
I. Plaintiffs Lack Standing to Challenge Certain Provisions of California’s Assault Weapons Control Act Under the Second Amendment .....	8
A. The Individual and Entity Plaintiffs Lack Standing .....	8
B. The Organizational Plaintiffs Lack Standing .....	12
II. The First Amended Complaint Fails to State a Claim that Certain Provisions of the Assault Weapons Control Act Violate the Second Amendment .....	14
CONCLUSION.....	16

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**Page**

**CASES**

*Ashcroft v. Iqbal*  
556 U.S. 662 (2009) ..... 7, 15

*Bell Atl. Corp. v. Twombly*  
550 U.S. 544 (2007) ..... 7

*Benton v. Maryland*  
395 U.S. 784 (1969) ..... 8

*Cetacean Cmty. v. Bush*  
386 F.3d 1169 (9th Cir. 2004) ..... 6

*Chandler v. State Farm Mut. Auto. Ins. Co.*  
598 F.3d 1115 (9th Cir. 2010) ..... 6

*Duncan v. Becerra*  
366 F. Supp. 3d 1131 (S.D. Cal. 2019) ..... 2

*Hill v. Opus Corp.*  
841 F. Supp. 2d 1070 (C.D. Cal. 2011) ..... 7

*Jackson v. Carey*  
353 F.3d 750 (9th Cir. 2003) ..... 7

*Kokkonen v. Guardian Life Ins. Co. of Am.*  
511 U.S. 375 (1994) ..... 6

*Lujan v. Defenders of Wildlife*  
504 U.S. 555 (1992) ..... 8, 9

*Perez v. Alta-Dena Certified Dairy, LLC*  
647 Fed. App’x 682 (9th Cir. 2016) ..... 7

*Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t of Agric.*  
415 F.3d 1078 (9th Cir. 2005) ..... 13

*Rupp v. Becerra*  
2019 WL 4742298 (C.D. Cal. July 22, 2019) ..... 5

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**(continued)**

**Page**

*Safe Air for Everyone v. Meyer*  
373 F.3d 1035 (9th Cir. 2004) ..... 6

*Sec. & Exchange Comm’n v. Med. Comm. for Human Rights*  
404 U.S. 403 (1972) ..... 8

*Silveira v. Lockyer*  
312 F.3d 1052 (9th Cir. 2002) ..... 2

*Silvester v. Harris*  
843 F.3d 816 (9th Cir. 2016) ..... 15, 16

*Valle del Sol Inc. v. Whiting*  
732 F.3d 1006 (9th Cir. 2013) ..... 13, 14

*Watison v. Carter*  
668 F.3d 1108 (9th Cir. 2012) ..... 7

*White v. Lee*  
227 F.3d 1214 (9th Cir. 2000) ..... 6

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**(continued)**

**Page**

**STATUTES**

**California Penal Code**

§ 18005(c)..... 9  
 § 30510 ..... 2, 6  
 § 30510(a)..... 5  
 § 30515(a)..... 3, 5  
 § 30515(a)(2) ..... 3, 4, 5  
 § 30515(a)(4)(A)..... 3  
 § 30515(a)(5) ..... 3, 4, 5  
 § 30515(a)(6)(A)-(B)..... 4  
 § 30515(b)..... 3, 5, 8  
 § 30600 ..... *passim*  
 § 30605 ..... *passim*  
 § 30680 ..... 4  
 § 30800 ..... *passim*  
 § 30900 ..... 4  
 § 30910 ..... *passim*  
 § 30915 ..... *passim*  
 § 30925 ..... 10, 13  
 § 30945 ..... *passim*  
 § 30950 ..... *passim*  
 § 31000 ..... *passim*  
 § 31005 ..... *passim*  
 § 32310(a)..... 2

**CONSTITUTIONAL PROVISIONS**

**United States Constitution**

Article III ..... 6, 8  
 Second Amendment..... *passim*

**COURT RULES**

**Federal Rules of Civil Procedure**

Rule 8(a) ..... 15  
 Rule 12(b)(1) ..... 2, 6, 8  
 Rule 12(b)(6) ..... 2, 6, 15



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**(continued)**

**Page**

**OTHER AUTHORITIES**

California Code of Regulations, Title 11

§ 5460 ..... 5

§ 5471 ..... 5

§ 5499 ..... 2

§ 5499 ..... 6

Senate Bill 23..... 2

## INTRODUCTION

1  
2 In addition to challenging the State’s definitions of an “assault weapon” under  
3 the Second Amendment, Plaintiffs’ First Amended Complaint for Declaratory and  
4 Injunctive Relief (the “FAC”) (Dkt. 9) includes Second Amendment challenges to  
5 an array of other statutes touching on the regulation of assault weapons. The FAC,  
6 however, fails to demonstrate that Plaintiffs may challenge many of those statutes  
7 in this case. The Court should therefore dismiss Plaintiffs’ Second Amendment  
8 claim to the extent it challenges those statutes and require Plaintiffs to re-plead their  
9 claims without reference to statutes that are not properly at issue in this action.

10 The FAC fails to allege facts showing that any of the Plaintiffs has standing to  
11 challenge California Penal Code sections 30800 (deeming certain assault weapons a  
12 public nuisance), 30915 (regulating assault weapons obtained by bequest or  
13 inheritance), 30925 (restricting importation of assault weapons by new residents),  
14 30945 (restricting use of registered assault weapons), 30950 (prohibiting possession  
15 of assault weapons by minors and prohibited persons), 31000 (authorizing  
16 additional uses of registered assault weapons with permit), and 31005 (authorizing  
17 sale of assault weapons to exempt recipients with permit). The Court therefore  
18 lacks subject matter jurisdiction over Plaintiffs’ Second Amendment claim to the  
19 extent Plaintiffs seek to declare these seven statutes as unconstitutional and to  
20 enjoin their enforcement.

21 Additionally, even if Plaintiffs have standing to challenge these statutes, the  
22 FAC lacks *any* factual allegations concerning them and thus fails to state a claim  
23 that any of them violates the Second Amendment. For example, the FAC fails to  
24 state a plausible claim that California Penal Code section 30950—which prohibits  
25 the possession of assault weapons by anyone under the age of 18 and anyone  
26 prohibited by law from possessing a firearm—is unconstitutional under the Second  
27 Amendment. Contrary to the FAC’s legal conclusions and boilerplate allegations,  
28

1 California can, consistent with the Second Amendment, prohibit the possession of  
2 assault weapons by minors and prohibited persons.

3 For these reasons, under Federal Rule of Civil Procedure 12(b)(1) and  
4 12(b)(6), the Court should dismiss the FAC to the extent it challenges California  
5 Penal Code sections 30800, 30915, 30925, 30945, 30950, 31000, and 31005. The  
6 Court should require Plaintiffs to file an amended complaint that is limited to  
7 claims that they have standing to assert and that are supported by well-pleaded,  
8 factual allegations.

## 9 BACKGROUND

### 10 I. OVERVIEW OF CALIFORNIA’S RESTRICTIONS ON ASSAULT WEAPONS

11 California has long regulated the manufacture, importation, sale, and  
12 possession of assault weapons. Since enacting the Assault Weapons Control Act  
13 (the “AWCA”) in 1989—the first legislative restriction on assault weapons in the  
14 nation, *see Silveira v. Lockyer*, 312 F.3d 1052, 1057 (9th Cir. 2002), *abrogated on*  
15 *other grounds by District of Columbia v. Heller*, 554 U.S. 570 (2008)—California  
16 has strengthened its restrictions over time. While the original AWCA restricted  
17 particular assault weapons identified by make and model, *see* Cal. Penal Code  
18 § 30510; Cal. Code Regs. tit. 11, § 5499, the Legislature enacted Senate Bill 23 in  
19 1999 to provide an alternative definition of an “assault weapon” “to broaden [the  
20 AWCA’s] coverage and to render it more flexible in response to technological  
21 developments in the manufacture of semi-automatic weapons.” *Silveira*, 312 F.3d  
22 at 1058.<sup>1</sup>

23  
24  
25 <sup>1</sup> Senate Bill 23 also added restrictions on the manufacture, importation, and  
26 sale of large-capacity magazines (“LCMs”) capable of holding more than ten  
27 rounds of ammunition, presently codified at California Penal Code  
28 section 32310(a). This Court has held that California’s LCM restrictions violate the  
Second Amendment. *See Duncan v. Becerra*, 366 F. Supp. 3d 1131, 1185-86 (S.D.  
Cal. 2019), *appeal docketed*, No. 19-55376 (Apr. 4, 2019). The case is pending  
appeal before the Ninth Circuit Court of Appeals.

1 Under California Penal Code section 30515(a), as presently codified, a rifle  
2 qualifies as an “assault weapon” if it is:

- 3 • a semiautomatic, centerfire rifle that does not have a fixed magazine,<sup>2</sup> but  
4 has one or more of the following features: a pistol grip that protrudes  
5 conspicuously beneath the action of the rifle, a thumbhole stock, a folding  
6 or telescoping stock, a grenade or flare launcher, a flash suppressor, or a  
7 forward pistol grip, *id.* § 30515(a)(1)(A)-(F);
- 8 • a semiautomatic, centerfire rifle that has a fixed LCM, *id.* § 30515(a)(2);  
9 or
- 10 • a semiautomatic, centerfire rifle that has an overall length of less than  
11 30 inches, *id.* § 30515(a)(3).

12 A pistol qualifies as an “assault weapon” if it is:

- 13 • a semiautomatic pistol that does not have a fixed magazine, but has a  
14 threaded barrel, capable of accepting a flash suppressor, a forward  
15 handgrip, or a silencer, Cal. Penal Code § 30515(a)(4)(A);
- 16 • a semiautomatic pistol that does not have a fixed magazine, but has a  
17 second handgrip, *id.* § 30515(a)(4)(B);
- 18 • a semiautomatic pistol that does not have a fixed magazine, but has a  
19 “shroud that is attached to, or partially or completely encircles, the barrel  
20 that allows the bearer to fire the weapon without burning the bearer’s hand,  
21 except a slide that encloses the barrel,” *id.* § 30515(a)(4)(C);
- 22 • a semiautomatic pistol that does not have a fixed magazine, but has the  
23 “capacity to accept a detachable magazine at some location outside of the  
24 pistol grip,” *id.* § 30515(a)(4)(D); or
- 25 • a semiautomatic pistol with a fixed LCM, *id.* § 30515(a)(5).

26  
27 <sup>2</sup> Section 30515(b) defines a “fixed magazine” as “an ammunition feeding  
28 device contained in, or permanently attached to, a firearm in such a manner that the  
device cannot be removed without disassembly of the firearm action.”

1 A shotgun qualifies as an “assault weapon” if it is:

- 2 • a semiautomatic shotgun that has both of the following features: (1) a
- 3 folding or telescoping stock and (2) a pistol grip that protrudes
- 4 conspicuously beneath the action of the weapon, a thumbhole stock, or a
- 5 vertical handgrip, Cal. Penal Code § 30515(a)(6)(A)-(B);
- 6 • a semiautomatic shotgun that has the ability to accept a detachable
- 7 magazine, *id.* § 30515(a)(7); or
- 8 • a shotgun that has a revolving cylinder, *id.* § 30515(a)(8).

9 California Penal Code section 30600 provides that anyone who manufactures,  
10 distributes, transports, imports, keeps for sale, offers for sale, or lends an “assault  
11 weapon” in the State is guilty of a felony. Under California Penal Code  
12 section 30605, possession of an assault weapon in the State is a misdemeanor or a  
13 felony.<sup>3</sup>

## 14 **II. PROCEDURAL HISTORY**

15 On August 15, 2019, Plaintiffs James Miller, Patrick Russ, Ryan Peterson, and  
16 San Diego County Gun Owners Political Action Committee filed a complaint,  
17 asserting a facial Second Amendment challenge to California Penal Code sections  
18 30515(a)(2) and 30515(a)(5), which define an “assault weapon” as a  
19 semiautomatic, centerfire rifle with a fixed LCM or a semiautomatic pistol with a  
20 fixed LCM. Dkt. 1. The initial complaint also challenged, on their face and as  
21 applied to Plaintiffs, California Penal Code sections 30600, 30605, 30800, 30910,  
22 30915, 30945, and 31000 to the extent they regulate “assault weapons” as defined  
23 by sections 30515(a)(2) or 30515(a)(5). *See id.* ¶¶ 1, 32, 34.

24 After Defendants answered the complaint, Plaintiffs filed the FAC. Dkt. 9.  
25 The FAC adds nine new plaintiffs and challenges California’s assault-weapon

26 \_\_\_\_\_  
27 <sup>3</sup> Under California Penal Code section 30680, assault weapons lawfully  
28 owned before January 1, 2017 are grandfathered and may be possessed in the State  
if the weapon was registered by July 1, 2018 under California Penal Code  
section 30900.

1 restrictions generally under the Second Amendment, and not just those pertaining to  
 2 semiautomatic rifles and pistols with fixed LCMs. *Compare* Dkt. 1 ¶ 1, with FAC  
 3 ¶ 88. The FAC asserts a single claim under the Second Amendment, challenging  
 4 the definition of an “assault weapon” under California Penal Code section  
 5 30515(a), including the features-based definition in section 30515(a)(1) and the  
 6 minimum-length requirement in section 30515(a)(3) for semiautomatic, centerfire  
 7 rifles. *See* FAC ¶¶ 91-104. The FAC challenges California’s assault-weapon  
 8 restrictions that apply to rifles, pistols, and shotguns.<sup>4</sup>

9 The initial complaint sought a judicial declaration that the LCM-based  
 10 definitions of an “assault weapon” found in California Penal Code sections  
 11 30515(a)(2) and (a)(5) violate the Second Amendment and prayed for an injunction,  
 12 enjoining Defendants from enforcing certain additional statutes regulating assault  
 13 weapons, *see* Cal. Penal Code §§ 30600, 30605, 30800, 30910, 30915, 30945,  
 14 31000. Dkt. 1 at 18-19 (Prayer for Relief). The FAC, by contrast, prays for a  
 15 broader declaration that all of the definitions of an “assault weapon” violate the  
 16 Second Amendment, *see* Cal. Penal Code §§ 30515(a) (defining rifles, pistols, and  
 17 shotguns as assault weapons), 30515(b) (defining “fixed magazine”); Cal. Code  
 18 Regs. tit. 11, §§ 5460, 5471 (defining terms in California’s assault-weapon  
 19 restrictions), and that the same statutes regulating assault weapons that were

20 \_\_\_\_\_  
 21 <sup>4</sup> The District Court for the Central District of California recently held that  
 22 certain assault-weapon restrictions that apply to semiautomatic, centerfire rifles do  
 23 not violate the Second Amendment, including many of the statutory provisions  
 24 challenged in this action. *See Rupp v. Becerra*, No. 17-cv-00746-JLS-JDE, \_\_\_ F.  
 25 Supp. 3d \_\_\_, 2019 WL 4742298, at \*7, \*11 (C.D. Cal. July 22, 2019) (holding that  
 26 California’s assault-weapon restrictions do not burden the Second Amendment and,  
 27 alternatively, satisfy intermediate scrutiny), *appeal docketed* No. 19-56004  
 28 (Aug. 28, 2019). That case concerned a Second Amendment challenge to, *inter*  
*alia*, California Penal Code sections 30510(a) (list of rifles that qualify as assault  
 weapons), 30515(a)(1)(A)-(C), (E)-(F) (list of features that qualify a semiautomatic,  
 centerfire rifle as an assault weapon), 30515(a)(3) (minimum rifle length), 30600  
 (prohibiting the manufacture, importation, and sale of assault weapons), 30605  
 (prohibiting possession of assault weapons), 30925 (new resident requirements),  
 and 30945 (conditions for possessing registered assault weapons). *Id.* at \*3. The  
 case is currently pending appeal before the Ninth Circuit Court of Appeals.

1 challenged in the initial complaint also violate the Second Amendment, *see* Cal.  
 2 Penal Code §§ 30600, 30605, 30800, 30910, 30915, 30945, 31000. FAC ¶ 87; *id.*  
 3 at 41 (Prayer for Relief). The FAC also prays for an injunction of those statutes  
 4 and regulations, as well as an injunction of certain additional statutes that were not  
 5 challenged in the initial complaint, *see* Cal. Penal Code §§ 30925, 30950, 31005.  
 6 FAC ¶¶ 88-89; *id.* at 41-42 (Prayer for Relief).<sup>5</sup>

### 7 LEGAL STANDARD

8 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for  
 9 lack of subject matter jurisdiction may properly raise the issue of standing.  
 10 *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010).  
 11 Under Article III of the United States Constitution, a suit brought by a plaintiff who  
 12 lacks standing is not a “case or controversy” over which a federal court can have  
 13 subject matter jurisdiction. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir.  
 14 2004). A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) may be  
 15 either facial or factual. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). “In a  
 16 facial attack, the challenger asserts that the allegations contained in a complaint are  
 17 insufficient on their face to invoke federal jurisdiction.” *Safe Air for Everyone v.*  
 18 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a “factual attack,” by contrast, “the  
 19 challenger disputes the truth of the allegations that, by themselves, would otherwise  
 20 invoke federal jurisdiction.” *Id.* The party asserting jurisdiction bears the burden  
 21 of establishing subject matter jurisdiction on a motion to dismiss under Federal  
 22 Rule of Civil Procedure 12(b)(1). *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511  
 23 U.S. 375, 377 (1994).

24 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests  
 25 the legal sufficiency of a complaint. “To survive a motion to dismiss, a complaint  
 26

27 <sup>5</sup> The FAC does not challenge the lists of prohibited assault weapons in  
 28 California Penal Code section 30510 or section 5499 of title 11 of the California  
 Code of Regulations.

1 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief  
2 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting  
3 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint “that offers  
4 ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of  
5 action will not do,” *id.* at 678 (quoting *Twombly*, 550 U.S. at 555), and  
6 “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
7 conclusory statements, do not suffice,” *id.* at 678 (citing *Twombly*, 550 U.S. at 555).  
8 Rather, a plaintiff’s factual allegations must nudge the claims in the complaint  
9 “across the line from conceivable to plausible.” *Twombly*, 550 U.S. at 570.  
10 Determining whether a complaint states a plausible claim for relief is “a context-  
11 specific task that requires the reviewing court to draw on its judicial experience and  
12 common sense.” *Iqbal*, 556 U.S. at 679.

13 Where a single cause of action asserts multiple claims, the Court may dismiss  
14 some but not all of those claims. *See Hill v. Opus Corp.*, 841 F. Supp. 2d 1070,  
15 1081-82 (C.D. Cal. 2011) (dismissing certain claims that, though alleged together,  
16 were separable from claims not preempted by federal law); *Perez v. Alta-Dena*  
17 *Certified Dairy, LLC*, 647 Fed. App’x 682, 685 (9th Cir. 2016) (holding that district  
18 court erred in dismissing entire causes of action instead of specific claims).

19 Dismissal without leave to amend is appropriate when the Court is satisfied  
20 that the deficiencies in the complaint could not possibly be cured by amendment.  
21 *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *see also Watison v. Carter*,  
22 668 F.3d 1108, 1117 (9th Cir. 2012) (dismissal with prejudice is appropriate if the  
23 district court “determines that the pleading could not possibly be cured by the  
24 allegation of other facts” (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir.  
25 1995))).  
26  
27  
28



**ARGUMENT**

**I. PLAINTIFFS LACK STANDING TO CHALLENGE CERTAIN PROVISIONS OF CALIFORNIA’S ASSAULT WEAPONS CONTROL ACT UNDER THE SECOND AMENDMENT**

“[F]ederal courts may act only in the context of a justiciable case or controversy.” *Benton v. Maryland*, 395 U.S. 784, 788 (1969). This limitation “derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.” *Sec. & Exchange Comm’n v. Med. Comm. for Human Rights*, 404 U.S. 403, 407 (1972) (quotation marks and citation omitted). Standing is a jurisdictional requirement, and a party invoking federal jurisdiction has the burden of establishing standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

On this motion, Defendants do not contest Plaintiffs’ standing to challenge California’s restrictions on the manufacture, importation, sale, and possession of assault weapons, *see* Cal. Penal Code §§ 30515(a), (b) (defining assault weapons), 30600 (prohibiting manufacture, importation, transportation, keeping for sale, offering for sale, and lending of assault weapons), 30605 (prohibiting possession of assault weapons). But Plaintiffs have failed to demonstrate that they have standing to challenge seven additional statutes regulating assault weapons: California Penal Code sections 30800, 30915, 30925, 30945, 30950, 31000, and 31005.

Accordingly, this Court lacks subject matter jurisdiction over Plaintiffs’ claims challenging these additional statutes, and should dismiss Plaintiffs’ Second Amendment claim under Federal Rule of Civil Procedure 12(b)(1) to the extent Plaintiffs seek to declare as unconstitutional, and to enjoin, these particular statutes.

**A. The Individual and Entity Plaintiffs Lack Standing**

Under Article III, a plaintiff must establish the following three elements: (1) an injury in fact; (2) a causal connection; and (3) redressability. First, a plaintiff must have suffered an “injury in fact” that is “concrete and particularized” and “actual, or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560

1 (internal quotation marks and citation omitted). Second, the injury in fact must be  
2 fairly traceable to the challenged action of the defendant. *Id.* Third, the relief that  
3 the plaintiff seeks must be likely to redress the injury. *Id.* at 561.

4 Here, Plaintiffs James Miller, Patrick Russ, Wendy Hauffen, Neil Rutherford,  
5 Adrian Sevilla, Ryan Peterson, and John Phillips (collectively, the “Individual  
6 Plaintiffs”) and Plaintiffs Gunfighter Tactical, LLC and PWGG, L.P. (together, the  
7 “Entity Plaintiffs”) do not have standing to challenge the seven additional statutes  
8 challenged in the FAC (Penal Code sections 30800, 30915, 30925, 30945, 30950,  
9 31000, and 31005). The FAC fails to allege that any of the Individual Plaintiffs or  
10 Entity Plaintiffs have or will suffer any cognizable injury from the enforcement of  
11 these statutes. The FAC’s conclusory allegation that “Plaintiffs are presently and  
12 continuously injured” by enforcement of all of the statutes listed in the FAC is  
13 insufficient to allege that any of the Plaintiffs have suffered a concrete injury that is  
14 traceable to these statutes. *See* FAC ¶ 88.

15 **First**, subject to exceptions, California Penal Code section 30800 provides that  
16 possession of an assault weapon or a .50 BMG rifle is a “public nuisance” solely for  
17 purposes of that section and California Penal Code section 18005(c).  
18 Section 30800(a) provides that any assault weapon illegally possessed in the State  
19 is a public nuisance, authorizing certain law enforcement authorities to bring a civil  
20 action to enjoin possession of the weapon, *id.* § 30800(b), or impose a civil fine for  
21 each weapon illegally possessed, *id.* § 30800(c). Additionally, section 30800(d)  
22 deems as a public nuisance any illegally possessed assault weapon that is used in  
23 the commission of a crime, subjecting the weapon to the requirements of section  
24 18005(c). Section 18005 provides that weapons surrendered to law enforcement  
25 authorities under section 18000, which generally requires a defendant to surrender a  
26 weapon used in the commission of a crime, may be offered for sale at a public  
27 auction, unless the weapon cannot be sold to the public, in which case the weapon  
28 must be destroyed after reasonable notice is provided to the owner. *Id.* § 18005(c),

1 (d); *see also id.* §§ 18000, 29300(a). The FAC does not allege that any of the  
 2 Individual Plaintiffs has been or will be injured by this statute. *See* FAC ¶¶ 1-6, 8,  
 3 56-75, 79-82.

4 ***Second***, California Penal Code section 30915 provides that anyone who  
 5 obtains title by bequest or intestate succession to an assault weapon that has been  
 6 registered must, within 90 days, render the weapon permanently inoperable, sell the  
 7 weapon to a licensed firearms dealer, obtain a permit to possess the weapon, or  
 8 remove the weapon from the State. The FAC fails to allege that any of the  
 9 Individual Plaintiffs has or will obtain title to an assault weapon by bequest or  
 10 intestate succession, or that any of the Individual Plaintiffs intends to pass title to an  
 11 assault weapon by bequest or inheritance, or that any of the Plaintiffs would be  
 12 harmed by the statute if they did. *See* FAC ¶¶ 1-6, 8, 56-75, 79-82.

13 ***Third***, California Penal Code section 30925 provides that anyone moving to  
 14 the State who is in lawful possession of an assault weapon must, prior to bringing  
 15 the weapon into the State, obtain a permit from the Department of Justice to retain  
 16 possession of the weapon in the State and deliver the weapon to a licensed firearms  
 17 dealer in the State to hold until a permit is issued or dispose of the weapon as  
 18 authorized. Each of the Individual Plaintiffs is alleged to be a resident of the State,  
 19 *see* FAC ¶ 1-6, 8, and none of them have allegedly been, or will be, injured by this  
 20 statute. *See id.* ¶¶ 1-6, 8, 56-75, 79-82.

21 ***Fourth***, California Penal Code section 30945 provides that anyone who  
 22 possesses an assault weapon that has been registered with the Department of Justice  
 23 may use the weapon only at certain designated places, including the owner's  
 24 residence or at a licensed target range. None of the Individual Plaintiffs allegedly  
 25 owns an assault weapon that has been registered with the Department of Justice, *see*  
 26 FAC ¶¶ 56, 60, 64, 67-75, 80,<sup>6</sup> and the FAC is devoid of any allegations as to how

27 <sup>6</sup> The FAC alleges that Plaintiffs Hauffen and Peterson own a "registered,  
 28 semi-automatic, centerfire rifle," but specifies that these weapons do not qualify as

1 the restrictions imposed by section 30945 cause the Individual Plaintiffs injury or  
2 violate the Second Amendment.

3 **Fifth**, California Penal Code section 30950 provides that no person under the  
4 age of 18, and no adult who is prohibited by state or federal law from possessing a  
5 firearm, may register or possess an assault weapon or .50 BMG rifle. The FAC  
6 fails to allege that any of the Individual Plaintiffs are under the age of 18 or are  
7 acting in a representative capacity on behalf of a minor who wishes to possess an  
8 assault weapon. FAC ¶¶ 1-6, 8. The FAC also alleges that each of the Individual  
9 Plaintiffs is not prohibited by law from possessing a firearm, *id.* ¶¶ 1-6, 8, so they  
10 also lack standing to challenge section 30950 to the extent it bars prohibited  
11 persons from possessing assault weapons.

12 **Sixth**, California Penal Code section 31000 allows lawful owners of assault  
13 weapons acquired during certain periods to obtain a permit to use those weapons for  
14 purposes other than those authorized under California Penal Code section 30945.  
15 The FAC fails to allege that any of the Individual Plaintiffs has received or been  
16 denied such a permit, and the FAC is devoid of any allegations that this statute has  
17 injured or will injure the Individual Plaintiffs in any way.

18 **Seventh**, California Penal Code section 31005 authorizes the Department of  
19 Justice to issue permits, upon a finding of good cause, for the manufacture and sale  
20 of assault weapons and .50 BMG rifles for sale to, *inter alia*, law enforcement and  
21 military agencies. In effect, section 31005 operates as a limited exemption for  
22 permit holders from the prohibitions on the manufacturing, keeping or offering for  
23 sale, and sale of assault weapons set forth in sections 30600 and 30910. The FAC  
24 alleges that Plaintiff Ryan Peterson is unable to acquire a permit under  
25 section 31005 and that he “desires to acquire and sell firearms to normal, law-  
26 abiding people who are not exempt, such as law enforcement officers, government  
27 \_\_\_\_\_  
28 assault weapons under California law. FAC ¶¶ 64, 72.

1 agencies, military agencies, or governments, under the laws of the State.” FAC  
2 ¶ 70. But Plaintiff Peterson’s alleged inability to obtain a permit under  
3 section 31005 is not the reason why that plaintiff is unable to sell assault weapons  
4 to “normal, law-abiding people”; Plaintiff Peterson is prohibited from engaging in  
5 that activity under sections 30600 and 30910. The FAC also alleges that Plaintiffs  
6 John Phillips and PWGG, L.P. hold a “special weapons permit” that allows them to  
7 sell assault weapons to “select exempted recipients” (presumably a permit issued  
8 under section 31005), but that those plaintiffs wish to sell assault weapons to  
9 “non-exempt agencies or individuals, such as the other Individual Plaintiffs.” *Id.*  
10 ¶ 81, 85. Section 31005 *allows* them to sell to exempt customers, but does not  
11 expressly prohibit them from selling firearms to other, non-exempt customers. As  
12 with Plaintiff Peterson, the alleged injury suffered by Plaintiffs Phillips and PWGG,  
13 L.P. are traceable to sections 30600 and 30910, which expressly prohibit the sale of  
14 assault weapons, rather than section 31005. None of the other Individual or Entity  
15 Plaintiffs allege that they have been or will be injured by section 31005.

16 Because none of the Individual or Entity Plaintiffs has allegedly suffered or  
17 will suffer an injury from enforcement of California Penal Code sections 30800,  
18 30915, 30925, 30945, 30950, 31000, and 31005, they lack standing to challenge  
19 those statutes in this action.

## 20 **B. The Organizational Plaintiffs Lack Standing**

21 Four of the Plaintiffs are organizations allegedly focused on the advancement  
22 of Second Amendment rights: Plaintiffs San Diego County Gun Owners PAC,  
23 California Gun Rights Foundation, Second Amendment Foundation, and Firearms  
24 Policy Coalition, Inc. (collectively, the “Organizational Plaintiffs”). As with the  
25 Individual and Entity Plaintiffs, the Organizational Plaintiffs lack standing to  
26 challenge the seven additional statutes.

27 “An association has standing to bring suit on behalf of its members when its  
28 members would otherwise have standing to sue in their own right, the interests at

1 stake are germane to the organization’s purpose, and neither the claim asserted nor  
2 the relief requested requires the participation of the individual members in the  
3 lawsuit.” *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v.*  
4 *U.S. Dep’t of Agric.*, 415 F.3d 1078, 1104 (9th Cir. 2005) (quoting *Friends of the*  
5 *Earth, Inc. v. Laidlaw Env’tl. Serv. (TOC), Inc.*, 528 U.S. 167, 181 (2000)). Here,  
6 the FAC fails to allege that any of the Organizational Plaintiffs’ members would  
7 have standing in their own right to challenge California Penal Code sections 30800,  
8 30915, 30925, 30945, 30950, 31000, and 31005—*e.g.*, that certain members are  
9 under the age of 18 and desire to possess an assault weapon, Cal. Penal Code  
10 § 30950, or that certain non-resident members wish to move to the State and retain  
11 ownership of an assault weapon, *see id.* § 30925. The FAC does not allege that any  
12 members of Plaintiffs San Diego County Gun Owners PAC or Second Amendment  
13 Foundation have been injured by any of these statutes. *See* FAC ¶¶ 10, 13. And the  
14 generalized allegations that the other two Organizational Plaintiffs’ “members and  
15 supporters have been adversely and directly harmed by Defendants’ enforcement of  
16 the laws, regulations, policies, practices, and customs challenged herein,” FAC  
17 ¶¶ 11-12, fails to demonstrate that any of their members have been injured by these  
18 particular statutes and thus would have standing to challenge them in their own  
19 right.

20 The Organizational Plaintiffs also fail to allege direct standing to challenge  
21 these statutes, as the FAC fails to allege that any of these statutes has caused a  
22 “drain on [their] resources from both a diversion of [their] resources and frustration  
23 of [their] mission.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir.  
24 2013) (quoting *Fair Hous. Council of San Fernando Valley v. Roomate.com, LLC*,  
25 666 F.3d 1216, 1219 (9th Cir. 2012). An organization “cannot manufacture the  
26 injury by incurring litigation costs or simply choosing to spend money fixing a  
27 problem that otherwise would not affect the organization at all,” but must “instead  
28 show that it would have suffered some other injury if it had not diverted resources

1 to counteracting the problem.” *Id.* (quoting *La Asociacion de Trabajadores de*  
2 *Lake Forest v. Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010)).

3 The FAC fails to allege that Plaintiffs San Diego County Gun Owners PAC  
4 has expended any resources due to any of the seven statutes, FAC ¶ 10, and  
5 conclusory allegations that the remaining Organizational Plaintiffs have spent  
6 resources due to the State’s regulation of assault weapons fail to show that they  
7 have suffered a drain on resources due to these particular statutes, *see id.* ¶¶ 11, 12  
8 (alleging that Plaintiffs California Gun Rights Foundation and Firearms Policy  
9 Coalition have “expended and diverted resources because of the State of  
10 California’s laws . . . on ‘large-capacity’ magazines and ‘assault weapons’”); *id.*  
11 ¶ 13 (alleging that Plaintiff Second Amendment Foundation has “dedicate[d]  
12 resources—including for this action—that would otherwise be available for other  
13 purposes” due to “[t]he laws, policies, practices, and customs challenged in this  
14 case”).

15 For these reasons, the Organization Plaintiffs lack representational and direct  
16 standing to challenge California Penal Code sections 30800, 30915, 30925, 30945,  
17 30950, 31000, and 31005.

18 **II. THE FIRST AMENDED COMPLAINT FAILS TO STATE A CLAIM THAT**  
19 **CERTAIN PROVISIONS OF THE ASSAULT WEAPONS CONTROL ACT**  
20 **VIOLATE THE SECOND AMENDMENT**

21 The FAC also fails to state a plausible claim that any of the additional seven  
22 statutes violates the Second Amendment. As a threshold matter, Plaintiffs purport  
23 to assert a facial and an as-applied challenge to these statutes, but as discussed in  
24 Section I.A, *supra*, the FAC fails to allege that any of the Individual or Entity  
25 Plaintiffs have been injured or otherwise affected by any of these laws. Thus,  
26 Plaintiffs’ as-applied challenge to these laws must be dismissed to the extent the  
27 FAC fails to allege that they have been or will be applied to them.

28 In addition, the FAC fails to state a plausible claim that any of these statutes  
are facially invalid under the Second Amendment. As discussed in Section I.A,

1 *supra*, the additional seven statutes challenged in the FAC regulate a range of  
2 activities and impose different requirements concerning the possession,  
3 importation, sale, and use of assault weapons, but the FAC does not allege any facts  
4 concerning these activities and requirements or, critically, how those statutes  
5 violate the Second Amendment. The only allegations about these Penal Code  
6 sections are Plaintiffs’ repeated legal conclusion that they, along with the other  
7 statutes and regulations challenged in this action, violate the Second Amendment.  
8 *See* FAC ¶¶ 31, 55, 87-89. While the Court, in ruling on a motion to dismiss under  
9 Federal Rule of Civil Procedure 12(b)(6), must assume the truth of Plaintiffs’  
10 factual allegations and draw all reasonable inferences in their favor, “the tenet that a  
11 court must accept as true all of the allegations contained in a complaint is  
12 inapplicable to legal conclusions.” *Iqbal*, 556 U.S. at 678. The FAC lacks any  
13 particularized *factual* allegations, required under Federal Rule of Civil Procedure  
14 8(a), demonstrating that these statutes violate the Second Amendment. Plaintiffs  
15 cannot state a valid claim merely by tacking half-a-dozen or more statutes onto their  
16 challenge to California’s assault-weapon restrictions without any factual  
17 allegations.

18 The FAC’s pleading deficiencies are particularly notable with respect to  
19 Plaintiffs’ challenge to California Penal Code section 30950, which prohibits the  
20 possession of an assault weapon or .50 BMG rifle by anyone under the age of 18 or  
21 anyone prohibited from possessing a firearm under state or federal law. Under the  
22 two-step approach adopted by the Ninth Circuit for adjudicating Second  
23 Amendment claims—which asks (1) “whether the challenged law burdens conduct  
24 protected by the Second Amendment” and, if so, (2) whether the challenged law  
25 satisfies the applicable level of constitutional scrutiny, *Silvester v. Harris*, 843 F.3d  
26 816, 820-21 (9th Cir. 2016)—California Penal Code section 30950 is plainly  
27 constitutional. The FAC contains no factual allegations to suggest that prohibiting  
28



1 the possession of firearms, let alone assault weapons or .50 BMG rifles, by  
2 juveniles or prohibited persons violates the Second Amendment.

3 To the contrary, California Penal Code section 30950 is constitutional on its  
4 face. The Supreme Court in *Heller* “identified a non-exhaustive list of  
5 ‘longstanding prohibitions,’ which can be considered ‘presumptively lawful  
6 regulatory measures’ falling outside the scope of Second Amendment protection” at  
7 the first step of the Court’s analysis. *Silvester*, 843 F.3d at 830 (Thomas, C.J.,  
8 concurring) (quoting *Heller*, 554 U.S. at 626, 627 n.26). California’s prohibition on  
9 juveniles possessing assault weapons and .50 BMG rifles—in addition to satisfying  
10 any level of constitutional scrutiny at step two—is a presumptively lawful measure  
11 at step one. *See id.* at 830 n.3 (noting “the existence of a longstanding tradition of  
12 prohibiting juveniles from both receiving and possessing *handguns*” (quoting  
13 *United States v. Rene E.*, 583 F.3d 8, 12 (1st Cir. 2009)) (emphasis added)). And  
14 *Heller* included in its non-exhaustive list of presumptively lawful measures  
15 “longstanding prohibitions on the possession of firearms by felons.” 554 U.S. at  
16 626. Even if Plaintiffs were to prevail on their constitutional challenges to  
17 California Penal Code sections 30600 and 30605, section 30950 would not violate  
18 the Second Amendment.

19 Accordingly, the FAC fails to allege a plausible claim that the seven additional  
20 statutes violate the Second Amendment.

## 21 CONCLUSION

22 For the foregoing reasons, Defendants respectfully request that the Court  
23 dismiss the FAC for lack of standing and failure to state a claim to the extent the  
24 FAC challenges California Penal Code sections 30800, 30915, 30925, 30945,  
25  
26  
27  
28

1 30950, 31000, and 31005, and require Plaintiffs to file an amended pleading that  
2 does not assert claims against these statutes.

3 Dated: October 25, 2019

Respectfully Submitted,

4 XAVIER BECERRA  
5 Attorney General of California  
6 MARK R. BECKINGTON  
7 Supervising Deputy Attorney General

8 /s/ John D. Echeverria  
9 JOHN D. ECHEVERRIA  
10 Deputy Attorney General  
11 *Attorneys for Defendants Xavier*  
12 *Becerra, in his official capacity as*  
13 *Attorney General of the State of*  
14 *California, and Brent E. Orick, in his*  
15 *official capacity as Interim Director*  
16 *of the Department of Justice Bureau*  
17 *of Firearms*

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## CERTIFICATE OF SERVICE

Case Name: **James Miller, et al. v.  
Xavier Becerra, et al.**

Case No. **19-cv-1537 BEN-JLB**

I hereby certify that on October 25, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS CERTAIN  
CLAIMS IN FIRST AMENDED COMPLAINT**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS CERTAIN CLAIMS IN FIRST AMENDED COMPLAINT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 25, 2019, at Los Angeles, California.

Colby Luong  
Declarant

/s/ Colby Luong  
Signature