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9 Attorneys for Plaintiffs
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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13

14 JOHN TEIXEIRA, STEVE
NOBRIGA, GARY GAMAZA,
15 CALGUNS FOUNDATION (CGF),
INC., SECOND AMENDMENT
16 FOUNDATION (SAF), INC., and
17 CALIFORNIA ASSOCIATION OF
FEDERAL FIREARMS LICENSEES,
18 INC. (Cal-FFL),

19 Plaintiffs,

20 vs.

21
22 COUNTY OF ALAMEDA, ALAMEDA
BOARD OF SUPERVISORS (as a
23 policy making body), WILMA CHAN
in her official capacity, NATE MILEY
24 in his official capacity, and KEITH
25 CARSON in his official capacity.

26 Defendants.
27

CASE NO.: 3:12-CV-03288 SI

DECLARATION OF BRANDON
COMBS for PLAINTIFF: CALIFORNIA
ASSOCIATION OF FEDERAL
FIREARMS LICENSEES, INC.

1 I, BRANDON COMBS, declare as follows:

- 2 1. I am the president of CALIFORNIA ASSOCIATION OF FEDERAL
3 FIREARMS LICENSEES, INC.
- 4 2. The CALIFORNIA ASSOCIATION OF FEDERAL FIREARMS LICENSEES,
5 INC., (Cal-FFL) is a non-profit industry association of, by, and for firearms
6 manufacturers, dealers, collectors, training professionals, shooting ranges,
7 and non-industry affiliates.
- 8 3. Our purpose is advancing the interests of our members and the general
9 public through strategic litigation, legislative efforts, and education.
- 10 4. Cal-FFL expends financial and other resources in both litigation and non-
11 litigation projects to protect the interests of their members and the public-at-
12 large. Cal-FFL brings this action on behalf of itself and its members.
- 13 5. The genesis of our association, and a significant part of our continuing
14 operational philosophy, is defined by our efforts to counteract the efforts of
15 local governments and various other organizations who seek to chill and
16 otherwise obstruct the “right to keep and bear arms” of law-abiding gun
17 owners and the merchants who serve them.
- 18 6. While the firearms industry is heavily regulated by both federal and state
19 laws, local (city and county) governments represent a significant threat to the
20 rights of our members through their unconstitutional, often pre-textual, use
21 of public safety legislation and discriminatory land use regulations.
- 22 7. The Firearm Dealers our organization represents have no objection to
23 meeting the usual zoning requirements and land use regulations for
24 properties that facilitate other constitutional rights like book stores and
25 churches (e.g., addressing traffic congestion, adequate sanitation, sufficient
26 parking, and accommodations for wheel chair accessibility).
- 27 8. Nor would our members object to firearm-specific regulations like: building
28 security (both physical and electronic), Cal-OSHA and industry standard

1 rules for the storage of flammables, business hours consistent with the
2 surrounding business community, and maintenance of all state and federal
3 licenses to deal firearms.

4 9. However, the “500 foot rule” is not rationally related to any possible public
5 safety concerns a retail gun store might raise, especially when that gun store
6 is otherwise in compliance with all federal, state and local laws relating to
7 firearm sales. The “500 foot rule” appears to be exclusively designed to limit
8 gun stores by red-lining them out of existence and thus establishing a
9 practice that is practically impossible to satisfy in metropolitan areas.

10 10. This pretext of land use regulations is not unlike the pattern and practice of
11 local governments using these same regulations to restrict retail
12 establishments selling adult-oriented material as described in a line of U.S.
13 Supreme Court Cases that began with: *Young v. American Mini Theatres,*
14 *Inc.*, 427 U.S. 50 (1976); and *Schad v. Borough of Mount Ephraim*, 452 U.S.
15 61 (1981), and continuing through with the cases: *City of Renton v. Playtime*
16 *Theatres, Inc.*, 475 U.S. 41 (1986); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560
17 (1991). These latter cases developed what has come to be known as the
18 *secondary effects doctrine*.

19 11. There is no justification for red-lining gun stores. Unlike adult bookstores,
20 adult live-entertainment establishments and liquor stores, the employees and
21 patrons of gun stores are – by definition and force of law – law-abiding
22 citizens. No one can work in a gun store, buy a gun (or ammunition), possess
23 a gun (or ammunition), or transport a gun (or ammunition) if they are:

- 24 a. A convicted felon,
- 25 b. A misdemeanor convicted of various enumerated crimes of violence,
26 including domestic violence,
- 27 c. A person subject to terms of probation that prohibit the possession of
28 weapons,



CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS FIREARMS PROHIBITING CATEGORIES



State and federal law make it unlawful for certain persons to own and/or possess firearms, including:

- Any person who is convicted of a felony, or any offense enumerated in Penal Code sections 29900 or 29905
- Any person who is ordered to not possess firearms as a condition of probation or other court order listed in Penal Code section 29815, subdivisions (a) and (b)
- Any person who is convicted of a misdemeanor listed in Penal Code section 29805 (refer to List of Prohibiting Misdemeanors)
- Any person who is adjudged a ward of the juvenile court because he or she committed an offense listed in Welfare and Institutions Code section 707(b), an offense described in Penal Code section 1203.073(b), or any offense enumerated in Penal Code section 29805
- Any person who is subject to a temporary restraining order or an injunction issued pursuant to Code of Civil Procedure sections 527.6 or 527.8, a protective order as defined in Family Code section 6218, a protective order issued pursuant to Penal Code sections 136.2 or 646.91, or a protective order issued pursuant to Welfare and Institutions Code section 15657.03
- Any person who is found by a court to be a danger to himself, herself, or others because of a mental illness
- Any person who is found by a court to be mentally incompetent to stand trial
- Any person who is found by a court to be not guilty by reason of insanity
- Any person who is adjudicated to be a mentally disordered sex offender
- Any person who is placed on a conservatorship because he or she is gravely disabled as a result of a mental disorder, or an impairment by chronic alcoholism
- Any person who communicates a threat to a licensed psychotherapist against a reasonably identifiable victim, that has been reported by the psychotherapist to law enforcement
- Any person who is taken into custody as a danger to self or others under Welfare and Institutions Code section 5150, assessed under Welfare and Institutions Code section 5151, and admitted to a mental health facility under Welfare and Institutions Code sections 5151, 5152, or certified under Welfare and Institutions Code sections 5250, 5260, and 5270.15
- Any person who is addicted to the use of narcotics (state and federal)
- Any person who is under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year (federal)
- Any person who has been discharged from the military under dishonorable conditions (federal)
- Any person who is an illegal alien (federal)
- Any person who has renounced his or her US Citizenship (federal)
- Any person who is a fugitive from justice (federal)



CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS FIREARMS PROHIBITING CATEGORIES

Firearm prohibitions for misdemeanor violations of the offenses listed below are generally for ten years from the date of conviction, but the duration of each prohibition may vary. All statutory references are to the California Penal Code, unless otherwise indicated.

- Threatening public officers, employees, and school officials (Pen. Code, § 71.)
- Threatening certain public officers, appointees, judges, staff or their families with the intent and apparent ability to carry out the threat (Pen. Code, § 76.)
- Intimidating witnesses or victims (Pen. Code, § 136.1.)
- Possessing a deadly weapon with the intent to intimidate a witness (Pen. Code, § 136.5.)
- Threatening witnesses, victims, or informants (Pen. Code, § 140.)
- Attempting to remove or take a firearm from the person or immediate presence of a public or peace officer (Pen. Code, § 148(d).)
- Unauthorized possession of a weapon in a courtroom, courthouse, or court building, or at a public meeting (Pen. Code, § 171(b).)
- Bringing into or possessing a loaded firearm within the state capitol, legislative offices, etc. (Pen. Code, § 171(c).)
- Taking into or possessing loaded firearms within the Governor's Mansion or residence of other constitutional officers (Pen. Code, 171(d).)
- Supplying, selling or giving possession of a firearm to a person for participation in criminal street gangs (Pen. Code, § 186.28.)
- Assault (Pen. Code, §§ 240, 241.)
- Battery (Pen. Code, §§ 242, 243.)
- Sexual Battery (Pen. Code, § 243.4)
- Assault with a stun gun or taser weapon (Pen. Code, § 244.5.)
- Assault with a deadly weapon other than a firearm, or with force likely to produce great bodily injury (Pen. Code, § 245.)
- Assault with a deadly weapon or instrument; by any means likely to produce great bodily injury or with a stun gun or taser on a school employee engaged in performance of duties (Pen. Code, § 245.5.)
- Discharging a firearm in a grossly negligent manner (Pen. Code, § 246.3.)
- Shooting at an unoccupied aircraft, motor vehicle, or uninhabited building or dwelling house (Pen. Code, § 247.)
- Inflicting corporal injury on a spouse or significant other (Pen. Code, § 273.5.)*
- Wilfully violating a domestic protective order (Pen. Code, § 273.6.)
- Drawing, exhibiting, or using deadly weapon other than a firearm (Pen. Code, § 417, subd. (a)(1) & (a)(2).)
- Inflicting serious bodily injury as a result of brandishing (Pen. Code, § 417.6.)
- Making threats to commit a crime which will result in death or great bodily injury to another person (Pen. Code, § 422.)
- Bringing into or possessing firearms upon or within public schools and grounds (Pen. Code, § 626.9.)
- Stalking (Pen. Code, § 646.9.)
- Armed criminal action (Pen. Code, § 25800.)
- Possessing a deadly weapon with intent to commit an assault (Pen. Code, § 17500.)
- Driver of any vehicle who knowingly permits another person to discharge a firearm from the vehicle or any person who willfully and maliciously discharges a firearm from a motor vehicle (Pen. Code, § 26100, subd. (b) or (d).)
- Criminal possession of a firearm (Pen. Code, § 25300.)
- Firearms dealer who sells, transfers or gives possession of any firearm to a minor or a handgun to a person under 21 (Pen. Code, § 27510.)
- Various violations involving sales and transfers of firearms (Pen. Code, § 27590, subd. (c).)
- Person or corporation who sells any concealable firearm to any minor (former Pen. Code, § 12100, subd. (a).)
- Unauthorized possession/transportation of a machine gun (Pen. Code, § 32625)
- Possession of ammunition designed to penetrate metal or armor (Pen. Code, § 30315.)
- Carrying a concealed or loaded firearm or other deadly weapon or wearing a peace officer uniform while picketing (Pen. Code, §§ 830.95, subd. (a), 17510, subd. (a).)
- Bringing firearm related contraband into juvenile hall (Welf. & Inst. Code, § 871.5.)
- Bringing firearm related contraband into a youth authority institution (Welf. & Inst. Code, § 1001.5.)
- Purchase, possession, or receipt of a firearm or deadly weapon by a person receiving in-patient treatment for a mental disorder, or by a person who has communicated to a licensed psychotherapist a serious threat of physical violence against an identifiable victim (Welf. & Inst. Code, § 8100.)
- Providing a firearm or deadly weapon to a person described in Welfare and Institutions Code sections 8100 or 8103 (Welf. & Inst. Code, § 8101.)
- Purchase, possession, or receipt of a firearm or deadly weapon by a person who has been adjudicated to be a mentally disordered sex offender or found to be mentally incompetent to stand trial, or not guilty by reason of insanity, and individuals placed under conservatorship (Welf. & Inst. Code, § 8103.)

The following misdemeanor convictions result in a lifetime prohibition:

- Assault with a firearm (Pen. Code, §§ 29800, subd. (a)(1), 23515, subd. (a).)
- Shooting at an inhabited or occupied dwelling house, building, vehicle, aircraft, housecar or camper (Pen. Code, §§ 246, 29800, subd. (a)(1), 17510, 23515, subd. (b).)
- Brandishing a firearm in presence of a peace officer (Pen. Code §§ 417, subd. (c), 23515, subd. (d), 29800, subd. (a)(1).)
- Two or more convictions of Penal Code section 417, subdivision (a)(2) (Pen. Code § 29800, subd. (a)(2).)

* A "misdemeanor crime of domestic violence" (18 U.S.C. §§ 921(a)(33)(A), 922(g)(9).)

Note: The Department of Justice provides this document for informational purposes only. This list may not be inclusive of all firearms prohibitions. For specific legal advice, please consult with an attorney licensed to practice law in California.