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12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14
15 FOR THE COUNTY OF FRESNO

16 DANNY VILLANUEVA, NIALL
17 STALLARD, RUBEN BARRIOS,
18 CHARLIE COX, MARK STROH,
19 ANTHONY MENDOZA, AND
20 CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED,

21 Plaintiffs,

22 vs.

23 XAVIER BECERRA, in his official
24 capacity as Attorney General for the State
25 of California; STEPHEN LINDLEY, in his
26 official capacity as Chief of the California
27 Department of Justice, Bureau of Firearms;
28 CALIFORNIA DEPARTMENT OF
JUSTICE; and DOES 1–10,

Defendants.

CASE NO.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

[Gov. Code, § 11340, et seq.]

29 Plaintiffs Danny Villanueva, Niall Stallard, Ruben Barrios, Charlie Cox, Mark Stroh,
30 Anthony Mendoza, and the California Rifle & Pistol Association, Incorporated (collectively,
31 “Plaintiffs”), by and through their counsel, bring this Complaint for Declaratory and Injunctive
32 Relief against the above-named Defendants, their employees, agents, and successors in office,
33 and in support thereof allege the following upon information and belief:

1 **INTRODUCTION**

2 1. Under California’s Roberti-Roos Assault Weapon Control Act (“AWCA”), any
3 firearm defined as an “assault weapon” is heavily restricted. Merely possessing one is a crime,
4 unless the person possessing it meets an exception to the general prohibition. The most
5 commonly available such exception is for “assault weapons” that have been properly registered.

6 2. The definition of “assault weapon” has changed various times since its first
7 iteration in 1989. And, with each change came a finite window for individuals already in
8 possession of a newly declared “assault weapon” to register it in order to continue to possess it.

9 3. Beginning in the year 2000, a necessary characteristic for semi-automatic,
10 centerfire firearms to qualify as an “assault weapon” in most cases was their “capacity to accept a
11 detachable magazine.” Between 2000 and 2016, it was common for firearm owners and
12 manufacturers to remove the “detachable magazine” feature from semi-automatic firearms to
13 lawfully keep them out of the “assault weapon” definition. This was typically achieved by
14 retrofitting the firearm with an aftermarket product, generally called a “magazine lock.”

15 4. The Legislature deemed this practice—some fifteen years after it began and tens
16 or hundreds of thousands of new firearms acquired with “magazine locks” later—as a “loophole”
17 to the AWCA’s restrictions. It responded in 2016 by adopting Assembly Bill 1135 (“AB 1135”)
18 and Senate Bill 880 (“SB 880”), which changed California’s definition of an “assault weapon” for
19 certain rifles and handguns (but not shotguns) so that equipping them with a “magazine lock”
20 alone would no longer suffice to remove such firearms from the “assault weapon” definition.
21 They achieved this by deeming any semiautomatic centerfire rifle or handgun not having a “fixed
22 magazine” to be an “assault weapon.”

23 5. Because the registration period for “assault weapons” has long been closed, AB
24 1135 and SB 880 opened a new registration window, allowing for the continued possession of the
25 countless newly affected rifles and pistols already owned by California residents, as long as they
26 are registered as “assault weapons” prior to July 1, 2018, and in accordance with regulations
27 established by Defendant California Department of Justice (“DOJ”).

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1 not have a “fixed” magazine. Without a “fixed” magazine, Plaintiff Villanueva’s rifle is now
2 classified as an “assault weapon” under the AWCA and must be registered as such in compliance
3 with Defendants’ illegal regulations. Because Defendants’ regulations were not adopted
4 according to the requirements of the APA or in conformance the limited exception afforded by
5 Penal Code section 30900(b)(5), Plaintiff Villanueva was deprived of his statutory right under the
6 APA to comment on them before their enforcement. Moreover, Plaintiff Villanueva will be
7 forced to comply with regulations that go beyond what is statutorily allowed or required. And he
8 will be subject to criminal prosecution should he violate or otherwise fail to comply with
9 Defendants’ illegal regulations.

10 12. Plaintiff Niall Stallard is a resident of Fresno County, California and a citizen of
11 the United States. Plaintiff Stallard is not prohibited from firearm ownership under federal or
12 California law. Plaintiff Stallard lawfully owns a semi-automatic, centerfire rifle that does not
13 have a “fixed” magazine. Without a “fixed” magazine, Plaintiff Stallard’s rifle is now classified
14 as an “assault weapon” under the AWCA and must be registered as such in compliance with
15 Defendants’ illegal regulations. Plaintiff Stallard also owns a semi-automatic shotgun that does
16 not have a “fixed” magazine. Plaintiff Stallard’s shotgun is not considered an “assault weapon”
17 under the AWCA, but is considered an “assault weapon” according to Defendants’ illegal
18 regulations which unlawfully expand the definition of an “assault weapon” to include her
19 shotgun. Because Defendants’ regulations were not adopted according to the requirements of the
20 APA or in conformance the limited exception afforded by Penal Code section 30900(b)(5),
21 Plaintiff Stallard was deprived of her statutory right under the APA to comment on them before
22 their enforcement. Moreover, Plaintiff Stallard will be forced to comply with regulations that go
23 beyond what is statutorily allowed or required. And she will be subject to criminal prosecution
24 should she violate or otherwise fail to comply with Defendants’ illegal regulations.

25 13. Plaintiff Ruben Barrios is a resident of Fresno County, California, and a citizen of
26 the United States. Plaintiff Barrios is not prohibited from firearm ownership under federal or
27 California law. Plaintiff Barrios lawfully owns a semi-automatic, centerfire rifle that does not
28 have a “fixed” magazine. Plaintiff Barrios did not acquire this rifle from a manufacturer but

1 lawfully built it. Although not required to do so under either federal or state law, Plaintiff Barrios
2 voluntarily inscribed a serial number onto his rifle. Without a “fixed” magazine, Plaintiff Barrios’
3 rifle is now classified as an “assault weapon” under the AWCA and must be registered as such in
4 compliance with Defendants’ illegal regulations. As a condition of registration, Defendants’
5 illegal regulations will require Plaintiff Barrios to first apply to DOJ for a unique serial number
6 that must be inscribed onto the firearm, and is otherwise subject to all of Defendant’s illegal
7 regulations. Because Defendants’ regulations were not adopted according to the requirements of
8 the APA or in conformance the limited exception afforded by Penal Code section 30900(b)(5),
9 Plaintiff Barrios was deprived of his statutory right under the APA to comment on them before
10 their enforcement. Moreover, Plaintiff Barrios will be forced to comply with regulations that go
11 beyond what is statutorily allowed or required. And he will be subject to criminal prosecution
12 should he violate or otherwise fail to comply with Defendants’ illegal regulations.

13 14. Plaintiff Charlie Cox is a resident of Riverside County, California and a citizen of
14 the United States. Plaintiff Cox is not prohibited from firearm ownership under federal or
15 California law. Plaintiff Cox lawfully owns a semi-automatic, centerfire rifle that does not have a
16 “fixed” magazine. Without a “fixed” magazine, Plaintiff Cox’s rifle is now classified as an
17 “assault weapon” under the AWCA and must be registered as such in compliance with
18 Defendants’ illegal regulations. Because Defendants’ regulations were not adopted according to
19 the requirements of the APA or in conformance the limited exception afforded by Penal Code
20 section 30900(b)(5), Plaintiff Cox was deprived of his statutory right under the APA to comment
21 on them before their enforcement. Moreover, Plaintiff Cox will be forced to comply with
22 regulations that go beyond what is statutorily allowed or required. And he will be subject to
23 criminal prosecution should he violate or otherwise fail to comply with Defendants’ illegal
24 regulations.

25 15. Plaintiff Mark Stroh is a resident of Riverside County, California and a citizen of
26 the United States. Plaintiff Stroh is not prohibited from firearm ownership under federal or
27 California law. Plaintiff Stroh lawfully owns a semi-automatic, centerfire rifle that does not have
28 a “fixed” magazine. Without a “fixed” magazine, Plaintiff Stroh’s rifle is now classified as an

1 “assault weapon” under the AWCA and must be registered as such in compliance with
2 Defendants’ illegal regulations. Because Defendants’ regulations were not adopted according to
3 the requirements of the APA or in conformance the limited exception afforded by Penal Code
4 section 30900(b)(5), Plaintiff Stroh was deprived of his statutory right under the APA to
5 comment on them before their enforcement. Moreover, Plaintiff Stroh will be forced to comply
6 with regulations that go beyond what is statutorily allowed or required. And he will be subject to
7 criminal prosecution should he violate or otherwise fail to comply with Defendants’ illegal
8 regulations.

9 16. Plaintiff Anthony Mendoza is a resident of Alameda County, California, and a
10 citizen of the United States. Plaintiff Mendoza is not prohibited from firearm ownership under
11 federal or California law. Plaintiff Mendoza lawfully owns a semi-automatic, centerfire rifle that
12 does not have a “fixed” magazine. Without a “fixed” magazine, Plaintiff Mendoza’s rifle is now
13 classified as an “assault weapon” under the AWCA and must be registered as such in compliance
14 with Defendants’ illegal regulations. Plaintiff Mendoza also owns a semi-automatic shotgun that
15 does not have a “fixed” magazine. Plaintiff Mendoza’s shotgun is not considered an “assault
16 weapon” under the AWCA, but is considered an “assault weapon” according to Defendants’
17 illegal regulations which unlawfully expand the definition of an “assault weapon” to include his
18 shotgun. Because Defendants’ regulations were not adopted according to the requirements of the
19 APA or in conformance the limited exception afforded by Penal Code section 30900(b)(5),
20 Plaintiff Mendoza was deprived of his statutory right under the APA to comment on them before
21 their enforcement. Moreover, Plaintiff Mendoza will be forced to comply with regulations that go
22 beyond what is statutorily allowed or required. And he will be subject to criminal prosecution
23 should he violate or otherwise fail to comply with Defendants’ illegal regulations.

24 17. Plaintiff California Rifle & Pistol Association, Incorporated (“CRPA”) is a
25 nonprofit organization that works to preserve constitutional and statutory rights of gun
26 ownership, including the right to self-defense, right to hunt, and the right to keep and bear arms.
27 CRPA is dedicated to promoting the shooting sports by conducting state championship matches
28 for adults and young shooters, teaching firearms safety, and supporting state teams that attend the

1 national championships each year. CRPA represents the interests of the tens of thousands of its
2 members who reside in the State of California, including those in Fresno County, who are too
3 numerous to conveniently bring this action individually and whose interests include their desire
4 to register firearms potentially impacted by the new “assault weapon” definition and subject to
5 Defendants’ illegal regulations challenged herein. Because Defendants’ illegal regulations were
6 not adopted according to the requirements of the APA or in conformance the limited exception
7 afforded by Penal Code section 30900(b)(5), CRPA members have been deprived of their
8 statutory right under the APA to comment on them before their enforcement. Moreover, CRPA
9 members will be forced to comply with regulations that go beyond what is statutorily allowed or
10 required. And they will be subject to criminal prosecution should they violate or otherwise fail to
11 comply with Defendants’ illegal regulations.

12 **II. DEFENDANTS**

13 18. Defendant Xavier Becerra is the Attorney General of California, the state’s chief
14 law enforcement officer. Pursuant to Article V, Section 13, of the California Constitution and
15 Government Code sections 12524, 12550, and 12560, Defendant Becerra has supervisory powers
16 over the district attorneys, sheriffs, and other law enforcement officials to ensure the “uniform
17 and adequate” enforcement of the laws of the state of California. He is also charged with the duty
18 to instruct local prosecutors and law enforcement agencies regarding the meaning of the laws of
19 the state, including the implementation of the new “assault weapon” regulations. Defendant
20 Becerra is sued in his official capacity.

21 19. Defendant Stephen Lindley is the Director of the DOJ Bureau of Firearms. As
22 such, he is authorized to execute, interpret, and enforce the laws of the State of California
23 pertaining to, among other things, “assault weapons” and the registration of such firearms,
24 including the regulations, practices, and policies at issue in this action. Defendant Lindley is sued
25 in his official capacity.

26 20. Defendant California Department of Justice (“DOJ”) is a lawfully constituted
27 executive agency charged by Senate Bill 683 (Stats. 2013, ch. 761), to promulgate and implement
28 regulations for the registration of newly classified “assault weapons” pursuant to SB 880 and AB

1 1135. It is the sole California agency responsible for doing so.

2 21. Plaintiffs do not know the true names and capacities of Defendants Doe 1 through
3 Doe 10, inclusive, who are therefore sued by such fictitious names. Plaintiffs allege on
4 information and belief that each person or entity designated as Doe 1 through Doe 10, is
5 responsible in some manner for the adoption or enforcement of the unlawful regulations as
6 alleged in this complaint. Plaintiffs pray for leave to amend this Complaint and Petition to show
7 the true names, capacities, and/or liabilities of Doe Defendants 1 through 10 if and when they are
8 determined.

9 **JURISDICTION AND VENUE**

10 22. This Court has jurisdiction under Article VI, Section 10, of the California
11 Constitution and California Code of Civil Procedure section 410.10.

12 23. Venue in this Court is proper because this is an action against public officers of the
13 State of California, in their official capacities, for acts performed as part of their public duties that
14 have caused and will continue to cause legal injuries and deprivation of rights to persons,
15 including Plaintiffs, in Fresno County. (Code Civ. Proc., §§ 393, subd. (b), & 395, subd. (a).)

16 24. Venue in this Court is also proper because this is an action against the Attorney
17 General, a public officer of the state of California, and because this Attorney General has an
18 office in Fresno, California. (Code Civ. Proc., § 401, subd. (1).)

19 **AUTHENTICITY OF EXHIBITS**

20 25. All exhibits accompanying this Complaint are true and correct copies of the
21 original documents. The exhibits are incorporated herein by reference as though fully set forth in
22 this Complaint.

23 **GENERAL ALLEGATIONS**

24 **I. LAWS GOVERNING ADOPTION OF REGULATIONS**

25 26. The APA was enacted as a result of “unprecedented growth” in the number of
26 administrative regulations in recent years, many of which are frequently “unclear and
27 unnecessarily complex, even when the complicated and technical nature of the subject matter is
28 taken into account.” (Gov. Code, § 11340.) To combat the substantial time and public funds

1 wasted in adopting unnecessary regulations, the Legislature created the Office of the
2 Administrative Law (“OAL”) to oversee the rulemaking process in California. (Gov. Code, §§
3 11340–11340.1.)

4 27. On information and belief, Plaintiffs allege that OAL did not conduct a review of
5 Defendants’ illegal regulations to determine their compliance with the substantive and
6 procedural standards of the APA. Rather, OAL merely granted Defendants’ request to “file and
7 print” the regulations pro forma. As a result, there was no “approval” of Defendants’ illegal
8 regulations by OAL.

9 28. The APA requires that for each regulation to be effective, it must be within the
10 scope of authority conferred to a state agency and in accordance with standards prescribed by
11 other provisions of law. (Gov. Code, § 11342.1.) In order to have appropriate “authority,” a
12 regulation must be supported by a provision of law that permits or obligates the agency to adopt,
13 amend, or repeal the regulation. (Gov. Code, § 11349, subd. (b).)

14 29. If a rule constitutes a “regulation,” and there is no statutory provision expressly
15 excusing the agency from complying with the APA, the rule is invalid and cannot be enforced if
16 it is enacted without satisfying the APA’s requirements. (See Gov. Code, § 11346; and
17 *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 576.)

18 30. Even if an agency complies with the APA’s requisite rulemaking process, courts
19 can conduct an independent review of whether a regulation is consistent with the statute
20 authorizing its adoption. (*Watkins v. Cty. of Alameda* (2009) 177 Cal. App. 4th 320, 335; and
21 Gov. Code, §§ 11342.1–11342.2.) If a court finds a regulation is not “within the scope of the
22 authority conferred,” the regulation is void. (*Ibid.*) And, a regulation that impairs the scope of a
23 statute must be declared void. (*Bearden v. U.S. Borax, Inc.* (2006) 138 Cal.App.4th 429, 436
24 internal quotation marks and citations omitted.)

25 31. “Any interested person may obtain a judicial declaration as to the validity of any
26 regulation . . . by bringing an action for declaratory relief in the superior court in accordance
27 with the Code of Civil Procedure.” (Gov. Code, § 11350(a).)

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1 **II. THE “ASSAULT WEAPON CONTROL ACT”**

2 32. The AWCA generally makes it illegal to manufacture or cause to be
3 manufactured, distribute, transport, or import into the state for sale, keep for sale, offer or expose
4 for sale, or give, or lend an “assault weapon.”¹ A violation is punishable as a felony by
5 imprisonment for four, six, or eight years.² The AWCA also generally prohibits the possession of
6 any “assault weapon,” which is punishable as either a misdemeanor or felony.³

7 33. The class of firearms that California defines as “assault weapons” has changed
8 (and expanded) multiple times since the AWCA was first enacted in 1989. As originally written,
9 the AWCA expressly declared over 55 firearms, listed by make and model, to be “assault
10 weapons” under Penal Code section 30520 (former Penal Code section 12276.5).⁴

11 **A. Category 1 “Assault Weapons”**

12 34. In 1991, the Legislature amended the AWCA to add several new firearms to the
13 list of restricted “assault weapons.”⁵ Following those amendments, this list of firearms became
14 known as “Category 1 assault weapons.”

15 35. “Category 1 assault weapons” already in the possession of individuals prior to
16 their classification as “assault weapons” were required to be registered with DOJ on or before
17 March 31, 1992, following an extension resulting from the 1991 amendment.⁶ It is no longer
18 possible to register a “Category 1 assault weapon,” and individuals who still possess such
19 firearms can only legally do so if the firearms were properly registered.

20 36. In order to register a “Category 1 assault weapon,” individuals had to obtain a

21 _____
22 ¹ Pen. Code, § 30600(a).

23 ² *Ibid.*

24 ³ Pen. Code, § 30605(a).

25 ⁴ In 2010, the legislature reorganized, without substantive change, all the Penal Code
26 sections relating to “deadly weapons,” including those relating to “assault weapons.” See Sen. B.
1080, 2009-2010 Reg. Sess. (Cal. 2010).

27 ⁵ Pen. Code, § 30510 (former Pen. Code, § 12276 (1992)).

28 ⁶ Pen. Code, § 30960(a) (former Pen. Code, § 12285(f) (1992)).

1 registration form from a local police or sheriff's office.⁷ The form was completed under penalty
2 of perjury, and required the applicant to provide a thumbprint, pay a \$20 fee, and list specific
3 information about their firearm, including the serial number, make, model, and caliber.⁸

4 **B. Category 2 "Assault Weapons"**

5 37. In 2000, the California Supreme Court explained the legal requirements DOJ had
6 to meet to add a firearm to the list of "assault weapons."⁹ Immediately following this decision,
7 DOJ added more than 60 firearms to that list.¹⁰ These firearms became known as "Category 2
8 assault weapons." But in 2006, the legislature repealed DOJ's authority to add firearms to the list
9 of "assault weapons," and as a result the Category 1 and 2 list of is now static.¹¹

10 38. Category 2 firearms already in the possession of individuals prior to their
11 classification as "assault weapons" were required to be registered with DOJ on or before January
12 23, 2001. It is no longer possible to register a Category 2 "assault weapon," and individuals who
13 still possess such firearms can only legally do so if the firearms were properly registered.

14 39. The process for registering a firearm classified as a Category 2 "assault weapon"
15 was generally identical to that of the registration requirements for Category 1 "assault weapons,"
16 requiring the registrant to provide their personal information along with a thumbprint, pay a \$20
17 fee, and list their firearms serial number, make, model, caliber, and acquisition information (if
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21 ⁷ See *Registering of 300,000 Assault Guns Begins: Weapons: Tough First-In-Nation Law*
22 *Controls the Manufacture, Sale, Possession and Ownership of High-Powered Military-Style*
23 *Guns*, Los Angeles Times (Jan. 4, 1990)
<http://articles.latimes.com/1990-01-04/news/mn-315_1_assault-gun>.

24 ⁸ *Ibid.*

25 ⁹ *Kasler v. Lockyer* (2000) 23 Cal.4th 472.

26 ¹⁰ The list of firearms added by DOJ can be found in Title 11 of the California Code of
27 Regulations, section 5499.

28 ¹¹ Assembly Bill No. 2728 (2006) (repealing the Attorney General's authority to declare a
firearm an "assault weapon.")

1 known).¹²

2 **C. Category 3 “Assault Weapons”**

3 40. In 1999, the legislature again amended the AWCA to further expand the
4 definition of an “assault weapon.” Unlike Category 1 and 2 “assault weapons,” which are
5 expressly listed by make and model, the legislature created a new definition for the term “assault
6 weapon” by identifying firearms based on their features and configuration.¹³ Firearms meeting
7 this definition became known as “Category 3 assault weapons.” “Category 3 assault weapons”
8 include:

- 9 (1) A semiautomatic, centerfire rifle *that has the capacity to accept a*
10 *detachable magazine and any one of the following:*
11 (A) A pistol grip that protrudes conspicuously beneath the action of
12 the weapon.
13 (B) A thumbhole stock.
14 (C) A folding or telescoping stock.
15 (D) A grenade launcher or flare launcher.
16 (E) A flash suppressor.
17 (F) A forward pistol grip.
- 18 (2) A semiautomatic, centerfire rifle that has a fixed magazine with the
19 capacity to accept more than 10 rounds.
- 20 (3) A semiautomatic, centerfire rifle that has an overall length of less than 30
21 inches.
- 22 (4) A semiautomatic pistol that *has the capacity to accept a detachable*
23 *magazine and any one of the following:*
24 (A) A threaded barrel, capable of accepting a flash suppressor, forward
25 handgrip, or silencer.
26 (B) A second handgrip.
27 (C) A shroud that is attached to, or partially or completely encircles,
28 the barrel that allows the bearer to fire the weapon without burning
the bearer's hand, except a slide that encloses the barrel.
(D) The capacity to accept a detachable magazine at some location
outside of the pistol grip.
- (5) A semiautomatic pistol with a fixed magazine that has the capacity to
accept more than 10 rounds.
- (6) A semiautomatic shotgun that has both of the following:
(A) A folding or telescoping stock.
(B) A pistol grip that protrudes conspicuously beneath the action of

27 ¹² See former Cal. Code Regs., tit. 11, §§ 978.30–978.31 (renumbered to sections 5470 and
5471 in 2006).

28 ¹³ Pen. Code, § 30515 (former Pen. Code, § 12276.1).

1 the weapon, thumbhole stock, or vertical handgrip.

2 (7) A semiautomatic shotgun that has the ability to accept a detachable
3 magazine.

4 (8) Any shotgun with a revolving cylinder.¹⁴

5 41. Because Category 3 firearms were identified by their features and characteristics,
6 DOJ adopted regulations that defined a number of terms used in the identification of Category 3
7 “assault weapons,” stating that these definitions were “necessary to promote a clear
8 understanding” of the new laws.¹⁵ The regulations were submitted under California’s APA
9 rulemaking process, which includes “comprehensive public notice and comment requirements,”
10 and that “documents and information on which the rulemaking action is based are available for
11 review and inspection.”¹⁶

12 42. “Category 3 assault weapons” already in the possession of individuals prior to
13 their classification as “assault weapons” were required to be registered in compliance with these
14 regulations on or before December 31, 2000. It is no longer possible to register a Category 3
15 “assault weapon,” and individuals who still possess such firearms can only legally do so if they
16 were properly registered. The same registration application for Category 2 “assault weapons”
17 was used by individuals to register Category 3 “assault weapons.”¹⁷

18
19 ¹⁴ Pen. Code, § 30515(a) (2016), italics and bold added to subdivisions (a)(1) and (a)(4) to
20 highlight the only two sections that are modified by the recent change in California law and that
serve as the basis of the regulations at issue.

21 ¹⁵ See “Initial Statement of Reasons” for regulations for Senate Bill No. 23, available at
22 <<https://www.oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/isor.pdf>> (last visited June 22,
23 2017).

24 ¹⁶ *Regular Rulemaking Process*, Office of Administrative Law,
25 <https://oal.ca.gov/rulemaking_process/regular_rulemaking_process/> (last visited June 22,
2017).

26 ¹⁷ DOJ maintained a website for the purpose of registering Category 3 “assault weapons.”
27 That website, www.regagun.org (which is no longer functional) including a statement that
28 Category 2 “assault weapons” possessed prior to August 16, 2000 must be registered on or before
January 23, 2001.” But there was no registration form specific to such firearms. An archived
version of DOJ’s website can be found at

1 **D. Category 4 “Assault Weapons”**

2 43. Because “Category 3 assault weapons” must have “the capacity to accept a
3 detachable magazine,” owners of such firearms who preferred to keep safety and accuracy-
4 enhancing features like a pistol grip, thumbhole stock, flash suppressor, or adjustable stock
5 (which would otherwise be banned under the Category 3 definition) could avoid their firearm
6 being labeled an “assault weapon” by disabling its capacity to accept a detachable magazine. To
7 do so, they typically retrofitted their firearms with an aftermarket product commonly known as a
8 “magazine lock” or “bullet-button.”

9 44. Whereas the standard magazine release for a “detachable magazine” operates
10 with the push of a finger, the typical “magazine lock” replaces the one-piece magazine release
11 button with a two-piece assembly that cannot be operated with the push of a finger; rather, a tool
12 is needed to reach the button to release the magazine so it can be removed. The most common
13 “tool” used is the tip of a bullet, which was, prior to AB 1135 and SB 880, expressly considered
14 under Title 11, Section 5469(a) of the California Code of Regulations, to be a “tool.” Because a
15 tool was needed to release the magazine, and because California did not consider a magazine
16 “detachable” if a “tool” is required to remove it from a firearm, a firearm with a “magazine lock”
17 did not qualify as having “the capacity to accept a detachable magazine.” Therefore, prior to
18 2017, firearms with a “magazine lock” did not fall within the “Category 3 assault weapons”
19 definition, and could be equipped with safety—and accuracy—enhancing features like a pistol
20 grip, thumbhole stock, flash suppressor, or adjustable stock without being subject to the AWCA.

21 45. In 2016, the Legislature introduced AB 1135 and SB 880, which again changed
22 California’s definition of an “assault weapon,” but only as applied to rifles and pistols (not
23 shotguns). The purpose of these bills was to make equipping a rifle or pistol with a “magazine
24 lock” an insufficient alteration to take that firearm outside the definition of a “Category 3 assault
25 weapon.” Specifically, California’s new definition of an “assault weapon” includes:

- 26 (a) (1) A semiautomatic, centerfire rifle ***that does not have a fixed magazine but***
27 ***has any one of the following:***
28 (A) A pistol grip that protrudes conspicuously beneath the action of

<<https://web.archive.org/web/20010119105200/http://www.regagun.org:80/>>.

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- the weapon.
 - (B) A thumbhole stock.
 - (C) A folding or telescoping stock.
 - (D) A grenade launcher or flare launcher.
 - (E) A flash suppressor.
 - (F) A forward pistol grip.
- (2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.
 - (3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.
 - (4) A semiautomatic pistol ***that does not have a fixed magazine but has any one of the following:***
 - (A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
 - (B) A second handgrip.
 - (C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.
 - (D) The capacity to accept a detachable magazine at some location outside of the pistol grip.
 - (5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.
 - (6) A semiautomatic shotgun that has both of the following:
 - (A) A folding or telescoping stock.
 - (B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.
 - (7) A semiautomatic shotgun that has the ability to accept a detachable magazine.
 - (8) Any shotgun with a revolving cylinder.
- (b) ***For purposes of this section, "fixed magazine" means an ammunition feeding 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.***¹⁸

(Pen. Code, § 30515 [subdivisions (a)(1), (a)(4), (b) are emphasized to underscore the only changes made to the definition of “assault weapon” from 2016 to 2017. Aside from these changes, the Legislature made no other substantive changes to the definition of an “assault weapon” under California law].)

46. Firearms now classified as “assault weapons” under AB 1135 and SB 880 are being referred to as “Category 4 assault weapons.” Since January 1, 2017, the sale, transfer, or

¹⁸ Pen. Code, § 30515.

1 manufacturing of such firearms has been prohibited. Thus, it is no longer possible to acquire a
2 “Category 4 assault weapon.”

3 47. Individuals who currently possess a Category 4 “assault weapon” can only legally
4 do so if they lawfully acquired and possessed it before January 1, 2017. They must also register
5 such firearms by July 1, 2018, in accordance with regulations Defendant DOJ is required to
6 adopt. (Pen. Code, § 30900, subd. (b).) Following this date, it will be illegal to possess an
7 unregistered “Category 4 assault weapon,” even if it was otherwise lawfully acquired.

8 48. Because prior registration periods have long been closed, the Legislature also
9 enacted a new subdivision (b) for Penal Code section 30900, which creates a new registration
10 window for “Category 4 assault weapons” so that existing owners could lawfully continue to
11 possess them. This new subdivision states:

- 12 (1) Any person who, from January 1, 2001, to December 31, 2016, inclusive,
13 lawfully possessed an assault weapon that does not have a fixed
14 magazine, as defined in Section 30515, those weapons with an
15 ammunition feeding device that can be readily removed from the firearm
16 with the use of a tool, shall register the firearm before January 1, 2018,
17 but not before the effective date of the regulations adopted pursuant to
18 paragraph (5), with the department pursuant to those procedures that the
19 department may establish by regulation pursuant to paragraph (5).
- 20 (2) Registrations shall be submitted electronically via the Internet utilizing a
21 public-facing application made available by the department.
- 22 (3) The registration shall contain a description of the firearm that identifies it
23 uniquely, including all identification marks, the date the firearm was
24 acquired, the name and address of the individual from whom, or business
25 from which, the firearm was acquired, as well as the registrant's full name,
26 address, telephone number, date of birth, sex, height, weight, eye color,
27 hair color, and California driver's license number or California
28 identification card number.
- 29 (4) The department may charge a fee in an amount of up to fifteen dollars
30 (\$15) per person but not to exceed the reasonable processing costs of the
31 department. The fee shall be paid by debit or credit card at the time that
32 the electronic registration is submitted to the department. The fee shall be
33 deposited in the Dealers' Record of Sale Special Account to be used for
34 purposes of this section.
- 35 (5) The department shall adopt regulations *for the purpose of implementing*
36 *this subdivision*. These regulations are exempt from the Administrative
37 Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1
38 of Division 3 of Title 2 of the Government Code).

(Pen. Code, § 30900, subd. (b), italics and bold added.)

1 **E. DOJ’s “Bullet-Button Assault Weapon” Regulations**

2 49. On December 30, 2016, a Friday immediately preceding New Year’s Eve,
3 BOF—without notifying the public or known impacted parties—submitted proposed regulations
4 to OAL purporting to amend sections 5469 and 5473 of Title 11, Division 5 of the California
5 Code of Regulations (hereinafter, Title 11, Division 5 of the California Code of Regulations shall
6 be referred to as “11 CCR”) and to add sections 5470–5472, 5474–5474.2, and 5475–5478,
7 relating to “Bullet-Button Assault Weapons,” as BOF described them.

8 50. BOF requested that OAL “file and print” the regulations “ASAP” with an
9 effective date of January 1, 2017, asserting that such regulations were exempt from the APA’s
10 rulemaking process by way of Penal Code section 30900(b)(5).

11 51. On or about December 30, 2016, Plaintiffs’ counsel contacted BOF to request a
12 copy of the proposed regulations. BOF representatives informed Plaintiffs’ counsel that DOJ
13 would not release the text of the regulations to the public or Plaintiffs’ counsel.

14 52. Following BOF’s refusal to release the text of its proposed regulations, Plaintiffs’
15 counsel contacted OAL to request a copy. Shortly thereafter, OAL provided Plaintiffs’ counsel
16 with a copy of BOF’s proposed regulations.

17 53. Because BOF’s proposed regulations went far beyond what was necessary to
18 register a firearm as an “assault weapon,” Plaintiffs’ counsel submitted a formal request to the
19 OAL to reject BOF’s proposed regulations on January 9, 2017.¹⁹

20 54. On the same day, Plaintiffs’ counsel also submitted a letter to BOF demanding
21 that it withdraw the proposed regulations from OAL’s consideration.²⁰

22 55. Both letters explain that Penal Code section 30900(b)(5) provides DOJ a limited
23 exemption from the APA for regulations relating only to:

24
25 ¹⁹ A copy of this letter is available online at
26 <http://michellawyers.com/wp-content/uploads/2017/01/Letter-to-OAL-re-Bullet-Button-Assault-Weapons_1.9.17.pdf>.

27
28 ²⁰ A copy of this letter is available online at
<http://michellawyers.com/wp-content/uploads/2017/01/Letter-to-DOJ-re-Bullet-Button-Assault-Weapons_1.9.17.pdf>.

- (1) “[T]hose procedures” as stated in (b)(1) to register “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,” i.e., the newly classified “assault weapons”;
- (2) The electronic submission of the registration of an “assault weapon” as required under Penal Code section 30900, subdivision (b)(2);
- (3) The information for the description of the firearm to be contained in the registration as required (and limited) by Penal Code section 30900, subdivision (b)(3); and
- (4) The registration fee which cannot exceed the reasonable processing costs of the department for registration and how to pay it in compliance with Penal Code section 30900, subdivision (b)(4).

56. Any other regulation unrelated to the above registration requirements, has not been specifically exempted by the Legislature and must go through the typical rulemaking procedures mandated by the APA.

57. Shortly before a final decision was to be issued by the OAL, BOF formally withdrew its proposed regulations from consideration on February 13, 2017.

58. On May 15, 2017, three months after BOF withdrew its proposed regulations, it again submitted proposed regulations to OAL, as “file and print only.”²¹ And, once again, BOF refused to provide a copy of its regulations to the public for review, and Plaintiffs’ counsel was again forced to obtain a copy from the OAL.

59. BOF’s second set of proposed regulations remained almost completely unchanged from its original proposal in December 2016.

60. In addition to the second set of proposed regulations, DOJ included a cover letter purporting to respond to the letters submitted by Plaintiffs’ counsel to OAL and BOF opposing the first set of proposed regulations.²²

61. In response to this cover letter, Plaintiffs’ counsel submitted a comprehensive

²¹ A copy of DOJ’s regulations can be viewed online at <http://michellawyers.com/wp-content/uploads/2017/05/DOJ-Submission-of-Regulation-.pdf>.

²² A copy of this letter is can be viewed online at <http://michellawyers.com/wp-content/uploads/2017/08/AW-Reg-Cx-Cover-Letter.pdf>.

1 letter addressing all of the arguments raised by BOF, as well as highlighting in detail all of the
2 legal and practical issues with BOF’s second set of proposed regulations.²³

3 62. After receiving BOF’s cover letter and the comprehensive response letter from
4 Plaintiffs’ counsel, OAL officially denied BOF’s request to publish the regulations.²⁴ While the
5 denial mentioned that BOF submitted its proposed regulations pursuant to Government Code
6 section 11343.8, no specific reason or citation was given for the denial.

7 63. On or about July 21, 2017, BOF once again submitted proposed regulations to
8 OAL for the registration of newly-classified “assault weapons.” As with its prior proposals, BOF
9 once again submitted the regulations as “File and Print Only,” and refused to release a copy of
10 the text to the public. As a result, Plaintiffs’ counsel was once again forced to request a copy
11 from OAL, which it again provided.

12 64. As submitted, this third set of proposed regulations sought adoption of 11 CCR
13 sections 5470, 5471, 5472, 5473, 5474, 5474.1, 5474.2, 5475, 5476, 5477, and 5478. They also
14 sought the amendment of existing 11 CCR section 5469, and the repeal of 11 CCR section 5473.
15 (See Exhibit “A” attached hereto.)

16 65. The only substantive change made between this third set of proposed regulations
17 and BOF’s prior set—which was denied by OAL on June 26—was the date for the deadline to
18 register a newly classified “assault weapon,” which was changed to reflect the amendments
19 resulting from Governor Jerry Brown signing Assembly Bill No. 103 (“AB 103”) into law on
20 June 27, 2017, extending the registration period for newly classified “assault weapons” under SB
21 880 and AB 1135 from January 1, 2018 to July 1, 2018. (See Pen. Code, § 30900, subd. (b) (as
22 amended by AB 103).)

23 66. OAL was not required to make a decision on BOF’s regulations until August 30,
24 2017, but despite the third set of regulations being substantively identical to the prior withdrawn
25

26 ²³ A copy of this letter is available online at
27 <[http://michellawyers.com/wp-content/uploads/2017/06/FINAL-Opp-Ltr-to-DOJ-re-Bullet-Butto
n-AWs.pdf](http://michellawyers.com/wp-content/uploads/2017/06/FINAL-Opp-Ltr-to-DOJ-re-Bullet-Button-AWs.pdf)>.

28 ²⁴ A copy of OAL’s official denial is available online at
<<https://shared.nrapvf.org/sharedmedia/1509706/2017-0512-02fp-denial.pdf>>

1 or rejected sets, OAL officially approved BOF's proposed regulations for publication on August
2 2, 2017, denying Plaintiffs' counsel the opportunity to submit an opposition letter.

3 67. As a result of OAL's approval, BOF's regulations have now been published in
4 the California Code of Regulations and are currently being administered and enforced by DOJ.

5 **III. DOJ'S REGULATIONS VIOLATE THE APA**

6 68. DOJ's exemption from the APA under Penal Code section 30900(b)(5) is
7 expressly limited to implementing Penal Code section 30900(b). That provision solely concerns
8 the registration procedures for those firearms newly defined as "assault weapons" by AB 1135
9 and SB 880, as explained in paragraph 55 above. While several of the regulations DOJ adopted
10 were indeed exempt from the APA, DOJ improperly shoe-horned various other regulations under
11 the exemption that were not entitled to such exemption.

12 69. Each of those regulations exceeds the scope of that APA exemption and are thus
13 invalid because they go beyond merely implementing the registration scheme delineated in Penal
14 Code section 30900(b) for firearms newly-designated as "assault weapons" by AB 1135 and SB
15 880.

16 70. In addition, a number of these regulations unlawfully enlarge the scope of or are
17 inconsistent with other existing California statutes.

18 71. Because these regulations are not exempt from the requirements of the APA, and
19 otherwise fail to substantially comply with its requirements, Plaintiffs are entitled to an order
20 from this court declaring such regulations invalid under Government Code section 11350.

21 72. Penal Code section 30900(b) requires individuals who currently possess a firearm
22 now classified as an "assault weapon" following AB 1135 and SB 880 to register their firearm
23 with DOJ before July 1, 2018 according to its illegal regulations. Failure to do so can lead to a
24 potential felony conviction punishable as a fine of up to \$500 and imprisonment, leading to a
25 loss of constitutionally-protected rights, including a lifetime ban on the ownership or possession
26 of firearms. (Pen. Code, §§ 30600-30605.)

27 73. Further, harm from these regulations lies in the subversion of the democratic
28 values the APA was intended to serve. The notice, comment, and review procedures of the APA

1 were enacted to secure the public benefits of openness, accessibility, and accountability in the
2 formulation of rules that implement legislative enactments. Irreparable harm to these important
3 public benefits occurs whenever a state agency unlawfully adopts a regulation as DOJ has here.

4 74. Unless enjoined by order of this Court, Plaintiffs will continue to suffer great and
5 irreparable harm because the challenged regulations lack sufficient legislative authority or
6 expand or conflict with existing statutory law in violation of the APA.

7
8 **FIRST CAUSE OF ACTION**
FOR DECLARATORY AND INJUNCTIVE RELIEF

9 **Declaration re Validity of Cal. Code Regs., tit. 11, § 5469 —**
10 **Deletion of “Assault Weapon” Term Definitions**
(Gov. Code, § 11350)

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

12 75. Plaintiffs incorporate by reference the allegations in the above paragraphs as
13 though fully set forth herein.

14 76. 11 CCR section 5469 deletes existing regulations providing definitions for the
15 following “assault weapon” terms: “detachable magazine,” “flash suppressor,” “forward pistol
16 grip,” “pistol grip that protrude conspicuously beneath the action of the weapon,” and
17 “thumbhole stock.”

18 77. DOJ’s exemption from the APA does not extend to regulations defining “assault
19 weapon” terms. Rather, it is expressly limited to implementing the registration procedures for
20 those firearms newly defined as “assault weapons” under Penal Code section 30900(b), which
21 provision expressly points to another *preexisting* statute for the definition of those new “assault
22 weapons,” Penal Code section 30515.

23 78. In addition to not allowing the promulgation of new “assault weapon” terms
24 outside terms necessary to promulgate registration procedures, neither AB 1135 or SB 880
25 authorized DOJ to delete the preexisting definitions for these terms for the purpose of registering
26 the newly defined “assault weapons.” Foremost, neither AB 1135 or SB 880 addressed any of
27 these preexisting, longstanding terms (except for replacing “detachable magazine” with “fixed
28 magazine.”) And, following the enactment of Senate Bill 23 in 1999, DOJ adopted regulations

1 defining each of these terms after several public hearings and a 45-day public comment period
2 that resulted in DOJ making significant amendments to most of the originally proposed
3 regulations .²⁵ Without the public’s participation, the originally proposed definitions would have
4 been unworkable, lacked sufficient clarity, and been otherwise overly burdensome. 11 CCR
5 section 5469 thus deletes terms that have been developed in compliance with the APA and been
6 in place for over 17 years. Had the Legislature intended to allow DOJ to alter such definitions
7 without adhering to the APA, it would have been clear in affording DOJ the authority to do so.
8 The express limited scope of AB 1135 and SB 880 does not imbue the DOJ with the authority to
9 alter these preexisting definitions outside the procedures of the APA.

10 79. An actual controversy exists. Plaintiffs contend that Defendants violated the APA
11 because they lack authority to adopt such regulation and that Defendants intend to nevertheless
12 enforce it. Plaintiffs allege on information and belief that the Defendants and each of them
13 contend the regulations are not subject to the APA.

14 80. A judicial declaration of the legality of Defendants’ conduct and whether a
15 regulation deleting existing regulations defining “assault weapon” terms violates the APA, is
16 necessary and appropriate at this time, as Defendants are currently enforcing such a regulation.

17 81. Defendants’ unlawful conduct has caused, and, unless enjoined by this Court, will
18 continue to cause irreparable injury to Plaintiffs, their members, and supporters. Plaintiffs, their
19 supporters, and members, as owners of firearms affected or potentially affected by DOJ’s
20 regulations, have been specifically harmed because Defendants’ unlawful conduct has denied
21 them their statutory right to be heard and to provide input regarding regulations governing a
22 program that significantly affects both their property and liberty interests.

23 82. The public in general, and Plaintiffs specifically, have an interest in preventing
24 Defendants from enforcing the unlawful regulations changing the applicable definitions of
25 “assault weapon” terms.

26
27 ²⁵ *Department of Justice Regulations for Assault Weapons and Large Capacity*
28 *Magazines: Final Statement of Reasons*, California Department of Justice,
<<https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/fsor.pdf>> (last visited June 22, 2017);
see also Cal. Code Regs., tit. 11, § 5469.

1 enforce it. Plaintiffs allege on information and belief that Defendants contend the regulation does
2 not expand the scope of the AWCA and is not subject to the APA.

3 90. By expanding the definition of an “assault weapon” to apply to these shotguns,
4 Defendants have and will continue to cause Plaintiffs Stallard, Mendoza, and other similarly-
5 situated individuals, including members of Plaintiff CRPA, irreparable harm by subjecting them
6 to the restrictions of the AWCA and the serious potential penalties for violating it when they
7 should not be.

8 91. A judicial declaration of the legality of Defendants’ conduct and whether
9 adopting a regulation that includes shotguns without a “fixed magazine” in the definition of
10 “assault weapon” violates the APA, is necessary and appropriate at this time, as Defendants are
11 currently enforcing 11 CCR section 5470(d).

12 92. Unless 11 CCR section 5470(d) is enjoined by order of this Court, Plaintiffs will
13 continue to suffer this great and irreparable harm.

14
15 **THIRD CAUSE OF ACTION**
FOR DECLARATORY AND INJUNCTIVE RELIEF

16 **Declaration re Validity of Cal. Code Regs., tit. 11, § 5471 —**
17 **New “Assault Weapon” Term Definitions**
(Gov. Code, § 11350)

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

19 93. Plaintiffs incorporate by reference the allegations in the above paragraphs as
20 though fully set forth herein.

21 94. 11 CCR section 5471 creates new definitions for forty-four “assault weapon”
22 terms.

23 95. As explained above in the First Cause of Action, DOJ’s exemption from the APA
24 does not extend to regulations defining “assault weapon” terms. Rather, it is expressly limited to
25 implementing the registration procedures for those firearms newly defined as “assault weapons”
26 under Penal Code section 30900(b), which provision expressly points to another statute for the
27 definition of those new “assault weapons,” Penal Code section 30515.

28 ///

1 96. Forty of 11 CCR section 5471’s forty-four definitions apply to terms that have
2 nothing to do with the firearm characteristics affected by AB 1135 or SB 880 (*i.e.*, “fixed”
3 magazines). In fact, some of the terms 11 CCR section 5471 creates definitions for have nothing
4 to do with defining an “assault weapon” at all, e.g., the new definition of “barrel length”
5 promulgated in subdivision (d). And most of these forty terms have existed since 2000, either
6 without a definition or were previously defined in regulations that were adopted in compliance
7 with the APA, as explained in the First Cause of Action above. Section 5471 alters these long-
8 standing “assault weapon” term definitions and replaces them with newly revised definitions that
9 were adopted without any input from the public whatsoever. What’s more, countless firearms
10 were already acquired, registered, or prohibited years ago based on those terms as previously
11 defined by statute or regulation. This means that firearms lawfully possessed pre-2017 could be
12 classified as “assault weapons” not by the Legislature’s adoption of AB 1135 and SB 880, but by
13 DOJ’s unilateral redefinition of terms, thereby retroactively making them illegal. DOJ was not
14 authorized to change these definitions at all by AB 1135 and SB 880, much less on a “file and
15 print” basis as they have done here.

16 97. Even assuming DOJ’s APA exemption does extend to its adopting regulations
17 defining “assault weapon” terms generally, DOJ is still prohibited from adopting definitions that
18 expand or curtail the scope of the AWCA.

19 98. Yet, 11 CCR section 5471(a) would improperly re-classify certain shotguns as
20 “assault weapons” in a manner that expands Penal Code section 30515, for the same reasons
21 explained above in the Second Cause of Action.

22 99. 11 CCR section 5471 is not a mere restatement of statutory law. It creates new
23 substantive definitions of critical terms defining “assault weapons.” In some cases, it changes
24 longstanding definitions for terms that were adopted over 17 years ago in accordance with the
25 APA. It also improperly expands the scope of the definition of “assault weapon” to include
26 firearms that are not “assault weapons” under the AWCA.

27 100. Because there is no express exemption from the APA in the California Code for
28 promulgating regulations regarding the definition of “assault weapon” terms, any regulation

1 defining or redefining “assault weapon” terms is thus subject to the procedural requirements set
2 forth in the APA. Because Defendant DOJ has adopted such definitions without satisfying the
3 APA’s requirements, they are void.

4 101. And, by expanding the definition of an “assault weapon” to apply to certain
5 shotguns, Defendants have and will continue to cause Plaintiffs Stallard, Mendoza, and other
6 similarly-situated individuals, including members of Plaintiff CRPA, irreparable harm by
7 subjecting them to the restrictions of the AWCA and the serious potential penalties for violating
8 it when they should not be.

9 102. An actual controversy exists. Plaintiffs contend that Defendants violated the APA
10 because they lack authority to adopt such regulations and that Defendants intend to nevertheless
11 enforce them. Plaintiffs allege on information and belief that the Defendants contend the
12 regulations are not subject to the APA.

13 103. A judicial declaration of the legality of Defendants’ conduct and whether the
14 regulation defining or redefining “assault weapon” terms violates the APA, is necessary and
15 appropriate at this time, as Defendants are currently enforcing the regulations.

16 104. Defendants’ unlawful conduct has caused and, unless enjoined by this Court, will
17 continue to cause irreparable injury to Plaintiffs, their members, and supporters. Plaintiffs, their
18 supporters, and members, as owners of firearms affected or potentially affected by DOJ’s
19 regulations, have been specifically harmed because Defendants’ unlawful conduct has denied
20 them their statutory right to be heard and to provide input regarding regulations governing a
21 program that significantly affects both their property and liberty interests.

22 105. The public in general, and Plaintiffs specifically, have an interest in preventing
23 Defendants from enforcing the unlawful regulations changing the applicable definitions of
24 “assault weapon” terms.

25 106. Unless 11 CCR section 5471 is enjoined by order of this Court, Plaintiffs will
26 continue to suffer great and irreparable harm by being subjected to and forced to comply with
27 these illegal regulations.

28 ///

1 **FOURTH CAUSE OF ACTION**
2 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

3 **Declaration re Validity of Cal. Code Regs., tit. 11, §§ 5472, subs. (f)–(g), 5474.2 —**
4 **Restrictions on Registrations**
5 **(Gov. Code, § 11350)**

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

7 107. Plaintiffs incorporate by reference the allegations in the above paragraphs as
8 though fully set forth herein.

9 108. 11 CCR section 5472 includes provisions limiting which firearms DOJ will accept
10 registrations for. While this regulation does properly clarify that firearms previously registered
11 as “assault weapons” do not need to be re-registered, its subdivisions (f) and (g) illegally prohibit
12 the registration of certain home-built firearms (or as defined by DOJ, a “Firearm Manufactured
13 By Unlicensed Subject,” or “FMBUS”) or firearms that do not have specified serial numbers.

14 109. 11 CCR section 5472(f) states that DOJ “will not register as an assault weapon a
15 firearm manufactured by a federally-licensed manufacturer if the firearm does not have a serial
16 number applied pursuant to federal law.” And 11 CCR section 5472(g) states that DOJ “will not
17 register as an assault weapon a FMBUS if the firearm does not have a serial number assigned by
18 the Department and applied by the owner or agent pursuant to section 5474.2.”

19 110. 11 CCR section 5472.2 requires owners of a FMBUS to first “seek a Department
20 issued serial number . . . prior to initiating the assault weapon registration process,” and to
21 engrave, cast, stamp, or otherwise conspicuously place the serial number on the FMBUS prior to
22 attempting to register the firearm as an “assault weapon.”

23 111. Neither California or federal law, however, require individuals who own a
24 FMBUS to apply for—let alone obtain and affix—a DOJ-approved serial number on such
25 firearms. In fact, California’s recently enacted provisions under AB 857 require individuals who
26 currently possess a firearm that does not have a DOJ-approved serial number to apply for one
27 and engrave that serial number on their firearm no later than January 1, 2019, well after the
28 deadline to register a firearm as an “assault weapon” ends on July 1, 2018. (Pen. Code, § 29180,
subd. (c).) As a result, 11 CCR section 5472(f) and (g), and 11 CCR section 5472.2, unlawfully

1 expand the scope of AB 857 by mandating the deadline to apply a serial number to a “FMBUS”
2 a year earlier than statutorily required.

3 112. In contrast to AB 857 and other areas of California law, 11 CCR section 5474.2
4 also requires “certain additional information” (i.e., information in addition to the serial number)
5 to be stamped on the firearm.²⁶ AB 857, however, solely requires the engraving, stamping, or
6 placement of the serial number. California’s legislature knowingly chose *not* to require
7 additional information beyond the serial number.

8 113. Individuals who have voluntarily registered a FMBUS using a personalized serial
9 number will have to re-apply and re-engrave their serial number pursuant to 5474.2’s
10 specifications. DOJ has knowingly accepted and processed such registrations without issue.

11 114. Also, the regulation specifies that a federally licensed firearm manufacturer
12 (commonly referred to as an “07” licensee) is required to engrave the firearm. This is incorrect.
13 A federally-licensed gunsmith or dealer (commonly referred to as an “01”) may do engraving.²⁷
14 And current California law requires anyone doing this to have a “Dangerous Weapon” Permit
15 (“DWP”) because the firearms in question are “assault weapons.” (See, e.g., Pen. Code, § 30645
16 [exception to “assault weapon” restrictions for “entities and persons who have been issued”
17 dangerous weapon permits].) Without a DWP, the firearms could not be taken to or left with a
18 firearm manufacturer/dealer/gunsmith without violating California laws restricting transfer and
19 possession of an “assault weapon.”

20 115. 11 C.C.R. section 5472(f) and (g), and 11 CCR section 5472.2(a)(3)(B) exceed
21 the statutory requirements for marking firearms lawfully made by Californians and are thus void.

22 116. These regulations are not mere restatements of statutory law. They create
23 requirements for markings on a firearm before the firearms can be registered that no statute
24 requires, including, specifically, AB 1135 and SB 880 under which DOJ purportedly
25 promulgated these new definitions.

26
27 ²⁶ Failure to abide by these marking requirements will cause DOJ to deny the registration
28 of the “assault weapon.” (Cal. Code Regs., tit. 11 § 5474.2(a)(4)).

²⁷ See ATF Rul. 2009–1

1 117. Each of these regulations exceeds the scope of DOJ’s APA exemption and are
2 thus invalid because they go beyond merely implementing the registration scheme delineated in
3 Penal Code section 30900(b) for firearms newly-designated as “assault weapons” by AB 1135
4 and SB 880.

5 118. By mandating as a condition of registration that certain home-built firearms first
6 have inscribed a DOJ-approved serial number, Defendants have and will continue to cause
7 Plaintiff Barrios and other similarly-situated individuals irreparable harm because they will be
8 required to deface their lawfully acquired property, and in doing so face potential penalties for
9 violating federal law. And Defendants have and will continue to cause CRPA members who
10 have previously voluntarily registered their firearms using a personally inscribed serial number
11 irreparable harm because they will be required to re-apply for a serial number despite Defendants
12 already accepting their personally inscribed serial number for the purposes of voluntary
13 registration.

14 119. An actual controversy exists. Plaintiffs contend that Defendants violated the APA
15 because they lack authority to adopt such regulations and that Defendants intend to nevertheless
16 enforce them. Plaintiffs allege on information and belief that the Defendants and each of them
17 contend the regulations are not subject to the APA.

18 120. A judicial declaration of the legality of Defendants’ conduct and whether the
19 regulations restricting what firearms can be registered as an “assault weapon” violates the APA,
20 is necessary and appropriate at this time, as Defendants are currently enforcing the regulations.

21 121. Defendants’ unlawful conduct has caused and, unless enjoined by this Court, will
22 continue to cause irreparable injury to Plaintiffs, their members, and supporters. Plaintiffs, their
23 supporters, and members, as owners of firearms affected or potentially affected by DOJ’s
24 regulations, have been specifically harmed because Defendants’ unlawful conduct has denied
25 them their statutory right to be heard and to provide input regarding regulations governing a
26 program that significantly affects both their property and liberty interests.

27 ///

28 ///

1 122. The public in general, and Plaintiffs specifically, have an interest in preventing
2 Defendants from enforcing the unlawful regulations restricting what firearms can be registered
3 as an “assault weapon,” as it undermines the democratic values the APA was designed to serve.

4 123. Unless 11 CCR sections 5472 (f)–(g) and 5474.2 are enjoined by order of this
5 Court, Plaintiffs will continue to suffer great and irreparable harm by being subjected to and
6 forced to comply with these illegal regulations.

7 **FIFTH CAUSE OF ACTION**
8 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

9 **Declaration re Validity of Cal. Code Regs., tit. 11, §§ 5474, subs. (a) &(c); and**
10 **5478, subd. (a)(2) —**
11 **Required Registration Information**
12 **(Gov. Code, § 11350)**

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

14 124. Plaintiffs incorporate by reference the allegations in the above paragraphs as
15 though fully set forth herein.

16 125. The information required by DOJ for “assault weapon” registration, as stated in
17 11 CCR section 5474(a), is not called for by statute.

18 126. The Penal Code is specific as to exactly what personal information is required for
19 registration: “registrant’s full name, address, telephone number, date of birth, sex, height,
20 weight, eye color, hair color, and California driver’s license number or California identification
21 card number.”²⁸

22 127. Subdivision (a) of 11 CCR section 5474 additionally requires an applicant to
23 provide *military ID number, U.S. citizenship status, place of birth, country of citizenship, and*
24 *alien registration number.*

25 128. The Penal Code makes no mention of all the extra information required by 11
26 CCR section 5474, subdivision (a). The California Legislature was rather specific as to what
27 personal information is required for the registration of an “assault weapon” (and, by implication,
28 what information is not required), and DOJ seeks to expand those requirements. Thus, 11 CCR
section 5474(a) improperly enlarges the requirements of 30900(b)(3).

²⁸ Pen. Code, § 30900, subd. (b)(3).

1 129. 11 CCR section 5477(c) makes a prerequisite to “assault weapon” registration
2 access to fairly expensive equipment, by requiring “clear digital photographs” of any firearm
3 sought to be registered as an “assault weapon” to be included in the registration application. So it
4 would require an individual who wants to register her firearm as an “assault weapon” to
5 purchase, borrow, or find a digital camera capable of taking photos of the firearm that DOJ may
6 find acceptable and to send the photos to DOJ.

7 130. No such requirement to own and/or operate cameras exists under the Penal Code
8 for *any* type of firearm ownership or registration, and especially not for “assault weapon”
9 registration. The California legislature did not intend to have the ownership and operation of
10 digital devices be a barrier to firearm registration and ownership.

11 131. Such an expansion of a statute is not permissible via regulation. 11 CCR section
12 5474(c) is thus invalid.

13 132. For the same reasons, 11 CCR section 5478(a)(2)’s photograph requirement for
14 voluntary deregistration is also void.

15 133. By mandating as a condition of registration that individuals provide personal
16 information and photographs of their firearms as a condition for registration, Defendants have
17 and will continue to cause Plaintiffs and other similarly-situated individuals irreparable harm
18 because they will be required to provide Defendants’ with information in excessive of what is
19 required for registration.

20 134. An actual controversy exists. Plaintiffs contend that Defendants violated the APA
21 because they lack authority to adopt such regulations and that Defendants intend to nevertheless
22 enforce them. Plaintiffs allege on information and belief that the Defendants and each of them
23 contend the regulations are lawful.

24 135. A judicial declaration of the legality of Defendants’ conduct and whether the
25 regulations requiring individuals to provide personal information and photographs of their
26 firearms violates the APA, is necessary and appropriate at this time, as Defendants are currently
27 enforcing the regulations.

28 ///

1 136. Defendants' unlawful conduct has caused and, unless enjoined by this Court, will
2 continue to cause irreparable injury to Plaintiffs, their members, and supporters. Plaintiffs, their
3 supporters, and members, as owners of firearms affected or potentially affected by DOJ's
4 regulations, have been specifically harmed because Defendants' unlawful conduct has denied
5 them their statutory right to be heard and to provide input regarding regulations governing a
6 program that significantly affects both their property and liberty interests.

7 137. The public in general, and Plaintiffs specifically, have an interest in preventing
8 Defendants from enforcing the unlawful regulations requiring individuals to provide excessive
9 personal information and photographs of their firearms, as it undermines the democratic values
10 the APA was designed to serve.

11 138. Unless 11 CCR sections 5474(a), 5474(c), and 5478(a)(2) are enjoined by order
12 of this Court, Plaintiffs will continue to suffer great and irreparable harm by being subjected to
13 and forced to comply with these illegal regulations.

14
15 **SIXTH CAUSE OF ACTION**
FOR DECLARATORY AND INJUNCTIVE RELIEF

16 **Declaration re Validity of Cal. Code Regs., tit. 11, § 5474.1, subs. (b)-(c) —**
17 **Joint Registration Restrictions**
(Gov. Code, § 11350)

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

19 139. Plaintiffs incorporate by reference the allegations in the above paragraphs as
20 though fully set forth herein.

21 140. Penal Code section 30955 provides:

22 The department's registration procedures shall provide the option of joint
23 registration for any assault weapon or .50 BMG rifle owned by family members
residing in the same household.

24 141. 11 CCR section 5474.1(b) expressly and definitively establishes what
25 relationships meet the statutory definition of "family members" under Penal Code section 30955.
26 11 CCR section 5474.1(b) only authorizes joint registration for the following relationships: (a)
27 Spouses; (b) Parent to Child; (c) Child to Parent; (d) Grandparent to Grandchild; (e) Grandchild
28 to Grandparent; (f) Domestic Partner; and (g) Siblings.

1 142. But there are many different family dynamics that DOJ either does not consider or
2 refuses to recognize. Examples include aunts, uncles, nieces, nephews, and other common
3 familial relationships not specifically listed in DOJ’s regulations.

4 143. By limiting what family members can jointly-register, 11 CCR section 5474.1(b)
5 improperly limits the scope of permissible joint registrations of “assault weapons.”

6 144. What’s more, individuals who reside in the same household that will be
7 prohibited from jointly-registering—despite otherwise having a familial relationship—are placed
8 in a precarious position of being in “possession” of an unregistered assault weapon as a result of
9 the shared residence. Such individuals face potential felony convictions punishable as a fine of
10 up to \$500 and imprisonment. (Penal Code, § 30605, subd. (a).)

11 145. Contrary to 11 CCR section 5474.1(b), existing California law does not limit the
12 definition of the term “family member.”²⁹ 11 CCR section 5474.1 is, therefore, in conflict with
13 Penal Code section 30955, and thus void.

14 146. Moreover, because subsections (b) and (c) of 11 CCR section 5474.1 implement
15 DOJ’s narrow view of what constitutes a “family member” in a manner restrictive to the scope of
16 the express language of the Penal Code permitting “family members residing in the same
17 household” to register “assault weapons,” the regulation is unduly narrow in the absence of any
18 intention by the legislature to so limit it.

19 147. DOJ’s regulations also require “proof of address” for each joint registrant as a
20 condition of registration. 11 CCR section 5474.1(c) expressly establishes acceptable forms that
21 will satisfy DOJ’s “proof of address” requirement for family members residing in the same
22 household.³⁰

24 ²⁹ See *Bearden, supra*, 138 Cal.App.4th at 436, internal quotation marks and citations
25 omitted.

26 ³⁰ Acceptable forms of proof of address are (only) as follows: (1) Carry Concealed Weapon
27 (CCW) Permit; (2) Curio and Relic (C & R) Federal firearm license with name and address; (3)
28 Utility Bill: Cable, electricity garbage, gas, propane, alarm/security or water bill with purchaser’s
name on it and dated within three months of application for registration; (4) Military permanent
duty station orders indicating assignment within California (active duty military spouse ID is not
acceptable); (5) Property Deed: Valid deed or trust for the individual’s property or a certificate of

1 148. Nothing in the Penal Code requires joint-registrants to provide documentation
2 proving they reside at a specific address, let alone those types of documents deemed acceptable
3 by DOJ. What’s more, DOJ’s regulations do not even accept a California Driver’s License or
4 Identification Card as “proof of address” for the purposes of joint-registration of a newly
5 classified “assault weapon.”

6 149. DOJ also amended its regulations for joint-registration. Originally, DOJ’s draft
7 regulation required joint-registrants to “identify one individual as the primary registrant,” and
8 that joint-registrations will be valid “for co-registrant family members only while living in the
9 same household as the primary registrant.”³¹ But DOJ admitted that “had the Legislature
10 intended these requirements *they should have been statutorily stated in a much clearer*
11 *manner.*”³² As a result, DOJ deleted these requirements from its proposal.

12 150. Because DOJ’s regulations impair the scope of Penal Code section 30955 by
13 limiting the types of family relationships allowed for joint-registration, and requiring “proof of
14 address” as a condition of joint-registration, 11 CCR section 5474.1 is invalid and therefore
15 void.³³

16 151. By limiting who may jointly-register firearms as “assault weapons,” Defendants
17 have and will continue to cause Plaintiffs and other similarly-situated individuals irreparable
18 harm by not allowing joint-registration of their firearm as an “assault weapon” with family
19 members residing in the same household not specifically contemplated by DOJ’s regulations.

20 _____
21 title; (6) Resident Hunting License; (7) Signed and dated rental agreement/contract or residential
22 lease; (8) Trailer certification of title; (9) DMV Vehicle Registration; and (10) Certificate of
Eligibility, as defined in section 4031, subdivision (g) of Chapter 3.

23 ³¹ *Notice of Modifications to Text of Regulations*, California Department of Justice,
24 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/sb23rev.pdf>> (last visited June 22,
2017).

25 ³² *Department of Justice Regulations for Assault Weapons and Large Capacity*
26 *Magazines: Final Statement of Reasons*, California Department of Justice,
27 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/fsor.pdf>> (last visited June 22, 2017),
italics and bold added.

28 ³³ Subsection (a) of 11 CCR section 5474.1 is merely a restatement of the law and,
therefore, not legally problematic.

1 152. An actual controversy exists. Plaintiffs contend that Defendants violated the APA
2 because they lack authority to adopt such regulations and that Defendants intend to nevertheless
3 enforce them. Plaintiffs allege on information and belief that the Defendants and each of them
4 contend the regulations are not subject to the APA.

5 153. A judicial declaration of the legality of Defendants' conduct and whether the
6 regulations restricting who may jointly-register a firearm violates the APA, is necessary and
7 appropriate at this time, as Defendants are currently enforcing the regulations.

8 154. Defendants' unlawful conduct has caused and, unless enjoined by this Court, will
9 continue to cause irreparable injury to Plaintiffs, their members, and supporters. Plaintiffs, their
10 supporters, and members, as owners of firearms affected or potentially affected by DOJ's
11 regulations, have been specifically harmed because Defendants' unlawful conduct has denied
12 them their statutory right to be heard and to provide input regarding regulations governing a
13 program that significantly affects both their property and liberty interests.

14 155. The public in general, and Plaintiffs specifically, have an interest in preventing
15 Defendants from enforcing the unlawful regulations restricting who may jointly-register a
16 firearm, as it undermines the democratic values the APA was designed to serve.

17 156. Unless 11 CCR section 5474.1(b)–(c) is enjoined by order of this Court, Plaintiffs
18 will continue to suffer great and irreparable harm by being subjected to and forced to comply
19 with these illegal regulations.

20
21 **SEVENTH CAUSE OF ACTION**
 FOR DECLARATORY AND INJUNCTIVE RELIEF

22 **Declaration re Validity of Cal. Code Regs., tit. 11, § 5476, subds. (d)–(e) —**
23 **Background Check**
 (Gov. Code, § 11350)

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

25 157. Plaintiffs incorporate by reference the allegations in the above paragraphs as
26 though fully set forth herein.

27 ///

28 ///

1 158. 11 CCR section 5476, including subdivisions (d) and (e) thereof, require an
2 “assault weapon” registration applicant to pass a “firearms eligibility check” (i.e., background
3 check) before the registration can be completed.

4 159. But, the legislature does not require, or even refer to, an eligibility or
5 “background check” in the new (or any other) Penal Code sections governing the registration of
6 “assault weapons.” And, wherever firearm eligibility checks are required under California law,
7 the Legislature has expressly authorized DOJ to conduct them *via statute*.³⁴ In addition, the
8 Legislature has, via statute, authorized DOJ to constantly update its files concerning who may
9 lawfully possess firearms through the Armed and Prohibited Persons System.³⁵ If DOJ had
10 inherent authority to require background checks absent an expressly enabling statute, these other
11 statutes expressly giving DOJ authority in these other specific instances would be meaningless.

12 160. By omitting such authority from the controlling statutes, the Legislature has
13 decided that a firearm eligibility check is, by law, *not* required for the registration of “assault
14 weapons” and that DOJ has no authority to require one, as it unilaterally seeks to do with the
15 challenged regulations. This provision improperly goes beyond the language or intent of Penal
16 Code section 30900(b), and as a result is void.

17 161. By mandating as a condition of registration that individuals provide excessive
18 personal information, Defendants have and will continue to cause Plaintiffs and other similarly-
19 situated individuals irreparable harm because they will be required to provide personal
20 information in excessive of what is required for registration for the purposes of a background
21 check.

22 162. An actual controversy exists. Plaintiffs contend that Defendants violated the APA
23 because they lack authority to adopt such regulations and that Defendants intend to nevertheless
24 enforce them. Plaintiffs allege on information and belief that the Defendants and each of them
25 contend the regulations are not subject to the APA.

26 ///

27 _____
28 ³⁴ See, e.g., Pen. Code, §§ 26710, 28220, 30105, & 33865.

³⁵ See generally Pen. Code, §§ 30000–30005.

1 163. A judicial declaration of the legality of Defendants’ conduct and whether the
2 regulations requiring a background check as a requirement of registration, is necessary and
3 appropriate at this time, as Defendants are currently enforcing the regulations.

4 164. Defendants’ unlawful conduct has caused and, unless enjoined by this Court, will
5 continue to cause irreparable injury to Plaintiffs, their members, and supporters. Plaintiffs, their
6 supporters, and members, as owners of firearms affected or potentially affected by DOJ’s
7 regulations, have been specifically harmed because Defendants’ unlawful conduct has denied
8 them their statutory right to be heard and to provide input regarding regulations governing a
9 program that significantly affects both their property and liberty interests.

10 165. The public in general, and Plaintiffs specifically, have an interest in preventing
11 Defendants from enforcing the unlawful regulations requiring a background check as a
12 requirement of registration, as it undermines the democratic values the APA was designed to
13 serve.

14 166. Unless 11 CCR section 5476(d)–(e) is enjoined by order of this Court, Plaintiffs
15 will continue to suffer great and irreparable harm by being subjected to and forced to comply
16 with these illegal regulations.

17
18 **EIGHTH CAUSE OF ACTION**
19 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

20 **Declaration re Validity of Cal. Code Regs., tit. 11, § 5477 —**
21 **Post-Registration Restrictions**
22 **(Gov. Code, § 11350)**

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

24 167. Plaintiffs incorporate by reference the allegations in the above paragraphs as
25 though fully set forth herein.

26 168. 11 CCR section 5477 prohibits the removal of the “release mechanism for an
27 ammunition feeding device on an assault weapon pursuant to Penal Code section 30900(b)(1) . . .
28 *after the assault weapon is registered.*” This seems to prohibit removal of the magazine lock
(e.g., “bullet button”) from a firearm once it is registered. Such a regulation is illegal on two
grounds.

1 **A. The Regulation is Outside the Scope of DOJ’s APA Exemption**

2 169. Defendant DOJ’s exemption from the APA is limited to those regulations
3 implementing Penal Code section 30900(b). That provision is solely concerned with the
4 registration process.

5 170. There is simply nothing in Section 30900 allowing DOJ to regulate what happens
6 *after* the registration process has been completed.

7 171. By implementing, administering, and enforcing a regulation restricting removal of
8 the “magazine lock” post-registration, without adhering to APA’s requirements, e.g., providing
9 formal notice and opportunity for public comment, Defendants have violated and continue to
10 violate the APA.

11 **B. The Regulation Illegally Expands Scope of AWCA**

12 172. Even if Penal Code section 30900(b) could be read as including within its scope
13 post-registration activity, 11 CCR section 5477 is still void because it expands what the
14 Legislature intended for the treatment of “assault weapons” post-registration.

15 173. A person who possesses and registers a firearm meeting the current definition of
16 an “assault weapon” pursuant to Penal Code section 30900(b) possesses a *registered* “assault
17 weapon.” That firearm is now in the system as an “assault weapon” registered to that individual.
18 As a result, the requirements, restrictions, and exceptions for possessing a registered “assault
19 weapon” apply to that person and that firearm, irrespective of what he or she does with the
20 “bullet button.”

21 174. The Penal Code does not distinguish between how and why a firearm is
22 considered an “assault weapon” once it is registered. Nothing prevents an individual who
23 currently has a registered “assault weapon” from adding or removing features, provided the
24 resulting firearm is not considered illegal for some other reason (e.g., the firearm has a
25 prohibited short-barreled rifle, is a machinegun, or is a destructive device). Nothing in the
26 AWCA precludes individuals from modifying a properly registered “assault weapon” so long as
27 the modification does not trigger another prohibition unrelated to the AWCA. Thus, by imposing
28 a post-registration restriction on a properly registered “assault weapon,” 11 CCR section 5477

1 unlawfully expands California law. As such, the regulation is invalid.

2 175. 11 CCR section 5477 is not a restatement of the law, as the regulation
3 definitively states what activities are restricted once a firearm is registered as an “assault
4 weapon,” when the statute itself is silent on such post-registration activities.

5 176. By prohibiting individuals from modifying a firearm’s magazine release
6 mechanism after the firearm has been registered as an “assault weapon,” Defendants have and
7 will continue to cause Plaintiffs and other similarly-situated individuals irreparable harm because
8 they will be deprived of their rights to own and possess firearms that they lawfully obtained prior
9 to the enactment of SB 880 and AB 1135.

10 177. An actual controversy exists. Plaintiffs contend that Defendants violated the APA
11 because they lack authority to adopt such regulations and that Defendants intend to nevertheless
12 enforce them. Plaintiffs allege on information and belief that the Defendants and each of them
13 contend the regulations are not subject to the APA.

14 178. A judicial declaration of the legality of Defendants’ conduct and whether the
15 regulations restricting post-registration activity, is necessary and appropriate at this time, as
16 Defendants are currently enforcing the regulations.

17 179. Defendants’ unlawful conduct has caused and, unless enjoined by this Court, will
18 continue to cause irreparable injury to Plaintiffs, their members, and supporters. Plaintiffs, their
19 supporters, and members, as owners of firearms affected or potentially affected by DOJ’s
20 regulations, have been specifically harmed because Defendants’ unlawful conduct has denied
21 them their statutory right to be heard and to provide input regarding regulations governing a
22 program that significantly affects both their property and liberty interests.

23 180. The public in general, and Plaintiffs specifically, have an interest in preventing
24 Defendants from enforcing the unlawful regulations restricting post-registration activity, as it
25 undermines the democratic values the APA was designed to serve.

26 181. Unless 11 CCR section 5477 is enjoined by order of this Court, Plaintiffs will
27 continue to suffer great and irreparable harm by being subjected to and forced to comply with
28 these illegal regulations.

1 **NINTH CAUSE OF ACTION**
2 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

3 **Declaration re Validity of Cal. Code Regs., tit. 11, § 5473, subd. (b)(1)**
4 **— “Non-Liability” Clause**

5 **(Gov. Code, § 11350)**
6 **(By All Plaintiffs Against All Defendants)**

7 182. Plaintiffs incorporate by reference the allegations in the above paragraphs as
8 though fully set forth herein.

9 183. The APA provides that any interested person may obtain a declaration as to the
10 validity of any regulation through an action for declaratory relief. (Gov. Code, § 11350(a).)

11 184. The APA requires that every regulation be “necessary” to effectuate the purpose
12 of the statute that the regulation implements, be supported by “authority” which permits or
13 obligates the agency to adopt the regulation, and be “consistent” by being in harmony with, and
14 not in conflict or contradictory to, existing statutes, court decisions, or other provisions of law.
(Gov. Code, §§ 11349, subd. (a)–(c), and 11349.1, subd. (a)(1)–(2).)

15 185. Included with the challenged regulations is a subsection which states that DOJ “is
16 not responsible for and will have no liability for any hardware, software, information, or other
17 items or any services,” and that “in no event shall either party be liable . . . under any theory of
18 liability . . . for any indirect, incidental, special, or consequential damages.” (Cal. Code Regs., tit.
19 11, § 5473, subd. (b)(1).)

20 186. 11 CCR section 5473’s “non-liability” clause is unnecessary for the
21 implementation of Penal Code section 30900, which only concerns the registration of a firearm
22 now classified as an “assault weapon” pursuant to SB 880 and AB 1135. There are no facts,
23 studies, or expert opinions supporting the need for the regulation. What’s more, removing the
24 regulation would have no effect on the ability of an individual to register an “assault weapon”
25 pursuant to the requirements of SB 880 and AB 1135. As a result, the regulation lacks any—let
26 alone substantial—evidence supporting its necessity.

27 187. Because 11 CCR section 5473’s “non-liability” clause is unnecessary for the
28 implementation of Penal Code section 30900, the regulation fails to substantially comply with

1 the APA’s requirement that it be “necessary” to effectuate the purpose of the statute that it
2 purports to implement.

3 188. As “authority” cited for 11 CCR section 5473’s “non-liability” clause, the
4 regulation cites Penal Code section 30900, and references Penal Code sections 30515 and 30900.
5 Neither section, however, permits or obligates DOJ to exempt itself under any theory of liability
6 for damages for any hardware, software, information, or other items or any services that may
7 result during the registration process.

8 189. Because DOJ is not authorized under Penal Code section 30900 to exempt itself
9 from such liability, the regulation fails to substantially comply with the APA’s requirement that
10 a regulation be supported by “authority” permitting its adoption.

11 190. 11 CCR section 5473’s “non-liability” clause is also in direct conflict with the
12 California Constitution and the Information Practices Act of 1977 (“IPA”). Under the California
13 Constitution, every individual is entitled to certain inalienable rights, including the right to
14 privacy. (Cal. Const., art. I, § 1.) Out of concern with the government’s increasing demand for
15 personal information of citizens, California enacted the IPA to bolster the right to privacy.

16 191. The IPA prohibits the government, including DOJ, from disclosing “any personal
17 information in a manner that would link the information disclosed to the individual to whom it
18 pertains” absent very limited exceptions. (See Civ. Code, § 1798.24.) Notably, there is no
19 exception for agencies that enact “non-liability” clauses for release of private information, such
20 as the regulation at issue here attempts to do. As a result, the provisions of the IPA directly
21 conflict with the “non-liability” clause included in the regulations.

22 192. Because the “non-liability” clause directly conflicts with the provisions of the
23 IPA, it is not in harmony with, and in fact directly conflicts with and is contradictory to, existing
24 California law. As a result, the “non-liability” clause fails to substantially comply with the
25 APA’s requirement that a regulation be “consistent” with existing statutes, and is therefor
26 invalid.

27 193. By mandating as a condition of registration that individuals agree to not hold DOJ
28 responsible for any indirect, incidental, special, or consequential damages under any theory of

1 liability for hardware, software, information, or other items or any services, Defendants have and
2 will continue to cause Plaintiffs and other similarly-situated individuals irreparable harm because
3 they will be required to surrender their Constitutional right to privacy and protections afforded
4 under the IPA.

5 194. An actual controversy exists. Plaintiffs contend that Defendants violated the APA
6 because they lack authority to adopt such regulations and that Defendants intend to nevertheless
7 enforce them. Plaintiffs allege on information and belief that the Defendants and each of them
8 contend the regulations are not subject to the APA.

9 195. A judicial declaration of the legality of Defendants' conduct and whether the
10 regulations requiring individuals to agree to DOJ's "non-liability" clause as a condition of
11 registration, is necessary and appropriate at this time, as Defendants are currently enforcing the
12 regulations.

13 196. Defendants' unlawful conduct has caused and, unless enjoined by this Court, will
14 continue to cause irreparable injury to Plaintiffs, their members, and supporters. Plaintiffs, their
15 supporters, and members, as owners of firearms affected or potentially affected by DOJ's
16 regulations, have been specifically harmed because Defendants' unlawful conduct has denied
17 them their statutory right to be heard and to provide input regarding regulations governing a
18 program that significantly affects both their property and liberty interests.

19 197. The public in general, and Plaintiffs specifically, have an interest in preventing
20 Defendants from enforcing the unlawful regulations requiring individuals to agree to DOJ's
21 "non-liability" clause as a condition of registration, as it undermines the democratic values the
22 APA was designed to serve.

23 198. Unless 11 CCR section 5473, subd. (b)(1) is enjoined by order of this Court,
24 Plaintiffs will continue to suffer great and irreparable harm by being subjected to and forced to
25 comply with these illegal regulations.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

- 28 1. For a declaration that Defendants' amendment of Cal. Code Regs., tit. 11, § 5469

1 is beyond the scope of the APA exemption in Penal Code section 30900, subd. (b)(5).

2 2. For a declaration that Defendants' amendment of Cal. Code Regs., tit. 11, § 5469
3 fails to substantially comply with the requirements of the APA and is therefore invalid.

4 3. For a preliminary and permanent prohibitory injunction forbidding Defendants,
5 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §
6 5469, as amended.

7 4. For a declaration that Cal. Code Regs., tit. 11, § 5470, subd. (d) is beyond the
8 scope of the APA exemption in Penal Code section 30900(b)(5).

9 5. For a declaration that Cal. Code Regs., tit. 11, § 5470, subd. (d) is beyond the
10 scope of and otherwise conflicts with Penal Code section 30515(a)(7) (classifying semiautomatic
11 shotguns with the ability to accept a "detachable magazine" as an "assault weapon").

12 6. For a declaration that Cal. Code Regs., tit. 11, § 5470, subd. (d) fails to
13 substantially comply with the requirements of the APA and is therefore invalid.

14 7. For a preliminary and permanent prohibitory injunction forbidding Defendants,
15 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §
16 5470, subd. (d).

17 8. For a declaration that Cal. Code Regs., tit. 11, § 5471 is beyond the scope of the
18 APA exemption in Penal Code section 30900(b)(5).

19 9. For a declaration that Cal. Code Regs., tit. 11, § 5471 fails to substantially comply
20 with the requirements of the APA and is therefore invalid.

21 10. For a preliminary and permanent prohibitory injunction forbidding Defendants,
22 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §
23 5471.

24 11. For a declaration that Cal. Code Regs., tit. 11, § 5472, subd. (c) is beyond the
25 scope of the APA exemption in Penal Code section 30900(b)(5).

26 12. For a declaration that Cal. Code Regs., tit. 11, § 5472, subd. (c) fails to
27 substantially comply with the requirements of the APA and is therefore invalid.

28 13. For a declaration that Cal. Code Regs., tit. 11, § 5472, subd. (c) is beyond the

1 scope of and otherwise conflicts with California law.

2 14. For a preliminary and permanent prohibitory injunction forbidding Defendants,
3 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §
4 5472, subd. (c).

5 15. For a declaration that Cal. Code Regs., tit. 11, § 5472, subd. (f) is beyond the
6 scope of the APA exemption in Penal Code section 30900(b)(5).

7 16. For a declaration that Cal. Code Regs., tit. 11, § 5472, subd. (f) fails to
8 substantially comply with the requirements of the APA and is therefore invalid.

9 17. For a declaration that Cal. Code Regs., tit. 11, § 5472, subd. (g) is beyond the
10 scope of the APA exemption in Penal Code section 30900(b)(5).

11 18. For a declaration that Cal. Code Regs., tit. 11, § 5472, subd. (g) fails to
12 substantially comply with the requirements of the APA and is therefore invalid.

13 19. For a preliminary and permanent prohibitory injunction forbidding Defendants,
14 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §
15 5472, subds. (f)–(g).

16 20. For a declaration that Cal. Code Regs., tit. 11, § 5473, subd. (b)(1) is beyond the
17 scope of the APA exemption in Penal Code section 30900(b)(5).

18 21. For a declaration that Cal. Code Regs., tit. 11, § 5473, subd. (b)(1) fails to
19 substantially comply with the requirements of the APA and is therefore invalid.

20 22. For a preliminary and permanent prohibitory injunction forbidding Defendants,
21 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §
22 5473, subd. (b)(1).

23 23. For a declaration that Cal. Code Regs., tit. 11, § 5474, subd. (a) is beyond the
24 scope of the APA exemption in Penal Code section 30900(b)(5).

25 24. For a declaration that Cal. Code Regs., tit. 11, § 5474, subd. (a) fails to
26 substantially comply with the requirements of the APA and is therefore invalid.

27 25. For a preliminary and permanent prohibitory injunction forbidding Defendants,
28 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §

- 1 5474, subd. (a).
- 2 26. For a declaration that Cal. Code Regs., tit. 11, § 5474, subd. (c) is beyond the
3 scope of the APA exemption in Penal Code section 30900(b)(5).
- 4 27. For a declaration that Cal. Code Regs., tit. 11, § 5474, subd. (c) fails to
5 substantially comply with the requirements of the APA and is therefore invalid.
- 6 28. For a preliminary and permanent prohibitory injunction forbidding Defendants,
7 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §
8 5474, subd. (c).
- 9 29. For a declaration that Cal. Code Regs., tit. 11, § 5474.1 is beyond the scope of the
10 APA exemption in Penal Code section 30900(b)(5).
- 11 30. For a declaration that Cal. Code Regs., tit. 11, § 5474.1 fails to substantially
12 comply with the requirements of the APA and is therefore invalid.
- 13 31. For a preliminary and permanent prohibitory injunction forbidding Defendants,
14 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §
15 5474.1.
- 16 32. For a declaration that Cal. Code Regs., tit. 11, § 5474.2 is beyond the scope of the
17 APA exemption in Penal Code section 30900 (b)(5).
- 18 33. For a declaration that Cal. Code Regs., tit. 11, § 5474.2 is beyond the scope of
19 and otherwise conflicts with the requirements of AB 857.
- 20 34. For a declaration that Cal. Code Regs., tit. 11, § 5474.2 fails to substantially
21 comply with the requirements of the APA and is therefore invalid.
- 22 35. For a preliminary and permanent prohibitory injunction forbidding Defendants,
23 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §
24 5474.2.
- 25 36. For a declaration that Cal. Code Regs., tit. 11, § 5477 is beyond the scope of the
26 APA exemption in Penal Code section 30900(b)(5).
- 27 37. For a declaration that Cal. Code Regs., tit. 11, § 5477 is beyond the scope of and
28 otherwise conflicts with California law.

1 38. For a declaration that Cal. Code Regs., tit. 11, § 5477 fails to substantially comply
2 with the requirements of the APA and is therefore invalid.

3 39. For a preliminary and permanent prohibitory injunction forbidding Defendants,
4 their employees, agents, and successors in office, from enforcing Cal. Code Regs., tit. 11, §
5 5477.

6 40. For an award of Plaintiffs' reasonable costs and attorneys' fees pursuant to Code
7 of Civil Procedure section 1021.5. and any other relevant provision of state or federal law.

8 41. For such other relief as may be just and proper.

9 Dated: September 7, 2017

MICHEL & ASSOCIATES, P.C.

11 /s/C. D. Michel
12 C. D. Michel
13 Counsel for Plaintiffs

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EXHIBIT A

FINAL TEXT

Text added to the regulations is shown in underline.

Text deleted from the regulations is shown in strikethrough.

California Code of Regulations
Title 11, Division 5

Chapter 39 Assault Weapons and Large-Capacity Magazines

Article 2. Definitions of Terms Used to Identify Assault Weapons Registration Requirement, What Qualifies for Registration, and Definitions

§ 5469. Definitions. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Who Must Register.

The following definitions apply to terms used in the identification of assault weapons pursuant to Penal Code section 30515:

- (a) ~~“Detachable magazine” means any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool. Ammunition feeding device includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine.~~
- (b) ~~“Flash suppressor” means any device designed, intended, or that functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision.~~
- (c) ~~“Forward pistol grip” means a grip that allows for a pistol style grasp forward of the trigger.~~
- (d) ~~“Pistol grip that protrudes conspicuously beneath the action of the weapon” means a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing.~~
- (e) ~~“Thumbhole stock” means a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing.~~

Any 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 Penal Code section 30515, including those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool (commonly referred to as a bullet-button weapon) must register the firearm before July 1, 2018.

Note: Authority cited: Section ~~30520~~ 30900, Penal Code. Reference: Sections ~~16170(a), 16350, 16890, 30515, 30600, 30605, 30610, 30615, 30620, 30625, 30630, 30635, 30640, 30645, 30650, 30655, 30660, 30665, 30670, 30675, 30900, 30905, 30910, 30915, 30920, 30925, 30930, 30935, 30940, 30945, 30950, 30955, 30960 and 30965,~~ Penal Code.

Article 3. Assault Weapon Registration

§ 5470. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Which Weapons Must be Registered.

- (a) Except as provided in section 5472, an assault weapon that does not have a fixed magazine, as defined by Penal Code section 30515, must be registered with the Department before July 1, 2018.
- (b) A semiautomatic, centerfire or rimfire pistol with an ammunition feeding device that can be readily removed from the firearm with the use of a tool, commonly referred to as a bullet-button weapon, that has one or more specified features identified in Penal Code section 30515 is included in the category of firearms that must be registered.
- (c) A semiautomatic, centerfire rifle with an ammunition feeding device that can be readily removed from the firearm with the use of a tool, commonly referred to as a bullet-button weapon, that has one or more specified features identified in Penal Code section 30515 is included in the category of firearms that must be registered.
- (d) A semiautomatic shotgun with an ammunition feeding device that can be readily removed from the firearm with the use of a tool, commonly referred to as a bullet-button weapon, is included in the category of firearms that must be registered.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5471. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Explanation of Terms Related to Assault Weapon Designation.

For purposes of Penal Code section 30900 and Articles 2 and 3 of this Chapter the following definitions shall apply:

- (a) “Ability to accept a detachable magazine” means with respect to a semiautomatic shotgun, it does not have a fixed magazine.
- (b) “Action” means the working mechanism of a semiautomatic firearm, which is the combination of the receiver or frame and breech bolt together with the other parts of the mechanism by which a firearm is loaded, fired, and unloaded.

- (c) “Barrel” means the tube, usually metal and cylindrical, through which a projectile or shot charge is fired. Barrels may have a rifled or smooth bore.
- (d) “Barrel length” means the length of the barrel measured as follows: Without consideration of any extensions or protrusions rearward of the closed bolt or breech-face the approved procedure for measuring barrel length is to measure from the closed bolt (or breech-face) to the furthest end of the barrel or permanently attached muzzle device. Permanent methods of attachment include full-fusion gas or electric steel-seam welding, high-temperature (1100°F) silver soldering, or blind pinning with the pin head welded over. Barrels are measured by inserting a dowel rod into the barrel until the rod stops against the closed bolt or breech-face. The rod is then marked at the furthest end of the barrel or permanently attached muzzle device, withdrawn from the barrel, and measured.
- (e) “Bullet” means the projectile expelled from a gun. It is not synonymous with a cartridge. Bullets can be of many materials, shapes, weights, and constructions such as solid lead, lead with a jacket of harder metal, round-nosed, flat-nosed, hollow-pointed, et cetera.
- (f) “Bullet-button” means a product requiring a tool to remove an ammunition feeding device or magazine by depressing a recessed button or lever shielded by a magazine lock. A bullet-button equipped fully functional semiautomatic firearm does not meet the fixed magazine definition under Penal Code section 30515(b).
- (g) “Bore” means the interior of a firearm’s barrel excluding the chamber.
- (h) “Caliber” means the nominal diameter of a projectile of a rifled firearm or the diameter between lands in a rifled barrel. In the United States, caliber is usually expressed in hundreds of an inch; in Great Britain in thousandths of an inch; in Europe and elsewhere in millimeters.
- (i) “Cartridge” means a complete round of ammunition that consists of a primer, a case, propellant powder and one or more projectiles.
- (j) “Centerfire” means a cartridge with its primer located in the center of the base of the case.
- (k) “Contained in” means that the magazine cannot be released from the firearm while the action is assembled. For AR-15 style firearms this means the magazine cannot be released from the firearm while the upper receiver and lower receiver are joined together.
- (l) “Department” means the California Department of Justice.
- (m) “Detachable magazine” means any ammunition feeding device that can be removed readily from the firearm without disassembly of the firearm action or use of a tool. A bullet or ammunition cartridge is considered a tool. An ammunition feeding device includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine.

An AR-15 style firearm that has a bullet-button style magazine release with a magnet left on the bullet-button constitutes a detachable magazine. An AR-15 style firearm lacking a magazine catch assembly (magazine catch, magazine catch spring and magazine release button) constitutes a detachable magazine. An AK-47 style firearm lacking a magazine catch assembly (magazine catch, spring and rivet/pin) constitutes a detachable magazine.

- (n) “Disassembly of the firearm action” means the fire control assembly is detached from the action in such a way that the action has been interrupted and will not function. For example, disassembling the action on a two part receiver, like that on an AR-15 style firearm, would require the rear take down pin to be removed, the upper receiver lifted upwards and away from the lower receiver using the front pivot pin as the fulcrum, before the magazine may be removed.
- (o) “Featureless” means a semiautomatic firearm (rifle, pistol, or shotgun) lacking the characteristics associated with that weapon, as listed in Penal Code section 30515.
- (p) “Fixed magazine” means an ammunition feeding 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.
- (q) “Flare launcher” means a device used to launch signal flares.
- (r) “Flash suppressor” means any device attached to the end of the barrel, that is designed, intended, or functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision. A hybrid device that has either advertised flash suppressing properties or functionally has flash suppressing properties would be deemed a flash suppressor. A device labeled or identified by its manufacturer as a flash hider would be deemed a flash suppressor.
- (s) “FMBUS” means a Firearm Manufactured By Unlicensed Subject.
- (t) “Forward pistol grip” means a grip that allows for a pistol style grasp forward of the trigger.
- (u) “Frame” means the receiver of a pistol.
- (v) “Grenade launcher” means a device capable of launching a grenade.
- (w) “Permanently attached to” means the magazine is welded, epoxied, or riveted into the magazine well. A firearm with a magazine housed in a sealed magazine well and then welded, epoxied, or riveted into the sealed magazine well meets the definition of “permanently attached to”.
- (x) “Overall length of less than 30 inches” with respect to a centerfire rifle means the rifle has been measured in the shortest possible configuration that the weapon will function/fire

and the measurement is less than 30 inches. Folding and telescoping stocks shall be collapsed prior to measurement. The approved method for measuring the length of the rifle is to measure the firearm from the end of the barrel, or permanently attached muzzle device, if so equipped, to that part of the stock that is furthest from the end of the barrel, or permanently attached muzzle device. (Prior to taking a measurement the owner must also check any muzzle devices for how they are attached to the barrel.)

- (y) “Pistol” means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length. This definition includes AR-15 style pistols with pistol buffer tubes attached. Pistol buffer tubes typically have smooth metal with no guide on the bottom for rifle stocks to be attached, and they sometimes have a foam pad on the end of the tube farthest from the receiver.
- (z) “Pistol grip that protrudes conspicuously beneath the action of the weapon” means a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed beneath or below the top of the exposed portion of the trigger while firing. This definition includes pistol grips on bullpup firearm designs.
- (aa) “Receiver” means the basic unit of a firearm which houses the firing and breech mechanisms and to which the barrel and stock are assembled.
- (bb) “Receiver, lower” means the lower part of a two part receiver.
- (cc) “Receiver, unfinished” means a precursor part to a firearm that is not yet legally a firearm. Unfinished receivers may be found in various levels of completion. As more finishing work is completed the precursor part gradually becomes a firearm. Some just have the shape of an AR-15 lower receiver for example, but are solid metal. Some have been worked on and the magazine well has been machined open. Firearms Manufactured by Unlicensed Subjects (FMBUS) began as unfinished receivers.
- (dd) “Receiver, upper” means the top portion of a two part receiver.
- (ee) “Rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.
- (ff) “Rimfire” means a rimmed or flanged cartridge with the priming mixture located in the rim of the case.
- (gg) “Second handgrip” means a grip that allows the shooter to grip the pistol with their non-trigger hand. The second hand grip often has a grip texture to assist the shooter in weapon control.
- (hh) “Semiautomatic” means a firearm functionally able to fire a single cartridge, eject the

empty case, and reload the chamber each time the trigger is pulled and released. Further, certain necessary mechanical parts that will allow a firearm to function in a semiautomatic nature must be present for a weapon to be deemed semiautomatic. A weapon clearly designed to be semiautomatic but lacking a firing pin, bolt carrier, gas tube, or some other crucial part of the firearm is not semiautomatic for purposes of Penal Code sections 30515, 30600, 30605(a), and 30900.

- (1) A mechanically whole semiautomatic firearm merely lacking ammunition and a proper magazine is a semiautomatic firearm.
 - (2) A mechanically whole semiautomatic firearm disabled by a gun lock or other firearm safety device is a semiautomatic firearm. (All necessary parts are present, once the gun lock or firearm safety device is removed, and weapon can be loaded with a magazine and proper ammunition.)
 - (3) With regards to an AR-15 style firearm, if a complete upper receiver and a complete lower receiver are completely detached from one another, but still in the possession or under the custody or control of the same person, the firearm is not a semiautomatic firearm.
 - (4) A stripped AR-15 lower receiver, when sold at a California gun store, is not a semiautomatic firearm. (The action type, among other things, is undetermined.)
- (ii) “Shotgun with a revolving cylinder” means a shotgun that holds its ammunition in a cylinder that acts as a chamber much like a revolver. To meet this definition the shotgun’s cylinder must mechanically revolve or rotate each time the weapon is fired. A cylinder that must be manually rotated by the shooter does not qualify as a revolving cylinder.
- (jj) “Shroud” means a heat shield that is attached to, or partially or completely encircles the barrel, allowing the shooter to fire the weapon with one hand and grasp the firearm over the barrel with the other hand without burning the shooter’s hand. A slide that encloses the barrel is not a shroud.
- (kk) “Spigot” means a muzzle device on some firearms that are intended to fire grenades. The spigot is what the grenade is attached to prior to the launching of a grenade.
- (ll) “Stock” means the part of a rifle, carbine, or shotgun to which the receiver is attached and which provides a means for holding the weapon to the shoulder. A stock may be fixed, folding, or telescoping.
- (mm) “Stock, fixed” means a stock that does not move, fold, or telescope.
- (nn) “Stock, folding” means a stock which is hinged in some fashion to the receiver to allow the stock to be folded next to the receiver to reduce the overall length of the firearm. This definition includes under folding and over folding stocks.

- (oo) “Stock, telescoping” means a stock which is shortened or lengthened by allowing one section to telescope into another portion. On AR-15 style firearms, the buffer tube or receiver extension acts as the fixed part of the stock on which the telescoping butt stock slides or telescopes.
- (pp) “Those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool” includes functional semiautomatic rifles, pistols, and shotguns with bullet-button style magazine releases. These weapons do not have a fixed magazine.
- (qq) “Thumbhole stock” means a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing.
- (rr) “Threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer” means a threaded barrel able to accept a flash suppressor, forward handgrip, or silencer, and includes a threaded barrel with any one of those features already mounted on it. Some firearms have “lugs” in lieu of threads on the end of the barrel. These lugs are used to attach some versions of silencers. For purposes of this definition a lugged barrel is the same as a threaded barrel.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

Article 3. Assault Weapon Registration

§ 5472. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Weapons That Will Not Be Registered as Assault Weapons.

- (a) The Department will not register as an assault weapon a firearm unless it was lawfully possessed on or before December 31, 2016.
- (b) The Department will not register a firearm that was required to be registered under prior assault weapon registration laws in effect before January 1, 2017. These weapons include, but are not limited to, firearms known as “named assault weapons” and are listed in Penal Code section 30510 and sections 5495 and 5499 of Chapter 40.
- (c) The Department will not register a firearm as an assault weapon if the firearm is featureless, except for bullet-button shotguns as described in section 5470(d).
- (d) The Department will not register a firearm as an assault weapon if the firearm has a fixed magazine that holds ten rounds or less.
- (e) The Department will not register a firearm as an assault weapon unless the firearm is fully assembled and fully functional.

- (f) The Department will not register as an assault weapon a firearm manufactured by a federally-licensed manufacturer if the firearm does not have a serial number applied pursuant to federal law.
- (g) The Department will not register as an assault weapon a FMBUS if the firearm does not have a serial number assigned by the Department and applied by the owner or agent pursuant to section 5474.2.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5473. Voluntary Cancellations

- (a) ~~The DOJ will accept voluntary cancellations for assault weapons that are no longer possessed by the registrant. Cancellations will also be accepted for assault weapons, defined and registered pursuant to Penal Code section 30515, that have been modified or reconfigured to no longer meet the assault weapon definition. Cancellation requests must be signed, dated, and provide the following information:
 - (1) ~~Registrant's full name, telephone number, and current address; make, model, and serial number of the assault weapon; and the DOJ assault weapon registration number (as indicated on the registration confirmation letter provided to the registrant at the time of registration). If the DOJ assault weapon registration number is unknown, the request must be notarized.~~~~
- (b) ~~After confirmation of the information provided on the cancellation request, the DOJ will permanently delete the registration for the specified assault weapon(s). If there are no remaining assault weapons registered to the individual, all personal information regarding the registrant will also be deleted from the assault weapon data base. The DOJ will mail confirmation of the cancellation to the address provided on the request.~~

~~Note: Authority cited: Section 30520, Penal Code. Reference: Sections 30900, 30905, 30910, 30915, 30920, 30925, 30930, 30935, 30940, 30945, 30950, 30955, 30960 and 30965, Penal Code.~~

§ 5473. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); California Firearms Application Reporting System (“CFARS”); Account Requirements.

- (a) Assault weapon registrations must be filed electronically using the Department’s California Firearms Application Reporting System (CFARS), at the following website: <https://cfars.doj.ca.gov/login.do>.
- (b) A CFARS account must be created to use the electronic registration system. To create a CFARS account, assault weapon registrants will be required to agree to the following conditions of use:

(1) Non-Liability: The Department is not responsible for and will have no liability for any hardware, software, information, or other items or any services provided by any persons other than the Department. Except as may be required by law, in no event shall either party be liable to the other or any third party, under any theory of liability, including, but not limited to, any contract or tort claim for any cause whatsoever, for any indirect, incidental, special, or consequential damages, including loss of revenue or profits, even if aware of the possibility thereof.

(2) Authorization: I am authorized to use CFARS for the purpose of reporting firearm information to the Department in order to comply with California firearm laws and regulations. If I become aware of an unauthorized user obtaining access to my CFARS account, I will notify the Customer Support Center immediately at (916) 227-7527, or via email at: firearms.bureau@doj.ca.gov.

(3) Fees: Notwithstanding such notification, the Department shall not be liable for transaction charges fraudulently incurred. It will be the cardholder's responsibility to pay any charges. The Department will not provide refunds after the submission of a transaction.

(4) True and Accurate Information: All of the information I submit to the Department through CFARS shall be true, accurate, and complete to the best of my knowledge.

(c) The following information must be provided by registrants in order to create a CFARS account:

(1) Full Name

(2) Email Address

(3) Three Security Questions and Answers

(4) Password

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5474. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Applicant and Firearms Information.

Once a CFARS account has been created, registrants must provide the following information:

(a) The registrant's full name, address, telephone number, date of birth, sex, height, weight,

eye color, hair color, military identification number (if applicable), California Driver License number or California Identification Card number, U.S. citizenship status, place of birth, country of citizenship, and alien registration number or I-94, if applicable.

- (b) A description of the firearm that identifies it uniquely, including but not limited to: firearm type, make, model, caliber, firearm color, barrel length, serial number, all identification marks, firearm country of origin/manufacture, the date the firearm was acquired, the name and address of the individual from whom, or business from which, the firearm was acquired.
- (c) Clear digital photos of firearms listed on the application. One photo shall depict the bullet-button style magazine release installed on the firearm. One photo shall depict the firearm from the end of the barrel to the end of the stock if it is a long gun or the point furthest from the end of the barrel if it is a pistol. The other two photos shall show the left side of the receiver/frame and right side of the receiver/frame. These locations are typically where firearms are marked when manufacturing is complete. At the discretion of the Department the last two photos shall be substituted for photos of identification markings at some other locations on the firearm.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5474.1. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Joint Registration of Assault Weapons.

- (a) If a firearm will be jointly registered, one family member must be identified as the primary registrant. The name and relationship of each joint registrant must be provided. Joint registrants must reside in the same household and share the same address.
- (b) All joint registrants must be 18 years of age by June 30, 2018. Joint registrations are only authorized for the following family relationships:
- (1) Spouses
 - (2) Parent to Child
 - (3) Child to Parent
 - (4) Grandparent to Grandchild
 - (5) Grandchild to Grandparent

(6) Domestic Partners

(7) Siblings

(c) Proof of address for each joint registrant shall be provided at the time of electronic submission. Acceptable forms of proof of address are as follows:

(1) Carry Concealed Weapon (CCW) Permit

(2) Curio and Relic (C & R) Federal firearm license with name and address

(3) Utility Bill: Cable, electricity, garbage, gas, pipeline, propane, alarm/security, or water bill with purchaser's name on it and dated within three months of application for registration.

(4) Military permanent duty station orders indicating assignment within California; (active duty military spouse ID is not acceptable).

(5) Property Deed: Valid deed or deed of trust for the individual's property or a certificate of title

(6) Resident Hunting License

(7) Signed and dated rental agreement/contract or residential lease

(8) Trailer certification of title

(9) DMV Vehicle Registration

(10) Certificate of Eligibility, as defined in section 4031, subdivision (g) of Chapter 3.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515, 30900 and 30955, Penal Code.

5474.2. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Firearm Manufactured By Unlicensed Subject (FMBUS).

A person seeking assault weapon registration for this type of firearm shall seek a Department issued serial number at: dojserialnumber@doj.ca.gov, prior to initiating the assault weapon registration process.

(a) A Department-provided serial number shall be issued and applied as follows:

- (1) The Department shall issue a unique serial number to the applicant. The serial number issuance is a separate process and must be done before the assault weapon application will be accepted by the Department. Applicants seeking a FMBUS related serial number shall complete a New Serial Number Application, Form BOF 1008, (Rev. 07/2017) hereby incorporated by reference, and submit it to the Department prior to the initiation of the registration of this type of firearm.
- (2) Once the applicant has received a Department issued serial number, the applicant may contact a Federal Firearms Licensed Manufacturer (type 07) to have the serial number applied in a manner consistent with this section and federal law. However, a Federal Firearms Licensee is under no obligation to perform this work. Persons who have manufactured their own firearm may also use non-licensed parties to apply the serial number and other required markings; however, the owner of the weapon must not leave the firearm unattended with an unlicensed party in violation of firearms transfer and/or lending laws. Proof of the serial number being applied to the firearm shall be given to the Department in the form of one or more digital photographs of the newly serialized firearm being submitted in accordance with the photo requirement noted in section 5474 (c).
- (3) An unlicensed manufacturer of firearms must legibly and uniquely identify each firearm manufactured as follows:

 - (A) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any serial number placed by the unlicensed manufacturer on any other firearm. The engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch; and
 - (B) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered, or removed. The additional information must include:

 - (i) The model of the firearm, if such designation has been made;
 - (ii) The caliber or gauge of the firearm;
 - (iii) The manufacturer's first and last name as provided to the Department for

registration purposes, when applicable; and

(iv) The city and state (or recognized abbreviation thereof) where the manufacturer made the firearm.

(4) Measurement of height and depth of markings. The depth of all markings required by this section will be measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers required by paragraph (a)(3)(A) of this section will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

(5) The Department shall deny assault weapon registration applications if it determines the above described marking requirements have not been met.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5475. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Fees.

(a) The fee to register an assault weapon is \$15.00 per person, per transaction. There is no limit to the number of assault weapons a person can register in a single transaction.

(b) The fee must be paid by debit or credit card at the time the registration is submitted to the Department for processing. If the fee is not paid, the registration will not be processed.

(c) A \$5 fee is required to obtain a copy of the original registration disposition letter.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5476. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Processing of Applications

(a) Applications for assault weapon registration must be received between January 1, 2017, and June 30, 2018, and will be processed in the order in which they are received.

(b) Once the registration has been submitted electronically and fees have been paid, the Department will inform the applicant, via email, that the application: has been received and accepted for processing; is being returned as incomplete and specify what information is required; or has been rejected.

(c) If the Department deems an application incomplete and notifies the applicant via email of

the incomplete determination, the applicant shall provide the requested information or documentation within 30 days. If the Department does not receive the additional information or documentation within 30 days, the application will be rejected and the application fee will not be refunded. The applicant may complete a new application by June 30, 2018, subject to a new application fee.

- (d) Once the Department determines that all necessary information has been received and the firearm qualifies for registration, the firearms eligibility check shall commence. The Department will inform the applicant of the results of the check.
- (e) If the firearms eligibility check is successful, the registrant shall receive an assault weapon registration disposition letter via U.S. mail.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515, 30900 and 30950, Penal Code.

§ 5477. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Post-Registration Modification of Registered Assault Weapons, Prohibition.

- (a) The release mechanism for an ammunition feeding device on an assault weapon registered pursuant to Penal Code section 30900, subdivision (b)(1) shall not be changed after the assault weapon is registered. A weapon's eligibility for registration pursuant to Penal Code section 30900, subdivision (b)(1) depends, in part, on its release mechanism. Any alteration to the release mechanism converts the assault weapon into a different weapon from the one that was registered.
- (b) The prohibition in subdivision (a) does not extend to the repair or like-kind replacement of the mechanism.
- (c) This prohibition in subdivision (a) does not extend to a firearm that is undergoing the deregistration process pursuant to section 5478. Written confirmation from the Department that acknowledges the owner's intent to deregister his or her assault weapon pursuant to section 5478 shall be proof the deregistration process has been initiated.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5478. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Voluntary Deregistration.

- (a) The Department will accept voluntary deregistration requests for assault weapons that are no longer possessed by the registrant, in the form of a completed Form BOF 4546, "Notice of No Longer in Possession," (Rev. 07/2017) hereby incorporated by reference.

Deregistration requests will also be accepted for assault weapons, as defined in Penal Code section 30515, that have been modified or reconfigured to no longer meet that definition. Deregistration requests must be in writing, signed, dated, and provide the following information:

- (1) Registrant's full name, telephone number, and current address; make, model, and serial number of the assault weapon; and the Department assault weapon registration number (as indicated on the registration confirmation letter provided to the registrant at the time of registration). If the Department assault weapon registration number is unknown, the request must be notarized.
 - (2) If the firearm has been modified or reconfigured to no longer meet the definition of assault weapon, one or more photographs clearly depicting the firearm in its current configuration shall be attached to the written deregistration request. Additional information, photographs, or inspection may be requested by the Department before determining eligibility for deregistration.
 - (3) If the registrant is no longer in possession of the firearm, proof of sale or transfer of the firearm shall be attached to the written deregistration request. Acceptable proof includes receipts from out-of-state gun stores, or law enforcement reports depicting the seizure and/or destruction of the firearm(s).
- (b) Upon determining eligibility for deregistration, the Department will delete the assault weapon registration for the specified firearm(s), and, if the weapon is still in the possession of the registrant, will convert the information to a BOF 4542A, "Firearm Ownership Report, (Rev. 07/2017), hereby incorporated by reference.
- (c) If the registrant has sold the weapon to a party outside of the State of California or otherwise lawfully disposed of the weapon, or if the weapon was seized by law enforcement, the Department will create a "No Longer In Possession" entry in the Automated Firearms System.
- (d) Upon completion of the assault weapon deregistration, the Department will mail confirmation of deregistration and updated firearm ownership information to the registrant at the address provided on the request.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.