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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

DEFENSE DISTRIBUTED, a Texas
corporation; SECOND AMENDMENT
FOUNDATION,
Plaintiffs,
v.
ROBERT BONTA, in his official
capacity as California Attorney General;
LUIS LOPEZ, in his official capacity as
Director of the California Bureau of
Firearms,
Defendant.

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiffs Defense Distributed and Second Amendment Foundation (“SAF”) (“Plaintiffs”), for their Complaint against California Attorney General Robert Bonta and Bureau of Firearms Director Luis Lopez (collectively, “Defendants”), allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Defense Distributed is a non-profit corporation organized under the laws of the State of Texas, with its headquarters and principal place of business in Austin, Texas. Defense Distributed sells products and software that allow consumers to self-manufacture some of the most popular firearms in the United States. Among other things, Defense Distributed sells a product called the Ghost Gunner. The Ghost Gunner is a general-purpose Computerized Numerical Code

1 milling machine (“CNC machine”) that gives purchasers the ability to complete
2 unfinished frames and receivers for various types of firearms, including the AR-15,
3 AR-308, M1911, and AK-47. The unfinished frames and receivers, and the code to
4 complete them, are sold together with the CNC machine. Defense Distributed has
5 standing to challenge Cal. Penal Code §§ 29180(f), 29185, 30400, 27530(a), and
6 18010(d) because they effectively prohibit Defense Distributed from selling or
7 importing—and its customers from possessing or using—the Ghost Gunner,
8 unfinished frames and receivers, and other precursor parts in California without
9 risking criminal prosecution. *See, e.g., Ezell v. City of Chicago*, 651 F.3d 684, 696
10 (7th Cir. 2011) (supplier of firing-range facilities had standing to bring Second
11 Amendment challenge to ordinance); *Wedges/Ledges of Cal., Inc. v. City of Phoenix*,
12 *Ariz.*, 24 F.3d 56, 61 (9th Cir. 1994) (“It is well settled that a provider of goods or
13 services has standing to challenge government regulations that directly affect its
14 customers and restrict its market.”); *see also Valle del Sol Inc. v. Whiting*, 732 F.3d
15 1006, 1015–16 (9th Cir. 2000) (holding that a party has standing to challenge
16 constitutionality of statute where “a credible threat of prosecution . . . is clearly
17 traceable” to the challenged statute “and can be redressed through an injunction
18 enjoining enforcement of that provision.”).

19 2. Plaintiff SAF is a non-profit educational foundation incorporated under
20 the laws of Washington with its principal place of business in Bellevue, Washington.
21 SAF seeks to preserve the effectiveness of the Second Amendment through
22 educational and legal action programs. SAF has over 650,000 members and
23 supporters nationwide, including thousands of members in California. The Court’s
24 interpretation of the Second Amendment directly impacts SAF’s members and
25 supporters in California. SAF brings this action on behalf of itself, its members,
26 supporters who possess all the indicia of membership, and similarly situated
27 members of the public. The laws, policies, practices, and customs challenged in this
28 case, and Defendants’ actions and failures alleged herein, have caused SAF to

1 dedicate resources—including for this action—that would otherwise be available for
2 other purposes to protect the rights and property of its members, supporters, and the
3 general public.

4 3. Defendant Robert Bonta is the Attorney General of the State of
5 California and is being sued in his official capacity. Under Article 5, § 13 of the
6 California Constitution, Attorney General Bonta is the “chief law officer of the
7 State,” with a duty “to see that the laws of the state are uniformly and adequately
8 enforced.” Cal. Const. art. V, § 13. Defendant Bonta is the head of the California
9 Department of Justice (“DOJ”). The DOJ and its Bureau of Firearms regulate and
10 enforce state law related to the sales, transfer, possession, and ownership of firearms.
11 As head of the DOJ, Defendant Bonta is responsible for the creation, implementation,
12 execution, and administration of the laws, regulations, customs, practices, and
13 policies of the DOJ. Further, under Section 10 of California Assembly Bill 1621
14 (“AB 1621”), the Attorney General is specifically permitted to “bring an action to
15 enjoin the importation into the state or sale or transfer of any firearm precursor part
16 that is unlawfully imported into this state or sold or transferred within this state.” *See*
17 Cal. Penal Code § 18010(d)(1). The Attorney General and DOJ maintain an office in
18 Los Angeles, California.

19 4. Defendant Luiz Lopez is the Director of the DOJ’s Bureau of Firearms
20 and is being sued in his official capacity. On information and belief, Defendant Lopez
21 reports to Attorney General Bonta, and is responsible for the various operations of
22 the Bureau of Firearms, including the implementation and enforcement of the
23 statutes, regulations, and policies regarding weapons, including firearms and
24 magazines. As head of the Bureau, Defendant Lopez is responsible for the creation,
25 implementation, execution, and administration of the laws, regulations, customs,
26 practices, and policies of the DOJ.

27 5. Jurisdiction is proper in this Court under 28 U.S.C. §§ 1331, 1343, 2201-
28 02 and 42 U.S.C. §§ 1983 and 1988, as this action seeks to redress the deprivation

1 under color of the laws, statutes, ordinances, regulations, customs, and usages of the
2 State of California, of the rights, privileges, or immunities secured by the United
3 States Constitution.

4 6. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the
5 events giving rise to Plaintiffs' causes of action arose or exist in this district in which
6 the action is brought. Venue is also proper under 28 U.S.C. § 1391, as the venue rules
7 of this State specifically permit this action to be filed in the Central District since the
8 Attorney General and California Department of Justice maintain an office within this
9 Division. Cal. Civ. Proc. Code § 401(1).

10 **FACTUAL ALLEGATIONS**

11 **I. CNC Milling Machines and the Ghost Gunner Product**

12 7. CNC milling machines are the modern-day manifestation of firearm
13 milling technology, technology that has never before been regulated in American
14 history.

15 8. Firearm milling technology dates back to the early nineteenth century.
16 *See, e.g., Lindsay Schakenbach Regele, Industrial Manifest Destiny: American*
17 *Firearms Manufacturing and Antebellum Expansion*, 92 Bus. Hist. Rev. 57, 64
18 (2018) (explaining that "Federal support of small arms manufacturing has been well
19 documented," and that federal funds supported the development of the first firearm
20 milling machine in the 1810s).

21 9. The earliest known milling machine originated at a factory operated by
22 Simeon North, who had a contract with the War Department to manufacture firearms.
23 David A. Hounshell, *From the American System to Mass Production, 1800-1932* 28–
24 29 (1984). Beginning in 1820, John H. Hall, a cooper, cabinetmaker, and boatbuilder,
25 improved upon North's milling machine, "develop[ing] three classes of milling
26 machines, which he used to finish [firearm] parts." *Id.* at 39–41.

27 10. Building on these innovations, John T. Parsons invented the first
28 numerical control (NC) milling machine in the 1940s. Sohaib Jabran et al.,

1 *Functional Reverse Engineering of Strategic and Non-Strategic Machine Tools* 42
2 (Wasim Ahmed Khan et. al. eds., 1st ed. 2021).

3 11. Modern-day CNC milling is a standard machining process that employs
4 computerized controls and rotating cutting tools to precisely remove material from a
5 workpiece to produce a custom-designed part or product.

6 12. As in any manufacturing process that begins with the preparation of
7 specifications, CNC milling begins with a design of the final component, which is
8 used to generate coded instructions. It then removes material from the workpiece
9 using a series of precise movements along different paths and axes to produce the
10 final design shape.

11 13. This process can be used with a variety of materials, including plastic,
12 metal, wood, and glass. And it can create products for use in a wide range of
13 industries, including aerospace, automotive, commercial, electronics, maintenance,
14 medical, telecommunications, and transportation.

15 14. CNC milling machines are also commonly used to manufacture a wide
16 variety of firearm frames and receivers.

17 15. The Ghost Gunner is the latest evolution of a general-purpose CNC
18 milling machine that allows users to manufacture their own firearms by finishing
19 incomplete frames and receivers of some of the most popular firearms in the United
20 States, including the AR-15, AR-308, M1911, and AK-47.

21 16. The AR-15, AR-308, M1911, and AK-47 are all commonly used
22 firearms in the United States.

23 17. Defense Distributed used to sell 80%-complete frames and receivers but
24 due to the current regulations in place no longer does so in California. It continues to
25 sell the Ghost Gunner in California.

26 18. Because the materials provided by Defense Distributed often do not
27 have serial numbers and are not licensed with the federal government, they may be
28 used to make what are popularly known by the moniker “ghost guns.”

II. The Sparse History of Self-Manufactured Firearm Regulation.

19. Self-manufactured firearms have a long and, until recently, unregulated history in the United States. *See, e.g.,* Joseph G. S. Greenlee, *The American Tradition of Self-Made Arms*, 54 St. Mary's L.J. (forthcoming 2022).¹

20. The unregulated self-manufacture of firearms was common in the American colonies, beginning with gunsmiths who made and repaired militia and hunting weapons and were "extremely important and highly valued in their communities." *See id.* at 9.

21. Indeed, colonists had the express right to import firearms and the parts necessary to make them. *Id.* at 9–10 (citing Francis Newton Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America* 3787–88 (Francis Newton Thorpe ed., 1909)).

22. While "[i]n the large gunsmith shops of the cities it is probable that many minds were given to the making of a gun . . . in the smaller shops which formed the great majority—mere cabins on the outskirts of the wilderness—one man with or without an apprentice did every part of the work." Charles Winthrop Sawyer, *Firearms in American History* 145 (1910); *see also* James B. Whisker, *The Gunsmith's Trade* 5 (1992) ("In small shops one tradesman performed all operations required to make a gun . . . There was no division of labor.").

23. Colonial law reflected an understanding that the right to bear arms extended to commerce in firearms, which is necessarily associated with their manufacture. For instance, in Virginia, all persons had "liberty to sell armes and

¹ Manuscript available at:
<https://deliverypdf.ssrn.com/delivery.php?ID=574084113083007008102120094005023088050082052006043055030097114006006003106089098000029045032055014058032016027075093065001028033070056089028116121026010020093077030063012064090089088098072124003120021007071126112027117122017077020114064000031111102013&EXT=pdf&INDEX=TRUE>.

1 ammunition to any of his majesties loyall subjects inhabiting this colony.” Laws of
2 Va., Feb. 1676-77, Va. Stat. at Large, 2 Hening 403 (1823).

3 24. During the Revolutionary War, when the British attempted to prevent
4 the Americans from acquiring firearms and ammunition, Americans manufactured
5 their own arms and gunpowder to survive. *See Greenlee, supra*, at 12–15 (citing M.L.
6 Brown, *Firearms in Colonial America: The Impact on History and Technology* 1492-
7 1792 127 (1980)).

8 25. Further, “[w]hen the colonies faced major arms shortages throughout
9 the war, domestic arms manufacturing filled the void.” *See Greenlee, supra*, at 16;
10 *see also* David B. Kopel, *Does the Second Amendment Protect Firearms*
11 *Commerce?*, 127 Harv. L. Rev. F. 230, 234 (2014) (explaining that “the right to
12 engage in firearms commerce . . . is one of the most important reasons why America's
13 political dispute with Great Britain turned into an armed revolution.”)

14 26. Several colonial representative bodies subsequently solicited firearm
15 manufacturers, including those engaged in private manufacture and those outside of
16 the firearms business, to increase domestic production. *See Greenlee, supra*, at
17 18--23.

18 27. The circumstances of the war required “[n]early every able-bodied male
19 between 16 and 60 . . . to provide his own arms in the colonial and founding eras,”
20 and some men “built their arms themselves.” *Id.* at 25.

21 28. After the Revolutionary War, “[b]ecause gunsmithing was a universal
22 need in early America, many early Americans who were professionals in other
23 occupations engaged in gunsmithing as an additional occupation or hobby.” *See id.*
24 at 29.

25 29. Indeed, “persons occupied as blacksmiths, whitesmiths, tinsmiths,
26 locksmiths, silversmiths, farmers, clock and watchmakers, carpenters, mechanics,
27 cutlers, stonemasons, merchants, and at least one attorney offered gunsmithing
28 services.” *Id.* at 29–31. This tradition extended to pioneers, mountain men, and

1 explorers whose need to make and repair firearms was a necessity to survive. *Id.* at
2 32.

3 30. Although some early riflemakers forged their firearm parts from scratch,
4 “there were gunsmiths who did not forge out their barrel blanks, but purchased them
5 in bulk from some factory like that of Eliphalet Remington.” John G.W. Dillin, *The*
6 *Kentucky Rifle* 96 (1975). These riflemakers then fitted their barrels “to hand-made
7 stocks with American factory or English locks.” *Id.*

8 31. Describing the landscape of firearms in early America in 1793, Thomas
9 Jefferson wrote that “[o]ur citizens have always been free to make, vend, and export
10 arms. It is the constant occupation and livelihood of some of them.” Letter from
11 Secretary of State Thomas Jefferson to British Ambassador to the United States
12 George Hammond, May 15, 1793, in *The Writings of Thomas Jefferson* 325, 326
13 (Paul Ford ed., 1904) (vol. 7).

14 32. It is also notable that in the nineteenth and twentieth centuries, “[m]any
15 of the most important innovations in firearms technology began not in a federal
16 armory or major firearms manufactory, but in private homes and workshops . . .
17 [including] [t]he most popular rifle in America today . . . the AR-15, owned in the
18 tens of millions . . . [whose] roots are in homebuilding. *See* Greenlee, *supra*, at 35–
19 39.

20 33. To be sure, anyone with the requisite skill could build firearms for any
21 purpose; “[o]ne need not have had a wealthy patron or sponsor, or work for king and
22 nobility, to make guns.” *See id.* at 41 (internal citation removed); Whisker, *supra*, at
23 6 (“Even those apprentices who had never completed an apprenticeship might enter
24 the trade. No guild, union or government agency attempted to regulate the gun
25 making business . . . He need not take any examination. He need not present one of
26 his guns to any examining board.”); *id.* at 90 (“Gunsmiths considered it to be their
27 right to make guns without regulation or interference.”).

28

1 34. In fact, *no restrictions* were placed on the ability to manufacture arms
2 for personal use in America during the seventeenth, eighteenth, or nineteenth
3 centuries. *See* Greenlee, *supra*, at 40. Rather, “[a]ll such restrictions have been
4 enacted within the last decade.” *Id.* (emphasis added).

5 35. Any such restriction is inconsistent with the Nation’s historical tradition
6 of firearms regulation.

7 36. In addition, it may be safely said that the United States has no historical
8 tradition of regulating the tools and parts used for the self-manufacture of firearms.

9 37. Thus, laws that restrict the tools and parts used for the self-manufacture
10 of firearms are inconsistent with the Nation’s historical tradition of firearms
11 regulation.

12 38. The first major federal gun regulation was narrow, and not enacted until
13 the 1934 National Firearms Act, which “regulated a subset of arms thought
14 particularly suitable for criminal use.” *See* Jake Charles, *Ghost Guns, History, and*
15 *the Second Amendment*, Duke Center for Firearms Law (Apr. 27, 2022),
16 [https://firearmslaw.duke.edu/2022/04/ghost-guns-history-and-the-second-](https://firearmslaw.duke.edu/2022/04/ghost-guns-history-and-the-second-amendment/)
17 [amendment/](https://firearmslaw.duke.edu/2022/04/ghost-guns-history-and-the-second-amendment/).

18 39. The federal government has never required a license to build a firearm
19 for personal use. *See* Greenlee, *supra*, at 42. Restrictions applying to self-
20 manufactured firearms generally apply to all firearms—for instance, “the making of
21 a firearm that falls within the scope of the National Firearms Act requires advanced
22 approval by [ATF], as well as a tax payment. But no federal law uniquely targets
23 arms built for personal use.” *Id.* at 42–43.

24 40. Despite these laws—all of which were enacted long after the Founding
25 and the passage of the Fourteenth Amendment—it has always been lawful to build
26 arms for personal use under federal law with no special restrictions. *See What is ATF*
27 *Doing in Regards to People Making Their Own Firearms*, Bureau of Alcohol,
28 Tobacco, Firearms and Explosives (May 14, 2015),

1 <https://www.atf.gov/firearms/qa/what-atf-doing-regards-people-making-their-own->
2 firearms (last visited August 4, 2022) (“An individual may generally make a firearm
3 for personal use.”).

4 41. At the state level, it was not until 2016 that a small minority of states
5 began to narrowly regulate the manufacture of arms for personal use. *See* Greenlee,
6 *supra*, at 42. California was the first state to regulate self-built arms, passing a law in
7 2016 that took effect in 2018. *See* 2016 Cal. Legis. Serv. Ch. 60 (A.B. 857) (adding
8 Cal. Penal Code § 29180). Thereafter, only a handful of other states (including New
9 Jersey, Connecticut, Hawaii, the District of Colombia, Rhode Island, and Nevada)
10 have implemented similar narrow regulations, but none have outright banned
11 self-manufacturing processes for firearms.

12
13 **III. California Imposes Unprecedented Restrictions on the Self-Manufacture**
14 **of Firearms with the Passage of AB 1621 and Attempts to Deter the**
15 **Vindication of Constitutional Rights with the Passage of SB 1327.**

16 42. On June 30, 2022, California Governor Gavin Newsom signed AB
17 1621, which amended or added multiple provisions of the Penal Code, including §§
18 29180(f), 29185, 30400, 27530(a), and 18010(d). AB 1621 was enacted as an
19 “urgency” statute, meaning that these provisions took effect immediately. *See* AB
20 1621, § 41.

21 43. Section 29180(f), as added by AB 1621, § 22, provides that “[a] person,
22 corporation, or firm shall not knowingly manufacture or assemble, or *knowingly*
23 *cause, allow, facilitate, aid, or abet the manufacture or assembling of*, a firearm that
24 is not imprinted with a valid state or federal serial number or mark of identification.”

25 44. A violation of Section 29180(f) “is punishable by imprisonment in a
26 county jail not to exceed one year, or by a fine not to exceed one thousand dollars
27 (\$1,000), or by both that fine and imprisonment” if the firearm at issue is a handgun.
28 Cal. Penal Code § 29180(g). For all other firearms, a violation of § 29180(f) “is

1 punishable by imprisonment in a county jail not to exceed six months, or by a fine
2 not to exceed one thousand (\$1,000), or by both that fine and imprisonment.” *Id.*

3 45. Section 29185, as added by AB 1621 § 25, imposes sweeping
4 restrictions that criminalize the use or sale of CNC milling machines. It provides, in
5 relevant part, that:

- 6 (a) No person, firm, or corporation, other than a federally licensed
7 firearms manufacturer or importer, shall use a computer numerical
8 control (CNC) milling machine to manufacture a firearm, including
9 a completed frame or receiver or a firearm precursor part[;]
10 (b) It is unlawful to sell, offer to sell, or transfer a CNC milling machine
11 that has the sole or primary function of manufacturing firearms to
12 any person in this state, other than a federally licensed firearms
13 manufacturer or importer[; and]
14 (c) It is unlawful for any person in this state other than a federally
15 licensed firearms manufacturer or importer to possess, purchase, or
16 receive a CNC milling machine that has the sole or primary function
17 of manufacturing firearms.

18 Cal. Penal Code § 29185(a)–(c).

19 46. To avoid violating § 29185, any individual in California who possessed
20 a CNC machine “that has the sole or primary function of manufacturing firearms”
21 before the effective date of AB 1621 (June 30, 2022) must, within 90 days after the
22 effective date, take one of the following actions:

- 23 (A) Sell[] or transfer[] the machine to a federally licensed firearms
24 manufacturer or importer[;]
25 (B) Sell[] or transfer[] the machine to a person described in [§ 29185(d)]
26 paragraph (1)[;]
27 (C) Remove[] the machine from this state[;]
28 (D) Relinquish[] the machine to a law enforcement agency[; or]
(E) Otherwise lawfully terminate[] possession of the machine.

Cal. Penal Code § 29185(d)(3)(A)–(E).

47. Under § 29185(f), a violation of § 29185 “is punishable as a
misdemeanor.”

1 48. Cal. Penal Code § 30400, as added by AB 1621, § 28, also criminalizes
2 the sale or transfer of federally unregulated firearm precursor parts.

3 49. Specifically, Cal. Penal Code § 30400(a) states, in relevant part, that “it
4 shall be unlawful for a person to purchase, sell, offer to sell, or transfer ownership of
5 any firearm precursor part in this state that is not a federally regulated firearm
6 precursor part.”

7 50. Cal. Penal Code § 16519, as added by AB 1621 § 5, defines a “federally
8 regulated firearm precursor part” as “any firearm precursor part deemed to be a
9 firearm pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the
10 United States Code and any regulations issued pursuant thereto, and, if required, *has*
11 *been imprinted with a serial number* by a federal licensee authorized to serialized
12 firearms in compliance with all applicable federal laws and regulations.” (emphasis
13 added).

14 51. The federal definition of a “firearm” under the Gun Control Act of 1968
15 includes “the frame or receiver of any such weapon.” 18 U.S.C. § 921(a)(3).

16 52. Prior to April 22, 2022, ATF regulations defined “frames” and
17 “receivers” as firearm components that are readily operational without any additional
18 modification. *See* 27 C.F.R. §§ 478.11, 479.11 (as effective until August 24,
19 2022) (defining a “firearm frame or receiver” as “[t]hat part of a firearm which
20 provides housing for the hammer, bolt or breechblock, and firing mechanism, and
21 which is usually threaded at its forward portion to receive the barrel”).

22 53. However, on April 22, 2022, ATF issued a Final Rule expanding the
23 definition of a “frame” and “receiver,” and in turn a “firearm,” to include a “partially
24 complete, disassembled, or nonfunctional frame or receiver, including a frame or
25 receiver parts kit, that is designated to or may readily be completed, assembled,
26 restored, or otherwise converted to function as a frame or receiver” *Definition of*
27 *“Frame or Receiver” and Identification of Firearms*, 87 Fed. Reg. 24652, 24735,
28 24739 (Apr. 26, 2022) (to be codified at 27 C.F.R. §§ 478.11 and 478.12).

1 54. The Final Rule took effect on August 24, 2022. *Id.* at 24652.

2 55. Now that the Final Rule is in effect, any precursor parts falling outside
3 the current federal definition of “frame or receiver” (which are therefore not
4 considered “firearms”) are not federally regulated nor required to have a serial
5 number, and thus do not qualify as “federally regulated precursor parts” under Cal.
6 Penal Code § 16519.

7 56. The California DOJ Bureau of Firearms has taken the position that, since
8 the Final Rule took effect, only federally regulated firearm precursor parts may be
9 purchased, sold, offered for sale, or transferred in California, unless a limited
10 exception applies. *See id.* § 30400(b).

11 57. Additionally, Cal. Penal Code § 27530(a), as added by AB 1621 § 17,
12 prohibits the sale or transfer of “a firearm that is not imprinted with a serial number
13 imprinted by a federal licensee authorized to serialize firearms.”

14 58. Due to ATF’s new and expansive definition of “firearm” in its Final
15 Rule, this regulation works in conjunction with § 30400 to effectively ban the sale,
16 transfer, or import into California of all incomplete frames, receivers, and other
17 precursor parts required to self-manufacture a firearm.

18 59. To enforce these new restrictions on the sale, transfer, or import of
19 firearm precursor parts, Cal. Penal Code § 18010(d)(1), as added by AB 1621 § 10,
20 bestows enforcement power upon the Attorney General, a district attorney, or a city
21 attorney to “enjoin the importation into the state or sale or transfer of any firearm
22 precursor part that is unlawfully imported into [California] or sold or transferred
23 within” California.

24 60. Against the backdrop of sweeping restrictions on the self-manufacture
25 and possession of firearms, California also enacted legislation that goes to
26 unprecedented lengths to deter affected parties from seeking to enforce their
27 constitutional rights.

28

1 61. Specifically, Section 2 of Senate Bill 1327 (“SB 1327”), which was
2 enacted on July 22, 2022, adds the following provision to the California Civil Code:

3 **1021.11** (a) Notwithstanding any other law, any person, including an
4 entity, attorney, *or law firm*, who seeks declaratory or injunctive relief
5 to prevent this state, a political subdivision, a governmental entity or
6 public official in this state, or a person in this state from enforcing any
7 statute, ordinance, rule, regulation, or *any other type of law that*
8 *regulates or restricts firearms*, or that represents any litigant seeking
9 that relief, *is jointly and severally liable to pay the attorney’s fees and*
10 *costs of the prevailing party.*

11 (emphasis added).

12 62. In other words, any person—including a lawyer or law firm representing
13 a client—who seeks to enjoin a California firearm restriction faces the prospect of
14 liability under SB 1327 for the California government’s attorneys’ fees.

15 63. And the attorneys’ fees provision in Section 2 of SB 1327 is arbitrarily
16 one-sided in the *government’s* favor, as it provides that “[a]ny person, including an
17 entity, attorney, or law firm, who seeks declaratory or injunctive relief as described
18 in subdivision (a), shall not be deemed a prevailing party under this section or any
19 other provision of this chapter.” SB 1327 § 2.

20 64. The government is considered the “prevailing party” if a court does
21 either of the following: (1) “[d]ismisses any claim or cause of action brought by the
22 party seeking the declaratory or injunctive relief described by subdivision (a),
23 regardless of the reason for the dismissal,” or (2) [e]nters judgment in favor of the
24 party opposing the declaratory or injunctive relief described by subdivision (a), on
25 any claim or cause of action.” *Id.*

26 65. Thus, to avoid liability for the government’s attorneys’ fees, a plaintiff
27 in a Second Amendment case must win in all respects, even if it substantially prevails
28 on the merits, settles a claim without a waiver, or voluntarily dismisses any portion
of the action for any reason.

 66. Additionally, if the government is deemed the “prevailing party,” it can
seek to recoup fees for three years after the litigation concludes. *Id.*

1 67. Worse yet, California’s inclusion of Section 2—and its passage of SB
2 1327 more generally—was nothing more than an ill-advised political ploy designed
3 to manufacture a proxy war with the State of Texas.

4 68. The Senate Judiciary Committee’s analysis of SB 1327 admitted that the
5 bill “is modeled after a controversial Texas abortion law, and includes a number of
6 the same *problematic procedural mechanisms*.” See California Senate Judiciary
7 Committee Analysis of SB 1327, at 2 (2022) (emphasis added).

8 69. The California Assembly Committee on Judiciary’s analysis of SB 1327
9 further acknowledges that “Texas included a number of provisions in SB 8 *to*
10 *discourage lawsuits challenging the law itself*. . . The mechanism for doing so was
11 to make the party who was not the ‘prevailing party’ in such a lawsuit responsible
12 for attorney’s fees, imposed liability for the fees on both the plaintiff and their
13 attorney, and create lopsided and unfair rules about who was the ‘prevailing party’
14 (spoiler alert: almost never the party who challenges the law). *This bill replicates*
15 *those provisions*.” See Assembly Judiciary Committee Analysis of SB 1327, at 12
16 (2022).

17 70. The Assembly Judiciary Committee’s analysis goes on to state, “[i]t’s a
18 lose-lose scenario for plaintiffs who challenge the bill or a gun law; and a win-win
19 scenario for the government. An attorney could properly represent a client in seeking
20 to strike down an unconstitutional law, win on all but one count, and break no other
21 statutory or professional duties, but then be held responsible (along with their client)
22 for paying the defendant’s attorney’s fees. In fact, even if the defendant failed to seek
23 attorney’s fees in the underlying action or the court refused to award them and found
24 this bill to unconstitutional, this bill would allow the defendant government entity to
25 bring an action within three years to hold the attorney responsible for those fees and
26 costs. *This language appears to be unprecedented in California law and likely would*
27 *not be endorsed by this Committee but for the fact that it is included in this bill and*
28 *modeled on Texas law*.” *Id.* at 13 (emphasis added).

72. Nevertheless, California Governor Gavin Newsom signed SB 1327 into law, confirming in his statement that the bill has no legitimate purpose: “If they [Texas] are going to use this framework to put women’s lives at risk, we are going to use it to save people’s lives here in the state of California. *That’s the spirit, the principle, behind this law.*” Alex Berke, *California’s New Gun Bill Is Bad Law and Dumb Politics*, THE DAILY BEAST (July 29, 2022) (emphasis added), <https://www.thedailybeast.com/californias-new-gun-bill-is-bad-law-and-dumb-politics>.

73. Plaintiffs incorporate the foregoing allegations as though fully set forth herein.

75. To justify a firearm regulation that is the subject of a Second Amendment challenge, the “government may not simply posit that the regulation promotes an important interest.” *Id.* at 2126. “Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* A firearm regulation only falls outside the “Second Amendment’s ‘unqualified command’” if it is “consistent with this Nation’s historical tradition.” *Id.* at 2126, 2130 (quoting *Konigsberg v. State Bar of Cal.*, 366

1 U.S. 36, 50 n.10 (1961)). This analytical framework does not “invoke any means-end
2 test such as intermediate scrutiny,” *Id.* at 2128–29; such a standard is too deferential
3 “to the determinations of legislatures.” *Id.* at 2131.

4 76. The historical analysis of the Second Amendment “requires courts to
5 assess whether modern firearm regulations are consistent with the Second
6 Amendment’s text and historical understanding.” *Id.* “[W]hen a challenged
7 regulation addresses a general societal problem that has persisted since the 18th
8 century, the lack of a distinctly similar historical regulation addressing that problem
9 is relevant evidence that the challenged regulation is inconsistent with the Second
10 Amendment.” *Id.*

11 77. Further, “the Court has acknowledged that certain unarticulated rights
12 are implicit in enumerated guarantees . . . [and] fundamental rights, even though not
13 expressly guaranteed, have been recognized by the Court as indispensable to the
14 enjoyment of rights explicitly defined.” *Richmond Newspapers v. Virginia*, 448 U.S.
15 555, 579–80 (1980).

16 78. Here, the text of the Second Amendment, which guarantees “the right
17 of the people to keep and bear Arms,” implicitly includes the right to acquire and
18 manufacture firearms. *See* U.S. Const. amend. II. Further, the “right to keep arms,
19 necessarily involves the right to purchase them, to keep them in a state of efficiency
20 for use, and to purchase and provide ammunition suitable for such arms, and to keep
21 them in repair.” *See Andrews v. State*, 50 Tenn. 165, 178 (1871). Without
22 constitutional protections for the acquisition and manufacturing of firearms, the
23 “right of the people to keep and bear Arms” would be in jeopardy. *See Ezell*, 651
24 F.3d at 704 (clarifying that “[t]he right to possess firearms for protection implies a
25 corresponding right to acquire and maintain proficiency in their use; the core right
26 wouldn’t mean much without the training and practice that make it effective.”); *Ill.*
27 *Ass’n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930, 930 (N.D.
28 Ill. 2014) (holding that “the right to keep and bear arms for self-defense under the

1 Second Amendment . . . must also include the right to *acquire* a firearm . . .”) (emphasis in original).

2
3 79. Nothing in the “Nation’s historical tradition of firearm regulation”
4 supports the heavy-handed restrictions in Cal. Penal Code §§ 29180(f), 29185,
5 30400(a), 27530(a), and 18010(d). *See Bruen*, 142 S. Ct. at 2130. To the contrary,
6 self-manufactured firearms were not subject to *any* governmental regulation—state
7 or federal—until 2016.

8 80. Nevertheless, § 29185 prohibits *any* private person or company (except
9 a “federally licensed firearms manufacturer or importer”) from using modern
10 technology—a CNC milling machine—to manufacture their own weapons. Even the
11 mere sale, offer to sell, transfer, possession, purchase, or receipt of this technology
12 subjects an individual to criminal liability. *See* Cal. Penal Code § 29185(b)–(c), (f).
13 Section 29180(f) similarly prohibits any person or company from manufacturing or
14 “caus[ing], allow[ing], facilitat[ing], or abet[ting] the manufacture of” firearms—a
15 prohibition that appears to apply broadly to companies that sell CNC milling
16 machines.

17 81. Likewise, the regulatory scheme in §§ 30400, 27530(a), and 18010(d)
18 undermines the right to self-manufacture firearms because it all but prohibits
19 individuals from acquiring the precursor materials required to self-manufacture
20 modern, commonly used firearms.

21 82. These unprecedented regulations are plainly inconsistent with the
22 “Nation’s historical tradition of firearm regulation.” *See Bruen*, 142 S. Ct. at 2130.
23 Accordingly, the restrictions on the self-manufacture of firearms in §§ 29180(f),
24 29185, 30400, 27530(a), and 18010(d) fall directly within—and are proscribed by—
25 the Second Amendment’s “unqualified command.” *Id.* (quoting *Konigsberg*, 366
26 U.S. at 50 n.10).

27 83. Because Cal. Penal Code §§ 29180(f), 29185, 30400, 27530(a), and
28 18010(d) violate Plaintiffs’ and Plaintiffs’ members’ rights under the Second and

1 Fourteenth Amendments to the United States Constitution, they are invalid—both
2 facially and as applied against the Plaintiffs in this action. Plaintiffs are therefore
3 entitled to declaratory and permanent and preliminary injunctive relief against
4 Defendants, their officers, agents, servants, employees, and all persons in active
5 concert or participation with them.

6 COUNT TWO

7 (42 U.S.C. § 1983 Action for Deprivation of 8 Plaintiffs’ Rights under U.S. Const. amends. I and XIV)

8 84. Plaintiffs incorporate the foregoing allegations as though fully set forth
9 herein.

10 85. The First Amendment, which applies against the States under U.S.
11 Const. amend. XIV, provides that “Congress shall make no law . . . abridging . . . the
12 right of the people . . . to petition the Government for a redress of grievances.” U.S.
13 Const. amend. I.

14 86. The right of access to the courts is one aspect of the right of petition,
15 *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011). It “cannot be
16 impaired, either directly . . . or indirectly, by threatening or harassing [an individual]
17 in retaliation for filing lawsuits,” and “state officials may not take retaliatory action
18 against an individual designed either to punish him for having exercised his
19 constitutional right to seek judicial relief or to intimidate or chill his exercise of that
20 right in the future.” *Harrison v. Springdale Water & Sewer Comm’n*, 780 F.2d 1422,
21 1427–28 (8th Cir. 1986); *see also United States v. Jackson*, 390 U.S. 570, 582 (1968)
22 (“Whatever might be said of Congress’ objectives, they cannot be pursued by means
23 that needlessly chill the exercise of basic constitutional rights.”)

24 87. The fee-shifting provision in SB 1327 § 2, which imposes liability upon
25 anyone who seeks to challenge California’s litany of restrictions on their Second
26 Amendment rights—including attorneys and law firms—is plainly intended to chill
27 and punish challenges to gun-related legislation.

28

1 88. Under the fee-shifting provision, an attorney could represent a client
2 seeking to strike down an unconstitutional law, win on all but one claim, and still be
3 held responsible for paying the government's attorney's fees.

4 89. In fact, even if the defendant fails to seek attorney's fees in the
5 underlying action or the court refuses to award them and *finds this provision*
6 *unconstitutional*, this bill allows the defendant to bring an action within three years
7 to hold the attorney responsible for those fees and costs.

8 90. There is no question that this violates the First Amendment right to
9 petition the government for a redress of grievances. *See In re Workers Comp. Refund*,
10 842 F. Supp. 1211, 1218–19 (D. Minn. 1994), *aff'd sub nom. In re Workers' Comp.*
11 *Refund*, 46 F.3d 813 (8th Cir. 1995) (finding a similar fee-shifting provision
12 unconstitutional because “[i]t is obvious to the Court that [the provision] was
13 purposefully inserted because the legislature knew [the statute] would incite a
14 challenge. This section can only be seen as an unconstitutional effort to forestall and
15 encumber this predictable lawsuit. The legislature may not financially hobble an
16 opponent to protect its enactment.”); *see also Coffey v. Cox*, 234 F. Supp. 2d 884,
17 891 (C.D. Ill. 2002) (“[A]n award of Defendants’ attorneys’ fees imposed against
18 Plaintiff [under 42 U.S.C. § 1988] may chill a future meritorious plaintiff from
19 pursuing his civil rights action for fear of having to pay his opponent’s attorney’s
20 fees should he ultimately be unsuccessful.”).

21 91. For similar reasons, SB 1327 § 2 also violates Plaintiffs’ substantive due
22 process rights.

23 92. If a legislative classification infringes on a recognized fundamental
24 right, “substantive due process forbids the infringement of that right ‘at all, no matter
25 what process is provided, unless the infringement is narrowly tailored to serve a
26 compelling state interest.’” *Witt v. Dep’t of Air Force*, 527 F.3d 806, 817 (9th Cir.
27 2008) (citing *Reno v. Flores*, 507 U.S. 292, 301–02 (1993)). Otherwise, courts apply
28 rational basis review. *Id.*

1 93. The right to petition the government and the corresponding right to
2 access the courts are fundamental rights. *Chambers v. Baltimore & Ohio Railroad*
3 *Co.*, 207 U.S. 142, 148 (1907) (the right to sue and defend in the courts “is the right
4 conservative of all other rights, and lies at the foundation of orderly government. It
5 is one of the highest and most essential privileges of citizenship . . .”); *see also Ryland*
6 *v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983) (“The right of access to the courts is
7 basic to our system of government, and it is well established today that it is one of
8 the fundamental rights protected by the Constitution.”).

9 94. California’s only asserted interests in SB 1327 § 2 were to mirror the
10 Texas Heartbeat Act and deter challenges to gun legislation. These are not legitimate
11 governmental interests—let alone compelling ones.

12 95. Nor is SB 1327 § 2 narrowly tailored because, among other things, it (1)
13 makes litigants, attorneys, *and* law firms jointly and severally liable for attorneys’
14 fees and costs; and (2) provides for an award of fees to the government in any
15 challenge to a California firearm regulation—including challenges where the plaintiff
16 prevails on some of its claims.

17 96. Thus, SB 1327 § 2 would not pass strict scrutiny or rational basis review.

18 97. Because SB 1327 § 2 violates Plaintiffs’ rights under the First and
19 Fourteenth Amendments to the United States Constitution, Plaintiffs are entitled to
20 declaratory and preliminary and permanent injunctive relief.

21 COUNT THREE

22 (42 U.S.C. § 1983 Action for Deprivation of Plaintiffs’ Right to 23 Equal Protection under U.S. Const. amend. XIV)

24 98. Plaintiffs incorporate the foregoing allegations as though fully set forth
25 herein.

26 99. The Fourteenth Amendment, enforceable under 42 U.S.C. § 1983,
27 provides that no state shall deny to any person within its jurisdiction the equal
28 protection of the laws.

1 100. Equal protection is “essentially a direction that all persons similarly
2 situated should be treated alike.” *City of Cleburne v. Living Ctr.*, 473 U.S. 432, 439
3 (1985).

4 101. If unequal treatment occurs in the context of exercising a fundamental
5 right, or the government is motivated by animus toward a disfavored group, courts
6 apply heightened scrutiny. *See Loving v. Virginia*, 388 U.S. 1, 11 (1967); *see also*
7 *Romer v. Evans*, 517 U.S. 620, 632 (1996); *City of Cleburne*, 473 U.S. at 439.

8 102. Both the right to petition the government and the right to keep and bear
9 arms are fundamental rights.

10 103. On its face, SB 1327 § 2 does not apply to plaintiffs who bring
11 constitutional challenges against non-gun-related regulations. SB 1327 § 2 therefore
12 unequally denies Plaintiffs their fundamental right to petition the government for
13 asserting a particular constitutional right—the right to bear and keep arms—while
14 placing no similar burden on challenges asserting other constitutional rights.

15 104. Again, California’s only asserted interests in SB 1327 § 2 were to mirror
16 the Texas Heartbeat Act and deter challenges to gun legislation. These are not
17 legitimate governmental interests—let alone compelling ones.

18 105. Nor is SB 1327 § 2 narrowly tailored for the reasons explained in Count
19 Two.

20 106. Thus, SB 1327 § 2 would not pass strict scrutiny or rational basis review.

21 107. Because SB 1327 § 2 deprives Plaintiffs of the right to equal protection
22 under the law secured by the Fourteenth Amendment of the United States
23 Constitution, Plaintiffs are entitled to declaratory and preliminary and permanent
24 injunctive relief.

25 **COUNT FOUR**
26 **(Supremacy Clause, U.S. Const. art. VI)**

27 108. Plaintiffs incorporate the foregoing allegations as though fully set forth
28 herein.

1 109. SB 1327 § 2 impedes the vindication of federal rights, and is therefore
2 preempted by 42 U.S.C. § 1988(b), which permits the court to give the “prevailing
3 party [in a § 1983 action] . . . a reasonable attorney’s fee as part of the costs.” *See*
4 *also Felder v. Casey*, 487 U.S. 131, 138 (1988) (state statute preempted when it
5 “conflicts in both its purpose and effects with the remedial objectives of § 1983”);
6 *La Raza Unida v. Volpe*, 545 F. Supp. 36, 39 (N.D. Cal. 1982) (finding that § 1988
7 preempted conflicting state law requiring legislative appropriation before the
8 California state defendants would satisfy a judgment).

9 110. Because SB 1327 § 2 is preempted by 42 U.S.C. § 1988, Plaintiffs are
10 entitled to declaratory and preliminary and permanent injunctive relief.

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RELIEF REQUESTED

WHEREFORE, Plaintiffs request that the Court enter an order and judgment:

A. Declaring that Cal. Penal Code §§ 29180(f), 29185, 30400, 27530(a), and 18010(d) violate the Second and Fourteenth Amendments and are thus devoid of any legal force or effect;

B. Permanently and preliminarily enjoining Defendants and their employees and agents from bringing an enforcement action against any company or individual pursuant to Cal. Penal Code §§ 29180, 29185, or 18010(d);

C. Declaring that SB 1327 § 2 violates the First and Fourteenth Amendments and is thus devoid of any legal force or effect;

D. Declaring that SB 1327 § 2 violates the Supremacy Clause and is thus devoid of any legal force or effect

E. Permanently and preliminarily enjoining Defendants and their employees and agents from seeking attorney's fees pursuant to SB 1327 § 2;

F. Awarding Plaintiffs their attorneys' fees and costs under 42 U.S.C. § 1988; and

G. Granting such other and further relief that the Court may deem just and proper.

DATED this day of August, 2022.

SNELL & WILMER L.L.P.

By: /s/

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