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 8

9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 11  
 12

13 **LANCE BOLAND, ET AL.,**  
 14  
 Plaintiffs,  
 15  
 v.  
 16  
 17 **ROB BONTA, IN HIS OFFICIAL  
 CAPACITY AS ATTORNEY GENERAL OF  
 18 THE STATE OF CALIFORNIA, ET AL.,**  
 19 Defendants.  
 20

Case No. 8:22-cv-01421-DFM

**DEFENDANT’S OPPOSITION TO  
MOTION FOR PRELIMINARY  
INJUNCTION**

Date: January 23, 2023  
 Time: 9:00 a.m.  
 Courtroom: 6B  
 Judge: Hon. Cormac J. Carney  
 Trial Date: None set  
 Action Filed: August 3, 2022

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## INTRODUCTION

1  
2 Plaintiffs are not entitled to the extraordinary remedy of a preliminary  
3 injunction barring enforcement of California’s Unsafe Handgun Act (“UHA”), a  
4 state law that has been in place for over twenty years. The UHA is  
5 not a handgun ban. Handguns, which include revolvers, non-semiautomatic pistols,  
6 and semiautomatic pistols, have long been and continue to be widely  
7 available for purchase and possession in California. Plaintiffs do not allege that  
8 they cannot purchase a handgun suitable for self-defense, nor claim that they do not  
9 already own such handguns. Rather, the UHA merely prohibits the manufacture or  
10 commercial sale of handguns that do not meet certain safety requirements.

11 As a threshold matter, although Plaintiffs ask the Court to enjoin enforcement  
12 of all statutes in the UHA, they have asserted arguments related to only three  
13 particular provisions. Specifically, Plaintiffs argue that the UHA’s requirements  
14 that semiautomatic pistols include three safety features—chamber load indicators  
15 (“CLIs”), magazine disconnect mechanisms (MDMs), and microstamping  
16 capability (*see* Cal. Penal Code § § 31910(b)(4)–(6))—violate the Second  
17 Amendment. However, Plaintiffs have failed to and cannot show that they are  
18 entitled to an injunction barring enforcement of these requirements.

19 Plaintiffs cannot show that they are likely to succeed on their Second  
20 Amendment challenge to CLI, MDM, and microstamping requirements because  
21 under the plain text analysis required by *New York State Rifle & Pistol Association,*  
22 *Inc., v. Bruen*, \_\_\_ U.S. \_\_\_, 142 S.Ct. 2111 (2022), the provisions do not violate  
23 Plaintiffs’ right to “keep” or “bear” arms. Although the CLI, MDM, and  
24 microstamping requirements mean that not every model of semiautomatic pistol is  
25 available for Plaintiffs to purchase in California, that does not mean that the  
26 requirements prevent them from “‘keep[ing]’ firearms in their home, at the ready  
27 for self-defense,” *id.* at 2135, or from carrying arms on one’s person in and outside  
28 the home in case of confrontation, *id.* at 2136. The challenged provisions are

1 therefore entirely different than the total bans on handgun possession and carry that  
2 have been struck down by the Supreme Court. *See District of Columbia v. Heller*,  
3 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *Bruen*,  
4 142 S.Ct. 2111.

5 Plaintiffs have also failed to meet their burden to show that they will suffer  
6 irreparable harm absent a preliminary injunction. Since the challenged provisions  
7 do not violate Plaintiffs’ Second Amendment rights, they are not currently suffering  
8 any harm. Moreover, because the CLI, MDM, and microstamping requirements  
9 constitute less than all of the requirements to make a semiautomatic pistol eligible  
10 for sale, an injunction would not have any immediate practical effect, because it  
11 would not make any models that are not already ineligible for sale available to be  
12 sold pending trial.

13 Finally, the balance of the equities and the public interest strongly disfavor a  
14 preliminary injunction here. While Plaintiffs do not currently suffer any harm due  
15 to the status quo, an injunction would seriously undermine California’s considered  
16 effort to improve the safety of handguns sold in California.

17 For these reasons, explained further below, the Court should deny Plaintiffs’  
18 motion for preliminary injunction.

## 19 **BACKGROUND**

### 20 **I. CALIFORNIA’S UNSAFE HANDGUN ACT**

21 The UHA prohibits the manufacture or sale of any “unsafe handgun” in  
22 California, making a violation punishable by imprisonment in a county jail for not  
23 more than one year. Cal. Penal Code § 32000(a).<sup>1</sup> The UHA does not prohibit the  
24 mere possession of any handgun or other firearm. *See* §§ 31900, *et seq.*

25 California enacted the UHA in 1999 “in response to the proliferation of local  
26 ordinances banning low cost, cheaply made handguns known as ‘Saturday Night

27 \_\_\_\_\_  
28 <sup>1</sup> Further statutory references are to the California Penal Code unless otherwise indicated.

1 Specials,’ which called to the Legislature’s attention the need to address the issue of  
2 handguns sales in a more comprehensive manner.” *See Fiscal v. City and County*  
3 *of San Francisco*, 158 Cal. App. 4th 895, 912 (Cal. Ct. App. 2008). The UHA was  
4 aimed at reducing handgun crime as well as promoting handgun consumer safety.  
5 *Id.* at 913–14. The UHA took effect on January 1, 2001, and has been subsequently  
6 amended. *See* Senate Bill No. 15 (Cal. 1999–2000 Reg. Sess.); *see also, e.g.*,  
7 Senate Bill No. 1080 (Cal. 2009–2010 Reg. Sess.), § 6 (nonsubstantive  
8 reorganization of statutes only); Assem. Bill No. 2847 (Cal. 2019–2020 Reg. Sess.).

9 The UHA directs that the California Department of Justice (“DOJ”) “shall  
10 compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers,  
11 and other firearms capable of being concealed upon the person that have been tested  
12 by a certified testing laboratory, have been determined not to be unsafe handguns,  
13 and may be sold in this state pursuant to this title.” § 32015(a). The DOJ maintains  
14 the roster in accordance with this directive. *See* Declaration of Salvador Gonzalez  
15 (“Gonzalez Dec.”), ¶¶ 7, 15.<sup>2</sup> A firearm shall be deemed to satisfy the roster  
16 requirements if manufacturer’s similar firearm is already listed and the differences  
17 are “purely cosmetic.” § 32030.

18 Under the UHA, subject to specified exceptions,<sup>3</sup> an unsafe handgun is a  
19 revolver, semiautomatic pistol, or non-semiautomatic pistol that fails to meet  
20 certain requirements. *See* § 31910; *see also Fiscal*, 158 Cal. App. 4th at 912.

21 To avoid the “unsafe” designation, revolvers and non-semiautomatic pistols  
22 must have safety devices. § 31910(a)(1), (b)(1). They must also meet certain firing  
23

24 <sup>2</sup> The roster is posted at DOJ’s website at  
25 <https://oag.ca.gov/firearms/certified-handguns/search>.

26 <sup>3</sup> Exceptions are set forth in sections 32000(b), 32105, 32110, and 32100.  
27 They include firearms sold to law enforcement officials (§ 32000(b)(4), (6), (7)),  
28 certain curios or relics (§§ 32000(b)(3), 32110(g)), pistols used in Olympic target  
shooting (§ 32105), firearms transferred between private parties (§ 32110(a)), and  
firearms used solely as props in movie and television productions (§ 32110(h)).

1 and drop safety requirements as determined by an independent testing laboratory.  
2 § 31910(a)(2), (3); § 31910(b)(2), (3); §§ 31905(a), 31900.

3 To avoid the “unsafe” designation, semiautomatic pistols must, in addition to  
4 the requirements above, also include three specified features: a chamber load  
5 indicator (“CLI”), a magazine disconnect mechanism (“MDM”) (if the pistol has a  
6 detachable magazine), and microstamping. § 31910(b)(1)–(6). CLIs and MDMs  
7 are “safety features designed to limit accidental discharges that occur when  
8 someone mistakenly believes no round is in the chamber.” *Pena v. Lindley*, 898  
9 F.3d 969, 974 (2018); Gonzalez Dec., ¶¶ 10–14.

10 Microstamping is the placement of “a microscopic array of characters used to  
11 identify the make, model, and serial number of the pistol . . . in one or more places  
12 on the interior surface or internal working parts of the pistol, and that are  
13 transferred by imprinting on each cartridge case when the firearm is fired.”  
14 § 31910(b)(6). Microstamping is intended to “provide important investigative leads  
15 in solving gun-related crimes by allowing law enforcement personnel to quickly  
16 identify information about the handgun from spent cartridge casings found at the  
17 crime scene.” *Fiscal*, 158 Cal. App. 4th at 914. Although the UHA’s initial  
18 microstamping requirement mandated two microstamping locations on each round  
19 ammunition, in 2020, the Legislature amended the UHA to decrease the  
20 microstamping requirement to one location per round. *Compare* Assem. Bill 2847  
21 (Cal. 2019–2020 Reg. Sess), § 2 *with* Sen. Bill 1080 (Cal. 2009–2010 Reg. Sess.), §  
22 6; *see also* § 31910(b)(6)(A). The Legislature noted that while firearm  
23 manufacturers claimed that dual-location microstamping was impossible or  
24 impractical (a claim that the Legislature expressly “rejected”), the industry had  
25 conceded that single-location microstamping, as required in the amended provision,  
26 is feasible. AB 2847, §1 (h); *see also* Appellants’ Answer Brief on the Merits at  
27 16, *Nat’l Shooting Sports Foundation, Inc. v. State of California*, 5 Cal.5th 428  
28 (2018) (No. S239397), 2017 WL 4541977 (“Microstamped characters that identify

1 the make, model, and serial number of a semi-automatic pistol (a ‘microstamped  
2 alpha numeric code’) can be etched or imprinted on the tip of the pistol’s firing  
3 pin”).

4  
5 **II. THE SECOND AMENDMENT AND THE SUPREME COURT’S DECISIONS IN  
6 *HELLER* AND *MCDONALD***

7 The Second Amendment provides: “A well regulated Militia, being necessary  
8 to the security of a free State, the right of the people to keep and bear Arms, shall  
9 not be infringed.” U.S. Const. amend. II. In recent years, the Supreme Court has  
10 closely examined the Second Amendment in the cases of *District of Columbia v.*  
11 *Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010),  
12 and, most recently, *New York State Rifle & Pistol Association, Inc., v. Bruen*, \_\_\_  
13 U.S. \_\_\_, 142 S.Ct. 2111 (2022).

14 In *Heller*, a District of Columbia special police officer sued to invalidate a  
15 District law completely banning the possession of a handgun in the home and  
16 requiring that any other lawfully owned firearm in the home, such as a registered  
17 long gun, be disassembled or otherwise rendered inoperable for immediate use.  
18 554 U.S. at 574.

19 The Court held that the Second Amendment protects an individual right, not a  
20 collective one. *Heller*, 554 U.S. at 595. But the Court further held that “[l]ike most  
21 rights, the right secured by the Second Amendment is not unlimited. From  
22 Blackstone through the 19th-century cases, commentators and courts routinely  
23 explained that the right was not a right to keep and carry any weapon whatsoever in  
24 any manner whatsoever and for whatever purpose.” *Id.* at 626 (citations omitted).  
25 Thus, while *Heller* upheld the invalidation of a very strict law of the District of  
26 Columbia that generally prohibited the possession of handguns, *id.* at 576, 636,  
27 *Heller* also provided an expressly non-exhaustive list of “presumptively lawful  
28 regulatory measures,” *id.* at 627 n.26, “a variety of tools” that “the Constitution  
leaves . . . for combating” the problem of firearm violence in the United States. *Id.*

1 at 636. That list includes “longstanding prohibitions on the possession of firearms  
2 by felons and the mentally ill, or laws forbidding the carrying of firearms in  
3 sensitive places such as schools and government buildings, or laws imposing  
4 conditions and qualifications on the commercial sale of arms,” as well as  
5 prohibitions on “dangerous and unusual weapons.” *Id.* at 626–27.

6 Key to *Heller*’s analysis of the District’s regulations was the observation that  
7 “the law totally bans handgun possession in the home. It also requires that any  
8 lawful firearm in the home be disassembled or bound by a trigger lock at all times,  
9 rendering it inoperable.” *Heller*, 554 U.S. at 628. In finding the total ban on  
10 handguns unconstitutional, the Court explained:

11  
12 [T]he inherent right of self-defense has been central to the Second  
13 Amendment right. The handgun ban amounts to a prohibition of an  
14 entire class of “arms” that is overwhelmingly chosen by American  
15 society for that lawful purpose. The prohibition extends, moreover, to  
16 the home, where the need for defense of self, family, and property is  
17 most acute. Under any of the standards of scrutiny that we have  
18 applied to enumerated constitutional rights, banning from the home  
19 “the most preferred firearm in the nation to ‘keep’ and use for  
20 protection of one’s home and family,” would fail constitutional muster.

21 *Id.* at 628–29 (footnote and citation omitted). Addressing the requirement that  
22 firearms in the home be rendered and kept inoperable at all times, the Court  
23 similarly explained that the requirement was unconstitutional because “[t]his makes  
24 it impossible for citizens to use them for the core lawful purpose of self-defense[.]”  
25 *Id.* at 630.

26 In *McDonald*, the Supreme Court held that the Second Amendment is fully  
27 incorporated against the States via the Fourteenth Amendment. 561 U.S. at 777–  
28 78. But the Court explained that “incorporation does not imperil every law

1 regulating firearms.” *Id.* at 786. In doing so, the Court was careful to re-state the  
2 critical language from *Heller*:

3  
4 It is important to keep in mind that *Heller*, while striking down a law  
5 that prohibited the possession of handguns in the home, recognized  
6 that the right to keep and bear arms is not “a right to keep and carry  
7 any weapon whatsoever in any manner whatsoever and for whatever  
8 purpose.” [Citation.] We made it clear in *Heller* that our holding did  
9 not cast doubt on such longstanding regulatory measures as  
10 “prohibitions on the possession of firearms by felons and the mentally  
11 ill,” “laws forbidding the carrying of firearms in sensitive places such  
12 as schools and government buildings, or laws imposing conditions and  
13 qualifications on the commercial sale of arms.” [Citation.] We repeat  
14 those assurances here.

15 *Id.* (italics added).

### 16 **III. THE NINTH CIRCUIT UPHOLDS THE UHA’S CLI, MDM, AND** 17 **MICROSTAMPING REQUIREMENTS IN *PENA V. LINDLEY***

18 Following *Heller* and *McDonald*, in the 2018 decision of *Pena v. Lindley*, the  
19 Ninth Circuit affirmed the constitutionality of the UHA’s requirement that  
20 semiautomatic pistols sold in California include CLIs, MDMs, and microstamping.<sup>4</sup>  
21 *See* 898 F.3d 969, 973 (9th Cir. 2018). In rejecting the plaintiffs’ Second  
22 Amendment challenge, the court expressly dismissed plaintiffs’ assertion “that they  
23 have a constitutional right to purchase a particular handgun.” *Id.*

24 The Court’s analysis involved a two-step inquiry for Second Amendment  
25 challenges that it had adopted following *Heller*. *Id.* at 975. That inquiry asked (1)  
26 whether the law “burdens conduct protected by the Second Amendment,” and if so,  
27 (2) whether the law withstands the appropriate level of scrutiny. *Id.* at 976 (quoting  
28 *Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 960 (9th Cir. 2014)).

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<sup>4</sup> *Pena* was decided when the microstamping provision still required pistol to imprint two sets of identifying information on each fired round, rather than one set. *See Pena v. Lindley*, 898 F.3d 969, 974 (2018).

1           The Ninth Circuit panel opted not to conduct step one of the analysis because  
2 it determined that, regardless of whether the UHA burdens Second Amendment  
3 conduct, it withstood the applicable level of scrutiny. *Id.* at 976. Before moving to  
4 step two, however, the Court recognized that the challenged UHA provisions may  
5 not burden protected activity, because they may constitute “laws imposing  
6 conditions and qualifications on the commercial sale of arms” that are permissible  
7 under *Heller*. *Id.* at 975–76 (quoting *Heller*, 554 U.S. at 626–27).

8           In step two, the court held that the CLIs, MDMs, and microstamping  
9 requirements satisfy intermediate scrutiny. *Id.* at 977-86. In its analysis, the Court  
10 concluded that the requirements “place almost no burden on the physical exercise  
11 of Second Amendment rights,” and that any such burden is lessened by the UHA’s  
12 exceptions, including for grandfathered semiautomatic pistols on the roster and off-  
13 roster semiautomatic pistols in private transactions. *Id.* at 978-79.

#### 14 **IV. THE SUPREME COURT DECISION IN *BRUEN***

15           On June 23, 2022, the Supreme Court issued its opinion in *Bruen*, setting forth  
16 the current framework for analyzing Second Amendment claims.

17           In *Bruen*, the Supreme Court addressed the constitutionality of New York’s  
18 requirement that individuals show “proper cause” as a condition of securing a  
19 license to carry a firearm in public. 142 S. Ct. at 2123. New York defined “proper  
20 cause” as a showing of “special need for self-protection distinguishable from that of  
21 the general community.” *Id.* at 2123.

22           Before turning to the merits, the Court announced a new methodology for  
23 analyzing Second Amendment claims. It recognized that lower courts, including  
24 the Ninth Circuit, had “coalesced around a ‘two-step’ framework for analyzing  
25 Second Amendment challenges that combines history with means-end scrutiny.”  
26 *Id.* at 2125. The Supreme Court in *Bruen* declined to adopt that two-step approach  
27 and announced a new standard for analyzing Second Amendment claims that is  
28

1 “centered on constitutional text and history.” *Id.* at 2126, 2128–29. Under this  
2 text-and-history approach,

3           When the Second Amendment’s plain text covers an  
4 individual’s conduct, the Constitution presumptively protects that  
5 conduct. The government must then justify its regulation by  
6 demonstrating that it is consistent with the Nation’s historical  
7 tradition of firearm regulation.

8 *Id.* at 2129–30.

9           Applying that test to the case before it, the Court held that New York’s  
10 “proper cause” requirement was inconsistent with the Second Amendment’s text  
11 and history, and therefore unconstitutional. *Id.* at 2134–56.

12           The Court began its analysis by considering “whether the plain text of the  
13 Second Amendment protects [plaintiffs’] proposed course of conduct—carrying the  
14 handguns publicly for self-defense.” *Id.* at 2134. This involved application of the  
15 “‘textual elements’ of the Second Amendment’s operative clause— ‘the right of the  
16 people to keep and bear arms shall not be infringed.’” *Id.* (citing *Heller*, 554 U.S. at  
17 592). The Court easily concluded that the plaintiffs were part of the “people”  
18 protected by the Second Amendment. *Id.* Turning to the terms “keep” and “bear”  
19 arms, the Court concluded that the right to “bear” arms protected the public carry of  
20 handguns for self-defense, reasoning that since “self-defense is ‘the *central*  
21 *component*’ of the [Second Amendment] right itself,” and “[m]any Americans  
22 hazard greater danger outside the home than in it,” it would make “little sense” to  
23 confine that right to the home. *Id.* at 2135. The Court explained that the terms  
24 “keep” and “bear” mean that the Second Amendment’s text protects individuals’  
25 rights to “‘keep’ firearms in their home, at the ready for self-defense,” *id.* at 2135,  
26 and to carry arms on one’s person in and outside the home in case of confrontation,  
27 *id.* at 2136.  
28

1           Because the plain text of the Second Amendment covered the *Bruen* plaintiffs’  
2 proposed course of conduct, the burden then shifted to New York to show that the  
3 prohibition was consistent with “the Nation’s historical tradition of firearm  
4 regulation.” *Id.* at 2135. The Court explained that in some cases, this inquiry  
5 would be “fairly straightforward,” such as when a challenged law addresses a  
6 “general societal problem that has persisted since the 18th century.” *Bruen*, 142 S.  
7 Ct. at 2131. But in others—particularly those where the challenged laws address  
8 “unprecedented societal concerns or dramatic technological changes”—this  
9 historical analysis requires a “more nuanced approach.” *Id.* at 2132. Governments  
10 can justify regulations of that sort by “reasoning by analogy,” a process that  
11 requires the government to show that its regulation is “‘relevantly similar’” to a  
12 “well-established and representative historical analogue.” *Id.* at 2333 (citation and  
13 emphasis omitted). And while the Court did not “provide an exhaustive survey of  
14 the features that render regulations relevantly similar under the Second  
15 Amendment,” it did identify “two metrics: how and why the regulations burden a  
16 law-abiding citizen’s right to armed self-defense.” *Id.* After conducting a lengthy  
17 survey of “the Anglo-American history of public carry,” the Court held that New  
18 York had failed to make such a showing. *Id.* at 2156.

19           While *Bruen* announced a new standard for analyzing Second Amendment  
20 claims, it also made clear that governments may continue to adopt reasonable gun  
21 safety regulations. The Court recognized that the Second Amendment is not a  
22 “regulatory straightjacket.” *Bruen*, 142 S. Ct. at 2133. Nor does it protect a right to  
23 “keep and carry any weapon whatsoever in any manner whatsoever and for  
24 whatever purpose.” *Id.* at 2128 (quoting *Heller*, 554 U.S. at 626). Indeed, as  
25 Justice Alito explained, *Bruen*’s majority opinion did not “decide anything about  
26 the kinds of weapons that people may possess.” 142 S. Ct. at 2157 (Alito, J.,  
27 concurring).  
28

1           Moreover, Justice Kavanaugh—joined by Chief Justice Roberts—wrote  
 2 separately to underscore the “limits of the Court’s decision.” *Bruen*, 142 S. Ct. at  
 3 2161 (Kavanaugh, J., concurring). Justice Kavanaugh reiterated *Heller*’s  
 4 observation that “the Second Amendment allows a ‘variety’ of gun regulations.”  
 5 *Id.* at 2162 (quoting *Heller*, 554 U.S. at 636).<sup>5</sup> In particular, Justice Kavanaugh  
 6 emphasized that that the “presumptively lawful measures” that *Heller* identified—  
 7 including laws “imposing conditions and qualifications on the commercial sale of  
 8 arms,” and prohibitions on “dangerous and unusual weapons”—remained  
 9 constitutional.<sup>6</sup> *Id.* at 2162 (quoting *Heller*, 554 U.S. at 626–27, 627 n.26).

### 10                                   **LEGAL STANDARD FOR PRELIMINARY INJUNCTION**

11           Injunctive relief is an “extraordinary remedy that may only be awarded upon a  
 12 clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res.*  
 13 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “The purpose of a preliminary  
 14 injunction is to preserve the status quo ante litem pending a determination of the  
 15 action on the merits.” *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th  
 16 Cir. 2016) (internal quotation omitted). Thus, “[i]n cases where the movant seeks to  
 17 alter the status quo,” injunctive relief is “disfavored and a higher level of scrutiny  
 18 must apply.” *Disbar Corp. v. Newsom*, 508 F. Supp. 3d 747, 751 (E.D. Cal. 2020).

19           “A plaintiff seeking a preliminary injunction must establish that he is likely to  
 20 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
 21 preliminary relief, that the balance of equities tips in his favor, and that an  
 22 injunction is in the public interest.” *Winter*, 555 U.S. at 20. “When the

23 \_\_\_\_\_  
 24 <sup>5</sup> These observations are consistent with the Court’s assurances that “[s]tate  
 25 and local experimentation with reasonable firearms regulations will continue under  
 the Second Amendment.” *McDonald*, 561 U.S. at 785 (plurality opinion)  
 (quotation marks and citation omitted).

26 <sup>6</sup> As the Fourth Circuit has observed, while *Heller* “invoked Blackstone for  
 27 the proposition that ‘dangerous and unusual’ weapons have historically been  
 prohibited, Blackstone referred to the crime of carrying ‘dangerous or unusual  
 28 weapons.’” *Kolbe v. Hogan*, 849 F.3d 114, 131 n.9 (4th Cir. 2017) (en banc)  
 (quoting 4 Blackstone 148-49 (1769)).

1 government is a party, these last two factors,” balance of the equities and public  
2 interest, “merge.” *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir.  
3 2014); *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (same). Analysis of  
4 the first factor (i.e., likelihood of success on the merits) is a “threshold inquiry,”  
5 and thus if a movant fails to establish that factor, the court “need not consider the  
6 other factors.” *Azar*, 911 F.3d at 575.

## 7 8 ARGUMENT

### 9 I. PLAINTIFFS HAVE MADE NO ATTEMPT TO SHOW THAT MOST UHA 10 PROVISIONS ARE PROPERLY SUBJECT TO AN INJUNCTION

11 The Court should deny Plaintiffs’ Motion for Preliminary Injunction in large  
12 part because Plaintiffs have not even attempted to show that most UHA provisions  
13 it seeks to enjoin are properly subject to a preliminary injunction. Plaintiffs ask the  
14 Court to preliminarily enjoin enforcement of all UHA statutes in Penal Code  
15 section 31900 through 32110. Mtn. for Prelim. Inj., ECF No. 23, at 1–2. These  
16 statutes include, for example, statutes governing the maintenance of the roster (§§  
17 31910(b)(7), 32010, 32015, 32025), statutes related to the requirements that all  
18 roster-eligible handguns (revolvers, nonsemiautomatic pistols, and pistols) include  
19 a safety device (commonly known as a “safety”) (§ 31910(a)(1), (b)(1)) and  
20 undergo firing and drop safety testing in a certified laboratory (§ 31900; § 31905;  
21 § 31910(a)(2)-(3), (b)(2)-(3); § 32010; § 32020), and the exceptions to handguns  
22 deemed “unsafe” (§§ 32100-32110).

23 Plaintiffs’ motion does not include any arguments applying the *Winter* factors  
24 for preliminary injunctions to these and most of the other provisions in Penal Code  
25 sections 31900 through 32110. Plaintiffs’ arguments are instead confined to merely  
26 three of the safety features requirements for roster-eligible semiautomatic pistols:  
27 the chamberload indicator, magazine disconnect mechanism, and microstamping.  
28 *See* Pltfs. Pts. & Auth. at 10–19. Those requirements are encoded in Penal Code  
section 31910(b)(4)–(6). Plaintiffs have therefore failed to meet their burden to

1 prove entitlement to an injunction against enforcement of any other statute in the  
2 UHA. Plaintiffs’ motion should be denied as to those statutes for this reason alone.

3  
4 **II. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS BECAUSE**  
5 **THE PLAIN TEXT OF THE SECOND AMENDMENT DOES NOT CONFER THE**  
6 **RIGHT TO PURCHASE PARTICULAR MODELS OF SEMIAUTOMATIC**  
7 **PISTOLS**

8 Plaintiff’s motion should also be denied because they cannot show a  
9 likelihood of success on their claim that the UHA’s CLI, MDM, and microstamping  
10 requirements violate the Second Amendment. The plain text of the Second  
11 Amendment does not protect Plaintiff’s desire to purchase off-roster semiautomatic  
12 pistol models without those safety features.

13 Under *Bruen*, the analysis begins with an assessment of whether the Second  
14 Amendment’s plain text protects the plaintiffs’ “proposed course of conduct.”  
15 *Bruen*, 142 S. Ct. at 2134. Here, Plaintiffs’ proposed course of conduct—the  
16 conduct they allege is prohibited—is to purchase off-roster semiautomatic pistols  
17 that do not include a CLI, MDM, or microstamping. This conduct is not protected  
18 by the Second Amendment’s protection of individuals’ rights to either “keep” or  
19 “bear” arms.

20 As explained in *Bruen*, these terms mean that the Second Amendment text  
21 protects individuals’ rights to “‘keep’ firearms in their home, at the ready for self-  
22 defense,” *id.* at 2135, and to carry arms on one’s person in and outside the home in  
23 case of confrontation, *id.* at 2136. Thus, in *Heller*, the challenged law prevented  
24 individuals from “keep[ing]” and “bear[ing]” arms because it constituted a total ban  
25 on possessing *any* handgun in the home. *See Heller*, 554 U.S. at 628. And, in  
26 *Bruen*, the challenged law prevented individuals from “bear[ing]” arms because it  
27 prevented them from carrying *any* handgun outside the home for self-defense. *See*  
28 *Bruen* 142 S. Ct. at 2134–35.

29 In contrast here, the CLI, MDM, or microstamping requirements do not  
30 prevent plaintiffs from either keeping handguns in the home or carrying them in

1 public for self-defense. As the Ninth Circuit previously concluded, these  
2 restrictions ‘place almost no burden on the physical exercise of Second Amendment  
3 rights.’ *Pena*, 898 F.3d at 978. The requirements only apply to the *sales* of certain  
4 semiautomatic pistols—ones that lack the required safety features. They therefore  
5 do not prevent Plaintiffs from continuing to possess any firearm or from carrying  
6 any firearm in any place. They also do not prevent Plaintiffs from acquiring new  
7 arms suitable for self-defense. *See* Pltfs. Pts. & Auth. at 13. The CLI, MDM, and  
8 microstamping requirements do not prevent plaintiffs from purchasing any  
9 revolver, non-semiautomatic pistol, or any firearm that is not a handgun. Even  
10 within the sub-category of semiautomatic pistols the requirements still provide  
11 plaintiffs with hundreds of models to choose from. Pltfs. Pts & Auth. at 4. Finally,  
12 the challenged safety feature requirements impose no limit to the total number of  
13 firearms (or semiautomatic pistols, specifically) that plaintiffs may possess, carry,  
14 or obtain for self-defense. In sum, unlike in *Heller* and *Bruen*, the CLI, MDM, and  
15 microstamping requirements do not prevent Plaintiffs from “keep[ing]” or  
16 “bear[ing]” arms in the home and in public for self-defense. The plain text of the  
17 Second Amendment therefore does not protect Plaintiffs’ desire to purchase off-  
18 roster semiautomatic pistols without these safety features. *See Pena*, 898 F.3d at  
19 978 (“[B]eing unable to purchase a subset of semiautomatic weapons, without  
20 more, does not significantly burden the right to self-defense in the home.”); *see also*  
21 *Defense Distributed v. Bonta*, 2022 WL 15524977, \*4, (C.D. Cal. Oct. 21, 2022)  
22 (holding that law restricting use of milling machines to federally-licensed  
23 manufacturers or importers was plainly outside the text of the Second Amendment,  
24 failing the threshold question in *Bruen*).

25 Plaintiffs appear to argue that the Second Amendment confers an unfettered  
26 right for an individual to purchase any and all handgun models of their choosing.  
27 *See* Pltfs. Pts. & Auth. at 13. The legal authorities do not support this proposition.  
28 The laws at issue in *Heller* and *Bruen* were struck down for thwarting the Second

1 Amendment’s “core lawful purpose of self-defense” by preventing individuals from  
2 keeping or carrying any of the “entire class” of handguns. *Heller*, 554 U.S. at 628;  
3 *Bruen* 142 S. Ct. at 2134–35. The cases did not purport to provide individuals with  
4 unlimited choices regarding which handguns to keep and bear. To the contrary,  
5 *Heller* made clear, and the Supreme Court repeatedly has confirmed, that the  
6 Second Amendment is “not a right to keep and carry any weapon whatsoever in any  
7 manner whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 628; *accord*  
8 *McDonald*, 561 U.S. at 786; *accord Bruen*, 142 S. Ct. at 2128. The CLI, MDM,  
9 and microstamping requirements do not ban the possession or carry of any firearm  
10 at all, but rather “impos[e] conditions and qualifications on the commercial sale of  
11 arms,” and are therefore “presumptively lawful.” *Heller*, 554 U.S. at 626–27;  
12 *accord McDonald*, 561 U.S. at 786; *Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J.,  
13 concurring); *see also Pena*, 898 F.3d at 975–76.

14 Plaintiffs also appear to suggest that they have the right to purchase the  
15 models of semiautomatic pistols that they believe would provide them with the *best*  
16 self-defense, as compared to the models on the roster. Pltfs. Pts. & Auth. at 7–9.  
17 However, Plaintiffs cite no legal authority supporting this proposition. Plaintiffs  
18 also propose no workable standard for determining when the availability of fewer-  
19 than-all models of semiautomatic pistols equates to prevention of their ability to  
20 “keep” and “bear” arms under *Bruen*’s text-and-history approach to the Second  
21 Amendment.

22 Plaintiffs’ challenge to the CLI, MDM, and microstamping requirements  
23 therefore fails the plain text inquiry of the applicable text-and-history approach  
24 under *Bruen*. Their claim therefore fails on the merits and this Court need not  
25 proceed to step two of the *Bruen* analysis. *See Bruen*, 142 S. Ct. at 2126. However,  
26 even if the Court were to conclude that the text of the Second Amendment applies  
27 to the CLI, MDM, and microstamping requirements, Defendant can still defend  
28 those requirements by showing that they are “consistent with the Nation’s historical

1 tradition of firearm regulation”—specifically that they impose a “comparable  
2 burden on the right of armed self-defense” to the relevant historical analogues and  
3 is “comparably justified.” *Bruen*, 142 S. Ct. at 2133. This historical tradition  
4 includes, for example, restrictions on the storage of gunpowder in the home, “trap”  
5 guns (firearms configured to fire remotely), and the keeping of loaded firearms  
6 inside the home. *See* Defendants’ Supplemental Brief in Response to the Court’s  
7 Order of August 29, 2022 at 53-54, *Miller v. Bonta*, No. 3:19-cv-01537-BEN-JLB  
8 (S.D. Cal. October 13, 2022) (ECF No. 137); Declaration of Saul Cornell at ¶¶ 35-  
9 40, *Miller v. Bonta*, No. 3:19-cv-01537-BEN-JLB (S.D. Cal. October 13, 2022)  
10 (ECF No. 137-3).

11 But as *Bruen* itself acknowledged, the historical inquiry can be complex and  
12 difficult. *Id.* at 2134. Compilation of the evidence must be undertaken by trained  
13 historians through painstaking efforts just to identify the sources available to them  
14 in order to answer a particular historical inquiry. *See* Declaration of Zachary  
15 Schrag at 2-5, *Miller v. Becerra*, No. 3:19-cv-1537-BEN-JLB (S.D. Cal. Aug. 29,  
16 2022), (ECF No. 129-1). Accordingly, if the Court were to conclude that Plaintiffs’  
17 claims implicate the text of the Second Amendment (or defer ruling on that  
18 question)—and conclude that Plaintiffs have satisfied the other *Winter* factors—the  
19 Court should provide the parties with additional time to conduct the research and  
20 briefing necessary to perform the historical analysis called for by *Bruen*, before the  
21 Court then issues its decision on this motion.

### 22 **III. PLAINTIFF CANNOT ESTABLISH IRREPARABLE HARM ABSENT AN** 23 **INJUNCTION BARRING ENFORCEMENT OF THE THREE SAFETY FEATURE** 24 **REQUIREMENTS**

25 Even if Plaintiffs were able to demonstrate a likelihood of success on the  
26 merits, Plaintiffs also have not and cannot meet their burden to show that they are  
27 likely to suffer irreparable harm absent an injunction. *See Winter*, 555 U.S. at 22.

28 Plaintiffs assert that, absent an injunction, the UHA’s requirements will  
continue to violate their Second Amendment rights. However, as explained above,

1 the challenged provisions do not violate Plaintiffs’ Second Amendment rights, so  
2 no such harm will occur. And, explained above, nor could Plaintiffs argue that, as a  
3 practical matter, they lack access to handguns sufficient for self-defense purposes.

4 Moreover, even if Plaintiffs did have the Second Amendment right to purchase  
5 off-roster semiautomatic pistols without CLM, MDM, or microstamping features,  
6 Plaintiffs have failed to show that an injunction barring enforcement of those  
7 requirements would allow them to purchase such pistols prior to trial. This is  
8 because all handguns, including semiautomatic pistols, must meet other  
9 requirements, including firing and drop testing in an independent laboratory, before  
10 they can be legally sold. *See* §§ 31900, 31905, 31910(b)(2)–(3), 32010. A  
11 preliminary injunction would therefore not cause off-roster semi-automatic pistols  
12 to be immediately available for sale.

13 Plaintiffs have failed to show that they will suffer irreparable harm absent an  
14 injunction.

15 **IV. THE BALANCE OF THE EQUITIES AND PUBLIC INTEREST WEIGH**  
16 **AGAINST AN INJUNCTION BARRING ENFORCEMENT OF THE THREE**  
17 **SAFETY FEATURE REQUIREMENTS**

18 Finally, the balance of the equities (which, where the defendant is a  
19 government official, includes analysis of the public interest) weighs against a  
20 preliminary injunction here. Courts “pay particular regard for the public  
21 consequences in employing the extraordinary remedy of injunction.” *Winter*, 555  
22 U.S. at 24. When a district court balances the hardships of the public interest  
23 against a private interest, “the public interest should receive greater weight.” *FTC.*  
24 *v. Affordable Media*, 179 F.3d 1228, 1236 (9th Cir. 1999).

25 As explained above, Plaintiffs will not be harmed by the Court’s denial of  
26 injunctive relief. The challenged UHA provisions do not violate their Second  
27 Amendment rights. The provisions do not prevent Plaintiffs from continuing to  
28 possess the firearms they already own. And, the provisions do not prevent  
Plaintiffs from purchasing in California an unlimited number of additional

1 handguns, including hundreds of different models of revolvers, non-semiautomatic  
2 pistols, and semiautomatic pistols. In other words, Plaintiffs will continue to have  
3 broad access to handguns to exercise their central, “inherent right to self-defense.”  
4 *Heller*, 554 U.S. at 628. Moreover, a preliminary injunction would likely not  
5 alleviate any alleged harm to Plaintiffs prior to trial on the merits because  
6 semiautomatic pistols would still be subject to other requirements.

7 On the other hand, an injunction would upset the long-established status quo by  
8 permitting unsafe handguns to be sold in California prior to trial, creating public  
9 safety risks. As the Ninth Circuit already determined in *Pena*’s intermediate  
10 scrutiny analysis, “[t]here is no doubt that the governmental safety interests  
11 identified for the CLI and MDM requirements are substantial.” *Pena*, 898 F.3d at  
12 981. The absence of a CLI or MDM in a semiautomatic pistol increases the risk of  
13 accidental discharge and injury to Californians from use of these handguns.  
14 *Gonzalez Dec.*, ¶ 14. The Ninth Circuit has also already rejected Plaintiffs’  
15 suggestion here that these devices may decrease safety:

16 California does not instruct consumers to disregard CLIs and MDMs.  
17 Instead, the regulations simply mean that consumers should not rely  
18 entirely on them or assume that just because a magazine is out or the  
19 CLI is not popped up, the weapon is incapable of being dangerous.  
20 “Treat all guns as if they are loaded,” California tells gun-owners.  
That is just good, old-fashioned common sense.

21 *Pena*, 898 F.3d at 981.

22 Similarly, the Ninth Circuit has also already ruled that microstamping  
23 promotes the substantial government interests in public safety and crime  
24 prevention. *Id.* at 982.

25 It is true that some of the semiautomatic pistols on the roster have been  
26 “grandfathered in,” and do not include one or all of the three safety features at  
27 issue. However, Plaintiffs concede that some of the semiautomatic pistols on the  
28

1 roster *do* include one or more of the features (Pltfs. Mtn. for Prelim. Inj. at 5), and  
2 more such models will likely be added to the roster in the future.<sup>7</sup> An injunction  
3 purporting to permit the sales of new handgun models lacking the safety features  
4 would therefore likely lead to more sales in California of handguns lacking those  
5 features in lieu of handguns that include them (which is, in fact, what Plaintiffs  
6 claim they wish to do through this action). The injunction would thereby  
7 undermine California’s considered effort to enhance the safety of newly-sold  
8 semiautomatic pistols. *See Fiscal v. City and County of San Francisco*, 158 Cal.  
9 App. 4th 895, 912 (Ct. App. 2008). Indeed, “[a]ny time a State is enjoined by a  
10 court from effectuating statutes enacted by representatives of its people, it suffers a  
11 form of irreparable injury.” *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts,  
12 C.J., in chambers) (quotation and citation omitted).

13 Finally, preliminary relief should also be denied because Plaintiffs effectively  
14 seek to litigate the merits of the dispute without a motion for summary judgment or  
15 trial. “[C]ourts generally disfavor preliminary injunctive relief that is identical to  
16 the ultimate relief sought in the case.” *See Progressive Democrats for Soc. Just. v.*  
17 *Bonta*, No. 21-CV-03875-HSG, 2021 WL 6496784, at \*11 (N.D. Cal. July 16,  
18 2021); *see also Hennessy-Waller v. Snyder*, 529 F. Supp. 3d 1031, 1046 (D. Ariz.  
19 2021), *aff’d sub nom. Doe v. Snyder*, 28 F.4th 103 (9th Cir. 2022). Plaintiffs seek  
20 in their motion the same relief they seek to obtain after summary judgment or a  
21 trial, weighing heavily against issuance of a preliminary injunction.

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24  
25 <sup>7</sup> Although there are currently no semiautomatic pistols on the roster capable  
26 of microstamping, the requirement plays an important role in transitioning handgun  
27 sales in California toward safer models. Notably, the single-location  
28 microstamping requirement has been the subject of litigation since shortly after its  
enactment in 2020 (*see* Complaint for Injunctive and Declaratory Relief, *Renna v.*  
*Bonta*, No. 20-cv-2190-DMS-DEB (S.D. Cal) (ECF. No 1)), which has likely  
disincentivized firearms manufacturers from developing compliant models prior to  
legal resolution.

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**CONCLUSION**

For the reasons explained above, the Court should deny Plaintiffs’ Motion for Preliminary Injunction.

Dated: December 5, 2022

Respectfully submitted,

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