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 Director of the Department of Justice Bureau  
 of Firearms*

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

**MICHELLE NGUYEN, et al.,**

Plaintiffs,

v.

**ROB BONTA, in his official capacity  
 as Attorney General of California and  
 ALLISON MENDOZA, in her official  
 capacity as Director of the  
 Department of Justice Bureau of  
 Firearms,**

Defendants.

Case No. 3:20-cv-02470-WQH-MMP

**DEFENDANTS' RESPONSE TO  
 PLAINTIFFS' STATEMENT OF  
 UNDISPUTED MATERIAL FACTS**

Date: To be set by the Court  
 Judge: Hon. William Q. Hayes  
 Courtroom: 14B  
 Action Filed: Dec. 18, 2020

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Local Rule  
 7.1.f.1, and the Court's Chamber Rules and Procedures, Defendants Rob Bonta, in  
 his official capacity as Attorney General of California, and Allison Mendoza, in her

official capacity as the Director of the California Department of Justice Bureau of Firearms, submit the following Response to Plaintiffs' Statement of Undisputed Material Facts.

	<b><u>Plaintiffs' Stated Undisputed Fact</u></b>	<b><u>Defendants' Response</u></b>
1.	Defendants have enforced and are continuing to enforce California's OGM law.	Undisputed.
2.	Individual Plaintiffs (Nguyen, Boguski, Medina, Colletti, Phillips, and Prince) are California residents and members of the Institutional Plaintiffs (Firearms Policy Coalition, Inc., San Diego Gun Owners PAC, and Second Amendment Foundation).	Undisputed.
3.	None of the Individual Plaintiffs is disqualified from owning or possessing firearms under federal or state law.	Undisputed solely for purposes of establishing standing and ripeness in this litigation.
4.	Institutional Plaintiffs bring this action on behalf their members and supporters similarly situated to Individual Plaintiffs.	Undisputed.
5.	Each Individual Plaintiff actively desires and intends to purchase two or more handguns, two or more semiautomatic centerfire rifles, or a combination of two or more of the	Undisputed.

1		same in a single transaction within a	
2		30-day period from a licensed dealer,	
3		and each would do so but for	
4		California's OGM law.	
5	6.	Plaintiffs Prince and Phillips are	Undisputed that Plaintiffs Prince
6		licensed firearms dealers for Retailer	and Phillips are listed as firearms
7		Plaintiffs, North County Shooting	dealers in the California DOJ's
8		Center Inc. ("NCSC") and PWGG	Centralized List of Firearms
9		L.P. ("PWGG"), respectively.	Dealers for Retailer Plaintiffs North
10			County Shooting Center Inc.
11			("NCSC") and PWGG L.P.
12			("PWGG"), respectively.
13	7.	Plaintiffs NCSC and PWGG are	Undisputed.
14		licensed by the Bureau of Alcohol,	
15		Tobacco, Firearms, and Explosives	
16		("ATF") as Federal Firearms	
17		Licensees ("FFL").	
18	8.	Because of the OGM law, Retailer	Undisputed.
19		Plaintiffs are prevented from selling	
20		two or more handguns, two or more	
21		semiautomatic centerfire rifles, or a	
22		combination of two or more of the	
23		same in a single transaction within a	
24		30-day period to individuals not	
25		otherwise disqualified by federal or	
26		state law from owning or possessing	
27		firearms.	
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1	9.	Assembly Bill No. 1621 will extend	Undisputed.
2		the same purchase prohibitions to all	
3		arms falling within an expanded	
4		definition of “firearm,” so as to	
5		include “completed frames or	
6		receivers” and all other “firearm	
7		precursor parts,” once it becomes	
8		effective on January 1, 2024.	
9	10.	During the Founding era, “[t]here was	Disputed in part. Undisputed that
10		not a law on the books in any of the	Stephen Halbrook’s Vermont Law
11		states which interfered with the	Review article stated that “[t]here
12		keeping or bearing of arms by free	was not a law on the books in any
13		citizens, and this right was understood	of the states which interfered with
14		and deemed fundamental despite the	the keeping or bearing of arms by
15		lack of a state bill of rights.”	free citizens, and this right was
16			understood and deemed
17			fundamental despite the lack of a
18			state bill of rights.”
19			Disputed that that were no laws that
20			“interfered with the keeping or
21			bearing of arms.” <i>See, e.g.,</i> DX-18,
22			Saul Cornell and Nathan DeDino, <i>A</i>
23			<i>Well Regulated Right: The Early</i>
24			<i>American Origins of Gun Control</i> ,
25			73 Fordham L. Rev. 487, 506-513
26			(2004) (listing eighteenth-century
27			gun laws); Pltfs.’ Ex. 10, Dkt. No.
28			

		60-14, at 16-18 (listing “restrictions on the use of firearms in the Colonial law”); Defendants’ Summary Judgment Motion Memorandum of Points and Authorities at 14-23 (listing and discussing regulations on the sale and possession of firearms and gun powder).
11.	“No colony or state restricted arms possession by males who were too young or too old for the militia, nor by females.”	<p>Disputed in part. Undisputed that the book <i>Firearms Law and the Second Amendment: Regulation, Rights, and Policy</i> stated that “[n]o colony or state restricted arms possession by males who were too young or too old for the militia, nor by females.”</p> <p>Disputed because evidence related to militia laws is not relevant to an individual’s Second Amendment right. <i>See District of Columbia v. Heller</i>, 554 U.S. 570, 605 (2008) (explaining that the Second Amendment “protect[s] an individual right unconnected with militia service”); <i>see also id.</i> at 606-609.</p>

12.	People in the colonial states commonly offered for sale and sought for purchase multiple firearms in single transactions	Disputed. During the founding era, the number of firearms available for purchase was very limited. DX-9 <sup>1</sup> (Sweeney Expert Rept.) ¶¶ 6, 10; <i>see also</i> DX-19, William G. Merkel, Forum: Comment, <i>Mandatory Gun Ownership, the Militia Census of 1806, and Background Assumptions concerning the Early American Right to Arms: A Cautious Response to Robert Churchill</i> , 25 Law & Hist, Rev. 187, 192-93 (2007) (“militia eligible Americans . . . were unable to [arm themselves] because guns were scarce”). In addition, the cost of a firearm generally prevented people from purchasing more than one firearm at a time. DX-10 (McCutchen Expert Rept.) ¶ 15. Moreover, the statement is not supported by the underlying
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<sup>1</sup> “DX” followed by the exhibit number are citations to Defendants’ exhibits accompanying the Declaration of Jerry T. Yen in support of Defendants’ Motion for Summary Judgment (Dkt. No. 59) or the Declaration of Jerry T. Yen in support of Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment.

1		evidence because dealer
2		advertisements are not evidence of
3		actual transactions. <i>See</i> Pltfs.' Ex.
4		5, Dkt. No. 60-9, at 266, 304
5		(merely discussing advertisements
6		from dealers seeking to acquire and
7		sell pistols).
8	13. The free citizenry commonly owned,	Disputed. The majority of
9	possessed, and carried on their person	individuals owned either one gun or
10	more than one firearm during the	no gun at all. DX-9 (Sweeney
11	Founding era.	Expert Rept.) ¶¶ 11, 18, and tbl. 1;
12		<i>see also</i> DX-21, Paul G. E.
13		Clements, <i>The Consumer Culture of</i>
14		<i>the Middle Atlantic, 1760-1820</i> , 52
15		Wm. & Mary Quarterly 591, 622-
16		624, tbls. VII, XVII, XVIII, and
17		XIX (2005); Pls.' Ex. 8 at 1800;
18		DX-20, Randolph Roth, <i>Guns, Gun</i>
19		<i>Culture, and Homicide: The</i>
20		<i>Relationship between Firearms, the</i>
21		<i>Uses of Firearms, and</i>
22		<i>Interpersonal Violence</i> , 59 Wm. &
23		Mary Quarterly 223, 228 (2002);
24		DX-22, Kevin M. Sweeney,
25		<i>Firearms, Militias and the Second</i>
26		<i>Amendment, in The Second</i>
27		<i>Amendment on Trial: Critical</i>
28		

		<p>Essays on <i>District of Columbia v. Heller</i> 324-325, 340-341, 346-347, 354-355, tbls. 4, 7, 8, and 9 (Saul Cornell &amp; Nathan Kozuskanich, eds., University of Massachusetts Press, 2013). In addition, the statement is not supported by the underlying evidence because it includes assertions made without citation to any sources, <i>see</i> Pltfs.’ Ex. 5 at 291-292, or in the context of firearms purchases for the state militia, <i>see</i> Pltfs.’ Ex. 7, Dkt. No. 60-11, at 132; Pltfs.’ Ex. 5 at 295.</p>
14.	<p>The colonies almost universally <i>required</i> firearm ownership.</p>	<p>Disputed. Firearms ownership regulations were mainly targeted to militia. <i>See</i> Pltfs.’ Ex. 10. In addition, the underlying evidence is an opinion stated in an article without citation to any other sources. <i>See</i> Pltfs.’ Ex. 9, Dkt. No. 60-13, at 1-2.</p>



15. The historical practices or patterns referenced in SOUMF Nos. 10, 11, 12, 13, and 14 were the genesis of militia regulations during the Founding era.

Disputed. The citations in Plaintiffs' Statement of Undisputed Material Facts Nos. 10, 11, 12, 13, and 14 do not discuss the "genesis of militia regulations during the Founding era." In addition, militia laws were an attempt by the state to protect and ensure the safety of communities. DX-18 at 498, 510 ("the militia served to protect communities" and "militia laws can be seen as another attempt by the state to guarantee the safety of the community"). Further, evidence related to militia laws is not relevant to an individual's Second Amendment right. *See District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (explaining that the Second Amendment "protect[s] an individual right unconnected with militia service"); *see also id.* at 606-609.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	16. The general aim of militia regulations was to ensure compliance with mandates of firearm ownership, possession, and use by all members of the free citizenry.	Disputed. Militia laws were an attempt by the state to protect and ensure the safety of communities. DX-18 at 498, 510 (“the militia served to protect communities” and “militia laws can be seen as another attempt by the state to guarantee the safety of the community”). In addition, the statement is not supported by the underlying evidence. <i>See</i> Pltfs.’ Exh. 6, Dkt. No. 60-10, at 177-188 (no discussion on the purpose of militia regulations). Further, evidence related to militia laws is not relevant to an individual’s Second Amendment right. <i>See District of Columbia v. Heller</i> , 554 U.S. 570, 605 (2008) (explaining that the Second Amendment “protect[s] an individual right unconnected with militia service”); <i>see also id.</i> at 606-609.
24 25 26 27 28	17. Several Colonies required their militiamen to be equipped and to keep with them at all times a “case of good pistols”—i.e., multiple firearms.	Disputed. Some colonies required their troops to be <i>provided with</i> a “case of good pistols.” <i>See</i> Pls.’ Exh. 10 at 7 (Massachusetts), 10

1		(New Hampshire), 16 (New York),
2		22 (Virginia). There was no
3		requirement that they keep the
4		“case of good pistols” with them at
5		all times. <i>See id.</i> In addition,
6		evidence related to militia laws is
7		not relevant to an individual’s
8		Second Amendment right. <i>See</i>
9		<i>District of Columbia v. Heller</i> ,
10		554 U.S. 570, 605 (2008)
11		(explaining that the Second
12		Amendment “protect[s] an
13		individual right unconnected with
14		militia service”); <i>see also id.</i> at 606-
15		609.
16	18.	Disputed in part. Undisputed that
17	Only four states (South Carolina,	South Carolina, Virginia, Maryland,
18	Virginia, Maryland, New Jersey) and	and New Jersey have enacted OGM
19	the District of Columbia, have ever	laws, and that the OGM laws in
20	enacted such laws, and only those in	Virginia, Maryland, and New
21	Virginia, Maryland, and New Jersey	Jersey are still in force. Disputed
22	are still in force.	that the District of Columbia
23		enacted an OGM law. The District
24		of Columbia enacted a law where a
25		gun owner could not register more
26		than one pistol in a 30-day period.
27		D.C. Code § 7–2502.03(e) (2011).
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1		Disputed that only four states have
2		enacted OGM laws. California also
3		enacted an OGM law and it is still
4		in force. Cal. Penal Code § 27535.
5		In addition, New York City also has
6		also enacted an OGM law. New
7		York City Admin. Code
8		§ 10-302.1(b).
9	19.	California's OGM law is the most
10		restrictive of the jurisdictions with
11		OGM laws as it targets both handguns
12		and long guns.
13		Disputed in part. Undisputed that
14		California's OGM law currently
15		applies to handguns and
16		semiautomatic centerfire rifles. Cal.
17		Penal Code § 27535.
18		Disputed that California's OGM
19		law is the most restrictive. <i>See,</i>
20		<i>e.g.,</i> Md. Code Ann., Pub. Safety §
21		5-128(b) (Maryland's OGM law
22		also applies to assault weapons);
23		New York City Admin. Code
24		§ 10-302.1(b) (New York City's
25		law applies to all firearms).
26	20.	The stated purpose of the original
27		OGM law as enacted under Assembly
28		Bill No. 202 in 2000 was to "curtail
		the illegal gun market, disarm
		criminals, and save lives by preventing
		multiple purchases of handguns
		Undisputed that this is one of the
		stated purposes of the OGM law.

1		through legitimate channels,” on the	
2		rationale that “[p]reventing multiple	
3		purchases takes the profit out of black	
4		market sales and puts gun traffickers	
5		and straw purchasers out of business.”	
6	21.	More specifically, the stated goal of	Undisputed that this is one of the
7		the law was “to stop one gun	stated goals of the OGM law, and
8		purchaser from buying several	that the legislative record for
9		firearms and transferring a firearm to	Assembly Bill No. 202 stated that
10		another person who does not have the	straw transactions typically involve
11		legal ability to buy a gun him/herself,”	“a third party who is under 21 years
12		in particular those who are underage,	of age, has a disqualifying prior
13		have a disqualifying prior conviction,	conviction, has a mental disorder,
14		a mental disorder, or are not residents.	or is not a resident.”
15	22.	When the law was expanded to	Disputed. The Ventura County
16		semiautomatic centerfire rifles	Board of Supervisors made that
17		effective July of 2021 under Senate	statement in support of Senate Bill
18		Bill No. 61, the Legislature stated that	No. 61. Plaintiffs’ Exh. 11, Dkt.
19		AB 202 had been “intended to reduce	No. 60-15, at AG_Nguyen-0000034
20		the illegal flow of handguns by	
21		eliminating the opportunity to sell	
22		guns from bulk purchases on the black	
23		market” and that applying this same	
24		law to long guns “would be part of the	
25		solution in reducing gun violence.”	
26	23.	Throughout all relevant times,	Undisputed that Defendants enforce
27		Defendants have implemented and	California statutes and regulations
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	<p>enforced a multitude of statutes, regulations, and policies that strictly regulate and criminalize the acquisition, possession, and use of firearms by all prohibited persons, including those who become prohibited after a lawful acquisition. <i>See e.g.</i>, Cal. Penal Code §§ 29800, 29805, 29815, 29825; 18 U.S.C §§ 922(b)(2), 922(d), 922(g).</p>	<p>on the acquisition and possession of firearms.</p>
24.	<p>Throughout all relevant times, Defendants have also implemented and enforced a multitude of statutes, regulations, policies, and systems that collect, maintain, and monitor identifying information of those who are currently prohibited persons, who lawfully acquire, sale, and transfer firearms, and who later become prohibited persons, including, for example: Cal. Penal Code §§ 11101, 11105, 11106, 26150, 26185, 26195, 26225, 28220; the Dealer's Record of Sale (DROS) DROS Entry System (DES); the Armed Prohibited Persons System (APPS); Mental Health Reporting System (MHRs); Mental</p>	<p>Undisputed that Defendants enforce California statutes and regulations on the possession of firearms.</p>

1		Health Firearms Prohibition System	
2		(MHFPS); Prohibited Applicant (PA);	
3		and many other such regulatory	
4		programs.	
5	25.	The legislative history of AB 202 and	Undisputed that the legislative
6		SB 61 recognized the existence of	record for Assembly Bill 202
7		these various schemes and how they	recognizes that there are other laws
8		already compel ordinary law-abiding	governing the purchase of firearms,
9		citizens to obtain special certification,	including a background check, a
10		pass a background check, wait ten	ten-day waiting period, and a basic
11		days, and complete a safe handling	firearm safety certificate.
12		demonstration as preconditions to any	
13		lawful purchase.	
14	26.	It also recognized the myriad state and	Undisputed that the legislative
15		federal laws that specifically	record for Assembly Bill 202
16		criminalize straw purchasing and	recognizes that there are California
17		illegal firearms trafficking.	and federal laws prohibiting straw
18			purchases and firearms trafficking.
19	27.	State law separately “[p]rohibits the	Undisputed that the legislative
20		sale, loan, or transfer of a firearm to	record for Assembly Bill 202
21		any person who is not the actual	acknowledges that state law
22		purchaser or transferee if the intent is	“[p]rohibits the sale, loan, or
23		to avoid the statutory requirements for	transfer of a firearm to any person
24		lawful transfer,” and “[t]he Federal	who is not the actual purchaser or
25		Gun Control Act forbids straw	transferee if the intent is to avoid
26		transactions” because it “prevents a	the statutory requirements for
27		person from purchasing guns in a state	lawful transfer,” “[t]he Federal Gun
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1		with lax laws and then returning to his	Control Act forbids straw
2		or her state of residency.”	transactions,” and “[f]ederal law
3			prevents a person from purchasing
4			guns in a state with lax laws and
5			then returning to his or her state of
6			residency.”
7	28.	Further, all federal licensees must	Undisputed that 18 U.S.C.
8		report to ATF and all related state law	§ 923(g)(3)(A) requires federal
9		enforcement agencies all sales,	licensees submit a report to ATF
10		transfers, or disposals of two or more	“and to the department of State
11		handguns “at one time or during any	police or State law enforcement
12		five consecutive business days,” and	agency of the State or local law
13		they must make this report “not later	enforcement agency of the local
14		than the close of business on the day	jurisdiction” “whenever the licensee
15		that the multiple sale or other	sells or otherwise disposes of, at
16		disposition occurs.”	one time or during any five
17			consecutive business days, two or
18			more pistols, or revolvers, or any
19			combination of pistols and
20			revolvers totaling two or more.”
21			The report must be submitted “not
22			later than the close of business on
23			the day that the multiple sale or
24			other disposition occurs.”
25	29.	The legislative history acknowledged	Disputed. The legislative record for
26		that only the District of Columbia and	Senate Bill 61 lists California, the
27		three other states—Virginia,	District of Columbia, Maryland,
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1		Maryland, and New Jersey—have	and Virginia as having limits on the
2		OGM laws, and they target only	number of firearms that can be sold
3		handguns, not handguns <i>and</i> long guns	in one month. Plaintiffs’ Exh. 11 at
4		like California does.	AG_Nguyen-0000052-54. Senate
5			Bill 61 also notes that Maryland’s
6			limitation also includes assault
7			weapons. <i>Id.</i>
8	30.	The sole reference to a mass shooting	Undisputed that the legislative
9		in the legislative record is an argument	record for Senate Bill 61 includes a
10		in support of SB 61 from the Ventura	statement from the Ventura County
11		County Board of Supervisors, which	Board of Supervisors referencing a
12		referenced one local mass shooting in	mass shooting in November 2018.
13		2018.	
14	31.	And there is no indication that the	Undisputed that the statement from
15		shooter used multiple firearms—much	the Ventura County Board of
16		less multiple firearms acquired within	Supervisors in the legislative record
17		a 30-day period.	for Senate Bill 61 did not include
18			information as to whether the mass
19			shooter used multiple firearms.
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1 Dated: October 13, 2023

Respectfully submitted,

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6 /s/ Jerry T. Yen

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10 *capacity as California Attorney*  
11 *General, and Allison Mendoza, in her*  
12 *official capacity as Director of the*  
13 *Department of Justice Bureau of*  
14 *Firearms*