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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 Ivan Peña, et al.,) Case No. 2:09-CV-01185-KJM-CKD
19)
20 Plaintiffs,)
21)
22 v.)
23)
24 Stephen Lindley)
25)
26 Defendant.)
27)
28)

Date: December 16, 2013
Time: 10 a.m.
Dept: Courtroom 3,15th Floor
Judge: The Hon. Kimberly J. Mueller
Trial Date: None
Action Filed: May 1, 2009

Come now Plaintiffs Ivan Peña, Roy Vargas, Doña Croston, Brett Thomas, the
Second Amendment Foundation, Inc., and the Calguns Foundation, Inc., by and
through undersigned counsel, and submit their Response to Defendant’s Statement
of Facts in Support of Defendant’s Motion for Summary Judgment or, in the
Alternative, for Summary Adjudication.

<u>Asserted Undisputed Material Fact</u>	<u>Response</u>
1. Defendant Stephen Lindley is Chief of the California Department of Justice Bureau of Firearms.	1. Admitted
2. Plaintiff Second Amendment Foundation, Inc. is a Washington non-profit corporation.	2. Admitted, but not material.
3. Plaintiff The Calguns Foundation, Inc. is a California non-profit corporation.	3. Admitted, but not material.
4. Plaintiff Ivan Peña is a California resident.	4. Admitted.
5. Peña wants to buy a handgun described as a "Para USA (Para Ordnance) P1345SR/ Stainless Steel .45 ACP 4.25."	5. Admitted.
6. A Para USA (Para Ordnance) P1345SR/ Stainless Steel .45 ACP 4.25" is not on the California Department of Justice (DOJ) roster of approved firearms.	6. Admitted.
7. The Para USA (Para Ordnance) P1345SR/ Stainless Steel .45 ACP 4.25 is a semiautomatic pistol manufactured by Para Ordnance that is chambered for .45 caliber Automatic Colt Pistol (ACP), or ".45 Auto," ammunition. Its barrel length is 4.25 inches. The gun Peña wants is used, as opposed to new, and is currently owned by an individual in Washington, but is being offered for sale by PRK Arms, a firearms dealer in Fresno.	7. Disputed. Peña is not necessarily interested in this example, but has only identified the particular gun as the model is not available in California. See Peña Decl., ¶¶ 4-6, 9-10. Otherwise admitted.
8. Peña already owns "at least one fully functional handgun" that is suitable for self defense. It is "suitable for self-defense purposes in certain circumstances, but may not be suitable for self-defense purposes in other circumstances." But Peña is "able to purchase an operable handgun that is suitable for self- defense."	8. Admitted, but not material.
9. Plaintiff Roy Vargas is a California resident.	9. Admitted.

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10. Vargas wants to buy a handgun described as a “Glock 21 SF with an ambidextrous magazine release.” 10. Admitted.
11. A Glock 21 SF with an ambidextrous magazine release is not the California DOJ roster of approved firearms. 11. Admitted.
12. The Glock 21 SF with an ambidextrous magazine is a semiautomatic pistol manufactured by Glock that uses .45 caliber ammunition. It has a 4.6-inch barrel and a short frame and is in new condition. PRK Arms in Fresno is ready to sell Vargas the desired Glock, assuming it can acquire one from a distributor. 12. Admitted.
13. Vargas already owns “at least one fully functional handgun” that is suitable for self defense. The handgun(s) he already owns “may be suitable for self-defense purposes in certain circumstances, but may not be suitable for self-defense purposes in other circumstances.” But he is “able to purchase an operable handgun that is suitable for self- defense.” 13. Admitted, but not material.
14. Plaintiff Doña Croston is a California resident. 14. Admitted.
15. Croston wants to buy a handgun described as “Springfield Armory XD-45 Tactical 5” Bi- Tone stainless steel/black handgun in .45 ACP, model number XD9623.” 15. Admitted.
16. A Springfield Armory XD-45 Tactical 5” Bi-Tone stainless steel/black handgun in .45 ACP, model number XD9623 is not on the California DOJ roster of approved firearms. 16. Admitted.

- 1 17. The Springfield Armory handgun Croston 17. Admitted.
2 desires is a semiautomatic pistol chambered
3 for .45 ACP. It has a 5-inch barrel and is in
4 new condition. PRK Arms in Fresno is ready
5 to sell her one, assuming it can acquire one
6 from a distributor.
- 5 18. Croston already owns “at least one fully 18. Admitted, but not
6 functional handgun” that is suitable for self
7 defense, depending on the circumstances.
8 She is nonetheless “able to purchase an operable
9 handgun that is suitable for self-defense.”
- 9 19. Plaintiff Brett Thomas is a California resident. 19. Admitted.
- 10 20. Thomas wants to buy a handgun described as 20. Admitted.
11 a “High Standard Buntline style revolver.”
- 12 21. A High Standard Buntline style revolver is not 21. Admitted.
13 on the California DOJ roster of approved firearms.
- 14 22. The revolver is chambered for .22 long rifle 22. Disputed. Thomas is
15 ammunition. Its barrel length is 9.5 inches. It
16 is a used gun, and is currently owned by an
17 individual in Georgia, but is being offered for
18 sale by PRK Arms.
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- 21 23. Thomas already owns “at least one fully 23. Admitted, but not
22 functional handgun” that is suitable for self
23 defense, depending on the circumstances, and
24 he is “able to purchase an operable handgun
25 that is suitable for self-defense” irrespective of
26 the circumstances.

1 24. There are currently more than 1,200 different kinds of handguns listed on California's roster of approved handguns. Those are handguns that are available to plaintiffs for purchase. Specifically, as of October 23, 2013, there were 1,273 handguns listed on the roster and thus available for sale in California. 24. Admitted, but not material.

25. Since this lawsuit was filed, there have been approximately 1.5 million legal handgun transactions in California. Specifically, since 2009 to October 23, 2012, the Bureau of Firearms has processed 1,491,176 Dealer's Record of Sale (DROS) transactions. 25. Admitted, but not material.

26. Since 2009, there have been hundreds of thousands of handgun transactions per year, and those figures are increasing. Specifically, the yearly handgun DROS transactions are as follows: 26. Admitted, but not material.

- 2009: 228,368
- 2010: 236,086
- 2011: 293,429
- 2012: 388,006
- 2013 (as of October 23, 2013): 345,287

Dated: December 2, 2013

Respectfully submitted,

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