John W. Dillon (CA Bar No. 296788)
Dillon Law Group APC
2647 Gateway Road
Suite 105, No. 255
Carlsbad, California 92009
Tel: (760) 642-7150 | Fax: 760-642-7151
jdillon@dillonlawgp.com

Chad Flores (TX Bar. No 24059769)*
Flores Law PLLC
917 Franklin Street
Suite 600
Houston, Texas 77002
Tel: (713) 364-6640 | Fax: 832-645-2496
cf@chadflores.law
**Admitted Pro Hac Vice*

Attorneys for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. COAST RUNNER INDUSTRIES, INC., GHOST GUNNER, INC., and DEFENSE DISTRIBUTED, Defendants.	Case No. 37-2024-00020896-CU-MC-CTL Action Filed: May 3, 2024 **Defendants' Response to the Plaintiff's Motion for a Preliminary Injunction** Date: March 28, 2025 Time: 10:30 A.M. Dept: C-64 Judge: Hon. Loren Freestone

TABLE OF CONTENTS

Argument

I. Plaintiff's claims are meritless.

The motion should be denied because Plaintiff lacks a likelihood of success on the merits, obviating the need to consider the balance of harms. Many independent faults defeat these claims.

First, Plaintiff cannot establish the claims' elements because Plaintiff misreads the statutes at issue. Coast Runner exists not to *evade* these laws, but to comply. The key provisions cover only CNC milling machines with "the sole or primary function of manufacturing firearms." Cal. Penal Code § 29185(b)-(c). But the Coast Runner has neither a "sole or primary function of manufacturing firearms" because it is a *multi-function* machine. Proof of that "function" speaks directly to the controlling inquiry and overrides the marketing inferences Plaintiff tries to bootstrap. This machine was *designed to comply* and it does.

Second, assuming that these laws cover the Coast Runner *because* it can sometimes help make firearms, Plaintiff's claims violate the Second Amendment's right to keep and bear Arms. Just as a law specially criminalizing printing presses would undoubtedly implicate the First Amendment, so too a law specially criminalizing gunsmithing tools implicates the Second. Plaintiff therefore has to meet the test set by *New York State Rifle & Pistol Association, v. Bruen*, 142 S.Ct. 2111 (2022). But that cannot be done because there is no American historical tradition of regulating the self-manufacture of firearms in any significant respect—let alone a tradition of proscribing it with the harsh penalties that these laws do.

Plaintiff's claims also suffer from several other case-dispositive shortcomings. The alter ego theory used to commingle all of the Defendants is invalid. Under the Texas law that governs this issue, Plaintiff's scant proof of overlapping personnel and operational similarity does not come close to meeting the test. Plaintiff also cannot establish personal jurisdiction over the Defendants—especially Ghost Gunner Inc., and Defense Distributed, whose only case-related activity was Texas-based conduct concerning the internal affairs of businesses organized under Texas law.

A. Plaintiff cannot establish the underlying claim's elements.

Both of Plaintiff's claims require proof of what is proscribed by California Penal Code § 29185. The first claim asserts California Civil Code § 3273.62(a), which itself requires proof of "conduct prohibited by Section 29185 of the Penal Code." Cal. Civ. Code § 3273.62(a). The second claim requires that same proof. It asserts a violation of California Business and Professional Code § 17200, which entails a showing of "unlawful" business practice that Plaintiff's motion says (at 15) is met by a violation of Section 3273.62. At bottom, therefore, the pleadings clearly establish (and Plaintiff does not contest) that both of Plaintiff's claims require proof of conduct prohibited by California Penal Code § 29185. But Coast Runner was made to comply with this law—not evade it—and complying is exactly what it does.

1. Penal Code Sections 29185(b) and (c) do not apply.

The crimes defined by California Penal Code Sections 29185(b) and (c) occur only if they entail "a CNC milling machine or three-dimensional printer *that has the sole or primary function of manufacturing firearms*." Cal. Penal Code § 29185(b)-(c) (emphasis added). CNC milling machines without that "sole or primary function" are not covered by the Penal Code.

Sections 29185(b) and (c) do not apply here because the Coast Runner does not have a "sole or primary function of manufacturing firearms." Functionally—all that matters—the Coast Runner is a generalized *multi*-purpose CNC mill capable of fulfilling a vast range of manufacturing needs across multiple industries. It has no "sole or primary function" of manufacturing anything in particular. Paragraphs 10 through 16 of the Declaration of Garret Walliman, Coast Runner's CTO, establish this both with clear conclusions and a wealth of supporting engineering details. *See* Ex. A. at 4-6, ¶¶ 10-16.

Standing alone, that objective engineering reality—the fact that Coast Runner is a generalized *multi*-function CNC mill with no "sole or primary function of manufacturing firearms"—stops Sections 29185(b) and (c) from applying. Plaintiff's subjective arguments about how Coast Runner has been *marketed* do not change this result for two independent reasons.

First and most importantly, marketing evidence cannot make Sections 29185(b) and (c) apply where, as here, there is actual objective evidence of how the machine "functions." If proof shows that a machine does not have the "sole or primary function of manufacturing firearms," Penal Code Sections 29185(b) and (c) do not apply—*regardless of whether or not the machine is marketed that way or not.* The "reputable presumption" provision of Civil Code § 3273.62(b) does not change this. It operates only when there is *no objective evidence* of a machine's legal "function." For that discrete procedural posture, Section 3273.62(b) says that proof of certain marketing methods yields a "rebuttable presumption" of a Section 29185 violation. Cal. Civ. Code § 3273.62(b). But even if such marketing occurred here (it did not for reasons shown below), the "reputable presumption" has been rebutted. Just as the statute contemplates, the rebuttal has been accomplished by objective proof showing that Coast Runner is a generalized multi-function CNC mill with no "sole or primary function of manufacturing firearms." In each of these respects, Plaintiff's contrary understanding of the statue is clearly foreclosed by plain text. And even if a material part of these statutes were ambiguous, the rule of lenity would operate for the Defendants to defeat the motion. *See, e.g.*, *People v. Reynoza*, 15 Cal. 5th 982, 1013 (2024).

Second and independently, marketing evidence does not make Sections 29185(b) and (c) apply because Coast Runner's marketing did *not* trigger the § 3273.62(b) presumption. Plaintiff says otherwise by pointing to stray references cherrypicked out of context. But according to the "totality of circumstances" that this statute looks to, Cal. Civ. Code § 3273.62(b), Coast Runner Industries, Inc. markets the Coast Runner in accordance with its function—as a generalized, multi-purpose CNC milling machine not dedicated to any specific application but capable of fulfilling a vast range of manufacturing needs across multiple industries. *See* Ex. A at 8-14. Plaintiff has *no* evidence of major marketing efforts to the contrary. For this reason as well, marketing evidence cannot override what the evidence of Coast Runner's actual "function" shows: Penal Code Sections 29185(b) and (c) do not apply.

2. Penal Code Section 29185(a) is not asserted and does not apply

Plaintiff's motion is predicated entirely on supposed violations of California Penal Code Sections 29185**(b)** and **(c)**—not Section 29185**(a)**. This makes sense because Sections 29185**(b)** and **(c)** are about *buying and selling* certain CNC milling machines ("sell" "offer to sell" "transfer" "possess" "purchase" or "receive"), whereas Section 29185(**a)** concerns the very different crime of *using* a CNC milling machine to manufacture a firearm. The Court should understand the motion accordingly, as asserting only the violations of California Penal Code Sections 29185**(b)** and **(c)** addressed in full above.

Alternatively, if the Plaintiff is understood to assert violations of California Penal Code Section 29185**(a)**, their claims will not succeed because the requisite scienter is lacking. Since Section 29185**(a)** does *not* criminalize mere buying, selling, or possessing any machine, mere scienter about a machine being bought, sold, or possessed does *not* carry the burden. Yet that is the only scienter Plaintiff can show.

Section 29185(a) criminalizes only the actual "use" of a covered machine to manufacture a firearm. Cal. Penal Code § 29185(a). So to carry the relevant burden, Plaintiff has to show scienter as to the fact that a particular Coast Runner buyer will necessarily use it for the one proscribed manufacturing purpose instead of the thousands of other manufacturing purposes that remain perfectly legal. No such scienter evidence exists here. Proof of Defendants' *actual* knowledge of that fact is obviously absent. Nor is there any legally valid proof of "recklessness," which even if constitutionally proper (unlikely) would require the Plaintiff to show that the number of illegal instances is mathematically "substantial" in relation to legal instances. *See People v. Obermueller*, 104 Cal. App. 5th 207, 219 (2024) (on the escalating varieties of scienter, including recklessness). But there is no such proof here. Plaintiff has literally zero evidence of what the true set of Coast Runner users is like and zero evidence of how they would use a Coast Runner in light of Section 29185. All that Plaintiffs rely upon is conjecture—unproven assumptions of third-party criminal conduct about "ghost guns" generally—which cannot carry the burden an injunction requires.

B. The supposedly-violated laws are unconstitutional.

Even if Plaintiff could establish the statutory elements of their alleged violation, the claims would nonetheless fail across the board because their enforcement violates the Second Amendment. Both facially and as applied here, no relief can be had under either law individually or under both laws together.

The Second Amendment forbids laws abridging the individual right to keep and bear Arms, *see District of Columbia v. Heller*, 554 U.S. 570, 627 (2008), and applies to these statutes by virtue of the Fourteenth Amendment, *see McDonald v. Chicago*, 561 U.S. 742 (2010). Where "the Second Amendment's plain text covers an individual's conduct," the Constitution presumptively protects that conduct," and "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Association, v. Bruen*, 142 S.Ct. 2111 (2022). That test applies here and cannot be met because both laws are clearly inconsistent with this Nation's historical tradition of firearm regulation.

As to the initial issue of constitutional text, the Second Amendment's operative words cover what AB 1621 and AB 1089 proscribe. The Second Amendment's term "Arms" covers "all instruments that constitute bearable arms," including "those that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582. AB 1621 and AB 1089 plainly regulate such "Arms" by acting upon any "firearm." *See* Cal. Penal Code § 29185 (governing "a firearm" and "firearms"); Cal. Civ. Code § 3273.62 (governing "firearms"). What these statutes proscribe is also covered by the Second Amendment phrase "keep and bear," which necessarily entails an individual right to make or acquire Arms. *See id.*

The Plaintiff's main answer is to say (in their motion to strike brief at 20) that "[n]either California Civil Code § 3273.62 or California Penal Code § 29185 implicates conduct protected by the Second Amendment." But no appellate court has ever held that for good reason. The point is plainly wrong. As a matter of law, these laws *do* implicate the Second Amendment inquiry of *Bruen* and its progeny.

To make the position clear, the Defendants' point is *not* that these activities lack a textual hook and are protected anyhow. The point is that the requisite textual hook exists because the Second Amendment phrase "keep and bear Arms" necessarily entails acquiring and/or making personal firearms.

All of the leading opinions on this issue support the Defendants. *See Luis v. United States*, 578 U.S. 5, 26-27 (2016) (Thomas, J., concurring in the judgment) ("Constitutional rights thus implicitly protect those closely related acts necessary to their exercise."). *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011), is particularly instructive: "The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that make it effective." *Id.* So too are older cases that demonstrate the tradition's long history. *See Andrews v. State*, 50 Tenn. 165, 178 (1871) (the "right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair"). Additional opinions to be followed on this point are *Mock v. Garland*, 75 F.4th 563, 588 (5th Cir. 2023) (Willett, J., concurring) ("protected Second Amendment 'conduct' likely includes making common, safety-improving modifications to otherwise lawfully bearable arms), and *Ill. Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014) ("the right to keep and bear arms . . . must also include the right to acquire a firearm . . ." (emphasis in original)).

Because the statutes in question implicate the Second Amendment's protections, Plaintiff has the burden of demonstrating the requisite historical tradition supporting these laws; it is not the Defendants' burden to disprove that historical tradition. *See Bruen*, 142 S.Ct. 2111. Even so, authorities already make it clear that there is ***no*** historical tradition of regulating the self-manufacture of firearms as these statutes do. *See* Joseph G.S. Greenlee, The American Tradition of Self-Made Arms, 54 St. Mary's L.J. 35, 66 (2023).

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." *Id.* at 9. Colonists possessed both the express right to import whole firearms *and the parts necessary to make their own firearms*. *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 Thorpe ed., 1909)). 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 Sawyer, Firearms in American History 145 (1910); *see also* James B. Whisker, The Gunsmith's Trade 5 (1992).

During the Revolutionary War, when the British attempted to prevent the Americans from acquiring firearms and ammunition, Americans were forced to manufacture their own. *See Greenlee*, *supra*, at 12–15. Due to the circumstances of the war, "[n]early every able-bodied male between 16 and 60 . . . [had] to provide his own arms" and some men "built their arms themselves." *Id.* at 25. "When the colonies faced major arms shortages throughout the war, domestic arms manufacturing filled the void." *Id.* at 16. Indeed, the colonies themselves solicited firearm manufacturers, including those engaged in private manufacture and others outside of the firearms industry, to increase domestic production. *Id.* at 18–23. Thomas Jefferson understood the right very well, writing that that "[o]ur citizens have always been free to make, vend, and export arms. It is the constant occupation and livelihood of some of them." *Letter from Secretary of State Thomas Jefferson to British Ambassador to the United States George Hammond*, May 15, 1793, *in* 7 The Writings of Thomas Jefferson 325–26 (Paul Ford ed., 1904).[1]

[1] After the Revolutionary War, "gunsmithing was a universal need in early America" and "many early Americans who were professionals in other occupations engaged in gunsmithing as an additional

Plaintiff's supposedly modern notion of home firearm production is not modern at all. Although some early riflemakers forged their firearm parts from scratch, "there were gunsmiths who did not forge out their barrel blanks, but purchased them in bulk from some factory like that of Eliphalet Remington." John G.W. Dillin, The Kentucky Rifle 96 (1975). These riflemakers then fitted their barrels "to hand-made stocks with American factory or English locks." *Id.* The tradition of personal tooled gunmaking—free from any major regulation whatsoever—continued into the nineteenth and twentieth centuries, when "[m]any of the most important innovations in firearms technology began not in a federal armory or major firearms manufactory, but in private homes and workshops." Greenlee, *supra*, at 35. During all of these time periods, anyone with the requisite skill had an essentially unfettered right to build their own firearms; "[o]ne need not have had a wealthy patron or sponsor, or work for king and nobility, to make guns." Greenlee, *supra*, at 41 (internal citation omitted); Whisker, *supra*, at 6 ("Even those apprentices who had never completed an apprenticeship might enter the trade. No guild, union or government agency attempted to regulate the gun making business….He need not take any examination. He need not present one of his guns to any examining board."); *id.* at 90 ("Gunsmiths considered it to be their right to make guns without regulation or interference."). Deviations from this tradition are decidedly few and modern.

No restrictions were placed on the self-manufacture of firearms for personal use in America during the seventeenth, eighteenth, or nineteenth centuries. *See* Greenlee, *supra*, at 40. Rather, "[a]ll such restrictions have been enacted within the last decade." *Id.* At the state level, it was not until 2016 that a small minority of states began to regulate the manufacture of arms for personal use. *Id.* at 42. Hence, there is no American historical tradition of regulating the self-manufacture of firearms in any significant respect—let alone proscribing it as these statutes do. They clearly abridge the Second Amendment.

---

occupation or hobby." Greenlee, *supra*, at 29. This tradition extended to pioneers, mountain men, and explorers whose need to make and repair firearms was a survival necessity. *Id.* at 32.

C. The Defendant companies are distinct—not alter egos.

Plaintiff's claims presuppose that Defense Distributed and Ghost Gunner Inc. are alter egos of Coast Runner Industries, Inc. *See* Compl. at 4, ¶ 6 ("Coast Runner Industries, Inc. is merely an alter ego of Ghost Gunner Inc. and Defense Distributed"). But that assertion is both legally invalid and factually false. What they plead does not meet the test. And they cannot prove their alter ego allegations either. As a result, the claims against Defense Distributed and Ghost Gunner Inc. are totally invalid and the claims against Coast Runner Industries, Inc. can only rely on conduct attributable to that particular entity.

Texas law governs the question of whether any one of these companies is the "alter ego" of another, *see, e.g.*, Tex. Bus. Org. Code § 1.105, and the Texas law on this point is "well-settled" and strict. *Tex. Tech Univ. Sys. v. Martinez*, 691 S.W.3d 415, 422 (Tex. 2024). Texas law has "never held corporations liable for each other's obligations merely because of centralized control, mutual purposes, and shared finances." *SSP Partners v. Gladstrong Investments (USA) Corp.*, 275 S.W.3d 444, 455 (Tex. 2008). The applicable rule is that "[a]lter ego is shown from the total dealings of the corporation and the individual, including the degree to which corporate formalities have been followed and corporate and individual property have been kept separately; the amount of financial interest, ownership, and control the individual maintains over the corporation; and whether the corporation has been used for personal purposes." *Durham v. Accardi*, 587 S.W.3d 179, 185 (Tex. App.—Houston [14th Dist.] 2019, no pet.). "Evidence that will support an alter ego finding includes (1) the payment of alleged corporate debts with personal checks or other commingling of funds, (2) representations that the individual will financially back the corporation, (3) the diversion of company profits to the individual for the individual's personal use, (4) inadequate capitalization, and (5) any other failure to keep corporate and personal assets separate." *Id.*

The complaint's only significant basis for asserting alter ego status is the alleged overlapping presence of certain personnel. Yet no Texas precedent upholds an alter ego finding on such slim allegations. To the contrary, they have long held that an "individual's role as an officer, director, or

majority shareholder of an entity alone is not sufficient to support a finding of alter ego." *Id.* The Court should follow *Durham* here and deem the complaint's alter ego allegations insufficient as a matter of law.

Endsley Elec., Inc. v. Altech, Inc., 378 S.W.3d 15, 24 (Tex. App.—Texarkana 2012, no pet.), is another of the many controlling cases. Legally, it rightly upholds the rule that there "must be something more than mere unity of financial interest, ownership, and control for a court to treat an officer, director, or shareholder as the corporation's alter ego and make an officer, director, or shareholder liable for the corporation's actions." *Id.* at 25. Factually, it rightly concludes that shared personnel does not warrant an alter ego finding where, as here, "there is no evidence that [they] supported the project with personal funds, represented to anyone that they were personally backing [Coast Runner], commingled personal and company funds, manipulated or transferred [Coast Runner's] assets or liabilities, made loans to or from the company, prioritized themselves as creditors, or otherwise abused the corporate form." *Id.*

No identified case from Texas (both sides agree it is the controlling jurisdiction) upholds veil piercing on analogous facts. Partially overlapping personnel and partially overlapping control are the Plaintiff's only meaningful points. But under both *Durham*, and *Endsley*, there "must be something more than mere unity of financial interest, ownership, and control." *Id.* at 25.

Even though the "total dealings" of each corporation are what matter, *Durham*, 587 S.W.3d at 185, the Plaintiff has nothing to say about key matters like "the degree to which corporate formalities have been followed and corporate and individual property have been kept separately." *Id.* Able counsel flyspecked all of the corporate filings and reported no improprieties. And no one has ever suggested that Coast Runner Industries, Inc. cannot answer for all of its debts. No "fraud" or "evasion of existing obligations" exists where, as here, a full-fledged and fully-solvent defendant is ready, willing, and able to answer for all of the business that it carries on.

Exhibit A puts the nail in the coffin, establishing beyond doubt that no veil piercing effort will succeed here. It shows Coast Runner is "a fully solvent going concern with fully normal financial stability, capable of independently answering for all of its business obligations." Ex. A at 3-4. "The company has always adhered to the requisite corporate formalities, maintaining adequate capitalization and operating as a distinct legal entity." *Id.* "In no substantial respect has the company ever paid debts with personal checks, represented that another entity would back the company, commingled funds, or diverted substantial company profits to others." *Id.*

JNM Express, LLC v. Lozano, 688 S.W.3d 327 (Tex. 2024) (cited Plaintiff earlier) does not help the Plaintiff. It *refused* to pierce the veil. And it did so for reasons that support the Defendants here: no evidence that the company was not "reasonably capitalized in light of the nature and risk of its business." *Id.* at 334. There is no suggestion of undercapitalization here, let alone any evidence of it. The other cited case, *Hernandez v. Cudco Sols., LLC*, No. 14-21-00605-CV, 2023 WL 2659103, at *5 (Tex. App.—Houston [14th Dist.] Mar. 28, 2023, no pet.), refused to pierce the veil too.

For these reasons, the Court should hold that the claims against Defense Distributed and Ghost Gunner Inc. are totally invalid and no preliminary injunction can issue against them. The Court should also hold that, because of the alter ego theory's invalidity, the claims against Coast Runner Industries, Inc. can only rely on conduct attributable to that particular entity—drastically diminishing the case even more.

D. Personal jurisdiction is lacking.

The Plaintiffs cannot prevail on their claims because personal jurisdiction is lacking. General personal jurisdiction exists only if a defendant's forum contacts are so "continuous and systematic" that it can said to be "at home" there. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). No serious case for general jurisdiction can be made here because the Defendants are at home only in Texas. The complaint essentially concedes this by acknowledging that all of the Defendants are at home in Texas. *See* Compl.at 6-7. Specific personal jurisdiction exists only if the action arises out of conduct that constitutes a

defendant's purposeful availment of the forum itself. *E.g.*, *Walden v. Fiore*, 571 U.S. 277, 284 (2014). That test is not met here as to any defendant—especially Ghost Gunner Inc., and Defense Distributed.

Specific personal jurisdiction is clearly absent as to Defendants Ghost Gunner Inc., and Defense Distributed. Though Paragraphs 16 and 17 make allegations about their California contacts, *see* Compl. at 7-8 ¶¶ 16-17, they are wholly conclusory and therefore do not count, *see, e.g.*, *Weatherford v. City of San Rafael*, 2 Cal. 5th 1241, 1255 (2017). Otherwise, the complaint never alleges that these defendants did anything in or to California. Though there are allegations of these defendants somehow abusing corporate forms vis-à-vis Coast Runner, Inc., *those allegations are not about California*. They pertain only to Texas-based conduct concerning the internal affairs of businesses organized under Texas law. Whatever relationship these alleged activities created is with Texas alone—not California.

Specific personal jurisdiction is also absent as to Defendant Coast Runner, Inc. (and by extension as to the other defendants if they are somehow implicated by everything Coast Runner Inc. did). The paragraph 15 allegations about Coast Runner, Inc.'s California contacts are conclusory, *see* Compl. at 7, ¶ 15, and therefore do not count. Besides those, the complaint's essential basis for exercising specific personal jurisdiction over Coast Runner, Inc. is that Californians will choose in the future to do business with it. This effort violates two of the key rules upheld by the Supreme Court in *Walden*.

First, *Walden* makes specific jurisdiction over Coast Runner, Inc. impossible by reaffirming a longstanding rule about whose contacts matter: Contacts count towards purposeful availment only if they are created by the "defendant himself"—not if they are created by "plaintiffs or third parties." *Walden*, 571 U.S. at 284. Plaintiff's case violates this rule because the only California connections it can muster belong to third parties—the Californians that allegedly engage in the conduct at issue. Jurisdictionally, the Defendants did not reach out to anyone in California. Californians reached out to Texas.

Second, *Walden* makes specific jurisdiction impossible to sustain here by holding that "'minimum contacts' analysis looks to the defendant's contacts with *the forum State itself*, not the defendant's contacts with *persons who reside there*."" *Walden*, 571 U.S. at 285. Whatever relationship the Defendants have created here is with California residents themselves—not their state. Under *Walden*, the critical jurisdictional question is about "whether the defendant's actions connect him to the forum." *Id.* For all of this action's Defendants, the answer is "no."

In each of these respects, Plaintiff's suit tries to do precisely what *Walden* disallowed. It tries to establish specific jurisdiction with something other than "contacts that the 'defendant himself' creates"; and it contradicts the rule that "'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Id.* at 284–85. The Defendants can be only be sued at home, in Texas.

There is also a third independent reason to reject specific jurisdiction here: Most of the contacts that supposedly constitute purposeful availment have not occurred. The suit is not really about business that is occurring *now*. No Coast Runner machine has ever shipped to California. The suit is really about business that Plaintiffs predict Defendants will carry on in the future. If specific jurisdiction could ever exist, it would only arise if and when the Defendants engage in the conduct that the Plaintiff predicts that they will take part in later. But because they have not done so yet, jurisdiction does not exist *yet*. *See Estate of Martinez v. Yavorcik*, 455 F. Supp. 2d 115, 121 n.3 (D. Conn. 2006) ("[P]romises as to future conduct cannot establish personal jurisdiction."); *See also Home Gambling Network, Inc. v. Betinternet.com, PLC*, 2:05CV 00610 KJD LRL, 2006 WL 1795554, at *5 (D. Nev. June 26, 2006) ("Jurisdiction is not based on the likelihood of some future contact with the forum, but 'the defendant's conduct and connection with the forum state . . . such that he should reasonably anticipate being haled into court there.'" (omission in original) (quoting *World-Wide Volkswagen Corp.*, 444 U.S. 286)); *Eli Lilly*

& Co. v. Nang Kuang Pharm. Co., Ltd., No. 1:14-CV-01647-TWP, 2015 WL 3744557, at *1 (S.D. Ind. June 15, 2015) ("[P]ersonal jurisdiction cannot be based on future contacts, even if such contacts are allegedly 'inevitable.'" (quoting *Sys. Software Assocs., Inc. v. Trapp*, No. 95 C 3874, 1995 WL 506058, at *6 (N.D. Ill. Aug.18, 1995)); *Koninklijke Philips N.V. v. Digital Works, Inc.*, 2:13-CV-01341-JAD, 2014 WL 3816395, at *3 (D. Nev. Aug. 4, 2014) (no personal jurisdiction where " their jurisdictional basis is one of potential future contacts only").

The waiver suggestion Plaintiff made earlier is wrong because the issue has been timely raised just as the rules anticipate—in a motion that is filed before any pleading and that asserts "lack of jurisdiction of the court over him or her." Cal. Civ. Proc. Code § 418.10. Defendant's motion to strike made this perfectly evident in asserting (at 9) that "Plaintiff cannot establish that the Defendants' relationship with California crosses the threshold necessary to warrant an exercise specific jurisdiction." And under Section 418.10(e), it was proper to put this jurisdictional argument in a motion that includes other non-jurisdictional issues. *See* Cal. Civ. Proc. Code § 418.10(e).

Asahi Metal Indus. Co. v. Superior Court of California, 480 U.S. 102 (1987), was cited by the as supposedly trumping *Walden*. But *Asahi* could not have undone *Walden* because *Asahi* came *before Walden*. And even if the California contacts in question are considered relevant, they are certainly not the kind of "continuous and wide-reaching contacts" that *Walden* requires. *Walden*, 571 U.S. at 285.

II. Harm balancing opposes relief.

Whatever the case may be when there are no constitutional rights at issue, the balance must be struck differently where, as here, both First and Second Amendment rights are implicated. In this context, prior restraints are almost never allowed, subject only to a very narrow exception for "post-trial remedies" against conduct that has already been "judicially determined" to lack constitutional protection. *Balboa Island Vill. Inn, Inc. v. Lemen*, 40 Cal. 4th 1141, 1158 (2007). Because that exception does not apply

here, the general rule banning prior restraints controls. This doctrine applies to both the First and Second Amendment aspects of the case. The First Amendment application is well-established. *See, e.g.*, *id.*; *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963). The Second Amendment application is equally valid because of *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), which confirms that the modern "Second Amendment standard accords with how we protect other constitutional rights," including in particular "the First Amendment." *Id.* at 24. For all of the same reasons that prior restraints of speech violate the First Amendment, so too do prior restraints of the right to keep and bear Arms violate the Second Amendment.

Finally, Plaintiff fails to show that an injunction will give any benefit. Mere "anecdote and supposition" do not suffice. *United States v. Playboy Ent. Group*, 529 U.S. 803, 822 (2000). Compelling "empirical support" of efficacy must be given. *Globe Newspaper Co. v. Sup. Ct. for Norfolk Cty.*, 457 U.S. 596, 609 (1982). *I.e.*, proof must demonstrate that the "restriction will in fact alleviate" the concerns. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001). Yet no proof of efficacy exists here, and common sense confirms that it won't stop the feared harms. *Cf. Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2313 14 (2016) ("Determined wrongdoers, already ignoring existing statutes and safety measures, are unlikely to be convinced to adopt safe practices by a new overlay of regulations.").

III. The "any other machine" position fails.

Plaintiff seeks injunctive relief regarding the Coast Runner *and* "any other CNC milling machine." Plaintiff's Motion at 3; Plaintiff's Memo at 3. The Court should reject the latter because the Plaintiff does not try and certainly does not succeed in justifying an injunction as to "any other CNC milling machine." The only well-presented clams concern the Coast Runner in particular. No others warrant relief.

IV. Conclusion

The motion should be denied.

Respectfully submitted,
By: /s/ John W. Dillon

John W. Dillon (CA Bar No. 296788)
Dillon Law Group APC
2647 Gateway Road
Suite 105, No. 255
Carlsbad, California 92009
Tel: (760) 642-7150 | Fax: 760-642-7151
jdillon@dillonlawgp.com

Chad Flores (TX Bar. No 24059769)*
Flores Law PLLC
917 Franklin Street
Suite 600
Houston, Texas 77002
Tel: (713) 364-6640 | Fax: 832-645-2496
cf@chadflores.law
**Admitted Pro Hac Vice*

Attorneys for Defendants