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
Admission Pro Hac Vice Pending

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' MEMORANDUM IN SUPPORT OF MOTION TO STRIKE** Date: February 28, 2025 Time: 10:30 A.M. Dept: C-64 Judge: Hon. Loren Freestone

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I. ARGUMENT

California's anti-SLAPP statute applies to this action and requires striking all of Plaintiff's claims. The statute applies because the case arises from Defendants' acts furthering both the right of petition and the right of free speech in connection with a public issue. The test is met by complaint allegations that try to make the Defendants liable for how Defense Distributed opposed California laws regarding CNC milling machines, first with political advocacy and then with prior federal litigation. With both covered petitioning and speech at issue, Plaintiff must show a probability of prevailing. Because it cannot do so, the motion should be granted and the Defendants should recover their fees and costs.[1]

A. The Complaint is Subject to a Special Motion to Strike.

California's anti-SLAPP statute applies to any "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike." Cal. Civ. Proc. Code § 425.16(b)(1). Covered acts include "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an

[1] The motion is timely because it is filed within the statute's 60-day deadline, *see* § 425.16(f), not counting the days that the action was in federal courts that would not recognize the instant motion, which are tolled automatically or in the alternative should be tolled under any discretionary tolling standard. *See Spanair S.A. v. McDonnell Douglas Corp.*, 172 Cal. App. 4th 348, 358 (2009) (tolling of state court deadlines is "automatic" during removed proceedings).

issue of public interest." § 425.16(e). "In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." *Id.* § 425.16(b)(2). "The Legislature has directed that the courts construe this language broadly." *Rivero v. Am. Fed'n of State, Cnty., & Mun. Employees, AFL-CIO*, 105 Cal. App. 4th 913, 918 (2003). Under these standards, the anti-SLAPP statute covers this entire case because both causes of action arise from covered petitioning and free speech.

B. The Case Arises from Defendants' Acts Furthering the Right of Petition.

First, the anti-SLAPP statute applies to the entire case because Plaintiff's claims arise from Defendants' acts furthering the "right of petition . . . under the United States Constitution or the California Constitution in connection with a public issue." Cal. Civ. Proc. Code § 425.16(b)(1). Plaintiff's claims arise from such petitioning in multiple respects, any one of which suffices to trigger coverage.

Litigation against the government clearly constitutes covered "petitioning" activity. *See, e.g.*, *Navellier v. Sletten*, 29 Cal. 4th 82, 90 (2002) ("The constitutional right of petition encompasses the basic act of filing litigation." (cleaned up)). So do all of the activities that are necessarily adjunct to such litigation, such as acts that are "preparatory to or in anticipation of the bringing of an action or other official proceeding." *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1115 (1999); *Navellier v. Sletten*, 29 Cal. 4th 82, 90 (2002). Both kinds of "petitioning" activity are at issue here.

Complaint paragraphs 1-6, 9, and 24-28 most clearly show that Plaintiff's claims arise from covered acts of petitioning. Compl. at 4-5, ¶¶ 1-6; *id.* at 6, ¶ 9; *id.* at 9-10, ¶¶ 22-27. In those allegations—which are integral to both specified causes of action[2]—the complaint tries to hold the

[2] The complaint invokes paragraphs 4, 5, and 6 as a basis for both the first cause of action, *see* Compl. at 24, ¶ 64, and the second, *see* Compl. at 26, ¶ 75.

Defendants liable for how Defense Distributed spoke in opposition to and litigated against California laws regarding CNC milling machines. *Id.* Both legislative and judicial petitioning are at issue. The connection is not implied or attenuated; it is express and direct. *Id.* The allegations proudly invoke both Defense Distributed's prior legislative advocacy and its prior litigation against legislation as material liability keystones. Compl. at 4-6, ¶¶ 4-6, 9.

Like those leading allegations, the complaint in paragraphs 22-28 again shows that Plaintiff's claims arise from covered acts of petitioning. Compl. at 9-10, ¶¶ 22-28. There as well, the complaint tries to hold the Defendants liable for how Defense Distributed spoke in opposition to and litigated against California laws regarding CNC milling machines. *See id.* at Compl. at 9, ¶ 23 ("Wilson and Defense Distributed also made a video directed 'To California' that mocked California's legislative efforts to curb the manufacture and sale of certain gun parts"); *id.* at 9, ¶ 24 ("Wilson's attack on California regulations culminated in August 2022, when Defense Distributed filed a federal lawsuit challenging AB 1621, claiming the law violated Defense Distributed's purported Second Amendment right to sell its Ghost Gunner product."). Complaint paragraph 82 confirms that the covered petitioning actions are integral parts of the liability theory. Compl. at 27, ¶ 82. To show that the Defendants "seek to evade AB 1089 and AB 1621," it pleads that "Defendants only began marketing the Coast Runner after they lost their legal challenge to AB 1621 in California" and says that "Defendants' attempted end-run around the California legislature's clear intent to prohibit the sale of dangerous CNC milling machines in the state is an unfair business practice and should not be permitted here." *Id.*

That these actions are what the claims "arise from" is clear as well, in at least two separate respects. Most importantly, the complaint invokes Defense Distributed's prior legislative advocacy and prior litigation against legislation as *actus reus*—key material steps in the overall effort to supposedly help people "evade state and federal firearms laws and to create ghost guns."

Compl. at 3, ¶ 1. Additionally, the complaint invokes Defense Distributed's prior legislative advocacy and prior litigation against legislation as proof of *mens rea*, *see* Compl. at 4, ¶ 4 (pleading what "Defense Distributed is well aware of"), which would be enough on its own to meet the test.

C. The Case Arises From Defendants' Acts Furthering the Right of Free Speech.

Second, the anti-SLAPP statute applies to the entire case because all of Plaintiff's claims "arise from" Defendants' acts in furtherance of the "right of . . . free speech under the United States Constitution or the California Constitution in connection with a public issue." Cal. Civ. Proc. Code § 425.16(b)(1). Here as well Acts furthering that "right of … free speech" include "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" and "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." § 425.16(e).

Complaint paragraphs 21-23 show that Plaintiff's claims arise from covered acts of free speech. Compl. at 4-5, ¶¶ 1-6; *id.* at 6, ¶ 9; *id.* at 9-10, ¶¶ 22-27. There the complaint deems it necessary to plead what Defense Distributed's founder said publicly about issues of gun politics, *id.* 8, ¶ 21 ("Wilson has consistently demonstrated an indifferent attitude towards the tragic human toll of gun violence."), and to draw liability from mockery of legislative efforts—classic acts of free speech under any definition:

> 22. For years, Wilson's stated goal has been to devise products that evade gun safety regulations, particularly those in California. For example, a 2016 Defense Distributed statement declared: "We are not blind to the impending threat [Hillary Clinton], *coming California legislation*, and the prohibitionists in the media pose to our modern rifles and to the Second Amendment. And we are not relaxing. Though we are proud of what we've been able to offer the people in the last two years with GG, *we know we must commit ourselves anew to the defense of our liberties and to offering you a machine that can last through prohibition and even the eventual breakup of this country*."[13]
>
> 23. Wilson and Defense Distributed also made a video directed "To California" that mocked California's legislative efforts to curb the manufacture and sale of certain gun parts.[14]

Id. 9, ¶¶ 22-23.

The statute also applies because Plaintiff's claims arise from covered acts of free *commercial* speech, which is obviously implicated by the complaint and fully protected by the law. The complaint spends many sections basing its actions on commercial speech about the products in question, *e.g.*, Compl. at 10-14, ¶¶ 28-40, and California law rightly deems that speech within the statute's protections, *see FilmOn.com Inc. v. DoubleVerify Inc.,* 7 Cal. 5th 133, 148 (2019).[3] The claims "arise from" these acts of free speech in the same way that they "arise from" the acts of petitioning, as explained above.

D. The Acts Concerned Public Issues and Public Interests.

Every speech and petitioning act at issue here was "in connection with a public issue or an issue of public interest." § 425.16. These terms are "broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity." *Damon v. Ocean Hills*

[3] Section 425.17 of anti-SLAPP statute exempts certain expressive actions from the scope of section 425.16—i.e., makes certain of a Defendants' expressive actions *in*eligible for the protection of a special motion to strike. But that exception does not apply here because it pertains only to "comparative advertising." *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 147 (2019).

Journalism Club, 85 Cal. App. 4th 468, 479 (2000). "Consistent with the statute's purpose, its text defines conduct in furtherance of the rights of petition and free speech on a public issue not only by its content, but also by its location, its audience, and its timing." *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 143 (2019). "In articulating what constitutes a matter of public interest, courts look to certain specific considerations, such as whether the subject of the speech or activity 'was a person or entity in the public eye' or 'could affect large numbers of people beyond the direct participants,' and whether the activity 'occur[red] in the context of an ongoing controversy, dispute or discussion . . . .'" *Id.* at 145–46 (cleaned up).

The "public issue"/"public interest" threshold is clearly me here, as evidenced by the high public profile and high public impact of the legislative proceedings in question, the judicial proceedings in question, and the Defendants themselves. The complaint alleges the high public profile and high public impact of the issues in question at paragraphs 55 through 63. Compl. at 18-24, ¶¶ 48-50, 55-63. It also alleges the high public profile and high public impact of particular defendants in question at paragraphs 19 through 24. Compl. at 8-9, ¶¶ 19-24 (detailing the public-figure status of Defense Distributed's founder with articles by the New York Times, Reason Magazine, Wired Magazine, and the Southern Poverty Law Center).

II. THE PLAINTIFF CANNOT ESTABLISH A PROBABILITY OF PREVAILING.

Given that the anti-SLAPP statute applies to the entire case, all of Plaintiff's claims "shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." Cal. Civ. Proc. Code § 425.16(b)(1). To meet this burden, the plaintiff has to establish both that their claims are properly "stated" and that they are properly "substantiated." *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 63 (2002). Though it is *not* Defendants' burden to disestablish Plaintiff's case, several key faults are already clear.

A. 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 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."); *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 hauled 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 plaintiffs did "not demonstrate[] that Diaz has had any contacts with Nevada; their jurisdictional basis is one of potential future contacts only"). If that does not disable the case as a matter of "minimum contacts," then it must constitute the kind of suit that offends "traditional notions of fair play and substantial justice." *Int'l Shoe,* 326 U.S. at 319 (1945) ("[The Due Process Clause] does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations.").

For these reasons, the Plaintiff cannot establish that the Defendants' relationship with California crosses the threshold necessary to warrant an exercise specific jurisdiction. The jurisdictional shortcoming is sufficiently established as to Coast Runner and quite clearly established as to the others.

B. The Veil Piercing Claims Fail.

The Plaintiffs also cannot prevail on their claims because the "alter ego" allegations are not properly "stated" and definitely cannot be "substantiated." *See* Compl. at 4, ¶ 6 ("Coast Runner Industries, Inc. is merely an alter ego of Ghost Gunner Inc. and Defense Distributed"); *id.* at 10, ¶ 30 (similar). Because the alter-ego assertion is a necessary component of the case against all three defendants, the failure of the alter-ego assertion defeats every claim as well. At a minimum, the failure of the alter ego claim requires immediate rejected of the claims against Ghost Gunner Inc. and Defense Distributed.

Texas law governs the question of whether any one of these Texas 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.* Facts meeting that test have not been pleaded here and cannot be substantiated.

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.*

For these reasons, the Court should hold that the complaint's alter ego allegations fail to satisfy Texas law as to both Defense Distributed and Ghost Gunner Inc. So regardless of what happens to the case against Coast Runner Industries, Inc., the claims against the other two defendants should be immediately dismissed for failure to state a claim upon which relief can be granted.

C. AB 1621 and AB 1089 are Unconstitutional.

The Plaintiffs also cannot prevail on their claims because enforcing AB 1621 and AB 1089 against the Defendants 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 AB 1621 and AB 1089 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 to AB 1621 and AB 1089 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"). The activities that AB 1621 and AB 1089 proscribe are also covered by the Second Amendment phrase "keep and bear," which necessarily entails an individual right to make or acquire Arms. *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.").[4] Just as a law criminalizing printing presses would implicate the First Amendment, so too a law criminalizing personal gunsmithing tools implicates the Second.

Because the firearm regulations of AB 1621 and AB 1089 implicate the Second Amendment's protections, Plaintiffs have the burden of demonstrating 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 that supports what AB 1621 and AB 1089 do. *See* Joseph G.S. Greenlee, The American Tradition of Self-Made Arms, 54 St. Mary's L.J. 35, 66 (2023). So AB 1621 and AB 1089's supposedly modern notion of citizens making firearms with tools and preexisting parts 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,

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[4] *See also Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) ("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."); *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"); *see also 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); *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)).

but in private homes and workshops." Greenlee, *supra*, at 35. Deviations from this historical 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 with the harsh penalties that AB 1621 and AB 1089 do. These laws therefore violate of the Second Amendment and cannot be enforced against Defendants here.

III. THE PREVAILING DEFENDANTS SHOULD BE AWARDED FEES AND COSTS.

Given that this motion to strike should be granted, each prevailing Defendant is entitled to recover their attorney's fees and costs, § 425.16(c)(1), the amount of which should be determined by later motion.

IV. CONCLUSION

The motion to strike should be granted and Defendants awarded their fees and costs.

Dated: October 31, 2024

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:
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
**Admission Pro Hac Vice Forthcoming*

Attorneys for Defendants