CLAUDIA G. SILVA, County Counsel (SBN 167868)
By: JOHN P. COOLEY, Chief Deputy (SBN 162955)
Office of County Counsel, County of San Diego
1600 Pacific Highway, Room 355
San Diego, California 92101-2469
Telephone: (619) 531-4860
Email: john.cooley@sdcounty.ca.gov

Additional Counsel Appearances on Signature Page
Attorneys for Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the County of San Diego

Plaintiff, The People of the State of California
Exempt from filing fees per Gov't Code § 6103

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 **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE** [Filed Concurrently Herewith: Declaration of John P. Cooley in Support of Plaintiff's Opposition to Defendants' Motion to Strike] Hearing: February 28, 2025 Time: 10:30 A.M. Dept.: C-64 Hon. Loren G. Freestone Trial Date: None Set

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

PRELIMINARY STATEMENT

Defendants Coast Runner Industries, Inc., Ghost Gunner, Inc., and Defense Distributed market, advertise, and sell a computer numerical control ("CNC") milling machine called the "Coast Runner" that facilitates consumers' ability to self-manufacture unserialized firearm parts used to create so-called "ghost guns." To stop this unlawful business practice, Plaintiff the People of the State of California initiated this suit against Defendants for violation of the California Civil Code and California's Unfair Competition Law ("UCL"). Defendants moved to strike the Complaint under California's anti-SLAPP statute, advancing the meritless argument that Plaintiff's claims arise from certain speech cited as background information in the Complaint. A plain reading of the Complaint reveals that Plaintiff's claims rest entirely on Defendants' illegal actions—their marketing, advertising, and selling of the Coast Runner, a machine designed to build ghost guns, in flagrant violation of California's gun violence prevention and consumer protection laws. Such conduct is exempted from anti-SLAPP protections. Moreover, the People's claims far exceed the minimal merit required to defeat an anti-SLAPP challenge, notwithstanding Defendants' unsupported legal challenges on the basis of personal jurisdiction (which is improperly raised), alter ego liability (which Plaintiff has adequately demonstrated), and the Second Amendment (which is wholly inapplicable to this action). Accordingly, the Court should deny the motion and foreclose Defendants' opportunity to appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Defendants Defense Distributed and Ghost Gunner, Inc. sell products that are designed to allow customers to manufacture ghost guns. (Cooley Decl. ¶¶ 3, 9, 20). Chief among these products is the "Ghost Gunner," a CNC mill designed "to allow individuals to manufacture their own un-serialized firearms." (*Id.* ¶ 20). In response to the threat to public safety posed by ghost guns, the California legislature in 2022 enacted Assembly Bill 1621 ("AB 1621") (later codified as Cal. Pen. Code § 29185), which prohibits non-licensed entities from selling or marketing CNC milling machines primarily used for manufacturing firearms, effectively rendering the Ghost Gunner unlawful in California. Defense Distributed unsuccessfully challenged the constitutionality of AB 1621 in federal court. *Def. Distributed* v. *Bonta*, 2022 WL 15524983, at

*1 (C.D. Cal. Oct. 24, 2022). Shortly thereafter, Coast Runner Industries, Inc. was incorporated, and Defendants began marketing a substantially identical product—the Coast Runner—to California consumers. (Cooley Decl. ¶ 3).

On May 3, 2024, Plaintiff initiated this action, alleging that Defendants' marketing and sales practices with respect to the Coast Runner violate California Civil Code § 3273.62(a) and the UCL because the Coast Runner is nothing more than a rebranded Ghost Gunner and is specifically designed to facilitate users' ability to manufacture firearms, and Defendants have expressly and impliedly promoted the Coast Runner as a gunsmithing tool. (Compl. ¶¶ 64-86). Plaintiff seeks relief in the form of damages and an injunction barring Defendants from further violation of California Civil Code § 3273.62(a). (*Id*. at 28). On October 31, 2024, Defendants filed the instant Motion to Strike. (*See* Mot.).

LEGAL STANDARD

California's anti-SLAPP statute is designed to prevent "*meritless* claims arising from protected activity" that cause a chilling effect on the right of free speech. *See Baral* v. *Schnitt*, 1 Cal. 5th 376, 384 (2016) (emphasis in original). The statute provides a basis for defendants to move to strike a complaint only if (a) the cause of action arises from an act "in furtherance of the person's right of petition or free speech . . . in connection with a public issue" and (b) the plaintiff fails to establish "a probability that [they] will prevail on the claim." Cal. Civ. Proc. Code § 425.16(b)(1). In considering the motion to strike, the Court must consider the pleadings and supporting and opposing affidavits. Cal. Civ. Proc. Code § 425.16(b)(2).

The defendant bears the burden of establishing that the challenged claim "aris[es] from" four categories of enumerated protected activity. Cal. Civ. Proc. Code § 425.16(e); *Marijanovic* v. *Gray, York & Duffy*, 137 Cal. App. 4th 1262, 1270 (2006). "In the anti-SLAPP context, the critical consideration is whether the cause of action is *based on* the defendant's protected free speech or petitioning activity." *Navellier* v. *Sletten*, 29 Cal. 4th 82, 89 (2002) (emphasis in original). Even if the defendant meets this burden, the Court may only strike the complaint if the claims lack "minimal merit." *WasteXperts, Inc.* v. *Arakelian Enters., Inc.*, 103 Cal. App. 5th 652, 659 (2024). At this second stage of analysis, the court's "inquiry is limited to whether the plaintiff

has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment." *Id.* (internal quotations omitted). "[The Court] accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law." *Baral*, 1 Cal. 5th at 385; *Overstock.com, Inc.* v. *Gradient Analytics, Inc.*, 151 Cal. App. 4th 688, 699-700 (2007) ("We do not weigh credibility, nor do we evaluate the weight of the evidence.").

ARGUMENT

The Court should deny Defendants' motion because (a) Plaintiff's claims arise from illegal conduct that is not protected by California's anti-SLAPP statute and (b) Plaintiff's claims have more than the minimal merit required to survive an anti-SLAPP motion.

A. Defendants' Conduct Is Not Protected Under the Anti-SLAPP Statute

The People allege that Defendants have designed, marketed, and offered for sale in California a machine designed to build ghost guns in violation of California law. Instead of engaging with these claims, Defendants' motion myopically focuses on background facts included in the Complaint that explain how and why the Coast Runner was conceived. But Plaintiff's claims arise only from Defendants' efforts to "sell, offer to sell, transfer, advertise, or market the Coast Runner in California" in violation of state law. (Compl. ¶ 67). Such illegal activity is not afforded anti-SLAPP protections, and any of Defendants' undisputed "*commercial* speech," (Mot. 5 (emphasis in original)), is expressly exempted from anti-SLAPP protections.

1. Plaintiff's Claims Do Not Arise from Past Litigation or Political Statements

Plaintiff's claims do not arise from Defendants' past litigation or the political statements of its officers. In determining whether a defendant has demonstrated that the claims arise from protected activity, courts "must look at the gravamen of the lawsuit." *Rivera* v. *First DataBank, Inc.*, 187 Cal. App. 4th 709, 715 (2010) (internal quotation omitted). "The gravamen is defined by the *acts on which liability is based*, not some philosophical thrust or legal essence of the cause of action." *Contreras* v. *Dowling*, 5 Cal. App. 5th 394, 405 (2016) (internal quotations omitted) (emphasis in original); *see also Ramona Unified Sch. Dist.* v. *Tsiknas*, 135 Cal. App. 4th 510, 519-20 (2005). Here, Defendants argue that Plaintiff's claims arise from statements "made before a

legislative, executive, or judicial proceeding" or "in connection with an issue under consideration or review by a legislative, executive, or judicial body," specifically Defense Distributed's failed constitutional challenge to AB 1621 and past statements from Defendants' shared officers concerning the constitutionality of "California laws regarding CNC milling machines." (Mot. 2-4.) But the fact that such activity is mentioned in a complaint does not make it the gravamen of the claim. *Martinez* v. *Metabolife Internat., Inc.*, 113 Cal. App. 4th 181, 188 (2003) ("[C]ollateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute."). Plaintiff's claims are entirely independent of Defendants' legal challenges and criticism of California law.

The People assert that Defendants have violated § 3273.62 and the UCL through the marketing and sale of the Coast Runner. Both of these laws prohibit certain sales, marketing, and business practices. Section 3273.62 provides that a "person shall not *sell, offer to sell, transfer, advertise, or market* a CNC milling machine . . . in a manner that knowingly or recklessly causes another person in this state to engage in conduct prohibited by Section 29185 of the Penal Code, or in a manner that otherwise knowingly or recklessly aids, abets, promotes, or facilitates conduct prohibited by that section." (emphasis added); *See also* Senate Rules Committee, Analysis of AB 1089, 2023-2024 Reg. Sess., at 8 (Cal. Sept. 2, 2023) (§ 3273.62 designed "to assist in accountability and enforcement against companies whose *sale or advertising practices*" facilitate violations of the California Penal Code (emphasis added)). Likewise, the UCL prohibits "any unlawful, unfair or fraudulent *business act or practice* and unfair, deceptive, untrue or misleading *advertising*." Cal. Bus. & Prof. Code § 17200 (emphasis added).

Accordingly, Plaintiff's Complaint makes clear that the relevant conduct giving rise to its claims are Defendants' marketing and sales practices with regard to the Coast Runner. (*See* Compl. ¶¶ 6-7, 9, 15-17, 29, 34, 37-41, 52-54, 67, 69, 79-80, 82.) The Complaint alleges that Defendants are marketing and selling the Coast Runner at trade shows and online, explicitly and implicitly highlighting its gunsmithing capabilities (*id.* ¶¶ 7, 29, 37-41, 43-47, 53-54, 69-72, 82); Defendants' marketing practices are designed to skirt California law (*id.* ¶¶ 6, 9, 67-72); Defendants' marketing targeted California consumers (*id.* ¶¶ 15-17); and Ghost Gunner and

Defense Distributed offered to sell the Coast Runner to California consumers (*id.* ¶¶ 32-35, 69). Neither of Plaintiff's causes of action rely on Defense Distributed's failed attempt to invalidate AB 1621 or Defendants' officers' statements. Such activity does not constitute sales, marketing, or business practices prohibited under § 3273.62 or the UCL, and therefore could not give rise to Plaintiff's claims. *See San Diegans for Open Gov't* v. *San Diego State Univ. Rsch. Found.*, 13 Cal. App. 5th 76, 84 (2017) ("appropriate focus" for anti-SLAPP analysis "is on the alleged injury-producing conduct . . . , and not defendant's alleged wrongful motive for engaging in that conduct"); *Navellier*, 29 Cal. 4th at 89 ("[T]the mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute"); *Martinez*, 113 Cal. App. 4th at 187-88.

The marketing and sales practices giving rise to Plaintiff's claims are deceptive and promote illegal activity. Such advertising is not entitled anti-SLAPP protections. For advertising to receive any First Amendment protections, "it at least must concern lawful activity and not be misleading." *Cent. Hudson Gas & Elec. Corp.* v. *Pub. Serv. Comm'n*, 447 U.S. 557, 566 (1980). The government is free to "ban forms of communication more likely to deceive the public than to inform it, or commercial speech related to illegal activity." *Id.* at 563-64 (citations omitted). Likewise, California's anti-SLAPP law "cannot be invoked by a defendant whose assertedly protected activity is illegal as a matter of law." *Flatley* v. *Mauro*, 39 Cal. 4th 299, 305 (2006).

The People bring this lawsuit not to chill protected activity, but to protect the public and enforce the duly-enacted laws of California. Defendants' Motion should be denied.

2. Defendants' Commercial Speech and Conduct is Exempt from Anti-SLAPP Protections

Even if Defendants' marketing and sales practices constitute commercial speech entitled to some First Amendment protections, commercial speech is expressly exempted from the anti-SLAPP statute under California Code of Civil Procedure § 425.17(c).

The commercial speech exemption applies when (1) the cause of action is against a person primarily engaged in the business of selling or leasing goods or services; (2) the cause of action arises from a statement or conduct by that person consisting of representations of fact about that person's business operations, goods, or services; (3) the statement or conduct was made for the

purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services; and (4) the intended audience is an actual or potential buyer or customer. *Simpson Strong-Tie Co.* v. *Gore*, 49 Cal. 4th 12, 30 (2010).

Here, all elements of the exemption are satisfied. *First*, Defendants are primarily engaged in the business of selling or leasing goods or services, namely CNC mills and related parts, tools, materials, and software. (Cooley Decl. ¶¶ 3-4, 6, 9, 20, 25); *see also Def. Distributed*, 2022 WL 15524977, at *2.

Second, Defendants' violations of California Civil Code § 3273.62 and the UCL arise directly from their commercial statements and conduct concerning representations of fact about the Coast Runner. For example, the Complaint alleges, among other things, that (1) the Coast Runner "has the same internal designs" and features as the Ghost Gunner and "is being marketed" to facilitate "the illegal production of untraceable ghost guns" (Compl. ¶ 6; Cooley Decl. ¶¶ 24-25); (2) Defendants marketed the Coast Runner at a firearms trade show as a "cutting-edge CNC mill [that] empowers small manufacturers and gunsmiths with advanced capabilities" (Compl. ¶¶ 38, 71; Cooley Decl. ¶¶ 12, 23); (3) Defendants informed California customers seeking to purchase a Ghost Gunner that they would receive a Coast Runner in lieu of the Ghost Gunner, as the two products are interchangeable (Compl. ¶ 34; Cooley Decl. ¶ 18); and (4) Coast Runner's website includes a list of Prohibited Uses designed to facilitate the sale of the Coast Runner without running afoul of federal firearm-related laws (Compl. ¶ 41; Cooley Decl. ¶ 14). These representations of fact about the Coast Runner—and others specified in the Complaint—are the marketing and sales efforts that give rise to Plaintiffs' claims.

Third, the statements and conduct described above relate to Defendants' marketing and sales efforts. There can be no genuine dispute that such efforts were purposefully directed to potential buyers for the purpose of securing sales of the Coast Runner. Cal. Code Civ. Proc. § 425.17(c). Accordingly, Defendants' statements and conduct are excluded from anti-SLAPP protections under the commercial speech exemption.

Defendants contend the commercial speech exemption only applies to "comparative advertising" based on dicta in *FilmOn.com Inc.* v. *DoubleVerify Inc.*, 7 Cal. 5th 133, 146-47

(2019). Several courts have rejected Defendants' interpretation of *FilmOn* because there, the parties stipulated that the exemption did not apply, and the California Supreme Court instead was evaluating whether the conduct at issue fell into the "catchall" provision of § 425.16(e)(4). *See WasteXperts, Inc.* v. *Arakelian Enters., Inc.*, 103 Cal. App. 5th 652, 665 (Ct. App. 2024), *review denied* (Sept. 25, 2024) ("*FilmOn* did not add a fifth element to the exemption, nor does it implicitly require courts to make a preliminary finding about whether the case involved comparative advertising."); *Neurelis, Inc.* v. *Aquestive Therapeutics, Inc.*, 71 Cal. App. 5th 769, 787 n.5 (2021) (same); *Xu* v. *Huang*, 73 Cal. App. 5th 802, 816 (2021) (same).

In any event, here, Defendants' marketing was both explicitly comparative (*e.g.*, the description of the Coast Runner as one of the "hottest new products" at SHOT Show) and impliedly comparative (*e.g.*, marketing the Coast Runner as the California-specific version of the Ghost Gunner on Ghost Gunner's website, indicating to consumers that it had the same capabilities as the Ghost Gunner and was more suited to gunsmithing than other CNC machines). Under any interpretation of *FilmOn*, Defendants' conduct falls within the commercial speech exemption.

In sum, to the extent Plaintiffs' claims rest on speech or conduct, it is unprotected commercial speech or conduct that falls under the § 425.17(c) commercial speech exemption to the anti-SLAPP statute. The Court should therefore deny Defendants' Motion.

B. Plaintiff Will Likely Prevail on Its Claims

Even if the Court determines that the challenged claims arise from activity protected by the anti-SLAPP statute, Defendants' motion must nevertheless be denied because Plaintiff's claims not only have the minimal merit required to survive an anti-SLAPP motion, but also are likely to succeed on the merits. "[I]n order to establish the requisite probability of prevailing, the plaintiff need only have stated and substantiated a legally sufficient claim." *Navellier*, 29 Cal. 4th at 88 (internal quotation and citation omitted). Here, Plaintiff easily satisfies its burden at the second step of the anti-SLAPP analysis.

First, Plaintiff sufficiently alleged a violation of California Civil Code § 3273.62. The Complaint alleges that each of the Defendants have offered to sell, advertised, and marketed (Compl. ¶¶ 7, 9, 32, 34-40, 52-54) the Coast Runner CNC milling machine (*id*. ¶¶ 34-35, 38) in a

manner that knowingly or recklessly caused, aided, abetted, promoted, or facilitated unlicensed persons in California to manufacture firearms with a CNC milling machine in violation of California Penal Code § 29185 (*id.* ¶¶ 6-7, 9, 32, 34-47, 67-72). Because the alleged conduct violates California law, Plaintiffs have also adequately alleged a violation of the UCL. Cal. Bus. & Prof. Code § 17200; *Boschma* v. *Home Loan Ctr., Inc.*, 198 Cal. App. 4th 230, 252 (2011) (noting UCL "borrows violations of other laws and treats them as . . . independently actionable").

Second, Plaintiff has made a prima facie showing of facts that substantiate its allegations. There is no dispute that the Coast Runner is a CNC milling machine. (Cooley Decl. ¶ 25). Nor can there be any dispute that Defendants have offered to sell, advertised, or marketed the Coast Runner. (*Id.* ¶¶ 16, 22-23, 28-29). Finally, Plaintiff's evidence demonstrates that Defendants knowingly or recklessly caused, aided, abetted, promoted, or facilitated unlicensed persons in California to manufacture firearms with a CNC milling machine.

Coast Runner's name alone is a signal to customers that it is functionally equivalent to the Ghost Gunner. Coast Runner and Ghost Gunner share the same components, parts, and specifications. (*Id.* ¶¶ 24-25). The manual for the Coast Runner was clearly derived from materials used for the Ghost Gunner, further indicating to consumers the similarities between the products. (*Id.* ¶¶ 24-25). Ghost Gunner's website informed California purchasers that they would receive a Coast Runner in lieu of a Ghost Gunner, demonstrating the products' interchangeability. (*Id.* ¶ 18). Defendants promoted the Coast Runner as a gunsmithing tool. (*Id.* ¶¶ 14, 23, 25). Defendants' Terms of Use require purchasers to verify that they are not prohibited from possessing firearms under the Gun Control Act, as set forth in 18 U.S.C. § 922(g). (*Id.* ¶ 14). Defendants make no effort to verify that purchasers of the Coast Runner are licensed firearms manufacturers. (*Id.* ¶ 14). Together, these facts clearly establish Defendants' efforts to unlawfully sell and market the Coast Runner as a means for California residents to self-manufacture firearms.

Ignoring the sufficiency of Plaintiff's pleadings and evidence, Defendants attack Plaintiff's claims on various legal bases. The Court should reject each of Defendants' arguments.

1. Defendants' Personal Jurisdiction Challenge Is Improperly Raised and Unavailing

Defendants first challenge Plaintiffs' claims on the basis of a purported lack of personal

jurisdiction over each of the Defendants. The argument is improperly raised in Defendants' motion to strike. California Code of Civil Procedure § 418.10(e)(3) provides that a defendant's failure to move to quash service of summons on the ground of personal jurisdiction "at the time of filing a . . . motion to strike constitutes a waiver of the issue[] of lack of personal jurisdiction[.]" Defendants never filed a motion to quash under § 418.10 and have therefore waived any personal jurisdiction defenses. Additionally, "it has long been the rule in California that a party waives any objection to the court's exercise of personal jurisdiction when the party makes a general appearance in the action." *Roy* v. *Superior Ct.*, 127 Cal. App. 4th 337, 341 (2005). Here, Defendants have made "a general appearance" as the motion to strike "raises other than jurisdictional objections" and requests attorney's fees and costs. *Fireman's Fund Ins. Co.* v. *Sparks Constr., Inc.*, 114 Cal. App. 4th 1135, 1145 (2004); (Mot. 1-6, 10-14.).

Even if Defendants have not waived their personal jurisdiction arguments, the Court may properly exercise personal jurisdiction. A court may exercise specific jurisdiction over a nonresident defendant if "(1) the defendant has purposefully availed himself of forum benefits; (2) the controversy relates to, or arises out of, the defendant's contacts with the forum; and (3) the exercise of jurisdiction comports with fair play and substantial justice." *Yue* v. *Yang*, 62 Cal. App. 5th 539, 547 (2021).

Here, all three prongs of the specific jurisdiction analysis are met. *First*, Defendants purposefully and voluntarily directed their activities at California. The Complaint alleges that, in an effort to circumvent AB 1621 and maintain access to the California market, Ghost Gunner, Inc. and Defense Distributed formed Coast Runner Industries as a vehicle to market and sell the Coast Runner as the "California-specific" version of the Ghost Gunner. (Compl. ¶¶ 15-17, 24-47); *Ford Motor Co.* v. *Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021) (contacts sufficient where "defendant deliberately reached out beyond its home—by, for example, exploiting a market in the forum State" (cleaned up)). Ghost Gunner, Inc. and Defense Distributed marketed and sold the Coast Runner as a replacement for the Ghost Gunner, informing potential California purchasers that "California residents ordering a Ghost Gunner CNC machine consent to receiving a Coast Runner CNC machine in lieu of a Ghost Gunner." (Cooley Decl. ¶ 18). Expressly marketing and

offering to sell a product to consumers in a particular state is sufficient to establish purposeful availment of the forum benefits. *Asahi Metal Indus. Co.* v. *Superior Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 112 (1987) (designing product for forum state market indicative of purposeful availment).

Moreover, Coast Runner Industries' Terms and Conditions provided that use of its website and "Marketplace Offerings" (*i.e.*, the Coast Runner) were "governed by and construed in accordance with the laws of the State of California . . . and to be entirely performed within the State of California." (Cooley Decl. ¶ 15); *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 482 (1985) (choice-of-law provisions relevant to personal jurisdiction analysis). The Terms and Conditions also provided that the parties would litigate disputes in San Diego, California. (Cooley Decl. ¶ 15). In fact, where a dispute is prosecuted in state or federal court in San Diego, California, the Terms and Conditions provided that "the Parties hereby *consent to, and waive all defenses for lack of personal jurisdiction*." (*Id.* (emphasis added)). Moreover, the Terms and Conditions directed "California Users and Residents" to contact the California Department of Consumer Affairs if any complaint was not satisfactorily resolved. (*Id.*)

Defendants also marketed the Coast Runner at the "Maker Faire" trade show in Mare Island, California on October 18-20, 2024. The Marker Faire webpage for the Coast Runner noted that "[o]ur company has a ten-year history in 3D printing and desktop CNC technology." (Cooley Decl. ¶ 22). As Coast Runner, Inc. was only formed in February 2023, the company's purported "ten-year history" can only be a reference to Ghost Gunner, Inc. and Defense Distributed's experience with "desktop CNC technology" for ghost gun manufacturing. Boasting one's technical expertise to facilitate sales to consumers in the forum state constitutes purposeful availment. *See Daimler Trucks N. Am. LLC* v. *Superior Ct.*, 80 Cal. App. 5th 946, 952-53 (2022) (finding purposeful availment where advertising campaign was directed to California).

Defendants do not deny any of the allegations in the Complaint concerning Defendants' contacts with California. Instead, they offer the vague rebuttal that no Coast Runner has ever "*shipped*" to California, and therefore Plaintiff's claims are "really about business that Plaintiffs predict Defendants will carry on in the future." (Mot. 8). That no Coast Runner has been shipped

to California does not mean that the Court may not exercise personal jurisdiction over Defendants. Defendants fail to offer any evidence whatsoever showing that they have not (a) advertised the Coast Runner for sale in California, (b) accepted deposits for the Coast Runner from California residents, (c) sold other products to California residents, (c) communicated about their products with California residents, or (d) engaged in any other business in California.

Second, the instant action relates to, or arises out of, Defendants' contacts with the forum. This action is premised on Defendants' joint marketing and advertising of the Coast Runner in California and elsewhere in violation of California's Civil Code and the UCL. *Snowney* v. *Harrah's Ent., Inc.*, 35 Cal. 4th 1054, 1069 (2005) ("Because the harm alleged by plaintiff relates directly to the content of defendants' promotional activities in California, an inherent relationship between plaintiff's claims and defendants' contacts with California exists.").

Third, the Court's exercise of personal jurisdiction comports with fair play and substantial justice. In making this determination, courts evaluate several factors, including "the burden on the defendant of appearing in the forum" and "the forum state's interest in adjudicating the claim." *Vons Companies, Inc.* v. *Seabest Foods, Inc.*, 14 Cal. 4th 434, 448 (1996). Here, it is reasonable for the Court to exercise personal jurisdiction over Defendants because California has a strong interest in adjudicating the claim, as its legislature passed laws specifically designed to prohibit the type of conduct in which Defendants have engaged, which poses a threat to the important social policies of public safety and law enforcement. Moreover, any burden on Defendants of litigating the case in the Superior Court of San Diego County cannot be given weight, as Coast Runner's Terms and Conditions specifically designated San Diego, California as the venue for all state and federal litigation, as well as arbitration. (Cooley Decl. ¶ 15.) As Coast Runner's personnel overlaps with those of Ghost Gunner, Inc. and Defense Distributed (*id.* ¶¶ 3-4), it is not credible that San Diego is a convenient venue for Coast Runner but burdensome for Ghost Gunner, Inc. and Defense Distributed.

2. Plaintiff Has Adequately Pleaded Claims Against Each Defendant, in Addition to Its Alter Ego Allegations

Defendants next argue that all claims against them must be dismissed because Plaintiff's alter ego allegations, which are a "necessary component of the case against all three defendants,"

are not sufficiently alleged. (Mot. 10-11.) Contrary to Defendants' selective reading, the Complaint establishes violations of § 3273.62 and the UCL by each Defendant individually and adequately alleges alter ego liability in the alternative. (Compl. ¶¶ 64-86). Plaintiff has also assembled a prima facie showing of facts, supported by admissible evidence, to substantiate its allegations against each of the Defendants. (*Supra* at 8). Consequently, Plaintiff's alter ego allegations are not "necessary" to the claims against each of the three Defendants.

In the alternative, Plaintiff has also adequately alleged, and made a prima facie factual showing of, alter ego liability between Coast Runner Industries, Ghost Gunner, Inc., and Defense Distributed.[1] "Alter ego applies when there is such unity between corporation and individual that the separateness of the corporation has ceased and holding only the corporation liable would result in injustice." *JNM Express, LLC* v. *Lozano*, 688 S.W.3d 327, 335 (Tex. 2024) (internal quotation omitted); *Virtualmagic Asia, Inc.* v. *Fil-Cartoons, Inc.*, 99 Cal. App. 4th 228, 244 (2002). "The 'injustice' that gives rise to an application of alter ego liability emanates from the kinds of abuse that the corporate structure should not shield—fraud, evasion of existing obligations, circumvention of statutes, monopolization, criminal conduct, and the like." *Hernandez* v. *Cudco Sols., LLC*, 2023 WL 2659103, at *4 (Tex. App. Mar. 28, 2023) (cleaned up); *Sonora Diamond Corp.* v. *Superior Ct.*, 83 Cal. App. 4th 523, 538-39 (2000).

Here, the Complaint adequately alleges sufficient unity between the Defendants and abuse of the corporate form such that a finding of alter ego liability is warranted. *First*, any distinctions between Defense Distributed, Ghost Gunner, Inc., and Coast Runner Industries are illusory. Coast Runner Industries has adopted Defense Distributed and Ghost Gunner's history and experience in the 3D printing and CNC mill industry as its own to advertise its products. (Ex. 19, Cooley Decl. ¶ 22.) Defense Distributed and Ghost Gunner, Inc.—which, at different times, have been wholly-owned subsidiaries of each other—designated their own officers and directors to operate Coast Runner and provided it with the products, schematics, technology, motion control software ("grblGG," which is specifically described as "firmware for Ghost Gunner machines" (Cooley

[1] Defendants argue that Texas law applies to Plaintiff's alter ego allegations. Because there is no true conflict between California and Texas law regarding when a party may be deemed the alter ego of another, *Wimbledon Fund, SPC (Class TT)* v. *Graybox, LLC*, 2016 WL 7444701, at *3 n.2 (C.D. Cal. June 13, 2016), Plaintiff prevails regardless of which state's law applies.

Decl. ¶¶ 25, 30)), user manuals, employee base, and physical business locations to support its operations. (*Id*. ¶¶ 8,11; Compl. ¶¶ 28-33); *Tryco Enterprises, Inc.* v. *Robinson*, 390 S.W.3d 497, 509 (Tex. App. 2012) (factors in alter ego liability include whether entities shared common offices and common employees, and whether one entity's employees rendered services on behalf of the other); *Virtualmagic Asia, Inc.*, 99 Cal. App. 4th at 245 (alter ego factors include "use of the same offices and employees" and "use of one as a mere conduit for the affairs of the other"). Indeed, public filings indicate that all three Defendants operate out of the same Austin, Texas addresses. (Cooley Decl. ¶¶ 3-12). And Defense Distributed and Ghost Gunner, Inc. even offered the Coast Runner mill for sale to its own customers. (Compl. ¶¶ 34; Cooley Decl. ¶ 18). Centralized control is also indicative of alter ego liability. *See Shaoxing Cnty. Huayue Imp. & Exp.* v. *Bhaumik,* 191 Cal. App. 4th 1189, 1198 (2011); *Salazar* v. *Coastal Corp.*, 928 S.W.2d 162, 170 (Tex. App. 1996) (alter ego factors include "identity of shareholders, directors, officers, and employees" and "failure to distinguish in ordinary business between the two entities"). Here, Garret Walliman, a senior employee of Defense Distributed and the lead product designer of the Ghost Gunner, is identified as the former sole director of Coast Runner Industries. (Cooley Decl. ¶ 3). Cody Wilson, a director of Ghost Gunner, Inc. and Defense Distributed, is Coast Runner Inc.'s sole director (in addition to serving as its organizer), further erasing any distinctions between Coast Runner Industries, Ghost Gunner, Inc. and Defense Distributed. (*Id.* ¶ 4).

Second, the Complaint alleges with specificity that Defense Distributed and Ghost Gunner, Inc. together conceived of and created Coast Runner Industries. and the Coast Runner mill as a means to continue selling and marketing their CNC mills in California following Defense Distributed's failed challenge to AB 1621. (Compl. ¶¶ 24-47). Accordingly, honoring the corporate form here would sanction an injustice—namely, (a) circumvention of California's statutes and (b) criminal conduct. *Hernandez*, 2023 WL 2659103, at *4.

3. AB 1621 and AB 1089 Are Constitutional

As noted above, Defense Distributed has already tried and failed to invalidate AB 1621 on Second Amendment grounds in federal court. *Def. Distributed* v. *Bonta*, 2022 WL 15524977, at *4 (C.D. Cal. Oct. 21, 2022). Recycling those same arguments, Defendants contend that enforcing

AB 1621 and AB 1089 infringe an individual's right to keep and bear arms. The argument is wholly devoid of merit, as a plain reading of the relevant statutes reveals the conduct prohibited therein is not protected by the Second Amendment.

In *New York State Rifle & Pistol Association, Inc.* v. *Bruen*, 597 U.S. 1 (2022), the Supreme Court held that "*when the Second Amendment's plain text covers an individual's conduct*, the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 17 (emphasis added). If, and only if, the regulation implicates conduct protected by the plain text of the Second Amendment, then "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

Neither California Civil Code § 3273.62 or California Penal Code § 29185 implicates conduct protected by the Second Amendment. Section 29185 regulates the possession and use of CNC mills, not "Arms." *District of Columbia* v. *Heller*, 554 U.S. 570, 581 (2008) (defining "Arms" as "weapons"); *Def. Distributed*, 2022 WL 15524977, at *4 ("AB 1621 has nothing to do with 'keep[ing]' or 'bear[ing]' arms."). Likewise, California Civil Code § 3273.62 regulates sales and marketing practices with respect to CNC mills; it does not in any way infringe upon an individual's Second Amendment rights. As the federal court properly found in rejecting Defendants' previous lawsuit, the plain text of the Second Amendment does not protect a right to market devices for the self-manufacture firearms to anyone, without a license or without complying with other gun violence prevention laws. *Def. Distributed*, 2022 WL 15524977, at *4.

To the extent the Court determines that § 3273.62 and § 29185 implicate conduct protected by the plain text of the Second Amendment, both statutes are consistent with this Nation's history of firearm regulations. When considering cases involving "dramatic technological changes" courts may engage in "a more nuanced approach" to its historical inquiry. *Bruen*, 597 U.S. at 34. Here, "the self-assembly of firearms by non-professionals was never a threat to public safety in the founding era, and thus would not have been in the contemplation of founding-era lawmakers." *Palmer* v. *Sisolak*, 2024 WL 4432818, at *7 (D. Nev. Oct. 7, 2024). Therefore, this court should use a more nuanced approach that asks whether the challenged laws are "consistent with the

/ / /

principles that underpin the Nation's regulatory tradition." *United States* v. *Rahimi*, 602 U.S. 680, 681 (2024).

The historical traditions of "regulating both types of firearms and who could possess them for public safety reasons" are relevantly similar to § 3273.62 and § 29185. *Palmer*, 2024 WL 4432818, at *2. For example, a "1652 New York law outlawed illegal trading of guns, gun powder, and lead by private individuals" and a "1631 Virginia law required the recording not only of all new arrivals to the colony, but also 'of arms and munitions.'" *United States* v. *Serrano*, 651 F. Supp. 3d 1192, 1211-12 (S.D. Cal 2023) (internal citations omitted) (analyzing 18 U.S.C. § 922(k), which prohibits firearms with obliterated serial numbers). These historical regulations "were designed to combat illegal arms and ammunition trafficking and to ensure that individuals considered dangerous did not obtain firearms." *Id.* at 1212. In the early 1800s, Massachusetts and Maine imposed fines for falsely altering firearm barrel stamps verifying the weapon's safety. *United States* v. *Barnes*, 2024 WL 3328593, at *5 (D. Del. July 8, 2024) (analyzing § 922(k)). Such laws were enacted "to protect citizens from firearms 'which are unsafe, and thereby the lives of the citizens be exposed.'" *Id.* (quoting 3 Laws of the Commonwealth of Massachusetts from November 28, 1780 to February 28, 1807, at 259).

Likewise, AB 1089 was enacted to combat the production of ghost guns, which "can be manufactured by an unlicensed buyer with parts that can be acquired without a background check or manufacturing license" and are therefore "difficult for law enforcement to trace." Senate Committee on Appropriations, Analysis of AB 1089, 2023-2024 Reg. Sess., at 1 (Cal. Aug. 14, 2023). AB 1621 was enacted in response to the "proliferation of unserialized ghost guns," which have "caused enormous harm and suffering, hampered the ability of law enforcement to trace crime guns and investigate firearm trafficking and other crimes, and dangerously undermined the effectiveness of laws and protections critical to the health, safety, and well-being of Californians." 2022 Cal. Legis. Serv. Ch. 76 (A.B. 1621) (West). Accordingly, both AB 1089 and AB 1621 are consistent with this Nation's historical tradition of firearm regulation.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' Motion to Strike.

Dated: February 14, 2024

CLAUDIA ~~G. SILVA~~, County Counsel (SBN 167868)
By: JOHN P. COOLEY, Chief Deputy (SBN 162955)
Office of County Counsel, County of San Diego
1600 Pacific Highway, Room 355
San Diego, California 92101-2469
Telephone: (619) 531-4860
Facsimile: (619) 531-6005
E-mail: john.cooley@sdcounty.ca.gov

ROBERT A. SACKS (SBN 150146)
ALEXA M. LAMARCHE (SBN 317068)
SULLIVAN & CROMWELL LLP
1888 Century Park East
Los Angeles, California 90067
Telephone: (310) 712-6600
Facsimile: (310) 712-8800
E-mail: sacksr@sullcrom.com
E-mail: lamarchea@sullcrom.com
LEONID TRAPS (*pro hac vice* pending)
SOPHIE A. KIVETT (*pro hac vice* pending)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588
E-mail: trapsl@sullcrom.com
E-mail: kivetts@sullcrom.com

ESTHER SANCHEZ-GOMEZ (SBN 330408)
GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE
268 Bush St. # 555
San Francisco, CA 94104
Telephone: (415) 433-2062
Facsimile: (415) 433-3357
E-mail: esanchezgomez@giffords.org

WILLIAM T. CLARK (*pro hac vice* pending)
GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE
244 Madison Ave, Ste 147
New York, NY 10016
Telephone: (415) 433-2062
Facsimile: (415) 433-3357
E-mail: wclark@giffords.org

Attorneys for Plaintiff,
THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the County of San Diego