

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**PLAINTIFFS’ MOTION FOR PRELIMINARY  
INJUNCTION; NOTICE OF HEARING**

**[FRCP 65]**

Date: January 23, 2020  
Time: 10:00 a.m.  
Courtroom 11, 19<sup>th</sup> Floor  
Judge: Hon. James Donato

20  
21  
22 TO ALL PARTIES, THROUGH THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on **Thursday, January 23, 2020**, at **10:00 a.m.**, or as  
24 soon thereafter as the matter may be heard in Courtroom 11 of this United States District Court,  
25 Hon. James Donato presiding, plaintiffs CHAD LINTON, PAUL MCKINLEY STEWART,  
26 KENDALL JONES, FIREARMS POLICY FOUNDATION, FIREARMS POLICY  
27 COALITION, SECOND AMENDMENT FOUNDATION, CALIFORNIA GUN RIGHTS  
28 FOUNDATION and MADISON SOCIETY FOUNDATION (“plaintiffs”), will and hereby do

**SEILER EPSTEIN LLP**  
Attorneys at Law

SEILER EPSTEIN LLP  
Attorneys at Law

1 move this Court for the issuance of a preliminary injunction, enjoining defendants from  
2 enforcing and continuing to enforce their policies which deprive individual plaintiffs Linton,  
3 Stewart and Jones from their right to purchase, own, possess, and handle firearms and  
4 ammunition within the State of California, pursuant to FRCP 65(b).

5 Plaintiffs specifically request that this Court grant preliminary injunctive relief to prevent  
6 defendants from continuing to deprive them of important rights under the Constitution, and to  
7 prevent them from enforcing and continuing to enforce Pen Code §§ 29800 and 30305 against  
8 plaintiffs Linton, Stewart and Jones, based upon their non-violent, out-of-state felony convictions  
9 that have been set aside and vacated in their respective states of origin. Defendants should  
10 further be enjoined from denying these plaintiffs Certificates of Eligibility pursuant to Pen. Code  
11 § 26710.

12 This motion will be made on the grounds that the defendants' policies, practices, and  
13 customs are being used to deny the right of plaintiffs, and similarly situated individuals, to  
14 own/possess and purchase firearms, notwithstanding other state court judgments and proceedings  
15 that have specifically set aside, vacated or otherwise dismissed their felony convictions, and  
16 restored their firearm rights to them; that these policies violate the Second Amendment, the Full  
17 Faith and Credit Clause (Art. IV § 1); that plaintiffs have shown a likelihood of prevailing on the  
18 merits of their claims; that plaintiffs have shown irreparable injury in the absence of preliminary  
19 injunctive relief; and that the balance of equities tips in the plaintiffs' favor, justifying  
20 preliminary injunctive relief.

21 In support of this motion, plaintiffs and moving parties will rely upon this notice of  
22 motion and motion, the memorandum of points and authorities; the supporting declarations of the  
23 plaintiffs and counsel, and all exhibits attached thereto, their request for judicial notice, all court  
24 records and other matters of which the Court may take judicial notice, and all other evidence and  
25 argument that the Court may consider upon the hearing of this matter.

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1 Dated: December 19, 2019

**SEILER EPSTEIN LLP**

2  
3 /s/ George M. Lee

4 George M. Lee

5 Attorneys for Plaintiffs

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Phone: (415) 979-0500  
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19 Defendants.

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**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

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**SEILER EPSTEIN LLP**  
Attorneys at Law

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**SEILER EPSTEIN LLP**  
Attorneys at Law

**I. INTRODUCTION**

This action seeks to vindicate and restore fundamental rights, including the right to keep and bear arms. The State, acting through the defendants' policies, practices and customs, deprives plaintiffs and others similarly situated on the grounds that once one is a convicted felon, he is always a convicted felon. However, it is undisputed that those purportedly disqualifying felony convictions emanating from other states have been set aside, vacated or otherwise dismissed, and that plaintiffs' rights have been expressly restored to them. Accordingly, there is no legal or equitable bar to the continuing deprivation of the plaintiffs' rights under the Second Amendment. As plaintiffs have also made a showing of irreparable harm in the absence of injunctive relief, a preliminary injunction restoring their rights should issue, and defendants should be enjoined from enforcing Pen. Code §§ 29800 (prohibiting possession of firearms by a felon) or 30305 (ammunition) against them.

**II. STATEMENT OF FACTS**

This case involves three individual plaintiffs who were convicted in three different states, but who are now subject to defendants' common policy to deprive them and others like them from possessing firearms or ammunition.

**A. PLAINTIFF KENDALL JONES**

Plaintiff Kendall Jones has lived in the County of Sacramento, for over 39 years. (Jones Decl., ¶ 1). He was employed by the California Department of Corrections as a Correctional Officer for 30 years until his final retirement in 2014, and served as a firearms and use-of-force instructor for the Department. Mr. Jones also worked as the Primary Armory Officer for the California State Prison Solano facility for over 19 years. (Id.) He is POST-certified and NRA-certified in the subjects of firearms, laws, self-defense, firearms safety and responsibility, and in his career received numerous letters of commendation and appreciation, both pertaining to his primary duties as a Correctional Officer, and also as a firearms and use-of-force instructor. (Id., ¶ 3-4). Since retirement, he has pursued the natural course of his career as a law enforcement firearms trainer, and in this capacity, he has personally trained thousands of peace officers and private citizens in the proper use of handguns, rifles, shotguns, less-lethal defensive weapons

1 (e.g., pepper spray) and use of force. (Id., ¶ 5). Mr. Jones continues to expand his own training,  
2 permitting him to provide training in all aspects of firearms and self-defense. (Id., ¶¶ 5-7).

3 When he was 19 years old – over three decades ago – Mr. Jones was arrested in Houston,  
4 Texas, from an incident involving the alleged misuse of a credit card. Mr. Jones maintains that  
5 he had used a credit card under mistaken pretenses. (Jones Decl., ¶ 8). Nevertheless, after being  
6 charged with credit card fraud in 1980, the prosecutor made an offer to have the court set aside  
7 and dismiss the matter, following a period of probation, if Mr. Jones agreed to plead guilty to a  
8 single charge of “credit card abuse,” a third degree felony under Texas law, which involved no  
9 term of confinement. (Id., ¶ 9). In light of the prosecutor’s offer by which the charges would be  
10 set aside and dismissed, Mr. Jones accepted the deal, pled guilty to the charge offered, and  
11 completed a three-year term of probation. (Id.) After successfully completing probation, on or  
12 about August 22, 1983, per the agreement, the district court for the County of Harris, Texas,  
13 permitted him to withdraw his plea of guilty, and set aside and dismissed the judgment of  
14 conviction. (Id., ¶ 10; Jones Ex. A).

15 Mr. Jones then moved to California and pursued a career in law enforcement with the  
16 State of California. (Jones Decl., ¶ 11). For thirty years, he legally and necessarily owned and  
17 possessed firearms, as a part of his profession, for personal protection, recreation and other  
18 lawful purposes. (Id.) Since retiring in 2014, Mr. Jones has had a career as a law enforcement  
19 firearms and use-of-force trainer, drawing upon 30 years of training and experience in the field.  
20 To continue in this field and chosen profession, of course, he is required to own, possess, handle  
21 and use firearms and ammunition. (Id.)

22 He previously acquired and held a Certificate of Eligibility (“COE”) to possess firearms  
23 and ammunition under Cal. Penal Code § 26710, a necessary requirement to becoming or  
24 maintaining status as a certified firearm instructor under current DOJ policy. (Jones Decl., ¶ 13).  
25 In fact, even at present, Mr. Jones is listed on the Department of Justice’s website as one of its  
26 Certified Instructors eligible to provide training specified by Pen. Code § 31635(b). (Jones  
27 Decl., ¶ 12; Jones Ex. B). But in 2018, after he submitted his renewal application for his COE,  
28 which he had held since 2010, the DOJ informed him that his application was being delayed.

1 (Jones Decl., ¶ 14.) After Mr. Jones initiated a record review request, the Department informed  
 2 him on February 23, 2019 that he was “not eligible to own, possess or have under [his] custody  
 3 or control any firearm[.]” and denied him the renewed COE. (Id.; Jones Ex. C).

4 **B. PLAINTIFF CHAD LINTON**

5 In 1987, while plaintiff Chad Linton was serving in the U.S. Navy, and stationed at NAS  
 6 Whidbey Island, Washington, he tried – albeit briefly – to outrun a Washington State Police  
 7 officer and make it back to base. He reconsidered the idea, and was arrested without resistance.  
 8 (Linton Decl., ¶ 3). Mr. Linton was charged and pled guilty to attempted evasion, a Class C  
 9 felony under the Revised Code of Washington, and driving while intoxicated, a misdemeanor.  
 10 (Id., ¶ 4). He spent seven days in jail. (Id.) In 1988, he successfully completed his probation,  
 11 and received a certificate of discharge, and reasonably believed, based upon statements made by  
 12 the Washington State court judge that the matter had been dismissed from his records. (Id., ¶ 5).

13 Mr. Linton moved back to California, where he has been and remains a law-abiding  
 14 citizen. (Id., ¶ 6-8). In 2015, he attempted to make a firearm purchase but was surprised to learn  
 15 that he was denied by the California DOJ due to the Washington State conviction. (Id., ¶ 9). Mr.  
 16 Linton hired a Washington attorney who re-opened the criminal proceedings, withdrew the guilty  
 17 plea, and entered a retroactive not-guilty plea. (Id.) The court then issued its “Order on Motion  
 18 Re: Vacating Record of Felony Conviction,” in which it specifically found that the crime for  
 19 which Mr. Linton was convicted was not a violent offense. (Linton Decl., ¶ 10; Linton Ex. A).  
 20 The court granted the motion to vacate the conviction, set aside the guilty plea, and released  
 21 plaintiff from all penalties and disabilities resulting from the offense. On April 18, 2016, the  
 22 Island County Superior Court also issued an Order Restoring Right to Possess Firearms pursuant  
 23 to Revised Code of Washington 9.41.040(4). (Linton Decl., ¶ 11; Linton Ex. B).

24 Mr. Linton underwent a Personal Firearms Eligibility Check (“PFEC”), pursuant to Cal.  
 25 Pen. Code § 30105(a), to confirm his eligibility to purchase and/or possess a firearm, which  
 26 indicated he was eligible both to possess and purchase firearms. (Linton Decl., ¶ 12; Linton Ex.  
 27 C). In 2018, Mr. Linton attempted to purchase a rifle, but was again denied. (Linton Decl., ¶ 13;  
 28

1 Linton Ex. D). Mr. Linton then underwent a “Live Scan” fingerprint-based background check  
 2 request with the DOJ directly, which again showed the presence of no felony convictions.  
 3 (Linton Decl., ¶ 14).

4 Mr. Linton’s counsel began discussions with the California DOJ to correct his status as a  
 5 “prohibited person” here. Counsel provided the DOJ with the Washington court orders vacating  
 6 the felony conviction and restoring plaintiff’s firearm rights. (Linton Decl., ¶ 15). In response,  
 7 the DOJ informed plaintiff that “the [felony] entry in question cannot be found on your  
 8 California criminal history record, therefore, no further investigation is required[,]” and that his  
 9 fingerprints “did not identify any criminal history maintained by the Bureau of Criminal  
 10 Information and Analysis.” (Linton Decl., ¶ 16; Linton Exs. F and G). Based upon these letters,  
 11 Mr. Linton attempted to purchase a revolver in March 2018, but was again denied. (Linton  
 12 Decl., ¶ 17). Then, on April 3, 2018, DOJ agents of the Armed Prohibited Persons System  
 13 (APPS) enforcement program, came to Mr. Linton’s home, and seized several firearms that he  
 14 had acquired and owned throughout the years, including an antique, family-heirloom shotgun  
 15 that was once owned by his grandfather. (Id., ¶ 18). All of these firearms were acquired through  
 16 legal purchases or transfers, through federally-licensed firearm dealers (FFLs), and pursuant to  
 17 DOJ background checks. Mr. Linton’s wife showed the DOJ agents the Washington State court  
 18 orders that vacated the felony conviction, and restored Mr. Linton’s gun rights. These agents  
 19 sought guidance from defendant Wilson, who purportedly advised that the Washington court  
 20 orders would have no effect here, and ordered seizure of the firearms. (Id., ¶¶ 18-20).

21  
 22 **C. PLAINTIFF PAUL MCKINLEY STEWART**

23 In 1976, when plaintiff Stewart was 18 years old, and living in Arizona, he succumbed to  
 24 a crime of opportunity, and stole some lineman’s tools from a telephone company truck.  
 25 (Stewart Decl., ¶ 3). When the police came to his residence to investigate, Mr. Stewart gave up  
 26 the tools and offered no resistance to his arrest. (Id.) Mr. Stewart was found guilty of first  
 27 degree burglary, a felony, in the County of Yuma, Arizona. He was sentenced to three years of  
 28 probation, and the Court imposed a suspended sentence. (Id., ¶ 4). He successfully completed

1 his probation in 1978, and believed that the felony conviction had been dismissed. (Id., ¶ 4-5).

2 Since moving to California in 1988, Mr. Stewart has been a law-abiding citizen, and has  
3 remained steadily and gainfully employed. (Stewart Decl., ¶ 6). In 2015, he attempted to  
4 purchase a pistol for self defense in the home, which was denied due to the presence of a felony  
5 conviction. (Id., ¶ 7). A Live Scan fingerprint background check showed a lingering conviction,  
6 but did not reflect whether it was a felony. It also stated that it was “undetermined” whether he  
7 was eligible to purchase firearms. (Id., ¶ 8).

8 Mr. Stewart filed an application to restore his firearm rights and to set aside his judgment  
9 of guilt with the Superior Court of Yuma County, Arizona, which issued an order restoring his  
10 firearm rights, and specifically set aside the judgment of guilt. (Stewart Decl., ¶ 10; Stewart Ex.  
11 A). Believing the matter would be automatically updated in any background search, Mr. Stewart  
12 attempted to make another firearm purchase on February 10, 2018, which the DOJ also denied.  
13 (Stewart Decl., ¶ 12). Mr. Stewart had several telephone conversations with DOJ officials, who  
14 informed him that the Arizona felony conviction disqualified him from possessing or purchasing  
15 firearms, notwithstanding the Arizona court’s order. (Id., ¶ 14.)

### 16 III. ARGUMENT

#### 17 A. STANDARD

18 A plaintiff seeking preliminary injunctive relief must establish that he is likely to succeed  
19 on the merits, is likely to suffer irreparable harm in the absence of preliminary relief, the balance  
20 of equities tips in his favor and that an injunction is in the public interest. *Winter v. Natural Res.*  
21 *Def. Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365 (2008). A stronger showing of one element may  
22 offset a weaker showing of another. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,  
23 1131 (9th Cir. 2011). The Ninth Circuit also uses the “serious questions” approach under which  
24 an injunction may be ordered when plaintiff demonstrates serious questions going to the merits  
25 and the balance of hardships tips sharply in plaintiff’s favor, in addition to meeting the other  
26 elements of the *Winter* test. *Id.* at 1131-32. “[A]t an irreducible minimum,” the party seeking an  
27 injunction “must demonstrate a fair chance of success on the merits, or questions serious enough  
28 to require litigation.” *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105-06 (9th Cir. 2012).

1 **B. PLAINTIFFS HAVE DEMONSTRATED A LIKELIHOOD OF PREVAILING ON THE MERITS.**

2 **1. Plaintiffs Will Prevail on Their Second Amendment Claims.**

3 In *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783 (2008), the Supreme  
4 Court affirmed an individual right to possess a firearm “unconnected with militia service.” 554  
5 U.S. at 582. At the core of the Second Amendment is the right of “law-abiding, responsible  
6 citizens to use arms in defense of hearth and home.” *Id.* at 634-35. And in *McDonald v. City of*  
7 *Chicago*, 561 U.S. 742, 130 S.Ct. 3020 (2010), the Court held that Second Amendment right as  
8 recognized in *Heller* was a right fundamental to our system of ordered liberty. 561 U.S. at 778,  
9 791. At the same time, the Court explained that its recognition of an individual right to bear  
10 firearms would not “cast doubt on longstanding prohibitions on the possession of firearms by  
11 felons[,]” among other restrictions. *Heller*, 554 U.S. at 626; *McDonald*, 561 U.S. at 786. The  
12 total prohibition defendants are enforcing against plaintiffs is not “longstanding,” and even if it  
13 were, plaintiffs are not of a class of persons the Founders understood to be prohibited from  
14 possessing arms—i.e., violent and otherwise dangerous persons. *Binderup v. Attorney General*,  
15 836 F.3d 336, 348 (3d Cir. 2016). Nor is there any history or tradition of such a prohibition.

16 But if one was at some time a felon, does that mean he is *always* a convicted felon, for  
17 purposes of the right to own firearms? As a matter of our Nation’s history, prohibited persons  
18 could have their rights restored once they were no longer considered dangerous. Moreover, 18  
19 U.S.C. § 922(g)(1), the federal statute prohibiting possession of a firearm by convicted felons  
20 generally, is subject to an important and relevant qualification, that further defines what it means  
21 to have been previously convicted of such disqualifying crimes:

22 What constitutes a conviction of such a crime shall be determined in accordance  
23 with the law of the jurisdiction in which the proceedings were held. *Any*  
24 *conviction which has been expunged, or set aside or for which a person has been*  
25 *pardoned or has had civil rights restored shall not be considered a conviction for*  
26 *purposes of this chapter, unless such pardon, expungement, or restoration of civil*  
27 *rights expressly provides that the person may not ship, transport, possess, or*  
28 *receive firearms.*

18 U.S.C. § 921, subdiv. (a)(20)(B) (emphasis added). The first sentence of this provision, “the  
choice-of-law clause,” defines the rule for determining “[w]hat constitutes a conviction,” and the  
second sentence, “the exemption clause,” is likewise to be determined according to the state

1 where the conviction originated as well. *Beecham v. United States*, 511 U.S. 368, 114 S.Ct. 1669  
 2 (1994); *Caron v. United States*, 524 U.S. 308, 313, 118 S.Ct. 2007 (1998).

3 The State’s enforced prohibition here has no longstanding historical predicate and  
 4 broadly restricts the constitutionally protected rights of plaintiffs for all purposes relating to  
 5 firearms. And like the ban struck down in *Heller*, it threatens citizens with substantial criminal  
 6 penalties. *Heller*, 554 U.S. at 634. Because the challenged law fails *Heller*’s categorical analysis,  
 7 the plaintiffs have a high likelihood of success on the merits. But even under the two-step  
 8 approach first articulated within this Circuit in *United States v. Chovan*, 735 F.3d 1127, 1136  
 9 (9th Cir. 2013), plaintiffs will prevail.<sup>1</sup> Under this two-step approach, the court must first ask  
 10 “whether the challenged law burdens conduct protected by the Second Amendment,” and, if so,  
 11 then determines the “appropriate level of scrutiny.” In *Chovan*, the court considered a  
 12 misdemeanor’s challenge to 18 U.S.C. § 922(g)(9), which imposes a lifetime firearms ban on  
 13 domestic violence misdemeanants. At the first step, the Ninth Circuit found that section  
 14 922(g)(9)’s lifetime prohibition did burden rights protected by the Second Amendment. 735  
 15 F.3d at 1137. Therefore, it cannot reasonably be disputed that defendants’ policies here similarly  
 16 burden conduct protected by the Second Amendment.

17 At the second step, a court is to measure “‘how severe the statute burdens the Second  
 18 Amendment right. ‘Because *Heller* did not specify a particular level of scrutiny for all Second  
 19 Amendment challenges, courts determine the appropriate level by considering ‘(1) how close the  
 20 challenged law comes to the core of the Second Amendment right, and (2) the severity of the  
 21 law’s burden on that right.’” *Duncan v. Becerra*, 265 F.Supp.3d 1106, 1119 (S.D. Cal. 2017)  
 22 (granting preliminary injunction), *aff’d*, 742 F.App’x 218 (9th Cir. 2018) (quoting *Bauer v.*  
 23 *Becerra*, 858 F.3d 1216, 1222 (9th Cir. 2017)). “Guided by this understanding, [the] test for the  
 24 appropriate level of scrutiny amounts to ‘a sliding scale.’ [...] ‘A law that imposes such a  
 25 \_\_\_\_\_

26 <sup>1</sup>Plaintiffs preserve and maintain their position that such a test, and tiered scrutiny, are inappropriate for categorical  
 27 bans, including that at issue here. *Heller*, 554 U.S. at 634, 635 (“We know of no other enumerated constitutional  
 28 right whose core protection has been subjected to a freestanding ‘interest-balancing’ approach”; “[t]he Second  
 Amendment . . . is the very *product* of an interest balancing by the people”); *Ezell v. City of Chicago*, 651 F.3d 684,  
 703 (7th Cir. 2011) (“Both *Heller* and *McDonald* suggest that broadly prohibitory laws restricting the core Second  
 Amendment right—like the handgun bans at issue in those cases, which prohibited handgun possession even in the  
 home—are categorically unconstitutional.”).

1 severe restriction on the fundamental right of self defense of the home that it amounts to a  
 2 destruction of the Second Amendment right is unconstitutional under any level of scrutiny.’ [...]’  
 3 Further down the scale, a ‘law that implicates the core of the Second Amendment right and  
 4 severely burdens that right warrants strict scrutiny. Otherwise, intermediate scrutiny is  
 5 appropriate.’” *Bauer*, 858 F.3d at 1222 (citing *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir.  
 6 2016), and *Chovan*, 735 F.3d at 1138).

7 In this case, if tiered scrutiny is used at all, strict scrutiny should apply to the defendants’  
 8 policies at issue, i.e., those which prohibit now non-felons formerly convicted in other states for  
 9 non-violent crimes notwithstanding the set-aside/dismissal of those convictions. In *Chovan*, the  
 10 court noted that the statute there at issue, 18 U.S.C. § 922(g)(9), contained exemptions for  
 11 convictions that have been set expunged, pardoned or set aside, or for those who have had their  
 12 civil rights restored in section 921(a)(33)(B)(ii), and thus, the majority opinion held that while  
 13 section 922(g)(9) substantially burdened Second Amendment rights, the burden was “lightened”  
 14 by those exceptions, and applied intermediate scrutiny. *Chovan*, 735 F.3d at 1138; *Fisher v.*  
 15 *Kealoha*, 855 F.3d 1067, 1071 n.2 (9th Cir. 2017). However, in the present case, the very fact  
 16 that the State refuses to recognize these set-aside exceptions that might otherwise “lighten” the  
 17 burden makes the burden more severe, and warrants strict scrutiny.

18 The effect of defendants’ policies is to deprive persons like plaintiffs Linton, Stewart and  
 19 Jones of their ability to exercise a fundamental constitutional right to purchase/possess a firearm  
 20 for lawful purposes, including for self-defense in the home. (Linton Decl., ¶ 21; Stewart Decl., ¶  
 21 15; Jones Decl., ¶ 17). Indeed, in Mr. Linton’s case, California Department of Justice Agents  
 22 came to his home and seized firearms that he had legally purchased, including an antique family  
 23 heirloom that had once belonged to his grandfather. (Linton Decl., ¶ 18). And in Mr. Jones’s  
 24 case, a deprivation of the right to a firearm is particularly problematic, among other reasons,  
 25 because of his status as a retired correctional officer, who routinely dealt with and was threatened  
 26 on occasion by some of the state’s most violent convicted criminals. (Jones Decl., ¶ 17.) Thus,  
 27 there is no question that the defense policies place a substantial burden on “core” Second  
 28 Amendment conduct, i.e., the right to keep and bear arms in the home for self-defense. *Heller*,

1 554 U.S. at 635. Accordingly, the defendants’ policies should be evaluated under strict scrutiny,  
2 that is, requiring defendants to show that their policies are narrowly tailored to achieve a  
3 compelling state interest, and that no less restrictive alternative exists to achieve the same ends.  
4 *United States v. Alvarez*, 617 F.3d 1198, 1216 (9th Cir. 2010) (citing *Citizens United v. Fed.*  
5 *Election Comm’n*, 558 U.S. 310, 340, 130 S.Ct. 876, 898 (2010)). *See also*,, *United States v.*  
6 *Engstrum*, 609 F.Supp.2d 1227, 1231 (D. Utah 2009) (applying strict scrutiny to § 922(g)(9)).

7 Plaintiffs here have shown that they are now responsible, law-abiding citizens with no  
8 history of violent behavior or conduct that would suggest that they pose any elevated threat or  
9 danger to others. None of the individual plaintiffs was sentenced to a term in prison, and all  
10 successfully completed the terms of their probation. The crimes for which they were convicted  
11 are each more than thirty years old, were for non-violent, lesser-classified felonies, and did not  
12 involve the use of force. The sentences imposed upon the plaintiffs were minor, and more to the  
13 ultimate point, their convictions were adjudged to have been vacated, expunged, and/or set aside  
14 under the laws of those states by courts of competent jurisdiction. Federal law does not  
15 otherwise prohibit them from possessing firearms. Their convictions are therefore deemed to  
16 have been nullified. *See, e.g., United States v. Fowler*, 198 F.3d 808, 809–10 (11th Cir. 1999)  
17 (under Alabama law, restoration of all civil and political rights nullifies any and all legal  
18 incapacities, including the right to possess firearms). Therefore, California cannot prohibit their  
19 exercise of this fundamental and important right to keep and bear arms.

20 **2. Plaintiffs Will Prevail on Their Full Faith & Credit Clause Claims.**

21 As an alternative to their Second Amendment claim, plaintiffs have also shown that they  
22 will prevail, as a matter of law, on their claim under the Constitution’s Full Faith and Credit  
23 Clause. At its core, this case presents the question of whether California is required to honor the  
24 judgments of courts in other states that have set aside or vacated plaintiffs’ underlying felony  
25 convictions, and expressly restored their Second Amendment rights to them. Article IV, section  
26 1 of the United States Constitution provides that “Full Faith and Credit shall be given in each  
27 State to the public Acts, Records, and judicial Proceedings of every other State.” “That Clause  
28 requires each State to recognize and give effect to valid judgments rendered by the courts of its

1 sister States.” *V.L. v. E.L.*, -- U.S. --, 136 S.Ct. 1017, 1020 (2016). The Supreme Court has  
 2 explained that the “animating purpose” of this Clause was:

3 to alter the status of the several states as independent foreign sovereignties, each  
 4 free to ignore obligations created under the laws or by the judicial proceedings of  
 5 the others, and to make them integral parts of a single nation throughout which a  
 6 remedy upon a just obligation might be demanded as of right, irrespective of the  
 7 state of its origin.

8 *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232, 118 S.Ct. 657, 663 (1998) (quoting *Milwaukee*  
 9 *County v. M.E. White Co.*, 296 U.S. 268, 277, 56 S.Ct. 229 (1935)).

10 *Baker* made it clear to distinguish the Clause’s command as between legislative acts of  
 11 other states, and state court judgments. Specifically, the Court stated that the Clause “does not  
 12 compel ‘a state to substitute the statutes of other states for its own statutes dealing with a subject  
 13 matter concerning which it is competent to legislate.’” *Baker*, 522 U.S. at 232 (citing *Pacific*  
 14 *Employers Ins. Co. v. Industrial Accident Comm’n*, 306 U.S. 493, 501, 59 S.Ct. 629, 632 (1939)).  
 15 The Court further clarified: “Regarding judgments, however, the full faith and credit obligation  
 16 is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over  
 17 the subject matter and persons governed by the judgment, qualifies for recognition throughout  
 18 the land.” *Baker*, 522 U.S. at 233 (citing *Matsushita Elec. Industrial Co. v. Epstein*, 516 U.S.  
 19 367, 373, 116 S.Ct. 873 (1996)).

20 Importantly, the Court held that there is no “roving public policy exception” to the full  
 21 faith and credit due judgments, and that the Clause orders submission even to the hostile policies  
 22 reflected in the judgment of another state. *Baker*, 522 U.S. at 233. See also, *Estin v. Estin*, 334  
 23 U.S. 541, 546 (1948); *Williams v. North Carolina*, 317 U.S. 287 (1942) (requiring North  
 24 Carolina to recognize change in marital status effected by Nevada divorce decree contrary to the  
 25 laws of North Carolina); *V.L. v. E.L.*, 136 S.Ct. at 1020 (a state may not disregard the judgment  
 26 of a sister state because it deems it to be wrong on the merits) (citing *Milliken v. Meyer*, 311 U.S.  
 27 457, 462, 61 S.Ct. 339 (1940)).

28 In the present case, defendants’ policies refuse to honor the judgments of the states from  
 which the convictions originated. These policies, therefore, violate both the Constitution’s Full  
 Faith and Credit Clause, and its enabling statute, 28 U.S.C. § 1738.

1 **C. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY IN THE ABSENCE OF INJUNCTIVE**  
 2 **RELIEF.**

3 **1. All Plaintiffs Have Shown Unconstitutional Deprivation of Substantial**  
 4 **Liberty Interests Protected by the Second Amendment.**

5 “It is well established that the deprivation of constitutional rights ‘unquestionably  
 6 constitutes irreparable injury.’ *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting  
 7 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); 11A Charles Alan Wright et al., *Federal Practice and*  
 8 *Procedure* § 2948.1 (2d ed. 1995) (“When an alleged deprivation of a constitutional right is  
 9 involved, most courts hold that no further showing of irreparable injury is necessary.”) The  
 10 Ninth Circuit has applied the First Amendment’s “irreparable if-only-for-a-minute” rule to cases  
 11 involving other rights and, in doing so, has held a deprivation of these rights represents  
 12 irreparable harm per se. *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997).

13 “The same is true for Second Amendment rights. Their loss constitutes irreparable  
 14 injury.” *Duncan*, 265 F.Supp.3d at 1135. “The right to keep and bear arms protects tangible and  
 15 intangible interests which cannot be compensated by damages. [...] ‘The right to bear arms  
 16 enables one to possess not only the means to defend oneself but also the self-confidence—and  
 17 psychic comfort—that comes with knowing one could protect oneself if necessary.’” *Id.* (citing  
 18 *Grace v. District of Columbia*, 187 F.Supp.3d 124, 150 (D.D.C. 2016) and *Ezell v. City of*  
 19 *Chicago*, 651 F.3d 684, 699 (7th Cir. 2011)). “Loss of that peace of mind, the physical  
 20 magazines, and the enjoyment of Second Amendment rights constitutes irreparable injury.”  
 21 *Duncan*, 265 F.Supp.3d at 1135. *See also*, *Ezell*, 651 F.3d at 700 (a deprivation of the right to  
 22 arms is “irreparable,” with “no adequate remedy at law”).

23 Plaintiffs have shown that they are being deprived of the ability to possess firearms for  
 24 lawful purposes, including self-defense in the home. All plaintiffs would exercise their rights in  
 25 the absence of defendants’ policies and therefore require injunctive relief to vindicate and restore  
 26 their rights. (Linton Decl., ¶ 21; Stewart Decl., ¶ 15; Jones Decl., ¶ 17). Defendants’  
 27 enforcement of Pen. Code § 29800(a) (prohibiting possession of firearm by convicted felons) or  
 28 § 30305(a)(1) (ammunition) should be enjoined as to them.

1           **2. Plaintiff Jones Has Shown Irreparable Injury From Being Unable to**  
 2           **Continue His Profession as a Law Enforcement Firearms Trainer.**

3           In addition to the pure constitutional injuries alone, plaintiff Jones has also demonstrated  
 4 significant and ongoing harm as a result of defendants’ policies, and their denial of his  
 5 Certificate of Eligibility under Pen. Code § 26710.<sup>2</sup> Mr. Jones is simply unable to pursue his  
 6 long-trained for career as professional a firearms instructor. (Jones Decl., ¶¶ 3-7, 16). He has  
 7 had to discontinue all further firearms instruction, training and classes, and is thus being deprived  
 8 of a career and livelihood that he has been training for, for over 30 years. (*Id.*, ¶ 16). Until  
 9 defendants are restrained and enjoined, temporarily, preliminarily and permanently, he will  
 10 continue to be deprived of his ability to make a living in this field. (*Id.*) And furthermore, his  
 11 inability to own/possess or even handle firearms or ammunition, resulting in his inability to be a  
 12 firearms trainer, is causing severe injury to his professional reputation as a firearms instructor  
 13 and trainer, within the law enforcement and civilian training communities. (*Id.*) Furthermore,  
 14 there is severe humiliation and embarrassment associated with being a “prohibited person,” even  
 15 after 30 years of service in law enforcement. (*Id.*)

16           In *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir. 2014), the Ninth  
 17 Circuit considered a challenge by individual DACA recipients, regarding Arizona’s enactments  
 18 that would have deprived them of state driver’s licenses. The plaintiffs sought a preliminary  
 19 injunction preventing Arizona officials from enforcing their policy. The district court found that  
 20 plaintiffs were likely to succeed on the merits of their equal protection claim, but that they had  
 21 not shown a likelihood of irreparable harm sufficient to justify preliminary injunctive relief. The  
 22 Ninth Circuit reversed, and on this point, specifically found that plaintiffs had shown “ample  
 23 evidence” that defendants’ policies caused them irreparable harm. 757 F.3d at 1068. The Court  
 24 continued: “In particular, Plaintiffs’ inability to obtain driver's licenses likely causes them  
 25 irreparable harm by limiting their professional opportunities. Plaintiffs’ ability to drive is integral  
 26

27 \_\_\_\_\_  
 28 <sup>2</sup>A Certificate of Eligibility, issued by the California DOJ, confirms a person's eligibility to lawfully possess and/or purchase firearms under state and federal law. *Silvester*, 843 F.3d at 825–26 (citing Pen. Code § 26710 and 11 Cal. Code Regs. § 4031(g)).

1 to their ability to work[...]. Plaintiffs’ lack of driver’s licenses has, in short, diminished their  
 2 opportunity to pursue their chosen professions. This ‘loss of opportunity to pursue [Plaintiffs’]  
 3 chosen profession[s]’ constitutes irreparable harm.” *Arizona Dream Act Coal.*, 757 F.3d at 1068  
 4 (citing *Enyart v. Nat’l Conference of Bar Exam’rs, Inc.*, 630 F.3d 1153, 1165 (9th Cir. 2011) and  
 5 *Chalk v. U.S. Dist. Ct.*, 840 F.2d 701, 709–10 (9th Cir. 1988)).

6 It is otherwise well-established that the threatened loss of livelihood or career supports  
 7 the irreparable harm to justify injunctive relief, under both federal and state standards. See, e.g.,  
 8 *Enyart*, 630 F.3d at 1165 (the plaintiff “demonstrated irreparable harm in the form of loss of  
 9 opportunity to pursue her chosen profession[.]”); *Barajas v. City of Anaheim*, 15 Cal.App.4th  
 10 1808, 1812 n.2 (1993) (“[p]laintiffs have no adequate remedy at law in our view; loss of their  
 11 livelihoods, in whole or in part, would be extremely difficult to evaluate in terms of damages[.]”);  
 12 *Costa Mesa City Employees’ Assn. v. City of Costa Mesa*, 209 Cal.App.4th 298, 308 (2012)  
 13 (“losing a job, and the income it entails, amounts to irreparable harm.”)

14 Finally, the Court should consider both the ongoing humiliation and embarrassment, not  
 15 to mention the professional stigma that Mr. Jones is enduring as a “prohibited person,” after a  
 16 stellar, 30-year career in law enforcement and firearms training, which is now impairing his  
 17 profession. (Jones Decl., ¶ 16). See, *Chalk*, 840 F.2d at 709 (irreparable injury found in  
 18 psychological distress arising from loss of job); *Enyart*, 630 F.3d at 1165 (discussing  
 19 professional stigma).  
 20

21 All of these facts show irreparable injury to Mr. Jones arising from defendants’ policies.

22 **3. Preliminary Injunctive Relief is Necessary to Prevent Enforcement Against**  
 23 **Mr. Jones Pending the Disposition of this Action.**

24 Mr. Jones further requires preliminary injunctive relief to prevent enforcement by the  
 25 Department of Justice’s Armed Prohibited Persons (APPS) enforcement program. (Jones Decl.,  
 26 ¶ 19). Without relief from Pen. Code §§ 29800(a)(1) and 30305(a)(1), Mr. Jones reasonably fears  
 27 arrest. First, as has already been shown in this case, armed agents from the APPS enforcement  
 28 program have already come to plaintiff Linton’s home to seize firearms he purchased after

1 passing background checks, and which the Department had known about for many years.<sup>3</sup> (See  
 2 Linton Decl., ¶ 18). This seizure came only after Mr. Linton’s counsel attempted to convince  
 3 defendant Wilson to correct the Department’s records, based upon the restoration of Mr. Linton’s  
 4 firearms rights in Washington. (Id., ¶¶ 15-16; Linton Exs. E-G). And when litigants bring cases  
 5 to challenge their status as prohibited persons, it is not unheard of for the Department to turn its  
 6 enforcement arms loose on them. (See Decl. of George M. Lee and Req. for Jud. Notice, ¶¶ 4-6,  
 7 Ex. A.)

8 For these additional reasons, and as he is likely to prevail on the merits, plaintiff Jones  
 9 requires preliminary injunctive relief from the Department’s enforcement of Pen. Code §§ 29800  
 10 and 30305, by and through its APPS program.

11 **D. THE BALANCING OF RELATIVE HARMS FAVORS INJUNCTIVE RELIEF.**

12 The third requirement under *Winter* is that the balance of equities tips in the moving  
 13 party’s favor. *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009) (citing *Winter*,  
 14 129 S. Ct. at 376). To assess this prong, the court must “balance the interests of all parties and  
 15 weigh[s] the damage to each.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009).

16 Here, the balancing of relative harms manifestly favors the plaintiffs. As stated above,  
 17 plaintiffs have been deprived of important and fundamental constitutional rights, and in Mr.  
 18 Jones’s case, faces the loss of a career for which he has trained for over 30 years. In contrast,  
 19 there is no risk of harm to the State to allow any of them to purchase, own or possess firearms or  
 20 ammunition. Before the defendants’ enforcement these policies, plaintiffs Linton and Jones  
 21 owned firearms, peaceably, for many years. In Mr. Linton’s case, he has lived in California for  
 22 over 30 years, possessing firearms until last year, when armed DOJ agents stormed his house to  
 23 confiscate them. (Linton Decl., ¶ 18). Again, defendants had *long* known about these firearms,  
 24 because they were purchased after background checks, and were duly registered. And in Mr.  
 25 Jones’s case, he has actually provided valuable service to the State in training thousands of peace  
 26

27  
 28 <sup>3</sup>The Penal Code requires firearms dealers to transmit basic identifying information about the firearm and its  
 purchaser to the California Department of Justice, which the Department stores in a firearms database. *United States*  
*v. Buttner*, 432 F. App’x 696, 696–97 (9th Cir. 2011); Pen. Code § 11106.

1 officers in his thirty-year career as a law enforcement/civilian firearms trainer, for which he has  
2 received numerous letters of commendation. (Jones Decl., ¶¶ 4-5).

3 On an as-applied basis, a preliminary injunction should therefore issue in favor of  
4 individual plaintiffs Linton, Stewart and Jones, enjoining defendants from denying them firearm  
5 purchases, and eliminating their status as “prohibited persons.” The Department should further  
6 be enjoined from denying plaintiffs Certificates of Eligibility under Pen. Code § 26710. In the  
7 Ninth Circuit, a plaintiff may also obtain a preliminary injunction under a “sliding scale”  
8 approach by raising “serious questions” going to the merits of plaintiff’s claims and showing that  
9 the balance of hardships tips “sharply” in his or her favor. *A Woman’s Friend Pregnancy Res.*  
10 *Clinic v. Becerra*, 901 F.3d 1166, 1167 (9th Cir. 2018). As the plaintiffs here have raised serious  
11 questions, and have shown that a balance of the hardships tips sharply in their favor, preliminary  
12 injunctive relief is appropriate.

13 **E. THE PUBLIC INTEREST FAVORS AN INJUNCTION.**

14 By establishing a likelihood that defendants’ policies violate the Constitution, plaintiffs  
15 have also established that both the public interest and the balance of the equities favor a  
16 preliminary injunction. “[I]t is clear that it would not be equitable or in the public’s interest to  
17 allow the state ... to violate the requirements of federal law, especially when there are no  
18 adequate remedies available.” [...] On the contrary, the public interest and the balance of the  
19 equities favor “prevent[ing] the violation of a party’s constitutional rights.” *Arizona Dream Act*  
20 *Coal.*, 757 F.3d at 1069 (citing *Melendres*, 695 F.3d at 1002). This applies equally to Second  
21 Amendment rights as well. “The public interest favors the exercise of Second Amendment rights  
22 by law-abiding responsible citizens. And it is always in the public interest to prevent the  
23 violation of a person’s constitutional rights.” *Duncan*, 265 F.Supp.3d at 1136.

24 **IV. CONCLUSION**

25 Plaintiffs respectfully request that this Court grant preliminary injunctive relief to prevent  
26 defendants from continuing to deprive them of important constitutional rights, and to prevent  
27 them from enforcing Pen. Code §§ 29800 and 30305 based upon their non-violent, out-of-state  
28 felony convictions that have been set aside and vacated in their respective states of origin.

1 Dated: December 19, 2019

**SEILER EPSTEIN LLP**

2  
3 /s/ George M. Lee

4 George M. Lee

5 Attorneys for Plaintiffs  
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**SEILER EPSTEIN LLP**  
Attorneys at Law

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**DECLARATION OF PLAINTIFF KENDALL  
JONES IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

20  
21  
22 DECLARATION OF KENDALL JONES

23 I, Kendall Jones, declare as follows:

24 1. I am an adult resident of the County of Sacramento, California, where I have lived  
25 for over 39 years. I am a named plaintiff in this matter and if called as a witness, I could  
26 competently testify to these facts.

27 2. This declaration is made in support of plaintiffs' motion for issuance of a  
28 preliminary injunction.

1           3.       I am a 30-year veteran of the California Department of Corrections, having been  
2 employed as a Correctional Officer from 1984 through 2013. In 2013, I was specifically asked  
3 to return to provide firearms and other use-of-force training to the Department. Until my final  
4 honorable retirement in 2014, I served as the Primary Armory Officer for the CSP Solano facility  
5 for over 19 years, specializing in firearms, chemical agents, batons and use of deadly force  
6 training. I received my Peace Officers' Standards and Training (POST) Certification in 1997  
7 and has continued training through the National Rifle Association (NRA) and the Sacramento  
8 Regional Public Safety Training Center. My primary focus has been on firearms, laws, self-  
9 defense, firearms safety and responsibility. In 2004 I was designated as a Subject Matter Expert  
10 in the use of force by the Department of Corrections.

11           4.       During my career as a Correctional Officer, I received numerous letters of  
12 commendation and letters of appreciation, both pertaining to my primary duties as a Correctional  
13 Officer, but also as a firearms and use-of-force instructor, from officials, including State  
14 correctional officials and wardens.

15           5.       As a law enforcement officer and professional trainer, I am well trained in the use  
16 of firearms. I have personally trained thousands of Peace Officers and private citizens in the  
17 proper use of handguns, rifles, shotguns, less-lethal options (pepper spray) and the use of force. I  
18 have received specialized training in tactical handguns, rifles and shotguns. I have continued to  
19 expand my knowledge base by attending firearms instructor courses ensuring that I am current  
20 and up-to-date on any new changes in his areas of expertise. I am qualified to provide superior  
21 training in all aspects of firearms training, self-defense, safety and gun care.

22           6.       I currently have and maintain NRA certifications for: (1) Home Safety,  
23 Protection, Education and Responsibility; (2) Pistol and Rifle; (3) NRA Law Enforcement  
24 Handgun/Shotgun Instructor; and (4) Metallic Cartridge Reloading Instructor. In addition, I am  
25 or have been an instructor for the California Commission on Peace Officers Standards and  
26 Training (POST), and have further received training and certificates from:

- 27           • Glock (Glock Instructor's Workshop);
- 28           • Sacramento Regional Public Safety Training Center (Firearms/Rifle Instructor;

1 Firearms Instructor Update);

- 2 • Armor Holdings, Inc. (Basic Instructor, Critical Response); and
- 3 • California Department of Corrections Correctional Training Center (Expandable
- 4 Baton Instructor Certification; Use of Force Training; Chemical Agents, and First
- 5 Aid).

6 7. I have been a firearms instructor for the Bureau of Security and Investigative  
7 Services (BSIS), and I maintain active memberships in the International Association of Law  
8 Enforcement Firearms Instructors (IALEFI) and have received a certificate in the Master  
9 Instructor Development Program with IALEFI. I have been a firearms instructor with the  
10 California Dept of Corrections, the Sacramento Gun Club, and numerous CCW programs.

11 8. I grew up in Houston, Texas. In 1980, when I was 19 years old, and living in  
12 Houston, I was arrested arising from an incident involving the alleged misuse of a credit card. In  
13 that case, someone had told me that I could use his credit card when, in fact, he did not have  
14 authorization to use it himself in the first place, and therefore, I had mistakenly used a credit card  
15 under false pretenses.

16 9. After being charged with credit card fraud, in 1980, I was made an offer by the  
17 prosecutor, in which he offered that the charges would be set aside and dismissed, following a  
18 period of probation, if I agreed to plead guilty to a single charge of “credit card abuse,” a third  
19 degree felony under Texas law, which involved no term of confinement. In light of the  
20 prosecutor’s offer by which these charges would be set aside and dismissed, I accepted this deal,  
21 pled guilty to the charge as offered, and completed a three-year term of probation under  
22 community supervision.

23 10. Having successfully completed the term of my community supervision probation,  
24 on or about August 22, 1983, the district court for the County of Harris, Texas, permitted me to  
25 withdraw my plea of guilty, set aside and dismiss the judgment of conviction. I was able to  
26 obtain a certified copy of this judgment. A true and correct certified copy of the Texas court’s  
27 FULL TERMINATION ORDER OF THE COURT DISMISSING THE CAUSE in the Texas case is attached  
28

1 hereto as **Jones Exhibit A**.

2 11. After this event, I moved to California and pursued my career in law enforcement  
3 with the State of California, as discussed in paragraph 3 above. I received and completed my  
4 training at the Richard A. McGee Correctional Training Center in 1984, and went to work for the  
5 Department of Corrections. I also have completed community college courses in firearms  
6 instruction, which I have continued to update every two years. Throughout my career in law  
7 enforcement, I legally and necessarily owned and possessed firearms, as a part of my profession,  
8 for personal protection, recreation and sport.

9 12. Since retiring honorably in 2014, I have chosen to pursue my career as a law  
10 enforcement firearms and use of force trainer, drawing upon by 30 years of training and  
11 experience in the field. To continue in this field and chosen profession, which I have dutifully  
12 and lawfully pursued and trained for, for over 30 years, I am required to own and possess  
13 firearms and handle both firearms and ammunition. In fact, at the current time, I am listed on the  
14 Department of Justice’s website as one of its Certified Instructors eligible to provide training  
15 specified by Pen. Code § 31635(b). A true and correct excerpt from the DOJ’s current list of  
16 instructors authorized to provide “Comparable Firearm Safety Training” in which I am listed is  
17 attached hereto as **Jones Exhibit B**.

18 13. I have previously had no problem obtaining and holding a Certificate of  
19 Eligibility (“COE”) to own/possess firearms and/or ammunition under Cal. Penal Code § 26710,  
20 a necessary requirement to becoming or maintaining status as a certified firearm instructor under  
21 current DOJ policy.

22 14. In 2018, I submitted my application for renewal of my COE, which I had held  
23 without incident since 2010. In or around February 2018, the DOJ informed me that the COE  
24 application was being delayed. I then initiated a record review request. On or about February  
25 23, 2019, the DOJ Bureau of Firearms informed me that according to the Department’s records, I  
26 was “not eligible to own, possess or have under [his] custody or control any firearm[,]” and  
27 denied me a Certificate of Eligibility. A true and correct copy of the DOJ’s letter of February 23,  
28

1 2019 is attached hereto as **Jones Exhibit C**.

2 15. I am informed and believe that the Department’s policies, practices, and customs  
3 are being used to deny the right of plaintiffs, and similarly situated individuals, to own/possess  
4 and purchase firearms, notwithstanding other state court judgments and proceedings that have  
5 specifically set aside, vacated or otherwise dismissed our felony convictions, and restored our  
6 firearm rights.

7 16. As a result of these policies, and the denial of my renewal of the COE, I am  
8 unable to pursue my chosen and long-pursued and trained-for career as a firearms instructor. I  
9 have had to discontinue all further firearms instruction, training and classes. I am thus being  
10 permanently deprived of my career and livelihood that I have literally been training for, for over  
11 30 years. Unless and until the Department, and the defendants’ implementation of these policies  
12 is restrained and enjoined, temporarily, preliminarily and permanently, I will continue to be  
13 deprived of my ability to make a living in this field. And furthermore, my inability to  
14 own/possess or even handle firearms or ammunition, resulting in my inability to be a firearms  
15 trainer, is causing severe injury to my professional reputation as a firearms instructor and trainer,  
16 within the law enforcement and civilian training communities. Defendants’ policies have also  
17 caused me severe and ongoing humiliation and embarrassment associated with being a  
18 “prohibited person,” even after 30 years of service in law enforcement.

19 17. Also, as the Department now legally considers me to be a “prohibited person,” I  
20 am no longer able to legally defend myself with the use of a firearm. This is particularly  
21 problematic as a retired correctional officer, as I have had interactions and incidents involving  
22 some of the state’s most violent convicted criminals in prison. It was not unusual for me to be  
23 threatened by inmates while I was on duty, e.g., with statements like, “One day I’ll see you on  
24 the streets,” and the like.

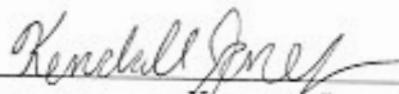
25 18. I am therefore suffering and am continuing to suffer irreparable injury as a result  
26 of the Department’s determination, through the policies issued and implemented by defendants,  
27 that prohibits me from owning, possessing or handling firearms and ammunition.  
28

1           19. I also and further reasonably fear arrest and prosecution as a result of defendants'  
2 policies and practices as they pertain to the Department of Justice's Armed Prohibited Persons  
3 (APPS) enforcement program. As shown in the complaint, I am informed and believe that armed  
4 agents of the California DOJ have shown up at the homes of persons such as Plaintiff Linton, to  
5 intimidate and coerce such persons into giving up important rights, including the right to keep  
6 and bear arms guaranteed by the United States Constitution. I have also been informed and  
7 believe, and am otherwise aware that the California Department of Justice retaliates against  
8 citizens like myself who exercise their rights to petition the courts to restore their firearm rights  
9 by sending armed agents to their homes. For example, in *James v. Granger*, E.D. Cal. No. 1:13-  
10 cv-00983, the plaintiff in that case, Scott James, had filed a mandamus action against the State of  
11 California concerning denial of his right to own/possess firearms, after a misdemeanor  
12 conviction. As a result of the mandamus action, the Department of Justice sent armed agents to  
13 Mr. James's house to seize firearms, and to arrest him, in an attempt to intimidate him from  
14 exercising his rights, and to gain advantage in the mandamus action. It was undisputed that at  
15 the time of the search warrant and arrest at Mr. James's house, the Deputy Attorney General  
16 handling the civil action was present. Therefore, the threat of a similar form of retaliation and  
17 coercion is very present in our case.

18  
19           20. For these reasons, and as set forth in the motion, we respectfully request  
20 preliminary injunctive relief to prevent the State of California and defendants from continuing to  
21 deprive us of these important rights under the Constitution, and to prevent them from enforcing  
22 and continuing to enforce their policies as they pertain to the denial of rights based upon non-  
23 violent, out-of-state felony convictions that have been set aside and vacated in their respective  
24 states of origin.

25           I declare under penalty of perjury that the foregoing is true and correct.

26  
27 Dated: December 6, 2019

  
KENDALL JONES

**JONES EXHIBIT A**

FULL TERMINATION ORDER OF THE COURT-DISSMISSING THE CAUSE

THE STATE OF TEXAS

VS. NO. 317020

KENDALL JONES

29/337

IN CRIMINAL DISTRICT COURT NO. 180  
OF HARRIS COUNTY, TEXAS

It appears to the Court, after considering the recommendation of the defendant's probation officer, and other matters and evidence to the effect that the defendant has satisfactorily fulfilled the conditions of probation during the full period of the original probationary period to which he was sentenced. Therefore the period of probation is terminated.

It is therefore the order of the Court that the defendant be and he is hereby permitted to withdraw his plea of guilty, the indictment against the defendant be and the same is hereby dismissed and the Judgment of Conviction be hereby set aside as provided by law.

Probation Officer: Clara D. Perez

Entered this 22nd day of August, A.D. 1983

[Signature], Judge Presiding



05

44003 942 040 90a



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this March 22, 2019

Certified Document Number: 79056150 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

**JONES EXHIBIT B**

State of California Department of Justice



**XAVIER BECERRA**  
*Attorney General*

HOME ABOUT MEDIA CAREERS REGULATIONS RESOURCES PROGRAMS CONTACT

## Becoming A DOJ Certified Instructor And Maintaining Current DOJ Certified Instructor Certification

Home / Firearms / *Becoming A DOJ Certified Instructor And Maintaining Current ...*

[...]

### Comparable Training In Firearms Safety

**Entities Recognized by DOJ as Providing Comparable Firearm Safety Training to Those Entities Specified by Penal Code section 31635, subdivision (b).**

Penal Code section 31635, subdivision (b) authorizes the California Department of Justice (DOJ) to recognize entities which provide firearms safety training comparable to the entities specified within that subdivision. Individuals possessing a Certificate of Completion from any of the entities so recognized by DOJ may apply to be a DOJ Certified Instructor.

The entities recognized by DOJ as providing firearms safety training comparable to the entities specified by Penal Code section 31635, subdivision (b) are:

[...]

Sacramento Gun Club

Kendall Jones Sacramento



[Excerpts from: <https://oag.ca.gov/firearms/fscinfo> as of 11/15/19]

**JONES EXHIBIT C**

**XAVIER BECERRA**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**



BUREAU OF FIREARMS  
P.O. BOX 160487  
SACRAMENTO, CA 95816-0487  
Telephone: (916) 227-3751  
Fax: (916) 227-1032

February 23, 2019

KENDALL JONES  
[REDACTED]

RE : Certificate of Eligibility Denial Notice

Dear KENDALL JONES:

The California Department of Justice (the Department) has reviewed your application for a Certificate of Eligibility. Department records indicate you are not eligible to own, possess, or have under your custody or control any firearm. Therefore, your application for a Certificate of Eligibility is denied.

California law affords you the opportunity to obtain a copy of your records and to refute any erroneous or inaccurate information contained therein. (Pen. Code, §§ 11120 – 11127.) If you wish to obtain a copy of your record, you must complete a Firearms Record Review Request for Live Scan (BOF 8016RR). This form can be found on the Department's website at <https://oag.ca.gov/firearms/forms>.

If you have any questions, please email the Bureau of Firearms at [COE@doj.ca.gov](mailto:COE@doj.ca.gov).

Sincerely,

CERTIFICATE OF ELIGIBILITY UNIT  
Bureau of Firearms

For XAVIER BECERRA  
Attorney General

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**DECLARATION OF PLAINTIFF CHAD  
LINTON IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

20 DECLARATION OF CHAD LINTON

21 I, Chad Linton, declare as follows:

22 1. I am an adult resident of the County of Placer, California. I am a named plaintiff  
23 in this matter and if called as a witness, I could competently testify to these facts.

24 2. This declaration is made in support of plaintiffs' motion for issuance of a  
25 preliminary injunction.

26 3. I served in the United States Navy from 1986 to 1988. On or about August 20,  
27 1987, while I was stationed at Whidbey Island Naval Air Station, Washington, I made an error in  
28

1 judgment. While on a motorcycle, and traveling at a high rate of speed, I went past a  
2 Washington State Police car. For a brief period of time, I thought perhaps I might be able to  
3 make it back to NAS Whidbey Island before the Washington State Police officer would be able  
4 to catch up to me, and I accelerated. However, after a few moments, I reconsidered that idea,  
5 pulled over to the side of the highway, and voluntarily allowed the state trooper to catch up to  
6 me. I was arrested and did not resist my arrest in any way.

7 4. I was charged in Washington State, Island County Superior Court, with  
8 attempting to evade a police vehicle, a “Class C felony” under section 46.61.024 of the Revised  
9 Code of Washington (“RCW”), and with driving under the influence, charged as a misdemeanor.  
10 I spent seven days in jail.

11 5. On or about December 29, 1987, I entered pleas of guilty to both Count I  
12 (Attempting to Evade a Pursuing Police Vehicle, RCW 46.61.024) and Count II (Driving While  
13 Intoxicated, RCW 46.61.502). I was sentenced to seven days in jail, with credit for all seven  
14 days served, was required to complete community service, paid fines, and successfully  
15 completed all other terms of probation. At the time of the sentencing, the Washington State  
16 court judge, who was sympathetic to me, told me that if I successfully completed all terms of my  
17 probation, that the court would reduce the matter to a misdemeanor and have the matter  
18 discharged from my records. I had no reason to believe that this had not occurred. In fact, in  
19 1988, I received a certificate of discharge, showing that I successfully completed probation.  
20 That certificate included a statement that “the defendant’s civil rights lost by operation of law  
21 upon conviction be HEREBY RESTORED.”

22 6. After being discharged from the Navy, in 1988, I moved back to California.  
23 Since moving back to California, I have undergone multiple background checks and fingerprint-  
24 based “Live Scan” database queries of law enforcement records, in connection with licensing,  
25 none of which revealed the presence of a felony conviction in another state. I had also  
26 reasonably relied upon the statements made by the trial judge in Washington State, in believing  
27 that the attempted evading charge had been reduced to a misdemeanor, and that the restoration of  
28

1 my rights upon successful completion of probation entitled me to own firearms legally.

2 7. In fact, since 1988, I have successfully and legally purchased and acquired several  
3 firearms, all with the approval of the State of California having passed all state and federal  
4 background checks.

5 8. Since returning to California permanently, I have been and remain a law-abiding  
6 citizen. I have married and have raised a family here.

7 9. On or about December 26, 2015, I attempted to make a purchase of a handgun,  
8 and was denied the purchase by the State of California. I was informed by the California DOJ  
9 that I was prohibited from taking possession of the handgun due to the existence of a prior  
10 felony, and that the disqualifying offense was the Washington State matter dating back to 1987,  
11 which I believed had been reduced to a misdemeanor. Nevertheless, based upon the DOJ's  
12 denial of the firearm purchase, I hired an attorney in the State of Washington. On my behalf, he  
13 re-opened the criminal proceedings, in which I then withdrew my guilty plea, and entered a not-  
14 guilty plea, which was entered retroactively.

15 10. On March 21, 2016, the Superior Court of the State of Washington, Island County  
16 issued its final Order on Motion Re: Vacating Record of Felony Conviction, in which the court  
17 specifically found that the offense for which I was convicted was not a violent offense under  
18 Washington State law. A true and correct certified copy of that record is attached hereto as  
19 **Linton Exhibit A**. Accordingly, the Superior Court granted the motion to vacate conviction  
20 records related to the underlying offense, set aside the guilty plea, and released me from all  
21 penalties and disabilities resulting from the offense. (Exhibit A, p. 2.)

22 11. On April 18, 2016, the Superior Court of the State of Washington, Island County,  
23 further issued, upon a petition filed by my attorney, an Order Restoring Right to Possess  
24 Firearms pursuant to Revised Code of Washington (RCW) 9.41.040(4). A true and correct  
25 certified copy of this order is attached as **Linton Exhibit B**. As part of that petition, and order,  
26 the court found that I was qualified to have the right to possess firearms restored to me, and  
27 accordingly, ordered "that Petitioner Chad Linton's civil rights and right to possess firearms are  
28

1 FULLY RESTORED pursuant to RCW 9.41.040(4).” (*Id.*) The court further ordered the  
2 Washington State Patrol to transmit a copy of its Order to the Federal Bureau of Investigation.

3 12. After these proceedings, in order to determine whether I was still prohibited from  
4 owing or purchasing firearms in the State of California, on or about October 25, 2016, I  
5 voluntarily underwent a Personal Firearms Eligibility Check (“PFEC”) pursuant to Cal. Pen.  
6 Code § 30105(a) to confirm my eligibility to purchase and/or possess a firearm. Based upon this  
7 check, the California DOJ’s Bureau of Firearms informed me that I was eligible both to possess  
8 and purchase firearms, based upon a search of California’s records. The PFEC form indicated,  
9 however, that the actual purchase of a firearm would involve the search of a federal database by  
10 the DOJ. A true and correct copy of my PFEC results, dated October 25, 2016, is attached hereto  
11 as **Linton Exhibit C**.

12 13. Based upon the court orders from the State of Washington, and the PFEC results,  
13 on October 30, 2018, I attempted to purchase a rifle, but again, I was denied. On or about  
14 November 7, 2016, the California DOJ informed me that I was ineligible to purchase or possess  
15 firearms pursuant to its review of state and/or federal records which purported to show that I was  
16 a “Felon: Any person who has been convicted of a felony under the laws of the United States, of  
17 the State of California, or of any other state, government, or country.” A true and correct copy of  
18 the DOJ’s letter denying me the right to purchase a firearm is attached hereto as **Linton Exhibit**  
19 **D**. But the only felony conviction I had ever suffered was the Washington State conviction,  
20 which by that time had already been set aside, vacated, and for which my firearms rights  
21 specifically had been restored to me by the Washington court. (Exhibits A and B.)

22 14. After this firearm denial, I requested and underwent a “Live Scan” fingerprint-  
23 based background check request with the DOJ directly. On or about November 10, 2016, the  
24 results of that Live Scan were returned and showed the presence of no felony convictions.  
25

26 15. On or about February 2, 2017, my attorney, Adam Richards, wrote the DOJ to  
27 contest its determination regarding my status as a prohibited person. In furtherance of this claim  
28 of inaccuracy and/or incompleteness, Mr. Richards provided the DOJ with copies of the

1 Washington Court’s Order vacating the felony conviction (Exhibit A), as well as the Order  
2 restoring my firearm rights (Exhibit B). A true and correct copy of Mr. Richards’s letter to the  
3 DOJ dated February 2, 2017, is attached hereto as **Linton Exhibit E**. The DOJ did not respond  
4 to this request and communication.

5 16. My attorney made a second request to the DOJ to correct my record, on  
6 November 11, 2017. On or about January 30, 2018, in apparent response to my attorney’s letter,  
7 the DOJ sent me a letter directly, stating that “the entry in question cannot be found on your  
8 California criminal history record, therefore, no further investigation is required.” A copy of the  
9 California DOJ’s letter to me dated January 30, 2018, is attached as **Linton Exhibit F**. In  
10 addition, on about March 6, 2018, the DOJ sent me an additional record stating that “as of the  
11 date of this letter, your fingerprints did not identify any criminal history maintained by the  
12 Bureau of Criminal Information and Analysis.” A true and correct copy of the DOJ’s letter dated  
13 March 6, 2018, is attached as **Linton Exhibit G**.

14 17. Based upon the letters from the DOJ (Exhibits F and G) which appeared to be  
15 responsive to my attorney’s letters, on March 20, 2018, I believed that the confusion had been  
16 cleared up, and that the DOJ’s records had been corrected. I then attempted to purchase a .357  
17 revolver, for self-defense in the home, but once again, I was denied. On or about March 27,  
18 2018, the DOJ sent me a letter stating that the attempted firearm purchase was denied due to the  
19 presence of a prior felony conviction—again, the only possible such matter being the now-  
20 vacated Washington matter.

21 18. On or about April 3, 2018, agents of the California Department of Justice came to  
22 my home, and seized several firearms that I had legally acquired and owned throughout the  
23 years, including an antique, family-heirloom shotgun that was once owned by my grandfather.  
24 All of these firearms were acquired through legal purchases or transfers, through federally-  
25 licensed firearm dealers (FFLs), and pursuant to DOJ DROS (“Dealer’s Record of Sale”)  
26 background checks. As stated, over the years, I had passed many other background checks, and  
27 Live Scan fingerprint-based checks in connection with professional licensing, none of which  
28

1 turned up the presence of any felony convictions, and in conjunction with the trial judge's  
2 statements at my sentencing in 1987, I had believed that the matter had been reduced to a  
3 misdemeanor and vacated at the time of discharge. At the time the DOJ agents came to my  
4 home, my wife showed the DOJ agents the Washington State court orders that vacated the felony  
5 conviction, and restored my gun rights. I was informed by the DOJ agents that they had sought  
6 approval from Deputy Attorney General Robert Wilson to return the firearms to me, but Mr.  
7 Wilson denied this request.

8 19. On September 24, 2018, Mr. Richards, spoke with Deputy Attorney General  
9 Wilson about this ongoing inability of DOJ to reconcile and correct its records with the (already-  
10 provided) records showing that the Washington State felony had been vacated and firearms  
11 rights had been restored. A true and correct copy of Mr. Richards's letter of December 4, 2018  
12 to Deputy Attorney General Wilson, confirming this conversation, is attached as **Linton Exhibit**  
13 **H.**

14 20. The DOJ did not respond to Mr. Richards's request to reverse their decision, or  
15 change their policy, and I have been forced to file this action to vindicate my rights.

16 21. I am therefore suffering and am continuing to suffer irreparable injury as a result  
17 of the Department's determination, through the policies issued and implemented by defendants,  
18 that prohibits me from owning or possessing firearms. I am being deprived of the ability to  
19 exercise a fundamental constitutional right to purchase/possess a firearm for lawful purposes,  
20 including for self-defense in the home. I desire to exercise, and would exercise these rights, but  
21 for the defendants' policies that prohibit me from doing so.

22 22. For these reasons, and as set forth in the motion, we respectfully request  
23 preliminary injunctive relief to prevent the State of California and defendants from continuing to  
24 deprive us of these important rights under the Constitution, and to prevent them from enforcing  
25 and continuing to enforce their policies as they pertain to the denial of rights based upon non-  
26 violent, out-of-state felony convictions that have been set aside and vacated in their respective  
27 states of origin.

28 I declare under penalty of perjury that the foregoing is true and correct.

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Dated: Dec 13, 2019

Chad Linton  
chad linton (Dec 13, 2019)

CHAD LINTON

**SEILER EPSTEIN LLP**  
Attorneys at Law

**LINTON EXHIBIT A**

STATE OF WASHINGTON )  
COUNTY OF ISLAND ) ss

FILED  
DEBRA VAN PELT  
ISLAND COUNTY CLERK  
2016 MAR 21 PM 3:34

I, Debra Van Pelt, Clerk of Island County and ex-officio clerk of the Superior Court, do hereby certify that this instrument consisting of 3 page(s), is a full, true and correct copy of the original now on file in my office; WITNESS my hand and official seal this 30<sup>th</sup> day of November, 2016.

DEBRA VAN PELT  
By:   
Deputy  
Coupeville, Washington

SUPERIOR COURT OF WASHINGTON  
ISLAND COUNTY

STATE OF WASHINGTON,  
Plaintiff,

vs.

CHAD JAY LINTON,  
  
Defendant.

No. 87-1-00064-9

Order on Motion Re: Vacating Record of  
Felony Conviction  
Granted (ORVCJG)

Clerk's Action Required, para. 3.6

I. Basis

This matter comes before the court on defendant's motion for order vacating record of felony conviction pursuant to RCW 9.94A.640. The court having heard argument of the parties and considered the case records and files, and the pleadings submitted on the matter.

II. Findings

- 2.1 Adequate notice was given to the appropriate parties and agencies.
- 2.2 On or about December 29, 1987, the defendant was convicted of the following offense(s):  
Cause No: 87-1-00064-9 Count: I Offense: Attempting to Elude Pursuing Police Vehicle in violation of RCW 46.61.024.
- 2.3 Defendant was discharged under RCW 9.94A.637 as having completed the requirement of his or her sentence for the offense listed in paragraph 2.2 (RCW 9.94A.640).
- 2.4 Defendant satisfied the following requirements of RCW 9.94A.640(2) or has met the equivalent of these requirements as they would be applied to a person convicted of a crime committed after July 1, 1984:

There are no criminal charges pending against the defendant in any court of this state or another state, or in any federal court (RCW 9.94A.640(2)(a)).

The offense for which the defendant was convicted is not one of the following offenses (RCW 9.94A.640(2)(b), (c), (g)):

A violent offense as defined in RCW 9.94A.030
A crime against persons as defined in RCW 43.43.830
A class C felony described in RCW 46.61.502(6) or 46.61.504(6)

- 2.5 The defendant has not been convicted of any new crime in this state, another state, or federal court since the date of discharge under RCW 9.94A.637 or expiration of probation, based upon the criminal history check of the following records (RCW 9.94A.640(2)(d)):
- Washington State Crime Information Center (WACIC), RCW 43.43.500 et seq;  
National Crime Information Center (NCIC), including the Interstate Identification Index (Triple I), 28 USC Section 534;  
Judicial Information System (JIS), including Defendant Case History (DCH) from the District and Municipal Court Information System (DISCIS), RCW 2.68 et seq. and JISCR; AND/OR  
Other: Washington State Patrol Washington Access To Criminal History (WATCH).
- 2.6 The offense for which the defendant was convicted was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and it has been at least five years since the date of discharge under RCW 9.94A.637 or expiration of probation (RCW 9.94A.640(2)(f)).

### III. Order

The court orders:

- 3.1 The motion for order vacating conviction records of the following offense is granted.

Cause No: 87-1-00064-9 Count: I Offense: Attempting to Elude Pursuing Police Vehicle in violation of RCW 46.61.024.

The court further orders that:

- 3.2 The defendant's guilty plea for the offense listed in paragraph 3.1 is withdrawn and a not guilty plea is entered.  
*And/Or*  
The guilty verdict for the offense listed in paragraph 3.1 is set aside.
- 3.3 The information or indictment for the offense listed in paragraph 3.2 is dismissed.
- 3.4 The defendant shall be released from all penalties and disabilities resulting from the offense listed in paragraph 3.1 and the conviction of that offense shall not be included in the defendant's criminal history for purposes of determining a sentence in any subsequent conviction. However, the conviction may be used in a later criminal prosecution.
- 3.5 For all purposes, including responding to questions on employment applications, the defendant may state that he or she has never been convicted of the offense listed in paragraph 3.1.

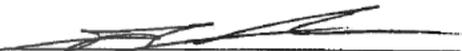
3.6 The clerk of the court shall immediately transmit a certified copy of this order to the Washington State Patrol and to the Island County Sheriff which agencies shall immediately update their records to reflect the vacation of the record of conviction of the offense(s) listed in paragraph 3.1. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation. The Washington State Patrol or local law enforcement agency may not disseminate or disclose a conviction that has been vacated under RCW 9.94A.640 to any person, except to other criminal justice enforcement agencies.

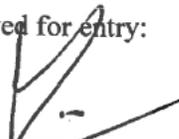
Dated: 3/21/2016

  
Judge/Print Name:  
Alan R Hancock

Presented by:

Approved for entry:

  
Brent Thompson, WSBA# 44778  
Attorney for Respondent

  
Michael Setstrom, WSBA# 46425  
Prosecuting Authority

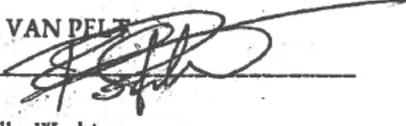
**LINTON EXHIBIT B**

STATE OF WASHINGTON )  
COUNTY OF ISLAND ) ss

FILED  
DEBRA VAN PELT  
ISLAND COUNTY CLERK

2016 APR 18 AM 11:47

I, Debra Van Pelt, Clerk of Island County and ex-officio clerk of the Superior Court, do hereby certify that this instrument consisting of 1 page(s), is a full, true and correct copy of the original now on file in my office. WITNESS my hand and official seal this ~~30th~~ day of November, 20 16.

DEBRA VAN PELT  
By:   
Deputy  
Coupeville, Washington

SUPERIOR COURT OF WASHINGTON  
ISLAND COUNTY

CHAD JAY LINTON,  
  
Petitioner,  
vs.  
STATE OF WASHINGTON,  
Respondent.

No. 16-2-00196-8

RCW 9.41.040(4) ORDER RESTORING  
RIGHT TO POSSESS FIREARMS

Clerk's Action Required

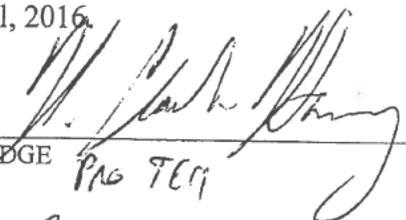
7  


THIS MATTER having come on for hearing before the above entitled court on a RCW 9.41.040(4) Petition for Order Restoring Right to Possess Firearms and the court having reviewed the Petition and having heard any objections thereto, and being otherwise fully advised:

THE COURT HEREBY FINDS on August 11, 1988 the Island County Superior Court discharged Petitioner and restored his civil rights lost as a result of Island County Superior Court Cause No. 87-1-00064-9; on March 21, 2016 the Island County Superior Court also vacated, set aside, dismissed, and released Petitioner from all penalties and disabilities resulting from Island County Superior Court Cause No. 87-1-00064-9; and the Petitioner is qualified, pursuant to RCW 9.41.040(4), to have the right to possess firearms fully restored; now therefore:

THE COURT HEREBY ORDERS that Petitioner Chad Linton's civil rights and right to possess firearms are FULLY RESTORED pursuant to RCW 9.41.040(4). The clerk of the court shall, forthwith, provide a certified copy of this Order to the Washington State Patrol-Identification Section. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation.

DONE IN OPEN COURT this 18<sup>th</sup> day of April, 2016.

  
JUDGE  
PAG TER

Presented by:

  
Brent Thompson, WSBA #44778  
Attorney for Petitioner

Approved for entry:

  
Michael Salstrom, WSBA #46225  
Attorney for State of Washington

**LINTON EXHIBIT C**



State of California  
Department of Justice  
Bureau of Firearms



P.O. Box 820200, Sacramento, CA 94203-0200

**PERSONAL FIREARMS ELIGIBILITY CHECK (PFEC) NOTIFICATION**

October 25, 2016

(date check was completed)

CHAD JAY LINTON

[REDACTED]  
[REDACTED]

**THIS NOTICE IS FOR INFORMATION PURPOSES ONLY  
IT DOES NOT AUTHORIZE THE SALE OR TRANSFER OF ANY FIREARM**

- You are eligible to both possess and purchase firearms as of the date the check was completed. This determination is based on a check of California records.
- You are ineligible to either possess or purchase firearms as of the date the check was completed.
- You are eligible to possess firearms as of the date the check was completed, but ineligible to purchase firearms as of the date the check was completed.
- A firearms eligibility determination could not be confirmed as of the date the check was completed. Please contact (916) 227-7527 for more information.

*No person or agency may require or request another person to obtain a firearms eligibility check or notification of firearms eligibility pursuant to section 30105 of the Penal Code. A violation of these provisions is a misdemeanor.*

*If the applicant for a firearms eligibility check purchases, transfers, or receives a firearm through a licensed dealer as required by law, a waiting period and background check are both required.*

**PLEASE BE AWARE OF THE FOLLOWING**

**If you are ELIGIBLE to purchase:**

*Federal law does not authorize a check of the National Instant Criminal History Background Check System (NICS) as part of a Personal Firearms Eligibility Check (PFEC). Therefore, although the results of the PFEC indicate you are eligible to possess and purchase firearms, you could still be prohibited based on information in a federal database that the California Department of Justice was not authorized to check.*

*Upon application to purchase a firearm another background check will be conducted and the waiting period will apply.*

*A valid California Driver License or Identification Card is required at the time of purchase of any firearm.*

*A valid Alien Registration Card or I-94 is required at the time of purchase of any firearm if applicant is a non-U.S. citizen. The non-U.S. citizen applicant must also meet certain federal requirements to purchase a firearm, unrelated to the firearms eligibility background check.*

**If you are INELIGIBLE to purchase:**

*And if you are also ineligible to possess, you must relinquish any firearms in your possession to your local law enforcement agency or complete and follow the directions stated on the enclosed 'General Notice of Firearm Prohibition and Power of Attorney for Firearms Relinquishment, Sale or Transfer for Storage.'*

*If you have questions regarding this notification, please contact DOJ at (916) 227-7527.*

**LINTON EXHIBIT D**

**KAMALA D. HARRIS**  
**Attorney General**

*State of California*  
**DEPARTMENT OF JUSTICE**



**BUREAU OF FIREARMS**  
**P.O. BOX 820200**  
**SACRAMENTO, CA 94203-0200**  
**Telephone: (916) 227-7527**  
**Fax: (916) 227-3744**

November 07, 2016

**CHAD JAY LINTON**  
[REDACTED]

**RE: Firearm Denial**

**Dear CHAD JAY LINTON:**

You recently applied to purchase a firearm. When a person applies to purchase a firearm in California, the California Department of Justice (the Department) is required by state and federal laws to examine its records to determine whether the purchaser is eligible under state and federal law to purchase and possess firearms. Your recent firearm purchase application is being denied because the Department's review of state and/or federal records matching your identifying information revealed the following information:

**Felon:** Any person who has been convicted of a felony under the laws of the United States, of the State of California, or of any other state, government, or country.

This determination was based upon information you provided in your application to purchase a firearm, such as your name, date of birth, driver's license number and physical description, but has not been confirmed with fingerprint comparison. It is possible that the criminal record may not be yours and may belong to another individual whose name and identifying information is similar to yours.

If you wish to challenge the accuracy of the Department's determination or the completeness of your criminal history record, please complete a request for Live Scan Service form (BCIA/BOF8016) located on the Bureau of Firearms web page at <http://oag.ca.gov/firearms>.

**FIREARMS CLEARANCE SECTION**  
**Bureau of Firearms**

For **KAMALA D. HARRIS**  
**Attorney General**

**LINTON EXHIBIT E**

LAW OFFICES OF

ROTHSCHILD WISHEK & SANDS LLP

765 UNIVERSITY AVENUE  
SACRAMENTO, CALIFORNIA 95825

TELEPHONE (916) 444-9845  
FACSIMILE (916) 640-0027

M. BRADLEY WISHEK  
SHANNON V. BAKER  
CLYDE M. BLACKMON  
ADAM J. RICHARDS  
ERIN L. BRENNAN  
AMIT SINGH

*Of Counsel*  
MICHAEL ROTHSCHILD  
QUIN DENVIR (1940-2016)  
KENDALL DAWSON WASLEY

*Retired*  
MICHAEL S. SANDS

February 2, 2017

**VIA U.S. MAIL**

State of California Department of Justice  
Bureau of Criminal Information and Analysis  
Record Review Unit  
P.O. Box 903417  
Sacramento, CA 94203-4170

Re: Chad Linton  
Claim of Alleged Inaccuracy or Incompleteness



To Whom It May Concern:

This office represents Chad Linton. We are in receipt of the letter from your office to Mr. Linton dated November 10, 2016. We are also in receipt of a letter from the Firearms Clearance Section dated November 7, 2016 informing Mr. Linton that his application to purchase a firearm has been denied due to a felony conviction. Please consider this letter as a claim of inaccuracy or incompleteness. The basis for this claim is that the DOJ appears to attribute a felony offense to Mr. Linton from the State of Washington. This offense was vacated by the Superior Court of Washington, County of Island and his right to own firearms was expressly restored by the court. I have enclosed two documents for the Department's review, both of which are stamped, certified copies of the relevant court record. The documents provide the following:

1. Document 1: Order on Motion Re: Vacating Record of Felony Conviction Granted.
  - a. This document provides, among other things, the following:
    - i. The defendant's guilty plea for the offense listed in paragraph 3.1 is withdrawn and a not guilty plea is entered.
    - ii. The guilty verdict for the offense listed in paragraph 3.1 is set aside.
    - iii. The defendant shall be released from all penalties and disabilities resulting from the offense listed in paragraph 3.1 and the conviction of that offense shall not be included in the defendant's criminal history for the purposes of determining a sentence in any subsequent conviction. However, the conviction may be used in a later criminal prosecution.
    - iv. For all purposes, including responding to questions on employment applications, the defendant may state that he or she has never been convicted of the offense listed in paragraph 3.1.
2. Document 2: Order Restoring Right to Possess Firearms.
  - a. This document provides, in summary, that the rights lost by defendant in the case number at issue are thereby restored and defendant is qualified, pursuant to

Record Review Unit  
Re: Claim of Alleged Inaccuracy or Incompleteness  
February 2, 2017  
Page 2

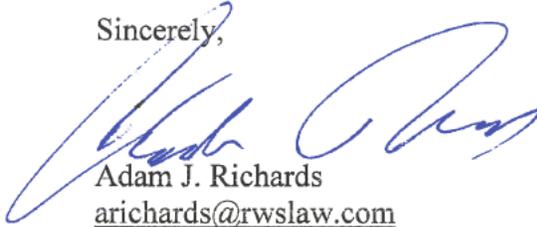
Washington law, to have the right to possess firearms fully restored. The court then orders that his rights are restored.

The enclosed court records unequivocally demonstrate that Mr. Linton's right to own and possess firearms was fully restored and that the offense which originally caused him to lose his rights, was fully vacated.

Based on the foregoing, please correct your record concerning Mr. Linton such that it reflects that he has not been convicted of a felony and that he is able to own and possess firearms.

Please contact me or Mr. Linton should you have any questions or concerns or should you disagree with this request and the information contained herein.

Sincerely,



Adam J. Richards  
[arichards@rwslaw.com](mailto:arichards@rwslaw.com)

AJR/clu

Enclosure: Claim of Alleged Inaccuracy or Incompleteness

cc: Chad Linton

**LINTON EXHIBIT F**

XAVIER BECERRA  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



Bureau of Criminal Information and Analysis  
Record Review Section  
P. O. Box 903417  
Sacramento, CA 94203-4170

January 30, 2018

Chad Jay Linton  
[REDACTED]

RE: Criminal History Record  
[REDACTED]

Dear Mr. Linton:

This correspondence is in response to your claim of alleged inaccuracy or incompleteness in your California state summary criminal history record as maintained by the California Department of Justice (DOJ), received on May 24, 2017 and November 28, 2017.

The DOJ is required to record arrest and disposition information that is received from a law enforcement agency or court of this state. The entry in question cannot be found on your California criminal history record, therefore, no further investigation is required.

The event dated November 1, 2001 is not an arrest entry but was generated by California Alcohol Beverage Control when they conducted a fingerprint-based background check on you regarding your License Certification or Permit submission. This entry can only be deleted at the direction of the submitting agency. You must contact Alcohol Beverage Control and ask that they submit a request to the DOJ to remove the applicant entry.

If you have questions concerning firearms eligibility, etc., please contact the California Department of Justice, Bureau of Firearms, at (916) 227-1375.

If you have any further questions concerning this matter, please direct your correspondence to the Record Review Section at the address provided above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Annette AH PO".

ANNETTE AH PO, DOJ Administrator  
Record Review and Challenge Program  
Bureau of Criminal Information and Analysis

For XAVIER BECERRA  
Attorney General

**LINTON EXHIBIT G**



XAVIER BECERRA  
Attorney General

State of California  
DEPARTMENT OF JUSTICE

BUREAU OF CRIMINAL INFORMATION AND ANALYSIS

P.O. Box 903417  
SACRAMENTO, CA 94203-4170

March 06, 2018

CHAD JAY LINTON

[REDACTED]  
[REDACTED]

RE: California Criminal History Information

Dear Applicant:

This is in response to your record review request initiated due to either a notification regarding a delay in your firearms eligibility check or a notification that your firearms eligibility check was denied. As of the date of this letter, your fingerprints did not identify any criminal history record maintained by the Bureau of Criminal Information and Analysis. As requested, a copy of this record review has been sent to your designee.

This response does not constitute a complete firearms eligibility clearance. If you have any questions regarding your firearms clearance, please contact the Firearms Bureau directly at (916) 227-7527.

Record Review and Challenge Program  
Applicant Record and Certification Branch  
Bureau of Criminal Information and Analysis

For XAVIER BECERRA  
Attorney General

**LINTON EXHIBIT H**

LAW OFFICE OF  
**ADAM J. RICHARDS**

2530 J Street, Ste. 320  
Sacramento, California 95816

TELEPHONE (916) 399-3486

FACSIMILE (916) 823-3307

December 4, 2018

**SENT BY U.S. MAIL AND EMAIL TO Robert.Wilson@doj.ca.gov**

Deputy Attorney General Robert D. Wilson  
Office of the Attorney General  
California Bureau of Firearms  
1300 I St, Ste 125  
Sacramento, CA 95814

Re: DEPARTMENT DENIAL OF RIGHT TO PURCHASE A FIREARM --  
CHAD LINTON

Dear Mr. Wilson:

Thank you for speaking with me on Tuesday, September 24, 2018 about my client, Chad Linton. Based on our conversation, it is my understanding that the Department's position is that Mr. Linton is prohibited from owning or possessing firearms in the State of California pursuant to Penal Code section 29800 as a result of his vacated and dismissed 1988 felony conviction in the State of Washington. During our call, you stated that the only measure that would restore his rights, according to your Department, is a presidential pardon. As I informed you during our conversation, I strongly disagree with the Department's position as I believe it to be arbitrary and capricious for several reasons. As evidenced by the Washington State court records, certified copies of which were provided to your department, Mr. Linton's conviction was vacated and dismissed. The unequivocal language in the Washington State Superior Court order states, among other things, that 1) the information/indictment against him was dismissed, 2) that he shall be released from all penalties and disabilities resulting from the offense, 3) that the conviction was vacated, and 4) that for all purposes, defendant may state that he was never convicted of the offense. While this order in and of itself restores his right to own and possess firearms in all jurisdictions, including federally pursuant to 18 USC 921(a)(20)(B), Mr. Linton also received an express order from the Washington Superior Court restoring his right to own and possess firearms, a certified copy of which was also provided to your office. Your position that Washington orders have no authority over California is irrelevant and misses the crux of the issue; Washington courts are not seeking to modify a California order or case. Instead, the question of whether Mr. Linton was convicted of a felony resides with the jurisdiction in which the conviction allegedly occurred. Mr. Linton has no record in the State of California and now, effectively, has no record in the State of Washington.

Deputy Attorney General Robert Wilson  
Re: Linton, Chad  
12/4/2018  
Page 2

The Department's position that Mr. Linton is still prohibited is spurious and deprives him of the free exercise of a fundamental right and equal protection under the law. The Department's current position is especially troubling given that the Department informed Mr. Linton in response to his Personal Firearms Eligibility Check (hereafter, "PFEC") that he was eligible to own and possess firearms in August of this year, 2018. Yet, he was denied the ability to purchase a firearm shortly thereafter. While, you made clear during our call that the PFEC only checks California law and records, Mr. Linton has no California record and he is not federally prohibited or prohibited in the state of Washington. Yet, California still maintains that he is prohibited as a result of his 1988 conviction for attempting to elude a pursuing police vehicle which has since been vacated and dismissed; His rights, including with respect to firearms were fully restored.

It seems that Mr. Linton has exhausted his remedies with the Department and, as you informed me during our call, the Department will not change its position with regard to its view of Mr. Linton's record and that he is currently prohibited from owning or possessing a firearm. Please confirm in writing within ten (10) days of this letter the Department's position that it will not change their policy as it pertains to the facts of this case nor issue to Mr. Linton written clearance to purchase a firearm.

Thank you for your attention to this matter.

Sincerely,



Adam J. Richards

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**DECLARATION OF PLAINTIFF PAUL  
MCKINLEY STEWART IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY  
INJUNCTION**

20  
21 DECLARATION OF PAUL MCKINLEY STEWART

22 I, Paul McKinley Stewart, declare as follows:

23 1. I am an adult resident of the County of San Bernardino, California, where I have  
24 lived for over 30 years. I am a named plaintiff in this matter and if called as a witness, I could  
25 competently testify to these facts.

26 2. This declaration is made in support of plaintiffs' motion for issuance of a  
27 preliminary injunction.

28 //

1           3.       On or about June 6, 1976, when I was 18 years old and living in Yuma, Arizona, I  
2 saw an unlocked telephone company truck in a commercial yard. I hopped the fence, reached  
3 into the truck, and took some lineman’s tools back to my trailer. When the police came to my  
4 trailer to investigate the matter, I gave up the tools and offered no resistance to my arrest.

5           4.       On or about August 3, 1976, I was found guilty of a first degree burglary, a  
6 felony, in the County of Yuma, Arizona. I was sentenced to three years of probation, and the  
7 Court imposed a suspended sentence during the probation period. That court’s sentencing order  
8 specifically stated: “If in all respects you obey this order at the end of three years, or sooner upon  
9 the recommendation of your probation officer the judgment of guilty as well as this order may be  
10 vacated ant the case dismissed. This action will restore to you all rights lost by this conviction  
11 except that notwithstanding such dismissal the conviction may be considered if you are again  
12 convicted of another offense.”

13           5.       On or about October 5, 1978, I successfully completed my probation and thus  
14 believed the matter was dismissed. My belief was reinforced by a statement made by my  
15 probation officer, who had also told me that the felony conviction had been dismissed due to my  
16 successful completion of probation.

17           6.       Since moving to San Bernardino County, California, in or around 1988, I have  
18 married, raised a family, and am a father to two grown and successful children. I have remained  
19 steadily and gainfully employed.

20           7.       On or about December 28, 2015, I went to a local gun dealer and attempted to  
21 purchase a pistol for self-defense in the home. Based upon the court’s statements, and those of  
22 my probation officer, I did not believe I was prohibited from doing so. While I was waiting for  
23 clearance on the background check, I also attempted to purchase additional firearms.

24           8.       On or about January 1, 2014, the DOJ sent me a letter regarding the attempted  
25 firearm purchase, informing me that my status was still “undetermined” and that the firearm  
26 purchase would be delayed. Eventually, I was told I was disqualified from purchasing or  
27 possessing any firearms due to the presence of a prior felony conviction.  
28

1           9.       I then requested a Live Scan fingerprint-based background check for a copy of my  
2 criminal records. On or about March 28, 2016, I received the results of the FBI criminal records  
3 check, which indicated a conviction in Arizona, but did not indicate whether it was classified as a  
4 felony or not. The FBI letter said that the matter was “undetermined” as to whether I was  
5 eligible to purchase or possess firearms.

6           10.       On or about March 29, 2016, I filed with the Superior Court of Yuma County,  
7 Arizona, an application to restore my civil rights, including my firearm rights, and to set aside  
8 the judgment of guilt. On or about August 11, 2016, that Court issued an order restoring my  
9 firearm rights, and specifically set aside the judgment of guilt. A true and correct certified copy  
10 of the Court’s order of August 11, 2016, is attached as **Stewart Exhibit A**.

11           11.       On or about February 2, 2018, the Arizona Department of Public Safety further  
12 sent me additional documentation showing that the felony conviction had been set aside and that  
13 my records had been so corrected.

14           12.       On or about February 10, 2018, I attempted to purchase a firearm from a local  
15 firearms store in Redlands, California, believing that the Arizona Court order would  
16 automatically be updated in any background search. However, the DOJ denied this firearm  
17 purchase as well.

18           13.       On or about February 27, 2018, the DOJ sent me a letter indicating that my  
19 attempt to purchase a firearm had again been denied on the basis of a prior felony conviction. A  
20 true and correct copy of the DOJ’s letter dated February 27, 2018, is attached as **Stewart Exhibit**  
21 **B**.

22           14.       Subsequently, I had several telephone conversations with DOJ representatives  
23 regarding the firearms denial. They informed me that the Arizona felony conviction was  
24 disqualifying me from owning or possessing firearms, notwithstanding the Arizona Court’s  
25 order.

26           15.       I am suffering and am continuing to suffer irreparable injury as a result of the  
27 Department’s determination, through the policies issued and implemented by defendants, that  
28

1 prohibits me from owning or possessing firearms. I am being deprived of the ability to exercise  
2 a fundamental constitutional right to purchase/possess a firearm for lawful purposes, including  
3 for self-defense in the home. I desire to exercise, and would exercise these rights, but for the  
4 defendants' policies that prohibit me from doing so.

5 16. For these reasons, and as set forth in the motion, we respectfully request  
6 preliminary injunctive relief to prevent the State of California and defendants from continuing to  
7 deprive us of these important rights under the Constitution, and to prevent them from enforcing  
8 and continuing to enforce their policies as they pertain to the denial of rights based upon non-  
9 violent, out-of-state felony convictions that have been set aside and vacated in their respective  
10 states of origin.

11 I declare under penalty of perjury that the foregoing is true and correct.

12  
13 Dated: Dec 13, 2019

Paul McKinley Stewart  
Paul McKinley Stewart (Dec 13, 2019)

14 PAUL MCKINLEY STEWART

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SEILER EPSTEIN LLP  
Attorneys at Law

**STEWART EXHIBIT A**



S1400CR7608338

FILED

2016 AUG 11 PM 12:24

LYNN TAZZ  
CLERK OF SUPERIOR COURT  
YUMA ARIZONA 85364

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,

Plaintiff,

vs.

PAUL MCKINLEY STEWART,

Defendant.

Case No. S1400CR7608338

ORDER

HONORABLE STEPHEN J. ROUFF  
COMMISSIONER TWO

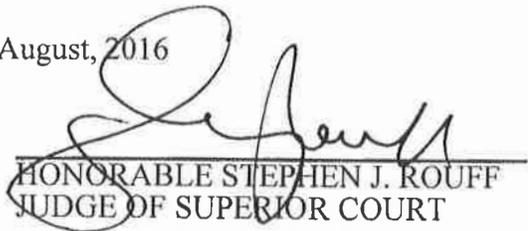
PAUL MCKINLEY STEWART, defendant above named, was adjudged guilty on August 12, 1976, to-wit: Count One, First Degree Burglary and Count Two, Theft.

On May 13, 2016, the defendant, submitted an Application to Restore Civil Rights, Restore Gun Rights, and Set Aside Judgment of Guilt.

The Court having determined the defendant successfully completed the sentence imposed herein,

**IT IS HEREBY ORDERED** that the civil rights lost at the time of sentencing are now restored and setting aside judgment of guilt and dismissal of the Information/Indictment, and those rights shall include the right to possess weapons as defined in A.R.S. §§13-604 and 13-3101.

DATED this 11<sup>th</sup> day of August, 2016

  
HONORABLE STEPHEN J. ROUFF  
JUDGE OF SUPERIOR COURT

1 Copy of the foregoing placed this  
2 day of August, 2016, in the  
boxes of:

3 Yuma County Attorney's Office  
4 and mailed to:

5 Office of the Attorney General  
6 Attn: Criminal History Unit  
7 1275 W. Washington Street  
Phoenix, AZ 85007-2926

8 Paul McKinley Stewart  
9 56050 Taos Trail  
Yucca Valley, California 92284

10  
11 LYNN FAZZ, Clerk of the Superior Court

12 By   
13 Deputy Clerk TAMMY SHERMAN  
14

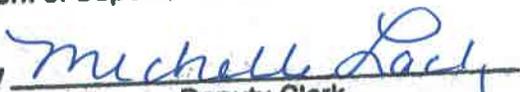
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I certify this to be a true copy of  
the original on file in my office.

Case No. 51400CR7608338

Attested to this 26 day of August, 2019

Lynn Fazz  
Clerk of Superior Court

By   
Deputy Clerk

**STEWART EXHIBIT B**



BUREAU OF FIREARMS  
P.O. BOX 820200  
SACRAMENTO, CA 94203-0200  
Telephone: (916) 227-7527  
Fax: (916) 227-3744

February 27, 2018

PAUL MCKINLEY STEWART



RE: Firearm Denial

Dear PAUL MCKINLEY STEWART:

You recently applied to purchase a firearm. When a person applies to purchase a firearm in California, the California Department of Justice (the Department) is required by state and federal laws to examine its records to determine whether the purchaser is eligible under state and federal law to purchase and possess firearms. Your recent firearm purchase application is being denied because the Department's review of state and/or federal records matching your identifying information revealed the following information:

Felon: Any person who has been convicted of a felony under the laws of the United States, of the State of California, or of any other state, government, or country.

This determination was based upon information you provided in your application to purchase a firearm, such as your name, date of birth, driver's license number and physical description, but has not been confirmed with fingerprint comparison. It is possible that the criminal record may not be yours and may belong to another individual whose name and identifying information is similar to yours.

If you wish to challenge the accuracy of the Department's determination or the completeness of your criminal history record, please complete a request for Live Scan Service form (BCIA/BOF8016RR) located on the Bureau of Firearms web page at <http://oag.ca.gov/firearms>.

FIREARMS CLEARANCE SECTION  
Bureau of Firearms

For XAVIER BECERRA  
Attorney General

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**DECLARATION OF GEORGE M. LEE IN  
SUPPORT OF PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION AND REQUEST  
FOR JUDICIAL NOTICE**

20  
21 DECLARATION OF GEORGE M. LEE AND REQ. FOR JUDICIAL NOTICE

22 I, George M. Lee, declare as follows:

23 1. I am an attorney at law, in good standing, duly licensed to practice law in this  
24 State and appear before its courts. I am admitted to practice in the Northern District of  
25 California. I am attorney of record for plaintiffs Chad Linton, et al. in the above-captioned  
26 matter. I have personal knowledge of the facts stated herein, and if called as a witness, I could  
27 competently testify to these facts.

28 //

1           2.       This declaration is made in support of plaintiffs’ motion for issuance of a  
2 preliminary injunction. In this regard, this declaration authenticates the exhibit attached hereto  
3 and constitutes a request for judicial notice of the matters set forth herein, pursuant to Fed. Rule  
4 of Evidence 201.

5           3.       As set forth in his declaration, plaintiff Kendall Jones reasonably fears  
6 enforcement by the California Department of Justice (“DOJ”) in this matter. This fear is neither  
7 unreasonable nor unfounded. As set forth in the supporting declaration of Chad Linton in  
8 support of plaintiffs’ motion, and the FAC, on or about April 3, 2018, DOJ agents came to Mr.  
9 Linton’s home, and seized several firearms that he had acquired and owned throughout the years,  
10 including an antique, family-heirloom shotgun that was once owned by his grandfather. (Linton  
11 Decl., ¶ 18; FAC ¶ 33). It is undisputed that this raid on Mr. Linton’s home occurred after Mr.  
12 Linton’s counsel, Adam Richards, Esq., had written a letter to defendant Deputy Attorney  
13 General Wilson requesting correction of Mr. Linton’s records to reflect that his out-of-state  
14 felony conviction had been set aside, or vacated, and his firearm rights restored to him. (Linton  
15 Decl., Ex. E).

16           4.       This Court is requested to take judicial notice of the civil rights complaint filed by  
17 Scott James in the matter entitled *James v. Granger, et al.*, filed in the Eastern District of  
18 California, Case No. 1:13-cv-00983-AWI-SKO, a true and correct copy of which is attached  
19 hereto as **Lee Exhibit A**. That federal case arose from an underlying state court writ petition  
20 proceeding that Mr. James had filed in Tulare County Superior Court, Case No. VCU241117, to  
21 challenge the DOJ’s status of him as a “prohibited person.” The issue in the underlying state  
22 court proceeding was whether Mr. James’s misdemeanor conviction for battery under Pen. Code  
23 § 242 qualified as a misdemeanor crime of domestic violence, thereby disqualifying him from  
24 owning or possessing firearms. See *James v. State of California*, 229 Cal.App.4th 130 (2014).  
25 Incidentally, the trial court had agreed with Mr. James, and concluded that he was not  
26 disqualified. 229 Cal.App.4th at 135.

27           5.       Based upon my review of the pleadings and discovery that was submitted in the  
28 *James v. Granger* (federal) matter, it was undisputed that after Mr. James had filed his state court

1 writ petition to challenge his status as a prohibited person, and after the defense had initiated  
2 some discovery, DOJ agents raided Mr. James’s house, arrested him, and seized firearms from  
3 his home. Although it was disputed that the Deputy Attorney General who was defending the  
4 state court writ petition, Kimberly J. Granger, had personally directed the raid on Mr. James’s  
5 home, it was undisputed that Ms. Granger was present at the scene of the execution of the search  
6 warrant “as an observer.”

7 6. Accordingly, it is not unheard of for Department of Justice to use its Armed  
8 Prohibited Persons (APPS) enforcement program as to contestants and litigants who petition the  
9 Department to contest their status regarding their firearm rights.

10 7. Accordingly, preliminary injunctive relief is further requested to prevent the  
11 Department’s enforcement of Pen. Code §§ 29800 and 30305, by and through its APPS program  
12 pending the outcome/disposition of this lawsuit.

13 I declare under penalty of perjury that the foregoing is true and correct.

14  
15 Dated: December 19, 2019



16 \_\_\_\_\_  
17 GEORGE M. LEE

SEILER EPSTEIN LLP  
Attorneys at Law

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**LEE EXHIBIT A**

1 Leonard C. Herr, #081896  
2 Ron Statler, #234177  
3 DOOLEY, HERR, PEDERSEN & BERGLUND BAILEY  
4 Attorneys at Law, LLP  
5 100 Willow Plaza, Suite 300  
6 Visalia, California 93291  
7 Telephone: (559) 636-0200  
8 Email: lherr@dhlaw.net

9 Attorneys for Plaintiff: SCOTT R. JAMES

10  
11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**

13 SCOTT R. JAMES,

14 Plaintiff,  
15 v.

16 KIMBERLY GRANGER, an  
17 individual,

18 Defendant.

CASE NO.:

**COMPLAINT FOR VIOLATION OF CIVIL  
RIGHTS [42 U.S.C. §1983]**

**DEMAND FOR JURY TRIAL**

19 Plaintiff Scott R. James' civil rights under Article I, sections 9 & 10 of the  
20 United States Constitution and the First, Third, Fourth, Fifth, and Sixth  
21 Amendments to it, were violated by Defendant Kimberly Granger when she  
22 directed agents and, by withholding information from those agents, caused them  
23 to deny him counsel during an in-custody interrogation, to withhold information  
24 from the Court in procuring a search warrant, to threaten to destroy his real and  
25 personal property if he did not answer questions during an in-custody  
26 interrogation after having been denied the benefit of counsel, and causing criminal  
27 charges no reasonable state attorney would have believed to be sustainable to be  
28 filed against him in retaliation for having brought suit in mandamus against the  
Attorney General of the State of California to secure his rights, and denied him his

1 rights of equal protection before the law.

2 While divided into sections and subsections, this Complaint is to be read as  
3 a whole. Each part incorporates each other part unless otherwise noted.

4 **I.**

5 **THE PARTIES**

6 Plaintiff Scott R. James is and at all times relevant to this complaint was a  
7 U.S. Citizen domiciled in County of Tulare, State of California.

8 Defendant Kimberly Granger is and at all times relevant to this complaint  
9 was an attorney employed by the Attorney General of the State of California.

10 It is unknown at this time if others undertook actions under color of state  
11 law to violate Mr. James' civil rights or were duped by Ms. Granger's actions.  
12 Should other defendants come to light, Mr. James will seek leave of Court to add  
13 that person or those persons as defendants.

14 **II.**

15 **JURISDICTION AND VENUE**

16 The action arises under 42 U.S.C. section 1983.

17 Venue is proper in this District because a substantial part of the events or  
18 omissions giving rise to the claim occurred in Tulare County, which is in this  
19 District.

20 **III.**

21 **FACTS OF THE CASE**

22 Scott James brought suit against the State of California in *mandamus*  
23 regarding his right to own/purchase/possess firearms in February 2011. The  
24 case arose because Mr. James pleaded no contest in 1996 to a misdemeanor  
25 violation of California Penal Code section 242. No copy of the complaint against  
26 him, his answer, or a record of factual findings made by the Court appear in the  
27 Court's records. His conviction was expunged under California Penal Code §  
28 1203.4 in 2008.

1 After ten years passed from his conviction by plea of no contest, Mr. James  
2 sought to purchase a firearm. He passed his background check and bought it.  
3 He was eventually issued a concealed carry permit, again passing his background  
4 check.

5 In 2008, he was denied the purchase of a firearm and was informed, for the  
6 first time, that the State believed him to have been convicted of a misdemeanor  
7 crime of domestic violence. Mr. James could not understand why his status had  
8 changed. Mr. James engaged in written informal appeals through counsel with  
9 the federal and state governments hoping to clear up the misunderstanding  
10 regarding his prior conviction and, at one point, believed the matter must have  
11 been cleared and tried to purchase a gun again but was again denied. The  
12 governmental agencies would not budge, and Mr. James filed the *mandamus*  
13 action.

14 Ms. Granger represented the State in that action. This complaint is not  
15 based on any actions Ms. Granger undertook in her defense of the State in that  
16 action; rather it is based on actions she undertook outside of that defense to gain  
17 unlawful and unconstitutional advantage in the *mandamus* action, and for other  
18 unknown reasons of personal *animus*, by misuse of her state authority by causing  
19 another action to be brought against and maintained against Mr. James.

20 As part of the *mandamus* action, Mr. James was deposed by Ms. Granger  
21 on July 25, 2011. During questioning, Mr. James was asked if he possessed any  
22 firearms at his home. He responded yes. The legality of his doing so was the very  
23 question to be answered by the action brought in *mandamus*.

24 Over the next couple of days, Granger contacted agents for the State  
25 Bureau of Firearms and informed them that Mr. James was in possession of  
26 firearms despite having been convicted of a misdemeanor crime of domestic  
27 violence. Granger did not inform the agents that he had brought a petition in  
28 *mandamus* for a determination of whether his possession of those firearms was

1 lawful. The agents, in turn, did not inform the Court of that fact. The search  
2 warrant was issued.

3 Scott R. James had filed a motion for summary judgment in the *mandamus*  
4 action. The search was done a week before the State's opposition to Mr. James'  
5 summary judgment was due to be filed in October 2011 – about two months had  
6 passed since the search warrant had been signed by the Court. Ms. Granger was  
7 on scene to supervise the search.

8 State Agents, acting on the advice of Ms. Granger, did the search of Mr.  
9 James' home. Mr. Granger was present for the entire search. During this time,  
10 Ms. Granger directed agents where to search and when. In Ms. Granger's  
11 presence, agents arrested Mr. James and questioned him after having refused to  
12 allow Mr. James' lawyer to escort him inside the home so Mr. James could be  
13 represented by counsel during that questioning. After denying Mr. James legal  
14 representation by an attorney of his choice, Agents, acting on the advice of Ms.  
15 Granger, threatened to use explosives on a safe in the middle of his home if he did  
16 not answer questions. Mr. James, frightened, tearful, and denied counsel, gave  
17 the agents, within Ms. Granger's earshot and at her direction, the combination to  
18 the safe. Firearms were located in the safe and confiscated. Mr. James was  
19 charged with violation of California Penal Code section 12280(b) in Tulare County  
20 Superior Court, Case no. VCF260879. Ms. Granger was not the prosecutor of that  
21 action.

22 On or about February 3, 2012, the Tulare County Superior Court issued an  
23 order in the *mandamus* case declaring that Ms. Granger's contention that Mr.  
24 James had been convicted of a misdemeanor crime of domestic violence was based  
25 on an argument of law so outside the realm of reasonableness and logic that, were  
26 the Court to agree, it would violate its oath of office. This argument by Ms.  
27 Granger was offered as though it was the current state of the law rather than a  
28 novel interpretation of it. The State of California appealed that decision; the case

1 has been briefed but that appeal is still pending before the Fifth District Court of  
2 Appeals for the State of California, case no. F065003 [argument not yet  
3 scheduled].

4 A hearing on a motion to suppress evidence in the criminal case was held  
5 before the Hon. Joseph Kalashian on February 8, 2013, after which the charges  
6 were dropped and the case dismissed. During questioning, it was revealed that if  
7 the State of California comes to learn that a person not currently under  
8 investigation for some other crime or otherwise dangerous may own or possess  
9 guns in violation of federal law prohibiting them because of a potential prior  
10 conviction of a misdemeanor crime of domestic violence, the State notifies them by  
11 letter and asks to have the weapons stored by a licensed third party or the police  
12 pending a determination of the person's status. No letter was delivered to Mr.  
13 James, and no oral request was made to him or to his counsel, despite his  
14 cooperative admission of gun possession in a lawsuit in which he sought to  
15 address the question.

16 **IV.**

17 **CAUSE OF ACTION**

18 **DEPRIVATION OF CIVIL RIGHTS – 42 U.S.C. § 1983**

19 Kimberly Granger acted under color of state law by using her office to  
20 advise state agents that Scott R. James had been convicted of a misdemeanor  
21 crime of domestic violence, legal advice no reasonable officer of the Court could  
22 have believed as such an interpretation of the law would require such officers to  
23 violate their oaths of office.

24 Ms. Granger also knew that her interpretation of the law could not  
25 withstand rational consideration and therefore withheld information she knew a  
26 reasonable agent would include in a petition or otherwise consider important in  
27 his or her own evaluation of whether to request a search warrant in order to  
28 ensure the warrant would be requested and issued and Mr. James arrested. Ms.

1 Granger knew Scott R. James would be arrested because he had already testified  
2 that he had guns – and had already purchased at least one gun with the State’s  
3 full knowledge. Ms. Granger advised officers to arrest and question him after  
4 having refused to allow Mr. James to be accompanied by his attorney.

5 Ms. Granger further acted under color of state law by advising agents  
6 during the search of Mr. James’ home. During the search, her demeanor became  
7 increasingly agitated as Agents found nothing except the very firearms about  
8 which Mr. James had filed a civil suit.

9 Ms. Granger’s was able to undertake this misuse of power because she was  
10 clothed with the authority of state law; so clothed because of her employment as  
11 an attorney with the state Attorney General’s office.

12 Ms. Granger undertook these actions under color of state law in order to  
13 intimidate and publicly vilify Mr. James in retaliation for having done no more  
14 than seek redress in the Courts for a declaration of his rights. State practice in  
15 such circumstances involved a letter asking for cooperative relinquishment of  
16 firearms pending the determination. Mr. James’ willingness to be cooperative was  
17 patent: he had brought suit in which his purchase of a firearm was alleged in the  
18 petition; he had testified under oath he had guns. Instead, Ms. Granger withheld  
19 information from state agents and gave legal advice to them that Mr. James had  
20 been convicted of a misdemeanor crime of domestic violence, advice no reasonable  
21 attorney for the state Attorney General could believe was true or, in the  
22 alternative, was deliberately indifferent to the constitutional violation that  
23 occurred.

24 Ms. Granger violated Mr. James rights to redress, counsel, and to be free of  
25 unreasonable search and seizure and *ex post facto* laws guaranteed by the United  
26 States Constitution.

27 Mr. James has suffered general and special damages including but not  
28 limited to costs and fees for defense of the criminal matter, lost wages/profits,

1 constitutional deprivations, interference with business relations, sleepless nights,  
2 ignominy, and humiliation, all in an amount to be proven and found at trial.

3 **PRAYER**

4 WHEREFORE, Scott James prays for judgment against the Defendant and  
5 an award:

- 6 1. For general and special damages;
- 7 2. For actual and consequential damages;
- 8 3. For compensatory damages;
- 9 4. For attorney fees [under the Civil Rights Act];
- 10 5. For costs of suit;
- 11 6. For whatever other relief the Court deems proper.

12 Dated: June 26, 2013

DOOLEY, HERR, PEDERSEN  
& BERGLUND BAILEY

13  
14 By: /s/ Leonard C. Herr

LEONARD C. HERR  
Attorneys for Plaintiff  
SCOTT R. JAMES

15  
16  
17 **JURY DEMAND**

18 Plaintiff, SCOTT R. JAMES, demands trial by jury.

19  
20 Dated: June 26, 2013

DOOLEY, HERR, PEDERSEN  
& BERGLUND BAILEY

21  
22 By: /s/ Leonard C. Herr

LEONARD C. HERR  
Attorneys for Plaintiff  
SCOTT R. JAMES

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