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16 Filing Fees Exempt (Gov. Code § 6103)

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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 IN AND FOR THE COUNTY OF SAN FRANCISCO

20 PEOPLE OF THE STATE OF
CALIFORNIA,
21
22 Plaintiff,
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24 v.
25 BLACKHAWK MANUFACTURING
GROUP INC.; GS PERFORMANCE, LLC;
MDX CORPORATION; and DOES 1-25,
26
27 Defendants.
28

Case No. CGC-21-594577

**DECLARATION OF SAN MATEO
COUNTY DISTRICT ATTORNEY
STEPHEN WAGSTAFFE IN SUPPORT
OF THE PEOPLE OF THE STATE OF
CALIFORNIA'S MOTION FOR A
PRELIMINARY INJUNCTION**

Date: June 3, 2022
Time: 9:30 a.m.
Dept.: 306
Judge: Hon. Anne-Christine Massullo

Date Filed: August 18, 2021

Trial Date: Not yet set

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05/20/2022
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

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1 I, Stephen Wagstaffe, declare under penalty of perjury that:

2 1. I am the District Attorney of San Mateo County. I have personal knowledge of the
3 facts set forth below, and if called upon as a witness, I would testify to them under oath.

4 2. I am the elected District Attorney of San Mateo County. I have prosecuted crimes
5 in San Mateo County for my entire legal career. I joined the San Mateo County District
6 Attorney's office in 1977. Former District Attorney Jim Fox named me Chief Deputy District
7 Attorney in 1991. In 2010, I was elected to my first term as District Attorney, and I have served
8 as the District Attorney for over a decade.

9 3. As the District Attorney, I supervise the prosecutors and prosecutions in my office.
10 I am generally familiar with the dockets that San Mateo County's prosecutors have and the
11 investigations that my office's investigators carry out. I am also in frequent communication with
12 the police chiefs, as well as the Sheriff, in San Mateo County. I am familiar with general trends
13 in the types of crimes that are referred by police to my office for prosecution.

14 4. Ghost guns pose a grave public safety problem in San Mateo County. By "ghost
15 gun," I refer to firearms that lack serial numbers and that are sold, in an almost-finished state,
16 outside of the federally-licensed process for ordinary firearm sales.

17 5. The ghost gun crisis is relatively new. When I first became District Attorney in
18 2010, ghost guns did not play a significant role in crime in San Mateo County, and few, if any,
19 prosecutions of firearm-related crimes involved ghost guns. The situation today is very different.
20 Based on my knowledge of the dockets of the prosecutors in my office, as well as conversations I
21 have had with San Mateo County prosecutors, I estimate that about one-third of all firearms-
22 related crimes that the San Mateo County District Attorney's office charged in 2021 involved
23 ghost guns, with this proportion increasing each of the past two years.¹ The ghost gun problem is
24 so pervasive that in 2022 my office began to systematically track which incoming referrals from
25 law enforcement involve ghost guns.

26

27

28 ¹ By "firearm-related crimes," I refer to any crime that involves the use or possession of a
firearm, from homicide to felon-in-possession cases.

1 6. In the last two years, the San Mateo County District Attorney’s office has
2 prosecuted a number of crimes involving ghost guns. Two current prosecutions illustrate how
3 people who are ineligible to obtain firearms are able to obtain ghost guns.

4 7. My office is currently prosecuting a Daly City resident for crimes related to
5 firearms. In 2020, this man was arrested after a domestic violence incident. He was freed on
6 bail, but while on bail was subject to a gun violence restraining order. This man had also
7 previously been the subject of a mental health hold. As a result of the mental health hold and the
8 gun violence restraining order, he became ineligible to possess firearms, and law enforcement
9 confiscated the firearms in his possession at the time of his domestic violence arrest. After he had
10 been freed on bail, law enforcement received a tip that he had come to possess new firearms.
11 Law enforcement responded to the tip. (I note that responding to such tips—going to confiscate
12 firearms from someone prohibited from possessing them—is among the most dangerous tasks law
13 enforcement personnel must carry out.) Law enforcement eventually determined that he was in
14 possession of a completed, unserialized AK47 (i.e., a ghost gun) and 958 rounds of ammunition,
15 including 535 7.62 mm bullets. He also possessed 11 magazines, night vision goggles, and a rifle
16 scope. In addition, he was found in possession of a drill press of the type that can be used to
17 complete a ghost gun. My office subsequently charged this man with new firearms crimes.

18 8. My office is currently prosecuting a Norteno gang member for crimes related to
19 ghost guns. The defendant was on probation following a felony conviction and was ineligible to
20 possess firearms under California law. The San Mateo County Sheriff determined that, while on
21 probation, the defendant had ordered ghost guns online, which were shipped to the defendant’s
22 home. After searching the defendant’s communications, law enforcement found text and
23 Instagram messages showing that the defendant was in communication with out-of-county
24 Norteno gang members, for whom he was assembling ghost guns. At the time he was
25 apprehended, the defendant was in possession of a Dremel/rotary tool and razor blades, both of
26 which are commonly used to manufacture ghost guns. My office subsequently charged the
27 defendant with new firearms crimes.

28

1 9. Prosecutors in my office have also seen ghost guns involved in lethal crimes. San
2 Mateo County prosecutors are currently prosecuting a murder case in which the defendants
3 traveled to San Mateo County from Los Angeles County to commit a revenge killing. After
4 committing homicide, one of the defendants fled to Oklahoma. Oklahoma authorities
5 apprehended him. At the time of his apprehension in Oklahoma, the defendant was in possession
6 of two ghost guns. In another recent, in-county homicide, an East Palo Alto man was shot dead
7 on Christmas Eve 2021. Law enforcement has investigated the homicide as a gang-related crime.
8 The victim possessed a ghost gun.

9 10. The absence of serial numbers from ghost guns hampers the efforts of law
10 enforcement to solve crimes. Prosecutors in my office have, in the past, presented homicide cases
11 where law enforcement used the serial number on a recovered gun to help identify the perpetrator.
12 Even when a gun crime's perpetrator is not the firearm's lawful owner, law enforcement can use
13 the serial number to identify the most recent lawful owner, who can provide information about
14 how he or she lost possession of the firearm — such as, for example, because it was stolen. This
15 information can be valuable in solving crimes. By contrast, when a ghost gun is recovered, it
16 lacks a serial number that can be used to trace firearm ownership or possession.

17 11. Similarly, serial numbers help prosecutors prove that firearms are in fact firearms,
18 which is a necessary element in proving crimes such as felon-in-possession. Prosecutors must
19 sometimes prove possession without having recovered the firearm at issue. San Mateo County
20 prosecutors have, in the past, used a defendant's Instagram videos to prove that a defendant
21 possessed a firearm and, in those instances, have been able to point to the presence of a serial
22 number on the firearm as evidence that the firearm is a real firearm, as opposed to a non-
23 functional replica (which is a common defense in such cases). In one case, a San Mateo County
24 prosecutor sought to prove firearm possession through the use video evidence, but no serial
25 number was visible on the firearm; it was a ghost gun. In this instance, to prove that the firearm
26 was not a replica, my office engaged the expertise of a Hollywood prop master to testify about the
27 differences between real and replica guns, which is a needless waste of public resources caused
28 by the absence of a serial number on the firearm at issue.

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12. Finally, serial numbers assist law enforcement in the execution of search warrants and restraining orders. From my experience as a prosecutor, I know that, prior to serving a search warrant or restraining order at a particular residence, law enforcement officials often check to see whether firearms are registered to owners residing at, or otherwise associated with, that residence. Traditionally, this has been an investigatory tool vital to officer safety. However, this protective tool has been undermined by the proliferation of ghost guns that are not registered.

13. In that same vein, when law enforcement learns that someone who is not authorized to be in possession of a firearm is in possession, such as in the case of the Daly City resident described in paragraph 7, law enforcement will attempt to confiscate the firearm due to the risk to public safety. Confiscating a firearm from someone prohibited from possessing one is among the most dangerous tasks that law enforcement personnel must carry out.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 18, 2022, in Redwood City, California.


STEPHEN M. WAGSTAFFE