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15 David Borges, and Loran Kelley

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF LOS ANGELES**

18 THE PEOPLE OF THE STATE OF CALIFORNIA,

19 Plaintiffs,

20 vs.

21
22 POLYMER80, INC., a Nevada Corporation;
23 DAVID BORGES, an individual; LORAN
KELLEY, an individual,

24 Defendants.
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Case No. 21STCV06257

[Related to Case No. 21STCV29196]

[Assigned for all purposes to the Hon. Daniel
S. Murphy, Department 32]

**DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR JUDGMENT ON
THE PLEADINGS OR, IN THE
ALTERNATIVE, FOR A STAY**

Date: May 19, 2023

Time: 8:30 a.m.

Department: 32

Reservation ID: 305522480553

Complaint Filed: February 17, 2021

Trial Date: May 30, 2023

1 **NOTICE OF MOTION AND MOTION**

2 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

3 **PLEASE TAKE NOTICE THAT** on May 19, 2023 at 8:30 a.m., or as soon thereafter as the
4 matter may be heard before the Honorable Daniel S. Murphy of the Superior Court of the State of
5 California for the County of Los Angeles, located at Stanley Mosk Courthouse, 111 North Hill Street,
6 Los Angeles, California 90012, Defendants Polymer80, Inc., David Borges, and Loran Kelley
7 (collectively, “Defendants”), will and hereby do move the Court for judgment on the pleadings or, in
8 the alternative, for a stay.

9 The motion for judgment on the pleadings is made under section 438 of the Code of Civil
10 Procedure and California common law on the grounds that this lawsuit is preempted by the Protection
11 of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 *et seq.*, and that Plaintiff’s public nuisance claim
12 fails for lack of a cognizable public right.

13 To the extent Defendants’ bring a statutory motion for judgment on the pleadings under section
14 438 of the Code of Civil Procedure, Defendants respectfully request that this Court “permit[.]” the late-
15 filed statutory motion for judgment on the pleadings as filed herein. Code Civ. Proc. § 438(e); *see*
16 *Korchemny v. Piterman* (2021) 68 Cal.App.5th 1032, 1055 (rejecting argument that section 438
17 requires movant “to ‘seek the permission of’ the trial court prior to filing the motion”); *Burnett v.*
18 *Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1063 (“The statute does not impose a ‘good cause’
19 requirement.”). The preemption of this lawsuit by federal law, Plaintiff’s reliance on unconstitutional
20 California firearms statutory provisions, and the general insufficiency of Plaintiff’s allegations each
21 support the acceptance of the statutory component of Defendants’ motion as filed.

22 If for any reason the Court is unable to grant Defendants’ motion for judgment on the
23 pleadings, Defendants move in the alternative for a stay pending the Ninth Circuit’s resolution of the
24 constitutionality of California firearms statutory provisions that Plaintiff seeks to enforce against
25 Defendants in this case. *See Renna v. Bonta* (S.D. Cal. Apr. 3, 2023) No. 3:20-cv-02190-DMS-DEB,
26 *appeal noticed* (S.D. Cal. Apr. 14, 2023); *Boland v. Bonta* (C.D. Cal. Mar. 20, 2023) No. 8:22-cv-
27 1421-CJC-ADS, *appeal docketed*, No. 23-55276 (9th Cir. Mar. 27, 2023).

1 This motion is based upon this Notice of Motion and the accompanying Memorandum of
2 Points and Authorities in Support of Defendants' Motion for Judgment on the Pleadings or, in the
3 alternative, for a Stay; Request for Judicial Notice in Support of Defendants' Motion for Judgment on
4 the Pleadings or, in the alternative, for a Stay; Declaration of Michael Marron in Support of
5 Defendants' Request for Judicial Notice; Declaration of Michael Marron in Support of Defendants'
6 Motion for Judgment on the Pleadings; Declaration of Michael Marron in Support of Defendants'
7 Motion for a Stay; [Proposed] Order granting Defendants' Motion for Judgment on the Pleadings; and
8 [Proposed] Order granting Defendants' Motion for a Stay filed herewith; as well as all the pleadings,
9 records, and files herein, and on such other oral or documentary evidence as may be presented at the
10 hearing of this motion.

11 In compliance with Code of Civil Procedure § 438(d), Defendants specify that they seek
12 judicial notice of the following judicial records:

13 **EXHIBIT** **DOCUMENT**

- 14 **A.** Amended Order Granting in Part and Denying in Part Plaintiffs' Motion for
15 Preliminary Injunction, *Renna v. Bonta* (S.D. Cal. Apr. 3, 2023) No. 3:20-cv-
02190-DMS-DEB, ECF No. 81
- 16 **B.** Notice of Preliminary Injunction Appeal, *Renna v. Bonta* (S.D. Cal. Apr. 14,
17 2023) No. 3:20-cv-02190-DMS-DEB, ECF No. 86
- 18 **C.** Order Granting Plaintiffs' Motion for Preliminary Injunction, *Boland v. Bonta*
(C.D. Cal. Mar. 20, 2023) No. 8:22-cv-01421-CJC-ADS, ECF No. 60
- 19 **D.** Order, *Boland v. Bonta* (9th Cir. Mar. 31, 2023) No. 23-55276, ECF No. 7
- 20 **E.** Opinion & Order on Polymer80, Inc.'s Motion for Temporary Restraining Order
21 and Preliminary Injunction, *Polymer80, Inc. v. Garland* (N.D. Tex. Mar. 19,
22 2023) No. 4:23-cv-00029-O, ECF No. 27
- 23 **F.** Memorandum of Points and Authorities in Support of Demurrer of Defendants
24 Polymer80, Inc., David Borges, and Loran Kelley to Complaint, *People of the*
State of California v. Polymer80, Inc. (Cal. Super. Ct. Apr. 20, 2021) No.
21STCV06257
- 25 **G.** Order re: Demurrer to Complaint, *People of the State of California v. Polymer80,*
26 *Inc.* (Cal. Super. Ct. June 7, 2021) No. 21STCV06257

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DATED: April 27, 2023

GREENSPOON MARDER LLP



By: _____

MICHAEL MARRON

Attorney for Defendants Polymer80, Inc., David
Borges, and Loran Kelley

1 **PROOF OF SERVICE**

2 *The People of The State of California vs. Polymer80, Inc., David Borges, Loran Kelley*
3 Case No. 21STCV06257

4 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
5 **FOR THE COUNTY OF LOS ANGELES**

6 I am employed in the County of Jefferson, State of Alabama. I am over the age of eighteen
7 years and not a party to this action. My business address is 1819 5th Avenue N, Birmingham, AL
8 35203. On April 27, 2023, I served true and correct copies of the following document(s) described as
9 **DEFENDANTS’ NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE**
10 **PLEADINGS OR, IN THE ALTERNATIVE, FOR A STAY** on the interested parties in this action
11 as follows:

12 **SEE ATTACHED SERVICE LIST**

13 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
14 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
15 document(s) to be sent from e-mail address clamar@bradley.com to the persons at the e-mail addresses
16 listed in the Service List. I did not receive, within a reasonable time after the transmission, any
17 electronic message or other indication that the transmission unsuccessful.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct.

20 Executed on April 27, 2023, at Birmingham, Alabama.

21 */s/ W. Chadwick Lamar, Jr.*
22 _____
23 W. Chadwick Lamar, Jr.

1 **SERVICE LIST**

2 *The People of The State of California vs. Polymer80, Inc., David Borges, Loran Kelley*
3 *Case No. 21STCV06257*

4 **OFFICE OF THE LOS ANGELES CITY**
5 **ATTORNEY**

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