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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 STEVEN ERIC WALKER,

12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA;
15 THE STATE OF CALIFORNIA,
16 And All Actors, Agents and Elected
17 Officials Thereof, and Does 1
18 through 100, Respectively,

19 Defendants.

Case No: 20-CV-31-DMS-AGS

**ORDER GRANTING MOTION TO
REOPEN CASE AND MOTION TO FILE
AMENDED COMPLAINT; AND
DISMISSING FIRST AMENDED
COMPLAINT WITH PREJUDICE FOR
FAILURE TO STATE A CLAIM**

19 On October 17, 2022, Defendant Steven Walker filed a “Request to Reopen Case
20 Pursuant to Federal Rules of Civil Procedure, Rule 60” and a “Request to File Amended
21 Complaint for Declaratory and Injunctive Relief; Breach of Contract; Facial Challenge to
22 Unconstitutional Laws.” (ECF Nos. 14, 15.) The Court construes these requests as a motion
23 to reopen his case and a motion to file an amended complaint, respectively. Defendant also
24 submitted an “Amended Complaint for Declaratory and Injunctive Relief; Breach of
25 Contract; General Challenge to Unconstitutional Laws; Request for Class Action
26 Certification” as part of his motion to file an amended complaint. (ECF No. 15.)
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1 Plaintiff's motions to reopen his case and bring an amended complaint rely on the
2 Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142
3 S. Ct. 2111 (2022). Based on *Bruen*, Plaintiff requests declaratory judgment, injunctive
4 relief, and class certification. (ECF No. 15, First Amended Complaint, 52.) Defendant's
5 motion to reopen his case and motion to file an amended complaint are hereby **GRANTED**.
6 The Court accepts the First Amended Complaint ("FAC"), as filed as part of his motion.
7 (ECF No. 15.)

8 I.

9 BACKGROUND

10 Plaintiff is a non-prisoner proceeding *pro se*. On January 6, 2020, Plaintiff filed a
11 Complaint against the United States, State of California, "And All Actors, Agents, and
12 Elected Officials Thereof; And Does 1 Through 100" and a motion to proceed *In Forma*
13 *Pauperis*. (ECF Nos. 1, 2.) The Court granted Plaintiff's motion to proceed in *In Forma*
14 *Pauperis* and dismissed the Complaint for failure to state a claim. (ECF No. 3.) On May
15 18, 2020, Plaintiff submitted a motion for reconsideration of summary dismissal of the
16 Complaint, which the Court denied. (ECF Nos. 6, 11.) Plaintiff appealed the Court's denial,
17 and on July 19, 2021, the Ninth Circuit affirmed the decision of the Court. (ECF No 13.)
18 The matter presently before the Court is Plaintiff's First Amended Complaint, which
19 contains the same or substantially similar allegations as those Plaintiff had brought in his
20 original Complaint. As an initial matter, considering Plaintiff's IFP status, the Court
21 conducts a *sua sponte* screening of the FAC, per 28 U.S.C. § 1915(e)(2).

22 II.

23 DISCUSSION

24 Notwithstanding payment of any filing fee or portion thereof, a complaint filed by
25 any person proceeding IFP pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory and
26 *sua sponte* review and dismissal by the court to the extent it is frivolous, malicious, fails to
27 state a claim upon which relief may be granted, or seeks monetary relief from a defendant
28 immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845

1 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to
2 prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*). Prior to its
3 amendment by the Prison Litigation Reform Act, the former 28 U.S.C. § 1915(d) permitted
4 *sua sponte* dismissal of only frivolous and malicious claims. *Id.* at 1130. 28 U.S.C. §
5 1915(e)(2), however, mandates that the court reviewing a complaint filed pursuant to the
6 IFP provisions of section 1915 make and rule on its own motion to dismiss before directing
7 that the complaint be served by the U.S. Marshal pursuant to Fed. R. Civ. P. 4(c)(2). *Lopez*,
8 203 F.3d 1127 (“[S]ection 1915(e) not only permits, but requires a district court to dismiss
9 an in forma pauperis complaint that fails to state a claim.”); *see also Barren v. Harrington*,
10 152 F.3d 1193, 1194 (9th Cir. 1998) (noting the “the language of § 1915(e)(2)(B)(ii)
11 parallels the language of Federal Rule of Civil Procedure 12(b)(6).”).¹

12 In the First Amended Complaint, Plaintiff alleges violations of his rights under the
13 Second, Ninth, and Tenth Amendments, and breaches of purported contracts implied by the
14 same amendments and constitutional oaths taken by various government officials. Plaintiff
15 argues that “when a person earns their freedom from confinement or is discharged (cleared)
16 from the penalty imposed for *a previous* conviction of crime . . . they have constitutionally
17 satisfied their debt to society” and “are no longer ‘criminals’ or ‘felons.’” (ECF No. 15,
18 First Amended Complaint, ¶ 13.) Plaintiff argues that Defendants, “when enforcing
19 weapons control laws, have exercised powers which are not delegated by the Constitution
20 and, in doing so, have breached their contractual obligations under the Constitution, and
21 encroached upon, denied, or disparaged the constitutionally secured powers and rights of
22 the people.” (ECF No. 15, First Amended Complaint, ¶ 15.)

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25 ¹ A motion to dismiss under Rule 12(b)(6) should be granted if a plaintiff’s complaint fails
26 to contain “enough facts to state a claim to relief that is plausible.” *Bell Atl. Corp. v.*
27 *Twombly*, 550 U.S. 544, 556 (2007). “A claim has facial plausibility when the plaintiff
28 pleads factual content that allows the court to draw the reasonable inference that the
defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
(citing *Twombly*, 550 U.S. at 556).

1 Plaintiff describes himself as a “free, law-abiding, ordinary, tax-paying citizen of the
2 State of California and United States of America,” who “does not currently own a firearm
3 (weapon), but seeks to acquire a weapon to keep and bear for in-home and personal self-
4 defense and security, and other lawful purposes of personal safety.” (ECF No. 15, First
5 Amended Complaint, ¶ 22.) He continues, “[b]ut for California’s and the Federal
6 Governments’ encroachments and chilling restrictions on weapons and his reasonable fear
7 of criminal prosecution and penalties for exercising his fundamental right to self-security
8 and safety,” he would “immediately acquire and continuously possess a weapon for lawful
9 purposes, including in-home personal security, personal safety, and self-defense.” (ECF
10 No. 15, First Amended Complaint, ¶ 22.) Plaintiff seeks to represent a “very large class of
11 citizens (approximately 330 million people) who are subject to the same encroachments,
12 infringements, penalties, and chilling restrictions alleged herein.” (ECF No. 15, First
13 Amended Complaint, ¶ 22.)

14 Plaintiff neglects to plead standing in the FAC. Notwithstanding, the Court is
15 familiar with Plaintiff’s criminal history and status as a felon, which he had raised himself
16 in the original Complaint and which the Court discussed in its prior Order Dismissing the
17 Complaint. (ECF No. 3.) Plaintiff was convicted by a jury for the criminal offense of
18 premeditated attempted murder, with use of a firearm. In the FAC, Plaintiff requests that
19 the Court address his “facial challenge to the constitutional validity of the laws in question,”
20 divorced from his status as a felon.² (ECF No. 15, Motion to File Amended Complaint, 2.)
21 Plaintiff claims the Court did not previously address his more general challenge in its prior
22 order, but he is incorrect. Both in its Order Dismissing Plaintiff’s Complaint (ECF No. 3)
23 and its Order Denying Plaintiff’s Motion for Reconsideration (ECF No. 11), the Court
24 addressed Plaintiff’s general claims regarding the validity of all firearms laws and his
25 request to restore the right not of felons, but law-abiding citizens more generally, to bear
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28 ² Simultaneously, Plaintiff’s request amounts to a petition for the Court to restore his
personal right to bear arms, even though he is a felon.

1 arms. (ECF No. 3 at 3; ECF No. 11 at 5.) The Court made clear that the distinction does
2 not assist Plaintiff.

3 Today, Plaintiff essentially sets forth the same arguments. He contends that the
4 Constitution guarantees his right to bear arms, and congressionally enacted laws or court
5 decisions which limit this right are unconstitutional. Specifically, Plaintiff argues that
6 *Bruen* “brings to question the continued validity of this court’s summary dismissal and sole
7 reliance on unsubstantiated *dicta* to support its reasoning, which impermissibly relieved the
8 defendants of their constitutional burden to demonstrate how their overreaching regulations
9 as applied generally, or even to plaintiffs current law-abiding conduct, are historically
10 justified.” (ECF No. 15, Motion to File Amended Complaint, 2-3.) Plaintiff’s arguments
11 ultimately amount to the same claims he raised, and which the Court previously dismissed,
12 in the original Complaint. Plaintiff again seeks to vindicate the constitutional right for
13 himself to bear arms, even though he is a felon, and for individuals, including but not limited
14 to individuals with a felony conviction.

15 In support of his argument today, Plaintiff argues that *Bruen* should change the result
16 of the Court’s prior dismissal. Plaintiff misinterprets *Bruen*. Unfortunately for Plaintiff,
17 *Bruen* still focuses on the right of law-abiding, responsible citizens to use arms for self-
18 defense. 142 S. Ct. 2111, 2118 (2022) (citing *District of Columbia v. Heller*, 554 U.S. at
19 635, 128 S.Ct. 2783. Pp. 2129 - 2131. While Plaintiff alleges he is presently law-abiding,
20 his status as a felon precludes him from possessing a firearm. Furthermore, *Bruen* neither
21 overturns a long line of precedent nor offers blanket protection for any and all individuals,
22 irrespective of criminal history, against laws and statutes that restrict the Second
23 Amendment. Plaintiff also suggests that the Second Amendment does not limit the right to
24 bear arms to citizens who are law-abiding. (ECF No. 15, First Amended Complaint, ¶ 33,
25 n. 24.) The Court rejects this argument. Both *D.C. v. Heller* and *Bruen* make clear that the
26 right secured by the Second Amendment is not unlimited and longstanding prohibitions on
27 the possession of firearms by felons are not only lawful, but constitutional. *See* 554 U.S.
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1 570, 626, 128 S. Ct. 2783, 2816 (2008); *see also* 142 S. Ct. 2111, 2162 (2022) (Kavanaugh,
2 J., concurring).

3 Finally, courts in this District have considered the same or similar arguments raised
4 by Plaintiff and have arrived at the same outcome. For example, Plaintiff's FAC sets forth
5 similar arguments to those raised in a motion filed in this District by Defendant David
6 Lemont Hill, in *U.S. v. Hill*, Case No. 21cr0107-WHQ, 2022 WL 4361917 (S.D. Cal. Sept.
7 20, 2022). There, Judge William Q. Hayes denied defendant Hill's motion in an order
8 issued September 20, 2022. Having considered Plaintiff's arguments in his motion to file
9 an amended complaint and First Amended Complaint, the Court adopts the thorough and
10 well-reasoned analysis and conclusion issued by Judge Hayes in the *Hill* case, which
11 determined that binding Ninth Circuit precedent was not overruled by *Bruen*, and that the
12 federal felon-in-possession law does not violate the Second Amendment. 2022 WL
13 4361917, at *2-3.

14 The Court also directs Plaintiff to its prior Order Dismissing the Complaint and Order
15 Denying Plaintiff's Motion for Reconsideration. (ECF No. 11.) There is still no dispute
16 that Plaintiff has suffered a felony conviction and individuals who have a prior felony
17 conviction like Plaintiff's, cannot restore their Second Amendment rights under existing
18 law, except in limited circumstances not present here, even if they become law-abiding
19 citizens.³

20 II. 21 CONCLUSION

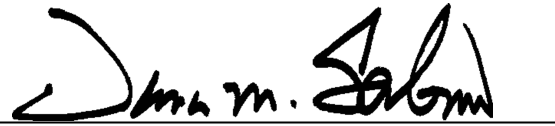
22 The crux of Plaintiff's FAC has not changed. Plaintiff claims that state and federal
23 governments improperly deny his right to bear arms under the Second Amendment because
24 of his status as a felon and that convicted felons who abide by the law post-conviction have
25 the right to possess firearms. The Ninth Circuit and the Supreme Court have both
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27 ³ Generally, a person sentenced to prison on a felony cannot restore their right to bear arms
28 under the Second Amendment unless they get a Certificate of Rehabilitation and a Pardon
by the Governor's Office. *See* California Penal Code § 4852.01.

1 recognized the validity of laws curtailing the right of a felon to possess firearms and *Bruen*
2 has not changed the result. Consequently, the FAC is hereby **DISMISSED**, with prejudice,
3 for failure to state a claim, and Plaintiff's requests for declaratory judgment, class
4 certification, and injunctive relief are **DENIED** as moot.

5 **IT IS SO ORDERED.**

6 Dated: October 28, 2022



Hon. Dana M. Sabraw, Chief Judge
United States District Court

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