

1 EDMUND G. BROWN JR., State Bar No. 37100  
 Attorney General of California  
 2 JONATHAN RENNER, State Bar No. 187138  
 Senior Assistant Attorney General  
 3 PETER A. KRAUSE, State Bar No. 185098  
 Deputy Attorney General  
 4 1300 I Street, Suite 125  
 P.O. Box 944255  
 5 Sacramento, CA 94244-2550  
 Telephone: (916) 324-5328  
 6 Fax: (916) 324-8835  
 E-mail: Peter.Krause@doj.ca.gov  
 7 *Attorneys for Defendant Steven Lindley, in his  
 official capacity as Acting Chief of the  
 8 California Department Of Justice*

9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
 12 SACRAMENTO DIVISION

13  
 14 **STATE AMMUNITION INC., dba**  
**www.stateammo.com; JIM OTTEN, dba**  
 15 **www.a1ammo.com, and JIM RUSSELL**  
**USMC (Ret.),**

16  
 17 Plaintiffs,

18 v.

19 **STEVEN LINDLEY, in his official**  
**capacity as Acting Chief of the**  
 20 **California Department of Justice,**  
**Bureau of Firearms, and DOES 1**  
 21 **through 10,**

22  
 23 Defendants.

Case No. 10-CV-01864 -MCE-KJN

**DEFENDANT'S NOTICE OF  
 MOTION AND MOTION TO  
 DISMISS THE COMPLAINT OR, IN  
 THE ALTERNATIVE, TO STAY  
 THE ACTION**

Date: November 18, 2010  
 Time: 2:00 p.m.  
 Ctrm: No. 7 - 14th Floor  
 Judge: Hon. Morrison C. England, Jr.  
 Trial Date: None  
 Action Filed: July 16, 2010

[Memorandum of Points and Authorities  
 and Request for Judicial Notice Filed  
 Concurrently Herewith]

24 **NOTICE OF MOTION**

25 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

26 PLEASE TAKE NOTICE that on November 18, 2010, at 2:00 p.m. or as soon  
 27 thereafter as this matter may be heard in Courtroom 7 of the above-entitled court, located  
 28

1 at 501 I Street, Sacramento, California 95814, defendant Steven Lindley, in his official  
2 capacity as Acting Chief of the California Department of Justice, Bureau of Firearms, will  
3 and hereby does move the Court for an order (1) dismissing the Complaint pursuant to  
4 Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, and (2) in  
5 the alternative, staying the action. This Motion is made on the following grounds:

6 1. The Court lacks subject matter jurisdiction over the claims alleged in the  
7 Complaint because the issues presented are not ripe. (Fed. R. Civ. P. 12(b)(1));

8 2. The Court lacks subject matter jurisdiction over the claims alleged in the  
9 Complaint under the Eleventh Amendment of the United States Constitution, which  
10 prohibits suits against the state in federal court. (Fed. R. Civ. P. 12(b)(1)); and

11 3. If necessary, the Court should stay the action pending a decision in *Parker v.*  
12 *State of California, et al.*, Superior Court of California, County of Fresno, Case No.  
13 10CECG02116, which involves a constitutional vagueness challenge to AB 962, the act at  
14 issue in this action.

15 This Motion is based upon this Notice of Motion and Motion, the Memorandum of  
16 Points and Authorities and Request for Judicial Notice filed concurrently herewith, all  
17 pleadings, records, and files herein, those matters of which the Court may take judicial  
18 notice, and upon such oral argument as may be made at the hearing on this Motion.

19 Dated: September 20, 2010

Respectfully Submitted,

21 EDMUND G. BROWN JR.  
22 Attorney General of California  
23 JONATHAN K. RENNER  
24 Senior Assistant Attorney General

*/s/ Peter A. Krause*

25 PETER A. KRAUSE  
26 Deputy Attorney General  
27 *Attorneys for Defendant Steven Lindley,*  
28 *in his official capacity as Acting Chief of*  
*the California Department Of Justice*

SA2010102125  
10614989.doc

1 EDMUND G. BROWN JR., State Bar No. 37100  
 Attorney General of California  
 2 JONATHAN RENNER, State Bar No. 187138  
 Senior Assistant Attorney General  
 3 PETER A. KRAUSE, State Bar No. 185098  
 Deputy Attorney General  
 4 1300 I Street, Suite 125  
 P.O. Box 944255  
 5 Sacramento, CA 94244-2550  
 Telephone: (916) 324-5328  
 6 Fax: (916) 324-8835  
 E-mail: Peter.Krause@doj.ca.gov  
 7 *Attorneys for Defendant Steven Lindley, in his*  
*official capacity as Acting Chief of the*  
 8 *California Department Of Justice*

9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
 12 SACRAMENTO DIVISION

13 **STATE AMMUNITION INC., dba**  
 14 **www.stateammo.com; JIM OTTEN, dba**  
 15 **www.a1ammo.com, and JIM RUSSELL**  
 16 **USMC (Ret.),**

17 Plaintiffs,

18 v.

19 **STEVEN LINDLEY, in his official**  
 20 **capacity as Acting Chief of the**  
 21 **California Department of Justice,**  
 22 **Bureau of Firearms, and DOES 1**  
 23 **through 10,**

24 Defendants.

Case No. 10-CV-01864 -MCE-KJN

- (1) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT STEVEN LINDLEY'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, TO STAY THE ACTION; and**
- (2) **DECLARATION OF PETER A. KRAUSE IN SUPPORT THEREOF**

Date: November 18, 2010  
 Time: 2:00 p.m.  
 Ctrm: No. 7 - 14th Floor  
 Judge: Hon. Morrison C. England, Jr.  
 Trial Date: None  
 Action Filed: July 16, 2010

[Notice of Motion and Request for Judicial Notice Lodged Concurrently Herewith]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

	<b>Page</b>
Summary of argument .....	1
Allegations of the complaint .....	1
Applicable legal standard .....	2
Argument .....	3
I.    Plaintiffs have not alleged a ripe controversy. ....	3
II.   Steven Lindley, in his official capacity as an acting bureau chief for the California Department of Justice, is immune from suit in federal court under the Eleventh Amendment.....	5
III.  If the Court does not dismiss the complaint in its entirety, it should stay the action pending resolution of <i>Parker v. State of California</i> .....	8
Conclusion .....	10

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

**CASES**

*Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*,  
300 U.S. 227 (1937)..... 3

*Almond Hill Sch. v. U.S. Dept. of Agric.*,  
768 F.2d 1030 (9th Cir. 1985) ..... 5

*Atascadero State Hosp. v. Scanlon*,  
473 U.S. 234 (1985)..... 5

*CMAX, Inc. v. Hall*,  
300 F.2d 265 (9th Cir. 1962)..... 8

*Ex Parte Young*,  
209 U.S. 123 (1908)..... 5, 6, 7

*Kokkonen v. Guardian Life Ins. Co. of Am.*,  
511 U.S. 375 (1944)..... 2

*L.A. County Bar Ass’n v. Eu*,  
979 F.2d 697 (9th Cir. 1992) ..... 6

*Landis v. N. Am. Co.*,  
299 U.S. 248 (1936)..... 8, 9

*Lockyer v. Miran Corp.*,  
398 F.3d 1098 (9th Cir. 2005) ..... 8, 9

*Long v. Van de Kamp*,  
772 F. Supp. 1141 (C.D. Cal. 1991) ..... 6, 7

*Long v. Van de Kamp*,  
961 F.2d 151 (9th Cir. 1992) ..... 6, 7

*MedImmune, Inc. v. Genentech, Inc.*,  
549 U.S. 118 (2007)..... 3

*Papasan v. Allain*,  
478 U.S. 265 (1986)..... 5

*Pennhurst State Sch. & Hosp. v. Halderman*,  
465 U.S. 89 (1984)..... 5

**TABLE OF AUTHORITIES**

(continued)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

*Quern v. Jordan*,  
440 U.S. 332 (1979) ..... 5

*S. Pac. Transp. Co. v. Brown*,  
651 F.2d 613 (9th Cir. 1981) ..... 7

*Safe Air for Everyone v. Meyer*,  
373 F.3d 1035 (9th Cir. 1994) ..... 2

*San Diego County Gun Rights Comm’n v. Reno*,  
98 F.3d 1121 (9th Cir. 1996) ..... 4, 5

*Snoeck v. Brussa*,  
153 F.3d 984 (9th Cir. 1998) ..... 6, 7

*Thomas v. Union Carbide Agric. Prods. Co.*,  
473 U.S. 568 (1985) ..... 3, 5

*Thornhill Publ’g Co. v. Gen. Tel. & Elecs.*,  
594 F.2d 730 (9th Cir. 1979) ..... 2

*Toilet Goods Ass’n v. Gardner*,  
387 U.S. 158 (1967) ..... 4

*Wilbur v. Locke*,  
423 F.3d 1101 (9th Cir. 2005) ..... 5

**STATUTES**

28 U.S.C. § 2201(a) ..... 3

Fed. R. Civ. Proc., rule 12(b)(1) ..... 2

**CONSTITUTIONAL PROVISIONS**

U.S. Const., amend XI ..... 1, 5, 6, 7

1 **SUMMARY OF ARGUMENT**

2 In 2009, the Governor signed California Assembly Bill (AB) 962, the “Anti-Gang  
3 Neighborhood Protection Act,” which places certain restrictions on the purchase, sale, and  
4 display of handgun ammunition. In this action plaintiffs allege that AB 962 will, when it  
5 goes into effect in February 2011, violate the Commerce Clause, deprive them of Due  
6 Process and Equal Protection under the Fourteenth Amendment, and unreasonably  
7 infringe on their right to keep and bear arms in violation of the Second Amendment.  
8 Plaintiffs’ claims should be dismissed on numerous grounds.

9 Federal courts are courts of limited jurisdiction. Article III does not grant a federal  
10 court jurisdiction to consider this action because the issues presented are not ripe for  
11 review. Until the challenged statutes take effect next year and there is a legitimate threat  
12 of enforcement, the law’s application, and any harm that plaintiffs might suffer, is purely  
13 speculative. The Court should therefore withhold its jurisdiction to issue declaratory  
14 relief. Furthermore, although state officers may be sued in federal court under limited  
15 circumstances, this suit against Acting Chief Lindley is based solely upon his official  
16 capacity at the California Department of Justice and his generalized duty to enforce state  
17 law. The action therefore is the equivalent of a prohibited action against the State itself;  
18 hence plaintiffs’ claims are barred by the Eleventh Amendment.

19 Should any portion of plaintiffs’ claims survive dismissal, the Court should exercise  
20 its discretion to stay the action to allow a related state court case to proceed to judgment.  
21 For the foregoing reasons, and as more fully explained below, the State respectfully  
22 requests that the Court grant this Motion.

23 **ALLEGATIONS OF THE COMPLAINT**

24 Plaintiffs<sup>1</sup> allege that AB 962 violates the Commerce Clause because it discriminates  
25 against ammunition sellers and purchasers outside of California by purportedly banning

26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiffs are State Ammunition, Inc., an online retail ammunition store, Jim Otten, an  
28 individual who resides in Minnesota and operates an online retail ammunition store, and Jim  
Russell, a California resident who purchases ammunition through the internet from sources  
located outside of California. They are referred to collectively as “Plaintiffs.”

1 sales other than those completed in face-to-face transactions. They argue that under AB  
2 962, residents of California are prohibited from purchasing ammunition from out-of-state  
3 sellers online or by mail-order, and sellers in California are prohibited from selling  
4 ammunition online or by mail-order to purchasers outside of California. (¶¶ 27-36.<sup>2</sup>)

5 Plaintiffs also argue that AB 962 violates Due Process and Equal Protection under  
6 the Fourteenth Amendment because: (1) AB 962 explicitly discriminates between  
7 California and out-of-state residents; (2) the definition of “handgun ammunition” is  
8 unconstitutionally vague; and (3) AB 962 is impossible to comply with. (¶¶ 37-44.)

9 Finally, Plaintiffs allege that AB 962 generally violates the Second Amendment and  
10 cannot survive the strict scrutiny analysis which they contend the courts must apply to  
11 laws that infringe upon individual and fundamental rights. (¶¶ 45-48.)

12 Plaintiffs sue defendant Steven Lindley in his official capacity as the Acting Chief of  
13 the California Department of Justice’s Bureau of Firearms. (¶ 8.) Chief Lindley disputes  
14 the accuracy of Plaintiffs allegations, but accepts them as true for purposes of this Motion.

### 15 APPLICABLE LEGAL STANDARD

16 Rule 12(b)(1) allows a party to raise the defense that a court lacks jurisdiction over  
17 the subject matter of a claim. “A motion to dismiss for lack of subject matter jurisdiction  
18 may either attack the allegations of the complaint or may be made as a 'speaking motion'  
19 attacking the existence of subject matter jurisdiction in fact.” *Thornhill Publ'g Co. v. Gen.*  
20 *Tel. & Elecs.*, 594 F.2d 730, 733 (9th Cir. 1979). The instant Rule 12(b)(1) motion  
21 attacks the allegations of the complaint, so the district court must accept the allegations of  
22 the complaint as true. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir.  
23 1994). But the burden of proof on a Rule 12(b)(1) motion is on the party seeking to  
24 invoke the court’s subject matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*,  
25 511 U.S. 375, 377 (1944); *Thornhill*, 594 F.2d at 733.

26  
27  
28 <sup>2</sup> All citations using only the paragraph symbol are to the Complaint filed July 16, 2010.



**ARGUMENT****I. PLAINTIFFS HAVE NOT ALLEGED A RIPE CONTROVERSY.**

A district court's role is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution. In their complaint, Plaintiffs allege that AB 962 will have a host of unconstitutional effects, but the act does not even go into effect until February 1, 2011. Hence, the Court cannot know precisely how the law might apply to, or be enforced against, these Plaintiffs. Because the allegations plead in the complaint are based on conjecture, speculation, and a misreading of AB 962, the issues presented are not ripe for adjudication by this Court.

The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides in pertinent part that in "a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of any appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration." The "actual controversy" requirement of section 2201 refers to the type of cases and controversies that are justiciable under Article III; i.e., cases involving a substantial controversy between parties having adverse interests of sufficient immediacy and reality. *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240 (1937); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 125-126 (2007).

The basic rationale of the ripeness doctrine "is to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements." *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985). The central concern is to avoid making decisions that depend on uncertain or contingent future events that may not occur as anticipated, or may not occur at all. *Cardenas v. Anzai*, 311 F.3d 929, 934 (9th Cir. 2002). Ripeness is, thus, a question of timing. See *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 140 (1974).

Plaintiffs seek to invalidate AB 962 in its entirety based on what they *predict* its effects will be, yet can offer no facts to show that events will unfold as they anticipate. To

1 compound matters, Plaintiffs misrepresent how AB 962 will operate.<sup>3</sup> The hypothetical  
2 nature of this case is accentuated by the fact that the Penal Code provisions they challenge  
3 have not been enforced and will not take effect for several months. Until AB 962 is  
4 operational, there is no way to know how the law will actually be enforced, or what its  
5 effects might be on plaintiffs and others. See *Toilet Goods Ass'n v. Gardner*, 387 U.S.  
6 158, 164 (1967) (pre-enforcement dispute not ripe where regulation's impact could not  
7 "be said to be felt immediately by those subject to it in conducting their day-to-day  
8 affairs").

9 Ripeness also requires a threat of imminent harm. Neither the mere existence of a  
10 proscriptive statute nor a generalized threat of prosecution satisfies the "case or  
11 controversy" requirement. *San Diego County Gun Rights Comm'n v. Reno*, 98 F.3d 1121,  
12 1126-27 (9th Cir. 1996). Here, Plaintiffs cannot even allege a generalized threat of  
13 prosecution or enforcement because the act remains dormant. And while Plaintiffs allege  
14 that "residents of California will now be unable to purchase ammunition from out-of-state  
15 sellers, and will be forced to personally travel to some location just to buy ammunition  
16 subject to lack of stock, lack of product availability, and inflated prices" (§ 32), and that  
17 "out of state vendors will simply refuse to sell or ship [ammunition] to California  
18 residents" (§ 33), these are predictive factual and legal conclusions, not allegations that  
19 the Court must accept as true. As the court in *San Diego Gun Rights Comm'n* said:

20 A concrete factual situation is necessary to delineate the boundaries of what  
21 conduct the government may or may not regulate. . . . As we have previously  
22 observed, "the District Court should not be forced to decide ... constitutional  
23 constitutional claims would be devoid of any factual context whatsoever.  
24 Neither the district court nor this court can "be umpire to debates concerning  
25 harmless, empty shadows."

25 \_\_\_\_\_  
26 <sup>3</sup> For instance, Plaintiffs allege that under AB 962, "residents of California will now be  
27 unable to purchase ammunition from out-of-state sellers." (§ 32.) This is false – individuals in  
28 California will still be able to purchase handgun ammunition from out-of-state sellers. AB 962  
simply will require that the transaction be completed face-to-face. Cal. Penal Code § 12318  
("Commencing February 1, 2011, the delivery or transfer of ownership of handgun ammunition  
may only occur in a face-to-face transaction.").

1 *Id.* at 1132-33 (citations omitted). For the same reasons, the Court should decline to  
2 adjudicate Plaintiffs' indefinite claims of injury and unconstitutionality in the absence of a  
3 ripe dispute.<sup>4</sup>

4 **II. STEVEN LINDLEY, IN HIS OFFICIAL CAPACITY AS AN ACTING BUREAU**  
5 **CHIEF FOR THE CALIFORNIA DEPARTMENT OF JUSTICE, IS IMMUNE FROM**  
6 **SUIT IN FEDERAL COURT UNDER THE ELEVENTH AMENDMENT.**

7 The Eleventh Amendment bars suits against a state or its instrumentalities in federal  
8 court, irrespective of the nature of the relief requested, in the absence of consent by the  
9 state or an abrogation of that immunity by Congress. *Papasan v. Allain*, 478 U.S. 265,  
10 276-77 (1986); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984).  
11 Section 1983 does not abrogate a state's Eleventh Amendment immunity. *Quern v.*  
12 *Jordan*, 440 U.S. 332, 341 (1979). Nor has the State of California waived its immunity  
13 with respect to claims brought under section 1983 in federal court. *Atascadero State*  
14 *Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985).

15 "The Eleventh Amendment [also] bars a suit against state officials when 'the state is  
16 the real, substantial party in interest.'" *Pennhurst*, 465 U.S. at 101; *see Almond Hill Sch.*  
17 *v. U.S. Dep't of Agric.*, 768 F.2d 1030, 1033 (9th Cir. 1985). The "general rule is that  
18 relief sought nominally against an officer is in fact against the sovereign if the decree  
19 would operate against the latter." *Pennhurst*, 465 U.S. at 101. "[A]s when the State itself  
20 is named as the defendant, a suit against state officials that is in fact a suit against a State  
21 is barred regardless of whether it seeks damages or injunctive relief." *Id.* at 101-02.

22 The Supreme Court recognized a limited exception to Eleventh Amendment  
23 immunity in *Ex Parte Young*, 209 U.S. 123 (1908). The *Ex Parte Young* exception allows  
24 "suits for prospective declaratory and injunctive relief against state officers, sued in their  
25 official capacities, to enjoin an alleged ongoing violation of federal law." *Wilbur v.*

---

26 <sup>4</sup> Plaintiffs also cannot satisfy the prudential component of ripeness, under which courts  
27 examine the fitness of the issues for judicial decision and the hardship to the parties of  
28 withholding court consideration. *Thomas*, 220 F.3d at 1141. Because of the statute's inchoate  
posture, Plaintiffs will experience no hardship if they are required to wait until after February  
2011 to bring a challenge to the statute once its application is known.

1 *Locke*, 423 F.3d 1101, 1111 (9th Cir. 2005). But, for the *Ex Parte Young* exception to  
2 apply “such officer must have some connection with the enforcement of the act, or else it  
3 is merely making him a party as a representative of the State, and thereby attempting to  
4 make the State a party.” *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998). “This  
5 connection must be fairly direct; a generalized duty to enforce state law or general  
6 supervisory power over the persons responsible for enforcing the challenged provision  
7 will not subject an official to suit.” *L.A. County Bar Ass’n v. Eu*, 979 F.2d 697, 704 (9th  
8 Cir. 1992).

9 Here, defendant Lindley is being sued for declaratory and injunctive relief in his  
10 official capacity as the Acting Chief of the Department of Justice, Bureau of Firearms.  
11 Plaintiffs allege that in this capacity he is “the individual currently charged with oversight  
12 of the California State agency that will enforce the statute at issue.” (¶ 8.) This  
13 conclusory allegation is insufficient to defeat sovereign immunity. Indeed, the Court may  
14 disregard such unsupported factual conclusions. *W. Mining Council v. Watt*, 643 F.2d  
15 618,624 (9th Cir. 1981). A close reading of the complaint reveals no specific allegations  
16 whatsoever regarding the Department of Justice’s enforcement role. That is because the  
17 Legislature did not give the agency any special role in administering or enforcing AB 962  
18 – any law enforcement officer in California may enforce its provisions once it goes into  
19 effect. This action against Chief Lindley, then, is based solely upon his “generalized duty  
20 to enforce state law” and is the equivalent of a prohibited action against the State itself.

21 Dismissing Chief Lindley on Eleventh Amendment grounds is firmly supported by  
22 Ninth Circuit authority, including the case of *Long v. Van de Kamp*, 961 F.2d 151 (9th  
23 Cir. 1992). *Long* arose from warrantless surprise searches of a motorcycle repair shop by  
24 deputy sheriffs and members of the California Highway Patrol pursuant to a provision in  
25 the California Vehicle Code that authorized such searches. *Long v. Van de Kamp*, 772 F.  
26 Supp. 1141, 1142 (C.D. Cal. 1991).<sup>5</sup> One of the operators of the repair shop was arrested

27 \_\_\_\_\_  
28 <sup>5</sup> While the court of appeals vacated the trial court’s order in *Long*, the Ninth Circuit’s  
published decision incorporates by reference the facts of the case. *See Long*, 961 F.2d at 152.

1 during a search. *Long*, 772 F. Supp. at 1142-43. The operators filed suit challenging the  
2 constitutionality of the Vehicle Code provision. *Id.* at 1143. The operators named the  
3 Attorney General and sought to enjoin him from enforcing the statute. *Id.*

4 In directing the district court to dismiss the Attorney General on Eleventh  
5 Amendment grounds, the Ninth Circuit stated that “there must be a connection between  
6 the official sued and enforcement of the allegedly unconstitutional statute, and there must  
7 be a threat of enforcement.” *Long*, 961 F.2d at 152. The Ninth Circuit found that the  
8 “general supervisory powers of the California Attorney General” did not establish the  
9 connection with enforcement required by *Ex Parte Young*. *Id.* (citing *S. Pac. Transp. Co.*  
10 *v. Brown*, 651 F.2d 613, 614 (9th Cir. 1981) (as amended)).<sup>6</sup> There also was no threat that  
11 the Vehicle Code provision would be enforced by the Attorney General, who “ha[d] not in  
12 any way indicated that he intend[ed] to enforce [the provision].” *Id.* “In addition, the  
13 searches of plaintiffs’ premises were not the result of any action attributable or traceable  
14 to the Attorney General.” *Id.* The Ninth Circuit held that “[a]bsent a *real likelihood* that  
15 the state official will employ his supervisory powers against plaintiffs’ interests, the  
16 Eleventh Amendment bars federal court jurisdiction.” *Id.* (emphasis added).

17 The circumstances here are analogous to those in *Long*. Plaintiffs’ complaint alleges  
18 no “direct connection” between Chief Lindley and the enforcement of AB 962. His  
19 general duty to enforce California law is insufficient to establish the requisite connection.  
20 Perhaps more importantly, there is no threat of enforcement. The vague allegation that  
21 Chief Lindley “will enforce the statute at issue” is insufficient to establish a “real  
22 likelihood” that Chief Lindley will employ his general powers to enforce AB 962 against  
23 Plaintiffs. *Long*, 961 F.2d at 152. Accordingly, the *Ex Parte Young* exception does not  
24 apply in this case. *See Long*, 961 F.2d at 152; *see also Snoeck*, 153 F.3d at 987 (“As *Ex*

25 \_\_\_\_\_  
26 <sup>6</sup> In *Southern Pacific Transp. Co.*, several railroads sued the Oregon Attorney General to  
27 enjoin enforcement of a statute limiting employers’ abilities to negotiate settlements with  
28 employees injured on the job. *S. Pac. Transp. Co.*, 651 F.2d at 614. The Ninth Circuit held that  
“[t]he attorney general’s power to direct and advise [district attorneys] does not make the alleged  
injury fairly traceable to his action, nor does it establish sufficient connection with enforcement to  
satisfy *Ex parte Young*.” *Id.* at 615.

1 *Parte Young* explains, the officers of the state must be cloaked with a duty to enforce the  
2 laws of the state and must threaten or be about to commence civil or criminal proceedings  
3 to enforce an unconstitutional act”). For these reasons, Chief Lindley respectfully  
4 requests that the Court grant this motion.

5 **III. IF THE COURT DOES NOT DISMISS THE COMPLAINT IN ITS ENTIRETY, IT**  
6 **SHOULD STAY THE ACTION PENDING RESOLUTION OF *PARKER V. STATE OF***  
7 ***CALIFORNIA, ET AL.***

8 If the Court does not dismiss this action on one of the grounds discussed above, it  
9 should stay the matter pending a decision in the related case of *Parker v. State of*  
10 *California, et al.*, Superior Court of California, County of Fresno, Case No.  
11 10CECG02116 (filed 6/17/2010).<sup>7</sup> Like this case, *Parker* involves a constitutional  
12 challenge to AB 962. Specifically, the plaintiffs in *Parker*, like Plaintiffs here, allege that  
13 several sections of AB 962 are unconstitutionally vague. A stay is appropriate to allow  
14 the Superior Court to adjudicate these claims of vagueness.

15 A district court has the discretionary power to control the disposition of the cases on  
16 its docket “in a manner which will promote economy of time and effort for itself, for  
17 counsel, and for the litigants.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); see  
18 *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). How these objectives can be achieved  
19 “calls for the exercise of judgment, which must weigh competing interests and maintain  
20 an even balance.” *Landis*, 299 U.S. at 254-55; see *Lockyer v. Miran Corp.*, 398 F.3d  
21 1098, 1110 (9th Cir. 2005) (“Where it is proposed that a pending proceeding be stayed,  
22 the competing interests which will be affected by the granting or refusal to grant a stay  
23 must be weighed.”). Such competing interests include “the possible damage which may  
24 result from the granting of a stay, the hardship or inequity which a party may suffer in  
25 being required to go forward, and the orderly course of justice measured in terms of the  
26 simplifying or complicating of issues, proof, and questions of law which could be  
27 expected to result from a stay.” *CMAX*, 300 F.2d at 268.

28 <sup>7</sup> The complaint in *Parker* is attached as Exhibit “A” to Defendant’s Request for Judicial  
Notice, which is lodged concurrently with this motion.

1           “A trial court may, with propriety, find it is efficient for its own docket and the  
2 fairest course for the parties to enter a stay of an action before it, pending resolution of  
3 independent proceedings which bear upon the case.” *Lockyer*, 398 F.3d at 1111 (quoting  
4 *Levy v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979); see *Landis*,  
5 299 U.S. at 255 (rejecting as “too mechanical and narrow” the view that there is no power  
6 to stay a proceeding upon the outcome of a controversy to which the litigant is a stranger).  
7 These separate proceedings may be judicial, administrative, or arbitral in nature, and  
8 proper imposition of a stay does not require that the issues in such separate proceedings  
9 are necessarily controlling of the action before the court. *Id.* However, “[a] stay should  
10 not be granted unless it appears likely the other proceedings will be concluded within a  
11 reasonable time in relation to the urgency of the claims presented to the court.” *Id.*

12           There is considerable overlap between the issues raised in this case and those raised  
13 in *Parker*. Plaintiffs here devote a substantial portion of their complaint to allegations  
14 concerning AB 962’s purported vagueness, particularly the definition of “handgun  
15 ammunition.” (See ¶¶ 11, 13, 18, 23, & 33.) That issue is pivotal in *Parker*. (See  
16 Request for Judicial Notice, Exh. “A” [*Parker* complaint], ¶¶ 88-103.) If plaintiffs’  
17 vagueness challenge in *Parker* is successful, AB 962 likely will be invalidated and this  
18 action could become moot. At a minimum, the Superior Court’s judgment in *Parker* will  
19 provide crucial direction to this Court in its analysis of the issues presented in this case.

20           A stay is especially appropriate here in light of the jurisdictional concerns identified  
21 above, as well as principles of federalism and comity implicated when a federal court is  
22 asked to invalidate new state legislation. See *Stefanelli v. Minard*, 342 U.S. 117, 120  
23 (1951) (in exercising their equitable powers federal courts must recognize “[t]he special  
24 delicacy of the adjustment to be preserved between federal equitable power and State  
25 administration of its own law”).

26           Finally, Plaintiffs will not be prejudiced by a stay pending a decision in *Parker*  
27 because that case already is at issue, a preliminary injunction motion is set for hearing on  
28 October 28, 2010, and a motion for summary judgment is calendared for December 16,

1 2010. (Krause Decl., ¶ 3.) Hence, those proceedings should be concluded almost *two*  
2 *months* before the laws challenged here will even go into effect. To promote judicial  
3 economy, and to avoid the needless construction of state statutes, the State respectfully  
4 requests a stay of these proceedings pending a decision in *Parker v. State of California*.

5 **CONCLUSION**

6 For all the foregoing reasons, the State respectfully requests that the Court issue an  
7 order dismissing the complaint and, if necessary, staying the action pending a decision in  
8 the matter of *Parker v. State of California, et al.*

9 Dated: September 20, 2010

Respectfully Submitted,

10 EDMUND G. BROWN JR.  
11 Attorney General of California  
12 JONATHAN K. RENNER  
13 Senior Assistant Attorney General

*/s/ Peter A. Krause*

14 PETER A. KRAUSE  
15 Deputy Attorney General  
16 *Attorneys for Defendant Steven Lindley,*  
17 *in his official capacity as Acting Chief of*  
18 *the California Department Of Justice*

16 SA2010102125  
17 10614868.doc



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF PETER A. KRAUSE**

I, Peter A. Krause, declare as follows:

1. I am an attorney at law duly licensed to practice in the State of California. I am a Deputy Attorney General in the Office of the Attorney General, counsel for defendant Steven Lindley, in his official capacity as Acting Chief of the California Department Of Justice. This declaration is submitted in support of the State’s Motion to Dismiss or, in the Alternative, to Stay the Action. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

2. I also am counsel to defendants the State of California, Edmund G. Brown Jr. (in his capacity as Attorney General of the State of California), and the California Department of Justice in *Parker v. State of California, et al.*, Superior Court of California, County of Fresno, Case No. 10CECG02116 (June 17, 2010), the complaint in which is the subject of a Request for Judicial Notice lodged concurrently herewith.

3. The *Parker* matter is at issue and the plaintiffs in that case filed a preliminary injunction motion on September 7, 2010 that is set for hearing on October 28, 2010. The plaintiffs also have calendared a motion for summary judgment for hearing on December 16, 2010.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 20, 2010 at Sacramento, California.

*/s/ Peter A. Krause*

\_\_\_\_\_

Peter A. Krause

1 EDMUND G. BROWN JR., State Bar No. 37100  
 Attorney General of California  
 2 JONATHAN RENNER, State Bar No. 187138  
 Senior Assistant Attorney General  
 3 PETER A. KRAUSE, State Bar No. 185098  
 Deputy Attorney General  
 4 1300 I Street, Suite 125  
 P.O. Box 944255  
 5 Sacramento, CA 94244-2550  
 Telephone: (916) 324-5328  
 6 Fax: (916) 324-8835  
 E-mail: Peter.Krause@doj.ca.gov  
 7 *Attorneys for Defendant Steven Lindley, in his*  
*official capacity as Acting Chief of the*  
 8 *California Department Of Justice*

9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
 12 SACRAMENTO DIVISION

13  
 14 **STATE AMMUNITION INC., dba**  
**www.stateammo.com; JIM OTTEN, dba**  
 15 **www.alammo.com, and JIM RUSSELL**  
**USMC (Ret.),**

16  
 17 Plaintiffs,

18 v.

19 **STEVEN LINDLEY, in his official**  
**capacity as Acting Chief of the**  
 20 **California Department of Justice,**  
**Bureau of Firearms, and DOES 1**  
 21 **through 10,**

22  
 23 Defendants.

Case No. 10-CV-01864 -MCE-KJN

**REQUEST FOR JUDICIAL NOTICE  
 IN SUPPORT OF DEFENDANT'S  
 MOTION TO DISMISS THE  
 COMPLAINT OR, IN THE  
 ALTERNATIVE, TO STAY THE  
 ACTION**

Date: November 18, 2010  
 Time: 2:00 p.m.  
 Ctrm: No. 7 - 14th Floor  
 Judge: Hon. Morrison C. England, Jr.  
 Trial Date: None  
 Action Filed: July 16, 2010

[Notice of Motion and Memorandum of  
 Points and Authorities Filed Concurrently  
 Herewith]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**REQUEST FOR JUDICIAL NOTICE**

Defendant Steven Lindley, in his official capacity as Acting Chief of the California Department of Justice, Bureau of Firearms, by and through his attorneys of record, respectfully requests that the Court take judicial notice pursuant to Federal Rule of Evidence rule 201 of the following facts and document:

On June 17, 2010, certain plaintiffs filed a complaint in the Superior Court of California, County of Fresno, Case No. 10CECG02116, entitled *Parker, et al. v. State of California, et al.* The plaintiffs in that action seek to invalidate Assembly Bill 962 on the ground that the act's definition of "handgun ammunition" is unconstitutionally vague under the Fourteenth Amendment to the United States Constitution. A true and correct copy of the Complaint in *Parker v. State of California* is attached hereto as Exhibit "A."

Dated: September 20, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
JONATHAN K. RENNER  
Senior Assistant Attorney General

*/s/ Peter A. Krause*

PETER A. KRAUSE  
Deputy Attorney General  
*Attorneys for Defendant Steven Lindley,  
in his official capacity as Acting Chief  
of the California Department Of Justice*

SA2010102125  
10615030.doc

**EXHIBIT A**

**FILED**

JUN 17 2010

FRESNO COUNTY SUPERIOR COURT

CLERK

1 C. D. Michel - SBN 144258  
Clinton B. Monfort - SBN 255609  
2 Sean A. Brady - SBN 262007  
MICHEL & ASSOCIATES, P.C.  
3 180 East Ocean Blvd., Suite 200  
Long Beach, CA 90802  
4 Telephone: (562) 216-4444  
Fax: (562) 216-4445  
5 cmichel@michellawyers.com

6 Attorneys for Plaintiffs/Petitioners

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF FRESNO

10 CECE 02 1 16

10 SHERIFF CLAY PARKER, TEHAMA )  
COUNTY SHERIFF; HERB BAUER )  
11 SPORTING GOODS; CALIFORNIA RIFLE )  
AND PISTOL ASSOCIATION )  
12 FOUNDATION; ABLE'S SPORTING, )  
INC.; RTG SPORTING COLLECTIBLES, )  
13 LLC; AND STEVEN STONECIPHER, )

CASE NO.  
**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF;  
PETITION FOR WRIT OF MANDATE**  
**(TO DETERMINE VALIDITY  
OF STATUTES)**

14 Plaintiffs and Petitioners,

15 vs.

16 THE STATE OF CALIFORNIA; JERRY )  
17 BROWN, IN HIS OFFICIAL CAPACITY )  
AS ATTORNEY GENERAL FOR THE )  
18 STATE OF CALIFORNIA; THE )  
CALIFORNIA DEPARTMENT OF )  
19 JUSTICE; and DOES 1-25, )

20 Defendants and Respondents.  
21

This case has been assigned to  
Judge Adolfo M. Corona for all purposes

22 Plaintiffs and Petitioners<sup>1</sup> Sheriff Clay Parker, et. al., (collectively "Plaintiffs") by and  
23 through their Counsel, bring this action against Defendants under state and federal law, including  
24 42 U.S.C. 1983, to challenge the validity of California Penal Code sections 12060, 12061, and  
25 12318 *et seq.* that regulate "handgun ammunition" as it is defined in Penal Code sections  
26 12060(b) and 12323(a).

27  
28 <sup>1</sup> In matters combining a complaint for declaratory relief and writ petition, the parties are  
uniformly referred to as "plaintiff" and "defendant." (Code Civ. Proc. §§ 308, 1063.)

INTRODUCTION

1  
2 1. In 2009, Governor Schwarzenegger signed Assembly Bill 962 into law, which added  
3 Penal Code sections 12060, 12061 and 12318<sup>2</sup> to the California Penal Code and implemented a  
4 statutory scheme for the transfer and handling of “handgun ammunition.”

5 2. The Challenged Provisions are void for vagueness under the Due Process Clause of the  
6 Fourteenth Amendment, both facially and as applied, because their definition of “handgun  
7 ammunition” fails to provide notice to “people of ordinary intelligence,” including Plaintiffs and  
8 law enforcement officers, of which calibers of ammunition these provisions regulate. This failure  
9 to provide notice is especially egregious given the heightened standard of certainty required of  
10 laws like the Challenge Provisions that impose criminal penalties and impact constitutionally  
11 protected conduct. Under the Challenged Provisions, “handgun ammunition” includes all  
12 ammunition “*principally for use in* pistols, revolvers, and other firearms capable of being  
13 concealed upon the person, . . . notwithstanding that the ammunition may also be used in some  
14 rifles.”

15 3. Despite the fact that virtually all calibers of ammunition can be used safely in both  
16 rifles and handguns, the Challenged Provisions fail to provide any standard whereby a person of  
17 ordinary intelligence can understand and determine whether a given caliber of ammunition is  
18 “principally for use” in a handgun. Ordinary persons, including law abiding individuals,  
19 ammunition vendors, and law enforcement officers are required to know, *without any clarifying*  
20 *guidelines from Defendants*, whether ammunition commonly used in both rifles and handguns,  
21 including but not limited to .22 LR, .22-250, 270 Winchester, .308, .308 NATO, 9mm, .357  
22 Magnum, .40 Smith & Wesson .44 Magnum, .45 Colt, .45 ACP, and 40-40 Winchester, are  
23 “principally for use in handguns.”

24 4. Accordingly, the Challenged Provisions require ordinary persons – as well as those  
25 charged with enforcing them – to have superior knowledge that they neither have, nor can

26  
27  
28 <sup>2</sup> Penal Code sections 12060, 12061 and 12318 are hereinafter referred to collectively as the  
“Challenged Provisions.”

1 reasonably acquire, prior to engaging in or regulating the exercise of constitutionally protected  
2 conduct.

3 5. The confusion surrounding which calibers of ammunition are “principally for use” in  
4 handguns prevents persons of ordinary intelligence who wish to comply with the law from having  
5 reasonable notice of their obligations under the Challenged Provisions.

6 6. Further, even if the terms “principally for use in” had an objective meaning, whether a  
7 given caliber of ammunition is used principally in a handgun as opposed to a rifle is something  
8 that will change and fluctuate over time, depending on the changing popularity and usage of  
9 different types of firearms that utilize that particular caliber of ammunition.

10 7. Moreover, rifle and handgun ammunition packaging most often *does not have* a label  
11 indicating whether it is “handgun” or “rifle” ammunition – let alone labeling indicating what its  
12 “*principal use*” might be under the Challenged Provisions.

13 8. Ultimately, no statutory or other means exist that would enable Plaintiffs to first  
14 *understand the meaning* of the Challenged Provisions’ “principally for use in” standard, and  
15 second, determine whether a given caliber of ammunition is *actually “handgun ammunition”*  
16 *under that standard*.

17 9. Due to the vagueness of the Challenged Provisions, law enforcement officials have  
18 essentially unbridled discretion to interpret and apply the Challenged Provisions, including the  
19 arbitrary ability to declare which calibers of ammunition are “handgun ammunition.” Plaintiffs,  
20 and others wishing to comply with the law, are therefore unjustly subject to criminal penalties if  
21 their understanding of the law differs from that of law enforcement.

22 10. For these reasons, Plaintiffs, as taxpayers, citizens, retailers, and law enforcement  
23 officials seek injunctive and declaratory relief prohibiting the enforcement of the Challenged  
24 Provisions.

25 ///

26 ///

27 ///

28 ///

PARTIES

[Plaintiffs]

11. Plaintiff SHERIFF CLAY D. PARKER ("SHERIFF PARKER"), is the duly elected Sheriff for the County of Tehama, California. SHERIFF PARKER has been a law enforcement officer since 1981, and is a graduate of the Federal Bureau of Investigation National Academy. He was originally elected Sheriff of Tehama County in 1998, and has been re-elected to that position two (2) times. SHERIFF PARKER is also the immediate-past President of the California State Sheriffs' Association, and is a former President of the Western States' Sheriffs' Association. In addition to having standing as a citizen and taxpayer, SHERIFF PARKER is responsible for determining the policies of the Tehama County Sheriff's Department, including which calibers of ammunition are "handgun ammunition" under the Challenged Provisions. SHERIFF PARKER is also responsible for upholding the laws of California and of the United States. Without further clarification or guidelines as to what calibers of ammunition are "handgun ammunition," SHERIFF PARKER cannot, and does not, know how to equitably enforce the Challenged Provisions.

12. Plaintiff HERB BAUER'S SPORTING GOODS, INC., is a California corporation that sells a variety of ammunition suitable for use in both rifles and handguns, with its principal place of business in the County of Fresno, CA. Barry Bauer is the President of HERB BAUER'S SPORTING GOODS, INC., and is responsible for determining the policies and operating procedures of HERB BAUER'S SPORTING GOODS, INC., including which calibers of ammunition are "handgun ammunition" under the Challenged Provisions. Plaintiff does not, and cannot, know what its obligations are under the Challenged Provisions because they do not provide notice of which calibers of ammunition are "handgun ammunition" and thus regulated by the Challenged Provisions. The failure to provide Plaintiff with notice of which calibers of ammunition are "handgun ammunition" under the Challenged Provisions unreasonably and unfairly subjects Plaintiff to the threat of prosecution for violations of these laws, because Plaintiff does not, and cannot, know what the Challenged Provisions prohibit.

///



1           13. Plaintiff CALIFORNIA RIFLE AND PISTOL ASSOCIATION FOUNDATION  
2 (“CRPA FOUNDATION”) is a non-profit entity classified under section 501(c)(3) of the Internal  
3 Revenue Code and incorporated under California law, with headquarters in Fullerton, California.  
4 Contributions to CRPA FOUNDATION are used for the direct benefit of Californians. Funds  
5 granted by the Foundation benefit a wide variety of constituencies throughout California,  
6 including gun collectors, hunters, target shooters, law enforcement, and those who choose to own  
7 a firearm to defend themselves and their families. CRPA FOUNDATION seeks to: raise  
8 awareness about unconstitutional laws, defend and expand the legal recognition of the rights  
9 protected by the Second Amendment, promote firearms and hunting safety, protect hunting rights,  
10 enhance marksmanship skills of those participating in shooting sports, and educate the general  
11 public about firearms. CRPA FOUNDATION supports law enforcement and various charitable,  
12 educational, scientific, and other firearms-related public interest activities that support and defend  
13 the Second Amendment rights of all law-abiding Americans. In this suit, CRPA FOUNDATION  
14 represents the interests of the tens of thousands of its supporters who reside in the State of  
15 California and who are too numerous to conveniently bring this action individually, and whose  
16 interests include their desire to purchase and transfer ammunition and otherwise exercise their  
17 constitutional rights to keep and bear arms without being subject to criminal prosecution for  
18 violating the unconstitutionally vague Challenged Provisions.

19           14. Plaintiff ABLE’S SPORTING, INC. (“ABLE’S”) is a lawful ammunition distributor  
20 that ships dozens of different calibers of firearm ammunition, including ammunition suitable for  
21 use in both long guns and handguns, directly to California residents. Neither Plaintiff ABLE’S,  
22 nor others distributors in its position, know what their obligations are under California Penal Code  
23 section 12318<sup>3</sup> because the Challenged Provisions do not provide notice as to which calibers of  
24 ammunition are “handgun ammunition” and thus regulated by section 12318. As a result, the  
25 Challenged Provisions unreasonably and unfairly subject Plaintiff ABLE’S to criminal  
26 prosecution for violating section 12318.

---

27  
28 <sup>3</sup> All further statutory references are to the California Penal Code unless otherwise indicated.

1 15. Plaintiff RTG SPORTING COLLECTIBLES, LLC ("RTG") is a lawful ammunition  
2 distributor that ships dozens of different calibers of firearm ammunition, including ammunition  
3 suitable for use in both long guns and handguns, directly to residents of California, including  
4 Fresno County residents. Most of the ammunition RTG ships into California was manufactured  
5 before the year 1960, and in many cases before 1920, and, despite being mostly live ammunition,  
6 is sold as "collectible ammunition" not intended for firing. Plaintiff RTG does not and cannot  
7 know what its obligations are under section 12318 because the Challenged Provisions not only fail  
8 to provide notice of which calibers of ammunition are "handgun ammunition" and thus regulated  
9 by section 12318, but also as to whether RTG's collectible ammunition is subject to section 12318  
10 at all. As a result, the Challenged Provisions unreasonably and unfairly subject RTG to criminal  
11 prosecution for violating section 12318.

12 16. Plaintiff STEVEN STONECIPHER is an individual resident of Fresno County,  
13 California and is *not* engaged in the business of selling ammunition. In addition to having  
14 standing as a citizen and taxpayer, Plaintiff STONECIPHER mails ammunition to friends and/or  
15 family, and sometimes receives ammunition in the mail from out of state shippers of ammunition.  
16 Plaintiff STONECIPHER does not, and cannot, know what his obligations are under section  
17 12318, because the Challenged Provisions do not provide notice of what calibers of ammunition  
18 are "handgun ammunition" and thus regulated by section 12318. As a result, the Challenged  
19 Provisions unreasonably and unfairly subject Plaintiff STONECIPHER and others similarly  
20 situated to criminal prosecution for violating section 12318.

21 17. Plaintiffs initiate this action in their respective personal interests and as taxpayers and  
22 citizens seeking to enjoin the undue expenditure of public funds to enforce these void and invalid  
23 statutes.

24 **[Defendants]**

25 18. Defendant STATE OF CALIFORNIA ("STATE") is a sovereign state admitted to the  
26 United States under section 3, Article IV of the United States Constitution.

27 19. Defendant JERRY BROWN is the Attorney General of California. He is the chief law  
28 enforcement officer of California, and is charged by article V, section 13 of the California

1 Constitution with the duty to inform the general public, and to supervise and instruct local  
2 prosecutors and law enforcement agencies, regarding the meaning of the laws of the STATE,  
3 including the Challenged Provisions, and to ensure the fair, uniform and consistent enforcement of  
4 those laws throughout the state.

5 20. Defendant CALIFORNIA DEPARTMENT OF JUSTICE ("DOJ") is a lawfully  
6 constituted executive agency of California responsible, in part, for administering the Challenged  
7 Provisions. It is charged by Article V, section 13 of the California Constitution with the duty to  
8 inform the general public, and to supervise and instruct local prosecutors and law enforcement  
9 agencies, regarding the meaning of the laws of the STATE, including the Challenged Provisions,  
10 and ensure the fair, uniform and consistent enforcement of those laws throughout the state.

11 21. Defendants STATE OF CALIFORNIA, BROWN and the DOJ (collectively  
12 "DEFENDANTS") are responsible for administering the Challenged Provisions, and are in fact  
13 presently enforcing subparagraphs (1) and (2) of section 12061(a) against Plaintiffs, and will  
14 enforce subparagraphs (3)-(7) of section 12061(a) and section 12318 against Plaintiffs when those  
15 provisions take effect on February 1, 2011.

16 22. The true names or capacities, whether individual, corporate, associate or otherwise of  
17 the Defendants named herein as DOE, are presently unknown to Plaintiffs, who therefore sue said  
18 Defendants by such fictitious names. Plaintiffs pray for leave to amend this Complaint and  
19 Petition to show the true names, capacities, and/or liabilities of DOE Defendants if and when they  
20 have been determined.

21 23. Defendants are presently enforcing subparagraphs (1) and (2) of section 12061(a) and  
22 will be enforcing subparagraphs (3)-(7) of section 12061(a) and section 12318 against Plaintiffs  
23 under color of state law within the meaning of 42 U.S.C. § 1983, in that such enforcement  
24 subjects plaintiffs to the deprivation of rights, privileges, and immunities secured by the United  
25 States Constitution.

26 ///

27 ///

28 ///

1 **JURISDICTION AND VENUE**

2 24. This Court has jurisdiction under sections 525, 526, 1060 and 1085 of the California  
3 Code of Civil Procedure and other applicable laws. Plaintiffs lack a “plain, speedy, and adequate  
4 remedy in the ordinary course of law.” (Cal. Code of Civ. Proc. § 1086.)

5 25. Because this action is brought against a public officer of the State of California and  
6 against the State of California itself, and because the Attorney General has an office in Fresno,  
7 CA, this action is properly brought in the Superior Court for the State of California for the County  
8 of Fresno. (Code of Civ. Proc. §§ 393(b), 394(a), 401(1).)

9 **AUTHENTICITY OF EXHIBITS**

10 26. All exhibits accompanying this Complaint and Petition are true and correct copies of  
11 the original documents. The exhibits are incorporated herein by reference as though fully set forth  
12 in this Complaint and Petition.

13 **REGULATORY SCHEME**

14 **[Assembly Bill 962]**

15 27. Sections 12060, 12061 and 12318 were added to the California Penal Code by  
16 Assembly Bill 962 (2009-2010 Reg. Sess.) (“AB 962”),<sup>4</sup> which implemented a statutory scheme  
17 for the transfer and handling of “handgun ammunition.”

18 28. Each of these sections regulate “handgun ammunition” as defined in section 12060(b).

19 29. Section 12060(b) defines “handgun ammunition” as follows: “Handgun ammunition”  
20 means handgun ammunition as defined in subdivision (a) of Section 12323, but excluding  
21 ammunition designed and intended to be used in an “antique firearm” as defined in Section  
22 921(a)(16) of Title 18 of the United States Code. Handgun ammunition does not include blanks.”

23 30. Penal Code section 12323(a)<sup>5</sup> defines “handgun ammunition” as: “...ammunition

24  
25 <sup>4</sup> Assembly Bill No. 962 (2009-2010 Reg. Sess.) is codified at Penal Code §§ 12060,  
26 12061, 12316, 12317, and 12318. The amendments to Penal Code §§ 12317 and 12318 are not  
27 challenged in this suit. A copy of AB 962 containing the language of the statutes added and  
28 amended by its passage, including the Challenged Provisions, is attached as Exhibit “A” and  
incorporated herein.

<sup>5</sup> A copy of the text of Cal. Pen. Code section 12323(a) is attached hereto as Exhibit “B.”

1 principally for use in pistols, revolvers, and other firearms capable of being concealed upon the  
2 person, as defined in subdivision (a) of Section 12001<sup>6</sup>, notwithstanding that the ammunition may  
3 also be used in some rifles.”

4 31. As provided in Section 921(a)(16) of Title 18 of the United States Code, the term  
5 “antique firearm” means: (A) any firearm (including any firearm with a matchlock, flintlock,  
6 percussion cap, or similar type of ignition system) manufactured in or before 1898; or (B) any  
7 replica of any firearm described in subparagraph (A) if such replica (i) is not designed or  
8 redesigned for using rimfire or conventional centerfire fixed ammunition, or (ii) uses rimfire or  
9 conventional centerfire fixed ammunition which is no longer manufactured in the United States  
10 and which is not readily available in the ordinary channels of commercial trade; or (C) any muzzle  
11 loading rifle, muzzle loading shotgun, or muzzleloading pistol, which is designed to use black  
12 powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of  
13 this subparagraph, the term “antique firearm” shall not include any weapon which incorporates a  
14 firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any  
15 muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the  
16 barrel, bolt, breechblock, or any combination thereof.”

17 32. Thus, “handgun ammunition,” for purposes of the Challenged Provisions, is defined  
18 by Penal Code section 12060(b), as all ammunition “principally for use in [handguns] . . . ,  
19 notwithstanding that the ammunition may also be used in some rifles.”<sup>7</sup>

20 33. Section 12061 regulates the activities of anyone deemed a “handgun ammunition  
21 vendor” (hereinafter “Vendor”) as defined in section 12060©.

22 ///

23 ///

24 \_\_\_\_\_  
25 <sup>6</sup> Section 12001(a) provides: “As used in this title, the terms ‘pistol,’ ‘revolver,’ and ‘firearm  
26 capable of being concealed upon the person’ shall apply to and include any device designed to be  
27 used as a weapon....” (For convenience, “pistols, revolvers, and other firearms capable of being  
28 concealed upon the person” are hereinafter referred to in this Complaint as “handgun(s).”)

<sup>7</sup> Excluding ammunition “designed and intended” to be used in “antique firearms,” and  
blanks. (Cal Pen. Code section 12061(b).)

1           34. Section 12060(c) defines a "handgun ammunition vendor" as: "any person, firm,  
2 corporation, dealer, or any other business enterprise that is engaged in the retail sale of any  
3 "handgun ammunition," or that holds itself out as engaged in the business of selling any "handgun  
4 ammunition."

5           35. Section 12061(a)(1) mandates that: "A vendor shall not permit any employee who the  
6 vendor knows or reasonably should know is a person described in Section 12021 or 12021.1 of  
7 this code or Section 8100 or 8103 of the Welfare and Institutions Code to handle, sell, or deliver  
8 handgun ammunition in the course and scope of his or her employment."

9           36. Section 12061(a)(2) mandates that: "A vendor shall not sell or otherwise transfer  
10 ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or  
11 display for transfer of ownership of any handgun ammunition in a manner that allows that  
12 ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or  
13 employee thereof."

14           37. Commencing February 11, 2011, subsections (3)-(7) of 12061(a) require Vendors  
15 (subject to exceptions for exempted persons), under penalty of misdemeanor prosecution, to  
16 accurately record specific information about every transfer of "handgun ammunition" made by the  
17 Vendor, store the records on the premises for five years, and make the records available for  
18 inspection and/or use by law enforcement.<sup>8</sup>

19           38. Section 12318 requires that, subject to exceptions for exempted persons:  
20 "Commencing February 11, 2011, the delivery or transfer of ownership of handgun ammunition  
21 may only occur in a face-to-face transaction with the deliverer or transferor being provided bona  
22 fide evidence of identity from the purchaser or other transferee. A violation of this section is a  
23 misdemeanor."<sup>9</sup>

---

24  
25           <sup>8</sup> See section 12061(b) of AB 962 attached hereto as Exhibit "A."

26           <sup>9</sup> Deliveries, transfers or sales to certain persons are exempted from these requirements under  
27 section 12318(c), including transfers to authorized law enforcement representatives, persons on  
28 the centralized list maintained by the Department of Justice pursuant to section 12083, "handgun  
ammunition vendors," and others.

**[Vagueness Doctrine]**

1  
2 39. The Fourteenth Amendment of the United States Constitution provides that no state  
3 shall deprive any person of life, liberty, or property, without due process of law.

4 40. A statute which either forbids or requires the doing of an act in terms so vague that  
5 persons of common intelligence must necessarily guess at its meaning and differ as to its  
6 application violates the first essential requirement of due process.

7 41. The “void for vagueness” doctrine under the Due Process Clause generally requires  
8 that a penal statute define the criminal offense with sufficient definiteness that ordinary people can  
9 understand what conduct is prohibited. It requires laws to give the person of ordinary intelligence  
10 a reasonable opportunity to know what is prohibited, so that he or she may act accordingly.

11 42. The certainty required in legislation is greater where a criminal statute limits a  
12 constitutional right.

13 43. *District of Columbia v. Heller* (2008), 128 S. Ct. 2783, held that the Second  
14 Amendment of the United States Constitution protects an individual right to keep and bear arms.

15 44. The Second Amendment, by way of its incorporation through the Fourteenth  
16 Amendment, limits state and local government action from infringing on an individual’s right to  
17 keep and bear arms.

18 45. The “void for vagueness” doctrine also requires that penal statutes regulate in a  
19 manner that does not encourage arbitrary and discriminatory enforcement of the law. Laws may  
20 not impermissibly delegate basic policy matters to policemen, judges, and juries for resolution on  
21 an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory  
22 application.

23 **GENERAL ALLEGATIONS**

24 46. Each of the Challenged Provisions are criminal statutes that limit the constitutional  
25 right to keep and bear arms guaranteed by the Second Amendment.

26 ///

27 ///

28 ///

1 47. The Challenged Provisions are void for vagueness because persons of ordinary  
2 intelligence, including Plaintiffs, are unable to ascertain at any given time which calibers of  
3 ammunition are considered “principally for use” in a handgun and are thus “handgun ammunition”  
4 pursuant to sections 12060(b) and 12323(a).

5 48. All modern centerfire and rimfire ammunition for use in rifles and/or handguns consist  
6 of the same components: a metal casing that suspends a metal projectile over a charge of  
7 smokeless powder confined within the metal casing and a primer to ignite the charge.

8 49. Virtually all calibers of ammunition can be used safely in both rifles and handguns.

9 50. Many calibers of ammunition are commonly used in both rifles and handguns,  
10 including but not limited to .22 LR, .22-250, 270 Winchester, .308, .308 NATO, 9mm, .357  
11 Magnum, .40 Smith & Wesson, .44 Magnum, .45 Colt, .45 ACP, and 40-40 Winchester.

12 51. Persons of ordinary intelligence are unable to ascertain from reading the Challenged  
13 Provisions what the phrase “principally for use in” means, let alone whether a given caliber of  
14 ammunition is “principally for use” in a handgun at any given time.

15 52. The Challenged Provisions fail to provide any standard whereby one can determine  
16 whether a given caliber of ammunition is “principally for use” in a handgun.

17 53. The Challenged Provisions do not state what “ammunition ‘principally for use’ in a  
18 handgun” means. If it means ammunition that is used more often in a handgun than in a long gun,  
19 the Challenged Provisions still do not specify which calibers of ammunition are in fact used more  
20 often in a handgun than in a long-gun, or vice-versa.

21 54. Whether a given caliber of ammunition is used more often in a handgun than in a rifle  
22 may change and fluctuate over time, depending on the changing popularity and usage of different  
23 types of firearms which utilize that caliber of ammunition, or vice-versa.

24 55. There are no means for individuals of ordinary intelligence to determine which  
25 calibers of ammunition, at any given time, are used more often in a handgun than in a long-gun.

26 56. Even if a manufacturer’s intended use was the “applicable” standard, there are  
27 likewise no means for individuals of ordinary intelligence to determine which calibers of  
28 ammunition are intended by manufacturers to be “principally for use” in a handgun or a rifle.



1 57. Packaging for ammunition that is commonly used in both rifles and handguns most  
2 often has no label indicating whether it is “handgun” or “rifle” ammunition, let alone indicating  
3 whether the ammunition is “*principally for use*” in a handgun under section 12060(b).

4 58. As well, as firearm models and calibers evolve, are developed, and become more or  
5 less popular with consumers, whether a specific type of ammunition is intended to be “principally  
6 for use” in a handgun can change and fluctuate over time.

7 59. There is no generally accepted technical definition of “handgun ammunition,” nor any  
8 commonly understood delineation between “handgun ammunition” and other ammunition used in  
9 the firearms industry that clearly equates to the “principally for use in [handguns]” language upon  
10 which the Challenged Provisions rely.

11 60. For example, ammunition that is commonly referred to as .22 Long Rifle, or .22 LR,  
12 is frequently used in handguns, including Olympic target pistols, despite the use of the term “rifle”  
13 in its nomenclature.

14 61. Further, under the definition of “antique firearm” in Section 921(a)(16) of Title 18 of  
15 the United States Code, a firearm made in or before 1898 is an “antique firearm,” but an identical  
16 firearm in the same caliber made after 1898 is not an “antique firearm.” Numerous calibers of  
17 ammunition, including but not limited to .22 Short, .22 Long, 32-20, .38-40, .44-40, .45 Colt, and  
18 .32 Colt can be used in identical firearms that were manufactured both in or before 1898 and after  
19 1898, and are commonly used in both rifles and handguns. Because many calibers of ammunition  
20 can be used in both a modern firearm and an “antique firearm” under that definition, there is no  
21 way of knowing whether any of those calibers is “designed and intended” to be used in an  
22 “antique firearm” or not, and thus exempt from the Challenged Provisions

23 62. The uncertainty and confusion as to which calibers of ammunition are “principally for  
24 use in” handguns prevents people of ordinary intelligence who wish to comply with the law from  
25 having notice of what their obligations are under the Challenged Provisions.

26 63. Law enforcement officials likewise cannot know and are unable to clearly determine  
27 which calibers of ammunition are “principally for use in” handguns.

28

1 64. Without legislative guidance as to what calibers of ammunition are “handgun  
2 ammunition,” such as an enumerated list of regulated ammunition calibers, some law enforcement  
3 agencies, and individual officers, will unilaterally or subjectively consider a given caliber to be  
4 “handgun ammunition” under the Challenged Provisions, while others will not, thereby  
5 encouraging arbitrary and discriminatory application of the Challenged Provisions.

6 65. Also, a person of ordinary intelligence does not, and cannot, know whether rare  
7 ammunition that is sold as a collectible, not intended to be fired but that can be fired, is “handgun  
8 ammunition” under the Challenged Provisions. Though it is intended to be used as a collectible, it  
9 may still be subjectively considered “principally for use in” handguns by law enforcement, thereby  
10 encouraging further arbitrary and discriminatory application of the Challenged Provisions.

11 **[Guideline Failures]**

12 66. On or about December 30, 2009, the DOJ Bureau of Firearms released an official  
13 “Information Bulletin” for all California firearms dealers that provided a list of all “New and  
14 Amended Firearms Laws” that became effective January 1, 2010. The Information Bulletin lists  
15 subparagraphs (1) and (2) of section 12061(a) as laws effective January 1, 2010. The Information  
16 Bulletin also lists subparagraphs (3) of section 12061 and section 12318 as taking effect on  
17 February 1, 2011.<sup>10</sup>

18 67. The Information Bulletin summarizes each Challenged Provision, but fails to provide  
19 any guidelines or clarification for Vendors, individuals or law enforcement to understand and  
20 determine what the term “principally for use in” means, let alone whether any given caliber of  
21 ammunition is “principally for use” in handguns, and therefore “handgun ammunition” under the  
22 Challenged Provisions.

23 68. None of the Challenged Provisions, nor any other provision of the law, confer  
24 authority upon an agency or other entity to promulgate regulations to clarify the Challenged  
25 Provisions.

26 ///

27  
28 <sup>10</sup> A copy of the Information Bulletin is attached hereto as Exhibit “C.”

1 69. Defendant DOJ has expressly stated it “[does not] have any other guidelines to  
2 distinguish . . . “handgun ammunition” from other ammunition,” and it “would only refer to the  
3 language of Penal Code section 12323, subd. (a) . . .”

4 70. Defendant DOJ has expressly stated it “can’t and won’t adopt a general policy” about  
5 which calibers of ammunition are covered by the Challenged Provisions.

6 71. Defendant DOJ also stated it “[does not] plan to hold any regulatory meetings”  
7 concerning the implementation and clarification of the Challenged Provisions.

8 72. Defendant DOJ has stated it “[doesn’t] know and . . . can’t say” whether DOJ Field  
9 Representatives charged with enforcing these laws will consider a certain caliber of ammunition  
10 to be “handgun ammunition” under, and for purposes of enforcing, the Challenged Provisions.

11 **[Irreparable Injury Allegations]**

12 73. Due to the vagueness of the Challenged Provisions as to what calibers of ammunition  
13 are “handgun ammunition,” the named individual plaintiffs, and the individuals and entities  
14 represented in this action, are irreparably injured, and will continue to be injured, by the mere  
15 enactment, existence, and ongoing and pending arbitrary enforcement of the Challenged  
16 Provisions in the following ways:

17 74. Licensed business enterprises, including Plaintiff HERB BAUER SPORTING  
18 GOODS, INC. and those represented by Plaintiff CRPA FOUNDATION, engaged in the business  
19 of selling or transferring ammunition within the state are, and will continue to be, subject to  
20 criminal prosecution for allowing an employee to handle a caliber of ammunition that,  
21 unbeknownst to the Vendor, law enforcement subjectively deems “handgun ammunition” –  
22 despite the fact that neither Vendors nor law enforcement can ascertain which calibers of  
23 ammunition are “handgun ammunition” under section 12061(a)(1) and which are not.

24 75. Licensed business enterprises, including Plaintiff HERB BAUER SPORTING  
25 GOODS, INC. and those represented by Plaintiff CRPA FOUNDATION, engaged in the business  
26 of selling or transferring ammunition within the state are, and will continue to be, subject to  
27 criminal prosecution for displaying a caliber of ammunition in a manner accessible to the  
28 transferee that, unbeknownst to the Vendor, law enforcement subjectively considers “handgun

1 ammunition”, despite the fact that neither Vendors nor law enforcement can ascertain which  
2 calibers of ammunition are “handgun ammunition” under 12061(a)(2) and which are not.

3 76. Licensed business enterprises, including Plaintiff HERB BAUER SPORTING  
4 GOODS, INC. and those represented by Plaintiff CRPA FOUNDATION, engaged in the business  
5 of selling or transferring ammunition within the State will be forced to risk criminal prosecution  
6 for failing to record transfers of a caliber of ammunition that, unbeknownst to the Vendor, law  
7 enforcement subjectively considers “handgun ammunition,” despite the fact that neither Vendors  
8 nor law enforcement can ascertain which calibers of ammunition are “handgun ammunition”  
9 under section 12061(a)(3-7).

10 77. Licensed business enterprises, including Plaintiffs ABLE’S, RTG, and those  
11 represented by CRPA FOUNDATION, engaged in the business of shipping ammunition to  
12 individuals in the State will be subject to criminal prosecution for shipping to a transferee within  
13 the State a caliber of ammunition that, unbeknownst to the Vendor, law enforcement subjectively  
14 considers “handgun ammunition,” despite the fact that neither Vendors nor law enforcement can  
15 ascertain which calibers of ammunition are “handgun ammunition” under section 12318 and  
16 which are not. Due to enforcement threats under section 12318 and the inability to determine  
17 which calibers of ammunition are “handgun ammunition,” Plaintiffs ABLE’S and RTG may be  
18 forced to cease all shipments of ammunition suitable for use in both handguns and rifles to their  
19 customers in California, thereby causing a significant decrease in sales and lost profits.

20 78. In the case of Plaintiff RTG, most of the ammunition it ships into California is sold as  
21 collectible ammunition that is not intended for firing. Plaintiff RTG does not, and cannot, know  
22 what its obligations are under section 12318 because the Challenged Provisions fail to provide  
23 notice of whether collectible ammunition is subject to section 12318.<sup>11</sup> It is unclear whether any  
24 given caliber of RTG’s collectible ammunition is “principally for use in a handgun” when it is  
25 sold for use as a collector’s item. This failure to provide notice unreasonably and unfairly subjects  
26

---

27 <sup>11</sup> Much of the collectible ammunition RTG ships to California is not “designed and intended  
28 to be used in an ‘antique firearm’ as defined in Section 921(a)(16) of Title 18 of the United  
States Code” and is thus not *expressly* exempt from the requirements of section 12318.

1 RTG to criminal prosecution for violating section 12318, because RTG does not and cannot know  
2 what conduct the law prohibits.

3 79. Licensed business enterprises, including Plaintiff HERB BAUER SPORTING  
4 GOODS, INC., and those represented by Plaintiff CRPA FOUNDATION, engaged in the business  
5 of selling or transferring ammunition in the state will be subject to criminal prosecution for failing  
6 to request "bona fide evidence of identification" from a transferee, upon transferring within the  
7 state, a caliber of ammunition that law enforcement subjectively considers "handgun  
8 ammunition," despite the fact that neither Vendors nor law enforcement can ascertain which  
9 calibers of ammunition are "handgun ammunition" under section 12318 and which are not.

10 80. Individual residents of the state, including Plaintiff STEVEN STONECIPHER and  
11 those represented by Plaintiff CRPA FOUNDATION, who transfer and receive ammunition via  
12 mail within the state, will be subject to criminal prosecution for shipping to a transferee (or  
13 receiving as a transferee) a caliber of ammunition that law enforcement subjectively considers  
14 "handgun ammunition," despite the fact that neither the parties to the transfer, nor law  
15 enforcement, can ascertain which calibers of ammunition are "handgun ammunition" under  
16 section 12318 and which are not.

17 81. Residents of the state, including Plaintiff STEVEN STONECIPHER and those  
18 represented by Plaintiff CRPA FOUNDATION, who transfer ammunition, will be subject to  
19 criminal prosecution for failing to request "bona fide evidence of identification" upon transfer of a  
20 caliber of ammunition that law enforcement subjectively considers "handgun ammunition,"  
21 despite the fact that neither the parties to the transfer, nor law enforcement, can ascertain which  
22 calibers of ammunition are "handgun ammunition" under section 12318 and which are not.

23 82. Law enforcement officials, including Plaintiff SHERIFF PARKER, whose sworn duty  
24 it is to uphold the law, do not and cannot know what individuals' and Vendors' obligations are  
25 under the Challenged Provisions because those officials cannot ascertain which calibers of  
26 ammunition are "handgun ammunition" under the Challenged Provisions. The vagueness of the  
27 term "handgun ammunition" thereby encourages arbitrary and discriminatory enforcement of the  
28 Challenged Provisions.

1 83. All Plaintiffs, and those represented by Plaintiffs, who are taxpayers, are irreparably  
2 injured by the waste of tax funds associated with the passage and implementation of the  
3 unconstitutionally vague Challenged Provisions, including expenditures of public funds relating to  
4 the enforcement of these provisions.

5 84. Plaintiffs ask this Court to declare the Challenged Provisions invalid on their face and  
6 as applied to Plaintiffs because the definition of "handgun ammunition" as set forth in these  
7 provisions, and in section 12060(b) specifically, is unconstitutionally vague, as it fails to provide  
8 notice to persons of ordinary intelligence what the law is or how to comply with it, and thereby  
9 violates Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment. Plaintiffs  
10 also ask that a writ issue prohibiting Defendants from enforcing any of the Challenged Provisions.

11 **PUBLIC INTEREST INVOLVED**

12 85. Plaintiffs, and those represented by Plaintiffs, as citizens and taxpayers, properly  
13 bring this Complaint for Injunctive and Declaratory relief and Petition for Writ of Mandate in the  
14 nature of a citizen mandamus action to promote the public interest in having the general laws  
15 obeyed.

16 86. The Challenged Provisions are void for vagueness under the Due Process Clause of  
17 the Fourteenth Amendment because they fail to provide notice to "people of ordinary intelligence"  
18 regarding which calibers of ammunition those provisions regulate, and make ordinary citizens  
19 responsible for determining the scope of their application. Similarly, because of the failure to  
20 clearly specify which calibers of ammunition should be regulated by the Challenged Provisions,  
21 law enforcement officials have unbridled discretion to interpret and enforce the Challenged  
22 Provisions.

23 87. The public has an interest in preventing the state from enforcing vague laws such as  
24 the Challenged Provisions that subject residents to criminal prosecution without notice of how to  
25 avoid liability under those provisions, in violation of those residents' constitutional rights.

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIRST CAUSE OF ACTION  
FOR DECLARATORY AND INJUNCTIVE RELIEF  
DUE PROCESS VAGUENESS - FACIAL  
(By All Plaintiffs Against All Defendants)**

88. Plaintiffs re-allege all prior paragraphs and incorporate them herein.

89. An actual controversy has arisen and now exists between Plaintiffs and Defendants relative to their respective rights and duties under the Challenged Provisions, in that Plaintiffs contend these provisions are invalid and unenforceable on their face because they violate the Fourteenth Amendment's Due Process requirement that laws not be vague. Defendants dispute this contention, as they currently enforce subparagraphs (1) and (2) of section 12061(a), and will enforce subparagraphs (3)-(7) of section 12061 and section 12318 when these sections take effect on February 1, 2011.

90. Plaintiffs desire a declaration invalidating the Challenged Provisions on their face. A judicial declaration is necessary and appropriate at this time so that Plaintiffs may ascertain their rights and duties under the Challenged Provisions without first unknowingly violating these provisions and thereby subjecting themselves to criminal liability.

91. To resolve this controversy, Plaintiffs request that, pursuant to California Code of Civil Procedure section 1060, this Court declare the following: Penal Code sections 12060, 12061 and 12318 that regulate "handgun ammunition" as defined in Penal Code sections 12060(b) and 12323(a) are void for vagueness on their face because they fail to provide notice to persons of ordinary intelligence regarding which calibers of ammunition are "handgun ammunition" and thus subject to the Challenged Provisions; this vagueness thereby encourages arbitrary and discriminatory enforcement of the law and violates the Due Process Clause of the Fourteenth Amendment.

92. Additionally, Plaintiffs seek an injunction pursuant to Code of Civil Procedure sections 525 and 526. The state's enforcement of the Challenged Provisions, unless enjoined by order of this Court, will continue to cause great and irreparable injury to Plaintiffs, because they are unable to determine what conduct is required or prohibited under the Challenged Provisions. As a result, Plaintiffs continually risk criminal prosecution and suffer Due Process violations.

1 93. The state's adoption and enforcement of the Challenged Provisions, and the resultant  
2 injuries to Plaintiffs, is and will be of a continuing nature for which Plaintiffs have no adequate  
3 remedy at law because monetary damages are impossible to determine.

4 94. Accordingly, Plaintiffs seek a permanent injunction forbidding Defendants, their  
5 agents, employees, representatives, and all those acting in concert with them from enforcing the  
6 Challenged Provisions. This Court should render declaratory judgment declaring the Challenged  
7 Provisions unconstitutional and unenforceable.

8 **SECOND CAUSE OF ACTION**  
9 **FOR DECLARATORY AND INJUNCTIVE RELIEF**  
10 **DUE PROCESS VAGUENESS - AS APPLIED**  
11 **(By Plaintiff Herb Bauer Sporting Goods, Inc. Against All Defendants)**

12 95. Plaintiffs re-allege all prior paragraphs and incorporate them herein.

13 96. An actual controversy has arisen and now exists between Plaintiff and Defendants  
14 relative to their respective rights and duties under subparagraphs (1) and (2) of section 12061(a) in  
15 that Plaintiff contends these provisions are invalid and unenforceable as applied to Plaintiff  
16 because they violate the Fourteenth Amendment's Due Process requirement that laws not be  
17 vague. Defendants dispute this contention, as they currently enforce subparagraphs (1) and (2) of  
18 section 12061(a), and thereby subject Plaintiff to arbitrary prosecution for inadvertent violations  
19 of these provisions because Plaintiff does not, and cannot, know how to comply with them due to  
20 their vagueness as applied.

21 97. As to subparagraph (1) of section 12061(a), Plaintiff does not, and cannot, know  
22 which calibers of ammunition certain employees are prohibited from handling.

23 98. As to subparagraph (2) of section 12061(a), Plaintiff does not, and cannot, know  
24 which calibers of ammunition must be displayed in a manner so that the ammunition is  
25 inaccessible to customers.

26 99. Plaintiff desires a declaration as to the validity of subparagraphs (1) and (2) of section  
27 12061(a) as these provisions are applied to Plaintiff. A judicial declaration is necessary and  
28 appropriate at this time so that Plaintiff may ascertain its rights and duties under subparagraphs (1)



1 and (2) of section 12061(a) without first inadvertently subjecting itself to arbitrary criminal  
2 liability by unknowingly violating any of these provisions.

3 100. To resolve this controversy, Plaintiff requests that, pursuant to California Code of  
4 Civil Procedure section 1060, this Court declare the following: subparagraphs (1) and (2) of Penal  
5 Code section 12061(a) are void for vagueness as applied to Plaintiff because these provisions fail  
6 to provide notice to Plaintiff regarding which calibers of ammunition are "handgun ammunition"  
7 as defined in Penal Code sections 12060(b) and 12323(a), and because such vagueness encourages  
8 arbitrary and discriminatory enforcement of these laws against Plaintiff in violation of the Due  
9 Process Clause of the Fourteenth Amendment.

10 101. Additionally, Plaintiff seeks an injunction pursuant to Code of Civil Procedure  
11 sections 525 and 526. The State's wrongful conduct, unless enjoined by this Court, will continue  
12 to cause great and irreparable injury to Plaintiff because it is unable to determine what conduct is  
13 required of it under subparagraphs (1) and (2) of section 12061(a). As a result, Plaintiff  
14 continually risks criminal prosecution and suffers Due Process violations.

15 102. The state's adoption and enforcement of subparagraphs (1) and (2) of section  
16 12061(a), and the resultant injuries to Plaintiff, is and will be of a continuing nature for which  
17 Plaintiff has no adequate remedy at law because monetary damages are impossible to determine.

18 103. Accordingly, Plaintiff seeks a permanent injunction forbidding Defendants, their  
19 agents, employees, representatives, and all those acting in concert with them from enforcing the  
20 Challenged Provisions. This Court should render declaratory judgment declaring the Challenged  
21 Provisions unconstitutional and unenforceable.

22 **THIRD CAUSE OF ACTION**  
23 **PETITION FOR WRIT OF MANDATE**  
24 **(By All Plaintiffs Against All Defendants)**

25 104. Plaintiffs re-allege all prior paragraphs and incorporate them herein.

26 105. Defendants have a clear, present, and ministerial duty *not* to enforce the Challenged  
27 Provisions against Plaintiffs, or anyone.  
28

1 106. Plaintiffs are beneficially interested in this matter, as they and their supporters are  
2 subject to Defendants' arbitrary enforcement of the unconstitutionally vague Challenged  
3 Provisions.

4 107. Defendants' adoption and enforcement of the Challenged Provisions is and will be of  
5 a continuing nature for which Plaintiffs have no plain, speedy, adequate remedy at law, and which  
6 has and will continue to result in irreparable harm.

7 108. Plaintiffs present important questions of statutory and constitutional interpretation, as  
8 well as questions of public interest, which further warrant prompt disposition of this matter.

9 109. Accordingly, Plaintiffs seek a writ of mandate, pursuant to Code of Civil Procedure  
10 sections 1085 and 1087 commanding Defendants to stop enforcing the Challenged Provisions.

11 **DECLARATORY AND WRIT RELIEF WARRANTED**

12 110. Declaratory and writ relief is warranted in this case because: (1) an actual  
13 controversy has arisen and now exists between Plaintiffs and Defendants over the validity of the  
14 Challenged Provisions; and (2) there is no adequate remedy in the ordinary course of law.

15 111. Subsections (1) and (2) of section 12061(a) took effect on January 1, 2010, and are  
16 currently being enforced. These provisions are unlawfully vague such that Plaintiffs are unable to  
17 understand the Challenged Provisions and ascertain which calibers of ammunition are "handgun  
18 ammunition" under these provisions. Due to this vagueness, ammunition vendors have been  
19 forced, and will continue to be forced, to risk criminal penalties for failing to comply with the  
20 Challenged Provisions, because it allows for an arbitrary and discriminatory application of the  
21 Challenged Provisions by law enforcement. Likewise, any person or Vendor who transfers  
22 ammunition, subject to limited exceptions for exempted persons, will be forced to risk criminal  
23 penalties for failing to comply with the Challenged Provisions. Moreover, Defendants' ongoing  
24 and pending enforcement of invalid laws wastes taxpayer funds and unduly burdens Plaintiffs.

25 **PRAYER**

26 1. Wherefore Plaintiffs pray for the following relief: A Declaration that Penal Code  
27 sections 12060, 12061, and 12318 are null and void on their face because such provisions are  
28 unlawfully vague under the Due Process Clause of the Fourteenth Amendment;

1           2. A Declaration that subparagraphs (1) and (2) of Penal Code section 12061(a) are null  
2 and void as applied to Plaintiffs because such provisions are unlawfully vague under the Due  
3 Process Clause of the Fourteenth Amendment;

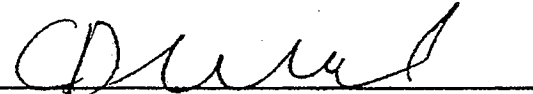
4           3. Issuance of a Peremptory Writ and/or Permanent Injunction ordering Defendants to stop  
5 enforcing Penal Code sections 12060, 12061, and 12318;

6           4. Costs and attorneys' fees as provided by section 1021.5 of the California Code of Civil  
7 Procedure, 42 U.S.C. § 1988, and any other relevant provision of California or federal law.

8           5. Such other relief as this Court may deem just and proper.  
9

10           Dated: June 17, 2010

Respectfully submitted,  
MICHEL & ASSOCIATES, P.C.



C. D. MICHEL  
Attorney for Plaintiffs

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VERIFICATION

I, C.D. Michel, declare as follows:

I am one of the attorneys for the Plaintiffs herein. I have read the foregoing Complaint for Declaratory and Injunctive Relief / Petition for Writ of Mandate and know its contents. The facts alleged in the petition are within my own knowledge and I know these facts to be true. Because of my familiarity with the relevant facts and because my clients are absent from the county where I have my office, I, rather than Plaintiffs, verify this petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on June 17, 2010, at Long Beach, California.

Dated: \_\_\_\_\_

MICHEL & ASSOCIATES, PC



C. D. Michel  
Attorney for Plaintiffs

# **EXHIBIT A**

Assembly Bill No. 962

CHAPTER 628

An act to amend Section 12316 of, to add Sections 12317 and 12318 to, to add Article 3.5 (commencing with Section 12060) to Chapter 1 of, to add a heading for Chapter 2.6 (commencing with Section 12316) to, and to repeal the heading of Chapter 2.6 (commencing with Section 12320) of, Title 2 of Part 4 of, the Penal Code, relating to ammunition.

[Approved by Governor October 11, 2009. Filed with  
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 962, De Leon. Ammunition.

Existing law generally regulates the sale of ammunition.

The bill would provide that no handgun ammunition vendor, as defined, shall sell, offer for sale, or display for sale, any handgun ammunition in a manner that allows that ammunition to be accessible to a purchaser without the assistance of the vendor or employee thereof.

Existing law generally regulates what information is required to be obtained in connection with the transfer of ammunition.

This bill would, subject to exceptions, commencing February 1, 2011, require handgun ammunition vendors to obtain a thumbprint and other information from ammunition purchasers, as specified. A violation of these provisions would be a misdemeanor.

This bill would provide that a person enjoined from engaging in activity associated with a criminal street gang, as specified, would be prohibited from having under his or her possession, custody, or control, any ammunition. Violation of these provisions would be a misdemeanor.

The bill would prohibit supplying or delivering, as specified, handgun ammunition to prohibited persons, as described, by persons or others who know, or by using reasonable care should know, that the recipient is a person prohibited from possessing ammunition or a minor prohibited from possessing ammunition, as specified. Violation of these provisions is a misdemeanor with specified penalties.

The bill would provide, subject to exceptions, that commencing February 1, 2011, the delivery or transfer of ownership of handgun ammunition may only occur in a face-to-face transaction, with the deliverer or transferor being provided bona fide evidence of identity of the purchaser or other transferee. A violation of these provisions would be a misdemeanor.

By creating new crimes, this bill would impose a state-mandated local program.

Ch. 628

— 2 —

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known, and may be cited, as the Anti-Gang Neighborhood Protection Act of 2009.

SEC. 2. Article 3.5 (commencing with Section 12060) is added to Chapter 1 of Title 2 of Part 4 of the Penal Code, to read:

Article 3.5. Handgun Ammunition Vendors

12060. As used in this article, the following terms apply:

(a) "Department" means the Department of Justice.

(b) "Handgun ammunition" means handgun ammunition as defined in subdivision (a) of Section 12323, but excluding ammunition designed and intended to be used in an "antique firearm" as defined in Section 921(a)(16) of Title 18 of the United States Code. Handgun ammunition does not include blanks.

(c) "Handgun ammunition vendor" or "vendor" means any person, firm, corporation, dealer, or any other business enterprise that is engaged in the retail sale of any handgun ammunition, or that holds itself out as engaged in the business of selling any handgun ammunition.

12061. (a) A vendor shall comply with all of the following conditions, requirements and prohibitions:

(1) A vendor shall not permit any employee who the vendor knows or reasonably should know is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code to handle, sell, or deliver handgun ammunition in the course and scope of his or her employment.

(2) A vendor shall not sell or otherwise transfer ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or display for transfer of ownership of any handgun ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or employee thereof.

(3) Commencing February 1, 2011, a vendor shall not sell or otherwise transfer ownership of any handgun ammunition without, at the time of delivery, legibly recording the following information:

(A) The date of the sale or other transaction.

(B) The purchaser's or transferee's driver's license or other identification number and the state in which it was issued.

(C) The brand, type, and amount of ammunition sold or otherwise transferred.

(D) The purchaser's or transferee's signature.

(E) The name of the salesperson who processed the sale or other transaction.

(F) The right thumbprint of the purchaser or transferee on the above form.

(G) The purchaser's or transferee's full residential address and telephone number.

(H) The purchaser's or transferee's date of birth.

(4) Commencing February 1, 2011, the records required by this section shall be maintained on the premises of the vendor for a period of not less than five years from the date of the recorded transfer.

(5) Commencing February 1, 2011, the records referred to in paragraph (3) shall be subject to inspection at any time during normal business hours by any peace officer employed by a sheriff, city police department, or district attorney as provided in subdivision (a) of Section 830.1, or employed by the department as provided in subdivision (b) of Section 830.1, provided the officer is conducting an investigation where access to those records is or may be relevant to that investigation, is seeking information about persons prohibited from owning a firearm or ammunition, or is engaged in ensuring compliance with the Dangerous Weapons Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4), or any other laws pertaining to firearms or ammunition. The records shall also be subject to inspection at any time during normal business hours by any other employee of the department, provided that employee is conducting an investigation where access to those records is or may be relevant to that investigation, is seeking information about persons prohibited from owning a firearm or ammunition, or is engaged in ensuring compliance with the Dangerous Weapons Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4), or any other laws pertaining to firearms or ammunition.

(6) Commencing February 1, 2011, the vendor shall not knowingly make a false entry in, fail to make a required entry in, fail to obtain the required thumbprint, or otherwise fail to maintain in the required manner records prepared in accordance with paragraph (2). If the right thumbprint is not available, then the vendor shall have the purchaser or transferee use his or her left thumb, or any available finger, and shall so indicate on the form. If the purchaser or transferee is physically unable to provide a thumbprint or fingerprint, the vendor shall so indicate on the form.

(7) Commencing February 1, 2011, no vendor shall refuse to permit a person authorized under paragraph (5) to examine any record prepared in accordance with this section during any inspection conducted pursuant to this section, or refuse to permit the use of any record or information by those persons.

(b) Paragraph (3) of subdivision (a) shall not apply to or affect sales or other transfers of ownership of handgun ammunition by handgun ammunition vendors to any of the following, if properly identified:

(1) A person licensed pursuant to Section 12071.

(2) A handgun ammunition vendor.



Ch. 628

— 4 —

(3) A person who is on the centralized list maintained by the department pursuant to Section 12083.

(4) A target facility which holds a business or regulatory license.

(5) Gunsmiths.

(6) Wholesalers.

(7) Manufacturers or importers of firearms licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(8) Sales or other transfers of ownership made to authorized law enforcement representatives of cities, counties, cities and counties, or state or federal governments for exclusive use by those government agencies if, prior to the delivery, transfer, or sale of handgun ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which he or she is employed.

(c) (1) A violation of paragraph (3), (4), (6), or (7) of subdivision (a) is a misdemeanor.

(2) The provisions of this subdivision are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

SEC. 3. A heading for Chapter 2.6 of Title 2 of Part 4 is added to the Penal Code, immediately preceding Section 12316, to read:

#### CHAPTER 2.6. AMMUNITION

SEC. 5. Section 12316 of the Penal Code is amended to read:

12316. (a) (1) Any person, corporation, or dealer who does any of the following shall be punished by imprisonment in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both the imprisonment and fine:

(A) Sells any ammunition or reloaded ammunition to a person under 18 years of age.

(B) Sells any ammunition or reloaded ammunition designed and intended for use in a handgun to a person under 21 years of age. As used in this subparagraph, "ammunition" means handgun ammunition as defined in subdivision (a) of Section 12323. Where ammunition or reloaded ammunition may be used in both a rifle and a handgun, it may be sold to a person who is at least 18 years of age, but less than 21 years of age, if the vendor reasonably believes that the ammunition is being acquired for use in a rifle and not a handgun.

(C) Supplies, delivers, or gives possession of any ammunition to any minor who he or she knows, or using reasonable care should know, is prohibited from possessing that ammunition at that time pursuant to Section 12101.

(2) Proof that a person, corporation, or dealer, or his or her agent or employee, demanded, was shown, and acted in reasonable reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this subdivision. As used in this subdivision, "bona fide evidence of majority and identity" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, California state identification card, identification card issued to a member of the Armed Forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(b) (1) No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

(2) For purposes of this subdivision, "ammunition" shall include, but not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. "Ammunition" does not include blanks.

(3) A violation of paragraph (1) of this subdivision is punishable by imprisonment in a county jail not to exceed one year or in the state prison, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment.

(4) A person who is not prohibited by paragraph (1) from owning, possessing, or having under his or her custody or control, any ammunition or reloaded ammunition, but who is enjoined from engaging in activity pursuant to an injunction issued pursuant to Section 3479 of the Civil Code against that person as a member of a criminal street gang, as defined in Section 186.22, may not own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

(5) A violation of paragraph (4) of this subdivision is a misdemeanor.

(c) Unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under subparagraph (A) of paragraph (1) of subdivision (a) of Section 12027. This subdivision shall not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making an arrest or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, a person holding a

Ch. 628

— 6 —

valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle guard, who is engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code. A violation of this subdivision is punishable by imprisonment in a county jail for a term not to exceed six months, a fine not to exceed one thousand dollars (\$1,000), or both the imprisonment and fine.

(d) (1) A violation of paragraph (1) or (4) of subdivision (b) is justifiable where all of the following conditions are met:

(A) The person found the ammunition or reloaded ammunition or took the ammunition or reloaded ammunition from a person who was committing a crime against him or her.

(B) The person possessed the ammunition or reloaded ammunition no longer than was necessary to deliver or transport the ammunition or reloaded ammunition to a law enforcement agency for that agency's disposition according to law.

(C) The person is prohibited from possessing any ammunition or reloaded ammunition solely because that person is prohibited from owning or possessing a firearm only by virtue of Section 12021 or ammunition or reloaded ammunition because of paragraph (4) of subdivision (b).

(2) Upon the trial for violating paragraph (1) or (4) of subdivision (b), the trier of fact shall determine whether the defendant is subject to the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she is subject to the exemption provided by this subdivision.

SEC. 6. Section 12317 is added to the Penal Code, to read:

12317. (a) Any person, corporation, or firm who supplies, delivers, sells, or gives possession or control of, any ammunition to any person who he or she knows or using reasonable care should know is prohibited from owning, possessing, or having under his or her custody or control, any ammunition or reloaded ammunition pursuant to paragraph (1) or (4) of subdivision (b) of Section 12316, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and another provision of law shall not be punished under more than one provision.

(c) For purposes of this section, "ammunition" shall include, but not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with deadly consequence. "Ammunition" does not include blanks.

SEC. 7. Section 12318 is added to the Penal Code, to read:

12318. (a) Commencing February 1, 2011, the delivery or transfer of ownership of handgun ammunition may only occur in a face-to-face

transaction with the deliverer or transferor being provided bona fide evidence of identity from the purchaser or other transferee. A violation of this section is a misdemeanor.

(b) For purposes of this section:

(1) "Bona fide evidence of identity" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, state identification card, identification card issued to a member of the Armed Forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(2) "Handgun ammunition" means handgun ammunition as defined in subdivision (a) of Section 12323, but excluding ammunition designed and intended to be used in an "antique firearm" as defined in Section 921(a)(16) of Title 18 of the United States Code. Handgun ammunition does not include blanks.

(3) "Handgun ammunition vendor" has the same meaning as set forth in Section 12060.

(c) Subdivision (a) shall not apply to or affect the deliveries, transfers, or sales of, handgun ammunition to any of the following:

(1) Authorized law enforcement representatives of cities, counties, cities and counties, or state and federal governments for exclusive use by those government agencies if, prior to the delivery, transfer, or sale of the handgun ammunition, written authorization from the head of the agency employing the purchaser or transferee, is obtained identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency employing the individual.

(2) Sworn peace officers, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who are authorized to carry a firearm in the course and scope of their duties.

(3) Importers and manufacturers of handgun ammunition or firearms licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) Persons who are on the centralized list maintained by the Department of Justice pursuant to Section 12083.

(5) Persons whose licensed premises are outside this state who are licensed as dealers or collectors of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(6) Persons licensed as collectors of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto whose licensed premises are within this state who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071.

(7) A handgun ammunition vendor.

(8) A consultant-evaluator, as defined in subdivision (s) of Section 12001.

Ch. 628

— 8 —

SEC. 8. The heading of Chapter 2.6 (commencing with Section 12320) of Title 2 of Part 4 of the Penal Code is repealed.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

**EXHIBIT B**

DEERING'S CALIFORNIA CODES ANNOTATED  
Copyright (c) 2010 by Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS DOCUMENT IS CURRENT THROUGH 2009-2010 EXTRAORDINARY  
SESSIONS 1-5, \*\*\*  
7, AND 8, AND URGENCY LEGISLATION THROUGH CH 25 OF THE 2010 REGULAR  
SESSION

PENAL CODE  
Part 4. Prevention of Crimes and Apprehension of Criminals  
Title 2. Control of Deadly Weapons  
Chapter 2.6. Ammunition

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Pen Code § 12323 (2009)

**§ 12323. Definitions**

As used in this chapter, the following definitions shall apply:

(a) "Handgun ammunition" means ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, as defined in subdivision (a) of Section 12001, notwithstanding that the ammunition may also be used in some rifles.

(b) "Handgun ammunition designed primarily to penetrate metal or armor" means any ammunition, except a shotgun shell or ammunition primarily designed for use in rifles, that is designed primarily to penetrate a body vest or body shield, and has either of the following characteristics:

(1) Has projectile or projectile core constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, beryllium copper, or depleted uranium, or any equivalent material of similar density or hardness.

(2) Is primarily manufactured or designed, by virtue of its shape, cross-sectional density, or any coating applied thereto, including, but not limited to, ammunition commonly known as "KTW ammunition," to breach or penetrate a body vest or body shield when fired from a pistol, revolver, or other firearm capable of being concealed upon the person.


(c) "Body vest or shield" means any bullet-resistant material intended to provide ballistic and trauma protection for the wearer or holder.

(d) "Rifle" shall have the same meaning as defined in paragraph (20) of subdivision (c) of Section 12020.



**EXHIBIT C**

Edmund G. Brown Jr., Attorney General

California Department of Justice DIVISION OF LAW ENFORCEMENT George B. Anderson, Director		<b>INFORMATION BULLETIN</b>	
<i>Subject:</i>  <b>New and Amended Firearms Laws</b>	<i>No:</i> 2009-BOF-05	<b>Bureau of Firearms</b>	<i>Date:</i> 12/30/09

**TO: All California Centralized List of Firearms Dealers, Manufacturers, and Exempted Federal Firearms Licensees**

This bulletin provides a brief summary of new and amended California firearms laws that take effect on January 1, 2010, unless otherwise noted. You may contact the California State Capitol Legislative Bill Room at (916) 445-2323 to obtain copies of the bills (order by statute year and chapter number), or access the full text of the bills via the Internet at <http://www.leginfo.ca.gov/>.

**AB 962 (Stats. 2009, ch. 628)**

- Handgun ammunition must be displayed in a manner that makes the ammunition inaccessible to a purchaser or transferee, and requires the assistance of the vendor or an employee of the vendor. (§ 12061.)<sup>1</sup>
- An employee of a handgun ammunition vendor, who is prohibited from possessing firearms, cannot handle, sell, or deliver handgun ammunition in the course and scope of his or her employment. (§ 12061.)
- No one shall supply, deliver, or give ammunition to a minor who is prohibited from possessing ammunition pursuant to section 12101. (§ 12316.)
- Any person who is enjoined from engaging in activity associated with a criminal street gang is prohibited from possessing ammunition. A violation is a misdemeanor. (§ 12316.)
- Beginning February 1, 2011, the delivery or transfer of handgun ammunition must occur in a face-to-face transaction, with the recipient providing bona fide evidence of his or her identity and age, subject to specified exceptions. Non-face-to-face transfers, such as internet transactions and mail order deliveries are prohibited. A violation is a misdemeanor. (§ 12318.)
- Beginning February 1, 2011, handgun ammunition vendors must obtain a thumbprint and other information related to handgun ammunition transactions subject to specified exceptions (including transfers to peace officers who are authorized to carry a firearm in the course and scope their duties). The information must be retained by the vendor for five years from the date of the transaction. A violation is a misdemeanor. (§ 12061.)

<sup>1</sup> All further statutory references are to the California Penal Code, unless otherwise specified.

Information Bulletin 2009-BOF-05  
New and Amended Firearms Laws  
Page 2

**AB 1286 (Stats. 2009, ch. 144)**

- An exemption to the limit of one handgun per 30 days has been added, allowing the transfer of multiple handguns within 30 days to community colleges certified by the Commission on Peace Officer Standards and Training for commission-certified law enforcement training. (§ 12072.)

**SB 175 (Stats. 2009, ch. 334)**

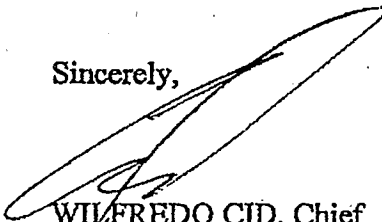
- The firearms dealer licensing requirement provides an exception for the exchange of a firearm to or from a gunsmith for purpose of service or repair. (§ 12072.)
- A California Firearms License Check (CFLC) verification number exemption for dangerous weapons has been removed. (§ 12072.)
- Pawnbrokers are precluded from placement on the Centralized List of Exempted Federal Firearms Licensees (CLEFFL). (§ 12083.)
- Persons who possess a current dangerous weapons permit, are exempt from the fees associated with CLEFFL. (§ 12083.)

**SB 449 (Stats. 2009, ch. 335)**

- Beginning July 1, 2010, secondhand dealers will report daily to DOJ (rather than the local law enforcement agency) via electronic submission, any firearms purchased, taken in trade, or taken in pawn. Within one working day of receipt of a secondhand dealer report, the DOJ will electronically provide information in the report to a secure mailbox of the local law enforcement agency. (§ 12083; Bus. and Prof. Code §§ 21628 and 21628.2.)

If you have any questions regarding this Information Bulletin, please contact the DOJ Bureau of Firearms at (916) 263-4887.

Sincerely,



WILFREDO CID, Chief  
Bureau of Firearms

For EDMUND G. BROWN JR.  
Attorney General

## CERTIFICATE OF SERVICE

Case Name: State Ammunition v. Lindley No. 10-cv-01864 -MCE-KJN

I hereby certify that on September 20, 2010, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:


- (1) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT STEVEN LINDLEY'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, TO STAY THE ACTION; and**
  - (2) DECLARATION OF PETER A. KRAUSE IN SUPPORT THEREOF**
- DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS THE COMPLAINT OR, IN THE ALTERNATIVE, TO STAY THE ACTION**
- REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT OR, IN THE ALTERNATIVE, TO STAY THE ACTION**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 20, 2010, at Sacramento, California.

Brenda Sanders

Declarant



Signature