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7 Attorneys for Defendants,
8 ANDREW'S SPORTING GOODS, INC.
9 dba TURNER'S OUTDOORSMAN
10 and S.G. DISTRIBUTING, INC.

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN DIEGO

13	Judicial Council Coordination Proceeding)	JUDICIAL COUNCIL COORDINATION
14	Special Title (Rule 1550(b)))	PROCEEDINGS NO. 4095
15	FIREARM CASES)	
16	Coordinated actions:)	
17	THE PEOPLE OF THE STATE OF)	Superior Court of California City & County of
18	CALIFORNIA, ex rel. the County of Los)	San Francisco No. 303753
19	Angeles, et. al.,)	Superior Court of California County of Los
20	v.)	Angeles No. BC210894
21	ARCADIA MACHINE & TOOL, et. al.,)	Superior Court of California County of Los
22	_____)	Angeles No. BC214794
23	THE PEOPLE OF THE STATE OF)	DECLARATION OF DR. NANCY
24	CALIFORNIA, by and through JAMES K.)	MATHIOWETZ IN SUPPORT OF
25	HAHN, City Attorney of the City of Los)	TRADER'S KELLY OBJECTIONS TO
26	Angeles, et. al.,)	ANTICIPATED TRIAL TESTIMONY OF
27	v.)	PLAINTIFFS' GUN TRACE EXPERTS
28	ARCADIA MACHINE & TOOL, et. al.,)	GERALD A. NUNZIATO AND JOSEPH J.
	_____)	VINCE, JR.
	THE PEOPLE OF THE STATE OF)	Date: , 2003
	CALIFORNIA, by and through San)	Time: a.m.
	Francisco City Attorney Louise H. Renne,)	Dept. 65
	v.)	Hon. Vincent. P. DiFiglia
	ARCADIA MACHINE & TOOL, et. al.)	
	_____)	
	I, Nancy A. Mathiowetz, declare as follows:	

1 1. I have personal knowledge of them matters set forth herein and if called to testify could
2 and would testify hereto.

3 2. I am an Associate Professor, Joint Program in Survey Methodology, University of
4 Maryland and Adjunct Associate Professor and Adjunct Associate Research Scientist, University
5 of Michigan. I received a B.S. degree from the University of Wisconsin-Madison and MS.
6 (Biostatistics) and Ph.D. (Sociology) degrees from the University of Michigan. I conduct research,
7 teach courses, and have provided expert testimony in federal court in the areas of survey
8 methodology and statistics. My curriculum vitae is attached as Exhibit 1.

9 3. I have studied the Bureau of Alcohol Tobacco and Firearms' National Firearms Tracing
10 System (FTS). From that review, I find that the firearms in the FTS data are not necessarily
11 "crime guns" and that the data overall is not collected in a manner consistent with the features of a
12 statistical data system and therefore can not be considered reliable for the purposes of statistical
13 estimation.

14 **THE FTS DATA ARE NOT COLLECTED IN A MANNER CONSISTENT WITH THE**
15 **FEATURES OF A STATISTICAL DATA SYSTEM AND THEREFORE CANNOT BE**
16 **CONSIDERED RELIABLE FOR THE PURPOSES OF STATISTICAL ESTIMATION.**

17 4. The FTS data are not collected in a manner consistent with features of a statistical data
18 system. Features of a statistical data capture system include, but are not limited to, the inclusion of
19 quality control procedures so as to insure the collection of accurate and reliable information,
20 especially among critical data elements. Such features include the consistent training of personnel
21 associated with all levels of data capture, quality control for all levels of data collection and data
22 entry, assessment of the reliability of coding systems, and the documentation of the extent of
23 missing data within the data system. These features, in general, do not exist as part of the Firearms
24 Tracing System. As a result, use of the FTS for statistical estimation can result in erroneous
25 conclusions.

26 5. I offer one example as illustrative of the type of erroneous conclusions that may result
27 from using the FTS for statistical estimation.

28

1 The form used to request a trace submission (ATF F 3312.1)¹ requires the assignment
2 of a crime code. This field is noted on the form as a required field. The back of the
3 form includes a partial list of the possible crime codes that could be assigned; this list
4 does not include the code for “weapons offense”— code 5299. Among all trace
5 requests between 1990 and 2000, 42.0% are associated with code 5299, a rate three
6 and a half times that of the next most frequently assigned code (“weapons
7 possession,” code 5212 ,which accounts for 11.8% of the trace requests). However,
8 the code 5299 has been used as a default code for missing crime codes; unlike
9 statistical data files in which imputed data are flagged for the data analyst, there is no
10 flag in the FTS data file to distinguish between those traces for which code 5299
11 represents the actual circumstances associated with the recovered weapon and those
12 cases for which 5299 was assigned due to missing data. Any analyst using the data
13 would therefore be unable to separate those traces classified as weapons offenses from
14 those trace requests for which the crime code was missing and the default value of
15 5299 assigned.

9 6. Examination of the FTS data reveal other problems, both at the point of data capture (the
10 original request for tracing) and with the processing of the data at the National Tracing Center,
11 including, but not limited to, missing data and inconsistent implementation of coding schemes.
12 For example, among those traces submitted between 1990 and 2000, at least 10 percent indicate
13 one or more missing data elements for data elements listed as required on the trace request form.
14 In addition, examination of the data file reveals inconsistencies in the assignment of trace result
15 status codes. For example, among those trace requests assigned a status code of B8 indicative of a
16 missing or invalid manufacturer name, 17.7% have a legitimate manufacturer code associated with
17 the trace request.

18
19 **THE FIREARMS IN THE FTS DATABASE ARE NOT NECESSARILY CRIME GUNS**

20 7. There are at least two sources of information that indicate that not all guns submitted for
21 tracing should be considered “crime guns.” These sources include the reports and depositions of
22 various law enforcement and BATF officials as well as the FTS data themselves. Examination of
23 the various elements of the trace data file (specifically the trace, weapon, individual, recovery, and
24 dealer tables) leads one to the conclusion that for a number of trace requests, the requests are
25 associated with what I would characterize as “casting a wide net” to locate a final sale associated
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28 ¹Bureau of Alcohol, Tobacco, and Firearms (2002) Crime Gun Trace Reports (2000) National
Report. Department of the Treasury.

1 with a firearm for which the serial number is obliterated. If one looks at weapons for which the
2 serial number has been obliterated, it is not uncommon to find a series of trace requests in which
3 the serial number for the weapon varies by one digit. In these cases, the date of the trace request,
4 the crime code associated with the weapon, the birth date of the possessor of the weapon, and
5 other information pertaining to the recovery and submission of the trace request are all identical.
6 Table 1 provides an illustration of such a case. The nature of the requests suggest that for weapons
7 for which the serial number is obliterated, not all trace requests are associated with a recovered
8 weapon. In the illustrative case provided in Table 1, we see that the ten traces are all associated
9 with weapons for which the serial numbers are obliterated; the serial numbers range from 311-
10 06186 through 311-96186, all of the same model and caliber, all associated with the same crime
11 code (0999, homicide), all recovered on the same date, same city, all in the possession of the same
12 individual. The fact that all ten trace requests are associated with weapons for which the serial
13 numbers are obliterated and that the serial numbers only vary by the 4 digit (from 0 to 9) indicates
14 a series of trace requests looking for any individual in whose hands to place the gun. From the
15 perspective of a law enforcement tool, such a broad sweeping attempt to locate the purchaser of
16 the weapon serves the very purpose for which the FTS was created. From the perspective of
17 statistical estimation, however, the result is a number of “fictitious” traces. Note that for this
18 example, all ten of the serial numbers were traced to a final sale. As a result, counts of “crime
19 guns as well as counts of “crime grins” by dealers, distributors, or manufacturer would be falsely
20 inflated.

21 8. Thus, from my review of the FTS, I can conclude that counts of weapons submitted for
22 tracing, counts of weapons by dealers and comparisons among retail dealers are not reliable
23 indicators of the true number or distribution of guns or handguns used in crimes.

24 9. Prior to drawing any inferences from a data set, it is generally accepted practice that the
25 analyst

26 (1) Take into account the original purpose for which the data were collected,

27 (2) Understand the process by which the data were collected and compiled, the quality
28 control procedures used or not used, and the resulting effects on data validity and quality,

1 (3) Evaluate the overall validity and quality of the data set for the purposes for which the
2 data are to be used (e.g. the amount and effect of data errors, missing data, and duplicative data,
3 the representativeness of the data and any anomalies in the data); and

4 (4) Determine the appropriate uses of the data set given the above factors. Mr. Nunziato's
5 technique fails to take into account these basic steps. Had Mr. Nunziato applied proper analytical
6 procedures to evaluate the trace data, he would have found issues in all of the above categories
7 that should have been addressed but were not. Proper evaluation and analysis of these trace
8 databases reveals that there are serious problems, weaknesses and anomalies in these data, such that
9 it cannot be used as the basis for inferences regarding firearm dealers.

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11 I swear under penalty of perjury under the laws of the State of California that the foregoing
12 is true and correct and that this declaration is executed on April ____, 2003 at _____.

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Dr. Nancy Mathiowetz
DECLARANT

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Haydee Villegas, declare:

1. That I am employed in the City of San Pedro, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 407 North Harbor Boulevard, San Pedro, California 90731.

2. On March 10, 2003, I served the foregoing document(s) described as **ANDREWS SPORTING GOODS, INC.’S AND S.G. DISTRIBUTING, INC.’S SUPPLEMENTAL REPLY AND CLARIFICATION OF STATISTICAL EVIDENCE RE: MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action by JusticeLink Electronic filing on all persons appearing on the Service List.

I declare under penalty that the foregoing is true and correct. Executed this 10th day of March, 2003, at San Pedro, California.

Haydee Villegas

Haydee Villegas