

1                   **LONGYEAR, O'DEA & LAVRA, LLP**

2                   3620 American River Drive, Suite 230  
3                   Sacramento, California 95864-5923

4                   Tel: 916-974-8500 Fax: 916 974-8510

5                   John A. Lavra, CSB No. 114533  
6                   Jeri L. Pappone, CSB No. 210104

7                   Attorneys for Defendants, LOU BLANAS, as SHERIFF OF COUNTY  
8                   OF SACRAMENTO; COUNTY OF SACRAMENTO,  
9                   SHERIFF'S DEPARTMENT; COUNTY OF SACRAMENTO

10                  UNITED STATES DISTRICT COURT

11                  EASTERN DISTRICT OF CALIFORNIA

12                  DAVID K. MEHL, LOK T. LAU,  
13                  and FRANK FLORES,

14                  vs.

15                  LOU BLANAS, individually and in his  
16                  official capacity as SHERIFF OF  
17                  COUNTY OF SACRAMENTO;  
18                  COUNTY OF SACRAMENTO,  
19                  SHERIFF'S DEPARTMENT;  
20                  COUNTY OF SACRAMENTO;  
21                  BILL LOCKYER, Attorney General,  
22                  State of California;  
23                  RANDI ROSSI, State Firearms Director  
24                  and Custodian of Records

25                  Defendants

1                   **CASE NO.: CIV S-03 -2682 MCE KJM**

2                   **DEFENDANTS' REPLY TO  
3                   PLAINTIFFS' OPPOSITION TO  
4                   MOTION FOR SUMMARY  
5                   JUDGMENT;  
6                   OPPOSITION TO PLAINTIFFS'  
7                   COUNTER MOTION**

8                   Date: December 7, 2007

9                   Time: 9:00 a.m.

10                  Ctrm: 3

11                  Judge: Honorable Morrison C. England, Jr.

12                  DEFENDANTS' submit the following in Reply to Plaintiffs' Opposition to their Motion  
13                  for Summary Judgment and in opposition to Plaintiffs' Counter-Motion.

14                  **OPPOSITION TO PLAINTIFFS' COUNTER MOTION**

15                  Plaintiffs' counter motion for ***judgment on the pleadings*** is an attempt to persuade the  
16                  court for the second time that certain California Penal Code sections, i.e. Sections 12027,  
17                  12031(b), 12050-12054, are unconstitutional. Plaintiffs' basis for this position is the exemption  
18

1 the California Penal Code makes for retired peace officers to carry concealed weapons by the  
2 statute's presumption of "good cause" for those individuals. Former law enforcement are not  
3 exempt from the provisions and burdens of establishing good cause to carry a concealed weapon,  
4 but the good/just cause has been established by virtue of their former occupation. Defendants'  
5 reading of these statutes includes the understanding that because of the peril in which individuals  
6 in law enforcement are placed in arresting, prosecuting and incarcerating criminals, and the  
7 exposure to threats of retaliation, and criminal acts by those so dealt with by law enforcement,  
8 that "just cause" or "good cause" to carry a concealed weapon is thereby established. It is not, as  
9 Plaintiffs appear to argue, that persons in the law enforcement field have no just cause or are not  
10 required to show just cause, or are not subject to or exposed to threats to their safety and security  
11 in society after retirement, but that by virtue of their occupation, the just cause is created and  
12 patently exists.

13 Plaintiffs use the holdings in Silveira v. Lockyear, 312 F.3d 1052 (9th Cir. 2002) as  
14 support for their position. However, Silveira's holding is limited to its application to the  
15 possession of *semi-automatic/assault weapons* by retired peace officers. The Silveira holding  
16 has no applicability to the Plaintiffs' claims in this case, except to affirm that the Second  
17 Amendment to the United States Constitution affords to the states a collective right to maintain  
18 effective state militias, as well as to affirm that Plaintiffs have no constitutional right to own or  
19 possess firearms. Silvera, 312 F.3d at 1088. Silveira does not establish that the exemption for  
20 retired peace officers and other law enforcement officials to carry concealed weapons is  
21 unconstitutional, nor that the requirement that citizens desiring to carry concealed weapons  
22 establish good cause to do so, is in violation of a citizen's Fourteenth Amendment rights to equal  
23 protection.

24 The court has already ruled on the constitutionality of the California Penal Code Sections  
25 in the ruling it issued herein on Defendants Lockyer and Rossi's 12(b)(6) motion to dismiss on  
26 September 2, 2004 at pages 10 - 12. Based upon this court's previous ruling, this issue is  
27

---

28 REPLY TO PLAINTIFFS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

1 rendered moot, and Plaintiff's **Second** Cause of Action should be dismissed.

2 **REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR**  
3 **SUMMARY JUDGMENT**

4 In order to oppose Defendants' Motion for Summary Judgment, Plaintiffs must set forth  
5 material facts which create a genuine issue for trial. Plaintiffs are required to set forth "specific  
6 facts" showing that there is a genuine issue requiring trial. See Beard v. Banks, 126 S.Ct. 2572,  
7 2578, 165 L.Ed.2d 697 (2006). If Plaintiffs are unable to make the required showing, the law  
8 requires entry of judgment in favor of the moving party. Id. In addition, the "facts" promulgated  
9 by the opposing party must be admissible in evidence. FRCP 56(e). Plaintiffs' opposition has  
10 failed to set forth any material factual disputes based upon any admissible evidence.

11 Plaintiffs have abandoned their **First, Fourth** and **Sixth** causes of action and have  
12 submitted no opposition to Defendants motion on these claims. See Opposition, pg. 1:22-2:10.  
13 Plaintiffs also concede that their **Fifth** cause of action pertaining to the Second and Ninth  
14 Amendment claims has no merit in this action and have presented argument merely to preserve  
15 issues for appeal purposes.

16 **A. Plaintiffs Have No Standing and Lack Cause**

17 **1. Plaintiffs Lack Standing**

18 Plaintiffs have provided no factual or legal basis in opposition Defendants' Motion for  
19 Summary Judgment based upon standing. Plaintiffs do not even address this issue in their  
20 opposition. It is Plaintiffs' burden to establish that they indeed have standing. FW/PBS, Inc. v.  
21 Dallas, 493 U.S. 215, 231, 107 L.Ed. 2d 603, 110 S.Ct. 596 (1990); Warth v. Seldin, 422 U.S.  
22 490, 508, 45 L.Ed. 2d 343, 95 S.Ct. 2197 (1975). Plaintiffs cannot trace any "injury" to any  
23 unconstitutional act by any Defendant. Plaintiffs' applications for CCW permits were denied for  
24 legal, non-discriminatory reasons. Notwithstanding, even if some CCW policy of Defendants'  
25 could conceivably be found unconstitutional, the undisputed facts establish that Plaintiffs were  
26 denied permits, not by Defendant Blanas, but by others in the Department for valid reasons

having no connection whatsoever to the alleged policy regarding campaign contributions and CCW permits.

## **2. No Proximate or Legal Cause Exists**

The Plaintiffs must establish proximate or legal causation, linking the alleged injury with the alleged wrongful conduct. Plaintiffs must show that Defendants either personally participated in conduct which deprived them of a federally protected right, or that they caused the deprivation of that right to occur. See Arnold v. International Business Machines Corp., 637 F.2d 1350 (9th Cir. 1981). Plaintiffs have alleged that they were deprived of a CCW permit by Defendants because they did not contribute to the Sheriff's political election campaign, and that had they done so, they would have been granted permits. However, Plaintiffs' applications were denied based upon legitimate reasons which had no bearing on whether or not campaign contributions were or were not made. As set forth in the moving papers and more specifically below, the material facts which bear directly on the reasons for the denial of CCW permits to Plaintiffs are undisputed. There is no causal connection between the allegations made and the actual reasons for denial, and Plaintiffs supply no evidence to the contrary.

**B. Timothy Twomey's Declaration Fails to Raise a Triable Issue of Fact and Should Be Stricken**

Plaintiffs have submitted the declaration of Timothy Twomey in an attempt to raise a triable issue of material fact. Defendants have moved to strike this declaration and have interposed objections to it for a number of reasons, most significantly that Twomey is not an expert witness at all when it comes to the issuance of CCW permits.

However, even considering Twomey's statements at face value, his testimony does not raise a triable issue on the claims of Mehl and Lau for the following reasons:

1. Twomey does not, and can not, factually dispute that Lau's application and appeal were denied for the reasons set forth by Mr. Harris and the Evaluation Committee members;
  2. Twomey does not, and can not, dispute that Mehl never provided to the

Department any reasons why he needed a CCW permit, and his attempted application was denied only after Mehl did not provide the information to the Department;

3. Even though he has no experience, knowledge, or training on the good cause requirement for issuance of CCW permits, Twomey does not and can not, identify a single individual, campaign contributor or not, who received a CCW without a showing of good cause;

4. Twomey has not disputed that the Department employees who dealt with Plaintiffs' applications had no input, direction, or advice from Sheriff Blanas, or any elected Sheriff, on whether to approve or deny Plaintiffs for CCW permits;

5. Twomey has not, and can not, dispute that the Department employees who acted on Plaintiffs' applications knew whether Plaintiffs were campaign contributors to a Sheriff;

6. Twomey does not dispute that any campaign contributor to Blanas' campaign who was issued a CCW permit was known to be a contributor to the campaign by those who evaluated their application, at the time or before the permit was issued;

7. Twomey does not dispute that persons who contributed to the Sheriff's campaign were denied CCW permits; and

8. Twomey does not dispute that a standard procedure was in place for review, issuance, and appeal of denials, and that Plaintiffs were subject to this procedure just like everyone else. During Sheriff Blanas' 8 years as Sheriff of Sacramento County, he personally approved a few CCW permits based upon exigent circumstances or immediate threats to the individual upon good cause, of which he was made aware. When these permits were approved for good cause, each individual was required to file a formal application, to receive clearance from the Department of Justice, and range approval.

In essence, Twomey states that some individuals who appear on lists of campaign contributors, at some point in time, received a CCW permit. The fact that someone contributed to a campaign and at some point was issued a permit is not unlawful, unconstitutional, or a violation of Department policy. Persons who contribute to any election have the same right to apply for a CCW permit as any other citizen.

1           **C.       Plaintiff Mehl's Declaration**

2           Plaintiff Mehl submits his declaration in opposition to Defendants' motion for summary  
3 judgment and therein states that, "I was never contacted by any Sheriff's department official to  
4 finish the application process either in writing, person, or by phone, as I specifically  
5 demanded...." There is no disputable fact with respect to the Department having contacted Mr.  
6 Mehl regarding his incomplete application. In fact, Mr. Mehl *personally produced* at his  
7 deposition a copy of the letter sent to him by Chief Denham, in which Chief Denham instructed  
8 him to provide the Department with his good cause for requesting a CCW permit, and also in  
9 which Chief Denham informed him he would not be charged for the re-filing of his application.  
10 (See Declaration of Jeri L. Pappone, Exhibit B.) This letter, and Mr. Mehl's deposition  
11 testimony is contrary to paragraphs 7, 8, 9, 11, 13, and 16 of the declaration he submits in  
12 opposition to Defendants' motion. Mr. Mehl testified that although he received the letter from  
13 Chief Denham, he did not respond to it, nor contact anyone at the Department upon receipt of  
14 the denial letter for an appeal. (Declaration of Jeri L. Pappone, Exhibit B.)

15           A party cannot create a genuine issue of fact sufficient to survive summary judgment  
16 simply by contradicting his or her own previous sworn statement (by, say, filing a later affidavit  
17 that flatly contradicts that party's earlier sworn deposition) without explaining the contradiction  
18 or attempting to resolve the disparity. Cleveland v. Policy Mgmt. Sys. Corp., 526 U.S. 795, 806  
19 (U.S. 1999).

20           Plaintiff Mehl has submitted no factual evidence sufficient to create a genuine issue for  
21 trial that controverts that he never completed his application and never submitted his reasons for  
22 requesting a CCW permit to the Sheriff's Department, even after being asked to do so.  
23 Plaintiffs' opposition sets forth no facts which dispute Defendants' factual evidence that this was  
24 the reason Mr. Mehl's application was denied, nor do Plaintiffs submit any factual evidence that  
25 the reason Mr. Mehl's application was denied was a "false" reason.

26           **D.       Plaintiff Lau's Declaration**

27           The only factual assertion Plaintiff Lau states in his declaration which may be germane to

1 the issues of this lawsuit is at paragraph 7, that, “at no time did the FBI ever restrict my access or  
2 use of firearms.” Defendants have not asserted that Mr. Lau is restricted from owing firearms,  
3 nor that he is prevented from having firearms in his home or place of business. Defendants were  
4 provided the information by Plaintiff Lau as contained in the Exhibits to C. Scott Harris Jr.’s  
5 Declaration. Within that information provided by Mr. Lau is documentation stating that, “[I]n  
6 the fall of 1996, Lau’s government vehicle and gun were taken from him due to a medical  
7 mandate related to Lau’s sleep apnea -- a sleeping disorder he was diagnosed with some two  
8 years earlier.” (See Declaration of Jeri L. Pappone, Exhibit C.) In Mr. Lau’s deposition, taken  
9 on December 13, 2006, he testified that he suffers from major depression, PTSD and severe  
10 sleep apnea, and is and has been disabled because of those conditions for more than six years  
11 prior to his deposition testimony. (See Declaration of Jeri L. Pappone, Exhibit D.)

12 Plaintiff Lau’s declaration does not dispute any of the material facts upon which  
13 Defendants base their motion for summary judgment. Plaintiff has no evidence that any member  
14 of the Evaluation Committee or Chief Harris knew if he had or had not contributed to the  
15 Sheriff’s political campaign, nor any evidence to establish that campaign contributions were ever  
16 considered by members of the Sheriff’s Department when CCW permit applications were  
17 reviewed. Plaintiff Lau presented no admissible evidence of facts which show the reasons upon  
18 which his application was denied were “false” reasons or reasons which violated his  
19 constitutional rights.

E. Edwin Gerber

21 Plaintiffs persist in raising the issue of a CCW permit issued to Edwin Gerber. Plaintiffs  
22 also continue to supply the Court with only a misleading portion of the information regarding  
23 this particular permit. Plaintiffs have in their possession the entire file regarding Mr. Gerber's  
24 permit, and know from that file that Mr. Gerber was physically attacked and received threats to  
25 his life, but only color their presentation to the Court with the fact that the former Sheriff owns a  
26 vacation home with Mr. Gerber. See Declaration of Lou Blanas. Plaintiffs have no evidence  
27 that Mr. Gerber's permit was issued for other than good cause, but continue to attempt to

diminish the good name of the former Sheriff by intimating some sort of impropriety.

**F. Plaintiffs Have Failed to Dispute the Undisputed Material Facts Set Forth by Defendants**

As set forth in Defendants' Objections and Motion to Strike, Mr. Twomey's declaration fails to provide any factual evidence which disputes the undisputed material facts in Defendants' Motion. No facts are provided by Plaintiffs which controvert the bases upon which each of the Plaintiffs' applications for CCW permits were denied, or provide admissible factual evidence that Plaintiffs' applications were denied for false reasons. Plaintiffs, through their own declarations or through Mr. Twomey provide no factual evidence which creates a triable issue of material fact that Mr. Mehl's application was denied for any other reason than that it was incomplete or that Mr. Lau's application was denied for reasons other than those stated by the reviewers.

Mr. Mehl's declaration does not provide evidence that he completed his application and provided the information requested to justify the CCW permit. He received communications from the Department requesting that he provide the information, and testified at his deposition to that effect. He also testified at his deposition that he did not provide the information to the Department as requested in the correspondence he received from Chief Denham. There is no dispute of these facts. Mr. Mehl's application was never completed, and was therefore denied.

Mr. Lau's declaration, likewise, does not dispute the facts upon which Defendants' Motion is based. Mr. Lau provided copious amounts of information to the Department, especially on appeal, which was reviewed by the Evaluation Committee and/or Chief Harris. The information Mr. Lau provided to the Department in conjunction with his application, as well as in his deposition testimony, confirms that Mr. Lau had disclosed that he had a pending lawsuit against the FBI, he had been arrested for shoplifting twice, that he was, at the time of his application, as well as currently, being treated for depression, Post Traumatic Stress Disorder and sleep apnea, that at one point the FBI stripped him of his car and gun and security clearance,

1 that he had been terminated by the FBI in 2000, and that the FBI did not provide a letter on his  
2 behalf in support of his CCW permit application. In addition, the documentation provided by  
3 Mr. Lau included more than one letter from the FBI stating that they had no information  
4 regarding any facts that would compromise Mr. Lau's safety. (See Declaration of Jeri L.  
5 Pappone, Exhibit D.) Plaintiff Lau does not and cannot dispute that he provided the  
6 documentation to Defendants in connection with his CCW permit application which contained  
7 this information. There is no dispute and cannot be any dispute that Mr. Lau's application was  
8 denied for any reasons other than those given by Defendants.

9           **G. Plaintiffs' Additional Material Facts Do Not Raise a Triable Issue of**  
10           **Material Fact**

11           The undisputed material facts show that Plaintiffs' applications were denied based upon  
12 legitimate reasons, which did not violate any of their constitutional rights. Mehl did not  
13 complete his application, and Lau was denied both initially and upon appeal based on many  
14 issues cited in documents he provided to the Department as set forth by Declarations of those  
15 who reviewed his application. Plaintiffs have not produced any supported factual evidence that  
16 the reasons their applications were denied were false or other than what Defendants have  
17 attested to.

18           Plaintiffs have submitted a document entitled "Plaintiffs' Additional Material Facts in  
19 Support of Opposition". (Docket Number 158) According to the local rules (56-260(b)) the  
20 opposition may file a "Statement of *Disputed Facts*," with the proper evidentiary support,  
21 establishing material facts as to which there is a genuine issue which would preclude summary  
22 judgment. However, the purported "facts" in Plaintiffs' pleading are either argument,  
23 immaterial, irrelevant, unsupported, conclusory or misleading and/or actually false.

24           Paragraphs 1 through 44 purport to present facts. However, they merely offer irrelevant  
25 information, speculation, conclusions, conjecture, suppositions and outright inaccuracies. Mr.  
26 Twomey has never served as the Detective in SIIB with the job of reviewing CCW permit  
27 applications, nor has he ever served on the Evaluations Committee to determine the issuance of

1 CCW permits, or served as the appeals officer for denied applications. Mr. Twomey was never a  
2 Sheriff or a Chief of Police to whom the California statutes grants the discretion for the issuance  
3 of CCW permits. Mr. Twomey has no basis upon which to formulate opinions regarding the  
4 procedures, the law applied or the establishment of “good cause” according to California State  
5 statutes for the issuance of a CCW permit.

6 In paragraphs 44 through 88 Plaintiffs focus on singular portions of the Deposition of  
7 Amber Wong, senior records specialist for the Sacramento County Sheriff’s Department, and the  
8 clerk in charge of maintaining and handling CCW permit applications and files. Not one of  
9 these statements, whether accurately or inaccurately recorded by Plaintiffs, represent a material  
10 fact which has any consequence to Plaintiffs’ claims, nor do any of these paragraphs create a  
11 genuine issue in order to defeat summary judgment.

12 Paragraphs 89 through 131 also contain many misleading and false and irrelevant  
13 statements. For instance, Plaintiffs’ insist on raising the circumstances surrounding the arrest by  
14 Deputy McAtee of an individual named James Colafrancesco. Eight to ten years prior to  
15 Plaintiffs’ CCW applications, Mr. Colafrancesco was issued a CCW permit in 1994, which  
16 following his arrest in October of 1994, was revoked. The records produced to Plaintiffs’  
17 counsel in this action show that Mr. Colafrancesco never contributed to Sheriff Blanas’ or any  
18 Sheriff’s campaign, and Plaintiffs’ counsel has been informed through Mr. Colafrancesco’s  
19 counsel, as well as through Mr. Colafrancesco’s personal declaration under penalty of perjury, of  
20 this fact. Plaintiffs’ counsel persists in perpetuating falsehoods to the court in an attempt to  
21 bolster some sort of case against Defendants. (See Declaration of Jeri L. Pappone, Exhibit A.)  
22 All 42 of these paragraphs are irrelevant to Plaintiffs’ claims.

23 In paragraphs 132 through 180, Plaintiffs list various individuals whom they purport  
24 either gave campaign contributions to Sheriff Blanas, have a CCW permit, or purportedly had  
25 some other connection to Sheriff Blanas. This is all irrelevant to Plaintiffs’ claims. Other than a  
26 handful of permits that were approved by Blanas during his tenure, subject to the applicant  
27 meeting the requirements of the Penal Code, there is no evidence that Committee members knew

1 that a person contributed to a campaign or not. There also is no evidence that any permit was  
2 issued to anyone, campaign contributor or not, without good cause and without the person  
3 clearing a criminal background check and range clearance. Further, the undisputed evidence  
4 shows that the individuals who evaluated Plaintiffs' applications had no knowledge of whether  
5 or not Plaintiffs knew Sheriff Blanas or whether they had given to the Sheriff's election  
6 campaign or not. The Evaluations Committee members gave valid legal reasons for the denial  
7 of each Plaintiff's application, which reasons were not in violation of any Constitutional or other  
8 rights afforded these individuals. These paragraphs of argument, conjecture, speculation and  
9 other information, whether accurately presented or not, do not dispute the facts upon which  
10 Defendants base their motion.

## 11 CONCLUSION

12 The reams of paper filed by Plaintiffs are entirely irrelevant to the claims based upon  
13 these Plaintiffs' applications for CCW permits. In addition, the unorganized, and voluminous  
14 papers which Plaintiffs have imposed upon Defendants created an unreasonable burden in  
15 attempting to organize and determine what exhibits, some unlabeled, belonged to which  
16 documents. The waste involved is atrocious. However, after a concerted dig through all that  
17 Plaintiffs have filed, there is no factual, admissible evidence which disputes the material facts  
18 Defendants have presented, or which show any violation of the Constitutional rights of these  
19 Plaintiffs.

20 Plaintiffs' claim in this action is that "CCW permits were summarily granted to  
21 campaign contributors," and that if Plaintiffs had likewise contributed, they would have been  
22 granted the CCW permits they desired. The undisputed evidence submitted by Defendants  
23 shows that campaign contributions were not even known, much less considered in evaluating  
24 CCW applications; many individuals who wanted CCW permits and had contributed to Sheriff  
25 Blanas' election campaign were denied permits; many individuals who did not contribute to  
26 Sheriff Blanas' campaign were granted permits; Sheriff Blanas had no knowledge of Plaintiffs  
27 and played no part in the evaluation of their applications; and Plaintiffs were denied CCW

1 permits based upon valid, legal reasons which had nothing to do with campaign contributions.  
2 Finally, Plaintiffs have no constitutional right to a CCW permit or even the right to own or  
3 possess weapons.

4 Plaintiffs have abandoned their First Cause of Action based on race/national origin, have  
5 conceded that the Ninth Circuit does not recognize their claims brought under the Second or  
6 Ninth Amendments to the Constitution (as related to their Fourth and Sixth Causes of Action),  
7 and, as this court determined in its order of September 2, 2004 at page 15, “Denying Plaintiffs  
8 the right to carry a concealed firearm does not constitute a violation of the Privileges and  
9 Immunities Clause” (Plaintiffs’ Fifth Cause of Action). Finally, Plaintiffs have no factual  
10 support to their allegation that CCW permits were issued by the Defendants based upon an  
11 applicant’s political campaign contributions, or that even if such were the case, that Plaintiffs  
12 were denied CCW permits on that basis. Therefore, Defendants respectfully request judgement  
13 entered in their favor.

14 DATED: November 30, 2007.

LONGYEAR, O’DEA & LAVRA, LLP

15 /s/ Jeri L. Pappone

16 By \_\_\_\_\_

17 JOHN A. LAVRA  
18 JERI L. PAPPONE  
Attorneys for Defendants  
Sacramento County  
Lou Blanas

1                   LONGYEAR, O'DEA & LAVRA, LLP

2                   3620 American River Drive, Suite 230  
3                   Sacramento, California 95864-5923

4                   Tel: 916-974-8500 Fax: 916 974-8510

5                   John A. Lavra, CSB No. 114533  
6                   Jeri L. Pappone, CSB No. 210104

7                   Attorneys for Defendants, LOU BLANAS, as SHERIFF OF COUNTY  
8                   OF SACRAMENTO; COUNTY OF SACRAMENTO,  
9                   SHERIFF'S DEPARTMENT; COUNTY OF SACRAMENTO

10                  UNITED STATES DISTRICT COURT

11                  EASTERN DISTRICT OF CALIFORNIA

12                  DAVID K. MEHL, LOK T. LAU,  
13                  and FRANK FLORES,

14                  )                   **CASE NO.: CIV S-03 -2682 MCE KJM**

15                  Plaintiffs,

16                  )                   **DECLARATION OF JERI L. PAPPONE**  
17                  )                   **IN SUPPORT OF DEFENDANTS'**  
18                  )                   **REPLY TO PLAINTIFFS'**  
19                  )                   **OPPOSITION TO MOTION FOR**  
20                  )                   **SUMMARY JUDGMENT**

21                  vs.  
22                  )  
23                  LOU BLANAS, individually and in his  
24                  official capacity as SHERIFF OF COUNTY  
25                  OF SACRAMENTO;  
26                  COUNTY OF SACRAMENTO,  
27                  SHERIFF'S DEPARTMENT;  
28                  COUNTY OF SACRAMENTO;  
29                  BILL LOCKYER, Attorney General,  
30                  State of California;  
31                  RANDI ROSSI, State Firearms Director  
32                  and Custodian of Records  
33                  )  
34                  Defendants  
35                  )

36                  Date: December 7, 2007  
37                  Time: 9:00 a.m.  
38                  Ctrm: 3  
39                  Judge: Honorable Morrison C. England, Jr.

40                  I, JERI L. PAPPONE, declare as follows:

41                  1. I am an attorney at law duly licensed to practice in all courts of the State of  
42                  California, and the United States District Court for the Eastern District of California. I am an  
43                  associate with the law firm of Longyear, O'Dea & Lavra, LLP, attorneys for Defendants herein.

44                  2. Attached hereto as Exhibit A, is a true and correct copy of correspondence  
45                  received from counsel for James Colafrancesco and the Declaration of James Colafrancesco.

3. Attached hereto as Exhibit B, is a true and correct copy of relevant portions of the Deposition transcript and Exhibits thereto of Plaintiff David Mehl, taken on December 14, 2006 and April 13, 2007.

4. Attached hereto as Exhibit C, is a true and corrected copy of documentation provided to the Sacramento County Sheriff's Department by Plaintiff Lok T. Lau in connection with his CCW application.

5. Attached hereto as Exhibit D, is a true and correct copy of relevant portions of the Deposition transcript and Exhibits thereto of Plaintiff Lok T. Lau, taken on December 13, 2006.

6. Attached hereto as Exhibit E, is a true and correct copy of the Expert Witness Disclosure of Timothy Twomey, served and filed by Plaintiffs on August 31, 2007.

I have personal knowledge of the foregoing and if called upon to testify could competently do so. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of November 2007, at Sacramento, California.

  
JERRIL L. PAPPONE

JERI L. PAPPONE

# **EXHIBIT A**

Received

Jul 9 2007 04:25pm

FROM : LAW OFFICESOF KEVIN MARCHESE

FAX NO. :916 774 0285

Jul. 09 2007 04:35PM P1

KEVIN R. MARCHESE  
ATTORNEY AT LAW  
1215 K STREET, 17TH FLOOR  
SACRAMENTO, CALIFORNIA 95814

(916) 503-3179 FACSIMILE: (916) 774-0285

July 9, 2007 4:20PM

Gary W. Gorski, Esq.  
Attorney at Law  
8549 Nephi Way  
Fair Oaks, California 95628

**VIA TELECOPY ONLY**  
**TWO PAGES TOTAL**

(916)965-6801

Jeri L. Pappone, Esq.  
LONGYEAR O'DEA LAVRA  
3620 American River Drive, Suite 230  
Sacramento, California 95864

(916)974-8510

RE: *MEHL, ET.AL. v LOU BLANAS, ET.AL*  
U.S. DIST.COURT/EASTERN DIST. CALIF.  
Case # CIV S 03 2682  
James Colafrancesco Witness Subpoena

Dear Counsel:

My client, Jim Colafrancesco, believes that he has been the subject of inaccurate information in this case. First, my client is not and was not ever "on the run" or otherwise evading or avoiding service of any legal process or deposition subpoena. Quite the contrary, my client is available and has instructed me to accept any service of process as I indicated to Mr. Gorski on Friday, July 6, 2007 following our first awareness.

I am hopeful, on the other hand, that it will be unnecessary to depose my client since he was never a campaign contributor to any current or past sheriff, nor did he even know, meet or otherwise associate with these men back then or now.

Any claim, assertion, testimony or publication that my client was a contributor is inaccurate and without any merit. I believe that discovery records exchanged between the parties verify this as a fact. Second, any claim that my client was unavailable as a witness is also inaccurate.

Attached is my client's written declaration with regard to the forgoing, which should end his involvement or reference in this case. If not, please call me. (916)849-5663 directly.

Very truly yours,

  
Kevin Marchese  
KRM

FROM :LAW OFFICESOF KEVIN MARCHESE FAX NO. :916 774 0285

Jul 09 07 04:22p Colafrancesco

Jul. 09 2007 04:36PM P2

FROM :LAW OFFICESOF KEVIN MARCHESE FAX NO. :916 774 0285

9166860217

p. 1

Jul. 09 2007 04:09PM P1

**DECLARATION OF JAMES C. COLAFRANCESCO**

I, James C. Colafrancesco, Declare as follows:

1. I am an adult over the age of eighteen and am competent to make this declaration.
2. I have never contributed financially or otherwise promoted any campaign for Sheriff, and specifically not for Glen Craig, Lou Blanas or John McGinnis.
3. Any reference, claim or publication stating that I had ever contributed to any such political campaign for Sheriff, or that I had ever made any statement to the effect that I was a contributor are inaccurate and unmeritorious.
4. On Thursday, July 5, 2007, my attorney, Kevin Marchese, obtained a copy of a deposition subpoena and a notice of taking deposition purportedly issued by Fair Oaks attorney, Gary Gorski, for me- James Colafrancesco - to appear as a witness in the case of *Mehl, et.al. v Lou Blanas, et.al., U.S. District Court/Eastern Dist. Calif. Case #S 03 2682* that was provided by defense counsel - Jeri L. Pappone, Esq.
5. I was unaware that I was being sought as a witness in this case, and I have never been served with legal process in regards to this witness subpoena.
6. On Thursday, July 5, 2007, my attorney, Kevin Marchese, obtained a copy of an email dated 30 May 2007 between attorney Gary Gorski and attorney Jeri Pappone in which attorney Gary Gorski represented that "Colafrancesco is on the run" as a reason why my witness deposition was going off-calendar.
7. As a businessman in the region as well as a resident of Sacramento County my availability to answer legal matters, both personally or through my legal counsel are a matter of record. Furthermore, I was in Sacramento during the months of May and June 2007. I have never been contacted or otherwise been made aware of anyone trying to contact me in regard to the *Mehl* litigation until July 5, 2007; however, I was contacted by KCRA Channel 3 on July 2, 2007 at my home indicating that it is not, in fact, difficult to get a hold of me.
8. On July 6, 2007, I instructed my attorney, Kevin Marchese, to contact attorney Gary Gorski to make arrangements to formally receive the subject un-served witness subpoena. As of this declaration's writing, such has not been received.
9. I am available to testify to matters regarding any publication, testimony or hearsay document regarding purported campaign contributions.

All of the above statements are true and correct, stated under the penalty of perjury and based upon my personal firsthand knowledge. If called as a witness I would and could testify in a manner identical to that set forth hereinabove. Executed this 9<sup>th</sup> day of July in Sacramento County, California.

*James Colafrancesco*  
James Colafrancesco - Declarant  
Facsimile signature to serve as original

7/9/07

# **EXHIBIT B**

09:11:49

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF CALIFORNIA

3 --o0o--

4 David K. MEHL, LOK T. LAU )  
and FRANK FLORES, )  
5 )  
Plaintiffs, )  
6 ) No. CIV S-03-2682 MCE KJM  
vs. )  
7 )  
LOU BLANAS, individually )  
8 and in his official )  
capacity as SHERIFF OF )  
9 COUNTY OF SACRAMENTO; )  
COUNTY OF SACRAMENTO, )  
10 SHERIFF'S DEPARTMENT; )  
COUNTY OF SACRAMENTO; BILL )  
11 LOCKYER, Attorney General, )  
State of California; RANDI )  
12 ROSSI, State Firearms )  
Director and Custodian of )  
13 Records, )  
14 Defendants. )  
15

**CERTIFIED COPY**

16 --o0o--

17 Deposition of  
18 DAVID K. MEHL

19 Thursday, December 14, 2006

20 --o0o--

21  
22 L.J. HART & ASSOCIATES  
Certified Shorthand Reporters  
23 1900 Point West Way, Suite 141  
Sacramento, California 95815  
24 Telephone (916) 922-9001

25 Reported by DIANA HULSEY, CSR License No. 6915

1                   A P P E A R A N C E S  
2  
3

4       For the Plaintiffs:

5

6                   GARY W. GORSKI, Attorney at Law  
7                   8549 Nephi Way  
7                   Fair Oaks, California 95628

8

9       For the Defendants:

10

11                  LONGYEAR, O'DEA & LAVRA  
11                  By: JOHN A. LAVRA  
12                  3620 American River Drive, Suite 230  
12                  Sacramento, California 95864-5923

13

14                  --oo--  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

10:45:20 1 is the cover sheet to the application for a CCW license.

10:45:30 2 A Sorry. If I can just take a moment, because if

10:45:34 3 there was something in here that was --

10:45:36 4 MR. GORSKI: A business card?

10:45:37 5 THE WITNESS: No, not a business card, but a

10:45:39 6 certified mail certificate that would clarify because I

10:45:42 7 would keep that.

10:45:45 8 MR. GORSKI: I didn't see one.

10:45:46 9 MR. LAVRA Q: Before you do that, I want to ask

10:45:48 10 you --

10:45:48 11 A I don't see one.

10:45:49 12 Q -- a question just to move this along.

10:45:54 13 A Okay.

10:45:54 14 Q Exhibit C is a document that was just provided by

10:45:59 15 your attorney that has, it looks like it's a cover sheet to

10:46:03 16 the application for a CCW license with, and I'll represent

10:46:07 17 to you we're using a photocopy under stipulation, of a

10:46:11 18 yellow post-it note that was on the cover of what we've

10:46:15 19 marked as Exhibit C in its original form. Is that post-it

10:46:18 20 note to the best of your recollection the post-it note that

10:46:21 21 you reference in Exhibit's B and D?

10:46:31 22 A Yes, I'd agree with that.

10:46:34 23 Q Okay. Next I'll give you Exhibit E which was

10:46:38 24 also provided by your attorney this morning. Have you seen

10:46:40 25 that document before?

10:46:41 1 A I believe so.

10:47:00 2 Q And the date of the document is August 1, 2002;

10:47:05 3 correct?

10:47:05 4 A Yes.

10:47:06 5 Q And your original application date was July 16th,

10:47:10 6 2002; correct?

10:47:11 7 A Yes.

10:47:13 8 Q So does this to your eyes appear to be the

10:47:17 9 response of the sheriff's department to your July 16th,

10:47:22 10 2002 application?

10:47:23 11 A Yes.

10:47:23 12 Q And in this document you're informed that your

0:47:30 13 original application was incomplete?

10:47:32 14 A Yeah.

10:47:32 15 Q And you're asked by the department to provide

10:47:36 16 information to justify your need to carry a concealed

10:47:40 17 weapon; correct?

10:47:41 18 A Yes, I see that sentence.

10:47:50 19 Q Okay. That's what they're asking, "Please

10:47:52 20 provide information to justify your need to carry a

10:47:56 21 concealed weapon"?

10:47:57 22 A Well, okay. Let me read it because that's not

10:47:59 23 what I'm -- it says -- maybe I'm missing the section you're

10:48:04 24 reading. It says, "After review, it was determined that

0:48:07 25 you had not provided the required information needed to

10:48:10 1 justify good cause. If you wish to resubmit it," blah,  
10:48:13 2 blah, blah. I'm not up to the point where it says I need  
10:48:16 3 to provide that information as part of the original  
10:48:19 4 application, so can you point that out to me?

10:48:21 5 Q From your reading of this document, were you  
10:48:24 6 requested by the sheriff's department to provide  
10:48:26 7 information that would justify your need to carry a  
10:48:29 8 concealed weapon?

10:48:30 9 A No.

10:48:31 10 Q Okay. Were you told that if you wanted to  
10:48:37 11 provide information to justify your need to carry a  
10:48:40 12 concealed weapon you could include that information as an  
0:48:43 13 attachment to the application?

10:48:45 14 A Okay. I'm still reading on this, and so I think  
10:48:50 15 I'm kind of behind.

10:48:51 16 Q Take as much time as you need.

10:48:53 17 A I'm good with numbers, but I read slowly. See, I  
10:49:12 18 think is was part of the problem I had with this and the  
10:49:15 19 sticky note and the application form itself, it's all  
10:49:20 20 conflicting.

10:49:20 21 Q Okay. My question just was, were you informed by  
10:49:23 22 the sheriff's department that if you wanted to resubmit  
10:49:28 23 your application and provide information that you felt  
10:49:31 24 would justify your need to carry a concealed weapon you  
0:49:34 25 could do so and that you could provide that information in

10:49:37 1 an attachment to the application?

10:49:38 2 A Yes, may, but not -- it says that you may, but

10:49:43 3 it's not required. You know, the huge difference is that

10:49:49 4 the application doesn't require it, nor does it ask for

10:49:52 5 that if you follow the instructions, and that's, again,

10:49:54 6 where I think the package is conflicting information

10:49:58 7 between what they put in here, the package, the sticky

10:50:01 8 note, and if you actually follow instructions, this is

10:50:05 9 countered to what they said because that's supposed to be

10:50:08 10 information provided during an interview.

10:50:11 11 Q Okay.

10:50:13 12 A But you may if you want.

10:50:15 13 Q Okay. And did you do that?

10:50:16 14 A I thought I had, but according to the

10:50:20 15 application, it does not appear to be there from what your

10:50:24 16 Exhibit A is.

10:50:25 17 Q Well, not only from Exhibit A, from your --

10:50:29 18 A Yeah.

10:50:30 19 Q -- testimony?

10:50:30 20 A Which is the same, yeah.

10:50:32 21 Q Okay.

10:50:32 22 A I don't remember doing it. I mean, heck, I don't

10:50:36 23 remember.

10:50:36 24 MR. LAVRA: Okay. Let me see if I have any other

10:50:40 25 questions.

**REPORTER'S CERTIFICATE**

I, Diana Hulsey, a Certified Shorthand Reporter  
in and for the County of Sacramento, State of California,  
duly appointed and commissioned to administer oaths, do  
hereby certify:

That I am a disinterested person herein; that the witness, DAVID K. MEHL, named in the foregoing deposition, was by me duly sworn to testify the truth; that the deposition was reported in shorthand by me, Diana Hulsey, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting; that the foregoing is a true and correct record of the testimony given by the witness.

IN WITNESS WHEREOF, I hereby certify this  
deposition at my office in the County of Sacramento, State  
of California, this 11th day of January, 2007.

Diana Hulsey  
Diana Hulsey, CSR 6915

L.J. HART & ASSOCIATES  
Certified Shorthand Reporters  
1900 Point West Way, Suite 141  
Sacramento, California 95815  
Telephone: (916) 922-9001

1                   UNITED STATES DISTRICT COURT  
2                   EASTERN DISTRICT OF CALIFORNIA

3                   --o0o--

4                   DAVID K. MEHL, LOK T. LAU,      )  
5                   and FRANK FLORES,                )  
6                   )  
7                   Plaintiffs,                        )  
8                   )  
9                   vs.                                 )   No. CIV S-03-2682 MCE KJM  
10                  )  
11                  LOU BLANAS, individually        )  
12                  and in his official             )  
13                  capacity as SHERIFF OF         )  
14                  COUNTY OF SACRAMENTO;            )  
15                  COUNTY OF SACRAMENTO,            )  
16                  SHERIFF'S DEPARTMENT;            )  
17                  COUNTY OF SACRAMENTO; BILL     )  
18                  LOCKYER, Attorney General,    )  
19                  State of California; RANDI    )  
20                  ROSSI, State Firearms            )  
21                  Director and Custodian of    )  
22                  Records,                            )  
23                  )  
24                  Defendants.                        )  
25                  )  
\_\_\_\_\_

**CERTIFIED COPY**

16                   --o0o--

17                   Deposition of

18                   DAVID K. MEHL

19                   Volume II

20                   Friday, April 13, 2007

21                   --o0o--

22                  L.J. HART & ASSOCIATES  
23                  Certified Shorthand Reporters  
24                  1900 Point West Way, Suite 141  
25                  Sacramento, California 95815  
                    Telephone (916) 922-9001

Reported by KAREN FORSTER, CSR License No. 8691, RPR

1                           A P P E A R A N C E S  
2  
3

4       For the Plaintiffs:

5                           LAW OFFICE OF GARY GORSKI  
6       By: GARY GORSKI, Attorney at Law  
7       8549 Nephi Way  
8       Fair Oaks, California 95628

9       For the Defendants, LOU BLANAS, as SHERIFF OF COUNTY OF  
10      SACRAMENTO; COUNTY OF SACRAMENTO, SHERIFF'S DEPARTMENT;  
11      COUNTY OF SACRAMENTO:

12      LONGYEAR, O'DEA & LAVRA  
13      By: JOHN A. LAVRA, Attorney at Law  
14      3620 American River Drive, Suite 230  
15      Sacramento, California 95864

16      Also Present: BEN MEHL

17                          --o0o--  
18  
19  
20  
21  
22  
23  
24  
25

1 A I don't talk to them about my commute to work at  
2 all really.

3 MR. LAVRA: Would you read the question back to  
4 Mr. Mehl. And just try to answer it yes or no.

5 (Whereupon the record was read back  
6 as follows:

7 "Q. Did you ever discuss with any  
8 of your supervisors at work during  
9 that period of time that you were  
10 applying for a CCW license to carry  
11 a concealed weapon while riding  
12 your commute to work?"

13 THE WITNESS: No.

14 MR. LAVRA Q: Did you ever speak to anyone  
15 personally from the Sacramento Sheriff's Department about  
16 your application for a CCW license?

17 A No. No one ever contacted me.

18 Q You went to the counter, the public counter, at  
19 the sheriff's department to obtain the CCW license package;  
20 is that right?

21 A First, I went to one of the branches in Rancho,  
22 and then I went to the one downtown, because the -- while  
23 the Web site said that they had it at all the sheriff's  
24 sub-departments or whatever, they didn't, so then I had to  
25 go downtown.

1 Q And when you went downtown did you speak to the  
2 person at the public counter about obtaining a package?

3 A No. He didn't want to speak about anything. He  
4 just said, "Here," and that was it.

5 Q So the extent of your conversation was you  
6 requesting the package and him giving it to you?

7 A That's my memory, yes.

8 Q So you didn't have any discussion about anything  
9 about the application or filling out the application or  
10 anything having to do with your application?

11 A Not that I remember. I mean, I'm trying to  
12 think, and I just can't remember any particular discussions  
13 with him.

14 Q Uh-huh. Now, you received two written  
15 communications from the sheriff's department concerning  
16 your attempts at applying for a CCW license; correct?

17 A I believe actually three if you count the sticky  
18 note.

19 Q Okay. Let's exclude the sticky note since we  
20 don't know who authored it; right?

21 A Correct.

22 Q Okay. You received a communication from Steve  
23 Cotta. Do you remember that?

24 A It was one of your exhibits.

25 MR. GORSKI: Well, first of all, do you remember

1 Steve Cotta, or do you need to look at the document?

2 THE WITNESS: I needed to look at the document to  
3 know who it was, but he had it there, and that was one of  
4 the documents that you had as an exhibit.

5 MR. LAVRA Q: Okay. Well, just to refresh your  
6 recollection, -- let's see. The first page of Exhibit A is  
7 a document with the name "Detective Steve Cotta" on the  
8 bottom of the document.

9 A Uh-huh.

10 Q Do you see that?

11 A Yes.

12 Q This is a document you already testified you  
13 received from the sheriff's department.

14 A Yes.

15 Q And in this document it says, "If you want to  
16 appeal the decision you can call Tamara Haney," and they  
17 give you a telephone number. Do you see that?

18 A Yes, I do.

19 Q Did you ever contact Tamara Haney at the number  
20 that the sheriff's department provided you?

21 A As I testified before, no.

22 Q And there's also the next line of the letter  
23 says, "If you have any questions, please call," and they  
24 give you another telephone number. Do you see that line in  
25 the letter, the last line?

1 A Yes.

2 Q And did you ever call that telephone number to  
3 talk about this communication?

4 A Not that I remember.

5 Q Did you ever attempt to call anybody once you  
6 received this notice from the sheriff's department?

7 A I don't remember.

8 Q All right. As you sit here today, do you believe  
9 that you did and you just can't remember the specifics of  
10 it or --

11 A I just -- I don't believe I did, but I'm not  
12 going to exclude that maybe I did try and just didn't do  
13 it, but I don't remember attempting anything of that nature  
14 that you're asking about.

15 Q Okay. In Exhibit E to your last deposition is  
16 the letter from Chief Denham, which we already went over to  
17 some extent in your last deposition. You recall receiving  
18 this letter; correct?

19 A Yes.

20 Q And there's a telephone number in this letter for  
21 Chief Denham. Do you see that?

22 A Yes.

23 Q Did you ever call this telephone number to  
24 inquire about this letter?

25 A Not that I remember.

1 Q Did you call or attempt to call anyone at the  
2 sheriff's department as a result of receiving this letter?

3 A Not that I remember.

4 Q Did you ever take any steps to try to appeal any  
5 decision of the Sacramento Sheriff's Department with  
6 respect to any of your applications?

7 A Just resubmitting is an appeal, in essence.

8 Q Okay. I'm not talking about in essence.

9 A Going through the formal appeal process?

10 Q Did you ever file an appeal --

11 A No.

12 Q -- of any decision of the sheriff's department  
13 with respect to any of your applications?

14 A No.

15 Q Okay. And you never to this day have contacted  
16 anyone with the sheriff's department to determine any  
17 information about your applications or why you didn't  
18 receive a CCW license?

19 A No. Not that I remember, no.

20 Q Is there any reason why you didn't appeal?

21 A We went over this last time. I submitted the  
22 form, and you're going to ask the same person again? That  
23 seems just kind of pointless. If your children were to ask  
24 you to do something and you said no and they ask you again,  
25 would you say yes?

Fill out  
Complete  
app. and  
Mail Original

Department of Justice

DEFENDANT'S	
EXHIBIT NO. _____	
FOR IDENTIFICATION	
Mehl	C
PENGAD 800-631-6989	
DATE: 12-14-06	RPTR: DPT



**STANDARD APPLICATION  
FOR LICENSE TO CARRY  
A CONCEALED WEAPON (CCW)**

# SACRAMENTO COUNTY



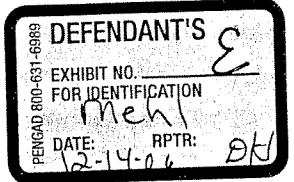
# SHERIFF'S DEPARTMENT

LOU BLANAS

*Sheriff*

August 1, 2002

David Mehl  
8704 Barracuda Way  
Sacramento, CA 95828



RE: Application for concealed weapons permit:

Your application for a concealed weapons permit was received and reviewed by Sacramento Sheriff's Special Investigations Bureau Staff. As stated on page (4) of the issuance policy this fee is **non-refundable**. After review of your application, it was determined that you had not provided the required information needed to justify good cause for issuance of a concealed weapon permit. If you wish to re-submit an application, please provide any/all information that will justify your need to carry a concealed weapon as stated on page 1 - 3 of Sacramento Sheriff's issuance policy. You may provide this information as an attachment. Incomplete applications will not be considered.

Please use the State of California Application provided with this letter and submit original to us. You may, of course, make a copy for your personal files. You will not be required to pay an additional (\$20) filing fee to re-submit your updated application. Any additional fees are required only if application is approved.

If you do not wish to submit an attachment outlining your justification to carry a concealed weapon you may fill out an application in person at Sacramento County Sheriff's Main Headquarters at:

711 'G' Street  
Sacramento, CA 95814  
Front Counter (**officers on duty to witness signature**) 8am - 4pm  
Sacramento, CA 95814

If you have any questions, please call me at (916) 874-5371.

Very truly yours,

SHERIFF LOU BLANAS

A handwritten signature of Sheriff Lou Blanas.

Chief Robert Denham  
Investigative and Special Operations Services

Attachments: (2)

REPORTER'S CERTIFICATE

I, Karen Forster, a Certified Shorthand Reporter  
in and for the County of Sacramento, State of California,  
duly appointed and commissioned to administer oaths, do  
hereby certify:

That I am a disinterested person herein; that the witness, DAVID K. MEHL, named in the foregoing deposition, was by me duly sworn to testify the truth; that the deposition was reported in shorthand by me, Karen Forster, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting; that the foregoing is a true and correct record of the testimony given by the witness.

IN WITNESS WHEREOF, I hereby certify this deposition at my office in the County of Sacramento, State of California, this 23rd day of April, 2007.

KAREN FORSTER, CSR 8691, RPR

L.J. HART & ASSOCIATES  
Certified Shorthand Reporters  
1900 Point West Way, Suite 141  
Sacramento, California 95815  
Telephone: (916) 922-9001

# **EXHIBIT C**

The FBI reacted by keeping him on his undercover assignment for six more months. When Lau emerged from his undercover role, he was not sent for psychological treatment, but instead received a couple weeks of re-training before being shipped off to the FBI's Sacramento field office -- despite his request to be located in Seattle. As he began his new job as a special agent in Sacramento, an investigation into the shoplifting incident was still hanging over his head.

"One cannot simply (take) an agent undercover for years and then simply place the agent in an office and expect that person to function normally," argues former FBI Unit Chief Vasquez in legal pleadings filed in federal court. "It is similar to a veteran returning from the war and finding persons who did not understand the contributions or sacrifices made."

Predictably, according to Vasquez, Lau began to run into problems adjusting to the special agent job -- for which he had no real training.

"Mr. Lau should have been placed in a teaching position wherein his expertise could be used," Vasquez states in a legal declaration. "Mr. Lau gained expertise that does not appear in the manuals and the FBI did not recognize this. Instead, Mr. Lau was (made) a nobody who did not know how to be an FBI agent.

"The supervisor of the squad in Sacramento probably felt he was a thorn in the side of the office and the Bureau, as a 5-year agent should be able to do any assignment."

In 1993, nearly three years after the shoplifting incident occurred, Lau's punishment was meted out by the Bureau. He received a 14-day suspension without pay.

Steven Pomerantz, then assistant director of the FBI's Administrative Services Division, in an Oct. 12, 1993, letter to Lau, stated that "were it not for (the) unique circumstances and attendant stressors" of Lau's undercover assignment, he would have no choice but to fire him for the shoplifting incident.

"However, inasmuch as I believe that your actions on that date were, to some degree, the by-product of the unusual work-related stress you were subjected to, I have concluded that disciplining you for the incident at Sears would be inappropriate," Pomerantz wrote.

The head of the FBI's Safeguard Unit at the time, Dr. Stephen Band, stated in a June 29, 1993, memorandum that Lau "may again exhibit unacceptable behavior (shoplifting) if he was placed in a position which (he) perceived as stressful."

Still, the FBI provided Lau with no treatment. In fact, Silva argues in court pleadings that through the date of his firing, "Mr. Lau was denied adequate medical and psychological treatment since he could not discuss the basis of his medical and psychological condition since it related to classified work . . ."

## Getting the boot

The situation in the Sacramento field office only got worse for Lau after he was punished for the Sears shoplifting episode. In 1995, his supervisor tasked him with the humiliating job of running photocopies for the office after Lau failed to perform to expectations on several assignments. Then, in the fall of 1996, Lau's government vehicle and gun were taken from him due to a medical mandate related to Lau's sleep apnea -- a sleeping disorder he was diagnosed with some two years earlier.

Despite not having a gun or car, Lau claims his supervisor ordered him to continue performing his normal duties.

"Incredibly, despite being stripped of his weapon, agent Lau was required to investigate, make arrests and serve search warrants as any normal armed agent," writes attorney Brian Varner in an April 21, 1997, letter to the FBI. "Between Nov. 14, 1996, and March 24, 1997, Agent Lau executed four federal search warrants on

# **EXHIBIT D**

11:08:31 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

--o0o--

4 DAVID K. MEHL, LOK T. LAU )  
and FRANK FLORES, )  
5 )  
Plaintiffs, )  
6 ) No. CIV S-03-2682 MCE KJM  
vs. )  
7 )  
LOU BLANAS, individually )  
and in his official )  
capacity as SHERIFF OF )  
COUNTY OF SACRAMENTO; )  
COUNTY OF SACRAMENTO, )  
SHERIFF'S DEPARTMENT; )  
COUNTY OF SACRAMENTO; BILL )  
LOCKYER, Attorney General, )  
State of California; RANDI )  
ROSSI, State Firearms )  
Director and Custodian of )  
Records, )  
Defendants. )  
\_\_\_\_\_  
15

**CERTIFIED COPY**

JAN 11 2007

16 --o0o--  
17 Deposition of  
18 LOK. T. LAU  
19 Wednesday, December 13, 2006  
20 --o0o--  
21  
22 L.J. HART & ASSOCIATES  
Certified Shorthand Reporters  
23 1900 Point West Way, Suite 141  
Sacramento, California 95815  
24 Telephone (916) 922-9001  
25 Reported by DIANA HULSEY, CSR License No. 6915

1                   A P P E A R A N C E S  
2  
3  
4       For the Plaintiffs:  
5  
6                   GARY W. GORSKI, Attorney at Law  
7                   8549 Nephi Way  
7                   Fair Oaks, California 95628  
8  
9       For the Defendants:  
10  
11                  LONGYEAR, O'DEA & LAVRA  
12                  By: JOHN A. LAVRA  
12                  3620 American River Drive, Suite 230  
13                  Sacramento, California 95864-5923  
14  
15                  --oo--  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

11:25:33 1 illness?

11:25:33 2 A I don't know what you mean by mental illness, but

11:25:40 3 I did tell you that I suffer from major depression, PTSD

11:25:48 4 and severe sleep apnea, and that's what I'm --

11:25:52 5 Q Are you disabled because of those conditions?

11:25:54 6 A Yes.

11:25:57 7 Q Have you been disabled because of those

11:26:00 8 conditions for the last six years?

11:26:04 9 A Yes, and longer than I'm not aware of.

11:26:11 10 Q When did you first start receiving -- or, strike

11:26:22 11 that.

11:26:22 12 Do you receive disability benefits because of

1:26:27 13 your disability from the federal government?

11:26:30 14 A Yes.

11:26:31 15 Q And that's the Federal Workers' Compensation

11:26:34 16 Program that you testified about?

11:26:36 17 A Yes.

11:26:37 18 Q And how long have you been receiving disability

11:26:40 19 benefits through that program?

11:26:42 20 A For the past approximately four years.

11:26:49 21 Q When did you first -- or, strike that.

11:26:54 22 Did you have to apply for those benefits?

11:26:56 23 A Yes.

11:26:56 24 Q When did you apply for those benefits?

1:26:59 25 A I applied for those benefits in the year 2000,

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

May 1, 2003

COPY

Antonio V. Silva, P.C.  
Attorneys at Law  
2616 Montana Avenue  
El Paso, Texas 79903

RE: Lok T. Lau

Dear Mr. Silva:

This is to acknowledge receipt of your letter of April 23, 2003 regarding your client Mr. Lau.

At this time the FBI is not aware of any facts that would compromise the safety of your client, Mr. Lau. Should the situation change, we will advise you accordingly.

Sincerely,

*Anne M. Gulyassy*  
Anne M. Gulyassy  
Deputy General Counsel

DEFENDANT'S	E
EXHIBIT NO.	
FOR IDENTIFICATION	
Lau	
PENGAD 800-631-6969	RPTR
DATE: 12-13-06	24



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

March 23, 2001

Antonio V. Silva, P.C.  
Attorneys at Law  
2616 Montana Avenue  
El Paso, Texas 79903

RE: Mr. Lau

Dear Mr. Silva:

This is to acknowledge receipt of your letters of March 1, 2001 regarding your client Mr. Lau.

At this time the FBI is not aware of any facts that would compromise the safety of your client, Mr. Lau. Should the situation change, we will advise you accordingly.

Sincerely,

Charles M. Steele  
Deputy General Counsel

1                           REPORTER'S CERTIFICATE

2

3                           I, Diana Hulsey, a Certified Shorthand Reporter  
4                           in and for the County of Sacramento, State of California,  
5                           duly appointed and commissioned to administer oaths, do  
6                           hereby certify:

7                           That I am a disinterested person herein; that the  
8                           witness, LOK. T. LAU, named in the foregoing deposition,  
9                           was by me duly sworn to testify the truth; that the  
10                          deposition was reported in shorthand by me, Diana Hulsey, a  
11                          Certified Shorthand Reporter of the State of California,  
12                          and thereafter transcribed into typewriting; that the  
13                          foregoing is a true and correct record of the testimony  
14                          given by the witness.

15                          IN WITNESS WHEREOF, I hereby certify this  
16                          deposition at my office in the County of Sacramento, State  
17                          of California, this 10th day of January, 2007.

18

19

  
Diana Hulsey, CSR 6915

20

21

22

23

24

25

L.J. HART & ASSOCIATES  
Certified Shorthand Reporters  
1900 Point West Way, Suite 141  
Sacramento, California 95815  
Telephone: (916) 922-9001

# **EXHIBIT E**

**TIMOTHY TWOMEY EXPERT WITNESS REPORT RE: CCW  
ISSUANCE IN CASE NUMBER 03 2682 MCE/KJM**

1. I received a Bachelors Degree in Psychology in 1972 from California State University, Sacramento.
2. In late 1972 or early 1973, I was accepted into the Sacramento County Sheriff's Department's Reserve Academy.
3. After graduation, I worked almost every Sunday and Monday, David Watch, riding with a partner. Eventually I earned the trust of fellow deputies and was assigned, as reserve deputy, to patrol in a one person unit.
4. In approximately May of 1994, I was hired by the Sacramento County Sheriff's Department as a long term, paid on-call reserve and was assigned to the Rio Consumnes Correctional Center (RCCC).
5. In approximately September, 1974, I was hired as a full time Deputy Sheriff and was assigned to the Sacramento Law Enforcement Training Academy, graduating in or about January, 1975, finishing some hundredths of points behind the top academic recruit.
6. It was during this academy I became familiar with the Weaponless Control Self Techniques as developed by Robert Koga, a retired Los Angeles Police Officer.
7. Mr. Koga developed control techniques from his knowledge of Aikido.
8. I was personally taught these restraint techniques which involve varying degrees of force to be applied, on a case by case basis, and have personally employed them pursuant to Departmental policy ever since, including the Use of Force Departmental policy outlined in the Declaration of Ray Raute.
9. After assignments at the courthouse, the airport, the R.C.C.C., and the Main Jail, I was transferred to patrol, where later I was promoted to a Field Training Officer.
10. In 1975 (+-)I became a Certified Departmental Weaponless Control Self Defense (Koga) Instructor.
11. I attended at least one Weaponless Control Self Defense Course in which Robert Koga was the sole instructor.
12. I hold a 1<sup>st</sup> degree brown belt in Kempo Karate. I hold a 3<sup>rd</sup> degree brown belt in Judo. I earned the status as a Grand Master, Police Combat Pistol, California Combat Association. I hold a lifetime California Community College Instructors Certificate in Psychology, Police Science and Physical Education.
13. Starting in approximately 1975, I began teaching Custody Procedures to the various Law Enforcement Academies and Community Colleges throughout Northern California.
14. In my almost ten years of teaching, I taught hundreds of recruits Weaponless Control Self Defense (Koga) techniques throughout northern California Community Colleges and Agencies.
15. I have personally used the Koga techniques thousands of times during my 32 year career including the "Standing Modified Handcuffing Technique", "The Felony Handcuffing Technique", the "Wrist Lock", the "Twist Lock", "Wrist Throw", the "Two Count Striking Hand", "Three From the Ring", and the "Carotid Choke."
16. In 1979, then Captain George Lotz asked me to do an analysis of the Field Training

program. He specifically wanted to know if the reason for the large number of failures in the retread program (the number of deputies returning to the jail system during the patrol retraining was do the different academies the deputies experienced. He felt there were more re training failures for those hired with just a Reserve Training experience.

17. I discovered that there was a 50% failure rate in the re tread (re training program) That is, after passing the initial Field Training program, completing the jail time (up to 5 years) 50% of those retreaded back to the Field Training returned to Correctional Services regardless of the academy background.

18. After interviewing several retread failures, I discovered that the reasons varied for each failure: some had established seniority in Correctional Services that enabled them to bid for a day shift with weekends off.

19. Some had pressure from family life to return to a day shift only.

20. Some resented the necessary overtime Patrol Services required.

21. Some resented being ordered around like rookies.

22. But the fact remained 50% of the deputies who under went two training cycles returned to the Correctional Services after an expensive redundant training program.

23. In September of 1980, I was promoted to Sergeant, and was assigned to the Rio Consumnes Correctional Center (RCCC). In March, 1983, I was assigned to the Sheriff's Staff as the administrative assistant to Larry Stamm, Chief Deputy for Security and Correctional Services.

24. During my assignment as assistant to Chief Deputy Stamm, I reviewed every completed Internal Affairs Investigation (with the exception of one), including those alleging excessive force, that came to Security and Correctional Services and either passed them on to Chief Stamm, or wrote an administrative review for Chief Stamm or returned them for further investigation. I became familiar with the record keeping methods in Internal Affairs, and their access to all levels in the department, crossing all lines of authority. I became familiar with most, if not all, of the General Orders that govern the department, writing several. I became familiar with all of the operations that governed each division within the Security and Corrections Service area, writing, modifying and or deleting over 150 of them in the two year period.

25. In or around June, 1984, I was promoted to Lieutenant but remained assigned to the Sheriff's staff as the assistant to Larry Stamm, Chief Deputy for Security and Correctional Services.

26. During this assignment, I was asked by Larry Stamm to become a legislative advocate for security and Correctional Services.

27. I was responsible for initiating legislative changes in PC§s 4007, 4021b, and 853.6.

28. I also worked with Dwight "Spike" Helmith legislative liaison for the California Highway Patrol and Al Cooper legislative liaison for the California Chief's of Police and the California State Sheriff's Association in the development of PC§ 4030, the strip search legislation.

29. However, in approximately January, 1985, I voluntarily transferred to South Patrol Division as the co-watch commander of morning watch.

30. In approximately 1986, I was assigned as the South Patrol Division Executive Lieutenant, and as the relief watch commander.

31. In mid 1986, Chief Deputy Larry Stamm approached me and told me he had been selected by newly elected Sheriff Glen Craig to be the new Undersheriff. He asked me to become his assistant, which I agreed to do.

32. During the approximately 6 months prior to Sheriff Craig swearing in, I assisted the future Undersheriff formulate structural changes in the Sheriff's Department.

33. We restructured the Field Training Program to allow newly hired deputies to complete a formal State Board of Correction 80 hours Corrections Course, then be immediately assigned to Correctional Services instead of Patrol Training.

34. Undersheriff Stamm, incorporating my findings in my 1979 Field Training Program Study, decided that assigning deputies to Correctional Services instead of Patrol would:

1. Save the department a significant amount in training costs.
2. Eliminate the adrenalin rush experience that patrol training provides new deputies only to have them face 4 to 5 to 6 years in the jail system as disgruntled "patrol" officers.
3. Save the department bodies. Those deputies that were successful in the rigorous Jail Training Program, and were successful in the custody environment, after failing Patrol Training would still have a career within the Sacramento County Sheriff's Department as a custody officer.

(Currently under the Patrol First program, if a recruit fails Patrol Training after an extensive and expensive Academy, s/he is released from county services)

35. Then, in January of 1987, I was appointed the Assistant to Undersheriff Larry D. Stamm. I was the first Lieutenant in the department to have held that assignment.

36. While I was assigned as the assistant to the Undersheriff, I read every completed Internal Affairs Investigation forwarded through chain of command from throughout the department.

37. I became more familiar with the Internal Affairs filing system and numbering system, and overall investigative procedures and protocols. During this time, I personally reviewed a certain portion of the Internal Affairs files to check on the progress of the investigation, the nature of the investigation, the date of the investigation, the I.A. file number, and to review the (then) employees complaint card. In a number of complicated IA/DI investigations, I wrote lengthy summary of events, for Chief Deputy Larry Stamm's, *et al*, to review.

38. While I was assistant to the Undersheriff, I wrote, revised or deleted several Departmental General Orders. While I was assistant to the Undersheriff, I attended the weekly Service Area meetings involving all of the managers in the division.

39. In approximately January of 1988, at my request, I was assigned as the Executive Lieutenant in the Special Investigations Bureau, and coincidentally, the Commander of the Warrant/Fugitive Bureau, a bureau larger than any other in the Detective Division.

40. Larry Stamm, named Chief Deputy of Security and Correctional Services by newly elected Sheriff Robbie Waters, ordered me to author the Sheriff's Staff Division budget for the 83/83 period.

41. There was no mention of any monies allocated for the concealed weapons permit process in the 82/83 budget which I utilized for the 83/84 budget as a bench mark.

42. During the promotional process for Lieutenant in or around 1984, I not only read each and only Sheriff's Department General orders, I made hundreds of flash cards, and studied the growing stack several times each day.

43. I captured 2<sup>nd</sup> place in the process for promotion to Lieutenant of over 70 candidates, I believe.

44. There was no mention of the CCW process in the Sheriff's Staff Division Budget or the General Orders in the entire time I was a member of the Sacramento County Sheriff's management team.

45. In 1988, I was assigned as the Executive Lieutenant (currently called assistant commander) of the Special Investigations Unit and at the same time the commander of the Warrant Fugitive Bureau, a bureau under the umbrella of the Special Investigations Unit.

46. Then Captain Brian Collins required me to start and complete the Investigations Unit 88/89 budget.

47. When I completed the budget, three months later than should have been (the budget was due in October, 1987), then Chief Deputy Valarien John Kobza, called my budget, to my face, as the best budget ever written, in the presence of Captain Collins.

48. There was no mention in the SID (now SIU - I believe) of any monies allocated to the CCW process, a function of the SID, as I was told.

49. Since my position as a member of the Sheriff's Staff Division, my position as assistant commander of the Special Investigation Unit, and my review of the Sheriff's Department General Order for promotion to Lieutenant, and at least 3 tries to be promoted to Captain, I have never seen any orders, rules, processes for the issuance of CCW permits

50. I am familiar with the Deputy Aaron McAfee incident through personal conversations with Deputy McAfee, his watch commander at the time, and by reading a copy of Deputy McAfee's arrest report which he gave me to read.

51. This is the now called Colanfrancesco incident.

52. I have never read, been provided, nor relied upon any documents in any personal file, nor any internal affairs investigation to form conclusions regarding the Colanfrancesco matter, just the crime report and my conversation's with his watch commander regarding the report, and deputy McAfee's work product.

53. Hence, § 832.7 of the penal code is not involved.

54. It was my conclusion at the time, and remains to this day that Deputy Aaron McAtee was charged with conduct that any and all patrol deputies were required to do at the time: show on the log sheet a "report" was necessary, but complete the report in the next few weeks without the use of overtime.

55. I am convinced to this day that the false charge against Deputy McAtee resulted in his failure to recognize that Colanfrancesco was immunized from suffering any action resulting from criminal activity in Sacramento County.

#### OPINION

56. I base my opinions to a degree of reasonable certainty due to my education, training, experience, and a former management employee, and the information I have been provided to form my opinion, as noted throughout, herein, including, but not limited to

- (1) Documents produced in discovery, paying particular attention to all

CCW documents and Campaign records, in addition to other campaign records which have not been produced by the Defendants.

- (2) I read the depositions of Blanas, McAtee and Wong.
- (3) I have read the Declaration of Colanfrancesco.
- (4) I reviewed the Defendants responses to discovery thus far, and Plaintiffs responses.
- (5) I reviewed the initial disclosures.
- (6) I have reviewed the written CCW issuance policy and the state statute regarding issuance.
- (7) I have also relied on the expert opinion of Wendell Phillips, and his report signed August 31, 2007.
- (8) I have reviewed the purported written CCW policy.
- (9) I have reviewed the picture of the Blanas/Gerber property and deed description online.

57. This is the type of evidence I would use to formulate my opinions herein.

58. To a degree of reasonable certainty, I concur with, and have verified, the findings of fact and opinions expressed in the expert witness report of Mr. Phillips, and adopt the same as though it is my own opinion as well. I make this adoption based upon my personal knowledge of Mr. Phillips qualifications and experience, and respect his opinion as accurate and unbiased. I also have percipient knowledge to corroborate his opinion as well.

59. Further, I opine the following conclusions:

60. First, the Defendants, when implementing the purported CCW written policy, relied upon absolutely no data or facts as to what constitutes good cause. Further, there is no objective criteria. As such, it is subject to abuse on its face.

61. Second, there is no supporting data as to why all active or honorably separated member of the criminal justice system directly responsible for the investigation, arrest, incarceration, prosecution or imposition of sentence on criminal offenders are provided preferential treatment for the issuance of a CCW.

62. There is no evidence that I'm aware off, including myself and colleagues, that any person who was an "active or honorably separated member of the criminal justice system directly responsible for the investigation, arrest, incarceration, prosecution or imposition of sentence on criminal offenders" was ever stalked, threatened, or any way placed in danger by someone they arrested or prosecuted. I have never heard of such an incident, and the fact that Defendants failed to produce or identify any data on the subject, though requested, proves the point. The reality is this: everyone is subject to being a victim of crime, and to provide preferential treatment for one group violates policies of fundamental fairness for the issuance of CCWs.

63. I am not aware of any specialized training in the criminal justice system for determining what constitutes cause for issuance of a CCW.

64. In fact, I have never even heard of any policy debates or issues regarding how, when and why CCWs should be issued.

65. However, it is well known throughout the Sheriff's Department that CCW, Honorary Deputy Badges and Ids are sold to Craig and Blanas' campaign contributors.

66. In sum, it is my opinion, based upon a degree of reasonable certainty, that the CCW policy of the Sacramento County Sheriff's Department, as both written and unwritten, is applied in a discriminatory, unfair, biased, prejudicial, and capricious manner, and that there is obviously extreme favoritism towards two distinct groups, to the exclusion of all other citizens of Sacramento County: 1) those with political ties (e.g. campaign contributors) to the Sheriff receive CCWs, Badges, and I.D.s. and, 2) "active or honorably separated member of the criminal justice system directly responsible for the investigation, arrest, incarceration, prosecution or imposition of sentence on criminal offenders" are also provided preferential treatment (I.e. the *prima facie* good cause standard for issuance).

67. My opinions and conclusions are not limited to this report, and this report only represents a general outline of the systemic problems noticed.

68. I have been found to be an expert in the Jail Procedures and arrest Control and Use of Force, both in state and federal courts.

69. I have read and complied with the protective order issued in this case.

70. I have provided testimony in the case of Lancaster v. County of Yolo; Afshar v. County of Sacramento; and Hall v. County of Sacramento. These cases are employment or excessive force cases, and do not involve CCWs.

71. I charge \$350.00 per hour for deposition/trial testimony. 4 hour minimum based upon anticipated length of deposition.

8/31/2007

/s/ Timothy G. Twomey (Original Signature on File with Attorney)  
Lt. Timothy G. Twomey (Ret.)

LONGYEAR, O'DEA & LAVRA, LLP  
3620 American River Drive, Suite 230  
Sacramento, California 95864-5923  
Tel: 916-974-8500 Fax: 916 974-8510

John A. Lavra, CSB No. 114533  
Jeri L. Pappone, CSB No. 210104  
Attorneys for Defendants, LOU BLANAS, as SHERIFF OF COUNTY  
OF SACRAMENTO; COUNTY OF SACRAMENTO,  
SHERIFF'S DEPARTMENT; COUNTY OF SACRAMENTO

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVID K. MEHL, LOK T. LAU,  
and FRANK FLORES,  
Plaintiffs  
vs.  
LOU BLANAS, individually and in his  
official capacity as SHERIFF OF COUNTY  
OF SACRAMENTO;  
COUNTY OF SACRAMENTO,  
SHERIFF'S DEPARTMENT;  
COUNTY OF SACRAMENTO;  
BILL LOCKYER, Attorney General,  
State of California;  
RANDI ROSSI, State Firearms Director  
and Custodian of Records  
Defendants  
)

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

CASE NO.: CIV S-03 -2682 MCE KJM

**DECLARATION OF LOU BLANAS  
IN SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

Date: December 7, 2007  
Time: 9:00 a.m.  
Ctrm: 3  
Judge: Honorable Morrison C. England, Jr.

I, LOU BLANAS, declare as follows:

1. Edwin Gerber was issued an "emergency" permit in July of 2006 based upon verified death threats and actual assault and batteries against him. A copy of the letter I wrote to Mr. Gerber is attached hereto as Exhibit A. Upon my approval of the permit, Mr. Gerber worked with Lt. Michael McKeel and SIIB, and filed out the documentation required for the application, received clearance from the Department of Justice as required by State law, and obtained his

range approval. Mr. Gerber also submitted documentation of the threats and assaults and batteries against him, and photographs of his injuries which resulted. Mr. Gerber had good cause for the issuance of the CCW permit.

2. During my 8 years as Sheriff of Sacramento County, I personally approved a few CCW permits based upon exigent circumstances or immediate threats to the individual upon good cause of which I was made aware. My best recollection is that when I personally approved each of these permits, all for good cause, in each case the individual was required, like Mr. Gerber, to file a formal application, to receive clearance from the Department of Justice and range approval. However, during my 8 years as Sheriff and under my administration, several hundred CCW permits were issued by the Sacramento County Sheriff's Department, through the procedure described in my declaration and the declarations of other Departmental personnel previously submitted in support of this motion.

3. In addition to Mr. Gerber (above), paragraphs 132-180 of Plaintiffs' document #158 name approximately 50 individuals in a manner intended to imply some impropriety in the issuance of those permits through me. From a review of the documentation, of those 50 named, only 12 received permits during my tenure as Sheriff. Of those 12, one was the City of Sacramento's Retired Chief of Police, three are names unknown to me, and 6 did not contribute to my campaign. Retired Chief Kearns is entitled to a CCW permit pursuant to California Penal Code. All other applications were processed without my input or direct approval.

I have personal knowledge of the foregoing and if called upon to testify thereto could competently do so.

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

EXECUTED this 29th day of November, 2007, at Sacramento, California.

  
LOUBLANAS

# **EXHIBIT A**

SACRAMENTO COUNTY



SHERIFF'S DEPARTMENT

**Lou Blanas**

*Sheriff*

July 26, 2006

Edward Gerber  
3030 Orange Grove Avenue  
North Highlands, CA 95660

Dear Mr. Gerber:

It has been brought to my attention that you have made verbal application for an Emergency Concealed Weapons (CCW) permit. Lieutenant Mike McKeel has briefed me regarding your concerns, and I concur that a potential threat does exist.

Therefore, I am granting your request for a CCW to be issued on an emergency basis. This permit will be issued today and valid until October 26, 2006.

During the next thirty days, I recommend you work with Lieutenant Mike McKeel to ensure that formal application is made through our CCW Committee. If you have any further needs concerning the safety of you or your immediate family members, please do not hesitate to contact Lieutenant McKeel at (916) 874-5601.

Please feel free to contact me at any time should you need my assistance.

Very truly yours,

A handwritten signature in black ink that reads "Lou Blanas".  
LOU BLANAS, SHERIFF

LB/dlm

## LONGYEAR, O'DEA & LAVRA, LLP

3620 American River Drive, Suite 230  
Sacramento, California 95864-5923

Tel: 916-974-8500 Fax: 916 974-8510

John A. Lavra, CSB No. 114533  
Jeri L. Pappone, CSB No. 210104

Attorneys for Defendants, LOU BLANAS, as SHERIFF OF COUNTY OF SACRAMENTO; COUNTY OF SACRAMENTO, SHERIFF'S DEPARTMENT; COUNTY OF SACRAMENTO

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID K. MEHL, LOK T. LAU,  
and FRANK FLORES,

**CASE NO.: CIV S-03 -2682 MCE KJM**

**Plaintiffs,**

VS.

**MOTION TO STRIKE DECLARATION  
OF TIMOTHY TWOMEY**

LOU BLANAS, individually and in his official capacity as SHERIFF OF COUNTY OF SACRAMENTO; COUNTY OF SACRAMENTO, SHERIFF'S DEPARTMENT; COUNTY OF SACRAMENTO; BILL LOCKYER, Attorney General, State of California; RANDI ROSSI, State Firearms Director and Custodian of Records

Date: December 7, 2007  
Time: 9:00 a.m.  
Ctrm: 3  
Judge: Honorable Morrison C. England, Jr.

## Defendants

## **INTRODUCTION**

Defendants request that the court exclude the testimony of Plaintiffs' designated expert, Timothy G. Twomey. Mr. Twomey was disclosed as Plaintiffs' expert pursuant to the court's scheduling order on August 31, 2007. Defendants move to exclude Mr. Twomey's testimony on the following grounds:

1. Mr. Twomey is not qualified or competent as an expert on CCW issues.
2. Mr. Twomey's purported "testimony" is unreliable, and not relevant on the ultimate issues of whether Plaintiffs' civil rights were violated when they did not receive a CCW permit.
3. Mr. Twomey's purported testimony includes/ contains opinions on issues of law and credibility of witnesses, which is not the proper subject of expert testimony.
4. Mr. Twomey's declaration contains information, purported opinions, and data not included in his expert report, and thus his testimony is inadmissible.

## **POINTS AND AUTHORITIES**

Under FRE 702, “if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify in the form of an opinion.” FRE 702 However, the testimony must be (1) based upon sufficient facts or data, (2) the product of reliable principles and methods, and (3) the witness has to have applied the principles and methods reliably to the facts of the case. FRE 702

Legal conclusions, including opinions on an ultimate issue of law are not helpful to the jury and should be excluded. McHugh vs. United Service Auto. Ass'n, 164 F.3d 451, 454 (9<sup>th</sup> Cir. 1999). Further, if an employee of an entity purports to give an opinion as to whether or not the entity discriminated against a Plaintiff, the testimony is only admissible “when given by a person whose position with the Defendant entity provides the opportunity to personally observe and experience the Defendants’ policies and practices.” Gossett vs. Oklahoma Ex Rel. Bd. of Regents for Langston Univ., 245 F.3d 1172, 1179 (10<sup>th</sup> Cir. 2001). Witnesses are precluded from expressing an opinion on the truthfulness of another witnesses testimony. United States vs. Forrester, 60 F.3d 52, 63 (2<sup>nd</sup> Cir. 1995); United States vs. Geston, 299 F.3d 1130, 1135-1137 (9<sup>th</sup> Cir. 2002). Under the Federal Rules, the trial judge is assigned the task of ensuring that an expert’s testimony is based upon a reliable foundation and is relevant to an issue in the case. Daubert vs. Merrell Dow Pharmaceuticals Inc., 509 US 579, 592 (1993) *See also Kumho Tire Co. Ltd. vs. Carmichael*, 526 US 137, 149, (1999) wherein the Supreme Court held that

1 Rule 702 imposes a special obligation upon the trial court to ensure that an expert's testimony  
2 "is not only relevant, but reliable. Expert testimony is only admissible if it is "properly  
3 grounded, well reasoned, and not speculative before it can be admitted." FRE 702, Adv. Comm.  
4 Notes (2000). The reliability of an expert witness' testimony must be "apparent from the  
5 record." Elsayed Mukhtar vs. California State Univ. Hayward, 299 F.3d 1053, 1066, (9<sup>th</sup> Cir.  
6 2002) amended 319 F.3d 1073 (2003).

7 For expert witness testimony to be admissible it must be based upon "scientific,  
8 technical, or other specialized knowledge." FRE 702. The testimony is admissible only if the  
9 expert has special knowledge, skill, experience, training or education on the subject matter in the  
10 particular case. FRE 702. Whether a witness is qualified to testify as an expert depends upon  
11 the expert's specific qualifications to the issues in the case. Smelser vs. Norfolk Southern Ry.  
12 Co., 105 F.3d 299 (6<sup>th</sup> Cir. 1997). In Smelser, the court held that when making a preliminary  
13 determination regarding an expert's qualifications, the court must examine the witnesses  
14 qualifications, "not . . . in the abstract, but whether those qualifications provide a foundation for  
15 a witness to answer a specific question." Smelser vs. Nor Folk Southern Ry. Co., supra, 105  
16 F.3d at 303. Therefore, if an expert has no experience with a particular issue in the case, his  
17 testimony is not admissible. For example, in Anderson vs. Raymond Corp., 340 F.3d 520, 523,  
18 (8<sup>th</sup> Cir. 2003) an engineer was determined not to be qualified to give an opinion about the  
19 design of a forklift. The court found that because he had never designed a forklift, and had  
20 never tested his theory nor seen or designed any protective device related to forklifts, he was not  
21 qualified as an expert in that case. When considering the admissibility of testimony based on  
22 technical or specialized knowledge, courts must determine whether the testimony has a reliable  
23 basis in the knowledge and experience on the issue that is relevant to the case. Kumho Tire Co.  
24 Ltd. vs. Carmichael, *supra* 526 US at 149 (1999). Thus, even if an expert is qualified in a  
25 particular discipline, he or she must have specific knowledge regarding the issue at hand.  
26 Hochen vs. Bobesd Group Inc., 290 F.3d 446, 452 (1<sup>st</sup> Cir. 2002). In Hochen this case the court  
27 found that an engineer's testimony was inadmissible because of lack of knowledge about the

1 specific printing press in question in that case. A witness who relies on experience must explain  
2 in the testimony how the experience leads to his or her conclusions, why the experience is an  
3 appropriate basis for the opinion, and how the experience is reliably applied to the facts. FRE  
4 702, Adv. Comm. Notes (2000).

5 Similarly, in Peitzmeier vs. Hennessy Ind., 97 F.3d 293, 297, (8<sup>th</sup> Cir. 1996) the court  
6 struck, on a summary judgment motion, the testimony of an automotive mechanic's expert  
7 witness. The expert testified that the design of a tire changing machine was defective, and that  
8 design changes would have eliminated the defect. The court however struck the testimony  
9 because the mechanic had neither designed nor tested safety devices relating to tire changing  
10 machines, he had never designed, built, or tested the particular tire changing machine at issue in  
11 the case, and therefore his testimony did not satisfy the first factor set forth in the case of  
12 Daubert, supra.

13 In the United States vs. Kristophe, 833 F.2d 1296, 1299, (9<sup>th</sup> Cir. 1987) the court held:  
14 Federal Rule of Evidence 702 sets the standard for the admissibility of expert  
15 testimony. Such testimony is admissible "if scientific, technical, or other  
16 specialized knowledge will assist the trier of fact to understand the evidence or to  
determine a fact in issue." The main inquiry is whether the jury will receive a  
"appreciable help" from expert testimony. (Citation omitted)

17 In Amaral we set forth four criteria to determine the helpfulness of expert  
18 testimony: (1) qualified expert; (2) proper subject; (3) conformity to generally  
accepted explanatory theory; and (4) probative value compared to prejudicial  
19 effect. (Citation) A jury will not be helped unless the witness is an expert in the  
field.

20 Similarly, in Fineburg vs. United States, 393 F.2d 417, 421 (9<sup>th</sup> Cir. 1968) the court held:  
21 To warrant the use of expert testimony, two elements are required. First, the  
subject of the inference must be so distinctly related to some science, profession,  
22 business, or occupation as to be beyond the knowledge of the average layman,  
and second, the witness must have such knowledge or experience in that field or  
23 calling as to make it appear that his opinion or inference will probably aid the  
trier in his search for the truth.

24 **TWOMEY NOT QUALIFIED AS EXPERT WITNESS**

25 Applying the above standards to Twomey's declaration, the court should exclude his  
26 testimony.  
27

1        In order to qualify, an expert must have knowledge, experience, or education, not in the  
2 abstract, but in the specific issues of the case. Pietzmeir v Hennessy Ltd, *supra*. Here, Twomey  
3 states that he was formally employed with the Sacramento County Sheriff's Department through  
4 1994. He states, without any basis, that he is qualified as an expert on law enforcement  
5 management generally. In an unsupported and conclusory manner he states that he is an expert  
6 on what constitutes good cause for issuance of a CCW Permit. Twomey gives no reason why he  
7 is or believes he is an expert on issuance of CCW Permits. His qualifications and competency  
8 as an expert must be set forth in facts in the record, and there is no record that Twomey is  
9 qualified to express opinions about CCW permits. Elsayed Mukhtar vs. California State Univ.  
10 Hayward, *supra*.

11       The record demonstrates that Twomey is not qualified to testify about the issues related  
12 to this case. In particular his declaration shows the following:

- 13       1. No experience in Sacramento County Sheriff's Department policies regarding CCW  
14 Permits.
- 15       2. No experience or knowledge of what constitutes good cause for committees  
16 reviewing CCW applications.
- 17       3. No experience in screening CCW applications.
- 18       4. No experience in responding to CCW applications.
- 19       5. No experience in analyzing, developing, or using the CCW forms used in the Plaintiffs'  
20 applications.
- 21       6. No experience sitting on a committee reviewing CCW applications.
- 22       7. No experience in granting CCW applications.
- 23       8. No experience in denying CCW applications.
- 24       9. No experience in appeals of decisions to deny CCW applications.
- 25       10. No training regarding Sacramento County Sheriff's Department's CCW policies.
- 26       11. No evidence that he was even employed by the Sheriff's Department on the dates  
27 Plaintiff Lau's application or Plaintiff Mehl's attempted application.

12. No education or training on the good cause requirements under state law for determining whether a sheriff, in his or her discretion, can issue a CCW permit.

13. No education, training or experience on the state law requirements for the issuance of the CCW permits.

Further, throughout his declaration, Twomey seems to be attempting to rely on some type of statistical analysis to conclude that there is a connection between issuing CCW permits and campaign contributions. Twomey is not a statistician, has no training in statistical methodology, has not described any statistical theory put to use by him which is approved and used by real statisticians in their field, and/or that any statistical analysis is based upon reliable principles.

Clearly Twomey is not an expert in any recognized fields using accepted principles for the issues that exist in this case.

Boiling down his 314 paragraph declaration to its essence, Twomey merely claims that he is an “expert” at looking at documents, and arriving at “an administrative determination” of an issue (i.e. telling others what he thinks about the documents). (Twomey declaration paragraph 47). This testimony is not helpful to an understanding of the facts, evidence, or theories in this case.

## **TWOMEY'S TESTIMONY IS SPECULATIVE AND INADMISSIBLE ON ITS FACE**

It is well established that expert testimony based on pure speculation is not admissible. FRE 702 However, Twomey’s statements are speculative at best, and in most instances nothing more than argument. For instance, Twomey identifies individuals who contributed to Blanas’ or McGinness’ campaign, and then vaguely “opines” that they have a high probability of receiving a CCW. (Twomey declaration paragraph 269). Based on what? There is no accepted factual basis described by Twomey to back up this proposition.

To prove the point, one has to only consider the following: For each person who contributed to a campaign and at some point was issued a CCW permit, Twomey does not identify what committee members approved the issuance of the CCW permit, whether any committee member approving a CCW permit even knew whether an applicant had contributed to the Sheriff's

1 campaign, whether any person who made any decision on Lau's application knew whether Lau  
2 had contributed to a campaign, or whether anyone with the Sheriff's Department knew whether  
3 Mehl contributed to a Sheriff's campaign. For Twomey to try to draw a connection between  
4 political contributions and being issued a CCW permit is speculative, as he does not take into  
5 account any of the foregoing.

6 Further, Twomey identifies not one single person in his 314 paragraph declaration who  
7 contributed to a campaign and was issued a permit who did not have good cause for the issuance  
8 of the permit.

9 Twomey's declaration is vague, cursory, and when read front to back is not an expert  
10 declaration at all. Rather it is a lengthy narrative containing largely argument, and little if any  
11 admissible expert testimony. Plaintiffs are simply using Twomey's declaration to argue their  
12 theories of the case, which is inappropriate in the context of a summary judgment. When a  
13 summary judgment is made and supported by admissible affidavits, an adverse party may not  
14 rely on mere allegations, but must set forth specific facts showing that there is a genuine issue  
15 for trial. FRCP 56(e). If an adverse affidavit relies merely on allegations, which is the case with  
16 Twomey's declaration, the court when appropriate, shall enter judgment against the adverse  
17 party. FRCP 56(e) . For opinion testimony to be admissible, it "must not be flights of fancy,  
18 speculations, or hunches, intuitions, or rumors about matters remote from that experience."

19 Friedel vs. City of Madison, 832 F.3d 965, 970 (7<sup>th</sup> Cir. 1987)

20 **TWOMEY'S TESTIMONY BASED UPON ISSUES OF LAW OR**  
21 **CREDIBILITY OF WITNESSES IS INADMISSIBLE**

22 Twomey's declaration contains numerous conclusions about his opinion about legal  
23 issues. For instance, in paragraph 115, he gives his analysis of Penal Code Section 12050, and  
24 in paragraph 117 he testifies concerning violation of "law" under Penal Code 12050. In  
25 paragraph 118, he describes the CCW application process under state law. It is well established  
26 that expert witnesses cannot testify about issues of law, and thus to the extent that Twomey's  
27 opinions are based upon legal issues in this case, it is clearly inadmissible.

1           Further, Twomey's statements which refer to the credibility of witnesses is inadmissible,  
2 and any opinions based thereon are inadmissible.

3           **TWOMEY'S DECLARATION IS INADMISSIBLE AS IT EXCEEDS**  
4           **THE SCOPE OF HIS DISCLOSED TESTIMONY**

5           Twomey was disclosed as Plaintiffs' designated expert on August 31, 2007. A copy of his  
6 expert witness report is attached to the Declaration of Jeri L. Pappone as Exhibit E. Expert  
7 witness testimony may not be considered unless the declarant has been designated as an expert  
8 for trial. Bryant vs. Farmers Insurance Exchange, 432 F.3d 1114, 1122-1123 (10<sup>th</sup> Cir. 2005).  
9 Further, every retained expert is required to prepare and produce a written report that contains all  
10 of the information specified in Rule 26(a)(2)(B) which provides:

11          A report shall contain a complete statement of all opinions to be expressed and  
12 the basis and reasons therefore; the data or other information considered by the  
13 witness in forming the opinion; any exhibits to be used as a summary of or  
support for the opinion; the qualifications of the witness, including a list of all  
publications offered by the witness within the 10 preceding years; the  
compensation to be paid for the study and testimony; and a listing of any other  
cases in which the witness has testified as an expert at trial or by deposition  
within the preceding 4 years.

14          “Rule 37(c)(1) gives teeth to these requirements by forbidding the use at trial of any  
15 information required to be disclosed by Rule 26(a) that is not properly disclosed.” Yeti By Molly  
16 Ltd. vs. Deckers Outdoor Corp., 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

17          Twomey's expert report is six (6 ) pages in length. Of those six (6 ) pages,  
18 approximately two and a half pages relate to his purported opinions, where he makes the  
20 following conclusions:

- 21          1.       That when implementing the purported CCW written policy, there is no objective  
22 criteria used by the department (paragraph 60).
- 23          2.       That there is no supporting data why active or honorably separated members of the  
24 criminal justice system directly responsible for the investigation, arrest, incarceration,  
25 prosecution, or imposition of sentence on criminal offenders are provided preferential treatment  
26 for the issuance of a CCW (paragraph 61).

3. That Sacramento County's CCW policy is applied in a discriminatory, unfair, biased, prejudicial and capricious manner, with extreme favoritism to active or honorably separated members of the criminal justice system or to those with political ties to the sheriff.

Now, in response to the summary judgment motion, Twomey has submitted a 314 paragraph, 63 page declaration which contains opinions, which even if admissible, are not set forth in his expert witness report, and therefore should not be considered by the court. Those opinions include the following:

1. Twomey's opinion that Plaintiffs were denied an equal fair opportunity to receive a CCW as compared to those who received CCWs (paragraph 266).

2. That the Plaintiffs were denied an equal opportunity under the law to receive a CCW from Defendants (paragraph 267).

3. Twomey's opinion that there was a "systemic problem that is inherent in a system whereby money influences those with the "power" to issue CCW (paragraph 268).

4. Twomey's opinion that those who have access to the Sheriff have a very high probability of receiving a CCW, if they apply for one as compared to a very low probability for those who do not have access to the Sheriff nor contributed to his campaign (paragraph 269).

5. Twomey's opinion that both Plaintiffs' CCW applications were denied simply because they were not known contributors to Sheriff Blanas' political campaign for sheriff (paragraph 270).

6. Twomey's opinion that it is well known throughout the Sheriff's Department that CCW, honorary deputy sheriff's badges and ID's were given to Craig and Blanas' campaign contributors (paragraph 276).

7. Twomey's opinion that 'Mr. Lau in all likelihood possessed a security clearance that far exceeded any background investigation conducted on any CCW permit holders in Sacramento County employee, including myself (paragraph 278)<sup>1</sup>.

<sup>1</sup> In actuality, Lau had a security clearance stripped by the FBI once it was found that he was suffering from a mental illness, had been arrested, and had lied about being arrested.

8. Twomey's opinion "all things being equal, the proportion of rejections for campaign contributors would be about equivalent. However, the only variable to change is that those who received a guaranteed CCW were also campaign contributors (paragraph 282).

In addition to those opinions, Twomey's lengthy declaration contains other information that he supposedly considered in forming his opinions, which were required under Rule 26 to be disclosed in his report, and which were in fact not disclosed. This includes the documents described in the following paragraphs:

1. All documents identified in paragraphs 56-80;
  2. The CCW Applications identified in paragraphs 89-101, and 103;
  3. All documents described in paragraph 107 attached as Exhibit K to Twomey's Declaration;

4. Documents attached as Exhibit L and M, described as downloads from the state of California Department of Justice's official website described in paragraph 108;

5. Documents described in paragraph 124. The form letter to applicants in 2005, and the standard DOJ application identified in paragraph 125;

6. Documents related to the individuals identified in paragraph 134;

7. Any information contained from any application submitted by Mehl or Lau described or referred to in paragraph 278;

8. Applications of those individuals identified in paragraph 147;

9. Declaration of James Rothery filed as Document 149 with the opposition;

10. All references to Twomey's purported work with David Orsay, as described in paragraphs 171-177;

11. The database referred to by Twomey described in paragraphs 171-174;

12. All opinions and documentation related to any opinions concerning applicant Edwin Gerber as set forth in paragraphs 197 and 198;

13. Information relating to applicants described in paragraphs 199 through 207, and any conclusions, statements, or opinions thereafter.

1           14. Information concerning and any statements, conclusions, or opinions stated  
2 regarding David Fite at paragraph 115, an individual identified as “Halami” in paragraph 216,  
3 Richard Hill in paragraph 217, Bob Frank in paragraph 218, Patrick Frink in paragraph 219,  
4 Ronald Yee in paragraph 221, John and Steven Rattackis paragraph 222, John Valensin  
5 paragraph 224, Ron Sellers paragraph 225, Ramona Thornton paragraph 226, Dave Baker  
6 paragraph 227, Pasquale Montesano paragraph 228, Chris Hansen paragraph 229, John Christie  
7 paragraph 230, Chris Lee paragraph 232, James Grey paragraph 233, Hatim Shariff paragraph  
8 234, Julie Rollofson paragraph 235.

9           15. All individuals and any statements, conclusions or opinions identified in  
10 paragraph 236-260.

11 Plaintiff has submitted an expert report of Mr. Twomey which does not contain any of  
12 the references to, opinions, or reported analysis as set forth above. To allow the evidence at the  
13 trial or the summary judgment motion at this point is extremely prejudicial to Defendants, and a  
14 violation of Rule 26.

Respectfully submitted,

16 || Dated: November 30, 2007

## LONGYEAR, O'DEA & LAVRA, LLP

By: \_\_\_\_\_ /s/ John A. Lavra  
JOHN A. LAVRA  
JERI L. PAPPONE

1           **LONGYEAR, O'DEA & LAVRA, LLP**

2           3620 American River Drive, Suite 230  
3           Sacramento, California 95864-5923

4           Tel: 916-974-8500 Fax: 916 974-8510

5           John A. Lavra, CSB No. 114533  
6           Jeri L. Pappone, CSB No. 210104

7           Attorneys for Defendants, LOU BLANAS, as SHERIFF OF COUNTY  
8           OF SACRAMENTO; COUNTY OF SACRAMENTO,  
9           SHERIFF'S DEPARTMENT; COUNTY OF SACRAMENTO

10           **UNITED STATES DISTRICT COURT**

11           **EASTERN DISTRICT OF CALIFORNIA**

12           DAVID K. MEHL, LOK T. LAU,  
13           and FRANK FLORES,

14           )           **CASE NO.: CIV S-03 -2682 MCE KJM**

15           Plaintiffs,

16           )           **DEFENDANTS' OBJECTIONS TO**  
17           vs.  
18           )           **DECLARATION OF TIMOTHY G.**  
19           )           **TWOMEY**

20           LOU BLANAS, individually and in his  
21           official capacity as SHERIFF OF  
22           COUNTY OF SACRAMENTO;  
23           COUNTY OF SACRAMENTO,  
24           SHERIFF'S DEPARTMENT;  
25           COUNTY OF SACRAMENTO;  
26           BILL LOCKYER, Attorney General,  
27           State of California;  
28           RANDI ROSSI, State Firearms Director  
         and Custodian of Records

Defendants

Defendants object to the admissibility of the statements, testimony, and/or matters set forth in the declaration of Timothy G. Twomey as follows:

1. Defendants object to paragraph 50 on the grounds that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd

vs. Deckers Outdoor Corp., 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

2. Defendants object to paragraph 51 on the grounds that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp., 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

3. Defendants object to paragraph 52 on the grounds that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp., 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

4. Defendants object to paragraph 55 on the grounds that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), and that the subject matter of the testimony is not a proper basis for expert testimony under FRE 702.

5. Defendants object to paragraph 76 on the grounds that the testimony is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

6. Defendants object to paragraph 83 on the grounds of relevancy (FRE 401,402), that the testimony lacks proper evidentiary foundation (FRE 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), that the

1 subject matter of the testimony is not a proper basis for expert testimony under FRE 702, and  
2 that the testimony is based upon matters not contained within the expert report of Twomey.  
3 FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d  
4 1101, 1106 (9<sup>th</sup> Cir. 2001).

5 7. Defendants object to paragraph 86 on the grounds of relevancy (FRE 401, 402), that the  
6 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
7 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
8 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
9 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
10 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP  
11 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

12 8. Defendants object to paragraph 87 on the grounds that the testimony is based upon  
13 matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1),  
14 and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

15 9. Defendants object to paragraph 89 on the grounds of relevancy (FRE 401, 402), that the  
16 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
17 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
18 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
19 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
20 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
21 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
22 2001).

23 10. Defendants object to paragraph 90 on the grounds of relevancy (FRE 401, 402), that the  
24 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
25 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
26 training, education, or experience to provide the testimony (FRE 702), that the subject matter of

1 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
2 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
3 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
4 2001).

5 11. Defendants object to paragraph 91 on the grounds of relevancy (FRE 401, 402), that the  
6 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
7 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
8 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
9 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
10 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
11 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
12 2001).

13 12. Defendants object to paragraph 92 on the grounds of relevancy (FRE 401, 402), that the  
14 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
15 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
16 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
17 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
18 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
19 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
20 2001).

21 13. Defendants object to paragraph 93 on the grounds of relevancy (FRE 401, 402), that the  
22 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
23 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
24 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
25 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
26 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),

1 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
2 2001).

3 14. Defendants object to paragraph 94 on the grounds of relevancy (FRE 401, 402), that the  
4 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
5 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
6 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
7 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
8 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
9 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
10 2001).

11 15. Defendants object to paragraph 95 on the grounds of relevancy (FRE 401, 402), that the  
12 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
13 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
14 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
15 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
16 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
17 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
18 2001).

19 16. Defendants object to paragraph 96 on the grounds of relevancy (FRE 401, 402), that the  
20 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
21 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
22 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
23 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
24 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
25 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
26 2001).

---

27 DEFENDANTS' OBJECTIONS TO DECLARATION OF TIMOTHY G. TWOMEY  
28

1 17. Defendants object to paragraph 97 on the grounds of relevancy (FRE 401, 402), that the  
2 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
3 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
4 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
5 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
6 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
7 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
8 2001).

9 18. Defendants object to paragraph 98 on the grounds of relevancy (FRE 401, 402), that the  
10 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
11 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
12 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
13 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
14 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
15 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
16 2001).

17       19. Defendants object to paragraph 99 on the grounds of relevancy (FRE 401, 402), that the  
18 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
19 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
20 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
21 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
22 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
23 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
24 2001).

25 20. Defendants object to paragraph 100 on the grounds of relevancy (FRE 401, 402), that the  
26 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon

1 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
2 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
3 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
4 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
5 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
6 2001).

7 21. Defendants object to paragraph 101 on the grounds of relevancy (FRE 401, 402), that the  
8 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
9 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
10 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
11 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
12 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
13 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
14 2001).

15 22. Defendants object to paragraph 102 on the grounds that the testimony is based upon  
16 matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1),  
17 and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

18 23. Defendants object to paragraph 103 on the grounds of relevancy (FRE 401, 402), that the  
19 testimony is based upon speculation (FRE 401, 402, 601, 602), and that the testimony is based  
20 upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP  
21 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

22 24. Defendants object to paragraph 104 on the grounds that the witness lacks the requisite  
23 knowledge, skill, training, education, or experience to provide the testimony. FRE 702.

24 25. Defendants object to paragraph 105 on the grounds that the witness lacks the requisite  
25 knowledge, skill, training, education, or experience to provide the testimony. FRE 702.

26

27

---

DEFENDANTS' OBJECTIONS TO DECLARATION OF TIMOTHY G. TWOMEY

28

26. Defendants object to paragraph 107 on the grounds that the testimony is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

27. Defendants object to paragraph 108 on the grounds that the testimony is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

28. Defendants object to paragraph 109 on the grounds of relevancy (FRE 401, 402), that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), and that the subject matter of the testimony is not a proper basis for expert testimony under FRE 702.

29. Defendants object to paragraph 111 on the grounds that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), and that the subject matter of the testimony is not a proper basis for expert testimony under FRE 702.

30. Defendants object to paragraph 112 on the grounds that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis for expert testimony under FRE 702 and that the testimony is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

31. Defendants object to paragraph 113 on the grounds that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience

1 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
2 for expert testimony under FRE 702 and that the testimony is based upon matters not contained  
3 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd  
4 vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

5 32. Defendants object to paragraph 116 on the grounds of relevancy (FRE 401, 402), that the  
6 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
7 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
8 training, education, or experience to provide the testimony (FRE 702), and that the subject  
9 matter of the testimony is not a proper basis for expert testimony under FRE 702.

10 33. Defendants object to paragraph 117 on the grounds of relevancy (FRE 401, 402), that the  
11 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
12 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
13 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
14 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
15 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
16 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
17 2001).

18 34. Defendants object to paragraph 118 on the grounds of relevancy (FRE 401, 402), that the  
19 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
20 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
21 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
22 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
23 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
24 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
25 2001).

26 35. Defendants object to paragraph 119 on the grounds of relevancy (FRE 401, 402), that the

1 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
2 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
3 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
4 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
5 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
6 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
7 2001).

8 36. Defendants object to paragraph 124 on the grounds that the testimony lacks proper  
9 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
10 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
11 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
12 for expert testimony under FRE 702 and that the testimony constitutes or is based upon  
13 inadmissible hearsay. FRE 80.

14 37. Defendants object to paragraph 127 on the grounds that the testimony lacks proper  
15 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
16 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
17 to provide the testimony (FRE 702), and that the subject matter of the testimony is not a proper  
18 basis for expert testimony under FRE 702.

19 38. Defendants object to paragraph 131 on the grounds that the testimony lacks proper  
20 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
21 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
22 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
23 for expert testimony under FRE 702, and that the testimony is based upon matters not contained  
24 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd  
25 vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

26

27

---

DEFENDANTS' OBJECTIONS TO DECLARATION OF TIMOTHY G. TWOMEY

28

Page 10

1 39. Defendants object to paragraph 134 on the grounds that the testimony lacks proper  
2 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
3 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
4 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
5 for expert testimony under FRE 702, and that the testimony is based upon matters not contained  
6 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd  
7 vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

8 40. Defendants object to paragraph 136 on the grounds that the testimony lacks proper  
9 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
10 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
11 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
12 for expert testimony under FRE 702, and that the testimony is based upon matters not contained  
13 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd  
14 vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

15       41. Defendants object to paragraph 140 on the grounds that the testimony lacks proper  
16 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
17 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
18 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
19 for expert testimony under FRE 702, and that the testimony is based upon matters not contained  
20 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd  
21 vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

22 42. Defendants object to paragraph 143 on the grounds that the testimony lacks proper  
23 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
24 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
25 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
26 for expert testimony under FRE 702, and that the testimony is based upon matters not contained

within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

43. Defendants object to paragraph 144 on the grounds of relevancy (FRE 401, 402), that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

44. Defendants object to paragraph 146 on the grounds of relevancy (FRE 401, 402), that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

45. Defendants object to paragraph 147 on the grounds that the testimony is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

46. Defendants object to paragraph 148 on the grounds of relevancy (FRE 401, 402), that the testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is

1 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
2 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
3 2001).

4 47. Defendants object to paragraph 150 on the grounds that the testimony lacks proper  
5 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
6 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
7 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
8 for expert testimony under FRE 702, and that the testimony is based upon matters not contained  
9 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd  
10 vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

11 48. Defendants object to paragraph 153 on the grounds that the testimony lacks proper  
12 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
13 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
14 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
15 for expert testimony under FRE 702, and that the testimony is based upon matters not contained  
16 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd  
17 vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

18 49. Defendants object to paragraph 154 on the grounds that the testimony lacks proper  
19 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
20 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
21 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
22 for expert testimony under FRE 702, and that the testimony is based upon matters not contained  
23 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd  
24 vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

25 50. Defendants object to paragraph 159 on the grounds that the testimony lacks proper  
26 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,

1 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
2 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
3 for expert testimony under FRE 702, and that the testimony is based upon matters not contained  
4 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd  
5 vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

6 51. Defendants object to paragraph 160 on the grounds that the testimony lacks proper  
7 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
8 601, 602), and that the witness lacks the requisite knowledge, skill, training, education, or  
9 experience to provide the testimony. FRE 702.

10 52. Defendants object to paragraph 161 on the grounds relevancy (FRE 401, 402), and that  
11 the testimony is based upon speculation. FRE 401, 402, 601, 602.

12       53. Defendants object to paragraph 162 on the grounds of relevancy (FRE 401, 402), that the  
13 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
14 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
15 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
16 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
17 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
18 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
19 2001).

20 54. Defendants object to paragraph 163 on the grounds of relevancy (FRE 401, 402), that the  
21 testimony lacks proper evidentiary foundation (FRE 602), and that the witness lacks the requisite  
22 knowledge, skill, training, education, or experience to provide the testimony. FRE 702.

23 55. Defendants object to paragraph 164 on the grounds of relevancy (FRE 401, 402), that the  
24 testimony lacks proper evidentiary foundation (FRE 602), that the witness lacks the requisite  
25 knowledge, skill, training, education, or experience to provide the testimony. FRE 702.

26

1 56. Defendants object to paragraph 171 on the grounds of relevancy (FRE 401, 402), and that  
2 the witness lacks the requisite knowledge, skill, training, education, or experience to provide the  
3 testimony. FRE 702.

4 57. Defendants object to paragraph 172 on the grounds of relevancy (FRE 401, 402), and that  
5 the witness lacks the requisite knowledge, skill, training, education, or experience to provide the  
6 testimony. FRE 702.

7 58. Defendants object to paragraph 173 on the grounds of relevancy (FRE 401, 402), and that  
8 the witness lacks the requisite knowledge, skill, training, education, or experience to provide the  
9 testimony. FRE 702.

10 59. Defendants object to paragraph 174 on the grounds of relevancy (FRE 401, 402), and that  
11 the witness lacks the requisite knowledge, skill, training, education, or experience to provide the  
12 testimony. FRE 702.

13       60. Defendants object to paragraph 176 on the grounds of relevancy (FRE 401, 402), that the  
14       testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
15       speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
16       training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
17       the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
18       based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
19       FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
20       2001).

21 61. Defendants object to paragraph 179 on the grounds that the testimony is based upon  
22 matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1),  
23 and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

24 62. Defendants object to paragraph 180 on the grounds that the testimony lacks proper  
25 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
26 601, 602), and that the witness lacks the requisite knowledge, skill, training, education, or

1 experience to provide the testimony. FRE 702.

2 63. Defendants object to paragraph 181 on the grounds that the testimony lacks proper  
3 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
4 601, 602), and that the witness lacks the requisite knowledge, skill, training, education, or  
5 experience to provide the testimony. FRE 702.

6 64. Defendants object to paragraph 182 on the grounds that the testimony lacks proper  
7 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
8 601, 602), and that the witness lacks the requisite knowledge, skill, training, education, or  
9 experience to provide the testimony. FRE 702.

10 65. Defendants object to paragraph 183 on the grounds that the testimony lacks proper  
11 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
12 601, 602), and that the witness lacks the requisite knowledge, skill, training, education, or  
13 experience to provide the testimony. FRE 702.

14 66. Defendants object to paragraph 184 on the grounds that the testimony lacks proper  
15 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
16 601, 602), and that the witness lacks the requisite knowledge, skill, training, education, or  
17 experience to provide the testimony. FRE 702.

18 67. Defendants object to paragraph 185 on the grounds that the testimony is based upon  
19 matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1),  
20 and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

21 68. Defendants object to paragraph 187 on the grounds that the testimony is based upon  
22 matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1),  
23 and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

24 69. Defendants object to paragraph 188 on the grounds that the testimony is based upon  
25 matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1),  
26 and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

1      70. Defendants object to paragraph 192 on the grounds that the witness lacks the requisite  
2 knowledge, skill, training, education, or experience to provide the testimony. FRE 702.

3      71. Defendants object to paragraph 193 on the grounds of relevancy (FRE 401, 402), that the  
4 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
5 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
6 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
7 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony  
8 is based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
9 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
10 2001).

11     72. Defendants object to paragraph 194 on the grounds of that the witness lacks the requisite  
12 knowledge, skill, training, education, or experience to provide the testimony. FRE 702.

13     73. Defendants object to paragraph 197 on the grounds that the subject matter of the  
14 testimony is not a proper basis for expert testimony under FRE 702.

15     74. Defendants object to paragraph 203 on the grounds of relevancy (FRE 401, 402), that the  
16 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
17 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
18 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
19 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
20 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
21 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
22 2001).

23     75. Defendants object to paragraph 212 on the grounds of relevancy. (FRE 401, 402).

24     76. Defendants object to paragraph 213 on the grounds of relevancy. (FRE 401, 402).

25     77. Defendants object to paragraph 214 on the grounds of relevancy. (FRE 401, 402).

26     78. Defendants object to paragraph 226 on the grounds that the testimony lacks proper

1 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
2 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
3 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
4 for expert testimony under FRE 702, and that the testimony is based upon matters not contained  
5 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), and Yeti By Molly Ltd  
6 vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

7 79. Defendants object to paragraph 230 on the grounds that the testimony is based upon  
8 speculation. (FRE 401, 402, 601, 602).

9 80. Defendants object to paragraph 238 on the grounds of relevancy (FRE 401, 402), that the  
10 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
11 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
12 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
13 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
14 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
15 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
16 2001).

17 81. Defendants object to paragraph 241 on the grounds of relevancy (FRE 401, 402) and that  
18 the testimony is based upon speculation. (FRE 401, 402, 601, 602).

19 82. Defendants object to paragraph 257 on the grounds of relevancy. (FRE 401, 402).

20 83. Defendants object to paragraph 258 on the grounds of relevancy (FRE 401, 402), that the  
21 testimony lacks proper evidentiary foundation (FRE 602), and that the testimony is based upon  
22 speculation (FRE 401, 402, 601, 602).

23 84. Defendants object to paragraph 260 on the grounds of relevancy (FRE 401, 402), that the  
24 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
25 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
26 training, education, or experience to provide the testimony (FRE 702), and that the subject

1 matter of the testimony is not a proper basis for expert testimony under FRE 702.

2 85. Defendants object to paragraph 262 on the grounds that the testimony is based upon  
3 matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1),  
4 and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

5 86. Defendants object to paragraph 263 on the grounds that the testimony lacks proper  
6 evidentiary foundation (FRE 602), that the testimony is based upon speculation (FRE 401, 402,  
7 601, 602), that the witness lacks the requisite knowledge, skill, training, education, or experience  
8 to provide the testimony (FRE 702), that the subject matter of the testimony is not a proper basis  
9 for expert testimony under FRE 702, and that the testimony is based upon matters not contained  
10 within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1), that the testimony  
11 constitutes or is based upon inadmissible hearsay (FRE 80), and Yeti By Molly Ltd vs. Deckers  
12 Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

13 87. Defendants object to paragraph 264 on the grounds of relevancy (FRE 401, 402), that the  
14 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
15 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
16 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
17 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
18 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
19 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
20 2001).

21 88. Defendants object to paragraph 265 on the grounds of relevancy (FRE 401, 402), that the  
22 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
23 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
24 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
25 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
26 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),

1 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
2 2001).

3 89. Defendants object to paragraph 266 on the grounds of relevancy (FRE 401, 402), that the  
4 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
5 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
6 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
7 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
8 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
9 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
10 2001).

11 90. Defendants object to paragraph 267 on the grounds of relevancy (FRE 401, 402), that the  
12 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
13 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
14 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
15 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
16 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
17 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
18 2001).

19 91. Defendants object to paragraph 268 on the grounds of relevancy (FRE 401, 402), that the  
20 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
21 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
22 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
23 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
24 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
25 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
26 2001).

1 92. Defendants object to paragraph 269 on the grounds of relevancy (FRE 401, 402), that the  
2 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
3 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
4 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
5 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
6 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
7 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
8 2001).

9       93. Defendants object to paragraph 270 on the grounds of relevancy (FRE 401, 402), that the  
10      testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
11      speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
12      training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
13      the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
14      based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
15      FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
16      2001).

17 94. Defendants object to paragraph 277 on the grounds of relevancy (FRE 401, 402), that the  
18 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
19 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
20 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
21 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
22 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
23 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
24 2001).

25 95. Defendants object to paragraph 278 on the grounds of relevancy (FRE 401, 402), that the  
26 testimony lacks proper evidentiary foundation (FRE 602), and that the testimony is based upon

1 speculation. (FRE 401, 402, 601, 602).

2 96. Defendants object to paragraph 279 on the grounds of relevancy (FRE 401, 402), that the  
3 testimony lacks proper evidentiary foundation (FRE 602), and that the testimony is based upon  
4 speculation. (FRE 401, 402, 601, 602).

5 97. Defendants object to paragraph 280 on the grounds of relevancy. (FRE 401, 402).

6 98. Defendants object to paragraph 282 on the grounds of relevancy (FRE 401, 402), that the  
7 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
8 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
9 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
10 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
11 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
12 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
13 2001).

14 99. Defendants object to paragraph 297 on the grounds of relevancy (FRE 401, 402), that the  
15 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
16 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
17 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
18 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
19 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
20 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
21 2001).

22 100. Defendants object to paragraph 298 on the grounds of relevancy (FRE 401, 402), that the  
23 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
24 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
25 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
26 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is

1 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
2 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
3 2001).

4 101. Defendants object to paragraph 299 on the grounds of relevancy (FRE 401, 402), that the  
5 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
6 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
7 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
8 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
9 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
10 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
11 2001).

12 102. Defendants object to paragraph 300 on the grounds of relevancy (FRE 401, 402), that the  
13 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
14 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
15 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
16 the testimony is not a proper basis for expert testimony under FRE 702, and that the testimony is  
17 based upon matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B),  
18 FRCP 37(c)(1), and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
19 2001).

20 103. Defendants object to paragraph 302 on the grounds of relevancy. (FRE 401, 402).

21 104. Defendants object to paragraph 308 on the grounds of relevancy (FRE 401, 402), that the  
22 testimony lacks proper evidentiary foundation (FRE 602), and that the testimony is based upon  
23 speculation (FRE 401, 402, 601, 602).

24 105. Defendants object to paragraph 311 on the grounds of relevancy (FRE 401, 402), that the  
25 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
26 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,

1 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
2 the testimony is not a proper basis for expert testimony under FRE 702, that the testimony  
3 constitutes or is based upon inadmissible hearsay (FRE 80), and that the testimony is based upon  
4 matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1),  
5 and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

6 106. Defendants object to paragraph 312 on the grounds of relevancy (FRE 401, 402), that the  
7 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
8 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
9 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
10 the testimony is not a proper basis for expert testimony under FRE 702, that the testimony  
11 constitutes or is based upon inadmissible hearsay (FRE 80), and that the testimony is based upon  
12 matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1),  
13 and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

14 107. Defendants object to paragraph 313 on the grounds of relevancy (FRE 401, 402), that the  
15 testimony lacks proper evidentiary foundation (FRE 602), that the testimony is based upon  
16 speculation (FRE 401, 402, 601, 602), that the witness lacks the requisite knowledge, skill,  
17 training, education, or experience to provide the testimony (FRE 702), that the subject matter of  
18 the testimony is not a proper basis for expert testimony under FRE 702, that the testimony  
19 constitutes or is based upon inadmissible hearsay (FRE 80), and that the testimony is based upon  
20 matters not contained within the expert report of Twomey. FRCP 26(a)(2)(B), FRCP 37(c)(1),  
21 and Yeti By Molly Ltd vs. Deckers Outdoor Corp. 259 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2001).

22 Dated: November 28, 2007

LONGYEAR, O'DEA & LAVRA, LLP

24 By:

25 JOHN A. LAVRA  
JERI L. PAPPONE

---

27 DEFENDANTS' OBJECTIONS TO DECLARATION OF TIMOTHY G. TWOMEY  
28