

No. 14-15531 [Dist Ct. No.: 3:10-CV-01255-SI]

IN THE
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

MARK HAYNIE; et al.,
Plaintiffs - Appellants,

vs.

KAMALA HARRIS; et al.,
Defendants - Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SUSAN ILLSTON U.S. DISTRICT JUDGE – PRESIDING

EXCERPT OF RECORD

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I, Donald Kilmer, Declare:

1. I am the Attorney for Record for the Plaintiff/Appellants in this appeal.
2. I certify that the documents included in this Excerpt of Record were derived from Electronic Docket on the Court's PACER file system with only two modifications: (1) the District Court headers at the top of the page were cropped, and (2) an ER Page # was added to the bottom right of each page of the documents.

I declare under penalty of perjury that the foregoing is true and correct.

July 23, 2014

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
450 GOLDEN GATE AVENUE, SAN FRANCISCO, CA

11

MARK AARON HAYNIE, BRENDAN
12 JOHN RICHARDS, THE CALGUNS
FOUNDATION, INC., and THE
13 SECOND AMENDMENT
FOUNDATION, INC.,

Case No.: 3:10-CV-01255 SI

NOTICE OF APPEAL TO THE UNITED
STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

14

15 Plaintiffs,

JUDGMENT ENTERED: Mar. 4, 2014

16

vs.

17

KAMALA HARRIS, Attorney General
18 of California, CALIFORNIA
DEPARTMENT OF JUSTICE,

19

20 Defendants.

21

PLEASE TAKE NOTICE:

22

23

Plaintiffs: MARK AARON HAYNIE, BRENDAN JOHN RICHARDS, THE

24

CALGUNS FOUNDATION, INC., and THE SECOND AMENDMENT

25

FOUNDATION, INC., appeal to the United States Court of Appeal for the Ninth

26

Circuit from the final JUDGMENT (Doc # 96) of the district court, entered in this

27

case on March 4, 2014, and all interlocutory orders that gave rise to the Judgment,

28

including but not limited to the ORDER GRANTING DEFENDANTS' MOTION TO

1 DISMISS WITHOUT LEAVE TO AMEND, filed on March 4, 2014. (Doc # 95).

2 Dated: March 20, 2014

3 /s/ Donald Kilmer

4 Donald Kilmer, Attorney for Plaintiffs

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK AARON HAYNIE, BRENDAN JOHN
RICHARDS, THE CALGUNS FOUNDATION,
INC., and THE SECOND AMENDMENT
FOUNDATION, INC.,

No. C 10-01255 SI

JUDGMENT

Plaintiffs,

v.


KAMALA HARRIS, ATTORNEY GENERAL
OF CALIFORNIA and CALIFORNIA
DEPARTMENT OF JUSTICE,

Defendants.

Defendants' motion to dismiss for lack of standing and lack of ripeness has been granted without
leave to amend. Judgment is entered accordingly.

IT IS SO ORDERED AND ADJUDGED.

Dated: March 4, 2014



SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK AARON HAYNIE, BRENDAN JOHN
RICHARDS, THE CALGUNS FOUNDATION,
INC., and THE SECOND AMENDMENT
FOUNDATION, INC.,

No. C 10-01255 SI

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS WITHOUT
LEAVE TO AMEND**

Plaintiffs,

v.

KAMALA HARRIS, ATTORNEY GENERAL
OF CALIFORNIA and CALIFORNIA
DEPARTMENT OF JUSTICE,

Defendants.

On February 28, 2014, the Court heard argument on defendants’ motion to dismiss plaintiffs’ third amended consolidated complaint. Having considered the arguments of the parties and the papers submitted, and for good cause shown, the Court hereby GRANTS defendants’ motion to dismiss, without leave to amend.

BACKGROUND

Plaintiffs Mark Aaron Haynie (“Haynie”) and Brendan John Richards (“Richards”) filed separate lawsuits against California Attorney General Kamala Harris (“Harris”) and the California Department of Justice (“DOJ”), alleging that they were wrongfully arrested for lawful possession of certain weapons that officers mistakenly believed were assault weapons banned under the California Assault Weapons

1 Control Act (“AWCA”), California Penal Code sections 12275-12290. The Calguns Foundation and
2 the Second Amendment Foundation are also plaintiffs in both suits. The Calguns Foundation is a
3 “non-profit organization” which “support[s] the California firearms community by promoting education
4 . . . about California and federal firearms laws, rights and privileges, and defend[s] and protect[s] the
5 civil rights of California gun owners.” Third Amended Consolidated Complaint (“ACC”) ¶ 12. The
6 purposes of the Second Amendment Foundation, a “non-profit membership organization,” include
7 “education, research, publishing and legal action focusing on the Constitutional right to privately own[]
8 and possess firearms, and the consequences of gun control.” *Id.* ¶ 13. The Calguns Foundation
9 contributed funds for Haynie’s and Richards’ legal representation during their criminal proceedings.
10 *Id.* ¶¶ 35, 63, 74.

11 The following facts are drawn from the operative complaint.

12
13 **1. Haynie**

14 On February 7, 2009, Haynie was arrested by officers of the Pleasanton Police Department for
15 possession of an assault weapon banned under the AWCA. ACC ¶¶ 22-23. Haynie paid \$6,000 to a bail
16 bondsman. *Id.* ¶ 23. Haynie’s rifle was “based on the popular and common Colt AR-15 rifle,” and was
17 “functionally identical to an AR-15.” *Id.* ¶ 26. However, Haynie’s rifle contained a “bullet button”
18 which makes the magazine of the rifle non-detachable, taking the weapon out of the statutory definition
19 of an assault weapon under California Penal Code sections 12276 and 12276.1. *Id.* ¶¶ 24-25. The
20 Alameda County District Attorney’s Office declined to file an information against Haynie, and the
21 matter was dropped on March 27, 2009. *Id.* ¶ 28. Haynie was released on that same date. *Id.* ¶ 29. On
22 October 21, 2009, Haynie obtained a finding of factual innocence from the Pleasanton Police
23 Department. *Id.* ¶ 32. The Calguns Foundation paid for Haynie’s legal representation. *Id.* ¶ 35. Haynie
24 has since sold his firearms for fear that he would face additional future arrests. *Id.* ¶ 33. He alleges that
25 he has a reasonable fear of reacquiring the rifle because it “looks like a contraband weapon,” making
26 it more likely that he will have future law enforcement contact and possible arrest. *Id.*

27 Haynie originally brought suit against the City of Pleasanton and the City of Pleasanton Police
28 Department, but the City and police department were dismissed from the case after paying Haynie

1 \$6,000 in exchange for a release of all other claims. *Id.* ¶ 37. Haynie alleges that the DOJ is the state
2 agency responsible for the training and education of law enforcement agencies with respect to assault
3 weapons, and that, because the DOJ will not take measures to clarify the detachable magazine feature
4 or bullet-button technology, “innocent gun-owners continue to be arrested by local law enforcement
5 agencies and charged with violating Penal Code section 30600 *et seq.*” *Id.* ¶¶ 38-39. Haynie alleges
6 that the “the entire set of laws and regulations defining California assault weapons are unconstitutionally
7 vague and ambiguous.” *Id.* ¶ 39.

8

9 **2. Richards**

10 Plaintiff Richards was arrested on two separate occasions for the possession of what officers
11 believed were assault weapons banned under California law. *Id.* ¶¶ 40, 50, 65, 67. The first arrest
12 occurred in May of 2010, when a Rohnert Park police officer believed Richards possessed assault
13 weapons within the scope of the AWCA. *Id.* ¶¶ 40, 50-51. Officer Becker, the arresting officer, also
14 seized two pistols and one rifle from Richards on that day. *Id.* ¶ 61. Richards spent six days in jail and
15 was released after paying a \$1,400 fee to a bondsman. *Id.* ¶ 52. On September 9, 2010, the Sonoma
16 County District Attorney’s Office dismissed all charges against Richards based on a report by a
17 criminalist from the California Department of Justice. *Id.* ¶¶ 53-54. The report opined that Richards’
18 firearms lacked features that would make them illegal under the AWCA. *Id.* ¶ 54. One of the firearms
19 deemed to not be an assault weapon under the Penal Code “had a properly installed bullet button, thus
20 rendering the firearm incapable of accepting a detachable magazine that could only be removed from
21 the gun by the use of a tool.” *Id.* ¶ 54(a). Thereafter, all charges against Richards were dismissed and
22 his firearms were returned to him. *Id.* ¶¶ 56, 61.

23 In August of 2011, Richards was arrested a second time, when a Sonoma County Sheriff’s
24 deputy found a Springfield Armory M1A rifle in the trunk of Richards’ car. *Id.* ¶¶ 65-66. The arresting
25 officer believed that the rifle was illegal under the AWCA because it had a “flash suppressor” on it. *Id.*
26 ¶ 67. Richards was released after paying \$2,000 to a bail bondsman. *Id.* ¶ 68. On September 19, 2011,
27 the charges against Richards were dismissed due to a report by a California Department of Justice
28 criminalist stating that Richards’ firearm did not have a flash suppressor and was thus not illegal under

1 the AWCA. *Id.* ¶ 69. All charges against Richards were subsequently dismissed. *Id.* ¶ 72. Richards
2 alleges that because he was arrested twice, he has a reasonable fear that he will face repeated wrongful
3 arrests in the future. *Id.* ¶ 75.

4 5 **3. Procedural History**

6 On May 6, 2011, defendants filed a motion to dismiss Haynie’s first amended complaint
7 (“FAC”). Docket No. 26. On June 20, 2011, plaintiffs and defendants filed a stipulation and proposed
8 order consolidating *Haynie v. Harris* and *Richards v. Harris* because “[b]oth Haynie and Richards
9 present the same legal issues regarding California’s Assault Weapons Control Act and the Department
10 of Justice’s role in enforcing it.” Docket No. 38. Accordingly, on June 21, 2011, the Court ordered the
11 cases to be consolidated for hearing pursuant to Federal Rule of Civil Procedure 42(a). On October 22,
12 2011, the Court granted defendants’ motion to dismiss but allowed plaintiffs the opportunity to cure the
13 deficiencies by filing an amended consolidated complaint.

14 On November 4, 2011, plaintiffs filed an amended consolidated complaint. Docket No. 43.
15 Richards then brought a related action based on his second arrest, and on December 21, 2011, *Richards*
16 *v. Harris (II)* was ordered to be related with *Haynie v. Harris* and *Richards v. Harris*. Docket No. 47.
17 On November 1, 2012, plaintiffs filed a second amended consolidated complaint. Docket No. 71.
18 Following a case management conference, the parties agreed to voluntarily dismiss from the lawsuit the
19 City of Rohnert Park and Officer Becker.

20 On December 20, 2013, plaintiffs filed the operative complaint. Plaintiffs claim that defendants
21 “intentionally or through deliberate indifference to the rights of law-abiding gun-owners,” have failed
22 to generate appropriate memoranda to assist local law enforcement agencies in properly identifying
23 “assault weapons” under the AWCA. ACC ¶¶ 16-17, 84. Specifically, plaintiffs maintain that because
24 the DOJ will not issue a bulletin or memorandum clarifying that weapons with a “bullet button” are legal
25 to possess, they fear similar wrongful arrests in the future. *Id.* Plaintiffs also argue that the AWCA is
26 unconstitutionally vague and ambiguous on its face and as applied to Haynie and Richards. *Id.* at 86.
27 By the present motion, defendants move pursuant to Federal Rules of Civil Procedure 12(b)(1) and
28

1 12(b)(6) to dismiss the ACC. Docket No. 92, Defendants’ Motion to Dismiss the Third Amended
2 Complaint (“Defs.’ Mot.”).

3
4 **LEGAL STANDARD**

5 **1. Federal Rule of Civil Procedure 12(b)(1)**

6 Federal Rule of Civil Procedure 12(b)(1) allows a party to challenge a federal court’s jurisdiction
7 over the subject matter of the complaint. The party invoking the jurisdiction of the federal court bears
8 the burden of establishing that the court has the requisite subject matter jurisdiction to grant the relief
9 requested. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted).
10 “In resolving a Rule 12(b)(1) factual attack on jurisdiction, the district court may review evidence
11 beyond the complaint without converting the motion to dismiss into a motion for summary judgment.”
12 *In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1236 (9th Cir. 2008) (citation omitted). A
13 complaint will be dismissed if, looking at the complaint as a whole, it appears lacking in federal
14 jurisdiction either “facially” or “factually.” *Thornhill Publ’g Co., Inc. v. Gen. Tel. & Elecs. Corp.*, 594
15 F.2d 730, 733 (9th Cir. 1979). When the complaint is challenged for lack of subject matter jurisdiction
16 on its face, all material allegations in the complaint will be taken as true and construed in the light most
17 favorable to the plaintiff. *NL Indus. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). In deciding a Rule
18 12(b)(1) motion which mounts a factual attack on jurisdiction, “no presumption of truthfulness attaches
19 to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court
20 from evaluating for itself the merits of jurisdictional claims.” *Mortensen v. First Fed. Savings & Loan*
21 *Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977).

22
23 **2. Federal Rule of Civil Procedure 12(b)(6)**

24 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it
25 fails to state a claim upon which relief can be granted. The question presented by a motion to dismiss
26 is not whether the plaintiff will prevail in the action, but whether the plaintiff is entitled to offer
27 evidence in support of the claim. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other*
28 *grounds by Davis v. Scherer*, 468 U.S. 183 (1984). Dismissal of a complaint may be based “on the lack

1 of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”
 2 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). In answering this question, the
 3 Court must assume that the plaintiff’s allegations are true and must draw all reasonable inferences in
 4 the plaintiff’s favor. *See Usher v. City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987).

6 DISCUSSION

7 In their FAC, plaintiffs sought an order from the Court compelling defendants to issue a
 8 statewide bulletin clarifying the bullet button technology. FAC ¶ 36. In ruling on the motion to dismiss
 9 the FAC, the Court found that plaintiffs failed to plead sufficient facts to show standing to seek
 10 injunctive relief. In the operative complaint now before the Court, plaintiffs slightly modified their
 11 theory of recovery, but seek similar injunctive and declaratory relief, asserting that California’s AWCA
 12 is unconstitutionally vague and ambiguous. ACC ¶ 113. They assert that the confusion caused by the
 13 AWCA has had a “chilling effect on the fundamental right to ‘keep and bear arms.’” *Id.* ¶ 111.
 14 Specifically, plaintiffs seek an order from the Court suspending enforcement of the AWCA until
 15 defendants “take steps to clarify the definition of Assault Weapon.” *Id.*

16 Defendants contend that plaintiffs do not meet the requirements of standing for prospective
 17 equitable relief and present unripe claims. Defendants further contend that the AWCA is not
 18 unconstitutionally vague.

19 For the following reasons, the Court finds that plaintiffs do not have standing to seek injunctive
 20 relief and present unripe claims.

22 1. Haynie and Richards Cannot Establish Standing to Seek Injunctive Relief.

23 Defendants argue that plaintiffs Haynie and Richards lack standing because they do not meet the
 24 standards for injunctive relief. The doctrine of standing sets forth minimum constitutional requirements
 25 under Article III that serve to limit the jurisdiction of federal courts to the adjudication of actual cases
 26 or controversies. *City of L.A. v. Lyons*, 461 U.S. 95, 101 (1983) (citations omitted). The question of
 27 whether a plaintiff has standing presents both constitutional and prudential considerations. *Gladstone*
 28 *Realtors v. Vill. of Bellwood*, 441 U.S. 91, 99 (1979); *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

1 Before a federal court can consider the merits of a legal claim, the party seeking to invoke the court’s
2 jurisdiction must establish the requisite standing to sue. *Whitmore v. Ark.*, 495 U.S. 149, 154 (1990).

3 To establish Article III standing, a plaintiff must establish three elements:

4 First, the plaintiff must have suffered an injury in fact – an invasion of a
5 legally protected interest which is (a) concrete and particularized and (b)
6 actual or imminent, not conjectural or hypothetical. Second, there must
7 be a causal connection between the injury and the conduct complained of
8 – the injury has to be fairly . . . trace[able] to the challenged action of the
9 defendant, and not . . . the result [of] the independent action of some third
10 party not before the court. Third, it must be likely, as opposed to merely
11 speculative, that the injury will be redressed by a favorable decision.

9 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal citations and quotations omitted).

10 “The party invoking federal jurisdiction bears the burden of establishing these elements.” *Id.* at 561.

11 Moreover, plaintiffs seeking equitable relief must also show a “likelihood of substantial and immediate
12 irreparable injury,” a separate and additional jurisdictional requirement. *Lyons*, 461 U.S. at 111
13 (internal citations omitted). “Past exposure to illegal conduct does not in itself show a present case or
14 controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse
15 effects.” *O’Shea v. Littleton*, 414 U.S. 488, 495-96 (1974).

16 Defendants contend that plaintiffs have not established the imminent threat of irreparable harm
17 needed for standing to seek injunctive relief, and also fail to overcome prudential limitations.
18 Specifically, they argue that Haynie’s and Richards’ allegations of fear of being subjected to repeated
19 wrongful arrests for AWCA violations are speculative and fall short of showing a likelihood of
20 substantial and immediate irreparable injury. Defs.’ Mot. at 9. Defendants argue that absent this
21 showing, federalism considerations weigh in favor of judicial restraint from intervening with the state’s
22 criminal law matters through issuance of injunctions. *Id.*

23 In *Lyons*, a case where the plaintiff sought a preliminary and permanent injunction against the
24 City of Los Angeles barring the use of the chokeholds, the United States Supreme Court elaborated upon
25 the standing requirements for injunctive relief:

26 In order to establish an actual controversy in this case, Lyons would have
27 had not only to allege that he would have another encounter with the
28 police but also to make the incredible assertion either, (1) that *all* police
officers in Los Angeles always choke any citizen with whom they happen
to have an encounter, whether for the purpose of arrest, issuing a citation

1 or for questioning or, (2) that the City ordered or authorized police
2 officers to act in such manner.

3 461 U.S. at 105-06 (emphasis in original). In the earlier ruling on the motion to dismiss the FAC, this
4 Court applied *Lyons* and held that “to show a real and immediate threat and demonstrate a case or
5 controversy, Haynie and Richards would have to allege either that *all* law enforcement officers in
6 California *always* arrest any citizen they come into contact with who is lawfully in possession of a
7 weapon with a bullet button, or that the DOJ has ordered or authorized California law enforcement
8 officials to act in such a manner.” Docket No. 42, Order Granting Defendants’ Motion to Dismiss and
9 Granting Leave to Amend (“FAC Order”).

10 The motion to dismiss the FAC was granted despite Haynie’s and Richards’ arrests because “past
11 exposure to illegal conduct without any continuing, current adverse effects is not enough to show a case
12 or controversy for injunctive relief, and that even allegation of routine misconduct is not sufficient.”
13 *Id.* at 11 (citing *Lyons*, 461 U.S. at 102, 105). Furthermore, the Court found that plaintiffs’ allegation
14 that the “DOJ has been simultaneously advising residents of California that their possession of certain
15 semi-automatic firearms is legal, while at the same time warning them that any one of the 58 of the
16 State’s District Attorneys might come to a different conclusion and prosecute them” did not amount to
17 an official policy of instructing law enforcement to arrest citizens lawfully in possession of weapons
18 with a bullet button. *Id.* at 12. For the reasons discussed below, the Court now finds that plaintiffs
19 failed to adequately address these shortcomings in the ACC.

20 Plaintiffs fail to make the necessary showing of “imminent threat of irreparable harm” because
21 they fail to demonstrate they will suffer continuing, adverse effects in the absence of an injunction.
22 Haynie alleges that, after his false arrest, he sold his firearms for fear of future arrests, and now has a
23 reasonable fear of reacquiring similar firearms. ACC ¶ 33. As in the first motion to dismiss, Haynie’s
24 single arrest is not sufficient to demonstrate a real and immediate threat because “past exposure to illegal
25 conduct” alone is not enough to meet the standard for injunctive relief. *See Lyons*, 461 U.S. at 102, 105.
26 Moreover, his claim that he will have similar future encounters with law enforcement officers is pure
27 speculation, especially given the fact that he no longer owns the firearms at issue. ACC ¶ 33.

28

1 Richards also fails to adequately allege present, adverse effects. Richards contends that because
 2 he was arrested twice, he is realistically threatened by a repetition of wrongful arrests. *Id.* ¶ 75. The
 3 Court addressed the issue of Richards’ second arrest in a motion to dismiss his separate lawsuit, prior
 4 to the consolidation of cases. The Court stated that the allegations regarding his second arrest “will not
 5 suffice to establish standing to seek injunctive relief under *Lyons*.” C 11-2493, Docket No. 39, Order
 6 Granting In Part and Denying In Part Defendants’ Motion to Dismiss (“Richards Order”). “Past
 7 exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive
 8 relief . . . if unaccompanied by any continuing, present adverse effects.” *Lyons*, 461 U.S. at 95-96. The
 9 Court further determined that “even assuming that both arrests . . . constituted illegal conduct, these
 10 arrests alone do not provide evidence of continuing adverse effects.”¹ Richards Order at 7; *see Lyons*,
 11 461 U.S. at 103 (“[C]ase or controversy considerations obviously shade into those determining whether
 12 the complaint states a sound basis for equitable relief . . . even if the complaint presented an existing
 13 case or controversy, an adequate basis for equitable relief against petitioners had not been
 14 demonstrated.”) (citing *O’Shea*, 414 U.S. at 499, 502).

15 To demonstrate that there are continuing adverse effects, plaintiffs cite to additional instances
 16 of false arrests of citizens based on firearms being misidentified by police. Plaintiff’s Opposition to
 17 Defendants’ Motion to Dismiss the ACC (“Pls.’ Opp’n”), 16; ACC ¶ 104. However, as detailed above,
 18 even an allegation of routine misconduct is not sufficient, as it does not amount to an allegation that all
 19 law enforcement officers in California always wrongly arrest any citizen with whom they come into
 20 contact who is lawfully in possession of a weapon with a bullet button, as *Lyons* requires. *Lyons*, 461
 21 U.S. at 102, 105.

22
 23 ¹ Richards’ separate lawsuit sought prospective injunctive relief against the City of Rohnert Park.
 24 The Court determined that Richards’ claims contained substantially similar allegations to those made
 25 in the FAC, which was dismissed for lack of standing. Citing the FAC Order, the Court found that “to
 26 seek injunctive relief against the City of Rohnert Park, Richards would have to allege that every Rohnert
 27 Park police officer will without fail arrest anyone who he finds in possession of a firearm with a bullet
 28 button.” Richards Order at 7. The Court further stated that “Richards’ second arrest by the Sonoma
 County Sheriff’s Office cannot support his claim for injunctive relief against the City of Rohnert Park”
 because they are “separate and distinct governmental entities.” *Id.* Though the present case pertains
 to one governmental entity, namely the California DOJ, the Court has made clear that plaintiffs must
 meet the *Lyons* standard by alleging that every officer will arrest anyone who he finds in possession of
 a firearm with a bullet button. Thus, even two past false arrests for the same conduct are not sufficient
 to meet this standard, especially absent a current threat of prosecution.

1 Plaintiffs cite to two Ninth Circuit cases to support their arguments for standing; however, these
2 cases are distinguishable from the present case, and are ultimately unavailing. The Supreme Court in
3 *Lyons* made clear that “recognition of the need for a proper balance between state and federal authority
4 counsels restraint in the issuance of injunctions against state officers engaged in the administration of
5 the states’ criminal laws in the absence of irreparable injury which is both great and immediate.” *Id.*
6 at 112. Plaintiffs, in their opposition, cite to *LaDuke v. Nelson*, 762 F.2d 1318 (9th Cir. 1985) and
7 *Hawkins v. Comparet-Cassani*, 251 F.3d 1230 (9th Cir. 2001), two Ninth Circuit cases applying *Lyons*,
8 as a basis for standing to seek injunctive relief. In *LaDuke*, the Ninth Circuit upheld the District Court’s
9 issuance of an injunction prohibiting federal immigration officers from conducting farm and ranch
10 checks of migrant farm housing without a warrant, probable cause, or articulable suspicion. 762 F.2d
11 at 1333. While the Court held that plaintiffs demonstrated “a likelihood of recurrent injury,” it also
12 concluded that unlike *Lyons*, prudential limitations of comity were not a concern because the injunction
13 involved federal immigration issues, rather than state law enforcement matters. *Id.* at 1324-25. The
14 Ninth Circuit stated:

15 A third distinguishing feature that separates the present case from *Lyons*
16 is the absence of the prudential limitations circumscribing federal court
17 intervention in state law enforcement matters. *Lyons*, *Rizzo*, and *O’Shea*
18 all involved attempts by plaintiffs to entangle federal courts in the
19 operations of state law enforcement and criminal justice institutions. *See*
20 *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) (city law enforcement
21 practices); *Rizzo v. Goode*, 423 U.S. 362 (1976) (same); *O’Shea v.*
22 *Littleton*, 414 U.S. 488 (1974) (county criminal justice system).
23 Obviously, none of the considerations inherent in the judicial concept of
24 “Our Federalism,” *Younger v. Harris*, 401 U.S. 37, 44, (1971), are
25 implicated in constitutional challenges to executive branch behavior in
26 federal courts. This court cannot rely on a state judiciary to correct the
27 unconstitutional practices of federal officials. *Cf. Los Angeles v. Lyons*,
28 461 U.S. at 113 (comity counsels in favor of permitting state judiciary
systems to oversee state law enforcement practices). Accordingly, the
comity considerations which influenced the Supreme Court’s decisions
in *O’Shea*, *Rizzo* and *Lyons* are inapplicable in this case.

15 *Id.* As in *Lyons* and unlike *LaDuke*, the present case involves a request for federal court intervention
16 in state law enforcement matters. Therefore, it is particularly important for plaintiffs to meet their
17 burden of demonstrating a likelihood of imminent and irreparable harm before the Court may issue
18 injunctive relief.

1 *Hawkins* is also distinguishable from the present case. In *Hawkins*, the Ninth Circuit held that
2 the plaintiff had standing to seek injunctive relief, despite federalism considerations, because he
3 demonstrated a likelihood of irreparable injury. 251 F.3d at 1237. The plaintiff, a defendant in an
4 ongoing criminal prosecution, sought an injunction to prevent the county sheriff’s office from using an
5 electrical restraint “stun belt” while plaintiff appeared in court, based on plaintiff’s alleged past
6 misbehavior while in court. *Id.* at 1236-37. The Ninth Circuit determined that there was a likelihood
7 of reoccurrence because plaintiff remained imprisoned and in custody of defendants, and “needed only
8 to enter a Los Angeles courtroom to justify use” of the belt. *Id.* (“Since use of the belt is based on past
9 conduct, Hawkins need not have been arrested or engaged in illegal behavior to subject him to its use.”)
10 The Ninth Circuit also noted that, unlike the conduct in *Lyons*, the use of the belt stemmed from the
11 Sheriff’s official written policy. *Id.* at 1237.

12 As discussed above, Haynie and Richards have failed to demonstrate a likelihood of
13 reoccurrence, and there is no official DOJ policy that instructs officers to arrest citizens who own
14 firearms that are lawful under the AWCA. Unlike the plaintiff in *Hawkins*, Haynie and Richards would
15 need to suffer an entirely new arrest, based on new conduct – an entirely speculative set of events.
16 Because Haynie and Richards have failed to make a showing of likelihood of reoccurrence, comity
17 considerations weigh in favor of judicial restraint, and the ACC must be dismissed for lack of standing.
18 Further leave to amend will not be given, since leave to amend was already given on this very issue.
19 *See Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995).

20
21 **2. The Calguns Foundation and The Second Amendment Foundation Lack Standing.**

22 The Court further finds that both the Calguns Foundation and the Second Amendment
23 Foundation lack standing to bring this action on behalf of members or in their own right. Associations
24 have standing to sue on behalf of their members “only if (a) their members would otherwise have
25 standing to sue in their own right; (b) the interests that the organizations seek to protect are germane to
26 their purpose; and (c) neither the claim asserted nor the relief requested requires the participation of
27 individual members in the lawsuit.” *San Diego Cnty. Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1130-31
28 (9th Cir. 1996) (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977), superseded

1 in part by statute as stated in *United Food & Commer. Workers Union Local 751 v. Brown Grp.*, 517
2 U.S. 544 (1996)).

3 Because associations have standing to sue on behalf of their members “only if . . . their members
4 would otherwise have standing to sue in their own right” and because Richards and Haynie failed to
5 establish standing to sue for injunctive relief, the Calguns Foundation and the Second Amendment
6 Foundation similarly do not have standing to seek injunctive relief against defendants in this Court. *See*
7 *San Diego Cnty. Gun Rights Comm.*, 98 F.3d at 1130-31.

8 Furthermore, an association has direct standing only if “it [shows] a drain on its resources from
9 both a diversion of its resources and frustration of its mission.” *Fair Hous. Council of San Fernando*
10 *Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012) (citing *Fair Hous. of Marin v.*
11 *Combs*, 285 F.3d 899, 905 (9th Cir.2002)). However, “standing must be established independent of the
12 lawsuit filed by the plaintiff.” *Walker v. City of Lakewood*, 272 F.3d 1114, 1124 n. 3 (9th Cir. 2001)).
13 An association “cannot manufacture [an] injury by incurring litigation costs or simply choosing to spend
14 money fixing a problem that otherwise would not affect the organization at all.” *La Asociacion de*
15 *Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010).

16 The Calguns Foundation’s allegations that it paid for the defense of several members, including
17 Haynie and Richards, does not suffice to establish associational standing. *See Combs*, 285 F.3d at 903
18 (“[A]n organization cannot, of course, manufacture the injury necessary to maintain a suit from its
19 expenditure of resources on that very suit”) (internal quotation marks omitted). In addition, the
20 Calguns Foundation and the Second Amendment Foundation do not allege that they have incurred any
21 expenses aside from the litigation costs. *Id.* at 903 (“[A]n organization establishes Article III injury if
22 it alleges that purportedly illegal action increases the resources the group must devote to programs
23 independent of its suit challenging the action.”) (internal citations omitted); *see also Havens Realty*
24 *Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (“[C]oncrete and demonstrable injury to the organization’s
25 activities with the consequent drain on the organization’s resources constitutes far more than simply a
26 setback to the organization’s abstract social interests.”). Therefore, the Calguns Foundation and the
27 Second Amendment Foundation do not have standing to sue in their own right.

28

1 To challenge the constitutionality of a statute as applied, a party must have standing. *O’Shea*,
2 414 U.S. at 493 (“Those who seek to invoke the power of federal courts must allege an actual case or
3 controversy . . . a plaintiff must allege some threatened or actual injury before a federal court may
4 assume jurisdiction.”). All plaintiffs – both individual and institutional – have failed to show standing
5 to seek injunctive relief, and therefore the Court may not address plaintiffs’ constitutional challenge to
6 the AWCA. *See Fleck & Assocs., Inc. v. Phoenix, City of, an Arizona Mun. Corp.*, 471 F.3d 1100, 1106
7 (9th Cir. 2006) (holding that the district court erred in reaching the merits where plaintiff’s complaint
8 failed to demonstrate a cognizable injury and did not establish associational standing.).

9
10 **3. Plaintiffs’ Claims for Injunctive Relief are Not Ripe for Adjudication.**

11 Finally, defendants contend that plaintiffs’ claims for injunctive and declaratory relief are not
12 ripe for review. Defs.’ Mot. at 7. They argue that “allegations in the ACC affirmatively demonstrate
13 that [Haynie] no longer own guns, demonstrating that no present controversy exists as to him, and the
14 allegations as to [Richards’] present gun ownership were inconclusive.” Defs.’ Mot. at 1. With respect
15 to Haynie, plaintiffs argue his fear of future wrongful arrest is ripe for review because he alleged a desire
16 to reacquire a firearm like the one that got him arrested. Pls.’ Opp’n at 9. With respect to Richards,
17 plaintiffs argue that it can be reasonably inferred that he recovered his firearms from the arresting
18 agency after his second arrest. *Id.* For the following reasons, the Court finds that plaintiffs fail to allege
19 sufficient facts demonstrating ripeness.

20 “Ripeness doctrine protects against premature adjudication of suits in which declaratory relief
21 is sought.” *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1044 (9th Cir. 1999) (internal citations
22 omitted). “In suits seeking both declaratory and injunctive relief against a defendant’s continuing
23 practices, the ripeness requirement serves the same function in limiting declaratory relief as the
24 imminent-harm requirement serves in limiting injunctive relief.” *Id.* Ripeness is “peculiarly a question
25 of timing.” *Regional Rail Reorg. Act Cases*, 419 U.S. 102, 140, (1974). Significantly, “[a] claim is not
26 ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed
27 may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotations omitted).

28

1 In addition to plaintiffs’ failure to show a likelihood of substantial and immediate injury required
 2 for standing to seek injunctive relief, the ACC must also be dismissed because plaintiffs fail to allege
 3 sufficient facts demonstrating ripeness. Specifically, neither Haynie nor Richards adequately alleges
 4 that he currently possesses a weapon that might subject him to prosecution under the AWCA. Haynie
 5 alleges that he sold his firearms and fears that he may be arrested again should he reacquire them. ACC
 6 ¶ 33 (“[Haynie] may suffer repeated wrongful arrests in the future if he reacquires a firearm”). Because
 7 Haynie’s fear of future arrests depends upon the contingency of his reacquiring a new firearm that might
 8 in turn be subject to AWCA enforcement, his claims are not ripe for relief. *See Thomas v. Anchorage*
 9 *Equal Rights Comm’n*, 220 F.3d 1134, 1138-40 (9th Cir. 2000) (en banc) (“[S]uch “some day”
 10 intentions—without . . . specification of when the some day will be—do not support a finding of the
 11 “actual or imminent” injury that our cases require.”) (quoting *Lujan*, 504 U.S. at 564).

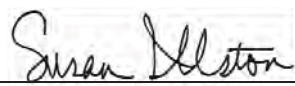
12 Similarly, Richards does not allege in the ACC that his firearms were returned to him after his
 13 second arrest, nor does he allege that he currently owns firearms that are subject to enforcement under
 14 the AWCA. Because Richards has not sufficiently alleged that he currently owns the firearms at issue,
 15 he also fails to demonstrate a case or controversy that is ripe for review. Though it is possible that
 16 Richards could amend the ACC to cure this defect, amendment would be futile because he still lacks
 17 standing for injunctive relief. Accordingly, the Court grants defendants’ motion to dismiss, without
 18 leave to amend. *See Bonin*, 59 F.3d at 845.

19
20 **CONCLUSION**

21 For the foregoing reasons and for good cause shown, and the basis of the record before it, the
 22 Court hereby GRANTS defendants’ motion to dismiss plaintiffs’ Third Amended Consolidated
 23 Complaint, without leave to amend. This order resolves Docket No. 92.

24
25 **IT IS SO ORDERED.**

26 Dated: March 4, 2014

27 
 28 _____
 SUSAN ILLSTON
 UNITED STATES DISTRICT JUDGE

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10 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 MARK AARON HAYNIE, BRENDAN
JOHN RICHARDS, THE CALGUNS
13 FOUNDATION, INC., and THE
SECOND AMENDMENT
14 FOUNDATION, INC.,

15 Plaintiffs,

16 vs.

17
18 KAMALA HARRIS, Attorney General
of California, CALIFORNIA
19 DEPARTMENT OF JUSTICE,

20 Defendants.

Case No.: 3:10-CV-01255 SI

**THIRD AMENDED CONSOLIDATED
COMPLAINT**

DEMAND FOR JURY TRIAL

42 U.S.C. §§ 1983, 1988

SECOND AMENDMENT

FOURTEENTH AMENDMENT

21
22 **PROCEDURAL INTRODUCTION**

- 23 1. *Haynie v. Harris*, Case No.: 3:10-CV-01255 SI was ordered consolidated with
24 *Richards v. Harris (I)*, Case No.: 3:11-CV-02493 SI, in an order filed on
25 October 22, 2011. (See Documents # 42 and #15 respectively.)
26 2. The second *Richards v. Harris (II)*, Case No.: 3:11-CV-05580 SI was ordered
27 to be related with the first two cases in an order filed on December 21, 2011.
28 (See documents #47 and # 20 respectively.)

- 1 3. The final (4th) case, *Plog-Horowitz, et al., v. Harris, et al*, Case No.: CV-12-
2 0452 SI was ordered to be related to the first three (3) cases in an order filed
3 on March 1, 2012 (See Documents # 53, #17 and #5 respectively.)
- 4 4. In a stipulation and order filed with the Court, all four cases were
5 consolidated under *Haynie v. Harris*, Case No.: 3:10-CV-01255 SI, with the
6 remaining case numbers dismissed and the Defendants reserving the right to
7 separate trials.
- 8 5. Several Defendants have been dismissed from these consolidated actions:
9 a. City of Pleasanton and Pleasanton Police Department in *Haynie v.*
10 *Harris*, Case No.: 3:10-CV-01255 SI. See documents #6 and #7, filed on
11 June 8, 2012 and June 15, 2010, respectively.
- 12 b. Sonoma County Sheriff's Department and Sheriff's Deputy Greg
13 Myers. Document #23, filed on June 19, 2012.
- 14 c. City of Rohnert Park and Officer Dean Becker (RP134). Document #90,
15 filed December 19, 2013.
- 16 6. Pursuant to a stipulation of the parties the entire action entitled: *Plog-*
17 *Horowitz, et al., v. Harris, et al*, former Case No.: CV-12-0452 SI, was
18 dismissed with prejudice on October 29, 2012. (Doc # 70 in this case and Doc
19 #19 in CV-12-0452 SI)

SUBSTANTIVE INTRODUCTION

- 22 7. Plaintiff MARK AARON HAYNIE was wrongfully arrested for possession of
23 an Assault Weapon and required to make bail in a state criminal case in
24 which he was found factually innocent. He is associated with and exercises
25 membership rights in both the THE CALGUNS FOUNDATION, INC., and
26 THE SECOND AMENDMENT FOUNDATION, INC.
- 27 8. Plaintiff BRENDAN RICHARDS is an honorably discharged United States
28 Marine who saw combat duty in Iraq. He is associated with and exercises

1 membership rights in both the THE CALGUNS FOUNDATION, INC., and
2 THE SECOND AMENDMENT FOUNDATION, INC.

3 a. On May 20, 2010, RICHARDS was wrongfully arrested for possession
4 of an Assault Weapon and spent six (6) days in the Sonoma County jail
5 while his family tried to raise the funds for him to make bail in a state
6 criminal case which was dismissed. He was factually innocent of the
7 charges brought.

8 b. On August 14, 2011, RICHARDS was wrongfully arrested a second
9 time for possession of an Assault Weapon and spent four (4) days in
10 the Sonoma County jail awaiting bail. Again the charges against him
11 were dismissed. He was factually innocent of the charges brought.

12 9. Plaintiffs HAYNIE, and RICHARDS along with the Institutional Plaintiffs
13 CALGUNS FOUNDATION, INC., and SECOND AMENDMENT
14 FOUNDATION, INC., seek injunctive and declaratory relief against
15 Defendants HARRIS and the CALIFORNIA DEPARTMENT OF JUSTICE
16 that the California Penal Codes and Regulations defining Assault Weapons
17 are unconstitutionally vague and ambiguous and therefore result in wrongful
18 arrests and seizures of lawfully possessed/owned arms. They further allege
19 that the unconstitutionally vague and ambiguous definitions of assault
20 weapons and the ongoing risk of arrest and seizure have a chilling effect on
21 the fundamental right to “keep and bear” arms of ordinary and common
22 design as protected by the Second Amendment to the United States
23 Constitution.

24

25 **PARTIES**

26 10. Plaintiff MARK AARON HAYNIE is a natural person and citizen of the
27 United States and of the State of California and was at all material times a
28 resident of Alameda County.

1 a. In a prior iteration of this action, HAYNIE had sued the City of
2 Pleasanton and the Pleasanton Police Department. Those defendants
3 were dismissed after reaching a cash settlement with Plaintiff
4 HAYNIE.

5 b. Plaintiff HAYNIE does not seek monetary damages against any
6 remaining defendants.

7 11. Plaintiff BRENDAN RICHARDS is a natural person and citizen of the
8 United States and of the State of California. He is an honorably discharged
9 United States Marine with six months of combat duty in Iraq.

10 a. In a prior iteration of this action, RICHARDS had sued the County of
11 Sonoma Sheriff’s Department and Sheriff’s Deputy Myers. Those
12 defendants were dismissed after reaching a non-cash settlement with
13 Plaintiff RICHARDS.

14 b. In a prior iteration of this action, RICHARDS had sued the City of
15 Rohnert Park and Officer Dean Becker (RP34). Those defendants were
16 dismissed after reaching a non-cash settlement with Plaintiff
17 RICHARDS.

18 c. Plaintiff RICHARDS does not seek monetary damages against any
19 remaining defendants.

20 12. Plaintiff THE CALGUNS FOUNDATION, INC., (CGF) is a non-profit
21 organization incorporated under the laws of California with its principal
22 place of business in San Carlos, California. The purposes of CGF include
23 supporting the California firearms community by promoting education for all
24 stakeholders about California and federal firearms laws, rights and
25 privileges, and defending and protecting the civil rights of California gun
26 owners. As part of CGF’s mission to educate the public – and gun-owners in
27 particular – about developments in California’s firearm laws, CGF assists in
28 the maintenance and contributes content to an internet site called

1 Calguns.net. [<http://www.calguns.net/calgunforum/index.php>] On that
2 website CGF informs its members and the public at large about pending civil
3 and criminal cases, including but not limited to: arrests, convictions and
4 appeals relating to California gun law. The website itself contains messages,
5 forums and various posts that document the concerns that California gun
6 owners have about possible arrest, prosecution and conviction for running
7 afoul of California’s vague and ambiguous laws relating to so-called Assault
8 Weapons. CGF represents its members and supporters, which include
9 California gun owners and Plaintiffs HAYNIE, and RICHARDS. CGF brings
10 this action on behalf of itself and its supporters, who possess all the indicia of
11 membership.

12 13. Plaintiff SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-
13 profit membership organization incorporated under the laws of Washington
14 with its principal place of business in Bellvue, Washington. SAF has over
15 650,000 members and supporters nationwide, including California. The
16 purposes of SAF include education, research, publishing and legal action
17 focusing on the Constitutional right to privately owned and possess firearms,
18 and the consequences of gun control. SAF brings this action on behalf of
19 itself and its members.

20 14. Defendant KAMALA HARRIS is the Attorney General of the State of
21 California and she is obligated to supervise her agency and comply with all
22 statutory duties under California Law. She is charged with enforcing,
23 interpreting and promulgating regulations regarding California’s Assault
24 Weapons Statutes. Furthermore, California Penal Code §§ 13500 *et seq.*,
25 establishes a commission on Peace Officer Standards and Training that
26 requires the DEPARTMENT OF JUSTICE, with the Attorney General as an
27 *ex officio* member of the commission, which is to provide personnel, training
28 and training material to cities and counties to insure an effective and

1 professional level of law enforcement within the State of California.
2 Furthermore, California Attorney General KAMALA HARRIS has concurrent
3 prosecutorial jurisdiction with the state’s 58 District Attorneys, and she is
4 bound by a duty to seek substantial justice and avoid the filing of criminal
5 charges in which she knows (or should know) are not supported by probable
6 cause. HARRIS also has an independent duty to disclose information
7 beneficial to the accused and by extension she has a duty to prevent wrongful
8 arrests in the first place when she has the power to do so.

9 15. Defendant CALIFORNIA DEPARTMENT OF JUSTICE is an agency of the
10 State of California, headed by the Attorney General of the State, with a
11 statutory duty to enforce, administer and interpret the law and promulgate
12 regulations regarding weapons identified by the California Legislature as
13 “Assault Weapons.” This agency also has the power to issue memorandums,
14 bulletins and opinion letters to law enforcement agencies throughout the
15 State regarding reasonable interpretations of what constitutes an “Assault
16 Weapon” under California Law.

17 16. Plaintiffs allege on information and belief that the majority of municipal
18 police departments and sheriffs’ offices in California conduct peace officer
19 training on the identification and regulation of deadly weapons as defined by
20 California law and that any failure by these local law enforcement agencies
21 to conduct adequate training is based on an intentional or deliberate
22 indifference to the rights of gun-owners by the Defendants HARRIS and
23 CALIFORNIA DEPARTMENT OF JUSTICE.

24 17. Plaintiffs further allege on information and belief the following alternative
25 theories of liability against the Defendants:

26 a. Defendants HARRIS and/or CALIFORNIA DEPARTMENT OF
27 JUSTICE, intentionally or through deliberate indifference to the rights
28 of law-abiding gun-owners, have failed to promulgate appropriate

1 memoranda, industry bulletins and/or regulations to assist local law
2 enforcement agencies in properly identifying Assault Weapons as
3 defined by California Law; and/or

4 b. California Law purporting to define and regulate Assault Weapons is
5 so unconstitutionally vague and ambiguous that no reasonable person
6 (i.e., the general public, local police, etc.) can identify and/or comply
7 with California’s laws regulating this class of weapons.

8
9 **JURISDICTION AND VENUE**

10 18. This Court has subject matter jurisdiction over this action pursuant to 28
11 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1988.

12 19. This Court has supplemental jurisdiction over any state law causes of action
13 arising from the same operative facts under 28 U.S.C. § 1367.

14 20. Venue for this action is proper under 28 U.S.C. §§ 1391 and/or the Civil Local
15 Rules for bringing an action in this district.

16
17 **CONDITIONS PRECEDENT**

18 21. All conditions precedent have been performed, and/or have occurred, and/or
19 have been excused, and/or would be futile.

20
21 **FACTS - Plaintiff HAYNIE**

22 22. On or about February 7, 2009, officers of the PLEASANTON POLICE
23 DEPARTMENT arrested and detained MARK HAYNIE thus depriving him
24 of his liberty. The agency case numbers for the incident are: CEN: 09-6635
25 and PFN: BHD164. The docket number was: 09318856.

26 23. MARK HAYNIE was cited for possession of an Assault Weapon under
27 California Penal Code § 30600 et seq. Bail was set at \$60,000.00. This
28 caused MARK HAYNIE to have to pay a \$6,000 fee to a bail bondsman.

- 1 24. MARK HAYNIE's rifle was not an Assault Weapon because it was not listed
2 in California Penal Code § 30510 *et seq.*
- 3 25. MARK HAYNIE's rifle was not an Assault Weapons because it could not be
4 identified under Penal Code § 30510 *et seq.* with the characteristics of an
5 assault weapon in that:
- 6 a. It did not have a "detachable magazine" as that term is defined by
7 California statutory law and regulations promulgated by the
8 Defendant CALIFORNIA DEPARTMENT OF JUSTICE.
 - 9 b. MARK HAYNIE's rifle did have a "bullet button" which requires the
10 use of a tool (a bullet being defined as a tool by the California Code of
11 Regulations) to remove the magazine from the gun, thus making the
12 magazine non-detachable.
- 13 26. MARK HAYNIE's rifle is based on the popular and common Colt AR-15 rifle.
14 It is functionally identical to an AR-15 except that the magazine (as noted
15 above) is non-detachable and the non-detachable magazine capacity does not
16 exceed ten (10) rounds.
- 17 27. Several manufacturers offer several models of semi-automatic, center-fire
18 rifles that are not "assault weapons" as defined by California law. Examples:
- 19 a. Ruger Mini-14 Ranch Rifle. (Caliber 5.56mm NATO/.223 Rem.)
 - 20 b. Ruger Mini Thirty Rifle. (Caliber 7.62 x 39mm) Ruger 99/44 Deerfield
21 Carbine. (Caliber .44 Remington Magnum)
 - 22 c. Remington Model 750 Woodmaster. (Available in several calibers.)
 - 23 d. Browning BAR. (Available in several calibers.)
 - 24 e. Benelli R1 Rifle. (Available in several calibers.)
- 25 28. MARK HAYNIE made all required court appearances. The Alameda County
26 District Attorney's office declined to file an information against MARK
27 HAYNIE and the matter was formally dropped from the Alameda County
28 Superior Court Criminal Docket on March 27, 2009.

- 1 29. MARK HAYNIE was deprived of his liberty until March 27, 2009 when bail
2 was exonerated in Department 701 by Superior Court Judge Walker.
- 3 30. MARK HAYNIE lost time off from work to make court appearances and
4 incurred other losses associated with said criminal charges.
- 5 31. MARK HAYNIE was deprived of the possession and use of valuable personal
6 property (a rifle) from the date of his arrest until mid-June of 2009 when he
7 reacquired the firearm from the PLEASANTON POLICE DEPARTMENT.
- 8 32. On or about October 21, 2009, MARK HAYNIE obtained a finding of factual
9 innocence under California Penal Code 851.8 from the PLEASANTON
10 POLICE DEPARTMENT.
- 11 33. After termination of his criminal case and while this case was pending,
12 MARK HAYNIE wrestled with whether or not he should “keep and bear”
13 such a controversial weapon. He eventually sold his firearms for a number of
14 reasons, including but not limited to a reasonable fear that he would face
15 future additional arrests. This reasonable fear is based on:
- 16 a. As part of MARK HAYNIE’s enjoyment of his Second Amendment
17 rights, he regularly goes to the range to shoot his rifles. These ranges
18 are public places. Because the rifle he wants to reacquire looks like a
19 contraband weapon, he draws attention to himself by possessing this
20 legal version of the rifle in these public settings. This makes it more
21 likely that HAYNIE will have future law enforcement contact and
22 possible arrest, based on possession of this particular rifle.
 - 23 b. MARK HAYNIE’s knowledge about the dangers of owning these
24 weapons was gained from his own experiences.
 - 25 c. MARK HAYNIE’s knowledge about the risks of exercising his rights is
26 also gained from Calguns.net, where he has learned about multiple
27 wrongful arrests of law-abiding gun owners charged under California’s
28 vague and ambiguous Assault Weapon Statutes.

1 34. Based on his knowledge of these other cases – including co-plaintiff
2 RICHARDS – and his own personal experience, Plaintiff HAYNIE has a
3 reasonable fear that he may suffer repeated wrongful arrests in the future if
4 he reacquires a firearm that local law enforcement agencies continue to
5 confuse with firearms defined by California as Assault Weapons. This
6 reasonable fear results in a chilling of his fundamental right to “keep and
7 bear” arms of common use and ordinary design.

8 35. CALGUNS FOUNDATION, INC., paid for Plaintiff MARK HAYNIE’S
9 representation in the criminal matter in the amount of: \$3,713.43.

10 36. CALGUNS FOUNDATION, INC., has also paid for the defense of other
11 California residents similarly situated. (e.g., charged with possession of
12 Assault Weapons and dismissal of charges.)

13 37. On or about May 10, 2010, the Defendants CITY OF PLEASANTON and
14 CITY OF PLEASANTON POLICE DEPARTMENT were dismissed from this
15 case after payment to MARK HAYNIE of \$6,000 and a release of all claims.

16 38. Because Defendant CALIFORNIA DEPARTMENT OF JUSTICE has taken
17 the position in prior pleadings in this case that HAYNIE’s arrest was indeed
18 wrongful and that there is nothing they can do to further clarify the
19 detachable magazine feature and bullet-button technology, they (DOJ) have
20 adopted an admission that the California Assault Weapon regulatory regime
21 (statutes and regulations) cannot be improved upon by any means at their
22 disposal to prevent future wrongful arrests.

23 39. Plaintiffs herein allege that if no further clarifications of California’s Assault
24 Weapons statutes and regulations are desirable or (legally?) possible, yet
25 innocent gun-owners continue to be arrested by local law enforcement
26 agencies and charged with violating Penal Code § 30600 *et seq.*, then only one
27 conclusion can follow – the entire set of laws and regulations defining
28 California Assault Weapons are unconstitutionally vague and ambiguous.

FACTS – Plaintiff RICHARDS (First Arrest)

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- 40. On or about May 20, 2010, Defendant BECKER arrested Plaintiff RICHARDS thus depriving him of his liberty.
- 41. On or about May 20, 2010, Defendant BECKER seized firearms (2 pistols and 1 rifle) from Plaintiff RICHARDS, thus depriving him of the means of exercising his Second Amendment rights.
- 42. The arresting agency case number for the incident is: 10-0001930. The docket number for the Sonoma Superior Court Case was: SCR 583167.
- 43. Defendant BECKER investigated a disturbance at a Motel 6 located at 6145 Commerce Blvd., which was within his operational jurisdiction.
- 44. While both men were on the sidewalk at the motel, Defendant BECKER questioned Plaintiff RICHARDS about his involvement in the disturbance, and during the conversation, RICHARDS revealed that he had unloaded firearms in the trunk of his vehicle.
- 45. Defendant BECKER indicated that he planned to search the trunk of RICHARDS’ vehicle and began to walk toward RICHARDS’ car. After BECKER asked a second time if Plaintiffs’ firearms were loaded and responding “no”, RICHARDS inquired whether OFFICER BECKER needed a warrant to search the trunk of his car.
- 46. Apparently relying on Penal Code § 25850, OFFICER BECKER replied that since RICHARDS had admitted that firearms were in the trunk, no warrant was necessary.
- 47. Only after this statement, and in obedience to BECKER’S demand, did RICHARDS turn over the keys to the trunk of his vehicle.
- 48. OFFICER BECKER found two pistols and one rifle, along with other firearm-related equipment in the trunk. None of the firearms were loaded.
- 49. OFFICER BECKER inquired about the registration of Plaintiff’s firearms and RICHARDS replied that those firearms that required registration were

1 in fact registered to him.

2 50. OFFICER BECKER placed RICHARDS under arrest for a violation of CA
3 Penal Code § 30600 *et seq.* – Possession of an unregistered Assault Weapon.

4 51. On the strength of an incident report prepared by OFFICER BECKER, who
5 claimed to be a firearm instructor and an expert witness having previously
6 testified about the identification of Assault Weapons, Plaintiff RICHARDS
7 was charged by the Sonoma County District Attorney with the following
8 crimes by way of felony complaint:

9 a. Two counts of possession of an Assault Weapon under California Penal
10 Code § 30600 *et seq.*

11 b. Four counts of possession of large capacity magazines. CA Penal Code
12 § 16590 *et seq.*

13 52. Bail was set at \$20,000.00. RICHARDS spent 6 days in jail while his family
14 tried to raise the funds for bail. Finally, a \$1,400 non-refundable fee was paid
15 to a bondsman and RICHARDS was released on bail.

16 53. On September 9, 2010, prior to a scheduled Preliminary Hearing, the Sonoma
17 County District Attorney’s Office dismissed all charges against Plaintiff
18 BRENDAN RICHARDS.

19 54. The dismissal was based on an August 16, 2010, report prepared by Senior
20 Criminalist John Yount of the California Department of Justice Bureau of
21 Forensic Services. Criminalist Yount had found that none of RICHARDS
22 firearms were Assault Weapons as defined by the California Penal Code or
23 any of its regulations.

24 a. One firearm (a semi-automatic pistol) had a properly installed bullet
25 button, thus rendering the firearm incapable of accepting a detachable
26 magazine that could only be removed from the gun by the use of a tool.

27 b. The other firearm (a semi-automatic rifle) had none of the features or
28 characteristics that make a firearm subject to registration under CA’s

1 Assault Weapon regime.

2 c. There was never an issue with the third firearm (another semi-
3 automatic pistol that is actually on the California safe handgun list)
4 being classified as an assault weapon and it was registered to Plaintiff.

5 55. All of RICHARDS’ firearms were semi-automatic guns. California certifies
6 scores of semi-automatic pistols (including models based on the venerable .45
7 Cal. M1911 of World War II vintage) for retail sale in California.
8 Additionally, several manufacturers offer several models of semi-automatic,
9 center-fire rifles that are not “assault weapons” under California law.

10 Examples include:

- 11 a. Ruger Mini-14 Ranch Rifle. (Caliber 5.56mm NATO/.223 Rem.)
- 12 b. Ruger Mini Thirty Rifle. (Caliber 7.62 x 39mm) Ruger 99/44 Deerfield
13 Carbine. (Caliber .44 Remington Magnum)
- 14 c. Remington Model 750 Woodmaster. (Available in several calibers.)
- 15 d. Browning BAR. (Available in several calibers.)
- 16 e. Benelli R1 Rifle. (Available in several calibers.)
- 17 f. Springfield Armory M1A with California legal muzzle break and 10-
18 round magazines.
- 19 g. World War II Era M1 Garand, available for mail order sales from the
20 United States Government through the Civilian Marksmanship
21 program. <http://www.thecmp.org/Sales/rifles.htm>
- 22 h. World War II Era M1 Carbines, also available for mail order sales from
23 the United States Government through the Civilian Marksmanship
24 program. <http://www.thecmp.org/Sales/rifles.htm>

25 Thus, Plaintiffs herein aver that semi-automatic firearms are common and
26 ordinary weapons, suitable for exercising Second Amendment rights.

27 56. After the government’s release of the expert’s report, the Prosecution had
28 further discussions with RICHARDS’ Counsel, wherein it was pointed out

1 that California law does not criminalize mere possession of large capacity
2 magazines. Upon The People’s concession that this is the state of the law in
3 California, all charges against RICHARDS were dismissed.

4 57. RICHARDS, through counsel, made several inquiries over the next several
5 months to the Sonoma County District Attorney about a stipulation of factual
6 innocence under Penal Code § 851.8. These negotiations reached an impasse
7 when the District Attorney insisted on a finding that there was probable
8 cause for the police to arrest RICHARDS as a *quid pro quo* for their
9 stipulation for a finding of factual innocence. In other words, it can be
10 inferred that the Sonoma County District Attorney still believed, after
11 dismissing the case against RICHARDS, that there is enough ambiguity in
12 the California Assault Weapon statutes and regulations that reasonable
13 minds can differ and that experts are required to interpret the law. Of course
14 this set of circumstances will still result in gun-owners continuing to be
15 arrested, having to post bail, and having to hire attorneys and experts to
16 clear their names.

17 58. BRENDAN RICHARDS made all required court appearances until the
18 matter was dismissed on September 9, 2010.

19 59. BRENDAN RICHARD was thus deprived of his liberty while he was
20 incarcerated pending the posting of bail and then through to September 9,
21 2010, when the case was dismissed and bail was exonerated.

22 60. BRENDAN RICHARDS lost time off from work and incurred travel expenses
23 to make court appearances. He also incurred other losses associated with the
24 criminal case against him.

25 61. BRENDAN RICHARDS was deprived of the possession and use of valuable
26 personal property (two pistols and a rifle), necessary for exercising his Second
27 Amendment “right to keep and bear arms.” This deprivation of
28 constitutionally protected property occurred from the date of his arrest until

1 the property was returned to him following the dismissal.

2 62. THE CALGUNS FOUNDATION, INC., paid \$11,224.86 for Plaintiff

3 BRENDAN RICHARDS' legal representation in the first criminal matter.

4 63. THE CALGUNS FOUNDATION, INC., has also paid for the defense and

5 expert consultations for many other California residents similarly situated.

6 (e.g., possession of a "bullet button" semi-automatic rifle, arrest and

7 dismissal of charges.)

8 64. On December 19, 2013, CITY OF ROHNERT PARK and OFFICER DEAN

9 BECKER were dismissed from this action (Doc #90) after a declaration was

10 provided by the Director of Public Safety for the City of Rohnert Park (Brian

11 Masterson) that the terms "have the capacity to accept a detachable

12 magazine", "bullet button", "pistol grips" and "flash hidere" lack sufficient

13 clarity such that it is difficult for officer in the field to determine if a firearm

14 that looks like an assault weapon is in fact an assault weapon. This Director

15 of Public Safety of a local law enforcement agency believes it would be helpful

16 to police officers and the general public if the State of California or some

17 judicial authority were to clarify more specifically the criteria it considers

18 relevant in determining whether a particular weapon is an assault weapon,

19 particularly as the law applies to bullet buttons, pistol grips and flash hidere.

20 [See **Exhibit P** for a true and correct copy of the Brian Masterson's

21 Declaration.]

22

23 **FACTS – Plaintiff RICHARDS (Second Arrest)**

24 65. On or about August 14, 2011, the Sonoma County Sheriff's Office acting

25 through Sheriff's Deputy Greg Myers, arrested Plaintiff RICHARDS thus

26 depriving him of his liberty.

27 66. On or about August 14, 2011, the Sonoma County Sheriff's Office acting

28 through Sheriff's Deputy Greg Myers, made contact with RICHARDS,

1 wherein RICHARDS informed the arresting officer that there were firearms
2 located in the trunk of his vehicle. RICHARDS declined to consent to a
3 search of the trunk. The arresting officer then hand-cuffed RICHARDS and
4 proceeded to conduct a warrantless search of the vehicle in apparent reliance
5 on Penal Code § 25850. The arresting officer seized a Springfield Armory
6 M1A from the trunk of Plaintiff RICHARDS car.

7 67. The arresting officer apparently believed that the muzzle break installed on
8 RICHARDS' rifle was a flash suppressor. RICHARDS was charged with a
9 single felony count of violating California Penal Code § 30600 *et seq.*, –
10 possession of an assault weapon. Bail was initially set at \$100,000.

11 68. A motion to reduce bail was made on or about August 18, 2011, and bail was
12 reduced to \$20,000. RICHARDS was released on bail that day after posting a
13 non-refundable fee to a bail bondman of approximately \$2,000.

14 69. Prior to the next court appearance, the weapon in question was examined by
15 the California Department of Justice Bureau of Forensic Services. Senior
16 Criminalist John Yount issued a report on or about August 29, 2011, that the
17 firearm was not an Assault Weapon under California law.

18 70. The arresting officer either lacked the training to properly distinguish a
19 muzzle break from a flash suppressor and/or the definition of a flash
20 suppressor is so vague and ambiguous that a well trained peace officer can
21 easily confuse a flash suppressor with a muzzle break.

22 71. The California Department of Justice has never promulgated objective
23 standards for identifying flash suppressors. Plaintiffs allege on information
24 and belief that the CALIFORNIA DEPARTMENT OF JUSTICE in fact relies
25 upon manufacturer catalogs and marketing materials, rather than objective
26 scientific tests to determine whether a device is a flash suppressor, flash-
27 hider, muzzle break and/or recoil compensator.

28 72. On or about September 19, 2011, the charges against RICHARDS were

1 dismissed. Although he was cleared by the government’s own expert, the
2 Sonoma County D.A. declined to stipulate to a finding of factual innocence.

3 73. The weapon in question – Springfield Armory model M1A is a common and
4 ordinary firearm suitable for exercising the “right to keep and bear arms”
5 under the Second Amendment to the United States Constitution.

6 74. RICHARDS lost time off of work. He was required to post bail. CALGUNS
7 FOUNDATION, INC., again paid RICHARDS’ criminal defense lawyer.

8 75. Following this second arrest on charges of violating California Penal Code §
9 30600 – possession of an Assault Weapon – Plaintiff RICHARDS has a
10 reasonable fear, that by exercising a fundamental right protected by the U.S.
11 Constitution, he is realistically threatened by a repetition of wrongful
12 arrests. He further contends that the claim of future injury cannot be
13 written off as mere speculation. RICHARDS also bases his fear of repeated
14 arrests on the information he obtains from the Calguns.net website.

15 76. During the course of this litigation, Plaintiffs reached an agreement to
16 dismiss the Sonoma County Defendants (the Sheriff’s Office and Deputy
17 Myer) from the case in consideration of Sonoma Sheriff-Coroner Steve
18 Freitas’ declaration that California Law defining “flash suppressor” is vague
19 and ambiguous. [See **Exhibit O** attached hereto. The exhibit is pages 8 and
20 9 of a 9-page settlement agreement.]

21 **FACTS – Relating to Vague and Ambiguous Laws Impacting**
22 **the Second Amendment**

23 77. The CALIFORNIA DEPARTMENT OF JUSTICE is the State agency
24 responsible for the training and education of law enforcement agencies with
25 respect to Assault Weapons under Penal Code §§ 30520 and 31115.

26 a. Penal Code § 30520 states: “The Attorney General **shall** adopt those
27 rules and regulations that **may** be necessary **or** proper to carry out the
28 purposes and intent of this chapter.” [emphasis added]

1 b. Penal Code § 31115 states [in part]: “The Department of Justice **shall**
2 conduct a public education and notification program regarding the
3 registration of assault weapons and the definition of the weapons set
4 forth in Section 30515.” [emphasis added]

5 78. California’s definitions of Assault Weapons are set forth at Penal Code §§
6 16170(a), 16250, 16790, 16970, and 30500-31115.

7 79. The California Code of Regulations interpreting the statutory definition of
8 assault weapons are found at Title 11, Division 5, Chapters 39 & 40.

9 80. The Orange County Sheriff’s Department has issued a training bulletin about
10 the “bullet button” to prevent wrongful arrests in that county. A true and
11 correct copy is attached as **Exhibit A**.

12 81. The City of Sacramento has issued a training bulletin about the “bullet
13 button” to prevent wrongful arrests in that jurisdiction. A true and correct
14 copy is attached as **Exhibit B**.

15 82. The Calguns Foundation Inc., has published a flow-chart to identify weapons
16 that are designated as assault weapons under California law. A true and
17 correct copy is attached as **Exhibit C**.

18 83. Defendant CALIFORNIA DEPARTMENT OF JUSTICE has promulgated an
19 “Assault Weapons Identification Guide,” an 84-page publication which
20 describes the Assault Weapons regulated in Penal Code (former) sections
21 12276, 12276.1, and 12276.5. In the Guide, the Department acknowledges
22 that a magazine is considered detachable when it “can be removed readily
23 from the firearm with neither disassembly of the firearm action nor use of a
24 tool being required. A bullet or ammunition cartridge is considered a tool.”

25 84. Defendant CALIFORNIA DEPARTMENT OF JUSTICE has declined to issue
26 a statewide bulletin or other directive regarding the “bullet button.”

27 85. Though it would not be unduly burdensome for Defendant CALIFORNIA
28 DEPARTMENT OF JUSTICE to issue a bulletin regarding the technology of

1 the bullet button and to develop a field test to insure state-wide compliance
2 with the law, the CALIFORNIA DEPARTMENT OF JUSTICE insists:

3 a. That this Court does not have the power to compel issuance of such a
4 bulletin, and/or

5 b. That the California Assault Weapon Statutes and Regulations are
6 sufficiently clear that the risk of arrest and prosecution should be
7 borne by the citizens of California and/or that the risks of paying
8 damages for false arrest should be borne by local law enforcement
9 agencies.

10 At this stage of the litigation, Plaintiffs are prepared to accept Defendants'
11 (DOJ) characterization that the Assault Weapon Statutes and Regulations
12 that they are charged with interpreting, educating the public about and
13 enforcing are not subject to any further clarification by their agency.

14 86. Instead, Plaintiffs will aver that the entire California Assault Weapon
15 Statutes and the Regulations derived therefrom are vague and ambiguous on
16 their face and as applied to HAYNIE and RICHARDS.

17 87. Furthermore, Plaintiffs allege that Defendant CALIFORNIA DEPARTMENT
18 OF JUSTICE has contributed – through its policies, procedures and customs
19 – to a state of general confusion of California’s Assault Weapons laws thus
20 rendering them hopelessly vague and ambiguous as applied; and thus an
21 infringement of the Second Amendment to the United States Constitution.

22
23 **FACTS – Department of Justice Creates Confusion**

24 88. The formation of CGF was partially inspired by a desire to counteract a
25 disinformation campaign orchestrated by the California Department of
26 Justice (DOJ) in response to gun owners realizing the implications of the
27 California Supreme Court Decision in *Harrot v. County of Kings* and the
28 expiration of the Federal Assault Weapons laws.

1 89. In late 2005, various individuals and licensed gun stores began importing
2 into California AR pattern rifles and the receivers for them.

3 90. In response to inquiries about the legality of importing and possessing
4 certain AR and AK pattern rifles and receivers, DOJ began replying in their
5 official letters that while THEY were of the opinion that these rifles were
6 legal, local District Attorneys might disagree and prosecute anyway. True
7 and correct copies of these letter are attached as **Exhibit D** and they all
8 follow a similar pattern of declaring a certain gun part (receiver) legal to
9 import into California and then warning the recipient that California's 58
10 District Attorneys may have a different opinion that could result in
11 prosecution. See:

- 12 i. December 12, 2005 letter from DOJ to Ms. Amanda Sitar
13 rendering an opinion about the legality of a Stag-15 Lower
14 receiver but warning that local prosecutors may disagree and
15 prosecute accordingly.
- 16 ii. January 18, 2006 letter from DOJ to BST Guns also opining out
17 the legality of firearms, but giving the same warning the 58
18 county prosecutors could potentially prosecute anyway.
- 19 iii. December 28, 2005 letter from DOJ to Matthew Masuda.
- 20 iv. December 27, 2005 letter from DOJ to Christopher Kjellberg.
- 21 v. December 27, 2005 letter from DOJ to Kirk Haley.
- 22 vi. December 28, 2005 letter from DOJ to Mark Mitzel.
- 23 vii. December 28, 2005 letter from DOJ to Jason Paige.

24 91. From February to May 2006, the California Department of Justice issued a
25 series of memorandums that were obtained as part of a California Public
26 Records Request. A true and correct copy of that disclosure is Attached as
27 **Exhibit E**. The memorandums are remarkable because:

- 28 a. The Department of Justice made changes to the various versions of

1 this memorandum due to Jason Davis, then an attorney for the
2 National Rifle Association, pointing out legal flaws in the various
3 iterations.

4 b. In all versions of the memorandum, the Department of Justice directly
5 conflicted the previously published Assault Weapons Information
6 Guide by stating that owners of a firearm with features had to,
7 “permanently alter the firearm so that it cannot accept a detachable
8 magazine.” “Permanent alteration” is not required in the Penal Code,
9 the Assault Weapons Information Guide, or the then existing
10 California Code of Regulations 11 C.C.R. 5469.

11 92. On or about May 10, 2006, DOJ counsel Alison Merrilees informed a member
12 of the public that the DOJ wished to create a test case, “[w]e are eagerly
13 awaiting a test case on this, because we think we’ll win.” A true and correct
14 copy of the email that was obtained as part of a Public Records Act request is
15 attached as **Exhibit F**.

16 93. In May 2006, DOJ issued an internal memo to phone staff that stated, “It is
17 DOJ’s opinion that under current law, a semiautomatic centerfire rifle that is
18 modified to be temporarily incapable of accepting a detachable magazine, but
19 can be restored to accommodate a detachable magazines, is an assault
20 weapons if it has any of the features listed in §12276.1(a)(1),” and
21 “Individuals who alter a firearm designed and intended to accept a
22 detachable magazine in an attempt to make it incapable of accepting a
23 detachable magazine do so at their legal peril,” stating further, “[w]hether or
24 not such a firearm remains capable of accepting a detachable magazine is a
25 question for law enforcement agencies, district attorneys, and ultimately
26 juries of twelve persons, not the California Department of Justice.” A copy of
27 this memorandum was obtained as part of a Public Records Act Request and
28 is attached as **Exhibit G**.

- 1 94. On or about June 6, 2006, DOJ issued a Notice of Proposed Rulemaking. The
2 proposed amendment would have “define[d] a sixth term, “capacity to accept
3 a detachable magazine”, as meaning “capable of accommodating a detachable
4 magazine, but shall not be construed to include a firearm that has been
5 permanently altered so that it cannot accommodate a detachable magazine.”
6 A true and correct copy of the notice is attached as **Exhibit H**.
- 7 95. On or about November 1, 2006, DOJ issued a “Text of Modified Regulations”
8 The updated text attempted to define “detachable magazine” as “currently
9 able to receive a detachable magazine or readily modifiable to receive a
10 detachable magazine” and had other “permanency” requirements. A true and
11 correct copy of the notice is attached as **Exhibit I**.
- 12 96. Plaintiff CGF alleges on information and belief, DOJ did not submit the
13 Modified Regulations to the Office of Administrative Law (“OAL”) and thus
14 the 2006 Rulemaking did not take effect.
- 15 97. On or about July 11, 2007, CGF (through Gene Hoffman, the Chairman of
16 CGF) petitioned the OAL to have them find that the continued publication of
17 the “Important Notice” Memorandum after the 2006 Rulemaking that was
18 not submitted to OAL was an “Underground Regulation.” See **Exhibit J**.
- 19 98. On or about September 11, 2007, OAL accepted Hoffman’s petition. See
20 **Exhibit K**.
- 21 99. On or about September 21, 2007, OAL suspended it’s review as DOJ issued a
22 certification on or about September 20, 2007, that stated, “[DOJ] reserves the
23 right to interpret the law in any case-specific adjudication, as authorized in
24 *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557,572.” A
25 true and correct copy of the letter from the OAL along with DOJ’s
26 certification is attached as **Exhibit L**.
- 27 100. The reservation in the certification of September 20, 2007, leads to
28 uncertainty over whether the DOJ would take the position that permanence

1 was required for modifications to a firearm so that the firearm would not
2 have “the capacity to accept a detachable magazine.”

3 101. On or about September 29, 2008, DOJ responded to a letter inquiry about the
4 legality of selling a semiautomatic center fire rifle with an alternate version
5 of the bullet button colloquially known as the Prince-50 kit. DOJ stated:

6 “Since there are no statutes, case law, or regulations concerning
7 whether a rifle that is loaded with a fixed, removeable magazine can
8 also be considered to have the ‘capacity to accept a detachable
9 magazine,’ we are unable to declare rifles configured with the ‘Prince
10 50 Kit’ or ‘bullet button’ to be legal or illegal.”

11 See **Exhibit M**, with special attention to Attachment A, which is the letter
12 dated September 29, 2008.

13 102. On November 3, 2008, DOJ replied to Kern County DA Edward Jagels:

14 “Since there are no statutes, case law, or regulations concerning
15 whether a rifle that is loaded with a fixed, removeable magazine
16 can also be considered to have the ‘capacity to accept a
17 detachable magazine,’ we are unable to declare rifles configured
18 with the ‘Prince 50 Kit’ or ‘bullet button’ to be legal or illegal.”

19 A true and correct copy of this letter is attached as **Exhibit N**. The letter is
20 hard to read due to multiple copies. If discovery proceeds in this matter,
21 Plaintiff would expect to obtain a cleaner copy.

22 103. Not only is the CALIFORNIA DEPARTMENT OF JUSTICE claiming it has
23 no duty to issue a clarifying bulletin to the State’s District Attorneys and
24 Law Enforcement Community, on this issue; they have apparently engaged
25 in a pattern of disinformation and confusion on the issue of whether a rifle
26 fitted with a device that makes it incapable of accepting a detachable
27 magazine is legal to own in California. It could be argued that CALIFORNIA
28 DEPARTMENT OF JUSTICE ’s firearms division has created such a state of
confusion that the entire statutory and regulatory scheme for defining
California Assault Weapons is hopelessly, and unconstitutionally vague and
ambiguous.

FACTS – Calguns Foundation, Inc., Ongoing Efforts to Assist Law Abiding Gun Owners

104. The CALGUNS FOUNDATION, INC., has defended many incidents of law abiding gun owners and retailers whose firearms were either seized, the individual was arrested and/or charged with violating Assault Weapons Control Act.

- a. In approximately April 2007, Matthew Corwin was arrested and charged with multiple violations of the AWCA. See *People v. Matthew Corwin*, Case No. GA069547, Los Angeles Superior Court.
- b. In June 2008, John Contos was arrested and charged in Solano County with a violation of (then) Penal Code § 12280 - possession and/or manufacturing of Assault Weapons based on the allegation that his rifle had an illegal thumb-hole stock. The case number was VCR198514-VF. CGF funded the defense of Mr. Contos. The case was dismissed and the D.A. stipulated to a finding of factual innocence.
- c. In November 2008, John Crivello had a semiautomatic centerfire rifle with a bullet button magazine release seized from his home in Santa Cruz, California by the Santa Cruz Police Department. Counsel provided by CGF educated the Santa Cruz District Attorney’s office. Counsel to CGF was advised that DOJ stated that it was unclear whether the bullet button was legal but that the District Attorney should file anyway. The District Attorney (ADA Dave Genochio and/or Charlie Baum) dropped charges and the firearm was returned to Mr. Crivello. CGF spent \$645.00 defending Mr. Crivello.
- d. On or about November 3, 2009, Deputy J. Finley of Orange County Sheriff’s Department seized a bullet button equipped Stag Arms AR-15 style firearm from Stan Sanders. CGF counsel was engaged to explain the legality of the firearm to the Orange County Sheriff’s Department

1 and the firearm was subsequently returned to Mr. Sanders. The
2 Orange County Training Bulletin was issued partially in response to
3 this incident. CGF spent \$650.00 defending Mr. Sanders.

4 e. On or about March 30, 2010, Robert Wolf was arrested by the
5 Riverside County Sheriff’s Department for possession of a
6 semiautomatic centerfire rifle with a “Prince 50 Kit.” CGF counsel
7 intervened and had the case dismissed on or about November 11, 2010,
8 with the firearm subsequently returned to Mr. Wolf. CGF spent
9 \$5,975.00 defending Mr. Wolf.

10 105. Plaintiffs allege on information and belief that there may be other innocent
11 gun owners, who without the resources of THE CALGUNS FOUNDATION,
12 INC., and/or THE SECOND AMENDMENT FOUNDATION, were charged
13 under these vague and ambiguous statutes/regulations and plead guilty (or
14 no contest) to lesser charges to avoid a felony conviction.

15 **FACTS – Semi-Automatic, Center-Fire Rifles and Handguns**
16 **are “Arms” Protected by the Second Amendment.**

17 106. Plaintiffs herein allege that semi-automatic center-fire rifles and handguns
18 with detachable magazines and any number of additional features (e.g., pistol
19 grips, collapsible stocks, flash suppressors, etc...) are “arms” protected by the
20 Second Amendment to the United States Constitution. Furthermore, to the
21 extent that California seeks to regulate the manufacturing, acquisition and
22 possession of semi-automatic, center-fire rifles with detachable magazines, it
23 must define them in a way that is not vague and ambiguous.

24 107. Plaintiffs herein allege that the state of confusion caused by the current
25 vague and ambiguous statutes/regulations continues to result in the wrongful
26 arrests of innocent gun-owners while they are exercising a fundamental
27 “right to keep and bear” lawful firearms. These wrongful arrests and the
28 chilling of fundamental rights violates the Second Amendment to the United

1 States Constitution as that right is incorporated against state action through
2 the Fourteenth Amendment.

3
4 **CLAIM FOR RELIEF:**
5 **SECOND AMENDMENT & FOURTEENTH AMENDMENT,**
6 **UNITED STATES CONSTITUTION**
7 **42 USC §§ 1983, 1988; 28 USC § 2201, 2202**
8 **INJUNCTIVE/DECLARATORY RELIEF**

9 108. Paragraphs 1 through 107 are incorporated by reference as though fully set
10 forth.

11 109. California’s Assault Weapon Statutes and Regulations are unconstitutionally
12 vague and ambiguous and have resulted in the wrongful arrest, detention
13 and prosecution of law-abiding citizens exercising their Second Amendment
14 right to ‘keep and bear arms’ that are in common use for lawful purposes.

15 110. California’s Assault Weapon Statutes and Regulations are unconstitutionally
16 vague and ambiguous and have resulted in the wrongful confiscation of
17 common and ordinary firearms, that are protected by the Second
18 Amendment, from their law-abiding owners.

19 111. California’s Assault Weapon Statutes and Regulations are unconstitutionally
20 vague and ambiguous and therefore have a chilling effect on the fundamental
21 right to “keep and bear arms” of common use and ordinary design.

22 112. The California Department of Justice has the power and resources to clarify
23 the law, but persist, by their failure to act upon a statutory duty, in a pattern
24 and practice of intentional disregard for the rights of law-abiding gun owners.

25 113. Only an order from this Court suspending the enforcement of the California
26 Assault Weapons Control Act, until such time as the Defendants take steps to
27 clarify the definition of Assault Weapon, can adequately address these
28 violations of the Second Amendment as incorporated against state actors
through the Fourteenth Amendment.

1 WHEREFORE, the Plaintiffs requests that this Court:

- 2 A. Issue a declaratory judgment and/or injunctive relief that California’s
3 Assault Weapon Statutes and Regulations are unconstitutional and/or
4 that this Court suspend enforcement of the California Assault
5 Weapons Act until such time as the California Department of Justice
6 issues appropriate regulations, bulletins or memoranda to prevent
7 wrongful arrests of law-abiding citizens exercising a fundamental
8 right.
- 9 B. Award costs of this action to all the Plaintiffs.
- 10 C. Award reasonable attorney fees and costs to the Plaintiffs on all
11 Claims of the complaint, including but not limited to fee/cost awards
12 under 42 USC §§ 1983, 1988 and/or California Code of Civil Procedure
13 § 1021.5.
- 14 D. Declaratory relief under 28 USC §§ 2201, 2202.
- 15 E. Such other and further relief as this Court may deem appropriate.
- 16

17 Respectfully Submitted.

18 Dated: December 20, 2013,

19 _____ /s/
20 Donald Kilmer, Jr. [SBN: 179986]
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22 1645 Willow Street, Suite 150
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25 Attorneys for Plaintiffs

26

27

Exhibit A



TRAINING BULLETIN

ORANGE COUNTY SHERIFF'S DEPARTMENT

BULLETIN NO. 10-3

ASSAULT WEAPONS

This training bulletin is intended to provide some helpful information when encountering firearms (rifles, pistols and shotguns) in the field and whether they are legal or not. This training bulletin will also help eliminate confusion as to what actually makes a rifle, pistol or shotgun legal or illegal to possess and what makes them an "assault weapon."

Whenever you take lawful possession of a firearm in the field, you should **always** run the firearm's serial number through the Automated Firearms System (AFS) to see if that firearm is legally registered or not. Here is an example of what a registered rifle's teletype print out will look like.

* **REGISTRATION**

**DO NOT ARREST BASED SOLELY ON THIS RESPONSE **

SER/902XXXXX MAK/STE STEYR CAL/223

TYP/RI RIFLE SEMI-AUTOMATIC MOD/AUG SA

DOT/1992XXXX BBL/20

NAM/SMITH,JOHN DOB/19XX11XX ADR/27XXX CAXXXX

CTY/USAXXXXXX ZIP/92XXX CCC/3000

CII/0851XXXX OLN/N743XXXX

REG/**REGISTRATION**

ORI/CA034XXX OCA/AW59XXX

FCN/1869221XXXXXX

Assault Weapons

The term "assault weapon" means any designated semiautomatic firearms as defined by Penal Code section 12276. Assault weapons are divided into three categories. These are:

- Category 1** Firearms specifically listed in Penal Code section 12276 subdivisions (a), (b), and (c) (Roberti-Roos Assault Weapons Control Act of 1989).
- Category 2** Additional firearms specifically listed by make and model expanding on the AR and AK "series" firearms in Penal Code section 12276 subdivisions (e) and (f) (Kasler v. Lockyer (2000) 23 Cal. 4th 472, AK and AR-15 series weapons).
- Category 3** Firearms that are defined by generic characteristic features of the firearm in Penal Code section 12276.1 (Senate Bill 23 or "SB 23 features").



TRAINING BULLETIN

ORANGE COUNTY SHERIFF'S DEPARTMENT

Under Category 3, PC 12276.1 (a) Notwithstanding Penal Code section 12276, "assault weapon" shall also mean the following:

Rifles

- (1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine **and** any **one** of the following:
 - (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
 - (B) A thumbhole stock.
 - (C) A folding or telescoping stock.
 - (D) A grenade launcher or flare launcher.
 - (E) A flash suppressor.
 - (F) A forward pistol grip.
- (2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.
- (3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

Notes

- Bayonets and bayonet lugs are not considered characteristics of assault weapons under California law.
- There has been an increase of AR-15 and AK-47 type firearms sold in California that at first glance appear to be an assault weapon, but these firearms have a device installed called a "Bullet Button". This device prevents the shooter from depressing the magazine release button with a finger. The magazine can quickly be released by using a "tool", which can be the tip of a bullet or some other tool to depress the enclosed magazine release button. Once a bullet button is installed and there is an attached magazine capable of holding only 10 rounds, the firearm no longer has a "detachable magazine" as required for a Category 3 type of assault weapon as per Penal Code Section 12276.1(a)(1). This is an example of a bullet button.





TRAINING BULLETIN

ORANGE COUNTY SHERIFF'S DEPARTMENT

- Companies have become creative and have a "10/30 round magazine". These magazines look just like a 30 round magazine, but have been permanently altered to only hold 10 rounds. If you are basing an assault weapon charge on the fact that a rifle has a fixed magazine with the capacity to accept more than 10 rounds, make sure you can in fact load more than 10 rounds into the magazine, Penal Code 12276.1(a)(2). **Note in your report that you were able to load more than 10 rounds into the magazine.**

Pistols

- (4) A semiautomatic pistol that has the capacity to accept a detachable magazine **and** any **one** of the following:
 - (A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
 - (B) A second handgrip.
 - (C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.
 - (D) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

Shotguns

- (6) A semiautomatic shotgun that has **both** of the following:
 - (A) A folding or telescoping stock.
 - (B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.
- (7) A semiautomatic shotgun that has the ability to accept a detachable magazine.
- (8) Any shotgun with a revolving cylinder.

.50 caliber BMG (Browning Machinegun) Semi-automatic and Single-shot Rifles

It is a felony for any person to manufacture, distribute, transport, import into California, or keep or offer for sale, or give or lend, an assault weapon or .50 BMG rifle (Penal Code § 12280).

Any person who lawfully possesses an assault weapon or .50 BMG rifle must have registered it as such with the Department of Justice (Penal Code § 12285).

If a firearm or receiver has neither a 12276.1- specified combination of characteristic features, nor is listed by make and model in PC 12276/11 CCR § 979.10 or 11 CCR § 979.11, it is **not** an assault weapon.



TRAINING BULLETIN

ORANGE COUNTY SHERIFF'S DEPARTMENT

Do **not** just book the firearm into Property for Safekeeping, especially if you are unsure of its assault weapon characteristics. Book the weapon as Evidence. Booking the weapon as Evidence will allow for follow-up investigation, if needed. When booking a firearm into property, you **shall** obtain a FCN from Teletype for each firearm booked.

Included are links to "California Firearms Laws-2007", "Assault Weapons Identification Guide" and "California Centerfire, Semi-Auto Rifle Identification Flowchart." These resources should help personnel determine if an assault weapon is lawful to possess.

Clicking on the link below will take you to the Department of Justice (DOJ) Bureau of Firearms website "California Firearms Laws-2007". This publication includes the firearms sections as well as that of dangerous weapons:

<http://ag.ca.gov/firearms/forms/pdf/Cfl2007.pdf>

For comprehensive assault weapon information, click on the following link that will take you to the California Attorney General's "Assault Weapons Identification Guide-3rd Edition, Nov. 2001":

<http://ag.ca.gov/firearms/forms/pdf/awguide.pdf>

The "California Centerfire, Semi-Auto Rifle Identification Flowchart" is an easy to follow flowchart listing yes/no questions showing the characteristics and related penal code sections of assault weapons and .50 BMG rifles. The second page of the flowchart lists all of the banned assault rifles by make and model (Class I and II) and lists the characteristics (Class III) of assault weapons. This is a resource only, much like a "quick code" and not to be used for official citation. Click on the following link:

<http://www.calguns.net/caawid/flowchart.pdf>

For further information or clarification as to whether a firearm is unlawful to possess or is an assault weapon, contact Property/Evidence Sergeant Greg Schuch at (714) 834-6485, the Katella Armory at (714) 538-2612 or Range Sergeant Paul Gilmore at (714) 538-2464.

Exhibit B



Investigations Division Training Bulletin

November, 18th 2008

Ref.#: 2008-1

Assault Weapon Cases

There has been an increase over the last two years of AR-15 & AK-47 type firearms sold in CA that at first glance appear to be an assault weapon. These firearms have a device installed called a "Bullet Button". The device prevents the shooter from depressing the magazine release button with a finger. However, the magazine can quickly be released by using the tip of a bullet or other tool to depress the enclosed magazine release button.

Once a bullet button device is installed the firearm no longer has a "detachable magazine" as required in Penal Code Section 12276.1(a)(1) and as defined in the California Code of Regulations. This allows someone to legally possess a rifle built on an off-list (not listed in PC 12276) lower receiver with a pistol grip, folding/telescoping stock, flash suppressor or a forward pistol grip because the firearm has a "fixed magazine".



1

**Detective Halstead
Sacramento Police Department
(916) 433-0671**

There are several ways to classify a firearm as an Assault Weapon. The two most common ways to determine if a firearm is an assault weapon is to refer to Penal Code Sections 12276 & 12276.1.

Penal Code Section 12276 contains a list of all the category 1 assault weapons. Any firearm named on the list in Penal Code Section 12276 is considered an assault weapon and if not registered as an assault weapon with DOJ is a violation of Penal Code Section 12280.

Penal Code Section 12276.1 is used to classify a firearm based on its generic characteristics. The make and model have no bearing on whether a firearm is an assault weapon under this section. Penal Code Section 12276.1(a) provides three separate definitions that officers can refer to when attempting to determine if a rifle is an assault weapon. A rifle only has to meet one of the following three definitions to be an assault weapon. Penal Code Section 12276.1(a) defines an assault rifle as anyone of the following:

(1) A semiautomatic, centerfire rifle that has the capacity to accept a **detachable magazine** and any one of the following:

- a) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- b) A thumbhole stock.
- c) A folding or telescoping stock.
- d) A grenade or flare launcher.
- e) A flash suppressor.
- f) A forward pistol grip.

OR

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than ten rounds.

OR

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

A rifle equipped with a “Bullet Button” can’t fall under Penal Code Section 12276.1(a)(1) because it no longer has a detachable magazine. However, Penal Code Section 12276.1(a)(2) does apply to a rifle equipped with a “Bullet Button” if it has a magazine installed that can hold more than 10 rounds.

Companies that manufacture magazines have become creative in working with California's Assault Weapon laws. They have created a magazine called a "10/30 round magazine". These magazines look just like a 30 round magazine. However, they have been permanently altered to only hold 10 rounds. Some of these magazines are marked as 10 round magazines, but many are not. If you are basing an assault weapon charge on the fact that a rifle has a fixed magazine with the capacity to hold more than 10 rounds make sure you can load more than 10 rounds into the magazine. **Note in your report that you were able to load more than 10 rounds into the magazine.

At first glance the rifle below appears to be an assault rifle. However, it is a completely legal firearm in California. The rifle is an off-list, semiautomatic, centerfire rifle with a telescoping stock, pistol grip, a fixed 10 round magazine and overall length of 31 inches.

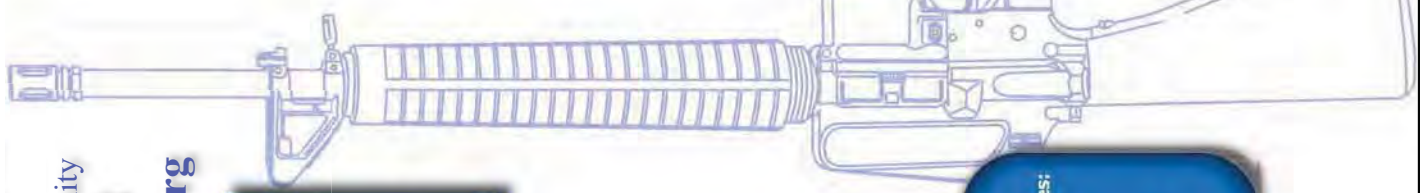


Contact Detective Halstead if you have any questions at (916) 433-0671.

**Detective Halstead
Sacramento Police Department
(916) 433-0671**

Exhibit C

Presented as a public service by:
 California's premiere firearms community
www.CALGUNS.net
 and
www.CalGunsFoundation.org

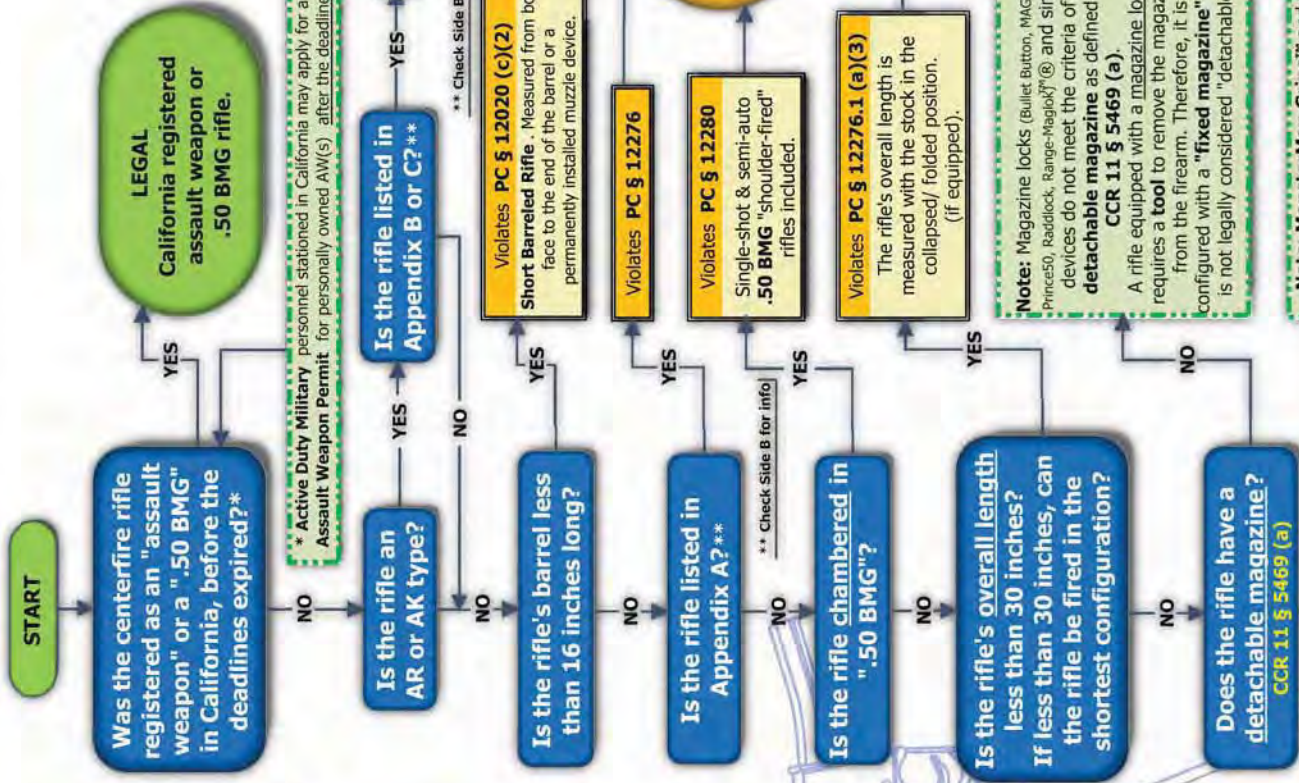


Roberti-Roos Assault Weapons Control Act of 1989
 The registration deadline for assault weapons listed in the Roberti-Roos ban was March 31, 1992.

Senate Bill 23 (SB-23)
 The registration deadline for assault weapons as "defined by characteristics" in SB-23 was December 31, 2000.

The registration deadline for assault weapons as defined by Penal Code section 12276(e) "AK and AR-15 series" assault weapons was January 23, 2001.

.50 BMG Restrictions and Registration
 The registration deadline for ".50 BMG rifles" was April 30, 2006.



Note: Magazine locks (Bullet Button, MAG-LOCK, Prince50, Raddlock, Range-MagLock®) and similar devices do not meet the criteria of a detachable magazine as defined in CCR 11 § 5469 (a).
 A rifle equipped with a magazine lock requires a tool to remove the magazine from the firearm. Therefore, it is configured with a "fixed magazine" that is not legally considered "detachable".

Note: MonsterMan Grips™ and the California Rifles U15™ stock do not meet the criteria of a pistol grip. They do not allow the user to grip the rifle with a pistol style grasp, nor do they protrude conspicuously beneath the action of the weapon. CCR 11 § 5469 (d) (see Side B for pictures)

<p>IST PC section 12276 (a), (d), and (c).</p> <p>Category 2 - was the legally ambiguous definition targeting AR and AK "series" firearms in PC 12276(e). This definition was modified by the California Supreme Court in 2001 in what is known as the Harrott v. County of Kings (2001) 25 Cal.4th 1138. The DOJ was required to create an additional list of firearms by make and model. It is available in CCR 11 § 5469 and is sometimes referred to as the "series list". Then came AB2728, which prevents the DOJ from ever updating the list after Jan 2007.</p> <p>Category 3 - are defined by characteristic features listed in PC 12276.1. These are sometimes referred to as "SB23 features" (Senate Bill 23).</p>	<p>Characteristics of a Assault Weapon PC 12276.1 (a)</p> <p>12276.1 (a) Notwithstanding PC section 12276, assault weapon shall also mean the following: Rifles</p> <p>(1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine CCR 11 § 5469 (a) and any one of the following:</p> <p>(A) A pistol grip CCR 11 § 5469 (d)</p> <p>(B) A thumbhole stock. CCR 11 § 5469 (e)</p> <p>(C) A folding or telescoping stock.</p> <p>(D) A grenade launcher or flare launcher.</p> <p>(E) A flash suppressor. CCR 11 § 5469 (b)</p> <p>(F) A forward pistol grip. CCR 11 § 5469 (c)</p> <p>(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.</p> <p>(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.</p> <p>Definition of a "Thumbhole Stock" CCR 11 § 5469 (e)</p> <p>"thumbhole stock" means a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing.</p>	<p>American Arms: AK-C 47, AK-F 47</p> <p>American Arms: AK-Y 39, AK-F 39</p> <p>Arsenal: SLG (all)</p> <p>Arsenal: SLR (all)</p> <p>B-West: AK-47 (all)</p> <p>Hesse Arms: Model 47 (all)</p> <p>Hesse Arms: Wiegler STG 940 Rifle</p> <p>Inter Ordnance - Monroe, NC: AK-47 (all)</p> <p>Inter Ordnance - Monroe, NC: M-97</p> <p>Inter Ordnance - Monroe, NC: RPK</p> <p>Kalashnikov USA: Hunter Rifle / Saiga</p> <p>MAADI CO: MISR (all)</p> <p>MAADI CO: MISTR (all)</p> <p>Mitchell Arms, Inc.: AK-47 (all)</p> <p>Mitchell Arms, Inc.: AK-47 Cal .308 (all)</p> <p>Mitchell Arms, Inc.: M-76, M-90</p> <p>Mitchell Arms, Inc.: RPK</p> <p>Norinco: 81 S (all)</p> <p>Norinco: 86 (all)</p> <p>Norinco: AK-47 (all)</p> <p>Norinco: Hunter Rifle</p> <p>Norinco: MAK 90</p> <p>Norinco: NHM 90, 90-2, 91 Sport</p> <p>Norinco: RPK Rifle</p> <p>Ohio Ordnance Works: AK-74</p> <p>Ohio Ordnance Works: ROMAK 991</p> <p>Valmet: 76 S, Hunter Rifle</p> <p>WUM: WUM (all)</p>	<p>American Spirit: USA Model</p> <p>Armalite: AR 10 (all), M15 (all)</p> <p>Armalite: Golden Eagle</p> <p>Bushmaster: XM15 (all)</p> <p>Colt: Law Enforcement (6920)</p> <p>Colt: Match Target (all)</p> <p>Colt: Sporter (all)</p> <p>Dalphon: B. F. D.</p> <p>DPMS: Panther (all)</p> <p>Eagle Arms: EA-15 A2 H-BAR, EA-15 E1</p> <p>Eagle Arms: M15 (all)</p> <p>Frankford Arsenal: AR-15 (all)</p> <p>Hesse Arms: HAR 15A2 (all)</p> <p>Knights: RAS (all), SR-15 (all)</p> <p>Knights: SR-25 (all)</p> <p>Les Baer: Ultimate AR (all)</p> <p>Olympic Arms: AR-15, Car-97, PCR (all)</p> <p>Ordnance, Inc.: AR-15</p> <p>Palmetto: SGA (all)</p> <p>Professional Ordnance, Inc.: Carbon 15 Rifle</p> <p>PWA: All Models</p> <p>Rock River Arms, Inc.: Car A2</p> <p>Rock River Arms, Inc.: Car A4 Flattop</p> <p>Rock River Arms, Inc.: LE Tactical Carbine</p> <p>Rock River Arms, Inc.: NM A2 - DCM Legal</p> <p>Rock River Arms, Inc.: Standard A-2</p> <p>Rock River Arms, Inc.: Standard A-4 Flattop</p> <p>Wilson Combat: AR-15</p>	<p>Definition of a "Detachable Magazine" CCR 11 § 5469 (a)</p> <p>"Detachable magazine" means any ammunition feeding device that can be removed from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool.</p> <p>Definition of a "Flash Suppressor" CCR 11 § 5469 (b)</p> <p>"Flash suppressor" means any device designed, intended, or that functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision. CCR 11 § 5469 (b)</p> <p>Flash Suppressor/ Flash Hider is a device attached to or integral with the muzzle of a firearm, designed to eliminate or reduce the incandescent flash of the firearm's discharge. Although they can reduce the visibility of the firearm's location when fired, they are primarily designed to prevent the shooter's vision from being blinded by the flash at night. Many flash hiders also act as a muzzle brake.</p> <p>Characteristics of a flash suppressor: The majority of these devices come in two styles. The multi prong and the birdcage flash suppressor. The inner cavity of the muzzle device is usually several times the diameter of the bore. The muzzle device usually has large slots to allow the propelling gasses to blow through: redirecting, reducing, eliminating the muzzle flash from the shooters field of vision.</p> <p>Muzzle Brake/ Muzzle Compensator is a device attached to or integral with the muzzle of a firearm, designed to redirect the propelling gasses to counter the firearm's: recoil, muzzle rise.</p> <p>Characteristics of muzzle brake: The major difference between a flash suppressor and a muzzle brake is the size of the inner cavity. The inner cavity of a muzzle brake is usually just slightly larger than the diameter of the bore. This better traps the propelling gasses behind the bullet. This forces/redirects more of the gasses to escape through small ports/slots in the muzzle device. These ports/slots are usually machined/drilled in strategic locations or angled to divert the gasses to reduce the firearm's: recoil, muzzle rise.</p>	<p>U15 Stock</p>  <p>California Rifles</p>  <p>MonsterMan Grips</p>  <p>Each individual is compelled to become familiar with Federal, State and local firearms laws as relate to their purchase, sale, transfer, possession, assembly, modification and/or use. The information presented and views contained herein shall not be construed as legal advice or as a substitute for legal representation, which can only be given by an attorney. This is a best-efforts compilation by gun rights activists, based upon our experience and research, who make no claim as to the legality or basis of the information contained herein. Although this publication is believed to be current at the time of its printing, we urge the reader to investigate these topics in detail as laws and regulations change over time. Calguns.net and the Calguns Foundation shall not be liable for the improper use of or reliance upon such information as may found at www.calguns.net, www.calgunsfoundation.org or in this publication.</p> <p>V.1.04.1008/08</p>
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Exhibit D

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 12, 2005

Ms. Amanda Sitar
Stag Arms
515 John Downey Drive
New Britain, CT 06051
Fax: (860) 229-3738
Phone: (860) 229-9994

Re: Importation of Stag-15 Lower Receiver into California

Dear Ms. Sitar:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now listed as assault weapons by the Department. It will be added shortly to the DOJ Assault Weapons Identification Guide and will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

January 18, 2006

BST Guns
A.J. Robello
1307 Scott Street, Suite D
Petaluma, CA 94954

Re: Importation of Unlisted Lower Receivers into California: Stag 15, Fulton Armory, Ameetec
Mega Gator, Superior, Sun Devil

Dear Mr. Robello:

I am writing in response to your inquiry about whether it is legal to send the unlisted AR-15 lower receivers listed above, into California.

The receivers about which you inquired are not listed as Category One assault rifles in California Penal Code 12276, and are not yet named as Category Two assault rifles. Although technically the receivers are legal to purchase and possess in California at this time (assuming they do not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that they are virtually identical to assault weapons that are now illegal in California. You should also be aware that we may add them soon to the DOJ Assault Weapons Identification Guide. Therefore, the lower receivers may soon be classified as assault weapons.

Also, please realize that this opinion is not conclusive about the legality of the receivers. A local prosecutor in one of California's 58 counties could decide to prosecute you for illegal importation of assault weapons, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Matthew C. Masuda
1182 N. Abbott Avenue
Milpitas, CA 95035

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Masuda:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

Mr. Christopher Kjellberg
6225 Garfield Court
Rocklin, CA 95765

Re: Importation of Stag-6.8 Lower Receiver into California

Dear Mr. Kjellberg:

I am writing in response to your inquiry about whether it is legal to send a Stag-6.8 lower receiver to California.

The Stag-6.8 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-6.8 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-6.8 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-6.8 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

Mr. Kirk P. Haley
7389 Pocket Road
Sacramento, CA 95822

Re: L.A.R. Manufacturing Inc. Grizzly .223 CAL receiver

Dear Mr. Haley:

I am writing in response to your letter dated December 5, 2005, inquiring about the L.A.R. Manufacturing Inc. Grizzly .223 CAL receiver. You asked about the legality of purchasing and possessing a L.A.R. Manufacturing Inc. Grizzly .223 CAL receiver in California. We are not familiar with that particular make and model of firearm, so cannot give a definitive opinion about whether or not it is legal in California. We would be happy to examine the firearm itself, or a photo thereof, in order to render an opinion.

You should be aware, however, that the receiver may be illegal if it has any of the characteristics listed in Penal Code 12276.1. Also, a local prosecutor in one of California's 58 counties could decide to prosecute you for possession of an assault weapon, regardless of our opinion about the legality of the firearm.

Please feel free to contact me again if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Mark A. Mitzel
486 Medanos Court
Fremont, CA 94539

Re: Importation of FAR-15 Lower Receiver into California

Dear Mr. Mitzel:

I am writing in response to your inquiry about whether it is legal to send a FAR-15 lower receiver to California.

The FAR-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the FAR-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the FAR-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the FAR-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

William Jason Paige
4436 Sierra Express Drive
Camino, CA 95709

Re: Importation of DSA ZM4 Lower Receiver into California

Dear Mr. Paige:

I am writing in response to your inquiry about whether it is legal to send a DSA ZM4 lower receiver to California.

The DSA ZM4 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the DSA ZM4 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the DSA ZM4 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the DSA ZM4 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General

Exhibit E



BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

FAX TRANSMISSION COVER SHEET

IMPORTANT/CONFIDENTIAL: This communication is intended only for the use of the individual or entity to which it is addressed. This message contains information from the State of California, Attorney General's Office, which may be privileged, confidential and exempt from disclosure under applicable law. If the reader of this communications is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

DATE: May 24th, 2006 **TIME:** 5:00 PM **NO. OF PAGES:** 10
(INCLUDING COVER SHEET)

TO: _____
NAME: Gene Hoffman, Jr.
OFFICE: _____
LOCATION: _____
FAX NO: (650) 522-4481 **PHONE NO.:** _____

FROM: _____
NAME: Alison Merrilees
OFFICE: Department of Justice, Firearms Division
LOCATION: Sacramento, CA
FAX NO: (916) 263-0676 **PHONE NO.:** _____

MESSAGE/INSTRUCTIONS

Documents Enclosed

PLEASE DELIVER AS SOON AS POSSIBLE!
FOR ASSISTANCE WITH THIS FAX, PLEASE CALL THE SENDER

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION

P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

May 24, 2006

Mr. Gene Hoffman Jr.
751 Sylvan Way
Emerald Hills, CA. 94062

Re: Public Records Act Request

Dear Mr. Hoffman:

I am writing in response to your letter dated May 11, 2006 requesting "copies of records relating to the various iterations of the memoranda or "Important Notices" regarding sales or possession of Unnamed AR-15/AK 47 "Series" Firearms." You requested "copies of all of the revisions of this memo/notice since December 1, 2005." You also requested "any meeting notices, emails, internal memoranda or other written or electronic records directly relating to the analysis in the various versions of these notices."

According to our records, we have posted three notices on our website regarding series-style assault weapons since December 1, 2005. The first notice was posted on February 6, 2006. The February 6, 2006 contained two typographical errors regarding the year of the *Harrott* decision and an error regarding the closing date for registration of SB 23 assault weapons. I have enclosed a copy of the February 6, 2006 notice, which is labeled as "Attachment A." That document was edited to correct the errors and to add the DOJ seal on February 7, 2006. I have enclosed a copy of the February 7, 2006 notice, which is labeled as "Attachment B."

On May 1, 2006, we removed the February 7, 2006 notice from the Firearms Division website. On May 9, 2006, we posted a revised notice regarding series-style weapons that was prepared in consultation with attorneys within the Department. It represents the Department's final policy regarding series-style weapons that have not been identified as assault weapons by the Department. I have enclosed a copy of the May 9th notice, which is labeled as "Attachment C."

None of the other documents that you requested are subject to public disclosure because they are privileged under the Evidence Code. (California Government Code §6245(k)). Therefore, we will not comply with the portion of your Public Records Act request in which you request those documents.

Hoffman PRA Request
May 24, 2006
Page 2

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General

For: BILL LOCKYER
Attorney General

Attachments

Attachment A

BILL LOCKYER
California
Attorney General
JUSTICE

State of
DEPARTMENT OF

FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487
Public: 916-263-4887

IMPORTANT NOTICE

California Department of Justice Information Regarding the Sale/Possession of Newly Identified AR-15/AK 47 "Series" Firearms

The Department of Justice (hereafter "the Department") has received numerous contacts from the public and firearms industry personnel regarding the legality of various AR-15/AK 47 "series" style firearms that have not yet been identified as "series" assault weapons by the Department. The Department is also aware of the recent high volume of sales of these firearms.

The Department has the statutory authority to identify "series" assault weapons. In 2000, the California Supreme Court upheld that authority in *Kasler v. Lockyer* (2000) 23 Cal. 4th 472. The Department updated the list of "series" weapons in 2000 (as "Category 2" assault weapons), shortly after the *Kasler* decision.

The California Supreme Court reiterated in 2003 that "the Attorney General has the authority to determine that certain semiautomatic firearms are assault weapons by simply identifying them as such in the list published by the Attorney General in the California Code of Regulations...two types of firearms defined in Penal Code (PC) section 12276 by the use of the term series, namely the AK-47 series and the Colt AR-15 series." *Harroff v. County of Kings* (2003) 25 Cal. 4th 1138, 1155.

Accordingly, the Department is currently in the process of identifying those firearms in the state that are variations, with minor differences, of AR-15/AK 47 "series" weapons. Once this process is complete, the Department will promulgate a list and file it with the Secretary of State's office. Concurrently, the Department will begin updating the Assault Weapon Identification Guide which is currently available via the Department's website at <http://ag.ca.gov/firearms/forms/index.html>. Once the list of newly identified "series" weapons is filed with the Secretary of State, citizens who possess those weapons will have 90 days to register them with the Department of Justice.

Newly identified "series" weapons cannot legally have the features listed

2/2006

IMPORTANT NOTICE

Page Two

The registration period for assault weapons with those characteristics (Category 3 assault weapons) ended on December 31, 2000. Because *non-series* assault weapons with PC section 12276.1 features may not be offered for sale, manufactured, imported, or possessed in California, it follows that newly registered *series* weapons may not have the features listed in PC section 12276.1, either.

The prohibition on the features listed in PC section 12276.1 is consistent with current DOJ policy that named *series* weapons are illegal, unless registered, regardless of whether they have the PC section 12276.1 features. It is also consistent with the intent of the California state legislature to ban assault weapons, expressed in 1991 when PC section 12276(f) was enacted.

This section is declaratory of existing law, as amended, and a clarification of the law and the Legislature's intent which bans the weapons enumerated in this section, the weapons included in Section 12276.5, and any other models which are only minor variations of those weapons with minor differences, regardless of the manufacturer [emphasis added].

It should be noted that individuals who timely registered "Category 1" and "Category 2" assault weapons were allowed to keep or add the PC section 12276.1 features on their firearms. Those generic features were not illegal during the registration period for Category 1 assault weapons. In August of 2000, when the Department identified the Category 2 *series* weapons, it was legal to register weapons with those characteristics as Category 3 assault weapons. Firearms with those features could no longer be registered as of January 1, 2001. Therefore, newly identified *series* (Category 4) weapons likewise cannot have those features.

Registrants of newly identified series weapons cannot legally add PC section 12276.1 features to those firearms. The Department intends to enforce this restriction through the assault weapon registration process. Registration acknowledgment letters will include an admonition to registrants that adding prohibited features to newly registered assault weapons will invalidate the registration. The basis for valid registration will rest solely on the fact that the Department identifies the receivers for these firearms as variations, with minor differences, of already controlled AR-15/AK 47 *series* weapons. All additional features of the newly identified *series* weapons must conform with current California law.

Firearm manufacturers, wholesalers and dealers who misinform the public about the ability to legally add prohibited features to these newly listed firearms risk criminal prosecution. They could also face civil penalties of up to \$2,500 per violation under the state's Unfair Practices Act (California Business & Professions Code section 17000 et seq.).

This information will be distributed to criminal justice agencies throughout the state, as well as to firearm dealers listed on the Department's Centralized List, via the formal Information Bulletin process.

in PC section 12276.1 when they are registered. Those features cannot legally be added after the firearms are registered as assault weapons. The PC section 12276.1 features have been banned since January 1, 2000, when Senate Bill 23 went into effect. The public was notified of the prohibition on the specified features many years ago.

Attachment B

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-4887

IMPORTANT NOTICE

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IMPORTANT NOTICE

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Attachment C

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-4887

IMPORTANT NOTICE

California Department of Justice Information Regarding the Sale/Possession of Unnamed AR- 15/AK 47 "Series" Firearms

The Department of Justice (hereafter "the Department") has received numerous inquiries from the public and firearms industry personnel about the legality of various AR-15/AK 47 "series" style firearms that have not been named by the Department as "series" assault weapons. The Department believes that the public and law enforcement are best served by reference to the generic definition of assault weapons set forth in SB 23, rather than reliance upon a scheme of identifying assault weapons by name. Therefore, the Department will not update the list of "series" assault weapons.

SB 23 has banned the possession, sale and manufacture of firearms with the characteristics of assault weapons as defined in California Penal Code §12276.1 since January 1, 2000. A semiautomatic centerfire rifle with the capacity to accept a detachable magazine and any of the generic features listed in Penal Code §12276.1(a)(1) is contraband unless it was registered prior to January 1, 2001. It is illegal to manufacture, cause to be manufactured, distribute, transport, import, keep for sale, offer or expose for sale, give or lend such a weapon, except as permitted by law.

Law enforcement officials, firearm dealers and the public should be aware that semiautomatic centerfire rifles that are modified to be temporarily incapable of accepting detachable magazines, but can be restored to accommodate detachable magazines, are assault weapons if they have any of the features listed in §12276.1(a)(1). The Department intends to exercise its power pursuant to Penal Code section 12276.5(i) to adopt regulations as "necessary or proper to carry out the purposes and intent" of California law to ban assault weapons in the state.

Individuals who own firearms that meet the generic definition of assault weapons banned by SB 23 must do one of the following in order to comply with existing law: remove the features, sell the firearm (without the features), or permanently alter the firearm so that it cannot accept a detachable magazine.

It remains illegal to possess assault weapons banned by name (either in statute or regulation), unless those assault weapons are registered and possessed in accordance with state law. The time limits for registration, which depend on the make and model of the assault weapon, are set forth in Penal Code §12285.

Exhibit F

Alison Merrilees - Re: CA assault weapons - introduction

From: Alison Merrilees
To: Luis Tolley
Date: 5/10/2006 9:43 AM
Subject: Re: CA assault weapons - introduction

Luis,

Hi Luis,

We don't think there is any "taking" issue that would require compensation/registration. We believe that our interpretation of "capacity to accept" is consistent with current law and regulations. We have never given our blessing to any of the temporary fixes that these guys now ASSUME are legal. We are eagerly awaiting a test case on this, because we think we'll win.

The gun guys bragged repeatedly that they could restore their "California legal AR's" to fully functional AW's in a matter of seconds. I don't think a judge or jury would find that such a configuration complies with the letter or the intent of the law.

A few of them clearly are on our side, but I expect them to get worn down and stop speaking up. That does not bother me. They are never going to be happy as long as we say they can't have what they want : AW's that are legal. Our current position is pretty easy to defend. I'm not worried.

>>> Luis Tolley <[REDACTED]> 05/09/06 6:46 PM >>>
Hi Alison:

Oh my, I just read through part of the CalGuns thread. The gun guys are upset aren't they. Sounds like you did good.

They may have a point in the question of how a revised definition of "capacity to accept a detachable magazine" impacts weapons that were formerly approved by DOJ. We would not want anything that opens up a new registration process if that process enables them to add features prohibited by SB 23. I'm not quite sure how that all works out.

Luis Tolley
Project Concern International

[REDACTED]

----- Original Message -----

From: Alison Merrilees
To: Brian Siebel
Cc: Ellyne Bell ; [REDACTED]
Sent: Wednesday, May 10, 2006 6:41 AM
Subject: Re: CA assault weapons - introduction

FYI -

We posted an updated memo on our website today.
<http://caag.state.ca.us/firearms/forms/pdf/AWpolicyrev4.pdf>

Of course, the gun guys are going nuts about it, <http://www.calguns.net/calgunforum/showthread.php?t=33601>

We feel confident that our plan will hold up to any legal challenges.

>>> Brian Siebel <[REDACTED]> 05/09/06 12:39 PM >>>
Friday may work better for all concerned. Ellyne is going to try to set up a call.

In advance of that, did LCAV prepare a memo for the Attorney General on the AW receivers and detachable magazine issues? I'd appreciate reading anything you can share with me in advance of our call.

Thank you,

BJS

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006 2:43:42 PM >>>
Thanks, Brian. I look forward to speaking with you. I am available on Friday at 1 p.m.

I regularly check in with the calguns guys, but had not seen the one you sent me. I get a lot of useful information from them, at least to the extent that I can tolerate their rantings!

By the way, I am also available today until 1 p.m. our time if you want to try and catch me today.

Thanks.

Alison

Alison Y. Merrilees
Deputy Attorney General
Counsel, Firearms Division
California Department of Justice
[REDACTED] 16)263-0802
Fax- (916)263-0676

>>> Brian Siebel <[REDACTED]> 05/09/06 11:20 AM >>>

Alison:


I am sending this e-mail by way of introduction. I have been receiving information from your office by way of Luis Tolley and Ellyne Bell. I am a Senior Attorney with the Brady Center, and have been here almost ten years. During my tenure, I have been involved extensively with the assault weapons issue in California. For example, I was involved in the

Kasler v. Lungren, Harrott v. County of Kings, and People v. Dingman cases, the 101 California Street lawsuit, and other issues. I also represented the 12 city and county plaintiffs in the municipal gun suit.

You should be aware of some of what is being said on various gun-nut message boards about DOJ's plans. Here is a sample of one such discussion. <http://www.calguns.net/calgunforum/showthread.php?t=33533>

My direct contact information is below. I understand Ellyne is trying to set up a conference call for Friday of this week (I'm traveling tomorrow and Thursday). I look forward to speaking with you on the phone and offering my expertise to the Attorney General.

Sincerely,

Brian J. Siebel
Brady Center to Prevent Gun Violence
Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax


In addition to our website at www.gunlawsuits.org, please visit our new

websites at www.stopthenra.com and www.nrablacklist.com

This communication and any attachments may contain information that is confidential and protected from disclosure by the attorney-client privilege, as attorney work product, or by other applicable privileges.

If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or communication of this message is strictly prohibited. If you have received this communication in error, please notify me and delete this message.

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Exhibit G

How to Respond to Telephone and Email Inquiries from the Public About 5/10/06 Important Notice re Unlisted AR/AK Series Firearms:

- Current law defines a semiautomatic centerfire rifle with the capacity to accept a detachable magazine and any of the generic features listed in Penal Code §12276.1(a)(1) as an assault weapon.
- Such a firearm is contraband unless it was registered in a timely fashion pursuant to Penal Code §12285.
- It is DOJ's opinion that under current law, a semiautomatic centerfire rifle that is modified to be *temporarily incapable of accepting a detachable magazine*, but can be restored to accommodate a detachable magazines, is an assault weapons if it has any of the features listed in §12276.1(a)(1).
- Regulations will be adopted to clarify current law. The regulations will not change DOJ's opinion about firearms that DOJ now considers to be legal.
- The public will have an opportunity to comment on our proposed regulations, as permitted under the California Administrative Procedures Act.
- Individuals who alter a firearm designed and intended to accept a detachable magazine in an attempt to make it incapable of accepting a detachable magazine do so at their legal peril.
- Whether or not such a firearm remains capable of accepting a detachable magazine is a question for law enforcement agencies, district attorneys, and ultimately juries of twelve persons, **not the California Department of Justice**.
- We cannot anticipate how any or all of the above entities will view the conversion of a firearm.
- DOJ has approved several models of **commercially manufactured** firearms that we believe have been altered to be permanently incapable of accepting detachable magazines. However, we have warned those manufacturers that other law enforcement entities could view the legality of those firearms differently. Local law enforcement agencies and district attorneys could consider the firearms to be capable of accepting detachable magazines, and therefore assault weapons under California law.
- For your protection, you should ensure that your firearm either does not have the capacity to accept a detachable magazine, or does not have any of the features listed in Penal Code §12276.1(a)(1).
- You have the responsibility to protect yourself from the wide variety of potential law enforcement entities and how they may view the legality of your modification.

Exhibit H

TITLE 11. DEPARTMENT OF JUSTICE NOTICE OF PROPOSED RULEMAKING

The Department of Justice (“Department” or “DOJ”) proposes to amend Section 978.20 of Division 1, Title 11 of the California Code of Regulations (CCR) regarding definitions of terms used to identify assault weapons after considering all comments, objections, and recommendations regarding the proposed action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code (PC) section 12276.1 identifies restricted assault weapons based on specific characteristics or features. Currently, California Code of Regulations (CCR) section 978.20 of Title 11 defines five terms used in § 12276.1 PC. The proposed amendment will define a sixth term, “capacity to accept a detachable magazine”, as meaning “capable of accommodating a detachable magazine, but shall not be construed to include a firearm that has been permanently altered so that it cannot accommodate a detachable magazine.”

AUTHORITY AND REFERENCE

Authority: Penal Code section 12276.5(i)

Reference: Penal Code sections 12276.1, 12276.5, 12280, 12285, and 12289

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on August 16, 2006. Only comments received at the Department offices by that time will be considered. Please submit written comments to:

Mail: Jeff Amador, Field Representative
Department of Justice
Firearms Licensing and Permits Section
P.O. Box 820200
Sacramento, CA 94203-0200

or

Email: jeff.amador@doj.ca.gov

PUBLIC HEARING

The Department will hold a public hearing beginning at 9:00 a.m. on Wednesday, August 16, 2006 for the purpose of receiving public comments regarding the proposed regulatory action. The hearing will be held in the Department of Water Resources auditorium located at 1416 9th Street, Sacramento, California. The auditorium is wheelchair accessible. At the hearing, any person may present oral or written comments regarding the proposed regulatory action. The Department requests, but does not require, that persons who make oral comments also submit

written copy of their testimony at the hearing.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following determinations:

Mandate on local agencies or school districts: None

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts that a representative person or business would incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: None.

Small business determination: The Department has determined the proposed amendment does not affect small business. This determination is based on the fact that the proposed amendment simply defines a term used to identify assault weapons but does not place any additional cost burden on small businesses nor their customers.

Assessment regarding effect on jobs/businesses: The proposed amendment will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses doing business within California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations. The Department invites any person interested in presenting statements or arguments with respect to alternatives to the proposed regulations to do so at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Please direct inquiries concerning the proposed administrative action to Jeff Amador at (916) 227-3661. The backup contact person is Troy Perry at (916) 227-3707. The mailing address for Jeff Amador and Troy Perry is:

Department of Justice
Firearms Licensing and Permits Section
P.O. Box 820200
Sacramento, CA 94203-0200

AVAILABILITY OF RULEMAKING FILE INCLUDING THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The DOJ will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. The initial statement of reasons and the text of proposed regulations are currently available at the DOJ website at <http://caag.state.ca.us/firearms/regs/>. You may also obtain copies by contacting Troy Perry at the telephone number or address listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. The Department will accept written comments on the modified text for 15 days after the date on which they are made available. Copies of any modified text will be available from the DOJ website at <http://caag.state.ca.us/firearms/regs/>. You may also obtain a written copy of any modified text by contacting Troy Perry at the telephone number or address above.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, the final statement of reasons will be available at the DOJ website at <http://caag.state.ca.us/firearms/regs/>. You may also obtain a written copy of the final statement of reasons by contacting Troy Perry at the telephone number or address above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in strikeout format, as well as the Final Statement of Reasons once it is completed, can be accessed through the DOJ website at <http://caag.state.ca.us/firearms/regs/>.

Exhibit I

Text of Modified Regulations

The Department has illustrated changes to the originally proposed language as follows: originally proposed language is shown in regular text; deletions from the originally proposed language are shown in strikeout using a “-”; and additions to the originally proposed language are shown with an underline.

Chapter 12.8 Department of Justice Regulations for Assault Weapons and Large Capacity Magazines

Article 2. Definitions of Terms Used to Identify Assault Weapons

~~978.20~~ 5469. Definitions

The following definitions apply to terms used in the identification of assault weapons pursuant to Penal Code section 12276.1:

- (a) “detachable magazine” means any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool. Ammunition feeding device includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine.
- (b) “flash suppressor” means any device designed, intended, or that functions to perceptibly reduce or redirect muzzle flash from the shooter’s field of vision.
- (c) “forward pistol grip” means a grip that allows for a pistol style grasp forward of the trigger.
- (d) "pistol grip that protrudes conspicuously beneath the action of the weapon” means a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing.
- (e) “thumbhole stock” means a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing.
- (f)(1) “capacity to accept a detachable magazine” means ~~capable of accommodating a detachable magazine, but shall not be construed to include a firearm that has been permanently altered so that it cannot accommodate a detachable magazine.~~ currently able to receive a detachable magazine or readily modifiable to receive a detachable magazine.

- (2) A firearm is readily modifiable to receive a detachable magazine if it has a device that prevents the magazine from being released but allows the firearm to accept a detachable magazine when the device is removed, reversed, or disengaged, without alterations to the magazine well.
- (3) A firearm is not readily modifiable to receive a detachable magazine if, for example:
 - (A) it does not have a magazine well;
 - (B) the magazine is fixed to the receiver by a continuous ribbon of welding around the perimeter of the magazine well, or by multiple ribbons of welding that are each at least one half inch in length;
 - (C) the magazine is fixed to the receiver with a rivet (or other irreversible locking device) that is driven through the magazine well and fixed in place with epoxy; or
 - (D) the modification requires disassembly of the action.

NOTE: Authority cited: Section 12276.5(i), Penal Code.
Reference: Sections 12276.1, 12276.5, 12280, 12285, and 12289, Penal Code.

Exhibit J

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Attention: Chapter 2 Compliance Unit

Petition to the Office of Administrative Law

Re: ““IMPORTANT NOTICE” California Department of Justice Information
Regarding the Sale/Possession of Unnamed AR-15/AK 47 ‘Series’ Firearms”

From: Gene Hoffman, Jr.

Date: July 11, 2007

1. Identifying Information:

Gene Hoffman, Jr.
751 Sylvan Way
Emerald Hills, CA 94062
650-XXX-XXXX
hoffmang@hoffmang.com

2. State agency or department being challenged:

California Department of Justice, Bureau of Firearms (“BOF”)

3. Description of the Underground Regulation and the Department Action By Which it was Issued

A document entitled “*IMPORTANT NOTICE California Department of Justice Information Regarding the Sale/Possession of Unnamed AR-15/AK 47 ‘Series’ Firearms*” available from the California Department of Justice, Bureau of Firearms homepage and more specifically located at: <http://ag.ca.gov/firearms/forms/pdf/AWpolicyrev4.pdf> (Attachment A hereto) (hereinafter, “Important Notice”) published on or about May 9, 2006.

4. The Legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code and that no express statutory exemption to the requirements of the APA is applicable:

The California Administrative Procedure Act, California Government Code §11400 et seq., defines “regulation” to mean “every rule, regulation, order, or standard of general application . . . adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it” §11342.600.

Furthermore, “[a] regulation subject to the APA . . . has two principal identifying characteristics. . . . First, the agency must **intend its rule to apply generally**, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. . . . Second, the rule must ‘**implement, interpret, or make specific** the law enforced or administered by the agency, or govern the agency’s procedure.’ ” *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 571 (1996) (emphasis added) (internal citations omitted).

A) The “Important Notice” is a Regulation

The “Important Notice” is a “regulation” within the meaning of §11342.600, as it purports to generally inform law enforcement officials, firearm dealers and the public of requirements of Penal Code §12276.1 and 11 C.C.R. 5469.¹

B) The “Important Notice” Applies Generally

This rule applies generally, since it applies to all owners and sellers of semi automatic centerfire rifles in the State, therefore satisfying the first element of *Tidewater*.²

C) The “Important Notice” Purports to Implement, Interpret and Make Specific California Penal Code § 12276.1

The “Important Notice” is an attempt to promulgate a completely new rule that requires owners of semiautomatic centerfire rifles that are modified to be **temporarily or currently** incapable of accepting detachable magazines (and have features listed in 12276.1) to **permanently** alter their rifle or face felony criminal prosecution.³

¹ “**Law enforcement officials, firearm dealers and the public** should be aware that semiautomatic centerfire rifles that are modified to be temporarily incapable of accepting detachable magazines, but can be restored to accommodate detachable magazines, are assault weapons if they have any of the features listed in §12276.1(a)(1).” “*Important Notice*”, para 3 (emphasis added).

² The “Important Notice” purports to apply to all “[i]ndividuals who own firearms that meet the generic definition of assault weapons banned by SB 23.” *Important Notice*”, para 4.

³ “Individuals who own firearms that meet the generic definition of assault weapons banned by SB 23 must do one of the following in order to comply with existing law: remove the features, sell the firearm (without the features), or **permanently alter** the firearm so that it cannot accept a detachable magazine.” “*Important Notice*”, para 4 (emphasis added).

The rule as stated in the “Important Notice” thus attempts to interpret and make specific⁴ the definition of exactly which semiautomatic centerfire rifles are prohibited in the State by Penal Code §12276.1 and 11 C.C.R. 5469, therefore satisfying the second element of *Tidewater*.

No express APA exemption in Government Code §11340.9 applies to the “Important Notice” and there are no express exemptions to the APA for the BOF in the relevant Penal Code sections.⁵

5. Legal Basis for why the “Important Notice” is an underground regulation

A) Background

In 1999, the California Legislature passed SB-23⁶ which added a generic definition to the Assault Weapons Control Act in §12276.1 of the Penal Code. This definition hinged on whether or not a semi-automatic centerfire rifle had a “detachable magazine” **and** any of a list of prohibited features (such as a pistol grip, collapsible stock or “flash hider”).

However, such prohibited features are perfectly legal under SB-23 as long as the rifle has a fixed magazine (i.e., does not have a “detachable magazine”).

To further define and implement the newly enacted provisions of SB-23, the BOF (then known as The Department of Firearms) conducted a regulatory process in compliance with the APA that resulted in the enactment of 11 C.C.R. 5469 (the “2000 Rulemaking”).

Part of this rulemaking process addressed the exact definition of fixed magazine vs. “detachable magazine”, as will be shown *infra*.

From 2000 to 2006, little changed regarding the enforcement of Penal Code §12276.1 and 11 C.C.R. 5469. Then, in early 2006 certain firearms enthusiasts and firearms sellers realized the implications of the combined impact of *Harrot v. County of Kings* (2001) 25 Cal.4th 1138 and the expiration of the Federal Assault Weapons Ban, on California law.

Sellers and enthusiasts realized that they could legally import, buy, sell, and assemble rifles that were very similar (but not identical) to rifles that were considered “Assault

⁴ “A semiautomatic centerfire rifle with the **capacity to accept** a detachable magazine and any of the generic features listed in Penal Code §12276.1(a)(1) is contraband unless it was registered prior to January 1, 2001.” “*Important Notice*”, para 2 (emphasis added).

⁵ AB-2728 which passed in 2006 and became effective January 1, 2007 removed the only unrelated exception to the APA that the BOF had in the Penal Code relating to firearms.

⁶ Bill text and legislative history available at http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_23&sess=9900&house=B&author=perata

Weapons” in California as long as they complied with Penal Code §12276 (so called “named assault weapons”) and the feature restrictions in §12276.1 as interpreted by 11 C.C.R. 5469.

As outlined above, the feature restrictions contained in §12276.1 prohibit, e.g. pistol grips, collapsible stocks and/or flash hidiers **only** on rifles that have a “**detachable magazine,**” thus making the definition of what exactly constitutes a **fixed magazine** to be of paramount importance.

In an attempt to make an end-run around the plain meaning of the law that defines fixed magazines, the BOF responded to this influx of new rifles with the “Important Notice.”

In effect, the “Important Notice” is an underground regulation purporting to interpret Penal Code §12276.1 and 11 C.C.R. 5469 in a way that the legislature did not intend or require, and that the BOF knows or should have known is outside of the BOF’s *own previous interpretations* of Penal Code §12276.1.

In fact, the “Important Notice” substantially changes the definition of fixed magazine, thereby turning tens of thousands of firearms owners who relied on the previous definition of a fixed magazine, into felons.⁷

B) The Current Definition of Fixed Magazine Does Not Require “Permanent Alteration”

In the 2000 Rulemaking, BOF promulgated the definition of “detachable magazine” as:

(a) "detachable magazine" means any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool.⁸

Issues with a type of rifle known as the “SKS” led to the definition of what would be considered a fixed magazine (and therefore not a “detachable magazine”) rifle subject to §12276.1. The BOF stated in the *Final Statement of Reasons for the 2000 Rulemaking* (emphasis added):

Comment

A1.12 - The SKS rifle with a detachable magazine cannot be changed without using a bullet tip as a tool, thus the regulations conflict with the specific listing of SKS rifles with detachable magazines in the Roberti-Roos Assault Weapons

⁷ Penal Code §12280. (a) (1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon or any .50 BMG rifle, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

⁸ Title 11 California Code of Regulations 5469 (a)

Control Act. DOJ has no authority to contradict existing law.

Response

The Department disagrees with the comment because any magazine that requires the use of a bullet or any other tool for its removal is a **fixed magazine**, not a detachable magazine. The SKS with a true detachable magazine does not require a bullet or any other tool to remove and is a controlled assault weapon under Penal Code section 12276. Identifying a bullet as a tool allows for the proper categorization of an SKS with a fixed magazine. **Therefore, the SKS referred to in the comment has a fixed, not detachable magazine.**⁹

There is no requirement in either Penal Code §12276.1 or 11 C.C.R. 5469 that a rifle with a fixed magazine be **permanently altered** in any way. Quite the opposite is true, in fact. As outlined above, the BOF has clearly stated that rifles that required merely the use of a “bullet tip” to remove the magazine were nonetheless classified as having a fixed magazine.

Furthermore, if the intent of the legislature was to require that rifles be “**permanently altered**,” the statutory language would have said so. However, the statutory plain language of SB-23 makes no mention of “permanently altered” in §12276.1 (a)¹⁰.

In the *Final Statement of Reasons for the 2000 Rulemaking* the BOF itself reiterated that that modifications to semiautomatic rifles did not need to be “permanent:”

Comment

C5.04 - The firearm should have to be **permanently modified** so that it lacks the capacity to accept a detachable magazine or any of the offensive features in order for the Department to accept cancellation of a registration.

Response

The Department disagrees with the comment. Registration cancellation is not exclusive to modification of the firearm, **nor does the Department believe permanent modification** is required.¹¹

(emphasis added)

⁹ *Final Statement of Reasons for the 2000 Rulemaking*, <http://ag.ca.gov/firearms/regs/fsor.pdf>, Attachment A pg. 2.

¹⁰ Compare that with the definitions applicable to “large-capacity magazines” passed concurrently in SB-23; §12276.1. (d) (2) “Capacity to accept more than 10 rounds” shall mean capable of accommodating more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

¹¹ *Ibid.* Attachment A pg. 36

Paragraphs 3 and 4 of the “Important Notice” now purport to interpret both Penal Code §12276.1 (a) (1) and 11 C.C.R. 5469 by adding a new test of whether a modification to a rifle is **temporary** or **permanent** to the test of whether a rifle has a detachable magazine (and is therefore regulated by Penal Code §12276.1).

Paragraphs 3 and 4 of the “Important Notice” state:

Law enforcement officials, firearm dealers and the public should be aware that semiautomatic centerfire rifles that are **modified to be temporarily incapable of accepting detachable magazines, but can be restored to accommodate** detachable magazines, are assault weapons if they have any of the features listed in §12276.1(a)(1). The Department intends to exercise its power pursuant to Penal Code section 12276.5(i) to adopt regulations as “necessary or proper to carry out the purposes and intent” of California law to ban assault weapons in the state.

Individuals who own firearms that meet the generic definition of assault weapons banned by SB 23 must do one of the following in order to comply with existing law: remove the features, sell the firearm (without the features), or **permanently alter** the firearm so that it cannot accept a detachable magazine.

(emphasis added)

This is the **exact opposite** of what the BOF has earlier stated in the Final Statement of Reasons for the 2000 Rulemaking, and is in direct conflict with the law as written.

It is black letter law that an administrative agency may not alter, extend, limit, or enlarge a statute that it administers (*First Industrial Loan Co. v. Daugherty* (1945) 26 Cal.2d 545, 550.) The BOF’s attempt to add a new test of whether a rifle is “**temporarily incapable**” of accepting a detachable magazine (vs. “**permanently altered**”) is thus an impermissible attempt to enlarge the number and types of rifles controlled by Penal Code §12276.1 and §12280(a)(1)&(2) while directly contradicting existing law and previous BOF opinions.

Therefore, the “Important Notice” should be removed from BOF’s website and no further attempt to issue or enforce a new definition of rifles controlled by Penal Code §12276.1 should be attempted without opening a new APA compliant proposed regulation process.

6. The petition raises an issue of considerable public importance requiring prompt resolution.

Various estimates place the number of newly imported semiautomatic centerfire rifles during the past 18 months at between 30,000 to more than 50,000 rifles¹³. Owners and sellers of these rifles are now unclear whether they can simply follow the law **as written** in the Penal Code and the C.C.R. or whether they have to take **additional and expensive steps** to modify their rifles comply with the law. Some rifle owners already have been arrested and their cases have taken additional time and expense for both citizens and District Attorneys to resolve due to confusion caused by the BOF's underground regulation of Penal Code §12276.1 (a) (1) and 11 C.C.R. 5469.¹⁴

Of additional concern are the rifle owners who relied upon the 2000 Rulemaking to clarify whether they actually had to register their rifles as assault weapons based on the definition in 11 CCR, Section 5469 (a)¹⁵. Those who took the plain language of the law to mean that they did not have to permanently alter their rifle did not take the opportunity to register during the limited window of time in 2000, as they thought their rifles were exempt (since those rifles had a fixed magazine).

They now are in a constitutionally difficult position as they are either unintentional felons or are forced by the BOF's underground regulation to make permanent and expensive changes to their property (and be deprived thereof in contravention to their 5th Amendment rights and their right to be free from "*ex-post-facto*" law).

As outlined above, the "Important Notice" most certainly meets the criteria of an underground regulation. The "Important Notice" specifically and directly contradicts existing law. The "Important Notice" contradicts the BOF's own legitimately adopted regulations and previous statutory interpretation.

Furthermore, should the "Important Notice" be enforced, it contradicts individual rights under both the Federal Constitution and the Constitution of the State of California, and turns thousands of otherwise law-abiding California citizens into felons.

7. Attachments

Exhibit A hereto is a true and correct copy of the "Important Notice" available from: <http://ag.ca.gov/firearms/forms/pdf/AWpolicyrev4.pdf>.

8. Certification

I certify that I have submitted a copy of this petition and all its attachments to:

¹³ See <http://www.recordnet.com/apps/pbcs.dll/article?AID=/20060410/NEWS01/604100333>, and http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2701-2750/ab_2728_cfa_20060829_231230_asm_floor.html

¹⁴ See for example *People v. Matthew Corwin*, Case No. GA069547, Los Angeles Superior Court

¹⁵ Title 11 CCR 5469, "detachable magazine" means any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool...

Gene Hoffman

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7/11/2007

William Cid
Director
Bureau of Firearms
4949 Broadway
Sacramento, CA 95820
916-263-4887

I certify that all of the above information is true and correct to the best of my knowledge.

/s/

Gene Hoffman, Jr.

July 11, 2007

Date

ATTACHMENT A



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-4887

IMPORTANT NOTICE

California Department of Justice Information Regarding the Sale/Possession of Unnamed AR- 15/AK 47 “Series” Firearms

The Department of Justice (hereafter “the Department”) has received numerous inquiries from the public and firearms industry personnel about the legality of various AR-15/AK 47 “series” style firearms that have not been named by the Department as “series” assault weapons. The Department believes that the public and law enforcement are best served by reference to the generic definition of assault weapons set forth in SB 23, rather than reliance upon a scheme of identifying assault weapons by name. Therefore, the Department will not update the list of “series” assault weapons.

SB 23 has banned the possession, sale and manufacture of firearms with the characteristics of assault weapons as defined in California Penal Code §12276.1 since January 1, 2000. A semiautomatic centerfire rifle with the capacity to accept a detachable magazine and any of the generic features listed in Penal Code §12276.1(a)(1) is contraband unless it was registered prior to January 1, 2001. It is illegal to manufacture, cause to be manufactured, distribute, transport, import, keep for sale, offer or expose for sale, give or lend such a weapon, except as permitted by law.

Law enforcement officials, firearm dealers and the public should be aware that semiautomatic centerfire rifles that are modified to be temporarily incapable of accepting detachable magazines, but can be restored to accommodate detachable magazines, are assault weapons if they have any of the features listed in §12276.1(a)(1). The Department intends to exercise its power pursuant to Penal Code section 12276.5(i) to adopt regulations as “necessary or proper to carry out the purposes and intent” of California law to ban assault weapons in the state.

Individuals who own firearms that meet the generic definition of assault weapons banned by SB 23 must do one of the following in order to comply with existing law: remove the features, sell the firearm (without the features), or permanently alter the firearm so that it cannot accept a detachable magazine.

It remains illegal to possess assault weapons banned by name (either in statute or regulation), unless those assault weapons are registered and possessed in accordance with state law. The time limits for registration, which depend on the make and model of the assault weapon, are set forth in Penal Code §12285.

Exhibit K

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826

Susan Lapsley, Director



September 11, 2007

Gene Hoffman, Jr.
751 Sylvan Way
Emerald Hills, CA 94062

Re: CTU-07-0712-01

Dear Mr. Hoffman:

On July 12, 2007, the Office of Administrative Law received your petition alleging that the Department of Justice, Bureau of Firearms has issued, used, enforced, or attempted to enforce an underground regulation. The specific alleged underground regulation is:

The Department of Justice, Bureau of Firearms issued a document entitled, "IMPORTANT NOTICE California Department of Justice Information Regarding the Sale/Possession of Unnamed AR-15/AK 47 "Series" Firearms" which informed owners and dealers of firearms that semiautomatic centerfire rifles that are modified to be temporarily incapable of accepting detachable magazines, but that can be restored to accommodate detachable magazines are assault weapons if they have any of the features listed in Penal Code §12276.1(a)(1). It also notifies these individuals that they must remove the features, sell the firearm without the features or permanently alter the firearm in order to comply with the law.

After reviewing your petition and the accompanying documentation, we accept the petition for consideration. Pursuant to Title 1, California Code of Regulations, section 270, please note the following time table:

- Publication of Petition in Notice Register: September 28, 2007
- Deadline for Public Comments: October 29, 2007
- Deadline for Agency Response: November 13, 2007
- Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response
- Deadline for OAL Decision: January 28, 2008

Sincerely,

Susan Lapsley
Director

Exhibit L

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



Susan Lapsley
Director

September 21, 2007

Gene Hoffman, Jr.
751 Sylvan Way
Emerald Hills, CA 94062

Re: CTU-07-0712-01

Dear Mr. Hoffman:

The Office of Administrative Law has received your petition alleging that the Department of Justice has issued, used, enforced, or attempted to enforce an underground regulation. The Department of Justice has certified, pursuant to California Code of Regulations, title 1 section 280, that it will not issue, use, enforce, or attempt to enforce the alleged underground regulation you challenged, except on a case by case basis as permitted by *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 572. OAL, therefore, pursuant to section 280, will suspend all action on the petition.

Our decision in no way reflects on the merits of the underlying issue presented by your petition. It does not constitute a judgment or opinion on any issue raised in your petition. Nothing in our decision restricts your right or ability to pursue this matter directly with the Department of Justice or in court.

Sincerely,

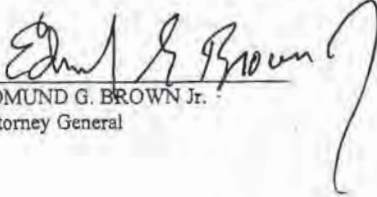
Susan Lapsley
Director

CERTIFICATION

FILED
2007 SEP 21 PM 3:16

I, EDMUND G. BROWN Jr., Attorney General, hereby certify:

1. The California Department of Justice received notice that Gene Hoffman, Jr. had filed a petition with the Office of Administrative Law (OAL) alleging that a document entitled "Important Notice" which was posted on the website maintained by the Bureau of Firearms within the California Department of Justice constituted an "underground regulation." A copy of the petition is attached hereto as Exhibit A.
2. The California Department of Justice will not issue, use, enforce, or attempt to enforce the policy at issue as a rule of general application, but reserves the right to interpret the law in any case that may arise in the course of a case-specific adjudication, as authorized in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 572.


 EDMUND G. BROWN Jr.
 Attorney General

DATED: September 20, 07

Exhibit M

Gene Hoffman
The Calguns Foundation

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"Capacity To Accept" Underground Regulation

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Attention: Chapter 2 Compliance Unit

Petition to the Office of Administrative Law

Re: Bureau of Firearms "Capacity to accept" Underground Regulation

From: Gene Hoffman, Jr., Chairman, The Calguns Foundation

Date: February 26, 2007

1. Identifying Information:

Gene Hoffman, Jr.
Chairman
The Calguns Foundation
3200 Bridge Parkway Suite 202C
Redwood City, CA 94065
650-275-1015
hoffmang@calgunsfoundation.org

2. State agency or department being challenged:

California Department of Justice, Bureau of Firearms ("BoF")

3. Description of the Underground Regulation and the Department Action By Which it was Issued

BoF is promulgating an Underground Regulation as exemplified in a letter dated September 29, 2008 to Mr. Mike Badella of Dolorian Capital, Inc. of Fresno (Attachment A hereto) (hereinafter, the Capacity to Accept Letter or "CTA Letter") which is in response to Mr. Badella's letter dated September 25, 2008 (Attachment B hereto.) That letter states in pertinent part:

Regarding your question about using the "Prince 50 Kit" it is our understanding that such a device is designed to temporarily attach a magazine to a rifle, but allow the magazine to be removed from the rifle with the use of a tool. While there is no question that such a configuration would render the magazine of a rifle to be non-detachable, **it is unclear whether such a configuration negates the rifle's "capacity to accept" a detachable magazine.** Since there are no statutes,

Gene Hoffman
The Calguns Foundation

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case law, or regulations concerning whether a rifle that is loaded with a fixed, removable magazine can also be considered to have the "capacity to accept a detachable magazine," we are unable to declare rifles configured with the "Prince 50 Kit" or "bullet button" to be legal or illegal. To do so without regulation would create an illegal "underground regulation."

Attachment A, para 5, (emphasis added.)

4. The Legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code and that no express statutory exemption to the requirements of the APA is applicable:

The California Administrative Procedure Act, California Government Code §11400 et seq., defines "regulation" to mean "every rule, regulation, order, or standard of general application . . . adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it . . ." §11342.600.

Furthermore, "[a] regulation subject to the APA . . . has two principal identifying characteristics. . . . First, the agency must **intend its rule to apply generally**, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. . . . Second, the rule must '**implement, interpret, or make specific** the law enforced or administered by the agency, or govern the agency's procedure.' " *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 571 (1996) (emphasis added, internal citations omitted).

A) The "CTA Letter" is a Regulation

The "CTA Letter" is a "regulation" within the meaning of §11342.600, as it attempts to supplement, interpret, revise, and make specific the validly adopted definition of the term "detachable magazine" in Penal Code §12276.1 and 11 C.C.R. 5469¹ by re-interpreting the phrase "capacity to accept a detachable magazine." On knowledge and belief the "CTA Letter" materially reflects the standard of general application that BoF provides to District Attorneys throughout California when they inquire about the legality of various non-detachable magazine semiautomatic rifles.

B) The "CTA Letter" Applies Generally

¹ "While there is no question that such a configuration would render the magazine of a rifle to be non-detachable, it is **unclear whether such a configuration negates the rifle's 'capacity to accept' a detachable magazine.**" (emphasis added).

Gene Hoffman
The Calguns Foundation

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This rule applies generally, as it applies to all owners and sellers of semiautomatic centerfire rifles in the State, therefore satisfying the first element of *Tidewater*.²

C) The "CTA Letter" Purports to Implement, Interpret and Make Specific California Penal Code § 12276.1

The "CTA Letter" is an attempt to promulgate a new interpretation of the term "detachable magazine" for semiautomatic centerfire rifles that are modified to be incapable of accepting detachable magazines (and have features listed in 12276.1.) This is an attempt to force owners to alter the configuration of their rifle or face felony criminal prosecution.³

The interpretation as stated in the "CTA Letter" thus attempts to interpret⁴ and make specific the definition of exactly which semiautomatic centerfire rifles are prohibited in the State by Penal Code §12276.1 and 11 C.C.R. 5469 by disingenuously inserting some heretofore unknown uncertainty in the definition of the APA defined term "**detachable magazine**" supposedly brought about by the phrase "**capacity to accept,**" therefore satisfying the second element of *Tidewater*.

No express APA exemption in Government Code §11340.9 applies to the "CTA Letter" and there are no express exemptions to the APA for the BOF in the relevant Penal Code sections.⁵

5. Legal Basis for why the "CTA Letter" is an underground regulation

A) Background

Penal Code §12276.1 defines certain semiautomatic centerfire rifles as "assault weapons" that are prohibited from being manufactured, transported or possessed in California on penalty of a felony. One definition of "assault weapon" hinges on whether or not a semiautomatic centerfire rifle has a "detachable magazine" **and** any of a list of prohibited features (such as a pistol grip, telescoping stock or flash hider).

² The "CTA Letter" applies to all firearms manufacturers and sellers regulated by BoF, "This letter is in response to your request dated September 25, 2008 for advice about whether it would be legal to sell a particular rifle in California." "CTA Letter", para 1.

³ "[I]t is unclear whether such a configuration negates the rifle's '**capacity to accept' a detachable magazine**. Since there are no statutes, case law, or regulations concerning whether a rifle that is loaded with a fixed, removable magazine can also be considered to have the 'capacity to accept a detachable magazine,' we are unable to declare rifles configured with the 'Prince 50 Kit' or 'bullet button' to be legal..." "CTA Letter", para 5 (emphasis added).

⁴ "[I]t is unclear whether such a configuration negates the rifle's '**capacity to accept' a detachable magazine**." "CTA Letter", para 5 (emphasis added).

⁵ AB-2728 which passed in 2006 and became effective January 1, 2007 removed the only unrelated exception to the APA that the BOF had in the Penal Code relating to firearms.

Gene Hoffman

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The Calguns Foundation

"Capacity To Accept" Underground Regulation

However, such prohibited features are perfectly legal under Penal Code §12276.1 as long as the rifle has a fixed magazine (i.e., does not have a "detachable magazine").

BoF (then known as The Department of Firearms) conducted a regulatory process in compliance with the APA that resulted in the enactment of 11 C.C.R. 5469 (the "2000 Rulemaking".)

Part of this rulemaking process addressed the exact definition of fixed magazine vs. "detachable magazine", as will be shown *infra*.

In an attempt to make an end-run around the meaning of the law that defines the nature and scope of fixed magazines, the BoF recently promulgated an underground regulation that attempted to require permanence for any non detachable or "fixed magazine" rifle. Mr. Hoffman petitioned OAL in a letter dated July 11, 2007 to review that underground regulation. OAL accepted that petition for review and assigned it a reference number of CTU-07-0712-01. BoF subsequently withdrew the "permanence" underground regulation in a questionably worded certification letter to OAL from Attorney General Brown dated September 20, 2007.

While BoF appears to be complying with its certification that it will not illegally take the position that permanence is required for a fixed magazine, BoF has begun to promulgate a new interpretation of the phrase "capacity to accept a detachable magazine" that is in conflict with its own previous interpretations and is incorrect as a matter of law.

B) The Current Definition of "Detachable Magazine" Is Not Altered By The Phrase "Capacity To Accept"

The Phrase "Non-detachable" Applies to Rifles, not to Magazines

Regarding your question about using the "Prince 50 Kit" it is our understanding that such a device is designed to temporarily attach a magazine to a rifle, but allow the magazine to be removed from the rifle with the use of a tool. While there is no question that such a configuration would **render the magazine** of a rifle to be non-detachable, it is unclear whether such a configuration negates the **rifle's "capacity to accept" a detachable magazine**.

- **Attachment A** *[emphasis added]*

First, when BoF states, "there is no question that such a configuration would **render the magazine** of a rifle to be non-detachable," they misinterpret the actual test in the Penal Code. To wit, PC §12276.1(a)(1) states clearly that the "non-detachable" nature refers to rifles, not to magazines.

The statute reads in relevant part, "[a] semiautomatic, **centerfire rifle** *that* has the capacity to accept a detachable magazine." The word "*that*" refers to "a ... rifle" and **not**

Gene Hoffman
The Calguns Foundation

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a magazine. Once the rifle no longer has the capacity to accept a "detachable magazine" as that term is defined in 11 C.C.R.⁶, it can no longer be defined as an "assault weapon" for purposes of the Penal Code.⁷

The Penal Code and C.C.R are Quite Clear Regarding Capacity to Accept

. . . it is unclear whether such a configuration negates the rifle's "capacity to accept" a detachable magazine. Since there are no **statutes**, case law, or **regulations** concerning whether a rifle that is loaded with a fixed, removable magazine can also be considered to have the "capacity to accept a detachable magazine," we are unable to declare rifles configured with the "Prince 50 Kit" or "bullet button" to be legal or illegal.

Attachment A *[emphasis added]*

Second, BoF states that it is "unclear whether such a configuration negates the rifle's 'capacity to accept' a detachable magazine." However, the Penal Code and the C.C.R. are both quite clear on the matter.

To ascertain the plain meaning of the statute, as modified by BoF's own APA-compliant rulemaking, one merely substitutes the appropriate definition from 11 C.C.R. 5469 into the text of PC §12276.1(a)(1) as follows:

12276.1. (a) Notwithstanding Section 12276, "assault weapon" shall also mean any of the following:

- (1) A semiautomatic, centerfire rifle that has the capacity to accept **any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required.**⁸ A bullet or ammunition cartridge is considered a tool. [and] any of the following..

[Emphasis Added]

Contrary to BoF's attempt to assert that there is no statute or regulation on point, there in fact is a statute **and** a validly adopted regulation directly on point.

A rifle correctly configured with a "Prince 50 Kit" or "bullet button" device simply does not have the capacity to accept any ammunition feeding device that can be removed

⁶ Section 5469 defines "detachable magazine" as "any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required."

⁷ Assuming that it is at least 30 inches long and does not have a fixed magazine capable of holding more than 10 rounds.

⁸ 11 C.C.R. 5469.

Gene Hoffman
The Calguns Foundation

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"Capacity To Accept" Underground Regulation

2/25/2009

readily from the firearm with neither disassembly of the firearm action nor use of a tool being required.

"Fixed Removable Magazines" were Contemplated by the 2000 Rulemaking

Since there are no statutes, case law, or regulations concerning whether a rifle that is loaded with a **fixed, removable magazine** can also be considered to have the "capacity to accept a detachable magazine," we are unable to declare rifles configured with the "Prince 50 Kit" or "bullet button" to be legal or illegal.

Attachment A *[emphasis added]*

Third, the BoF's own 2000 Rulemaking that lead to 11 C.C.R. 5469 shows that BoF fully contemplated "fixed removable magazines", in the Final Statement of Reasons:

Comment

A1.12 - The SKS rifle with a detachable magazine cannot be changed without using a bullet tip as a tool, thus the regulations conflict with the specific listing of SKS rifles with detachable magazines in the Roberti-Roos Assault Weapons Control Act. DOJ has no authority to contradict existing law.

Response

The Department disagrees with the comment because any magazine that requires the use of a bullet or any other tool for its removal is a **fixed magazine**, not a detachable magazine. The SKS with a true detachable magazine does not require a bullet or any other tool to remove and is a controlled assault weapon under Penal Code section 12276. Identifying a bullet as a tool allows for the proper categorization of an SKS with a fixed magazine. **Therefore, the SKS referred to in the comment has a fixed, not detachable magazine.**

[Emphasis added]

If it is true that BoF cannot determine that a rifle with a "fixed removable magazine" is legal, then how can any member of the public determine if the SKS that they thought was legally owned is in fact an "SKS with detachable magazine" long prohibited by the Penal Code?

In reality, both the traditional SKS with a non-detachable magazine and a semiautomatic centerfire rifle with a "bullet button" device installed are functionally identical as to their magazine function. It is an underground regulation to attempt to claim that either or both are prohibited.

Gene Hoffman
The Calguns Foundation

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Any attempt to assert that SKS rifles are prohibited would also be an **unadoptable regulation**, as the BoF does not have the authority to contradict existing law as BoF noted in the 2000 Rulemaking.

To Declare a Rifle Legal is Not the Same as Promulgating an Underground Regulation

Finally, BoF's assertion that to declare a rifle legal would amount to an underground regulation, is incorrect as a matter of law.

Government Code Section 11340.9(f) exempts any rule or interpretation that would be considered, "[a] regulation that embodies the only legally tenable interpretation of a provision of law." Correctly installed, a rifle equipped with a "Prince 50 Kit" or a "bullet button" device follows the only legally tenable interpretation of PC §12276.1(a)(1) and 11 C.C.R. 5469. Therefore, it is within the authority of BoF to declare via advisory letter that rifles so equipped are in fact not "assault weapons."

PC §12276.5 (c) requires the BoF to adopt rules and regulations that are necessary and proper to carry out the purposes and intent of the section. If the agency tasked with interpreting the statutory scheme finds the scheme "**unclear**," then how can District Attorneys, law enforcement agencies, and their personnel, courts, or the general public determine what is or is not an "assault weapon?"

Conclusion

The attempt by BoF to legally embellish upon its own validly adopted C.C.R. provisions is specifically prohibited by the APA as interpreted by the California courts – see *Union of American Physicians and Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 272 Cal.Rptr. 886.

6. The petition raises an issue of considerable public importance requiring prompt resolution.

Owners and sellers of these rifles are now unclear whether they can simply follow the law **as written** in the Penal Code and the C.C.R. or whether they have to take **additional and expensive steps** to modify their rifles comply with the law. Rifle owners have been and continue to be arrested and their cases have taken additional time and expense for both citizens and District Attorneys to resolve due to confusion caused by the BoF's underground regulation of the phrase "capacity to accept a detachable magazine" in Penal Code §12276.1 (a) (1) and 11 C.C.R. 5469.⁹

⁹ The Calguns Foundation has provided, and continues to provide, technical and financial assistance to individual defendants who have been arrested for possession of assault rifles. In four (4) recent cases in Northern California (that the Foundation has been associated with) the charges were dismissed and/or the D.A. declined to file a case after it was pointed out that tools were required to remove the magazines from the rifles. In at least one case, an individual had to post a \$60,000 bond (\$6,000 in non-refundable cash to a

Gene Hoffman
The Calguns Foundation

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Of additional concern are the rifle owners who relied upon the 2000 Rulemaking to clarify whether they actually had to register their rifles as assault weapons based on the definition in 11 CCR, Section 5469 (a)¹⁰. Those who took the plain language of the law to mean that they did not have to alter their rifle did not take the opportunity to register during the limited window of time in 2000, as they thought their rifles were exempt (since those rifles had a fixed magazine as those are defined in the 2000 Rulemaking).

These people are now in a constitutionally difficult position as they are either unintentional felons or are forced by the BoF's underground regulation to make expensive changes to their property (and be deprived thereof in contravention to their 5th Amendment rights and their right to be free from "*ex-post-facto*" law).

As outlined above, the "CTA Letter" most certainly meets the criteria of an underground regulation. The "CTA Letter" specifically and directly contradicts existing law. The "CTA Letter" contradicts and attempts to confuse the BoF's own legitimately adopted regulations and previous statutory interpretation.

7. Attachments

Attached as Attachment A hereto is a true and correct copy of the "CTA Letter."
Attached as Attachment B hereto is a true and correct copy of a letter from Mr. Mike Badella of Dolorian Capital, Inc. to BoF.

bail bondsman) to get out of jail on a felony charge of Assault Weapon possession. This was a case where the D.A. declined to even file criminal charges after the arrest, but the individual is still out the \$6,000 paid to the bondsman.

¹⁰ Title 11 CCR 5469: "'detachable magazine' means any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool..."

Gene Hoffman
The Calguns Foundation

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8. Certification

I certify that I have submitted a copy of this petition and all its attachments to:

Wilfredo Cid
Director
Bureau of Firearms
4949 Broadway
Sacramento, CA 95820
916-263-4887

I certify that all of the above information is true and correct to the best of my knowledge.

Gene Hoffman, Jr.

February 25, 2009
Date

Gene Hoffman
The Calguns Foundation

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ATTACHMENT A

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
(916) 263-0699
Facsimile: (916) 263-0676

September 29, 2008

Mr. Mike Badella
Dolorian Capital, Inc.
191 West Shaw Ave., Suite 205-A
Fresno, CA 93704

Re: Request for Approval of HAS-15 Rifle

Dear Mr. Badella:

This letter is in response to your request dated September 25, 2008 for advice about whether it would be legal to sell a particular rifle in California.

The California Department of Justice (DOJ) has never had the legal duty or authority to *approve* a rifle, shotgun, or pistol for sale in the state on the basis that the firearm is not an assault weapon. At one time, DOJ had the legal authority pursuant to Section 12276.5, to declare a firearm to be a "series" assault weapon, or to obtain a court order that a firearm was an assault weapon. (See *Harrott v. County of Kings* (2001) 25 Cal.4th 1138, 1155.) However, that authority was revoked by statute in 2007. (Stats. 2006, ch. 793 (AB 2728).) Under current law, DOJ has the duty to prepare the Assault Weapons Guide and distribute the guide to law enforcement. (§ 12276.5, subd. (a).) DOJ's duty is essentially administrative. Consequently, determining what types of firearms are prohibited pursuant to Section 12276.1 is for the courts. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.)

An agency is prohibited from adopting a regulation -- an interpretation of the law intended for general application -- unless that regulation has been formally adopted pursuant to the Administrative Procedures Act (APA). (Gov. Code, §§ 11340.5, subd. (a), 11342.600.) An interpretation of the law intended for general application that is not adopted in compliance with the APA is an illegal "underground regulation" that is entitled to no weight by the courts of the state. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 581-582.) Rather, an interpretive policy is void when promulgated in violation of the APA. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.)

Although DOJ cannot adopt general policies about whether a class or type of firearm is an assault weapon without complying with the APA, we can provide you with general information about California law governing assault weapons. A semiautomatic centerfire rifle with the "capacity to accept a detachable magazine" and any of a number

Mr. Dauchia

September 29, 2008

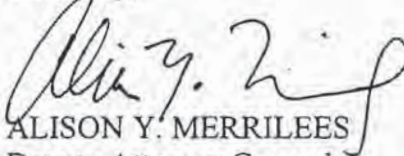
Page 2

of specified features, such as a "pistol grip that protrudes conspicuously below the action of the weapon," is an "assault weapon" under California law. (§ 12276.1, subd. (a).) DOJ regulations clarify that a "detachable magazine" is "any ammunition feeding device that can be removed with neither disassembly of the action nor use of a tool being required." (Cal. Code Regs., tit. 11, §978.20, subd. (b).)

Regarding your question about using the "Prince 50 Kit," it is our understanding that such a device is designed to temporarily attach a magazine to a rifle, but allow the magazine to be removed from the rifle with the use of a tool. While there is no question that such a configuration would render the magazine of a rifle to be non-detachable, it is unclear whether such a configuration negates the rifle's "capacity to accept" a detachable magazine. Since there are no statutes, case law, or regulations concerning whether a rifle that is loaded with a fixed, removable magazine can also be considered to have the "capacity to accept a detachable magazine," we are unable to declare rifles configured with the "Prince 50 Kit" or "bullet button" to be legal or illegal. To do so without a regulation would create an illegal "underground regulation."

I hope this information is helpful. Please feel free to contact me again if you need further clarification.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General

Gene Hoffman
The Calguns Foundation

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ATTACHMENT B



September 25, 2008

California Department of Justice Bureau of Firearms
Alison Merrilees
POB 160487
Sacramento, CA 95816

We are sales representatives for High Standard Manufacturing Company, Inc. We would like to start selling a California legal variant of the High Standard HSA-15 rifle. We are planning on producing the rifle with a fixed 10 round magazine utilizing the Prince50 kit. I have attached a copy of the Prince50 Designs Instructions.

Would this rifle be legal to sale in the state of California? If not, what would it take to make it a California legal rifle?

Thank you for your time,

Mike Badella
Dolarian Capital, Inc.
191 West Shaw Avenue
Suite 205-A
Fresno, CA 93704
559-243-0117 x207
559-243-0126 FAX

Corporate
191 W. Shaw Avenue
Suite 205-A
Fresno, CA 93704

Eastern Europe
1, Vrbitskogo Str
Kyiv 01021
Ukraine

Exhibit N

EDMUND G. BROWN JR.
Attorney General



State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
(916) 263-0699
Facsimile (916) 263-0676

November 3, 2008

Mr. Edward J. Jagels
District Attorney
Kern County
1215 Truxton Ave.
Bakersfield, CA 93301

Re: Request for Guidance and Clarification about on Assault Weapons

Dear District Attorney Jagels:

This letter is in response to your written request dated August 12, 2005, for "guidance from the BOF on how to determine whether firearms may be 'assault weapons' based on the features they possess [sic]." You also requested clarification from our office about whether a semi-automatic centerfire rifle would meet the definition of "assault weapon" set forth in California Penal Code Section¹ 12276.1, subdivision (a) if certain modifications were made to the rifle, or certain accessories, such as the "Prince 50 Kit," "bullet button," or "MonsterMan grip," were attached to the rifle.

The California Department of Justice has a long history of cooperating with law enforcement agencies throughout the state, including those in Kern County. The Bureau of Firearms recently established a regional office in Fresno. So far this year, our special agents in the Fresno office have seized more than 125 firearms (including seven assault weapons) and almost 20,000 round of ammunition from felons and other persons who are prohibited by law from possessing both firearms and ammunition. We have also worked with your office to prosecute individuals who have unlawfully possessed, used and sold firearms in Kern County. Your office recently filed felony charges based upon a Bureau of Firearms investigation alleging that the defendant, a felon, illegally possessed an assault weapon in violation of Section 12280, subdivision (b), a firearm in violation of Section 12021, subdivision (a), and ammunition in violation of Section 12316, subdivision (b). A felony arrest warrant has been issued in that case.

However, the California Department of Justice (DOJ) has never had the legal duty or authority to *approve* a rifle, shotgun, or pistol for sale in the state on the basis that the firearm is not an assault weapon. At one time, DOJ had the legal authority pursuant to Section 12276.5, to declare a firearm to be a "series" assault weapon, or to obtain a court order that a firearm was an assault weapon. (See *Harrott v. County of Kings* (2001) 25

¹All statutory references are to the California Penal Code, unless otherwise indicated.

Mr. Jagels
November 3, 2008
Page 2

Cal.4th 1138, 1155.) However, that authority was revoked by statute in 2007 (Stats. 2006, ch. 793 (AB 2728).) Under current law, DOJ has the duty to prepare the Assault Weapons Guide and distribute the guide to law enforcement. (§ 12276.5, subd. (a)) DOJ's duty is essentially administrative. Consequently, determining what types of firearms are prohibited pursuant to Section 12276.1 is for the courts. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.)

Explaining your need for guidance from the Bureau of Firearms, you mention a letter written by Deputy Attorney General (DAG) Nancy Palmieri that "approved" the DS Arms model SA 58 "as not being 'an assault weapon under California law.'" You describe the letter as being the basis for a "policy" of the Department of Justice that firearms similar to the DSA SA 58 are not assault weapons.

A letter from a Deputy Attorney General cannot establish a DOJ "policy" that a particular type of firearm is, or is not, an assault weapon. An agency is prohibited from adopting a regulation -- an interpretation of the law intended for general application -- unless that regulation has been formally adopted pursuant to the Administrative Procedures Act (APA) (Gov. Code, §§ 11340.5, subd. (a), 11342.600) An interpretation of the law intended for general application that is not adopted in compliance with the APA is an illegal "underground regulation" that is entitled to no weight by the courts of the state. (*Marillon v. Royal Packing Co.* (2000) 22 Cal 4th 575, 581-582.) Rather, an interpretive policy is void when promulgated in violation of the APA. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal 4th 557, 571.)

In response to your request for "guidance from the BOF on how to determine whether firearms may be 'assault weapons' based on the features they possess [sic]," the Bureau of Firearms simply relies upon the state's statutes, regulations, and published appellate court decisions to determine whether an individual firearm is an assault weapon. Although we cannot adopt general policies about whether a class or type of firearm is an assault weapon, our office is happy to provide you with general information about California law governing firearms, including assault weapons. The Bureau of Firearms can also provide expert testimony about whether an individual firearm is an assault weapon in a court proceeding. An opinion rendered in a case-specific adjudication is not a "regulation" or policy that is subject to the APA. (*Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal.4th at p. 572.) Such an opinion would not be dispositive of the legal question whether a particular firearm is, in fact, an "assault weapon" because that question can only be answered by a finder of fact in a trial court (See *Harrott v. County of Kings, supra*, 25 Cal.4th at pp. 1155.) "And, of course, the Attorney General's identification of a particular firearm as a series assault weapon would, in an appropriate case, be subject to challenge. . . . [T]he Attorney General now asserts that the rifle is an AK 47 . . . Therefore, the case should be remanded to the trial court for a resolution of this question "[.]

Regarding your question about the "Prince 50 Kit" and "boller button," it is our understanding that those devices are designed to temporarily attach a magazine to a rifle.

Mr. Jugels
November 3, 2008
Page 3

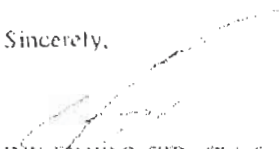
but allow the magazine to be removed from the rifle with the use of a tool. While there is no question that such a configuration would render the magazine of a rifle to be non-detachable, it is unclear whether such a configuration negates the rifle's "capacity to accept" a detachable magazine. Since there are no statutes, case law, or regulations concerning whether a rifle that is loaded with a fixed, removable magazine can also be considered to have the "capacity to accept a detachable magazine," we are unable to declare rifles configured with the "Prince 50 Kit" or "bullet button" to be legal or illegal. To do so without a regulation would create an illegal "underground regulation."

Regarding the "MonsterMan Grip," you state that this grip is not a pistol grip because it "does not permit a 'pistol-style grasp' and instead permits only a 'rifle style grasp' on AR or AK-type firearms." It is unclear what clarification you are seeking. If the MonsterMan Grip is truly not a pistol grip, then attaching it to a semiautomatic centerfire rifle that has the capacity to accept a detachable would not render such a rifle an assault weapon. Again, it should be noted that the Department does not have the authority to approve (or disapprove) such items for use in California.

Our staff continues to be available as a law enforcement resource for your office. If your staff has an inquiry about the law, your staff may contact Deputy Attorney General Alison Merrilees at (916) 274-6136. If your staff needs to identify a particular model of firearm or determine whether that firearm meets the definition of an "assault weapon" under California law, or if your office needs expert testimony in court, your staff may contact our firearms expert, Special Agent Blake Graham, at (916) 274-1025. If your office needs assistance with a criminal investigation, please contact DOJ Special Agent Supervisor Lee Carenga at the Bureau of Firearms regional office in Fresno at (559) 457-5024. We look forward to continuing our cooperative relationship with the Kern County District Attorney's office to enforce state firearms laws in California.

I hope this information is helpful. Please feel free to contact me again if you need further clarification.

Sincerely,



WILFREDO CID, Chief
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General

Exhibit O

DECLARATION OF SONOMA COUNTY SHERIFF STEVE FREITAS

I, STEVE FREITAS, hereby declare as follows:

1. I am the current elected Sheriff-Coroner of the County of Sonoma, and assumed that office on January 3, 2011. Prior to that day, I had been employed as a peace officer with the Sonoma County Sheriff's Office for approximately 20 years, during which time I also served in the capacity as the Chief of Police of the Town of Windsor, California. During my 27-year career, I have worked in various agencies in both detention administration and law enforcement in several different capacities. The matters set forth below are true and correct based on my own personal experiences and opinions, unless otherwise indicated, and if called to testify in this action I could and would competently testify thereto.
2. Under current law, the presence of a "flash suppressor" on a firearm is one indicia of an illegal assault weapon under California's Assault Weapons Control Act. Per California regulations, the definition of a "flash suppressor" is "[a]ny device designed, intended, or that functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision. (See 11 C.C.R. §5469(b).) Based on my review of this law, my investigation of the issues with Sheriff's Office weapons experts, and my general experience in law enforcement, I have developed the following opinions.
3. In my opinion, it is very difficult for law enforcement officers in the field to determine whether a device attached to a firearm meets the definition of a "flash suppressor." This is because the definition of "flash suppressor" has no objective standard or measurement that can be used in the field to determine whether a device is an illegal "flash suppressor." In addition, "flash suppressors" can easily be confused with very similar-looking devices attached to the end of a rifle barrel that are not illegal, such as muzzle-brakes, muzzle-compensators, or harmonic balancers.
4. In my opinion, to determine whether a device attached to a weapon is an illegal "flash suppressor" or instead a legal device (such as a muzzle-brake) creates profound challenges to peace officers in the field. The differences between illegal "flash suppressors" and legal devices are fine distinctions, which require thorough examination, research into manufacturers' specifications, and/or firing the weapon – which practices are not available to officers in the field.
5. It is my opinion that there is no general training my Office could conduct that would assist Sheriff's Deputies in distinguishing between a legal muzzle brake and an illegal flash suppressor with certainty.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on 5/22, 2012, in the City of Santa Rosa, County of Sonoma, State of California.



STEVE FREITAS

Exhibit P

1 STEVEN C. MITCHELL, ESQ., SBN 124644
ROBERT W. HENKELS, ESQ., SBN 255410
2 GEARY, SHEA, O'DONNELL, GRATAN & MITCHELL, P.C.
37 Old Courthouse Square, Fourth Floor
3 Santa Rosa, California 95404
Telephone: 707/545-1660
4 Facsimile: 707/545-1876

5 Attorneys for Defendants
CITY OF ROHNERT PARK, OFFICER DEAN BECKER (RP134)

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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 BRENDAN JOHN RICHARDS, THE
CALGUNS FOUNDATION, INC., and THE
12 SECOND AMENDMENT FOUNDATION,
INC.,

13 Plaintiffs,

14 v.

15 KAMALA HARRIS, Attorney General of
16 California (in her official capacity),
CALIFORNIA DEPARTMENT OF JUSTICE,
17 CITY OF ROHNERT PARK, OFFICER DEAN
BECKER (RP134) and DOES 1 to 20,

18 Defendants.
19

CASE NO.: CV 11 2493 LB

**DECLARATION OF BRIAN
MASTERSON, DIRECTOR OF THE
DEPARTMENT OF PUBLIC SAFETY FOR
THE CITY OF ROHNERT PARK**

20 I, Brian Masterson, declare and state as follows:

21 1. I am the current Director of the Rohnert Park Department of Public Safety, a
22 department that oversees both fire and police services for the City of Rohnert Park, California. I
23 have been employed as a peace officer since 1981, and have acted as Director of Public Safety for
24 the City of Rohnert Park since 2008. The matters set forth in this declaration are known to me
25 personally and if called upon to testify, I could and would testify thereto.

26 2. I have reviewed Arrest Report # 2010000912 (Case # 10-0001930) relating to
27 Officer Becker's arrest of Brendan Richards. As reflected in that report, among the various
28 weapons, ammunition and magazines seized as evidence was a DRACO weapon with a pistol grip

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SHEA,
O'DONNELL
GRATTAN &
MITCHELL
P.C.

1 that looks similar to an AK-47. It was apparently equipped with what I believe plaintiffs' refer to
2 as a "bullet button." I understand the term "bullet button" to refer to an after-market accessory that
3 attaches to the magazine of a firearm, "fixing" the magazine in place until a tool is used to detach
4 the magazine. The magazine of a firearm equipped with a "bullet button" can be detached with the
5 use of any small solid object, such as the tip of a bullet, or an Allen wrench or small screwdriver.

6 3. Also based on the report, I am informed and believe that another weapon seized and
7 identified by Officer Becker as an assault weapon under California law was a an AMEETEC Arms
8 WM-15 model firearm. I am informed and believe that this firearm appeared to Officer Becker to
9 be a semi-automatic centerfire rifle with the capacity to accept a detachable magazine and that it
10 had the superficial physical appearance of an assault weapon.

11 4. I have reviewed the Physical Evidence Examination Report prepared by Criminalist
12 John Yount of the California Department of Justice, Bureau of Forensic Services, Case Number
13 SR-10-002044-0001, dated August 16, 2010 (the "Report"), which appears to have been prepared
14 after Mr. Richards' arrest and based upon evidence submitted for analysis. Based on the Report, it
15 appears that the California Department of Justice, at least with respect to the Senior Criminalist
16 who prepared the Report, takes the position that a weapon equipped with a "bullet button" does not
17 "have the capacity to accept a detachable magazine" and thus does not meet the definition of a an
18 unlawful assault rifle as that term is defined by California Penal Code § 30515.

19 5. According to the Report, it was also John Yount's opinion that the WM-15, which is
20 a semi-automatic, centerfire rifle with a detachable magazine, lacked any of the further identifying
21 characteristics that constitute an assault weapon under California law. (e.g., it did not have a pistol
22 grip, or a flash hider)

23 6. In my opinion, and given the Department of Justice's Report in this case and the lack
24 of clear judicial authority available as guidance, it is difficult for officers in the field to determine,
25 with certainty, whether a weapon equipped with any particular "bullet button" meets the definition
26 of a rifle "with the capacity to accept a detachable magazine". Furthermore, it is my opinion that
27 the definitions of "pistol grip" and "flash hider" make it difficult for officers in the field to
28 determine if a firearm that looks like an assault weapon is in fact an assault weapon, as such items

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O'DONNELL
GRATTAN &
MITCHELL
P.C.

1 can be confused with similar-looking devices that are apparently not illegal.

2 7. Based upon my review of the Arrest Report, I believe that, given all circumstances
3 confronting Officer Dean Becker at the time of the underlying incident, it was reasonable for
4 Officer Becker to believe that a crime had been committed. However, I also believe that it would
5 be helpful for our officers and for the general public if the State of California or some judicial
6 authority were able to clarify more specifically the criteria it considers to be relevant in determining
7 whether a particular weapon is an assault weapon, particularly as it applies to bullet buttons, pistol
8 grips and flash hidere.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct. Executed this 16th day of December, 2013.

11 
12 BRIAN MASTERSON

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26 LAW OFFICES OF
27 GEARY,
28 SHEA,
O'DONNELL
GRATTAN &
MITCHELL
P.C.

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK AARON HAYNIE, BRENDAN JOHN RICHARDS, THE CALGUNS FOUNDATION, INC. and THE SECOND AMENDMENT FOUNDATION, INC.

No. C 10-1255 SI and No. CV 11-2493 SI

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND GRANTING LEAVE TO AMEND

Plaintiffs,

v.

KAMALA HARRIS, ATTORNEY GENERAL OF CALIFORNIA and CALIFORNIA DEPARTMENT OF JUSTICE

Defendants.

Now before the Court is defendants' motion to dismiss plaintiffs' claims for prospective injunctive and declaratory relief in *Haynie v. Harris* and *Richards v. Harris*. In both cases, plaintiffs seek, *inter alia*, an order compelling the defendant California Department of Justice to issue appropriate memorandums and/or bulletins to the State's District Attorneys and law enforcement agencies to prevent wrongful arrests. For the reasons set forth below, the Court GRANTS defendants' motion to dismiss those claims for declaratory and prospective injunctive relief, and GRANTS plaintiffs leave to amend.

BACKGROUND

Plaintiffs Mark Aaron Haynie and Brendan John Richards filed separate lawsuits against California Attorney General Kamala Harris and the California Department of Justice ("DOJ") alleging that they were wrongfully arrested for lawful possession of certain weapons that were mistakenly identified by California law enforcement officials as assault weapons under the California Assault

1 Weapons Control Act (“AWCA”), Cal. Penal Code §§ 12275-12290. Both plaintiffs claim that, because
 2 the DOJ will not issue a bulletin clarifying that weapons with a “bullet button” are legal to possess, they
 3 fear similar wrongful arrests in the future. Haynie FAC (hereinafter “FAC”) ¶ 45; Richards Compl.
 4 (hereinafter “Compl.”) ¶ 52. The Calguns Foundation and the Second Amendment Foundation are also
 5 plaintiffs in both suits. The Calguns Foundation is a “non-profit organization” which “support[s] the
 6 California firearms community by promoting education . . . about California and federal firearms laws,
 7 rights and privileges, and defend[s] and protect[s] the civil rights of California gun owners.” FAC ¶ 3.
 8 The purposes of the Second Amendment Foundation, a “non-profit membership organization,” include
 9 “education, research, publishing and legal action focusing on the Constitutional right to privately owned
 10 [sic] and possess firearms, and the consequences of gun control.” *Id.* ¶ 4. The Calguns Foundation
 11 contributed funds for Haynie’s and Richards’ legal representation during their criminal proceedings.
 12 FAC ¶¶ 3, 23; Compl. ¶ 39.

13
 14 1. ***Haynie***

15 Plaintiff Mark Aaron Haynie was arrested by officers of the Pleasanton Police Department on
 16 February 7, 2009 for possession of an assault weapon under California Penal Code § 12280 *et seq.* FAC
 17 ¶ 12. Haynie paid \$6,000 to a bail bondsman. *Id.* ¶ 13. Haynie’s rifle had a “bullet button” which
 18 makes the magazine of the rifle non-detachable. *Id.* ¶ 15. His rifle was not listed in California Penal
 19 Code § 12276 and could not be identified under Penal Code § 12276.1, the sections of the AWCA which
 20 define “assault weapon.” *Id.* ¶¶ 14-15. The Alameda County District Attorney’s Office declined to file
 21 an information against Haynie, and the matter was dropped from the Alameda County Superior Court
 22 Criminal Docket on March 27, 2009. *Id.* ¶ 18. Haynie was released on that same date. *Id.* ¶ 19. Haynie
 23 obtained a finding of factual innocence under California Penal Code § 851.8 on October 21, 2009. *Id.*
 24 ¶ 22. The Calguns Foundation paid for Haynie’s legal representation. *Id.* ¶ 23.

25 Haynie originally brought suit against the City of Pleasanton, the City of Pleasanton Police
 26 Department, and Doe defendants seeking damages, but the City and police department were dismissed
 27 from the case after payment to Haynie of \$6,000 and a release of all other claims. *Id.* ¶ 25. Haynie
 28 alleges that the DOJ is the state agency responsible for the training and education of law enforcement

1 agencies with respect to assault weapons, and that because the DOJ will not issue a statewide bulletin
 2 regarding the bullet button, he “has a reasonable fear that he may suffer wrongful arrests in the future.”
 3 *Id.* ¶¶ 26, 33, 35. Haynie also alleges that it would “not be unduly burdensome” for the DOJ to issue
 4 a bulletin “regarding the technology of the bullet button and to develop a field test to insure state-wide
 5 compliance with the law.” *Id.* ¶ 34.

6 In *Haynie*, plaintiffs seek (1) prospective injunctive relief under 42 U.S.C. § 1983 to prevent
 7 future violations of Fourth Amendment rights; (2) prospective injunctive relief under 42 U.S.C. § 1983
 8 to prevent future violations of Second Amendment rights; and (3) prospective injunctive relief requiring
 9 the DOJ and Harris to comply with their duties under California Penal Code §§ 12276.5 and 12289.
 10 FAC ¶¶ 37-44. Specifically, plaintiffs request that the Court issue a “declaratory judgment and/or
 11 prospective injunctive relief” to compel Harris and the DOJ to “issue appropriate memorandums and/or
 12 bulletins [regarding the bullet button] to the State’s District Attorneys and Law Enforcement Agencies
 13 to prevent wrongful arrests.” FAC ¶ 45(A).

14
 15 II. ***Richards***

16 Plaintiff Brendan John Richards was arrested by Rohnert Park police officer Dean Becker on
 17 May 20, 2010 for possession of an unregistered assault weapon under California Penal Code § 12280(b).
 18 Richards Compl. ¶¶ 17, 27. Officer Becker also seized two pistols and one rifle from Richards on that
 19 day. *Id.* ¶ 18. Richards spent six days in jail and was released after paying a \$1,400 non-refundable fee
 20 to a bondsman. *Id.* ¶ 29. The Calguns Foundation paid approximately \$11,000 for Richards’ legal
 21 representation. *Id.* ¶ 39. On September 9, 2010, the Sonoma County District Attorney’s Office
 22 dismissed all charges against Richards. *Id.* ¶ 30. The dismissal was based on a report by the DOJ
 23 Bureau of Forensic Services finding that none of the firearms confiscated from Richards were assault
 24 weapons as defined by the California Penal Code or California regulations. *Id.* ¶ 31. One of the
 25 firearms deemed to not be an assault weapon under the Penal Code “had a properly installed bullet
 26 button, thus rendering the firearm incapable of accepting a detachable magazine that could only be
 27 removed from the gun by the use of a tool.” *Id.* ¶ 31(a).

28 Richards’ claim for relief is broader than Haynie’s claim. Richards claims that because the DOJ

1 will not issue a bulletin to prevent future arrests, California Penal Code § 12276.1 is unconstitutionally
2 vague as it was applied to Richards, and Richards has a “continuing reasonable fear that he may suffer
3 wrongful arrests in the future.” *Id.* ¶ 51. Richards and the associational plaintiffs seek (1) a declaratory
4 judgment and/or injunctive relief that California Penal Code § 12276.1 is unconstitutional; (2) a
5 declaratory judgment and/or injunctive relief that California Penal Code § 12031(e) is unconstitutional
6 because “[m]ere possession of a firearm, . . . , when otherwise lawful, cannot support a finding of
7 probable cause to believe a crime has been committed, such that the Fourth Amendment’s warrant
8 requirement can be legislatively disregarded”; (3) a declaratory judgment and/or prospective injunctive
9 relief to compel Harris and the DOJ to “issue appropriate memorandums and/or bulletins to the State’s
10 District Attorneys and Law Enforcement Agencies to prevent wrongful arrests”; (4) injunctive relief
11 against the City of Rohnert Park and Officer Becker requiring amendments to policies and training to
12 address identification of assault weapons under California law and compliance with the Fourth
13 Amendment’s requirements for lawful searches; and (5) damages from the City of Rohnert Park and
14 Officer Becker. *See id.* ¶¶ 53-67.

15 On June 20, 2011, plaintiffs and defendants Harris and DOJ filed a stipulation and proposed
16 order consolidating *Haynie v. Harris* and *Richards v. Harris*. The parties stipulated that “[b]oth *Haynie*
17 and *Richards* present the same legal issues regarding California’s Assault Weapons Control Act and the
18 Department of Justice’s role in enforcing it.” Docket No. 38 in CV 10-1255 p. 2. The parties also
19 stipulated that “the legal defenses raised by the State Defendants in their Motion to Dismiss in the
20 *Haynie* matter are identical to those they would raise in a Motion to Dismiss in *Richards*, namely,
21 standing and subject matter jurisdiction.” *Id.* The parties further stipulated that the opposition and reply
22 in both *Haynie* and *Richards* would be “substantially identical” and that the facts alleged in the *Haynie*
23 FAC and the *Richards* Complaint “can be used to support arguments in either or both cases.” *Id.* On
24 June 21, 2011, the Court entered the stipulation and ordered the cases consolidated for hearing, pursuant
25 to Federal Rule of Civil Procedure 42(a). The pending motion to dismiss pertains only to plaintiffs’
26 claims against Harris and the DOJ.

LEGAL STANDARDS

I. Federal Rule of Civil Procedure 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) allows a party to challenge a federal court’s jurisdiction over the subject matter of the complaint. *See* Fed. R. Civ. Pro. 12(b)(1). The party invoking the jurisdiction of the federal court bears the burden of establishing that the court has the requisite subject matter jurisdiction to grant the relief requested. *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) (citation omitted). “In resolving a Rule 12(b)(1) factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment.” *In re. Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1236 (9th Cir. 2008) (citation omitted). A complaint will be dismissed if, looking at the complaint as a whole, it appears to lack federal jurisdiction either “facially” or “factually.” *Thornhill Pub'g Co., Inc. v. General Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). When the complaint is challenged for lack of subject matter jurisdiction on its face, all material allegations in the complaint will be taken as true and construed in the light most favorable to the plaintiff. *NL Indus. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). In deciding a Rule 12(b)(1) motion which mounts a factual attack on jurisdiction, “no presumption of truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist.” *Mortensen v. First Fed. Savings & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977).

II. Federal Rule of Civil Procedure 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The question presented by a motion to dismiss is not whether the plaintiff will prevail in the action, but whether the plaintiff is entitled to offer evidence in support of the claim. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds by Davis v. Scherer*, 468 U.S. 183 (1984). Dismissal of a complaint may be based “on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). In

1 answering this question, the Court must assume that the plaintiff's allegations are true and must draw
 2 all reasonable inferences in the plaintiff's favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561
 3 (9th Cir. 1987).

5 DISCUSSION

6 Defendants move to dismiss plaintiffs' claims for an order compelling the defendant California
 7 Department of Justice to issue appropriate memorandums and/or bulletins to the State's District
 8 Attorneys and law enforcement agencies to prevent wrongful arrests, arguing that plaintiffs do not meet
 9 either of the required components of standing for prospective equitable relief.¹ Defendants contend that
 10 plaintiffs (1) do not demonstrate a credible threat of future injury which is sufficiently concrete and
 11 particularized to meet the case or controversy requirement of Article III and (2) do not demonstrate an
 12 imminent threat of irreparable harm, a separate jurisdictional requirement plaintiffs must meet when
 13 seeking equitable relief. In addition, defendants argue that plaintiffs' failure to establish a likelihood
 14 of imminent injury requires dismissal of their related declaratory relief claim because plaintiffs must
 15 establish a likelihood of imminent injury in order to present a ripe claim for declaratory relief.
 16 Defendants also argue that plaintiffs fail to allege facts sufficient to justify injunctive relief against a
 17 state official.

18 The DOJ has published an Assault Weapons Identification Guide indicating that weapons where
 19 a tool, such as a bullet, is needed to remove the magazine, the weapon is not considered a banned gun
 20 due to its detachable magazine. Defs' Mot. at 1. However, both Haynie and Richards claim that,
 21 because the DOJ will not issue a bulletin specifically regarding the technology of the bullet button, they
 22 have a reasonable fear that they may be wrongfully arrested in the future. FAC ¶ 35; Compl. ¶ 51. The
 23 Calguns Foundation and the Second Amendment Foundation also claim that because the DOJ will not
 24 issue a bulletin, they fear that their members will be subject to wrongful arrests. FAC ¶ 36; Compl. ¶ 52.

25
 26 ¹ Defendants' motion does not contend that the *Richards* plaintiffs lack standing to challenge
 27 the constitutionality of the statute, and those claims are not addressed in or affected by this order.
 28 Instead, defendants' motion is more narrowly focused on whether plaintiffs in both cases have standing
 to seek prospective injunctive relief in the form of an order compelling the defendant California
 Department of Justice to issue appropriate memorandums and/or bulletins to the State's District
 Attorneys and law enforcement agencies to prevent wrongful arrests.

1 Plaintiffs' opposition to defendants' motion does not address any of defendants' arguments about
2 standing to seek the prospective injunctive relief at issue. Rather, plaintiffs assert that the DOJ is
3 simultaneously advising California residents that possession of certain semi-automatic firearms is legal
4 and warning that any of the State's District Attorneys may come to a different conclusion and prosecute
5 them for possession of the firearms, resulting in "the chilling of a fundamental right." Pls' Opp'n at 1-2.
6 Plaintiffs claim that there have been "a half-dozen cases, related to bullet buttons or magazine locks, in
7 which Calguns Foundation Inc., assisted in the defense of people wrongfully accused of possessing legal
8 firearms." *Id.* One of the cases cited is *Richards*. *Id.* Plaintiffs argue that the Court has federal
9 question jurisdiction because they are seeking to vindicate a constitutional right. They assert that there
10 is confusion in the law enforcement community about the definition of detachable magazines and it is
11 therefore not unreasonable for Haynie, the Calguns Foundation, and the Second Amendment Foundation
12 to claim that there is a real threat of future illegal seizures of firearms. Plaintiffs set out "four separate
13 theories for injunctive relief," including alleged duties of defendants Harris and the DOJ to carry out
14 certain sections of the California Penal Code, provide training and outreach to law enforcement, avoid
15 filing of criminal charges not supported by probable cause and prevent wrongful arrests, and to "clear
16 up the confusion" about the AWCA. *Id.* at ¶. 9-10.

17 Calguns Foundation Chairman Gene Hoffman also filed a declaration in opposition to the motion
18 to dismiss. Attached to the declaration are seven letters from 2005 and 2006 on DOJ letterhead which
19 he claims "all follow a similar pattern of declaring a certain gun part (receiver) legal to import into
20 California and then warning the recipient that California's 58 District Attorneys may have a different
21 opinion that could result in prosecution." Hoffman Decl. ¶ 6; *see* Ex. A. Hoffman also attaches DOJ
22 notices which he claims contradict the California Penal Code, California regulations, and the DOJ's
23 Assault Weapons Identification Guide – which he says do not require permanent alteration of weapons
24 – because the notices "stat[e] that owners of a firearm with features had to, 'permanently alter the
25 firearm so that it cannot accept a detachable magazine.'" Hoffman Decl. ¶ 7 & Ex. B. The notices were
26 posted on the DOJ's website and detail the Department's policy regarding series-style weapons not
27 identified as assault weapons by the Department. *See id.* Ex. B. Hoffman attaches several other DOJ
28 and Office of Administrative Law (OAL) communications, including a DOJ e-mail, internal memo to

1 phone staff, Notice of Proposed Rulemaking, “Text of Modified Regulations,” 2008 letters from DOJ
 2 indicating an inability to declare weapons with bullet buttons legal or illegal, and a 2007 letter from
 3 OAL indicating suspension of its review of DOJ regulations, which Hoffman claims demonstrate
 4 misinformation, confusion, and uncertainty about the legality of weapons with a bullet button. Hoffman
 5 Decl. ¶¶ 8-18 & Ex. C, D, E, F, G, H, I, J, K. Finally, Hoffman documents six incidents, including
 6 Richards’ experience, in which the Calguns Foundation defended alleged wrongful arrests, charges, or
 7 seizure of weapons under the AWCA. *See* Hoffman Decl. ¶ 20.

8 Defendants respond, *inter alia*, that it is appropriate for the Attorney General’s staff to express
 9 an informed opinion about the legality of certain weapons while warning the public that other
 10 prosecutors may disagree. Defendants note that the DOJ letters from 2005 and 2006 attached to
 11 Hoffman’s declaration “explicitly state they are expressing ‘an opinion’ about the legality of certain
 12 weapons” and that the opinions of Attorneys General are not binding on the courts. *Id.* & Letter from
 13 Alison Merrilees to Amanda Sitar (Dec. 12, 2005) in Ex. A; *see also Lucas v. Board of Trustees*, 18 Cal.
 14 App. 3d 988, 991-92 (1971) (“The opinions of the Attorney General, of course, are not binding upon
 15 the courts. They are, however, entitled to much weight.”) (internal citation omitted). Defendants also
 16 cite Ninth Circuit case law indicating that the Attorney General does not have complete control over
 17 District Attorneys in support of their argument that DOJ letters that express an opinion about the legality
 18 of certain weapons but warn the public that other prosecutors may disagree are appropriate. *See*
 19 *Brewster v. Shasta County*, 275 F.3d 803, 809 (9th Cir. 2001) (holding that the “general law
 20 enforcement authority” provided to the Attorney General by Article 5, § 13 of the California
 21 Constitution “‘does not contemplate absolute control and direction’ of the officials subject to the
 22 Attorney General’s supervision.”) (internal citation omitted).

23
 24 I. Haynie and Richards lack standing to seek an order compelling DOJ to issue a
 25 memorandum to prevent wrongful arrests

26 The Constitution of the United States limits the jurisdiction of federal courts to “Cases” and
 27 “Controversies.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992). Standing is an essential and
 28 unchanging part of the case-or-controversy requirement of Article III. *Id.* at 560 (citation omitted).

1 Before a federal court can consider the merits of a legal claim, the party seeking to invoke the
 2 jurisdiction of the court must establish the requisite standing to sue. *Whitmore v. Arkansas*, 495 U.S.
 3 149, 154 (1990). The threshold inquiry into standing “in no way depends on the merits of the
 4 [petitioner's] contention that particular conduct is illegal” *Id.* at 155.

5 Over the years, Supreme Court cases have established that:

6 the irreducible constitutional minimum of standing contains three elements. First, the
 7 plaintiff must have suffered an injury in fact – an invasion of a legally protected interest
 8 which is (a) concrete and particularized and (b) actual or imminent, not conjectural or
 9 hypothetical. Second, there must be a causal connection between the injury and the
 10 conduct complained of -- the injury has to be fairly . . . trace[able] to the challenged
 11 action of the defendant, and not . . . the result [of] the independent action of some third
 12 party not before the court. Third, it must be likely, as opposed to merely speculative,
 13 that the injury will be redressed by a favorable decision.

14 *Lujan*, 504 U.S. at 560-61 (internal citations and quotations omitted).

15 “The party invoking federal jurisdiction bears the burden of establishing these elements.” *Id.*
 16 at 561. Each element “must be supported in the same way as any other matter on which the plaintiff
 17 bears the burden of proof, i.e. with the manner and degree of evidence required at the successive stages
 18 of the litigation.” *Id.* (internal citations omitted). “At the pleading stage, general factual allegations of
 19 injury resulting from the defendant’s conduct may suffice,” for on a motion to dismiss, courts “presume
 20 that general allegations embrace those specific facts that are necessary to support the claim.” *Id.*
 21 (internal citations omitted). Plaintiffs seeking equitable relief must also show “irreparable injury, a
 22 requirement that cannot be met where there is no showing of any real or immediate threat that the
 23 plaintiff will be wronged again – a ‘likelihood of substantial and immediate irreparable injury.’” *City*
 24 *of Los Angeles v. Lyons*, 461 U.S. 95, 111 (internal citation omitted).

25 Defendants rely primarily on *City of Los Angeles v. Lyons* to argue that plaintiffs lack standing
 26 to seek the prospective injunctive relief at issue. In *Lyons*, the Supreme Court considered a complaint
 27 seeking damages and injunctive and declaratory relief against the City of Los Angeles and four of its
 28 police officers. The plaintiff had been placed in a chokehold by Los Angeles police after being stopped
 for a vehicle code violation. *Id.* at 97-98. Lyons sought a preliminary and permanent injunction against
 the city barring the use of the chokeholds. *Id.* at 98. Lyons alleged that, pursuant to the authorization
 of the City, Los Angeles police officers “regularly and routinely” applied the challenged chokeholds

1 in “innumerable situations”; that “numerous” people had been injured as a result of the use of the
2 chokeholds; that he and other people were threatened with irreparable injury in the form of bodily injury
3 and death; and that he justifiably feared that any contact with Los Angeles police might result in him
4 being “choked and strangled to death without provocation, justification, or other legal excuse.” *Id.* at
5 98 (quoting Lyons’ complaint).

6 The Court found that Lyons had a claim for damages that appeared to meet all the Article III
7 standing requirements, but held that he did not meet the standard for seeking equitable relief in federal
8 court because there was no showing of any real or immediate threat that he would be wronged again.
9 “The equitable remedy is unavailable absent a showing of irreparable injury, a requirement that cannot
10 be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again
11” *Id.* at 111. The Court reiterated a previous holding that “[p]ast exposure to illegal conduct does
12 not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any
13 continuing, present adverse effects.” *Id.* at 102 (internal citation and quotation marks omitted). The
14 Court stated that the allegations in the complaint that police in Los Angeles “routinely” applied the
15 chokeholds without provocation or other justification fell “far short” of the allegations that would be
16 necessary to establish a case or controversy between the parties. *Id.* at 105. In order to establish an
17 actual case or controversy, the Court stated that Lyons would “have had not only to allege that he would
18 have another encounter with police but also to make the incredible assertion either (1) that *all* police
19 officers in Los Angeles *always* choke any citizen with whom they happen to have an encounter . . . , or
20 (2) that the City ordered or authorized police officers to act in such manner.” *Id.* at 105-06 (emphasis
21 in original). The Court held that even though there may inevitably be “certain instances” in which
22 strangleholds will be illegally applied and injury and death unconstitutionally inflicted on the victim,
23 it was no more than “conjecture” to suggest that in every encounter between the police and a citizen,
24 the police would act unconstitutionally and inflict injury without provocation or legal excuse, and it was
25 “no more than speculation” to claim that Lyons himself would have a similar encounter with police in
26 the future. *Id.* at 108. “If Lyons has made no showing that he is realistically threatened by a repetition
27 of his experience of October 1976, then he has not met the requirements for seeking an injunction in a
28 federal court” *Id.* at 109. Because of the “speculative” nature of Lyons’ claim of future injury,” the

1 prerequisite showing of “a ‘likelihood of substantial and immediate irreparable injury’” for equitable
2 relief was not fulfilled, and he did not have standing to seek an injunction in federal court. *Id.* at 111.

3 Under *Lyons*, plaintiffs’ allegations that they fear future wrongful arrests do not demonstrate a
4 case or controversy and fail to establish standing to seek an order compelling DOJ to issue a
5 memorandum to prevent wrongful arrests. *Lyons* holds that past exposure to illegal conduct without any
6 continuing, current adverse effects is not enough to show a case or controversy for injunctive relief, and
7 that even allegation of routine misconduct is not sufficient. *See Lyons*, 461 U.S. at 102, 105. Under the
8 *Lyons* standard, to show a real and immediate threat and demonstrate a case or controversy, Haynie and
9 Richards would have to allege either that *all* law enforcement officers in California *always* arrest any
10 citizen they come into contact with who is lawfully in possession of a weapon with a bullet button, or
11 that the DOJ has ordered or authorized California law enforcement officials to act in such a manner. *See*
12 *id.* at 105-06.

13 Plaintiffs’ opposition does not address any of defendants’ arguments about standing, nor do
14 plaintiffs attempt to distinguish *Lyons*. While detailing the past conduct of California law enforcement
15 officials, neither Haynie nor Richards alleges that he has had any similar experiences since the incidents
16 of February 7, 2009 and May 10, 2010, respectively, or that he has had any further contact with law
17 enforcement officers which would demonstrate continuing, present adverse effects. Similarly, plaintiffs’
18 assertion that there are “a half-dozen cases, related to bullet buttons or magazine locks, in which
19 Calguns Foundation Inc., assisted in the defense of people wrongfully accused of possessing legal
20 firearms,” does not amount to an allegation that *all* law enforcement officers in California *always*
21 wrongly arrest any citizen with whom they come into contact who is lawfully in possession of a weapon
22 with a bullet button. *See* Pls’ Opp’n ¶ 4(f).

23 Similarly, neither Haynie nor Richards alleges that Harris or the DOJ has ordered or authorized
24 California law enforcement officers to arrest people in lawful possession of firearms with bullet buttons.
25 Plaintiffs’ claims that the “DOJ has been simultaneously advising residents of California that their
26 possession of certain semi-automatic firearms is legal, while at the same time warning them that any one
27 of the 58 of the State’s District Attorneys might come to a different conclusion and prosecute them for
28 ownership/possession of these same firearms,” and that there is a “general state of confusion in the law

1 enforcement community about the definition of detachable magazines,”² is not tantamount to an
2 allegation that DOJ has ordered law enforcement officials to arrest citizens lawfully in possession of
3 weapons with bullet buttons.

4 Plaintiffs also fail to demonstrate a likelihood of substantial and immediate irreparable injury,
5 a prerequisite for the type of equitable relief sought. As in *Lyons*, where the individual alleging that
6 he had been choked by police five months earlier did “nothing to establish a real and immediate threat
7 that he would again” be stopped for a traffic violation or any other offense and subjected to the same
8 treatment, plaintiffs’ complaints do not establish a real and immediate threat that they will again have
9 an encounter with law enforcement officers who will wrongfully arrest them for lawful possession of
10 guns with a bullet button. Just as it was “no more than speculation” for Lyons to claim he would have
11 a similar encounter with police in the future, it is no more than speculation for Haynie and Richards to
12 claim that they will have future encounters with law enforcement officers similar to their previous
13 experiences. See *Lyons*, 461 U.S. at 108. These speculative claims do not show a likelihood of
14 substantial and immediate irreparable injury. See *id.* at 111. Because Haynie and Richards do not
15 demonstrate that they are “realistically threatened by a repetition” of their experiences, *Lyons*, 461 U.S.
16 at 109, they do not meet the requirements for standing to seek an order compelling DOJ to issue a
17 directive to prevent wrongful arrests. Accordingly, the Court GRANTS defendants’ motion to dismiss
18 plaintiffs’ claims seeking such relief.

19
20 II. The Calguns Foundation and the Second Amendment Foundation lack associational
21 standing to sue Harris and the DOJ for the injunctive relief at issue

22 Associations have standing to sue on behalf of their members “only if (a) their members would
23 otherwise have standing to sue in their own right; (b) the interests that the organizations seek to protect
24 are germane to their purpose; and (c) neither the claim asserted nor the relief requested requires the
25 participation of individual members in the lawsuit.” *San Diego Cnty. Gun Rights Comm. v. Reno*, 98
26 F.3d 1121, 1130-31 (9th Cir. 1996) (citing *Hunt v. Washington State Apple Advertising Comm’n*, 432
27 U.S. 333, 343 (1977), superseded in part by statute as stated in *United Food & Commer. Workers Union*

28 ² Pls’ Opp’n at 1-2, 7.

1 *Local 751 v. Brown Group*, 517 U.S. 544 (1996)).

2 Because associations have standing to sue on behalf of their members “only if . . . their members
3 would otherwise have standing to sue in their own right . . .” and because, for the reasons discussed
4 above, Richards and Haynie fail to establish a case or controversy giving them standing to sue the
5 Attorney General and DOJ for injunctive relief, it appears at this time that the Calguns Foundation and
6 the Second Amendment Foundation similarly do not have standing to seek injunctive relief against
7 Harris and the DOJ in this Court.³ See *San Diego Cnty. Gun Rights Comm.*, 98 F.3d at 1130-31.
8 Accordingly, the Court dismisses the associational plaintiffs’ claims seeking an order compelling
9 defendants to issue a memorandum to prevent wrongful arrests.

10
11 III. Plaintiffs’ related claims for declaratory relief are not ripe for adjudication

12 “Ripeness doctrine protects against premature adjudication of suits in which declaratory relief
13 is sought.” *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1044 (9th Cir. 1999) (internal citation
14 omitted). “In suits seeking both declaratory and injunctive relief against a defendant’s continuing
15 practices, the ripeness requirement serves the same function in limiting declaratory relief as the
16 imminent-harm requirement serves in limiting injunctive relief.” *Id.* In *Texas v. United States*, the
17 Supreme Court held that, “A claim is not ripe for adjudication if it rests upon contingent future events
18 that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296,
19 300 (1998) (internal quotations omitted).

20 As discussed above, it is mere speculation that Haynie or Richards will have another encounter
21 with police and be unlawfully arrested as a result of such a hypothetical encounter. Because claims for
22 declaratory relief are not ripe for adjudication if they rest upon “contingent future events that may not
23 occur as anticipated, or indeed may not occur at all,” and because future wrongful arrests of Haynie or

24
25 ³ On August 5, 2011, plaintiffs filed a Notice of Supplemental Authority and attached *Ezell v.*
26 *City of Chicago*, 2011 U.S. App. LEXIS 14108 (7th Cir. July 6, 2011). Plaintiffs assert that this case
27 addresses “institutional standing.” Notice of Supplemental Authority p. 2. In *Ezell*, the Seventh Circuit
28 Court of Appeals held that organizational plaintiffs, including the Second Amendment Foundation, had
standing to seek a declaration that the City of Chicago’s ban on firing ranges was invalid and to seek
an injunction blocking the ban’s enforcement. However, unlike in the present case, in *Ezell* it was “clear
the individual plaintiffs have standing.” *Ezell*, U.S. App. LEXIS 14108 at *22-23 n. 7. *Ezell* does not
change the Court’s analysis of the associational plaintiffs’ lack of standing.


1 Richards may never occur or may not occur as plaintiffs “fear,” plaintiffs’ claims for declaratory relief,
2 to the extent they are concomitant with plaintiffs’ claims for injunctive relief discussed *supra*, are not
3 ripe for adjudication. *See Hodgers-Durgin*, 199 F.3d at 1044 (internal quotations and citations omitted).

4
5 CONCLUSION

6 For the foregoing reasons, the Court GRANTS defendants’ motion to dismiss plaintiffs’ claims
7 for prospective injunctive and declaratory relief regarding the issuance of a bulletin to prevent wrongful
8 arrests. Plaintiffs are directed to file a consolidated amended complaint by November 4, 2011. If
9 plaintiffs wish to pursue the dismissed claims for injunctive and declaratory relief, they should plead
10 facts demonstrating that they have standing to do so in the consolidated amended complaint. The Case
11 Management Conference currently scheduled for November 4, 2011 is continued to January 13,
12 2012.

13
14 IT IS SO ORDERED.

15
16 Dated: October 22, 2011

17 
18 _____
19 SUSAN ILLSTON
20 United States District Judge
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United States District Court
For the Northern District of California

ADRMOP,APPEAL,CLOSED,CONSOL,E-Filing,ENETERM,REFSET-JSC

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:10-cv-01255-SI**

Haynie et al v. City of Pleasanton et al
Assigned to: Hon. Susan Illston
Referred to: Magistrate Judge Jacqueline Scott Corley
(Settlement)
Case in other court: USCA, 14-15531
Cause: 42:1983 Civil Rights Act

Date Filed: 03/25/2010
Date Terminated: 03/04/2014
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Mark Aaron Haynie

represented by **Donald E.J. Kilmer , Jr**
Offices of Donald Kilmer
1645 Willow Street
Suite 150
San Jose, CA 95125
408/264-8489
Fax: 408/264-8487
Email: Don@DKLawOffice.com
ATTORNEY TO BE NOTICED

Plaintiff

Calguns Foundation, Inc.

represented by **Donald E.J. Kilmer , Jr**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Second Amendment Foundation, Inc.

represented by **Donald E.J. Kilmer , Jr**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Brendan John Richards

represented by **Donald E.J. Kilmer , Jr**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Max Joseph Plog-Horowitz
TERMINATED: 10/29/2012

represented by **Donald E.J. Kilmer , Jr**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

City of Pleasanton
TERMINATED: 06/15/2010

represented by **Louis A. Leone**
Stubbs & Leone
2175 N. California Boulevard
Suite 900
Walnut Creek, CA 94596
925-974-8600
Fax: 925-974-8601
Email: lleone@stubbsleone.com
TERMINATED: 08/30/2013
ATTORNEY TO BE NOTICED

Defendant

represented by

City of Pleasanton Police Department
TERMINATED: 06/15/2010

Louis A. Leone
(See above for address)
TERMINATED: 08/30/2013
ATTORNEY TO BE NOTICED

Defendant

California Department of Justice

represented by **Ross Charles Moody**
Attorney General of the State of California
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
(415) 703-1376
Fax: 415-703-1234
Email: ross.moody@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Kamala Harris
Attorney General of California (in her official capacity)

represented by **Ross Charles Moody**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

City of Rohnert Park
TERMINATED: 12/19/2013

represented by **Steven Corson Mitchell**
Geary Shea O'Donnell Grattan & Mitchell,
P.C.
37 Old Courthouse Square, 4th Floor
Santa Rosa, CA 95404
707-545-1660
Fax: (707) 545-1876
Email: smitchell@gsoglaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Officer Dean Becker
(RP134)
TERMINATED: 12/19/2013

represented by **Steven Corson Mitchell**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Andrew Lyssand
TERMINATED: 10/29/2012

represented by **Steven Corson Mitchell**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

City of Cotati
TERMINATED: 10/29/2012

represented by **Steven Corson Mitchell**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Cotati Police Department
TERMINATED: 10/29/2012

represented by **Steven Corson Mitchell**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
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03/25/2010	<u>1</u>	COMPLAINT (Summmons issued); against California Department of Justice, City of Pleasanton, City of Pleasanton Police Department (Filing fee \$ 350, receipt number 34611043917.). Filed byMark Aaron Haynie, Calguns Foundation, Inc., Second Amendment Foundation, Inc.. (ys, COURT STAFF) (Filed on 3/25/2010) (Additional attachment(s) added on 4/9/2010: # <u>1</u> Civil Cover Sheet) (ys, COURT STAFF). (Entered: 03/26/2010)
03/25/2010	<u>2</u>	ADR SCHEDULING ORDER: Case Management Statement due by 6/25/2010. Case Management Conference set for 7/2/2010 02:30 PM. (Attachments: # <u>1</u> standing orders and cmc order)(ys, COURT STAFF) (Filed on 3/25/2010) (Entered: 03/26/2010)
03/25/2010	<u>3</u>	Summons Issued as to California Department of Justice, City of Pleasanton, City of Pleasanton Police Department. (ys, COURT STAFF) (Filed on 3/25/2010) (Entered: 03/26/2010)
03/25/2010		CASE DESIGNATED for Electronic Filing. (ys, COURT STAFF) (Filed on 3/25/2010) (Entered: 03/26/2010)
04/09/2010	<u>4</u>	CLERKS NOTICE re: Failure to E-File complaint by plaintiffs' counsel. (ys, COURT STAFF) (Filed on 4/9/2010) (Entered: 04/09/2010)
04/09/2010	<u>5</u>	***Duplicate of Document #1***COMPLAINT against California Department of Justice, City of Pleasanton, City of Pleasanton Police Department (Filing fee \$ 350.). Filed byMark Aaron Haynie, Calguns Foundation, Inc., Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Civil Cover Sheet)(Kilmer, Donald) (Filed on 4/9/2010) Modified on 4/9/2010 (ys, COURT STAFF). (Entered: 04/09/2010)
06/08/2010	<u>6</u>	STIPULATION for Dismissal of Defendants City of Pleasanton and City of Pleasanton Police Department with Prejudice by City of Pleasanton, City of Pleasanton Police Department. (Leone, Louis) (Filed on 6/8/2010) (Entered: 06/08/2010)
06/15/2010	<u>7</u>	ORDER dismissing Pleasanton and Pleasanton Police Dept. (tf, COURT STAFF) (Filed on 6/15/2010) (Entered: 06/15/2010)
06/23/2010	<u>8</u>	STIPULATION and Proposed Order selecting Early Neutral Evaluation by California Department of Justice (<i>Stipulation and [Proposed] Order Selecting ADR Process and Continuing Case Management Conference</i>) (Moody, Ross) (Filed on 6/23/2010) (Entered: 06/23/2010)
06/29/2010	<u>9</u>	ORDER REFERRING CASE to Early Neutral Evaluation; continuing cmc to 10/1/10 (tf, COURT STAFF) (Filed on 6/29/2010) (Entered: 06/29/2010)
06/29/2010		***Deadlines terminated. (ys, COURT STAFF) (Filed on 6/29/2010) (Entered: 06/30/2010)
06/29/2010		Set Deadlines/Hearings: Case Management Conference set for 10/1/2010 02:30 PM. (ys, COURT STAFF) (Filed on 6/29/2010) (Entered: 06/30/2010)
07/16/2010	<u>10</u>	ADR Clerks Notice Appointing James V. Fitzgerald as ENE Evaluator. (af, COURT STAFF) (Filed on 7/16/2010) (Entered: 07/16/2010)
09/27/2010	<u>11</u>	STIPULATION and <i>[Proposed] Order Continuing Case Management Conference to Permit Completion of Early Neutral Evaluation Process</i> by California Department of Justice. (Moody, Ross) (Filed on 9/27/2010) (Entered: 09/27/2010)
09/30/2010	<u>12</u>	ORDER continuing cmc to 1/21/10 (tf, COURT STAFF) (Filed on 9/30/2010) (Entered: 09/30/2010)
09/30/2010	<u>13</u>	ORDER continuing cmc to 1/21/11 (tf, COURT STAFF) (Filed on 9/30/2010) (Entered: 09/30/2010)
09/30/2010		Set Deadlines/Hearings: Case Management Conference set for 1/21/2011 02:30 PM. (ys, COURT STAFF) (Filed on 9/30/2010) (Entered: 10/01/2010)
10/01/2010	<u>14</u>	corrected ORDER (tf, COURT STAFF) (Filed on 10/1/2010) (Entered: 10/01/2010)

10/01/2010	<u>15</u>	STIPULATION <i>Reset CMC</i> by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 10/1/2010) (Entered: 10/01/2010)
10/07/2010		ADR Remark: ENE deadline was extended to January 21, 2011 <u>14</u> . (af, COURT STAFF) (Filed on 10/7/2010) (Entered: 10/07/2010)
10/12/2010	<u>16</u>	ORDER continuing cmc to 2/4/11 (tf, COURT STAFF) (Filed on 10/12/2010) (Entered: 10/12/2010)
10/12/2010		Set Deadlines/Hearings: Case Management Conference set for 2/4/2011 02:30 PM. (ys, COURT STAFF) (Filed on 10/12/2010) (Entered: 10/13/2010)
01/21/2011	<u>17</u>	STIPULATION <i>to reset CMC</i> by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 1/21/2011) (Entered: 01/21/2011)
01/24/2011	<u>18</u>	ORDER re <u>17</u> – continuing CMC to 3/18/11 at 2:30 pm.(tf, COURT STAFF) (Filed on 1/24/2011) Modified on 1/25/2011 (ys, COURT STAFF). (Entered: 01/24/2011)
02/11/2011	<u>19</u>	CERTIFICATION OF ENE Session 2/9/2011, case not settled, further discussions are expected after the upcoming case management conference, ENE complete. Signed by Evaluator, James V. Fitzgerald, dated 2/11/2011. (af, COURT STAFF) (Filed on 2/11/2011) (Entered: 02/11/2011)
03/04/2011	<u>20</u>	CASE MANAGEMENT STATEMENT <i>Joint</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 3/4/2011) (Entered: 03/04/2011)
03/04/2011	<u>21</u>	STIPULATION <i>to file First Amended Complaint</i> by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit Proposed Amended Complaint)(Kilmer, Donald) (Filed on 3/4/2011) (Entered: 03/04/2011)
03/09/2011	<u>22</u>	ORDER Re: First Amended Complaint re <u>21</u> (tf, COURT STAFF) (Filed on 3/9/2011) Modified on 3/10/2011 (ys, COURT STAFF). (Entered: 03/09/2011)
03/09/2011	<u>23</u>	AMENDED COMPLAINT <i>First</i> against California Department of Justice, Kamala Harris. Filed by Mark Aaron Haynie, Calguns Foundation, Inc., Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 3/9/2011) (Entered: 03/09/2011)
03/15/2011	<u>24</u>	CLERKS NOTICE Initial Case Management Conference set for 3/25/2011 02:30 PM. (tf, COURT STAFF) (Filed on 3/15/2011) (Entered: 03/15/2011)
03/29/2011	<u>25</u>	Minute Entry: Initial Case Management Conference held on 3/25/2011 before Illston (Date Filed: 3/29/2011). Further Case Management Conference set for 6/10/2011 03:00 PM. Motion Hearing set for 6/10/2011 09:00 AM before Hon. Susan Illston. () (tf, COURT STAFF) (Date Filed: 3/29/2011) Modified on 3/29/2011 (tf, COURT STAFF). (Entered: 03/29/2011)
05/06/2011	<u>26</u>	MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> filed by California Department of Justice, Kamala Harris. Motion Hearing set for 6/10/2011 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. (Attachments: # <u>1</u> Memorandum of Points and Authorities in Support of Motion to Dismiss, # <u>2</u> Proposed Order [Proposed] Order Granting Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).))(Moody, Ross) (Filed on 5/6/2011) (Entered: 05/06/2011)
05/20/2011	<u>27</u>	DECLARATION of Gene Hoffman <i>Chairman of Calguns Foundation, Inc.</i> , opposing <u>26</u> defendants' motion to dismiss filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K)(Kilmer, Donald) (Filed on 5/20/2011) Modified on 5/23/2011 (ys, COURT STAFF). (Entered: 05/20/2011)

05/20/2011	<u>28</u>	RESPONSE/Opposition to (re <u>26</u> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i>) filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 5/20/2011) Modified on 5/23/2011 (ys, COURT STAFF). (Entered: 05/20/2011)
05/24/2011	<u>29</u>	CLERKS NOTICE Continuing Motion Hearing, Set/Reset Deadlines as to <u>26</u> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> Motion Hearing set for 7/1/2011 09:00 AM before Hon. Susan Illston. (tf, COURT STAFF) (Filed on 5/24/2011) (Entered: 05/24/2011)
05/24/2011	<u>30</u>	CLERKS NOTICE Further Case Management Conference set for 7/1/2011 03:00 PM. (tf, COURT STAFF) (Filed on 5/24/2011) (Entered: 05/24/2011)
05/25/2011	<u>31</u>	Letter from Ross C. Moody to the Honorable Susan Illston (REQUEST to re-set hearing on defendants' motion to dismiss to Aug. 5 or 12) . (Moody, Ross) (Filed on 5/25/2011) Modified on 5/26/2011 (ys, COURT STAFF). (Entered: 05/25/2011)
05/26/2011	<u>32</u>	LETTER APPROVING REQUEST TO Continue Motion Hearing (tf, COURT STAFF) (Filed on 5/26/2011) (Entered: 05/26/2011)
05/26/2011		Set/Reset Deadlines as to <u>26</u> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> Motion Hearing set for 8/5/2011 09:00 AM before Hon. Susan Illston. (tf, COURT STAFF) (Filed on 5/26/2011) (Entered: 05/26/2011)
05/27/2011	<u>33</u>	REPLY (re <u>26</u> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i>) (Reply Brief in Support of Motion to Dismiss) filed by California Department of Justice, Kamala Harris. (Moody, Ross) (Filed on 5/27/2011) (Entered: 05/27/2011)
06/01/2011	<u>34</u>	MOTION to Relate Case to 11-2493-LB filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Kilmer, Donald) (Filed on 6/1/2011) Modified on 6/2/2011 (ys, COURT STAFF). (Entered: 06/01/2011)
06/08/2011	<u>35</u>	ORDER RELATING CASE to 11-2493. (tf, COURT STAFF) (Filed on 6/8/2011) Modified on 6/8/2011 (ys, COURT STAFF). (Entered: 06/08/2011)
06/08/2011	<u>36</u>	ORDER granting <u>34</u> Motion to Relate Case (tf, COURT STAFF) (Filed on 6/8/2011) (Entered: 06/08/2011)
06/08/2011	<u>37</u>	ORDER granting motion to relate case and setting 8/5/11 @ 2:30 p.m. for the initial case management conference. (tf, COURT STAFF) (Filed on 6/8/2011) (Entered: 06/08/2011)
06/22/2011	<u>38</u>	ORDER consolidating cases and motion hearing (tf, COURT STAFF) (Filed on 6/22/2011) (Entered: 06/22/2011)
06/22/2011		Set/Reset Deadlines as to (26 in 3:10-cv-01255-SI) MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> Replies due by 7/13/2011. Motion Hearing set for 8/5/2011 09:00 AM

		before Hon. Susan Illston. (tf, COURT STAFF) (Filed on 6/22/2011) (Entered: 06/22/2011)
08/05/2011	<u>39</u>	STATEMENT OF RECENT DECISION pursuant to Civil Local Rule 7-3.d filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 8/5/2011) (Entered: 08/05/2011)
08/10/2011	<u>40</u>	Minute Entry: Motion Hearing HELD ON 8/5/11 (Date Filed: 8/10/2011) re (26 in 3:10-cv-01255-SI) MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> MOTION to Dismiss <i>Notice of Motion and Motion to Dismiss First Amended Complaint (F.R.C.P. 12(b)(1) and 12(b)(6).)</i> filed by California Department of Justice, Kamala Harris. Further Case Management Conference set for 9/30/2011 03:00 PM. (Court Reporter S. Bartlett.) (tfS, COURT STAFF) (Date Filed: 8/10/2011) (Entered: 08/10/2011)
09/29/2011	<u>41</u>	CLERKS NOTICE Further Case Management Conference set for 11/4/2011 03:00 PM. (tf, COURT STAFF) (Filed on 9/29/2011) (Entered: 09/29/2011)
10/22/2011	<u>42</u>	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND GRANTING LEAVE TO AMEND. Amended complaint is due 11/4/11. Case management conference is continued to 1/13/12. (SI, COURT STAFF) (Filed on 10/22/2011) Modified on 10/24/2011 (ys, COURT STAFF). (Entered: 10/22/2011)
10/22/2011		Set Deadlines/Hearings: Further Case Management Conference set for 1/13/2011 03:00 PM in Courtroom 10, 19th Floor, San Francisco. (ys, COURT STAFF) (Filed on 10/22/2011) (Entered: 10/24/2011)
10/24/2011		Further Case Management Conference set for 1/13/2012 02:30 PM. (these cases shall be consolidated based on the order granting the motion to dismiss)(tf, COURT STAFF) (Filed on 10/24/2011) (Entered: 10/24/2011)
11/04/2011	<u>43</u>	AMENDED COMPLAINT <i>Consolidated</i> against California Department of Justice, Kamala Harris. Filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N)(Kilmer, Donald) (Filed on 11/4/2011) (Entered: 11/04/2011)
11/18/2011	<u>44</u>	STIPULATION <i>and Order for Additional Time to Plead to Consolidated Amended Complaint</i> by California Department of Justice, Kamala Harris. (Moody, Ross) (Filed on 11/18/2011) (Entered: 11/18/2011)
11/23/2011	<u>45</u>	ORDER for Additional Time to Plead to Consolidated Amended Complaint re <u>44</u> Stipulation. (tf, COURT STAFF) (Filed on 11/23/2011) Modified on 11/28/2011 (ys, COURT STAFF). (Entered: 11/23/2011)
12/16/2011	<u>46</u>	STIPULATION <i>and Order Re: Related Case</i> by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit Complaint - New Case)(Kilmer, Donald) (Filed on 12/16/2011) (Entered: 12/16/2011)
12/21/2011	<u>47</u>	ORDER RELATING CASE to 11-2493, 11-5580. (tfS, COURT STAFF) (Filed on 12/21/2011) Modified on 12/22/2011 (ysS, COURT STAFF). (Entered: 12/21/2011)
12/21/2011	<u>48</u>	ORDER Re: Related Case by Calguns Foundation (tfS, COURT STAFF) (Filed on 12/21/2011) (Entered: 12/21/2011)
12/30/2011	<u>49</u>	STIPULATION <i>to reset CMC</i> by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 12/30/2011) (Entered: 12/30/2011)
01/03/2012	<u>50</u>	JOINT CASE MANAGEMENT STATEMENT filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 1/3/2012) (Entered: 01/03/2012)

01/05/2012	<u>51</u>	ORDER Initial Case Management Conference set for 3/30/2012 02:30 PM. (tf, COURT STAFF) (Filed on 1/5/2012) (Entered: 01/05/2012)
01/05/2012		Set/Reset Deadlines as to (22 in 3:11-cv-02493-SI) MOTION to Dismiss <i>Third and Fourth Claims for Relief of Plaintiffs' Amended Consolidated Complaint</i> . Motion Hearing set for 4/20/2012 09:00 AM before Hon. Susan Illston. (tf, COURT STAFF) (Filed on 1/5/2012) (Entered: 01/05/2012)
02/29/2012	<u>52</u>	MOTION to Related case to CV 12-452-LBS TIPULATION WITH PROPOSED ORDER <i>Relating Case</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit Complaint (Proposed) Related Case)(Kilmer, Donald) (Filed on 2/29/2012) Modified on 3/1/2012 (ysS, COURT STAFF). (Entered: 02/29/2012)
03/01/2012	<u>53</u>	ORDER granting (52) Stipulation in case 3:10-cv-01255-SI; granting (16) Stipulation in case 3:11-cv-05580-SI signed by Judge Illston on 3/1/12 (tfS, COURT STAFF) (Filed on 3/1/2012) (Entered: 03/01/2012)
03/20/2012		Set/Reset Deadlines as to (22 in 3:11-cv-02493-SI) MOTION to Dismiss <i>Third and Fourth Claims for Relief of Plaintiffs' Amended Consolidated Complaint</i> . Motion Hearing set for 4/20/2012 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. (tfS, COURT STAFF) (Filed on 3/20/2012) (Entered: 03/20/2012)
03/20/2012	<u>54</u>	ORDER, Motions terminated: (18 in 3:11-cv-05580-SI) STIPULATION TO RESCHEDULE CASE MANAGEMENT CONFERENCE, ETC. filed by Greg Myers, Sonoma County Sheriff's Office. Initial Case Management Conference set for 5/25/2012 02:30 PM in Courtroom 10, 19th Floor, San Francisco.. Signed by Judge Illston on 3/20/12. (tfS, COURT STAFF) (Filed on 3/20/2012) Modified on 3/20/2012 (tfS, COURT STAFF). (Entered: 03/20/2012)
05/17/2012	<u>55</u>	STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 5/17/2012) (Entered: 05/17/2012)
05/22/2012	<u>56</u>	ORDER to continue 5/25/12 conference. Further Case Management Conference set for 6/29/2012 03:00 PM in Courtroom 10, 19th Floor, San Francisco.. Signed by Judge Susan Illston on 5/19/12., Motions terminated: (9 in 3:12-cv-00452-SI) STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i> filed by The Calguns Foundation, Inc., Max Joseph Plog-Horowitz, The Second Amendment Foundation, Inc., (21 in 3:11-cv-05580-SI) STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i> filed by The Calguns Foundation, Inc., The Second Amendment Foundation, Inc., Brendan John Richards, (55 in 3:10-cv-01255-SI) STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i> filed by Second Amendment Foundation, Inc., Mark Aaron Haynie, Calguns Foundation, Inc.. (tfS, COURT STAFF) (Filed on 5/22/2012) (Entered: 05/22/2012)
06/20/2012	<u>57</u>	STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i> filed by California Department of Justice, Kamala Harris. (Moody, Ross) (Filed on 6/20/2012) (Entered: 06/20/2012)
06/21/2012	<u>58</u>	ORDER continuing 6/29/12 case mgt conference to 7/27/12, Motions terminated: (57 in 3:10-cv-01255-SI) STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i> filed by California Department of Justice, Kamala Harris. Further Case Management Conference set for 7/27/2012 03:00 PM in Courtroom 10, 19th Floor, San Francisco.. Signed by Judge Illston on 6/21/12. (tfS, COURT STAFF) (Filed on 6/21/2012) (Entered: 06/21/2012)
06/26/2012		The case management set in this consolidated civil case is terminated. The case was consolidated in June 2011 with 10-1255. All filings should only be in the lead consolidated case and any related case if the filing applies to the related only case(s). (tfS, COURT STAFF) (Filed on 6/26/2012) (Entered: 06/26/2012)
07/20/2012	<u>59</u>	STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i> filed by California Department of Justice, Kamala Harris. (Moody, Ross) (Filed on 7/20/2012) (Entered: 07/20/2012)

07/25/2012	<u>60</u>	ORDER Further Case Management Conference set for 7/27/12 is continued to 8/24/2012 02:30 PM in Courtroom 10, 19th Floor, San Francisco., Motions terminated: (36 in 3:11-cv-02493-SI) STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i> filed by The Calguns Foundation, Inc., The Second Amendment Foundation, Inc., Brendan John Richards, (59 in 3:10-cv-01255-SI) STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i> filed by California Department of Justice, Kamala Harris.. Signed by Judge Susan Illston on 7/24/12. (tfS, COURT STAFF) (Filed on 7/25/2012) (Entered: 07/25/2012)
07/25/2012		Set/Reset Hearing Further Case Management Conference set for 8/24/2012 03:00 PM in Courtroom 10, 19th Floor, San Francisco. (ysS, COURT STAFF) (Filed on 7/25/2012) (Entered: 07/26/2012)
08/09/2012	<u>61</u>	STIPULATION WITH PROPOSED ORDER <i>Extend Time to File Amended Complaint</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 8/9/2012) (Entered: 08/09/2012)
08/21/2012	<u>62</u>	ORDER by Judge Susan Illston granting (61) Stipulation in case 3:10-cv-01255-SI; granting (26) Stipulation in case 3:11-cv-05580-SI; granting (13) Stipulation in case 3:12-cv-00452-SI Plaintiffs shall have until September 4, 2012 to file an amended complaint in Richards v. Harris II (Sonoma County) 3:11-CV-05580 SI; Haynie v. Harris 3:10-CV-01255SI; Richards v. Harris I (Rohnert Park) 3:11-CV-02493 SI; and Ploghorowitz v. Harris, 3:12-CV-0452 SI (tfS, COURT STAFF) (Filed on 8/21/2012) (Entered: 08/21/2012)
08/24/2012	<u>63</u>	Minute Entry: Further Case Management Conference held on 8/24/2012 before Susan Illston (Date Filed: 8/24/2012). Further Case Management Conference set for 11/2/2012 03:00 PM in Courtroom 10, 19th Floor, San Francisco. (Court Reporter n/a.) (tfS, COURT STAFF) (Date Filed: 8/24/2012) (Entered: 08/24/2012)
09/04/2012	<u>64</u>	STIPULATION WITH PROPOSED ORDER <i>to Consolidate Cases</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 9/4/2012) (Entered: 09/04/2012)
09/04/2012	<u>65</u>	AMENDED COMPLAINT (<i>Consolidated Related Cases</i>) against Dean Becker, California Department of Justice, City of Rohnert Park, Kamala Harris, Andrew Lyssand, City of Cotati. Filed by Calguns Foundation, Inc., Mark Aaron Haynie, Second Amendment Foundation, Inc., Andrew Lyssand, City of Cotati, Brendan John Richards, Max Joseph Plog-Horowitz. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O)(Kilmer, Donald) (Filed on 9/4/2012) (Entered: 09/04/2012)
09/06/2012	<u>66</u>	ORDER to Consolidate Cases signed on 9/6/12 by Judge Susan Illston granting (64) Stipulation in case 3:10-cv-01255-SI; granting (43) Stipulation in case 3:11-cv-02493-SI; granting (29) Stipulation in case 3:11-cv-05580-SI; granting (17) Stipulation in case 3:12-cv-00452-SI (tfS, COURT STAFF) (Filed on 9/6/2012) (Entered: 09/06/2012)
09/21/2012	<u>67</u>	STIPULATION <i>to Extend Time to Respond to Amended Consolidated Complaint</i> filed by Dean Becker, City of Rohnert Park, Andrew Lyssand. (Mitchell, Steven) (Filed on 9/21/2012) (Entered: 09/21/2012)
09/24/2012	<u>68</u>	STIPULATION <i>to Extend Time for Defendants Kamala Harris and California Department of Justice to Respond to Amended Consolidated Complaint</i> filed by California Department of Justice, Kamala Harris. (Moody, Ross) (Filed on 9/24/2012) (Entered: 09/24/2012)
10/25/2012	<u>69</u>	STIPULATION WITH PROPOSED ORDER <i>partial dismissal and continue CMC</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Max Joseph Plog-Horowitz, Brendan John Richards, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 10/25/2012) (Entered: 10/25/2012)
10/29/2012	<u>70</u>	ORDER dismissing 12-0452 SI Further Case Management Conference set for 11/2/12 is continued 2/8/2013 03:00 PM in Courtroom 10, 19th Floor, San

		Francisco.. Signed by Judge Susan Illston on 10/26/12. (tfS, COURT STAFF) (Filed on 10/29/2012) (Entered: 10/29/2012)
11/01/2012	<u>71</u>	AMENDED COMPLAINT <i>2nd Consolidated</i> against Dean Becker, California Department of Justice, City of Rohnert Park, Kamala Harris. Filed by Calguns Foundation, Inc., Brendan John Richards, Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O)(Kilmer, Donald) (Filed on 11/1/2012) (Entered: 11/01/2012)
02/01/2013	<u>72</u>	STIPULATION WITH PROPOSED ORDER <i>to reset CMC</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Brendan John Richards, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 2/1/2013) (Entered: 02/01/2013)
02/05/2013	<u>73</u>	ORDER Further Case Management Conference set for 2/8/13 is continued to 4/5/2013 03:00 PM in Courtroom 10, 19th Floor, San Francisco.. Signed by Judge Susan Illston on 2/4/13., Motions terminated: <u>72</u> STIPULATION WITH PROPOSED ORDER <i>to reset CMC</i> filed by Second Amendment Foundation, Inc., Mark Aaron Haynie, Calguns Foundation, Inc., Brendan John Richards. (tfS, COURT STAFF) (Filed on 2/5/2013) (Entered: 02/05/2013)
02/13/2013	74	CLERKS NOTICE Further Case Management Conference set for 4/5/13 is advanced to 4/2/2013 10:00 AM in Courtroom 10, 19th Floor, San Francisco. This is a docket text entry only, there is no document associated with this notice. (tfS, COURT STAFF) (Filed on 2/13/2013) (Entered: 02/13/2013)
03/26/2013	<u>75</u>	STIPULATION WITH PROPOSED ORDER <i>to reset CMC</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Brendan John Richards, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 3/26/2013) (Entered: 03/26/2013)
04/01/2013	<u>76</u>	ORDER Further Case Management Conference set for 4/2/13 is continued to 6/21/2013 03:00 PM in Courtroom 10, 19th Floor, San Francisco.. Signed by Judge Susan Illston on 4/1/13., Motions terminated: <u>75</u> STIPULATION WITH PROPOSED ORDER <i>to reset CMC</i> filed by Second Amendment Foundation, Inc., Mark Aaron Haynie, Calguns Foundation, Inc., Brendan John Richards.(tfS, COURT STAFF) (Filed on 4/1/2013) (Entered: 04/01/2013)
06/14/2013	<u>77</u>	STIPULATION WITH PROPOSED ORDER <i>to reset Case Management Conference</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Brendan John Richards, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 6/14/2013) (Entered: 06/14/2013)
06/18/2013	<u>78</u>	ORDER Further Case Management Conference set for 6/21/13 is continued to 9/6/2013 03:00 PM in Courtroom 10, 19th Floor, San Francisco. Signed by Judge Susan Illston on 6/17/13., Motions terminated: <u>77</u> STIPULATION WITH PROPOSED ORDER <i>to reset Case Management Conference</i> filed by Second Amendment Foundation, Inc., Mark Aaron Haynie, Calguns Foundation, Inc., Brendan John Richards. (tfS, COURT STAFF) (Filed on 6/18/2013) (Entered: 06/18/2013)
08/29/2013	<u>79</u>	STIPULATION WITH PROPOSED ORDER <i>to reset CMC</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Brendan John Richards, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 8/29/2013) (Entered: 08/29/2013)
08/29/2013	<u>80</u>	ORDER by Judge Susan Illston denying <u>79</u> Stipulation to continue hearing. (tfS, COURT STAFF) (Filed on 8/29/2013) (Entered: 08/29/2013)
08/29/2013		Set/Reset Hearing Further Case Management Conference set for 1/10/2014 03:00 PM in Courtroom 10, 19th Floor, San Francisco. (ysS, COURT STAFF) (Filed on 8/29/2013) (Entered: 08/30/2013)
08/30/2013	<u>81</u>	JOINT CASE MANAGEMENT STATEMENT <i>for Sept. 6, 2013 CMC</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Brendan John Richards, Second

		Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 8/30/2013) (Entered: 08/30/2013)
08/30/2013	<u>82</u>	NOTICE by City of Pleasanton <i>Notice of Removal from Electronic Notification</i> (Leone, Louis) (Filed on 8/30/2013) (Entered: 08/30/2013)
09/06/2013		Set Deadlines/Hearings: Case Management Conference set for 9/6/2013 03:00 PM in Courtroom 10, 19th Floor, San Francisco. (ysS, COURT STAFF) (Filed on 9/6/2013) (Entered: 09/06/2013)
09/10/2013	<u>83</u>	Minute Entry: Further Case Management Conference held on 9/6/2013 before Susan Illston (Date Filed: 9/10/2013). Further Case Management Conference set for 11/15/2013 03:00 PM in Courtroom 10, 19th Floor, San Francisco. (Court Reporter n/a.) (tfS, COURT STAFF) (Date Filed: 9/10/2013) (Entered: 09/10/2013)
09/10/2013		CASE REFERRED to Magistrate Judge Jacqueline Scott Corley for Settlement (ahm, COURT STAFF) (Filed on 9/10/2013) (Entered: 09/10/2013)
09/16/2013	<u>84</u>	Minute Entry: Telephone Conference held on September 16, 2013 before Magistrate Judge Jacqueline Scott Corley (Date Filed: 9/16/2013). Settlement Conference with plaintiff and defendant City of Rohnert Park set for 10/4/2013 10:30 AM in Courtroom F, 15th Floor, San Francisco. (Court Reporter: Not Reported) (ahm, COURT STAFF) (Date Filed: 9/16/2013) (Entered: 09/16/2013)
10/03/2013	85	CLERKS NOTICE <i>continuing settlement conference</i> . TO ALL PARTIES AND COUNSEL OF RECORD: Please take notice that by the request of the parties, the settlement conference currently scheduled for October 4, 2013 is continued to October 9, 2013 at 10:30 a.m., before Magistrate Judge Jacqueline Scott Corley, in Courtroom F, 15th Floor, Federal Building, 450 Golden Gate Avenue in San Francisco. Joint settlement submission due by noon on October 8, 2013. (This is a text only docket entry, there is no document associated with this notice.) (ahm, COURT STAFF) (Filed on 10/3/2013) (Entered: 10/03/2013)
10/08/2013	86	CLERKS NOTICE <i>vacating settlement conference</i> . TO ALL PARTIES AND COUNSEL OF RECORD: Please take notice that by the request of the parties, due to settlement between Plaintiff and City of Rohnert Park, the settlement conference scheduled for October 9, 2013 before Magistrate Judge Jacqueline Scott Corley is vacated. (This is a text only docket entry, there is no document associated with this notice.) (ahm, COURT STAFF) (Filed on 10/8/2013) (Entered: 10/08/2013)
11/08/2013	<u>87</u>	JOINT CASE MANAGEMENT STATEMENT <i>for Nov 15, 2013 CMC</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Brendan John Richards, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 11/8/2013) (Entered: 11/08/2013)
11/18/2013	<u>88</u>	Minute Entry: Further Case Management Conference held on 11/15/2013 before Susan Illston (Date Filed: 11/18/2013). Motion Hearing set for 6/27/2014 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. (Court Reporter n/a.) (tfS, COURT STAFF) (Date Filed: 11/18/2013) (Entered: 11/18/2013)
12/12/2013	<u>89</u>	STIPULATION WITH PROPOSED ORDER <i>to reset filing deadline for Complaint and Answer</i> filed by Calguns Foundation, Inc., Mark Aaron Haynie, Brendan John Richards, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 12/12/2013) (Entered: 12/12/2013)
12/19/2013	<u>90</u>	NOTICE of Voluntary Dismissal <i>of Defendants Rohnert Park and Officer Dean Becker</i> by Calguns Foundation, Inc., Mark Aaron Haynie, Brendan John Richards, Second Amendment Foundation, Inc. (Kilmer, Donald) (Filed on 12/19/2013)

		(Entered: 12/19/2013)
12/20/2013	<u>91</u>	AMENDED COMPLAINT <i>Third (Consolidated)</i> against California Department of Justice, Kamala Harris. Filed by Calguns Foundation, Inc., Brendan John Richards, Mark Aaron Haynie, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Exhibit Exhibit C, # <u>4</u> Exhibit Exhibit D, # <u>5</u> Exhibit Exhibit E, # <u>6</u> Exhibit Exhibit F, # <u>7</u> Exhibit Exhibit G, # <u>8</u> Exhibit Exhibit H, # <u>9</u> Exhibit Exhibit I, # <u>10</u> Exhibit Exhibit J, # <u>11</u> Exhibit Exhibit K, # <u>12</u> Exhibit Exhibit L, # <u>13</u> Exhibit Exhibit M, # <u>14</u> Exhibit Exhibit N, # <u>15</u> Exhibit Exhibit O, # <u>16</u> Exhibit Exhibit P)(Kilmer, Donald) (Filed on 12/20/2013) (Entered: 12/20/2013)
01/13/2014	<u>92</u>	MOTION to Dismiss (<i>Notice of Motion and Motion to Dismiss Third Amended Complaint and Request for Injunctive/Declaratory Relief; Memorandum of Points and Authorities in Support of Motion to Dismiss Third Amended Complaint</i>) filed by California Department of Justice, Kamala Harris. Motion Hearing set for 2/28/2014 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. Responses due by 1/27/2014. Replies due by 2/3/2014. (Moody, Ross) (Filed on 1/13/2014) (Entered: 01/13/2014)
01/27/2014	<u>93</u>	RESPONSE (re <u>92</u> MOTION to Dismiss (<i>Notice of Motion and Motion to Dismiss Third Amended Complaint and Request for Injunctive/Declaratory Relief; Memorandum of Points and Authorities in Support of Motion to Dismiss Third Amended Complaint</i>)) filed by Calguns Foundation, Inc., Mark Aaron Haynie, Brendan John Richards, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 1/27/2014) (Entered: 01/27/2014)
02/03/2014	<u>94</u>	REPLY (re <u>92</u> MOTION to Dismiss (<i>Notice of Motion and Motion to Dismiss Third Amended Complaint and Request for Injunctive/Declaratory Relief; Memorandum of Points and Authorities in Support of Motion to Dismiss Third Amended Complaint</i>)) filed by California Department of Justice, Kamala Harris. (Moody, Ross) (Filed on 2/3/2014) (Entered: 02/03/2014)
03/04/2014	<u>95</u>	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS WITHOUT LEAVE TO AMEND <u>89</u> <u>92</u> (Illston, Susan) (Filed on 3/4/2014) (Entered: 03/04/2014)
03/04/2014	<u>96</u>	JUDGMENT: Defendants motion to dismiss for lack of standing and lack of ripeness has been granted without leave to amend. Judgment is entered accordingly. (Illston, Susan) (Filed on 3/4/2014) Modified on 3/5/2014 (ysS, COURT STAFF). (Entered: 03/04/2014)
03/20/2014	<u>97</u>	NOTICE OF APPEAL to the 9th CCA 14-15531 Calguns Foundation, Inc., Mark Aaron Haynie, Brendan John Richards, Second Amendment Foundation, Inc..(Appeal fee of \$505 receipt number 0971-8468772 paid.) (Attachments: # <u>1</u> Representation Statement)(Kilmer, Donald) (Filed on 3/20/2014) Modified on 4/1/2014 (ysS, COURT STAFF). (Entered: 03/20/2014)
03/20/2014	<u>98</u>	USCA Case Number 14-15531 USCA for <u>97</u> Notice of Appeal, filed by Second Amendment Foundation, Inc., Mark Aaron Haynie, Calguns Foundation, Inc., Brendan John Richards. (ysS, COURT STAFF) (Filed on 3/20/2014) (Entered: 04/01/2014)
04/21/2014	<u>99</u>	Transcript Designation Form for proceedings held on 2/28/2014 before Judge Illston, (Kilmer, Donald) (Filed on 4/21/2014) (Entered: 04/21/2014)
04/21/2014	<u>100</u>	Minute Entry: Motion Hearing held on 2/28/2014 before Susan Illston (Date Filed: 4/21/2014). (Court Reporter K Sullivan.) (tfS, COURT STAFF) (Date Filed: 4/21/2014) (Entered: 04/21/2014)

9th Circuit Case Number(s) 14-15531

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system

on (date) Jul 23, 2014 .

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

Signature (use "s/" format) /s/ Donald Kilmer

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system

on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

[Empty box for listing non-CM/ECF participants]

Signature (use "s/" format)

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