

1 Donald E. J. Kilmer, Jr. [SBN: 179986]
LAW OFFICES OF DONALD KILMER
2 1645 Willow Street, Suite 150
San Jose, California 95125
3 Voice: (408) 264-8489
Fax: (408) 264-8487
4 E-Mail: Don@DKLawOffice.com

5 Jason A. Davis [SBN: 224250]
Davis & Associates
6 27201 Puerta Real, Suite 300
Mission Viejo, California 92691
7 Voice: (949) 310-0817
Fax: (949) 288-6894
8 E-Mail: Jason@CalGunLawyers.com

9 Attorneys for Plaintiffs

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
14 SECOND AMENDMENT
FOUNDATION, INC.,

15 Plaintiffs,

16 vs.

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

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)

20
21 **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)

- 1
- 2 40. On or about May 20, 2010, Defendant BECKER arrested Plaintiff
- 3 RICHARDS thus depriving him of his liberty.
- 4 41. On or about May 20, 2010, Defendant BECKER seized firearms (2 pistols and
- 5 1 rifle) from Plaintiff RICHARDS, thus depriving him of the means of
- 6 exercising his Second Amendment rights.
- 7 42. The arresting agency case number for the incident is: 10-0001930. The
- 8 docket number for the Sonoma Superior Court Case was: SCR 583167.
- 9 43. Defendant BECKER investigated a disturbance at a Motel 6 located at 6145
- 10 Commerce Blvd., which was within his operational jurisdiction.
- 11 44. While both men were on the sidewalk at the motel, Defendant BECKER
- 12 questioned Plaintiff RICHARDS about his involvement in the disturbance,
- 13 and during the conversation, RICHARDS revealed that he had unloaded
- 14 firearms in the trunk of his vehicle.
- 15 45. Defendant BECKER indicated that he planned to search the trunk of
- 16 RICHARDS' vehicle and began to walk toward RICHARDS' car. After
- 17 BECKER asked a second time if Plaintiffs' firearms were loaded and
- 18 responding "no", RICHARDS inquired whether OFFICER BECKER needed a
- 19 warrant to search the trunk of his car.
- 20 46. Apparently relying on Penal Code § 25850, OFFICER BECKER replied that
- 21 since RICHARDS had admitted that firearms were in the trunk, no warrant
- 22 was necessary.
- 23 47. Only after this statement, and in obedience to BECKER'S demand, did
- 24 RICHARDS turn over the keys to the trunk of his vehicle.
- 25 48. OFFICER BECKER found two pistols and one rifle, along with other firearm-
- 26 related equipment in the trunk. None of the firearms were loaded.
- 27 49. OFFICER BECKER inquired about the registration of Plaintiff's firearms
- 28 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 hidiers" 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 hidiers.
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
22 **FACTS – Relating to Vague and Ambiguous Laws Impacting
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
20 /s/
Donald Kilmer, Jr. [SBN: 179986]
21 Law Offices of Donald Kilmer, APC
1645 Willow Street, Suite 150
22 San Jose, California 95125
Voice: (408) 264-8489
Fax: (408) 264-8487
23 E-Mail: Don@DKLawOffice.com

 /s/
24 Jason A. Davis [SBN: 224250]
25 Davis & Associates
27201 Puerta Real, Suite 300
26 Mission Viejo, California 92691
Voice: (949) 310-0817
27 Fax: (949) 288-6894
E-Mail: Jason@CalGunLawyers.com

28 Attorneys for Plaintiffs

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.

Exhibit C

California Centerfire, Semi-Auto, Rifle Identification



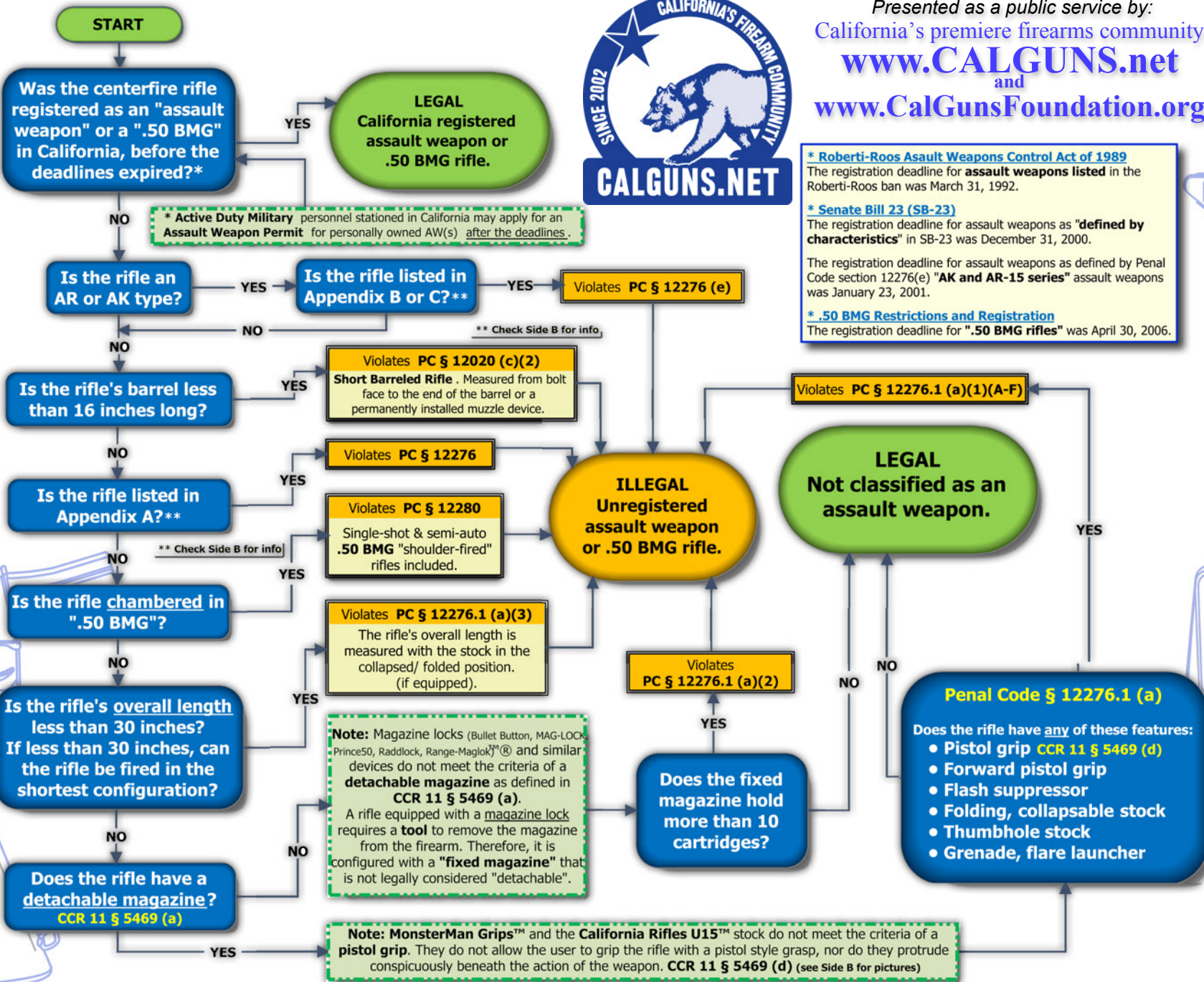
Presented as a public service by:
 California's premiere firearms community
www.CALGUNS.net
 and
www.CalGunsFoundation.org

*** 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.



Appendix A Roberti-Roos AW list
Armalite: AR-180
Beretta: AR-70
Bushmaster Assault Rifle
Calico: M-900
Colt: AR-15 (all)
Daewoo: AR 100, AR110 C
Daewoo: K-1, K-2, Max 1, Max 2
Fabrique Nationale: 308 Match, Sporter
Fabrique Nationale: FAL, LAR, FNC
HK: 91, 93, 94, PSG-1
IMI: Galil, Uzi
J&R ENG: M-68
MAADI CO: AK47, ARM
Made in China: 56, 56S, 84S, 86S, AKS
Made in China: AK, AK47, AK47S, AKM
Made in Spain: CETME Sporter
MAS: 223
Norinco: 56, 56 S, 84S, 86S
Poly technologies: AK47, AKS
RPB Industries, Inc.: sM10, sM11
SIG: AMT, PE-57, SG 550, SG 551
SKS w/ detachable magazine
Springfield Armory: BM59, SAR-48
Sterling: MK-6
Steyr: AUG
SWD Incorporated: M11
Valmet: M62S, M71S, M78S
Weaver Arms: Nighthawk

Appendix B AR Series
American Spirit: USA Model
Armalite: AR 10 (all), M15 (all)
Armalite: Golden Eagle
Bushmaster: XM15 (all)
Colt: Law Enforcement (6920)
Colt: Match Target (all)
Colt: Sporter (all)
Dalphon: B. F. D.
DPMS: Panther (all)
Eagle Arms: EA-15 A2 H-BAR, EA-15 E1
Eagle Arms: M15 (all)
Frankford Arsenal: AR-15 (all)
Hesse Arms: HAR 15A2 (all)
Knights: RAS (all), SR-15 (all)
Knights: SR-25 (all)
Les Baer: Ultimate AR (all)
Olympic Arms: AR-15, Car-97, PCR (all)
Ordnance, Inc.: AR-15
Palmetto: SGA (all)
Professional Ordnance, Inc.: Carbon 15 Rifle
PWA: All Models
Rock River Arms, Inc.: Car A2
Rock River Arms, Inc.: Car A4 Flattop
Rock River Arms, Inc.: LE Tactical Carbine
Rock River Arms, Inc.: NM A2 - DCM Legal
Rock River Arms, Inc.: Standard A-2
Rock River Arms, Inc.: Standard A-4 Flattop
Wilson Combat: AR-15

Appendix C AK Series
American Arms: AK-C 47, AK-F 47
American Arms: , AK-Y 39, AK-F 39
Arsenal: SLG (all)
Arsenal: SLR (all)
B-West: AK-47 (all)
Hesse Arms: Model 47 (all)
Hesse Arms: Wiegler STG 940 Rifle
Inter Ordnance - Monroe, NC: AK-47 (all)
Inter Ordnance - Monroe, NC: M-97
Inter Ordnance - Monroe, NC: RPK
Kalashnikov USA: Hunter Rifle / Saiga
MAADI CO: MISR (all)
MAADI CO: MISTR (all)
Mitchell Arms, Inc.: AK-47 (all)
Mitchell Arms, Inc.: AK-47 Cal .308 (all)
Mitchell Arms, Inc.: M-76, M-90
Mitchell Arms, Inc.: RPK
Norinco: 81 S (all)
Norinco: 86 (all)
Norinco: AK-47 (all)
Norinco: Hunter Rifle
Norinco: MAK 90
Norinco: NHM 90, 90-2, 91 Sport
Norinco: RPK Rifle
Ohio Ordnance Works: AK-74
Ohio Ordnance Works: ROMAK 991
Valmet: 76 S, Hunter Rifle
WUM: WUM (all)

The 3 categories of an assault weapon in California
Category 1 - are firearms listed on the original Roberti-Roos assault weapons list PC section 12276 (a), (b), and (c).
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 § 5499 and is sometimes referred to as the "series list". Then came AB2728 , which prevents the DOJ from ever updating the list after Jan 2007.
Category 3 - are defined by characteristic features listed in PC 12276.1. These are sometimes referred to as " SB23 features " (Senate Bill 23).

Characteristics of a Assault Weapon PC 12276.1 (a)
12276.1 (a) Notwithstanding PC section 12276, assault weapon shall also mean the following: Rifles (1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine CCR 11 § 5469 (a) and any one of the following: (A) A pistol grip CCR 11 § 5469 (d) (B) A thumbhole stock. CCR 11 § 5469 (e) (C) A folding or telescoping stock. (D) A grenade launcher or flare launcher. (E) A flash suppressor. CCR 11 § 5469 (b) (F) A forward pistol grip. CCR 11 § 5469 (c) (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 .

Harrott v. County of Kings (2001) 25 Cal. 4th 1138
...a trial court may not find a semiautomatic firearm a series assault weapon under section 12276, subdivision (e), unless the firearm has first been included in the list of series assault weapons promulgated by the Attorney General pursuant to section 12276.5, subdivision (h)

Definition of a "Detachable Magazine" CCR 11 § 5469 (a)
"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**.

Definition of a "Thumbhole Stock" CCR 11 § 5469 (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.

Definition of a "Pistol Grip" PC 12276.1 & CCR 11 § 5469 (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.

Definition of a "Flash Suppressor" CCR 11 § 5469 (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. **CCR 11 § 5469 (b)**



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.



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.

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.

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.



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 if 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

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 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

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 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 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 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

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,

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

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." *Harrott 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

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 2001 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." *Harrott v. County of Kings* (2001) 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 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.

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.

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

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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 strikethrough 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.

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 hidere **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...

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

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 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,

A handwritten signature in cursive script that reads "Susan Lapsley".

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,

A handwritten signature in cursive script that reads "Susan Lapsley".

Susan Lapsley
Director

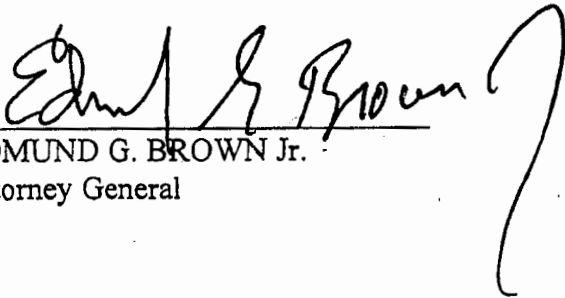
CERTIFICATION

ENDORSED FILED
IN THE OFFICE OF

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

2007 SEP 21 PM 3:16

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

Gene Hoffman
The Calguns Foundation

Page 1
"Capacity To Accept" Underground Regulation

2/25/2009

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,

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

Page 3
“Capacity To Accept” Underground Regulation

2/25/2009

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
The Calguns Foundation

Page 4
"Capacity To Accept" Underground Regulation

2/25/2009

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

Page 5
“Capacity To Accept” Underground Regulation

2/25/2009

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

Page 6
“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.

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

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

Page 9
"Capacity To Accept" Underground Regulation

2/25/2009

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

Page 10
2/25/2009
"Capacity To Accept" Underground Regulation

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

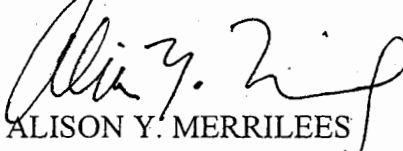
Mr. Badella
September 29, 2008
Page 2

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

Page 11
2/25/2009
"Capacity To Accept" Underground Regulation

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 160987
SACRAMENTO, CA 95816-0987
(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 *Harratt 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 DSA 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. (*Morillon 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 "bullet 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

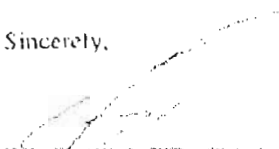
but allow the magazine to be removed from the rifle with the use of a tool. While there is no question that such a configuration would render the magazine of a rifle to be non-detachable, it is unclear whether such a configuration negates the rifle's "capacity to accept" a detachable magazine. Since 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, GRATTAN & 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
12 CALGUNS FOUNDATION, INC., and THE
13 SECOND AMENDMENT FOUNDATION,
14 INC.,

15 Plaintiffs,

16 v.

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

20 Defendants.

CASE NO.: CV 11 2493 LB

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

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

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

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.