

FILED

JAN 22 2007

FRESNO COUNTY SUPERIOR COURT

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10 Attorneys for Plaintiffs

FILED BY FAX

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF FRESNO

13 EDWARD W. HUNT, in his official
14 capacity as District Attorney of Fresno
County, and in his personal capacity as a
15 citizen and taxpayer, et. al.,

16 Plaintiffs,

17 v.

18 STATE OF CALIFORNIA; WILLIAM
LOCKYER, Attorney General of the State of
19 California; CALIFORNIA DEPARTMENT
OF JUSTICE; Does 1-100;

20 Defendants.
21

) CASE NO. 01CECG03182
)
) **PLAINTIFFS' EVIDENTIARY**
) **OBJECTIONS TO DOJ AGENT IGNATIUS**
) **CHINNS' DECLARATION IN SUPPORT OF**
) **DEFENDANTS' MOTION FOR SUMMARY**
) **JUDGMENT/ADJUDICATION**

22
23 TO DEFENDANTS AND TO DEFENDANTS' ATTORNEYS OF RECORD:

24 Pursuant to California Rules of Court, Rules 343 and 345, and Code of Civil Procedure
25 section 437c(b)(5), Plaintiffs hereby submit their evidentiary objections to the Declaration of DOJ
26 Agent Ignatius Chinn in Support of Defendants' Motion for Summary Judgment, or, alternatively,
27 for Summary Adjudication on plaintiffs' Amended Complaint.
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1 **I. PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENTS**

2 Plaintiffs challenge Agent Ignatius Chinn’s competency as a spokesperson and expert for
3 the DOJ defendants, and contend that he has not been, and cannot be, qualified as an expert within
4 the meaning of Evidence Code sections 720 and 800¹, and Code of Civil Procedure section
5 437c(d).

6 Plaintiffs contend that Agent Chinn is unqualified to a) interpret, argue and advocate law,
7 and b) to testify as to what the California Legislature’s intent is, or has been, relative to the laws
8 discussed in his Declaration (attached hereto as Exhibit A.)

9 Pursuant to section 802, plaintiffs seek to cross-examine Agent Chinn regarding his
10 qualifications as an expert, and the manner in which he formed the opinions expressed within his
11 Declaration — before it is admitted into evidence.

12 Plaintiffs further assert that Agent Chinn’s Declaration is fatally flawed, and therefore,
13 pursuant to sections 350, 352 and 803, seek to have his Declaration and any expert testimony he
14 may wish to provide, excluded from evidence in support of Defendants’ pending Motion for
15 Summary Judgment, etc.

16 **II. STANDARD OF REVIEW**

17 An expert’s testimony in support of a motion for summary judgment is proper if
18 admissible within the meaning of sections 702, 720 and 801. Generally, an expert must be
19 sufficiently qualified as such, and the basis for his or her testimony must be either personal first-
20 hand knowledge, or otherwise reasonably relied upon. (*Hayman v. Block*, (1986) 176 CA3d 629,
21 638-639.) Further, such testimony must be supported by factual evidence, and as such, cannot be
22 based in speculation or conjecture. Legal or factual conclusions fail as well. (*Snider v. Snider*
23 (1962) 200 Cal.App.2d 741, 751.)

24 In support of a motion for summary judgment, the moving party is held to a high standard
25 in relation to expert testimony: “An [expert] opinion unsupported by reasons or explanations does
26 not establish the absence of a material fact issue for trial, as required for summary judgment.”

27
28 ¹ Unless otherwise noted, all section references are to the California Evidence
Code.

1 (*Kelley v. Trunk* (1998) 66 Cal.App.4th 519.)

2 **III. ARGUMENT**

3 **A. Pursuant to Sections 701(b), 720(a) and 802, Agent Chinn May**
4 **Be Required to Testify To His Qualifications Prior to Allowing**
5 **His Declaration into Evidence**

6 This Court has the authority to allow plaintiffs to directly examine Agent Chinn before
7 defendants' may use his purported Declaration as expert testimony in support of their pending
8 Motion for Summary Judgment, etc.: "In any proceeding held outside the presence of the jury, the
9 court may reserve challenges to the competency of a witness until the direct examination of that
10 witness." (§ 701(2).) "Against the objection of a party, such special knowledge, skill, experience,
11 training, or education must be shown before the witness may testify as an expert." (§720 subd.(a).)
12 And, "The Court in its discretion may require that a witness before testifying in the form of an
13 opinion be first examined concerning the matter upon which his opinion is based." (§ 802.)

14 **B. As Required By Sections 702(a), and 801(b) Agent Chinn's Declaration**
15 **Fails to Sufficiently Demonstrate His Qualification as an Expert**

16 Agent Chinn characterizes himself as an expert, but fails to provide any meaningful proof.
17 Instead, he merely states, "I am an expert in identification of assault weapons." (Chinn Decl., p. 2,
18 l. 22) And, "I have been qualified as an expert in firearms identification and nomenclature."²
19 (Chinn Decl. p. 2, ll. 23 - 24.) But he fails a) to explain what he means by the assertion that he was
20 "qualified," b) he fails to provide any description or explanation of the manner in which he was
21 "qualified" by the referenced courts, and c) he fails to provide any factual evidence, that he was
22 qualified by the courts listed. Agent Chinn neither provides any detail regarding the number or
23 nature of the cases in which he allegedly testified, nor does he provide any information regarding
24 his function in these cases. Depending on the subject matter, and as a former gun salesman, he
25 very easily could have testified as to the wholesale and retail value of certain guns, but this
26 information has no relevance here.

27 ² Agent Chinn lists two grand juries, the United States (Eastern) District Court,
28 and superior courts in fifteen California counties before whom he has allegedly been
"qualified" as an expert.

1 Throughout paragraphs 2 through 4 of his Declaration, Agent Chinn purports to establish
2 his qualifications to testify as an expert regarding the issues. But nowhere does he set forth his
3 *credentials* to sufficiently support his Declaration, or defendants' Motion for Summary Judgment.

4 Specifically, Agent Chinn states that he has been a police officer for many years, that he is
5 currently employed by the Department of Justice, and that he has been "involved in at least 200
6 firearms investigations involving illegal transactions, illegal machine gun conversions, and assault
7 weapons sales and possession violations." (Chinn Decl., p.2, ll. 10-12.)

8 Agent Chinn further states: "[f]rom 1974 through 1987 I had an off-duty job as a part-time
9 gun repair analyst at an Oakland gun store. During my employment at this store, I learned firearms
10 identification nomenclature and repair." (Chinn Decl., p.2, ll. 12-14.) None of this is supported by
11 the necessary factual evidence, nor does his area of "expertise" have any application here.

12 Agent Chinn further asserts he attended classes "given by numerous gun manufacturers,
13 such as Glock, Colt, and Smith and Wesson" (sic)³ and "law enforcement firearms classes
14 concerning firearms violations, given by the United States Army," the FBI, and "the federal (sic)
15 Bureau of Alcohol, Tobacco and Firearms." (Chinn Decl., p. 2, ll. 14-18.)

16 Agent Chinn also states, "Investigations in my present position have primarily involved
17 individuals who possess, buy, and sell firearms illegally, either because the transactions violate
18 state or federal law or the firearms themselves are illegal." (Chinn Decl., p.2, ll.18-21.)

19 None of these statements establish Agent Chinn as an expert for purposes of the pending
20 Motion for Summary Judgment. At paragraph 5, Agent Chinn cites the definition of "flash
21 suppressor" within the meaning of Penal Code section 12276.1(a)(1)(E) and California Code of
22 Regulations section 978.20(b). He points out plaintiffs' causes of action and then claims that
23 plaintiffs "unlawfully alters and expands the well-established meaning of the term 'flash
24 suppressor' and, in doing so, unlawfully expands the meaning of Penal Code section
25 12276.1(a)(1)(E)." (Chinn Decl., p.3, ll. 16-19.)

26 After listing plaintiffs' claims (Chinn Decl., p. 3, ll. 19-23), Chinn then purports to counter
27

28 ³ The company's name is "Smith & Wesson."

1 plaintiffs' legal conclusions:

2 In regard to measurement standards, DOJ's position is that the absence of a
3 measurement provision in the statute and regulation does not render the 'flash
4 suppressor' definition invalid. The absence of specific measurement standards
5 demonstrates the legislative intent to include devices that reduce or redirect any
6 amount of flash, and no administrative regulation may alter a statute or enlarge or
7 impair its scope. (Chinn Decl., p.3, ll. 23-27)

8 Further, "DOJ would have exceeded its authority if it had established a standard that
9 permitted some percentage or amount of flash suppression." (Chinn Decl., pp. 3,4, ll. 27-1.)

10 Agent Chinn is not an attorney. Yet, under the guise of an expert, he purports to challenge
11 plaintiffs' claims regarding 1) the meaning and nature of Penal Code section 12276.1(a)(1)(E); 2)
12 the meaning and nature of Chapter 12.8 of Title 11 of the California Code of Regulations relative
13 to the definition of the term "flash suppressor;" and 3) the impact this legislation, and components
14 thereof, have upon California's rifle owning public.

15 Further, Chinn does not, and cannot establish that he is qualified to opine as to what DOJ's
16 "position" is regarding any legislation, let alone "assault weapons" legislation, and certainly not
17 whether "the absence of a measurement provision in the statute and regulation render[s] the
18 definition of the term flash suppressor 'invalid.'" (Chinn Decl., p. 5, 3-20.)

19 Agent Chinn states, "I was directly involved in the initial drafting and subsequent revisions
20 of the assault weapon characteristics definitions" in the related Regulations (Chinn Decl., p. 3, ll.
21 6-8.) This assertion is specious at best because he fails to provide any supporting factual detail
22 whatsoever about the nature of his alleged direct involvement. Agent Chinn's *direct involvement*
23 could have consisted of no more than being called into a meeting with the attorneys drafting the
24 legislation and being asked to identify a certain firearm by its make and model. In any case, this
25 experience upon which Agent Chinn purports to establish his expertise, is tangential at best.

26 Further, none of Chinn's other qualifications, as discussed, *supra*, would serve him in any
27 capacity whatsoever regarding the nature, meaning, and effect of the legislation on California rifle
28 owners at issue here. Chinn has completely failed to demonstrate any expertise regarding
29 California assault weapons legislation.

Also, Chinn states what the Legislature's intent was in drafting the legislation at issue

1 (Chinn Decl. p. 3, ll. 25-26) — which, again, he has demonstrated no expertise for. (The issue of
2 intent will be discussed *post.*)

3 In their operative Complaint herein, plaintiffs, as Agent Chinn puts it, “complain” of the
4 manner in which Penal Code section 12020(c)(25) and 12276.1(d)(2) define the term
5 “permanently altered.” (Chinn Decl., p. 8, ll. 8-12, as it relates back to the discussion at p. 7, ll.
6 19-28.) And again, Agent Chinn purports to counter plaintiffs’ legal position, by stating what
7 DOJ’s “position” is on the subject: “DOJ does not favor construing the term ‘over-literally,’
8 however, and has rejected an interpretation of the term.” No factual support is provided.

9 The third primary component of Chinn’s Declaration addresses “plaintiffs’ claim that DOJ
10 has not fulfilled a duty to exercise supervisory power over district attorneys and law enforcement
11 to assure that arrests and prosecutions are carried out in a manner consistent with this DOJ
12 regulation” relative to the term “detachable magazine” as defined by Penal Code section 12276.1.
13 (Chinn Decl., p. 9, ll. 2-4.) Again, Chinn addresses plaintiffs’ legal position as expressed in their
14 Complaint, by countering that “nothing in the DOJ letter referenced by plaintiffs is inconsistent
15 with the DOJ’s intention to enforce Penal Code section 12276.1 or section 978.20(a) of the
16 Regulations *as they are written.*” (Chinn Decl., p. 9, ll. 14-16) (Emphasis added.) Again, Chinn
17 interprets and argues the law while under the guise of an “assault weapons identification and
18 nomenclature” expert.

19 In addition to having failed to establish himself as a qualified legal practitioner (and
20 therefore someone qualified to interpret, dissect and argue laws, and their impact upon the public,
21 and to counter, or otherwise address, the opinions and assertions of opposing legal counsel),
22 Agent Chinn also fails to demonstrate his designation (let alone expertise), as an expert for what
23 DOJ’s “position” is regarding any legislation, including that of “assault weapons.” Yet,
24 throughout his Declaration, Agent Chinn repeatedly states — without providing supporting factual
25 evidence — that DOJ proposes (¶¶ 15, 17 and 20), determines (¶¶ 17 and 18), agrees to (¶ 18), has
26 confirmed (¶ 20), does not favor (¶ 18), has observed (¶ 20), considers to be a detachable
27 magazine (¶ 21), and even what DOJ’s intent was or was not (¶ 21), with regard to the legal issues
28 here. Nowhere does Chinn support his assertions with anything to indicate what the sources of his

1 information are, whether his statements are based upon first-hand, personal knowledge, or that he
2 has been informed of these supposed facts, by whom, or any combination thereof.

3 Agent Chinn's proffered testimony may be admissible however if plaintiffs had served
4 defendants with a deposition notice, and designated him as their Person Most Knowledgeable.
5 Perhaps then, despite his *lack of a law license*, and his status as a *non-legislator*, Chinn might be
6 able to speak to some of these issues. But this is not the case. Chinn's level of "expertise" does
7 not rise to that of an expert. It is completely devoid of any evidence that he has been designated to
8 speak for defendants and does not demonstrate that he is qualified to do so as an expert, much less
9 to the degree of competency required by Evidence Code § 801(b):

10 If a witness is testifying as an expert, his testimony in the form of an opinion is limited to
11 such an opinion as is:

12 Based on the matter (including his special knowledge, skill, experience, training
13 and education) perceived by or personally known to the witness or made known to
14 him at or before the hearing, whether or not admissible, that is of a type that
15 reasonably may be relied upon by an expert in forming an opinion upon the subject
16 to which his testimony relates.

17 Further, section 702(a) states, "[s]ubject to Section 801, the testimony of a witness
18 concerning a particular matter is inadmissible unless he has the personal knowledge of the
19 matter."

20 **C. Pursuant to Code of Civil Procedure Section 437c(d) and Evidence Code
21 Sections 305, 352 and 803, Chinn's Background Fails to Qualify Him
22 as an Expert and His Testimony Should be Excluded From Evidence**

23 Section 720(a) sets forth the qualifications for an expert witness as "special knowledge,
24 skill, experience, training, or education sufficient to qualify him as an expert on the subject to
25 which his testimony relates." As detailed above, Chinn's experience as a police officer, part-time
26 gun store employee, and his attendance at firearms-related classes, fail (severally and in the
27 aggregate) to provide him the special skill, knowledge, training, etc. that correspond to the issues
28 in this litigation. More specifically, his purported qualifications, fail to apply to the *legal issues* in
29 plaintiffs' operative Complaint and defendants' Motion for Summary Judgment.

30 He further states, ostensibly, regarding his qualifications as an expert that, "I am familiar
31 with methods used by people to alter firearms records and illegally transfer firearms. (Chinn Decl.,
32

1 p. 2, ll. 21-22) Agent Chinn’s *familiarity* with matters on the periphery of the issues herein fails to
2 provide him the requisite expertise to testify in support of the pending Motion for Summary
3 Judgment.

4 Agent Chinn further declares: “I am familiar with this lawsuit and with the Assault
5 Weapons Control Act (the ‘Act’) described in the lawsuit. In particular, I am familiar with the
6 amendments to the Act established by Senate Bill 23, Chapter 129 of the Statutes of 1999 (‘SB
7 23’).” Again, Agent Chinn’s familiarity with the issues fails to make him an expert
8 within the meaning of sections 720 and 800, and Code of Civil Procedure section 437c(d).

9 As such, Agent Chinn’s testimony is not proper for purposes of defendants’ Motion for
10 Summary Judgment, etc.: “Supporting . . . declarations shall . . . set forth admissible evidence, and
11 shall show affirmatively that the affiant is competent to testify to the matters stated.” (Code of
12 Civ. Proc. § 437c(d))

13 Further, “[t]he foundational or preliminary fact determination that the trial judge must
14 make is whether a witness who is asked to testify to an expert opinion on a particular subject
15 possesses the qualification of an expert on *that* particular subject.” (Gilbert, Jefferson’s California
16 Evidence Benchbook, Third Ed., Vol. 1 (March 2006), at p. 616, § 29.27) (Italics in original.)

17 Accordingly, this Court is authorized to exclude Chinn’s Declaration, and any other
18 testimony he has to offer, from evidence: “The court may, and upon objection shall, exclude
19 testimony in the form of an opinion that is based in whole or in significant part on matter that is
20 not a proper basis for such an opinion.” (§ 803)

21 Fundamentally, “No evidence is admissible except relevant evidence. (§ 350.) “[T]he court
22 in its discretion may exclude evidence if its probative value is substantially outweighed by the
23 probability that its admission will (a) necessitate undue consumption of time or (b) create
24 substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.”

25
26 **D. Agent Chinn’s Inadmissible Declaration Completely Lacks
Factual Support and Should be Excluded from Evidence**

27 Agent Chinn asserts his expert opinion relating to DOJ’s rule making policies, legislative
28 processes, and intentions with regard to the development, interpretation, legal effect and

1 enforcement of the subject legislation, without providing adequate factual support (let alone the
2 basis for his reliance on same), the rare exception being the two references he makes to the
3 exhibits attached to his Declaration. Even then, Exhibit B is questionable because relative to
4 DOJ's supposed confirmation that the Springfield Muzzle Break and Browning BOSS are not
5 flash suppressors, as conveyed by Exhibit B (the Owen/ATF letter), Agent Chinn states that the
6 confirmation ("evaluating") was done "in a variety of informal contexts" (Chinn Decl., p.7, ll. 10,
7 11.) He then opines and concludes it is DOJ's position that, "It thus does not function to
8 perceptibly reduce or redirect muzzle flash from the shooter's field of vision." (Chinn Decl., p. 7,
9 ll. 16-17.)

10 The remainder of the Declaration provides no specific supportive explanation, description,
11 detail, or authority, to reasonably indicate that Chinn possesses expertise related to the issues
12 herein, including what Defendant DOJ's legal position is.

13 Admittedly, some of these legal issues approach and skirt the boundaries of technical
14 issues relating to firearm mechanics, such as the manner in which a particular firearm can be
15 identified as a flash suppressor — under the laws currently at issue — Chinn's Declaration still
16 fails to demonstrate, by way of factual evidentiary support, that he possesses any degree of
17 expertise in this regard.

18 Beyond the exhibit references, Chinn's Declaration consists of conclusions of fact and law,
19 all of which are too numerous to address, but the following should serve as an adequate
20 representation: "I am an expert in identification of assault weapons." (Chinn Decl., p. 3., l. 23.) "I
21 have been qualified as an expert in firearms identification and nomenclature" before two grand
22 juries and numerous other courts. (Chinn Decl., p.3, ll. 23 - 27.) These are conclusions of fact.
23 "DOJ's position is that the absence of measurement provision in the statute and regulation does
24 not render the 'flash suppressor' definition invalid." (Chinn Decl., p.3, ll. 23-25.) This statement
25 is both a conclusion of fact (as to what DOJ's position is), and a conclusion of law (as to the legal
26 effect of the absence of a measurement provision in the cited law.)

27 The absence of specific measurement standards demonstrates the legislative intent
28 to include devices that reduce or redirect any amount of flash, and no
administrative regulation may alter a statute or enlarge or impair its scope. DOJ

1 would thus have exceeded its authority if it had established a standard that
2 permitted some percentage or amount of flash suppression. (Chinn Decl., pp. 3, 4,
ll. 25 - 1)

3 This two-sentence statement contains a conclusion of fact and three conclusions of law.⁴

4 Further, “[d]epending on the device, inspection of the device may establish that it does not
5 function to perceptibly reduce or redirect muzzle flash from the shooter’s field of vision.” (Chinn
6 Decl., p. 4, ll. 24-26) “Attached hereto as Exhibit A are true and correct copies of excerpts from
7 firearms reference materials that were considered by DOJ in the rulemaking process and/or
8 attached as exhibits to plaintiffs’ complaint.” (Chinn Decl., p.6, ll.7-9) These two statements are
9 conclusions of fact because the Declaration provides no related factual support. “In my experience
10 as an expert in the field of firearms identification and nomenclature, I have found that there are
11 legitimate muzzle brakes and compensators that do not suppress flash.” (Chinn Decl., p.6, ll.14 -
12 16) “DOJ was not at liberty to deviate from the legislative intent to include devices that suppress
13 flash.” (Chinn Decl., p.7, ll. 4, 5)

14 In making the following statement, and offering an “expert” opinion based upon the
15 unsupported assertion regarding DOJ’s position, Agent Chinn reaches factual and legal
16 conclusions that could very easily be incorrect; As a matter of fact, it is plaintiffs’ position that the
17 conclusion is incorrect: “DOJ has determined that the device redirects flash in a 360 degree arc
18 around the barrel such that, on balance, it floods the shooter’s field of vision with flash. It thus,
19 does not function to perceptibly reduce or redirect muzzle flash from the shooter’s field of vision.”
20 Followed to its illogical conclusion, Agent Chinn’s expert opinion is that because a shooter’s field
21 of vision is (allegedly) “flood[ed]” with flash, this proves that there is zero reduction or
22 redirection of muzzle flash. This vague statement provides no information indicating that one
23 hundred, or even, say 90 percent, of the muzzle flash flooded the shooter’s field of vision. The
24 shooter’s field of vision could have been “flooded” with muzzle flash yet one, or five, or ten
25 percent of the flash still could have been reduced or redirected.

26
27 ⁴ The fact that Plaintiffs and Defendants take opposing positions on this key
28 legal issue creates a triable issue of fact that should cause Defendants’ Motion for
Summary Judgment to fail.

1 Furthermore, these assertions are offered without any more support or other helpful
2 elaboration: Agent Chinn does not say who could make such an authoritative visual inspection,
3 nor does he explain any criterion by which it could be made. He never makes any determination
4 himself, nor names anyone else-including the Department of Justice- who *has* made one. He also
5 does not point to any device where such determination has been made. Concomitantly, he fails to
6 provide any estimate of the number of devices as to which such visual determinations can be
7 made, or what percentage of the total universe of devices are subject to such determinations and
8 does not explain why or how determinations can be made about some devices, but not others.
9 “The value of opinion evidence rests not in the conclusion reached but in the factors considered
10 and the reasoning employed. ... Where an expert bases his conclusion ... upon factors which are
11 speculative, remote or conjectural, then his conclusion has no evidentiary value ...” (*P.G. & E. v.*
12 *Zuckerman* (1987) 189 C.A. 3d 1113, 1134; Emphasis Added), nor do they raise triable issues of
13 fact in opposition to our expert’s contrary testimony.

14 While, Agent Chinn uses the qualifier, “perceptibly,” in offering his expert opinion, a key
15 issue in this litigation is defendants’ refusal to provide the specifics of light emission
16 measurement, such as what they mean by the term “perceptibly.” And Agent Chinn fails to
17 provide any such explication in his Declaration. His opinion is thus inadmissible: “Personal
18 knowledge and competency must be shown in the supporting and opposing affidavits and
19 declarations” and “[t]he affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’
20 facts.” (*Hayman v. Block* (1986) 176 CA3d 629, 638-639)

21 Finally, “[masters which would be excluded under the rules of evidence if proffered by a
22 witness in a trial as hearsay, conclusions or impermissible opinions, must be disregarded in
23 supporting affidavits.” (*Id.* at 638-639, citing *Kramer v. Barnes* (1963) 212 Calliope.2d 440, 446.)

24 Again, nowhere does Chinn support any of his assertions with anything to indicate what
25 the sources of his information are, whether his statements are based upon first-hand, personal
26 knowledge, or how he has been informed of these supposed facts, by whom, or some combination
27 thereof. Without factual support, these assertions are nothing more than hearsay, speculation, and
28 conjecture:

1 The hearsay rule and its exceptions apply to the contents of declarations on a
2 motion for summary judgment. For a declaration to meet summary judgment
3 standards, the declaring must *show* that if sworn as a witness he or she can testify
4 competently to the evidentiary facts contained in the declaration.
(Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter
Group 2006) ¶10:132; Italics in original.)

5 Also, “[declamations referring to observed facts or events should contain facts indicating
6 the declaring was in a position to observe such *facts* or events, and in fact did so.” (*Id* at 10:132.1)
7 (Italics in original.)

8 Further, “[m]uch of Ms. Rossi’s declaration dealt with the issue of waiver . . . These
9 [unsupported] conclusions were based on speculation about what Ms. Messina knew, considered,
10 or concluded.” (*Mitchell v. United National Insurance Company* (2005) 127 CA4th 478.)

11 Chinn’s Declaration contains his sworn, form statement attesting to his competency: “The
12 matters set forth in this declaration are true of my own knowledge, and I called as a witness, I
13 could and would testify competently thereto” (Chinn Decl., p. 1, ll. 27-28) However, standing
14 alone, this statement is nothing more than another conclusion of fact.

15 In this regard, the Ratter Guide states, “[t]his form allegation is merely the declarant’s
16 *conclusion*. (*Id* at 10:111) (Italics in original.) Since Agent Chinn’s Declaration is completely
17 devoid of factual support, and consists instead of hearsay, speculation and conjecture, it is
18 inadmissible, and should therefore be excluded from evidence.

19 **E. Agent Chinn’s Declaration Purports to State the Intentions of**
20 **the DOJ Defendants and the Legislature — Which is Prohibited**
21 **and Therefore Inadmissible**

22 In testifying as an expert for the DOJ Defendant, Agent Chinn repeatedly purports to state
23 what DOJ’s intentions are, or have been, relative to the issues herein, including DOJ’s rule-
24 making and enforcement policies, and legislative processes. He does this expressly in some
25 instances, and in others he uses the word “position” which, by reasonable inference, means he is
26 expressing what DOJ intends their “position” to be on a given subject:

27 In regard to measurement standards, DOJ’s position is that the absence of a
28 measurement provision in the statute and regulation does not render the ‘flash
29 suppressor’ definition invalid. The absence of specific measurement standards
30 demonstrates the legislative intent to include devices that reduce or redirect any
31 amount of flash, and no administrative regulation may alter a statute or enlarge or

1 impair its scope. (Chinn. Decl., p.3, ll. 23-27) (Emphasis added.)

2 In this statement, Chinn purports to offer his expert opinion regarding both the DOJ's and
3 the Legislature's intent. Within paragraphs 6, 7, 17, 18, 20 and 21 of his Declaration, Chinn
4 provides similar statements regarding DOJ's "position" on the three primary summary judgment
5 issues.⁵ And as discussed, supra, each is inadmissible because Chinn cannot properly testify
6 regarding the intentions of anyone other than himself. "Our appellate courts have consistently held
7 that a statement of someone else's intent, as contrasted with a statement on one's own intent, is a
8 mere conclusion of law." (*Hoover Community Hotel Corp. v. Thomson* (1985) 167 CA3d 1130,
9 1136-1137) Further, "our Supreme Court reversed a judgment based upon testimony of someone
10 else's intent because such testimony 'unsupported by any facts tending to show that he knew what
11 their intention was not competent to support a finding.'" (*California etc. Co. v. Union etc. Co.*
12 (1899) 126 Cal. 433)

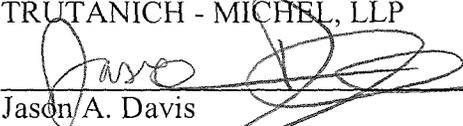
13 **IV. CONCLUSION**

14 This Court should allow plaintiffs to examine Agent Chinn regarding the manner in which
15 his opinions have been formed, and his qualifications to testify as an expert — prior to allowing
16 his Declaration into evidence because his qualifications fail to provide him with the requisite
17 expertise with which to testify to the factual and legal issues here.

18 Agent Chinn's Declaration, and any other testimony he may wish to provide, should be
19 excluded from evidence because 1) he is not qualified to testify as an expert on the issues relevant
20 to the pending Motion for Summary Judgment, 2) he provides insufficient evidentiary and factual
21 support for his opinions and assertions, and 3) his Declaration consist of inadmissible legal and
22 factual conclusions.

23 Date: January 22, 2007

TRUTANICH - MICHEL, LLP

24 
25 Jason A. Davis
26 Attorney for Plaintiffs

27 ⁵ Chinn's Declaration addresses three primary issues relating to assault
28 weapons: the meaning, etc. of the terms flash suppressor, permanently altered and
detachable magazine.

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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On January 22, 2007, I served the foregoing document(s) described as

PLAINTIFFS' EVIDENTIARY OBJECTIONS TO DOJ AGENT IGNATIUS CHINNS' DECLARATION IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT/ADJUDICATION

on the interested parties in this action by placing

- the original
- a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

Douglas J. Woods
ATTORNEY GENERAL'S OFFICE
1300 "P" Street, Ste. 125
Sacramento, CA 94244-2550

(BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on January 22, 2007, at Long Beach, California.

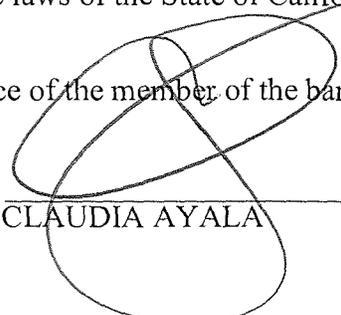
(PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.

X (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.

Executed on January 22, 2007, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.



CLAUDIA AYALA