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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

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

Plaintiffs,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

) CASE NO. 01CECG03182

) **DECLARATION OF DON B. KATES IN**
) **OPPOSITION TO DEFENDANTS' MOTION**
) **FOR SUMMARY ADJUDICATION AND IN**
) **SUPPORT OF PLAINTIFFS' MOTION FOR**
) **SUMMARY ADJUDICATION**

DECLARATION OF DON B. KATES

1. I am a member of the California State Bar and one of the attorneys for plaintiffs in this case.

2. Defendants disagree with plaintiffs' claim that the flash suppressor definition violates due process since it is impossible for a layman to determine whether a device on or in a rifle has an unintended effect of reducing or redirecting flash. It is apparently defendants' position that in some or many cases a layperson can determine by visual inspection that a device on or in a rifle barrel does not function to reduce or redirect flash. But this position is factually unsupported by the only evidence defendants offer – which is also factually contradicted by this declaration.

3. The only evidence defendants offer to support their position is the following statement from the declaration of their expert Mr. Chinn: "Depending on the device visual inspection of the device may establish that it does not function to perceptibly reduce or redirect muzzle flash from the shooter's field of vision." "Visual inspection" by whom – experts like Mr. Chinn, or ordinary people? Mr. Chinn does not say. This makes his assertion irrelevant to the issues here for what due process requires is that a matter be accessible to people of ordinary intelligence and knowledge. Issuing a regulation written in Greek would not be satisfactory notice to the general public of this state. Neither is a regulation which requires people to make determinations which only experts know how to make.

4. So, on its face, the only evidence defendants submit neither supports their position and motion nor does it raise a triable issue of fact against plaintiffs' evidence that the portion of the flash suppressor definition plaintiffs challenge does not give due process notice.

5. Now let us suppose that Mr. Chinn's declaration actually made the unequivocal assertion that would be relevant, i.e., that laymen can determine from looking at some flash suppressors that they do not reduce or redirect flash. Had that been his assertion it be wrong.

6. It bears emphasis that Mr. Chinn offers no explanation of how a lay person would determine from looking at a rifle that nothing in or on it will reduce or redirect flash. But I can say from my own knowledge that I am a lay person – and I have not the vaguest notion of how I, or anyone else, would determine from looking at a rifle that nothing in or on it will reduce or redirect

1 flash.

2 7. If it were possible for a layman to determine such a matter I would be in a better
3 position than most laymen to do so. I have owned rifles for more than five decades, have been
4 involved in the shooting sports for more than five decades, have been a sworn law enforcement
5 officer, and am a columnist for a shooting magazine. But, to reiterate, I have not the vaguest
6 notion of how one could determine from looking at a rifle that nothing in or on it will reduce or
7 redirect flash when that rifle is fired.

8 [VERIFICATION]

9 I certify and declare under penalty of perjury under the laws of the State of California that
10 the foregoing is a true and correct statement of my personal knowledge and is executed this 2nd
11 day of January, 2007 in Clark County, Washington.

12 
13
14 DON B. KATES

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 4, 2007, I served the foregoing document(s) described as

**DECLARATION OF DON B. KATES IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY ADJUDICATION AND IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY 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 "I" 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 4, 2007, at Long Beach, California.

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

X (MAIL OVERNIGHT) 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 4, 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