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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 Attorney of Fresno County, and in his personal capacity as a citizen and taxpayer, et. al., Plaintiffs, v. STATE OF CALIFORNIA; WILLIAM LOCKYER, Attorney General of the State of California; CALIFORNIA DEPARTMENT OF JUSTICE; Does 1-100; Defendants.	CASE NO. 01CECG03182 **PLAINTIFFS' STATEMENT IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY, AND IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY ADJUDICATION**

Plaintiffs hereby submit the following Separate Statement of Undisputed Material Facts pursuant to Code of Civil Procedure section 437c(b) in opposition to Defendants' Motion for Summary Judgment or, Alternatively, for Summary Adjudication in this action. As set forth below, Defendants are not entitled to judgment as a matter of law on any of the remaining causes of action set forth in Plaintiffs' First Amended Complaint.

FIRST CAUSE OF ACTION

ISSUE ONE: Defendants are not entitled to summary adjudication relating to Plaintiffs' First Cause of Action (for "Unauthorized DOJ Redefinition of 'Flash Suppressor'"), because Plaintiffs can show that the regulation defining "flash suppressor" is arbitrary, capricious, or lacking in evidentiary support.

Undisputed Material Facts	Supporting Evidence
1. Penal Code section 12276.1 states, in part: "(a) Notwithstanding Section 12276, "assault weapon" shall also mean any of the following: (1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following: * * * (E) A flash suppressor. * * * (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."	Undisputed.

2.	Section 978.20 of Title 11 of the California Code of Regulations states, in part: "The following definitions apply to terms used in the identification of assault weapons pursuant to Penal Code section 12276.1: * * * (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."	Disputed. Plaintiffs agree that the statement is accurate for former Section 978.20 of Title 11 of the California Code of Regulations, which was renumbered to be Section 5469 of Title 11 of the California Code of Regulations.
3.	Plaintiffs claim: "'Flash suppressor' is a term with an established technical meaning."	Undisputed.
4.	Plaintiffs claim: "[A]s the concept 'flash suppressor' is used in Penal Code section 12276.1(a)(1)(E), it applies only to devices expressly called 'flash suppressors' or which were designed for the purpose of flash suppression and marketed as performing that purpose."	Undisputed.
5.	Plaintiffs claim that "compensators" and "muzzle brakes" are devices that "have established technical meanings which differentiate them from a 'flash suppressor.'"	Undisputed.
6.	Plaintiffs claim: "A second respect in which CCR section 978.20(b) departs from established usage is in unlawfully and unconstitutionally applying the term 'flash suppressor' to devices . . . that do not actually reduce flash but merely 'redirect' it."	Undisputed.
7.	The *NRA/ILA Glossary* (1995) defined "Flash Hider/Suppressor" as "A muzzle attachment intended to reduce visible muzzle flash caused by burning propellant." It defined	Undisputed.

	"Muzzle Brake" as "An attachment to or integral part of the barrel that traps and diverts expanding gasses and reduces recoil." It provided no definition of "Compensator."	
8.	*Jane's Infantry Weapons* (20th Ed. 1994-95) defined "Flash Hider" as "Conical attachment to the muzzle for concealing muzzle flash from an observer. Also acts as a flash eliminator, though it is less efficient than a properly designed eliminator." It defined "Flash Eliminator" as "A device fitted to the muzzle to cool emergent gases, preventing the formation of flash or flame." It defined "Muzzle Brake" as "Attachment to the muzzle of a weapon designed to deflect some of the emergent gases and direct them against surfaces so as to generate a thrust on the muzzle countering the recoil force. Widely used on artillery but less popular in small arms since an efficient brake will divert too much gas to the sides and rear, to the discomfort of the firer and his companions." It defined "Compensator" as "A device attached to a weapon barrel (usually an automatic weapon) to divert some of the muzzle blast upward and thus counteract the tendency for the muzzle to rise during automatic fire." It provided no separate definition of "Flash Suppressor."	Undisputed.
9.	The Sporting Arms and Ammunition Manufacturers' Institute ("SAAMI") *Non-Fiction Writer's Guide* defined "Flash Suppressor" as "An attachment to the muzzle designed to reduce muzzle flash." *Note: A flash suppressor is not a silencer.*" It provided no definition for "Flash	Undisputed.

	Hider," "Muzzle Brake," or "Compensator."	
10.	SAAMI *Technical Correspondent's Handbook* (Rev. 1/31/00) defined "Flash Suppressor" as "A muzzle attachment designed to reduce muzzle flash. Also called Flash Hider" It defined "Flash Hider" as "See Flash Suppressor." It defined "Muzzle Brake" as "Device at the muzzle end usually integral with the barrel that uses the emerging gas behind a projectile to reduce recoil. See also, Compensator." It defined "Compensator" as "A device attached to the muzzle end of the barrel that utilizes propelling gases to reduce recoil."	Disputed to the extent that the definition provided in Defendants' Separate Statement omits a portion of the definition of "Compensator," which states "[A]lso see Muzzle Brake." Chinn Decl. Exh. A, pp. 19-22.
11.	Chester Mueller & John Olson, *Small Arms Lexicon and Concise Encyclopedia* (1st Ed. 1968), defined "Flash Hider" as "a muzzle attachment for a gun to conceal the flame when it is fired at night." It defined "Muzzle Brake" as "an attachment secured to the muzzle of a gun, which may be a cannon, rifle or shotgun, to utilize some of the muzzle blast to apply a forward force to the barrel at the instant the gun is reacting backward in recoil. Basically it is a tube screwed to the muzzle, having a bore of diameter slightly larger than the bore of the barrel to enable the bullet or shot charge to pass freely through it. The wall of the tube is provided with holes or slits at right angles to the bore or inclined backward and outward at a slight angle to permit a portion of the muzzle blast to thus act against the tube and escape from it." It defined "Compensator" as "a muzzle brake commonly used on cannon, now often	Undisputed.

	used on some types of shotguns and automatic weapons to reduce the upward jump of the muzzle as well as recoil. It consists of a metal tube of bore slightly larger than the bullet or shot charge, screwed to the muzzle. Its wall has a series of openings at right angles to the bore, of selected patterns, designed to cause the muzzle blast to exert forward force in opposition to the backward recoil movement of the gun when it is fired. The Cutts Compensator is an example." It provided no separate definition for "Flash Suppressor."	
12.	John Quick, *Dictionary of Weapons and Military Terms*, defined "Flash Suppressor" as "A device attached to the muzzle of a weapon which reduces the amount of visible light or flash created by burning propellant gases." It defined "Flash Hider" as "A metallic cone and/or flat disks which are attached to the muzzle of a gun to conceal the flash when it is fired and to prevent temporary blindness of the gun crew while firing." It defined "Muzzle Brake" as "A device attached to the muzzle of a weapon which utilizes escaping gas to reduce recoil and noise." It defined "Compensator" as "On some small arms, a device used to hold down muzzle rise and reduce recoil."	Undisputed.
13.	The Association of Firearm and Tool Mark Examiners, *Glossary* (1969), defined "Flash Suppressor" as "A muzzle attachment designed to reduce muzzle flash." It defined "Compensator" as "A device attached to or integral with the muzzle end of the barrel to utilize propelling gases for counter-recoil. Also called MUZZLE BRAKE." It provided no	Undisputed.

	separate definition of "Flash Hider" or "Muzzle Brake."	
14.	John Malloy, *Complete Guide to Guns and Shooting* (1995), defined "Compensator" as "a device attached to the muzzle of a firearm to reduce the upward movement of the muzzle brought about by recoil; powder gases directed upward pull the muzzle down, compensating for muzzle jump." It provided no definition for "Flash Suppressor," "Flash Hider," or "Muzzle Brake."	Undisputed.
15.	The Association of Firearm and Tool Mark Examiners, *Glossary* (2nd Ed. 1985), defined "Flash Suppressor" as "A muzzle attachment designed to reduce muzzle flash." It defined "Muzzle Brake" as "A device at or in the muzzle end of a barrel that uses the emerging gas behind the projectile to reduce recoil." It defined "Compensator" as "A device attached to or integral with the muzzle end of the barrel to utilize propelling gases for counter-recoil. Also called MUZZLE BRAKE." It provided no definition of "Flash Hider."	Undisputed.
16.	George C. Nonte, Jr., *Firearms Encyclopedia* (1973), defined "Flash Suppressor"as "A device attached to the muzzle of a firearm that serves to disrupt, or reduce the amount of flame produced upon firing. The most common type consists of tuning-fork-like fingers which extend beyond the muzzle and vibrate under the impulse of firing to disrupt and reduce flash. See also FLASH HIDER." It defined "Flash Hider" as "A device attached to the muzzle of any gun for the purpose of concealing (not reducing) the flash or flame generated by the burning propellant and by the ignition	Disputed to the extent that the definition provided in Defendants' Separate Statement omits a portion of the definition of "compensator," which states: "when gases are diverted in sufficient quantities, they reduce rearward thrust, and if deflected rearward, exert forward thrust and thus tend to counterbalance a portion of recoil. Generally speaking the greater the percentage of gases diverted and the more nearly they approach 180 degrees change in direction, the greater the amount of recoil reduction produced. Practical limitations generally prevent achieving more than about 40 percent recoil reduction with even the best

	of expanding gases as they contact the oxygen-rich atmosphere. Usually a large conical or tubular extension clamped to the muzzle. See also FLASH SUPPRESSOR." It defined "Muzzle Brake" in part as "A device attached to the muzzle to reduce recoil and, to some extent, muzzle jump. Regardless of the vast array of sizes, shapes, and internal configurations, all brakes function by momentarily trapping propellant gases as they emerge from the muzzle and by diverting them at right angles to the bore's centerline, or slightly rearward." It defined "Compensator" in part as "A device fitted to the muzzle of any firearm whose function is to reduce the upward movement of the muzzle brought about by recoil forces."	and the most efficient muzzle brakes. It is not possible to divert gas directly rearward because of its effect on the shooter and even approaching rearward diversion can produce shock-wave effects on bystanders and also greatly increases the intensity of the muzzle blast. The disadvantages of size and bulk, interference with line of sight, increased muzzle blast and discomfort, and cost have generally limited the use of muzzle brakes on conventional sporting guns. On the other hand, they have become very widely used on military arms, and are almost universally used on weapons over .50 caliber." See also CUTTS COMPENSATOR. Chinn Decl., Exh. A, p. 47.
17.	W.H.B. Smith & Joseph E. Smith, *The Book of Rifles* (3rd Ed. 1963), defined "Flash Suppressor" as "A prong type arrangement fitted to the muzzle of weapons which reduces muzzle flash." It defined "Flash Hider" as "A device attached to the muzzle of a rifle to reduce muzzle flash. Mis-named because its function is to reduce, not to hide, muzzle flash." It defined "Muzzle Brake" as "A device attached to the muzzle of a gun, designed to deflect the propelling gases emerging from the muzzle behind the bullet, and to utilize the energy of these gases to pull the gun forward to counter the recoil of the weapon." It provided no definition of "Compensator."	Undisputed.

18.	The United States Army John F. Kennedy Center for Special Warfare (Airborne), *U.S. Army Special Forces Foreign Weapons Handbook* (1 January 1967), defined "Flash Suppressor" as "A two, three or four prong device attached to the muzzle of a weapon which tends to cool the hot gases as they leave the muzzle behind the bullet. Cooling the gases reduces the flash." It defined "Flash Hider" as "An attachment attached to the muzzle of a weapon which shield the muzzle flash, or a circular disk attached to the barrel just to the rear of the muzzle to shie[l]d the flash from the firer." It defined "Muzzle Brake" as "A device at the muzzle of weapon which deflects the emerging powder gases. The energy imparted by this act of deflection pulls the weapon forward to offset some of the rearward motion of recoil." It defined "Compensator" in part as "A device attached to the muzzle of a weapon, which due to its design allows the gases following the bullet out of the muzzle to be deflected upward through slots in the top surface of the compensator. The lower portion of the compensator is solid, so that while some gas escapes through the top, gas is also pressing against the bottom."	Undisputed.
19.	Steindler, *The Firearms Dictionary* (1970), defined "Flash Hider" as "a device that reduces but does not hide muzzle flash. Fastened to the muzzle of military small arms, the flash hider does not reduce muzzle blast. Also known as FLASH SUPPRESSOR." It defined "Muzzle Brake" in part as "a device fastened to the muzzle of a rifle, sometimes to the muzzle of a shotgun, that reduces recoil & to some	Disputed. A definition for "flash suppressor" is provided in Steindler, *The Firearms Dictionary* (1970) and states: "FLASH SUPPRESSOR *see* Flash Hider. Chinn Decl., Exh. A, pp. 56-60.

		extent also cuts down on muzzle jump (*q.v.*)." It provided no separate definition for "Flash Suppressor" or "Compensator."	
	20.	Ian V. Hogg & John Weeks, *Military Small Arms of the 20th Century* (6th Ed.), defined "Flash Hider" as "Muzzle attachment intended to conceal the muzzle flash from the firer so as to prevent his being dazzled when firing in poor light. It can also act as a flash eliminator but is not so efficient in this role." It defined "Muzzle Brake" as "A device fitted to the muzzle of a weapon and designed to deflect some of the emergent gas and direct it against surfaces so as to produce a pull on the muzzle and thus reduce the recoil force. Not widely used on small arms, since the gas diverts sideways and increases the blast and noise level to the firer and his companions." It defined "Compensator" as "Device attached to, or forming part of, the muzzle of a weapon and which diverts some of the escaping gas upwards or to one side so as to counter the tendency of the gun muzzle to rise or swing during automatic fire." It provided no separate definition for "Flash Suppressor."	Undisputed.
	21.	Duncan Long, *The Complete AR-15/M16 Sourcebook*, in its section entitled "FLASH SUPPRESSORS AND MUZZLE BRAKES" states, in part: "Flash suppressors minimize the muzzle flash, which can give away a rifleman's position in combat. Consequently, most modern military and police rifles have flash suppressors (also called flash hiders) attached to their muzzles. These devices don't completely eliminate	Undisputed.

flash, but they do reduce it, especially with ammunition designed for minimal flash and with rifles having longer barrels. [¶] Muzzle brakes reduce felt recoil and make shooting a more enjoyable experience. Compensators help prevent recoil forces from pushing the barrel upward and off target and are generally the same as muzzle brakes; most modern designs both reduce and compensate for recoil. The trade-off for reduced recoil and compensation often is added noise and flash, though some muzzle brakes do a pretty good job of keeping this to a minimum. Some modern systems try to combine both the muzzle brake and the flash hider to have the best of both systems. . . . [¶] The A1-style birdcage flash hider is cheap and works well; the A2-style is nearly as effective and has the lower cutouts missing so it acts as a compensator to keep the barrel on target during strings of fire (and also prevents a dust cloud during prone shooting). . . . [¶] For maximum flash hiding, the open-prong flash hider is hard to beat. One modern version of this . . . is the Vortex offered by Western Ordnance International Corp. . . . [¶] Originally, the unit was designed just for hiding flash, but it was discovered that it also reduced the size of groups as well as recoil somewhat. . . . Because of all the enhancements the Vortex offers, it's now being sold as a multipurpose device. . . . [¶] For those wanting reduction of recoil, Fabian Brothers' muzzle brake is most ideal. . . . The original design, sold as the Mil/Brake, didn't do much to suppress flash, but it was revamped when it became the Muzzle Stabilizer; now the birdcage-style slits at its front greatly reduce

	flash."	
22.	The Legislature has defined some prohibited weapons or devices (short-barreled shotgun, short-barreled rifle, wallet gun, camouflaging firearm container, zip gun) expressly by reference to their design or intended use, but did not do so for the weapons and devices identified in Penal Code section 12276.1.	Disputed. 1. Penal Code section 12275.5 states in part that: "It is not, however the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities." 2. Penal Code section 12275.5 is in the same Chapter (Chapter 2.3) as Penal Code section 12276.1.
23.	Muzzle brakes and compensators can affect flash.	Disputed. Plaintiffs claim "Many civilian rifles have compensators or muzzle brakes, these being devices designed to control recoil. Some such devices *may* have incidental effects on flash." (Emphasis added.) Am. Compl., ¶41.
24.	DOJ replaced the word "conceals" with "redirects" in the definition of "flash suppressor" because it concluded that the word "conceals" in the original proposed definition presented the possibility of an overly broad interpretation which could have included any device positioned between the shooter's eye and the muzzle flash, such as the sights on a gun.	Disputed. Plaintiffs do not know the actual intent of the Department of Justice in its actions. It is undisputed, however, that Defendants' Initial Statement of Reasons claims that "'conceals' in the original definition presented the possibility of an overly broad interpretation which could have included any device positioned between the shooter's eye and the muzzle flash, such as the sights on a gun. To avoid such unintended interpretation, the word "conceals" was replaced with 'redirects.'" Declaration of Randy Rossi ("Rossi Decl.") Exh. A, p. 15.

SECOND CAUSE OF ACTION

ISSUE TWO: Defendants are not entitled to summary adjudication relating to Plaintiffs' Second Cause of Action (for "Uncertainty of 'Flash Suppressor'") because Plaintiffs' can show that a person of ordinary intelligence does not have a reasonable opportunity to know what is prohibited by the "flash suppressor" definition, let alone in all applications.

Undisputed Material Facts		Supporting Evidence
25.	Undisputed Material Fact Nos. 1-2 are incorporated herein by reference as though fully set forth at length.	Supporting evidence regarding Plaintiffs' responses to Undisputed Material Fact Nos. 1-2 is incorporated herein by reference as though fully set forth at length.
26.	Plaintiffs claim: "[T]he regulations establish no scientific criteria, i.e., lumens, footcandles, etc., by which to measure flash or its reduction."	Undisputed.
27.	Plaintiffs claim that the definition of "flash suppressor" in the regulation "require[s] testing which the ordinary rifle owner is unable to perform."	Undisputed.
28.	Plaintiffs claim that the definition of "flash suppressor" in the regulation is uncertain because it is unclear as to whether flash suppression function is determined by reference to shooting from the shoulder or from the hip, whether flash suppression function is determined by reference to firearms with iron sights or with telescopic sights, and which ammunition characteristics to consider in determining flash suppression function.	Disputed. Plaintiffs claim that the examples cited in Separate Statement No. 28 are a subset of uncertainties and ambiguities that Plaintiffs claim are the result of the definition of "flash suppressor" within their First Amended Complaint. Another example includes, but is not limited to, the lack of a measuring standard to differentiate those devices that are designed and intended for use as "flash suppressors" from those that may have an incidental effect on "flash" but are *primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities* – such as compensators and/or muzzle brakes . First Am. Compl., ¶¶50-51, 55.

29.	DOJ concluded "that the absence of statutorily defined specific measurement standards or a statutory requirement to establish those standards demonstrates a legislative intent to identify any device that reduces or redirects flash from the shooter's field of vision as a flash suppressor regardless of its name and intended/additional purpose."	Disputed. To the extent that the statement is limited to the DOJ's conclusion, Plaintiffs do not dispute the conclusion. Plaintiffs do, however, dispute the legal conclusion of the DOJ as being contrary to the intent of the legislature, as stated in Penal Code §12275.5, which states in part: "It is *not*, however, the intent of the Legislature by *this chapter* to place restrictions on the use of those weapons which are primarily *designed and intended for hunting, target practice, or other legitimate sports or recreational activities*." (Emphasis added.)
30.	DOJ determines whether a particular feature or device is a flash suppressor as defined in the regulation by inspecting the device, reviewing material regarding the device provided by the manufacturer or otherwise, and/or consulting with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF").	Disputed. California has defined "flash suppressor" as "any device designed, intended, or that functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision." Section 5469 of Title 11 of the California Code of Regulations. This Separate Statement accurately describes how DOJ can determine whether a device was designed or intended to suppress flash. But as to the "functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision" portion of the definition, Defendants' Separate Statement No. 30 is false and inaccurate in the following respects: 1. A determination that a device neither reduces nor diverts flash can only be made by scientific test firing of a rifle wherein the firing is photographed and the photos are then evaluated by light measurement instrumentation. There is no method of determining whether a device does or does not function to reduce or divert flash by merely inspecting the device visually. Defendants admit that they do not have light measurement instrumentation and do not conduct testing. Therefore they do not know whether the dozens of such devices that exist

are or are not "flash suppressors" under the challenged portion of the definition. Declaration of Frederic Tulleners ("Tullener Decl.") (¶¶ 7-12), Declaration of Jess Guy filed in support of Plaintiffs Motion for Summary Judgment ("Guy Decl.") (¶¶ 18, 34); Declaration of Michael Shain filed in support of Plaintiffs Motion for Summary Judgment ("Shain Decl.)(¶14); and Declaration of Torrey Johnson ("Johnson Decl."); also Chinn Decl., ¶¶ 11, 15).

2. There are currently dozens of muzzle devices on the market. There are presumably dozens of others in circulation that were once on the market, but are no longer. Each of these dozens and dozens of devices is potentially a "flash suppressor" under the challenged second and third definitions. Whether any or all of these devices are "flash suppressors" under the challenged second and third definitions can only be determined by scientific testing.

Second Declaration of Jason Davis ("Davis 2nd Decl.") ¶ 2 and exhibits thereto; Tulleners Decl. (¶¶ 7-12); Shain Decl.(¶14); and Guy Decl. (¶¶ 18, 34).

3. Plaintiffs know of only two of these dozens and dozens of devices that DOJ has determine to be "flash suppressors"; the Browning BOSS and the Springfield Muzzle Break (SMB). The latter determination was made simply because ATF decided that the SMB was not a "flash suppressor" under the federal definition of that term. Defendants apparently merely applied that determination under their Regulation without making any inquiry as to whether the federal definition accorded with that Regulation. Nor have Defendants made any showing to this Court that the federal definition is in accord with Defendants' challenged Regulation.

Defendants' Separate Statement of

Undisputed Facts No. 39.

4. The showing as to Defendants' approval of the BOSS is even more defective. Defendants explain that approval on the basis that a manufacturer's photo of a rifle with a BOSS device being fired shows that it *redirects* flash in a 360 degree arc which Defendants have decided is acceptable under the third definition of the Regulation (redirection of flash out of the shooters' eyes). But what about their second definition — whether the BOSS **reduces** flash? Defendants do not claim that in approving the BOSS they even considered whether it reduces flash; neither do they explain any basis they may have had for considering that issue. And, Defendants admit that they have never tested to determine if a device reduces flash and that they do not have instruments with which to perform such a test.

Chinn Decl., ¶ 15; Defendants' Separate Statement of Undisputed Facts No. 40. First Declaration of Jason Davis filed in support of Plaintiffs' Motion for Summary Judgment ("Davis' 1st Decl.") and Exhibits cited therein. Specifically, Defendants' Amended Response to Special Interrogatories 20-22 and 24-25, and 51 (attached as Exhibit QQ within to Plaintiffs Notice of Lodgment referred therein), which state in part:
"Defendants do not possess equipment for measuring light."

***

"Defendants do not perform any test-firing to determine whether a device functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision."

5. Neither now, nor in the registration year (2000), would DOJ have been able to advise any caller whether any one of the dozens and dozens of other devices that could have been attached to, or made part of, a rifle constituted a "flash suppressor" under its aberrant second

and third definitions of that phrase.

Chinn Decl., ¶ 15; Defendants' Separate Statement of Undisputed Facts No. 40. First Declaration of Jason Davis filed in support of Plaintiffs' Motion for Summary Judgment ("Davis'1st Decl.") and Exhibits cited therein. Specifically, Defendants' Amended Response to Special Interrogatories 20-22 and 24-25, and 51 (attached as Exhibit QQ within to Plaintiffs Notice of Lodgment referred therein), which state in part:
"Defendants do not possess equipment for measuring light."

***

"Defendants do not perform any test-firing to determine whether a device functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision."

6. Currently, it is not possible for a citizen to learn from ATF if their rifle has a device that is a "flash suppressor" — under any definition. (Defendants have provided no evidence indicating that one could ever obtain such information from ATF.) The expiration of the 1994 federal assault weapon law in 2004 meant that ATF was, and currently is, no longer concerned with such issues. So anyone needing advice now, is unable to obtain it from ATF.

The statute under which ATF dealt with "flash suppressor" issues expired in 2004. In particular, the assault weapon provisions of Title XI of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994), took effect in 1994 and were repealed in 2004. Section 110105 of the Act provided:

This subtitle and the amendments made by this subtitle-

(1) shall take effect on the date of the enactment of this Act [i.e., September 13, 1994]; and

(2) are repealed effective as of the

date that is 10 years after that date [i.e., September 13, 2004].

The Act defined the term "semiautomatic assault weapon" in part to include certain rifles with a "flash suppressor." (18 U.S.C. § 921(a)(30) (repealed) provided in part:

The term "semiautomatic assault weapon" means – . . .

(B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of – . . .

(iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor . . . .

Along with the Act, this definition and ATF's regulations which repeated this definition were repealed.

As explained by ATF's website, http://www.atf.gov/firearms/101204part478regs.htm:

Portions of Regulations in Part 478 that are no longer effective after 9/13/04

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On September 13, 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322. Title IX, Subtitle A, Section 110105 of this Act generally made it unlawful to manufacture, transfer and possess semiautomatic assault weapons (SAWs) . . . . Significantly, the law provided that it would expire 10 years from the date of enactment. Accordingly, effective 12:01 am on September 13, 2004, the provisions of the law ceased to apply and the following provisions of the regulations in Part 478 no longer apply:

Section 478.11- Definitions of the terms "semiautomatic assault weapon" and "large capacity ammunition feeding device" . . . .

Accordingly, the term "flash suppressor" no longer appears in federal law or regulations,

		and ATF has no further dealings with the subject. 7. Whether it ever was possible to consult with ATF as to such matters, Defendants supply information that on one occasion before 2004 they consulted with ATF about a single specific device which ATF had tested under Federal standards, not California's Regulation which were adopted after the issuance of the ATF letter cited in the Chinn Decl. Chinn Decl., ¶ 15.
31.	Possible ways for others to learn whether a particular device functions as a flash suppressor as defined in the regulation include inspection of the device, consultation with DOJ or ATF, and review of product information provided by the manufacturer or distributed by the industry.	Disputed. Plaintiffs allegè that Separate Statement No. 31 is true only with regard to determining whether a device was designed or intended to reduce flash, i.e. under the first (unchallenged) portion of the Regulation. Separate Statement No. 31 is wholly inaccurate as to determinations of whether a device accidentally reduces or redirects flash for the reasons set out in Plaintiffs' response to Separate Statement No. 30, supra: 1. It is impossible to determine from visual inspection of a muzzle device that it does not reduce or redirect flash. Tulleners Decl. (¶¶ 7-12); Shain Decl. (¶ 14); and Guy Decl. (¶¶18 and 34). 2. There are dozens of muzzle devices that would be "flash suppressors" under Defendants' challenged second and third definitions if they affected flash. The only devices one could learn about from calling DOJ were the SMB and the BOSS. DOJ has never tested muzzle devices; DOJ never had and currently has no information regarding whether any other device is a "flash suppressor." Moreover, advice by DOJ that a device is not a "flash suppressor" is only advice, not a defense to a charge of failure to register. A local district attorney who

disagrees with DOJ's position can prosecute the person who relied on the advice.

Second Declaration of Davis ¶ 2; Chinn Decl., ¶15; Decl. of C.D. Michel; Decl. of Lt. Col. Drenkowski filed with the Court in support of Plaintiffs Motion for Summary Judgment (¶¶5-7); Plaintiffs' Separate Statement of Undisputed Facts, Nos.104, 105.

3. Advice is currently unavailable from ATF because the federal statute linking the ATF to assault weapon issues expired in 2004. (See federal statutory and regulatory citations set out in response to Defendants' Separate Statement No. 30, supra.)

4. When it existed, former 18 U.S.C. 922(v) was concerned with "flash suppressors" then being manufactured. ATF would never have been involved with, or had any advice to give, regarding muzzle devices that had been produced in earlier years, but were no longer on the market. See former 18 U.S.C. 922(v), which stated in part:
(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.
***
(2) Paragraph (1) shall not apply to possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under federal law on the date of the enactment of this subsection.

5. Defendants offer no evidence that ATF's definition of "flash suppressor" is identical or even similar to the challenged portions of the California DOJ's definitions for "flash suppressor" and/or conducted testing of muzzle devices under those same definitions and standards. Thus there is no evidence that ATF would have known what to advise people calling for advice regarding the requirements of a California statute, with which ATF had no concern.

Defendants' Separate Statement of Undisputed Facts Nos. 38, 39 Chinn Decl., ¶15.

6. It is Plaintiffs' understanding that ATF only tested one muzzle device on one occasion and that this was done at the request of the maker. Defendants offer no showing that there were more tests, nor do Defendants offer any details regarding this one test, beyond offering the assertion that it occurred. Defendants offer no evidence that ATF ever routinely tested muzzle devices so that it could have advised anyone regarding the dozens and dozens of different muzzle devices and models thereof that exist.

Defendants' Separate Statement of Undisputed Facts Nos. 38, 39 Chinn Decl., ¶15.

7. Defendants offer no evidence that ordinary Californians would have known to call any federal agency, let alone ATF specifically, for compliance advice regarding a California statute.

Chinn Decl., ¶15; Defendants' Separate Statement of Undisputed Facts Nos. 30, 31.

8. Defendants offer no evidence that ATF would have taken the risk of advising ordinary Californians as to what they should know to comply with a California statute as to which ATF had no concern.

Chinn Decl., ¶15; Defendants' Separate Statement of Undisputed Facts Nos.30, 31.

9. Defendants offer no evidence that ATF staffing would have been able, personnel-wise, to handle and respond to calls from thousands of ordinary Californians during the ten-day period of December 21, 2000, to December 31, 2000, – that being the entire period during which the Regulation and the registration period co-existed.

		Chinn Decl., ¶15; Defendants' Separate Statement of Undisputed Facts, Nos. 30, 31.
32.	There are many variables as to firearm and ammunition characteristics and shooter usage that may, in combination, affect whether a device functions to suppress flash, including the burning rate of the powder used, the length of the barrel, cartridge, caliber, bullet weight, how the firearm is held, and type of sights. DOJ's understanding of the statute is, if the selection of any variable makes a perceptible difference, determination of whether a device functions to suppress flash assumes typical shooting usage, and assumes the characteristics of commonly available firearms and ammunition.	Disputed. Plaintiffs do not dispute that there are many variables as to firearm and ammunition characteristics and shooter usage that may, singularly and/or in combination, affect whether a device functions to suppress flash, including the burning rate of the powder used, the length of the barrel, cartridge, caliber, bullet weight, how the firearm is held and types of sights. Chinn Decl., ¶ 12. Plaintiffs dispute, however, that it is the DOJ's understanding of the statute that the selection of any variable makes a perceptible difference, determination of whether a device functions to suppress flash assumes typical shooting usage and assumes the characteristics of commonly available firearms and ammunition. No such standard is set forth in the regulations promulgated pursuant to the Assault Weapons Control Act.

FIFTH CAUSE OF ACTION

ISSUE THREE: Defendants are not entitled to summary adjudication relating to Plaintiffs' Fifth Cause of Action (for "Uncertainty of 'Permanently Alter' In Relation To Large Capacity Feeding Devices") because Plaintiffs can show that a person of ordinary intelligence does not have a reasonable opportunity to know what is prohibited by the large-capacity magazine definitions with the "permanently altered" exception, let alone in all applications.

Undisputed Material Facts		Supporting Evidence
33.	Penal Code section 12020(c)(25) states, in part: "As used in this section, 'large-capacity magazine' means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following: (A) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds."	Undisputed.
34.	Penal Code section 12276.1(d) states, in part: "The following definitions shall apply under this section: * * * (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."	Undisputed.
35.	Plaintiffs claim that DOJ should have issued a regulation defining a "permanent" alteration to mean an alteration "that cannot be altered or reversed except by physical alteration of the contours or dimensions of the magazine, e.g., alteration that involves physically changing the contours or dimensions of the magazine by metalworking, machining or supergluing (in the case of polymer (a type of plastic) magazines)."	Undisputed.

36.	As originally noticed to the public, the statutory term "permanently altered" was defined to mean "any irreversible change or alteration. After consideration of public comment, DOJ concluded that the proposed definition failed to provide any additional clarity to the statutory term. Furthermore, DOJ concluded that none of the comments considered provided additional clarity while maintaining the legislative intent. DOJ concluded the term "permanently altered" as used in the statute appears to be sufficiently understood without further definition.	Disputed. Plaintiffs agree that As originally noticed to the public, the statutory term "permanently altered" was defined to mean "any irreversible change or alteration. After consideration of public comment, DOJ concluded that the proposed definition failed to provide any additional clarity to the statutory term. Furthermore, DOJ concluded that none of the comments considered provided additional clarity while maintaining the legislative intent. The bald, unsupported assertion made by the final sentence of Separate Statement No. 36 (that the meaning of "permanently altered" is sufficiently understood by the public), however, is clearly wrong as proven by its inconsistency with Defendants' own acts. Specifically: 1. SB23 allows firearm magazines which have been "permanently altered" to take 10 rounds or fewer. This presumes that it is possible to so "permanently alter" a magazine. Pen. C. 12020(c)(25) and 12276.1(d). 2. But when Defendants undertook to preliminarily define the meaning of "permanently alter" by regulation they defined it as the making of an "irreversible" alteration. Had this Regulation been adopted, it would have defined the phrase as setting an **absolute** standard. Defendants' Separate Statement of Undisputed Facts No. 36.

3. But there is no way to make an "irreversible" alteration to a metal or hard plastic mechanism like a firearm magazine. Any alteration which leaves such a mechanism in a working condition can be reversed, albeit the cost of that reversal may be excessive or disproportionate. So Defendants' proposed absolute standard would have conflicted with the statutory provision inherent in which it is possible to make a "permanent" alteration.

Guy Decl. (¶¶47-49) and Steven Helsley ("Helsley Decl.") (¶7).

4. In this lawsuit, Defendants have accepted a different definition of "permanent" which is **relative** (rather than absolute). This dictionary definition of a permanent alteration is an alternation that lasts, or is intended to last, indefinitely without change and/or will last a relatively long time.

Defendants' Dec. 12, 2002, Memorandum of Points & Authorities in Support of Demurrer to Plaintiffs' First Amended Complaint, pp. 17-18.

5. The evidence before the Court thus shows that two quite different definitions exist for the statutory term "permanently alter." The evidence further shows that persons subject to the Act are confused as to which of these very different meanings applies and are unwilling to take advantage of the statutory provision because they fear prosecution and/or confiscation of their rifles.

Declarations of Lt. Col. Drenkowski (¶¶5-7), Mark Halcon of Dec. Of C. D. Michel; Decl. of Lt. Col. Drenkowski filed with the Court in support of Plaintiffs' Motion for Summary Judgment (¶ 11), and Stephen Helsley.

	6. The confusion as to the provision's meaning is frustrating the accomplishment of its objectives, and presents the danger of prosecutions inconsistent with DOJ's interpretation of the provision that it is Defendants' duty to clarify the situation. As Defendants have not contended that any clarification other lesser or different from a clarifying regulation would suffice, that is the method of clarification which Defendants should be required to make. California Constitution, Art. V, section 13 (duty to assure that the law is enforced consistently), Penal Code § 12276.5 (I) (power and duty to clarify the AWCA by regulation).

CLAIM 1 IN SIXTH CAUSE OF ACTION

ISSUE FOUR: Defendants are not entitled to summary adjudication relating to Plaintiffs' Claim 1 in the Sixth Cause of Action (for "Inconsistency Regarding Springfield and Browning Products'"), because disagreement with particular DOJ determinations is a basis for invalidating the regulation defining "Flash Suppressor" pursuant to which the determinations are made.

Undisputed Material Facts	Supporting Evidence
37. Undisputed Material Fact Nos. 1-2 are incorporated herein by reference as though fully set forth at length.	Supporting evidence regarding Plaintiffs' responses to Undisputed Material Fact Nos. 1-2 is incorporated herein by reference as though fully set forth at length.
38. DOJ has confirmed that the Springfield Muzzle Break is not a flash suppressor, based on such determination by ATF.	Disputed. DOJ has alleged that the Springfield Muzzle Break is not a "flash suppressor" based upon such determination by the ATF that preceded California's regulations defining "flash suppressor," but has not demonstrated that the ATF uses the same definition of "flash suppressor" that the California Department of Justice uses. Chinn Decl., ¶15, Exh.B.

39.	In evaluating the Browning BOSS, DOJ has determined that the device redirects flash in a 360 degree arc around the barrel such that, on balance, it floods the shooter's field of vision with flash and, thus, does not function to perceptibly reduce or redirect muzzle flash from the shooter's field of vision.	Disputed. Defendants explain that approval on the basis that a manufacturer's photo of a rifle with a BOSS device being fired shows that it *redirects* flash in a 360 degree arc which Defendants have decided is acceptable under the definition of "flash suppressor" (redirection of flash out of the shooters' eyes). But this conflicts with the statement made by Defendants in their Points and Authorities in Support of their Motion for Summary Judgment (p. 6:17-20.), which states: "DOJ's understanding, though, is that the absence of measurement standards in the statute listing "flash suppressor" means the Legislature intended to include devices that reduce or redirect *any* amount of flash, and that DOJ is not at liberty to deviate from such intent by establishing some hypothetically permissible level of perceptible flash that would not render the device a flash suppressor." Further, Defendants do not claim that in approving the BOSS they even considered whether it reduces flash; neither do they explain any basis they may have had for considering that issue. And, Defendants admit that they have never tested to determine if a device reduces flash and that they do not have instruments with which to perform such a test. Chinn Decl., ¶¶ 6, 15; Defendants' Separate Statement of Undisputed Facts No. 40. First Declaration of Jason Davis filed in support of Plaintiffs Motion for Summary Judgment ("Davis 1st Decl.") and Exhibits cited therein. Specifically, Defendants' Amended Response to Special Interrogatories 20-22 and 24-25, and 51 (attached as Exhibit QQ within to Plaintiffs Notice of Lodgment referred therein), which state in part: "Defendants do not possess equipment for measuring light." *** "Defendants do not perform any test-firing to determine whether a device functions to perceptibly reduce or redirect muzzle flash

40.	Plaintiffs claim that the definition of "flash suppressor" in the regulation should be invalidated because the Springfield Muzzle Break and the Browning BOSS do function to redirect flash from the shooter's field of vision, but plaintiffs do not seek to reverse DOJ's determinations that they are not flash suppressors.	Undisputed.

CLAIM 2 IN SIXTH CAUSE OF ACTION

ISSUE FIVE: Defendants are not entitled to summary adjudication relating to Plaintiffs' Claim 2 in the Sixth Cause of Action (for "Inconsistency Re 'Detachable Magazine'"), because there is controversy as to whether a magazine attached to a receiver by a screw, requiring a screwdriver for removal, is a "detachable magazine."

Undisputed Material Facts		Supporting Evidence
41.	Penal Code section 12276.1 states, in part: "(a) Notwithstanding Section 12276, "assault weapon" shall also mean any of the following: (1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following: * * * (4) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following: * * * (D) The capacity to accept a detachable magazine at some location outside of the pistol grip. * * * (7) A semiautomatic shotgun that has the ability to accept a detachable magazine."	Undisputed.

42.	Section 978.20 of Title 11 of the California Code of Regulations states, in part: "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."	Disputed. Plaintiffs do not dispute the substance of this claim, but only dispute the citation to California Code of Regulations, Title 11, § 978.20; The regulations have been renumbered since the filing of Plaintiffs First Amended Complaint. The proper citation for the definition of "detachable magazine" is now California Code of Regulations, Title 11, § 5469(a).
43.	Plaintiffs claim that a magazine attached to a receiver by a screw, requiring a screwdriver for removal, is not a detachable magazine.	Undisputed.
44.	DOJ does not consider a magazine attached to a receiver by a screw, requiring a screwdriver for removal, to be a detachable magazine.	Disputed. DOJ has determined that "a modification maneuver of this type is viewed with scepticism by this office and violates the sprit, if not the letter, of the law within Penal Code section 12276.1." Chinn Decl., ¶¶ 20-21; Am. Compl., Exh. 28; Plfs' Mem. in Supp. of Mo. for Summ. Judgm. 15:20-21.

45. Plaintiffs have identified no alleged prosecution involving improper application of the "detachable magazine" definition in which DOJ has allegedly improperly acquiesced.	Disputed. Plaintiffs have not identified any alleged prosecutions involving improper application of the "detachable magazine" definition in which DOJ has allegedly improperly acquiesced, but since discovery, our office has been contacted by at least two persons who have been threatened with criminal prosecution and have had their firearms seized for the same reason. Mr. Davis has informed and discussed these matters with the California Department of Justice Firearms Division Deputy Attorney General Alison Merrillees during discussions on new regulations. Davis 2nd Dec. ¶ 6.

CLAIM 3 IN SIXTH CAUSE OF ACTION

ISSUE SIX: Defendants are not entitled to summary adjudication that Plaintiffs' Claim 3 in the Sixth Cause of Action (for "Inconsistency Regarding Importation of 'Large Capacity' Magazine Rifles") is moot because any question regarding whether modern replicas of 19th Century lever-action rifles with tubular magazines are subject to the "large-capacity magazine" prohibition has been eliminated by legislative amendment.

Undisputed Material Facts	Supporting Evidence
46. Plaintiffs complain that DOJ allows members of the Single Action Shooting Society, Inc. ("SASS") to bring modern replicas of 19th Century lever-action rifles with tubular magazines into California for SASS western style shooting competitions, even though such rifles would technically fall within the prohibition against importation of "large-capacity magazines."	Disputed. Plaintiffs claim was not limited to rifles with tubular magazines that fall within the exemption. Further, Defendants permission letter was not limited to tubular magazines that fall within the exemptions, but regards all "antique 'cowboy' rifles." First Am. Compl., ¶¶ 25, 84-85; Plfs' Mem. in Supp. of Mo. for Summ. Judgm. 17:6-18:6.

47.	Penal Code section 12020(a) states, in part: "Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison: * * * (2) Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine."	Undisputed.
48.	Penal Code section 12020(c)(25) states, in part: "As used in this section, 'large-capacity magazine' means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following: * * * (C) A tubular magazine that is contained in a lever-action firearm."	Undisputed.

ADDITIONAL UNDISPUTED FACTS IN SUPPORT OF PLAINTIFF'S OPPOSITION	**SUPPORTING EVIDENCE**
1. Thousands of California rifle owners have no way of being able to know whether their rifles, or any devices attached thereto, or thereon, have the capability to reduce or redirect flash – thus they have no way to determine if they should register them.	Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, etc., p. 11, ll 12, 13.
2. Ordinary California rifle owners have no access to the highly specialized and expensive scientific (light emission measuring)equipment necessary to test for flash suppression, and therefore cannot test their rifles in order to	Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, etc., p. 8, ll 9 - 11, p. 11, ll 12,13; Decl. of Fred Tulleners, ¶ 11; Decl. of Torrey Johnson, ¶ 9.

	determine if they must be registered.	
3.	Prior to SB23 there was no definition of "flash suppressor" that utilized the concept of flash being "redirected" away from a shooter's eyes as a component of, or form of, flash suppression; and with the exception of the Regulation currently being challenged, no post-SB23 has done so either. As such the current Regulation is arbitrary.	UMF 7 - 21.
4.	Defendants have failed to provide even one definition of the term "flash suppressor," from any source, utilizing the concept of redirection of flash from a Shooter's eyes, as stated in the challenged Regulation. As such, the Regulation is arbitrary.	UMF 7 - 21.
5.	Defendants passed the Regulation currently at issue on December 20, 2000.	DOJ Rulemaking File.
6.	The late (December 20, 2000), passage of the Regulation provided California's gun-owning citizens only ten (10) days within which to a) determine whether their firearm should be registered, and then b) to register each such firearm.	DOJ Rulemaking File.
7.	There are scores of devices that are designed and intended to be muzzle brakes or compensators.	Decl. Davis ¶2 and Exhibit A attached thereto.

8. Plaintiffs counsel has been contacted by no fewer than two persons who have been threatened with criminal prosecution, and have had their firearms seized for violations of the AWCA due to confusion surrounding modifications that would no longer render their firearms configured with "detachable magazines."	Decl. Davis ¶5.
9. Defendants have been informed of the instances in which Plaintiffs counsel has been contacted by persons who have been threatened with criminal prosecution, and have had their firearms seized for violations of the AWCA due to confusion surrounding modifications that would no longer render their firearms configured with "detachable magazines."	Decl. Davis ¶6.

Date: January 8, 2007

TRUTANICH • MICHEL, LLP

C. D. Michel
Attorney for Plaintiffs'

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 8, 2007, I served the foregoing document(s) described as **DECLARATION OF JASON A. DAVIS IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, ETC., AND IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY ADJUDICATION** on the interested parties in this action by placing

[ ] **the original**
[X] **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 8, 2007, at Long Beach, California.

_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 8, 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