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FILED

DEC 20 2007

FRESNO COUNTY SUPERIOR COURT
By _____ LE - DEPUTY

FILED BY FAX

12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF FRESNO

15 EDWARD W. HUNT, in his official)
capacity as District Attorney of Fresno)
16 County, and in his personal capacity as a)
citizen and taxpayer, et. al.,)
17 Plaintiffs,)
18 v.)
19 STATE OF CALIFORNIA; WILLIAM)
20 LOCKYER, Attorney General of the State of)
California; CALIFORNIA DEPARTMENT)
21 OF JUSTICE; Does 1-100;)
22 Defendants.)

CASE NO. ~~BC351731~~ 016E66-03182

**EX PARTE APPLICATION FOR ORDER
SHORTENING TIME FOR PLAINTIFFS'
NOTICE OF MOTION AND MOTION TO
COMPEL ATTENDANCE AND
TESTIMONY OF MIKE SMALL, JEFF
AMADOR AND ALISON MERRILEES;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF JASON DAVIS IN
SUPPORT THEREOF; EXHIBITS "A"
AND "B"**

Date: December 20, 2007
Time: 3:30 p.m.
Dept: 72

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25 **TO DEFENDANTS AND THEIR ATTORNEY OF RECORD**

26 Plaintiffs hereby apply to this Court, ex parte, for an order shortening time for notice of the
27 following motions: 1) Notice of Motion and Motion to Compel Attendance and Testimony of
28 Mike Small, Jeff Amador, and Alison Merrilees. A copy of this Motion is attached hereto as

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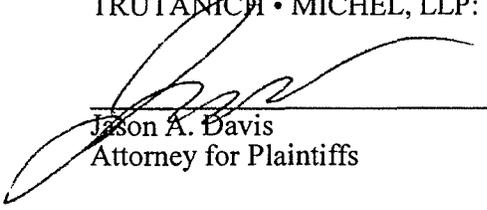
Exhibit A.

This Application is made on the ground that severe prejudice will result if the hearing date is not advanced, as the trial date in this matter is set for March 10, 2008. Plaintiffs have not been able to obtain the deposition testimony of Mike Small, Jeff Amador, and Alison Merrilees due to Defendants' refusal to produce these deponents. Plaintiffs cannot proceed to trial without the deposition testimony of these key witnesses at issue in this motion given their repeated and prolonged contact with the public, firearm retailers, and law enforcement on the subject matter of this litigation. This is especially true given that Defendants' counsel delayed in the attendance of Mr. Small and Mr. Amador for deposition following five months of rescheduling efforts to take these depositions without any prior indication that he would absolutely refuse to produce these individuals.

This Application will be based on Code of Civil Procedure §§ 1005 and 128, and on California Rules of Court, Rules 3.1200 - 3.1207. This Application is made on the Memorandum of Points and Authorities, the Declaration of Jason A. Davis attached hereto, Exhibits "A" and "B" attached hereto, and upon all papers and pleadings on file herein and on such other oral and documentary evidence as may be presented at the time of this hearing.

Date: December 20, 2007

TRUTANICH • MICHEL, LLP:



Jason A. Davis
Attorney for Plaintiffs

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 FACTS

4 A. UNDERLYING FACTS

5 Plaintiffs are embroiled in litigation with Defendants over, among other things, the
6 definitions (or lack thereof) of the terms “flash suppressor” and “permanently” alter as it is used
7 in section 12276.1 of the California Penal Code. In preparation for trial Plaintiffs attempted to
8 take the depositions of Defendants’ employees Mike Small, Jeff Amador, and Alison Merrilees.

9 On June 25, 2007, Plaintiffs originally noticed the depositions of Mike Small and Jeff
10 Amador for July 23, 2007 and July 24, 2007, respectively. (Exhibits “A” and “B” in support of
11 Plaintiffs’ Motion to Compel Attendance and Testimony; Declaration of Jason A. Davis, ¶ 2).
12 Through these depositions, Plaintiffs intended, and still intend, to inquire into deponents’
13 communications with the public about the application of the assault weapons provisions at issue
14 in this case. (See Davis Decl. at ¶ 2). Mr. Small and Mr. Amador have, in fact, responded to
15 numerous public inquires and engaged in communications with various law enforcement agencies
16 regarding the actual application of these provisions and were specifically named as responsive
17 parties in Defendants’ Responses to Plaintiffs’ Form Interrogatories - further evidencing the
18 relevance of deponents’ testimony to this case. (See Davis Decl. at ¶ 3).

19 On July 18, 2007, Defendants objected to the deposition notices for Mr. Small and Mr.
20 Amador, claiming that any such communications with the public were limited *only* to referring
21 the public to the relevant statutory or regulatory provisions. (Exhibit “C” in support of Plaintiffs’
22 Motion to Compel Attendance and Testimony; See Davis Decl. at ¶ 4). Defendants further
23 alleged, without basis, that Plaintiffs true purpose in seeking these depositions was to inquire into
24 the DOJ’s internal regulation considerations - and threatened to file for protective orders to
25 prevent these depositions from taking place. (Id.)

26 Plaintiffs thereafter continued these depositions and engaged in telephone conversations
27 with Defendants’ counsel whereby Plaintiffs clarified that they do not intend to inquire into any
28 internal deliberations or communications of DOJ officials. (See Davis Decl. at

1 ¶ 5). Plaintiffs further clarified that these depositions were not limited only to communications
2 involving mere references to statutes or regulations as Defendants alleged. (Id.) Plaintiffs then
3 rescheduled the deposition of Mr. Small and Mr. Amador for August 13, 2007, and August 14,
4 2007, respectively. (Id.)

5 On August 9, 2007, Plaintiffs again rescheduled the depositions of Mr. Small and Mr.
6 Amador for August 24, 2007, and August 31, 2007, respectively. (Exhibit “D” in support of
7 Plaintiffs’ Motion to Compel Attendance and Testimony; See Davis Decl. at ¶ 6). At this time
8 Plaintiffs reminded Defendants that it is Plaintiffs’ belief that Mr. Small and Mr. Amador play an
9 advisory role in the DOJ - Bureau of Firearms, which advises permittees on various “assault
10 weapon” related issues. (Id.)

11 On or about August 20, 2007, Plaintiffs agreed to take the depositions off calendar pending
12 completion of a stipulated motion for clarification from the court as to the applicable
13 constitutional standard of review for this case. (See Davis Decl. at ¶ 7).

14 On October 15, 2007, Plaintiff’s provided Defendants with their argument for inclusion in
15 Defendants’ motion for clarification. (See Davis Decl. at ¶ 8). At this time, Defendants’ had
16 already provided Plaintiffs with their argument for the motion for clarification - but sought to
17 revise their argument. Further, they refused to provide any dates that Mr. Small and Mr. Amador
18 would be available for deposition *after repeated requests* by Plaintiffs. To date, Defendants have
19 not filed any motion for clarification with this court. (Id. at ¶¶ 8, 24.)

20 On October 16, 2007, Plaintiffs informed Defendants that although Plaintiffs understand
21 that Defendants seek clarification from the court as to the applicable standard of review,
22 Plaintiffs’, after two months, can no longer hold off on deposing these key witnesses. (Exhibit “E”
23 in support of Plaintiffs’ Motion to Compel Attendance and Testimony; See Davis Decl. at ¶ 9).
24 Plaintiffs further informed Defendants that due to their refusal to provide any dates that Mr. Small
25 and Mr. Amador would be available for deposition, Plaintiffs have chosen the dates of October 29
26 through November 1, 2007. (Id.)

27 On October 16, 2007, Plaintiffs noticed the depositions of Mike Small and Jeff Amador for
28 October 31, 2007, and November 1, 2007, respectively. (Exhibits “F” and “G” in support of

1 Plaintiffs' Motion to Compel Attendance and Testimony; See Davis Decl. at ¶ 10). On October
2 22, 2007, Defendants informed Plaintiffs that Mr. Mark Beckington was taking over as counsel on
3 this matter. (See Davis Decl. at ¶ 11).

4 On October 25, 2007, Defendants informed Plaintiffs that they would not produce Mr.
5 Small and Mr. Amador for their rescheduled deposition dates. (Exhibit "H" in support of
6 Plaintiffs' Motion to Compel Attendance and Testimony; See Davis Decl. at ¶ 12). In this
7 correspondence, Mr. Beckington indicated that he would need to meet and confer to resolve any
8 issues with the objections previously raised by Defendants - even though Plaintiffs had already
9 met and conferred with Plaintiffs counsel and clarified their intentions on numerous occasions.
10 (Id.) At this time Mr. Beckington also indicated that he would contact these deponents to
11 determine their availability for depositions pending a meet and confer with Plaintiffs' counsel on
12 this issue. (Id.)

13 On October 29, pursuant to Mr. Beckington's meet and confer request, Plaintiff's *again*
14 provided a detailed explanation for the depositions of Mr. Small and Mr. Amador. (Exhibit "I" in
15 support of Plaintiffs' Motion to Compel Attendance and Testimony; See Davis Decl. at ¶ 13).
16 Plaintiffs also reiterated that these individuals have direct contact with permittees and the general
17 public who rely on their advice for clarification of the regulations at issue in this case. (Id.) At
18 this time, Plaintiffs advised Defendants that if they still do not wish to produce these deponents
19 following Plaintiffs' numerous clarifications and meet and confer attempts, Defendants should
20 seek a protective order. (Id.) Finally, in Plaintiffs' correspondence of October 29, 2007, Plaintiffs
21 requested that Defendants provide reasonable and timely alternative dates for these depositions by
22 the close of business on October 31, 2007, and further advised that, should Defendants fail to
23 cooperate, Plaintiffs will be forced to file a motion compelling deponents' attendance and
24 testimony. (Id.)

25 Following Mr. Beckington's review of Plaintiff's detailed clarification letter, *Mr.*
26 *Beckington himself*, without objection to their appearance, thereafter proposed the week of
27 December 3, 2007, to schedule the depositions of Mr. Small and Mr. Amador. (See Davis Decl. at
28 ¶ 14).

1 On November 7, 2007, Plaintiffs requested that Defendants clarify the specific dates that
2 Mr. Small and Mr. Amador would be available for deposition. (Exhibit "J" in support of
3 Plaintiffs' Motion to Compel Attendance and Testimony; See Davis Decl. at ¶ 15). Thereafter,
4 Mr. Beckington informed Plaintiffs that Mr. Small and Mr. Amador would be available for
5 deposition on December 4, 2007, and December 5, 2007, respectively. (See Davis Decl. at ¶ 15).
6 On November 15, Plaintiffs noticed the depositions of Mr. Small and Mr. Amador for December
7 4, 2007, and December 5, 2007, respectively. (Exhibits "K and "L" in support of Plaintiffs'
8 Motion to Compel Attendance and Testimony; See Davis Decl. at ¶ 16.)

9 On November 27, 2007, Plaintiffs noticed the deposition of Alison Merrilees for November
10 December 10, 2007. (Exhibit "M" in support of Plaintiffs' Motion to Compel Attendance and
11 Testimony; See Davis Decl. at ¶ 17.) During subsequent conversations, Mr. Beckington informed
12 Plaintiffs counsel that he would not produce Ms. Merrilees for the noticed deposition date. (See
13 Davis Decl. at ¶ 17).

14 On November 30, 2007, Plaintiffs received a letter from Mr. Beckington (mistakenly dated
15 November 29, 2007), whereby Defendants refused to provide any of these deponents for their
16 respective noticed depositions. (Exhibit "N" in support of Plaintiffs' Motion to Compel
17 Attendance and Testimony; See Davis Decl. at ¶ 18). In this correspondence, Mr. Beckington
18 stated his refusal to produce Mike Small and Jeff Amador under the authority of the "official
19 information privilege" set forth in California Code of Civil Procedure section 1040. (Id.) As well,
20 Mr. Beckington stated his refusal to produce Alison Merrilees under the "opposing counsel"
21 presumption set forth in *Carehouse v. Convalescent Hosp. v. Superior Court* (2006) 143 Cal.
22 App.4th 1558. (Id.) Mr. Beckington further stated that he intended to file a motion for protective
23 order to prevent these depositions from taking place. (Id.) To date, Mr. Beckington has not filed
24 any motion for protective order with this court. (See Davis Decl. at ¶ 18.)

25 Defendants submitted this absolute refusal just days prior to the noticed depositions for
26 Mr. Small and Mr. Amador, despite Defendants' possession of these notices for over two weeks.
27 (See Exhibits "L-N" in support of Plaintiffs' Motion to Compel Attendance and Testimony; Davis
28 Decl. at ¶ 19). Additionally, Defendants submitted this last minute objection despite the fact that

1 it was Defendants themselves who selected these dates for the depositions following the parties'
2 meet and confer efforts, whereby Plaintiffs repeatedly and unequivocally informed Defendants of
3 their grounds for deposing each of these witnesses. (See Exhibit "J" in support of Plaintiffs'
4 Motion to Compel Attendance and Testimony; Davis Decl. at ¶ 14-16,19).

5 On December 3, 2007, Plaintiffs submitted a letter to Defendants in an effort to informally
6 and in good faith resolve this dispute and the need to file a motion to compel. (Exhibit "O;" See
7 Davis Decl. at ¶ 20). In this letter, Plaintiffs again, and in even more detail, clarified their
8 grounds for deposing Mike Small, Jeff Amador, and Alison Merrilees, and provided examples of
9 the type of information about which Plaintiffs would inquire. (Id.)

10 Plaintiffs subsequently attempted to meet and confer with Defendants' counsel via
11 telephone but to no avail. (See Davis Decl. at ¶ 21). During this conversation, Mr. Beckington
12 stated his unequivocal refusal to produce Mike Small, Jeff Amador, and Alison Merrilees at this
13 time or any future time.(Id.) Plaintiffs thereafter reiterated their intention to file a motion to
14 compel deponents' attendance and testimony, and Mr. Beckington informed Plaintiffs' of his
15 intention to promptly file a motion for protective order. (Id.)

16 On December 6, 2007, Defendants submitted a letter to Plaintiffs stating their absolute and
17 ultimate refusal to produce deponents Small, Amador, and Merrilees for deposition at any future
18 time, and again confirmed their intention to promptly seek a protective order. (Exhibit "P;" See
19 Davis Decl. at ¶ 23).

20 Notwithstanding Plaintiffs clarification attempts, Mr. Beckington continues to refuse to
21 produce Mike Small, Jeff Amador, and Alison Merrilees for their respective depositions and,
22 again, has not filed a motion for protective order for any of these deponents. (See Davis Decl. at ¶
23 21, 24).

24 B. MOTIONS AT ISSUE

25 The motion at issue in this ex parte application is the Notice of Motion and Motion to
26 Compel Attendance and Testimony of Mike Small, Jeff Amador, and Alison Merrilees, attached
27 hereto as Exhibit "A."

28 As described in detail above, Plaintiffs attempted a prolonged and drawn-out meet and

1 confer regarding these depositions, however Defendants refuse to produce deponents as set forth
2 fully in the motion attached hereto as Exhibit "A."

3 As the trial date in this matter is set for March 10, 2008, and Plaintiffs cannot proceed to
4 trial without the deposition testimony of these key witnesses, the Court should shorten the time
5 for Plaintiffs to notice this motion. This is especially true given that Defendants stalled for over
6 five months while the Small and Amador depositions were noticed and finally rescheduled
7 according to dates selected by Defendants themselves before informing Plaintiffs of their absolute
8 refusal to produce deponents just days prior the rescheduled deposition dates and despite the fact
9 that to date, Defendants have yet to file any motion for protective order.

10 On December 18, 2007, before 10:00 a.m. Counsel for Plaintiffs, Jason A. Davis properly
11 noticed counsel for Defendants, Mr. Mark Beckington, of the hearing on Plaintiff's Ex Parte
12 Application for Order Shortening Time for Plaintiffs' Notice of Motion and Motion to Compel
13 Attendance and Testimony of Mike Small, Jeff Amador, and Alison Merrilees via fax. (A Copy
14 of this transmission is attached hereto as Exhibit "B").

15 **II.**

16 **ARGUMENT**

17 **A. THE COURT IS AUTHORIZED TO GRANT EX PARTE RELIEF**
18 **TO SHORTEN TIME IN THE INSTANT CASE**

19 Generally, a motion to compel must be served at least sixteen court days before the hearing.
20 (Code Civ. Proc. § 1005(b)). However, the Court may in its discretion, shorten the time required
21 for notice of motions. (*Id.*) Thus, as described in these moving papers, good cause exists and the
22 Court may prescribe a shorter time for the service of notice on Defendants in this action.

23 **B. GOOD CAUSE TO SHORTEN TIME EXISTS BECAUSE PLAINTIFF**
24 **IS AT RISK OF IRREPARABLE HARM AND IMMEDIATE DANGER**

25 These witnesses have prolonged and repeated contact with the public, firearms dealers, and
26 law enforcement agencies on the issue of assault weapons. (See Exhibit "O" in support of
27 Plaintiffs' Motion to Compel Attendance and Testimony; Davis Decl. at ¶¶ 2-3, 20, 22).
28 Defendant cannot proceed adequately to trial without the deposition testimony of Mr. Small, Mr.

1 Amador, and Ms. Merrilees. (See Davis Decl. at ¶ 25). Plaintiffs have engaged in prolonged and
2 difficult scheduling with Defendants regarding these depositions, only to have opposing counsel
3 refuse attendance of the witnesses at the last minute. (See Exhibits "A-O" in support of Plaintiffs'
4 Motion to Compel Attendance and Testimony; Davis Decl. at ¶¶ 2-24). Trial is currently
5 scheduled for March 10, 2008. Given the impending trial date, good cause exists.

6 The trial in this case will not be on the merits should Defendants deny Plaintiffs the
7 opportunity to depose these key witnesses. (See Exhibit "O;" Davis Decl. at ¶ 26). Therefore,
8 Plaintiffs are at risk of irreparable harm. Based on the foregoing, the Court should issue an order
9 shortening time with respect to the motion attached hereto as Exhibit "A."

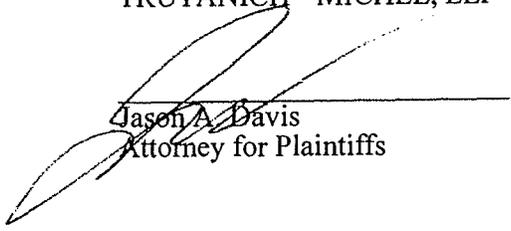
10 **III.**

11 **CONCLUSION**

12 Based on the foregoing, Plaintiffs EDWARD W. HUNT, in his official capacity as District
13 Attorney of Fresno County, and in his personal capacity as a citizen and taxpayer, et. al.,
14 respectfully requests the Court for an order shortening time for notice on Plaintiffs' motion
15 attached hereto as Exhibit "A" of this Application.

16 Dated: December 20, 2007

TRUTANICH • MICHEL, LLP

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19 Jason A. Davis
20 Attorney for Plaintiffs

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1 5. Plaintiffs thereafter continued these objections and engaged in telephone conversations
2 with Defendants' counsel whereby Plaintiffs clarified that they do not intend to inquire into any
3 internal deliberations or communications of DOJ officials. Plaintiffs further clarified that these
4 depositions were not limited only to communications involving mere references to statutes or
5 regulations as Defendants alleged. Plaintiffs then rescheduled the deposition of Mr. Small and
6 Mr. Amador for August 13, 2007, and August 14, 2007, respectively.

7 6. On August 9, 2007, Plaintiffs again rescheduled the depositions of Mr. Small and Mr.
8 Amador for August 24, 2007, and August 31, 2007, respectively. At this time Plaintiffs reminded
9 Defendants that it is Plaintiffs' belief that Mr. Small and Mr. Amador play an advisory role in the
10 DOJ - Bureau of Firearms, which advises permittees on various "assault weapon" related issues.
11 A true and correct copy of this letter is attached to Plaintiffs' Motion to Compel Attendance and
12 Testimony as Exhibit "D."

13 7. On or about August 20, 2007, Plaintiffs agreed to continue the depositions pending
14 completion of a stipulated motion for clarification from the court as to the applicable
15 constitutional standard of review for this case.

16 8. On October 15, 2007, Plaintiff's provided Defendants with their argument for inclusion
17 in Defendants' motion for clarification. At this time, Defendants' had already provided Plaintiffs
18 with their argument for the motion for clarification, but were revising it. Defendants refused to
19 provide any dates that Mr. Small and Mr. Amador would be available for deposition after
20 repeated requests by Plaintiffs. To date, Defendants have not filed any motion for clarification
21 with this court.

22 9. On October 16, 2007, Plaintiffs informed Defendants that although Plaintiffs understand
23 that Defendants seek clarification from the court as to the applicable standard of review,
24 Plaintiffs', after two months, can no longer hold off on deposing these key witnesses. Plaintiffs
25 further informed Defendants that due to their refusal to provide any dates that Mr. Small and Mr.
26 Amador would be available for deposition, Plaintiffs have chosen the dates of October 29 through
27 November 1, 2007. A true and correct copy of this letter is attached hereto as Exhibit "E."

28 10. On October 16, 2007, Plaintiffs noticed the depositions of Mike Small and Jeff Amador

1 for October 31, 2007, and November 1, 2007, respectively. A true and correct copy of these
2 deposition notices are attached hereto as Exhibits "F" and "G".

3 11. On October 22, 2007, Defendants informed Plaintiffs that Mr. Mark Beckington was
4 taking over as counsel on this matter.

5 12. On October 25, 2007, Defendants informed Plaintiffs that they would not produce Mr.
6 Small and Mr. Amador for their rescheduled deposition dates. In this correspondence, Mr.
7 Beckington indicated that he would need to meet and confer to resolve any issues with the
8 objections previously raised by Defendants - even though Plaintiffs had already met and conferred
9 with Plaintiffs counsel and clarified their intentions on numerous occasions. At this time Mr.
10 Beckington also indicated that he would contact these deponents to determine their availability for
11 depositions pending a meet and confer with Plaintiffs' counsel on this issue. A true and correct
12 copy of this letter is attached to Plaintiffs' Motion to Compel Attendance and Testimony as
13 Exhibit "H."

14 13. On October 29, pursuant to Mr. Beckington's meet and confer request, Plaintiff's again
15 provided a detailed explanation for the depositions of Mr. Small and Mr. Amador. Plaintiffs
16 reiterated that these individuals have direct contact with permittees and the general public who
17 rely on their advice for clarification of the regulations at issue in this case. At this time, Plaintiffs
18 advised Defendants that if they still do not wish to produce these deponents following Plaintiffs'
19 numerous clarifications and meet and confer attempts, Defendants should seek a protective order.
20 Finally, in Plaintiffs' correspondence of October 29, 2007, Plaintiffs requested that Defendants
21 provide reasonable and timely alternative dates for these depositions by the close of business on
22 October 31, 2007, and further advised that, should Defendants fail to cooperate, Plaintiffs will be
23 forced to file a motion compelling deponents' attendance and testimony. A true and correct copy
24 of this letter is attached to Plaintiffs' Motion to Compel Attendance and Testimony as Exhibit "I."

25 14. Following Mr. Beckington's review of Plaintiff's detailed clarification letter, Mr.
26 Beckington thereafter proposed the week of December 3, 2007, to schedule the depositions of Mr.
27 Small and Mr. Amador.

28 15. On November 7, 2007, Plaintiffs requested that Defendants clarify the specific dates

1 that Mr. Small and Mr. Amador would be available for deposition. Thereafter, Mr. Beckington
2 informed Plaintiffs that Mr. Small and Mr. Amador would be available for deposition on
3 December 4, 2007, and December 5, 2007, respectively. A true and correct copy of the November
4 7 letter is attached to Plaintiffs' Motion to Compel Attendance and Testimony as Exhibit "J."

5 16. On November 15, Plaintiffs noticed the depositions of Mr. Small and Mr. Amador for
6 December 4, 2007, and December 5, 2007, respectively. A true and correct copy of these
7 deposition notices are attached to Plaintiffs' Motion to Compel Attendance and Testimony as
8 Exhibits "K" and "L."

9 17. On November 27, 2007, Plaintiffs noticed the deposition of Alison Merrilees for
10 December 10, 2007. During subsequent conversations, Mr. Beckington informed Plaintiffs
11 counsel that he would not produce Ms. Merrilees for deposition. A true and correct copy of the
12 December 10, 2007 deposition notice is attached to Plaintiffs' Motion to Compel Attendance and
13 Testimony as Exhibit "M."

14 18. On November 30, 2007, Plaintiffs received a letter from Mr. Beckington, dated
15 November 29, 2007, whereby Plaintiffs refused to provide any of these deponents for their
16 respective noticed depositions. In this correspondence, Mr. Beckington stated his refusal to
17 produce Mike Small and Jeff Amador under the authority of the "official information privilege"
18 set forth in California Code of Civil Procedure section 1040. As well, Mr. Beckington stated his
19 refusal to produce Alison Merrilees under the "opposing counsel" presumption set forth in
20 *Carehouse v. Convalescent Hosp. v. Superior Court* (2006) 143 Cal. App.4th 1558. Mr.
21 Beckington further stated that he intended to file a motion for protective order to prevent these
22 depositions from taking place. To date, Mr. Beckington has not filed any motion for protective
23 order. A true and correct copy of the November 30, 2007 letter is attached to Plaintiffs' Motion to
24 Compel Attendance and Testimony as Exhibit "N."

25 19. Defendants submitted this absolute refusal just days prior to the noticed depositions for
26 Mr. Small and Mr. Amador, despite being in possession of these notices for over two weeks.
27 Additionally, Defendants submitted this last minute objection despite the fact that it was
28 Defendants themselves who selected these dates for the depositions following the parties' meet

1 and confer efforts, whereby Plaintiffs repeatedly and unequivocally informed Defendants of their
2 grounds for deposing each of these witnesses.

3 20. On December 3, 2007, Plaintiffs submitted a letter to Defendants in an effort to
4 informally and in good faith resolve this dispute and the need to file a motion to compel. In this
5 letter, Plaintiffs again, and in even more detail, clarified their grounds for deposing Mike Small,
6 Jeff Amador, and Alison Merrilees, and provided examples of the type of information about
7 which Plaintiffs would inquire. In this correspondence, Plaintiffs informed Defendants of their
8 intention to file a motion to compel the attendance and testimony of each deponent should
9 Defendants continue to produce these witnesses for deposition. A true and correct copy of this
10 letter is attached to Plaintiffs' Motion to Compel Attendance and Testimony as Exhibit "O."

11 21. On December 5, 2007, a meet and confer process ensued and Mr. Beckington stated his
12 unequivocal refusal to produce Mike Small, Jeff Amador, and Alison Merrilees at this time or any
13 future time. Plaintiffs thereafter reiterated their intention to file a motion to compel deponents'
14 attendance and testimony, and Mr. Beckington informed Plaintiffs' of his intention to promptly
15 file a motion for protective order.

16 22. With regard to the deposition of Alison Merrilees, although official transcripts are not
17 yet available, in Plaintiffs' deposition of Ignatius Chinn, Mr. Chinn indicated that all written
18 public inquiries are in fact forwarded to "legal." As Deputy Attorney General, Ms. Merrilees
19 serves a dual role as public advisor for the Bureau of Firearms and is not counsel for the Bureau
20 in this action. To date, Ms. Merrilees has not been listed as counsel for the Bureau on any
21 document filed with the court in this matter.

22 23. On December 6, 2007, Defendants submitted a letter to Plaintiffs stating their absolute
23 and ultimate refusal to produce deponents Small, Amador, and Merrilees for deposition at any
24 future time, and confirmed their intention to seek a protective order. A true and correct copy of
25 this letter is attached to Plaintiffs' Motion to Compel Attendance and Testimony as Exhibit "P."

26 24. To date, Mr. Beckington has yet to file with this court any motion for protective order.

27 25. Plaintiff cannot adequately proceed to trial without the deposition testimony of Mike
28 Small, Jeff Amador, and Alison Merrilees - this is especially true given that Defendants have, to

1 date, failed to produce all but one deponent noticed by Plaintiff in this matter.

2 26. The trial in this case will not be on the merits should Defendants fail to produce Mr.
3 Small, Mr. Amador, and Ms. Merrilees for deposition. Therefore Plaintiff is at risk of irreparable
4 harm and immediate danger, warranting the issuance of an order shortening time for notice of the
5 motions.

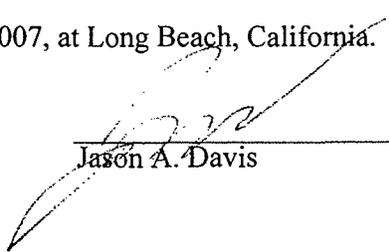
6 27. On December 20, 2007, before 10:00 a.m. Counsel for Plaintiffs, Jason A. Davis
7 properly noticed counsel for Defendants, Mr. Mark Beckington, of the hearing on Plaintiff's Ex
8 Parte Application for Order Shortening Time for Plaintiffs' Notice of Motion and Motion to
9 Compel Attendance and Testimony of Mike Small, Jeff Amador, and Alison Merrilees via fax. A
10 true and correct copy of this transmission is attached hereto as Exhibit "B."

11 I declare under penalty of perjury under the laws of the State of California that the foregoing
12 is true and correct.

13 Executed this 20th day of December, 2007, at Long Beach, California.

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Jason A. Davis

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11 Attorneys for Plaintiffs

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14

IN AND FOR THE COUNTY OF FRESNO

15

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

17

Plaintiffs,)

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v.)

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STATE OF CALIFORNIA; WILLIAM)
20 LOCKYER, Attorney General of the State of)
California; CALIFORNIA DEPARTMENT)
21 OF JUSTICE; Does 1-100;)

22

Defendants.)

23

CASE NO. ~~BC251731~~ *01CECC 03182*

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO COMPEL
ATTENDANCE AND TESTIMONY OF
MIKE SMALL, JEFF AMADOR, AND
ALISON MERRILEES; POINTS AND
AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF
JASON A. DAVIS IN SUPPORT
THEREOF; EXHIBITS "A - P"**

Date:
Time:
Dept:

24

TO DEFENDANTS' AND THEIR ATTORNEY OF RECORD:

25

YOU ARE HEREBY NOTIFIED THAT on _____, or as soon

26

thereafter as the matter may be heard in Department 72 of the above-entitled court, Plaintiff

27

EDWARD W. HUNT, in his official capacity as District Attorney of Fresno County, and in his

28

personal capacity as a citizen and taxpayer, et. al., will move this Court for an order compelling

1 Mike Small, Jeff Amador, and Alison Merrilees to attend depositions and provide testimony on
2 dates to be determined by this court. Defendants' counsel has refused, and continues to refuse, to
3 produce Mike Small, Jeff Amador, and Alison Merrilees for deposition as demonstrated in the
4 declaration of Jason Davis and the exhibits attached thereto.

5 Plaintiffs will also move for an order that Defendants and their attorney of record, Mark
6 Beckington, pay the moving party the sum of \$ _____, as the reasonable costs and
7 attorney's fees incurred by the moving party in connection with this proceeding. This Motion is
8 made on the grounds that the depositions are relevant to the subject matter of this action, and that
9 Defendant counsel's absolute refusal to produce deponents Mike Small, Jeff Amador, and Alison
10 Merrilees was without sufficient justification and made in an effort to delay discovery.

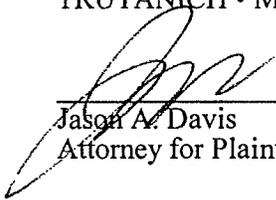
11 This Motion is based on the grounds that counsel for Defendants, has delayed, refused, and
12 continues to refuse, to produce Mike Small, Jeff Amador, and Alison Merrilees for depositions
13 noticed by Plaintiffs, and under California Code of Civil Procedure sections, 2017.010, 2025.450,
14 2025.420, 2025.410, and 2023.030.

15 Furthermore, this Motion will be made on the ground that Plaintiffs have made a prolonged
16 good faith attempt at informal resolution of the issues presented by this Motion and the attached
17 meet and confer declaration pursuant to Section 2016.040.

18 This Motion is based on this notice, the points and authorities set forth below, the attached
19 declaration of Jason A. Davis and Exhibits A-P attached thereto, oral argument, and the complete
20 files and records of this action.

21 Date: December 20, 2007

TRUTANICH • MICHEL, LLP:

22
23 
24 _____
25 Jason A. Davis
26 Attorney for Plaintiffs
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs have attempted to schedule and take the depositions of Mike Small and Jeff
4 Amador for over five months. (See Davis Decl. at ¶¶ 17 through 27, and Exhibits M through P
5 attached thereto.) Plaintiffs have also attempted to schedule and take the deposition of Alison
6 Merrilees for over one month. (Id.. at ¶¶ 2 through 27, and Exhibits A through P attached
7 thereto.) On Friday, November 30, 2007, despite countless rescheduling and clarification efforts
8 by Plaintiffs, Defendants' informed Plaintiffs that they would not produce deponents Mike Small,
9 Jeff Amador, and Alison Merrilees for the noticed deposition dates of December 4, 2007,
10 December 5, 2007, and December 10, 2007, respectively.

11 Mr. Beckington continues to refuse to provide Mike Small, Jeff Amador, and Alison
12 Merrilees for deposition and, to date, has not moved this court for a protective order. As such,
13 Plaintiffs seek an order from this Court compelling deponents Mike Small, Jeff Amador, and
14 Alison Merrilees to attend their respective depositions and provide testimony in response to
15 inquiries relevant to this case.

16 **II. FACTS**

17 On November 7, 2007, Plaintiffs requested that Defendants clarify the specific dates that
18 Mr. Small and Mr. Amador would be available for deposition. (Exhibit "J;" See Davis Decl. at ¶
19 15). Thereafter, Mr. Beckington informed Plaintiffs that Mr. Small and Mr. Amador would be
20 available for deposition on December 4, 2007, and December 5, 2007, respectively. (See Davis
21 Decl. at ¶ 15). On November 15, Plaintiffs noticed the depositions of Mr. Small and Mr. Amador
22 for December 4, 2007, and December 5, 2007, respectively. (Exhibits "K and "L;" See Davis
23 Decl. at ¶ 16.) On November 27, 2007, Plaintiffs noticed the deposition of Alison Merrilees for
24 November December 10, 2007. (Exhibit "M;" See Davis Decl. at ¶ 17.) During subsequent
25 conversations, Mr. Beckington informed Plaintiffs counsel that he would not produce Ms.
26 Merrilees for the noticed deposition date.. (See Davis Decl. at ¶ 17).

27 On November 30, 2007, Plaintiffs received a letter from Mr. Beckington (dated November
28 29, 2007), whereby Defendants refused to provide any of these deponents for their respective

1 noticed depositions. (Exhibit “N;” See Davis Decl. at ¶ 18). In this correspondence, Mr.
2 Beckington stated his refusal to produce Mike Small and Jeff Amador under the authority of the
3 “official information privilege” set forth in California Code of Civil Procedure section 1040. (Id.)
4 As well, Mr. Beckington stated his refusal to produce Alison Merrilees under the “opposing
5 counsel” presumption set forth in *Carehouse v. Convalescent Hosp. v. Superior Court* (2006) 143
6 Cal. App.4th 1558. (Id.) Mr. Beckington further stated that he intended to file a motion for
7 protective order to prevent these depositions from taking place. (Id.) To date, Mr. Beckington
8 has not filed any motion for protective order with this court. (See Davis Decl. at ¶ 18.)

9 Defendants submitted this absolute refusal just days prior to the noticed depositions for
10 Mr. Small and Mr. Amador, despite Defendants’ possession of these notices for over two weeks.
11 (See Exhibits “L-N;” Davis Decl. at ¶ 19). Additionally, Defendants submitted this last minute
12 objection despite the fact that it was Defendants themselves who selected these dates for the
13 depositions following the parties’ meet and confer efforts, whereby Plaintiffs repeatedly and
14 unequivocally informed Defendants of their grounds for deposing each of these witnesses. (See
15 Exhibit “J;” Davis Decl. at ¶ 14-16,19).

16 On December 3, 2007, Plaintiffs submitted a letter to Defendants in an effort to informally
17 and in good faith resolve this dispute and the need to file a motion to compel. (Exhibit “O;” See
18 Davis Decl. at ¶ 20). In this letter, Plaintiffs again, and in even more detail, clarified their
19 grounds for deposing Mike Small, Jeff Amador, and Alison Merrilees, and provided examples of
20 the type of information about which Plaintiffs would inquire. (Id.)

21 Specifically, Plaintiffs informed Mr. Beckington that Plaintiffs do not intend to inquire into
22 the thought processes or deliberations of any of these deponents (See Exhibit “O”). Plaintiffs
23 further stated their intention to inquire into the DOJ’s interpretation of the term “permanently
24 alter” as provided in communications with the public. (Id.) Plaintiffs do not wish to merely
25 “authenticate” documents, but to inquire into the DOJ’s outward representations to the public of
26 how relevant terms are defined in practice to afford citizens and businesses the ability to comply
27 with provisions of the Assault Weapons Control Act (hereinafter “AWCA”). (Id.)

28 With respect to Alison Merrilees, Plaintiffs clarified for Defendants that she is *not* being

1 deposited in her role as “counsel” for the Bureau in this action. (See Exhibit “O;” Davis Decl. at ¶
2 22). As Deputy Attorney General for the Bureau of Firearms, Ms. Merrilees serves not only the
3 role of legal counsel for the Bureau, but also the role of public advisor regarding the DOJ’s
4 enforcement and interpretation of existing regulations. (Id.) She has, on multiple occasions
5 engaged in conversations and written correspondence with the public regarding requests to clarify
6 the “assault weapon” laws. Further, in Plaintiffs’ deposition of Ignatius Chinn, Mr. Chinn
7 admitted that all written public inquiries are, in fact, forwarded to “legal.” (See Davis Decl. at ¶
8 22). Plaintiffs informed Defendants that it is within this alternate capacity that Ms. Merrilees will
9 be questioned. (See Exhibit “O”). Moreover, Ms. Merrilees has *never* been listed as counsel for
10 the Bureau on *any* document filed with the court *in this matter*. (See Davis Decl. at ¶ 22). Nor is
11 her communications with the public, firearm dealers, and law enforcement protected or privileged
12 communication.

13 In Defendants’ letter of November 30, 2007, Defendants also requested that Plaintiffs offer
14 an explanation as to the legitimate areas of inquiry for these depositions. (See Exhibit “N”) In
15 response to this request, Plaintiff’s letter of December 3, 2007, provided a list to Defendants to
16 help shed light on the subject matter Plaintiffs will cover in their depositions of the noticed DOJ
17 officials. (See Exhibit “O”). Plaintiffs letter provided, in pertinent part, as follows:

- 18 “Plaintiffs intend to inquire into the following areas and subject matter, *including*
19 *but not limited to*:
- 20 • Written and verbal correspondence and communication with public regarding:
 - 21 - The legality and definition of “permanently alter” with regard to “large
22 capacity” magazines
 - 23 - The definition of “permanently alter” with regard to other devices
 - 24 - The legality and definition of compensators
 - 25 - The legality and definition of muzzle breaks
 - 26 - The legality of devices that may or may not be “flash suppressors”
 - 27 • Written and verbal correspondence with other regulatory and enforcement
28 agencies and officials of such agencies including but not limited to Offices of the
District Attorney, Departments of the Sheriff, and Police Departments, regarding:
 - The legality and definition of “permanently alter” with regard to “large capacity”
magazines
 - The definition of “permanently alter” with regard to other devices
 - The legality and definition of compensators
 - The legality and definition of muzzle breaks
 - The legality of devices that may or may not be “flash suppressors”
 - Any testimony in prosecutions related to the subject matter of this litigation
 - Any testimony in license hearings related to the subject matter of this litigation
 - Any testimony in permit hearings related to the subject matter of this litigation
 - Authority for the opinions, clarifications, and/or other statements provided in

1 correspondence and communications with the public unrelated to the deliberative
2 thought process.
3 • Other questions asked by members of the public that are pertinent to this
4 litigation that may or may not have been responded to by DOJ officials.
5 • Questions by members of the public regarding contradicting or differing
6 responses provided by DOJ officials.” (See Exhibit “O”).

7 Finally, in Plaintiffs’ correspondence of December 3, 2007, Plaintiffs informed Defendants
8 of their intention to file a motion to compel the attendance and testimony of each deponent should
9 Defendants continue to fail to produce these key witnesses for deposition. “See Exhibit “O;”
10 Davis Decl. at ¶ 20).

11 Plaintiffs subsequently attempted to meet and confer with Defendants’ counsel via
12 telephone – to no avail. (See Davis Decl. at ¶ 21). During this conversation, Mr. Beckington
13 stated his unequivocal refusal to produce Mike Small, Jeff Amador, and Alison Merrilees at this
14 time or any future time.(Id.) Plaintiffs thereafter reiterated their intention to file a motion to
15 compel deponents’ attendance and testimony, and Mr. Beckington informed Plaintiffs’ of his
16 intention to promptly file a motion for protective order. (Id.)

17 On December 6, 2007, Defendants submitted a letter to Plaintiffs stating their absolute and
18 ultimate refusal to produce deponents Small, Amador, and Merrilees for deposition at any future
19 time, and again confirmed their intention to promptly seek a protective order. (Exhibit “P;” See
20 Davis Decl. at ¶ 23).

21 Mr. Beckington continues to refuse to produce Mike Small, Jeff Amador, and Alison
22 Merrilees for their respective depositions and, again, has not filed a motion for protective order
23 for any of these deponents. (See Davis Decl. at ¶ 21, 24).

24 Plaintiffs cannot proceed adequately to trial in this matter without the deposition testimony
25 of these key witnesses. (See Davis Decl. at ¶ 22). As such, Plaintiffs are forced at this time to
26 respectfully request that this Court compel Mr. Small, Mr. Amador, and Ms. Merrilees to attend
27 depositions on dates to be set by this court and to compel each of these deponents to fully respond
28 to the questions asked of them by Plaintiffs that are relevant to this case and award Plaintiffs
sanctions against Defendants and their attorney of record.

27 III. ARGUMENT

28 A. Plaintiffs Are Entitled to an Order Compelling Deponents Attendance and Testimony at their Respective Depositions

1 Defendants' counsel Mark Beckington refused to produce Mike Small and Jeff Amador for
2 depositions scheduled on December 4, 2007 and December 5, 2007. (See Exhibits "K-L," "N,"
3 and "P;" Davis Decl. at ¶ 18-19). Further, Mr. Beckington declined to produce Alison Merrilees
4 for her deposition noticed for December 10, 2007. (See Exhibit "M," "N," and "P;" See Davis
5 Decl. at ¶ 18-19). Mr. Beckington continues to refuse to produce any of the deponents for
6 depositions at any future date and has not moved this court for a protective order. (See Exhibits
7 "N" and "P;" See Davis Decl. at ¶ 21, 24).

8 Section 2025.450 of the California Code of Civil Procedure states:

9 (a) If, after service of a deposition notice, a party to the action or an officer, director,
10 managing agent, or employee of a party, or a person designated by an organization that
11 is a party under Section 2025.230, without having served a valid objection under Section
12 2025.410, fails to appear for examination, *or to proceed with it*, or to produce for
13 inspection any document or tangible thing described in the deposition notice, *the party
giving the notice may move for an order compelling the deponent's attendance and
testimony, and the production for inspection of any document or tangible thing described
in the deposition notice.* (Code Civ. Proc. § 2025.450(a)). (emphasis added).

14 Plaintiffs are entitled to an Order compelling Mr. Small, Mr. Amador, and Ms. Merrilees'
15 attendance and testimony due to their failure to proceed with the depositions or move forward in
16 seeking a protective order.

17 **B. As of the Date of Filing, Defendants' Counsel Has Failed to Move for a
18 Protective Order as Was His Basis for Refusing to Produce Deponents
19 Small and Amador**

20 Just days prior to the *repeatedly rescheduled* deposition dates for Mr. Small and Mr.
21 Amador, and following *extensive clarification efforts*, Defendants' counsel informed Plaintiffs
22 that he would not produce either of these deponents and would seek protective orders for both.
23 (See Exhibits "A-M," "N-O;" Davis Decl. at ¶¶ 2-16, 18-21). At no point since the depositions
24 were originally noticed *over three five prior to this time* has Mr. Beckington move this court for a
25 protective order. (See Davis Decl. at ¶ 24).

26 California Code of Civil Procedure § 2025.420 allows for any party to move for a protective
27 order from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.

28 Having not received any motion for a protective order to date, it is difficult to determine the
grounds Mr. Beckington will state in support of the protective order. However, Mr. Beckington
stated in his letter of November 30, 2007 that Mr. Small and Mr. Amador are protected from

1 discovery into their “thought processes or deliberations” by the “official information” privilege in
2 “Code Civ. Proc. § 1040.” (See Exhibit “N;” Davis Decl. at ¶18). As this code section does not
3 exist, Plaintiffs will assume for the purposes of this motion that Mr. Beckington intended to cite
4 to California Evidence Code section 1040.

5 **1. Mr. Small and Mr. Amador are not protected from**
6 **Deposition by the Official Information Privilege**

7 The “official information privilege” set forth in Evid. Code § 1040 “represents the exclusive
8 means by which a public entity may assert a claim of governmental privilege based on the
9 necessity for secrecy.” *Shepherd v. Superior Court* (1976) 17 Cal.3d 107, 116, 123 [130 Cal.Rptr.
10 257, 550 P.2d 161]; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 539-540 [113 Cal.Rptr.
11 897, 522 P.2d 305].) This privilege, however, is expressly conditional and is *not absolute*.
12 *Marylander v. Superior Court* (2002) 81 Cal.App.4th 1119. (Italics added). The threshold
13 determination to be made in order to invoke the official information privilege is whether the
14 information being sought was acquired in confidence. *Id.* at 1126. A trial court commits error
15 under this section if the court fails to make this threshold determination. *Id.* at 1127.

16 In the present case, the threshold determination is not satisfied because the information
17 being sought was not “acquired in confidence.” As outlined in detail, *supra*, Plaintiffs intend to
18 inquire about written and verbal communications between the DOJ and the public as well as
19 communications with other regulatory and law enforcement agencies. (See Exhibit “O;” Davis
20 Decl. at ¶¶ 2, 13, 20.) Moreover, Mr. Small and Mr. Amador are named as responsive parties in
21 Defendants’ Responses to Plaintiffs’ Form Interrogatories - further evidencing the relevance of
22 deponents’ testimony to this case. (See Davis Decl. at ¶ 3). Such outward representations by these
23 witnesses to the public of how relevant terms are defined in practice to afford citizens and
24 businesses the ability to comply with provisions of the AWCA are not confidential and are
25 *extremely* relevant to this proceeding. (*Id.*) As this information is *not confidential* there is simply
26 no justification for its secrecy. Thus, the official information privilege does not apply because the
27 threshold determination of whether this information was acquired in confidence is not satisfied.

28 Moreover, even if the threshold determination were satisfied, the statutory “official
information privilege” does not provide absolute protection. “If the public entity satisfies the

1 threshold burden of showing that the information was acquired in confidence, the statute requires
2 the court next to weigh the interests and to sustain the privilege only if there is a necessity for
3 preserving the confidentiality of the information that outweighs the necessity for disclosure in the
4 interest of justice.” *Marylander*, 81 Cal.App.4th 1119, 1126; citing *Shepherd v. Superior Court*,
5 17 Cal.3d 107, 123-125.

6 As discussed, Mr. Small and Mr. Amador are not protected by the official information
7 privilege because the threshold criterion of whether the information (on which Plaintiffs seek to
8 depose Defendants) was acquired in confidence is not met. Therefore, the “weighing” process
9 required prior to invocation of this privilege need not be reached.

10 a. **Even if Applied, the Balancing Test Required under
11 the Official Information Privilege is not Satisfied**

12 Even if the interests are weighed, the public interest in disclosure is not outweighed by the
13 public interest in non-disclosure. The public has an immeasurable interest in discovering how
14 firearms laws are interpreted and enforced by the very agency that promulgates them and is
15 charged with enforcing them. This knowledge allows the public the ability to properly comply
16 with the undeniably confusing provisions of the AWCA in order to avoid criminal penalty.¹

17 ¹ Article 5 Section 13 of the California Constitution states that:

18 **Attorney General shall be the chief law officer of the State. It shall be the duty of**
19 **the Attorney General to see that the laws of the State are uniformly and**
20 **adequately enforced. The Attorney General shall have direct supervision over**
21 **every district attorney and sheriff and over such other law enforcement**
22 **officers as may be designated by law, in all matters pertaining to the duties of**
23 **their respective offices, and may require any of said officers to make reports**
24 **concerning the investigation, detection, prosecution, and punishment of crime in**
25 **their respective jurisdictions as to the Attorney General may seem advisable.**

26 Whenever in the opinion of the Attorney General any law of the State is not being
27 adequately enforced in any county, it shall be the duty of the Attorney General to
28 prosecute any violations of law of which the superior court shall have jurisdiction,
and in such cases the Attorney General shall have all the powers of a district
attorney. When required by the public interest or directed by the Governor, the
Attorney General shall assist any district attorney in the discharge of the duties of
that office. (Emphasis added).

Government Code section 12550 reiterates Article 5 of the Constitution, stating:

The Attorney General has direct supervision over the district
attorneys of the several counties of the State and may require of them written
reports as to the condition of public business entrusted to their charge. When he
deems it advisable or necessary in the public interest, or when directed to do so by

1 Conversely, the public has little to no interest in shielding DOJ officials from being
2 questioned about their outward communications to the public and other government agencies
3 charged with enforcing the AWCA. The DOJ's ability to properly serve the public by, among
4 other duties, promulgating, clarifying, and enforcing firearms laws and regulations is not hindered
5 by the public's inquiry into non-confidential conversations. (See Footnote 1, *supra*). The public's
6 interest is best served by promoting uniformity in the government's enforcement, interpretation,
7 and clarification of the laws governing that public - not outright secrecy for every conversation
8 it's employees may engage in while carrying out their official duties. (See Footnote 1, *supra*).
9 The depositions of Mr. Small and Mr. Amador by Plaintiffs will serve precisely this purpose. (See
10 Exhibit "O").

11 As such, the public interest in disclosure is *not* outweighed by the public interest in non-
12 disclosure. Therefore, even if the "official information" privilege is applied, the deposition
13 testimony of Mr. Small and Mr. Amador sought by Plaintiffs is not protected from disclosure and
14

15 the Governor, he shall assist any district attorney in the discharge of his duties,
16 **and may, where he deems it necessary, take full charge of any investigation or**
17 **prosecution** of violations of law of which the superior court has jurisdiction. In
18 this respect he has all the powers of a district attorney, including the power to issue
19 or cause to be issued subpoenas or other process. (Emphasis added).

20 Emphasizing the need for uniform enforcement, is the Office of the Attorney
21 General's Mission Statement states:

22 It is our duty to serve our state and work honorably every day to fulfill
23 California's promise. The Attorney General and our Department's employees
24 provide leadership, information and education in partnership with state and local
25 governments and the people of California to:

- 26 • **Enforce and apply all our laws fairly and impartially.** Ensure
27 justice, safety, and liberty for everyone.
- 28 • Encourage economic prosperity, equal opportunity and tolerance.
- Safeguard California's human, natural, and financial resources for this
 and future generations. (Emphasis added.)

 In fact, California district attorney is a state officer when deciding whether
to prosecute an individual. Under California law, district attorney acted as state,
rather than county, official when he decided to proceed with criminal prosecution
of accused granted new trial, given that Attorney General, rather than county, had
authority to oversee district attorney's conduct with respect to investigation and
prosecution of crimes; therefore, county could not be liable to accused under §§
1983 for alleged wrongful prosecution. *Weiner v. San Diego County* (2000), 210
F.3d 1025.

1 Plaintiffs' are entitled to an order compelling the attendance and testimony of these deponents.

2 **2. Mr. Small and Mr. Amador are not protected from Deposition**
3 **by the Common Law "Deliberative Process" Privilege**

4 Defendants do not cite specifically to the "deliberative process" privilege in their
5 November 30, 2007 letter to Plaintiffs. (See Exhibit "N"). Rather, Defendants merely claim that
6 the "thought processes or deliberations" of Mr. Small and Mr. Amador are protected by the
7 "official information privilege." (Id.) As discussed above, the official information privilege is not
8 applicable to the present situation.

9 However, this distinct, albeit similar, "deliberative process" privilege *is* discussed in detail
10 in *Marylander*, which was cited by Defendants in their letter of November 30, 2007. (See Exhibit
11 "O"). For this reason, and in the interests of judicial economy and clarification for the court,
12 Plaintiffs will address this common law "deliberative process" privilege as though it was raised by
13 Defendants.

14 The common law "deliberative process" privilege is based primarily on the need for the
15 Governor to receive candid advice or information and, much like the official information
16 privilege, is wholly inapplicable to this case. *Marylander*, 81 Cal.App.4th 1119, 1126; (See
17 generally *Times Mirror Co. v. Superior Court* (1991) 53 Cal. 3d 1325, 1339-1344 & fn. 10;
18 *California First Amendment Coalition v. Superior Court* (1998) 67 Cal. App. 4th 159, 169-172;
19 see also *Regents of University of California v. Superior Court* (1999) 20 Cal. 4th 509, 540-541
20 [85 Cal. Rptr. 2d 257, 976 P.2d 808] (conc. opn. of Brown, J.)) Plaintiffs, as stated to Defendants
21 on numerous occasions, simply do not intend to inquire about any "internal communications" or
22 "deliberations" of DOJ officials. (See Exhibits "I" and "O;" Davis Decl. at ¶¶ 2, 13, 20). Rather,
23 Plaintiffs are interested in inquiring about the DOJ's communications with the public and law
24 enforcement agencies regarding their interpretation of terms and provisions of the AWCA at issue
25 in this case. (Id.) Such communications are not "candid advice or information," and therefore,
26 the deliberative process privilege does not apply.

27 Moreover, even if the common law "deliberative process" privilege were applicable to the
28 present situation, it likewise *does not* provide absolute protection. *Marylander*, 81 Cal.App.4th
1119, 1127. (Italics added). There is no authority that declares that this deliberative process

1 privilege has been judicially recognized as an absolute privilege making communications immune
2 from disclosure to a litigant without any weighing of the need for the evidence in the pending
3 litigation. *Id.* “Not every disclosure which hampers the “deliberative process” implicates the
4 “deliberative process” privilege. Only if the public interest in non-disclosure *clearly outweighs*
5 the public interest in disclosure does the deliberative process privilege “spring into existence.” *Id.*
6 at 1128.

7 **a. Even if Applied, the Balancing Test Required under the
8 Deliberative Process Privilege is not Satisfied**

9 As discussed above, the “deliberative process” privilege is not applicable to the present
10 case because Plaintiffs do not seek to inquire about any internal deliberations, communications, or
11 processes. *Marylander* at 1128. Therefore, the “weighing” process required prior to invocation
12 of this privilege need not be reached. However, even if the public interest is weighed, the public
13 interest in disclosure is not *clearly outweighed* (a higher standard than even the official
14 information privilege) by the public interest in non-disclosure. *Id.* at 1126, 1128. (Emphasis
15 added).

16 As stated, *supra*, the public has an immeasurable interest in discovering how firearms laws
17 are interpreted and enforced by the very agency that promulgates them and is charged with
18 enforcing them. (See Footnote 1). This knowledge allows the public the ability to properly comply
19 with the undeniably confusing provisions of the AWCA in order to avoid criminal penalty.
20 Conversely, the public has little to no interest in shielding DOJ officials from being questioned
21 about their outward communications to the public and other government agencies charged with
22 enforcing the AWCA. The DOJ’s ability to properly serve the public by, among other duties,
23 promulgating, clarifying, and enforcing firearms laws and regulations is not hindered by the
24 public’s inquiry into non-confidential conversations. (*Id.*) The public’s interest is *best served* by
25 promoting uniformity in the government’s enforcement, interpretation, and clarification of the
26 laws governing that public - not outright secrecy for every conversation it’s employees may
27 engage in while carrying out their duties. The depositions of Mr. Small and Mr. Amador by
28 Plaintiffs will serve precisely this purpose. (See Exhibit “O”).

As such, the public interest in disclosure is not *clearly outweighed* by the public interest in

1 non-disclosure. Therefore, even if the “deliberative process” privilege is applied, the deposition
2 testimony of Mr. Small and Mr. Amador sought by Plaintiffs is not protected from disclosure and
3 Plaintiff’s Motion must be granted.

4 Without any moving papers on the subject of protective orders, it is impossible to determine
5 on exactly what grounds Mr. Beckington will support his argument. It should be noted, however,
6 should Mr. Beckington ask for a protective order and be denied, “the court may order that the
7 deponent provide or permit the discovery against which protection was sought on those terms and
8 conditions that are just.” (Code Civ. Proc. § 2025.420(c)).

9 **C. As of the Date of Filing, Defendants’ Counsel Has Failed to**
10 **Move for a Protective Order as Was His Basis for Refusing**
to Produce Deponent Merrilees

11 Defendants’ counsel refused to produce Alison Merrilees for her deposition noticed for
12 December 10, 2007. (See Exhibits “M,” “N,” and “P;” Davis Decl. at ¶¶ 17, 18, 23). Mr.
13 Beckington further informed Plaintiffs that he would seek a protective order to prevent Ms.
14 Merrilees from being deposed. (See Exhibit “N” and “P;” Davis Decl. at ¶¶ 18, 21, 23). At no
15 point since her deposition was noticed has Mr. Beckington moved this court for a protective
16 order. (See Davis Decl. at ¶ 24).

17 California Code of Civil Procedure § 2025.420 allows for any party to move for a protective
18 order from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.

19 Having not received any motion for a protective order to date, it is difficult to determine the
20 grounds Mr. Beckington will state in support of the protective order. However, Mr. Beckington’s
21 letter of November 30, 2007 stated that Ms. Merrilees is protected from deposition as the
22 Bureau’s legal counsel because “depositions of opposing counsel are presumptively improper,
23 severely restricted, and require ‘extremely’ good cause - a high standard.” (*Carehouse*
24 *Convalescent Hosp. V. Superior Court* (2006) 143 Cal. App.4th 1558); (See Exhibit “N”).

25 **1. Ms. Merrilees is Subject to Deposition because She is not**
26 **Opposing Counsel in this Matter or any Underlying Matter**

26 Mr. Beckington’s contention that deposing Alison Merrilees is presumptively improper is
27 misplaced because Ms. Merrilees is not opposing counsel in this matter and, as such, she is not
28 afforded any heightened protection from deposition. (See Exhibit “O;” Davis Decl. at ¶ 20, 22).

1 The court in *Carehouse* stated that “[d]epositions of *opposing counsel* are presumptively
2 improper, severely restricted, and require extremely good cause – a high standard.”
3 *Carehouse*, 143 Cal. App.4th 1558. (Italics added). This concern stems from public policy
4 considerations to prevent attorneys from taking undue advantage of their adversary’s industry and
5 efforts, burdens on litigation, a chilling effect on the attorney-client relationship to be free to
6 devote his or her time, and efforts to preparing the client’s case without fear of being interrogated
7 by his or her opponent. *Id.* at 1561-1562.

8 In the present case, the deposition of Alison Merrilees is not presumptively improper
9 because she is not opposing counsel in this matter or any underlying matter. (See Exhibit “O;”
10 Davis Decl. at 20, 22). Defendants’ counsel apparently refuses to produce Ms. Merrilees on the
11 erroneous belief that she somehow is not subject to deposition simply because she is employed by
12 a government agency and happens to be an “attorney” for that particular agency. *Carehouse* quite
13 clearly does not stand for this proposition. The court in *Carehouse* definitively limits protection
14 to only those attorneys who are, in fact, “opposing counsel” in a particular matter or related
15 underlying matter. *Id.* at 1562; *American Casualty Co. v. Krieger* (1995) 160 F.R.D. 582. At no
16 time during the course of this litigation or in any related or underlying matter has Ms. Merrilees
17 served as opposing counsel for Defendants. (See Exhibit “O;” Davis Decl. at ¶ 22). To be sure,
18 Ms. Merrilees has *never* been listed as counsel for the Bureau on *any* document filed with the
19 court in this matter

20 Moreover, and notwithstanding the above distinction, Ms. Merrilees is not even being
21 deposed in her “general role” as counsel for the Bureau of Firearms. As Deputy Attorney General
22 for the Bureau, Ms. Merrilees serves a dual role. In fact, in Plaintiff’s deposition of Ignatius
23 Chinn, Mr. Chinn admitted that all written public inquiries are forwarded to “legal.” (See Davis
24 Decl. at ¶ 22). Accordingly, Ms. Merrilees serves not only the role of legal counsel for the
25 Bureau, but also the role of public advisor regarding the DOJ’s enforcement and interpretation of
26 existing regulations. (*Id.*) It is within this alternate capacity that Ms. Merrilees will be questioned
27 regarding the subject matter outlined in detail for Defendants in Plaintiffs’ letter of December 3,
28 2007. (See Exhibit “O”).

1 Thus, Ms. Merrilees is not shielded from deposition by the “opposing counsel” protections
2 of *Carehouse*, and Plaintiffs are entitled to an order compelling Ms. Merrilees’ attendance and
3 testimony on the subject matter of communications with the public and law enforcement agencies.

4 **2. Even if Ms. Merrilees was Opposing Counsel in this**
5 **Matter She is Nonetheless Subject To Deposition**

6 California *does not* prohibit taking the deposition of an opposing party's attorney. Rather,
7 the courts apply a three-prong test in considering the propriety of opposing counsel depositions.
8 “First, does the proponent have other practicable means to obtain the information? Second, is the
9 information crucial to the preparation of the case? Third, is the information subject to a
10 privilege?” *Carehouse*, 143 Cal. App.4th at 1563. “Parties claiming the benefit of the work
11 product and attorney-client privileges have the burden to show preliminary facts to support its
12 applicability.” (See *Carehouse* at 1563, citing *Fellows v. Superior Court* (1980) 108 Cal.App.3d
13 55, 67 [166 Cal. Rptr. 274].)

14 As discussed, *supra*, Ms. Merrilees is not opposing counsel in this matter and therefore the
15 three prong test of *Carehouse* need not be applied. However, even if this test were to be applied,
16 deposition of Ms. Merrilees by Plaintiffs is nonetheless proper.

17 First, Plaintiffs do not have other practicable means by which to obtain the information.
18 Plaintiffs seek to inquire about Ms. Merrilees’ interpretations to and communications with the
19 public, dealers, and law enforcement agencies regarding the subject matter of this litigation. (See
20 Exhibit “O”). As these communications took place between Ms. Merrilees and *numerous* other
21 individuals, Plaintiffs have no other practical means by which to inquire about these
22 representations. Second, this information is absolutely crucial to Plaintiffs case. (See Exhibit
23 “O;” Davis Decl. at ¶¶ 2-3). Plaintiffs would be severely prejudiced if they were not allowed to
24 inquire about the DOJ’s interpretations to and communications with the public, dealers, and law
25 enforcement agencies regarding the subject matter of this litigation. (*Id.* at ¶ 25). Finally, this
26 information is not subject to any privilege, as the scope of the inquiry does not encompass any
27 confidential, secret, or intra-agency communications or deliberations, nor do these
28 communications with the public fall within the purview of the work product or attorney-client
privileges. (See Exhibit “O;” Davis Decl. at 22).

1 Thus, even if Ms. Merrilees were opposing counsel in this matter, she would still be subject
2 to deposition by Plaintiffs under the three prong test adopted by *Carehouse*.

3 Without any moving papers on the subject of protective orders, it is impossible to determine
4 on exactly what grounds Mr. Beckington will support his argument. It should be noted, however,
5 should Mr. Beckington ask for a protective order and be denied, “the court may order that the
6 deponent provide or permit the discovery against which protection was sought on those terms and
7 conditions that are just.” (Code Civ. Proc. § 2025.420(c)).

8 **D. Defendant Has Attempted to Meet and Confer with Plaintiff as
9 Required by California Code of Civil Procedure Section 2025.450**

9 Section 2025.450.040 mandates that the motion to compel must be accompanied by a
10 declaration stating facts showing a reasonable and good-faith attempt at an informal resolution of
11 each issue presented by the motion. The attached declaration of Jason A. Davis indicates
12 Plaintiffs’ counsel attempted to informally resolve the above matters with Mr. Beckington
13 following his stated refusal to produce deponents in his letter of November 30, 2007.

14 Plaintiffs subsequently sought to meet and confer with Defendants’ counsel via telephone to
15 no avail.

16 **E. Sanctions Are Appropriate for Misuse of the Discovery Process**

17 This Court should impose sanctions against Defendants’ and their Attorney of Record for
18 the misuse of the discovery process described in detail above and in the attached declaration.
19 California Code of Civil Procedure § 2025.480(f) states:

20 The court *shall* impose monetary sanctions under Chapter 7 (commencing with Section
21 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes
22 a motion to compel an answer or production, unless it finds that the one subject to the
23 sanction acted with substantial justification or that other circumstances make the
24 imposition of the sanction unjust.

25 California Code of Civil Procedure § 2025.450 states, in pertinent part:

26 (c)(1) If a motion under subdivision (a) is granted, the court shall impose a monetary
27 sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who
28 noticed the deposition and against the deponent or the party with whom the deponent is
29 affiliated, unless the court finds that the one subject to the sanction acted with substantial
30 justification or that other circumstances make the imposition of the sanction unjust.
(Code Civ. Proc. § 2025.450(c)(1)).

31 Furthermore in Section 2023.030(a) of the California Code of Civil Procedure states:

32 The court may impose a monetary sanction ordering that one engaging in the misuse of
33 the discovery process, or any attorney advising that conduct, or both pay the reasonable

1 expenses, including attorney's fees, incurred by anyone as a result of that conduct. The
2 court may also impose this sanction on one unsuccessfully asserting that another has
3 engaged in the misuse of the discovery process, or on any attorney who advised that
4 assertion, or on both. If a monetary sanction is authorized by any provision of this title,
the court shall impose that sanction unless it finds that the one subject to the sanction
acted with substantial justification or that other circumstances make the imposition of the
sanction unjust. (Code Civ. Proc. § 2023.030(a)).

5 Defendants' counsel improperly delayed discovery and willfully refused, and continues to
6 refuse, to produce deponents Mike Small, Jeff Amador, and Alison Merrilees. (See Exhibits "N
7 and "O"). Plaintiffs did so after *numerous* rescheduling efforts by Plaintiffs. (See Exhibits "A-
8 L"). Moreover, and even more shocking, is that Defendants finally refused to produce deponents
9 Small and Amador for the dates that *they themselves* selected following extensive clarification by
10 Plaintiffs - *just days before the depositions were set to take place*. (See Exhibit "J;" Davis Decl.
11 at ¶ 14-15). In addition, although refusing to move forward with any of the noticed deposition
12 dates for Mr. Small, Mr. Amador, and Ms. Merrilees in order to seek a protective order, Mr.
13 Beckington has failed to do so as of the date of these moving papers. (See Exhibits "N" and "P;"
14 Davis Decl. at ¶ 24).

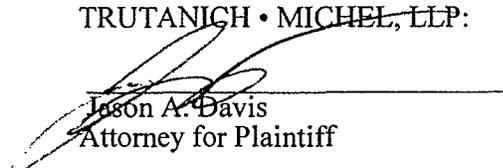
15 As a result, Plaintiffs were denied relevant information concerning the proof of its case and
16 were forced to file this motion compelling their attendance and testimony. Therefore, Defendants
17 and their attorney of record, Mark Beckington, should be ordered to pay sanctions in the amount
18 of \$3,890.00. (See Davis Decl. at ¶ 28).

19 IV. CONCLUSION

20 Based on the foregoing, Plaintiffs seek an order from this Court compelling Defendants to
21 produce Mike Small, Jeff Amador, and Alison Merrilees for their respective depositions and
22 further compelling Mike Small, Jeff Amador, and Alison Merrilees to respond to questions
23 relevant to this case. In addition, should the Court grant this motion, Plaintiffs request sanctions
24 be awarded against Defendants and Defendants' counsel, Mark Beckington, and for all other relief
25 the Court deems just and proper.

26 Date: December 20, 2007

TRUTANICH • MICHEL, LLP:

27 
28 Jason A. Davis
Attorney for Plaintiff

1 Mr. Amador for August 13, 2007, and August 14, 2007, respectively.

2 6. On August 9, 2007, Plaintiffs again rescheduled the depositions of Mr. Small and Mr.
3 Amador for August 24, 2007, and August 31, 2007, respectively. At this time Plaintiffs reminded
4 Defendants that it is Plaintiffs' belief that Mr. Small and Mr. Amador play an advisory role in the
5 DOJ - Bureau of Firearms, which advises permittees on various "assault weapon" related issues.
6 A true and correct copy of this letter is attached hereto as Exhibit "D."

7 7. On or about August 20, 2007, Plaintiffs agreed to continue these depositions pending
8 completion of a stipulated motion for clarification from the court as to the applicable
9 constitutional standard of review for this case.

10 8. On October 15, 2007, Plaintiff's provided Defendants with their argument for inclusion
11 in Defendants' motion for clarification. At this time, Defendants' had not provided Plaintiffs with
12 their argument for the motion for clarification - nor had they provided any dates that Mr. Small
13 and Mr. Amador would be available for deposition after repeated requests by Plaintiffs. To date,
14 Defendants have not filed any motion for clarification with this court.

15 9. On October 16, 2007, Plaintiffs informed Defendants that although Plaintiffs understand
16 that Defendants seek clarification from the court as to the applicable standard of review,
17 Plaintiffs,' after two months, can no longer hold off on deposing these key witnesses. Plaintiffs
18 further informed Defendants that due to their refusal to provide any dates that Mr. Small and Mr.
19 Amador would be available for deposition, Plaintiffs have chosen the dates of October 29 through
20 November 1, 2007. A true and correct copy of this letter is attached hereto as Exhibit "E."

21 10. On October 16, 2007, Plaintiffs noticed the depositions of Mike Small and Jeff Amador
22 for October 31, 2007, and November 1, 2007, respectively. A true and correct copy of these
23 deposition notices are attached hereto as Exhibits "F" and "G."

24 11. On October 22, 2007, Defendants informed Plaintiffs that Mr. Mark Beckington was
25 taking over as counsel on this matter.

26 12. On October 25, 2007, Defendants informed Plaintiffs that they would not produce Mr.
27 Small and Mr. Amador for their rescheduled deposition dates. In this correspondence, Mr.
28 Beckington indicated that he would need to meet and confer to resolve any issues with the

1 objections previously raised by Defendants - even though Plaintiffs had already met and conferred
2 with Plaintiffs counsel and clarified their intentions on numerous occasions. At this time Mr.
3 Beckington also indicated that he would contact these deponents to determine their availability for
4 depositions pending a meet and confer with Plaintiffs' counsel on this issue. A true and correct
5 copy of this letter is attached hereto as Exhibit "H."

6 13. On October 29, pursuant Mr. Beckington's meet and confer request, Plaintiff's again
7 provided a detailed explanation for the depositions of Mr. Small and Mr. Amador. Plaintiffs
8 reiterated that these individuals have direct contact with permittees and the general public who
9 rely on their advice for clarification of the regulations at issue in this case. At this time, Plaintiffs
10 advised Defendants that if they still do not wish to produce these deponents following Plaintiffs'
11 numerous clarifications and meet and confer attempts, Defendants should seek a protective order.
12 Finally, in Plaintiffs' correspondence of October 29, 2007, Plaintiffs requested that Defendants
13 provide reasonable and timely alternative dates for these depositions by the close of business on
14 October 31, 2007, and further advised that, should Defendants fail to cooperate, Plaintiffs will be
15 forced to file a motion compelling deponents' attendance and testimony. A true and correct copy
16 of this letter is attached hereto as Exhibit "I."

17 14. Following Mr. Beckington's review of Plaintiff's detailed clarification letter, Mr.
18 Beckington thereafter proposed the week of December 3, 2007, to schedule the depositions of Mr.
19 Small and Mr. Amador.

20 15. On November 7, 2007, Plaintiffs requested that Defendants clarify the specific dates
21 that Mr. Small and Mr. Amador would be available for deposition. Thereafter, Mr. Beckington
22 informed Plaintiffs that Mr. Small and Mr. Amador would be available for deposition on
23 December 4, 2007, and December 5, 2007, respectively. A true and correct copy of the November
24 7 letter is attached hereto as Exhibit "J."

25 16. On November 15, Plaintiffs noticed the depositions of Mr. Small and Mr. Amador for
26 December 4, 2007, and December 5, 2007, respectively. A true and correct copy of these
27 deposition notices are attached hereto as Exhibits "K" and "L."

28 17. On November 27, 2007, Plaintiffs noticed the deposition of Alison Merrilees for

1 December 10, 2007. During subsequent conversations, Mr. Beckington informed Plaintiffs
2 counsel that he would not produce Ms. Merrilees for deposition. A true and correct copy of the
3 December 10, 2007 deposition notice is attached hereto as Exhibit "M."

4 18. On November 30, 2007, Plaintiffs received a letter from Mr. Beckington, dated
5 November 29, 2007, whereby Plaintiffs refused to provide any of these deponents for their
6 respective noticed depositions. In this correspondence, Mr. Beckington stated his refusal to
7 produce Mike Small and Jeff Amador under the authority of the "official information privilege"
8 set forth in California Code of Civil Procedure section 1040. As well, Mr. Beckington stated his
9 refusal to produce Alison Merrilees under the "opposing counsel" presumption set forth in
10 *Carehouse v. Convalescent Hosp. v. Superior Court* (2006) 143 Cal. App.4th 1558. Mr.
11 Beckington further stated that he intended to file a motion for protective order to prevent these
12 depositions from taking place. To date, Mr. Beckington has not filed any motion for protective
13 order. A true and correct copy of the November 30, 2007 letter is attached hereto as Exhibit "N."

14 19. Defendants submitted this absolute refusal just days prior to the noticed depositions for
15 Mr. Small and Mr. Amador, despite being in possession of these notices for over two weeks.
16 Additionally, Defendants submitted this last minute objection despite the fact that it was
17 Defendants themselves who selected these dates for the depositions following the parties' meet
18 and confer efforts, whereby Plaintiffs repeatedly and unequivocally informed Defendants of their
19 grounds for deposing each of these witnesses.

20 20. On December 3, 2007, Plaintiffs submitted a letter to Defendants in an effort to
21 informally and in good faith resolve this dispute and the need to file a motion to compel. In this
22 letter, Plaintiffs again, and in even more detail, clarified their grounds for deposing Mike Small,
23 Jeff Amador, and Alison Merrilees, and provided examples of the type of information about
24 which Plaintiffs would inquire. In this correspondence, Plaintiffs informed Defendants of their
25 intention to file a motion to compel the attendance and testimony of each deponent should
26 Defendants continue to produce these witnesses for deposition. A true and correct copy of this
27 letter is attached hereto as Exhibit "O."

28 21. On December 5, 2007, a meet and confer process ensued and Mr. Beckington stated

1 his unequivocal refusal to produce Mike Small, Jeff Amador, and Alison Merrilees at this time or
2 any future time. Plaintiffs thereafter reiterated their intention to file a motion to compel
3 deponents' attendance and testimony, and Mr. Beckington informed Plaintiffs' of his intention to
4 promptly file a motion for protective order.

5 22. With regard to the deposition of Alison Merrilees, although official transcripts are not
6 yet available, in Plaintiffs' deposition of Ignatius Chinn, Mr. Chinn indicated that all written
7 public inquiries are in fact forwarded to "legal." As Deputy Attorney General, Ms. Merrilees
8 serves a dual role as public advisor for the Bureau of Firearms and is not counsel for the Bureau
9 in this action. To date, Ms. Merrilees has not been listed as counsel for the Bureau on any
10 document filed with the court in this matter.

11 23. On December 6, 2007, Defendants submitted a letter to Plaintiffs stating their absolute
12 and ultimate refusal to produce deponents Small, Amador, and Merrilees for deposition at any
13 future time, and confirmed their intention to seek a protective order. A true and correct copy of
14 this letter is attached hereto as Exhibit "P."

15 24. To date, Mr. Beckington has yet to file with this court any motion for protective order.

16 25. Plaintiffs cannot proceed adequately to trial in this matter without the deposition
17 testimony of these key witnesses, namely: Mike Small, Jeff Amador, and Alison Merrilees.

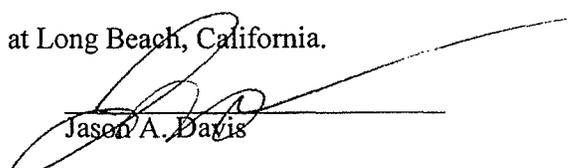
18 26. The parties were not able to resolve any of the issues addressed in this motion.

19 27. I am informed and believe and thereon allege that any attempts to further meet and
20 confer on the issues raised in this motion will be fruitless, as the parties are at an impasse.

21 28. Our office has spent 14 hours in preparation of this motion. Our hourly fee is \$275.00
22 per hour. I anticipate spending two hours at the hearing on this Motion. I would therefore request
23 that the Court order sanctions in the amount of \$3,850.00 plus \$40.00 to file this motion, against
24 Defendants' and their Attorney of Record, Mark Beckington.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct.

27 Executed this 19th Day of December, 2007, at Long Beach, California.

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Jason A. Davis

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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 E. Ocean Boulevard, Suite 200, Long Beach, California 90802.

On December 20, 2007, I served the foregoing document(s) described as

PLAINTIFFS' NOTICE OF MOTION AND MOTION TO COMPEL ATTENDANCE AND TESTIMONY OF MIKE SMALL, JEFF AMADOR, AND ALISON MERRILEES; POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF JASON A. DAVIS IN SUPPORT THEREOF; EXHIBITS "A - P"

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:

Mr. Mark Beckington
Deputy Attorney General
Government Law Section
California Department of Justice
300 South Spring St., Ste. 1702
Los Angeles, CA 90013

(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.

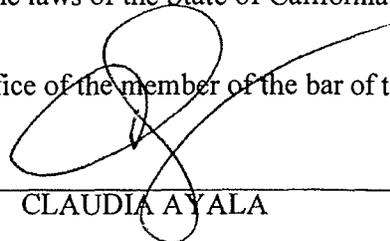
Executed on December 20, 2007, at Long Beach, California.

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

Executed on December 20, 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

EXHIBIT A

1 C. D. Michel --- SBN 144258
Jason A. Davis --- SBN 224250
2 TRUTANICH • MICHEL, LLP
180 East Ocean Blvd., Suite 200
3 Long Beach, CA 90802
Tel: (562) 216.4444

4 Stephen P. Halbrook
5 LAW OFFICES OF STEPHEN P. HALBROOK
10560 Main Street., Suite 404
6 Fairfax, Virginia 22030
Tel: (703) 352.7276

7 Don B. Kates --- SBN 039193
8 BENENSON & KATES
22608 North East 269th Avenue
9 Battleground, Washington 98604
Tel: (360) 666.2688

10
11 Attorneys for Plaintiffs

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13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF FRESNO

15 EDWARD W. HUNT, in his official	) CASE NO. 01CECG03182
capacity as District Attorney of Fresno)
16 County, and in his personal capacity as a	) NOTICE OF TAKING DEPOSITION OF
citizen and taxpayer, et. al.,	) CALIFORNIA DEPARTMENT OF JUSTICE
17	) EMPLOYEE MICHAEL SMALL/ REQUEST
Plaintiffs,	) FOR PRODUCTION OF DOCUMENTS
18)
v.)
19	) Date: July 23, 2007
STATE OF CALIFORNIA; WILLIAM	) Time: 10:00 a.m.
20 LOCKYER, Attorney General of the State of	) Place: Phillips Legal Services
California; CALIFORNIA DEPARTMENT) 350 University Ave., Suite 270
21 OF JUSTICE; Does 1-100;) Sacramento, CA 95825
22)
Defendants.)
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25 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:
26 NOTICE IS HEREBY GIVEN that Plaintiff EDWARD W. HUNT, in his personal
27 capacity and as citizen and taxpayer, will take the deposition, on oral examination, of California
28 Department of Justice employee MICHAEL SMALL. The deposition will be taken on Monday,

1 July 23, 2007, at 10:00 a.m., at Phillips Legal Services located at 350 University Ave., Suite 270,
2 Sacramento, CA 95825.

3 NOTICE IS FURTHER GIVEN that Plaintiff EDWARD W. HUNT intends to cause the
4 proceedings to be recorded stenographically. Plaintiff EDWARD W. HUNT reserves the right to
5 record the deponent's testimony by audiotape, and/or videotape pursuant to C.C.P. §2025.220,
6 stenographically, and/or by real-time transcription pursuant to C.C.P. §2025.20 and to use such
7 recorded testimony at the trial of this matter.

8 The deposition will be taken before a deposition officer who is authorized to administer an
9 oath. If the deposition is not completed on the date specified in this notice, the taking of the
10 deposition will be continued from day to day thereafter, except for Sundays and holidays, at the
11 same place, until completed.

12 NOTICE IS FURTHER GIVEN that MICHAEL SMALL shall bring and produce the
13 following documents at the deposition, at the time and place specified in this notice.

14
15 **DOCUMENTS TO BE PRODUCED AT DEPOSITION**

16 **DEFINITIONS - FLASH SUPPRESSOR**

- 17 1. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor."
18 ("WRITINGS" shall mean writings as defined in Evidence Code Section 250 and shall
19 include, but not be limited to internal memoranda, inter-agency memoranda,
20 correspondence, internal correspondence, inter-agency correspondence, lists, personnel
21 rosters, emails (digital and/or printouts), meeting minutes, notes, facsimiles, facsimile
22 cover sheets, notebooks, computer files -- whether on hard disk, floppy diskette, or any
23 removable-media drive, voice mail printouts, and all other papers, books, and computer
24 files.)
- 25 2. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
26 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (b).
- 27 3. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
28 defined by Penal Code section 12276.1, subsection (a)(1)(E).

1 4. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
2 defined by Penal Code section 12276.1, subsection (a)(4)(A).

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DEFINITIONS - PERMANENTLY ALTER

5 5. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter."

6 6. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
7 stated in Penal Code section 12020, subsection (b)(15).

8 7. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
9 stated in Penal Code section 12020, subsection (b)(25)(A).

10 8. All WRITINGS since January 1, 1999, relating to the definition of "permanently" as stated
11 in Penal Code section 12088.2, subsection (b).

12 9. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
13 stated in Penal Code section 12276, subsection (d)(2).

14 10. All WRITINGS since January 1, 1999, relating to the definition of "permanently
15 inoperable" as stated in Penal Code section 12285, subsection (b)(1).

16 11. All WRITINGS since January 1, 1999, relating to the definition of "permanently
17 deactivated" as stated in Penal Code section 12285, subsection (b)(3).

18 12. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
19 in Penal Code section 12020, subsection (b)(25).

20 13. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
21 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(1).

22 14. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
23 in Penal Code section 12276.1, subsection (a)(2).

24 15. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
25 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4).

26 16. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
27 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4)(D).

28 17. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated

- 1 in Penal Code section 12276.1, subsection (a)(5).
- 2 18. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
3 in Penal Code section 12276.1, subsection (d)(2).
- 4 19. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine."
- 5 20. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine" as
6 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (a).
- 7 21. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
8 term "flash suppressor."
- 9 22. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
10 term "detachable magazine."
- 11 23. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
12 phrase "capacity to accept a detachable magazine."
- 13 24. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
14 phrase "permanently alter."
- 15 25. All photographs of "flash suppressors."
- 16 26. All photographs created by the California Department of Justice, Firearms Division since
17 January 1, 1999, of any object examined for the purposes of determining whether said
18 object was a "flash suppressor," where said object was deemed by the California
19 Department of Justice, Firearms Division not to be a "flash suppressor."
- 20 27. All photographs of firearm receivers deemed by the California Department of Justice
21 Firearms Division since January 1, 1999 to have the "capacity to accept a detachable
22 magazine."
- 23 28. All photographs of firearms deemed by the California Department of Justice Firearms
24 Division since January 1, 1999, to not have the "capacity to accept a detachable
25 magazine."
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28 **EXEMPLARS - FLASH SUPPRESSORS**

- 29 All "flash suppressors" currently in the custody of the California Department of Justice.

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Firearms Division.

30 All "flash suppressors" exemplars currently in the custody of the California Department of Justice, Firearms Division.

EXEMPLARS - PERMANENTLY ALTER

31. All "permanently altered" magazines currently in the custody of the California Department of Justice, Firearms Division.

32. All "permanently altered" magazine exemplars currently in the custody of the California Department of Justice, Firearms Division.

33. Any device examined for the purposes of determining whether it was a "flash suppressor," where the device was deemed by the California Department of Justice, Firearms Division not to be a "flash suppressor."

34. All firearm receivers that are presently being held in the custody and/or control of the California Department of Justice's, Firearms Division as exemplars of modifications that render a receiver no longer "capable of accepting a detachable magazine."

MINUTES

35. All minutes of meetings from the California Department of Justice's, Firearms Division relating to the definition of "assault weapon."

EXPERT TESTIMONY

36. All transcripts of YOUR testimony in any criminal case relating to firearms. ("YOU" and/or "YOUR" shall mean YOU, YOUR officers, employees, principals, insurance companies, or anyone acting on YOUR behalf.)

37. All transcripts of YOUR testimony in any criminal case relating to firearms.

38. All transcripts of YOUR testimony in any criminal case relating to "assault weapons."

39. All transcripts of YOUR testimony in any criminal case relating to the definition of "flash suppressor."

- 1 40. All transcripts of YOUR testimony in any criminal case relating to the definition of
2 "detachable magazine."
- 3 41. All transcripts of YOUR testimony in any criminal case relating to the definition of
4 "capacity to accept a detachable magazine."
- 5 42. All transcripts of YOUR testimony in any criminal case relating to the definition of
6 "permanently alter."
- 7 43. All transcripts of YOUR testimony in any civil lawsuit relating to firearms.
- 8 44. All transcripts of YOUR testimony in any civil lawsuit relating to "assault weapons."
- 9 45. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of "flash
10 suppressor."
- 11 46. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
12 "detachable magazine."
- 13 47. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
14 "capacity to accept a detachable magazine."
- 15 48. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
16 "permanently alter."
- 17 49. All transcripts of YOUR statements relating to firearms.
- 18 50. All transcripts of YOUR statements relating to the definition of "assault weapon."
- 19 51. All transcripts of YOUR statements relating to the definition of "flash suppressor."
- 20 52. All transcripts of YOUR statements relating to the definition of "detachable magazine."
- 21 53. All transcripts of YOUR statements relating to the definition of "capacity to accept a
22 detachable magazine."
- 23 54. All transcripts of YOUR statements relating to the definition of "permanently alter."
- 24 55. All INVESTIGATION REPORTS ("INVESTIGATION REPORTS" are hereinafter
25 defined as any WRITING that is identified as an "investigation report" on the face of the
26 WRITING) that refer to "assault weapons."
- 27 56. All INVESTIGATION REPORTS that refer or relate any "detachable magazine."
- 28 57. All INVESTIGATION REPORTS that refer or relate any "flash suppressor."

1 58. All INVESTIGATION REPORTS that refer or relate to the permanence of any
2 modification to any firearm.

3
4 **REFERENCE MATERIALS**

5 59. All WRITINGS since January 1, 1999, consisting of, regarding, referring to, and/or
6 relating in any way to any and all REFERENCE MATERIALS used by YOU in the
7 drafting of California Code of Regulations Title 11, section 5469(a), formerly section
8 978.20(a), which states:

9 "detachable magazine" means any ammunition feeding device that
10 can be removed readily from the firearm with neither disassembly of
11 the firearm action nor use of a tool being required. A bullet or
12 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.

13 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
14 academic, scholarly, scientific, reference or other authorities and/or investigational
15 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in
16 performing any investigation, inquiry, or study, etc. in drafting any text which consists of,
17 relates to, refers to, or in any way regards Penal Code section 12276.1. This includes, but
18 is not limited to academic and reference works such as technical manuals, encyclopedia,
19 Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses,
20 correspondence, emails, etc.).

21 60. All WRITINGS consisting of, regarding, referring to, and/or relating in any way to any and
22 all REFERENCE MATERIALS used by YOU in the drafting of California Code of
23 Regulations Title 11, section 5469(a), formerly section 978.20(b), which states:

24 "flash suppressor" means any device designed, intended, or that
25 functions to perceptibly reduce or redirect muzzle flash from the
shooter's field of vision.

26 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
27 academic, scholarly, scientific, reference or other authorities and/or investigational
28 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in

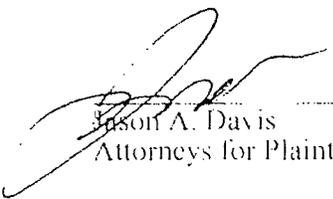
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4 Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses,
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7 **INVESTIGATION REPORTS**

- 8 61. All "investigation reports" identifying Ignatius Chinn as a Reporting Agent or Supervisor
9 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
10 62. All "investigation reports" identifying Juan Solano as a Reporting Agent or Supervisor
11 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
12 63. All "investigation reports" identifying Dale Ferranto as a Reporting Agent or Supervisor
13 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
14 64. All "investigation reports" identifying Chris Abad as a Reporting Agent or Supervisor
15 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.

16 DATED: June 25, 2007

TRUTANICH • MICHEL, LLP

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20 Jason A. Davis
21 Attorneys for Plaintiff's
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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 June 28, 2007, I served the foregoing document(s) described as

**NOTICE OF TAKING DEPOSITION OF CALIFORNIA DEPARTMENT
OF EMPLOYEE MICHAEL SMALL/ REQUEST FOR
PRODUCTION OF DOCUMENTS**

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 June 28, 2007, at Long Beach, California.

X (VIA 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.

(PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
Executed on June 28, 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.

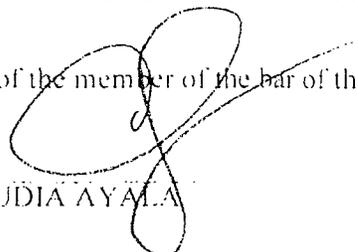

CLAUDIA AYALA

EXHIBIT B

1 C. D. Michel --- SBN 144258
Jason A. Davis --- SBN 224250
2 TRUFANICH • MICHEL, LLP
180 East Ocean Blvd., Suite 200
3 Long Beach, CA 90802
Tel: (562) 216.4444

4
5 Stephen P. Halbrook
LAW OFFICES OF STEPHEN P. HALBROOK
10560 Main Street., Suite 404
6 Fairfax, Virginia 22030
Tel: (703) 352 7276

7
8 Don B. Kates SBN 039193
BENENSON & KATES
22608 North East 269th Avenue
9 Battleground, Washington 98604
Tel: (360) 666.2688

10
11 Attorneys for Plaintiffs

12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF FRESNO

15 EDWARD W. HUNT, in his official	) CASE NO. 01CECG03182
capacity as District Attorney of Fresno)
16 County, and in his personal capacity as a	) NOTICE OF TAKING DEPOSITION OF
citizen and taxpayer, et. al.,	) CALIFORNIA DEPARTMENT OF JUSTICE
17	) EMPLOYEE JEFF AMADOR/ REQUEST
Plaintiffs,	) FOR PRODUCTION OF DOCUMENTS
18)
v.)
19	) Date: July 24, 2007
STATE OF CALIFORNIA; WILLIAM	) Time: 10:00 a.m.
20 LOCKYER, Attorney General of the State of	) Place: Phillips Legal Services
California; CALIFORNIA DEPARTMENT	) 350 University Ave., Suite 270
21 OF JUSTICE; Does 1-100;	) Sacramento, CA 95825
22)
Defendants.)
23)

24
25 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:
26 NOTICE IS HEREBY GIVEN that Plaintiff EDWARD W. HUNT, in his personal
27 capacity and as citizen and taxpayer, will take the deposition, on oral examination, of California
28 Department of Justice employee JEFF AMADOR. The deposition will be taken on Monday, July

1 24, 2007, at 10:00 a.m., at Phillips Legal Services located at 350 University Ave., Suite 270,
2 Sacramento, CA 95825.

3 NOTICE IS FURTHER GIVEN that Plaintiff EDWARD W. HUNT intends to cause the
4 proceedings to be recorded stenographically. Plaintiff EDWARD W. HUNT reserves the right to
5 record the deponent's testimony by audiotape, and/or videotape pursuant to C.C.P. §2025.220,
6 stenographically, and/or by real-time transcription pursuant to C.C.P. §2025.20 and to use such
7 recorded testimony at the trial of this matter.

8 The deposition will be taken before a deposition officer who is authorized to administer an
9 oath. If the deposition is not completed on the date specified in this notice, the taking of the
10 deposition will be continued from day to day thereafter, except for Sundays and holidays, at the
11 same place, until completed.

12 NOTICE IS FURTHER GIVEN that JEFF AMADOR shall bring and produce the
13 following documents at the deposition, at the time and place specified in this notice.

14
15 **DOCUMENTS TO BE PRODUCED AT DEPOSITION**

16 **DEFINITIONS - FLASH SUPPRESSOR**

- 17 1. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor."
18 ("WRITINGS" shall mean writings as defined in Evidence Code Section 250 and shall
19 include, but not be limited to internal memoranda, inter-agency memoranda,
20 correspondence, internal correspondence, inter-agency correspondence, lists, personnel
21 rosters, emails (digital and/or printouts), meeting minutes, notes, facsimiles, facsimile
22 cover sheets, notebooks, computer files whether on hard disk, floppy diskette, or any
23 removable-media drive, voice mail printouts, and all other papers, books, and computer
24 files.)
- 25 2. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
26 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (b).
- 27 3. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
28 defined by Penal Code section 12276.1, subsection (a)(1)(1).

1 4. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
2 defined by Penal Code section 12276.1, subsection (a)(4)(A).

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DEFINITIONS - PERMANENTLY ALTER

5 5. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter."

6 6. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
7 stated in Penal Code section 12020, subsection (b)(15).

8 7. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
9 stated in Penal Code section 12020, subsection (b)(25)(A).

10 8. All WRITINGS since January 1, 1999, relating to the definition of "permanently" as stated
11 in Penal Code section 12088.2, subsection (b).

12 9. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
13 stated in Penal Code section 12276, subsection (d)(2).

14 10. All WRITINGS since January 1, 1999, relating to the definition of "permanently
15 inoperable" as stated in Penal Code section 12285, subsection (b)(1).

16 11. All WRITINGS since January 1, 1999, relating to the definition of "permanently
17 deactivated" as stated in Penal Code section 12285, subsection (b)(3).

18 12. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
19 in Penal Code section 12020, subsection (b)(25).

20 13. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
21 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(1).

22 14. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
23 in Penal Code section 12276.1, subsection (a)(2).

24 15. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
25 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4).

26 16. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
27 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4)(D).

28 17. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated

- 1 in Penal Code section 12276.1, subsection (a)(5).
- 2 18. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
3 in Penal Code section 12276.1, subsection (d)(2).
- 4 19. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine."
- 5 20. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine" as
6 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (a).
- 7 21. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
8 term "flash suppressor."
- 9 22. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
10 term "detachable magazine."
- 11 23. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
12 phrase "capacity to accept a detachable magazine."
- 13 24. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
14 phrase "permanently alter."
- 15 25. All photographs of "flash suppressors."
- 16 26. All photographs created by the California Department of Justice, Firearms Division since
17 January 1, 1999, of any object examined for the purposes of determining whether said
18 object was a "flash suppressor," where said object was deemed by the California
19 Department of Justice, Firearms Division not to be a "flash suppressor."
- 20 27. All photographs of firearm receivers deemed by the California Department of Justice
21 Firearms Division since January 1, 1999 to have the "capacity to accept a detachable
22 magazine."
- 23 28. All photographs of firearms deemed by the California Department of Justice Firearms
24 Division since January 1, 1999, to not have the "capacity to accept a detachable
25 magazine."

26
27 **EXEMPLARS - FLASH SUPPRESSORS**

- 28 29. All "flash suppressors" currently in the custody of the California Department of Justice.

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Firearms Division.

30 All "flash suppressors" exemplars currently in the custody of the California Department of Justice, Firearms Division.

EXEMPLARS - PERMANENTLY ALTER

31. All "permanently altered" magazines currently in the custody of the California Department of Justice, Firearms Division.

32. All "permanently altered" magazine exemplars currently in the custody of the California Department of Justice, Firearms Division.

33. Any device examined for the purposes of determining whether it was a "flash suppressor," where the device was deemed by the California Department of Justice, Firearms Division not to be a "flash suppressor."

34. All firearm receivers that are presently being held in the custody and/or control of the California Department of Justice's, Firearms Division as exemplars of modifications that render a receiver no longer "capable of accepting a detachable magazine."

MINUTES

35. All minutes of meetings from the California Department of Justice's, Firearms Division relating to the definition of "assault weapon."

EXPERT TESTIMONY

36. All transcripts of YOUR testimony in any criminal case relating to firearms. ("YOU" and/or "YOUR" shall mean YOU, YOUR officers, employees, principals, insurance companies, or anyone acting on YOUR behalf.)

37. All transcripts of YOUR testimony in any criminal case relating to firearms.

38. All transcripts of YOUR testimony in any criminal case relating to "assault weapons."

39. All transcripts of YOUR testimony in any criminal case relating to the definition of "flash suppressor."

- 1 40. All transcripts of YOUR testimony in any criminal case relating to the definition of
2 "detachable magazine."
- 3 41. All transcripts of YOUR testimony in any criminal case relating to the definition of
4 "capacity to accept a detachable magazine."
- 5 42. All transcripts of YOUR testimony in any criminal case relating to the definition of
6 "permanently alter."
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- 27 56. All INVESTIGATION REPORTS that refer or relate any "detachable magazine."
- 28 57. All INVESTIGATION REPORTS that refer or relate any "flash suppressor."

1 58. All INVESTIGATION REPORTS that refer or relate to the permanence of any
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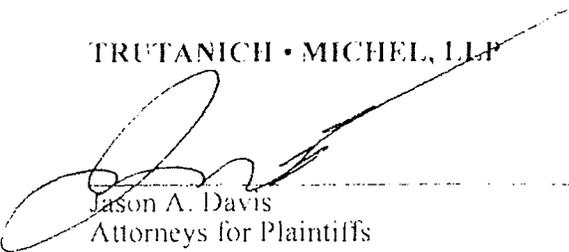
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6

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9 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
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13 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
14 64. All "investigation reports" identifying Chris Abad as a Reporting Agent or Supervisor
15 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.

16 DATED: June 25, 2007

TRUTANICH • MICHEL, LLP

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19 Jason A. Davis
20 Attorneys for Plaintiffs
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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 June 28, 2007, I served the foregoing document(s) described as

**NOTICE OF TAKING DEPOSITION OF CALIFORNIA DEPARTMENT
OF JUSTICE EMPLOYEE JEFF AMADOR/ REQUEST FOR
PRODUCTION OF DOCUMENTS**

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 June 28, 2007, at Long Beach, California.

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(PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
Executed on June 28, 2007, at Long Beach, California.

(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.

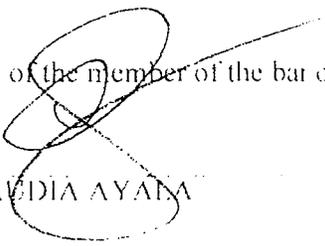

CLAUDIA AYALA

EXHIBIT C

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 324-4663
Facsimile: (916) 324-5567
E-Mail: Douglas.Woods@doj.ca.gov

July 18, 2007

Via Facsimile and First Class Mail

Jason A. Davis, Esq.
Trutanich • Michel, LLP
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802

RE: *Hunt v. State of California, et al.*
Fresno County Superior Court Case No. 01CECG03182

Dear Jason:

I hope that you were able to enjoy a good break on your vacation. On the deposition notices you sent out shortly before you left, I am writing to object on behalf of the defendants consistent with our recent discussions.

As I have described, plaintiffs may not take the depositions of Mike Small and Jeff Amador for the purpose of inquiring into the Department of Justice's internal process in the course of promulgating the assault weapon regulations at issue here. Such internal process is subject to the deliberative process and official information privileges. In addition, under Government Code section 11350(d), a declaratory relief challenge to a regulation is limited to evidence contained in the administrative rulemaking record, as the Court has already confirmed. I understand that you believe Mr. Small and/or Mr. Amador have been involved previously in responding to public inquiries as to the application of the assault weapons provisions challenged in this case. Our understanding, however, is that any such involvement was limited to referring the public to the relevant statutory or regulatory provisions. In any event, plaintiffs' true purpose in seeking these depositions -- improper inquiry into the Department of Justice's internal regulation considerations -- is belied by the blatant inclusion in the accompanying document requests of regulatory subjects *not even at issue in the case*.

In regard to the deposition notice for Ignatius Chinn, we believe it is important to wait until the parties have clarity from the Court as to the constitutional standard governing plaintiffs' vagueness claims before proceeding. It is my understanding that the Court has not yet acted upon the proposed order submitted by defendants following the summary judgment hearing.

We are prepared to move for a protective order in these regards if necessary, but it is my hope that the parties would be able to work cooperatively in obtaining clarity from the Court as

Jason A. Davis, Esq.
July 18, 2007
Page 2

to the constitutional standard governing plaintiffs' vagueness claims, and in agreeing to drop the depositions of Mr. Small and Mr. Amador. If and when any of these depositions is to be taken, consistent with your assurances to me when you sent out the deposition notices, we will schedule a date and time mutually convenient to the witness and counsel. For now, defendants object to the depositions for the reasons stated above, and will not be appearing next week.

Thank you for your ongoing courtesy and cooperation in this matter.

Sincerely,



DOUGLAS J. WOODS
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

EDMUND G. BROWN JR.
Attorney General

COPY

State of California
DEPARTMENT OF JUSTICE



FAX TRANSMISSION COVER SHEET

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

DATE: July 18, 2007 **TIME:** 10:45 AM **NO. OF PAGES:** 3
(Including Fax Cover Sheet)

TO:

NAME: Jason A. Davis, Esq.
OFFICE: Trutanich Michel, LLP
LOCATION: Long Beach
FAX NO.: (562) 216-4445 **PHONE NO.:** (562) 216-4444

FROM:

NAME: Douglas J. Woods, Deputy Attorney General
OFFICE: Government Law Section
LOCATION: Sacramento
FAX NO.: (916) 324-5567 **PHONE NO.:** (916) 324-4663

MESSAGE/INSTRUCTIONS

Re: Hunt, et al. v. State of California, et al.

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

EXHIBIT D

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. McROBERTS
SAN DIEGO, CA

TRUTANICH • MICHEL • LLP
Attorneys At Law
LOS ANGELES - SAN DIEGO

OF COUNSEL:
JOHN F. MAGHINER
LOS ANGELES, CA

DON B. KAPIS
SAN FRANCISCO, CA

MARK K. BENESSON
NEW YORK, N.Y.

DAVID T. HARDY
TUCSON, AZ

Jason Davis' Direct Contact:
(562) 216-4444
cayalaJDavis@tmlp.com

August 9, 2007

Mr. Douglas J. Woods
Deputy Attorney General
CALIFORNIA DEPARTMENT OF JUSTICE
1300 I Street
Sacramento, CA 95814

VIA FAX (916)324-5567 & U. S. MAIL

Re: **Hunt et al. v. State of California et al.**
Case No: 01CECG03182

Dear Mr. Woods:

I write to memorialize our conversation yesterday and to address some unresolved discovery issues I would also like to thank you for taking the time to go over issues outstanding in the above reference matter.

PROPOSED ORDER CLARIFYING STANDARD OF REVIEW

Regarding your proposal that we seek clarification from the Court on the standard of review that it intends to apply in this matter, we believe that such a proposal would make the upcoming trial more palatable. During our conversation you agreed to draft a proposed memorandum providing both yours and our positions on the standard of review for the Due Process causes of action, with a proposed order. While we do not oppose the concept, such a proposal shall have no bearing on the remaining discovery in this matter -- except as expressly stated herein. Nor are Plaintiffs willing to stipulate to this proposed motion without reviewing and approving the language contained therein. On that point, you agreed to provide our office with a draft by the end of today. We look forward to reviewing the draft and will work in good faith to clarify any ambiguities that may exist regarding the standard of review.

TIMING OF MOTION TO COMPEL

We also agreed that the time to file a motion to compel discovery on all outstanding discovery shall be no later than thirty [30] days from the Court's ruling on the above referenced proposed motion. Having considered that date, we believe that it is too volatile when considered in the light of our previous stipulation that was based upon the proposed judgment -- and went unanswered until August 1, 2007. Thus, as we discussed yesterday, we now recommend an alternative fixed date of no later than August 31, 2007. Please let me know if this date meets with your satisfaction.

Mr. Douglas Woods
August 9, 2007
Page 2

PRODUCTION OF DOCUMENTS

Also, we discussed your lack of production of documents in response to Plaintiff's Supplemental Requests for Production of Documents and Third Set of Requests for Production of Documents. Because trial is quickly approaching, we can no longer provide any delays in discovery. Your office has had more than a sufficient amount of time to respond to these requests, which were initially submitted on February 23, 2007. As such, if we do not receive the requested production by August 17, 2007, we will file our motions to compel production.

As I mentioned in our phone conversation yesterday, my clients are concerned that your office is not pursuing a diligent search for records. Evidencing this is our receipt of documents responsive to our requests through California's Public Records Act that were not included in your responses to our Requests for Production of Documents. As such, we advise you that all responsive documents must be produced – unless identified properly within a privilege log, which we have yet to receive in response to *any* discovery requests.

A supplemental and detailed meet and confer letter addressing all remaining issues is forthcoming.

DEPOSITIONS

Regarding the depositions of Michael Small, Jeff Amador, Ignatius Chinn, and Chris Abad, you informed me that they would not appear for their scheduled depositions because the "standard of review in this matter is not clear" and you believe that we are on a fishing expedition with regard to Michael Small and Jeff Amador. You provide no law in support of your contention that the properly noticed deponents are not obligated to appear for oral examination. Also, regarding Mr. Small and Mr. Amador, I informed you that it is our belief that they play an advisory role in the Department of Justice - Bureau of Firearms Permits Department, which advises permittees on various "assault weapon" related issues.

Out of courtesy, we have already rescheduled these depositions once. Yesterday, we agreed to reschedule the depositions of Messrs. Small, Amador and Abad pursuant to CCP §2016.030. You agreed that re-noticing these depositions is not necessary. As such, the date of these depositions are now August 24, 2007, August 31, 2007, and September 7, 2007 – respectively. All other terms of the deposition notice remain unaltered.

We did not, however, agree to alter the deposition date of Ignatius Chinn - whom you stated will not appear for oral examination on Monday, August 13, 2007 – as scheduled. As such, Mr. Chinn's refusal to appear for the deposition subjects him to penalties. A deponent who disobeys a deposition subpoena in any manner may be punished for contempt without the necessity of a prior order of court directing compliance by the witness [CCP § 2020.240; see CCP §2023.030(e) (contempt sanction for misuse of discovery process)]. A deponent who disobeys a deposition subpoena is also subject to a monetary penalty and the payment of damages to the party aggrieved by his disobedience [CCP § 2020.240; see CCP § 1992 (penalty for disobedience of subpoena)]. In the alternative, the Court may issue a warrant for the arrest of the witness or person who fails to appear [CCP § 1993(a)(1); see CCP §§ 1993(a)(2), (b), 1993.1-1993.2].

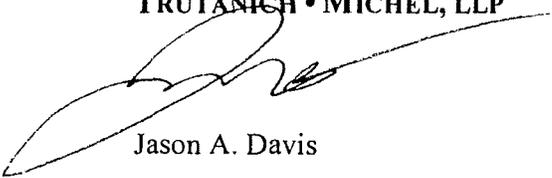
Mr. Douglas Woods
August 9, 2007
Page 3

Your blanket refusal to have the deponents appear is inadequate. As we discussed, the appropriate response would be a motion to Stay and Quash the Deposition Notice, a Motion to Quash or Modify Deposition subpoena, or a Protective Order. You have not made any attempt to make or notice us of any of the above referenced motions. As such, we are prepared to go forward with the deposition on Monday, August 13, 2007. Should Mr. Chinn fail to appear, we will seek a motion to Compel attendance, testimony, production of documents and all costs and fees associated.

If it is Defendants intention to seek any of the above referenced relief from the deposition notice, however, Plaintiffs will voluntarily continue the deposition of Ignatius Chinn until August 17, 2007 in order to permit Defendants the opportunity to have their motion heard.

Sincerely,

TRUTANICH • MICHEL, LLP



Jason A. Davis

JAD/ca

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. MCROBERTS
SAN DIEGO, CA

TRUTANICH · MICHEL · LLP
Attorneys At Law
LOS ANGELES · SAN DIEGO

OF COUNSEL:
JOHN F. MAGNINGER
LOS ANGELES, CA

DON B. KATES
SAN FRANCISCO, CA

MARK K. BENENSON
NEW YORK, N.Y.

DAVID T. HARDY
TUCSON, AZ

Writer's Direct Contact:

FAX TRANSMITTAL SHEET

TO: Douglas Woods
FAX NO: (916)324-5567
TEL. NO: (916) 324-4663
FROM: Jason A. Davis
DATE: August 9, 2007
RE: *Hunt et al. v. State of California et al.,*

THIS FAX CONTAINS COVER PAGE PLUS 3 PAGES. IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT Claudia Ayala AT (562) 216-4444.

SPECIAL INSTRUCTIONS

- PLEASE CALL TO CONFIRM TRANSMITTAL
 PLEASE CALL TO DISCUSS
 FOR YOUR INFORMATION
 OTHER/MESSAGE:

Will follow via U. S. Mail.

THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS BELOW VIA THE U.S. POSTAL SERVICE. THANK YOU.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 3112
CONNECTION TEL 19163245567
SUBADDRESS
CONNECTION ID Att Gen Office-1
ST. TIME 08/09 06:03
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RESULT OK

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. McROBERTS
SAN DIEGO, CA



OF COUNSEL:
JOHN F. MACHINGER
LOS ANGELES, CA

DON B. KATZ
SAN FRANCISCO, CA

MARK K. BENIENSON
NEW YORK, N.Y.

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- FOR YOUR INFORMATION
- OTHER/MESSAGE:
Will follow via U. S. Mail.

EXHIBIT E

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. MCROBERTS
SAN DIEGO, CA

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DON B. KATZ
SAN FRANCISCO, CA

MARK K. BENESSON
NEW YORK, N.Y.

DAVID T. HARDY
TUCSON, AZ

October 16, 2007

Mr. Douglas J. Woods
Deputy Attorney General
California Department of Justice
1300 I Street
Sacramento, CA 95814
VIA OVERNIGHT MAIL

Re: **Hunt, et al. v. State of California, et al.**
County of Fresno, Superior Court Case No: 01CECG03182

Dear Mr. Woods:

Enclosed are the continuances for the previously noticed depositions. We thank you for agreeing that we did not need to file new deposition notices. We have, pursuant to multiple verbal agreements, continued the depositions in light of the fact that you seek clarity in the standard of review. As of yesterday, we provided you with our argument for inclusion in your motion for clarification. While we understand that you seek clarification from the court on the standard of review prior to our depositions, we can no longer hold off on deposing these witnesses. Unfortunately, due to your refusal to provide us with *any* dates that your clients would be available after *repeated* requests, we have chosen the dates of October 29, 2007 through November 1, 2007.

Please feel free to contact me if you have any questions or concerns. You can also reach me by email at jdavis@tmllp.com.

Sincerely,
TRUTANICH • MICHEL, LLP



Jason A. Davis

JAD/ca
Enc.

UPS Internet Shipping: View/Print Label

- 1. Print the label(s):** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
- 2. Fold the printed label at the dotted line.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
- 3. GETTING YOUR SHIPMENT TO UPS**

Customers without a Daily Pickup

 - Schedule a same day or future day Pickup to have a UPS driver pickup all of your Internet Shipping packages.
 - Hand the package to any UPS driver in your area.
 - Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return ServicesSM (including via Ground) are accepted at Drop Boxes.
 - To find the location nearest you, please visit the 'Find Locations' Quick link at ups.com.

Customers with a Daily Pickup

- Your driver will pickup your shipment(s) as usual.

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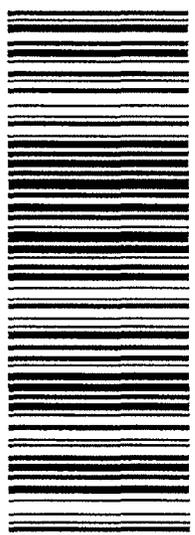
<p>JASON A. DAVIS 562-216-4444 TRUTANICH-MICHEL, LLP 180 E. OCEAN BLVD. LONG BEACH CA 90802</p> <p>SHIP TO: MR. DOUGLAS J. WOODS 562-216-4444 CALIFORNIA DEPARTMENT OF JUSTICE 1300 "I" STREET SACRAMENTO CA 95814-2919</p>	<p>LTR 1 OF 1</p> <p>CA 958 9-02</p> 	<p>UPS NEXT DAY AIR SAVER 1P</p> <p>TRACKING #: 1Z F79 6E0 13 9023 3774</p>		<p>BILLING: P/P</p> <p>Reference #1: HUNT</p>  <p>UPS 9 5 16 0 W03E60 69 0A 37.5007</p>	<p>HUNT</p> 
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EXHIBIT F

1 C. D. Michel --- SBN 144258
Jason A. Davis --- SBN 224250
2 TRUTANICH • MICHEL, LLP
180 East Ocean Blvd., Suite 200
3 Long Beach, CA 90802
Tel: (562) 216.4444

4 Stephen P. Halbrook
5 LAW OFFICES OF STEPHEN P. HALBROOK
10560 Main Street., Suite 404
6 Fairfax, Virginia 22030
Tel: (703) 352.7276

7 Don B. Kates --- SBN 039193
8 BENENSON & KATES
22608 North East 269th Avenue
9 Battleground, Washington 98604
Tel: (360) 666.2688

10
11 Attorneys for Plaintiffs

12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF FRESNO

15 EDWARD W. HUNT, in his official	) CASE NO. 01CECG03182
capacity as District Attorney of Fresno)
16 County, and in his personal capacity as a	) NOTICE OF TAKING DEPOSITION OF
citizen and taxpayer, et. al.,	) CALIFORNIA DEPARTMENT OF JUSTICE
17	) EMPLOYEE MICHAEL SMALL/ REQUEST
Plaintiffs,	) FOR PRODUCTION OF DOCUMENTS
18)
v.)
19	) Date: October 31, 2007
STATE OF CALIFORNIA; WILLIAM	) Time: 10:00 a.m.
20 LOCKYER, Attorney General of the State of	) Place: Phillips Legal Services
California; CALIFORNIA DEPARTMENT	) 350 University Ave., Suite 270
21 OF JUSTICE; Does 1-100;	) Sacramento, CA 95825
22)
Defendants.)
23)

24
25 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

26 NOTICE IS HEREBY GIVEN that Plaintiff EDWARD W. HUNT, in his personal
27 capacity and as citizen and taxpayer, will take the deposition, on oral examination, of California
28 Department of Justice employee MICHAEL SMALL. The deposition will be taken on

1 Wednesday, October 31, 2007, at 10:00 a.m., at Phillips Legal Services located at 350 University
2 Ave., Suite 270, Sacramento, CA 95825.

3 NOTICE IS FURTHER GIVEN that Plaintiff EDWARD W. HUNT intends to cause the
4 proceedings to be recorded stenographically. Plaintiff EDWARD W. HUNT reserves the right to
5 record the deponent's testimony by audiotape, and/or videotape pursuant to C.C.P. §2025.220,
6 stenographically, and/or by real-time transcription pursuant to C.C.P. §2025.20 and to use such
7 recorded testimony at the trial of this matter.

8 The deposition will be taken before a deposition officer who is authorized to administer an
9 oath. If the deposition is not completed on the date specified in this notice, the taking of the
10 deposition will be continued from day to day thereafter, except for Sundays and holidays, at the
11 same place, until completed.

12 NOTICE IS FURTHER GIVEN that MICHAEL SMALL shall bring and produce the
13 following documents at the deposition, at the time and place specified in this notice.

14
15 **DOCUMENTS TO BE PRODUCED AT DEPOSITION**

16 **DEFINITIONS - FLASH SUPPRESSOR**

- 17 1. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor."
18 ("WRITINGS" shall mean writings as defined in Evidence Code Section 250 and shall
19 include, but not be limited to internal memoranda, inter-agency memoranda,
20 correspondence, internal correspondence, inter-agency correspondence, lists, personnel
21 rosters, emails (digital and/or printouts), meeting minutes, notes, facsimiles, facsimile
22 cover sheets, notebooks, computer files - whether on hard disk, floppy diskette, or any
23 removable-media drive, voice mail printouts, and all other papers, books, and computer
24 files.)
25 2. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
26 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (b).
27 3. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
28 defined by Penal Code section 12276.1, subsection (a)(1)(E).

1 4. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
2 defined by Penal Code section 12276.1, subsection (a)(4)(A).

3

4 **DEFINITIONS - PERMANENTLY ALTER**

5 5. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter."

6 6. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
7 stated in Penal Code section 12020, subsection (b)(15).

8 7. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
9 stated in Penal Code section 12020, subsection (b)(25)(A).

10 8. All WRITINGS since January 1, 1999, relating to the definition of "permanently" as stated
11 in Penal Code section 12088.2, subsection (b).

12 9. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
13 stated in Penal Code section 12276, subsection (d)(2).

14 10. All WRITINGS since January 1, 1999, relating to the definition of "permanently
15 inoperable" as stated in Penal Code section 12285, subsection (b)(1).

16 11. All WRITINGS since January 1, 1999, relating to the definition of "permanently
17 deactivated" as stated in Penal Code section 12285, subsection (b)(3).

18 12. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
19 in Penal Code section 12020, subsection (b)(25).

20 13. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
21 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(1).

22 14. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
23 in Penal Code section 12276.1, subsection (a)(2).

24 15. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
25 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4).

26 16. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
27 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4)(D).

28 17. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated

- 1 in Penal Code section 12276.1, subsection (a)(5).
- 2 18. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
3 in Penal Code section 12276.1, subsection (d)(2).
- 4 19. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine."
- 5 20. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine" as
6 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (a).
- 7 21. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
8 term "flash suppressor."
- 9 22. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
10 term "detachable magazine."
- 11 23. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
12 phrase "capacity to accept a detachable magazine."
- 13 24. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
14 phrase "permanently alter."
- 15 25. All photographs of "flash suppressors."
- 16 26. All photographs created by the California Department of Justice, Firearms Division since
17 January 1, 1999, of any object examined for the purposes of determining whether said
18 object was a "flash suppressor," where said object was deemed by the California
19 Department of Justice, Firearms Division not to be a "flash suppressor."
- 20 27. All photographs of firearm receivers deemed by the California Department of Justice
21 Firearms Division since January 1, 1999 to have the "capacity to accept a detachable
22 magazine."
- 23 28. All photographs of firearms deemed by the California Department of Justice Firearms
24 Division since January 1, 1999, to not have the "capacity to accept a detachable
25 magazine."
26

27 **EXEMPLARS - FLASH SUPPRESSORS**

- 28 29. All "flash suppressors" currently in the custody of the California Department of Justice,

1 Firearms Division.

2 30 All "flash suppressors" exemplars currently in the custody of the California Department of
3 Justice, Firearms Division.

4

5

EXEMPLARS - PERMANENTLY ALTER

6 31. All "permanently altered" magazines currently in the custody of the California Department
7 of Justice, Firearms Division.

8 32. All "permanently altered" magazine exemplars currently in the custody of the California
9 Department of Justice, Firearms Division.

10 33. Any device examined for the purposes of determining whether it was a "flash suppressor,"
11 where the device was deemed by the California Department of Justice, Firearms Division
12 not to be a "flash suppressor."

13 34. All firearm receivers that are presently being held in the custody and/or control of the
14 California Department of Justice's, Firearms Division as exemplars of modifications that
15 render a receiver no longer "capable of accepting a detachable magazine."

16

17

MINUTES

18 35. All minutes of meetings from the California Department of Justice's, Firearms Division
19 relating to the definition of "assault weapon."

20

21

EXPERT TESTIMONY

22 36. All transcripts of YOUR testimony in any criminal case relating to firearms. ("YOU"
23 and/or "YOUR" shall mean YOU, YOUR officers, employees, principals, insurance
24 companies, or anyone acting on YOUR behalf.)

25 37. All transcripts of YOUR testimony in any criminal case relating to firearms.

26 38. All transcripts of YOUR testimony in any criminal case relating to "assault weapons."

27 39. All transcripts of YOUR testimony in any criminal case relating to the definition of "flash
28 suppressor."

- 1 40. All transcripts of YOUR testimony in any criminal case relating to the definition of
2 "detachable magazine."
- 3 41. All transcripts of YOUR testimony in any criminal case relating to the definition of
4 "capacity to accept a detachable magazine."
- 5 42. All transcripts of YOUR testimony in any criminal case relating to the definition of
6 "permanently alter."
- 7 43. All transcripts of YOUR testimony in any civil lawsuit relating to firearms.
- 8 44. All transcripts of YOUR testimony in any civil lawsuit relating to "assault weapons."
- 9 45. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of "flash
10 suppressor."
- 11 46. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
12 "detachable magazine."
- 13 47. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
14 "capacity to accept a detachable magazine."
- 15 48. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
16 "permanently alter."
- 17 49. All transcripts of YOUR statements relating to firearms.
- 18 50. All transcripts of YOUR statements relating to the definition of "assault weapon."
- 19 51. All transcripts of YOUR statements relating to the definition of "flash suppressor."
- 20 52. All transcripts of YOUR statements relating to the definition of "detachable magazine."
- 21 53. All transcripts of YOUR statements relating to the definition of "capacity to accept a
22 detachable magazine."
- 23 54. All transcripts of YOUR statements relating to the definition of "permanently alter."
- 24 55. All INVESTIGATION REPORTS ("INVESTIGATION REPORTS" are hereinafter
25 defined as any WRITING that is identified as an "investigation report" on the face of the
26 WRITING) that refer to "assault weapons."
- 27 56. All INVESTIGATION REPORTS that refer or relate any "detachable magazine."
- 28 57. All INVESTIGATION REPORTS that refer or relate any "flash suppressor."

1 58. All INVESTIGATION REPORTS that refer or relate to the permanence of any
2 modification to any firearm.

3
4 **REFERENCE MATERIALS**

5 59. All WRITINGS since January 1, 1999, consisting of, regarding, referring to, and/or
6 relating in any way to any and all REFERENCE MATERIALS used by YOU in the
7 drafting of California Code of Regulations Title 11, section 5469(a), formerly section
8 978.20(a), which states:

9 "detachable magazine" means any ammunition feeding device that
10 can be removed readily from the firearm with neither disassembly of
11 the firearm action nor use of a tool being required. A bullet or
12 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.

13 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
14 academic, scholarly, scientific, reference or other authorities and/or investigational
15 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in
16 performing any investigation, inquiry, or study, etc. in drafting any text which consists of,
17 relates to, refers to, or in any way regards Penal Code section 12276.1. This includes, but
18 is not limited to academic and reference works such as technical manuals, encyclopedia.,
19 Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses,
20 correspondence, emails, etc.).

21 60. All WRITINGS consisting of, regarding, referring to, and/or relating in any way to any and
22 all REFERENCE MATERIALS used by YOU in the drafting of California Code of
23 Regulations Title 11, section 5469(a), formerly section 978.20(b), which states:

24 "flash suppressor" means any device designed, intended, or that
25 functions to perceptibly reduce or redirect muzzle flash from the
shooter's field of vision.

26 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
27 academic, scholarly, scientific, reference or other authorities and/or investigational
28 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in

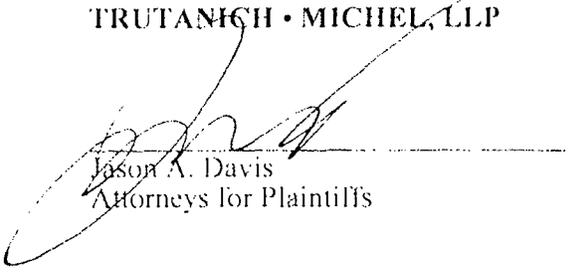
1 performing any investigation, inquiry, or study, etc. in drafting any text which consists of,
2 relates to, refers to, or in any way regards Penal Code section 12276.1. This includes, but
3 is not limited to academic and reference works such as technical manuals, encyclopedia.,
4 Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses,
5 correspondence, emails, etc.).
6

7 **INVESTIGATION REPORTS**

- 8 61. All "investigation reports" identifying Ignatius Chinn as a Reporting Agent or Supervisor
9 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
10 62. All "investigation reports" identifying Juan Solano as a Reporting Agent or Supervisor
11 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
12 63. All "investigation reports" identifying Dale Ferranto as a Reporting Agent or Supervisor
13 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
14 64. All "investigation reports" identifying Chris Abad as a Reporting Agent or Supervisor
15 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.

16 DATED: October 16, 2007

TRUTANICH • MICHEL, LLP

17
18 
19 Jason A. Davis
20 Attorneys for Plaintiffs
21
22
23
24
25
26
27
28

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

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

7 On October 16, 2007, I served the foregoing document(s) described as

8 **NOTICE OF TAKING DEPOSITION OF CALIFORNIA DEPARTMENT
9 OF EMPLOYEE MICHAEL SMALL/ REQUEST FOR
10 PRODUCTION OF DOCUMENTS**

11 on the interested parties in this action by placing

12 the original

13 a true and correct copy

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

15 Douglas J. Woods

16 ATTORNEY GENERAL'S OFFICE

17 1300 "I" Street, Ste. 125

18 Sacramento, CA 94244-2550

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

25 Executed on October 16, 2007, at Long Beach, California.

26 X (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
27 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under
28 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.

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

Executed on October 16, 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.

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EXHIBIT G

1 C. D. Michel — SBN 144258
Jason A. Davis — SBN 224250
2 TRUTANICH • MICHEL, LLP
180 East Ocean Blvd., Suite 200
3 Long Beach, CA 90802
Tel: (562) 216.4444

4 Stephen P. Halbrook
5 LAW OFFICES OF STEPHEN P. HALBROOK
10560 Main Street., Suite 404
6 Fairfax, Virginia 22030
Tel: (703) 352.7276

7 Don B. Kates — SBN 039193
8 BENENSON & KATES
22608 North East 269th Avenue
9 Battleground, Washington 98604
Tel: (360) 666.2688

10

11 Attorneys for Plaintiffs

12

13

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14

IN AND FOR THE COUNTY OF FRESNO

15

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

17

Plaintiffs,

18

v.

19

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

22

Defendants.

23

24

25

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

26

NOTICE IS HEREBY GIVEN that Plaintiff EDWARD W. HUNT, in his personal
27 capacity and as citizen and taxpayer, will take the deposition, on oral examination, of California
28 Department of Justice employee JEFF AMADOR. The deposition will be taken on Thursday,

1 November 1, 2007, at 10:00 a.m., at Phillips Legal Services located at 350 University Ave., Suite
2 270, Sacramento, CA 95825.

3 NOTICE IS FURTHER GIVEN that Plaintiff EDWARD W. HUNT intends to cause the
4 proceedings to be recorded stenographically. Plaintiff EDWARD W. HUNT reserves the right to
5 record the deponent's testimony by audiotape, and/or videotape pursuant to C.C.P. §2025.220,
6 stenographically, and/or by real-time transcription pursuant to C.C.P. §2025.20 and to use such
7 recorded testimony at the trial of this matter.

8 The deposition will be taken before a deposition officer who is authorized to administer an
9 oath. If the deposition is not completed on the date specified in this notice, the taking of the
10 deposition will be continued from day to day thereafter, except for Sundays and holidays, at the
11 same place, until completed.

12 NOTICE IS FURTHER GIVEN that JEFF AMADOR shall bring and produce the
13 following documents at the deposition, at the time and place specified in this notice.

14
15 **DOCUMENTS TO BE PRODUCED AT DEPOSITION**

16 **DEFINITIONS - FLASH SUPPRESSOR**

- 17 1. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor."
18 ("WRITINGS" shall mean writings as defined in Evidence Code Section 250 and shall
19 include, but not be limited to internal memoranda, inter-agency memoranda,
20 correspondence, internal correspondence, inter-agency correspondence, lists, personnel
21 rosters, emails (digital and/or printouts), meeting minutes, notes, facsimiles, facsimile
22 cover sheets, notebooks, computer files whether on hard disk, floppy diskette, or any
23 removable-media drive, voice mail printouts, and all other papers, books, and computer
24 files.)
- 25 2. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
26 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (b).
- 27 3. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
28 defined by Penal Code section 12276.1, subsection (a)(1)(E).

1 4. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
2 defined by Penal Code section 12276.1, subsection (a)(4)(A).

3

4

DEFINITIONS - PERMANENTLY ALTER

5 5. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter."

6 6. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
7 stated in Penal Code section 12020, subsection (b)(15).

8 7. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
9 stated in Penal Code section 12020, subsection (b)(25)(A).

10 8. All WRITINGS since January 1, 1999, relating to the definition of "permanently" as stated
11 in Penal Code section 12088.2, subsection (b).

12 9. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
13 stated in Penal Code section 12276, subsection (d)(2).

14 10. All WRITINGS since January 1, 1999, relating to the definition of "permanently
15 inoperable" as stated in Penal Code section 12285, subsection (b)(1).

16 11. All WRITINGS since January 1, 1999, relating to the definition of "permanently
17 deactivated" as stated in Penal Code section 12285, subsection (b)(3).

18 12. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
19 in Penal Code section 12020, subsection (b)(25).

20 13. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
21 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(1).

22 14. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
23 in Penal Code section 12276.1, subsection (a)(2).

24 15. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
25 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4).

26 16. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
27 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4)(D).

28 17. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated

- 1 in Penal Code section 12276.1, subsection (a)(5).
- 2 18. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
3 in Penal Code section 12276.1, subsection (d)(2).
- 4 19. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine."
- 5 20. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine" as
6 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (a).
- 7 21. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
8 term "flash suppressor."
- 9 22. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
10 term "detachable magazine."
- 11 23. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
12 phrase "capacity to accept a detachable magazine."
- 13 24. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
14 phrase "permanently alter."
- 15 25. All photographs of "flash suppressors."
- 16 26. All photographs created by the California Department of Justice, Firearms Division since
17 January 1, 1999, of any object examined for the purposes of determining whether said
18 object was a "flash suppressor," where said object was deemed by the California
19 Department of Justice, Firearms Division not to be a "flash suppressor."
- 20 27. All photographs of firearm receivers deemed by the California Department of Justice
21 Firearms Division since January 1, 1999 to have the "capacity to accept a detachable
22 magazine."
- 23 28. All photographs of firearms deemed by the California Department of Justice Firearms
24 Division since January 1, 1999, to not have the "capacity to accept a detachable
25 magazine."
26

27 **EXEMPLARS - FLASH SUPPRESSORS**

- 28 29. All "flash suppressors" currently in the custody of the California Department of Justice,

1 Firearms Division.

2 30 All "flash suppressors" exemplars currently in the custody of the California Department of
3 Justice, Firearms Division.

4

5

EXEMPLARS - PERMANENTLY ALTER

6 31. All "permanently altered" magazines currently in the custody of the California Department
7 of Justice, Firearms Division.

8 32. All "permanently altered" magazine exemplars currently in the custody of the California
9 Department of Justice, Firearms Division.

10 33. Any device examined for the purposes of determining whether it was a "flash suppressor,"
11 where the device was deemed by the California Department of Justice, Firearms Division
12 not to be a "flash suppressor."

13 34. All firearm receivers that are presently being held in the custody and/or control of the
14 California Department of Justice's, Firearms Division as exemplars of modifications that
15 render a receiver no longer "capable of accepting a detachable magazine."

16

17

MINUTES

18 35. All minutes of meetings from the California Department of Justice's, Firearms Division
19 relating to the definition of "assault weapon."

20

21

EXPERT TESTIMONY

22 36. All transcripts of YOUR testimony in any criminal case relating to firearms. ("YOU"
23 and/or "YOUR" shall mean YOU, YOUR officers, employees, principals, insurance
24 companies, or anyone acting on YOUR behalf.)

25 37. All transcripts of YOUR testimony in any criminal case relating to firearms.

26 38. All transcripts of YOUR testimony in any criminal case relating to "assault weapons."

27 39. All transcripts of YOUR testimony in any criminal case relating to the definition of "flash
28 suppressor."

- 1 40. All transcripts of YOUR testimony in any criminal case relating to the definition of
2 "detachable magazine."
- 3 41. All transcripts of YOUR testimony in any criminal case relating to the definition of
4 "capacity to accept a detachable magazine."
- 5 42. All transcripts of YOUR testimony in any criminal case relating to the definition of
6 "permanently alter."
- 7 43. All transcripts of YOUR testimony in any civil lawsuit relating to firearms.
- 8 44. All transcripts of YOUR testimony in any civil lawsuit relating to "assault weapons."
- 9 45. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of "flash
10 suppressor."
- 11 46. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
12 "detachable magazine."
- 13 47. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
14 "capacity to accept a detachable magazine."
- 15 48. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
16 "permanently alter."
- 17 49. All transcripts of YOUR statements relating to firearms.
- 18 50. All transcripts of YOUR statements relating to the definition of "assault weapon."
- 19 51. All transcripts of YOUR statements relating to the definition of "flash suppressor."
- 20 52. All transcripts of YOUR statements relating to the definition of "detachable magazine."
- 21 53. All transcripts of YOUR statements relating to the definition of "capacity to accept a
22 detachable magazine."
- 23 54. All transcripts of YOUR statements relating to the definition of "permanently alter."
- 24 55. All INVESTIGATION REPORTS ("INVESTIGATION REPORTS" are hereinafter
25 defined as any WRITING that is identified as an "investigation report" on the face of the
26 WRITING) that refer to "assault weapons."
- 27 56. All INVESTIGATION REPORTS that refer or relate any "detachable magazine."
- 28 57. All INVESTIGATION REPORTS that refer or relate any "flash suppressor."

1 58. All INVESTIGATION REPORTS that refer or relate to the permanence of any
2 modification to any firearm.

3
4 **REFERENCE MATERIALS**

5 59. All WRITINGS since January 1, 1999, consisting of, regarding, referring to, and/or
6 relating in any way to any and all REFERENCE MATERIALS used by YOU in the
7 drafting of California Code of Regulations Title 11, section 5469(a), formerly section
8 978.20(a), which states:

9 "detachable magazine" means any ammunition feeding device that
10 can be removed readily from the firearm with neither disassembly of
11 the firearm action nor use of a tool being required. A bullet or
12 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.

13 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
14 academic, scholarly, scientific, reference or other authorities and/or investigational
15 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in
16 performing any investigation, inquiry, or study, etc. in drafting any text which consists of,
17 relates to, refers to, or in any way regards Penal Code section 12276.1. This includes, but
18 is not limited to academic and reference works such as technical manuals, encyclopedia.,
19 Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses,
20 correspondence, emails, etc.).

21 60. All WRITINGS consisting of, regarding, referring to, and/or relating in any way to any and
22 all REFERENCE MATERIALS used by YOU in the drafting of California Code of
23 Regulations Title 11, section 5469(a), formerly section 978.20(b), which states:

24 "flash suppressor" means any device designed, intended, or that
25 functions to perceptibly reduce or redirect muzzle flash from the
shooter's field of vision.

26 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
27 academic, scholarly, scientific, reference or other authorities and/or investigational
28 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in

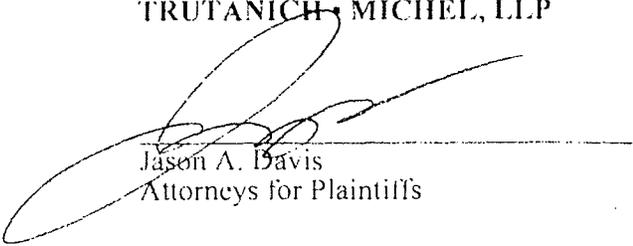
1 performing any investigation, inquiry, or study, etc. in drafting any text which consists of,
2 relates to, refers to, or in any way regards Penal Code section 12276.1. This includes, but
3 is not limited to academic and reference works such as technical manuals, encyclopedia.,
4 Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses,
5 correspondence, emails, etc.).

6
7 **INVESTIGATION REPORTS**

- 8 61. All "investigation reports" identifying Ignatius Chinn as a Reporting Agent or Supervisor
9 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
- 10 62. All "investigation reports" identifying Juan Solano as a Reporting Agent or Supervisor
11 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
- 12 63. All "investigation reports" identifying Dale Ferranto as a Reporting Agent or Supervisor
13 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
- 14 64. All "investigation reports" identifying Chris Abad as a Reporting Agent or Supervisor
15 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.

16 DATED: October 16, 2007

TRUTANICH MICHEL, LLP

17
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19 
20 Jason A. Davis
21 Attorneys for Plaintiffs
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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 October 16, 2007, I served the foregoing document(s) described as

**NOTICE OF TAKING DEPOSITION OF CALIFORNIA DEPARTMENT
OF JUSTICE EMPLOYEE JEFF AMADOR/ REQUEST FOR
PRODUCTION OF DOCUMENTS**

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 October 16, 2007, at Long Beach, California.

(VIA 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.

(PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
Executed on October 16, 2007, at Long Beach, California.

(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.

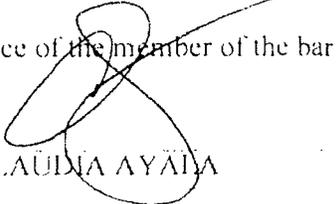

CLAUDIA AYALA

EXHIBIT H

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



FAX TRANSMISSION COVER SHEET

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

DATE: October 25, 2007 **TIME:** 4:³⁶~~55~~ p.m. **NO. OF PAGES:** 3
(Including Fax Cover Sheet)

TO:

NAME: Jason A. Davis, Esq.
OFFICE: Trutanich Michel, LLP
LOCATION: Long Beach
FAX NO.: (562) 216-4445 **PHONE NO.:** (562) 216-4444

FROM:

NAME: Mark Beckington, Deputy Attorney General
OFFICE: Government Law Section
LOCATION: Los Angeles
FAX NO.: 213/897-1071 **PHONE NO.:** 213/897-1096

MESSAGE/INSTRUCTIONS

Re: Hunt, et al. v. State of California, et al., 01CECG03182

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

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013

Public: (213) 897-2000
Telephone: (213) 897-1096
Facsimile: (213) 897-1071
E-Mail: Mark.Beckington@doj.ca.gov

October 25, 2007

Via Facsimile and First Class Mail

Jason A. Davis, Esq.
Trutanich • Michel, LLP
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802

RE: Hunt, et al. v. State of California, et al.
Superior Court of California, County of Fresno, Case No. 01CECG03182

Dear Mr. Davis:

This letter will confirm my conversations with you on Tuesday and Wednesday of this week concerning the deposition notices served by your office.

The notices, which were served by overnight mail on October 16, set the depositions of Ignatius Chinn, Cris Abad, Mike Small and Jeff Amador for October 29 through November 1 in Sacramento. Although I understand that the parties have had past discussions regarding the setting of depositions, the particular dates for these depositions were not cleared with the Attorney General's Office in advance. As a practical matter, including the fact that I have just taken over as the assigned deputy, the depositions cannot go forward on the dates designated in the notices. Therefore, I have notified you that the witnesses and the Attorney General's Office will not be appearing for the depositions as scheduled.

Further, I would note that Doug Woods, the deputy previously assigned to this case, has stated multiple objections to prior notices of deposition directed to these particular deponents. The issues raised by those objections have not been resolved. I reiterate and incorporate the objections previously made by Mr. Woods and submit that the parties will need to meet and confer to resolve them before proceeding with the depositions.

In a show of good faith, however, I have represented that I will contact the deponents regarding their availability. As soon as this information is available, I will contact you to discuss setting a deposition schedule that is mutually convenient for the parties and the attorneys. My agreement to obtain these dates is not intended as a waiver of any objection stated or incorporated herein.

Jason A. Davis, Esq.
October 25, 2007
Page 2

This letter will constitute a notice of objection to the deposition notices pursuant to Code of Civil Procedure § 2025.410 for the reasons stated above and incorporated herein.

Finally, I understand that this litigation has been conducted with both sides extending professional courtesies, particularly with respect to discovery, and I want to assure you that this letter is written in that spirit. It is my hope that we will be able to informally resolve the issues relating to these depositions.

Please call if you have any questions or comments about the foregoing.

Sincerely,



MARK R. BECKINGTON
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

MRB:mb

EXHIBIT I

CARMEN A. TRUTANICH
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LOS ANGELES, CA

GLENN S. McROBERTS
SAN DIEGO, CA

TRUTANICH • MICHEL • LLP
Attorneys At Law
LOS ANGELES • SAN DIEGO

OF COUNSEL:
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LOS ANGELES, CA

DON B. KATES
SAN FRANCISCO, CA

MARK K. BENENSON
NEW YORK, N.Y.

DAVID T. HARDY
TUCSON, AZ

Jason Davis' Direct Contact:
(562) 216-4458
jdavis@tmllp.com

October 29, 2007

Mr. Mark Beckington
Deputy Attorney General
Government Law Section
California Department of Justice
300 South Spring St., Ste. 1702
Los Angeles, CA 90013

VIA FAX (213) 897-1071 & U. S. MAIL

**Re: Hunt, et al. v. State of California, et al.
County of Fresno, Superior Court Case No: 01CECG03182**

Dear Mr. Beckington:

I write regarding your letter dated October 25, 2007, which addressed the notices served by overnight mail on October 16, 2007. Those notices set the depositions of Ignatius Chinn, Chris Abad, Mike Small and Jeff Amador for October 29 through November 1 in Sacramento.

You informed me verbally during our conversation on October 24, 2007 and in your letter that you will not produce the deponents on the above referenced dates. These dates more than satisfy the minimum 10 days notice required for depositions. Further, your office has been on notice of these depositions since they were initially served on June 28, 2007, continued on August 15, 2007 and subsequently taken off calendar until an agreed upon date was provided. You also state that though you "understand that the parties have had past discussions regarding the setting of depositions, the particular dates for these depositions were not cleared with the Attorney General's office in advance." We agree. These dates were not cleared in advance because Mr. Woods, after multiple attempts, both in writing and verbally, refused to provide any dates over the course of several months.

You state that Mr. Woods has provided multiple objections regarding the depositions of "these particular deponents." Two of these deponents are identified in your discovery responses as persons who can identify "flash suppressors" without test-firing the devices; the other two were both directly involved in the drafting of the regulations and have direct contact with permittees and the general public who rely on their advice for clarification of the regulations and/or have been investigated by the same. If you do not wish to produce the deponents, I suggest you seek a protective order.

In a show of "good faith," you state that you will contact the deponents regarding their availability." I have been requesting availability dates for months. None were provided. Having reset

Mr. Mark Beckington
October 29, 2007
Page 2

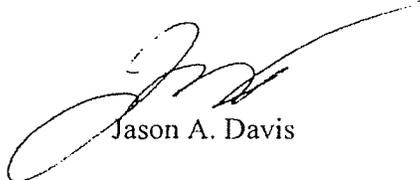
the depositions, you have had since October 16, 2007 to contact these four deponents to obtain alternative dates.

It has always been our hope to informally resolve this dispute. Thus, we request reasonable and timely alternative dates for the above referenced depositions by Wednesday, October 31, 2007. If we do not receive any reasonable and timely alternative dates for each of the persons noticed for deposition by the end of Wednesday, October 31, 2007, we will be forced to seek a motion to compel.

We understand that you need time to acquaint yourself with the details of the case. But, you should be aware that this trial is approaching, and we must complete discovery shortly. We have been more than willing to consider extensions and have even provided you with an argument for the motion for clarification regarding the standard of review. We are, however, compelled to continue forward towards trial regardless of whether the court issues an order on the standard – because he has not and may not until the time of trial.

Additionally, with regard to your proposed stipulation for clarification of the standard of review, we have not received your final draft as of today. If you intend on going forward with that motion, please advise.

Sincerely,
TRUTANICH • MICHEL, LLP



Jason A. Davis

JAD/ca
Enc.

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. McROBERTS
SAN DIEGO, CA

Writer's Direct Contact:

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Attorneys At Law
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OF COUNSEL:
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DON B. KADES
SAN FRANCISCO, CA

MARK K. BESENSON
NEW YORK, N.Y.

DAVID T. HARDY
TUCSON, AZ

FAX TRANSMITTAL SHEET

TO: Mr. Mark Beckington
FAX NO: (213) 897-1071
TEL. NO: (213) 897-1096
FROM: Jason A. Davis
DATE: October 29, 2007
RE: *Hunt et al., v. State of California et al.,*

THIS FAX CONTAINS COVER PAGE PLUS 2 PAGES. IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT Claudia Ayala AT (562) 216-4444.

SPECIAL INSTRUCTIONS

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THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS BELOW VIA THE U.S. POSTAL SERVICE. THANK YOU.

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C. D. MICHEL
LOS ANGELES, CA

GLENN S. MCROBERTS
SAN DIEGO, CA

TRUTANICH • MICHEL • LLP
Attorneys At Law
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OF COUNSEL:
JOHN F. MACHENGER
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NEW YORK, N.Y.

DAVID T. HARDY
TUCSON, AZ

Writer's Direct Contact:

FAX TRANSMITTAL SHEET

TO: Mr. Mark Beckington
FAX NO: (213) 897-1071
TEL. NO: (213) 897-1096
FROM: Jason A. Davis
DATE: October 29, 2007
RE: *Hunt et al., v. State of California et al.,*

THIS FAX CONTAINS COVER PAGE PLUS 2 PAGES. IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT Claudia Ayala AT (562) 216-4444.

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EXHIBIT J

CARMEN A. FROENDEL
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GLENN S. McROBERTS
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Jason Davis' Direct Contact
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jdavis@tmllp.com

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OF COUNSEL
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LOS ANGELES, CA

DENNIS B. KATZ
SAN FRANCISCO, CA

MARK K. BENTSON
NEW YORK, N.Y.

DAVID E. HAYDY
TUCSON, AZ

November 7, 2007

Mr. Mark Beckington
Deputy Attorney General
California Department of Justice
1300 I Street
Sacramento, CA 95814
VIA FAX (213) 897-1071 & U. S. MAIL

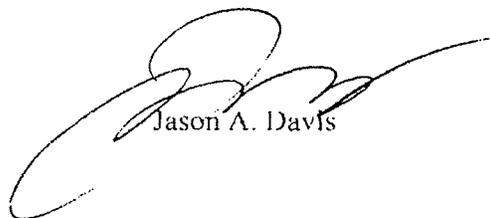
Re: Hunt, et al. v. State of California, et al.
County of Fresno, Superior Court Case No: 01CECG03182

Dear Mr. Beckington:

This letter will confirm our conversation on November 5, 2007, wherein you graciously granted Plaintiffs' an extension of time to respond to all currently outstanding discovery -- including Defendants' Request for Production of Documents, Supplemental Special Interrogatories and Supplemental Form Interrogatories. The responses will be due on November 14, 2007. Also, we have yet to receive any proposed deposition dates for Ignatius Chinn, Michael Small, Jeff Amador and Chris Abad. Per our conversation you were awaiting confirmation from one deponent. I am happy to depose those that did confirm the week of December 3rd. Please clarify which deponents are available and on which specific dates for that week.

Thank you once again for your ongoing cooperation in this matter. Please do not hesitate to contact me if you have any questions or concerns. You can also reach me by email at jdavis@tmllp.com.

Sincerely,
TRUTANICH • MICHEL, LLP



Jason A. Davis

JAD/ca

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. McROBERTS
SAN DIEGO, CA

Writer's Direct Contact:

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OF COUNSEL
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DON B. KATLS
SAN FRANCISCO, CA

MARK K. BENLSON
NEW YORK, N.Y.

DAVID T. HARDA
TUCSON, AZ

FAX TRANSMITTAL SHEET

TO: Mr. Mark Beckington
FAX NO: (213) 897-1071
TEL. NO: (213) 897-1096
FROM: Jason A. Davis
DATE: November 8, 2007
RE: *Hunt et al., v. State of California et al.,*

THIS FAX CONTAINS COVER PAGE PLUS 1 PAGES. IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT Claudia Ayala AT (562) 216-4444.

SPECIAL INSTRUCTIONS

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CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. McROBERTS
SAN DIEGO, CA

TRUTANICH · MICHEL · LLP
Attorneys At Law
LOS ANGELES · SAN DIEGO

OF COUNSEL:
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LOS ANGELES, CA

DON B. KATES
SAN FRANCISCO, CA

MARK K. BENESSON
NEW YORK, N.Y.

DAVID T. HARDY
TUCSON, AZ

Writer's Direct Contact:

FAX TRANSMITTAL SHEET

TO: Mr. Mark Beckington
FAX NO: (213) 897-1071
TEL. NO: (213) 897-1096
FROM: Jason A. Davis
DATE: November 8, 2007
RE: *Hunt et al., v. State of California et al.,*

THIS FAX CONTAINS COVER PAGE PLUS 1 PAGES. IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT Claudia Ayala AT (562) 216-4444.

SPECIAL INSTRUCTIONS

- PLEASE CALL TO CONFIRM TRANSMITTAL
- PLEASE CALL TO DISCUSS
- FOR YOUR INFORMATION
- OTHER/MESSAGE:

Will follow via U. S. Mail.

EXHIBIT K

1 C. D. Michel --- SBN 144258
Jason A. Davis --- SBN 224250
2 TRUTANICH • MICHEL, LLP
180 East Ocean Blvd., Suite 200
3 Long Beach, CA 90802
Tel: (562) 216.4444

4 Stephen P. Halbrook
5 LAW OFFICES OF STEPHEN P. HALBROOK
10560 Main Street., Suite 404
6 Fairfax, Virginia 22030
Tel: (703) 352.7276

7 Don B. Kates --- SBN 039193
8 BENENSON & KATES
22608 North East 269th Avenue
9 Battleground, Washington 98604
Tel: (360) 666.2688

10

11 Attorneys for Plaintiffs

12

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF FRESNO

15 EDWARD W. HUNT, in his official) CASE NO. 01CECG03182
capacity as District Attorney of Fresno)
16 County, and in his personal capacity as a) **NOTICE OF TAKING DEPOSITION OF**
citizen and taxpayer, et. al.,) **CALIFORNIA DEPARTMENT OF JUSTICE**
17) **EMPLOYEE MICHAEL SMALL/ REQUEST**
Plaintiffs,) **FOR PRODUCTION OF DOCUMENTS**

18

19

20 STATE OF CALIFORNIA; WILLIAM) Date: December 4, 2007
LOCKYER, Attorney General of the State of) Time: 10:00 a.m.
California; CALIFORNIA DEPARTMENT) Place: Phillips Legal Services
21 OF JUSTICE; Does 1-100;) 350 University Ave., Suite 270
Sacramento, CA 95825

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:
NOTICE IS HEREBY GIVEN that Plaintiff EDWARD W. HUNT, in his personal
capacity and as citizen and taxpayer, will take the deposition, on oral examination, of California
Department of Justice employee MICHAEL SMALL. The deposition will be taken on Tuesday.

1 December 4, 2007, at 10:00 a.m., at Phillips Legal Services located at 350 University Ave., Suite
2 270, Sacramento, CA 95825.

3 NOTICE IS FURTHER GIVEN that Plaintiff EDWARD W. HUNT intends to cause the
4 proceedings to be recorded stenographically. Plaintiff EDWARD W. HUNT reserves the right to
5 record the deponent's testimony by audiotape, and/or videotape pursuant to C.C.P. §2025.220,
6 stenographically, and/or by real-time transcription pursuant to C.C.P. §2025.20 and to use such
7 recorded testimony at the trial of this matter.

8 The deposition will be taken before a deposition officer who is authorized to administer an
9 oath. If the deposition is not completed on the date specified in this notice, the taking of the
10 deposition will be continued from day to day thereafter, except for Sundays and holidays, at the
11 same place, until completed.

12 NOTICE IS FURTHER GIVEN that MICHAEL SMALL shall bring and produce the
13 following documents at the deposition, at the time and place specified in this notice.

14
15 **DOCUMENTS TO BE PRODUCED AT DEPOSITION**

16 **DEFINITIONS - FLASH SUPPRESSOR**

- 17 1. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor."
18 ("WRITINGS" shall mean writings as defined in Evidence Code Section 250 and shall
19 include, but not be limited to internal memoranda, inter-agency memoranda,
20 correspondence, internal correspondence, inter-agency correspondence, lists, personnel
21 rosters, emails (digital and/or printouts), meeting minutes, notes, facsimiles, facsimile
22 cover sheets, notebooks, computer files – whether on hard disk, floppy diskette, or any
23 removable-media drive, voice mail printouts, and all other papers, books, and computer
24 files.)
- 25 2. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
26 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (b).
- 27 3. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
28 defined by Penal Code section 12276.1, subsection (a)(1)(E).

1 4. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
2 defined by Penal Code section 12276.1, subsection (a)(4)(A).

3

4

DEFINITIONS - PERMANENTLY ALTER

5 5. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter."

6 6. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
7 stated in Penal Code section 12020, subsection (b)(15).

8 7. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
9 stated in Penal Code section 12020, subsection (b)(25)(A).

10 8. All WRITINGS since January 1, 1999, relating to the definition of "permanently" as stated
11 in Penal Code section 12088.2, subsection (b).

12 9. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
13 stated in Penal Code section 12276, subsection (d)(2).

14 10. All WRITINGS since January 1, 1999, relating to the definition of "permanently
15 inoperable" as stated in Penal Code section 12285, subsection (b)(1).

16 11. All WRITINGS since January 1, 1999, relating to the definition of "permanently
17 deactivated" as stated in Penal Code section 12285, subsection (b)(3).

18 12. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
19 in Penal Code section 12020, subsection (b)(25).

20 13. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
21 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(1).

22 14. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
23 in Penal Code section 12276.1, subsection (a)(2).

24 15. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
25 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4).

26 16. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
27 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4)(D).

28 17. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated

- 1 in Penal Code section 12276.1, subsection (a)(5).
- 2 18. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
- 3 in Penal Code section 12276.1, subsection (d)(2).
- 4 19. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine."
- 5 20. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine" as
- 6 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (a).
- 7 21. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
- 8 term "flash suppressor."
- 9 22. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
- 10 term "detachable magazine."
- 11 23. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
- 12 phrase "capacity to accept a detachable magazine."
- 13 24. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
- 14 phrase "permanently alter."
- 15 25. All photographs of "flash suppressors."
- 16 26. All photographs created by the California Department of Justice, Firearms Division since
- 17 January 1, 1999, of any object examined for the purposes of determining whether said
- 18 object was a "flash suppressor," where said object was deemed by the California
- 19 Department of Justice, Firearms Division not to be a "flash suppressor."
- 20 27. All photographs of firearm receivers deemed by the California Department of Justice
- 21 Firearms Division since January 1, 1999 to have the "capacity to accept a detachable
- 22 magazine."
- 23 28. All photographs of firearms deemed by the California Department of Justice Firearms
- 24 Division since January 1, 1999, to not have the "capacity to accept a detachable
- 25 magazine."
- 26

EXEMPLARS - FLASH SUPPRESSORS

- 28 29. All "flash suppressors" currently in the custody of the California Department of Justice,

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Firearms Division.

30 All "flash suppressors" exemplars currently in the custody of the California Department of
Justice, Firearms Division.

EXEMPLARS - PERMANENTLY ALTER

31. All "permanently altered" magazines currently in the custody of the California Department
of Justice, Firearms Division.

32. All "permanently altered" magazine exemplars currently in the custody of the California
Department of Justice, Firearms Division.

33. Any device examined for the purposes of determining whether it was a "flash suppressor."
where the device was deemed by the California Department of Justice, Firearms Division
not to be a "flash suppressor."

34. All firearm receivers that are presently being held in the custody and/or control of the
California Department of Justice's, Firearms Division as exemplars of modifications that
render a receiver no longer "capable of accepting a detachable magazine."

MINUTES

35. All minutes of meetings from the California Department of Justice's, Firearms Division
relating to the definition of "assault weapon."

EXPERT TESTIMONY

36. All transcripts of YOUR testimony in any criminal case relating to firearms. ("YOU"
and/or "YOUR" shall mean YOU, YOUR officers, employees, principals, insurance
companies, or anyone acting on YOUR behalf.)

37. All transcripts of YOUR testimony in any criminal case relating to firearms.

38. All transcripts of YOUR testimony in any criminal case relating to "assault weapons."

39. All transcripts of YOUR testimony in any criminal case relating to the definition of "flash
suppressor."

- 1 40. All transcripts of YOUR testimony in any criminal case relating to the definition of
2 "detachable magazine."
- 3 41. All transcripts of YOUR testimony in any criminal case relating to the definition of
4 "capacity to accept a detachable magazine."
- 5 42. All transcripts of YOUR testimony in any criminal case relating to the definition of
6 "permanently alter."
- 7 43. All transcripts of YOUR testimony in any civil lawsuit relating to firearms.
- 8 44. All transcripts of YOUR testimony in any civil lawsuit relating to "assault weapons."
- 9 45. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of "flash
10 suppressor."
- 11 46. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
12 "detachable magazine."
- 13 47. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
14 "capacity to accept a detachable magazine."
- 15 48. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
16 "permanently alter."
- 17 49. All transcripts of YOUR statements relating to firearms.
- 18 50. All transcripts of YOUR statements relating to the definition of "assault weapon."
- 19 51. All transcripts of YOUR statements relating to the definition of "flash suppressor."
- 20 52. All transcripts of YOUR statements relating to the definition of "detachable magazine."
- 21 53. All transcripts of YOUR statements relating to the definition of "capacity to accept a
22 detachable magazine."
- 23 54. All transcripts of YOUR statements relating to the definition of "permanently alter."
- 24 55. All INVESTIGATION REPORTS ("INVESTIGATION REPORTS" are hereinafter
25 defined as any WRITING that is identified as an "investigation report" on the face of the
26 WRITING) that refer to "assault weapons."
- 27 56. All INVESTIGATION REPORTS that refer or relate any "detachable magazine."
- 28 57. All INVESTIGATION REPORTS that refer or relate any "flash suppressor."

1 58. All INVESTIGATION REPORTS that refer or relate to the permanence of any
2 modification to any firearm.

3
4 **REFERENCE MATERIALS**

5 59. All WRITINGS since January 1, 1999, consisting of, regarding, referring to, and/or
6 relating in any way to any and all REFERENCE MATERIALS used by YOU in the
7 drafting of California Code of Regulations Title 11, section 5469(a), formerly section
8 978.20(a), which states:

9 "detachable magazine" means any ammunition feeding device that
10 can be removed readily from the firearm with neither disassembly of
11 the firearm action nor use of a tool being required. A bullet or
12 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.

13 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
14 academic, scholarly, scientific, reference or other authorities and/or investigational
15 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in
16 performing any investigation, inquiry, or study, etc. in drafting any text which consists of,
17 relates to, refers to, or in any way regards Penal Code section 12276.1. This includes, but
18 is not limited to academic and reference works such as technical manuals, encyclopedia.,
19 Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses,
20 correspondence, emails, etc.).

21 60. All WRITINGS consisting of, regarding, referring to, and/or relating in any way to any and
22 all REFERENCE MATERIALS used by YOU in the drafting of California Code of
23 Regulations Title 11, section 5469(a), formerly section 978.20(b), which states:

24 "flash suppressor" means any device designed, intended, or that
25 functions to perceptibly reduce or redirect muzzle flash from the
shooter's field of vision.

26 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
27 academic, scholarly, scientific, reference or other authorities and/or investigational
28 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in

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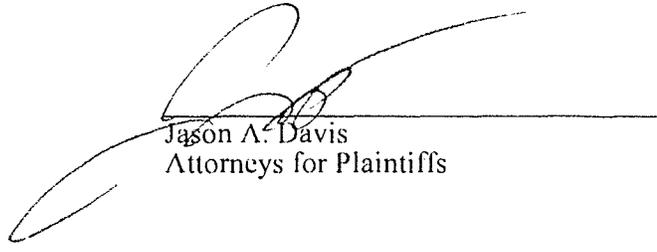
performing any investigation, inquiry, or study, etc. in drafting any text which consists of, relates to, refers to, or in any way regards Penal Code section 12276.1. This includes, but is not limited to academic and reference works such as technical manuals, encyclopedia, Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses, correspondence, emails, etc.).

INVESTIGATION REPORTS

- 61. All "investigation reports" identifying Ignatius Chinn as a Reporting Agent or Supervisor Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
- 62. All "investigation reports" identifying Juan Solano as a Reporting Agent or Supervisor Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
- 63. All "investigation reports" identifying Dale Ferranto as a Reporting Agent or Supervisor Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
- 64. All "investigation reports" identifying Chris Abad as a Reporting Agent or Supervisor Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.

DATED: November 15, 2007

TRUTANICH • MICHEL, LLP



Jason A. Davis
Attorneys for Plaintiffs

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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 November 15, 2007, I served the foregoing document(s) described as

**NOTICE OF TAKING DEPOSITION OF CALIFORNIA DEPARTMENT
OF EMPLOYEE MICHAEL SMALL/ REQUEST FOR
PRODUCTION OF DOCUMENTS**

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 November 15, 2007, at Long Beach, California.

 X (VIA 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.

 (PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
Executed on November 15, 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.

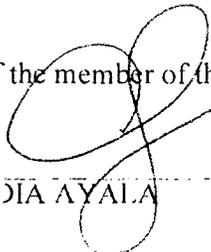

.....
CLAUDIA AYALA

EXHIBIT L

1 C. D. Michel — SBN 144258
Jason A. Davis — SBN 224250
2 TRUTANICH • MICHEL, LLP
180 East Ocean Blvd., Suite 200
3 Long Beach, CA 90802
Tel: (562) 216.4444

4 Stephen P. Halbrook
5 LAW OFFICES OF STEPHEN P. HALBROOK
10560 Main Street., Suite 404
6 Fairfax, Virginia 22030
Tel: (703) 352.7276

7 Don B. Kates — SBN 039193
8 BENENSON & KATES
22608 North East 269th Avenue
9 Battleground, Washington 98604
Tel: (360) 666.2688

10
11 Attorneys for Plaintiffs

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13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF FRESNO

15 EDWARD W. HUNT, in his official	) CASE NO. 01CECG03182
capacity as District Attorney of Fresno)
16 County, and in his personal capacity as a	) NOTICE OF TAKING DEPOSITION OF
citizen and taxpayer, et. al.,	) CALIFORNIA DEPARTMENT OF JUSTICE
17	) EMPLOYEE JEFF AMADOR/ REQUEST
Plaintiffs,	) FOR PRODUCTION OF DOCUMENTS
18)
v.)
19	) Date: December 5, 2007
STATE OF CALIFORNIA; WILLIAM	) Time: 10:00 a.m.
20 LOCKYER, Attorney General of the State of	) Place: Phillips Legal Services
California; CALIFORNIA DEPARTMENT	) 350 University Ave., Suite 270
21 OF JUSTICE; Does 1-100;	) Sacramento, CA 95825
22)
Defendants.)
23)

24
25 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:
26 NOTICE IS HEREBY GIVEN that Plaintiff EDWARD W. HUNT, in his personal
27 capacity and as citizen and taxpayer, will take the deposition, on oral examination, of California
28 Department of Justice employee JEFF AMADOR. The deposition will be taken on Wednesday,

1 December 5, 2007, at 10:00 a.m., at Phillips Legal Services located at 350 University Ave., Suite
2 270, Sacramento, CA 95825.

3 NOTICE IS FURTHER GIVEN that Plaintiff EDWARD W. HUNT intends to cause the
4 proceedings to be recorded stenographically. Plaintiff EDWARD W. HUNT reserves the right to
5 record the deponent's testimony by audiotape, and/or videotape pursuant to C.C.P. §2025.220,
6 stenographically, and/or by real-time transcription pursuant to C.C.P. §2025.20 and to use such
7 recorded testimony at the trial of this matter.

8 The deposition will be taken before a deposition officer who is authorized to administer an
9 oath. If the deposition is not completed on the date specified in this notice, the taking of the
10 deposition will be continued from day to day thereafter, except for Sundays and holidays, at the
11 same place, until completed.

12 NOTICE IS FURTHER GIVEN that JEFF AMADOR shall bring and produce the
13 following documents at the deposition, at the time and place specified in this notice.

14
15 **DOCUMENTS TO BE PRODUCED AT DEPOSITION**

16 **DEFINITIONS - FLASH SUPPRESSOR**

- 17 1. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor."
18 ("WRITINGS" shall mean writings as defined in Evidence Code Section 250 and shall
19 include, but not be limited to internal memoranda, inter-agency memoranda,
20 correspondence, internal correspondence, inter-agency correspondence, lists, personnel
21 rosters, emails (digital and/or printouts), meeting minutes, notes, facsimiles, facsimile
22 cover sheets, notebooks, computer files – whether on hard disk, floppy diskette, or any
23 removable-media drive, voice mail printouts, and all other papers, books, and computer
24 files.)
- 25 2. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
26 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (b).
- 27 3. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
28 defined by Penal Code section 12276.1, subsection (a)(1)(E).

1 4. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
2 defined by Penal Code section 12276.1, subsection (a)(4)(A).

3

4 **DEFINITIONS - PERMANENTLY ALTER**

5 5. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter."

6 6. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
7 stated in Penal Code section 12020, subsection (b)(15).

8 7. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
9 stated in Penal Code section 12020, subsection (b)(25)(A).

10 8. All WRITINGS since January 1, 1999, relating to the definition of "permanently" as stated
11 in Penal Code section 12088.2, subsection (b).

12 9. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
13 stated in Penal Code section 12276, subsection (d)(2).

14 10. All WRITINGS since January 1, 1999, relating to the definition of "permanently
15 inoperable" as stated in Penal Code section 12285, subsection (b)(1).

16 11. All WRITINGS since January 1, 1999, relating to the definition of "permanently
17 deactivated" as stated in Penal Code section 12285, subsection (b)(3).

18 12. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
19 in Penal Code section 12020, subsection (b)(25).

20 13. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
21 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(1).

22 14. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
23 in Penal Code section 12276.1, subsection (a)(2).

24 15. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
25 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4).

26 16. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
27 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4)(D).

28 17. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated

- 1 in Penal Code section 12276.1, subsection (a)(5).
- 2 18. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
3 in Penal Code section 12276.1, subsection (d)(2).
- 4 19. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine."
- 5 20. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine" as
6 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (a).
- 7 21. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
8 term "flash suppressor."
- 9 22. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
10 term "detachable magazine."
- 11 23. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
12 phrase "capacity to accept a detachable magazine."
- 13 24. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
14 phrase "permanently alter."
- 15 25. All photographs of "flash suppressors."
- 16 26. All photographs created by the California Department of Justice, Firearms Division since
17 January 1, 1999, of any object examined for the purposes of determining whether said
18 object was a "flash suppressor," where said object was deemed by the California
19 Department of Justice, Firearms Division not to be a "flash suppressor."
- 20 27. All photographs of firearm receivers deemed by the California Department of Justice
21 Firearms Division since January 1, 1999 to have the "capacity to accept a detachable
22 magazine."
- 23 28. All photographs of firearms deemed by the California Department of Justice Firearms
24 Division since January 1, 1999, to not have the "capacity to accept a detachable
25 magazine."
26

27 **EXEMPLARS - FLASH SUPPRESSORS**

- 28 29. All "flash suppressors" currently in the custody of the California Department of Justice,

1 Firearms Division.

2 30 All "flash suppressors" exemplars currently in the custody of the California Department of
3 Justice, Firearms Division.

4

5 **EXEMPLARS - PERMANENTLY ALTER**

6 31. All "permanently altered" magazines currently in the custody of the California Department
7 of Justice, Firearms Division.

8 32. All "permanently altered" magazine exemplars currently in the custody of the California
9 Department of Justice, Firearms Division.

10 33. Any device examined for the purposes of determining whether it was a "flash suppressor,"
11 where the device was deemed by the California Department of Justice, Firearms Division
12 not to be a "flash suppressor."

13 34. All firearm receivers that are presently being held in the custody and/or control of the
14 California Department of Justice's, Firearms Division as exemplars of modifications that
15 render a receiver no longer "capable of accepting a detachable magazine."

16

17

MINUTES

18 35. All minutes of meetings from the California Department of Justice's, Firearms Division
19 relating to the definition of "assault weapon."

20

21

EXPERT TESTIMONY

22 36. All transcripts of YOUR testimony in any criminal case relating to firearms. ("YOU"
23 and/or "YOUR" shall mean YOU, YOUR officers, employees, principals, insurance
24 companies, or anyone acting on YOUR behalf.)

25 37. All transcripts of YOUR testimony in any criminal case relating to firearms.

26 38. All transcripts of YOUR testimony in any criminal case relating to "assault weapons."

27 39. All transcripts of YOUR testimony in any criminal case relating to the definition of "flash
28 suppressor."

- 1 40. All transcripts of YOUR testimony in any criminal case relating to the definition of
- 2 "detachable magazine."
- 3 41. All transcripts of YOUR testimony in any criminal case relating to the definition of
- 4 "capacity to accept a detachable magazine."
- 5 42. All transcripts of YOUR testimony in any criminal case relating to the definition of
- 6 "permanently alter."
- 7 43. All transcripts of YOUR testimony in any civil lawsuit relating to firearms.
- 8 44. All transcripts of YOUR testimony in any civil lawsuit relating to "assault weapons."
- 9 45. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of "flash
- 10 suppressor."
- 11 46. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
- 12 "detachable magazine."
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- 14 "capacity to accept a detachable magazine."
- 15 48. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
- 16 "permanently alter."
- 17 49. All transcripts of YOUR statements relating to firearms.
- 18 50. All transcripts of YOUR statements relating to the definition of "assault weapon."
- 19 51. All transcripts of YOUR statements relating to the definition of "flash suppressor."
- 20 52. All transcripts of YOUR statements relating to the definition of "detachable magazine."
- 21 53. All transcripts of YOUR statements relating to the definition of "capacity to accept a
- 22 detachable magazine."
- 23 54. All transcripts of YOUR statements relating to the definition of "permanently alter."
- 24 55. All INVESTIGATION REPORTS ("INVESTIGATION REPORTS" are hereinafter
- 25 defined as any WRITING that is identified as an "investigation report" on the face of the
- 26 WRITING) that refer to "assault weapons."
- 27 56. All INVESTIGATION REPORTS that refer or relate any "detachable magazine."
- 28 57. All INVESTIGATION REPORTS that refer or relate any "flash suppressor."

1 58. All INVESTIGATION REPORTS that refer or relate to the permanence of any
2 modification to any firearm.

3
4 **REFERENCE MATERIALS**

5 59. All WRITINGS since January 1, 1999, consisting of, regarding, referring to, and/or
6 relating in any way to any and all REFERENCE MATERIALS used by YOU in the
7 drafting of California Code of Regulations Title 11, section 5469(a), formerly section
8 978.20(a), which states:

9 "detachable magazine" means any ammunition feeding device that
10 can be removed readily from the firearm with neither disassembly of
11 the firearm action nor use of a tool being required. A bullet or
12 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.

13 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
14 academic, scholarly, scientific, reference or other authorities and/or investigational
15 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in
16 performing any investigation, inquiry, or study, etc. in drafting any text which consists of,
17 relates to, refers to, or in any way regards Penal Code section 12276.1. This includes, but
18 is not limited to academic and reference works such as technical manuals, encyclopedias,
19 Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses,
20 correspondence, emails, etc.).

21 60. All WRITINGS consisting of, regarding, referring to, and/or relating in any way to any and
22 all REFERENCE MATERIALS used by YOU in the drafting of California Code of
23 Regulations Title 11, section 5469(a), formerly section 978.20(b), which states:

24 "flash suppressor" means any device designed, intended, or that
25 functions to perceptibly reduce or redirect muzzle flash from the
shooter's field of vision.

26 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
27 academic, scholarly, scientific, reference or other authorities and/or investigational
28 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in

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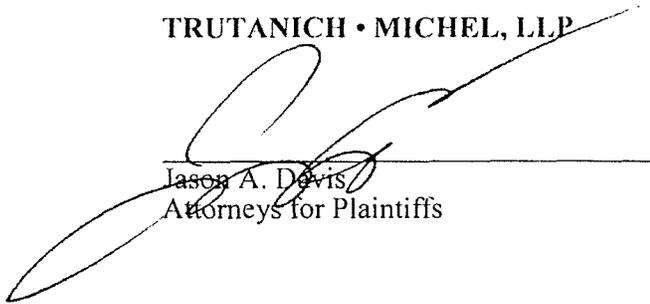
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INVESTIGATION REPORTS

- 61. All "investigation reports" identifying Ignatius Chinn as a Reporting Agent or Supervisor Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
- 62. All "investigation reports" identifying Juan Solano as a Reporting Agent or Supervisor Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
- 63. All "investigation reports" identifying Dale Ferranto as a Reporting Agent or Supervisor Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
- 64. All "investigation reports" identifying Chris Abad as a Reporting Agent or Supervisor Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.

DATED: November 15, 2007

TRUTANICH • MICHEL, LLP



Jason A. Davis
Attorneys for Plaintiffs

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

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

6 On November 15, 2007, I served the foregoing document(s) described as

7 **NOTICE OF TAKING DEPOSITION OF CALIFORNIA DEPARTMENT**
8 **OF JUSTICE EMPLOYEE JEFF AMADOR/ REQUEST FOR**
9 **PRODUCTION OF DOCUMENTS**

9 on the interested parties in this action by placing
10 [] the original
11 [X] a true and correct copy
12 thereof enclosed in sealed envelope(s) addressed as follows:

11 Douglas J. Woods
12 ATTORNEY GENERAL'S OFFICE
13 1300 "I" Street, Ste. 125
14 Sacramento, CA 94244-2550

14 (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
15 processing correspondence for mailing. Under the practice it would be deposited with the
16 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
17 California, in the ordinary course of business. I am aware that on motion of the party
18 served, service is presumed invalid if postal cancellation date is more than one day after
19 date of deposit for mailing an affidavit.
20 Executed on November 15, 2007, at Long Beach, California.

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

21 (PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of
22 the addressee.
23 Executed on November 15, 2007, at Long Beach, California.

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

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

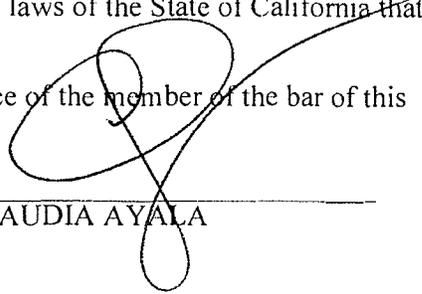
27 
28 _____
29 CLAUDIA AYALA

EXHIBIT M

1 C. D. Michel - SBN 144258
Jason A. Davis --- SBN 224250
2 TRUTANICH • MICHEL, L.L.P.
180 East Ocean Blvd., Suite 200
3 Long Beach, CA 90802
Tel: (562) 216.4444

4 Stephen P. Halbrook
5 LAW OFFICES OF STEPHEN P. HALBROOK
10560 Main Street., Suite 404
6 Fairfax, Virginia 22030
Tel: (703) 352.7276

7 Don B. Kates - SBN 039193
8 BENENSON & KATES
22608 North East 269th Avenue
9 Battleground, Washington 98604
Tel: (360) 666.2688

10

11 Attorneys for Plaintiffs

12

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF FRESNO

15 EDWARD W. HUNT, in his official) CASE NO. 01CECG03182
capacity as District Attorney of Fresno)
16 County, and in his personal capacity as a) NOTICE OF TAKING DEPOSITION OF
citizen and taxpayer, et. al.,) CALIFORNIA DEPARTMENT OF JUSTICE
17) EMPLOYEE ALISON MERRILEES/
Plaintiffs,) REQUEST FOR PRODUCTION OF
18) DOCUMENTS

19

v.)
20 STATE OF CALIFORNIA; WILLIAM) Date: December 10, 2007
LOCKYER, Attorney General of the State of) Time: 10:00 a.m.
California; CALIFORNIA DEPARTMENT) Place: Phillips Legal Services
21 OF JUSTICE; Does 1-100;) 350 University Ave., Suite 270
Sacramento, CA 95825
22 Defendants.)
23)

24

25

26 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

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29

NOTICE IS HEREBY GIVEN that Plaintiff EDWARD W. HUNT, in his personal
capacity and as citizen and taxpayer, will take the deposition, on oral examination, of California
Department of Justice employee ALISON MERRILEES. The deposition will be taken on

1 Monday, December 10, 2007, at 10:00 a.m., at Phillips Legal Services located at 350 University
2 Ave., Suite 270, Sacramento, CA 95825.

3 NOTICE IS FURTHER GIVEN that Plaintiff EDWARD W. HUNT intends to cause the
4 proceedings to be recorded stenographically. Plaintiff EDWARD W. HUNT reserves the right to
5 record the deponent's testimony by audiotape, and/or videotape pursuant to C.C.P. §2025.220,
6 stenographically, and/or by real-time transcription pursuant to C.C.P. §2025.20 and to use such
7 recorded testimony at the trial of this matter.

8 The deposition will be taken before a deposition officer who is authorized to administer an
9 oath. If the deposition is not completed on the date specified in this notice, the taking of the
10 deposition will be continued from day to day thereafter, except for Sundays and holidays, at the
11 same place, until completed.

12 NOTICE IS FURTHER GIVEN that ALISON MERRILLEES shall bring and produce the
13 following documents at the deposition, at the time and place specified in this notice.

14
15 **DOCUMENTS TO BE PRODUCED AT DEPOSITION**

16 **DEFINITIONS - FLASH SUPPRESSOR**

- 17 1. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor."
18 ("WRITINGS" shall mean writings as defined in Evidence Code Section 250 and shall
19 include, but not be limited to internal memoranda, inter-agency memoranda,
20 correspondence, internal correspondence, inter-agency correspondence, lists, personnel
21 rosters, emails (digital and/or printouts), meeting minutes, notes, facsimiles, facsimile
22 cover sheets, notebooks, computer files - whether on hard disk, floppy diskette, or any
23 removable-media drive, voice mail printouts, and all other papers, books, and computer
24 files.)
- 25 2. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
26 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (b).
- 27 3. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
28 defined by Penal Code section 12276.1, subsection (a)(1)(E).

1 4. All WRITINGS since January 1, 1999, relating to the definition of "flash suppressor" as
2 defined by Penal Code section 12276.1, subsection (a)(4)(A).

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DEFINITIONS - PERMANENTLY ALTER

5 5. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter."

6 6. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
7 stated in Penal Code section 12020, subsection (b)(15).

8 7. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
9 stated in Penal Code section 12020, subsection (b)(25)(A).

10 8. All WRITINGS since January 1, 1999, relating to the definition of "permanently" as stated
11 in Penal Code section 12088.2, subsection (b).

12 9. All WRITINGS since January 1, 1999, relating to the definition of "permanently alter" as
13 stated in Penal Code section 12276, subsection (d)(2).

14 10. All WRITINGS since January 1, 1999, relating to the definition of "permanently
15 inoperable" as stated in Penal Code section 12285, subsection (b)(1).

16 11. All WRITINGS since January 1, 1999, relating to the definition of "permanently
17 deactivated" as stated in Penal Code section 12285, subsection (b)(3).

18 12. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
19 in Penal Code section 12020, subsection (b)(25).

20 13. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
21 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(1).

22 14. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
23 in Penal Code section 12276.1, subsection (a)(2).

24 15. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
25 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4).

26 16. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept a
27 detachable magazine" as stated in Penal Code section 12276.1, subsection (a)(4)(D).

28 17. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated

- 1 in Penal Code section 12276.1, subsection (a)(5).
- 2 18. All WRITINGS since January 1, 1999, relating to the phrase "capacity to accept" as stated
3 in Penal Code section 12276.1, subsection (d)(2).
- 4 19. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine."
- 5 20. All WRITINGS since January 1, 1999, relating to the phrase "detachable magazine" as
6 defined by Title 11, Division 5, Chapter 39, Section 5469, Subsection (a).
- 7 21. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
8 term "flash suppressor."
- 9 22. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
10 term "detachable magazine."
- 11 23. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
12 phrase "capacity to accept a detachable magazine."
- 13 24. All WRITINGS since January 1, 1999, relating to any request seeking clarification of the
14 phrase "permanently alter."
- 15 25. All photographs of "flash suppressors."
- 16 26. All photographs created by the California Department of Justice, Firearms Division since
17 January 1, 1999, of any object examined for the purposes of determining whether said
18 object was a "flash suppressor," where said object was deemed by the California
19 Department of Justice, Firearms Division not to be a "flash suppressor."
- 20 27. All photographs of firearm receivers deemed by the California Department of Justice
21 Firearms Division since January 1, 1999 to have the "capacity to accept a detachable
22 magazine."
- 23 28. All photographs of firearms deemed by the California Department of Justice Firearms
24 Division since January 1, 1999, to not have the "capacity to accept a detachable
25 magazine."

26
27 **EXEMPLARS - FLASH SUPPRESSORS**

- 28 29. All "flash suppressors" currently in the custody of the California Department of Justice.

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Firearms Division.

30 All "flash suppressors" exemplars currently in the custody of the California Department of Justice, Firearms Division.

EXEMPLARS - PERMANENTLY ALTER

31. All "permanently altered" magazines currently in the custody of the California Department of Justice, Firearms Division.

32. All "permanently altered" magazine exemplars currently in the custody of the California Department of Justice, Firearms Division.

33. Any device examined for the purposes of determining whether it was a "flash suppressor," where the device was deemed by the California Department of Justice, Firearms Division not to be a "flash suppressor."

34. All firearm receivers that are presently being held in the custody and/or control of the California Department of Justice's, Firearms Division as exemplars of modifications that render a receiver no longer "capable of accepting a detachable magazine."

MINUTES

35. All minutes of meetings from the California Department of Justice's, Firearms Division relating to the definition of "assault weapon."

EXPERT TESTIMONY

36. All transcripts of YOUR testimony in any criminal case relating to firearms. ("YOU" and/or "YOUR" shall mean YOU, YOUR officers, employees, principals, insurance companies, or anyone acting on YOUR behalf.)

37. All transcripts of YOUR testimony in any criminal case relating to firearms.

38. All transcripts of YOUR testimony in any criminal case relating to "assault weapons."

39. All transcripts of YOUR testimony in any criminal case relating to the definition of "flash suppressor."

- 1 40. All transcripts of YOUR testimony in any criminal case relating to the definition of
2 "detachable magazine."
- 3 41. All transcripts of YOUR testimony in any criminal case relating to the definition of
4 "capacity to accept a detachable magazine."
- 5 42. All transcripts of YOUR testimony in any criminal case relating to the definition of
6 "permanently alter."
- 7 43. All transcripts of YOUR testimony in any civil lawsuit relating to firearms.
- 8 44. All transcripts of YOUR testimony in any civil lawsuit relating to "assault weapons."
- 9 45. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of "flash
10 suppressor."
- 11 46. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
12 "detachable magazine."
- 13 47. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
14 "capacity to accept a detachable magazine."
- 15 48. All transcripts of YOUR testimony in any civil lawsuit relating to the definition of
16 "permanently alter."
- 17 49. All transcripts of YOUR statements relating to firearms.
- 18 50. All transcripts of YOUR statements relating to the definition of "assault weapon."
- 19 51. All transcripts of YOUR statements relating to the definition of "flash suppressor."
- 20 52. All transcripts of YOUR statements relating to the definition of "detachable magazine."
- 21 53. All transcripts of YOUR statements relating to the definition of "capacity to accept a
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- 24 55. All INVESTIGATION REPORTS ("INVESTIGATION REPORTS" are hereinafter
25 defined as any WRITING that is identified as an "investigation report" on the face of the
26 WRITING) that refer to "assault weapons."
- 27 56. All INVESTIGATION REPORTS that refer or relate any "detachable magazine."
- 28 57. All INVESTIGATION REPORTS that refer or relate any "flash suppressor."

1 58. All INVESTIGATION REPORTS that refer or relate to the permanence of any
2 modification to any firearm.

3
4 **REFERENCE MATERIALS**

5 59. All WRITINGS since January 1, 1999, consisting of, regarding, referring to, and/or
6 relating in any way to any and all REFERENCE MATERIALS used by YOU in the
7 drafting of California Code of Regulations Title 11, section 5469(a), formerly section
8 978.20(a), which states:

9 "detachable magazine" means any ammunition feeding device that
10 can be removed readily from the firearm with neither disassembly of
11 the firearm action nor use of a tool being required. A bullet or
12 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.

13 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
14 academic, scholarly, scientific, reference or other authorities and/or investigational
15 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in
16 performing any investigation, inquiry, or study, etc. in drafting any text which consists of,
17 relates to, refers to, or in any way regards Penal Code section 12276.1. This includes, but
18 is not limited to academic and reference works such as technical manuals, encyclopedia,
19 Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses,
20 correspondence, emails, etc.)

21 60. All WRITINGS consisting of, regarding, referring to, and/or relating in any way to any and
22 all REFERENCE MATERIALS used by YOU in the drafting of California Code of
23 Regulations Title 11, section 5469(a), formerly section 978.20(b), which states:

24 "flash suppressor" means any device designed, intended, or that
25 functions to perceptibly reduce or redirect muzzle flash from the
shooter's field of vision.

26 (As used within these Requests, REFERENCE MATERIALS shall refer to any and all
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28 material that YOU studied, reviewed, scrutinized, examined, or otherwise utilized in

1 performing any investigation, inquiry, or study, etc. in drafting any text which consists of,
2 relates to, refers to, or in any way regards Penal Code section 12276.1. This includes, but
3 is not limited to academic and reference works such as technical manuals, encyclopedia,
4 Web sites, databases, books, magazines, periodicals, newsletters, reports, analyses,
5 correspondence, emails, etc.).

6
7 **INVESTIGATION REPORTS**

- 8 61. All "investigation reports" identifying Ignatius Chinn as a Reporting Agent or Supervisor
9 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
10 62. All "investigation reports" identifying Juan Solano as a Reporting Agent or Supervisor
11 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
12 63. All "investigation reports" identifying Dale Ferranto as a Reporting Agent or Supervisor
13 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.
14 64. All "investigation reports" identifying Chris Abad as a Reporting Agent or Supervisor
15 Agent that relate to "assault weapons" as defined in Penal Code section 12276.1.

16 DATED: November 27, 2007

17 **TRUTANICH • MICHEL, LLP**

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19 Jason A. Davis
20 Attorneys for Plaintiffs

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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 November 28, 2007, I served the foregoing document(s) described as

**NOTICE OF TAKING DEPOSITION OF CALIFORNIA DEPARTMENT
OF EMPLOYEE ALISON MERRILEES/ REQUEST FOR
PRODUCTION OF DOCUMENTS**

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:

Mr. Mark Beckington
Deputy Attorney General
Government Law Section
California Department of Justice
300 South Spring St., Ste. 1702
Los Angeles, CA 90013

(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 November 28, 2007, at Long Beach, California.

X (VIA 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.

(PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
Executed on November 28, 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

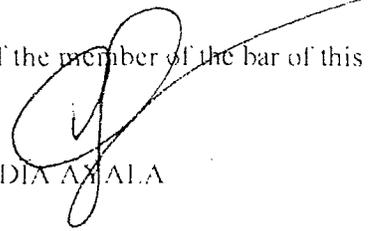


EXHIBIT N

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



FAX TRANSMISSION COVER SHEET

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

DATE: November 30, 2007 **TIME:** 2:44 PM **NO. OF PAGES:** 4
(Including Fax Cover Sheet)

TO:

NAME: Jason A. Davis, Esq.
OFFICE: Trutanich Michel, LLP
LOCATION: Long Beach
FAX NO.: (562) 216-4445 **PHONE NO.:** (562) 216-4444

FROM:

NAME: Mark R. Beckington, Deputy Attorney General
OFFICE: Government Law Section
LOCATION: Los Angeles
FAX NO.: (213) 897-1071 **PHONE NO.:** (213) 897-1096

MESSAGE/INSTRUCTIONS

Re: Hunt, et al. v. State of California, et al.

Attached please find letter of today's date. Original to follow via U.S. Mail.



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

EDMUND G. BROWN JR.
Attorney General

CHRON

State of California
DEPARTMENT OF JUSTICE



300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013

Public: (213) 897-2000
Telephone: (213) 897-1096
Facsimile: (213) 897-1071
E-Mail: Mark.Beckington@doj.ca.gov

November 29, 2007

Via Facsimile and First Class Mail

Jason A. Davis, Esq.
Trulanich • Michel, LLP
180 E. Occan Boulevard, Suite 200
Long Beach, CA 90802

RE: Hunt, et al. v. State of California, et al.
Superior Court of California, County of Fresno, Case No. 01CECG03182

Dear Mr. Davis:

This letter concerns the plaintiffs' deposition notices directed to Mike Small and Jeff Amador and your letter of November 14, 2007, requesting deposition dates for nine DOJ employees, including Bureau of Firearms Chief Wilfredo Cid and Deputy Attorney General Alison Merrilees. For the reasons discussed below, there does not appear to be any basis on which the plaintiffs may proceed with these depositions. We request that you take the noticed depositions off calendar and withdraw your request for the depositions of the other DOJ employees.

Depositions of Mike Small and Jeff Amador

As discussed in previous correspondence and communications, the plaintiffs may not use the depositions of Mike Small or Jeff Amador to inquire into their thought processes or deliberations in promulgating assault weapon regulations or the related thought process or deliberations of others. Such discovery would be barred by the official information privilege. (Code Civ. Proc., § 1040; see *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119.) Further, courts have repeatedly recognized that such matters are not a proper subject of discovery. (See *County of Los Angeles* (1975) 13 Cal.3d 721, 723; *Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 192-193.)

When I discussed this issue with you by phone, you indicated that plaintiffs intended to inquire about correspondence with the public and dealers. You also mentioned asking about their opinions on assault weapon matters. To extent that the plaintiffs seek to authenticate documents, this can be done without a deposition. Otherwise, discovery of such communications would not

Jason A. Davis, Esq.
November 27, 2007
Page 2

appear to be relevant to any issue remaining in the case. Nor would their private opinions on assault weapon definitions. As set forth in the court's ruling on the summary judgment motions, this action is limited to (1) the facial validity of a portion of the "flash suppressor" regulatory definition, (2) whether the Department acted arbitrarily and capriciously in not promulgating a regulatory definition of "permanently alter" as used in the AWCA, and (3) whether the DOJ correctly ruled that the Browning Boss and Springfield Muzzle Break are not flash suppressors. The matters you have identified thus far would have no bearing on the facial validity of the regulations, the AWCA, or the DOJ rulings.

This concern is underscored by the document demand that accompanied the deposition notices. The demands seek documents relating to regulatory and statutory language that are not the subject of this action. (See Defendants' Objections to Notices of Deposition.) The document demands demonstrate that plaintiffs apparently intend to use the depositions to inquire into matters not relevant to the subject matter of the action nor reasonably calculated to lead to the discovery of admissible evidence.

Under these circumstances, we do not believe that the plaintiffs have any basis to proceed with the depositions of Mr. Small or Mr. Amador. Plaintiffs are requested to take the depositions off calendar or offer an explanation as to legitimate areas of inquiry for the depositions. Otherwise, the defendants will take appropriate responsive action, including, but not limited to, moving for an appropriate protective order.

Depositions Proposed in November 14, 2007 Letter

In your November 14, 2007 letter, you requested information on the availability for deposition of the following DOJ employees: Wilfredo Cid, Alison Merrillces, Bob Berthold, Eric Maher, Karen Milami, Brent George, Kathy Quinn, Vicki Lyman, and Dana McKennon. We decline to provide this information in the absence of an offer of proof as to the reason for undertaking these depositions.

As the Chief of the Bureau of Firearms, Wilfredo Cid would not be subject to deposition absent compelling reasons. (*Westly v. Superior Court* (2005) 125 Cal.App.4th 907, 910 ["the general rule in California and federal court is that agency heads and other top governmental executives are not subject to deposition absent compelling reasons."]) Given the issues remaining in this action, no such compelling reasons are apparent.

Further, Alison Merrillces, the Bureau's legal counsel, would ordinarily not be subject to deposition. (*Carehouse Convalescent Hosp. v. Superior Court* (2006) 143 Cal.App.4th 1558.) "Depositions of opposing counsel are presumptively improper, severely restricted, and require 'extremely' good cause—a high standard." (*Ibid.*)

As for the remaining seven persons identified in your letter, their deposition testimony would not appear to be relevant or reasonably calculated to lead to the discovery of admissible

Jason A. Davis, Esq.
November 27, 2007
Page 3

evidence on the limited issues remaining in this action. (See discussion above.) Producing these persons for deposition would result in needless expense, annoyance, and inconvenience.

Given that the depositions of Mike Small and Jeff Amador are set for next Tuesday and Wednesday, I request that you contact me promptly to resolve the foregoing matters.

Sincerely,



MARK R. BECKINGTON
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

MRB:mb

EXHIBIT O

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. MCROBERTS
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OF COUNSEL:
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December 3, 2007

Mr. Mark Beckington
Deputy Attorney General
Government Law Section
California Department of Justice
300 South Spring St., Ste. 1702
Los Angeles, CA 90013
VIA FAX (213) 897-1071 & U. S. MAIL

**Re: Hunt, et al. v. State of California, et al.
County of Fresno, Superior Court Case No: 01CECG03182**

Dear Mr. Beckington:

The purpose of this correspondence is to respond to your letters of November 29, 2007 and December 3, 2007 that addressed deposition notices directed to Mike Small, Jeff Amador, and several other DOJ employees. In your letter of November 29, 2007 you state that "there does not appear to be any basis on which the plaintiffs may proceed with these depositions." We disagree. For the reasons discussed below, our office will file a motion compelling the attendance and testimony of each noticed DOJ employee should you continue to refuse to produce these individuals.

Depositions of Mike Small and Jeff Amador

Your letter cites to *Marylander v. Superior Court* (2002) 81 Cal. App.4th 1119, for the premise that discovery into the thought processes or deliberations of government officials is barred by the official information privilege. As discussed in previous correspondence and communications, however, our office does not intend to inquire into the thought processes or deliberations in promulgating the "assault weapon" regulations at issue.

Rather, our office seeks, for example, to inquire into the DOJ's interpretation of the term "permanently alter" as provided in communications with the public. Our office does not seek to merely "authenticate" documents, but to inquire into the DOJ's outward representations to the public of how relevant terms are defined in practice to afford citizens and businesses the ability to comply with provisions of the AWCA. *Marylander* does not stand for the premise that inquiries about a government official's representations to the public are absolutely protected from inquiry in litigation. While it is conceivable that some questions relating to that correspondence may be protected by the official information privilege, by no means do all potential questions relating to these communications pertain only to the "deliberative thought process" of DOJ officials or to the "authenticity" of such

Mr. Mark Beckington
December 3, 2007
Page 2

correspondence.

Moreover, the DOJ's communications with the public are not limited to written correspondence and plaintiffs have no other means by which to obtain information relating to the DOJ's verbal communications regarding clarification inquiries and statements to the public on this issue.

Your letter requests that plaintiffs offer an explanation as to the legitimate areas of inquiry for these depositions. In addition to the explanation provided above, as an example of the legitimacy of plaintiffs inquires, the following list should help to shed light on the subject matter plaintiffs will cover in their depositions of DOJ officials. Plaintiffs intend to inquire into the following areas and subject matter, *including but not limited to*:

- Written and verbal correspondence and communication with public regarding:
 - The legality and definition of "permanently alter" with regard to "large capacity" magazines
 - The definition of "permanently alter" with regard to other devices
 - The legality and definition of compensators
 - The legality and definition of muzzle breaks
 - The legality of devices that may or may not be "flash suppressors"

- Written and verbal correspondence with other regulatory and enforcement agencies and officials of such agencies including but not limited to Offices of the District Attorney, Departments of the Sheriff, and Police Departments
 - The legality and definition of "permanently alter" with regard to "large capacity" magazines
 - The definition of "permanently alter" with regard to other devices
 - The legality and definition of compensators
 - The legality and definition of muzzle breaks
 - The legality of devices that may or may not be "flash suppressors"

- Any testimony in prosecutions related to the subject matter of this litigation.

- Any testimony in license hearings related to the subject matter of this litigation

- Any testimony in permit hearings related to the subject matter of this litigation

- Authority for the opinions, clarifications, and/or other statements provided in correspondence and communications with the public unrelated to the deliberative thought process.

- Other questions asked by members of the public that are pertinent to this litigation that may or may not have been responded to by DOJ officials.

- Questions by members of the public regarding contradicting or differing responses provided by DOJ officials.

Mr. Mark Beckington
December 3, 2007
Page 3

In light of the foregoing, the depositions of Mike Small and Jeff Amador are material and directly relevant to the issues in this case. Accordingly, unless you agree to produce Mr. Small and Mr. Amador for deposition, our office will seek an order compelling the attendance and testimony of each.

Deposition of Wilfredo Sid

Your letter states that, "as the Chief of the Bureau of Firearms, Wilfredo Cid would not be subject to deposition absent compelling reasons." As authority for this claim you cite to *Westly v. Superior Court* (2005) 125 Cal.App.4th 907, 910 which states that "The general rule in California and federal court is that agency heads and other top governmental executives are not subject to deposition absent compelling reasons." While that is the general rule, *Westly* also affirms an exception to this rule. "An exception to the rule exists only when the official has direct personal factual information pertaining to material issues in the action and the deposing party shows the information is not available through any other source. (*Id.* at 911, citing *Church of Scientology of Boston v. IRS*, supra, 138 F.R.D. at p. 12.)

The subject matter on which Wilfredo Cid was intended to be questioned falls squarely within this exception. Telephone calls between Mr. Cid and the general public or firearm retailers about the DOJ's interpretation and enforcement of existing regulations relating to the term "capacity to accept" and the definition of "flash suppressor" concern issues material to this action. Further, as the person who placed and/or received these phone calls it is Mr. Cid who has direct personal factual information pertaining to them. Finally, information relating to these public advisories that are relevant to this action are not available through any other source.

As such, we believe we are entitled to depose Mr. Cid. Given his short tenure with the Bureau of Firearms, however, we will take Mr. Cid's deposition off calendar

Deposition of Alison Merrilees

Your letter states that Alison Merrilees is not subject to deposition because "Depositions of opposing counsel are presumptively improper, severely restricted, and require extremely good cause - a high standard." (*Carehouse Convalescent Hosp. V. Superior Court* (2006) 143 Cal. App.4th 1558.) However, as you are well aware, Ms. Merrilees is *not* being deposed in her role as "counsel" for the Bureau in this action. As Deputy Attorney General for the Bureau of Firearms, Ms. Merrilees serves not only the role of legal counsel for the Bureau, but also the role of public advisor regarding the DOJ's enforcement and interpretation of existing regulations. It is within this alternate capacity that Ms. Merrilees will be questioned regarding the subject matter outline above.

Accordingly, the present facts can be easily distinguished from those in *Carehouse*. There, the court sought to protect opposing counsel in a particular matter from being questioned so as to prevent a "chilling" of the attorney client relationship. While Ms. Merrilees is an attorney for the Bureau of Firearms, she is not legal counsel for the Bureau in this matter and is not being questioned as such. Ms. Merrilees communicates with the public, dealers, and other law enforcement agencies regarding the subject matter of this litigation. *Carehouse* does not stand for the notion that any attorney

Mr. Mark Beckington
December 3, 2007
Page 4

employed by a large government agency cannot be questioned in a matter to which that government agency is a representative party simply because that individual happens to be an "attorney" for that particular agency. As Ms. Merrilees is not "opposing counsel" in this matter, the three prong test set forth in *Carehouse* need not be applied.

Even under the three prong test of *Carehouse*, however, the deposition of Ms. Merrilees is appropriate. *Carehouse*, 143 Cal. App.4th 1558, 1562. First, as discussed *supra*, plaintiffs do not have other practicable means by which to obtain information provided to the public through communications with Ms. Merrilees herself. Second, and also discussed *supra*, this information is absolutely crucial to the preparation of plaintiffs' case. Finally, this information is not subject to any privilege, as the scope of the inquiry will not encompass the "thought processes or deliberations of government officials" that would be barred by the official information privilege.

Accordingly, unless you agree to produce Ms. Merrilees for deposition, our office will seek an order compelling her attendance and testimony.

Other Depositions Proposed in November 14, 2007 Letter

As for the remaining seven persons identified in our letter of November 14, 2007 letter, as clarified and outlined *supra*, the depositions of these individuals seek, for example, to inquire into the DOJ's interpretation of the term "permanently alter" as provided in communications with the public. Our office does not seek to merely "authenticate" documents, but to inquire into the DOJ's outward representations to the public of how relevant terms are defined in practice to afford citizens the ability to comply with provisions of the AWCA. As discussed *supra*, *Marylander* does not stand for the premise that inquiries about a government official's representations to the public are absolutely protected from inquiry in litigation. While it is conceivable that some questions relating to that correspondence may be protected by the official information privilege, by no means do all potential questions relating to these communications pertain only to the "deliberative thought process" of DOJ officials or to the "authenticity" of such correspondence.

Accordingly, unless you agree to produce these individuals for deposition, our office will seek an order compelling their attendance and testimony.

Letter Received December 3, 2007

In your letter of December 3, 2007, you state that our November 20, 2007 letter "left the erroneous impression that my letter was the first time that the Department has objected to proceeding with the Amador and Small depositions." We originally noticed these depositions on August 14, 2007 and August 15, 2007. However, we had these depositions taken off calendar pending the "Stipulated Motion for Clarification," which has yet to be filed. We did not receive any objection to their appearance. Following these discussions, *your office selected dates to move forward with the Amador and Small depositions*. Again, less than two business days prior to the date for which these depositions were *rescheduled*, you then refused to provide Mr. Amador and Mr. Small and indicated your intentions to file a protective order *for the first time*.

Mr. Mark Beckington
December 3, 2007
Page 5

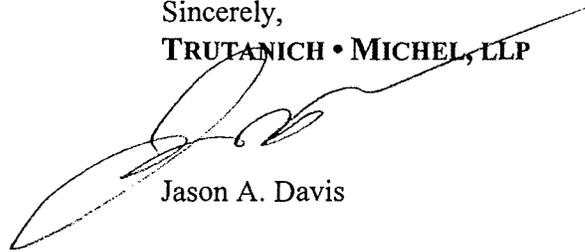
As your letter correctly cites, "Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may *promptly* moved for a protective order." (*See* Code Civ. Proc., § 2025.420, subd. (a). (Emphasis added.)) Mr. Small's Deposition was originally scheduled for August 13, was continued to October 31, and was finally re-noticed on November 15 to take place on December 4, 2007. Jeff Amador's deposition was originally scheduled for August 14, was continued to November 1, and was finally re-noticed on November 15 to take place on December 5, 2007. It is not "prompt" to express an intention to file a motion for protective order for the first time on the afternoon of November 30, 2007, just days prior to the scheduled departure of plaintiffs' attorneys given the notice your office received.

I hope this clarifies our position with regards to the noticed depositions. We hope to resolve these issues amicably without the need to file a motion to compel or a protective order. However, given the looming trial date in this matter, time is of the essence.

Please call if you have any questions or concerns,

Sincerely,

TRUTANICH • MICHEL, LLP



Jason A. Davis

JAD/ca
Enc.

HP LaserJet 3200se



HP LASERJET 3200

DEC-3-2007 6:36PM

Fax Call Report

Job	Date	Time	Type	Identification	Duration	Pages	Result
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GLENN E. MCNEELY
SAN DIEGO, CA

John Deak' Dines Center
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NEW YORK, N.Y.

DAVID T. HANBY
TUCSON, AZ

December 3, 2007

Mr. Mark Beckington
Deputy Attorney General
Government Law Section
California Department of Justice
300 South Spring St., Ste. 1702
Los Angeles, CA 90013
VIA FAX (213) 697-1071 & U. S. MAIL

Re: **Hunt, et al. v. State of California, et al.**
County of Fresno, Superior Court Case No: 01CECG03182

Dear Mr. Beckington:

The purpose of this correspondence is to respond to your letters of November 29, 2007 and December 3, 2007 that addressed deposition notices directed to Mike Small, Jeff Amador, and several other DOJ employees. In your letter of November 29, 2007 you state that "there does not appear to be any basis on which the plaintiffs may proceed with these depositions." We disagree. For the reasons discussed below, our office will file a motion compelling the attendance and testimony of each noticed DOJ employee should you continue to refuse to produce these individuals.

Depositions of Mike Small and Jeff Amador

Your letter cites to *Marylander v. Superior Court* (2002) 81 Cal. App.4th 1119, for the premise that discovery into the thought processes or deliberations of government officials is barred by the official information privilege. As discussed in previous correspondence and communications, however, our office does not intend to inquire into the thought processes or deliberations in promulgating the "assault weapon" regulations at issue.

Rather, our office seeks, for example, to inquire into the DOJ's interpretation of the term "permanently alter" as provided in communications with the public. Our office does not seek to merely "authenticate" documents, but to inquire into the DOJ's outward representations to the public of how relevant terms are defined in practice to afford citizens and businesses the ability to comply with provisions of the AWCA. *Marylander* does not stand for the premise that inquiries about a government official's representations to the public are absolutely protected from inquiry in litigation. While it is conceivable that some questions relating to that correspondence may be protected by the official information privilege, by no means do all potential questions relating to these communications pertain only to the "deliberative thought process" of DOJ officials or to the "authenticity" of such

EXHIBIT P

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



FAX TRANSMISSION COVER SHEET

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DATE: December 6, 2007TIME: 10:38 AMNO. OF PAGES: 3

(Including Fax Cover Sheet)

TO:

NAME: Jason A. Davis, Esq.OFFICE: Trutanich Michel, LLPLOCATION: Long BeachFAX NO.: (562) 216-4445PHONE NO.: (562) 216-4444

FROM:

NAME: Mark R. Beckington, Deputy Attorney GeneralOFFICE: Government Law SectionLOCATION: Los AngelesFAX NO.: (213) 897-1071PHONE NO.: (213) 897-1096

MESSAGE/INSTRUCTIONSRe: Hunt, et al. v. State of California, et al.

Attached please find letter of today's date. Original to follow via U.S. Mail.

50202366.wpd

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

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013

Public: (213) 897-2000
Telephone: (213) 897-1096
Facsimile: (213) 897-1071
E-Mail: Mark.Beckington@doj.ca.gov

December 6, 2007

Via Facsimile and First Class Mail

Jason A. Davis, Esq.
Trutanich • Michel, LLP
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802

RE: Hunt, et al. v. State of California, et al.
Superior Court of California, County of Fresno, Case No. 01CECG03182

Dear Mr. Davis:

This will follow up on our conversations on Wednesday concerning the depositions that have been noticed by plaintiffs or that plaintiffs have represented they intend to take in the near future.

Cris Abad Deposition

Due to a medical emergency involving the witness's family, we have agreed to reschedule the Cris Abad deposition for 10:00 a.m., December 19, 2007. The deposition will be taken at your office, located at 180 E. Ocean Blvd., Long Beach, CA 90802. Thank you for your courtesy and cooperation in rescheduling the deposition.

Ignatius Chinn Deposition

The Ignatius Chinn deposition is set for December 11, 2007 in Sacramento. I informed you that the Department and Mr. Chinn object to the videotaping of the deposition. You have confirmed that plaintiffs will not videotape or audiotape the Chinn deposition. Therefore, the deposition will be taken solely before a certified shorthand reporter.

Remaining Depositions

In addition to the depositions for Abad and Chinn, plaintiffs have served notices for the depositions of Alison Merrilees, Dale Ferranto, Jim Biscailuz, Steve Bufford, Mike Giusto, Brent George, Mike Small and Jeff Amador. (Plaintiffs have withdrawn the deposition notice for

Jason A. Davis, Esq.
December 5, 2007
Page 2

Wilfredo Cid.) In correspondence, you have requested information regarding the availability for deposition of Bob Berthold, Eric Maher, Karen Milami, Kathy Quinn, Vicki Lyman, and Dana McKennon. In our conversation on Tuesday, you mentioned that you have prepared additional deposition notices and might seek to depose up to 24 Department employees. I have advised you that the Department will not produce these witnesses for their depositions and will seek a protective order providing that the depositions not be taken.

This case concerns a *facial* challenge to the validity of specific provisions of the Assault Weapons Control Act and the regulatory definitions prepared by the Department. The deposition subject areas that you have identified in correspondence and in our telephonic communications would have no bearing on the facial validity of the statutes and regulations. Certainly, plaintiffs do not need to depose large numbers of Firearms Bureau employees regarding each and every written or telephonic communication they have had with the public. Nor do plaintiffs need to examine a wide range of such employees as to their opinions and knowledge relating to assault weapons. Given the significant expense and burden that would be imposed on the Department and its employees, combined with the lack of any discoverable information that would result from such depositions, this is an appropriate case for the court to issue a order protecting the Department and its employees "from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." (Code Civ. Proc., § 2025.420, subd. (b).)

In addition to the foregoing concerns, the deposition of Deputy Attorney General Alison Merrilces may not be taken for the reasons that have been stated in prior correspondence. Further, I have been advised that Dale Ferranto is the Assistant Chief of the Bureau of Firearms and that Steve Bufford is the Bureau Program Manager. Therefore, the authority I have previously cited limiting the depositions of senior government officials would apply equally to the notices for these persons. (*Westly v. Superior Court* (2005) 125 Cal.App.4th 907, 910.)

Please call if you have any questions or comments.

Sincerely,



MARK R. BECKINGTON
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

MRB:mb

EXHIBIT B

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MARK K. BUNNISON
NEW YORK, N.Y.

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TUCSON, AZ

December 18, 2007

Mr. Mark Beckington
Deputy Attorney General
Government Law Section
California Department of Justice
300 South Spring St., Ste. 1702
Los Angeles, CA 90013
VIA FAX (213) 897-1071

Re: **Hunt, et al. v. State of California, et al.**
County of Fresno, Superior Court Case No: 01CECG03182

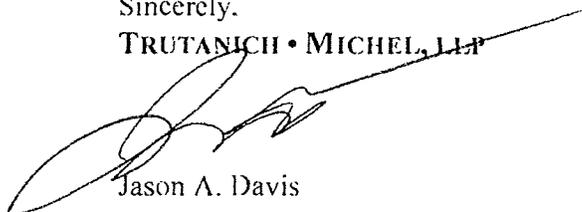
Dear Mr. Beckington:

The purpose of this letter is to give notice of the Ex Parte Application for Order Shortening Time for Notice of Motion to Compel Attendance and Testimony of Mike Small, Jeff Amador, and Alison Merrilees; Memorandum of Points and Authorities in Support Thereof; Declaration of Jason Davis in Support Thereof. The Ex Parte Application has been continued to Thursday, December 20, 2007, at 3:30 p.m. or as soon thereafter as it may be heard in Dept. 72 of the Fresno Superior Court located at 1100 Van Ness, Fresno, CA 93724.

Please do not hesitate to contact me if you have any questions or concerns. You can also reach me by email at jdavis@tmlp.com.

Sincerely,

TRUTANICH • MICHEL, LLP



Jason A. Davis

JAD/ca

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. McROBERT
SAN DIEGO, CA

Writer's Direct Contact

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MARK K. BENJAMINSON
NEW YORK, N.Y.

DAVID L. HARRIS
TUCSON, AZ

FAX TRANSMITTAL SHEET
IMMEDIATE ATTENTION REQUIRED

TO: Mr. Mark Beckington

FAX NO: (213) 897-1071

TEL. NO: (213) 897-1096

FROM: Jason A. Davis

DATE: December 18, 2007

RE: *Hunt et al., v. State of California et al.*

THIS FAX CONTAINS COVER PAGE PLUS 1 PAGES. IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT Claudia Ayala AT (562) 216-4444.

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GLENN S. McROBERTS
SAN DIEGO, CA

TRUTANICH • MICHEL • LLP
Attorneys At Law
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OF COUNSEL
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DAVID F. HARDY
TUCSON, AZ

Writer's Direct Contact

Jason A. Davis
Email: davis@umlpp.com
Direct (362) 216-4456

FAX TRANSMITTAL SHEET
IMMEDIATE ATTENTION REQUIRED

TO: Mr. Mark Beckington
FAX NO: (213) 897-1071
TEL. NO: (213) 897-1096
FROM: Jason A. Davis
DATE: December 18, 2007
RE: *Hunt et al., v. State of California et al.,*

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DAVID F. HADY
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FAX TRANSMITTAL SHEET
IMMEDIATE ATTENTION REQUIRED

TO: Mr. Mark Beckington
FAX NO: (213) 897-1071
TEL. NO: (213) 897-1096
FROM: Jason A. Davis
DATE: December 18, 2007
RE: *Hunt et al., v. State of California et al.*

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Fresno Superior Court

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Party: Edward W. Hunt	
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Personal Check	-40.00
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Total Payment:	40.00

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Fresno County Treasurer
Date: 20-DEC-2007 Time: 04:07
01CECG03182 40.00
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