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17 Attorneys for Plaintiffs

18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 IN AND FOR THE COUNTY OF FRESNO

20 EDWARD W. HUNT, in his official) CASE NO. 01CECG03182
21 capacity as District Attorney of Fresno)
22 County, and in his personal capacity as a)
23 citizen and taxpayer; DAVE SUNDY,)
24 former Oakdale Chief of Police, in his)
25 personal capacity as a citizen and taxpayer;)
26 LAW ENFORCEMENT ALLIANCE OF)
27 AMERICA, on behalf of its members whose)
28 therewith, and as citizens and taxpayers;)
CALIFORNIA SPORTING GOODS)
ASSOCIATION, INC., a California non-)
profit corporation; HERB BAUER)
SPORTING GOODS, a California)
corporation; and BARRY BAUER, as)
taxpayer and licensed firearm dealer.)
Plaintiffs,)
v.)
STATE OF CALIFORNIA; WILLIAM)
LOCKYER, Attorney General of the State of)
California; CALIFORNIA DEPARTMENT)
OF JUSTICE; Does 1-100;)
Defendants.)

FILED
FEB 25 2002
FRESNO COUNTY SUPERIOR COURT
CLERK'S OFFICE
DEPUTY

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CLERK'S DEPUTY

1 I, Paul Dougherty, declare and say that, based on my expertise as a criminalist and firearms
2 examiner, if called as an expert witness I would testify as follows:

3

4 [EXPERTISE]

5 1. During the period 1960 through 1986 I worked at the San Mateo County Sheriff's
6 Department Criminalistics Laboratory, first as assistant criminalist and then as chief criminalist.
7 Though I am now retired from that position and living in Southern California, I continue to work
8 part time as senior criminalist (firearms) for the Crime Laboratory of the Ventura County Sheriff's
9 Department. In that position and in my prior position with San Mateo County, my work
10 specializes in the examination and analysis of firearms, though I also perform other criminalistics
11 work as well.

12 2. My degrees are a B.S. in criminalistics (1956) from the University of California at
13 Berkeley and a J.D. from Lincoln U. School of Law (1971). I am a member of a number of
14 professional societies whose areas of interest include some or several of the following: death and
15 accident investigation, ballistics, firearms design and safety and criminalistics in general. Those
16 societies include: the American Academy of Forensic Sciences (Fellow); the Royal Microscopical
17 Society (Fellow); the (American) Association of Firearms & Toolmark Examiners (Distinguished
18 Life Member); the California Association of Criminalists; the International Wound Ballistics
19 Association; and the Southern California Firearms Study Group. (Until my retirement from the
20 San Mateo Criminalistics Laboratory I was a member of the American Association of Crime
21 Laboratory Directors.)

22 3. I have been qualified as an expert, and testified, on matters involving firearms,
23 including firearms design, safety, and handling, death and accident investigation, and ballistic
24 analysis, in hundreds of cases in the California and federal courts and those of other states and in
25 the courts of Canada and the United Kingdom.

26 ///

27 ///

28 ///

[THREADED BARREL]

2 4. Under Pen. C. § 12276.1 a pistol is or may be an "assault weapon" (AW) if it has a
3 "threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer." Pen. C. §
4 12276.1 (a)(4)(A). Unfortunately, this creates a minefield of hazardous confusions for anyone who
5 is unfamiliar with firearms esoterica.

6 5. Pistols with threaded barrels are quite rare. Conventional multi-use pistols do not have
7 threads on the barrel. Pistols having threaded barrels are primarily those designed or adapted
8 solely for precision target shooting, including Olympic competition shooting. A pistol of this type
9 may have a threaded barrel so that either the manufacturer or a gunsmith can screw a compensator
10 or a weight onto the end of the barrel to achieve the perfect balance and other operational
11 characteristics required for precision target shooting.

12 6. Even if a pistol has a threaded barrel, that pistol is not "capable of accepting a flash
13 suppressor, forward handgrip, or silencer" unless its threads match those of some flash suppressor,
14 forward handgrip, or silencer that exists somewhere in the world. To know whether their pistols
15 are "capable of accepting" any of those items, owners of pistols with threaded barrels must know:
16 (a) the dimensions of the threads on their pistols' barrels; and (b) the dimensions of the threads on
17 the flash suppressors, forward handgrips and silencers that exist all over the world. While it is
18 possible for owners to determine (a), not even experts know, or can determine (b). There are no
19 books or written materials of any kind that catalog the thread dimensions of all, or most, or many,
20 flash suppressors, forward handgrips, and/or silencers.

21 7. Absent such written materials, the only way owners could determine whether their
22 pistols are "capable of accepting" those items would be to obtain a selection of flash suppressors,
23 forward handgrips, and silencers to try to screw on the barrels of their pistols. As to silencers, Pen.
24 C. § 12520 makes it a felony for an ordinary person not involved in law enforcement to handle
25 them even momentarily. As to flash suppressors and forward handgrips for a handgun, they are
26 rare and arcane objects that the ordinary gun owner would have no idea how to obtain. The fact is
27 that, outside of watching James Bond-type movies, ordinary handgun owners will never even have
28 seen (much less closely examined) a silencer, flash suppressor or forward handgrip for a handgun.

1 So, assuming the owner's pistol barrel had threads, how could s/he know or ascertain if
2 somewhere in the world there exists a silencer, flash suppressor or forward handgrip whose
3 threads fit it?

4 8. There exists another problem for owners of precision target pistols beyond the
5 impossibility of ascertaining thread dimensions for silencers, flash suppressors or forward
6 handgrips. Many such owners will not even know that their target pistols have a threaded barrel.
7 The threads are concealed by the weight or compensator that has been placed on them. Many
8 owners will never have thought about how the compensator or weight is affixed on the end of the
9 barrel. (Is it screwed on to threads, spot-welded or affixed in some other way?) Yet, unless they
10 realize there are threads on the barrel under the compensator or weight, owners cannot anticipate
11 that their target pistol may be classified as an "assault weapon" under § 12276.1 by reason of the
12 threaded barrel.

13 9. Many such precision target pistols are in the .22 target calibers. Many of them are .22
14 Shorts, the lowest velocity of the .22 calibers. Owners are unlikely to think of their precision
15 target pistol as a weapon at all, since it was designed and purchased for the exclusive purpose of
16 putting holes in paper targets. Much less would they deem this low-powered pistol to be an
17 "assault weapon." So, even if target pistol owners understood § 12276.1 (a)(4)(A), they would be
18 unlikely to think that statute applicable to their firearms which were neither designed nor intended
19 to be used in connection with a flash suppressor, forward handgrip, or silencer.¹

20 10. There are a few pistols that were deliberately designed with threaded barrels to accept
21 silencers. These are generally military arms and may only rarely be encountered in civilian life.
22 With DOJ's research resources it could have promulgated a bulletin or regulation identifying at
23 least some of the pistols that are "capable of accepting" silencers within the meaning of § 12276.1.
24 Such a bulletin or regulation would be very helpful both to owners seeking to understand and

25
26
27 ¹ I recognize that Pen. C. § 12276.1 (c)(2) exempts by name a number of Olympic-type pistols in
28 .22 and .32 caliber. But it fails to name a number of other Olympic-type and precision target pistols in
those calibers and many such pistols in other calibers that are made or modified for precision target
shooting.

1 comply with Pen. C. §§ 12275 et seq. (the AWCA) and law enforcement officers and agencies
2 charges with the enforcement of it. Regrettably, DOJ did not see fit to research and promulgate
3 such a bulletin or regulation.

4

5 [MAGAZINE CAPACITY OF TUBULAR MAGAZINE RIFLES AND SHOTGUNS]

6 11. By section 3 of SB 23 the Legislature amended Penal Code § 12020(a)(2) to make it a
7 crime for any owner of a "large capacity magazine" to loan it to another person, or for merchants
8 to sell such items. These prohibitions do not just cover to the detachable magazines with which
9 most rifles classified as AWs operate. They also cover rifles and shotguns having integral tubular
10 magazines that meet the statutory definition of "large capacity" set out in Penal Code §
11 12020(c)(25): "any ammunition feeding device with the capacity to accept more than 10 rounds . .
12 . ."

13 12. Unfortunately, defendants' failure to issue a clarifying regulation presents a grave
14 uncertainty problem for both owners and law enforcement as to which tubular magazine firearms
15 § 12020(a)(2) should be deemed to cover and which not. In a tubular magazine the rounds are
16 placed one behind the other. Whether a particular gun's tubular magazine will hold ten rounds, or
17 more than ten, or less, depends on the length of the rounds, which may vary. These facts raise
18 multiple ambiguities for the meaning of §§ 12020(a)(2) and (c)(25): Is the term "rounds" in these
19 provisions an infinitely malleable one so that a gun that did not fall under § 12020 (a)(2) when
20 that prohibition became effective in 2000 may become subject to that prohibition if some shorter
21 non-standard round is later invented? May a gun become subject to that prohibition if, though it
22 was designed and sold as using a long round, it is capable of using some shorter rounds that exists
23 in some other nation, though not in the U.S. or California? Or does the term "rounds" refer to a
24 fixed, identifiable length of the round -- based on the specific round contemplated when the gun
25 was designed, and/or on the common understanding in California of which round it uses? In short,
26 can a firearm be deemed to have the "capacity to accept more than ten rounds" because it can be
27 loaded with non-standard short rounds it was not intended to use or sold to the owner as using
28 and/or of which the Legislature was unaware when § 12020 (a)(2) was enacted?

1 13. While these issues are steeped in hyper-technical detail, the questions themselves are
2 crucial to the potential criminal liability of gun owners or merchants -- who, nonetheless, may be
3 wholly unaware of the issues and dangers that are involved. If "capacity to accept more than ten
4 rounds" is viewed as infinitely malleable rather than limited to the rounds a firearm was sold as
5 using, owners who lend a firearm to a friend on a hunt thereby unknowingly commit a crime if
6 there exists a short non-standard round the owner may never have heard of, or have realized will
7 work in the firearm -- even though that shorter round may not even be available for purchase in
8 this state. Likewise, the merchant who sold that firearm thereby committed a crime, despite never
9 having heard of that shorter round which may only exist in some other nation. These are not mere
10 hypothetical possibilities, as the following examples show.

11

12 [SHOTGUNS: "MAGAZINE CAPACITY" MEANS 2.75" SHELLS]

13 14. Throughout the 20th Century and to date in the U.S. the standard length of 12 gauge
14 shotgun shells (rounds) has always been 2.75 inches. When the "magazine capacity" of a shotgun
15 is discussed in this country it is universally understood and assumed to be the number of 2.75 inch
16 rounds its magazine will hold. This is true, even though: a) different lengths prevail in other
17 nations; and b) in the second half of the Century more powerful 3 inch shells also appeared and
18 some shotguns were developed to utilize them as well as the standard 2.75 inch round. Shotguns
19 which use the three inch rounds will also use the smaller 2.75 inch round. If advertising or sales
20 literature refers to a tubular magazine shotgun as taking five 3 inch shells, it will specify "3 inch
21 shells"; whereas, when it refers to that shotgun's magazine capacity in general, it will generally say
22 "6 shells," that being understood to refer to the standard 2.75 inch round.

23 15. This is equally true regarding the 2 inch shells that were invented, and are found, in
24 the United Kingdom. Though few California firearms stores carry such English shells, and few
25 American shotgun owners know of their existence, those shells are to some extent available in this
26 country, if only by special order. Nevertheless, it would be neither usual nor correct to describe the
27 "magazine capacity" of an American tubular magazine shotgun as 8 rounds, meaning eight of
28 these short 2 inch English shells. Once again, in this country the magazine capacity of a shotgun is

1 universally understood to be the number of 2.75 inch rounds its magazine will hold. So even
2 though a shotgun might be able to hold eight 2 inch shells, the usual and proper way of describing
3 its magazine capacity would be 6 rounds, meaning six standard American 2.75 inch rounds.²

4 16. Based on "magazine capacity" as measured in standard 2.75 inch shells, shotgun
5 owners would never anticipate that their guns would fall within § 12020 (a)(2)'s ban on tubular
6 magazines that accept more than ten rounds. No tubular magazine shotgun has a magazine
7 capacity of even ten 2.75 inch rounds, much less of more than ten. Most tubular magazine
8 shotguns have magazine capacities of four, five or six 2.75 inch rounds, though a few will take
9 seven or eight rounds, and there is at least one model, the Mossberg 590, that will take nine 2.75
10 inch rounds. Recently, however, Aguila, an obscure Mexican manufacturer has developed a low-
11 power 1.5 inch round that will work in at least some 12 gauge tubular magazine shotguns. The
12 magazine of a tubular magazine shotgun having a capacity of six standard (2.75 inch) rounds will
13 hold 11 of these non-standard 1.5 inch Aguila rounds.

14 17. Unless shotgun magazine capacity is understood as a fixed quantity measured in terms
15 of 2.75 inch shells, the development of these 1.5 inch Aguila rounds presents many ambiguities as
16 to which tubular magazine shotguns fall under § 12020's (a)(2) prohibitions. Among these
17 ambiguities is whether certain shotguns are covered in that those 1.5 inch shells will fit into their
18 magazines -- even though those shotguns will not function with those rounds or will not function
19 reliably?

18. To understand this ambiguity requires an understanding of how a semiautomatic shotgun works: once the tubular magazine is loaded, a metal protrusion on the side of the gun is pulled to manually work the slide thereby bringing the first shell into the firing chamber. When the trigger is pulled discharging that first shell, the forces thereby created automatically cycle the

² Illustrative of the confusing and chaotic nature of firearms nomenclature generally is that the rounds commonly called "2 inch", "2.75 inch" or "3 inch" are not that long when they go into the shotgun. What those dimensions refer to is the length of the casing **as manufactured, before being crimped** to contain the powder and shot. Once crimped, a round is somewhat shorter; thus a standard 2.75 inch round when crimped may be anywhere between 2.55 and 2.7 inches long, depending on the size of the crimp.

1 slide so as to bring the next shell from the magazine into the chamber, and this continues with
2 every subsequent pull of the trigger until the gun is empty.

3 19. But Aguila's literature indicates that its 1.5 inch shells will not cycle in semiautomatic
4 shotguns.³ The shells can be loaded into a semiautomatic's magazine, and pulling back the
5 protrusion to manually work the slide may (or may not) catch a shell and bring it up into the firing
6 chamber; and if the 1.5 inch shell is chambered, pulling the trigger will discharge it. But discharge
7 of the low-powered 1.5 inch shell does not create enough force to fully cycle the slide bringing
8 another shell into the chamber.

9 20. Thus as the Aguila literature indicates, even if the first 1.5 inch round will chamber
10 and fire in a semiautomatic shotgun, it not function the firearm semiautomatically. (Indeed, it is by
11 no means clear that the shotgun will function at all. While the 1.5 inch rounds can be manually
12 loaded into the magazine, it may be impossible to cycle one of these short rounds into the
13 chamber. It may just hang up ("jam") in the mechanism that is supposed to feed the shells from the
14 magazine into the chamber.) But even though the shotgun cannot cycle and fire these 1.5 inch
15 rounds, 11 of them can be loaded into the tubular magazine of a semiautomatic shotgun that will
16 take six 2.75 inch shells. So the question arises: Does that shotgun magazine's "capacity to accept"
17 11 such shells subject its owner to the Penal Code § 12020(a)(2) prohibition even though those
18 shells will not operate semiautomatically in it? If so, "the capacity to accept more than 10" of
19 these shells makes it a crime for the owner to loan this semiautomatic shotgun to a hunting buddy
20 -- though they may not even be aware of the existence of the 1.5 inch shells (which would not
21 function the gun in any event). By the same token, there are probably some unknowing shotgun
22 owners who already have violated § 12020 (a)(2) by loaning their gun to a buddy on a hunt.
23 Likewise there are probably also merchants who have violated § 12020 (a)(2) by selling
24 semiautomatic shotguns because it never occurred to them that a shotgun would be deemed to

25
26
27 ³ "Early in our development work it was clear that this new round would hardly cycle semi-
28 automatic [shotguns] while also having difficulties in feeding some pump action shotguns flawlessly."
 (Quotation from Aguila website, www.aguilammo.com; see the first page of the section headed "Aguila
 Ammunition - New Products 12 Gauge Minishells.")

1 have "the capacity to accept" a round that it cannot operate with if that round nevertheless can be
2 loaded in the shotgun's magazine.

3 21. The same ambiguity, and others as well, arise as to pump-action shotguns. There are
4 literally scores of makes and models of tubular magazine pump-action shotguns owned in
5 California. The only make and model that Aguila claims will reliably function with its 1.5 inch
6 round is the Winchester 1300 series. Aguila adds, however, that its round will function in some
7 Mossberg and Remington models that have had "a minor modification in their elevators"
8 (Quoting again from Aguila website; see fn. ??? above.) Nonetheless 12 gauge pump action
9 shotguns may be deemed to have "the capacity to accept" these rounds in the same sense as
10 discussed regarding semiautomatic shotguns above: the rounds will load into their magazines even
11 though they may not cycle into the firing chamber reliably (or at all). As with the semiautomatic
12 shotguns, so with the pump-actions: If the capacity to be loaded into the magazine is all that is
13 required to fall under Penal Code § 12020(ac)(2), any owner who has loaned a pump-action
14 shotgun to a buddy on a hunt may have already unknowingly violated § 12020 (a)(2); and so has
15 any merchant who sold such a shotgun after Jan. 1, 2000 unthinkingly assuming that "the capacity
16 to accept" referred to the capacity to actually fire a round rather than just to load it in a shotgun's
17 magazine.

18 22. To reiterate, the only way to avoid grave ambiguities is to interpret magazine capacity
19 under § 12020 (a)(2) as a fixed and limited quantity measured in terms of 2.75 inch shells.
20 Assume that (contrary to the assumption discussed in the last two paragraphs) § 12020 (a)(2) does
21 not apply to shorter rounds unless a shotgun will actually and reliably work with those rounds. If
22 so, § 12020 (a)(2) would not apply to any semiautomatic shotgun. Nonetheless, many other
23 ambiguities would remain as to its application to pump-action shotguns, given the existence of the
24 new 1.5 inch Aguila rounds.

25 23. In this connection it is important to closely read what Aguila actually says about
26 whether and which pump-action shotguns can use that round. I fear owners and merchants will
27 make the very hazardous assumption that their pump-action shotguns will not use, and so are not
28 affected by, the 1.5 inch round because Aguila names only a few shotguns as reliably using that

1 round. Closer reading, however, discredits this hazardous assumption. Aguila does not make the
2 definite assertion that its 1.5 inch round will not work in some pump-action shotguns. All Aguila
3 is saying that its 1.5 inch shells does work in the Winchester 1300 and the specified models of
4 Mossberg and Remington having the specified alteration. As to other shotguns Aguila is not
5 denying that the 1.5 inch shell can work in them, but just cautiously disclaiming any
6 representation at all as to whether it will function reliably (or at all) in those other makes and
7 models of pump-action shotgun.

8 24. Based on the Aguila statement it is perfectly possible that a particular make or model
9 other than those Aguila names will generally function the 1.5 inch round though some individual
10 few shotguns of that brand or model will not. Moreover, even if some other make or model will
11 generally not function the 1.5 inch round, it may be that some shotguns of that make or model
12 will. Though each individual shotgun produced by mass production techniques is almost identical
13 to another shotgun of the same make and model, the guns are not "carbon copies." Sufficient
14 variation exists that some individual shotgun may function the 1.5 inch round even though they
15 are of a model that generally does not do so. Absent testing of an individual shotgun, not even an
16 expert could be certain whether it will or will not function the 1.5 inch round.

17 25. But individual owners are unlikely to test to determine whether their pump-action
18 shotguns cycle the Aguila 1.5 shells for they are unlikely to know of the existence of those shells.
19 It is necessary to understand how obscure the Aguila company, and its 1.5 inch rounds, are and
20 how limited is their presence in the market. The Aguila website indicates that it began making
21 these shells some time in 1999. Nevertheless, neither Aguila nor its ammunition were listed in the
22 1999 GUN DIGEST, the comprehensive list of ammunition-makers (U.S. and foreign) selling in this
23 country. In fact, Aguila is still so new and obscure it is still not listed in the GUN DIGESTS for 2000
24 and 2001 nor is its ammunition.⁴

25 ///

26 _____
27 28 ⁴ I am informed that GUN DIGEST 2001 lists a website for Aguila in its listing of firearms-related websites -- which listing does not, however, indicate even that Aguila produces shotgun shells, much less the length of those shells.

1 26. It is also important to understand how minuscule and obscure Aguila's 1.5 inch
2 shotgun offerings are. Shotguns come (in descending order of size-power) in gauges 10, 12, 16,
3 20, and .410 with 12, 20 and .410 being the most popular in the U.S. Yet even today even the few
4 loadings Aguila makes are available only for 12 gauge shotguns. By the same token, even today
5 Aguila offers only three different kinds of shotgun rounds. In comparison, major ammunition
6 manufacturers offer scores of different shotgun rounds including numerous different kinds of
7 buckshot, birdshot and slug loads.

8 27. Though I was not then aware of it, I am informed that a single Aguila 1.5 inch loading,
9 # 7.5 birdshot, may have been sold in this country (not necessarily in California) during some part
10 of the year 1999. Presumably, some Americans (but not necessarily any Californians) who use #
11 7.5 birdshot in 12 gauge shotguns were aware of the existence of these Aguila 1.5 inch rounds in
12 1999. That is a reasonably popular size for hunting of small birds, though # 8 is more popular for
13 that purpose; # 7.5 is also used for skeet and trap shooting, though # 6 is more popular. Insofar as
14 any American shotgun owners were aware of the existence of Aguila 1.5 inch shells in 1999 that
15 awareness would presumably have been confined to a few skeet and trap shooters and hunters of
16 small birds. Bird hunters who use other shells could or would not have been aware these 1.5 inch
17 birdshot shells, nor would hunters of deer and other animals.

18 28. It is not up to me to say what §§ 12020 (a)(2) and (c)(25) mean and how they should
19 be interpreted. I can say that throughout the 20th Century, and to date, shotgun "magazine
20 capacity" in this country has always been understood to mean capacity to accept 2.75 inch shells;
21 and whenever magazine capacity in some other length of shell is meant that other length is
22 expressly and specifically named. I can also assert that numerous and grave ambiguities arise if §§
23 12020 (a)(2) and (c)(25) are interpreted not to refer to magazine capacity as a fixed and certain
24 thing but as infinitely malleable to include newly developing ammunition of which Americans
25 may not be aware. My discussion of the 1.5 inch Aguila rounds illustrates this. I believe it may
26 fairly be said that there is no realistic basis to think that the Legislature or many firearms dealers
27 were aware of the existence of 1.5 inch shotgun shells when SB 23 was enacted in 1999. Neither
28 is it realistic to think that even today these shells are known to many or most dealers or to many or

1 most dealers or to the great majority of shotgun owners in California and the U.S.

2

3 [TUBULAR MAGAZINE RIFLES WITH A CAPACITY OF 10 ROUNDS OR LESS]

4 29. The same problems exist with many tubular magazine rifles but are perhaps even more
5 exacerbated because these problems are even less likely to be anticipated by the owners. Lever-
6 action rifles with tubular magazines exceeding a ten shot capacity have been sold in this country
7 since the mid-1850s. Millions of such rifles have been sold in this c. 150 period; indeed, since the
8 early 1960s millions of rifles that are either exact replicas of, or generally patterned after, such
9 19th Century tubular lever-action rifles have been sold in the United States. Few, if any, owners or
10 dealers are alert to the possibility that these rifles with a pre-Civil War design and technology are
11 now subject to special legal regulation.

12 30. Vast numbers of lever action rifles owned in this state were designed and sold as
13 having a magazine capacity of ten rounds or less. Many of these are rifles using .357 magnum or
14 .44 magnum rounds but they will also accomodate the shorter (and much less powerful) .38
15 special or .44 special rounds. Owners may be unaware that rifles sold to them as taking 10 or
16 fewer .357 or .44 magnum rounds may hold more than ten of these shorter rounds.

17 31. Nevertheless, the literal language of § 12020 (c)(25) may be interpreted as applying
18 the § 12020 (a)(2) "large capacity" restrictions to tubular magazine rifles that were purchased as
19 having a magazine capacity of ten or less. By that interpretation the owner of such a rifle would be
20 committing a crime by loaning it to a hunting buddy if, unbeknownst to either of them, there is
21 somewhere in the world a shorter cartridge whose dimensions would allow the rifle to accept
22 more than ten rounds.

23 32. In addition to regularly manufactured cartridges, there is the problem of handloaders.
24 Cartridge cases, gunpowder, primers and bullets are readily available to anyone who wishes to
25 produce ammunition for himself (and perhaps his friends). Handloaders are people who load their
26 own cartridges. They are, of course, not required to comply with SAAMI standards. They can take
27 a cartridge case of standard length and substantially shorten it, while still loading it with the same
28 (or less) powder. As a result they may be able to load 11 or 12 shortened shells into a tubular

1 magazine rifle that was intended, designed and sold as having a magazine capacity of ten or less.
2 The literal language of Pen. C. § 12020 (c)(25) may be interpreted as applying the Pen. C. § 12020
3 (a)(2) restrictions to such rifles because of the existence of such handloaded cartridges even
4 though: they were hand-manufactured, and only for the use of their makers; they have never been
5 commercially sold; and the rifle owners have no knowledge or understanding that these cartridges
6 even exist, and do not understand their rifles to have a capacity of more than ten cartridges.

7

8 [UNCERTAINTY OF "PERMANENTLY" ALTERED]

9 33. The § 12020 (a)(2) sale restriction applies to tubular magazine rifles, and to
10 detachable magazines, that hold more than 10 rounds; Pen. C. § 12276.1 (a)(2) and (a) (4) produce
11 a cognate sale restriction by classifying either a semiautomatic pistol or "a semiautomatic,
12 centerfire rifle that has a fixed magazine with the capacity to accept more than ten rounds" an an
13 "assault weapon." There certainly are millions of such detachable pistol and rifle magazines, and
14 of such tubular magazine rifles and fixed magazine semiautomatic rifles and handguns, in
15 California though I know no reliable way to estimate the total numbers with precision. The resale
16 value of such a detachable magazine varies from as low as less than fifty dollars to well over a
17 thousand dollars, depending on the magazine. The resale value of rifles or handguns using such
18 magazines varies from as low as less than \$100.00 to as much as several thousand dollars,
19 depending on the gun.

20 34. The Legislature has provided, however, that such a gun and/or separate feeding device
21 may be resold by the current owner if it has "been permanently altered so that [the magazine, aka
22 feeding device] cannot accommodate more than ten rounds...." Pen. C. §§ 12020 (c)(25) and
23 12276.1 (d)(2).

24 35. Tubular or fixed magazines are metal; detachable magazines are generally metal,
25 though some are made of high strength plastic. As applied to such objects, the concept
26 "permanently alter" can be interpreted so as to make it an oxymoron. Short of destroying them, or
27 making them non-functional, there is no way of "permanently" altering metal or high strength
28 plastic objects if "permanent" is understood to mean an alteration that cannot be reversed even at

1 inordinate cost. For instance, even if the feeding tube of a replica of a 12-round 19th Century rifle
2 were cut short and capped so as to accommodate only ten rounds, the cap **could** later be taken off
3 and an extension welded back on to restore it to a 12-round capacity. As a practical matter, the
4 cost of such a reversal would exceed the value it would add to the rifle, particularly if the work of
5 reversal were done in a careful manner to preserve the aesthetic value of the rifle. By the same
6 token, there is no method of irreversibly reducing a metal or plastic detachable magazine to 10
7 rounds that could not be reversed, albeit at exorbitant cost.

8 36. Thus no magazine alteration is "permanent," under these laws if that word is construed
9 without regard to common sense and economic practicality. That word, however, can be so
10 defined that it is sensible and practical, based on its historical context. The Legislature may be
11 deemed to have used the concept "permanently" altered in the context of (and in contradistinction
12 to) the long tradition of **non-**"permanently" reducing firearm magazine capacity. In California and
13 other states, hunting regulations often limit the number of rounds that a firearm may hold when
14 used in the hunting of certain kinds of game. The way these limitations traditionally have been
15 complied with is by inserting an easily removable wooden or metal dowel into the feeding device,
16 thereby reducing the number of rounds it could hold.

17 37. Given this background, the SB 23 statutes involved here could be interpreted as using
18 the wording "permanently altered" to describe alterations that reduce magazine capacity by
19 structural changes that are not readily or easily reversible, e.g. changes involving such things as
20 machining, metalworking, welding, brazing, soldering or application of bonding agents or
21 adhesives.

22

23

[VERIFICATION]

24

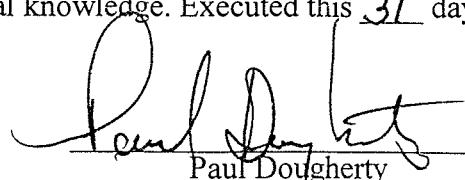
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28

I certify and declare under penalty of perjury under the laws of the State of California that
the foregoing is a true and correct statement of my personal knowledge. Executed this 31 day of
AUGUST at Ojai, California.



The image shows a handwritten signature in black ink, which appears to read "Paul Dougherty". The signature is fluid and cursive, with some loops and variations in letter height.

PROOF OF SERVICE

2 | STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

I, Haydee Villegas, am employed in the City of San Pedro, 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 407 North Harbor Boulevard, San Pedro, California 90731.

6 On February 22, 2002, I served the foregoing document(s) described as

**DECLARATION OF PAUL DOUGHERTY IN SUPPORT OF PLAINTIFFS' REQUEST
FOR DECLARATORY AND INJUNCTIVE RELIEF**

on the interested parties in this action by placing

[] the original

[X] a true and correct copy

10 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 San Pedro, 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 February 22, 2002, at San Pedro, 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.

Executed on February 22, 2002, at San Pedro, California.

23 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
of this court at whose direction the service was made.

Haydee Villegas
Haydee Villegas

1 HUNT v. STATE OF CALIFORNIA
2 Case No. 01CECG03182

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