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10 Attorneys for Plaintiffs

11
12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF FRESNO

14 EDWARD W. HUNT, in his official)
15 capacity as District Attorney of Fresno)
County, and in his personal capacity as a)
16 citizen and taxpayer; DAVE SUNDY,)
former Oakdale Chief of Police, in his)
17 personal capacity as a citizen and taxpayer;)
LAW ENFORCEMENT ALLIANCE OF)
18 AMERICA, on behalf of its members whose)
duty it is to enforce the law and/or to comply)
19 therewith, and as citizens and taxpayers;)
CALIFORNIA SPORTING GOODS)
20 ASSOCIATION, INC., a California non-)
profit corporation; HERB BAUER)
21 SPORTING GOODS, a California)
corporation; and BARRY BAUER, as)
22 taxpayer and licensed firearm dealer.)

23 Plaintiffs,

24 v.

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

27 Defendants.
28

FILED
FEB 25 2002
FRESNO COUNTY SUPERIOR COURT
CLERK DEPUTY

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FRESNO COUNTY SUPERIOR COURT

CLERK DEPUTY

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;)
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39 LOCKYER, Attorney General of the State of)
40 California; CALIFORNIA DEPARTMENT)
41 OF JUSTICE; Does 1-100;)

42 Defendants.)

-12/2002

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

3
4 [EXPERTISE]

5 1. For the last 25+ years I have been continuously employed as a criminalist specializing
6 particularly in firearms examination. Since 1994, and to date, I have been and am employed in that
7 capacity with the Las Vegas Metropolitan Police Department. My educational background is:
8 1969: B.S. in chemistry, San Diego State University. 1972: M.S. in chemistry, San Diego State
9 University.

10 2. During the 22 year period 1973-1994 I was a criminalist with the California
11 Department of Justice (DOJ) in various of its offices throughout California. In that capacity I did
12 general criminalistics, specializing particularly in firearms examination, including the test-firing
13 of firearms for various purposes. I acquired special experience with the testing of flash through a
14 series of experiments concerning the amount and kind of flash that would be generated by firing
15 of California Highway Patrol firearms with multiple kinds of ammunition. These experiments
16 were conducted by me and other DOJ laboratory employees over a period of several years in
17 evaluating ammunition to be used by state agencies (principally the California Highway Patrol.)

18 3. My last four and a half years with DOJ were spent as a Program Manager in its
19 California Criminalistics Institute training other criminalists, especially in firearms examination. I
20 am a Distinguished Member of the Association of Firearms and Toolmark Examiners and a
21 member, and member of the governing board, of the International Wound Ballistics Association.

22 4. During my career I have been qualified as an expert, and have testified, in hundreds of
23 cases in California courts. An estimated 60-70% of those cases involved my testifying as to
24 firearms technical issues. Since coming to Las Vegas I have been qualified as an expert and
25 testified as such on firearms issues in 30-40 cases in the Nevada courts.

26 ///

27 ///

28 ///

1 [ERRORS IN DOJ "FLASH SUPPRESSOR" DEFINITION]

2 5. I am familiar with both the DOJ regulation defining "flash suppressor"¹ and DOJ's
3 "Final Statement of Reasons" which tries to justify that definition. Comparison of them to
4 technical firearms dictionaries, lexicons, military, and industry sources in general reveals that the
5 DOJ definition contains at least three major errors. The first of these errors lies in DOJ's
6 confusing "muzzle brakes" and "compensators" (devices designed to deal with various recoil
7 effects) with "flash suppressor" which are devices designed to reduce muzzle flash. The second
8 error is that DOJ's definition of "flash suppressor" expressly applies that term not just where flash
9 is actually reduced but also where it has merely been "redirected." In introducing the redirection
10 concept, DOJ's definition departs from **all** definitions of "flash suppressor" I can find in the
11 technical literature, **including** dictionaries, glossaries and materials DOJ itself listed as the basis
12 for its definition. **All** define what a flash suppressor seeks to do as "reduce" flash -- not "redirect"
13 it.²

14 _____
15 ¹ CCR § 12.8.978.20 (b) which reads: "flash suppressor' means any device designed,
16 intended, or that functions to perceptibly reduce or redirect muzzle flash from the shooter's field
of vision."

17 ²The only cited reference to support DOJ's position is its own guidebook which is not an
18 independent reference source and, of course, supports DOJ's position on the matter, having been
19 composed by the same personnel who produced that position. Notably, it fails to cite an independent
reference source for that position.

20 The sources cited by DOJ as supposedly supporting the CCR § 12.8.978.20 (b) definition of
flash suppressor are:

- 21 • Jane's Infantry Weapons, Glossary, Twentieth Edition, 1994-95
- 22 • Sporting Arms and Ammunition Manufacturers' Institute, Inc. (SAAMI), Technical
Correspondent's Handbook, Glossary of Industry Terms
- 23 • SAAMI Non-Fiction Writer's Guide
- 24 • National Rifle Association Institute for Legislative Action (NRA-ILA), Firearms Glossary
- 25 • Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Federal Firearms
Regulations Reference Guide, 2000
- 26 • California Attorney General's Assault Weapons Identification Guide, 1993
- Complete Guide to Guns & Shooting, by John Malloy, 1995
- Small Arms Lexicon and concise Encyclopedia, Chester Mueller and John Olson and
- Dictionary of Weapons and Military Terms, John Quick, Ph.D.

27 I have examined all of the foregoing reference sources except ATF FIREARMS REGULATION -
28 2000 which I was unable to locate. None of the independent sources refers to the concept of redirecting
flash. I am informed by ATF personnel that that concept is not an element or part in the ATF definition
of flash suppressor. (Note: ATF refers to the federal Bureau of Alcohol, Tobacco and Firearms.)

1 6. The third error in DOJ's definition is that it applies the term "flash suppressor" to
2 mechanisms that were neither intended nor designed to reduce flash but may slightly reduce flash
3 as an unintended side-effect of achieving their intended purpose. Yet dictionary definitions
4 generally define "flash suppressor" as an object designed or intended to reduce flash. (See ¶ 10
5 below.) Some dictionaries do speak in terms of effect, but this is **presumed** effect, i.e. they
6 presume flash is reduced because that is the design-intent of the device and not based on actual
7 testing to verify that there has been a real reduction.

8 7. In my opinion the DOJ regulation defining flash suppressor slops together different
9 concepts, several of which are wrong or irrelevant, and thereby introduces both error and grave
10 and unnecessary uncertainty into a matter that the statute itself clearly defined by using a phrase
11 having a clear technical meaning (see ¶ 10 below). My opinion is based on review of all available
12 technical sources, including those cited by DOJ itself (which, however, emphatically do not
13 support the elements I criticize in the DOJ definition; but see fn. 2, above). In addition, I have
14 considered the declaration of plaintiffs' expert Michael Shain regarding the difficulties of testing
15 rifles to determine whether they are equipped with a flash suppressor as that term is construed in
16 the DOJ definition. Having read the declaration of plaintiffs' expert Shain, I fully concur with the
17 assertions made therein.

18
19 [ERRONEOUS INCLUSION OF "MUZZLE BRAKES" AND
20 "COMPENSATORS" WITHIN THE CONCEPT "FLASH SUPPRESSOR"]

21 8. I begin with an explanation of how cartridges operate when fired, with special emphasis
22 on a simplified explanation of the highly complex factors that cause flash. It must be understood
23 that the firing of a cartridge does not involve any explosion, but rather ignition of the highly
24 inflammable powder in the cartridge. Its burning creates rapidly expanding gasses which escape
25 by pushing the bullet down and out of the barrel. Only about 1/3rd of the chemical energy is
26 converted to kinetic energy driving the bullet down and out of the barrel. The leftover energy is
27 largely contained in a gas-particle mixture which escapes the barrel after the bullet. These gasses
28 are generally fuel-rich. The major component flash is created because they may ignite when they

1 mix with oxygen from the air as they escape the barrel. Also with longer burning powders some
2 powder may be unburned and igniting as it is expelled from the barrel, especially on shorter
3 barreled firearms.

4 9. The most effective way of reducing or eliminating flash is to select a cartridge that may
5 contain additives designed to suppress flash and also uses powder that burns fast enough so that
6 all the powder is burned before it reaches the end of the barrel. An alternative choice is a
7 mechanical "flash suppressor", i.e., the kind of mechanism Pen. C. § 12276.1 focuses on as one
8 thing that defines a rifles that constitutes an "assault weapon" (AW) under the Assault Weapon
9 Control Act. Such a mechanical "flash suppressor" may either be built in as an integral part of the
10 barrel, or an add-on that is attached as part of a barrel extension.

11 10. The method by which such a mechanical flash suppressor is supposed to work is by
12 interrupting and disrupting the flow of burning gasses and/or powder coming out of the muzzle.
13 But, to be frank, some mechanical flash suppressor designs may not work at all, or may not work
14 reliably; and, to the extent mechanical flash suppressors do work, it is not entirely clear how and
15 why they work. For that reason, the only accurate definition of "flash suppressor" focuses on
16 purpose rather than effect; viz. the standard industry source which defines a flash suppressor as
17 "An attachment to the muzzle designed to reduce muzzle flash."³

18 11. In contradistinction, a muzzle brake or compensator is a device that reduces recoil
19 and/or muzzle jump, i.e., upward motion of the muzzle, not muzzle flash. By the same token, the
20 cause of muzzle flash (the burning of gasses and powder **leaving the muzzle**) is not something
21 muzzle brakes or compensators are designed to affect. Flash, being caused by gasses and powder
22 **as and after they leave the muzzle**, has no substantial effect on recoil and/or muzzle jump.

23 12. So muzzle brakes and compensators are related to each other in that both are supposed
24

25 ³ This definition comes from the Glossary of the Sporting Arms & Ammunition Manufacturing
26 Institute (SAAMI) and may be found on its official website (www.saami.org). SAAMI is the research and
27 standardization body created by the firearms industry to determine and propound industry standards for
28 technical issues including such things as cartridge dimensions, powder characteristics and safe-loading
limits, and to define and disseminate industry technical information.

I have provided plaintiffs' counsel several closely similar definitions of "flash suppressor" from
firearms dictionaries and other technical works which counsel will be giving the court as Exhibits 6-15.

1 to deal with aspects of recoil. In contrast, neither of them are related to flash suppressors which
2 are not designed to deal with recoil. Accordingly, definitions in firearms dictionaries of "muzzle
3 brake" and "compensator" often cross-reference each other. But they do not cross-reference "flash
4 suppressor" and vice versa (except occasionally to differentiate "muzzle brake" and/or
5 "compensator" from "flash suppressor"). It bears emphasis that this is as true of sources DOJ cites
6 as justifying its definition as of the firearms technical literature in general. **None** of the sources I
7 have reviewed that DOJ cites to justify its definition confuse flash suppressor, on the one hand,
8 with muzzle brakes and compensators on the other, nor do they include muzzle brakes and
9 compensators when defining "flash suppressor." (But see fn. 2 above.)

10 13. Muzzle brakes, compensators and flash suppressor may all look the same to the
11 uninitiated. All three may involve holes, slots or spaces that are either cut into the barrel itself or
12 into a barrel attachment that is screwed on, or otherwise attached, to the end of the barrel. But, to
13 reiterate, flash suppressor serve a wholly different purpose than do muzzle brakes or
14 compensators. Any effect muzzle brakes or compensators have on flash is purely incidental. To
15 consider them flash suppressors is like considering a large square camper placed on the bed of a
16 sleek pickup truck a brake. Yes, the air drag of the camper slows the truck down, but that does not
17 make a camper either a brake or a part of the braking system.

18 14. The differences between flash suppressors, on the one hand, and muzzle brakes and
19 compensators on the other, correspond to what I am informed is the fundamental distinction on
20 which the Assault Weapon Control Act (AWCA - Pen. C. § 12275 et seq.) rests. I am informed
21 that the AWCA expressly states its purpose as being to control modern military type firearms but
22 not civilian sport-type rifles.⁴ Given that purpose, it is clear why § 12276.1 uses "flash suppressor"

23
24 ⁴ I am informed that Pen. C. § 12275.5 states a legislative intent that the AWCA cover military
25 weapons, but not civilian sporting arms in the following words (with emphasis added):

26 The Legislature hereby finds and declares that the proliferation and use of
27 assault weapons poses a threat to the health, safety, and security of all citizens of this
28 state. The Legislature has restricted the assault weapons specified in Section 12276
based upon finding that each firearm has such a high rate of fire and capacity for
firepower that its function as a legitimate sports or recreational firearm is substantially
outweighed by the danger that it can be used to kill and injure human beings. It is the
intent of the Legislature in enacting this chapter to place restrictions on the use of assault

1 to help define which kinds of weapons are to be deemed AWs under the AWCA. The flash
2 suppressor is a military device of military origin and purposes.

3
4 [MILITARY DERIVATION/FUNCTION OF FLASH SUPPRESSOR]

5 15. There are two reasons for the military seeking to suppress flash on weapons it uses.
6 These reasons are largely or completely irrelevant to civilian hunting arms. One reason is that
7 flash may reveal a soldier's position to the enemy, and draw counter-fire. That is completely
8 irrelevant to the civilian hunter because, at the risk of seeming facetious, game animals do not
9 shoot back. The other reason why it is desirable to suppress flash from firing a military rifle at
10 night (the only time flash is really visible) is the blinding effect of flash. It can temporarily blind
11 the soldiers who are shooting, their comrades around them, and electronic night vision equipment.
12 I put this in terms of soldiers because night-blinding is a not a problem for hunters since they do
13 not usually hunt at night for among other things, night hunting is generally illegal.

14
15 [UNCERTAIN EFFECT ON FLASH]

16 16. Do muzzle brakes and compensators have even trivial flash reduction effects as an
17 unintended side-effect of their purpose of controlling or reducing recoil? This question is very
18 difficult to answer because these devices are not designed to reduce flash. So their effect on flash
19 has not really been tested by their makers. In addition, the way in which they operate makes it very
20 difficult to devise a test that would measure their effect on flash (if any). In the absence of
21 definitive scientific testing, there is no basis for any general assessment of whether muzzle brakes
22 and compensators: a) reduce flash; b) do not affect flash, or c) actually increase or accentuate
23 flash. In fact these devices can dramatize flash. Movie guns often have compensators or muzzle
24 brakes for that purpose. The devices highlight (without necessarily increasing) the flash by

25
26
27 _____
28 weapons and to establish a registration and permit procedure for their lawful sale and
possession. *It is not, however, the intent of the Legislature by this chapter to place
restrictions on the use of those weapons which are primarily designed and intended for
hunting, target practice, or other legitimate sports or recreational activities.*

1 changing what would otherwise be a single large muzzle flash into a radiating pattern of smaller
2 flashes surrounding the muzzle.

3 17. Absent scientific standards and testing, it is impossible to know if the total flash is
4 greater with a compensator or muzzle brake than without. Among other things, the answer may
5 differ depending on the viewer's perspective or angle of vision. A compensator or muzzle brake
6 may appear either to increase or to decrease the flash effect depending on whether the firearm is
7 being viewed from directly in front of the shooter; from an area of 90 degrees in front; from an
8 area of 180 degrees in front; or from an area of 360 degrees around the shooter.

9 18. Ironically, there is one generalization that can be made, even without testing, as to the
10 probable effects of muzzle brakes and compensators on flash. To reiterate, those devices are
11 intended to reduce or control recoil and muzzle flip, i.e., the tendency of the muzzle to moving
12 upwards in firing. So, to whatever extent a muzzle brake or compensator affects flash, it would
13 probably be by directing the flash upwards; for this would incline the muzzle to move downwards,
14 thereby counteracting the tendency of recoil and muzzle flip to move the muzzle upwards. Insofar
15 as these devices do direct flash upwards they are doing the opposite of what DOJ is theorizing
16 they might do: By directing flash upward they are increasing the likelihood of night-blinding the
17 shooter even if they may (or may not) be decreasing the extent of the flash that is directed
18 horizontally or downwards.

19
20 [WHAT IS TO BE MEASURED?]

21 19. This brings me to an ambiguity which the DOJ definition deals with by an assumption
22 DOJ has neither examined nor in any way linked to the statute. The DOJ definition just assumes
23 that the issue to which flash relates is its brightness rather the size of the area over which it
24 spreads. This apparently derives from DOJ's further unexamined assumption that a flash
25 suppressor has only one purpose, preventing the soldier from suffering night-blindness. If that
26 were the only issue, the brightness of the flash would be of paramount concern. But if another
27 reason flash is to be suppressed is to avoid revealing the shooter's position, the area over which
28 flash occurs is at least an equal concern. All the brightness of the flash reveals is where the muzzle

1 is; but a less bright, but broader, corona of flash radiating out of the barrel may light up the
2 shooter to observers.

3 20. The issue raised in the last paragraph exemplifies the many problems that arise only
4 because the DOJ definition departs from the statute and the established technical meaning of
5 "flash suppressor." Under this aberrant DOJ definition, the issue is actual flash reduction. That can
6 only be determined by testing. But testing requires standards e.g., is the issue reduction in how
7 bright the flash is, as DOJ apparently assumes, or the area it illuminates? If testing is what is
8 required, it was incumbent on the Legislature to either write the standards into the law or require
9 DOJ to provide the standards. The statute does neither. To me this indicates that the Legislature
10 used "flash suppressor" according to the established technical usage which focuses on design
11 intent, not actual effect.⁵ If that is how the Legislature used "flash suppressor", the question of
12 whether a particular device is a flash suppressor would be resolved by relatively easy research:
13 look at whether the device bears the phrase "flash suppressor" and/or at what the manual, sales
14 literature and/or patent records say about its purposes. Only because DOJ has failed to follow this
15 established definition do there arise the problems mentioned in this declaration and that of
16 plaintiffs' expert Michael Shain.

17
18 [SUMMARY OF PROBLEMS WITH THE DOJ DEFINITION UNDER WHICH A
19 MUZZLE BRAKE OR COMPENSATOR MAY BE DEEMED A FLASH SUPPRESSOR]

20 21. To summarize, in defining a muzzle brake or compensator as having even the
21 potential to be a "flash suppressor" DOJ regulation CCR § 12.8.978.20 flies in the face of
22 established technical source definitions and industry descriptions of flash suppressor, muzzle
23 brakes and compensators, respectively -- **including** the independent sources DOJ itself has cited
24 as the basis for its definition. That regulation also ignores the statutory distinction between
25 modern military type firearms, which the AWCA seeks to control, and civilian sport-type rifles
26 which it expressly excludes from being "assault weapons."

27
28 ⁵ Per the SAAMI definition "An attachment to the muzzle *designed* to reduce muzzle flash." My italics. See ¶ 10.

1 discussed, many or most muzzle brakes and compensators are likely to blow flash primarily
2 upwards so that they can actually increase the chance of the shooter being flash-blinded.
3 Nevertheless a muzzle brake that has zero net effect on flash-blinding (or even increases the flash-
4 blinding effect) is still a "flash suppressor" under the erroneous DOJ definition. That definition
5 applies if **any** part of the flash is redirected out of the field of vision -- regardless of whether a
6 muzzle brake or compensator is redirecting equal, or more flash, into the field of vision.

7 25. A further problem with the DOJ definition's sole focus on flash being redirected "from
8 *the shooter's* field of vision" is that this fails to take the multiple purposes of a flash suppressor
9 into account. It appears to represent a completely unexamined -- indeed unstated, even in DOJ's
10 Final Statement of Reasons -- assumption that the defining purpose of a flash suppressor is only
11 protecting **the shooter** from temporary night blindness. What about the other purposes of reducing
12 flash: to minimize the danger of night blinding fellow-soldiers; and, far more important,
13 minimizing the danger of revealing the shooter's position to enemy soldiers, thereby drawing
14 counter-fire? Since muzzle brakes and compensators are not intended to affect flash at all, any
15 redirection they cause is random vis-a-vis the real (and multiple) purposes of a flash suppressor.
16 So, even if a particular muzzle brake or compensator did accidentally happen to redirect flash
17 "from the shooter's field of vision," the result may be that it is redirected into the fields of vision
18 of the shooter's fellow-soldiers located in a 180 degree arc to each side of the shooter. Far more
19 important, it may make the flash more visible to enemy soldiers who are located in a position from
20 which the muzzle can be seen.

21 26. Absent actual testing of individual rifles, the issues must be approached speculatively,
22 on a purely theoretical level. Such an approach reveals the enormous problems created by using
23 the concept of "redirection" of flash as one way of defining "flash suppressor." A muzzle brake or
24 compensator could only redirect flash from the shooter's field of vision by diverting the gasses
25 entirely downwards. (Diverting gasses to the sides or upward would redirect flash **within** the
26 shooter's field of vision but not "from" it.) And, though diverting the gasses downwards could
27 somewhat redirect the flash from the shooter's field of vision, it would still spotlight the shooter to
28 observers. If a shooter snipes from an elevated position (e.g., concealed in a tree or on the top of a

1 building) a muzzle brake or compensator that directed the gasses downward would spotlight the
2 shooter's exact position to observers situated more or less directly below. If the gasses were not
3 redirected at all, observers would see a piercing plume of flame at the end of the muzzle. With the
4 gasses blown downward, however, what observers below would see is a corona of light that would
5 tend to reveal the shooter or at least make the shooter's position no less unmistakable. So, far from
6 accurately defining "flash suppressor", the DOJ definition is unrelated to what a flash suppressor
7 is supposed to do. A compensator or muzzle brake that meets the DOJ definition by redirecting
8 flash out of the shooter's field of vision (i.e., downwards) may actually cause something a flash
9 suppressor is supposed to be preventing in that it could reveal the shooter's position.

10 27. Furthermore, to postulate, as the DOJ definition does, a muzzle brake or compensator
11 that directs all or most of the flash downwards makes no sense. If the flash is redirected mostly
12 downwards it can only be because the gasses/powder are being so redirected. But, once again, the
13 purpose of a muzzle brake or compensator is to control or reduce **upward** motion of the muzzle.
14 The effect of directing gasses downward would be not to reduce or control upward motion, but to
15 increase it. So it seems unlikely that any compensator or muzzle brake has ever been designed to
16 blow the gasses and powder solely downward. The optimum design for a compensator or muzzle
17 brake to control or reduce recoil would be by blowing gasses out to the sides and/or upwards. As
18 illustrated by the use of muzzle brakes on movie guns, redirecting gasses out to the sides may
19 actually cause the flash to be more visible to persons standing at an oblique angle in front of the
20 muzzle, or to side of the shooter, than it would be if the rifle lacked a muzzle brake. At the same
21 time, it may not make flash less revealing to an observer standing more or less in front of the gun,
22 and may even make flash in some ways more visible. Absent a muzzle brake or compensator,
23 observers in that position would see a very bright plume of flame coming directly out of the barrel.
24 But if the rifle has a muzzle brake or compensator blowing the gasses out to the sides, observers in
25 front may see the shooter revealed in the corona of somewhat less bright but widely radiating
26 flames caused by the operation of the muzzle brake or compensator. This, once again, illustrates
27 the error of applying the concept "flash suppressor" to a muzzle brake or a compensator heedless
28 of the fact that they are different mechanisms having different purposes than a flash suppressor.

1 inconsistency of California DOJ's approval of two devices that necessarily must be deemed flash
2 suppressors under that CCR § 12.8.978.20 definition, the Springfield Muzzle Brake and the
3 Browning BOSS system. The BOSS is a system designed to increase rifle accuracy by eliminating
4 or reducing barrel vibration. In that respect it differs from ordinary muzzle brakes like the
5 Springfield. But it, like the Springfield, and countless other muzzle brakes or compensators, meets
6 the CCR § 12.8.978.20 definition of flash suppressor in that each has some unintended effect in
7 redirecting some of the flash out of a shooter's field of vision (albeit, these devices may also be
8 redirecting as much or more flash back into the field of vision). Nevertheless, DOJ has issued
9 advisory letters declaring that the Springfield Muzzle Brake and the Browning BOSS system are
10 not flash suppressor and do not count as such under Pen. C. § 12276.1. I am informed that DOJ's
11 **only** explanation and basis for approving these devices is that they are deemed not to be flash
12 suppressor by BATF (the federal Bureau of Alcohol, Tobacco and Firearms). That fact is,
13 however, irrelevant for "redirection" of flash is not a concept BATF uses or applies to define a
14 flash suppressor. Thus, whether BATF deems these devices not to be flash suppressor should have
15 no bearing on their being classified as flash suppressors under the CCR § 12.8.978.20 definition
16 which does so define any device that redirects flash.

17 32. DOJ's misclassifications of the BOSS and the Springfield Muzzle Brake present
18 particular difficulties for law enforcement authorities attempting to determine whether particular
19 firearms meet the § 12276.1 categorical definitions of an AW, and, if so, whether persons
20 possessing those firearms deserve prosecution for failure to register them. If law enforcement
21 authorities follow the definition of flash suppressor set out in CCR § 12.8.978.20 they must deem
22 semiautomatic detachable magazine center rifles having the Springfield Muzzle Brake or the
23 Browning BOSS system to be AWs. But it will be perilous for them to arrest and prosecute
24 owners, and/or confiscate the rifles, in the face of DOJ's advisory letters declaring those devices
25 not to be flash suppressors. Based on those letters such arrests, prosecutions and/or confiscations
26 would be invalid. Moreover, law enforcement authorities have been left without guidance as to
27 myriad other non-flash suppressor devices that operate identically or similarly to the Springfield
28 and/or BOSS. Consistency with the advice letters would seem to preclude arrest, prosecution

1 and/or confiscation. But consistency with the DOJ regulation would require arrest, prosecution
2 and/or confiscation.

3 33. Lest there be any confusion about the matter, I agree that neither the BOSS nor the
4 Springfield Muzzle Brake is properly deemed a flash suppressor. But that is because these
5 devices do not meet the well-established elements of the actual definition of flash suppressor (see
6 ¶ 10 above). But they do meet the aberrant CCR § 12.8.978.20 definition which focuses on
7 "redirection" as well as reduction, and applies the term to muzzle brakes, compensators and other
8 devices that were not intended to reduce flash.

9 34. In this connection, I think it significant that DOJ's justification for so defining "flash
10 suppressor" is not just wrong but self-refuting. DOJ's Final Statement of Reasons asserts:

11 [DOJ] concluded that the absence [from Pen. C. § 12276.1] of statutorily defined
12 specific measurement standards [for muzzle flash] or a statutory requirement [for
13 DOJ] to establish those standards demonstrates a legislative intent to identify any
14 device that reduces or redirects flash from the shooter's field of vision as a flash
15 suppressor regardless of its name or intended/additional purpose.⁶

16 Logically, however, it is the opposite conclusion that follows: The "absence of statutorily defined
17 specific measurement standards", etc., suggests a legislative intent to use the well-established
18 meaning of "flash suppressor" that does **not** involve measurement to define it: "A muzzle
19 attachment *designed* to reduce muzzle flash."⁷

20
21 [COMPARABLE STATUTES]

22 35. Had the Legislature intended to base the meaning of "flash suppressor" even partially
23 on actual effect in suppressing flash, it would either have established standards and a testing
24

25 ⁶ Cal. Dept. of Justice, Firearms Div., Department of Justice Regulations for Assault Weapons
26 and Large Capacity Magazines - Final Statement of Reasons (Feb. 2000), p. 2.

27 ⁷ This is the definition given in the authoritative GLOSSARY OF THE ASSOCIATION OF FIREARM
28 AND TOOLMARK EXAMINERS (1985), p. 60, with emphasis added. Compare fn. 1 setting out the virtually
identical definition by SAAMI (the Small Arms and Ammunition Manufacturing Institute).

1 protocol or tasked DOJ with establishing those things. That is, after all, exactly what the
2 Legislature did in the other major gun control law it enacted in the same year; see Pen. C. §§
3 12127-28 (defining "unsafe handguns" according to an ornate testing protocol). As used in SB 23,
4 the term "flash suppressor" seems to fit within a long tradition of California weapons laws
5 definitions based on design and intent, e.g. Pen. C. §§ 12200 ("The term [machine gun] also
6 includes any part or combination of parts designed and intended for use in converting a weapon
7 into a machine gun."), 12320 (armor piercing ammunition defined as being "designed primarily to
8 penetrate metal or armor") and 12500 (devices or parts "designed, used or intended" to act as a
9 silencer or be used in making a silencer).

10
11 [VERIFICATION]

12 I certify and declare under penalty of perjury under the laws of the State of California that
13 the foregoing is a true and correct statement of my personal knowledge. Executed this 10th day of
14 September, at Las Vegas, Nevada.

15
16 
17 _____
18 Torrey D. Johnson
19 Declarant
20
21
22
23
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27
28

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

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

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

7 **DECLARATION OF TORREY D. JOHNSON IN SUPPORT OF PLAINTIFFS' REQUEST**
8 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

8 on the interested parties in this action by placing

- 9 the original
10 a true and correct copy

10 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
15 collection and processing correspondence for mailing. Under the practice it would be
16 deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid
17 at San Pedro, California, in the ordinary course of business. I am aware that on motion of
18 the party served, service is presumed invalid if postal cancellation date is more than one
19 day after date of deposit for mailing an affidavit.

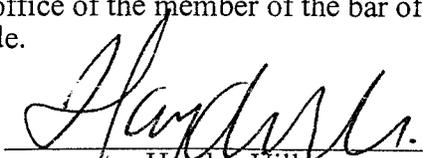
18 Executed on February 22, 2002, at San Pedro, California.

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

22 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
24 that 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 of this court at whose direction the service was made.

26 
27 Haydee Villegas

HUNT v. STATE OF CALIFORNIA
Case No. 01CECG03182

MAILING LIST

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