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Attorneys for Plaintiffs

FILED

APR - 4 2002

FRESNO COUNTY SUPERIOR COURT
By _____
C.A. - DEPUTY

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

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

Plaintiffs,

v.

STATE OF CALIFORNIA; WILLIAM
LOCKYER, Attorney General of the State of
California, et. al.,

Defendants.

) CASE NO. 01CECG03182
)
) **DECLARATION OF EDWARD HUNT IN**
) **SUPPORT OF REPLY TO OPPOSITION**
) **FOR PRELIMINARY INJUNCTION**
)
) Date: April 10, 2002
) Time: 3:00 P.M.
) Dept.: 98A

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1 EDWARD W. HUNT declares and says that if called as a witness he would testify to the
2 following under oath:

3 1. I am one of the plaintiffs in this suit.

4 2. I have read all the allegations of the complaint attached as the appendix hereto and
5 know them to be true of my own knowledge in so far as they refer to me.

6

7

[VERIFICATION]

8

9

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. Executed this 3 day of April, 2001 at Fresno,
10 California.

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Edward Hunt
Declarant

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1 24. Plaintiff HUNT's duties and his oath of office require that he and his office investigate
2 and prosecute offenses against the law, but forbid him to prosecute where a person's guilt or
3 innocence is not ascertainable or where the person did not have a fair opportunity to understand
4 the law and conform to it. To lawfully perform these duties requires that plaintiff HUNT must
5 himself know the meaning of the law. That, however, is precluded by defendants' inconsistent
6 conduct, and failure to carry out the Legislature's expectation that they would promulgate proper
7 adequate, and timely regulations defining the provisions of SB 23. As a result, plaintiff HUNT is
8 irreparably injured in that:

9 a) he cannot himself proceed, nor can he supervise his office, deputies and investigators in
10 proceeding, to investigate and prosecute possible offenses against certain provisions of SB 23;

11 b) neither can he instruct the forensic laboratories his office uses in the applicable
12 standards for testing whether a firearm has certain of the features specified in section 12276.1
13 because defendants' regulations fail to indicate what the applicable standards are;

14 c) because defendants have issued advice letters or letter rulings that contradict the
15 language of the Act, or contradict the regulations defendants have promulgated thereunder,
16 plaintiff HUNT is placed in the impossible position of receiving inconsistent direction and
17 inconsistent readings of the law from those whom he is supposed to be able to rely upon, and
18 under whose supervisory authority he is supposed to operate;

19 d) in addition, regardless of which legal positions plaintiff HUNT may take in prosecuting
20 certain offenses under SB 23, defense counsel can contradict him based on contrary regulations or
21 DOJ advice letters or letter rulings;

22 e) in such situations even if plaintiff HUNT's legal position is correct, defense counsel will
23 (correctly) interpose the argument that due process precludes conviction where a violation was
24 based on the advice of the agency that administers the law or of the chief law officer of the state;

25 f) in general, defense counsel will assert, and plaintiff HUNT cannot disagree, that in
26 terms of registration of possible "AWs" the Legislature intended that the public have a registration
27 period of more than 27 days and the benefit of a meaningful public education campaign as to what
28 section 12276.1 means, and that defendants' failures in these respects may render some

1 prosecutions unfair and unjust.

2 25. Plaintiffs have no plain, speedy or adequate remedy at law to redress the harms alleged
3 in this complaint. Plaintiff HUNT and the law enforcement officers represented herein by LEAA
4 bring this lawsuit as a necessary aspect of performing their duties which they are unable, and will
5 continue to be unable, to perform as to the laws involved in SB 23, without the relief sought.
6 Concomitantly, plaintiffs LEAA, BAUER and CSGA, Inc. bring this lawsuit because they and
7 their members cannot conduct their affairs without clarification of the law. Plaintiffs and those
8 they represent desire and need to understand the law so that they may conform to it and not be
9 subject to prosecution for violating it.

10 34. A further problem is that defining flash suppressor in terms of any "perceptibl[e]"
11 reduction or redirection of flash requires testing of particular muzzle brakes or compensators, but
12 leaves wholly undefined the standards to be used in such testing. Defendants' failure to provide
13 standards leaves unanswered a host of crucial questions plaintiff Hunt will be expected to answer
14 by any forensic laboratory he employs to test whether a device "perceptibly" reduces flash. More
15 important, they are questions the defense may raise in any prosecution plaintiff HUNT might bring
16 -- and which the court will expect him to answer. But plaintiff HUNT has no answers to these
17 questions since defendants have promulgated CCR section 12.8.978.20(b), which gratuitously
18 gives rise to these questions while supplying no standards with which to answer them.

19 42. The problem is particularly acute because some rifles with integral muzzle brakes or
20 compensators have barrels so short that removal of the device brings them below the minimum
21 legal length. Even if testing reveals that the rifle was legal before it was cut down for the test, the
22 rifle cannot be returned to its owner since it is now illegal for the owner to possess.² Plaintiff
23 HUNT may then be liable to compensate the owner for the value of the rifle. It is difficult to
24 believe that when section 12276.1 uses the phrase "flash suppressor," it intends an expanded
25

26 ² There are actually two length restrictions. First, Pen. Code, § 12020, subs. (a) & (c)(2)
27 prohibits possession of a rifle with a barrel of less than 16" length. Second, § 12276.1, subd. (a)(3)
28 prohibits possession of a semiautomatic center fire rifle whose overall length is less than 30" unless it
was registered as an AW before December 31, 2000. But, of course, the hypothetical rifle discussed in
the text would not have been registerable since it was not an AW – until the authorities cut off enough of
its barrel in the course of testing it that the rifle's overall length fell below 30".

1 meaning that imposes such costs on those who must enforce it.

2 68. The inconsistency of DOJ declaring these muzzle brakes not to be flash suppressors
3 though they meet DOJ's mis-definition of that term creates a quandary for plaintiff HUNT and
4 other plaintiffs who are duty-bound to enforce SB 23. If these plaintiffs deem the Springfield
5 Armory "Muzzle Break" and Browning BOSS system to be flash suppressors they are
6 contradicting DOJ's specific finding that these devices are not flash suppressors. Yet to deem
7 them not flash suppressors flies in the face of the DOJ mis-definition which is binding on these
8 plaintiffs. The quandary is complicated by the fact that numerous other muzzle brakes redirect
9 flash exactly as do the Springfield Armory "Muzzle Break" and Browning BOSS system. If in
10 enforcing section 12276.1 plaintiffs deem these other muzzle brakes not to be flash suppressors,
11 plaintiffs will be acting inconsistently with the DOJ mis-definition. But for those plaintiffs to
12 treat these other muzzle brakes as flash suppressors would contradict DOJ's determination that the
13 indistinguishably operating Springfield armory "Muzzle Break" and Browning BOSS system are
14 not flash suppressors under section 12276.1.

15 74. Defendants' SASS correspondence places plaintiff HUNT in a quandary, directly
16 impinging on his performance of his duties. One of the SASS-sponsored competitions is sited in
17 Fresno County. The permission defendants have granted appears inconsistent with section
18 12020(a)(2) if that provision is read as categorically banning importation of any "large capacity"
19 magazine rifle or shotgun. Plaintiffs believe that section 12020(a)(2) should instead be read as a
20 ban only on importation of such firearms for the purpose of sale. But defendants' SASS
21 correspondence does not enunciate this -- or any other -- rationale for allowing non-Californian
22 SASS members to bring these rifles into the state. In abeyance of any rationale from defendants,
23 plaintiff HUNT is left bereft of guidance as to any of the following problems:

24 a) As written, defendants' SASS correspondence refers only to a particular SASS-
25 sponsored competition in Riverside County: Does it also apply to and validate importation of large
26 capacity magazine rifles for use in the SASS-sponsored competition in Fresno? Would it also
27 apply to and validate importation of large capacity magazine rifles for competitions sponsored in
28 Fresno by some organization other than SASS?;

1 b) As written, defendants' SASS correspondence speaks only to the importation of large
2 capacity magazine rifles: Does it also validate importation of large capacity magazine shotguns for
3 use in competitive matches?;

4 c) What does defendants' SASS correspondence imply as to the legality of non-California
5 residents bringing large capacity magazine rifles and shotguns with them on coming to reside in
6 California?

7 75. The inconsistent DOJ conduct described in this cause of action obscures the meaning
8 of the laws and regulations involved and confuses those whose duty it is to enforce them laws and
9 the public in general. In addition, it handicaps plaintiff HUNT and other enforcement officials in
10 any prosecution they might bring in relation to the affected statutes and regulations. Inevitably
11 (and properly) defendants will seize upon the inconsistencies to argue: a) that the laws and
12 regulations do not support the theory of the prosecution; and/or b) that the laws and regulations
13 are fatally uncertain; or c) that, however the laws and regulations should properly be interpreted,
14 due process precludes prosecution of people for acts done in reliance on contrary interpretations
15 by the Attorney General and/or DOJ. Even if those arguments are incorrect, their presentation
16 will enormously complicate and burden any prosecution the public official plaintiffs might bring.

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PROOF OF SERVICE

STATE OF CALIFORNIA
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.

On April , 2002, I served the foregoing document(s) described as

DECLARATION OF EDWARD HUNT IN SUPPORT OF REPLY TO OPPOSITION FOR PRELIMINARY INJUNCTION

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 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.

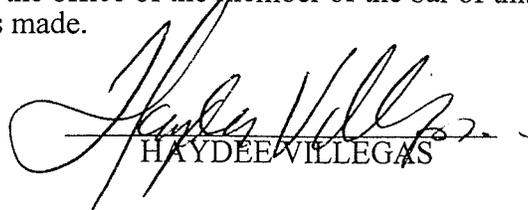
Executed on April 3, 2002, at San Pedro, California.

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 April 3, 2002, at San Pedro, 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 of this court at whose direction the service was made.


HAYDEE VILLEGAS