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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

EDWARD W. HUNT, in his official capacity as District Attorney of Fresno County, and in his personal capacity as a citizen and taxpayer, et. al., Plaintiffs, v. STATE OF CALIFORNIA; WILLIAM LOCKYER, Attorney General of the State of California; CALIFORNIA DEPARTMENT OF JUSTICE; Does 1-100; Defendants.	CASE NO. 01CECG03182 **DECLARATION OF MICHAEL SHAIN IN SUPPORT OF PLAINTIFFS' REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF** Date: December 14, 2006 Time: 3:30 p.m. Dept.: 72

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

Plaintiffs,

v.

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

Defendants.

CASE NO. 01CECG03182

DECLARATION OF MICHAEL SHAIN IN SUPPORT OF PLAINTIFFS' REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

Date: December 14, 2006
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I, Michael Shain, declare and say that, based on my expertise in investigating and analyzing firearms and firearms cases, if called as an expert I would testify as follows:

[EXPERTISE]

1. My police career was with the statewide law enforcement agency of the University of California (University of California Police Department), including service with U.C.L.A.'s police department, in the respective capacities (among other things) of: Detective, Rangemaster-Principal Firearms Instructor, Commander of the Patrol Division and Officer in Charge of Internal Affairs. I am a member of both the California Rangemasters Association and the International Association of Law Enforcement Firearms Instructors.

2. During my eight-year tenure as the primary firearms instructor and range master for my department, I had responsibility for virtually all facets of firearms use. This included hands on evaluation of firearms for use in the field, inspection and testing of all firearms prior to field use, basic and advanced training, qualification for all authorized firearms, maintenance and repair, and investigation of discharges.

3. As a result of this experience, and of my investigatory work and other training, I have extensive experience with "assault-weapon (AW)-type firearms, both those meeting the general criteria set out in Penal Code section 12276.1 and those specifically named as AWs in section 12276.

4. Among the firearms systems I was responsible for were the semi-automatic Colt AR-15 rifle, fully automatic (selective fire) Colt, M-16 rifle and the Colt Sub-Machine Gun, Beretta Sub-Machine Gun and various other assault rifles used for training exercises. In addition to my F.B.I training in automatic weapons and certification as an instructor, I attended the Los Angeles County Sheriff's Department M-16 School and received training from Colt on the use, handling and maintenance of these firearms. I have carried, trained and deployed these firearms in my law enforcement capacity.

5. I am a graduate of the F.B.I.'s Certificated Firearms Instructor School and various Los Angeles Sheriff's Department courses including: Automatic Weapons Training Program,

Autoloader Transition School and the Homicide Investigator Training Program.

6. Since entering the private sector, I have trained and educated private citizens in the use, handling and maintenance of various firearms and have consulted and testified in depth on firearm handling, firearm operation, design and characteristics issues. I have an extensive knowledge of commercially available firearms and am licensed by the State of California Department of Justice to teach and certify basic firearms safety for civilians. Several of my recent cases have involved unusual firearms and I have done and am currently involved in extensive research for firearms manufacturers in preparation for litigation.

7. I am currently a firearms safety consultant for the National Shooting Sports Foundation and am listed on their "Speakers Bureau" as a firearms expert.

[KNOWLEDGE RE PENAL CODE SECTION 12276.1 "FLASH SUPPRESSOR" ISSUES]

8. I am familiar with all of the following: with Penal Code section 12276.1 (a)(1)(E) regarding rifles with "flash suppressors"; with California Code of Regulations section 12.8.978.20 subdivision (b) (CCR § 12.8.978.20 (b)), the DOJ regulation defining "flash suppressor", and with the DOJ "Final Statement of Reasons" seeking to justify that definition.

9. I have also read the declaration of plaintiffs' expert Torrey Johnson and I concur in the assertions he makes therein regarding how the term "flash suppressor" is commonly understood by firearms owners, firearms experts, firearms manufacturers, and in the firearms community in general. The purpose of this declaration is to discuss further and other technical problems with the viability of CCR § 12.8.978.20 (b) (aka "the regulation").

[IMPOSSIBILITY OR IMPRACTICALITY OF TESTING IN GENERAL]

10. Penal Code section 12276.1 (a)(1)(E) provides that as one criterion for determining that a rifle is an AW is whether it has a "flash suppressor." As that term is understood by firearms owners, firearms experts, firearms manufacturers, the firearms community in general, that term does not include either compensators or muzzle brakes, devices that are designed to deal with aspects of recoil, not with flash. Nevertheless CCR § 12.8.978.20 (b) defines compensators and

muzzle brakes to be flash suppressor if they reduce or eliminate flash -- in any perceptible degree whatever -- or if they just redirect it -- though they were not intended to have any such effect. This necessarily means that the only way to determine that a rifle with a compensator or muzzle brake qualifies as a flash suppressor under the regulation is to individually test each suspect rifle and compensator or muzzle brake. The commonly accepted approach to this test would be to design an experiment that would allow a comparison of the flash from the rifle with and without the suspect device. In other words, a rifle with a certain feature is fired. Then that feature is removed and the rifle is fired again. If the rifle with the feature has (or seems to have) "perceptibly" less flash, that feature is deemed to be a "flash suppressor" under the CCR § 12.8.978.20 (b) definition, even though that feature was not designed or intended to so operate. (N.B. I am assuming here that the feature is not integral, but is attached in a way that allows easy removal. The much greater difficulties if the feature is integral are discussed below; see discussion below.)

11. The first problem with such comparison testing is that it is simply not something most ordinary civilian gun owners are in a position to do on their rifles. As a general proposition, tests that involve firing a rifle can only be carried out at a rifle range. (Few civilian gun owners have access to rural properties large enough, and with a suitable backstop, to test a rifle on.) Moreover, the comparison testing CCR § 12.8.978.20 requires will usually require an indoor range. That is because flash is largely invisible except in the dark, and civilian outdoor ranges are generally not open at night. (Insofar as they are open, it is because they are night-lighted. That means they are poorly suited or unsuited for testing a phenomenon, flash, that is only fully visible in the dark.) But indoor ranges are generally unavailable. In fact, the term indoor **rifle** range is something of an oxymoron. Indoor ranges are largely limited to handguns and low-power .22 rifles, particularly in urban areas. Many indoor ranges will not even accept handguns of the highest caliber and power, much less higher caliber or intermediate power rifles.

12. More important yet, liability considerations preclude any civilian range from allowing shooters to conduct precisely the kind of comparison firing that is needed to test if the muzzle brake or compensator on a particular rifle actually reduces flash so as to qualify as being a "flash

suppressor" within CCR § 12.8.978.20 (b). Whether indoor or outdoor, civilian ranges are generally set up so that range personnel can at all times observe the firing line and be able to caution or remove shooters if they fail to follow range safety rules. No responsibly run civilian range (indoor or outdoor) is going to let rifle owners turn out the lights and blaze away in the darkness. (Indeed, even if a civilian rifle owner had access to some rural property on which to shoot, conducting unlighted night firing tests would be an invitation to civil liability in case of an accident.)

13. Furthermore, even if a civilian rifle owner could somehow persuade a civilian range to allow unlighted night firing, there is another difficulty that is quite insuperable: because the code specifies that the perceptibility of the reduction or redirection of muzzle flash is from the shooter's field of vision, the shooter would have operate the firearm and evaluate the split second flash at the same time. There is little chance that a layperson could evaluate a perceptible difference given the very brief duration of the muzzle flash of a rifle. This brings up the issue of perceptibility, which will be discussed in more detail below. Attempts by individual civilian rifle owners to gage the "reduction or redirection of muzzle flash from the shooter's field of vision" would certainly result in differing and subjective evaluations, from owner to owner. Since there are no objective, measurable criteria for determining "reduction or redirection", even civilian rifle owners who might be able to configure a safe test firing in darkness, would have no reliable, empirical documentation with which to defend themselves against the possibility that a law enforcement agency might evaluate the perceptibility of the "reduction or redirection" differently.

14. The only safe and effective way to conduct such comparison firing would be to have mirrors and/or high-speed cameras positioned in the place of the shooter. The rifle would have to be secured in a vise and activated by some remote device. The film of the two muzzle flashes would then have to be compared side by side. Such a comparison is inherently problematic because of differences between what the human eye perceives (the standard which the regulation applies) and what a camera records. Few, if any, civilian gun owners are qualified to judge such matters.

15. In any event, few ordinary civilians have either access to such equipment or the

expertise to employ it. Indeed, few police departments have those things, unless they have access to a laboratory staffed by criminalists and firearms examiners. I have spoken with firearms examiners from several law enforcement agency crime labs from across the state, including the Los Angeles County Sheriff's Department, the San Diego County Sheriff's Department, the Sacramento Police Department and the Sacramento County Sheriff's Department. Universally, they told me that the description contained in the code is vague and subject to individual interpretation. They all told me that there was no standard for the testing of flash suppressors. Most of these local crime labs do not even have access to indoor rifle ranges where light levels can be controlled and experiments configured to safely and effectively measure and document the "reduction or redirection" of flash. In fact, I could only locate one with access to an indoor rifle range, the Sacramento Sheriff's Department Crime Lab. Their staff told me that they were the exception and they knew of no other crime labs in the state with similar facilities. It is certainly unrealistic to believe that individual civilians will be able to access facilities and accomplish what most law enforcement agencies find difficult and impractical at best, and impossible at worst.

16. In addition to the lack of measurable criteria that is delineated by the code, the term "shooter's field of vision" is ambiguous. A shooter's field of vision is dependent on how the rifle is held at the time it is fired. Many civilian shooters fire rifles from the hip or with their head held off the stock of the rifle. A shooter who holds his head off the stock when firing may not be able to perceive any change in the muzzle flash, with or without the devices in question. This raises another question in terms of where to position the rifle in relation to the test of the muzzle flash, without beginning to address the issue of the differences between what a camera sees and what the naked eye perceives.

17. Beside the impracticability of the testing that the regulation requires be done are the problems that arise from the lack of any provision for certifying the results. Assuming an ordinary gun owner could test the compensator or muzzle brake on his rifle, he has only his own word that he tested it and for what the test showed. Suppose officers stop him to investigate whether the rifle qualifies as an AW by reason of having a muzzle brake or compensator that the regulation defines as a flash suppressor. They can simply take his word that he did test the rifle and that the

compensator or muzzle brake does not reduce or redirect flash -- so that it is not a flash suppressor under the regulation's definition. To adopt a policy of taking the owner's word, of course, would be to render the regulation a dead letter insofar as it classifies muzzle brakes or compensators as flash suppressors if they reduce or redirect flash. Yet it is difficult to see what else officers can do. There is no field test they can perform to ascertain whether a muzzle brake or compensator reduces or redirects flash. No doubt some officers will seize the rifle for laboratory testing and perhaps arrest the owner pending that testing. But is this legal? As I was trained regarding the requirements for probable cause, the fact that the muzzle brake or compensator on a rifle barrel may or may not be a flash suppressor as defined by the regulation cannot justify either a seizure or an arrest.

18. In this connection, two other provisions of California law may be relevant: Penal Code section 12031, which forbids the possession of loaded firearms in public places, authorizes officers to take possession of any firearm they find in such a place and examine it to see if it is loaded. See section 12031 (e). Penal Code section 12125ff., which require safety testing of handguns, provides for DOJ to certify certain testing laboratories which shall certify the results to DOJ. If such provisions existed in new section 12276.1 owners would be able to have their rifles tested and certified – and/or police would be able to take the rifles for testing. The fact that new section 12276.1 makes no such provisions seems to me to suggest that the Legislature never dramed such testing would be needed. That in turn suggests that CCR § 12.8.978.20 (b) errs in so defining "flash suppressor" that comparison testing is required to determine whether a compensator or muzzle brake is a flash suppressor.

19. In sum: a) CCR § 12.8.978.20 (b) over-extends the meaning of "flash suppressor" to encompass muzzle brakes and compensators that incidentally, unintentionally may reduce flash; b) the only way to know if the muzzle brake or compensator on any particular rifle reduces flash is to physically test it by firing it in the dark; c) very few ordinary rifle owners have access to a place where they can reasonably, safely and responsibly test-fire rifles in darkness; d) very few ordinary rifle owners have access to, or the expertise to use, the equipment needed to safely conduct the kind of testing required to determine whether a muzzle brake or compensator on their rifles meets

the CCR § 12.8.978.20 (b) definition of causing a "perceptible" reduction in flash. Thus very few ordinary civilian rifle owners could have known a muzzle brake or compensator, or other such feature rendered their rifle an AW that required registration before Jan. 1, 2001.

[DIFFICULTIES OF SUCH TESTING FOR LAW ENFORCEMENT AGENCIES]

20. Law enforcement agencies that have seized a rifle as a possible AW face less insuperable difficulties of testing to see whether that rifle qualifies as a "flash suppressor" under CCR § 12.8.978.20 (b). Most, if not all, agencies have access to their own outdoor range or to a range they use by agreement with another agency. Though those ranges will generally be closed at night, in principle it would often be possible to have access for conducting night testing as described above. This will not always be the case, however, for liability concerns may cause even a police range to refuse use at night. Any testing would require the use of sophisticated high-speed photographic equipment and personnel skilled in its use. As discussed above, few agencies have such equipment or personnel available, though in some cases the equipment and personnel might be borrowed or contracted for with other agencies.

21. While many law enforcement agencies would at least have access to the physical facilities, equipment and expertise to do the necessary testing, they are nevertheless unable to do it. This inability stems from the failure of the code (and the regulation) to specify various things and/or to enunciate various standards that are necessary to establish a protocol for testing. One might infer from the failure of Penal Code section 12276.1 (a)(1)(E) to address these matters that that statute does not contemplate testing -- rather that it uses "flash suppressor" in the commonly understood way of: "A muzzle attachment *designed* to reduce muzzle flash." (Quoting, with my emphasis, the GLOSSARY OF THE ASSOCIATION OF FIREARM AND TOOLMARK EXAMINERS (1985), p. 60.)

22. Nevertheless in CCR § 12.8.978.20 (b) DOJ has extended the concept of a flash suppressor to compensators, muzzle brakes or other devices if they "perceptibl[y]" reduce flash, even though they do so only unintentionally and incidentally to the effect they were designed to achieve. Thus CCR § 12.8.978.20 (b) requires comparison testing like that I have described to

determine if a compensator or muzzle brake on a particular rifle "perceptibl[y]" reduces flash. But if testing is to occur there must be standards to resolve the various technical issues discussed below. Yet DOJ has expressly declined to provide the necessary standards.

23. Some issues requiring standardization that I am about to list may seem like hyper-technical details that should be left to experts to settle. But that is the very point. These issues arising out of CCR § 12.8.978.20 (b) needed to be definitively settled by DOJ **before** the statute and regulation went into effect. Statewide legislation requires statewide uniformity. These technical issues cannot be left for different firearm examiners in different labs to test differently based on different standards. Nor, with all due respect, are these issues that the courts have the expertise to resolve. Moreover, relegating their resolution to cases that arise as the Act is litigated could result in chaotic inconsistency, with rifles that are identical being deemed AWs in some areas of the state and not AWs in other areas. That situation might continue until the Supreme Court was forced to resolve it, despite the judiciary's lack of appropriate expertise. The issues under CCR § 12.8.978.20 (b) as to which DOJ should be required to promulgate statewide standards include:

24. a. Brightness of flash or area illuminated thereby? CCR § 12.8.978.20 (b) is highly ambiguous because its unelaborated use of the term "reduction" could refer to either of two reductions: reduction in the area illuminated by the flash; or reduction in the brightness of the flash. The difference is epitomized by variable-control flashlights. Unlike flashlights that just send a beam of light out, variable-control flashlights allow users to narrow the beam so that it penetrates farther, or broaden the beam so that it illuminates a much larger radius (albeit less brightly since the power of the battery remains the same whether the focus is broad or narrow). Unlike a muzzle brake or compensator, what a mechanism that is designed as a flash suppressor is designed to do is reduce **both** the brightness of the flash and the breadth of the area it illuminates. Since CCR § 12.8.978.20 (b) extends the definition beyond real flash suppressors to potentially embrace muzzle brakes or compensators used by competition shooters that unintentionally "reduce" flash, DOJ needed to clarify whether the issue to be tested is that flash is made less bright or that the radius of the area it illuminates is reduced. As that has not been clarified, it is

impossible to know what the test should be measuring. There can be no basis for testing until and unless DOJ is required to clarify this matter.

25. b. Direction of flash. A similar ambiguity exists as to muzzle brakes/compensators used by competition shooters that may simply change the direction of the flash. Imagine a rifle that is shown by high-speed photography to send a narrow flash out 8 inches when it is fired. Suppose that, with no diminution in brightness, a muzzle brake redirects this so that the size of the frontal flash is reduced to 2 inches, but now three additional narrow 2-inch flashes also appear -- from slots cut in each side of the barrel and from a slot in the top of the barrel. CCR § 12.8.978.20 (b) should clearly state whether a muzzle brake that merely changes the direction of the flash without reducing total brightness is, or is not, a flash suppressor. There can be no basis for testing until and unless DOJ is required to clarify this matter.

26. c. Differential visual acuity. Under CCR § 12.8.978.20 a muzzle brake or compensator is a flash suppressor if its use has **any** perceptible flash reductive effect -- no matter how small. But people differ in visual acuity, and the better the vision the more likely the observer may be to spot a tiny reduction in flash that would be imperceptible to someone with slightly less acute vision. So, by whose perception is the issue of "perceptibly reduc[ing]" flash to be tested: the "average person" (QUERY: how is **that** to be defined?); or a person with perfect 20-20 vision; or several people chosen at random; or the criminalist(s) conducting the testing -- who may vary in age from late 20s to late 70s? Once again, CCR § 12.8.978.20 (b) is highly ambiguous. It's unelaborated use of the term "perceptibly" may result in identical rifles being deemed AWs or not depending entirely on whose perception of flash is being tested rather than any actual difference in the rifles. There is no basis for testing until and unless DOJ is required to clarify this.

27. d. Selecting the cartridge(s) to test. For virtually every common rifle caliber there are at least two or three different cartridges made. For the more popular calibers there may be five, ten or even more different cartridges. Different cartridges use different gunpowders and different amounts of gunpowders that may produce different amounts of flash, or no flash at all. Nor is the fact that a particular cartridge gives no flash, or a different amount of flash than another, something one can learn from an announcement on the cartridge package or by asking the

manufacturer. (Manufacturers may not know how much, if any, flash the cartridge produces, since flash reduction is a happenstance rather than something produced intentionally.) So if two law enforcement agencies test for flash on two identical rifles with identical muzzle brakes, the results may nevertheless differ radically if different cartridges are used in the testing. It is entirely possible, therefore, that the two agencies' tests would produce diametrically opposite conclusions on whether the muzzle brake reduces flash because of unrecognized differences in the test cartridges used. DOJ has not only failed to provide standards to deal with this problem; its regulation is inherently vague and seems to reflect no understanding of the problem at all. To call a muzzle brake a flash suppressor if it reduces muzzle flash does not resolve whether: flash need only be reduced in **any** of the cartridges available for that rifle; or if flash must be reduced in firing **all** the applicable cartridges; or something in between? Again, these are issues that DOJ should be required to clarify. Again there is no basis for testing until and unless DOJ does so.

28. e. Miscellaneous problems. Flash is affected by a number of things including the type of powder used, barrel length, and temperature. Conceivably, one muzzle brake or compensator might produce no perceptible flash reduction on a rifle with a long barrel, but a significant reduction with a short barrel. As a result, a muzzle brake or compensator tested by one laboratory on a long barreled firearm might show no flash reduction, and so not be covered by section 12276.1 (a)(1)(E); yet when another laboratory tested the same muzzle brake on a short-barreled rifle significant flash reduction might occur, so that that rifle would appear to fall under section 12276.1 (a)(1)(E). As to temperature, firearms may not exhibit flash on the first or second shot but on third or fourth shots show flash due to the heating of the barrel causing the hotter gasses to ignite and form a muzzle flash. Since powder has a dramatic effect, cartridges used to test various muzzle breaks would have to be very specifically defined. Since it is impossible to ensure that two cartridges are exactly identical, each test, with or without a muzzle break or compensator, would have to be done a number of times and the results averaged. In summary, the DOJ regulation needs to clearly define and delineate at least: ammunition used for the testing (in each and every caliber to be tested), number and sequencing of shots, barrel lengths, degree of light reduction in some clearly defined unit, ambient and barrel temperature ranges, method for

determination of light reduction, etc. DOJ not having defined these standards, there is no basis for testing to determine whether a muzzle brake or compensator does or does not constitute a flash suppressor as defined by CCR § 12.8.978.20 (b).

[THE BARREL-INTEGRAL CONUNDRUM]

29. Up to now my explanation of why the testing required by CCR § 12.8.978.20 (b) is impossible for ordinary people has addressed the simple situation DOJ apparently contemplates, i.e., where the muzzle brake or compensator to be tested is on a barrel extension that can easily be detached from the barrel. Another entire level of difficulty or impossibility is added when the muzzle brake or compensator to be tested is integral to the barrel. In that case the necessary comparison testing would require that the owner first fire the rifle with the muzzle brake or compensator attached, and then cut it off to see if firing without it generated perceptibly more flash. This would, however, be a pointless exercise for owners because once the mechanism has been cut off there is no practical or economical way to reattach it. That being so, the rifle no longer has an attachment that could bring it under section 12276.1 (a)(1)(E).

30. There may also be a legal obstacle to civilians following such a testing protocol. If the rifle has a barrel short enough that if the removal of the integral muzzle brake or compensator reduces the barrel length to less than 16 inches or the overall length to less than 26 inches it would cause it to be unlawful under the short barreled rifle section of 12020 (a)(1) of the California Penal Code, and/or 12276.1 (a)(3) if it is under 30 inches. In this case, the owner could not legally cut the barrel down and possess the rifle even for the period of time required to test it. Neither could any gunsmith or civilian testing laboratory acting for the owner.

31. These same problems inhere in a somewhat different manner to testing by a law enforcement agency that has seized a rifle that may be an unregistered AW, depending on whether a barrel-integral muzzle brake or compensator reduces flash and thus qualifies as a "flash suppressor" under CCR § 12.8.978.20 (b). Testing such a rifle is not pointless for the agency since, if the muzzle brake or compensator does so qualify, the owner is subject to prosecution and the rifle is forfeit. But what if the agency's testing shows that the muzzle brake or compensator is

not a flash suppressor? In that event, the rifle is not forfeit and the owner is entitled to its return. But its value has been greatly impaired by the agency having cut off the end of the barrel to test it. Since testing has confirmed the rifle's legality, isn't the owner entitled to be recompensed for the diminution in its value? If so, who is required to do the recompensing, and from what funds? (The argument can be made that a like-kind rifle could be used to do the comparison firing, unfortunately, most law enforcement agencies possess a limited number of commercial rifles, let alone access to the entire spectrum of commercially available and custom made rifles. In addition, it is commonly accepted that no two firearms perform identically. Thus, the issue of differences in "perceptible" flash would then have to take into account and quantify things like the age and condition of the two different rifles.)

32. The problem is exacerbated if the rifle's barrel was so short that cutting off the integral muzzle brake or compensator brought the barrel under 16 inches or the overall length under 30 inches. In that circumstance, the owner may **not** be given the rifle back because civilians may not legally have such a "short-barreled rifle." (See fn. ??? above.) So what is the law enforcement agency supposed to do -- go out and buy the owner a new rifle?

33. To reiterate, all the problems discussed in all preceding paragraphs are artificially caused by the three errors in CCR § 12.8.978.20 (b): a) applying the concept of flash suppressor to muzzle brakes or compensators; b) applying that concept in terms of redirecting flash rather suppressing it; and c) expanding that concept to include mechanical objects that reduce flash unintentionally rather than limiting it to objects that were designed as flash suppressors.

34. I must add that these problems caused by DOJ's erroneous definition have been exacerbated by DOJ's failure to do certain research and testing that it is well equipped, though neither the general public nor law enforcement in general are equipped to do. No special DOJ regulation was needed to define "flash suppressor" since the definition is well established; see definition from the GLOSSARY OF THE ASSOCIATION OF FIREARM AND TOOLMARK EXAMINERS given above.

35. But DOJ could have produced a regulation identifying by name both the models of rifle that have barrel-integral mechanical flash suppressors, and the after market barrel-extension

that constitutes a flash suppressor under that definition. Alternatively, DOJ could have offered to perform the necessary testing to determine for owners the status of the muzzle brakes or compensators on their rifles.

[VERIFICATION]

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 30th day of January at Brentwood, California.

MICHAEL SHAIN

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 September 29, 2006, I served the foregoing document(s) described as

DECLARATION OF MICHAEL SHAIN 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**

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 September 29, 2006, at Long Beach, California.

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

Executed on September 29, 2006, 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