

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

Before the Honorable Alan Simpson, Judge

Department 72

EDWARD W. HUNT, et al.,)
) Case No. 01 CE CG 03182
Plaintiff,)
)
vs.)
)
STATE OF CALIFORNIA,)
et al.,) REPORTER'S TRANSCRIPT
)
Defendants.)
_____)

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Fresno, California

March 22, 2007

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A P P E A R A N C E S:

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I N D E X

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1 MARCH 22, 2007 - AFTERNOON SESSION

2 (Whereupon the following proceedings were
3 held in open court in the presence of the
4 Court and Counsel:)

5 THE COURT: The next matter is Edward Hunt and others
6 versus the State of California, Case No. 01 CE CG 03182.

7 MR. WOODS: Good afternoon, your Honor. Doug Woods
8 with the Attorney General's office on behalf of Defendants.

9 THE COURT: Good afternoon.

10 MR. WOODS: May I pile on top of the binders?

11 THE COURT: You don't want to get anything mixed up.
12 I'm in the middle of a preliminary hearing. They've waived
13 continuous preliminary hearing so --

14 MR. WOODS: Be careful?

15 THE COURT: Yeah, please. Yes.

16 MR. DAVIS: Good afternoon, your Honor. Jason Davis
17 appearing on behalf of Plaintiffs.

18 THE COURT: Good afternoon.

19 MR. KATES: And I'm Don Kates also appearing on behalf
20 of Plaintiffs.

21 THE COURT: Very well. Is it "K"?

22 MR. KATES: K A T E S.

23 THE COURT: Kates. Thank you.

24 MR. MICHEL: Your Honor, on the phone, Chuck Michel
25 also appearing for Plaintiffs.

26 THE COURT: Thank you. M I C H E L?

1 MR. MICHEL: Correct, your Honor. Thank you.

2 THE COURT: All right. Thank you.

3 The Court issued a tentative ruling. And, Mr. Woods,
4 I believe your office contacted the Court requesting oral
5 argument.

6 MR. WOODS: That is correct, your Honor.

7 THE COURT: And, Counsel, you can feel free to be
8 seated if you would be more comfortable at any time.

9 MR. WOODS: Both Counsel?

10 THE COURT: Yeah.

11 MR. WOODS: That includes you, too, Mr. Michel, if
12 you're standing up.

13 MR. MICHEL: Thank you, your Honor.

14 THE COURT: Yes.

15 MR. WOODS: Thank you, your Honor.

16 THE COURT: Sure.

17 MR. WOODS: I looked at the tentative, and in -- in
18 virtually every respect, we are in complete agreement with
19 the Court.

20 THE COURT: Let's talk about the part where we're not.

21 MR. WOODS: Yes, your Honor, with just a couple points
22 of clarification and, unfortunately, not necessarily short
23 points of clarification. But with a couple of points of
24 clarification, I believe that we can persuade the Court that
25 Plaintiff's remaining causes of action are also subject to
summary adjudication on the -- on the vagueness claims,

1 causes of action two and five.

2 THE COURT: Uh-huh.

3 MR. WOODS: The ostensive fact dispute that the Court
4 has identified in its tentative is, essentially, Defendants
5 on the one side say, "Yes, they can determine," et cetera,
6 and Plaintiffs on the other side are saying, "No, they can't
7 determine," et cetera. And, therefore, there's a fact
8 dispute. And if this were as an applied challenging, that
9 would be fine. We would have a fact dispute that we would
10 have to resolve via trial.

11 The situation here, though, is that we've got a facial
12 challenge to a law. And the standard applicable to a facial
13 challenge is -- is very much different than -- than just a
14 simple who's right, who's wrong, can they determine, can they
15 not determine.

16 The standard that the Plaintiffs have to face -- the
17 dispute that they have to create in order to get past summary
18 judgment is Defendants, on the one side, say, "Yes, they can
19 determine," et cetera, et cetera. Plaintiffs on the other
20 side say, "They can't ever determine," et cetera, et cetera.
21 They can't ever know if the device is --

22 THE COURT: If the device is a flash suppressor or
23 not.

24 MR. WOODS: They can't ever know if an activity
25 resulted in permanent alteration or not. That's the Hoffman
26 Estates, vague in all application, standard given to us by

1 the United States Supreme Court on a -- on a facial vagueness
2 challenge. And it sounds extreme -- it sounds extreme for me
3 to stand here, or sit here, actually, and say, "Your Honor,
4 they've got to demonstrate to the Court that they can have --
5 they have evidence that in no instance can anyone know
6 whether a flash suppressor or a device functions to suppress
7 flash and in no instance is a certain activity with a firearm
8 permanently altering that magazine capacity."

9 It sounds harsh to say that's what they've got to do,
10 but that's a function of the extremity of their claim. Their
11 claim is a facial challenge to a law. It's not as an applied
12 challenge. They're trying to wipe a law off the books
13 without any application to a given set of circumstances.

14 That's an extreme claim at trial. It would -- it
15 would be subject to the Hoffman Estates, vague in all
16 applications standards, which is a high burden for the -- the
17 Plaintiffs at trial. And they've got that same
18 correspondingly high burden here if they want to create a
19 disputed issue of fact to get past summary judgment.

20 On the second cause of action regarding the flash
21 suppressor definition, Plaintiffs allege -- and they actually
22 argue in their brief the right language; they say the right
23 thing. They can't ever determine whether a device is a flash
24 suppressor. Okay? That sounds like the right thing; that
25 sounds like we're talking the same ballpark with the right
26 standard.

1 But here's the problem for the Plaintiffs. The
2 evidence, the undisputed facts and the evidence including
3 Plaintiff's own admissions belie that allegation. As the
4 Court noted in the tentative, -- I'm reading from the bottom
5 of page 6 of the tentative, "Plaintiffs contend that the
6 devices do function to reduce flash from the shooter's field
7 of vision" -- pause for a second. How do they know that
8 unless it's plausible to conclude that and evaluate the
9 device and conclude that. "Plaintiffs contend that the
10 devices do function to reduce flash from the shooter's field
11 of vision, and, therefore, they are flash suppressor -- flash
12 suppressors under the DOJ's definition."

13 Skipping to the next paragraph, "However, the
14 Plaintiff's own expert states that the Springfield muzzle
15 brake device and Browning BOSS, another device," quote -- and
16 this is quoting from Plaintiff's expert's declarations, "Each
17 has some unintended effect in redirecting some of the flash
18 out of the shooter's field of vision." How do they know
19 that, unless they were able to evaluate the device and come
20 to that conclusion?

21 They are identifying in their own papers instances in
22 which it is possible to evaluate the device in question which
23 alone, by virtue of that admission, defeats their claim,
24 their facial vagueness claim. That defeats the argument
25 that -- and their allegation that it's impermissibly vague in
26 all applications. They're identifying instances in which it

1 is possible. And, of course, there are many others. That's
2 just based on their admission.

3 The Court notes -- the Court notes on page 4 of the
4 tentative, as part of the discussion, that there are several
5 ways for a firearm owner to know if a device attached to the
6 firearm functions to suppress flash. One way, as we've
7 pointed out, is to inspect the device itself, inspect its
8 features, educate yourself about its features, inspect what
9 the device does, and evaluate the device.

10 Another way is to look at the literature that is
11 provided with the device by the manufacturer, by the seller.
12 Those are the couple that the Court noted in the tentative.
13 In our papers, we identified other examples. And it doesn't
14 take a lot of imagination. There -- there are dealers; there
15 are publications; there are all sorts of ways for gun owners
16 to know information about a device and correspondingly to
17 know whether a particular device functions to suppress flash.
18 Example, -- and again, this is all talking in the context of
19 the facial challenge. And Plaintiff's obligation to negate
20 the possibility of there being any fair application of
21 this -- of this provision -- any certain application.

22 The example that I come up with, Gun Maker A makes a
23 device, has engineers, has gunsmiths as part of its
24 manufacturing facility, makes a device in order to suppress
25 flash. It's a device to go on the end of the gun, and the
26 design and intent is to suppress flash. The device has holes

1 and slots in strategic spots. It's a certain shape. It has
2 prongs. It has a certain configuration that the engineers
3 and the gunsmiths know it suppresses flash. They designed it
4 so significantly to suppress flash, to function to suppress
5 flash. They -- they -- everybody knows it suppresses flash,
6 and the industry publications discuss it wouldn't be
7 permissible in -- in California in combination with other
8 features because it is clearly, no dispute, a flash
9 suppressor. Even Plaintiffs would agree to that -- because
10 it's designed and intended to suppress flash.

11 Gun Maker B notes, "Hey, this device doesn't just
12 suppress flash, it also has a nice effect in that it reduces
13 some of the recoil. So you know what we're going to do?
14 We're going to copy Gun Maker A. We're going to make the
15 same device, same hole, same splits, same sprongs, same size
16 and shape. But you know what, we're not intending this to be
17 a flash suppressor. We're not designing it to be a flash
18 suppressor. We're intending this thing to be a muzzle
19 brake." They market it as a muzzle brake. Everyone in the
20 industry wink, wink; nod, nod; know this muzzle brake is
21 exactly the same as the Gun Maker A's flash suppressor, even
22 though it's not intended to function as to suppress flash.

23 Gun owner buys it. That gun owner is fairly on notice
24 that Gun Maker B's nonflash suppressor muzzle brake does
25 indeed function to suppress flash. That gun owner is fairly
26 on notice. There is no arguing that that gun owner couldn't

1 be fairly prosecuted for having that device attached to his
2 firearm with the other possible combinations of features that
3 make it an assault weapon. That alone is my ability to come
4 up with one example, and you can see, --

5 THE COURT: How would they know?

6 MR. WOODS: Pardon?

7 THE COURT: How would they know?

8 MR. WOODS: He's fairly on notice, your Honor. It's
9 exactly the same -- that same thing that manufacturer A
10 has -- has designed in order to have the flash suppression
11 effects.

12 THE COURT: How would they know?

13 MR. WOODS: Brochure.

14 THE COURT: How would they know that it's the same?

15 MR. WOODS: Well, that -- you know, what if -- if for
16 some reason that particular gun owner has an ability to
17 convince an arresting officer, I -- I have never heard of Gun
18 Maker A. I've -- that's -- that's a question of proof, just
19 like for the other prosecution.

20 THE COURT: No, not -- not never heard of Gun Maker A.
21 But how would they know that this thing that they bought
22 or --

23 MR. WOODS: Right.

24 THE COURT: -- on the end of Gun Maker B's product
25 that they purchased --

26 MR. WOODS: Right.

1 THE COURT: -- while marketed as a recoil
2 suppressant, --

3 MR. WOODS: Your Honor, --

4 THE COURT: -- was, in actuality, among those who know
5 wink, wink, a flash suppressor, which is identical to
6 something some other company makes whose product they didn't
7 buy? How would they know?

8 MR. WOODS: Your Honor, in -- my hypothetical assumes
9 he does, and that's the problem.

10 THE COURT: That's why -- that's why -- go ahead.

11 MR. WOODS: It goes both ways. Actually, it assumes
12 that he does, your Honor, --

13 THE COURT: Uh-huh.

14 MR. WOODS: -- because that -- that is what I'm left
15 with in our hypothetical -- facial challenge world. I'm left
16 with the coming up with hypotheticals. My point about my
17 hypothetical is this gun owner knows, even though this device
18 was not intended -- was not designed to suppress flash, this
19 gun owner knows.

20 THE COURT: How do they know?

21 MR. WOODS: Like he's part of the wink, wink; nod,
22 nod. He reads the monthly Gun Digest. He reads -- he gets
23 on the web sites. He's up-to-date on the features. He
24 knows, for instance, what Gun Maker A's flash suppressor
25 looks like. He knows that Gun Maker B's flash suppressor is
identical, for all intents and purposes. He knows that.

1 He's fairly on notice.

2 And the point of my hypothetical, your Honor, is that
3 the gun owner who knows is an example of this provision
4 having an undisputedly fair application. In an instance
5 where a particular gun owner might not know, we can spend the
6 scenario of -- the hypothetical scenario in an infinite
7 number of directions; right? We can say, "This gun owner
8 doesn't read Gun Digest. This gun owner doesn't get on the
9 web site. This gun owner has not heard of Gun Maker A, has
10 never seen Gun Maker A's device."

11 That's a point -- you can get to a point where you
12 make a defense for this gun owner, and that's fine. My
13 point -- that's fine, and that doesn't defeat my motion, your
14 Honor, of the infinite number of scenarios. It's up to
15 Plaintiffs -- that's the fallacy of their claim. It's up to
16 Plaintiffs to negate all of the possible scenarios in which
17 this could have fair application.

18 It's not up to me on the facial challenging to a law
19 to say in every instance everyone will know exactly what they
20 need to know before they're fairly -- before they're fairly
21 prosecuted.

22 THE COURT: Okay. Thank you.

23 MR. WOODS: Oh, your Honor, I've got more thoughts. I
24 recognize that it's a bulky case, but --

25 THE COURT: Many are.

26 MR. WOODS: Yeah.

1 THE COURT: And many are that are remaining on
2 calendar for the rest of today --

3 MR. WOODS: Let me -- I can keep it short.

4 THE COURT: -- besides this one.

5 And so for that reason, I want to, as best you can,
6 have you focus your remarks to the one area other than many,
7 many areas of the tentative ruling, --

8 MR. WOODS: Yes.

9 THE COURT: -- with which you agree and focus directly
10 upon that. You mentioned the second cause of action and the
11 fifth cause of action.

12 MR. WOODS: Yes.

13 THE COURT: And if we can, as we move forward, --

14 MR. WOODS: Let --

15 THE COURT: -- focus even closer, it would be helpful.

16 MR. WOODS: Yes, your Honor.

17 THE COURT: Thank you.

18 MR. WOODS: On the fifth cause of action, my point is
19 much more brief. It's the same issue. Plaintiffs, actually,
20 on the fifth cause of action challenge the lack of a
21 regulatory definition of the term "permanently altered."
22 Plaintiffs don't even pretend -- don't even allege that it's
23 that -- the term in the statute is vague in all applications.
24 They actually give permissible applications -- welding,
25 Palmer adhesive, soldering. They give examples of things
that are truly permanent, undisputed permanent. They also

1 give examples of the different things they propose of -- of
2 alterations that are not permanent -- insertion of wooden
3 dowels that can be easily removed.

4 THE COURT: I know.

5 MR. WOODS: Those are perfect examples, your Honor, of
6 a failure -- and actually a confirmation of my point -- that
7 there are many applications at which that term has -- has
8 fair application.

9 One point I want to get to -- and I -- I won't belabor
10 it, but if the Court -- the Court cites the Hoffman Estates
11 case, and I believe is committed to the Hoffman Estates case
12 but then, in evaluating the different contentions, doesn't
13 hold Plaintiffs to that high burden. And that's what I'm
14 asking the Court to do is to go ahead and hold them to that
15 high burden.

16 My concern is that perhaps Plaintiff's citations to
17 the Kolender and City of Chicago cases caught the Court's
18 attention. I saw them cited in the discussion of Plaintiff's
19 motion. They weren't cited in the discussion dealing with
20 Defendant's motion, but I'm concerned that some of the
21 thoughts from those cases, which aren't applicable, found
22 their way into the Court's thinking and -- and softening its
23 view in what Plaintiffs had to do.

24 The Kolender and City of Chicago cases, United States
25 Supreme Court, were loitering cases. Plaintiff's raised
26 these cases in the demurrer. Your Honor, we opposed it way

1 back then. And Judge Kane properly ignored those cases,
2 found they weren't -- they weren't applicable. And
3 nonetheless, we didn't see them at all here until Plaintiff's
4 reply brief. That's the only reason why I mentioned it now
5 is I have had a chance to respond to Kolender and City of
6 Chicago, but Plaintiffs put those in their reply brief. My
7 three points which I would have said, if I had seen it
8 earlier in the briefing process, are that City of Chicago and
9 Kolender were loitering cases involving themselves reaching
10 into substantively Constitutionally protected areas -- First
11 Amendment association of speech, liberty interests. Unlike
12 here, no such substantively protected Constitutional rights
13 at issue. It's a straight "Is it vague? Is it not? Is it
14 certain? Is it not?" That's the difference between Kolender
15 and City of Chicago in our case.

16 In addition to the absence of a mens rea requirement,
17 here we've got a mens rea requirement, as the Court notes,
18 protects the Defendant. In City of Chicago and Kolender,
19 there were no mens rea requirements. And, of course, the
20 provisions there, actually, were vague. They used terms that
21 were -- were indeterminate. Unlike here, there is no dispute
22 as to what the terms actually mean. There is just a dispute
23 as to whether collateral circumstances in Plaintiff's view
24 render the terms in the regulation uncertain.

25 My final point, your Honor, and I know you're anxious
26 for me to reach my final point. But this is -- this is on --

1 THE COURT: How do you know?

2 MR. WOODS: Your earlier -- earlier urgings, your
3 Honor.

4 THE COURT: Well, I hope that you don't feel that
5 you're receiving some short shrift in terms of either the
6 thought that has been given to your papers or those that the
7 others filed in support and in opposition to these motions or
8 in the time that is being afforded you to argue today.

9 That's why I asked you that. Because we started at just a
10 bit after 3:30 with law and motion, meaning about 3:33 or
11 3:34, and it's now 3:56. And other than me saying a few
12 sentences, you're the only one that has said anything.

13 MR. WOODS: Your Honor, --

14 THE COURT: And you started off saying that, in large
15 part, you agreed with the tentative ruling. And I've simply
16 urged you to focus your remarks to why you disagree with the
17 aspects of the tentative ruling that you disagree with. I
18 understand what the papers said, and I understand what the
19 cases said. And we may disagree with regard to certain
20 aspects of what's before the Court today in terms of what the
21 decision should be, but this is your opportunity, and I don't
22 want you to feel that you're being slighted in regard.

23 We do have a preliminary hearing that's in progress.
24 I have about -- I don't know -- nine other cases on calendar
25 including two ex parte matters -- maybe it's only seven. I
26 don't know. But I'll be happy to hear anything you have to

1 say as long as you don't start repeating yourself or worse.

2 MR. WOODS: Understood, your Honor. One final point,
3 focused.

4 THE COURT: Sure.

5 MR. WOODS: Claim one in the sixth cause of action
6 related to the Browning BOSS and Springfield muzzle brake
7 claim that --

8 THE COURT: We're talking about the sixth cause of
9 action?

10 MR. WOODS: Correct, your Honor. I'm moving on.

11 THE COURT: Okay. I thought it was the second and the
12 fifth.

13 MR. WOODS: Second and fifth were the vagueness
14 issues, your Honor.

15 THE COURT: Okay. Go ahead.

16 MR. WOODS: This is on claim one, the sixth cause of
17 action.

18 THE COURT: Okay.

19 MR. WOODS: The dispute that the Court has identified
20 in the tentative --

21 THE COURT: Uh-huh.

22 MR. WOODS: -- is -- Plaintiffs believe the Browning
23 BOSS and the Springfield muzzle brake are flash suppressors
24 under the regulation. Defendants believe that those devices
25 are not flash suppressors under the regulation. That is a
26 true dispute. We disagree on that. But the existence of

1 that dispute is assumed by our motion. The point of our
2 motion was not to engage in that dispute and prove ourselves
3 right and then wrong. The point of our motion in -- I'll
4 make a reference -- I won't read it, but I'll make a
5 reference to paragraph 80 of the Complaint.

6 THE COURT: Uh-huh.

7 MR. WOODS: Paragraph 80 of the Complaint is their
8 claim for what they want. On claim one of the sixth cause of
9 action, they want as a result of that disagreement to
10 invalidate the regulatory definition. They want to
11 invalidate the law based on their disagreement with us on
12 that issue.

13 And our point is whatever our disagreement is of that
14 issue, whatever the validity, they may be right. If they're
15 right, it doesn't defeat our motion. Our motion is that's
16 not a basis -- disagreement with an agency determination. An
17 agency's incorrect determination is not a basis for
18 invalidating a law pursuant to which that decision is made.
19 That's the point of our claim on cause of action six.

20 And so I wanted to clarify that for the Court and hope
21 that the Court would reconsider that aspect of its tentative,
22 also.

23 MR. WOODS: Okay. Thank you, your Honor.

24 THE COURT: Sure. Anything else at this point?

25 MR. WOODS: Housekeeping, your Honor, but I presume we
26 should talk -- I presume the Court would prefer to engage in

1 substance for the time being.

2 THE COURT: What kind of housekeeping?

3 MR. WOODS: Claim two of the sixth cause of action,
4 your Honor, that's the claim related to detachable magazines
5 that the Plaintiffs abandoned in the course of the briefing.

6 THE COURT: Uh-huh.

7 MR. WOODS: My request to the Court would be to go
8 ahead and include in this order that that claim is dismissed
9 without prejudice rather than waiting for Plaintiffs to file
10 a dismissal.

11 MR. DAVIS: We're fine with that, your Honor.

12 THE COURT: All right.

13 MR. WOODS: Claim three on the sixth cause of action,
14 your Honor, is the ill-fashioned lever action large capacity
15 magazine claim --

16 THE COURT: Uh-huh.

17 MR. WOODS: -- that the Court identified as moot in
18 the tentative -- in the tentative ruling.

19 THE COURT: Uh-huh.

20 MR. WOODS: The Court referred to denying our motion
21 as to cause of action six, though, and based on the Court's
22 reasoning and our summary judgment argument, based on
23 mootness, my request would be that claim three of the sixth
24 cause of action judgment be granted based on mootness in
25 Defendant's favor in that claim.

26 THE COURT: Okay.

1 MR. WOODS: And each -- each of the claims in the
2 sixth cause of action is independent. We cited Loenthal and
3 CCP 437c sub (o). Each of those claims request independent
4 relief. So each is independently subject to summary
5 adjudication, your Honor.

6 THE COURT: Okay. Anything else?

7 MR. WOODS: Depending on whether the Court takes the
8 matter under submission, the other housekeeping -- the last
9 housekeeping item would be how to address remaining work, in
10 light of the Court's tentative, which did not resolve the
11 case either 100 percent for Plaintiffs or 100 percent for
12 Defendants, and the need to push back the trial date.

13 THE COURT: Okay. Well, either, Mr. Michel, Mr.
14 Kates, or Mr. Davis, do any of you have anything to say in
15 response?

16 MR. DAVIS: Yeah. Yes, your Honor. I would like to
17 address that very quickly. I just -- one of the causes of
18 action as well. With regard to the first cause of action, --

19 THE COURT: Uh-huh.

20 MR. DAVIS: -- that was granted in favor of
21 Defendant's motion, --

22 THE COURT: Uh-huh.

23 MR. DAVIS: -- I would like to address a couple
24 points, which I think we have not only caused the denial of
25 their request but the granting of ours.

26 The definition of flash suppressor, as provided by the

1 Department of Justice, is any device that reduces or
2 redirects the flash from the shooter's field of vision. The
3 record shows evidence of conflicting or different definitions
4 of flash suppressor that talk about reduction and some talk
5 about intending to -- intending to reduce. None of the
6 definitions in the record actually address redirect.

7 The fact that they included anything that redirects
8 flash from the shooter's field of vision is, in our view,
9 capricious, arbitrary, and completely lacking of evidentiary
10 support in the record. For that reason alone, that provision
11 of the record -- of the definition should be stricken.

12 Now, since I know we're trying to go through this
13 quickly, --

14 THE COURT: That's twice you said that.

15 MR. DAVIS: -- I'd like to address the due process
16 clause.

17 THE COURT: The same thing I said to Mr. -- Mr. Woods
18 applies to your comments. I'm not going to let you folks get
19 on the record and start talking about how -- I don't mean you
20 personally, sir, but any of you -- any of you get on the
21 record and start talking about how quickly I made you go
22 through this or anything else.

23 MR. DAVIS: No.

24 THE COURT: It's not going to happen.

25 MR. DAVIS: Your Honor, --

26 THE COURT: If we need to continue this over for --

1 for another day for further consideration, despite your
2 April 23, 2007 trial date, and the indication by Counsel that
3 there may be some desire, at least by one side, to -- to move
4 that, that's fine. I don't have a problem with that.

5 But I'm not going to have -- let a record be created
6 that we're in such a rush that you or anyone else can't get
7 to say what they needed to say.

8 MR. DAVIS: I have no intentions on implying that.

9 THE COURT: I just want to be clear. You do your
10 thing, and I'll make my record, too. Go ahead.

11 MR. DAVIS: With regard to the second cause of action
12 due process issue, Plaintiffs -- or excuse me, the Defendants
13 hang their hat in part on the triable issue of mens rea which
14 provides assurance against criminal prosecution to some
15 extent.

16 One of the problems with that is the assault weapon
17 law is not just a criminal prosecution; it's also a
18 forfeiture proceeding. So someone is caught with one of
19 these firearms and does happen to make their way through
20 criminal court and succeeded in getting a dismissal or
21 getting acquittal, as a result of them not being able to know
22 that the device was a flash suppressor or that that firearm
23 can never be returned, it -- it will be forfeited or --

24 THE COURT: Destroyed.

25 MR. DAVIS: -- forfeited and destroyed or taken by law
26 enforcement pursuant to a number of different statutes that

1 address that.

2 THE COURT: Right.

3 MR. DAVIS: So regardless of whether or not someone
4 who gets away with it, as far as, you know, the fact that
5 they didn't -- weren't able to know whether or not their
6 device has a flash suppressor and, therefore, their gun is an
7 assault weapon, they're still out the property rights. They
8 would have, had clear regulations been in place, been able to
9 register it. And there's a point that was raised, that they
10 could have written -- in all caution, they could have
11 registered the firearm anyways, just to make it an assault
12 weapon.

13 But one of the problems I would like to point out,
14 once you register your firearms device and you're in that
15 gray area and you're not sure you can no longer transfer that
16 firearm, you have transportation restrictions that apply to
17 you. When you pass away, you cannot pass it on to your
18 heirs.

19 Assault weapons are treated differently under the law
20 as far as transfers -- transportation goes. So in an
21 abundance of caution, people who may possess nonassault
22 weapons may be giving up the rights by registering to be
23 safe. So that's what I would like to address with regard to
24 the second cause of action.

25 With regard to the third cause of action -- excuse me,
26 the fifth cause of action permanently altering -- permanently

1 altering magazines, the definition that stands now, as a
2 result of the plane language according to the Court, was the
3 Webster's definition, which is "continuing without
4 fundamental change." We did provide a number of offers -- or
5 a number of methods that these could be made. But I would
6 like to point out that Government Code 11340.5, even if it --
7 the DOJ approves that by actions or by letter, Government
8 Code 11340.5 prohibits that from being binding.

9 In order for the --

10 THE COURT: Excuse me. Mr. Michel, can you hear me?

11 MR. MICHEL: Yes, your Honor.

12 THE COURT: Can you hear the arguments that are being
13 made by Counsel?

14 MR. MICHEL: Yes, I can, your Honor.

15 THE COURT: Okay. I trusted that you would speak up
16 if you could not. I realize that Mr. --

17 MR. DAVIS: Davis.

18 THE COURT: -- Mr. Davis is on your side.

19 MR. MICHEL: Your Honor, I was just going to say,
20 unless there is something that the DOJ has said that has made
21 the Court inclined to reconsider its tentative, I think we
22 can probably submit.

23 THE COURT: I see. Well, I don't know. I -- I --
24 I -- well, you've heard what's going on here, and I --

25 MR. MICHEL: Yes.

26 THE COURT: -- I understand what you're saying. I

1 don't know how other Counsel feel about that, but --

2 MR. DAVIS: He's my boss, so --

3 MR. MICHEL: I don't want to --

4 THE COURT: Very well.

5 MR. MICHEL: -- I don't want to argue a case that
6 doesn't need to be argued. Unless the DOJ has raised a point
7 that causes the Court some concern, which we would be happy
8 to address, I think we can probably end our argument.

9 THE COURT: Okay. Thank you.

10 Mr. Woods, anything further?

11 MR. WOODS: Your Honor, I had one thought that I
12 skipped over related to the Chinn declaration --

13 THE COURT: Uh-huh.

14 MR. WOODS: -- and courts sustaining the objections to
15 the Chinn declaration.

16 As to his description of the Springfield muzzle brake
17 and Browning BOSS determinations, consistent with my prior
18 discussion, which I won't repeat, because he wasn't trying to
19 defend those decisions, he was just stating this is what the
20 decisions were. That's why the objections to the Chinn
21 declaration didn't make sense. And so they're not offered to
22 engage in that dispute and accomplish that dispute because
23 they don't need, in my view, your Honor, any foundation for
24 how they got to those conclusions. The intention was just to
25 put into evidence that those conclusions had been made.

26 And Plaintiffs actually have introduced the same

1 conclusions by virtue of their Exhibits N and Q already in
2 the Defendant's discovery responses. And, in actually, in
3 their own declarations, also, the Johnson and Guy
4 declarations also describe those determinations and criticize
5 them. So those -- the actual fact of the determinations are
6 in evidence, regardless. I just wanted to point that out for
7 your Honor.

8 THE COURT: Thank you.

9 MR. DAVIS: That I -- can I address Chuck Michel on
10 another end real quick?

11 THE COURT: Sure.

12 MR. DAVIS: I'm not sure. Are you wanting to submit
13 on the tentative with all causes of action or including the
14 first or -- including the first?

15 MR. MICHEL: Well, your Honor, we've made a --

16 THE COURT: That was Mr. Davis that allowed you to
17 make that inquiry directly to you.

18 MR. MICHEL: Thank you, your Honor.

19 THE COURT: Sure.

20 MR. MICHEL: We made an argument on the first cause of
21 action, and I -- I think, as far as the rest is concerned,
22 again, if anything that the DOJ has said raises a concern in
23 the Court's mind, we would be happy to come back and address
24 it. But I know the Court spent a lot of time putting that
25 tentative ruling together and has studied these issues pretty
closely, and so I think if -- if the Court's inclined to just

1 adopt its tentative, even if we didn't manage to convince you
2 on a first cause of action, I think we're ready to submit at
3 this point.

4 MR. DAVIS: I would also like to add one thing -- is
5 that the Court did mention that one of the --

6 THE COURT: This is Mr. Davis that's talking again
7 now.

8 MR. MICHEL: Yes, your Honor.

9 THE COURT: Okay. Go ahead.

10 MR. DAVIS: The sixth cause of action addresses the
11 Walther P-22 --

12 THE COURT: Right.

13 MR. DAVIS: -- but was not in the actual Complaint.
14 We would like to possibly have leave to amend to include that
15 in the Complaint, but it would not require us to have any
16 additional time because it does follow within the rubric of
17 the conflicting statements. We have all the evidence and
18 discovery we need on that issue.

19 THE COURT: I'll tell you what's going to happen.

20 Is it submitted?

21 MR. DAVIS: Yes.

22 MR. WOODS: Yes, your Honor.

23 THE COURT: All right. The Court adopts its tentative
24 ruling. That's the first thing.

25 The second thing is, any of these housekeeping issues
26 you want to discuss, I want you to meet and confer with

1 regard to them, including judgments with respect to the
2 specific areas within -- within claims or causes of action.

3 And also with respect to the issue that you just
4 raised, Mr. Davis, if you would meet and confer and submit
5 appropriate supplemental -- not supplemental, really, orders
6 -- but that's essentially what they are -- to the Court,
7 exchange them, take a look at them, and do your best to reach
8 agreement. It sounds like you are in agreement with regard
9 to some of those things. If not, then there will be some
10 more motions, I suppose.

11 All right. Thank you, gentlemen.

12 MR. MICHEL: Your Honor, the only other thing I would
13 ask is: Do we need a case management conference?

14 THE COURT: No. You're going to have a settlement
15 conference April the 10th and a trial readiness hearing on
16 Friday, April the 20th. And if the case isn't resolved, a
17 Court trial on April the 23rd. That's the way that things
18 are looking right now.

19 MR. MICHEL: Right. We've stayed some discovery, and
20 the Court has now helped us to narrow a great deal of issues
21 which are down to a few.

22 THE COURT: And if it turns out that you see one of
23 the things that Mr. Woods was talking about was the
24 possibility that the trial date maybe needs to be moved,
25 pushed back -- I think was the term that he used -- and that
may be. I don't know. And I think that -- now that you have

1 a sense of some of these issues, these legal issues, you can
2 talk about some of the fallout of that, the result of --

3 MR. MICHEL: Okay.

4 THE COURT: -- what's left and determine what you
5 need. I'm not going to try and tell you --

6 MR. MICHEL: I understand, your Honor.

7 THE COURT: -- what you can -- and if you can agree on
8 something, fine. If you think you need to do more discovery
9 or you need more time, I'm not going to prohibit that. I
10 don't think -- if there is something you all can agree on,
11 great.

12 MR. MICHEL: All right, your Honor. I understand.

13 THE COURT: It's that kind of case. If you're going
14 to try this case, if it's really going to be tried, -- it
15 sounds like it probably will be -- you want to have it ready.
16 Both sides want to have it ready, and I would like you to do
17 that, --

18 MR. MICHEL: Absolutely.

19 THE COURT: -- you know?

20 MR. MICHEL: And the Court has really focused us, so I
21 think we can make it productive and short and sweet.

22 THE COURT: Great. Thank you all.

23 MR. KATES: Thank you, your Honor.

24 MR. MICHEL: Thank you, your Honor.

25 MR. WOODS: Thank you, your Honor.

26 MR. DAVIS: Thank you, your Honor.

1 THE COURT: Sure.

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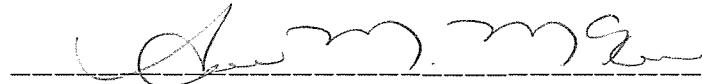
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