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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF FRESNO

10 SHERIFF CLAY PARKER, TEHAMA
COUNTY SHERIFF; HERB BAUER
11 SPORTING GOODS; CALIFORNIA
RIFLE AND PISTOL ASSOCIATION
12 FOUNDATION; ABLE'S SPORTING,
INC.; RTG SPORTING COLLECTIBLES,
13 LLC; AND STEVEN STONECIPHER,

14 Plaintiffs and Petitioners,

15 vs.

16 THE STATE OF CALIFORNIA; JERRY
17 BROWN, IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL FOR THE
18 STATE OF CALIFORNIA; THE
CALIFORNIA DEPARTMENT OF
19 JUSTICE; and DOES 1-25,

20 Defendants and Respondents.
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FILED

SEP 07 2010

FRESNO COUNTY SUPERIOR COURT

By _____ TLC - DEPUTY

) CASE NO. 10CECG02116
)
) **DECLARATION OF CLINTON B.**
) **MONFORT IN SUPPORT OF MOTION FOR**
) **PRELIMINARY INJUNCTION**
)
) Date: September 29, 2010
) Time: 3:30 p.m.
) Location: Dept. 97A
) Judge: Hon. Jeffrey Y. Hamilton
) Action Filed: June 17, 2010

FILED BY FAX

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1. I am the attorney of record for Plaintiffs in the above-entitled action.
2. Following the passage of Assembly Bill 962 (2009) ("AB 962") in October of 2009, our office began to receive inquiries from firearms retailers, including Plaintiffs Herb Bauer Sporting Goods, Able's Sporting, Inc. and RTG Sporting Collectibles, LLC, seeking advice on how best to comply with the mandates of AB 962. Several clients specifically questioned which precise cartridges of ammunition would be affected by California Penal Code sections 12060, 12061, and 12318. A true and correct copy of Assembly Bill 962 (2010) is filed concurrently herewith as Exhibit "1."
3. On or about December 9, 2009, and again on or about December 15, 2009, our office contacted Counsel for the Department of Justice ("DOJ") Bureau of Firearms via e-mail, seeking clarification of California Penal Code sections 12060, 12061, and 12318 in order to best advise our clients on how to properly comply with the new laws.
4. On or about December 9, 2009, our office contacted Counsel for the DOJ Bureau of Firearms via e-mail, inquiring about whether Defendant DOJ would hold any regulatory meetings regarding the implementation of Assembly Bill 962. Counsel responded that Defendant DOJ had no intentions of holding any regulatory meetings on this issue.
5. On or about December 15, 2009, our office again contacted Counsel for the DOJ Bureau of Firearms via e-mail, seeking clarification for our clients as to the meaning and scope of AB 962, including questions regarding which types of ammunition were regulated by sections 12060, 12061, and 12318. Using ".22 LR" as an example, our office specifically inquired as to whether a particular caliber of ammunition used in both handguns and long guns would be considered "handgun ammunition" under sections 12060, 12061, and 12318. Through a series of responses, Counsel for the DOJ Bureau of Firearms indicated that she "did not know" and "could not say" whether DOJ Field Representatives would consider a certain caliber of ammunition "handgun ammunition," and that Defendant DOJ was unable to adopt a policy about which types of ammunition are handgun ammunition as it would be considered an illegal underground regulation.

1 6. On or about December 16, 2009, our office sent Defendant DOJ a request pursuant to
2 the California Public Records Act, seeking any and all writings and communications relating to
3 the enforcement of AB 962. A true and correct copy of "Public Records Act Request 12.16.09 –
4 'DOJ Bureau of Firearms - AB 962'" is filed concurrently herewith as Exhibit "6."

5 7. On or about December 30, 2009, DOJ Bureau of Firearms released an "Information
6 Bulletin," entitled "New and Amended Firearms Laws" that provided a brief summary of new
7 and amended California firearms laws. The Bulletin's section on AB 962 set forth the new
8 regulations impacting the transfer of "handgun ammunition," but failed to clarify which types of
9 ammunition would be affected by California Penal Code sections 12060, 12061, and 12318. A
10 true and correct copy of Defendant DOJ's "Information Bulletin," entitled "New and Amended
11 Firearms Laws" is filed concurrently herewith as Exhibit "8."

12 8. On or about January 25, 2010, Defendant DOJ responded to our office's Public Records
13 Act Request for writings and communications relating to the enforcement of AB 962. Enclosed
14 with that response was the series of e-mail communications between Counsel for the DOJ Bureau
15 of Firearms and our office. A true and correct copy of "Defendant DOJ's Public Records Act
16 Response and Relevant E-mail Enclosures" is filed concurrently herewith as Exhibit "7."

17 9. As a result of our clients continued inquiries about which types of ammunition would be
18 regulated by AB 962 and Defendant DOJ's inability to provide any guidance on this issue, our
19 office was unable to advise our clients as to how to comply with the new laws. Our office
20 subsequently received requests from our clients to commence litigation seeking injunctive and
21 declaratory relief to protect them from prosecution for inadvertently violating the new laws.

22 10. On or about June 17, 2010, Plaintiffs filed their Complaint for Declaratory and
23 Injunctive Relief against Defendants the State of California, Jerry Brown, in his official capacity
24 as Attorney General for the State of California, and the California DOJ ("Defendants"),
25 challenging the validity of Penal Code sections 12060, 12061, and 12318.

26 11. Out of professional courtesy, Plaintiff's subsequently granted Defendants' request for
27 an extension to file a responsive pleading until August 2, 2010.

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1 12. On or about August 2, 2010, Defendants filed their Answer to [Plaintiffs'] Complaint
2 for Declaratory and Injunctive Relief and Petition for Writ of Mandate.

3 13. On or about August 5, 2010, our office contacted counsel for Defendants via e-mail,
4 inquiring as to whether Defendants would stipulate to a shortened briefing schedule to resolve this
5 case on the merits via summary judgment before Penal Code sections 12061(a)(3-7) and 12318
6 take effect on February 1, 2011, as Plaintiffs' business decisions greatly rely on whether this law
7 will be enforced, and as plaintiffs will be subject to the threat of prosecution for inadvertent
8 violations of these laws should this case not be resolved when those sections take effect as set
9 forth fully in Plaintiffs' declarations filed concurrently herewith. Further, Plaintiffs seek speedy
10 resolution of this matter to prevent further risk of prosecution for inadvertent violations of Penal
11 Code section 12061(a)(1-2) which have already taken effect. The parties were unable to agree to
12 a shortened briefing schedule for Plaintiff's Motion for Summary Judgment. Accordingly,
13 Plaintiffs' informed Defendants of their intention to proceed with a Motion for Preliminary
14 Injunction continued preparation of the instant motion.

15 14. Meanwhile, according to the sponsor of Assembly Bill 2358 (2010), Assemblyman
16 Kevin De Leon, Defendant DOJ worked with Assemblyman De Leon to remove the reference to
17 Penal Code section 12323(a) and replace it with a "list of ammunition calibers" that would be
18 considered "handgun ammunition" under AB 962. On or about August 19, 2010, AB 2358 was
19 amended to clarify AB 962 by including a list of ammunition calibers that would be considered
20 handgun ammunition, but the bill ultimately failed to pass the Senate. The bill's failure to pass
21 the legislature was presumably due to the many flaws posed not only by Defendants' list of
22 ammunition calibers, but also due to the flaws which led numerous organizations, including the
23 California Rifle and Pistol Association, to oppose the bill prior to the recent "list amendment."
24 (Hearing on A.B. 2358 Before the S. Pub. Safety Comm., 2010 Leg., 2009-2010 Reg. Sess. (Cal.
25 2010) (statement of Assem. Kevin DeLeon, Sponsor).) True and correct copies of "Assembly Bill
26 2358 (2010), Amended August 19th 2010," "Assembly Bill 2358 (2010), Amended August 30th,
27 2010," and "Assembly Bill 2358 (2010) History" are filed concurrently herewith as Exhibits 2, 3,
28 and 4, respectively.

1 15. Plaintiffs believe that the amendment to AB 2358 to include a list of ammunition
2 calibers was the result of Defendant DOJ's communications with Assemblyman De Leon's office
3 regarding the merits of this suit and the vagueness of the challenged provisions. Plaintiffs are
4 unable to confirm this, however, as a previous public records request for communications
5 regarding AB 962 and AB 2358 were denied on privilege grounds, and Plaintiffs' expect that a
6 subsequent request for information about DOJ's communications with Assemblyman DeLeon's
7 office will be denied on similar grounds. True and correct copies of "Public Records Act Request
8 7.16.10-DOJ Bureau of Firearms" and "Defendant DOJ's Public Records Act Response" are
9 filed concurrently herewith as Exhibits "9" and "10," respectively.

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct.

12 Dated this 7th day of September, 2010 at Long Beach, California.

13
14 
15 Clinton B. Monfort

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF FRESNO

4 I, Valerie Pomella, am employed in the City of Long Beach, Los Angeles County,
5 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.

6 On September 7, 2010, I served the foregoing document(s) described as

7 **DECLARATION OF CLINTON B. MONFORT IN SUPPORT OF MOTION FOR**
8 **PRELIMINARY INJUNCTION**

on the interested parties in this action by placing

9 ☐ the original

☒ a true and correct copy

10 thereof enclosed in sealed envelope(s) addressed as follows:

11 Edmund G. Brown, Jr.
12 Attorney General of California
Zackery P. Morazzini
13 Supervising Deputy Attorney General
Peter A. Krause
14 Deputy Attorney General (185098)
1300 I Street, Suite 125
15 P.O. Box 944255
Sacramento, CA 94244-2550

16 — (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
17 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,
18 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
19 date of deposit for mailing an affidavit.
Executed on September 7, 2010, at Long Beach, California.

20 X (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the
21 addressee.
Executed on September 7, 2010, at Long Beach, California.

22 — (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used
23 complies with California Rules of Court, Rule 2003, and no error was reported by the
machine. Pursuant to Rules of Court, Rule 2006(d), I caused the machine to print a
24 transmission record of the transmission, copies of which is attached to this declaration.
Executed on September 7, 2010, California.

25 X (STATE) I declare under penalty of perjury under the laws of the State of California that
26 the foregoing is true and correct.

27 
28 VALERIE POMELLA