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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF FRESNO

14  
15 **SHERIFF CLAY PARKER, et al.,**

16 Plaintiffs and Petitioners,

17 v.

18 **THE STATE OF CALIFORNIA; et al.,**

19 Defendants and Respondents.

Case No. 10CECG02116

(1) **DEFENDANTS' OBJECTIONS TO  
PLAINTIFFS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT OR, IN THE  
ALTERNATIVE, SUMMARY  
ADJUDICATION/TRIAL BRIEF;**

(2) **[PROPOSED] ORDER THEREON**

Date: January 18, 2011  
Time: 8:30 a.m.  
Dept: 402  
Judge: Hon. Jeffrey Hamilton

Action Filed: June 17, 2010

24 Defendants the State of California, Edmund G. Brown Jr. (sued erroneously as "Jerry Brown"),  
25 and the California Department of Justice (collectively, the "State") hereby object to the  
26 documents presented in plaintiffs Sheriff Clay Parker, Herb Bauer Sporting Goods, California  
27 Rifle and Pistol Association, Able's Sporting, Inc., RTG Sporting Collectibles, LLC, and Steven  
28

Stonecipher's (collectively, "Plaintiffs") Request for Judicial Notice in Support of Plaintiffs' Motion for Summary Judgment or in the Alternative for Summary Adjudication/Trial.

**I. THE COURT SHOULD DECLINE PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE OF TENNESSEE COURT RECORDS BECAUSE THEY ARE IRRELEVANT AND DEVOID OF PRECEDENTIAL VALUE.**

Plaintiffs' seek judicial notice of numerous records from the court files of the Tennessee Chancery Court in the matter of *Tennessee ex rel. Rayburn v. Cooper*, Case No. 09-1284-I in the Chancery Court for Davidson County, Tennessee including (1) the Amended Complaint for Injunctive and Declaratory Relief (Exhibit A), (2) Defendant's Response in Opposition to Plaintiffs' Motions for Partial Summary Judgment (Exhibit B), (3) Defendant's Cross-Motion for Judgment on the Pleadings and/or for Summary Judgment (Exhibit C), (4) Order of Chancellor Claudia Bonnyman (Exhibit D), and (5) the Consolidated Memorandum of Law of Defendant Attorney General Cooper in Opposition to Plaintiffs' Motions for Partial Summary Judgment in Support of Defendant's Cross-Motion for Judgment on the Pleadings and/or for Summary Judgment (Exhibit I).

The only apparent purpose for Plaintiffs' request for judicial notice of the Tennessee court records is to imbue the material with precedential value it neither has, nor can acquire. Although a court may judicially notice a variety of matters pursuant to Evidence Code section 450, only *relevant* material may be noticed. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135 fn. 1; *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 ["judicial notice, since it is a substitute for proof [citation], is always confined to those matters which are relevant to the issue at hand"], *overruled on other grounds* by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257.) Apart from their implied value as alleged precedent, which they lack, Plaintiffs fails to articulate any reason why these records are relevant or have any bearing on the legal questions at hand. Absent relevance, the Court should decline judicial notice of the court records. (See *id.*)

Although a court may take notice of the existence of document in a sister state's court file, it cannot take judicial notice of the *truth* of the hearsay statements in the decisions of the court files. (*Mangini*, 7 Cal.4th at p. 1063 ["to the extent plaintiff asks us to notice the truth of matters asserted in those documents, and not merely their existence, Reynolds has stated a valid

objection”]; *Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145 [“while courts are free to take judicial notice of the existence of each document in a court file, including the truth of results reached, *they may not take judicial notice of the truth of hearsay statements in decisions and court files*”] [italics added].) Even though hearsay statements are part of the court record or file, it does not mean that they are proper records for judicial notice. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1566.) The documents Plaintiffs seek notice of consist of hearsay statements and are not proper records for judicial notice. Since the court can only take judicial notice of the existence of the documents; the documents lose any relevance they might otherwise have on the material issues in this case. Since the Tennessee documents have no relevance to the material issues at hand, the Court should sustain the State’s objections to the exhibits and deny judicial notice of Exhibits A, B, C, D and I.

Finally, even if the Tennessee case involved facts analogous to those in this case, which is difficult to discern, a written trial court ruling has no precedential value. (*Santa Ana Hospital Medical Center v. Belshe* (1997) 56 Cal.App.4th 819, 831.) Since the Tennessee order has no precedential value, judicial notice cannot be used to impart to it value it does not have. (*Crab Addison v. Superior Court of Los Angeles County* (2008) 169 Cal.App.4th 958, 963 [“The order has no precedential value [cite], and judicial notice cannot be used to impart to it value it does not have”].) Since there is no precedential value, the Order is not a proper document for judicial notice.

## **II. BILL INFORMATION ON ASSEMBLY BILL 2358 AND SENATE BILL 1276 IS NOT RELEVANT TO ANY ISSUE BEFORE THE COURT.**

Plaintiffs also request judicial notice of Assembly Bill 2358 (2010) and Senate Bill 1276 (1994) but fail to articulate any factual or legal basis for taking notice of these bills. (See Plaintiffs’ Request for Judicial Notice, Exhs. F, G, & H.) Putting aside the general rules that unpassed bills have little value as evidence of legislative intent (*Dyna-Med, Inc. v. Fair Employment & Hous. Comm’n* (1987) 43 Cal.3d 1379, 1396), and that “[c]omments made by an individual legislator . . . about unpassed legislation have little value as evidence of legislative intent behind the statute the legislation sought to amend” (*California Highway Patrol v. Superior*

1 Court (2006) 135 Cal.App.4th 488, 506 fn.13), SB 1276 is a sixteen year old bill with no  
2 relevance to the Court's interpretation of the definition of handgun ammunition or any other legal  
3 question before the Court. Unless the bill or its history file were considered by the legislators  
4 when voting on AB962, it is not a proper indicator of legislative intent. (See *Heavenly Valley v.*  
5 *El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1340-1341 [refusing to grant  
6 judicial notice of letter written by consultant to State Bar taxation section which sponsored the  
7 bill, in the absence of a showing that the "views expressed therein were presented to the  
8 legislators who voted on the bill"].)

9 Similarly, neither AB2358 nor SB 1276 are legislative history for AB962, nor do they  
10 address the meaning of the phrase "principally for use" in a handgun". Instead, Plaintiffs seek to  
11 use Assembly Member De Leon's purported hearsay statement (of which they provide no  
12 evidence) and a stray remark made in a report in SB 1276 to prove the truth of the matters  
13 purportedly asserted therein. That is not a proper use of legislative history, even if the statements  
14 at issue qualified as such.

15 Finally, while courts may notice official acts of the government, courts do not take  
16 judicial notice of the truth of all matters asserted therein. (*Mangini v. R.J. Reynolds Tobacco*  
17 *Company et al, supra*, 7 Cal.4th 1057, 1063.) The Supreme Court in *Mangini* declined to take  
18 judicial notice of a 1994 report of the United States Surgeon General stating:

19 The taking of judicial notice of the official acts of governmental entity does not in  
20 and of itself require acceptance of the truth of factual matters which might be  
21 deduced therefrom, since in many instances what is being noticed, and thereby  
22 established, is no more than the existence of such acts and not, without supporting  
evidence, what might factually be associated with or flow therefrom. (*Id.* at  
pp.1063-1064.)

23 Applying this rule here, only the existence of the failed Assembly and Senate bills can be  
24 judicially noticed, not the hearsay statements of a committee or legislator.

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1 For all the foregoing reasons, the State respectfully requests that the Court sustain its  
2 objections to Plaintiffs' request for judicial notice.

3  
4 Dated: January 3, 2011

Respectfully Submitted,

5 KAMALA D. HARRIS  
6 Attorney General of California  
7 ZACKERY P. MORAZZINI  
8 Supervising Deputy Attorney General  
9 KIMBERLY GRAHAM  
10 Deputy Attorney General



11 PETER A. KRAUSE  
12 Deputy Attorney General  
13 *Attorneys for Defendants and Respondents*  
14 *State of California, Edmund G. Brown Jr.,*  
15 *and the California Department of Justice*

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EXHIBITS OBJECTED TO	COURT'S RULING
<b>Exhibit A:</b> Certified Copy of Amended Complaint for Injunctive and Declaratory Relief in <i>Tennessee ex rel. Rayburn v. Cooper</i> , Case No. 09-1294-I, filed July 6, 2009	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<b>Exhibit B:</b> Certified Copy of Defendant's Response in Opposition to Plaintiffs' Motions for Partial Summary Judgment in <i>Tennessee ex rel. Rayburn v. Cooper</i> , Case No. 09-1294-I, filed October 2, 2009	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<b>Exhibit C:</b> Certified copy of Defendant's Cross-Motion for Judgment on the Pleadings and/or for summary Judgment in <i>Tennessee ex rel. Rayburn v. Cooper</i> , Case No. 09-1294-I, filed October 5, 2009	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<b>Exhibit D:</b> Certified Copy of Order of Chancellor Claudia Bonnyman in <i>Tennessee ex rel. Rayburn v. Cooper</i> , Case No. 09-1294-I, filed November 25, 2009	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<b>Exhibit F:</b> California Assembly Bill 2358 (2010) as Amended in Senate on August 19, 2010	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<b>Exhibit G:</b> California Assembly Bill 2358 (2010) as Amended on in Senate August 30, 2010	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<b>Exhibit H:</b> California Senate Bill 1276 (1994) as Amended in Senate on May 26, 1994	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<b>Exhibit I:</b> Certified Copy of Consolidated Memorandum of Law of Defendant Attorney General Cooper in Opposition to Plaintiffs' Motions for Partial Summary Judgment and in Support of Defendant's Cross-Motion for Judgment on the Pleadings and/or for Summary Judgment in <i>Tennessee ex rel. Rayburn v. Cooper</i> , Case No. 09-1294-I, filed October 2, 2009	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

### ORDER

The Court, having considered the State's objections to Plaintiffs Request for Judicial Notice in support of their Motion for Summary Judgment or, in the Alternative, Summary Adjudication /Trial Brief, hereby rules as indicated on each of the State's objections.

IT IS SO ORDERED.

Dated: January \_\_, 2011

\_\_\_\_\_  
Honorable Jeffrey Y. Hamilton

**DECLARATION OF SERVICE BY OVERNIGHT COURIER**

Case Name: Sheriff Clay Parker, et al. v. The State of California  
No.: 10CECG02116

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On January 3, 2011, I served the attached

**DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE SUMMARY ADJUDICATION/TRIAL BRIEF**

**DECLARATION OF KIMBERLY J. GRAHAM IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION/TRIAL BRIEF**

**DECLARATION OF PETER A. KRAUSE IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION/TRIAL BRIEF**

**DECLARATION OF BLAKE GRAHAM IN SUPPORT OF THE STATE'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION/TRIAL BRIEF**

**DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION/TRIAL BRIEF; DECLARATION OF PETER A. KRAUSE IN SUPPORT THEREOF**

**DEFENDANTS' EVIDENCE IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE SUMMARY ADJUDICATION/TRIAL BRIEF**

**(1) DEFENDANTS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION / TRIAL BRIEF; and (2) SUPPLEMENTAL STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION**

**(1) DEFENDANTS' OBJECTIONS TO EVIDENCE AND DECLARATIONS SUBMITTED IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION/TRIAL BRIEF; (2) [PROPOSED] ORDER THEREON**

**(1) DEFENDANTS' OBJECTIONS TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION/TRIAL BRIEF; (2) [PROPOSED] ORDER THEREON**

by placing a true copy thereof enclosed in a sealed envelope with the Golden State Overnight courier service, addressed as follows:

C.D. Michel  
Clint B. Monfort  
Sean A. Brady  
Michel & Associates, P.C.  
180 E. Ocean Boulevard, Suite 200  
Long Beach, CA 90802

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 3, 2011, at Sacramento, California:

Brenda Apodaca  
Declarant

Brenda Apodaca  
Signature