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9 *the State of California, Edmund G. Brown, Jr., and*
the California Department of Justice

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

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16 **SHERIFF CLAY PARKER, et al.,**

17 Plaintiffs and Petitioners,

18 v.

19 **THE STATE OF CALIFORNIA, et al.,**

20 Defendants and Respondents.

Case No. 10CECG02116

**(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

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

Action Filed: June 17, 2010

23
24 Defendants and respondents the State of California, Edmund G. Brown Jr. (sued
25 erroneously as "Jerry Brown"), and the California Department of Justice (collectively, the
26 "State") make the following objections to the Declarations of Tom Allman, Barry Bauer, Ray T.
27 Giles, Brian Hall. Stephen Helsley, Clinton B. Monfort, Clay Parker, Larry Potterfield, Steven
28

Stonecipher, Michael Tenny, and Randy Wright, and to certain exhibits offered by plaintiffs Sheriff Clay Parker, Herb Bauer Sporting Goods, California Rifle and Pistol Association Foundation, Able's Sporting, Inc., RTG Collectibles, LLC, and Steven Stonecipher (collectively, "Plaintiffs") in support of their Motion for Summary Judgment or, in the Alternative, Summary Adjudication / Trial Brief.

The State respectfully requests that the Court rule on each of the following objections prior to ruling on Plaintiffs' motion.

EVIDENCE OBJECTED TO	GROUND'S FOR OBJECTION	COURT'S RULING
Declarations of Brian Hall, Larry W. Potterfield, Clay Parker, Michael Tenny, and Randy Wright	1. These declarants each fail to aver that they have personal knowledge of the facts set forth in their declarations, or that if called as a witness that they could and would testify competently to the truth of the factual matters asserted in their declarations. (See Code Civ. Proc., § 437c(d) ["Supporting . . . affidavits or declarations shall be made by any person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations"]; <i>Corwin v. Los Angeles Newspaper Serv. Bureau, Inc.</i> (1971) 4 Cal.3d 842,851 fn. 6.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

OBJECTIONS TO DECLARATION OF TOM ALLMAN

Paragraph 3 (2:10-12): I am responsible for determining the policies of the Mendocino County Sheriff-Coroner's Department, including a determination of what ammunition is regulated as "handgun ammunition" under California Penal Code sections 12060, 12061, and 12318.	2. Conclusory. The declarant fails to explain how such policies are adopted or who might have input. (See <i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446 ["Affidavits which set forth only conclusions, opinions or ultimate facts are insufficient"].)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
		3. Ambiguous: The declarant fails to explain what sort of policy would apply to a determination of what ammunition is handgun ammunition and how that policy might be communicated to officers.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
		4. Lacks Foundation (§ 403): The declarant fails to proffer any preliminary evidence to lay the foundation for his department's procedures for setting such policies, whether they are written or verbal, or even what steps he might take in drafting the policy.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	Paragraph 4 (2:13-16): I do not know what ammunition is "principally for use in" a handgun. I also do not know what ammunition is exempt from these laws as ammunition "designed and intended to be used in 'antique firearms'" manufactured before 1898 are also used in firearms manufactured after 1898.	5. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
		6. Inadmissible Opinion (§ 801) and Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to search for guidance as to what ammunition is "principally for use in a handgun, and has not satisfied any of the exceptions to section 403, subdivision (a). Further, the declarant fails to state	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
		what steps, if any, he took to determine what ammunition is exempt as ammunition for antique weapons. (See <i>Taliaferro v. Taliaferro</i> (1962) 203 Cal.App.2d 649, 651 [failure to state facts upon which opinion is based may warrant disregard of opinion, especially where it is self-serving].)	

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
Paragraph 5 (2:17-19): Without any further guidelines as to what ammunition is "handgun ammunition" under Penal Code sections 12060, 12061, and 12318, I am unable to enforce these laws equitably because I do not know what ammunition is "handgun ammunition."	7. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	8. Lack of Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation about what steps, if any, he took to search for guidance as to what ammunition might be considered "handgun ammunition," and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
OBJECTIONS TO DECLARATION OF BARRY BAUER		
Paragraph 3 (2:11-12): I do not know what ammunition is "handgun ammunition" under California Penal Code sections 12060, 12061, and 12318.	9. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	10. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation he attempted to search any reference materials to determine what ammunition might be considered "handgun ammunition," and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 4 (2:13-16): I do not know what ammunition is principally for use in a handgun. Nor do I know of any source from which I could determine what ammunition	11. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	suitable for use in both rifles and handguns is principally for use in a handgun under California Penal Code sections 12060, 12061, and 12318, and which is not principally for use in a handgun.		
		12. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be suitable in both rifles and handguns, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	Paragraph 5 (2:17-21): I also do not know which ammunition is exempt from California Penal Code sections 12060, 12061, and 12318 as ammunition “designed and intended to be used in ‘antique firearms’” manufactured before 1898 . . .	13. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
		14. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be exempt from California Penal Code sections 12060, 12061, and 12318, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	Paragraph 11 (3:13-15): I fear that I will be prosecuted for unknowingly violating those statutes and will have my federal firearms license	15. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
and California firearm dealers permit revoked.		
	16. Speculative: The declarant does not present any evidence, besides his purported "fear" to substantiate that he will be prosecuted. Because there is no evidence, the testimony is speculative. (<i>People v. Morrison</i> (2004) 34 Cal.4th 698, 711 [evidence is "irrelevant" if it leads only to speculative inferences].)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	17. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he will be prosecuted or has been threatened with prosecution.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

OBJECTIONS TO DECLARATION OF RAY T. GILES

Paragraph 3 (2:10-11): I do not know what ammunition is "handgun ammunition" and thus subject to California Penal Code sections 12060, 12061, and 12318.	18. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	19. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be considered "handgun ammunition," and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 4 (2:12-14): I do not know what ammunition is principally for use in a handgun. Nor do I know of any source from which I could determine what ammunition suitable for use in both rifles and handguns is principally for use in a handgun, and which is not principally for	20. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
use in a handgun.	<p>21. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be considered "handgun ammunition," and has not satisfied any of the exceptions to section 403, subdivision (a).</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<p>Paragraph 5 (2:15-17): I also do not know which ammunition is exempt from California Penal Code sections 12060, 12061, and 12318 as ammunition "designed and intended to be used in 'antique firearms'" manufactured before 1898 . . .</p>	<p>22. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	<p>23. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be exempt from California Penal Code sections 12060, 12061, and 12318, and has not satisfied any of the exceptions to section 403, subdivision (a).</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<p>Paragraph 10 (4:9-11): Because I do not know what ammunition is handgun ammunition" under California Penal Code sections 12060, 12061, and 12318, I fear that I will be prosecuted for unknowingly violating those statutes.</p>	<p>24. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	<p>25. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he will be prosecuted, and has not satisfied any of the exceptions to section 403, subdivision</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	(a).	
	26. Speculative: The declarant does not present any evidence, besides his "fear," to substantiate that he will be prosecuted. Because there is no evidence, the testimony is speculative. (<i>People v. Morrison, supra</i> , 34 Cal.4th 698, 711.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
OBJECTIONS TO DECLARATION OF BRIAN HALL		
Paragraph 3 (2:11-12): I do not know what ammunition is "handgun ammunition" and thus subject to California Penal Code sections 12060, 12061, and 12318.	27. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	28. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be considered "handgun ammunition," and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 4 (2:13-15): I do not know what ammunition is principally for use in a handgun. Nor do I know of any source from which I could determine what ammunition suitable for use in both rifles and handguns is principally for use in handguns, and which is not principally for use in a handgun.	29. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	30. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be suitable in both rifles and handguns, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
<p>Paragraph 5 (2:16-18): I also do not know what ammunition is exempt from California Penal Code sections 12060, 12061, and 12318 as ammunition “designed and intended to be used in ‘antique firearms’” manufactured before 1898 . . .</p>	<p>31. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
	<p>32. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be exempt from California Penal Code sections 12060, 12061, and 12318, and has not satisfied any of the exceptions to section 403, subdivision (a).</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>Paragraph 7 (3:1-5): Because I do not know what “handgun ammunition” is under California Penal Code sections 12060, 12061, and 12318, and fear that Chattanooga Shooting Supplies, Inc., or I will be prosecuted for unknowingly violating those statutes, it is the current intent of Chattanooga Shooting Supplies, Inc., to cease shipping all ammunition that is suitable for use in both handguns and long guns to non-exempt California customers beginning February 1, 2011 to avoid risking criminal prosecution under California Penal Code section 12318.</p>	<p>33. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
		34. Speculative: The declarant does not present any evidence, besides his purported "fear," to substantiate that Chattanooga Shooting Supplies, Inc. or the declarant will be prosecuted. Because there is no evidence, the testimony is speculative. (<i>People v. Morrison, supra</i> , 34 Cal.4th 698, 711.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
		35. Immaterial and Irrelevant (§§ 210, 350, & 351): The fact that Chattanooga Shooting Supplies, Inc., might cease shipping ammunition beginning February 1, 2011, is irrelevant to the material issue as to what ammunition is considered handgun ammunition.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
		36. Ambiguous: "Clear intent" is ambiguous because it is unclear if it is the final decision or if Chattanooga Shooting Supplies, Inc., will change its mind and continue shipping products as they currently do.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
		37. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might qualify as handgun ammunition.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	OBJECTIONS TO DECLARATION OF STEPHEN HELSLEY		
	Paragraph 52 (16:17-22): For the person who knows little about firearms, the imprecise use of technical terms is predictable. A common error is to assume that "everyone knows" something or that it is "common knowledge." When people refer to ".22s," "9mms," ".45s," or any other "caliber" of cartridges, and assume they have	38. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	communicated effectively the specific ammunition cartridge they have in mind, they are usually mistaken.		
		39. Inadmissible Opinion (§ 803) and Lacks Foundation (§ 403): The statement fails to identify any factual evidence to show what his opinion is based on. (<i>Taliaferro v. Taliaferro</i> (1962) 203 Cal.App.2d 649, 651 [failure to state facts upon which opinion is based may warrant disregard of opinion, especially where it is self-serving]; <i>Powell v. Kleinman</i> (2007) 151 Cal.App.4th 112, 123 ["an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based"].)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
		40. Speculative: The statement fails to identify any factual evidence to show people who know "little about firearms" do not communicate effectively what specific ammunition cartridge they have in mind. Because there is no evidence, the statement is speculative.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
		41. Ambiguous: "Person" is ambiguous because it is not clear if he is referring to an average person who knows "little about firearms" compared to a firearm vendor who is held to a higher standard than the "person who knows little about firearms."	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	Paragraph 65 (19:26-27): "Virtually all modern, commercially produced self-contained metallic ammunition can be safely used interchangeably in a rifle	42. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
or a handgun.”		
	43. Inadmissible Opinion (§ 803) Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation as to the sources he used to come to his opinion, and has not satisfied any of the exceptions to section 403, subdivision (a). <i>(Taliaferro v. Taliaferro, supra, 203 Cal.App.2d 649, 651)</i>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	44. Ambiguous: The phrase “virtually all” is unclear without a factual explanation as to which ammunition and cannot be used interchangeably.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 66 (20:1-4): There is no generally accepted definition of “handgun ammunition,” nor any commonly understood delineation between “handgun ammunition” and other ammunition used in the firearms industry, let alone one that allows one to determine whether certain cartridges are “principally for use” in handguns.	45. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. <i>(Kramer v. Barnes (1963) 212 Cal.App.2d 440, 446; see also Powell v. Kleinman (2007) 151 Cal.App.4th 112, 123 [“an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based”].)</i>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	46. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation as to the sources he used to reach his opinion, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	<p>47. Speculative: Because there is no evidence to show there is a lack of a “generally accepted” definition or “commonly understood” delineation the statement is speculative. (<i>People v. Morrison, supra</i>, 34 Cal.4th 698, 711.)</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
<p>Paragraph 69 (20:18-22): The markings on ammunition boxes are interesting, but are not controlling as to how it can ultimately be used, or as to whether that particular ammunition was intended to be used, or will actually be used, more often in a handgun than in a rifle. Such a determination cannot be made from looking at the packaging nor from consulting any other source.</p>	<p>48. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	<p>49. Lacks Foundation (§ 403) and Inadmissible Opinion (§ 801): Declarant does not provide factual evidence to support his opinion that the “markings” on the box are not “controlling” as to how the ammunition can be used. Further, he does not provide any foundation as to what sources he reviewed or attempted to locate in order to come to the opinion. (<i>Taliaferro v. Taliaferro, supra</i>, 203 Cal.App.2d 649, 651; <i>Powell v. Kleinman</i> (2007) 151 Cal.App.4th 112, 123 [“an expert's opinion rendered without a</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	<p>reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based”].)</p>	
	<p>50. Ambiguous: The term “markings” is ambiguous because “markings” can refer to the caliber of</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	ammunition contained in the box or whether the ammunition contained in the box should be used for handguns or rifles.	
Paragraph 70 (20:23-26): While firearms and ammunition literature sometimes make reference to "handgun ammunition" and "rifle ammunition," when referencing some cartridges, I assume the authors never anticipated making the technical distinctions necessitated by CA Penal Code section 12060.	51. Speculative: Declarant speculates about what third parties were thinking about when making the distinction between "handgun ammunition" and "rifle ammunition," but does not provide factual evidence to substantiate his assumption. (<i>People v. Morrison, supra</i> , 34 Cal.4th 698, 711.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	52. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation supporting his assumption, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 71 (20:27-28-21:1-2): The inclusion of military and law enforcement use of submachine guns in determining whether a certain cartridge is used more often in a handgun could have a significant impact, because submachine guns use the same ammunition as many handguns.	53. Speculative: Declarant does not provide factual evidence, but merely opines that there "could" be an impact. Because there is no evidence, it is irrelevant. (<i>People v. Morrison, supra</i> , 34 Cal.4th 698, 711; <i>Powell v. Kleinman</i> (2007) 151 Cal.App.4th 112, 123 ["an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based"].)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	54. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation as to the sources he used to reach his opinion, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
<p>Paragraph 71 (21:8-11): From my experience with the Department of Justice, training with submachine guns consumes significant amounts of ammunition, possibly more so than training with handguns chambered for the same cartridge.</p>	<p>55. Immaterial and Irrelevant (§§ 210, 350, & 351): It is irrelevant whether submachine guns consume significant amounts of ammunition more than handguns during training because it does not support the material issue as to what ammunition is principally used in handgun.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>Paragraph 72 (21:11-13): Neither the academic and professional works comprising my library nor my experiences qualifying me as an expert in firearms and ammunition provide me with knowledge as to what cartridges are "principally for use in a handgun."</p>	<p>56. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
	<p>57. Lacks Foundation (§ 403): Declarant fails to identify facts underlying the methodology he followed to reach this opinion. (<i>Powell v. Kleinman</i> (2007) 151 Cal.App.4th 112, 123 ["an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based"])</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>Paragraph 73 (21:14-16): Furthermore, I do not know of any sources from which I could determine what cartridges suitable for use in both rifles and handguns are used more often in a handgun than in a long gun.</p>	<p>58. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
	<p>59. Lacks Foundation (§ 403): Declarant fails to identify facts underlying the methodology he followed to reach this opinion. (<i>Powell v. Kleinman</i> (2007) 151</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	Cal.App.4th 112, 123 [“an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based”]	
OBJECTIONS TO DECLARATION OF CLINTON B. MONFORT		
Paragraph 3 (2:14-17): 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.	60. Hearsay (Evid. Code, § 1200): The statement summarizes an email but does not verify or properly authenticate the email’s sender, recipient, or content.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	61. Relevance (§§ 350 & 351): Neither the statement nor the e-mail are relevant to any material issue in the case.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	62. Secondary Evidence Rule (Evid. Code §§ 1521 & 1523, subd. (a)): Declarant is basing his statement on emails, which violates § 1523, subd. (a). None of the exceptions of subdivisions (b) through (d) apply.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 4 (2:18-21): 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.	63. Hearsay (§ 1200): The statement summarizes the writings, which in turn refers to another communication.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	64. Relevance (§§ 350 & 351): Neither the statement nor the e-mail	<input type="checkbox"/> Sustained

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	are relevant to any material issue in the case.	<input type="checkbox"/> Overruled
	65. Secondary Evidence Rule (Evid. Code, §§ 1521 & 1523, subd. (a)): Declarant is basing his statement on emails, which violates § 1523, subd. (a). None of the exceptions of subdivisions (b) through (d) apply.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 5 (2:22-25): 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.	66. Hearsay (§ 1200): The statement summarizes an email but does not verify the email's content.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	67. Relevance (§§ 350 & 351): Neither the statement nor the e-mail are relevant to any material issue in the case.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	68. Secondary Evidence Rule (Evid. Code, §§ 1521 & 1523, subd. (a)): Declarant is basing his statement on emails, which violates § 1523, subd. (a). None of the exceptions of subdivisions (b) through (d) apply.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 5 (2:28-3:1-3): Counsel for 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.	69. Hearsay (§ 1200): The statement summarizes communications between DOJ counsel and himself and no exceptions apply.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	70. Relevance (§§ 350 & 351): Neither the statement nor the e-mail are relevant to any material issue in the case.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
<p>Paragraph 9 (3:26-28): As a result of our clients continued inquiries about which ammunition would be regulated by AB 962 and Defendant DOJ's inability to provide any guidance on this issue, our office was unable to advise our clients as to how to comply with the new laws.</p>	<p>71. Hearsay (Evid. Code, § 1200): The statement summarizes conversations between declarant's clients and declarant and DOJ and declarant.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
	<p>72. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation as to the whether he viewed any source(s) to provide guidance to the clients as to how to comply with the new laws., and has not satisfied any of the exceptions to section 403, subdivision (a). Also fails to disclose personal knowledge on which the statement is based.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
	<p>73. Relevance (§§ 350 & 351): The statement is not relevant to any material issue in the case.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled <input type="checkbox"/></p>
<p>Paragraph 13 (4:13-15): On or about August 19, 2010, AB 2358 was amended to clarify AB 962 by including a list of ammunition calibers that would be considered handgun ammunition, but the bill ultimately failed to pass the Senate.</p>	<p>74. Immaterial and Irrelevant (§§ 210, 350 & 351): The statement is irrelevant because AB2358 is not relevant to any material fact at issue in the case.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
	<p>75. Secondary Evidence Rule (Evid. Code, §§ 1521 & 1523, subd. (a)): The bill provides the best evidence of its content.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>Paragraph 14 (4:21-23): Plaintiffs believe that the amendment to AB 2358 to include a list of ammunition calibers was the result of Defendant DOJ's communications with Assemblyman de León's office regarding the merits of this suit and the vagueness of the challenged provisions.</p>	<p>76. Relevance (§§ 350 & 351): Plaintiffs' purported belief is not relevant to prove any fact of consequence in the action.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
	<p>77. Speculative: There is no evidence presented to validate declarant's belief that AB 2358 was</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	written due to communications between DOJ and Assemblyman De Leon's office. Because there is no information the statement is irrelevant. (<i>People v. Morrison, supra</i> , 34 Cal.4th 698, 711.)	
	78. Lacks Foundation (§ 403): Declarant has not proffered any foundational evidence of his personal knowledge regarding the reason for the introduction of AB 2358, or any communications between DOJ and Assemblyman de Leon's office, nor has he satisfied the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 19 (6:1-3): On or about November 23, 2010, opposing counsel served on our office [Defendant's] Response to Specially Prepared Interrogatories, Set One. The special interrogatories and the responses relied upon in Plaintiff's motion are set forth below.	79. Secondary Evidence Rule (Evid. Code, §§ 1521 & 1523, subd. (a)): The interrogatory responses provide the best evidence of their content.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
DECLARATION OF CLAY PARKER		
Paragraph 3 (2:11-13): I am responsible for determining the policies of the Tehama County Sheriff's office, including a determination of what ammunition is regulated as "handgun ammunition" under California Penal Code sections 12060, 12061, and 12318.	80. Conclusory: The declarant fails to explain how such policies are adopted or who might have input. (See <i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446 ["Affidavits which set forth only conclusions, opinions or ultimate facts are insufficient"].)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	81. Ambiguous: The declarant fails to explain what sort of policy would apply to a determination of what ammunition is handgun ammunition and how that policy might be communicated to officers.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	82. Lacks Foundation: The declarant fails to proffer any preliminary evidence to lay the foundation for his department's procedures for setting such policies, whether they are written or verbal, or even what steps he might take in drafting the policy.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
<p>Paragraph 4 (2:14-18): I do not know what types of ammunition are “principally for use in” a handgun. I also do not know which types of ammunition are exempt from these laws as ammunition “designed and intended to be used in ‘antique firearms’” manufactured before 1898, because many types of ammunition used in firearms manufactured before 1898 are also used in firearms manufactured after 1898.</p>	<p>83. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
	<p>84. Inadmissible Opinion (§ 801) and Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to search for guidance as to what ammunition is “principally for use in a handgun, and has not satisfied any of the exceptions to section 403, subdivision (a). Further, the declarant fails to state what steps, if any, he took to determine what ammunition is exempt as ammunition for antique weapons. (See <i>Taliaferro v. Taliaferro</i> (1962) 203 Cal.App.2d 649, 651 [failure to state facts upon which opinion is based may warrant disregard of opinion, especially where it is self-serving].)</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>Paragraph 5 (2:19-20): Without any further guidelines as to what types of ammunition are “handgun ammunition” under Penal Code sections 12060, 12061, and 12318, I am unable to</p>	<p>85. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>enforce these laws equitably because I do not know what types of ammunition are “handgun ammunition.”</p>		
	<p>86. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be considered “handgun ammunition,”</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	and has not satisfied any of the exceptions to section 403, subdivision (a).	
OBJECTIONS TO DECLARATION OF LARRY W. POTTERFIELD		
Paragraph 3 (2:11-12): I do not know what ammunition is "handgun ammunition" and thus subject to California Penal Code sections 12060, 12061, and 12318.	87. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	88. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be considered "handgun ammunition," and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 4 (2:13-15): I do not know what ammunition is principally for use in a handgun. Nor do I know of any source from which I could determine what ammunition suitable for use in both rifles and handguns is principally for use in a handgun, and which is not principally for use in a handgun.	89. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	90. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be suitable in both rifles and handguns, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 5 (2:16-18): I also do not know which ammunition is exempt from California Penal Code sections 12060, 12061, and 12318 as ammunition "designed and intended to be used in 'antique firearms'" manufactured before 1898 ...	91. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	92. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be exempt from California Penal Code sections 12060, 12061, and 12318, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 7 (3:1-4): Because I do not know what "handgun ammunition" is under California Penal Code sections 12060, 1261, and 12318, Midway Arms, Inc. (dba Midway USA), Inc. will cease shipping all ammunition to non-exempt California customers beginning February 1, 2011 to avoid risking criminal prosecution under California Penal Code section 12318.	93. Relevance (§§ 350 & 351): The fact that Midway Arms, Inc. will "cease to ship all ammunition" is not relevant to any material issue in the case.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	94. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he will be prosecuted, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	95. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
OBJECTIONS TO DECLARATION OF STEVEN STONECIPHER		
Paragraph 3 (2:8-9): I do not know what ammunition is "handgun ammunition" and thus subject to California Penal Code sections 12060, 12061, and 12318.	96. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	97. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1	EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
2 3 4		research what ammunition might be considered "handgun ammunition," and has not satisfied any of the exceptions to section 403, subdivision (a).	
5 6 7 8 9	Paragraph 4 (2:10-12): I do not know what ammunition is principally for use in a handgun. Nor do I know of any source from which I could determine what ammunition suitable for use in both rifles and handguns is principally for use in a handgun, and which is not principally for use in a handgun.	98. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
10 11 12 13 14		99. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be suitable in both rifles and handguns, and has not satisfied any of the exceptions to section 403, subdivision (a)..	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
15 16 17 18 19 20 21	Paragraph 5 (2:13-16): I also do not know which ammunition is exempt from California Penal Code sections 12060, 12061, and 12318 as ammunition "designed and intended to be used in 'antique firearms'" manufactured before 1898 because many cartridges used in firearms manufactured before 1898 are also use din firearms manufactured after 1898.	100. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled.
22 23 24 25 26 27 28		101. Inadmissible Opinion (§ 801) and Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to search for guidance as to what ammunition is "principally for use in a handgun, and has not satisfied any of the exceptions to section 403, subdivision (a). Further, the declarant fails to state the basis for the opinion regarding antique weapons manufactured before 1898 being used	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	in firearms manufactured after 1898. (See <i>Taliaferro v. Taliaferro</i> (1962) 203 Cal.App.2d 649, 651 [failure to state facts upon which opinion is based may warrant disregard of opinion, especially where it is self-serving].)	
Paragraph 6 (2:17-22): Because I do not know what ammunition is "handgun ammunition" under California Penal Code sections 12060, 12061, and 12318, I fear that I will be prosecuted for unknowingly violating those statutes. For example, I fear prosecution under Penal Code section 12318 if I ship to a non-exempt California resident any ammunition that law enforcement deems "handgun ammunition" even though I do not know what ammunition is "handgun ammunition" nor what ammunition law enforcement will consider "handgun ammunition" under these laws.	102. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	103. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he will be prosecuted, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	104. Speculative: The declarant does not present any evidence, besides his "fear," to substantiate that he will be prosecuted. Because there is no evidence, the testimony is speculative. (<i>People v. Morrison, supra</i> , 34 Cal.4th 698, 711.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
OBJECTIONS TO DECLARATION OF MICHAEL TENNY		
Paragraph 3 (1:10-11): I do not know what ammunition is "handgun ammunition" and thus subject to California Penal code sections 12060, 12061, and 12318.	105. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	106. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be considered "handgun ammunition," and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 4 (1:12-14): I do not know what ammunition is principally for use in a handgun. Nor do I know of any source from which I could determine what ammunition suitable for use in both rifles and handguns is principally for use in a handgun, and which is not principally for use in a handgun.	107. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	108. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be suitable in both rifles and handguns, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 5 (1:15-19): I also do not know which ammunition is exempt from California Penal Code sections 12060, 12061, and 12318 as ammunition "designed and intended to be used in 'antique firearms'" manufactured before 1898, because many cartridges of ammunition used in firearms manufactured before 1898 are also used in firearms manufactured after 1898 including cartridges sold by	109. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
CTD, Inc.	110. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to search for guidance as to what ammunition is "principally for use in a handgun, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	111. Relevance (§§ 350 & 351): The fact that CTD, Inc. will "cease to ship all ammunition to non-exempt California customers" is not relevant to any material issue in the case. It is a business decision.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Paragraph 7 (2:1-4): Because I do not know what "handgun ammunition" is under California Penal Code sections 12060, 12061, and 12318, CTD, Inc. will cease shipping all ammunition to non-exempt California customers beginning January 1, 2011 to avoid risking criminal prosecution under California Penal Code section 12318.	112. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he will be prosecuted, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	113. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	OBJECTIONS TO DECLARATION OF RANDY WRIGHT	
Paragraph 3 (2:11-12): I do not know what ammunition is "handgun ammunition" and thus subject to California Penal Code sections 12060, 12061, and 12318.	114. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	115. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be considered "handgun ammunition," and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1	EVIDENCE OBJECTED TO	GROUND'S FOR OBJECTION	COURT'S RULING
2 3 4 5 6 7	Paragraph 4 (2:14-15): I do not know what ammunition is principally for use in a handgun. Nor do I know of any source from which I could determine what ammunition suitable for use in both rifles and handguns is principally for use in a handgun, and which is not principally for use in a handgun.	116. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
8 9 10 11		117. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to research what ammunition might be suitable in both rifles and handguns, and has not satisfied any of the exceptions to section 403, subdivision (a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
12 13 14 15 16 17 18 19 20	Paragraph 5 (2:16-20): I also do not know which ammunition is exempt from California Penal Code sections 120601, 12061, and 12318 as ammunition "designed and intended to be used in 'antique firearms'" manufactured before 1898, because many cartridges of ammunition used in firearms manufactured before 1898 are also used in firearms manufactured after 1898, including cartridges soled by Able's Sporting, Inc.	118. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
21 22		119. Lacks Foundation (§ 403): The declarant has not proffered any preliminary evidence to lay the foundation that he attempted to search for guidance as to what	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
23 24		ammunition is "principally for use in a handgun, and has not satisfied any of the exceptions to section 403, subdivision (a).	
25 26 27 28	Paragraph 7 (3:1-6): Because I do not know what ammunition is "handgun ammunition" under California Penal Code sections 12060, 12061, and 12318, I fear that I will be prosecuted for	120. Conclusory: Declaration which sets forth only conclusions, opinions or, ultimate facts is insufficient. (<i>Kramer v. Barnes</i> (1963) 212 Cal.App.2d 440, 446.)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
<p>1 unknowingly violating these 2 statutes. For example, I fear 3 prosecution under Penal Code 4 section 12318 if I ship to non- 5 exempt California resident 6 any ammunition that law 7 enforcement deems 'handgun 8 ammunition' even though I do 9 not know what ammunition is 10 "handgun ammunition" nor 11 what ammunition law 12 enforcement will consider 13 "handgun ammunition" under 14 these laws.</p>		
	<p>15 121. Speculative: The declarant 16 does not present any evidence, 17 besides his purported "fear," to 18 substantiate that he will be 19 prosecuted. Because there is no 20 evidence, the testimony is 21 speculative. (<i>People v. Morrison</i> 22 (2004) 34 Cal.4th 698, 711 [evidence 23 is "irrelevant" if it leads only to 24 speculative inferences].)</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
	<p>25 122. Lacks Foundation (§ 403): 26 The declarant has not proffered any 27 preliminary evidence to lay the 28 foundation that he will be prosecuted, or even why he fears prosecution and has not satisfied any of the exceptions to section 403, subdivision (a).</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>OBJECTIONS TO PLAINTIFFS' EVIDENCE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE FOR SUMMARY ADJUDICATION/TRIAL</p>		
<p>29 Exhibit 2: Assembly Bill 30 2358 (2010) as Amended by 31 Senate August 19, 2010.</p>	<p>32 123. Relevance (§§ 350 & 351): 33 AB 2358 removed the "principally 34 for use" language in Penal Code 35 § 12323 (a) and is therefore 36 irrelevant to any material issue in this 37 case, which involves a challenge to 38 the existing definition in that section.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>39 Exhibit 3: Assembly Bill 40 2358 as Amended by Senate 41 August 30, 2010.</p>	<p>42 124. Relevance (§§ 350 & 351): 43 AB 2358 removed the "principally 44 for use" standard in Penal Code 45 § 12323 (a) and is therefore 46 irrelevant to any material issue</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>


EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	before the court.	
Exhibit 4: Complete Bill History, A.B. 2358 (2010)	<p>125. Relevance (§§ 350 & 351): AB 2358 removed the “principally for use” standard in Penal Code, § 12323 (a) and is therefore irrelevant to any material issue before the court.</p> <p>The legislative history of AB2358 also has no bearing on the interpretation or meaning of AB962 and is therefore irrelevant.</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit 5: Legislative History Report and Analysis Re: Senate Bill 1276 (Hart-1994).	<p>126. Relevance (§§ 350 & 351): The legislative history of SB1276 is not relevant to prove any material issue in this case because the information pertains to a bill that failed sixteen years ago and does not provide any relevant information that will either prove or disprove any material fact in this case.</p> <p>The legislative history of SB1276 also has no bearing on the interpretation or meaning of AB962 and is therefore irrelevant.</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit 6: Public Records Act Request Sent to California Department of Justice Re: Assembly Bill 962, dated December 16, 2009.	127. Hearsay (§ 1200): The Public Records Act request is a written statement made by an individual within the plaintiffs’ counsel’s firm offered for the truth of the matter asserted with no showing that a hearsay exception applies.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit 7: Defendant Department of Justice Response to Public Records Act Request and Relevant Email Enclosures, dated January 25, 2010.	128. Hearsay (§ 1200): The response letter from the Department of Justice and the email enclosures are all written statements made out of court and are being offered for the truth of the matter asserted with no showing that a hearsay exception applies.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit 9: Public Records Act Request Sent to California Department of Justice Re: Assembly Bill 962, dated July 16, 2010.	129. Hearsay (§ 1200): The Public Records Act request is a written statement made by an individual within the plaintiffs’	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

EVIDENCE OBJECTED TO	GROUNDS FOR OBJECTION	COURT'S RULING
	counsel's firm with no showing that a hearsay exception applies..	
Exhibit 10: California Department of Justice's Response to Public Records Act Request, dated August 9, 2010.	130. Hearsay (§ 1200): The response letter from the Department of Justice is a written statement made out of court and are being offered for the truth of the matter asserted.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
	131. Relevance (§§ 350 & 351): The Department of Justice's response is not relevant to prove or disprove any material issue in this case.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit 49: Midway U.S.A. 2011 Catalog Page with Disclaimer Re: Sale of Ammo in California.	132. Hearsay (§ 1200): The catalog is a written statement made out of court by the Midway company and is being offered for the truth of the matter asserted with no showing that a hearsay exception applies.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit 50: Cheaper Than Dirt 2011 Catalog Page with Disclaimer Re: Sale of Ammo in California.	133. Hearsay (§ 1200): The catalog is a written statement made out of court by the Cheaper Than Dirt company and is being offered for the truth of the matter asserted, i.e., that the company intends to stop shipping ammunition to California, with no showing that a hearsay exception applies.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

Dated: January 3, 2011

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
ZACKERY P. MORAZZINI
Supervising Deputy Attorney General
KIMBERLY GRAHAM
Deputy Attorney General


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

SA2010101624

ORDER

The Court, having considered the foregoing objections to the declarations and evidence filed in support of Plaintiffs' 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

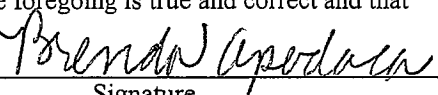
by placing a true copy thereof enclosed in a sealed envelope with the Golden State Overnight courier service, addressed as follows:

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


Signature