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1	KAMALA D. HARRIS	
2	Attorney General of California ZACKERY P. MORAZZINI	
3	Supervising Deputy Attorney General KIMBERLY J. GRAHAM	
	Deputy Attorney General	
4	PETER A. KRAUSE Deputy Attorney General	•
5	State Bar No. 185098 1300 I Street, Suite 125	
6	P.O. Box 944255	
7	Sacramento, CA 94244-2550 Telephone: (916) 324-5328	
8	Fax: (916) 324-8835 E-mail: Peter.Krause@doj.ca.gov	
9.	Attorneys for Defendants and Respondents State of California, Edmund G. Brown Jr., and the	o.
	California Department of Justice	
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11	SUPERIOR COURT OF THE	E STATE OF CALIFORNIA
12	COUNTY O	F FRESNO
13		
14		Case No. 10CECG02116
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15	SHERIFF CLAY PARKER, et al.,	DEFENDANTS' REQUEST FOR HUDICIAL NOTICE IN SUPPORT OF
16	Plaintiffs and Petitioners,	JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PLAINTIFFS'
.		JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE,
16	Plaintiffs and Petitioners,	JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION/TRIAL
16 17 18	Plaintiffs and Petitioners,	JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE,
16 17 18 19	Plaintiffs and Petitioners, v.	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 Date: January 18, 2011
16 17 18 19 20	Plaintiffs and Petitioners, v. THE STATE OF CALIFORNIA, et al.,	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 Date: January 18, 2011 Time: 8:30 a.m.
16 17 18 19	Plaintiffs and Petitioners, v. THE STATE OF CALIFORNIA, et al.,	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 Date: January 18, 2011 Time: 8:30 a.m. Dept: 402
16 17 18 19 20	Plaintiffs and Petitioners, v. THE STATE OF CALIFORNIA, et al.,	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 Date: January 18, 2011 Time: 8:30 a.m.
16 17 18 19 20 21	Plaintiffs and Petitioners, v. THE STATE OF CALIFORNIA, et al., Defendants and Respondents.	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 Date: January 18, 2011 Time: 8:30 a.m. Dept: 402 Judge: Hon. Jeffrey Hamilton Action Filed: June 17, 2010
16 17 18 19 20 21 22 23	Plaintiffs and Petitioners, v. THE STATE OF CALIFORNIA, et al.,	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 Date: January 18, 2011 Time: 8:30 a.m. Dept: 402 Judge: Hon. Jeffrey Hamilton Action Filed: June 17, 2010
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16 17 18 19 20 21 22 23 24 25	Plaintiffs and Petitioners, v. THE STATE OF CALIFORNIA, et al., Defendants and Respondents. Defendants and respondents the State of California.	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 Date: January 18, 2011 Time: 8:30 a.m. Dept: 402 Judge: Hon. Jeffrey Hamilton Action Filed: June 17, 2010 diffornia, Edmund G. Brown Jr. (sued a Department of Justice (collectively, the
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16 17 18 19 20 21 22 23 24 25	Plaintiffs and Petitioners, v. THE STATE OF CALIFORNIA, et al., Defendants and Respondents. Defendants and respondents the State of Calerroneously as "Jerry Brown"), and the California "State") respectfully request that the Court take justibilities (d) and (h) of Evidence Code section	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 Date: January 18, 2011 Time: 8:30 a.m. Dept: 402 Judge: Hon. Jeffrey Hamilton Action Filed: June 17, 2010 difornia, Edmund G. Brown Jr. (sued a Department of Justice (collectively, the addicial notice of the attached exhibits pursuant to
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Defendants' Request For Judicial Notice In Support Of Defendants Opposition To Plaintiffs' Motion For Summary

Judgment Or In The Alternative Motion For Adjudication/Trial (10CECG02116)

I.

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REQUEST FOR JUDICIAL NOTICE OF COURT RECORDS

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Pursuant to Evidence Code section 452, subdivision (d), the Court may take judicial notice of records of any court of this state or any court of record of the United States. Defendants' respectfully request that the Court take judicial notice of the following documents from the case of *State Ammunition Inc.*, et al. v. Lindley, United States District Court, Eastern District case number 2:10-cv-01864-MCE-KJN, which alleged, among other things, a claim that Assembly Bill 962 was unconstitutionally vague. The court can take judicial notice of the existence of each document in a court file, including the truth of the results reached. (*Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145.) Attached are true and correct certified copies of the following:

Exhibit A: Complaint for Declaratory and Injunctive Relief in *State Ammunition Inc., et al. v. Lindley*, United States District Court, Eastern District case number 2:10-cv-01864-MCE-KJN.

Exhibit B: Order to Dismiss in *State Ammunition Inc., et al. v. Lindley*, United States District Court, Eastern District case number 2:10-cv-01864-MCE-KJN.

Defendants also request judicial notice of the memorandum that Plaintiffs Sheriff Clay
Parker et al. filed in this case in support of their motion for preliminary injunction. The relevance
of the memorandum is explained in the State's Opposition brief filed in support of its Opposition
to Plaintiffs Motion for Summary Judgment or, in the Alternative Summary Adjudication/trial
Brief. A true and correct copy of the Memorandum is attached hereto for the Court's
convenience.

Exhibit C: Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction, filed in Fresno County Superior Court Case No. 10CECG02116 on 09/07/2010.

II. REQUEST FOR JUDICIAL NOTICE OF WEBSITE PRINTOUTS:

The State also requests that the Court take judicial notice of printouts of pages taken from certain websites pursuant to Evidence Code section 452, subdivision (h). This section allows the court to take judicial notice of facts and propositions that are not reasonably subject to

1	dispute and are capable of immediate and accurate determination by resort to sources of
2	reasonably indisputable accuracy. Defendants request judicial notice of the websites not for their
3	factual content, but to show how several ammunition vendors classify ammunition as handgun
4	ammunition. It is appropriate for a court to take judicial notice of the existence of a website. (In
5	re Mille (2010) 182 Cal. App. 4th 635, 647; Searlez Valley Minerals Operations, Inc., v. State
6	Board of Equalization (2008) 160 Cal.App.4th 514, 519.)
7	Exhibit D: Printout from the website of Able's Ammunition:
8	http://www.ableammo.com/catalog/advanced_search_result.php?search_in_description=0
9	<u>&keywords=handgun%20ammunition&inc</u> <u>subcat=1&sort=3a&page=7</u> as of December
10	27, 2010.
11	Exhibit E: Printout from the website of Cabela's:
12	http://www.cabelas.com/catalog/browse/shooting-ammunition-handgun-ammunition/_/N-
13	1100189/No-0/Ns-CATEGORY_SEQ_104372280?WTz_stype=GNP as of December 27,
14	2010.
15	Exhibit F: Printout from the website of Cheaper Than Dirt (handgun ammunition):
16	http://www.cheaperthandirt.com/CategoryListing.aspx?catid=78&PN=hga, as of
17	December 27, 2010.
18	Exhibit G: Printout from the website of Cheaper Than Dirt (rifle ammunition):
19	http://www.cheaperthandirt.com/CategoryListing.aspx?catid=79&PN=rfa, as of
20	December 27, 2010.
21	Exhibit H: Printout from the website of Midway USA:
22	http://www.midwayusa.com/browse/BrowseCategories.aspx?tabId=3&categoryId=691&c
23	ategoryString=653, as of December 27, 2010.
24	Exhibit I: Printout from the website of Natchez Shooters Supplies:
25	http://natchezss.com/ammo.cfm?contentId=ammoGroup&ammoGroup=2&category=3, as
26	of December 27, 2010.
27	

1	Exhibit J: Printout from the website of the	e Sportsman's Guide:
2	http://www.sportsmansguide.com/net/brow	vse/BrowseAmmoIndex.aspxm, as of December
3	27, 2010.	
4	Dated: January 3, 2011	Respectfully Submitted,
5	•	KAMALA D. HARRIS
6		Attorney General of California ZACKERY P. MORAZZINI Supervising Deputy Attorney General
. 7		Supervising Deputy Attorney General KIMBERLY GRAHAM Deputy Attorney General
8		
9	4	Klan
10		PETER A. KRAUSE Deputy Attorney General
11		Deputy Attorney General Attorneys for Defendants and Respondents State of California, Edmund G. Brown Jr.,
12		and the California Department of Justice
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I am an attorney at law duly licensed to practice before all courts of the State of

California. I am a Deputy Attorney General in the Office of the Attorney General, counsel for Defendants and respondents the State of California, Edmund G. Brown Jr. (sued erroneously as

I, Peter A. Krause, declare as follows:

"Jerry Brown"), and the California Department of Justice (collectively, the "State") in this action.

I have personal knowledge of the facts set froth herein and, if called and sworn as a witness, could and would testify competently thereto.

- 2. Attached as Exhibit A is a true and correct certified copy of the Complaint for Declaratory and Injunctive Relief in *State Ammunition Inc., et al. v. Lindley*, United States District Court, Eastern District case number 2:10-cv-01864-MCE-KJN.
- 3. Attached as Exhibit B is a true and correct certified copy of the Order to Dismiss in *State Ammunition Inc.*, et al. v. Lindley, United States District Court, Eastern District case number 2:10-cv-01864-MCE-KJN.
- 4. Attached as Exhibit C is a true and correct copy of the Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction, filed in Fresno County Superior Court Case No. 10CECG02116 on 09/07/2010.
- 5. Attached as Exhibit D is a true and correct copy of a printout from the website of Able Ammunition, which was found at the following web address:

 http://www.ableammo.com/catalog/advanced_search_result.php?search_in_description=0&keywords=handgun%20ammunition&inc_subcat=1&sort=3a&page=7 as of December 27, 2010.
- 6. Attached as Exhibit E is a true and correct copy of a printout from the website of Cabela's, which was found at the following web address:

http://www.cabelas.com/catalog/browse/shooting-ammunition-handgun-ammunition/_/N-1100189/No-0/Ns-CATEGORY SEQ 104372280?WTz stype=GNP as of December 27, 2010.

7. Attached as Exhibit F is a true and correct copy of a printout from the website of Cheaper Than Dirt, which was found at the following web address using a search of the phrase "handgun ammunition:"

Case 2:10-cv-01864-MCE-KJN Document 1 Filed 07/16/10 Page 1 of 12

1 2	Kevin D. Chaffin, Esq. SBN 193245 CHAFFIN LAW OFFICE			
3	4475 Dupont Court Suite 9 Ventura, California 93003 Phone: (805) 650-8200	I herby certify that the annexed instrument is a true and correct copy of the original on file in my office.		
4	Fax: (805) 715-7003 Web: www.chaffinlaw.com Attorney for Plaintiffs	ATTEST: VICTORIA C. MINOR Clerk, U. S. District Court Eastern District of California		
5		By AROGURION		
6		Dated 12/20/2010		
8	UNITED STATES	DISTRICT COURT		
9	EASTERN DISTRIC			
10	BASTER BETWEE	71 G1 G12022 G141 (222		
	OTTATES AND AUDITION INC. dl-	Case No.:		
11	STATE AMMUNITION INC., dba) www.stateammo.com.	\$		
12	JIM OTTEN, dba www.a1ammo.com, and) JIM RUSSELL USMC (Ret.),)	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF		
13	Plaintiffs,			
14) vs.)			
15	STEVEN LINDLEY, in his official capacity as)			
16	Acting Chief of the California Department of			
17	Justice, Bureau of Firearms, and DOES 1 through) 10,			
18	Defendants.			
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20				
21	Plaintiffs allege as follows:			
22	JURISD	DICTION		
23	This Court has subject matter jurisdic	tion over Plaintiffs' claims arising under the United		
24	States Constitution, 42 U.S.C. §1983, 28 U.S.C. §§1	331, and 1343(a)(3).		
25	2. Venue is proper in this Court pursuan	t to 28 U.S.C. § 1391(b). A substantial part of the		
26	events giving rise to the claim occurred in this district and Defendant is located in this district.			
27		athorized pursuant to 28 U.S.C. § 1651 (All Writs		
28	Act), § 2201 (Declaratory Judgment Act) and § 2202			
20	1100), 3 2201 (Document) vaugment 1200, and 3 2202			
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	II	_ `A -		

 $$^{-1}-$$ COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF [28 U.S.C. §§ 1331, 1343]

Plaintiffs will suffer irreparable harm.

NATURE OF THE ACTION

4. This is a civil action for declaratory and injunctive relief to determine (1) whether California's Anti-Gang Neighborhood Protection Act of 2009, California Assembly Bill 962 (hereinafter referred to as "AB962") ban on handgun ammunition purchases other than in "face to face" transactions is invalid under the Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3, because it is a de facto ban on interstate commerce; (2) whether the impossibility of compliance and the irrational and vague terms of AB962 violate Due Process and Equal Protection rights as provided by Fourteenth Amendment to the United States Constitution; and (3) whether the unreasonable infringement of the right to keep and bear Arms is a violation of the Second Amendment of the United States Constitution.

PARTIES

- 5. Plaintiff STATE AMMUNITION INC. is a California Corporation, dba <u>stateammo.com</u> (hereinafter referred to as "STATEAMMO.COM"), with an online retail ammunition store which advertises and sells ammunition to individuals throughout the United States. STATEAMMO.COM holds Federal Firearms Licenses for the manufacture of ammunition, import of ammunition, and sale of firearms. Likewise, STATEAMMO.COM is licensed to sell firearms by the State of California, and appears on the Centralized List of Firearms Dealers maintained by the California Department of Justice. As a result of AB962, like other California ammunition manufacturers and sellers, STATEAMMO.COM will suffer a loss of business income, good will and other tangible and intangible benefits as a result of AB962.
- 6. Plaintiff JIM OTTEN is an individual residing in the state of Minnesota, dba www.a1ammo.com, with an online retail ammunition store which advertises and sells ammunition to individuals throughout the United States, including individuals residing in the State of California. As a result of AB962, he will suffer a loss of business income, good will and other tangible and intangible benefits as a result of AB962.
- 7. Plaintiff JIM RUSSELL (USMC Ret.) is an individual residing in the State of California.

 Major RUSSELL is a disabled veteran who honorably served his country as an officer in the United States

Marine Corps. He is actively involved in the Paralyzed Veterans Association of America as Director of Shooting Sports. He purchases handgun ammunition through the internet from sources located outside the State of California. Major RUSSELL uses this ammunition in his work with other disabled Paralyzed Veterans of America in their shooting sports activities. As a result of AB962, Major RUSSELL will be unable to purchase handgun ammunition through the internet. As a disabled veteran, it is difficult for Major RUSSELL to travel in person to retail sales locations. In addition to the physical difficulty of traveling to purchase ammunition, the lack of stock, lack of selection, and higher prices are all factors which make face-to-face ammunition purchasing prohibitive.

- 8. Defendant STEVEN LINDLEY, in his official capacity as Acting Chief of the California Department of Justice, Bureau of Firearms, (hereinafter referred to as the "CADOJBOF") is the individual currently charged with oversight of the California State agency that will enforce the statute at issue. The Acting Chief's office is located in Sacramento, California. The Acting Chief is the director of the agency that is enforcing AB962 and promulgating related regulations.
- 9. At present, Plaintiffs do not have sufficient information and belief to identify the names and capacities, whether individual, corporate, associate or otherwise, of the Defendants identified in this Complaint by the fictitious name "DOE." Upon discovery of the true names and capacities of these presently unknown DOE Defendants, Plaintiffs will seek leave to amend her complaint. Plaintiffs allege on information and belief that each fictitiously named DOE Defendant is in some manner, presently unknown, responsible for the events and happenings herein set forth.

STATUTORY AND FACTUAL BACKGROUND

- 10. AB962 amended the California Penal Code in several manners, all of which are unconstitutional. (See Cal. Penal Code §§12060, 12061(a), 12316(a)(b)(c)(d), 12317(a)(b)(c), 12318(a)(b)(c).)
- 11. California Penal Code section 12060(b) defines "handgun ammunition" as being defined by California Penal Code section 12323(a) which states: ""Handgun ammunition" means ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, as defined in subdivision (a) of Section 12001, notwithstanding that the ammunition may also be used in some rifles." This definition is impermissibly vague, and by failing to specifically define "handgun"

ammunition," it forces individuals and businesses to guess what is meant by "handgun ammunition." As a result, people engaging in constitutionally protected activity (interstate commerce), selling and buying constitutionally protected products (firearms and ammunition), are placed in the precarious position of not knowing whether or not the legal product they are buying is considered by someone somewhere buried deep in the bureaucracy of the State of California to be "handgun" ammunition or "rifle" ammunition.

- 12. The definition of "handgun ammunition" violates the Commerce Clause as well as the Equal Protection and Due Process Clauses of the United States Constitution. As a result, the entirety of AB962 must be overturned by the Court.
- employee who the vendor knows or reasonably should know is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code to handle, sell, or deliver handgun ammunition in the course and scope of his or her employment." Unlike firearms vendors, ammunition vendors are not required to possess a Federal Firearms License, nor are they required to obtain California Certificates of Eligibility or be placed on the Centralized List of Firearms Dealers maintained by the CADOJBOF. As a result of AB962, numerous ammunition vendors through California and the United States will now be placed in the position of having to guess as to whether or not they are even required to comply with this provision, on top of having to guess as to what is or is not considered "handgun ammunition."
- 14. Likewise, these vendors are in no position to know whether or not employees are prohibited, since they are not authorized by law to conduct criminal background checks. Further, some criminal records in the State of California are sealed and private, not accessible to the public, and thus there is no way to know what is or is not considered reasonably discoverable information. For example, some known sex offenders may be listed on the Megan's Law database maintained by the State of California. Under the terms of AB962, one might argue that ammunition vendors are required to check the Megan's Law database for each employee.
- 15. Placing individuals and businesses in the position of having to guess whether or not their actions or inactions are criminal conduct, with no reasonable way to know for sure, is an unconstitutional violation of equal protection and due process protections. This provision therefore violates the Commerce

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27 28 Clause as well as the Equal Protection and Due Process Clauses of the United States Constitution. As a result, the entirety of AB962 must be overturned by the Court.

- California Penal Code section 12316 (a) provides, in pertinent part: 16.
 - (1) Any person, corporation, or dealer who does any of the following shall be punished by imprisonment in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both the imprisonment and fine:
 - (A) Sells any ammunition or reloaded ammunition to a person under 18 years of age.
 - (B) Sells any ammunition or reloaded ammunition designed and intended for use in a handgun to a person under 21 years of age. As used in this subparagraph, "ammunition" means handgun ammunition as defined in subdivision (a) of Section 12323. Where ammunition or reloaded ammunition may be used in both a rifle and a handgun, it may be sold to a person who is at least 18 years of age, but less than 21 years of age, if the vendor reasonably believes that the ammunition is being acquired for use in a rifle and not a handgun. (emphasis added).
- Penal Code section 12323(a) defines handgun ammunition as that "principally for use" in 17. pistols, revolvers or concealable firearms. Penal Code section 12316(a) criminalizes the sale of ammunition that "may be used in both a rifle and a handgun" unless the vendor "reasonably believes that the ammunition is being acquired for use in a rifle and not a handgun." (emphasis added.)
- AB962 places vendors in the untenable position of (a) having to know what type of 18. weapon ammunition is "principally" used in, and (b) having to know the subjective intended use by a purchaser. It is indisputable fact that a large portion of popular ammunition calibers on the market are designed for use in both rifles and handguns. From the most basic .22 long rifle caliber of ammunition, which is used equally in pistols and rifles in many parts of the country, to standard .38 special, .357 magnum, and similar calibers, which can be used in handguns or rifles, the end result of AB962 is that vendors are required to guess what is or is not considered handgun ammunition, then after that guess is made, they are required to somehow determine the subjective intent of an ammunition purchaser. This provision therefore violates the Commerce Clause as well as the Equal Protection and Due Process Clauses of the United States Constitution. As a result, the entirety of AB962 must be overturned by the Court.

19.

ammunition. It states:

(1) No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the

(1) No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

California Penal Code section 12316(b) provides yet another and different definition of

- (2) For purposes of this subdivision, "ammunition" shall include, but not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. "Ammunition" does not include blanks.
- (3) A violation of paragraph (1) of this subdivision is punishable by imprisonment in a county jail not to exceed one year or in the state prison, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment.
- (4) A person who is not prohibited by paragraph (1) from owning, possessing, or having under his or her custody or control, any ammunition or reloaded ammunition, but who is enjoined from engaging in activity pursuant to an injunction issued pursuant to Section 3479 of the Civil Code against that person as a member of a criminal street gang, as defined in Section 186.22, may not own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.
- (5) A violation of paragraph (4) of this subdivision is a misdemeanor.
- 20. First, this section criminalizes the possession of not just ammunition, but also bullets (inert pieces of metal), cartridges (inert pieces of brass), magazines, clips, speed loaders, autoloaders and projectiles capable of being fired from a firearm. Since all of these products are legal, and sold both in retail stores and online/mail-order throughout the United States, purchasers and vendors will now face the certain result that businesses will simply stop selling these items to anyone in California.
- 21. As stated above, there is no reasonable method available by which a vendor could know whether or not someone is prohibited from owning a firearm, since background checks are not authorized by law nor required by law for ammunition purchases. Instead, vendors will be left to simply guess as to whether or not customers are prohibited. This provision therefore violates the Commerce Clause as well as the Equal Protection and Due Process Clauses of the United States Constitution. As a result, the entirety of AB962 must be overturned by the Court.
- 22. Second, Penal Code section 12316(b)(4), which provided that members of criminal street gangs may not possess ammunition, is unconstitutional on several grounds as well. Criminal records in

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California are not public information. Membership in criminal street gangs, and civil injunctions against them, is likewise information totally outside the reach and knowledge of ammunition vendors.

- 23. California Penal Code section 12316(b) provides for multiple and inherently confusing and overreaching definitions of "ammunition." Likewise, it imposes a criminal penalty for selling legal products to persons legal entitled to purchase them, meanwhile ignoring the fact that criminal records and gang membership/civil injunction terms are wholly outside the knowledge of ammunition vendors. This provision therefore violates the Commerce Clause as well as the Equal Protection and Due Process Clauses of the United States Constitution. As a result, the entirety of the unconstitutionally vague AB962 must be overturned.
- 24. California Penal Code section 12317(a) provides: "Any person, corporation, or firm who supplies, delivers, sells, or gives possession or control of, any ammunition to any person who he or she knows or using reasonable care should know is prohibited from owning, possessing, or having under his or her custody or control, any ammunition or reloaded ammunition pursuant to paragraph (1) or (4) of subdivision (b) of Section 12316, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment." This provision therefore violates the Commerce Clause as well as the Equal Protection and Due Process Clauses of the United States Constitution. As a result, the entirety of AB962 must be overturned.
- 25. California Penal Code section 12318(a) provides: "Commencing February 1, 2011, the delivery or transfer of ownership of handgun ammunition may only occur in a face-to-face transaction with the deliverer or transferor being provided bona fide evidence of identity from the purchaser or other transferee. A violation of this section is a misdemeanor." This provision criminalizes interstate commerce, and the purchase of arms/ammunition, which is a fundamental and constitutionally protected right. The provisions of AB962 violate not only the Constitution of the United States at set forth above, but also the provisions of California's own Constitution. The Constitution of the State of California provides, in pertinent part, as follows:

"All people are by nature free and independent and have inalienable rights. Among these are enioving and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

(Cal. Const. Art. 1 § 1.)

(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws: (Cal. Const. Art. 1 §7(a).)

The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land. (Cal. Const. Art. 3 §1.)

26. California Penal Code section 12318(c)(5) states that the face-to-face sales requirement does not apply to: "(5) Persons whose licensed premises are outside this state who are licensed as dealers or collectors of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto." AB962 thus creates a protected category solely defined by state of residence. AB962 seeks to criminalize legal conduct (the purchase/sale of ammunition) not only inside California, but outside as well. AB962 thus purports to ban interstate commerce, which is a direct violation of the Constitution of the United States of America which states the United States "Congress shall have Power... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; ..." (U.S. Const. art. I, sect. 8, cl. 3.) By specifically exempting one category of out-of-state persons, AB962 purports to ban sales by California based ammunition manufacturers and vendors to purchases who live outside the State of California. Such an infringement on interstate commerce is a violation of the Commerce Clause. The AB962 ban on out-of-state ammunition sales must be overturned. AB962 creates a prima facie case of violation of the commerce clause as its prohibition against out-of-state vendors favors in-state vendors.

COUNT ONE: AB962 IMPROPERLY REGULATES, DISCRIMINATES AGAINST, AND UNDULY BURDENS INTERSTATE COMMERCE (U.S. Const. Art. I, sec. 8, cl. 3)

- 27. Plaintiffs incorporate paragraphs 1 through 26 above as though fully set forth herein.
- 28. The Commerce Clause of the U.S. Constitution provides that "Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . ." U.S. Const. art. I, sect. 8, cl. 3.
- 29. The Commerce Clause prohibits state laws and regulations that, inter alia, (i) discriminate against interstate commerce; (ii) regulate extraterritorial commerce; or (iii) unduly burden interstate and extraterritorial commerce.

30. AB962 explicitly and unconstitutionally discriminates against ammunition sellers and purchasers located outside the State of California by banning handgun ammunition sales other than those occurring in "face to face transactions," thus criminalizing their sale of a legal and constitutionally protected product (arms) to individuals residing in the State of California. Likewise, AB962 discriminates against citizens of the United States of America who live outside the State of California, as a "face to face" handgun ammunition purchase prohibition is a de facto ban on interstate commerce.

- 31. AB962 explicitly and unconstitutionally prohibits California ammunition businesses from selling handgun ammunition except in a "face to face" transaction, which is a de facto ban on interstate commerce. AB962 criminalizes a constitutionally protected activity (interstate commerce) and prohibits the sale of a constitutionally protected product (arms), by preventing residents of California from buying ammunition from out-of-state sellers via online or mail-order purchasers, and further prevents ammunition manufacturers and sellers in California from selling ammunition online or by mail-order to purchasers outside the State of California.
- 32. AB962 unconstitutionally interferes with and regulates the channels of interstate commerce, and the use of the channels of interstate commerce, by subjecting out-of-state ammunition sellers to a "face to face" transaction requirement, which on its own face, is an explicit ban on interstate commerce. Likewise, residents of California will now be unable to purchase ammunition from out-of-state sellers, and will be forced to personally travel to some location to buy ammunition in person, subject to lack of stock, lack of product availability, and inflated prices resulting from the new monopoly.
- 33. In addition to a ban on handgun ammunition sales in all but "face to face" transactions, AB962 includes an irrational, preempted definition of "ammunition" so expansive that out-of-state vendors will be unable to determine what is or isn't legal and what actions are or are not criminal. As a result, out-of-state vendors will simply refuse to sell or ship to California residents. Likewise, the criminalization of the sale of ammunition to an ever-expanding impossible-to-ascertain list of prohibited purchasers will cumulatively interfere with and regulate channels of interstate commerce.
- 34. In actuality and in practical effect, AB962 regulates conduct and commerce occurring wholly outside the State of California.
 - 35. All Plaintiffs in this action are injured by AB962.

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balance of the AB962 regulation. The burdens imposed by AB962 are clearly excessive in relation to any purported benefit. AB962 VIOLATES THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE UNITED STATES CONSTITUTION (U.S. Const. Amend. XIV; U.S.C. § 1983) COUNT TWO:

The portions of AB962 that violate the Commerce Clause are not severable from the

- Plaintiffs incorporate paragraphs 1 through 36 above as though fully set forth herein. 37.
- The Equal Protection and Due Process clauses provide "All persons born or naturalized in 38. the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, sec. 1.
- AB962 criminalizes two types of constitutionally protected conduct; engaging in interstate 39. commerce and buying ammunition which is an inseparable and indistinguishable part of the Second Amendment right to keep and bear arms. AB962 discriminates on its face in that ammunition manufacturers and sellers located in California are prohibited from selling ammunition to residents of the other 49 states in the Union, while out-of-state ammunition manufacturers and sellers are only prohibited from selling ammunition to individuals residing in California. Such an illogical, irrational and blatantly discriminatory law deprives all Plaintiffs of their rights, privileges, and or immunities secured by the Fourteenth Amendment of the Constitution of the United States.
- AB962 further violates the Equal Protection and Due Process Clauses of the United States 40. Constitution through its failure to define "ammunition vendor." AB962 purports to exempt "ammunition vendors" from its "face to face" purchase ban. (Cal. Penal Code §12061(a)(7)(2).) Section 12060(c) states: "(c)"Handgun ammunition vendor" or "vendor" means any person, firm, corporation, dealer, or any other business enterprise that is engaged in the retail sale of any handgun ammunition, or that holds itself out as engaged in the business of selling any handgun ammunition." (Cal. Penal Code § 12060(c).) However, there is no provision in federal or California law by which any entity is officially licensed or recognized as an "ammunition vendor." As such, ammunition manufacturers, distributors, wholesalers,

and retailers outside California have no legitimate way to verify if an intended recipient is in fact an "ammunition vendor." This will result in a flat refusal to send these legal and constitutionally protected products to California in general, and thus denies both the sellers and users of a fundamental freedom and property right in violation of the Equal Protection and Due Process clauses of the U.S. Constitution.

- 41. AB962 explicitly discriminates against citizens of the United States of America based on where they live by banning all handgun ammunition sales except those that occur in "face to face" transactions. Likewise, AB962 prohibits California ammunition manufacturers and sellers from engaging in the basic and fundamental freedoms of engaging in commerce and keeping and bearing arms.
- 42. Each Plaintiff is harmed by AB962. STATEAMMO.COM will be unable to sell ammunition to purchases in 49 other states, resulting in an immediate and devastating loss of income, business growth, goodwill, and customers. A1AMMO.COM will be unable to sell ammunition to purchasers in California, resulting in the loss of business, goodwill, income, and existing customers. Each Plaintiff is harmed by AB962. Each will suffer irreparable harm if the Court does not enforce the provisions of the United States Constitution and use its power to strike down AB962.
- 43. The provisions of AB962 subject ammunition purchases and vendors to disparate treatment without meeting the requirements of strict scrutiny. AB962 further discriminates against individuals on the basis of whether or not they are employees of the government, exempting "Authorized law enforcement representatives of cities, counties, cities and counties, or state and federal governments for exclusive use by those government agencies" and "peace officers" from its provisions. The Second Amendment to the United States Constitution expresses fundamental and individual rights that cannot be reserved only to government employees. These rights are guaranteed to every citizen. To denying these rights to all but government employees, AB962 violates the Second Amendment. This disparate treatment is a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
- 44. AB962 seeks to further harm the businesses in California engaged in the manufacture or sale of ammunition, and seeks to raise the prices which ammunition purchasers in California must pay for their desired product. This is an irrational and arbitrary denial of substantial property rights, and a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(U.S. Const. Amend. II; U.S.C. § 1983)

in this case. The Second Amendment right to keep and bear Arms is a right that has been incorporated

Plaintiffs incorporate paragraphs 1 through 44 above as though fully set forth herein.

The Second Amendment to the United States Constitution provides that: "...the right of the

The Second Amendment right to keep and bear Arms is a right belonging to each Plaintiff

CONSTITUTION

people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

AB962 VIOLATES THE SECOND AMENDMENT RIGHT TO KEEP

AND BEAR ARMS AS PROVIDED BY THE UNITED STATES

COUNT THREE:

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and bear Arms.

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against the States of the United States of America. The Second Amendment right to keep and bear arms protects each Plaintiffs rights to firearms and ammunition. AB962 violates and infringes upon each Plaintiff's Second Amendment rights as set forth above.

48. The provisions of AB962 do not and can not survive the strict scrutiny analysis which the Courts must apply to laws which infringe upon individual and fundamental rights such as the right to keep

WHEREFORE, plaintiffs respectfully request that this Court grant the following relief:

- i. As to each Count, a declaratory judgment, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, that AB962 violates U.S. and California law in the manner alleged above, and thus is invalid and unconstitutional.
- ii. As to each Count, preliminary and permanent injunctions, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendant and his agents, employees, delegates, and those acting in concert with him from implementing or enforcing the provisions of AB962 as identified above.
- iii. Such other relief available under federal law that may be considered appropriate under the circumstances, including other fees, attorney's fees and costs of this action to the extent allowed by federal law (including but not limited to 42 U.S.C. § 1988), and further relief as this Court deems just and proper.

DATED: July 16, 2010

CHAFFIN LAW OFFICE

/s/KDCHAFFIN

Kevin D. Chaffin, Esq. Attorney for Plaintiffs

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I herby certify that the annexed instrument is a true and correct copy of the original on file in my office.

ATTEST: VICTORIA C. MINOR

Clerk, U. S. District Court Eastern District of California

Deputy Clerk 2010

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

No. 2:10-cv-01864 MCE-KJN

Dated

ORDER

STEVEN LINDLEY, in his official capacity as Acting Chief of the California Department of Justice, Bureau of Firearms,

STATE AMMUNITION INC., et al.,

Defendant.

Plaintiffs,

----00000----

Plaintiffs State Ammunition Inc., dba www.stateammo.com, Jim Otten, dba www.alammo.com, and Jim Russel, Retired United States Marine Corp. ("Plaintiffs") seek redress from Defendant Steven Lindley, in his official capacity as Acting Chief of the California Department of Justice, Bureau of Firearms ("Defendant") from California Assembly Bill 962. Namely, specific provisions of the bill, effective February 1, 2011, will make it a misdemeanor in California to sell, deliver, or transfer handgun ammunition in any manner that is not a face-to-face transaction.

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Plaintiffs contest other portions of the bill, also not in effect until February 2011. Plaintiffs are either sellers or consumers of ammunition available online and sold throughout the United States. They argue that the new provisions violate interstate commerce, equal protection and due process protections, as well as the United States Constitution's Second Amendment granting Americans the right to bear arms (and by extension bear ammunition). Defendant contends that Plaintiffs' claims are speculative since the provisions at issue are not yet in effect, and thus not ripe for review.

The Supreme Court has consistently held that the ripeness doctrine aims "to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements." Thomas v. Union Carbide Agric. Prod. Co., 473 U.S. 568, 580 (1985) (citing Abbott Lab. v. Gardner, 387 U.S. 136, 148 (1967)). Thus, questions about ripeness become "a question of timing." Id.

The Declaratory Judgment Act authorizes federal courts to declare rights and other legal relationships in a "case of actual controversy within its jurisdiction." 28 U.S.C. § 2201(a). For a declaratory judgment to be issued, the claim must be constitutionally ripe, that is the facts demonstrate there is a controversy "of sufficient immediacy and reality." Educational Credit-Mgmt. Corp. v. Coleman (In re-Coleman), 560 F.3d 1000, 1005 (9th Cir. 2009).

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Plaintiffs' claims are not ripe for review. They cannot demonstrate any current harm or a sufficiently immediate concern. No one can yet anticipate how California's bill will affect Plaintiffs and/or their business. No case or controversy exists at this time. 1 Therefore, Plaintiffs' case is DISMISSED without prejudice, and Defendant's Motion to Dismiss (ECF No. 11) is DENIED as moot.²

IT IS SO ORDERED.

Dated: December 2, 2010

UNITED STATES DISTRICT JUDGE

made by Plaintiffs at this stage of litigation.

¹ The Court declines to examine any additional arguments

² Because oral argument will not be of material assistance, the Court deemed this matter suitable for decision without oral argument. E.D. Cal. Local Rule 230 (g).

		•
1	C. D. Michel - SBN 144258	
2	Clinton B. Monfort - SBN 255609 Sean A. Brady - SBN 262007	
3	MICHEL & ASSOCIATES, P.C. 180 East Ocean Blvd., Suite 200	
3	Long Beach, CA 90802	
4	Telephone: (562) 216-4444 Fax: (562) 216-4445	
5	cmichel@michellawyers.com	
6	Attorneys for Plaintiffs/Petitioners	
7	SUPERIOR COURT OF	THE STATE OF CALIFORNIA
8	FOR THE CO	OUNTY OF FRESNO
9	SHERIFF CLAY PARKER, TEHAMA	CASE NO. 10CECG02116
10	COUNTY SHERIFF; HERB BAUER SPORTING GOODS; CALIFORNIA RIFLE) AND PISTOL ASSOCIATION	AUTHORITIES IN SUPPORT OF MOTION
11	FOUNDATION; ABLE'S SPORTING, INC.; RTG SPORTING COLLECTIBLES,)) FOR PRELIMINARY INJUNCTION
12	LLC; AND STEVEN STONECIPHER,) Date: September 29, 2010) Time: 3:30 p.m.
13	Plaintiffs and Petitioners,) Location: Dept. 97A) Judge: Hon. Jeffrey Y. Hamilton
14	vs.	Action Filed: June 17, 2010
15	THE STATE OF CALIFORNIA; JERRY	
16	BROWN, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE	
17	STATE OF CALIFORNIA; THE CALIFORNIA DEPARTMENT OF	
	JUSTICE; and DOES 1-25,	
18	Defendants and Respondents.	
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PROCEDURAL AND FACTUAL BACKGROUND

This case brings a constitutional vagueness challenge to three sections of the California Penal Code that regulate the transfer and handling of "handgun ammunition."

On June 16, 2010, Plaintiffs Sheriff Clay Parker, et al., filed this action for Declaratory and Injunctive Relief and Petition for Writ of Mandate challenging the validity of Penal Code sections 12060, 12061, and 12318 (the "Challenged Provisions"). Defendants subsequently filed their Answer to Plaintiffs' Complaint on August 2, 2010. On August 19, 2010, the sponsor of the Challenged Provisions, Assemblyman Kevin De Leon, amended pending Assembly Bill 2358 ("AB 2358") in an attempt to address the admitted vagueness of the Challenged Provisions. On August 31, 2010, that legislation failed.

As the parties have been unable to agree upon a shortened briefing schedule to resolve this case on the merits via summary judgment, and as Plaintiffs are subject to irreparable harm by the ongoing and pending enforcement of unconstitutional criminal statutes, Plaintiffs now move this court for a preliminary injunction prohibiting enforcement of the Challenged Provisions.¹

Passed in 2009, Assembly Bill 962 ("AB 962") added sections 12060, 12061, and 12318 to the California Penal Code² and implemented a statutory scheme for the transfer and handling of "handgun ammunition." Section 12060 contains the definitions applicable to sections 12061 and 12318. Section 12061 requires "handgun ammunition" vendors⁴ to: (1) preclude prohibited employees (persons prohibited by law from possessing firearms) from accessing "handgun ammunition;" (2) store "handgun

Although California Code of Civil Procedure § 526(b)(3) generally prevents a court from issuing preliminary injunctive relief to prevent the enforcement of public statutes, such is not the case when the question of a statute's constitutionality is at issue. (*Cohen v. Bd. of Supervisors* (1986) 178 Cal.App.3d 447, 453.)

² All further statutory references are to the California Penal Code unless noted.

³ Assem. Bill No. 962 (2009-2010 Reg. Sess.) is codified at Penal Code §§ 12060, 12061, 12316, 12317, and 12318. The amendments to Penal Code §§ 12317 and 12318 are not challenged in this suit. A copy of AB 962 is attached hereto as Exhibit "1."

Section 12060(c) defines a "vendor" as: "any person, firm, corporation, dealer, or other business enterprise that is engaged in the retail sale of any handgun ammunition, or that holds itself out as engaged in the business of selling any handgun ammunition.

ammunition" out of the reach of customers; and (3) record specific information about every transfer of "handgun ammunition" made by the Vendor and obtain a thumb print from the customer. Section 12318 requires that all sales and transfers of "handgun ammunition" be conducted in a "face-to-face" transaction.

Section 12060(b) provides the definition of "handgun ammunition" specifically applicable to sections 12061 and 12318. It provides: "Handgun ammunition' means handgun ammunition as defined in subdivision (a) of Section 12323, but excluding ammunition designed and intended to be used in an "antique firearm" as defined in Section 921(a)(16) of Title 18 of the United States Code." Section 12323(a), in turn, defines "handgun ammunition" as: "... ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, as defined in subdivision (a) of Section 12001⁵, notwithstanding that the ammunition may also be used in some rifles."

Thus, "handgun ammunition," for purposes of the Challenged Provisions, is defined by section 12060(b) as all ammunition "principally for use in [handguns] . . . , notwithstanding that the ammunition may also be used in some rifles." (Emphasis added.)

The problem is, it is impossible to determine whether a specific ammunition type is "principally for use" in handguns. All modern centerfire and rimfire ammunition for use in rifles and handguns consist of the same components. (Declaration of Mike Haas ("Haas Decl.") at p. 3, ¶ 10; Declaration of Stephen Helsley ("Helsley Decl.") at p. 5, ¶ 17; Exhibit "11.") Ammunition available in virtually all calibers can be and is used safely in both rifles and handguns. (Haas Decl. at p. 3, ¶ 9; Helsley Decl. at p. 12, ¶ 47.)

Section 12001(a) provides: "As used in this title, the terms 'pistol,' 'revolver,' and 'firearm capable of being concealed upon the person' shall apply to and include any device designed to be used as a weapon...." (For convenience, "pistols, revolvers, and other firearms capable of being concealed upon the person" are hereafter referred to in this Complaint as "handgun(s).")

⁶ Excluding ammunition "designed and intended" to be used in "antique firearms," and blanks. (Cal. Pen. Code section 12061(b).)

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The Challenged Provisions do not state what "ammunition 'principally for use' in a handgun" means, nor do they specify what ammunition is "principally for use" in handguns. (See Exhibit 1.) Additionally, packaging for ammunition most often has no label associating its use with either a "handgun" or a "rifle." (Haas Decl. at pp. 3-4, ¶¶13-14; Helsley Decl. at pp. 12-13, ¶¶ 50-51.) Nor is there any common understanding in the firearms industry or among experts as to whether each of these thousands of types and calibers of ammunition are "principally for use" in a handgun and thus "handgun ammunition" under the Challenged Provisions. (Haas at p. 4, ¶ 16; Helsley at p. 12, ¶ 48.)

And, in any event, whether a type of ammunition is "principally" used in handguns is in part a temporal determination. Even if it could initially be determined whether an ammunition type was principally used in handguns, that will change and/or fluctuate with time as the ammunition's usage changes in response to hunting seasons and insofar as demand for particular ammunition types changes with the popularity of different handgun and rifle models or different shooting sports. (Haas Decl. at p. 4, ¶ 18; Helsley Decl. at p. 12, ¶ 49.)

DISCUSSION

I. PLAINTIFFS ARE LIKELY TO PREVAIL BECAUSE THE CHALLENGED PROVISIONS DO NOT PROVIDE ADEQUATE NOTICE TO THE PUBLIC NOR PROVIDE SUFFICIENT STANDARDS FOR LAW ENFORCEMENT

In determining whether preliminary injunctive relief is appropriate, courts consider two interrelated factors: (1) the likelihood that plaintiff will prevail on the merits at trial; and (2) the relative balance of harms likely to result from the granting or denial of interim injunctive relief. (White v. Davis (2003) 30 Cal. 4th 528, 554.) The court's determination must be guided by a "mix" of these two factors; as such, the greater Plaintiffs' showing on one, the less that must be shown on the other to support relief. (Butt v. Cal. (1992) 4 Cal. App. 4th 668, 678.)

"The Fourteenth Amendment to the United States Constitution and Article I, section 7 of the California Constitution, each guarantee that no person shall be deprived of life, liberty, or property without due process of law. This constitutional command requires 'a reasonable degree of certainty in legislation, especially in the criminal law ' " (People v. Heitzman (1994) 9 Cal.4th 189, 199 (quoting In re Newbern (1960) 53 Cal.2d 786, 792).)

Though not binding on this Court, courts in other jurisdictions have also found these terms to have similar meaning, and their reasoning is persuasive. In State ex rel. Martin v. Kansas City, the court interpreted "mainly" to mean "more than half" when it addressed the meaning of the phrase "mainly within," regarding an ordinance permitting the city's annex of certain property found "mainly within" the city. The court held that "[i]f 'within' means surrounded, "mainly within" a city would mean that a common perimeter of more than fifty percent was present. (Martin, supra, 317 P.2d at p. 811) (emphasis added).) Likewise, the Court of Special Appeal of Maryland said, "[w]e believe the word 'primarily,' as used in [the statute], possesses a common and generally accepted meaning. Webster's New World Dictionary defines 'primarily' as 'mainly; principally.' "(Schrader, supra, 517 A.2d at p. 1146.) The court went on to clarify that "in quantifiable terms, 'primarily' is commonly understood to suggest a figure representing more than 50 percent." (Ibid. (emphasis added).)

So for any given caliber or type of ammunition to qualify as "handgun ammunition" under the Challenged Provisions, that ammunition would have to be used in handguns more than fifty percent (50%) of the time. But there is no means for a person of ordinary intelligence to ascertain whether this is true for any particular type of ammunition. (Declaration of Barry Bauer ("Bauer Decl.") at ¶¶ 3-6; Declaration of Steven Stonecipher ("Stoneciper Decl.") at ¶¶ 3-6.) Most types of ammunition can be and are used safely in both rifles and handguns, and it is often the case that packaging for ammunition that *can* be used in a handgun is not labeled as such. (Haas Decl. at pp. 3-4, ¶¶9, 13-14; Helsley Decl. at pp. 12-13, ¶¶ 47, 50-51.)

In fact, even experts cannot determine this. There exists in the firearms industry no generally accepted definition of "handgun ammunition," nor any commonly understood delineation between "handgun ammunition" and other ammunition that equates to the "principally for use" in handguns language upon which the Challenged Provisions rely. (Haas at p. 4, ¶ 16; Helsley at p. 12, ¶ 48.)

Without sufficient guidelines as to what constitutes "handgun ammunition," persons of ordinary intelligence cannot be expected to know which types of ammunition the Challenged Provisions regulate. Without the benefits of such standards, individuals and vendors must guess as to whether any given type of ammunition is used in handguns more than fifty percent (50%) of the time – at any particular point in time – under changing market conditions.

2. Absent an Official List of Regulated Ammunition, it Is Impossible for Persons of Ordinary Intelligence to Determine Which Types Are "Principally for Use in Handguns"

The definition relied upon by the Challenged Provisions is unworkable. Unworkable definitions for tangible items that do not inform ordinary persons as to which items fall within the scope of the definition must fail for vagueness. Where a person is unable to determine for himself whether his particular item possesses those characteristics making it illegal under such a statute, and where an expert's opinion is required to make this determination, absent something like an official list of regulated items, the statute cannot be said to provide either fair notice or meaningful guidelines to a person of ordinary intelligence.⁸

The California Supreme Court's decision in *Harrott v. County of Kings*, (2001) 25 Cal.4th 1138, is instructive. In *Harrott*, the California Supreme Court addressed the limitations of the Assault Weapons Classification Act ("AWCA"), finding its language failed to fully inform persons of ordinary intelligence which firearms were regulated as "assault weapons" by the statute. (*Harrott, supra*, 25 Cal.4th at p. 1153.) As mandated by the AWCA, the Attorney General created the Assault Weapons Identification Guide ("the Guide"), designating by manufacturer markings those firearms deemed to be assault weapons regulated under the Act. (*Id.* at p. 1142-43.) The trial court determined the plaintiff's firearm constituted an "assault weapon" under Penal Code section 12276 on the ground it was an "AK series" weapon, despite the fact that expert witnesses for both sides agreed the firearm's manufacturer markings did not match those in the Guide. (*Id.* at p. 1143.)

The Court of Appeal reversed the lower court's decision on due process grounds, basing its ruling on the "difficulty an ordinary citizen might have, when a gun's markings are not listed in the Identification Guide, in determining whether a semiautomatic firearm should be considered an assault weapon under the AWCA." (Harrott, supra, 25 Cal.4th at pp. 1146-1147.) The Court concluded that ordinary citizens are not responsible for determining the meaning of unclear statutory language without

This line of reasoning was recently adopted by the California Court of Appeal in *People v. Saleem* (2d Dist. 2009) 180 Cal.App.4th 254, 273-74 [102 Cal.Rptr.3d 652, 667], review granted Mar. 10, 2010. Review of this decision by the California Supreme Court was dismissed on September 1, 2010, in light of recent amendments to Penal Code section 12370 (Stats. 2010, ch. 21). Therefore, a publication order may be forthcoming.

In this case, individuals and vendors, including Plaintiffs, are unable to determine for themselves whether a given type of ammunition is "handgun ammunition," as no reasonable person can determine which types of ammunition are used more than fifty percent (50%) of the time in a handgun. (Bauer Decl. at ¶ 3-6; Stonecipher Decl. at ¶ 3-6.) Moreover, the Challenged Provisions' definition of "handgun ammunition" is problematic because *even experts* are unable to determine with any certainty whether a given type of ammunition has in fact been fired more than 50% of the time out of a handgun as opposed to a long gun. (Haas Decl. at p. 5, ¶ 19-20; Helsley Decl. at p. 13, ¶ 53-54.) Although the controlling standard requires the Challenged Provisions, in and of themselves, to provide notice to persons of ordinary intelligence as to what ammunition is regulated *without* the need for independent market research, it is virtually impossible, even through *painstaking research and analysis*, to establish *with legal certainty* that any type of ammunition suitable for use in both handguns and long guns is fired through or loaded into handguns more often than long guns. (Haas Decl. at p. 5, ¶ 19-20; Helsley Decl. at p. 13, ¶ 53-54.)

B. The Legislative History of the Challenged Provisions Confirms Vagueness

1. A Previous Attempt to Rely on "Principally for Use in Handguns" Exposed the Vagueness Problems of the Challenged Provisions

Nothing in the legislative history of section 12323 or AB 962 clarifies the "principally for use" in handguns language relied upon by the Challenged Provisions. There is, however, revealing language in the legislative history of Senate Bill 1276 (hereafter SB 1276), a failed measure introduced in 1994 to implement provisions regulating the transfer of "handgun ammunition" similar to those appearing in the Challenged Provisions. The Bill Analysis conducted by the Senate Committee on Judiciary for SB 1276 contains a "comment" on the definition of "handgun ammunition" provided in section 12323 which reads, in relevant part:

Existing Penal Code section 12323 was added in 1982 and defines handgun ammunition as 'ammunition principally for use in pistols and revolvers . . . notwithstanding that the ammunition may also be used in some rifles. . . . However, it may not be suitable for

⁹ The relevant legislative history of SB 1276 is attached hereto as Exhibit "5."

defining handgun ammunition in general. It may be assumed that many ammunition calibers are suitable for both rifles and handguns. Without additional statutory guidance, it may be very difficult for dealers to determine which ammunition is "handgun ammunition" for purposes of the requirements added to Penal Code section 12076. (Exhibit 5.) (Emphasis added.)

The legislative history of AB 962 contains nothing to clarify the Legislature's intent as to the scope of the definition for "handgun ammunition" as adopted by and used in the Challenged Provisions. But the history of SB 1276 provides compelling evidence of that very same definition's vagueness as applied to the Challenged Provisions. ¹⁰

2. The Legislature Recognized the Vagueness Problems in the Challenged Provisions and Tried But Failed to Fix Them This Year

In 2010, the author of AB 962 and the Challenged Provisions, Assemblyman Kevin De Leon, introduced legislation that would have expanded the application of 2009's AB 962. (Assem. Bill No. 2358 (2009-2010 Reg. Sess.) ("AB 2358").)¹¹ Subsequent to the filing of this litigation by Plaintiffs, Assemblyman De Leon amended AB 2358 in the last days of the legislative session, working frantically with Defendant DOJ to revise the Challenged Provisions by amending Penal Code section 12323(a) to replace the "principally for use in" language with a "list of ammunition calibers" that would be considered "handgun ammunition" under the Challenged Provisions. The "list amendment" was obviously the result of Defendant DOJ's discussions with Assemblyman De Leon about DOJ's own recognition of the merits of this suit. (Declaration of Clinton B. Monfort ("CBM Decl.") at p. 3, ¶¶ 14-

Plaintiffs note they do not challenge Penal Code section 12323(a) itself, as it is referenced by Penal Code sections other than the Challenged Provisions which include additional language to allow individuals to determine whether ammunition is "handgun ammunition." For example, Penal Code section 12316(b) follows the reference to section 12323(a) with the following: "Where ammunition or reloaded ammunition may be used in both a rifle and a handgun, it may be sold to a person who is at least 18 years of age, but less than 21 years of age, if the vendor reasonably believes that the ammunition is being acquired for use in a rifle and not a handgun." The Challenged Provisions do not include such "clarifying" language. Nor could this language be applied to the Challenged Provisions, as PC section 12061 mandates that "handgun ammunition" be stored where it cannot be accessed by customers, i.e., a Vendor could not have a reasonable belief as to whether a potential purchaser would intend to use that ammunition in a handgun or rifle.

Copies of AB 2358, as amended on August 19, 2010 and August 30, 2010, are attached hereto as Exhibits "2" and "3," respectively and incorporated herein.

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15; Exhibits 2-4, 9-10.) Though the proposed list of ammunition calibers would have presented its own legal problems if it had passed, AB 2358 failed to pass in the Senate, for numerous reasons. (CBM Decl. at p. 3, ¶ 14; Exhibit 4.)

Even though AB 2358 failed passage, testimony provided during consideration of the bill provides further compelling evidence of the vagueness of the Challenged Provisions. At a Senate Public Safety Committee hearing on AB 2358 held on August 23, 2010, Assemblyman De Leon stated that "throughout the year, [the legislature] had been listening to gun dealers, as well as vendors, regarding their concerns about AB 962." Assemblyman De Leon revealed that the most common complaint, a complaint that was raised the previous year in committee, is that the existing definition of 'handgun ammunition' is too vague, and that we want to bring some clarity to the law for California vendors. (Hearing on A.B. 2358 Before the S. Pub. Safety Comm., 2010 Leg., 2009-2010 Reg. Sess. (Cal. 2010) (statement of Assem. Kevin DeLeon, Sponsor).) Assemblyman De Leon's testimony confirmed that the "list of ammunition calibers" was provided to them by Defendant DOJ. (Ibid.) Assemblyman De Leon's own testimony confirms the widespread and openly voiced confusion surrounding the definition of "handgun ammunition" contained in the Challenged Provisions, and demonstrates the inability of Defendants or the legislature to produce a workable definition of "handgun ammunition" in either of the past two legislative calendar years. The sponsor of the Challenged Provisions has publicly confirmed that the Challenged Provisions fail to provide reasonable notice as to what ammunition is "handgun ammunition." (See ibid.)

C. No California Courts Have Interpreted "Handgun Ammunition;"
But Harrot Confirms that the Challenged Provisions Fail to Provide Sufficient
Notice of Prohibited Conduct

The third prong of *Heitzman* focuses on the way in which courts have previously construed the challenged statutory language. Unfortunately, there are no court decisions interpreting Penal Code §12323(a) or the Challenged Provisions to guide us. Nor has the regulatory agency charged with licensing firearm retailers been able to provide clarification to its licensees.¹²

The DOJ Firearms Bureau licenses and regulates firearm retailers in CA. DOJ also provides licensees with information about their responsibilities and changes in the law. On December 30, 2009, DOJ published an "Information Bulletin" providing a brief overview of AB

III. THE CHALLENGED PROVISIONS ENCOURAGE ARBITRARY AND DISCRIMINATORY ENFORCEMENT BASED ON EACH POLICE OFFICER'S SUBJECTIVE UNDERSTANDING OF THE LAW

The Challenged Provisions are *also* unconstitutionally vague because they encourage arbitrary and discriminatory enforcement of the law by police and prosecutors. The U.S. Supreme Court has noted that "the requirement that a legislature establish minimal guidelines to govern law enforcement" is the defining consideration of the vagueness doctrine. (*Kolender, supra*, 461 U.S. at 357-58.) "[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-09.) "Where the legislature fails to provide such minimal guidelines, a criminal statute may permit 'a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." (*Kolender, supra*, 461 U.S. at pp. 357-358).)

In City of Chicago v. Morales, petitioner City of Chicago enacted a Gang Congregation Ordinance which prohibited criminal street gang members from loitering with one another in any public place. (City of Chi. v. Morales (1998) 527 U.S. 41, 45 (hereafter Morales).) The case makes clear the importance of "definiteness and clarity" in the law, characteristics that the challenged provisions lack. The ordinance defined "loitering" as "remaining in any one place with no apparent purpose." (Id. at p. 47.) The Chicago Police Department promulgated detailed guidelines that purported to prevent arbitrary or discriminatory enforcement of the ordinance. (Id. at p. 48.) For instance, they confined arrest authority to designated officers, established detailed criteria for defining street gangs and membership in such gangs, and provided for designated but publicly undisclosed enforcement areas. (Id. at pp. 48-49.)

Despite attempts to clarify the scope of the term "loitering," the Supreme Court of Illinois struck down the ordinance because it did not "meet constitutional standards for definiteness and clarity" because it "provides absolute discretion to police officers to determine what activities constitute loitering." (Morales, supra, 527 U.S. at pp. 61, 64.) Upon review, the U.S. Supreme Court confirmed the holding, finding the law unconstitutionally vague. (Id. at p. 64.)

^{962. (}Exhibit 8.) Tellingly, despite retailer inquiries, this Bulletin did not clarify what "handgun ammunition" is under the Challenged Provisions. Nor could it have - none of the Challenged Provisions, nor any other provision of the law, confer authority upon an agency or other entity to promulgate regulations to clarify them.

 Like the Gang Congregation Ordinance in *Morales*, the lack of clarity as to which ammunition is considered "handgun ammunition" violates "the requirement that a legislature establish minimal guidelines to govern law enforcement." (*Kolender*, *supra*, 461 U.S. at p. 358.) And the DOJ has stated that it *will not and cannot* adopt a policy as to what types of ammunition are "handgun ammunition."¹³

Because there are no official guidelines regarding which types of ammunition are "principally for use in [handguns]," each law enforcement officer must look beyond what is reasonably apparent and try to make his or her own determination as to whether more than fifty percent of a particular type of ammunition is used in handguns. (Declaration of Clay Parker ("Parker Decl.") at ¶¶ 3-7.) As such, like the Gang Congregation ordinance in *Morales*, each of the Challenged Provisions unlawfully "entrusts lawmaking to the moment-to-moment judgment of the policeman on his beat," encouraging arbitrary and discriminatory enforcement of the law in violation of due process. (*Kolender, supra*, at p. 359.)

IV. THE HARM SUFFERED BY PLAINTIFFS IF PRELIMINARY INJUNCTION IS DENIED FAR OUTWEIGHS THE HARM SUFFERED BY DEFENDANT IF PRELIMINARY INJUNCTION IS GRANTED

In evaluating the relative harm to the parties upon the granting or denial of a preliminary injunction, the court may consider any of several factors: "(1) the inadequacy of any other remedy; (2) the degree of irreparable injury the denial of the injunction will cause; (3) the necessity to preserve the status quo; [and] (4) the degree of adverse effect on the public interest or interests of third parties the granting of the injunction will cause." (Cohen v. Bd. of Supervisors (1985) 40 Cal.3d 277, 286 fn. 5 (hereafter Cohen).)

A. Absent an Injunction, Plaintiffs Risk Prosecution for Unknowing Violations and Will Suffer Irreparable Harm without Adequate Legal Remedy

"To qualify for preliminary injunctive relief plaintiffs must show irreparable injury, either existing or threatened." (City of Torrance v. Transitional Living Ctrs. for L.A. (1982) 30 Cal.3d 516, 526 (citing Cal. Code Civ. Proc. § 526(a)(2).) Irreparable harm is usually present where plaintiff will

Following passage of AB 962, Plaintiffs' counsel contacted counsel for the DOJ's Bureau of Firearms for clarification. Counsel for the DOJ's Bureau of Firearms responded that it "did not know" and "could not say" whether ammunition inquired about was "handgun ammunition" under the Challenged Provisions. (CBM Decl. at p. 2, ¶¶ 3-5, 8; See exhibits 6, 7.)

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27 28 v. Whittier Water Co. (1st Dist. 1922) 59 Cal.App. 1, 7; Wind v. Herbert (2nd Dist. 1960) 186 Cal.App.2d 276, 285 (citing Cal. Code Civ. Proc. § 3422).) The Ninth Circuit Court of Appeals has recognized time and again that, "constitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm." (Nelson v. NASA (9th Cir. 2007) 530 F.3d 865, 881 (citing Monterey Mech. Co. v. Wilson (9th Cir. 1997) 125 F.3d 702, 715).) Due to the unconstitutional vagueness of the Challenged Provisions, Plaintiffs are, and will continue to be, unfairly subject to the dire consequence of criminal prosecution in violation of due process. (Bauer Decl. at ¶ 7; Stonecipher Decl. at ¶ 5.) The existence and ongoing arbitrary enforcement of the Challenged Provisions invites irreparable harm upon Plaintiffs and those similarly situated.

suffer an injury for which adequate compensation is difficult, if not impossible, to ascertain. (Pellissier

The California Supreme Court has further recognized that a showing that plaintiff has "discontinued [a] method of conducting . . . business as alleged because of fear of arrest and prosecution" under a constitutionally unsound law is sufficient to show irreparable injury. (McKay Jewelers, Inc. v. Bowron (1942) 19 Cal.2d 595, 599.) The passage of the Challenged Provisions has forced those Plaintiffs engaged in the business of selling or otherwise transferring ammunition to nonexempt persons in California to contemplate whether to discontinue certain business practices and to begin preparations for the Challenged Provisions to take effect. For instance, Plaintiffs Able's Sporting, Inc., and RTG Sporting Collectibles, Inc., have indicated that they will, out of a necessary abundance of caution and because they cannot know which types of ammunition are regulated by the Challenged Provisions, cease all transfers of ammunition that can be used in both handguns and long-guns to nonexempt persons in California. (Giles Decl. at ¶¶ 3-8; Wright Decl. at ¶¶ 3-9.) Discontinuing these transfers will result in a significant loss of profits from Plaintiffs' California markets during the pendency of this action and beyond. (Giles Decl., ¶ 8; Wright Decl., ¶ 8-10.) In the absence of preliminary injunction, then, these Plaintiffs face a Hobson's Choice: either discontinue these ammunition transfers in California and risk the loss of massive profits and business goodwill, or continue transfers and risk prosecution under the Challenged Provisions. Either "choice" is stark, and the remedy for the harms invited by either is not readily calculated in monetary terms.

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Because these Plaintiffs are forced to alter their business methods out of genuine fear of unjust prosecution, irreparable harm exists and a preliminary injunction should issue.

B. A Preliminary Injunction is Necessary to Preserve the Status Quo, Pending Adjudication of the Merits at Trial

The balance of harms tips in favor of the party seeking injunctive relief when the granting of such relief is necessary to preserve the status quo. California courts have long recognized the status quo to mean "the last peaceable, uncontested status which preceded the pending controversy." (People v. Hill (1st Dist. 1977) 66 Cal.App.3d 320, 331 (quoting United R.R. v. Super. Ct. (1916) 172 Cal. 80, 87).) Moreover, the California Supreme Court has recognized that preliminary injunctions preventing the enforcement of statutes in effect for only a short time at the point of hearing a request for such relief effectively maintain the status quo. (King v. Meese (1987) 43 Cal.3d 1217, 1227.) Because the Challenged Provisions have yet to take effect, or have been in effect for only a short time, the status quo will be preserved only by the granting of preliminary injunctive relief.

C. Public Interest Will Be Served, Not Harmed, by Preliminary Injunction

A third consideration in the balance of harms analysis is "the degree of adverse effect on the public interest or interests of third parties the granting of the injunction will cause." (*Cohen, supra*, 40 Cal.3d at p. 286, fn. 5.) Where the public interest would be harmed by the issuance of a preliminary injunction, courts are understandably reluctant to grant such relief. When the public interest is *served* by injunction, however, the balance of harms should tip in the movant's favor.

Plaintiffs recognize that it is generally in the public interest for courts to refrain from interfering in the enforcement of laws adopted by duly elected representatives out respect for the separation of powers. (City of Santa Monica v. Super. Ct. of LA Co. (2d Dist. 1964) 231 Cal.App.2d 223, 226 (hereafter Santa Monica). However, Plaintiffs point out that this interest is not served when an admittedly vague law imposes the dire consequence of criminal sanctions upon unwitting persons in violation of their rights to due process. The Challenged Provisions invite arbitrary and discriminatory enforcement of the law as each officer relies on his or her subjective understanding of the "principally for use" language; where one officer may witness the transfer of ammunition suitable for use in both handguns and long-guns and cite the transaction as a violation of the Challenged Provisions, another

officer may witness an identical transaction and determine that a transfer of such ammunition is not touched by the law. Such circumstances would manifestly create confusion in the public mind and would have a natural tendency to create disrespect for law enforcement officers unable to apply the law in a uniform manner. (Santa Monica, supra, 231 Cal.App.2d at 226.) Viewed in this light, it is apparent that preliminary injunction will serve the public interest by delaying the enforcement of the Challenged Provisions until it is determined whether they provide sufficient standards to guide law enforcement in a consistent application of the provisions, thereby promoting proper respect for the rule of law.

D. Defendants Will Suffer no Harm if Injunctive Relief is Granted and any Potential Harm is Minimal and Does Not Outweigh the Harm to Plaintiffs Absent Such Relief

Given the substantial likelihood that Plaintiffs will succeed on the merits, the harm to Defendants in delaying enforcement of the statute is slight. The public has no interest in enforcing an unconstitutional law, as an "unconstitutional law is void and is as no law." (Ex parte Siebold (1880) 100 U.S. 371, 376.) Unlike Plaintiffs, who will continue to suffer the threat of unjust criminal prosecution under laws with which they do not and cannot know how to comply, Defendants will incur no injury by the granting of preliminary injunctive relief. The relief Plaintiffs seek merely asks Defendants to delay the enforcement of a likely unconstitutional law—a law in which Defendants have no legitimate interest enforcing. There would be no action required of or monetary loss to Defendants, and Defendants would not be deprived of any particular benefit. As such, the balance of harms continues to tilt in Plaintiffs' favor, and preliminary injunction is proper.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court grant preliminary injunctive relief pursuant to California Code of Civil Procedure section 527, enjoining Defendants, their employees, agents, and persons acting with them or on their behalf, from enforcing California Penal Code sections 12060, 12061, and 12318 pending final adjudication of this case at trial.

Dated: September 7, 2010

Respectfully Submitted, MICHEL & ASSOCIATES, P.C.

C. D. MICHEL

Attorney for Plaintiffs

1	PROOF OF SERVICE						
2	STATE OF CALIFORNIA						
3	COUNTY OF FRESNO						
4 5	I, Valerie Pomella, am employed in the City of Long Beach, Los Angeles County, California I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.						
6	On September 7, 2010, I served the foregoing document(s) described as						
7	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION						
8 9 10	on the interested parties in this action by placing [] the original [X] a true and correct copy thereof enclosed in sealed envelope(s) addressed as follows:						
11 12 13 14 15	Attorney General of California Zackery P. Morazzini Supervising Deputy Attorney General Peter A. Krause Deputy Attorney General (185098) 1300 I Street, Suite 125						
16 17 18 19	(BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit. Executed on September 7, 2010, at Long Beach, California.						
20 21	X (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee. Executed on September 7, 2010, at Long Beach, California.						
22 23 24	(VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used complies wit 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 transmission record of the transmission, copies of which is attached to this declaration. Executed on September 7, 2010, California.						
25 26 27	X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. VALERIE POMELLA						
28	· · · · · · · · · · · · · · · · · · ·						

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Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction



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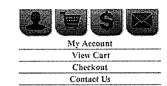
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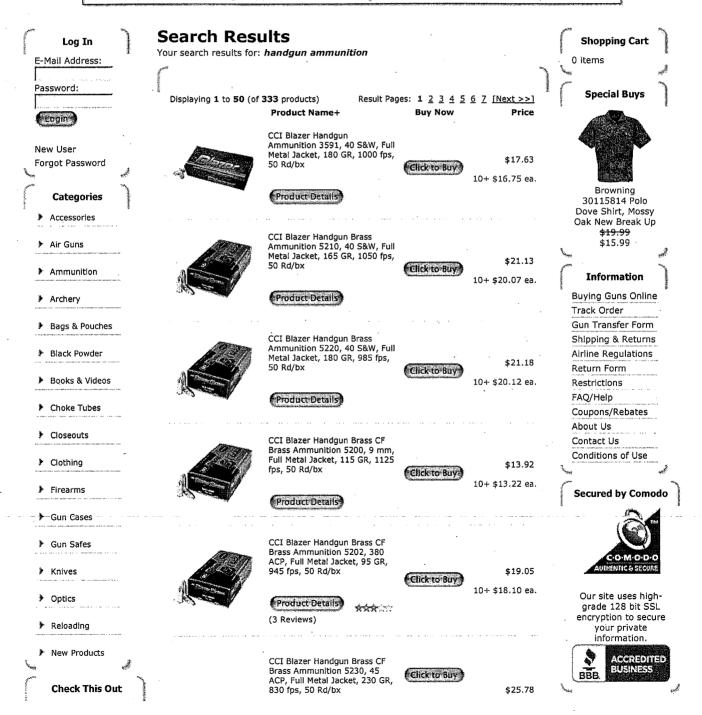
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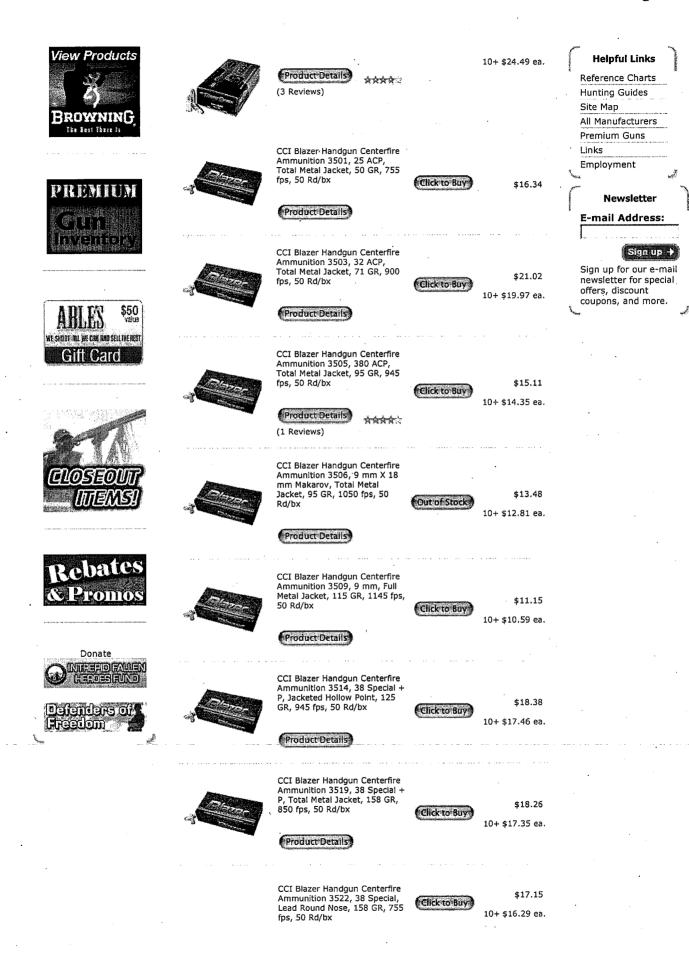


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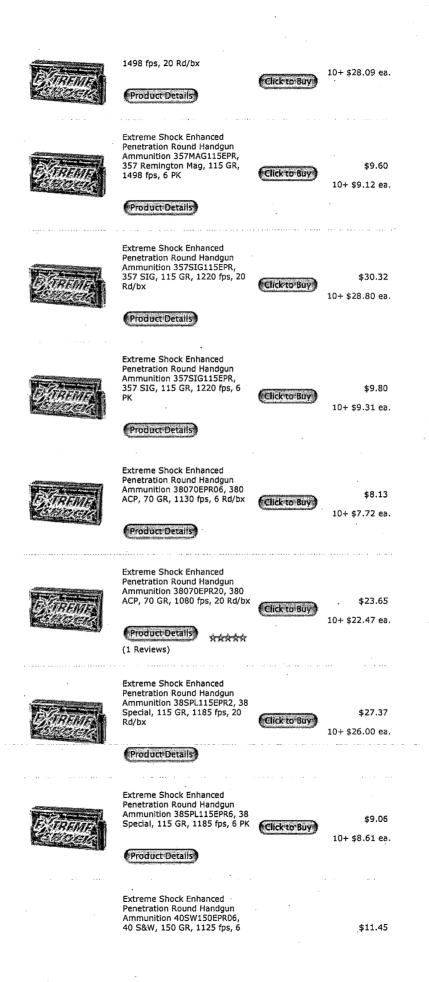
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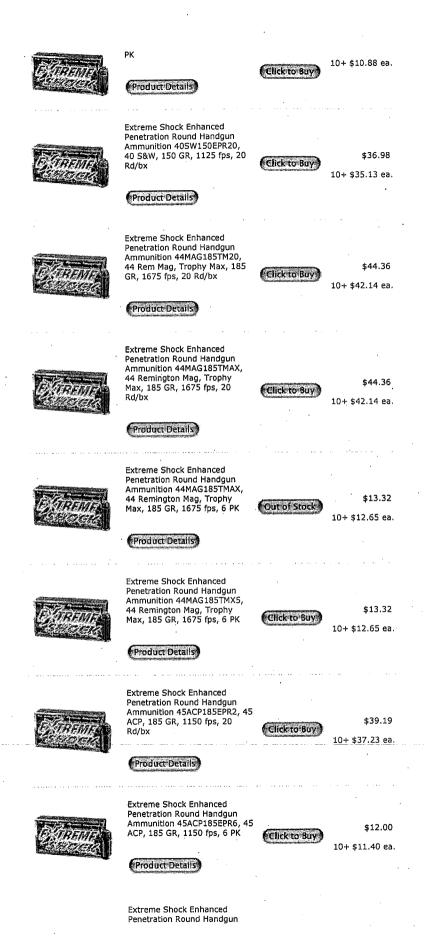


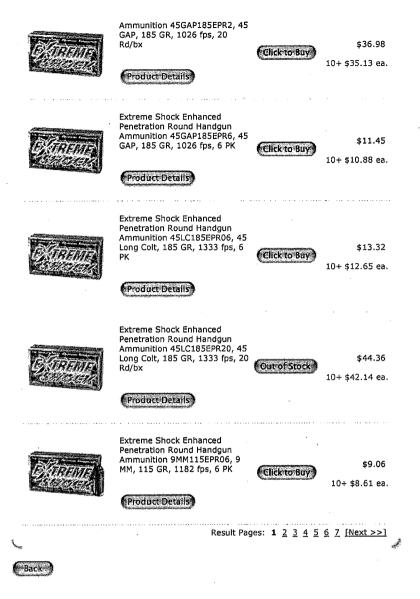












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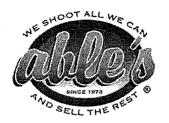
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All Manufacturers | Beretta | Beretta Shotguns | Browning | Browning Shotguns | Benelli Firearms | Colt Fireams | Franchi Firearms | Remington Firearms | Stoeger Firearms | Federal Ammunition | Nikon Sport Optics | Nikon Rifle Scopes | Leupold Rifle Scopes | Hunting Supplies





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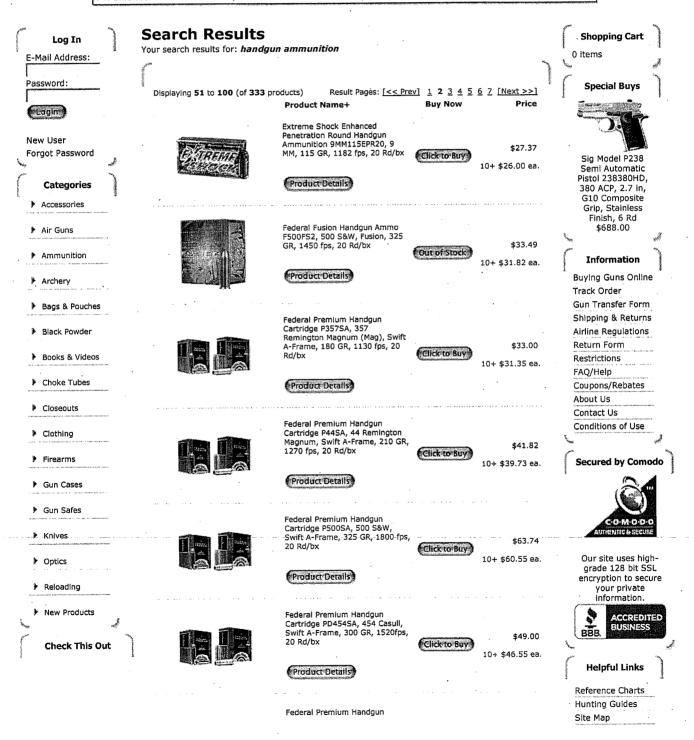
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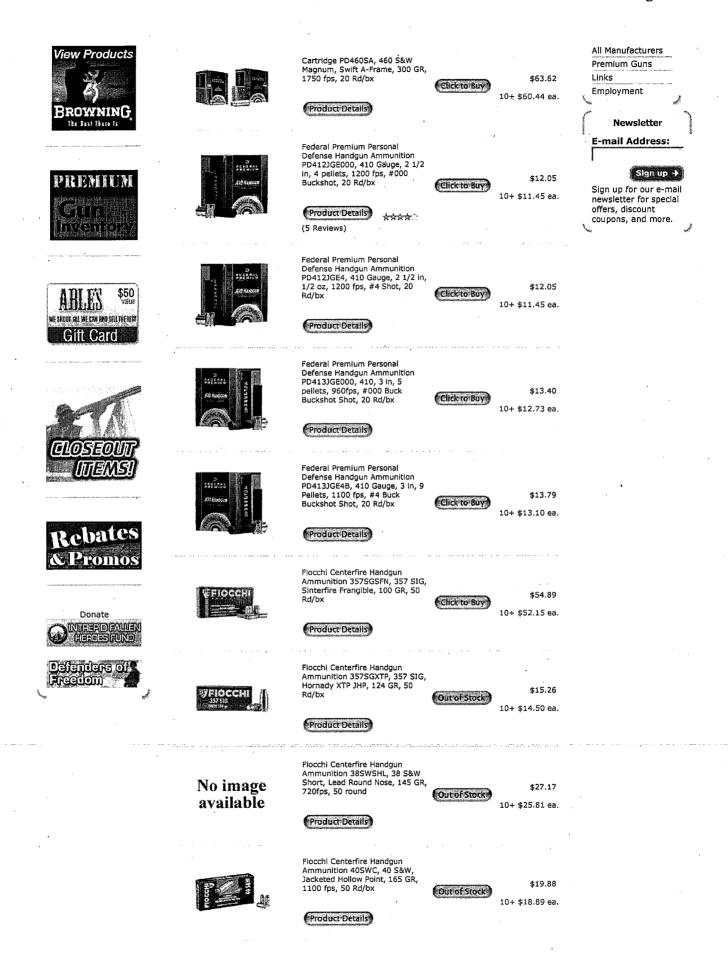
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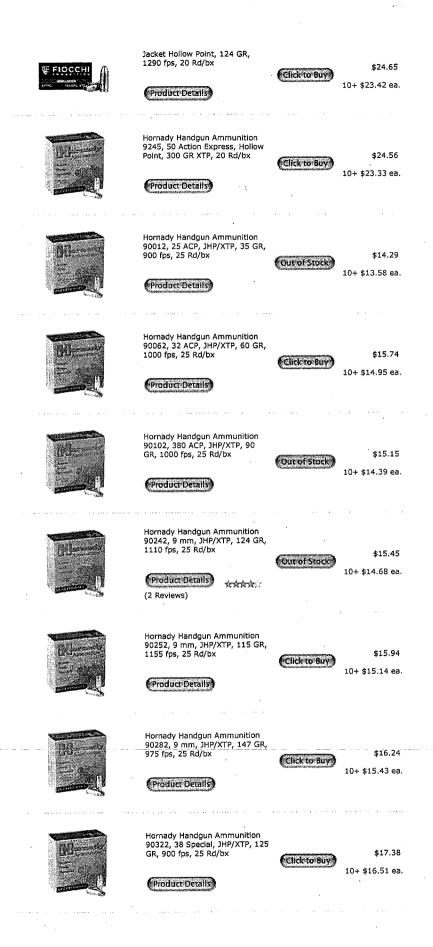
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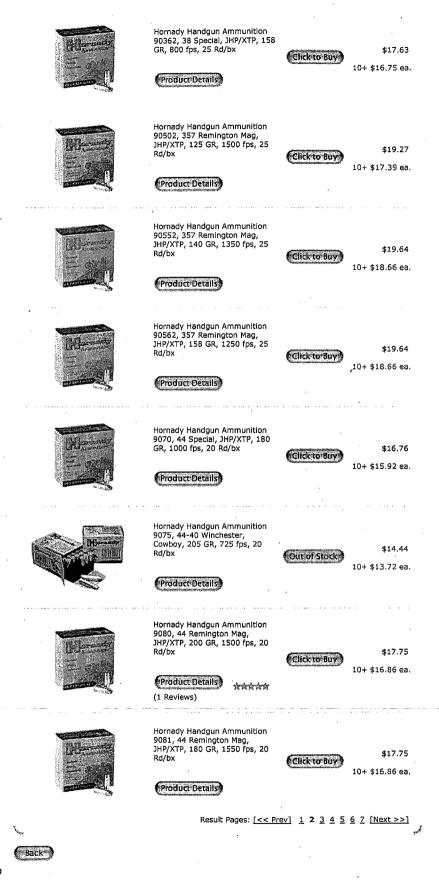












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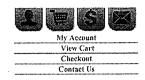
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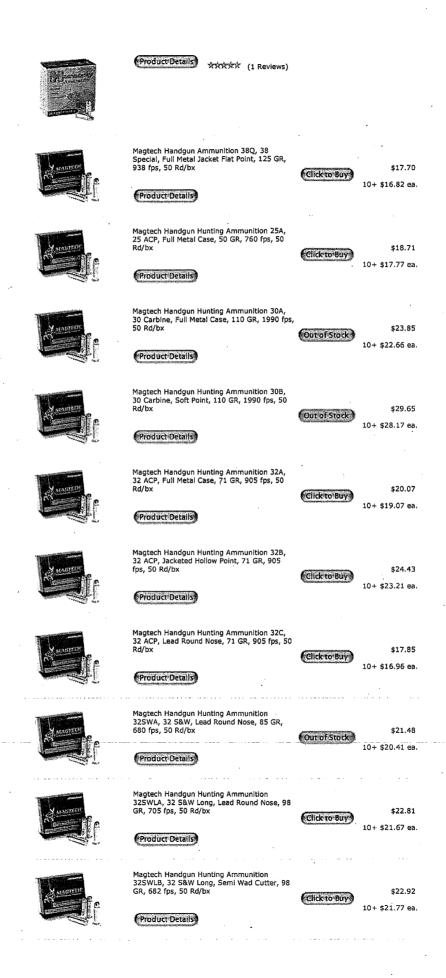
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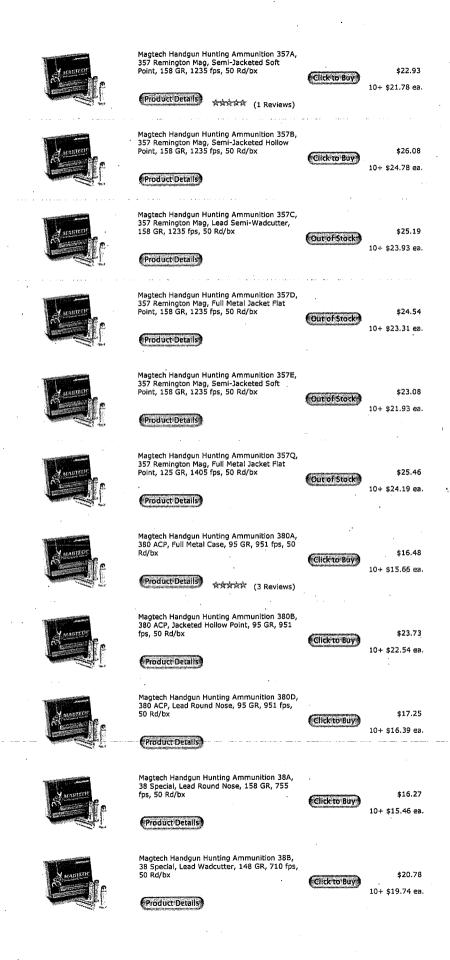
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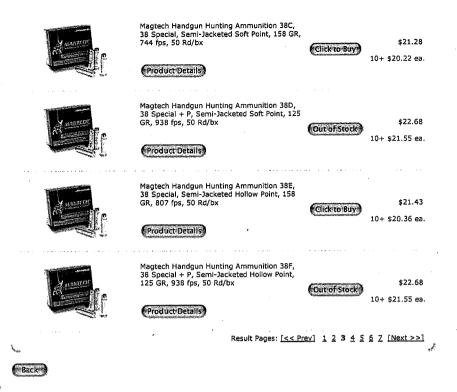
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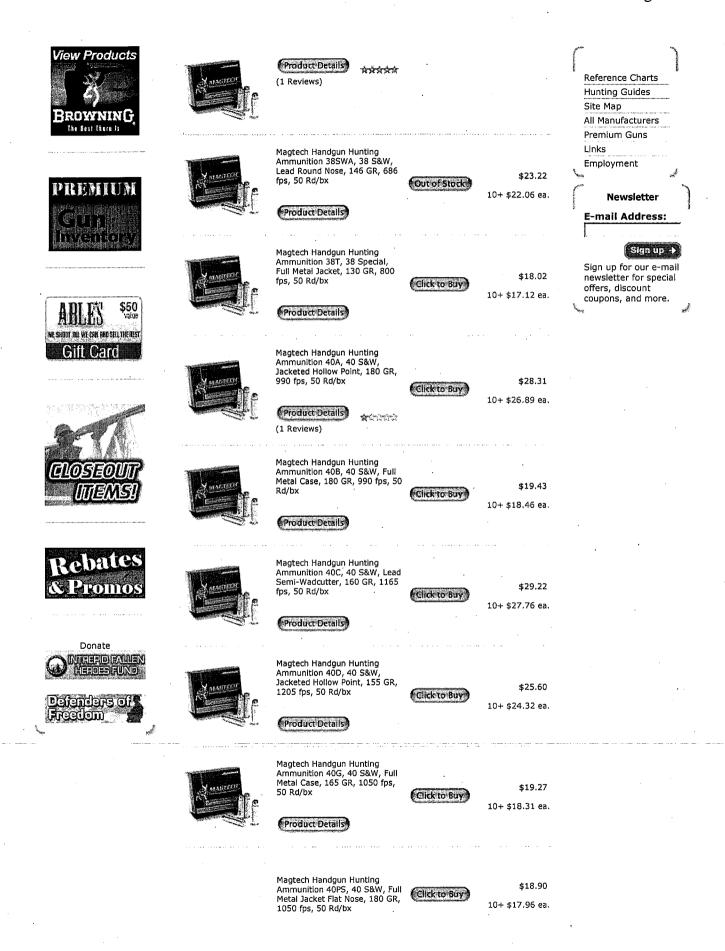
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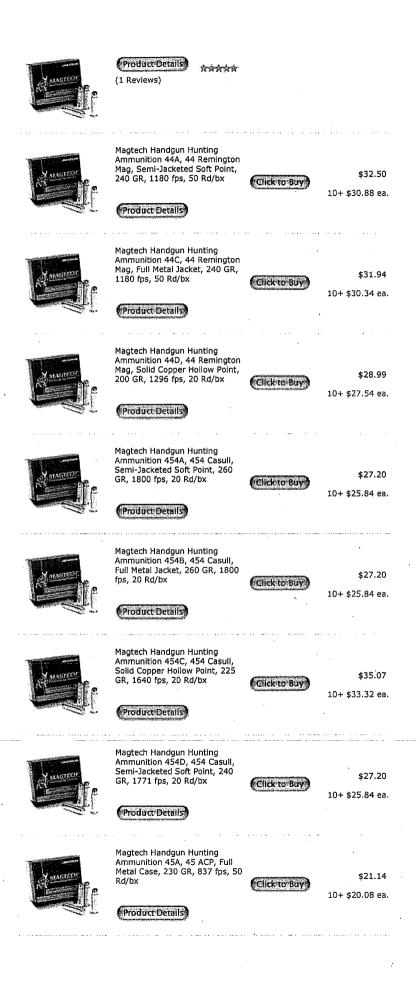
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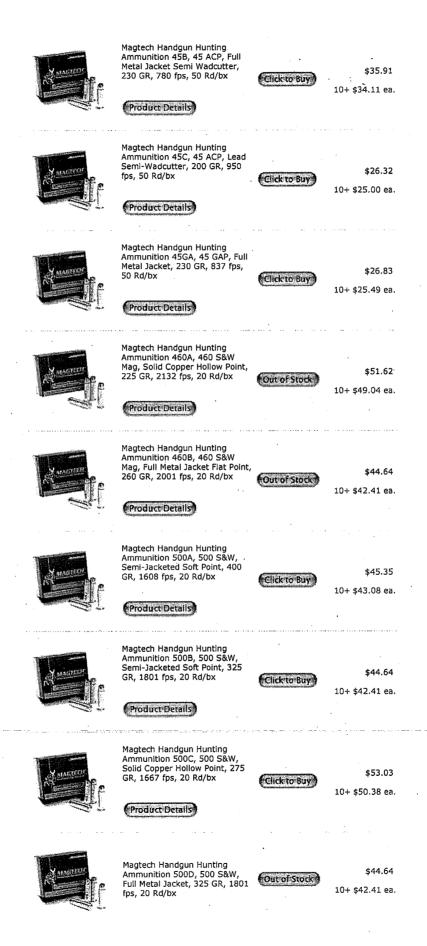
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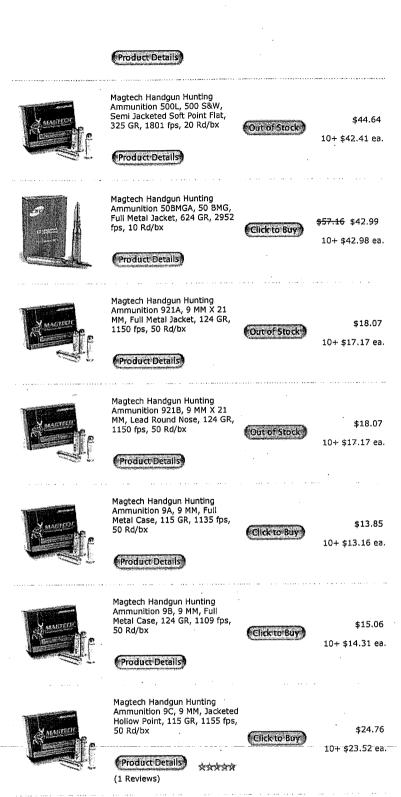
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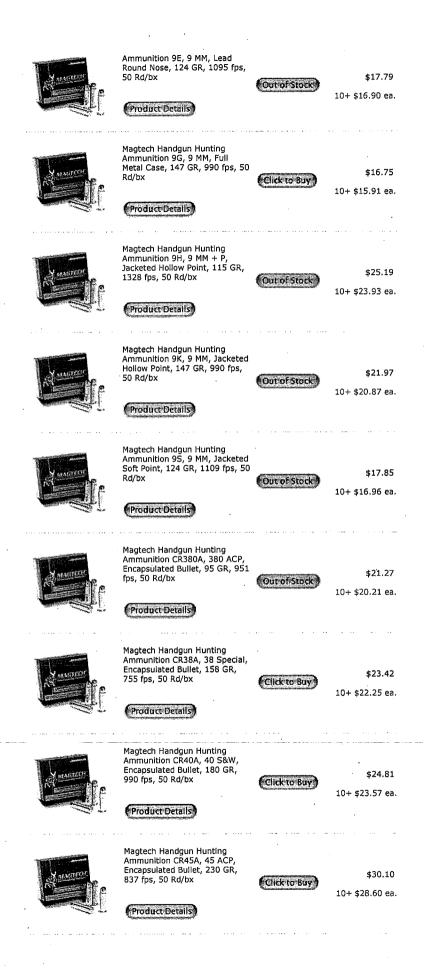
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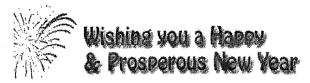
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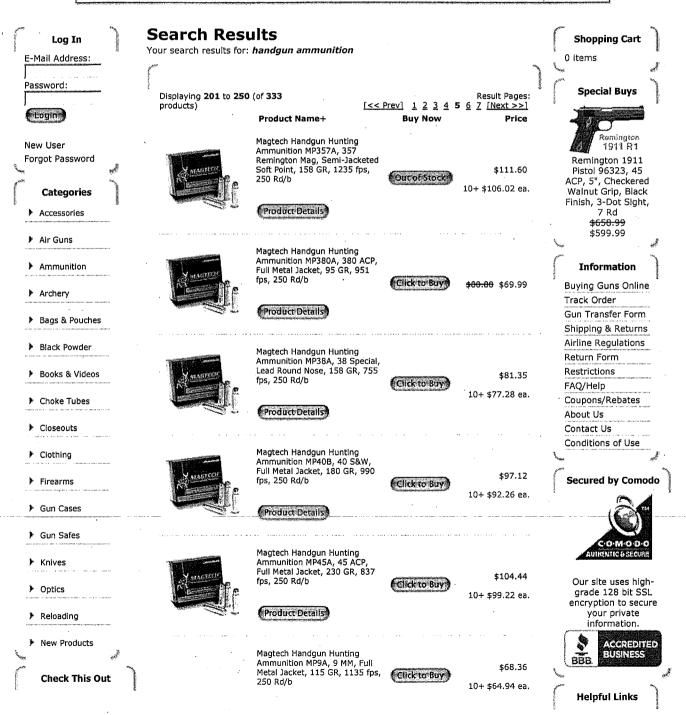
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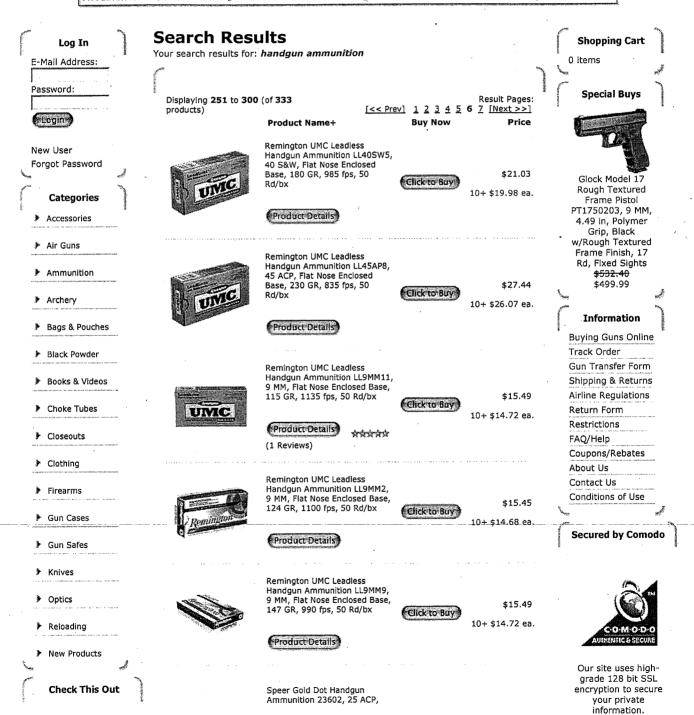
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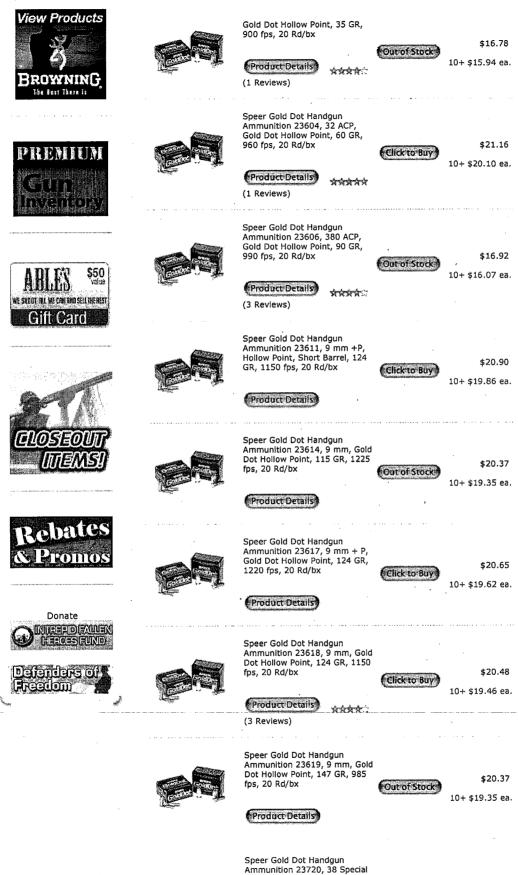
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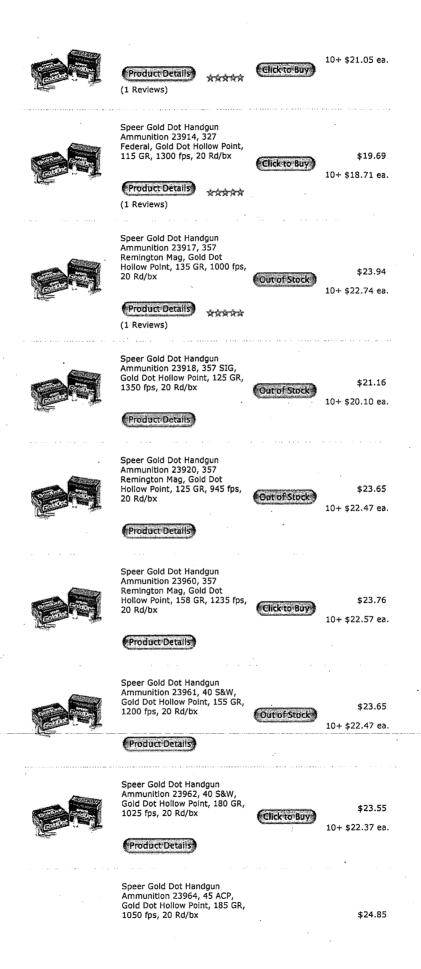
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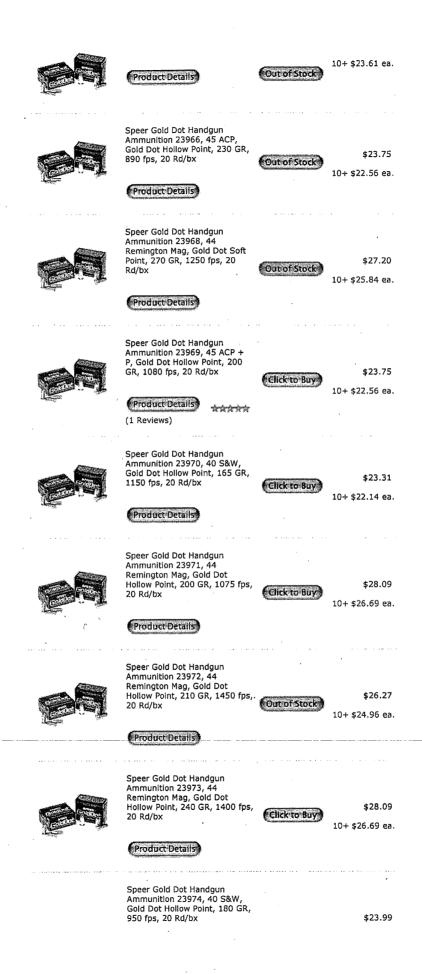
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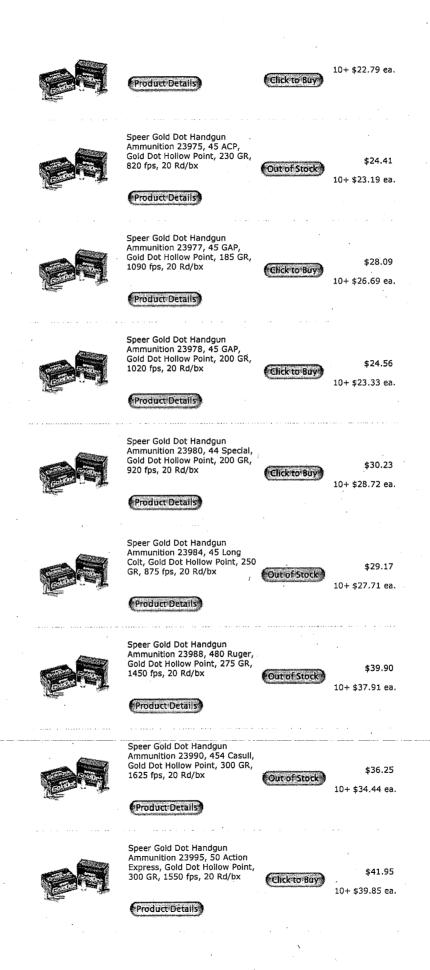
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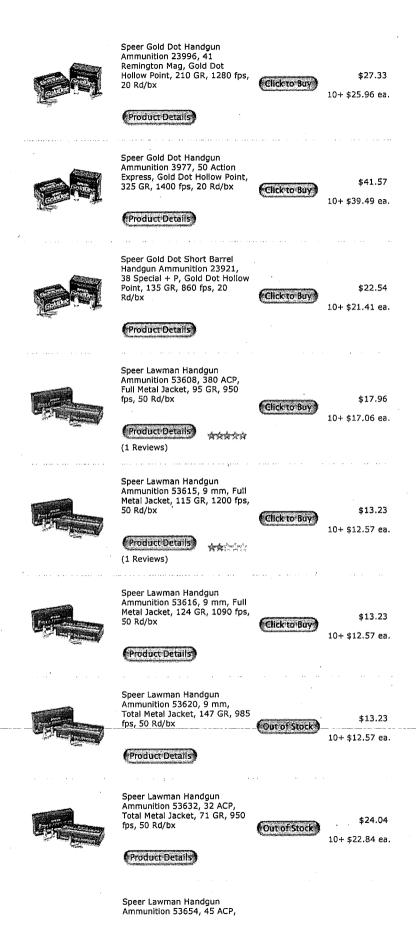
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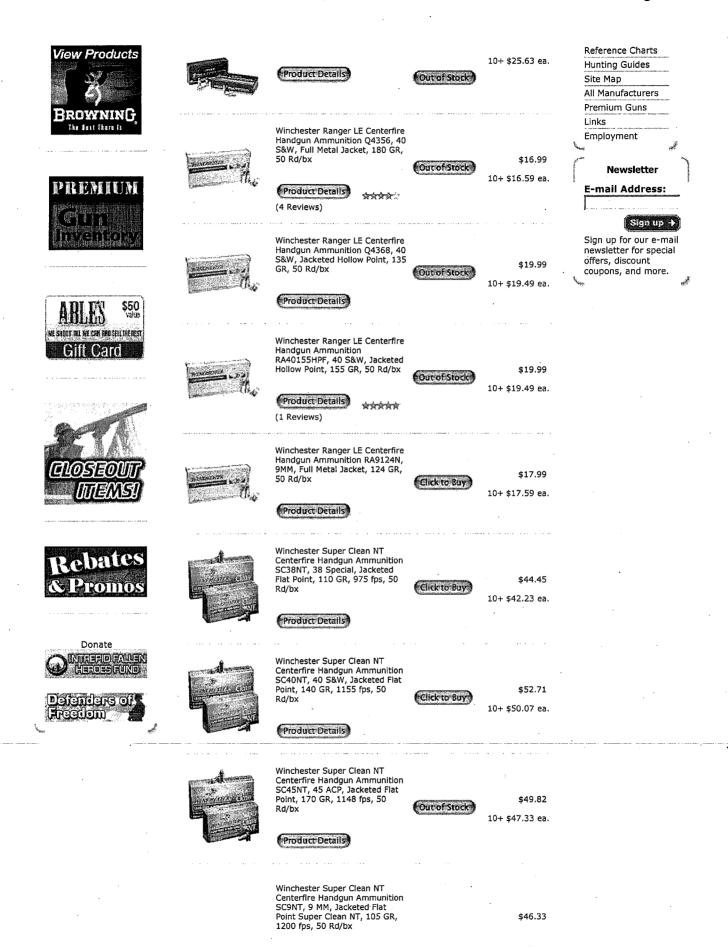
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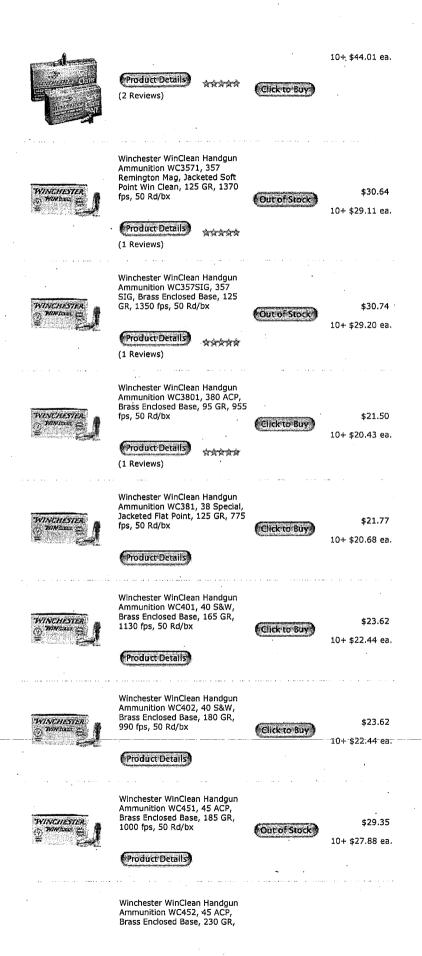
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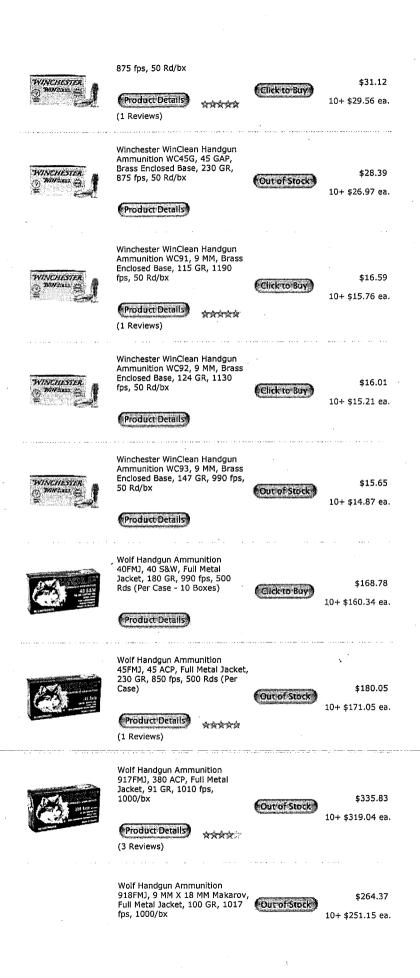
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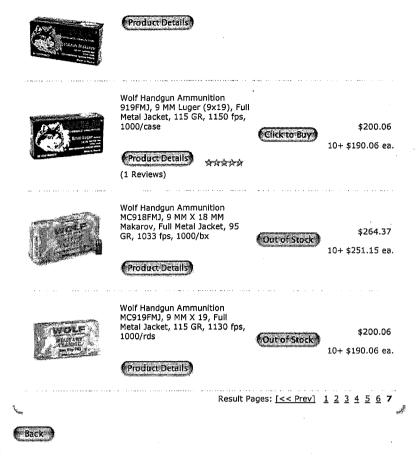
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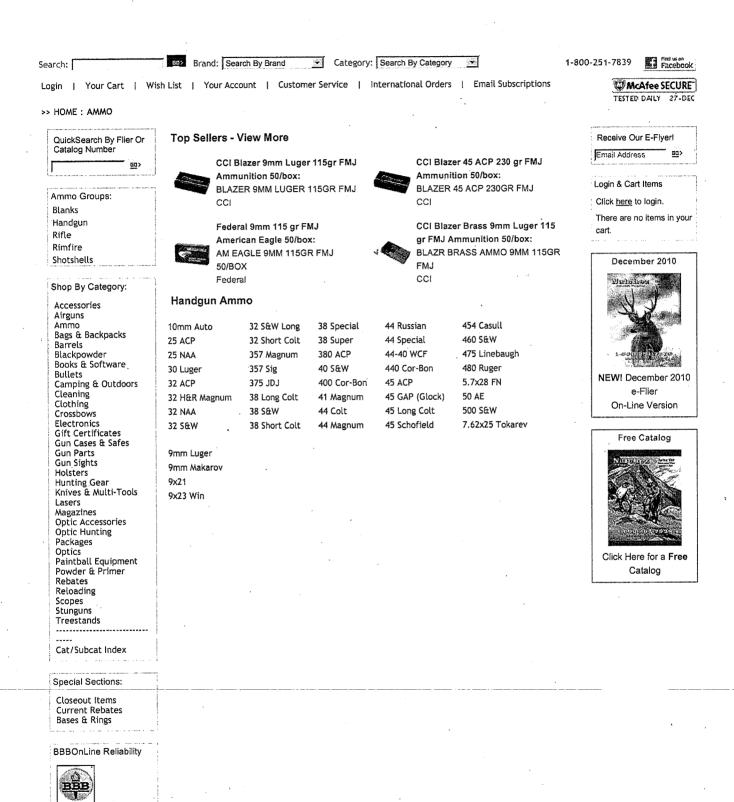








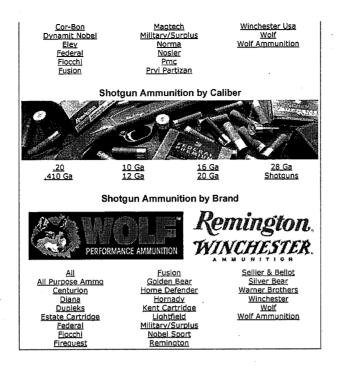
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No.: 10CECG02116

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

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

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- (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

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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

Signature

Declarant