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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF FRESNO

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

16 Plaintiffs and Petitioners,

17 vs.

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

19 Defendants and Respondents.
20
21
22

Case No. 10CECG02116

**(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**

Date: January 18, 2011

Time: 8:30 a.m.

Dept: 402

Judge: Honorable Jeffrey Hamilton

Trial Date: January 18, 2011

Action Filed: June 17, 2010

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26 Defendants the State of California, Edmund G. Brown Jr. (erroneously sued as "Jerry
27 Brown"), and the California Department of Justice (collectively, "the State") respectfully submit
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this separate statement in response to plaintiffs Sheriff Clay Parker, Herb Bauer Sporting Goods, Inc., California Rifle and Pistol Association Foundation, Able's Sporting, Inc., RTG Collectibles, LLC, and Steven Stonecipher's (collectively, "Plaintiffs") Separate Statement of Undisputed Facts, together with references to supporting evidence, in support of the State's Opposition to Plaintiffs' Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief.

ISSUE NO. 1 – PLAINTIFFS ARE ENTITLED TO JUDGMENT ON THE FIRST CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF: DUE PROCESS VAGUENESS – FACIAL – BECAUSE CALIFORNIA PENAL CODE SECTIONS 12060, 12061, AND 12318 PROVIDE NEITHER ADEQUATE NOTICE TO ORDINARY PERSONS NOR SUFFICIENT GUIDELINES TO LAW ENFORCEMENT TO PREVENT ARBITRARY AND DISCRIMINATORY ENFORCEMENT OF THE LAW

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>1. Assembly Bill 962 passed the Legislature on September 11, 2009, and was approved by Governor Schwarzenegger on October 11, 2009; it added sections 12060, 12061, and 12318 (hereafter referred to collectively as the "Challenged Provisions") to the California Penal Code.</p> <p>[Assembly Bill No. 962 and Complete Bill History (Ex.1 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief).]</p>	<p>Undisputed.</p>
<p>2. There is general confusion as to what ammunition is "principally for use in handguns."</p> <p>[Allman Declaration at 2:13, Bauer Declaration at 2:13, Giles Declaration at 2:12, Hall Declaration at 2:13, Parker Declaration at 2:14, Potterfield Declaration at 2:13, Stonecipher Declaration at 2:10, Tenny Declaration at 1:12, Wright Declaration at 2:13.]</p>	<p>Disputed.</p> <p>Objection: Vague and ambiguous as to the meaning of "general confusion." See also the State's Objections to Evidence Nos.1-37, & 80-122 objecting to the cited portions of the declarations.</p> <p>State's Compendium of Evidence, Exh. "A," B. Bauer Deposition, pp.36:18-37:3; 42:1-9; 42:19-43:2; 43:9-17; 43:18-44:2; 44:3-44:20; 49:8-49:19; Exh. "D," S. Helsley Deposition, pp. 129:12-17; 146:1-5; 155:22-156:7; 158:9-</p>

1		17; 159:24-160:1; 163:15-17; 165:2-4; 172:12-14; Exh. "E," C. Parker Deposition, pp. 49:3-16; 54:25-55:7; 55:8-14; 55:15-22; 60:9-14; 61:7-20; Exh. "F," S. Stonecipher Deposition, pp. 43:6-14; 43:18-22; 48:16-19; 52:1-24; 53:3-7; 53:11-15; 53:19-22; 54:1-5, 55:1-5; 56:23-57:1; 57:6-11.
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7	3. There is confusion among law enforcement officers as to what ammunition is "principally for use in handguns."	Disputed.
8		Objection: Conclusory; Lacks Foundation; Vague. See Objections to Evidence Nos. 2-8 and 80-86.
9	[Parker Declaration at 2:13, Allman Declaration at 2:13]	
10		Deposition of Clay Parker, pp. 44:20-23, 45:14-47:20 [testifying he has not attempted to research or determine what ammunition might qualify]; pp. 42:6-15; 42:20-43:7 [testifying that the Tehama County Sheriff's Department defers to the California Department of Justice enforcement of gun laws at gun and ammunition vendors]
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15		Declaration of Blake Graham, ¶¶ 10-17 .
16	4. Penal Code section 12060 does not rely on a list of ammunition "principally for use in handguns."	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12060 of the Penal Code provides the best evidence of its content.
17		
18	[Pen. Code, § 12060.]	
19		
20	5. Penal Code section 12061 does not rely on a list of ammunition "principally for use in handguns."	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12061 of the Penal Code provides the best evidence of its content.
21		
22	[Pen. Code, § 12061.]	
23		
24	6. Penal Code section 12318 does not rely on a list of ammunition "principally for use in handguns."	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12318 of the Penal Code provides the best evidence of its content.
25		
26	[Pen. Code, § 12318.]	
27		
28	7. Penal Code section 12323 does not rely on a list of ammunition "principally for use in	Objection: Relevance; Secondary Evidence

1	handguns.”	Rule (Evid. Code §§ 1521 & 1523. Section
2	[Pen. Code, § 12323.]	12323 of the Penal Code provides the best
3		evidence of its content.
4	8. Defendant DOJ has not promulgated	Undisputed.
5	regulations regarding the definition of	
6	“handgun ammunition” for purposes of the	
7	Challenged Provisions.	
8	[Responses to Plaintiffs’ Request for	
9	Admissions, Set One (Ex. 56 to Plaintiffs’	
10	Evidence in Support of Motion for Summary	
11	Judgment or in the Alternative Summary	
12	Adjudication / Trial Brief) at 7:22-24.]	
13		
14	9. Penal Code section 12060 does not confer	Objection: Relevance; Secondary Evidence
15	authority on the Department of Justice (“DOJ”)	Rule (Evid. Code §§ 1521 & 1523. Section
16	to create a list of ammunition “principally for	12060 of the Penal Code provides the best
17	use in handguns.”	evidence of its content.
18	[Pen. Code, § 12060.]	
19		
20	10. Penal Code section 12061 does not confer	Objection: Relevance; Secondary Evidence
21	authority on the Department of Justice (“DOJ”)	Rule (Evid. Code §§ 1521 & 1523. Section
22	to create a list of ammunition “principally for	12061 of the Penal Code provides the best
23	use in handguns.”	evidence of its content.
24	[Pen. Code, § 12061.]	
25		
26	11. Penal Code section 12318 does not confer	Objection: Relevance; Secondary Evidence
27	authority on the Department of Justice (“DOJ”)	Rule (Evid. Code §§ 1521 & 1523. Section
28	to create a list of ammunition “principally for	12318 of the Penal Code provides the best
	use in handguns.”	evidence of its content.
	[Pen. Code, § 12318.]	
	12. Penal Code section 12323 does not confer	Objection: Relevance; Secondary Evidence
	authority on the Department of Justice (“DOJ”)	Rule (Evid. Code §§ 1521 & 1523. Section
	to create a list of ammunition “principally for	12323 of the Penal Code provides the best
	use in handguns.”	evidence of its content.
	[Pen. Code, § 12323.]	
	13. Senate Bill 1276 was a failed measure	Objection: Relevance. Hearsay. Senate Bill
	introduced by Senator Hart in 1994. It	1276 has no bearing on any material fact before
	attempted to introduce provisions regulating	the Court and is not legislative history. See:
	the transfer of “handgun ammunition”	

1 2 3 4 5 6 7 8	substantially similar to those appearing in the Challenged Provisions. [Senate Bill 1276 (1994) as Amended in Senate on May 26, 1994 (Ex. H to Plaintiffs' Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at p. 4; Legislative History Report and Analysis Re: Senate Bill 1276 (Hart – 1994) (Ex. 5 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at LH009–010.]	(1) The State's Objections to Plaintiffs' Request for Judicial Notice; and (2) The State's Objections to Evidence No. 126.
9 10 11 12 13 14 15 16 17 18 19 20 21 22	14. A Bill Analysis conducted by the Senate Committee on Judiciary for Senate Bill 1276 contains a "comment" on Penal Code section 12323's definition of "handgun ammunition 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 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." [Legislative History Report and Analysis Re: Senate Bill 1276 (Hart – 1994) (Ex. 5 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at LH010.]	Objection: Relevance. Hearsay. Senate Bill 1276 has no bearing on any material fact before the Court and is not legislative history. See: (1) The State's Objections to Plaintiffs' Request for Judicial Notice; and (2) The State's Objections to Evidence No. 126.
23 24 25 26 27 28	15. Senate Bill 1276 (1994) relied on the definition of "handgun ammunition" found at Penal Code section 12323. [Senate Bill 1276 (1994) as Amended in Senate on May 26, 1994 (Ex. H to Plaintiffs' Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at p. 4.]	Objection: Relevance. Hearsay. Senate Bill 1276 has no bearing on any material fact before the Court and is not legislative history. See: (1) The State's Objections to Plaintiffs' Request for Judicial Notice; and (2) The State's Objections to Evidence No. 126.

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2	16. Defendants' expert admitted that he was	Objection: Relevance. What Mr. Graham was
3	asked to opine on what he thought should be	asked to do vis-à-vis Assembly Bill 2358 is not
4	included as "handgun ammunition" in	relevant to any material fact in this case. See:
5	Assembly Bill 2358's enumerated list of	(1) The State's Objections to Plaintiffs' Request
6	"handgun ammunition" calibers.	for Judicial Notice; and
7	[Graham Deposition Vol. One (Ex. 57 to	(2) Objections to Evidence Nos. 123-125.
8	Plaintiffs' Evidence in Support of Motion for	
9	Summary Judgment or in the Alternative	
10	Summary Adjudication / Trial Brief) at	
11	102:21-103:17]	
12	17. When asked which ammunition he thought	Objection: Relevance. What Mr. Graham was
13	should be included in AB 2358's list of	asked to do vis-à-vis Assembly Bill 2358 is not
14	"handgun ammunition," Defendants' expert	relevant to any material fact in this case. See:
15	said he remembered identifying the following:	(1) The State's Objections to Plaintiffs' Request
16	"45, .380., .25, .40, .38, .357, possibly .4.54,	for Judicial Notice; and
17	and possibly .762, and maybe .223."	(2) Objections to Evidence Nos. 123-125.
18	[Graham Deposition Vol. One (Ex. 57 to	
19	Plaintiffs' Evidence in Support of Motion for	
20	Summary Judgment or in the Alternative	
21	Summary Adjudication / Trial Brief) at	
22	103:18-104:10.]	
23	18. Counsel for Defendant DOJ has stated that	Objection: Relevance. Hearsay. See
24	Defendant DOJ will not and cannot adopt a	Objections to Evidence Nos. 127-128.
25	policy as to what ammunition constitutes	
26	"handgun ammunition" for purposes of the	
27	Challenged Provisions.	
28	[Public Records Act Request Sent to California	
	Department of Justice Re: Assembly Bill 962,	
	dated December 16, 2009 (Ex. 6 to Plaintiffs'	
	Evidence in Support of Motion for Summary	
	Judgment or in the Alternative Summary	
	Adjudication / Trial Brief); Defendant	
	Department of Justice Response to Public	
	Records Act and Relevant E-mail Enclosures,	
	dated January 25, 2010 (Ex. 7 to Plaintiffs'	
	Evidence in Support of Motion for Summary	
	Judgment or in the Alternative Summary	
	Adjudication / Trial Brief) at AM0002,	
	AM0004, AM0006, AM0013.]	
	19. On August 19, 2010, then pending	Objection: Relevance. Assembly Bill 2358 is
	Assembly Bill 2358 was amended to include in	not relevant to any material fact in this case.
	Penal Code section 12323 the following	See:

1 2 3 4 5 6 7 8 9 10 11	<p>definition of “handgun ammunition”: “any variety of ammunition in the following calibers, notwithstanding that the ammunition may also be used in some rifles: .22 <i>rimfire</i>, .25, .32, .38, .9mm, .10mm. .40, .41, .44, .45, 5.7x28mm, .223, .357, .454, .5.56x45mm, 7.62x39, 7.63mm, 7.65mm, .50.”</p> <p>[Assembly Bill No. 2358 (2010) as Amended in Senate August 19, 2010 (Ex.2 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief, Ex. F to Plaintiffs’ Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:29-8:21; Complete Bill History, A.B. No. 2358 (Ex. 4 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief).]</p>	<p>(1) The State’s Objections to Plaintiffs’ Request for Judicial Notice; and</p> <p>(2) Objections to Evidence Nos. 123-125</p>
12 13 14 15 16 17 18 19 20 21 22 23 24	<p>20. On August 30, 2010, then pending Assembly Bill 2358 was amended to include in Penal Code section 12323 the following definition of “handgun ammunition”: “any variety of ammunition in the following calibers, notwithstanding that the ammunition may also be used in some rifles: .22 <i>rimfire</i>, .25, .32, .38, .9mm, .10mm. .40, .41, .44, .45, 5.7x28mm, .357, .454, .5.56x45mm, 7.63mm, 7.65mm.”</p> <p>[Assembly Bill No. 2358 (2010) as Amended in Senate August 30, 2010 (attached as Ex. 3 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief, Ex. G to Plaintiffs’ Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 16:11-40; Complete Bill History, A.B. No. 2358 (attached as Ex.4 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief).]</p>	<p>Objection: Relevance. Assembly Bill 2358 is not relevant to any material fact in this case. See:</p> <p>(1) The State’s Objections to Plaintiffs’ Request for Judicial Notice; and</p> <p>(2) Objections to Evidence Nos. 123-125</p>
25 26 27 28	<p>21. All modern centerfire and rimfire ammunition for use in handguns or rifles consist of the same components: a metal casing that suspends a metal projectile over a charge of powder confined within the metal casing</p>	<p>Undisputed.</p>

1	and a primer (or priming charge) to ignite the	
2	powder - ("self-contained metallic	
3	ammunition").	
4	[Helsley Declaration at ¶ 20.]	
5	22. In order of their specificity, these three	Undisputed.
6	terms are used to describe a self-contained	
7	metallic cartridge: "ammunition," "caliber,"	
8	and its given "cartridge name."	
9	[Helsley Declaration at ¶ 54.]	
10	23. "Ammunition" is defined in the Glossary	Undisputed.
11	of the Association of Firearms and Tool Mark	
12	Examiners as:	
13	"One or more loaded cartridges consisting of a	
14	primed case, propellant, and with one or more	
15	projectiles. Also referred to as fixed or live	
16	ammunition."	
17	[Graham Deposition Vol. One (Ex. 57 to	
18	Plaintiffs' Evidence in Support of Motion for	
19	Summary Judgment or in the Alternative	
20	Summary Adjudication / Trial Brief) at	
21	Merged Ex. C at p. 2.]	
22	24. The definition of "caliber" depends on	Undisputed.
23	whether it is applied to a firearm or to	
24	ammunition. When applied to ammunition, the	
25	Glossary of the Association of Firearms and	
26	Tool Mark Examiners defines it as: "A	
27	numerical term, without the decimal point,	
28	included in a cartridge name to indicate the	
	nominal bullet diameter."	
	[Graham Deposition Vol. One (Ex. 57 to	
	Plaintiffs' Evidence in Support of Motion for	
	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at	
	Merged Ex. C at p. 5.]	
	25. It is a more precise description of	Objection: Relevance; Mischaracterizes the
	ammunition to identify it by its specific	witness's testimony; vague and ambiguous as to
	cartridge name because often the "caliber" in	the context where the description might be
	the cartridge's given name does not reflect the	more precise.
	actual bore or bullet diameter.	

1	[Helsley Declaration at ¶¶ 54-64.]	
2		
3	26. Within any given “caliber,” there are	Undisputed.
4	usually various “cartridges,” some of which	
5	may be used more often in a handgun, and	
6	some of which may be used more often in a	
	rifle.	
	[Helsley Declaration at ¶¶ 56-64.]	
7		
8	27. Reference to the measurement of a	Objection: Mischaracterizes the witness’s
9	projectile’s diameter (i.e., its caliber) is not a	testimony. Vague and ambiguous as to context
	particularly precise method of identifying	and the phrase “not a particularly precise
	ammunition.	method.”
10	[Helsley Declaration at ¶ 55-64.]	
11		
12	28. Virtually all calibers can be and are fired	Objection: Mischaracterizes the witness’s
13	safely through both handguns and rifles.	testimony; Conclusory; Lacks foundation;
	[Helsley Declaration at ¶ 65.]	vague. See Objections to Evidence Nos. 42-44.
14		
15	29. Virtually all cartridges can be and are fired	Objection: Mischaracterizes the witness’s
16	safely through both handguns and rifles.	testimony; Conclusory; Lacks foundation;
	[Helsley Declaration at ¶ 65.]	vague. See Objections to Evidence Nos. 42-44.
17		
18	30. Packaging for ammunition often has no	Objection: Mischaracterizes the witness’s
19	label associating its use with either a handgun	testimony; Conclusory; Lacks foundation;
	or a rifle.	vague. See Objections to Evidence Nos. 48-50.
20	[Helsley Declaration at ¶¶ 68-69.]	
21		
22	31. Packaging for ammunition does not	Objection: Mischaracterizes the witness’s
	identify whether the ammunition it contains is	testimony; Conclusory; Lacks foundation;
	“principally for use in handguns.”	vague. See Objections to Evidence Nos. 48-50.
23	[Helsley Declaration at ¶ 69.]	
24		
25	32. In those instances where ammunition	Objection: Mischaracterizes the witness’s
26	manufacturers or vendors label or market a	testimony; Conclusory; Lacks foundation;
27	particular cartridge as a “handgun cartridge,”	vague. See Objections to Evidence Nos. 48-50.
	such markings do not identify whether that	
28	cartridge, or ammunition of that caliber, is	
	actually “principally used in handguns.”	

1	[Helsley Declaration at ¶¶ 68-69.]	
2		
3	33. Experts cannot form a reliable opinion as to whether a given caliber or cartridge is intended to be or has actually been fired more than fifty percent of the time through a handgun.	Disputed. Objection: Assumes facts not in evidence; mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 45-47, 56-59.
4		
5	[Helsley Declaration at ¶¶ 66, 72-73.]	Declaration of Blake Graham, ¶¶ 10-17.
6		
7	34. There exists in the firearms industry no commonly understood delineation between "handgun ammunition" and other ammunition that indicates whether certain ammunition is actually fired or intended to be fired more often in handguns than in long-guns.	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 42-59.
8		
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10		
11	[Helsley Declaration at ¶¶ 65-70, 72-73.]	
12		
13	35. There exists in the firearms industry no commonly understood definition of "handgun ammunition" that equates with the "principally for use in handguns" language relied on by the Challenged Provisions.	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 42-52.
14		
15	[Helsley Declaration at ¶¶ 65-70.]	
16		
17	36. Defendants assert that "there is a common understanding among those individuals and businesses who might be subject to sections 12060, 12061, and 12318 of the Penal Code, as well as among those might enforce them," as to what ammunition is "used principally in pistols and revolvers."	Undisputed.
18		
19		
20		
21	[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 6:16-19, 7:8-11.]	
22		
23		
24		
25	37. Defendants identify the following ammunition as "principally for use in handguns" for purposes of the Challenged Provisions: .45, 9mm, 10mm, .40, .357, .38, .44, .380, .454, .25, and .32.	Undisputed that the State indentified these calibers of ammunition in response to Plaintiff's Special Interrogatory No. 5 after objecting to the Plaintiff's use of the phrase "types of ammunition" as vague and ambiguous.
26		
27		
28	[Responses to Specially Prepared	

1	Interrogatories, Set One (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 5:7-8, 5:21-22;	
2	Amended Response to Specially Prepared Interrogatory No. 5 (Ex. 55 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 2:24-3:2.]	
3		
4	38. Defendants assert that the ammunition they deemed "principally for use in handguns" based on their review of handgun sales records in California, written documents, ammunition vendor websites, and online encyclopedias, is "commonly understood" to be "handgun ammunition" for purposes of the Challenged Provisions.	Undisputed that these comprised some of the steps Mr. Graham took in his expert analysis, otherwise disputed.
5		Declaration of Blake Graham, ¶¶ 10-17.
6	[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:8-20; Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 118:3-11, 142:21-25.]	
7		
8	39. Additional research over time may cause Defendants' list of ammunition "principally for use in handguns" to change.	Undisputed.
9	[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 204:21-205:8; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 67:21-68:1, 116:11-18, 118:11-18 9.]	
10		
11	40. Regulations promulgated at some date in the future may cause Defendants' list of ammunition "principally for use in handguns" to change.	Undisputed.
12	[Amended Response to Specially Prepared Interrogatory No. 5 (Ex. 55 to Plaintiffs'	

1	Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 2:26-3:2.]	
2		
3	41. Defendants' expert admitted that if he had the opportunity to review sales records over a larger time frame, his opinion as to what ammunition is "principally for use in a handgun" might have changed.	Objection: Mischaracterizes the witness's testimony.
4		
5	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 118:11-18.]	
6		
7	42. Defendants' expert admits he may have left cartridges off Defendants' list of ammunition "principally for use in handguns" that [based on his understanding of "handgun ammunition"], should have been included.	Objection: Mischaracterizes the witness's testimony (which testimony is not included on Plaintiffs' Exhibit 58).
8		
9	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 69:20-70:5.]	
10		
11	43. Defendants' expert's methodology for determining what ammunition was "principally for use in handguns" was a two-step process that involved the expert looking at the records of handgun sales in California, and then reviewing websites, written materials and drawing on his personal experience.	Undisputed that these comprised some of the steps Mr. Graham took in his expert analysis, otherwise disputed.
12		Declaration of Blake Graham, ¶¶ 10-17.
13	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 63:22-64:6, 140:13-21.]	
14		
15	44. Defendants' list of calibers that constitute ammunition "principally for use in handguns" was based on the records of handgun sales in California over each of the past five years, written materials, ammunition vendor websites, and online encyclopedias."	Undisputed that these comprised some of the steps Mr. Graham took in his expert analysis, otherwise disputed.
16		Declaration of Blake Graham, ¶¶ 10-17.
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1 [Responses to Specially Prepared
2 Interrogatories (Ex. 54 to Plaintiffs' Evidence
3 in Support of Motion for Summary Judgment
4 or in the Alternative Summary Adjudication /
5 Trial Brief) at 7:14-20.]

6 45. Defendant DOJ is required to keep and
7 maintain records of handgun sales in
8 California; this record is commonly referred to
9 as the Dealer Record of Sales ("DROS") and it
10 is linked to the Automated Firearms System
11 ("AFS").

12 [Responses to Specially Prepared
13 Interrogatories, Set One (Ex. 54 to Plaintiffs'
14 Evidence in Support of Motion for Summary
15 Judgment or in the Alternative Summary
16 Adjudication / Trial Brief) at 7:14; Graham
17 Deposition Vol. One (Ex. 57 to Plaintiffs'
18 Evidence in Support of Motion for Summary
19 Judgment or in the Alternative Summary
20 Adjudication / Trial Brief) at 176:14-17, 177:7-
21 13, 190:3-6.]

22 46. Defendants and their expert witness relied
23 in part on the DROS records to determine
24 which ammunition should be included in
25 Defendants' list of ammunition they consider
26 "handgun ammunition" for purposes of the
27 Challenged Provisions.

28 [Responses to Specially Prepared
Interrogatories, Set One (Ex. 54 to Plaintiffs'
Evidence in Support of Motion for Summary
Judgment or in the Alternative Summary
Adjudication / Trial Brief) at 7:13-18; Graham
Deposition Vol. One (Ex. 57 to Plaintiffs'
Evidence in Support of Motion for Summary
Judgment or in the Alternative Summary
Adjudication / Trial Brief) at 181:14-16,
181:23-182:1; Graham Deposition Vol. Two
(Ex. 58 to Plaintiffs' Evidence in Support of
Motion for Summary Judgment or in the
Alternative Summary Adjudication / Trial
Brief) at 9:17-20.]

47. Defendants' expert's reliance on DROS
records was his "starting point." He used the
records to determine which popular handgun
calibers should be researched further to
determine if ammunition of those calibers is

Undisputed.

Undisputed.

Objection: Mischaracterizes the witness's
testimony.

Declaration of Blake Graham, ¶ 13.

1	"principally for use in handguns."	
2	[Graham Deposition Vol. Two (Ex. 58 to	
3	Plaintiffs' Evidence in Support of Motion for	
4	Summary Judgment or in the Alternative	
5	Summary Adjudication / Trial Brief) at 9:17-	
6	20, 63:22-64:6.]	
7	48. Defendants' expert admitted that certain	Objection: Mischaracterizes the witness's
8	calibers may have been omitted from	testimony.
9	Defendants' list of ammunition "principally for	Declaration of Blake Graham, ¶¶ 10-17.
10	use in handguns" because they were	
11	"unpopular."	
12	[Graham Deposition Vol. One (Ex. 57 to	
13	Plaintiffs' Evidence in Support of Motion for	
14	Summary Judgment or in the Alternative	
15	Summary Adjudication / Trial Brief) at	
16	204:21-207:9.]	
17	49. Defendants and their expert relied on	Undisputed.
18	DROS records only from the previous five	
19	years to determine the handguns most	
20	commonly sold in California over the same	
21	time period.	
22	[Responses to Specially Prepared	
23	Interrogatories, Set One (Ex. 54 to Plaintiffs'	
24	Evidence in Support of Motion for Summary	
25	Judgment or in the Alternative Summary	
26	Adjudication / Trial Brief) at 7:14-16; Graham	
27	Deposition Vol. Two (Ex. 58 to Plaintiffs'	
28	Evidence in Support of Motion for Summary	
	Judgment or in the Alternative Summary	
	Adjudication / Trial Brief) at 115:18-116:2,	
	116:17-117:6.]	
	50. Defendants' expert does not have any	Undisputed.
	information regarding what percentage of the	
	total guns in circulation are represented by the	
	records of handgun sales in the past five years.	
	[Graham Deposition Vol. Two (Ex. 58 to	
	Plaintiffs' Evidence in Support of Motion for	
	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 118:4-	
	10.]	

1 2 3 4 5 6 7 8	<p>51. The DROS records relied upon by Defendants' expert combine firearms that utilize ammunition referred to by Defendants as "handgun ammunition" and firearms that utilize ammunition referred to by Defendants as "rifle ammunition" under a single caliber listing.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 12:18-14:2.]</p>	<p>Objection: Mischaracterizes the witness' testimony.</p> <p>Declaration of Blake Graham, ¶ 13.</p>
9 10 11 12 13 14	<p>52. The DROS records relied upon by Defendants' expert are not precise in identifying the sales of handguns that use a specific cartridge.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 14:10-23.]</p>	<p>Objection: Mischaracterizes the witness' testimony.</p>
15 16 17 18 19 20 21	<p>53. The DROS system does not break down sales by guns as to every cartridge of ammunition sold and whether such ammunition is a "rifle cartridge," "handgun cartridge," or both.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 19:23-20:20.]</p>	<p>Undisputed.</p>
22 23 24 25 26 27 28	<p>54. The DROS records relied on by Defendants' expert does not contain a listing of all types of cartridges fired by a firearm of that caliber due to space limitations.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 22:11-23:9.]</p>	<p>Undisputed.</p>

1 2 3 4 5 6 7	55. Defendants' expert admitted that the DROS records relied on to inform his opinions contained categories of ammunition that could have been a mixture of what he considers "handgun ammunition" and "rifle ammunition." [Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 91:18-92:6.]	Objection: Mischaracterizes the witness' testimony.
8 9 10 11 12 13	56. The DROS records relied on by Defendants' expert include a number of entries in calibers Defendants' expert considers "common rifle caliber rounds." [Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 189:10-192:18.]	Objection: Mischaracterizes the witness' testimony. Testimony also subject to objections made during the deposition concerning speculation and vagueness.
14 15 16 17 18 19	57. There is no record of total rifle sales in California in existence because Defendant DOJ is prohibited from retaining records on the sale of long-guns. [Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 183:19-184:15.]	Undisputed.
20 21 22 23 24 25 26	58. Defendants' expert did not determine the total number of rifle sales in California as compared with the total number of handgun sales to inform his opinion as to whether a particular ammunition was principally used in a handgun. [Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:17-24.]	Disputed. Objection: Mischaracterizes the witness' testimony. Declaration of Blake Graham, ¶¶ 15-17.
27 28	59. Defendants' expert was unable to compare	Undisputed.

1 the sales of handguns using a particular
2 ammunition with rifle sales that use the same
3 ammunition because he is admittedly unaware
4 of any source of data regarding rifle sales.

5 [Graham Deposition Vol. Two (Ex. 58 to
6 Plaintiffs' Evidence in Support of Motion for
7 Summary Judgment or in the Alternative
8 Summary Adjudication / Trial Brief) at 93:6-
9 24.]

10 60. Defendants' expert admits his opinion as
11 to which ammunition is "principally for use in
12 handguns" may have been different had he
13 been able to compare handgun sales with rifle
14 sales.

15 [Graham Deposition Vol. Two (Ex. 58 to
16 Plaintiffs' Evidence in Support of Motion for
17 Summary Judgment or in the Alternative
18 Summary Adjudication / Trial Brief) at 95:13-
19 20.]

Objection: Mischaracterizes the witness's
testimony which merely says it may have been
helpful to have that data.

See also Declaration of Blake Graham, ¶¶ 15-
17.

20 61. Defendants relied in part on the
21 representations made by ammunition vendors
22 on their websites to determine whether certain
23 ammunition should be included in Defendants'
24 list of ammunition they consider "handgun
25 ammunition" for purposes of the Challenged
26 Provisions.

27 [Responses to Specially Prepared
28 Interrogatories, Set One (Ex. 54 to Plaintiffs'
Evidence in Support of Motion for Summary
Judgment or in the Alternative Summary
Adjudication / Trial Brief) at 7:18-20.]

Undisputed.

62. Defendants' expert relied in part on the
fact that ammunition vendor websites listed
certain cartridges as "handgun ammunition" to
inform his opinion as to whether specific
ammunition was "principally for use in
handguns."

[Graham Deposition Vol. Two (Ex. 58 to
Plaintiffs' Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 44:1-
14, 64:17-65:6.]

Undisputed.

<p>63. Defendants' expert testified that the fact that certain websites refer to some ammunition as "handgun cartridges" helped establish the DOJ's list of calibers "principally for use in handgun."</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:5-95:13, 160:19-23, 166:21-167:6.]</p>	<p>Objection: Mischaracterizes the witness's testimony.</p> <p>Declaration of Blake Graham, ¶¶ 10-17.</p>
<p>64. The four vendor websites that Defendants' expert relied to inform his opinion as to whether specific ammunition was "principally for use in handguns" include: Cabela's, Cheaper Than Dirt, Inc., J & G Sales, and Midway USA.</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:5-20, 148:23-149:4; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 37:8-13, 40:11-15, 43:4-10.]</p>	<p>Objection: Mischaracterizes the witness's testimony.</p> <p>Declaration of Blake Graham, ¶¶ 10-17.</p>
<p>65. In forming his opinion regarding whether ammunition was principally used in handguns, Defendants' expert gave some weight to whether the website listed the ammunition as "popular."</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 65:9-16.]</p>	<p>Objection: Mischaracterizes the witness's testimony.</p>
<p>66. Defendants' expert did not contact the relied-upon website vendors or do any investigation as to what criteria the websites relied upon to characterize the ammunition as "popular" or what the websites' characterization meant.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to</p>	<p>Undisputed.</p>

1	Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 44:15-46:3.]	
2		
3		
4	67. Defendants' expert admitted there is a difference between "popular" ammunition for a handgun and ammunition that is "principally for use in a handgun."	Objection: Mischaracterizes the witness's testimony.
5		
6		
7	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 102:6-104:3.]	
8		
9		
10	68. None of the relied-upon website vendors provided Defendants' expert with data regarding the total rounds of each type of ammunition sold.	Undisputed.
11		
12		
13	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 46:4-16.]	
14		
15		
16	69. The websites Defendants' expert relied upon to inform his opinions as to which ammunition is "principally for use in handguns" list as "handgun ammunition" ammunition that Defendants' expert does not consider to be principally used in handguns.	Undisputed.
17		
18		
19		
20	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 62:25-63:21.]	
21		
22		
23	70. Defendants' expert's decision to exclude certain ammunition listed as "handgun ammunition" on the vendor websites he relied upon to inform his opinions as to which ammunition is "principally for use in handguns" was based on his experience in observing the use of that ammunition in the field.	Objection: Mischaracterizes the witness's testimony.
24		
25		
26		
27		
28		

1	Graham Deposition Vol. Two (Ex. 58 to	
2	Plaintiffs' Evidence in Support of Motion for	
3	Summary Judgment or in the Alternative	
4	Summary Adjudication / Trial Brief) at 66:15-	
5	67:9.]	
6	71. Michael Tenny, the party responsible for	Objection: Relevance; Conclusory; Lacks
7	ensuring compliance with all applicable laws in	Foundation. See Objections to Evidence Nos.
8	the locations from and to which Cheaper Than	105-113 & 133.
9	Dirt, Inc., ships ammunition, does not know	
10	what ammunition is "handgun ammunition"	
11	and thus subject to the Challenged Provisions.	
12	[Tenny Declaration at 1:6-11.]	
13	72. Larry Potterfield, the party responsible for	Objection: Relevance; Conclusory; Lacks
14	ensuring compliance with all applicable laws in	Foundation. See Objections to Evidence Nos.
15	the locations from and to which Midway Arms,	87-95 & 132.
16	Inc.(dba Midway USA), ships ammunition,	
17	does not know what ammunition is "handgun	
18	ammunition" and thus subject to the	
19	Challenged Provisions.	
20	[Potterfield Declaration at 2:3-12.]	
21	73. Brian Hall, the party responsible for	Objection: Relevance; Conclusory; Lacks
22	ensuring compliance with all applicable laws in	Foundation. See Objections to Evidence Nos.
23	the locations from and to which Chattanooga	27-37.
24	Shooting Supplies, Inc. (dba Natchez Shooters	
25	Supplies), ships ammunition, does not know	
26	what ammunition is "handgun ammunition"	
27	and thus subject to the Challenged Provisions.	
28	[Hall Declaration at 2:3-12.]	
	74. Michael Tenny, the party responsible for	Objection: Relevance; Conclusory; Lacks
	ensuring compliance with all applicable laws in	Foundation. See Objections to Evidence Nos.
	the locations from and to which Cheaper Than	105-113 & 133.
	Dirt, Inc., ships ammunition, does not know	
	what ammunition is "principally for use in a	
	handgun" and is unaware of any source to	
	which he can look to determine what	
	ammunition suitable for use in both handguns	
	and rifles is "principally for use in a handgun."	
	[Tenny Declaration at 1:12-14.]	
	75. Larry Potterfield, the party responsible for	Objection: Relevance; Conclusory; Lacks

1 2 3 4 5 6	ensuring compliance with all applicable laws in the locations from and to which Midway Arms, Inc.(dba Midway USA), ships ammunition, does not know what ammunition is “principally for use in a handgun” and is unaware of any source to which he can look to determine what ammunition suitable for use in both handguns and rifles is “principally for use in a handgun.” [Potterfield Declaration at 2:13-15.]	Foundation. See Objections to Evidence Nos. 87-95 & 132.
7 8 9 10 11 12 13	76. Brian Hall, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Chattanooga Shooting Supplies, Inc. (dba Natchez Shooters Supplies), ships ammunition, does not know what ammunition is “principally for use in a handgun” and is unaware of any source to which he can look to determine what ammunition suitable for use in both handguns and rifles is “principally for use in a handgun.” [Hall Declaration at 2:13-15.]	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 27-37.
14 15 16 17 18 19 20 21 22	77. Michael Tenny, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Cheaper Than Dirt, Inc., ships ammunition, does not know what ammunition is exempt from the Challenged Provisions as ammunition that is “designed and intended to be used in antique firearms” manufactured before 1898, because many cartridges of ammunition used in firearms manufactured before 1898 are also used in firearms manufactured after 1898, including cartridges sold by Cheaper Than Dirt, Inc. [Tenny Declaration at 1:15-19.]	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 105-113 & 133.
23 24 25 26 27 28	78. Larry Potterfield, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Midway Arms, Inc.(dba Midway USA), ships ammunition, does not know what ammunition is exempt from the Challenged Provisions as ammunition that is “designed and intended to be used in antique firearms” manufactured before 1898, because many cartridges of ammunition used in firearms manufactured before 1898 are also	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 87-95 & 132.

1 used in firearms manufactured after 1898,
2 including cartridges sold by Midway Arms,
Inc.(dba Midway USA).

3 [Potterfield Declaration at 2:16-20.]

4
5 79. Brian Hall, the party responsible for
6 ensuring compliance with all applicable laws in
7 the locations from and to which Chattanooga
8 Shooting Supplies, Inc. (dba Natchez Shooters
9 Supplies), ships ammunition, does not know
10 what ammunition is exempt from the
11 Challenged Provisions as ammunition that is
12 “designed and intended to be used in antique
13 firearms” manufactured before 1898, because
14 many cartridges of ammunition used in
15 firearms manufactured before 1898 are also
16 used in firearms manufactured after 1898,
17 including cartridges sold by Chattanooga
18 Shooting Supplies, Inc. (dba Natchez Shooters
19 Supplies).

20 [Hall Declaration at 2:16-20.]

Objection: Relevance; Conclusory; Lacks
Foundation. See Objections to Evidence Nos.
27-37.

21 80. Cheaper Than Dirt, Inc., has announced
22 that it will cease shipping all ammunition to
23 non-exempt California customers beginning
24 January 1, 2011, to avoid risking criminal
25 prosecution under Penal Code section 12328.

26 [Tenny Declaration at 2:1-8.]

Objection: Relevance; Conclusory; Lacks
Foundation. See Objections to Evidence Nos.
105-113 & 133.

27 81. Midway Arms, Inc.(dba Midway USA),
28 has announced that it will cease shipping all
ammunition to non-exempt California
customers beginning January 1, 2011, to avoid
risking criminal prosecution under Penal Code
section 12318.

[Potterfield Declaration at 3:1-9.]

Objection: Relevance; Conclusory; Lacks
Foundation. See Objections to Evidence Nos.
87-95 & 132.

82. It is the current intent of Chattanooga
Shooting Supplies, Inc. (dba Natchez Shooters
Supplies), to cease shipping all ammunition
that is suitable for use in both handguns and
long-guns to non-exempt California customers
beginning February 1, 2011, to avoid risking
criminal prosecution under Penal Code section
12318.

Objection: Relevance; Conclusory; Lacks
Foundation. See Objections to Evidence Nos.
27-37.

1	[Hall Declaration at 3:1-6.]	
2		
3	83. Defendants' expert knows of no specific	Undisputed
4	trade magazine articles that he used to inform	
5	his opinion regarding which ammunition is	
6	"principally for use in handguns."	
7	[Graham Deposition Vol. Two (Ex. 58 to	Undisputed.
8	Plaintiffs' Evidence in Support of Motion for	
9	Summary Judgment or in the Alternative	
10	Summary Adjudication / Trial Brief) at 34:8-	
11	35:14.]	Undisputed.
12	84. Defendants' expert did not use any trade	
13	magazine articles regarding the amount of	
14	particular ammunition sold.	
15	[Graham Deposition Vol. Two (Ex. 58 to	Undisputed.
16	Plaintiffs' Evidence in Support of Motion for	
17	Summary Judgment or in the Alternative	
18	Summary Adjudication / Trial Brief) at 35:15-	
19	36:13.]	Undisputed.
20	85. Defendants' expert's use of trade	
21	magazines to inform his opinion regarding	
22	ammunition "principally for use in handguns"	
23	is based solely upon his reading of trade	Undisputed.
24	magazines over the years, with no specific	
25	reference to a particular article or data from	
26	those trade magazines on the subject.	
27	[Graham Deposition Vol. Two (Ex. 58 to	Undisputed, subject to objections in the
28	Plaintiffs' Evidence in Support of Motion for	
	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 35:15-	
	36:13, 36:14-37:6]	Undisputed, subject to objections in the
	86. The DOJ's expert testified that he pulled	
	from his personal and professional experiences	
	to determine what ammunition should be	
	considered "handgun ammunition" under the	Undisputed, subject to objections in the
	Challenged Provisions.	
	[Graham Deposition Vol. One (Ex. 57 to	
	Plaintiffs' Evidence in Support of Motion for	
	Summary Judgment or in the Alternative	Undisputed, subject to objections in the
	Summary Adjudication / Trial Brief) at 81:24-	
	82:4, 91:1-4, 186:17-24; Graham Deposition	

1	Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 24:8-18, 28:4-29:2, 64:1-6, 72:25-73:10.]	
2		
3		
4	87. Defendants' expert concluded that, based on his training and experience over the last sixteen years or so, when added to experience with handguns and other factors, he " <i>has a feeling</i> that there are certain calibers that are more often than not handgun calibers."	Disputed. Objection: Mischaracterizes the witness's testimony. Declaration of Blake Graham, ¶¶ 10-17.
5		
6		
7		
8	[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 81:24-82:4, 206:22-207:2.]	
9		
10		
11		
12	88. Defendants' expert's opinion regarding ammunition "principally for use in handguns" was not informed by information regarding the amounts and types of ammunition used by the military.	Undisputed.
13		
14		
15	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 109:14-18.]	
16		
17		
18		
19	89. Defendants' expert's opinion regarding ammunition "principally for use in handguns" was not informed by specific information regarding the number of handguns and/or rifles used by military service members stationed in California.	Undisputed.
20		
21		
22	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 109:8-13, 110:8-111:10.]	
23		
24		
25		
26	90. Defendants' expert's opinion regarding ammunition "principally for use in handguns" was not informed by research studies regarding popular or prevalently used ammunition.	Objection: Mischaracterizes the witness's testimony. Evidence cited bears no relation to facts asserted.
27		
28		

1	[Graham Deposition Vol. Two (Ex. 58 to	
2	Plaintiffs' Evidence in Support of Motion for	
3	Summary Judgment or in the Alternative	
4	Summary Adjudication / Trial Brief) at	
5	118:19-24.]	
6	91. Defendants' expert's opinion regarding	Undisputed subject to the objections raised
7	ammunition "principally for use in handguns"	
8	was not informed by existing polls regarding	
9	the ammunition generally or the popularity of	during the cited portion of the deposition.
10	certain cartridges.	
11	[Graham Deposition Vol. Two (Ex. 58 to	
12	Plaintiffs' Evidence in Support of Motion for	
13	Summary Judgment or in the Alternative	
14	Summary Adjudication / Trial Brief) at	
15	119:20-120:8.]	
16	92. Prior to forming his opinion as to	Undisputed subject to vagueness objections
17	ammunition prevalently used in handguns,	
18	Defendants' expert did not personally conduct	
19	any polls regarding the ammunition members	raised during the cited portion of the deposition.
20	of the general public use in their handguns.	
21	[Graham Deposition Vol. Two (Ex. 58 to	
22	Plaintiffs' Evidence in Support of Motion for	
23	Summary Judgment or in the Alternative	
24	Summary Adjudication / Trial Brief) at 120:9-	
25	16.]	
26	93. Defendants assert that the ammunition	Undisputed.
27	they have identified as "principally for use in	
28	handguns" is supported in part by the fact that	
29	those calibers are identified as "handgun	
30	ammunition" in <i>Cartridges of the World</i> .	
31	[Responses to Specially Prepared	
32	Interrogatories, Set One (Ex. 54 to Plaintiffs'	
33	Evidence in Support of Motion for Summary	
34	Judgment or in the Alternative Summary	
35	Adjudication / Trial Brief) at 7:18-21.]	
36	94. In its sections on rifle cartridges,	Objection: This "fact" is vague and
37	<i>Cartridges of the World</i> identifies multiple	
38	cartridges in the calibers included in	
39	Defendants' list of ammunition "principally for	ambiguous. It also is unclear to which portions
40	use in handguns."	
41	[Barnes, <i>Cartridges of the World: A Complete</i>	

1	and Illustrated Reference for Over 1500	
2	Cartridges (11th ed. 2006) "Selected Pages	
3	from Chapter 2: Current American Rifle	
4	Cartridges and Chapter 3: Obsolete Rifle	
5	Cartridges " (Ex. 52 Plaintiffs' Evidence in	
6	Support of Motion for Summary Judgment or	
7	in the Alternative Summary Adjudication /	
8	Trial Brief) <i>passim</i> .]	
9		
10	95. In its sections on handgun cartridges,	Undisputed.
11	<i>Cartridges of the World</i> identifies multiple	
12	cartridges in calibers not included in	
13	Defendants' list of ammunition "principally for	
14	use in handguns."	
15		
16	[Barnes, Cartridges of the World: A Complete	
17	and Illustrated Reference for Over 1500	
18	Cartridges (11th ed. 2006) "Selected Pages	
19	from Chapter 6: Handgun Cartridges of the	
20	World " (Ex. 53 to Plaintiffs' Evidence in	
21	Support of Motion for Summary Judgment or	
22	in the Alternative Summary Adjudication /	
23	Trial Brief) <i>passim</i> .]	
24		
25	96. Defendants' expert admitted there are	Undisputed subject to the objections raised
26	many ammunition cartridges that fall within	during the cited portions of the deposition.
27	the listed caliber classes that are not	
28	"principally for use in a handgun."	
29		
30	[Graham Deposition Vol. One (Ex. 57 to	
31	Plaintiffs' Evidence in Support of Motion for	
32	Summary Judgment or in the Alternative	
33	Summary Adjudication / Trial Brief) at 135:7-	
34	136:5, 137:8-22, 154:25-155:3, 155:21-156:2.]	
35		
36	97. Defendants have suggested that the	Undisputed subject to the objections raised
37	Challenged Provisions apply to ammunition	during the cited portions of the deposition. See
38	that is "used principally" in handguns.	also Graham Deposition transcript, Plaintiffs'
39		Ex.54, p. 5:18 – 20.
40	[Responses to Specially Prepared	
41	Interrogatories, Set One (Ex. 54 to Plaintiffs'	
42	Evidence in Support of Motion for Summary	
43	Judgment or in the Alternative Summary	
44	Adjudication / Trial Brief) at 7:8-11.]	
45		
46	98. Defendants' expert suggested that the	Disputed.
47	"principally for use in handguns" language	
48	relates to the total number of handguns in	
49	circulation that are chambered in a particular	Objection: Mischaracterizes the witness's
50		testimony.

1 2 3 4 5	caliber versus the total number of rifles in circulation that are chambered in the same caliber. [Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 83:1-16.]	Declaration of Blake Graham, ¶¶ 10-17.
6 7 8 9 10 11 12 13	99. Defendants' expert suggested that the "principally for use in handguns" language relates to a mix of factors, including "the number of manufacturers that may have produced a weapon in a particular caliber," "the length of time that a particular gun has been available in a particular caliber," and the number of rifles in that caliber, if any. [Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 127:5-128:25.]	Disputed. Objection: Mischaracterizes the witness's testimony. Declaration of Blake Graham, ¶¶ 10-17.
14 15 16 17 18 19 20 21 22 23 24 25 26	100. When asked whether the "principally for use in a handgun" standard required a consideration of whether any particular ammunition was fired more often through a handgun than a long-gun, Defendants' expert responded: "I would say [its] not much of a factor because principally for use really deals with the kind of firearm its going to go into, in my – in my est-- in my understanding, so if you have one weapon that can shoot a million rounds a second and then you have 500,000 rounds – or handguns out there that shoot ten rounds a minute, that weapon is actually – or the ammunition is principally for use in the larger pool of – of weapons." [Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 83:1-16.]	Undisputed subject to the objections raised during the cited portion of the deposition.
27 28	101. When asked to clarify whether he would consider the numerosity of total weapons or the	Undisputed subject to the objections raised

1 2 3 4 5 6 7 8 9 10	<p>numerosity of models of weapons to be the determining factor determining whether certain ammunition is “principally for use in handguns,” Defendants’ expert stated:</p> <p>“Given the available information in the amount of time I had, I tried to compare the number of manufacturers that may have produced a weapon in a particular caliber, the number of models that each manufacturer used in that caliber, and then, perhaps, the length of time that a particular gun has been available in a particular caliber.”</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 128:8-25.]</p>	<p>during the cited portion of the deposition. See generally Graham Deposition transcript.</p>
11 12 13 14 15 16	<p>102. Firearms chambered in .22 are among the most popular weapons, as to both handguns and rifles.</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 185:21-186:5; Helsley Declaration at ¶¶ 29, 33.]</p>	<p>Undisputed.</p> <p>Objection: Relevance. The State has not identified .22 caliber ammunition as handgun ammunition within the meaning of the Challenged Definition.</p>
17 18 19 20	<p>103. .22 Long Rifle is likely the most popular firearm cartridge in the world.</p> <p>[Helsley Declaration at ¶ 33.]</p>	<p>Undisputed.</p> <p>Objection: Relevance. The State has not identified .22 caliber ammunition as handgun ammunition within the meaning of the Challenged Definition.</p>
21 22 23 24 25 26 27 28	<p>104. In December 2009, when Plaintiffs’ counsel inquired as to whether “.22 rimfire” ammunition would be considered “handgun ammunition” under the Challenged Provisions, Counsel for Defendant DOJ stated that she did not know.</p> <p>[Public Records Act Request Sent to California Department of Justice Re: Assembly Bill 962, dated December 16, 2009 (Ex. 6 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief); Defendant Department of Justice Response to Public</p>	<p>Objection: Relevance; Hearsay. See Objections to Evidence Nos. 127-128. The State has not identified .22 caliber ammunition as handgun ammunition within the meaning of the Challenged Definition.</p>

1 Records Act and Relevant E-mail Enclosures,
2 dated January 25, 2010 (Ex. 7 to Plaintiffs'
3 Evidence in Support of Motion for Summary
4 Judgment or in the Alternative Summary
5 Adjudication / Trial Brief) at AM0002,
6 AM0004, AM0006, AM0013.]

5 105. Defendants' expert suggests that, at this
6 time, .22 caliber is not "principally for use in
7 handguns," but that his opinion could change
8 based on future research.

8 [Graham Deposition Vol. One (Ex. 57 to
9 Plaintiffs' Evidence in Support of Motion for
10 Summary Judgment or in the Alternative
11 Summary Adjudication / Trial Brief) at
12 186:25-187:17.]

Undisputed.

12 106. Defendants expert stated he would only
13 classify three .45 caliber cartridges to be
14 "principally for use in a handgun": .45 ACP,
15 .45 GAP, and .45 Long Colt.

14 [Graham Deposition Vol. One (Ex. 57 to
15 Plaintiffs' Evidence in Support of Motion for
16 Summary Judgment or in the Alternative
17 Summary Adjudication / Trial Brief) at
18 153:13-18.]

Undisputed.

18 107. *Cartridges of the World* includes
19 numerous .45 cartridges in its section on
20 handgun cartridges besides the .45 ACP, .45
21 GAP, and .45 Long Colt.

20 [Barnes, *Cartridges of the World: A Complete*
21 *and Illustrated Reference for Over 1500*
22 *Cartridges* (11th ed. 2006) "Selected Pages
23 from Chapter 6: Handgun Cartridges of the
24 World" (Ex. 53 Plaintiffs' Evidence in
25 Support of Motion for Summary Judgment or
26 in the Alternative Summary Adjudication /
27 Trial Brief) *passim*.]

Undisputed.

25 108. There are multiple cartridges that can be
26 used in firearms manufactured both before and
27 after 1898, including but not limited to,
28 cartridges in the following calibers: 22, .32,
.38, .44, .45, and .50.

Undisputed.

1	[Helsley Declaration at ¶¶ 20-25.]	
2		
3	109. Ammunition that can be used in a	Objection: Mischaracterizes the witness's testimony.
4	modern firearm chambered to fire that	
5	cartridge can also be used in an antique firearm	
6	chambered to fire that same cartridge.	
7	[Helsley Declaration at ¶¶ 20-25.]	
8		
9	110. Ammunition, when it is manufactured, is	Objection: Mischaracterizes the witness's testimony.
10	designed and intended to be used in any	
11	firearm that is chambered for that cartridge,	
12	regardless of when the firearm it will be used	
13	in was manufactured.	
14	[Helsley Declaration at ¶¶ 20-25.]	
15		
16	111. The calibers Defendants claim to be	Undisputed, subject to vagueness objections raised in response to Plaintiffs' special interrogatories.
17	"handgun ammunition" include cartridges that	
18	are designed and intended to be used in	
19	"antique firearms," and thus should be exempt	
20	from the Challenged Provisions.	
21	[Helsley Declaration at ¶23.]	
22		
23	112. Defendants' expert witness testified that	Undisputed.
24	.45 Long Colt is unequivocally "handgun	
25	ammunition" under the Challenged Provisions.	
26	[Graham Deposition Vol. One (Ex. 57 to	
27	Plaintiffs' Evidence in Support of Motion for	
28	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at	
	153:13-18.]	
	113. 45 Long Colt is used in firearms	Undisputed.
	manufactured prior to 1898.	
	[Helsley Decl. at ¶ 23.]	
	114. <i>State of Tennessee ex rel. Rayburn v. Cooper</i> , involved a challenge to a state law	Objection: Relevance. Hearsay. The <i>Rayburn</i> case has no bearing on any material fact before the Court, is not precedent, and is hearsay.
	authorizing firearms to be carried by patrons in	
	establishments where "the serving of meals" is	
	the " <i>principle</i> business conducted" – as	

<p>1 vague because there were obvious instances</p> <p>2 where a patron could determine whether a</p> <p>3 particular establishment was a “restaurant,”</p> <p>pointing to establishments that only serve food</p> <p>– and no alcohol.</p> <p>4 [Consolidated Memorandum of Law of</p> <p>5 Defendant Attorney General Cooper in</p> <p>6 Opposition to Plaintiffs’ Motions for Partial</p> <p>7 Summary Judgment and in Support of</p> <p>8 Defendant’s Cross-Motion for Judgment on the</p> <p>9 Pleadings and/or for Summary Judgment in</p> <p>10 <i>Tennessee ex rel. Rayburn v. Cooper</i>, Case No.</p> <p>09-1284-I, filed October 2, 2009 (Ex. I to</p> <p>11 Plaintiffs’ Request for Judicial Notice in</p> <p>12 Support of Motion for Summary Judgment or</p> <p>13 in the Alternative Summary Adjudication /</p> <p>14 Trial Brief) at pp. 19-20.]</p>	<p>case has no bearing on any material fact before</p> <p>the Court, is not precedent, and is hearsay.</p> <p>See the State’s Objections to Plaintiffs’ Request</p> <p>for Judicial Notice.</p>
<p>11 118. In conjunction with Fish and Game Code</p> <p>12 section 3004.5, the Legislature granted the Fish</p> <p>13 and Game Commission the authority to certify</p> <p>14 and publish a list of nonlead ammunition</p> <p>15 suitable for use in regulated areas. The list of</p> <p>16 certified nonlead ammunition can be easily</p> <p>17 accessed at the Commission’s website.</p> <p>18 [California Department of Fish and Game,</p> <p>19 Certified Nonlead Ammunition Information,</p> <p>20 http://www.dfg.ca.gov/wildlife/hunting/condor/</p> <p>21 certifiedammo.html (last visited Nov. 29,</p> <p>22 2010) (Ex. E to Plaintiffs’ Request for Judicial</p> <p>23 Notice in Support of Motion for Summary</p> <p>24 Judgment or in the Alternative</p> <p>25 Summary Adjudication / Trial Brief).]</p>	<p>Objection: Relevance; otherwise undisputed.</p>
<p>26 119. On December 30, 2009, DOJ published an</p> <p>27 “Information Bulletin” providing a brief</p> <p>28 overview of AB 962.</p> <p>[Information Bulletin from California</p> <p>Department of Justice Re: New and Amended</p> <p>Firearm Laws, dated December 30, 2009 (Ex. 8</p> <p>to Plaintiffs’ Evidence in Support of Motion</p> <p>for Summary Judgment or in the Alternative</p> <p>Summary Adjudication / Trial Brief).]</p>	<p>Undisputed.</p>

ISSUE NO. 1: THE STATE’S SUPPLEMENTAL UNDISPUTED MATERIAL FACTS IN SUPPORT OF OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

The State also submits the following statement of additional material facts that raise a triable issue with respect to Issue No. 1, together with references to supporting evidence, in opposition to Plaintiffs Motion.

The State's Supplemental Undisputed Material Facts and Supporting Evidence	Plaintiffs' Response and Supporting Evidence
<p>1. Barry Bauer, president of plaintiff Herb Bauer Sporting Goods, testified that in his experience, the following cartridges of ammunition were chambered, or used, more often in a handgun than a rifle: .45 ACP, .45 GAP, 9mm Luger, 10mm Auto, .40 S&W, .25 ACP, and .380 ACP.</p> <p>[State's Compendium of Evidence, Exh. "A," B. Bauer Deposition, pp.36:18-37:3; 42:1-9; 42:19-43:2; 43:9-17; 43:18-44:2; 44:3-44:20; 49:8-49:19.]</p>	
<p>2. Plaintiffs' expert witness, Stephen Helsley, testified that the following cartridges of ammunition were handgun cartridges: .25 ACP, .45 GAP, 9mm Federal, 10mm Auto, .357 SIG, .44 Auto Mag, and .38 S&W.</p> <p>[State's Compendium of Evidence, Exh. "D," S. Helsley Deposition, pp. 129:12-17; 146:1-5; 155:22-156:7; 158:9-17; 159:24-160:1; 163:15-17; 165:2-4; 172:12-14.]</p>	
<p>3. Plaintiff Sheriff Clay Parker testified that, in his experience, the following calibers and cartridges of ammunition were used more often handguns: .45 ACP, .40 caliber, .25 ACP, .32 ACP, .38 Special, and .380 ACP.</p> <p>[State's Compendium of Evidence, Exh. "E," C. Parker Deposition, pp. 49:3-16; 54:25-55:7; 55:8-14; 55:15-22; 60:9-14; 61:7-20.]</p>	
<p>4. Plaintiff Steven Stonecipher testified that, in his experience, the following cartridges were chambered, or used, more often in handguns: .45 ACP, .380 ACP, 9mm Luger, 10mm, .40 S&W, .25 ACP, .32 ACP, .357 SIG, .454 Casull.</p> <p>[State's Compendium of Evidence, Exh. "F," S. Stonecipher Deposition, pp. 43:6-14; 43:18-22; 48:16-19; 52:1-24; 53:3-7; 53:11-15; 53:19-22; 54:1-5, 55:1-5; 56:23-57:1; 57:6-11.]</p>	

1 5. Barry Bauer, president of plaintiff Herb
2 Bauer Sporting Goods, testified that no one
3 from the California Department of Justice,
4 federal Bureau of Alcohol, Tobacco, Firearms
5 and Explosives, the Fresno County Sheriff's
6 Office, the Fresno County District Attorneys'
7 Office, or the Fresno City Police Department
8 have enforced sections 12060, 12061, or 12318
9 of the Penal Code against the company, or
10 threatened to do so.

11 [State's Compendium of Evidence, Exh. "A,"
12 B. Bauer Deposition, pp.117:3-119:6.]

13 6. Plaintiff Sheriff Clay Parker testified that he
14 has never visited a gun dealer or ammunition
15 vendor in Tehama County to determine
16 compliance with California's gun laws, opting
17 instead to allow the California Department of
18 Justice handle such enforcement duties.

19 [State's Compendium of Evidence, Exh. "E,"
20 C. Parker Deposition, pp. 42:6-15; 42:20-43:7.]

21 7. Plaintiff Sheriff Clay Parker testified that he
22 did not research, visited no websites, and read
23 no books to try to determine what ammunition
24 might be considered handgun ammunition or
25 "antique ammunition" within the meaning of
26 AB 962.

27 [State's Compendium of Evidence, Exh. "E,"
28 C. Parker Deposition, pp. 44:20-23; 45:14-
47:20.]

ISSUE NO. 2 – PLAINTIFFS ARE ENTITLED TO JUDGMENT ON THE SECOND CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF: DUE PROCESS VAGUENESS – AS APPLIED – BECAUSE, AS APPLIED TO PLAINTIFF BARRY BAUER, CALIFORNIA PENAL CODE SECTIONS 12060, 12061, AND 12318 PROVIDE NEITHER ADEQUATE NOTICE TO ORDINARY PERSONS NOR SUFFICIENT GUIDELINES TO LAW ENFORCEMENT TO PREVENT ARBITRARY AND DISCRIMINATORY ENFORCEMENT OF THE LAW

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>120. Assembly Bill 962 passed the Legislature on September 11, 2009, and was approved by Governor Schwarzenegger on October 11, 2009; it added sections 12060, 12061, and 12318 (hereafter referred to collectively as the "Challenged Provisions") to the California Penal Code.</p> <p>[Assembly Bill No. 962 and Complete Bill History (Ex.1 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief).]</p>	<p>Undisputed .</p>
<p>121. There is general confusion as to what ammunition is "principally for use in handguns."</p> <p>[Allman Declaration at 2:13, Bauer Declaration at 2:13, Giles Declaration at 2:12, Hall Declaration at 2:13, Parker Declaration at 2:14, Potterfield Declaration at 2:13, Stonecipher Declaration at 2:10, Tenny Declaration at 1:12, Wright Declaration at 2:13.]</p>	<p>Disputed.</p> <p>Objection: Vague and ambiguous as to the meaning of "general confusion." See also the State's Objections to Evidence Nos.1-37, & 80-122 objecting to the cited portions of the declarations.</p> <p>State's Compendium of Evidence, Exh. "A," B. Bauer Deposition, pp.36:18-37:3; 42:1-9; 42:19-43:2; 43:9-17; 43:18-44:2; 44:3-44:20; 49:8-49:19; Exh. "D," S. Helsley Deposition, pp. 129:12-17; 146:1-5; 155:22-156:7; 158:9-17; 159:24-160:1; 163:15-17; 165:2-4; 172:12-14; Exh. "E," C. Parker Deposition, pp. 49:3-16; 54:25-55:7; 55:8-14; 55:15-22; 60:9-14; 61:7-20; Exh. "F," S. Stonecipher Deposition, pp. 43:6-14; 43:18-22; 48:16-19; 52:1-24; 53:3-7; 53:11-15; 53:19-22; 54:1-5, 55:1-5; 56:23-57:1; 57:6-11.</p>

122. There is confusion among law enforcement officers as to what ammunition is “principally for use in handguns.” [Parker Declaration at 2:13, Allman Declaration at 2:13]	Disputed. Objection: Conclusory; Lacks Foundation; Vague. See Objections to Evidence Nos. 2-8 and 80-86. Deposition of Clay Parker, pp. 44:20-23, 45:14-47:20 [testifying he has not attempted to research or determine what ammunition might qualify]; pp. 42:6-15; 42:20-43:7 [testifying that the Tehama County Sheriff’s Department defers to the California Department of Justice enforcement of gun laws at gun and ammunition vendors] Declaration of Blake Graham, ¶¶ 10-17
123. Penal Code section 12060 does not rely on a list of ammunition “principally for use in handguns.” [Pen. Code, § 12060.]	Objection: Relevance, Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12060 of the Penal Code provides the best evidence of its content.
124. Penal Code section 12061 does not rely on a list of ammunition “principally for use in handguns.” [Pen. Code, § 12061.]	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12061 of the Penal Code provides the best evidence of its content.
125. Penal Code section 12318 does not rely on a list of ammunition “principally for use in handguns.” [Pen. Code, § 12318.]	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12318 of the Penal Code provides the best evidence of its content.
126. Penal Code section 12323 does not rely on a list of ammunition “principally for use in handguns.” [Pen. Code, § 12323.]	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12323 of the Penal Code provides the best evidence of its content.
127. Defendant DOJ has not promulgated regulations regarding the definition of “handgun ammunition” for purposes of the Challenged Provisions. [Responses to Plaintiffs’ Request for	Undisputed.

1	Admissions, Set One (Ex. 56 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:22-24.]	
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3		
4	128. Penal Code section 12060 does not confer authority on the Department of Justice ("DOJ") to create a list of ammunition "principally for use in handguns."	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12060 of the Penal Code provides the best evidence of its content.
5		
6	[Pen. Code, § 12060.]	
7		
8	129. Penal Code section 12061 does not confer authority on the Department of Justice ("DOJ") to create a list of ammunition "principally for use in handguns."	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12061 of the Penal Code provides the best evidence of its content.
9		
10	[Pen. Code, § 12061.]	
11		
12	130. Penal Code section 12318 does not confer authority on the Department of Justice ("DOJ") to create a list of ammunition "principally for use in handguns."	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12318 of the Penal Code provides the best evidence of its content.
13		
14	[Pen. Code, § 12318.]	
15		
16	131. Penal Code section 12323 does not confer authority on the Department of Justice ("DOJ") to create a list of ammunition "principally for use in handguns."	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12323 of the Penal Code provides the best evidence of its content.
17		
18	[Pen. Code, § 12323.]	
19		
20	132. Senate Bill 1276 was a failed measure introduced by Senator Hart in 1994. It attempted to introduce provisions regulating the transfer of "handgun ammunition" substantially similar to those appearing in the Challenged Provisions.	Objection: Relevance. Hearsay. Senate Bill 1276 has no bearing on any material fact before the Court and is not legislative history. See:
21		(1) The State's Objections to Plaintiffs' Request for Judicial Notice; and
22	[Senate Bill 1276 (1994) as Amended in Senate on May 26, 1994 (Ex. H to Plaintiffs' Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at p. 4; Legislative History Report and Analysis Re: Senate Bill 1276 (Hart – 1994) (Ex. 5 to Plaintiffs' Evidence in Support of	(2) The State's Objections to Evidence No. 126.
23		
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28		

1	Motion for Summary Judgment or in the	
2	Alternative Summary Adjudication / Trial	
3	Brief) at LH009-010.]	
4	133. A Bill Analysis conducted by the Senate	Objection: Relevance. Hearsay. Senate Bill
5	Committee on Judiciary for Senate Bill 1276	1276 has no bearing on any material fact before
6	contains a "comment" on Penal Code section	the Court and is not legislative history. See:
7	12323's definition of "handgun ammunition	(1) The State's Objections to Plaintiffs' Request
8	which reads, in relevant part:	for Judicial Notice; and
9	"Existing Penal Code section 12323 was added	(2) The State's Objections to Evidence No. 126.
10	in 1982 and defines handgun ammunition as	
11	"ammunition principally for use in pistols and	
12	revolvers . . . notwithstanding that the	
13	ammunition may also be used in some rifles. . .	
14	." However, it may not be suitable for defining	
15	handgun ammunition in general. It may be	
16	assumed that many ammunition calibers are	
17	suitable for both rifles and handguns. Without	
18	additional statutory guidance, it may be very	
19	difficult for dealers to determine which	
20	ammunition is "handgun ammunition" for	
21	purposes of the requirements added to Penal	
22	Code section 12076."	
23	[Legislative History Report and Analysis Re:	
24	Senate Bill 1276 (Hart - 1994) (Ex. 5 to	
25	Plaintiffs' Evidence in Support of Motion for	
26	Summary Judgment or in the Alternative	
27	Summary Adjudication / Trial Brief) at	
28	LH010.]	
18	134. Senate Bill 1276 (1994) relied on the	Objection: Relevance. Hearsay. Senate Bill
19	definition of "handgun ammunition" found at	1276 has no bearing on any material fact before
20	Penal Code section 12323.	the Court and is not legislative history. See:
21	[Senate Bill 1276 (1994) as Amended in	(1) The State's Objections to Plaintiffs' Request
22	Senate on May 26, 1994 (Ex. H to Plaintiffs'	for Judicial Notice; and
23	Request for Judicial Notice in Support of	(2) The State's Objections to Evidence No. 126.
24	Motion for Summary Judgment or in the	
25	Alternative Summary Adjudication / Trial	
26	Brief) at p. 4.]	
27		
28	135. Defendants' expert admitted that he was	Objection: Relevance. What Mr. Graham was
29	asked to opine on what he thought should be	asked to do vis-à-vis Assembly Bill 2358 is not
30	included as "handgun ammunition" in	relevant to any material fact in this case. See:
31	Assembly Bill 2358's enumerated list of	(1) The State's Objections to Plaintiffs' Request
32	"handgun ammunition" calibers.	for Judicial Notice; and
33	[Graham Deposition Vol. One (Ex. 57 to	
34	Plaintiffs' Evidence in Support of Motion for	
35	Summary Judgment or in the Alternative	

1	Summary Adjudication / Trial Brief) at 102:21-103:17]	(2) Objections to Evidence Nos. 123-125.
2		
3	136. When asked which ammunition he	Objection: Relevance. What Mr. Graham was
4	thought should be included in AB 2358's list	asked to do vis-à-vis Assembly Bill 2358 is not
5	of "handgun ammunition," Defendants' expert	relevant to any material fact in this case. See:
6	said he remembered identifying the following:	(1) The State's Objections to Plaintiffs' Request
7	"45, .380., .25, .40, .38, .357, possibly .454,	for Judicial Notice; and
8	and possibly .762, and maybe .223."	(2) Objections to Evidence Nos. 123-125.
9	[Graham Deposition Vol. One (Ex. 57 to	
10	Plaintiffs' Evidence in Support of Motion for	
11	Summary Judgment or in the Alternative	
12	Summary Adjudication / Trial Brief) at 103:18-104:10.]	
13	137. Counsel for Defendant DOJ has stated	Objection: Relevance. Hearsay. See
14	that Defendant DOJ will not and cannot adopt	Objections to Evidence Nos. 127-128.
15	a policy as to what ammunition constitutes	
16	"handgun ammunition" for purposes of the	
17	Challenged Provisions.	
18	[Public Records Act Request Sent to California	
19	Department of Justice Re: Assembly Bill 962,	
20	dated December 16, 2009 (Ex. 6 to Plaintiffs'	
21	Evidence in Support of Motion for Summary	
22	Judgment or in the Alternative Summary	
23	Adjudication / Trial Brief); Defendant	
24	Department of Justice Response to Public	
25	Records Act and Relevant E-mail Enclosures,	
26	dated January 25, 2010 (Ex. 7 to Plaintiffs'	
27	Evidence in Support of Motion for Summary	
28	Judgment or in the Alternative Summary	
	Adjudication / Trial Brief) at AM0002,	
	AM0004, AM0006, AM0013.]	
	138. On August 19, 2010, then pending	Objection: Relevance. Assembly Bill 2358 is
	Assembly Bill 2358 was amended to include in	not relevant to any material fact in this case.
	Penal Code section 12323 the following	See:
	definition of "handgun ammunition": "any	(1) The State's Objections to Plaintiffs' Request
	variety of ammunition in the following	for Judicial Notice; and
	calibers, notwithstanding that the ammunition	(2) Objections to Evidence Nos. 123-125
	may also be used in some rifles: .22 rimfire,	
	.25, .32, .38, .9mm, .10mm, .40, .41, .44, .45,	
	5.7x28mm, .223, .357, .454, .5.56x45mm,	
	7.62x39, 7.63mm, 7.65mm, .50."	
	[Assembly Bill No. 2358 (2010) as Amended	
	in Senate August 19, 2010 (Ex.2 to Plaintiffs'	
	Evidence in Support of Motion for Summary	
	Judgment or in the Alternative Summary	

1 2 3 4 5	Adjudication / Trial Brief, Ex. F to Plaintiffs' Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:29-8:21; Complete Bill History, A.B. No. 2358 (Ex. 4 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief).]	
6 7 8 9 10 11 12 13 14 15 16 17 18	<p>139. On August 30, 2010, then pending Assembly Bill 2358 was amended to include in Penal Code section 12323 the following definition of "handgun ammunition": "any variety of ammunition in the following calibers, notwithstanding that the ammunition may also be used in some rifles: .22 rimfire, .25, .32, .38, .9mm, .10mm, .40, .41, .44, .45, 5.7x28mm, .357, .454, .5.56x45mm, 7.63mm, 7.65mm."</p> <p>[Assembly Bill No. 2358 (2010) as Amended in Senate August 30, 2010 (attached as Ex. 3 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief, Ex. G to Plaintiffs' Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 16:11-40; Complete Bill History, A.B. No. 2358 (attached as Ex.4 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief).]</p>	<p>Objection: Relevance. Assembly Bill 2358 is not relevant to any material fact in this case. See:</p> <p>(1) The State's Objections to Plaintiffs' Request for Judicial Notice; and</p> <p>(2) Objections to Evidence Nos. 123-125</p>
19 20 21 22 23 24 25	<p>140. All modern centerfire and rimfire ammunition for use in handguns or rifles consist of the same components: a metal casing that suspends a metal projectile over a charge of powder confined within the metal casing and a primer (or priming charge) to ignite the powder - ("self-contained metallic ammunition").</p> <p>[Helsley Declaration at ¶ 20.]</p>	Undisputed.
26 27 28	141. In order of their specificity, these three terms are used to describe a self-contained metallic cartridge: "ammunition," "caliber," and its given "cartridge name."	Undisputed.

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[Helsley Declaration at ¶ 54.]	
<p>142. "Ammunition" is defined in the Glossary of the Association of Firearms and Tool Mark Examiners as:</p> <p>"One or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. Also referred to as fixed or live ammunition."</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at Merged Ex. C at p. 2.]</p>	Undisputed.
<p>143. The definition of "caliber" depends on whether it is applied to a firearm or to ammunition. When applied to ammunition, the Glossary of the Association of Firearms and Tool Mark Examiners defines it as: "A numerical term, without the decimal point, included in a cartridge name to indicate the nominal bullet diameter."</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at Merged Ex. C at p. 5.]</p>	Undisputed.
<p>144. It is a more precise description of ammunition to identify it by its specific cartridge name because often the "caliber" in the cartridge's given name does not reflect the actual bore or bullet diameter.</p> <p>[Helsley Declaration at ¶¶ 54-64.]</p>	Objection: Mischaracterizes the witness's testimony; vague and ambiguous as to the context where the description might be more precise.
<p>145. Within any given "caliber," there are usually various "cartridges," some of which may be used more often in a handgun, and some of which may be used more often in a rifle.</p> <p>[Helsley Declaration at ¶¶ 56-64.]</p>	Undisputed.

146. Reference to the measurement of a projectile's diameter (i.e., its caliber) is not a particularly precise method of identifying ammunition. [Helsley Declaration at ¶ 55-64.]	Objection: Mischaracterizes the witness's testimony. Vague and ambiguous as to context and the phrase "not a particularly precise method."
147. Virtually all calibers can be and are fired safely through both handguns and rifles. [Helsley Declaration at ¶ 65.]	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 42-44.
148. Virtually all cartridges can be and are fired safely through both handguns and rifles. [Helsley Declaration at ¶ 65.]	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 42-44.
149. Packaging for ammunition often has no label associating its use with either a handgun or a rifle. [Helsley Declaration at ¶¶ 68-69.]	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 48-50.
150. Packaging for ammunition does not identify whether the ammunition it contains is "principally for use in handguns." [Helsley Declaration at ¶ 69.]	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 48-50.
151. In those instances where ammunition manufacturers or vendors label or market a particular cartridge as a "handgun cartridge," such markings do not identify whether that cartridge, or ammunition of that caliber, is actually "principally used in handguns." [Helsley Declaration at ¶¶ 68-69.]	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 48-50.
152. Experts cannot form a reliable opinion as to whether a given caliber or cartridge is intended to be or has actually been fired more than fifty percent of the time through a handgun. [Helsley Declaration at ¶¶ 66, 72-73.]	Disputed. Objection: Assumes facts not in evidence; mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 45-47, 56-59. Declaration of Blake Graham, ¶¶ 10-17.

1 2 3 4 5	153. There exists in the firearms industry no commonly understood delineation between “handgun ammunition” and other ammunition that indicates whether certain ammunition is actually fired or intended to be fired more often in handguns than in long-guns. [Helsley Declaration at ¶¶ 65-70, 72-73.]	Objection: Mischaracterizes the witness’s testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 42-59.
6 7 8 9 10	154. There exists in the firearms industry no commonly understood definition of “handgun ammunition” that equates with the “principally for use in handguns” language relied on by the Challenged Provisions. [Helsley Declaration at ¶¶ 65-70.]	Objection: Mischaracterizes the witness’s testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 42-52.
11 12 13 14 15 16 17 18	155. Defendants assert that “there is a common understanding among those individuals and businesses who might be subject to sections 12060, 12061, and 12318 of the Penal Code, as well as among those might enforce them,” as to what ammunition is “used principally in pistols and revolvers.” [Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 6:16-19, 7:8-11.]	Undisputed.
19 20 21 22 23 24 25 26 27 28	156. Defendants identify the following ammunition as “principally for use in handguns” for purposes of the Challenged Provisions: .45, 9mm, 10mm, .40, .357, .38, .44, .380, .454, .25, and .32. [Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 5:7-8, 5:21-22; Amended Response to Specially Prepared Interrogatory No. 5 (Ex. 55 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 2:24-3:2.]	Undisputed that the State indentified these calibers of ammunition in response to Plaintiff’s Special Interrogatory No. 5 after objecting to the Plaintiff’s use of the phrase “types of ammunition” as vague and ambiguous.

1 2 3 4 5 6 7 8 9 10	<p>157. Defendants assert that the ammunition they deemed “principally for use in handguns” based on their review of handgun sales records in California, written documents, ammunition vendor websites, and online encyclopedias, is “commonly understood” to be “handgun ammunition” for purposes of the Challenged Provisions.</p> <p>[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:8-20; Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 118:3-11, 142:21-25.]</p>	<p>Undisputed that these comprised some of the steps Mr. Graham took in his expert analysis, otherwise disputed.</p> <p>Declaration of Blake Graham, ¶¶ 10-17.</p>
11 12 13 14 15 16 17 18	<p>158. Additional research over time may cause Defendants’ list of ammunition “principally for use in handguns” to change.</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 204:21-205:8; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 67:21-68:1, 116:11-18, 118:11-18 9.]</p>	<p>Undisputed.</p>
19 20 21 22 23 24	<p>159. Regulations promulgated at some date in the future may cause Defendants’ list of ammunition “principally for use in handguns” to change.</p> <p>[Amended Response to Specially Prepared Interrogatory No. 5 (Ex. 55 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 2:26-3:2.]</p>	<p>Undisputed.</p>
25 26 27 28	<p>160. Defendants’ expert admitted that if he had the opportunity to review sales records over a larger time frame, his opinion as to what ammunition is “principally for use in a handgun” might have changed.</p>	<p>Objection: Mischaracterizes the witness’s testimony.</p>

1	[Graham Deposition Vol. Two (Ex. 58 to	
2	Plaintiffs' Evidence in Support of Motion for	
3	Summary Judgment or in the Alternative	
4	Summary Adjudication / Trial Brief) at	
5	118:11-18.]	
6	161. Defendants' expert admits he may have	Objection: Mischaracterizes the witness's testimony (which testimony is not included on Plaintiffs' Exhibit 58).
7	left cartridges off Defendants' list of	
8	ammunition "principally for use in handguns"	
9	that [based on his understanding of "handgun	
10	ammunition"], should have been included.	
11	[Graham Deposition Vol. Two (Ex. 58 to	
12	Plaintiffs' Evidence in Support of Motion for	
13	Summary Judgment or in the Alternative	
14	Summary Adjudication / Trial Brief) at 69:20-	
15	70:5.]	
16	162. Defendants' expert's methodology for	Undisputed that these comprised some of the steps Mr. Graham took in his expert analysis, otherwise disputed. Declaration of Blake Graham, ¶¶ 10-17.
17	determining what ammunition was "principally	
18	for use in handguns" was a two-step process	
19	that involved the expert looking at the records	
20	of handgun sales in California, and then	
21	reviewing websites, written materials and	
22	drawing on his personal experience.	
23	[Graham Deposition Vol. Two (Ex. 58 to	
24	Plaintiffs' Evidence in Support of Motion for	
25	Summary Judgment or in the Alternative	
26	Summary Adjudication / Trial Brief) at 63:22-	
27	64:6, 140:13-21.]	
28	163. Defendants' list of calibers that constitute	Undisputed that these comprised some of the steps Mr. Graham took in his expert analysis, otherwise disputed. Declaration of Blake Graham, ¶¶ 10-17.
	ammunition "principally for use in handguns"	
	was based on the records of handgun sales in	
	California over each of the past five years,	
	written materials, ammunition vendor	
	websites, and online encyclopedias."	
	[Responses to Specially Prepared	
	Interrogatories (Ex. 54 to Plaintiffs' Evidence	
	in Support of Motion for Summary Judgment	
	or in the Alternative Summary Adjudication /	
	Trial Brief) at 7:14-20.]	
	164. Defendant DOJ is required to keep and	Undisputed.
	maintain records of handgun sales in	
	California; this record is commonly referred to	
	as the Dealer Record of Sales ("DROS") and it	

1 is linked to the Automated Firearms System
2 (“AFS”).

3 [Responses to Specially Prepared
4 Interrogatories, Set One (Ex. 54 to Plaintiffs’
5 Evidence in Support of Motion for Summary
6 Judgment or in the Alternative Summary
7 Adjudication / Trial Brief) at 7:14; Graham
8 Deposition Vol. One (Ex. 57 to Plaintiffs’
9 Evidence in Support of Motion for Summary
10 Judgment or in the Alternative Summary
11 Adjudication / Trial Brief) at 176:14-17, 177:7-
12 13, 190:3-6.]

13 165. Defendants and their expert witness relied
14 in part on the DROS records to determine
15 which ammunition should be included in
16 Defendants’ list of ammunition they consider
17 “handgun ammunition” for purposes of the
18 Challenged Provisions.

19 [Responses to Specially Prepared
20 Interrogatories, Set One (Ex. 54 to Plaintiffs’
21 Evidence in Support of Motion for Summary
22 Judgment or in the Alternative Summary
23 Adjudication / Trial Brief) at 7:13-18; Graham
24 Deposition Vol. One (Ex. 57 to Plaintiffs’
25 Evidence in Support of Motion for Summary
26 Judgment or in the Alternative Summary
27 Adjudication / Trial Brief) at 181:14-16,
28 181:23-182:1; Graham Deposition Vol. Two
(Ex. 58 to Plaintiffs’ Evidence in Support of
Motion for Summary Judgment or in the
Alternative Summary Adjudication / Trial
Brief) at 9:17-20.]

Undisputed.

166. Defendants’ expert’s reliance on DROS
records was his “starting point.” He used the
records to determine which popular handgun
calibers should be researched further to
determine if ammunition of those calibers is
“principally for use in handguns.”

[Graham Deposition Vol. Two (Ex. 58 to
Plaintiffs’ Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 9:17-
20, 63:22-64:6.]

Objection: Mischaracterizes the witness’s
testimony.

Declaration of Blake Graham, ¶ 13.

167. Defendants’ expert admitted that certain
calibers may have been omitted from

Objection: Mischaracterizes the witness’s

1	Defendants' list of ammunition "principally for use in handguns" because they were	testimony.
2	"unpopular."	Declaration of Blake Graham, ¶¶ 10-17.
3	[Graham Deposition Vol. One (Ex. 57 to	
4	Plaintiffs' Evidence in Support of Motion for	
5	Summary Judgment or in the Alternative	
6	Summary Adjudication / Trial Brief) at	
7	204:21-207:9.]	
8	168. Defendants and their expert relied on	Undisputed.
9	DROS records only from the previous five	
10	years to determine the handguns most	
11	commonly sold in California over the same	
12	time period.	
13	[Responses to Specially Prepared	
14	Interrogatories, Set One (Ex. 54 to Plaintiffs'	
15	Evidence in Support of Motion for Summary	
16	Judgment or in the Alternative Summary	
17	Adjudication / Trial Brief) at 7:14-16; Graham	
18	Deposition Vol. Two (Ex. 58 to Plaintiffs'	
19	Evidence in Support of Motion for Summary	
20	Judgment or in the Alternative Summary	
21	Adjudication / Trial Brief) at 115:18-116:2,	
22	116:17-117:6.]	
23	169. Defendants' expert does not have any	Undisputed.
24	information regarding what percentage of the	
25	total guns in circulation are represented by the	
26	records of handgun sales in the past five years.	
27	[Graham Deposition Vol. Two (Ex. 58 to	
28	Plaintiffs' Evidence in Support of Motion for	
29	Summary Judgment or in the Alternative	
30	Summary Adjudication / Trial Brief) at 118:4-	
31	10.]	
32	170. The DROS records relied upon by	Objection: Mischaracterizes the witness'
33	Defendants' expert combine firearms that	testimony.
34	utilize ammunition referred to by Defendants	Declaration of Blake Graham, ¶ 13.
35	as "handgun ammunition" and firearms that	
36	utilize ammunition referred to by Defendants	
37	as "rifle ammunition" under a single caliber	
38	listing.	
39	[Graham Deposition Vol. Two (Ex. 58 to	
40	Plaintiffs' Evidence in Support of Motion for	
41	Summary Judgment or in the Alternative	
42	Summary Adjudication / Trial Brief) at 12:18-	
43	14:2.]	

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2	171. The DROS records relied upon by	Objection: Mischaracterizes the witness' testimony.
3	Defendants' expert are not precise in	
4	identifying the sales of handguns that use a	
5	specific cartridge.	
6	[Graham Deposition Vol. Two (Ex. 58 to	
7	Plaintiffs' Evidence in Support of Motion for	
8	Summary Judgment or in the Alternative	
9	Summary Adjudication / Trial Brief) at 14:10-	
10	23.]	
11		
12	172. The DROS system does not break down	Undisputed.
13	sales by guns as to every cartridge of	
14	ammunition sold and whether such	
15	ammunition is a "rifle cartridge," "handgun	
16	cartridge," or both.	
17	[Graham Deposition Vol. Two (Ex. 58 to	
18	Plaintiffs' Evidence in Support of Motion for	
19	Summary Judgment or in the Alternative	
20	Summary Adjudication / Trial Brief) at 19:23-	
21	20:20.]	
22		
23	173. The DROS records relied on by	Undisputed.
24	Defendants' expert does not contain a listing of	
25	all types of cartridges fired by a firearm of that	
26	caliber due to space limitations.	
27	[Graham Deposition Vol. Two (Ex. 58 to	
28	Plaintiffs' Evidence in Support of Motion for	
	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 22:11-	
	23:9.]	
	174. Defendants' expert admitted that the	Objection: Mischaracterizes the witness' testimony.
	DROS records relied on to inform his opinions	
	contained categories of ammunition that could	
	have been a mixture of what he considers	
	"handgun ammunition" and "rifle	
	ammunition."	
	[Graham Deposition Vol. Two (Ex. 58 to	
	Plaintiffs' Evidence in Support of Motion for	
	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 91:18-	
	92:6.]	

175. The DROS records relied on by Defendants' expert include a number of entries in calibers Defendants' expert considers "common rifle caliber rounds."	Objection: Mischaracterizes the witness' testimony. Testimony also subject to objections made during the deposition concerning speculation and vagueness.
[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 189:10-192:18.]	
176. There is no record of total rifle sales in California in existence because Defendant DOJ is prohibited from retaining records on the sale of long-guns.	Undisputed.
[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 183:19-184:15.]	
177. Defendants' expert did not determine the total number of rifle sales in California as compared with the total number of handgun sales to inform his opinion as to whether a particular ammunition was principally used in a handgun.	Disputed.
[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:17-24.]	Objection: Mischaracterizes the witness' testimony. Declaration of Blake Graham, ¶¶ 15-17.
178. Defendants' expert was unable to compare the sales of handguns using a particular ammunition with rifle sales that use the same ammunition because he is admittedly unaware of any source of data regarding rifle sales.	Undisputed.
[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:6-24.]	
179. Defendants' expert admits his opinion as	Objection: Mischaracterizes the witness's

1 2 3 4 5 6	to which ammunition is "principally for use in handguns" may have been different had he been able to compare handgun sales with rifle sales. [Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 95:13-20.]	testimony which merely says it may have been helpful to have that data. See also Declaration of Blake Graham, ¶¶ 15-17.
7 8 9 10 11 12 13 14	180. Defendants relied in part on the representations made by ammunition vendors on their websites to determine whether certain ammunition should be included in Defendants' list of ammunition they consider "handgun ammunition" for purposes of the Challenged Provisions. [Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:18-20.]	Undisputed.
15 16 17 18 19 20 21	181. Defendants' expert relied in part on the fact that ammunition vendor websites listed certain cartridges as "handgun ammunition" to inform his opinion as to whether specific ammunition was "principally for use in handguns." [Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 44:1-14, 64:17-65:6.]	Undisputed.
22 23 24 25 26 27 28	182. Defendants' expert testified that the fact that certain websites refer to some ammunition as "handgun cartridges" helped establish the DOJ's list of calibers "principally for use in handgun." [Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:5-95:13, 160:19-23, 166:21-167:6.]	Objection: Mischaracterizes the witness's testimony. Declaration of Blake Graham, ¶¶ 10-17.

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<p>183. The four vendor websites that Defendants' expert relied to inform his opinion as to whether specific ammunition was "principally for use in handguns" include: Cabela's, Cheaper Than Dirt, Inc., J & G Sales, and Midway USA.</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:5-20, 148:23-149:4; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 37:8-13, 40:11-15, 43:4-10.]</p>	<p>Objection: Mischaracterizes the witness's testimony.</p> <p>Declaration of Blake Graham, ¶¶ 10-17.</p>
<p>184. In forming his opinion regarding whether ammunition was principally used in handguns, Defendants' expert gave some weight to whether the website listed the ammunition as "popular."</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 65:9-16.]</p>	<p>Objection: Mischaracterizes the witness's testimony.</p>
<p>185. Defendants' expert did not contact the relied-upon website vendors or do any investigation as to what criteria the websites relied upon to characterize the ammunition as "popular" or what the websites' characterization meant.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 44:15-46:3.]</p>	<p>Undisputed.</p>
<p>186. Defendants' expert admitted there is a difference between "popular" ammunition for a handgun and ammunition that is "principally for use in a handgun."</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative</p>	<p>Objection: Mischaracterizes the witness's testimony.</p>

1	Summary Adjudication / Trial Brief) at 102:6-104:3.]	
2		
3	187. None of the relied-upon website vendors provided Defendants' expert with data regarding the total rounds of each type of ammunition sold.	Undisputed.
4		
5	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 46:4-16.]	
6		
7		
8		
9	188. The websites Defendants' expert relied upon to inform his opinions as to which ammunition is "principally for use in handguns" list as "handgun ammunition" ammunition that Defendants' expert does not consider to be principally used in handguns.	Undisputed.
10		
11		
12		
13	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 62:25-63:21.]	
14		
15		
16	189. Defendants' expert's decision to exclude certain ammunition listed as "handgun ammunition" on the vendor websites he relied upon to inform his opinions as to which ammunition is "principally for use in handguns" was based on his experience in observing the use of that ammunition in the field.	Objection: Mischaracterizes the witness's testimony.
17		
18		
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21	Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 66:15-67:9.]	
22		
23		
24	190. Michael Tenny, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Cheaper Than Dirt, Inc., ships ammunition, does not know what ammunition is "handgun ammunition" and thus subject to the Challenged Provisions.	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 105-113 & 133.
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1	[Tenny Declaration at 1:6-11.]	
2		
3	191. Larry Potterfield, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Midway Arms, Inc.(dba Midway USA), ships ammunition, does not know what ammunition is "handgun ammunition" and thus subject to the Challenged Provisions.	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 87-95 & 132.
4		
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7	[Potterfield Declaration at 2:3-12.]	
8		
9	192. Brian Hall, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Chattanooga Shooting Supplies, Inc. (dba Natchez Shooters Supplies), ships ammunition, does not know what ammunition is "handgun ammunition" and thus subject to the Challenged Provisions.	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 27-37.
10		
11		
12	[Hall Declaration at 2:3-12.]	
13		
14	193. Michael Tenny, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Cheaper Than Dirt, Inc., ships ammunition, does not know what ammunition is "principally for use in a handgun" and is unaware of any source to which he can look to determine what ammunition suitable for use in both handguns and rifles is "principally for use in a handgun."	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 105-113 & 133.
15		
16		
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19	[Tenny Declaration at 1:12-14.]	
20		
21	194. Larry Potterfield, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Midway Arms, Inc.(dba Midway USA), ships ammunition, does not know what ammunition is "principally for use in a handgun" and is unaware of any source to which he can look to determine what ammunition suitable for use in both handguns and rifles is "principally for use in a handgun."	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 87-95 & 132.
22		
23		
24		
25		
26	[Potterfield Declaration at 2:13-15.]	
27		
28	195. Brian Hall, the party responsible for	Objection: Relevance; Conclusory; Lacks

1 2 3 4 5 6	<p>ensuring compliance with all applicable laws in the locations from and to which Chattanooga Shooting Supplies, Inc. (dba Natchez Shooters Supplies), ships ammunition, does not know what ammunition is “principally for use in a handgun” and is unaware of any source to which he can look to determine what ammunition suitable for use in both handguns and rifles is “principally for use in a handgun.”</p> <p>[Hall Declaration at 2:13-15.]</p>	Foundation. See Objections to Evidence Nos. 27-37.
7 8 9 10 11 12 13 14 15	<p>196. Michael Tenny, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Cheaper Than Dirt, Inc., ships ammunition, does not know what ammunition is exempt from the Challenged Provisions as ammunition that is “designed and intended to be used in antique firearms” manufactured before 1898, because many cartridges of ammunition used in firearms manufactured before 1898 are also used in firearms manufactured after 1898, including cartridges sold by Cheaper Than Dirt, Inc.</p> <p>[Tenny Declaration at 1:15-19.]</p>	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 105-113 & 133.
16 17 18 19 20 21 22 23 24	<p>197. Larry Potterfield, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Midway Arms, Inc.(dba Midway USA), ships ammunition, does not know what ammunition is exempt from the Challenged Provisions as ammunition that is “designed and intended to be used in antique firearms” manufactured before 1898, because many cartridges of ammunition used in firearms manufactured before 1898 are also used in firearms manufactured after 1898, including cartridges sold by Midway Arms, Inc.(dba Midway USA).</p> <p>[Potterfield Declaration at 2:16-20.]</p>	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 87-95 & 132.
25 26 27 28	<p>198. Brian Hall, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Chattanooga Shooting Supplies, Inc. (dba Natchez Shooters Supplies), ships ammunition, does not know what ammunition is exempt from the</p>	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 27-37.

1 2 3 4 5 6	<p>Challenged Provisions as ammunition that is “designed and intended to be used in antique firearms” manufactured before 1898, because many cartridges of ammunition used in firearms manufactured before 1898 are also used in firearms manufactured after 1898, including cartridges sold by Chattanooga Shooting Supplies, Inc. (dba Natchez Shooters Supplies).</p> <p>[Hall Declaration at 2:16-20.]</p>	
7 8 9 10 11	<p>199. Cheaper Than Dirt, Inc., has announced that it will cease shipping all ammunition to non-exempt California customers beginning January 1, 2011, to avoid risking criminal prosecution under Penal Code section 12328.</p> <p>[Tenny Declaration at 2:1-8.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 105-113 & 133.</p>
12 13 14 15 16	<p>200. Midway Arms, Inc.(dba Midway USA), has announced that it will cease shipping all ammunition to non-exempt California customers beginning January 1, 2011, to avoid risking criminal prosecution under Penal Code section 12318.</p> <p>[Potterfield Declaration at 3:1-9.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 87-95 & 132.</p>
17 18 19 20 21 22	<p>201. It is the current intent of Chattanooga Shooting Supplies, Inc. (dba Natchez Shooters Supplies), to cease shipping all ammunition that is suitable for use in both handguns and long-guns to non-exempt California customers beginning February 1, 2011, to avoid risking criminal prosecution under Penal Code section 12318.</p> <p>[Hall Declaration at 3:1-6.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 27-37.</p>
23 24 25 26 27 28	<p>202. Defendants’ expert knows of no specific trade magazine articles that he used to inform his opinion regarding which ammunition is “principally for use in handguns.”</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 34:8-</p>	<p>Undisputed</p>

1	35:14.]	
2		
3	203. Defendants' expert did not use any trade	Undisputed.
4	magazine articles regarding the amount of	
5	particular ammunition sold.	
6	[Graham Deposition Vol. Two (Ex. 58 to	
7	Plaintiffs' Evidence in Support of Motion for	
8	Summary Judgment or in the Alternative	
9	Summary Adjudication / Trial Brief) at 35:15-	
10	36:13.]	
11		
12	204. Defendants' expert's use of trade	Undisputed.
13	magazines to inform his opinion regarding	
14	ammunition "principally for use in handguns"	
15	is based solely upon his reading of trade	
16	magazines over the years, with no specific	
17	reference to a particular article or data from	
18	those trade magazines on the subject.	
19	[Graham Deposition Vol. Two (Ex. 58 to	
20	Plaintiffs' Evidence in Support of Motion for	
21	Summary Judgment or in the Alternative	
22	Summary Adjudication / Trial Brief) at 35:15-	
23	36:13, 36:14-37:6]	
24		
25	205. The DOJ's expert testified that he pulled	Undisputed, subject to objections in the
26	from his personal and professional experiences	deposition transcript.
27	to determine what ammunition should be	
28	considered "handgun ammunition" under the	
	Challenged Provisions.	
	[Graham Deposition Vol. One (Ex. 57 to	
	Plaintiffs' Evidence in Support of Motion for	
	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 81:24-	
	82:4, 91:1-4, 186:17-24; Graham Deposition	
	Vol. Two (Ex. 58 to Plaintiffs' Evidence in	
	Support of Motion for Summary Judgment or	
	in the Alternative Summary Adjudication /	
	Trial Brief) at 24:8-18, 28:4-29:2, 64:1-6,	
	72:25-73:10.]	
	206. Defendants' expert concluded that, based	Disputed.
	on his training and experience over the last	Objection: Mischaracterizes the witness's
	sixteen years or so, when added to experience	testimony.
	with handguns and other factors, he "has a	Declaration of Blake Graham, ¶¶ 10-17.
	feeling that there are certain calibers that are	
	more often than not handgun calibers."	

1	[Graham Deposition Vol. One (Ex. 57 to	
2	Plaintiffs' Evidence in Support of Motion for	
3	Summary Judgment or in the Alternative	
4	Summary Adjudication / Trial Brief) at 81:24-	
	82:4, 206:22-207:2.]	
5	207. Defendants' expert's opinion regarding	Undisputed.
6	ammunition "principally for use in handguns"	
7	was not informed by information regarding the	
	amounts and types of ammunition used by the	
	military.	
8	[Graham Deposition Vol. Two (Ex. 58 to	
9	Plaintiffs' Evidence in Support of Motion for	
10	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at	
	109:14-18.]	
11		
12	208. Defendants' expert's opinion regarding	Undisputed.
13	ammunition "principally for use in handguns"	
14	was not informed by specific information	
	regarding the number of handguns and/or rifles	
	used by military service members stationed in	
	California.	
15	[Graham Deposition Vol. Two (Ex. 58 to	
16	Plaintiffs' Evidence in Support of Motion for	
17	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 109:8-	
	13, 110:8-111:10.]	
18		
19	209. Defendants' expert's opinion regarding	Objection: Mischaracterizes the witness's
20	ammunition "principally for use in handguns"	testimony. Evidence cited bears no relation to
21	was not informed by research studies regarding	facts asserted.
	popular or prevalently used ammunition.	
22	[Graham Deposition Vol. Two (Ex. 58 to	
23	Plaintiffs' Evidence in Support of Motion for	
	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at	
	118:19-24.]	
24		
25	210. Defendants' expert's opinion regarding	Undisputed subject to the objections raised
26	ammunition "principally for use in handguns"	during the cited portion of the deposition.
27	was not informed by existing polls regarding	
	the ammunition generally or the popularity of	
	certain cartridges.	
28		

1	[Graham Deposition Vol. Two (Ex. 58 to	
2	Plaintiffs' Evidence in Support of Motion for	
3	Summary Judgment or in the Alternative	
4	Summary Adjudication / Trial Brief) at	
5	119:20-120:8.]	
6	211. Prior to forming his opinion as to	Undisputed subject to vagueness objections
7	ammunition prevalently used in handguns,	
8	Defendants' expert did not personally conduct	raised during the cited portion of the deposition.
9	any polls regarding the ammunition members	
10	of the general public use in their handguns.	
11	[Graham Deposition Vol. Two (Ex. 58 to	
12	Plaintiffs' Evidence in Support of Motion for	
13	Summary Judgment or in the Alternative	
14	Summary Adjudication / Trial Brief) at 120:9-	
15	16.]	
16	212. Defendants assert that the ammunition	Undisputed.
17	they have identified as "principally for use in	
18	handguns" is supported in part by the fact that	
19	those calibers are identified as "handgun	
20	ammunition" in <i>Cartridges of the World</i> .	
21	[Responses to Specially Prepared	
22	Interrogatories, Set One (Ex. 54 to Plaintiffs'	
23	Evidence in Support of Motion for Summary	
24	Judgment or in the Alternative Summary	
25	Adjudication / Trial Brief) at 7:18-21.]	
26	213. In its sections on rifle cartridges,	Objection: This "fact" is vague and
27	<i>Cartridges of the World</i> identifies multiple	
28	cartridges in the calibers included in	
	Defendants' list of ammunition "principally for	
	use in handguns."	
	[Barnes, <i>Cartridges of the World: A Complete</i>	
	<i>and Illustrated Reference for Over 1500</i>	
	<i>Cartridges</i> (11th ed. 2006) "Selected Pages	
	from Chapter 2: Current American Rifle	
	<i>Cartridges</i> and Chapter 3: Obsolete Rifle	
	<i>Cartridges</i> " (Ex. 52 Plaintiffs' Evidence in	
	Support of Motion for Summary Judgment or	
	in the Alternative Summary Adjudication /	
	Trial Brief) <i>passim</i> .]	
	214. In its sections on handgun cartridges,	Undisputed.
	<i>Cartridges of the World</i> identifies multiple	
	cartridges in calibers not included in	

1	Defendants' list of ammunition "principally for use in handguns."	
2		
3	[Barnes, Cartridges of the World: A Complete and Illustrated Reference for Over 1500 Cartridges (11th ed. 2006) "Selected Pages from Chapter 6: Handgun Cartridges of the World " (Ex. 53 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) <i>passim</i> .]	
4		
5		
6		
7		
8	215. Defendants' expert admitted there are many ammunition cartridges that fall within the listed caliber classes that are not "principally for use in a handgun."	Undisputed subject to the objections raised during the cited portions of the deposition.
9		
10	[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 135:7-136:5, 137:8-22, 154:25-155:3, 155:21-156:2.]	
11		
12		
13		
14	216. Defendants have suggested that the Challenged Provisions apply to ammunition that is "used principally" in handguns.	Undisputed subject to the objections raised during the cited portions of the deposition. See also Graham Deposition transcript, Plaintiffs' Ex.54, p. 5:18 – 20.
15		
16	[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:8-11.]	
17		
18		
19		
20	217. Defendants' expert suggested that the "principally for use in handguns" language relates to the total number of handguns in circulation that are chambered in a particular caliber versus the total number of rifles in circulation that are chambered in the same caliber.	Disputed. Objection: Mischaracterizes the witness's testimony.
21		
22		
23	[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 83:1-16.]	Declaration of Blake Graham, ¶¶ 10-17.
24		
25		
26		
27	218. Defendants' expert suggested that the "principally for use in handguns" language	Disputed.
28		

<p>1 relates to a mix of factors, including “the 2 number of manufacturers that may have 3 produced a weapon in a particular caliber,” 4 “the length of time that a particular gun has 5 been available in a particular caliber,” and the 6 number of rifles in that caliber, if any.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 127:5- 128:25.]</p>	<p>Objection: Mischaracterizes the witness’s testimony.</p> <p>Declaration of Blake Graham, ¶¶ 10-17.</p>
<p>8 219. When asked whether the “principally for 9 use in a handgun” standard required a 10 consideration of whether any particular 11 ammunition was fired more often through a 12 handgun than a long-gun, Defendants’ expert 13 responded:</p> <p>“I would say [its] not much of a factor because principally for use really deals with the kind of firearm its going to go into, in my – in my est- -- in my understanding, so if you have one weapon that can shoot a million rounds a second and then you have 500,000 rounds – or handguns out there that shoot ten rounds a minute, that weapon is actually – or the ammunition is principally for use in the larger pool of – of weapons.”</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 83:1- 16.]</p>	<p>Undisputed subject to the objections raised during the cited portion of the deposition.</p>
<p>21 220. When asked to clarify whether he would 22 consider the numerosity of total weapons or the 23 numerosity of models of weapons to be the 24 determining factor determining whether certain 25 ammunition is “principally for use in 26 handguns,” Defendants’ expert stated:</p> <p>“Given the available information in the amount of time I had, I tried to compare the number of manufacturers that may have produced a weapon in a particular caliber, the number of models that each manufacturer used in that caliber, and then, perhaps, the length of time that a particular gun has been available in a particular caliber.”</p>	<p>Undisputed subject to the objections raised during the cited portion of the deposition. See generally Graham Deposition transcript.</p>

1	[Graham Deposition Vol. Two (Ex. 58 to	
2	Plaintiffs' Evidence in Support of Motion for	
3	Summary Judgment or in the Alternative	
4	Summary Adjudication / Trial Brief) at 128:8-25.]	
5	221. Firearms chambered in .22 are among the	Undisputed.
6	most popular weapons, as to both handguns	
7	and rifles.	
8	[Graham Deposition Vol. One (Ex. 57 to	Objection: Relevance. The State has not
9	Plaintiffs' Evidence in Support of Motion for	identified .22 caliber ammunition as handgun
10	Summary Judgment or in the Alternative	ammunition within the meaning of the
11	Summary Adjudication / Trial Brief) at	Challenged Definition.
12	185:21-186:5; Helsley Declaration at ¶¶ 29,	
13	33.]	
14	222. .22 Long Rifle is likely the most popular	Undisputed.
15	firearm cartridge in the world.	
16	[Helsley Declaration at ¶ 33.]	Objection: Relevance. The State has not
17		identified .22 caliber ammunition as handgun
18		ammunition within the meaning of the
19		Challenged Definition.
20	223. In December 2009, when Plaintiffs'	Objection: Relevance; Hearsay. See
21	counsel inquired as to whether ".22 rimfire"	Objections to Evidence Nos. 127-128. The
22	ammunition would be considered "handgun	State has not identified .22 caliber ammunition
23	ammunition" under the Challenged Provisions,	as handgun ammunition within the meaning of
24	Counsel for Defendant DOJ stated that she did	the Challenged Definition.
25	not know.	
26	[Public Records Act Request Sent to California	
27	Department of Justice Re: Assembly Bill 962,	
28	dated December 16, 2009 (Ex. 6 to Plaintiffs'	
	Evidence in Support of Motion for Summary	
	Judgment or in the Alternative Summary	
	Adjudication / Trial Brief); Defendant	
	Department of Justice Response to Public	
	Records Act and Relevant E-mail Enclosures,	
	dated January 25, 2010 (Ex. 7 to Plaintiffs'	
	Evidence in Support of Motion for Summary	
	Judgment or in the Alternative Summary	
	Adjudication / Trial Brief) at AM0002,	
	AM0004, AM0006, AM0013.]	
	224. Defendants' expert suggests that, at this	Undisputed.
	time, .22 caliber is not "principally for use in	
	handguns," but that his opinion could change	
	based on future research.	

1	[Graham Deposition Vol. One (Ex. 57 to	
2	Plaintiffs' Evidence in Support of Motion for	
3	Summary Judgment or in the Alternative	
4	Summary Adjudication / Trial Brief) at	
	186:25-187:17.]	
5	225. Defendants expert stated he would only	Undisputed.
6	classify three .45 caliber cartridges to be	
7	"principally for use in a handgun": .45 ACP,	
8	.45 GAP, and .45 Long Colt.	
9	[Graham Deposition Vol. One (Ex. 57 to	
10	Plaintiffs' Evidence in Support of Motion for	
	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at	
	153:13-18.]	
11	226. <i>Cartridges of the World</i> includes	Undisputed.
12	numerous .45 cartridges in its section on	
13	handgun cartridges besides the .45 ACP, .45	
14	GAP, and .45 Long Colt.	
15	[Barnes, <i>Cartridges of the World: A Complete</i>	
16	<i>and Illustrated Reference for Over 1500</i>	
17	<i>Cartridges</i> (11th ed. 2006) "Selected Pages	
18	from Chapter 6: Handgun Cartridges of the	
19	World " (Ex. 53 Plaintiffs' Evidence in	
20	Support of Motion for Summary Judgment or	
21	in the Alternative Summary Adjudication /	
22	Trial Brief) <i>passim</i> .]	
23	227. There are multiple cartridges that can be	Undisputed.
24	used in firearms manufactured both before and	
25	after 1898, including but not limited to,	
26	cartridges in the following calibers: 22, .32,	
27	.38, .44, .45, and .50.	
28	[Helsley Declaration at ¶¶ 20-25.]	
	228. Ammunition that can be used in a	Objection: Mischaracterizes the witness's
	modern firearm chambered to fire that	testimony.
	cartridge can also be used in an antique firearm	
	chambered to fire that same cartridge.	
	[Helsley Declaration at ¶¶ 20-25.]	

1 2 3 4	229. Ammunition, when it is manufactured, is designed and intended to be used in any firearm that is chambered for that cartridge, regardless of when the firearm it will be used in was manufactured. [Helsley Declaration at ¶¶ 20-25.]	Objection: Mischaracterizes the witness's testimony.
5 6 7 8 9	230. The calibers Defendants claim to be "handgun ammunition" include cartridges that are designed and intended to be used in "antique firearms," and thus should be exempt from the Challenged Provisions. [Helsley Declaration at ¶23.]	Undisputed, subject to vagueness objections raised in response to Plaintiffs' special interrogatories.
10 11 12 13 14 15	231. Defendants' expert witness testified that .45 Long Colt is unequivocally "handgun ammunition" under the Challenged Provisions. [Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 153:13-18.]	Undisputed.
16 17 18	232. 45 Long Colt is used in firearms manufactured prior to 1898. [Helsley Decl. at ¶ 23.]	Undisputed.
19 20 21 22	233. <i>State of Tennessee ex rel. Rayburn v. Cooper</i> , involved a challenge to a state law authorizing firearms to be carried by patrons in establishments where "the serving of meals" is the " <i>principle</i> business conducted" – as opposed to the serving of alcohol.	Objection: Relevance. Hearsay. The <i>Rayburn</i> case has no bearing on any material fact before the Court, is not precedent, and is hearsay. See the State's Objections to Plaintiffs' Request for Judicial Notice.
23 24 25 26 27 28	[Amended Complaint for Injunctive and Declaratory Relief in <i>Tennessee ex rel. Rayburn v. Cooper</i> , Case No. 09-1284-I, filed July 6, 2009 (Ex. A to Plaintiffs' Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at ¶ 2; Order of Chancellor Claudia Bonnyman in <i>Tennessee ex rel. Rayburn v. Cooper</i> , Case No. 09-1284-I, filed November 25, 2009 (Ex. D to ' Request for Judicial Notice in Support of	

1	Motion for Summary Judgment or in the	
2	Alternative Summary Adjudication / Trial	
3	Brief) at 24:20-2.]	
4	234. In <i>State of Tennessee ex rel. Rayburn v. Cooper</i> , plaintiffs argued it would be	Objection: Relevance. Hearsay. The <i>Rayburn</i>
5	extremely difficult for an individual to	case has no bearing on any material fact before
6	determine whether they were in a bar or a	the Court, is not precedent, and is hearsay.
7	restaurant.	
8	[Amended Complaint for Injunctive and	See the State's Objections to Plaintiffs' Request
9	Declaratory Relief in <i>Tennessee ex rel.</i>	for Judicial Notice.
10	<i>Rayburn v. Cooper</i> , Case No. 09-1284-I, filed	
11	July 6, 2009 (Ex. A to Plaintiffs' Request for	
12	Judicial Notice in Support of Motion for	
13	Summary Judgment or in the Alternative	
14	Summary Adjudication / Trial Brief) at ¶¶ 93,	
15	97, 99.]	
16	235. The court in <i>State of Tennessee ex rel.</i>	Objection: Relevance. Hearsay. The <i>Rayburn</i>
17	<i>Rayburn v. Cooper</i> found the statute	case has no bearing on any material fact before
18	unconstitutionally vague, reasoning that	the Court, is not precedent, and is hearsay.
19	whether the serving of meals is a business's	
20	principle business is <i>not something that can be</i>	See the State's Objections to Plaintiffs' Request
21	<i>known</i> to the ordinary citizen. The court added	for Judicial Notice.
22	that inquiry would not suffice to overcome the	
23	law's vagueness.	
24	[Order of Chancellor Claudia Bonnyman in	
25	<i>Tennessee ex rel. Rayburn v. Cooper</i> , Case No.	
26	09-1284-I, filed November 25, 2009 (Ex. D to	
27	Plaintiffs' Request for Judicial Notice in	
28	Support of Motion for Summary Judgment or	
	in the Alternative Summary Adjudication /	
	Trial Brief) at 12:24-13:6.]	
	236. Defendants in <i>State of Tennessee ex rel.</i>	Objection: Relevance. Hearsay. The <i>Rayburn</i>
	<i>Rayburn v. Cooper</i> argued that the law was not	case has no bearing on any material fact before
	vague because there were obvious instances	the Court, is not precedent, and is hearsay.
	where a patron could determine whether a	
	particular establishment was a "restaurant,"	See the State's Objections to Plaintiffs' Request
	pointing to establishments that only serve food	for Judicial Notice.
	– and no alcohol.	
	[Consolidated Memorandum of Law of	
	Defendant Attorney General Cooper in	
	Opposition to Plaintiffs' Motions for Partial	
	Summary Judgment and in Support of	
	Defendant's Cross-Motion for Judgment on the	
	Pleadings and/or for Summary Judgment in	
	<i>Tennessee ex rel. Rayburn v. Cooper</i> , Case No.	

1	09-1284-I, filed October 2, 2009 (Ex. I to	
2	Plaintiffs' Request for Judicial Notice in	
3	Support of Motion for Summary Judgment or	
4	in the Alternative Summary Adjudication /	
5	Trial Brief) at pp. 19-20.]	
6	237. In conjunction with Fish and Game Code	Objection: Relevance; otherwise undisputed.
7	section 3004.5, the Legislature granted the Fish	
8	and Game Commission the authority to certify	
9	and publish a list of nonlead ammunition	
10	suitable for use in regulated areas. The list of	
11	certified nonlead ammunition can be easily	
12	accessed at the Commission's website.	
13	[California Department of Fish and Game,	
14	Certified Nonlead Ammunition Information,	
15	http://www.dfg.ca.gov/wildlife/hunting/condor/	
16	certifiedammo.html (last visited Nov. 29,	
17	2010) (Ex. E to Plaintiffs' Request for Judicial	
18	Notice in Support of Motion for Summary	
19	Judgment or in the Alternative	
20	Summary Adjudication / Trial Brief).]	
21	238. On December 30, 2009, DOJ published an	Undisputed.
22	"Information Bulletin" providing a brief	
23	overview of AB 962.	
24	[Information Bulletin from California	
25	Department of Justice Re: New and Amended	
26	Firearm Laws, dated December 30, 2009 (Ex. 8	
27	to Plaintiffs' Evidence in Support of Motion	
28	for Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief).]	
	239. Defendant DOJ provided notice to all	Undisputed that DOJ published an Information
	California firearm dealers, including Plaintiffs	Bulletin on or about December 30, 2009.
	Herb Bauer Sporting Goods, Inc., that Penal	
	Code section 12061, subdivisions (a)(1) and	Disputed that the bulletin constituted a "threat
	(2) took effect, and have been in force, since	of enforcement." Plaintiffs mischaracterize the
	January 1, 2010, effectively threatening all	evidence.
	California firearm dealers with enforcement of	
	those sections.	Objection: Secondary Evidence Rule (Evid.
	[Information Bulletin from California	Code §§ 1521 & 1523.) The bulletin provides
	Department of Justice Re: New and Amended	the best evidence of its content.
	Firearm Laws, dated December 30, 2009 (Ex. 8	
	to Plaintiffs' Evidence in Support of Motion	
	for Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief).]	

ISSUE NO. 2: THE STATE'S SUPPLEMENTAL UNDISPUTED MATERIAL FACTS IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

The State also submits the following statement of additional material facts that raise a triable issue with respect to Issue No. 2, together with references to supporting evidence, in opposition to Plaintiffs Motion.

The State's Supplemental Undisputed Material Facts and Supporting Evidence	Plaintiffs' Response and Supporting Evidence
<p>8. Barry Bauer, president of plaintiff Herb Bauer Sporting Goods, testified that in his experience, the following cartridges of ammunition were chambered, or used, more often in a handgun than a rifle: .45 ACP, .45 GAP, 9mm Luger, 10mm Auto, .40 S&W, .25 ACP, and .380 ACP.</p> <p>[State's Compendium of Evidence, Exh. "A," B. Bauer Deposition, pp.36:18-37:3; 42:1-9; 42:19-43:2; 43:9-17; 43:18-44:2; 44:3-44:20; 49:8-49:19.]</p>	
<p>9. Plaintiffs' expert witness, Stephen Helsley, testified that the following cartridges of ammunition were handgun cartridges: .25 ACP, .45 GAP, 9mm Federal, 10mm Auto, .357 SIG, .44 Auto Mag, and .38 S&W.</p> <p>[State's Compendium of Evidence, Exh. "D," S. Helsley Deposition, pp. 129:12-17; 146:1-5; 155:22-156:7; 158:9-17; 159:24-160:1; 163:15-17; 165:2-4; 172:12-14.]</p>	
<p>10. Plaintiff Sheriff Clay Parker testified that, in his experience, the following calibers and cartridges of ammunition were used more often handguns: .45 ACP, .40 caliber, .25 ACP, .32 ACP, .38 Special, and .380 ACP.</p> <p>[State's Compendium of Evidence, Exh. "E," C. Parker Deposition, pp. 49:3-16; 54:25-55:7; 55:8-14; 55:15-22; 60:9-14; 61:7-20.]</p>	
<p>11. Plaintiff Steven Stonecipher testified that, in his experience, the following cartridges were chambered, or used, more often in handguns: .45 ACP, .380 ACP, 9mm Luger, 10mm, .40 S&W, .25 ACP, .32 ACP, .357 SIG, .454 Casull.</p> <p>[State's Compendium of Evidence, Exh. "F," S.</p>	

1 Stonecipher Deposition, pp. 43:6-14; 43:18-22;
2 48:16-19; 52:1-24; 53:3-7; 53:11-15; 53:19-22;
3 54:1-5, 55:1-5; 56:23-57:1; 57:6-11.

4 12. Barry Bauer, president of plaintiff Herb
5 Bauer Sporting Goods, testified that no one
6 from the California Department of Justice,
7 federal Bureau of Alcohol, Tobacco, Firearms
8 and Explosives, the Fresno County Sheriff's
9 Office, the Fresno County District Attorneys'
10 Office, or the Fresno City Police Department
11 have enforced sections 12060, 12061, or 12318
12 of the Penal Code against the company, or
13 threatened to do so.

14 [State's Compendium of Evidence, Exh. "A,"
15 B. Bauer Deposition, pp.117:3-119:6.]

16 13. Plaintiff Sheriff Clay Parker testified that
17 he has never visited a gun dealer or
18 ammunition vendor in Tehama County to
19 determine compliance with California's gun
20 laws, opting instead to allow the California
21 Department of Justice handle such enforcement
22 duties.

23 [State's Compendium of Evidence, Exh. "E,"
24 C. Parker Deposition, pp. 42:6-15; 42:20-43:7.]

25 14. Plaintiff Sheriff Clay Parker testified that
26 he did not research, visited no websites, and
27 read no books to try to determine what
28 ammunition might be considered handgun
ammunition or "antique ammunition" within
the meaning of AB 962.

[State's Compendium of Evidence, Exh. "E,"
C. Parker Deposition, pp. 44:20-23; 45:14-
47:20.]

1 Dated: January 3, 2011

Respectfully Submitted,

2 KAMALA D. HARRIS
3 Attorney General of California
4 ZACKERY P. MORAZZINI
5 Supervising Deputy Attorney General
6 KIMBERLY GRAHAM
7 Deputy Attorney General



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

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

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

I declare:

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

On January 3, 2011, I served the attached

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

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

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

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

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

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

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

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

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

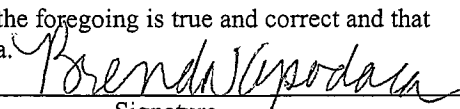
by placing a true copy thereof enclosed in a sealed envelope with the Golden State Overnight courier service, addressed as follows:

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

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

Brenda Apodaca

Declarant


Signature