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

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

14)
15 Plaintiffs and Petitioners,)

16 vs.)

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

20)
21 Defendants and Respondents.)
22

CASE NO. 10CECG02116

**STIPULATED SUPPLEMENTAL
SEPARATE STATEMENT OF
UNDISPUTED FACTS IN SUPPORT OF
OPPOSITION TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT OR IN THE
ALTERNATIVE SUMMARY
ADJUDICATION / TRIAL BRIEF**

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

Trial Date: January 18, 2011
Action Filed: June 17, 2010

23 Due to the unique timing and nature of this proceeding and pursuant to the parties' stipulation
24 permitting Plaintiffs Sheriff Clay Parker, et al. ("Plaintiffs") to introduce deposition testimony not
25 originally lodged in support of Plaintiffs' Motion for Summary Judgment, Plaintiffs
26 respectfully submit this response to Defendants' Supplemental Separate Statement of Undisputed
27 Material Facts, together with references to supporting evidence, in support of their Motion for
28 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>Objections: 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>

<p>3. There is confusion among law enforcement officers as to what ammunition is “principally for use in handguns.”</p> <p>[Parker Declaration at 2:13, Allman Declaration at 2:13]</p>	<p>Disputed.</p> <p>Objection: Conclusory; Lacks Foundation; Vague. See Objections to Evidence Nos. 2-8 and 80-86.</p> <p>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 Sheriffs Department defers to the California Department of Justice enforcement of gun laws at gun and ammunition vendors]</p> <p>Declaration of Blake Graham, ¶¶ 10-17 .</p>
<p>4. Penal Code section 12060 does not rely on a list of ammunition “principally for use in handguns.”</p> <p>[Pen. Code, § 12060.]</p>	<p>Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12060 of the Penal Code provides the best evidence of its content.</p>
<p>5. Penal Code section 12061 does not rely on a list of ammunition “principally for use in handguns.”</p> <p>[Pen. Code, § 12061.]</p>	<p>Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12061 of the Penal Code provides the best evidence of its content.</p>
<p>6. Penal Code section 12318 does not rely on a list of ammunition “principally for use in handguns.”</p> <p>[Pen. Code, § 12318.]</p>	<p>Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12318 of the Penal Code provides the best evidence of its content.</p>
<p>7. Penal Code section 12323 does not rely on a list of ammunition “principally for use in handguns.”</p> <p>[Pen. Code, § 12323.]</p>	<p>Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12323 of the Penal Code provides the best evidence of its content.</p>
<p>8. Defendant DOJ has not promulgated regulations regarding the definition of “handgun ammunition” for purposes of the Challenged Provisions.</p> <p>[Responses to Plaintiffs’ Request for 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.]</p>	<p>Undisputed.</p>

<p>9. 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."</p> <p>[Pen. Code, § 12060.]</p>	<p>Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12060 of the Penal Code provides the best evidence of its content.</p>
<p>10. 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."</p> <p>[Pen. Code, § 12061.]</p>	<p>Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12061 of the Penal Code provides the best evidence of its content.</p>
<p>11. 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."</p> <p>[Pen. Code, § 12318.]</p>	<p>Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12318 of the Penal Code provides the best evidence of its content.</p>
<p>12. 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."</p> <p>[Pen. Code, § 12323.]</p>	<p>Objection: Relevance; Secondary; Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12323 of the Penal Code provides the best evidence of its content.</p>
<p>13. 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.</p> <p>[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.]</p>	<p>Objection: Relevance. Hearsay. Senate Bill 1276 has no bearing on any material fact before the Court and is not legislative history. See:</p> <p>(1) The State's Objections to Plaintiffs' Request for Judicial Notice; and</p> <p>(2) The State's Objections to Evidence No. 126.</p>

1 14. A Bill Analysis conducted by the Senate
2 Committee on Judiciary for Senate Bill 1276
3 contains a "comment" on Penal Code section
4 12323's definition of "handgun ammunition which
5 reads, in relevant part:

6 "Existing Penal Code section 12323 was added
7 in 1982 and defines handgun ammunition as
8 "ammunition principally for use in pistols and
9 revolvers . . . notwithstanding that the ammunition
10 may also be used in some rifles. . . ." However, it
11 may not be suitable for defining handgun
12 ammunition in general. It may be assumed that
13 many ammunition calibers are suitable for both
14 rifles and handguns. Without additional statutory
15 guidance, it may be very difficult for dealers to
16 determine which ammunition is "handgun
17 ammunition" for purposes of the requirements
18 added to Penal Code section 12076."

19 [Legislative History Report and Analysis Re:
20 Senate Bill 1276 (Hart – 1994) (Ex. 5 to Plaintiffs'
21 Evidence in Support of Motion for Summary
22 Judgment or in the Alternative Summary
23 Adjudication / Trial Brief) at LH010.]

24 15. Senate Bill 1276 (1994) relied on the
25 definition of "handgun ammunition" found at
26 Penal Code section 12323.

27 [Senate Bill 1276 (1994) as Amended in Senate on
28 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.]

16. Defendants' expert admitted that he was
asked to opine on what he thought should be
included as "handgun ammunition" in Assembly
Bill 2358's enumerated list of "handgun
ammunition" calibers.

[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
102:21-103:17]

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.

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.

Objection: Relevance. What Mr. Graham was
asked to do vis-a-vis Assembly Bill 2358 is
not relevant to any material fact in this case.
See:

(1) The State's Objections to Plaintiffs'
Request for Judicial Notice; and

(2) Objections to Evidence Nos. 123-125.

<p>17. When asked which ammunition he thought should be included in AB 2358's list of "handgun ammunition," Defendants' expert said he remembered identifying the following: ".45, .380., .25, .40, .38, .357, possibly .454, and possibly .762, and maybe .223."</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 103:18-104:10.]</p>	<p>Objection: Relevance. What Mr. Graham was asked to do vis-a-vis 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>
<p>18. Counsel for Defendant DOJ has stated that Defendant DOJ will not and cannot adopt a policy as to what ammunition constitutes "handgun ammunition" for purposes of the Challenged Provisions.</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 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.]</p>	<p>Objection: Relevance. Hearsay. See Objections to Evidence Nos. 127-128.</p>
<p>19. On August 19, 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, .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</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>

1	Summary Adjudication / Trial Brief).]	
2		
3	20. On August 30, 2010, then pending Assembly	Objection: Relevance. Assembly Bill 2358 is not relevant to any material fact in this case. See: (1) The State's Objections to Plaintiffs' Request for Judicial Notice; and (2) Objections to Evidence Nos. 123-125
4	Bill 2358 was amended to include in Penal Code	
5	section 12323 the following definition of	
6	"handgun ammunition": "any variety of	
7	ammunition in the following calibers,	
8	notwithstanding that the ammunition may also be	
9	used in some rifles: .22 <i>rimfire</i> , .25, .32, .38,	
10	.9mm, .10mm, .40, .41, .44, .45, 5.7x28mm, .357,	
11	.454, .5.56x45mm, 7.63mm, 7.65mm."	
12	[Assembly Bill No. 2358 (2010) as Amended in	
13	Senate August 30, 2010 (attached as Ex. 3 to	
14	Plaintiffs' Evidence in Support of Motion for	
15	Summary Judgment or in the Alternative	
16	Summary Adjudication / Trial Brief, Ex. G to	
17	Plaintiffs' Request for Judicial Notice in Support	
18	of Motion for Summary Judgment or in the	
19	Alternative Summary Adjudication / Trial Brief)	
20	at 16:11-40; Complete Bill History, A.B. No. 2358	
21	(attached as Ex.4 to Plaintiffs' Evidence in	
22	Support of Motion for Summary Judgment or in	
23	the Alternative Summary Adjudication / Trial	
24	Brief).]	
25	21. All modern centerfire and rimfire ammunition	Undisputed.
26	for use in handguns or rifles consist of the same	
27	components: a metal casing that suspends a metal	Undisputed.
28	projectile over a charge of powder confined within	
	the metal casing and a primer (or priming charge)	Undisputed.
	to ignite the powder - ("self-contained metallic	
	ammunition").	
	[Helsley Declaration at ¶ 20.]	
	22. In order of their specificity, these three terms	Undisputed.
	are used to describe a self-contained metallic	
	cartridge: "ammunition," "caliber," and its given	Undisputed.
	"cartridge name."	
	[Helsley Declaration at ¶ 54.]	
	23. "Ammunition" is defined in the Glossary of	Undisputed.
	the Association of Firearms and Tool Mark	
	Examiners as:	Undisputed.
	"One or more loaded cartridges consisting of a	
	primed case, propellant, and with one or more	Undisputed.
	projectiles. Also referred to as fixed or live	
	ammunition."	

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 Merged	
	Ex. C at p. 2.]	
5	24. The definition of "caliber" depends on	Undisputed.
6	whether it is applied to a firearm or to	
7	ammunition. When applied to ammunition, the	
8	Glossary of the Association of Firearms and Tool	
9	Mark Examiners defines it as: "A numerical term,	
10	without the decimal point, included in a cartridge	
11	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.]	
12	25. It is a more precise description of ammunition	Objection: Relevance; Mischaracterizes the
13	to identify it by its specific cartridge name because	witness's testimony; vague and ambiguous as
14	often the "caliber" in the cartridge's given name	to
15	does not reflect the actual bore or bullet diameter.	the context where the description might be
	[Helsley Declaration at ¶¶ 54-64.]	more precise.
16	26. Within any given "caliber," there are usually	Undisputed.
17	various "cartridges," some of which may be used	
18	more often in a handgun, and some of which may	
19	be used more often in a rifle.	
	[Helsley Declaration at ¶¶ 56-64.]	
20	27. Reference to the measurement of a projectile's	Objection: Mischaracterizes the witness's
21	diameter (i.e., its caliber) is not a particularly	testimony. Vague and ambiguous as to context
22	precise method of identifying ammunition.	and the phrase "not a particularly precise
	[Helsley Declaration at ¶ 55-64.]	method."
23	28. Virtually all calibers can be and are fired	Objection: Mischaracterizes the witness's
24	safely through both handguns and rifles.	testimony, Conclusory; Lacks foundation;
25	[Helsley Declaration at ¶ 65.]	vague. See Objections to Evidence Nos. 42-
		44.
26	29. Virtually all cartridges can be and are fired	Objection: Mischaracterizes the witness's
27	safely through both handguns and rifles.	testimony, Conclusory; Lacks foundation;
28	[Helsley Declaration at ¶ 65.]	vague. See Objections to Evidence Nos. 42-
		44.

<p>30. Packaging for ammunition often has no label associating its use with either a handgun or a rifle.</p> <p>[Helsley Declaration at ¶¶ 68-69.]</p>	<p>Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 48-50.</p>
<p>31. Packaging for ammunition does not identify whether the ammunition it contains is "principally for use in handguns."</p> <p>[Helsley Declaration at ¶ 69.]</p>	<p>Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 48-50.</p>
<p>32. 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."</p> <p>[Helsley Declaration at ¶¶ 68-69.]</p>	<p>Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 48-50.</p>
<p>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.</p> <p>[Helsley Declaration at ¶¶ 66, 72-73.]</p>	<p>Disputed.</p> <p>Objection: Assumes facts not in evidence; mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 45-47, 56-59.</p> <p>Declaration of Blake Graham, ¶¶10-17.</p>
<p>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.</p> <p>[Helsley Declaration at ¶¶ 65-70, 72-73.]</p>	<p>Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 42-59.</p>
<p>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.</p> <p>[Helsley Declaration at ¶¶ 65-70.]</p>	<p>Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 42-52.</p>

<p>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.”</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 6:16-19, 7:8-11.]</p>	<p>Undisputed.</p>
<p>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.</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 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.]</p>	<p>Undisputed that the State identified 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.</p>
<p>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.</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>

1 2 3 4 5 6 7 8	<p>39. 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>	Undisputed.
9 10 11 12 13	<p>40. 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>	Undisputed.
14 15 16 17 18 19	<p>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.</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 118:11-18.]</p>	Objection: Mischaracterizes the witness's testimony.
20 21 22 23 24 25 26	<p>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.</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 69:20-70:5.]</p>	Objection: Mischaracterizes the witness's testimony (which testimony is not included on Plaintiffs' Exhibit 58.)

<p>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.</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 63:22-64:6, 140:13-21.]</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>
<p>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."</p> <p>[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.]</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>
<p>45. Defendant DOJ is required to keep and maintain records of handgun sales in California; this record is commonly referred to as the Dealer Record of Sales ("DROS") and it is linked to the Automated Firearms System ("AFS").</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 7:14; 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 176:14-17, 177:7-13, 190:3-6.]</p>	<p>Undisputed.</p>
<p>46. Defendants and their expert witness relied in part on the DROS records to determine which ammunition should be included in Defendants' list of ammunition they consider "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</p>	<p>Undisputed.</p>

1 2 3 4 5 6	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.]	
7 8 9 10 11 12	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 "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.
13 14 15 16 17 18	48. Defendants' expert admitted that certain calibers may have been omitted from Defendants' list of ammunition "principally for use in handguns" because they were "unpopular." [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 204:21-207:9.]	Objection: Mischaracterizes the witness's testimony. Declaration of Blake Graham, ¶¶ 10-17.
19 20 21 22 23 24 25 26	49. Defendants and their expert relied on DROS records only from the previous five years to determine the handguns most commonly sold in California over the same time period. [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 7:14-16; 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 115:18-116:2, 116:17-117:6.]	Undisputed.
27 28	50. Defendants' expert does not have any information regarding what percentage of the total guns in circulation are represented by the records	Undisputed.

1	of handgun sales in the past five years.	
2	[Graham Deposition Vol. Two (Ex. 58 to	
3	Plaintiffs' Evidence in Support of Motion for	
4	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 118:4-10.]	
5	51. The DROS records relied upon by	Objection: Mischaracterizes the witness's
6	Defendants' expert combine firearms that utilize	testimony.
7	ammunition referred to by Defendants as	Declaration of Blake Graham, ¶ 13.
8	"handgun ammunition" and firearms that utilize	
9	ammunition referred to by Defendants as "rifle	
10	ammunition" under a single caliber listing.	
11	[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.]	
12	52. The DROS records relied upon by	Objection: Mischaracterizes the witness's
13	Defendants' expert are not precise in identifying	testimony.
14	the sales of handguns that use a specific cartridge.	
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 14:10-23.]	
18	53. The DROS system does not break down sales	Undisputed.
19	by guns as to every cartridge of ammunition sold	
20	and whether such ammunition is a "rifle	
21	cartridge," "handgun cartridge," or both.	
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 19:23-	
	20:20.]	
24	54. The DROS records relied on by Defendants'	Undisputed.
25	expert does not contain a listing of all types of	
26	cartridges fired by a firearm of that caliber due to	
27	space limitations.	
28	[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.]	

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

1	[Graham Deposition Vol. Two (Ex. 58 to	
2	Plaintiffs' Evidence in Support of Motion for	
3	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 93:6-24.]	
4	60. Defendants' expert admits his opinion as to	Objection: Mischaracterizes the witness's
5	which ammunition is "principally for use in	
6	handguns" may have been different had he been	
	able to compare handgun sales with rifle sales.	
7	[Graham Deposition Vol. Two (Ex. 58 to	See also Declaration of Blake Graham, ¶¶ 15-17.
8	Plaintiffs' Evidence in Support of Motion for	
9	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 95:13-20.]	
10	61. Defendants relied in part on the	Undisputed.
11	representations made by ammunition vendors on	
12	their websites to determine whether certain	
13	ammunition should be included in Defendants' list	
14	of ammunition they consider "handgun	
15	ammunition" for purposes of the Challenged	
16	Provisions.	
	[Responses to Specially Prepared Interrogatories,	
17	Set One (Ex. 54 to Plaintiffs' Evidence in Support	Undisputed.
18	of Motion for Summary Judgment or in the	
19	Alternative Summary Adjudication / Trial Brief)	
20	at 7:18-20.]	
21	62. Defendants' expert relied in part on the fact	
22	that ammunition vendor websites listed certain	
23	cartridges as "handgun ammunition" to inform his	
24	opinion as to whether specific ammunition was	
25	"principally for use in handguns."	
26	[Graham Deposition Vol. Two (Ex. 58 to	
27	Plaintiffs' Evidence in Support of Motion for	
28	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 44:1-14,	
	64:17-65:6.]	
23	63. Defendants' expert testified that the fact that	Objection: Mischaracterizes the witness's
24	certain websites refer to some ammunition as	
25	"handgun cartridges" helped establish the DOJ's	
26	list of calibers "principally for use in handgun."	
27	[Graham Deposition Vol. One (Ex. 57 to	Declaration of Blake Graham, ¶¶ 10-17.
28	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>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 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>67. 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 Summary Adjudication / Trial Brief) at 102:6-104:3.]</p>	<p>Objection: Mischaracterizes the witness's testimony.</p>

1 2 3 4 5	68. None of the relied-upon website vendors provided Defendants' expert with data regarding the total rounds of each type of ammunition sold. [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.]	Undisputed.
6 7 8 9 10 11 12	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. [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.]	Undisputed.
13 14 15 16 17 18 19	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. 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.]	Objection: Mischaracterizes the witness's testimony.
20 21 22 23 24	71. 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. [Tenny Declaration at 1:6-11.]	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 105-113 & 133.

<p>72. 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.</p> <p>[Potterfield Declaration at 2:3-12.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 87-95 & 132.</p>
<p>73. 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.</p> <p>[Hall Declaration at 2:3-12.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 27-37.</p>
<p>74. 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.”</p> <p>[Tenny Declaration at 1:12-14.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 105-113 & 133.</p>
<p>75. 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.”</p> <p>[Potterfield Declaration at 2:13-15.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 87-95 & 132.</p>

<p>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.”</p> <p>[Hall Declaration at 2:13-15.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 27-37.</p>
<p>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.</p> <p>[Tenny Declaration at 1:15-19.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 105-113 & 133.</p>
<p>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 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>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 87-95 & 132.</p>

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

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

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

16 80. Cheaper Than Dirt, Inc., has announced that it
17 will cease shipping all ammunition to non-exempt
18 California customers beginning January 1, 2011,
19 to avoid risking criminal prosecution under Penal
20 Code section 12328.

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

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

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

28 [Potterfield Declaration at 3:1-9.]

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

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

[Hall Declaration at 3:1-6.]

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

1 2 3 4 5 6	<p>83. 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 34:8-35:14.]</p>	Undisputed.
7 8 9 10 11	<p>84. Defendants' expert did not use any trade magazine articles regarding the amount of particular ammunition sold.</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 35:15-36:13.]</p>	Undisputed.
12 13 14 15 16 17 18 19	<p>85. Defendants' expert's use of trade magazines to inform his opinion regarding ammunition "principally for use in handguns" is based solely upon his reading of trade magazines over the years, with no specific reference to a particular article or data from those trade magazines on the subject.</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 35:15-36:13, 36:14-37:6]</p>	Undisputed.
20 21 22 23 24 25 26 27 28	<p>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 Challenged Provisions.</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 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.]</p>	Undisputed, subject to objections in the deposition transcript.

<p>1 87. Defendants' expert concluded that, based on</p> <p>2 his training and experience over the last sixteen</p> <p>3 years or so, when added to experience with</p> <p>4 handguns and other factors, he "<i>has a feeling</i> that</p> <p>5 there are certain calibers that are more often than</p> <p>6 not handgun calibers."</p> <p>7 [Graham Deposition Vol. One (Ex. 57 to</p> <p>8 Plaintiffs' Evidence in Support of Motion for</p> <p>9 Summary Judgment or in the Alternative</p> <p>10 Summary Adjudication / Trial Brief) at 81:24-</p> <p>11 82:4, 206:22-207:2.]</p>	<p>Disputed.</p> <p>Objection: Mischaracterizes the witness's</p> <p>testimony.</p> <p>Declaration of Blake Graham, ¶¶ 10-17.</p>
<p>8 88. Defendants' expert's opinion regarding</p> <p>9 ammunition "principally for use in handguns" was</p> <p>10 not informed by information regarding the</p> <p>11 amounts and types of ammunition used by the</p> <p>12 military.</p> <p>13 [Graham Deposition Vol. Two (Ex. 58 to</p> <p>14 Plaintiffs' Evidence in Support of Motion for</p> <p>15 Summary Judgment or in the Alternative</p> <p>16 Summary Adjudication / Trial Brief) at 109:14-</p> <p>17 18.]</p>	<p>Undisputed.</p>
<p>18 89. Defendants' expert's opinion regarding</p> <p>19 ammunition "principally for use in handguns" was</p> <p>20 not informed by specific information regarding the</p> <p>21 number of handguns and/or rifles used by military</p> <p>22 service members stationed in California.</p> <p>23 [Graham Deposition Vol. Two (Ex. 58 to</p> <p>24 Plaintiffs' Evidence in Support of Motion for</p> <p>25 Summary Judgment or in the Alternative</p> <p>26 Summary Adjudication / Trial Brief) at 109:8-13,</p> <p>27 110:8-111:10.]</p>	<p>Undisputed.</p>
<p>28 90. Defendants' expert's opinion regarding</p> <p>ammunition "principally for use in handguns" was</p> <p>not informed by research studies regarding popular</p> <p>or prevalently used ammunition.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to</p> <p>Plaintiffs' Evidence in Support of Motion for</p> <p>Summary Judgment or in the Alternative</p> <p>Summary Adjudication / Trial Brief) at 118:19-</p> <p>24.]</p>	<p>Objection: Mischaracterizes the witness's</p> <p>testimony. Evidence cited bears no relation to</p> <p>facts asserted.</p>

<p>91. Defendants' expert's opinion regarding ammunition "principally for use in handguns" was not informed by existing polls regarding the ammunition generally or the popularity of certain cartridges.</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 119:20-120:8.]</p>	<p>Undisputed subject to the objections raised during the cited portion of the deposition.</p>
<p>92. Prior to forming his opinion as to ammunition prevalently used in handguns, Defendants' expert did not personally conduct any polls regarding the ammunition members of the general public use in their 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 120:9-16.]</p>	<p>Undisputed subject to the objections raised during the cited portion of the deposition.</p>
<p>93. Defendants assert that the ammunition they have identified as "principally for use in handguns" is supported in part by the fact that those calibers are identified as "handgun ammunition" in <i>Cartridges of the World</i>.</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 7:18-21.]</p>	<p>Undisputed.</p>
<p>94. In its sections on rifle cartridges, <i>Cartridges of the World</i> identifies multiple cartridges in the calibers included in Defendants' list of ammunition "principally for use in handguns."</p> <p>[Barnes, <i>Cartridges of the World: A Complete and Illustrated Reference for Over 1500 Cartridges</i> (11th ed. 2006) "Selected Pages from Chapter 2: Current American Rifle Cartridges and Chapter3: Obsolete Rifle Cartridges " (Ex. 52 Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) <i>passim</i>.]</p>	<p>Objection: This "fact" is vague and ambiguous. It also is unclear to which portions of the cited exhibit Plaintiffs are relying upon.</p>

1 2 3 4 5 6 7 8	<p>95. In its sections on handgun cartridges, <i>Cartridges of the World</i> identifies multiple cartridges in calibers not included in Defendants' list of ammunition "principally for use in handguns."</p> <p>[Barnes, <i>Cartridges of the World: A Complete and Illustrated Reference for Over 1500 Cartridges</i> (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>.]</p>	Undisputed.
9 10 11 12 13 14	<p>96. Defendants' expert admitted there are many ammunition cartridges that fall within the listed caliber classes that are not "principally for use in a 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 135:7-136:5, 137:8-22, 154:25-155:3, 155:21-156:2.]</p>	Undisputed subject to the objections raised during the cited portions of the deposition.
15 16 17 18 19	<p>97. Defendants have suggested that the Challenged Provisions apply to ammunition that is "used principally" in handguns.</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 7:8-11.]</p>	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.
20 21 22 23 24 25 26 27 28	<p>98. 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.</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>Disputed.</p> <p>Objection: Mischaracterizes the witness's testimony.</p> <p>Declaration of Blake Graham, ¶¶ 10-17.</p>

1 99. Defendants' expert suggested that the
2 "principally for use in handguns" language relates
3 to a mix of factors, including "the number of
4 manufacturers that may have produced a weapon
5 in a particular caliber," "the length of time that a
6 particular gun has been available in a particular
7 caliber," and the number of rifles in that caliber, if
8 any.

9 [Graham Deposition Vol. Two (Ex. 58 to
10 Plaintiffs' Evidence in Support of Motion for
11 Summary Judgment or in the Alternative
12 Summary Adjudication / Trial Brief) at 127:5-
13 128:25.]

Disputed.

Objection: Mischaracterizes the witness's
testimony.

Declaration of Blake Graham, ¶¶ 10-17.

14 100. When asked whether the "principally for use
15 in a handgun" standard required a consideration of
16 whether any particular ammunition was fired more
17 often through a handgun than a long-gun,
18 Defendants' expert responded:

19 "I would say [its] not much of a factor because
20 principally for use really deals with the kind of
21 firearm its going to go into, in my -- in my est- --
22 in my understanding, so if you have one weapon
23 that can shoot a million rounds a second and then
24 you have 500,000 rounds -- or handguns out there
25 that shoot ten rounds a minute, that weapon is
26 actually -- or the ammunition is principally for use
27 in the larger pool of -- of weapons."

28 [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 portions of the deposition.

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<p>101. When asked to clarify whether he would consider the numerosity of total weapons or the 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>Undisputed subject to the objections raised during the cited portions of the deposition. See generally Graham Deposition Transcript.</p>
<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>
<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>

1 2 3 4 5 6 7 8 9 10 11 12	<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 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.]</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>
13 14 15 16 17 18	<p>105. Defendants' expert suggests that, at this time, .22 caliber is not "principally for use in handguns," but that his opinion could change based on future research.</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 186:25-187:17.]</p>	<p>Undisputed.</p>
19 20 21 22 23 24	<p>106. Defendants expert stated he would only classify three .45 caliber cartridges to be "principally for use in a handgun": .45 ACP, .45 GAP, and .45 Long Colt.</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 153:13-18.]</p>	<p>Undisputed.</p>
25 26 27 28	<p>107. <i>Cartridges of the World</i> includes numerous .45 cartridges in its section on handgun cartridges besides the .45 ACP, .45 GAP, and .45 Long Colt.</p> <p>[Barnes, <i>Cartridges of the World: A Complete and Illustrated Reference for Over 1500 Cartridges</i> (11th ed. 2006) "Selected Pages from Chapter 6: Handgun Cartridges of the World" (Ex. 53</p>	<p>Undisputed.</p>

1	Plaintiffs' Evidence in Support of Motion for	
2	Summary Judgment or in the Alternative	
3	Summary Adjudication / Trial Brief) <i>passim</i> .]	
4	108. There are multiple cartridges that can be	Undisputed.
5	used in firearms manufactured both before and	
6	after 1898, including but not limited to, cartridges	
7	in the following calibers: 22, .32, .38, .44, .45, and	
8	.50.	
9	[Helsley Declaration at ¶¶ 20-25.]	
10	109. Ammunition that can be used in a modern	Objection: Mischaracterizes the witness's
11	firearm chambered to fire that cartridge can also	testimony.
12	be used in an antique firearm chambered to fire	
13	that same cartridge.	
14	[Helsley Declaration at ¶¶ 20-25.]	
15	110. Ammunition, when it is manufactured, is	Objection: Mischaracterizes the witness's
16	designed and intended to be used in any firearm	testimony.
17	that is chambered for that cartridge, regardless of	
18	when the firearm it will be used in was	
19	manufactured.	
20	[Helsley Declaration at ¶¶ 20-25.]	
21	111. The calibers Defendants claim to be	Undisputed, subject to vagueness objections
22	"handgun ammunition" include cartridges that are	raised in response to Plaintiffs' special
23	designed and intended to be used in "antique	interrogatories.
24	firearms," and thus should be exempt from the	
25	Challenged Provisions.	
26	[Helsley Declaration at ¶23.]	
27	112. Defendants' expert witness testified that .45	Undisputed.
28	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.]	
	113. 45 Long Colt is used in firearms	Undisputed.
	manufactured prior to 1898.	
	[Helsley Decl. at ¶ 23.]	

1 114. *State of Tennessee ex rel. Rayburn v. Cooper*,
2 involved a challenge to a state law authorizing
3 firearms to be carried by patrons in establishments
4 where “the serving of meals” is the “*principle*
business conducted” – as opposed to the serving of
alcohol.

5 [Amended Complaint for Injunctive and
6 Declaratory Relief in *Tennessee ex rel. Rayburn v.*
7 *Cooper*, Case No. 09-1284-I, filed July 6, 2009
8 (Ex. A to Plaintiffs’ Request for Judicial Notice in
9 Support of Motion for Summary Judgment or in
10 the Alternative Summary Adjudication / Trial
11 Brief) at ¶ 2; Order of Chancellor Claudia
Bonnyman in *Tennessee ex rel. Rayburn v.*
Cooper, Case No. 09-1284-I, filed November 25,
2009 (Ex. D to ’ Request for Judicial Notice in
Support of Motion for Summary Judgment or in
the Alternative Summary Adjudication / Trial
Brief) at 24:20-2.]

Objection: Relevance. Hearsay. The *Rayburn*
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.

12 115. In *State of Tennessee ex rel. Rayburn v.*
13 *Cooper*, plaintiffs argued it would be extremely
14 difficult for an individual to determine whether
they were in a bar or a restaurant.

15 [Amended Complaint for Injunctive and
16 Declaratory Relief in *Tennessee ex rel. Rayburn v.*
17 *Cooper*, Case No. 09-1284-I, filed July 6, 2009
18 (Ex. A to Plaintiffs’ Request for Judicial Notice in
Support of Motion for Summary Judgment or in
the Alternative Summary Adjudication / Trial
Brief) at ¶¶ 93, 97, 99.]

Objection: Relevance. Hearsay. The *Rayburn*
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.

19 116. The court in *State of Tennessee ex rel.*
20 *Rayburn v. Cooper* found the statute
unconstitutionally vague, reasoning that whether
21 the serving of meals is a business’s principle
business is *not something that can be known* to the
22 ordinary citizen. The court added that inquiry
would not suffice to overcome the law’s
vagueness.

23 [Order of Chancellor Claudia Bonnyman in
24 *Tennessee ex rel. Rayburn v. Cooper*, Case No.
25 09-1284-I, filed November 25, 2009 (Ex. D to
26 Plaintiffs’ Request for Judicial Notice in Support
of Motion for Summary Judgment or in the
Alternative Summary Adjudication / Trial Brief)
at 12:24-13:6.]

Objection: Relevance. Hearsay. The *Rayburn*
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.

1 117. Defendants in *State of Tennessee ex rel.*
2 *Rayburn v. Cooper* argued that the law was not
3 vague because there were obvious instances where
4 a patron could determine whether a particular
5 establishment was a “restaurant,” pointing to
6 establishments that only serve food – and no
7 alcohol.

8 [Consolidated Memorandum of Law of Defendant
9 Attorney General Cooper in Opposition to
10 Plaintiffs' Motions for Partial Summary Judgment
11 and in Support of Defendant's Cross-Motion for
12 Judgment on the Pleadings and/or for Summary
13 Judgment in *Tennessee ex rel. Rayburn v. Cooper*,
14 Case No. 09-1284-I, filed October 2, 2009 (Ex. I
15 to Plaintiffs' Request for Judicial Notice in
16 Support of Motion for Summary Judgment or in
17 the Alternative Summary Adjudication / Trial
18 Brief) at pp. 19-20.]

Objection: Relevance. Hearsay. The *Rayburn*
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.

12 118. In conjunction with Fish and Game Code
13 section 3004.5, the Legislature granted the Fish
14 and Game Commission the authority to certify and
15 publish a list of nonlead ammunition suitable for
16 use in regulated areas. The list of certified nonlead
17 ammunition can be easily accessed at the
18 Commission's website.

19 [California Department of Fish and Game,
20 Certified Nonlead Ammunition Information,
21 [http://www.dfg.ca.gov/wildlife/hunting/condor/cer](http://www.dfg.ca.gov/wildlife/hunting/condor/certifiedammo.html)
22 [tifiedammo.html](http://www.dfg.ca.gov/wildlife/hunting/condor/certifiedammo.html) (last visited Nov. 29, 2010) (Ex.
23 E to Plaintiffs' Request for Judicial Notice in
24 Support of Motion for Summary Judgment or in
25 the Alternative
26 Summary Adjudication / Trial Brief).]

Objection: Relevance; otherwise undisputed.

21 119. On December 30, 2009, DOJ published an
22 “Information Bulletin” providing a brief overview
23 of AB 962.

24 [Information Bulletin from California Department
25 of Justice Re: New and Amended Firearm Laws,
26 dated December 30, 2009 (Ex. 8 to Plaintiffs'
27 Evidence in Support of Motion for Summary
28 Judgment or in the Alternative Summary
Adjudication / Trial Brief).]

Undisputed.

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>Objection: Relevance; Mischaracterizes the witness's testimony; Vague and ambiguous; Lacks foundation; Calls for expert opinion; Improper lay witness opinion.</p> <p>Subject to the objections raised during the cited portions of the deposition, undisputed that Barry Bauer, President of Herb Bauer Sporting Goods, testified that, in his personal experience, .45 GAP, 9mm Luger, .40 S&W, .25 ACP, and .380 ACP are likely fired more often in a handgun; otherwise disputed.</p> <p>As to .45ACP, Mr. Bauer testified that, in his personal experience, it would "<i>probably</i> be . . . more often done in a handgun," but that he could merely "speculate" because his customers "use [.45 ACP] in all different kinds of guns," both handguns and rifles.</p> <p>Defendants never asked Mr. Bauer to identify the 10mm Auto cartridge. The testimony Defendants cite refers to 10mm S&W, a different cartridge.</p> <p>[Bauer Deposition (Ex. E to Plaintiffs' Evidence in Support of Reply to Defendants' Opposition to Motion for Summary Judgment or in the Alternative for Summary Adjudication / Trial) at 39:11-41:25, 47:25-58:13; Cartridges The State Inquired About Being "Handgun Ammunition" During Depositions (Chart) (Ex. C to Plaintiffs' Evidence in Support of Reply to Defendants' Opposition to Motion for Summary Judgment or in the Alternative for Summary Adjudication / Trial).]</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>Objection: Vague and ambiguous as to "handgun cartridges;" it is unclear whether Defendants are referring to the standard relied on in the Challenged Provisions.</p>

1 [State's Compendium of Evidence, Exh. "D," S.
2 Helsley Deposition, pp. 129:12-17; 146:1-5;
3 155:22-156:7; 158:9-17; 159:24-160:1; 163:15-
17; 165:2-4; 172:12-14.]

4 3. Plaintiff Sheriff Clay Parker testified that,
5 in his experience, the following calibers and
6 cartridges of ammunition were used more often
7 in handguns: .45 ACP, .40 caliber, .25 ACP, .32
8 ACP, .38 Special, and .380 ACP.

9 [State's Compendium of Evidence, Exh. "E," C.
10 Parker Deposition, pp. 49:3-16; 54:25-55:7;
11 55:8-14; 55:15-22; 60:9-14; 61:7-20.]

Objection: Relevance; Mischaracterizes the
witness's testimony; Vague and ambiguous;
Lacks foundation; Calls for expert opinion;
Improper lay witness opinion.

Subject to the objections raised during the cited
portions of the deposition, **undisputed** that
Sheriff Clay Parker testified that, in his personal
experience, .32 ACP and .40 caliber, are likely
fired more often in a handgun; otherwise
disputed.

As to .25 ACP, Sheriff Parker states only that he
has "seen it shot" more often in a handgun, not
that it is actually used more often handguns.

As to .45 ACP, Sheriff Parker says not that *it*
is used more often in handguns, but that "[t]oday
in California, [it] is *probably* shot in more
handguns."

As to .38 Special, Sheriff Parker says not that *it*
is used more often in handguns, but that he has
"principally seen [it] fired out of a handgun."

Defendants never asked Sheriff Parker to
identify .380 ACP. The testimony Defendants
cite refers to ".380," without specifying a
cartridge.

[Parker Deposition (Ex. G to Plaintiffs'
Evidence in Support of Reply to Defendants'
Opposition to Motion for Summary Judgment or
in the Alternative for Summary Adjudication /
Trial) at 49:15-16, 55:8-14, 61:7-13, 49:15-62:1;
Cartridges The State Inquired About Being
"Handgun Ammunition" During Depositions
(Chart) (Ex. C to Plaintiffs' Evidence in Support
of Reply to Defendants' Opposition to Motion
for Summary Judgment or in the Alternative for
Summary Adjudication / Trial).]

1 4. Plaintiff Stephen Stonecipher testified that,
2 in his experience, the following cartridges were
3 chambered, or used, more often in handguns: .45
ACP, .380 ACP, 9mm Luger, 10mm, .40 S&W,
4 .25 ACP, .32 ACP, .357 SIG, .454 Casull.

5 [State's Compendium of Evidence, Exh. "E," S.
6 Stonecipher Deposition, pp. 43:6-14; 43:18-22;
7 48:16-19; 52:1-24; 53:3-7; 53:11-15; 53:19-22;
8 54:1-5; 55:1-5; 56:23-57:1; 57:6-11.]

Objection: Relevance; Mischaracterizes the
witness's testimony; Vague and ambiguous;
Lacks foundation; Calls for expert opinion;
Improper lay witness opinion.

Subject to the objections raised during the cited
portions of the deposition, **undisputed** that
Stephen Stonecipher testified that, in his
personal experience, .45 ACP, .380 ACP, .40
S&W, .25 ACP, .32 ACP, and .357 SIG, are
likely fired more often in a handgun; otherwise
disputed.

Mr. Stonecipher testifies that, in his experience,
9mm Luger is chambered more often in a
handgun, only after first explaining that he and
his friends "prefer to shoot" the 9mm long gun.

Defendants did not ask Mr. Stonecipher to
identify "10mm," generally. The testimony cited
refers more specifically to "ten-millimeter Smith
and Wesson."

Mr. Stonecipher did not identify .454 Casull as a
cartridge chambered more often in handguns. He
said only this: "It's chambered for both and I
have both, *but I probably shoot the handgun
more.*"

[Stonecipher Deposition (Ex. D to Plaintiffs'
Evidence in Support of Reply to Defendants'
Opposition to Motion for Summary Judgment or
in the Alternative for Summary Adjudication /
Trial) at 50:10-23, 57:3-11, 39:11-51:10;
Cartridges The State Inquired About Being
"Handgun Ammunition" During Depositions
(Chart) (Ex. C to Plaintiffs' Evidence in Support
of Reply to Defendants' Opposition to Motion
for Summary Judgment or in the Alternative for
Summary Adjudication / Trial).]

22 5. Barry Bauer, president of plaintiff Herb
23 Bauer Sporting Goods, testified that no one from
24 the California Department of Justice, federal
25 Bureau of Alcohol, Tobacco, Firearms and
26 Explosives, the Fresno County Sheriff's Office,
27 the Fresno County District Attorneys' Office, or
28 the Fresno City Police Department have
enforced sections 12060, 12061, or 12318 of the
Penal Code against the company, or threatened
to do so.

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

Objection: Relevance.

Undisputed.

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<p>6. Plaintiff Sheriff Clay Parker testified that he has never visited a gun dealer or ammunition vendor in Tehama County to determine compliance with California’s gun laws, opting instead to allow the California Department of Justice handle such enforcement duties.</p> <p>[State’s Compendium of Evidence, Exh. “E,” C. Parker Deposition, pp. 42:6-15; 42:20-43:7.]</p>	<p>Objection: Relevance.</p> <p>Undisputed.</p>
<p>7. Plaintiff Sheriff Clay Parker testified that he did not research, visited no websites, and read no books to try to determine what ammunition might be considered handgun ammunition or “antique ammunition” within the meaning of AB 962.</p> <p>[State’s Compendium of Evidence, Exh. “E,” C. Parker Deposition, pp. 44:20-23; 45:14-47:20.]</p>	<p>Objection: Relevance.</p> <p>Undisputed.</p>

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>Objections: 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 Sheriffs 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; 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 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.]	Undisputed.

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." [Pen. Code, § 12060.]	Objection: Relevance; Secondary Evidence Rule (Evid. Code §§ 1521 & 1523. Section 12060 of the Penal Code provides the best evidence of its content.
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." [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.
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." [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.
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." [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.
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. [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.]	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.

1 133. A Bill Analysis conducted by the Senate
2 Committee on Judiciary for Senate Bill 1276
3 contains a "comment" on Penal Code section
4 12323's definition of "handgun ammunition which
5 reads, in relevant part:

6 "Existing Penal Code section 12323 was added
7 in 1982 and defines handgun ammunition as
8 "ammunition principally for use in pistols and
9 revolvers . . . notwithstanding that the ammunition
10 may also be used in some rifles. . . ." However, it
11 may not be suitable for defining handgun
12 ammunition in general. It may be assumed that
13 many ammunition calibers are suitable for both
14 rifles and handguns. Without additional statutory
15 guidance, it may be very difficult for dealers to
16 determine which ammunition is "handgun
17 ammunition" for purposes of the requirements
18 added to Penal Code section 12076."

19 [Legislative History Report and Analysis Re:
20 Senate Bill 1276 (Hart – 1994) (Ex. 5 to Plaintiffs'
21 Evidence in Support of Motion for Summary
22 Judgment or in the Alternative Summary
23 Adjudication / Trial Brief) at LH010.]

24 134. Senate Bill 1276 (1994) relied on the
25 definition of "handgun ammunition" found at
26 Penal Code section 12323.

27 [Senate Bill 1276 (1994) as Amended in Senate on
28 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.]

135. Defendants' expert admitted that he was
asked to opine on what he thought should be
included as "handgun ammunition" in Assembly
Bill 2358's enumerated list of "handgun
ammunition" calibers.

[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
102:21-103:17]

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.

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.

Objection: Relevance. What Mr. Graham was
asked to do vis-a-vis Assembly Bill 2358 is
not relevant to any material fact in this case.
See:

(1) The State's Objections to Plaintiffs'
Request for Judicial Notice; and

(2) Objections to Evidence Nos. 123-125.

1 136. When asked which ammunition he thought
2 should be included in AB 2358's list of "handgun
3 ammunition," Defendants' expert said he
4 remembered identifying the following:
5 ".45, .380., .25, .40, .38, .357, possibly .4.54, and
6 possibly .762, and maybe .223."

7 [Graham Deposition Vol. One (Ex. 57 to
8 Plaintiffs' Evidence in Support of Motion for
9 Summary Judgment or in the Alternative
10 Summary Adjudication / Trial Brief) at 103:18-
11 104:10.]

Objection: Relevance. What Mr. Graham was
asked to do vis-a-vis Assembly Bill 2358 is
not relevant to any material fact in this case.
See:

(1) The State's Objections to Plaintiffs'
Request for Judicial Notice; and

(2) Objections to Evidence Nos. 123-125.

12 137. Counsel for Defendant DOJ has stated that
13 Defendant DOJ will not and cannot adopt a policy
14 as to what ammunition constitutes "handgun
15 ammunition" for purposes of the Challenged
16 Provisions.

17 [Public Records Act Request Sent to California
18 Department of Justice Re: Assembly Bill 962,
19 dated December 16, 2009 (Ex. 6 to Plaintiffs'
20 Evidence in Support of Motion for Summary
21 Judgment or in the Alternative Summary
22 Adjudication / Trial Brief); Defendant Department
23 of Justice Response to Public Records Act and
24 Relevant E-mail Enclosures, dated January 25,
25 2010 (Ex. 7 to Plaintiffs' Evidence in Support of
26 Motion for Summary Judgment or in the
27 Alternative Summary Adjudication / Trial Brief)
28 at AM0002, AM0004, AM0006, AM0013.]

Objection: Relevance. Hearsay. See
Objections to Evidence Nos. 127-128.

18 138. On August 19, 2010, then pending Assembly
19 Bill 2358 was amended to include in Penal Code
20 section 12323 the following definition of
21 "handgun ammunition": "any variety of
22 ammunition in the following calibers,
23 notwithstanding that the ammunition may also be
24 used in some rifles: .22 *rimfire*, .25, .32, .38,
25 .9mm, .10mm, .40, .41, .44, .45, 5.7x28mm, .223,
26 .357, .454, .5.56x45mm, 7.62x39, 7.63mm,
27 7.65mm, .50."

28 [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

Objection: Relevance. Assembly Bill 2358 is
not relevant to any material fact in this case.
See:

(1) The State's Objections to Plaintiffs'
Request
for Judicial Notice; and

(2) Objections to Evidence Nos. 123-125.

1	Summary Adjudication / Trial Brief).]	
2		
3	139. On August 30, 2010, then pending Assembly	Objection: Relevance. Assembly Bill 2358 is not relevant to any material fact in this case. See: (1) The State's Objections to Plaintiffs' Request for Judicial Notice; and (2) Objections to Evidence Nos. 123-125
4	Bill 2358 was amended to include in Penal Code	
5	section 12323 the following definition of	
6	“handgun ammunition”: “ any variety of	
7	ammunition in the following calibers,	
8	notwithstanding that the ammunition may also be	
9	used in some rifles: .22 <i>rimfire</i> , .25, .32, .38,	
10	.9mm, .10mm. .40, .41, .44, .45, 5.7x28mm, .357,	
11	.454, .5.56x45mm, 7.63mm, 7.65mm.”	
12	[Assembly Bill No. 2358 (2010) as Amended in	
13	Senate August 30, 2010 (attached as Ex. 3 to	
14	Plaintiffs’ Evidence in Support of Motion for	
15	Summary Judgment or in the Alternative	
16	Summary Adjudication / Trial Brief, Ex. G to	
17	Plaintiffs’ Request for Judicial Notice in Support	
18	of Motion for Summary Judgment or in the	
19	Alternative Summary Adjudication / Trial Brief)	
20	at 16:11-40; Complete Bill History, A.B. No. 2358	
21	(attached as Ex.4 to Plaintiffs’ Evidence in	
22	Support of Motion for Summary Judgment or in	
23	the Alternative Summary Adjudication / Trial	
24	Brief).]	
25	140. All modern centerfire and rimfire	Undisputed.
26	ammunition for use in handguns or rifles consist	
27	of the same components: a metal casing that	
28	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”).	
	[Helsley Declaration at ¶ 20.]	
	141. In order of their specificity, these three terms	Undisputed.
	are used to describe a self-contained metallic	
	cartridge: “ammunition,” “caliber,” and its given	
	“cartridge name.”	
	[Helsley Declaration at ¶ 54.]	
	142. “Ammunition” is defined in the Glossary of	Undisputed.
	the Association of Firearms and Tool Mark	
	Examiners as:	
	“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.”	

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 Merged	
	Ex. C at p. 2.]	
5	143. The definition of "caliber" depends on	Undisputed.
6	whether it is applied to a firearm or to	
7	ammunition. When applied to ammunition, the	
8	Glossary of the Association of Firearms and Tool	
9	Mark Examiners defines it as: "A numerical term,	
10	without the decimal point, included in a cartridge	
11	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.]	
12	144. It is a more precise description of	Objection: Relevance; Mischaracterizes the
13	ammunition to identify it by its specific cartridge	witness's testimony; vague and ambiguous as
14	name because often the "caliber" in the cartridge's	to
15	given name does not reflect the actual bore or	the context where the description might be
	bullet diameter.	more precise.
	[Helsley Declaration at ¶¶ 54-64.]	
16	145. Within any given "caliber," there are usually	Undisputed.
17	various "cartridges," some of which may be used	
18	more often in a handgun, and some of which may	
19	be used more often in a rifle.	
	[Helsley Declaration at ¶¶ 56-64.]	
20	146. Reference to the measurement of a	Objection: Mischaracterizes the witness's
21	projectile's diameter (i.e., its caliber) is not a	testimony. Vague and ambiguous as to context
22	particularly precise method of identifying	and the phrase "not a particularly precise
23	ammunition.	method."
	[Helsley Declaration at ¶ 55-64.]	
24	147. Virtually all calibers can be and are fired	Objection: Mischaracterizes the witness's
25	safely through both handguns and rifles.	testimony, Conclusory; Lacks foundation;
26	[Helsley Declaration at ¶ 65.]	vague. See Objections to Evidence Nos. 42-
		44.
27	148. Virtually all cartridges can be and are fired	Objection: Mischaracterizes the witness's
28	safely through both handguns and rifles.	testimony, Conclusory; Lacks foundation;
	[Helsley Declaration at ¶ 65.]	vague. See Objections to Evidence Nos. 42-
		44.

1		
2	149. Packaging for ammunition often has no label	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 48-50.
3	associating its use with either a handgun or a rifle.	
4	[Helsley Declaration at ¶¶ 68-69.]	
5	150. Packaging for ammunition does not identify	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 48-50.
6	whether the ammunition it contains is "principally	
7	for use in handguns."	
8	[Helsley Declaration at ¶ 69.]	
9	151. In those instances where ammunition	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 48-50.
10	manufacturers or vendors label or market a	
11	particular cartridge as a "handgun cartridge," such	
12	markings do not identify whether that cartridge, or	
13	ammunition of that caliber, is actually "principally	
14	used in handguns."	
15	[Helsley Declaration at ¶¶ 68-69.]	
16	152. Experts cannot form a reliable opinion as to	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.
17	whether a given caliber or cartridge is intended to	
18	be or has actually been fired more than fifty	
19	percent of the time through a handgun.	
20	[Helsley Declaration at ¶¶ 66, 72-73.]	
21	153. There exists in the firearms industry no	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 42-59.
22	commonly understood delineation between	
23	"handgun ammunition" and other ammunition that	
24	indicates whether certain ammunition is actually	
25	fired or intended to be fired more often in	
26	handguns than in long-guns.	
27	[Helsley Declaration at ¶¶ 65-70, 72-73.]	
28	154. There exists in the firearms industry no	Objection: Mischaracterizes the witness's testimony; Conclusory; Lacks foundation; vague. See Objections to Evidence Nos. 42-52.
	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.]	

1 155. Defendants assert that “there is a common
2 understanding among those individuals and
3 businesses who might be subject to sections
4 12060, 12061, and 12318 of the Penal Code, as
5 well as among those might enforce them,” as to
6 what ammunition is “used principally in pistols
7 and revolvers.”

8 [Responses to Specially Prepared Interrogatories,
9 Set One (Ex. 54 to Plaintiffs’ Evidence in Support
10 of Motion for Summary Judgment or in the
11 Alternative Summary Adjudication / Trial Brief)
12 at 6:16-19, 7:8-11.]

Undisputed.

13 156. Defendants identify the following
14 ammunition as “principally for use in handguns”
15 for purposes of the Challenged Provisions: .45,
16 9mm, 10mm, .40, .357, .38, .44, .380, .454, .25,
17 and .32.

18 [Responses to Specially Prepared Interrogatories,
19 Set One (Ex. 54 to Plaintiffs’ Evidence in Support
20 of Motion for Summary Judgment or in the
21 Alternative Summary Adjudication / Trial Brief)
22 at 5:7-8, 5:21-22; Amended Response to Specially
23 Prepared Interrogatory No. 5 (Ex. 55 to Plaintiffs’
24 Evidence in Support of Motion for Summary
25 Judgment or in the Alternative Summary
26 Adjudication / Trial Brief) at 2:24-3:2.]

Undisputed that the State identified 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.

27 157. Defendants assert that the ammunition they
28 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.

[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.]

Undisputed that these comprised some of the
steps Mr. Graham took in his expert analysis,
otherwise disputed.

Declaration of Blake Graham, ¶¶ 10-17.

1 2 3 4 5 6 7 8	<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>	Undisputed.
9 10 11 12 13	<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>	Undisputed.
14 15 16 17 18 19	<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>[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.]</p>	Objection: Mischaracterizes the witness's testimony.
20 21 22 23 24 25 26	<p>161. 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.</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 69:20-70:5.]</p>	Objection: Mischaracterizes the witness's testimony (which testimony is not included on Plaintiffs' Exhibit 58.)

1 2 3 4 5 6 7	<p>162. 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.</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 63:22-64:6, 140:13-21.]</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>
8 9 10 11 12 13 14	<p>163. 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."</p> <p>[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.]</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>
15 16 17 18 19 20 21 22 23	<p>164. Defendant DOJ is required to keep and maintain records of handgun sales in California; this record is commonly referred to as the Dealer Record of Sales ("DROS") and it is linked to the Automated Firearms System ("AFS").</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 7:14; 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 176:14-17, 177:7-13, 190:3-6.]</p>	<p>Undisputed.</p>
24 25 26 27 28	<p>165. Defendants and their expert witness relied in part on the DROS records to determine which ammunition should be included in Defendants' list of ammunition they consider "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</p>	<p>Undisputed.</p>

1	Alternative Summary Adjudication / Trial Brief)	
2	at 7:13-18; Graham Deposition Vol. One (Ex. 57	
3	to Plaintiffs' Evidence in Support of Motion for	
4	Summary Judgment or in the Alternative	
5	Summary Adjudication / Trial Brief) at 181:14-16,	
6	181:23-182:1; Graham Deposition Vol. Two (Ex.	
7	58 to Plaintiffs' Evidence in Support of Motion	
8	for Summary Judgment or in the Alternative	
9	Summary Adjudication / Trial Brief) at 9:17-20.]	
10	166. Defendants' expert's reliance on DROS	Objection: Mischaracterizes the witness's
11	records was his "starting point." He used the	testimony.
12	records to determine which popular handgun	Declaration of Blake Graham, ¶ 13.
13	calibers should be researched further to determine	
14	if ammunition of those calibers is "principally for	
15	use in handguns."	
16	[Graham Deposition Vol. Two (Ex. 58 to	
17	Plaintiffs' Evidence in Support of Motion for	
18	Summary Judgment or in the Alternative	
19	Summary Adjudication / Trial Brief) at 9:17-20,	
20	63:22-64:6.]	
21	167. Defendants' expert admitted that certain	Objection: Mischaracterizes the witness's
22	calibers may have been omitted from Defendants'	testimony.
23	list of ammunition "principally for use in	Declaration of Blake Graham, ¶¶ 10-17.
24	handguns" because they were "unpopular."	
25	[Graham Deposition Vol. One (Ex. 57 to	
26	Plaintiffs' Evidence in Support of Motion for	
27	Summary Judgment or in the Alternative	
28	Summary Adjudication / Trial Brief) at 204:21-	
	207:9.]	
	168. Defendants and their expert relied on DROS	Undisputed.
	records only from the previous five years to	
	determine the handguns most commonly sold in	
	California over the same time period.	
	[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 7:14-16; 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 115:18-	
	116:2, 116:17-117:6.]	
	169. Defendants' expert does not have any	Undisputed.
	information regarding what percentage of the total	
	guns in circulation are represented by the records	

1	of handgun sales in the past five years.	
2	[Graham Deposition Vol. Two (Ex. 58 to	
3	Plaintiffs' Evidence in Support of Motion for	
4	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 118:4-10.]	
5	170. The DROS records relied upon by	Objection: Mischaracterizes the witness's
6	Defendants' expert combine firearms that utilize	testimony.
7	ammunition referred to by Defendants as	Declaration of Blake Graham, ¶ 13.
8	"handgun ammunition" and firearms that utilize	
9	ammunition referred to by Defendants as "rifle	
10	ammunition" under a single caliber listing.	
11	[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.]	
12	171. The DROS records relied upon by	Objection: Mischaracterizes the witness's
13	Defendants' expert are not precise in identifying	testimony.
	the sales of handguns that use a specific cartridge.	
14	[Graham Deposition Vol. Two (Ex. 58 to	
15	Plaintiffs' Evidence in Support of Motion for	
16	Summary Judgment or in the Alternative	
17	Summary Adjudication / Trial Brief) at 14:10-23.]	
18	172. The DROS system does not break down	Undisputed.
19	sales by guns as to every cartridge of ammunition	
20	sold and whether such ammunition is a "rifle	
21	cartridge," "handgun cartridge," or both.	
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 19:23-	
	20:20.]	
24	173. The DROS records relied on by Defendants'	Undisputed.
25	expert does not contain a listing of all types of	
26	cartridges fired by a firearm of that caliber due to	
27	space limitations.	
28	[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.]	

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

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

1 2 3 4 5 6 7 8 9 10	<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>
11 12 13 14 15	<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>
16 17 18 19 20 21	<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>
22 23 24 25 26 27 28	<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 Summary Adjudication / Trial Brief) at 102:6-104:3.]</p>	<p>Objection: Mischaracterizes the witness's testimony.</p>

1 2 3 4 5	187. None of the relied-upon website vendors provided Defendants' expert with data regarding the total rounds of each type of ammunition sold. [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.]	Undisputed.
6 7 8 9 10 11 12	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. [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.]	Undisputed.
13 14 15 16 17 18 19	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. 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.]	Objection: Mischaracterizes the witness's testimony.
20 21 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. [Tenny Declaration at 1:6-11.]	Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 105-113 & 133.

1 2 3 4 5 6	<p>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.</p> <p>[Potterfield Declaration at 2:3-12.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 87-95 & 132.</p>
7 8 9 10 11	<p>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.</p> <p>[Hall Declaration at 2:3-12.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 27-37.</p>
12 13 14 15 16 17	<p>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.”</p> <p>[Tenny Declaration at 1:12-14.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 105-113 & 133.</p>
18 19 20 21 22 23 24	<p>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.”</p> <p>[Potterfield Declaration at 2:13-15.]</p>	<p>Objection: Relevance; Conclusory; Lacks Foundation. See Objections to Evidence Nos. 87-95 & 132.</p>

1 195. Brian Hall, the party responsible for ensuring
2 compliance with all applicable laws in the
3 locations from and to which Chattanooga Shooting
4 Supplies, Inc. (dba Natchez Shooters Supplies),
5 ships ammunition, does not know what
6 ammunition is "principally for use in a handgun"
7 and is unaware of any source to which he can look
8 to determine what ammunition suitable for use in
9 both handguns and rifles is "principally for use in
10 a handgun."

11 [Hall Declaration at 2:13-15.]

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

12 196. Michael Tenny, the party responsible for
13 ensuring compliance with all applicable laws in
14 the locations from and to which Cheaper Than
15 Dirt, Inc., ships ammunition, does not know what
16 ammunition is exempt from the Challenged
17 Provisions as ammunition that is "designed and
18 intended to be used in antique firearms"
19 manufactured before 1898, because many
20 cartridges of ammunition used in firearms
21 manufactured before 1898 are also used in
22 firearms manufactured after 1898, including
23 cartridges sold by Cheaper Than Dirt, Inc.

24 [Tenny Declaration at 1:15-19.]

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

25 197. Larry Potterfield, the party responsible for
26 ensuring compliance with all applicable laws in
27 the locations from and to which Midway Arms,
28 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).

[Potterfield Declaration at 2:16-20.]

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

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

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

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

16 199. Cheaper Than Dirt, Inc., has announced that
17 it will cease shipping all ammunition to non-
18 exempt California customers beginning January 1,
19 2011, to avoid risking criminal prosecution under
20 Penal Code section 12328.

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

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

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

28 [Potterfield Declaration at 3:1-9.]

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

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

36 [Hall Declaration at 3:1-6.]

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

1 2 3 4 5 6	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." [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 34:8-35:14.]	Undisputed.
7 8 9 10 11	203. Defendants' expert did not use any trade magazine articles regarding the amount of particular ammunition sold. [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 35:15-36:13.]	Undisputed.
12 13 14 15 16 17 18 19	204. Defendants' expert's use of trade magazines to inform his opinion regarding ammunition "principally for use in handguns" is based solely upon his reading of trade magazines over the years, with no specific reference to a particular article or data from those trade magazines on the subject. [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 35:15-36:13, 36:14-37:6]	Undisputed.
20 21 22 23 24 25 26 27 28	205. 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 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.]	Undisputed, subject to objections in the deposition transcript.

<p>206. 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."</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 81:24-82:4, 206:22-207:2.]</p>	<p>Disputed.</p> <p>Objection: Mischaracterizes the witness's testimony.</p> <p>Declaration of Blake Graham, ¶¶ 10-17.</p>
<p>207. 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.</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 109:14-18.]</p>	<p>Undisputed.</p>
<p>208. 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.</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 109:8-13, 110:8-111:10.]</p>	<p>Undisputed.</p>
<p>209. Defendants' expert's opinion regarding ammunition "principally for use in handguns" was not informed by research studies regarding popular or prevalently used ammunition.</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 118:19-24.]</p>	<p>Objection: Mischaracterizes the witness's testimony. Evidence cited bears no relation to facts asserted.</p>

1 2 3 4 5 6 7	210. Defendants' expert's opinion regarding ammunition "principally for use in handguns" was not informed by existing polls regarding the ammunition generally or the popularity of certain cartridges. [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 119:20-120:8.]	Undisputed subject to the objections raised during the cited portion of the deposition.
8 9 10 11 12	211. Prior to forming his opinion as to ammunition prevalently used in handguns, Defendants' expert did not personally conduct any polls regarding the ammunition members of the general public use in their 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 120:9-16.]	Undisputed subject to the objections raised during the cited portion of the deposition.
13 14 15 16 17 18 19	212. Defendants assert that the ammunition they have identified as "principally for use in handguns" is supported in part by the fact that those calibers are identified as "handgun ammunition" in <i>Cartridges of the World</i> . [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 7:18-21.]	Undisputed.
20 21 22 23 24 25 26 27 28	213. In its sections on rifle cartridges, <i>Cartridges of the World</i> identifies multiple cartridges in the calibers included in Defendants' list of ammunition "principally for use in handguns." [Barnes, <i>Cartridges of the World: A Complete and Illustrated Reference for Over 1500 Cartridges</i> (11th ed. 2006) "Selected Pages from Chapter 2: Current American Rifle Cartridges and Chapter 3: Obsolete Rifle Cartridges" (Ex. 52 Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) <i>passim</i> .]	Objection: This "fact" is vague and ambiguous. It also is unclear to which portions of the cited exhibit Plaintiffs are relying upon.

1 2 3 4 5 6 7 8	<p>214. In its sections on handgun cartridges, <i>Cartridges of the World</i> identifies multiple cartridges in calibers not included in Defendants' list of ammunition "principally for use in handguns."</p> <p>[Barnes, <i>Cartridges of the World: A Complete and Illustrated Reference for Over 1500 Cartridges</i> (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>.]</p>	Undisputed.
9 10 11 12 13	<p>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."</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 135:7-136:5, 137:8-22, 154:25-155:3, 155:21-156:2.]</p>	Undisputed subject to the objections raised during the cited portions of the deposition.
14 15 16 17 18 19	<p>216. Defendants have suggested that the Challenged Provisions apply to ammunition that is "used principally" in handguns.</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 7:8-11.]</p>	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.
20 21 22 23 24 25	<p>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.</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>Disputed.</p> <p>Objection: Mischaracterizes the witness's testimony.</p> <p>Declaration of Blake Graham, ¶¶ 10-17.</p>

1 218. Defendants' expert suggested that the
2 "principally for use in handguns" language relates
3 to a mix of factors, including "the number of
4 manufacturers that may have produced a weapon
5 in a particular caliber," "the length of time that a
6 particular gun has been available in a particular
7 caliber," and the number of rifles in that caliber, if
8 any.

9 [Graham Deposition Vol. Two (Ex. 58 to
10 Plaintiffs' Evidence in Support of Motion for
11 Summary Judgment or in the Alternative
12 Summary Adjudication / Trial Brief) at 127:5-
13 128:25.]

Disputed.

Objection: Mischaracterizes the witness's
testimony.

Declaration of Blake Graham, ¶¶ 10-17.

14 219. When asked whether the "principally for use
15 in a handgun" standard required a consideration of
16 whether any particular ammunition was fired more
17 often through a handgun than a long-gun,
18 Defendants' expert responded:

19 "I would say [its] not much of a factor because
20 principally for use really deals with the kind of
21 firearm its going to go into, in my -- in my est- --
22 in my understanding, so if you have one weapon
23 that can shoot a million rounds a second and then
24 you have 500,000 rounds -- or handguns out there
25 that shoot ten rounds a minute, that weapon is
26 actually -- or the ammunition is principally for use
27 in the larger pool of -- of weapons."

28 [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 portions of the deposition.

<p>220. When asked to clarify whether he would consider the numerosity of total weapons or the 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>Undisputed subject to the objections raised during the cited portions of the deposition. See generally Graham Deposition Transcript.</p>
<p>221. 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>
<p>222. .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>

223. 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.

[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.]

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.

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

[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 186:25-187:17.]

Undisputed.

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

[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.

226. *Cartridges of the World* includes numerous .45 cartridges in its section on handgun cartridges besides the .45 ACP, .45 GAP, and .45 Long Colt.

[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

Undisputed.

1	Plaintiffs' Evidence in Support of Motion for	
2	Summary Judgment or in the Alternative	
3	Summary Adjudication / Trial Brief) <i>passim</i> .]	
4	227. There are multiple cartridges that can be	Undisputed.
5	used in firearms manufactured both before and	
6	after 1898, including but not limited to, cartridges	
7	in the following calibers: 22, .32, .38, .44, .45, and	
8	.50.	
9	[Helsley Declaration at ¶¶ 20-25.]	
10	228. Ammunition that can be used in a modern	Objection: Mischaracterizes the witness's
11	firearm chambered to fire that cartridge can also	testimony.
12	be used in an antique firearm chambered to fire	
13	that same cartridge.	
14	[Helsley Declaration at ¶¶ 20-25.]	
15	229. Ammunition, when it is manufactured, is	Objection: Mischaracterizes the witness's
16	designed and intended to be used in any firearm	testimony.
17	that is chambered for that cartridge, regardless of	
18	when the firearm it will be used in was	
19	manufactured.	
20	[Helsley Declaration at ¶¶ 20-25.]	
21	230. The calibers Defendants claim to be	Undisputed, subject to vagueness objections
22	"handgun ammunition" include cartridges that are	raised in response to Plaintiffs' special
23	designed and intended to be used in "antique	interrogatories.
24	firearms," and thus should be exempt from the	
25	Challenged Provisions.	
26	[Helsley Declaration at ¶23.]	
27	231. Defendants' expert witness testified that .45	Undisputed.
28	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.]	
	232. 45 Long Colt is used in firearms	Undisputed.
	manufactured prior to 1898.	
	[Helsley Decl. at ¶ 23.]	

233. *State of Tennessee ex rel. Rayburn v. Cooper*, involved a challenge to a state law authorizing firearms to be carried by patrons in establishments where “the serving of meals” is the “*principle business conducted*” – as opposed to the serving of alcohol.

[Amended Complaint for Injunctive and Declaratory Relief in *Tennessee ex rel. Rayburn v. Cooper*, 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 *Tennessee ex rel. Rayburn v. Cooper*, Case No. 09-1284-I, filed November 25, 2009 (Ex. D to ’ Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 24:20-2.]

Objection: Relevance. Hearsay. The *Rayburn* 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.

234. In *State of Tennessee ex rel. Rayburn v. Cooper*, plaintiffs argued it would be extremely difficult for an individual to determine whether they were in a bar or a restaurant.

[Amended Complaint for Injunctive and Declaratory Relief in *Tennessee ex rel. Rayburn v. Cooper*, 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 ¶¶ 93, 97, 99.]

Objection: Relevance. Hearsay. The *Rayburn* 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.

235. The court in *State of Tennessee ex rel. Rayburn v. Cooper* found the statute unconstitutionally vague, reasoning that whether the serving of meals is a business’s principle business is *not something that can be known* to the ordinary citizen. The court added that inquiry would not suffice to overcome the law’s vagueness.

[Order of Chancellor Claudia Bonnyman in *Tennessee ex rel. Rayburn v. Cooper*, Case No. 09-1284-I, filed November 25, 2009 (Ex. D to Plaintiffs’ Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 12:24-13:6.]

Objection: Relevance. Hearsay. The *Rayburn* 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.

236. Defendants in *State of Tennessee ex rel. Rayburn v. Cooper* argued that the law was not vague because there were obvious instances where a patron could determine whether a particular establishment was a “restaurant,” pointing to establishments that only serve food – 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 *Tennessee ex rel. Rayburn v. Cooper*, Case No. 09-1284-I, filed October 2, 2009 (Ex. I to Plaintiffs' Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at pp. 19-20.]

Objection: Relevance. Hearsay. The *Rayburn* 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.

237. In conjunction with Fish and Game Code section 3004.5, the Legislature granted the Fish and Game Commission the authority to certify and publish a list of nonlead ammunition suitable for use in regulated areas. The list of certified nonlead ammunition can be easily accessed at the Commission's website.

[California Department of Fish and Game, Certified Nonlead Ammunition Information, <http://www.dfg.ca.gov/wildlife/hunting/condor/certifiedammo.html> (last visited Nov. 29, 2010) (Ex. E to Plaintiffs' Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief).]

Objection: Relevance; otherwise undisputed.

238. On December 30, 2009, DOJ published an “Information Bulletin” providing a brief overview of AB 962.

[Information Bulletin from California Department of Justice Re: New and Amended 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).]

Undisputed.

239. Defendant DOJ provided notice to all California firearm dealers, including Plaintiffs Herb Bauer Sporting Goods, Inc., that Penal Code section 12061, subdivisions (a)(1) and (2) took effect, and have been force, since January 1, 2010, effective threatening all California firearm dealers with enforcement of those sections.

[Information Bulletin from California Department of Justice Re: New and Amended 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).]

Undisputed that DOJ published an Information Bulletin on or about December 30, 2009.

Disputed that the bulletin constituted a "threat of enforcement." Plaintiffs mischaracterize the evidence.

Objection: Secondary Evidence Rule (Evid. Code §§ 1521 & 1523.) The bulletin provides the best evidence of its content.

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>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>Objection: Relevance; Mischaracterizes the witness's testimony; Vague and ambiguous; Lacks foundation; Calls for expert opinion; Improper lay witness opinion.</p> <p>Subject to the objections raised during the cited portions of the deposition, undisputed that Barry Bauer, President of Herb Bauer Sporting Goods, testified that, in his personal experience, .45 GAP, 9mm Luger, .40 S&W, .25 ACP, and .380 ACP are likely fired more often in a handgun; otherwise disputed.</p> <p>As to .45ACP, Mr. Bauer testified that, in his personal experience, it would "<i>probably</i> be . . . more often done in a handgun," but that he could merely "speculate" because his customers "use [.45 ACP] in all different kinds of guns," both handguns and rifles.</p> <p>Defendants never asked Mr. Bauer to identify the 10mm Auto cartridge. The testimony Defendants cite refers to 10mm S&W, a different cartridge.</p> <p>[Bauer Deposition (Ex. E to Plaintiffs' Evidence in Support of Reply to Defendants' Opposition to Motion for Summary Judgment or in the Alternative for Summary Adjudication / Trial) at 39:11-41:25, 47:25-58:13; Cartridges The State Inquired About Being "Handgun Ammunition" During Depositions (Chart) (Ex. C to Plaintiffs' Evidence in Support of Reply to Defendants' Opposition to Motion for Summary Judgment or in the Alternative for Summary Adjudication / Trial).]</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,</p>	<p>Objection: Vague and ambiguous as to "handgun cartridges;" it is unclear whether Defendants are referring to the standard relied on in the Challenged Provisions.</p>

1 2 3 4	.44 Auto Mag, and .38 S&W. [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.]	
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	3. Plaintiff Sheriff Clay Parker testified that, in his experience, the following calibers and cartridges of ammunition were used more often in handguns: .45 ACP, .40 caliber, .25 ACP, .32 ACP, .38 Special, and .380 ACP. [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>Objection: Relevance; Mischaracterizes the witness's testimony; Vague and ambiguous; Lacks foundation; Calls for expert opinion; Improper lay witness opinion.</p> <p>Subject to the objections raised during the cited portions of the deposition, undisputed that Sheriff Clay Parker testified that, in his personal experience, .32 ACP and .40 caliber, are likely fired more often in a handgun; otherwise disputed.</p> <p>As to .25 ACP, Sheriff Parker states only that he has "seen it shot" more often in a handgun, not that it is actually used more often handguns.</p> <p>As to .45 ACP, Sheriff Parker says not that it <i>is</i> used more often in handguns, but that "[t]oday in California, [it] is <i>probably</i> shot in more handguns."</p> <p>As to .38 Special, Sheriff Parker says not that it <i>is</i> used more often in handguns, but that he has "principally seen [it] fired out of a handgun."</p> <p>Defendants never asked Sheriff Parker to identify .380 ACP. The testimony Defendants cite refers to ".380," without specifying a cartridge.</p> <p>[Parker Deposition (Ex. G to Plaintiffs' Evidence in Support of Reply to Defendants' Opposition to Motion for Summary Judgment or in the Alternative for Summary Adjudication / Trial) at 49:15-16, 55:8-14, 61:7-13, 49:15-62:1; Cartridges The State Inquired About Being "Handgun Ammunition" During Depositions (Chart) (Ex. C to Plaintiffs' Evidence in Support of Reply to Defendants' Opposition to Motion for Summary Judgment or in the Alternative for Summary Adjudication / Trial).]</p>

1 4. Plaintiff Stephen Stonecipher testified that,
2 in his experience, the following cartridges were
3 chambered, or used, more often in handguns: .45
4 ACP, .380 ACP, 9mm Luger, 10mm, .40 S&W,
5 .25 ACP, .32 ACP, .357 SIG, .454 Casull.

6 [State's Compendium of Evidence, Exh. "E," S.
7 Stonecipher Deposition, pp. 43:6-14; 43:18-22;
8 48:16-19; 52:1-24; 53:3-7; 53:11-15; 53:19-22;
9 54:1-5; 55:1-5; 56:23-57:1; 57:6-11.]

Objection: Relevance; Mischaracterizes the witness's testimony; Vague and ambiguous; Lacks foundation; Calls for expert opinion; Improper lay witness opinion.

Subject to the objections raised during the cited portions of the deposition, **undisputed** that Stephen Stonecipher testified that, in his personal experience, .45 ACP, .380 ACP, .40 S&W, .25 ACP, .32 ACP, and .357 SIG, are likely fired more often in a handgun; otherwise **disputed**.

Mr. Stonecipher testifies that, in his experience, 9mm Luger is chambered more often in a handgun, only after first explaining that he and his friends "prefer to shoot" the 9mm long gun.

Defendants did not ask Mr. Stonecipher to identify "10mm," generally. The testimony cited refers more specifically to "ten-millimeter Smith and Wesson."

Mr. Stonecipher did not identify .454 Casull as a cartridge chambered more often in handguns. He said only this: "It's chambered for both and I have both, *but I probably shoot the handgun more.*"

[Stonecipher Deposition (Ex. D to Plaintiffs' Evidence in Support of Reply to Defendants' Opposition to Motion for Summary Judgment or in the Alternative for Summary Adjudication / Trial) at 50:10-23, 57:3-11, 39:11-51:10; Cartridges The State Inquired About Being "Handgun Ammunition" During Depositions (Chart) (Ex. C to Plaintiffs' Evidence in Support of Reply to Defendants' Opposition to Motion for Summary Judgment or in the Alternative for Summary Adjudication / Trial).]

22 5. Barry Bauer, president of plaintiff Herb
23 Bauer Sporting Goods, testified that no one from
24 the California Department of Justice, federal
25 Bureau of Alcohol, Tobacco, Firearms and
26 Explosives, the Fresno County Sheriff's Office,
27 the Fresno County District Attorneys' Office, or
28 the Fresno City Police Department have
enforced sections 12060, 12061, or 12318 of the
Penal Code against the company, or threatened
to do so.

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

Objection: Relevance.

Undisputed.

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

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

Objection: Relevance.

Undisputed.

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

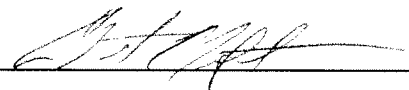
10 [State's Compendium of Evidence, Exh. "E," C.
Parker Deposition, pp. 44:20-23; 45:14-47:20.]

Objection: Relevance.

Undisputed.

11
12 Dated: January 7, 2011

Respectfully Submitted,
MICHEL & ASSOCIATES, P.C.

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16 Clinton Monfort
17 Attorney for Plaintiffs
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA
3 COUNTY OF FRESNO

4 I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I
am over the age eighteen (18) years and am not a party to the within action. My business address is
180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

5 On January 7, 2011, I served the foregoing document(s) described as

6 **STIPULATED SUPPLEMENTAL SEPARATE STATEMENT OF**
7 **UNDISPUTED FACTS IN SUPPORT OF OPPOSITION TO PLAINTIFFS'**
8 **MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY**
ADJUDICATION / TRIAL BRIEF

9 on the interested parties in this action by placing

10 ☐ the original

☒ a true and correct copy

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

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

17 (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
processing correspondence for mailing. Under the practice it would be deposited with the U.S.
18 Postal Service on that same day with postage thereon fully prepaid at Long Beach, California,
in the ordinary course of business. I am aware that on motion of the party served, service is
19 presumed invalid if postal cancellation date is more than one day after date of deposit for
mailing an affidavit.

20 Executed on January 7, 2011, at Long Beach, California.

21 X (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the
22 practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt
on the same day in the ordinary course of business. Such envelope was sealed and placed for
23 collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance
with

24 Executed on January 7, 2011, at Long Beach, California.

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

26 (FEDERAL) I declare that I am employed in the office of the member of the bar of this court
27 at whose direction the service was made.

28 
CLAUDIA AYALA