

1 C. D. Michel - SBN 144258
Clinton B. Monfort - SBN 255609
2 Sean A. Brady - SBN 262007
MICHEL & ASSOCIATES, P.C.
3 180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
4 Telephone: (562) 216-4444
Fax: (562) 216-4445
5 cmichel@michellawyers.com

6 Attorneys for Plaintiffs/Petitioners

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF FRESNO
10

11 SHERIFF CLAY PARKER, TEHAMA) CASE NO. 10CECG02116
COUNTY SHERIFF; HERB BAUER)
12 SPORTING GOODS; CALIFORNIA RIFLE) **PLAINTIFFS' OBJECTIONS TO**
AND PISTOL ASSOCIATION) **DEFENDANTS' EVIDENCE OFFERED IN**
13 FOUNDATION; ABLE'S SPORTING,) **OPPOSITION TO MOTION FOR**
INC.; RTG SPORTING COLLECTIBLES,) **SUMMARY JUDGMENT**
14 LLC; AND STEVEN STONECIPHER,)
)

15 Plaintiffs and Petitioners,
16
17 vs.

18 THE STATE OF CALIFORNIA; JERRY
BROWN, IN HIS OFFICIAL CAPACITY
19 AS ATTORNEY GENERAL FOR THE
STATE OF CALIFORNIA; THE
20 CALIFORNIA DEPARTMENT OF
JUSTICE; and DOES 1-25,
21
22 Defendants and Respondents.

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

) Date Action Filed: June 17, 2010

23 **TO THIS HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

24 **PLEASE TAKE NOTICE** that Plaintiffs SHERIFF CLAY PARKER, TEHAMA COUNTY
25 SHERIFF, et al., make the following objections to the evidence lodged in support of Defendants THE
26 STATE OF CALIFORNIA, et al.'s Opposition to Motion for Summary Judgment. These objections are
27 made pursuant to California Rule of Court 3.1354.
28

Objections to Exhibit A: Deposition of Barry Bauer

Objection No. 1

Bauer Deposition, Vol. 1, at 36:18 - 37:3:

MS. GRAHAM: Q But based on your experience, I'm not asking for the entire world, but based on your personal experience as we've discussed today, would 45 ACP ammunition be chambered more often in a long gun or in a handgun?

MR. DALE: Same objections as before. It's also been asked and answered. Go ahead.

THE WITNESS: Probably at Herb Bauer Sporting Goods it would be in one of the handguns that we sell a customer.

Grounds for Objection No. 1:

Relevance. (Evid. Code, §§ 350, 352.) Here, the State offers the testimony of Plaintiff regarding his understanding of whether a particular type of ammunition is more often chambered in a rifle or a handgun. This question and the response elicited have no bearing on whether there is a common understanding of the public as to whether that particular ammunition is principally for use in a handgun. Rather, the State seeks to offer Mr. Bauer's limited experience in handling, selling and firing ammunition as a proxy for the experience and understanding of all firearms users in the state. Mr. Bauer's limited experience doesn't meaningfully lend itself to determining what ammunition is principally for use in a handgun, and therefore his testimony is not relevant to that determination.

Improper Lay Opinion. (Evid. Code, §§ 800-803.) The deponent does not hold himself out to be an expert on the use of ammunition and firearms, and is not qualified in questioning to be an expert, yet the State improperly attempts to offer his opinions regarding whether certain ammunition is chambered more often in a rifle or firearm. Such testimony of the deponent's opinion is offered as evidence that the deponent's non-expert opinion tends to prove the State's contention that the particular ammunition is principally for use in a handgun.

Foundation and Speculative. (Evid. Code, §§ 702, 800-803.) The State asks the deponent to offer

1 opinions regarding the use of a particular ammunition in rifles and firearms, but fails to offer any evidence
2 of, e.g., how many times the deponent has sold such ammunition, witnessed its use or fired it himself, and
3 the witness' review of studies, polls or research papers to support the witness' opinions regarding whether
4 such ammunition is principally used in a handgun or rifle. The State provides no foundational information
5 for the party reviewing the testimony to determine whether the deponent's opinions and testimony are
6 based on either (1) a very limited knowledge and scope of experience regarding the use of the ammunition,
7 or (2) speculation by the witness.

8 Vague and Ambiguous. (Evid. Code, § 765.) The State repeatedly asked this and other non-expert
9 deponents for their opinion as to whether certain types of ammunition were "chambered more often in a
10 rifle (or long gun) or a handgun". Each time the State's interrogator was asked to define what was meant
11 by "chambered more often", e.g., whether more rounds of the subject cartridge were fired from a handgun
12 or rifle, whether more brands and models of handgun chambered that cartridge than brands and models
13 of rifles, etc., the State did not clarify what specifically was meant. Resultantly, this deponent and the
14 others testified that in their experience certain rounds were more often chambered in a handgun, without
15 any common understanding as to what that referred to, i.e., more weapons, or more rounds. Because it is
16 wholly unclear from the testimony what the State was asking the deponents, there is no meaningful
17 information to be drawn from their testimony as it relates to whether such ammunition is principally for
18 use in a handgun.

19
20 **Objection No. 2**

21 Bauer Deposition, Vol. 1, at 42:1 - 44:20:

22 MS. GRAHAM: Q Taking into consideration your personal experience with
23 firearms that we've discussed, as we discussed, would 45 GAP ammunition be fired more
24 often in a long gun or in a handgun?

25 MR. DALE: Objection, calls for expert opinion, improper lay witness opinion,
26 calls for speculation, vague and ambiguous as to "more often fired." Go ahead and
27 answer.

28 THE WITNESS: Handgun.

1 MS. GRAHAM: Q Are you familiar with a nine-millimeter long gun cartridge?

2 A: Yes

3 Q: Taking into consideration your personal experience with firearms and
4 ammunition, would a nine-millimeter long gun ammunition be fired more often in a long
5 gun or in a handgun?

6 MR. DALE: Same objections.

7 THE WITNESS: Handgun.

8 MS. GRAHAM: Q Are you familiar with the nine-millimeter Luger cartridge?

9 A: Yes.

10 Q: Taking into consideration your personal experience with firearms and
11 ammunition, would a nine-millimeter Luger ammunition be fired more often in a long gun
12 or in a handgun?

13 MR. DALE: Same objections.

14 THE WITNESS: Handgun.

15 MS. GRAHAM: Q Are you familiar with a nine-millimeter Parabellum cartridge?

16 A: No.

17 Q: Are you familiar with a 9 by 19 Parabellum cartridge?

18 A: No.

19 Q: Are you familiar with a ten-millimeter Smith and Wesson cartridge?

20 A: Yes.

21 Q: Taking into consideration your personal experience with firearms and
22 ammunition, would a ten-millimeter Smith and Wesson ammunition be fired more often
23 in a long gun or a handgun?

24 MR. DALE: Same objections.

25 THE WITNESS: Handgun.

26 MS. GRAHAM: Q Are you familiar with a 40 Smith and Wesson cartridge?

27 A: Yes.

28 Q: Taking into consideration your personal experience with firearms and

1 ammunition, would a 40 Smith and Wesson -- would 40 Smith and Wesson ammunition
2 be fired more often in a long gun or
3 handgun?

4 MR. DALE: Same objections.

5 THE WITNESS: Handgun.

6 MS. GRAHAM: Q Are you familiar with a 25 ACP cartridge?

7 A: Yes.

8 Q: Taking into consideration your personal experience with firearms and
9 ammunition, would 25 ACP ammunition be fired more often in a long gun or in a
10 handgun?

11 MR. DALE: Same objections.

12 THE WITNESS: Handgun.

13 MS. GRAHAM: Q Are you familiar with a 32 ACP ammunition?

14 A: Yes.

15 Q: Taking into consideration your personal experience with firearms and
16 ammunition, would a 32 ACP ammunition be fired more often in a long gun or a
17 handgun?

18 MR. DALE: Same objections.

19 THE WITNESS: Handgun.

20 **Grounds for Objection No. 2:**

21 Relevance. (Evid. Code, §§ 350, 352.); Improper Lay Opinion. (Evid. Code, §§ 800-803.);
22 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.); Vague and Ambiguous. (Evid. Code, §
23 765.)

24
25 **Objection No. 3**

26 Bauer Deposition, Vol. 1, at 49:8-19:

27 Q: Taking into consideration your personal experience with firearms
28 and ammunition, would 380 ACP ammunition be fired more often in a long gun or in a

1 handgun?

2 MR. DALE: Objection, not relevant, not likely to lead to the discovery of
3 admissible evidence, improperly calls for a lay opinion, calls for an expert opinion,
4 vague and ambiguous as to "more often fired," and calls for speculation. Go ahead.

5 THE WITNESS: Based on the firearms we sell, 380 would be a handgun
6 ammunition.

7 **Grounds for Objection No. 3:**

8 Relevance. (Evid. Code, §§ 350, 352.); Improper Lay Opinion. (Evid. Code, §§ 800-803.);
9 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.); Vague and Ambiguous. (Evid. Code, §
10 765.)

11
12 **Objections to Exhibit B: Deposition of Blake Graham, Vol. 1**

13 **Objection No. 4**

14 Entirety of Testimony.

15 **Grounds for Objection No. 4:**

16 Not Qualified to Render Expert Opinion. (Evid. Code, § 720.) Although Mr. Graham has
17 extensive experience as a law enforcement officer for the State, Mr. Graham testifies to no particular
18 training or experience to qualify him as an expert on the particular subject for which his testimony is
19 offered, i.e., whether there is a common understanding as to whether certain types of ammunition are
20 principally for use in a handgun.

21 Mr. Graham's education is primarily one in general law enforcement principles. He admitted
22 that only two of his classes in college addressed identifying ammunition. (Graham Deposition, Vol.1,
23 at 20:11 - 21:6. (Attached as Exhibit H to Supp. Dec. of CBM)) Mr. Graham's curriculum vitae
24 similarly shows experience in general law enforcement techniques, including drug busts and
25 specialization in assault weapons training, but does not evidence a level of training or sophistication
26 such that he can intimately testify regarding the history, use or popularity of specific cartridges and
27 calibers. (See Exhibit "A" to the Graham Depo. [c.v].)

28 Thus, Mr. Graham did not work in the State Department of Justice's ballistics lab or otherwise

1 develop expertise in identifying particular bullet fragments and tying them to a particular handgun or
2 firearm; the extent of his experience in this regard is simply bagging casings as evidence and sending
3 them to a lab. (Graham Depo., Vol.1, at 22:10 - 23:10, 25:4-8, 25:14 - 26:10, 32:4 - 33:5, 33:16 -
4 34:7, 35:9-24, and 36:18 - 37:11 (Attached as Exhibit H to Supp. Dec. of CBM); and Graham
5 Declaration in support of Defendants' Opposition to MSJ, at 2:13 - 7:14.)

6 Mr. Graham does not have expertise resulting from exposure to a wide array of firearms or
7 firearms studies regarding use. (Graham Depo., Vol.1, at 22:10 - 23:10, 25:4-8, 25:14 - 26:10, 32:4 -
8 33:5, 33:16 - 34:7, 35:9-24 (Attached as Exhibit H to Supp. Dec. of CBM) .) He has not procured
9 weapons for the State, or considered whether a particular weapon might be appropriate for purchase
10 and use by law enforcement because of the interchangeability or economy of its ammunition. (Graham
11 Depo., Exhibit "A" [c.v.]; and Graham Decl., at 2:13 - 7:14.) Mr. Graham has never conducted
12 research regarding the efficacy of certain weapons and their ammunition, has no academic background
13 in studying the historical uses of firearms in California or worldwide, or the ammunition they use.
14 (Graham Depo., Vol. 2, at 335:23 - 337:20 (Attached as Exhibit I to Supp. Dec. of CBM); and Exhibit
15 "A" [c.v.].) Mr. Graham has authored no papers, studies, reports or journals for the DOJ or any other
16 employer regarding the popularity of certain weapons or their ammunition. (Graham Depo., Vol. 2, at
17 337:13 - 338:11 (Attached as Exhibit I to Supp. Dec. of CBM); and Exhibit "A" [c.v.].) By his own
18 admission, Mr. Graham's drew upon no identifiable personal experience in starting his to form his
19 opinions in this matter. (Plaintiffs' Undisputed Material Fact ("UMF") No. 43.) His first steps were to
20 consult a DOJ database on handgun sales, and then cross-reference the weapons listed with cartridges
21 listed in a treatise. (UMF No. 43.) Mr. Graham then consulted with four gun vendor websites
22 regarding what they listed as "handgun ammunition", none of which were identical. (UMF Nos. 61-
23 65.) He did not apply any of his own statistics, study information, or data on the subject to further
24 inform his opinion. (Graham Depo., Vol. 2, at 337:13 - 338:11, 358:4-17 (Attached as Exhibit I to
25 Supp. Dec. of CBM).)

26 Under Evidence Code section 720, the expert must be offering his opinion to aid the trier of
27 fact in an issue beyond the common experience. Yet Mr. Graham's initial efforts consisted of
28 activities that could be conducted by anyone without Mr. Graham's experience – review a database,

1 review a treatise, look at some websites. To qualify as an expert, Mr. Graham must be able to supply
2 some expertise or training to these steps that shows special knowledge of the subject. Mr. Graham
3 cannot demonstrate such special knowledge because by his own testimony, after conducting the
4 common steps that anyone can do – review a database, review a treatise, look at some websites – Mr.
5 Graham’s special knowledge which he then applied consisted of (1) recalling having read some trade
6 magazines (Graham Depo., Vol. 2, at 252:20 - 254:24. (Attached as Exhibit I to Supp. Dec. of CBM)),
7 (2) recalling having been present at a few of the many yearly gun shows held in the state (Graham
8 Depo., Vol. 2, at 337:13-25 (Attached as Exhibit I to Supp. Dec. of CBM).), (3) recalling observing a
9 small percentage of the many gun and ammunition transactions occurring at these shows (Graham
10 Depo., Vol. 2, at 339:20 - 340:1 (Attached as Exhibit I to Supp. Dec. of CBM).), (4) recalling in a non-
11 specific way having spoken with between 20 and 100 participants at these gun shows regarding the
12 sales during his 16-year career (Graham Depo., Vol. 2, at 340:10 - 342:2 (Attached as Exhibit I to
13 Supp. Dec. of CBM).), and (5) having taken no notes, statistics, or other quantifiable data to help him
14 process this limited empirical experience and draw meaningful conclusions regarding gun or
15 ammunition sales. (Graham Depo., Vol. 2, at 339:5 - 340:9 (Attached as Exhibit I to Supp. Dec. of
16 CBM).)

17 Mr. Graham has never previously qualified as an ammunition expert; he has qualified solely as
18 an assault weapons expert. (Graham Depo., Exhibit “A” [c.v.], and Graham Decl., at 7:16 - 8:6.)

19 The extent of Mr. Graham’s experience with ammunition is that he’s shot a lot of it from
20 weapons in training and in the field, has collected some as evidence, and watched a little of it being
21 sold. Most law enforcement personnel at the DOJ have the same or similar experiences, however, and
22 could have conducted the same research as Mr. Graham, and would have likely reached similar
23 conclusions based on a similarly narrow frame of reference regarding firearm and ammunition sales in
24 California. This does not make those law enforcement agents qualified to render expert opinions on
25 the use or popularity of specific types of ammunition, and it does not make them qualified to render
26 opinions about the public’s perception of the principal uses of particular types of ammunition.

27 Lack of Foundation to Render Expert Opinion. (Evid. Code, § 801.) Mr. Graham relies upon
28 too narrow a field of data to draw the broad conclusions he seeks to offer as expert opinions. To be

1 admissible, an expert's opinions must be based on matters (1) personally observed by the expert,
2 including research, studies or experiments conducted by the expert, (2) personally known to the expert,
3 (3) made known to the expert at or before trial, or (4) of a type that reasonably may be relied upon by
4 experts in his field in forming an opinion on the subject. (See Evid. Code, § 801, subd. (b).)

5 Mr. Graham's bases for his testimony lack the reliability to allow him to reach his ultimate
6 opinions, i.e., that certain cartridges of ammunition are principally use in a handgun. Mr. Graham
7 bases his opinion initially on only a five-year window of handgun transfer records from the DOJ's
8 database. (UMF No. 49.) Mr. Graham offers no explanation as to what percentage of total guns
9 circulating and in use in California or worldwide that this five-year period represents. (UMF No. 39,
10 42, 50.) Thus, the trier of fact cannot determine whether a five-year sample of transfers is a reliable
11 foundation upon which to make conclusions regarding all gun and ammunition use under the
12 challenged statutes.

13 Mr. Graham's conclusions are also underpinned by the assumption that transfers of handguns
14 within the five year period are reflective of or correlate to ammunition use, i.e., that the more guns
15 transferred means the more of the cartridge of ammunition used in that gun is fired. (UMF No. 47.)
16 Mr. Graham provides no testimony for why this assumption is so. Perhaps the transfered guns are
17 never fired or fired rarely. Perhaps law enforcement firing of submachine guns outstrips the firing of
18 handguns. There is no data provided and no analysis or conclusions drawn to support Mr. Graham's
19 assumption that more transfers equals more use of ammunition.

20 Mr. Graham admits that the other necessary side of the comparison is missing, i.e., rifle
21 transfers. (UMF Nos. 59-60.) Mr. Graham did not contact firearms manufacturers to determine how
22 many of a particular rifle are sold in California in the same given year that a particular handgun that
23 uses the same cartridge was sold. He admits that he has no access to such data from the DOJ or other
24 government agencies. (UMF Nos. 57-58.) In lieu of this crucial information, Mr. Graham substitutes
25 his own very limited empirical experience, the busts he's participated in and the gun shows he's
26 observed but compiled no data from. Thus, Mr. Graham concludes that some cartridges have lots of
27 models of handguns manufactured for their use, but cannot provide any testimony or analysis as to
28 whether the one or two models of rifles he's identified as firing that same cartridge and dismissed as

1 insignificant in his analysis are nonetheless sold in a volume far exceeding all of sales of the different
2 models of corresponding handguns. (UMF Nos. 59-60.)

3 Mr. Graham had access to reports from his own Forensics Services Bureau regard the
4 prevalence of use of certain types of ammunition in crimes, but did not consult his own Department's
5 reports or any other reports. (Graham Depo., Vol. 2, at 352:18 - 355:8 (Attached as Exhibit I to Supp.
6 Dec. of CBM).) Mr. Graham didn't bother to consult with anyone in his own Forensics Services
7 Bureau in forming his opinions. (Graham Depo., Vol. 2, at 355:25 - 356:4 (Attached as Exhibit I to
8 Supp. Dec. of CBM).)

9 Mr. Graham's methods also included reviewing firearm vendor websites to see what websites
10 listed as "handgun ammunition" or "most popular". (UMF Nos. 61-65.) This method is very
11 unreliable as he made no efforts to determine the bases for these websites listing particular cartridges
12 as "handgun ammunition" or "most popular", such as contacting the vendors to determine the vendors'
13 bases for classifying particular ammunition as "handgun ammunition". (UMF No. 66.) Mr. Graham
14 provides no testimony regarding why his cursory review of these classifications is reliable. Mr.
15 Graham also fails to reliably and credibly explain why the lists of "handgun ammunition" on those
16 websites are not uniform, and why Mr. Graham's own list of ammunition commonly understood to be
17 principally used in handguns fails to include several of the cartridges commonly listed as "handgun
18 ammunition" on the websites he relied upon in forming his opinions. (UMF Nos. 69-70.)

19 Finally, although Mr. Graham claims that he has sufficient data to render opinions about his
20 ever-dwindling list of ammunition cartridges of which there is purportedly a common understanding
21 that they are principally used in handguns, Mr. Graham nonetheless admits that he lacks the
22 information to render an opinion about .22 caliber ammunition, also by his admission very popular and
23 used in both handguns and rifles. (Graham Depo., Vol. 2, at 350:20 - 352:2 (Attached as Exhibit I to
24 Supp. Dec. of CBM).) Thus, Mr. Graham's expert body of knowledge supporting his opinions lacks
25 information regarding whether a key ammunition type qualifies under the law. Mr. Graham admits
26 that it might, but that he lacks the expertise to opine on it at this time. (Graham Depo., Vol. 2, at
27 351:21 - 352:2 (Attached as Exhibit I to Supp. Dec. of CBM).)

28 Mr. Graham's relied-upon methods – failing to compare rifle transfers to handgun transfers,

1 failing to justify equating handgun transfers to ammunition use, and failing to use any research,
2 statistics or other data of ammunition use or sales – are unreliable, and insufficient foundation exists to
3 admit his opinions based upon those unreliable methods.

4 **Objections to Exhibit C: Deposition of Blake Graham, Vol. 1**

5 **Objection No. 5**

6 Entirety of Testimony.

7 **Grounds for Objection No. 5:**

8 Not Qualified to Render Expert Opinion. (Evid. Code, § 720.); Lack of Foundation to Render
9 Expert Opinion. (Evid. Code, § 801.)

10
11 **Objections to Exhibit E: Deposition of Sheriff Clay Parker**

12 **Objection No. 6**

13 Parker Deposition, Vol. 1, at 44:19 - 47:17:

14 Q: What sorts of research have you done to determine
15 what types of ammunition might be considered antique
16 ammunition?

17 A: Really haven't done any research.

18 Q: In paragraph five, you -- of your declaration you state
19 that, "Without any further guidelines as to what types of
20 ammunition are handgun ammunition under Penal Code
21 Sections 12061, 12061 and 12318, I am unable to enforce these
22 laws equitably because I do not know what types of ammunition
23 are handgun ammunition." Do you see that?

24 A: Yes, I do.

25 Q: When you made that statement in the declaration,
26 how long had you thought about that concept?

27 A: Again, I think it gets back to February of 2009 when
28 the bill was introduced. "Handgun ammunition" is just too

1 ambiguous for me. I need some type of guidance, some type of
2 list from a competent authority to let me know.Q: Did you
3 consider whether there's any book that could provide you with
4 guidance regarding whether a particular cartridge or caliber of
5 ammunition is considered handgun ammunition?

6 A: Well, since we're dealing with the Penal Code, we
7 were looking -- or I should say I was looking more for guidance
8 from the attorney general, from some legislation that could be
9 amended to list specific calibers because whatever book you
10 read could have a different interpretation.

11 Q: So you did not look to any books for guidance for
12 what might be considered handgun ammunition?

13 A: No, I did not.

14 Q: Did you consider whether there's any Web site that
15 might be able to provide you with guidance regarding whether a
16 particular cartridge or caliber of ammunition is considered
17 handgun ammunition?

18 A: Again, I have to go with the same answer. What's on
19 a Web site or anything else, it depends who you would look to.
20 We need something in black and white on paper as to what the
21 definition is.

22 Q: So you did not consult any Web sites?

23 A: No.

24 Q: Did you contact anyone for guidance as to
25 what might be considered handgun ammunition?

26 MR. DALE: Other than who he's testified to?

27 THE WITNESS: Yeah, I can't think of anyone else other than those that
28 I've already talked about.

1 Q: BY MR. KRAUSE: The attorney general?

2 A: Correct.

3 Q: Anybody else at the Department of Justice?

4 A: I know I've had discussions with some of the DOJ
5 employees, but specifically who, not ringing a bell right now.

6 Q: Do you recall when the conversations occurred?

7 A: Probably the majority of them would have been at
8 north state sheriffs meetings held in Tehama County.

9 Q: Do you recall when? What -- what year or what
10 month?

11 A: Yeah, month-wise, no, but I'm sure something was
12 mentioned probably in 2009 and then again in 2010 at one of the
13 north state sheriffs meetings.

14 Q: And there were DOJ agents or employees present at
15 that meeting?

16 A: Yeah. And the one that jumps out at me is Wil Cid. I
17 know he's attended the meetings before.

18 Q: Do you recall specifically discussing AB 962 with Mr. Cid?

19 A: I know I've discussed firearms with him, but
20 specifically 962, I don't remember.

21 Q: So apart from Attorney General Brown, you don't
22 recall contacting anyone at DOJ about AB 962, specifically?

23 A: Not specifically, no.

24 **Grounds for Objection No. 6:**

25 Relevance. (Evid. Code, §§ 350, 352.) The State seeks to introduce testimony that Sheriff
26 Parker failed to do any research regarding what constituted ammunition principally for use in handguns
27 under the challenged statutes before making statements that he did not understand what constituted
28 ammunition principally for use in handguns under the challenged statutes. The attempt to offer the

1 testimony for this purpose directly contradicts the State's position that there is a common
2 understanding of what constitutes ammunition principally for use in handguns under the challenged
3 statutes. Further, the State supplies no authority with mandates that proscribed conduct is not
4 constitutionally vague if members of the public can conduct research on the internet of its meaning.
5 Further, Mr. Parker does not hold himself out to be an expert on ammunition and is not qualified as
6 one through questioning. Thus, Mr. Parker is a lay witness, and if he conducted research to form
7 opinions on specific cartridges of ammunition, those opinions would be inadmissible and therefore
8 irrelevant to issue of the State's contention that there is a common understanding of what constitutes
9 ammunition principally for use in handguns under the challenged statutes.

10 Improper Lay Opinion. (Evid. Code, §§ 800-803.) The deponent does not hold himself out to
11 be an expert on the use of ammunition and firearms, and is not qualified in questioning to be an expert,
12 yet the State improperly attempts to offer his opinions regarding whether he has adequately researched
13 whether certain ammunition is "handgun ammunition". Such testimony of the deponent's opinion is
14 improperly offered as evidence that the deponent's inability to research and form a lay opinion on the
15 issue tends to prove the State's contention that there is a common understanding of what constitutes
16 ammunition principally for use in handguns under the challenged statutes.

17 **Objection No. 7**

18 Parker Deposition, Vol. 1, at 49:3-16:

19 Q: BY MR. KRAUSE: The .45 ACP cartridge?

20 A: That is correct.

21 Q: But would you agree that it's used more often in handguns than in
22 long guns?

23 MR. DALE: Objection. Vague and ambiguous as to "more often."

24 THE WITNESS: I guess you'd have to narrow it down. Are you
25 speaking strictly Tehama County? In the nation? In the world?

26 Q: BY MR. KRAUSE: California.

27 A: In what era?

28 Q: Today in California.

1 A: Today in California, I would say the .45 ACP is
2 probably shot in more handguns than a long gun.
3

4 **Grounds for Objection No. 7:**

5 Relevance. (Evid. Code, §§ 350, 352.) Here, the State offers the testimony of Plaintiff
6 regarding his understanding of whether a particular type of ammunition is used more often handguns
7 versus long guns. This question and the response elicited have no bearing on whether there is a
8 common understanding of the public as to whether that particular ammunition is principally for use in
9 a handgun. Rather, the State seeks to offer Mr. Parker's limited experience in handling and firing
10 ammunition as a proxy for the experience and understanding of all firearms users in the state. Mr.
11 Parker's limited experience doesn't meaningfully lend itself to determining what ammunition is
12 principally for use in a handgun, and therefore his testimony is not relevant to that determination.

13 Improper Lay Opinion. (Evid. Code, §§ 800-803.) The deponent does not hold himself out to
14 be an expert on the use of ammunition and firearms, and is not qualified in questioning to be an expert,
15 yet the State improperly attempts to offer his opinions regarding whether certain ammunition is used
16 more often in a handgun versus a rifle. Such testimony of the deponent's opinion is offered as
17 evidence that the deponent's non-expert opinion tends to prove the State's contention that the
18 particular ammunition is principally for use in a handgun.

19 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.) The State asks the deponent to
20 offer opinions regarding the use of a particular ammunition in rifles and handguns, but fails to offer
21 any evidence of, e.g., how many times the deponent has handled such ammunition, witnessed its use or
22 fired it himself, and the witness' review of studies, polls or research papers to support the witness'
23 opinions regarding whether such ammunition is principally used in a handgun or rifle. The State
24 provides no foundational information for the party reviewing the testimony to determine whether the
25 deponent's opinions and testimony are based on either (1) a very limited knowledge and scope of
26 experience regarding the use of the ammunition, or (2) speculation by the witness.

27 Vague and Ambiguous. (Evid. Code, § 765.) The State repeatedly asked this and other non-
28 expert deponents for their opinion as to whether certain types of ammunition were "used more often in

1 a handgun". The State's interrogator was asked to define what was meant by "used more often", and
2 narrowed the phrase by era and location, but declined to offer any other parameters, e.g., whether
3 more rounds of the subject cartridge were fired from a handgun or rifle, whether more brands and
4 models of handgun chambered that cartridge than brands and models of rifles, etc. Resultantly, this
5 deponent testified that a particular cartridge was "used more often" in a handgun in California in the
6 modern era, without any common understanding of what "used more often meant", i.e., used by who?,
7 used by civilians only?, more rounds of that cartridge had been fired in handguns overall?, more
8 models and brands of handguns and rifles were manufactured to chamber that round?, etc. Because it
9 is wholly unclear from the testimony what the State was asking the deponent, there is no meaningful
10 information to be drawn from their testimony as it relates to whether such ammunition is principally
11 for use in a handgun.

12 **Objection No. 8**

13 Parker Deposition, Vol. 1, at 54:25 - 55:7:

14 Q: So would you agree, based on what you've seen, that the
15 .40-caliber cartridge is chambered more often in a handgun?

16 MR. DALE: Objection. Vague and ambiguous as to "chambered more often in."

17 THE WITNESS: Just in my personal experience, that would be a correct
18 statement, that .40 caliber would be used more often in a handgun than a long gun.

19 **Grounds for Objection No. 8:**

20 Relevance. (Evid. Code, §§ 350, 352.) Here, the State offers the testimony of Plaintiff
21 regarding his understanding of whether a particular type of ammunition is more often chambered in a
22 rifle or a handgun. This question and the response elicited have no bearing on whether there is a
23 common understanding of the public as to whether that particular ammunition is principally for use in
24 a handgun. Rather, the State seeks to offer Mr. Parker's limited experience in handling and firing
25 ammunition as a proxy for the experience and understanding of all firearms users in the state. Mr.
26 Parker's limited experience doesn't meaningfully lend itself to determining what ammunition is
27 principally for use in a handgun, and therefore his testimony is not relevant to that determination.

28 Improper Lay Opinion. (Evid. Code, §§ 800-803.) The deponent does not hold himself out to

1 be an expert on the use of ammunition and firearms, and is not qualified in questioning to be an expert,
2 yet the State improperly attempts to offer his opinions regarding whether certain ammunition is
3 chambered more often in a rifle or handgun. Such testimony of the deponent's opinion is offered as
4 evidence that the deponent's non-expert opinion tends to prove the State's contention that the
5 particular ammunition is principally for use in a handgun.

6 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.) The State asks the deponent to
7 offer opinions regarding the use of a particular ammunition in rifles and handguns, but fails to offer
8 any evidence of, e.g., how many times the deponent has handled such ammunition, witnessed its use or
9 fired it himself, and the witness' review of studies, polls or research papers to support the witness'
10 opinions regarding whether such ammunition is principally used in a handgun or rifle. The State
11 provides no foundational information for the party reviewing the testimony to determine whether the
12 deponent's opinions and testimony are based on either (1) a very limited knowledge and scope of
13 experience regarding the use of the ammunition, or (2) speculation by the witness.

14 Vague and Ambiguous. (Evid. Code, § 765.) The State repeatedly asked this and other non-
15 expert deponents for their opinion as to whether certain types of ammunition were "chambered more
16 often in a rifle (or long gun) or a handgun". Each time the State's interrogator was asked to define
17 what was meant by "chambered more often", e.g., whether more rounds of the subject cartridge were
18 fired from a handgun or rifle, whether more brands and models of handgun chambered that cartridge
19 than brands and models of rifles, etc., the State did not clarify what specifically was meant.
20 Resultantly, this deponent and the others testified that in their experience certain rounds were more
21 often chambered in a handgun, without any common understanding as to what that referred to, i.e.,
22 more weapons, or more rounds. Because it is wholly unclear from the testimony what the State was
23 asking the deponents, there is no meaningful information to be drawn from their testimony as is relates
24 to whether such ammunition is principally for use in a handgun.

25
26 **Objection No. 9**

27 Parker Deposition, Vol. 1, at 60:9-14:

28 Q: BY MR. KRAUSE: So again, you -- based on your

1 experience, you would agree that the .380 cartridge is handgun
2 ammunition?

3 A: Again, I would say that if it gets down to one of
4 those lists, that the .380 could be on there as basically being
5 used in a handgun much more than a long gun.

6 **Grounds for Objection No. 9:**

7 Relevance. (Evid. Code, §§ 350, 352.) Here, the State offers the testimony of Plaintiff
8 regarding his understanding of whether a particular type of ammunition is “handgun ammunition”.
9 This question and the response elicited have no bearing on whether there is a common understanding
10 of the public as to whether that particular ammunition is principally for use in a handgun. Rather, the
11 State seeks to offer Mr. Parker’s limited experience in handling and firing ammunition as a proxy for
12 the experience and understanding of all firearms users in the state. Mr. Parker’s limited experience
13 doesn’t meaningfully lend itself to determining what “handgun ammunition” is.

14 Improper Lay Opinion. (Evid. Code, §§ 800-803.) The deponent does not hold himself out to
15 be an expert on the use of ammunition and firearms, and is not qualified in questioning to be an expert,
16 yet the State improperly attempts to offer his opinions regarding whether certain ammunition is
17 “handgun ammunition”. Such testimony of the deponent’s opinion is offered as evidence that the
18 deponent’s non-expert opinion tends to prove the State’s contention that the particular ammunition is
19 principally for use in a handgun.

20 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.) The State asks the deponent to
21 offer opinions regarding the use of a particular ammunition in rifles and handguns, but fails to offer
22 any evidence of, e.g., how many times the deponent has handled such ammunition, witnessed its use or
23 fired it himself, and the witness’ review of studies, polls or research papers to support the witness’
24 opinions regarding whether such ammunition constitutes “handgun ammunition”. The State provides
25 no foundational information for the party reviewing the testimony to determine whether the deponent’s
26 opinions and testimony are based on either (1) a very limited knowledge and scope of experience
27 regarding the use of the ammunition, or (2) speculation by the witness.

28 Vague and Ambiguous. (Evid. Code, § 765.) The State repeatedly asked this deponent for his

1 opinion as to whether certain types of ammunition was “handgun ammunition”. Each time the State’s
2 interrogator was asked to define what was meant by “handgun ammunition”, e.g., whether more rounds
3 of the subject cartridge were fired from a handgun or rifle, whether more brands and models of
4 handgun chambered that cartridge than brands and models of rifles, etc., the State argued that it had
5 adequately defined the phrase by referring the deponent to the statute. i.e., the challenged statute that
6 defines handgun ammunition as ammunition principally for use in a handgun. (See Parker Depo., Vol.
7 1, at 59:5-21 [attached as Exhibit “E” to Deft’s Evidence in Opposition].) Like other depositions, no
8 specification was made as to this underlying phrase. Resultantly, the deponent was testifying as to
9 handgun ammunition as ammunition that was more often shot in a handgun than a rifle, but again with
10 no clarification or common context as to whether “more often shot” referred to, e.g., more rounds of
11 the ammunition being fired from a handgun versus a rifle, more brands and models of handguns that
12 chamber the round for use versus rifles, uses of the round including or excluding military and law
13 enforcement use in California. With so many potential variables as to the context in which the
14 deponent is giving his answer versus how the interrogator meant the question, and a lack of
15 clarification despite numerous objections and opportunities for the State to clarify the meaning, the
16 deponent’s answer is meaningless.

17
18 **Objection No. 10**

19 Parker Deposition, Vol. 1, at 61:7-20:

20 Q: BY MR. KRAUSE: All right. Based on your
21 experience, would you agree that the .38 Special cartridge is
22 handgun ammunition?

23 MR. DALE: Same objection.

24 THE WITNESS: Again, I believe that .38 Special also can be fired in a
25 long gun; however, I’ve principally seen them fired in a handgun.

26 Q: BY MR. KRAUSE: What about the .38 Smith &
27 Wesson cartridge? Would you agree that that cartridge is
28 handgun ammunition?

1 MR. DALE: Same objection.

2 THE WITNESS: Again, I believe that's -- there's a long gun out there,
3 but I've principally seen that fired out of a handgun. In fact, I think I have one.

4 **Grounds for Objection No. 10:**

5 Relevance. (Evid. Code, §§ 350, 352.); Improper Lay Opinion. (Evid. Code, §§ 800-803.;
6 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.); Vague and Ambiguous. (Evid. Code, §
7 765.)

8
9 **Objections to Exhibit F: Deposition of Steven Stonecipher**

10 **Objection No. 11**

11
12 Stonecipher Deposition, Vol. 1, at 43:6-14:

13 MS. GRAHAM: Q Granted that you may have shot a particular
14 cartridge out of both a rifle and a handgun, is there one caliber or not that you
15 have shot more often out of a handgun than you have out of a long gun?

16 MR. DALE: Same objection -- no, sorry, withdraw. Go ahead.

17 THE WITNESS: Maybe a 45.

18 MS. GRAHAM: Q Would it be like a 45 ACP?

19 A: ACP, uh-huh.

20 **Grounds for Objection No. 11:**

21 Relevance. (Evid. Code, §§ 350, 352.) Here, the State offers the testimony of Plaintiff
22 regarding his limited experience in shooting certain cartridges of ammunition. This question and the
23 response elicited have no bearing on whether there is a common understanding of the public as to
24 whether that particular ammunition is principally for use in a handgun. Rather, the State seeks to offer
25 Mr. Stonecipher's limited experience in handling and firing ammunition as a proxy for the experience
26 and understanding of all firearms users in the state. Mr. Stonecipher's limited experience doesn't
27 meaningfully lend itself to determining what ammunition is principally for use in a handgun, and
28 therefore his testimony is not relevant to that determination.

Improper Lay Opinion. (Evid. Code, §§ 800-803.) The deponent does not hold himself out to be an expert on the use of ammunition and firearms, and is not qualified in questioning to be an expert, yet the State improperly attempts to offer his opinions regarding whether *he has shot* certain ammunition most often from a handgun. Such testimony of the deponent's opinion is the improperly offered as evidence that the deponent's non-expert opinion resulting from his own shooting habits tends to prove the State's contention that the particular ammunition is principally for use in a handgun.

Objection No. 12

Stonecipher Deposition, Vol. 1, at 43:18-22:

Q: Any other?

A: Probably a 380 Colt pistol, Automatic Colt Pistol.

Q: So that would be a 380 ACP?

A: ACP.

Grounds for Objection No. 12:

Relevance. (Evid. Code, §§ 350, 352.) Improper Lay Opinion. (Evid. Code, §§ 800-803.)

Objection No. 13

Stonecipher Deposition, Vol. 1, at 52:1-24:

Q: The cartridge, okay. So a nine-millimeter Parabellum you're saying has a 357 -- I'm sorry?

A: That's the bullet diameter.

Q: But you're familiar with the nine-millimeter Parabellum?

A: Yes.

Q: When that ammunition -- based on your experience, would you consider that ammunition more often chambered in a long gun or a handgun?

MR. DALE: Again, I'm going to object. It calls for speculation, calls for an expert opinion. It's also vague and ambiguous as to "chambered in." I know

1 you previously asked a clarifying question, but my concern is he doesn't
2 understand what you mean by "chambered in" in terms of how many times he's
3 seen it chambered in or experienced it chambered in a particular weapon, how
4 many times he's seen it chambered and fired, or whether he's talking about total
5 number of weapons in which he can chamber it based on his experience, long
6 guns versus handguns. So that's the reason I keep raising that objection,
7 Counsel.

8 MS. GRAHAM: Okay, I understand.

9 THE WITNESS: I would say handguns.

10 **Grounds for Objection No. 13:**

11 Relevance. (Evid. Code, §§ 350, 352.) Here, the State offers the testimony of Plaintiff
12 regarding his understanding of whether a particular type of ammunition is more often chambered in a
13 rifle or a handgun. This question and the response elicited have no bearing on whether there is a
14 common understanding of the public as to whether that particular ammunition is principally for use in
15 a handgun. Rather, the State seeks to offer Mr. Stonecipher's limited experience in handling and firing
16 ammunition as a proxy for the experience and understanding of all firearms users in the state. Mr.
17 Stonecipher's limited experience doesn't meaningfully lend itself to determining what ammunition is
18 principally for use in a handgun, and therefore his testimony is not relevant to that determination.

19 Improper Lay Opinion. (Evid. Code, §§ 800-803.) The deponent does not hold himself out to
20 be an expert on the use of ammunition and firearms, and is not qualified in questioning to be an expert,
21 yet the State improperly attempts to offer his opinions regarding whether certain ammunition is
22 chambered more often in a rifle or handgun. Such testimony of the deponent's opinion is offered as
23 evidence that the deponent's non-expert opinion tends to prove the State's contention that the
24 particular ammunition is principally for use in a handgun.

25 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.) The State asks the deponent to
26 offer opinions regarding the use of a particular ammunition in rifles and handguns, but fails to offer
27 any evidence of, e.g., how many times the deponent has made or sold such ammunition, witnessed its
28 use or fired it himself, and the witness' review of studies, polls or research papers to support the

1 witness' opinions regarding whether such ammunition is principally used in a handgun or rifle. The
2 State provides no foundational information for the party reviewing the testimony to determine whether
3 the deponent's opinions and testimony are based on either (1) a very limited knowledge and scope of
4 experience regarding the use of the ammunition, or (2) speculation by the witness.

5 Vague and Ambiguous. (Evid. Code, § 765.) The State repeatedly asked this and other non-
6 expert deponents for their opinion as to whether certain types of ammunition were "chambered more
7 often in a rifle (or long gun) or a handgun". Each time the State's interrogator was asked to define
8 what was meant by "chambered more often", e.g., whether more rounds of the subject cartridge were
9 fired from a handgun or rifle, whether more brands and models of handgun chambered that cartridge
10 than brands and models of rifles, etc., the State did not clarify what specifically was meant.
11 Resultantly, this deponent and the others testified that in their experience certain rounds were more
12 often chambered in a handgun, without any common understanding as to what that referred to, i.e.,
13 more weapons, or more rounds. Because it is wholly unclear from the testimony what the State was
14 asking the deponents, there is no meaningful information to be drawn from their testimony as it relates
15 to whether such ammunition is principally for use in a handgun.

16
17 **Objection No. 14**

18 Stonecipher Deposition, Vol. 1, at 53:3-7:

19 Q: Based on your experience, would a ten-millimeter

20 Smith and Wesson cartridge be more often chambered in a
21 handgun or a long gun?

22 MR. DALE: Same objection.

23 THE WITNESS: In a handgun.

24 **Grounds for Objection No. 14:**

25 Relevance. (Evid. Code, §§ 350, 352.); Improper Lay Opinion. (Evid. Code, §§ 800-803.);
26 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.); Vague and Ambiguous. (Evid.
27 Code, § 765.)
28

Objection No. 15

Stonecipher Deposition, Vol. 1, at 53:11-15:

Q: Based on your experience, would a ten-millimeter

Smith and Wesson cartridge be more often chambered in a

handgun or a long gun?

MR. DALE: Same objection.

THE WITNESS: In a handgun.

Grounds for Objection No. 15

Relevance. (Evid. Code, §§ 350, 352.); Improper Lay Opinion. (Evid. Code, §§ 800-803.);

Foundation and Speculative. (Evid. Code, §§ 702, 800-803.); Vague and Ambiguous. (Evid.

Code, § 765.)

Objection No. 16

Stonecipher Deposition, Vol. 1, at 53:19-22:

Q: And, in your experience, would 25 ACP be more

often chambered in a handgun or in a long gun?

MR. DALE: Same objection.

THE WITNESS: In a handgun.

Grounds for Objection No. 16:

Relevance. (Evid. Code, §§ 350, 352.); Improper Lay Opinion. (Evid. Code, §§ 800-803.);

Foundation and Speculative. (Evid. Code, §§ 702, 800-803.); Vague and Ambiguous. (Evid.

Code, § 765.)

Objection No. 17

Stonecipher Deposition, Vol. 1, at 54:1-5:

Q: And based on your experience, would 32 ACP

ammunition be more often chambered in a long gun or a

handgun?

1 MR. DALE: Same objection.

2 THE WITNESS: Handgun.

3 **Grounds for Objection No. 17:**

4 Relevance. (Evid. Code, §§ 350, 352.); Improper Lay Opinion. (Evid. Code, §§ 800-803.);

5 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.); Vague and Ambiguous. (Evid.
6 Code, § 765.)

7

8 **Objection No. 18**

9 Stonecipher Deposition, Vol. 1, at 56:23 - 57:1:

10 Q: And based on your experience, would 380 ACP
11 ammunition be chambered more often in a handgun or a 25 long
12 gun?

13 A: Handgun.

14 **Grounds for Objection No. 18:**

15 Relevance. (Evid. Code, §§ 350, 352.); Improper Lay Opinion. (Evid. Code, §§ 800-803.);

16 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.); Vague and Ambiguous. (Evid.
17 Code, § 765.)

18

19 **Objection No. 19**

20 Stonecipher Deposition, Vol. 1, at 57:6-11:

21 Q: Based on your experience, would 454 Casull
22 ammunition be chambered more often in a handgun or in a long
23 gun?

24 MR. DALE: Same objection.

25 THE WITNESS: It's chambered for both and I have both, but I probably shoot
26 the handgun more.

27 **Grounds for Objection No. 19:**

28 Relevance. (Evid. Code, §§ 350, 352.); Improper Lay Opinion. (Evid. Code, §§ 800-803.);

Foundation and Speculative. (Evid. Code, §§ 702, 800-803.); Vague and Ambiguous. (Evid. Code, § 765.)

Objection No. 20

Stonecipher Deposition, Vol. 1, at 48:16-19:

MS. GRAHAM: Q Would you consider the 45 ACP, based on your experience with firearms, is most often shot out of a handgun or a long gun?

A: Out of a handgun.

Grounds for Objection No. 20:

Relevance. (Evid. Code, §§ 350, 352.) Here, the State offers the testimony of Plaintiff regarding his understanding of whether a particular type of ammunition is “most often” shot out of a handgun. The State provides no information as to what background or experience that the witness has that would make his limited experience with the ammunition have some bearing on the ultimate issue, whether there is a common understanding by the people of California as to what ammunition is principally for use in a handgun.

Improper Lay Opinion. (Evid. Code, §§ 800-803.) The deponent does not hold himself out to be an expert on the use of ammunition and firearms, and is not qualified in questioning to be an expert, yet the State improperly attempts to offer his opinions regarding whether certain ammunition is “most often” shot from a handgun. Such testimony of the deponent’s opinion is improperly offered as evidence that the deponent’s non-expert opinion tends to prove the State’s contention that the particular ammunition is principally for use in a handgun.

Foundation and Speculative. (Evid. Code, §§ 702, 800-803.) The State asks the deponent to offer opinions regarding the use of a particular ammunition in rifles and firearms, but fails to offer any evidence of, e.g., how many times the deponent has handled such ammunition, witnessed its use or fired it himself, and the witness' review of studies, polls or research papers to support the witness' opinions regarding whether such ammunition is principally used in a handgun or rifle. The State provides no foundational information for the party reviewing the testimony to determine whether the deponent's opinions and testimony are based on either (1) a very limited knowledge and scope of

1 experience regarding the use of the ammunition, or (2) speculation by the witness.

2
3 **Objections to Exhibit H: Roster of Handguns Certified For Sale**

4 **Objection No. 21**

5 Entirety of Exhibit "H".

6 **Grounds for Objection No. 21:**

7 Improper Expert Opinion. (Evid. Code, § 803.) In his opposing declaration, the State's expert,
8 Mr. Graham, identifies Exhibit "H" as one of the documents upon which he relied in forming opinions
9 expressed in the declaration. (See Graham Decl., at 4:7-11.) Mr. Graham was deposed on December
10 1-2, 2010. Exhibit "H" was not among the documents produced at Mr. Graham's deposition. Mr.
11 Graham also testified that he had offered all opinions that he had on the subject matter. (Graham
12 Depo., Vol. 2 at 368:15-20 (Attached as Exhibit I to Supp. Dec. of CBM).) Where an expert witness
13 fails to disclose all bases or documents relied upon for his opinions, the expert should be excluded
14 from offering those undisclosed opinions and their bases. (See *Jones v. Moore* (2000) 80 Cal.App.4th
15 557, 565, and *Easterby v. Clark* (2009) 171 Cal.App.4th 772, 781.)

16
17 **Objections to Declaration of Blake Graham**

18 **Objection No. 22**

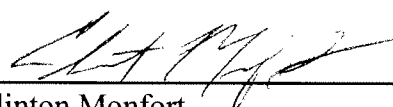
19 Entirety of Declaration.

20 **Grounds for Objection No. 22:**

21 Not Qualified to Render Expert Opinion. (Evid. Code, § 720.); Lack of Foundation to Render
22 Expert Opinion. (Evid. Code, § 801.)

23 January 7, 2011

24 Respectfully Submitted,
MICHEL & ASSOCIATES, P.C.

25
26 
27 Clinton Monfort
28 Attorney for Plaintiffs

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 **PLAINTIFFS' OBJECTIONS TO DEFENDANTS' EVIDENCE OFFERED IN OPPOSITION**
7 **TO MOTION FOR SUMMARY JUDGMENT**

8 on the interested parties in this action by placing

9 ☐ the original

☒ a true and correct copy

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

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

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

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

19 (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the
20 addressee.

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

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

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
26 foregoing is true and correct.

27 
28 CLAUDIA AYALA