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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
12 COUNTY SHERIFF; HERB BAUER	)	
13 SPORTING GOODS; CALIFORNIA RIFLE	)	<b>[PROPOSED] ORDER ON PLAINTIFFS'</b>
14 AND PISTOL ASSOCIATION	)	<b>OBJECTIONS TO DEFENDANTS'</b>
15 FOUNDATION; ABLE'S SPORTING,	)	<b>EVIDENCE OFFERED IN OPPOSITION TO</b>
16 INC.; RTG SPORTING COLLECTIBLES,	)	<b>MOTION FOR SUMMARY JUDGMENT</b>
17 LLC; AND STEVEN STONECIPHER,	)	
	)	
18 Plaintiffs and Petitioners,	)	Date: January 18, 2011
	)	Time: 8:30 a.m.
19 vs.	)	Location: Dept. 402
	)	Judge: Hon. Jeff Hamilton
20 THE STATE OF CALIFORNIA; JERRY	)	
21 BROWN, IN HIS OFFICIAL CAPACITY	)	Date Action Filed: June 17, 2010
22 AS ATTORNEY GENERAL FOR THE	)	
STATE OF CALIFORNIA; THE	)	
CALIFORNIA DEPARTMENT OF	)	
JUSTICE; and DOES 1-25,	)	
	)	
Defendants and Respondents.	)	

23 On January 18, 2011, the motion for summary judgment of Plaintiffs SHERIFF CLAY PARKER,  
24 TEHAMA COUNTY SHERIFF, et al. came before the Court on regularly-noticed hearing. Pursuant to  
25 California Rule of Court 3.1354, Plaintiffs lodged written objections to the evidence presented by  
26 Defendants THE STATE OF CALIFORNIA, et al. in opposition to the motion. Good Cause having been  
27 shown, The Court hereby makes the following rulings on Plaintiffs' Evidentiary Objections:  
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 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 sold 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

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

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

16  
17 **Court's Ruling on Objection No. 1:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

18  
19 **Objection No. 2**

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

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

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

27 THE WITNESS: Handgun.

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

1 A: Yes.

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

5 MR. DALE: Same objections.

6 THE WITNESS: Handgun.

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

8 A: Yes.

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

12 MR. DALE: Same objections.

13 THE WITNESS: Handgun.

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

21 A: Yes.

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

25 MR. DALE: Same objections.

26 THE WITNESS: Handgun.

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

28 A: Yes.

1 Q: Taking into consideration your personal experience with firearms  
2 and ammunition, would a 40 Smith and Wesson -- would 40 Smith and  
3 Wesson ammunition be fired more often in a long gun or 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  
9 and ammunition, would 25 ACP ammunition be fired more often in a  
10 long gun or in a 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  
16 and ammunition, would a 32 ACP ammunition be fired more often in a  
17 long gun or a handgun?

18 MR. DALE: Same objections.

19 THE WITNESS: Handgun.

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

22 Relevance. (Evid. Code, §§ 350, 352.); Improper Lay Opinion. (Evid. Code, §§ 800-803.);  
23 Foundation and Speculative. (Evid. Code, §§ 702, 800-803.); Vague and Ambiguous. (Evid. Code, §  
24 765.)

25  
26 **Court's Ruling on Objection No. 2: \_\_\_\_\_ Sustained; \_\_\_\_\_ Denied.**

**Objection No. 3**

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

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

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

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

**Grounds for Objection No. 3:**

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.)

**Court's Ruling on Objection No. 3:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

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

**Objection No. 4**

Entirety of Testimony.

**Grounds for Objection No. 4:**

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

Mr. Graham's education is primarily one in general law enforcement principles. He admitted that only two of his classes in college addressed identifying ammunition. (Graham Deposition, Vol.1, at 20:11 - 21:6.) Mr. Graham's curriculum vitae similarly shows experience in general law

1 enforcement techniques, including drug busts and specialization in assault weapons training, but does  
2 not evidence a level of training or sophistication such that he can intimately testify regarding the  
3 history, use or popularity of specific cartridges and calibers. (See Exhibit “A” to the Graham Depo.  
4 [c.v].)

5 Thus, Mr. Graham did not work in the State Department of Justice’s ballistics lab or otherwise  
6 develop expertise in identifying particular bullet fragments and tying them to a particular handgun or  
7 firearm; the extent of his experience in this regard is simply bagging casings as evidence and sending  
8 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 -  
9 34:7, 35:9-24, and 36:18 - 37:11; and Graham Declaration in support of Defendants’ Opposition to  
10 MSJ, at 2:13 - 7:14.)

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

1 Under Evidence Code section 720, the expert must be offering his opinion to aid the trier of  
2 fact in an issue beyond the common experience. Yet Mr. Graham's initial efforts consisted of  
3 activities that could be conducted by anyone without Mr. Graham's experience – review a database,  
4 review a treatise, look at some websites. To qualify as an expert, Mr. Graham must be able to supply  
5 some expertise or training to these steps that shows special knowledge of the subject. Mr. Graham  
6 cannot demonstrate such special knowledge because by his own testimony, after conducting the  
7 common steps that anyone can do – review a database, review a treatise, look at some websites – Mr.  
8 Graham's special knowledge which he then applied consisted of (1) recalling having read some trade  
9 magazines (Graham Depo., Vol. 2, at 252:20 - 254:24.), (2) recalling having been present at a few of  
10 the many yearly gun shows held in the state (Graham Depo., Vol. 2, at 337:13-25.), (3) recalling  
11 observing a small percentage of the many gun and ammunition transactions occurring at these shows  
12 (Graham Depo., Vol. 2, at 339:20 - 340:1.), (4) recalling in a non-specific way having spoken with  
13 between 20 and 100 participants at these gun shows regarding the sales during his 16-year career  
14 (Graham Depo., Vol. 2, at 340:10 - 342:2.), and (5) having taken no notes, statistics, or other  
15 quantifiable data to help him process this limited empirical experience and draw meaningful  
16 conclusions regarding gun or ammunition sales. (Graham Depo., Vol. 2, at 339:5 - 340:9.)

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.) Mr. Graham didn't bother to  
6 consult with anyone in his own Forensics Services Bureau in forming his opinions. (Graham Depo.,  
7 Vol. 2, at 355:25 - 356:4.)

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

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

26 Mr. Graham's relied-upon methods – failing to compare rifle transfers to handgun transfers,  
27 failing to justify equating handgun transfers to ammunition use, and failing to use any research,  
28 statistics or other data of ammunition use or sales – are unreliable, and insufficient foundation exists to

1 admit his opinions based upon those unreliable methods.

2  
3 **Court's Ruling on Objection No. 4:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

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

6 **Objection No. 5**

7 Entirety of Testimony.

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

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

11  
12 **Court's Ruling on Objection No. 5:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

13  
14 **Objections to Exhibit E: Deposition of Sheriff Clay Parker**

15 **Objection No. 6**

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

17 Q: What sorts of research have you done to determine what types of  
18 ammunition might be considered antique ammunition?

19 A: Really haven't done any research.

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

25 A: Yes, I do.

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

28 A: Again, I think it gets back to February of 2009 when the bill was introduced.

1 "Handgun ammunition" is just too ambiguous for me. I need some type of  
2 guidance, some type of list from a competent authority to let me know.

3 Q: Did you consider whether there's any book that could provide you with  
4 guidance regarding whether a particular cartridge or caliber of ammunition is  
5 considered handgun ammunition?

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

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

12 A: No, I did not.

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

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

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

20 A: No.

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

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

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

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

27 A: Correct.

28 Q: Anybody else at the Department of Justice?

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

3 Q: Do you recall when the conversations occurred?

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

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

7 A: Yeah, month-wise, no, but I'm sure something was mentioned probably in  
8 2009 and then again in 2010 at one of the north state sheriffs meetings.

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

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

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

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

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

17 A: Not specifically, no.

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

19 Relevance. (Evid. Code, §§ 350, 352.) The State seeks to introduce testimony that Sheriff  
20 Parker failed to do any research regarding what constituted ammunition principally for use in handguns  
21 under the challenged statutes before making statements that he did not understand what constituted  
22 ammunition principally for use in handguns under the challenged statutes. The attempt to offer the  
23 testimony for this purpose directly contradicts the State's position that there is a common  
24 understanding of what constitutes ammunition principally for use in handguns under the challenged  
25 statutes. Further, the State supplies no authority with mandates that proscribed conduct is not  
26 constitutionally vague if members of the public can conduct research on the internet of its meaning.  
27 Further, Mr. Parker does not hold himself out to be an expert on ammunition and is not qualified as  
28 one through questioning. Thus, Mr. Parker is a lay witness, and if he conducted research to form

1 opinions on specific cartridges of ammunition, those opinions would be inadmissible and therefore  
2 irrelevant to issue of the State's contention that there is a common understanding of what constitutes  
3 ammunition principally for use in handguns under the challenged statutes.

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

11  
12 **Court's Ruling on Objection No. 6:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

13  
14 **Objection No. 7**

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

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

17 A: That is correct.

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

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

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

22 Q: BY MR. KRAUSE: California.

23 A: In what era?

24 Q: Today in California.

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

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

28 Relevance. (Evid. Code, §§ 350, 352.) Here, the State offers the testimony of Plaintiff

1 regarding his understanding of whether a particular type of ammunition is used more often handguns  
2 versus long guns. This question and the response elicited have no bearing on whether there is a  
3 common understanding of the public as to whether that particular ammunition is principally for use in  
4 a handgun. Rather, the State seeks to offer Mr. Parker's limited experience in handling and firing  
5 ammunition as a proxy for the experience and understanding of all firearms users in the state. Mr.  
6 Parker's limited experience doesn't meaningfully lend itself to determining what ammunition is  
7 principally for use in a handgun, and therefore his testimony is not relevant to that determination.

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

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

22 Vague and Ambiguous. (Evid. Code, § 765.) The State repeatedly asked this and other non-  
23 expert deponents for their opinion as to whether certain types of ammunition were "used more often in  
24 a handgun". The State's interrogator was asked to define what was meant by "used more often", and  
25 narrowed the phrase by era and location, but declined to offer any other parameters, e.g., whether  
26 more rounds of the subject cartridge were fired from a handgun or rifle, whether more brands and  
27 models of handgun chambered that cartridge than brands and models of rifles, etc. Resultantly, this  
28 deponent testified that a particular cartridge was "used more often" in a handgun in California in the

1 modern era, without any common understanding of what “used more often meant”, i.e., used by who?,  
2 used by civilians only?, more rounds of that cartridge had been fired in handguns overall?, more  
3 models and brands of handguns and rifles were manufactured to chamber that round?, etc. Because it  
4 is wholly unclear from the testimony what the State was asking the deponent, there is no meaningful  
5 information to be drawn from their testimony as it relates to whether such ammunition is principally  
6 for use in a handgun.

7  
8 **Court’s Ruling on Objection No. 7:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

9  
10 **Objection No. 8**

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

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

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

15 THE WITNESS: Just in my personal experience, that would be a correct statement, that  
16 .40 caliber would be used more often in a handgun than a long gun.

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

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

26 Improper Lay Opinion. (Evid. Code, §§ 800-803.) The deponent does not hold himself out to  
27 be an expert on the use of ammunition and firearms, and is not qualified in questioning to be an expert,  
28 yet the State improperly attempts to offer his opinions regarding whether certain ammunition is



1 chambered more often in a rifle or handgun. Such testimony of the deponent's opinion is offered as  
2 evidence that the deponent's non-expert opinion tends to prove the State's contention that the  
3 particular ammunition is principally for use in a handgun.

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

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

23  
24 **Court's Ruling on Objection No. 8: \_\_\_\_\_ Sustained; \_\_\_\_\_ Denied.**

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 experience, you

1 would agree that the .380 cartridge is handgun ammunition?

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

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

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

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  
16 “handgun ammunition”. Such testimony of the deponent’s opinion is offered as evidence that the  
17 deponent’s non-expert opinion tends to prove the State’s contention that the particular ammunition is  
18 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 constitutes “handgun ammunition”. The State provides  
24 no foundational information for the party reviewing the testimony to determine whether the deponent’s  
25 opinions and testimony are based on either (1) a very limited knowledge and scope of experience  
26 regarding the use of the ammunition, or (2) speculation by the witness.

27 Vague and Ambiguous. (Evid. Code, § 765.) The State repeatedly asked this deponent for his  
28 opinion as to whether certain types of ammunition was “handgun ammunition”. Each time the State’s

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

16  
17 **Court’s Ruling on Objection No. 9:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

18  
19 **Objection No. 10**

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

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

23 MR. DALE: Same objection.

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

26 Q: BY MR. KRAUSE: What about the .38 Smith & Wesson cartridge?

27 Would you agree that that cartridge is handgun ammunition?

28 MR. DALE: Same objection.

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

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

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. Code, §  
6 765.)

7  
8 **Court's Ruling on Objection No. 10:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

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

11 **Objection No. 11**

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

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

**Court's Ruling on Objection No. 11: \_\_\_\_\_ Sustained; \_\_\_\_\_ Denied.**

### 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.)

**Court's Ruling on Objection No. 12: \_\_\_\_\_ Sustained; \_\_\_\_\_ Denied.**

### 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

1 handgun?

2 MR. DALE: Again, I'm going to object. It calls for speculation, calls for an  
3 expert opinion. It's also vague and ambiguous as to "chambered in." I know  
4 you previously asked a clarifying question, but my concern is he doesn't  
5 understand what you mean by "chambered in" in terms of how many times he's  
6 seen it chambered in or experienced it chambered in a particular weapon, how  
7 many times he's seen it chambered and fired, or whether he's talking about total  
8 number of weapons in which he can chamber it based on his experience, long  
9 guns versus handguns. So that's the reason I keep raising that objection,  
10 Counsel.

11 MS. GRAHAM: Okay, I understand.

12 THE WITNESS: I would say handguns.

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

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

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

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

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

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

19  
20 **Court's Ruling on Objection No. 13:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

21  
22 **Objection No. 14**

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

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

25 Wesson cartridge be more often chambered in a handgun or a long gun?

26 MR. DALE: Same objection.

27 THE WITNESS: In a handgun.  
28

**Grounds for Objection No. 14:**

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.)

**Court's Ruling on Objection No. 14:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

**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.)

**Court's Ruling on Objection No. 15:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

**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.)

**Court's Ruling on Objection No. 16:** \_\_\_\_\_ Sustained; \_\_\_\_\_ Denied.

### 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?

MR. DALE: Same objection.

THE WITNESS: Handgun.

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

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.)

**Court's Ruling on Objection No. 17:** \_\_\_\_\_ Sustained; \_\_\_\_\_ Denied.

### Objection No. 18

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

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

A: Handgun.

### Grounds for Objection No. 18:

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.)

1 Court's Ruling on Objection No. 18: \_\_\_\_\_ Sustained; \_\_\_\_\_ Denied.

2  
3 **Objection No. 19**

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

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

7 MR. DALE: Same objection.

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

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

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

14  
15 Court's Ruling on Objection No. 19: \_\_\_\_\_ Sustained; \_\_\_\_\_ Denied.

16  
17 **Objection No. 20**

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

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

21 A: Out of a handgun.

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

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

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

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

15  
16 **Court’s Ruling on Objection No. 20:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

17  
18                    **Objections to Exhibit H: Roster of Handguns Certified For Sale**

19                                    **Objection No. 21**

20            Entirety of Exhibit “H”.

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

22        Improper Expert Opinion. (Evid. Code, § 803.) In his opposing declaration, the State’s expert,  
23 Mr. Graham, identifies Exhibit “H” as one of the documents upon which he relied in forming opinions  
24 expressed in the declaration. (See Graham Decl., at 4:7-11.) Mr. Graham was deposed on December  
25 1-2, 2010. Exhibit “H” was not among the documents produced at Mr. Graham’s deposition. Mr.  
26 Graham also testified that he had offered all opinions that he had on the subject matter. (Graham  
27 Depo., Vol. 2 at 368:15-20.) Where an expert witness fails to disclose all bases or documents relied  
28 upon for his opinions, the expert should be excluded from offering those undisclosed opinions and

1 their bases. (See *Jones v. Moore* (2000) 80 Cal.App.4th 557, 565, and *Easterby v. Clark* (2009) 171  
2 Cal.App.4th 772, 781.)

3  
4 **Court's Ruling on Objection No. 21:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

5  
6 **Objections to Declaration of Blake Graham**

7 **Objection No. 22**

8 Entirety of Declaration.

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

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

12 **Court's Ruling on Objection No. 22:** \_\_\_\_\_ **Sustained;** \_\_\_\_\_ **Denied.**

13  
14 Dated: \_\_\_\_\_

15  
16 \_\_\_\_\_  
17 Hon. Jeff Hamilton  
18 JUDGE OF THE SUPERIOR COURT  
19  
20  
21  
22  
23  
24  
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26  
27  
28

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  
5 over the age eighteen (18) years and am not a party to the within action. My business address is 180 East  
Ocean Blvd., Suite 200, Long Beach, California 90802.

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

7 **[PROPOSED] ORDER ON PLAINTIFFS' OBJECTIONS TO DEFENDANTS' EVIDENCE**  
8 **OFFERED IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

9 on the interested parties in this action by placing

10 ☐ the original

11 ☒ a true and correct copy

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

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

16 (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and  
17 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  
presumed invalid if postal cancellation date is more than one day after date of deposit for mailing  
an affidavit.

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

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

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

22 X (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of  
23 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  
24 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  
with ordinary business practices.

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

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

28   
CLAUDIA AYALA