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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  
COUNTY SHERIFF; HERB BAUER  
12 SPORTING GOODS; CALIFORNIA  
RIFLE AND PISTOL ASSOCIATION  
13 FOUNDATION; ABLE'S SPORTING,  
INC.; RTG SPORTING COLLECTIBLES,  
14 LLC; AND STEVEN STONECIPHER,

15 Plaintiffs and Petitioners,

16 vs.  
17

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

21 Defendants and Respondents.  
22

) CASE NO. 10CECG02116

) **SUPPLEMENTAL DECLARATION OF**  
) **CLINTON B. MONFORT IN SUPPORT OF**  
) **PLAINTIFFS' REPLY TO OPPOSITION TO**  
) **MOTION FOR SUMMARY JUDGMENT OR**  
) **IN THE ALTERNATIVE FOR SUMMARY**  
) **ADJUDICATION AND TRIAL;**  
) **EXHIBITS A - J**

) Date: January 18, 2011

) Time: 8:30 a.m.

) Location: Dept. 402

) Judge: Hon. Jeffrey Y. Hamilton

) Action Filed: June 17, 2010  
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**DECLARATION OF CLINTON B. MONFORT**

I, Clinton B. Monfort, declare as follows:

1. I am an attorney licensed to practice law before the courts of the State of California. I am an associate attorney of the law firm Michel & Associates, P.C. I am an attorney of record for Plaintiffs in this action and I have personal knowledge of each fact stated in this declaration.

2. On or about December 29, 2010, our office engaged in communications with Defendants' counsel, Peter A. Krause, about how Plaintiffs should address the issue of utilizing testimony from witnesses deposed subsequent to the filing of Plaintiffs' Motion for Summary Judgment as a result of the shortened briefing schedule negotiated between the parties with the participation of the Court. Plaintiffs' concern was that Plaintiffs would not have access to deposition testimony that Defendants were able to rely on in their Opposition, as Plaintiffs counsel could not reasonably anticipate every possible argument in support of Defendants' opposition and submit a declaration from every witness encompassing everything that might be asked during Defendants' deposition of Plaintiffs and their expert. The parties stipulated that Plaintiffs would not introduce evidence to support any novel arguments, but could do so to counter arguments and testimony relied upon by Defendants in their Opposition. Attached hereto as Exhibit "A" is a true and accurate copy of the e-mail chain between the parties' counsel discussing the use of additional testimony not lodged in support of Plaintiffs' Motion for Summary Judgment due to the unique timing and nature of this proceeding.

3. In light of the parties' stipulation on or about December 29, 2010 to allow the use of additional deposition testimony by Plaintiffs, a true and accurate "Stipulated Supplemental Separate Statement of Undisputed Facts" is filed concurrently herewith.

4. For the convenience of the court, Plaintiffs have prepared a chart documenting the ammunition Defendants identified as "handgun ammunition" throughout this litigation. A true and accurate chart titled "Various Lists of Ammunition Defendants Consider 'Handgun Ammunition'" that reflects testimony given by Defendants and their expert witness, Blake Graham, in Response to Plaintiffs' Special Interrogatories, Set One, during the Deposition of Blake Graham, and provided in the Declaration of Blake Graham in support of Defendants' Opposition to Plaintiffs' Motion for

1 Summary Judgment / Trial brief, which documents Defendants' testimony about what ammunition  
2 they consider "handgun ammunition" is attached hereto as Exhibit "B."

3         5.       In support of Defendants' Opposition to Plaintiffs' Motion for Summary Judgment,  
4 Defendants lodged with the court excerpts of deposition testimony of Plaintiffs Herb Bauer Sporting  
5 Goods Person Most Qualified / Barry Bauer, Sheriff Clay Parker, Plaintiff Steven Stonecipher, and  
6 Plaintiffs' expert witness, Steven Helsley. As Defendants' Opposition, Supporting Separate  
7 Statement, and Compendium of Evidence filed in support of Defendants' Opposition refer to  
8 testimony provided by each of these witnesses about whether each believes various cartridges are used  
9 more often in a handgun in their experience, Plaintiffs have assembled a chart for the Court's  
10 convenience documenting the answers provided by each of these witnesses in one document. A true  
11 and accurate chart documenting these deponents' responses by Plaintiffs and their expert witness titled  
12 "Cartridges the State Inquired About Being 'Handgun Ammunition' During Depositions" is attached  
13 hereto as Exhibit "C."

14         6.       Pursuant to the stipulation of the parties, excerpts from the certified Deposition  
15 Transcript of Steven Stonecipher is attached hereto as Exhibit "D" in Support of Plaintiffs' Motion for  
16 Summary Judgment or in the Alternative Summary Adjudication / Trial Brief. I attended the  
17 deposition, which was taken on December 13, 2010, and can state that the transcript accurately reflects  
18 the testimony provided on each page filed with the Court in support of Plaintiffs' Motion.

19         7.       Pursuant to the stipulation of the parties, excerpts from the certified Deposition  
20 Transcript of Barry Bauer, President and the Person Most Qualified for Plaintiff Herb Bauer Sporting  
21 Goods, Inc., are attached hereto as Exhibit "E" in Support of Plaintiffs' Motion for Summary  
22 Judgment or in the Alternative Summary Adjudication / Trial Brief. I attended the deposition, which  
23 was taken on December 14, 2010, and can state that the transcript accurately reflects the testimony  
24 provided on each page filed with the Court in support of Plaintiffs' Motion.

25         8.       Pursuant to the stipulation of the parties, excerpts from the certified Deposition  
26 Transcript of Steven Helsley, are attached hereto as Exhibit "F" in Support of Plaintiffs' Motion for  
27 Summary Judgment or in the Alternative Summary Adjudication / Trial Brief. I attended the  
28

1 deposition, which was taken on December 16, 2010, and can state that the transcript accurately reflects  
2 the testimony provided on each page filed with the Court in support of Plaintiffs' Motion.

3         9. Pursuant to the stipulation of the parties, excerpts from the certified Deposition  
4 Transcript of Clay Parker are attached hereto as Exhibit "G" in Support of Plaintiffs' Motion for  
5 Summary Judgment or in the Alternative Summary Adjudication / Trial Brief. I attended the  
6 deposition telephonically in Long Beach California, which was taken on December 21, 2010, by  
7 Defendants telephonically at their offices in Sacramento, CA, and can state that the transcript  
8 accurately reflects the testimony provided on each page filed with the Court in support of Plaintiffs'  
9 Motion.

10         12. Defendants' expert witness, Blake Graham, submitted a declaration in support of  
11 Defendants Opposition to Plaintiffs' Motion for Summary Judgment / Trial Brief. Defendants have  
12 also lodged portions of the deposition transcript of Blake Graham, Volumes I and II, taken on  
13 December 1<sup>st</sup> and 2<sup>nd</sup>, 2010. Plaintiffs have filed objections to Mr. Graham's testimony on grounds  
14 that it lacks foundation and that Mr. Graham lacks qualification to testify as an expert. In support of  
15 Plaintiffs' Objections to Defendant's Evidence Offered in Opposition to Motion for Summary  
16 Judgment / Trial Brief, excerpts from the volume one and two of the certified deposition transcripts of  
17 Defendants' lay / expert witness, Blake Graham, are attached as Exhibit "H" and "I," respectively. I  
18 attended the deposition, which was taken on December 1<sup>st</sup> and 2<sup>nd</sup>, 2010. I can state that the transcripts  
19 accurately reflects the testimony provided during the deposition as to each page of testimony filed with  
20 the Court. Plaintiffs will lodge copies of the relevant portions of volume one and two of certified  
21 deposition transcripts Blake Graham corresponding to the portions of the rough final drafts previously  
22 filed in support of Plaintiffs' moving papers by Tuesday, January 11, 2011.

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13. On January 6, 2011 I visited the Able's Ammo website catalog found at [www.ableammo.com.catalog](http://www.ableammo.com.catalog). Attached hereto as Exhibit "J" is a true and accurate printout of the Able's catalogue page found on its website that was downloaded and printed on January 6, 2011.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 7, 2011

  
Clinton B. Monfort

## **EXHIBIT A**

## Clint B. Monfort


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**From:** Clint B. Monfort  
**Sent:** Wednesday, December 29, 2010 12:22 PM  
**To:** 'Peter Krause'  
**Subject:** RE: Evidence and Separate Statements

I think your proposal is fine. Our intent isn't to surprise you and make new arguments, we just want to make sure we have the ability to use different portions of the same depositions in accordance with the Rule of Completeness found in Cal. Evid. Code section 365, which provides that "if part of an act, declaration, conversation, or writing is introduced into evidence by one party, an adverse party is entitled to introduce any portion of the remainder that relates to the same subject involved in the part admitted."

It doesn't sound like we will need to file a motion. I know you are busier than me this week so give me a call at your convenience if you want to discuss further.

Thanks,

<p><b>Clint B. Monfort</b> Attorney</p>  <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Firearms - Environmental - Land Use - Employment Law</p>	<p>Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:CMonfort@michellawyers.com">CMonfort@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a></p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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**From:** Peter Krause [mailto:[Peter.Krause@doj.ca.gov](mailto:Peter.Krause@doj.ca.gov)]  
**Sent:** Wednesday, December 29, 2010 11:15 AM  
**To:** Clint B. Monfort  
**Subject:** RE: Evidence and Separate Statements

You like to remind me about that, don't you?

Just give me a call. It could be that we can avoid a motion.

>>> "Clint B. Monfort" <[CMonfort@michellawyers.com](mailto:CMonfort@michellawyers.com)> 12/29/2010 11:06 AM >>>

Let me run this up the flagpole. I don't want to drag this out and its irrelevant now but for the record if we negotiated a shortened briefing schedule initially (avoiding a MPI) we would have had all depositions done on both sides before our MSJ was due.

Our one expert, Steven Helsley, was identified well before our motion was due and we didn't designate any others.

You're proposition might work but its tough to say without seeing your opposition first.

Let me discuss with Chuck and give you a final answer.

**Clint B. Monfort**  
Attorney



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**From:** Peter Krause [<mailto:Peter.Krause@doj.ca.gov>]  
**Sent:** Wednesday, December 29, 2010 10:58 AM  
**To:** Clint B. Monfort  
**Cc:** Zackery Morazzini  
**Subject:** RE: Evidence and Separate Statements

Clint,

As I told you before, I am not trying to make your life difficult. This issue is not about the State's defense; it is about Plaintiffs' affirmative case and the evidence that you chose to elicit from your witnesses in support of your summary judgment motion.

There was no delay in deposing witnesses. Plaintiffs agreed to proceed on the compressed schedule offered by the Court, which included a December 20 deposition cutoff. You knew for a long time that the State was not going to take depositions until we knew who your summary judgment declarants would be and what they had to say. We did not learn the identities of your declarants until December 6. Plaintiffs even refused to even identify their experts until December 6 despite repeated requests.

In the end, this is about fairness. The State should not be required to waive its right to rebut evidence from your own witnesses that was not introduced with the moving papers, as specifically provided by section 437c.

As you can imagine, I am very busy this week and cannot devote any more time to this exchange. The only other offer I can make is the following: The State intends to identify a handful of supplemental undisputed material facts in its opposition. You can use any deposition testimony you like to rebut those facts.

If none of the State's offers are acceptable to Plaintiffs, then all I can suggest is that Plaintiffs take whatever actions they are going to take and the State will file appropriate objections.

Please call me if you'd like to talk about exactly what Plaintiffs intend to submit on reply.

Peter

Peter A. Krause  
Deputy Attorney General  
Office of the Attorney General  
Civil Division, Government Law Section  
1300 I Street  
Sacramento, CA 95814



Telephone: (916) 324-5328

Fax: (916) 324-8835

>>> "Clint B. Monfort" <CMonfort@michellawyers.com> 12/28/2010 10:30 AM >>>


Peter,

That is unfortunate. I understand the spirit of summary judgment rules, but the only moving target here has been the states' defense. We cannot possibly anticipate every possible argument in support of Defendants' opposition and then submit a "catch all" declaration from every witness covering everything that might be asked in a deposition. I'm surprised you would suggest that as an option. It is more than reasonable for plaintiffs to have access to deposition testimony that defendants have access to. The only thing that prevented it was Defendants' delay in deposing our witnesses which plaintiffs have made available since September.

As for your proposals, filing an amended separate statement will not burden or prejudice your clients as Plaintiffs will not be making any new arguments, but will be using it to counter potential arguments the state might make that are based on the recent deposition testimony. Moving the deadline back at this juncture is simply not an option as you are well aware.

I didn't expect this to be an issue. Hopefully this clears up your concerns and sheds some light on the issue. If the state still plans to object please let me know so that we can seek appropriate relief from the court.

Thanks,

<b>Clint B. Monfort</b> Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:CMonfort@michellawyers.com">CMonfort@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a>
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**From:** Peter Krause [mailto:Peter.Krause@doj.ca.gov]

**Sent:** Tuesday, December 28, 2010 9:58 AM

**To:** Clint B. Monfort

**Cc:** Kimberly Graham; Zackery Morazzini

**Subject:** Re: Evidence and Separate Statements

Clint,

In response to your e-mail below, the State will object to the introduction of new evidence on reply.

The summary judgment statutes and case law make it very clear that the moving party has to introduce all relevant evidence with the moving papers and may not rely upon new evidence introduced for the first time on reply. This rule is based on concepts of fairness and due process.

You say in your e-mail that Plaintiffs "didn't have access to this evidence when [we] filed our motion." That is false. The "new" evidence you want to introduce is testimony from your *own clients*, not third parties you haven't had access to until recently. If Plaintiffs wanted to elicit more or different information from them, you had every opportunity to do so and to include it in a declaration.

I hope that you appreciate that the State is not taking this position to be difficult. The evidence lodged in support of a summary judgment motion cannot be a moving target. We are preparing our opposition papers and evidentiary objections based upon the arguments and evidence served on December 6. Plaintiffs had every opportunity to obtain full and complete declarations from their witnesses and the State should not be asked to bear the burden of Plaintiffs' failure to elicit whatever "new" evidence they think was brought out in our depositions of your witnesses.

In light of the above, I see only two equitable options: (1) proceed with the existing evidence and, if the summary judgment motion is denied, introduce the testimony in the bench trial phase of the case, or (2) file and serve an amended separate statement and stipulate to continue the State's opposition deadline (and the hearing/trial date) to allow us to respond to your new arguments and supporting evidence. If you can think of another option that will not prejudice the State, please let me know.

Peter

Peter A. Krause  
Deputy Attorney General  
Office of the Attorney General  
Civil Division, Government Law Section  
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Sacramento, CA 95814  
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>>> "Clint B. Monfort" <CMonfort@michellawyers.com> 12/21/2010 6:20 PM >>>

Peter,

Glad we have all of the depositions behind us. What a whirlwind of depositions that was. Anyway, I wanted to discuss how we should deal with introduction of evidence in your Opposition and our Reply. Obviously there was testimony provided by our Plaintiffs and expert that we will want to use in our reply brief since we didn't have access to this evidence when we filed our Motion.

Without knowing how you are going to present your evidence in your separate statement, my initial thoughts are that we will file an amended separate statement that will include relevant testimony from the recent depositions. Just want to make sure that you won't object to this and that we don't need to file any sort of motion with the court to introduce new evidence.

Please let me know at your earliest convenience. I'll be out traveling tomorrow through next Monday for Christmas but will have access to my work e-mail sporadically.

Hope you have a nice Christmas and get lots of ammo in your stocking.

Clint

<b>Clint B. Monfort</b> Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:CMonfort@michellawyers.com">CMonfort@michellawyers.com</a> Web:
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## **EXHIBIT B**

## VARIOUS LISTS OF AMMUNITION DEFENDANTS CONSIDER “HANDGUN AMMUNITION”

State's Response to Plaintiffs' First Set of Special Interrogatories	State Expert's Deposition Testimony about What Ammunition is "Handgun Ammunition" Per Request of the Legislature	Cartridges the State Inquired about being Handgun Ammunition during Depositions of Plaintiffs and Plaintiffs' Expert	Cartridges Listed in the State's Expert's Declaration in Support of Defendants' Opposition	Additional Cartridges the State's Expert Listed during Deposition Testimony
.25 <sup>1</sup> .32 <sup>2</sup> .357 <sup>3</sup> .380 <sup>4</sup> .40 <sup>5</sup> .45 <sup>6</sup> 9mm <sup>7</sup> 10mm <sup>8</sup>	maybe .223 <sup>9</sup> .25 <sup>10</sup> .357 <sup>11</sup> .38 <sup>12</sup> .380 <sup>13</sup> .40 <sup>14</sup> .45 <sup>15</sup> possibly .454 <sup>16</sup> possibly 7.62 <sup>17</sup> 9mm <sup>18</sup> 10mm <sup>19</sup>	.25 ACP <sup>20</sup> .32 ACP <sup>21</sup> .357 Mag <sup>22</sup> .357 SIG <sup>23</sup> .38 S&W <sup>24</sup> .38 Special <sup>25</sup> .38 (Super) Auto <sup>26</sup> .380 <sup>27</sup> .380 ACP <sup>28</sup> .380 Revolver <sup>29</sup> .40 <sup>30</sup> .40 S&W <sup>31</sup> .44 Auto Mag <sup>32</sup> .44 Remington Mag <sup>33</sup> .44 Special <sup>34</sup> .45 ACP <sup>35</sup> .45 GAP <sup>36</sup> .454 Casull <sup>37</sup> 9mm Federal <sup>38</sup> 9mm Long <sup>39</sup> 9mm Luger <sup>40</sup> 9mm Mauser <sup>41</sup> 10mm Auto <sup>42</sup> 10mm S&W <sup>43</sup>	.25 ACP <sup>44</sup> .32 ACP <sup>45</sup> .357 Mag <sup>46</sup> .357 SIG <sup>47</sup> .38 Special <sup>48</sup> .38 Super <sup>49</sup> .380 ACP <sup>50</sup> .40 S&W Auto <sup>51</sup> .44 Remington Mag <sup>52</sup> .44 S&W Special <sup>53</sup> .44 Auto Mag <sup>54</sup> .45 ACP <sup>55</sup> .45 GAP <sup>56</sup> .454 Casull <sup>57</sup> 9mm Luger <sup>58</sup> 10mm Auto <sup>59</sup>	.25 NAA <sup>60</sup> .256 Win Mag <sup>61</sup> .32 S&W <sup>62</sup> .32 Short Colt <sup>63</sup> .45 Long Colt <sup>64</sup> 9mm Mauser <sup>65</sup>

1. See Defs.' Resp. to Pls.' Specially Prepared Interrogatories, Set One at 5:21-22.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *See* Graham Depo. vol. 1, 103:18-104:3, Dec. 1, 2010.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *See* Bauer Depo. 44:6-11, Dec. 14, 2010; Parker Depo. 55:8-14, Dec. 21, 2010; Stonecipher Depo. 53:19-22, Dec. 13, 2010; Helsley Depo. 129:12-16, Dec. 16, 2010.

21. *See* Bauer Depo. 44:15-20; Parker Depo. 55:15-56:3; Stonecipher Depo. 54:1-5; Helsley Depo. 161:2-18.

22. *See* Bauer Depo. 44:22-45:5; Parker Depo. 56:7-21; Stonecipher Depo. 54:9-23; Helsley Depo. 161:19-22.

23. *See* Bauer Depo. 45:18-20; Stonecipher Depo. 55:1-5; Helsley Depo. 163:2-18.

24. *See* Parker Depo. 61:14-20; Helsley Depo. 172:8-14.

25. *See* Bauer Depo. 50:24-51:10; Parker Depo. 61:7-13; Stonecipher Depo. 58:3-13; Helsley Depo. 170:17-172:7.

26. *See* Parker Depo. 61:21-62:1; Helsley Depo. 172:15-173:12.
27. *See* Parker Depo. 59:5-60:14.
28. *See* Bauer Depo. 49:8-49; Stonecipher Depo. 56:23-57:1; Helsley Depo. 167:10-168:20.
29. *See* Parker Depo. 59:5-60:14; Helsley Depo. 165:24-167:2.
30. *See* Parker Depo. 52:15-55:7.
31. *See* Bauer Depo. 43:21-44:2; Stonecipher Depo. 53:11-15; Helsley Depo. 160:2-10.
32. *See* Bauer Depo. 45:23-46:3; Parker Depo. 57:15-23; Stonecipher Depo. 55:23-56:7; Helsley Depo. 164:23-165:4.
33. *See* Helsley Depo. 165:5-15.
34. *See* Bauer Depo. 47:5-19; Stonecipher Depo. 56:13-20; Helsley Depo. 163:18-164:12.
35. *See* Bauer Depo. 39:11-41:25; Parker Depo. 49:15-16; Stonecipher Depo. 47:25-48:19; Helsley Depo. 151:5-155:21.
36. *See* Bauer Depo. 42:1-9; Parker Depo. 49:17-50:1; Stonecipher Depo. 48:23-49:2; Helsley Depo. 155:22-156:7.
37. *See* Bauer Depo. 49:23-50:6; Parker Depo. 60:15-61:6; Stonecipher Depo. 57:3-11; Helsley Depo. 168:21-170:15.
38. *See* Helsley Depo. 158:9-17.
39. *See* Bauer Depo. 42:13-18:6; Stonecipher Depo. 49:12-21.
40. *See* Bauer Depo. 42:22-43:2; Parker Depo. 50:2-52:2; Stonecipher Depo. 50:10-23; Helsley Depo. 156:8-157:18.
41. *See* Helsley Depo. 158:18-159:4.
42. *See* Parker Depo. 52:3-14; Helsley Depo. 159:24-160:1.
43. *See* Bauer Depo. 43:12-17:6; Parker Depo. 53:3-7.
44. *See* Declaration of Blake Graham Supp. Defs.' Opp. to Pls.' Summ. J Mot. at ¶ 12.
45. *Id.*
46. *Id.*
47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *See* Graham Depo. vol. 1, 133:17-21.

61. *See id.* at 132:23-133:1.

62. *See id.* at 136:6-8.

63. *See id.* at 137:3-5.

64. *See id.* at 153:13-23.

65. *See id.* at 172:22-173:1-2.



CARTRIDGES THE STATE INQUIRED ABOUT BEING "HANDGUN AMMUNITION" DURING DEPOSITIONS <sup>1</sup>				
TYPE	BAUER	PARKER	STONECIPHER	HELSLEY
.25 ACP	Handgun 44:6-11	"I've seen it shot in both the long gun and handgun, but more often in a handgun." 55:8-14	Handgun 53:19-22	"I've never seen a rifle that was chambered for .25 ACP cartridge." 129:12-16
.32 ACP	Handgun 44:15-20	Definitely handgun 55:15-56:3	Handgun 54:1-5	Not handgun 161:2-18
.357 MAG.	"Goes both ways." 44:24-45:5	50/50 56:7-21	50/50 54:9-23	Not handgun 161:19-22
.357 SIG	Unfamiliar 45:18-20	***	Handgun 55:1-5	Handgun 163:10-17
.38 S&W	***	Handgun 61:14-20	***	Handgun 172:8-14
.38 SPECIAL	50/50 50:24-51:10	Handgun 61:7-13	50/50 58:3-13	Both handgun and long gun 170:17-172:7
.38 (Super) Auto	***	Unfamiliar 61:21-62:1	***	Handgun 172:15-173:12
.380	***	Handgun, 59:5-60:14	***	***
.380 ACP	Handgun 49:8-19	***	Handgun 56:23-57:1	Not handgun 167:10-168:20
.380 REVOLVER	***	Handgun 59:5-60:14	***	British cartridge 165:24-167:2
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<sup>1</sup> All citations contained within this chart are to pin cites of the designated party's deposition transcript.

\*\*\* = Not asked of this deponent

## **EXHIBIT D**

1 I N D E X

2 WITNESS: STEVEN STONECIPHER

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF FRESNO

3 -oOo-

4

SHERIFF CLAY PARKER, TEHAMA )

5 COUNTY SHERIFF; HERB BAUER )

SPORTING GOODS; CALIFORNIA )

6 RIFLE AND PISTOL ASSOCIATION; )

7 ABLE'S SPORTING, INC.; RTG )

SPORTING COLLECTIBLES, LLC; )

8 AND STEVEN STONECIPHER, )

)

9 Plaintiffs and Petitioners, )

)

10 vs. )

)

11 THE STATE OF CALIFORNIA; JERRY )

BROWN, IN HIS OFFICIAL )

12 CAPACITY AS ATTORNEY GENERAL )

FOR THE STATE OF CALIFORNIA; )

13 THE CALIFORNIA DEPARTMENT OF )

JUSTICE, AND DOES 1-25, )

)

14 Defendants and Respondents. )

)

15

16 -oOo-

17 Fresno, California December 13, 2010

18 -oOo-

19 The deposition of STEVEN STONECIPHER was taken

20 in the above-entitled matter pursuant to all of the

21 provisions of law pertaining to the taking and use of

22 depositions before Karla M. Rocha, CSR, with offices at

23 Fresno, California, commencing at the hour of 2:15

24 p.m., at the offices of Kim Thayer & Associates, 225

25 West Shaw Avenue, Suite 101, Fresno, California.

1 APPEARANCES OF COUNSEL:

2 For the Plaintiffs and Petitioners:

3 MICHEL & ASSOCIATES  
4 By: Joshua R. Dale  
5 Co-Counsel: Sean A. Brady and Clint B. Monfort  
180 East Ocean Boulevard, Suite 200  
Long Beach, California 90802

6  
7 For the Defendants and Respondents:

8 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE  
9 By: Kimberly Graham  
1300 "I" Street, Suite 1101  
Sacramento, California 94244-2550

10

11 -oOo-

12 STEVEN STONECIPHER,  
13 called as a witness herein, having  
14 been heretofore duly sworn,  
15 testified as follows:

16 -oOo-

17

18 EXAMINATION BY MS. GRAHAM

19 MS. GRAHAM: Q Good afternoon, Mr. Stonecipher. I  
20 wanted to extend my apologies on the record, I'm sorry  
21 also to Counsel, that I had noticed the wrong time on  
22 your deposition and I do apologize for the inconvenience  
23 on that. I realize that you are extremely busy and I  
24 apologize profusely for that. That's not the way I  
25 practice and I apologize very much.

1     ambiguous.  Again, I don't know, are you asking him  
2     about his experience as it relates to observing the  
3     public or his experience as it relates to him using a  
4     particular ammunition?

5           MS. GRAHAM:  Q  Do you consider, when you go out  
6     and fire handguns at a shooting range -- or have you  
7     ever shot handguns and long guns at a shooting range?

8           A     Yes.

9           Q     And do you, while you're there, observe what  
10    other persons around you are shooting?

11          A     In some cases.

12          Q     Do you often attend -- do you, at some point,  
13    attend shooting ranges with friends and family?

14          A     No, I have a private shooting range.

15          Q     It's on your property?

16          A     Yes.

17          Q     Do you invite friends and family over to your  
18    home to shoot at your private shooting range?

19          A     Yes.

20          Q     Would you consider those observations that  
21    you've made with people coming over to shoot at your  
22    private shooting range part of your firearms  
23    experience?

24          A     Yes.

25          Q     So based on your own personal experience with

1 firearms and the experience that you just described  
2 with respect to people coming over to shoot at your  
3 private shooting range, would you agree that 45 ACP  
4 ammunition is more often used in a handgun than in a  
5 long gun?

6 MR. DALE: I'm going to object again, it calls for  
7 speculation. It's also not relevant and not likely to  
8 lead to the discovery of admissible evidence, as much  
9 as his experience in viewing how many people shooting  
10 handgun ammunition, probably doesn't give him a  
11 foundation to testify.

12 If you understand the question, go ahead and  
13 answer.

14 THE WITNESS: I have both. I have rifles and  
15 handguns that shoot it and we shoot both in 45 ACP.

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

19 A Out of a handgun.

20 Q Have you ever heard of the cartridge of 45  
21 GAP, which is Glock Action Pistol?

22 A Uh-huh.

23 Q Based on your experience with firearms as  
24 we've described, would you agree that 45 GAP ammunition  
25 is more often fired out of a chamber in a handgun than



1 a long gun?

2 A I have never shot one.

3 Q You might want to give your attorney a little  
4 bit of time to do his objection, if that's okay. Okay?

5 A Sorry.

6 MR. DALE: That's okay.

7 MS. GRAHAM: Q That's okay. Because you can hear  
8 that --

9 MR. DALE: She can see me ready to pounce, claws  
10 out.

11 THE WITNESS: I'll let you do your disagreement.

12 MS. GRAHAM: Q Based on your firearms experience  
13 that we've described, would you agree that  
14 nine-millimeter long gun ammunition is more often shot  
15 out of a handgun than out of a long gun?

16 MR. DALE: I'm going to object. Calls for  
17 speculation.

18 Go ahead.

19 THE WITNESS: I would say that's about 50/50. I  
20 actually have a couple nine-millimeter rifles that  
21 people like to shoot more than the pistols, but...

22 MS. GRAHAM: Q Okay. Are you familiar with the  
23 9 by 19 Luger cartridge?

24 A Yes.

25 Q Based on your experience, would you agree that



1 the 9 by 19 Luger cartridge is more often chambered in  
2 a handgun than in a long gun?

3 MR. DALE: I'm going to object, it calls for  
4 speculation. It's also not relevant nor likely to lead  
5 to the discovery of admissible evidence.

6 THE WITNESS: I'm just referring to the 9 by 9 -- I  
7 mean the nine-millimeter Lugers, not the 9 by 19.

8 MS. GRAHAM: Q Okay, so the nine-millimeter Luger?

9 A Uh-huh.

10 Q Would you, based on your experience, consider  
11 that cartridge, the nine-millimeter Luger, to be more  
12 often chambered in a handgun than a long gun?

13 MR. DALE: Same objection. It also calls for  
14 expert opinion.

15 THE WITNESS: Like I say, I've got both and, like I  
16 say, the long gun, that's what my friends prefer to  
17 shoot as opposed to the pistol, or myself, so.

18 MS. GRAHAM: Q So based on your experience, you  
19 would say that -- what would your answer be to the  
20 question of would the nine-millimeter Luger more often  
21 be shot or chambered in a long gun or in a handgun?

22 MR. DALE: Same objection.

23 THE WITNESS: It's chambered more in a handgun.

24 MR. DALE: And a belated objection, it's also vague  
25 and ambiguous as to "chambered in."

1           If you understand that she's talking about  
2   volume or -- if you understand.

3           MS. GRAHAM:   Q   With the phrase "chambered in a  
4   handgun" or "chambered in a long gun," what is your  
5   understanding of that phrase?

6           A           When it's actually loaded.

7           Q           So can we agree that when I say "chambered in  
8   a handgun or long gun" that's our understanding of what  
9   "chambered" is?

10          A           Yes.

11          Q           Are you familiar with the nine-millimeter  
12   Parabellum?

13          A           Yes.

14          Q           And is that a nine-millimeter cartridge?

15          A           Yes.

16          Q           Based on your experience --

17          A           Well, it's 357. The diameter of the bore  
18   again or the -- it's 357 diameter, but it's a  
19   nine-millimeter case.

20          Q           Case. So --

21          A           Cartridge.

22          Q           Okay, so my unfamiliarity, other than with  
23   getting to know ammunition now, when you're saying  
24   "case" is that the part -- the brass?

25          A           The cartridge, yes.

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

3           A     That's the bullet diameter.

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

6           A     Yes.

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

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

13                 I know you previously asked a clarifying  
14     question, but my concern is he doesn't understand what  
15     you mean by "chambered in" in terms of how many times  
16     he's seen it chambered in or experienced it chambered  
17     in a particular weapon, how many times he's seen it  
18     chambered and fired, or whether he's talking about  
19     total number of weapons in which he can chamber it  
20     based on his experience, long guns versus handguns. So  
21     that's the reason I keep raising that objection,  
22     Counsel.

23          MS. GRAHAM: Okay, I understand.

24          THE WITNESS: I would say handguns.

25          MS. GRAHAM: Q Are you familiar with the cartridge

1 ten-millimeter Smith and Wesson?

2 A Yes.

3 Q Based on your experience, would a  
4 ten-millimeter Smith and Wesson cartridge be more often  
5 chambered in a handgun or a long gun?

6 MR. DALE: Same objection.

7 THE WITNESS: In a handgun.

8 MS. GRAHAM: Q Are you familiar with a 40 Smith  
9 and Wesson?

10 A Yes.

11 Q Based on your experience, would a 40 Smith and  
12 Wesson ammunition be more often chambered in a handgun  
13 or in a long gun?

14 MR. DALE: Same objection.

15 THE WITNESS: In a handgun.

16 MS. GRAHAM: Q Are you familiar with a 25  
17 Automatic Colt Pistol ammunition, ACP?

18 A Yes.

19 Q And, in your experience, would 25 ACP be more  
20 often chambered in a handgun or in a long gun?

21 MR. DALE: Same objection.

22 THE WITNESS: In a handgun.

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

25 A Yes.



1 Q And based on your experience, would 32 ACP  
2 ammunition be more often chambered in a long gun or a  
3 handgun?

4 MR. DALE: Same objection.

5 THE WITNESS: Handgun.

6 MS. GRAHAM: Q Are you familiar with a 357 Magnum  
7 ammunition?

8 A Yes.

9 Q And based on your experience, would a 357  
10 Magnum ammunition be more often chambered in a handgun  
11 or in a long gun?

12 MR. DALE: Same objection.

13 THE WITNESS: I think there is more 357 handguns  
14 out there than long guns. I happen to have both and  
15 shoot both.

16 MS. GRAHAM: Q So in answer to my question, would  
17 a 357 Magnum ammunition be more often chambered in a  
18 handgun or a long gun?

19 MR. DALE: Same objection.

20 Go ahead.

21 THE WITNESS: For me specifically or the public?

22 MS. GRAHAM: Q For you, based on your experience.

23 A It's about 50/50.

24 Q Are you familiar with a 357 Sig ammunition?

25 A Yes.

1 Q Based on your experience, would a 357 Sig  
2 ammunition be chambered more often in a handgun or a  
3 long gun?

4 MR. DALE: Same objection.

5 THE WITNESS: A handgun.

6 MS. GRAHAM: Q Are you familiar with 44 Magnum  
7 ammunition?

8 A Yes.

9 Q And based on your experience, would 44 Magnum  
10 ammunition be more often used in a handgun or in a long  
11 gun?

12 MR. DALE: Same objection. Additionally, it's  
13 vague and ambiguous as to what would be "more often  
14 used."

15 MS. GRAHAM: Q Based on your experience, would a  
16 44 Magnum ammunition --

17 Would you read back one of my prior questions  
18 for me?

19 (Record read as:

20 "Q And based on your experience, would 44  
21 Magnum ammunition be more often used in a  
22 handgun or in a long gun?")

23 MS. GRAHAM: Q Based on your experience,  
24 Mr. Stonecipher, would a 44 Magnum ammunition be  
25 chambered more often in a handgun or long gun?

1 MR. DALE: Objection. Again, it calls for  
2 speculation, calls for expert opinion, is vague and  
3 ambiguous as to the phrase "would be chambered in."

4 Go ahead and answer.

5 THE WITNESS: There again, I have both and I shoot  
6 my rifle as much as my pistol. It's part of the cowboy  
7 action sports, so about 50/50 when you do the shoot.

8 MS. GRAHAM: Q Are you familiar with a 44 Special  
9 ammunition?

10 A Same as a 44 Magnum, it's interchangeable.

11 Sorry.

12 MR. DALE: That's okay.

13 MS. GRAHAM: Q Based on your experience, would a  
14 44 Special ammunition be chambered more often in a 44  
15 handgun or long gun?

16 MR. DALE: Same objection.

17 THE WITNESS: Same answer as a 44, I use them  
18 interchangeably.

19 MS. GRAHAM: Q So that would be 50/50?

20 A Yeah.

21 Q Are you familiar with a 380 ACP ammunition?

22 A Yes.

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



1 A Handgun.

2 MR. DALE: Same objection.

3 MS. GRAHAM: Q Are you familiar with a 454 Casull  
4 ammunition?

5 A Yes.

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

9 MR. DALE: Same objection.

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

12 MS. GRAHAM: Q Are you familiar with a 38 Special  
13 ammunition?

14 A Same as a 357 and it's in the same gun. It's  
15 interchangeable with a 357. Let me rephrase that. In  
16 the guns I own it's not interchangeable. A 357 will  
17 blow up older 38s, but the newer versions, everything  
18 we shoot is interchangeable.

19 Q When you say "older 38s," I'm not familiar  
20 with that.

21 A Police model, things like that. It will ruin  
22 the gun if you shoot 357 loads where you can shoot any  
23 38 in a 357.

24 Q In a newer type model?

25 A Any 357 you can shoot a 38 in, 38 Special.



1 Q So which ones will blow up?

2 A The 357 will cause damage to old 38 guns.

3 Q Got it, okay. Based on your experience, would  
4 38 Special ammunition be more often chambered in a  
5 handgun or in a long gun?

6 MR. DALE: Same objection.

7 THE WITNESS: Same answer as a 357, I use that  
8 interchangeably in those guns.

9 MS. GRAHAM: Q You had previously indicated  
10 handgun for those, so would that be your answer?

11 A It's 50/50, the 357, the rifle and the pistol.

12 Q Okay, so 50/50 for the 38 Special as well?

13 A Yes.

14 Q Going back to the Declaration of Steven  
15 Stonecipher in Support of the Motion for Summary  
16 Judgment...

17 MR. DALE: That would be five, right?

18 MS. GRAHAM: Yes.

19 Q Do you see in Paragraph 6 of your declaration,  
20 Lines 17 through 22, you state that you fear you will  
21 be prosecuted for violating California Penal Code  
22 Sections 12060, 12061 and 12318, do you see where you  
23 state that?

24 A Uh-huh, yes.

25 Q Why do you have this concern?

1           A     Well, not knowing what's legal to buy, reload  
2     for friends and shoot, I don't want some police  
3     officer, you know, confiscating my stuff, or anybody  
4     else, or break the law because I'm shooting the wrong  
5     ammunition in the wrong gun or...

6           Q     Has the California Department of Justice ever  
7     notified you that it intends to file any criminal  
8     charges against you if you ship handgun ammunition?

9           A     No.

10          Q     Has the Federal Bureau of Alcohol, Tobacco,  
11     Firearms & Explosives ever told you that it intends to  
12     file any charges against you if you ship ammunition?

13          A     No. Can you excuse me real quick?

14          Q     Of course.

15          MR. DALE: Take just a two-minute break.

16          MS. GRAHAM: Not a problem.

17          (Brief recess.)

18          MS. GRAHAM: Q I'm not sure if you answered this  
19     question: Has the Federal Bureau of Alcohol, Tobacco,  
20     Firearms and Explosives ever informed you that it  
21     intends to file any criminal charges against you if you  
22     ship handgun ammunition?

23          A     No.

24          Q     Has the Fresno County Sheriff's Office ever  
25     informed you that it intends to file any criminal

1 office of any changes or no changes the same as the  
2 notice of errata that would normally be included and  
3 signed by the witness. And the parties further agree  
4 that a certified copy may be used for any and all  
5 purposes in lieu of the original, so long as it  
6 reflects any changes.

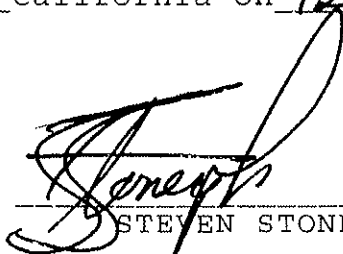
7 MS. GRAHAM: So agreed.

8 (Time noted 4:38 p.m.)  
9  
10  
11

12 -oOo-

13 I declare under penalty of perjury under the  
14 laws of the State of California that the foregoing is  
15 true and correct.

16 Executed at Morro Bay California on 12-29-10  
17 2010.

18   
19  
20

21 STEVEN STONECIPHER  
22  
23  
24  
25

1 STATE OF CALIFORNIA )  
2 COUNTY OF FRESNO ) ss.

3 I, Karla M. Rocha, a Certified Shorthand  
4 Reporter in the State of California, residing in  
5 Clovis, do hereby certify:

6 THAT the witness in the foregoing deposition  
7 named STEVEN STONECIPHER was by me duly sworn to  
8 testify to the truth, the whole truth and nothing but  
9 the truth for the taking of the testimony herein;

10 THAT said deposition was reported in shorthand  
11 by me at the time and place above stated, that I am a  
12 Certified Shorthand Reporter, and thereafter  
13 transcribed under my direction and control.

14 I FURTHER CERTIFY that I am not interested in  
15 the outcome of said action, nor connected with, nor  
16 related to any of the parties in said action or to  
17 their respective counsel.

18

19

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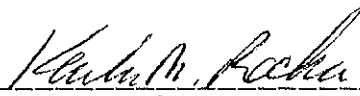
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Karla M. Rocha  
CSR #8982