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

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF FRESNO

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

16 Plaintiffs and Petitioners,

17 v.

18 **THE STATE OF CALIFORNIA; JERRY**
19 **BROWN, in his official capacity as Attorney**
20 **General for the State Of California; THE**
CALIFORNIA DEPARTMENT OF
JUSTICE, AND DOES 1-25,

21 Defendants and Respondents.
22

Case No. 10CECG02116

**ANSWER TO COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT OF
MANDATE**

Judge: The Honorable Adolfo M.
Corona

Trial Date: None

Action Filed: June 17, 2010

23 Defendants and respondents the State of California, Attorney General Edmund G. Brown
24 Jr., and the California Department of Justice (collectively, "the State") answer the Complaint for
25 Declaratory and Injunctive Relief and Petition for Writ of Mandate ("Complaint") filed by
26 plaintiffs and petitioners Clay Parker, Tehama County Sheriff; Herb Bauer Sporting Goods;
27 California Rifle and Pistol Association; Able's Sporting, Inc.; RTG Sporting Collectibles, LLC;
28 and Steven Stonecipher (collectively, "Plaintiffs") by admitting, denying, and averring as follows:

1 The State generally denies the truth of each and every allegation in the Complaint unless
2 specifically admitted or otherwise responded to, and admits those matters specifically admitted
3 only to the limited extent specified.

4 INTRODUCTION

5 1. Answering paragraph 1, the State alleges that Assembly Bill 962 and sections 12060,
6 12061, and 12318 of the Penal Code speak for themselves and provide the best evidence of their
7 content. Except as alleged, the State denies the allegations in paragraph 1.

8 2. Answering paragraph 2, the State denies that sections 12060, 12061, and 12318 of the
9 Penal Code are “void for vagueness” under the Due Process Clause of the Fourteenth
10 Amendment, either facially or as applied. The State also alleges that Assembly Bill 962 and
11 sections 12060, 12061, and 12318 of the Penal Code speak for themselves and provide the best
12 evidence of their content. The State further alleges that paragraph 2 asserts conclusions of law to
13 which no response is required. Except as alleged or denied, the State lacks knowledge or
14 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2
15 and, on that basis, denies those allegations.

16 3. Answering paragraph 3, the State denies that it has a duty to issue “clarifying
17 guidelines.” The State also alleges that sections 12060, 12061, and 12318 of the Penal Code
18 speak for themselves and provide the best evidence of their content. The State further alleges that
19 paragraph 3 asserts conclusions of law to which no response is required. Except as alleged or
20 denied, the State lacks knowledge or information sufficient to form a belief as to the truth of the
21 remaining allegations in paragraph 3 and, on that basis, denies those allegations.

22 4. Answering paragraph 4, the State alleges that sections 12060, 12061, and 12318 of
23 the Penal Code speak for themselves and provide the best evidence of their content. The State
24 further alleges that paragraph 4 asserts conclusions of law to which no response is required. The
25 State lacks knowledge or information sufficient to form a belief as to the truth of the remaining
26 allegations in paragraph 4 and, on that basis, denies those allegations.

27 5. Answering paragraph 5, the State denies that there is any confusion surrounding
28 which calibers of ammunition are “principally for use” in handguns. The State also alleges that

1 sections 12060, 12061, and 12318 of the Penal Code speak for themselves and provide the best
2 evidence of their content. The State further alleges that paragraph 5 asserts conclusions of law to
3 which no response is required. The State lacks knowledge or information sufficient to form a
4 belief as to the truth of the remaining allegations in paragraph 5 and, on that basis, denies those
5 allegations.

6 6. Answering paragraph 6, the State lacks knowledge or information sufficient to form a
7 belief as to the truth of the allegations contained in paragraph 6 and, on that basis, denies those
8 allegations.

9 7. Answering paragraph 7, the State lacks knowledge or information sufficient to form a
10 belief as to the truth of the allegations contained in paragraph 7 and, on that basis, denies those
11 allegations.

12 8. Answering paragraph 8, the State alleges that Assembly Bill 962 and sections 12060,
13 12061, and 12318 of the Penal Code speak for themselves and provide the best evidence of their
14 content. The State further alleges that paragraph 8 asserts conclusions of law to which no
15 response is required. Except as alleged, the State denies the allegations contained in paragraph 8.

16 9. Answering paragraph 9, the State denies that sections 12060, 12061, and 12318 of the
17 Penal Code are vague or confer “unbridled discretion” on law enforcement officers. The State
18 also alleges that sections 12060, 12061, and 12318 of the Penal Code speak for themselves and
19 provide the best evidence of their content. The State further alleges that paragraph 9 asserts
20 conclusions of law to which no response is required. Except as alleged or denied, the State lacks
21 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
22 contained in paragraph 9 and, on that basis, denies those allegations.

23 10. The State lacks sufficient knowledge or information to form a belief as to the truth of
24 the allegations contained in paragraph 10 and, on that basis, denies the allegations.

25 **PARTIES**

26 **[Plaintiffs]**

27 11. Answering paragraph 11, the State alleges that paragraph 11 asserts conclusions of
28 law to which no response is required. Except as alleged, the State lacks knowledge or

1 information sufficient to form a belief as to the truth of the allegations contained in paragraph 11
2 and, on that basis, denies the allegations.

3 12. Answering paragraph 12, the State alleges that paragraph 12 asserts conclusions of
4 law to which no response is required. Except as alleged, the State denies the allegations
5 contained in paragraph 12.

6 13. Answering paragraph 13, the State alleges that paragraph 13 asserts conclusions of
7 law to which no response is required. Except as alleged, the State lacks knowledge or
8 information sufficient to form a belief as to the truth of the remaining allegations contained in
9 paragraph 13 and, on that basis, denies the allegations.

10 14. Answering paragraph 14, the State denies that section 12318 of the Penal Code is
11 vague. The State also alleges that section 12318 speaks for itself and provides the best evidence
12 of its content. The State further alleges that paragraph 14 asserts conclusions of law to which no
13 response is required. Except as alleged or denied, the State lacks knowledge or information
14 sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14
15 and, on that basis, denies those allegations.

16 15. Answering paragraph 15, the State denies that section 12318 of the Penal Code is
17 vague. The State also alleges that section 12318 speaks for itself and provides the best evidence
18 of its content. The State further alleges that paragraph 15 asserts conclusions of law to which no
19 response is required. Except as alleged or denied, the State denies the allegations contained in
20 paragraph 15.

21 16. Answering paragraph 16, the State denies that section 12318 of the Penal Code is
22 vague. The State also alleges that section 12318 speaks for itself and provides the best evidence
23 of its content. The State further alleges that paragraph 16 asserts conclusions of law to which no
24 response is required. Except as alleged or denied, the State denies the allegations contained in
25 paragraph 16.

26 17. Answering paragraph 17, the State denies that sections 12060, 12061, and 12318 of
27 the Penal Code are void or invalid. Except as denied, the State lacks knowledge or information
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1 sufficient to form a belief as to the truth of the allegations contained in paragraph 17 and, on that
2 basis, denies those allegations.

3 **[Defendants]**

4 18. Answering paragraph 18, the State admits that California is a sovereign state. The
5 State further alleges that paragraph 18 asserts conclusions of law to which no response is
6 required. Except as specifically admitted or alleged, the State denies the allegations contained in
7 paragraph 18.

8 19. Answering paragraph 19, the State admits that defendant Edmund G. Brown Jr.
9 (erroneously sued herein as Jerry Brown) is the Attorney General of the State of California and
10 that, under article 5, section 13 of the California Constitution, he is the chief law officer of the
11 State of California. The State also alleges that article 5, section 13 of the California Constitution,
12 and sections 12060, 12061, and 12318 of the Penal Code speak for themselves and provide the
13 best evidence of their content. The State further alleges that paragraph 19 contains conclusions of
14 law to which no response is required. Except as admitted or alleged, the State denies the
15 allegations contained in paragraph 19.

16 20. Answering paragraph 20, the State admits that the California Department of Justice is
17 a state agency. The State also alleges that article 5, section 13 of the California Constitution, and
18 sections 12060, 12061, and 12318 of the Penal Code speak for themselves and provide the best
19 evidence of their content. The State further alleges that paragraph 20 contains conclusions of law
20 to which no response is required. Except as admitted or alleged, the State denies the allegations
21 contained in paragraph 20.

22 21. Answering paragraph 21, the State denies that it is presently enforcing subparagraphs
23 (1) or (2) of section 12061(a) of the Penal Code against any individual or business. The State also
24 alleges that paragraph 21 contains conclusions of law to which no response is required. Except as
25 alleged or denied, the State lacks knowledge or information sufficient to form a belief as to the
26 truth of the remaining allegations contained in paragraph 21 and, on that basis, denies the
27 allegations.

22. Answering paragraph 22, the State lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 and, on that basis, denies the allegations.

23. Answering paragraph 23, the State denies that is presently enforcing subparagraphs (1) or (2) of section 12061(a) of the Penal Code against any person or business. The State also alleges that paragraph 23 contains conclusions of law to which no response is required. Except as alleged or denied, the State lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 23 and, on that basis, denies the allegations.

JURISDICTION AND VENUE

24. Answering paragraph 24, the State denies that the Court has jurisdiction under sections 1085 or 1086 of the Code of Civil Procedure. The State further alleges that paragraph 24 contains conclusions of law to which no response is required. Except as alleged or denied, the State lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 24 and, on that basis, denies the allegations.

25. Answering paragraph 25, the State alleges that paragraph 25 contains conclusions of law to which no response is required, and that California law speaks for itself and provides the best evidence of its content. Except as alleged, the State lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 25 and, on that basis, denies the allegations.

AUTHENTICITY OF EXHIBITS

26. Answering paragraph 26, the State lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 and, on that basis, denies the allegations.

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REGULATORY SCHEME

[Assembly Bill 962]

27. Answering paragraph 27, the State alleges that Assembly Bill 962 and sections 12060, 12061, and 12318 of the Penal Code speak for themselves and provide the best evidence of their content. Except as alleged, the State denies the allegations contained in paragraph 27.

28. Answering paragraph 28, the State alleges that Assembly Bill 962 and sections 12060, 12061, and 12318 of the Penal Code speak for themselves and provide the best evidence of their content. Except as alleged, the State denies the allegations contained in paragraph 28.

29. Answering paragraph 29, the State alleges that section 12060(b) of the Penal Code speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 29.

30. Answering paragraph 30, the State alleges that section 12323(a) of the Penal Code speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 30.

31. Answering paragraph 31, the State alleges that section 921(a)(16) of Title 18 of the United States Code speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 31.

32. Answering paragraph 32, the State alleges that section 12060(b) of the Penal Code speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 32.

33. Answering paragraph 33, the State alleges that California law speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 33.

34. Answering paragraph 34, the State alleges that California law speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 34.

35. Answering paragraph 35, the State alleges that California law speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 35.

36. Answering paragraph 36, the State alleges that California law speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 36.

37. Answering paragraph 37, the State alleges that California law speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 37.

38. Answering paragraph 38, the State alleges that California law speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 38.

[Vagueness Doctrine]

39. Answering paragraph 39, the State alleges that the United States Constitution speaks for itself and provides the best evidence of its content. Except as specifically admitted, the State denies the allegations contained in paragraph 39.

40. Answering paragraph 40, the State alleges that paragraph 40 contains conclusions of law to which no response is required, and that California and federal law speak for themselves and provide the best evidence of their content. Except as alleged, the State denies the allegations contained in paragraph 40.

41. Answering paragraph 41, the State alleges that paragraph 41 contains conclusions of law to which no response is required, and that California and federal law speak for themselves and provide the best evidence of their content. Except as alleged, the State denies the allegations contained in paragraph 41.

42. Answering paragraph 42, the State alleges that paragraph 42 contains conclusions of law to which no response is required, and that California and federal law speak for themselves and provide the best evidence of their content. Except as alleged, the State denies the allegations contained in paragraph 42.

43. Answering paragraph 43, the State alleges that paragraph 43 contains conclusions of law to which no response is required, and that the case of *District of Columbia v. Heller* (2008) 128 S.Ct. 2783 speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 43.

44. Answering paragraph 44, the State alleges that paragraph 44 contains conclusions of law to which no response is required, and that California and federal law speak for themselves and provide the best evidence of their content. Except as alleged, the State denies the allegations contained in paragraph 44.

45. Answering paragraph 45, the State alleges that paragraph 45 contains conclusions of law to which no response is required, and that California and federal law speak for themselves and provide the best evidence of their content. Except as alleged, the State denies the allegations contained in paragraph 45.

GENERAL ALLEGATIONS

46. Answering paragraph 46, the State alleges that paragraph 46 contains conclusions of law to which no response is required, and that California and federal law speak for themselves and provide the best evidence of their content. Except as alleged, the State denies the allegations contained in paragraph 46.

47. Answering paragraph 47, the State denies that sections 12060, 12061, and 12318 of the Penal Code are “void for vagueness” under the Due Process Clause of the Fourteenth Amendment, either facially or as applied. The State also alleges that Assembly Bill 962 and sections 12060, 12061, and 12318 of the Penal Code speak for themselves and provide the best evidence of their content. The State further alleges that paragraph 47 asserts conclusions of law to which no response is required. Except as alleged or denied, the State lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 47 and, on that basis, denies those allegations.

48. Answering paragraph 48, the State lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 and, on that basis, denies the allegations.

1 49. Answering paragraph 49, the State lacks knowledge or information sufficient to form
2 a belief as to the truth of the allegations contained in paragraph 49 and, on that basis, denies the
3 allegations.

4 50. Answering paragraph 50, the State admits that certain calibers of ammunition may be
5 used in both rifles and pistols. Except as expressly admitted, the State lacks knowledge or
6 information sufficient to form a belief as to the truth of the allegations contained in paragraph 50
7 and, on that basis, denies the allegations.

8 51. Answering paragraph 51, the State alleges that paragraph 51 asserts conclusions of
9 law to which no response is required. Except as alleged, the State denies the allegations
10 contained in paragraph 51.

11 52. Answering paragraph 52, the State alleges that Assembly Bill 962 and sections
12 12060, 12061, and 12318 of the Penal Code speak for themselves and provide the best evidence
13 of their content. The State further alleges that paragraph 52 asserts conclusions of law to which
14 no response is required. Except as alleged, the State denies the allegations contained in paragraph
15 52.

16 53. Answering paragraph 53, the State alleges that Assembly Bill 962 and sections
17 12060, 12061, and 12318 of the Penal Code speak for themselves and provide the best evidence
18 of their content. The State further alleges that paragraph 53 asserts conclusions of law to which
19 no response is required. Except as alleged, the State lacks knowledge or information sufficient to
20 form a belief as to the truth of the remaining allegations contained in paragraph 53 and, on that
21 basis, denies those allegations.

22 54. Answering paragraph 54, the State lacks knowledge or information sufficient to form
23 a belief as to the truth of the allegations contained in paragraph 54 and, on that basis, denies the
24 allegations.

25 55. Answering paragraph 55, the State alleges that paragraph 55 asserts conclusions of
26 law to which no response is required. Except as alleged, the State denies the allegations
27 contained in paragraph 55.
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1 56. Answering paragraph 56, the State alleges that paragraph 56 asserts conclusions of
2 law to which no response is required. Except as alleged, the State denies the allegations
3 contained in paragraph 56.

4 57. Answering paragraph 57, the State alleges that paragraph 57 asserts conclusions of
5 law to which no response is required, and that California law speaks for itself and provides the
6 best evidence of its content. The State lacks knowledge or information sufficient to form a belief
7 as to the truth of the remaining allegations contained in paragraph 57 and, on that basis, denies
8 those allegations.

9 58. Answering paragraph 58, the State lacks knowledge or information sufficient to form
10 a belief as to the truth of the allegations contained in paragraph 58 and, on that basis, denies those
11 allegations.

12 59. Answering paragraph 59, the State alleges that paragraph 59 asserts conclusions of
13 law to which no response is required, and that California law speaks for itself and provides the
14 best evidence of its content. The State lacks knowledge or information sufficient to form a belief
15 as to the truth of the remaining allegations contained in paragraph 59 and, on that basis, denies
16 those allegations.

17 60. Answering paragraph 60, the State lacks knowledge or information sufficient to form
18 a belief as to the truth of the allegations contained in paragraph 60 and, on that basis, denies those
19 allegations.

20 61. Answering paragraph 61, the State alleges that paragraph 61 asserts conclusions of
21 law to which no response is required, and that section 921(a)(16) of Title 18 of the United States
22 Code speaks for itself and provides the best evidence of its content. The State lacks knowledge or
23 information sufficient to form a belief as to the truth of the allegations contained in paragraph 61
24 and, on that basis, denies those allegations.

25 62. Answering paragraph 62, the State alleges that paragraph 62 asserts conclusions of
26 law to which no response is required, and that California law speaks for itself and provides the
27 best evidence of its content. Except as alleged, the State denies the allegations contained in
28 paragraph 62.

1 63. Answering paragraph 63, the State denies the allegations contained in paragraph 63.

64. Answering paragraph 64, the State denies that legislative guidance is required as to any matters alleged in the Complaint. The State also alleges that paragraph 64 asserts conclusions of law to which no response is required, and that California law speaks for itself and provides the best evidence of its content. Except as alleged or denied, the State denies the allegations contained in paragraph 64.

7 65. Answering paragraph 65, the State alleges that paragraph 65 asserts conclusions of
8 law to which no response is required, and that California law speaks for itself and provides the
9 best evidence of its content. Except as alleged, the State denies the allegations contained in
10 paragraph 65.

11 [Guideline Failures]

66. Answering paragraph 66, the State admits that, on or about December 30, 2009, the California Department of Justice, Division of Law Enforcement, Bureau of Firearms issued an “Information Bulletin” with the subject “New and Amended Firearms Laws.” The State also admits that a copy of the Information Bulletin is attached as Exhibit “C” to the Complaint. The State alleges that the Information Bulletin speaks for itself and provides the best evidence of its content. Except as specifically admitted or alleged, the State denies the allegations contained in paragraph 66.

19 67. Answering paragraph 67, the State alleges that the Information Bulletin speaks for
20 itself and provides the best evidence of its content. Except as specifically alleged, the State
21 denies the allegations contained in paragraph 67.

68. Answering paragraph 68, the State alleges that paragraph 68 asserts conclusions of law to which no response is required, and that California law and the Information Bulletin speak for themselves and provide the best evidence of their content. Except as specifically alleged, the State denies the allegations contained in paragraph 68.

26 69. Answering paragraph 69, the State lacks knowledge or information sufficient to form
27 a belief as to the truth of the allegations contained in paragraph 69 and, on that basis, denies those
28 allegations.

70. Answering paragraph 70, the State lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 and, on that basis, denies those allegations.

71. Answering paragraph 71, the State lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 and, on that basis, denies those allegations.

72. Answering paragraph 72, the State lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 and, on that basis, denies those allegations.

[Irreparable Injury Allegations]

73. Answering paragraph 73, the State denies that Assembly Bill 962 or sections 12060, 12061, and 12318 of the Penal Code are unconstitutionally vague. The State also denies that Plaintiffs have suffered any injury, and denies that they will suffer any injury in the future. The State further alleges that paragraph 73 asserts conclusions of law to which no response is required. Except as expressly denied or alleged, the State denies the allegations contained in paragraph 73.

74. Answering paragraph 74, the State alleges that paragraph 74 asserts conclusions of law to which no response is required, and that section 12061 of the Penal Code speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 74.

75. Answering paragraph 75, the State alleges that paragraph 75 asserts conclusions of law to which no response is required, and that section 12061 of the Penal Code speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 75.

76. Answering paragraph 76, the State alleges that paragraph 76 asserts conclusions of law to which no response is required, and that section 12061 of the Penal Code speaks for itself and provides the best evidence of its content. Except as alleged, the State denies the allegations contained in paragraph 76.

1 77. Answering paragraph 77, the State denies that section 12318 of the Penal Code is
2 vague. The State also alleges that section 12318 speaks for itself and provides the best evidence
3 of its content. The State further alleges that paragraph 77 asserts conclusions of law to which no
4 response is required. Except as alleged or denied, the State denies the allegations contained in
5 paragraph 77.

6 78. Answering paragraph 78, the State denies that sections 12060, 12061, or 12318 of the
7 Penal Code are unconstitutionally vague or unfairly or unreasonably subject plaintiff RTG to
8 criminal prosecution. The State also alleges that these laws speak for themselves and provide the
9 best evidence of their content. The State further alleges that paragraph 78 asserts conclusions of
10 law to which no response is required. Except as alleged or denied, the State denies the allegations
11 contained in paragraph 78.

12 79. Answering paragraph 79, the State denies that sections 12060, 12061, or 12318 of the
13 Penal Code are vague. The State also alleges that these laws speak for themselves and provide
14 the best evidence of their content. The State further alleges that paragraph 79 asserts conclusions
15 of law to which no response is required. Except as alleged or denied, the State denies the
16 allegations contained in paragraph 79.

17 80. Answering paragraph 80, the State denies that section 12318 of the Penal Code is
18 vague, and alleges that the statute speaks for itself and provides the best evidence of its content.
19 The State further alleges that paragraph 80 asserts conclusions of law to which no response is
20 required. Except as alleged or denied, the State denies the allegations contained in paragraph 80.

21 81. Answering paragraph 81, the State denies that section 12318 of the Penal Code is
22 vague, and alleges that the statute speaks for itself and provides the best evidence of its content.
23 The State further alleges that paragraph 81 asserts conclusions of law to which no response is
24 required. Except as alleged or denied, the State denies the allegations contained in paragraph 81.

25 82. Answering paragraph 82, the State denies that sections 12060, 12061, or 12318 of the
26 Penal Code are unconstitutionally vague. The State also alleges that these laws speak for
27 themselves and provide the best evidence of their content. The State further alleges that
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1 paragraph 82 asserts conclusions of law to which no response is required. Except as alleged or
2 denied, the State denies the allegations contained in paragraph 82.

3 83. Answering paragraph 83, the State denies that Assembly Bill 962 or sections 12060,
4 12061, and 12318 of the Penal Code, are unconstitutionally vague. The State also denies that
5 Plaintiffs have suffered any injury, and denies that they will suffer any injury in the future. The
6 State further alleges that paragraph 83 asserts conclusions of law to which no response is
7 required. Except as expressly denied or alleged, the State denies the allegations contained in
8 paragraph 83.

9 84. Answering paragraph 84, the State denies that Assembly Bill 962 or sections 12060,
10 12061, and 12318 of the Penal Code, are unconstitutionally vague. The State also denies that
11 Plaintiffs have suffered any injury, and denies that they will suffer any injury in the future. The
12 State further alleges that paragraph 84 asserts conclusions of law to which no response is
13 required. Except as expressly denied or alleged, the State denies the allegations contained in
14 paragraph 84.

15 **PUBLIC INTEREST INVOLVED**

16 85. Answering paragraph 85, the State denies that mandamus, injunctive, or declaratory
17 relief are necessary or proper in this case and alleges that paragraph 85 asserts conclusions of law
18 to which no response is required. Except as alleged or denied, the State lacks knowledge or
19 information sufficient to form a belief as to the truth of the remaining allegations contained in
20 paragraph 85 and, on that basis, denies those allegations.

21 86. Answering paragraph 86, the State denies that sections 12060, 12061, and 12318 of
22 the Penal Code are “void for vagueness” under the Due Process Clause of the Fourteenth
23 Amendment, either facially or as applied, or that they confer “unbridled discretion” on law
24 enforcement officers. The State also alleges that Assembly Bill 962 and sections 12060, 12061,
25 and 12318 of the Penal Code speak for themselves and provide the best evidence of their content.
26 The State further alleges that paragraph 86 asserts conclusions of law to which no response is
27 required. Except as alleged or denied, the State denies the allegations contained in paragraph 86.
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87. Answering paragraph 87, the State denies that Assembly Bill 962 or sections 12060, 12061, and 12318 of the Penal Code are unconstitutionally vague. The State also alleges that paragraph 87 asserts conclusions of law to which no response is required. Except as alleged or denied, the State lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 87 and, on that basis, denies those allegations.

**FIRST CAUSE OF ACTION
FOR DECLARATORY AND INJUNCTIVE RELIEF
DUE PROCESS VAGUENESS – FACIAL
(By All Plaintiffs Against All Defendants)**

88. Answering paragraph 88, the State repleads and incorporates by reference its responses to paragraphs 1 through 87, inclusive, of the Complaint.

89. Answering paragraph 89, the State denies that an actual controversy exists between Plaintiffs and the State. The State also denies that it is presently enforcing subparagraphs (1) or (2) of section 12061(a) of the Penal Code against any individual or business. The State further denies that Assembly Bill 962 or sections 12060, 12061, and 12318 of the Penal Code are unconstitutionally vague on their face. The State further alleges that paragraph 89 asserts conclusions of law to which no response is required. Except as alleged or denied, the State lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 89 and, on that basis, denies those allegations.

90. Answering paragraph 90, the State denies that an actual controversy exists between Plaintiffs and the State. The State also alleges that paragraph 90 asserts conclusions of law to which no response is required. Except as alleged or denied, the State lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 90 and, on that basis, denies those allegations.

91. Answering paragraph 91, the State denies that declaratory relief is necessary or proper in this case. The State also denies that sections 12060, 12061, and 12318 of the Penal Code are “void for vagueness” under the Due Process Clause of the Fourteenth Amendment, on their face, or that they “encourage[] arbitrary and discriminatory enforcement of the law.” The

1 State also alleges that California law speaks for itself provides the best evidence of its content.
2 The State further alleges that paragraph 91 asserts conclusions of law to which no response is
3 required. Except as alleged or denied, the State denies the allegations contained in paragraph 91.

4 92. Answering paragraph 92, the State denies that Plaintiffs have suffered any injury, and
5 also denies that they will suffer any injury in the future. The State further alleges that paragraph
6 92 asserts conclusions of law to which no response is required. Except as expressly denied or
7 alleged, the State denies the allegations contained in paragraph 92.

8 93. Answering paragraph 93, the State denies that Plaintiffs have suffered any injury, and
9 also denies that they will suffer any injuries in the future. The State also denies that it is presently
10 enforcing subparagraphs (1) or (2) of section 12061(a) of the Penal Code against any individual
11 or business. The State further alleges that paragraph 93 asserts conclusions of law to which no
12 response is required. Except as expressly denied or alleged, the State denies the allegations
13 contained in paragraph 93.

14 94. Answering paragraph 94, the State denies that injunctive relief is necessary or proper
15 insofar as Plaintiffs have suffered no injury, and will suffer no injury in the future. The State
16 further alleges that paragraph 94 asserts conclusions of law to which no response is required.
17 Except as alleged or denied, the State denies the allegations contained in paragraph 94.

18 **SECOND CAUSE OF ACTION**
19 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
20 **DUE PROCESS VAGUENESS – AS APPLIED**
21 **(By Plaintiff Herb Bauer Sporting Goods, Inc. Against All Defendants)**

22 95. Answering paragraph 95, the State repleads and incorporates by reference its
23 responses to paragraphs 1 through 94, inclusive, of the Complaint.

24 96. Answering paragraph 96, the State denies that an actual controversy exists between
25 plaintiff Herb Bauer Sporting Goods, Inc. and the State. The State also denies that Assembly Bill
26 962 or sections 12060, 12061, and 12318 of the Penal Code are unconstitutionally vague as
27 applied to plaintiff Herb Bauer Sporting Goods, Inc. The State further alleges that paragraph 96
28 asserts conclusions of law to which no response is required. Except as alleged or denied, the

1 State lacks knowledge or information sufficient to form a belief as to the truth of the remaining
2 allegations contained in paragraph 96 and, on that basis, denies those allegations.

3 97. Answering paragraph 97, the State denies that subparagraph (a)(1) of section 12061
4 of the Penal Code, is unconstitutionally vague. The State further alleges that paragraph 97 asserts
5 conclusions of law to which no response is required. Except as alleged or denied, the State denies
6 the allegations contained in paragraph 97.

7 98. Answering paragraph 98, the State denies that subparagraph (a)(2) of section 12061
8 of the Penal Code, is unconstitutionally vague. The State further alleges that paragraph 98 asserts
9 conclusions of law to which no response is required. Except as alleged or denied, the State denies
10 the allegations contained in paragraph 98.

11 99. Answering paragraph 99, the State denies that declaratory relief is necessary or
12 proper in this case. The State also denies that section 12061(a)(1) or 12061(a)(2) are
13 unconstitutionally vague as applied to plaintiff Herb Bauer Sporting Goods, Inc. The State
14 further alleges that paragraph 99 asserts conclusions of law to which no response is required.
15 Except as alleged or denied, the State lacks knowledge or information sufficient to form a belief
16 as to the truth of the remaining allegations contained in paragraph 99 and, on that basis, denies
17 those allegations.

18 100. Answering paragraph 100, the State denies that declaratory relief is necessary or
19 proper in this case. The State also denies that section 12061(a)(1) or 12061(a)(2) are “void for
20 vagueness” as applied to plaintiff Herb Bauer Sporting Goods, Inc. The State further alleges that
21 paragraph 100 asserts conclusions of law to which no response is required. Except as alleged or
22 denied, the State denies the allegations contained in paragraph 100.

23 101. Answering paragraph 101, the State denies that injunctive relief is necessary or
24 proper insofar as the State has engaged in no “wrongful conduct,” and plaintiff Herb Bauer
25 Sporting Goods, Inc. has suffered no injury, and will suffer no injury in the future. The State
26 further alleges that paragraph 101 asserts conclusions of law to which no response is required.
27 Except as alleged or denied, the State denies the allegations contained in paragraph 101.
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1 102. Answering paragraph 102, the State denies that plaintiff Herb Bauer Sporting Goods,
2 Inc. has suffered any injury, and also denies that it will suffer any injuries in the future. The State
3 further alleges that paragraph 102 asserts conclusions of law to which no response is required.

4 Except as expressly denied or alleged, the State denies the allegations contained in paragraph 102.

5 103. Answering paragraph 103, the State denies that injunctive relief is necessary or
6 proper insofar as plaintiff Herb Bauer Sporting Goods, Inc. has suffered no injury, and will suffer
7 no injury in the future. The State further alleges that paragraph 103 asserts conclusions of law to
8 which no response is required. Except as alleged or denied, the State denies the allegations
9 contained in paragraph 103.

10 **THIRD CAUSE OF ACTION**
11 **PETITION FOR WRIT OF MANDATE**
12 **(By All Plaintiffs Against All Defendants)**

13 104. Answering paragraph 104, the State repleads and incorporates by reference its
14 responses to paragraphs 1 through 103, inclusive, of the Complaint.

15 105. Answering paragraph 105, the State denies the existence of a purported negative
16 ministerial duty “not to enforce” sections 12060, 12061, and 12318 of the Penal Code. The State
17 also alleges that paragraph 105 asserts conclusions of law to which no response is required.
18 Except as expressly alleged or denied, the State denies the allegations contained in paragraph 105.

19 106. Answering paragraph 106, the State denies that sections 12060, 12061, and 12318 of
20 the Penal Code are unconstitutionally vague or subject to arbitrary enforcement. The State also
21 alleges that California law speaks for itself provides the best evidence of its content. The State
22 further alleges that paragraph 106 asserts conclusions of law to which no response is required.
23 Except as alleged or denied, the State lacks knowledge or information sufficient to form a belief
24 as to the truth of the remaining allegations contained in paragraph 106 and, on that basis, denies
25 those allegations.

26 107. Answering paragraph 107, the State denies that Plaintiffs have suffered any harm, and
27 denies that they will suffer any harm in the future. Defendants Edmund G Brown Jr. and the
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1 California Department of Justice also deny that they adopted sections 12060, 12061, and 12318 of
2 the Penal Code. The State further denies that it is presently enforcing subparagraphs (1) or (2) of
3 section 12061(a) of the Penal Code against any individual or business. The State also alleges that
4 paragraph 107 asserts conclusions of law to which no response is required. Except as expressly
5 denied or alleged, the State denies the allegations contained in paragraph 107.

6 108. Answering paragraph 108, the State denies the allegations contained therein.

7 109. Answering paragraph 109, the State denies that mandamus relief is necessary or
8 proper in this case. The State also alleges that paragraph 109 asserts conclusions of law to which
9 no response is required. Except as alleged or denied, the State denies the allegations contained in
10 paragraph 109.

11 **DECLARATORY AND WRIT RELIEF WARRANTED**

12 110. Answering paragraph 110, the State denies the allegations contained therein.

13 111. Answering paragraph 111, the State denies that it is presently enforcing subparagraphs
14 (1) and (2) of section 12061(a) of the Penal Code against any person or business. The State also
15 denies that section 12060, 12061, or 12318 of the Penal Code are unconstitutionally vague. The
16 State further alleges that paragraph 111 asserts conclusions of law to which no response is
17 required. Except as expressly denied or alleged, the State lacks knowledge or information
18 sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 111
19 and, on that basis, denies the allegations.

20 **DEFENSES**

21 **FIRST DEFENSE**

22 (Failure to State a Cause of Action)

23 112. The Complaint, and each cause of action alleged therein, fails to state facts sufficient
24 to constitute a cause of action against the State.

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EIGHTH DEFENSE

(Immunity)

119. As a separate affirmative defense to all causes of action, the State alleges that it is protected by immunity and/or qualified immunity in this action, because its officers and employees were acting within the scope of their discretionary duties and/or in their official capacities. Such immunities may include, but are not necessarily limited to, the immunities set forth in section 815 et seq. of the California Government Code.

NINTH DEFENSE

(Legitimate Exercise of Discretion)

120. The Complaint, and each cause of action, is barred because at all relevant times, the State's actions with respect to Plaintiffs, if any, were done in compliance with applicable law. To the extent that any discretion was available, the State acted in the legitimate exercise of that discretion. Defendants acted at all times in good faith and with due care, pursuant to applicable policies, procedures, regulations, and laws.

TENTH DEFENSE

(Political Question)

121. As a separate affirmative defense to all causes of action, the State alleges that the Complaint seeks resolution of political questions over which this Court has no jurisdiction.

ELEVENTH DEFENSE

(Ripeness)

122. As a separate affirmative defense to all causes of action, the State alleges that the Complaint, and each cause of action, is barred because the action is premature and is not ripe, and no actual controversy exists.

TWELFTH DEFENSE

(No Entitlement to Attorneys' Fees)

123. Plaintiffs are not entitled to recover attorneys' fees.

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1 THIRTEENTH DEFENSE

2 (Lack of Duty)

3 124. As a separate affirmative defense to all causes of action, the State alleges that it does
4 not owe duties to Plaintiffs of the kind alleged in the Complaint.

5 PRAYER FOR RELIEF

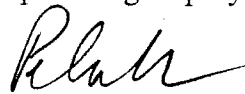
6 WHEREFORE, the State prays for Judgment as follows:

- 7 1. That the Court enter judgment in favor of the State;
8 2. That Plaintiffs take nothing by their Complaint;
9 3. That the Court award the State its costs and attorneys' fees incurred in connection
10 with this action; and
11 4. For such other and further relief as the Court deems just and proper.

12 Dated: August 2, 2010

Respectfully Submitted,

14 EDMUND G. BROWN JR.
Attorney General of California
15 ZACKERY P. MORAZZINI
Supervising Deputy Attorney General

16 
17 PETER A. KRAUSE
Deputy Attorney General
18 *Attorneys for Defendants and Respondents*
19 *State of California, Edmund G. Brown, Jr.,*
and the California Department of Justice

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21 10596305.doc

DECLARATION OF SERVICE BY U.S. MAIL

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

I declare:

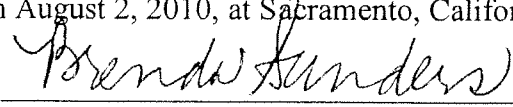
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 2, 2010, I served the attached ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

C.D. Michel
Michel & Associates, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 2, 2010, at Sacramento, California.

Brenda Sanders
Declarant


Signature