

FILED
DEC 07 2010
FRESNO COUNTY SUPERIOR COURT
By _____

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

CASE NO. 10CECG02116
DECLARATION OF CLINTON B.
MONFORT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT OR IN
THE ALTERNATIVE FOR SUMMARY
ADJUDICATION AND TRIAL

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

Action Filed: June 17, 2010

3) 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. Following the passage of Assembly Bill 962 (2009) ("AB 962") in October of 2009, our office began to receive inquiries from firearms retailers, including Plaintiffs Herb Bauer Sporting Goods, Able's Sporting, Inc. and RTG Sporting Collectibles, LLC, seeking advice on how to comply with AB 962. For the Court's convenience, a true and correct copy of "Assembly Bill No. 962" and "Complete Bill History" is attached as Exhibit "1" to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief, filed concurrently herewith.

3. On or about December 9, 2009, and again on or about December 15, 2009, our office contacted Counsel for the Department of Justice ("DOJ") Bureau of Firearms via e-mail, seeking clarification of California Penal Code sections 12060, 12061, and 12318 in order to best advise our clients on how to properly comply with the new laws.

4. On or about December 9, 2009, our office contacted Counsel for the DOJ Bureau of Firearms via e-mail, inquiring about whether Defendant DOJ would hold any regulatory meetings regarding the implementation of Assembly Bill 962. Counsel responded that Defendant DOJ had no intentions of holding any regulatory meetings on this issue.

5. On or about December 15, 2009, our office again contacted Counsel for the DOJ Bureau of Firearms via e-mail, seeking clarification for our clients as to the meaning and scope of AB 962, including questions regarding which types of ammunition were regulated by sections 12060, 12061, and 12318. Using ".22 LR" as an example, our office specifically inquired as to whether a particular caliber of ammunition used in both handguns and long guns would be considered "handgun ammunition" under sections 12060, 12061, and 12318. Through a series of responses, Counsel for the DOJ Bureau of Firearms indicated that she "did not know" and "could

1 not say” whether DOJ Field Representatives would consider a certain caliber of ammunition
2 “handgun ammunition,” and that Defendant DOJ was unable to adopt a policy about which types
3 ammunition are handgun ammunition as it would be considered an illegal underground regulation.

4 6. On or about December 16, 2009, our office sent Defendant DOJ a request pursuant
5 to the California Public Records Act, seeking any and all writings and communications relating to
6 the enforcement of AB 962. A true and correct copy of “Public Records Act Request Sent to
7 California Department of Justice Re: Assembly Bill 962, dated December 16, 2009’ ” is attached
8 as Exhibit “6” to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the
9 Alternative Summary Adjudication / Trial Brief, filed concurrently herewith.

10 7. On or about December 30, 2009, DOJ Bureau of Firearms released an
11 “Information Bulletin,” entitled “New and Amended Firearms Laws,” that provided a brief
12 summary of new and amended California firearms laws. The Bulletin’s section on AB 962 set
13 forth the new regulations impacting the transfer of “handgun ammunition,” but failed to clarify
14 what ammunition would be affected by California Penal Code sections 12060, 12061, and 12318.
15 A true and correct copy of Defendant DOJ’s “Information Bulletin from California Department of
16 Justice Re: New and Amended Firearms Laws, dated December 30, 2009” is attached as Exhibit
17 “8” to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative
18 Summary Adjudication / Trial Brief, filed concurrently herewith.

19 8. On or about January 25, 2010, Defendant DOJ responded to our office’s Public
20 Records Act Request for writings and communications relating to the enforcement of AB 962.
21 Enclosed with that response was the series of e-mail communications between Counsel for the
22 DOJ Bureau of Firearms and our office. A true and correct copy of “Defendant DOJ’s Public
23 Records Act Response and Relevant E-mail Enclosures, dated January 25, 2010” is attached as
24 Exhibit “7” to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the
25 Alternative Summary Adjudication / Trial Brief, filed concurrently herewith.

26 9. As a result of our clients continued inquiries about which ammunition would be
27 regulated by AB 962 and Defendant DOJ’s inability to provide any guidance on this issue, our
28 office was unable to advise our clients as to how to comply with the new laws. Our office

1 subsequently received requests from our clients to commence litigation seeking injunctive and
2 declaratory relief to protect them from prosecution for inadvertently violating the new laws.

3 10. On or about June 17, 2010, Plaintiffs filed their Complaint for Declaratory and
4 Injunctive Relief against Defendants the State of California, Jerry Brown, in his official capacity
5 as Attorney General for the State of California, and the California DOJ (“Defendants”),
6 challenging the validity of Penal Code sections 12060, 12061, and 12318.

7 11. Out of professional courtesy, Plaintiff’s subsequently granted Defendants’ request
8 for an extension to file a responsive pleading until August 2, 2010.

9 12. On or about August 2, 2010, Defendants filed their Answer to [Plaintiffs’]
10 Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate.

11 13. Meanwhile, Assemblyman Kevin de León attempted to remove the reference to
12 Penal Code section 12323(a) and replace it with a “list of ammunition calibers” that would be
13 considered “handgun ammunition” under AB 962. On or about August 19, 2010, AB 2358 was
14 amended to clarify AB 962 by including a list of ammunition calibers that would be considered
15 handgun ammunition, but the bill ultimately failed to pass the Senate. For the Court’s
16 convenience, true and correct copies of “Assembly Bill No. 2358 (2010) as Amended in Senate
17 August 19, 2010,” “Assembly Bill No. 2358 (2010) as Amended in Senate August 30, 2010,” and
18 “Complete Bill History, A.B. No. 2358” are attached as Exhibits “2”, “3”, and “4”, respectively, to
19 Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary
20 Adjudication / Trial Brief, filed concurrently herewith.

21 14. Plaintiffs believe that the amendment to AB 2358 to include a list of ammunition
22 calibers was the result of Defendant DOJ’s communications with Assemblyman de León’s office
23 regarding the merits of this suit and the vagueness of the challenged provisions. Plaintiffs are
24 unable to confirm this, however, as a previous public records request for communications
25 regarding AB 962 and AB 2358 was denied on privilege grounds, and Plaintiffs’ expect that a
26 subsequent request for information about DOJ’s communications with Assemblyman de León’s
27 office will be denied on similar grounds. True and correct copies of “Public Records Act Request
28 Sent to California Department of Justice Re: Assembly Bill 962, dated July 16, 2010” and

1 “California Department of Justice’s Response to Public Records Act, dated August 9, 2010” are
2 attached as Exhibits “9” and “10”, respectively, to Plaintiffs’ Evidence in Support of Motion for
3 Summary Judgment or in the Alternative Summary Adjudication / Trial Brief, filed concurrently
4 herewith.

5 15. Relevant excerpts from the true and correct copy of the Legislative History Report
6 and Analysis Re: Senate Bill 1276 (Hart – 1994) provided to our office in a sworn response to a
7 request for legislative history made upon Legislative Intent Service, Inc., is attached as Exhibit
8 “5” to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative
9 Summary Adjudication / Trial Brief, filed concurrently herewith.

10 16. True and correct copies of the Cover, Table of Contents, and Introduction found on
11 page 6 of Barnes, Cartridges of the World: A Complete and Illustrated Reference for Over 1500
12 Cartridges (11th ed. 2006) are attached as Exhibit “51” to Plaintiffs’ Evidence in Support of
13 Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief, filed
14 concurrently herewith. Our office has ordered the 12th edition of *Cartridges of the World* and
15 will lodge and serve copies of the corresponding pages in that edition as soon as it is received.

16 17. True and correct copies of selected pages from Chapter 2: Current American Rifle
17 Cartridges and Chapter 3: Obsolete Rifle Cartridges from Barnes, Cartridges of the World: A
18 Complete and Illustrated Reference for Over 1500 Cartridges (11th ed. 2006) are attached as
19 Exhibit “52” to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the
20 Alternative Summary Adjudication / Trial Brief, filed concurrently herewith. Our office has
21 ordered the 12th edition of *Cartridges of the World* and will lodge and serve copies of the
22 corresponding pages of that edition as soon as it is received.

23 18. True and correct copies of selected pages from Chapter 6: Handgun Cartridges of
24 the World from Barnes, Cartridges of the World: A Complete and Illustrated Reference for Over
25 1500 Cartridges (11th ed. 2006) are attached as Exhibit “53” to Plaintiffs’ Evidence in Support of
26 Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief, filed
27 concurrently herewith. Our office has ordered the 12th edition of *Cartridges of the World* and
28 will lodge and serve copies of the corresponding pages in that edition as soon as it is received.

1 19. On or about November 23, 2010, opposing counsel served on our office
2 [Defendants'] Responses to Specially Prepared Interrogatories, Set One. The special
3 interrogatories and the responses relied upon in Plaintiffs' motion are set forth below:

4 Plaintiffs' Special Interrogatory No. 5 asked Defendants to "[l]ist all types of ammunition
5 DEFENDANTS consider 'handgun ammunition' for purposes of California Penal Code section
6 12060, 12061, and 12318. Defendants responded with a list of "calibers" Defendants consider
7 "handgun ammunition" for purposes of the statutes. This list reads: ".45, 9mm, 10mm, .40, .357,
8 .38, .44, .380, .454, .25, .32."

9 Plaintiffs' Special Interrogatory No. 6 asked Defendants to "[f]or each type of ammunition
10 YOU list as 'handgun ammunition' in response to Special Interrogatory No. 5, please IDENTIFY
11 any and all PERSONS who have knowledge of the facts upon which YOU base YOUR response
12 to Special Interrogatory No. 5." Defendants responded that "[t]here is a common understanding
13 among those individuals and businesses who might be subject to section 12060, 12061, and 12318
14 of the Penal Code, as well as among those who might enforce them, that the calibers identified in
15 the State's response to Interrogatory No. 5 are used principally in pistols and revolvers." This
16 response notwithstanding, Defendants listed Special Agent Supervisor Blake Graham as a person
17 "with knowledge of the facts underlying the State's response."

18 Plaintiffs' Special Interrogatory No. 7 asked Defendants to "[f]or each type of ammunition
19 YOU list as 'handgun ammunition' in response to Special Interrogatory No. 5, please IDENTIFY
20 any and all DOCUMENTS upon which YOU rely to support YOUR response to Special
21 Interrogatory No. 5." Defendants responded that "[t]here is common understanding among those
22 individuals and businesses who might be subject to section 12060, 12061, and 12318 of the Penal
23 Code, as well as among those who might enforce them, that the calibers identified in the State's
24 response to Interrogatory No. 5 are used principally in pistols and revolvers." This response
25 notwithstanding, Defendants supported their list as follows: "The Department of Justice is
26 required by statute to maintain a record of handgun sales int the state. The sales data is contained
27 on a Dealer Record of Sales spreadsheet that the State will produce The listed calibers are
28

1 also identified in "Cartridges of the World," which Plaintiffs' expert relies upon, on ammunition
2 vendor websites, and online encyclopedias as handgun ammunition calibers."

3 A true and correct copy of [Defendants'] Responses to Specially Prepared Interrogatories,
4 Set One, provided in a verified response to Plaintiffs' Specially Prepared Interrogatories, Set One,
5 served on opposing counsel, Edmund G. Brown, Jr., Zackery P. Morazzini, and Peter A. Krause is
6 attached as Exhibit "54" to Plaintiffs' Evidence in Support of Motion for Summary Judgment or
7 in the Alternative Summary Adjudication / Trial Brief, filed concurrently herewith.

8 20. On November 29, 2010, opposing counsel served on our office an amended
9 response to Special Interrogatory No. 5. Defendants amended their response to include the
10 following: "The California Department of Justice may identify additional calibers of ammunition
11 that fall within the statutory definition of 'handgun ammunition' in regulations to be promulgated
12 at a later date." Defendants did not amend their original list of "handgun ammunition" (i.e., .45,
13 9mm, 10mm, .40, .357, .38, .44, .380, .454, .25, .32). A true and correct copy of [Defendants']
14 Amended Response to Specially Prepared Interrogatory No. 5 provided to me in a verified
15 response to Plaintiffs' Specially Prepared Interrogatories, Set One, served on served on opposing
16 counsel, Edmund G. Brown, Jr., Zackery P. Morazzini, and Peter A. Krause is attached as Exhibit
17 "55" to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative
18 Summary Adjudication / Trial Brief, filed concurrently herewith.

19 21. In response to Plaintiffs' request for an admission that Defendant DOJ had not
20 promulgated regulations regarding the definition of "handgun ammunition" for purposes of the
21 Challenged Provisions, Defendants admitted that Defendant DOJ had not. A true and correct
22 copy of [Defendants'] Responses to Request for Admissions, Set One, provided to me in a
23 verified response to Plaintiffs' Request for Admission, Set One, served on opposing counsel,
24 Edmund G. Brown, Jr., Zackery P. Morazzini, and Peter A. Krause is attached as Exhibit "56" to
25 Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary
26 Adjudication / Trial Brief, filed concurrently herewith.

27 22. Excerpts from the court reporter's expedited final draft of volume one of the
28 deposition transcript of Defendants' lay / expert witness, Blake Graham, are attached as Exhibit


1 “57” to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative
2 Summary Adjudication / Trial Brief, filed concurrently herewith. I attended the deposition, which
3 was taken on December 1, 2010, and can state that the transcript accurately reflects the testimony
4 provided on each page filed with the Court in support of Plaintiffs’ motion. The witness is
5 reviewing the testimony and will identify any changes in the time frame stipulated to on the
6 record between the parties. Pursuant to the stipulation of the parties, Plaintiffs will lodge copies of
7 the relevant portions of volume one of the deposition transcripts of Defendants’ lay / expert
8 witness, Blake Graham, once those are received. True and correct copies of the Exhibits marked
9 as Exhibit “C” and “D” during the deposition of Mr. Graham are filed with the relevant excerpts
10 of Mr. Graham’s testimony in attached as Exhibit “57” to Plaintiffs’ Evidence in Support of
11 Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief

12 23. Excerpts from court reporter’s expedited rough draft of volume two of the
13 deposition transcript of Defendants’ lay / expert witness, Blake Graham, are attached as Exhibit
14 “58” to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative
15 Summary Adjudication / Trial Brief, filed concurrently herewith. I attended the deposition, which
16 was taken on December 2, 2010, and can state that the transcript accurately reflects the testimony
17 provided while I was present during the deposition as to each page of testimony filed with the
18 Court in support of Plaintiffs’ motion. To the extent I was not present in the deposition room for
19 portions of the witness’s testimony, the Declaration of Sean A. Brady filed concurrently herewith
20 authenticates the accuracy of the statements relied upon by Plaintiffs during my absence. The
21 witness is reviewing the testimony and will identify any changes in the time frame stipulated to on
22 the record between the parties pursuant to the stipulation of the parties. Plaintiffs will lodge
23 copies of the relevant portions of the Court Reporter’s final draft of volume two of the deposition
24 transcripts of Defendants’ lay / expert witness, Blake Graham, as soon as they are received.
25 Plaintiffs will further lodge certified copies of the relevant portions of volume two of the
26 deposition transcripts of Defendants’ lay / expert witness, Blake Graham, once those are received.
27 Plaintiffs’ counsel has not yet received a final draft of Volume Two that includes marked exhibits,
28 to the extent any exhibits are referred to in testimony relied upon by Plaintiffs from Volume Two,

1 those exhibits will be lodged with the certified copies of the relevant excerpts of volume two of
2 when they are received.

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

5 Dated: December 6, 2010

6 
7 Clinton B. Monfort

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

7 On December 6, 2010, I served the foregoing document(s) described as

8 **DECLARATION OF CLINTON B. MONFORT IN SUPPORT OF MOTION**
9 **FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE FOR**
10 **SUMMARY ADJUDICATION AND TRIAL**

11 on the interested parties in this action by placing

12 ☐ the original

13 ☒ a true and correct copy

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

15 Edmund G. Brown, Jr.
16 Attorney General of California
17 Zackery P. Morazzini
18 Supervising Deputy Attorney General
19 Peter A. Krause
20 Deputy Attorney General (185098)
21 1300 I Street, Suite 125
22 P.O. Box 944255
23 Sacramento, CA 94244-2550

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

Executed on December 6, 2010, at Long Beach, California.

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

Executed on December 6, 2010, at Long Beach, California.

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

Executed on December 6, 2010, at Long Beach, California.

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

28 
CLAUDIA AYALA