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FRESNO COUNTY SUPERIOR COURT

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

10CEC9 02116

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

Plaintiffs and Petitioners,

vs.

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

Defendants and Respondents.

Case No.: ~~3:09-cv-08011-PCT-PGR~~

**DECLARATION OF STEPHEN
HELSLEY 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. Jeff Hilton

Date Action Filed: June 17, 2010

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I, Stephen Helsley, declare as follows:

1. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

Firearms and Ammunition Expert Qualifications

2. My expertise regarding firearms and ammunition is an outgrowth of fifty years of studying and collecting firearms and ammunition. Throughout my life I have owned approximately four hundred firearms, of which I currently own approximately two hundred and twenty. I am an avid collector and student of firearms-related literature, and my collection contains approximately three thousand volumes.
3. In 1964, as a Criminology major at Fresno State College, I completed my first firearms course, which focused on Smith & Wesson revolvers and the .38 Special cartridge. In 1965, I began reloading my own ammunition and purchasing and studying literature specifically focused on ammunition cartridges. I now load ammunition for cartridges ranging from .223 Winchester to 8-bore. In that mix are metallic centerfire, paper cased and pinfire ammunition. I also shoot muzzle-loading guns and have hunted with a 20-b Ketland side-by-side flintlock shotgun c.1815.
4. In 1967, I began my employment with the California Department of Justice (DOJ). By 1970, I was the departmental firearms instructor, a duty I was assigned until I was appointed Bureau Chief of Narcotic Enforcement by Attorney General Deukmejian in 1979. During the years that I was the Department's firearms instructor, agents could carry any caliber cartridge they preferred. Thus, I routinely dealt with ammunition ranging from .22lr to .44 Remington Magnum.
5. In the early 1970s, I began competing in both rifle and pistol matches. By 1973 my expertise was recognized by Guns & Ammo magazine, when they asked me to

1 co-author a "Mini Manual" on *Custom .45 Automatics*. Since then I have authored
2 at least 50 articles for thirteen other journals. The subject matter ranged from
3 sniper rifles to tactical shotguns to civil war era cartridge conversion revolvers.

4 6. I have also reviewed books dealing with the history of ammunition production in
5 England and France. Some examples of the books I have reviewed include
6 *Systeme Lefauchaux* by Chris Curtis and *Paradox* by Roger Lake and David
7 Baker. I have also acted as a researcher for other authors. One example is an
8 article by Silvio Calabi that ran in the November/December 2006 issue of
9 *Shooting Sportsman* magazine. The article "Less is More" is the definitive work
10 on the origin and development of the 28-g shotshell. Additionally, I recently co-
11 authored a book, *Hemingway's Guns*, which was published by Shooting
12 Sportsman Books in October of 2010.

13 7. During the 1970s, while employed as a DOJ Field Supervisor in San Diego, I was
14 first qualified in court as a "firearms expert." In 1973, I took the required training
15 to become an NRA Certified Police Firearms Instructor and a California
16 Commission on Peace Officers Standards and Training certified firearms
17 instructor. In addition to being certified as a firearms expert, I am a member of the
18 American Academy of Forensic Sciences and a Technical Adviser to the
19 Association of Firearm and Tool Mark Examiners.

20 8. In 1970, I was awarded the Attorney General's Purple Heart Medal upon
21 returning to duty with the Department of Justice after sustaining four gunshot
22 wounds during an undercover heroin investigation. Subsequently, in 1974, I
23 received the Attorney General's Valor Medal for my actions during an undercover
24 cocaine investigation that resulted in a hostage situation and gun-fight.

25 9. In 1975, I attended the FBI National Academy in Quantico, Virginia. Included in
26 the required course work was one on firearms. I graduated from the 102nd session
27 of the FBI National Academy with a 4.0 grade point average.
28

- 1 10. In later years I took other firearms training that ranged from use of the Heckler
2 & Koch 9mm MP5 submachine gun to concealed weapons training for a Nevada
3 “carry permit.”
- 4 11. When I became DOJ Chief of the Bureau of Narcotic Enforcement, I had the
5 overall responsibility of reviewing agent-involved shootings, as well as
6 purchasing their ammunition and firearms, which included handguns and rifles.
- 7 12. In 1985, I became Chief of the DOJ Bureau of Forensic Services (BFS). As BFS
8 Chief, I was involved in setting standards for the casework of those doing firearm
9 and tool mark examinations. On a larger scale, I was instrumental in establishing
10 the California Criminalistics Institute (“CCI”) – which at that time was one of
11 only three formal forensic training/research institutes in the United States. CCI
12 established a number of firearms courses that are still being offered. I remained
13 Chief of the BFS through 1988.
- 14 13. In 1988, I was promoted to Assistant Director of the DOJ’s Investigation and
15 Enforcement Branch, a position I held until I retired. As Assistant Director, I was
16 deeply involved in firearm issues, including the drafting of assault weapon-related
17 legislation. During this period, I was able to participate in ammunition testing at
18 the U.S. Army Wound Ballistic Laboratory at Letterman Institute in San
19 Francisco.
- 20 14. From 1993 until 2000, I was the State Liaison for the National Rifle Association
21 (“NRA”) in Sacramento. In that position I responded to requests from legislators
22 and staff regarding ammunition and firearms-related matters. After leaving the
23 NRA, my expertise in firearms and ammunition continued to expand as I logged
24 countless hours hunting and shooting competitively, as well as reloading
25 ammunition. New competitive disciplines that I engaged in included Long Range
26 Tactical Rifle, Black Powder Rifle Cartridge Silhouette, and Military Rifle
27 Silhouette. I also became involved in shotgun and double rifle competition. I
28 hunted Bison in North Dakota with a Sharps rifle made in 1863 and grouse in

1 Maine with a French pinfire shotgun c.1860. For all of these activities, I reloaded
2 my own cartridges. In 2003, I visited the Yuma Proving Grounds with a group of
3 forensic scientists. I was there to have my ammunition tested using Doppler radar
4 and high-speed photography.

5 15. At various times in the past I have conducted seminars on sniper rifles, and in
6 2007 and 2008, I co-taught a workshop on dangerous game rifles and the
7 ammunition for them.

8 16. In 2003, I toured the principal gun making firms in Brescia and Gardone, Italy. In
9 2008, I did the same in Suhl, Germany. In 2005, I toured the Federal Cartridge
10 Company in Anoka, Minnesota to learn how they made ammunition. For the past
11 seven years, I have consulted with California-based gun makers B. Searcy & Co.
12 and John Rigby & Co. Between 2004 and 2007, I also consulted with GaugeMate,
13 Inc. on the design of sub-gauge adapters for shotguns.

14 17. My consulting efforts also involve civil and criminal matters. Most recently, I
15 have been reconstructing the discharge of a pistol in a Central California training
16 school that seriously injured one of the students. During the last decade, I have
17 done fine gun photography and acted as a judge in the Gold Medal Concours
18 d'Elegance of Fine Guns. My photographs of firearms and cartridges have been
19 used for magazine ads and to support articles. Additionally, I inventory firearms
20 collections and provide valuations if requested. The most recent was a 77-gun
21 collection in Montana that I did in June. I recently traveled to Moscow, Russia
22 where I toured an arms manufacturer and firearm museums. I am currently
23 working on an article that examines shotguns and rifles made on the Needham
24 patent of 1852. These firearms use "needle-fire" cartridges – a design that was
25 used by both armies in the Franco-Prussian War of 1870.

26 18. I currently load 60 different types of ammunition. They range from the common
27 (.30-06, .357 S&W Magnum and .30 Carbine) to the obscure (6.5x53.5mm
28 Daudeteau, the .44 Evans and the 10.15x63mmR Serbian). I have the required

1 tools for at least 40 more should I choose to load for them. I have cast my own
2 lead bullets since 1966 and also have experience with bullet swaging. Learning
3 how to load ammunition properly (particularly for the obscure cartridges) requires
4 extensive research. To that end my book collection contains many volumes on
5 cartridge history, fabrication and reloading.

- 6 19. Knowledge acquired during the course of my studies and personal and
7 professional experiences described herein form the basis for my testimony in this
8 matter.

9 **Ammunition/Cartridge History, Distinctions, and Nomenclature**

- 10 20. All modern centerfire and rimfire ammunition for use in rifles and/or handguns
11 consist of the same components: a metal casing that suspends a metal projectile
12 over a charge of powder confined within the metal casing and a primer (or
13 priming charge) to ignite the powder - ("self-contained metallic ammunition"). A
14 true and correct copy of *Principles of Firearms – Definitions – Ammunition*
15 *Components*, <http://rkba.org/guns/principles/definitions/ammunition.html> (last
16 visited December 5, 2010) is filed concurrently herewith as Exhibit "11."
- 17 21. Self-contained metallic ammunition has been available for almost 160 years.
18 Whether a particular cartridge is used in a handgun (pistol or revolver) or a rifle
19 (or a shorter carbine version) is determined by the needs and desires of the end
20 user. Very large cartridges are generally not used in handguns because of recoil
21 or the weapon's bulk, not because of design or strength limitations. Smaller and
22 relatively less powerful cartridges have been, and continue to be, widely used in
23 both rifles and handguns. This is generally referred to as "cartridge inter-
24 changeability." Thus, a single box of cartridges may be consumed by use in a
25 rifle and a pistol.
- 26 22. By the 1880s, brass cartridge cases were in their modern form. The French
27 invented smokeless powder circa 1886, which generally replaced black powder as
28

1 the most commonly used propellant in modern self-contained metallic
2 ammunition.

3 23. Numerous cartridges, including, but not limited to, .22 Short, .22 Long Rifle, .30
4 Mauser, .32-20, .32 Smith & Wesson, .38-40, .44-40, .45 Long Colt, and 45-70
5 Government, can be used in identical firearms that were manufactured both in or
6 before 1898 and after 1898, and are commonly used in handguns. True and
7 correct copies of NORM FLAYDERMAN, FLAYDERMAN'S GUIDE TO ANTIQUE
8 AMERICAN FIREARMS 265-66 (7th ed. 1998) (hereafter FLAYDERMAN'S) and
9 Chuck Hawks, *A Brief History of .22 Rimfire Ammunition*, 2005,
10 http://www.chuckhawks.com/history_rimfire_ammo.htm; and page 85 of
11 FLAYDERMAN'S are filed concurrently herewith as Exhibits "12," "17," and "19,"
12 respectively.

13 24. Firearms manufactured in the "black-powder era" can safely use modern
14 smokeless loads if the pressure generated is within its threshold. And the
15 reciprocal is true, a modern firearm can safely use black-powder loads. For
16 example, the .45 Long Colt cartridge has been in almost constant production since
17 1872. A firearm chambered for .45 Long Colt, whether manufactured before or
18 after 1898, can shoot smokeless powder or black powder loads safely.

19 25. After self-contained metallic ammunition is manufactured, if stored correctly, it is
20 likely to still work properly after a century has passed. Accordingly, when
21 ammunition is manufactured, there is no way to know if it will be fired from a
22 rifle or handgun - or will remain unused. For instance, military .30 M1 Carbine
23 cartridges made during World War II or the Korean War may yet be used in a
24 cowboy style revolver in 2015. True and correct copies of Robert Gibson, *A*
25 *Pocket History of the M1 Carbine*, [http://www.fulton-](http://www.fulton-armory.com/M1Carbine.htm)
26 [armory.com/M1Carbine.htm](http://www.fulton-armory.com/M1Carbine.htm); and The Ruger New Model Blackhawk Single-
27 Action Revolver,
28 <http://www.ruger.com/products/newModelBlackhawkBlued/models.html> (last

1 visited December 5, 2010) are filed concurrently herewith as Exhibits "30" and
2 "31," respectively.

3 26. The historical record is quite clear that "cartridge interchange-ability" began
4 almost immediately after "perfection" of the Lefauchaux pinfire metallic cartridge
5 in the early 1850s. The following paragraphs provide a chronology that details
6 when certain cartridges were introduced, the type of firearm they were originally
7 used in, and how their interchangeability was applied in other types of firearms.
8 Paragraphs 27 through 51 provide examples of cartridge interchangeability, though
9 such examples are by no means exhaustive. As this phenomenon has not been
10 confined to the United States, examples from Europe are also included. The
11 chronology is divided into "Obsolete Cartridges", "Rimfire and Centerfire
12 Cartridges" and "Single-Shot Pistols for all Sizes of Cartridges." In the
13 paragraphs following that I will explain why when discussing the subject matter
14 of ammunition it is crucial to use the proper terminology to avoid confusion.
15 Then I will explain why I am unable to determine what ammunition is principally
16 for use in a handgun.

17 **Obsolete Cartridges**

18 27. 12mm pinfire: In 1854, Eugene Lefauchaux patented and began producing a six-
19 shot, 12mm pinfire revolver in Paris, France. In 1857, his revolver was adopted
20 by the French military and production was instituted at the French Imperial Arms
21 Factory at St. Etienne. Concurrently, Lefauchaux was producing revolver-
22 carbines and single-shot rifles that used the 12mm cartridge for public sale.
23 Lefauchaux-designed firearms (rifles and handguns) would later be made in both
24 Belgium and Spain. As examples, true and correct copies of Firearms History,
25 Technology & Development: Cartridges: Pinfire Cartridge,
26 <http://firearmshistory.blogspot.com/2010/05/cartridges-pinfire-cartridge.html>
27 (May 4, 2010); Gun & Game Forums – Some of my Antiques,
28 <http://www.gunandgame.com/forums/antique-firearms/103761-some-my->

1 antiques.html; and an Image of a Lefauchaux Model 1854 are filed concurrently
2 herewith as Exhibits "13," "14," and "15," respectively.

3 28. .41 Volcanic: In 1855, the Volcanic Repeating Arms Company (later renamed
4 The New Haven Arms Company and then the Winchester Repeating Arms
5 Company) produced a caseless .41 caliber cartridge that was utilized in both a
6 handgun and carbine rifle. As an example, a true and correct copy of an Image &
7 Description of Volcanic Lever Action Pistols and Carbines is filed concurrently
8 herewith as Exhibit "16."

9 **Rimfire and Centerfire Cartridges**

10 29. .22 Short: In 1857, Smith & Wesson introduced their Model No. 1 revolver that
11 was chambered for the .22 rimfire Short cartridge. The .22 Short has been in
12 continuous production since its introduction. It has been used in a range of
13 firearms from gallery rifles to Olympic pistols and in every action-type (pump,
14 single-shot, semiautomatic, lever action, etc.). The .22 Short can also be safely
15 fired in any firearm (handgun or rifle) that is chambered for the .22 Long or .22
16 Long Rifle. Exhibit "17" is an example of this.

17 30. .577 Snider: In 1867, the British government adopted their first centerfire
18 cartridge - the .577 Snider. It was used in converted Pattern 1853 muzzle loading
19 percussion rifles. Commercial manufacturers produced "double-barreled"
20 Howdah pistols for dangerous game hunters that utilized this same cartridge. As
21 an example, a true and correct copy of Arms Collectors' Association of the
22 Northern Territory, Inc., *Tiger Tamer: A 12-Bore Howdah Double*,
23 <http://www.acant.org.au/Articles/HowdahRifle.html> is filed concurrently herewith
24 as Exhibit "18."

25 31. 44-40 Winchester: This was the original cartridge for the Winchester Model 1873
26 lever-action rifle. By 1878, Colt was using it in their Single Action Army
27 Revolver. Exhibit "19" is an example of this. Both the Winchester and the Colt
28 would later be chambered for the .38-40 Winchester and the .32-20 Winchester

1 cartridges. Later, the Winchester Model 1892 rifle, the Colt Lightning Slide
2 Action rifle and the Marlin Model 1894 rifle and numerous Smith & Wesson
3 revolvers would also be chambered for the same three cartridges. In the 1990s,
4 what is generally described as “cowboy action shooting” became very popular
5 (and has remained so) and resulted in replica firearms (rifles and revolvers) of the
6 weapons previously described in this paragraph (and others) being imported
7 primarily from Italy. As an example, a true and correct copy of What is SASS?,
8 <http://www.sassnet.com/About-What-is-SASS-001A.php> (last visited December
9 5, 2010) is filed concurrently herewith as Exhibit “20.” In addition to .32-20,
10 .38-40 and .44-40, the imports are chambered for .38 Special, .357 Magnum and
11 .45 Long Colt. As an example, a true and correct copy of Uberti 1873 Rifle &
12 Carbine, http://www.uberti.com/firearms/1873_rifle_and_carbine.php (last visited
13 December 5, 2010) is filed concurrently herewith as Exhibit “21.” The .38
14 Special was introduced in 1902 by Smith & Wesson for use in their Military and
15 Police Model revolver. The .357 Magnum was introduced in 1935 and the .45
16 Long Colt c. 1872.

17 32. .45-70 Government: The .45-70 was the US military's primary service cartridge
18 for rifles from 1873 until the Spanish American War. It has been used in bolt-
19 action, single-shot, lever-action and pump-action rifles. Although a large
20 cartridge, the .45-70 has also been used in a number of revolvers. Most recently,
21 .45-70 revolvers have been made by Magnum Research and Super Six Ltd. As an
22 example, a true and correct copy of Gallery of Guns – Item Detail – Magnum
23 Research BFR 45-70,
24 <https://galleryofguns.com/genie/Default.aspx?item=BFR45%2f707> (last visited
25 December 5, 2010) is filed concurrently herewith as Exhibit “22.”

26 33. .22 Long Rifle: This cartridge was likely introduced in 1887 by the Stevens Arms
27 & Tool Co. for use in their single shot rifles. It is quite likely the most popular
28 firearm cartridge in the world. It is estimated that millions of Ruger 10-22 rifles

1 alone have been made for it since 1964. A pistol version of the 10-22 called "The
2 Charger" was also made. The number and variety of firearms that use the .22
3 Long Rifle cartridge are likely incalculable. As examples, true and correct copies
4 of Ruger 10/22 Rifles, <http://www.ruger.com/products/1022/index.html> (last
5 visited December 5, 2010) and Ruger Charger, [http://www.survival-gear-
6 guide.com/Ruger-Charger.html](http://www.survival-gear-guide.com/Ruger-Charger.html) (last visited December 5, 2010) are filed
7 concurrently herewith as Exhibits "23" and "24," respectively. Exhibits "17" and
8 "22" are also examples of this.

9 34. 9mm Luger (9x19mm Parabellum): In 1902, the 9x18mm cartridge was
10 developed for use in the American Eagle Luger pistol and other models. Luger
11 also produced a carbine using the same cartridge. The 9x19mm has been used
12 extensively in submachine guns. Various models of submachine guns have used
13 and use the 9x19mm. It is also used in the Ruger 9mm PC carbine, the Marlin
14 9mm Camp Carbine and Colt AR-15 style rifles with a conducive upper-receiver.
15 As examples, true and correct copies of 9mm Carbines & Grease Guns,
16 <http://www.best9mm.com/carbines/index.html> (last visited December 5, 2010);
17 Marlin Model 9 Camp Carbine Owner's Manual; and an Image & Description of
18 a Luger Carbine, are filed concurrently herewith as Exhibits "25," "26," and
19 "27," respectively.

20 35. 9x23mm Largo: The cartridge was developed in Belgium in 1903. It was
21 subsequently used in handguns made in Belgium (Bergman-Bayard) and Spain
22 (Astra, Llama, Star and Jo-Lo-Ar). In addition to submachine gun use, three bolt-
23 action rifle models were made in Spain (Onena, Destroyer and Ignacio Zubillaga).
24 As an example, a true and correct copy of 9mm Largo Firearms,
25 <http://www.9mmlargo.com/> (last visited December 5, 2010) is filed concurrently
26 herewith as Exhibit "28."

27 36. 45 ACP: Developed for use in the Colt Model 1910 pistol and was later adopted
28 by the US military with the Model 1911 Colt pistol. It is perhaps best known for

1 its relationship to the Thompson Sub Machine Gun (Tommy Gun) and the M3A1
2 (Grease Gun). Harrington & Richardson produced M60 and M65 semi-automatic
3 .45 ACP Reising Guns. The British military used the .45 ACP cartridge in
4 modified No.1 Mark III Short Magazine Lee Enfield rifles to create the DeLisle
5 carbine rifle. Later, Marlin produced the .45 Camp Carbine rifle which utilized
6 this same cartridge. As an example, a true and correct copy of
7 www.notpurfect.com – Neal Pritchett, *Firearms Reviews and Commentary -*
8 *Marlin Camp Gun .45*, <http://www.notpurfect.com/main/campgun.htm> (last
9 visited December 5, 2010) is filed concurrently herewith as Exhibit “29.”

10 37. 30 M1 Carbine: The cartridge and rifle were adopted in 1941. By the end of the
11 war, 6.2 million carbines had been made. In 1963, the Director of Civilian
12 Marksmanship began releasing the carbines for sale to members of the National
13 Rifle Association. Increased consumer interest ultimately saw new manufacturers
14 make carbine rifles that utilized this same cartridge. They included Plainfield,
15 Universal, Iver Johnson and Marlin (M62 Levermatic). Among the handguns
16 using the .30 carbine round was the Ruger Blackhawk revolver that has been
17 produced for approximately 40 years. Exhibits “30” and “31” showcase examples.

18 38. .44 Remington Magnum: In 1955, Smith & Wesson introduced the .44 Remington
19 Magnum cartridge for use in their Model 29 revolver. In 1961, Ruger introduced
20 the Deerstalker .44 Magnum carbine -- about 250,000 of which were produced
21 over the next 25-years. Ruger then introduced the Model 96/44M lever-action
22 rifle c. 1996. Their most current model is the Model 77/44 bolt-action rifle. Lever
23 action carbines have also been made by Rossi (Model 65 SRC), Browning B-92,
24 Marlin (Model 1894) and E. M. F. (Model 1892). One pump-action carbine, the
25 Universal Vulcan 440, was also produced. As an example, a true and correct copy
26 of Jim Hammond, *Shooting with Jim: Ruger 44 Magnum Carbine Product*
27 *Review*, <http://www.shootingwithjim.com/ruger-44-carbine.htm> (last visited
28 December 5, 2010) is filed concurrently herewith as Exhibit “32.”

39. 22 Winchester Magnum Rimfire - Introduced in 1960, it quickly became wildly popular and is now a standard chambering in both rifles and handguns. Exhibit "17" is an example of this.

40. .256 Winchester Magnum - When introduced in 1960, no firearm was chambered for it. In 1963, Marlin offered their Model 62 Levermatic (a rifle) in .256 Winchester Magnum and in 1966, Ruger introduced a single shot pistol called the Hawkeye, also chambered in .256 Winchester Magnum. As an example, a true and correct copy of Chuck Hawks, *The .256 Winchester*, 2004, <http://www.chuckhawks.com/256Win.htm> is filed concurrently herewith as Exhibit "33."

41. .221 Remington Fireball: Federal law prohibits conversion of a rifle into a handgun. Thus, existing bolt-action rifle actions couldn't be used to build handguns. To fill this need, in 1963, Remington introduced the XP-100 single-shot, bolt-action pistol that was chambered for the .221 Fireball cartridge. Later they added a magazine fed version that was chambered for .223 Remington, .22-250, 7mm-08 Remington, .250 Savage, .308 Winchester, .350 Remington Magnum and .35 Remington. As an example, a true and correct copy of Glenn Custom - PRICING - Remington XP-100, http://glenncustom.com/pricing_remxp100.html (last visited December 5, 2010) is filed concurrently herewith as Exhibit "34." In 2002, Remington began offering their Model 700 bolt-action rifle in the same .221 Fireball chambering. As an example, a true and correct copy of Bud's Gun Shop - Catalog - Rifles - Remington 700 LV Light Varmint .221 Fireball, http://www.budsgunshop.com/catalog/product_info.php/products_id/96185 (last visited December 5, 2010) is filed concurrently herewith as Exhibit "35."

42. .41 Remington Magnum: Smith & Wesson introduced the .41 Remington Magnum cartridge with their Model 57 revolver in 1964. Ruger, and others, make .41 magnum revolvers and Marlin offers the cartridge in their Model 1894 lever-

1 action carbine. As an example, a true and correct copy of Impact Guns – Marlin
2 41 Magnum Model 1894FG 20” Walnut,
3 <http://www.impactguns.com/store/1894FG.html> (last visited December 5, 2010) is
4 filed concurrently herewith as Exhibit “36.”

5 43. .40 Smith & Wesson: This cartridge was the result of work by Winchester and
6 Smith & Wesson c.1989. It is used in a variety of handguns, as well as carbines,
7 including the Beretta Cx4 Storm, the Hi Point 4095, the Kel-Tec SUB-2000, the
8 Olympic Arms K40, (as an example, a true and correct copy of *.40 S&W*
9 *Carbines: We Shoot Hi-Point, Beretta, Olympic Arms*, GUN TESTS, May 2006,
10 http://www.gun-tests.com/issues/18_5/features/5332-1.html is filed concurrently
11 herewith as Exhibit “37”) as well as others such as the Ruger PC4 carbine. DAN
12 SHIDELER, THE GUN DIGEST BOOK OF MODERN GUN VALUES (15th ed. 2009) 433
13 (hereafter GUN DIGEST). And, AR-15 lowers are commonly chambered in .40
14 S&W. The Federal Bureau of Investigation sought AR-15 carbines chambered in
15 .40 S&W as its officially issued carbine. See a true and correct copy of *Colt*
16 *Pattern .40 S&W Caliber Carbines*, FEDERAL BUSINESS OPPORTUNITIES, Aug. 7,
17 2009,
18 [https://www.fbo.gov/index?tab=core&s=opportunity&mode=form&id=6ac219a2](https://www.fbo.gov/index?tab=core&s=opportunity&mode=form&id=6ac219a2e12e8aedc2755b3053e32af1&tabmode=list)
19 [e12e8aedc2755b3053e32af1&tabmode=list](https://www.fbo.gov/index?tab=core&s=opportunity&mode=form&id=6ac219a2e12e8aedc2755b3053e32af1&tabmode=list) filed concurrently herewith as Exhibit
20 “38.”

21 44. 5.7x28mm: This cartridge was developed in the 1990s for dual use (handgun and
22 carbine). It originally could only be used in two firearm models available to
23 civilians: the PS90 semi-automatic carbine rifle and the FN Five-Seven semi-
24 automatic pistol. As an example, a true and correct copy of FNH 5.7x28 Bulk
25 Ammo Advertisement is filed concurrently herewith as Exhibit “39.” Since then,
26 AR-57 uppers chambered for the FN cartridge have been produced, as has a new
27 carbine called the FN PS90. Other companies are expected to produce other
28 models of firearms chambered in this cartridge in the near future.

1 45. .17 HMR and .17 Mach 2: These two rimfire cartridges were introduced in 2002
2 and 2004 respectively. They use the .22 Magnum and .22 Long Rifle cases and
3 smaller diameter bullets. They can (and are) being used in all manner of handguns
4 and rifles, just like .22 rimfire cartridges. As examples, true and correct copies of
5 Chuck Hawks, *The .17 Hornady Magnum Rimfire*, 2007,
6 <http://www.chuckhawks.com/17HMR.htm>; and Excel Arms – New Products –
7 New Models X-22P and X-22R, <http://www.excelarms.com/newproducts.html>
8 (last visited September 6, 2010) are filed concurrently herewith as Exhibits “40”
9 and “41,” respectively.

10 **Single Shot Pistols that Utilize All Ammunition Cartridges**

11 46. Thompson/Center: In 1967, Thompson/Center introduced their Contender pistol
12 (the “T/C”). It is a single-shot, break-action design that utilizes interchangeable
13 barrels to accommodate all cartridge sizes that can be used in rifles. T/Cs have
14 been chambered for cartridges from the diminutive .17 Mach 2 rimfire to those
15 suitable for hunting elephants. The current model of the Contender is the G-2.
16 Their website lists 102 available chamberings. Other barrel makers offer a greater
17 selection. As examples, true and correct copies of About Thompson Center
18 Arms, <http://www.tcarms.com/about> (last visited December 5, 2010); Thompson
19 Center Arms – Caliber Selection – Encore Pistols,
20 http://www.tcarms.com/customShop/chart_encore_pistol.php (last visited
21 December 5, 2010); Match Grade Machine – Chamberings Available,
22 http://www.matchgrademachine.com/chamberings_public.php (last visited
23 December 5, 2010); and John Taffin, *The Custom Pistols of Gary Reeder*, Guns
24 Magazine, March 2001, available at
25 http://findarticles.com/p/articles/mi_m0BQY/is_3_47/ai_70650330/ are filed
26 concurrently herewith as Exhibits “42,” “43,” “44,” and “45,” respectively.
27
28

- 1 47. BF Single Shot: The range of cartridges for use in this pistol is .17 rimfire to .45-
2 70, all of which cartridges can be and are used in various rifles. (GUN DIGEST
3 107.)
- 4 48. Kimber Predator Hunter: The range of cartridges for use in this pistol is .221
5 Fireball to 7mm TCU, all of which cartridges can be and are used in various
6 rifles. (GUN DIGEST 176.)
- 7 49. Magnum Research Lone Eagle: The range of cartridges for use in this pistol is .22
8 Hornet to .444 Marlin, all of which cartridges can be and are used in various
9 rifles. (GUN DIGEST 185.)
- 10 50. Pachmayr Dominator: The range of cartridges for use in this pistol is .22 Hornet
11 to .35 Remington, all of which cartridges can be and are used in various rifles.
12 (GUN DIGEST 196.)
- 13 51. Savage Striker: The range of cartridges for use in this pistol is .22-250, .243
14 Winchester and .308 Winchester, all of which cartridges can be and are used in
15 various rifles. (GUN DIGEST 207.)

16 **Designating ammunition between caliber or cartridge**

- 17 52. For the person who knows little about firearms, the imprecise use of technical
18 terms is predictable. A common error is to assume that “everyone knows”
19 something or that it is “common knowledge.” When people refer to “.22s,”
20 “9mms,” “.45s,” or any other “caliber” of cartridges, and assume they have
21 communicated effectively the specific ammunition cartridge they have in mind,
22 they are usually mistaken.
- 23 53. Cartridges have ‘names.’ Those originating in Europe are frequently described by
24 their bullet diameter and case length in millimeters (*e.g.*, 9x35mmR (rimed).)
25 England has traditionally described cartridges by bore diameter (*e.g.*, .450
26 Adams). The American approach has been a mixture that includes groove
27 diameter (.308 Winchester), the name of the cartridge designer (.257 Roberts – for
28

1 N.H. Roberts), the company that introduced the cartridge (.44 Remington
2 Magnum) or something fanciful (.22 Cheetah).

3 54. Three terms, in order of specificity, are used to describe a loaded, self-contained
4 metallic cartridge – ammunition, caliber, and its given name(s). “Ammunition” is
5 defined in the Glossary of the Association of Firearms and Tool Mark Examiners
6 as “One or more loaded cartridges consisting of a primed case, propellant, and
7 with one or more projectiles. Also referred to as fixed or live ammunition.” The
8 definition of “caliber” depends on whether it is applied to a firearm or
9 ammunition. When applied to ammunition, the Glossary of the Association of
10 Firearms and Tool Mark Examiners defines it as “[a] numerical term, without the
11 decimal point, included in a cartridge name to indicate the nominal bullet
12 diameter.”

13 55. I have reviewed the “calibers” listed by Defendants in response to Plaintiffs’
14 discovery requests (.454, .45, .44, .40, 10mm, .38, .380, .357, 9mm, .32 and .25).
15 The “caliber” used as part of the name for a cartridge is frequently not an accurate
16 description of the bullet or bore diameter. For instance, according to FRANK C.
17 BARNES, CARTRIDGES OF THE WORLD (Layne Simpson, ed., Gun Digest Books
18 12th ed. 2009), the .454 Casull has a bore diameter of .452. Likewise, the .38
19 Smith & Wesson Special is .357, the .32 Smith & Wesson is .312, the .44
20 Remington Magnum is .429, the 9x18mm (Makarov) is .363, the .218 Bee is .224,
21 the .380 Automatic is .358, the 44 Evans Long is .419, the .32 Protector is .300,
22 etc.

23 56. Also, within each “caliber” there is a wide range of cartridge lengths, bullet
24 weights, velocity, power, applications and true bullet diameters. Paragraphs 57-
25 64 provide some examples. Perhaps the smallest “.22” is the .22 BB (Bulleted
26
27
28

1 Breech) Cap. It was introduced in 1845 for the Flobert parlor (salon) rifles. It is
2 still produced and can be fired in any .22 rimfire rifle or handgun. On the other
3 end of the spectrum is the .220 Swift, which was introduced in 1935 and is
4 usually used for long-range varmint shooting.

5 57. Here is a non-exhaustive list of other “.22s”: .222 Remington, .222 Remington
6 Magnum, .223 Remington, .22 PPC, .225 Winchester, .22-250 Remington, .22
7 Accelerator, .22 Savage High-Power, .22-3000, .22 Hornet, .22 K Hornet, .22
8 Waldog, .22 Dasher, .22 BR Remington, .220 Weatherby Rocket, .22 Cheetah,
9 .22 Newton, .226 JDJ, .224 Weatherby Magnum, .221 Remington Fireball, .22
10 Remington Jet, .22 CB Cap, .22 Short, .22 Long, .22 Long Rifle, .22 Extra Long,
11 .22 Winchester Rimfire (WRF), .22 Winchester Magnum (WMR), .22 Winchester
12 Automatic, .22 Remington Automatic, .22 ILARCO 22 Short Magnum Rimfire
13 and the .22 Rimfire Shotgun.

14 58. The difference between certain .22 caliber cartridges is readily apparent. As an
15 example, a true and correct copy of a photograph I took on November 28, 2010 is
16 attached as Exhibit “48,” the pair of cartridges pictured at the very left are the .22
17 BB Cap and the .220 Swift respectively.

18 59. Nine-millimeter cartridges generally had their origin in Europe where that bore
19 diameter found great favor. The oldest is the 9mm pinfire for the Lefauchaux
20 revolver that dates to the mid-19th Century. The 9x17mm is a popular 9mm
21 cartridge, and is also known as a .380 domestically. The 9mm Mauser (9x57mm)
22 is a big game hunting cartridge. The difference between the 9x17mm and the
23 9x57mm is readily apparent in Exhibit “48” where the middle pair of cartridges
24 pictured are the 9x17mm and the 9x57mm respectively.

25 60. Here is a non-exhaustive list of other 9mm cartridges: 9mm Mauser
26 Revolver, 9x47mmR Swiss, 9x35mmR, 9x40mmR Target, 9mm Knecht Revolver,
27 9mm Nagant Revolver, 9mm Luger, 9x63mm Hessmer, 9x56mm Mannlicher,
28 9x56mm Haenel, 9x62mm Karl Puff, 9mm Browning Long, 9mm Browning

1 Short, 9mm Steyr, 9mm Bergmann Mars, 9mm Borchardt, 9mm Gasser Revolver,
2 9x38mmR Tesching, 9x42mmMB Target, 9x61mmR Hunting, 9x67mmR
3 Hunting, 9x71mm Peterlongo, 9x53.4mmR Mannlicher, 9x17mm, 9x18mm,
4 9x21mm, 9x72mmR Sauer, 9mm Winchester Magnum, 9mm Federal, 9mm
5 Action Express, 9x25 Dillon and 9mm Glisenti.

6 61. The difference between certain 9mm caliber cartridges is readily apparent. As an
7 example, a true and correct copy of a photograph I took on November 28, 2010 is
8 attached as Exhibit "48," the pair of cartridges pictured in the center are the
9 9x17mm and the 9x57mm respectively.

10 62. Forty-five caliber cartridges are most commonly of domestic origin. The first was
11 probably the .45 Long Colt (c.1872) to be soon followed by the .45 Government
12 (.45-70). Sharing the "45 caliber" title is the .458 Winchester Magnum that was
13 introduced in 1965 for dangerous game (elephant and Cape buffalo) hunting.

14 63. Here is a non-exhaustive list of other .45 caliber cartridges: .45 Automatic
15 Short, .45ACP, 45-90, 450 Marlin, 45-50 Peabody, .45 Remington Thompson, .45-
16 60 Winchester, .45-75 Winchester, .45-100 Ballard, .45-125 Winchester, .45-100
17 Van Choate, .45-100 Remington, .45-120 Sharps, .45 Silhouette, .458x1.5"
18 Barnes, .458x2" American, .450 Alaskan, .450 Howell, .450 Watts Magnum, .458
19 Lott, .450 Assegai, .450 Ackley Magnum, .45 Winchester Magnum, .45 Smith &
20 Wesson, .450 Rigby, .450 Adams, .45 Auto Rim, .45 Webley and .450 Nitro
21 Express.

22 64. The difference between certain .45 caliber cartridges is readily apparent. As an
23 example, in Exhibit "48," the pair of cartridges pictured at the very right are the
24 .450 Adams and the .458 Winchester Magnum respectively.

25 **Cannot Determine whether Cartridges Are Principally for Use in Handguns vs. Rifles**

26 65. Virtually all modern, commercially produced self-contained metallic ammunition
27 can be safely used interchangeably in a rifle or a handgun.
28

- 1 66. There is no generally accepted definition of “handgun ammunition,” nor any
2 commonly understood delineation between “handgun ammunition” and other
3 ammunition used in the firearms industry, let alone one that allows one to
4 determine whether certain cartridges are “principally for use” in handguns.
- 5 67. Whether a given cartridge is used more often in a handgun than in a rifle may
6 change and fluctuate over time, depending on the changing popularity and usage
7 of different types of firearms which utilize that cartridge, or vice-versa.
- 8 68. Commercial cartridges are sometimes labeled as being for “rifles” or “pistols.”
9 For instance, Eley makes .22 Long Rifle 40gr Match Pistol ammunition. Despite
10 the “pistol” designation, it can be safely and effectively used in a rifle. In fact, the
11 name of the cartridge (.22 Long Rifle) adds to the confusion. Conversely,
12 Remington .30-30 Express Core-Lokt Rifle cartridges can be used in a Thompson
13 Contender handgun that is chambered for that cartridge.
- 14 69. That “dual-use” of ammunition is anticipated by the manufacturer (box markings
15 aside) can be seen by the disclaimer on a box of Remington .223 ammunition. It
16 reads “Notice: These Remington cartridges are adapted to and intended for use
17 only in arms in good condition originally chambered and designed for the
18 cartridge.” The markings on ammunition boxes are interesting, but are not
19 controlling as to how it can ultimately be used, or as to whether that particular
20 ammunition was intended to be used, or will actually be used, more often in a
21 handgun than in a rifle. Such a determination cannot be made from looking at the
22 packaging nor from consulting any other resource.
- 23 70. While firearms and ammunition literature sometimes make reference to “handgun
24 ammunition” and “rifle ammunition,” when referencing some cartridges, I assume
25 the authors never anticipated making the technical distinctions necessitated by CA
26 Penal Code section 12060.
- 27 71. The inclusion of military and law enforcement use of submachine guns in
28 determining whether a certain cartridge is used more often in a handgun could

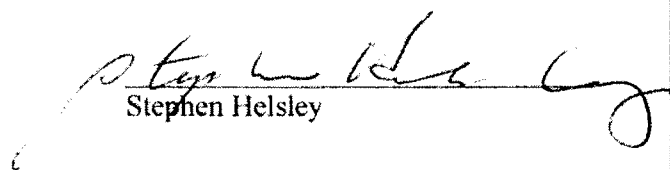
1 have a significant impact, because submachine guns use the same ammunition as
2 many handguns. For instance, the Heckler & Koch MP5 is a popular submachine
3 gun model with both law enforcement and military special operations personnel.
4 It was the submachine gun issued to me by the Department of Justice when I was
5 Assistant Director. The Heckler & Koch MP5 uses the 9mm Luger cartridge. In
6 prior decades, the 9mm Uzi and the .45 ACP Thompson submachine guns were
7 widely used. Such firearms are not "handguns," as they are intended to be fired
8 from the shoulder. From my experience with the Department of Justice, training
9 with submachine guns consumes significant amounts of ammunition, possibly
10 more so than training with handguns chambered for the same cartridge.

11 72. Neither the academic and professional works comprising my library nor my
12 experiences qualifying me as an expert in firearms and ammunition provide me
13 with knowledge as to what cartridges are "principally for use in a handgun."

14 73. Furthermore, I do not know of any sources from which I could determine what
15 cartridges suitable for use in both rifles and handguns are used more often in a
16 handgun than in a long gun.

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

19 Dated: December 6, 2010

20
21 
22 Stephen Helsley
23
24
25
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28

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF FRESNO

4 I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County,
5 California. I am over the age eighteen (18) years and am not a party to the within action. My
business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

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

7 **DECLARATION OF STEPHEN HELSLEY IN SUPPORT OF MOTION**
8 **FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE FOR**
9 **SUMMARY ADJUDICATION AND TRIAL**

10 on the interested parties in this action by placing

11 ☐ the original

12 ☒ a true and correct copy

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

13 Edmund G. Brown, Jr.

Attorney General of California

14 Zackery P. Morazzini

Supervising Deputy Attorney General

15 Peter A. Krause

Deputy Attorney General (185098)

1300 I Street, Suite 125

P.O. Box 944255

Sacramento, CA 94244-2550

16 (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
17 processing correspondence for mailing. Under the practice it would be deposited with the
18 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
California, in the ordinary course of business. I am aware that on motion of the party
19 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.

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

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

22 ☒ (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
23 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under
the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for
24 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
25 in accordance with ordinary business practices.

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

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

28 

CLAUDIA AYALA