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7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF FRESNO
10

11 SHERIFF CLAY PARKER, TEHAMA) CASE NO. 10CECG02116
COUNTY SHERIFF; HERB BAUER)
12 SPORTING GOODS; CALIFORNIA RIFLE) **NOTICE OF MOTION AND MOTION**
AND PISTOL ASSOCIATION) **FOR SUMMARY JUDGMENT OR IN**
13 FOUNDATION; ABLE'S SPORTING,) **THE ALTERNATIVE FOR SUMMARY**
INC.; RTG SPORTING COLLECTIBLES,) **ADJUDICATION / TRIAL**
14 LLC; AND STEVEN STONECIPHER,)

15) Date: January 18, 2011
Plaintiffs and Petitioners,) Time: 8:30 a.m.
16) Location: Dept. 402
vs.) Judge: Hon. Jeff Hamilton
17)

18 THE STATE OF CALIFORNIA; JERRY) Date Action Filed: June 17, 2010
BROWN, IN HIS OFFICIAL CAPACITY)
19 AS ATTORNEY GENERAL FOR THE)
STATE OF CALIFORNIA; THE)
20 CALIFORNIA DEPARTMENT OF)
JUSTICE; and DOES 1-25,)

21)
22 Defendants and Respondents.)
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1 **TO EACH PARTY AND TO COUNSEL OF RECORD FOR EACH PARTY:**

2 YOU ARE HEREBY NOTIFIED THAT on January 18, 2010 at 8:30 a.m., or as soon as
3 thereafter this matter may be heard, in Department 402 of this Court located at 1130 O Street,
4 Fresno, CA 93721, Plaintiffs Sheriff Clay Parker, et al. ("Plaintiffs") will, and hereby do, move
5 the Court for an order that judgment be entered in favor of Plaintiffs and against Defendants the
6 State of California, et al. ("Defendants") as prayed for in Plaintiffs' Complaint. YOU ARE
7 HEREBY FURTHER NOTIFIED THAT Plaintiffs have requested the Court take Judicial notice
8 of documents submitted in support of this motion. The documents of which judicial notice are
9 requested and there contents and relevance are set forth in the Request for Judicial Notice and
10 points and authorities filed concurrently with this motion. This motion is made on the grounds
11 that there is no defense to the action, there is no triable issue of material fact, and Plaintiffs are
12 entitled to judgment as a matter of law.

13 In the alternative, if for any reason summary judgment is not granted, Plaintiffs will, and
14 hereby do, move the Court for an order granting summary adjudication in favor of Plaintiffs and
15 against Defendants as to Plaintiffs' Claims that California Penal Code sections 12060, 12061, and
16 12318 are unconstitutionally vague on their face in violation of Plaintiffs' rights to Due Process.
17 Plaintiffs also will, and hereby do, move the Court for an order granting summary adjudication in
18 favor Plaintiff Herb Bauer Sporting Goods, Inc. and against Defendants as to Plaintiff's Claims
19 that California Penal Code section 12061(a)(1-2) are unconstitutionally vague as applied to this
20 Plaintiff in violation of Plaintiff's rights to due process.


21 The alternative motion is made on the grounds that, as to Plaintiffs' Claims that California
22 Penal Code sections 12060, 12061, and 12318 are unconstitutionally vague on their face, there is
23 no defense thereto; Plaintiffs are not aware of any affirmative defense asserted by Defendants at
24 this juncture, but as to any affirmative defenses that may be raised by Defendants, there is no
25 merit. As to Plaintiff Herb Bauer Sporting Goods, Inc. claims that California Penal Code section
26 12061(a)(1-2) are unconstitutionally vague as applied to this Plaintiff, there is no defense thereto;
27 Plaintiffs are not aware of any affirmative defense asserted by Defendants at this juncture, but as
28 to any affirmative defenses that may be raised by Defendants, there is no merit.

Should the Court determine any triable issues remain, the Court shall take any required testimony and resolve and factual issues at the hearing noticed herein, which shall serve as trial in this matter pursuant to the prior stipulation of the parties and the order of this Court.

The motion and alternative motion are based on this notice of motion, the accompanying memorandum of points and authorities filed in support thereof, the separate statement of undisputed material facts, the declarations of Sheriff Clay Parker, Barry Bauer, Randy Wright, Ray T. Giles, Steven Stonecipher, Sheriff Tom Allman, Brian Hall, Michael Tenny, and Larry Potterfield that are filed concurrently with this motion, exhibits 1-58 filed concurrently with this motion the papers, records, and files in this action, and any further evidence or argument that the Court may properly receive at or before the hearing.

Dated: December 6, 2010

Respectfully submitted,
MICHEL & ASSOCIATES, P. C.


Clinton Monfort
Attorney for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF FRESNO

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, 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.

On December 6, 2010, I served the foregoing document(s) described as
**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR IN THE
ALTERNATIVE FOR SUMMARY ADJUDICATION / TRIAL**

on the interested parties in this action by placing

☐ the original

☒ a true and correct copy

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

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

(BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the 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 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.

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

CLAUDIA AYALA