

C. D. Michel - SBN 144258  
Clinton B. Monfort - SBN 255609  
Sean A. Brady - SBN 262007  
**MICHEL & ASSOCIATES, P.C.**  
180 East Ocean Blvd., Suite 200  
Long Beach, CA 90802  
Telephone: (562) 216-4444  
Fax: (562) 216-4445  
cmichel@michellawyers.com

Attorneys for Plaintiffs/Petitioners

**FILED**

**MAR - 2 2011**

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ SXG - DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

SHERIFF CLAY PARKER, TEHAMA ) CASE NO. 10CECG02116  
COUNTY SHERIFF; HERB BAUER )  
SPORTING GOODS; CALIFORNIA RIFLE ) **NOTICE OF ENTRY OF JUDGMENT**  
AND PISTOL ASSOCIATION )  
FOUNDATION; ABLE'S SPORTING, )  
INC.; RTG SPORTING COLLECTIBLES, )  
LLC; AND STEVEN STONECIPHER, )

Plaintiffs and Petitioners,

vs.

THE STATE OF CALIFORNIA; KAMALA )  
D. HARRIS, IN HER OFFICIAL )  
CAPACITY AS ATTORNEY GENERAL )  
FOR THE STATE OF CALIFORNIA; THE )  
CALIFORNIA DEPARTMENT OF )  
JUSTICE; and DOES 1-25, )

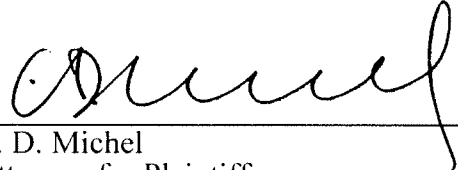
Defendants and Respondents.

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Notice is hereby given that on February 23, 2011, the Fresno Superior Court, per Judge  
3 Jeffrey Y. Hamilton, entered judgment in the above-entitled proceeding. A true and accurate copy  
4 of the Judgment is attached hereto as Exhibit "A" and incorporated by reference hereto.

5 Date: February 28, 2011

**MICHEL & ASSOCIATES, PC**

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8 C. D. Michel  
9 Attorney for Plaintiffs  
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## EXHIBIT A

FILED

FEB 22 2011

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPT. 402

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

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; KAMALA  
D. HARRIS, IN HER OFFICIAL  
CAPACITY AS ATTORNEY GENERAL  
FOR THE STATE OF CALIFORNIA; THE  
CALIFORNIA DEPARTMENT OF  
JUSTICE; and DOES 1-25,

Defendants and Respondents.

CASE NO. 10CECG02116

~~PROPOSED~~ JUDGMENT

Date: January 18, 2011  
Time: 8:30 am  
Dept: 402  
Judge: Hon. Jeffery Y. Hamilton

Trial Date: January 18, 2011  
Action Filed: June 17, 2010

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**JUDGMENT**

On January 18, 2011, at 8:30 a.m., Plaintiffs' Motion for Summary Judgment or, in the Alternative, for Summary Adjudication came on regularly for hearing in Department 402 of this Court, the Honorable Jeffery Y. Hamilton, judge presiding. C. D. Michel, Clinton Monfort, and Sean Brady appeared on behalf of Plaintiffs, and Peter Krause and Kimberly Graham appeared on behalf of Defendants. At the hearing, Plaintiffs dismissed their second and third causes of action without prejudice, and the Court verbally denied Plaintiffs' motion for summary judgment, and granted in part and denied in part the motion for summary adjudication.

An Order Denying Plaintiffs' Motion for Summary Judgment and Granting in Part and Denying in Part Plaintiffs' Motion For Summary Adjudication having been entered on January 31, 2011, and an Order of Permanent Injunction having been entered on January 21, 2011:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiffs' second and third causes of action are dismissed without prejudice;
2. Judgment is entered in favor of Plaintiffs and against Defendants on Plaintiffs' First Cause of Action for Declaratory and Injunctive Relief - Due Process Vagueness - Facial, in accordance with the Order Denying Plaintiffs' Motion for Summary Judgment and Granting in Part and Denying in Part Plaintiffs' Motion For Summary Adjudication, a true and correct copy of which is attached hereto as Exhibit "A" and is incorporated herein by reference;
3. Defendants the State of California, Kamala D. Harris, in her official capacity as Attorney General of the State of California, and the California Department of Justice, and each of their agents, employees, representatives, successors in office, and all persons or entities acting in concert or in participation with them are permanently prohibited, enjoined, and restrained from taking any action to implement, enforce, or give effect to the versions of California Penal Code sections 12060, 12061, and 12318 in effect as of January 21, 2011, the date of this Court's Order of Permanent Injunction, a true and correct copy of which is attached hereto as Exhibit "B" and is incorporated herein by reference;
4. Plaintiffs shall recover their costs of suit <sup>based on a memo of costs</sup> ~~in the amount of \$ \_\_\_\_\_~~;
5. This Court's jurisdiction to determine whether Plaintiffs are entitled to recover

1 attorneys' fees and, if so, in what amount, shall be retained. Entitlement to and the appropriate  
2 amount of attorneys' fees will be determined on noticed motion to be submitted to the Court by  
3 plaintiffs in accordance with California Rule of Court rule 3.1702 and Code of Civil Procedure  
4 section 1021.5.

5 Dated: 2/22, 2011

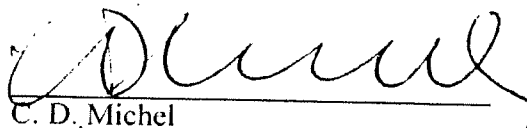
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7 JEFFREY Y. HAMILTON JR.

8 JEFFREY Y. HAMILTON  
9 Judge of the Superior Court

10 **APPROVED AS TO FORM:**

11 Dated: February 15, 2011

12 **MICHEL & ASSOCIATES, PC**

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15 C. D. Michel  
16 Attorney for Plaintiffs, Sheriff Clay Parker,  
17 Herb Bauer Sporting Goods, California Rifle  
and Pistol Association Foundation, Able's  
Sporting, Inc., RTG Sporting Collectibles, LLC,  
and Steven Stonecipher

18 Dated: February \_\_, 2011

19 **KAMALA D. HARRIS**  
20 Attorney General of California  
21 **ZACKERY P. MORAZZINI**  
22 Supervising Deputy Attorney General

23 PETER A. KRAUSE  
24 Deputy Attorney General  
25 Attorneys for Defendants and Respondents  
26 State of California, Kamala D. Harris, and  
27 the California Department of Justice  
28

**RECEIVED**  
FEB 22 2011

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO

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

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; KAMALA  
D. HARRIS, IN HER OFFICIAL  
CAPACITY AS ATTORNEY GENERAL  
FOR THE STATE OF CALIFORNIA; THE  
CALIFORNIA DEPARTMENT OF  
JUSTICE; and DOES 1-25,

Defendants and Respondents.

CASE NO. 10CECG02116

[PROPOSED] JUDGMENT

Date: January 18, 2011  
Time: 8:30 am  
Dept: 402  
Judge: Hon. Jeffery Y. Hamilton

Trial Date: January 18, 2011  
Action Filed: June 17, 2010

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

SHERIFF CLAY PARKER, TEHAMA	)	CASE NO. 10CECG02116
COUNTY SHERIFF; HERB BAUER	)	
SPORTING GOODS; CALIFORNIA RIFLE	)	
AND PISTOL ASSOCIATION	)	<b>[PROPOSED] JUDGMENT</b>
FOUNDATION; ABLE'S SPORTING,	)	
INC.; RTG SPORTING COLLECTIBLES,	)	
LLC; AND STEVEN STONECIPHER,	)	Date: January 18, 2011
	)	Time: 8:30 am
	)	Dept: 402
Plaintiffs and Petitioners,	)	Judge: Hon. Jeffery Y. Hamilton
	)	
vs.	)	
	)	Trial Date: January 18, 2011
THE STATE OF CALIFORNIA; KAMALA	)	Action Filed: June 17, 2010
D. HARRIS, IN HER OFFICIAL	)	
CAPACITY AS ATTORNEY GENERAL	)	
FOR THE STATE OF CALIFORNIA; THE	)	
CALIFORNIA DEPARTMENT OF	)	
JUSTICE; and DOES 1-25,	)	
	)	
	)	
Defendants and Respondents.	)	



1 **JUDGMENT**

2 On January 18, 2011, at 8:30 a.m., Plaintiffs' Motion for Summary Judgment or, in the  
3 Alternative, for Summary Adjudication came on regularly for hearing in Department 402 of this  
4 Court, the Honorable Jeffery Y. Hamilton, judge presiding. C. D. Michel, Clinton Monfort, and  
5 Sean Brady appeared on behalf of Plaintiffs, and Peter Krause and Kimberly Graham appeared on  
6 behalf of Defendants. At the hearing, Plaintiffs dismissed their second and third causes of action  
7 without prejudice, and the Court verbally denied Plaintiffs' motion for summary judgment, and  
8 granted in part and denied in part the motion for summary adjudication.

9 An Order Denying Plaintiffs' Motion for Summary Judgment and Granting in Part and  
10 Denying in Part Plaintiffs' Motion For Summary Adjudication having been entered on January 31,  
11 2011, and an Order of Permanent Injunction having been entered on January 21, 2011:

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

13 1. Plaintiffs' second and third causes of action are dismissed without prejudice;

14 2. Judgment is entered in favor of Plaintiffs and against Defendants on Plaintiffs' First  
15 Cause of Action for Declaratory and Injunctive Relief - Due Process Vagueness - Facial, in  
16 accordance with the Order Denying Plaintiffs' Motion for Summary Judgment and Granting in  
17 Part and Denying in Part Plaintiffs' Motion For Summary Adjudication, a true and correct copy of  
18 which is attached hereto as Exhibit "A" and is incorporated herein by reference;

19 3. Defendants the State of California, Kamala D. Harris, in her official capacity as  
20 Attorney General of the State of California, and the California Department of Justice, and each of  
21 their agents, employees, representatives, successors in office, and all persons or entities acting in  
22 concert or in participation with them are permanently prohibited, enjoined, and restrained from  
23 taking any action to implement, enforce, or give effect to the versions of California Penal Code  
24 sections 12060, 12061, and 12318 in effect as of January 21, 2011, the date of this Court's Order  
25 of Permanent Injunction, a true and correct copy of which is attached hereto as Exhibit "B" and is  
26 incorporated herein by reference;

27 4. Plaintiffs shall recover their costs of suit in the amount of \$ \_\_\_\_\_;

28 5. This Court's jurisdiction to determine whether Plaintiffs are entitled to recover

1 attorneys' fees and, if so, in what amount, shall be retained. Entitlement to and the appropriate  
2 amount of attorneys' fees will be determined on noticed motion to be submitted to the Court by  
3 plaintiffs in accordance with California Rule of Court rule 3.1702 and Code of Civil Procedure  
4 section 1021.5.

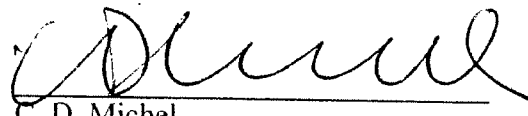
5 Dated: \_\_\_\_\_, 2011

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8 JEFFREY Y. HAMILTON  
Judge of the Superior Court

9  
10 **APPROVED AS TO FORM:**

11 Dated: February 18, 2011

**MICHEL & ASSOCIATES, PC**

12  
13   
14 C. D. Michel  
15 Attorney for Plaintiffs Sheriff Clay Parker,  
16 Herb Bauer Sporting Goods, California Rifle  
17 and Pistol Association Foundation, Able's  
Sporting, Inc., RTG Sporting Collectibles, LLC,  
and Steven Stonecipher

18 Dated: February \_\_, 2011

19 KAMALA D. HARRIS  
Attorney General of California  
20 ZACKERY P. MORAZZINI  
Supervising Deputy Attorney General

21  
22  
23 PETER A. KRAUSE  
Deputy Attorney General  
24 Attorneys for Defendants and Respondents  
25 State of California, Kamala D. Harris, and  
26 the California Department of Justice  
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1 attorneys' fees and, if so, in what amount, shall be retained. Entitlement to and the appropriate  
2 amount of attorneys' fees will be determined on noticed motion to be submitted to the Court by  
3 plaintiffs in accordance with California Rule of Court rule 3.1702 and Code of Civil Procedure  
4 section 1021.5.

5 Dated: \_\_\_\_\_, 2011

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8 JEFFREY Y. HAMILTON  
Judge of the Superior Court

9  
10 **APPROVED AS TO FORM:**

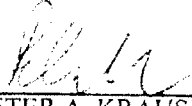
11 Dated: February \_\_, 2011

**MICHEL & ASSOCIATES, PC**

12  
13  
14 C. D. Michel  
15 Attorney for Plaintiffs Sheriff Clay Parker,  
16 Herb Bauer Sporting Goods, California Rifle  
17 and Pistol Association Foundation, Able's  
Sporting, Inc., RTG Sporting Collectibles, LLC,  
and Steven Stonecipher

18 Dated: February <sup>Y</sup>~~11~~ 2011

19 **KAMALA D. HARRIS**  
Attorney General of California  
20 **ZACKERY P. MORAZZINI**  
Supervising Deputy Attorney General

21  
22   
23 **PETER A. KRAUSE**  
24 Deputy Attorney General  
25 Attorneys for Defendants and Respondents  
26 State of California, Kamala D. Harris, and  
27 the California Department of Justice  
28

## **EXHIBIT A**

FILED

JAN 31 2011

FRESNO SUPERIOR COURT

By \_\_\_\_\_ DEPT. 402-DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO  
CENTRAL DIVISION

Sheriff Clay Parker, et al., ) No. 10 CECG 02116  
Plaintiffs, )  
v. ) ORDER DENYING PLAINTIFFS'  
State of California, et al., ) MOTION FOR SUMMARY JUDGMENT  
Defendants. ) AND GRANTING IN PART AND  
ADJUDICATION

A hearing on Plaintiffs Sheriff Clay Parker's, Herb Bauer Sporting Goods, Inc.'s, California Rifle and Pistol Association Foundation's, Able's Sporting, Inc.'s, RTG Sporting Collectibles, LLC's, and Steven Stonecypher's motion for summary judgment, or, in the alternative, for summary adjudication was held in this court on January 18, 2011. Appearances by counsel were noted on the record. After argument by counsel, the Court orally denied PLAINTIFFS' motion for summary judgment, denied Plaintiff Herb Bauer Sporting Goods, Inc.'s motion for summary adjudication of its second cause of action for declaratory and injunctive relief - as applied vagueness challenge, and granted PLAINTIFFS' motion for summary adjudication of their first cause of action for

1 declaratory and injunctive relief - facial vagueness challenge.  
2 The Court now issues the following written decision and rules as  
3 follows:  
4

5 1. PLAINTIFFS Sheriff Clay Parker's, Herb Bauer Sporting  
6 Goods, Inc.'s, California Rifle and Pistol Association  
7 Foundation's, Able's Sporting, Inc.'s, RTG Sporting  
8 Collectibles, LLC's, and Steven Stonecypher's First  
9 Cause of Action for Declaratory and Injunctive Relief -  
10 Facial Vagueness Challenge

11 PLAINTIFFS Sheriff Clay Parker, Herb Bauer Sporting Goods,  
12 Inc., California Rifle and Pistol Association Foundation, Able's  
13 Sporting, Inc., RTG Sporting Collectibles, LLC, and Steven  
14 Stonecypher have filed a motion for summary judgment of their  
15 complaint and summary adjudication of their first cause of action  
16 for declaratory and injunctive relief - due process vagueness -  
17 facial. In PLAINTIFFS' first cause of action, the PLAINTIFFS  
18 allege that an actual controversy has arisen and now exists  
19 between PLAINTIFFS and all DEFENDANTS because the PLAINTIFFS  
20 contend that Penal Code §§ 12060, 12061, and 12318 that regulate  
21 "handgun ammunition" as defined in Penal Code §§ 12060(b) and  
22 12323(a) are void for vagueness on their face and the DEFENDANTS  
23 contend that the statutes are not unconstitutionally vague and  
24 that they can be constitutionally enforced. In order to establish  
25 a cause of action for declaratory relief, a plaintiff must prove:  
26 (1) a proper subject of declaratory relief within the scope of  
27 Code of Civil Procedure § 1060, and (2) an actual controversy  
28 involving justiciable questions relating to the rights or  
obligations of a party. (See 5 Witkin, California Procedure (5<sup>th</sup>  
ed.) § 853.) Injunctive relief is a type of damage or relief and  
Order - Parker, et al. v. State of California, et al. (10CECG02116)

1 is a derivative cause of action, not a stand-alone cause of  
2 action.

3 The Court determines the issue of whether or not a statute is  
4 facially vague as a matter of law. (*People v. Cole* (2006) 38 Cal.  
5 4th 964, 988 ["Ultimately, the interpretation of a statute is a  
6 question of law for the courts to decide."].)

7 Penal Code 12060(b) states:

8 "Handgun ammunition" means handgun ammunition as defined  
9 in subdivision (a) of Section 12323, but excluding  
10 ammunition designed and intended to be used in an  
11 "antique firearm" as defined in Section 921(a)(16) of  
12 Title 18 of the United States Code. Handgun ammunition  
13 does not include blanks.

14 Penal Code § 12323(a) provides:

15 "Handgun ammunition" means ammunition principally for  
16 use in pistols, revolvers, and other firearms capable of  
17 being concealed upon the person, as defined in  
18 subdivision (a) of Section 12001, notwithstanding that  
19 the ammunition may also be used in some rifles.

20 Penal Code § 12001(a) states:

- 21 (a) (1) As used in this title, the terms "pistol,"  
22 "revolver", and "firearm capable of being concealed  
23 upon the person" shall apply to and include any device  
24 designed to be used as a weapon, from which is expelled  
25 a projectile by the force of any explosion, or other  
26 form of combustion, and that has a barrel less than 16  
27 inches in length. These terms also include any device  
28 that has a barrel 16 inches or more in length which is  
designed to be interchanged with a barrel less than 16  
inches in length.  
(2) As used in this title, the term "handgun" means any  
"pistol," "revolver," or "firearm capable of being  
concealed upon the person."

29 In their first cause of action, the PLAINTIFFS contend that  
30 Penal Code §§ 12060, 12061, and 12318 that regulate "handgun  
31 ammunition" as defined in Penal Code §§ 12060(b) and 12323(a) are  
32 facially void for vagueness because the statutes fail to provide

Order - Parker, et al. v. State of California, et al. (10CECG02116)

1 notice to persons of ordinary intelligence regarding which  
2 calibers of ammunition are "handgun ammunition" and thus subject  
3 to enforcement under Sections 12060, 12061, and 12318 and because  
4 the statutes encourage or invite arbitrary and discriminatory  
5 enforcement of the law. Specifically, the PLAINTIFFS contend that  
6 the entire statutory scheme envisioned by Sections 12060, 12061,  
7 and 12318 fail for vagueness because the definition of "handgun  
8 ammunition" -- the subject matter regulated by the statutes - is  
9 itself facially impermissibly vague. After careful consideration,  
10 the Court finds that the definition of "handgun ammunition" as  
11 established in Penal Code §§ 12060(b) and 12318(b)(2) is  
12 unconstitutionally vague and, because the definition of "handgun  
13 ammunition" is vague, Penal Code §§ 12060, 12061, and 12318, which  
14 define and regulate sales and transfers of "handgun ammunition"  
15 are also impermissibly vague.

16 Consequently, the Court grants the PLAINTIFFS' motion for  
17 summary adjudication of their first cause of action.

18 "The constitutional interest implicated in questions of  
19 statutory vagueness is that no person be deprived of 'life,  
20 liberty, or property without due process of law,' as assured by  
21 both the federal Constitution (U.S. Const., Amends. V, XIV) and  
22 the California Constitution (Cal. Const., art. I, § 7)."  
23 (*Williams v. Garcetti* (1993) 5 Cal. 4th 561, 567.) While Penal  
24 Code § 12060 is simply a definitional statute, Penal Code §§ 12061  
25 and 12318 are criminal statutes. More specifically, Section  
26 12061(c)(1) provides that a violation of Section 12061(a)(3),  
27 (a)(4), (a)(6), and (a)(7) is a misdemeanor and Section 12318(a)  
28 provides that a violation of Section 12318 is a misdemeanor.



1 "Under both Constitutions, due process of law in this context  
2 requires two elements: a criminal statute must "be definite enough  
3 to provide (1) a standard of conduct for those whose activities  
4 are proscribed and (2) a standard for police enforcement and for  
5 ascertainment of guilt." (*Williams v. Garcetti* (1993) 5 Cal. 4th  
6 561, 567 [quoting *Walker v. Superior Court* (1988) 47 Cal. 3d 112,  
7 141].)

8 Although the doctrine focuses both on actual notice to  
9 citizens and arbitrary enforcement, [the U.S. Supreme  
10 Court] ha[s] recognized recently that the more important  
11 aspect of the vagueness doctrine "is not actual notice,  
12 but the other principal element of the doctrine - the  
13 requirement that a legislature establish minimal  
14 guidelines to govern law enforcement." [Citation.]  
15 Where the legislature fails to provide such minimal  
16 guidelines, a criminal statute may permit "a  
17 standardless sweep [that] allows policemen, prosecutors,  
18 and juries to pursue their personal predilections."  
19 (*Kolender v. Lawson* (1983) 461 U.S. 352, 357-58 [quoting *Smith v.*  
20 *Goguen* (1974) 415 U.S. 566, 574-75].)

21 "A facial challenge to the constitutional validity of a  
22 statute or ordinance considers only the text of the measure  
23 itself, not its application to the particular circumstances of an  
24 individual." (*Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069,  
25 1084.)

26 The California Supreme Court has not articulated a  
27 single test for determining the propriety of a facial  
28 challenge. [Citation.] Under the strictest test, the  
statute must be upheld unless the party establishes the  
statute "inevitably pose[s] a present total and fatal  
conflict with applicable constitutional prohibitions."  
[Citation.] Under the more lenient standard, a party  
must establish the statute conflicts with constitutional  
principles "in the generality or great majority of  
cases." [Citation.] Under either test, the plaintiff  
has a heavy burden to show the statute is  
unconstitutional in all or most cases, and "cannot  
prevail by suggesting that in some future hypothetical

1 situation constitutional problems may possibly arise as  
2 to the particular application of the statute."  
3 (*Coffman Specialties, Inc. v. Department of Transportation* (2009)  
4 176 Cal. App. 4th 1135, 1145.)

5 The Court evaluates the statute according to the following  
6 standards:

7 Vague laws offend several important values. First,  
8 because we assume that man is free to steer between  
9 lawful and unlawful conduct, we insist that laws give  
10 the person of ordinary intelligence a reasonable  
11 opportunity to know what is prohibited, so that he may  
12 act accordingly. Vague laws may trap the innocent by  
13 not providing fair warning. Second, if arbitrary and  
14 discriminatory enforcement is to be prevented, laws  
15 must provide explicit standards for those who apply  
16 them. A vague law impermissibly delegates basic policy  
17 matters to policemen, judges, and juries for resolution  
18 on an *ad hoc* and subjective basis, with the attendant  
19 dangers of arbitrary and discriminatory application.  
20 (*Williams v. Garcetti* (1993) 5 Cal. 4th 561, 567-68 [quoting  
21 *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-09].)

22 The starting point of our analysis is "the strong  
23 presumption that legislative enactments 'must be upheld  
24 unless their unconstitutionality clearly, positively,  
25 and unmistakably appears. [Citations.] A statute  
26 should be sufficiently certain so that a person may know  
27 what is prohibited thereby and what may be done without  
28 violating its provisions, but it cannot be held void for  
uncertainty if any reasonable and practical construction  
can be given to its language.'"  
(*Williams v. Garcetti* (1993) 5 Cal. 4th 561, 568 [quoting *Walker*  
*v. Superior Court* (1988) 47 Cal. 3d 112, 143.]

29 **Statutes Fail to Provide Adequate Notice or Fair Warning.**

30 First, the Court must decide whether or not Penal Code §§  
31 12060, 12061, and 12318 are sufficiently definite to provide  
32 ordinary people and ammunition vendors adequate notice or fair  
33 warning of the conduct proscribed. In other words, would a person  
34 or ammunition vendor of ordinary intelligence understand what  
35 ammunition falls into the definition of "handgun ammunition" -

1 ammunition "principally for use in" pistols, revolvers, and other  
2 firearms with barrels less than 16 inches in length that cannot be  
3 interchanged with a barrel 16 inches in length or more,  
4 notwithstanding that the ammunition may also be used in some  
5 rifles, and excluding ammunition designed and intended to be used  
6 in an "antique firearm" and blanks - or does not fall within the  
7 provided definition of "handgun ammunition?"

8 In considering whether a legislative proscription is  
9 sufficiently clear to satisfy the requirements of fair  
10 notice, "we look first to the language of the statute,  
11 then to its legislative history, and finally to  
12 California decisions construing the statutory language."  
13 [Citation.] We thus require citizens to apprise  
14 themselves not only of statutory language but also of  
15 legislative history, subsequent judicial construction,  
16 and underlying legislative purposes [Citation].  
17 (*Walker v. Superior Court* (1988) 47 Cal. 3d 112, 143.)

18 The Court finds that the definition of "handgun ammunition"  
19 established in Penal Code §§ 12060(b) and 12318(b)(2) fails to  
20 provide adequate notice of the conduct proscribed to the people or  
21 handgun ammunition vendors of ordinary intelligence to whom the  
22 statutory scheme applies. Initially, the Court determines that  
23 there are no state or federal cases that construe or interpret the  
24 definition of "handgun ammunition" established in Penal Code §§  
25 12060(b) and 12318(b)(2).

26 Next, the Court looks to the legislative context, the  
27 legislative purpose, and the legislative history of Assembly Bill  
28 962, the bill that enacted Sections 12060, 12061, and 12318. The  
Legislature enacted Sections 12060, 12061, and 12318 as part of  
the "Anti-Gang Neighborhood Protection Act of 2009." (Stats.  
2009, ch. 628, § 1.) There is no legislative purpose clause or  
preamble in the "Anti-Gang Neighborhood Protection Act of 2009."

1 Additionally, there is no discussion in the legislative history of  
2 Assembly Bill 962 of exactly what types of ammunition, by caliber  
3 or by cartridge, were supposed to be included in the definition of  
4 "handgun ammunition." The Court notes that this lack of  
5 discussion is probably because most of the definition of "handgun  
6 ammunition" was taken from another statute already in effect  
7 (Penal Code § 12323(a)). However, due to the lack of a  
8 legislative purpose clause and lack of substantive discussions in  
9 the legislative history, Assembly Bill 926's legislative history  
10 does not help to clarify what ammunition the Legislature intended  
11 to fall into the definition of "handgun ammunition."

12 Finally, the Court considers the text of the definition of  
13 "handgun ammunition" itself and determines that the text of the  
14 definition of "handgun ammunition" established in Penal Code §§  
15 12060(b) and 12318(b)(2) fails to provide reasonable people or  
16 ammunition vendors with an objective standard that individuals or  
17 entities can use in order to determine what particular calibers or  
18 cartridges of ammunition are "principally for use in pistols,  
19 revolvers, and other firearms [with barrels of less than 16  
20 inches, which are not interchangeable with barrels of 16 inches or  
21 more]," notwithstanding that the ammunition may also be used in  
22 rifles, and are thus regulated by Sections 12060, 12061, and  
23 12318. In this case, it is not the definitions of the individual  
24 words themselves that cause the confusion. In fact, "pistol,"  
25 "revolver," and "firearm" all have clear, ordinary, and common  
26 meanings. An average person can easily measure a barrel and  
27 determine if the barrel is less than 16 inches or not or, even if  
28 the barrel is less than 16 inches in length, if the barrel is

1 interchangeable with a barrel that is 16 inches in length or more.  
2 In addition, the definition of "principally" has a clear,  
3 ordinary, and common meaning -- "chiefly," "mainly," or  
4 "primarily." (Dictionary.com Unabridged [based on Collins English  
5 Dictionary (10<sup>th</sup> Ed., 2009)]  
6 <<http://dictionary.reference.com/browse/principally>> [as of  
7 January 28, 2011.] "Primarily" is defined as "essentially" or  
8 "mostly", "chiefly" is defined as "essentially" or "mostly," and  
9 "mainly" is defined as "for the most part" or "to the greatest  
10 extent." (Dictionary.com Unabridged [based on Collins English  
11 Dictionary (10<sup>th</sup> Ed., 2009)]  
12 <<http://dictionary.reference.com/browse/primarily>>,  
13 <<http://dictionary.reference.com/browse/chiefly>>, and  
14 <<http://dictionary.reference.com/browse/mainly>> [as of January 28,  
15 2011.] Based on these definitions, it appears relatively clear  
16 that "handgun ammunition" is ammunition that is for the most part  
17 or to the greatest extent used in pistols, revolvers, and firearms  
18 with a barrel length of less than 16 inches, even though the  
19 ammunition may also be used in rifles. In different terms,  
20 "handgun ammunition" is ammunition used in pistols, revolver, and  
21 firearms with a barrel length of less than 16 inches more than  
22 fifty percent of the time.

23 However, while the meanings of the individual words of the  
24 definition are clear, the text of the "handgun ammunition"  
25 definition provides no objective way or method for a person or a  
26 handgun ammunition vendor to determine if a particular ammunition  
27 caliber or cartridge is used more often, or used more than fifty  
28 percent of the time, or used for the most part in pistols,

1 revolvers, or firearms with barrels of less than 16 inches, even  
2 though the same ammunition caliber or cartridge may also be used  
3 in rifles. Sections 12060(b) and 12318(b)(2) do not state that  
4 particular calibers and/or cartridges of ammunition are "handgun  
5 ammunition" or provide that, in order to determine what "handgun  
6 ammunition" is, people and handgun ammunition vendors should look  
7 at regulations or a guide propounded by a government agency for a  
8 list of particular calibers and/or cartridges of ammunition that  
9 qualify. (See *Harrott v. County of Kings* (2001) 25 Cal. 4th 1138,  
10 1152-53 [the California Supreme Court found that vagueness issues  
11 in the Roberti-Roos Assault Weapons Control Act of 1989 did not  
12 reach impermissible levels because ordinary citizens did not have  
13 to look at the language of the statute, but only had to consider  
14 the California Code of Regulations and an Identification Guide  
15 propounded by the Attorney General's office - objective uniform  
16 standards - to determine if an weapon was classified as an assault  
17 weapon].) Here, Penal Code §§ 12060, 12061, and 12318 do not  
18 permit any law enforcement agency to establish regulations or an  
19 identification guide to more narrowly define what ammunition is  
20 encompassed in the "handgun ammunition" definition.

21 The Court finds that the statutory language of the "handgun  
22 ammunition" definition encourages individual people and handgun  
23 ammunition vendors to consider their own experience, conduct,  
24 and/or actions in using or selling ammunition calibers and  
25 cartridges in handguns or rifles to determine if a particular  
26 ammunition caliber or cartridge is "handgun ammunition." One  
27 person might use one caliber of ammunition solely in rifles, while  
28 another person might only use that same caliber of ammunition in

1 handguns. If a person (Law Enforcement or citizen) or ammunition  
2 vendor is forced to consider and rely upon their own subjective  
3 experiences in order to determine what ammunition is "handgun  
4 ammunition," each person or ammunition vendor is likely to  
5 conceive of a definition of "handgun ammunition" that is in part,  
6 or to a great extent, different from any other person's or  
7 ammunition vendor's definition of "handgun ammunition."

8 Although DEFENDANTS assert that the ammunition vendor  
9 "profession" might have more specialized knowledge about  
10 ammunition use in handguns or rifles and that the Challenged  
11 Statutes only apply to handgun ammunition vendors, Penal Code §  
12 12318's application is not limited to handgun ammunition vendors,  
13 but instead applies to all people or entities engaged in the  
14 "delivery or transfer of ownership of handgun ammunition" and all  
15 people or entities cannot be charged with any specialized  
16 knowledge of ammunition use in handguns or rifles. Therefore, the  
17 Court finds that the "handgun ammunition" definition established  
18 in Sections 12060(b) and 12318(b)(2) does not provide people,  
19 handgun ammunition vendors, or other entities with adequate notice  
20 or fair warning of what ammunition is "handgun ammunition" so that  
21 the people, handgun ammunition vendors, and other entities can  
22 have a reasonable opportunity to determine what conduct is  
23 prohibited by Sections 12060, 12061 and 12318.

24 Consequently, Penal Code §§ 12060, 12061 and 12318 fail to  
25 meet the first requirement for a constitutionally valid criminal  
26 statute -- that the statute be definite enough so that ordinary  
27 people can understand what conduct is prohibited. (*Kolender v.*  
28 *Lawson* (1983) 461 U.S. 352, 357.)

1       Standard for Enforcement is Non-Existent.

2       Second, the Court must decide whether or not Penal Code §§  
3       12060, 12061, and 12318 are sufficiently definite to provide "a  
4       standard for police enforcement and for ascertainment of guilt."  
5       (*Williams v. Garcetti* (1993) 5 Cal. 4th 561, 567 [quoting *Walker*  
6       *v. Superior Court* (1988) 47 Cal. 3d 112, 141].) In other words,  
7       is the definition of "handgun ammunition" in Penal Code §§  
8       12060(b) and 12318(b)(2) sufficiently definite enough to provide a  
9       standard or guidelines for the police and court to determine if a  
10      person, handgun ammunition vendor, or other entity has violated  
11      Sections 12060, 12061, and 12318 in order to prevent arbitrary and  
12      discriminatory enforcement?

13      The Court finds that the definition of "handgun ammunition"  
14      established in Penal Code §§ 12060(b) and 12318(b)(2) contains no  
15      objective standard or method for determining what ammunition is  
16      encompassed by the definition of "handgun ammunition" leaving the  
17      law enforcement officers with "virtually complete discretion" to  
18      determine whether or not a particular caliber and/or cartridge of  
19      ammunition is "handgun ammunition." (*Kolender v. Lawson* (1983)  
20      461 U.S. 352, 357.) Specifically, the full discretion accorded to  
21      the enforcing law enforcement officer to determine if the  
22      ammunition at issue is "handgun ammunition" or not "necessarily  
23      '[entrusts] lawmaking to the moment-to-moment judgment of the  
24      policeman on his beat." (*Kolender*, 461 U.S. at 360.) The  
25      Legislature has simply left it open to the personal judgment call  
26      and subjective understanding of each individual law enforcement  
27      officer to determine if a particular caliber and/or cartridge of  
28      ammunition is "handgun ammunition" under the definition in



1 Sections 12060(b) and 12318(b)(2) and to subjectively apply that  
2 subjective definition of "handgun ammunition" to each issue of an  
3 ammunition sale or transfer that comes to the attention of that  
4 law enforcement officer.

5 Take, for example, two different law enforcement officers,  
6 one a county sheriff and the other a city police officer,  
7 separately conducting investigations into .32 caliber and .44  
8 caliber ammunition sales to people who gave the ammunition to a  
9 felon, which is a misdemeanor under Penal Code § 12317(a). One  
10 officer goes to an ammunition vendor where one of the ammunition  
11 sales occurred and requests to see the records of all "handgun  
12 ammunition" sales, which the vendor is required to keep pursuant  
13 to Section 12061(a)(3). The officer looks in the vendor's records  
14 and sees that there is a record of a "handgun ammunition" sale to  
15 the suspected individual for .32 caliber ammunition, but not for  
16 .44 caliber ammunition. Now, the officer knows that the  
17 individual under investigation purchased .44 caliber ammunition in  
18 the same transaction as the .32 caliber ammunition sale, but since  
19 the law enforcement officer does not believe that .44 caliber  
20 ammunition is ammunition "principally for use" in pistols,  
21 revolvers, and other firearms with barrels shorter than 16 inches  
22 or "handgun ammunition", the law enforcement officer does not  
23 arrest the vendor for committing misdemeanor violations of Penal  
24 Code § 12061(a)(3), which requires an ammunition vendor to keep  
25 records of all sales and transfers of "handgun ammunition" and  
26 Section 12061(a)(4), which provides that a vendor "shall not  
27 knowingly ... fail to make a required entry in" the "handgun  
28 ammunition" records required by Section 12061(a)(3). Next, during

1 the course of his separate but parallel investigation, the other  
2 law enforcement officer goes to the same ammunition vendor, also  
3 requests to see the records, and notices in the records that there  
4 is a record of a "handgun ammunition" sale to his suspect for .32  
5 caliber ammunition, but not for .44 caliber ammunition. Again,  
6 this second officer knows that his suspect purchased .44 caliber  
7 ammunition in the same transaction as the .32 caliber ammunition  
8 sale, but this time, since the second law enforcement officer  
9 believes that .44 caliber ammunition is ammunition "principally  
10 for use" in pistols, revolvers, and other firearms with barrels  
11 shorter than 16 inches or "handgun ammunition," the law  
12 enforcement officer arrests the ammunition vendor for misdemeanor  
13 violations of Penal Code § 12061(a)(3) and (a)(4).

14 In another twist, the two officers could be investigating  
15 improper sales and transfers of specific .44 caliber cartridge  
16 ammunition that an ammunition vendor does not keep records of  
17 because the vendor does not believe that the particular ammunition  
18 cartridge qualifies as "handgun ammunition." However, while one  
19 officer agrees with the vendor that the specific .44 caliber  
20 cartridge ammunition is not "handgun ammunition," the vendor is  
21 arrested by the other officer for misdemeanor violations of  
22 Section 12061(a)(3) and (a)(4) because the other officer disagrees  
23 with the vendor and believes that the specific .44 caliber  
24 cartridge ammunition is ammunition "principally for use" in a  
25 handgun. Because the language of the definition of "handgun  
26 ammunition" fundamentally requires each law enforcement officer to  
27 make a subjective determination as to whether or not the  
28 ammunition at issue is ammunition "principally for use" in a

1 handgun and then subjectively apply their own definition to the  
2 situation before them, the definition of "handgun ammunition"  
3 established by Section 12060(b) and 12318(b)(2) gives unlimited  
4 discretion to each individual law enforcement officer to determine  
5 arbitrarily if the ammunition at issue is "handgun ammunition" and  
6 to apply their particular classification of "handgun ammunition"  
7 or not to the specific issue before them.

8       The DEFENDANTS contend that there is no evidence that the  
9 DEFENDANTS will enforce the challenged definition arbitrarily and  
10 that, before enforcing the statutes, law enforcement will need  
11 probable cause to show that the ammunition at issue is used  
12 principally in handguns within the terms of the definition of  
13 "handgun ammunition." However, the DEFENDANTS appear to be  
14 misunderstanding the actual issue. This Court is not finding that  
15 the definition of "handgun ammunition" creates unconstitutional  
16 discretion in the law enforcement personnel to arrest people for  
17 violations of Sections 12061 and 12318 without probable cause that  
18 the ammunition at issue is "handgun ammunition" as defined by  
19 Sections 12060(b) and 12318(b)(2). Rather, the issue is that the  
20 actual definition of "handgun ammunition" is so vague that it does  
21 not establish an objective standard or method by which individual  
22 law enforcement officers can determine what ammunition is properly  
23 "handgun ammunition" as defined by Sections 12060(b) and  
24 12318(b)(2).

25       The List.

26       DEFENDANTS' argue that the "list" of calibers and cartridges  
27 that their firearms and ammunition expert, Blake Graham, compiled  
28 is a list of calibers and cartridges that DEFENDANTS' consider to

1 be "handgun ammunition" within the definition established in  
2 Sections 12060(b) and 12318(b)(2); the Court determines that this  
3 "list" is not any limitation on the "vast amount of discretion"  
4 granted to law enforcement in the enforcement of Sections 12061  
5 and 12318. (See *City of Chicago v. Morales* (1999) 527 U.S. 41, 63  
6 [holding that a general order of the Chicago police department of  
7 internal rules limiting their enforcement of the statute at issue  
8 in that case to certain designated areas of the city was not a  
9 sufficient limitation on the vast amount of discretion granted to  
10 the police in their enforcement of the challenged statute].)  
11 Here, this "list" of the California Department of Justice is not a  
12 proper administrative regulation that limits the vast amount of  
13 discretion that law enforcement officers have to determine and  
14 enforce their subjective definition of "handgun ammunition,"  
15 because nothing in Assembly Bill 962, which includes Sections  
16 12060, 12061, and 12318, grants the California Department of  
17 Justice the authority to promulgate regulations limiting the  
18 discretion of law enforcement officers when it comes to what  
19 ammunition can be properly defined as "handgun ammunition."  
20 Also, even if this "list" is evidence that the Department of  
21 Justice is internally limiting the discretion of the law  
22 enforcement officers that work for them, the Department of Justice  
23 is not the only law enforcement agency in California that will be  
24 enforcing Sections 12061 and 12318. In particular, Section  
25 12061(a)(5) states that "handgun ammunition" records of ammunition  
26 vendors are subject to inspection by any peace officer employed by  
27 not only the Department of Justice, but also peace officers  
28 employed by a sheriff, a city police department, or district

1 attorney and Section 12061(a)(7) and (c)(1) makes it a misdemeanor  
2 for an ammunition vendor to refuse to permit a person authorized  
3 under Section 12061(a)(5) to examine "handgun ammunition" records.  
4 Therefore, more law enforcement agencies other than the Department  
5 of Justice are entitled to enforce Sections 12061 and 12318 and  
6 any internal policy limiting the discretion of Department of  
7 Justice's peace officers does not apply to any other type of law  
8 enforcement officer.

9 Due to the fact that the definition of "handgun ammunition"  
10 established in Sections 12060(b) and 12318(b)(2) improperly fails  
11 to contain any objective standard for determining what ammunition  
12 is included in the definition of "handgun ammunition" and  
13 encourages law enforcement officers to engage in the subjective  
14 understanding and application of the "handgun ammunition"  
15 definition when the law enforcement officers enforce Sections  
16 12060, 12061 and 12318, the Court finds that the definition of  
17 "handgun ammunition" in Sections 12060(b) and 12318(b)(2)  
18 "furnishes a convenient tool for 'harsh and discriminatory  
19 enforcement by local prosecuting officers, against particular  
20 groups deems to merit their displeasure,' [Citation], and 'confers  
21 on police a virtually unrestrained power to arrest and charge  
22 persons with a violation.'" (*Kolender v. Lawson* (1983) 461 U.S.  
23 352, 360.) Consequently, Penal Code §§ 12060, 12061, and 12318  
24 fail to meet the second requirement for a constitutionally valid  
25 criminal statute - that the statute's definition of the criminal  
26 offense be definite enough to not encourage arbitrary and  
27 discriminatory enforcement. (*Kolender v. Lawson* (1983) 461 U.S.  
28 352, 357.)

1        Since Penal Code §§ 12060, 12061, and 12318 fail to "be  
2 definite enough to provide (1) a standard of conduct for those  
3 whose activities are proscribed and (2) a standard for police  
4 enforcement and for ascertainment of guilt[,] the Court finds  
5 that Penal Code §§ 12060, 12061, and 12318 are unconstitutionally  
6 vague on their face. (*Williams v. Garcetti* (1993) 5 Cal. 4th 561,  
7 567 [quoting *Walker v. Superior Court* (1988) 47 Cal. 3d 112,  
8 141].) Therefore, the Court grants PLAINTIFFS' motion for summary  
9 adjudication of their first cause of action for declaratory and  
10 injunctive relief - due process vagueness - facial.

11  
12        2.    PLAINTIFF Herb Bauer Sporting Goods, Inc.'s Second Cause  
13            of Action for Declaratory and Injunctive Relief - As  
14            Applied Vagueness Challenge

15        PLAINTIFF Herb Bauer Sporting Goods, Inc. has filed a motion  
16 for summary judgment of the complaint and summary adjudication of  
17 its second cause of action for declaratory and injunctive relief -  
18 due process vagueness - as applied. In PLAINTIFF's second cause  
19 of action, the PLAINTIFF alleges that an actual controversy has  
20 arisen and now exists between PLAINTIFF and all DEFENDANTS because  
21 the PLAINTIFF contends that Penal Code § 12061(a)(1) and (a)(2)  
22 are unconstitutional in that they are impermissibly vague and the  
23 DEFENDANTS contend that the statutes are not impermissibly vague  
24 and can be constitutionally enforced. In order to establish a  
25 cause of action for declaratory relief, a PLAINTIFF must prove:  
26 (1) a proper subject of declaratory relief within the scope of  
27 Code of Civil Procedure § 1060, and (2) an actual controversy  
28 involving justiciable questions relating to the rights or

1 obligations of a party. (See 5 Witkin, California Procedure  
2 (4<sup>th</sup> ed.) § 809.) Injunctive relief is a type of damage or relief  
3 and is a derivative cause of action, not a stand-alone cause of  
4 action.

5 Penal Code § 12061(a)(1) and (a)(2) provide that:

6 (a) A vendor shall comply with all of the following  
7 conditions, requirements and prohibitions:

- 8 1. A vendor shall not permit any employee who the  
9 vendor knows or reasonably should know is a  
10 person described in Section 12021 or 12021.1  
11 of this code or Section 8100 or 8103 of the  
12 Welfare and Institutions Code to handle, sell,  
13 or deliver handgun ammunition in the course  
14 and scope of his or her employment.
- 15 2. A vendor shall not sell or otherwise transfer  
16 ownership of, offer for sale or otherwise  
17 offer to transfer ownership of, or display for  
18 sale or display for transfer of ownership of  
19 any handgun ammunition in a manner that allows  
20 that ammunition to be accessible to a  
21 purchaser or transferee without the assistance  
22 of the vendor or employee thereof.

23 Penal Code 12060(b) provides the definition of "handgun  
24 ammunition" as used in Section 12061(a)(1) and (a)(2). "Handgun  
25 ammunition" is defined as ammunition "principally for use in"  
26 pistols, revolvers, and other firearms with barrels less than 16  
27 inches in length that cannot be interchanged with a barrel 16  
28 inches in length or more, notwithstanding that the ammunition may  
also be used in some rifles, and excluding ammunition designed and  
intended to be used in an "antique firearm" and blanks.

In the second cause of action, PLAINTIFF makes an as-applied  
vagueness challenge to Penal Code § 12061(a)(1) and (a)(2)  
contending that, as applied to PLAINTIFF, Sections 12061(a)(1)  
and (a)(2) fail to provide notice to PLAINTIFF which calibers of  
ammunition are "handgun ammunition" as defined in Penal Code

1 section 12060(b) and the vague definition encourages arbitrary and  
2 discriminatory enforcement of the laws against PLAINTIFF in  
3 violation of the Due Process Clause of the Fourteenth Amendment.  
4 However, the Court denies the PLAINTIFFs' motion for summary  
5 judgment and the PLAINTIFF's motion for summary adjudication of  
6 its second cause of action because the PLAINTIFF has failed to  
7 establish the second element of a cause of action for declaratory  
8 relief - an actual controversy involving justiciable questions  
9 relating to the rights and obligations of a party.

10 An as applied challenge may seek (1) relief from a  
11 specific application of a facially valid statute or  
12 ordinance to an individual or class of individuals who  
13 are under allegedly impermissible present restraint or  
14 disability as a result of the manner or circumstances in  
15 which the statute or ordinance has been applied, or (2)  
16 an injunction against future application of the statute  
17 or ordinance in the allegedly impermissible manner it is  
18 shown to have been applied in the past. It contemplates  
19 analysis of the facts of a particular case or cases to  
20 determine the circumstances in which the statute or  
21 ordinance has been applied and to consider whether in  
22 those particular circumstances the application derived  
23 the individual to whom it was applied of a protected  
24 right.

19 (*Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069, 1084.)

20 However, the PLAINTIFF's only facts regarding any possible  
21 application of Section 12061(a)(1) and (a)(2) do not demonstrate  
22 that PLAINTIFF is seeking relief from the specific application of  
23 the statute against PLAINTIFF, which caused PLAINTIFF to be under  
24 an impermissible present restraint or disability due to the  
25 statute's application or that PLAINTIFF is seeking an injunction  
26 against future application of the statute in the allegedly  
27 impermissible manner in which the statute was applied in the past.

28 PLAINTIFF's Undisputed Material Fact No. 238 establishes  
that, on December 30, 2009, the California Department of Justice  
Order - Parker, et al. v. State of California, et al. (10CECG02116)

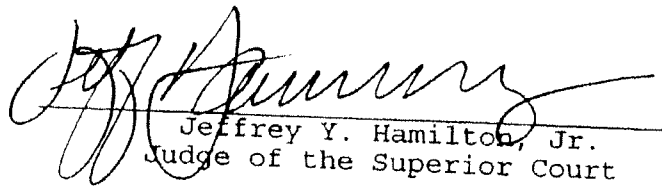


1 published an "Information Bulletin" providing a brief overview of  
2 Assembly Bill 962, which included Penal Code § 12061(a)(1) and  
3 (a)(2). PLAINTIFF's Undisputed Material Fact No. 239 proves that  
4 Defendant California Department of Justice provided notice to all  
5 California firearm dealers, including PLAINTIFF, that Penal Code §  
6 12061(a)(1) and (a)(2) took effect on, and has been in force  
7 since, January 1, 2010, effectively threatening all California  
8 firearm dealers with enforcement of Section 12061(a)(1) and  
9 (a)(2). (The Court assumes *arguendo* that providing notice of a  
10 law is effectively threatening enforcement of that law.) However,  
11 the PLAINTIFF has not provided any undisputed material facts  
12 demonstrating that the California Department of Justice, or any  
13 other Defendant, has actually ever enforced or applied Section  
14 12061(a)(1) and/or (a)(2) against PLAINTIFF or anyone else in the  
15 past or at the present time. Since an as applied vagueness  
16 challenge in this case requires the Court to consider the facts of  
17 how the statute has been applied against the PLAINTIFF or someone  
18 else and the PLAINTIFF has failed to provide any facts  
19 demonstrating that Section 12061(a)(1) and/or (a)(2) has ever been  
20 applied to anyone, the PLAINTIFF has not established that there is  
21 an active controversy between PLAINTIFF and DEFENDANTS as to  
22 whether or not Section 12061(a)(1) and (a)(2) are impermissibly  
23 vague as applied to PLAINTIFF.


24 Therefore, the PLAINTIFF has failed to establish each element  
25 of a cause of action for declaratory relief. Consequently, the  
26 burden never shifts to the DEFENDANTS to establish that a triable  
27 issue of material fact exists. Accordingly, the Court denies the  
28 PLAINTIFFS' motion for summary judgment and PLAINTIFF Herb Bauer

1 Sporting Goods, Inc.'s motion for summary adjudication of its  
2 second cause of action for declaratory and injunctive relief - due  
3 process vagueness - as applied.

4  
5 DATED this 31<sup>st</sup> day of January, 2011.

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7   
8 Jeffrey Y. Hamilton, Jr.  
9 Judge of the Superior Court

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<b>SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO</b> Civil Department - Non-Limited		Entered by: 
TITLE OF CASE: <b>Sherrif Clay Parker vs. State of California</b>		
<b>LAW AND MOTION MINUTE ORDER</b>		Case Number: <b>10CECG02116 JH</b>

Hearing Date: JANUARY 31, 2011

Department: 402

Court Clerk: M.Santana

Hearing Type: **From Chambers**

Judge/Temporary Judge: **Jeff Hamilton**

Reporter/Tape: Not Reported

Appearing Parties:

Plaintiff: **Not Present**

Defendant: **Not Present**

Counsel:

Counsel:

☐ Off Calendar

☐ Continued to ☐ Set for \_\_\_\_\_ at \_\_\_\_\_ Dept. \_\_\_\_\_ for \_\_\_\_\_

☐ Submitted on points and authorities with/without argument. ☐ Matter is argued and submitted.

☐ Upon filing of points and authorities.

☐ Motion is granted ☐ in part and denied in part. ☐ Motion is denied ☐ with/without prejudice.

☐ Taken under advisement

☐ Demurrer ☐ overruled ☐ sustained with \_\_\_\_\_ days to ☐ answer ☐ amend

☐ Tentative ruling becomes the order of the court. No further order is necessary.

☐ Pursuant to CRC 391(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

☐ Service by the clerk will constitute notice of the order.

☐ Time for amendment of the complaint runs from the date the clerk serves the minute order.

☐ Judgment debtor \_\_\_\_\_ sworn and examined.

☐ Judgment debtor \_\_\_\_\_ failed to appear.  
 Bench warrant issued in the amount of \$ \_\_\_\_\_

**Judgment:**

☐ Money damages ☐ Default ☐ Other \_\_\_\_\_ entered in the amount of:  
 Principal \$ \_\_\_\_\_ Interest \$ \_\_\_\_\_ Costs \$ \_\_\_\_\_ Attorney fees \$ \_\_\_\_\_ Total \$ \_\_\_\_\_  
☐ Claim of exemption ☐ granted ☐ denied. Court orders withholdings modified to \$ \_\_\_\_\_ per \_\_\_\_\_

**Further, court orders:**

☐ Monies held by levying officer to be ☐ released to judgment creditor. ☐ returned to judgment debtor.  
☐ \$ \_\_\_\_\_ to be released to judgment creditor and balance returned to judgment debtor.  
☐ Levying Officer, County of \_\_\_\_\_, notified. ☐ Writ to issue  
☐ Notice to be filed within 15 days. ☐ Restitution of Premises  
☒ Other: See attached copy of Order Denying Plaintiffs' Motion for Summary Judgment and Granting in Part and Denying in Part Plaintiffs' Motion for Summary Adjudication

FILED

JAN 31 2011

FRESNO SUPERIOR COURT

By \_\_\_\_\_ DEPT. 402 - DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO  
CENTRAL DIVISION

Sheriff Clay Parker, et al., ) No. 10 CECG 02116  
Plaintiffs, )  
v. ) ORDER DENYING PLAINTIFFS'  
State of California, et al., ) MOTION FOR SUMMARY JUDGMENT  
Defendants. ) AND GRANTING IN PART AND  
ADJUDICATION  
DENYING IN PART PLAINTIFFS'  
MOTION FOR SUMMARY

A hearing on Plaintiffs Sheriff Clay Parker's, Herb Bauer Sporting Goods, Inc.'s, California Rifle and Pistol Association Foundation's, Able's Sporting, Inc.'s, RTG Sporting Collectibles, LLC's, and Steven Stonecypher's motion for summary judgment, or, in the alternative, for summary adjudication was held in this court on January 18, 2011. Appearances by counsel were noted on the record. After argument by counsel, the Court orally denied PLAINTIFFS' motion for summary judgment, denied Plaintiff Herb Bauer Sporting Goods, Inc.'s motion for summary adjudication of its second cause of action for declaratory and injunctive relief - as applied vagueness challenge, and granted PLAINTIFFS' motion for summary adjudication of their first cause of action for

1 declaratory and injunctive relief - facial vagueness challenge.  
2 The Court now issues the following written decision and rules as  
3 follows:

- 4  
5 1. PLAINTIFFS Sheriff Clay Parker's, Herb Bauer Sporting  
6 Goods, Inc.'s, California Rifle and Pistol Association  
7 Foundation's, Able's Sporting, Inc.'s, RTG Sporting  
8 Collectibles, LLC's, and Steven Stonecypher's First  
9 Cause of Action for Declaratory and Injunctive Relief -  
10 Facial Vagueness Challenge

11 PLAINTIFFS Sheriff Clay Parker, Herb Bauer Sporting Goods,  
12 Inc., California Rifle and Pistol Association Foundation, Able's  
13 Sporting, Inc., RTG Sporting Collectibles, LLC, and Steven  
14 Stonecypher have filed a motion for summary judgment of their  
15 complaint and summary adjudication of their first cause of action  
16 for declaratory and injunctive relief - due process vagueness -  
17 facial. In PLAINTIFFS' first cause of action, the PLAINTIFFS  
18 allege that an actual controversy has arisen and now exists  
19 between PLAINTIFFS and all DEFENDANTS because the PLAINTIFFS  
20 contend that Penal Code §§ 12060, 12061, and 12318 that regulate  
21 "handgun ammunition" as defined in Penal Code §§ 12060(b) and  
22 12323(a) are void for vagueness on their face and the DEFENDANTS  
23 contend that the statutes are not unconstitutionally vague and  
24 that they can be constitutionally enforced. In order to establish  
25 a cause of action for declaratory relief, a plaintiff must prove:  
26 (1) a proper subject of declaratory relief within the scope of  
27 Code of Civil Procedure § 1060, and (2) an actual controversy  
28 involving justiciable questions relating to the rights or  
obligations of a party. (See 5 Witkin, California Procedure (5<sup>th</sup>  
ed.) § 853.) Injunctive relief is a type of damage or relief and  
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1 is a derivative cause of action, not a stand-alone cause of  
2 action.

3 The Court determines the issue of whether or not a statute is  
4 facially vague as a matter of law. (*People v. Cole* (2006) 38 Cal.  
5 4th 964, 988 ["Ultimately, the interpretation of a statute is a  
6 question of law for the courts to decide."].)

7 Penal Code 12060(b) states:

8 "Handgun ammunition" means handgun ammunition as defined  
9 in subdivision (a) of Section 12323, but excluding  
10 ammunition designed and intended to be used in an  
11 "antique firearm" as defined in Section 921(a)(16) of  
Title 18 of the United States Code. Handgun ammunition  
does not include blanks.

12 Penal Code § 12323(a) provides:

13 "Handgun ammunition" means ammunition principally for  
14 use in pistols, revolvers, and other firearms capable of  
15 being concealed upon the person, as defined in  
subdivision (a) of Section 12001, notwithstanding that  
the ammunition may also be used in some rifles.

16 Penal Code § 12001(a) states:

17 (a)(1) As used in this title, the terms "pistol,"  
18 "revolver", and "firearm capable of being concealed  
19 upon the person" shall apply to and include any device  
20 designed to be used as a weapon, from which is expelled  
a projectile by the force of any explosion, or other  
21 form of combustion, and that has a barrel less than 16  
22 inches in length. These terms also include any device  
that has a barrel 16 inches or more in length which is  
designed to be interchanged with a barrel less than 16  
inches in length.

23 (2) As used in this title, the term "handgun" means any  
24 "pistol," "revolver," or "firearm capable of being  
concealed upon the person."

25 In their first cause of action, the PLAINTIFFS contend that  
26 Penal Code §§ 12060, 12061, and 12318 that regulate "handgun  
27 ammunition" as defined in Penal Code §§ 12060(b) and 12323(a) are  
28 facially void for vagueness because the statutes fail to provide

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1 notice to persons of ordinary intelligence regarding which  
2 calibers of ammunition are "handgun ammunition" and thus subject  
3 to enforcement under Sections 12060, 12061, and 12318 and because  
4 the statutes encourage or invite arbitrary and discriminatory  
5 enforcement of the law. Specifically, the PLAINTIFFS contend that  
6 the entire statutory scheme envisioned by Sections 12060, 12061,  
7 and 12318 fail for vagueness because the definition of "handgun  
8 ammunition" -- the subject matter regulated by the statutes -- is  
9 itself facially impermissibly vague. After careful consideration,  
10 the Court finds that the definition of "handgun ammunition" as  
11 established in Penal Code §§ 12060(b) and 12318(b)(2) is  
12 unconstitutionally vague and, because the definition of "handgun  
13 ammunition" is vague, Penal Code §§ 12060, 12061, and 12318, which  
14 define and regulate sales and transfers of "handgun ammunition"  
15 are also impermissibly vague.

16 Consequently, the Court grants the PLAINTIFFS' motion for  
17 summary adjudication of their first cause of action.

18 "The constitutional interest implicated in questions of  
19 statutory vagueness is that no person be deprived of 'life,  
20 liberty, or property without due process of law,' as assured by  
21 both the federal Constitution (U.S. Const., Amends. V, XIV) and  
22 the California Constitution (Cal. Const., art. I, § 7)."  
23 (*Williams v. Garcetti* (1993) 5 Cal. 4th 561, 567.) While Penal  
24 Code § 12060 is simply a definitional statute, Penal Code §§ 12061  
25 and 12318 are criminal statutes. More specifically, Section  
26 12061(c)(1) provides that a violation of Section 12061(a)(3),  
27 (a)(4), (a)(6), and (a)(7) is a misdemeanor and Section 12318(a)  
28 provides that a violation of Section 12318 is a misdemeanor.

1 "Under both Constitutions, due process of law in this context  
2 requires two elements: a criminal statute must "be definite enough  
3 to provide (1) a standard of conduct for those whose activities  
4 are proscribed and (2) a standard for police enforcement and for  
5 ascertainment of guilt." (*Williams v. Garcetti* (1993) 5 Cal. 4th  
6 561, 567 [quoting *Walker v. Superior Court* (1988) 47 Cal. 3d 112,  
7 141].)

8 Although the doctrine focuses both on actual notice to  
9 citizens and arbitrary enforcement, [the U.S. Supreme  
10 Court] ha[s] recognized recently that the more important  
11 aspect of the vagueness doctrine "is not actual notice,  
12 but the other principal element of the doctrine - the  
13 requirement that a legislature establish minimal  
14 guidelines to govern law enforcement." [Citation.]  
15 Where the legislature fails to provide such minimal  
16 guidelines, a criminal statute may permit "a  
17 standardless sweep [that] allows policemen, prosecutors,  
18 and juries to pursue their personal predilections."  
19 (*Kolender v. Lawson* (1983) 461 U.S. 352, 357-58 [quoting *Smith v.*  
20 *Goguen* (1974) 415 U.S. 566, 574-75].)

21 "A facial challenge to the constitutional validity of a  
22 statute or ordinance considers only the text of the measure  
23 itself, not its application to the particular circumstances of an  
24 individual." (*Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069,  
25 1084.)

26 The California Supreme Court has not articulated a  
27 single test for determining the propriety of a facial  
28 challenge. [Citation.] Under the strictest test, the  
statute must be upheld unless the party establishes the  
statute "inevitably pose[s] a present total and fatal  
conflict with applicable constitutional prohibitions."  
[Citation.] Under the more lenient standard, a party  
must establish the statute conflicts with constitutional  
principles "in the generality or great majority of  
cases." [Citation.] Under either test, the plaintiff  
has a heavy burden to show the statute is  
unconstitutional in all or most cases, and "cannot  
prevail by suggesting that in some future hypothetical



1 situation constitutional problems may possibly arise as  
2 to the particular application of the statute."  
3 (*Coffman Specialties, Inc. v. Department of Transportation* (2009)  
4 176 Cal. App. 4th 1135, 1145.)

5 The Court evaluates the statute according to the following  
6 standards:

7 Vague laws offend several important values. First,  
8 because we assume that man is free to steer between  
9 lawful and unlawful conduct, we insist that laws give  
10 the person of ordinary intelligence a reasonable  
11 opportunity to know what is prohibited, so that he may  
12 act accordingly. Vague laws may trap the innocent by  
13 not providing fair warning. Second, if arbitrary and  
14 discriminatory enforcement is to be prevented, laws  
15 must provide explicit standards for those who apply  
16 them. A vague law impermissibly delegates basic policy  
17 matters to policemen, judges, and juries for resolution  
18 on an *ad hoc* and subjective basis, with the attendant  
19 dangers of arbitrary and discriminatory application.  
20 (*Williams v. Garcetti* (1993) 5 Cal. 4th 561, 567-68 [quoting  
21 *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-09].)

22 The starting point of our analysis is "the strong  
23 presumption that legislative enactments 'must be upheld  
24 unless their unconstitutionality clearly, positively,  
25 and unmistakably appears. [Citations.] A statute  
26 should be sufficiently certain so that a person may know  
27 what is prohibited thereby and what may be done without  
28 violating its provisions, but it cannot be held void for  
uncertainty if any reasonable and practical construction  
can be given to its language.'"  
(*Williams v. Garcetti* (1993) 5 Cal. 4th 561, 568 [quoting *Walker*  
*v. Superior Court* (1988) 47 Cal. 3d 112, 143.])

#### 29 Statutes Fail to Provide Adequate Notice or Fair Warning.

30 First, the Court must decide whether or not Penal Code §§  
31 12060, 12061, and 12318 are sufficiently definite to provide  
32 ordinary people and ammunition vendors adequate notice or fair  
33 warning of the conduct proscribed. In other words, would a person  
34 or ammunition vendor of ordinary intelligence understand what  
35 ammunition falls into the definition of "handgun ammunition" -

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1 ammunition "principally for use in" pistols, revolvers, and other  
2 firearms with barrels less than 16 inches in length that cannot be  
3 interchanged with a barrel 16 inches in length or more,  
4 notwithstanding that the ammunition may also be used in some  
5 rifles, and excluding ammunition designed and intended to be used  
6 in an "antique firearm" and blanks - or does not fall within the  
7 provided definition of "handgun ammunition?"

8 In considering whether a legislative proscription is  
9 sufficiently clear to satisfy the requirements of fair  
10 notice, "we look first to the language of the statute,  
11 then to its legislative history, and finally to  
12 California decisions construing the statutory language."  
13 [Citation.] We thus require citizens to apprise  
14 themselves not only of statutory language but also of  
15 legislative history, subsequent judicial construction,  
16 and underlying legislative purposes [Citation].  
17 (*Walker v. Superior Court* (1988) 47 Cal. 3d 112, 143.)

18 The Court finds that the definition of "handgun ammunition"  
19 established in Penal Code §§ 12060(b) and 12318(b)(2) fails to  
20 provide adequate notice of the conduct proscribed to the people or  
21 handgun ammunition vendors of ordinary intelligence to whom the  
22 statutory scheme applies. Initially, the Court determines that  
23 there are no state or federal cases that construe or interpret the  
24 definition of "handgun ammunition" established in Penal Code §§  
25 12060(b) and 12318(b)(2).

26 Next, the Court looks to the legislative context, the  
27 legislative purpose, and the legislative history of Assembly Bill  
28 962, the bill that enacted Sections 12060, 12061, and 12318. The  
Legislature enacted Sections 12060, 12061, and 12318 as part of  
the "Anti-Gang Neighborhood Protection Act of 2009." (Stats.  
2009, ch. 628, § 1.) There is no legislative purpose clause or  
preamble in the "Anti-Gang Neighborhood Protection Act of 2009."

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1 Additionally, there is no discussion in the legislative history of  
2 Assembly Bill 962 of exactly what types of ammunition, by caliber  
3 or by cartridge, were supposed to be included in the definition of  
4 "handgun ammunition." The Court notes that this lack of  
5 discussion is probably because most of the definition of "handgun  
6 ammunition" was taken from another statute already in effect  
7 (Penal Code § 12323(a)). However, due to the lack of a  
8 legislative purpose clause and lack of substantive discussions in  
9 the legislative history, Assembly Bill 926's legislative history  
10 does not help to clarify what ammunition the Legislature intended  
11 to fall into the definition of "handgun ammunition."

12 Finally, the Court considers the text of the definition of  
13 "handgun ammunition" itself and determines that the text of the  
14 definition of "handgun ammunition" established in Penal Code §§  
15 12060(b) and 12318(b)(2) fails to provide reasonable people or  
16 ammunition vendors with an objective standard that individuals or  
17 entities can use in order to determine what particular calibers or  
18 cartridges of ammunition are "principally for use in pistols,  
19 revolvers, and other firearms [with barrels of less than 16  
20 inches, which are not interchangeable with barrels of 16 inches or  
21 more]," notwithstanding that the ammunition may also be used in  
22 rifles, and are thus regulated by Sections 12060, 12061, and  
23 12318. In this case, it is not the definitions of the individual  
24 words themselves that cause the confusion. In fact, "pistol,"  
25 "revolver," and "firearm" all have clear, ordinary, and common  
26 meanings. An average person can easily measure a barrel and  
27 determine if the barrel is less than 16 inches or not or, even if  
28 the barrel is less than 16 inches in length, if the barrel is

1 interchangeable with a barrel that is 16 inches in length or more.  
2 In addition, the definition of "principally" has a clear,  
3 ordinary, and common meaning -- "chiefly," "mainly," or  
4 "primarily." (Dictionary.com Unabridged [based on Collins English  
5 Dictionary (10<sup>th</sup> Ed., 2009)]  
6 <<http://dictionary.reference.com/browse/principally>> [as of  
7 January 28, 2011.] ) "Primarily" is defined as "essentially" or  
8 "mostly", "chiefly" is defined as "essentially" or "mostly," and  
9 "mainly" is defined as "for the most part" or "to the greatest  
10 extent." (Dictionary.com Unabridged [based on Collins English  
11 Dictionary (10<sup>th</sup> Ed., 2009)]  
12 <<http://dictionary.reference.com/browse/primarily>>,  
13 <<http://dictionary.reference.com/browse/chiefly>>, and  
14 <<http://dictionary.reference.com/browse/mainly>> [as of January 28,  
15 2011.] Based on these definitions, it appears relatively clear  
16 that "handgun ammunition" is ammunition that is for the most part  
17 or to the greatest extent used in pistols, revolvers, and firearms  
18 with a barrel length of less than 16 inches, even though the  
19 ammunition may also be used in rifles. In different terms,  
20 "handgun ammunition" is ammunition used in pistols, revolver, and  
21 firearms with a barrel length of less than 16 inches more than  
22 fifty percent of the time.

23 However, while the meanings of the individual words of the  
24 definition are clear, the text of the "handgun ammunition"  
25 definition provides no objective way or method for a person or a  
26 handgun ammunition vendor to determine if a particular ammunition  
27 caliber or cartridge is used more often, or used more than fifty  
28 percent of the time, or used for the most part in pistols,

1 revolvers, or firearms with barrels of less than 16 inches, even  
2 though the same ammunition caliber or cartridge may also be used  
3 in rifles. Sections 12060(b) and 12318(b)(2) do not state that  
4 particular calibers and/or cartridges of ammunition are "handgun  
5 ammunition" or provide that, in order to determine what "handgun  
6 ammunition" is, people and handgun ammunition vendors should look  
7 at regulations or a guide propounded by a government agency for a  
8 list of particular calibers and/or cartridges of ammunition that  
9 qualify. (See *Harrott v. County of Kings* (2001) 25 Cal. 4th 1138,  
10 1152-53 [the California Supreme Court found that vagueness issues  
11 in the Roberti-Roos Assault Weapons Control Act of 1989 did not  
12 reach impermissible levels because ordinary citizens did not have  
13 to look at the language of the statute, but only had to consider  
14 the California Code of Regulations and an Identification Guide  
15 propounded by the Attorney General's office - objective uniform  
16 standards - to determine if an weapon was classified as an assault  
17 weapon].) Here, Penal Code §§ 12060, 12061, and 12318 do not  
18 permit any law enforcement agency to establish regulations or an  
19 identification guide to more narrowly define what ammunition is  
20 encompassed in the "handgun ammunition" definition.

21 The Court finds that the statutory language of the "handgun  
22 ammunition" definition encourages individual people and handgun  
23 ammunition vendors to consider their own experience, conduct,  
24 and/or actions in using or selling ammunition calibers and  
25 cartridges in handguns or rifles to determine if a particular  
26 ammunition caliber or cartridge is "handgun ammunition." One  
27 person might use one caliber of ammunition solely in rifles, while  
28 another person might only use that same caliber of ammunition in

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1 handguns. If a person (Law Enforcement or citizen) or ammunition  
2 vendor is forced to consider and rely upon their own subjective  
3 experiences in order to determine what ammunition is "handgun  
4 ammunition," each person or ammunition vendor is likely to  
5 conceive of a definition of "handgun ammunition" that is in part,  
6 or to a great extent, different from any other person's or  
7 ammunition vendor's definition of "handgun ammunition."

8       Although DEFENDANTS assert that the ammunition vendor  
9 "profession" might have more specialized knowledge about  
10 ammunition use in handguns or rifles and that the Challenged  
11 Statutes only apply to handgun ammunition vendors, Penal Code §  
12 12318's application is not limited to handgun ammunition vendors,  
13 but instead applies to all people or entities engaged in the  
14 "delivery or transfer of ownership of handgun ammunition" and all  
15 people or entities cannot be charged with any specialized  
16 knowledge of ammunition use in handguns or rifles. Therefore, the  
17 Court finds that the "handgun ammunition" definition established  
18 in Sections 12060(b) and 12318(b) (2) does not provide people,  
19 handgun ammunition vendors, or other entities with adequate notice  
20 or fair warning of what ammunition is "handgun ammunition" so that  
21 the people, handgun ammunition vendors, and other entities can  
22 have a reasonable opportunity to determine what conduct is  
23 prohibited by Sections 12060, 12061 and 12318.

24       Consequently, Penal Code §§ 12060, 12061 and 12318 fail to  
25 meet the first requirement for a constitutionally valid criminal  
26 statute -- that the statute be definite enough so that ordinary  
27 people can understand what conduct is prohibited. (*Kolender v.*  
28 *Lawson* (1983) 461 U.S. 352, 357.)

1       Standard for Enforcement is Non-Existent.

2       Second, the Court must decide whether or not Penal Code §§  
3 12060, 12061, and 12318 are sufficiently definite to provide "a  
4 standard for police enforcement and for ascertainment of guilt."  
5 (*Williams v. Garcetti* (1993) 5 Cal. 4th 561, 567 [quoting *Walker*  
6 *v. Superior Court* (1988) 47 Cal. 3d 112, 141].) In other words,  
7 is the definition of "handgun ammunition" in Penal Code §§  
8 12060(b) and 12318(b) (2) sufficiently definite enough to provide a  
9 standard or guidelines for the police and court to determine if a  
10 person, handgun ammunition vendor, or other entity has violated  
11 Sections 12060, 12061, and 12318 in order to prevent arbitrary and  
12 discriminatory enforcement?

13       The Court finds that the definition of "handgun ammunition"  
14 established in Penal Code §§ 12060(b) and 12318(b) (2) contains no  
15 objective standard or method for determining what ammunition is  
16 encompassed by the definition of "handgun ammunition" leaving the  
17 law enforcement officers with "virtually complete discretion" to  
18 determine whether or not a particular caliber and/or cartridge of  
19 ammunition is "handgun ammunition." (*Kolender v. Lawson* (1983)  
20 461 U.S. 352, 357.) Specifically, the full discretion accorded to  
21 the enforcing law enforcement officer to determine if the  
22 ammunition at issue is "handgun ammunition" or not "necessarily  
23 '[entrusts] lawmaking to the moment-to-moment judgment of the  
24 policeman on his beat." (*Kolender*, 461 U.S. at 360.) The  
25 Legislature has simply left it open to the personal judgment call  
26 and subjective understanding of each individual law enforcement  
27 officer to determine if a particular caliber and/or cartridge of  
28 ammunition is "handgun ammunition" under the definition in

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1 Sections 12060(b) and 12318(b)(2) and to subjectively apply that  
2 subjective definition of "handgun ammunition" to each issue of an  
3 ammunition sale or transfer that comes to the attention of that  
4 law enforcement officer.

5 Take, for example, two different law enforcement officers,  
6 one a county sheriff and the other a city police officer,  
7 separately conducting investigations into .32 caliber and .44  
8 caliber ammunition sales to people who gave the ammunition to a  
9 felon, which is a misdemeanor under Penal Code § 12317(a). One  
10 officer goes to an ammunition vendor where one of the ammunition  
11 sales occurred and requests to see the records of all "handgun  
12 ammunition" sales, which the vendor is required to keep pursuant  
13 to Section 12061(a)(3). The officer looks in the vendor's records  
14 and sees that there is a record of a "handgun ammunition" sale to  
15 the suspected individual for .32 caliber ammunition, but not for  
16 .44 caliber ammunition. Now, the officer knows that the  
17 individual under investigation purchased .44 caliber ammunition in  
18 the same transaction as the .32 caliber ammunition sale, but since  
19 the law enforcement officer does not believe that .44 caliber  
20 ammunition is ammunition "principally for use" in pistols,  
21 revolvers, and other firearms with barrels shorter than 16 inches  
22 or "handgun ammunition", the law enforcement officer does not  
23 arrest the vendor for committing misdemeanor violations of Penal  
24 Code § 12061(a)(3), which requires an ammunition vendor to keep  
25 records of all sales and transfers of "handgun ammunition" and  
26 Section 12061(a)(4), which provides that a vendor "shall not  
27 knowingly ... fail to make a required entry in" the "handgun  
28 ammunition" records required by Section 12061(a)(3). Next, during



1 the course of his separate but parallel investigation, the other  
2 law enforcement officer goes to the same ammunition vendor, also  
3 requests to see the records, and notices in the records that there  
4 is a record of a "handgun ammunition" sale to his suspect for .32  
5 caliber ammunition, but not for .44 caliber ammunition. Again,  
6 this second officer knows that his suspect purchased .44 caliber  
7 ammunition in the same transaction as the .32 caliber ammunition  
8 sale, but this time, since the second law enforcement officer  
9 believes that .44 caliber ammunition is ammunition "principally  
10 for use" in pistols, revolvers, and other firearms with barrels  
11 shorter than 16 inches or "handgun ammunition," the law  
12 enforcement officer arrests the ammunition vendor for misdemeanor  
13 violations of Penal Code § 12061(a)(3) and (a)(4).

14 In another twist, the two officers could be investigating  
15 improper sales and transfers of specific .44 caliber cartridge  
16 ammunition that an ammunition vendor does not keep records of  
17 because the vendor does not believe that the particular ammunition  
18 cartridge qualifies as "handgun ammunition." However, while one  
19 officer agrees with the vendor that the specific .44 caliber  
20 cartridge ammunition is not "handgun ammunition," the vendor is  
21 arrested by the other officer for misdemeanor violations of  
22 Section 12061(a)(3) and (a)(4) because the other officer disagrees  
23 with the vendor and believes that the specific .44 caliber  
24 cartridge ammunition is ammunition "principally for use" in a  
25 handgun. Because the language of the definition of "handgun  
26 ammunition" fundamentally requires each law enforcement officer to  
27 make a subjective determination as to whether or not the  
28 ammunition at issue is ammunition "principally for use" in a

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1 handgun and then subjectively apply their own definition to the  
2 situation before them, the definition of "handgun ammunition"  
3 established by Section 12060(b) and 12318(b)(2) gives unlimited  
4 discretion to each individual law enforcement officer to determine  
5 arbitrarily if the ammunition at issue is "handgun ammunition" and  
6 to apply their particular classification of "handgun ammunition"  
7 or not to the specific issue before them.

8       The DEFENDANTS contend that there is no evidence that the  
9 DEFENDANTS will enforce the challenged definition arbitrarily and  
10 that, before enforcing the statutes, law enforcement will need  
11 probable cause to show that the ammunition at issue is used  
12 principally in handguns within the terms of the definition of  
13 "handgun ammunition." However, the DEFENDANTS appear to be  
14 misunderstanding the actual issue. This Court is not finding that  
15 the definition of "handgun ammunition" creates unconstitutional  
16 discretion in the law enforcement personnel to arrest people for  
17 violations of Sections 12061 and 12318 without probable cause that  
18 the ammunition at issue is "handgun ammunition" as defined by  
19 Sections 12060(b) and 12318(b)(2). Rather, the issue is that the  
20 actual definition of "handgun ammunition" is so vague that it does  
21 not establish an objective standard or method by which individual  
22 law enforcement officers can determine what ammunition is properly  
23 "handgun ammunition" as defined by Sections 12060(b) and  
24 12318(b)(2).

25       The List.

26       DEFENDANTS' argue that the "list" of calibers and cartridges  
27 that their firearms and ammunition expert, Blake Graham, compiled  
28 is a list of calibers and cartridges that DEFENDANTS' consider to

1 be "handgun ammunition" within the definition established in  
2 Sections 12060(b) and 12318(b)(2); the Court determines that this  
3 "list" is not any limitation on the "vast amount of discretion"  
4 granted to law enforcement in the enforcement of Sections 12061  
5 and 12318. (See *City of Chicago v. Morales* (1999) 527 U.S. 41, 63  
6 [holding that a general order of the Chicago police department of  
7 internal rules limiting their enforcement of the statute at issue  
8 in that case to certain designated areas of the city was not a  
9 sufficient limitation on the vast amount of discretion granted to  
10 the police in their enforcement of the challenged statute].)  
11 Here, this "list" of the California Department of Justice is not a  
12 proper administrative regulation that limits the vast amount of  
13 discretion that law enforcement officers have to determine and  
14 enforce their subjective definition of "handgun ammunition,"  
15 because nothing in Assembly Bill 962, which includes Sections  
16 12060, 12061, and 12318, grants the California Department of  
17 Justice the authority to promulgate regulations limiting the  
18 discretion of law enforcement officers when it comes to what  
19 ammunition can be properly defined as "handgun ammunition."

20 Also, even if this "list" is evidence that the Department of  
21 Justice is internally limiting the discretion of the law  
22 enforcement officers that work for them, the Department of Justice  
23 is not the only law enforcement agency in California that will be  
24 enforcing Sections 12061 and 12318. In particular, Section  
25 12061(a)(5) states that "handgun ammunition" records of ammunition  
26 vendors are subject to inspection by any peace officer employed by  
27 not only the Department of Justice, but also peace officers  
28 employed by a sheriff, a city police department, or district

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1 attorney and Section 12061(a)(7) and (c)(1) makes it a misdemeanor  
2 for an ammunition vendor to refuse to permit a person authorized  
3 under Section 12061(a)(5) to examine "handgun ammunition" records.  
4 Therefore, more law enforcement agencies other than the Department  
5 of Justice are entitled to enforce Sections 12061 and 12318 and  
6 any internal policy limiting the discretion of Department of  
7 Justice's peace officers does not apply to any other type of law  
8 enforcement officer.

9 Due to the fact that the definition of "handgun ammunition"  
10 established in Sections 12060(b) and 12318(b)(2) improperly fails  
11 to contain any objective standard for determining what ammunition  
12 is included in the definition of "handgun ammunition" and  
13 encourages law enforcement officers to engage in the subjective  
14 understanding and application of the "handgun ammunition"  
15 definition when the law enforcement officers enforce Sections  
16 12060, 12061 and 12318, the Court finds that the definition of  
17 "handgun ammunition" in Sections 12060(b) and 12318(b)(2)  
18 "furnishes a convenient tool for 'harsh and discriminatory  
19 enforcement by local prosecuting officers, against particular  
20 groups deems to merit their displeasure,' [Citation], and 'confers  
21 on police a virtually unrestrained power to arrest and charge  
22 persons with a violation.'" (Kolender v. Lawson (1983) 461 U.S.  
23 352, 360.) Consequently, Penal Code §§ 12060, 12061, and 12318  
24 fail to meet the second requirement for a constitutionally valid  
25 criminal statute - that the statute's definition of the criminal  
26 offense be definite enough to not encourage arbitrary and  
27 discriminatory enforcement. (Kolender v. Lawson (1983) 461 U.S.  
28 352, 357.)

1 Since Penal Code §§ 12060, 12061, and 12318 fail to "be  
2 definite enough to provide (1) a standard of conduct for those  
3 whose activities are proscribed and (2) a standard for police  
4 enforcement and for ascertainment of guilt[,] the Court finds  
5 that Penal Code §§ 12060, 12061, and 12318 are unconstitutionally  
6 vague on their face. (*Williams v. Garcetti* (1993) 5 Cal. 4th 561,  
7 567 [quoting *Walker v. Superior Court* (1988) 47 Cal. 3d 112,  
8 141].) Therefore, the Court grants PLAINTIFFS' motion for summary  
9 adjudication of their first cause of action for declaratory and  
10 injunctive relief - due process vagueness - facial.

11

12 2. PLAINTIFF Herb Bauer Sporting Goods, Inc.'s Second Cause  
13 of Action for Declaratory and Injunctive Relief - As  
14 Applied Vagueness Challenge

15 PLAINTIFF Herb Bauer Sporting Goods, Inc. has filed a motion  
16 for summary judgment of the complaint and summary adjudication of  
17 its second cause of action for declaratory and injunctive relief -  
18 due process vagueness - as applied. In PLAINTIFF's second cause  
19 of action, the PLAINTIFF alleges that an actual controversy has  
20 arisen and now exists between PLAINTIFF and all DEFENDANTS because  
21 the PLAINTIFF contends that Penal Code § 12061(a)(1) and (a)(2)  
22 are unconstitutional in that they are impermissibly vague and the  
23 DEFENDANTS contend that the statutes are not impermissibly vague  
24 and can be constitutionally enforced. In order to establish a  
25 cause of action for declaratory relief, a PLAINTIFF must prove:  
26 (1) a proper subject of declaratory relief within the scope of  
27 Code of Civil Procedure § 1060, and (2) an actual controversy  
28 involving justiciable questions relating to the rights or

1 obligations of a party. (See 5 Witkin, California Procedure  
2 (4<sup>th</sup> ed.) § 809.) Injunctive relief is a type of damage or relief  
3 and is a derivative cause of action, not a stand-alone cause of  
4 action.

5 Penal Code § 12061(a)(1) and (a)(2) provide that:

6 (a) A vendor shall comply with all of the following  
7 conditions, requirements and prohibitions:

- 8 1. A vendor shall not permit any employee who the  
9 vendor knows or reasonably should know is a  
10 person described in Section 12021 or 12021.1  
11 of this code or Section 8100 or 8103 of the  
12 Welfare and Institutions Code to handle, sell,  
13 or deliver handgun ammunition in the course  
14 and scope of his or her employment.
- 15 2. A vendor shall not sell or otherwise transfer  
16 ownership of, offer for sale or otherwise  
17 offer to transfer ownership of, or display for  
18 sale or display for transfer of ownership of  
19 any handgun ammunition in a manner that allows  
20 that ammunition to be accessible to a  
21 purchaser or transferee without the assistance  
22 of the vendor or employee thereof.

23 Penal Code 12060(b) provides the definition of "handgun  
24 ammunition" as used in Section 12061(a)(1) and (a)(2). "Handgun  
25 ammunition" is defined as ammunition "principally for use in"  
26 pistols, revolvers, and other firearms with barrels less than 16  
27 inches in length that cannot be interchanged with a barrel 16  
28 inches in length or more, notwithstanding that the ammunition may  
also be used in some rifles, and excluding ammunition designed and  
intended to be used in an "antique firearm" and blanks.

In the second cause of action, PLAINTIFF makes an as-applied  
vagueness challenge to Penal Code § 12061(a)(1) and (a)(2)  
contending that, as applied to PLAINTIFF, Sections 12061(a)(1)  
and (a)(2) fail to provide notice to PLAINTIFF which calibers of  
ammunition are "handgun ammunition" as defined in Penal Code

Order - Parker, et al. v. State of California, et al. (10030002116)

-19-

1 section 12060(b) and the vague definition encourages arbitrary and  
2 discriminatory enforcement of the laws against PLAINTIFF in  
3 violation of the Due Process Clause of the Fourteenth Amendment.  
4 However, the Court denies the PLAINTIFFS' motion for summary  
5 judgment and the PLAINTIFF's motion for summary adjudication of  
6 its second cause of action because the PLAINTIFF has failed to  
7 establish the second element of a cause of action for declaratory  
8 relief - an actual controversy involving justiciable questions  
9 relating to the rights and obligations of a party.

10 An as applied challenge may seek (1) relief from a  
11 specific application of a facially valid statute or  
12 ordinance to an individual or class of individuals who  
13 are under allegedly impermissible present restraint or  
14 disability as a result of the manner or circumstances in  
15 which the statute or ordinance has been applied, or (2)  
16 an injunction against future application of the statute  
17 or ordinance in the allegedly impermissible manner it is  
18 shown to have been applied in the past. It contemplates  
19 analysis of the facts of a particular case or cases to  
20 determine the circumstances in which the statute or  
21 ordinance has been applied and to consider whether in  
22 those particular circumstances the application derived  
23 the individual to whom it was applied of a protected  
24 right.

25 (*Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069, 1084.)

26 However, the PLAINTIFF's only facts regarding any possible  
27 application of Section 12061(a)(1) and (a)(2) do not demonstrate  
28 that PLAINTIFF is seeking relief from the specific application of  
the statute against PLAINTIFF, which caused PLAINTIFF to be under  
an impermissible present restraint or disability due to the  
statute's application or that PLAINTIFF is seeking an injunction  
against future application of the statute in the allegedly  
impermissible manner in which the statute was applied in the past.

PLAINTIFF's Undisputed Material Fact No. 238 establishes  
that, on December 30, 2009, the California Department of Justice  
Order - Parker, et al. v. State of California, et al. (10CSC02116)

1 published an "Information Bulletin" providing a brief overview of  
2 Assembly Bill 962, which included Penal Code § 12061(a)(1) and  
3 (a)(2). PLAINTIFF's Undisputed Material Fact No. 239 proves that  
4 Defendant California Department of Justice provided notice to all  
5 California firearm dealers, including PLAINTIFF, that Penal Code §  
6 12061(a)(1) and (a)(2) took effect on, and has been in force  
7 since, January 1, 2010, effectively threatening all California  
8 firearm dealers with enforcement of Section 12061(a)(1) and  
9 (a)(2). (The Court assumes *arguendo* that providing notice of a  
10 law is effectively threatening enforcement of that law.) However,  
11 the PLAINTIFF has not provided any undisputed material facts  
12 demonstrating that the California Department of Justice, or any  
13 other Defendant, has actually ever enforced or applied Section  
14 12061(a)(1) and/or (a)(2) against PLAINTIFF or anyone else in the  
15 past or at the present time. Since an as applied vagueness  
16 challenge in this case requires the Court to consider the facts of  
17 how the statute has been applied against the PLAINTIFF or someone  
18 else and the PLAINTIFF has failed to provide any facts  
19 demonstrating that Section 12061(a)(1) and/or (a)(2) has ever been  
20 applied to anyone, the PLAINTIFF has not established that there is  
21 an active controversy between PLAINTIFF and DEFENDANTS as to  
22 whether or not Section 12061(a)(1) and (a)(2) are impermissibly  
23 vague as applied to PLAINTIFF.

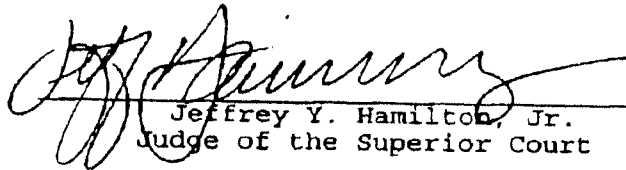
24 Therefore, the PLAINTIFF has failed to establish each element  
25 of a cause of action for declaratory relief. Consequently, the  
26 burden never shifts to the DEFENDANTS to establish that a triable  
27 issue of material fact exists. Accordingly, the Court denies the  
28 PLAINTIFFS' motion for summary judgment and PLAINTIFF Herb Bauer

Order - Parker, et al. v. State of California, et al. (10CEC02116)



1 Sporting Goods, Inc.'s motion for summary adjudication of its  
2 second cause of action for declaratory and injunctive relief - due  
3 process vagueness - as applied.

4  
5 DATED this 31<sup>st</sup> day of January, 2011.

6  
7   
8 Jeffrey Y. Hamilton, Jr.  
9 Judge of the Superior Court

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<b>SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO</b> Civil Department - Non-Limited 1130 "O" Street Fresno, CA 93724-0002 (559)457-1900		FOR COURT USE ONLY
TITLE OF CASE: <b>Sherrif Clay Parker vs. State of California</b>		
<b>CLERK'S CERTIFICATE OF MAILING</b>		CASE NUMBER: <b>10CECG02116 JH</b>

Name and address of person served:

**Peter Andrew Krause**  
**Office of the Attorney General**  
**1300 I Street, Ste 125**  
**Sacramento, CA 95814**

### CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the 01/31/11 minute order and copy of Order Denying Plaintiffs' Motion for Summary Judgment and Granting in Part and Denying in Part Plaintiffs' Motion for Summary Adjudication was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at Fresno, California, on:

Date: **February 1, 2011**

Clerk, by



**M. Santana**

, Deputy

**C. D. Michel, 180 East Ocean Blvd., Suite 200, Long Beach CA 90802**

**Peter A. Krause, Office of the Attorney General, 1300 I Street, Ste 125, Sacramento CA 95814**

<b>SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO</b> <b>Civil Department - Non-Limited</b> 1130 "O" Street Fresno, CA 93724-0002 (559)457-1900		FOR COURT USE ONLY
TITLE OF CASE: <b>Sherrif Clay Parker vs. State of California</b>		
<b>CLERK'S CERTIFICATE OF MAILING</b>		CASE NUMBER: <b>10CECG02116 JH</b>

Name and address of person served:

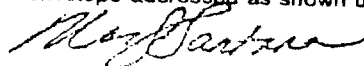
**C. D. Michel**  
**Michel & Associates**  
**180 East Ocean Blvd. Suite 200**  
**Long Beach, CA 90802**

**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that a true copy of the 01/31/11 minute order and copy of Order Denying Plaintiffs' Motion for Summary Judgment and Granting in Part and Denying in Part Plaintiffs' Motion for Summary Adjudication was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at Fresno, California, on:

Date: **February 1, 2011**

Clerk, by \_\_\_\_\_



**M. Santana**

, Deputy

**C. D. Michel, 180 East Ocean Blvd., Suite 200, Long Beach CA 90802**

**Peter A. Krause, Office of the Attorney General, 1300 I Street, Ste 125, Sacramento CA 95814**

## **EXHIBIT B**

1 C. D. Michel - SBN 144258  
Clinton B. Monfort - SBN 255609  
2 Sean A. Brady - SBN 262007  
MICHEL & ASSOCIATES, P.C.  
3 180 East Ocean Blvd., Suite 200  
Long Beach, CA 90802  
4 Telephone: (562) 216-4444  
Fax: (562) 216-4445  
5 cmichel@michellawyers.com

6 Attorneys for Plaintiffs/Petitioners

FILED

JAN 21 2011

FRESNO SUPERIOR COURT

By \_\_\_\_\_ DEPT. 402 - DEPUTY

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

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

15 Plaintiffs and Petitioners, )  
16 )

17 vs. )

18 THE STATE OF CALIFORNIA; JERRY )  
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 Defendants and Respondents. )  
22 )

CASE NO. 10CECG02116

~~PROPOSED~~ ORDER OF PERMANENT  
INJUNCTION

FILED BY FAX

23 On January 18, 2011, the Court granted Plaintiffs' motion for summary adjudication as to  
24 their first cause of action challenging certain California Penal Code sections on facial vagueness  
25 grounds. In furtherance of that ruling, the following injunctive relief is hereby GRANTED:

26 APPLICABILITY

27 The provisions of this injunction are applicable to defendants the State of California,  
28 Kamala D. Harris, in her official capacity as Attorney General of the State of California, and the

1 California Department of Justice, and to each of their agents, employees, representatives,  
2 successors in office, and all persons or entities acting in concert or in participation with them  
3 (hereinafter "enjoined parties").

4 **EFFECTIVE DATE**

5 The provisions of this injunction shall take effect on February 1, 2011, and shall remain  
6 permanently in effect, or until such other Orders are made by this Court.

7 **CONDUCT ENJOINED**


8 IT IS ORDERED that the enjoined parties are hereby permanently prohibited, enjoined,  
9 and restrained from taking any action to implement, enforce, or give effect to the versions of  
10 California Penal Code sections 12060, 12061, and 12318 in effect as of the date of this Injunction.

11 **RETENTION OF JURISDICTION**

12 IT IS FURTHER ORDERED that jurisdiction is retained by this Court for the purpose of  
13 enabling the parties to apply for such further orders and directions as may be necessary and  
14 appropriate for the interpretation or construction of this Order, and for the enforcement or  
15 compliance herewith.

16 Date: January 20, 2011

MICHEL & ASSOCIATES, PC

17  
18   
19 C. D. Michel  
20 Attorney for Plaintiffs

21 Date: January 20, 2011

OFFICE OF THE ATTORNEY GENERAL

22  
23 Peter A. Krause  
Attorney for Defendants

24 IT IS SO ORDERED.

25 Dated: 1/21/2011

JEFFREY Y. HAMILTON JR.

26 Honorable Judge Jeffrey Y. Hamilton  
27 Judge of the Superior Court  
28

1 California Department of Justice, and to each of their agents, employees, representatives,  
2 successors in office, and all persons or entities acting in concert or in participation with them  
3 (hereinafter "enjoined parties").

4 **EFFECTIVE DATE**

5 The provisions of this injunction shall take effect on February 1, 2011, and shall remain  
6 permanently in effect, or until such other Orders are made by this Court.

7 **CONDUCT ENJOINED**

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9 and restrained from taking any action to implement, enforce, or give effect to the versions of  
10 California Penal Code sections 12060, 12061, and 12318 in effect as of the date of this Injunction.

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13 enabling the parties to apply for such further orders and directions as may be necessary and  
14 appropriate for the interpretation or construction of this Order, and for the enforcement or  
15 compliance herewith.

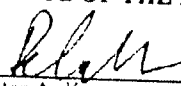
16 Date: January 20, 2011

MICHEL & ASSOCIATES, PC

17  
18  
19 C. D. Michel  
Attorney for Plaintiffs

20 Date: January 20, 2011

21 OFFICE OF THE ATTORNEY GENERAL

22   
23 Peter A. Krause  
Attorney for Defendants

24 IT IS SO ORDERED.

25 Dated: \_\_\_\_\_

26 Honorable Judge Jeffrey Y. Hamilton  
27 Judge of the Superior Court  
28

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 January 20, 2011, I served the foregoing document(s) described as

**[PROPOSED] ORDER OF PERMANENT INJUNCTION**

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:

Kamala Harris  
Attorney General of California  
Zackery P. Morazzini  
Supervising Deputy Attorney General  
Peter A. Krause  
Deputy Attorney General  
1300 I Street, Suite 125  
Sacramento, CA 94244-2550

X (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 January 20, 2011, 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.

(VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used complies with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, copies of which is attached to this declaration.  
Executed on January 20, 2011, 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



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 February 18, 2011, I served the foregoing document(s) described as

7 **[PROPOSED] JUDGMENT**

8 on the interested parties in this action by placing

9 ☐ the original

☒ a true and correct copy

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

10 Edmund G. Brown, Jr.  
11 Attorney General of California  
Zackery P. Morazzini  
12 Supervising Deputy Attorney General  
Peter A. Krause  
13 Deputy Attorney General  
1300 I Street, Suite 125  
14 Sacramento, CA 94244-2550

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16 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,  
17 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  
18 date of deposit for mailing an affidavit.  
Executed on February 18, 2011, at Long Beach, California.

19 — (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  
20 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  
21 placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for  
in accordance with ordinary business practices.

22 — (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used complies  
23 with California Rules of Court, Rule 2003, and no error was reported by the machine.  
Pursuant to Rules of Court, Rule 2006(d), I caused the machine to print a transmission  
24 record of the transmission, copies of which is attached to this declaration.  
Executed on February 18, 2011, at Long Beach, California.

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

27   
28 CLAUDIA AYALA

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  
6 business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

7 On February 28, 2011, I served the foregoing document(s) described as

8 **NOTICE OF ENTRY OF JUDGMENT DENYING PLAINTIFFS'  
9 MOTION FOR SUMMARY JUDGMENT AND GRANTING IN PART  
10 PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION**

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  
21 1300 I Street, Suite 125  
22 Sacramento, CA 94244-2550

23 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and  
24 processing correspondence for mailing. Under the practice it would be deposited with the  
25 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,  
26 California, in the ordinary course of business. I am aware that on motion of the party  
27 served, service is presumed invalid if postal cancellation date is more than one day after  
28 date of deposit for mailing an affidavit.  
Executed on February 28, 2011, 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  
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Executed on February 28, 2011, at Long Beach, California.

26 X (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