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

11 SHERIFF CLAY PARKER, TEHAMA)
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,)

CASE NO. 10CECG02116

**DECLARATION OF CLINTON B.
MONFORT IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION
TO TAX COSTS**

15 Plaintiffs and Petitioners,)
16 vs.)

Date: May 3, 2011
Time: 3:30 p.m.
Location: Dept. 402
Judge: Hon. Jeffrey Y. Hamilton
Action Filed: June 17, 2010

17 THE STATE OF CALIFORNIA; KAMALA)
18 D. HARRIS, in her official capacity as)
Attorney General for the State of California;)
19 THE CALIFORNIA DEPARTMENT OF)
JUSTICE; and DOES 1-25,)
20)
21)

Defendants and Respondents.)
22)
23)
24)
25)
26)
27)
28)

DECLARATION OF CLINTON B. MONFORT

I, Clinton B. Monfort, declare as follows:

1. I am an attorney licensed to practice law before the courts of the State of California. I am an associate attorney of the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

2. On or about June 17, 2010, Plaintiffs filed their Complaint for Declaratory and Injunctive Relief against Defendants the State of California, Jerry Brown, in his official capacity as Attorney General for the State of California, and the California Department of Justice (collectively "Defendants"), challenging the validity of Penal Code sections 12060, 12061, and 12318.

3. In or about July 2010, counsel for all parties conferred regarding the merits of this litigation. At this time, Defendants' counsel sought an extension of time to file Defendants' Answer to [Plaintiffs'] Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate. Out of professional courtesy, Plaintiffs granted this request.

4. On August 2, 2010, Defendants filed their Answer to [Plaintiffs'] Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate.

5. On or about August 5, 2010, anticipating that this case hinged largely on a question of law, our office contacted counsel for Defendants via e-mail, inquiring as to whether they would stipulate to a briefing schedule whereby this case would be resolved via cross-motions for summary judgment well before February 1, 2011, the date Penal Code sections 12061, subdivision (a)(3)-(7) and 12318 were set to take effect. Plaintiffs sought speedy resolution of their claims to increase the likelihood that a final decision would be rendered before the Challenged Provisions took effect and because Plaintiffs' immediate business decisions relied heavily on whether those sections could be enforced. The parties were unable to agree to a shortened briefing schedule, as Defendants asserted the need to conduct discovery and depose Plaintiffs' expert witnesses. Accordingly, Plaintiffs informed Defendants of their intention to proceed with a Motion for Preliminary Injunction.

1 6. In or about August 2010, Plaintiffs sought to file a Motion for Preliminary Injunction, but,
2 out of professional courtesy, postponed filing to accommodate opposing counsel's scheduled vacation
3 from August 27, 2010, to September 7, 2010.

4 7. On or about August 19, 2010, Plaintiffs' counsel learned that Assembly Bill 2358, a bill
5 introduced in 2010 to amend Penal Code sections 12061, 12077, 12318, and 12323, had been
6 amended to include a list of ammunition calibers that would be considered "handgun ammunition."
7 This knowledge led Plaintiffs to postpone filing the Motion for Preliminary Injunction until it could be
8 determined whether and how AB 2358 would impact the shape of Plaintiffs' arguments in this case.

9 8. On September 7, 2010, Plaintiffs moved for a preliminary injunction to enjoin the
10 enforcement of the Challenged Provisions pending a decision of this case on the merits.

11 9. On or about October 7, 2010, Plaintiffs propounded written discovery on Defendants,
12 seeking responses to several form interrogatories, specially prepared interrogatories, requests for
13 admission, and requests for production of documents. Defendants were expected to respond to those
14 requests on or before November 11, 2010, but Defendants requested an extension of time to respond.
15 Out of professional courtesy, Plaintiffs granted Defendants' request.

16 10. On November 17, 2010, Plaintiffs withdrew their Motion for Preliminary Injunction and
17 the parties, with the participation of the Court, negotiated an expedited briefing schedule by which
18 summary judgment could be heard and, if necessary, a trial could be held and judgment rendered
19 before the remainder of the Challenged Provisions were to take effect.

20 11. On or about November 23, 2010, Defendants responded to Plaintiffs' written discovery.
21 Their responses included a list of ammunition calibers commonly understood to be "handgun
22 ammunition" under California Penal Code sections 12060, 12061, and 12318. Defendants' responses
23 were verified by Special Agent Supervisor Blake Graham. Having reviewed Defendants' responses,
24 Plaintiffs recognized the need to depose Defendants' expert to examine the basis for the list.

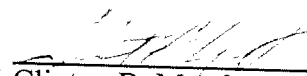
25 12. On December 1 and 2, 2010, Plaintiffs took the deposition of Defendants' expert, Blake
26 Graham. Deputy Attorney General Peter Krause and Deputy Attorney General IV Kimberly Graham
27 entered appearances on behalf of Defendants. Only Mr. Krause took an active role, while Ms. Graham
28 observed the proceedings.

1 13. Though Defendants first claimed the need to conduct discovery and depose Plaintiffs'
2 expert witnesses in August 2010, they did not depose Plaintiffs' expert, Stephen Helsley, until
3 December 16, 2010. They took the depositions of Plaintiffs Steven Stonecipher and Barry Bauer (of
4 Herb Bauer Sporting Goods) on December 13 and 14, 2010, respectively.

5 14. Three attorneys from Michel & Associates, P.C., (Joshua R. Dale, Sean A. Brady, and
6 Clinton B. Monfort) appeared on behalf of Plaintiffs at the depositions of Stephen Helsley, Steven
7 Stonecipher, and Barry Bauer. Mr. Dale, a senior associate and the most experienced litigator, took the
8 most active role in the proceedings. Mr. Brady, one of the firm's attorneys most experienced with
9 firearms and ammunition, attended to provide firearms expertise due to the highly technical nature of
10 this lawsuit's subject matter. I am the attorney principally responsible for this litigation and would
11 have been unable to prepare my case efficiently and fully had I not been present for the questioning of
12 Plaintiffs and their witnesses.

13 15. On January 18, 2011, at the hearing on Plaintiffs' summary judgment motion, the Court
14 granted summary adjudication as to Plaintiffs' first cause of action. Plaintiffs voluntarily dismissed the
15 second and third causes of action. On January 31, 2011, the Court issued its Order Denying Plaintiffs'
16 Motion for Summary Judgment and Granting in Part and Denying in Part Plaintiffs' Motion for
17 Summary Adjudication. Judgment as to the first cause of action was entered in Plaintiffs' favor on
18 February 23, 2011. Plaintiffs served Notice of Entry of Judgment on March 2, 2011. Plaintiffs filed
19 their Memorandum of Costs on March 11, 2011, seeking \$11,355.63 for filing fees, deposition costs,
20 service of process, court reporter fees, and travel expenses related to the hearings on Plaintiffs'
21 motions. Defendants brought this Motion to Tax Costs on April 1, 2011.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
23 true and correct. Executed this 19th day of April, 2011, at Long Beach, California.

24
25 
26 Clinton B. Monfort
27 Declarant
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 April 19, 2011, I served the foregoing document(s) described as

**DECLARATION OF CLINTON B. MONFORT IN SUPPORT OF OPPOSITION TO
DEFENDANTS' MOTION TO TAX COSTS**

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 D. 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

(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 April 19, 2011, at Long Beach, California.

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

Executed on April 19, 2011, at Long Beach, California.

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

Executed on April 19, 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

DECLARATION OF CLINTON B. MONFORT ISO OPPOSITION TO DEFENDANTS MOTION TO TAX COSTS