

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

DEC 07 2010

FRESNO COUNTY SUPERIOR COURT
By _____

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

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

14 Plaintiffs and Petitioners,)

15 vs.)

16 THE STATE OF CALIFORNIA; JERRY)
BROWN, IN HIS OFFICIAL CAPACITY)
17 AS ATTORNEY GENERAL FOR THE)
STATE OF CALIFORNIA; THE)
18 CALIFORNIA DEPARTMENT OF)
JUSTICE; and DOES 1-25,)
19)

20 Defendants and Respondents.)
21)

CASE NO. 10CECG02116

**SEPARATE STATEMENT OF
UNDISPUTED FACTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT OR IN THE ALTERNATIVE
SUMMARY ADJUDICATION / TRIAL
BRIEF**

Date:

Time:

Location: Dept. 97A

Judge: Hon. Jeffrey Y. Hamilton

Action Filed: June 17, 2010

22 Plaintiffs Sheriff Clay Parker, et al. ("Plaintiffs") submit this separate statement of
23 undisputed material facts, together with references to supporting evidence, in support of their
24 Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief against
25 Defendants, the State of California, et al. ("Defendants").
26
27
28

ISSUE NO. 1 – PLAINTIFFS ARE ENTITLED TO JUDGMENT ON THE FIRST CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF: DUE PROCESS VAGUENESS – FACIAL – BECAUSE CALIFORNIA PENAL CODE SECTIONS 12060, 12061, AND 12318 PROVIDE NEITHER ADEQUATE NOTICE TO ORDINARY PERSONS NOR SUFFICIENT GUIDELINES TO LAW ENFORCEMENT TO PREVENT ARBITRARY AND DISCRIMINATORY ENFORCEMENT OF THE LAW

Moving Party’s Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>1. Assembly Bill 962 passed the Legislature on September 11, 2009, and was approved by Governor Schwarzenegger on October 11, 2009; it added sections 12060, 12061, and 12318 (hereafter referred to collectively as the “Challenged Provisions”) to the California Penal Code.</p> <p>[Assembly Bill No. 962 and Complete Bill History (Ex.1 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief).]</p>	
<p>2. There is general confusion as to what ammunition is “principally for use in handguns.”</p> <p>[Allman Declaration at 2:13, Bauer Declaration at 2:13, Giles Declaration at 2:12, Hall Declaration at 2:13, Parker Declaration at 2:14, Potterfield Declaration at 2:13, Stonecipher Declaration at 2:10, Tenny Declaration at 1:12, Wright Declaration at 2:13.]</p>	
<p>3. There is confusion among law enforcement officers as to what ammunition is “principally for use in handguns.”</p> <p>[Parker Declaration at 2:13, Allman Declaration at 2:13]</p>	
<p>4. Penal Code section 12060 does not rely on a list of ammunition “principally for use in handguns.”</p> <p>[Pen. Code, § 12060.]</p>	

1	5. Penal Code section 12061 does not rely on	
2	a list of ammunition “principally for use in	
3	handguns.”	
4	[Pen. Code, § 12061.]	
5	6. Penal Code section 12318 does not rely on	
6	a list of ammunition “principally for use in	
7	handguns.”	
8	[Pen. Code, § 12318.]	
9	7. Penal Code section 12323 does not rely on	
10	a list of ammunition “principally for use in	
11	handguns.”	
12	[Pen. Code, § 12323.]	
13	8. Defendant DOJ has not promulgated	
14	regulations regarding the definition of	
15	“handgun ammunition” for purposes of the	
16	Challenged Provisions.	
17	[Responses to Plaintiffs’ Request for	
18	Admissions, Set One (Ex. 56 to Plaintiffs’	
19	Evidence in Support of Motion for Summary	
20	Judgment or in the Alternative Summary	
21	Adjudication / Trial Brief) at 7:22-24.]	
22	9. Penal Code section 12060 does not confer	
23	authority on the Department of Justice	
24	(“DOJ”) to create a list of ammunition	
25	“principally for use in handguns.”	
26	[Pen. Code, § 12060.]	
27	10. Penal Code section 12061 does not	
28	confer authority on the Department of Justice	
	(“DOJ”) to create a list of ammunition	
	“principally for use in handguns.”	
	[Pen. Code, § 12061.]	
	11. Penal Code section 12318 does not	
	confer authority on the Department of Justice	
	(“DOJ”) to create a list of ammunition	
	“principally for use in handguns.”	
	[Pen. Code, § 12318.]	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>12. Penal Code section 12323 does not confer authority on the Department of Justice (“DOJ”) to create a list of ammunition “principally for use in handguns.”</p> <p>[Pen. Code, § 12323.]</p>	
<p>13. Senate Bill 1276 was a failed measure introduced by Senator Hart in 1994. It attempted to introduce provisions regulating the transfer of “handgun ammunition” substantially similar to those appearing in the Challenged Provisions.</p> <p>[Senate Bill 1276 (1994) as Amended in Senate on May 26, 1994 (Ex. H to Plaintiffs’ Request for Judicial Notice in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at p. 4; Legislative History Report and Analysis Re: Senate Bill 1276 (Hart – 1994) (Ex. 5 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at LH009–010.]</p>	

1 14. A Bill Analysis conducted by the Senate
2 Committee on Judiciary for Senate Bill 1276
3 contains a “comment” on Penal Code section
12323’s definition of “handgun ammunition
which reads, in relevant part:

4 “Existing Penal Code section 12323 was
5 added in 1982 and defines handgun
6 ammunition as “ammunition principally for
use in pistols and revolvers . . .
7 notwithstanding that the ammunition may
8 also be used in some rifles. . . .” However, it
9 may not be suitable for defining handgun
10 ammunition in general. It may be assumed
11 that many ammunition calibers are suitable
for both rifles and handguns. Without
additional statutory guidance, it may be very
difficult for dealers to determine which
ammunition is “handgun ammunition” for
purposes of the requirements added to Penal
Code section 12076.”

12 [Legislative History Report and Analysis Re:
13 Senate Bill 1276 (Hart – 1994) (Ex. 5 to
14 Plaintiffs’ Evidence in Support of Motion for
Summary Judgment or in the Alternative
15 Summary Adjudication / Trial Brief) at
LH010.]

16 15. Senate Bill 1276 (1994) relied on the
17 definition of “handgun ammunition” found at
Penal Code section 12323.

18 [Senate Bill 1276 (1994) as Amended in
19 Senate on May 26, 1994 (Ex. H to Plaintiffs’
20 Request for Judicial Notice in Support of
Motion for Summary Judgment or in the
21 Alternative Summary Adjudication / Trial
Brief) at p. 4.]

22 16. Defendants’ expert admitted that he was
23 asked to opine on what he thought should be
24 included as “handgun ammunition” in
Assembly Bill 2358’s enumerated list of
“handgun ammunition” calibers.

25 [Graham Deposition Vol. One (Ex. 57 to
26 Plaintiffs’ Evidence in Support of Motion for
Summary Judgment or in the Alternative
27 Summary Adjudication / Trial Brief) at
102:21-103:17]

1 17. When asked which ammunition he
2 thought should be included in AB 2358's list
3 of "handgun ammunition," Defendants'
4 expert said he remembered identifying the
5 following:
6 ".45, .380., .25, .40, .38, .357, possibly .4.54,
7 and possibly .762, and maybe .223."

8 [Graham Deposition Vol. One (Ex. 57 to
9 Plaintiffs' Evidence in Support of Motion for
10 Summary Judgment or in the Alternative
11 Summary Adjudication / Trial Brief) at
12 103:18-104:10.]

13 18. Counsel for Defendant DOJ has stated
14 that Defendant DOJ will not and cannot adopt
15 a policy as to what ammunition constitutes
16 "handgun ammunition" for purposes of the
17 Challenged Provisions.

18 [Public Records Act Request Sent to
19 California Department of Justice Re:
20 Assembly Bill 962, dated December 16, 2009
21 (Ex. 6 to Plaintiffs' Evidence in Support of
22 Motion for Summary Judgment or in the
23 Alternative Summary Adjudication / Trial
24 Brief); Defendant Department of Justice
25 Response to Public Records Act and Relevant
26 E-mail Enclosures, dated January 25, 2010
27 (Ex. 7 to Plaintiffs' Evidence in Support of
28 Motion for Summary Judgment or in the
Alternative Summary Adjudication / Trial
Brief) at AM0002, AM0004, AM0006,
AM0013.]

1 19. On August 19, 2010, then pending
2 Assembly Bill 2358 was amended to include
3 in Penal Code section 12323 the following
4 definition of "handgun ammunition": "any
5 variety of ammunition in the following
6 calibers, notwithstanding that the ammunition
may also be used in some rifles: .22 *rimfire*,
.25, .32, .38, .9mm, .10mm. .40, .41, .44, .45,
5.7x28mm, .223, .357, .454, .5.56x45mm,
7.62x39, 7.63mm, 7.65mm, .50."

7 [Assembly Bill No. 2358 (2010) as Amended
8 in Senate August 19, 2010 (Ex.2 to Plaintiffs'
9 Evidence in Support of Motion for Summary
10 Judgment or in the Alternative Summary
11 Adjudication / Trial Brief, Ex. F to Plaintiffs'
12 Request for Judicial Notice in Support of
13 Motion for Summary Judgment or in the
Alternative Summary Adjudication / Trial
Brief) at 7:29-8:21; Complete Bill History,
A.B. No. 2358 (Ex. 4 to Plaintiffs' Evidence
in Support of Motion for Summary Judgment
or in the Alternative Summary Adjudication /
Trial Brief).]

14 20. On August 30, 2010, then pending
15 Assembly Bill 2358 was amended to include
16 in Penal Code section 12323 the following
17 definition of "handgun ammunition": " any
18 variety of ammunition in the following
19 calibers, notwithstanding that the ammunition
may also be used in some rifles: .22 *rimfire*,
.25, .32, .38, .9mm, .10mm. .40, .41, .44, .45,
5.7x28mm, .357, .454, .5.56x45mm, 7.63mm,
7.65mm."

20 [Assembly Bill No. 2358 (2010) as Amended
21 in Senate August 30, 2010 (attached as Ex. 3
22 to Plaintiffs' Evidence in Support of Motion
23 for Summary Judgment or in the Alternative
24 Summary Adjudication / Trial Brief, Ex. G to
25 Plaintiffs' Request for Judicial Notice in
26 Support of Motion for Summary Judgment or
in the Alternative Summary Adjudication /
Trial Brief) at 16:11-40; Complete Bill
History, A.B. No. 2358 (attached as Ex.4 to
Plaintiffs' Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief).]

21. All modern centerfire and rimfire ammunition for use in handguns or rifles consist of the same components: a metal casing that suspends a metal projectile over a charge of powder confined within the metal casing and a primer (or priming charge) to ignite the powder - ("self-contained metallic ammunition").

[Helsley Declaration at ¶ 20.]

22. In order of their specificity, these three terms are used to describe a self-contained metallic cartridge: "ammunition," "caliber," and its given "cartridge name."

[Helsley Declaration at ¶ 54.]

23. "Ammunition" is defined in the Glossary of the Association of Firearms and Tool Mark Examiners as:

"One or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. Also referred to as fixed or live ammunition."

[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at Merged Ex. C at p. 2.]

24. The definition of "caliber" depends on whether it is applied to a firearm or to ammunition. When applied to ammunition, the Glossary of the Association of Firearms and Tool Mark Examiners defines it as: "A numerical term, without the decimal point, included in a cartridge name to indicate the nominal bullet diameter."

[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at Merged Ex. C at p. 5.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

25. It is a more precise description of ammunition to identify it by its specific cartridge name because often the “caliber” in the cartridge’s given name does not reflect the actual bore or bullet diameter. [Helsley Declaration at ¶¶ 54-64.]	
26. Within any given “caliber,” there are usually various “cartridges,” some of which may be used more often in a handgun, and some of which may be used more often in a rifle. [Helsley Declaration at ¶¶ 56-64.]	
27. Reference to the measurement of a projectile’s diameter (i.e., its caliber) is not a particularly precise method of identifying ammunition. [Helsley Declaration at ¶ 55-64.]	
28. Virtually all calibers can be and are fired safely through both handguns and rifles. [Helsley Declaration at ¶ 65.]	
29. Virtually all cartridges can be and are fired safely through both handguns and rifles. [Helsley Declaration at ¶ 65.]	
30. Packaging for ammunition often has no label associating its use with either a handgun or a rifle. [Helsley Declaration at ¶¶ 68-69.]	
31. Packaging for ammunition does not identify whether the ammunition it contains is “principally for use in handguns.” [Helsley Declaration at ¶ 69.]	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>32. In those instances where ammunition manufacturers or vendors label or market a particular cartridge as a “handgun cartridge,” such markings do not identify whether that cartridge, or ammunition of that caliber, is actually “principally used in handguns.”</p> <p>[Helsley Declaration at ¶¶ 68-69.]</p>	
<p>33. Experts cannot form a reliable opinion as to whether a given caliber or cartridge is intended to be or has actually been fired more than fifty percent of the time through a handgun.</p> <p>[Helsley Declaration at ¶¶ 66, 72-73.]</p>	
<p>34. There exists in the firearms industry no commonly understood delineation between “handgun ammunition” and other ammunition that indicates whether certain ammunition is actually fired or intended to be fired more often in handguns than in long-guns.</p> <p>[Helsley Declaration at ¶¶ 65-70, 72-73.]</p>	
<p>35. There exists in the firearms industry no commonly understood definition of “handgun ammunition” that equates with the “principally for use in handguns” language relied on by the Challenged Provisions.</p> <p>[Helsley Declaration at ¶¶ 65-70.]</p>	
<p>36. Defendants assert that “there is a common understanding among those individuals and businesses who might be subject to sections 12060, 12061, and 12318 of the Penal Code, as well as among those might enforce them,” as to what ammunition is “used principally in pistols and revolvers.”</p> <p>[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 6:16-19, 7:8-11.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>37. Defendants identify the following ammunition as “principally for use in handguns” for purposes of the Challenged Provisions: .45, 9mm, 10mm, .40, .357, .38, .44, .380, .454, .25, and .32.</p> <p>[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 5:7-8, 5:21-22; Amended Response to Specially Prepared Interrogatory No. 5 (Ex. 55 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 2:24-3:2.]</p>	
<p>38. Defendants assert that the ammunition they deemed “principally for use in handguns” based on their review of handgun sales records in California, written documents, ammunition vendor websites, and online encyclopedias, is “commonly understood” to be “handgun ammunition” for purposes of the Challenged Provisions.</p> <p>[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:8-20; Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 118:3-11, 142:21-25.]</p>	
<p>39. Additional research over time may cause Defendants’ list of ammunition “principally for use in handguns” to change.</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 204:21-205:8; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 67:21-68:1, 116:11-18, 118:11-18 9.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>40. Regulations promulgated at some date in the future may cause Defendants' list of ammunition "principally for use in handguns" to change.</p> <p>[Amended Response to Specially Prepared Interrogatory No. 5 (Ex. 55 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 2:26-3:2.]</p>	
<p>41. Defendants' expert admitted that if he had the opportunity to review sales records over a larger time frame, his opinion as to what ammunition is "principally for use in a handgun" might have changed.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 118:11-18.]</p>	
<p>42. Defendants' expert admits he may have left cartridges off Defendants' list of ammunition "principally for use in handguns" that [based on his understanding of "handgun ammunition"], should have been included.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 69:20-70:5.]</p>	
<p>43. Defendants' expert's methodology for determining what ammunition was "principally for use in handguns" was a two-step process that involved the expert looking at the records of handgun sales in California, and then reviewing websites, written materials and drawing on his personal experience.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 63:22-64:6, 140:13-21.]</p>	

1	44. Defendants' list of calibers that constitute ammunition "principally for use in handguns" was based on the records of handgun sales in California over each of the past five years, written materials, ammunition vendor websites, and online encyclopedias."	
2		
3		
4		
5	[Responses to Specially Prepared Interrogatories (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:14-20.]	
6		
7		
8	45. Defendant DOJ is required to keep and maintain records of handgun sales in California; this record is commonly referred to as the Dealer Record of Sales ("DROS") and it is linked to the Automated Firearms System ("AFS").	
9		
10		
11		
12	[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:14; Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 176:14-17, 177:7-13, 190:3-6.]	
13		
14		
15		
16		
17	46. Defendants and their expert witness relied in part on the DROS records to determine which ammunition should be included in Defendants' list of ammunition they consider "handgun ammunition" for purposes of the Challenged Provisions.	
18		
19		
20		
21	[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:13-18; Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 181:14-16, 181:23-182:1; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 9:17-20.]	
22		
23		
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>47. Defendants' expert's reliance on DROS records was his "starting point." He used the records to determine which popular handgun calibers should be researched further to determine if ammunition of those calibers is "principally for use in handguns."</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 9:17-20, 63:22-64:6.]</p>	
<p>48. Defendants' expert admitted that certain calibers may have been omitted from Defendants' list of ammunition "principally for use in handguns" because they were "unpopular."</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 204:21-207:9.]</p>	
<p>49. Defendants and their expert relied on DROS records only from the previous five years to determine the handguns most commonly sold in California over the same time period.</p> <p>[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:14-16; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 115:18-116:2, 116:17-117:6.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>50. Defendants' expert does not have any information regarding what percentage of the total guns in circulation are represented by the records of handgun sales in the past five years.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 118:4-10.]</p>	
<p>51. The DROS records relied upon by Defendants' expert combine firearms that utilize ammunition referred to by Defendants as "handgun ammunition" and firearms that utilize ammunition referred to by Defendants as "rifle ammunition" under a single caliber listing.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 12:18-14:2.]</p>	
<p>52. The DROS records relied upon by Defendants' expert are not precise in identifying the sales of handguns that use a specific cartridge.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 14:10-23.]</p>	
<p>53. The DROS system does not break down sales by guns as to every cartridge of ammunition sold and whether such ammunition is a "rifle cartridge," "handgun cartridge," or both.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 19:23-20:20.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>54. The DROS records relied on by Defendants' expert does not contain a listing of all types of cartridges fired by a firearm of that caliber due to space limitations.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 22:11-23:9.]</p>	
<p>55. Defendants' expert admitted that the DROS records relied on to inform his opinions contained categories of ammunition that could have been a mixture of what he considers "handgun ammunition" and "rifle ammunition."</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 91:18-92:6.]</p>	
<p>56. The DROS records relied on by Defendants' expert include a number of entries in calibers Defendants' expert considers "common rifle caliber rounds."</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 189:10-192:18.]</p>	
<p>57. There is no record of total rifle sales in California in existence because Defendant DOJ is prohibited from retaining records on the sale of long-guns.</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 183:19-184:15.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>58. Defendants' expert did not determine the total number of rifle sales in California as compared with the total number of handgun sales to inform his opinion as to whether a particular ammunition was principally used in a handgun.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:17-24.]</p>	
<p>59. Defendants' expert was unable to compare the sales of handguns using a particular ammunition with rifle sales that use the same ammunition because he is admittedly unaware of any source of data regarding rifle sales.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:6-24.]</p>	
<p>60. Defendants' expert admits his opinion as to which ammunition is "principally for use in handguns" may have been different had he been able to compare handgun sales with rifle sales.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 95:13-20.]</p>	
<p>61. Defendants relied in part on the representations made by ammunition vendors on their websites to determine whether certain ammunition should be included in Defendants' list of ammunition they consider "handgun ammunition" for purposes of the Challenged Provisions.</p> <p>[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:18-20.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>62. Defendants’ expert relied in part on the fact that ammunition vendor websites listed certain cartridges as “handgun ammunition” to inform his opinion as to whether specific ammunition was “principally for use in handguns.”</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 44:1-14, 64:17-65:6.]</p>	
<p>63. Defendants’ expert testified that the fact that certain websites refer to some ammunition as “handgun cartridges” helped establish the DOJ’s list of calibers “principally for use in handgun.”</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:5-95:13, 160:19-23, 166:21-167:6.]</p>	
<p>64. The four vendor websites that Defendants’ expert relied to inform his opinion as to whether specific ammunition was “principally for use in handguns” include: Cabela’s, Cheaper Than Dirt, Inc., J & G Sales, and Midway USA.</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:5-20, 148:23-149:4; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 37:8-13, 40:11-15, 43:4-10.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>65. In forming his opinion regarding whether ammunition was principally used in handguns, Defendants' expert gave some weight to whether the website listed the ammunition as "popular."</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 65:9-16.]</p>	
<p>66. Defendants' expert did not contact the relied-upon website vendors or do any investigation as to what criteria the websites relied upon to characterize the ammunition as "popular" or what the websites' characterization meant.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 44:15-46:3.]</p>	
<p>67. Defendants' expert admitted there is a difference between "popular" ammunition for a handgun and ammunition that is "principally for use in a handgun."</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 102:6-104:3.]</p>	
<p>68. None of the relied-upon website vendors provided Defendants' expert with data regarding the total rounds of each type of ammunition sold.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 46:4-16.]</p>	

69. The websites Defendants' expert relied upon to inform his opinions as to which ammunition is "principally for use in handguns" list as "handgun ammunition" ammunition that Defendants' expert does not consider to be principally used in handguns.

[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 62:25-63:21.]

70. Defendants' expert's decision to exclude certain ammunition listed as "handgun ammunition" on the vendor websites he relied upon to inform his opinions as to which ammunition is "principally for use in handguns" was based on his experience in observing the use of that ammunition in the field.

Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 66:15-67:9.]

71. Michael Tenny, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Cheaper Than Dirt, Inc., ships ammunition, does not know what ammunition is "handgun ammunition" and thus subject to the Challenged Provisions.

[Tenny Declaration at 1:6-11.]

72. Larry Potterfield, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Midway Arms, Inc.(dba Midway USA), ships ammunition, does not know what ammunition is "handgun ammunition" and thus subject to the Challenged Provisions.

[Potterfield Declaration at 2:3-12.]

1	73. Brian Hall, the party responsible for	
2	ensuring compliance with all applicable laws	
3	in the locations from and to which	
4	Chattanooga Shooting Supplies, Inc. (dba	
5	Natchez Shooters Supplies), ships	
6	ammunition, does not know what ammunition	
	is "handgun ammunition" and thus subject to	
	the Challenged Provisions.	
	[Hall Declaration at 2:3-12.]	
7	74. Michael Tenny, the party responsible for	
8	ensuring compliance with all applicable laws	
9	in the locations from and to which Cheaper	
10	Than Dirt, Inc., ships ammunition, does not	
11	know what ammunition is "principally for use	
12	in a handgun" and is unaware of any source to	
13	which he can look to determine what	
	ammunition suitable for use in both handguns	
	and rifles is "principally for use in a	
	handgun."	
	[Tenny Declaration at 1:12-14.]	
14	75. Larry Potterfield, the party responsible	
15	for ensuring compliance with all applicable	
16	laws in the locations from and to which	
17	Midway Arms, Inc.(dba Midway USA), ships	
18	ammunition, does not know what ammunition	
19	is "principally for use in a handgun" and is	
20	unaware of any source to which he can look	
	to determine what ammunition suitable for	
	use in both handguns and rifles is "principally	
	for use in a handgun."	
	[Potterfield Declaration at 2:13-15.]	
21	76. Brian Hall, the party responsible for	
22	ensuring compliance with all applicable laws	
23	in the locations from and to which	
24	Chattanooga Shooting Supplies, Inc. (dba	
25	Natchez Shooters Supplies), ships	
26	ammunition, does not know what ammunition	
27	is "principally for use in a handgun" and is	
	unaware of any source to which he can look	
	to determine what ammunition suitable for	
	use in both handguns and rifles is "principally	
	for use in a handgun."	
	[Hall Declaration at 2:13-15.]	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

153. There exists in the firearms industry no commonly understood delineation between “handgun ammunition” and other ammunition that indicates whether certain ammunition is actually fired or intended to be fired more often in handguns than in long-guns. [Helsley Declaration at ¶¶ 65-70, 72-73.]	
154. There exists in the firearms industry no commonly understood definition of “handgun ammunition” that equates with the “principally for use in handguns” language relied on by the Challenged Provisions. [Helsley Declaration at ¶¶ 65-70.]	
155. Defendants assert that “there is a common understanding among those individuals and businesses who might be subject to sections 12060, 12061, and 12318 of the Penal Code, as well as among those might enforce them,” as to what ammunition is “used principally in pistols and revolvers.” [Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 6:16-19, 7:8-11.]	
156. Defendants identify the following ammunition as “principally for use in handguns” for purposes of the Challenged Provisions: .45, 9mm, 10mm, .40, .357, .38, .44, .380, .454, .25, and .32. [Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 5:7-8, 5:21-22; Amended Response to Specially Prepared Interrogatory No. 5 (Ex. 55 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 2:24-3:2.]	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>157. Defendants assert that the ammunition they deemed “principally for use in handguns” based on their review of handgun sales records in California, written documents, ammunition vendor websites, and online encyclopedias, is “commonly understood” to be “handgun ammunition” for purposes of the Challenged Provisions.</p> <p>[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:8-20; Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 118:3-11, 142:21-25.]</p>	
<p>158. Additional research over time may cause Defendants’ list of ammunition “principally for use in handguns” to change.</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 204:21-205:8; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 67:21-68:1, 116:11-18, 118:11-18 9.]</p>	
<p>159. Regulations promulgated at some date in the future may cause Defendants’ list of ammunition “principally for use in handguns” to change.</p> <p>[Amended Response to Specially Prepared Interrogatory No. 5 (Ex. 55 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 2:26-3:2.]</p>	

1	160. Defendants' expert admitted that if he	
2	had the opportunity to review sales records	
3	over a larger time frame, his opinion as to	
4	what ammunition is "principally for use in a	
5	handgun" might have changed.	
6	[Graham Deposition Vol. Two (Ex. 58 to	
7	Plaintiffs' Evidence in Support of Motion for	
8	Summary Judgment or in the Alternative	
9	Summary Adjudication / Trial Brief) at	
10	118:11-18.]	
11	161. Defendants' expert admits he may have	
12	left cartridges off Defendants' list of	
13	ammunition "principally for use in handguns"	
14	that [based on his understanding of "handgun	
15	ammunition"], should have been included.	
16	[Graham Deposition Vol. Two (Ex. 58 to	
17	Plaintiffs' Evidence in Support of Motion for	
18	Summary Judgment or in the Alternative	
19	Summary Adjudication / Trial Brief) at 69:20-	
20	70:5.]	
21	162. Defendants' expert's methodology for	
22	determining what ammunition was	
23	"principally for use in handguns" was a two-	
24	step process that involved the expert looking	
25	at the records of handgun sales in California,	
26	and then reviewing websites, written	
27	materials and drawing on his personal	
28	experience.	
	[Graham Deposition Vol. Two (Ex. 58 to	
	Plaintiffs' Evidence in Support of Motion for	
	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at 63:22-	
	64:6, 140:13-21.]	
	163. Defendants' list of calibers that	
	constitute ammunition "principally for use in	
	handguns" was based on the records of	
	handgun sales in California over each of the	
	past five years, written materials, ammunition	
	vendor websites, and online encyclopedias."	
	[Responses to Specially Prepared	
	Interrogatories (Ex. 54 to Plaintiffs' Evidence	
	in Support of Motion for Summary Judgment	
	or in the Alternative Summary Adjudication /	
	Trial Brief) at 7:14-20.]	

1 164. Defendant DOJ is required to keep and
2 maintain records of handgun sales in
3 California; this record is commonly referred
4 to as the Dealer Record of Sales ("DROS")
5 and it is linked to the Automated Firearms
6 System ("AFS").

7 [Responses to Specially Prepared
8 Interrogatories, Set One (Ex. 54 to Plaintiffs'
9 Evidence in Support of Motion for Summary
10 Judgment or in the Alternative Summary
11 Adjudication / Trial Brief) at 7:14; Graham
12 Deposition Vol. One (Ex. 57 to Plaintiffs'
13 Evidence in Support of Motion for Summary
14 Judgment or in the Alternative Summary
15 Adjudication / Trial Brief) at 176:14-17,
16 177:7-13, 190:3-6.]

17 165. Defendants and their expert witness
18 relied in part on the DROS records to
19 determine which ammunition should be
20 included in Defendants' list of ammunition
21 they consider "handgun ammunition" for
22 purposes of the Challenged Provisions.

23 [Responses to Specially Prepared
24 Interrogatories, Set One (Ex. 54 to Plaintiffs'
25 Evidence in Support of Motion for Summary
26 Judgment or in the Alternative Summary
27 Adjudication / Trial Brief) at 7:13-18;
28 Graham Deposition Vol. One (Ex. 57 to
Plaintiffs' Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at
181:14-16, 181:23-182:1; Graham Deposition
Vol. Two (Ex. 58 to Plaintiffs' Evidence in
Support of Motion for Summary Judgment or
in the Alternative Summary Adjudication /
Trial Brief) at 9:17-20.]

166. Defendants' expert's reliance on DROS
records was his "starting point." He used the
records to determine which popular handgun
calibers should be researched further to
determine if ammunition of those calibers is
"principally for use in handguns."

[Graham Deposition Vol. Two (Ex. 58 to
Plaintiffs' Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 9:17-
20, 63:22-64:6.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>167. Defendants’ expert admitted that certain calibers may have been omitted from Defendants’ list of ammunition “principally for use in handguns” because they were “unpopular.”</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 204:21-207:9.]</p>	
<p>168. Defendants and their expert relied on DROS records only from the previous five years to determine the handguns most commonly sold in California over the same time period.</p> <p>[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:14-16; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 115:18-116:2, 116:17-117:6.]</p>	
<p>169. Defendants’ expert does not have any information regarding what percentage of the total guns in circulation are represented by the records of handgun sales in the past five years.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 118:4-10.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>170. The DROS records relied upon by Defendants’ expert combine firearms that utilize ammunition referred to by Defendants as “handgun ammunition” and firearms that utilize ammunition referred to by Defendants as “rifle ammunition” under a single caliber listing.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 12:18-14:2.]</p>	
<p>171. The DROS records relied upon by Defendants’ expert are not precise in identifying the sales of handguns that use a specific cartridge.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 14:10-23.]</p>	
<p>172. The DROS system does not break down sales by guns as to every cartridge of ammunition sold and whether such ammunition is a “rifle cartridge,” “handgun cartridge,” or both.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 19:23-20:20.]</p>	
<p>173. The DROS records relied on by Defendants’ expert does not contain a listing of all types of cartridges fired by a firearm of that caliber due to space limitations.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 22:11-23:9.]</p>	

1 174. Defendants' expert admitted that the
2 DROS records relied on to inform his
3 opinions contained categories of ammunition
4 that could have been a mixture of what he
5 considers "handgun ammunition" and "rifle
6 ammunition."

7 [Graham Deposition Vol. Two (Ex. 58 to
8 Plaintiffs' Evidence in Support of Motion for
9 Summary Judgment or in the Alternative
10 Summary Adjudication / Trial Brief) at 91:18-
11 92:6.]

12 175. The DROS records relied on by
13 Defendants' expert include a number of
14 entries in calibers Defendants' expert
15 considers "common rifle caliber rounds."

16 [Graham Deposition Vol. One (Ex. 57 to
17 Plaintiffs' Evidence in Support of Motion for
18 Summary Judgment or in the Alternative
19 Summary Adjudication / Trial Brief) at
20 189:10-192:18.]

21 176. There is no record of total rifle sales in
22 California in existence because Defendant
23 DOJ is prohibited from retaining records on
24 the sale of long-guns.

25 [Graham Deposition Vol. One (Ex. 57 to
26 Plaintiffs' Evidence in Support of Motion for
27 Summary Judgment or in the Alternative
28 Summary Adjudication / Trial Brief) at
183:19-184:15.]

177. Defendants' expert did not determine the
total number of rifle sales in California as
compared with the total number of handgun
sales to inform his opinion as to whether a
particular ammunition was principally used in
a handgun.

[Graham Deposition Vol. Two (Ex. 58 to
Plaintiffs' Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 93:17-
24.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>178. Defendants’ expert was unable to compare the sales of handguns using a particular ammunition with rifle sales that use the same ammunition because he is admittedly unaware of any source of data regarding rifle sales.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:6-24.]</p>	
<p>179. Defendants’ expert admits his opinion as to which ammunition is “principally for use in handguns” may have been different had he been able to compare handgun sales with rifle sales.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 95:13-20.]</p>	
<p>180. Defendants relied in part on the representations made by ammunition vendors on their websites to determine whether certain ammunition should be included in Defendants’ list of ammunition they consider “handgun ammunition” for purposes of the Challenged Provisions.</p> <p>[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:18-20.]</p>	
<p>181. Defendants’ expert relied in part on the fact that ammunition vendor websites listed certain cartridges as “handgun ammunition” to inform his opinion as to whether specific ammunition was “principally for use in handguns.”</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 44:1-14, 64:17-65:6.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>182. Defendants’ expert testified that the fact that certain websites refer to some ammunition as “handgun cartridges” helped establish the DOJ’s list of calibers “principally for use in handgun.”</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:5-95:13, 160:19-23, 166:21-167:6.]</p>	
<p>183. The four vendor websites that Defendants’ expert relied to inform his opinion as to whether specific ammunition was “principally for use in handguns” include: Cabela’s, Cheaper Than Dirt, Inc., J & G Sales, and Midway USA.</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 93:5-20, 148:23-149:4; Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 37:8-13, 40:11-15, 43:4-10.]</p>	
<p>184. In forming his opinion regarding whether ammunition was principally used in handguns, Defendants’ expert gave some weight to whether the website listed the ammunition as “popular.”</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 65:9-16.]</p>	

1 185. Defendants' expert did not contact the
2 relied-upon website vendors or do any
3 investigation as to what criteria the websites
4 relied upon to characterize the ammunition as
5 "popular" or what the websites'
6 characterization meant.

7 [Graham Deposition Vol. Two (Ex. 58 to
8 Plaintiffs' Evidence in Support of Motion for
9 Summary Judgment or in the Alternative
10 Summary Adjudication / Trial Brief) at 44:15-
11 46:3.]

12 186. Defendants' expert admitted there is a
13 difference between "popular" ammunition for
14 a handgun and ammunition that is
15 "principally for use in a handgun."

16 [Graham Deposition Vol. Two (Ex. 58 to
17 Plaintiffs' Evidence in Support of Motion for
18 Summary Judgment or in the Alternative
19 Summary Adjudication / Trial Brief) at 102:6-
20 104:3.]

21 187. None of the relied-upon website
22 vendors provided Defendants' expert with
23 data regarding the total rounds of each type of
24 ammunition sold.

25 [Graham Deposition Vol. Two (Ex. 58 to
26 Plaintiffs' Evidence in Support of Motion for
27 Summary Judgment or in the Alternative
28 Summary Adjudication / Trial Brief) at 46:4-
16.]

188. The websites Defendants' expert relied
upon to inform his opinions as to which
ammunition is "principally for use in
handguns" list as "handgun ammunition"
ammunition that Defendants' expert does not
consider to be principally used in handguns.

[Graham Deposition Vol. Two (Ex. 58 to
Plaintiffs' Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 62:25-
63:21.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>189. Defendants’ expert’s decision to exclude certain ammunition listed as “handgun ammunition” on the vendor websites he relied upon to inform his opinions as to which ammunition is “principally for use in handguns” was based on his experience in observing the use of that ammunition in the field.</p> <p>Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 66:15-67:9.]</p>	
<p>190. Michael Tenny, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Cheaper Than Dirt, Inc., ships ammunition, does not know what ammunition is “handgun ammunition” and thus subject to the Challenged Provisions.</p> <p>[Tenny Declaration at 1:6-11.]</p>	
<p>191. Larry Potterfield, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Midway Arms, Inc.(dba Midway USA), ships ammunition, does not know what ammunition is “handgun ammunition” and thus subject to the Challenged Provisions.</p> <p>[Potterfield Declaration at 2:3-12.]</p>	
<p>192. Brian Hall, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Chattanooga Shooting Supplies, Inc. (dba Natchez Shooters Supplies), ships ammunition, does not know what ammunition is “handgun ammunition” and thus subject to the Challenged Provisions.</p> <p>[Hall Declaration at 2:3-12.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>193. Michael Tenny, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Cheaper Than Dirt, Inc., ships ammunition, does not know what ammunition is “principally for use in a handgun” and is unaware of any source to which he can look to determine what ammunition suitable for use in both handguns and rifles is “principally for use in a handgun.”</p> <p>[Tenny Declaration at 1:12-14.]</p>	
<p>194. Larry Potterfield, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Midway Arms, Inc.(dba Midway USA), ships ammunition, does not know what ammunition is “principally for use in a handgun” and is unaware of any source to which he can look to determine what ammunition suitable for use in both handguns and rifles is “principally for use in a handgun.”</p> <p>[Potterfield Declaration at 2:13-15.]</p>	
<p>195. Brian Hall, the party responsible for ensuring compliance with all applicable laws in the locations from and to which Chattanooga Shooting Supplies, Inc. (dba Natchez Shooters Supplies), ships ammunition, does not know what ammunition is “principally for use in a handgun” and is unaware of any source to which he can look to determine what ammunition suitable for use in both handguns and rifles is “principally for use in a handgun.”</p> <p>[Hall Declaration at 2:13-15.]</p>	

1 196. Michael Tenny, the party responsible for
2 ensuring compliance with all applicable laws
3 in the locations from and to which Cheaper
4 Than Dirt, Inc., ships ammunition, does not
5 know what ammunition is exempt from the
6 Challenged Provisions as ammunition that is
7 “designed and intended to be used in antique
8 firearms” manufactured before 1898, because
9 many cartridges of ammunition used in
10 firearms manufactured before 1898 are also
11 used in firearms manufactured after 1898,
12 including cartridges sold by Cheaper Than
13 Dirt, Inc.

14 [Tenny Declaration at 1:15-19.]

15 197. Larry Potterfield, the party responsible
16 for ensuring compliance with all applicable
17 laws in the locations from and to which
18 Midway Arms, Inc.(dba Midway USA), ships
19 ammunition, does not know what ammunition
20 is exempt from the Challenged Provisions as
21 ammunition that is “designed and intended to
22 be used in antique firearms” manufactured
23 before 1898, because many cartridges of
24 ammunition used in firearms manufactured
25 before 1898 are also used in firearms
26 manufactured after 1898, including cartridges
27 sold by Midway Arms, Inc.(dba Midway
28 USA).

[Potterfield Declaration at 2:16-20.]

198. Brian Hall, the party responsible for
ensuring compliance with all applicable laws
in the locations from and to which
Chattanooga Shooting Supplies, Inc. (dba
Natchez Shooters Supplies), ships
ammunition, does not know what ammunition
is exempt from the Challenged Provisions as
ammunition that is “designed and intended to
be used in antique firearms” manufactured
before 1898, because many cartridges of
ammunition used in firearms manufactured
before 1898 are also used in firearms
manufactured after 1898, including cartridges
sold by Chattanooga Shooting Supplies, Inc.
(dba Natchez Shooters Supplies).

[Hall Declaration at 2:16-20.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

199. Cheaper Than Dirt, Inc., has announced that it will cease shipping all ammunition to non-exempt California customers beginning January 1, 2011, to avoid risking criminal prosecution under Penal Code section 12328. [Tenny Declaration at 2:1-8.]	
200. Midway Arms, Inc.(dba Midway USA), has announced that it will cease shipping all ammunition to non-exempt California customers beginning January 1, 2011, to avoid risking criminal prosecution under Penal Code section 12318. [Potterfield Declaration at 3:1-9.]	
201. It is the current intent of Chattanooga Shooting Supplies, Inc. (dba Natchez Shooters Supplies), to cease shipping all ammunition that is suitable for use in both handguns and long-guns to non-exempt California customers beginning February 1, 2011, to avoid risking criminal prosecution under Penal Code section 12318. [Hall Declaration at 3:1-6.]	
202. Defendants' expert knows of no specific trade magazine articles that he used to inform his opinion regarding which ammunition is "principally for use in handguns." [Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 34:8-35:14.]	
203. Defendants' expert did not use any trade magazine articles regarding the amount of particular ammunition sold. [Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 34:15-35:13.]	

1 204. Defendants' expert's use of trade
2 magazines to inform his opinion regarding
3 ammunition "principally for use in handguns"
4 is based solely upon his reading of trade
magazines over the years, with no specific
reference to a particular article or data from
those trade magazines on the subject.

5 [Graham Deposition Vol. Two (Ex. 58 to
6 Plaintiffs' Evidence in Support of Motion for
7 Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 35:15-
36:13, 36:14-37:6]

8 205. The DOJ's expert testified that he
9 pulled from his personal and professional
10 experiences to determine what ammunition
11 should be considered "handgun ammunition"
under the Challenged Provisions.

12 [Graham Deposition Vol. One (Ex. 57 to
13 Plaintiffs' Evidence in Support of Motion for
14 Summary Judgment or in the Alternative
15 Summary Adjudication / Trial Brief) at 81:24-
82:4, 91:1-4, 186:17-24; Graham Deposition
16 Vol. Two (Ex. 58 to Plaintiffs' Evidence in
Support of Motion for Summary Judgment or
in the Alternative Summary Adjudication /
Trial Brief) at 24:8-18, 28:4-29:2, 64:1-6,
72:25-73:10.]

17 206. Defendants' expert concluded that,
18 based on his training and experience over the
19 last sixteen years or so, when added to
20 experience with handguns and other factors,
he "*has a feeling* that there are certain calibers
that are more often than not handgun
calibers."

21 [Graham Deposition Vol. One (Ex. 57 to
22 Plaintiffs' Evidence in Support of Motion for
23 Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 81:24-
82:4, 206:22-207:2.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>207. Defendants’ expert’s opinion regarding ammunition “principally for use in handguns” was not informed by information regarding the amounts and types of ammunition used by the military.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 109:14-18.]</p>	
<p>208. Defendants’ expert’s opinion regarding ammunition “principally for use in handguns” was not informed by specific information regarding the number of handguns and/or rifles used by military service members stationed in California.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 109:8-13, 110:8-111:10.]</p>	
<p>209. Defendants’ expert’s opinion regarding ammunition “principally for use in handguns” was not informed by research studies regarding popular or prevalently used ammunition.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 116:19-24.]</p>	
<p>210. Defendants’ expert’s opinion regarding ammunition “principally for use in handguns” was not informed by existing polls regarding the ammunition generally or the popularity of certain cartridges.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 119:20-120:8.]</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>211. Prior to forming his opinion as to ammunition prevalently used in handguns, Defendants' expert did not personally conduct any polls regarding the ammunition members of the general public use in their handguns.</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 120:9-16.]</p>	
<p>212. Defendants assert that the ammunition they have identified as "principally for use in handguns" is supported in part by the fact that those calibers are identified as "handgun ammunition" in <i>Cartridges of the World</i>.</p> <p>[Responses to Specially Prepared Interrogatories, Set One (Ex. 54 to Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 7:18-21.]</p>	
<p>213. In its sections on rifle cartridges, <i>Cartridges of the World</i> identifies multiple cartridges in the calibers included in Defendants' list of ammunition "principally for use in handguns."</p> <p>[Barnes, <i>Cartridges of the World: A Complete and Illustrated Reference for Over 1500 Cartridges</i> (11th ed. 2006) "Selected Pages from Chapter 2: Current American Rifle Cartridges and Chapter3: Obsolete Rifle Cartridges " (Ex. 52 Plaintiffs' Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) <i>passim</i>.]</p>	

1 214. In its sections on handgun cartridges,
2 *Cartridges of the World* identifies multiple
3 cartridges in calibers not included in
Defendants' list of ammunition "principally
for use in handguns."

4 [Barnes, *Cartridges of the World: A Complete*
5 *and Illustrated Reference for Over 1500*
6 *Cartridges* (11th ed. 2006) "Selected Pages
7 from Chapter 6: Handgun Cartridges of the
8 World " (Ex. 53 to Plaintiffs' Evidence in
Support of Motion for Summary Judgment or
in the Alternative Summary Adjudication /
Trial Brief) *passim*.]

9 215. Defendants' expert admitted there are
10 many ammunition cartridges that fall within
11 the listed caliber classes that are not
12 "principally for use in a handgun."

13 [Graham Deposition Vol. One (Ex. 57 to
14 Plaintiffs' Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 135:7-
136:5, 137:8-22, 154:25-155:3, 155:21-
156:2.]

15 216. Defendants have suggested that the
16 Challenged Provisions apply to ammunition
17 that is "used principally" in handguns.

18 [Responses to Specially Prepared
19 Interrogatories, Set One (Ex. 54 to Plaintiffs'
Evidence in Support of Motion for Summary
Judgment or in the Alternative Summary
Adjudication / Trial Brief) at 7:8-11.]

20 217. Defendants' expert suggested that the
21 "principally for use in handguns" language
22 relates to the total number of handguns in
23 circulation that are chambered in a particular
24 caliber versus the total number of rifles in
circulation that are chambered in the same
caliber.

25 [Graham Deposition Vol. Two (Ex. 58 to
26 Plaintiffs' Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 83:1-
27 16.]

1 218. Defendants' expert suggested that the
2 "principally for use in handguns" language
3 relates to a mix of factors, including "the
4 number of manufacturers that may have
5 produced a weapon in a particular caliber,"
6 "the length of time that a particular gun has
7 been available in a particular caliber," and the
8 number of rifles in that caliber, if any.

[Graham Deposition Vol. Two (Ex. 58 to
Plaintiffs' Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 127:5-
128:25.]

9 219. When asked whether the "principally for
10 use in a handgun" standard required a
11 consideration of whether any particular
12 ammunition was fired more often through a
13 handgun than a long-gun, Defendants' expert
14 responded:

15 "I would say [its] not much of a factor
16 because principally for use really deals with
17 the kind of firearm its going to go into, in my
18 -- in my est- -- in my understanding, so if you
19 have one weapon that can shoot a million
20 rounds a second and then you have 500,000
21 rounds -- or handguns out there that shoot ten
22 rounds a minute, that weapon is actually -- or
23 the ammunition is principally for use in the
24 larger pool of -- of weapons."

[Graham Deposition Vol. Two (Ex. 58 to
Plaintiffs' Evidence in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at 83:1-
16.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>220. When asked to clarify whether he would consider the numerosity of total weapons or the numerosity of models of weapons to be the determining factor determining whether certain ammunition is “principally for use in handguns,” Defendants’ expert stated:</p> <p>“Given the available information in the amount of time I had, I tried to compare the number of manufacturers that may have produced a weapon in a particular caliber, the number of models that each manufacturer used in that caliber, and then, perhaps, the length of time that a particular gun has been available in a particular caliber.”</p> <p>[Graham Deposition Vol. Two (Ex. 58 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 128:8-25.]</p>	
<p>221. Firearms chambered in .22 are among the most popular weapons, as to both handguns and rifles.</p> <p>[Graham Deposition Vol. One (Ex. 57 to Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) at 185:21-186:5; Helsley Declaration at ¶¶ 29, 33.]</p>	
<p>222. .22 Long Rifle is likely the most popular firearm cartridge in the world.</p> <p>[Helsley Declaration at ¶ 33.]</p>	

1 223. In December 2009, when Plaintiffs'
2 counsel inquired as to whether ".22 rimfire"
3 ammunition would be considered "handgun
4 ammunition" under the Challenged
Provisions, Counsel for Defendant DOJ stated
that she did not know.

5 [Public Records Act Request Sent to
6 California Department of Justice Re:
7 Assembly Bill 962, dated December 16, 2009
8 (Ex. 6 to Plaintiffs' Evidence in Support of
9 Motion for Summary Judgment or in the
10 Alternative Summary Adjudication / Trial
11 Brief); Defendant Department of Justice
Response to Public Records Act and Relevant
E-mail Enclosures, dated January 25, 2010
(Ex. 7 to Plaintiffs' Evidence in Support of
Motion for Summary Judgment or in the
Alternative Summary Adjudication / Trial
Brief) at AM0002, AM0004, AM0006,
AM0013.]

12 224. Defendants' expert suggests that, at this
13 time, .22 caliber is not "principally for use in
14 handguns," but that his opinion could change
based on future research.

15 [Graham Deposition Vol. One (Ex. 57 to
16 Plaintiffs' Evidence in Support of Motion for
17 Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at
186:25-187:17.]

19 225. Defendants expert stated he would only
20 classify three .45 caliber cartridges to be
"principally for use in a handgun": .45 ACP,
.45 GAP, and .45 Long Colt.

21 [Graham Deposition Vol. One (Ex. 57 to
22 Plaintiffs' Evidence in Support of Motion for
23 Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief) at
153:13-18.]

226. *Cartridges of the World* includes numerous .45 cartridges in its section on handgun cartridges besides the .45 ACP, .45 GAP, and .45 Long Colt.

[Barnes, *Cartridges of the World: A Complete and Illustrated Reference for Over 1500 Cartridges* (11th ed. 2006) “Selected Pages from Chapter 6: Handgun Cartridges of the World ” (Ex. 53 Plaintiffs’ Evidence in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication / Trial Brief) *passim*.]

227. There are multiple cartridges that can be used in firearms manufactured both before and after 1898, including but not limited to, cartridges in the following calibers: 22, .32, .38, .44, .45, and .50.

[Helsley Declaration at ¶¶ 20-25.]

228. Ammunition that can be used in a modern firearm chambered to fire that cartridge can also be used in an antique firearm chambered to fire that same cartridge.

[Helsley Declaration at ¶¶ 20-25.]

229. Ammunition, when it is manufactured, is designed and intended to be used in any firearm that is chambered for that cartridge, regardless of when the firearm it will be used in was manufactured.

[Helsley Declaration at ¶¶ 20-25.]

230. The calibers Defendants claim to be “handgun ammunition” include cartridges that are designed and intended to be used in “antique firearms,” and thus should be exempt from the Challenged Provisions.

[Helsley Declaration at ¶23.]

1	231. Defendants' expert witness testified that	
2	.45 Long Colt is unequivocally "handgun	
3	ammunition" under the Challenged	
4	Provisions.	
5	[Graham Deposition Vol. One (Ex. 57 to	
6	Plaintiffs' Evidence in Support of Motion for	
7	Summary Judgment or in the Alternative	
8	Summary Adjudication / Trial Brief) at	
9	153:13-18.]	
10	232. 45 Long Colt is used in firearms	
11	manufactured prior to 1898.	
12	[Helsley Decl. at ¶ 23.]	
13	233. <i>State of Tennessee ex rel. Rayburn v.</i>	
14	<i>Cooper</i> , involved a challenge to a state law	
15	authorizing firearms to be carried by patrons	
16	in establishments where "the serving of	
17	meals" is the " <i>principle</i> business conducted"	
18	– as opposed to the serving of alcohol.	
19	[Amended Complaint for Injunctive and	
20	Declaratory Relief in <i>Tennessee ex rel.</i>	
21	<i>Rayburn v. Cooper</i> , Case No. 09-1284-I, filed	
22	July 6, 2009 (Ex. A to Plaintiffs' Request for	
23	Judicial Notice in Support of Motion for	
24	Summary Judgment or in the Alternative	
25	Summary Adjudication / Trial Brief) at ¶ 2;	
26	Order of Chancellor Claudia Bonnyman in	
27	<i>Tennessee ex rel. Rayburn v. Cooper</i> , Case	
28	No. 09-1284-I, filed November 25, 2009 (Ex.	
	D to ' Request for Judicial Notice in Support	
	of Motion for Summary Judgment or in the	
	Alternative Summary Adjudication / Trial	
	Brief) at 24:20-2.]	
21	234. In <i>State of Tennessee ex rel. Rayburn v.</i>	
22	<i>Cooper</i> , plaintiffs argued it would be	
23	extremely difficult for an individual to	
24	determine whether they were in a bar or a	
25	restaurant.	
26	[Amended Complaint for Injunctive and	
27	Declaratory Relief in <i>Tennessee ex rel.</i>	
28	<i>Rayburn v. Cooper</i> , Case No. 09-1284-I, filed	
	July 6, 2009 (Ex. A to Plaintiffs' Request for	
	Judicial Notice in Support of Motion for	
	Summary Judgment or in the Alternative	
	Summary Adjudication / Trial Brief) at ¶¶ 93,	
	97, 99.]	

1 235. The court in *State of Tennessee ex rel.*
2 *Rayburn v. Cooper* found the statute
3 unconstitutionally vague, reasoning that
4 whether the serving of meals is a business's
5 principle business is *not something that can*
6 *be known* to the ordinary citizen. The court
7 added that inquiry would not suffice to
8 overcome the law's vagueness.

9 [Order of Chancellor Claudia Bonnyman in
10 *Tennessee ex rel. Rayburn v. Cooper*, Case
11 No. 09-1284-I, filed November 25, 2009 (Ex.
12 D to Plaintiffs' Request for Judicial Notice in
13 Support of Motion for Summary Judgment or
14 in the Alternative Summary Adjudication /
15 Trial Brief) at 12:24-13:6.]

16 236. Defendants in *State of Tennessee ex rel.*
17 *Rayburn v. Cooper* argued that the law was
18 not vague because there were obvious
19 instances where a patron could determine
20 whether a particular establishment was a
21 "restaurant," pointing to establishments that
22 only serve food – and no alcohol.

23 [Consolidated Memorandum of Law of
24 Defendant Attorney General Cooper in
25 Opposition to Plaintiffs' Motions for Partial
26 Summary Judgment and in Support of
27 Defendant's Cross-Motion for Judgment on
28 the Pleadings and/or for Summary Judgment
in *Tennessee ex rel. Rayburn v. Cooper*, Case
No. 09-1284-I, filed October 2, 2009 (Ex. I to
Plaintiffs' Request for Judicial Notice in
Support of Motion for Summary Judgment or
in the Alternative Summary Adjudication /
Trial Brief) at pp. 19-20.]

1 237. In conjunction with Fish and Game Code
2 section 3004.5, the Legislature granted the
3 Fish and Game Commission the authority to
4 certify and publish a list of nonlead
5 ammunition suitable for use in regulated
6 areas. The list of certified nonlead
7 ammunition can be easily accessed at the
8 Commission's website.

9 [California Department of Fish and Game,
10 Certified Nonlead Ammunition Information,
11 <http://www.dfg.ca.gov/wildlife/hunting/condor/certifiedammo.html> (last visited Nov. 29,
12 2010) (Ex. E to Plaintiffs' Request for
13 Judicial Notice in Support of Motion for
14 Summary Judgment or in the Alternative
15 Summary Adjudication / Trial Brief).]

16 238. On December 30, 2009, DOJ published
17 an "Information Bulletin" providing a brief
18 overview of AB 962.

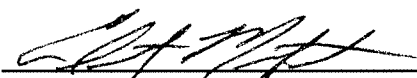
19 [Information Bulletin from California
20 Department of Justice Re: New and Amended
21 Firearm Laws, dated December 30, 2009 (Ex.
22 8 to Plaintiffs' Evidence in Support of Motion
23 for Summary Judgment or in the Alternative
24 Summary Adjudication / Trial Brief).]

25 239. Defendant DOJ provided notice to all
26 California firearm dealers, including Plaintiffs
27 Herb Bauer Sporting Goods, Inc., that Penal
28 Code section 12061, subdivisions (a)(1) and
(2) took effect, and have been in force, since
January 1, 2010, effectively threatening all
California firearm dealers with enforcement
of those sections.

[Information Bulletin from California
Department of Justice Re: New and Amended
Firearm Laws, dated December 30, 2009 (Ex.
8 to Plaintiffs' Evidence in Support of Motion
for Summary Judgment or in the Alternative
Summary Adjudication / Trial Brief).]

Dated: December 6, 2010

MICHEL & ASSOCIATES, P.C.


Clinton B. Monfort
Attorneys for Plaintiffs

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

8 **SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS'**
9 **MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY**
10 **ADJUDICATION / TRIAL BRIEF**

11 on the interested parties in this action by placing
12 [] the original
13 [X] a true and correct copy
14 thereof enclosed in sealed envelope(s) addressed as follows:

15 The California Department of Justice
16 1300 "I" Street
17 Sacramento, CA 95814-2919

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

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

25 X (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
26 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under
27 the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for
28 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

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

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

 (FEDERAL) I declare that I am employed in the office of the member of the bar of this
court at whose direction the service was made.

26 _____
27 CLAUDIA AYALA
28