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18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 IN AND FOR THE COUNTY OF FRESNO

20 EDWARD W. HUNT, in his official
21 capacity as District Attorney of Fresno
22 County, and in his personal capacity as a
23 citizen and taxpayer, et. al.,

24 Plaintiffs,

25 v.

26 STATE OF CALIFORNIA; WILLIAM
27 LOCKYER, Attorney General of the State of
28 California, et. al.,

Defendants.

) CASE NO. 01CECG03182

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

) Date: December 14, 2006

) Time: 3:30 p.m.

) Dept.: 72

FILED

SEP 29 2006

FRESNO COUNTY SUPERIOR COURT

By _____
SXG - DEPUTY

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Pursuant to California Code of Civil Procedure ("C.C.P.") § 437c(b) and California Rules of Court, Rule 342, Plaintiffs submit this Separate Statement of Undisputed Facts together with references to supporting evidence, in support of its Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication against Defendants.

I. MATERIAL FACTS RELATING TO THE PASSAGE OF SENATE BILL 23 (1999) AND THE ISSUANCE OF REGULATIONS

Undisputed Material Facts:	Supporting Evidence:
1. Prior to 1989, the term "assault weapon" did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists to expand the category of "assault rifles" so as to allow an attack on as many additional firearms as possible on the basis of "evil" appearance.	<i>Stenberg v. Carhart</i> (2000) 530 U.S. 914, 101, n.16.
2. In 1989 the California Legislature passed the first statewide regulation of firearms deemed to be "assault weapons" by make and model, such as model AR-15 manufactured by Colt's Manufacturing Company, LLC; that act was called the Roberti-Roos Assault Weapon Control Act ("AWCA"). Under this Act, any firearm on a list specified in Penal Code section 12276 is considered an "assault weapon." Firearms identified in Penal Code	1989 Cal. Stat. Ch. 19 section 3 at 64, codified at Cal. Penal Code sections 12275 <i>et seq.</i> Assault Weapons Identification Guide, 3 rd Edition - November 2001. (Exh. A at p.2.)

1 section 12276 are also called "Category 1"
2 "assault weapons." Such "assault weapons"
3 are regulated after December 31, 1991, and, in
4 general, were required to be registered as
5 "assault weapons" with the Department of
6 Justice on or before March 31, 1992.

8 3. The Roberti-Roos Assault Weapons
9 Control Act also regulated AK and AR-15
10 "series" "assault weapons." These are also
11 called Category 2 "assault weapons."
12 Effective August 16, 2000, firearm models
13 that are variations of the AK or AR-15, with
14 only minor differences from those two
15 models, are considered "assault weapons"
16 under the original Roberti-Roos Assault
17 Weapons Control Act of 1989, but only upon
18 the Department of Justice issuing regulations
19 identifying the make and model of such
20 firearms pursuant to Penal Code section
21 12276.5.
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23

Penal Code sections 12276, subd (e) and (f)
and 12276.5. Assault Weapons Identification
Guide, 3rd Edition - November 2001. (Exh. A
at p.56.)

1	4. The Roberti-Roos Assault Weapons	Penal Code section 12276.1; Assault Weapons
2	Control Act of 1989 (Penal Code section	Identification Guide, 3 rd Edition - November
3	12276) regulates specific “assault weapons”	2001. (Exh. A at p.70.); and Senate Bill 23
4	by makes and models. Since its passage in	(1999) (Exh. B.)
5	1989, many manufacturers created new	
6	firearm models that have very similar	
7	characteristics to controlled “assault	
8	weapons.” In response, the Legislature passed	
9	and the Governor signed SB 23 (Chapter 129,	
10	Statutes of 1999), which created Penal Code	
11	section 12276.1 to define “assault weapons”	
12	by generic characteristics. Under Penal Code	
13	section 12276.1, a firearm’s make, model, or	
14	markings have no bearing on whether it is an	
15	“assault weapon.” A firearm’s status as an	
16	assault weapon under this category is	
17	determined solely by its characteristics. There	
18	are three general types of firearms that are	
19	controlled by the generic characteristics	
20	“assault weapons” laws. These types include	
21	semiautomatic centerfire rifles, semiautomatic	
22	pistols, and semiautomatic or revolving	
23	cylinder shotguns.	
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<p>1 5. On December 20, 1999, the Office of the</p> <p>2 Attorney General, California Department of</p> <p>3 Justice filed a Notice of Publication /</p> <p>4 Regulations submissions with the Office of</p> <p>5 Administrative law. The Department of</p> <p>6 Justice proposed to adopt sections 978.10</p> <p>7 through 978.44 in Title 11, Division 1 of the</p> <p>8 California Code of Regulations (CCR). These</p> <p>9 sections apply to “assault weapons” and</p> <p>10 “large capacity magazines.”</p>	<p>Rule Making File: Part A – Notice of</p> <p>Publication/Regulations Submission. (Exh.</p> <p>C.)</p>
<p>11</p> <p>12</p> <p>13 6. The text of the regulations originally</p> <p>14 noticed to the public define six terms used in</p> <p>15 the identification of “assault weapons”</p> <p>16 pursuant to Penal Code section 12276.1:</p> <p>17 “detachable magazine”; “flash suppressor”;</p> <p>18 “forward pistol grip”; “permanently altered”;</p> <p>19 “pistol grip that protrudes conspicuously</p> <p>20 beneath the action of the weapon”; and</p> <p>21 “thumbhole stock.”</p>	<p>Rule Making File: Part B – Text of</p> <p>Regulations Originally Noticed to the Public.</p> <p>(Exh. D.); Rule Making File: Part C- Initial</p> <p>Statement of Reasons. (Exh. E at Hunt</p> <p>02894.)</p>
<p>22</p> <p>23 7. The text of the initial statement of reasons</p> <p>24 states that the regulations were necessary to</p> <p>25 establish “a title for the regulatory action and</p> <p>26 specifying the scope of regulations increase</p> <p>27 the general clarity of the regulatory action for</p> <p>28 persons affected by the regulations.”</p>	<p>Rule Making File: Part C – Initial Statement of</p> <p>Reasons. (Exh. E at Hunt 02893.)</p>

1 2 3 4 5 6 7 8	7. To define the terms expressed in Penal Code section 12276.1, the Department of Justice relied upon the Small Arms Lexicon and Concise Encyclopedia by Chester Mueller and John Olson and the Dictionary of Weapons and Military Terms by John Quick, Ph.D.	Rule Making File: Part C – Initial Statement of Reasons. (Exh. E at Hunt 02894.)
9 10 11 12	8. Prior to proposing the text of the regulations originally noticed to the public, the Department of Justice did not consider any alternatives.	Rule Making File: Part C – Initial Statement of Reasons. (Exh. E at Hunt 02894.)
13 14 15 16 17	9. The Department of Justice estimated that there would be “approximately 100,000 assault weapon registrants” of “assault weapons” pursuant to Senate Bill 23.	Rule Making File: Part C – Initial Statement of Reasons. (Exh. E at Hunt 02896.)
18 19 20 21 22 23 24 25 26 27 28	10. Approximately 1,300 written comments were received by the Department of Justice during a 45 day comment period.	Rule Making File: Part D – Written Comments Submitted During The 45-Day Comment Period. (Exh. F.)

11. The Department of Justice held two public hearings to receive testimony on the proposed regulations. The Department's first public hearing was held February 24, 2000, during which it heard 82 comments from the general public. The second public hearing was held February 28, 2000, during which the Department of Justice heard testimony from 51 people.	Rule Making File: Part E – Public Hearing Record. (Exh. G.)
12. In response to the comments received from the public regarding the proposed regulations, on May 10, 2000, the Department of Justice notified the public of changes to the proposed regulations and modified the text of the proposed regulations.	Rule Making File: Part F – Notice of Modifications to Text / Modified Text of Regulations. (Exh. H.)
13. The Department of Justice received comments during a 15-day comment period beginning May 10, 2000, through May 30, 2000. During this comment period, the Department of Justice received approximately 190 written comments.	Rule Making File: Part G – Written Comments Submitted During First 15 - Day Comment Period. (Exh. I.)

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14. In response to the comments received from the public regarding the modified regulations, on July 12, 2000, the Department of Justice notified the public of changes to the proposed regulations and modified the text of the proposed regulations.	Rule Making File: Part H – Second Notice of Modifications to Text / Modified Text of Regulations. (Exh. J.)
15. The Department of Justice received comments during the Second 15-Day comment period beginning July 12, 2000, through May 30, 2000. During this comment period, the Department of Justice received approximately 85 written comments.	Rule Making File: Part I – Written Comments Submitted During Second 15-Day Comment Period. (Exh. K.)
16. The volume of the written comments received during the three comment periods was so substantial and voluminous that the Department of Justice created a Comment Identification Key identifying each individual that submitted comments to the issues each individual raised during the comment period.	Rule Making File: Part J – Comment Identification Key. (Exh. L.)

1	17. Subsequent to the Second 15-Day	Rule Making File: Part K – Updated
2	Written Comment Period, the Department of	Informative Digest. (Exh. M.)
3	Justice issued an Updated Informative Digest,	
4	which identified the following documents as	
5	reference material to the Rule Making File	
6	during the rule making process:	
7		
8	• Jane’s Infantry Weapons,	
9	Glossary, Twentieth Edition,	
10	1994-95	
11	• Sporting Arms and	
12	Ammunition Manufacturer’s	
13	Institute, Inc. (SAAMI),	
14	Technical Correspondent’s	
15	Handbook, Glossary of	
16	Industry Terms	
17	• SAAMI Non-Fiction Writer’s	
18	Guide	
19	• National Rifle Association	
20	Institute for Legislative Action	
21	(NRA-ILA), Firearms Glossary	
22	Department of Treasury,	
23	Bureau of Alcohol, Tobacco	
24	and Firearms, Federal Firearms	
25	Regulation Reference Guide,	
26	2000	
27	• California Attorney General’s	
28	Assault Weapons Identification	
	Guide, 1993	
	• Complete Guide to Guns &	
	Shooting, by John Malloy,	
	1995.	
23	18. Exhibits C through T are true and correct	Rule Making File: Parts A-R. (Exh. C through
24	copies of Parts A through R of the Rule	T.)
25	Making File produced to Plaintiffs by the	
26	Department of Justice.	
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19. Though the Department of Justice estimated that 100,000 persons would register their firearms, only 37,924 persons registered their Penal Code section 12276.1 “assault weapons” pursuant to Senate Bill 23. Thus, if the Department of Justice estimate is correct, there is an estimated 62,076 persons that either modified their firearms or failed to register their Penal Code section 12276.1 “assault weapons.”	Rule Making File: Part C – Initial Statement of Reasons. (Exh. E at Hunt 02896.); Assault Weapon Registration Daily Report for December 31, 2001. (Exh. U.)
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II. MATERIAL FACTS RELATING TO PLAINTIFFS' CLAIM THAT DOJ'S REGULATIONS HAVE UNLAWFULLY EXPANDED THE DEFINITION OF THE TERM "FLASH SUPPRESSOR"

Undisputed Material Facts:	Supporting Evidence:
20. The text of the regulations originally noticed to the public defined "flash suppressor" as: "any device that reduces or conceals the visible light or flash created when a firearm is fired. This definition includes flash hiders, but does not include compensators and muzzle brakes (devices attached to or integral with the muzzle barrel to utilize propelling gasses for counter-recoil.)"	Rule Making File: Part B – Text of the Regulations Originally Noticed to the Public. (Exh. D at HUNT 02881.)
21. The Department of Justice modified their initial proposed definition of "flash suppressor" to read: "flash suppressor" means any device that reduces or redirects muzzle flash from the shooter's field of vision.	Rule Making File: Part F – Notice of Modifications to Text / Modified Text of Regulations. (Exh. H.)

1 2 3 4 5 6 7 8 9	22. Subsequent to the First 15 day comment period, the Department of Justice modified their proposed definition of “flash suppressor” to read: “flash suppressor” means any device designed, intended, or that functions to reduce or redirect muzzle flash from the shooter’s field of vision.”	Rule Making File: Part H – Second Notice of Modifications to Text / Modified Text of Regulations. (Exh. J.)
10 11 12 13 14 15	23. Dictionaries generally define “flash suppressor” as an object designed or intended to reduce flash.	Declaration of Torrey D. Johnson in Support of Plaintiffs’ Request for Declaratory and Injunctive Relief, ¶ 6; Declaration of Jess Guy in Support of Plaintiffs’ Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication ¶ 13.
16 17 18 19 20 21 22 23 24	24. In introducing the redirection concept, DOJ’s definition departs from all definitions of “flash suppressor” found in the technical literature, including dictionaries, glossaries and materials DOJ itself listed as the basis for its definition. Each of these reference works defines a flash suppressor function as seeking to “reduce” flash — not “redirect” it.	Declaration of Torrey D. Johnson in Support of Plaintiffs’ Request for Declaratory and Injunctive Relief, ¶ 5; Declaration of Michael Shain in Support of Plaintiffs’ Request for Declaratory and Injunctive Relief, ¶ 9; Declaration of Jess Guy in Support of Plaintiffs’ Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication ¶ 13.
25 26 27 28	25. The Small Arms Lexicon and Concise Encyclopedia by Chester Mueller and John Olson does not define the term “flash suppressor.”	Rule Making File: Part N – Supportive Reference Materials Originally Noticed To The Public. (Exh. P at HUNT 03029.)

1	26. The Small Arms Lexicon and Concise	Rule Making File: Part N – Supportive
2	Encyclopedia by Chester Mueller and John	Reference Materials Originally Noticed To
3	Olson does, however, define “flash hider” as a	The Public. (Exh. P at HUNT 03029.)
4	“muzzle attachment for a gun to conceal the	
5	flame when it is fired at night.”	
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7	27. The Small Arms Lexicon and Concise	Rule Making File: Part N – Supportive
8	Encyclopedia by Chester Mueller and John	Reference Materials Originally Noticed To
9	Olson also defines “muzzle brake” as “an	The Public. (Exh. P at HUNT 03032.)
10	attachment secured to the muzzle of a gun,	
11	which may be a cannon, rifle, or shotgun, to	
12	utilize some of the muzzle blast to apply a	
13	forward force to the barrel at the instant the	
14	gun is reacting backward in recoil. Basically	
15	it is a tube screwed to the muzzle, having a	
16	bore of diameter slightly larger than the bore	
17	of the barrel to enable the bullet or shot charge	
18	to pass freely through it. The wall of the tube	
19	is provided with holes or slits at right angles	
20	to the bore or inclined backward and outward	
21	at a slight angle to permit a portion of the	
22	muzzle blast to thus act against the tube and	
23	escape from it.”	
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1	28. The Small Arms Lexicon and Concise	Rule Making File: Part N – Supportive
2	Encyclopedia by Chester Mueller and John	Reference Materials Originally Noticed To
3	Olson also defines “compensator” as “a	The Public. (Exh. P at HUNT 03027.)
4	muzzle brake commonly used on cannon, now	
5	often used on some types of shotguns and	
6	automatic weapons to reduce the upward jump	
7	of the muzzle as well as recoil. It consists of a	
8	metal tube of bore slightly larger than the	
9	bullet or shot charge, screwed to the muzzle.	
10	Its wall has a series of openings at right angles	
11	to the bore, of selected patterns, designed to	
12	cause the muzzle blast to exert forward in	
13	opposition to the backward recoil movement	
14	of the gun when it is fired. The Cutts	
15	Compensator is an example.”	
16	29. The Small Arms Lexicon and Concise	Rule Making File: Part N – Supportive
17	Encyclopedia by Chester Mueller and John	Reference Materials Originally Noticed To
18	Olson also defines “muzzle compensator” as	The Public. (Exh. P at HUNT 03032.)
19	“a device attached to the muzzle of a gun	
20	barrel which utilizes the escaping gases to	
21	control the direction and amount of	
22	undesirable muzzle movement. It may also	
23	reduce the recoil energy of the weapon.”	
24	30. The Dictionary of Weapons and Military	Rule Making File: Part N – Supportive
25	Terms by John Quick defines “flash	Reference Materials Originally Noticed To
26	suppressor” as “a device attached to the	The Public. (Exh. P at HUNT 03039.)
27	muzzle of a weapon which reduces the	
28	amount of visible light or flash created by	
	burning propellant gases.”	

1	31. The Dictionary of Weapons and Military	Rule Making File: Part N – Supportive
2	Terms by John Quick defines “flash hider” as	Reference Materials Originally Noticed To
3	“a metallic cone and/or flat disks which are	The Public. (Exh. P at HUNT 03039.)
4	attached to the muzzle of a gun to conceal the	
5	flash when it is fired and to prevent temporary	
6	blindness of the gun crew while firing.”	
7	32. The Dictionary of Weapons and Military	Rule Making File: Part N – Supportive
8	Terms by John Quick defines “muzzle brake”	Reference Materials Originally Noticed To
9	as “a device attached to the muzzle of a	The Public. (Exh. P at HUNT 03042.)
10	weapon which utilizes escaping gas to reduce	
11	recoil and noise.”	
12	33. The Dictionary of Weapons and Military	Rule Making File: Part N – Supportive
13	Terms by John Quick defines “muzzle	Reference Materials Originally Noticed To
14	compensator” as “a device attached to the	The Public. (Exh. P at HUNT 03042.)
15	muzzle of a weapon which utilizes escaping	
16	gases to control muzzle movement.”	
17	35. The Dictionary of Weapons and Military	Rule Making File: Part N – Supportive
18	Terms by John Quick defines “compensator”	Reference Materials Originally Noticed To
19	as “On some small arms, a device used to hold	The Public. (Exh. P at HUNT 03037.)
20	down muzzle rise and reduce recoil.”	
21	36. The Association of Firearm and Tool	Rule Making File: Part N – Supportive
22	Mark Examiners 1969 Glossary defines “flash	Reference Materials Originally Noticed To
23	suppressor” as “a muzzle attachment designed	The Public. (Exh. P at HUNT 03049.)
24	to reduce muzzle flash.”	
25	37. The Association of Firearm and Tool	Rule Making File: Part N – Supportive
26	Mark Examiners 1969 Glossary defines “flash	Reference Materials Originally Noticed To
27	inhibitor” as “a material that is added to the	The Public. (Exh. P at HUNT 03049.)
28	propellant for the purpose of reducing muzzle	
	flash.”	

1	38. The Association of Firearm and Tool	Rule Making File: Part N – Supportive
2	Mark Examiners 1969 Glossary defines	Reference Materials Originally Noticed To
3	“compensator” as “a device attached to or	The Public. (Exh. P at HUNT 03048.)
4	integral with the muzzle end of the barrel to	
5	utilize propelling gases for counter-recoil.	
6	Also called Muzzle Brake.”	
7	39. The Jane’s Infantry Weapons, Glossary,	Rule Making File: Part O – Notice of
8	Twentieth Edition, 1994-95 does not define	Additional Supportive Reference
9	“flash suppressor.”	Materials/Additional Material. (Exh. Q at
10		HUNT 03060.)
11	40. The Jane’s Infantry Weapons, Glossary,	Rule Making File: Part O – Notice of
12	Twentieth Edition, 1994-95 does, however,	Additional Supportive Reference
13	define “flash hider” as a “conceal attachment	Materials/Additional Material. (Exh. Q at
14	to the muzzle for concealing muzzle flash	HUNT 03060.)
15	from an observer. Also acts as a flash	
16	eliminator, though it is less efficient than a	
17	properly designed eliminator.”	
18	41. The Jane’s Infantry Weapons, Glossary,	Rule Making File: Part O – Notice of
19	Twentieth Edition, 1994-95 also defines “flash	Additional Supportive Reference
20	eliminator” as “a device fitted to the muzzle to	Materials/Additional Material. (Exh. Q at
21	cool emergent gases preventing the formation	HUNT 03060.)
22	of flame or flames.”	
23	42. The Jane’s Infantry Weapons, Glossary,	Rule Making File: Part O – Notice of
24	Twentieth Edition, 1994-95 also defines	Additional Supportive Reference
25	“compensator” as “a device attached to a	Materials/Additional Material. (Exh. Q at
26	weapon barrel (usually an automatic weapon)	HUNT 03060.)
27	to divert some of the muzzle blast upward and	
28	thus counteract the tendency for the muzzle to	
	rise during automatic fire.”	

1	43. The Jane's Infantry Weapons, Glossary,	Rule Making File: Part O – Notice of
2	Twentieth Edition, 1994-95 also defines	Additional Supportive Reference
3	"muzzle brake" as an "attachment to the	Materials/Additional Material. (Exh. Q at
4	muzzle of a weapon designed to deflect some	HUNT 03061.)
5	of the emergent gases and direct them against	
6	the surface so as to generate a thrust on the	
7	muzzle countering the recoil force. Widely	
8	used on artillery but less popular in small arms	
9	since an efficient brake will divert too much	
10	gas to the sides and rear, to the discomfort of	
11	the fire and his companions."	
12	44. Sporting Arms and Ammunition	Rule Making File: Part O – Notice of
13	Manufacturing Institute, Inc.'s Glossary of	Additional Supportive Reference
14	Industry Terms defines the term "flash	Materials/Additional Material. (Exh. Q at
15	suppressor" as "a muzzle attachment designed	HUNT 03111.)
16	to reduce muzzle flash. Also called a flash	
17	hider."	
18	45. Sporting Arms and Ammunition	Rule Making File: Part O – Notice of
19	Manufacturing Institute, Inc.'s Glossary of	Additional Supportive Reference
20	Industry Terms defines the term "flash hider"	Materials/Additional Material. (Exh. Q at
21	as a "flash suppressor."	HUNT 03100.)
22	46. Sporting Arms and Ammunition	Rule Making File: Part O – Notice of
23	Manufacturing Institute, Inc.'s Glossary of	Additional Supportive Reference
24	Industry Terms defines the term	Materials/Additional Material. (Exh. Q at
25	"compensator" as "a device attached to the	HUNT 03100.)
26	muzzle end of the barrel that utilizes	
27	propelling gases to reduce recoil. See also	
28	muzzle brake."	

1 2 3 4 5 6 7	47. Sporting Arms and Ammunition Manufacturing Institute, Inc.'s Glossary of Industry Terms defines the term "muzzle brake" as "a device at the muzzle end usually integral with the barrel that uses the emerging gas behind a projectile to reduce recoil. See also, compensator."	Rule Making File: Part O – Notice of Additional Supportive Reference Materials/Additional Material. (Exh. Q at HUNT 03133.)
8 9 10 11 12 13	48. The National Rifle Association Institute for Legislative Action (NRA - ILA), Firearms Glossary defines the term "Flash Hider/Suppressor" as "a muzzle attachment intended to reduce visible muzzle flash caused by burning propellant."	Rule Making File: Part O – Notice of Additional Supportive Reference Materials/Additional Material. (Exh. Q at HUNT 03200.)
14 15 16 17 18 19	49. The National Rifle Association Institute for Legislative Action (NRA - ILA), Firearms Glossary defines the term "muzzle brake" as "an attachment to or integral part of the barrel that traps and diverts expanding gasses and reduces recoil."	Rule Making File: Part O – Notice of Additional Supportive Reference Materials/Additional Material. (Exh. Q at HUNT 03200.)
20 21 22 23 24 25 26 27	50. The Association of Firearms and Toolmark Examiners defines a "flash suppressor" as "a muzzle attachment designed to reduce muzzle flash."	Glossary of the Association of Firearm and Toolmark Examiners by the AFTE Standardization Committee. (Exh. V at p. 60.) (Also attached to Plaintiffs' First Amended Complaint as Exh. 6.); Declaration of Jess Guy in Support of Plaintiffs' Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication ¶ 42 n. 7.

1	51. The Association of Firearms and	Glossary of the Association of Firearm and
2	Toolmark Examiners defines a “compensator”	Toolmark Examiners by the AFTE
3	as “a device attached to or integral with the	Standardization Committee. (Exh. V at p. 45.)
4	muzzle end of a barrel to utilize propelling	(Also attached to Plaintiffs’ First Amended
5	gases for counter-recoil. Also called Muzzle	Complaint as Exh. 6.)
6	Brake.”	
7	52. The Association of Firearms and	Glossary of the Association of Firearm and
8	Toolmark Examiners defines a “muzzle	Toolmark Examiners by the AFTE
9	brake” as “a device at or in the muzzle end of	Standardization Committee. (Exh. V at p. 88.)
10	a barrel that uses the emerging gas behind the	(Also attached to Plaintiffs’ First Amended
11	projectile to reduce recoil.	Complaint as Exh. 6.)
12	53. The Sporting Arms and Ammunition	Non-Fiction Writer’s Guide: A writer’s
13	Manufacturers’ Institute defines a “flash	resource to firearms and ammunition. (Exh.
14	suppressor” as “an attachment to the muzzle	W at p. 47.) (Also attached to Plaintiffs’ First
15	designed to reduce muzzle flash. Note: A	Amended Complaint as Exh. 7.)
16	flash suppressor is not a silencer.”	
17	54. The Firearms Encyclopedia defines a	Firearms Encyclopedia (Exh. X at p. 104.)
18	“flash suppressor” as “a device attached to the	(Also attached to Plaintiffs’ First Amended
19	muzzle of a firearm that serves to disrupt, or	Complaint as Exh. 8.)
20	reduce the amount of flame produced upon	
21	firing.”	

1	55. The Firearms Encyclopedia defines a	Firearms Encyclopedia. (Exh. X at p. 103-
2	"flash hider" as "a device attached to the	104.) (Also attached to Plaintiffs' First
3	muzzle of any gun for the purpose of	Amended Complaint as Exh. 8.)
4	concealing (not reducing) the flash or flame	
5	generated by the burning propellant and by the	
6	ignition of expanding gases as they contact the	
7	oxygen-rich atmosphere. Usually a large	
8	conical or tubular extension clamped to the	
9	muzzle. See also Flash Suppressor."	
10	56. The Firearms Encyclopedia defines a	Firearms Encyclopedia. (Exh. X at p. 71.)
11	"compensator" as "a device fitted to the	(Also attached to Plaintiffs' First Amended
12	muzzle of any firearm whose function is to	Complaint as Exh. 8.)
13	reduce the upward movement of the muzzle	
14	brought about by recoil forces. The earliest	
15	form of this device to see commercial	
16	application was the Cutts Compensator,	
17	marketed for many years by Lyman Gunsight	
18	Co. A compensator fits over the muzzle and	
19	uses slots in its outer end to deflect propellant	
20	gases upwards, thus providing downward	
21	thrust to counteract recoil-inducing jump.	
22	Their effectiveness depends to a large extent	
23	upon the volume and the direction of the gases	
24	diverted, and other factors such as the stock	
25	design, center of gravity, etc. See also Cutts	
26	Compensator and Muzzle Brake.	
27	57. The Firearms Encyclopedia defines a	Firearms Encyclopedia. (Exh. X at p. 167-
28	"muzzle brake" as "a device attached to the	168.) (Also attached to Plaintiffs' First

1 muzzle to reduce recoil and, to some extent,
2 muzzle jump. Regardless of the vast array of
3 sizes, shapes, and internal configurations, all
4 brakes function by momentarily trapping
5 propellant gases as they emerge from the
6 muzzle and by diverting them at right angles
7 to the bore's centerline, or slightly rearward.
8 When gases are diverted in sufficient
9 quantities, they reduce rearward thrust, and if
10 deflected rearward, exert forward thrust and
11 thus tend to counterbalance a portion of recoil.
12 Generally speaking, the greater the percentage
13 of gases diverted and the more nearly they
14 approach 180 degrees change in direction, the
15 greater the amount of recoil reduction
16 produced. Practical limitations generally
17 prevent achieving more than about 40 per cent
18 recoil reduction with even the best and most
19 efficient "muzzle brakes." It is not possible to
20 divert gas directly rearward because of its
21 effect on the shooter, and even approaching
22 rearward diversion can produce shock-wave
23 effects on bystanders and also greatly
24 increases the intensity of the muzzle blast.
25 The disadvantages of size and bulk,
26 interference with line of sight, increased
27 muzzle blast and discomfort, and cost have
28 generally limited the use of muzzle brakes on

Amended Complaint as Exh. 8.)

1	conventional sporting guns. On the other	
2	hand, they have become very widely used on	
3	military arms, and are almost universally used	
4	on weapons over .50 caliber. See Also Cutts	
5	Compensator.	
6	58. The Book of Rifles defines a "flash	The Book of Rifles (Exh. Y at p. 598.) (Also
7	suppressor" as "a prong type arrangement	attached to Plaintiffs' First Amended
8	fitted to the muzzle of weapons which reduces	Complaint as Exh. 9.)
9	muzzle flash."	
10	59. The Book of Rifles defines a "flash hider"	The Book of Rifles. (Exh. Y at p. 598.) (Also
11	as "a device attached to the muzzle of a rifle	attached to Plaintiffs' First Amended
12	to reduce muzzle flash. Mis-named because	Complaint as Exh. 9.)
13	its function to reduce, not to hide, muzzle	
14	flash."	
15	60. The Book of Rifles defines a "muzzle	The Book of Rifles (Exh. Y at p. 604.) (Also
16	brake" as "a device attached to the muzzle of a	attached to Plaintiffs' First Amended
17	gun, designed to deflect the propelling gases	Complaint as Exh. 9.)
18	emerging from the muzzle behind the bullet,	
19	and to utilize the energy of these gases to pull	
20	the gun forward to counter the recoil of the	
21	weapon."	
22	61. The United States Army defines a "flash	U.S. Army Special Forces Foreign Weapons
23	suppressor" as "a two, three or four prong	Handbook. (Exh.Z at p. V-12.) (Also
24	device attached to the muzzle of a weapon	attached to Plaintiffs' First Amended
25	which tends to cool the hot gases as they leave	Complaint as Exh. 10.)
26	the muzzle behind the bullet. Cooling the hot	
27	gases reduces the flash."	

1	62. The United States Army defines a “flash	U.S. Army Special Forces Foreign Weapons
2	hider” as “an attachment attached to the	Handbook. (Exh. Z at p. V-12.) (Also
3	muzzle of a weapon which shields the muzzle	attached to Plaintiffs’ First Amended
4	flash, or a circular disk attached to the barrel	Complaint as Exh. 10.)
5	just to the rear of the muzzle to shield the	
6	flash from the firer.”	
7	63. The United States Army defines a	U.S. Army Special Forces Foreign Weapons
8	“compensator” as “a device attached to the	Handbook. (Exh. Z at p. V-9) (Also attached
9	muzzle of a weapon, which due to its design	to Plaintiffs’ First Amended Complaint as
10	allows the gases following the bullet out of the	Exh. 10.)
11	muzzle to be deflected upward through slots	
12	in the top surface of the compensator. The	
13	lower portion of the compensator is solid, so	
14	that while some gas escapes through the top,	
15	gas is also pressing against the bottom. This	
16	pressure against the bottom of the	
17	compensator, literally pushing the	
18	compensator down, pushes the muzzle down.	
19	This action tends to retard the muzzle climb	
20	which is an instability factor in a full-	
21	automatic firing weapon.	
22	64. The United States Army defines a “muzzle	U.S. Army Special Forces Foreign Weapons
23	brake” as “a device at the muzzle of the	Handbook. (Exh. Z at p. V-18.) (Also
24	weapon which deflects the emerging powder	attached to Plaintiffs’ First Amended
25	gases. The energy imparted by this act of	Complaint as Exh. 10.)
26	deflection pulls the weapon forward to offset	
27	some of the rearward motion.	

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65. The Firearms Dictionary defines a “flash suppressor” as a “flash hider.” A “flash hider” is defined by the Firearms Dictionary as “a device that reduces but does not hide muzzle flash. Fastened to the muzzle of military small arms, the flash hider does not reduce muzzle blast.”	Firearms Dictionary. (Exh. AA at p. 103.) (Also attached to Plaintiffs’ First Amended Complaint as Exh. 11.)
66. The Firearms Dictionary defines a “muzzle brake” as a device fastened to the muzzle of a rifle, sometimes to the muzzle of a shotgun, that reduces recoil (q.v.) & to some extent also cuts down on muzzle jump (q.v.). Muzzle brakes are found primarily on heavy recoil rifles & jump, the slots in the brake tend to increase muzzle blast somewhat by directing it backward toward the shooter. Muzzle brakes are also known as compensators. Also see Compensator, Cutts.”	The Firearms Dictionary. (Exh. AA at p. 156-157.) (Also attached to Plaintiffs’ First Amended Complaint as Exh. 11.)

1	67. In opposition to the proposed regulations,	February 23, 2000, letter from Jim Pope to
2	Sheriff Jim Pope wrote the Department of	Debbie Coffin, Analyst for the Department of
3	Justice on February 23, 2000, stating that:	Justice – Firearms Division. (Exh. BB.)
4	“Under 978.20(b) Flash Suppressor – How is	
5	one of my officers, at 3:00 a.m. on a dark	
6	street, supposed to determine if a device on	
7	the barrel of a weapon “reduces or conceals	
8	the visible light or flash created when the	
9	weapon is fired. . . .?” Can a muzzle break or	
10	compensator also be a flash suppressor and	
11	how is an officer supposed to tell the	
12	difference? Is the Browning BOSS System a	
13	flash suppressor? . . .”	
14	68. In opposition to the proposed regulations,	May 25, 2000 letter from Orange County
15	Orange County Sheriff Michael S. Carona	Sheriff Michael S. Carona to the Department
16	wrote the Department of Justice a letter on	of Justice. (Exh. CC.)
17	May 5, 2000, stating that “the definition of	
18	‘flash suppressor’ has been made worse by	
19	deleting the references to ‘compensator and	
20	muzzle brakes’. . . If the proposed definitions	
21	are adopted, each county will likely craft a	
22	unique interpretation of what constitutes an	
23	‘assault weapon’. Such could only result in	
24	confusion and the arrest of unwitting	
25	violators. I am responsible for insuring that	
26	my deputies are properly trained on this issue.	
27	As written, proper training would not be	
28	possible.”	

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<p>69. On May 23, 2000, Shasta County Sheriff Jim Pope wrote the Department of Justice again, stating: “New language defines a flash suppressor as a device that redirects muzzle flash from the shooter’s field of vision. The original language specified that a muzzle compensator, muzzle break, or similar device, was excluded . . . This section needs further clarifying language, and needs the original language placed back into the law which would allow muzzle compensator, breaks, or other similar devices to be utilized on a weapon without the weapon being registered under the assault weapon bill.”</p>	<p>May 23, 2000, letter from Shasta County Sheriff Jim Pope to Debbie Coffin, Analyst for the Department of Justice – Firearms Division. (Exh. DD.)</p>
<p>70. On June 16, 2000, Orange County Sheriff Michael S. Carona informed the Department of Justice that “The vagueness that flawed the first draft has not been corrected. The definition of “flash suppressor” has been made worse by deleting the references to ‘compensator and muzzle brakes’.”</p>	<p>June 16, 2000 letter from Sheriff Michael S. Carona to Debbie Coffin, Analyst for the Department of Justice - Firearms Division. (Exh. EE.)</p>

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<p>71. On July 24, 2000, Shasta County Sheriff Jim Pope informed the Department of Justice that there are current devices that come installed from the factory on sporting guns, such as the Browning BOSS system, and after-market devices that are designed, intended, and function as a muzzle recoil compensating device and are not intended to redirect muzzle flash from the shooter's field of vision. However, under the current proposed language, these devices would require sporting firearms that have been equipped or come from the factory with these devices to be registered as an assault weapon. I believe it will be difficult to show in a court of law that a certain device was intended to direct muzzle flash away from the shooter's field of vision without extensive testing and expert testimony.</p>	<p>July 24, 2000, letter from Shasta County Jim Pope to Debbie Coffin, Analyst for the Department of Justice – Firearms Division. (Exh. FF.)</p>
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72. On November 2, 2000, Chuck Michel informed the Department of Justice that “the DOJ has been informing dealers that it approved the Springfield M1A muzzle brake to replace the original flash suppressor because “BATF approved it.” As you know, BATF has no objective criteria for such approval. In your three drafts of proposed regulations, no linkage to BATF was proposed. If you have formally approved the Springfield Muzzle Brake, I would like a copy of documentation to that effect.”	November 2, 2000 letter from Chuck Michel to David DeAlba, Senior Assistant Attorney General. (Exh. GG.)
73. On November 6, 2000, the Department of Justice issued a letter stating that the Springfield M1A ‘muzzle brake/stabilizer’ has been accepted by the Bureau of Alcohol, Tobacco, and Firearms and the California DOJ.”	November 6, 2000, letter to Mr. Patton from Dale A. Ferranto, Assistant Director Firearms Division. (Exh. HH.)
74. In an August 10, 2000, letter to George Getty, the Department of Justice stated that the Department of Justice strongly considers the Bureau of Alcohol, Tobacco, and Firearms (ATF) determination of a muzzle brake. ATF has advised that manufacturers are provided written documentation when their product has been determined to be a muzzle break.	August 10 letter to George Getty from Pam Pauly, Field Representative for the California Department of Justice Firearms Division. (Exh. II.)

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75. On October 31, 2000, the Department of Justice sent Steven Helsley a letter stating that “the Springfield muzzle break was tested by Ed Owen, Jr., of the BATF Firearms and Technology Branch, and been determined not to be a flash suppressor.” And that the “Attorney General’s office has adopted the BATF’s determination and he can replace his flash suppressor with that muzzle break.”	October 31, 2000, letter to Steven Helsley from Timothy Rieger, Deputy Attorney General, Firearms Division. (Exh. JJ.)
76. On January 2, 2001, the Department of Justice sent Paul Gasparrelli a letter informing him that Browning BOSS. system would not be a “flash suppressor” because it is a brake, meaning a counter to the either rise or kick of the firearm, versus a flash suppressor which is designed to divert the flash away from the shooter’s field of vision.	January 25, 2001, letter to Paul Gasparrelli from Randi Rossi, Director of the California Department of Justice – Firearms Division. (Exh. KK.)
77. On March 4, 2003, Chuck Michel sent a letter to the Department of Justice inquiring, among other things, as to whether such a device is a “flash suppressor.”	March 4, 2003, letter to Randy Rossi, Director of the California Department of Justice – Firearms Division. (Exh.LL.)
78. On March 17, 2003, the Department of Justice responded to Chuck Michel’s March 4, 2003, request, but failed to state whether the device was or was not a “flash suppressor.”	March 17, 2003, letter from the Timothy Rieger, Deputy Attorney General to Chuck Michel. (Exh. MM.)

1	79. Under Code of Regulations § 978.20(b),	Defendants' Amended Responses to Plaintiffs'
2	"flash suppressor" includes devices found on	Request for Admissions, Set One. (Exh. NN
3	civilian sporting arms, such as muzzle brakes	at ¶ 43); DOJ Final Statement of Reasons.
4	and compensators.	(Exh. N at p. 2.) (Also attached to Plaintiffs'
5		First Amended Complaint as Exh. 5) (Noting
6		that an earlier draft of these DOJ regulations
7		expressly excluded "compensators" and
8		"muzzle brakes" from the definition of "flash
9		suppressor.")
10	80. Muzzle brakes and compensators are	Defendants' Responses to Plaintiffs' Request
11	devices used for the purpose of controlling	for Admissions, Set One. (Exh. OO at ¶ 46-
12	recoil.	47.)
13	81. Many civilian rifles are equipped with	Defendants' Responses to Plaintiffs' Request
14	devices such as compensators and muzzle	for Admissions, Set One. (Exh. OO at ¶ 48.)
15	brakes.	
16	82. Muzzle brakes serve a legitimate sporting	Defendants' Responses to Plaintiffs' Request
17	purpose in civilian use.	for Admissions, Set One. (Exh. OO at ¶ 48.)
18	83. Compensators serve a legitimate sporting	Defendants' Responses to Plaintiffs' Request
19	purpose in civilian use.	for Admissions, Set One. (Exh. OO at ¶ 49.)
20	84. Muzzle brakes and compensators may	Defendants' Amended Responses to Plaintiffs'
21	have the side effect of perceptibly reducing or	Request for Admissions, Set One. (Exh. NN
22	redirecting muzzle flash from the shooter's	at ¶ 43); DOJ Final Statement of Reasons.
23	field of vision.	(Exh. N at p. 2.) (Also attached to Plaintiffs'
24		First Amended Complaint as Exh. 5);
25		Defendants' Responses to Plaintiffs' Request
26		for Admissions, Set One. (Exh. OO at ¶ 43.)

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85. If it is determined that the device in question was not designed to or intended to perceptibly reduce or redirect muzzle flash from the shooter’s field of vision, then the DOJ’s analysis of whether it is a “flash suppressor” proceeds to a determination of whether the device nonetheless <i>functions</i> to perceptibly reduce or redirect muzzle flash from the shooter’s field of vision.	Defendants’ Amended Responses to Plaintiffs’ Request for Admissions, Set One. (Exh. NN at ¶ 24.)
86. All things being equal, the longer the barrel on a rifle is, the less flash it is likely to produce. Thus, by implication, replacing a barrel on a rifle with a longer barrel, all things being equal, will likely result in a reduction of flash.	Defendants’ Amended Responses to Plaintiffs’ Request for Admissions, Set One. (Exh. NN at ¶ 15.)
87. An earlier draft of these DOJ regulations expressly excluded “compensators” and “muzzle brakes” from the definition of “flash suppressor.”	Rule Making File: Part B – Text of the Regulations Originally Noticed to the Public. (Exh. D at HUNT 02881.) DOJ’s Final Statement of Reasons. (Exh. N at p. 2.) (Also attached to Plaintiffs’ First Amended Complaint as Exh. 5.).

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88. Whether a muzzle brake, compensator or other device is *designed* or *intended* to be a “flash suppressor” may be determined by any of the following criteria: whether it is named or called a “flash suppressor” by the manufacturer; whether the patent materials indicated the device was designed or intended to reduce flash; whether the manual indicates the device was designed or intended to reduce flash; and whether the manufacturer’s advertising materials indicate the device was designed or intended to reduce flash.

Defendants’ Responses to Plaintiffs’ Request for Admissions, Set One. (Exh. OO at ¶ 19); Defendants’ Amended Responses to Plaintiffs’ Request for Admissions, Set One. (Exh. NN at ¶ 24.)

1 **III. MATERIAL FACTS RELATING TO PLAINTIFFS' CLAIM THAT DOJ'S**
2 **REGULATIONS REGARDING THE DEFINITION OF "FLASH SUPPRESSOR" IS**
3 **UNLAWFULLY VAGUE**

4 Undisputed Material Facts:	Supporting Evidence:
5 89. During the public comment period, 6 written comments alleged that the proposed 7 definition of "flash suppressor" lacked clarity, 8 did not provide measurement standards, or 9 testing procedures, and did not provide the 10 ability to determine the difference between 11 illegal flash suppressors and flash hidere and 12 legal muzzle brakes and compensators.	Rule Making File: Part R - Notice of Additional Supportive Reference Materials/Additional Material. (Exh. T at HUNT 03245-03254, 03339-03351, 03394- 03406.)
13 90. DOJ does not test devices to determine if 14 they meet the DOJ's regulatory definition of 15 "flash suppressor." Defendants do not 16 perform any test-firing to determine whether a 17 device functions to perceptibly reduce or 18 redirect muzzle flash from the shooter's field 19 of vision. Defendants have never had any 20 need to do so. It is Defendants' opinion that if 21 there were any need for test-firing to 22 determine whether a particular device 23 functions to perceptibly reduce or redirect 24 muzzle flash from the shooter's field of 25 vision, Defendants would rely upon the 26 United States Bureau of Alcohol, Tobacco, 27 Firearms & Explosives. There are too many 28 variables as to firearm and ammunition	Defendants' Responses to Plaintiffs' Special Interrogatories, Set One. (Exh. PP at ¶¶ 36, 51.) Defendants' Amended Responses to Plaintiffs' Special Interrogatories, Set One. (Exh. PP at ¶¶ 36, 51.)

1 characteristics and shooter usage that may, in
2 combination, affect whether a device
3 functions to reduce or redirect flash from the
4 shooter's field of vision. As suggested by
5 Plaintiffs' interrogatories and Requests for
6 Admissions, such variables include the
7 burning rate of the powder used, the length of
8 the barrel, cartridge, caliber, bullet weight,
9 how the firearm is held, and type of sights. If
10 the selection of any variable makes a
11 perceptible difference, determination of
12 whether a device functions to perceptibly
13 reduce or redirect flash from the shooter's
14 field of vision assumes typical shooting usage,
15 and assumes the characteristics of commonly
16 available firearms and ammunition. Of
17 course, a shooter's actual usage of a device so
18 that it functions to perceptibly reduce or
19 redirect the flash from the shooter's field of
20 vision would render the device a flash
21 suppressor in that instance, even if the
22 shooter's usage is unusual in some way and
23 features of the particular firearm are
24 uncommon.

25 91. DOJ does not issue a partial or complete
26 list of devices that meet the DOJ's regulatory
27 definition of "flash suppressor."

Defendants' Responses to Plaintiffs' Special
Interrogatories, Set One. (Exh. PP at ¶37.)
Defendants' Amended Responses to Plaintiffs'
Special Interrogatories, Set One. (Exh. QQ at
¶37.)

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<p>92. The Department of Justice has not provided any guidelines, policies, training or training materials to criminalists, criminalistics laboratories, the DOJ's Bureau of Forensic Sciences, or the California Criminalistics Institute to determine whether a device is a "flash suppressor."</p>	<p>Defendants' Responses to Plaintiffs' Special Interrogatories, Set One. (Exh. PP at ¶¶81-82.) Defendants' Amended Responses to Plaintiffs' Special Interrogatories, Set One. (Exh. QQ at ¶¶81-82.)</p>
<p>93. The California Department of Justice has determined that many devices are flash suppressors under the regulations. In all but one of those instances the Department of Justice has determined that the device was designed or intended to reduce or redirect flash, without determining if the device functioned to reduce or redirect flash, even if not designed or intended to do so. The Department of Justice presumes that those devices do function to reduce or redirect flash, but that has not been the particular ground for their determination. In the only instance where the Department of Justice determined it was necessary to determine whether a device functioned to reduce or redirect flash, the Department of Justice determined it did not, and that the device was not deemed a flash suppressor.</p>	<p>Defendants' Responses to Plaintiffs' Special Interrogatories, Set One. (Exh. PP at ¶¶36-37.) Amended Responses to Plaintiffs' Special Interrogatories, Set One. (Exh. QQ at ¶¶36-37.)</p>

1	93. DOJ does not issue objective and	Defendants' Responses to Plaintiffs' Special
2	measurable standards for the testing of "flash	Interrogatories, Set One. (Exh. PP at ¶¶81-
3	suppressors."	82.) Defendants' Amended Responses to
4		Plaintiffs' Special Interrogatories, Set One.
5		(Exh. QQ at ¶¶81-82.)
6	94. DOJ does not provide any guidelines,	Defendants' Responses to Plaintiffs' Special
7	policies, training, or training materials to	Interrogatories, Set One. (Exh. PP at ¶20, 21,
8	criminalists or criminalistics laboratories as to	24, 27, 33, 37, 42, 43, 45, 46, and 51 .)
9	how to identify "flash suppressors" and/or	Defendants' Amended Responses to Plaintiffs'
10	rifles having them.	Special Interrogatories, Set One. (Exh. QQ at
11		¶¶20, 21, 24, 27, 33, 37, 42, 43, 45, 46, and
12		51.)
13	95. Referring to AB23, Deputy Attorney	Declaration of C.D. Michel in support of
14	General Timothy Rieger stated during an	Plaintiffs' Motion for Summary Judgment or
15	interview on <i>Postmark</i> that "[a]s a result of	in the Alternative Motion for Summary
16	those 'assault weapons' laws, there were	Adjudication ¶2.
17	different registration periods and there was	
18	some confusion, and the law was somewhat	
19	complex, but now that's all been resolved, for	
20	the most part anyway, and the registration	
21	periods are over, and the law is basically come	
22	to rest."	
23	96. Perceptible muzzle flash depends	Defendants' Responses to Plaintiffs' Request
24	substantially on the cartridge being fired by	for Admissions, Set One (Exh.OO at ¶ 21);
25	the rifle.	Declaration of Jess Guy in Support of
26		Plaintiffs' Motion for Summary Judgment or
27		in the Alternative Motion for Summary
28		Adjudication ¶ 17.

1	97. Rifles in common calibers can use at least	Declaration of Michael Shain in Support of
2	three or four, and often a dozen or more	Plaintiffs' Motion for Declaratory and
3	different ammunition cartridges using	Injunctive Relief, ¶ 23(d).
4	different powders.	
5	98. Muzzle flash may be affected by barrel	Defendants' Amended Responses to Plaintiffs'
6	length.	Request for Admissions, Set One. (Exh. NN
7		at ¶ 15); Defendants' Amended Responses to
8		Plaintiffs' Special Interrogatories. (Set One,
9		Exh. QQ at ¶ 51.)
10	99. Muzzle flash may be affected by bullet	Defendants' Amended Responses to Plaintiffs'
11	weight.	Special Interrogatories. (Set One, Exh. QQ at
12		¶ 51.)
13	100. Muzzle flash may be affected by the	Defendants' Amended Responses to Plaintiffs'
14	type of gunpowder used.	Request for Admissions, Set One. (Exh. NN
15		at ¶ 22); Defendants' Amended Responses to
16		Plaintiffs' Special Interrogatories, Set One.
17		(Exh. QQ at ¶ 51); Declaration of Jess Guy in
18		Support of Plaintiffs' Motion for Summary
19		Judgment or in the Alternative Motion for
20		Summary Adjudication ¶ 17.
21	101. The DOJ defines "perceptible" muzzle	Defendants' Responses to Plaintiffs' Special
22	flash as "what is perceptible to the human	Interrogatories, Set One. (Exh. PP. at ¶ 33.)
23	eye."	
24	102. The DOJ has declined to set any	Defendants' Responses to Plaintiffs' Special
25	standard of visual acuity for the human eye for	Interrogatories, Set One. (Exh. PP at ¶ 34.)
26	the purposes of perceiving muzzle flash.	

1	103. The DOJ has declined to clarify the	Defendants' Responses to Plaintiffs' Special
2	conditions under which a test for muzzle flash	Interrogatories, Set One. (Exh. PP at ¶ 33-35;
3	should take place.	Defendants' Amended Responses to Plaintiffs'
4		Special Interrogatories, Set One. (Exh. QQ at
5		¶ 51); DOJ Final Statement of Reasons. (Exh.
6		N at p. 2)(also attached to Plaintiffs' First
7		Amended Complaint as Exh. 5.)
8	104. The DOJ does not perform any test-	Defendants' Responses to Plaintiffs' Special
9	firing to determine whether a device functions	Interrogatories, Set One. (Exh. PP at ¶ 51.)
10	to perceptibly reduce or redirect muzzle flash	
11	from the shooter's field of vision.	
12	105. The DOJ does not possess equipment	Defendants' Responses to Plaintiffs' Special
13	for the measuring of light.	Interrogatories, Set One. (Exh. PP at ¶ 20.)
14	106. The DOJ is not aware of any police	Defendants' Responses to Plaintiffs' Special
15	forensic laboratory that possesses or controls	Interrogatories, Set One. (Exh. PP at ¶ 21.)
16	the equipment necessary to measure	
17	illuminance, foot candle equivalent, or any	
18	other method of measuring light that generally	
19	is accepted by the scientific community.	
20	107. Muzzle flash is generally not visible to	Defendants' Amended Responses to Plaintiffs'
21	the naked eye except in darkness.	Request for Admissions, Set One. (Exh. NN
22		at ¶ 7); Defendants' Responses to Plaintiffs'
23		Request for Admissions, Set One. (Exh. LL at
24		¶ 7.)
25	108. Civilian outdoor firing ranges are	Declaration of Michael Shain in Support of
26	generally not open at nighttime, and insofar as	Plaintiffs' Motion for Declaratory and
27	they are open, they are lighted at nighttime.	Injunctive Relief, ¶ 11.
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110. Indoor ranges will not permit rifle owners to turn off the lights and fire in darkness.	Declaration of Michael Shain in Support of Plaintiffs' Motion for Declaratory and Injunctive Relief, ¶ 12.
111. There is no one "field of vision" for a shooter firing a rifle.	Defendants' Responses to Plaintiffs' Request for Admissions, Set One. (Exh. OO at ¶ 12.)
112. A rifle may be fired either from the shoulder or from the hip.	Defendants' Answer to First Amended Complaint for Declaratory and Injunctive Relief at ¶ 50.
113. The "field of vision" for a shooter firing a rifle differs depending on whether the rifle is being fired from the shoulder or the hip.	Defendants' Responses to Plaintiffs' Request for Admissions, Set One. (Exh. NN ¶ 12); Defendants' Responses to Plaintiffs' Special Interrogatories, Set One. (Exh. PP at ¶ 56.)
114. When a rifle is fired from the hip, the shooter's "field of vision" is much greater than when the rifle is fired from the shoulder.	Defendants' Answer to First Amended Complaint for Declaratory and Injunctive Relief at ¶ 50.
115. It is possible that a muzzle brake or compensator may redirect flash out of the field of vision of a person shooting from the shoulder, but may not do so when the shooter is firing the same rifle from the hip.	Defendants' Answer to First Amended Complaint for Declaratory and Injunctive Relief at ¶ 50.
116. Rifles may be equipped with traditional iron sights or telescopic sights.	Defendants' Responses to Plaintiffs' Special Interrogatories, Set One. (Exh. PP at ¶ 51.)

117. A shooter's "field of vision" is different depending on whether the rifle is fixed with a telescopic sight.	Defendants' Responses to Plaintiffs' Request for Admissions, Set One. (Exh. NN at ¶ 14); Defendants' Responses to Plaintiffs' Special Interrogatories, Set One. (Exh. PP at ¶ 57); Declaration of Jess Guy in Support of Plaintiffs' Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication ¶ 37.
118. The Assault Weapons Identification Guide states that "[t]he purpose of this guide is to assist peace officers, firearms dealers, and the general public in the identification of 'assault weapons' and to promote the better understanding of the more significant recently enacted legislation."	Assault Weapons Identification Guide ("AWIG"). (Exh. A at p. i (unpaginated first page).)
119. Pages 2 through 53 of the AWIG discuss Roberti-Roos Assault Weapons; pages 56 through 67 discuss AK and AR-15 series weapons, and pages 70 to 72 discuss the identification of an assault weapon by its general characteristics under Penal Code § 12276.1.	AWIG. (Exh. A at p. 1-72.)
120. The only guidance that the AWIG provides in identifying an assault weapon by its general characteristics is stated verbatim under Penal Code § 12276.1.	AWIG, (Exh. A at p. 70-72.)

IV. MATERIAL FACTS RELATING TO PLAINTIFFS' CLAIM THAT THE "PERMANENTLY ALTERED" EXCEPTION IS UNCERTAIN

Undisputed Material Facts:	Supporting Evidence:
121. The DOJ states that "[d]efining the six terms [including the term "permanently altered"] is necessary to promote a clear understanding of Penal Code section 12276.1. This understanding is crucial for private citizens who own firearms that could be subject to registration and also for firearms dealers who must be able to identify firearms that will be subject to the statutory restrictions on the sale and transfer of assault weapons."	California Department of Justice Initial Statement of Reasons, Exh. E.
122. The DOJ's draft regulation defined "permanently altered" within the meaning of Penal Code sections 12020, subdivision (c)(25) and Penal Code 12276.1, subdivision (c)(2) as "any irreversible change or modification."	Defendants' Responses to Plaintiffs' Request for Admissions, Set One, Exh. OO ¶ 36; Rule Making File: Part B - Text of the Regulations Originally Noticed to the Public. (Exh. C at HUNT 02881.)
123. The Department of Justice subsequently deleted the proposed definition of "permanently altered" from the regulations.	Rule Making File: Part F - Notice of Modifications to Text / Modified Text of Regulations. (Exh. H.)

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124. As a practical matter, there is no way to alter a magazine, or any other metal or plastic object, in a manner that is “irreversible.”	Declaration of Jess Guy in Support of Plaintiffs’ Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication, ¶¶ 47-51; Declaration of Stephen Helsley in Support of Plaintiffs’ Summary Judgment or in the Alternative Motion for Summary Adjudication, ¶¶ 6-8.
125. While reversing a plastic or metal magazine back to its original form may require a disproportionate expenditure of time and resources, any alteration of such an object can be reversed.	Declaration of Jess Guy in Support of Plaintiffs’ Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication, ¶¶ 47-50; Declaration of Stephen Helsley in Support of Plaintiffs’ Summary Judgment or in the Alternative Motion for Summary Adjudication, ¶¶ 6-8.
126. “The listed means of alteration [including metalworking, machining, welding, brazing, soldering or application of bonding agents or adhesives] can be, but are not necessarily, permanent.”	Defendants’ Amended Responses to Plaintiffs’ Request for Admissions, Set One. [Exh. NN at ¶ 35]; Declaration of Jess Guy in Support of Plaintiffs’ Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication ¶ 50.
127. Defendants’ unpublicized position defines “permanent” as meaning “lasting or intended to last indefinitely without change” and “lasting a relatively long time.”	Defendants’ December 12, 2002, Mem. of P. & A. in Support of Demurrer to Plaintiffs’ Amended Complaint, p. 17-18.

1	128. The AWIG, provided to and relied upon	AWIG. (Exh. A at p. 81.)
2	by law enforcement personnel in identifying	
3	“assault weapons,” also does not provide any	
4	guidance as to the meaning of “permanently	
5	altered.”	
6	129. Individual gun owners and firearms	Declaration of Marc Halcon in Support of
7	dealers have foregone attempts to	Plaintiffs’ Motion for Summary Judgment or
8	“permanently alter” magazines as a result of	in the Alternative Motion for Summary
9	the perceived vagueness of the term	Adjudication, ¶ 11(a)-11(e); Declaration of
10	“permanently alter.”	Stephen Helsley in Support of Plaintiffs’
11		Summary Judgment or in the Alternative
12		Motion for Summary Adjudication, ¶¶ 6-8;
13		Declaration of Lt. Col. Dana Drenkowsky in
14		Support of Plaintiffs’ Motion for Summary
15		Judgment or in the Alternative Motion for
16		Summary Adjudication, ¶¶ 3-7.
17	130. DOJ advice letters are not publicized,	Defendants’ Responses to Plaintiffs’ Request
18	and are only sent to persons seeking advice.	for Admissions, Set One, Exh. (OO at ¶ 34);
19		Defendants’ Responses to Plaintiffs’ Special
20		Interrogatories, Set One. Exh. (PP at ¶ 91.)
21	131. On February 29, 1999, Assemblyman for	February 28, 1999, letter to Debbie Coffin
22	the Seventy Fourth District, Howard	from Assemblyman Howard Kaloogian. (Exh.
23	Kaloogian, wrote a letter to Debbie Coffin,	RR.)
24	Analyst for the Department of Justice	
25	Firearms Division stating that the staff of the	
26	Armory of Orange have the skill and the tools	
27	to make what a reasonable person would	
28	consider a “permanent alteration” to a	

1	magazine. However, short of total	
2	destruction, there is no way to make an	
3	"irreversible change."	
4	132. On February 8, 2000, Yuba County	February 8, 2000 letter from Yuba County
5	Sheriff Virginia Black submitted a letter to the	Sheriff Virginia Black to Debbie Coffin,
6	Department of Justice stating that she agrees	Analyst for the Department of Justice –
7	with Sgt. Robert Hatfield's assertions that "as	Firearms Division. (Exh. SS.)
8	for the 'irreversible modification' of	
9	magazines so that they could only hold 10	
10	rounds, is an item that could prove to be non-	
11	existent. If a magazine body is welded, or a	
12	block soldered in place to prevent more than	
13	10 rounds, another person can reverse this	
14	modification and make the magazine into one	
15	that could again hold more than 10 rounds."	
16	133. On February 17, 2000, Sonoma County	February 17, 2000, letter from Sonoma
17	Sheriff Jim Piccinini stated in a letter that the	County Sheriff Jim Piccinini to Debbie
18	term "'irreversible' sets an unachievable	Coffin, Analyst for the Department of Justice
19	standard.	– Firearms Division. (Exh. TT.)
20	134. On February 23, 2000, Sheriff Les	February 23, 2000, letter from Stanislaus
21	Weidman stated in a letter to the Department	County Sheriff Les Weidman to Debbie
22	of Justice that "if the words 'permanently	Coffin, Analyst for the Department of Justice
23	alter' were to be taken at face value, any	– Firearms Division. (Exh. UU.)
24	person with the tools and knowledge needed	
25	to cut down a magazine and re-attach the	
26	bottom would have the tools and knowledge	
27	to re-extend the magazine. For this reason, to	
28	'permanently alter' a magazine would be	

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impossible to achieve if the term is taken literally, as it must be to be enforced.”	
135. DOJ bulletins and advice letters are not binding and can, and have been, reversed and the opposite position taken by the DOJ and/or the Attorney General.	Defendants’ Responses to Plaintiffs’ Request for Admissions, Set One. (Exh. OO at ¶ 34); Defendants’ Responses to Plaintiffs’ Special Interrogatories, Set One. (Exh. PP at ¶ 93.)

IV. MATERIAL FACTS RELATING TO PLAINTIFFS' CLAIM OF MISLEADING AND INCONSISTENT COMMUNICATIONS AND ACTIONS

Undisputed Material Facts:	Supporting Evidence:
FLASH SUPPRESSOR INCONSISTENCIES	
136. The Browning BOSS system has the unintended effect of redirecting flash from the shooter's field of vision.	Browning Boss Web page. (Exh. VV.) (Also attached to Plaintiffs' First Amended Complaint as Exh. 23); Declaration of Torrey D. Johnson in Support of Plaintiffs' Motion for Declaratory and Injunctive Relief, ¶ 31; Declaration of Jess Guy in Support of Plaintiffs' Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication ¶ 39.
137. The Browning BOSS system was not intended to have the effect of redirecting flash from the shooter's field of vision.	DOJ letter to Trutanich•Michel LLP, dated December 15, 2000. (Exh. WW) (Also attached to Plaintiffs' First Amended Complaint as Exh. 20); Browning Boss Web page. (Exh. ??? at p. 2) (Also attached to Plaintiffs' First Amended Complaint as Exh. 23); Declaration of Torrey D. Johnson in Support of Plaintiffs' Motion for Declaratory and Injunctive Relief, ¶ 31.
138. "It is also the opinion of the California Department of Justice that the Browning Boss system is not a flash suppressor but a recoil reduction device."	DOJ letter to Trutanich Michel LLP, dated (December 15, 2000, Exh. WW.) (Also attached to Plaintiffs' First Amended Complaint as Exh. 20.)
139. The Springfield Armory "muzzle break" has the effect of redirecting flash from the shooter's field of vision.	Photos of Springfield Armory "muzzle break," (Exh. XX.) (Also attached to Plaintiffs' First Amended Complaint as Exh. 21-22);

1		Declaration of Torrey D. Johnson in Support
2		of Plaintiffs' Motion for Declaratory and
3		Injunctive Relief, ¶ 31.
4	140. The Springfield Armory "muzzle break"	Photos of Springfield Armory "muzzle break,"
5	was not intended to have the effect of	(Exh. XX.) (Also attached to Plaintiffs' First
6	redirecting flash from the shooter's field of	Amended Complaint as Exh. 21-22);
7	vision.	Declaration of Torrey D. Johnson in Support
8		of Plaintiffs' Motion for Declaratory and
9		Injunctive Relief, ¶ 31.
10	141. DOJ advice letters have stated that the	DOJ letter to Trutanich Michel LLP, dated
11	Browning BOSS system and Springfield	December 15, 2000, Exh. P (also attached to
12	Armory "muzzle break" are not "flash	Plaintiffs' First Amended Complaint as Exh.
13	suppressors" under Penal Code § 12276.1.	20); Declaration of Jess Guy in Support of
14		Plaintiffs' Motion for Summary Judgment or
15		in the Alternative Motion for Summary
16		Adjudication ¶ 39.
17	142. "Beginning in approximately 2000, the	Defendants' Amended Responses to
18	California Department of Justice has	Plaintiffs' Special Interrogatories, Set One,
19	confirmed in a variety of informal contexts	(Exh. OO. at ¶ 83.)
20	that the Springfield muzzle break is not a flash	
21	suppressor, based on the determination by the	
22	United States Bureau of Alcohol, Tobacco &	
23	Firearms."	
24	143. The DOJ made the determination that	Defendants' Responses to Plaintiffs' Special
25	the Springfield "muzzle break" is not a "flash	Interrogatories, Set One, Exh. PP at ¶ 89;
26	suppressor" based upon the determination of	Defendants' Amended Responses to Plaintiffs
27	the United States Bureau of Alcohol, Tobacco,	Request for Admissions, Set One, Exh. NN at
28	Firearms & Explosives.	¶ 23.

1	SASS AND CAPACITY TO ACCEPT MORE THAN 10 ROUNDS	
2 3 4 5	144. The Single Action Shooting Society, Inc. (SASS) is a group that sponsors western style shooting competitions generally using modern replicas of 19 th Century lever-action rifles.	Declaration of Boyd Davis in Support of Plaintiffs' Motion for Declaratory and Injunctive Relief, ¶ 5;
6 7 8 9 10	145. SASS rifles have magazine capacities of more than ten rounds.	Declaration of Boyd Davis in Support of Plaintiffs' Motion for Declaratory and Injunctive Relief, ¶ 6; <i>Long Guns for End of Trail</i> , Cowboy Chronicle (Mar. 2001.) (Exh. ZZ.) (also attached to Plaintiffs' First Amended Complaint as Exh. 31.)
11 12 13 14 15 16 17 18 19 20 21	146. DOJ letters to SASS authorize non-California SASS members to bring such rifles into the state with them for the purpose of participating in SASS competitions.	Declaration of Boyd Davis in Support of Plaintiffs' Motion for Declaratory and Injunctive Relief, ¶ 7; DOJ letters to Boyd Davis, President of the Single Action Shooting Society, dated March 16, 2000 and November 1, 2000. (Exh. AAA and BBB.) (Also attached to Plaintiffs' First Amended Complaint as Exh. 29 and 30); <i>Long Guns for End of Trail</i> , Cowboy Chronicle (Mar. 2001), Exh. ZZ (also attached to Plaintiffs' First Amended Complaint as Exh. 31.)
22 23 24	147. SASS also sponsors a competition in Fresno County.	Declaration of Boyd Davis in Support of Plaintiffs' Motion for Declaratory and Injunctive Relief, ¶ 8.
25 26 27 28	148. DOJ letters to SASS do not provide any rationale or explanation for allowing non-California SASS members to bring large capacity magazine rifles into the state.	Declaration of Boyd Davis in Support of Plaintiffs' Motion for Declaratory and Injunctive Relief; ¶ 9. DOJ letters to Boyd Davis, President of the Single Action

1		Shooting Society, dated March 16, 2000, and
2		November 1, 2000. (Exh. AAA and BBB.)
3		(also attached to Plaintiffs' First Amended
4		Complaint as Exh. 29 and 30.)
5	149. DOJ letters to SASS only refer to a	Declaration of Boyd Davis in Support of
6	particular SASS-sponsored competition in	Plaintiffs' Motion for Declaratory and
7	Riverside County.	Injunctive Relief; ¶ 10. DOJ letters to Boyd
8		Davis, President of the Single Action
9		Shooting Society, dated March 16, 2000, and
10		November 1, 2000. (Exh. AAA and BBB.)
11		(Also attached to Plaintiffs' First Amended
12		Complaint as Exh. 29 and 30.)
13	150. DOJ's letters to SASS only address the	Declaration of Boyd Davis in Support of
14	importation of large-capacity magazine rifles,	Plaintiffs' Motion for Declaratory and
15	not large-capacity magazine shotguns.	Injunctive Relief; ¶ 11. DOJ letters to Boyd
16		Davis, President of the Single Action
17		Shooting Society, dated March 16, 2000, and
18		November 1, 2000. (Exh. AAA and BBB.)
19		(also attached to Plaintiffs' First Amended
20		Complaint as Exh. 29 and 30.)
21	– WALTHER P22 –	
22	THREADED BARREL INCONSISTENCIES	
23	151. Carl Walther GmbH Sportwaffen	Declaration of C.D. Michel in Support of
24	designed a .22 caliber handgun ("Walther	Plaintiffs' Motion for Summary Judgment or
25	P22"), distributed and submitted for testing in	in the Alternative Motion for Summary
26	California by Smith & Wesson Holding Corp.	Adjudication, ¶¶ 7-11; California Department
27	("Smith & Wesson".)	of Justice Handgun Testing Program
28		Compliance Report for Walther P22 dated

1		April, 11, 2002. (Exh. CCC.); Department of
2		Justice memorandum dated April 29, 2002,
3		(Exh. DDD.); Department of Justice Handgun
4		Roster Listing Fee Request and payment dated
5		May 6, 2002. (Exh. EEE.)
6	152. The Walther P22 passed the tests and	Declaration of C.D. Michel in Support of
7	was placed on the Roster of Handguns	Plaintiffs' Motion for Summary Judgment or
8	Certified for Sale in California by the DOJ in	in the Alternative Motion for Summary
9	early 2002.	Adjudication, ¶¶ 7-11; California DOJ
10		Compliance Test Report and Memorandum,
11		provided by the California Department of
12		Justice on April 11, 2002, in response to a
13		Public Records Act Request. (Exh. DDD.);
14		DOJ Walther Timeline. (Exh. FFF.)
15	153. The Walther P22 was made legally	Declaration of C.D. Michel in Support of
16	available for purchase in the California	Plaintiffs' Motion for Summary Judgment or
17	market.	in the Alternative Motion for Summary
18		Adjudication, ¶¶ 7-11; California DOJ
19		Compliance Test Report and Memorandum,
20		provided by the California Department of
21		Justice on April 11, 2002, in response to a
22		Public Records Act Request. (Exh. DDD.);
23		DOJ Walther Timeline. (Exh. FFF.)
24	154. The Walther P22 features an innovative	Declaration of C.D. Michel in Support of
25	barrel system intended to make it possible to	Plaintiffs' Motion for Summary Judgment or
26	easily switch between a 3.43" and a 5-inch	in the Alternative Motion for Summary
27	barrel.	Adjudication, ¶¶ 7 & 14; DOJ Walther
28		Timeline. (Exh. FFF.); DOJ E-mail from Ron

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	Timeline, provided by the California Department of Justice on November 5, 2004, in response to a Public Records Act Request, (Exh. EEE.); Handwritten notes relating to the Walther P22 provided by the California Department of Justice on November 5, 2004, (Exh. JJJ.); DOJ letter to Smith & Wesson dated May 24, 2004, provided by the California Department of Justice on November 5, 2004, in response to a Public Records Act Request. (Exh. III.)
161 After the Walther P22 was officially declared to be an “assault weapon,” the distributor was required to issue a recall, which was done at great expense.	Declaration of C.D. Michel in Support of Plaintiffs’ Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication, ¶¶ 20-25; DOJ Walther Timeline, provided by the California Department of Justice on November 5, 2004, in response to a Public Records Act Request, (Exh. EEE.); Handwritten notes relating to the

1		Walther P22 provided by the California
2		Department of Justice on November 5, 2004,
3		(Exh. JJJ.); DOJ letter to Smith & Wesson
4		dated May 24, 2004, provided by the
5		California Department of Justice on
6		November 5, 2004, in response to a Public
7		Records Act Request. (Exh. III.) June 2,
8		2004, memorandum from Kurt Hindle to all
9		Walther dealers. (Exh. KKK.) June 2, 2004,
10		letter from Robert L. Scott to Randy Rossi.
11		(Exh. LLL.)
12	162. California Department of Justice Special	Declaration of C.D. Michel in Support of
13	Agent Supervisor Ignatius Chinn was	Plaintiffs' Motion for Summary Judgment or
14	informed of the threaded barrel on the Walther	in the Alternative Motion for Summary
15	P22 in July of 2002.	Adjudication, ¶ 12; DOJ Walther Timeline,
16		provided by the California Department of
17		Justice on November 5, 2004, in response to a
18		Public Records Act Request. (Exh. FFF.)
19	163. On January 29, 2004, the California	Declaration of C.D. Michel in Support of
20	Department of Justice Firearms Division	Plaintiffs' Motion for Summary Judgment or
21	Handgun Review Committee decided to	in the Alternative Motion for Summary
22	remove the Walther P22 from the Certified for	Adjudication, ¶ 17; DOJ Walther Timeline,
23	Sale list in California.	provided by the California Department of
24		Justice on November 5, 2004, in response to a
25		Public Records Act Request. (Exh. FFF.)
26	PERMITTEE'S EMPLOYEE CONDUCT INCONSISTENCIES	
27	164. On a number of occasions, DOJ has	Declaration of C.D. Michel in Support of
28	verbally informed licensed assault weapon	Plaintiffs' Summary Judgment or in the

1	retailers that permits issued to a corporate	Alternative Motion for Summary
2	dealer would authorize employees of that	Adjudication, ¶¶ 29-39; BATFE Ruling 73-
3	corporation to legally sell “assault weapons”	19. (Exh. MMM.); BATFE Industry Circular,
4	in the course of their duties. Such conduct is	(Exh. NNN.); U.S. Treasury Department,
5	permitted under federal and California laws.	Rev. Rule 69-248. (Exh. OOO); Senate Bill
6		824 (2003) Analysis as amended April 30,
7		2003, (Exh. PPP.); DOJ letter to Trutanich
8		Michel LLP dated July 7, 2003. (Exh. QQQ.);
9		Trutanich•Michel LLP letter to DOJ dated
10		July 22, 2003. (Exh. RRR.); August 22, 2003,
11		letter from Timothy Rieger to Jason Davis.
12		(Exh. SSS.); Trutanich Michel LLP letter to
13		DOJ dated May 5, 2004. (Exh. TTT.);
14		Declaration of Marc Halcon in Support of
15		Plaintiffs’ Motion for Declaratory and
16		Injunctive Relief, ¶ 7-9.
17	165. In the course of at least one	Declaration of C.D. Michel in Support of
18	investigation, the DOJ has taken the position	Plaintiffs’ Motion for Summary Judgment or
19	that a corporate “assault weapons” dealer	in the Alternative Motion for Summary
20	permit only grants authority to the single	Adjudication, ¶¶ 31-39; DOJ letter to
21	individual who actually signed the permit	Trutanich•Michel LLP dated July 7, 2003,
22	(typically the owner of the corporation) and	Exh. QQQ; August 22, 2003 letter from
23	those employees in his or her physical	Timothy Rieger to Jason Davis, Exh. SSS;
24	presence.	Trutanich•Michel LLP letter to DOJ dated
25		May 5, 2004, Exh. TTT.
26	166. The DOJ policy of limited construction	Declaration of C.D. Michel in Support of
27	of the corporate permit has not been	Plaintiffs’ Motion for Summary Judgment or
28	publicized.	in the Alternative Motion for Summary

1		Adjudication, ¶ 39.
2	167. The DOJ has not informed other	Declaration of C.D. Michel in Support of
3	permittees whether this limited construction of	Plaintiffs' Motion for Summary Judgment or
4	the corporate permit continues or not.	in the Alternative Motion for Summary
5		Adjudication, ¶¶ 31-39; DOJ letter to
6		Trutanich Michel LLP dated July 7, 2003,
7		(Exh. QQQ.); August 22, 2003, letter from
8		Timothy Rieger to Jason Davis. (Exh. SSS.);
9		Trutanich • Michel LLP letter to DOJ dated
10		May 5, 2004. (Exh. TTT.)
11	— ROBINSON ARMAMENT, CO. MODEL M96 RIFLE —	
12	PISTOL GRIP / CAPACITY TO ACCEPT INCONSISTENCIES	
13	168. During the public comment period,	Rule Making File: Part R - Notice of
14	written comments opposed the definition of	Additional Supportive Reference
15	“pistol grip that protrudes conspicuously	Materials/Additional Material. (Exh. T at
16	below the action of the weapon” because the	HUNT 03268-03285, 03360-03373, and
17	proposed definition was unclear.	03407-03421.)
18	169. The text of the regulations originally	Rule Making File: Part B - Text of the
19	noticed to the public defined “pistol grip that	Regulations Originally Noticed to the Public.
20	protrudes conspicuously beneath the action of	(Exh. D at HUNT 02881.)
21	the weapon” as any component that allows for	
22	the grasp, control, and fire of the firearm	
23	where the portion grasped is located beneath	
24	an imaginary line drawn parallel to the barrel	
25	that runs through the top of the exposed	
26	trigger.”	
27	170. The Department of Justice subsequently	Rule Making File: Part F - Notice of
28	amended the original definition of “pistol grip	Modifications to Text / Modified Text of
	that protrudes conspicuously beneath the	Regulations. (Exh. H.)

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action of the weapon” to read: “Pistol grip that protrudes conspicuously beneath the action of the weapon” means a grip that allows for a pistol style grasp below the top of the exposed portion of the trigger.	
171. Subsequent to the First 15 day comment period, the Department of Justice amended their modified proposed regulation defining “pistol grip that protrudes conspicuously beneath the action of the weapon” to read: “pistol grip that protrudes conspicuously beneath the action of the weapon” means a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing.”	Rule Making File: Part H - Second Notice of Modifications to Text / Modified Text of Regulations. (Exh. J.)
172. The DOJ maintains a Web page entitled “Frequently Asked Questions — Assault Weapon Registration.”	Declaration of C.D. Michel in Support of Plaintiffs’ Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication, ¶ 40; DOJ FAQ Web page. (Exh. UUU.)(<i>Available at</i> http://ag.ca.gov/firearms/regagunfaqs.htm (Last visited September 19, 2006).
173. The Web page informs the public that “[i]f the defining characteristics establishing a firearm as an SB 23 assault weapon are removed, it is no longer an assault weapon.”	Declaration of C.D. Michel in Support of Plaintiffs’ Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication, ¶ 40; DOJ FAQ Web page.

1		Association Media Release dated February 6,
2		2004, and November 25, 2003, Attorney
3		General's Press Release. (Exh. XXX.);
4		Declaration of Alex Robinson in Support of
5		Plaintiffs' Motion for Summary Judgment or
6		in the Alternative Motion for Summary
7		Adjudication, ¶ 10.
8	180. DOJ agents confiscated the Laguna	Declaration of C.D. Michel in Support of
9	Niguel dealer's firearms by threatening the	Plaintiffs' Motion for Summary Judgment or
10	dealer with criminal prosecution.	in the Alternative Motion for Summary
11		Adjudication, ¶ 49; California Rifle & Pistol
12		Association Media Release dated February 6,
13		2004 and November 25, 2003, Attorney
14		General's Press Release. (Exh. XXX.);
15		Declaration of Alex Robinson in Support of
16		Plaintiffs' Motion for Summary Judgment or
17		in the Alternative Motion for Summary
18		Adjudication, ¶ 11.
19	181. The confiscation of at least one M96	Declaration of C.D. Michel in Support of
20	rifle was videotaped.	Plaintiffs' Motion for Summary Judgment or
21		in the Alternative Motion for Summary
22		Adjudication, ¶ 49; California Rifle & Pistol
23		Association Media Release dated February 6,
24		2004, and November 25, 2003, Attorney
25		General's Press Release. (Exh. XXX.);
26		Declaration of Alex Robinson in Support of
27		Plaintiffs' Motion for Summary Judgment or
28		in the Alternative Motion for Summary

1		Adjudication, ¶ 11.
2	182. No compensation was offered for the	Declaration of C.D. Michel in Support of
3	seized M96 rifle.	Plaintiffs' Motion for Summary Judgment or
4		in the Alternative Motion for Summary
5		Adjudication, ¶ 48; California Rifle & Pistol
6		Association Media Release dated February 6,
7		2004, and November 25, 2003, Attorney
8		General's Press Release. (Exh. XXX.);
9		Declaration of Alex Robinson in Support of
10		Plaintiffs' Motion for Summary Judgment or
11		in the Alternative Motion for Summary
12		Adjudication, ¶ 10.
13	183. (A) Removal of the Penal Code §	Declaration of C.D. Michel in Support of
14	12276.1 features renders a firearm no longer	Plaintiffs' Motion for Summary Judgment or
15	an "assault weapon" provided it is not a	in the Alternative Motion for Summary
16	firearm listed by the Department of Justice by	Adjudication, ¶¶ 45-46; DOJ response letter
17	make and model as an "assault weapon." (B)	to Trutanich Michel, LLP dated May 1, 2003,
18	The DOJ's definition of "pistol grip" requires	(Exh. YYY.); DOJ response letter to
19	a grip allowing "[t]he fingers to wrap firmly	Trutanich Michel, LLP dated Dec. 17, 2003.
20	around the grip. The alternative Barrett 82A1	(Exh. ???.); Declaration of Alex Robinson in
21	"thumb hold" exemplar cannot be considered	Support of Plaintiffs' Motion for Summary
22	an assault weapon pistol grip because the	Judgment or in the Alternative Motion for
23	device allows only for the thumb, and not all	Summary Adjudication, ¶ 8.
24	the fingers, to grasp the device."	
25	184. Subsequently, the DOJ Firearms	Declaration of C.D. Michel in Support of
26	Division reversed their agents' determination	Plaintiffs' Motion for Summary Judgment or
27	that the M96 rifles were illegal "assault	in the Alternative Motion for Summary
28	weapons," and returned the confiscated	Adjudication, ¶¶ 50-53; California Rifle &

1	weapons to their rightful owners.	Pistol Association Media Release dated
2		February 6, 2004. (Exh. XXX.); DOJ letter to
3		Robinson Armament, Co. dated April 15,
4		2004. (Exh. ZZZ); Declaration of Alex
5		Robinson in Support of Plaintiffs' Motion for
6		Summary Judgment or in the Alternative
7		Motion for Summary Adjudication, ¶ 14.
8	185. In April 2004, the DOJ informed	Declaration of C.D. Michel in Support of
9	Robinson Armament Co. that the M96 is not	Plaintiffs' Motion for Summary Judgment or
10	an "assault weapon" within the meaning of	in the Alternative Motion for Summary
11	California Penal Code § 12276.1.	Adjudication, ¶¶ 50-53; DOJ letter to
12		Robinson Armament, Co. dated April 15,
13		2004. (Exh.ZZZ.); Declaration of Alex
14		Robinson in Support of Plaintiffs' Motion for
15		Summary Judgment or in the Alternative
16		Motion for Summary Adjudication, ¶ 14.
17	CAPACITY TO ACCEPT A DETACHABLE MAGAZINE	
18	186. The text of the regulations originally	Rule Making File: Part B - Text of the
19	noticed to the public defined "detachable	Regulations Originally Noticed to the Public.
20	magazine" as any magazine that can be readily	(Exh. D at HUNT 02881.)
21	removed without the use of tools."	
22	187. The Department of Justice subsequently	Rule Making File: Part F - Notice of
23	amended the definition of "detachable	Modifications to Text / Modified Text of
24	magazine" to read: "detachable magazine"	Regulations. (Exh. H.)
25	means any ammunition feeding device that	
26	can be removed readily from the firearm	
27	without disassembly of the firearm action or	
28	the use of a tool(s). For the purposes of this	

1	194. In response to an inquiry about a	December 21, 2005 letter from Alison
2	homebuilt firearm with a modification	Merrilees, Deputy Attorney General for the
3	detachable magazine. The Department of	Firearms Division of the Department of
4	Justice stated that "we would be happy to	Justice to an unknown consumer. (Exh.
5	offer our opinion about such a modification,	CCCC.)
6	we can only do so after examining the	
7	modified receiver." The Department of	
8	Justice also stated that "a receiver with a	
9	magazine that is not 'readily detachable' is not	
10	subject to the ban on generic characteristics	
11	set forth in section 12276.1(a)(1)." But the	
12	DOJ subsequently states in the same letter that	
13	"you should be aware that a local district	
14	attorney who believed you wre manufacturing	
15	an assault weapon could file charges against	
16	you for violating Penal Code section	
17	12280(a)." 195. In response to an inquiry about	E-mail from Alison Merrilees, Deputy
18	modification of a firearm to avoid the	Attorney General for the Firearms Division of
19	"detachable magazine" liability, the	the Department of Justice to California
20	Department of Justice stated that "if you build	Citizen. (Exh. DDDD.)
21	such a firearm, you do so at your legal peril.	
22	We have approved commercially	
23	manufactured firearms, such as the FAB-10,	
24	the Vulcan and the California Legal FN-FAL.	
25	We have also approved a commercial method	
26	of modifying a firearm with an open well	
27	performed by Evans Manufacturing. But we	
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have never approved a non-commercial modification of a firearm with an open magazine well, such as the methods you described. Whether or not your firearm were permanently [sic] incapable of accepting a detachable magazine could be up to local law enforcement, and ultimately a jury of twelve citizens.”	
196. The Department of Justice has also used a standard, which it now deems to be the current standard, that a firearm with a magazine that requires a tool to be removed is still a detachable magazine if the modification is reversible. “An SKS with a permanently affixed magazine, and a pistol grip, does not meet the definition of assault weapon rifle. However, if the fixed mag can be removed with the use of a tool, then it is not permanently affixed and would be considered detachable, for purposes of assault weapon definition.”	April 28, 2006 e-mail from Sally Carney to “Mr. Kastelic.” (Exh. EEEE.)
197. After having approved a firearm, and subsequently changing their minds about the legalities of a modification to one firearm by Vulcan Arms, the Department of Justice refused to address the legalities of other firearms submitted for clarification to the Department of Justice. “We have received the	March 22, 2006 letter from Ignatius H. Chinn, Special Agent Supervisor for the Firearms Division of the Department of Justice to Robert Hesse of Vulcan Arms. (Exh. FFFF.)

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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 September 29, 2006, I served the foregoing document(s) described as

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

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:

Douglas J. Woods
Attorney General's Office
1300 "I" Street, Ste. 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 September 29, 2006, at Long Beach, California.

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

Executed on September 29, 2006, 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.

CLAUDIA AYALA