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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14

15	Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
)	
16	Plaintiffs,	)	NOTICE OF MOTION AND MOTION
		)	FOR SUMMARY JUDGMENT
17	v.	)	[Fed. R. Civ. P. 56]
)	
18	Wilfredo Cid,	)	Date: Oct. 2, 2009
		)	Time: 10:00 a.m.
19		)	Dept: 2, 15 th Floor
	Defendants.	)	Judge: Frank C. Damrell, Jr.
20		)	Trial Date: None
		)	Action Filed: April 30, 2009
21			
22			

23 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:
24

25 PLEASE TAKE NOTICE that on Friday, October 2, 2009, at 10:00 a.m. or as soon
26 thereafter as the matter may be heard, in Courtroom 2 of the United State District Court for the
27 Eastern California, 501 I Street, Sacramento, California 95814 Plaintiffs Ivan Peña, Roy
28

1 Vargas, Doña Croston, Brett Thomas, the Second Amendment Foundation, Inc., and the
2 Calguns Foundation, Inc., by and through undersigned counsel, will move this Honorable
3 Court to enter a summary judgment in their favor and against Defendant pursuant to Fed. R.
4 Civ. Proc. 56.
5

6 Plaintiffs move for entry of summary judgment on all claims as the material facts in
7 this case are not in dispute, and Defendant's challenged customs, practices and policies violate
8 Plaintiffs' rights under the Second and Fourteenth Amendments to the United States
9 Constitution. This motion is based upon this notice of motion and motion, the attached
10 memorandum of points and authorities, exhibits, declarations, separate statement of
11 undisputed facts, any material in the Court's files, and any other relevant matter to be
12 considered by the Court.
13

14 Dated: September 1, 2009

Respectfully submitted,

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20 By: /s/Donald E.J. Kilmer, Jr./
Donald E.J. Kilmer, Jr.

By: /s/Alan Gura/
Alan Gura

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25 By: /s/Jason Davis/
Jason Davis
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27 Attorneys for Plaintiffs
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12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 Ivan Peña, et al ,	)	Case No. 2:09-CV-01185-FCD-KJM
)	
16 Plaintiffs,	)	DECLARATION OF DOÑA CROSTON
	)	IN SUPPORT OF MOTION FOR
	)	SUMMARY JUDGMENT
18 v.	)	[Fed. R. Civ. P. 56]
)	
19 Wilfredo Cid,	)	Date: Oct. 2, 2009
	)	Time: 10:00 a.m.
20 Defendants.	)	Dept: 2, 15 th Floor
	)	Judge: Frank C. Damrell, Jr.
	)	Trial Date: None
	)	Action Filed: April 30, 2009

23
 24 **DECLARATION OF DOÑA CROSTON**

25 I, Doña Croston, am competent to state, and to declare the following based on my personal
 26 knowledge:

- 27 1. I am a citizen of the United States and the State of California.
 28 2. I am a member of the Second Amendment Foundation and a supporter of their

1 activities.

2 3. I am a participant and supporter of the CalGuns Foundation, Inc. activities.

3 4. I seek to purchase a Springfield Armory XD-45 Tactical 5" Bi-Tone stainless
4 steel/black handgun in .45 ACP, model number XD9623, and have identified a willing seller
5 who stands ready to deliver said handgun to me.

6 5. I cannot lawfully purchase and take possession of the handgun as that handgun is not on
7 the California Handgun Roster.

8 6. I fear arrest, prosecution, fine and incarceration if I complete this handgun purchase.

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed this the 1st day of September, 2009.

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13 Doña Croston
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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 Ivan Peña, et al.,

19 Plaintiffs,

20 v.

21 Wilfredo Cid,

22 Defendants.

) Case No. 2:09-CV-01185-FCD-KJM

)
) DECLARATION OF ALAN GOTTLIEB
) IN SUPPORT OF MOTION FOR
) SUMMARY JUDGMENT
) [Fed. R. Civ. P. 56]

) Date: Oct. 2, 2009

) Time: 10:00 a.m.

) Dept: 2, 15th Floor

) Judge: Frank C. Damrell, Jr.

) Trial Date: None

) Action Filed: April 30, 2009

23
24 **DECLARATION OF ALAN GOTTLIEB**

25 I, Alan Gottlieb, am competent to state, and to declare the following based on my personal
26 knowledge:

27 1. I am the Founder and Executive Vice President of the Second Amendment Foundation,
28

1 Inc. ("SAF").

2 2. The Second Amendment Foundation, Inc. is a non-profit membership organization
3 incorporated under the laws of Washington with its principal place of business in Bellevue,
4 Washington.

5 3. SAF has over 650,000 members and supporters nationwide, including many in
6 Sacramento and Yolo Counties

7 4. The purposes of SAF include education, research, publishing and legal action focusing
8 on the Constitutional right to privately own and possess firearms, and the consequences of gun
9 control.

10 5. SAF expends their resources encouraging exercise of the right to bear arms, and
11 advising and educating their members, supporters, and the general public about the legality of
12 particular firearms. The issues raised by, and consequences of, Defendant's policies, are of
13 great interest to SAF constituencies.

14 6. Defendant's policies regularly cause the expenditure of resources by SAF as people turn
15 to our organizations for advice and information.

16 7. Defendant's policies bar the members and supporters of SAF from obtaining numerous,
17 if not most, handguns.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed this 1st day of September, 2009.

20 
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22
23 Alan Gottlieb
24 Executive Vice President / Founder
25 Second Amendment Foundation
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16 IN THE UNITED STATES DISTRICT COURT
17
18 FOR THE EASTERN DISTRICT OF CALIFORNIA
19

20 Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
)	
21 Plaintiffs,	)	DECLARATION OF GENE HOFFMAN,
	)	JR. IN SUPPORT OF MOTION FOR
22 v.	)	SUMMARY JUDGMENT
	)	[Fed. R. Civ. P. 56]
23 Wilfredo Cid,	)	Date: Oct. 2, 2009
	)	Time: 10:00 a.m.
24 Defendants.	)	Dept: 2, 15 th Floor
	)	Judge: Frank C. Damrell, Jr.
	)	Trial Date: None
	)	Action Filed: April 30, 2009

DECLARATION OF GENE HOFFMAN, JR.

I, Gene Hoffman, Jr., am competent to state, and to declare the following based on my personal knowledge:

1. I am the Chairman of the Calguns Foundation, Inc. ("CGF").

2. CFG is a non-profit organization incorporated under the laws of California with its principal place of business in Redwood City, California.

3. The purposes of CGF include supporting the California firearms community by promoting education for all stakeholders about California and federal firearm laws, rights and privileges, and securing, defending and protecting the civil rights of California gun owners, who are its members and supporters.

4. CGF expends their resources encouraging exercise of the right to bear arms, and advising and educating their members, supporters, and the general public about the legality of particular firearms. The issues raised by, and consequences of, Defendant's policies, are of great interest to CGF constituencies.

5. Defendant's policies regularly cause the expenditure of resources by CGF as people turn to our organization for advice and information.

6. Defendant's policies bar the board members and supporters of CGF from obtaining numerous, if not most, handguns.

7. Exhibit A is a true and correct copy of documents provided to me by the State of California in response to a request for official records pursuant to the California Public Records Act, Cal. Government Code §6250, et seq.

8. Exhibit B is a true and correct copy of: Jon Vernick, e al., "*I Didn't Know the Gun Was Loaded': An Explanation of Two Safety Devices That Can Reduce the Risk of Unintentional Firearm Injuries.*" 20 Journal of Public Health Policy No. 4. (1999).

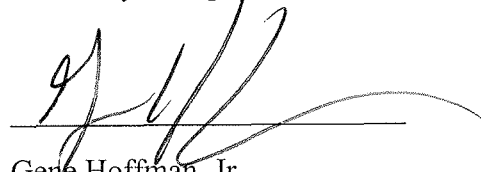
9. Exhibit C is a true and correct copy of the certified Legislative History of "Unsafe Handgun Bill" Author Bill File.

10. Exhibit D is a true and correct copy of the certified Legislative History of "Unsafe Handgun Bill" Senate Floor Analysis.

1 11. Exhibit H is a true and correct copy of documents provided to me by the State of
2 California in response to a request for official records pursuant to the California Public
3 Records Act, Cal. Government Code §6250, et seq.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed this the 1st day of September, 2009.

6
7 
8 Gene Hoffman, Jr.
9 Chairman
Calguns Foundation, Inc.

1 Alan Gura (Calif. Bar No. 178221)
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,

Plaintiffs,

v.

Wilfredo Cid,

Defendants.

Case No. 2:09-CV-01185-FCD-KJM

DECLARATION OF IVAN PEÑA
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT
[Fed. R. Civ. P. 56]

Date: Oct. 2, 2009

Time: 10:00 a.m.

Dept: 2, 15th Floor

Judge: Frank C. Damrell, Jr.

Trial Date: None

Action Filed: April 30, 2009

DECLARATION OF IVAN PEÑA

I, Ivan Peña, am competent to state, and to declare the following based on my personal knowledge:

1. I am a citizen of the United States and the State of California.

1 2. I am a member of the Second Amendment Foundation and a supporter of their
2 activities.

3 3. I am a board member of the CalGuns Foundation, Inc. and a supporter of their
4 activities.

5 4. I seek to purchase a Para USA (Para Ordnance) P1345SR / Stainless Steel .45 ACP
6 4.25", and have identified a willing seller who stands ready to deliver said handgun to me.

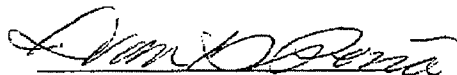
7 5. The Para USA P1345SR I sought to purchase was listed on California's Handgun
8 Roster until December 31, 2005, when it was discontinued and its listing not renewed.

9 6. I cannot lawfully purchase and take possession of the handgun as that handgun is not on
10 the California Handgun Roster.

11 7. I fear arrest, prosecution, fine and incarceration if I complete this handgun purchase.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed this the 1st day of September, 2009.

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16 Ivan Peña
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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14

15	Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
16)	
16	Plaintiffs,	)	DECLARATION OF BRETT THOMAS
17		)	IN SUPPORT OF MOTION FOR
17		)	SUMMARY JUDGMENT
18	v.	)	[Fed. R. Civ. P. 56]
18)	
19	Wilfredo Cid,	)	Date: Oct. 2, 2009
20		)	Time: 10:00 a.m.
20	Defendants.	)	Dept: 2, 15 th Floor
21		)	Judge: Frank C. Damrell, Jr.
22			Trial Date: None
23			Action Filed: April 30, 2009

24 **DECLARATION OF BRETT THOMAS**
25

26 I, Brett Thomas, am competent to state, and to declare the following based on my personal
27 knowledge:

- 28 1. I am a citizen of the United States and the State of California.

1 2. I am a member of the Second Amendment Foundation and a supporter of their
2 activities.

3 3. I am a board member of the CalGuns Foundation, Inc. and a supporter of their
4 activities.

5 4. The handgun at issue in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), was a
6 High Standard 9-shot revolver in .22 with a 9.5" Buntline-style¹ barrel.

7 5. I seek to purchase an identical High Standard 9-shot revolver in .22 with a 9.5" Butline-
8 style barrel, and have identified a willing seller who stands ready to deliver said handgun to me.

9 6. I cannot lawfully purchase and take possession of the handgun as that handgun is not on
10 the California Handgun Roster.

11 7. I fear arrest, prosecution, fine and incarceration if I complete this handgun purchase.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed this the 1st day of September, 2009.

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15 _____

16 Brett Thomas
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27 ¹ A "Buntline" is a Western-style extra-long barrel revolver, named for 19th-century
28 novelist Ned Buntline who was said to commission such guns for famous personalities of the day.

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16 IN THE UNITED STATES DISTRICT COURT
 17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18	Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
19)	
20	Plaintiffs,	)	DECLARATION OF ROY VARGAS
21		)	IN SUPPORT OF MOTION FOR
22		)	SUMMARY JUDGMENT
23	v.	)	[Fed. R. Civ. P. 56]
24)	
25	Wilfredo Cid,	)	Date: Oct. 2, 2009
26		)	Time: 10:00 a.m.
27	Defendants.	)	Dept: 2, 15 th Floor
28		)	Judge: Frank C. Damrell, Jr.
		)	Trial Date: None
		)	Action Filed: April 30, 2009

29 **DECLARATION OF ROY VARGAS**

30 I, Roy Vargas am competent to state, and to declare the following based on my personal
 31 knowledge:

32 1. I am a citizen of the United States and the State of California. I am a citizen of the

1 United States and the State of California.

2 2. I am a member of the Second Amendment Foundation and a supporter of their
3 activities.

4 3. I am a participant and supporter in CalGuns Foundation, Inc. activities.

5 4. I seek to purchase a Glock 21 SF with an ambidextrous magazine release, and have
6 identified a willing seller who stands ready to deliver said handgun to Plaintiff.

7 5. However, I cannot lawfully purchase and take possession of the handgun as that
8 handgun is not listed on the California Handgun Roster.

9 6. I fear arrest, prosecution, fine and incarceration if I complete this handgun purchase.

10 7. I was born without an arm below the right elbow.

11 8. The Glock 21 SF with a standard magazine release is listed on the California Handgun
12 Roster.

13 9. However, the Glock-21 SF with ambidextrous magazine release is superior for left-
14 handed shooters such myself, as opposed to the approved version of the Glock 21.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed this the 1st day of September, 2009.

17
18 
19 Roy Vargas

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12 IN THE UNITED STATES DISTRICT COURT

13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14	Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
15	Plaintiffs,)	
16		)	<u>EXHIBIT A</u>
17	v.)	
18	Wilfredo Cid,	)	In Support of Plaintiffs' Motion
19	Defendant.)	For Summary Judgment
	_____)	

20 Respectfully Submitted on Sept. 1, 2009

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By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

February 8, 2007

Mr. Kevin B. Reid, Sr.
Sturm, Ruger & Co, Inc.
Lacey Place
Southport, CT 06890

Re: Ruger P345 (CLI)

Dear Mr. Reid:

I am writing to inform you that the Firearms Division of the California Department of Justice has determined that the Ruger P345 (CLI) does not have a "chamber load indicator as defined in Section 12126" as required by California Penal Code section 12130(d)(1). Only handguns that satisfy the requirements of Penal Code section 12126 are considered "not unsafe" handguns that are eligible for listing on the roster of handguns approved for sale in California. (Penal Code §§ 12126; 12126.)

Penal Code section 12126(c) defines a chamber load indicator as "a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber." DOJ regulations further clarify how a chamber load indicator would "indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber." (Penal Code §12126(c).)

DOJ regulations require that "[a] functioning chamber load indicator must meet all of the following conditions:

- (A) Explanatory text and/or graphics either incorporated within the chamber load indicator or adjacent to the chamber load indicator is/are permanently displayed by engraving, stamping, etching, molding, casting, or other means of permanent marking.
- (B) Each letter of explanatory text must have a minimum height of 1/16 inch.
- (C) The explanatory text and/or graphics shall be of a distinct visual contrast to

Mr. Reid
February 8, 2007
Page 2

that of the firearm.

(D) The "loaded" indication, that portion of the chamber load indicator that visually indicates there is a round in the chamber, shall be of a distinct color contrast to the firearm.

(E) Only when there is a round in the chamber, the "loaded" indication is visible on the firearm from a distance of at least twenty-four inches. When there is no round in the chamber, the "loaded" indication must not be visible.

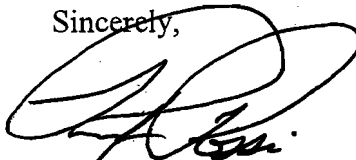
(F) The text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself. (Cal. Code Regs., tit. 11, § 4060, subd. (d), par. (1).)

In order to determine whether the Ruger P345 (CLI) has "text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself," we randomly selected six employees of the Firearms Division who have varying degrees of familiarity with firearms. We loaded the Ruger P345 (CLI) with an expended metal ammunition casing and asked the six individuals if they were able to determine whether the P345 (CLI) was loaded. Of the six people, none were able to determine whether the P345 (CLI) was loaded.

Under the totality of the circumstances, the purported chamber load indicator of the P345 (CLI) fails to inform a reasonably foreseeable adult user of the firearm that there is a round in the chamber of the firearm. Based upon our examination of the firearm and the fact that none of the individuals who were asked to examine the firearm were able to determine that it was loaded with an expended round out ammunition, it is clear that a reasonable foreseeable user would not be able to determine whether the firearm was loaded without referring to a user's manual or another resource.

Please feel free to contact me if you have any questions, or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Rossi", written over a horizontal line.

RANDY ROSSI, Director
Firearms Division

For EDMUND G. BROWN JR.
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

February 9, 2007

Mrs. Debra Else
Springfield Armory, Inc.
420 West Main Street
Geneseo, IL 61254

Re: Springfield Armory XD9611, XD9660, and XD9665 (CLI)

Dear Mrs. Else:

I am writing to inform you that the Firearms Division of the California Department of Justice has determined that the Springfield Armory XD9611, XD9660, and XD9665 (CLI's) do not have a "chamber load indicator as defined in Section 12126" as required by California Penal Code section 12130(d)(1). Only handguns that satisfy the requirements of Penal Code section 12126 are considered "not unsafe" handguns that are eligible for listing on the roster of handguns approved for sale in California. (Penal Code §§ 12126; 12126.)

Penal Code section 12126(c) defines a chamber load indicator as "a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber." DOJ regulations further clarify how a chamber load indicator would "indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber." (Penal Code §12126(c).)

DOJ regulations require that "[a] functioning chamber load indicator must meet all of the following conditions:

- (A) Explanatory text and/or graphics either incorporated within the chamber load indicator or adjacent to the chamber load indicator is/are permanently displayed by engraving, stamping, etching, molding, casting, or other means of permanent marking.
- (B) Each letter of explanatory text must have a minimum height of 1/16 inch.
- (C) The explanatory text and/or graphics shall be of a distinct visual contrast to

Mrs. Else
February 9, 2007
Page 2

that of the firearm.

(D) The "loaded" indication, that portion of the chamber load indicator that visually indicates there is a round in the chamber, shall be of a distinct color contrast to the firearm.

(E) Only when there is a round in the chamber, the "loaded" indication is visible on the firearm from a distance of at least twenty-four inches. When there is no round in the chamber, the "loaded" indication must not be visible.

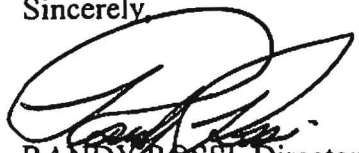
(F) The text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself. (Cal. Code Regs., tit. 11, § 4060, subd. (d), par. (1).)

In order to determine whether the Springfield Armory XD9611, XD9660, and XD9665 (CLI's) have "text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself," we randomly selected six non-sworn employees of the Firearms Division who have varying degrees of familiarity with firearms. We loaded the Springfield Armory XD9611, XD9660, and XD9665 (CLI's) with an expended metal ammunition casing and asked the six individuals if they were able to determine whether the XD9611, XD9660, and XD9665 (CLI's) were loaded. Of the six people, one person was able to determine whether the XD9611, XD9660, and XD9665 (CLI's) were loaded.

Under the totality of the circumstances, the purported chamber load indicator of the XD9611, XD9660, and XD9665 (CLI's) fails to inform a reasonably foreseeable adult user of the firearm that there is a round in the chamber of the firearm. Based upon our examination of the firearms and the fact that only one of the individuals who were asked to examine the firearms were able to determine that it was loaded with an expended round of ammunition, it is clear that a reasonable foreseeable user would not be able to determine whether the firearms were loaded without referring to a user's manual or another resource.

Please feel free to contact me if you have any questions, or need any additional information.

Sincerely,



RANDY ROSSI, Director
Firearms Division

For EDMUND G. BROWN JR.
Attorney General

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
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October 3, 2007

Mrs. Debra Else
Springfield Armory, Inc.
420 West Main Street
Geneseo, IL 61254

Re: Springfield Armory XD9611, XD9660, and XD9665 .

Dear Mrs. Else:

I am writing in response to your request for the Bureau of Firearms to re-evaluate whether the Springfield Armory models XD9611, XD9660, and XD9665 have chamber load indicators. We are unable to comply with your request because none of the models had text that met the minimum text height requirement for text on chamber load indicators when they were submitted to DOJ in 2006, and none of the models have magazine disconnect mechanisms, as now required by California law.

Penal Code section 12130(d)(1) provides that "[c]ommencing January 1, 2006, no center-fire semiautomatic pistol may be submitted for testing pursuant to this chapter if it does not have either a chamber load indicator as defined in subdivision (c) of Section 12126, or a magazine disconnect mechanism as defined in subdivision (d) of Section 12126." As of January 1, 2007, every center-fire semiautomatic pistols submitted for testing must have *both* a chamber load indicator as defined in subdivision (c) of Section 12126, *and* a magazine disconnect mechanism as defined in subdivision (d) of Section 12126, if the pistol has a detachable magazine.

Penal Code Section 12126(c) defines a chamber load indicator as "a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber." DOJ regulations further clarify how a chamber load indicator "indicate[s] to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber." (Pen. Code §12126, subd. (c).)

DOJ regulations require that a "functioning chamber load indicator must meet all of the following conditions:

Mrs. Else
October 3, 2007
Page 2

(A) Explanatory text and/or graphics either incorporated within the chamber load indicator or adjacent to the chamber load indicator is/are permanently displayed by engraving, stamping, etching, molding, casting, or other means of permanent marking.

(B) Each letter of explanatory text must have a minimum height of 1/16 inch.

(C) The explanatory text and/or graphics shall be of a distinct visual contrast to that of the firearm.

(D) The "loaded" indication, that portion of the chamber load indicator that visually indicates there is a round in the chamber, shall be of a distinct color contrast to the firearm.


(E) Only when there is a round in the chamber, the "loaded" indication is visible on the firearm from a distance of at least twenty-four inches. When there is no round in the chamber, the "loaded" indication must not be visible.

(F) The text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself. (Cal. Code Regs., tit. 11, § 4060, subd. (d), par. (1).)

When they were submitted for testing in 2006, the Springfield Armory XD9611, XD9660, and XD9665 models had explanatory text, but each letter of the text did not have a minimum height of 1/16 inch according to the DOJ-certified testing laboratory that tested the firearms. Because the text did not meet the minimum requirements set forth above, by the terms of DOJ regulations, none of the firearms had a "chamber load indicator" as defined in and required by California law. As of January 1, 2007, all models of semi-automatic pistols with detachable magazines must have magazine disconnect mechanisms, as well as chamber load indicators. Even if DOJ were to determine that the models tested in 2006 have chamber load indicators, DOJ could not approve the models because none of the handguns has a magazine disconnect mechanism. Therefore, we are unable to comply with your request to re-evaluate our decision.

Please feel free to contact me if you have any questions, or need any additional information.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
Plaintiffs,)	
	)	<u>EXHIBIT B</u>
v.)	
	)	In Support of Plaintiffs' Motion
Wilfredo Cid,)	For Summary Judgment
Defendant.)	
_____)	

Respectfully Submitted on Sept. 1, 2009

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By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs

ORIGINAL ARTICLE

Unintentional and undetermined firearm related deaths: a preventable death analysis for three safety devices

J S Vernick, M O'Brien, L M Hepburn, S B Johnson, D W Webster, S W Hargarten

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See end of article for authors' affiliations

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Objective: To determine the proportion of unintentional and undetermined firearm related deaths preventable by three safety devices: personalization devices, loaded chamber indicators (LCIs), and magazine safeties. A personalized gun will operate only for an authorized user, a LCI indicates when the gun contains ammunition, and a magazine safety prevents the gun from firing when the ammunition magazine is removed.

Design: Information about all unintentional and undetermined firearm deaths from 1991-98 was obtained from the Office of the Chief Medical Examiner for Maryland, and from the Wisconsin Firearm Injury Reporting System for Milwaukee. Data regarding the victim, shooter, weapon, and circumstances were abstracted. Coding rules to classify each death as preventable, possibly preventable, or not preventable by each of the three safety devices were also applied.

Results: There were a total of 117 firearm related deaths in our sample, 95 (81%) involving handguns. Forty three deaths (37%) were classified as preventable by a personalized gun, 23 (20%) by a LCI, and five (4%) by a magazine safety. Overall, 52 deaths (44%) were preventable by at least one safety device. Deaths involving children 0-17 (relative risk (RR) 3.3, 95% confidence interval (CI) 2.1 to 5.1) and handguns (RR 8.1, 95% CI 1.2 to 53.5) were more likely to be preventable. Projecting the findings to the entire United States, an estimated 442 deaths might have been prevented in 2000 had all guns been equipped with these safety devices.

Conclusion: Incorporating safety devices into firearms is an important injury intervention, with the potential to save hundreds of lives each year.

Rather than relying exclusively on changing the behavior of the users of dangerous products, injury prevention efforts have also focused on changing the design of the product itself to make it safer.¹ Of consumer products in the United States, firearms are among the most deadly. From 1990 to 1999, there were more than 12 000 unintentional firearm related deaths in the United States, with an additional 4000 deaths in the "undetermined" category.² Yet firearms can be designed with built-in safety features that may prevent at least some of these deaths.³

Injury prevention efforts to improve the safe design and manufacture of guns have concentrated primarily on three safety technologies: (1) personalization devices, (2) loaded chamber indicators (LCIs), and (3) magazine safeties. A personalized gun is a firearm that will fire only for an authorized user. This can be accomplished through a variety of user-recognition technologies—for example, fingerprint readers—that can be built into the design of the gun. Unless the firearm recognizes its authorized user, it is unable to fire.^{4,5}

A LCI is a device designed to indicate that the gun's firing chamber contains ammunition.⁶ LCIs are intended to prevent firearm related deaths where the gun's operator did not know the gun was loaded. At present, loaded chamber indicators are included on about 10%-20% of new pistol models.^{6,7} However, existing loaded chamber indicators generally consist of a small raised lever or button on the gun, with no additional markings to convey its meaning. Patents exist, however, for LCIs that would be far easier for operators to understand.⁶ A magazine safety (sometimes also called a magazine disconnect safety) blocks a semiautomatic pistol from firing when its ammunition magazine is removed, even if there is still a round in the chamber.⁸

Although all three of these safety devices have been widely discussed and promoted in both the public health and

popular literature, there have been few attempts to quantify their potential benefits. The United States General Accounting Office estimated that 23% of a sample of unintentional deaths were preventable by a loaded chamber indicator and 8% by a childproofing device.⁹ The child-proofing device considered in the General Accounting Office study was intended to prevent discharge by young children only (age <6), and therefore was not a personalized gun. Similarly, Ismach and colleagues concluded that in 14% of the incidents in their sample of mostly non-fatal firearm injuries the shooter was unaware that the gun was loaded; in 5% the handgun's ammunition magazine had been removed just before the shooting.¹⁰ From a North Carolina sample, Cherry and colleagues determined that the shooter believed the gun was unloaded in 39 of 187 (21%) unintentional firearm related deaths.¹¹

Using data from Maryland and Milwaukee, Wisconsin, this study examines the proportion of certain firearm related deaths that might be preventable by each of the three major safety devices. By including personalization technology, our analysis allows for a comparison of the relative benefits of the different devices.

METHODS

Data sources

Information about firearm related deaths was obtained from two primary sources: the Maryland Office of the Chief Medical Examiner, and the Wisconsin Firearm Injury Reporting System (FIRS). We reviewed the case files for all

Abbreviations: CI, confidence interval; FIRS, Firearm Injury Reporting System; LCI, loaded chamber indicator; RR, relative risk

unintentional and undetermined firearm related deaths in Maryland and Milwaukee County for 1991–98. These files include information obtained from medical examiner investigations, police files, and crime laboratory reports. For each firearm related death, we abstracted a variety of information about the victim, shooter, weapon, and circumstances of the death. Deaths associated with non-powder firearms (for example, airguns and bb guns) were excluded. The combined dataset represents a convenience sample based on the ease of obtaining the data, their relative quality and completeness, and the value of increasing the overall sample size.

Medical examiners sometimes code certain, seemingly unintentional, deaths as homicides (rather than “accidents”) where the gun’s trigger is intentionally pulled, even if the shooter did not intend to cause the death of the victim.^{12–13} This may be based on a technical, rather than intent based, definition of a homicide as one where the actions of one person result in the death of another. Therefore, using the Wisconsin surveillance system (FIRS), we separately identified those “homicides” in Milwaukee County where (1) the circumstances of the death indicated an accidental firing—such as playing with or cleaning a firearm and (2) the Federal Bureau of Investigation’s Supplemental Homicide Reports data similarly coded the death as a “negligent manslaughter”.¹⁴ In the absence of a comparable surveillance system, it would have been much more difficult to conduct a similar analysis of Maryland homicides.

Preliminary analyses of these negligent homicides in Milwaukee indicated that, as expected, their circumstances were very similar to both the accidental and undetermined deaths in Milwaukee County. Similarly, unintentional and undetermined deaths, as well as the combined data for Maryland and Milwaukee shared comparable age, sex, and type of gun characteristics. Our assessment of the circumstances of these deaths also suggested that the events surrounding unintentional and undetermined deaths were very similar. For these reasons, and to increase the precision of our point estimates, subsequent analyses combine the data from Maryland and Milwaukee.

Suicides and non-negligent homicides are not included in this analysis. Medical examiner and police records rarely contained detailed information about the circumstances of the death (for the suicides), or whether the shooter was the owner or an authorized user of the gun (for homicides). In addition, the factors associated with preventability may have been different for these intentional deaths.

Definition of a “preventable” death

Our primary goal was to estimate the proportion of the firearm related deaths in our sample that might have been prevented by one or more of the three safety devices. For each case, two reviewers (JV, MO) applied a set of rules to code the death as (1) “preventable”, (2) “possibly preventable”, or (3) “not preventable”. The very small number of cases where reviewers disagreed were resolved by a third reviewer (SJ) or by consensus.

For LCIs, a death was coded as preventable only if the case file indicated *clear* evidence that the shooter did not realize the gun was loaded at the time of the shooting. Usually this was based on unambiguous statements of witnesses interviewed by the police. In addition, the shooter must be old enough to understand the message to be conveyed by a LCI; to be conservative in this regard, we established a minimum age of 10. We coded the death as possibly preventable if there was only *some* evidence that the shooter thought the gun was unloaded. We assume (based on patent information) that such devices could be applied to any firearm, and can be designed so that even an untrained user would understand that the gun was loaded.

For personalized guns, a death was considered preventable if there was clear evidence in the case file that the shooter was not the owner or authorized user of the gun. For example, personalized guns can prevent deaths where the shooter is below the legal age for gun ownership—by definition an unauthorized user. We recognize that this assumes that adult owners of personalized handguns will not provide them to children, an assumption that might not always be correct. We coded deaths as “possibly” preventable by personalized guns when the case file indicated some evidence that the shooter was not an authorized user.

For magazine safeties, our preventability criteria required clear evidence that the shooter removed the ammunition magazine from a semiautomatic pistol immediately before the shooting. Where there was less clear evidence, the deaths were coded as possibly preventable.

For all of the devices, we conservatively coded the death as “not preventable by safety devices” if it did not meet any of the above criteria. It is important to recognize that characterizing a death as “preventable” does *not* mean that it would certainly have been prevented by the relevant safety device—only that, applying our rules, we determine that the death *could* have been prevented.

Analyses

Applying our criteria, for each of the safety devices we calculate the proportion of the deaths in our sample that fit the three categories of preventability. We also conducted bivariate analyses of deaths coded as preventable, compared with those coded as not preventable, to examine factors associated with differences between these two groups. To test the statistical significance of these bivariate analyses, χ^2 tests of independence, calculation of relative risks, and confidence intervals were used. Finally, extrapolating from our data, we calculate the number of lives that might be saved in the United States by these devices.

RESULTS

There were a total of 117 unintentional, undetermined, and negligent homicide deaths in our data set for 1991 to 1998, 66 in Maryland and 51 in Milwaukee (see table 1). Males (91%) and persons aged 0–20 (53%) represent the majority of the decedents. Handguns were involved in 81% of the deaths, with roughly equal proportions of pistols and revolvers. Among the circumstances of the incident, “playing with or showing the gun to others” (51%), and “handling or transporting the gun” (21%) represented nearly three quarters of all deaths.

Among all deaths, 43 (37%) met our criteria for being “preventable” by a personalized gun, 23 (20%) by a loaded chamber indicator, and five (4%) by a magazine safety. A smaller proportion of deaths for each device were classified as “possibly preventable” (see table 2).

Overall, 52 of the deaths (44%, 95% confidence interval (CI) 35% to 53%) fit our criteria as preventable by at least one of the devices. Some were preventable by more than one device. Importantly, there was no statistically significant difference in overall preventability by site ($\chi^2 = 0.74$, $p = 0.39$), reinforcing our decision to combine the Maryland and Milwaukee data for analysis. Also, no type of death was significantly more likely to be preventable than any other, whether unintentional, undetermined, or negligent homicide ($\chi^2 = 0.14$, $p = 0.93$). Again, this suggests that the relevant characteristics of these deaths are similar enough to justify combining the data for our purposes.

In the bivariate analyses, we compared preventable with non-preventable deaths, excluding those that were only “possibly” preventable. In these analyses, several characteristics of the deaths were associated with higher proportions

Table 1 Selected characteristics of unintentional, undetermined, and negligent homicide firearm related deaths in Maryland and Milwaukee, 1991–98

Variable*	No (%)
Age (years)	
0–17	46 (39)
18–20	16 (14)
21–40	37 (32)
41+	18 (15)
Sex	
Male	107 (91)
Female	10 (9)
Race	
White	60 (51)
Black	54 (46)
Other	3 (3)
Site/type of death	
Maryland (n = 66)	
Unintentional	20 (30)
Undetermined	46 (70)
Milwaukee (n = 51)	
Unintentional	13 (25)
Undetermined	12 (24)
Negligent homicide	26 (51)
Circumstance	
Cleaning	3 (3)
Handling/transporting/loading/unloading	25 (21)
Hunting	6 (5)
Miscellaneous/other	5 (4)
Playing with/showing gun to others	60 (51)
Thought safety was on/problem with safety	4 (3)
Unknown	14 (12)
Type of gun	
Handgun (n = 95)	
Pistol	42 (36)
Revolver	45 (38)
Unknown/other	8 (7)
Long gun (n = 19)	
Rifle	9 (8)
Shotgun	10 (9)
Missing (n = 3)	

*Age, sex, and race data refer to the decedent, whether or not the decedent is also the shooter. Circumstance and type of gun refer to characteristics of the event.

Table 2 Number (%) of preventable firearm deaths by various safety devices in Maryland and Milwaukee, 1991–98

	Personalized gun	LCI	Magazine safety	Any of three safety devices*
Preventable	43 (37)	23 (20)	5 (4)	52 (44)
Possibly preventable†	13 (11)	15 (13)	3 (3)	19 (16)
Not preventable by safety devices	61 (52)	79 (68)	109 (93)	46 (39)
Total	117 (100)	117 (100)	117 (100)	117 (100)

*Because the same death may be preventable by more than one device, figures in this column are not the sum of the other three columns.

†For personalized guns, this category includes deaths where the shooter was not in immediate control of the firearm when it discharged (for example, a firearm that discharged when dropped from a tree stand while hunting). For loaded chamber indicators (LCIs), this category includes so-called Russian roulette shootings (a LCI might eliminate the element of chance from this activity).

Table 3 Proportion of deaths preventable by at least one safety device, by selected variable categories, and results of χ^2 tests of independence for each category

Variable	Percent preventable	p Value for χ^2 *
Age (years)		<0.001
0–17	88	
18–20	62	
21–40	19	
41+	13	
Type of gun		<0.001
Handgun	62	
Long gun	8	
Circumstance		<0.001
Hunting	33	
Handling/transporting/loading	27	
Playing with/showing gun to others	80	
Thought safety was on/problem with safety	50	
Unknown	23	

*For each of the variables (age, type of gun, circumstance), the χ^2 tests the null hypothesis that the proportion of preventable firearm related deaths across the appropriate subcategories (that is, the different age, type of gun, and circumstance groupings) is the same.

of preventability (see table 3). Incidents where the decedent was aged 0–17 were three times as likely to be preventable (relative risk (RR) 3.3, 95% CI 2.1 to 5.1) as those involving all older persons. Deaths involving handguns were eight times as likely to be preventable (RR 8.1, 95% CI 1.2 to 53.5) as those involving long guns. Among the circumstances of the incident, deaths that involved “playing with or showing the gun to others” were most likely to be preventable (RR 3.2, 95% CI 1.9 to 65.3).

Based on our estimates of the proportion of deaths preventable by any safety device (44%, 95% CI 35% to 53%), we can calculate the number of lives that might be saved if all firearms had all three devices. In 2000, there were 776 unintentional firearm deaths in the United States. Applying our results yields an estimate of 341 unintentional deaths (95% CI 272 to 411) that might have been prevented. There were also 230 firearm deaths of undetermined intent in 2000, producing an estimate of 101 preventable deaths (95% CI 81 to 122) in this category. Combining these data, 442 lives might have been saved in 2000 if all firearms had all three safety devices (95% CI 353 to 533).

DISCUSSION

Overall, more than 40% of the firearm related deaths in our sample were preventable by at least one of the three safety devices. Providing all three of these devices in all firearms

could save more than 400 lives each year. Other research suggests that there would also be significant cost savings associated with preventing firearm related deaths, both for the victims’ families and for the community as a whole.^{15 16} Of course, any assessment of the desirability of the devices should weigh the benefits in lives saved (and injuries averted) against the costs to consumers of providing or requiring the devices.

Our conclusion that 20% of the deaths were preventable by a LCI is convincingly close to prior research, falling between the General Accounting Office’s 23% figure, and Ismach *et al*’s 14%. No prior research has examined the proportion of deaths preventable by a personalized gun. Yet our results suggest that personalized guns may be among the most beneficial firearm safety design changes for the future.

However, personalized guns are not uniformly supported by gun control advocates. In fact, some have argued that increased availability of these guns may even be counterproductive.¹⁷ Our research can help clarify the risk-benefit

equation for these guns by providing better information about how many lives might be directly saved by personalized guns. For loaded chamber indicators and magazine safeties, these concerns are minimized because potential gun buyers already have the option to purchase guns with these features.

Just 4% of the deaths in our sample were preventable by a magazine safety. The action of removing the ammunition magazine from a pistol prior to the shooting is apparently less common than other circumstances surrounding firearm related deaths, or at least is less frequently noted in medical examiner and police reports. However, the passive or automatic nature of magazine safeties, coupled with their relatively low price and mechanical simplicity, suggests that these devices remain a useful injury intervention.

Although safer handling or storage of firearms might also have prevented some of the deaths in our sample, this was not the focus of our research. In addition, there is some evidence that it may be quite difficult to alter the firearm handling, ownership, or storage practices of children¹⁸⁻¹⁹ and adults.²⁰⁻²³

For the present study we did not examine the safety devices' effects on suicides and non-negligent homicides. Personalized guns, in particular, might prevent youth suicides, and even some homicides where the gun was recently stolen from its owner. Future research, based on newly developed surveillance systems, might therefore yield greater estimates of the number of lives saved by these devices when all deaths are included.

Limitations

Our study has several limitations. There is inherent uncertainty in any determination of whether some safety device might have prevented any given death. We have tried to minimize some of this uncertainty by establishing reasonably specific rules and by using multiple coders. With data from Maryland and Milwaukee, the generalizability of our findings to other areas or to the United States as a whole is uncertain. However, the comparability of our findings regarding preventability among the two regions, and with other research, suggests that regional variation in preventability within the United States may not be especially great. The age distribution of our sample is somewhat younger than the nation as a whole, though the gender distribution is similar to national data.

As described, we did not include negligent homicides in Maryland. However, the purpose of our analysis was not to determine the raw number of preventable deaths, but the proportion of deaths that might be prevented by the various safety devices. Only if the proportion of negligent homicides in Maryland that were preventable was very different from the rest of the deaths in our sample would their absence affect our results. The similarity in preventability of Milwaukee's negligent homicides with the rest of the deaths suggests that this is probably not the case.

For several reasons, our estimate of the number of lives that might be saved by the three safety devices may be conservative. First, the reported number of unintentional deaths in the United States is likely to be an underestimate since many of these deaths, as in our Milwaukee data, are coded as negligent homicides. Inclusion of these negligent homicides substantially increased the number of Milwaukee cases in our sample. Also, in our calculations of lives potentially saved, we use only those deaths we classified as preventable, not those classified as possibly preventable.

On the other hand, we understand the uncertainties inherent in this or any calculation of possible lives saved under various assumptions. For example, this calculation assumes that the proportion of deaths preventable in our sample would be the same for the United States as a whole.

In addition, our lives saved calculations assume that all firearms would have the safety devices. Of course, even if *new* firearms were required to contain the devices, many older guns without the devices would remain in circulation. Therefore, it might be some years before the maximum benefit of the technologies would be felt. We also assume that LCIs can be designed, as a new California law requires, to be understood even by untrained users.²⁴

Some might even argue that the inclusion of new safety devices into firearms could result in the loss of lives, for example if the firearm did not function as intended during a defensive gun use, or if the increased cost forced some to forgo the purchase of a gun. Designers of personalized guns attempt to minimize or eliminate any interference with the normal operation of the firearm. LCIs and magazine safeties should result in little change to the operation or cost of a gun. The increased cost of personalized guns, and the impact this might have on purchasing decisions, is not known. In addition, despite the arguments of some researchers,²⁵ the best available evidence suggests that there are relatively few defensive uses of guns compared with gun related deaths and crimes.²⁶⁻²⁷

CONCLUSION

Despite the potentially lifesaving benefits of firearm safety technologies, most firearm manufacturers have not provided these devices voluntarily.⁶⁻⁷ In the United States, the public would support legislation requiring these devices. In one national poll, legislation requiring all new handguns to contain a LCI (73% in favor) or personalization technology (71% in favor) were each supported by a large majority of the respondents.²⁸

Certainly, incorporating safety devices into firearms is not the only appropriate strategy for responding to the many different causes of firearm violence. However, examples of successful design changes for other products (such as motor vehicles and prescription drug containers),²⁹⁻³⁰ coupled with the results of our study, suggest that product modification should remain an important intervention for firearms as well.

ACKNOWLEDGEMENTS

The authors gratefully acknowledge funding for this research from the Funders' Collaborative for Gun Violence Prevention. We also thank Allegra Kim for her assistance, and the Offices of the Medical Examiners for Milwaukee and Maryland for collecting and making available the data for this study.

Key points

- Changing the design of products to make them safer is a proven injury prevention strategy, but for firearms this strategy has not yet been widely adopted.
- For firearms, loaded chamber indicators and magazine safeties are designed to prevent some deaths where the shooter did not know the gun was loaded; personalization devices prevent the gun from being fired by an unauthorized user.
- In this study of the lifesaving potential of these three firearm safety devices, 44% of the deaths in the sample were preventable by at least one of the devices.
- Design changes to firearms have the potential to save hundreds of lives each year in the United States.

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ECHO**Lighter balls for younger children**

Please visit the Injury Prevention website [www.injuryprevention.com] for a link to the full text of this article.

The incidence of hand and wrist injuries from balls used by children in sporting activities may be reduced by increasing awareness of parents and coaches, using lighter balls, and introducing weight categories for players.

The case notes of all children aged 6-13 years attending the accident and emergency department of the Royal Aberdeen Children's Hospital from January to December 2001 as a result of a wrist, hand, or finger injury sustained from a blow by a ball were reviewed and the cause, type, and severity of the injury noted.

Altogether 187 children (125 boys, 69%) were seen over the study period. Football (soccer) resulted in 120 (64%) of the injuries, with 93 (78%) sustained by boys. Serious injuries were noted in 69 cases—67 fractures and two dislocations (37% of the total presentations). The fracture rate was higher in the injuries sustained outside school.

All injuries in this study were caused by a blow from a ball. Most football injuries in youngsters are mild, but their severity increases with age as children become heavier and achieve higher skill levels. The study concluded with the following recommendations. Firstly, using lighter balls for younger children would reduce the force of a blow. Secondly, weight categories would ensure that heavier players were not kicking or throwing balls at lighter players. Thirdly, awareness of the risk of hand and wrist injuries among parents and coaches should be increased.

Wider implementation of these modifications should be considered, and a register of injuries kept by sporting bodies would be of benefit in monitoring such injuries.

▲ *British Journal of Sports Medicine* 2003;**37**:351-353.

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16 IN THE UNITED STATES DISTRICT COURT

17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
19 Plaintiffs,)	
20	)	<u>EXHIBIT C</u>
21 v.)	
22	)	In Support of Plaintiffs' Motion
23 Wilfredo Cid,)	For Summary Judgment
24 Defendant.)	
25)	

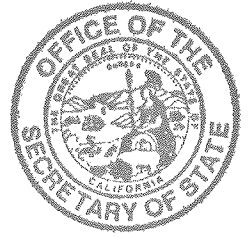
26 Respectfully Submitted on Sept. 1, 2009

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State of California Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify: SELECTED PAGES, AUTHOR BILL FILE, (SCOTT), SB 489, 2003

That the attached transcript of 16 page(s) is a full, true and correct copy of the original record in the custody of this office.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

APR 10 2003

A handwritten signature in cursive script that reads "Debra Bowen".

DEBRA BOWEN
Secretary of State

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Bruce McPherson, Chair
2003-2004 Regular Session

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SB 190 (Scott)
As Amended April 10, 2003
Hearing date: April 29, 2003
Penal Code
SAH:mc

SEMIAUTOMATIC FIREARMS:

CHAMBER LOAD INDICATORS/MAGAZINE DISCONNECT MECHANISMS

HISTORY

Source: Brady Campaign to Prevent Violence, United with the Million Mom March;
Coalition to Stop Gun Violence (co-sponsors)

Prior Legislation: SB 510 (Scott) – Chapter 608, Statutes of 2002 (provisions deleted prior to
enactment dealing with a different subject)
AB 576 – failed passage, Assembly Committee on Public Safety, 1/16/96
AB 1818 – passage refused in Senate, 8/31/94

Support: Legal Community Against Violence; California Chapter of the American College
of Emergency Physicians; individual letter

Opposition: California Rifle and Pistol Association; National Rifle Association; Gun Owners
of California; National Shooting Sports Foundation, Inc.; California Association of
Firearms Retailers; 14 individual communications

KEY ISSUES

EXISTING LAW PROVIDES THAT COMMENCING JANUARY 1, 2001, NO "UNSAFE
HANDGUN" MAY BE MANUFACTURED OR SOLD IN CALIFORNIA BY A LICENSED
DEALER, AS SPECIFIED, AND REQUIRES THAT THE DEPARTMENT OF JUSTICE
PREPARE AND MAINTAIN A ROSTER OF HANDGUNS WHICH ARE DETERMINED
NOT TO BE UNSAFE HANDGUNS.

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SHOULD, COMMENCING JANUARY 1, 2005, A CENTER-FIRE SEMIAUTOMATIC PISTOL THAT IS NOT ALREADY DETERMINED NOT TO BE AN UNSAFE HANDGUN, BE DEEMED AN "UNSAFE HANDGUN" IF IT DOES NOT HAVE A CHAMBER LOAD INDICATOR OR A MAGAZINE DISCONNECT MECHANISM, AS SPECIFIED (THUS ALLOWING A TWO-YEAR WINDOW FOR HANDGUNS PREVIOUSLY DEEMED NOT "UNSAFE" TO BE SOLD NEW IN CALIFORNIA WITHOUT EITHER DEVICE)?

SHOULD, COMMENCING JANUARY 1, 2007, A CENTER-FIRE SEMIAUTOMATIC PISTOL BE DEEMED AN "UNSAFE HANDGUN" IF IT DOES NOT HAVE BOTH A CHAMBER LOAD INDICATOR AND A MAGAZINE DISCONNECT MECHANISM IF IT HAS A DETACHABLE MAGAZINE, AS SPECIFIED?

SHOULD, COMMENCING JANUARY 1, 2007, A RIMFIRE SEMIAUTOMATIC PISTOL BE DEEMED AN "UNSAFE HANDGUN" IF IT DOES NOT HAVE A MAGAZINE DISCONNECT MECHANISM IF IT HAS A DETACHABLE MAGAZINE, AS SPECIFIED?

SHOULD THE FOLLOWING DEFINITIONS BE ADDED TO THE "UNSAFE HANDGUN" LAW:

- A "CHAMBER LOAD INDICATOR" MEANS A PLAINLY VISIBLE DEVICE IN A CONTRASTING COLOR THAT CLEARLY INDICATES TO A PERSON WHO IS UNFAMILIAR WITH THE OPERATION OF A SEMIAUTOMATIC PISTOL THAT A CARTRIDGE IS IN THE FIRING CHAMBER?
- A "MAGAZINE DISCONNECT MECHANISM" MEANS A MECHANISM THAT PREVENTS A SEMIAUTOMATIC PISTOL THAT HAS A DETACHABLE MAGAZINE FROM OPERATING TO STRIKE THE PRIMER OF AMMUNITION IN THE FIRING CHAMBER WHEN A DETACHABLE MAGAZINE IS NOT INSERTED IN THE PISTOL?

SHOULD SEMIAUTOMATIC PISTOLS BE PROHIBITED FROM BEING SUBMITTED FOR TESTING PURSUANT TO THE "UNSAFE HANDGUN" LAWS UNLESS THEY MEET THE FOLLOWING REQUIREMENTS:

- COMMENCING JANUARY 1, 2005, IF IT IS A CENTER-FIRE SEMIAUTOMATIC PISTOL, IT HAS EITHER A "CHAMBER LOAD INDICATOR" OR, IF IT HAS A DETACHABLE MAGAZINE, IT HAS A MAGAZINE DISCONNECT MECHANISM, BOTH AS SPECIFIED?
- COMMENCING JANUARY 1, 2007, IF IT IS A CENTER-FIRE SEMIAUTOMATIC PISTOL, IT HAS BOTH A "CHAMBER LOAD INDICATOR" AND, IF IT HAS A DETACHABLE MAGAZINE, IT HAS A MAGAZINE DISCONNECT MECHANISM, BOTH AS SPECIFIED?

(CONTINUED)

- COMMENCING JANUARY 1, 2005, IF IT IS A RIMFIRE SEMIAUTOMATIC PISTOL AND HAS A DETACHABLE MAGAZINE IT HAS A MAGAZINE DISCONNECT MECHANISM, AS SPECIFIED?

SHOULD RELATED CHANGES IN LAW BE MADE?

PURPOSE

The purpose of this bill is to add to the existing "unsafe handgun" law requirements for semiautomatic pistols, as specified.

Existing law provides that commencing January 1, 2001, no "unsafe handgun" may be manufactured or sold in California by a licensed dealer, as specified, and requires that the Department of Justice prepare and maintain a roster of handguns which are determined not to be unsafe handguns. Private party sales and transfers of handguns through a licensed dealer or sheriff in smaller counties are exempted from those restrictions. (Penal Code §§ 12125-12133.)

Existing law provides that for purposes of the "unsafe handgun" law, new models of previously tested handguns must be submitted for testing, as follows:

Penal Code section 12131.5. (a) A firearm shall be deemed to satisfy the requirements of subdivision (a) of Section 12131 [listed on Department of Justice roster as not an "unsafe handgun"] if another firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm only in one or more of the following features:

- (1) Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving.
 - (2) The material from which the grips are made.
 - (3) The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.
 - (4) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.
- (b) Any manufacturer seeking to have a firearm listed under this section shall provide to the Department of Justice all of the following:
- (1) The model designation of the listed firearm.
 - (2) The model designation of each firearm that the manufacturer seeks to have listed under this section.

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(3) A statement, under oath, that each unlisted firearm for which listing is sought differs from the listed firearm only in one or more of the ways identified in subdivision (a) and is in all other respects identical to the listed firearm.

(c) The department may, in its discretion and at any time, require a manufacturer to provide to the department any model for which listing is sought under this section, to determine whether the model complies with the requirements of this section.

Existing law provides that:

All firearms sold or transferred in this state by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state, shall include or be accompanied by a firearms safety device that is listed on the Department of Justice's roster of approved firearms safety devices and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm, or to the physical characteristics of the firearm that match those listed on the roster for use with the device, as specified. (Penal Code § 12088.1.)

Existing law provides that:

Every one is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. (Civil Code § 1714.)

This bill makes the following changes to the definition of an "unsafe handgun" that may not be sold "new" in California:

- Commencing January 1, 2005, for a center fire automatic semiautomatic pistol that is not already determined not to be an unsafe handgun listed on the roster pursuant to Section 12131 (Department of Justice roster of handguns found to not be "unsafe" and therefore available for sale new in California), it does not have either a chamber load indicator, or if it has a detachable magazine, a magazine disconnect mechanism.
- Commencing January 1, 2007, for all center fire automatic semiautomatic pistols, it does not have both a chamber load indicator and if it has a detachable magazine, a magazine disconnect mechanism.
- Commencing January 1, 2005, for all rimfire semiautomatic pistols that are not already listed on the Department of Justice roster it does not have a magazine disconnect mechanism, if it has a detachable magazine.

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- Commencing January 1, 2007, for all rimfire semiautomatic pistols that have a detachable magazine, it does not have a magazine disconnect mechanism.

This bill adds the following definitions to the "unsafe handgun" law:

- a "chamber load indicator" means a plainly visible device in a contrasting color that clearly indicates to a person who is unfamiliar with the operation of a semiautomatic pistol that a cartridge is in the firing chamber.
- a "magazine disconnect mechanism" means a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.
- a "semiautomatic pistol" means a pistol, as defined in subdivision (a) of Section 12001, the operating mode of which uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of the trigger.

This bill prohibits semiautomatic pistols from being submitted for testing pursuant to the "unsafe handgun" law unless they meet the following requirements:

- Commencing January 1, 2005, no center fire semiautomatic pistol may be submitted for testing pursuant to this chapter if it does not have either a "chamber load indicator" or a magazine disconnect mechanism if it has a detachable magazine.
- Commencing January 1, 2007, no center-fire semiautomatic pistol may be submitted for testing pursuant to this chapter if it does not have both a "chamber load indicator" and a magazine disconnect mechanism.
- Commencing January 1, 2005, no rimfire semiautomatic pistol may be submitted for testing if it has a detachable magazine and does not have a magazine disconnect mechanism.

This bill makes related changes in law.

COMMENTS

1. Need for This Bill

Background provided by the author includes the following:

From 1987 to 1996, nearly 2,200 American children 14 years of age and younger died from unintentional shootings. For every child who dies after being shot, an estimated 4 children are treated in U.S. hospitals for nonfatal gunfire injuries. In 1995 and 1996, 8,832 Californians were killed as a result of gunfire. According to data reported by hospitals to the California Department of Health Services, there were 13,153 nonfatal

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injuries which required hospitalization during the same period. About 10% of the injuries during that period of time were determined to be the result of unintentional shootings.

Many of these injuries and deaths were the result of unintentional shootings by users who thought that the guns they fired were not loaded. Gun users are often unaware that semiautomatic weapons can be fired when their loading mechanism – the magazine – is removed or emptied. A live round of ammunition may remain in the chamber of the firearm after the magazine is removed. When the trigger of a semiautomatic firearm with a live round in its chamber is pulled, it will fire, even though it does not have a magazine inserted, unless the gun has a magazine disconnect mechanism.

A 1997 survey by the Johns Hopkins Center for Gun Policy and Research and the National Opinion Research Center found that almost 35% of respondents (who were all *adults*) either did not know that a gun could be fired, or believed that a gun *could not be fired* with the magazine removed. 28% of those respondents lived in households where guns were present. Undoubtedly, many of those households also included children.

Teaching children how to "safely handle guns" is not the answer. Study after study has shown that gun safety programs for children are ineffective and may even increase the risk of unintentional firearm injury to children. In two recent experiments (one by the University of North Carolina and one by ABC News), guns were hidden in rooms where children were playing. Both studies found that children who previously had been taught not to touch guns and to instead immediately notify an adult are just as likely to handle guns than those who have not been so instructed. Another study released in July 2002 by the David and Lucille Packard Foundation found that parents overestimate the ability of their children to deal safely with guns. The report found that the easiest way to save lives is to make guns more "childproof" with built-in safety devices.

One such safety device is a chamber load indicator. A chamber load indicator alerts the gun user when there is a bullet in the firing chamber of the gun. Currently, chamber load indicators are installed on only about 11% all semiautomatic handguns. Chamber load indicators are effective safety devices. A 1991 General Accounting Office (GAO) study of shootings in 10 randomly selected cities across the nation found that 23% of the accidental shootings could have been prevented by chamber load indicators. The GAO report explained that "[a]lthough we cannot project to the country as a whole, were there actually to be the same ratio nationwide as in the 10 cities we studied, that would mean there were approximately 157,600 such injuries each year."

Magazine disconnect mechanisms prevent a semiautomatic weapon from being fired when its ammunition magazine is removed. They are passive safety devices, which require no training on the part of the user to be effective, which is particularly important to prevent accidents involving children. Magazine disconnect devices are currently installed on only about 14% of the semiautomatic handguns on the market.

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Like chamber load indicators, magazine disconnect mechanisms are effective safety devices. Although there is no statistical data at this time about how many deaths the devices could prevent, a 1999 report by the Johns Hopkins Center for Gun Policy and Research concluded that magazine disconnect mechanisms are inexpensive and effective safety devices.

2. Difference Between This Bill as First Heard by the Committee on March 18, 2003 and as Now Amended

When testimony was first taken on this bill in committee on March 18, the bill required that all semiautomatic firearms manufactured and sold in California after January 1, 2005, have a chamber load indicator and, if the firearm has a detachable magazine, a magazine disconnect mechanism, as specified. Those requirements were added in a new title of the Penal Code.

As now amended, this bill amends the current "unsafe firearms law" and requires that any center-fire semiautomatic pistol added to the Department of Justice roster of firearms not found to be "unsafe" from January 1, 2005, to December 31, 2006, shall have either a chamber load indicator or a detachable magazine disconnect, as specified, and that any new rimfire semiautomatic pistol added during that time must have a magazine disconnect if the firearm has a detachable magazine. Only centerfire semiautomatic pistols with both devices and rimfire semiautomatic pistols with a magazine disconnect mechanism may be listed on the roster and available for sale new in California commencing January 1, 2007. The submission of semiautomatic pistols for testing purposes is similarly "phased in."

3. The Addition of Either or Both Devices to a Pistol Previously Approved Would Require a New "unsafe handgun" Testing Procedure

The addition of either or both a chamber load indicator and/or a magazine disconnect would require that any previously tested handgun model approved as not an "unsafe handgun" would require retesting pursuant to Penal Code section 12131.5, cited in the Purpose section above. The current "unsafe handgun" law only allows "cosmetic" changes to a handgun model without requiring a retest. That code section mentions finish (color or plating, for example), grip material, general shape or texture of grips if not affecting dimensions and function, and other purely cosmetic features.

IS IT APPROPRIATE TO REMOVE ALL PREVIOUSLY TESTED SEMIAUTOMATIC FIREARMS FROM THE APPROVED ROSTER AFTER JANUARY 1, 2007, IF THEY DO NOT HAVE THE DEVICES MANDATED BY THIS BILL, AS SPECIFIED?

4. Evolution of the Definition of "chamber load indicator"

As introduced on February 22, 2001, SB 510 contained the following definition:

As used in this article, "chamber load indicator" means a device that plainly indicates to an untrained user that a cartridge is in the firing chamber.

As subsequently amended, that SB 510 definition went through the following evolution:

- As used in this article, "chamber load indicator" means a plainly visible device in a contrasting color that clearly that a cartridge is in the firing chamber. (as amended April 5, 2001)
- As used in this article, "chamber load indicator" means a plainly visible device in a contrasting color that clearly indicates to a person who has not been formally trained in handgun safety and is unfamiliar with the operation of that handgun that a cartridge is in the firing chamber. (as amended June 20, 2001)
- As used in this article, "chamber load indicator" means a plainly visible device in a contrasting color that clearly indicates to a person who is unfamiliar with the operation of a semiautomatic pistol that a cartridge is in the firing chamber. (as amended July 3, 2001)

This bill uses the last definition from SB 510 as amended on July 3, 2001. It also now requires chamber load indicators on only center-fire pistols. This bill, as amended, does add the new requirements for a chamber load indicator to the existing "unsafe handgun" law so that the Department of Justice will be involved through regulations in defining an indicator that meets the testing requirements.

IS IT FEASIBLE TO REQUIRE CHAMBER LOAD INDICATORS ON NEW CENTER-FIRE SEMIAUTOMATIC HANDGUNS BY JANUARY 1, 2007, BEYOND THOSE CURRENTLY AVAILABLE ON THE MARKET?

One may contrast the potential difficulty of defining "chamber load indicator" in an arguably - and necessarily - "subjective" way with the definition of a "magazine disconnect mechanism" which "means a mechanism that prevents a semiautomatic pistol from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol." The magazine disconnect definition is essentially self-enforcing. Does a firearm "fire" with a live round in the chamber and the magazine "disconnected" or not although it may not be entirely clear whether or not "disconnected" means fully inserted or totally removed from the pistol altogether or simply not fully inserted and engaged.

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5. Additional Information About "chamber load indicator"

Background provided by the author last year regarding SB 510 does indicate that there have been patents on file in the United States for chamber load indicators for handguns since the late 1800's. ("I didn't know the gun was loaded" . . . Venick et al; Journal of Public Health Policy, Vol. 20, No. 4, pp. 427-440.) Such indicators may be a metal protrusion or a colored-indicator which is flush with the surface of the semiautomatic firearm but which is visible and shows that a round is in the firing chamber. The background provided indicated that a 1988 patent was issued to Colt for a "light-emitting diode." Some semiautomatic handguns currently are sold with a chamber load indicator.

There is also an ongoing discussion about what could, should, or would be an "appropriate" chamber load indicator. For example, how does one construct a chamber load indicator which is sufficient to make its purposes and true indication known to a person who is both familiar with the weapon as well as to a person who is not familiar with the weapon or with firearms in general—or to a child? It may be possible in the not too distant future to have a device, similar to the car seatbelt warning voice that was popular in some cars, announce that a firearm is loaded. There are times when that might prove inopportune, but the technology of the future is not yet known. (There is also an ongoing discussion about the future sale of "smart guns" which would only fire when used by their owner or a person with the ability to enable the firearm.)

Regardless, it is arguable that a requirement in California would "drive" the technology of chamber load indicators. The background provided by the author last year also indicates a review of semiautomatic new handguns available in 1998 indicated that around 11% had some chamber load indicator mechanism. While those indicators were more likely to be available on more expensive firearms, there were some less expensive handguns with such devices, as well.

IS THE DEFINITION OF "CHAMBER LOAD INDICATOR" CONTAINED IN THIS BILL APPROPRIATE AND IF NOT IS THERE ANY BETTER DEFINITION?

6. Magazine Disconnect Mechanisms

This bill as currently amended requires either a chamber load indicator or a magazine disconnect mechanism for center-fire semiautomatic pistols to be listed as not an unsafe handgun in California commencing January 1, 2005, and both those features commencing January 1, 2007, as specified. It also now requires a magazine disconnect mechanism on any rimfire semiautomatic pistol after January 1, 2007, as specified.

This bill defines a magazine disconnect mechanism as:

a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.

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As with chamber load indicators, such devices are currently available on semiautomatic handguns. Committee staff knows of no such devices on long guns. The background provided by the author suggests the availability in 1998 of such devices on 14% of the handguns reviewed. Price again was a factor in availability, although not exclusively. In addition, there is some mention of peace officer concern that if they needed to fire their weapon and accidentally pushed a magazine release, they would still want to be able to fire the last round in the chamber. Patent issues are also pertinent to the mandate to include a magazine disconnect device. It might also be assumed that a mandate in California would drive technology in the market for magazine disconnect devices.

IS IT FEASIBLE TO REQUIRE SUCH DEVICES ON NEW CENTER-FIRE AND RIMFIRE SEMIAUTOMATIC HANDGUNS BY JANUARY 1, 2007, BEYOND THOSE CURRENTLY AVAILABLE ON THE MARKET?

NOTE: Committee staff does not know how many of the new semiautomatic handguns which are currently available in California, i.e., those approved by the Department of Justice as not "unsafe handguns," have either or both a chamber load indicator and a detachable magazine with magazine disconnect device. Any new model semiautomatic handgun with one or the other of the mandated items sold after January 1, 2005, which have not previously been tested by the Department of Justice and designated as not unsafe handguns, would have to be re-tested and designated as not unsafe before it could be sold in California. See Penal Code section 12131.5 cited in the Purpose section, above. Any new model with the items added as required after January 1, 2007, would have to be re-tested before it could be sold new in California.

There were 244,569 handguns sold in 1999 in California legally through licensed dealers and sheriff's in smaller counties (that number includes both new and used handguns). It is not possible for Committee staff to discern how many of those handguns had either or both of the items mandated by this bill. However, recent news accounts indicate that 70% of those handguns were semi-automatic pistols. (See Ascribe Newswire September 20, 2002, "California Handgun Study to Fortify Crime Prevention")

7. Change Effective January 1, 2003, Pertaining to Liability and Firearms and Ammunition

Prior to January 1, 2003, the following applied to liability lawsuits pertaining to firearms:

- (a) In a products liability action, no firearm or ammunition shall be deemed defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged. The potential of a firearm or ammunition to cause serious injury, damage, or death when discharged does not make the product defective in design. Injuries or damages resulting from the discharge of a firearm or ammunition are not proximately caused by its potential to cause serious injury, damage, or death, but are proximately caused by the actual discharge of the product. This section shall not affect a products liability cause of action

(More)

based upon the improper selection of design alternatives. (This section, enacted in 1983, is stated to be declaratory of existing law.) (Civil Code § 1714.4.)

Effective January 1, 2003, Civil Code section 1714.4 was deleted from law and Civil Code section 1714 was amended to read (underline indicates new language effective at the first of this year):

Every one is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. (Civil Code § 1714.)

That change in liability law could arguably change the legal scrutiny applied to determine whether or not the requirements of this bill are met in the future. For historical reference, SB 1818 (Gotch) in 1994 and SB 576 (Villaraigosa) from 1995 which both required a loaded chamber indicator on semi-automatic pistols included specific language about liability for damages caused by the failure to comply with that requirement and neither contained a definition of the required indicator.

8. Massachusetts AG Regulations Pertaining to Handguns

The Attorney General of the Commonwealth of Massachusetts has adopted the following regulations that apply to the sale of handguns in that state:

16.01: Definitions

Load indicator: shall mean a device which plainly indicates that a cartridge is in the firing chamber within the handgun.

Magazine safety disconnect: shall mean a device that prevents the firing of the handgun when the magazine is detached from the handgun. (940 CMR 16.01 (2001))

16.05: Sale of Handguns Without Childproofing or Safety Devices

(3) It shall be an unfair or deceptive practice for a handgun-purveyor to transfer or offer to transfer to any customer located within the Commonwealth any handgun which does not contain a load indicator or magazine safety disconnect.

(4) . . . 16.05(3) applies only to handguns that have a mechanism to load cartridges via a magazine. (940 CMR 16.05 (2001))

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It should be noted first that the Massachusetts "Handgun Performance Test" does not mention either a "load indicator" or a "magazine safety disconnect" and that the restrictions on the sale of handguns in 16.05 uses the conjunctive "or" so that the handgun shall have at least one or the other but both are not required for sale. In addition, those requirements are for sales, not manufacture in that state.

Questions raised about the Massachusetts law during the committee hearing on March 18, 2003, have resulted in inquiries about the Massachusetts law with the following now provided after telephone calls made between Attorney General staff of both states:

3/20/03 - Questions asked by CA DOJ staff of MA DOJ staff with answers provided:

1. Are there regulations that define exactly what a chamber load indicator is?

No. The definition is extremely limited. The definition simply says, "the load indicator shall mean a device which plainly indicates that a cartridge is in the firing chamber within the handgun." MA DOJ is working on a new definition that has more specific details, but that will be for prosecutorial discretion BECAUSE, in MA, the responsibility is on the dealer to determine whether or not a gun meets the standard. The AG's office is developing that regulation. It is in their bureaucratic process right now. It has to do with color, size and other characteristics.

2. How do you enforce your law?

In MA, the state police do records checks at gun dealers (like what our DOJ field reps do). The AG's office will also go in and purchase guns undercover to make sure all the laws are being followed (including MSD and CLI). They have done that with over one half their dealers. They only have 300 dealers in MA. 3 years ago, they had over a thousand dealers. Presumably, the new laws have caused more than a 66% decrease in gun dealers in MA.

3. How many handguns were sold in MA last year, 2001, 2000, 1999? When did the law come into effect?

[not available at time of call] ... It is about 40 to 50 thousand a year. The number had gone down; however, it is on its way back up.

4. How many makes/models are on the approved list of handguns that have:

a. magazine safety disconnects; b. chamber load indicators; c. both

They have 360 handguns on their roster; however, they currently do not test for the magazine safety disconnect OR the load indicator. So, they cannot say definitively which have the devices. They estimate that only a couple dozen have either a MSD or CLI.

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It is incumbent upon the dealer to certify that one or the other are present. HOWEVER, they are moving towards the laboratories certifying existence of a CLI or MSD. But, the new definition of a CLI has to be complete before they can do that.

Guns manufactured on or before October 1998 are exempt from the CLI/MSD law. MA tracks serial numbers as part of its enforcement activities to determine when a gun was manufactured. They subpoenaed the serial numbers from gun manufacturers.

5. Did gun manufacturers have to redesign firearms?

Yes, that is why there are so few new guns on the list when compared to California.

6. Does MA require guns manufactured in MA to meet the requirements of CLI's or MSD's?

No. Only sales.

7. Can we have a copy of their regulations?

Regulations:

http://www.ago.state.ma.us/con_pro/cmr2.pdf?section=17&head2=Handguns&head3=Regulations

More info:

http://www.ago.state.ma.us/con_pro/guns.asp

Mass. Roster:

http://www.state.ma.us/eops/publications/approved_roster2002.pdf

8. Any other thoughts on the MA law?

There are five million residents in MA. One million of those have gun licenses.

The requirements for Chamber Load Indicators in Massachusetts are really designed for people who are somewhat familiar with guns. This is how they are approaching the new regulations as well.

The Massachusetts AG staff also indicates that since neither device is part of the state Handgun Performance Test, adding either device does not entail retesting of the firearm if a device is added to a previously approved firearm model and the manufacturer indicates that is the only change.

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In addition, sponsors of this bill have also ascertained that (following edited by committee staff for inclusion; any ambiguity or errors are the responsibility of committee staff and not to be attributed to others):

First, although the requirements do not apply to manufacture, Smith & Wesson has modified those of its models that did not already comply with the requirements. [It appears that] their full line now complies with the MA requirements [having one or the other of the devices].

Second, the major gun manufacturers have made design changes to keep their guns available in MA, demonstrating that they are both able and willing to do so. Sig Arms, Smith & Wesson, Taurus and Walther (and perhaps many others) communicated to the MA AG's office that they would do so soon after the adoption of the requirements, and their guns are currently available for sale in MA.

Third, although the MA AG does not evaluate the devices or apply specific standards, they have explored the adoption of standards and have received suggestions about possible definitions. One suggestion ... describes "a red, yellow or orange colored area of at least four square millimeters" that is "visible on the exterior of the surface of the handgun when the appropriate caliber cartridge is in the chamber, but no red, yellow or orange is visible when no cartridge is in the chamber." [That may or may not be appropriate but it is also suggested that] the indicator be accompanied by adjacent labeling that unambiguously defines the meaning of the indicator.

9. Interstate Commerce

This bill would place restrictions on the sale, importation, and manufacture of semiautomatic firearms in California. There are enough similar restrictions on firearms in this state that it might be surprising if interstate commerce issues are raised by this bill. This bill would also generally prohibit the manufacture in California of semiautomatic firearms without the mandated items, even if those firearms are manufactured for export outside of the state. That is the same restriction which currently exists for the unsafe handgun law and the assault weapons law. (Penal Code §§ 12125-12133 and Penal Code §§ 12275-12290.) However, any such restriction at least may raise peripheral issues pertaining to interstate commerce. NOTE: Title 18, United States Code Service, section 927, does provide that:

§ 927. Effect of State law

No provision of this chapter [18 USCS §§ 921 et seq. - Federal Firearms Act]] shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

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10. Opposition to This Bill

The NRA letter in opposition to this bill includes:

The accident rate in the United States involving firearms is at its lowest level since 1903. This accident rate has declined almost 40 percent in the past 25 years alone and the decline in fatal firearm accidents has occurred in a century which has seen a four hundred percent increase in the number of firearms in circulation in the United States.

Senate Bill 190, would force the adoption into the design of firearms, unproven and untested technology. The requirements of SB 190 will make not firearms safer or reduce the number of firearms accidents.

Firearms safety training, such as the NRA has provided to millions of Americans, is the key to reducing firearms accidents, not the mandating of technical gadgets added to firearms.

11. Differences Between This Bill and SB 510 as Passed by the Committee Last Year

This bill has now been changed from the versions of SB 510 in 2001 by adding the new provisions to the "unsafe handgun" law; by exempting rimfire pistols from the chamber load indicator requirements; and by allowing semiautomatic center-fire pistols to have only one of those devices in order to be sold from January 1, 2005, to January 1, 2007.

When SB 510 was heard by this committee last year, it applied to all firearms. It was amended in the committee by the author to apply to handguns.

This bill further reflects the changes subsequently to SB 510 that changed the definition of "chamber load indicator"; refined the exemptions from the bill's requirements, including adding an exemption for the motion picture, television, and video production industry; and other minor changes.

12. Personal Handgun Importers

The Department of Justice "California Firearms Laws - 2003" contains the following on page 47:

Any person who meets the definition of a *personal handgun importer* who moves into California with the intention of establishing residency in this state, must report his or her ownership of any handgun acquired outside California to the Department of Justice within 60 days.

A personal handgun importer means an individual who meets specific criteria, which includes, but is not limited to, any person age 18 or older, who is not a licensed firearms

(More)

dealer or manufacturer, and who owns and intends to possess within this state on or after January 1, 1998, any pistol, revolver, or other firearm capable of being concealed upon the person that is not an assault weapon or machinegun, as defined by law. (Penal Code § 12001(n).)

Personal handgun importers shall report handgun ownership by choosing one of the following options:

- Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department. Forms are available from the Department of Justice, firearms dealers, law enforcement agencies, and the Department of Motor Vehicles;
- Sell or transfer the firearm in accordance with the provisions of Penal Code section 12072(d);
- Sell or transfer the firearm to a dealer licensed pursuant to Penal Code section 12071;
- Sell or transfer the firearm to a sheriff or police department. (If this option is chosen, individuals should notify the agency in advance that they intend to transport the handgun to that agency, and it should be transported unloaded and in a locked container). (Penal Code §§ 12026.2 (a)(18), 12072(f)(2)(A).)

There is no indication from the sponsors or author of this bill that it is intended to apply to those specifically defined importers who move to California and otherwise lawfully possess handguns even though they are called a unique kind of "importer" of firearms. Those persons are not specifically excluded from the "unsafe handgun" laws which, does exempt private party transfers from its restrictions. However, one of the options for a personal handgun importer is to sell the handgun in a private party transaction or to a dealer. That could remotely be considered importation for sale in an arguably overly broad interpretation, although staff does not know of any circumstance where that has been suggested, pursued, or argued under the existing "unsafe handgun" laws (nor during the legislative discussion of that law). If there is ever any confusion pertaining to that issue, it may be appropriate to specifically add those persons to those exempted from the provisions of the unsafe handgun law.

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12 IN THE UNITED STATES DISTRICT COURT

13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14	Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
15	Plaintiffs,)	
16		)	<u>EXHIBIT D</u>
17	v.)	
18	Wilfredo Cid,	)	In Support of Plaintiffs' Motion
19	Defendant.)	For Summary Judgment
	_____)	

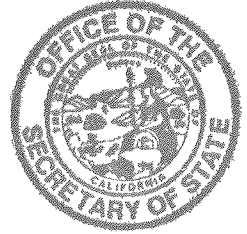
20 Respectfully Submitted on Sept. 1, 2009

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By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs



State of California Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California,
hereby certify: SELECTED PAGES, SENATE FLOOR ANALYSES
SB 489, 2003

That the attached transcript of 9 page(s) is a full, true and
correct copy of the original record in the custody of this office.



IN WITNESS WHEREOF, I execute this
certificate and affix the Great Seal of the
State of California this day of

APR 10 2009

A handwritten signature in cursive script that reads "Debra Bowen".

DEBRA BOWEN
Secretary of State

SENATE RULES COMMITTEE

SB 489

Office of Senate Floor Analyses

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UNFINISHED BUSINESS

Bill No: SB 489
Author: Scott (D), et al
Amended: 8/18/03
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 5/6/03

AYES: Vasconcellos, Burton, Romero, Sher

NOES: McPherson

NO VOTE RECORDED: Margett

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 23-16, 6/2/03

AYES: Alarcon, Alpert, Bowen, Burton, Cedillo, Chesbro, Dunn, Escutia,
Figueroa, Florez, Karnette, Kuehl, Machado, Murray, Ortiz, Perata,
Romero, Scott, Sher, Soto, Speier, Torlakson, Vincent

NOES: Aanestad, Ackerman, Ashburn, Battin, Brulte, Denham, Ducheny,
Hollingsworth, Johnson, Knight, Margett, McClintock, McPherson,
Morrow, Oller, Poochigian

NO VOTE RECORDED: Vasconcellos

ASSEMBLY FLOOR: 44-34, 9/4/03 - See last page for vote

SUBJECT: Semiautomatic firearms: chamber load indicators and
magazine disconnected mechanisms

SOURCE: Brady Campaign to Prevent Violence, United with the
Million Mom March
Coalition to Stop Gun Violence

CONTINUED

DIGEST: This bill adds to the existing “unsafe handgun” law requirements for semiautomatic pistols, as specified.

Assembly Amendments (1) expand and is more specific in the definition of a “chamber load indicator,” (2) change the operative date from January 1, 2005 to January 1, 2006, and (3) add co-authors.

ANALYSIS: Existing law provides that, commencing January 1, 2001, no “unsafe handgun” may be manufactured or sold in California by licensed dealer, as specified, and requires that the State Department of Justice (DOJ) prepare and maintain a roster of handguns which are determined not to be unsafe handguns. Private party sales and transfers of handguns through a licensed dealer or sheriff in small counties are exempted from those restrictions.

Existing law provides that for purposes of the “unsafe handgun” law, new models of the previously tested handguns must be submitted for testing, as follows:

“Penal Code section 12131.5. (a) A firearm shall be deemed to satisfy the requirements of subdivision (a) of Section 12131 (listed on Department of Justice roster as not an ‘unsafe handgun’) if another firearm is made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm only in one or more of the following features:

1. Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving.
2. The material from which the grips are made.
3. The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.
4. Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.

CONTINUED

- (b) Any manufacturer seeking to have a firearm listed under this section shall provide to the Department of Justice all of the following:
1. The model designation of the listed firearm.
 2. The model designation of each firearm that the manufacturer seeks to have listed under this section.
 3. A statement, under oath, that each unlisted firearm for which listing is sought differs from the listed firearm only in one or more of the ways identified in subdivision (a) and is in all other respects identical to the listed firearm.
- (c) The department may, in its discretion and at any time, require a manufacturer to provide to the department any model for which listing is sought under this section, to determine whether the model complies with the requirements of this section.”

Existing law provides that all firearms sold or transferred in this state by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state, shall include or be accompanied by a firearms safety device that is listed on the DOJ’s roster of approved firearms safety devices and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm, or to the physical characteristics of the firearm that match those listed on the roster for use with the device, as specified.

Existing law provides that every one is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section.

This bill makes the following changes to the definition of “unsafe handgun” that may not be sold “new” in California:

CONTINUED

1. Commencing January 1, 2006, for a center fire automatic semiautomatic pistol that is not already determined not to be an unsafe handgun listed on the roster pursuant to Section 12131 DOJ roster of handguns found to not be “unsafe” and therefore available for sale new in California), it does not have either a chamber load indicator, or if it has a detachable magazine, a magazine disconnect mechanism.
2. Commencing January 1, 2007, for all center fire automatic semiautomatic pistols, it does not have both a chamber load indicator and if it has a detachable magazine, a magazine disconnect mechanism.
3. Commencing January 1, 2007, maintaining on the DOJ roster of firearms not found “unsafe” handguns listed pursuant to Section 12131 prior to that date.
4. Commencing January 1, 2006, for all rimfire semiautomatic pistols that are not already listed on the DOJ roster it does not have a magazine disconnect mechanism, if it has a detachable magazine.
5. Commencing January 1, 2007, for all rimfire semiautomatic pistols that have a detachable magazine, it does not have a magazine disconnect mechanism.

This bill adds the following definitions to the “unsafe handgun” law:

1. A “chamber load indicator” means a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable user of the pistol, without requiring the user to refer to a user’s manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber.
2. A “magazine disconnect mechanism” means a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.

CONTINUED

3. A “semiautomatic pistol” means a pistol, as defined in subdivision (a) of Section 12001, the operating mode of which uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of the trigger.

This bill prohibits semiautomatic pistols from being submitted for testing pursuant to the “unsafe handgun” law unless they meet the following requirements:

1. Commencing January 1, 2006, no center fire semiautomatic pistol may be submitted for testing pursuant to this chapter if it does not have either a “chamber load indicator” or a magazine disconnect mechanism if it has a detachable magazine.
2. Commencing January 1, 2007, no center-fire semiautomatic pistol may be submitted for testing pursuant to this chapter if it does not have both a “chamber load indicator” and a magazine disconnect mechanism.
3. Commencing January 1, 2006, no rimfire semiautomatic pistol may be submitted for testing if it has a detachable magazine and does not have a magazine disconnect mechanism.

This bill makes related changes in law.

Prior Legislation

SB 510 (Scott), Chapter 608, Statutes of 2002. Passed the Senate on 5/30/01 with a vote of 24-11 (NOES: Ackerman, Brulte, Haynes, Johannessen, Johnson, Knight, McClintock, Monteith, Morrow, Oller, Poochigian). Provisions deleted in the Assembly.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 9/4/03)

Brady Campaign to Prevent Violence, United with the Million Mom March
(co-source)

Coalition to Stop Gun Violence (co-source)

American Academy of Pediatrics

Legal Community Against Violence

CONTINUED

California Chapter of the American College of Emergency Physicians
Firearms Law Center
Physicians for Social Responsibility
California Nurses Association
Women Against Gun Violence

OPPOSITION: (Verified 9/4/03)

BERETTA
California Sportsmen's Lobby
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition
Safari Club International
Sporting Arms and Ammunition Manufacturers' Institute
Sturm, Ruger and Company
TAURUS

ARGUMENTS IN SUPPORT: According to the author's office:

"From 1987 to 1996, nearly 2,200 American children 14 years of age and younger died from unintentional shootings. For every child who dies after being shot, an estimated 4 children are treated in U.S. hospitals for nonfatal gunfire injuries. In 1995 and 1996, 8,832 Californians were killed as a result of gunfire. According to data reported by hospitals to the California Department of Health Services, there were 13,153 nonfatal injuries which required hospitalization during the same period. About 10% of the injuries during that period of time were determined to be the result of unintentional shootings.

"Many of these injuries and deaths were the result of unintentional shootings by users who thought that the guns they fired were not loaded. Gun users are often unaware that semiautomatic weapons can be fired when their loading mechanism – the magazine – is removed or emptied. A live round of ammunition may remain in the chamber of the firearm after the magazine is removed. When the trigger of a semiautomatic firearm with a live round in its chamber is pulled, it will fire, even though it does not have a magazine inserted, unless the gun has a magazine disconnect mechanism.

"A 1997 survey by the Johns Hopkins Center for Gun Policy and Research and the National Opinion Research Center found that almost

CONTINUED

35% of respondents (who were all adults) either did not know that a gun could be fired, or believed that a gun could not be fired with the magazine removed. 28% of those respondents lived in households where guns were present. Undoubtedly, many of those households also included children.

“Teaching children how to “safely handle guns” is not the answer. Study after study has shown that gun safety programs for children are ineffective and may even increase the risk of unintentional firearm injury to children. In two recent experiments (one by the University of North Carolina and one by ABC News), guns were hidden in rooms where children were playing. Both studies found that children who previously had been taught not to touch guns and to instead immediately notify an adult are just as likely to handle guns than those who have not been so instructed. Another study released in July 2002 by the David and Lucille Packard Foundation found that parents overestimate the ability of their children to deal safely with guns. The report found that the easiest way to save lives is to make guns more “childproof” with built-in safety devices.

One such safety device is a chamber load indicator. A chamber load indicator alerts the gun user when there is a bullet in the firing chamber of the gun. Currently, chamber load indicators are installed on only about 11% all semiautomatic handguns. Chamber load indicators are effective safety devices. A 1991 General Accounting Office (GAO) study of shootings in 10 randomly selected cities across the nation found that 23% of the accidental shootings could have been prevented by chamber load indicators. The GAO report explained that ‘[a]lthough we cannot project to the country as a whole, were there actually to be the same ratio nationwide as in the 10 cities we studied, that would mean there were approximately 157,600 such injuries each year.’

“Magazine disconnect mechanisms prevent a semiautomatic weapon from being fired when its ammunition magazine is removed. They are passive safety devices, which require no training on the part of the user to be effective, which is particularly important to prevent accidents involving children. Magazine disconnect devices are currently installed on only about 14% of the semiautomatic handguns on the market.

CONTINUED

“Like chamber load indicators, magazine disconnect mechanisms are effective safety devices. Although there is no statistical data at this time about how many deaths the devices could prevent, a 1999 report by the Johns Hopkins Center for Gun Policy and Research concluded that magazine disconnect mechanisms are inexpensive and effective safety devices.”

ARGUMENTS IN OPPOSITION: BERETTA states that, “Beretta U.S.A. Corp. supplies pistols to the Los Angeles County and City Police Departments, the San Francisco Police Department, to the California Department of Corrections and to numerous other county and city law enforcement departments throughout California. We also provide a substantial number of the sidearms used by California citizens to protect themselves, their families and businesses and for recreational purposes.

“We recently received a copy of California Senate Bill 498, which seeks to require that magazine disconnect safety devices and loaded chamber indicators be added to handguns available for sale in California within the next few years. After reading the bill, we realize that it creates a potential financial liability for the State of California that may not have been considered by the sponsors of the bill.

“SB 489 calls any handgun that does not include a loaded chamber indicator and a magazine disconnect safety as ‘unsafe handgun’. Virtually no law enforcement handguns used in California have a magazine disconnect safety. Only some law enforcement handguns have loaded chamber indicators.

“By calling such guns ‘unsafe’, SB 489 will be used by plaintiffs’ attorneys as an admission by the State that handguns purchased for the police are, in fact, ‘unsafe’. Even though these are important firearm design considerations that argue against the use of these two features in a particular sidearm (for example, the design of some semi-automatic pistols makes a loaded chamber indicator impossible to incorporate due to the shape of the slide and for pistols that use a tip-up barrel), it will be difficult for a law enforcement department to argue such a defense if, for example, an accident occurs involving a police sidearm and the accident arguably involves the absence of one of these features when the state legislature has already agreed in advance that the gun is ‘unsafe’.

The U.S. Military uses Beretta pistols and requires that such pistols not have a magazine disconnect safety. This feature is also rejected by the Los

CONTINUED

Angeles and San Francisco Police Departments, as well as by numerous civilian users – namely, because they intend the pistol to fire in an emergency, with or without a magazine, in order to protect their lives. Most users of semiautomatic pistols expect the pistol to fire with or without a magazine. SB 489 confounds this commonplace expectation.

“People who want a pistol with a magazine disconnect safety can already purchase one. If, on the other hand, someone in California is injured or killed by an assailant because their pistol did not function as expected – namely, by discharging when the trigger is pulled, with or without the magazine—they will be able to thank the California legislature for making this choice for them.

“California already has an extensive system for testing and approving the safety of handguns sold in the State. We urge you to reject SB 489 because of the liability issues created for the State of California, its political subdivisions and its citizens.”

ASSEMBLY FLOOR:

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RJG:cm 9/16/03 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

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16 IN THE UNITED STATES DISTRICT COURT

17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
19 Plaintiffs,)	
20	)	<u>EXHIBIT E</u>
21 v.)	
22	)	In Support of Plaintiffs' Motion
23 Wilfredo Cid,)	For Summary Judgment
24 Defendant.)	
25 _____)	

26 Respectfully Submitted on Sept. 1, 2009

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Casing-code issues snag handgun law

By **James P. Sweeney**U-T SACRAMENTO BUREAU
2:00 a.m. August 10, 2009

SACRAMENTO — Two years after California passed a novel law requiring the next generation of semiautomatic handguns to leave a microscopic identifying code on shell casings, the controversial technology appears no closer to being introduced here or anywhere else.

California Attorney General Jerry Brown has not certified the law, which is required before it can take effect as scheduled on Jan. 1, and his aides could not say when that may happen.

Other states expected to follow California's lead instead have pulled back, waiting in some cases to see what happens here. Similar federal legislation has failed to find any political traction.

Gun manufacturers continue to question the readiness and potential cost of the technology, known as microstamping or ballistic tagging. Regardless, they say, other safety standards unique to California are stopping most companies from introducing handgun models here.

"I have no reason to believe there is any major manufacturer that is going to incur the millions and millions of dollars in costs to implement microstamping for new models introduced in California," said Larry Keane, senior vice president of the National Shooting Sports Foundation, an industry trade association.

"They will simply sell the models that are on the (approved) list now. New models going forward will be barred from the California market, which is already happening," he said.

The inventor of the microstamping technology and those who pushed the California law say any impediments to implementing the first-in-the-nation statute will be resolved soon.

"This is going to be implemented in January, and there won't be any bumps in the road," said Assemblyman Mike Feuer, a Los Angeles Democrat who carried the legislation for the Brady Campaign to Prevent Gun Violence.

"I remain confident," Feuer continued, "that it is in fact going to become not only the law in other states, but the law of the land."

Feuer's bill, AB 1471 of 2007, requires all new models of semiautomatic handguns sold in California after Jan. 1 to be equipped with a microscopic array of characters that identify the gun's make, model and serial number.

The tiny characters must be etched in at least two places — the tip of the firing pin and one other location — within the firearm and positioned so that they transfer onto each cartridge as it is fired.

OVERVIEW

Background: In 2007, the Legislature passed a bill that requires new models of semiautomatic handguns to leave an identifying code on shell casings. The law is scheduled to take effect Jan. 1.

What's changing: Unresolved legal issues and concerns about the technology have raised questions about whether the law will go into effect as planned.

The future: Efforts by other states and the federal government to adopt similar rules may lag if implementation of the California law becomes problematic.

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by the Union-Tribune

Gun-control advocates say the technology could have a profound impact on fighting crime. Most homicides in California are committed with handguns and most handguns sold in the state are semiautomatics.

But the limited application of the law, even if everything goes smoothly, does not figure to be felt for years.

The statute covers only new models of semiautomatic handguns approved for sale after its effective date. That excludes 1,326 different types of handguns legal for sale in California. Revolvers, which do not discharge shell casings, also are not covered.

The microstamping process was invented 15 years ago by Todd Lizotte, a New Hampshire engineer who patented the process under the trademark NanoMark Technologies. Because the technology was available nowhere else, the Legislature required the attorney general to certify that it was available "to more than one (gun) manufacturer unencumbered by any patent restrictions."

That hasn't happened yet.

"We're continuing to review the legislation, but the certification requirements have not yet been met," Christine Gasparac, the attorney general's press secretary, said last week.

The relevant patents are not yet in the public domain, Gasparac explained.

"Nothing can move forward until the patent issue has been resolved," she said.

Lizotte, the inventor, said from the outset that he was willing to provide a royalty-free license for gun manufacturers. Such a license would have allowed him to retain the patent rights for other applications.

But that did not satisfy the firearms industry nor apparently the state's attorneys.

In an interview last week, Lizotte said he recently decided to abandon at least four of the patents involved.

"We worked with the (state's) attorneys," he said. "They told us exactly what we needed to do to meet the guidelines and we've done that."

The patents may have been abandoned, said Gasparac, the attorney general's press secretary, "but our office is not aware of that."

Feuer, the assemblyman who carried the bill, requested and was granted a meeting with the attorney general last month. Afterward, he said he believes the certification process will be done soon.

That came as a surprise to representatives of the firearms industry, who said they have not been invited to any stakeholder sessions, as they normally are when the state develops regulations for major new gun laws.

In the two years since California embraced microstamping, seven other states have considered similar legislation. A proposed national law also was introduced in Congress. But only the District of Columbia has passed a microstamping law.

But even if the attorney general certifies the measure, gun makers say it's uncertain when the internal coding may be added to firearms, if ever.

Many firearms companies are struggling to comply with California's 2006 mandate that all new handgun models include a loaded chamber indicator and a mechanism that prevents firing when a magazine is removed.

In the more than three years since, just one new semiautomatic model has been approved by the state. Two others are pending, Gasparac said.

Sturm, Ruger & Co. Inc. is the only gun maker to date that has overcome that hurdle. The company's general counsel said he has "grave concerns" about whether microstamping is feasible.

"The problem I have with this is it can't be done," said Kevin Reid, Ruger's general counsel. "The legislation says it has to work 100 percent of the time and there is nobody, nobody including Todd Lizotte himself, who would say it will always work."

Several studies, including one done by the University of California Davis, have concluded the process needs further review, that it appears to work better on some guns than others.

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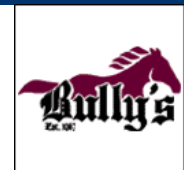


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But Lizotte, the inventor, argued that even in situations where only a partial code may be legible, it could still be invaluable – much like a partial fingerprint or license plate number – in cracking a crime.

For Feuer, the time has come to move past the debate and implement the law.

“The bottom line is this technology is going to help put criminals behind bars,” he said. “We should do it.”

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
Plaintiffs,)	
	)	<u>EXHIBIT F</u>
v.)	
	)	In Support of Plaintiffs' Motion
Wilfredo Cid,)	For Summary Judgment
Defendant.)	
)	

Respectfully Submitted on Sept. 1, 2009

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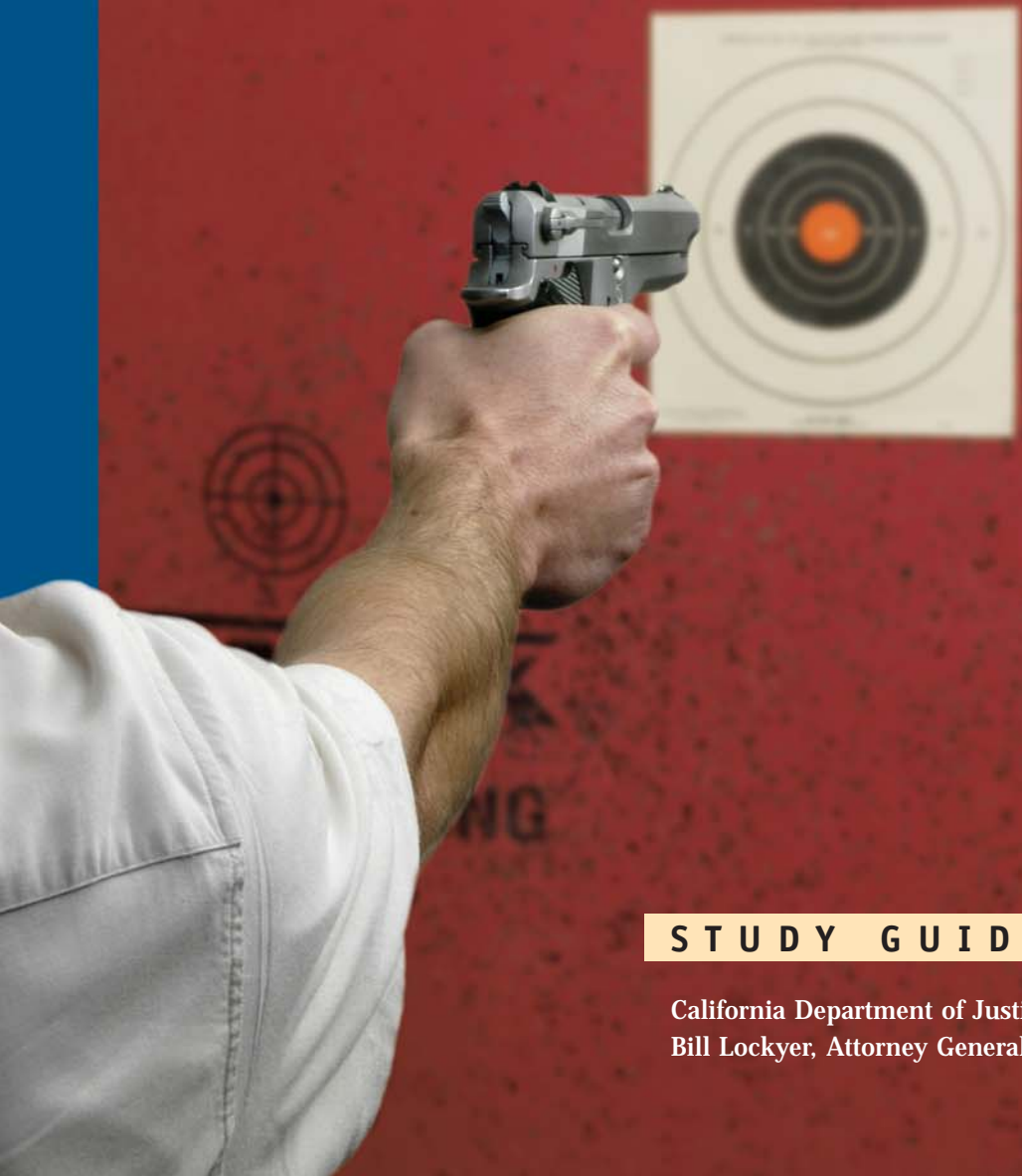
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Donald E. J. Kilmer, Jr., Attorney for Plaintiffs

H S C

Handgun Safety Certificate



STUDY GUIDE

California Department of Justice
Bill Lockyer, Attorney General

**CALIFORNIA DEPARTMENT OF JUSTICE
FIREARMS DIVISION**



www.ag.ca.gov/firearms

OCTOBER 2004

P R E F A C E

Handgun safety is the law in California. Every handgun owner should understand and follow handgun safety practices, have a basic familiarity with the operation and handling of his/her handgun, and be fully aware of the responsibility of handgun ownership. Pursuant to Penal Code section 12071 (b) any person who acquires a handgun must have a Handgun Safety Certificate (HSC), unless they are exempt from the HSC requirement. In order to obtain an HSC a person must pass a Department of Justice (DOJ) written test on handgun safety. The test is given by DOJ Certified Instructors, who are generally located at firearms dealerships.

This study guide provides you with the basic handgun safety information necessary to pass the test. Following the handgun safety information in this guide will also help reduce the potential for accidental deaths and injuries, particularly those involving children, caused by the unsafe handling and storing of handguns.

Included in this study guide is a general summary of the laws that govern the sale and use of firearms. A glossary is also provided at the end of this study guide that contains definitions of the more technical terms used.

Simply reading this study guide will not make you a safe handgun owner. To be a safe handgun owner you must practice the handgun safety procedures described in the following pages.

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Introduction



WHY HANDGUN SAFETY?

Handgun safety is important to all Californians. No one wants handgun accidents to happen, yet they do everyday. Handgun accidents involving children are especially disturbing. Studies show that easy access to loaded handguns in homes is a major cause of accidental shootings of children.

While there may be no way to guarantee safety, handgun owners can take steps to help prevent many accidental shootings. This study guide will give you valuable information to help you become a safe and responsible handgun owner.

HANDGUN SAFETY IS THE LAW

The intent of the California Legislature in enacting the Handgun Safety Certificate (HSC) law is to ensure that persons who obtain handguns have a basic familiarity with those firearms, including, but not limited to, the safe handling and storage of those firearms. It is not the intent of the Legislature to require an HSC for the mere possession of a firearm [Penal Code (PC) section 12800].

HANDGUN SAFETY CERTIFICATE INFORMATION

To obtain an HSC a person must take the Department of Justice (DOJ) written test and receive a passing score of at least 75% (the information necessary for passing the test is contained in this study guide).

An HSC is valid for five years from the date of issuance. If your HSC is lost, stolen or destroyed, a replacement may be obtained from the DOJ Certified Instructor who issued your original HSC.

Pursuant to PC section 12807, there are exemptions from the HSC requirement based on specific categories of persons. Some of the exempt categories are:

- Federal Firearms License Collectors with a Certificate of Eligibility (for Curio and Relic transactions only);
- Active, active reserve, or honorably retired military;
- Carry Concealed Weapon (CCW) permit holders; and
- Persons who have completed Peace Officers Standards and Training (PC section 832) firearms training.

For a complete list of exemptions visit the DOJ website at www.ag.ca.gov/firearms or contact the DOJ Firearms Division, Information Services Section at (916) 227-3703. You are required to provide documentation of your exemption to the firearms dealer each time you acquire a handgun.

SAFE HANDLING DEMONSTRATION

Prior to taking delivery of a handgun, you must successfully perform a safe handling demonstration with the handgun being purchased or acquired. The safe handling demonstration must be performed in the presence of a DOJ Certified Instructor on or after the date the Dealer Record of Sale (DROS) is submitted to DOJ and before the handgun is delivered.

The appendix at the end of this guide lists each of the statutorily mandated steps that constitute the safe handling demonstration for the three most common handgun types (semiautomatic pistols, double-action revolvers and single-action revolvers). The appendix is provided to help you prepare for the safe handling demonstration only. The information needed to answer all questions that appear on the DOJ handgun safety written test can be found within this study guide.

CAUSES OF HANDGUN ACCIDENTS

Ignorance and carelessness are major causes of handgun accidents. To help reduce the number of handgun accidents, it is critical that gun safety rules are understood and practiced at all times by every family member.

Following are some examples of handgun accidents that could have been avoided if the basic gun safety rules had been practiced:

Two young children playing in their home found a loaded handgun with the magazine removed on a bedside table. One child was injured when the handgun was fired.

A handgun owner assumed a handgun was unloaded. While cleaning it, he accidentally fired the handgun, causing injury to himself.

While practicing target shooting, a shooter was distracted by a noise behind her. She turned with her finger on the trigger and accidentally fired, injuring a person standing nearby.

Knowing the safety rules and applying them most of the time is not enough. Handgun accidents can happen even if a person knows the safety rules, but is careless in practicing them. For example, you may think you can leave your loaded handgun out on the kitchen table just for a moment while you go outside to turn off the garden hose. Although you know you should never leave a firearm where a child may find it, you carelessly think it will be alright “just this once.”

REMEMBER: Because ignorance and carelessness are major causes of handgun accidents, basic gun safety rules must be applied ALL THE TIME.

PREVENTING MISUSE TRAGEDIES

It is a fact that a number of depressed, intoxicated, substance abusive, or enraged individuals commit suicide every year with firearms, principally handguns. The developmental issues associated with adolescence makes teenagers particularly susceptible to this unfortunate outcome. Safe and responsible handgun storage practice, particularly when an individual in the household is experiencing one of the aforementioned conditions, can help prevent misuse tragedies.

BECOMING A SAFE AND RESPONSIBLE HANDGUN OWNER

Becoming a safe handgun owner is similar to becoming a safe driver—you combine a good working knowledge of the equipment, the basic skills of operation, and a mind set dedicated to safe and responsible usage and storage.

This means you must have:

- Respect for the danger of handguns.
- An awareness and concern about the possible safety hazards related to handguns.
- A desire to learn and practice safe conduct with handguns.

Developing a mind set for safe and responsible handgun usage and storage is the first step in actually becoming a responsible handgun owner. The next step is building your knowledge of handguns and gun safety which you can do by reading and understanding the information in this study guide. The final steps are becoming skillful in handling handguns and in using the safety knowledge that you have acquired.

CHAPTER 1

Gun Safety Rules



This chapter will introduce you to specific gun safety rules to give you a better understanding of handgun safety.

THE SIX BASIC GUN SAFETY RULES

There are six basic gun safety rules for gun owners to understand and practice at all times:

1. Treat all guns as if they are loaded.
2. Keep the gun pointed in the safest possible direction.
3. Keep your finger off the trigger until you are ready to shoot.
4. Know your target, its surroundings and beyond.
5. Know how to properly operate your gun.
6. Store your gun safely and securely to prevent unauthorized use.
Guns and ammunition should be stored separately.

1. Treat all guns as if they are loaded.

- Always assume that a gun is loaded even if you think it is unloaded.
- Every time a gun is handled for any reason, check to see that it is unloaded. For specific instructions on how to unload a handgun, see Chapter 3.
- If you are unable to check a gun to see if it is unloaded, leave it alone and seek help from someone more knowledgeable about guns.

2. Keep the gun pointed in the safest possible direction.

- Always be aware of where the gun is pointing. A “safe direction” is one where an accidental discharge of the gun will not cause injury or damage.
- Only point a gun at an object that you intend to shoot.
- Never point a gun toward yourself or another person.

3. Keep your finger off the trigger until you are ready to shoot.

- Always keep your finger off the trigger and outside the trigger guard until you are ready to shoot.

- Even though it may be comfortable to rest your finger on the trigger, it also is unsafe.
- If you are moving around with your finger on the trigger and stumble or fall, you could inadvertently pull the trigger.
- Sudden loud noises or movements can result in an accidental discharge because there is a natural tendency to tighten the muscles when startled.
- The trigger is for firing, the handle is for handling.

4. Know your target, its surroundings and beyond.

- Check that the areas in front of and behind your target are safe before shooting.
- Be aware that if the bullet misses or completely passes through the target, it could strike a person or object.
- Identify the target and make sure it is what you intend to shoot. If you are in doubt, DON'T SHOOT!
- Never fire at a target that is only a movement, color, sound or unidentifiable shape.
- Be aware of all the people around you before you shoot.

5. Know how to properly operate your gun.

- It is important to become thoroughly familiar with your gun. You should know its mechanical characteristics including how to properly load, unload and clear a malfunction from your gun.
- Obviously, not all guns are mechanically the same. Never assume that what applies to one make or model is exactly applicable to another.
- You should direct questions regarding the operation of your gun to your firearms dealer, or contact the manufacturer directly.

6. Store your gun safely and securely to prevent unauthorized use. Guns and ammunition should be stored separately.

- When the gun is not in your hands, you must still think of safety.
- Use a California-approved firearms safety device on the gun, such as a trigger lock or cable lock, so it cannot be fired.
- Store it unloaded in a locked container, such as a California-approved lock box or a gun safe.
- Store your gun in a different location than the ammunition.
- For maximum safety you should use both a locking device and a storage container.

ADDITIONAL SAFETY POINTS

The six basic safety rules are the foundational rules for gun safety. However, there are additional safety points which must not be overlooked:

- Never handle a gun when you are in an emotional state such as anger or depression. Your judgment may be impaired.
- Never shoot a gun in celebration (the Fourth of July or New Year's Eve, for example). Not only is this unsafe, but it is generally illegal. A bullet fired into the air will return to the ground with enough speed to cause injury or death.
- Do not shoot at water, flat or hard surfaces. The bullet can ricochet and hit someone or something other than the target.
- Hand your gun to someone only after you verify that it is unloaded and the cylinder or action is open. Take a gun from someone only after you verify that it is unloaded and the cylinder or action is open.
- Guns, alcohol and drugs don't mix. Alcohol and drugs can negatively affect judgment as well as physical coordination. Alcohol and any other substance likely to impair normal mental or physical functions should not be used before or while handling guns. Avoid handling and using your gun when you are taking medications that cause drowsiness or include a warning to not operate machinery while taking this drug.
- The loud noise from a fired gun can cause hearing damage, and the debris and hot gas that is often emitted can result in eye injury. Always wear ear and eye protection when shooting a gun.



CHAPTER 1: Self Test

1. A safe practice when handling a gun is to rest your finger on the outside of the trigger guard or along the side of the gun until you are ready to shoot. (page 9)
True False
2. To “know your target, its surroundings and beyond,” you must consider that if the bullet misses or completely passes through the target, it could strike a person or object. (page 10)
True False
3. Drinking alcohol while handling firearms is safe if your blood alcohol level remains below the legal limit. (page 11)
True False
4. Which of the following safety points should you remember when handling a gun? (page 11)
 - A. Never shoot a gun in celebration.
 - B. Do not fire at water, flat or hard surfaces.
 - C. Wear ear and eye protection when shooting a gun.
 - D. All of the above.
5. Safety Rule Number Two is keep the gun pointed: (page 9)
 - A. To the north.
 - B. In the safest possible direction.
 - C. Up.
 - D. Down.
6. Safety Rule Number Five is know how to properly: (page 10)
 - A. Clear a malfunction.
 - B. Operate your gun.
 - C. Load your gun.
 - D. Clean your gun.

Answers: 1: True, 2: True, 3: False, 4: D, 5: B, 6: B

CHAPTER 2

Handguns And Children



HANDGUN OWNER RESPONSIBILITY

It is a handgun owner's responsibility to take all possible steps to make sure a child cannot gain access to handguns. In fact, this responsibility is mandated by California law. The overall abiding rule is to store your gun in a safe and responsible manner at all times. As a handgun owner, you should be aware of the laws regarding children and firearms.

Summary of Safe Storage Laws Regarding Children

You may be guilty of a misdemeanor or a felony if you keep a loaded firearm within any premises that are under your custody or control and a child under 18 years of age obtains and uses it, resulting in injury or death, or carries it to a public place, unless you stored the firearm in a locked container or locked the firearm with a locking device to temporarily keep it from functioning. Please refer to Pages 29 and 30 for more information regarding safe storage and methods of childproofing your handgun.

You Cannot Be Too Careful with Children and Guns

There is no such thing as being too careful with children and guns. Never assume that simply because a toddler may lack finger strength, they can't pull the trigger. A child's thumb has twice the strength of the other fingers. When a toddler's thumb "pushes" against a trigger, invariably the barrel of the gun is pointing directly at the child's face. NEVER leave a firearm lying around the house. Please refer to Page 40 for more specific information regarding safe storage laws regarding children.

Child safety precautions still apply even if you have no children or if your children have grown to adulthood and left home. A nephew, niece, neighbor's child or a grandchild may come to visit. Practice gun safety at all times.

To prevent injury or death caused by improper storage of guns in a home where children are likely to be present, you should store all guns unloaded, lock them with a firearms safety device and store them in a locked container. Ammunition should be stored in a location separate from the gun.

Talking to Children about Guns

Children are naturally curious about things they don't know about or think are "forbidden." When a child asks questions or begins to act out "gun play," you may want to address his or her curiosity by answering the questions as honestly and openly as possible. This will remove the mystery and reduce the natural curiosity. Also, it is important to remember to talk to children in a manner they can relate to and understand. This is very important, especially when teaching children about the difference between "real" and "make-believe." Let children know that, even though they may look the same, real guns are very different than toy guns. A real gun will hurt or kill someone who is shot.

Instill a Mind Set of Safety and Responsibility

The American Academy of Pediatrics reports that adolescence is a highly vulnerable stage in life for teenagers struggling to develop traits of identity, independence and autonomy. Children, of course, are both naturally curious and innocently unaware of many dangers around them. Thus, adolescents as well as children may not be sufficiently safeguarded by cautionary words, however frequent. Contrary actions can completely undermine good advice. A "Do as I say and not as I do" approach to gun safety is both irresponsible and dangerous.

Remember that actions speak louder than words. Children learn most by observing the adults around them. By practicing safe conduct you will also be teaching safe conduct.

RULES FOR KIDS

Adults should be aware that a child could discover a gun when a parent or another adult is not present. This could happen in the child's own home; the home of a neighbor, friend or relative; or in a public place such as a school or park. If this should happen, a child should know the following rules and be taught to practice them.

1. Stop

The first rule for a child to follow if he/she finds or sees a gun is to stop what he/she is doing.

2. Don't Touch!

The second rule is for a child not to touch a gun he/she finds or sees. A child may think the best thing to do if he/she finds a gun is to pick it up and take it to an adult. A child needs to know he/she should NEVER touch a gun he/she may find or see.

3. Leave the Area

The third rule is to immediately leave the area. This would include never taking a gun away from another child or trying to stop someone from using gun.

4. Tell an Adult

The last rule is for a child to tell an adult about the gun he/she has seen. This includes times when other kids are playing with or shooting a gun.

Please note that, while there is no better advice at this time for children or adolescents who encounter a gun by happenstance, the California Chapter of the American College of Emergency Physicians reports that such warnings alone may be insufficient accident prevention measures with children and adolescents.



CHAPTER 2: Self Test

1. When not using a gun, it is imperative to use a firearms safety device and store it in a locked container.

(page 13)

True False

2. If you keep a loaded firearm where a child obtains and improperly uses it, you may face misdemeanor or felony charges.

(page 13)

True False

3. There is no such thing as being too careful with children and guns. (page 13)

True False

4. An important lesson children should learn is that guns are not toys. (page 14)

True False

5. The four safety “Rules for Kids” if they see a gun are: (page 14)

A. _____

B. _____

C. _____

D. _____

6. Child safety precautions only apply if you have children. (page 13)

True False

Answers: 1: True, 2: True, 3: True, 4: True, 5: A. Stop, B. Don't Touch, C. Leave the Area, D. Tell an Adult, 6: False

CHAPTER 3

Handgun Operation

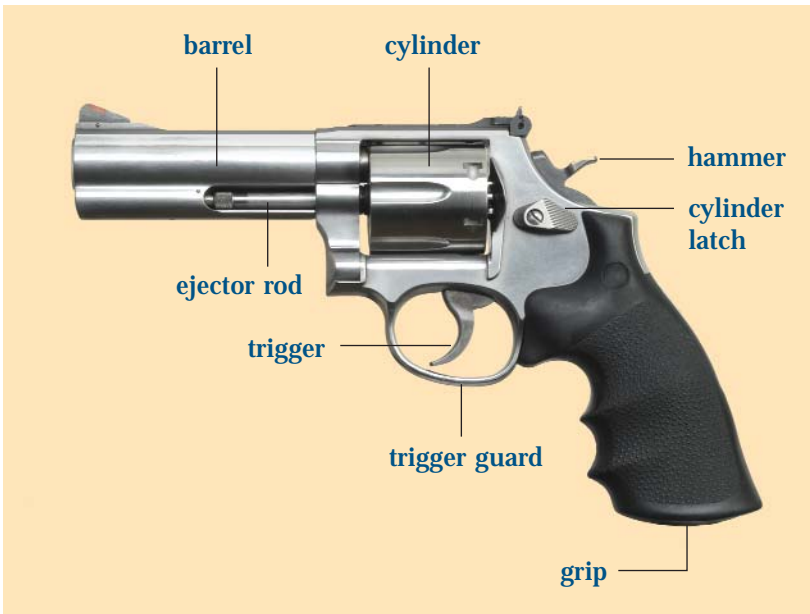
TYPES OF HANDGUNS

An important part of being a safe handgun owner is knowing how your handgun works. This begins with learning the difference between the two most common types of handguns – revolvers and semiautomatic pistols.

REVOLVER PARTS AND OPERATION

Parts of a Revolver

The basic parts of a revolver are:



How a Revolver Works

A revolver has a rotating cylinder containing a number of chambers. There are usually five or six chambers. The action of the trigger or hammer will line up a chamber with the barrel and firing pin. Releasing the cylinder latch allows the cylinder to swing out for loading, unloading and inspection.

Revolvers are either single or double action. The primary difference between these two types of revolvers is the function of the trigger. On a single-action revolver the trigger has a single function, to release the hammer. The trigger on a double-action revolver has two functions, to cock the hammer and to release it.

This section focuses on the double-action revolver because most of the revolvers sold are double-action. However, you can get detailed information on single-action revolvers from firearms dealers or manufacturers.

To Load a Double-Action Revolver

Always refer to the owner's manual for information specific to your handgun. Remember to keep the gun pointed in the safest possible direction and keep your finger off the trigger.

The steps to load a double-action revolver are:

1. Release the cylinder latch.
2. Swing the cylinder out.
3. Insert a cartridge of ammunition into each chamber.
4. Close the cylinder.



The double-action revolver is now loaded.

To Check or Unload a Double-Action Revolver

Always refer to the owner's manual for information specific to your handgun. Remember to keep the gun pointed in the safest possible direction and keep your finger off the trigger.

The steps to unload a double-action revolver are:

1. Release the cylinder latch.



Step 1

2. Swing the cylinder out.



Step 2

3. Inspect each chamber in the cylinder. If cartridges are in any chamber of the cylinder, use the ejector rod to remove them.



Step 3

The double-action revolver is now unloaded.

NOTE: Simply spinning a revolver to an empty chamber does not unload it or make it safe. The cylinder rotates to the next chamber before the hammer falls.

SEMIAUTOMATIC PISTOL PARTS AND OPERATION

Parts of a Semiautomatic Pistol

The basic parts of a semiautomatic pistol are:



How a Semiautomatic Pistol Works

A semiautomatic pistol has a single chamber. Each time the trigger is pulled, a cartridge is fired, the empty case is automatically extracted and ejected, the hammer is cocked, and a new cartridge is loaded into the chamber.

The primary difference between revolvers and semiautomatic pistols is how the ammunition is held. Revolvers use a cylinder to hold ammunition. Semiautomatic pistols use a magazine to hold ammunition. A magazine is a separate metal boxlike container into which cartridges are loaded. It is usually located within the grip. A button or catch releases the magazine.

Another difference is most semiautomatic pistols have a “safety” that is designed to prevent firing when engaged. However, it is not foolproof so do not rely on the safety to prevent an accidental discharge. A safety should only be used as an additional safety measure.

Never pull the trigger on any firearm with the safety in the “safe” position because thereafter the firearm could fire at any time without the trigger ever being touched. If a firearm is dropped, it may land hard enough to activate the firing mechanism without the trigger being touched.

To Load a Semiautomatic Pistol

Procedures differ for various semiautomatic pistols. Always refer to the owner's manual for information specific to your firearm. Remember to keep the gun pointed in the safest possible direction and keep your finger off the trigger.

Generally, the steps to load a semiautomatic pistol are:

1. Push the magazine release.
2. Remove the magazine.
3. Insert the appropriate cartridges into the magazine as described in the owner's manual.
4. Insert the magazine firmly into the pistol.
5. Pull the slide to the rear and release it.
6. Move any safety to "ON".



Step 1



Step 2



Step 3



Step 4



Step 5



Step 6

The semiautomatic pistol is now loaded.

Note: If you release the slide before inserting the magazine, there will NOT be a cartridge in the chamber.

To Check or Unload a Semiautomatic Pistol

Procedures differ for various semiautomatic pistols. Always refer to the owner's manual for information specific to your firearm. Remember to keep the gun pointed in the safest possible direction and keep your finger off the trigger.

Generally, the steps to unload a semiautomatic pistol are:

1. Push the magazine release.
2. Remove the magazine.
3. Pull the slide to the rear and lock it back, if possible. Pulling the slide back should eject any cartridge in the chamber. The action is now open.
4. Visually check the chamber to ensure it is empty.



The semiautomatic pistol is now unloaded.

C A U T I O N

You should NOT assume a semiautomatic pistol is unloaded just because the magazine is removed from the handgun.

Do not allow the slide to go forward UNLESS you have:

1. Checked again to be sure the chamber is empty, and
2. Checked again to be sure the magazine has been REMOVED.

If you pull the slide back ejecting the cartridge, check the chamber, let the slide go forward, and THEN remove the magazine, you have a loaded, dangerous firearm (a cartridge is in the chamber) even though you have removed the magazine. It is common and sometimes fatal to make this error.

ALWAYS REMOVE THE MAGAZINE FIRST!

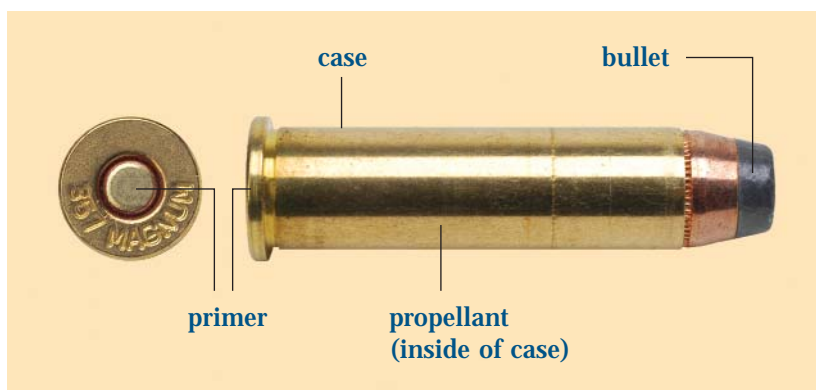
AMMUNITION

An often overlooked aspect of safe firearm operation is knowing about the ammunition you use. It is important for you to know which ammunition can be used safely in your firearm.

Ammunition Components

A firearm cartridge, commonly referred to as a “round,” is a single unit of ammunition made up of four parts: the case, the primer, the propellant and the bullet.

Components of a Cartridge



The case is the metal cylinder that is closed at one end and contains the other three components.

The primer is the impact-sensitive chemical compound used for ignition.

The propellant is a fast-burning chemical compound.

The bullet is the projectile fired from a firearm. It is usually made of lead, sometimes covered with a layer of copper or other metal and is located at the tip of the cartridge. People often mistakenly refer to the entire cartridge as a “bullet.” Actually the bullet is just one part of a cartridge.

PHYSICS OF GUNFIRE

To understand the power of a firearm, it is helpful to know some of the physics of gunfire. The fall of the hammer causes the primer to ignite the powder, which burns to produce gases. These rapidly-expanding gases push the bullet through the barrel and toward the target. The push of gases against the firearm results in what is called recoil. Some shooters are startled by recoil. Firearms vary in how much recoil they generate. Anticipation of recoil may cause an inexperienced shooter to grasp the firearm too tightly or flinch. Shooting a firearm properly minimizes the negative effects of recoil on the shooter.

FIREARM AND AMMUNITION CALIBERS

Firearms and ammunition are made in various calibers. Firearm caliber refers to barrel diameter. Revolvers generally have the caliber information on the barrel. Semiautomatic pistols generally have the caliber information on the slide. Ammunition caliber refers to bullet diameter. Ammunition has the caliber information on the box. Some of the more common calibers are the .22, .45, and 9 mm. You must only use the caliber of ammunition recommended by the manufacturer of your firearm.



.357 Magnum



9 mm Luger

Just because a cartridge fits your firearm does not necessarily mean the cartridge is safe to shoot. A firearm may not be able to handle the pressure created by using incorrect ammunition. This could result in damage to the firearm and possible injury to yourself or bystanders.

Never shoot ammunition that is old, dirty, corroded or wet, or ammunition that cannot be fully identified. This could cause a malfunction such as a jam or a misfire, or explosion of the firearm. Never throw ammunition in the trash. Call your local refuse department and ask for proper disposal instructions.

Some ammunition is illegal. Your firearms dealer can help you identify the correct and legal ammunition for your firearm. Purchase your ammunition from an authorized ammunition dealer only.

DANGEROUS RANGE

In order to shoot a firearm safely, you need to know not only your target but also the dangerous range of your ammunition. The dangerous range is the distance that a bullet can travel. Most ammunition can travel at least a mile, with some having the capability of traveling MORE than two miles. Therefore, even though you may fire at a target only a few feet or yards away, your bullet could travel far beyond your target. As it travels, the potential for damage widens. The importance of the dangerous range is that you must consider how much farther the bullet can travel beyond the target. This is because a bullet that misses or passes through a target could strike a person or object. If you think only of your target and not the dangerous range, you might mistakenly think someone or something is “too far away” to be in danger.

Another important point to remember in considering the dangerous range is that most ammunition can easily penetrate the interior walls of a house and still travel some distance before losing its energy. High velocity or magnum ammunition has even greater penetration and distance capabilities.

Remember: Once you fire, you are responsible for any damage or injuries your bullet causes.

MALFUNCTIONS

Any machine can malfunction. A firearm is no different. If your firearm malfunctions, always keep the basic safety rules in mind and do the following:

CAUTION

STOP FIRING!

KEEP THE GUN POINTED IN A SAFE DIRECTION.

WAIT TEN SECONDS.

SEEK COMPETENT HELP.

If you are at a range, the usual procedure to follow when a malfunction occurs is to keep your firearm pointed down range, keep your finger off the trigger and raise your non-shooting hand until a range official arrives. You have a potentially dangerous situation!



CHAPTER 3: Self Test

1. The importance of the “dangerous range” is that a bullet can travel far beyond the intended target. (page 25)
True False
2. The safety on a semiautomatic pistol is not foolproof. (page 20)
True False
3. Just because a cartridge fits into your firearm does not necessarily mean it is safe to shoot. (page 24)
True False
4. The two most common types of handguns are: (page 17)
 - A. Single-action and double-action revolvers.
 - B. Semiautomatic revolvers and pistols.
 - C. Semiautomatic and automatic pistols.
 - D. Revolvers and semiautomatic pistols.
5. After ensuring a double-action revolver is pointed in a safe direction and with your finger off the trigger, you begin unloading the handgun by: (page 19)
 - A. Releasing the cylinder latch.
 - B. Removing the cylinder.
 - C. Swinging out the cylinder.
 - D. Pushing the magazine release.
6. Firearm or ammunition caliber refers to: (page 24)
 - A. Barrel length.
 - B. Magazine capacity.
 - C. Barrel or bullet diameter.
 - D. Bullet velocity.
7. A magazine is part of a: (page 20)
 - A. Single-action revolver.
 - B. Double-action revolver.
 - C. Semiautomatic pistol.
 - D. Single-action and a double-action revolver.

Answers: 1: True, 2: True, 3: True, 4: D, 5: A, 6: C, 7: C

CHAPTER 4

Handgun Ownership



UNDERSTAND THE SAFETY ASPECTS OF YOUR HANDGUN

Get advice from a professional sales person on the safety aspects of the handgun you are considering buying. Select the handgun that best suits your personal needs. Ask a lot of questions! Ask about the correct ammunition for the handgun you have selected.

Become thoroughly familiar with the mechanics of the handgun you have selected. By knowing exactly how your handgun works, you are more likely to recognize any possible safety problems.

CAREFULLY READ ALL INSTRUCTIONAL MATERIAL

An owner's manual from the manufacturer of your handgun should be provided when you buy a new handgun. Manuals for used handguns usually can be obtained by writing or calling the manufacturer.

Carefully read the manual and use it to familiarize yourself with the handgun and its operation.

ENROLL IN A HANDGUN TRAINING COURSE

To help you learn to drive a car you probably had some “behind the wheel” training and practice before you got your driver's license. This also applies to handgun ownership. The best way to become skilled in using and understanding how your handgun operates is to enroll in a “hands-on” training course. There are many handgun training courses that can provide additional safety information.

For information on training courses in your area, contact a local firearms dealer or firearms safety organization.

CLEANING AND REPAIR

Maintenance is part of being a responsible firearms owner. Firearms should be cleaned regularly and especially after prolonged storage. The barrel should be cleaned after every use. Accumulated moisture, dirt or grease can interfere with the efficient and safe operation of a firearm.

Firearm cleaning kits and materials can be purchased from most firearms dealers. Be aware that some firearm cleaning substances are toxic. Carefully read and follow the instructions on the cleaning products.

You should clean your firearm in a location where you will have no distractions. Before you begin, always check your firearm to ensure it is unloaded and remove any ammunition from the cleaning area. Accidents can happen if cleaning procedures are not followed correctly and safely. Therefore, you should follow the cleaning instructions in your owner's manual and on your cleaning products. Firearms dealers or gunsmiths also are good sources for cleaning information.

Care should be taken to ensure adequate ventilation at all times to reduce the risk of inhaling lead particles. To avoid accidental ingestion of lead particles, never handle food or drink without first washing your hands. Do not smoke when exposed to lead. Wash your hands thoroughly after exposure.

Periodically inspect all firearms you own to be sure that they are in good working condition. If you notice any problems, have your firearm checked by a competent gunsmith. Any repairs should be made only by a gunsmith or the manufacturer of the firearm. You should not attempt to make any major modifications to your firearm. Some modifications are illegal and dangerous. They also could void the manufacturer's warranty.

By keeping your firearm properly maintained, you will ensure that it is safe to operate and will function reliably for many years.



SAFETY AND STORAGE DEVICES

If you decide to keep a firearm in your home you must consider the issue of how to store the firearm in a safe and secure manner. California recognizes the importance of safe storage by requiring that all firearms sold in California be accompanied by a DOJ-approved firearms safety device or proof that the purchaser owns a gun safe that meets regulatory standards established by the Department. The current list of DOJ-approved firearms safety devices and the gun safe standards can be viewed at the following DOJ website:
<http://www.ag.ca.gov/firearms/fsdcertlist.htm>.

There are a variety of safety and storage devices currently available to the public in a wide range of prices. Some devices are locking mechanisms designed to keep the firearm from being loaded or fired, but don't prevent the firearm from being handled or stolen. There are also locking storage containers that hold the firearm out of sight. For maximum safety you should use both a firearm safety device and a locking storage container to store your unloaded firearm.

Two of the most common locking mechanisms are trigger locks and cable locks. Trigger locks are typically two-piece devices that fit around the trigger and trigger guard to prevent access to the trigger. One side has a post that fits into a hole in the other side. They are locked by a key or combination locking mechanism. Cable locks typically work by looping a strong steel cable through the action of the firearm to block the firearm's operation and prevent accidental firing. However, neither trigger locks nor cable locks are designed to prevent access to the firearm.

Smaller lock boxes and larger gun safes are two of the most common types of locking storage containers. One advantage of lock boxes and gun safes is that they are designed to completely prevent unintended handling and removal of a firearm. Lock boxes are generally constructed of sturdy, high-grade metal opened by either a key or combination lock. Gun safes are quite heavy, usually weighing at least 50 pounds. While gun safes are typically the most expensive firearm storage devices, they are generally more reliable and secure.

Remember: Safety and storage devices are only as secure as the precautions you take to protect the key or combination to the lock.



METHODS OF CHILDPROOFING

As a responsible handgun owner, you must recognize the need and be aware of the methods of childproofing your handgun, whether or not you have children.

Whenever children could be around, whether your own, or a friend's, relative's or neighbor's, additional safety steps should be taken when storing firearms and ammunition in your home.

- Always store your firearm unloaded.
- Use a firearms safety device AND store the firearm in a locked container.
- Store the ammunition separately in a locked container.

Always storing your firearm securely is the best method of childproofing your firearm; however, your choice of a storage place can add another element of safety. Carefully choose the storage place in your home especially if children may be around.

- Do not store your firearm where it is visible.
- Do not store your firearm in a bedside table, under your mattress or pillow, or on a closet shelf.
- Do not store your firearm among your valuables (such as jewelry or cameras) unless it is locked in a secure container.
- Make sure the location you store your firearm and ammunition is not easily accessible to children.
- Consider storing firearms not possessed for self-defense in a safe and secure manner away from the home.



CHAPTER 4: Self Test

1. It is important to carefully read all instructional material you receive with your handgun. (page 27)
True False
2. Certain modifications, when made to a firearm, may void its warranty. (page 28)
True False
3. It is safe to store a loaded handgun in your bedside table. (page 30)
True False
4. Two common firearms safety devices are trigger locks and cable locks. (page 29)
True False
5. Which of the following steps should be taken to “childproof” your handgun? (page 30)
 - A. Use a firearms safety device AND store the firearm in a locked container.
 - B. Always store your firearm unloaded.
 - C. Store ammunition separately in a locked container.
 - D. All of the above.

Answers: 1: True, 2: True, 3: True, 4: True, 5: D

CHAPTER 5

Firearms Laws



INTRODUCTION TO THE LAWS

As the owner of a firearm, it is your responsibility to understand and comply with all federal, state and local laws regarding firearms ownership. Many of the laws described below pertain to the possession, use and storage of firearms in the home and merit careful review. This section contains a general summary of the state laws that govern the use of firearms, particularly handguns, by persons other than law enforcement officers or members of the armed forces. It is not designed to provide individual guidance for specific situations, nor does it address federal or local laws. Persons having specific questions are encouraged to seek legal advice from an attorney, or consult their local law enforcement agency, local prosecutor or law library.

SALES AND TRANSFERS OF FIREARMS

In California, only licensed California firearms dealers who possess a valid Certificate of Eligibility (COE) are authorized to engage in retail sales of firearms. These retail sales require the purchaser to provide personal identifier information for the Dealer Record of Sale (DROS) document that the firearms dealer must submit to the Department of Justice (DOJ). There is a mandatory ten-day waiting period before the firearms dealer can deliver the firearm to the purchaser, during which time DOJ conducts a firearms eligibility background check to ensure the purchaser is not prohibited from lawfully possessing firearms. Although there are exceptions, generally all firearms purchasers must be at least 18 years of age to purchase a long gun (rifle or shotgun) and 21 years of age to purchase a handgun (pistol or revolver). Additionally, purchasers must be California residents with a valid driver's license or identification card issued by the California Department of Motor Vehicles.

Generally, it is illegal for any person who is not a California licensed firearms dealer (private party) to sell or transfer a firearm to another non-licensed person (private party) unless the sale is completed through a licensed California firearms dealer. "Private party transfers" can be conducted at any licensed California firearms dealership that sells handguns. The buyer and seller must complete the required DROS document in person at the licensed firearms dealership and deliver the firearm to the dealer who will retain possession of the firearm during the mandatory ten-day waiting period. In addition to the applicable state fees, the firearms dealer may charge a fee not to exceed \$10 per firearm for conducting the private party transfer.

The infrequent transfer of firearms between immediate family members is exempt from the law requiring private party transfers to be conducted through a licensed firearms dealer. For purposes of this exemption, “immediate family” means parent and child, and grandparent and grandchild but does not include brothers or sisters. Please note if the firearm being transferred is a handgun, prior to taking possession of the firearm, the transferee must comply with the Handgun Safety Certificate requirement described below. Within 30 days of the transfer he/she must also submit a report of the transaction to DOJ. You may obtain the required report form (FD 4542) by contacting the DOJ Firearms Division at (916) 227-3703 or you can download the form yourself from the Firearms Division web site at www.ag.ca.gov/firearms/forms.

The reclaiming of a pawned firearm is subject to the DROS and 10-day waiting period requirements.

Specific statutory requirements relating to sales and transfers of firearms follow:

Proof-of-Residency Requirement

To purchase a handgun in California you must present documentation indicating that you are a California resident. Acceptable documentation includes a utility bill from within the last three months, a residential lease, a property deed or military permanent duty station orders indicating assignment within California. The address provided on the DROS must match either the address on the proof-of-residency document or the address on the purchaser’s California Driver’s license or Identification Card [PC section 12071 (b)].

Handgun Safety Certificate Requirement

To purchase or acquire a handgun you must have a valid Handgun Safety Certificate (HSC). To obtain an HSC you must score at least 75% on an objective written test pertaining to firearms laws and safety requirements. The test is given by Department of Justice Certified Instructors, who are generally located at firearms dealerships. An HSC is valid for five years. You may be charged up to \$25 for an HSC. Handguns being returned to their owners, such as pawn returns, are exempt from this requirement. In the event of a lost, stolen or destroyed HSC, the issuing DOJ Certified Instructor will issue a replacement HSC for a fee of \$15. You must present proof of identity to receive a replacement HSC (PC section 12800 – 12808).

Safe Handling Demonstration Requirement

Prior to taking delivery of a handgun, you must successfully perform a safe handling demonstration with the handgun being purchased or acquired. The safe handling demonstration must be performed in the presence of a DOJ Certified Instructor sometime between the date the DROS is submitted to DOJ and the delivery of the handgun, and is generally performed at a firearms dealership. The purchaser, firearms dealer and Certified Instructor must sign an affidavit stating the safe handling demonstration was completed. The steps required to complete the safe handling demonstration are described in the appendix. Pawn returns and intra-familial transfers are not subject to the safe handling demonstration requirement (PC section 12071).

Firearms Safety Device Requirement

All firearms (long guns and handguns) purchased in California must be accompanied with a firearms safety device (FSD) that has passed required safety and functionality tests and is listed on the DOJ's official roster of DOJ-approved firearms safety devices. The current roster of certified FSDs is available on the Firearms Division's website at <http://www.ag.ca.gov/firearms/fsdcertlist.htm>. The FSD requirement also can be satisfied if the purchaser signs an affidavit declaring ownership of either a DOJ-approved lock box or a gun safe capable of accommodating the firearm being purchased. Pawn returns and intra-familial transfers are not subject to the FSD requirement (PC sections 12088.1 – 12088.8).

Roster of Handguns Certified for Sale in California

No handgun may be sold by a firearms dealer to the public unless it is of a make and model that has passed required safety and functionality tests and is listed on the DOJ's official roster of handguns certified for sale in California. The current roster of handguns certified for sale in California is available on the Firearms Division's website at www.ag.ca.gov/firearms/certlist.htm. Private party transfers, intra-familial transfers, and pawn returns are exempt from this requirement (PC section 12125).

One-Handgun-per-Thirty-Days-Requirement

No person shall make an application to purchase more than one handgun within any 30-day period. Exemptions to the one-handgun-per-thirty-days requirement include pawn returns, intra-familial transfers and private party transfers [PC section 12072 (a)].

Handgun Sales and Transfer Requirements

	Retail Sales	Private Party Transfers	Intra-familial Transfers	Pawn Returns
Proof-of-Residency Requirement	Yes	Yes	No	Yes
Handgun Safety Certificate Requirement	Yes	Yes	Yes	No
Safe Handling Demonstration Requirement	Yes	Yes	No	No
Firearms Safety Device Requirement	Yes	Yes	No	No
Roster of Handguns Certified for sale in California	Yes	No	No	No
One Handgun Per 30 Days Requirement	Yes	No	No	No

Long Gun Sales and Transfer Requirements

	Retail Sales	Private Party Transfers	Intra-familial Transfers	Pawn Returns
Proof-of-Residency Requirement	No	No	No	No
Firearms Safety Device Requirement	Yes	Yes	No	No

NEW CALIFORNIA RESIDENT REQUIREMENT

Persons who move into California with the intention of establishing residency in this state must either report ownership of handguns to DOJ within 60 days or sell or transfer the handgun(s) pursuant to California law. Persons wishing to keep their handguns must submit a Report of Handgun Ownership form, along with a \$14 fee, to DOJ. Forms are available at licensed firearms dealers, the Department of Motor Vehicles or on-line at the Firearms Division web site at www.ag.ca.gov/firearms/forms [PC section 12072 (f)].

CARRYING A CONCEALED WEAPON

Carrying a Concealed Handgun Without a License on One's Person or in a Vehicle

It is illegal for any person to carry a handgun concealed upon his or her person or concealed in a vehicle without a license issued pursuant to Penal Code Section 12050 [PC section 12025 (a), (b)]. A firearm locked in a motor vehicle's trunk or in a locked container carried in the vehicle other than in the utility or glove compartment is not considered concealed within the meaning of the Penal Code Section 12025; neither is a firearm carried within a locked container directly to or from a motor vehicle for any lawful purpose (PC section 12026.1).

A handgun carried openly in a belt holster is not concealed within the meaning of the above prohibition [PC section 12025 (e)]. Even if carried openly, a handgun generally may not be loaded [PC section 12031 (a)]. Also, see "Loaded Firearms in Public."

The prohibition from carrying a concealed handgun does not apply to licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from the hunting expedition (PC section 12027). Notwithstanding this exception for hunters or fishermen, these individuals may not carry or transport loaded firearms when going to or from the expedition. The unloaded firearms should be transported in the trunk of the vehicle or in a locked container other than the utility or glove compartment (PC section 12026.1).

There are also occupational exceptions to the prohibition from carrying a concealed weapon, including authorized employees while engaged in specified activities (PC section 12027).

Licenses to Carry Concealed Weapons

A license to carry a concealed handgun or other firearm may be granted by the sheriff of the county in which the applicant resides, or the chief of the city police department of the city in which the applicant resides. Such licenses are issued only after a finding that the applicant is of good moral character, that good cause exists for such a license and the applicant is not prohibited from possessing firearms (PC section 12050).

Where the population of the county is less than 200,000 persons, the licensing authority may issue a license to carry a pistol, revolver or other firearm capable of being concealed upon the person, loaded and exposed (PC section 12050).

Unless otherwise restricted, a license is valid throughout the state.

FIREARMS ABOARD COMMON CARRIERS

Federal and state laws generally prohibit a person from carrying any firearm or ammunition aboard any commercial passenger airplane. Similar restrictions may apply to other common carriers such as trains, ships and buses. Persons who need to carry firearms or ammunition on a common carrier should always consult the carrier in advance to determine conditions under which firearms may be transported.

FIREARMS IN THE HOME, BUSINESS OR AT THE CAMPSITE

Unless otherwise unlawful, any person over the age of 18 who is not prohibited from possessing firearms may have a loaded or unloaded firearm at his or her place of residence, temporary residence, campsite or on private property owned or lawfully possessed by the person. Any person engaged in lawful business (including nonprofit organizations) or any officer, employee or agent authorized for lawful purposes connected with the business may have a loaded firearm within the place of business if that person is over 18 years of age and not otherwise prohibited from possessing firearms [PC section 12026, 12031 (h)].

NOTE: If a person's place of business, residence, temporary residence, campsite or private property is located within an area where possession of a firearm is prohibited by local or federal laws, such laws would prevail.

THE USE OF LETHAL FORCE IN SELF-DEFENSE

The question of whether use of lethal force is justified in self-defense cannot be reduced to a simple list of factors. This section is based on the instructions generally given to the jury in a criminal case where self-defense is claimed and illustrates the general rules regarding the use of lethal force in self-defense.

Permissible Use of Lethal Force in Defense of Life and Body

The killing of one person by another may be justifiable when necessary to resist the attempt to commit a forcible and life-threatening crime, provided that a

reasonable person in the same or similar situation would believe that (a) the person killed intended to commit a forcible and life-threatening crime; (b) there was imminent danger of such crime being accomplished; and (c) the person acted under the belief that such force was necessary to save himself or herself or another from death or a forcible and life-threatening crime. Murder, mayhem, rape and robbery are examples of forcible and life-threatening crimes (PC section 197).

Limitations on the Use of Force in Self-Defense

The right of self-defense ceases when there is no further danger from an assailant. Thus, where a person attacked under circumstances initially justifying self-defense renders the attacker incapable of inflicting further injuries, the law of self-defense ceases and no further force may be used. Furthermore, a person may only use the amount of force, up to deadly force, as a reasonable person in the same or similar circumstances would believe necessary to prevent imminent injury. It is important to note the use of excessive force to counter an assault may result in civil or criminal penalties.

The right of self-defense is not initially available to a person who assaults another. However, if such a person attempts to stop further combat and clearly informs the adversary of his or her desire for peace but the opponent nevertheless continues the fight, the right of self-defense returns and is the same as the right of any other person being assaulted.

LOADED FIREARMS IN PUBLIC

It is illegal to carry a loaded firearm on one's person or in a vehicle while in any public place, on any public street, or in any place where it is unlawful to discharge a firearm [PC section 12031 (a)].

It is illegal for the driver of any motor vehicle, or the owner of any motor vehicle irrespective of whether the owner is occupying the vehicle, to knowingly permit any person to carry a loaded firearm into the vehicle in violation of Penal Code Section 12031, or Fish and Game Code Section 2006 (PC section 12034). Also, see "Miscellaneous Prohibited Acts."

In order to determine whether a firearm is loaded, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place, on any public street or in any prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to these provisions is, in itself, grounds for arrest [PC section 12031 (e)].

The prohibition from carrying a loaded firearm in public does not apply to any person while hunting in an area where possession and hunting is otherwise lawful or while practice shooting at target ranges [PC section 12031 (b), (i)].

There are also occupational exceptions to the prohibition from carrying a loaded firearm in public, including authorized employees while engaged in specified activities (PC section 12031).

MISCELLANEOUS PROHIBITED ACTS

Obliteration or Alteration of Firearm Identification

It is illegal for any person to obliterate or alter the identification marks placed on any firearm including the make, model, serial number or any distinguishing mark lawfully assigned by the owner or by the Department of Justice (PC section 12090).

Possession of any pistol or revolver having its identification obliterated or altered is presumptive evidence that the possessor performed the obliteration or alteration (PC section 12091).

It is illegal for any person to buy, sell or possess a firearm knowing its identification has been obliterated or altered (PC section 12094).

Unauthorized Possession of a Firearm on School Grounds

It is illegal for any unauthorized person to possess or bring a firearm upon the grounds of, or into, any public school, including the campuses of the University of California, California State University campuses, California community colleges, any private school (Kindergarten through 12th grade) or private university or college (PC section 626.9).

Unauthorized Possession of a Firearm in a Courtroom, the State Capitol, etc.

It is illegal for any unauthorized person to bring or possess any firearm within a courtroom, courthouse, court building or at any meeting required to be open to the public (PC section 171b).

It is illegal for any unauthorized person to bring or possess a loaded firearm within (including upon the grounds of) the State Capitol, any legislative office, any office of the Governor or other constitutional officer, any Senate or Assembly hearing room, the Governor's Mansion or any other residence of the Governor or the residence of any constitutional officer or any Member of the Legislature. For these purposes, a firearm shall be deemed loaded whenever both the firearm and its unexpended ammunition are in the immediate possession of the same person (PC section 171c, 171d, 171e).

Drawing or Exhibiting a Firearm

If another person is present, it is illegal for any person, except in self defense, to draw or exhibit a loaded or unloaded firearm in a rude, angry or threatening manner or in any manner use a firearm in a fight or quarrel (PC section 417).

Threatening Acts with a Firearm on a Public Street or Highway

It is illegal for any person to draw or exhibit a loaded or unloaded firearm in a threatening manner against an occupant of a motor vehicle which is on a public street or highway in such a way that would cause a reasonable person apprehension or fear of bodily harm (PC section 417.3).

Discharge of a Firearm in a Grossly Negligent Manner

It is illegal for any person to willfully discharge a firearm in a grossly negligent manner which could result in injury or death to a person (PC section 246.3).

Discharge of a Firearm at an Inhabited/Occupied Dwelling, Building, Vehicle, Aircraft

It is illegal for any person to maliciously and willfully discharge a firearm at an inhabited dwelling, house, occupied building, occupied motor vehicle, occupied aircraft, inhabited house car or inhabited camper (PC section 246).

Discharge of a Firearm at an Unoccupied Aircraft, Motor Vehicle, or Uninhabited Building or Dwelling

It is illegal for any person to willfully and maliciously discharge a firearm at an unoccupied aircraft. It is illegal for any person to discharge a firearm at an unoccupied motor vehicle, building or dwelling. This does not apply to an abandoned vehicle, an unoccupied motor vehicle or uninhabited building or dwelling with permission of the owner and if otherwise lawful (PC section 247).

Discharge of a Firearm from a Motor Vehicle

It is illegal for any person to willfully and maliciously discharge a firearm from a motor vehicle. A driver or owner of a vehicle who allows any person to discharge a firearm from the vehicle may be punished by up to three years imprisonment in state prison (PC section 12034).

Criminal Storage

“Criminal storage of firearm of the first degree” – Keeping any loaded firearm within any premises that are under your custody or control and you know or reasonably should know that a child (any person under 18) is likely to gain access to the firearm without the permission of the child’s parent or legal guardian and the child obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person [PC section 12035 (b), (1)].

“Criminal storage of firearm of the second degree” – Keeping any loaded firearm within any premises that are under your custody or control and you know or reasonably should know that a child (any person under 18) is likely to gain access to the firearm without the permission of the child’s parent or legal guardian and the child obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself, herself, or any other person, or carries the firearm either to a public place or in violation of Section 417 [PC section 12035 (b), (2)].

Neither of the criminal storage offenses (first degree, second degree) shall apply whenever the firearm is kept in a locked container or locked with a locking device that has rendered the firearm inoperable [PC section 12035 (c), (2), (4)].

Sales, Transfers and Loans of Firearms to Minors

Generally, it is illegal to sell, loan or transfer any firearm to a person under 18 years of age, or to sell a handgun to a person under 21 years of age [PC section 12072 (a), (3)].

Possession of a Handgun or Live Ammunition by Minors

It is unlawful for a minor to possess a handgun or live ammunition unless one of the following circumstances exists:

- The minor is accompanied by his or her parent or legal guardian and the minor is actively engaged in a lawful recreational sporting, ranching or hunting activity, or a motion picture, television or other entertainment event;
- The minor is accompanied by a responsible adult and has prior written consent of his or her parent or legal guardian and is involved in one of the activities cited above; and
- The minor is at least 16 years of age, has prior written consent of his or her parent or legal guardian, and the minor is involved in one of the activities cited above (PC section 12101).

PERSONS INELIGIBLE TO POSSESS FIREARMS

The following persons are prohibited from possessing firearms (PC section 12021, 12021.1, Welfare and Institutions Code 8100, 8103):

Lifetime Prohibitions

- Any person convicted of any felony or any offense enumerated in Penal Code section 12021.1.
- Any person convicted of an offense enumerated in Penal Code section 12001.6.
- Any person with two or more convictions for violating Penal Code section 417 (a) (2).
- Any person adjudicated to be a mentally disordered sex offender (Welfare and Institutions Code 8103).
- Any person found by a court to be mentally incompetent to stand trial or not guilty by reason of insanity of any crime, unless the court has made a finding of restoration of competence or sanity (Welfare and Institutions Code 8103).

10-Year Prohibitions

- Any person convicted of a misdemeanor violation of the following: Penal Code sections 71, 76, 136.5, 140, 148 (d), 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, 12024, 12034 (b) or (d), 12040, 12072 (b) or (g) (3), 12100 (a), 12220, 12320, or 12590 and Welfare and Institution Code sections 871.5, 1001.5, 8100, 8101, or 8103.

5-Year Prohibitions

- Any person taken into custody as a danger to self or others, assessed, and admitted to a mental health facility under Welfare and Institutions Code sections 5150, 5151, 5152; or certified under Welfare and Institutions Code sections 5250, 5260, 5270.15.

Juvenile Prohibitions

- Juveniles adjudged wards of the juvenile court because they committed a 707 (b) Welfare and Institutions Code offense are prohibited until they reach age 30.

Miscellaneous Prohibitions

- Any person denied firearm possession as a condition of probation pursuant to Penal Code section 12021.1 (d).
- Any person charged with a felony offense, pending resolution of the matter [Title 18, 922 (g)].
- Any person while he or she is either a voluntary patient in a mental health facility or under a gravely disabled conservatorship (due to a mental disorder or impairment by chronic alcoholism) and if he or she is found to be a danger to self or others [Welfare and Institutions Code section 8103 (e)].
- Any person addicted to the use of narcotics (PC section 12021).
- Any person who communicates a threat (against any reasonably identifiable victim) to a licensed psychotherapist which is subsequently reported to law enforcement, is prohibited for six months [Welfare and Institutions Code section 8104 (c)].
- Any person who is subject to a protective order as defined in section 6218 of the Family Code, Penal Code section 136.2, or a temporary restraining order issued pursuant to sections 527.6 or 527.8 of the Code of Civil Procedure.



CHAPTER 5: Self Test

1. It is illegal for a person convicted of any felony offense to possess a firearm. (page 41)
True False
2. To legally give a firearm to your best friend as a birthday gift, you must complete the transfer of the firearm through a licensed firearms dealer. (page 33)
True False
3. It is illegal to lend a handgun to a minor without the permission of the minor's parent or legal guardian. (page 41)
True False
4. Generally, a person may legally have a loaded handgun, if otherwise lawful, at his or her campsite. (page 37)
True False
5. It is illegal to buy, sell or possess a handgun knowing its identification marks have been erased or altered. (page 39)
True False

Answers: 1: True, 2: True, 3: True, 4: True, 5: True

Appendix

SAFE HANDLING DEMONSTRATION STEPS

Pursuant to Penal Code section 12071, prior to taking delivery of a handgun from a licensed firearms dealer in California, an individual must correctly perform a safe handling demonstration with the handgun he or she is acquiring. This appendix lists each of the statutorily mandated steps that constitute the safe handling demonstration for the three most common handgun types (semiautomatic pistols, double-action revolvers and single-action revolvers). However, this information will not appear on the DOJ written test on handgun safety. Please note that a dummy round as stated in this guide means one bright orange, red or other readily identifiable dummy round. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

SEMIAUTOMATIC PISTOL:



The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness (that is, the firearm is pointed in a safe direction, preferably down at the ground) and trigger discipline (that is, the trigger finger is outside of the trigger guard and along side of the handgun frame) at all times, the handgun recipient shall correctly and safely perform the following:

I. Remove the magazine.



II. Lock the slide back. If the model of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure that it is clear.



III. Visually and physically inspect the chamber, to ensure that the handgun is unloaded.



IV. Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.



V. Load one dummy round into the magazine.



VI. Insert the magazine into the magazine well of the firearm.



- VII. Manipulate the slide release or pull back and release the slide.



- VIII. Remove the magazine.



- IX. Visually inspect the chamber to reveal that a round can be chambered with the magazine removed.



- X. Lock the slide back to eject the dummy round. If the handgun is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure that the chamber is clear.



- XI. Apply the safety, if applicable.



- XII. Apply the firearm safety device, if applicable.



DOUBLE-ACTION REVOLVER:



The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness (that is, the firearm is pointed in a safe direction, preferably down at the ground) and trigger discipline (that is, the trigger finger is outside of the trigger guard and along side of the handgun frame) at all times, the handgun recipient shall correctly and safely perform the following:

I. Open the cylinder



II. Visually and physically inspect each chamber to ensure that the revolver is unloaded.



- III. Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.



- IV. While maintaining muzzle awareness and trigger discipline, load one dummy round into a chamber of the cylinder and rotate the cylinder so that the round is in the next-to-fire position.



- V. Close the cylinder.



- VI. Open the cylinder and eject the round.



- VII. Visually and physically inspect each chamber to ensure that the revolver is unloaded.



- VIII. Apply the firearm safety device, if applicable.



SINGLE-ACTION REVOLVER:



The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness (that is, the firearm is pointed in a safe direction, preferably down at the ground) and trigger discipline (that is, the trigger finger is outside of the trigger guard and along side of the handgun frame) at all times, the handgun recipient shall correctly and safely perform the following:

I. Open the loading gate.



II. Visually and physically inspect each chamber to ensure that the revolver is unloaded.



- III. Remove the firearm safety device required to be sold with the handgun. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.



- IV. Load one dummy round into a chamber of the cylinder, close the loading gate and rotate the cylinder so that the round is in the next-to-fire position (the revolver may need to be placed on half-cock or the loading gate reopened).



- V. Open the loading gate and unload the revolver.



- VI. Visually and physically inspect each chamber to ensure that the revolver is unloaded.



- VII. Apply the firearm safety device, if applicable.



- * 1873 Rule: Recipients of original versions of single-action army revolvers should be advised to carry five rounds in the cylinder and leave the chamber under the hammer empty.

Safe Handling Demonstration Glossary

Action: A series of moving parts that allow a firearm to be loaded, fired and unloaded.

Barrel: The metal tube through which a bullet passes on its way to a target.

Breech: The part of a firearm at the rear of the barrel.

Bullet: The projectile located at the tip of the cartridge case.

Caliber: The bullet or barrel diameter.

Cartridge: A single unit of ammunition made up of the case, primer, propellant and bullet.

Case: A metal cylinder that is closed at one end and contains the other three components of the cartridge.

Chamber: The part of a gun where the cartridge is located when the gun is loaded.

Cylinder: The part of a revolver that holds ammunition in individual chambers.

Cylinder Latch: A latch on double-action revolvers that allows the cylinder to swing out.

Double-Action: A type of handgun action in which a single pull of the trigger both cocks the hammer and releases it.

Dummy Round: An inert cartridge without powder and primer.

Ejector Rod: The part used to remove cartridges from the cylinder.

Grip: The handle of the handgun.

Hammer: The part of the handgun action that drives the firing pin forward.

Jam: A malfunction that prevents a firearm from firing properly.

Magazine: A separate box-like metal container for semi-automatic pistols into which cartridges are loaded.

Magazine Release: A device that releases the magazine so that it can be removed from the pistol.

Magazine Well: The opening in a firearm into which a magazine is inserted.

Muzzle: The front end of the barrel from which a bullet exits.

Revolver: A handgun that has a rotating cylinder containing a number of chambers.

Round: See cartridge.

Safety: A device located on most semiautomatic pistols that is designed to prevent firing.

Semiautomatic pistol: A handgun that fires a single cartridge each time the trigger is pulled and which automatically extracts and ejects the empty cartridge case and reloads the chamber.

Single-action: A type of handgun action in which pulling the trigger causes the hammer to release.

Trigger Guard: Located on the underside of the gun, the trigger guard is designed to protect the trigger.



**If you have any comments or suggestions
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
Plaintiffs,)	
	)	<u>EXHIBIT G</u>
v.)	
	)	In Support of Plaintiffs' Motion
Wilfredo Cid,)	For Summary Judgment
Defendant.)	
_____)	

Respectfully Submitted on Sept. 1, 2009

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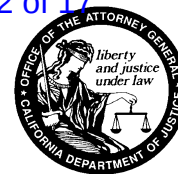
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Department of Justice Bureau of Firearms

De-Certified Handgun Models



The following handgun model listings have expired and consequently have been removed from the DOJ Handgun Roster and may no longer be sold, manufactured, etc., within California unless such sale, manufacture, etc., is otherwise expressly allowed under

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Walther USA (Carl Walther)	P1 (Century Int'l) / Composite, Steel	9mm	Pistol	4.94"	8/21/2009
Kimber	Ultra Ten II / Stainless Steel, Polymer	.45 ACP	Pistol	3"	8/19/2009
Ed Brown Products	SF-BB-CAL (Special Forces) / Carbon Steel	.45 ACP	Pistol	5"	8/16/2009
Firestorm (Gabilondo)	Mini Fire Storm 9mm / Blue Steel, Alloy	9mm	Pistol	3.375"	7/29/2009
Ed Brown Products	Executive Target "ET-BB-CAL" / Carbon Steel	.45 ACP	Pistol	5"	7/18/2009
Kimber	Team Match II / Stainless Steel	.45 ACP	Pistol	5"	7/17/2009
Sturm, Ruger & Co.	P95L / Blued Steel, Stnls Steel, Polymer	9mm	Pistol	3.90"	6/25/2009
Ed Brown Products	KC-SS-CAL / Stainless Steel	.45 ACP	Pistol	4.25"	6/24/2009
Browning	Buck Mark Micro Standard URX SE MS / Steel, Alloy	.22 LR	Pistol	4"	6/18/2009
Browning	Buck Mark SE MS Lt Splash 7.25 URX FO, Adj S / Steel, Alloy	.22 LR	Pistol	7.25"	6/18/2009
Sturm, Ruger & Co.	KMK512GCUS / Stainless Steel	.22 LR	Pistol	5.5"	6/18/2009
Sturm, Ruger & Co.	P97D / Blue Steel, Polymer	.45 ACP	Pistol	4.25"	6/13/2009
Magnum Research	BE9900RB / Steel	9mm	Pistol	3.5"	6/11/2009
Sturm, Ruger & Co.	KGP-141TG / Stainless Steel	.357 Magnum	Revolver	4"	6/3/2009
Sturm, Ruger & Co.	KSP-321XTG / Stainless Steel	.357 Magnum	Revolver	2.25"	6/3/2009
Sturm, Ruger & Co.	KP95DPR / Stainless Steel, Polymer	9mm	Pistol	3.9"	5/27/2009
Sturm, Ruger & Co.	P95DPR / Blue Steel, Polymer	9mm	Pistol	3.9"	5/27/2009
Sturm, Ruger & Co.	KP944D / Stainless Steel, Alum. Alloy	.40 S&W	Pistol	4.20"	5/15/2009
Kimber	Stainless TLE/RL II / Stainless Steel	.45 ACP	Pistol	5"	5/10/2009

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Sturm, Ruger & Co.	KP345DPR / Stainless Steel, Polymer	.45 ACP	Pistol	4.2"	4/25/2009
Sturm, Ruger & Co.	KSRH-9454 / Stainless Steel	.454 Casull	Revolver	9.5"	4/17/2009
Charles Daly	CDGR6002 1911 A-1 / Blue Steel	.45 ACP	Pistol	5"	4/4/2009
Sturm, Ruger & Co.	KSRH-2480 / Stainless Steel	.480 Ruger	Revolver	2.5"	3/28/2009
Kimber	Tactical Pro II / Blue Steel, Aluminum	.45 ACP	Pistol	4"	3/27/2009
Springfield Armory	PX9503L (ambi safety) / Alloy, Steel	.45 ACP	Pistol	4"	3/27/2009
Springfield Armory	PX9503L / Alloy, Steel	.45 ACP	Pistol	4"	3/27/2009
Firestorm (Gabilondo)	Mini Firestorm / 4140 Steel, Alloy	.40 S&W	Pistol	3.25"	3/26/2009
Kimber	Tactical Custom II / Blue Steel, Aluminum	.45 ACP	Pistol	5"	3/20/2009
Firestorm (Gabilondo)	Mini Firestorm 45 / Alloy, 4140 Steel	.45 ACP	Pistol	3.6"	3/19/2009
Kimber	Tactical Ultra II / Blue Steel, Aluminum	.45 ACP	Pistol	3"	3/19/2009
Sturm, Ruger & Co.	MK512GCL / Blue Steel	.22 LR	Pistol	5.5"	3/19/2009
Kimber	Royal II/External Extractor / Blue Steel	.45 ACP	Pistol	5"	3/16/2009
Browning	Buck Mark Micro Standard SS MS / Stainless Steel, Alloy	.22 LR	Pistol	4"	3/8/2009
Sturm, Ruger & Co.	KSP-241X / Stainless Steel	.22 LR	Revolver	4"	3/6/2009
Sturm, Ruger & Co.	KSP-3241X / Stainless Steel	.32 H&R Magnum	Revolver	4"	3/6/2009
Kimber	BP Ten II / Blue Steel, Poly	.45 ACP	Pistol	5"	3/4/2009
Kimber	Custom CDP II / Stainless, Aluminum	.45 ACP	Pistol	5"	3/4/2009
Kimber	Pro BP Ten II / Blue Steel, Poly	.45 ACP	Pistol	4"	3/4/2009
Kimber	Custom Target/External Extractor / Blue Steel	.45 ACP	Pistol	5"	2/25/2009
Kimber	Custom TLE II/External Extractor / Blue Steel	.45 ACP	Pistol	5"	2/25/2009
Kimber	Eclipse Pro Target II/External Extractor / Stainless Steel	.45 ACP	Pistol	4"	2/25/2009
Kimber	Gold Match II/External Extractor / Blue Steel	.45 ACP	Pistol	5"	2/25/2009

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Kimber	Gold Stainless Combat II/External Extractor / Stainless Steel	.45 ACP	Pistol	5"	2/25/2009
Kimber	Stainless TLE/External Extractor / Stainless Steel	.45 ACP	Pistol	5"	2/25/2009
Springfield Armory	PX9129L (ambi safety) / Stainless Steel	.45 ACP	Pistol	6"	2/20/2009
Springfield Armory	PX9129L / Stainless Steel	.45 ACP	Pistol	6"	2/20/2009
Springfield Armory	PX9510L (ambi safety) / Stainless, Blue Carbon Steel	.45 ACP	Pistol	3.25"	2/20/2009
Springfield Armory	PX9510L / Stainless, Blue Carbon Steel	.45 ACP	Pistol	3.25"	2/20/2009
Kimber	Gold Match Ten II / Stainless, Polymer	.45 ACP	Pistol	5"	2/9/2009
Kimber	Gold Combat II/External Extractor / Stainless Steel	.45 ACP	Pistol	5"	2/4/2009
Kimber	Pro CDP II/External Extractor / Stainless Steel, Aluminum	.45 ACP	Pistol	4"	2/4/2009
Kimber	Pro HD II/External Extractor / Stainless Steel	.45 ACP	Pistol	4"	2/4/2009
Springfield Armory	PX9629L (ambi safety) / Stainless Steel	.45	Pistol	6"	1/29/2009
Springfield Armory	PX9629L / Stainless Steel	.45	Pistol	6"	1/29/2009
Kimber	Stainless Ten II / Stainless/Polymer	.45 ACP	Pistol	5"	1/27/2009
Springfield Armory	PX9805L / Alloy, Stainless Steel	.45 ACP	Pistol	3"	1/17/2009
Kimber	Eclipse Ultra II/External Extractor / Stainless Steel	.45 ACP	Pistol	3"	1/9/2009
Kimber	Stainless Pro Carry II/External Extractor / Stainless Steel, Aluminum	.45 ACP	Pistol	4"	1/5/2009
Kimber	Super Match II/External Extractor / Stainless Steel	.45 ACP	Pistol	5"	1/5/2009
Sturm, Ruger & Co.	GPF-340 / Blue Steel	.357 Magnum	Revolver	4"	12/31/2008
Sturm, Ruger & Co.	KGPF-330 / Stainless Steel	.357 Magnum	Revolver	3"	12/31/2008
Sturm, Ruger & Co.	KGPF-340 / Stainless Steel	.357 Magnum	Revolver	4"	12/31/2008
Sturm, Ruger & Co.	KGPF-840 / Stainless Steel	.38 Spl	Revolver	4"	12/31/2008
Sturm, Ruger & Co.	KP4 / Stainless Steel, Polymer	.22 LR	Pistol	4.75"	12/31/2008
Sturm, Ruger & Co.	KRH-445 / Stainless Steel	.44 Magnum	Revolver	5.5"	12/31/2008

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Sturm, Ruger & Co.	KRH-45 / Stainless Steel	.45 Long Colt	Revolver	7.5"	12/31/2008
Sturm, Ruger & Co.	KRH-45R / Stainless Steel	.45 Long Colt	Revolver	7.5"	12/31/2008
Sturm, Ruger & Co.	MK6 (Mark II) / Blue Steel	.22 LR	Pistol	6"	12/31/2008
Sturm, Ruger & Co.	P94 / Blue Steel, Alum. Alloy	9mm	Pistol	4.2"	12/31/2008
Detonics USA LLC	9-11-01 / Stainless Steel	.45 ACP	Pistol	5"	12/29/2008
Detonics USA LLC	Combat Master / Stainless Steel	.45 ACP	Pistol	3.5"	12/29/2008
Para USA (Para Ordnance)	PX745ELMB / Steel	.45 ACP	Pistol	5"	12/29/2008
Para USA (Para Ordnance)	PX745EMB / Steel	.45 ACP	Pistol	5"	12/29/2008
Para USA (Para Ordnance)	PX745ENMB / Steel	.45 ACP	Pistol	5"	12/29/2008
Springfield Armory	XD9102LE / Polymer, Steel	.40 S&W	Pistol	4.08"	12/20/2008
Springfield Armory	XD9103LE / Polymer, Steel	.357 SIG	Pistol	4.08"	12/20/2008
Kimber	Stainless Gold Match II/External Extractor / Stainless Steel	.45 ACP	Pistol	5"	12/17/2008
Kimber	Eclipse Custom II/External Extractor / Stainless Steel	.45 ACP	Pistol	5"	12/16/2008
Kimber	Eclipse Target II/External Extractor / Stainless Steel	.45 ACP	Pistol	5"	12/16/2008
Kimber	Stainless Target II/External Extractor / Stainless Steel	.45 ACP	Pistol	5"	12/16/2008
Kimber	Ultra CDP II/External Extractor / Stainless Steel, Aluminum	.45 ACP	Pistol	3"	12/16/2008
Nighthawk Custom	Talon IV (Black/Blue) / Steel	.45 ACP	Pistol	3.65"	12/14/2008
Nighthawk Custom	Talon IV (Black/Sniper Gray) / Steel	.45 ACP	Pistol	3.65"	12/14/2008
Nighthawk Custom	Talon IV / Steel	.45 ACP	Pistol	3.65"	12/14/2008
Kimber	Rimfire Target Black 17M2 / Lightweight Alloy	.17 HM2	Pistol	5"	11/4/2008
Springfield Armory	XD9101LE / Steel, Polymer	9mm	Pistol	4.08"	10/21/2008
Sig Sauer, Inc. (Sauer, J.P. & Sons, Sig Arms)	1911-45-S / Stainless Steel	.45 ACP	Pistol	5"	8/10/2008
Charles Daly	CDGR6269 1911A-1 / Stainless Steel	.45 ACP	Pistol	4"	8/2/2008
Charles Daly	CDGR8008 Field HP / Blue Steel	9mm	Pistol	4.625"	8/2/2008

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Browning	Buck Mark Camper Splash MS / Steel, Alloy	.22 LR	Pistol	5.5"	7/29/2008
Browning	Buck Mark Plus SE MS NKL / Steel, Alloy	.22 LR	Pistol	5.5"	7/29/2008
Browning	Pro-9 / Stainless Steel, Polymer	9mm	Pistol	4"	7/29/2008
Sig Sauer, Inc. (Sauer, J.P. & Sons, Sig Arms)	226-9-Sport-STK / Stainless Steel	9mm	Pistol	4.4"	6/28/2008
Sig Sauer, Inc. (Sauer, J.P. & Sons, Sig Arms)	P229R GCP / Stainless Steel, Alloy	.40 S&W	Pistol	3.8"	6/13/2008
Feg. Hungary (Hungarian Arm Works)	PA 63 Two-Tone (Century Int'l) / Aluminum, Steel	9 mm Mak	Pistol	3.9"	5/21/2008
Charles Daly	CDGR6505 1911-A1 / Blue Steel	.45 ACP	Pistol	5"	4/26/2008
Charles Daly	CDGR6556 1911-A1 / Stainless Steel	.45 ACP	Pistol	5"	4/26/2008
Charles Daly	CDGR6900 1911-A1 / Stainless Steel	.45 ACP	Pistol	5"	4/26/2008
Browning	Buck Mark Micro Standard SE MS / Steel, Alloy	.22 LR	Pistol	4"	4/25/2008
Browning	Buck Mark Plus SE MS / Steel, Alloy	.22 LR	Pistol	5.5"	4/25/2008
Browning	Buck Mark Standard SE MS / Steel, Alloy	.22 LR	Pistol	5.5"	4/25/2008
Sig Sauer, Inc. (Sauer, J.P. & Sons, Sig Arms)	P228 (Two Tone) / Steel, Alloy	9mm	Pistol	3.9"	4/7/2008
Charles Daly	CDGR6051 1911 A-1 / Stainless Steel	.45 ACP	Pistol	5"	4/4/2008
Charles Daly	CDGR6228 1911 A-1 / Blue Steel	.45 ACP	Pistol	4"	4/4/2008
Charles Daly	CDGR6417 1911 A-1 / Blue Steel	.45 ACP	Pistol	3.5"	4/4/2008
Sig Sauer, Inc. (Sauer, J.P. & Sons, Sig Arms)	P220 (Stainless) Sport / Stainless Steel	.45 ACP	Pistol	5.5"	12/31/2007
Sig Sauer, Inc. (Sauer, J.P. & Sons, Sig Arms)	Mosquito (Green) / Steel, Polymer	.22 LR	Pistol	4"	12/19/2007
Sturm, Ruger & Co.	P90THGA / Blue Steel, Alum. Alloy, Stainless Steel	.45 ACP	Pistol	4.5"	12/18/2007
Sturm, Ruger & Co.	P90THGADLX / Blue Steel, Alum. Alloy, Stainless Steel	.45 ACP	Pistol	4.5"	12/18/2007
Browning	Buck Mark SE MS FLD PLUS RSWD / Steel, Alloy	.22 LR	Pistol	5.5"	10/4/2007
Browning	Buck Mark Camper SE MS NKL / Steel, Alloy	.22 LR	Pistol	5.5"	8/10/2007

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Browning	Buck Mark Micro NKL SE MS / Steel, Alloy	.22 LR	Pistol	4"	7/29/2007
Browning	Buck Mark SE MS NKL / Steel, Alloy	.22 LR	Pistol	5.5"	7/29/2007
Browning	Buck Mark Micro Plus Std SE / Steel, Alloy	.22 LR	Pistol	4"	3/19/2007
Browning	Buck Mark Nickel SE / Steel, Alloy	.22 LR	Pistol	5.5"	3/19/2007
Browning	Buck Mark Plus Nickel SE / Steel, Alloy	.22 LR	Pistol	5.5"	3/19/2007
Browning	Buck Mark Plus SE / Steel, Alloy	.22 LR	Pistol	5.5"	3/19/2007
Browning	Buck Mark 5.5 Field SE / Steel, Alloy	.22 LR	Pistol	5.5"	3/8/2007
Browning	Buck Mark Camper Nickel / Steel, Alloy	.22 LR	Pistol	5.5"	3/8/2007
Browning	Buck Mark Micro Nickel SE / Steel, Alloy	.22 LR	Pistol	4"	3/8/2007
Browning	Buck Mark 5.5 Target SE / Steel, Alloy	.22 LR	Pistol	5.5"	3/4/2007
Browning	Buck Mark Camper / Steel, Alloy	.22 LR	Pistol	5.5"	3/4/2007
Browning	Buck Mark Challenge SE / Steel, Alloy	.22 LR	Pistol	5.5"	3/4/2007
Browning	Buck Mark Micro Standard SE / Steel, Alloy	.22 LR	Pistol	4"	3/4/2007
Browning	Buck Mark Standard SE / Steel, Alloy	.22 LR	Pistol	5.5"	3/4/2007
Charles Daly	CDGR6473 1911A-1 / Stainless Steel	.45 ACP	Pistol	3.5"	11/27/2006
Browning	Buck Mark SE FLD PLUS RSWD / Steel, Alloy	.22 LR	Pistol	5.5"	10/4/2006
Shooters Arms Mfg.	M-1911 / Blue Steel	.45 ACP	Pistol	5"	9/10/2006
Browning	Buck Mark Camo Camper (MOBU) / Steel, Alloy	.22 LR	Pistol	5.5"	7/26/2006
European American Armory	Witness EA40B / Steel	.40 S&W	Pistol	4.5"	7/10/2006
European American Armory	Witness EA45B / Steel	.45 ACP	Pistol	4.5"	7/10/2006
Heckler & Koch	USP .357 Sig Compact / Steel, Polymer	.357 SIG	Pistol	3.58"	5/23/2006
Mauser	M2 / Steel, Alloy	.40 S&W	Pistol	3.5"	3/16/2006

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Feg. Hungary (Hungarian Arm Works)	PJK--9HP / Blue Steel	9mm	Pistol	4.625"	1/17/2006
Firestorm (Gabilondo)	Gov't / Steel	.45 ACP	Pistol	5"	1/8/2006
Llama (Gabilondo)	MAX-I / Steel	.45 ACP	Pistol	5"	1/8/2006
Para USA (Para Ordnance)	P1345SL / Stainless Steel	.45 ACP	Pistol	4.25"	12/31/2005
Para USA (Para Ordnance)	P1345SN / Stainless Steel	.45 ACP	Pistol	4.25"	12/31/2005
Para USA (Para Ordnance)	P1345SR / Stainless Steel	.45 ACP	Pistol	4.25"	12/31/2005
Heckler & Koch	P7M8 Anniversary / Blue Steel	9mm	Pistol	4.13"	11/22/2005
Para USA (Para Ordnance)	CTX1345GL / Stainless Steel	.45 ACP	Pistol	4.25"	11/4/2005
Para USA (Para Ordnance)	CTX1345GN / Stainless Steel	.45 ACP	Pistol	4.25"	11/4/2005
Para USA (Para Ordnance)	CTX1345GR / Stainless Steel	.45 ACP	Pistol	4.25"	11/4/2005
Browning	HP Standard / Steel	.40 S&W	Pistol	4.66"	10/23/2005
Mauser	M2 / Steel, Alloy	.45 ACP	Pistol	3.5"	10/16/2005
Para USA (Para Ordnance)	D745S / Stainless Steel	.45 ACP	Pistol	5"	10/16/2005
Para USA (Para Ordnance)	D745SL / Stainless Steel	.45 ACP	Pistol	5"	10/16/2005
Para USA (Para Ordnance)	D745SN / Stainless Steel	.45 ACP	Pistol	5"	10/16/2005
Firestorm (Gabilondo)	Firestorm Government Model .38 Super / Blue Steel	.38 Super	Pistol	5"	8/24/2005
Llama (Gabilondo)	Llama MiniMax Subcompact .45 / Blue Steel	.45 ACP	Pistol	3.63"	8/14/2005
Browning	Buck Mark Camper Blue / Steel, Alloy	.22 LR	Pistol	5.5"	7/26/2005
Browning	Buck Mark Camper Green / Steel, Alloy	.22 LR	Pistol	5.5"	7/26/2005
Browning	Buck Mark Camper Red / Steel, Alloy	.22 LR	Pistol	5.5"	7/26/2005
Browning	Hi-Power Silver Chrome Adj Sights / Steel	9mm	Pistol	4.66"	7/26/2005
Para USA (Para Ordnance)	C745S / Stainless Steel	.45 ACP	Pistol	3.5"	7/24/2005
Para USA (Para Ordnance)	C745SL / Stainless Steel	.45 ACP	Pistol	3.5"	7/24/2005
Para USA (Para Ordnance)	C745SN / Stainless Steel	.45 ACP	Pistol	3.5"	7/24/2005
Llama (Gabilondo)	Micro Max .380 Matte / Blue Steel	.380 ACP	Pistol	3.75"	7/16/2005

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Para USA (Para Ordnance)	D1640SL / Stainless Steel	.40 S&W	Pistol	5"	6/4/2005
Para USA (Para Ordnance)	D1640SN / Stainless Steel	.40 S&W	Pistol	5"	6/4/2005
Para USA (Para Ordnance)	D1640SR / Stainless Steel	.40 S&W	Pistol	5"	6/4/2005
Para USA (Para Ordnance)	T1445EL / Steel	.45 ACP	Pistol	5"	6/4/2005
Para USA (Para Ordnance)	T1445EN / Steel	.45 ACP	Pistol	5"	6/4/2005
Para USA (Para Ordnance)	T1445ER / Steel	.45 ACP	Pistol	5"	6/4/2005
Fabrique Nationale	FN HP-SFS / Steel, Alloy	9mm	Pistol	4.6"	5/24/2005
Para USA (Para Ordnance)	CCW745S / Stainless Steel	.45 ACP	Pistol	4.25"	5/19/2005
Para USA (Para Ordnance)	CCW745SL / Stainless Steel	.45 ACP	Pistol	4.25"	5/19/2005
Para USA (Para Ordnance)	CCW745SN / Stainless Steel	.45 ACP	Pistol	4.25"	5/19/2005
Para USA (Para Ordnance)	CT1345S / Stainless Steel	.45 ACP	Pistol	4.25"	5/19/2005
Para USA (Para Ordnance)	CT1345SL / Stainless Steel	.45 ACP	Pistol	4.25"	5/19/2005
Para USA (Para Ordnance)	CT1345SN / Stainless Steel	.45 ACP	Pistol	4.25"	5/19/2005
Para USA (Para Ordnance)	L1245SL / Stainless Steel	.45 ACP	Pistol	3.5"	5/17/2005
Para USA (Para Ordnance)	L1245SN / Stainless Steel	.45 ACP	Pistol	3.5"	5/17/2005
Para USA (Para Ordnance)	L1245SR / Stainless Steel	.45 ACP	Pistol	3.5"	5/17/2005
Para USA (Para Ordnance)	C6.45S / Stainless Steel	.45 ACP	Pistol	3"	5/8/2005
Para USA (Para Ordnance)	C6.45SL / Stainless Steel	.45 ACP	Pistol	3"	5/8/2005
Para USA (Para Ordnance)	C6.45SN / Stainless Steel	.45 ACP	Pistol	3"	5/8/2005
Para USA (Para Ordnance)	D1445SL / Stainless Steel	.45 ACP	Pistol	5"	5/7/2005
Para USA (Para Ordnance)	D1445SN / Stainless Steel	.45 ACP	Pistol	5"	5/7/2005
Para USA (Para Ordnance)	D1445SR / Stainless Steel	.45 ACP	Pistol	5"	5/7/2005
Para USA (Para Ordnance)	D189EL / Steel	9mm	Pistol	5"	5/7/2005
Para USA (Para Ordnance)	D189EN / Steel	9mm	Pistol	5"	5/7/2005
Para USA (Para Ordnance)	D189ER / Steel	9mm	Pistol	5"	5/7/2005
Para USA (Para Ordnance)	T1445SL / Stainless Steel	.45 ACP	Pistol	5"	5/7/2005
Para USA (Para Ordnance)	T1445SN / Stainless Steel	.45 ACP	Pistol	5"	5/7/2005

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Para USA (Para Ordnance)	T1445SR / Stainless Steel	.45 ACP	Pistol	5"	5/7/2005
Para USA (Para Ordnance)	T1640SL / Stainless Steel	.40 S&W	Pistol	5"	5/7/2005
Para USA (Para Ordnance)	T1640SN / Stainless Steel	.40 S&W	Pistol	5"	5/7/2005
Para USA (Para Ordnance)	T1640SR / Stainless Steel	.40 S&W	Pistol	5"	5/7/2005
Colt	02070E Govt Model MK IV / Stainless Steel	.38 Super	Pistol	5"	4/30/2005
Fabrique Nationale	BDA0 / Steel	9mm	Pistol	4.8"	4/30/2005
Fabrique Nationale	BDA9 / Steel	9mm	Pistol	4.8"	4/30/2005
STI International (Strayer Tripp, Inc.)	CA Trojan / 4140 Steel	.45 ACP	Pistol	5"	4/30/2005
Firestorm (Gabilondo)	45 Compact / 4140 Steel	.45 ACP	Pistol	4.25"	4/17/2005
Llama (Gabilondo)	Mini Max 45 / 4140 Steel	.45 ACP	Pistol	3.5"	4/17/2005
Firestorm (Gabilondo)	Firestorm 380 Duotone / 4140 Steel, Alloy	.380	Pistol	3.5"	4/9/2005
Firestorm (Gabilondo)	Firestorm Gov't Duotone / Steel	.45 ACP	Pistol	5"	4/9/2005
Browning	Buck Mark Camper Camo / Steel, Alloy	.22 LR	Pistol	5.5"	4/8/2005
Browning	Buck Mark Camper Gold / Steel, Alloy	.22 LR	Pistol	5.5"	4/8/2005
Browning	Buck Mark Camper Gray, FO Sights / Steel, Alloy	.22 LR	Pistol	5.5"	4/8/2005
Browning	Buck Mark Camper Gray, Lam. Grips / Steel, Alloy	.22 LR	Pistol	5.5"	4/8/2005
Browning	Buck Mark Camper Sanodal Black / Steel, Alloy	.22 LR	Pistol	5.5"	4/8/2005
Colt	02570E Govt Model Mark IV Ser 80 / Steel (blue)	.38 Super	Pistol	5"	3/12/2005
Colt	MM3060 DT / Stainless Steel	.44 Magnum	Revolver	6"	3/12/2005
Para USA (Para Ordnance)	L1445SL / Stainless Steel	.45 ACP	Pistol	5"	3/12/2005
Para USA (Para Ordnance)	L1445SN / Stainless Steel	.45 ACP	Pistol	5"	3/12/2005
Para USA (Para Ordnance)	L1445SR / Stainless Steel	.45 ACP	Pistol	5"	3/12/2005
Para USA (Para Ordnance)	S1445EL / Steel	.45 ACP	Pistol	5"	3/12/2005
Para USA (Para Ordnance)	S1445EN / Steel	.45 ACP	Pistol	5"	3/12/2005

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Para USA (Para Ordnance)	S1445ER / Steel	.45 ACP	Pistol	5"	3/12/2005
Para USA (Para Ordnance)	L1445EL / Steel	.45 ACP	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	L1445EN / Steel	.45 ACP	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	L1445ER / Steel	.45 ACP	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	L1640EL / Steel	.40 S&W	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	L1640EN / Steel	.40 S&W	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	L1640ER / Steel	.40 S&W	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	S1245SL / Stainless Steel	.45 ACP	Pistol	3.5"	2/28/2005
Para USA (Para Ordnance)	S1245SN / Stainless Steel	.45 ACP	Pistol	3.5"	2/28/2005
Para USA (Para Ordnance)	S1245SR / Stainless Steel	.45 ACP	Pistol	3.5"	2/28/2005
Para USA (Para Ordnance)	S1445SL / Stainless Steel	.45 ACP	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	S1445SN / Stainless Steel	.45 ACP	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	S1445SR / Stainless Steel	.45 ACP	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	S1640EL / Steel	.40 S&W	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	S1640EN / Steel	.40 S&W	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	S1640ER / Steel	.40 S&W	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	S1640SL / Stainless Steel	.40 S&W	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	S1640SN / Stainless Steel	.40 S&W	Pistol	5"	2/28/2005
Para USA (Para Ordnance)	S1640SR / Stainless Steel	.40 S&W	Pistol	5"	2/28/2005
Colt	07860D / Alloy, Stainless Steel	.45 ACP	Pistol	3"	2/10/2005
Para USA (Para Ordnance)	P1245RL / Steel, Alloy	.45 ACP	Pistol	3.5"	1/25/2005
Para USA (Para Ordnance)	P1245RN / Steel, Alloy	.45 ACP	Pistol	3.5"	1/25/2005
Para USA (Para Ordnance)	P1245RR / Steel, Alloy	.45 ACP	Pistol	3.5"	1/25/2005
Taurus	PT92 (Blue w/night sight) / Blue Steel	9mm	Pistol	5"	1/19/2005
Taurus	PT92 (Stainless w/night sight) / Stainless Steel	9mm	Pistol	5"	1/19/2005
Taurus	PT92 (Stainless) / Stainless Steel	9mm	Pistol	5"	1/19/2005

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Taurus	85 Titanium (Spectrum Blue) / Titanium	.38 Spl	Revolver	2"	1/13/2005
Bryco Arms	Jennings Nine CA / Zinc Die Cast	9mm	Pistol	3.75"	1/4/2005
Bryco Arms	Jennings T380-CA / Zinc Die Cast	.380	Pistol	4"	1/4/2005
Bryco Arms	M38-CA / Zinc Diecast	.380	Pistol	2.75"	1/3/2005
Para USA (Para Ordnance)	D1445EL / Steel	.45 ACP	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	D1445EN / Steel	.45 ACP	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	D1445ER / Steel	.45 ACP	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	D1640EL / Steel	.40 S&W	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	D1640EN / Steel	.40 S&W	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	D1640ER / Steel	.40 S&W	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	D745E / Steel	.45 ACP	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	D745EL / Steel	.45 ACP	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	D745EN / Steel	.45 ACP	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	L1245EL / Steel	.45 ACP	Pistol	3.5"	12/31/2004
Para USA (Para Ordnance)	L1245EN / Steel	.45 ACP	Pistol	3.5"	12/31/2004
Para USA (Para Ordnance)	L1245ER / Steel	.45 ACP	Pistol	3.5"	12/31/2004
Para USA (Para Ordnance)	P1245SL / Stainless Steel	.45 ACP	Pistol	3.5"	12/31/2004
Para USA (Para Ordnance)	P1245SN / Stainless Steel	.45 ACP	Pistol	3.5"	12/31/2004
Para USA (Para Ordnance)	P1245SR / Stainless Steel	.45 ACP	Pistol	3.5"	12/31/2004
Para USA (Para Ordnance)	P1345EL / Steel	.45 ACP	Pistol	4.25"	12/31/2004
Para USA (Para Ordnance)	P1345EN / Steel	.45 ACP	Pistol	4.25"	12/31/2004
Para USA (Para Ordnance)	P1345ER / Steel	.45 ACP	Pistol	4.25"	12/31/2004
Para USA (Para Ordnance)	P1445EL / Steel	.45 ACP	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	P1445EN / Steel	.45 ACP	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	P1445ER / Steel	.45 ACP	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	P1445SL / Stainless Steel	.45 ACP	Pistol	5"	12/31/2004
Para USA (Para Ordnance)	P1445SN / Stainless Steel	.45 ACP	Pistol	5"	12/31/2004

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Para USA (Para Ordnance)	P1445SR / Stainless Steel	.45 ACP	Pistol	5"	12/31/2004
Springfield Armory	PI9601L (ambi safety) / Carbon Steel	.45 ACP	Pistol	5"	12/31/2004
Springfield Armory	PI9601L / Carbon Steel	.45 ACP	Pistol	5"	12/31/2004
STI International (Strayer Tripp, Inc.)	2011 CA Edge / 4140 Carbon Steel, Polymer	.40 S&W	Pistol	5"	12/21/2004
Springfield Armory	PX9155L (ambi safety) / Stainless Steel	.40 S&W	Pistol	5"	11/6/2004
Springfield Armory	PX9155L / Stainless Steel	.40 S&W	Pistol	5"	11/6/2004
Springfield Armory	X-Treme Duty w/A.O. Tritium / Polymer, Steel	.40 S&W	Pistol	4.08"	9/24/2004
Springfield Armory	X-Treme Duty w/A.O. Tritium / Steel, Polymer	9mm	Pistol	4.08"	9/24/2004
Springfield Armory	PB9105L / Steel	.45 ACP	Pistol	5"	9/20/2004
Springfield Armory	PB9160L / Steel	.45 Ultra	Pistol	3.5"	9/20/2004
Para USA (Para Ordnance)	LC745S / Stainless Steel	.45 ACP	Pistol	3.5"	7/30/2004
Para USA (Para Ordnance)	LC745SL / Stainless Steel	.45 ACP	Pistol	3.5"	7/30/2004
Para USA (Para Ordnance)	LC745SN / Stainless Steel	.45 ACP	Pistol	3.5"	7/30/2004
Bryco Arms	J-22-CA / Zinc Die Cast	.22 LR	Pistol	2.5"	6/4/2004
Bryco Arms	M25-CA / Zinc Die Cast	.25	Pistol	2.5"	4/2/2004
Taurus	617 Titanium (Spectrum Blue) / Titanium	.357 Magnum	Revolver	2"	1/19/2004
Taurus	85 Titanium (Matte Spectrum Blue) / Titanium	.38 Spl	Revolver	2"	1/13/2004
Taurus	85 Titanium (Matte Spectrum Gold) / Titanium	.38 Spl	Revolver	2"	1/13/2004
Republic Arms, Inc.	Patriot / Stainless Steel	.45 ACP	Pistol	3"	1/4/2004
Beretta	8000 Mini Cougar F / Blue Steel	9mm	Pistol	3.7"	12/31/2003
Beretta	8040 Mini Cougar F / Blue Steel	.40 S&W	Pistol	3.6"	12/31/2003
Beretta	8045 Mini Cougar F / Blue Steel	.45 ACP	Pistol	3.7"	12/31/2003
Beretta	92FS Compact / Blue Steel	9mm	Pistol	4.3"	12/31/2003
Beretta	92FS Compact Inox / Stainless Steel	9mm	Pistol	4.3"	12/31/2003

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Beretta	92FS Compact Type M Inox / Stainless Steel	9mm	Pistol	4.3"	12/31/2003
Beretta	92G Elite / Blue Steel	9mm	Pistol	4.7"	12/31/2003
Beretta	96G Elite / Blue Steel, Stainless	.40 S&W	Pistol	4.7"	12/31/2003
Phoenix Arms	HP22 (Nickel) / Alloy	.22 LR	Pistol	5"	12/31/2003
Smith & Wesson	342 / Alloy, Titanium	.38 Spl +P	Revolver	1.87"	12/31/2003
Springfield Armory	PX9242L (ambi safety) / Carbon Steel, Alloy	.45 ACP	Pistol	4"	12/31/2003
Springfield Armory	PX9242L / Carbon Steel, Alloy	.45 ACP	Pistol	4"	12/31/2003
Sturm, Ruger & Co.	KP4B (22/45 Target) / Stainless Steel, Polymer	.22 LR	Pistol	4"	12/31/2003
Beretta	U22 Neos 4.5 / Steel, Polymer	.22 LR	Pistol	4.5"	12/3/2003
Beretta	M9 Ltd. Edition / Blue Steel	9mm	Pistol	4.92"	11/14/2003
Springfield Armory	PI9603L (ambi safety) / Steel	.40 S&W	Pistol	5"	11/6/2003
Springfield Armory	PI9603L / Steel	.40 S&W	Pistol	5"	11/6/2003
Charles Daly	CDGR6036 1911A-1 / Stainless, Blue Steel	.45 ACP	Pistol	5"	8/2/2003
Kimber	Ultra CDP Elite II / Stainless Steel, Alum. Alloy	.45 ACP	Pistol	3"	7/17/2003
Kimber	Ultra CDP Elite STS II / Stainless Steel, Alum. Alloy	.45 ACP	Pistol	3"	7/17/2003
Kimber	Pro Eclipse II / Stainless Steel	.45 ACP	Pistol	4"	6/27/2003
Bryco Arms	Valor 380 / Zinc Die Cast	.380	Pistol	3.75"	6/4/2003
Para USA (Para Ordnance)	T1640EL / Steel	.40 S&W	Pistol	5"	5/7/2003
Para USA (Para Ordnance)	T1640EN / Steel	.40 S&W	Pistol	5"	5/7/2003
Para USA (Para Ordnance)	T1640ER / Steel	.40 S&W	Pistol	5"	5/7/2003
Charles Daly	CDGR2077 DDA 10-45 / Blue Steel, Polymer, Chrome	.45 ACP	Pistol	3.62"	4/26/2003
Charles Daly	CDGR2084 DDA 10-45 / Blue Steel, Polymer, Chrome	.45 ACP	Pistol	3.62"	4/26/2003
Charles Daly	CDGR2099 DDA 10-45 / Blue Steel, Polymer, Chrome	.45 ACP	Pistol	3.62"	4/26/2003
Charles Daly	CDGR2141 DDA 10-45 / Blue Steel, Polymer, Chrome	.45 ACP	Pistol	4.37"	4/26/2003

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Colt	Police Positive / Blue Steel	.38 Spl	Revolver	4"	4/26/2003
Davis Industries	D-22 Satin / Alloy	.22 LR	Derringer	2.4"	4/26/2003
Kimber	Custom Eclipse II / Stainless Steel	.45 ACP	Pistol	5"	4/26/2003
Kimber	STS Gold Match SE II / Stainless Steel	.45 ACP	Pistol	5"	4/26/2003
Davis Industries	D-38 Blue / Steel, Alloy	.38 Spl	Derringer	2.75"	4/5/2003
Davis Industries	D-38 Chrome / Steel, Alloy	.38 Spl	Derringer	2.75"	4/5/2003
Davis Industries	D-38 Satin / Steel, Alloy	.38 Spl	Derringer	2.75"	4/5/2003
Charles Daly	CDGR2020 DDA 10-45 / Blue Steel, Black Polymer	.45 ACP	Pistol	3.62"	4/4/2003
Charles Daly	CDGR2196 DDA 10-45 / Blue Steel, Polymer, Chrome Steel	.45 ACP	Pistol	4.37"	4/4/2003
Kimber	Custom Defender II / Stainless Steel	.45 ACP	Pistol	5"	3/29/2003
Kimber	Target Elite II / Stainless Steel	.45 ACP	Pistol	5"	3/29/2003
Colt	04012XS Combat Commander / Stainless Steel (brushed)	.45 ACP	Pistol	4.25"	3/12/2003
Davis Industries	D-22 Chrome / Alloy	.22 LR	Derringer	2.4"	3/5/2003
Davis Industries	D-32 Blue / Alloy, Steel	.32	Derringer	2.4"	3/5/2003
Davis Industries	D-32 Satin / Alloy, Steel	.32	Derringer	2.4"	3/5/2003
Davis Industries	DM-22 Chrome / Alloy	.22 Magnum	Derringer	2.4"	3/5/2003
Davis Industries	DM-22 Satin / Alloy	.22 Magnum	Derringer	2.4"	3/5/2003
Para USA (Para Ordnance)	L1440EL / Steel	.40 S&W	Pistol	3.5"	2/28/2003
Para USA (Para Ordnance)	L1440EN / Steel	.40 S&W	Pistol	3.5"	2/28/2003
Para USA (Para Ordnance)	L1440ER / Steel	.40 S&W	Pistol	3.5"	2/28/2003
Para USA (Para Ordnance)	P1045SL / Stainless Steel	.45 ACP	Pistol	3"	2/28/2003
Para USA (Para Ordnance)	P1045SN / Stainless Steel	.45 ACP	Pistol	3"	2/28/2003
Para USA (Para Ordnance)	P1045SR / Stainless Steel	.45 ACP	Pistol	3"	2/28/2003
Para USA (Para Ordnance)	P1445RL / Steel, Alloy	.45 ACP	Pistol	5"	2/28/2003
Para USA (Para Ordnance)	P1445RN / Steel, Alloy	.45 ACP	Pistol	5"	2/28/2003
Para USA (Para Ordnance)	P1445RR / Steel, Alloy	.45 ACP	Pistol	5"	2/28/2003

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Para USA (Para Ordnance)	S1245EL / Steel	.45 ACP	Pistol	3.5"	2/28/2003
Para USA (Para Ordnance)	S1245EN / Steel	.45 ACP	Pistol	3.5"	2/28/2003
Para USA (Para Ordnance)	S1245ER / Steel	.45 ACP	Pistol	3.5"	2/28/2003
Springfield Armory	PX9162L (ambi safety) / Alloy, Carbon Steel	.45 ACP	Pistol	3.75"	2/8/2003
Springfield Armory	PX9162L / Alloy, Carbon Steel	.45 ACP	Pistol	3.75"	2/8/2003
Springfield Armory	PX9507L (ambi safety) / Alloy, Carbon Steel	.45 ACP	Pistol	3.25"	2/8/2003
Springfield Armory	PX9507L / Alloy, Carbon Steel	.45 ACP	Pistol	3.25"	2/8/2003
Davis Industries	D32 Chrome / Alloy, Steel	.32	Derringer	2.4"	2/6/2003
Davis Industries	D-22 Blue / Alloy	.22 LR	Derringer	2.4"	1/17/2003
Llama (Gabilondo)	MAX-I Deluxe Blue / Steel	.45 ACP	Pistol	5"	1/3/2003
Davis Industries	DM-22 Blue / Alloy	.22 Magnum	Derringer	2.4"	12/31/2002
Kimber	Comp. Alum. STS II / Stainless Steel, Alum. Alloy	.45 ACP	Pistol	4"	12/31/2002
Kimber	Compact II / Blue Steel	.45 ACP	Pistol	4"	12/31/2002
Para USA (Para Ordnance)	P1045RL / Steel, Alloy	.45 ACP	Pistol	3"	12/31/2002
Para USA (Para Ordnance)	P1045RN / Steel, Alloy	.45 ACP	Pistol	3"	12/31/2002
Para USA (Para Ordnance)	P1045RR / Steel, Alloy	.45 ACP	Pistol	3"	12/31/2002
Para USA (Para Ordnance)	P1245EL / Steel	.45 ACP	Pistol	3.5"	12/31/2002
Para USA (Para Ordnance)	P1245EN / Steel	.45 ACP	Pistol	3.5"	12/31/2002
Para USA (Para Ordnance)	P1245ER / Steel	.45 ACP	Pistol	3.5"	12/31/2002
Para USA (Para Ordnance)	P1640EL / Steel	.40 S&W	Pistol	5"	12/31/2002
Para USA (Para Ordnance)	P1640EN / Steel	.40 S&W	Pistol	5"	12/31/2002
Para USA (Para Ordnance)	P1640ER / Steel	.40 S&W	Pistol	5"	12/31/2002
Para USA (Para Ordnance)	P1640SL / Stainless Steel	.40 S&W	Pistol	5"	12/31/2002
Para USA (Para Ordnance)	P1640SN / Stainless Steel	.40 S&W	Pistol	5"	12/31/2002
Para USA (Para Ordnance)	P1640SR / Stainless Steel	.40 S&W	Pistol	5"	12/31/2002
Kimber	Pro Shadow / Blue Steel, Aluminum	.45 ACP	Pistol	4"	11/6/2002

Make	Model	Caliber	Type	Barrel Length	Date De-Certified
Kimber	Ultra Shadow LE II / Blue Steel, Alum. Alloy	.45 ACP	Pistol	3"	11/6/2002
Kimber	Ultra Eclipse II / Stainless Steel	.45 ACP	Pistol	3"	9/10/2002
Firestorm (Gabilondo)	Firestorm Mini Compact .45 / Blue Steel	.45 ACP	Pistol	3.63"	8/14/2002
Walther USA (Carl Walther)	P99 QPQ / Steel, Polymer	.40 S&W	Pistol	4.12"	6/14/2002
Walther USA (Carl Walther)	P99 QPQ / Steel, Polymer	9mm	Pistol	4"	6/14/2002
IM Metal	HS 2000 / Steel, Polymer	9mm	Pistol	4.08"	3/19/2002
Kimber	Poly Gold Match STS II / Stainless Steel, Polymer	.45 ACP	Pistol	5"	1/18/2002
Kimber	Poly Stainles II / Stainless Steel, Polymer	.45 ACP	Pistol	5"	12/31/2001

1 Alan Gura (Calif. Bar No. 178221)
2 Gura & Possessky, PLLC
3 101 N. Columbus St., Suite 405
4 Alexandria, VA 22314
5 703.835.9085/Fax 703.997.7665

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9 San Jose, CA 95125
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15 949.310.0817/Fax 949.288.6894

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
Plaintiffs,)	
	)	<u>EXHIBIT H</u>
v.)	
	)	In Support of Plaintiffs' Motion
Wilfredo Cid,)	For Summary Judgment
Defendant.)	
_____)	

Respectfully Submitted on Sept. 1, 2009

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408.264.8489/Fax 408.264.8487

By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-5153

January 12, 2007

Mr. Carlos Guevara
General Counsel
Glock, Inc.
6000 Highlands Parkway
Smyrna, GA 30082

Re: Glock Proposed Ambidextrous Magazine Release

Dear Mr. Guevara:

I am writing in response to your request that the Firearms Division of the California Department of Justice (DOJ) waive the requirement that a number of Glock handguns that have been redesigned to have an ambidextrous magazine release be tested by an independent DOJ-certified laboratory. Upon review of the issue, we have determined that we do not have the authority to exempt a handgun on DOJ's roster that is redesigned to have an ambidextrous magazine release from the testing requirement.

California law makes it a crime to import into the state for sale, keep for sale, offer or expose for sale, give or lend any "unsafe handgun." (California Penal Code § 12125(a).) A handgun is considered unsafe if it fails to meet the criteria set forth in Penal Code section 12126 after testing and approval by a DOJ-certified handgun testing laboratory. (Pen. Code § 12130.) A handgun that is tested and approved is eligible for listing on DOJ's roster of handguns that have been tested and determined not to be unsafe. (Pen. Code § 12131(a).)

"A firearm shall be deemed to satisfy the requirements of subdivision (a) of Section 12131 if another firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm only in one or more of the following features:

1. Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving.
2. The material from which the grips are made.
3. The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.
4. Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm." (Pen. Code § 12131.5(a).)

Mr. Guevara
January 12, 2007
Page 2

Handgun models that do not meet one of the criteria of Penal Code section 12131.5(a) are not "deemed to satisfy the requirements of subdivision (a) of Section 12131" and therefore must be tested, like all new models of handguns.

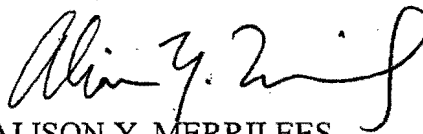
Glock proposes to alter the magazine catch on its models so that the catch grabs the magazine from the middle, rather than from the side, of the magazine. In order to do so, part of the frame must be cut to allow for a new magazine release button. The modification to the magazine release is a physical change to the firearm that is not listed in Penal Code section 12131.5(a). Physical changes to a listed handgun that do not qualify as exempt changes under section 12131.5(a) require that the redesigned handgun be tested prior to being listed on the DOJ roster of "not unsafe handguns."

The Penal Code does not give DOJ discretion to waive the testing requirement. Unless a statute gives a governmental agency such discretion, the agency is prohibited from expanding the scope of the statute. (See *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1081-1082 [illegal for a county clerk, charged with ministerial duty of issuing marriage licenses, to issue license to a same sex couple when statute authorized licenses only to couple of opposite sex; official improperly employed his own judgment or opinion concerning the statutes propriety or impropriety].)

A California owner of a Glock handgun model with a standard magazine release who wishes to have his or her handgun retrofitted with an ambidextrous magazine release may send the firearm to Glock. Glock could then retrofit the handgun and return it to its owner. No further testing of the retrofitted handgun would be required.

We apologize for any inconvenience caused by the delay in providing a final opinion to you about this matter. If you have any questions or concerns, please contact me at (916) 263-5153.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

From: Justin Phillips
To: Cheryle Massaro
Date: 1/24/2007 3:20:27 PM
Subject: Fwd: GLOCK Magazine Release

fyi

>>> Carlos Guevara [REDACTED] 11/20/2006 2:07 PM >>>

Dear Mr. Phillips,

According to our phone conversation, I am sending some pictures that show the proposed ambidextrous magazine release. As I mentioned, we plan to replace the current magazine release with the new ambidextrous part on all GLOCK models to better accommodate our left handed users.

We kindly request confirmation from the DOJ as to whether this minor improvement can be implemented on all GLOCK models currently approved for sale in California without additional testing.

We appreciate your assistance.

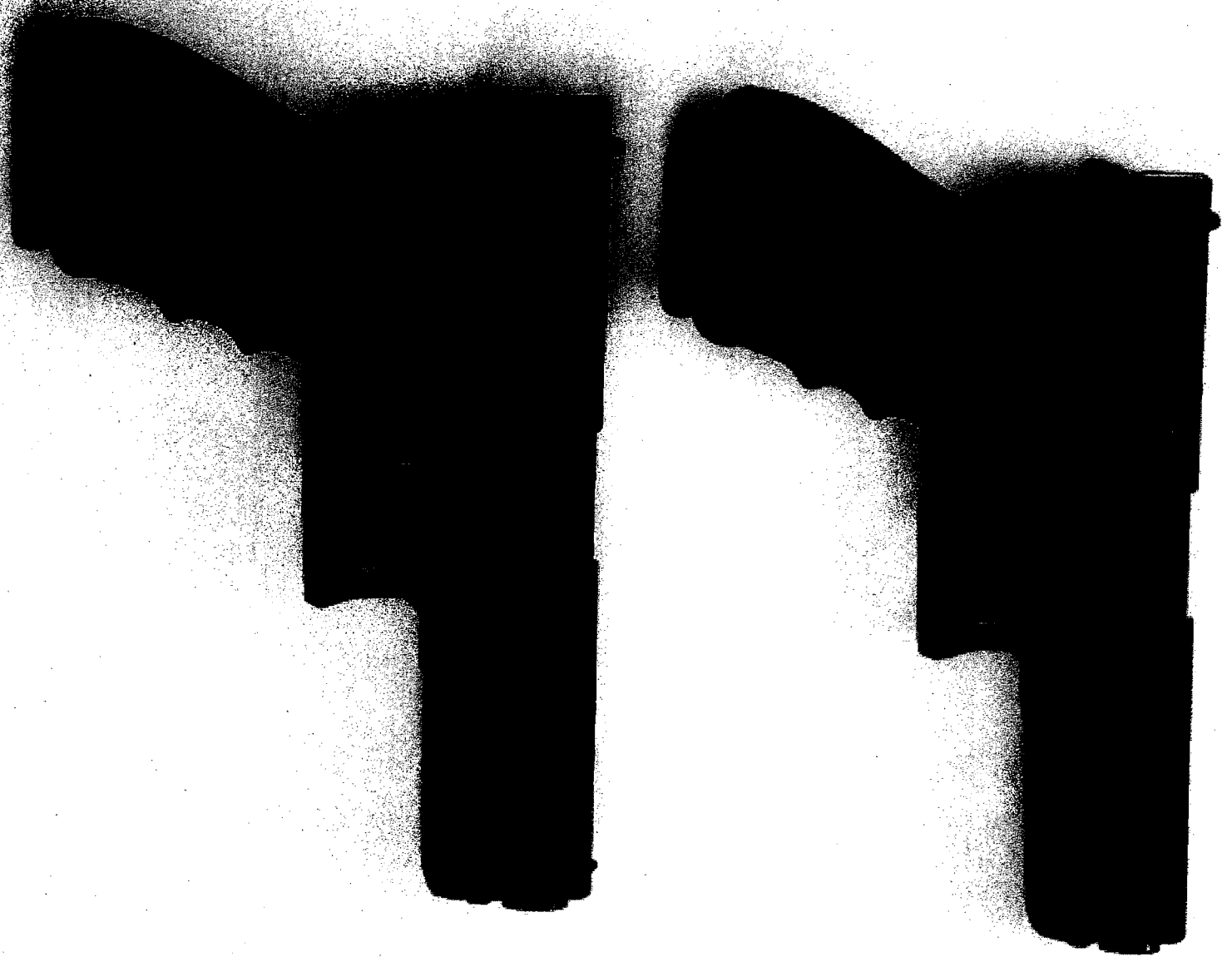
Best regards,

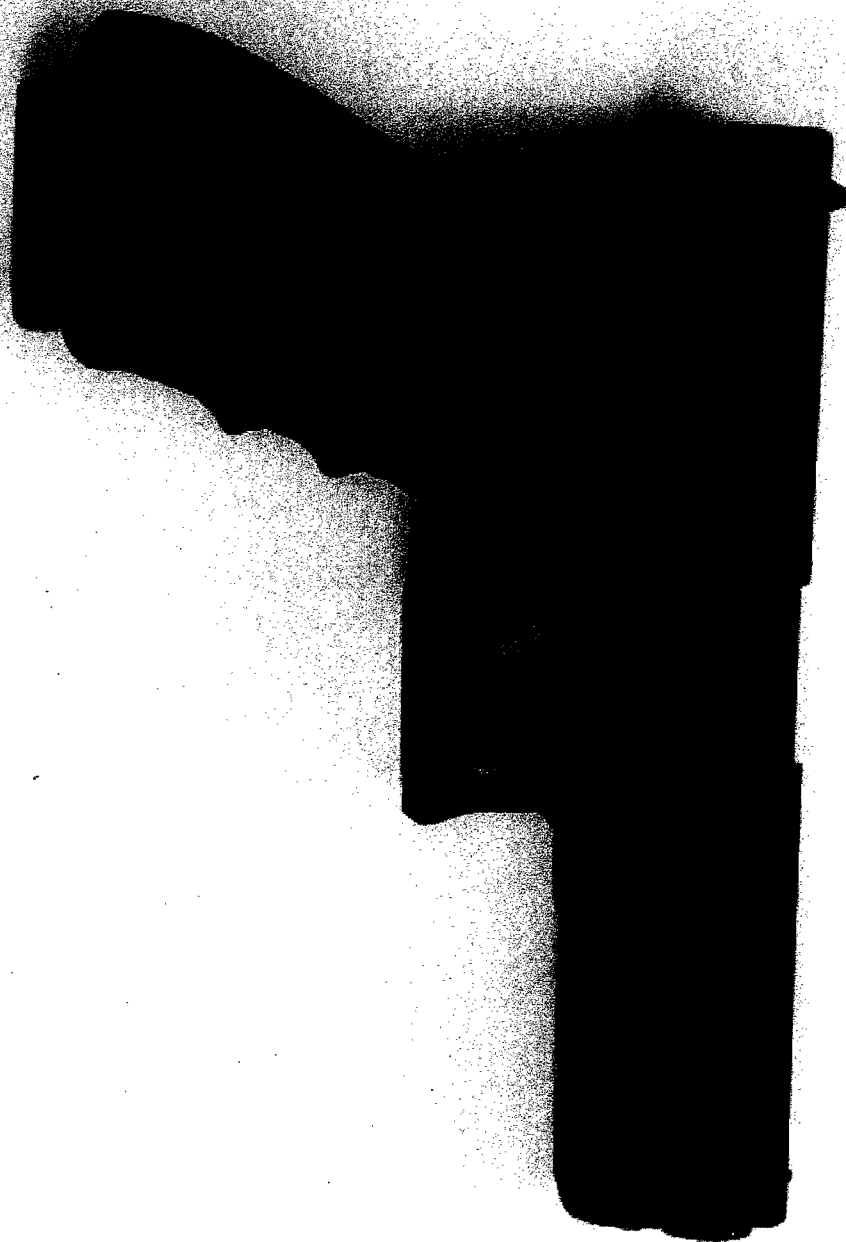
Carlos A. Guevara
General Counsel
GLOCK, Inc.
Dir. 770-319-4778
Fax. 770-437-4714

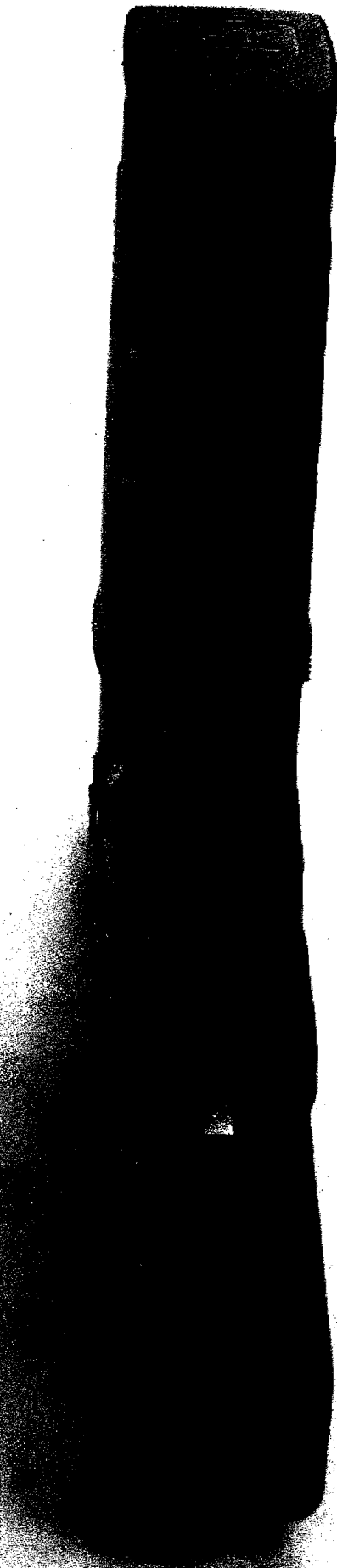
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EDMUND G. BROWN JR.
Attorney General

Chron
State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
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SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-5153

January 12, 2007

Mr. Carlos Guevara
General Counsel
Glock, Inc.
6000 Highlands Parkway
Smyrna, GA 30082

Re: Glock Proposed Ambidextrous Magazine Release

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1. Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving.
2. The material from which the grips are made.
3. The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.
4. Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm." (Pen. Code § 12131.5(a).)

Mr. Guevara
January 12, 2007
Page 2

Handgun models that do not meet one of the criteria of Penal Code section 12131.5(a) are not "deemed to satisfy the requirements of subdivision (a) of Section 12131" and therefore must be tested, like all new models of handguns.

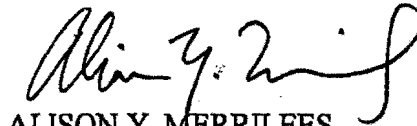
Glock proposes to alter the magazine catch on its models so that the catch grabs the magazine from the middle, rather than from the side, of the magazine. In order to do so, part of the frame must be cut to allow for a new magazine release button. The modification to the magazine release is a physical change to the firearm that is not listed in Penal Code section 12131.5(a). Physical changes to a listed handgun that do not qualify as exempt changes under section 12131.5(a) require that the redesigned handgun be tested prior to being listed on the DOJ roster of "not unsafe handguns."

The Penal Code does not give DOJ discretion to waive the testing requirement. Unless a statute gives a governmental agency such discretion, the agency is prohibited from expanding the scope of the statute. (See *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1081-1082 [illegal for a county clerk, charged with ministerial duty of issuing marriage licenses, to issue license to a same sex couple when statute authorized licenses only to couple of opposite sex; official improperly employed his own judgment or opinion concerning the statutes propriety or impropriety].)

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We apologize for any inconvenience caused by the delay in providing a final opinion to you about this matter. If you have any questions or concerns, please contact me at (916) 263-5153.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

GLOCK, Inc.

U.S.A.

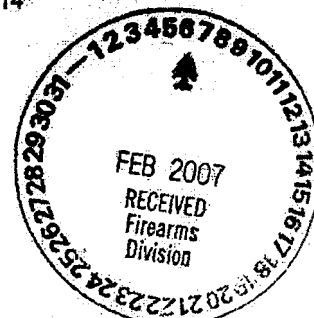


PERFECTION

GLOCK, Inc., P.O.Box 369, Smyrna,
Georgia 30081, U.S.A.

Tel. +1 (770) 319 4778
Fax +1 (770) 437 4714

Ms. Alison Y. Merrilees
Deputy Attorney General
California Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487



your reference Dated
Ambidextrous Magazine Release January 12, 2007

our reference Smyrna,
January 31, 2007

Re: GLOCK Ambidextrous Magazine Release

Dear Ms. Merrilees:

Thank you for your letter dated January 12, 2007 in which the California Department of Justice (DOJ) found, based primarily upon certain photographs provided by GLOCK, Inc., that the replacement of the standard magazine release for a new ambidextrous type on GLOCK pistols currently on the DOJ's roster of approved handguns does not fall within the Penal Code section 12131.5(a). We respectfully ask that you reconsider your initial findings for the following reasons: 1) the upgraded magazine release does not require a redesign of the pistol or an additional cut on the grip section of the frame, and 2) the physical change to the firearm is so limited, such that its differences, when compared to the listed firearms, eclipse those enumerated in section 12131.5(a).

In particular, the proposed magazine release does not require an additional cut in the frame to allow ambidextrous operation as initially believed by DOJ. A close look at the current design of the pistol, in particular the operation of its magazine release, clearly shows that it already provides the cut on the opposite side of the grip to be used for the upgraded part.

Moreover, the proposed ambidextrous magazine release does not require redesign of the pistol, but rather a very limited modification to the shape of the grip and some internal changes to accommodate proper engagement / release of the magazine. Please note that as required by Section 12131.5(a)3, the modification to the grip shape does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.

In order to fully appreciate the limited modification to the grip and the operation of the proposed ambidextrous magazine release, we request and would welcome the opportunity to meet with DOJ representatives to further explain this limited modification and to make prototypes available for your examination.

// HK model (that was tested)



GLOCK, Inc.

USA

We truly appreciate your assistance with this matter. Should you have any questions or require any additional information, please feel free to contact me.

Sincerely,

Carlos A. Guevara
GLOCK, Inc
General Counsel
Dir. 770-319-4778
Fax 770-437-4774
carlos.guevara@glock.us

2 Changes

① Ambi

mag re-
lease

② Rail
changes

12131. (a) On and after January 1, 2001, the Department of Justice shall compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state pursuant to this title. The roster shall list, for each firearm, the manufacturer, model number, and model name.

(b) (1) The department may charge every person in this state who is licensed as a manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in this state, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster pursuant to subdivision (a) and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs necessary to implement this chapter.

(2) Any pistol, revolver, or other firearm capable of being concealed upon the person that is manufactured by a manufacturer who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in this state, and who fails to pay any fee required pursuant to paragraph (1), may be excluded from the roster.

(3) If a purchaser has initiated a transfer of a handgun that is listed on the roster as not unsafe, and prior to the completion of the transfer, the handgun is removed from the roster of not unsafe handguns because of failure to pay the fee required to keep that handgun listed on the roster, the handgun shall be deliverable to the purchaser if the purchaser is not otherwise prohibited from purchasing or possessing the handgun. However, if a purchaser has initiated a transfer of a handgun that is listed on the roster as not unsafe, and prior to the completion of the transfer, the handgun is removed from the roster pursuant to subdivision (f), the handgun shall not be deliverable to the purchaser.

(c) The Attorney General may annually retest up to 5 percent of the handgun models that are listed on the roster described in subdivision (a).

(d) The retesting of a handgun model pursuant to subdivision (c) shall conform to the following:

(1) The Attorney General shall obtain from retail or wholesale sources, or both, three samples of the handgun model to be retested.

(2) The Attorney General shall select the certified laboratory to be used for the retesting.

(3) The ammunition used for the retesting shall be of a type recommended by the manufacturer in the user manual for the handgun. If the user manual for the handgun model makes no ammunition recommendation, the Attorney General shall select the ammunition to be used for the retesting. The ammunition shall be of the proper caliber for the handgun, commercially available, and in new condition.

(e) The retest shall be conducted in the same manner as the testing prescribed in Sections 12127 and 12128.

(f) If the handgun model fails retesting, the Attorney General

shall remove the handgun model from the roster maintained pursuant to subdivision (a).

(g) A handgun model removed from the roster pursuant to subdivision (f) may be reinstated on the roster if all of the following are met:

(1) The manufacturer petitions the Attorney General for reinstatement of the handgun model.

(2) The manufacturer pays the Department of Justice for all of the costs related to the reinstatement testing of the handgun model, including the purchase price of the handguns, prior to reinstatement testing.

(3) The reinstatement testing of the handguns shall be in accordance with subdivisions (d) and (e).

(4) The three handgun samples shall be tested only once for reinstatement. If the sample fails it may not be retested.

(5) If the handgun model successfully passes testing for reinstatement, and if the manufacturer of the handgun is otherwise in compliance with this chapter, the Attorney General shall reinstate the handgun model on the roster maintained pursuant to subdivision (a).

(6) The manufacturer shall provide the Attorney General with the complete testing history for the handgun model.

(7) Notwithstanding subdivision (c), the Attorney General may, at any time, further retest any handgun model that has been reinstated to the roster.

12131.5. (a) A firearm shall be deemed to satisfy the requirements of subdivision (a) of Section 12131 if another firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm only in one or more of the following features:

(1) Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving. NO

(2) The material from which the grips are made. NO

(3) The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. NO

(4) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.

(b) Any manufacturer seeking to have a firearm listed under this section shall provide to the Department of Justice all of the following:

(1) The model designation of the listed firearm.

(2) The model designation of each firearm that the manufacturer seeks to have listed under this section.

(3) A statement, under oath, that each unlisted firearm for which listing is sought differs from the listed firearm only in one or more of the ways identified in subdivision (a) and is in all other respects identical to the listed firearm.

(c) The department may, in its discretion and at any time, require a manufacturer to provide to the department any model for which

OR
?
NO
GLOCK:
"alters
engagement"
not function

listing is sought under this section, to determine whether the model complies with the requirements of this section.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
Plaintiffs,)	
	)	<u>EXHIBIT I</u>
v.)	
	)	In Support of Plaintiffs' Motion
Wilfredo Cid,)	For Summary Judgment
Defendant.)	
_____)	

Respectfully Submitted on Sept. 1, 2009

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Donald E. J. Kilmer, Jr., Attorney for Plaintiffs

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Roster of Handguns Certified for Sale

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Handgun models will be removed from the roster on the list expiration date unless the manufacturer renews the listing prior to the list expiration date.

[Search again](#)

There are 131 matching records for Springfield Armory
The matching records list is sorted by Make
This list is valid for Tuesday, September 01, 2009

Model	Gun Type	Barrel Length	Caliber	Exp Date
PX9801L (ambi safety) / Alloy, Stainless Steel	Pistol	3"	.45 ACP	12/20/2009
PX9801L / Alloy, Stainless Steel	Pistol	3"	.45 ACP	12/20/2009
PX9802L / Alloy, Stainless Steel	Pistol	3"	.45 ACP	8/13/2010
PX9804L / Alloy, Stainless Steel	Pistol	3"	.45 ACP	1/17/2010
PX9806L / Stainless Steel	Pistol	3"	.45 ACP	9/22/2010
PX9808L / Blue Steel	Pistol	3"	.45 ACP	9/6/2010
XD9801 / Composite, Steel	Pistol	3"	9mm	3/19/2010
XD9810 / Composite, Steel	Pistol	3"	9mm	7/29/2010
XD9811 / Composite, Steel	Pistol	3"	9mm	4/7/2010
XD9831 / Polymer, Steel	Pistol	3"	9mm	3/26/2010
XD9802 / Polymer, Steel	Pistol	3.01"	.40 S&W	10/25/2009
XD9812 / Polymer, Steel	Pistol	3.01"	.40 S&W	3/10/2010
XD9832 / Polymer, Steel	Pistol	3.01"	.40 S&W	3/26/2010
XD9842 / Polymer, Steel	Pistol	3.01"	.40 S&W	3/26/2010
1911 EMP Compact PI9209L / Alloy, Steel	Pistol	3.1"	9mm	2/6/2010
XD9821 / Polymer, Stainless Steel	Pistol	3.1"	9mm	3/23/2010

Contact Us

XD9822 / Polymer, Stainless Steel	Pistol	3.1"	.40 S&W	2/18/2010
PB9162L / Carbon Steel	Pistol	3.5"	.45	10/4/2009
PX9161L (ambi safety) / Stainless Steel	Pistol	3.5"	.45 ACP	12/31/2009
PX9161L / Stainless Steel	Pistol	3.5"	.45 ACP	12/31/2009
PX9171L (ambi safety) / Stainless Steel	Pistol	3.5"	.45 ACP	3/27/2010
PX9171L / Stainless Steel	Pistol	3.5"	.45 ACP	3/27/2010
PX9301L (ambi safety) / Carbon Steel	Pistol	3.5"	.45 ACP	12/31/2009
PX9301L / Carbon Steel	Pistol	3.5"	.45 ACP	12/31/2009
PX9505L / Alloy, Stainless Steel	Pistol	3.5"	9mm	9/6/2010
XD9524 / Polymer, Stainless Steel	Pistol	4"	.45 GAP	9/26/2010
PX9142L (ambi safety) / Stainless Steel	Pistol	4"	.45 ACP	3/27/2010
PX9142L / Stainless Steel	Pistol	4"	.45 ACP	3/27/2010
PX9511L (ambi safety) / Carbon Steel	Pistol	4"	.45 ACP	12/31/2009
PX9511L / Carbon Steel	Pistol	4"	.45 ACP	12/31/2009
XD9161 / Polymer, Steel	Pistol	4"	.45 ACP	11/20/2009
XD9261 / Polymer, Steel	Pistol	4"	.45 ACP	3/26/2010
XD9611 / Polymer, Steel	Pistol	4"	.45 ACP	3/17/2010
XD9612 / Polymer, Steel	Pistol	4"	.45 ACP	1/23/2010
XD9614 / Polymer, Steel	Pistol	4"	.45 ACP	3/26/2010
XD9645 / Polymer, Steel	Pistol	4"	.45 ACP	3/17/2010
XD9646 / Polymer, Steel	Pistol	4"	.45 ACP	11/28/2009
XD9647 / Polymer, Steel	Pistol	4"	.45 ACP	1/23/2010
XD9648 / Polymer, Steel	Pistol	4"	.45 ACP	3/26/2010
XD9701 / Polymer, Steel	Pistol	4"	9mm	5/9/2010
XD9702 / Polymer, Steel	Pistol	4"	.40 S&W	9/6/2010
XD9704 / Polymer, Steel	Pistol	4"	9mm	8/26/2010
XD9781 / Polymer, Steel	Pistol	4"	9mm	3/17/2010
XD9782 / Polymer, Carbon Steel	Pistol	4"	.40 S&W	3/17/2010
PW9142L / Carbon Steel	Pistol	4.0"	.45	10/4/2009
PX9149L / Alloy, Carbon Steel	Pistol	4.0"	.45	10/4/2009
XD9504 / Polymer, Carbon Steel	Pistol	4.05"	.45	3/23/2010
XD9221 / Polymer, Steel	Pistol	4.08	9mm	1/23/2010
XD9101 / Steel, Polymer	Pistol	4.08"	9mm	10/21/2009

XD9102 / Polymer, Steel	Pistol	4.08"	.40 S&W	12/20/2009
XD9103 / Polymer, Steel	Pistol	4.08"	.357 SIG	12/20/2009
XD9104 / Steel, Polymer	Pistol	4.08"	9mm	3/21/2010
XD9109 / Polymer, Steel	Pistol	4.08"	.40 S&W	3/21/2010
XD9113 / Polymer, Steel	Pistol	4.08"	.357 SIG	3/26/2010
XD9121 / Polymer, Steel	Pistol	4.08"	9mm	1/23/2010
XD9122 / Polymer, Steel	Pistol	4.08"	.40 S&W	1/23/2010
XD9201 / Steel, Polymer	Pistol	4.08"	9mm	3/26/2010
XD9202 / Composite, Steel	Pistol	4.08"	.40 S&W	3/26/2010
XD9222 / Polymer, Steel	Pistol	4.08"	.40 S&W	1/23/2010
XD9231 / Polymer, Steel	Pistol	4.08"	.40 S&W	3/26/2010
XD9301 / Steel, Polymer	Pistol	4.08"	9mm	1/17/2010
XD9302 / Polymer, Steel	Pistol	4.08"	.40 S&W	1/17/2010
XD9311 / Steel, Polymer	Pistol	4.08"	9mm	3/26/2010
XD9312 / Polymer, Steel	Pistol	4.08"	.40 S&W	3/27/2010
XD9501 / Steel, Polymer	Pistol	4.08"	9mm	12/3/2009
XD9502 / Polymer, Steel	Pistol	4.08"	.40 S&W	12/3/2009
PB9108 / Carbon Steel	Pistol	5"	.45 ACP	2/8/2010
PB9113L (ambi safety) / Steel	Pistol	5"	.38 Super	9/20/2010
PB9113L / Steel	Pistol	5"	.38 Super	9/20/2010
PB9114L / Steel	Pistol	5"	.38 Super	7/29/2010
PB9151L / Stainless Steel	Pistol	5"	.45 ACP	3/19/2010
PB9609L / Carbon Steel	Pistol	5"	.45 ACP	4/30/2010
PC9102 / Carbon Steel	Pistol	5"	.45 ACP	12/3/2009
PC9105LCA (ambi safety) / Steel	Pistol	5"	.45 ACP	9/20/2010
PC9105LCA / Steel	Pistol	5"	.45 ACP	9/20/2010
PC9106L / Steel	Pistol	5"	.45 ACP	9/22/2010
PC9107L (ambi safety) / Stainless Steel	Pistol	5"	.45 ACP	3/29/2010

PC9107L / Stainless Steel	Pistol	5"	.45 ACP	3/29/2010
PC9108L (ambi safety) / Carbon Steel	Pistol	5"	.45 ACP	3/29/2010
PC9108L / Carbon Steel	Pistol	5"	.45 ACP	3/29/2010
PC9111 (ambi safety) / Carbon Steel	Pistol	5"	.45 ACP	3/29/2010
PC9111 / Carbon Steel	Pistol	5"	.45 ACP	3/29/2010
PC9111LR / Carbon Steel	Pistol	5"	.45 ACP	7/21/2010
PC9206 / Carbon Steel	Pistol	5"	.45 ACP	5/9/2010
PI9132L (ambi safety) / Stainless Steel	Pistol	5"	.45 ACP	4/26/2010
PI9132L / Stainless Steel	Pistol	5"	.45 ACP	4/26/2010
PI9134L (ambi safety) / Stainless Steel	Pistol	5"	9mm	4/26/2010
PI9134L / Stainless Steel	Pistol	5"	9mm	4/26/2010
PI9140L (ambi safety) / Stainless Steel	Pistol	5"	.45 ACP	3/27/2010
PI9140L / Stainless Steel	Pistol	5"	.45 ACP	3/27/2010
PW9108L / Steel	Pistol	5"	.45 ACP	9/22/2010
PW9151L / Stainless Steel	Pistol	5"	.45 ACP	4/30/2010
PW9609L / Steel	Pistol	5"	.45 ACP	4/21/2010
PX9103L (ambi safety) / Alloy, Carbon Steel	Pistol	5"	.45 ACP	2/8/2010
PX9103L / Alloy, Carbon Steel	Pistol	5"	.45 ACP	2/8/2010
PX9104L / Alloy, Stainless Steel	Pistol	5"	.45 ACP	5/9/2010
PX9105L / Blue Steel	Pistol	5"	.45 ACP	9/6/2010
PX9106L / Steel	Pistol	5"	.45 ACP	9/22/2010
PX9108L (Integrated Locking System)) / Carbon Steel	Pistol	5"	.45 ACP	2/8/2010
PX9109L (ambi safety) / Carbon Steel	Pistol	5"	.45 ACP	2/8/2010
PX9109L / Carbon Steel	Pistol	5"	.45 ACP	2/8/2010
PX9130L (ambi safety) / Stainless Steel	Pistol	5"	9mm	12/31/2009
PX9130L / Stainless Steel	Pistol	5"	9mm	12/31/2009
PX9151L (ambi safety) / Stainless Steel	Pistol	5"	.45 ACP	2/20/2010
PX9151L / Stainless Steel	Pistol	5"	.45 ACP	2/20/2010
PX9152L / Stainless Steel	Pistol	5"	.45 ACP	5/9/2010
PX9154L / Stainless Steel	Pistol	5"	.45 ACP	10/25/2009

PX9181L (ambi safety) / Stainless Steel	Pistol	5"	.45 ACP	12/31/2009
PX9181L / Stainless Steel	Pistol	5"	.45 ACP	12/31/2009
PX9608L (ambi safety) / Carbon Steel	Pistol	5"	.45 ACP	4/26/2010
PX9608L / Carbon Steel	Pistol	5"	.45 ACP	4/26/2010
PX9609L / Carbon Steel	Pistol	5"	.45 ACP	7/31/2010
XD9132 / Polymer, Steel	Pistol	5"	.40 S&W	11/28/2009
XD9162 / Polymer, Steel	Pistol	5"	.45 ACP	11/20/2009
XD9232 / Polymer, Steel	Pistol	5"	.40 S&W	3/26/2010
XD9262 / Polymer, Steel	Pistol	5"	.45 ACP	3/26/2010
XD9402 Tactical / Polymer, Steel	Pistol	5"	.40 S&W	9/6/2010
XD9405 / Polymer, Steel	Pistol	5"	.40 S&W	12/3/2009
XD9412 / Polymer, Steel	Pistol	5"	.40 S&W	3/26/2010
XD9525 / Polymer, Stainless Steel	Pistol	5"	.45 GAP	9/26/2010
XD9621 / Polymer, Steel	Pistol	5"	.45 ACP	3/17/2010
XD9622 / Polymer, Steel	Pistol	5"	.45 ACP	1/23/2010
XD9624 / Polymer, Steel	Pistol	5"	.45 ACP	3/26/2010
PX9105ML / Carbon Steel	Pistol	5.0"	.45 ACP	10/25/2009
XD9131 / Polymer, Steel	Pistol	5.01"	9mm	1/23/2010
XD9401 / Polymer, Steel	Pistol	5.01"	9mm	3/10/2010
XD9404 / Polymer, Steel	Pistol	5.01"	9mm	6/23/2010
XD9411 / Polymer, Steel	Pistol	5.01"	9mm	3/26/2010
XD9505 / Polymer, Carbon Steel	Pistol	5.01"	.45	3/23/2010
PX9628L (ambi safety) / Stainless Steel	Pistol	6"	.45 ACP	2/8/2010
PX9628L / Stainless Steel	Pistol	6"	.45 ACP	2/8/2010

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12 IN THE UNITED STATES DISTRICT COURT

13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14	Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
15	Plaintiffs,)	
16		)	<u>EXHIBIT J</u>
17	v.)	
18	Wilfredo Cid,)	In Support of Plaintiffs' Motion
19	Defendant.)	For Summary Judgment
	_____)	

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2003
AMERICAN RIFLEMAN
HANDGUN OF THE YEAR
XD® PISTOL

2006
AMERICAN RIFLEMAN
HANDGUN OF THE YEAR
XD® 45ACP PISTOL

2006
SHOOTING INDUSTRY ACADEMY OF EXCELLENCE
HANDGUN OF THE YEAR
XD® 45ACP PISTOL



THE STANDARDS

IN 2001, SPRINGFIELD ARMORY SET OUT TO SHOW CUSTOMERS, THE FIREARM'S INDUSTRY, AND THE REST OF THE WORLD A WHOLE NEW STANDARD IN ERGONOMIC DESIGN AND AVAILABLE FEATURES. WITH THE INTRODUCTION OF THE XD® POLYMER PISTOL, THEY DID JUST THAT ...



THE SHOOTER CAN CHECK THE STRIKER STATUS INDICATOR BY SIGHT OR TOUCH TO VERIFY THE STRIKER IS IN THE COCKED POSITION.



THE LOADED CHAMBER INDICATOR ALLOWS THE SHOOTER TO VERIFY VISUALLY OR BY TOUCH, AND WITHOUT A DOUBT, THAT THERE IS A ROUND IN THE CHAMBER.



THE ULTRA SAFETY ASSURANCE (USA) TRIGGER SYSTEM™ GUARDS AGAINST ACCIDENTAL DISCHARGE FROM DROPPING OR BUMPING BY LOCKING THE TRIGGER IN PLACE UNTIL DIRECT, REARWARD PRESSURE IS APPLIED.



THE GRIP SAFETY ON THE XD® ALLOWS IT TO FIRE ONLY WHEN THE SHOOTER HAS A FIRM GRIP ON THE PISTOL.



XD® AVAILABILITY BY SIZE

MODEL	BARREL	CALIBER	MAG CAPACITY	BLACK	OD GREEN	DARK EARTH	BI-TONE SS/BLACK	BI-TONE SS/OD GREEN	BI-TONE SS/DARK EARTH
SUB-COMPACT	3.01"	9X19MM	10 OR 13 (16 W/ MAG X-TENSION™)	XD9801	XD9811		XD9821		
SUB-COMPACT	3.01"	40S&W	9 (12 W/ MAG X-TENSION™)	XD9802	XD9812		XD9822		
COMPACT	4.05"	45ACP	10 (13 W/ MAG X-TENSION™)	XD9645	XD9646	XD9647	XD9649	XD9650	XD9651
COMPACT	5.01"	45ACP	10 (13 W/ MAG X-TENSION™)	XD9655	XD9656	XD9657			
SERVICE	4.05"	9X19MM	16	XD9101	XD9201	XD9121	XD9301		
SERVICE	4.05"	40S&W	12	XD9102	XD9202	XD9122	XD9302		
SERVICE	4.05"	357SIG	12	XD9103					
SERVICE	4.05"	45GAP	9	XD9504					
SERVICE	4.05"	45ACP	13	XD9611	XD9612	XD9161	XD9613	XD9165	XD9163
SERVICE (THUMB SAFETY)	4.05"	45ACP	13	XD9661			XD9663		
PORTED V-10	4.05"	9X19MM	16	XD9701	XD9704				
PORTED V-10	4.05"	40S&W	12	XD9702	XD9706				
TACTICAL	5.01"	9X19MM	16	XD9401	XD9404	XD9131			
TACTICAL	5.01"	40S&W	12	XD9402	XD9405	XD9132			
TACTICAL	5.01"	357SIG	12	XD9403					
TACTICAL	5.01"	45GAP	9	XD9505					
TACTICAL	5.01"	45ACP	13	XD9621	XD9622	XD9162	XD9623		
TACTICAL (THUMB SAFETY)	5.01"	45ACP	13	XD9664			XD9666		

XD(M)™ AVAILABILITY BY SIZE

4.5	4.5"	40S&W	16	XDM9202					
4.5	4.5"	40S&W	16				XDM9212		

* HIGH-CAPACITY MAGAZINES MAY NOT BE AVAILABLE IN SOME STATES.
* THIS IS NOT AN ALL-INCLUSIVE LIST OF PART NUMBERS. PLEASE ASK YOUR SPRINGFIELD ARMORY® REPRESENTATIVE ABOUT MAGAZINE CAPACITY OPTIONS IN YOUR AREA AND NIGHT SIGHT OPTIONS.

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16 IN THE UNITED STATES DISTRICT COURT

17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
19 Plaintiffs,)	
20	)	<u>EXHIBIT K</u>
21 v.)	
22	)	In Support of Plaintiffs' Motion
23 Wilfredo Cid,	)	For Summary Judgment
24 Defendant.)	
25 _____)	

26 Respectfully Submitted on Sept. 1, 2009

27 Alan Gura (Calif. Bar No. 178221)
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By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs

D.C. 249 Rev. 9/78

METROPOLITAN POLICE DEPARTMENT WASHINGTON, D.C.

APPLICATION FOR FIREARMS REGISTRATION CERTIFICATE

\$10.00 FEE REQUIRED WITH THIS APPLICATION PRINT ALL INFORMATION

This application for a Firearms Registration Certificate must be hand-carried to the Metropolitan Police Department, Firearms Registration Section, 300 Indiana Avenue, N.W. Washington, D.C. 20001 by the purchaser. The purchaser MUST 1) be fingerprinted by the Metropolitan Police Department, however, if the purchaser has been fingerprinted by this department within five (5) years prior to submitting this application he need not be fingerprinted again if he offers other satisfactory proof of identity 2) submit with this application two full face photographs of himself, 1 1/4 x 1 7/8 inches taken within 30 days of filing this application 3) have vision better than or equal to that required to obtain a valid driver's license in the District of Columbia (a current driver's license will be prima facie evidence that the applicant's vision is sufficient) 4) demonstrate satisfactory knowledge of the laws in the District of Columbia pertaining to firearms and the safe and responsible use of same.

No transfer of a firearm between the seller and the purchaser may be made until a reply from the Chief of Police has been received by both parties involved.

SELLER'S NAME

STREET ADDRESS

CITY

APT. NO.

ZIP CODE

HELLER, Dick A.
PURCHASER/OWNER NAME
263 KENTUCKY AVE SE.
STREET ADDRESS
WASH DC 20003
CITY ZIP CODE

DESCRIPTION OF FIREARM

☐ NEW☒ USED

MAKE OF WEAPON

HIGH STANDARD

MODEL

BUNTLINE

SERIAL NUMBER

M0499-17

MFG. I.D. NUMBER

NO. OF SHOTS

9

CALIBER

.22

NO. OF BARREL/LENGTH

1

9 1/2

FINISH

BLACK

TYPE OF ACTION

Single

IDENTIFYING MARKS

DESCRIPTION OF PURCHASER/OWNER

DATE OF BIRTH

PLACE OF BIRTH

San Diego, CA

OPERATOR'S PERMIT NUMBER

RACE

SEX

M

OCCUPATION

Armed Security Guard

BUSINESS NAME

Blackhawk Sec.

BUSINESS ADDRESS

5210 AUTH RD SUITLAND MD 20746

HOME PHONE NUMBER

BUSINESS PHONE NUMBER

PURCHASER/OWNER'S ADDRESSES FOR THE PAST FIVE (5) YEARS WITH DATES OF RESIDENCE

263 KENTUCKY AVE SE. DC 20003

PURCHASER/OWNER'S OCCUPATION, BUSINESS NAME AND ADDRESSES FOR THE PAST FIVE (5) YEARS WITH DATES OF EMPLOYMENT

GSA Security, Black Hawk, 5210 AUTH RD. SUITLAND, MD, Dec 01-JY 02 - DC SPO, STING SEC,
635 MASS. AVE. NW, OCT 01 - DEC 01 - BURNS SEC, 701 S. 12TH, ARL VA, NOV 99 - SEP 00 - VANCE SEC
1000 Wilson Bl. ARL VA, JY 98 - NOV 99, HUDCO. 415 7th SW DC, Teller, MAY 97 - OCT 98.

HAVE YOU PREVIOUSLY BEEN DENIED IN THE DISTRICT OF COLUMBIA A PERMIT TO PURCHASE A RIFLE OR SHOTGUN LICENSE OR REGISTRATION CERTIFICATE? ☒ NO ☐ YES IF YES, EXPLAIN WHY AND BY WHOM

HAVE YOU EVER BEEN INVOLVED IN ANY MISHAP INVOLVING A PISTOL, RIFLE OR SHOTGUN? ☒ NO ☐ YES IF YES, EXPLAIN CIRCUMSTANCES, INCLUDING DATES, PLACES, AND NAMES OF ANY PERSONS INJURED OR KILLED.

GIVE A BRIEF STATEMENT OF YOUR INTENDED USE OF THE FIREARM AND WHERE THE FIREARM WILL BE KEPT

PERSONAL PROTECTION

I HEREBY CERTIFY THAT I AM NOT FORBIDDEN BY EXISTING LAWS AND REGULATIONS FROM PURCHASING OR POSSESSING A FIREARM AND THAT THE INFORMATION GIVEN IN MY APPLICATION IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND DOES NOT KNOWINGLY CONTAIN ANY MATERIAL MISREPRESENTATION OF FACT

SIGNATURE OF SELLER

DATE

SIGNATURE OF PURCHASER/OWNER

DATE

The Seller and the Purchaser MUST SIGN IN THE PRESENCE OF EACH OTHER.

NOTICE

This application is VALID as a FIREARMS REGISTRATION CERTIFICATE only when stamped APPROVED by the Chief of Police and a REGISTRATION NUMBER is affixed thereto.

THIS IS NOT A LICENSE TO CARRY A CONCEALED FIREARM.

JUL 19 '02 11:00

PAGE. 005

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
Plaintiffs,)	
	)	<u>EXHIBIT L</u>
v.)	
	)	In Support of Plaintiffs' Motion
Wilfredo Cid,)	For Summary Judgment
Defendant.)	
_____)	

Respectfully Submitted on Sept. 1, 2009

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By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
DICK ANTHONY HELLER, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No.08-01289 (RMU)
)	
DISTRICT OF COLUMBIA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	
TRACEY AMBEAU HANSON, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No. 09-00454 (RMU)
)	
DISTRICT OF COLUMBIA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

NOTICE OF EMERGENCY RULEMAKING

The defendants respectfully note that, today, June 17, 2009, the Metropolitan Police Department (“MPD”) adopted emergency rules establishing the District Roster of Handguns Determined Not to be Unsafe (“District Roster”). It is anticipated that the regulations will be published in this Friday’s edition of the D.C. Register, 56 D.C. Reg. ____ (June 19, 2009).¹ A copy of the emergency regulations are attached hereto.

The emergency rules were adopted, *inter alia*, based on

¹ Under District law, emergency regulations are effective immediately, and will expire in 120 days or the publication of a Final Rulemaking, whichever occurs first. *See* D.C. Official Code § 2-505(c).

1) recognition that California permits sale of firearms that have superficial differences to those firearms on its roster; 2) recognition that some handguns that have been placed on the California roster as safe handguns have been removed for administrative reasons not related to the handguns' safety; and 3) review of similar safe gun rosters maintained by Maryland and Massachusetts.

Id.

The emergency rulemaking "is necessary to . . . immediately clarify those firearms that should be added to the [District Roster] to continue the District's compliance with [*Heller v. District of Columbia*, ___ U.S. ___, 128 S. Ct. 2783 (Jun. 26, 2008)] concerning a person's constitutional right to legally possess a firearm in a person's home for the purpose of self-defense." *Id.*

The regulations include within the District Roster handguns listed on similar rosters from California, Massachusetts, and Maryland, "unless such pistol is an unregistrable firearm" pursuant to D.C. Official Code § 7-2502.02. *Id.*, 24 DCMR § 2323.2.

Moreover,

A pistol shall be deemed to be included on the District Roster of Handguns Certified for Sale if another pistol made by the same manufacturer is already listed and the unlisted pistol differs from the listed firearm only in one or more of the following features:

- (a) Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving.
- (b) The material from which the grips are made.
- (c) The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the pistol.
- (d) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the pistol.

Id., § 2323.3.

Any denial of an application relying on § 2323.3 may be appealed in the same manner as any other denial of an application for registration may be appealed. 24 DCMR §§ 2323.4, 2323.5.

Also today, the MPD sent letters to persons who previously had had their firearms-registration applications denied, inviting them to reapply in light of the new provisions. To the extent the instant plaintiffs may not have yet received such letters, they are similarly invited to reapply.

The District believes that these emergency regulations will render moot a number of plaintiffs' claims. Moreover, while the District worked expeditiously to correct perceived flaws in its firearms-regulation regime, the timing of that process was dependent on a number of factors outside the defendants' control, including potential action by Congress. In light of these developments, the District does not object to an alteration of the instant briefing schedule to allow plaintiffs to analyze and incorporate these new regulations.

DATE: June 17, 2009

Respectfully submitted,

PETER J. NICKLES
Attorney General for the District of Columbia

GEORGE C. VALENTINE
Deputy Attorney General, Civil Litigation Division

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
Plaintiffs,)	
	)	<u>EXHIBIT M</u>
v.)	
	)	In Support of Plaintiffs' Motion
Wilfredo Cid,)	For Summary Judgment
Defendant.)	
_____)	

Respectfully Submitted on Sept. 1, 2009

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By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs

CHIEF, METROPOLITAN POLICE DEPARTMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief of the Metropolitan Police Department, pursuant to subsections 504(e)(4), 504(f), and section 712 of the Firearms Regulations Control Act of 1975 (Act), effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365), hereby gives notice of the adoption on an emergency basis of an amendment to add sections 2323 and 2324 to Chapter 23 (Guns and Other Weapons) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR). The rulemaking: 1) revises the roster of handguns determined not to be unsafe prescribed by subsection 504(a) of the Act, and establishes which single action revolvers are permissible pursuant to subsection 504(e) of the Act, by adding suitable firearms, including single action revolvers, to the newly created District Roster of Handguns Determined Not to be Unsafe; and 2) interprets the term “assault weapons”, pursuant to § 101(3A) of the Act. The creation of the District Roster and the additions to it were made based upon: 1) recognition that California permits sale of firearms that have superficial differences to those firearms on its roster; 2) recognition that some handguns that have been placed on the California roster as safe handguns have been removed for administrative reasons not related to the handguns’ safety; and 3) review of similar safe gun rosters maintained by Maryland and Massachusetts.

Emergency rulemaking action is necessary to interpret and implement the provisions of sections 101(3A) and 504 of the Act and to add suitable weapons to the District’s Roster of Handguns Determined Not to be Unsafe. Emergency rulemaking will immediately clarify those firearms that should be added to the list to continue the District’s compliance with the Supreme Court’s decision and mandate in *District of Columbia v. Heller* concerning a person’s constitutional right to legally possess a firearm in a person’s home for the purpose of self-defense.

This emergency rulemaking was adopted on June 17, 2009, and became effective immediately. The emergency rulemaking will expire after one hundred and twenty (120) days, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Chief also gives notice of her intent to take final rulemaking action to adopt the proposed rulemaking in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Chapter 23 of Title 24 DCMR is amended to add section 2323 and 2324 to read as follows:

**2323 DISTRICT ROSTER OF HANDGUNS DETERMINED NOT TO BE
UNSAFE**

- 2323.1 The Metropolitan Police Department shall establish the District Roster of Handguns Determined Not to be Unsafe (District Roster). Pursuant to subsections 504(e)(4) and 504(f) of the Firearms Regulations Control Act of 1975 (Act), effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365), the District Roster shall constitute the roster of pistols that may be manufactured, sold, given, loaned, exposed for sale, transferred, or imported into the District of Columbia notwithstanding subsection 504(a) of the Act, and that may be owned or possessed within the District of Columbia notwithstanding subsection 504(b) of the Act.
- 2323.2 The District Roster shall include:
- (a) Any pistol that is on the California Roster of Handguns Certified for Sale (also known as the California Roster of Handguns Determined Not to be Unsafe) (California Roster), pursuant to California Penal Code § 12131, as of January 1, 2009, unless such pistol is an unregisterable firearm pursuant to section 202 of the Firearms Regulations Control Act of 1975, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365);
 - (b) Any pistol that was listed on the California Roster prior to January 1, 2009, which was, or is subsequently, removed from the California Roster for any reason not related to the pistol's safety;
 - (c) Any pistol listed on the January 1, 2009, Maryland Department of State Police Official Handgun Roster, as of January 1, 2009, published as Attachment A to this section, unless such pistol is an unregisterable firearm pursuant to section 202 of the Firearms Regulations Control Act of 1975, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365); and
 - (d) Any pistol listed on the Commonwealth of Massachusetts Executive Office of Public Safety and Security Approved Firearms Roster, as of April 2, 2009, published as Attachment B to this section, unless such pistol is an unregisterable firearm pursuant to section 202 of the Firearms Regulations Control Act of 1975, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365).
- 2323.3 A pistol shall be deemed to be included on the District Roster if another pistol made by the same manufacturer is already listed and the unlisted pistol differs from the listed firearm only in one or more of the following features:
- (a) Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving.

- (b) The material from which the grips are made.
- (c) The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the pistol.
- (d) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the pistol.

2323.4 Any applicant seeking to have a pistol registered under subsection 2323.3 shall provide to the Chief all of the following:

- (a) The model designation of the listed firearm.
- (b) The model designation of each firearm that the applicant seeks to have registered under this section.
- (c) A statement, under oath, that each unlisted pistol for which registration is sought differs from the listed pistol only in one or more of the ways identified in subdivision (a) and is in all other respects identical to the listed pistol.

2323.5 Any decision refusing registration pursuant to this section may be appealed to the Chief pursuant to section 210 of the Firearms Regulations Control Act of 1975, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365), and thereafter to the Office of Adjudication and Hearings pursuant to subsection (b-2) of section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365). In any such appeal, the applicant shall bear the burden of demonstrating that the Chief's decision should be reversed and registration permitted.

2323.6 The make and model of any pistol registered pursuant to §§ 2323.3 through 2323.5 shall be recorded by the Metropolitan Police Department in such a manner to allow the Chief to waive the requirements of § 2323.4 in the event an additional applicant seeks registration for an identical pistol.

2324 INTERPRETATION OF ASSAULT WEAPONS DEFINITION

- 2324.1 Section 101 paragraph 3A of the Firearms Regulations Control Act of 1975 (Act), effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365.), defined the term “assault weapon”, and section 202(a)(6) of the Act declared that “assault weapons” may not be registered in the District.
- 2324.2 In those instances where the definition of “assault weapon” refers to a firearms manufacturer or description without including a specific model reference, the term “assault weapon” shall be interpreted to include only those firearms produced by such manufacturer, or possessing such description, that share characteristics similar to other enumerated firearms in section 101 paragraph 3A(A)(i)(I) through (III) of the Act, or possess any of the enumerated characteristics listed in section 101 paragraph 3A(A)(i)(IV) through (VIII) and 3A(A)(ii) through (iii) of the Act.
- 2324.3 A firearm that is produced by a manufacturer or possesses a description that is included in the definition of “assault weapon” referred to in § 2324.1, but which does not share characteristics similar to the enumerated firearms, or the enumerated characteristics described in § 2324.2, may be registered, provided that the firearm is not otherwise prohibited from registration under District or Federal law or regulation.

All persons interested in commenting on the subject matter of this proposed rulemaking action may file comments, in writing, with: Terrence D. Ryan, General Counsel, Metropolitan Police Department, Suite 4125, 300 Indiana Avenue, N.W., Washington, D.C. 20001. Comments must be received no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of this proposal may be obtained, at cost, by writing to the above address.

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17 IN THE UNITED STATES DISTRICT COURT
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19 FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,)	Case No. 2:09-CV-01185-FCD-KJM
Plaintiffs,)	
)	<u>EXHIBIT N</u>
v.)	
)	In Support of Plaintiffs' Motion
Wilfredo Cid,)	For Summary Judgment
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20 Respectfully Submitted on Sept. 1, 2009

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By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DICK ANTHONY HELLER, *et al.*

Plaintiffs,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No.08-01289 (RMU)

TRACEY AMBEAU HANSON, *et al.*

Plaintiffs,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 09-00454 (RMU)

NOTICE OF EMERGENCY RULEMAKING

The defendants respectfully note that, today, June 25, 2009, the Metropolitan Police Department (“MPD”) adopted emergency rules to “exemp[t] certain single action pistols manufactured before 1985 from the application of section 504 of the Act, and establishes that certain other types of pistols manufactured before 1985 are deemed included on the newly created District Roster of Handguns Determined Not to be Unsafe.”

“The rulemaking will make the District’s safe gun laws identical to the State of Maryland as to Pre-1985 pistols.”

It is anticipated that the regulations will be published in next Friday's edition of the D.C. Register, 56 D.C. Reg. ____ (July 3, 2009).¹ A copy of the emergency regulations is attached hereto.

The District believes that these emergency regulations will render moot the claims of one of the instant plaintiffs. The District continues to discuss this rulemaking with opposing counsel, and the parties plan to file timely their joint status report proposing a revised briefing schedule tomorrow.

DATE: June 25, 2009

Respectfully submitted,

PETER J. NICKLES
Attorney General for the District of Columbia

GEORGE C. VALENTINE
Deputy Attorney General, Civil Litigation Division

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¹ Under District law, emergency regulations are effective immediately, and will expire in 120 days or the publication of a Final Rulemaking, whichever occurs first. *See* D.C. Official Code § 2-505(c).

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By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs

CHIEF, METROPOLITAN POLICE DEPARTMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief of the Metropolitan Police Department, pursuant to subsections 504(e)(4), 504(f), and section 712 of the Firearms Regulations Control Act of 1975 (Act), effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365), hereby gives notice of the adoption on an emergency basis of an amendment to add section 2325 to Chapter 23 (Guns and Other Weapons) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR). The rulemaking exempts certain single action pistols manufactured before 1985 from the application of section 504 of the Act, and establishes that certain other types of pistols manufactured before 1985 are deemed included on the newly created District Roster of Handguns Determined Not to be Unsafe. The rulemaking is informed by the reasonable laws and regulations of the State of Maryland. The rulemaking will make the District's safe gun laws identical to the State of Maryland as to Pre-1985 pistols.

Emergency rulemaking action is necessary to interpret and implement the provisions of 504 of the Act and to add suitable weapons to the District's Roster of Handguns Determined Not to be Unsafe and to exempt suitable weapons from the application of the roster. Emergency rulemaking will immediately clarify those firearms that are eligible for sale, transfer, ownership, or possession so as to continue the District's compliance with the Supreme Court's decision and mandate in *District of Columbia v. Heller* concerning a person's constitutional right to legally possess a firearm in a person's home for the purpose of self-defense.

This emergency rulemaking was adopted on June 25, 2009, and became effective immediately. The emergency rulemaking will expire after one hundred and twenty (120) days, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Chief also gives notice of her intent to take final rulemaking action to adopt the proposed rulemaking in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Chapter 23 of Title 24 DCMR is amended to add section 2325 to read as follows:

2325 PRE-1985 PISTOLS

- 2325.1 Any pistol with a single action firing mechanism manufactured prior to 1985 shall be exempt from the application of section 504 of the Firearms Regulations Control Act of 1975, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365).
- 2325.2 Any pistol manufactured prior to 1985, not subject to § 2325.1, shall be deemed included on the District Roster established pursuant to § 2323.

All persons interested in commenting on the subject matter of this proposed rulemaking action may file comments, in writing, with: Terrence D. Ryan, General Counsel, Metropolitan Police Department, Suite 4125, 300 Indiana Avenue, N.W., Washington, D.C. 20001. Comments must be received no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of this proposal may be obtained, at cost, by writing to the above address.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
)	
Plaintiffs,	)	PLAINTIFFS' STATEMENT OF
vs.	)	UNDISPUTED FACTS (SUF)
	)	IN SUPPORT OF PLAINTIFFS'
Wilfredo Cid,	)	MOTION FOR SUMMARY
	)	JUDGMENT
Defendant.	)	Fed. R. Civ. Proc. 56
	)	Local Rule 56-260

As required by Local Rule 56-260, Plaintiffs contend there is no genuine issue about the following material facts:

<u>Undisputed Fact</u>	<u>Support for Undisputed Fact</u>
1. California Law provides that "any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year."	California Penal Code § 12125

Undisputed Fact**Support for Undisputed Fact**

2.	California law presumes that <i>all</i> handguns are “unsafe” and therefore, generally barred from importation and sale, unless those handguns have been placed on the state’s special roster of handguns “determined not to be unsafe.”	California Penal Code §§ 12126 <i>et seq.</i> , 12131 <i>et seq.</i>
3.	Since 2007, a center-fire ¹ semi-automatic ² handgun cannot make the roster if it does not have both a chamber load indicator and, if it has a detachable magazine, a magazine disconnect mechanism.	California Penal Code §§ 12126(b)(5), 12130(d)(2).
4.	Since 2006, a rimfire ³ semi-automatic handgun must have a magazine disconnect mechanism if it has a detachable magazine.	California Penal Code §§ 12126(b)(6), 12130(d)(3).
5.	Handguns rostered prior to the effective dates of these requirements can remain rostered despite lacking these features.	California Penal Code §§ 12126(b)(5), 12126(b)(6).

¹ Most handguns use center-fire ammunition, which fires a bullet when the center of the cartridge is struck by the gun’s firing pin, igniting the primer.

² A semi-automatic handgun is handgun that fires one bullet each time the trigger is pulled, with the firing of each bullet causing the next round to be loaded into the chamber from a magazine. Most handguns in the United States are semi-automatic. Almost all the rest are revolvers, which hold several rounds in a rotating cylinder and also fire one bullet with each pull of the trigger. Nothing in the challenged laws, or this litigation, relates to fully-automatic weapons (machine guns), which are the subject of other specific legislative enactments.

³ Rimfire ammunition, which is fired when struck on its rim by the gun’s firing pin, is primarily used in the smallest calibers. For technical reasons, chamber load indicators are not feasible for rimfire ammunition.

Undisputed Fact**Support for Undisputed Fact**

6.	A magazine disconnect mechanism is “a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.”	California Penal Code §12126(d).
7.	A chamber load indicator (“CLI”) is “a device that plainly indicates that a cartridge is in the firing chamber.”	California Penal Code § 12126(c).
8.	Not all CLIs satisfy the California requirement. Under California law: [A] device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user’s manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber.	California Penal Code § 12126(c).
9.	Defendant tests the sufficiency of CLIs by asking his employees if they understand the CLI – and when the regulatory authority’s employees allegedly fail to understand the CLI, regardless of what the CLI is “designed and intended to indicate to a reasonable adult,” the CLI is ruled inadequate.	<u>Exhibit A</u> – Consisting of: February 8, 2007 letter from California Department of Justice to Mr. Kevin B. Reid, Sr., of Sturm, Ruger & Co., Inc. February 9, 2007 letter from California Department of Justice to Mrs. Debra Else of Springfield Armory, Inc. October 3, 2007 from California Department of Justice to Mrs. Debra Else of Springfield Armory, Inc.

Undisputed Fact**Support for Undisputed Fact**

10.	Given the rarity of CLIs and magazine disconnect devices, handguns lacking these features are in common use today, comprising the overwhelming majority of handguns.	<p><u>Exhibit B</u> – Consisting of:</p> <p>Jon Vernick, et al., “<i>I Didn’t Know the Gun Was Loaded</i>’: An Explanation of Two Safety Devices That Can Reduce the Risk of Unintentional Firearm Injuries.” 20 Journal of Public Health Policy No. 4 at 433 (1999)</p> <p><u>Exhibit C</u> – Consisting of:</p> <p>Legislative History of “Unsafe Handgun Bill” Author Bill File [See: pp. 6, 9, 10]</p> <p><u>Exhibit D</u> – Consisting of:</p> <p>Legislative History of “Unsafe Handgun Bill” Senate Floor Analysis [See: p. 7]</p>
11.	California legislators specifically considered that CLIs and magazine disconnects are available on only perhaps 11% and 14% of handguns, respectively, as proposed by the author of the bill mandating these features.	<p><u>Exhibit C</u> – Consisting of:</p> <p>Legislative History of “Unsafe Handgun Bill” Author Bill File [See: pp. 6, 9, 10]</p> <p><u>Exhibit D</u> – Consisting of:</p> <p>Legislative History of “Unsafe Handgun Bill” Senate Floor Analysis [See: p. 7]</p>
12.	Because CLIs and magazine disconnect mechanisms were viewed as beneficial, the California Legislature hoped that mandating these features would alter the firearms market.	<p><u>Exhibit C</u> – Consisting of:</p> <p>Legislative History of “Unsafe Handgun Bill” Author Bill File [See: pp. 6, 9, 10]</p>
13.	Since both the magazine disconnect and CLI requirements came into effect on January 1, 2007, only <i>one</i> new model of semi-automatic handgun has been approved for placement on the California handgun roster.	<p><u>Exhibit E</u> – Consisting of:</p> <p>August 10, 2009 article containing admission by California Department of Justice Spokesperson (Gasparac).</p>

Undisputed Fact**Support for Undisputed Fact**

14.	A handgun safety mechanism may fail or be misused by the user of a handgun.	<u>Exhibit F</u> – Consisting of: Study Guide for Handgun Safety Certificate. Published by the California Department of Justice. (p. 25) Available at: http://www.ag.ca.gov/firearms/forms/pdf/hscsg.pdf
15.	A chamber load indicator is a mechanical device that may fail or be misinterpreted by the user of a handgun.	<u>Exhibit F</u> – Consisting of: Study Guide for Handgun Safety Certificate. Published by the California Department of Justice. (p. 25) Available at: http://www.ag.ca.gov/firearms/forms/pdf/hscsg.pdf
16.	A magazine disconnect mechanism is a mechanical device that may fail.	<u>Exhibit F</u> – Consisting of: Study Guide for Handgun Safety Certificate. Published by the California Department of Justice. (p. 25) Available at: http://www.ag.ca.gov/firearms/forms/pdf/hscsg.pdf
17.	As the state advises handgun purchasers, “Any machine can malfunction. A firearm is no different.”	<u>Exhibit F</u> – Consisting of: Study Guide for Handgun Safety Certificate. Published by the California Department of Justice. (p. 25) Available at: http://www.ag.ca.gov/firearms/forms/pdf/hscsg.pdf
18.	To acquire any handgun in California, an individual must pass a written handgun safety test.	California Penal Code § 12800 – 12808.

Undisputed Fact**Support for Undisputed Fact**

<p>19. The test requires knowledge of the basic rules of handgun safety, the first of which is: “Treat all guns as if they are loaded.”</p>	<p><u>Exhibit F</u> – Consisting of:</p> <p>Study Guide for Handgun Safety Certificate. Published by the California Department of Justice. (p. 9)</p> <p>Available at: http://www.ag.ca.gov/firearms/forms/pdf/hscsg.pdf</p>
<p>20. The state’s study guide for the handgun safety test further provides:</p> <p>Always assume that a gun is loaded even if you think it is unloaded.</p> <p>Every time a gun is handled for any reason, check to see that it is unloaded [by following specific instructions for unloading the gun].</p> <p>If you are unable to check a gun to see if it is unloaded, leave it alone and seek help from someone more knowledgeable about guns.</p>	<p><u>Exhibit F</u> – Consisting of:</p> <p>Study Guide for Handgun Safety Certificate. Published by the California Department of Justice. (p. 9)</p> <p>Available at: http://www.ag.ca.gov/firearms/forms/pdf/hscsg.pdf</p>
<p>21. The state’s specific instructions for unloading a semi-automatic handgun contained in its gun safety study guide provides that a mechanical safety</p> <p>[It] is not foolproof so do not rely on the safety to prevent an accidental discharge.</p> <p>A safety should only be used as an additional safety measure.</p> <p>Never pull the trigger on any firearm with the safety in the “safe” position because thereafter the firearm could fire at any time without the trigger ever being touched.</p>	<p><u>Exhibit F</u> – Consisting of:</p> <p>Study Guide for Handgun Safety Certificate. Published by the California Department of Justice. (p. 20)</p> <p>Available at: http://www.ag.ca.gov/firearms/forms/pdf/hscsg.pdf</p>

Undisputed Fact**Support for Undisputed Fact**

<p>22. Although the state's gun safety study guide does not discuss chamber load indicators or magazine disconnect devices, it teaches, in order to pass the mandatory safety test, rules that would have gun owners ignore such devices. The study guide specifically instructs that in order to verify a semi-automatic handgun is unloaded, one must remove the magazine and visually inspect the chamber to verify that it is empty.</p>	<p><u>Exhibit F</u> – Consisting of:</p> <p>Study Guide for Handgun Safety Certificate. Published by the California Department of Justice. (p. 45 – 47)</p> <p>Available at: http://www.ag.ca.gov/firearms/forms/pdf/hscsg.pdf</p>
<p>23. In a large red box marked "CAUTION," the state's gun safety study guide provides:</p> <p>You should NOT assume a semiautomatic pistol is unloaded just because the magazine is removed from the handgun.</p> <p>Do not allow the slide to go forward UNLESS you have:</p> <ol style="list-style-type: none"> 1. Checked again to be sure the chamber is empty, and 2. Checked again to be sure the magazine has been REMOVED. <p>If you pull the slide back ejecting the cartridge, check the chamber, let the slide go forward, and THEN remove the magazine, you have a loaded, dangerous firearm (a cartridge is in the chamber) even though you have removed the magazine. It is common and sometimes fatal to make this error.</p> <p>ALWAYS REMOVE THE MAGAZINE FIRST!</p>	<p><u>Exhibit F</u> – Consisting of:</p> <p>Study Guide for Handgun Safety Certificate. Published by the California Department of Justice. (p. 22)</p> <p>Available at: http://www.ag.ca.gov/firearms/forms/pdf/hscsg.pdf</p>

Undisputed Fact**Support for Undisputed Fact**

24.	In order to purchase a handgun, the buyer must demonstrate that he or she knows how to safely operate the handgun, including following the instructions set forth in ¶ 23 above.	California Penal Code § 12071(b)(8) <i>et seq.</i>
25.	California law requires that all newly purchased firearms either be accompanied by an approved gun lock or the purchaser's affidavit that she owns an adequate lock box or gun safe.	California Penal Code § 12088.1 <i>et seq.</i>
26.	Listings on the California handgun roster are valid for one year, and must be renewed annually, including payment of an annual fee, prior to expiration to remain valid.	11 Calif. Code of Regulations § 4072(b).
27.	Defendant charges firearms manufacturers, importers, and dealers annual fees, ostensibly to operate the handgun roster program. Any handgun whose manufacturer fails to pay the required fees may be excluded from the roster for that reason alone.	California Penal Code §§ 12131(a)(1), 12131(a)(2).
28.	The initial and renewal annual listing fees for inclusion on the handgun roster are \$200.	11 Calif. Code of Regulations § 4072(b).
29.	Other than the California DOJ, only the manufacturer/importer of a handgun model is authorized to submit that handgun model to a DOJ-Certified Laboratory for testing.	11 Calif. Code of Regulations § 4059(c).

Undisputed Fact**Support for Undisputed Fact**

30.	A handgun can remain on the roster if its manufacturer/importer goes out of business or discontinues the model, provided that the model is not being offered for sale to licensed dealers, and “a fully licensed wholesaler, distributor, or dealer submits a written request to continue the listing and agrees to pay the annual maintenance fee.”	11 Calif. Code of Regulations § 4070(d).
31.	So long as a handgun is sold to dealers outside of California, the handgun’s manufacturer can cause the sale of that handgun to be forbidden inside California by failing to submit the gun for testing in that state or refusing to pay the annual \$200 fee.	California Penal Code § 12131; 11 Calif. Code of Regulations §§ 4059, 4070, 4072
32.	A manufacturer/importer or other responsible party may submit a written request to list a handgun model that was voluntarily discontinued or was removed for lack of payment of the annual maintenance fee. The request may be approved, and the handgun restored to the “safe gun” roster, provided the fee is paid.	11 Calif. Code of Regulations §4070(e).

Undisputed Fact**Support for Undisputed Fact**

<p>33. The following firearms and transactions are exempted from the handgun rostering requirement:</p> <p>(1) Firearms defined as curios or relics under federal law;</p> <p>(2) The purchase of any firearm by any law enforcement officer – State or Federal;</p> <p>(3) Pistols that are designed expressly for use in Olympic target shooting events, as defined by rule;</p> <p>(4) Certain single-action revolvers, as defined by rule; and</p> <p>(5) The sale, loan, or transfer of any firearm that is to be used solely as a prop during the course of a motion picture, television, or video production by authorized people related to the production.</p>	<p>California Penal Code §§ 12125, 12132, 12133</p>
<p>34. It is not illegal in California to import an unrostered handgun when moving into the state without the intention of selling it, nor is it illegal in California to possess or use an unrostered handgun that is otherwise lawful to possess or use.</p>	<p>California Penal Code §§ 12125(a).</p>
<p>35. California also exempts private party transfers, intra-familial transfers including gifts and bequests, various loans, and various single-action revolvers.⁴</p>	<p>California Penal Code §§ 12132, 12133</p>

⁴ “Single” or “double” action refers to the gun’s trigger function, one “action” being the effect of drawing back the hammer, another “action” being the effect of dropping the hammer. Guns can be designed to operate in single-action, double-action, or effectively both (if a gun has a hammer that might be retracted either manually or by pulling the trigger).

<u>Undisputed Fact</u>	<u>Support for Undisputed Fact</u>
36. Plaintiff Ivan Peña has sought to purchase a Para USA (Para Ordnance) P1345SR / Stainless Steel .45 ACP 4.25", and has identified a willing seller who stands ready to deliver said handgun to him.	Declaration of Ivan Peña ¶ 4.
37. Peña's Para USA P1345SR was listed on California's Handgun Roster until December 31, 2005, when it was discontinued and its listing not renewed.	<u>Exhibit G</u> – Consisting of: Department of Justice Bureau of Firearms De-Certified Handgun Models (p.7) Available at: http://ag.ca.gov/firearms/forms/pdf/removed.pdf
38. Peña cannot lawfully purchase and take possession of the handgun as that handgun is not on the California Handgun Roster.	<u>Exhibit G</u> – Consisting of: Department of Justice Bureau of Firearms De-Certified Handgun Models (p.7) Available at: http://ag.ca.gov/firearms/forms/pdf/removed.pdf
39. Peña fears arrest, prosecution, fine and incarceration if he completes this handgun purchase.	Declaration of Ivan Peña ¶ 7.
40. Plaintiff Roy Vargas has sought to purchase a Glock 21 SF with an ambidextrous magazine release, and has identified a willing seller who stands ready to deliver said handgun to Plaintiff.	Declaration of Roy Vargas ¶ 4.
41. Vargas cannot lawfully purchase and take possession of the handgun as that handgun is not listed on the California Handgun Roster.	Declaration of Roy Vargas ¶ 5.
42. Vargas fears arrest, prosecution, fine and incarceration if he completes this handgun purchase.	Declaration of Roy Vargas ¶ 6.

<u>Undisputed Fact</u>	<u>Support for Undisputed Fact</u>
43. Vargas was born without an arm below the right elbow.	Declaration of Roy Vargas ¶ 7.
44. The Glock 21 SF-STD with a standard magazine release is listed on the California Handgun Roster.	Declaration of Roy Vargas ¶ 8.
45. The Glock-21 SF with ambidextrous magazine release is superior for left-handed shooters such as Mr. Vargas, as opposed to the approved version of the Glock 21.	Declaration of Roy Vargas ¶ 9.
46. Glock's efforts to add the Glock 21 SF with ambidextrous magazine release to the California Roster have failed.	<u>Exhibit H</u> – Consisting of: January 12, 2007 Letter from California Department of Justice to Mr. Carlos Guevara, General Counsel of Glock, Inc.
47. Defendant permits Glock customers to have their Glock 21 SF-STD handguns fitted with an ambidextrous release at the Glock factory.	<u>Exhibit H</u> – Consisting of: January 12, 2007 Letter from California Department of Justice to Mr. Carlos Guevara, General Counsel of Glock, Inc.
48. Plaintiff Doña Croston has sought to purchase a Springfield Armory XD-45 Tactical 5" Bi-Tone stainless steel/black handgun in .45 ACP, model number XD9623, and has identified a willing seller who stands ready to deliver said handgun to her.	Declaration of Doña Croston ¶ 4.
49. Croston cannot lawfully purchase and take possession of the handgun as that handgun is not on the California Handgun Roster.	Declaration of Doña Croston ¶ 5.
50. Croston fears arrest, prosecution, fine and incarceration if she completes this handgun purchase.	Declaration of Doña Croston ¶ 6.

Undisputed Fact**Support for Undisputed Fact**

51.	Other models of this identical gun – but in different colors – are listed on the handgun roster and are thus available to Ms. Croston: the XD-45 Tactical 5" .45 ACP in black (model XD9621), the XD-45 Tactical 5" .45 ACP in OD Green (model XD9622), and the XD-45 Tactical 5" .45 ACP in Dark Earth (XD9162).	<u>Exhibit I</u> – Consisting of: California Department of Justice Roster of Approved Guns made by Springfield Armory. Available at: http://certguns.doj.ca.gov/safeguns_resp.asp
52.	The particular Bi-Tone XD-45 that Ms. Croston would possess was not released until after California required newly-listed guns to have a chamber load indicator and magazine disconnect device.	<u>Exhibit A</u> – Consisting of: February 9, 2007 letter from California Department of Justice to Mrs. Debra Else of Springfield Armory, Inc. October 3, 2007 from California Department of Justice to Mrs. Debra Else of Springfield Armory, Inc.
53.	Springfield Armory could not get the XD-45 in .45 ACP and Bi-Tone finish registered given the new listing requirements.	<u>Exhibit A</u> – Consisting of: February 9, 2007 letter from California Department of Justice to Mrs. Debra Else of Springfield Armory, Inc. October 3, 2007 from California Department of Justice to Mrs. Debra Else of Springfield Armory, Inc.
54.	The XD-45 Bi-Tone in .45 has a loaded chamber indicator, but the California Department of Justice has decided it does not qualify under Penal Code § 12126(c).	<u>Exhibit J</u> – Consisting of: Technical Data from Springfield Armory
55.	The XD-45 also lacks a magazine disconnect device.	<u>Exhibit J</u> – Consisting of: Technical Data from Springfield Armory

Undisputed Fact**Support for Undisputed Fact**

56.	The handgun at issue in <i>District of Columbia v. Heller</i> , 128 S. Ct. 2783 (2008), was a High Standard 9-shot revolver in .22 with a 9.5" Buntline-style ⁵ barrel.	<u>Exhibit K</u> – Consisting of: Redacted copy of Application for Firearm Registration Certificate for Dick A. Heller. This document was Exh A. On Motion for Summary Judgment in Civil Case 03-0213-EGS [4-10]; JA 32 in D.C. Cir. 04-7041; App. to Pet. For Cert. U.S. Supreme Ct. 07-290 at 119a.
57.	Plaintiff Brett Thomas has sought to purchase an identical High Standard 9-shot revolver in .22 with a 9.5" Butline-style barrel, and has identified a willing seller who stands ready to deliver said handgun to Thomas.	Declaration of Brett Thomas ¶ 5.
58.	Thomas cannot lawfully purchase and take possession of the handgun as that handgun is not on the California Handgun Roster.	Declaration of Brett Thomas ¶ 6.
59.	Thomas fears arrest, prosecution, fine and incarceration if he completes this handgun purchase.	Declaration of Brett Thomas ¶ 7.
60.	Plaintiff Second Amendment Foundation, Inc. ("SAF") is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington.	Declaration of Alan Gottlieb, Executive Vice President of Second Amendment Foundation, Inc., ¶ 2.
61.	SAF has over 650,000 members and supporters nationwide, including many in California.	Declaration of Alan Gottlieb, Executive Vice President of Second Amendment Foundation, Inc., ¶ 3.

⁵A "Buntline" is a Western-style extra-long barrel revolver, named for 19th-century novelist Ned Buntline who was said to commission such guns for famous personalities of the day.

Undisputed Fact**Support for Undisputed Fact**

62.	The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control.	Declaration of Alan Gottlieb, Executive Vice President of Second Amendment Foundation, Inc., ¶ 4.
63.	Plaintiff The Calguns Foundation, Inc. is a non-profit organization incorporated under the laws of California with its principal place of business in Redwood City, California.	Declaration of Gene Hoffman, Jr., Chairman of the Calguns Foundation, Inc., ¶ 2.
64.	The purposes of Calguns include supporting the California firearms community by promoting education for all stakeholders about firearm laws, rights and privileges, and securing the civil rights of California gun owners, who are among its members and supporters.	Declaration of Gene Hoffman, Jr., Chairman of the Calguns Foundation, Inc., ¶ 3.
65.	SAF and Calguns expend their resources encouraging exercise of the right to bear arms, and advising and educating their members, supporters, and the general public about the legality of particular firearms. The issues raised by, and consequences of, Defendant's policies, are of great interest to SAF and Calguns' constituencies.	Declaration of Alan Gottlieb, Executive Vice President of Second Amendment Foundation, Inc., ¶ 5. Declaration of Gene Hoffman, Jr., Chairman of the Calguns Foundation, Inc., ¶ 4.
66.	Defendant's policies regularly cause the expenditure of resources by SAF and Calguns as people turn to these organizations for advice and information.	Declaration of Alan Gottlieb, Executive Vice President of Second Amendment Foundation, Inc., ¶ 6. Declaration of Gene Hoffman, Jr., Chairman of the Calguns Foundation, Inc., ¶ 5.

67. Defendant's policies bar the members and supporters of SAF and Calguns from obtaining numerous, if not most, handguns.

Declaration of Alan Gottlieb, Executive Vice President of Second Amendment Foundation, Inc., ¶ 7.

Declaration of Gene Hoffman, Jr., Chairman of the Calguns Foundation, Inc., ¶ 6.

Respectfully Submitted on Sept. 1, 2009.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
)	
Plaintiffs,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF
v.	)	PLAINTIFFS' MOTION FOR SUMMARY
	)	JUDGMENT [Fed. R. Civ. P. 56]
Wilfredo Cid,)	
)	
Defendant.)	
)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW the Plaintiffs, Ivan Peña, Roy Vargas, Doña Croston, Brett Thomas, the Second Amendment Foundation, Inc. ("SAF"), and the Calguns Foundation, Inc. ("CGF"), by and through undersigned counsel, and submit their Memorandum of Points and Authorities in Support of their Motion for Summary Judgment.

1 Dated: September 1, 2009

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

PRELIMINARY STATEMENT

This case presents what is arguably the easiest Second Amendment question that might come before a federal court today, seeing as the question has just been answered by the Supreme Court barely over a year ago: May the government ban handguns of the kind in common use by Americans for ordinary lawful purposes? The answer: no. *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

Several years ago, state lawmakers banned from private retail sale any handgun that does not appear on a special roster. In time, as this program evolved to become ever-more restrictive, it has become all but impossible to sell any newly-designed handguns in California, while many previously-approved handguns have become prohibited for non-substantive, administrative reasons. And of course, the attempt to enumerate every single handgun that might be legally sold has predictably proved too ambitious a task not to yield arbitrary and irrational results.

Whatever else one might say about California's pre-*Heller* handgun rostering program, it is clearly not constitutional. The program is founded on a theory specifically rejected in *Heller* as inconsistent with individual's Second Amendment rights – that common firearms might be banned merely owing to the government's assessment that their possession is not in the public interest. In *Heller*'s wake, the District of Columbia's City Council adopted California's roster as its own. But in the face of a constitutional challenge, the District almost immediately modified the law, explicitly recognizing that California's rostering scheme does not meet constitutional standards. Respectfully, this Court should reach the same conclusion.

As the legislative record demonstrates, the California law consciously sought to alter the choices made in the mass market for common guns – precisely the sort of conduct proscribed by

1 the Second Amendment. Yet some of the California law's most restrictive policies do not
2 advance, and might even reduce, public safety.

3
4 *Heller* did not eliminate the government's ability to ban weapons that are outside the
5 scope of Second Amendment protection. But as the four handguns at issue in this case
6 demonstrate, California's scheme is intentionally designed to and does ban guns that easily pass
7 the *Heller* test for protected Second Amendment arms. Indeed, the exact same model handgun at
8 issue in *Heller* is banned in California and denied to plaintiff Brett Thomas because it has not
9 been (and cannot be) placed on the "Roster of Handgun Certified for Sale." Ivan Pena is denied
10 permission to own a handgun that had once been "rostered" and approved for sale, but which is
11 now no longer legal to purchase in California because the gun's manufacturer will not pay an
12 annual fee in perpetuity to keep it on the list. Roy Vargas, born with only a left arm, is denied
13 access to a handgun with an ambidextrous magazine release, even though the state would allow
14 him the identical model handgun with a right-handed magazine release he cannot operate. And
15 Dona Croston is denied permission to own a handgun because, effectively, it is the wrong color.
16
17
18

19 Yet Plaintiffs could legally obtain these same handguns if they had out-of-state relatives
20 willing to gift them, if Plaintiffs worked in the entertainment industry, or if they worked for law
21 enforcement. Individuals residing in another state are also allowed to import these guns into
22 California upon relocating here. And Plaintiffs could obtain these guns from other Californians
23 who might already have them in their possession.
24

25 It is impossible to reconcile the roster of arms approved for sale in the Bill of Rights with
26 that conjured by the operation of California law. The latter must yield.

27 ////
28

STATEMENT OF FACTS

The Handgun Rostering Program

The facts of this case are not in dispute. California law provides that “any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.” Statement of Undisputed Facts (“SUF”)

1. California law presumes that *all* handguns are “unsafe” and therefore, generally barred from importation and sale, unless those handguns have been placed on the state’s special roster of handguns “determined not to be unsafe.” SUF 2.

Since 2007, a center-fire¹ semi-automatic² handgun cannot make the roster if it does not have both a chamber loaded indicator and – if it has a detachable magazine – a magazine disconnect mechanism. SUF 3. Since 2006, a rimfire³ semi-automatic handgun must have a magazine disconnect mechanism if it has a detachable magazine. SUF 4. However, handguns rostered prior to the effective dates of these requirements can remain rostered despite lacking these features. SUF 5.

A magazine disconnect mechanism is “a mechanism that prevents a semiautomatic pistol

¹ Most handguns use center-fire ammunition, which fires a bullet when the center of the cartridge is struck by the gun’s firing pin, igniting the primer.

² A semi-automatic handgun is handgun that fires one bullet each time the trigger is pulled, with the firing of each bullet causing the next round to be loaded into the chamber from a magazine. Most handguns in the United States are semi-automatic. Almost all the rest are revolvers, which hold several rounds in a rotating cylinder and also fire one bullet with each pull of the trigger. Nothing in the challenged laws, or this litigation, relates to fully-automatic weapons (machine guns), which are the subject of other specific legislative enactments.

³ Rimfire ammunition, which is fired when struck on its rim by the gun’s firing pin, is primarily used in the smallest calibers. For technical reasons, chamber load indicators are not feasible for rimfire ammunition.

1 that has a detachable magazine from operating to strike the primer of ammunition in the firing
2 chamber when a detachable magazine is not inserted in the semiautomatic pistol.” SUF 6. A
3 chamber load indicator (“CLI”) is “a device that plainly indicates that a cartridge is in the firing
4 chamber.” SUF 7. Not all CLIs satisfy the California requirement. Under California law,
5

6 [a] device satisfies this definition if it is readily visible, has incorporated or adjacent
7 explanatory text or graphics, or both, and is designed and intended to indicate to a
8 reasonably foreseeable adult user of the pistol, without requiring the user to refer to a
9 user’s manual or any other resource other than the pistol itself, whether a cartridge is in
the firing chamber.

10 SUF 8.

11 Although a CLI is sufficient if it is “designed and intended to indicate to a reasonable
12 adult user” that the firearm is loaded, [Cal. Penal Code § 12126(c)] in practice the sufficiency of
13 the CLI is determined by a different standard. Defendant tests the sufficiency of CLIs by asking
14 his employees if they understand the CLI – and when the regulatory authority’s employees
15 allegedly fail to understand the CLI, regardless of what the CLI is “designed and intended to
16 indicate to a reasonable adult,” the CLI is ruled inadequate. SUF 9.
17

18 Given the rarity of CLIs and magazine disconnect devices, handguns lacking these
19 features are in common use today, and comprise the overwhelming majority of handguns. SUF
20 10.
21

22 This much is obvious upon any cursory survey of firearms as to be within judicial notice,
23 akin to observing that most American cars have power windows. There are, however, some
24 precise statistics. According to one survey, CLIs and magazine disconnect devices are included
25 on no more than 11% and 14% of handguns, respectively. Jon Vernick, et al., “‘I Didn’t Know
26 the Gun Was Loaded’: An Examination of Two Safety Devices That Can Reduce the Risk of
27 Unintentional Firearm Injuries,” 20 Journal of Public Health Policy No. 4 at 433 (1999).
28

1 Indeed, the rarity of CLIs and magazine disconnect mechanisms was a fact specifically
2 relied upon by the California Legislature in mandating these features as part of the rostering
3 program. California legislators specifically considered that CLIs and magazine disconnects are
4 available on only perhaps 11% and 14% of handguns, respectively, as proposed by the author of
5 the bill mandating these features. SUF 11. Because CLIs and magazine disconnect mechanisms
6 were viewed as beneficial, it was hoped that mandating these features would alter the firearms
7 market. SUF 12. “[It] is arguable that a requirement in California would ‘drive’ the technology of
8 chamber load indicators.” Exhibit B. California Senate Public Safety Committee Report, p. 9.
9 “It might also be assumed that a mandate in California would drive technology in the market for
10 magazine disconnect devices.” Id., p. 10.

11
12 Since both the magazine disconnect and CLI requirements came into effect on January 1,
13 2007, only *one* new model of semi-automatic handgun has been approved for placement on the
14 California handgun roster. SUF 13.

15
16 Yet these “safety” features are not foolproof. A handgun safety mechanism may fail or be
17 misused. SUF 14. A chamber loaded indicator is a mechanical device that may fail or be
18 misinterpreted by the user of a handgun. SUF 15. A magazine disconnect mechanism is a
19 mechanical device that may fail. SUF 16. As the state advises handgun purchasers, “Any
20 machine can malfunction. A firearm is no different.” SUF 17.

21
22 In fact, to acquire any handgun in California, an individual must pass a written handgun
23 safety test. SUF 18. The test requires knowledge of the basic rules of handgun safety, the first of
24 which is: “Treat all guns as if they are loaded.” SUF 19. The state’s study guide for the handgun
25 safety test further provides:
26
27
28

Always assume that a gun is loaded even if you think it is unloaded. Every time a gun is
handled for any reason, check to see that it is unloaded [by following specific instructions

1 for unloading the gun]. If you are unable to check a gun to see if it is unloaded, leave it
2 alone and seek help from someone more knowledgeable about guns.

3 SUF 20.

4 The state's specific instructions for unloading a semi-automatic handgun contained in its
5 gun safety study guide provides that a mechanical safety
6

7 is not foolproof so do not rely on the safety to prevent an accidental discharge. A safety
8 should only be used as an additional safety measure. Never pull the trigger on any firearm
9 with the safety in the "safe" position because thereafter the firearm could fire at any time
without the trigger ever being touched.

10 SUF 21.

11 Although the state's gun safety study guide does not discuss chamber load indicators or
12 magazine disconnect devices, it teaches, in order to pass the mandatory safety test, rules that
13 would have gun owners ignore such devices. The study guide specifically instructs that in order
14 to verify a semi-automatic handgun is unloaded, one must remove the magazine and visually
15 inspect the chamber to verify that it is empty. SUF 22.
16

17 In fact, in a large red box marked "CAUTION," the state's gun safety study guide
18 provides:
19

20 You should NOT assume a semiautomatic pistol is unloaded just because the magazine is
21 removed from the handgun.

22 Do not allow the slide to go forward UNLESS you have:

- 23 1. Checked again to be sure the chamber is empty, and
24 2. Checked again to be sure the magazine has been REMOVED.

25 If you pull the slide back ejecting the cartridge, check the chamber, let the slide go
26 forward, and THEN remove the magazine, you have a loaded, dangerous firearm (a
27 cartridge is in the chamber) even though you have removed the magazine. It is common
and sometimes fatal to make this error.

28 ALWAYS REMOVE THE MAGAZINE FIRST!

SUF 23.

1 In order to purchase a handgun, the buyer must demonstrate that he or she knows how to
2 safely operate the handgun, including following these instructions. SUF 24. Moreover, California
3 law also generally requires that all newly purchased firearms either be accompanied by an
4 approved gun lock or the purchaser's affidavit that she owns an adequate lock box or gun safe.
5 SUF 25.

7 Listings on the California handgun roster are valid for one year, and must be renewed
8 annually, including payment of an annual fee, prior to expiration to remain valid. SUF 26.
9 Defendant charges firearms manufacturers, importers, and dealers annual fees, ostensibly to
10 operate the handgun roster program. Any handgun whose manufacturer fails to pay the required
11 fees may be excluded from the roster for that reason alone. SUF 27. The initial and renewal
12 annual listing fees for inclusion on the handgun roster are \$200. SUF 28.

15 Other than the California DOJ, only the manufacturer/importer of a handgun model is
16 authorized to submit that handgun model to a DOJ-Certified Laboratory for testing. SUF 29. A
17 handgun can remain on the roster if its manufacturer/importer goes out of business or
18 discontinues the model, provided that the model is not being offered for sale to licensed dealers,
19 and "a fully licensed wholesaler, distributor, or dealer submits a written request to continue the
20 listing and agrees to pay the annual maintenance fee." SUF 30. So long as a handgun is sold to
21 dealers outside of California, the handgun's manufacturer can cause the sale of that handgun to
22 be forbidden inside California by failing to submit the gun for testing in that state or refusing to
23 pay the annual \$200 fee. SUF 31.

26 A manufacturer/importer or other responsible party may submit a written request to list a
27 handgun model that was voluntarily discontinued or was removed for lack of payment of the
28 annual maintenance fee. The request may be approved, and the handgun restored to the "safe

1 gun” roster, provided the fee is paid. SUF 32.

2 The following firearms and transactions are exempted from the handgun rostering
 3 requirement: (1) Firearms defined as curios or relics under federal law; (2) The purchase of any
 4 firearm by any law enforcement officer – State or Federal; (3) Pistols that are designed expressly
 5 for use in Olympic target shooting events, as defined by rule; (4) Certain single-action revolvers,
 6 as defined by rule; and (5) The sale, loan, or transfer of any firearm that is to be used solely as a
 7 prop during the course of a motion picture, television, or video production by authorized people
 8 related to the production. SUF 33.

11 It is also not illegal in California to import an unrostered handgun when moving into the
 12 state without the intention of selling it, nor is it illegal in California to possess or use an
 13 unrostered handgun that is otherwise lawful to possess or use. SUF 34. California also exempts
 14 private party transfers, intra-familial transfers including gifts and bequests, various loans, and
 15 various single-action revolvers. SUF 35.⁴

18 *Defendant’s Enforcement of the “Handgun Roster” Program Against Plaintiffs*

20 Plaintiff Ivan Peña has sought to purchase a Para USA (Para Ordnance) P1345SR /
 21 Stainless Steel .45 ACP 4.25", and has identified a willing seller who stands ready to deliver said
 22 handgun to him. SUF 36. The Para USA P1345SR that Peña’s wants to buy was listed on
 23 California’s Handgun Roster until December 31, 2005, when it was discontinued and its listing
 24 not renewed. SUF 37.

28 ⁴“Single” or “double” action refers to the gun’s trigger function, one “action” being the effect of drawing back the hammer, another “action” being the effect of dropping the hammer. Guns can be designed to operate in single-action, double-action, or effectively both (if a gun has a hammer that might be retracted either manually or by pulling the trigger).

1 Peña cannot lawfully purchase and take possession of the handgun as that handgun is not
2 on the California Handgun Roster. SUF 38. Peña fears arrest, prosecution, fine and incarceration
3 if he completes this handgun purchase. SUF 39.

4
5 Plaintiff Roy Vargas has sought to purchase a Glock 21 SF with an ambidextrous
6 magazine release, and has identified a willing seller who stands ready to deliver said handgun to
7 Plaintiff. SUF 40. However, Vargas cannot lawfully purchase and take possession of the handgun
8 as that handgun is not listed on the California Handgun Roster. SUF 41. Vargas fears arrest,
9 prosecution, fine and incarceration if he completes this handgun purchase. SUF 42.

10
11 Vargas was born without an arm below the right elbow. SUF 43. The Glock 21 SF-STD
12 with a standard magazine release is listed on the California Handgun Roster. SUF 44. However,
13 the Glock 21 SF with ambidextrous magazine release is superior for left-handed shooters such as
14 Mr. Vargas, as opposed to the approved version of the Glock 21. SUF 45. Glock's efforts to add
15 the Glock 21 SF with ambidextrous magazine release to the California Roster have failed. SUF
16 46.

17
18 However, Defendant permits Glock customers to have their Glock 21 SF-STD handguns
19 fitted with an ambidextrous release at the Glock factory. SUF 47. As state officials wrote Glock
20 in response to the gunmaker's pleas to include the ambidextrous Glock 21 SF on the roster:

21
22 A California owner of a Glock handgun model with a standard magazine release who
23 wishes to have his or her handgun model retrofitted with an ambidextrous magazine
24 release may send the firearm to Glock. Glock could then retrofit the handgun and return it
25 to its owner. No further testing of the retrofitted handgun would be required.

26 Exhibit H. In other words, California permits the sale of a Glock 21 SF-STD, and the alteration
27 of that handgun by Glock to add an ambidextrous magazine release, but will not allow consumers
28 to purchase new Glock 21 SFs with an ambidextrous magazine release in the first place.

Plaintiff Doña Croston has sought to purchase a Springfield Armory XD-45 Tactical 5"

1 Bi-Tone stainless steel/black handgun in .45 ACP, model number XD9623, and has identified a
2 willing seller who stands ready to deliver said handgun to her. SUF 48. Croston cannot lawfully
3 purchase and take possession of the handgun as that handgun is not on the California Handgun
4 Roster. SUF 49. Croston fears arrest, prosecution, fine and incarceration if she completes this
5 handgun purchase. SUF 50.

7 Other models of this identical gun – but in different colors – are listed on the handgun
8 roster and are thus available to Ms. Croston: the XD-45 Tactical 5" .45 ACP in black (model
9 XD9621), the XD-45 Tactical 5" .45 ACP in OD Green (model XD9622), and the XD-45
10 Tactical 5" .45 ACP in Dark Earth (XD9162). SUF 51. However, the particular Bi-Tone XD-45
11 that Ms. Croston would possess was not released until after California required newly-listed guns
12 to have a chamber load indicator and magazine disconnect device. SUF 52. Springfield Armory
13 could not get the XD-45 in .45 ACP and Bi-Tone finish registered given the new listing
14 requirements. SUF 53. The XD-45 Bi-Tone in .45 has a loaded chamber indicator, but the
15 California Department of Justice has decided it does not qualify under Penal Code § 12126(c).
16 SUF 54. The XD-45 also lacks a magazine disconnect device. SUF 55.

20 The handgun at issue in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), was a
21 High Standard 9-shot revolver in .22 with a 9.5" Buntline-style⁵ barrel. SUF 56. Plaintiff Brett
22 Thomas has sought to purchase an identical High Standard 9-shot revolver in .22 with a 9.5"
23 Butline-style barrel, and has identified a willing seller who stands ready to deliver said handgun
24 to Thomas. SUF 57. Thomas cannot lawfully purchase and take possession of the handgun as that
25 handgun is not on the California Handgun Roster. SUF 58. Thomas fears arrest, prosecution, fine
26

28 ⁵ A “Buntline” is a Western-style extra-long barrel revolver, named for 19th-century
novelist Ned Buntline who was said to commission such guns for famous personalities of the
day.

1 and incarceration if he completes this handgun purchase. SUF 59.

2 Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a non-profit membership
3 organization incorporated under the laws of Washington with its principal place of business in
4 Bellevue, Washington. SUF 60. SAF has over 650,000 members and supporters nationwide,
5 including many in California. SUF 61. The purposes of SAF include education, research,
6 publishing and legal action focusing on the Constitutional right to privately own and possess
7 firearms, and the consequences of gun control. SUF 62.

8
9 Plaintiff The Calguns Foundation, Inc. is a non-profit organization incorporated under the
10 laws of California with its principal place of business in Redwood City, California. SUF 63. The
11 purposes of Calguns include supporting the California firearms community by promoting
12 education for all stakeholders about firearm laws, rights and privileges, and securing the civil
13 rights of California gun owners, who are among its members and supporters. SUF 64.

14
15 SAF and Calguns expend their resources encouraging exercise of the right to bear arms,
16 and advising and educating their members, supporters, and the general public about the legality
17 of particular firearms. The issues raised by, and consequences of, Defendant’s policies, are of
18 great interest to SAF and Calguns’ constituencies. Defendant’s policies regularly cause the
19 expenditure of resources by SAF and Calguns as people turn to these organizations for advice
20 and information. SUF 65, 66. Defendant’s policies bar the members and supporters of SAF and
21 Calguns, living in California, from obtaining numerous, if not most, handguns. SUF 67
22
23
24
25

26 SUMMARY OF ARGUMENT

27 This case begins and ends with the fact that California will not roster handguns lacking
28 certain features which are missing from many, if not the vast majority, of handguns of the kind in

1 common use throughout the United States. That it has become impossible to market any new
 2 handguns in California is telling. The challenged laws constitute a massive ban on handguns
 3 whose possession and use is secured by the Second Amendment.
 4

5 In unsuccessfully defending its blanket handgun ban, the District of Columbia argued that
 6 it could unilaterally determine which arms were too dangerous to be allowed ordinary citizens,
 7 and that handguns as a class of weapons failed to meet its criteria. This argument was rejected
 8 both by the D.C. Circuit and the Supreme Court. The government's disdain for particular arms
 9 does not enable it to ban them if their possession is protected by the Second Amendment. The
 10 test is whether the arms at issue are of the kind that would be in common use for lawful purposes.
 11

12 Defendant's handgun rostering program also violates basic principles of equal protection,
 13 in that it arbitrarily makes distinctions between otherwise identical firearms, inherently making
 14 arbitrary distinctions among the people who would possess them, and bars some classes of
 15 people from possessing handguns that are perfectly permissible to others. These practices cannot
 16 survive Fourteenth Amendment scrutiny.
 17
 18
 19

20 **ARGUMENT**

21 I. THE SECOND AMENDMENT PROTECTS THE POSSESSION OF ARMS IN 22 COMMON USE FOR LAWFUL PURPOSES, INCLUDING HANDGUNS.

23 "[T]he sorts of weapons protected [by the Second Amendment are] those 'in common use
 24 at the time.'" *Heller*, 128 S. Ct. at 2817 (quoting *United States v. Miller*, 307 U. S. 174, 179
 25 (1939)). "[T]he Second Amendment does not protect those weapons not typically possessed by
 26 law-abiding citizens for lawful purposes." *Heller*, 128 S. Ct. at 2815-16. Handguns plainly satisfy
 27 this test. "It is enough to note, as we have observed, that the American people have considered
 28 the handgun to be the quintessential self-defense weapon . . . Whatever the reason, handguns are

1 the most popular weapon chosen by Americans for self-defense in the home, and a complete
 2 prohibition on their use is invalid.” *Heller*, 128 S. Ct. at 2818.

3
 4 There is little question that Defendant, as a state actor, is bound by Second Amendment
 5 rights by operation of the Fourteenth Amendment. As of this writing, the question of the Second
 6 Amendment’s incorporation is one of first impression before this Court, though it is squarely
 7 raised in several cases pending before the Ninth Circuit and the Supreme Court. While it cannot
 8 be taken for granted that the higher courts will opine on the matter any time soon, helpfully, the
 9 State of California has filed an amicus brief with the Supreme Court arguing that the Second
 10 Amendment is, indeed, incorporated and urging the Court to grant certiorari to clarify that fact.
 11 Br. of State of California, Supreme Court Nos. 08-1497, 08-1521. A comprehensive argument for
 12 incorporation appears in Plaintiffs’ Motion for Summary Judgment, *Sykes v. McGinness*, E.D.
 13 Cal. 09-01235, at pp. 9-14. As the parties are apparently in agreement on this point, it does not
 14 require further elucidation here.

15
 16 Defendant is still free to ban “dangerous and unusual weapons,” *Heller*, 128 S. Ct. at
 17 2817, including “sophisticated arms that are highly unusual in society at large.” *Id.* And
 18 Defendant can ban those weapons which do not meet the historic legal definition of “arms” as
 19 used in the Second Amendment – “any thing that a man wears for his defence, or takes into his
 20 hands, or useth in wrath to cast at or strike another.” *Heller*, 128 S. Ct. at 2791 (citing 1 A New
 21 and Complete Law Dictionary (1771); N. Webster, American Dictionary of the English Language
 22 (1828) (reprinted 1989)).⁶ But handguns have been held to pass the common use test by the
 23 Supreme Court. They are protected Second Amendment arms that cannot be banned – even if the
 24
 25
 26
 27
 28

⁶ “[A]ll firearms constituted ‘arms.’” *Heller*, 128 S. Ct. at 2791 (citing 1 J. Trusler, *The Distinction Between Words Esteemed Synonymous in the English Language* 37 (1794)).

1 state believes they are excessively dangerous.

2 II. DEFENDANT’S HANDGUN ROSTERING PROGRAM VIOLATES THE SECOND
3 AMENDMENT IN THAT IT BANS PROTECTED HANDGUNS.

4 The handguns banned by Defendant’s rostering program – including guns without CLIs
5 and/or magazine disconnect mechanisms, guns that have not been (and cannot be) submitted by
6 their manufacturer for government testing, and guns that would be perfectly acceptable by the
7 government but for lack of an annual listing fee – are all nonetheless handguns of the kind in
8 common use protected by the Second Amendment. None of these characteristics render a firearm
9 “dangerous or unusual” or establish that it is not of the kind in common use for lawful purposes.
10

11 The CLIs and magazine disconnect mechanisms required for rostering are rare features,
12 found on perhaps only 11% and 14% of all handguns in the marketplace. Considering
13 California’s particularly harsh and entirely arbitrary enforcement of its CLI requirement, that
14 number of qualified CLI’s is surely lower than even 11% of the market.
15

16 Many guns are still protected by the Second Amendment even if they have not been
17 manufactured for many years prior to the advent of the California Handgun Roster, or have been
18 manufactured by a company that does not wish to sell its products in one particular state. And
19 plainly, a gun model deemed “not unsafe” does not somehow alter its characteristics and become
20 “unsafe” simply because a check has not been cashed in Sacramento within the year.
21

22 The four handguns denied Plaintiffs by operation of Defendant’s handgun rostering
23 program are plainly within the Second Amendment’s protection. That the handgun roster law is
24 incompatible with Supreme Court precedent is illustrated by the roster’s operative banning of
25 Brett Thomas’s High Standard revolver – the exact same gun the Supreme Court ordered
26 Washington, D.C. not to ban barely over a year ago. This gun might not appear on the state’s list
27 of approved handguns, but according to the Supreme Court, it appears in the Second
28

1 Amendment.

2 The handguns denied Ivan Pena and Dona Croston are likewise plainly within the Second
3 Amendment's protection. They cannot be considered "dangerous and unusual" by any stretch of
4 imagination. Croston's gun appears on Defendant's approved list, albeit in different colors, but is
5 unavailable in the black/stainless finish because it was not made available for testing in that
6 particular color before the CLI and magazine disconnect requirements came into effect. It is not
7 as though Croston's gun failed any safety testing; California regulators refuse to test the gun
8 because it does not contain features missing from the overwhelming majority of American
9 handguns – as acknowledged by the California Legislature in enacting the requirements. Ivan
10 Pena's gun was once deemed safe enough for sale, but is only unavailable because its listing was
11 not renewed. The gun did not suddenly become dangerous on January 1, 2006, when its listing
12 expired because the manufacturer would not pay a fee and fill out a piece of paper.
13

14
15 The situation with respect to Roy Vargas's is absurd. Physically handicapped individuals
16 enjoy no lesser interest in self-defense and the Second Amendment right to arms that serves it.
17 However, such individuals are disproportionately hurt by artificial, unconstitutional limitations
18 on the range of handgun available to them. It makes no sense that Vargas cannot simply purchase
19 a Glock 21 SF with an ambidextrous magazine release, but that he can purchase the right-handed
20 version of this exact same gun, and undergo the additional burden and expense of having the
21 Glock factory make a custom modification for him – resulting in the exact same handgun that
22 Defendant will not place on the roster.
23

24
25 There is also no escaping the fact that the magazine disconnect and CLI requirements
26 contravene the state's own policies with respect to gun safety. The state mandates that all
27 handgun purchasers pass a handgun safety test that specifically teaches people not to rely on
28

gimmicks like magazine disconnects and CLIs. The state makes it absolutely clear that all guns must be treated as loaded, that the absence of a magazine is not to be interpreted as a sign that the gun is unloaded, that the only way to know guns are unloaded is to physically inspect the chamber. Even then, treating all guns as loaded promotes safe handling practices. And on top of the mandatory instruction on such practices, and the requirement that handgun purchasers demonstrate safe handling techniques, the state mandates that each handgun sale be accompanied by the sale of a lock or a guarantee that room exists in a safe for the gun.

The state's instructions with respect to safe gun handling and unloading are unassailable. Whatever the merits of the state's safe storage requirements, they do not ban a single gun, while making the magazine disconnect and CLI requirements redundant. It is irresponsible to rely on magazine disconnects and CLIs for gun safety, which is perhaps why the market has obviously rejected these features, and why the Defendant has such a difficult time agreeing to a standard of what actually constitutes a CLI.

California's legislature, operating in a pre-*Heller* environment, approached the handgun issue backwards from a constitutional, post-*Heller* perspective. The legislature sought to declare almost all handguns "unsafe" for failing to conform to its design preferences, or for the manufacturer's inability or unwillingness to pay for and participate in the state's regulatory scheme. Consciously, the state sought to "drive" the market towards its preferred outcomes. But *Heller* stands for the proposition that it is the regulatory environment that must accommodate itself to the choices made by the lawful, constitutionally-protected market for arms, and not the other way around.

III. DEFENDANT'S HANDGUN ROSTERING PROGRAM VIOLATES THE FOURTEENTH AMENDMENT GUARANTEE OF EQUAL PROTECTION.

The Equal Protection Clause "is essentially a direction that all person similarly situated

1 should be treated alike.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985)
 2 (citation omitted). Strict scrutiny applies to government classifications that “impinge on personal
 3 rights protected by the Constitution.” *Id.*, 473 U.S. at 440 (citations omitted). “Where
 4 fundamental rights and liberties are asserted under the Equal Protection Clause, classifications
 5 which might invade or restrain them must be closely scrutinized.” *Hussey v. City of Portland*, 64
 6 F.3d 1260, 1265 (9th Cir. 1995) (quoting *Harper v. Virginia Board of Elections*, 383 U.S. 663,
 7 670 (1966)). Indeed, “classifications . . . that impinge upon the exercise of a ‘fundamental’ right”
 8 are presumptively unconstitutional unless the government can demonstrate that the law satisfies
 9 strict scrutiny. *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982) (footnote omitted).

12 Although *Heller* did not announce a specific standard of review for cases raising Second
 13 Amendment concerns, the Supreme Court did conclude that “[b]y the time of the founding, the
 14 right to have arms had become fundamental for English subjects.” *Heller*, 128 S. Ct. at 2798
 15 (citation omitted). The Supreme Court thus specifically rejected rational basis as the standard of
 16 review for Second Amendment claims, and strongly suggested that the standard of review would
 17 be a rigorous one:
 18

20 Obviously, [rational basis] could not be used to evaluate the extent to which a legislature
 21 may regulate a specific, enumerated right, be it the freedom of speech, the guarantee
 22 against double jeopardy, the right to counsel, or the right to keep and bear arms.
 23 *Heller*, 128 S. Ct. at 2818 n. 27 (citing *United States v. Carolene Products Co.*, 304 U. S. 144,
 24 152, n. 4 (1938)).

25 Requiring strict scrutiny in evaluating Second Amendment questions does not spell the
 26 end of all gun laws because the government will often have a compelling state interest in the
 27 area, that may be constitutionally addressed. Strict scrutiny is context-sensitive and is “far from
 28 the inevitably deadly test imagined by the Gunther myth.” Adam Winkler, *Fatal in Theory and*

1 *Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts*, 59 Vanderbilt L.

2 Rev. 793, 795 (2006). The Fifth Circuit has long employed a version of strict scrutiny in Second

3 Amendment cases, allowing those laws that are

4
5 limited, narrowly tailored specific exceptions or restrictions for particular cases that are
6 reasonable and not inconsistent with the right of Americans generally to individually keep
and bear their private arms as historically understood in this country,...

7 *United States v. Emerson*, 270 F.3d 203, 261 (5th Cir. 2001). Under that standard, that court has

8 upheld the more basic federal gun laws. *See, e.g. Emerson* (upholding gun prohibition for people

9 covered by restraining orders); *United States v. Patterson*, 431 F.3d 832, 835 (5th Cir. 2005)

10 (drug addicts); *United States v. Everist*, 368 F.3d 517, 519 (5th Cir. 2004) (felons); *United States*

11 *v. Darrington*, 351 F.3d 632, 635 (5th Cir. 2003) (felons). “[I]t remains certain that the federal

12 government may not restrain the freedom to bear arms based on mere whimsy or convenience.”

13 *United States v. Everist*, 368 F.3d 517, 519 n.1 (5th Cir. 2004). However, where a classification

14 plainly fails rational basis review, the Court’s analysis need go no further. *Zobel v. Williams*, 457

15 U.S. 55, 60-61 (1982).

16
17
18 The sort of classifications created by the handgun roster are unacceptable under any sort
19 of scrutiny reserved for enumerated rights. First, there are the classifications among different
20 guns. Why is the Springfield Armory XD-45 acceptable in almost any finish, but will not even be
21 considered for testing in Bi-Tone? If guns failing to include CLIs and magazine disconnects are
22 unacceptably dangerous, why permit the continued manufacture and introduction of old,
23 allegedly “unsafe” models? Croston is being denied the gun of her choice not because of any
24 intrinsic quality it possesses, but because Croston prefers to have the gun in a particular color.
25
26

27 The requirement that an annual fee be paid by a manufacturer to keep a gun rostered is
28 similarly problematic. Pena’s access to his preferred handgun is cut-off simply because the model

1 is discontinued or at least, no longer the subject of an annual tribute. But “[a] state may not
2 impose a charge for the enjoyment of a right granted by the Federal Constitution.” *Murdock v.*
3 *Pennsylvania*, 319 U.S. 105 (1943).
4

5 In California, unrostered guns are permitted by private importation or as intra-family
6 gifts, just not as retail purchases. The roster thus privileges people who move into the state, or
7 who have family out-of-state. Yet all people, not just relatives, may transfer unrostered handguns
8 inside the state. These classifications make no sense. Any of the Plaintiffs might live next door to
9 individuals who lawfully obtained the same handguns denied by the roster law, prior to moving
10 to the state, or as a gift from an out-of-state relative.
11

12 California’s wide exemptions for law enforcement personnel, allowing them to purchase
13 unrostered guns for personal use, is completely irrational. If a gun is unacceptably dangerous, it is
14 odd to allow it to those perhaps most likely to use it. And if the harm to be ameliorated is the
15 unauthorized use of guns by people not knowledgeable in their use, police weapons, including
16 those owned privately by police officers, are no less likely to be stolen or mishandled by
17 unauthorized users.
18
19

20 The exceptions for curios and relics seems particularly egregious. Brett Thomas’s High
21 Standard revolver is not quite old enough to be exempt from the rostering law as a curio or relic,
22 though in perhaps ten years, it would qualify. Ironically, Mr. Heller’s particular gun might qualify
23 today based on the fact of its involvement in an historic Supreme Court case. 27 C.F.R. § 478.11.
24 But then, if Thomas prevails here, his gun, too, by that virtue, might also be transformed into an
25 exempted curio or relic.
26

27 Then there are the exceptions for movie and television production, which are not merely
28 irrational, but also underscore the fact that unrostered handguns are so common in American

1 culture such that audiences would not expect to see in realistic depiction of American life only
2 those guns approved by Defendant.

3 The distinctions between different guns on the basis of whether they have an acceptable
4 chamber loaded indicator are also unconstitutional given the wholly arbitrary manner in which
5 California regulators determine whether a CLI is sufficient – asking around at the office whether
6 random regulatory employees understand the CLI’s message. While the California Legislature
7 might have established “minimal guidelines,” *City of Chicago v. Morales*, 527 U.S. 41, 60
8 (1999) defining a CLI based on design intent and characteristics, Cal. Penal Code § 12126(c), the
9 regulatory practice is untethered from the legislative standard and in the end amounts to “because
10 we said so.” Of course, since the government does not ban revolvers or exceedingly popular
11 rimfire rounds such as the .22, CLIs will always be missing from significant numbers of
12 handguns.
13
14
15

16 These and other senseless distinctions are inevitable considering the audacious mission of
17 the handgun roster law: to make a complete list of all lawful handguns, and substitute the design
18 and feature preferences of legislators and regulators for that of a market comprising hundreds of
19 millions of people over the course of generations. That this project intrudes into the exercise of a
20 fundamental right calls for its abandonment.
21

22 The D.C. City Council reluctantly came to the same conclusion. Having adopted the
23 California roster as their own, with all the usual public assurances that their law was
24 constitutional, District officials re-considered upon being served with a very similar motion for
25 summary judgment. On June 17, 2009, in United State District Court for the District of
26 Columbia, the District gave notice that it was adopting an emergency regulation, abandoning its
27 reliance on the California roster, by creating a “District roster” that, while still unconstitutional,
28

1 eliminated many of the burdens associated with the laws challenged in that (and this) action. The
2 District based its emergency rule-making, in part, on the following findings:

3 1) recognition that California permits sale of firearms that have superficial differences to
4 those firearms on its roster; 2) recognition that some handguns that have been placed on
5 the California roster as safe handguns have been removed for administrative reasons not
6 related to the handguns' safety; and 3) review of similar safe gun rosters maintained by
7 Maryland and Massachusetts.
8
9

10 Exhibit L .

11 The new "District Roster" consists not only of the California and Massachusetts rosters,
12 but also that of Maryland. 24 DCMR 2323.1. The addition of the Maryland roster is significant,
13 as that state allows anyone to petition for additions to the roster, it does not require an annual
14 maintenance fee for guns to remain rostered, and it does not require handguns to have either a
15 magazine disconnect device nor CLI. Not surprisingly, the Maryland roster contains
16 approximately twice the number of handguns as does the California roster. Exhibit M.
17
18

19 Moreover, the new District roster expressly includes models removed from the California
20 roster for lack of payment, as well as guns that have only minor cosmetic differences from those
21 listed. 24 DCMR 2323.2, 2323.3. Exhibit M.
22

23 On June 25, 2009, the District imported another critical piece of Maryland's law into its
24 own: an exemption from rostering requirements of all handguns manufactured prior to 1985.

25 Exhibit N & Exhibit O.

26 All of these improvements made by Washington, D.C. to address its adoption of the
27 California roster have resulted in a bloated regulatory regime that, in the end, does not actually
28 ban very many handguns – and would allow all of the handguns at issue in this case to sold in

1 California.⁷ It appears unlikely that the California Legislature will be able to avoid summary
2 judgment by timely repealing or significantly modifying its roster law.
3

4
5 **CONCLUSION**

6 The facts in this case are well-established, as are the controlling legal principles: the State
7 of California cannot ban handguns of the kind in common use for lawful purposes, regardless of
8 its policy preferences. Nor are the design requirements here consistent with other California laws
9 aimed at improving gun safety, which condition the public to ignore these mandatory features in
10 the name of safety. Finally, the classifications riddling the rostering scheme are irrational and
11 beyond defense. The Court should enter summary judgment for Plaintiffs.
12

13 Respectfully Submitted on Sept. 1, 2009.
14

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⁷ Under its earlier interpretation of the California handgun roster, the D.C. Police allowed registration of a Glock 21 SF with ambidextrous magazine release.