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9 BILL LOCKYER, the STATE OF CALIFORNIA,  
and CALIFORNIA DEPARTMENT OF JUSTICE

10  
11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF FRESNO  
13

14 **EDWARD W. HUNT, in his official capacity as**  
15 **District Attorney of Fresno County, and in his**  
16 **personal capacity as a citizen and taxpayer, et al.,**

17 Plaintiffs,

18 v.

19 **STATE OF CALIFORNIA, et al.,**

20 Defendants.  
21

Case No. 01CECG03182

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION FOR  
SUMMARY JUDGMENT OR,  
ALTERNATIVELY, FOR  
SUMMARY ADJUDICATION ON  
PLAINTIFFS' AMENDED  
COMPLAINT**

Date: February 1, 2007  
Time: 3:30 p.m.  
Dept: 72

Before the Honorable Alan Simpson

22  
23 PLEASE TAKE NOTICE that on Thursday, February 1, 2007, at 3:30 p.m., or as soon  
24 thereafter as the matter may be heard, in Courtroom 72 of the above-entitled Court, located at  
25 1100 Van Ness Avenue, Fresno, California, defendants Attorney General Bill Lockyer, the State  
26 of California, and the California Department of Justice will move, and hereby do move for  
27 summary judgment or, alternatively, for summary adjudication on each of the claims in plaintiffs'  
28 Amended Complaint pursuant to Code of Civil Procedure 437c, on the ground that there are no

1 triable issues of material fact in this matter, and defendants are entitled to judgment as a matter of  
2 law.

3 Defendants' alternative request for summary adjudication seeks adjudication of the following  
4 issues:

5 ISSUE ONE: Defendants are entitled to summary adjudication that plaintiffs' First  
6 Cause of Action (for "Unauthorized DOJ Redefinition of 'Flash  
7 Suppressor'") is without merit because plaintiffs cannot show that the  
8 regulation defining "flash suppressor" is arbitrary, capricious, or lacking in  
9 evidentiary support.

10 ISSUE TWO: Defendants are entitled to summary adjudication that plaintiffs' Second  
11 Cause of Action (for "Uncertainty of 'Flash Suppressor'") is without merit  
12 because plaintiffs cannot show that a person of ordinary intelligence does  
13 not have a reasonable opportunity to know what is prohibited by the "flash  
14 suppressor" definition, let alone in all applications.

15 ISSUE THREE: Defendants are entitled to summary adjudication that plaintiffs' Fifth  
16 Cause of Action (for "Uncertainty of 'Permanently Alter' In Relation To  
17 Large Capacity Feeding Devices") is without merit because plaintiffs  
18 cannot show that a person of ordinary intelligence does not have a  
19 reasonable opportunity to know what is prohibited by the large-capacity  
20 magazine definitions with the "permanently altered" exception, let alone in  
21 all applications.

22 ISSUE FOUR: Defendants are entitled to summary adjudication that plaintiffs' Claim 1 in  
23 the Sixth Cause of Action (for "Inconsistency Regarding Springfield and  
24 Browning Products") is without merit because disagreement with  
25 particular DOJ determinations, even if valid, would at most be a basis for  
26 challenging the determinations, not a basis for invalidating the regulation  
27 defining "flash suppressor" pursuant to which the determinations are made.

28 ISSUE FIVE: Defendants are entitled to summary adjudication that plaintiffs' Claim 2 in the  
Sixth Cause of Action (for "Inconsistency Re 'Detachable Magazine'")  
is without merit because there is no controversy as to whether a magazine  
attached to a receiver by a screw, requiring a screwdriver for removal, is a  
"detachable magazine."

ISSUE SIX: Defendants are entitled to summary adjudication that plaintiffs' Claim 3 in  
the Sixth Cause of Action (for "Inconsistency Regarding Importation of  
'Large Capacity' Magazine Rifles") is moot because any question  
regarding whether modern replicas of 19<sup>th</sup> Century lever-action rifles with  
tubular magazines are subject to the "large-capacity magazine" prohibition  
has been eliminated by legislative amendment.

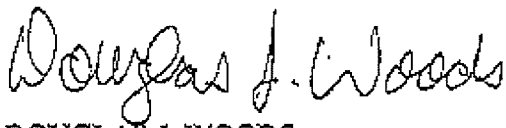
This motion is based upon this Notice of Motion, the supporting Memorandum of Points and  
Authorities, the Declarations of Ignatius Chinn, Randy Rossi, and Douglas J. Woods filed  
herewith, defendants' Separate Statement of Undisputed Facts, and on such further evidence as  
may be presented at the hearing of the motion.

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Dated: December 1, 2006

Respectfully submitted

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