

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-1300-MSK-MJW

JOHN B. COOKE, et al.,

Plaintiffs,

v.

JOHN W. HICKENLOOPER, Governor
of the State of Colorado,

Defendant.

30 (b) (6) DEPOSITION OF BURRUD ARMS, INC.
d/b/a JENSEN ARMS
by and through
JOHN WILLIAM BURRUD

PURSUANT TO NOTICE, the above-entitled deposition was taken on behalf of the Defendant at the Law Offices of Bruno, Colin & Lowe, P.C., 1999 Broadway, Suite 3100, Denver, Colorado, on November 12, 2013, at 9:09 a.m., recorded stenographically by Lisa D. Anthony, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public.

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1 PROCEEDINGS
 2 (Mr. Blake not yet present.)
 3 WHEREUPON, the following proceedings were
 4 taken pursuant to the Federal Rules of Civil
 5 Procedure.
 6 (Exhibit 1 marked for identification.)
 7 JOHN WILLIAM BURRUD,
 8 having been first duly sworn to state the whole truth,
 9 testified as follows:
 10 EXAMINATION
 11 BY MR. GROVE:
 12 Q. Good morning. My name is Matthew Grove. I
 13 am representing the Governor in the case of Cooke v.
 14 Hickenlooper, which is the federal case challenging
 15 the recently enacted gun laws in Colorado.
 16 Could you please state your name and spell
 17 your last name for the record.
 18 A. It's John William Burrud, B-u-r-r-u-d.
 19 Q. Are you here to testify about that case
 20 today?
 21 A. Yes, I am.
 22 MR. GROVE: That case number, for the record,
 23 is 13-cv-1300.
 24 Q. (By Mr. Grove) Let's go over a couple ground
 25 rules before we really get started. Have you ever

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 2 Page
 3 By Mr. Grove 4
 4 Requests that information be provided 63-64, 65
 5 EXHIBIT INDEX
 6 FOR IDENTIFICATION REFERENCE
 7 Deposition Exhibit 1 6
 8 Notice of Rule 30(b)(6) Deposition of
 9 Burrud Arms, Inc., d/b/a Jensen Arms 10
 10 Deposition Exhibit 2
 11 Sales Tax Returns
 12 December 2012 through October 2013
 13 CONFIDENTIAL
 14 Deposition Exhibit 3 18
 15 GunBroker web page re Smith & Wesson M&P
 16 Deposition Exhibit 4 23
 17 GunBroker web page re DPMS SASS .308
 18 Deposition Exhibit 5 25
 19 GunBroker web page re Core 15 MOE M4 .300
 20 Deposition Exhibit 6 27
 21 Second Amended Complaint for Declaratory
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 24 Emails from Bill Binet
 25 Deposition Exhibit 8 54
 Plaintiff Jensen Arms' Response to
 Defendant's First Set of Interrogatories
 and Requests for Production of Documents

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1 been deposed before?
 2 A. Once.
 3 Q. What case was that?
 4 A. I was in a motorcycle accident. They deposed
 5 me about the accident.
 6 Q. How long ago?
 7 A. 35 years ago.
 8 Q. So probably safe to say you may not remember
 9 everything that happened there.
 10 A. It would be very safe to say, yes.
 11 Q. So let me just touch on a couple of ground
 12 rules. I think the most important thing in a
 13 deposition is to avoid speaking over the top of one
 14 another, because the court reporter can't record two
 15 things that are going on at once. So I'll try to let
 16 you finish answering questions before I ask another
 17 one and, by the same token, if you could let me finish
 18 asking my question before you answer it. Is that
 19 okay?
 20 A. Yes.
 21 Q. And then you're already on to the second
 22 point, which is that the court reporter can only
 23 record audible answers. So a yes or a no is a lot
 24 better than an uh-huh or an huh-uh. Does that work?
 25 A. Yes.

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1 Q. We can take a break anytime you need it. The
 2 only caveat to that is if there is a question pending,
 3 you have to answer it, and then you can take a break.
 4 Does that work?
 5 A. Yes.
 6 Q. And it's my job to ask questions that you can
 7 understand, so if you don't understand something that
 8 I ask, which is entirely likely at some point, or at
 9 many points, in the deposition, please tell me and
 10 I'll rephrase it. Okay?
 11 A. Yes.
 12 Q. Then I have to ask you these questions. Are
 13 you suffering from any medical conditions that would
 14 affect your ability to answer and understand -- not in
 15 that order -- understand and answer my questions
 16 today?
 17 A. No.
 18 Q. And are you under the influence of any
 19 medications that would have that effect?
 20 A. No.
 21 Q. I'm handing you Exhibit 1. Just take a look
 22 at that and tell me when you've had a chance to look.
 23 Have you seen Exhibit 1 before?
 24 A. Yes.
 25 Q. What is it, to your knowledge?

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1 A. It's the questions that you will be asking
 2 during the deposition.
 3 Q. All right. It's the topics. And since
 4 you're not a lawyer -- you have made a very good
 5 career choice -- let me explain exactly what a
 6 30(b)(6) deposition is. Your attorney may have
 7 already done this. But you will be answering
 8 questions today on behalf of Burrud Arms. And
 9 actually, let me just stop there. Should I call it
 10 Burrud Arms or Jensen Arms, do you prefer?
 11 A. Jensen Arms is fine.
 12 Q. So you'll be answering questions on behalf of
 13 Jensen Arms, not you personally, because you're the
 14 corporate representative of the company and the
 15 company is the plaintiff in our case. Do you
 16 understand that distinction?
 17 A. Yes, I do.
 18 Q. Are you the best person to answer questions
 19 about the topics that are listed on Exhibit 1?
 20 A. I believe so.
 21 Q. So let's talk a little bit -- we can probably
 22 put that aside for now. I want to learn a little bit
 23 more about the business. As I understand it, you
 24 purchased it in November 2012.
 25 A. That's correct.

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1 Q. Do you know how long Jensen Arms had been
 2 around before that?
 3 A. I believe since 1994.
 4 Q. Who was the previous owner?
 5 A. Bob Jensen.
 6 Q. What's the corporate structure?
 7 A. It's incorporated; it's an S corp.
 8 Q. Are there shareholders?
 9 A. No.
 10 Q. So you're the sole owner?
 11 A. Yes, I am.
 12 Q. Do you know, how much due diligence did you
 13 do before you bought it?
 14 A. I looked at his balance and loss sheet -- I
 15 mean profit and loss sheet, I looked at three years of
 16 taxes, and I spoke with him at length and spoke with
 17 the other store employees. And I also -- I worked at
 18 the shop to kind of get the feel for the business.
 19 Q. Was the company profitable when you bought
 20 it?
 21 A. Yes.
 22 Q. Do you have a ballpark figure as to annual
 23 profits?
 24 A. Around 8 million.
 25 Q. Annually?

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1 A. Uh-huh. Yes.
 2 Q. Is that gross revenue or net profit?
 3 A. That's gross revenue.
 4 Q. Do you know what the margin was on that
 5 8 million?
 6 A. To the net profit?
 7 Q. Uh-huh.
 8 A. I don't -- I don't remember the exact number.
 9 Q. How about a ballpark figure?
 10 A. Maybe 300,000.
 11 Q. So it sounds like it's not a super high
 12 margin business?
 13 A. It is not.
 14 Q. Is that typical in the firearms industry?
 15 A. I believe so.
 16 Q. So I'm not a retailer. I don't really have
 17 much experience in that, aside from going to the
 18 store. But I imagine that the firearms business is
 19 like any other that has ebbs and flows; Christmas
 20 might be busier or July 4th weekend might be busier.
 21 In your experience, is that the case in the firearms
 22 business?
 23 A. That is the case.
 24 Q. Kind of walk me through a calendar year and
 25 when you might expect to sell more and fewer and the

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1 reasons for that.
 2 A. Usually the summer months, June, July and
 3 August, are slower.
 4 Q. Do you know why?
 5 A. Well, there's no hunting season, and I think
 6 everyone is on vacation, frankly.
 7 Q. So June, July, August are the slowest months.
 8 What are the busiest months?
 9 A. It picks up in September -- the hunting
 10 season starts -- October, November, and really goes
 11 through till next June. It's fairly stable.
 12 Q. Do you adjust your staffing to account for
 13 slow times and busy times?
 14 A. I don't adjust it to account for slow times
 15 and busy times.
 16 MR. GROVE: Why don't we go ahead and mark
 17 this.
 18 (Exhibit 2 marked for identification.)
 19 MR. COLIN: Just to note, Exhibit 2 has been
 20 designated confidential under the protective order as
 21 proprietary business information.
 22 Q. (By Mr. Grove) So Exhibit 2 is something
 23 that you put together and we just received this
 24 morning, so I haven't really had a chance to look at
 25 it that closely. But that won't stop me from asking

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1 questions about it.
 2 A. Okay.
 3 Q. Can you explain -- let's start with, what is
 4 it?
 5 A. This shows our gross sales per month. And
 6 there's two sets here. The first set, because I
 7 couldn't get gross sales off our computer system, is
 8 based on taxes that were paid, because when you pay
 9 taxes, you have to put your gross revenues down. So
 10 you notice the first three or four months are in that
 11 format. And then we had a computer system installed,
 12 which Mr. Jensen never had, and started being able to
 13 do it on the computer.
 14 Q. Does your business -- are you on a calendar
 15 year tax basis?
 16 A. Yes, calendar year.
 17 Q. Looks like things were pretty busy, starting
 18 right when you bought the place.
 19 A. That's correct.
 20 Q. Were you aware that there was a -- I guess
 21 the best way to say it is a run on firearms in late
 22 2012 through the early part of 2013?
 23 MR. COLIN: Foundation.
 24 A. Can you explain what "a run on firearms"
 25 means?

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1 Q. (By Mr. Grove) Sure. At least from news
 2 reports that I've read, things, starting probably
 3 in -- right around December of 2012, things got very
 4 busy in the firearms world. For example, our -- the
 5 state InstaCheck system was backed up for days at a
 6 time because so many people were getting background
 7 checks run. Did you experience that in your store?
 8 A. Yes.
 9 Q. Was it a higher volume than you expected?
 10 A. No.
 11 Q. Is it common to have the InstaCheck system be
 12 backed up in the way that it was?
 13 MR. COLIN: Vague.
 14 A. I don't have a lot of history. I've only
 15 been there for a year. So I'm not sure that I can
 16 really answer that with any kind of qualification.
 17 Q. (By Mr. Grove) During the first -- I guess
 18 from the time that you acquired your business, from
 19 November through, say, March or April, did you have
 20 trouble acquiring ammunition?
 21 A. Yes.
 22 Q. Was that common in the industry at the time?
 23 A. Yes.
 24 Q. Has that shortage been alleviated, or is it
 25 still going on?

13

1 A. It's still going on.
 2 Q. Do you know why people are having trouble
 3 getting it?
 4 A. No.
 5 Q. Let me ask that a different way. To your
 6 knowledge, has -- it's got to be one of two things,
 7 right, either supply decreased or demand increased.
 8 Do you know which one it is?
 9 A. It could be both.
 10 Q. You don't know, as you sit here today?
 11 A. I do not.
 12 Q. You mentioned earlier that gross revenues of
 13 the business when you bought it were about \$8 million
 14 a year. Am I remembering that correctly?
 15 A. Correct.
 16 Q. So that would be about -- doing this in my
 17 head -- \$650,000 a month or so, on average?
 18 A. On average, yes.
 19 Q. And your gross sales in your first month of
 20 ownership, first full month of ownership, which was
 21 December of 2012, were 883,000. Am I reading that
 22 right?
 23 A. That's correct.
 24 Q. This is on page 1 of Exhibit 2.
 25 A. Yes.

14

1 Q. And in January of 2013 they were just over a
 2 million dollars?
 3 A. That's correct.
 4 Q. And in March of -- I'm sorry -- February of
 5 2013 they were \$1.4 million?
 6 A. Yes.
 7 Q. So that rate is substantially higher, I'd
 8 say, averaging over those three months, probably 40
 9 percent higher, than historically? I'm just guessing
 10 off the top of my head there. Were you expecting
 11 sales to be that high when you bought it?
 12 A. The 1.4 million, no, I was not expecting that
 13 in that month. An aberration.
 14 Q. Did you change the marketing of Jensen Arms?
 15 A. We did. We started doing a lot more
 16 marketing and tried to get our customer service really
 17 into high gear.
 18 Q. Then things dropped off in April, it looks
 19 like, to \$860,000 or so. We're on page 4 of Exhibit 2
 20 here.
 21 A. That's correct.
 22 MR. COLIN: Is that March?
 23 MR. GROVE: I'm sorry. That is March.
 24 Q. (By Mr. Grove) Do you have any idea why?
 25 Did any customers talk to you about why everybody was

15

1 buying things in February and not in March?
 2 A. No, not specifically.
 3 Q. Let's keep going along this page. Sorry. To
 4 the next page. So this is when you -- this is the
 5 page with April 13 at the top.
 6 A. April 13, okay. I'm sorry.
 7 Q. This is when you switched to your new
 8 computer system, right?
 9 A. Yes.
 10 Q. So why don't you take me through the columns
 11 at the top and tell me what they mean.
 12 A. Tax Out is nontaxable items, stuff sold to
 13 police departments and such. Transfers are people
 14 transferring guns in, if somebody buys a gun on
 15 GunBroker and transfers it to the store. The CBI is
 16 the background check. GunBroker is our Internet site
 17 for sales. And then Refunds is refunds.
 18 Q. So then it's fair to say the left side here
 19 from, Refunds to the left, those are all expenses?
 20 A. Correct.
 21 Q. Okay. And then what is CC?
 22 A. Credit cards.
 23 Q. And then Gross Sales would be CC plus, I
 24 guess, cash and checks or somewhere --
 25 A. Yes, correct.

16

1 Q. While we're on the topic, and before I forget
 2 to get back to it, let's talk about this Tax Out
 3 column. You mentioned sales to police departments and
 4 things like that. Go ahead. Were you going to say
 5 something?
 6 A. No, that's okay.
 7 Q. Okay. What kind of business do you do with
 8 police departments? Do you have contracts with local
 9 police departments?
 10 A. We bid for contracts for police departments,
 11 yes.
 12 Q. What equipment do you sell them?
 13 A. Primarily it's ammunition, but in some cases
 14 it's weapons and the associated magazines.
 15 Q. Have you sold -- since July 1st, 2013, have
 16 you sold large-capacity magazines to police
 17 departments?
 18 A. Yes.
 19 Q. And when I say large-capacity magazines, are
 20 we on the same page with what that means?
 21 A. 16 or more, yeah.
 22 Q. 16 plus. Okay. What police departments have
 23 you sold them to?
 24 A. Loveland -- you know what. I don't know
 25 exactly. I don't handle the police sales. Mike Rigg

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1 does. Michael Rigg is my store manager, and he
 2 handles all the police sales. So I don't want to say
 3 something and be incorrect, not accurate.
 4 Q. Safe to say local police departments around
 5 Northern Colorado, that area?
 6 A. Yeah, Northern Colorado, yes.
 7 Q. Do you have a protocol for if a police
 8 officer or somebody with a badge -- I guess it could
 9 be a deputy sheriff or something like that -- comes in
 10 and says, I'd like to buy a large-capacity magazine
 11 using law enforcement exemption, would you sell it to
 12 that person?
 13 A. We usually require a letter from the
 14 department.
 15 Q. But it sounds like you don't require the
 16 department to make and pay for the order. If the
 17 buyer wanted to buy it personally and had adequate
 18 documentation, would you sell it to him?
 19 A. Yes.
 20 Q. Have you had anybody do that, to your
 21 knowledge?
 22 A. Yes.
 23 Q. Let's talk about the Transfers column. You
 24 mentioned GunBroker. What is that?
 25 A. GunBroker is a site that you can -- it's like

18	<p>1 Amazon, but for guns.</p> <p>2 Q. Do they have free shipping with a minimum</p> <p>3 order?</p> <p>4 A. I don't know. Probably.</p> <p>5 Q. Okay. So while we're on the topic --</p> <p>6 (Exhibit 3 marked for identification.)</p> <p>7 Q. (By Mr. Grove) I spent some time on</p> <p>8 GunBroker yesterday. I could not find the free</p> <p>9 shipping option. And I found -- I just wanted to go</p> <p>10 through a couple of firearms that I found here that I</p> <p>11 think are probably from your store. And these are</p> <p>12 current listings, at least as of yesterday.</p> <p>13 A. Yes.</p> <p>14 Q. My first thought was this is actually more</p> <p>15 similar to eBay than to Amazon.</p> <p>16 A. Perhaps.</p> <p>17 Q. But that doesn't really matter one way or the</p> <p>18 other. So looking at Exhibit 3, why don't you tell me</p> <p>19 how this system works.</p> <p>20 A. We post the gun for sale. We take several</p> <p>21 pictures of the gun. We do not do an auction, like</p> <p>22 eBay would do; we only do, buy it now. So they either</p> <p>23 buy it or they don't. There is no auction involved.</p> <p>24 And then they buy it. If we're going to ship it to</p> <p>25 another FFL dealer, which is the purpose of this, we</p>	20	<p>1 Loveland.</p> <p>2 A. If someone buys from the store in Texas, we</p> <p>3 usually get a phone call from that person, or in some</p> <p>4 cases the FFL dealer they've selected, to get our</p> <p>5 credentials. We send them our credentials. They then</p> <p>6 ship us the gun. We take the gun in, put it into our</p> <p>7 books. And once the customer comes in, they pay the</p> <p>8 fee and we sign it out of our books and they take the</p> <p>9 gun.</p> <p>10 Q. What's the fee?</p> <p>11 A. The fee is -- I think it's a \$25 transfer</p> <p>12 fee. And then of course they have to do the \$10</p> <p>13 background check.</p> <p>14 Q. That's from House Bill 1228, right? That was</p> <p>15 the new one that was -- the new \$10 check that the</p> <p>16 state started charging this year, correct?</p> <p>17 A. I don't believe so. I think -- well, House</p> <p>18 Bill -- you're talking about 1224? You said 1228.</p> <p>19 Q. Yeah. There were three bills: 1224, which</p> <p>20 is the large-capacity magazine limit; there's 1229,</p> <p>21 which is the private party transfer requirement; and</p> <p>22 then 1228, which also instituted a \$10 fee that you</p> <p>23 had to pay to the state.</p> <p>24 A. Yes, that is correct then.</p> <p>25 Q. That's different than the \$10 that you can</p>
19	<p>1 have to get that FFL dealer's numbers. And we package</p> <p>2 it, we do charge a shipping fee to ship it, and send</p> <p>3 it off to them.</p> <p>4 Q. How is your pricing -- if I wanted to walk</p> <p>5 into the store and buy this Smith & Wesson M&P, what</p> <p>6 would the price tag at the store be?</p> <p>7 A. Identical.</p> <p>8 Q. If I went online and I, say, lived in Texas</p> <p>9 and I wanted to buy this -- you sort of mentioned</p> <p>10 this, but I want to go into more detail -- you</p> <p>11 couldn't just ship it to my house, right?</p> <p>12 A. No. We have to ship it to an FFL dealer.</p> <p>13 Q. How does that work? Do I have to find an FFL</p> <p>14 that's near me?</p> <p>15 A. Yes, you do.</p> <p>16 Q. Who runs a background check?</p> <p>17 A. That FFL dealer.</p> <p>18 Q. And when does that happen?</p> <p>19 A. When the gun is shipped to the FFL dealer,</p> <p>20 they get the gun, the client comes in and does the</p> <p>21 background check to pick up the gun.</p> <p>22 Q. Do you do this in reverse?</p> <p>23 A. Yes.</p> <p>24 Q. So tell me how that works, if someone buys</p> <p>25 from the store in Texas and has it shipped to</p>	21	<p>1 charge to facilitate a private firearms transfer,</p> <p>2 correct?</p> <p>3 A. That's not the way -- are we dealing with</p> <p>4 1228 or 1224?</p> <p>5 Q. Let's just come back to that later on.</p> <p>6 A. I'm sorry.</p> <p>7 Q. I'm confusing myself.</p> <p>8 A. I'm confused too.</p> <p>9 Q. Let's just move on from there. I don't think</p> <p>10 it really matters that much.</p> <p>11 So I just want to go back to this \$25 that --</p> <p>12 the \$25 transfer fee that you charge when somebody</p> <p>13 from Texas -- an FFL from Texas ships the gun to you</p> <p>14 and then a buyer comes into your store.</p> <p>15 A. Right.</p> <p>16 Q. The buyer pays that fee to you, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And you run the Form 4473 --</p> <p>19 A. Correct.</p> <p>20 Q. -- and the InstaCheck check for them,</p> <p>21 correct?</p> <p>22 A. And they pay \$10 for that.</p> <p>23 Q. On top of the 25 bucks they're already</p> <p>24 paying?</p> <p>25 A. That's correct.</p>

22	<p>1 Q. Now I understand. Let's look at the second 2 page of this exhibit, which is 3. So I notice that, 3 unless it's very small, this particular gun looks like 4 it's not being sold with a magazine. Is it hidden in 5 there, or am I right about that? 6 A. It's not hidden that I can see. Let's look 7 at the description here. It's not clear in this if 8 it's coming with the magazine or not. 9 Q. Would you expect it to be pictured there if 10 it were? 11 A. Not necessarily. 12 Q. Do you ever sell magazines on the Internet, 13 without a magazine? (sic) 14 A. We may have. I don't know. 15 Q. If someone from, say, Maryland won the bid 16 for this gun, or a state -- I think Maryland is one of 17 these states that has a magazine capacity limit but 18 does not have an assault weapons ban. Let's just 19 suppose there is one. Would you consummate the sale? 20 What would you do? 21 A. Well, there's -- if you look here on "All 22 Sales Are Final" on the bottom here, it does say that 23 we ship unopened firearms, if available. "Scopes, 24 parts, upper receivers ship directly to customer when 25 allowed by law." So if it were not allowed by law, we</p>	24	<p>1 going to be shipped with from the factory? 2 A. Well, the manufacturer or the wholesaler. 3 Q. Do you have a choice when you order -- I 4 mean, can you say, I'd like 50 DPMS SASS's, and I'd 5 like them with 10-round magazines or I'd like them 6 with 30 or I'd like them with hundred-round drums? Is 7 that up to you as the purchaser -- I'm sorry -- as the 8 retailer? 9 A. As the retailer, not always. 10 Q. When is it not up to you? 11 A. Sometimes they do not have an alternate 12 magazine and send it with what is now a high-capacity 13 magazine. 14 Q. Give me some examples of when that's 15 happened. 16 A. Well, a lot of our guns that come in come in 17 with 30-round magazines as a standard, if we're 18 talking about this kind of a gun. 19 Q. And is this an AR platform? 20 A. It's an AR platform. Actually, this in a 21 .308 would come with a 20-round magazine. And an AR 22 platform, AR-15 platform, those would usually come 23 with 30-round magazines. We request to try and get 24 10-round magazines, but that doesn't always happen. 25 Q. But it looks like it worked in this case?</p>
23	<p>1 wouldn't ship it. If it was, we would. 2 So, in other words, if this gun had a 3 magazine and we were selling it to Texas, where it was 4 okay to sell it, we would ship it with the magazine. 5 If we were shipping it to California, we would not. 6 In fact, we couldn't even ship that gun because of the 7 assault weapon issues. 8 Q. Do guns come from the manufacturer with 9 magazines, typically? 10 A. Typically, yes. 11 Q. And is Smith & Wesson -- is that a 12 manufacturer that usually ships the magazine with the 13 gun? 14 A. Yes. 15 (Exhibit 4 marked for identification.) 16 Q. (By Mr. Grove) This is Exhibit 4. This is 17 another auction that I pulled up yesterday. This gun 18 looks like it has a -- my guess is a 10-round 19 magazine. Does it look like it to you? I'm on page 2 20 looking at the photo. 21 A. This is a SASS. Is it a .308? Yes, .308, 22 factory new in box. And if it's a .308, that 23 certainly looks like a 10 or less magazine. Could be 24 a five-round magazine. 25 Q. Who decides what magazine a gun like this is</p>	25	<p>1 A. I don't know if that was a request or it just 2 came that way. 3 Q. Is it common for -- would you be surprised, I 4 suppose, if you had received this weapon with a 5 10-round magazine prior to July 1st, 2013? 6 A. I'm not that familiar with this weapon, this 7 SASS. It's an unusual weapon, so I can't answer that. 8 Q. Okay. Just one more of these. 9 (Exhibit 5 marked for identification.) 10 (Discussion off the record.) 11 Q. (By Mr. Grove) So this is Exhibit 5. This 12 is a Core 15 MOE M4 -- 13 A. Yes. 14 Q. -- .300 Blackout with Magpul Furniture. So 15 what does Magpul furniture mean? 16 A. Furniture refers to the accessories on the 17 gun, such as the stock, the grip, the forehand. So 18 those are all manufactured by a company called Magpul. 19 Q. Is the magazine part of the furniture? 20 A. Well, yes and no. I wouldn't traditionally 21 consider it part of the furniture. But they actually 22 have kits called Matrix kits that come in different 23 colors, and it includes a magazine. 24 Q. It looks like this -- guessing just from 25 looking at it, looks like on page 2 that's probably a</p>

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1 Magpul PMAG.

2 A. That looks exactly like a Magpul PMAG to me.

3 Q. And that's a 30-round magazine, right?

4 A. That's what it looks like, yes.

5 Q. So it's safe to say that if -- well, you

6 wouldn't sell this to a Colorado buyer, right?

7 A. I would not.

8 Q. Either in the store or if the buyer bought it

9 online?

10 A. That is correct. Not with a magazine.

11 Q. Actually, that's a good question. What if

12 somebody from Colorado did win the auction and they

13 were in Durango or something, so they weren't going to

14 come into the store? What would you do?

15 A. Can you clarify the question?

16 Q. Sure. So I'm a buyer; I'm in Durango. I get

17 online and I buy this for the listed price and I

18 identify my local FFL in Durango and I say, okay, ship

19 it to me. What would you do, since this is pictured

20 with a 30-round magazine on it?

21 A. We would ship it without the magazine.

22 Q. Would you provide a replacement magazine?

23 A. In some cases we do. Some cases, we provide

24 a 10-round magazine. Any customer, we try and take

25 care of them.

27

1 (Exhibit 6 marked for identification.)

2 Q. (By Mr. Grove) This is Exhibit 6. This is

3 an abbreviated form of the complaint, which is 58

4 pages long. I just pulled out all the paragraphs that

5 I thought were probably relevant to your claims in

6 this case. And I just want to go through some of

7 these and try to flesh them out some.

8 A. I'm sorry. So this is the big --

9 MR. COLIN: This is this (indicating) --

10 THE DEPONENT: Okay.

11 MR. GROVE: Yeah, the complaint is, I don't

12 know, 295 paragraphs and 58 pages long. And that

13 seemed excessive. So I just pulled out the beginning

14 and then there's a section that specifically talks

15 about the licensed firearms dealers, which is about

16 halfway through this, the last three or four pages.

17 MR. COLIN: So it looks like we jump from

18 paragraph 31 to 124 --

19 MR. GROVE: And then stop.

20 MR. COLIN: -- and then stop at 141.

21 MR. GROVE: I was just trying to take it

22 easier on our printer.

23 MR. COLIN: Sure. I understand.

24 MR. GROVE: Saving the taxpayers money.

25 MR. COLIN: Saving a tree.

28

1 Q. (By Mr. Grove) So before I start this, are

2 you a gunsmith?

3 A. No.

4 Q. Does your store provide gunsmithing services?

5 A. We do not.

6 Q. Let's go to page -- it says at the top page 8

7 of 58, which is -- paragraph 21 is at the top of this

8 page.

9 A. You said 21 is the first paragraph?

10 Q. Starting with "As a practical matter. . ."

11 A. Yes.

12 Q. Why don't you read that paragraph and tell me

13 when you're ready.

14 A. Okay.

15 Q. I'm not sure you really needed to read that

16 to answer this question. But we'll get there. For a

17 sale out of your store that you conduct at retail,

18 walk me through the steps of how the background check

19 process works, from beginning to end.

20 A. They fill out the form.

21 Q. And that's Form 4473?

22 A. That's correct, yeah. And once they fill out

23 4473, our girls check it, or our guys, depending on

24 who is at the front counter, to make sure it was

25 filled out correctly.

29

1 Q. Let me stop you. So when you say they fill

2 out the Form 4473 --

3 A. The customer.

4 Q. The customer fills it out. All right. And

5 then the girls or guys then do what with it?

6 A. They check the form and they input the

7 information in the form into the Colorado background

8 check, which the name escapes me, for the CBI check.

9 Q. That's InstaCheck?

10 A. Yeah.

11 Q. So you said they check the form. What does

12 that involve?

13 A. Well, there are several questions on the

14 form. Sometimes in a rush the customer answers

15 something incorrectly or doesn't spell the name or

16 doesn't use the full name or doesn't use the county,

17 puts the state where the county goes.

18 Q. And if your employees catch a mistake like

19 that, what do they do?

20 A. They hand them a different form.

21 Q. You mean a new form?

22 A. A new form. Or if it's -- there are some

23 instances -- and I don't know them all, I'll be very

24 honest with you, because I don't do that part -- but

25 there are some instances where they can make a change

30

1 and initial it.
 2 Q. Does the -- does your employee check the
 3 purchaser's identification?
 4 A. Yes.
 5 Q. What sort of identification is required?
 6 A. Driver's license, proof of residency.
 7 Q. Would a passport be okay? Does it have to be
 8 a driver's license, I guess?
 9 A. I don't know, to be very honest.
 10 Q. Does it have to be a photo I.D.? Do you know
 11 that much?
 12 A. Has to be a photo I.D.
 13 (Mr. Blake arrives at the deposition.)
 14 Q. (By Mr. Grove) So you've got the form, you
 15 checked the identification, we know that the
 16 identification is -- looks like the person who handed
 17 it to you. What happens next?
 18 A. Then they input the information for the
 19 background check.
 20 Q. When you say input, do they use a computer,
 21 do they make a phone call?
 22 A. They use a computer. In some cases, if
 23 things are down, they'll -- in some cases they'll use
 24 a phone call. But that's rare.
 25 Q. What's the interface? Does InstaCheck have a

31

1 web page or --
 2 A. Yes, they do.
 3 Q. Have you seen that web page before?
 4 A. I have.
 5 Q. Does it look like Form 4473?
 6 A. No.
 7 Q. But the data that the customer puts into Form
 8 4473 is -- that's transferred by the employee from
 9 4473 to the InstaCheck page? Is that how it works?
 10 A. I don't know how much of that information is
 11 input. I don't know if the questions are input.
 12 Q. Okay. So you put in the information, you hit
 13 submit. What happens next?
 14 A. Then we -- it usually tells us a waiting
 15 time, approximate waiting time of how long it's going
 16 to take. The customer can then continue to shop, and
 17 then we call their name. Sometimes they're denied.
 18 Q. What's the longest that you've ever had to
 19 wait for CBI to complete a check?
 20 A. 14 days.
 21 Q. And what's the shortest you could expect?
 22 What's the average wait time now, for example?
 23 A. 20 minutes, 30 minutes.
 24 Q. What does the customer -- do they have to
 25 wait by the counter? Do they have to stay in the

32

1 store? I'm assuming for 14 days they didn't stay in
 2 the store.
 3 A. No, we don't require them to stay in the
 4 store.
 5 Q. And do they shop around, typically, or do
 6 they --
 7 A. Typically they shop around.
 8 Q. What are the options that you have -- I'm
 9 sure -- strike that.
 10 I'm sure that the system has gone down on
 11 occasion. What options do you have at that point?
 12 A. I think they can call by phone, talk to CBI
 13 directly.
 14 Q. When someone buys a gun from your store, do
 15 they often buy accessories with it?
 16 A. Yes.
 17 Q. So ammunition, for example?
 18 A. Yes.
 19 Q. I guess maybe that's not an accessory. How
 20 about scopes?
 21 A. Yes.
 22 Q. How about targets?
 23 A. Yes.
 24 Q. Do they buy extra magazines?
 25 A. Yes.

33

1 Q. Holsters?
 2 A. Yes.
 3 Q. Gun safes?
 4 A. If we're lucky.
 5 Q. What other types of accessories typically
 6 accompany a firearms purchase?
 7 A. Cleaning kits. Sometimes they'll go into our
 8 last room and look at our solar lighting, flashlights,
 9 rails, mounts.
 10 Q. How does your margin on guns compare to your
 11 margin on accessories?
 12 A. The margin on guns is very slight. The
 13 margin on accessories is about two times that, two to
 14 three times, depending on what the accessory is.
 15 Q. So the gun gets them in the store, but it's
 16 buying the accessories that makes the profit?
 17 A. That's correct.
 18 Q. While we're on the background check
 19 process -- we'll get to your interrogatory responses
 20 in a bit. But while I'm on the subject, you've never
 21 been sued for processing a background check, have you?
 22 A. No.
 23 Q. And that was true a couple of months ago when
 24 you did the interrogatory responses. I just wanted to
 25 confirm that was still true.

34	<p>1 A. Still true.</p> <p>2 Q. Are you aware of any FFL's who have ever been</p> <p>3 sued for processing a background check?</p> <p>4 A. I'm not personally aware of that.</p> <p>5 Q. So on paragraph 23, along these same lines --</p> <p>6 and we're still on Exhibit 6.</p> <p>7 A. Page 8 still, right?</p> <p>8 Q. Yes. Take a look at paragraph 23 and tell me</p> <p>9 when you've read it.</p> <p>10 A. Yes.</p> <p>11 Q. So the last sentence of this says, "FFL's are</p> <p>12 liable for errors on a Form 4473 and subject to</p> <p>13 license revocation and even federal felony charges."</p> <p>14 Are you aware of any FFL who has ever had his</p> <p>15 license revoked for making an error on Form 4473?</p> <p>16 A. I'm not personally aware.</p> <p>17 Q. Are you aware of what felony charges you</p> <p>18 would be subject to if you made a mistake?</p> <p>19 A. The classification of the felony?</p> <p>20 Q. Or just what you would call it. Is there a</p> <p>21 filled-out-Form-4473-wrong crime?</p> <p>22 A. I don't know specifically. I know when I</p> <p>23 took over the shop, I read that BATFE thing from cover</p> <p>24 to cover. But I can't remember that.</p> <p>25 Q. Are you aware whether any of your employees</p>	36	<p>1 A. No, that's correct.</p> <p>2 Q. So what would you do in that situation?</p> <p>3 A. Well, in that situation I would assume they</p> <p>4 would recheck the form, find out why it was rejected,</p> <p>5 and then resubmit it with the correct information --</p> <p>6 with corrected information.</p> <p>7 Q. So there's an explanation for a rejection</p> <p>8 when it comes back?</p> <p>9 A. Yes. Well, not always, no.</p> <p>10 Q. What circumstances would there not be an</p> <p>11 explanation?</p> <p>12 A. I don't know enough about the process that we</p> <p>13 undergo, because I'm not directly involved in that</p> <p>14 process, to know -- I have heard that that information</p> <p>15 is, in some cases, maybe all cases, privileged</p> <p>16 information. So they don't give a reason why it was</p> <p>17 rejected, I don't believe, but I don't know a hundred</p> <p>18 percent.</p> <p>19 Q. So it sounds like if there was a mistake on</p> <p>20 the form, they might send something back that said,</p> <p>21 the birth date doesn't match up with what we expected</p> <p>22 in the driver's license records?</p> <p>23 A. Perhaps.</p> <p>24 Q. But if somebody had some sort of conviction</p> <p>25 that was a prohibiting factor, they might --</p>
35	<p>1 or whether your store has ever made a mistake in</p> <p>2 filling out -- in transmitting the information that</p> <p>3 the buyer provided to you?</p> <p>4 A. Yes.</p> <p>5 Q. So tell me about that.</p> <p>6 A. We clarify with the BATFE and make sure that</p> <p>7 everything is okay.</p> <p>8 Q. What sort of mistakes have you caught?</p> <p>9 A. Mostly it's a transposing of the number.</p> <p>10 Q. Does that result in a rejection? Does it --</p> <p>11 so let me go through the process with you. So you</p> <p>12 transmit the data to InstaCheck. InstaCheck then</p> <p>13 checks against NICS and various other state databases.</p> <p>14 And let's say your employee was selling a gun</p> <p>15 to somebody who was born on January 1st, 1980, but</p> <p>16 instead he accidentally put February 1st, 1980. I</p> <p>17 assume then the birth date wouldn't match up with the</p> <p>18 other information on the form and that would result in</p> <p>19 some sort of message back to the store saying, we</p> <p>20 can't approve this purchase. Right?</p> <p>21 A. I would assume so. I don't know that</p> <p>22 directly, but I would assume so.</p> <p>23 Q. So if that happened, I would guess that</p> <p>24 doesn't mean the buyer is prohibited for all time</p> <p>25 because you made a mistake. Right?</p>	37	<p>1 InstaCheck might just come back with, this person is</p> <p>2 prohibited, and that's all the information you get?</p> <p>3 A. That's correct. I believe that's correct.</p> <p>4 Q. So the folks that run the background checks</p> <p>5 for you, are they specialists or are they floor</p> <p>6 salesmen? Who does it?</p> <p>7 A. They're trained, and they're trained by, say,</p> <p>8 Mike Rigg and Brei Lowe, who are both employees, who</p> <p>9 have been doing this for -- Mike was with Bob Jensen</p> <p>10 almost from the very beginning.</p> <p>11 Q. Is this their only job, to do the Form</p> <p>12 4473's?</p> <p>13 A. No. They're also running the cash register</p> <p>14 too.</p> <p>15 Q. Do you have salesmen out on the floor also?</p> <p>16 A. We have salesmen, yes.</p> <p>17 Q. So it sounds like you're either a cashier</p> <p>18 slash Form 4473 person or you're a salesman. Is that</p> <p>19 right?</p> <p>20 A. That's correct.</p> <p>21 Q. What's the average hourly wage for the folks</p> <p>22 who are running the cashiers --</p> <p>23 A. Oh, gosh.</p> <p>24 Q. -- cash registers?</p> <p>25 A. Cash registers? I don't know.</p>

38	<p>1 Q. Okay. Can you ballpark it? I mean --</p> <p>2 A. 12 an hour. Ballpark.</p> <p>3 Q. How much of your business -- shifting topics</p> <p>4 here -- comes from in-store traffic versus online?</p> <p>5 A. I'd say most of our business comes from</p> <p>6 in-store traffic.</p> <p>7 Q. Do you have customers who travel from around</p> <p>8 the state to visit the store?</p> <p>9 A. Yes.</p> <p>10 Q. How far away do they come from, to your</p> <p>11 knowledge?</p> <p>12 A. Some come from out of state, Nebraska,</p> <p>13 Wyoming.</p> <p>14 Q. Specifically just to come to Jensen Arms?</p> <p>15 A. Specifically just to come to Jensen Arms.</p> <p>16 Q. If I come from out of state, can I buy a gun</p> <p>17 at your store and then transport it back to my state?</p> <p>18 I'm just curious.</p> <p>19 A. A long gun. Not a handgun. But some people</p> <p>20 can purchase a gun and ship it to their FFL in another</p> <p>21 state. Probably the same thing you would do with</p> <p>22 GunBroker.</p> <p>23 Q. Right. On an average day, how many guns</p> <p>24 would you expect to sell out of your inventory?</p> <p>25 A. That's a very difficult question to answer.</p>	40	<p>1 that we have on a rack is legal. Even though it says</p> <p>2 it's 15 rounds, they're confused if that's a legal</p> <p>3 magazine or not. In some instances they might say</p> <p>4 close to what you said, just asking if a Glock 17 --</p> <p>5 if the 17-round magazine is legal.</p> <p>6 Q. Do you display anything on your shelves that</p> <p>7 you can't sell or that you don't sell to customers who</p> <p>8 walk in the door?</p> <p>9 A. Yes.</p> <p>10 Q. So what do you display that you can't sell?</p> <p>11 A. We sell to law enforcement, so we have a law</p> <p>12 enforcement area that displays magazines.</p> <p>13 Q. Is that specifically marked as law</p> <p>14 enforcement?</p> <p>15 A. I believe there's a small sign. There's a</p> <p>16 lock to get in. We sell what's called Blue Box guns,</p> <p>17 guns by Glock that are made specifically for law</p> <p>18 enforcement that are lower priced.</p> <p>19 Q. When you say there's a lock to get in, is</p> <p>20 this --</p> <p>21 A. It's like a tower, glass tower, and it has</p> <p>22 the guns lined up. In the back of that tower is a</p> <p>23 list that says who can buy these guns and who can't</p> <p>24 buy the guns.</p> <p>25 Q. Okay. So do you have any non-law enforcement</p>
39	<p>1 Depends on the day. It's a lot slower right now than</p> <p>2 it was. So between 30 and 50. That's an average day.</p> <p>3 Q. Still on Exhibit 6, let's flip a couple of</p> <p>4 pages. I'm on the page that says page 22 out of 58 at</p> <p>5 the top and has paragraph 129 as the first full</p> <p>6 paragraph.</p> <p>7 A. Uh-huh.</p> <p>8 Q. So why don't you take a look at paragraph 129</p> <p>9 and tell me when you've read it.</p> <p>10 A. Okay.</p> <p>11 Q. So the last sentence of this paragraph says,</p> <p>12 "Customers have already expressed confusion about what</p> <p>13 magazines will be legal. . ." Let's just stop there.</p> <p>14 I know this complaint was drafted before the law went</p> <p>15 into effect. Are you still getting expressions of</p> <p>16 confusion from customers?</p> <p>17 A. Yes.</p> <p>18 Q. So what are they confused about?</p> <p>19 A. The capacity which is legal.</p> <p>20 Q. So they just come in and say, is an 18-round</p> <p>21 magazine legal?</p> <p>22 A. They say a lot of different things.</p> <p>23 Q. Give me some examples of some of their</p> <p>24 confusion.</p> <p>25 A. Some of the confusion is whether a magazine</p>	41	<p>1 people walking over to that tower and saying, why</p> <p>2 can't I have the ones in that case?</p> <p>3 A. Yes.</p> <p>4 Q. What do you tell them?</p> <p>5 A. Because you're not law enforcement.</p> <p>6 Actually, I usually say, are you law enforcement?</p> <p>7 Q. So aside from those magazines and firearms</p> <p>8 that are in that case, do you display any other</p> <p>9 equipment that you can't sell to the average Joe who</p> <p>10 walks in?</p> <p>11 A. Yes.</p> <p>12 Q. What equipment is that?</p> <p>13 A. If a gun comes with a 30-round magazine,</p> <p>14 we'll display it with a 30-round magazine. If it's,</p> <p>15 like I said, the Magpul furniture kit or Matrix kit,</p> <p>16 we'll display it with the kit.</p> <p>17 Q. Then are people disappointed when they want</p> <p>18 to buy the gun and you tell them that you can't sell</p> <p>19 the magazine with it?</p> <p>20 A. Sometimes.</p> <p>21 Q. Do they say, okay, I'm not going to buy the</p> <p>22 gun then?</p> <p>23 A. Sometimes.</p> <p>24 Q. How often has that happened?</p> <p>25 A. I don't have an exact number.</p>

42	<p>1 Q. Is it an everyday occurrence?</p> <p>2 A. I don't think it's an everyday occurrence.</p> <p>3 Q. Let's go to paragraph 131, which doesn't</p> <p>4 pertain directly to you, but read it and tell me when</p> <p>5 you're ready.</p> <p>6 A. Okay.</p> <p>7 Q. Do you carry Smith & Wesson products?</p> <p>8 A. Yes, we do.</p> <p>9 Q. So paragraph 131 says that Smith & Wesson</p> <p>10 already informed Green Mountain Guns, which is another</p> <p>11 plaintiff in our case, that it will no longer ship</p> <p>12 merchandise to them because of uncertainty caused by</p> <p>13 House Bill 1224. Did you have any conversations like</p> <p>14 this with Smith & Wesson?</p> <p>15 A. No.</p> <p>16 Q. So they never indicated to you that they were</p> <p>17 going to suspend shipments?</p> <p>18 A. No.</p> <p>19 Q. How about Glock?</p> <p>20 A. No.</p> <p>21 Q. Any other companies that have suspended or</p> <p>22 declined to ship to you?</p> <p>23 A. CZ.</p> <p>24 Q. Anyone else?</p> <p>25 A. There are others, but that would be best -- a</p>	44	<p>1 Q. So let me see if I can sort of summarize what</p> <p>2 I read here to save us a little bit of time, and that</p> <p>3 is that CZ's attorney was concerned that they could</p> <p>4 not ship firearms that had magazines that held more</p> <p>5 than 15 rounds to your store at all under the law. Is</p> <p>6 that right?</p> <p>7 A. That's correct.</p> <p>8 Q. And so for that reason they were refusing to</p> <p>9 ship anything to you?</p> <p>10 A. That's correct.</p> <p>11 Q. And has that situation been resolved?</p> <p>12 A. Only partially. Our representative, Bill</p> <p>13 Binet, who is named in these correspondence, was able</p> <p>14 to separate our two orders. And so now we're slowly</p> <p>15 starting to get shipments of the lower capacity</p> <p>16 magazines and guns. The issue is that with all these</p> <p>17 manufacturers and, in some cases, dealers there is a</p> <p>18 long wait period. These guns are back-ordered. So</p> <p>19 this order was put in, I think, even before the first</p> <p>20 of the year. So it's been detrimental to our</p> <p>21 business.</p> <p>22 Q. So what kind of guns -- what kind of CZ guns</p> <p>23 does your store carry?</p> <p>24 A. Both their semiautomatic pistols as well as</p> <p>25 their long guns.</p>
43	<p>1 question best for Michael Rigg, the store manager.</p> <p>2 Q. What is CZ?</p> <p>3 A. It's a Czech company that makes a very famous</p> <p>4 gun called the CZ 75, as well as many, many others.</p> <p>5 They make rifles. And they have informed us that they</p> <p>6 wouldn't ship any guns with the high-capacity</p> <p>7 magazines. And in fact, it affected our orders.</p> <p>8 (Exhibit 7 marked for identification.)</p> <p>9 Q. (By Mr. Grove) This is Exhibit 7. These are</p> <p>10 emails that were attached to some of your discovery</p> <p>11 responses.</p> <p>12 A. That's correct.</p> <p>13 Q. Do you recognize these documents?</p> <p>14 A. I do.</p> <p>15 Q. So I guess my first question is, how much of</p> <p>16 your business is selling CZ products?</p> <p>17 A. CZ is a prominent gun in our stock. CZ's --</p> <p>18 the relationship that we have with CZ is really</p> <p>19 imperative to our corporation. CZ has done</p> <p>20 exhibitions where they come and have displays and</p> <p>21 stuff. And to become a CZ dealer is a difficult</p> <p>22 thing. We've got a very good relationship with CZ.</p> <p>23 So this has been detrimental to our business.</p> <p>24 Q. Are there any other CZ dealers in Colorado?</p> <p>25 A. I wouldn't -- I wouldn't know.</p>	45	<p>1 Q. And what calibers are the semiautos that the</p> <p>2 pistol is in?</p> <p>3 A. 9, .45, .40.</p> <p>4 Q. What magazine capacity does the 9 have?</p> <p>5 A. I believe it's 17 or 18.</p> <p>6 Q. And then the .40 and .45 I assume are 15 or</p> <p>7 below?</p> <p>8 A. I think there's one .40 that's above the 16.</p> <p>9 Q. Are those firearms, all three of those</p> <p>10 pistols, are they compatible with magazines that hold</p> <p>11 15 or fewer rounds?</p> <p>12 A. No.</p> <p>13 Q. Not at all?</p> <p>14 A. Not to my knowledge. I know that</p> <p>15 specifically some, there is no replacement magazine.</p> <p>16 I don't know about all of them because there's many,</p> <p>17 many different SKU's.</p> <p>18 Q. SKU is S-K-U?</p> <p>19 A. S-K-U, yeah.</p> <p>20 Q. So did CZ allow you to cancel orders of</p> <p>21 anything, or did you ask them to? How did this work</p> <p>22 when you said you split the order?</p> <p>23 A. Well, we split the order because there is</p> <p>24 hope in the future, if the law is overturned, that we</p> <p>25 might be able to continue to sell those guns. We</p>

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1 don't want to lose our place in line.
 2 Q. So as it stands now -- I want to make sure
 3 I'm getting this right -- CZ is shipping you guns that
 4 do not have large-capacity magazines?
 5 A. That's correct.
 6 Q. And they are not shipping you anything else?
 7 A. That's correct.
 8 MR. GROVE: Would you like to take a break?
 9 What time is it?
 10 THE DEPONENT: I'm okay.
 11 (Discussion off the record.)
 12 Q. (By Mr. Grove) Let's go back to Exhibit 6
 13 here and take a look at paragraph 133.
 14 A. Okay. Sorry. Yes.
 15 Q. Just take a look at that, and tell me when
 16 you've read it.
 17 A. Okay.
 18 Q. Just curious if your store has experienced an
 19 80 percent loss in revenue, as Grand Prix Guns
 20 anticipated it would.
 21 A. No.
 22 Q. Let's talk about private transfers for a
 23 second. Does Jensen Arms process private transfers
 24 for people who walk in the door?
 25 A. No.

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1 Q. Why not?
 2 A. Because we're not going to do the state's
 3 business for free. It takes time. It's also a big
 4 responsibility attached to it.
 5 Q. What's the responsibility?
 6 A. Well, we're logging the gun into our books
 7 and then logging it back out.
 8 Q. And does that -- why does that concern you?
 9 A. Well, every time you log something into a
 10 legal document, such as our book, there is
 11 ramifications attached to that.
 12 Q. What sort of ramifications?
 13 A. I don't know.
 14 Q. And you're concerned about, you said, about
 15 doing the state's work for free. What do you mean by
 16 that?
 17 A. Well, as I read it, I understand that the
 18 only fee that can be charged is \$10, and that's what
 19 the CBI check costs. So that fee doesn't go to us; it
 20 goes to CBI. Therefore, it's doing it for free. And
 21 there are man-hours involved in doing that.
 22 Q. How many man-hours?
 23 A. Well, for each one you're talking probably
 24 15, 20 minutes.
 25 Q. So your interpretation -- I just want to make

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1 sure I have this clear, this is back where we were
 2 getting confused before --
 3 A. Yes.
 4 Q. -- your interpretation is that you can charge
 5 \$10, but that \$10 goes to the state, and that you get
 6 nothing out of it?
 7 A. That's how I understand it.
 8 Q. Have you talked to any other firearms dealers
 9 about the way the process works?
 10 A. About the way the process works?
 11 Q. About who can be charged the fee and how it
 12 gets passed on and whether you can charge anything.
 13 MR. COLIN: Compound.
 14 MR. GROVE: It was compound.
 15 Q. (By Mr. Grove) Answer it if you can, though.
 16 A. Can you repeat it so I can really understand
 17 it.
 18 Q. Have you had any conversations with any other
 19 firearms dealers about, if you were going to do
 20 private background checks, how that would work?
 21 A. Yes.
 22 Q. Okay. So who have you had those discussions
 23 with?
 24 A. Tim Brough.
 25 Q. And my understanding -- and he's the Rocky

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1 Mountain Shooters Supply guy?
 2 A. That's correct.
 3 Q. My understanding is they actually run the
 4 checks.
 5 A. I don't know.
 6 Q. Why don't you tell me about your conversation
 7 with him.
 8 A. I believe that when we spoke, he was of the
 9 same mind that I was, that there was no additional
 10 fee, which is the \$10, to run the background check.
 11 And I don't know for a fact, but I believe that he's
 12 not doing it as well, for the same reasons.
 13 Q. So you understand that just to be a
 14 pass-through to the state, essentially? It's a
 15 pass-through. You collect -- InstaCheck charges you
 16 10 bucks, you are allowed to pass that \$10 along to
 17 the customer, then when the customer pays the 10
 18 bucks, you write a check to InstaCheck for that
 19 amount?
 20 A. Yes.
 21 Q. So one thing I came across on your web
 22 page -- and I didn't print it out, but this has to do
 23 with out-of-state firearms transfers. And you're just
 24 going to have to trust me that I wrote this down
 25 right. One of the numbers under the -- there was sort

50	<p>1 of a list of what you could do. And Number 4 was 2 price. And you said at the time of pickup the 3 transfer fee is \$25. So let me just stop right there. 4 I'm still trying to sort all these things out 5 in my head. Why can you charge a \$25 fee for a 6 transfer from an FFL to you? What authorizes you to 7 do that? 8 A. Because it's coming from another federal 9 firearm dealer. 10 Q. So if it's channeled through another FFL, you 11 can charge it? 12 A. I believe so. 13 Q. I'm not accusing you of doing anything wrong. 14 I'm just trying to figure this out on my own. Then 15 the next sentence says, if you choose to spend \$75 or 16 more at the time you pick up your transfer, then we 17 will waive the \$25 fee. Have you given any 18 consideration to offering a background check with a 19 minimum purchase, or something like that, for 20 private-party transfers? 21 A. No, I haven't. That's a good idea. 22 Q. And I'm not making any representations as to 23 whether that's legal or not, but it's just something 24 that I was thinking about as I was going through the 25 statute.</p>	52	<p>1 would be \$25, do you think that you would run private 2 background checks? 3 A. Yes. 4 Q. If you know, do you know if -- I guess other 5 dealers that you've communicated with -- never mind. 6 I'll withdraw that question. 7 (Exhibit 8 marked for identification.) 8 Q. (By Mr. Grove) Actually, before we get to 8, 9 let me just go back for a second. And I want to dig 10 into this private transfer question a little bit more. 11 Is a -- does your store -- do you do consignment 12 sales? 13 A. Yes. 14 Q. And how does a consignment sale work? If I 15 have a gun that I want to sell, but I don't want to 16 deal with it, can I walk into your store and ask you 17 guys to sell it secondhand for me? 18 A. Uh-huh. 19 MR. COLIN: Is that yes? 20 A. Yes. Sorry. Got too relaxed with my iced 21 tea. 22 Q. (By Mr. Grove) Thank you. Who sets the 23 price? 24 A. It's usually discussed between the customer 25 and myself.</p>
51	<p>1 A. As I read the statute, I believe it says that 2 you can't, you can't charge any other fees. But I'm 3 not an attorney, so. . . 4 Q. And whether that would be a fee or not, I 5 don't know. You probably want to talk to an attorney 6 about that. 7 A. I like that you suggested it. 8 MR. GROVE: Let's not say that it was a 9 suggestion. Maybe we should make this section of the 10 transcript subject to the protective order. 11 This might be a good time for a break. 12 (Recess from 10:24 a.m. to 10:43 a.m.) 13 Q. (By Mr. Grove) I want to go back to the 14 private background check stuff for just a second. 15 Let's just assume for the sake of argument that the 16 \$10 fee is not just a pass-through and that you could 17 charge it so the customer would have to pay 20 bucks. 18 They pay \$10 that you send to InstaCheck and then \$10 19 that would go to your -- to cover your costs, I 20 suppose. And I guess that's the question. Would the 21 \$10 cover your costs? 22 A. No. 23 Q. Would it come close? 24 A. I think 25 would be more appropriate. 25 Q. So if the fee that you were allowed to charge</p>	53	<p>1 Q. And then you take commission from it? 2 A. Yes. 3 Q. How does the background check process work in 4 that case? If I come in and want to buy a consigned 5 gun, do you consider that to be a private-party sale, 6 or is it something that you're selling out of your 7 inventory? 8 A. It's something that's already been logged 9 into our inventory, so it's already in our inventory. 10 And they go through the background check just like 11 anyone else. 12 Q. Would I have to pay a fee for the background 13 check in that case? 14 A. \$10. 15 Q. Is there a certain amount of time that you 16 would have to hold on to the firearm in order for it 17 to count as a consignment sale? 18 A. I'm not sure I understand that question. 19 Q. If I walked in with a friend or someone who I 20 was going to sell a gun to, and I said to you, I'd 21 like to sell this -- I'd like to consign this gun in 22 your store, and the person that I walked in with said, 23 I would like to buy that gun that has just been 24 consigned to you, would you consider -- what would 25 have to happen in order for that gun to be taken into</p>

54	<p>1 your inventory and for you to then process it as a</p> <p>2 sale out of your inventory?</p> <p>3 A. Take it as a consignment, log the gun into</p> <p>4 our books. And then the other party would buy the</p> <p>5 gun, pay our commission, pay the background check fee.</p> <p>6 And you wouldn't get paid for, I think it's 14 days.</p> <p>7 Q. I as the consigner?</p> <p>8 A. You as the consigner. Because we've policy</p> <p>9 on used guns that they have 14 days to see if it</p> <p>10 functioned properly.</p> <p>11 MR. GROVE: Where were we? Did I mark</p> <p>12 something? Yes, 8.</p> <p>13 Q. (By Mr. Grove) So these are your written</p> <p>14 discovery responses, 45 pages long, so I won't ask you</p> <p>15 to read them all right now. But we'll go through kind</p> <p>16 of one by one, and I just want to follow up on a few</p> <p>17 things.</p> <p>18 A. Okay.</p> <p>19 MR. GROVE: So I think this would be a good</p> <p>20 time to put on the record this use immunity question.</p> <p>21 We think that the technical guns takes care of this,</p> <p>22 obviously, but I can understand your and your</p> <p>23 counsel's concern.</p> <p>24 Just to put on the record that we had</p> <p>25 negotiations with Mr. Colin concerning whether the</p>	56	<p>1 and specifically citing to 18 U.S.C. 6002 and Federal</p> <p>2 Rule of Criminal Procedure 732(b), that in order to</p> <p>3 obtain testimony, notwithstanding the assertion of the</p> <p>4 Fifth Amendment privilege, this witness is granted use</p> <p>5 immunity and that we are in agreement that any</p> <p>6 testimony on this specific issue will be considered as</p> <p>7 confidential under the protective order.</p> <p>8 With that said, I think we are in agreement.</p> <p>9 MR. GROVE: Yes, we are.</p> <p>10 (Discussion off the record.)</p> <p>11 MR. COLIN: Normally we would designate this</p> <p>12 as under seal under the protective order. And</p> <p>13 Mr. Grove will tell you when that portion of the</p> <p>14 examination ends.</p> <p>15 MR. GROVE: It's not going to take long.</p> <p>16 (Pursuant to agreement of counsel, the</p> <p>17 following portion of the deposition, pages 57 through</p> <p>18 58, was taken under a stipulation of confidentiality,</p> <p>19 to be bound separately and marked "Confidential.")</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
55	<p>1 plaintiff entity was going to have to answer questions</p> <p>2 about magazines that are sold that hold 15 or fewer</p> <p>3 rounds but that also have removable base plates.</p> <p>4 We had a discussion with the attorney general</p> <p>5 yesterday, and he confirmed that to the extent he is</p> <p>6 able to, that this -- that answers that you provide to</p> <p>7 questions relating to this subject, he won't</p> <p>8 prosecute, and that we certainly won't -- that this</p> <p>9 portion of the deposition would be under the</p> <p>10 protective order and that we wouldn't share it with</p> <p>11 anybody, well, not only because we just have no</p> <p>12 interest in doing so, but because a protective order</p> <p>13 would prohibit us from doing so.</p> <p>14 So I think -- Mr. Colin, do you have anything</p> <p>15 that you want to add to that?</p> <p>16 MR. COLIN: I do. With that said,</p> <p>17 specifically in response to Interrogatory Number 4,</p> <p>18 which sought information of the nature that you've</p> <p>19 just described with regard to sales after July 1 of</p> <p>20 magazines with a capacity of 15 rounds or less but</p> <p>21 which have removable base plates, we asserted a Fifth</p> <p>22 Amendment privilege on behalf of the responder, who is</p> <p>23 this witness.</p> <p>24 We then had discussions regarding a grant of</p> <p>25 use immunity on this topic. It is my understanding,</p>	59	<p>1 (The confidential portion of the deposition</p> <p>2 having been concluded, the regular proceedings of the</p> <p>3 deposition were resumed.)</p> <p>4 Q. (By Mr. Grove) Let's look at Interrogatory</p> <p>5 Number 2, which is on page 21. So your response says,</p> <p>6 "House Bill 1224 has caused Plaintiff significant</p> <p>7 economic damages because it has been unable to sell</p> <p>8 all magazines and related firearms that hold greater</p> <p>9 than 15 rounds, which amounts to a considerable amount</p> <p>10 of inventory."</p> <p>11 Now, you have set up a -- at least I saw</p> <p>12 online -- a Wyoming magazine outlet?</p> <p>13 A. Yes.</p> <p>14 Q. Is that -- do you sell firearms there, or</p> <p>15 just magazines?</p> <p>16 A. No, just magazines and accessories.</p> <p>17 Q. How has that business been? Has it worked?</p> <p>18 Do people come?</p> <p>19 A. Slow. It's very slow.</p> <p>20 Q. Do you anticipate that you're going to keep</p> <p>21 it open?</p> <p>22 A. I don't know. But if we have weeks like</p> <p>23 we've had recently, probably not.</p> <p>24 Q. I think I saw online that it's only open</p> <p>25 intermittently. Is that right?</p>

60	<p>1 A. Yes.</p> <p>2 Q. Did you just rent a warehouse up there or</p> <p>3 something?</p> <p>4 A. No.</p> <p>5 Q. Is there a storefront?</p> <p>6 A. No.</p> <p>7 Q. Is it a tent? What's the physical setup?</p> <p>8 A. Mike Rigg's uncle owns a house up there.</p> <p>9 He's got a barn/garage, and it's out of the</p> <p>10 barn/garage.</p> <p>11 Q. In your online sales, do you sell -- do you</p> <p>12 sell magazines alone, or do you only sell firearms?</p> <p>13 Do you only sell magazines if they come with a</p> <p>14 firearm?</p> <p>15 A. We sell magazines as well.</p> <p>16 Q. Have you given any thought to putting your</p> <p>17 existing inventory online and selling it to</p> <p>18 out-of-state purchasers?</p> <p>19 A. Yes.</p> <p>20 Q. Have you tried to do that?</p> <p>21 A. Well, we're in the process.</p> <p>22 Q. How would your -- where do you think your</p> <p>23 pricing is going to be if you do that?</p> <p>24 A. Exactly what it is in our store.</p> <p>25 Q. Do you carry the Kel-Tec PMR-22?</p>	62	<p>1 think of?</p> <p>2 A. I think FN makes a couple models. FN,</p> <p>3 Fabrique Nationale. It's a Belgian company.</p> <p>4 MR. BLAKE: 5.7?</p> <p>5 A. 5.7. But they also have -- I think their</p> <p>6 9-millimeter may carry more than nine. I don't know</p> <p>7 exactly.</p> <p>8 Q. (By Mr. Grove) Any others?</p> <p>9 A. I'm sure there's -- I'm sure there's others.</p> <p>10 Q. But as you sit here today, you can't think of</p> <p>11 any?</p> <p>12 A. I can't.</p> <p>13 Q. Let's go to Interrogatory 8 on page 25. This</p> <p>14 is a long response. Why don't I give you a couple</p> <p>15 minutes to read this.</p> <p>16 A. Okay.</p> <p>17 Q. All right. So we'll just go through this</p> <p>18 sort of sentence by sentence. The second sentence</p> <p>19 says that most of these conversations with</p> <p>20 manufacturers' representatives and wholesalers took</p> <p>21 place between July and August of 2013. I'm just</p> <p>22 curious. This bill was passed in March, and it was</p> <p>23 hotly debated. Why did you wait until July and August</p> <p>24 of 2013 to have discussions with people who sold to</p> <p>25 you?</p>
61	<p>1 A. PMR-30, yes.</p> <p>2 MR. BLAKE: PMR-30.</p> <p>3 Q. (By Mr. Grove) PMR-30. Do you have any of</p> <p>4 those in stock?</p> <p>5 A. No.</p> <p>6 Q. How about the Springfield XDM?</p> <p>7 A. Yes.</p> <p>8 Q. The 9 millimeter?</p> <p>9 A. Yes.</p> <p>10 Q. My understanding is that -- again, you've</p> <p>11 probably figured out I'm not a gun expert by now -- my</p> <p>12 understanding is that that firearm is not compatible</p> <p>13 with a magazine that holds 15 or fewer rounds. Is</p> <p>14 that your understanding?</p> <p>15 A. That is my understanding too.</p> <p>16 Q. So do you have a lot of those in stock?</p> <p>17 A. Yes.</p> <p>18 Q. What are you doing with them?</p> <p>19 A. They're sitting in our bunker.</p> <p>20 Q. Any other guns that are not compatible with a</p> <p>21 magazine that holds 15 or fewer rounds that you have</p> <p>22 in stock?</p> <p>23 A. The CZ's. There are others. The Smith &</p> <p>24 Wesson M&P 9's. And there's others too.</p> <p>25 Q. Any off the top of your head that you can</p>	63	<p>1 A. I didn't think the law was going to pass.</p> <p>2 Q. And then it did pass in March, and you still</p> <p>3 have a three- or four-month gap, right?</p> <p>4 A. Yes.</p> <p>5 Q. Any reason that you delayed discussions until</p> <p>6 then?</p> <p>7 A. Not specifically.</p> <p>8 Q. Going down a couple more sentences, the</p> <p>9 sentence starts with "CZ's attorneys refused. . ." Do</p> <p>10 you see that?</p> <p>11 A. Yes.</p> <p>12 Q. So we have what was marked as Exhibit 7, the</p> <p>13 emails that you had with -- that you supplied --</p> <p>14 A. Yes.</p> <p>15 Q. -- between CZ and you. Were there any</p> <p>16 other -- did you have any other emails aside from</p> <p>17 those that were disclosed in response to Request for</p> <p>18 Production 8?</p> <p>19 A. I don't know.</p> <p>20 Q. Is that something you can check on?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. If you can check on that, if there are</p> <p>23 any others, we would like to see them. Just talk to</p> <p>24 Mr. Colin. He'll help.</p> <p>25 MR. COLIN: Just so I'm clear, you're asking</p>

64	<p>1 for emails between Binet, CZ, and/or Jensen? 2 MR. GROVE: Anything that has to do with 3 CZ's -- negotiations with CZ over whether CZ is going 4 to continue to supply products to you or not. I know 5 there were subsequent discussions, and I don't know 6 whether those were by email because you had 7 mentioned -- 8 THE DEPONENT: They were verbal. 9 Q. (By Mr. Grove) If you can go back and check 10 to see if there are any other, I would appreciate it. 11 A. Yes. 12 Q. So at the bottom of that paragraph it says, 13 "Jensen Arms has recently started to receive a small 14 flow of these weapons" -- which are the CZ guns that 15 you maintain are not banned -- "but because Jensen 16 Arms is a major CZ dealer, our sales and our loyal CZ 17 customers have been irreparably damaged by this new 18 bill." 19 What do you mean by irreparably damaged? 20 A. A lot of people have ordered or wanted guns 21 and we couldn't deliver them, so they've gone and 22 bought them somewhere else. So I've lost all that 23 revenue. 24 Q. The next paragraph, at the very bottom line 25 it says, "In some cases we've had to sign legal</p>	66	<p>1 A. Again, it has to do with back-ordering guns. 2 If you can't get them -- when we ordered guns at a 3 particular show, say in January, and they won't 4 deliver them and you have to negotiate for months to 5 get them to send them, you've lost your place in line. 6 So now that flow of guns -- you've missed all these 7 sales. And even though the guns are now starting to 8 come in, it's a slow process because we're behind 9 other people in line. 10 Q. You mentioned shows, and that triggered 11 something for me. Does Jensen Arms have a presence at 12 gun shows? Do you attend them and have a booth? 13 A. No. Well, is that a two-part question? 14 Q. Yes, it was. 15 MR. COLIN: I've failed in my job. Thank you 16 for catching that for me. 17 A. We attend them. We do not have a booth. 18 Q. (By Mr. Grove) So when you say you attend 19 them, what does that mean? 20 A. We're looking at the new guns. They're buyer 21 markets. So all of the manufacturers, the retailers, 22 the distributors, they have booths, and we go place 23 orders for business. 24 Q. So -- this is an area that again I don't know 25 much about. Are there consumer-focused gun shows and</p>
65	<p>1 affidavits that we would only sell these guns 'Out of 2 State,' but that is not our core business as it is 3 with many web-based dealers." 4 Did you keep copies of these affidavits? 5 A. I don't know. That would be a question for 6 Mike Rigg, because he's probably the one that signed 7 them. 8 Q. That's another one that I'd like for you to 9 check -- 10 A. I can do that, yes. 11 MR. COLIN: Do you want copies of them if we 12 keep them? 13 MR. GROVE: Yeah. Yes. 14 Q. (By Mr. Grove) Do you know -- it sounds like 15 your general manager would have been the one who had 16 the negotiations about that. But did suppliers call 17 up and say, we're not going to ship these to you 18 unless you sign something saying -- 19 A. Yes. 20 Q. Once you provided those affidavits, has the 21 flow of firearms resumed in the way that it was 22 before, with the exception of things that are no 23 longer permitted? 24 A. No. 25 Q. What's the difference been?</p>	67	<p>1 retailer-focused gun shows, or are they all sort of 2 one giant -- the same thing? 3 A. They're pretty much all business-based, not 4 consumer-based. 5 Q. I know I've heard of the Tanner Gun Show 6 here. Is that -- that seems to me, at least from the 7 ads I've seen, people going to see if they want to buy 8 a new gun for themselves. Am I understanding that 9 wrong? 10 A. I'm sorry. What is the question? 11 Q. I think of gun shows as not really trade 12 shows, but more private sort of flea markets, I guess, 13 for lack of a better word. But it sounds like what 14 you're saying is that they're generally more trade 15 shows. 16 A. Trade shows, correct. 17 Q. But there are -- there must be private sales 18 at gun shows, right? 19 A. (Deponent shook head.) 20 Q. Not the ones you attend? 21 A. Not the ones I attend. 22 Q. You've answered that question. I won't ask 23 it again. 24 A. Thank you. 25 Q. With your suppliers, do you have purchasing</p>

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1 contracts? Or how do you get -- what's your
 2 purchasing arrangement with, say, Smith & Wesson or a
 3 company like that?
 4 A. We'd go to the trade shows and put our orders
 5 in at trade shows. We also direct -- deal directly
 6 with distributors, wholesalers. And in some cases we
 7 deal directly with the manufacturer.
 8 Q. Are these options, sort of, contracts or
 9 commitments contracts? Do you say, I'm going to buy
 10 up to a thousand widgets from you and then you go
 11 later and say, okay, we only want 500 of them? Or do
 12 you say we want a thousand and they send you a
 13 thousand?
 14 A. Usually a list of guns with different SKU's
 15 are sent to us, and we say we want three of these,
 16 four of these, two of these. And that's what we order
 17 and that's what they deliver to us.
 18 Q. And --
 19 A. Pending back orders.
 20 Q. Right. And if they ship you something that
 21 doesn't move or if there's a law change and you can no
 22 longer sell, hypothetically, can you return it to the
 23 manufacturer or are you stuck with it?
 24 A. No, we cannot return it to the manufacturer.
 25 Q. Have you tried?

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1 A. We have.
 2 Q. I'm just curious. You probably don't know
 3 the answer to this, but in Interrogatory 9 at the top
 4 of page 27, you mention that "The only 'replacement'
 5 magazines available for these firearms are designed
 6 for use in California and have a capacity of only 10
 7 rounds."
 8 Do you know how California gun dealers --
 9 what do they do with something like the Springfield
 10 XDM? Do they just not sell it?
 11 A. I have no clue.
 12 Q. Let's go to page 37, which is Interrogatory
 13 Number 10. And Interrogatory Number 10 asks about
 14 magazine extensions and what you've sold. Why don't
 15 you take a minute and read your answer to that.
 16 A. Okay.
 17 Q. So I know the Kriss Mag Extension, that's
 18 out, right, because that adds 17 rounds to a Glock
 19 factory magazine? You can't sell that, right?
 20 A. Correct.
 21 Q. Are there any others that you've listed here,
 22 the Pearce Grip, the Glocks, the Ruger, the Karh, the
 23 Scherer, and these Fingertip Extensions for Smith &
 24 Wessons -- are any of those, in your view,
 25 impermissible for you to sell?

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1 THE DEPONENT: Do we invoke the --
 2 MR. COLIN: If you're concerned about the --
 3 THE DEPONENT: I'm concerned about it, yeah.
 4 MR. COLIN: -- question, then assert the
 5 privilege. Give you use immunity, and then we'll keep
 6 going.
 7 MR. GROVE: So granted.
 8 MR. COLIN: Okay. Protective order, so this
 9 would be under the seal.
 10 (Pursuant to agreement of counsel, the
 11 following portion of the deposition, pages 71 through
 12 72, was taken under a stipulation of confidentiality,
 13 to be bound separately and marked "Confidential.")
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1 (The confidential portion of the deposition
 2 having been concluded, the regular proceedings of the
 3 deposition were resumed.)
 4 Q. (By Mr. Grove) Let's go to the next page.
 5 So Interrogatory Number 11 asks about profitable sales
 6 and nonprofitable sales. And we pulled that word from
 7 the complaint.
 8 A. I'm sorry. 11, you said, right?
 9 Q. Yeah. We're on page 38.
 10 A. All right. Back of the page. My bad.
 11 Q. If you give me a second, I'm going to find
 12 it. So if you want to -- you're going to have to
 13 cross-reference here with Exhibit 6. Paragraph 25 of
 14 that says, "Currently, when FFL's are asked to" --
 15 MR. COLIN: Find what you need?
 16 THE DEPONENT: Okay.
 17 Q. (By Mr. Grove) -- "when FFL's are asked to
 18 conduct a background check for a firearm, not
 19 involving a profitable sale from the FFL's actual
 20 inventory, the fee charged may be \$50. A fee cap of
 21 \$10 will likely result in very few," et cetera,
 22 et cetera.
 23 So I guess my first question is, we asked our
 24 interrogatory without actually knowing what a
 25 profitable sale was because we hadn't had a chance to

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1 depose you yet. If you know, what does this sentence
 2 mean, or this clause, "not involving a profitable sale
 3 from the FFL's actual inventory"?

4 A. I don't know.

5 Q. Do you know -- the next clause says "the fee
 6 charged may be \$50." What does -- at the risk of
 7 sounding like Bill Clinton here, what does "may" mean
 8 in that context? Do you mean that a firearm dealer
 9 might choose to charge \$50 or it may be up to \$50?

10 A. I don't know.

11 Q. I was afraid you might say that. Okay. In
 12 your response to Interrogatory Number 11 -- and we are
 13 back on Exhibit 8 again -- we asked you to
 14 differentiate between profitable sales and
 15 nonprofitable sales. What did you -- how did you
 16 classify what a profitable sale and what a
 17 nonprofitable sale was?

18 A. This was prepared by my in-house bookkeeper,
 19 Brei Lowe. And I do not know what she attributed to a
 20 non-profitable sale versus a profitable sale.

21 Q. Do you ever -- do you sell firearms at cost
 22 ever?

23 A. Yes.

24 Q. And I'm assuming that would be in very small
 25 numbers?

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1 A. Very small numbers, yes.

2 Q. So in December 2012 there were 809 total
 3 sales, 801 of which were profitable sales and eight of
 4 which were non-profitable sales. Would it be a fair
 5 guess to say that you sold eight guns at cost and 801
 6 for profit?

7 A. I don't know exactly.

8 Q. Does that sound like a fair guess, though?

9 A. I wouldn't know if it was a fair guess or
 10 not.

11 Q. Let's flip the page to 39. These are all --
 12 again, these are all sales out of your inventory,
 13 right, either by consignment or at retail?

14 MR. COLIN: When you say that, you're
 15 referring to the responses to 11?

16 MR. GROVE: Everything in Interrogatory 11.

17 A. Oh, I'm sorry. I think I got lost here.
 18 These responses in response to Interrogatory 11?

19 Q. (By Mr. Grove) Yes.

20 A. And the question was?

21 Q. These are all sales out of your inventory,
 22 whether at retail or by consignment?

23 A. Yes.

24 Q. So the processing fee of \$10 that starts to
 25 appear here at the top of page 39, that's the --

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1 MS. SPALDING: Sorry. I have different page
 2 numbers, so maybe we have a different version.

3 MR. GROVE: We do have a different version.

4 THE DEPONENT: That's maybe why I got lost.

5 Q. (By Mr. Grove) We have the same version.

6 A. Okay, so we're on the same -- I just got
 7 lost, period.

8 Q. As I recall, you sent an updated version of
 9 this a couple weeks ago.

10 MR. WATSON: There was another version just a
 11 few days ago that incorporated about 20 pages more of
 12 a list of firearms, and I think that's -- you have the
 13 older version. I think you have the new one.

14 MR. GROVE: Just so I'm clear, the only
 15 difference is another -- there are no substantive
 16 changes to the answers, but --

17 MR. WATSON: It pertains to Interrogatory
 18 Number 11, and it's a substantive answer insofar as it
 19 continues the alphabetical list.

20 MR. GROVE: So this big, long list that's on
 21 page 6 and 7 --

22 THE DEPONENT: Yes.

23 MR. GROVE: Okay.

24 MR. COLIN: That's correct. We kept adding
 25 to it as Jensen Arms developed additional information.

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1 And there's also a sworn signature page that we sent
 2 you as well.

3 MR. GROVE: I got that. And I'm not
 4 interested in going through this list with you.

5 MR. COLIN: Okay. Good.

6 MR. GROVE: You can all thank us for that.

7 MR. WATSON: I think that's probably the
 8 difference in the pages.

9 MR. COLIN: It is.

10 Q. (By Mr. Grove) Okay. So back to the top of
 11 page 39 here. "A processing fee of \$10 was charged by
 12 the State of Colorado." And that's the InstaCheck
 13 fee, correct?

14 A. That's the CBI fee, yes, InstaCheck.

15 Q. Interrogatory 13, which is on page 40, says
 16 that out-of-state transfers -- this is your
 17 response -- amount approximately to 10 percent of all
 18 sales. Is that still accurate?

19 A. It's probably gone down a little bit, a few
 20 percentage points.

21 Q. Do you know why?

22 A. I do not know why.

23 Q. For out-of-state transfers, are those
 24 primarily through --

25 A. GunBroker.

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1 Q. Do you sell out-of-state through any other
 2 method?
 3 A. I think GunBroker is pretty much it.
 4 Q. And then sales to government, you estimated 2
 5 to 3 percent of all sales combined. Is that still
 6 accurate?
 7 A. I believe so.
 8 Q. Interrogatory 15 discusses the number of
 9 background checks. Do you have any idea how the
 10 numbers compare between your store, for rejections,
 11 and others?
 12 A. I have no clue.
 13 Q. Let's talk about some more of the things that
 14 you sell at retail. Do you sell revolvers?
 15 A. Yes.
 16 Q. What percentage of your business, would you
 17 say -- not of your business -- of your overall firearm
 18 sales would you say revolvers are?
 19 A. Can you repeat the question.
 20 Q. Yeah. Let me see if I can think of a way to
 21 rephrase this. How many -- what I'm trying to get at
 22 is what portion of your overall firearms sales you
 23 think each of these categories would comprise. So if
 24 you sold a thousand guns in a month, how many of those
 25 would you expect to be revolvers, for example.

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1 So what percentage of your overall firearms
 2 sales would you say are revolvers?
 3 A. This is just a guess, but I'd say between 5
 4 and 10 percent.
 5 Q. How about shotguns?
 6 A. Maybe 15 to 20 percent.
 7 Q. Really interesting thing when we get through
 8 this is if we're going to be at 140 percent.
 9 How about rifles?
 10 A. I would say probably about 40 percent.
 11 Q. And then semiautomatic pistols?
 12 A. 25, 30 percent.
 13 Q. And then I guess there's probably a
 14 miscellaneous category. Do you sell single-shot
 15 Derringers or anything like that? Dueling pistols?
 16 A. Well that -- no, I do not. I don't really
 17 think there's any miscellaneous. Any small Derringer
 18 type isn't going to be a revolver.
 19 Q. That's pretty good. You're right about
 20 between 90 and a hundred percent for your totals.
 21 Let's break it down for pistols. Percentage-wise, how
 22 would you break down your pistol sales between
 23 subcompacts, compacts, and full frame?
 24 A. Boy, that's a hard one. A lot of people have
 25 been gravitating now to the subcompacts or ultra

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1 compacts. But then there's a lot of people that want
 2 a full-frame 1911. So what were the three categories
 3 you gave me, again?
 4 Q. If there are any other categories, please
 5 tell me. But my understanding is that there's three
 6 broad categories: Subcompact, compact, and then full
 7 frame. If there are any others that I'm missing or if
 8 you have different names for them, please feel free to
 9 share.
 10 A. No, I don't think so. I think it would be
 11 probably fairly even.
 12 Q. So about a third of each?
 13 A. Yeah, about a third of each. Again, that
 14 changes.
 15 Q. Changes over time with what personal
 16 preferences are?
 17 A. Yeah.
 18 MR. GROVE: I'm going to go back to magazine
 19 extensions just real quick. I guess we could probably
 20 go under the protective order again here.
 21 (Pursuant to agreement of counsel, the
 22 following portion of the deposition, pages 81 through
 23 82, was taken under a stipulation of confidentiality,
 24 to be bound separately and marked "Confidential.")
 25

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1 (The confidential portion of the deposition
 2 having been concluded, the regular proceedings of the
 3 deposition were resumed.)
 4 Q. (By Mr. Grove) To your knowledge, if you
 5 alter a factory design, does it have any effect on the
 6 warranty?
 7 A. I don't know. Does on my computer.
 8 Q. Are you familiar with -- I'm going to list
 9 some companies. I just want to see if you're familiar
 10 with them. Magpul?
 11 A. Yes.
 12 Q. Bushmaster?
 13 A. Yes.
 14 Q. ASC?
 15 A. Yes.
 16 Q. Remington?
 17 A. Yes.
 18 Q. PRI, which is Precision Reflex. That might
 19 be French.
 20 MR. BLAKE: Reflex.
 21 MR. GROVE: That's supposed to be an X?
 22 Let's skip that one.
 23 MR. BLAKE: Just telling you what the company
 24 is. PRI, Precision Reflex, Inc.
 25 MR. GROVE: I've got the gun nut over here.

84	<p>1 THE DEPONENT: Good. You want to come over 2 here and answer some of these questions? 3 Q. (By Mr. Grove) Checkmate? 4 A. Yes. 5 Q. Auto-Ordnance? 6 A. Yes. 7 Q. Rock River? 8 A. Yes. 9 Q. ArmaLite? 10 A. Yes. 11 Q. Barrett? 12 A. Yes. 13 Q. ProMag? 14 A. Yes. 15 Q. Thermold? 16 A. Which is it? 17 Q. Thermold. 18 A. Sounds familiar, but I'm not a hundred 19 percent sure. 20 Q. Lancer? 21 A. Don't know. 22 Q. Safariland? 23 A. Yes. 24 Q. Stoner Arms? 25 A. Yes.</p>	86	<p>1 tried to seat a Springfield XD magazine into an XDM 2 model? 3 A. I have not personally, no. 4 Q. Then I'm just curious about the -- I want to 5 ask one or two more questions about background checks 6 and what happens. My understanding is that there are 7 several possibilities when you get a report back from 8 InstaCheck on somebody. And one of them is, this 9 guy's good to buy the gun. Another one might be, he's 10 prohibited for whatever reason. Another one might be, 11 there's a mistake on the form that you need to fix. 12 And then the last category that I'm aware of 13 is that this person has a warrant out for his arrest. 14 Do you know what happens if you get into that 15 situation? Have you had that happen in your store, 16 and what are you supposed to do? 17 MR. COLIN: The warrant situation? 18 MR. GROVE: Yes. 19 A. The warrant situation. I have not had that 20 personally happen when I was in the store. 21 Q. (By Mr. Grove) So does your store -- are 22 there instructions from InstaCheck or from CBI or from 23 BATF or anyone as to what needs to happen? Do you 24 call the police? 25 A. We do, as a matter of course, yeah.</p>
85	<p>1 Q. DPMS? 2 A. Yes. 3 Q. Are you currently stocking any 10-round or 4 magazines that hold fewer than 15 for the AR 5 platforms? 6 A. Yes. 7 Q. Are you -- what size magazines that hold 15 8 or fewer rounds are you stocking for an AR platform? 9 A. 10-round and 15-round. 10 Q. Who manufactures the 15-round magazines that 11 you're selling? 12 A. I don't know. 13 Q. You said you don't offer gunsmithing services 14 earlier, right? 15 A. I do not. 16 Q. I had some questions about that that I won't 17 ask you, then. 18 A. You can ask me. I just won't have any 19 answers for you. 20 MR. COLIN: While he's looking -- is the 21 owner of Stoner Arms named Stoner? 22 (Discussion off the record.) 23 (Recess from 11:35 a.m. to 11:40 a.m.) 24 Q. (By Mr. Grove) We talked earlier about the 25 Springfield XDM. I'm just curious. Have you ever</p>	87	<p>1 Q. To your knowledge, has that happened in your 2 store, whether or not you personally have been 3 present, since you've owned it? 4 A. I believe it has. 5 Q. And are you required to hold the person in 6 the store, or what exactly happens here? 7 A. I don't know if we're required to hold the 8 person in the store. 9 Q. Do you notify the person that the police are 10 coming? 11 A. Not that I know of. 12 Q. Do your employees call 911? Do they call 13 CBI? Who do they call? 14 A. They call the police. 15 Q. So it sounds like this has come up at least 16 at some point during your ownership of the store. 17 What happened? Was the person arrested? 18 A. I don't know if it was during the ownership 19 of the store or while I was working at the store. 20 Q. So either way, what happened when this 21 actually occurred? 22 A. I believe they called the police and the 23 police asked if they could try and keep them in the 24 store. 25 Q. What happened next?</p>

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1 A. I don't know the outcome of it. I believe
 2 they did try and keep them in the store. And I don't
 3 know if they were able to or if the police showed up.
 4 I don't know what the upshot to it was.
 5 Q. Did they try to -- I assume they didn't try
 6 to keep the person in by force.
 7 A. No, absolutely not.
 8 Q. But by pointing out other things they might
 9 want to look at or something?
 10 A. Yes.
 11 MR. GROVE: That's all I've got.
 12 MR. COLIN: That was brutal.
 13 (Deposition adjourned at 11:43 a.m.)
 14
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1 I have read the foregoing transcript of my
 2 testimony and have indicated the same by my signature.
 3
 4
 5
 6 _____
 7 JOHN WILLIAM BURRUD
 8
 9 Subscribed and sworn to before me by
 10 JOHN WILLIAM BURRUD on this _____ day of
 11 _____, 2013.
 12 My commission expires: _____
 13
 14 _____
 15 Notary Public
 16
 17 _____
 18 Address
 19
 20
 21
 22
 23
 24
 25

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1 REPORTER'S CERTIFICATE
 2
 3 Lisa D. Anthony, Registered Professional
 4 Reporter, Certified Realtime Reporter, and Notary
 5 Public, State of Colorado, duly commissioned to
 6 administer oaths, does hereby certify that previous to
 7 the commencement of the deposition the deponent was
 8 first duly sworn by me to testify to the truth;
 9 That the said deposition was stenographically
 10 recorded by me at the time and place aforesaid and was
 11 processed by computer into typewritten form under my
 12 supervision, and the foregoing constitutes an accurate
 13 and complete transcript; that the deponent reserved
 14 signature; that I am not counsel nor in any way
 15 connected with any counsel for any of the parties to
 16 said action or otherwise interested in its event.
 17 IN WITNESS WHEREOF, I have hereunto set my
 18 hand and affixed my seal this 18th day of November,
 19 2013.
 20 My Commission expires: September 14, 2017.
 21
 22
 23 _____
 24 LISA D. ANTHONY, RPR, CRR
 25 for CALDERWOOD-MACKELPRANG, INC.

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1 CALDERWOOD-MACKELPRANG, INC.
 2 7150 East Hampden Avenue, Suite 303
 3 Denver, CO 80224
 4 (303)477-3500
 5
 6 November 18, 2013
 7
 8 MARC E. COLIN, ESQ.
 9 Bruno, Colin & Lowe, P.C.
 10 1999 Broadway, Suite 3100
 11 Denver, CO 80202
 12 Re: John B. Cooke, et al. v. John W. Hickenlooper
 13 Deposition of: JOHN WILLIAM BURRUD
 14
 15 Dear Mr. Colin:
 16
 17 The deposition in the above-entitled matter is ready
 18 for reading and signing. Please attend to this matter
 19 by complying with ALL blanks checked below:
 20
 21 ___ arranging with us at the number listed above to
 22 read and sign the deposition in our office
 23 XX having deponent read your copy and sign
 24 amendment sheets, if any (original signature
 25 page enclosed)
 ___ reading enclosed deposition, signing signature
 page and correction sheets, if any
 XX within 35 days of the date of this letter
 ___ by _____ due to a trial/hearing date of _____
 Please be sure that the signature page and amendment
 sheets, if any, are signed before a Notary Public and
 returned to our office. If this matter has not been
 taken care of within said period of time, the
 deposition will be filed unsigned pursuant to the
 Rules of Civil Procedure. Thank you.
 CALDERWOOD-MACKELPRANG
 cc: Counsel of Record

1 CALDERWOOD-MACKELPRANG, INC.
2 7150 East Hampden Avenue, Suite 303
3 Denver, CO 80224
4 (303)477-3500

5 MATTHEW D. GROVE, ESQ.
6 Assistant Attorney General
7 Ralph L. Carr Colorado Judicial Center
8 1300 Broadway, 6th Floor
9 Denver, CO 80203

10 Re: John B. Cooke, et al. v. John W. Hickenlooper

11 Dear Mr. Grove:

12 Enclosed is the deposition of: JOHN WILLIAM BURRUD

13 Previously filed. Forwarding signature page
14 and amendment sheets.
15 Signed, no changes.
16 Signed, with changes, copy enclosed.
17 Unsigned, notice duly given _____,
18 pursuant to the Rules of Civil Procedure.

19 Not signed, notice duly given _____,
20 since trial is set for _____.

21 No signature required.
22 Signature waived.
23 To be signed in court.
24 Signature pages/amendment sheets to be returned
25 to court on date of trial.

26 Mailed by Certified Mail No. _____,
27 on approximately _____.

28 Hand-delivered on approximately _____.

29 CALDERWOOD-MACKELPRANG, INC.

30 cc: Counsel of Record