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3/27/2017 4:42:58 PM  
FRESNO COUNTY SUPERIOR COURT  
By: C. Cogburn, Deputy

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF FRESNO**

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

14 Plaintiffs and Petitioners,

15 vs.

16 THE STATE OF CALIFORNIA; KAMALA D.  
HARRIS, in her official capacity as Attorney  
17 General for the State of California; THE  
CALIFORNIA DEPARTMENT OF JUSTICE;  
18 and DOES 1-25,

19 Defendants and Respondents.  
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Case No. 10CECG02116

**DECLARATION OF BARRY BAUER IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR ATTORNEYS' FEES ON APPEAL**

Judge: Jeffrey Y. Hamilton  
Dept.: 402  
Date: May 31, 2017  
Time: 3:30 PM

Action Filed: June 17, 2010

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1 base my estimate on a projected 10% increase in ammunition sales for Herb Bauer Sporting Goods  
2 as a result of purchasers no longer having access to Herb Bauer Sporting Good's competitors who  
3 sell ammunition via mail order. As I testified in my deposition in this lawsuit, Herb Bauer Sporting  
4 Goods generated approximately \$120,000 gross revenue from ammunition sales in 2009 and has a  
5 30% profit margin.

6 6. I do not expect Herb Bauer Sporting Goods to receive any pecuniary interest at any  
7 future time as a result of this litigation, but rather I expect it to lose money as a result of this  
8 litigation.

9 7. The necessity of pursuing this lawsuit placed a burden on Herb Bauer Sporting Goods  
10 that was thus out of proportion to any financial stake in this case.

11 8. If I thought that the benefit to be gained from this litigation was financial in nature, as  
12 opposed to protection of constitutional rights, I would never have had Herb Bauer Sporting Goods  
13 pursue this litigation in light of anticipated litigation costs.

14 9. Based on the difficulty of succeeding in constitutional vagueness challenges, given the  
15 political environment of the state of California, given the controversial nature of the statutes at  
16 issue in this litigation, in light of recent case law supporting vagueness challenges being de-  
17 published, and based on input I received from my attorneys, I believed there to be a ten percent  
18 chance of success in this litigation at the time the vital litigation decisions were being made.

19 10. At the time the vital litigation decisions were being made, I anticipated this litigation  
20 would result in hundreds of thousands of dollars in legal costs. I understand the total costs of this  
21 litigation have exceeded \$700,000.00.

22 11. Even though Herb Bauer Sporting goods lost money as a result of this litigation and the  
23 continued availability of mail order ammunition sales, I estimate that in order to realize a financial  
24 interest substantially greater than the costs of this litigation, adjusted for the likelihood of success,  
25 Herb Bauer Sporting Goods would need to realize a pecuniary gain of greater than \$7,000,000.00.

26 12. At the time the vital litigation decisions were being made, I believed the potential for  
27 any financial gain for Herb Bauer Sporting Goods through this litigation, to the extent there was  
28 any, did not outweigh the costs of bringing this litigation. Rather, I estimate that the financial

1 burdens of this litigation far outweigh Herb Bauer Sporting Goods pecuniary interests in this  
2 litigation.

3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct.

5 Executed March 14, 2017.

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7 BARRY BAUER  
8 Declarant  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF FRESNO

4 I, Laura Palmerin, am employed in Long Beach, Los Angeles County, California. I am over  
5 the age of eighteen (18) years and am not a party to the within action. My business address is 180  
6 East Ocean Boulevard, Suite 200, Long Beach, CA 90802.

7 On March 27, 2017, I served the foregoing document(s) described as:

8 **DECLARATION OF BARRY BAUER IN SUPPORT OF**  
9 **PLAINTIFFS' MOTION FOR ATTORNEYS' FEES ON APPEAL**

10 on the interested parties in this action by placing

11 ☐ the original  
12 ☒ a true and correct copy  
13 thereof enclosed in a sealed envelope(s) addressed as follows:

14 George Waters  
15 Deputy Attorney General  
16 1300 I Street, Suite 125  
17 P.O. Box 944255  
18 Sacramento, CA 94244-2550


19 P. Patty Li  
20 Deputy Attorney General  
21 455 Golden Gate Ave., Suite 11000  
22 San Francisco, CA 94102

23 X (**BY MAIL**) As follows: I am "readily familiar" with the firm's practice of collection and  
24 processing correspondence for mailing. Under the practice it would be deposited with the  
25 U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles,  
26 California, in the ordinary course of business. I am aware that on motion of the party  
27 served, service is presumed invalid if postal cancellation date is more than one day after  
28 date of deposit for mailing an affidavit.  
Executed on March 27, 2017, at Long Beach, California

— (**VIA OVERNIGHT MAIL**) As follows: I am "readily familiar" with the firm's practice of  
collection and processing correspondence for overnight delivery by UPS/FED-EX. Under  
the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for  
receipt on the same day in the ordinary course of business. Such envelope was sealed and  
placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for  
in accordance with ordinary business practices.

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

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

25   
26 LAURA PALMERIN  
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