1 2	Anna M. Barvir, SBN 268728 MICHEL & ASSOCIATES, P.C. 180 East Ocean Blvd., Suite 200	E-FILED 3/27/2017 4:42:58 PM FRESNO COUNTY SUPERIOR COURT
3 4	Long Beach, CA 90802 Telephone: (562) 216-4444 Fax: (562) 216-4445 Email: abarvir@michellawyers.com	By: C. Cogburn, Deputy
5	Attorney for Plaintiffs and Petitioners	
6	Automety for Flaments and Feutioners	
7		
8	IN THE SUPERIOR COURT O	F THE STATE OF CALIFORNIA
9	FOR THE COU	NTY OF FRESNO
10	SHERIFF CLAY PARKER, TEHAMA	Case No. 10CECG02116
11	COUNTY SHERIFF; HERB BAUER SPORTING GOODS; CALIFORNIA RIFLE	DECLARATION OF RANDY WRIGHT
12	AND PISTOL ASSOCIATION FOUNDATION; ABLE'S SPORTING, INC.;	IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES ON APPEAL
13	RTG SPORTING COLLECTIBLES, LLC; AND STEVEN STONECIPHER,	Judge: Jeffrey Y. Hamilton
14	Plaintiffs and Petitioners,	Dept.: 402 Date: May 31, 2017 Time: 3:30 PM
15	VS.	1 mie. 5.50 F W
16	THE STATE OF CALIFORNIA; KAMALA D.	
17	HARRIS, in her official capacity as Attorney General for the State of California; THE	
18 19		
20	Defendants and Respondents.	Action Filed: June 17, 2010
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	DECLARATION C	F RANDY WRIGHT

1	DECLARATION OF RANDY WRIGHT
2	I, Randy Wright, declare as follows:
3	1. I am the President of Able's Sporting, Inc., ("Able's") a Texas corporation that sells and
4	ships directly to California residents a variety of ammunition that can be used interchangeably
5	between handguns and rifles. Able's is a plaintiff in this present action.
6	2. Able's filed this action to vindicate its constitutional right to Due Process and to prevent
7	the enforcement of unconstitutionally vague statutes. While I have an interest in being able to sell
8	ammunition, the basis for bringing this lawsuit was to ensure that neither Able's nor its patrons
9	violate the law while engaging in the sale or transfer of ammunition—something Able's could not
10	be certain of here due to the unconstitutionally vague statutory definition of "handgun
11	ammunition."
12	3. Ultimately, Able's' did not decide to participate in this litigation based on an expectation
13	that its financial benefit from participation would significantly outweigh the risks and costs
14	associated with litigating this case.
15	4. At the time Able's decided to pursue this litigation, I could not predict, or accurately
16	estimate, the value of any profits from California ammunition sales that would be lost as a result of
17	the enforcement of former Penal Code section 12318. I was unable to predict this because I did not
18	know how long the law might remain in effect or whether subsequent legislation would prohibit
19	future ammunition sales to California. Further, factors such as the economy, the political climate,
20	shipping costs, legislative compliance and operating costs, and fluctuations in the cost of
21	ammunition also impact Able's' revenues and profits, making it even more difficult to forecast any
22	potential pecuniary benefit to Able's.
23	5. I have nonetheless reviewed Able's' records of annual sales and profits, and I have also
24	examined profits generated from ammunition sales to ascertain any potential indirect pecuniary
25	gain that the company may have realized because of this litigation.
26	6. Based on my review of Able's' annual profits and its business records, Able's generated
27	approximately \$85,680 in net profits from ammunition sales to California between February 1,
28	2011, and December 31, 2016.

l DECLARATION OF RANDY WRIGHT

7. Based on my review of Able's' annual profits, I estimate that Able's will generate
 approximately \$12,240 in net profits between January 1, 2017, and December 31, 2017. It is,
 however, impossible to determine with complete accuracy what those net profits will be because
 there is no way to accurately predict what the cost of doing business may be due to, among other
 things, fluctuations in the costs of shipping, replacing merchandise lost or damaged in transit,
 legislative compliance, and day-to-day operations, as well as the cost and supply of and demand for
 ammunition.

8 8. Able's will no longer sell and ship ammunition to directly to unlicensed California residents
9 on or after January 1, 2018, due to recently passed legislation that prohibits the company from
10 doing so.

9. Despite the difficulties at the outset of this litigation in determining any indirect pecuniary
 benefit, I estimate that the total financial benefit that Able's has and will experience because of its
 victory in this action is approximately \$97,920, resulting from continued ammunition sales to
 California customers. I base that estimate on the net profits Able's has received from California
 sales between February 1, 2011, and December 31, 2016, as well as the approximately \$12,240 in
 net profits that I estimate the company will generate from California sales in 2017.

17 10. Able's has not received any other financial benefit, nor does it anticipate receiving any18 other financial benefit resulting from its success in this action.

19 11. Any pecuniary interest reaped by Able's is substantially outweighed by the costs of20 bringing this litigation.

21 12. The necessity of pursuing this lawsuit placed a burden on Able's that was out of22 proportion to any financial stake in this case.

13. If I believed that the benefit to be gained from this litigation was financial in nature, as
opposed to the protection of constitutional rights, Able's would not have pursued this litigation in
light of anticipated litigation costs.

14. Considering the relative difficulty of succeeding in constitutional vagueness challenges,
the political environment in California, the controversial nature of the challenged laws, the fact that
then-recent successful vagueness challenges had been depublished, as well as input received from

DECLARATION OF RANDY WRIGHT

my attorneys, I believed there to be a 10% chance of success in this litigation at the time the vital
 litigation decisions were being made.

3 15. At the time the vital litigation decisions were being made, I anticipated this litigation
4 would result in hundreds of thousands of dollars in legal costs. I understand the total costs of this
5 litigation have far exceeded \$700,000.

6 16. Because Able's' total approximate financial benefit from this lawsuit is \$97,920, Able's
7 would need to realize a pecuniary gain *at least seven times that amount* to realize a financial gain
8 that would exceed the costs of this litigation. Further, that number does not consider the fact that, at
9 the time Able's chose to participate in this suit, Able's expected a very low probability of success.

10 17. At the time the vital litigation decisions were being made, I understood that any potential
11 future pecuniary interest Able's might gain because of my continuing ability to sell ammunition to
12 California would likely be negated, in whole or in part, by subsequent legislation.

18. At the time the vital litigation decisions were being made, I understood that subsequent
legislation would very likely be adopted that would restrict Able's' ability to transact in all, or
certain, ammunition within California. I am aware the such legislation was signed into law in 2017,
which prohibits ammunition shipments to California residents beginning January 1, 2018.

17 19. At the time the vital litigation decisions were being made, I believed the potential for any
18 financial gain for Able's through this litigation, to the extent there was any, would not outweigh the
19 costs of bringing this litigation. Rather, the financial burdens of this litigation far outweigh Able's'
20 perceived and actual pecuniary benefits from this litigation.

21 I declare under penalty of perjury under the laws of the State of California that the forgoing 22 is true and correct. 23 Dated: March 23, 2017. WRIGHT 24 Declarant 25 26 27 28 3 DECLARATION OF RANDY WRIGHT

1	PROOF OF SERVICE	
	STATE OF CALIFORNIA COUNTY OF FRESNO	
4 tł	I, Laura Palmerin, am employed in Long Beach, Los Angeles County, California. I am over the age of eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, CA 90802.	
6	On March 27, 2017, I served the foregoing document(s) described as:	
7	DECLARATION OF RANDY WRIGHT IN SUPPORT OF	
9	on the interested parties in this action by placing [] the original [x] a true and correct copy hereof enclosed in a sealed envelope(s) addressed as follows:	
10 11 12 13	George WatersP. Patty LiDeputy Attorney GeneralDeputy Attorney General1300 I Street, Suite 125455 Golden Gate Ave., Suite 11000P.O. Box 944255Sacramento, CA 94244-2550	
14 <u>Σ</u> 15 16 17	 (<u>BY MAIL</u>) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit. Executed on March 27, 2017, at Long Beach, California 	
18 19 20 21	(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.	
	X (<u>STATE</u>) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	
23 24	(FEDERAL) I declare that I am employed in the office of the member of the bar of this of this court at whose direction the service was made.	
25 26	LAURA PALMERIN	
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