

1 KAMALA D. HARRIS
Attorney General of California
2 TAMAR PACHTER
Supervising Deputy Attorney General
ANTHONY R. HAKL, State Bar No. 197335
3 Deputy Attorney General
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 322-9041
Fax: (916) 324-8835
6 E-mail: Anthony.Hakl@doj.ca.gov
7 *Attorneys for Defendant Stephen Lindley*

8
9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
12

13 **IVAN PEÑA, ROY VARGAS, DOÑA**
14 **CROSTON, BRETT THOMAS, SECOND**
15 **AMENDMENT FOUNDATION, INC. and**
THE CALGUNS FOUNDATION, INC.,

16 Plaintiffs,

17 v.

18 **STEPHEN LINDLEY,**

19 Defendant.
20
21
22
23
24
25
26
27
28

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

**DEFENDANT STEPHEN LINDLEY'S
RESPONSE TO PLAINTIFFS'
STATEMENT OF UNDISPUTED FACTS**

<p>1 1. Handguns are arms of the kind in 2 common use for traditional lawful 3 purposes.</p>	<p>Disputed. This is a legal contention, not a statement of fact. <i>District of Columbia v. Heller</i>, 554 U.S. 570 (2008) speaks for itself. This contention is also irrelevant.</p>
<p>4 2. Semi-automatic firearms with 5 detachable magazines are arms of the 6 kind in common use for traditional 7 lawful purposes.</p>	<p>Disputed. This is a legal contention, not a statement of fact. Additionally, the “ATF Report” relied upon by plaintiffs does not show this. Nor does paragraph 15 of the declaration of Mr. Hoffman, which defendant objects to as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness. This contention is also irrelevant.</p>
<p>8 3. Semi-automatic firearms with 9 detachable magazines utilizing center- 10 fire ammunition are arms of the kind in 11 common use for traditional 12 lawful purposes.</p>	<p>Disputed. This is a legal contention, not a statement of fact. Additionally, the “ATF Report” relied upon by plaintiffs does not show this. Nor does paragraph 15 of the declaration of Mr. Hoffman, which defendant objects to as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness. This contention is also irrelevant.</p>
<p>13 4. California Law provides that “any 14 person in this state who manufactures or 15 causes to be manufactured, imports into 16 the state for sale, keeps for sale, offers 17 or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>
<p>18 5. California law presumes that <i>all</i> 19 handguns are “unsafe” and therefore, 20 generally barred from importation and 21 sale, unless those handguns have been 22 placed on the state’s special roster of 23 handguns “determined not to be 24 unsafe.”</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>

<p>1 6. Since 2007, a center-fire¹ 2 semiautomatic² handgun cannot make 3 the roster if it does not have both a 4 chamber load indicator and, if it has a detachable magazine, a magazine disconnect mechanism.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. Also, plaintiffs cite no evidence or other authority for the propositions set forth in footnotes 1 or 2.</p>
<p>5 7. Since 2006, a rimfire³ semi-automatic 6 handgun must have a magazine 7 disconnect mechanism if it has a detachable magazine.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. Also, plaintiffs cite no evidence or other authority for the proposition set forth in footnote 3.</p>
<p>8 8. Handguns rostered prior to the effective 9 dates of these requirements can remain 10 rostered despite lacking these features.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>
<p>11 9. A magazine disconnect mechanism is “a 12 mechanism that prevents a 13 semiautomatic pistol that has a 14 detachable magazine from operating to 15 strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.”</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>
<p>16 10. A chamber load indicator (“CLI”) is “a 17 device that plainly indicates that a 18 cartridge is in the firing chamber.”</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>

22 ¹ Most handguns use center-fire ammunition, which fires a bullet when the center of the cartridge
 is struck by the gun’s firing pin, igniting the primer.

23 ² A semi-automatic handgun is handgun that fires one bullet each time the trigger is pulled, with
 24 the firing of each bullet causing the next round to be loaded into the chamber from a magazine.
 Most handguns in the United States are semi-automatic. Almost all the rest are revolvers, which
 25 hold several rounds in a rotating cylinder and also fire one bullet with each pull of the trigger.
 Nothing in the challenged laws, or this litigation, relates to fully-automatic weapons (machine
 26 guns), which are the subject of other specific legislative enactments.

27 ³ Rimfire ammunition, which is fired when struck on its rim by the gun’s firing pin, is primarily
 28 used in the smallest calibers. For technical reasons, chamber load indicators are not feasible for
 rimfire ammunition.

<p>1 11. Not all CLIs satisfy the California 2 requirement. Under California law: [A] 3 device satisfies this definition if it is 4 readily visible, has incorporated or 5 adjacent explanatory text or graphics, or 6 both, and is designed and intended to 7 indicate to a reasonably foreseeable 8 adult user of the pistol, without 9 requiring the user to refer to a user’s 10 manual or any other resource other than 11 the pistol itself, whether a cartridge is in 12 the firing chamber.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>
<p>13 12. Defendant tests the sufficiency of CLIs 14 by asking his employees if they 15 understand the CLI – and when the 16 regulatory authority’s employees 17 allegedly fail to understand the CLI, 18 regardless of what the CLI is “designed 19 and intended to indicate to a reasonable 20 adult,” the CLI is ruled inadequate.</p>	<p>Disputed. This is not an accurate description of the documents cited by plaintiffs and is not an accurate description of the Department of Justice’s evaluation of chamber load indicators. Additionally, the contents of the cited letters speak for themselves.</p>
<p>21 13. Given the rarity of CLIs and magazine 22 disconnect devices, handguns lacking 23 these features are in common use today, 24 comprising the overwhelming majority 25 of handguns.</p>	<p>Disputed. The cited documents do not support the use of the word “rarity” or phrase “overwhelming majority. The “common use” aspect of this statement is also a legal contention, not a statement of fact. This statement mischaracterizes the cited legislative history. This contention is also irrelevant.</p>
<p>26 14. California legislators specifically 27 considered that CLIs and magazine 28 disconnects are available on only perhaps 11% and 14% of handguns, respectively, as proposed by the author of the bill mandating these features.</p>	<p>Disputed. The cited documents do not support this statement. The statement mischaracterizes the cited legislative history.</p>
<p>15 15. Because CLIs and magazine disconnect 16 mechanisms were viewed as beneficial, 17 the California Legislature hoped that 18 mandating these features would alter the 19 firearms market.</p>	<p>Disputed. The cited document does not support this statement. The statement mischaracterizes the cited legislative history.</p>
<p>20 16. A handgun safety mechanism may fail 21 or be misused by the user of a handgun.</p>	<p>Undisputed. As a general matter, any mechanical device can fail or be misused. But this contention is irrelevant.</p>

<p>1 17. A chamber loaded indicator is a mechanical device that may fail or be misinterpreted by the user of a handgun.</p>	<p>Undisputed. As a general matter, any mechanical device can fail or be misused. But this contention is irrelevant.</p>
<p>2 18. A magazine disconnect mechanism is a mechanical device that may fail.</p>	<p>Undisputed. As a general matter, any mechanical device can fail or be misused. But this contention is irrelevant.</p>
<p>3 19. As the state advises handgun purchasers, “Any machine can malfunction. A firearm is no different.”</p>	<p>Undisputed. This is an accurate quotation of a portion of the publication cited. But this contention is irrelevant.</p>
<p>4 20. To acquire any handgun in California, an individual must pass a written handgun safety test.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. This contention is also irrelevant.</p>
<p>5 21. The test requires knowledge of the basic rules of handgun safety, the first of which is: “Treat all guns as if they are loaded.”</p>	<p>Undisputed. This is an accurate quotation of a portion of the publication cited. But this contention is irrelevant.</p>
<p>6 22. The state’s study guide for the handgun safety test further provides: Always assume that a gun is loaded even if you think it is unloaded. Every time a gun is handled for any reason, check to see that it is unloaded [by following specific instructions for unloading the gun]. If you are unable to check a gun to see if it is unloaded, leave it alone and seek help from someone more knowledgeable about guns.</p>	<p>Undisputed. This is an accurate quotation of a portion of the publication cited. But this contention is irrelevant.</p>
<p>7 23. The state’s specific instructions for unloading a semi-automatic handgun contained in its gun safety study guide provides that a mechanical safety [It] is not foolproof so do not rely on the safety to prevent an accidental discharge. A safety should only be used as an additional safety measure. Never pull the trigger on any firearm with the safety in the “safe” position because thereafter the firearm could fire at any time without the trigger ever being touched.</p>	<p>Undisputed. This is an accurate quotation of a portion of the publication cited. But this contention is irrelevant.</p>

<p>1 24. Although the state’s gun safety study 2 guide does not discuss chamber loaded 3 indicators or magazine disconnect 4 devices, it teaches, in order to pass the 5 mandatory safety test, rules that would 6 have gun owners ignore such devices. 7 The study guide specifically instructs 8 that in order to verify a semi-automatic 9 handgun is unloaded, one must remove 10 the magazine and visually inspect the 11 chamber to verify that it is empty.</p>	<p>Disputed. The cited publication does not stand for the proposition set forth in the first sentence of this statement. This contention is also irrelevant.</p>
<p>8 25. In a large red box marked “CAUTION,” 9 the state’s gun safety study guide 10 provides: 11 12 You should NOT assume a 13 semiautomatic pistol is unloaded just 14 because the magazine is removed from 15 the handgun. 16 17 Do not allow the slide to go forward 18 UNLESS you have: 19 20 1. Checked again to be sure the 21 chamber is empty, and 22 23 2. Checked again to be sure the 24 magazine has been REMOVED. 25 26 If you pull the slide back ejecting the 27 cartridge, check the chamber, let the 28 slide go forward, and THEN remove the magazine, you have a loaded, dangerous firearm (a cartridge is in the chamber) even though you have removed the magazine. It is common and sometimes fatal to make this error. ALWAYS REMOVE THE MAGAZINE FIRST!</p>	<p>Undisputed. This is an accurate quotation of a portion of the publication cited. But this contention is irrelevant.</p>
<p>25 26. In order to purchase a handgun, the 26 buyer must demonstrate that he or she 27 knows how to safely operate the 28 handgun, including following the instructions set forth in ¶ 22 above.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. This contention is also irrelevant.</p>

<p>1 27. California law requires that all newly 2 purchased firearms either be 3 accompanied by an approved gun lock 4 or the purchaser’s affidavit that she 5 owns an adequate lock box or gun safe.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. This contention is also irrelevant.</p>
<p>4 28. All semi-automatic handguns not on the 5 approved roster prior to 2013 are barred 6 from the approved handgun roster 7 unless they employ so-called 8 “microstamping technology.”</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>
<p>8 29. “The Attorney General may also 9 approve a method of equal or greater 10 reliability and effectiveness in 11 identifying the specific serial number of 12 a firearm from spent cartridge casings 13 discharged by that firearm than that 14 which is set forth in this paragraph . . .”</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>
<p>13 30. The microstamping requirement of Cal. 14 Penal Code § 31910(b)(7) became 15 effective on May 17, 2013 because on 16 that date, the California Department of 17 Justice issued Information Bulletin No.: 18 2013-BOF-03, wherein Defendant 19 Lindley announced that the Department 20 had determined that the technology 21 described in Penal Code § 31910(b)(7) 22 is now available to more than one 23 manufacturer unencumbered by any 24 patent restrictions.</p>	<p>Undisputed.</p>
<p>20 31. There are no manufacturers of new 21 model semiautomatic firearms that offer 22 products with microstamping 23 technology for sale in the United States, 24 nor have any applied to have such a 25 handgun placed on the California 26 approved roster.</p>	<p>Disputed as to the first clause in this sentence. To be precise, in the cited discovery responses Lindley admits that “[n]o handguns currently available for sale in the United States have microstamping technology that satisfies the requirements of California's Handgun Roster Law.” As to the second clause, it is undisputed that to date no manufacturer has applied to have such a handgun placed on the roster.</p>
<p>25 32. Listings on the California handgun 26 roster are valid for one year, and must 27 be renewed annually, including 28 payment of an annual fee, prior to expiration to remain valid.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Code of Regulations speak for themselves.</p>

<p>1 33. Defendant charges firearms 2 manufacturers, importers, and dealers 3 annual fees, ostensibly to operate the 4 handgun roster program. Any handgun 5 whose manufacturer fails to pay the 6 required fees may be excluded from the 7 roster for that reason alone.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>
<p>8 34. The initial and renewal annual listing 9 fees for inclusion on the handgun roster 10 are \$200.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Code of Regulations speak for themselves.</p>
<p>11 35. Other than the California DOJ, only the 12 manufacturer/importer of a handgun 13 model is authorized to submit that 14 handgun model to a DOJ-Certified 15 Laboratory for testing.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Code of Regulations speak for themselves.</p>
<p>16 36. A handgun can remain on the roster if 17 its manufacturer/importer goes out of 18 business or discontinues the model, 19 provided that the model is not being 20 offered for sale to licensed dealers, and 21 “a fully licensed wholesaler, distributor, 22 or dealer submits a written request to 23 continue the listing and agrees to pay 24 the annual maintenance fee.”</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Code of Regulations speak for themselves.</p>
<p>25 37. So long as a handgun is sold to dealers 26 outside of California, the handgun’s 27 manufacturer can cause the sale of that 28 handgun to be forbidden inside California by failing to submit the gun for testing in that state or refusing to pay the annual \$200 fee.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code and Code of Regulations speak for themselves.</p>
<p>38. A manufacturer/importer or other responsible party may submit a written request to list a handgun model that was voluntarily discontinued or was removed for lack of payment of the annual maintenance fee. The request may be approved, and the handgun restored to the “safe gun” roster, provided the fee is paid.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Code of Regulations speak for themselves.</p>

<p>1 39. The following firearms and transactions 2 are exempted from the handgun 3 rostering requirement: 4 (1) Firearms defined as curios or 5 relics under federal law; 6 (2) The purchase of any firearm by 7 any law enforcement officer – 8 State or Federal; 9 (3) Pistols that are designed 10 expressly for use in Olympic 11 target shooting events, as 12 defined by rule; 13 (4) Certain single-action revolvers, 14 as defined by rule; and 15 (5) The sale, loan, or transfer of any 16 firearm that is to be used solely 17 as a prop during the course of a 18 motion picture, television, or 19 video production by authorized 20 people related to the production.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>
<p>13 40. It is not illegal in California to import 14 an unrostered handgun when moving 15 into the state without the intention of 16 selling it, nor is it illegal in California to 17 possess or use an unrostered handgun 18 that is otherwise lawful to possess or 19 use.</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.</p>
<p>18 41. California also exempts private party 19 transfers, intra-familial transfers 20 including gifts and bequests, various 21 loans, and various single-action 22 revolvers.⁴</p>	<p>Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. Also, plaintiffs cite no evidence or other authority for the proposition set forth in footnote 4.</p>
<p>21 42. Plaintiff Ivan Peña has sought to 22 purchase a Para USA (Para Ordnance) 23 P1345SR / Stainless Steel .45 ACP 24 4.25”, and has identified a willing seller 25 who stands ready to deliver said handgun to him.</p>	<p>Undisputed.</p>

26 ⁴ “Single” or “double” action refers to the gun’s trigger function, 4 one “action” being the
 27 effect of drawing back the hammer, another “action” being the effect of dropping the hammer.
 28 Guns can be designed to operate in single-action, double-action, or effectively both (if a gun has a
 hammer that might be retracted either manually or by pulling the trigger).

1	43. Peña's Para USA P1345SR was listed on California's Handgun Roster until December 31, 2005, when it was discontinued and its listing not renewed.	Undisputed. Additional explanation of why this firearm is no longer on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant's opposition to plaintiffs' motion for summary judgment.
2		
3		
4	44. Peña cannot lawfully purchase and take possession of the handgun as that handgun is not on the California Handgun Roster.	Undisputed to the extent "the handgun" refers to the exact firearm currently held by the seller identified in ¶ 42 above. But disputed to the extent that plaintiff could lawfully purchase a different Para USA (Para Ordnance) P1345SR / Stainless Steel .45 ACP 4.25" via a private-party transfer or other lawful means.
5		
6		
7		
8	45. Peña fears arrest, prosecution, fine and incarceration if he completes this handgun purchase.	Undisputed.
9		
10	46. Plaintiff Roy Vargas has sought to purchase a Glock 21 SF with an ambidextrous magazine release, and has identified a willing seller who stands ready to deliver said handgun to Plaintiff.	Undisputed.
11		
12		
13		
14	47. Vargas cannot lawfully purchase and take possession of the handgun as that handgun is not listed on the California Handgun Roster.	Undisputed to the extent "the handgun" refers to the exact firearm currently held by the seller identified in ¶ 46 above. But disputed to the extent that plaintiff could lawfully purchase a different Glock 21 SF with an ambidextrous magazine release via a private-party transfer or other lawful means.
15		
16		
17		
18	48. Vargas fears arrest, prosecution, fine and incarceration if he completes this handgun purchase.	Undisputed.
19		
20		
21	49. Vargas was born without an arm below the right elbow.	Undisputed.
22		
23	50. The Glock 21 SF-STD with a standard magazine release is listed on the California Handgun Roster.	Undisputed.
24		
25		
26		
27		
28		

<p>1 51. The Glock-21 SF with ambidextrous 2 magazine release is superior for 3 lefthanded shooters such as Mr. Vargas, 4 as opposed to the approved version of 5 the Glock 21.</p>	<p>Disputed. Paragraph 9 of the declaration of Mr. Vargas does not demonstrate this. Defendant objects to the statement as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness. This contention is also irrelevant. Mr. Vargas admits that he already owns handguns suitable for self defense and is able to purchase additional handguns for self defense. (See Exh. E to Decl. of Anthony R. Hakl in Supp. of Def. Stephen Lindley's Mot. for Summ. J.)</p>
<p>7 52. Glock's efforts to add the Glock 21 SF 8 with ambidextrous magazine release to 9 the California Roster have failed.</p>	<p>Disputed. This statement mischaracterizes Glock's "efforts" and the cited document. The explanation of why this firearm is not on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant's opposition to plaintiffs' motion for summary judgment.</p>
<p>11 53. Defendant permits Glock customers to 12 have their Glock 21 SF-STD handguns 13 fitted with an ambidextrous release at 14 the Glock factory.</p>	<p>Undisputed.</p>
<p>15 54. Plaintiff Doña Croston has sought to 16 purchase a Springfield Armory XD-45 17 Tactical 5" Bi-Tone stainless steel/black 18 handgun in .45 ACP, model number 19 XD9623, and has identified a willing 20 seller who stands ready to 21 deliver said handgun to her.</p>	<p>Undisputed.</p>
<p>22 55. Croston cannot lawfully purchase and 23 take possession of the handgun as that 24 handgun is not on the California 25 Handgun Roster.</p>	<p>Undisputed to the extent "the handgun" refers to the exact firearm currently held by the seller identified in ¶ 54 above. But disputed to the extent that plaintiff could lawfully purchase a different Springfield Armory XD-45 Tactical 5" Bi-Tone stainless steel/black handgun in .45 ACP, model number XD9623 via a private- party transfer or other lawful means. Also, the explanation of why the firearm Ms. Croston desires is not on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant's opposition to plaintiffs' motion for summary judgment.</p>
<p>26 56. Croston fears arrest, prosecution, fine 27 and incarceration if she completes this 28 handgun purchase.</p>	<p>Undisputed.</p>

<p>1 57. Other models of this identical gun – but 2 in different colors – are listed on the 3 handgun roster and are thus available to 4 Ms. Croston: the XD-45 Tactical 5” .45 5 ACP in black (model XD9621), the 6 XD-45 Tactical 5” .45 ACP in OD 7 Green (model XD9622), and the XD- 8 45 Tactical 5” .45 ACP in Dark Earth 9 (XD9162).</p>	<p>Disputed. There is no evidence that the cited firearms are “identical.” In any event, the explanation of why the firearm Ms. Croston desires is not on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant’s opposition to plaintiffs’ motion for summary judgment.</p>
<p>10 58. The particular Bi-Tone XD-45 that Ms. 11 Croston would possess was not released 12 until after California required newly 13 listed guns to have a chamber load 14 indicator and magazine disconnect 15 device.</p>	<p>Disputed. The cited documents do not show this. The documents reference various models, but not the model XD9623 desired by Croston.</p>
<p>16 59. Springfield Armory could not get the 17 XD-45 in .45 ACP and Bi-Tone finish 18 registered given the new listing 19 requirements.</p>	<p>Disputed. The explanation of why this firearm is not on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant’s opposition to plaintiffs’ motion for summary judgment.</p>
<p>20 60. The XD-45 Bi-Tone in .45 has a loaded 21 chamber indicator, but the California 22 Department of Justice has decided it 23 does not qualify under Penal Code § 24 16380(c).</p>	<p>Disputed. The explanation of why this firearm is not on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant’s opposition to plaintiffs’ motion for summary judgment. Also, the cited “Technical Data” does not show this.</p>
<p>25 61. The XD-45 also lacks a magazine 26 disconnect device.</p>	<p>Undisputed, but the cited “Technical Data” does not show this.</p>
<p>27 62. The handgun at issue in <i>District of</i> 28 <i>Columbia v. Heller</i>, 554 U.S. 570 (2008), was a High Standard 9-shot revolver in .22 with a 9.5” Buntline- style⁵ barrel.</p>	<p>Disputed. The handgun mentioned was not “at issue” in <i>Heller</i>. This is also irrelevant.</p>
<p>63. Plaintiff Brett Thomas has sought to purchase an identical High Standard 9- shot revolver in .22 with a 9.5” Buntline-style barrel, and has identified a willing seller who stands ready to deliver said handgun to Thomas.</p>	<p>Undisputed.</p>

⁵ A “Buntline” is a Western-style extra-long barrel revolver, named for 19th-century novelist Ned Buntline who was said to commission such guns for famous personalities of the day.

<p>1 64. Thomas cannot lawfully purchase and 2 take possession of the handgun as that 3 handgun is not on the California 4 Handgun Roster.</p>	<p>Undisputed to the extent “the handgun” refers to the exact firearm currently held by the seller identified in ¶ 63 above. But disputed to the extent that plaintiff could lawfully purchase a different High Standard 9- shot revolver in .22 with a 9.5” Buntline-style barrel via a private- party transfer or other lawful means. Also, the explanation of why the firearm Mr. Thomas desires is not on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant’s opposition to plaintiffs’ motion for summary judgment.</p>
<p>7 65. Thomas fears arrest, prosecution, fine 8 and incarceration if he completes this 9 handgun purchase.</p>	<p>Undisputed.</p>
<p>10 66. Plaintiffs Ivan Peña and Brett Thomas 11 are law-abiding citizens, shooting 12 enthusiasts and gun collectors, as are 13 other members and supporters of 14 Plaintiffs Second Amendment 15 Foundation, Inc. (“SAF”) and Calguns 16 Foundation, Inc. (“CGF”). Peña, 17 Thomas, and other SAF and CGF 18 members and supporters would acquire 19 new semiautomatic handguns of the 20 kind in common use throughout the 21 United States, for traditional lawful 22 purposes including self-defense, but 23 cannot do so owing to California’s 24 microstamping scheme.</p>	<p>Disputed. While the microstamping law may be prohibiting plaintiffs from acquiring certain new handguns that they desire, the law is not prohibiting them from acquiring any or all new handguns.</p>
<p>19 67. California’s handgun rostering scheme 20 substantially limits commerce in (and 21 therefore Plaintiffs’ access to) 22 unrostered handguns, since no dealer 23 can stock these firearms. This results in 24 a significant loss of choice and price 25 competition.</p>	<p>Disputed. The cited declarations do not show this. And defendant objects to those declarations as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness.</p>
<p>24 68. Plaintiffs would suffer increased costs 25 in transporting and transferring their 26 firearms from out-of-state dealers that 27 they would not suffer if the firearms 28 were available for sale in California.</p>	<p>Disputed. The cited declarations do not show this. And defendant objects to those declarations as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>69. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a nonprofit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington.</p>	<p>Undisputed.</p>
<p>70. SAF has over 650,000 members and supporters nationwide, including many in California.</p>	<p>Undisputed.</p>
<p>71. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control.</p>	<p>Undisputed.</p>
<p>72. Plaintiff The Calguns Foundation, Inc. is a non-profit organization incorporated under the laws of California with its principal place of business in San Carlos, California.</p>	<p>Undisputed.</p>
<p>73. Calguns supports the California firearms community by promoting education for all stakeholders about firearm laws, rights and privileges, and securing the civil rights of California gun owners, who are among its members and supporters.</p>	<p>Undisputed.</p>
<p>74. SAF and Calguns expend their resources encouraging exercise of the right to bear arms, and advising and educating their members, supporters, and the general public about the legality of particular firearms. The issues raised by, and consequences of, Defendant’s policies, are of great interest to SAF and Calguns’ constituencies.</p>	<p>Undisputed.</p>
<p>75. Defendant’s policies regularly cause the expenditure of resources by SAF and Calguns as people turn to these organizations for advice and information.</p>	<p>Disputed. The cited declarations do not show this. Defendant’s policies do not cause these organizations to spend resources. The manner in which the organizations choose to spend their resources is decided by the organizations.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>76. Defendant’s policies bar the members and supporters of SAF and Calguns from obtaining numerous, if not most, handguns.</p>	<p>Disputed. The cited declarations do not show this. And defendant objects to those declarations as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness. The evidence actually shows that numerous handguns are available to plaintiffs. (See Decl. of Stephen Lindley in Supp. of Def. Stephen Lindley’s Mot. for Summ. J.)</p>
<p>77. Defendants’ policies make firearms less accessible to the public, reduce the opportunity for selection and purchase, lessen price competition, and impose additional expenses on the purchase of firearms.</p>	<p>Disputed. The cited declarations do not show this. And defendant objects to those declarations as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness. The evidence actually shows that numerous handguns are available to plaintiffs. (See Decl. of Stephen Lindley in Supp. of Def. Stephen Lindley’s Mot. for Summ. J.)</p>

Dated: December 2, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
TAMAR PACHTER
Supervising Deputy Attorney General

/s/ ANTHONY R. HAKL

ANTHONY R. HAKL
Deputy Attorney General
Attorneys for Defendant Stephen Lindley

SA2009310413