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official capacity as Acting Chief of the
 8 *California Department Of Justice*

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

13
 14 **STATE AMMUNITION INC., dba**
www.stateammo.com; JIM OTTEN, dba
 15 **www.a1ammo.com, and JIM RUSSELL**
USMC (Ret.),

16
 17 Plaintiffs,

18 v.

19 **STEVEN LINDLEY, in his official**
capacity as Acting Chief of the
 20 **California Department of Justice,**
Bureau of Firearms, and DOES 1
 21 **through 10,**

22
 23 Defendants.

Case No. 10-CV-01864 -MCE-KJN

**DEFENDANT'S NOTICE OF
 MOTION AND MOTION TO
 DISMISS THE COMPLAINT OR, IN
 THE ALTERNATIVE, TO STAY
 THE ACTION**

Date: November 18, 2010
 Time: 2:00 p.m.
 Ctrm: No. 7 - 14th Floor
 Judge: Hon. Morrison C. England, Jr.
 Trial Date: None
 Action Filed: July 16, 2010

[Memorandum of Points and Authorities
 and Request for Judicial Notice Filed
 Concurrently Herewith]

24 **NOTICE OF MOTION**

25 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

26 PLEASE TAKE NOTICE that on November 18, 2010, at 2:00 p.m. or as soon
 27 thereafter as this matter may be heard in Courtroom 7 of the above-entitled court, located
 28

1 at 501 I Street, Sacramento, California 95814, defendant Steven Lindley, in his official
2 capacity as Acting Chief of the California Department of Justice, Bureau of Firearms, will
3 and hereby does move the Court for an order (1) dismissing the Complaint pursuant to
4 Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, and (2) in
5 the alternative, staying the action. This Motion is made on the following grounds:

6 1. The Court lacks subject matter jurisdiction over the claims alleged in the
7 Complaint because the issues presented are not ripe. (Fed. R. Civ. P. 12(b)(1));

8 2. The Court lacks subject matter jurisdiction over the claims alleged in the
9 Complaint under the Eleventh Amendment of the United States Constitution, which
10 prohibits suits against the state in federal court. (Fed. R. Civ. P. 12(b)(1)); and

11 3. If necessary, the Court should stay the action pending a decision in *Parker v.*
12 *State of California, et al.*, Superior Court of California, County of Fresno, Case No.
13 10CECG02116, which involves a constitutional vagueness challenge to AB 962, the act at
14 issue in this action.

15 This Motion is based upon this Notice of Motion and Motion, the Memorandum of
16 Points and Authorities and Request for Judicial Notice filed concurrently herewith, all
17 pleadings, records, and files herein, those matters of which the Court may take judicial
18 notice, and upon such oral argument as may be made at the hearing on this Motion.

19 Dated: September 20, 2010

Respectfully Submitted,

21 EDMUND G. BROWN JR.
22 Attorney General of California
23 JONATHAN K. RENNER
24 Senior Assistant Attorney General

/s/ Peter A. Krause

25 PETER A. KRAUSE
26 Deputy Attorney General
27 *Attorneys for Defendant Steven Lindley,*
28 *in his official capacity as Acting Chief of*
the California Department Of Justice

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