

1 EDMUND G. BROWN JR., State Bar No. 37100
 Attorney General of California
 2 ZACKERY P. MORAZZINI, State Bar No. 204237
 Supervising Deputy Attorney General
 3 PETER A. KRAUSE, State Bar No. 185098
 Deputy Attorney General
 4 1300 I Street, Suite 125
 P.O. Box 944255
 5 Sacramento, CA 94244-2550
 Telephone: (916) 324-5328
 6 Fax: (916) 324-8835
 E-mail: Peter.Krause@doj.ca.gov
 7 *Attorneys for Defendant Steven Lindley, in his*
official capacity as Acting Chief of the California
 8 *Department of Justice, Bureau of Firearms*

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

12
 13
 14 **STATE AMMUNITION INC., dba**
 15 **www.stateammo.com; JIM OTTEN, dba**
 16 **www.a1ammo.com, and JIM RUSSELL**
USMC (Ret.),

17 Plaintiffs,

18 v.

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

22 Defendants.

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

JOINT RULE 26 STATUS REPORT

Action Filed: July 16, 2010

JOINT RULE 26 STATUS REPORT

1
2 Plaintiffs State Ammunition Inc. dba www.stateammo.com, Jim Otten dba
3 www.alammo.com, and Jim Russell USMC (Ret.) (collectively, “Plaintiffs”), and defendant
4 Steven Lindley, in his official capacity as Acting Chief of the California Department of Justice,
5 Bureau of Firearms, through their respective counsel of record, hereby submit this joint status
6 report.

7 **1. A Brief Summary of the Claims:**

8 Plaintiffs allege in their complaint that AB 962 violates the Commerce Clause because it
9 discriminates against ammunition sellers and purchasers outside of California by purportedly
10 banning sales other than those completed in face-to-face transactions. They also allege that under
11 AB 962, residents of California are prohibited from purchasing ammunition from out-of-state
12 sellers online or by mail-order, and sellers in California are prohibited from selling ammunition
13 online or by mail-order to purchasers outside of California. Plaintiffs further allege AB 962
14 violates Due Process and Equal Protection under the Fourteenth Amendment because: (1) AB 962
15 explicitly discriminates between California and out-of-state residents; (2) the definition of
16 “handgun ammunition” is unconstitutionally vague; and (3) AB 962 is impossible to comply with.
17 Finally, Plaintiffs allege that AB 962 generally violates the Second Amendment and cannot
18 survive the strict scrutiny analysis which they contend the courts must apply to laws that infringe
19 upon individual and fundamental rights.

20 Defendant Lindley maintains that AB 962 is constitutional and has moved to dismiss the
21 complaint on the grounds that Plaintiffs’ claims are unripe and that the action is barred by
22 sovereign immunity. If the action is not dismissed in its entirety, Defendant has asked the Court
23 to stay the action to allow a related state court case to proceed to judgment
24

25 **2. Status of Service Upon All Defendants;**

26 Defendant has been served and is represented by counsel.
27
28

1 **3. Possible Joinder of Additional Parties;**

2 None anticipated at this time.

3
4 **4. Contemplated Amendments to the Pleadings;**

5 None anticipated at this time.

6
7 **5. The basis for jurisdiction and venue;**

8 Plaintiffs allege that this Court has subject matter jurisdiction over this action pursuant to
9 28 U.S.C. §§ 1331, 1343(a)(3), 2201, 2202 and 42 U.S.C. §1983 and Venue lies in this Court
10 pursuant to 28 U.S.C. § 1391.

11
12 **6. Anticipated discovery and the scheduling of discovery, including what changes, if**
13 **any, should be made in the timing, form, or requirement for disclosures under rule 26(a),**
14 **including a statement of when disclosures under Rule 26(a)(1), where made or will be made.**

15 Defendant Lindley has not answered and currently has pending a Motion to Dismiss to be
16 heard on November 18, 2010. As such, the parties request that the time for initial disclosures be
17 set for a date two weeks after the case is at issue.

18 **7. The subjects on which discovery may be needed, when discovery should be**
19 **completed, and whether discovery should be conducted in phases.**

20 Discovery will be completed by March 23, 2012. The parties will likely conduct discovery
21 on the topic of Assembly Bill 962, the implementation of the requirements imposed by Assembly
22 Bill 962, and the meaning behind the terms used in Assembly Bill 962.

23
24 **8. What changes, if any, should be made in the limitations on discovery imposed under**
25 **Civil Rules and what other limitations, if any, should be imposed.**

26 None.

1 **9. The timing of the disclosure of expert witnesses and information required by 26(a)(2).**

2 Parties will make their expert disclosures on or before December 9, 2012. Expert rebuttal
3 reports will be due March 2, 2012.

4
5 **10. The proposed dates for discovery cut-off.**

6 Proposed discovery cut-off date: March 23, 2012.

7
8 **11. Proposed date by which all non-discovery motions shall be filed.**

9 Non-discovery motions filing deadline: April 6, 2012.

10
11 **12. Proposed dates for final pretrial conference, and trial.**

12 Proposed final pretrial conference date: August 3, 2012; Proposed Trial Date August 31,
13 2012.

14
15 **13. Estimated of days of trial, and whether any party has demanded a jury trial.**

16 The parties estimate that this case will require 7 trial days. Defendant Lindley has waived
17 jury trial.

18
19 **14. Appropriateness of special procedures such as reference to a special master or
20 agreement to try the matter before a magistrate judge pursuant to 28 U.S.C. 636(c).**

21 The parties are unwilling to try the matter before a magistrate judge. There is no
22 foreseeable need for a special master.

23
24 **15. Proposed modification of standard pretrial procedures due to the special nature of
25 the case.**

26 None.

1 **16. Whether the case is related to any other case, including any matter involving**
2 **bankruptcy.**

3 The case is related to *Owner-Operator Independent Drivers Association v. Lindley*, United
4 States District Court, Eastern District of California Case No. 10-CV-02010 -MCE-KJN.

5 **17. Prospects for settlement, including whether a settlement conference should be**
6 **scheduled.**

7 Proposed date for a settlement conference in or about January 2012.

8
9 **18. Any other matters that may be conducive to the just and expeditious disposition of**
10 **the case, including whether counsel will waive any disqualification and stipulate to the trial**
11 **judge acting as a settlement judge.**

12 The parties are willing to waive any disqualification and stipulate to the trial judge acting as
13 a settlement judge and anticipate that the parties will file an ESI protocol and a protective order to
14 govern discovery in this case.

15 Dated: November 10, 2010

Respectfully submitted,

16 EDMUND G. BROWN JR.
17 Attorney General of California
18 ZACKERY P. MORAZZINI
19 Supervising Deputy Attorney General

/s/ Peter A. Krause

20 PETER A. KRAUSE
21 Deputy Attorney General
22 *Attorneys for Defendant Steven Lindley, in*
23 *his official capacity as Acting Chief of the*
24 *California Department of Justice, Bureau*
25 *of Firearms*

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

Dated: November 10, 2010

CHAFFIN LAW OFFICE

/s/ Kevin D. Chaffin
(as authorized on November 10, 2010)

KEVIN D. CHAFFIN
*Attorney for Plaintiffs State Ammunition
Inc., dba www.stateammo.com; Jim Otten,
dba www.a1ammo.com, and Jim Russell
USMC (Ret.)*

SA2010102122
10630141.doc