

1 Alan Gura, Calif. Bar No.: 178221
2 Gura & Possessky, PLLC
3 105 Oronoco Street, Suite 305
4 Alexandria, VA 22314
5 703.835.9085/Fax 703.997.7665

6 Donald E.J. Kilmer, Jr., Calif. Bar No.: 179986
7 Law Offices of Donald Kilmer, A.P.C.
8 1645 Willow Street, Suite 150
9 San Jose, CA 95125
10 408.264.8489/Fax 408.264.8487

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,) Case No. 2:09-CV-01185-KJM-CKD
)
Plaintiffs,)
vs.)
)
Stephen Lindley,)
)
Defendant.)
_____)

PLAINTIFFS' REPLY TO DEFENDANT'S OPPOSITION TO
MOTION TO SUPPLEMENT THE RECORD

However this Court might decide this case, it should do so on the basis of a full and complete understanding of how California's handgun rostering program functions—including with respect to the "grandfathering" of previously rostered handguns. Contrary to Defendant's assertion, the information contained in the manufacturers' new declarations was not reasonably available to Plaintiffs at the time of briefing or argument, although it was available to Defendant.

The issue here is not "the position of gun manufacturers on microstamping at any time prior to December 16, 2013." Opp. at 3. That much was well-known. Indeed, Plaintiffs and amicus Glock explained, as did Defendant in his

1 discovery responses, that no microstamping could be expected any time soon, or
2 possibly ever.

3 Rather, the issue here is gun manufacturers' *experience* in keeping handguns
4 "grandfathered" in the wake of the microstamping requirement's implementation.
5 Plaintiffs, and perhaps the Court, shared the normal understanding of a
6 "grandfather clause"—"Provision in a new law or regulation exempting those already
7 in or a part of the existing system which is being regulated." Black's Law Dictionary
8 699 (6th Ed.). Plaintiffs understood that existing handgun roster models would
9 remain on the roster. They did not anticipate that Defendant would apply an
10 extreme interpretation of the testing requirements to require retesting for "any
11 design, material, or manufacturing process modification . . . no matter how small . . .
12 even if it has no impact on the function of the handgun." Fifer Decl., ¶ 4.

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15 Plaintiffs might have assumed that handgun models, like all consumer
16 products, see minor, incremental change over time, but it was not until after the
17 argument on the pending motions—and approximately seven months after
18 imposition of the microstamping requirement—that manufacturers announced that
19 handguns everyone believed to be "grandfathered" were not, in fact, so, because
20 Defendant left the manufacturers no room whatsoever for their products' normal
21 evolution. And while it could have been assumed that eventually, manufacturers
22 would not wish to support grandfathered models for one particular state, it could not
23 have been assumed that Defendant would adopt a hyper-literal approach as to what
24 constitutes a "new" model such that the roster would see a 10% decline in just three
25 months—a decline that did not become evident until, again, after the argument.
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1 Defendant's attack on the relevance of the manufacturers' microstamping
2 decisions are likewise inapposite. It does not matter, for purposes of this case,
3 whether Defendant would do a better job of running Smith & Wesson or Sturm,
4 Ruger than do Messrs. Debney and Fifer. What matters is the fact that
5 manufacturers offer fewer models than anyone would have expected under previous
6 understandings of the "grandfathering" process, because of Defendant's practices. If
7 Defendant can argue that Plaintiffs should lose because a certain number of
8 handguns remain on the roster—and Defendant offers that "the total number of
9 handguns on the roster is a consideration," Opp. at 3—Plaintiffs should be able to
10 offer evidence that the roster is shrinking and will continue to do so because of the
11 way that Defendant's challenged practices impact real-life gun manufacturers.
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14 Respectfully, the roster and its rapidly declining size is not merely a function
15 of "business decision[s]." *Id.* It is a creature of legislative and regulatory decisions.
16 Businesses prefer selling their products and profiting, but they must make decisions
17 based on the regulatory environment imposed by government officials. California
18 regulators cannot simply issue decrees that businesses find infeasible, and then
19 attack (without any apparent qualification) a company's business judgment to reduce
20 its activity within the state.
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22 Defendant is not prejudiced by the Court having more complete and up-to-
23 date information about how grandfathering works, or does not work, in this context.
24 The manufacturers' announcements in December relative to grandfathering and
25 microstamping were news not just to Plaintiffs. If Defendant wanted to have this
26 matter brought up earlier, he should have better managed expectations regarding
27 grandfathering based on his post-microstamping interactions with manufacturers.
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Plaintiffs respectfully ask that the motion be granted.

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Respectfully submitted,

Alan Gura, Cal. Bar No.: 178221
Gura & Possessky, PLLC
105 Oronoco Street, Suite 305
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665
alan@gurapossesky.com

Donald E.J. Kilmer, Jr., Cal. Bar No. 179986
Law Offices of Donald Kilmer, A.P.C.
1645 Willow Street, Suite 150
San Jose, CA 95125
408.264.8489/Fax 408.264.8487
Don @DKLawOffice.com

/s/ Alan Gura
Alan Gura

/s/ Donald E.J. Kilmer, Jr.
Donald E.J. Kilmer, Jr.

Attorneys for Plaintiffs