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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM WIESE, et al.,

Plaintiffs,

vs.

ROB BONTA, in his official capacity as  
Attorney General of California, et al.,

Defendants.

Case No. 2:17-cv-00903-WBS-KJN

**PLAINTIFFS’ REPLY TO DEFENDANTS’  
RESPONSES TO PLAINTIFFS’ STATEMENT  
OF DISPUTED FACTS IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR SUMMARY  
JUDGMENT**

**[FRCP 56]**

Date: July 10, 2023  
Time: 1:30 p.m.  
Courtroom 5, 14th Floor  
Judge: Hon. William B. Shubb

Pursuant to Fed. Rule Civ. Pro. 56, and E.D. Cal. L.R. 260(a), plaintiffs William Wiese, Jeremiah Morris, Lance Cowley, Sherman Macaston, Clifford Flores, L.Q. Dang, Frank Federeau, Alan Normandy, Todd Nielsen, The Calguns Foundation, Firearms Policy Coalition, Firearms Policy Foundation, and Second Amendment Foundation (“Plaintiffs”) hereby submit this Reply to

1 Defendants’ Response to Plaintiffs’ Statement of Undisputed Material Facts in Support of  
 2 Plaintiffs’ Motion for Summary Judgment (“SOUMF”).

<b><u>SOUMF No. 1</u></b>	<b><u>Defendants’ Response</u></b>	<b><u>Plaintiffs’ Reply</u></b>
<p data-bbox="245 457 662 785">Fact: Defendant Rob Bonta is the head of the California Department of Justice (“DOJ”) which, along with its Bureau of Firearms, regulates and enforces state law related to the sales, transfer, possession and ownership of firearms.</p> <p data-bbox="245 827 662 974">Citations: California Const., art. 5, § 13; Defendants’ Answer to Third Amended Complaint (“TAC”) ¶ 24</p>	<p data-bbox="667 457 1057 495">Undisputed.</p>	<p data-bbox="1062 457 1515 533">Therefore, this fact stands undisputed.</p>
<b><u>SOUMF No. 2</u></b>	<b><u>Defendants’ Response</u></b>	<b><u>Plaintiffs’ Reply</u></b>
<p data-bbox="245 1083 662 1264">Fact: Defendant Allison Mendoza is sued in her official capacity as the Acting Director of the Bureau of Firearms.</p> <p data-bbox="245 1306 662 1381">Citations: Defendants’ Answer to TAC, ¶ 25</p>	<p data-bbox="667 1083 1057 1121">Undisputed.</p>	<p data-bbox="1062 1083 1515 1159">Therefore, this fact stands undisputed.</p>
<b><u>SOUMF No. 3</u></b>	<b><u>Defendants’ Response</u></b>	<b><u>Plaintiffs’ Reply</u></b>
<p data-bbox="245 1488 662 1703">Fact: California law defines a “large capacity magazine” (“LCM”) as “any ammunition feeding device with the capacity to accept more than 10 rounds” of ammunition.</p> <p data-bbox="245 1745 662 1820">Citations: Cal. Pen. Code § 16740</p>	<p data-bbox="667 1488 1057 1955">Disputed. The complete definition of a “large-capacity magazine” (“LCM”) is set forth in California Penal Code section 16740: “[L]arge-capacity magazine’ means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following: (a) A feeding</p>	<p data-bbox="1062 1488 1515 1736">Accordingly, it is undisputed that the definition of “large capacity magazine” under California law includes “any ammunition feeding device with the capacity to accept more than 10 rounds” of ammunition.</p>

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	<p>device that has been permanently altered so that it cannot accommodate more than 10 rounds. (b) A .22 caliber tube ammunition feeding device. (c) A tubular magazine that is contained in a lever-action firearm.”</p>	
<p><b><u>SOUMF No. 4</u></b></p> <p>Fact: Since 1999, through passage of Sen. Bill 23, California prohibited the manufacture, importation, sale, or receipt of LCMs.</p> <p>Citations: Cal. Pen. Code § 32310(a) (formerly § 12020(a)(2))</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. 1999 Cal. Stat. 1781, §§ 3, 3.5 (S.B. 23), became effective in 2000. See <i>Duncan v. Bonta</i>, 19 F.4th 1087, 1141 (9th Cir. 2021) (Bumatay, J., dissenting). S.B. 23 prohibited any person from manufacturing or causing to be manufactured, importing into the State, keeping for sale, offering to expose for sale, giving, or lending any LCM, subject to exceptions.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Accordingly, it is undisputed that S.B. 23’s prohibitions against LCMs in California have been in effect since at least January 1, 2000.</p>
<p><b><u>SOUMF No. 5</u></b></p> <p>Fact: California law did not prohibit persons from acquiring LCMs that had been legally acquired, prior to Jan. 1, 2000.</p> <p>Citations: Plaintiffs’ Request for Jud. Notice (“RJN”), Exh. A, p.1; Exh. B, p. 4; Exh. E, ¶ 12.</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. California Penal Code section 32310 (formerly section 12020) prohibited the manufacture, importation, sale, keeping for sale, offering or exposing for sale, giving, and lending of any large-capacity magazines. <i>Id.</i> at (a). Prior to 2017, California Penal Code section 32310 did not prohibit persons from possessing LCMs that they had legally acquired prior to January 1, 2000.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Notwithstanding their assertions here, Defendants’ responses do not actually dispute the fact that California law did not prohibit LCMs before the year 2000. Their own citation to page 1141 of the dissenting opinion in <i>Duncan</i> in response to SOUMF No. 4, immediately above, reinforces this reality. <i>Duncan v. Bonta</i>, 19 F.4th 1087, 1141 (9th Cir. 2021) (Bumatay, J., dissenting) (“<i>Since 2000</i>, California has prohibited the manufacture, importation, and sale of large-capacity magazines.”) (italics added).</p>

<p><b><u>SOUMF No. 6</u></b></p> <p>Fact: In 2016, the Legislature passed Sen. Bill 1446, which amended Pen. Code § 32310(b) to make it a criminal offense to possess a LCM, effective Jan. 1, 2017.</p> <p>Citations: Plaintiffs’ RJN, Exh. B, p. 4; Exh. C</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Undisputed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Therefore, this fact stands undisputed.</p>
<p><b><u>SOUMF No. 7</u></b></p> <p>Fact: Proposition 63, a measure banning the possession of LCMs, was approved by the voters in an election on November 9, 2016.</p> <p>Citations: Plaintiffs’ RJN, Exh. A, p. 1</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. The election in question was held on November 8, 2016. <a href="https://www.sos.ca.gov/elections/priorelections/statewide-election-results/general-election-november-8-2016">https://www.sos.ca.gov/elections/priorelections/statewide-election-results/general-election-november-8-2016</a>. Proposition 63 was approved by 63.1% of the vote. <a href="https://elections.cdn.sos.ca.gov/sov/2016general/sov/06-sov-summary.pdf">https://elections.cdn.sos.ca.gov/sov/2016general/sov/06-sov-summary.pdf</a>.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Accordingly, it is undisputed that Prop. 63 was approved in November of 2016; Defendants’ dispute on the basis that Prop. 63 was approved on November 8 instead of November 9 is not material to any fact in dispute.</p>
<p><b><u>SOUMF No. 8</u></b></p> <p>Fact: Proposition 63 amended Pen. Code § 32310 to impose criminal penalties on persons possessing LCMs on or after July 1, 2017.</p> <p>Citations: Pen. Code § 32310(c); Plaintiffs’ RJN, Exh. E, p. 8.</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Undisputed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Therefore, this fact stands undisputed.</p>
<p><b><u>SOUMF No. 9</u></b></p> <p>Fact: Plaintiffs Wiese, Morris, Cowley, Macaston, Flores, Dang, Federau, Normandy, and Nielsen (“Individual Plaintiffs”) all acquired LCMs</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. No discovery occurred in this case. Defendants cannot “present facts essential to justify [their] opposition” because they have not conducted</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>The declarations of the Plaintiffs to this effect are sufficient to establish this fact. More generally, the only facts relevant to resolution of this case are “legislative facts” regarding the</p>

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<p>for firearms, in California, prior to 2000.</p> <p>Citations: Wiese Decl., ¶ 4; Macaston Decl., ¶ 5; Flores Decl., ¶ 4; Dang Decl., ¶ 4; Federau Decl., ¶ 4; Normandy Decl., ¶ 4; Nielsen Decl., ¶ 4.</p>	<p>discovery on this fact. Fed. R. Civ. P. 56(d). As such, Plaintiffs’ motion for summary judgment cannot be granted unless and until Defendants take discovery relating to this fact. See <i>id.</i></p>	<p>history of magazine regulation in this country, and as such all facts and history are subject to historical citations and judicial notice as set forth in the parties’ briefing and argument, without the need for expert or other evidence adduced through traditional party discovery methods. See <i>Moore v. Madigan</i>, 702 F.3d 933 (7th Cir. 2012) (ordering entry of judgment for plaintiffs on review of order granting motion to dismiss because “[t]he constitutionality of the challenged statutory provisions does not present factual questions for determination in a trial . . . . Only adjudicative facts are determined in trials, and only legislative facts are relevant to the constitutionality of the Illinois gun law.”).</p>
<p><b><u>SOU MF No. 10</u></b></p> <p>Fact: Individual Plaintiffs would otherwise acquire additional LCMs for their existing firearms for lawful purposes.</p> <p>Citations: Wiese Decl., ¶¶ 5-6; Morris Decl., ¶¶ 5-6; Macaston Decl., ¶ 8; Flores Decl., ¶ 9; Dang Decl., ¶ 7; Federau Decl., ¶¶ 5-6.</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. No discovery occurred in this case. Defendants cannot “present facts essential to justify [their] opposition” because they have not conducted discovery on this fact. Fed. R. Civ. P. 56(d). As such, Plaintiffs’ motion for summary judgment cannot be granted unless and until Defendants take discovery relating to this fact. See <i>id.</i></p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>The declarations of the Plaintiffs to this effect are sufficient to establish this fact. More generally, the only facts relevant to resolution of this case are “legislative facts” regarding the history of magazine regulation in this country, and as such all facts and history are subject to historical citations and judicial notice as set forth in the parties’ briefing and argument, without the need for expert or other evidence adduced through traditional party discovery methods. See <i>Moore v. Madigan</i>, 702 F.3d 933 (7th Cir. 2012) (ordering entry of judgment for plaintiffs on review of order granting motion to dismiss because “[t]he constitutionality</p>

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		<p>of the challenged statutory provisions does not present factual questions for determination in a trial . . . . Only adjudicative facts are determined in trials, and only legislative facts are relevant to the constitutionality of the Illinois gun law.”).</p>
<p><b><u>SOU MF No. 11</u></b></p> <p>Fact: A magazine is a receptacle for a firearm that holds cartridges or shells under spring pressure preparatory for feeding into the chamber of a firearm.</p> <p>Citations: Sporting Arms and Ammunition Manufacturers’ Institute (SAAMI) Glossary, available at <a href="https://saami.org/saami-glossary/?letter=M">https://saami.org/saami-glossary/?letter=M</a></p>	<p><b><u>Defendants’ Response</u></b></p> <p>Undisputed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Therefore, this fact stands undisputed.</p>
<p><b><u>SOU MF No. 12</u></b></p> <p>Fact: Magazines may take many forms, such as box, drum, rotary, or tubular, and may be fixed or removable. Citations: <i>Id.</i></p>	<p><b><u>Defendants’ Response</u></b></p> <p>Undisputed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Therefore, this fact stands undisputed.</p>
<p><b><u>SOU MF No. 13</u></b></p> <p>Fact: Modern, semi-automatic firearms today are designed to be used, and are sold with magazines.</p> <p>Citations: Decl. of D. Allen Youngman (Lee Decl., Exh. A) (“Youngman Decl.”), ¶ 1.</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Undisputed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Therefore, this fact stands undisputed.</p>

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<b><u>SOUMF No. 14</u></b>	<b><u>Defendants’ Response</u></b>	<b><u>Plaintiffs’ Reply</u></b>
<p>Fact: A magazine is an inherent operating part of a functioning firearm.</p> <p>Citations: <i>Id.</i>, ¶ 7</p>	<p>Disputed. See Busse Decl. ¶ 127 (many functioning firearms do not have magazines).</p>	<p>Magazines are integral to the functioning of <i>semiautomatic</i> firearms. Without a magazine, such a firearm can only fire one shot without reloading, and it cannot function semiautomatically at all. See Youngman Decl., ¶ 7. This is further supported by Defendants’ own concessions herein that “[m]any new handguns sold by retailers in California cannot be fired without a magazine inserted, according to California law” (SOUMF No. 15), that “[m]any semiautomatic firearms sold in other states are sold with magazines capable of holding more than ten rounds” (SOUMF No. 16), and that SOUMF No. 17 lists common examples of such firearms otherwise widely available across the country.</p>
<p><b><u>SOUMF No. 15</u></b></p> <p>Fact: Many new handguns sold by retailers in California cannot be fired without a magazine inserted, according to California law.</p> <p>Citations: Youngman Decl. at ¶ 7; Cal. Pen. Code § 31910(b)(4)-(6)</p>	<p>Undisputed.</p>	<p>Therefore, this fact stands undisputed.</p>
<p><b><u>SOUMF No. 16</u></b></p> <p>Fact: In most other states, firearms, including many of the most popular pistols and rifles, are sold with standard capacity magazines.</p> <p>Citations: <i>Id.</i>, ¶ 8</p>	<p>Disputed. Many semiautomatic firearms sold in other states are sold with magazines capable of holding more than ten rounds. See Statement of Undisputed Facts, No. 17,</p>	<p>Accordingly, it is undisputed that “[m]any semiautomatic firearms sold in other states are sold with magazines capable of holding more than ten rounds.”</p>

	<i>infra.</i> Magazines do not have a “standard capacity.”	
<p><b><u>SOUF No. 17</u></b></p> <p>Fact: Examples of such firearms include: the Glock 17 pistol (with 17-round magazines); the Glock 19 pistol (with 15-round magazines), the SIG Sauer P226 pistol (with 15-round 9mm magazines), and the Beretta 92-series pistol (with 15, or 17-round magazines).</p> <p>Citations: <i>Id.</i>, ¶ 8; Jerry Lee and Chris Berens, Gun Digest 2018 374, 386-88, 408 (72nd ed. 2017) (Lee Decl., Exh. D)</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Undisputed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Therefore, this fact stands undisputed.</p>
<p><b><u>SOUF No. 18</u></b></p> <p>Fact: The most popular rifle in American history is the AR-15 platform, a semiautomatic rifle with standard magazines of twenty or thirty rounds.</p> <p>Citations: David B. Kopel, <i>The History of Firearm Magazines and Magazine Prohibitions</i>, 88 Alb. L. Rev. 849, 859 (2015), (Lee Decl., Exh. G, and available online at <a href="https://davekopel.org/2A/Law/Rev/2015/History-of-firearms-magazines-and-magazine-prohibition.pdf">https://davekopel.org/2A/Law/Rev/2015/History-of-firearms-magazines-and-magazine-prohibition.pdf</a>)</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. The cited source does not provide evidentiary support for this assertion. See David B. Kopel, <i>The History of Firearm Magazines and Magazine Prohibitions</i>, 88 Alb. L. Rev. 849, 859 n.90 (2015). In addition, the original AR-15 was sold with a five-round magazine. See Klarevas Decl., ¶ 49.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>The cited source specifically states on page 859, that “[t]he most popular rifle in American history is the AR-15 platform, a semiautomatic rifle with standard magazines of twenty or thirty rounds,” and footnote 90 lists supporting authorities for this assertion, including Nicholas J. Johnson, David B. Kopel, George A. Mocsary &amp; Michael P. O’Shea, <i>Firearms Law and the Second Amendment: Regulation, Rights, and Policy</i>, online chs. 12-15 (Aspen Publishers 2014), <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2683661">https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2683661</a> (citing further authorities demonstrating this popularity). These sources further illustrate that the popular AR-15 platform rifles today are, and have for many years been, those with magazines capable of holding more than ten rounds.</p>



<p><b><u>SOMF No. 19</u></b></p> <p>Fact: A study by the National Shooting Sports Foundation (NSSF) estimated that there were over 24 million “modern sporting rifles” (MSRs) in circulation in the United States as of 2022.</p> <p>Citations: Commonly Owned: NSSF Announces Over 24 Million MSRs in Circulation, The Firearm Indus. Trade Ass’n (July 20, 2022 (Lee Decl., Exh. E, and available at: <a href="https://bit.ly/3QBxiyv">https://bit.ly/3QBxiyv</a>))</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Plaintiffs’ estimate includes assault rifles acquired by law enforcement. (Pls. Exh. 17 at 2 (“An important note: The NSSF report includes weapons produced for law enforcement.”).)</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>This fact is not “<i>Plaintiffs’</i> estimate,” but rather an assertion based on the NSSF’s data compilation. Further, the referenced study does not include the stipulation that Defendants have noted. <i>See</i> <a href="https://www.nssf.org/articles/commonly-owned-nssf-announces-over-24-million-msrs-in-circulation/">https://www.nssf.org/articles/commonly-owned-nssf-announces-over-24-million-msrs-in-circulation/</a>. In any event, even assuming the data include “weapons produced for law enforcement,” Defendants do not explain how, if at all, this would materially diminish the significance of the asserted fact. Indeed, as the study observes, these arms are so ubiquitous that they outnumber the F-Series trucks on the road. <i>Id.</i>; <i>see</i> <a href="https://www.hotcars.com/ford-f-series-best-selling-truck-46-years/">https://www.hotcars.com/ford-f-series-best-selling-truck-46-years/</a> (“Selling over 640,000 units in 2022 in the US, the Ford F-Series range of trucks has once again become the highest-selling truck in America – 46th time in a row. Overall, it has become the best-selling vehicle in the US for the 41st time, making it a true icon and an undisputable legend of the automotive world.”)</p>
<p><b><u>SOU MF No. 20</u></b></p> <p>Fact: A 2022 NSSF survey of MSR owners showed that over half (52%) of MSR owners reported they possessed magazines with 30 round capacities, followed by 17% who said they owned magazines with 20 round capacities. When asked why they chose their respective</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. The survey does not claim that 52% of respondents reported that they possessed magazines with 30 round capacities, or that 17% said they owned magazines with 20 round capacities. Instead, the survey claims that 52% of respondents reported that</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>The survey’s findings speak for themselves and are in no way ambiguous. Additionally, Defendants have provided no evidence to refute or call these findings into question. As the NSSF survey reported: “Over half (52%) of MSR owners stated the magazine</p>

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<p>capacity, most frequent responses were related to their popularity/standard and being readily available.</p> <p>Citations: <i>Modern Sporting Rifle Comprehensive Consumer Report</i> at p. 31 (Lee Decl., Exh. F, and available at <a href="https://bit.ly/3GLmErS">https://bit.ly/3GLmErS</a>)</p>	<p>the “magazine capacity” of their most recently-purchased rifle was 30 rounds, and that another 17% reporter that the “magazine capacity” of their most recently-purchased rifle was 20 rounds. <i>See</i> Lee Decl., Ex. F at 31. Moreover, the rifles discussed in the survey do not themselves have a magazine capacity, as they are capable of using magazines capable of holding 10 or fewer rounds, <i>see</i> Busse Decl. ¶¶ 28-29, so this statement is unclear and ambiguous.</p>	<p>capacity of their MSR is 30 rounds. When asked why they chose their respective capacity, most frequent responses were related to popularity/standard and being readily available.” NSSF Survey at p. 6</p> <p>“Half (52%) of MSR owners stated the magazine capacity of their most recently acquired MSR is 30 rounds.” NSSF Survey at p. 31.</p> <p>17% of respondents stated that “the magazine capacity of their most recently acquired MSR” was 20 rounds. <i>Id.</i> at p. 31.</p> <p>Nor do Defendants argue or attempt to explain how their characterizations of the language in the survey, through which they apparently try to draw semantical distinctions from Plaintiffs’ characterizations, would in any way appreciably diminish the significance of the essential fact being asserted. Any such distinctions make no difference and thus the essential fact stands undisputed.</p>
<p><b><u>SOU MF No. 21</u></b></p> <p>Fact: Magazines holding more than 10 rounds of ammunition are, in virtually every other state of the Union, in common use by law-abiding for lawful purposes.</p> <p>Citations:</p> <p>Youngman Decl. at ¶¶ 7-8.</p> <p>This fact is not subject to genuine dispute. <i>See Duncan</i></p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. Whether a weapon accessory is in “common use” for self defense is a question of law. LCMs are not in common use for self-defense. <i>See, e.g.,</i> Allen Decl. ¶¶ 11, 18 (individuals rarely fire more than 10 rounds in self defense, with the average being approximately 2.2 rounds). Numerous courts have held that they are not,</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>No further evidentiary development is legal analysis is required to establish the commonality of LCMs as arms for self-defense and other lawful purposes. That is already clear in the record according to the evidence on file, and any further analysis of the issue should be conducted through “legislative” facts subject to historical citations and judicial notice.</p>

1 v. *Bonta*, 19 F.4th 1087, 1097  
 2 (9th Cir. 2021) (en banc),  
 3 cert. granted, judgment  
 4 vacated, 142 S. Ct. 2895  
 5 (2022), and vacated and  
 6 remanded, 49 F.4th 1228 (9th  
 7 Cir. 2022); *Heller v. District*  
 8 *of Columbia*, 670 F.3d 1244,  
 9 1261 (D.C. Cir. 2011) (*Heller*  
 10 *II*) (“[w]e think it clear  
 11 enough in the record that  
 12 semi-automatic rifles and  
 13 magazines holding more than  
 14 ten rounds are indeed in  
 15 ‘common use,’ as the  
 16 plaintiffs contend”); *Colorado*  
 17 *Outfitters Ass’n v.*  
 18 *Hickenlooper*, 24 F. Supp. 3d  
 19 1050, 1068 (D. Colo. 2014)  
 20 (“lawfully owned semi-  
 21 automatic firearms using a  
 22 magazine with the capacity of  
 23 greater than 15 rounds  
 24 number in the tens of  
 25 millions”); *Shew v. Malloy*,  
 26 994 F. Supp. 2d 234, 246 (D.  
 27 Conn. 2014) (semi-automatic  
 28 rifles such as the AR-15 as  
 well as magazines with a  
 capacity greater than 10  
 rounds “are ‘in common use’  
 within the meaning of *Heller*  
 and, presumably, used for  
 lawful purposes”); *Fyock v.*  
*City of Sunnyvale*, 25 F. Supp.  
 3d 1267, 1276-1277 (N.D.  
 Cal. 2014) (such magazines  
 are “typically possessed by  
 law-abiding citizens for  
 lawful purposes”); *N.Y. State*  
*Rifle & Pistol Ass’n*, 990 F.  
 Supp. 2d at 365 (presuming  
 use for lawful purposes).

“An issue is ‘genuine’ only if  
 there is sufficient evidence for  
 a reasonable fact finder to  
 find for the non-moving

based on substantially  
 similar records. *See, e.g.,*  
*Hanson v. District of*  
*Columbia*, \_\_ F. Supp. 3d  
 \_\_, 2023 WL 3019777, at  
 \*10-12 (N.D. Ill. Apr. 20,  
 2023) (holding that LCMs  
 “are not in fact commonly  
 used for self-defense” or  
 “typically possessed for  
 self-defense”); *Ocean State*  
*Tactical, LLC v. State of*  
*Rhode Island*, 2022 WL  
 17721175, at \*15 (D.R.I.  
 Dec. 14, 2022) (“[P]laintiffs  
 have failed to establish that  
 they have a likelihood of  
 success in demonstrating  
 that LCMs are weapons of  
 self-defense, such that they  
 would enjoy Second  
 Amendment protection.”);  
*Or. Firearms Fed’n, Inc. v.*  
*Brown*, \_\_ F. Supp. 3d \_\_,  
 2022 WL 17454829, at \*11  
 (D. Or. Dec. 6, 2022)  
 (“Plaintiffs have not shown  
 that large-capacity  
 magazines are weapons ‘in  
 common use . . . for lawful  
 purposes like self-defense’  
 such that they fall within  
 the plain text of the Second  
 Amendment.” (citation  
 omitted)); *see also Or.*  
*Firearms Fed’n, Inc.*, 2022  
 WL 17454829, at \*11 (“The  
 Ninth Circuit has noted,  
 without explicitly holding,  
 that there is ‘significant  
 merit’ to the argument that  
 large-capacity magazines  
 are not firearms commonly  
 used for lawful purposes  
 like self-defense, and  
 therefore are not covered by  
 the plain text of the Second

Further, any claim that LCMs  
 are “not in common use for self-  
 defense” because “individuals  
 rarely fire more than 10 rounds  
 in self-defense” is just wrong.

“Second Amendment rights do  
 not depend on how often the  
 magazines are used. Indeed, the  
 standard is whether the  
 prohibited magazines are  
 ‘typically possessed by law-  
 abiding citizens for lawful  
 purposes,’ not whether the  
 magazines are often *used* for  
 self-defense.” *Fyock v. City of*  
*Sunnyvale*, 25 F. Supp.3d 1267,  
 1276 (N.D. Cal. 2014) (emphasis  
 original, citing *Heller*, 554 U.S.  
 at 625), *aff’d sub nom. Fyock v.*  
*Sunnyvale*, 779 F.3d 991 (9th  
 Cir. 2015).

Moreover, Ms. Allen’s  
 conclusion is based on an  
 unreliable study, as explained in  
 Plaintiffs’ Response to  
 Defendants’ Undisputed  
 Material Fact No. 4 in support of  
 Defendant’s Cross-MSJ.  
 Additionally, the ubiquity of  
 LCMs among ordinary law-  
 abiding citizens and their  
 indisputable utility for lawful  
 self-defense “*in case of*  
*confrontation*” as guaranteed  
 under the Second Amendment  
 undermines any claim that they  
 are not in common use for lawful  
 purposes, as detailed further in  
 Plaintiffs’ Response to  
 Defendants’ Undisputed  
 Material Fact No. 4 in support of  
 Defendant’s Cross-MSJ.

The reasoning in the cases on  
 which Defendants rely here is  
 based on the faulty premise that

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<p>party.” <i>Far Out Productions, Inc. v. Oskar</i>, 247 F.3d 986, 992 (9th Cir. 2001) (citing <i>Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 248-49 (1986).</p>	<p>Amendment.” (quoting <i>Duncan v. Bonta</i>, 19 F.4th 1087, 1102 (9th Cir. 2021) (en banc)).</p>	<p>LCMs aren’t used frequently enough for self-defense to conclude that they are in common use for lawful purposes. <i>Hanson</i> at *8-12 (this opinion is currently on appeal); <i>Ocean State Tactical</i> at *14-15; <i>Or. Firearms Fed’n</i> at *9-11).</p>
<p><b><u>SOUF No. 22</u></b></p> <p>Fact: It is generally well-known, well-accepted, and generally indisputable that magazines capable of holding more than 10 rounds are commonly owned by millions of persons in the United States, for a variety of lawful purposes, including recreational target shooting, competition, home defense, collecting and hunting.</p> <p>Citations:</p> <p>Youngman Decl., ¶ 9.</p> <p>This fact is not subject to genuine dispute.</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. The cited source does not provide evidentiary support for this assertion. <i>See</i> Youngman Decl. ¶ 9 (Dkt. 11); <i>see also</i> Klarevas Decl., ¶ 40 (“The current number of LCMs in American society is unknown.”)</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>The ubiquitous use of LCMs for lawful purposes across the country is already well established in the existing record and the existing case law. No further “evidentiary support” is required. To the extent any further evidentiary development might be necessary or useful on this point, it should be conducted through “legislative” facts subject to historical citations and judicial notice.</p> <p>Moreover, Youngman’s industry-relevant knowledge and experience readily qualifies him to speak on the subjects matters addressed in his declaration, including the ubiquity of LCMs in common use for lawful purposes around the country, and Defendants have neither shown he is unqualified nor challenged his qualifications to do so.</p> <p>Lastly, Defendants have not refuted with any contrary evidence the essential fact that LCMs “are commonly owned by millions of persons in the United States, for a variety of lawful purposes,” such that this fact stands undisputed.</p>

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<b><u>SOUMF No. 23</u></b>	<b><u>Defendants’ Response</u></b>	<b><u>Plaintiffs’ Reply</u></b>
<p>Fact: The NSSF estimated that between 1990 and 2015 there were 230 million pistol and rifle magazines in the possession of United States consumers generally, and that magazines capable of holding more than 10 rounds of ammunition accounted for approx. 115 million, or half of all magazines owned, during this time period.</p> <p>Citations: Decl. of James Curcuruto in Support of Plaintiffs’ Motion for Preliminary Injunction (Lee Decl., Exh. B) (“Curcuruto Decl.”), ¶ 8</p>	<p>Disputed. Mr. Curcuruto acknowledges that the NSSF estimate is “based on extrapolation from indirect sources and cannot be confirmed as unequivocally accurate.” Lee Decl., Ex. B ¶ 13; <i>see also</i> Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs’ assertions). Moreover, to the extent the NSSF Magazine Chart was based on AFMER reports, those reports do not exclude production of firearms for purchase by law enforcement, and they do not provide manufacturing data on ammunition magazines. <i>See</i> ATF, Annual Firearms Manufacturing and Export Report (2020), <a href="https://www.atf.gov/firearms/docs/report/afmer-2020-final-report-coversheet/download">https://www.atf.gov/firearms/docs/report/afmer-2020-final-report-coversheet/download</a></p> <p>Objection: Speculative testimony. Fed. R. Evid. 702.</p>	<p>Defendants fail to refute with any contrary evidence the essential fact to which Curcuruto has attested that “whatever the actual number of such magazines United States consumers’ hands is, it is in the tens-of-millions, even under the most conservative estimates.” Decl. of Curcuruto ¶ 15.</p> <p>For the same reason, Curcuruto’s disclaimer that Defendants cite does not in any way appreciably diminish the significance of this essential fact, and Defendants fail to argue, much less explain, how it might do so. Similarly, even if true, Defendants have not shown or even argued how either the inclusion of data related to firearms produced for law enforcement or the exclusion of manufacturing data on ammunition magazines might in any way appreciably diminish the significance of this essential fact.</p> <p>Further, Defendants’ claim that this is “speculative testimony” ignores the breadth of Curcuruto’s industry-relevant knowledge and experience, which qualifies him to speak on this subject matter, and Defendants have neither shown he is unqualified nor challenged his qualifications to do so.</p> <p>As for the section of Klarevas’s Declaration that Defendants say “identif[ies] numerous flaws in Plaintiffs’ assertions,” this section essentially just criticizes Curcuruto for not being able to</p>

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		<p>provide more concrete figures and generally seeks to discredit Plaintiffs’ position based on the faulty premise that commonality only matters to the extent the data show LCMs are overwhelmingly <i>used</i> for self-defense—i.e., that the most common use of LCMs is for <i>actually firing upon</i> other people to defend against deadly force. Ultimately however, Klarevas provides no data that refutes or contradicts the essential fact that “whatever the actual number of such magazines United States consumers’ hands is, it is in the tens-of-millions, even under the most conservative estimates.” Indeed, he offers no hard numbers or concrete estimates of his own, and his discussion of the available data shows LCMs <i>must</i> be in the “tens-of-millions” or otherwise ubiquitous enough that they have indisputably proliferated in voluminous numbers among gunowners across the country. Klarevas Decl., ¶¶ 40-51.</p>
<p><b><u>SOUMF No. 24</u></b></p> <p>Fact: It is likely that tens of millions of magazines capable of holding 10 or more rounds were in the hands of United States consumers generally between 1990 and 2015.</p> <p>Citations: Curcuruto Decl., ¶ 13</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. Mr. Curcuruto acknowledges that the NSSF estimate is “based on extrapolation from indirect sources and cannot be confirmed as unequivocally accurate.” Lee Decl., Ex. B ¶ 13; <i>see also</i> Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs’ assertions). Moreover, to the extent Mr. Curcuruto’s NSSF source was based on ATF AFMER reports, <i>see id.</i>, Ex. A</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Plaintiffs’ reply to Defendants’ response to SOUMF No. 23 (which is verbatim the same) is equally applicable to Defendants’ response to SOUMF No. 24, and thus Plaintiffs incorporate herein their reply to SOUMF No. 23 as their reply to SOUMF No. 24.</p>

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	<p>(NSSF Magazine Chart), those reports do not exclude production of firearms for purchase by law enforcement, and they do not provide manufacturing data on ammunition magazines. <i>See</i> ATF, Annual Firearms Manufacturing and Export Report (2020), <a href="https://www.atf.gov/firearms/docs/report/afmer-2020-final-report-coversheet/download">https://www.atf.gov/firearms/docs/report/afmer-2020-final-report-coversheet/download</a>.</p> <p>Objection: Speculative testimony. Fed. R. Evid. 702.</p>	
<p><b><u>SOUMF No. 25</u></b></p> <p>Fact: An analysis of a survey performed in 2021 found that 48% of gun owners in the United States have at one point or another owned magazines that are capable of holding more than 10 rounds.</p> <p>Citations: William English, <i>2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned</i> (May 13, 2022) (Lee Decl. Exh. C) (“Survey”), at p. 22.</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. Whatever the percentage of gun owners who reported owning an LCM, only 3.56% of respondents to the survey reported being in “a situation . . . in which it would have been useful for defensive purposes to have a firearm with a magazine capacity in excess of 10 rounds” (550 out of 15,450 respondents). Lee Decl., Ex. C at 26-28; <i>see also</i> Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs’ assertion). And in 81.9% of defensive incidents, no shots were fired. <i>Id.</i> at 13.</p> <p>Objection: Hearsay. Fed. R. Evid. 801.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Defendants’ response is again based on the faulty premise that the commonality of LCMs is dependent upon the extent to which the data show that LCMs are overwhelmingly <i>used</i> for self-defense—i.e., for <i>actually firing upon</i> other people to defend against deadly force. Because this is a faulty premise, as more fully explained in Plaintiffs’ Response to Defendants’ Undisputed Material Fact No. 4 in support of Defendant’s Cross-MSJ, incorporated herein, Defendants’ response to SOUMF No. 24 is equally unavailing, fails to refute the essential fact asserted, and fails to generate any material fact in dispute.</p> <p>The state’s objection that the National Firearms Survey is hearsay is unfounded. The Survey (contains statements of</p>

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		<p>without taking judicial notice of them—and, indeed, should not take judicial notice of them, as they are not the type of facts to which the Rules apply); <i>see also Lockhart v. McCree</i>, 476 U.S. at 170 n.3.</p> <p>Because the Rules of Evidence do not apply, legislative facts can be and frequently are found in “books and other documents not prepared specially for litigation or refined in its fires.” <i>Ind. H. B. R.R. Co. v. Am. Cyanamid Co.</i>, 916 F.2d 1174, 1182 (7th Cir. 1990). The Survey is one such source that may appropriately be consulted by the Court in resolving this case.</p>
<p><b><u>SOU MF No. 26</u></b></p> <p>Fact: According to the Survey, approx. 39 million Americans have at some point owned at least one magazine that holds more than 10 rounds.</p> <p>Citations: <i>Id.</i>, at 23</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. Whatever the percentage of gun owners who reported owning an LCM, only 3.56% of respondents to the survey reported being in “a situation . . . in which it would have been useful for defensive purposes to have a firearm with a magazine capacity in excess of 10 rounds” (550 out of 15,450 respondents). Lee Decl., Ex. C at 26-28; <i>see also</i> Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs’ assertion). And in 81.9% of defensive incidents, no shots were fired. <i>Id.</i> at 13.</p> <p>Objection: Hearsay. Fed. R. Evid. 801.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Plaintiffs’ reply to Defendants’ response to SOUMF No. 26 (which is verbatim the same) is equally applicable to Defendants’ response to SOUMF No. 25, and thus Plaintiffs incorporate herein their reply to SOUMF No. 25 as their reply to SOUMF No. 26.</p>

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<b><u>SouMF No. 27</u></b>	<b><u>Defendants’ Response</u></b>	<b><u>Plaintiffs’ Reply</u></b>
<p>Fact: According to the <i>Survey</i>, American gun owners have owned as many as 269 million handgun magazines that hold over 10 rounds.</p> <p>Citations: <i>Id.</i>, at 24</p>	<p>Disputed. Whatever the percentage of gun owners who reported owning an LCM, only 3.56% of respondents to the survey reported being in “a situation . . . in which it would have been useful for defensive purposes to have a firearm with a magazine capacity in excess of 10 rounds” (550 out of 15,450 respondents). Lee Decl., Ex. C at 26-28; see also Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs’ assertion). And in 81.9% of defensive incidents, no shots were fired. <i>Id.</i> at 13.</p> <p>Objection: Hearsay. Fed. R. Evid. 801.</p>	<p>Plaintiffs’ reply to Defendants’ response to SouMF No. 27 (which is verbatim the same) is equally applicable to Defendants’ response to SouMF No. 25, and thus Plaintiffs incorporate herein their reply to SouMF No. 25 as their reply to SouMF No. 27.</p>
<p><b><u>SouMF No. 28</u></b></p> <p>Fact: According to the <i>Survey</i>, American gun owners have owned as many as 273 million rifle magazines that hold over 10 rounds.</p> <p>Citations: <i>Id.</i></p>	<p>Disputed. Whatever the percentage of gun owners who reported owning an LCM, only 3.56% of respondents to the survey reported being in “a situation . . . in which it would have been useful for defensive purposes to have a firearm with a magazine capacity in excess of 10 rounds” (550 out of 15,450 respondents). Lee Decl., Ex. C at 26-28; <i>see also</i> Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs’ assertion). And in 81.9% of defensive incidents, no shots were fired. <i>Id.</i> at 13.</p>	<p>Plaintiffs’ reply to Defendants’ response to SouMF No. 28 (which is verbatim the same) is equally applicable to Defendants’ response to SouMF No. 25, and thus Plaintiffs incorporate herein their reply to SouMF No. 25 as their reply to SouMF No. 28.</p>

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	<p>Objection: Hearsay. Fed. R. Evid. 801.</p>	
<p><b><u>SOUMF No. 29</u></b></p> <p>Fact: According to the <i>Survey</i>, individuals who own magazines that hold more than 10 rounds most commonly cite the following as the reasons for owning such devices: recreational target shooting, home defense, hunting, and defense outside the home.</p> <p>Citations: <i>Id.</i>, at 23</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. Self-defense is not the primary reason cited for owning an LCM. See Klarevas Decl., ¶¶ 40-49 (identifying numerous flaws in Plaintiffs’ assertion).</p> <p>Objection: Hearsay. Fed. R. Evid. 801.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Defendants’ response is again based on the faulty premise that the commonality of LCMs is dependent upon the extent to which the data show that LCMs are overwhelmingly <i>used</i> for self-defense—i.e., for <i>actually firing upon</i> other people to defend against deadly force. Because this is a faulty premise, as more fully explained in Plaintiffs’ Response to Defendants’ Undisputed Material Fact No. 4 in support of Defendant’s Cross-MSJ, incorporated herein, Defendants’ response to SOUMF No. 24 is equally unavailing, fails to refute the essential fact asserted, and fails to generate any material fact in dispute.</p> <p>The state’s objection that the National Firearms Survey is hearsay is unfounded. The Survey (contains statements of “legislative fact” or facts “which have relevance to the legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court in the enactment of a legislative body.” Fed. R. Evid. 201, 1972 Advisory Committee Note. Unlike “adjudicative facts,” or “the facts of the particular case,” <i>id.</i> the rules of evidence do not apply to legislative facts, <i>see, e.g., Wiesmueller v. Kosobucki</i>, 547 F.3d 740, 742 (7<sup>th</sup> Cir. 2008) (Posner, J., in</p>

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		<p>chambers); <i>see also</i> 1 Mueller &amp; Kirkpatrick, Fed. Evid. 2:12 (4th ed. Thomson Reuters/Westlaw 2013) (“[T]he Rules do not regulate . . . any aspect of noticing legislative facts.”). This means that it is irrelevant that the Survey is offered for the truth of the matter asserted—after all, sources of legislative facts will <i>frequently</i> be hearsay. As Professor Davis—whose taxonomy of adjudicative facts and legislative facts the Advisory Committee adopted in 1972—has explained, “even though nothing in the Rules provides that they are limited to adjudicative facts,” “[t]he hearsay provisions of the Federal Rules of Evidence clearly should not apply (Rule 803(8), for instance)” to legislative facts. Kenneth Culp Davis, <i>Facts in Lawmaking</i>, 80 Colum. L. Rev. 931, 941 (1980); <i>see</i> Fed. R. Evid. 201, 1972 Advisory Committee Note (relying on Professor Davis’s framework of legislative facts and adjudicative facts to explain why a judge may rely on legislative facts even without taking judicial notice of them—and, indeed, should not take judicial notice of them, as they are not the type of facts to which the Rules apply); <i>see also</i> <i>Lockhart v. McCree</i>, 476 U.S. at 170 n.3.</p> <p>Because the Rules of Evidence do not apply, legislative facts can be and frequently are found in “books and other documents not prepared specially for litigation or refined in its fires.” <i>Ind. H. B. R.R. Co. v. Am. Cyanamid Co.</i>, 916 F.2d</p>
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		1174, 1182 (7th Cir. 1990). The Survey is one such source that may appropriately be consulted by the Court in resolving this case.
<p><b><u>SOUF No. 30</u></b></p> <p>Fact: In California, the California DOJ estimated that as of December 16, 2016, “[t]here are likely hundreds of thousands of large capacity magazines in California at this time.”</p> <p>Citations: Finding of Emergency promulgated on or about December 16, 2016 (RJN Exh. A), p. 1</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Undisputed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Therefore, this fact stands undisputed.</p>
<p><b><u>SOUF No. 31</u></b></p> <p>Fact: The DOJ expected that “many gun owners” would be affected by a new ban on LCMs.</p> <p>Citations: <i>Id.</i></p>	<p><b><u>Defendants’ Response</u></b></p> <p>Undisputed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Therefore, this fact stands undisputed.</p>
<p><b><u>SOUF No. 32</u></b></p> <p>Fact: Prior to passage of SB 1446, the Senate Public Safety Committee considered and rejected the idea that the LCM ban would constitute a “takings” under the Fifth Amendment’s Takings Clause.</p> <p>Citations: California Senate Rules Committee, Office of Senate Floor Analyses - Analysis published 5/19/16 re SB 1446 (Plaintiffs’ RJN Exh. B), at pp. 4-6</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Undisputed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Therefore, this fact stands undisputed.</p>

<p><b><u>SOUMF No. 33</u></b></p> <p>Fact: Under the new law, owners of LCMs in the State of California, unless exempt, must: (1) Remove the large-capacity magazine from the state; (2) Sell the large-capacity magazine to a licensed firearms dealer; or (3) Surrender the large-capacity magazine to a law enforcement agency for destruction.</p> <p>Citations: Cal. Pen. Code § 32310(d)</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. Owners of LCMs may continue to possess them if they modify the magazines permanently to no longer hold more than ten rounds of ammunition. <i>See</i> Cal. Penal Code Section 17460; <i>see also</i> <i>Duncan v. Bonta</i>, 19 F.4th 1087, 1113 (9th Cir. 2021), <i>cert. granted, judgment vacated</i>, 142 S. Ct. 2895 (2022), <i>vacated and remanded</i>, 49 F.4th 1228 (9th Cir. 2022).</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Defendants’ purported factual dispute here is immaterial. Even assuming modifying LCMs permanently “to no longer hold more than ten rounds of ammunition” is a viable option—a dubious proposition given the absence of any guidance from the DOJ regarding how one could go about doing so and still remain in compliance with the State’s complex web of firearms regulations—this would still result in a takings requiring just compensation, because of the significant diminution in value to the LCM. Indeed, for Plaintiffs Dang and Macaston, their legally-acquired magazines were the only ones <i>ever made</i> for their particular firearms. Plaintiffs’ SOUMF No. 39; Dang Decl., ¶ 5; Macaston Decl., ¶ 6.</p> <p>Therefore, Defendants’ asserted fact does not generate any material fact in dispute.</p>
<p><b><u>SOUMF No. 34</u></b></p> <p>Fact: The law does not offer to compensate owners of LCMs for their surrender to a LCM for destruction.</p> <p>Citations: <i>Id.</i></p>	<p><b><u>Defendants’ Response</u></b></p> <p>Undisputed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Therefore, this fact stands undisputed.</p>
<p><b><u>SOUMF No. 35</u></b></p> <p>Fact: Individual Plaintiffs are unwilling to destroy or surrender their lawfully-acquired LCMs in their possession.</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. Defendants cannot “present facts essential to justify [their] opposition” because they have not conducted discovery on this fact. Fed.</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>The declarations of Plaintiffs to this effect are sufficient to establish the material facts relevant to resolving the issues. No further discovery on the point is necessary, and</p>

<p>1 Citations: Wiese Decl., ¶¶ 5-6; Morris Decl., ¶¶ 5-6; Macaston Decl., ¶ 8; Flores Decl., ¶ 9; Dang Decl., ¶ 7; Federau Decl., ¶¶ 5-6</p>	<p>R. Civ. P. 56(d). As such, Plaintiffs’ motion for summary judgment cannot be granted unless and until Defendants take discovery relating to this fact. <i>See id.</i></p>	<p>Defendants’ bald assertion that they “cannot ‘present facts essential to justify [their] opposition’ because they have not conducted discovery on this fact,” doesn’t make it so.</p>
<p>5 <b><u>SouMF No. 36</u></b></p> <p>6 Fact: Unless enjoined, enforcement of Pen. Code § 32310(c) will cause</p> <p>7 Individual Plaintiffs to suffer permanent physical</p> <p>8 deprivation of their personal property.</p> <p>9</p> <p>10 Citations: Wiese Decl., ¶ 8; Macaston Decl., ¶ 11; Flores Decl., ¶ 11; Dang Decl., ¶ 10; Federau Decl., ¶ 8; Morris Decl., ¶ 8</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. Owners of LCMs may continue to possess them if they modify the magazines permanently to no longer hold more than ten rounds of ammunition. <i>See Cal. Penal Code Section 17460; see also Duncan v. Bonta</i>, 19 F.4th 1087, 1113 (9th Cir. 2021), <i>cert. granted, judgment vacated</i>, 142 S. Ct. 2895 (2022), <i>vacated and remanded</i>, 49 F.4th 1228 (9th Cir. 2022).</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>Plaintiffs’ reply to Defendants’ response to SouMF No. 33 (which is verbatim the same) is equally applicable to Defendants’ response to SouMF No. 36, and thus Plaintiffs incorporate herein their reply to SouMF No. 33 as their reply to SouMF No. 36.</p>
<p>15 <b><u>SouMF No. 37</u></b></p> <p>16 Fact: Some Individual Plaintiffs have “pre-ban”</p> <p>17 magazines of substantial value, either intrinsically or</p> <p>18 because they have historical value.</p> <p>19</p> <p>20 Citations: Dang Decl., ¶ 5; Flores Decl., ¶¶ 4-5</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. Defendants cannot “present facts essential to justify [their] opposition” because they have not conducted discovery on this fact. Fed. R. Civ. P. 56(d). As such, Plaintiffs’ motion for summary judgment cannot be granted unless and until Defendants take discovery relating to this fact. <i>See id.</i></p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>The declarations of Plaintiffs to this effect are sufficient to establish the material facts relevant to resolving the issues. No further discovery on the point is necessary, and Defendants’ bald assertion that they “cannot ‘present facts essential to justify [their] opposition’ because they have not conducted discovery on this fact,” doesn’t make it so.</p>
<p>23 <b><u>SouMF No. 38</u></b></p> <p>24 Fact: Some of these</p> <p>25 magazines are the only</p> <p>26 magazines that these</p> <p>27 Individual Plaintiffs may have</p> <p>28 for that particular firearm.</p>	<p><b><u>Defendants’ Response</u></b></p> <p>Disputed. Defendants cannot “present facts essential to justify [their] opposition” because they have not conducted discovery on this fact. Fed. R. Civ. P. 56(d). As such,</p>	<p><b><u>Plaintiffs’ Reply</u></b></p> <p>The declarations of Plaintiffs to this effect are sufficient to establish the material facts relevant to resolving the issues. No further discovery on the point is necessary, and Defendants’ bald assertion that</p>

<p>1 Citations: Dang Decl., ¶ 5; 2 Flores Decl., ¶ 4; Macaston 3 Decl., ¶ 6</p>	<p>Plaintiffs’ motion for summary judgment cannot be granted unless and until Defendants take discovery relating to this fact. See <i>id.</i> Firearms that use LCMs are capable of operating with magazines holding ten rounds or less. See Busse Decl. ¶¶ 28-29.</p>	<p>they “cannot ‘present facts essential to justify [their] opposition’ because they have not conducted discovery on this fact,” doesn’t make it so.</p>
<p>7 <b><u>SOUMF No. 39</u></b></p> <p>8 Fact: Some of these 9 magazines are the only 10 magazines that were ever 11 made for that particular 12 firearm.</p> <p>13 Citations: Dang Decl., ¶ 5; 14 Macaston Decl., ¶ 6</p>	<p>7 <b><u>Defendants’ Response</u></b></p> <p>8 Disputed. Defendants 9 cannot “present facts 10 essential to justify [their] 11 opposition” because they 12 have not conducted 13 discovery on this fact. Fed. 14 R. Civ. P. 56(d). As such, 15 Plaintiffs’ motion for 16 summary judgment cannot 17 be granted unless and until 18 Defendants take discovery relating to this fact. <i>See id.</i></p> <p>Firearms that use LCMs are capable of operating with magazines holding ten rounds or less. <i>See</i> Busse Decl. ¶¶ 28-29.</p>	<p>7 <b><u>Plaintiffs’ Reply</u></b></p> <p>8 The declarations of Plaintiffs to 9 this effect are sufficient to 10 establish the material facts 11 relevant to resolving the issues. 12 No further discovery on the 13 point is necessary, and 14 Defendants’ bald assertion that 15 they “cannot ‘present facts 16 essential to justify [their] 17 opposition’ because they have 18 not conducted discovery on this fact,” doesn’t make it so.</p>

19 Respectfully submitted May 31, 2022,

20 **THE DIGUISEPPE LAW FIRM, P.C.**

21  
22 /s/ Raymond M. DiGuiseppe  
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