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10 **IN THE UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 **MICHELLE FLANAGAN, et al.,**
14 **Plaintiffs,**
15 **v.**
16 **CALIFORNIA ATTORNEY**
GENERAL XAVIER BECERRA, in
17 **his official capacity as Attorney**
General of the State of California, et
18 **al.,**
19 **Defendants.**
20

Case No.: 2:16-cv-06164-JAK-AS

**DEFENDANT'S SEPARATE
STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Date: November 6, 2017
Time: 8:30 a.m.
Courtroom: 10B
Judge: Hon. John A. Kronstadt
Action Filed: August 17, 2016

Under Local Rule 56-1, Defendant Xavier Becerra, in his official capacity as Attorney General of California (“Defendant”), submits the following statement of uncontroverted facts and conclusions of law, together with references to supporting evidence, in support of the concurrently filed motion for summary judgment. Defendant seeks summary judgment on the only remaining claim for relief: the claim under the Second and Fourteenth Amendments to the U.S. Constitution, “based on the open carry limitations,”¹ identified in the Complaint as California Penal Code sections 25850, 26350, 26400, and 26150(b)(2).² Therefore, each of the uncontroverted facts stated below relates to that single claim.

SEPARATE STATEMENT OF UNCONTROVERTED FACTS

Uncontroverted Facts

Supporting Evidence

1.	Plaintiff Michelle Flanagan testified at her deposition, “There are people who would possibly be upset that I was carrying a firearm if they didn’t know me, and I wouldn’t want to upset anyone I was around. I feel it much more professional to not show everyone my business. I don’t walk around with my wallet open or my cell phone open. Therefore, carrying concealed seems to me to be much more professional and responsible.”	ECF No. 45-2, Declaration of P. Patty Li in Support of Motion for Summary Judgment (“Li Decl.”), Ex. 1, Transcript of Deposition of Michelle Flanagan, 24:14-24:21.
2.	Plaintiff Dominic Nardone, at his deposition, described his experience	ECF No. 45-3, Li Decl., Ex. 2, Transcript of Deposition of Dominic

¹ Order on Defendant’s Motion to Dismiss (ECF No. 39) at 6.

² Complaint (ECF No. 1). at 19 (Prayer for Relief ¶ 3).

1		with carrying a firearm “openly,”	Nardone (“Nardone Depo.”), 21:10-
2		during which incident two police	22:1.
3		officers “came up behind me with	
4		their guns drawn.”	
5	3.	Plaintiff Dominic Nardone testified at	ECF No. 45-3, Li Decl., Ex. 2,
6		his deposition, “In today’s times	Nardone Depo., 21:23-22:3.
7		because of the stupidity of criminals,	
8		they’re hunting for police officers and	
9		police are scared, and I don’t blame	
10		them. So I don’t -- I prefer not to	
11		carry an open gun where you’re	
12		almost looking for trouble.”	
13	4.	Plaintiff Dominic Nardone testified at	ECF No. 45-3, Li Decl., Ex. 2,
14		his deposition, “I think if you’re	Nardone Depo., 20:10-20:14.
15		carrying an open gun . . . you would	
16		be stopped by every police officer	
17		every time you take a walk.”	
18	5.	Plaintiff Dominic Nardone testified at	ECF No. 45-3, Li Decl., Ex. 2,
19		his deposition, “if there’s a criminal	Nardone Depo., 20:16-20:20.
20		coming up behind you and you’re	
21		showing a gun, what do you think the	
22		first thing he’s going to reach for when	
23		he puts the knife in your back? He’s	
24		going to reach for the gun[.]”	
25	6.	Plaintiff Samuel Golden testified at his	ECF No. 45-4, Li Decl., Ex. 3,
26		deposition about “carrying openly,” “I	Transcript of Deposition of Samuel
27		believe it’s more dangerous and I	Golden (“Golden Depo.”), 18:25,
28			

1		believe it could cause people to jump	19:1-19:7.
2		to a conclusion that is not correct. . . .	
3		Somebody that's anti-gun could just	
4		freak out because . . . I happen to be	
5		standing next to them in the grocery	
6		line with a gun on my hip."	
7	7.	Plaintiff Samuel Golden testified at his	ECF No. 45-4, Li Decl., Ex. 3,
8		deposition, "I believe that open carry	Golden Depo., 18:9-18:12
9		can be a problem in of [sic] itself. . . .	
10		[I]f a bad guy wants to take something	
11		from me and he can see that I have a	
12		gun, he'll probably kill me before he	
13		takes what he wants."	
14	8.	Defendant's expert witness Stanford	ECF No. 45-8 to 45-12, Li Decl., Exs.
15		Law Prof. John J. Donohue III	7-9: Expert Report of John J.
16		submitted in this matter an expert	Donohue; National Bureau of
17		report and working paper, and a	Economic Research, Inc., Working
18		subsequently updated working paper,	Paper Series, Working Paper w23510,
19		applying two kinds of statistical	"Right-to-Carry Laws and Violent
20		methodologies (panel data analysis	Crime: A Comprehensive
21		and synthetic controls analysis) to	Assessment Using Panel Data and
22		multiple statistical models, evaluating	State-Level Synthetic Controls
23		a large set of data about violent crime,	Analysis," dated May 23, 2017 and
24		as well as murder specifically.	June 2017.
25	9.	Defendant's expert witness former	ECF No. 45-13, Li Decl., Ex. 10:
26		Covina Chief of Police Kim Raney	Expert Report of former Covina Chief
27		submitted in this matter an expert	of Police Kim Raney.
28			

1	report on the topic, “How do	
2	restrictions on the open carry of	
3	firearms affect public safety?”	
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SEPARATE STATEMENT OF CONCLUSIONS OF LAW

1. The U.S. Constitution’s Second Amendment, as historically understood, does not recognize an individual right of every law-abiding citizen to carry a firearm openly in non-sensitive public places for the purpose of self-defense under almost all circumstances, particularly as Plaintiffs Michelle Flanagan, Dominic Nardone, Samuel Golden, Jacob Perkio, and the California Rifle & Pistol Association (“Plaintiffs”) assert the right.

2. If California’s open-carry laws do implicate the Second Amendment, California’s open-carry laws do not regulate the core of the Second Amendment right, and do not impose a severe burden on the core of the Second Amendment right. Therefore, California’s open-carry laws warrant intermediate scrutiny.

3. California’s open-carry laws survive intermediate scrutiny. They serve the important government objectives of bolstering public safety and minimizing firearm violence. And the laws, in operation and effect, reasonably fit with the achievement of those objectives.

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1 Dated: September 11, 2017

Respectfully submitted,

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8 /s/ Jonathan M. Eisenberg
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