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

MICHELLE FLANAGAN, et al.,

Plaintiffs,

v.

**CALIFORNIA ATTORNEY
GENERAL XAVIER BECERRA, in
his official capacity as Attorney
General of the State of California, et
al.,**

Defendants.

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

**DEFENDANT'S OBJECTIONS TO
EVIDENCE FILED IN OPPOSITION
TO DEFENDANT'S 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

Defendant Xavier Becerra, Attorney General of the State of California, sued in his official capacity (“Defendant”), submits the following objections to evidence that Plaintiffs Michelle Flanagan, Samuel Golden, Dominic Nardone, Jacob Perkio, and the California Rifle and Pistol Association (“CRPA”; together with the other plaintiffs herein, “Plaintiffs”) proffered in opposition to Defendant’s motion for summary judgment.

DECLARATION OF SEAN A. BRADY (ECF No. 57-1)	OBJECTION	COURT’S RULING
<p>¶ 1. I am an attorney at the law firm Michel & Associates, P.C., attorneys of record for plaintiffs in this action. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.</p> <p>¶ 2. On April 26, 2017, counsel for Defendants deposed Plaintiff Michelle Flanagan. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the transcript of Ms. Flanagan’s deposition.</p> <p>¶ 3. On April 26, 2017, counsel for Defendants deposed Plaintiff Dominic Nardone. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the transcript of Mr. Nardone’s deposition.</p>		

¶ 4. On May 1, 2017, counsel for Defendants deposed Plaintiff Samuel Golden. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the transcript of Mr. Golden's deposition.

¶ 5. On May 1, 2017, counsel for Defendants deposed Plaintiff Jacob Perkio. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the transcript of Mr. Perkio's deposition.

¶ 6. On July 12, 2017, and again on August 8, 2017, counsel for Plaintiffs deposed Defendant's expert witness, Stanford Law Professor John J. Donohue III. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the transcript of Prof. Donohue's deposition.

¶ 7. Plaintiffs' expert witness Professor Gary Kleck, a professor of criminology at Florida State University, submitted in this matter an expert report analyzing and responding to the report of

1	Defendant's expert,		
2	Professor John J.		
3	Donohue III. Attached		
4	hereto as Exhibit 6 is a true		
5	and correct copy of the		
6	Expert Report of Professor		
7	Gary Kleck.		
8	¶ 8. Plaintiffs' expert		
9	witness Guy Rossi, a		
10	retired law enforcement		
11	officer and a law		
12	enforcement trainer,		
13	submitted in this matter an		
14	expert report analyzing		
15	and responding to the		
16	report of Defendant's		
17	expert witness Chief Kim		
18	Raney (ret.). Attached		
19	hereto as Exhibit 7 is a true		
20	and correct copy of the		
21	Expert Report of Guy		
22	Rossi.		
23	¶ 9. Plaintiffs' expert		
24	Senator John Cooke, a		
25	Colorado state senator and		
26	retired police chief,		
27	submitted in this matter an		
28	expert report analyzing and		
	responding to the report of		
	Defendant's expert witness		
	Chief Kim Raney (ret.).		
	Attached hereto as Exhibit		
	8 is a true and correct copy		
	of the Expert Report		
	Senator John Cooke.		
	[Objections 1, 2, 3] ¶ 10. I	1. Lacks foundation/personal	1. Sustained /
	have researched and	knowledge. Fed. R. Evid. 602.	Overruled

1	confirmed that 46 states	2. Irrelevant (improper legal	2. Sustained /
2	allow the open carry of	argument). Fed. R. Evid. 401,	Overruled
3	firearms in some form.	402.	
4	States generally prohibiting	3. Improper opinion testimony	3. Sustained /
5	open carry of any firearm	of a lay person. Fed. R. Evid.	Overruled
6	by statute are California,	701, 702.	
7	Hawaii, Florida, Illinois as		
8	well as the District of	Brady does not define the terms	
9	Columbia.	“open carry,” “allow the open	
10		carry of firearms in some form,”	
11		or “generally prohibiting open	
12		carry of any firearm.” The	
13		statements using these terms are	
14		thus vague and incapable of	
15		being evaluated.	
16		Brady does not address whether	
17		“open carry” is permitted in	
18		some or all of the municipalities	
19		within the referenced states.	
20		Brady does not provide citations	
21		to the statutes or legal	
22		authorities relied upon in	
23		coming to these conclusions,	
24		making it impossible to verify	
25		his assertions.	
26		Brady does not establish that he	
27		is qualified to provide expert	
28		testimony as to these topics.	
		Brady’s statements are	
		unsupported legal argument,	
		which is improper content for a	
		declaration. These assertions	
		should have been presented in	
		Plaintiffs’ opposition brief,	
		within the page limits, and	
		supported by the proper	

1		citations. <i>See</i> Fed. R. Civ. P.	
2		56(c)(4) (“An affidavit or	
3		declaration used to support or	
4		oppose a motion must be made	
5		on personal knowledge, set out	
6		facts that would be admissible	
7		in evidence, and show that the	
8		affiant or declarant is competent	
9		to testify on the matters	
10		stated.”); <i>Silver v. Exec. Car</i>	
11		<i>Leasing Long-Term Disability</i>	
12		<i>Plan</i> , 466 F.3d 727, 732 (9th	
13		Cir. 2006) (district court	
14		properly excluded attorney’s	
15		declaration containing	
16		legal argument not appropriate	
17		for a declaration). <i>See also</i> L.R.	
18		7–7 (“Declarations shall contain	
19		only factual, evidentiary matter	
20		and shall conform as far as	
21		possible to the requirements of	
22		Fed. R. Civ. P. 56(c)(4)”; L.R.	
23		11–6 (“appendices shall not	
24		include any matters which	
25		properly belong in the body of	
26		the memorandum of points and	
27		authorities.”).	
28			
23	[Objections 4, 5, 6] ¶ 11. I	4. Lacks foundation/personal	4. Sustained /
24	have researched and	knowledge. Fed. R. Evid. 602.	Overruled
25	confirmed that there are		
26	three additional states	5. Irrelevant (improper legal	5. Sustained /
27	that do not have statutory	argument). Fed. R. Evid. 401,	Overruled
28	prohibitions against open	402.	
	carry, but state law has		
	been construed to generally		
	prohibit the practice. These		

1 2 3 4 5 6	states are Massachusetts, New York, and New Jersey.	6. Improper opinion testimony of a lay person. Fed. R. Evid. 701, 702. Objectionable for the same the reasons stated for Objections 1, 2, and 3.	6. Sustained / Overruled
7 8 9 10 11 12 13 14 15 16	[Objections 7, 8, 9] ¶ 12. I have researched and confirmed that there are two states which generally prohibit the open carry of handguns, but otherwise allow the open carry of long guns. These states are Maryland and South Carolina.	7. Lacks foundation/personal knowledge. Fed. R. Evid. 602. 8. Irrelevant (improper legal argument). Fed. R. Evid. 401, 402. 9. Improper opinion testimony of a lay person. Fed. R. Evid. 701, 702. Objectionable for the same the reasons stated for Objections 1, 2, and 3.	7. Sustained / Overruled 8. Sustained / Overruled 9. Sustained / Overruled
17 18 19 20 21 22 23 24 25 26 27 28	[Objections 10, 11, 12] ¶ 13. I have researched and confirmed that 34 states allow unlicensed persons to carry firearms openly, notwithstanding municipal ordinances in some states. There are six states which require a permit but permits are granted on a shall issue basis. These states are Indiana, Georgia, Minnesota, Oklahoma, Texas, and Tennessee. The remaining six states allow open carry with a permit but are “may issue” permit	10. Lacks foundation/personal knowledge. Fed. R. Evid. 602. 11. Irrelevant (improper legal argument). Fed. R. Evid. 401, 402. 12. Improper opinion testimony of a lay person. Fed. R. Evid. 701, 702. In addition to the reasons stated for Objections 1, 2, and 3, this statement is also objectionable because Brady fails to define the terms “shall issue” and “may issue.”	10. Sustained / Overruled 11. Sustained / Overruled 12. Sustained / Overruled

1	regimes, and it is unknown		
2	how many permits they		
3	issue.		
4	[Objections 13, 14, 15]	13. Lacks foundation/personal	13. Sustained /
5	¶ 14. I have researched and	knowledge. Fed. R. Evid. 602.	Overruled
6	confirmed that in the	14. Irrelevant (improper legal	14. Sustained /
7	following 29 states, the	argument). Fed. R. Evid. 401,	Overruled
8	practice of openly carrying	402.	
9	a firearm in public was	15. Improper opinion testimony	15. Sustained /
10	generally not prohibited	of a lay person. Fed. R. Evid.	Overruled
11	prior to the passage of	701, 702.	
12	“shall issue concealed		
13	weapon permit” statutes.		
14	These states include		
15	Alabama, Alaska, Arizona,	In addition to the reasons stated	
16	Colorado, Idaho, Kansas,	for Objections 10, 11, and 12,	
17	Kentucky, Louisiana,	this statement is also	
18	Maine, Michigan,	objectionable because Brady	
19	Missouri, Mississippi,	fails to specify which states	
20	Montana, North Carolina,	“never specifically banned the	
21	Nebraska, New Hampshire,	practice of openly carrying and	
22	New Mexico, Nevada,	firearm [<i>sic</i>].”	
23	Ohio, Oregon,		
24	Pennsylvania, South		
25	Dakota, Utah, Virginia,		
26	Washington, West		
27	Virginia, Wisconsin,		
28	Wyoming, Vermont. Most		
	of these states never		
	specifically banned the		
	practice of openly carrying		
	and firearm [<i>sic</i>]. And in		
	those states that did		
	prohibit the open carry of a		
	firearm, the prohibition		
	was ultimately eliminated		
	by statute or found		
	unconstitutional under that		
	state’s constitution.		

1 Dated: October 16, 2017

Respectfully submitted,

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8 /s/ Jonathan M. Eisenberg
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12 *Becerra, Attorney General of the State*
13 *of California*
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