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9

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA  
12

13 VIRGINIA DUNCAN, RICHARD  
LEWIS, PATRICK LOVETTE,  
14 DAVID MARGUGLIO,  
CHRISTOPHER WADDELL, and  
15 CALIFORNIA RIFLE & PISTOL  
ASSOCIATION, INCORPORATED,  
16 a California corporation,

17 Plaintiffs,

18 vs.

19 XAVIER BECERRA, in his official  
capacity as Attorney General of the  
20 State of California; and DOES 1-10,

21 Defendants.  
22

Case No.: 17-cv-1017-BEN-JLB

**DECLARATION OF LUCY P. ALLEN  
IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

Date: June 13, 2017

Time: 10:00 a.m.

Dept.: 5A

Judge: Hon. Roger T. Benitez

23 I, Lucy P. Allen, declare as follows:

24 1. I am a Managing Director of NERA Economic Consulting ("NERA"),  
25 a member of NERA's Securities and Finance Practice and Chair of NERA's  
26 Product Liability and Mass Torts Practice. NERA provides practical economic  
27 advice related to highly complex business and legal issues arising from  
28 competition, regulation, public policy, strategy, finance, and litigation. NERA was

DECLARATION OF LUCY P.  
ALLEN

1 established in 1961 and now employs approximately 500 people in more than 20  
2 offices worldwide.

3 2. In my over 20 years at NERA, I have been engaged as an economic  
4 consultant or expert witness in numerous projects involving economic and  
5 statistical analysis. I have been qualified as an expert and testified in court on  
6 various economic and statistical issues relating to the flow of guns into the criminal  
7 market. I have testified at trials in Federal District Court, before the New York City  
8 Council Public Safety Committee, the American Arbitration Association and the  
9 Judicial Arbitration Mediation Service, as well as in depositions.

10 3. I have an A.B. from Stanford University, an M.B.A. from Yale  
11 University, and M.A. and M. Phil. degrees in Economics, also from Yale  
12 University. Prior to joining NERA, I was an Economist for both President George  
13 H. W. Bush's and President Bill Clinton's Council of Economic Advisers.

14 4. This declaration addresses the results of analyses that I and others  
15 under my direction at NERA conducted with respect to the following issues: (a) the  
16 number of rounds of ammunition fired by individuals using a gun in self-defense;  
17 and (b) the use of large-capacity magazines in mass shootings.

18  
19 *A. Number of rounds fired by individuals in self-defense*  
20

21 5. Plaintiffs claim the banned "large-capacity magazines" (which are  
22 magazines capable of holding more than ten rounds) are commonly used in the  
23 home for self-defense. In particular, the Complaint<sup>1</sup> claims, "There is little dispute  
24 that magazines having a capacity over 10 rounds are popular for self-defense  
25 purposes. [...] Each available round is an additional opportunity to end a threat.  
26

27 <sup>1</sup> Complaint for Declaratory and Injunctive Relief, dated May 17, 2017  
28 ("Complaint").

1 That is precisely why millions of Americans choose magazines over ten rounds for  
2 self-defense, including in the home.”<sup>2</sup>

3 6. Data from the NRA Institute for Legislative Action (“NRA-ILA”)  
4 indicates that it is rare for a person, when using a firearm in self-defense, to fire  
5 more than ten rounds. The NRA-ILA maintains a database of “armed citizen”  
6 stories describing private citizens who have successfully defended themselves, or  
7 others, using a firearm. Although it is not compiled scientifically, this is the largest  
8 collection of accounts of citizen self-defense of which I am aware. Moreover, in  
9 light of the positions taken by the entity compiling the data, I would expect that any  
10 selection bias would be in favor of stories that put use of guns in self-defense in the  
11 best possible light.

12 7. A study of all incidents in this database over a 5-year period from 1997  
13 through 2001 found that it is rare for individuals to defend themselves using more  
14 than ten rounds. Specifically, this study found that, on average, 2.2 shots were fired  
15 by defenders and that in 28% of incidents of armed citizens defending themselves  
16 the individuals fired no shots at all.<sup>3</sup>

17 8. We performed a similar analysis of NRA-ILA stories published  
18 between January 2011 and May 2017. For each incident, the number of offenders,  
19 defenders, and shots fired were tabulated, along with the location, nature and  
20 outcome of the crime. The information was gathered for each incident from both  
21 the NRA-ILA synopsis and, where available, one additional news story.<sup>4</sup>

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22  
23 <sup>2</sup> Complaint, ¶47.

24 <sup>3</sup> Claude Werner, “The Armed Citizen – A Five Year Analysis.”

25 <sup>4</sup> The following incidents were excluded from the analysis: (1) repeat stories, (2)  
26 wild animal attacks, and (3) one incident where the supposed victim later pleaded  
27 guilty to covering up a murder. When the exact number of shots fired was not  
28 specified, we used the average for the most relevant incidents with known  
number of shots. For example, if the stories indicated that “shots were fired” this  
would indicate that at least two shots were fired and thus we used the average

9. According to this analysis, defenders fired 2.2 shots on average. Out of 736 incidents, there were two incidents (0.3% of all incidents), in which the defender was reported to have fired more than 10 bullets. In 18.2% of incidents, the defender did not fire any shots, and simply threatened the offender with a gun. For incidents occurring in the home (56% of total), defenders fired an average of 2.1 shots, and fired no shots in 16.1% of incidents. The table below summarizes some of these findings.

**Number of Shots Fired in Self-Defense  
Based on NRA-ILA Armed Citizen Incidents in the United States  
January 2011 - May 2017**

	Shots Fired by Individual in Self-Defense	
	Overall	Incidents in Home
Average Shots Fired	2.2	2.1
Number of Incidents with No Shots Fired	134	66
Percent of Incidents with No Shots Fired	18.2%	16.1%
Number of Incidents with >10 Shots Fired	2	2
Percent of Incidents with >10 Shots Fired	0.3%	0.5%

**Notes and Sources:**

Events from NRA-ILA Armed Citizen database covering 736 incidents from January 2011 through May 2017. Excludes repeat stories, wild animal attacks and one incident where the supposed victim later pleaded guilty to covering up a murder.

10. We also performed this analysis for incidents that occurred in California. According to this analysis, defenders fired 2.0 shots on average. Out of 47 incidents, there were no incidents in which the defender was reported to have

number of shots fired in all incidents in which two or more shots were fired and the number of shots was specified.

fired more than 10 bullets. In 27.7% of incidents, the defender did not fire any shots, and simply threatened the offender with a gun. For incidents occurring in the home (60% of total), defenders fired an average of 1.9 shots, and fired no shots in 32.1% of incidents. The table below summarizes some of these findings for California.

**Number of Shots Fired in Self-Defense  
Based on NRA-ILA Armed Citizen Incidents in California  
January 2011 - May 2017**

	Shots Fired by Individual in Self-Defense	
	Overall	Incidents in Home
Average Shots Fired	2.0	1.9
Number of Incidents with No Shots Fired	13	9
Percent of Incidents with No Shots Fired	27.7%	32.1%
Number of Incidents with >10 Shots Fired	0	0
Percent of Incidents with >10 Shots Fired	0.0%	0.0%

**Notes and Sources:**

Events from NRA-ILA Armed Citizen database covering 47 incidents from January 2011 through May 2017. Excludes repeat stories, wild animal attacks and one incident where the supposed victim later pleaded guilty to covering up a murder.

**B. Mass shootings**

**1. Use of large-capacity magazines in mass shootings**

11. We found two comprehensive sources detailing historical mass shootings: 1) "US Mass Shootings, 1982-2017: Data From Mother Jones' Investigation," published by Mother Jones and 2) "Mass Shooting Incidents in

1 America (1984-2012),” published by the Citizens Crime Commission of New York  
2 City. See attached Table 1 for a summary of the combined data.

3 12. The definition of mass shooting and the period covered differed  
4 somewhat for each of the sources. Mother Jones covers 86 mass shootings from  
5 1982 to 2017.<sup>5</sup> Mother Jones includes mass shootings in which a shooter killed four  
6 or more people in one incident in a public place and excludes crimes involving  
7 armed robbery or gang violence.<sup>6</sup> Starting in January 2013, Mother Jones changed  
8 its definition of a mass shooting to include instances when a shooter killed three or  
9 more people, consistent with a change in the federal definition of a mass shooting.<sup>7</sup>  
10 Citizens Crime Commission covers 33 mass shootings from 1984 to 2012. Citizens  
11 Crime Commission includes mass shootings in which a shooter killed four or more  
12 people and the gun used by the shooter had a magazine with capacity greater than  
13 ten.<sup>8</sup> We updated the data on shots fired for mass shootings where available.

14 13. Based on the combined data we found that large-capacity magazines  
15 (those with a capacity to hold more than 10 rounds of ammunition) are often used  
16

17 <sup>5</sup> “US Mass Shootings, 1982-2017: Data From Mother Jones’ Investigation,”  
18 *Mother Jones*, updated January 8, 2017.  
19 [http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-](http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data)  
20 [data](http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data), accessed June 1, 2017.

21 <sup>6</sup> “A Guide to Mass Shootings in America,” *Mother Jones*, updated April 19,  
22 2017. <http://www.motherjones.com/politics/2012/07/mass-shootings-map>. See,  
23 also, “What Exactly is a Mass Shooting,” *Mother Jones*, August 14, 2012.  
24 <http://www.motherjones.com/mojo/2012/08/what-is-a-mass-shooting>

25 <sup>7</sup> “A Guide to Mass Shootings in America,” *Mother Jones*, updated April 19,  
26 2017. <http://www.motherjones.com/politics/2012/07/mass-shootings-map>.

27 The Mother Jones data includes three incidents involving two shooters  
28 (Columbine High School, San Bernardino and Westside Middle School).

<sup>8</sup> “Mass Shooting Incidents in America (1984-2012),” *Citizens Crime Commission of New York City*. [http://www.nycrimecommission.org/mass-shooting-incidents-](http://www.nycrimecommission.org/mass-shooting-incidents-america.php)  
[america.php](http://www.nycrimecommission.org/mass-shooting-incidents-america.php), accessed June 1, 2017.



1 in mass shootings. Such large-capacity magazines were used in the majority of the  
 2 mass shootings with known magazine capacity since 1982 (44 out of 50 mass  
 3 shootings).<sup>9</sup> In the past two years, guns with large-capacity magazines were used in  
 4 eight of the nine mass shootings with known magazine capacity.<sup>10</sup>

5 14. The data indicates that it is common for offenders to fire more than ten  
 6 rounds when using a gun with a large-capacity magazine in mass shootings. In  
 7 particular, in mass shootings that involved use of large-capacity magazine guns, the  
 8 average number of shots fired was 75.<sup>11</sup>

## 9 10 **2. Casualties in mass shootings with large-capacity magazine guns** 11 **compared with other mass shootings**

12 15. Based on our analysis of the combined mass shootings data in the past  
 13 35 years, casualties were higher in the mass shootings that involved large-capacity  
 14 magazine guns than in other mass shootings. In particular, we found an average  
 15 number of fatalities or injuries of 22 per mass shooting with a large-capacity  
 16 magazine versus 9 for those without.<sup>12</sup>

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17  
 18 <sup>9</sup> For many of the mass shootings, the data does not indicate whether a large-  
 19 capacity magazine is used. Based only on Mother Jones data, large capacity  
 20 magazines were used in 42 out of 48 mass shootings with known magazine  
 capacity.

21 <sup>10</sup> During the past two years, there were six additional mass shootings in which the  
 22 magazine capacity was unknown.

23 <sup>11</sup> There were 31 mass shootings in which the magazine capacity and the number of  
 shots fired were known.

24 <sup>12</sup> A 2013 study by Mayors Against Illegal Guns similarly found that when mass  
 25 shootings involved assault weapons or high capacity magazine, the number of  
 26 deaths was higher. The study was based on data from the FBI and media reports  
 27 covering the period January 2009 through January 2013. The study found that  
 28 mass shootings where assault weapons or high-capacity magazines were used  
 resulted in an average of 14.4 people shot and 7.8 deaths versus other mass  
 shootings that resulted in 5.7 people shot and 4.8 deaths. See, "Analysis of

### 3. Mass shootings with only one gun and large capacity magazines

16. Based on our analysis of the combined mass shootings data in the past 35 years, there have been 44 incidents (88% of the 50 mass shootings with known magazine capacity) in which the shooter used a large capacity magazine. There have been 36 incidents (41% of the 88 mass shootings) in which the shooter had only one gun. There were 16 incidents (32% of the 50 mass shootings with known magazine capacity) where the shooter had only one gun and used a large capacity magazine. An average of 14 people were killed or injured in each of these 16 mass shootings.<sup>13</sup>

### 4. Percent of mass shooters' guns legally obtained

17. The combined data on mass shootings indicates that the majority of guns used in mass shootings were obtained legally. Shooters in 76% of mass shootings in the past 35 years obtained their guns legally (at least 67 of the 88 mass shootings) and almost 76% of the guns used in these 88 mass shootings were obtained legally (at least 147 of the 194 guns).

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Recent Mass Shootings," *Mayors Against Illegal Guns*, September, 2013.

<sup>13</sup> An analysis of only the mass shootings identified by Mother Jones yielded similar results: 1) Large capacity magazines were used in 42 out of the 48 mass shootings with known magazine capacity; 2) The shooter had only one gun in 34 out of the 86 mass shootings; 3) The shooter had only one gun and used a large capacity magazine in 14 of the 48 shootings with known magazine capacity. An average of 14 people were killed or injured during these 14 mass shootings.



1 I declare under penalty of perjury that the forgoing is true and correct.  
2 Executed within the United States on June 5, 2017.  
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8 Lucy P. Allen  
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**Table 1**  
**Combined Mass Shootings Data**  
**1982 – 2017**

Location	Date	Source	Large Cap. Mag.? <sup>1</sup>	Fatalities <sup>2</sup>	Injuries <sup>2</sup>	Total Fatalities & Injuries <sup>2</sup>	Shots Fired	Gun(s) Obtained Legally?	Offenders' Number of Guns
(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Albany, CA	4/18/2017	MJ	No	3	0	3	16 <sup>a</sup>	-	1
Auderdale, FL	1/6/2017	MJ	-	5	6	11	-	Yes	1
Bellevue, WA	9/23/2016	MJ	-	5	0	5	-	-	1
Boutte, LA	7/17/2016	MJ	Yes	3	3	6	-	-	3
Brownsville, TX	7/7/2016	MJ	Yes	5	11	16	-	Yes	3
Chandler, AZ	6/12/2016	MJ	Yes	49	53	102	-	Yes	2
Cheney, KS	2/25/2016	MJ	Yes	3	14	17	-	Yes	2
Chippewaukee, WI	2/20/2016	MJ	-	6	2	8	-	Yes	1
Cerritos, CA	12/2/2015	MJ	Yes	14	21	35	150 <sup>b</sup>	Yes	4
Colorado Springs, CO	11/27/2015	MJ	-	3	9	12	-	-	1
Colorado Springs, CO	10/31/2015	MJ	Yes	3	0	3	-	Yes	3
Concord, OR	10/1/2015	MJ	-	9	9	18	-	Yes	6
Cookeville, TN	7/16/2015	MJ	Yes	5	2	7	-	Yes	3
Columbia, SC	6/17/2015	MJ	Yes	9	1	10	-	Yes	1
De Pere, WI	6/11/2015	MJ	-	3	1	4	-	Yes	2
Edmonds, WA	10/24/2014	MJ	-	5	1	6	-	Stolen	1
Elgin, IL	5/23/2014	MJ	Yes	6	13	19	-	Yes	3
Euless, TX	4/3/2014	MJ	-	3	12	15	-	Yes	1
Exton, PA	2/20/2014	MJ	-	4	2	6	-	-	2
Farmington, CT	9/16/2013	MJ	-	12	8	20	-	Yes	2
Fort Lauderdale, FL	7/26/2013	MJ	Yes	7	0	7	10 <sup>c</sup>	Yes	1
Fontana, CA	6/7/2013	MJ	Yes	6	3	9	70 <sup>d</sup>	Yes	2
Frederick, MD	4/21/2013	MJ	-	5	0	5	-	Yes	2
Franklin County, NY	3/13/2013	MJ	-	5	2	7	-	Yes	1
Groton, CT	12/14/2012	MJ/CC	Yes	28	2	30/28	154	Stolen	4/3

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(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
apolis, MN	9/27/2012	MJ/CC	Yes	7	1/2	8/9	46	Yes	1
reek, WI	8/5/2012	MJ/CC	Yes	7	3	10	-	Yes	1
l, CO	7/20/2012	MJ/CC	Yes	12	70	82	80	Yes	4
, WA	5/30/2012	MJ	-	6	1	7	-	Yes	2
id, CA	4/2/2012	MJ	No	7	3	10	-	Yes	1
ss, GA	2/22/2012	MJ	-	5	0	5	-	Yes	1
each, CA	10/14/2011	MJ	-	8	1	9	-	Yes	3
i City, NV	9/6/2011	MJ/CC	Yes	5	7	12	-	Yes	3
Rapids, MI	7/7/2011	CC	Yes	8	2	10	10	-	1
a, AZ	1/8/2011	MJ/CC	Yes	6	13	19	33	Yes	1
ester, CT	8/3/2010	MJ/CC	Yes	9	2	11	11	Yes	2
nd, WA	11/29/2009	MJ	-	4	1	5	-	Stolen	2
ood, TX	11/5/2009	MJ/CC	Yes	13	30/32	43/45	214	Yes	1
amton, NY	4/3/2009	MJ/CC	Yes	14	4	18	99	Yes	2
ge, NC	3/29/2009	MJ	No	8	3	11	-	Yes	2
rson, KY	6/25/2008	MJ	-	6	1	7	-	Yes	1
b, IL	2/14/2008	MJ/CC	Yes	6	21	27	54	Yes	4
ood, MO	2/7/2008	MJ	-	6	2	8	-	Stolen	2
a, NE	12/5/2007	MJ/CC	Yes	9	4/5	13/14	14	Stolen	1
on, WI	10/7/2007	MJ	-	6	1	7	-	Yes	1
burg, VA	4/16/2007	MJ/CC	Yes	32/33	23/17	55/50	176	Yes	2
ike City, UT	2/12/2007	MJ	No	6	4	10	-	No	2
ster County, PA	10/2/2006	MJ	-	6	5	11	-	Yes	3
, WA	3/25/2006	MJ	-	7	2	9	-	Yes	4
, CA	1/30/2006	MJ/CC	Yes	8	0	8	-	Yes	1

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**Combined Mass Shootings Data**  
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(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
ake, MN	3/21/2005	MJ	-	10	5	15	-	Stolen	3
field, WI	3/12/2005	MJ	-	7	4	11	-	Yes	1
bus, OH	12/8/2004	MJ	-	5	7	12	-	Yes	1
r, WI	11/21/2004	CC	Yes	6	3	9	20	-	1
ian, MS	7/8/2003	MJ	-	7	8	15	-	Yes	5
se Park, IL	2/5/2001	MJ	-	5	4	9	-	Yes	4
field, MA	12/26/2000	MJ/CC	Yes	7	0	7	37	Yes	3
t, FL	12/30/1999	MJ	-	5	3	8	-	Yes	2
ulu, HI	11/2/1999	MJ/CC	Yes	7	0	7	28	Yes	1
orth, TX	9/15/1999	MJ/CC	Yes	8	7	15	30	Yes	2
a, GA	7/29/1999	MJ	-	9	13	22	-	Yes	4
on, CO	4/20/1999	MJ/CC	Yes	13/15	24	37/39	188	No	4
field, OR	5/21/1998	MJ/CC	Yes	4	25	29	50	No	3
oro, AR	3/24/1998	MJ/CC	Yes	5	10	15	26	Stolen	9/10
gton, CT	3/6/1998	MJ/CC	Yes	5	1/0	6/5	5	Yes	1
e, CA	12/18/1997	MJ/CC	Yes	5	2	7	144	Yes	1
. SC	9/15/1997	MJ	-	4	3	7	-	No	1
auderdale, FL	2/9/1996	MJ	-	6	1	7	-	Yes	2
s Christi, TX	4/3/1995	MJ	-	6	0	6	-	Yes	2
ild Base, WA	6/20/1994	MJ/CC	Yes	5/6	23	28/29	-	Yes	1
t, CO	12/14/1993	MJ	-	4	1	5	-	-	1
n City, NY	12/7/1993	MJ/CC	Yes	6	19	25	30	Yes	1
eville, NC	8/6/1993	MJ	-	4	8	12	-	Yes	3
ancisco, CA	7/1/1993	MJ/CC	Yes	9	6	15	75	No	3
as Glen, NY	10/15/1992	MJ	-	5	0	5	-	Yes	1

**Table 1**  
**Combined Mass Shootings Data**  
**1982 – 2017**

Location	Date	Source	Large Cap. Mag. <sup>1</sup>	Fatalities <sup>2</sup>	Injuries <sup>2</sup>	Total Fatalities & Injuries <sup>2</sup>	Shots Fired	Gun(s) Obtained Legally?	Offenders' Number of Guns
(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Murder, CA	5/1/1992	MJ	-	4	10	14	-	Yes	2
Oak, MI	11/14/1991	MJ	-	5	5	10	-	Yes	1
City, IA	11/1/1991	MJ	No	6	1	7	-	Yes	1
a, TX	10/16/1991	MJ/CC	Yes	24	20	44	100	Yes	2
nville, FL	6/18/1990	MJ/CC	Yes	10	4	14	14	Yes	2
ille, KY	9/14/1989	MJ/CC	Yes	9	12	21	21	Yes	5
on, CA	1/17/1989	MJ/CC	Yes	6	29/30	35/36	106	Yes	2
vale, CA	2/16/1988	MJ	-	7	4	11	-	Yes	7
Bay, FL	4/23/1987	MJ/CC	Yes	6	14/10	20/16	-	Yes	3
id, OK	8/20/1986	MJ	-	15	6	21	-	Yes	3
sidro, CA	7/18/1984	MJ/CC	Yes	22	19	41	257	Yes	3
, TX	6/29/1984	MJ/CC	Yes	6	1	7	-	No	1
, FL	8/20/1982	MJ	No	8	3	11	-	Yes	1
Average				8.0	7.7	15.7	73		
Large Capacity Magazine Average				10.0	11.8	21.8	75		
Non-Large Capacity Magazine Average				6.3	2.3	8.7	-		

tings, 1982-2017: Data from Mother Jones' Investigation," accessed June 1, 2017) and the Citizens Crime Commission of New York City ("Citizens Mass Shooting Incidents in America (1984-2012)," accessed June 1, 2017). MJ indicates Mother Jones data. CC indicates Citizens Crime Commission on data, "/" is added between values. In these instances, values from MJ are listed first. Except where noted, all data on shots fired obtained from CC. a capacity to hold more than 10 rounds of ammunition.

s and injuries.

ed After Gunman Kills 3 White Men in Downtown Fresno," *LA Times*, April 19, 2017.

ts Left Trail of Clues, but No Clear Motive," *New York Times*, December 3, 2015.

on Fire in Hialeah Shooting Rampage," *NBC News*, July 28, 2013.

ica Gunman 'Ready for Battle,'" *New York Times*, June 8, 2013.