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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
14

15 **VIRGINIA DUNCAN, et al.,**

16 Plaintiffs,

17 v.

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

21 Defendants.
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17-cv-1017-BEN-JLB

**DECLARATION OF BLAKE
GRAHAM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT**

Date: April 30, 2018
Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

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DECLARATION OF BLAKE GRAHAM

I, BLAKE GRAHAM, declare:

1. I am a Special Agent Supervisor for the California Department of Justice, Bureau of Firearms. I make this declaration of my own personal knowledge and experience and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

BACKGROUND AND QUALIFICATIONS

2. I received a Bachelor of Science degree in May 1992 in Criminal Justice at the California State University Sacramento. My coursework included forensics, corrections, and a number of classes in criminal justice-related topics.

3. Since 1994, I have worked as either an investigator for the California Department of Alcoholic and Beverage Control (ABC), or as a Special Agent for the California Department of Justice (DOJ). My job responsibilities in all of these positions have increasingly required the recovery, investigation, and identification of firearms, the ammunition used for those firearms, and the magazines used for feeding ammunition for such firearms.

4. My work as an investigator for ABC between 1994 and 1999 included the recovery of firearms, magazines and ammunition.

5. Between 1999 and 2002, I worked as a Special Agent for DOJ, and was assigned to the Violence Suppression Program in the Bureau of Narcotics Enforcement. In this job, I investigated violent crimes and various violations occurring at California gun shows. As a gun show enforcement agent, I attended gun shows in the San Francisco Bay Area to monitor, and if necessary, seize, firearms, ammunition, and magazines sold illegally to felons, parolees, and probationers.

1 6. From October 2002 to the present, I have been a Special Agent and
2 Special Agent Supervisor, for the DOJ's Bureau of Firearms (BOF). In this
3 capacity, I am assigned to recover firearms from prohibited individuals,
4 monitor gun shows for illegal activities, conduct surveillance on gun dealers
5 suspected of illegal activity, and investigate illegal trafficking of firearms,
6 manufacturing of assault weapons, machine guns, and illegal possession of
7 various magazines and ammunition.

8 7. Since 2008, I have been responsible for reviewing handguns that are
9 submitted by manufacturers for inclusion in California's roster of handguns
10 certified for sale. A copy of the roster can be found on the DOJ website:
11 <http://certguns.doj.ca.gov/>.

12 8. In my career I have attended at least 40 gun shows and have become
13 very knowledgeable on current laws pertaining to the sales of firearms,
14 ammunition, and ammunition containers—including large-capacity magazines
15 (LCMs)—in the State of California.

16 9. I have been trained and qualified to carry several different types of
17 firearms, including: Glock Model 17 (9 mm semi-automatic pistol), multiple
18 Glock .40 caliber semi automatic pistols, Heckler & Koch MPS (9 mm
19 submachine gun), Smith & Wesson, Model 60 (.38 Special revolver), multiple
20 .45 caliber semi-automatic pistols, and a Colt, Model M4 (5.56 mm machine
21 gun). I have access to other Department-owned handguns, shotguns,
22 submachine guns, machine guns, rifles, shotguns and 40 mm "less lethal"
23 launchers.

24 10. Throughout my career, I have conducted training programs in the
25 identification and handling of firearms. I have also trained other Special
26 Agents of BOF on assault weapons and firearms identification. I also have
27 given firearms identification classes to members of the Sacramento and San
28 Joaquin County District Attorney's offices.

1 11. I have also completed at least 15 firearms training courses since 1994.
2 These courses included the assembly and use of specific firearms, cartridge
3 composition (bullet, the propellant, and the casing), common calibers used by
4 law enforcement, and training on rifle and handgun ammunition. I have been
5 certified as a California Peace Officer Standards and Training (POST) approved
6 Firearms Instructor/Rangemaster since 2002.

7 12. During the course of my career and training I have become proficient in
8 the use and disassembly of various revolvers, pistols, submachine guns, shotguns,
9 and rifles. I have made or assisted in the arrest of at least thirty persons for
10 violations involving illegal weapons possession. In the course of my employment I
11 have participated in excess of thirty search warrants which involved the illegal
12 possession of firearms.

13 13. I have been qualified as an expert witness regarding the use of firearms in
14 14 cases in both federal and state court since 2007.

15 FINDINGS

16 I. USE OF LARGE-CAPACITY MAGAZINES IN MASS SHOOTINGS.

17 14. Through the course of my work, I am familiar with the use of LCMs.

18 15. LCMs are ammunition feeding devices that can hold more than ten
19 rounds, and sometimes up to 100 rounds, of ammunition.

20 16. LCMs allow semi-automatic weapons to fire more than 10 rounds
21 without the need for a shooter to reload the weapon.

22 17. Because LCMs enable a shooter to fire repeatedly without needing to
23 reload, they significantly increase a shooter's ability to kill and injure large
24 numbers of people quickly.

25 18. Because magazines carrying more than 10 rounds at a time allow for
26 uninterrupted shooting, such LCMs have been the preferred ammunition feeding
27 devices in several mass shootings in California and elsewhere.

1 19. To the best of my knowledge, all of the shootings listed below
2 involved persons who shot and wounded and/or killed one or more persons,
3 including peace officers, while using LCMs.

4 a. On January 17, 1989, Patrick Purdy, shot and killed 5 and wounded
5 32 others at the Cleveland Elementary School in Stockton, California. He used an
6 AK-47 style rifle and LCMs in the shooting.

7 b. On February 28, 1997, Larry Phillips and Emil Matasareanu, armed
8 with multiple assault weapons and LCMs, wounded 20 people, including law
9 enforcement officers, while robbing the Bank of America in North Hollywood,
10 California.

11 c. On January 9, 2005, Andres Raya used a LCM and illegal assault
12 weapon to shoot and kill Police Sgt. Howard Stevenson in Ceres, California.

13 d. On June 15, 2008, Marco Topete used an assault rifle and LCM
14 to shoot and kill Yolo County Sheriff's Deputy Tony Diaz after a traffic stop
15 near Dunnigan, California.

16 e. On November 5, 2009, Nidal Hasan used a semi-automatic pistol
17 and LCMs to shoot and kill 13 and wounded over 30 others at the Fort Hood
18 Army base in Fort Hood, Texas.

19 f. On February 25, 2010, Ricky Liles, used multiple weapons and
20 LCMs to shoot and kill two law enforcement officers and wounded one other in
21 Minkler, California.

22 g. January 8, 2011, Jared Loughner used a handgun with a LCM to
23 shoot and kill 6 people and wounded 13 others in Tucson, Arizona. He was
24 subdued while trying to reload his weapon.

25 h. On July 20, 2012, James Holmes used an assault weapon and LCMs
26 to kill 12 people and wound 70 others in a movie theater in Aurora, Colorado.

i. On December 14, 2012, Adam Lanza used LCMs and multiple firearms to kill 20 children and six adults at Sandy Hook Elementary School in Newtown, Connecticut.

j. On June 7, 2013, John Zawahri—who was previously denied purchase of a firearm by DOJ—used a home-built AR-15 rifle and LCMs to kill his father and brother at their family home, and then kill and wound others at the Santa Monica, California Community College.

k. On December 2, 2015, Syed Farook and his wife, Tashfeen Malik, used assault weapons and LCMs in killing 14 people and wounding 22 others at the Inland Regional Center in San Bernardino, California.

l. On June 12, 2016, Omar Mateen used an assault rifle and LCMs to shoot and kill 49 people and wound 53 others inside a nightclub in Orlando, Florida.

m. On July 7, 2016, Micah Johnson used an assault rifle and a LCM to shoot and kill five police officers and wound nine others in Dallas, Texas.

n. On July 17, 2016, Gavin Long used an assault rifle and LCMs to shoot and kill three police officers and wound three other officers in Baton Rouge, Louisiana.

o. On October 1, 2017, Stephen Paddock used assault rifles and LCMs to fire over 1,000 rounds on concertgoers at an outdoor music festival in Las Vegas, Nevada, killing 58 people and wounding more than 500 others. To date, this is the deadliest mass shooting in U.S. history.

II. LEGISLATION LIMITING LARGE CAPACITY MAGAZINES.

20. I am also aware of the state and federal laws banning the sale and possession of LCMs, and the effect of these laws on the availability of such magazines in California.

21. From 1994 to 2004, the federal assault weapons ban controlled the manufacture and sales of LCMs in the United States. During this 10-year window,

1 new LCMs were only able to be sold to law enforcement and the military. Over
2 time, LCMs were removed from public access due to incidental seizure during
3 everyday law enforcement investigations in all 50 states.

4 22. In 1999, the California Legislature passed Senate Bill No. 23, which
5 restricted the sales, transfer and manufacture of LCMs on a state level. This bill,
6 which, at the time did not prohibit possession of LCMs, eventually became codified
7 as California Penal Code section 32310.

8 23. For nearly two decades, since 2000, when California's LCM restrictions
9 went into effect, magazine manufacturers have been producing compliant
10 magazines for sale in California that hold no more than 10 rounds of ammunition,
11 which are widely available in the state and compatible with most, if not all,
12 semiautomatic firearms.

13 **III. REASONS FOR CALIFORNIA'S PROHIBITION ON POSSESSION OF LARGE-**
14 **CAPACITY MAGAZINES.**

15 24. Once the Federal restrictions were lifted in late 2004, LCMs became
16 available in states outside California. This has created in increase in the amount of
17 illegal importation of LCMs in California.

18 25. Since at least 2002, Agents from the DOJ Bureau of Firearms have
19 conducted investigations in which California residents would travel outside
20 California and purchase or acquire LCMs and then return to California with
21 these illegally imported LCMs.

22 26. In such cases, these same subjects would also acquire ammunition
23 and firearms that would be smuggled back into California at the same time.

24 27. Many times these California residents were already prohibited from
25 acquiring, owning and possessing firearms, ammunition and ammunition
26 feeding devices. Sometimes the traffickers would not be firearms-prohibited
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1 but they would ultimately still break the law and smuggle back firearms and
2 LCMs despite facing the potential of felony charges should they be caught.

3 28. The prohibition on sales, but not possession, of LCMs, has also
4 created a market for LCM repair kits. At numerous California gun shows, prior
5 to 2014, I saw subjects purchase disassembled LCMs being sold as large-
6 capacity magazine repair kits. Often the repair kits were for weapons that were
7 not even sold prior to the year 2000.

8 29. Because of the availability of the “repair kits,” Special Agents with
9 the Bureau of Firearms could see California residents were either illegally
10 importing LCM or purchasing these repair kits and assembling them into LCMs
11 in violation of Penal Code Section 32310.

12 30. On October 11, 2013 Governor Brown signed Assembly Bill No. 48,
13 which made it a misdemeanor to knowingly manufacture, import, keep for sale,
14 offer or expose for sale, or give, lend, buy, or receive any LCM conversion kit that
15 is capable of converting an ammunition feeding device into a large-capacity
16 magazine. The bill also made it a misdemeanor or a felony to buy or receive a
17 large-capacity magazine. This new law in essence outlawed “repair kits” and the
18 issues associated with them. Much of AB 48 was codified as Section 32310,
19 subdivisions (a) and (b).

20 31. Even with the passage of AB 48, BOF Agents do not have the ability
21 to identify whether the LCMs at issue were legally purchased, or are the
22 product of an illegal transfer. Also, the presence of large numbers of LCMs in
23 the state—even if lawfully owned by law-abiding citizens—increases the
24 potential for criminal theft or illegal trafficking of such magazines.

25 32. Because of these challenges in identifying legally possessed
26 magazines, as well as use of LCMs in mass shootings that have occurred both in
27 and outside of California for several years, the people of California enacted
28 Proposition 63 in November 2016 to amend Section 32310 to prohibit the

1 possession large-capacity magazines. The State's laws prohibiting possession of
2 large capacity magazines through Proposition 63 ensures the restriction on the use
3 of such magazines in the State.

4 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
5 foregoing is true and correct.

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7 Executed on: April 5, 2018

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9 
10 BLAKE GRAHAM