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10 Xavier Becerra

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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15 **VIRGINIA DUNCAN, RICHARD**
16 **LEWIS, PATRICK LOVETTE,**
17 **DAVID MARGUGLIO,**
18 **CHRISTOPHER WADDELL, and**
19 **CALIFORNIA RIFLE & PISTOL**
ASSOCIATION, INC., a California
corporation,

20 Plaintiffs,

21 v.

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

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

**DEFENDANT'S OBJECTIONS TO
EVIDENCE FILED IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Date: April 30, 2018
Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez

Defendant Xavier Becerra, Attorney General of the State of California, sued in his official capacity, submits the following objections to evidence filed in support of the motion for summary judgment filed by Plaintiffs Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell, and the California Rifle and Pistol Association, Inc.

No.	PLAINTIFFS' EVIDENCE	OBJECTIONS
1	<p>Declaration of Virginia Duncan (Dkt. No. 50-3) ¶ 6 (objection to italicized portion of testimony):</p> <p>"I would also immediately acquire and continuously possess such a magazine for other lawful purposes, including to properly train for such defensive situations, as well as for use in the course of my work in predator management, <i>as discharging more than ten rounds can be necessary to effectively stop certain pack-hunting predators, like coyotes, from attempting to attack people or the livestock I protect as a service to landowners, including ranchers and farmers. Having to change a magazine after expending ten rounds during a continuing self-defense situation not only slows my ability to respond to the threat such that I may be unable to re-load my firearm in time to effectively defend myself and others in my home, but it also requires me to always have an additional magazine on hand, which is not always feasible. The</i></p>	<p>Improper lay testimony based on technical or specialized knowledge. Fed. R. Evid. 701(c); <i>United States v. Figueroa-Lopez</i>, 125 F.3d 1241, 1246 (9th Cir. 1997) (lay testimony based on specialized knowledge gained in connection with the witness's job is inadmissible under Federal Rule of Evidence 701).</p> <p>Speculative lay testimony. Fed. R. Evid. 701; <i>United States v. Freeman</i>, 498 F.3d 893, 905 (9th Cir. 2007) ("It is necessary that a lay witness's 'opinions are based upon . . . direct perception of the event, are not speculative, and are helpful to the determination' of factual issues before the jury." (quoting <i>United States v. De Peri</i>, 778 F.2d 963, 977-78 (1985))).</p>

1		<i>same applies to my depredation work.”</i>	
2	2	Declaration of David Marguglio (Dkt. No. 50-4) ¶ 6 (objection to italicized portion of testimony):	Same as Objection 1.
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6		“But for the authorities’ current enforcement of California Penal Code section 32310, I would immediately acquire and continuously possess a magazine capable of holding more than ten rounds within the state of California for lawful recreational and competitive shooting, as well as in-home self-defense to effectively protect myself and others from a threat that cannot be effectively neutralized with ten or fewer rounds, such as multiple armed home-intruders. I would also immediately acquire and continuously possess such a magazine for other lawful purposes, including to properly train for such defensive situations. I have first-hand knowledge of how the additional time and dexterity required to change a magazine after expending ten rounds is detrimental in a competitive shooting situation. With the added element of stress, having to change a magazine after expending ten rounds during a continuing self-defense situation not only slows my ability to respond to the threat that I may be unable to re-load my firearm	
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1		<i>in time to effectively defend myself and others in my home, but it also requires me to always have an additional magazine on hand, which is not always feasible.”</i>	
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3	3	Declaration of Patrick Lovette (Dkt. No. 50-5) ¶ 6 (objection to italicized portion of testimony):	Same as Objection 1.
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5		“I originally selected, and currently still own and possess, this magazine for only lawful purposes, especially for self-defense training, target practice, and in-home self-defense to effectively protect myself and others from a threat that cannot be effectively neutralized with ten or fewer rounds, such as multiple armed home-intruders.”	
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15	4	Declaration of Patrick Lovette (Dkt. No. 50-5) ¶ 7:	Same as Objection 1.
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17		“In my experience as a certified firearms instructor, to change a magazine after expending ten rounds during a continuing self-defense situation would not only slow my ability to respond to the threat such that I may be unable to re-load my firearm in time to effectively defend myself or others in my home, but it would also require me to always have an additional magazine on hand, which is not always feasible.”	
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25	5	Declaration of Christopher Waddell (Dkt. No. 50-6) ¶ 6 (objection to italicized portion of testimony):	Same as Objection 1.
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23	6	Hearsay. Fed. R. Evid. 801; <i>Block v. City of L.A.</i> , 253 F.3d 410, 419 (9th Cir. 2001) (affidavit based on inadmissible hearsay where affiant was not personally involved in the matters at issue, did not personally review records regarding such matters, and relied on unsworn out-of-
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		court statements by unidentified individuals).
7	<p>Declaration of Richard Francis Travis (Dkt. No. 50-7) ¶ 5:</p> <p>“CRPA’s membership includes individuals who, due to the current enforcement of California Penal Code section 32310, are prohibited from acquiring or possessing, within the state of California, any magazine capable of holding more than ten rounds that has not been permanently altered so that it cannot accommodate more than ten rounds, is not a .22 caliber tube ammunition feeding device, and is not a tubular magazine that is contained in a lever-action firearm, because they do not qualify for any of the limited exceptions to section 32310’s restrictions.”</p>	Same as Objection 6.
8	<p>Declaration of Richard Francis Travis (Dkt. No. 50-7) ¶ 6:</p> <p>“CRPA’s membership includes individuals who, but for the current enforcement of California Penal Code section 32310, would immediately acquire and continuously own a magazine capable of holding more than ten rounds within the state of California to the extent permitted by law for lawful purposes,</p>	Same as Objection 6.

1		including for in-home self-	
2		defense, hunting, and competing,	
3		as well as training for each of	
4	9	these.”	
5		Declaration of Richard Francis	Same as Objection 6.
6		Travis (Dkt. No. 50-7) ¶ 7:	
7		“CRPA’s membership includes	
8		individuals who, if this court	
9		declares California Penal Code	
10		section 32310 invalid or	
11		otherwise enjoins its	
12		enforcement, will immediately	
13		acquire and continue to possess a	
14		magazine capable of holding	
15		more than ten rounds within the	
16		state of California to the extent	
17		permitted by law for lawful	
18		purposes, including for in-home	
19		self-defense, hunting, and	
20		competing, as well as training for	
21		each of these.”	
22	10	Declaration of Richard Francis	Same as Objection 6.
23		Travis (Dkt. No. 50-7) ¶ 8:	
24		“CRPA’s membership includes	
25		individuals who, prior to January	
26		1, 2000, in accordance with state	
27		and federal law, lawfully acquired	
28		an ammunition feeding device	
		capable of holding more than ten	
		rounds that meets the definition	
		of a ‘large capacity magazine’	
		under California Penal Code	
		section 16740. These members	
		presently own and use these	
		magazines for lawful purposes,	
		including in-home self-defense,	
		hunting, and competing, as well	
		as training for each of these.	

1		Many of these CRPA members	
2		do not qualify for any of the	
3		exceptions to section 32310's	
4		restrictions and will, therefore, be	
5		legally required to dispossess	
6		themselves of any of their	
7		lawfully possessed 'large capacity	
8		magazines' while within the state	
9		of California."	
10	11	Declaration of Richard Francis	Same as Objection 6.
11		Travis (Dkt. No. 50-7) ¶ 9:	
12		"I know of CRPA members who	
13		have stated that, if this Court does	
14		not declare California Penal Code	
15		section 32310's 'large capacity	
16		magazine' possession restriction	
17		invalid or otherwise enjoin its	
18		enforcement, they will	
19		immediately dispossess	
20		themselves of any 'large capacity	
21		magazine' they currently lawfully	
22		possess while within the State of	
23		California."	
24	12	Declaration of Richard Francis	Same as Objection 6.
25		Travis (Dkt. No. 50-7) ¶ 10:	
26		"I know of CRPA members who	
27		have stated that, if this Court	
28		declares California Penal Code	
		section 32310's 'large capacity	
		magazine' possession restriction	
		invalid or otherwise enjoins its	
		enforcement, they will continue	
		to possess any 'large capacity	
		magazine' they currently lawfully	
		possess while within the State of	
		California to the extent permitted	
		by law for lawful purposes,	
		including for in-home self-	

1		defense, hunting, and competing, as well as training for each of these.”	
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3	13	Declaration of Anna M. Barvir (Dkt. No. 50-8), Ex. 2 at 32-36 (Expert Witness Report of Stephen Helsley, §§ V.2-3):	Speculative expert testimony. Fed. R. Evid. 702; <i>United States v. Hermanek</i> , 289 F.3d 1076, 1094 (9th Cir. 2002)
4		Opinion that large-capacity magazines may be necessary for self-defense.	(“The trial judge in all cases of proffered expert testimony must find that it is properly grounded, well- reasoned, and not speculative before it can be admitted. The . . . expert must explain how the conclusion is so grounded.” (quoting Fed. R. Evid. 702, comm. note)); <i>see e.g.</i> , DX-J . at 451 (explaining that the “scholarly foundation” for his opinions regarding self-defense comprises “all of the reading that I’ve done, some writing —not a lot, but a lot of reading and talking to peace officers or other people who have been involved in shootings and learning what was involved in those events”); <i>id.</i> at 454-55 (explaining that the basis for his statement that civilians are unlikely to have spare ammunition readily accessible is, “in my own case, for instance, if – if I think somebody is breaking in my house, I’m getting out of bed, I have my boxer shorts on, I’ve got a flashlight in one hand and the Glock in the other hand and I really don’t have any place to put that spare magazine,” while acknowledging that he has never been the victim of a home invasion). ¹
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¹ Citations to Defendants’ exhibits annexed to the accompanying Declaration of John D. Echeverria are to “DX” followed by exhibit number.

1	14	Declaration of Anna M. Barvir (Dkt. No. 50-8), Ex. 3 at 52 (Expert Witness Rebuttal of Dr. Gary Kleck, § V.B.1):	Improper legal testimony of an expert witness. Fed. R. Evid. 702; <i>Aguilar v.</i> <i>Int'l Longshoremen's Union Local</i> <i>No. 10</i> , 966 F.2d 443, 447 (9th Cir. 1992) (“[E]xpert testimony consisting of legal conclusions [is] not admissible.” (citing <i>Marx v. Diners</i> <i>Club, Inc.</i> , 550 F.2d 505, 509 (2d Cir. 1977))).
2		Opinion that Dr. Louis Klarevas does not qualify as an expert.	
3	15	Declaration of Anna M. Barvir (Dkt. No. 50-8), Ex. 4 at 106- 115):	Improper testimony of a rebuttal expert witness. See <i>Lindner v.</i> <i>Meadow Gold Dairies, Inc.</i> , 249 F.R.D. 625, 635-36 (D. Haw. 2008) (“Rule 26(a)(2)(C) ‘defines rebuttal experts as presenting “evidence [that] is <i>intended solely</i> to contradict or rebut evidence on the same subject matter identified” by an initial expert witness’”); <i>Sierra Club, Lone</i> <i>Star Chapter v. Ceder Point Oil Co.</i> , 73 F.3d 546, 571 (5th Cir. 1996) (“The purpose of rebuttal and supplementary disclosures is just that—to rebut and to supplement. These disclosures are not intended to provide an extension of the deadline by which a party must deliver the lion’s share of its expert information.”); DX-UU at 474 (testifying that he did not read anything in the expert reports of Christopher Koper or Louis Klarevas discussing that grandfathered large- capacity magazines have been used in mass shootings in California).
4		Opinion that Section 32310 has had no statistically significant impact on violent crime in California.	
5	16	Declaration of Anna M. Barvir (Dkt. No. 50-8), Ex. 4 at 115-21 (Expert Witness Rebuttal of Dr. Carlisle E. Moody, § VI.B):	Improper testimony of a rebuttal expert witness. See <i>Lindner v.</i> <i>Meadow Gold Dairies, Inc.</i> , 249 F.R.D. 625, 635-36 (D. Haw. 2008) (“Rule 26(a)(2)(C) ‘defines rebuttal experts as presenting “evidence [that]
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1	Opinion that lawfully possessed	is <i>intended solely</i> to contradict or
2	large-capacity magazines are not	rebut evidence on the same subject
3	commonly used in mass	matter identified” by an initial expert
4	shootings in California.	witness”); <i>Sierra Club, Lone</i>
5		<i>Star Chapter v. Ceder Point Oil Co.</i> ,
6		73 F.3d 546, 571 (5th Cir. 1996)
7		(“The purpose of rebuttal and
8		supplementary disclosures is just
9		that—to rebut and to supplement.
10		These disclosures are not intended to
11		provide an extension of the deadline
12		by which a party must deliver the
13		lion’s share of its expert
14		information.”); DX-UU at 476-77
15		(testifying that there is nothing in the
16		expert reports of Christopher Koper or
17		Louis Klarevas regarding an opinion
18		about California’s violent crime rate).

Dated: April 9, 2018

Respectfully submitted,

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/s/ John D. Echeverria

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