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

15 **VIRGINIA DUNCAN, RICHARD**  
16 **LEWIS, PATRICK LOVETTE,**  
17 **DAVID MARGUGLIO,**  
18 **CHRISTOPHER WADDELL, and**  
19 **CALIFORNIA RIFLE & PISTOL**  
20 **ASSOCIATION, INC., a California**  
21 **corporation,**

Plaintiffs,

v.

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

Defendant.

17-cv-1017-BEN-JLB

**EXHIBITS 7-11 TO THE  
DECLARATION OF JOHN D.  
ECHEVERRIA IN SUPPORT OF  
DEFENDANT'S OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT OR,  
ALTERNATIVELY, PARTIAL  
SUMMARY JUDGMENT**

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

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# **Exhibit 7**

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
3           -----:  
4   VIRGINIA DUNCAN, et al.,       :  
5                               Plaintiff, :Case No.  
6   v.                               :17-cv-1017-BEN-JLB  
7   XAVIER BECERRA, in his       :  
8   official capacity as       :  
9   Attorney General of the       :  
10   State of California, et       :  
11   al.,                               :  
12                               Defendants.:  
13           -----:  
14                   Deposition of CARLISLE MOODY taken at the  
15   offices of Kirkland & Ellis, LLP, 655 Fifteenth  
16   Street, NW, Washington, DC on Tuesday, January 2,  
17   2018, beginning at 10:00 a.m. before Sydney R.  
18   Crawford, a Notary Public in and for the District of  
19   Columbia.  
20  
21   ATKINSON-BAKER, INC. COURT REPORTERS  
22   (800) 288-3376  
    www.depo.com  
    REPORTED BY:   Sydney R. Crawford

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P R O C E E D I N G S

\* \* \*

WHEREUPON,

CARLISLE MOODY

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE DEFENDANT

BY MS. GORDON:

Q. Good morning, Professor Moody. Do you prefer Professor Moody or Dr. Moody?

A. Either one.

Q. Either one?

A. Professor is what I hear most of at the school, so let's go with that.

Q. I'm Alexandra Robert Gordon, and I represent the defendant, Attorney General Xavier Becerra in this matter. We haven't met before today; correct?

A. Correct.

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1 number?

2 A. Yes. Yes.

3 Q. And what is -- what is a P value?

4 A. P value is that number, .05. In other  
5 words, if you're two standard deviations away from  
6 the mean, the P value is .05, which simply means  
7 that there's less than, there's a 5 percent chance.  
8 Only a 5 percent chance that the number would be  
9 that far away from the mean and still actually be  
10 zero.

11 Q. Okay. So can you infer -- let's say you  
12 have a P value greater than .05. Can you infer an  
13 absence of causation from that?

14 A. It is indicative of no causation.

15 Q. Is it possible that something could have a  
16 real world effect, though, and not be statistically  
17 significant?

18 A. Yes.

19 Q. Okay. Does the size of sample, sample  
20 size of data affect the calculation of statistical  
21 significance?

22 A. Uh-hum. Yes, it does.



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Carlisle Moody Vol. II  
January 4, 2018

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P R O C E E D I N G S

\* \* \*

WHEREUPON,

CARLISLE MOODY

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE DEFENDANT

BY MS. GORDON:

Q. We are resuming the deposition of Dr. Carlisle Moody.

Doctor Moody, since there's been sort of a break, do you need me to go over the basic admonitions or housekeeping rules, or do you remember them?

A. I remember them.

Q. The most important would be to ask you, is there any reason why you can't give truthful and accurate testimony today?

A. No.

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1 (Exhibit No. 12 was marked for  
2 identification.)

3 BY MS. GORDON:

4 Q. Is this the paper that we've been talking  
5 about, about your sort of study on large capacity  
6 magazines?

7 A. Yes.

8 Q. Okay. I understand that, you know, you  
9 feel that we're not talking about this, and we're  
10 going to move off of this momentarily, but could you  
11 please go to page 6, and do you see where it says  
12 "Summary and Conclusion," Roman numeral III?

13 A. Yes.

14 Q. Could you just read the first full  
15 sentence, please?

16 A. Repeat, please.

17 Q. The first sentence. It starts, "Firearms  
18 fitted with large capacity magazines."

19 A. "Firearms fitted with large capacity  
20 magazines can be used to cause death and injury in  
21 public shooting incidents, and can also result in  
22 more rounds fired and more homicides in general than

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1 similar firearms with smaller magazines."

2 Q. Okay. And just in the interest of  
3 fairness and completeness, you do go on in that  
4 paragraph to include other ways that people can  
5 wreak havoc as well; right?

6 A. Yes.

7 Q. Okay. But I'm just curious, do you agree  
8 with the first -- that sentence that -- that you  
9 just read?

10 A. Yes. Yes.

11 Q. And what was the basis for that statement?  
12 How did you arrive at that conclusion?

13 A. Just theoretically.

14 Q. Theoretically.

15 A. Theoretically, if you have more rounds in  
16 a single place, you might be able to do a better job  
17 of creating mayhem.

18 Q. Did you -- so this is -- this is dated  
19 February 2015. So you would have written this  
20 before you did your expert report in Colorado;  
21 correct?

22 A. Correct.

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1 articles about these things, and I've been doing  
2 statistical analyses of these problems for a while.

3 Q. No. Of course. But you didn't do a  
4 statistical analysis --

5 A. No. Not here.

6 Q. -- for that question?

7 A. No. This is just an aspect of these  
8 things that I was asked to investigate, and so I  
9 said okay, why not, I'll do it.

10 Q. Okay. So I'm also sort of wondering since  
11 you're a rebuttal expert, that opinion, what in  
12 Koper and Klarevas does that rebut?

13 A. If you're -- I don't know -- I'm not --  
14 that's not clear to me. I don't know. I was asked  
15 to do it and I did it.

16 Q. I understand. And so do you -- but do you  
17 read anything, and I think you have the reports if  
18 you want to review them, do you read anything in the  
19 Koper or Klarevas reports as saying, you know, we  
20 know that large capacity magazines that were  
21 grandfathered have been used in mass shootings in  
22 California?

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1           A.     No.

2           Q.     Opinion -- opinion 3. So top of page 3.  
3     You say, "Bans on such magazines have no effect on  
4     violent crime." And you say, "As illustrated by the  
5     results of the Washington Post study of firearms  
6     recovered by Virginia law enforcement." So what --  
7     what data did you use to come to that conclusion?

8           A.     Virginia Clearinghouse, Virginia -- I  
9     can't remember what it's called, but it's  
10    essentially a clearinghouse where -- for criminal  
11    weapons, weapons taken from criminals at the -- at  
12    the time that they are under arrest -- were sent to  
13    a place called a clearinghouse, where they were --  
14    data on those weapons was kept by the state police.

15               And this relatively unique data set was  
16    revealed by the Washington Post, they seemed to hear  
17    about it and got ahold of it and made it public.

18           Q.     And is that data set limited to Virginia?

19           A.     Yes. It is.

20           Q.     So you were relying on Virginia specific  
21    data to come up with -- as a basis of this opinion;  
22    correct?

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1 levels.

2 Q. And did you?

3 A. No. Essentially the same answer.

4 Q. Essentially the same answer. Okay.

5 Great. All right. Thank you. I think now I  
6 understand sort of the relationship between this and  
7 how this basically works, more or less. All right.

8 So let's look at I believe we are now on  
9 page 6 of your report, and it's number 2,  
10 "California's Violent Crime Rate."

11 So I don't want this to sound rude, but  
12 I'm wondering sort of why you are offering an  
13 opinion on the relationship between the acquisition  
14 ban and California's violent crime rate.

15 A. I believe I was asked at one point to do  
16 that. Why not. And I said okay, fine.

17 Q. Okay. But is this meant to rebut opinions  
18 that you found in Klarevas --

19 A. Not directly, no.

20 Q. Indirectly?

21 A. Well, I mean I wonder whether an LCM ban  
22 might have an effect on violent crime.

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1 Q. Okay.

2 A. If violent criminals use large capacity  
3 magazines.

4 Q. Okay. But is there something in either of  
5 their reports, Dr. Koper or Dr. Klarevas that you  
6 read as making -- as offering an opinion about the  
7 violent crime rate, the large --

8 A. No.

9 MS. BARVIR: Objection. Asked and  
10 answered.

11 (Off the record.)

12 BY MS. GORDON:

13 Q. So, first of all, I just want to make sure  
14 I understand what you mean by "violent crime." What  
15 does that include?

16 A. Murder rate, robbery and assault.

17 Q. Including, I guess, gun assault as well?

18 A. Yes.

19 Q. Okay. So it's not limited to only crimes  
20 with large capacity magazines?

21 A. No.

22 Q. Okay. So, I mean, that's going to include

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1 research I did in this case presented in my report.

2 Q. Okay. What -- which research precisely  
3 that you did for this case presented?

4 A. Reading. Reading all the reports, trying  
5 to get, you know, some idea where these LCMs came  
6 from, and whether they were likely to be somebody  
7 who's three at the time in the year 2000 would  
8 probably not store up a, not get an LCM as a present  
9 from grandma and store it up until he shoots  
10 somebody in 2012.

11 Q. I should -- I should not hope not, yeah.

12 Have you looked at mass shootings that  
13 occurred nationally during the federal assault  
14 weapon ban?

15 A. No.

16 Q. So you don't know which mass shootings  
17 occurred using grandfathered weapons; right, during  
18 the assault weapon ban?

19 A. No.

20 Q. But you are aware that there were a  
21 significant number of grandfathered weapons during  
22 the federal assault weapon ban; correct?

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1           A.    I -- I -- I do not have that data.  I  
2   don't recall that data.

3           Q.    Okay.  So --

4           A.    I have no reason to disbelieve you.

5           Q.    Okay.  But so, then, just to be clear, the  
6   data about how many grandfathered LCMs there were  
7   during the assault weapons ban is not a factor in  
8   any of the analysis that you've done?

9           A.    No.

10          Q.    Okay.  Is it possible that a stolen large  
11   capacity magazine that was legally possessed within  
12   California could be taken to another jurisdiction  
13   and used in a mass shooting?

14          A.    It's possible, I suppose.

15          Q.    And so would that constitute a danger  
16   created by a legally-possessed large capacity  
17   magazine?

18          A.    What's a danger?  I mean, did this person  
19   actually shoot somebody with it?

20          Q.    Yes.

21          A.    Oh, then it is a danger.

22          Q.    It's a hypothetical.  I'm not saying that

1 that happened.

2 A. The mere fact that it's stolen does not  
3 constitute a danger, it's the -- it's the reason for  
4 the use after it's stolen that constitutes the  
5 danger.

6 Q. Okay. So let's move on to your section C.  
7 Right. So, again, this is also work that you did  
8 originally for the Weise case; correct?

9 A. No.

10 Q. You didn't present information in the  
11 Weise case?

12 A. I did. Oh, no. Originally, it was -- it  
13 was the research paper that --

14 Q. The SSRN?

15 A. The SSRN paper, yes.

16 Q. Oh, okay. So that's back in 2015 --

17 A. Yes. And I just -- this is just a -- yes.  
18 That was back in 2015 and this is a reanalysis of  
19 the same data.

20 Q. So -- of the same data. Did you add to  
21 the data?

22 A. No.

# **Exhibit 8**

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
3                   -----:  
4                   VIRGINIA DUNCAN, et al.,       :  
5   Plaintiff,   :Case No.  
6                   v.   :17-cv-1017-BEN-JLB  
7                   XAVIER BECERRA, in his       :  
8                   official capacity as       :  
9                   Attorney General of the       :  
10                  State of California, et       :  
11                  al.,                                       :  
12   Defendants.:  
13                   -----:  
14                  Deposition of GARY KLECK taken at the  
15                  offices of Kirkland & Ellis, LLP, 655 Fifteenth  
16                  Street, NW, Washington, DC on Wednesday, January 3,  
17                  2018, beginning at 9:00 a.m. before Sydney R.  
18                  Crawford, a Notary Public in and for the District of  
19                  Columbia.  
20                  ATKINSON-BAKER, INC. COURT REPORTERS  
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                  REPORTED BY: Sydney R. Crawford  
                  FILE NO: AB0D9A1

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P R O C E E D I N G S

\* \* \*

WHEREUPON,

GARY KLECK

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE DEFENDANT

BY MR. ZELIDON-ZEPEDA:

Q. Good morning.

A. Good morning.

Q. My name is Jose Zelidon-Zepeda. I'm a Deputy Attorney General for the State of California. You understand that you're here for your deposition in a case called Duncan versus Becerra.

A. Okay.

MR. ZELIDON-ZEPEDA: Could counsel please identify themselves for the record?

MS. BARVIR: Anna Barvir, B-A-R-V-I-R, counsel for the plaintiffs.

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1 the fraction that will involve large capacity  
2 magazines. That much is true, something that both  
3 advocates and opponents agree on.

4 Q. And then the opposite is true as well;  
5 right?

6 MS. BARVIR: Objection. Form. Vague and  
7 ambiguous. Go ahead and answer.

8 THE WITNESS: What opposite? I mean  
9 the -- the opposite that it's frequent, that are  
10 frequently involved?

11 BY MR. ZELIDON-ZEPEDA:

12 Q. No. the opposite of if you define the --  
13 if you define gun massacres in terms of a -- a lower  
14 number of individuals who are dead, obviously that's  
15 going to impact the percentage, and it goes that --

16 A. Yes. Sorry. Go ahead.

17 Q. No. No. I was done.

18 A. Yes. The lower -- the lower your  
19 criterion, your cutoff for what constitutes a mass  
20 shooting, the less likely it is large capacity  
21 magazines will be involved.

22 Because the one thing that advocates of

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1 bans on large capacity magazines are correct about  
2 is the statistical point that large capacity  
3 magazines are more likely to show up -- not likely,  
4 but relatively more likely to show up in cases with  
5 larger numbers of victims.

6 Q. Do you think large capacity magazine have  
7 an impact on crimes other than mass massacres?

8 MS. BARVIR: Object to the form. Vague  
9 and ambiguous. Go ahead.

10 BY MR. ZELIDON-ZEPEDA:

11 Q. You know, let me reframe my question.  
12 Do you think that LCM use has an impact in  
13 crimes other than gun massacres?

14 A. I know of no affirmative evidence to  
15 suggest that's the case, that there is such an  
16 effect.

17 Q. Have you affirmatively researched that  
18 issue?

19 A. No. No. That's not been a focus of any  
20 of my research. Others, however, have kind of  
21 indirectly approached it by looking at whether bans  
22 on large capacity magazines affect other kinds of

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Gary Kleck  
January 3, 2018

Exhibit 8  
Page 00486

1 Do you see that?

2 A. Are you referring to page 17 at the top  
3 few lines?

4 Q. Yeah, the second paragraph, the --

5 A. Oh, the second paragraph.

6 Q. Yes. And if you need some time to look at  
7 it, because I know it's sort of interrelated, please  
8 go ahead and take some time.

9 A. No, I don't need any additional time. I  
10 mean, pointing out, I'm basically saying what I just  
11 said, that there's another reading of what he was  
12 intending, which is not, you know, the point that he  
13 was actually making, that is to say I cite  
14 Christopher Koper, who accurately notes that large  
15 capacity magazines allow people to fire more rounds  
16 without reloading, which is true.

17 Whereas Klarevas was making a distinct  
18 point saying that while you had the gun loaded with  
19 a large capacity magazine, you could fire more  
20 rapidly than if you had a smaller capacity magazine  
21 with the gun, which is not true at all and it's not  
22 a claim that any other expert makes.

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1 Q. But if in fact that's not what Klarevas  
2 was claiming, then your statement is false.

3 A. Well, your -- you're pro -- you're posing  
4 a false hypothetical. I mean, there's no doubt that  
5 he was not making the point about, you know, you  
6 don't have to reload so often because he makes that  
7 point separately.

8 And so there's -- aside from that, once we  
9 can rule that out, there are no other readings that  
10 would reasonably impose on what Klarevas said that  
11 are accurate. I mean, none at all. I mean, if he  
12 were here today he would not be able to rephrase it  
13 in a way that makes it into an accurate statement,  
14 unless he was simply making the same point twice,  
15 and that's rather dishonest to make, as if you have  
16 two points to make, when in fact you only have one  
17 point to make, the point that you don't have to  
18 reload so often with a large capacity magazine.

19 Q. So it sounds, and I might have missed it  
20 because there was a flurry of words, but it sounds  
21 like you agree with the argument that LCMs allow  
22 certain weapons to fire more than 10 rounds without

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Gary Kleck  
January 3, 2018

Exhibit 8  
Page 00488

1 requiring the shooter to reload the weapon.

2 A. I do.

3 Q. And is it fair to say that you also agree  
4 that victims who suffer multiple gunshot wounds are  
5 more likely to die than those who suffer a single  
6 wound?

7 A. I do.

8 Q. Going back to the previous point, *ibid*.  
9 You stated that if Dr. Klarevas were to try to  
10 explain what he meant regarding the -- the  
11 facilitate firing comment, and reconcile that with a  
12 later point that you say is a separate and distinct  
13 point regarding firing multiple rounds, that that  
14 would be, the word you used was "dishonest" or  
15 something; is that correct?

16 A. No. What I said was dishonest was making  
17 one point, but presenting it as if it's two separate  
18 points. As if you're creating a dishonest  
19 impression of increasing the strength of your  
20 argument. Two valid points would be better than  
21 just one valid point, but those are not two distinct  
22 points. He was -- or not two distinct valid points.

1 offender, and to shoot all let's say four offenders,  
2 you'd obviously need a correspondingly larger number  
3 of rounds.

4 Q. Are you aware of any research that yields  
5 these numbers regarding the rate at which defensive  
6 gun requires the use of 10 or more bullets?

7 A. To my knowledge no one has studied the  
8 issue. Me or anyone else.

9 Q. So what is your basis for saying that this  
10 is a scenario that's likely?

11 A. Well, there are two solid reasons. Number  
12 one, we know that crime, violent crimes in which  
13 victims face multiple offenders are commonplace, and  
14 we know that from the National Crime Victimization  
15 survey.

16 And number two, we know that it requires  
17 considerably more than one round to shoot any one  
18 offender. We know that from two sources of  
19 information -- well, really that's basically all one  
20 source of information or one category of  
21 information, which is how good police officers are  
22 in their marksmanship in real world combat

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1 Q. On page 10 of your rebuttal report, you  
2 state that shooters more intent on hurting many  
3 people would prepare to do so by acquiring LCMs?

4 A. Yes.

5 Q. Why is that?

6 A. Because of the belief, accurate or not,  
7 that they can conflict more harm if they can fire  
8 large numbers of rounds without reloading.

9 Q. Did you perform any type of analysis in  
10 order to derive this conclusion, or was this just a  
11 common sense analysis or conclusion?

12 A. Well, it's both common sense and sometimes  
13 where there are surviving shooters they say  
14 something to that effect. In fact, I believe, one  
15 of the defendants' experts quoted a defender as  
16 saying he went to the gun dealer and told the gun  
17 dealer that he wanted, you know, the deadliest  
18 equipment that would allow him to shoot the largest  
19 number of rounds, et cetera, et cetera. So he was  
20 in effect -- he wasn't admitting to an intent to  
21 commit a mass murder, but he was saying that, yeah,  
22 there's a connection between my desire to fire many

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Gary Kleck  
January 3, 2018

Exhibit 8  
Page 00491

1 rounds and my desire to get a large capacity  
2 magazine.

3 Q. So isn't this like saying that having an  
4 LCM enables an offender to cause more harm?

5 A. No. It only says that this is something  
6 that offenders believe.

7 Q. Okay. Do you think it's an accurate or  
8 inaccurate belief?

9 A. It's inaccurate.

10 Q. Is that because, as you discussed earlier,  
11 an offender can just go ahead and not get a large  
12 capacity magazine, but get the same amount of  
13 bullets through smaller magazines?

14 A. Right. They can do everything that that  
15 mass shooter might want to do if they had 10-round  
16 magazines rather than 30-round magazines. There's a  
17 difference between hypothetical potential and the  
18 reality of actual mass shootings, and the typical  
19 mass shooter doesn't really, he's not done a study  
20 of how mass shootings actually occur.

21 All he knows is yeah, I might be able to  
22 fire many rounds with a large capacity magazine

# **Exhibit 9**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

-----x  
VIRGINIA DUNCAN, et al.,

Plaintiffs,

v.

Case No.

XAVIER BECERRA, in his

17-cv-1017-BEN-JLB

official capacity as Attorney

General of the State of

California,

Defendant.  
-----x

DEPOSITION OF CHRISTOPHER S. KOPER, PH.D.

Washington, D.C.

Friday, January 5, 2018

Reported by:

Michele E. Eddy, CRR, RPR, CLR

JOB NO. 135559

1  
2  
3  
4 Friday, January 5, 2018

5 9:55 A.M.  
6  
7

8 Deposition of CHRISTOPHER S. KOPER,  
9 PH.D., held at the offices of Kirkland & Ellis  
10 LLP, 655 Fifteenth Street, Northwest, Washington,  
11 D.C., pursuant to notice, before Michele E.  
12 Eddy, a Registered Professional Reporter,  
13 Certified Realtime Reporter, and Notary Public  
14 of the state of Maryland, Commonwealth of  
15 Virginia, and the District of Columbia.  
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1 APPEARANCES:

2 MICHEL & ASSOCIATES

3 Attorneys for Plaintiffs

4 180 E. Ocean Boulevard, Suite 200

5 Long Beach, California 90802

6 BY: ANNA BARVIR, ESQUIRE

8 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE

9 Attorneys for Defendants

10 455 Golden Gate Avenue

11 San Francisco, CA 94102

12 BY: JOSE ZELIDON-ZEPEDA, ESQUIRE

P R O C E E D I N G S

Washington, D.C.

January 5, 2018

- - -

CHRISTOPHER S. KOPER, Ph.D.,  
having been duly sworn, testified as follows:

MS. BARVIR: Good morning. We're  
here for the deposition of Dr. Christopher  
Koper.

EXAMINATION

BY MS. BARVIR:

Q Could you state your name, your  
title, and your business address for the  
record, please.

A Christopher Shawn Koper. I'm an  
associate professor at George Mason University  
in Fairfax, Virginia.

Q And just -- do you prefer if I call  
you Dr. Koper or Professor Koper? Which works  
for you?

A Either one. Either is fine.

Q My name is Anna Barvir. I'm an  
attorney for the plaintiffs in this matter  
captioned Duncan v. Becerra.

What is your understanding of what

1 cases.

2 Q What evidence, if any, do you have  
3 that the presence of an LCM in a mass shooting  
4 actually impacts the rate of fire, the amount  
5 of time between shots in a mass shooting?

6 MR. ZELIDON-ZEPEDA: Objection.

7 Compound.

8 A There is -- and I suppose it's cited  
9 in here. I would have to look for it. But I  
10 know that there was -- in some of my writings,  
11 we -- I or my colleagues have shown, at least  
12 for some cases where data were available, that  
13 the number of shots fired in cases involving  
14 LCMs was higher -- substantially higher than in  
15 other cases. Then there's also the victim  
16 counts. The number of people shot and killed  
17 in those cases that involve high-capacity  
18 semiautomatics tends to be substantially larger  
19 than in other mass shooting incidents.

20 Q Right. That suggests a higher number  
21 of shots fired, right. But what about the rate  
22 of fire, like how much time is -- it takes  
23 between shots in a mass shooting incident?

24 A Well, the problem there is that you  
25 have to know exactly -- to make clear

1 might be more likelihood of some retaliation  
2 against the shooter or just generally slowing  
3 down their rate of fire.

4 Q What evidence do you have that that  
5 actually happens in mass shooting events?

6 A We largely infer it from the  
7 statistics, from the results of the events.  
8 It's also with reference to the broader  
9 literature on weaponry effects on violent crime  
10 outcomes. There's been a good deal of research  
11 looking at the impact that different weapons  
12 have on the outcomes of attacks, and it  
13 generally suggests that the type of weapon used  
14 is important to determining the outcome even  
15 independent of offender characteristics or  
16 intent.

17 Q Did you talk about those studies in  
18 your expert report?

19 A No, we haven't gotten into those.

20 Q So can you say to a reasonable degree  
21 of scientific probability that large-capacity  
22 magazines are outcome determinative in how many  
23 people are shot in a mass public shooting?

24 A Well, what we can say in some of  
25 these cases is that there have been statistical

1 tests of the differences in number of victims  
2 across the two sets of cases and oftentimes  
3 showing -- sometimes the differences are  
4 examined in statistical tests, sometimes not.

5 In some of my recent work, we  
6 actually did do a statistical test, and we  
7 found that in those cases where a high-capacity  
8 magazine was used, it was a statistically  
9 significant difference with higher numbers of  
10 victims in the LCM cases.

11 So we know that there is a  
12 difference, and the question becomes what is  
13 the mechanism of that, what is theoretically  
14 the most likely mechanism. I think many would  
15 judge it as being the weaponry having an impact  
16 on the outcome.

17 Q Is this research in your 2017 report?

18 A Yes. Although I have -- I and others  
19 have done comparisons of different types of  
20 mass shootings as well. So you don't have to  
21 rely just on mine, but other people have done  
22 that, too.

23 Q Could you direct me to any of those  
24 other people's sources?

25 A First of all, there are some

1 different places throughout this report where I  
2 have compared different subsets of attacks with  
3 different types of weaponry. I talked about  
4 the work that -- some earlier comparisons that  
5 I did that are contained in the 2004 report  
6 based on looking at some mass shootings.  
7 There's the work of Luke Dillon, who was a  
8 master's student at George Mason who looked at  
9 this issue.

10 I've seen in some different reports  
11 that people have produced that they have  
12 documented differences in number of people shot  
13 in cases involving high-capacity versus other  
14 weapons. Again, there's my 2017. So I've seen  
15 that in some different places. I've seen that  
16 in some other academic work, I think, too, at  
17 least as demonstrated differences in number of  
18 people shot for assault weapon versus other  
19 types of cases.

20 Q On page 5 at the top, I'm just  
21 bringing us back to the sentence we read  
22 earlier about "semiautomatics equipped with  
23 LCMs have frequently been employed in highly  
24 publicized mass shootings and are  
25 disproportionately used in the murders of law

# **Exhibit 10**

**In the Matter Of:**

**VIRGINIA DUNCAN vs XAVIER BECERRA**

17-cv-1017-BEN-JLB

---

**LUCY P. ALLEN**

*January 18, 2018*

---



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Exhibit 10

LUCY P. ALLEN  
VIRGINIA DUNCAN vs XAVIER BECERRA

January 18, 2018

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
-----x  
VIRGINIA DUNCAN, et al.,  
Plaintiffs,  
-against- No. 17-cv-1017-BEN-JLB  
XAVIER BECERRA, in his official capacity as  
Attorney General of the State of California,  
Defendant.  
-----x

DEPOSITION OF LUCY P. ALLEN  
New York, New York  
Thursday, January 18, 2018

Reported by:  
Aydil M. Torres, CSR  
JOB NO. J1035413

LUCY P. ALLEN  
VIRGINIA DUNCAN vs XAVIER BECERRA

January 18, 2018

2

January 18, 2018

9:53 a.m.

Deposition of LUCY P. ALLEN,  
held at the offices of Esquire  
Deposition Solutions, LLC, 1384  
Broadway, New York, New York,  
pursuant to Notice, before Aydil M.  
Torres, a Notary Public of the  
State of New York.

LUCY P. ALLEN  
VIRGINIA DUNCAN vs XAVIER BECERRA

January 18, 2018

3

A P P E A R A N C E S:

MICHEL & ASSOCIATES, P.C.

Attorneys for Plaintiffs

180 East Ocean Boulevard, Suite 200

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BY: ANNA M. BARVIR, ESQ.

NICHOLAS W. STADMILLER, ESQ.

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

Attorneys for Defendant

300 South Spring Street, Suite 1702

Los Angeles, California 90013

BY: JOHN D. ECHEVERRIA, ESQ.

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED  
by and between the attorneys for the  
respective parties herein, that filing,  
sealing and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the form  
of the question, shall be reserved to the  
time of the trial.

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be sworn to  
and signed before any officer authorized to  
administer an oath, with the same force  
and effect as if signed and sworn to before  
the Court.

LUCY P. ALLEN  
VIRGINIA DUNCAN vs XAVIER BECERRA

January 18, 2018

5

1  
2 L U C Y P. A L L E N,  
3 the witness herein, having been  
4 first duly sworn by a Notary Public  
5 of the State of New York, was  
6 examined and testified as follows:

7 THE REPORTER: Please state  
8 your name for the record.

9 THE WITNESS: Lucy Allen.  
10 A-L-L-E-N.

11 THE REPORTER: Will you  
12 please state your address for the  
13 record.

14 THE WITNESS: 1166 Avenue of  
15 the Americas, New York, New York.  
16 That's my work address.

17 EXAMINATION BY

18 MS. BARVIR:

19 Q. Could you state your name, title,  
20 and business address once more for the record  
21 for me, please?

22 A. Lucy Allen, managing director, 1166  
23 Avenue of the Americas, New York, New York,  
24 NERA Economic Consulting.

25 Q. Thank you. So NERA, N-E-R-A, if I

LUCY P. ALLEN  
VIRGINIA DUNCAN vs XAVIER BECERRA

January 18, 2018  
24

1 Lucy P. Allen

2 report, is it your opinion, as an expert,  
3 that large-capacity magazines are not often  
4 used in self-defense in the home?

5 A. I wouldn't say I've addressed that  
6 specific question, no.

7 Q. And based on your findings, as you  
8 summarize them in this report -- excuse me --  
9 is it your opinion as an expert that these  
10 large capacity magazines are often used in  
11 mass shootings?

12 A. I think I show data that a large  
13 percentage of mass shootings involve large  
14 capacity magazines, and that the number of  
15 fatalities and injuries are higher in mass  
16 shootings that involve large capacity  
17 magazines, than those that do not involve  
18 large capacity magazines.

19 Q. Okay. Have you ever been asked  
20 before to determine a number of rounds of  
21 ammunition that are fired in self-defense in  
22 the home, in another legal case?

23 A. I have been asked to determine  
24 rates that are similar to this, so I believe,  
25 for example, I was asked to determine the

LUCY P. ALLEN  
VIRGINIA DUNCAN vs XAVIER BECERRA

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1 Lucy P. Allen

2 that occur in a public place or primarily  
3 occur in a public place.

4 Q. So do you know how many mass  
5 shooting there would be per year if the  
6 definitions were not limited to public  
7 places?

8 A. If you used a completely different  
9 -- you use just a large -- like more than  
10 three people being killed anywhere?

11 Q. Uh-huh.

12 A. I don't know the answer to that.

13 Q. How about if you use the definition  
14 that didn't limit the event to where four or  
15 more people were killed and not connected  
16 with another crime?

17 A. I don't know the answer.

18 Q. Do you know for sure whether the  
19 Mother Jones and Citizens Crime Commission  
20 data sets you use include every public mass  
21 shooting event not connected to another crime  
22 that occurred in the 36-year period that was  
23 studied?

24 A. Is your question, do they include  
25 everything that would meet their definition

LUCY P. ALLEN  
VIRGINIA DUNCAN vs XAVIER BECERRA

January 18, 2018  
215

1 Lucy P. Allen

2 or are you trying to change the definition?

3 Q. That would meet their definition.

4 Are you certain that they've included every  
5 single incident of mass shooting that meets  
6 their definition within that 36-year period?

7 A. I am not certain that they have  
8 included everything. I have looked at the  
9 mass shootings that Dr. Kleck says that they  
10 failed to include, and I found that the vast  
11 majority of them did not meet the  
12 definitions, but I have not done anything  
13 else to determine whether -- to find other  
14 mass shootings that they may have excluded.  
15 I don't believe I recall anything in regard  
16 to that.

17 Q. So you don't know what percentage  
18 of shootings with four or more people killed  
19 were covered by those two sources; do you?

20 A. I'm not aware of other mass  
21 shootings that meet their definition, which  
22 is a -- in general is what I understand to be  
23 the common -- a common definition of mass  
24 shooting that are not included, you know,  
25 with the exception of one incident, I

LUCY P. ALLEN  
VIRGINIA DUNCAN vs XAVIER BECERRA

January 18, 2018  
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1 Lucy P. Allen

2 believe.

3 Q. So you assume they cover all of  
4 them but you're not certain?

5 A. I have not assumed that. I have --  
6 I have looked to see what other sources there  
7 are of mass shootings, and I have found that  
8 these are -- and I have not found that other  
9 sources include mass shootings that they have  
10 -- I have found that their analysis is  
11 comprehensive and systemic with, you know,  
12 the minor exception here and there of one  
13 that I'm not sure why they included or one  
14 that I'm not sure why they excluded. So I  
15 have some, you know, some minor exceptions I  
16 have found that both of them have a  
17 systematic and comprehensive approach.

18 Q. Are you familiar with the "Gun  
19 Violence Archive"?

20 A. I'm aware that Dr. Kleck mentioned  
21 it and I looked at the data that Dr. Kleck  
22 said that Mother Jones had in a biased way or  
23 mistakenly excluded, and I found that he was  
24 incorrect, and that -- so that is my  
25 familiarity with it, is looking into the

LUCY P. ALLEN  
VIRGINIA DUNCAN vs XAVIER BECERRA

January 18, 2018  
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1 Lucy P. Allen

2 Ms. Allen.

3 THE WITNESS: Thank you.

4 (Whereupon, a discussion was  
5 held off the record at this time.)

6 MS. BARVIR: We are back on  
7 record. We are opening the record  
8 again just to introduce as  
9 Plaintiff's 7, I believe, the  
10 updated pages of Lucy Allen's  
11 expert report in this matter that  
12 showed the new numbers with the Las  
13 Vegas incident.

14 THE WITNESS: Correct.

15 (Plaintiff's Exhibit 7,  
16 Updated Pages, marked for  
17 identification, as of this  
18 date.)

19 -oOo-  
20 (Whereupon, the examination  
21 of LUCY P. ALLEN was adjourned at  
22 5:39 p.m.)

23 LUCY P. ALLEN

24 Subscribed and sworn to  
25 before me this day  
26 of , 2010.

27 NOTARY PUBLIC



both sources and searched news stories on each mass shooting to obtain data on shots fired where available.<sup>17</sup> See attached Appendix B for a summary of the combined data.

22. Based on the combined data we found that large-capacity magazines (those with a capacity to hold more than 10 rounds of ammunition) are often used in mass shootings. Magazine capacity is known in 83 out of the 96 mass shootings (86%) considered in this analysis. We found that large-capacity magazines were used in the majority of mass shootings since 1982 regardless of how mass shootings with unknown magazine capacity are treated. In particular, out of 83 mass shootings with known magazine capacity, 54 involved large-capacity magazines or 65% of mass shootings with known magazine capacity. Even assuming the mass shootings with unknown magazine capacity *all* did not involve large-capacity magazines, the majority of mass shootings involved large capacity magazines (*i.e.*, 54 out of 96 mass shootings or 56%).

23. The combined data on mass shootings indicates that it is common for offenders to fire more than ten rounds when using a gun with a large-capacity magazine in mass shootings. In particular, in mass shootings that involved use of large-capacity magazine guns, the average number of shots fired was 99.<sup>18</sup>

## 2. Casualties in mass shootings with large-capacity magazine guns compared with other mass shootings

24. Based on our analysis of the combined mass shootings data in the past 35 years, casualties were higher in the mass shootings that involved large-capacity magazine guns than in

---

to another crime (such as robbery or domestic violence). See "Mayhem Multiplied: Mass Shooters and Assault Weapons," *Citizens Crime Commission of New York City*, 2016.

The second source covers 33 mass shootings from 1984 to 2012, in which a shooter killed four or more people and the gun used by the shooter had a magazine capacity greater than ten. All but one of the mass shooting incidents in the second source are covered by the first, but the combination of the two sources provides additional detail, such as the number of shots fired. See "Mass Shooting Incidents in America (1984-2012)," *Citizens Crime Commission of New York City*, <http://www.nycrimecommission.org/mass-shooting-incidents-america.php>, accessed June 1, 2017.

<sup>17</sup> The October 1, 2017 Las Vegas Strip mass shooting occurred a few days before the filing of this report, so numbers for this shooting have been updated based on Mother Jones data accessed January 17, 2018.

<sup>18</sup> There were 36 mass shootings in which the magazine used was known to be a large capacity magazine and the number of shots fired were known. The October 1, 2017 Las Vegas Strip mass shooting occurred a few days before the filing of this report. Details on the Las Vegas shooting are updated based on Mother Jones data accessed January 17, 2018 and "Sheriff Says More than 1,100 Rounds Fired in Las Vegas," *Las Vegas Review Journal*, November 22, 2017.

other mass shootings. In particular, we found an average number of fatalities or injuries of 31 per mass shooting with a large-capacity magazine versus 9 for those without.<sup>19</sup>

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

25. The combined data on mass shootings indicates that the majority of guns used in mass shootings were obtained legally.<sup>20</sup> According to the data, shooters in at least 71% of mass shootings in the past 35 years obtained their guns legally (at least 68 of the 96 mass shootings) and at least 76% of the guns used in these 96 mass shootings were obtained legally (at least 170 of the 224 guns).<sup>21</sup>

### C. Rate in California that victims use a firearm in self-defense in the home

26. Plaintiffs claim the banned large-capacity magazines are commonly used in the home for self-defense.<sup>22</sup> We estimated how common it is in California for a person in their home to defend themselves with a gun against an armed robber.

27. Using California-specific crime data collected by the California Department of Justice,<sup>23</sup> we estimated the number of residential robberies committed with a firearm. This estimate was based on the average annual rate for the six-year period between 2011-2016 using

---

<sup>19</sup> An analysis of the mass shootings detailed in an article by Plaintiffs' expert Gary Kleck yielded similar results (21 average fatalities or injuries in mass shootings involving large-capacity magazines versus 8 for those without). The article covered 88 mass shooting incidents between 1994 and 2013. *See* Kleck, Gary, "Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkages," 17 *Justice Research and Policy* 28 (2016).

A 2013 study by Mayors Against Illegal Guns found that when mass shootings involved assault weapons or high capacity magazines, the number of deaths was higher. The study was based on data from the FBI and media reports covering the period January 2009 through January 2013. The study found that 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 Recent Mass Shootings," *Mayors Against Illegal Guns*, September 2013.

<sup>20</sup> The determination of whether guns were obtained legally is based on Mother Jones reporting.

<sup>21</sup> Mother Jones did not indicate whether the guns were obtained legally for 10% of mass shootings (9 out of the 91 mass shootings covered by Mother Jones).

<sup>22</sup> Complaint at 47.

<sup>23</sup> "Crime in California 2016," *California Department of Justice: Criminal Justice Statistics Center*.

# Appendix B

## Combined Mass Shootings Data

### 1982 – October 2017

Case	Location	Date	Source	Large Cap. Mag.? <sup>a</sup>	Fatalities <sup>b</sup>	Injuries <sup>b</sup>	Total Fatalities & Injuries <sup>b</sup>	Shots Fired	Gun(s) Obtained Legally? <sup>c</sup>	Offenders' Number of Guns
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1. Las Vegas Strip	<sup>d</sup> Las Vegas, NV	10/1/2017	MJ	Yes	58 <sup>d</sup>	546 <sup>d</sup>	604 <sup>d</sup>	1,100 <sup>d</sup>	Yes	23 <sup>d</sup>
2. San Francisco UPS	San Francisco, CA	6/14/2017	MJ	Yes	3	2	5	-	No	2
3. Pennsylvania Supermarket	Tunkhannock, PA	6/7/2017	MJ	No	3	0	3	59 <sup>e</sup>	-	2
4. Fiamma Workplace	Orlando, FL	6/5/2017	MJ	-	5	0	5	-	-	1
5. Ohio Nursing Home	Kirkersville, OH	5/12/2017	MJ	-	3	0	3	-	-	2
6. Fresno Downtown	Fresno, CA	4/18/2017	MJ	No	3	0	3	16 <sup>f</sup>	-	1
7. Fort Lauderdale Airport	Fort Lauderdale, FL	1/6/2017	MJ	-	5	6	11	15 <sup>g</sup>	Yes	1
8. Cascade Mall	Burlington, WA	9/23/2016	MJ	-	5	0	5	-	-	1
9. Baton Rouge Police	Baton Rouge, LA	7/17/2016	MJ	Yes	3	3	6	43 <sup>h</sup>	-	3
10. Dallas Police	Dallas, TX	7/7/2016	MJ	Yes	5	11	16	-	Yes	3
11. Orlando Nightclub	Orlando, FL	6/12/2016	MJ/CC	Yes	49/50	53	102/103	110 <sup>i</sup>	Yes	2
12. Excel Industries	Hesston, KS	2/25/2016	MJ	Yes	3	14	17	-	Yes	2
13. Kalamazoo	Kalamazoo County, MI	2/20/2016	MJ	-	6	2	8	-	Yes	1
14. San Bernardino	San Bernardino, CA	12/2/2015	MJ/CC	Yes	14/16	21	35/37	150 <sup>j</sup>	Yes	4
15. Planned Parenthood Clinic	Colorado Springs, CO	11/27/2015	MJ	-	3	9	12	-	-	1
16. Colorado Springs	Colorado Springs, CO	10/31/2015	MJ	Yes	3	0	3	-	Yes	3
17. Umpqua Community College	Roseburg, OR	10/1/2015	MJ/CC	Yes	9/10	9	18/19	-	Yes	6
18. Chattanooga Military Center	Chattanooga, TN	7/16/2015	MJ/CC	Yes	5/6	2/3	7/9	-	Yes	3
19. Charleston Church	Charleston, SC	6/17/2015	MJ/CC	Yes	9	1	10	-	Yes	1
20. Trestle Trail Bridge	Menasha, WI	6/11/2015	MJ	-	3	1	4	-	Yes	2
21. Marysville High School	Marysville, WA	10/24/2014	MJ/CC	Yes	5	1	6	-	Stolen	1
22. Isla Vista	Santa Barbara, CA	5/23/2014	MJ	Yes	6	13	19	50 <sup>k</sup>	Yes	3
23. Fort Hood	Fort Hood, TX	4/3/2014	MJ	-	3	12	15	-	Yes	1
24. Alturas Tribal	Alturas, CA	2/20/2014	MJ	-	4	2	6	-	-	2
25. Washington Navy Yard	Washington, D.C.	9/16/2013	MJ/CC	No	12/13	8/7	20	-	Yes	2

# Appendix B

## Combined Mass Shootings Data

### 1982 – October 2017

Case	Location	Date	Source	Large Cap. Mag. <sup>a</sup>	Fatalities <sup>b</sup>	Injuries <sup>b</sup>	Total Fatalities & Injuries <sup>b</sup>	Shots Fired	Gun(s) Obtained Legally? <sup>c</sup>	Offenders' Number of Guns
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
76. Piper Technical Center	Los Angeles, CA	7/19/1995	CC	Yes	4	0	4	-	-	-
77. Walter Rossler Company	Corpus Christi, TX	4/3/1995	MJ/CC	No	6	0	6	-	Yes	2
78. Air Force Base	Fairchild Base, WA	6/20/1994	MJ/CC	Yes	5/6	23	28/29	50 <sup>r</sup>	Yes	1
79. Chuck E. Cheese	Aurora, CO	12/14/1993	MJ/CC	No	4	1	5	-	-	1
80. Long Island Railroad	Garden City, NY	12/7/1993	MJ/CC	Yes	6	19	25	30	Yes	1
81. Luigi's Restaurant	Fayetteville, NC	8/6/1993	MJ/CC	No	4	8	12	-	Yes	3
82. 101 California Street	San Francisco, CA	7/1/1993	MJ/CC	Yes	9	6	15	75	No	3
83. Watkins Glen	Watkins Glen, NY	10/15/1992	MJ/CC	No	5	0	5	-	Yes	1
84. Lindhurst High School	Olivehurst, CA	5/1/1992	MJ/CC	No	4	10	14	-	Yes	2
85. Royal Oak Postal	Royal Oak, MI	11/14/1991	MJ/CC	No	5	5/4	10/9	-	Yes	1
86. University of Iowa	Iowa City, IA	11/1/1991	MJ/CC	No	6	1	7	-	Yes	1
87. Luby's Cafeteria	Killeen, TX	10/16/1991	MJ/CC	Yes	24	20	44	100	Yes	2
88. GMAC	Jacksonville, FL	6/18/1990	MJ/CC	Yes	10	4	14	14	Yes	2
89. Standard Gravure Corporation	Louisville, KY	9/14/1989	MJ/CC	Yes	9	12	21	21	Yes	5
90. Stockton Schoolyard	Stockton, CA	1/17/1989	MJ/CC	Yes	6	29/30	35/36	106	Yes	2
91. ESL	Sunnyvale, CA	2/16/1988	MJ/CC	No	7	4	11	-	Yes	7
92. Shopping Centers	Palm Bay, FL	4/23/1987	MJ/CC	Yes	6	14/10	20/16	40 <sup>s</sup>	Yes	3
93. United States Postal Service	Edmond, OK	8/20/1986	MJ/CC	No	15	6	21	-	Yes	3
94. San Ysidro McDonald's	San Ysidro, CA	7/18/1984	MJ/CC	Yes	22	19	41	257	Yes	3
95. Dallas Nightclub	Dallas, TX	6/29/1984	MJ/CC	Yes	6	1	7	-	No	1
96. Welding Shop	Miami, FL	8/20/1982	MJ	No	8	3	11	-	Yes	1
Large Capacity Magazine Average					10.2	20.3	30.6	99.3		
Non-Large Capacity Magazine Average					6.3	2.9	9.2	22.6		

Exhibit 10  
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## Appendix B

### Combined Mass Shootings Data 1982 – October 2017

Case	Location	Date	Source	Large Cap. Mag. <sup>a</sup>	Fatalities <sup>b</sup>	Injuries <sup>b</sup>	Total Fatalities & Injuries <sup>b</sup>	Shots Fired	Gun(s) Obtained Legally? <sup>c</sup>	Offenders' Number of Guns
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

#### Notes and Sources:

Data from Mother Jones ("US Mass Shootings, 1982-2017: Data from Mother Jones' Investigation," accessed June 1, 2017) and the Citizens Crime Commission of New York City ("Mayhem Multiplied: Mass Shooters and Assault Weapons," 2016, and "Citizens Crime Commission of New York City, Mass Shooting Incidents in America (1984-2012)," accessed June 1, 2017).

MJ indicates Mother Jones data. CC indicates Citizens Crime Commission of New York City data. If sources differ 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.

<sup>a</sup> Large capacity magazines are those with a capacity to hold more than 10 rounds of ammunition.

<sup>b</sup> Offender(s) included in counts of fatalities and injuries.

<sup>c</sup> The determination of whether guns were obtained legally is based on Mother Jones reporting.

<sup>d</sup> **The October 1, 2017 Las Vegas Strip mass shooting occurred a few days before the filing of this report, so numbers for this shooting have been updated based on Mother Jones data accessed January 17, 2018. Shots fired from: "Sheriff Says More than 1,100 Rounds Fired in Las Vegas," *Las Vegas Review Journal*, November 22, 2017.**

<sup>e</sup> Shots fired from: "Killer in Supermarket Shooting Posted Chilling Videos Online, Lauding Columbine Massacre," *Washington Post*, June 9, 2017.

<sup>f</sup> Shots fired from: "Hate Crime is Suspected After Gunman Kills 3 White Men in Downtown Fresno," *Los Angeles Times*, April 19, 2017.

<sup>g</sup> Shots fired from: "Fort Lauderdale Shooting Suspect Appears in Court, Ordered Held Without Bond," *Washington Post*, January 9, 2017.

<sup>h</sup> Shots fired from: "Baton Rouge Cop Killer Left Note, Fired At Least 43 Rounds," *CNN*, July 9, 2017.

<sup>i</sup> Shots fired from: "We Thought It Was Part of the Music: How the Pulse Nightclub Massacre Unfolded in Orlando," *The Telegraph*, June 13, 2016.

<sup>j</sup> Shots fired from: "San Bernardino Suspects Left Trail of Clues, but No Clear Motive," *New York Times*, December 3, 2015.

<sup>k</sup> Shots fired from: "Sheriff: Elliot Rodger Fired 50-plus Times in Isle Vista Rampage," *Los Angeles Times*, June 4, 2014.

<sup>l</sup> Shots fired from: "Shooter Set \$10,000 on Fire in Hialeah Shooting Rampage," *NBC News*, July 28, 2013.

<sup>m</sup> Shots fired from: "Police Call Santa Monica Gunman 'Ready for Battle,'" *New York Times*, June 8, 2013.

<sup>n</sup> Shots fired from: "Hialeah Gunman's Rage Over Estranged Wife Leaved 5 Dead," *Sun-Sentinel*, June 7, 2010.

<sup>o</sup> Shots fired from: "Small Town Grieves for 6, and the Killer," *Los Angeles Times*, October 9, 2007.

<sup>p</sup> Shots fired from: "National Briefing | Midwest: Ohio: Shooter At Club May Have Reloaded," *New York Times*, January 15, 2005.

<sup>q</sup> Shots fired from: "5 Beach Workers in Florida are Slain by Ex-Colleague," *New York Times*, February 10, 1996.

<sup>r</sup> Shots fired from: "Man Bent On Revenge Kills 4, Hurts 23 -- Psychiatrist Is First Slain In Rampage At Fairchild Air Force Base," *The Seattle Times*, June 21, 1994.

<sup>s</sup> Shots fired from: "6 Dead in Florida Sniper Siege; Police Seize Suspect in Massacre," *Chicago Tribune*, April 25, 1987.

# **Exhibit 11**

**In the Matter Of:**  
**DUNCAN vs BECERRA**

17-cv-1017-BEN-JLB

---

**LOUIS KLAREVAS**

*January 19, 2018*

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Exhibit 11

LOUIS KLAREVAS  
DUNCAN vs BECERRA

January 19, 2018

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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VIRGINIA DUNCAN, et al.,  
  
Plaintiffs,  
  
-against- No. 17-cv-1017-BEN-JLB  
  
XAVIER BECERRA, in his official capacity as  
Attorney General of the State of California,  
  
Defendant.

-----x

DEPOSITION OF LOUIS KLAREVAS  
  
New York, New York  
  
Friday, January 19, 2018

Reported by:  
Aydil M. Torres, CSR  
JOB NO. J1035515

LOUIS KLAREVAS  
DUNCAN vs BECERRA

January 19, 2018

2

January 19, 2018

10:04 a.m.

Deposition of LOUIS

KLAREVAS, held at the offices of  
Esquire Deposition Solutions, LLC,  
1384 Broadway, New York, New York,  
pursuant to Notice, before Aydil M.  
Torres, a Notary Public of the  
State of New York.

LOUIS KLAREVAS  
DUNCAN vs BECERRA

January 19, 2018

3

A P P E A R A N C E S:

MICHEL & ASSOCIATES, P.C.

Attorneys for Plaintiffs

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BY: NICHOLAS W. STADMILLER, ESQ.

ANNA M. BARVIR, ESQ.

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

Attorneys for Defendant

300 South Spring Street, Suite 1702

Los Angeles, California 90013

BY: JOSE A. ZELIDON-ZEPEDA, ESQ.

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED  
by and between the attorneys for the  
respective parties herein, that filing,  
sealing and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the form  
of the question, shall be reserved to the  
time of the trial.

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be sworn to  
and signed before any officer authorized to  
administer an oath, with the same force  
and effect as if signed and sworn to before  
the Court.

LOUIS KLAREVAS  
DUNCAN vs BECERRA

January 19, 2018

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L O U I S     K L A R E V A S ,  
the witness herein, having been  
first duly sworn by a Notary Public  
of the State of New York, was  
examined and testified as follows:

THE REPORTER: Please state  
your name for the record.

THE WITNESS: Louis,  
L-O-U-I-S, Klarevas,  
K-L-A-R-E-V-A-S.

THE REPORTER: Please state  
your business address for the  
record.

THE WITNESS: 69-12 62nd  
Road, Middle Village, Queens, New  
York. Sorry, Middle Village, New  
York 11379.

MR. STADMILLER: So we are  
all taking notes on how to  
pronounce it but you've just  
clarified that, Klarevas.

THE WITNESS: Yeah, it's a  
long "E" and then try to imagine  
the "A"s are, like, Klarevas.

LOUIS KLAREVAS  
DUNCAN vs BECERRA

January 19, 2018  
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1 Louis Klarevas

2 those opportunities.

3 Q. Have you expressed any opinion that  
4 the children in the Sandy Hook school  
5 shooting incident escaped while the shooter  
6 was changing magazines?

7 A. That is correct, they did.

8 Q. And what is that based on?

9 A. It's based on my review of the  
10 witness statements that the children gave to  
11 police officers immediately following the  
12 Sandy Hook massacre. These were the  
13 statements of the actual children who fled.

14 Q. Now, even assuming -- if what you  
15 are saying is true, does that indicate that  
16 the magazine change in question did provide  
17 additional time for victims to escape, beyond  
18 the time that elapsed between the shots when  
19 the shooter was not firing?

20 A. It -- it -- it did provide the time  
21 necessary.

22 Q. How do you make that determination?

23 A. Well, we know that he was firing --  
24 well, first of all we -- we -- I make that  
25 determination based on what the witness

LOUIS KLAREVAS  
DUNCAN vs BECERRAJanuary 19, 2018  
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1 Louis Klarevas  
2 statements say. The students said, you know,  
3 that when he was changing out his magazines,  
4 one of the student recognized this as an  
5 opportunity, he yelled for the other  
6 students, and they all ran. And in -- I  
7 believe in one of the witness statements, one  
8 of the students actually even pushed him,  
9 physically pushed him aside, or grazed by him  
10 and bumped him, and then all the other  
11 students ran out. Additional students ran  
12 out behind that student.

13 Q. Would you agree with the statement  
14 that  
15 "the best available information indicates  
16 that mass shooters generally fire their  
17 weapons slowly and deliberately with  
18 substantial intervals between shots?

19 A. I disagree with that statement,  
20 because we know based on audio and video  
21 recordings that, in general, when mass  
22 shooters undertake their attacks, they tend  
23 to fire in a different kind of pattern, which  
24 is burst of fires at a very rapid pace,  
25 usually two to three rounds per second, if

LOUIS KLAREVAS  
DUNCAN vs BECERRA

January 19, 2018  
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1 Louis Klarevas  
2 you're using a semiautomatic firearm,  
3 followed by, if they're continuing their  
4 shooting, long pauses, and then again bursts.  
5 That assumes, of course, that someone is  
6 going to fire more than one magazine's worth  
7 of bullets.

8 Q. Okay. Would you agree with the  
9 statement that "shooters can easily change  
10 detachable magazines in approximately two to  
11 four seconds, depending on experience"?

12 A. I would qualify that. I mean,  
13 competitive shooters probably shoot at a rate  
14 of, you know, magazine changes of around 3 or  
15 4 seconds. Based on what we know from mass  
16 shooters and, you know, the evidence that I  
17 have seen, which would be looking again at  
18 video and audio tape, usually it's a little  
19 bit longer. I mean, these are high stress  
20 situations, you have shooters that are under  
21 duress. A good example would be one that I  
22 cited in my exhibits. It's the audio  
23 recording of a very recent active shooting  
24 involving --

25 Q. The list --

LOUIS KLAREVAS  
DUNCAN vs BECERRAJanuary 19, 2018  
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Louis Klarevas

A. Sorry, yeah, I will do the things. Exhibit 6. It would be the very last link, because they're presented chronologically. It is a link to a recording that the active shooter actually live fed this onto a site called Parascope and while he was attacking Douglas County Sheriff Deputies outside of Denver, Colorado, and this is a military veteran. It took him approximately ten seconds to change magazines and you can hear that. So the idea that somehow -- and also we know the Las Vegas shooter, his shortest interval of pause between firing burst of rounds onto the concert attendants attendees was, I believe, 25 seconds. So the idea that it takes two to four seconds is really maybe theoretical, but it's really something you perhaps see in competitive shooting. It's not something that we see, in terms of active shooters.

Q. In terms of active shooters, do you have any opinion on what the average time for them to change a magazine attachment would be?

LOUIS KLAREVAS  
DUNCAN vs BECERRA

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1 Louis Klarevas

2 Q. Did those play any part in the  
3 basis for your opinions for your expert  
4 report?

5 A. Well, that is something I state  
6 explicitly in my expert report.

7 Q. Okay. And did you say that --  
8 okay.

9 You further state "Imagine how many  
10 lives would have been spared if the Las Vegas  
11 strip shooter had to pause firing in order to  
12 reload after 10 rounds."

13 A. Yes.

14 Q. Do you have any estimate as to how  
15 many lives would have been spared if he had  
16 to reload after 10 rounds?

17 A. I have not put together an  
18 estimate. I'm still confident in the  
19 statement because we know that in between  
20 bursts of gun fire, his shortest time span  
21 was 25 seconds. So just taking that  
22 across-the-board, if every time he had to  
23 reload and it takes him 25 seconds or he had  
24 to switch guns and it took him 25 seconds,  
25 that would have been -- to shoot 90 rounds,

LOUIS KLAREVAS  
DUNCAN vs BECERRA

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1 Louis Klarevas

2 like he did, now take that, instead of having  
3 -- which what I believe were 11 pauses, take  
4 that and multiply that by 10 or by -- or by.

5 Q. 20?

6 A. No, no, by ten-fold, because it's  
7 instead of 100 rounds, you are dividing it by  
8 10. You are looking at upwards of -- I said  
9 11 -- 110 pauses, each 25 seconds. That's a  
10 lot of time for people to flee.

11 Q. Okay. Just to confirm, you haven't  
12 started to perform any sort of analysis on  
13 that. It's more of a statement that lives  
14 could have been spared, as you just  
15 explained?

16 A. Actually, I think I just did, kind  
17 of off the cuff, an analysis for you. If you  
18 do 110 times 25, you get an idea of how many  
19 --

20 Q. That would be your best estimate?

21 A. That would be a really long time  
22 that would be -- yeah, that -- that would be,  
23 like, over 2,000 seconds, I believe. So  
24 that's more time not shooting than shooting.  
25 That's a lot of time for people to get out of

LOUIS KLAREVAS  
DUNCAN vs BECERRAJanuary 19, 2018  
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1 Louis Klarevas  
2 the way. And there were, obviously, a lot of  
3 survivors. We're talking about tens of  
4 thousands of people who were in the line of  
5 fire. Some of them who panicked and tried  
6 to, you know, many of them who stayed because  
7 they were afraid of -- of -- of the gun fire,  
8 but then when there were pauses, you see in  
9 the video evidence image, they ran. Imagine  
10 if we could have created 100 more  
11 opportunities for them to run. Not to  
12 mention that in the initial gun burst,  
13 instead of shooting 90 rounds, he would have  
14 shot just 10.

15 Q. Did the fact that he had multiple  
16 guns set up which we already talked about,  
17 contribute at all into your statement?

18 A. Well, it certainly leads you to  
19 believe that if someone can have multiple  
20 guns, as opposed to one gun, it requires that  
21 person to switch and get that gun, and if you  
22 are shooting from a sniper position, you  
23 know, you will have to get up, you are on  
24 your belly, for example, on that hotel room  
25 firing your rifle, you're going to have to

LOUIS KLAREVAS  
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1 Louis Klarevas  
2 get up, get rid of that gun that you just  
3 used, go grab your other gun that's got a  
4 fresh magazine in it, come back, set it up,  
5 shoot again, which could explain, in part,  
6 why it took him a minimum of 25 seconds  
7 between the bursts of fire. So when you have  
8 more guns, it could in theory create even  
9 longer pauses. So, again, another advantage  
10 to an active shooter of having large capacity  
11 magazine is that doesn't have to stop to  
12 reload, doesn't have to stop to switch guns.  
13 At most, you know, would stop much more  
14 infrequently, would stop with less frequency  
15 to switch out one large capacity magazine for  
16 another. So it definitely provides  
17 advantages to the active shooter and  
18 disadvantages to those in the line of fire.

19 Q. So could -- so could reviving the  
20 assault weapons ban be a contributing factor  
21 in causing less gun massacres?

22 A. Could it result in less gun  
23 massacres? Sure. Particularly because I  
24 think that the most effective part of the  
25 assault weapons ban was the ban on large