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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 VIRGINIA DUNCAN, et al.,
11
12 Plaintiffs,

13 v.

14 XAVIER BECERRA, in his official
capacity as Attorney General of the State
of California,

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

**DECLARATION OF ANNA M.
BARVIR IN SUPPORT OF
PLAINTIFFS' COURT-ORDERED
SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT;
EXHIBITS 89-92**

DECLARATION OF ANNA M. BARVIR

1
2 1. I am an attorney at the law firm Michel & Associates, P.C., attorneys of
3 record for Plaintiffs in this action. I am licensed to practice law before the United
4 States District Court for the Southern District of California. I am also admitted to
5 practice before the Eastern, Central, and Northern Districts of California, the courts of
6 the state of California, the Supreme Court of the United States, and the D.C., Fourth,
7 Ninth, and Tenth Circuit Courts of Appeals. I have personal knowledge of the facts set
8 forth herein and, if called and sworn as a witness, could and would testify competently
9 thereto.

10 2. Attached hereto as **Exhibit 89** is a true and correct copy of a November
11 8, 2016 article from the Los Angeles Times, *California Voters Approve Gun Control*
12 *Measure Proposition 63*, available at [http://www.latimes.com/nation/politics/
13 trailguide/la-na-election-day-2016-proposition-63-gun-control-1478280771-
14 htmlstory.html](http://www.latimes.com/nation/politics/trailguide/la-na-election-day-2016-proposition-63-gun-control-1478280771-htmlstory.html) (last visited, June 10, 2018).

15 3. Attached hereto as **Exhibit 90** is a true and correct copy of excerpts from
16 the February 3, 2014 deposition of Dr. Christopher S. Koper in the matter of *Tardy v.*
17 *O'Malley*, United States District Court, District of Maryland, Case No. CCB-13-
18 2841.

19 4. On January 5, 2018, I, as counsel for Plaintiffs, deposed Defendant's
20 designated expert in this matter, Dr. Christopher S. Koper. Attached hereto as
21 **Exhibit 91** is a true and correct copy of excerpts from the transcript of Dr. Koper's
22 deposition.

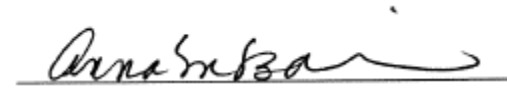
23 5. Attached hereto as **Exhibit 92** is a true and correct copy of an October
24 26, 2016 article from the Sacramento Bee, *Prop. 63 Will Reduce Gun Violence and*
25 *Send A Message to NRA*, available at [http://www.sacbee.com/opinion/op-
26 ed/soapbox/article110560432.html](http://www.sacbee.com/opinion/op-ed/soapbox/article110560432.html) (last visited June 10, 2018).

27 ///

28 ///

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed within the United States on June 11, 2018.

3
4 

5 Anna M. Barvir

6 Declarant
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EXHIBIT 89

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By PATRICK MCGREEVY

California voters approve gun control measure Proposition 63

Exhibit 89

6



Store managers Jamie Taflinger, left, and Kendyll Murray show customer Cornell Hall, of Highland, different types of ammo at the Get Loaded gun store in Grand Terrace. (Gina Ferazzi / Los Angeles Times)

Following a year marked by a series of mass shootings, voters on Tuesday approved Proposition 63, which toughens California's already strict gun control laws.

The initiative outlaws the possession of ammunition magazines that hold more than 10 rounds, requires background checks for people buying bullets, makes it a crime not to report lost or stolen guns, and provides a process for taking guns from people upon their conviction for a felony.

The measure was proposed by Lt. Gov. Gavin Newsom, who late Tuesday called the vote "historic progress to reduce gun violence."

"It was a repudiation of the National Rifle Assn. and the gun lobby. They lost badly," Newsom said in an interview. "It's a very important initiative because I think it's the beginning of a national debate on relinquishment (by felons) and ammunition background checks that will I think will have a very significant impact on reducing gun violence in this country."

During the campaign, Newsom argued more laws are needed to keep guns out of the hands of criminals and terrorists following a series of mass shootings in the United States.

Tuesday's vote came nearly a year after two terrorists killed 14 people in San Bernardino. The Proposition 63 campaign ads also cited a mass shooting at an Orlando nightclub that killed 49 people in June and the 2012 massacre that left 20 children and several educators dead at Sandy Hook Elementary School in Newtown, Conn.

Exhibit 89

The opposition, which includes the National Rifle Assn., argued it would create a burden on gun owners but that criminals will find a way to get around the new law.

Opponents also said Newsom was using the ballot measure to raise his profile ahead of his campaign for governor in 2018.

"Prop. 63 is another attempt by Newsom and his 1%, elitist friends to attack law-abiding Californians," said Craig DeLuz, a spokesman for the Stop Prop 63 Committee. "They want to replace the 'War on Drugs' with 'The War on law-abiding gun owners' so they can continue locking up young black and Latino men."

With the NRA focusing more of its resources in other states where gun control had more opposition, the campaign against Proposition 63 was outspent. Supporters raised close to \$4.5 million, while opponents were able to raise about \$868,000.

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Nov. 8, 2016, 11:09 p.m.



By DAVID MONTERO

"Millions" fear their liberties will be threatened under a Trump administration, McMullin warns

Exhibit 89

8

EXHIBIT 90

In The Matter Of:

*Shawn J. Tardy, et al. vs.
Martin J. O'Malley, et al.*

*Christopher S. Koper, Ph.D.
Vol. 1
February 3, 2014*

*Gore Brothers Reporting & Videoconferencing
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Exhibit 90

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

SHAWN J. TARDY, et al.

Plaintiffs

Case No.

vs.

1:13-cv-02841-CCB

MARTIN J. O'MALLEY, et al.

Defendants

_____/

The deposition of CHRISTOPHER S. KOPER,
PH.D. was held on Monday, February 3, 2014, commencing
at 1:48 p.m., at George Mason University, Research
Hall, 4400 University Drive, Fairfax, Virginia 22030,
before Amanda J. Curtiss, CSR, Notary Public.

REPORTED BY: Amanda J. Curtiss, CSR

1 APPEARANCES:

2
3 ON BEHALF OF THE PLAINTIFFS:

4 JOHN PARKER SWEENEY, ESQUIRE

5 JAMES W. PORTER, III, ESQUIRE

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1 MR. SWEENEY: All right. Let's pull out
2 the 2004 article. Let's mark this as the next exhibit.
3 I think we're finally at five.

4 (Koper Exhibit 5 was marked for
5 identification.)

6 (Off the record.)

7 BY MR. SWEENEY:

8 Q Let's go back on the record.

9 On page 81 of your 2004 report that we've
10 marked as Koper Exhibit 5, you state your conclusions
11 with respect to the effect of the assault weapon and
12 large capacity magazine federal ban; correct?

13 A Are you referring to the first full
14 paragraph?

15 Q Yes, I am.

16 A That's a partial statement of it, yes.

17 Q All right. And you state there quote,
18 "Because offenders can substitute non-banned guns and
19 small magazines for banned AWs and LCMs," meaning
20 assault weapons and large capacity magazines?

21 A Correct.

1 Q "There is not a clear rationale for
2 expecting the ban to reduce assaults and robberies with
3 guns." Am I reading that correctly?

4 A Yes.

5 Q And that correctly and accurately state
6 your conclusion with respect to the impact on
7 firearm-related crime of the federal ban on assault
8 weapons and large capacity magazines; correct?

9 A That's a partial statement of it.

10 Q All right. But -- but accurate in and of
11 itself?

12 A Yes.

13 Q Okay. And when you say you would not
14 expect the assault weapon or large capacity magazine
15 ban to reduce assaults with guns, that would include
16 assaults leading to homicides; correct?

17 A Not exactly. What I'm saying here is I
18 don't expect the overall level of assaultive violence
19 with guns to change whether or not these guns and
20 magazines are available, but what I am hypothesizing is
21 that changes in the use of these guns and magazines

1 could affect the share of attacks that involve -- that
2 result in injuries or deaths.

3 Q But -- but they -- you would not expect a
4 ban on assault weapons or large capacity magazines to
5 actually reduce the number of firearm-related assaults
6 or robberies; correct?

7 A Correct.

8 Q And you would not expect a ban on assault
9 weapons or large capacity magazines to reduce
10 firearm-related home invasions; correct?

11 A No. Correct, I mean.

12 Q And you wouldn't expect a ban on assault
13 weapons or large capacity magazines to reduce the
14 number of firearms assaults on police officers;
15 correct?

16 A Correct. That's fair enough.

17 Q On note 95 on that page, you address I
18 believe state bans on assault weapons in which you say,
19 "A few studies suggest that state-level assault weapon
20 bans have not reduced crime." Am I reading that
21 correct?

1 Q All right. And are you aware of anyone
2 else's data with respect to studying the impact of the
3 federal ban on assault weapons and large capacity
4 magazines that reached a conclusion different from the
5 conclusion that you state here?

6 A No.

7 Q Would you agree with me that the government
8 interest to be served by the federal assault weapon ban
9 and large capacity magazine ban was the reduction of
10 firearm-related violence; correct?

11 A You could view it that way or you could
12 view it more specifically as trying to get a reduction
13 in shootings in incidents with high numbers of shots
14 fired. And so, you know, again, I tended to view --
15 judge this more specifically in terms of effects on gun
16 injuries and gun deaths. As I noted in the report,
17 given the trends in use of assault weapons and large
18 capacity magazines that had been observed to that
19 point, I felt it was actually premature to make any
20 definitive conclusions about the ban's effects on gun
21 deaths and injuries. I felt that the effects of the

1 ban were still unfolding at that time and might still
2 take a while to fully unfold.

3 Q Isn't it true that as you sit here today,
4 you cannot conclude with a reasonable degree of
5 scientific probability that the federal ban on assault
6 weapons and large capacity magazines reduced crimes
7 related to guns?

8 A Correct.

9 Q And it didn't reduce the number of deaths
10 or injuries caused by guns either; correct?

11 A Correct.

12 Q Returning to your report for a moment,
13 Professor. I lost my copy of.

14 On paragraph five at the top of page two
15 you say, "Based on my research, I found, among other
16 things, that assault pistols" --

17 A I'm sorry. Could you clarify for me?

18 Q I'm sorry. Page two.

19 A Page two. Got you.

20 Q Paragraph five.

21 A Uh-huh.

1 Q Under "Summary of Findings."

2 A Okay.

3 Q You state, "Based on my research, I found,
4 among other things, that assault pistols are used
5 disproportionately in crime in general, and that
6 assault weapons more broadly were disproportionately
7 used in murder and other serious crimes in some
8 available data sources," correct?

9 A Yes.

10 Q Let's see if we can pull that apart so I
11 can understand what you're saying here. Now, how do
12 you define assault pistols?

13 A Handguns that have the military style
14 features qualifying as assault weapons.

15 Q And would you agree with me that they
16 became popularly used by criminals in connection with
17 the so-called crack epidemic of the 1980s?

18 A I don't know that I can make a statement
19 that specific. I can say that, I mean, there are
20 statistics in the report on how widely they were used
21 in crime. Generally assault weapons accounted for a

1 which one might try to infer that, but the case, yeah,
2 it's not as clear. It's fair to say.

3 BY MR. SWEENEY:

4 Q Now, in paragraph eight of your report, you
5 state in the second sentence that Maryland's
6 recently-enacted ban on assault weapons and large
7 capacity magazines has the quote "potential" close
8 quote to accomplish a couple of things; correct?

9 A Yes. Okay.

10 Q Now, when you say potential, I'm trying to
11 understand what you mean here. Would you agree with me
12 that any law would have the potential to produce a
13 benefit?

14 MR. FADER: Objection.

15 THE WITNESS: Might depend on -- on what it
16 is. In this case, you know, I'm saying potential based
17 largely on my studies of the federal assault weapons
18 ban and what -- what we found there.

19 BY MR. SWEENEY:

20 Q Can you state with a reasonable degree of
21 scientific probability that the ban on assault weapons

1 and large capacity magazines in Maryland will reduce
2 the number of crimes committed with assault weapons and
3 other firearms with large capacity magazines?

4 A I can't put a probability on that. You
5 know, all I can say is based on the experience with the
6 federal assault weapons ban, that there are grounds for
7 believing that the Maryland law could achieve that in
8 extrapolating from the results of the federal study.
9 Otherwise, one has to actually study the implementation
10 of the Maryland law to begin putting, you know,
11 probabilities on it and measuring those effects.

12 Q All right. Can you say to a reasonable
13 degree of scientific probability that the ban on
14 assault weapons and large capacity magazines in
15 Maryland will reduce the number of shots fired in gun
16 crimes?

17 A Not sure what you mean by a reasonable
18 probability 'cause I just I can't put a probability on
19 it and tell you how likely it is to occur.

20 Q Can you say to a reasonable degree of
21 scientific probability that the Maryland ban on assault

1 weapons and large capacity magazines will reduce the
2 number of gunshot victims in such crimes?

3 A Again, same answer. I can't state it with
4 an exact probability at this time.

5 Q And if I ask you the same question with
6 respect to number four, reduce the number of wounds per
7 gunshot victim, and five, reduce the lethality of
8 gunshot injuries when they do occur, and six, reduce
9 the substantial societal costs that flow from
10 shootings, would your answer be the same?

11 A Yes.

12 Q Okay. Now, the Maryland law does not
13 prohibit all semi-automatic firearms; correct?

14 A Correct.

15 Q And criminals can substitute semi-automatic
16 firearms that aren't banned; correct?

17 A Those and other guns.

18 Q Right. And isn't that variable something
19 that you can't control and one of the reasons why you
20 can't say to any probability whether or not the ban
21 will accomplish the six items that you state in

1 paragraph eight of your report?

2 MR. FADER: Objection.

3 THE WITNESS: In principle, the
4 substitution of non-banned guns and magazines has the
5 potential to lessen the lethality and injuriousness of
6 gun attack incidents. So I wouldn't say that the
7 Maryland ban is going to reduce the rate of gun crime,
8 but what I am saying is there's a possibility it could
9 reduce shots fired, people hit, wounds inflicted, those
10 sorts of things in attacks that -- that happen.

11 BY MR. SWEENEY:

12 Q If a particular banned assault rifle, a
13 Colt AR-15, can readily be substituted with a Colt AR
14 HBAR, isn't the ban unlikely to have any significant
15 impact on the use of assault rifles in crime?

16 A Well, that one particular instance, it
17 seems that the policy makers for whatever reason have
18 allowed one similar variation of the AR-15 to still be
19 legal. I don't know what all the considerations were
20 in doing that. I suppose it was part of political
21 bargaining. But it does raise the possibility that

EXHIBIT 91

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 the 1990s, and gun crime dropped very
2 substantially throughout the 1990s. But we
3 wanted to be careful in not necessarily
4 attributing that to the assault weapons ban.
5 There were a lot of factors that could be
6 driving down gun crime.

7 And what seemed -- what has always
8 seemed most logical to me is that a law like
9 this will be most likely to not necessarily
10 affect the level of gun crime, because people
11 who can't get assault weapons or high-capacity
12 magazines can still commit crime with other
13 guns and magazines, but what it can do is
14 reduce the likelihood that those gun crimes
15 result in injuries and deaths by forcing
16 offenders to use other sorts of weapons.

17 So that's why we looked at a lot of
18 the particular types of measures that we were
19 trying to emphasize in those reports rather
20 than just, you know, saying, well, gun crime
21 went down, you know, during the 1990s, and
22 trying to attribute that to the ban. That
23 would be more theoretically ambiguous, and it's
24 just harder to do. There are a lot of
25 different factors that could be affecting gun

1 crime during that time.

2 Q Why would forcing criminal assailants
3 to use other sorts of weapons drive -- make a
4 criminal attack less lethal or less injurious?

5 A The notion is that attackers with
6 assault weapons and high-capacity magazines
7 will, on average, fire higher numbers of shots.
8 And when you have higher numbers of shots being
9 fired in gun attacks, you'll have a greater
10 likelihood of deaths or injuries stemming from
11 those attacks.

12 Q Possibly.

13 But what if they, instead of going to
14 reduced-capacity firearms, use airplanes or
15 Molotov cocktails or trucks going down New York
16 City streets?

17 A Well, those are different ways that I
18 suppose someone can try to commit mass casualty
19 events. But I guess I would also look at it
20 this way. We have restrictions in federal law
21 on things like destructive devices and machine
22 guns that have long been outlawed and -- or
23 heavily regulated. And that's because of their
24 capacity to inflict mass casualty incidents.

25 Well, despite that, we still have

1 So the government is within its
2 power, I guess you're saying to me, to regulate
3 those kinds of weapons.

4 A To regulate particular types of
5 weaponry that appear to be particularly
6 dangerous, or there is the wording still in the
7 Heller decision about the types of weaponry the
8 government might still regulate.

9 MS. BARVIR: Can we go off the
10 record.

11 (A brief recess was taken.)

12 MS. BARVIR: Go back on the record.

13 Before we broke, I was going to enter
14 this new report into evidence as Exhibit 4.
15 (Exhibit 4 was marked for identification.)

16 BY MS. BARVIR:

17 Q Can you identify this document for
18 me.

19 A Yes. This is an article that I wrote
20 with Darren Reedy back in -- published it back
21 in 2003. It was looking at the outcomes of
22 attacks -- or contrasting the outcomes of
23 attacks involving semiautomatic pistols and
24 revolvers.

25 Q So you recognize this document.

1 A Yes.

2 Q I'm sorry, what were you studying in
3 this 2003 report?

4 A So we were comparing handgun attacks
5 involving semiautomatic pistols to those
6 involving revolvers in terms of their outcomes,
7 looking at things like shots fired, number of
8 people hit, number of wounds inflicted per
9 victim.

10 Q Can you describe your conclusions in
11 this briefly.

12 A Sure. In this study we found that
13 attacks involving semiautomatic weapons, on
14 average, resulted in more shots fired, and, on
15 average, they resulted in more people hit than
16 did attacks with revolvers.

17 Q Thank you.

18 The first page of the document that's
19 titled -- labeled 151, in the "Conclusion," can
20 you read the first sentence for me.

21 A "The findings provide limited
22 evidence that recent growth in the production
23 and use of pistols has contributed to higher
24 levels of gunshot victimizations. However,
25 available data did not permit an assessment of

1 whether the association between gun types and
2 assault outcomes are mediated by
3 characteristics of incidents and actors."

4 Q Thank you.

5 The first bit says "limited
6 evidence." In what way was it limited?

7 A I guess in the sense that it was --
8 in some respects, it's kind of indirect
9 evidence. So we're looking at this, and we're
10 saying, okay, attacks with pistols result in
11 more shots fired and more people hit. So, by
12 extension, that suggests that this -- that
13 recent growth in the use of pistols over the
14 last few decades preceding this study had
15 likely contributed to growth in gunshot
16 victimizations.

17 Q Okay.

18 So am I correct in understanding this
19 study was about the use of semiautomatic
20 pistols without regard to whether LCMS were
21 used?

22 A Correct. We could not measure that
23 exactly.

24 Q Why is that?

25 A The gun information was often

1 limited. Sometimes in the case files it just
2 said that it was a semiautomatic weapon, and it
3 didn't have the exact make and model or
4 magazine capacity.

5 Q Is it fair to say that you're telling
6 me that there was insufficient data regarding
7 the use of LCMs to draw strong conclusions
8 regarding magazine capacity in this study?

9 MR. ZELIDON-ZEPEDA: Objection.

10 Misstates the testimony.

11 A We could not look specifically at
12 cases involving LCMs and test them against
13 others, but, by extension, the results
14 certainly have implications for use of LCMs
15 because we can expect that some -- that, in
16 general, these semiautomatics are going to have
17 higher ammunition capacities and that some
18 share of them -- we don't know exactly what
19 share, but that some share involved
20 high-capacity guns.

21 Q Okay.

22 At the bottom of page 152, the first
23 column under "Methods," that last sentence
24 says, "The lack of specific gun model
25 information precluded precise measurement of

1 ammunition capacity for all but a very small
2 number of gunfire incidents."

3 Do you see that?

4 A Yes.

5 Q Do you know what the very small
6 number was offhand?

7 A No.

8 Q Is it accurate to say that a finding
9 of the 2003 study was that while pistol cases
10 involving more shots fired, they were not
11 significantly more likely to result in injury,
12 fatal or nonfatal, than were revolver cases?

13 A If you're focusing on that specific
14 measure, what was the likelihood that the case
15 resulted in someone getting hit, I don't think
16 there was a difference there.

17 Q The words that I'm gathering from --
18 it's on page 153. Let's see if we can find it
19 so we're all under the same understanding here.
20 Yes, I think it's right under figure 2 there.
21 "Although pistol cases involved higher numbers
22 of shots, they were not significantly more
23 likely." Right?

24 A Okay. Yes.

25 Q Are you referencing statistically

1 A "However, the key mechanism for a
2 semiautomatic weaponry effect is the number of
3 wounds; that is, does the higher number of
4 shots fired in pistol cases increase the
5 likelihood that gunshot victims will suffer
6 multiple wounds, thereby making it more likely
7 that victims will die?"

8 Q You're posing the question of whether
9 a higher number of shots fired in pistol cases
10 increases the likelihood that victims will
11 suffer multiple wounds, making it more likely
12 they would die. Correct?

13 A Right. That's one mechanism for a
14 semiautomatic effect. So it could affect the
15 number of people wounded, or it could affect
16 the number who have multiple wounds.

17 Q Right.
18 What was your conclusion?

19 A In this particular study, we did not
20 find that there is a significant difference
21 between the two sets of cases. I think the
22 actual number of wounds per victim was very
23 similar for the two groups. I think the
24 proportion that had multiple wounds might have
25 actually been a little higher for the

1 semiautomatic cases, but for this particular
2 sample, number of gunshot wounds per victim was
3 not a key factor.

4 Q Can you read the last sentence of
5 that paragraph for me.

6 A "However, neither of these
7 differences"?

8 Q "Therefore."

9 A "Therefore, we would not expect
10 victims shot with pistols to die more
11 frequently than victims shot with revolvers,
12 holding gun caliber, wound location, the
13 victim's physical condition, and other relevant
14 factors constant."

15 Q Remind me, which type of handgun can
16 accept attachable magazines, including LCMs,
17 pistols --

18 A Pistols.

19 Q I'm sorry, what was your answer?

20 A Pistols.

21 Q Thank you.

22 A Sorry.

23 Q So from this study, do you have any
24 way of determining whether LCMs were used in
25 the pistol cases studied in 2003?

1 A I cannot say for sure how many did,
2 but it is likely -- in fact, I should say we
3 know that some did. There were some cases in
4 the data where, yeah, we were able to make that
5 determination, just not enough to do a separate
6 analysis with those.

7 But it's reasonable to infer that,
8 you know, some number of these semiautomatic
9 pistol cases would have involved large-capacity
10 magazines, and we did find a number of attacks
11 that involved more than ten shots fired.

12 Q You just don't know how many for sure
13 involved magazines over ten rounds?

14 A That's correct.

15 Q Okay.

16 You can't say -- so is it fair to say
17 that you can't say from this research that LCMs
18 weren't used in a majority of pistol cases you
19 studied?

20 A I'm sorry, say that again.

21 Q The double negative made it really
22 difficult.

23 Can you say from this research that
24 LCMs were not used in a majority of the pistol
25 cases you studied in 2003?

1 A I can't say that for sure. You're
2 saying that LCMs were not used in the majority.
3 That's what you're asking?

4 Q I think that's what I'm asking.

5 A I doubt that LCMs were used in a
6 majority of these cases, but I can't say for
7 sure.

8 Q Why do you doubt that?

9 A Because I've never -- in different
10 gun samples that I've looked at, I've never
11 seen -- well, I should correct that. In much
12 of the time when you look at general samples of
13 guns used in crime, you don't see LCM firearms
14 generally accounting for the majority of the
15 semiautomatic weapons.

16 Q What is a percentage you would
17 usually see?

18 A Back around that time, around the
19 time that this work was being done, estimates
20 suggested, and, you know, and different data
21 sources, anywhere from, I think -- and I talk
22 about this in the 2004 report -- anywhere from,
23 like, 16 percent to 25 percent. Recently I'm
24 seeing higher numbers than that, but back at
25 that time that's where it was.

1 Q But you can't be sure.

2 A Cannot be sure, no.

3 Q Is it fair to say that based on the
4 data of this study that pistols equipped with
5 LCMs could actually be less likely to produce
6 deaths than revolvers?

7 MR. ZELIDON-ZEPEDA: Objection.
8 Incomplete hypothetical.

9 A I mean, I would have to look. I
10 don't know for sure.

11 Q Can you, using this data, support the
12 statement that gunshot injury incidents
13 involving LCMs were more likely to produce
14 death than those with revolvers?

15 MR. ZELIDON-ZEPEDA: Same objection.

16 A Yeah, I can't be entirely certain.
17 It's a reasonable extrapolation from the data,
18 but I can't say that for sure.

19 Q How about the statement that gunshot
20 injury incidents involving LCMs were more
21 likely to produce death than those without
22 LCMs?

23 MR. ZELIDON-ZEPEDA: Same objection.

24 A Again, you would have to look more
25 closely at the data. It could be that even

1 though the semiautomatic cases overall were not
2 more likely to produce multiple -- higher
3 numbers of wounds, if you were able to focus
4 specifically on the LCM cases, maybe you would
5 see that. It's hard to know.

6 Q But you couldn't do that.

7 A Couldn't do that.

8 Q Earlier you had alluded to finding
9 some number of incidents where more than ten
10 shots were fired. I've seen approximations
11 around 5 percent. Does that sound right?

12 A No. It depends on how you count,
13 whether you're counting incidents or whether
14 you're counting victims. So we found that 2
15 and a half to 3 percent of the gunfire
16 incidents involved more than ten shots fired.
17 They accounted for 4 to 5 percent of the
18 victims in the sample.

19 Q Thank you for that clarification.
20 How many incidents did you find where
21 more than ten shots were fired?

22 A You have to look at table 1 to see
23 this.

24 Q Page 154?

25 A Yes.

1 Q You're going to have to help me with
2 this.

3 A So it's six by the minimum estimate.
4 Two, three, four, five, six. If you go by --

5 Q Where do you see that?

6 A Table 1, in the first column, under
7 "Minimum Estimates," and you have "Pistol
8 Incidents" and then --

9 Q "Shots fired, ten or more," so you
10 count up the 11, 12, 13. Is that right?

11 A Yes. So six by the minimum estimates
12 or, let's see, one, two, three, four, five,
13 six -- or seven by the maximum.

14 Q Is the maximum the number in the
15 parentheses, or where is -- oh, on the other
16 side of the table.

17 A Right.

18 Q Thank you.

19 A Yes, on the other side of the table.

20 Q Sorry.

21 So six or seven.

22 Out of how many incidents total that
23 you were looking at this sample?

24 A So there were 165 pistol incidents.
25 Actually, I should say two. I shouldn't forget

1 the revolver cases. They were in there, too.

2 Q And that adds the 71?

3 A Yes.

4 Q What is that number?

5 A Yes, so 71 revolver incidents.

6 Q And 165 pistol?

7 A Yes.

8 Q Was that 236? That's the number I
9 get. I think that's right.

10 So 6 out of 165 incidents with
11 semiautomatics involved more than ten shots
12 fired.

13 A Yes.

14 Q That's roughly 3.6 percent?

15 A Yes, 3.6 to 4 if you go with the
16 maximum incidents.

17 Q Thank you.

18 Can you explain to me why you focused
19 on crime with more than ten shots fired here?

20 A We didn't actually highlight that
21 particular issue in this article. In this
22 article we were just focusing on the issue of
23 semiautomatics versus revolvers. It was in my
24 later 2004 assault weapons report that I drew
25 more attention to this particular issue because

1 it seemed very relevant to assessing what sorts
2 of effects bans on large-capacity magazines
3 might have on gunshot victimizations.

4 Q So you did more focus on the ten
5 shots -- you had a finding in 2003 that there
6 were a small number of events where more than
7 ten shots were fired, but you didn't really
8 study that and really study the ten shots until
9 2004. Is that what you're saying to me?

10 A Yes. I don't believe that I
11 highlighted it in this particular article. It
12 was an issue that I highlighted more in the
13 2004 DOJ report.

14 Q I think that's correct, yes. Thank
15 you.

16 But, in any event, 2004, 2003, why
17 are we focusing on ten shots fired in our
18 research?

19 A Well, because that's the limit on --
20 typical limit on magazine capacity. It
21 certainly was under the federal law and under
22 many state laws.

23 So one way to gauge the potential
24 effects that restrictions on LCMS -- sorry,
25 large-capacity magazines -- sometimes I'll slip

1 into LCMS.

2 Q That's fine.

3 A One way to gauge the potential
4 effects of that sort of law is to look at how
5 frequently more than ten shots are fired in gun
6 attacks and try to assess how many gunshot
7 victimizations stem from those attacks.

8 Q But what is so special about ten?
9 Like why do you suppose the government set the
10 number at ten?

11 MR. ZELIDON-ZEPEDA: Objection.

12 Calls for speculation. Lacks foundation.

13 A Yes, I mean, I don't know why they
14 would necessarily have picked ten as the limit.
15 Certainly you could -- from a prevention
16 perspective, you could argue for a lower limit.
17 They would have a greater effect. But ten has
18 been where a lot of people have settled. I
19 assume that reflects kind of the give-and-take
20 of the political process so that was where they
21 set it. If that answers your question.

22 Q Perfectly. Thank you.

23 Have you done any research that
24 segregates different magazine capacities? For
25 instance, have you studied the differences in

1 outcomes maybe between ten rounds -- what about
2 11 rounds, 15, 17, 27, 30, 50?

3 A No, I don't think so. Especially if
4 you're asking if I looked at attacks, say, with
5 a gun that has a 20-round magazine versus those
6 where I know it was a seven-round or something,
7 no.

8 Q Or 27 versus 11, 10.

9 Do you know of anyone who has done
10 that kind of research?

11 A I don't think I've seen anything like
12 that, to my knowledge.

13 Q So sitting here today, can you state
14 with any reasonable degree of certainty that
15 it's the addition of that 11th round that makes
16 a difference and not, say, the 15th?

17 MR. ZELIDON-ZEPEDA: Objection.

18 Vague.

19 A My logic in focusing here is to look
20 at how often -- if you're going to restrict
21 magazines at ten rounds, how often could that
22 make a difference, how often could that prevent
23 people from firing a higher number of shots.
24 If you're getting at the notion of like looking
25 at these sorts of attacks and determining how

1 often, say, a person was hit by an 11th shot as
2 opposed to a 15th shot or something along those
3 lines, I haven't seen anything like that.

4 People haven't dug in that far.

5 Q Or even -- that could be one way of
6 looking at it, I suppose, but also using -- I
7 don't know if there's a way to show what the
8 magazine capacities were above ten rounds, if
9 there's any way to -- has anyone researched,
10 like, what are the numbers over 11, what are
11 the numbers over 15, what are the numbers over
12 17, et cetera.

13 A I mean, other than showing here, you
14 know, how many cases involved, you know, say
15 like 11 or 15 or what have you, no, I don't
16 think there's -- I don't think there's been
17 much more detail than that. I don't know what
18 things you might see if you fished around in
19 the numbers.

20 The general principle is that more
21 shots fired seems to be associated with more
22 victims hit, more wounds. But beyond that, I
23 don't know if anyone has gotten into those
24 types of specifics that you mentioned.

25 Q So to the extent that your research

1 and what seems to be out there is aggregating
2 all incidents involving magazines over ten
3 rounds, without any distinction as the
4 capacities grow, would it be true like that you
5 would just increase your numbers of gun
6 incidents and shots fired, et cetera, if you
7 keep going down, if you change the definition
8 to, say, five rounds or six rounds?

9 A Yes, one would expect that if you did
10 that, if you went down to lower limits, that,
11 yeah, you could prevent even more -- have more
12 of a preventive effect on number of shots fired
13 in victimizations.

14 Q And your research would capture more
15 crimes that would fit the bill of an LCM crime.

16 A Yes.

17 Q All right. I would like to discuss
18 your 2004 Baltimore Sun editorial,
19 "Disassembling the assault gun ban."

20 A Okay.

21 MS. BARVIR: We'll mark that.

22 (Exhibit 5 was marked for identification.)

23 Q I was able to get this off the
24 Internet. It's not the one that -- it's not
25 like a court copy, but I hope we can agree that

1 A Yes.

2 Q Which we can't -- we haven't been
3 able to establish that certainly that will be
4 the case, or to a reasonable degree of
5 certainty.

6 A We don't yet have any data showing us
7 that, yes, that happened.

8 Q "That happened" being the LCM ban had
9 an impact on gun crime?

10 A Right, right.

11 Q Move to page 81.

12 The last full paragraph before the
13 9.1 break summarizes another finding. "Because
14 offenders can substitute non-banned guns and
15 small magazines for banned AWs and LCMs, there
16 is not clear rationale for expecting the ban to
17 reduce assaults and robberies with guns."

18 A Correct.

19 Q That's right?

20 Does that statement in your 2004
21 report correctly and accurately state your
22 conclusion with regard to the impact on
23 firearm-related crime, the federal ban?

24 A Yes, that's my view, that
25 restrictions like this are not likely to affect

Exhibit 91

1 number of people killed, what is the number.
2 Sometimes two people differentiate between
3 different categories of mass shooting events,
4 like those that occur in a public place versus
5 all of them.

6 In the latest study that my
7 colleagues and I did, the 2017 paper, we just
8 tried to look broadly at incidents involving
9 four or more people murdered, and we just used
10 that broad definition in the latest study. But
11 there is no agreed-upon standard to use.

12 Q So throughout your report it might
13 mean different things depending on whose work
14 or what opinions you're making and what
15 research you were -- or data you were looking
16 at. Is that accurate?

17 A Yes.

18 Q Is there anything in your 2004 report
19 that analyzes the impact of the federal ban on
20 homicide rates?

21 A On the homicide rate specifically,
22 no. We did do some descriptive analyses
23 looking at some different indicators reflecting
24 the injuriousness and/or lethality of gun
25 violence during that period.

1 Q What did those analyses say?

2 A There are a number of different
3 measures one might look at. Figure 9.1 on page
4 82, for example, "Percentage of violent gun
5 crimes resulting in death," that's something
6 that might conceivably be driven down by
7 assault weapons, LCM restrictions. On later
8 pages later in this chapter -- let me see here,
9 I'll go back. Figure 9.3 on page 94,
10 "Percentage of gunshot victimizations resulting
11 in death," figure 9.4 on page 96, "Percentage
12 of gunfire cases resulting in gunshot
13 victimizations," that wouldn't be specific to
14 deaths. That's just people getting shot or
15 injured per case, but ... let's see.

16 There are some other -- table 9.4 has
17 some other measures that we considered and
18 looked at, like victims per gun homicide
19 incident. That's in table 9.4. That's also
20 specific to homicides. Some of the other
21 measures we look at in table 4 get into things
22 like wounds, wounds per victim.

23 Q You're saying these are all sorts of
24 analyses -- all sorts of trends that can be
25 driven down by an LCM ban or an AW ban?

1 A Yes.

2 Q What is your basis by saying that?
3 Why do you think that?

4 A If the assault weapons or
5 large-capacity magazine restrictions result in
6 fewer people getting shot per gun crime, so if
7 they don't affect the number of gun crimes and
8 the number of assaults but they make those
9 assaults less likely to result in injury or
10 death, then these are some of the types of
11 measures that might help to reveal that and
12 show that over time.

13 Q Is there any statewide data that
14 would show, in states that have these types of
15 bans, that that's actually happening?

16 A I don't think so. Well, you could
17 look at certain things at the state level. You
18 could look at the ratio of, say, gun murders to
19 nonfatal gun crimes. Unfortunately, it's --
20 I'm not aware of any estimates, state-level
21 estimates on shootings. You would probably
22 have to go into lots of jurisdictions and try
23 to collect these sorts of data from local
24 police agency records and look at it in
25 different places.

1 Q I have one more quote I want to ask
2 you about on page 196 in the summary. I guess
3 it's a summary of yet another set of findings.
4 Correct?

5 A Yes.

6 Q Can you read for me the third
7 sentence.

8 A "Therefore" -- starting with
9 "Therefore"?

10 Q Yes.

11 A "Therefore, we cannot clearly credit
12 the ban with any of the nation's recent drop in
13 gun violence.

14 Q Is that still your opinion today?

15 A Yes.

16 Q Based on the federal ban's impact --
17 the research you did in 2004?

18 A Yes.

19 Q Can you read the next sentence.

20 A "And, indeed, there's been no
21 discernible reduction in the lethality and
22 injuriousness of gun violence, based on
23 indicators like the percentage of gun crimes
24 resulting in death or the share of gunfire
25 incidents resulting in injury, as we might have

1 expected had the ban reduced crimes with both
2 assault weapons and large-capacity magazines."

3 Q So you're telling me that you think,
4 from all these figures and tables that we just
5 went through, those are the sorts of things
6 that could go down with an LCM ban or an AW
7 ban, but you didn't see that happening during
8 the time the federal ban was in effect?

9 A No, because use of large-capacity
10 magazines have remained high for at least
11 through the late 1990s and into the very early
12 2000s.

13 Q LCM use remained high?

14 A Yes. It remained high or rising
15 through the late 1990s. There were indications
16 it was starting to come down a little bit by
17 the early 2000s, but they had not yet gone down
18 below preban levels, and that was as far as I
19 could go with the data I had at that time.

20 Q They remained high through the late
21 '90s, started to go down, I'm sorry, did you
22 say in the early 2000s?

23 A It looked like, once we got into the
24 early 2000s, that maybe they were starting to
25 go down, but I was seeing kind of -- there's

1 limited data, and I was seeing mixed
2 indications. So I couldn't really conclude at
3 that time, based on what was available, that
4 LCM use had declined.

5 Q What was the trend in the violent
6 crime rates at that time?

7 A They were going down.

8 Q They were going down.

9 What about gun homicide rates?

10 A That was going down.

11 Q What about the number of deaths in
12 gun crime?

13 A Yes, gun deaths were going down.

14 Q Okay.

15 Do you know of anyone else who has
16 studied the impact of the federal ban and
17 reached different conclusions than you have?

18 A No. I did mention in my expert
19 report, I think, at least one other study, one
20 other recent econometric study that had looked
21 at the -- it was evaluating the effects of the
22 assault weapon bans on gun murder, and I think
23 that one also didn't find an effect from the
24 federal law.

25 Q So you're saying they agreed with --

1 intermediate outcome of decreasing the number
2 of assault weapons or LCMs that were appearing
3 in crime was really -- that's kind of the
4 extent of what your research found in 2004?

5 A That was the key finding, was that --

6 Q The key, thank you.

7 A That there were mixed -- that there
8 were mixed trends there. The use of assault
9 weapons had gone down, but looking more broadly
10 at use of all high-capacity weapons, that those
11 had not yet gone down at the time that I
12 finished the study.

13 Q And you also didn't find the more
14 distal -- is that the word you used -- outcome
15 of --

16 A Uh-hmm.

17 Q -- actually affecting crime rates --
18 gun violent crime rates, gun murders -- I'm
19 sorry.

20 A Yes, gun murders and gun injuries,
21 correct.

22 Q What would you say is the ultimate
23 outcome that the federal ban was trying to
24 effect?

25 A Ultimately, the goal was to reduce

1 crimes committed with high-capacity
2 semiautomatic -- well, assault weapons and
3 other high-capacity semiautomatic weapons to,
4 in the long run, reduce shootings and deaths
5 stemming from the use of those weapons.

6 Q So it sounded like the intermediate
7 outcome would have been reducing the crimes
8 using the LCMs and/or assault weapons so that
9 you can get to the more distal outcome of
10 reducing shootings and deaths.

11 A Yes.

12 Q As you sit here today, can you
13 conclude with any reasonable degree of
14 scientific probability that the federal ban
15 actually reduced crimes related to guns?

16 A Crimes related to guns?

17 Q Gun crime.

18 A Gun crime? No, I wouldn't. I would
19 not say that it affected the rate of gun crime.

20 Q Can you say with a reasonable degree
21 of scientific probability that the federal ban
22 reduced the number of injuries caused by guns?

23 A I can't say that during the time that
24 it was in effect, based on the data that I
25 have.

1 Q What about the number of deaths
2 caused by guns?

3 A No.

4 Q I think we're good with this for now.

5 A Let me -- there is one thing I should
6 qualify, though, which is that I made that
7 conclusion based on the data that I studied,
8 which went only up through the very early part
9 of the 2000s. If there is other data that came
10 out more recently suggesting that the ban was
11 making more of a dent in use of overall
12 high-capacity, semiautomatic weaponry by the
13 very end, very late period, like '03 and '04,
14 based on The Washington Post's study of LCM
15 trends in Virginia, that does raise the
16 possibility that maybe it was having a little
17 bit more of a desired effect by that very late
18 period, but that was just something that I
19 didn't -- wasn't within the scope of my study.

20 MS. BARVIR: I'm going to mark this
21 as Exhibit 7.

22 (Exhibit 7 was marked for identification.)

23 Q Do you recognize this document?

24 A Yes.

25 Q Can you describe it for me.

1 A It was a book chapter that I wrote in
2 2013 that summarized the results from my 2004
3 DOJ report.

4 Q Again, this was not based on new or
5 original research on the federal ban, but it
6 was more like a summary of the findings and
7 what happened in the year 2004. Correct?

8 A Yes, that's correct. I had done no
9 additional analysis here. I did report on a
10 few other things that were relevant that had
11 come out since then, but I didn't do any -- had
12 not done any further research on the issue.

13 Q Was The Washington Post data that you
14 were referring, was that done -- was that
15 involved in this at all?

16 A I did mention it.

17 Q You did mention it. Okay. Thank
18 you.

19 I'll just keep this for safekeeping
20 for now.

21 Finally, because we've talked about
22 it a few times, I would like to enter your 2017
23 report. I don't have any questions on it at
24 this time. And that's Exhibit 8.

25 (Exhibit 8 was marked for identification.)

EXHIBIT 92



SOAPBOX

Prop. 63 will reduce gun violence and send a message to NRA

BY GAVIN NEWSOM
Special to The Bee

October 26, 2016 02:10 PM
Updated October 28, 2016 09:16 AM

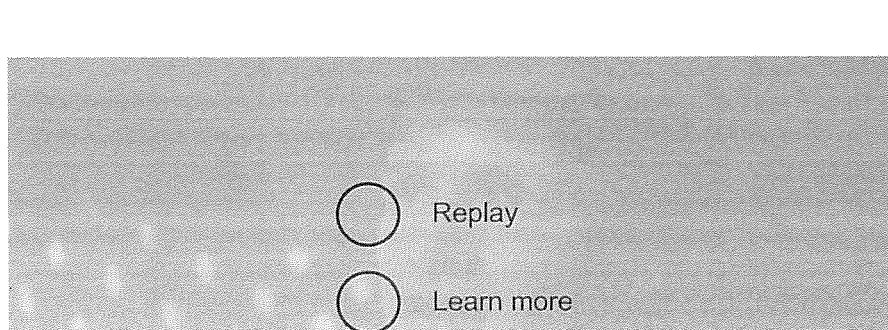
It shouldn't feel normal, and it shouldn't feel familiar when we hear about yet another horrific mass shooting.

We've seen the headlines so many times that we risk forgetting what they truly mean: loss, pain and unspeakable sadness. And we can never let the incessant bad news about gun violence lull us into a sense of helplessness and hopelessness.

We can and must do more to save more people – and Proposition 63 is part of that effort.

ADVERTISING

Exhibit 92
57



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We need to make a change. I sat in horror after the school shooting in Newtown, Conn., and thought: We have to take action now.

Then, more mass shootings, more lives lost. A father wished his daughter well as she headed back to the University of California, Santa Barbara, only to find out she had been shot and killed in front of her sorority.

A group of friends went out for a fun night at a club in Orlando that quickly turned into a nightmare. Most of the daily violence and tragedies don't make the news, but each and every shooting has its own heartbreaking story.

Then, I heard something that struck me directly: We are all answerable, all of us. I began to ask myself what I could do, and what the American people could do, to get our government to change these laws and to save lives.

So I reached out to the Law Center to Prevent Gun Violence and together we crafted Proposition 63, the Safety for All Act, on the November ballot.

Proposition 63 represents a historic and unprecedented chance for California voters to stand up to the National Rifle Association and bring about bold change.

The measure would ensure that people banned from owning guns do not possess them and require the reporting of lost and stolen guns. It would also require information sharing with our federal system on people prohibited from owning weapons, prohibit the possession of large-capacity military-style magazines and treat ammunition sales as gun sales – all to keep guns and ammo out of the wrong hands.

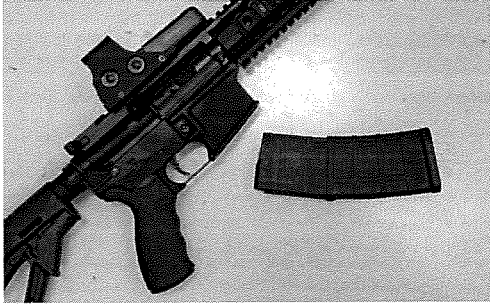
California has been leading for decades through the passage of smart gun laws, and we know for a fact that they work.

Exhibit 92
58

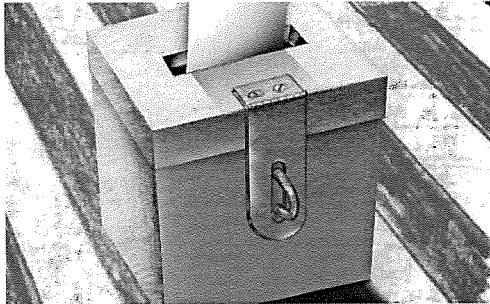
So let's do more and save more lives. We are not innocent bystanders. Proposition 63 will reduce gun violence.

Gavin Newsom is lieutenant governor of California and chief proponent of Proposition 63. He wrote this viewpoint on behalf of the Yes on Prop. 63 campaign and can be contacted at gavin@gavinnewsom.com.

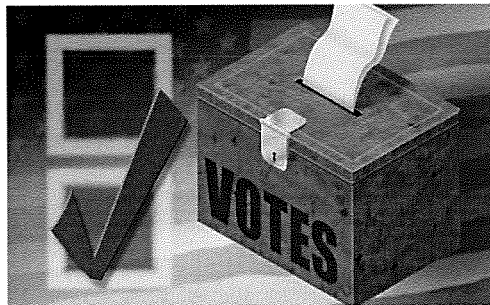
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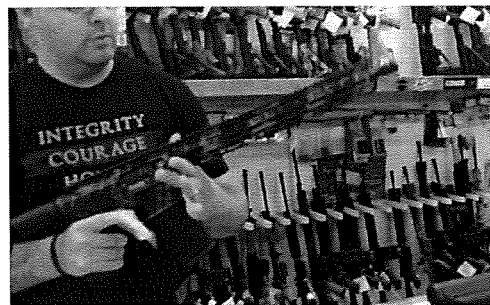
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CERTIFICATE OF SERVICE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Duncan, et al. v. Becerra*

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

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**DECLARATION OF ANNA M. BARVIR IN SUPPORT OF PLAINTIFFS'
COURT-ORDERED SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT; EXHIBITS 89-92**

on the following parties by electronically filing the foregoing on June 11, 2018, with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 11, 2018, at Long Beach, CA.

/s/Laura Palmerin
Laura Palmerin

CERTIFICATE OF SERVICE

17cv1017