Case 8	3:17-cv-00746-JLS-JDE Document 91 Filed (	)5/02/19 Pag	e 1 of 6 Page ID #:4922			
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9	IN THE UNITED STAT	ES DISTRIC	T COURT			
10	FOR THE CENTRAL DIS					
11	SOUTHERN					
12						
13						
14	STEVEN RUPP, et al.,	8:17-cv-007	46-JLS-JDE			
15	Plaintiffs,		NT'S OBJECTIONS TO E FILED IN SUPPORT			
		EVIDENCI	L FILLU IN SUFFURI			
16	<b>v.</b>	<b>OF PLAIN</b>	TIFFS' MOTION FOR Y JUDGMENT			
17	XAVIER BECERRA, in his official capacity as Attorney General of the	OF PLAIN SUMMARY Date:	<b>TIFFS' MOTION FOR</b> <b>Y JUDGMENT</b> May 31, 2019			
17 18	XAVIER BECERRA, in his official capacity as Attorney General of the State of California, et al.,	OF PLAIN SUMMAR Date: Time: Courtroom:	<b>TIFFS' MOTION FOR Y JUDGMENT</b> May 31, 2019 10:30 a.m. 10A			
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Defendant Xavier Becerra, Attorney General of the State of California, sued in his official capacity, submits the following objections to evidence filed in support of Plaintiffs' motion for summary judgment.

No.	Plaintiffs' Evidence	Defendant's Objections
1	Plaintiffs' Exhibits 21-24 <sup>1</sup>	Plaintiffs' Exhibits 21-24 ("NSSF
	(objection to the exhibits in their	Reports"), and all references to these
	entirety).	exhibits in Plaintiffs' Memorandum and Plaintiffs' Exhibit 2 (English
	Plaintiffs' Exhibit 21 is cited on	Rpt.), should be stricken from the
	page 6, lines 16-18, of Plaintiffs'	record because they were not timely
	Memorandum of Points and Authorities in Support of Plaintiffs'	made available to Defendant, and Defendant's expert did not have an
	Motion for Summary Judgment	opportunity to review them when
	("Plaintiffs' Memorandum"), ECF No. 86.	preparing a rebuttal report. (Fed. R. Civ. D. $26(a)(2)(B)(ii)$ ("The learnert]
	10. 00.	Civ. P. 26(a)(2)(B)(ii) ("The [expert] report must contain the facts or
	Plaintiffs' Exhibits 21-24 are also	data considered by the witness in
	extensively cited in, and relied upon by, the Expert Report of William	forming [the expert's opinions]"); Fed. R. Civ. P. 37(c)(1) ("If a party
	English (Pls. Exh. 2).	fails to provide information as
		required by Rule 26(a), the party
		is not allowed to use that information
		to supply evidence on a motion ").)
		The NSSF Reports are trade publications not freely available to
		the general public. (Supplemental
		Decl. of Peter H. Chang in Supp. of
		Def.'s Opp. to Pls.' Mot. for Summ.
		J. ("Supplemental Chang Declaration" or "Supp. Chang.
		Decl."), ¶ 4.) Plaintiffs did not
		produce the NSSF Reports in
		discovery. (Id. at ¶ 5.) Plaintiffs'
<u>.</u>	<sup>1</sup> Citations to "Disintiffs' Exhibits" as	"Pls Exh" are to exhibits annexed to

<sup>1</sup> Citations to "Plaintiffs' Exhibits" or "Pls. Exh." are to exhibits annexed to the Declaration of Sean. A. Brady in Support of Plaintiffs' Motion for Summary Judgement, ECF No. 78.

1	expert, William English, relied
2	extensively on the NSSF Reports to
3	prepare his opening expert report.
	( <i>See</i> Pls. Exh. 2 (English Rpt.), ECF No. 78-0, at 3-6; <i>see id.</i> , References.)
4	On October 30, 2018, Defendant
5	requested the NSSF Reports from
6	Plaintiffs so that Defendant's expert
7	may review them and use them in
	rebutting English's report. ( <i>Id.</i> at $\P$
8	6.) Plaintiffs did not provide the NSSF Reports to Defendants before
9	rebuttal expert reports were due. ( <i>Id.</i> )
10	Therefore, Defendant's expert
11	witness, John Donohue, did not have
	an opportunity to review the NSSF Reports that English relied on before
12	preparing his rebuttal report. (Def.
13	Exh. 7 at 247 n.3.) <sup>2</sup>
14	
15	Plaintiffs had possession of the NSSF
16	Reports since at least before October 25, 2018, when they served the expert
	report of William English, and likely
17	much earlier. (See Def. Exh. 46 at
18	1549:16-1551:4.) Yet, even though
19	Defendant expressly requested them so Defendant's expert may review
20	them for the rebuttal report, Plaintiffs
	did not provide the NSSF Reports to
21	Defendant until December 10, 2018,
22	two days before the deposition of
23	William English, and well after rebuttal reports were due. (Supp.
24	Chang Decl., ¶ 6.)
25	
26	
27	<sup>2</sup> Citations to "Defendant's Exhibit" or "Def. Exh." are to the exhibits annexed to the Declaration of Peter H. Chang, ECF No. 76 (for exhibits 1-45) or the
28	accompanying Supplemental Chang Declaration (for exhibit 46).
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1       2       Plaintiffs' Exhibit 2 (Expert Report of William English) (objection to report in its entirety).       Failure to timely produce underlying NSSF Reports. (See Objection No. 1.)         4       Lack of qualification to provide expert testimony. (Fed. R. Evid. 702; Sundance, Inc. v. DeMonte Fabricating Ltd., 550 F.3d 1356, 1362 (Fed. Cir. 2008) (holding that the trial court abused its discretion to permit a witness to testify as an expert where the witness had "no skill in the pertinent at" and thus was not "a qualified technical expert"); Pls. Exh. (English Rpt.) at 1-3 (claiming that his "scholarly research has focused on empirical methods in the social sciences, behavioral economics, and regulatory policy" and that he is "in the process of conducting research on the impact of various firearms laws within the United States").)         17       Lack of sufficient facts and unreliable methodology. (Fed. R. Evid. 702; Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 593 (1993) (observing that Federal Rule of Evidence 702 requires the court to conduct "a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology roperly can be applied to the facts in issue"); see Def. Exh. 7 (Donohue Rebutal Rpt. ¶ 2) at 245-52, ¶ 14-19 (the English Report is based on an unpublished student						
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<ul> <li>methodology properly can be applied to the facts in issue"); see Def. Exh. 7</li> <li>(Donohue Rebuttal Rpt. ¶ 2) at 245-</li> <li>52, ¶¶ 14-19 (the English Report is based on an unpublished student</li> </ul>						
<ul> <li>to the facts in issue"); see Def. Exh. 7</li> <li>(Donohue Rebuttal Rpt. ¶ 2) at 245-</li> <li>52, ¶¶ 14-19 (the English Report is based on an unpublished student</li> </ul>	24				-	
26 27(Donohue Rebuttal Rpt. ¶ 2) at 245- 52, ¶¶ 14-19 (the English Report is based on an unpublished student	25					
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1	paper that relied on flawed data-
2	collection methodology.)
3	Speculative expert testimony. (Fed.
4	R. Evid. 702; United States v.
5	<i>Hermanek</i> , 289 F.3d 1076, 1094 (9th Cir. 2002) ("The trial judge in all
6	cases of proffered expert testimony
7	must find that it is properly grounded,
8	well-reasoned, and not speculative before it can be admitted." (quoting
9	Fed. R. Evid. 702, comm. note));
10	Brady Decl., Ex. 2 (English Rpt.) at 6 ("Based on the statistics, research,
10	and estimates [from National
11	Shooting Sports Foundation production data for AR-platform
	rifles], it is my opinion that
13	semiautomatic, centerfire rifles with
14	detachable magazines and [that qualify as assault weapons under the
15	AWCA] are commonly owned and
16	used by millions of law-abiding Americans for a variety of lawful
17	purposes."); Def. Exh. 7 (Donohue
18	Rebuttal Rpt. ¶ 2) at 245-52, ¶¶ 14-19
19	(the English Report is based on an unpublished student paper that relied
20	on flawed data-collection
21	methodology.)
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