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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

**STEVEN RUPP, et al.,**

Plaintiffs,

**v.**

**XAVIER BECERRA, in his official  
capacity as Attorney General of the  
State of California, et al.,**

Defendants.

8:17-cv-00746-JLS-JDE

**DEFENDANT'S STATEMENT OF  
GENUINE DISPUTES OF  
MATERIAL FACT**

Date: May 31, 2019  
Time: 10:30 a.m.  
Courtroom: 10A  
Judge: Hon. Josephine L. Staton  
Trial Date: N/A  
Action Filed: April 24, 2017

In accordance with Local Rule 56-2 and this Court's procedures, Defendant Xavier Becerra, Attorney General of the State of California, sued in his official capacity ("Defendant"), submits the following Statement of Genuine Disputes of Material Fact in support of his Opposition to Plaintiffs' Motion for Summary Judgment, filed concurrently herewith.

While Defendant disputes certain material facts herein, resolution of these facts do not require trial. *See* Def. Opp. to Mem. in Supp. of Pls. Mot. Summ. J., filed concurrently herewith, at 13-14. In addition, Defendant notes objections to evidence cited in support of Plaintiffs' Statement of Uncontroverted Facts and Conclusions of Law, which are also discussed in Defendant's Objections to Evidence Filed in Support of Plaintiffs' Motion for Summary Judgment, filed concurrently herewith.

|   | <b>Plaintiffs' Statement of Uncontroverted Facts and Conclusions of Law</b>  | <b>Defendant's Genuine Disputes of Material Fact and Objections</b> |
|---|--|---|
| 1 | All individual plaintiffs are residents of the State of California. (Willis Decl. ¶ 1; Dember Decl. ¶ 1; Martin Decl. ¶ 1; Rupp Decl. ¶ 1; Valencia Decl. ¶ 1; Johnson Decl. ¶ 1; Seifert Decl. ¶ 1; Jones Decl. ¶ 1.)   | Undisputed.   |
| 2 | All individual plaintiffs are law-abiding and are not prohibited from owning firearms under the laws of the United States or the State of California. (Willis Decl. ¶ 2; Dember Decl. ¶ 2; Martin Decl. ¶ 2; Rupp Decl. ¶ 2; Valencia Decl. ¶ 2; Johnson Decl. ¶ 2; Seifert Decl. ¶ 2; Jones Decl. ¶ 2.) | Undisputed.   |

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| 1 | 3 | All individual plaintiffs have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner. (Willis Decl. ¶ 2; Dember Decl. ¶ 2; Martin Decl. ¶ 2; Rupp Decl. ¶ 2; Valencia Decl. ¶ 2; Johnson Decl. ¶ 2; Seifert Decl. ¶ 2; Jones Decl. ¶ 2.) | Undisputed. |
| 2 | 4 | Plaintiff Troy Willis is a retired reserve officer for the Indio Police Department. (Willis Decl. ¶ 2.)  | Undisputed. |
| 3 | 5 | Plaintiffs Willis and Christopher Seifert each lawfully own a semiautomatic, centerfire rifle with a detachable magazine equipped with one or more prohibited features under the AWCA. (Willis Decl. ¶ 3; Seifert Decl. ¶ 3.)  | Undisputed. |
| 4 | 6 | Plaintiff Dennis Martin lawfully owns a semiautomatic, centerfire rifle with a non-fixed magazine that he registered with the California Department of Justice as an “assault weapon.” (Martin Decl. ¶ 3. )  | Undisputed. |
| 5 | 7 | Plaintiff Martin is prohibited under the AWCA and its related regulations from replacing his firearm’s “bullet button” with a standard magazine release, and but for these restrictions would immediately do so. (Martin Decl. ¶ 4.)   | Undisputed. |
| 6 | 8 | Plaintiffs Willis, Martin, and Seifert are each prohibited under the AWCA from engaging in certain activities with their registered “assault weapons” that are otherwise   | Undisputed. |

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| 1  |    | lawful with any other firearm not            |  |
| 2  |    | classified as an “assault weapon,”           |  |
| 3  |    | and but for these restrictions               |  |
| 4  |    | Plaintiffs Willis, Martin, . . . , and . . . |  |
| 5  |    | would engage in such activities.             |  |
| 6  |    | (Willis Decl. ¶ 5; Martin Decl. ¶ 5;         |  |
| 7  |    | Seifert Decl. ¶ 4. )                         |  |
| 8  | 9  | Plaintiff Steven Rupp and Michael            | Disputed. Plaintiffs may register to   |
| 9  |    | Jones each own a semiautomatic,              | possess assault rifles without         |
| 10 |    | centerfire rifle with a non-fixed            | modifying them. (Cal. Penal Code       |
| 11 |    | magazine that they were forced to            | § 30900(b)(1) (permitting registration |
| 12 |    | modify to ensure it was no longer            | of semiautomatic, centerfire rifles    |
| 13 |    | considered an “assault weapon” and           | with a non-fixed magazine by July 1,   |
| 14 |    | therefore lawful to possess in the           | 2018).)                                |
| 15 |    | State of California. (Rupp Decl. ¶ 3;        |  |
| 16 |    | Jones Decl. ¶ 3.)                            |  |
| 17 | 10 | Plaintiffs Rupp and Seifert each             | Undisputed.                            |
| 18 |    | lawfully own a frame or “lower               |  |
| 19 |    | receiver” of a firearm that they             |  |
| 20 |    | wish to assemble into fully                  |  |
| 21 |    | functioning semiautomatic,                   |  |
| 22 |    | centerfire rifles with a detachable          |  |
| 23 |    | magazine and either a pistol grip,           |  |
| 24 |    | flash suppressor, or adjustable stock,       |  |
| 25 |    | or in a configuration that has an            |  |
| 26 |    | overall length of less than 30 inches        |  |
| 27 |    | but more than 26 inches. (Seifert            |  |
| 28 |    | Decl. ¶ 5; Rupp Decl. ¶ 4.)                  |  |
|    | 11 | Plaintiffs Rupp and Seifert are              | Undisputed.                            |
|    |    | concerned that if multiple intruders         |  |
|    |    | attack them while at home, they will         |  |
|    |    | be required to immediately                   |  |
|    |    | reassemble their firearm into such a         |  |
|    |    | configuration to effectively protect         |  |
|    |    | themselves and others in their home.         |  |
|    |    | (Rupp Decl. ¶ 6; Seifert Decl. ¶ 7.)         |  |
|    | 12 | Plaintiffs Rupp and Seifert believe          | Undisputed.                            |
|    |    | that not being able to immediately           |  |
|    |    | assemble their frames or “lower              |  |
|    |    | receivers” into such a configuration         |  |

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| 1  |    | will impact their ability to         |  |
| 2  |    | effectively defend themselves and    |  |
| 3  |    | others in their home. (Rupp Decl.    |  |
| 4  |    | ¶ 7; Seifert Decl. ¶ 8.)             |  |
| 5  | 13 | Plaintiffs Alfonso Valencia, Steven  | Undisputed.  |
| 6  |    | Dember, and Cheryl Johnson each      |  |
| 7  |    | would like to acquire a              |  |
| 8  |    | semiautomatic, centerfire rifle with |  |
| 9  |    | a detachable magazine having one     |  |
| 10 |    | or more of the features that is      |  |
| 11 |    | prohibited by the AWCA to keep in    |  |
| 12 |    | their home for self-defense and      |  |
| 13 |    | other lawful purposes, including     |  |
| 14 |    | hunting, training, and recreation.   |  |
| 15 |    | (Valencia Decl. ¶ 3; Johnson Decl.   |  |
| 16 |    | ¶ 3; Dember Decl. ¶ 3.)              |  |
| 17 | 14 | All individual Plaintiffs will be    | Disputed. (ECF No. 49 at 23 (noting                |
| 18 |    | continuously and irreparably harmed  | that individuals subject to the AWCA               |
| 19 |    | by the ongoing deprivation of their  | “remain free to choose any weapon                  |
| 20 |    | individual, fundamental right to     | that is <i>not</i> restricted by the AWCA or       |
| 21 |    | possess and use commonly             | another state law”); <i>e.g.</i> , <i>Kolbe v.</i> |
| 22 |    | possessed firearms for lawful        | <i>Hogan</i> , 849 F.3d 114, 140-41 (4th Cir.      |
| 23 |    | purposes, including in-home self-    | 2017) (en banc) (assault-weapon                    |
| 24 |    | defense, without risking criminal    | restrictions do not violate the Second             |
| 25 |    | prosecution. (Willis Decl. ¶ 6;      | Amendment).)                                       |
| 26 |    | Martin Decl. ¶ 6; Rupp Decl. ¶ 8;    | Objection: Conclusion of law.                      |
| 27 |    | Seifert Decl. ¶ 9; Jones Decl. ¶ 5.) | Improper legal testimony of a lay                  |
| 28 |    |                                      | witness. (Fed R. Evid. 701(b).)                    |
|    | 15 | All individual Plaintiffs would like | Undisputed.  |
|    |    | to acquire new semiautomatic,        |  |
|    |    | centerfire rifles with a detachable  |  |
|    |    | magazine, having one or more of the  |  |
|    |    | features that is prohibited by the   |  |
|    |    | AWCA, and were it not for the        |  |
|    |    | AWCA and fear of prosecution for     |  |
|    |    | violating it, would do so. (Willis   |  |
|    |    | Decl. ¶ 7; Dember Decl. ¶¶ 3-4;      |  |

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| 1 |    | Martin Decl. ¶ 7; Rupp Decl. ¶ 9; Valencia Decl. ¶¶ 3-4; Johnson Decl. ¶¶ 3-4; Seifert Decl. ¶ 10; Jones Decl. ¶ 6.)   |  |
| 2 | 16 | All individual Plaintiffs who lawfully own “assault weapons” or firearms they were forced to modify in accordance with the AWCA acquired their firearm for use in their home for self-defense and other lawful purposes such as hunting, training, and recreation. (Willis Decl. ¶ 4; Rupp Decl. ¶ 5; Seifert Decl. ¶ 6; Jones Decl. ¶ 4.) | Disputed. Plaintiffs may register to possess assault rifles without modifying them. (Cal. Penal Code § 30900(b)(1) (permitting registration of semiautomatic, centerfire rifles with a non-fixed magazine by July 1, 2018).) |
| 3 | 17 | Richard Travis is the Executive Director for Plaintiff California Rifle & Pistol Association, Incorporated (“CRPA”). (Travis Decl. ¶ 1.)   | Undisputed.  |
| 4 | 18 | Plaintiff CRPA is a non-profit membership and donor-supported organization classified under IRC section 501(c)(4) and incorporated under the laws of California with its headquarters in Fullerton, California. (Travis Decl. ¶ 1.)  | Undisputed.  |
| 5 | 19 | Founded in 1875, CRPA seeks to defend the Second Amendment and advance laws that protect the rights of individual citizens. (Travis Decl. ¶ 2.)  | Undisputed.  |
| 6 | 20 | Plaintiff CRPA Works [sic] to preserve the constitutional and statutory rights of gun ownership, including the right to self-defense, the right to hunt, and the right to keep and bear arms. (Travis Decl. ¶ 2.)  | Undisputed.  |
| 7 | 21 | Plaintiff CRPA is dedicated to promoting the shooting sports,  | Undisputed.  |

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| 1  |    | providing education, training, and organized competition for adult and junior shooters. (Travis Decl. ¶ 2.)   |  |
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| 3  | 22 | Plaintiff CRPA's members include law enforcement officers, prosecutors, professionals, firearms experts, and members of the public. (Travis Decl. ¶ 2.)   | Undisputed.  |
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| 6  | 23 | Plaintiff CRPA works to preserve the constitutional rights of all law-abiding individuals, including the fundamental right to keep and bear commonly owned firearms for the core lawful purpose of self-defense. (Travis Decl. ¶ 3.)  | Undisputed.  |
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| 11 | 24 | Plaintiff CRPA has members who own semiautomatic, centerfire rifles with non-fixed magazines that were forced to register their firearm as an "assault weapon" with the California Department of Justice before July 1, 2018. (Travis Decl. ¶ 4.)                                     | Disputed. Registration is not required for weapons that do not have a fixed magazine and none of the features listed in Penal Code section 30515. (Cal. Penal Code § 30900(b)(1).)<br><br>Objection: Hearsay. (Fed. R. Evid. 801.) |
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| 17 | 25 | Plaintiff CRPA has members who are prohibited under the AWCA and its related regulations from replacing their firearm's "bullet button" with a standard magazine release, and but for those restrictions would do so. (Travis Decl. ¶ 4.)   | Undisputed.  |
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| 22 | 26 | Plaintiff CRPA also has members who lawfully own semiautomatic, centerfire rifles with detachable magazines with one or more prohibited features under the AWCA, or firearms specifically identified by their make and model as "assault weapons" under the AWCA. (Travis Decl. ¶ 5.) | Undisputed.  |
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| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8               | 27 | Plaintiff CRPA has members who lawfully own firearms classified as “assault weapons” who are prohibited under the AWCA and related regulations from engaging in certain activities that are otherwise lawful with any other firearm not classified as an “assault weapon,” and but for those restrictions would engage in such activities with their firearms. (Travis Decl. ¶ 6.)  | Undisputed.   |
| 9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17  | 28 | Plaintiff CRPA has members who, but for the AWCA and its related regulations, would acquire, transfer, and/or possess firearms classified as “assault weapons,” and are continuously and irreparably harmed by the ongoing deprivation of their individual, fundamental right to possess and use commonly possessed firearms for lawful purposes, including in-home self-defense, without risking criminal prosecution. (Travis Decl. ¶ 7.) | Disputed. (ECF No. 49 at 23 (noting that individuals subject to the AWCA “remain free to choose any weapon that is <i>not</i> restricted by the AWCA or another state law”); <i>e.g.</i> , <i>Kolbe</i> , 849 F.3d at 140-41 (assault-weapon restrictions do not violate the Second Amendment).)<br><br>Objection: Improper legal testimony of a lay witness. (Fed R. Evid. 701(b).)  |
| 18<br>19<br>20<br>21<br>22<br>23<br>24<br>25<br>26 | 29 | Millions of rifles that are prohibited by the AWCA are in the hands of the American people. (Brady Decl., Ex. 2 [Expert Report W. English]; Ex. 7 [Depo. Tr. B. Graham] at 21:13-21, 25:9-15, 28:3-6; Exs. 11-25; Ex. 8 [DOJ Resp. to Seifert’s Reqs. for Admission, Set One] at 4; Ex. 10 [DOJ Second Suppl. Resp. to Willis Interrogs., Set One] at 8.)   | Disputed. Def. Exh. 18 <sup>1</sup> at 895 (approximately 166,650 assault rifles were registered in California as of November 2, 2018); Def. Exh. 7 (Donohue Reb. Rpt) at 252-253 (¶¶ 17-18) (ownership rate of assault rifles in California is less than 0.5 percent); <i>see</i> Def. Exh. 1 (Donohue Rept.) at 8, ¶ 22; <i>see also</i> Pls. Exh. 17 <sup>2</sup> at 2 (“Scholars who have researched American gun ownership treat the industry’s estimates with |

<sup>1</sup> “Def. Exh.” refers to exhibits accompanying the Declaration of Peter H. Chang, ECF No. 76.

<sup>2</sup> “Pls. Exh.” refers to exhibits accompanying the Declaration of Sean A. Brady, ECF No. 78.



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some skepticism.”); *id.* (“Americans only started buying assault weapons in large numbers after the federal assault weapon ban expired in 2004. That year there were only about 100,000 made by American manufacturers.”); *id.* at 3 (“[C]ivilian ownership of assault weapons is also a recent phenomenon”).)

Evidence cited by Plaintiffs does not support proposed statement of fact. (*See, e.g.*, Pls. Exh. 7 (Graham Dep. Tr.) at 21:18-24 (testifying that the “most common two groups” of firearms at Northern California gun shows are “a semiautomatic handgun or probably an AR platform of some kind,” which Graham clarified “might just be a lower receiver sitting there” that would not be prohibited under the AWCA); *id.* at 25:9-15 (agreeing that prior to the AWCA amendment to include bullet-button rifles, AR-15 platform rifles were “prevalent” at gun stores that Graham frequented); *id.* at 28:3-6 (agreeing that prior to Senate Bill 880 Graham would see AR platform rifles at gun stores “frequently”).)

Plaintiffs’ estimate includes assault rifles acquired by law enforcement. (Pls. Exh. 17 at 2 (“An important note: The NSSF report includes weapons produced for law enforcement.”).)

Objections: (1) Speculative expert testimony of William English (Fed. R. Evid. 702); and (2) failure to timely

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| 1  |    | produce facts and data relied upon by    |
| 2  |    | William English (Fed. R. Civ. P.         |
| 3  |    | 26(a)(2)(B)(ii); Fed. R. Civ. P.         |
| 4  |    | 37(c)(1)).                               |
| 5  | 30 | Americans typically choose rifles        |
| 6  |    | prohibited by the AWCA for self-         |
| 7  |    | defense.                                 |
| 8  |    | (Brady Decl., Ex. 1 [Expert Report       |
| 9  |    | of J. B. Boone] at 5; Ex. 2 [Expert      |
| 10 |    | Report of W. English] at 4; Ex. 3        |
| 11 |    | [Expert Report of S. Helsley] at 11-     |
| 12 |    | 12; Exs. 28-29; 35-37.)                  |
| 13 |    | Disputed. Evidence cited by Plaintiffs   |
| 14 |    | does not support proposed statement      |
| 15 |    | of fact. (Pls. Exh. 21 (2017 NSSF        |
| 16 |    | Report) at 10 (noting that 30% of AR-    |
| 17 |    | style rifles were sold in 2016 for       |
| 18 |    | “personal-protection purposes,”          |
| 19 |    | compared to 47.1% for                    |
| 20 |    | “target/informal shooting” and 59.5%     |
| 21 |    | of handguns for “personal-protection     |
| 22 |    | purposes”); Pls. Exh. 1 (Boone Rpt.)     |
| 23 |    | at 5 (does not state that rifles that    |
| 24 |    | qualify as assault weapons under the     |
| 25 |    | AWCA are typically chosen by law-        |
| 26 |    | abiding citizens for self-defense); Pls. |
| 27 |    | Exh. 2 (English Rpt.) at 4               |
| 28 |    | (acknowledging that “[r]ecreational      |
|    |    | target shooting was the most prevalent   |
|    |    | reason cited for owning a [‘modern       |
|    |    | sporting rifle’]”); Pls. Exh. 3 (Helsley |
|    |    | Rpt.) at 11-12 (does not state that      |
|    |    | rifles that qualify as assault weapons   |
|    |    | under the AWCA are typically chosen      |
|    |    | by law-abiding citizens for self-        |
|    |    | defense).)                               |
|    |    | Objections: Same objections to the       |
|    |    | English Report noted in response to      |
|    |    | Item No. 29 <i>supra</i> .               |
| 31 | 31 | Americans typically choose rifles        |
|    |    | prohibited by the AWCA for               |
|    |    | hunting.                                 |
|    |    | (Brady Decl., Ex. 2 [Expert Report       |
|    |    | of W. English] at 4, 7; Ex. 3 [Expert    |
|    |    | Report of S. Helsley] at 11-12; Ex.      |
|    |    | 30-33.)                                  |
|    |    | Disputed. Evidence cited by Plaintiffs   |
|    |    | does not support proposed statement      |
|    |    | of fact. (Pls. Exh. 2 (English Rpt.) at  |
|    |    | 4 (noting that hunting was one of        |
|    |    | several “[a]dditional reasons” cited by  |
|    |    | survey participants for owning a         |
|    |    | “modern sporting rifle”); Pls. Exh. 3    |
|    |    | (Helsley Rpt.) at 11 (does not state     |

that rifles that qualify as assault weapons under the AWCA are typically chosen by law-abiding citizens for hunting but rather states that an owner of an AR-platform rifle *can* configure the weapon “as a 7lb rifle for hunting in steep difficult terrain”); *id.* at 12 (noting merely that “AR-platform rifles serve a variety of functions,” including hunting).)

Evidence shows traditional (non-assault) rifles are typically chosen for hunting. (Pls. Exh. 21 (2017 NSSF Report) at 10 (noting that 22.9% of AR-style rifles were sold in 2016 for hunting purposes, compared to 68.3% of “[t]raditional rifles” for hunting purposes); *id.*, Ex. 22 (2016 NSSF Report) at ix (“Handguns and traditional rifles top the list” of firearms used in target or sport shooting and hunting); *id.*, Ex. 30 (Brenton USA post) (discussing reasons to hunt with AR-15 rifle, not that rifles that qualify as assault weapons under the AWCA are typically chosen by law-abiding citizens for hunting); Pls. Exh. 31 (Guns.com post) at 1 (“AR-15s . . . have long been a symbol of the tactical world, but black rifles are *slowly* creeping their way past military and law enforcement applications and into the world of hunting.” (emphasis added)); *id.* at 3 (quoting Army veteran, “Because of [the AR-15’s] military inception, it has been seen as an under powered, military application rifle only. Not until recently, with the popularity of

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|    |   | <p>the newer [ammunition] rounds have people started to consider it as a viable option for hunting applications.”); <i>see also</i> Def. Exh. 21 (1998 ATF Rpt. on Sporting Suitability of Modified Semiautomatic Assault Rifles) at 1019 (“[W]hile these rifles are used for hunting medium and larger game, as well as for shooting varmints, the evidence was not persuasive that there was widespread use for hunting. We did not find any evidence that the ability to a large capacity military magazine serves any hunting purpose. Traditional hunting rifles have much smaller magazine capabilities. Furthermore, the mere fact that the LCMM rifles are used for hunting does not mean that they are particularly suitable for hunting or meet the test for importation [based on sporting suitability].”); Def. Exh. 22 (1989 ATF Rpt. on Importability of Certain Semiautomatic Rifles) at 1054 (concluding that “the semiautomatic assault rifle is not a type of firearm generally recognized as a particularly suitable for or readily adaptable to sporting purposes”).)</p> <p>Objections: Same objections to the English Report noted in response to Item No. 29 <i>supra</i>.</p> |
| 32 | <p>Americans typically choose rifles prohibited by the AWCA for competition.</p> <p>(Brady Decl., Ex. 2 [Expert Report of W. English] at 4; Ex. 3 [Expert</p> | <p>Disputed. Evidence cited by Plaintiffs does not support proposed statement of fact. (Pls. Exh. 2 (English Rpt.) at 4 (noting that “competitive shooting sports” was one of several “[a]dditional reasons” cited by survey</p>  |

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| 1  |    | Report of S. Helsley] at 11-12; Ex. 22.)   | participants for owning a “modern sporting rifle”); Pls. Exh. 3 (Helsley Rpt.) at 11 (does not state that rifles that qualify as assault weapons under the AWCA are typically chosen by law-abiding citizens for competition and, rather, speculates that an owner of an AR-platform rifle can configure the weapon “as a 12lb single-shot rifle for 1000-yard target competition”); Pls. Exh. 22 (2016 NSSF Report) (does not distinguish competitive target shooting from recreational target or sport shooting activities); <i>id.</i> at ix (“Handguns and traditional rifles top the list” of firearms used in target or sport shooting and hunting).) |
| 2  |    |  | Objections: Same objections to the English Report noted in response to Item No. 29 <i>supra</i> .   |
| 3  | 33 | Americans typically choose rifles prohibited by the AWCA for target shooting.                                  | Disputed. Evidence cited by Plaintiffs does not support proposed statement of fact. (Pls. Exh. 2 (English Rpt.) at 4 (noting that “competitive shooting sports” was one of several  |
| 4  |    | (Brady Decl., Ex. 2 [Expert Report of W. English] at 4; Ex. 3 [Expert Report of S. Helsley] at 11-12; Ex. 22.) | “[a]dditional reasons” cited by survey participants for owning a “modern sporting rifle”); Pls. Exh. 3 (Helsley Rpt.) at 11 (does not state that rifles that qualify as assault weapons under the AWCA are typically chosen by law-abiding citizens for target shooting and, rather, speculates that an owner of an AR-platform rifle can configure the weapon “as a 12lb single-shot rifle for 1000-yard target competition”); Pls. Exh. 22 (2016 NSSF Report) at ix (“Handguns and traditional rifles top the list” of  |
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|    |   | firearms used in target or sport shooting and hunting); <i>id.</i> at iii (noting a 14% drop in the number of participants who used a “modern sporting rifle” for target shooting from 2014 to 2016).)   |
|    |   | Objections: Same objections to the English Report noted in response to Item No. 29 <i>supra</i> .  |
| 34 | <p>The American public has had access to and has commonly owned semi-automatic, centerfire rifles with detachable magazines for more than a century.</p> <p>(Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 3-6; <i>see also</i> John Henwood, <i>The 8 and the 81: A History of Remington’s Pioneer Autoloading Rifles</i> 4-5 (1993); John Henwood, <i>The Forgotten Winchesters: A History of the Models 1905, 1907, and 1910 Self-Loading Rifles</i> 2-6, 22-23, 115-24 (1995).)</p> | <p>Disputed. Evidence cited by Plaintiffs does not support proposed statement of fact. (Pls. Exh. 3 (Helsley Rpt.) at 5 (discussing the availability of M1 carbines in the “early 1960s, [when] they became widely available both on the surplus market and through the [Director of Civilian Marksmanship]”); <i>id.</i> at 6 (discussing “second wave of surplus rifle imports” in the late 1980s, which included a “new important player”: the SKS, a “semiautomatic rifle with a <i>fixed ten round magazine</i>” (emphasis added)).)</p> <p>Proposed statement is contradicted by Plaintiffs’ expert. (Def. Exh. 16 at 825:20-826:12 (testifying that AR platform rifles became commonly possessed by civilians around the early 1980s); <i>id.</i> at 827:3-13 (testifying that semiautomatic rifles with centerfire firing mechanisms became commonly possessed by civilians around 1960).)</p> |
| 35 | The AR-15 has been available to the American public since at least 1959.  | Undisputed.  |

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| 1  |    | (Brady Decl., Ex. 2 [Expert Report of W. English] at 3; Ex. 3 [Expert Report of S. Helsley] at 6.) |   |
| 2  | 36 | The popularity of AR-15 type rifles has increased since its inception.                             | Undisputed.   |
| 3  |    | (Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 11-12.)                                       |   |
| 4  |    | <b>Pistol Grips</b>  |   |
| 5  | 37 | Rifles commonly come standard with a pistol grip.  | Undisputed.   |
| 6  |    | (Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 7; [Expert Report of W. English] at 3.)       |   |
| 7  | 38 | Pistol grips for rifles are commonly available aftermarket.  | Undisputed.   |
| 8  |    | (Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 11; Ex. 44.)                                  |   |
| 9  | 39 | Pistol grips do not affect a rifle's rate of fire.   | Disputed. Proposed statement is contradicted by Plaintiffs' expert.   |
| 10 |    | (Brady Decl.; Ex. 3 [Expert Report of S. Helsley] at 7-9.)   | (Def. Exh. 16 (Helsley Dep. Tr.) at 835:20-836:4 ("Q. Is it possible that for somebody with less experience than you, that the features may have something to do with the rifles rate of fire, particularly the rifle's effective [as opposed to cyclic] rate of fire? A. Is it possible? Everything's possible."); <i>id.</i> at 843:13-844:15 (testifying that, in general, a protruding pistol grip could be more effective in stabilizing a weapon during rapid fire than other types of pistol grips); <i>id.</i> at 848:8-12 (Q. "[I]f there's a monster man grip, could that affect detrimentally the effective rate of fire for that firearm? A. I would say yes."); Pls. Exh. 3 (Helsley Rpt.) |
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| 1  |    | at 8 (“An AR type rifle can still be         |
| 2  |    | fired without a pistol grip installed,       |
| 3  |    | but would leave the user’s hand in a         |
| 4  |    | non-optimal and less safe position to        |
| 5  |    | operate the rifle. For example, the          |
| 6  |    | ‘MonsterMan’ style grip . . . is not         |
| 7  |    | prohibited by California law.”); <i>see</i>  |
| 8  |    | <i>also</i> Def. Exh. 2 (Graham Rpt.) at 126 |
| 9  |    | (“Pistol grip that protrudes beneath         |
| 10 |    | the action of the weapon, thumbhole          |
| 11 |    | stock, and forward pistol grip may           |
| 12 |    | provide the shooter increased physical       |
| 13 |    | control of the rifle. These features         |
| 14 |    | also provide increased ergonomics,           |
| 15 |    | which can enhance more accurate              |
| 16 |    | rapid shooting.”).)                          |
| 17 | 40 | <i>[SUF 40 intentionally left blank.]</i>    |
| 18 | 41 | Pistol grips do not affect a rifle’s         |
| 19 |    | capacity to accept ammunition.               |
| 20 |    | (Brady Decl., Ex. 3 [Expert Report           |
| 21 |    | of S. Helsley] at 7-9.)                      |
| 22 | 42 | Pistol grips do not affect the power         |
| 23 |    | of the projectile a rifle discharge          |
| 24 |    | [sic].                                       |
| 25 |    | (Brady Decl., Ex. 1 [Expert Report           |
| 26 |    | of J. B. Boone] at 5-7; Ex. 3 [Expert        |
| 27 |    | Report of S. Helsley] at 7-9.)               |
| 28 | 43 | Pistol grips are not dangerous per se.       |
|    |    | (Brady Decl., Ex. 3 [Expert Report           |
|    |    | of S. Helsley] at 6-9.)                      |
|    |    | Disputed. Proposed statement is              |
|    |    | contradicted by Plaintiffs’ expert.          |
|    |    | (Def. Exh. 16 (Helsley Dep. Tr.) at          |
|    |    | 835:20-836:4 (“Q. Is it possible that        |
|    |    | for somebody with less experience            |
|    |    | than you, that the features may have         |
|    |    | something to do with the rifles rate of      |
|    |    | fire, particularly the rifle’s effective     |
|    |    | [as opposed to cyclic] rate of fire? A.      |
|    |    | Is it possible? Everything’s                 |



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|    |  | possible.”); <i>id.</i> at 843:13-844:15 (testifying that, in general, a protruding pistol grip could be more effective in stabilizing a weapon during rapid fire than other types of pistol grips); <i>id.</i> at 848:8-12 (Q. “[I]f there’s a monster man grip, could that affect detrimentally the effective rate of fire for that firearm? A. I would say yes.”); Pls. Exh. 3 (Helsley Rpt.) at 8 (“An AR type rifle can still be fired without a pistol grip installed, but would leave the user’s hand in a non-optimal and less safe position to operate the rifle. For example, the ‘MonsterMan’ style grip . . . is not prohibited by California law.”); <i>see also</i> Def. Exh. 2 (Graham Rpt.) at 126 (“Pistol grip that protrudes beneath the action of the weapon, thumbhole stock, and forward pistol grip may provide the shooter increased physical control of the rifle. These features also provide increased ergonomics, which can enhance more accurate rapid shooting.”).) |
| 44 | The purpose of a pistol grip is to position the “trigger finger” for optimum trigger control and help absorb recoil.<br><br>(Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 7.) | Undisputed.   |
| 45 | Pistol grips allow a rifle to be used with one hand.<br><br>(Brady Decl., Ex. 1 [Expert Report of J. B. Boone] at 12.)   | Disputed. Plaintiffs’ evidence shows most rifles may be used with one hand. (Pls. Exh. 28 (American Rifleman Article) at 6 (“Most general-purpose rifles will work perfectly when fired with only one hand.”).)   |

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| 1  |    |   |
| 2  | 46 | Pistol grips can accommodate a disabled person.   |
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| 4  |    | (Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 9.)  |
| 5  |    |   |
| 6  |    | Disputed. Plaintiffs' evidence shows most rifles may be used with one hand. (Pls. Exh. 28 (American Rifleman Article) at 6 ("Most general-purpose rifles will work perfectly when fired with only one hand.").)   |
| 7  |    | Objection: Speculative testimony of an expert witness. (Fed. R. Evid. 702.)   |
| 8  |    |   |
| 9  |    | <b>Adjustable Stocks</b>  |
| 10 | 47 | Rifles commonly come standard with an adjustable stock.   |
| 11 |    |   |
| 12 |    | (Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 10; [Expert Report of W. English] at 3 <sup>3</sup> .)   |
| 13 |    |   |
| 14 |    | Disputed. Proposed statement is contradicted by Plaintiffs' expert. (Pls. Exh. 3 (Helsley Rpt.) at 9 ("Most mass-produced rifles and shotguns are equipped with a stock that will fit the 'average' user—whoever that is. Some firearms come with factory stocks that are designed to allow the user to adjust the [length of pull]."); <i>id.</i> , Pls. Exh. 2 (English Rpt.) at 3 (stating that "Modern Sporting Rifles" "virtually always are equipped with a vertical pistol grip and often have a flash suppressor and/or an adjustable stock").) |
| 15 |    |   |
| 16 |    | Objection: Plaintiffs' expert witness, English, is not qualified to testify on assault rifle features. (Fed. R. Evid. 702.)   |
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| 23 | 48 | Adjustable stocks for rifles are commonly available aftermarket.  |
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| 25 |    | (Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 9; Ex. 45.)  |
| 26 |    |   |
| 27 |    | Disputed. Proposed statement is not supported by cited evidence. (Pls. Exh. 3 (Helsley Rpt.) at 9 (does not state that adjustable rifle stocks are commonly available aftermarket); Pls. Exh. 45 (Brownells.com) at 1   |

<sup>3</sup> The English Report is Plaintiffs' Exhibit 2.

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|    |  | (indicating that 44 items are available for sale that qualify as adjustable rifle stocks).)  |
| 49 | <p>A “telescoping stock” allows the user of the rifle to adjust the length of a rifle a couple of inches as conditions dictate and has no material effect on the concealability of the rifle.</p> <p>(Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 10; Ex. 7 [Depo. Tr. B. Graham] at 81:2-19.)</p> | Disputed. Evidence shows a telescoping stock enhances the concealability of a rifle. (Def. Exh. 3 (Mersereau Rpt.) at 138, ¶ 10; Def. Exh. 2 (Graham Rpt.) at 124, ¶ 21; Def. Exh. 22 (ATF Rpt.) at 1048.) |
| 50 | <p>The purpose of a telescoping stock is to allow the user of a rifle to make it a comfortable length for that user’s body type or as conditions dictate.</p> <p>(Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 10; [Depo. Tr. B. Graham] at 94:1-4; 95:19-21.)</p>                                  | Disputed. Evidence shows a telescoping stock enhances the concealability of a rifle. (Def. Exh. 3 (Mersereau Rpt.) at 138, ¶ 10; Def. Exh. 2 (Graham Rpt.) at 124, ¶ 21; Def. Exh. 22 (ATF Rpt.) at 1048.) |
| 51 | <p>People of different body sizes may need different length stocks to properly hold a rifle.</p> <p>(Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 9; Ex. 6 [Depo. Tr. M. Mersereau] at 37:2-11; [Depo. Tr. B. Graham] at 95:19-21.)</p>   | Undisputed.  |
| 52 | <p>What clothing a person is wearing may affect what length stock that person needs to properly hold a rifle.</p> <p>(Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 9; [Depo. Tr. B. Graham] at 94:1-4.)</p>   | Undisputed.  |
|    | <b>Flash Suppressors</b>   |  |
| 53 | Rifles commonly come standard with a flash suppressor.   | Disputed. Proposed statement is not supported by cited evidence. (Pls.   |

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| 1  |   | Exh. 3 (Helsley Rpt.) at 10-11 (does not state that rifles commonly come standard with a flash suppressor); <i>id.</i> , Pls. Exh. 2 (English Rpt.) at 3 (stating that “Modern Sporting Rifles” “virtually always are equipped with a vertical pistol grip and often have a flash suppressor and/or an adjustable stock”).)   |
| 2  | (Brady Decl., Ex. 2 [Expert Report of W. English] at 3; Ex. 3 [Expert Report of S. Helsley] at 10-11.)  |   |
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| 7  | 54 Flash suppressors for rifles are commonly available aftermarket.   | Disputed. Proposed statement is not supported by cited evidence. (Pls. Exh. 3 (Helsley Rpt.) at 11 (does not state that flash suppressors are commonly available aftermarket); Pls. Exh. 46 (Brownells.com) at 1 (indicating that 109 items are available for sale that qualify as “flash hidiers”).)   |
| 8  | (Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 11; Ex. 46.)   |   |
| 9  |   |   |
| 10 |   |   |
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| 13 | 55 Flash suppressors do not hide the flash from those in the direct line of fire, but rather from the shooter.  | Disputed. Evidence shows flash suppressors help conceal the shooter. (Pls. Exh. 25 at 8 (indicating that the flash suppressor “[r]educes the flash from the barrel of the weapon, allowing the shooter to remain concealed when shooting at night”); <i>id.</i> , Ex. 7 (Graham Dep. Tr.) at 104:9-19 (testifying that a flash suppressor “may” make the muzzle flash less visible to “people being shot at” “[d]epending on your angle to the shooter”); <i>see also</i> Def. Exh. 16 at 863:7-15 (“Q. “So a flash suppressor could help a shooter remain concealed from the periphery in low light conditions when operating a firearm with a flash suppressor? A. Yes.”); <sup>4</sup> <i>id.</i> , Exh. 22 at 1049 (flash suppressor “disperses the muzzle flash when the |
| 14 | (Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 10; Ex. 5 [Expert Report of B. Graham] at 22, 28; Ex. 6 [Depo. Tr. M. Mersereau] at 56:14-18; Ex. 7 [Depo. Tr. B. Graham] at 103:15-20.) |   |
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<sup>4</sup> Defendant’s Statement of Uncontroverted Facts incorrectly cited page 836 instead of page 863 of Exhibit 16. *See* Dkt. No. 75 at 5 (Item No. 24).

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| 1  |    | firearm is fired to help conceal the     |
| 2  |    | shooter's position, especially at        |
| 3  |    | night").)                                |
| 4  | 56 | Flash suppressors only have an           |
| 5  |    | effect in low-light conditions.          |
| 6  |    | (Brady Decl., Ex. 3 [Expert Report       |
| 7  |    | of S. Helsley] at 10; Ex. 6 [Depo.       |
| 8  |    | Tr. M. Mersereau] at 56:3-6; [Depo.      |
| 9  |    | Tr. B. Graham] at 103:21-24.)            |
| 10 |    | Disputed. Evidence shows flash           |
| 11 |    | suppressors have an effect beyond        |
| 12 |    | low-light conditions. (Pls. Exh. 7       |
| 13 |    | (Graham Dep. Tr.) at 103:21-24 ("Q.      |
| 14 |    | So is . . . the effect of a flash        |
| 15 |    | suppressor only relevant in low light    |
| 16 |    | conditions? A. I would say it's most     |
| 17 |    | relevant . . . ."); Def. Exh. 22 at 1049 |
| 18 |    | (flash suppressor "disperses the         |
| 19 |    | muzzle flash when the firearm is fired   |
| 20 |    | to help conceal the shooter's position,  |
| 21 |    | <i>especially at night</i> " (emphasis   |
| 22 |    | added)).)                                |
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|    |    | <b>Features Generally</b>                |
|    | 57 | None of the features is inherently       |
|    |    | dangerous.                               |
|    |    | (Brady Decl., Ex. 3 [Expert Report       |
|    |    | of S. Helsley] at 6; Ex. 7 [Depo. Tr.    |
|    |    | B. Graham] at 108:2-16.)                 |
|    |    | Undisputed.                              |
|    | 58 | None of the features becomes             |
|    |    | inherently dangerous when used in        |
|    |    | conjunction with any of the other        |
|    |    | features.                                |
|    |    | (Brady Decl., Ex. 3 [Expert Report       |
|    |    | of S. Helsley] at 6; Ex. 7 [Depo. Tr.    |
|    |    | B. Graham] at 108:2-16.)                 |
|    |    | Undisputed.                              |
|    | 59 | The features increase accuracy of        |
|    |    | the rifle.                               |
|    |    | (Brady Decl., Ex. 1 [Expert Report       |
|    |    | of J. B. Boone] at 8-12; Ex. 3           |
|    |    | [Expert Report of S. Helsley] at 6-      |
|    |    | 11, 12; Ex. 4 [Expert Report of M.       |
|    |    | Mersereau] at 8-11; Ex. 5 [Expert        |
|    |    | Report of B. Graham] at 19, 22, 26,      |

|   |    |   |             |
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| 1 |    | 28; [Depo. Tr. B. Graham] at 119-123; 124:1-6.)   |             |
| 2 | 60 | The features increase user control of the rifle.  | Undisputed. |
| 3 |    | Brady Decl., Ex. 1 [Expert Report of J. B. Boone] at 8-12; Ex. 3 [Expert Report of S. Helsley] at 6-11, 12; Ex. 4 [Expert Report of M. Mersereau] at 8-11; Ex. 5 [Expert Report of B. Graham] at 19, 22, 26, 28; Ex. 6 [Depo. Tr. M. Mersereau] at 36:7-37:11; Ex. 7 [Depo. Tr. B. Graham] at 107:6-14, 108:2-16; [Depo. Tr. B. Graham] at 119-123; 124:1-6.) |             |
| 4 | 61 | The State's designated expert witness, Blake Graham, opined that the features increase accuracy and the user's control of the rifle.  | Undisputed. |
| 5 |    | (Brady Decl., Ex. 3 [Expert Report of B. Graham] at 19, 22, 26, 28; Ex. 7 [Depo. Tr. B. Graham] at 107:6-14, 108:2-16; [Depo. Tr. B. Graham] at 119-123; 124:1-6.)  |             |
| 6 | 62 | The State's designated expert witness, Michael Mersereau, opined that features increase accuracy and the user's control of the rifle.   | Undisputed. |
| 7 |    | (Brady Decl., Ex. 4 [Expert Report of M. Mersereau] at 8-11; Ex. 6 [Depo. Tr. M. Mersereau] at 36:7-37:11.)   |             |
| 8 |    | <b>"Assault Weapon" Laws</b>  |             |
| 9 | 63 | California's Assault Weapon Control Act was adopted in 1989   | Undisputed. |

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| 1  |    | and was the first “assault weapon” law in the country.  |  |
| 2  |    |   |  |
| 3  |    | (Assemb. B. 357, 1989-1990 Reg. Sess. (Cal. 1989); Brady Decl., Ex. 48.)  |  |
| 4  |    |   |  |
| 5  | 64 | The federal “assault weapon” law took effect in 1994.   | Undisputed.  |
| 6  |    |   |  |
| 7  |    | (Req. Jud. Ntc., ¶ 8, Ex. 8.)   |  |
| 8  | 65 | Congress allowed the federal “assault weapon” law to expire in 2004.  | Undisputed.  |
| 9  |    |   |  |
| 10 |    | (Req. Jud. Ntc., ¶ 8, Ex. 8.)   |  |
| 11 | 66 | Federal law does not currently restrict “assault weapons.”  | Disputed. Federal law imposes generally applicable firearms restrictions that would apply to “assault weapons.” ( <i>See, e.g.</i> , 18 U.S.C. § 922.) |
| 12 |    |   |  |
| 13 |    | (Req. Jud. Ntc., ¶ 8, Ex. 8.)   |  |
| 14 |    |   |  |
| 15 | 67 | Currently, other than California, there are six states in the country with an “assault weapon” law, plus the District of Columbia.  | Undisputed.  |
| 16 |    |   |  |
| 17 |    |   |  |
| 18 |    | (Req. Jud. Ntc., Exs. 1-7.)   |  |
| 19 | 68 | Every “assault weapon” law in the country other than California’s was originally adopted in the 1990s or later.   | Undisputed.  |
| 20 |    |   |  |
| 21 |    |   |  |
| 22 |    | (Req. Jud. Ntc., Exs. 1-7 (Conn. Gen. Stat. §§53-202a – 53-202k (first enacted in 1993); D.C. Code Ann. §§7-2501.01(3A), 7-2502.02 (a)(6) (enacted in 2008); Haw. Rev. Stat. Ann. §§ 134-1, 134-8 (first enacted in 1992); Md. Code Ann., Crim. Law §§ 4-301, 4-303 (first enacted in 2002); N.J. Stat. Ann. §§ |  |
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| 1  |    | 2C:39-1w, 2C:39-3 (first enacted in    |             |
| 2  |    | 1999); N.Y. Penal Law §§               |             |
| 3  |    | 265.00(22), 265.02(7) (first enacted   |             |
| 4  | 69 | in 1998)).)                            |             |
| 5  |    | The United States government,          | Undisputed. |
| 6  |    | through the Director of Civilian       |             |
| 7  |    | Marksmanship, used to operate a        |             |
| 8  |    | program that would sell                |             |
| 9  |    | semiautomatic, centerfire rifles with  |             |
| 10 |    | detachable magazines directly to the   |             |
| 11 |    | public, including some rifles that     |             |
| 12 |    | would be considered “assault           |             |
| 13 |    | weapons” under the AWCA.               |             |
| 14 |    | (Brady Decl., Ex. 3 [Expert Report     |             |
| 15 |    | of S. Helsley] at 5; Exs. 16, 42, 43.) |             |

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