

1 C. D. Michel – SBN 144258  
2 cmichel@michellawyers.com  
3 Sean A. Brady – SBN 262007  
4 sbrady@michellawyers.com  
5 Matthew D. Cubeiro – SBN 291519  
6 mcubeiro@michellawyers.com  
7 MICHEL & ASSOCIATES, P.C.  
8 180 East Ocean Boulevard, Suite 200  
9 Long Beach, CA 90802  
10 Telephone: 562-216-4444  
11 Facsimile: 562-216-4445

12 Attorneys for Plaintiffs

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION**

STEVEN RUPP, et al.,

Plaintiffs,

vs.

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

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

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

Hearing Date: May 31, 2019  
Hearing Time: 10:30 a.m.  
Courtroom: 10A  
Judge: Josephine L. Staton

Plaintiffs Steven Rupp, Steven Dember, Cheryl Johnson, Michael Jones, Christopher Seifert, Alfonso Valencia, Troy Willis, Dennis Martin, and the California Rifle & Pistol Association, Incorporated, submit the following objections to evidence filed in support of Defendant's motion for summary judgment.

No.	Defendant's Evidence	Objections
1	<p>Expert Report and Declaration of John Donohue (Donohue Rpt.).</p> <p>¶¶27-28: "a poll conducted for the <i>New York Times</i> from June 17-20, 2016 among a national sample of 1975 registered voters found that 67 percent of Americans favored such a ban. Importantly, the <i>New York Times</i> also polled '32 current or retired academics in criminology, public health and law, who have published extensively in peer-reviewed academic journals on gun policy; to ask them what measures would be most effective in dealing with America's mass shooting problem, and an assault weapons ban was deemed overall by this panel to be the single most effective measure."</p>	<p><b>Improper expert methodology.</b> Fed. R. Evid. 702, 703; <i>Gen. Elec. Co. v. Joiner</i>, 522 U.S. 136, 146-47 (1997) (holding courts have discretion to decide that materials relied upon by experts are insufficient to support an expert's conclusions).</p> <p><b>Hearsay.</b> Fed. R. Evid. 403. The contents of this declaration rely on hearsay statements and statistics. Donohue relies on a poll conducted for the <i>New York Times</i> from 2016 (¶27) as well as surveys conducted by Pew Research Center (¶28).</p> <p><b>Lay Testimony.</b> Declarant improperly offers lay testimony that is actually expert testimony (based on scientific, technical, or specialized knowledge). Fed. R. Evid. 701(c); <i>United States v. Figueroa-Lopez</i>, 125 F.3d 1241, 1246 (9th Cir. 1997). Declarant impermissibly offers expert testimony under the guise of lay opinion, in contravention of FRE 701 and 702.</p> <p><b>Authentication.</b> The document referred to has not been properly</p>

1		authenticated. Fed. R. Evid. 901, 902.
2		
3	<b>2</b>	<b>Expert Report and Declaration of John Donohue (Donohue Rpt.).</b>
4		
5		¶56: “Moreover, the dramatic jump in gun massacres in the 10 years following the end of the assault weapons ban is in contrast to the downward drift in overall crime over this period, which further buttresses the link between the proliferation of assault weapons following the lapse in the federal assault weapon ban and the increased number of gun massacres.”
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27	<b>3</b>	<b>Expert Report and Declaration of John Donohue (Donohue Rpt.).</b>
28		

authenticated. Fed. R. Evid. 901, 902.

**2** Expert Report and Declaration of John Donohue (Donohue Rpt.).

¶56: “Moreover, the dramatic jump in gun massacres in the 10 years following the end of the assault weapons ban is in contrast to the downward drift in overall crime over this period, which further buttresses the link between the proliferation of assault weapons following the lapse in the federal assault weapon ban and the increased number of gun massacres.”

**Improper expert methodology.** Fed. R. Evid. 702, 703; *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146-47 (1997) (holding courts have discretion to decide that materials relied upon by experts are insufficient to support an expert’s conclusions).

**Hearsay.** Fed. R. Evid. 403. The contents of this declaration rely on hearsay statements and statistics. Donohue relies on research conducted by Louis Klarevas, who is not a named expert in this case, nor has the proper foundation been laid for the use of this information.

**Authentication.** The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.

**Lay Testimony.** Declarant improperly offers lay testimony that is actually expert testimony (based on scientific, technical, or specialized knowledge). Fed. R. Evid. 701(c); *United States v. Figueroa-Lopez*, 125 F.3d 1241, 1246 (9th Cir. 1997). Declarant impermissibly offers expert testimony under the guise of lay opinion, in contravention of FRE 701 and 702.

**3** Expert Report and Declaration of John Donohue (Donohue Rpt.).

**Improper testimony of an expert witness to a legal question.** Fed. R.

¶¶104-105: “The suggestion is also made that law-abiding citizens should have access to the same type of weaponry available to “trained police officers.” This analogy fails because police have very different needs than private individuals. To defend themselves, private individuals only need to scare off criminals.”

Evid. 702; *Aguilar v. Int’l Longshoremen’s Union Local No. 10*, 966 F.2d 443, 447 (9th Cir. 1992) (“[E]xpert testimony consisting of legal conclusions [is] not admissible.” (citing *Marx v. Dinners Club, Inc.*, 550 F.2d 505, 509 (2d Cir. 1977))). The expert is opining on what is proper to consider under the relevant constitutional analysis. Without an extensive educational background regarding police procedures, declarant makes an assertion exceeding the bound of his expertise.

**Improper expert methodology.**

Fed. R. Evid. 702, 703; *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146-47 (1997) (holding courts have discretion to decide that materials relied upon by experts are insufficient to support an expert’s conclusions).

**Lacks personal knowledge.**

Witnesses are prohibited from testifying as to matters that they lack personal knowledge of. Fed. R. Evid. 602. The personal knowledge standard of 602 is also applicable to affidavits and declarations submitted in connection with motions for summary judgment. (*See* FRCP 56(e) which requires, in part, that: “A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify

1		on the matters stated.” <i>See also</i> , <i>FDIC v. New</i>
2		<i>Hampshire Ins. Co.</i> , 953 F.2d 478
3		(9th Cir. 1991) (“Declarations and
4		other evidence of the moving party
5		that would not be admissible are
6		subject to a timely objection and
7		may
8		be stricken.”).
9		<b>Lay Testimony.</b> Declarant
10		improperly offers lay testimony that
11		is actually expert testimony (based
12		on scientific, technical, or
13		specialized knowledge). Fed. R.
14		Evid. 701(c); <i>United States v.</i>
15		<i>Figueroa-Lopez</i> , 125 F.3d 1241,
16		1246 (9th Cir. 1997). Declarant
17		impermissibly offers expert
18		testimony
19		under the guise of lay opinion, in
20		contravention of FRE 701 and 702.
21	<b>4</b>	<b>Prejudicial Fed. R. Evid. 403</b>
22	Expert Report and Declaration of John Donohue (Donohue Rpt.).	<b>Improper expert methodology.</b>
23	¶106, 114: “[e]ncouraging the even	Fed. R. Evid. 702, 703; <i>Gen. Elec.</i>
24	greater danger of using an assault	<i>Co. v. Joiner</i> , 522 U.S. 136, 146-47
25	weapon for self-defense is a recipe	(1997) (holding courts have
26	for generating similar unwelcome	discretion to decide that materials
27	outcomes that will put family	relied upon by experts are
28	members and neighbors at	insufficient to support an expert’s
	considerable risk.” (¶106).	conclusions).
	Additionally, Declarant states “Any	<b>Lacks personal knowledge.</b>
	argument that because a large number	Witnesses are prohibited from
	of individuals throughout the United	testifying as to matters that they lack
	States have assault weapons today,	personal knowledge of. Fed. R. Evid.
	they are in ‘common use’ and	602. The personal knowledge
	therefore cannot be banned in	standard of 602 is also applicable to
	California is misguided. The current	affidavits and declarations submitted

	<p>level of ownership cannot be taken as an expression of American approval of this dangerous weaponry.” (§114).</p>	<p>in connection with motions for summary judgment. (<i>See</i> FRCP 56(e) which requires, in part, that: “A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated.” <i>See also</i>, <i>FDIC v. New Hampshire Ins. Co.</i>, 953 F.2d 478 (9th Cir. 1991) (“Declarations and other evidence of the moving party that would not be admissible are subject to a timely objection and may be stricken.”).</p>
<p><b>5</b></p>	<p>Expert Report and Declaration of John Donohue (Donohue Rpt.).</p> <p>¶116: “Indeed, the industry is constantly striving to find new ways to increase the lethality of their merchandise, so the notion that some threshold of ‘common use’ erects a constitutional impediment that can obstruct governmental initiatives to promote citizen safety is wholly misguided. The ability and right of citizens to enact safety promoting measures designed to deal with the serious growing problem of public mass shootings should not be affected by the marketing ability of the gun industry to hawk their wares.”</p>	<p><b>Improper testimony to a legal question.</b> Fed.R. Evid. 702; <i>Aguilar v. Int’l Longshoremen’s Union Local No. 10</i>, 966 F.2d 443, 447 (9th Cir. 1992) (“[E]xpert testimony consisting of legal conclusions [is] not admissible.” (citing <i>Marx v. Diners Club, Inc.</i>, 550 F.2d 505, 509 (2d Cir. 1977)). The expert is opining on what is proper to consider under the relevant constitutional analysis.</p> <p>Declarant improperly offers lay testimony that is actually expert testimony (based on scientific, technical, or specialized knowledge). Fed. R. Evid. 701(c); <i>United States v. Figueroa-Lopez</i>, 125 F.3d 1241, 1246 (9th Cir. 1997). Declarant impermissibly offers expert testimony</p>

1		under the guise of lay opinion, in
2		contravention of FRE 701 and 702.
3	<b>6</b>	<b>Speculative expert testimony.</b> Fed.
4	Expert Report and Declaration of	R. Evid. 702; <i>U.S. v. Hermanek</i> , 289
5	Blake Graham (Graham Rpt.)	F.3d 1076, 1094 (9th Cir. 2002)
6	¶ 1: “I am a Special Agent Supervisor	(“The trial judge in all cases of
7	for the California department of	proffered expert testimony must find
8	Justice, Bureau of Firearms.”	that it is properly grounded, well
9		reasoned, and not speculative before
10		it can be admitted. The ... expert
11		must explain how the conclusion is
12		so grounded.” (quoting Fed. R. Evid.
13		702, comm. note)). The Declarant is
14		testifying to matters unrelated to his
15		professional occupation. Declarant
16		has proffered improper opinion
17		testimony of a lay person.
18		Declarant’s academic credentials
19		only include a Bachelor of Science
20		degree in Criminal Justice from
21		California State University
22		Sacramento. Despite Declarant’s
23		extensive employment history, there
24		is no foundation for which he can lay
25		out his opinion on this matter
26	<b>7</b>	<b>Hearsay.</b> Fed. R. Evid. 403:
27	Expert Report and Declaration of	Declarant is relying on out of court
28	Blake Graham (Graham Rpt.)	statements offered to prove the truth
	¶¶24: “Overall, in my experience, the	of the matter they assert.
	challenged features described in	
	Penal Code section 30515 on assault	<b>Lay Testimony.</b> Declarant
	rifles may aid the shooters in being	improperly offers lay testimony that
	potentially more effective and	is actually expert testimony (based
	efficient while shooting people.	on scientific, technical, or
	Semiautomatic assault rifles are	specialized knowledge). Fed. R.
	generally modelled after successful	Evid. 701(c); <i>United States v.</i>
	military machine guns and	<i>Figuerroa-Lopez</i> , 125 F.3d 1241,
	submachine guns.”	1246 (9th Cir. 1997). Declarant



1		impermissibly offers expert testimony
2		under the guise of lay opinion, in
3		contravention of FRE 701 and 702.
4		<b>Speculative expert testimony.</b> Fed.
5		R. Evid. 702; <i>U.S. v. Hermanek</i> , 289
6		F.3d 1076, 1094 (9th Cir. 2002)
7		(“The trial judge in all cases of
8		proffered expert testimony must find
9		that it is properly grounded, well
10		reasoned, and not speculative before
11		it can be admitted. The ... expert
12		must explain how the conclusion is
13		so grounded.” (quoting Fed. R. Evid.
14		702, comm. note)). The Declarant is
15		testifying to matters unrelated to his
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22		California State University
23		Sacramento. Despite Declarant’s
24		extensive employment history, there
25		is no foundation for which he can lay
26		out his opinion on this matter.
27	<b>8</b>	<b>Lay Testimony.</b> Declarant
28	Expert Report and Declaration of Blake Graham (Graham Rpt.)	improperly offers lay testimony that
	¶¶36-38: “Often assault weapons are	is expert testimony (based on
	paired with LCMs during these	scientific, technical, or specialized
	crimes by the suspects. LCMs are	knowledge). Fed. R. Evid. 701(c);
	ammunition feeding devices that can	<i>United States v. Figueroa-Lopez</i> ,
	hold more than ten rounds, and	125 F.3d 1241, 1246 (9th Cir. 1997).
	sometimes up to 100 rounds, of	(¶¶24, 34)
	ammunition. Semiautomatic assault	
	weapons when loaded with LCMs	
	enable a shooter to potentially fire	



1		more than 10 rounds without the need for the shooter to reload the weapon. Because LCMs enable a shooter to fire repeatedly without needing to reload every 10 rounds, they significantly increase a shooter's ability to kill and injure large numbers of people quickly."	
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7	9	Expert Report and Declaration of Blake Graham (Graham Rpt.)	Improper testimony of an expert witness to a legal question. Fed. R. Evid. 702; <i>Aguilar v. Int'l Longshoremens Union Local No. 10</i> , 966 F.2d 443, 447 (9th Cir. 1992) ("[E]xpert testimony consisting of legal conclusions [is] not admissible." (citing <i>Marx v. Diners Club, Inc.</i> , 550 F.2d 505, 509 (2d Cir. 1977))). The expert is opining on what is proper to consider under the relevant constitutional analysis.
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9		¶45: "It is my opinion that the provisions of California Assault Weapons Control Act challenged by plaintiffs in this case enhances public safety by limiting prohibited weapons that are unreasonably dangerous for unrestricted civilian use and are often used by those who intend on committing crimes such as mass shootings."	
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16	10	Expert Report and Declaration of Michael Mersereau (Mersereau Rpt.)	<b>Speculative expert testimony.</b> Fed. R. Evid. 702; <i>U.S. v. Hermanek</i> , 289 F.3d 1076, 1094 (9th Cir. 2002) ("The trial judge in all cases of proffered expert testimony must find that it is properly grounded, well reasoned, and not speculative before it can be admitted. The ... expert must explain how the conclusion is so grounded." (quoting Fed. R. Evid. 702, comm. note)). The Declarant is testifying to matters unrelated to his professional occupation.
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18		¶1: "I am a Detective employed by the Los Angeles Police Department (the "LAPD") as a sworn officer for approximately 22 years."	
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26	11	Expert Report and Declaration of Michael Mersereau (Mersereau Rpt.)	<b>Lay Testimony.</b> Declarant improperly offers lay testimony that is actually expert testimony (based
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1	¶8: “It is my opinion, based on my	on scientific, technical, or
2	training and experience, that assault	specialized knowledge). Fed. R.
3	rifles (as defined by California Penal	Evid. 701(c); <i>United States v.</i>
4	Code sections 30510 and 30515) pose	<i>Figueroa-Lopez</i> , 125 F.3d 1241,
5	a greater danger to both police	1246 (9th Cir. 1997).
6	officers and the public than other	Lay opinion is only admissible if it is
7	unrestricted semi-automatic,	based on the declarant’s own
8	centerfire rifles...”	percipience of the events and is not
9		based on scientific, technical, or
10		other specialized knowledge within
11		the scope of FRE 702.
12	<b>12</b> Expert Report and Declaration of	<b>Lacks Foundation.</b> This statement
13	Michael Mersereau (Mersereau Rpt.)	is based solely on lay opinion and is
14	¶13: “Adding any of the features	therefore inadmissible. Fed. R. Evid.
15	described above further increases the	602, 701, 702.
16	ability of the shooter to accurately	<b>Prejudicial. Fed. R. Evid. 403.</b>
17	and rapidly deliver rounds to the	
18	target, increasing the potential	
19	lethality of the firearm beyond that	
20	presented by a featureless rifle.”	
21	<b>13</b> Expert Report and Declaration of	<b>Lacks Foundation.</b> This statement
22	Michael Mersereau (Mersereau Rpt.)	is based solely on lay opinion and is
23	¶19: “It is my opinion, based on my	therefore inadmissible. Fed. R. Evid.
24	training and experience, that the	602, 701, 702.
25	above described attacks would have	<b>Prejudicial. Fed. R. Evid. 403.</b> Lay
26	been less deadly had the shooters not	opinion is only admissible if it is
27	been armed with assault rifles or	based on the declarant’s own
28	assault rifles converted to machine	percipience of the events and is not
	guns.”	based on scientific, technical, or
		other specialized knowledge within
		the scope of FRE 702.
	<b>14</b> Expert Report and Declaration of	Lay opinion is only admissible if it is
	Michael Mersereau (Mersereau Rpt.)	based on the declarant’s own
		percipience of the events and is not
		based on scientific, technical, or

	<p>¶23: “There is no evidence that assault rifles are ‘commonly’ used for self-defense. While any firearm including an assault rifle could be used effectively in a self-defense scenario, handguns and shotguns are the more common and preferred choice.”</p>	<p>other specialized knowledge within the scope of FRE 702</p> <p><b>Lacks Foundation.</b> This statement is based solely on lay opinion and is therefore inadmissible. Fed. R. Evid. 602, 701, 702.</p> <p><b>Prejudicial. Fed. R. Evid. 403.</b></p>
15	<p>Expert Report and Declaration of Christopher Colwell (Colwell Rpt.).</p> <p>Page 5: “It is my opinion that while all weapons pose risk, assault rifles, especially when equipped with large capacity magazines, pose a far greater risk to the public from a medical standpoint than non-assault firearms.”</p>	<p>Declarant improperly offers lay testimony that is actually expert testimony (based on scientific, technical, or specialized knowledge). Fed. R. Evid. 701(c); <i>United States v. Figueroa-Lopez</i>, 125 F.3d 1241, 1246 (9th Cir. 1997).</p> <p>Declarant is an expert in the field of medicine, not firearms, thus he is offering a lay opinion which should not be admitted. Lay opinion is admissible if it is based on the declarant’s own percipience of the events and is not based on scientific, technical, or other specialized knowledge within the scope of FRE 702. Here, declarant’s opinion is based on specialized knowledge and is thus inadmissible.</p> <p><b>Speculative expert testimony.</b> Fed. R. Evid. 702; <i>U.S. v. Hermanek</i>, 289 F.3d 1076, 1094 (9th Cir. 2002) (“The trial judge in all cases of proffered expert testimony must find that it is properly grounded, well reasoned, and not speculative before it can be admitted. The ... expert must explain</p>

1		how the conclusion is so grounded.”
2		(quoting Fed. R. Evid. 702, comm.
3		note)). The Declarant is testifying to
4		matters unrelated to his professional
5	16	occupation.
6	Expert Report and Declaration of	<b>Speculative expert testimony.</b>
7	Lucy Allen (Allen Rpt.)	Fed. R. Evid. 702; <i>U.S. v. Hermanek</i> ,
8	¶6: “In preparing this report, I	289 F.3d 1076, 1094 (9th Cir. 2002)
9	considered the following	(“The trial judge in all cases of
10	materials...”	proffered expert testimony must find
11		that it is properly grounded, well
12		reasoned,
13		and not speculative before it can be
14		admitted. The ... expert must explain
15		how the conclusion is so grounded.”
16		(quoting Fed. R. Evid. 702, comm.
17		note)). The Declarant is testifying to
18		matters unrelated to his professional
19		occupation.
20		<b>No personal knowledge.</b> Witnesses
21		are prohibited from testifying as to
22		matters that they lack personal
23		knowledge of. Fed. R. Evid. 602.
24		The personal knowledge standard of
25		602 is also applicable to affidavits
26		and declarations submitted in
27		connection with motions for
28		summary judgment. ( <i>See</i> FRCP
		56(e) which requires, in part, that:
		“A supporting or opposing affidavit
		must be made on personal
		knowledge, set out facts that would
		be admissible in evidence, and show
		that the affiant is competent to testify
		on the matters stated.” <i>See also</i> ,
		<i>FDIC v. New Hampshire Ins. Co.</i> ,
		953 F.2d 478 (9th Cir.
		1991)(“Declarations and other
		evidence of the moving party that

1		would not be admissible are subject to a timely objection and may be stricken.”).
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4		<b>Hearsay. Fed. R. Evid. 403.</b> The declarant relies on out of court documents to prove the truth of the matters asserted therein. Declarant relies on these sources for the statistics produced by the various authors without demonstrating the validity of the data produced in the various sources (¶6). Despite the fact that the declarant claims to have personally assessed the data presented in her declaration, the data that she used was acquired through third party sources and not by declarant or her employer, NERA Economic Consulting. Thus any conclusion made is based on hearsay and is inadmissible and should not be relied upon.
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17		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
18		
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20	<b>17</b>	<b>Expert Report and Declaration of Lucy Allen (Allen Rpt.)</b>
21		¶9: “The Mother Jones data that we analyzed covers 104 mass shootings from 1982 to September 2008.”
22		<b>Same objections as 16 above.</b>
23		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
24		
25	<b>18</b>	<b>Updated Table and Appendix B to Expert Report of Lucy Allen (Exhibit 80 to Lucy Allen Deposition)</b>
26		<b>Hearsay. Fed. R. Evid. 403.</b> This exhibit is an out of court statement that is being offered for the truth to what it asserts and is therefore inadmissible as hearsay.
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<p>1 <b>19</b></p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p>	<p>Rebuttal Expert Report and Declaration of John Donohue.</p> <p>¶18: “Even assuming that each of the approximately 166,000 assault rifles is owned by a separate adult individual in California, it would mean that 0.5% of Californians possess an assault rifle (166,000/30.84 million)—an ownership rate that is far from what may be considered as ‘common use.’ That ownership rate is likely even lower because, as my initial report noted, gun ownership is growing increasingly concentrated. This implies that whatever the number of assault rifles is, it is a far smaller number of households in California and in the United State that have such weapons. English confuses the number of guns with the number of <i>owner</i> of guns, with the latter considerably smaller than the former.”</p>	<p>Declarant improperly offers lay testimony that is expert testimony (based on scientific, technical, or specialized knowledge). Fed. R. Evid. 701(c); <i>United States v. Figueroa-Lopez</i>, 125 F.3d 1241, 1246(9th Cir. 1997).</p> <p><b>Hearsay. Fed. R. Evid. 403.</b> Declarant relies on data collected from an outside source which constitutes an out of court statement and is being offered for the truth of the matter.</p> <p><b>Relevance.</b> Declarant presents data that is irrelevant to the matter. Fed. R. Evid. 401, 402.</p>
<p>18 <b>20</b></p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Rebuttal Expert Report and Declaration of John Donohue.</p> <p>¶20: “In other words, the very features that made this weapon attractive to the military (absent the ability to switch to automatic fire, which is not the standard military mode) now makes it the weapon of choice for many mass shooters across the country.”</p>	<p><b>Hearsay.</b> Declarant is asserting as fact, the mental impressions and thought processes of persons other than himself. Declarant asserts that mass shooters are selecting to use the AR-15 for the specific reasons outlined in ¶20. However, this is improper due to the fact, that Declarant in no way can know why someone make a specific decision. Doing so is prejudicial and is extremely misleading and not based on sworn affidavits from the individuals referred to. Prejudicial. Fed. R. Evid. 403.</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p><b>21</b> Rebuttal Expert Report and Declaration of Blake Graham.</p> <p>¶ 1: “I am a Special Agent Supervisor for the California department of Justice, Bureau of Firearms.”</p>	<p><b>Lacks personal knowledge.</b> Witnesses are prohibited from testifying as to matters that they lack personal knowledge of. Fed. R. Evid. 602. The personal knowledge standard of 602 is also applicable to affidavits and declarations submitted in connection with motions for summary judgment. (<i>See</i> FRCP 56(e) which requires, in part, that: “A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated.” <i>See also</i>, <i>FDIC v. New Hampshire Ins. Co.</i>, 953 F.2d 478 (9th Cir. 1991) (“Declarations and other evidence of the moving party that would not be admissible are subject to a timely objection and may be stricken.”)).</p> <p><b>Speculative expert testimony.</b> Fed. R. Evid. 702; <i>U.S. v. Hermanek</i>, 289 F.3d 1076, 1094 (9th Cir. 2002) (“The trial judge in all cases of proffered expert testimony must find that it is properly grounded, well reasoned, and not speculative before it can be admitted. The ... expert must explain how the conclusion is so grounded.” (quoting Fed. R. Evid. 702, comm. note)). The Declarant’s academic credentials only include a Bachelor of Science degree in Criminal Justice from California State University</p>
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1		Sacramento. Despite Declarant's extensive employment history, there is no foundation for which he can lay out his opinion on this matter.
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4	<b>22</b>	<b>Hearsay. Fed. R. Evid. 403.</b>
5	Rebuttal Expert Report and Declaration of Blake Graham.	Declarant relies on hearsay in support of his rebuttal. Fed. R. Evid. 403. This is a quote attributed to <a href="http://www.scribid.com">www.scribid.com</a> as noted on page three of the rebuttal.
6	¶ 9: "A 2014 FBI report indicates that 9mm Luger projectiles outperform .40 S&W and .45 auto projectiles tested by the FBI..."	<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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12	<b>23</b>	<b>Hearsay. Fed. R. Evid. 403.</b>
13	Rebuttal Expert Report and Declaration of Blake Graham.	Declarant improperly offers lay testimony that is actually expert testimony (based on scientific, technical, or specialized knowledge). Fed. R. Evid. 701 (c). This statement is uncorroborated by evidence and is solely based on lay opinion, thus making it inadmissible.
14	¶ 12: "While this may be true, those same features are what makes assault weapons attractive to potential mass shooters or criminals..."	
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18	<b>24</b>	<b>Hearsay. Fed. R. Evid. 403.</b>
19	Excerpts of Transcript of the Deposition of John Donohue	This exhibit is an out of court statement that is being offered for the truth to what it asserts and is therefore inadmissible as hearsay.
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22	<b>25</b>	<b>Hearsay. Fed. R. Evid. 403.</b>
23	Excerpts of Transcript of the Deposition of Blake Graham	This exhibit is an out of court statement that is being offered for the truth to what it asserts and is therefore inadmissible as hearsay.
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26	<b>26</b>	<b>Hearsay. Fed. R. Evid. 403.</b>
27	Excerpts of Transcript of the Deposition of Michael Mersereau	This exhibit is an out of court statement that is being offered for the truth to
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1		what it asserts and is therefore inadmissible as hearsay.
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3	<b>27</b>	Excerpts of Transcript of the Deposition of Christopher Colwell
4		<b>Hearsay. Fed. R. Evid. 403.</b> This exhibit is an out of court statement that is being offered for the truth to what it asserts and is therefore inadmissible as hearsay.
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7	<b>28</b>	Excerpts of Transcript of the Deposition of Lucy Allen (Allen Dep.)
8		<b>Hearsay. Fed. R. Evid. 403.</b> This exhibit is an out of court statement that is being offered for the truth to what it asserts and is therefore inadmissible as hearsay.
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11	<b>29</b>	Excerpts of Transcript of the Deposition of J. Buford Boone (Boone Dep.)
12		<b>Hearsay. Fed. R. Evid. 403.</b> This exhibit is an out of court statement that is being offered for the truth to what it asserts and is therefore inadmissible as hearsay.
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15	<b>30</b>	Excerpts of Transcript of the Deposition of Gary Kleck (Kleck Dep.)
16		<b>Hearsay. Fed. R. Evid. 403.</b> This exhibit is an out of court statement that is being offered for the truth to what it asserts and is therefore inadmissible as hearsay.
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19	<b>31</b>	Excerpts of Transcript of the Deposition of Stephen Helsley (Helsley Dep.)
20		<b>Hearsay. Fed. R. Evid. 403.</b> This exhibit is an out of court statement that is being offered for the truth to what it asserts and is therefore inadmissible as hearsay.
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23	<b>32</b>	Violence Policy Center, Bullet Buttons: The Gun Industry's Attack on California's Assault Weapons Ban (2012)
24		<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the
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document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.

"Declarant improperly offers lay testimony that is actually expert testimony (based on scientific, technical, or specialized knowledge.). Fed. R.Evid. 702, 703. This evidence cites to surveys that they did not personally conduct, and therefore cannot testify to in court. Lacks personal knowledge. Fed.R.Evid. 702. The contents of the article does not identify any data or other acceptable foundation upon which it bases its opinions. The article bases its opinions on an on-line survey conducted in 2010 by the National Shooting Sports Foundation, without detailing the demographics surveyed or any information regarding the accumulation of data.

Additionally, the author of this article has done nothing more than rely on hearsay studies and conformed data accumulated therewith to form biased and unscientific opinions. Studies cited in the article include: (1) The Department of Treasury from April 1998; (2) Modern Sporting Rifle, Comprehensive Consumer Report from 2010; (3) Freedom Group Annual Report from 2011. This article is prejudicial because the contents of the article are misleading in that it is supported by biased

1		opinion and irrelevant surveys which do not depict an accurate cross section of the community. Fed.R.Evid. 401, 402, 403.
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4		<b>Fed. R. Evid. 403.</b> Prejudicial because article makes several unfounded assumptions and opinions that are misleading and should therefore not be admitted into evidence.
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9		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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12	<b>33</b>	Excerpt of United States Army, Rifle Marksmanship M16/M4 - Series Weapons (2008)
13		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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16	<b>34</b>	Brady Center to Prevent Gun Violence, Assault Weapons “Mass Produced Mayhem” (2008)
17		<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document’s contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.
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25		<b>Fed. R. Evid. 702, 801-802.</b>
26		Because the document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being
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1		put forth by an expert who can speak directly to the reliability thereof under Fed. R. Evid. 702, nor is it proper lay opinion under Fed. R. Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed. R. Evid. 801-802. It states as much at p. 1,308: "The question should be asked of the candidates, 'Senator, why should civilians be allowed to wield these weapons of war?' This report provides the factual basis for answering that question, and makes the evidentiary case for an assault weapons ban. The report also outlines how the availability of assault weapons to criminals has altered the balance of power on urban streets between police and criminals, placing police officers in grave risk of harm."
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16		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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20	<b>35</b> Excerpts of Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles (1998)	<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802
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1		According to this study at footnote 2:
2		“The study was carried out by a
3		working group composed of ATF
4		and Treasury representatives. The
5		working group’s activities and
6		findings were overseen by a steering
7		committee composed of ATF and
8		Treasury officials.” Thus the hearsay
9		data collected and relied upon are
10		prejudicial and misleading.
11		Fed.R.Evid. 801, 802. Fed. R. Evid.
12		403.
13		<b>Authentication.</b> The document
14		referred to has not been properly
15		authenticated. Fed. R. Evid. 901,
16		902.
17	<b>36</b> Bureau of Alcohol, Tobacco, and	<b>Fed.R.Evid. 702, 801-802.</b> Because
18	Firearms, Report and	this document is comprised entirely
19	Recommendation on the	of out of court statements being
20	Importability of Certain	offered for the truth of their contents,
21	Semiautomatic Rifles (1989) (ATF	and because it is not being put forth
22	Rpt.)	by an expert who can speak directly
23		to the reliability thereof under
24		Fed.R.Evid. 702, 701, nor is it proper
25		lay opinion under Fed.R.Evid. 702,
26		701, the document’s contents are
27		inadmissible hearsay and should not
28		be considered by the court under
		Fed.R.Evid. 801-802 This Report
		was written in 1989, and is therefore
		misleading due to the fact that it is
		based on records from thirty years
		ago. The opinions opined in this
		report are out dated and should not
		be admitted into evidence due to
		their lack of foundation and
		credibility.

1		Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).
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5		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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9	<b>37</b>	<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802. Fed.R.Evid. 702, 701.
10	Christopher S. Koper, et al., Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: an Updated Examination of Local and National Sources, 95 Journal of Urban Health 3, 313-321 (2017) (Koper Article)	
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27	<b>38</b>	<b>Lacks foundation.</b> Fed. R. Evid. 602.
28	Colt.com, AR15A4 Advertisement	



1		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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4	<b>39</b>	<b>Colt.com, About Colt Rifles</b>
5		<b>Lacks foundation.</b> Fed. R. Evid. 602.
6		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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10	<b>40</b>	<b>David S. Fallis, Data Indicate Drop in High-Capacity Magazines During Federal Gun Ban, Washington Post (Jan. 10, 2013)</b>
11		<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.
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19		<b>Irrelevant.</b> This article is irrelevant due to the fact that the state of Virginia is the focus of this article and not California. Fed.R.Evid. 401, 402.
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23		<b>Hearsay.</b> The author relies on a hearsay survey conducted by the Washington Post in which the author does not denote any demographically data regarding those who took the survey. Fed. R. Evid. 801, 802. The article relies on a report by the National Institute of Justice from
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1		2004. Using data and quotes from works nearly fifteen years old is prejudicial and extremely misleading. Fed.R.Evid. 403. The article is based on the Washington Post's opinions of data gathered. Since the Washington Post is not an expert, this evidence lacks proper foundation and falls prey to the multiple level of hearsay issue (that of the data collected, reports cited to and used by the Post to form their opinions). Fed. R. Evid. 801, 802.
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10		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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14	<b>41</b>	<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.
15	H.R. Rep. No. 103-489, Public Safety and Recreational Firearms Use Protection Act (H.R. Rep. 103-489)	
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1		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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4	<b>42</b>	<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.
5	Mark Follman, et al., More than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines, Mother Jones (Feb. 27, 2013)	
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14		Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).
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18		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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22	<b>43</b>	<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are
23	S.B. 880 Report, 2015-2016 Reg. Sess., Assembly Committee on Public Safety (June 14, 2016) (S.B. 880 Rpt.)	
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1		inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.
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4		Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).
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8		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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12	<b>44</b> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Selection and Application Guide 0101.06 to Ballistic-Resistant Body Armor (2014)	<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.
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21		Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).
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26		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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1	45	Violence Policy Center, "Officer Down": Assault Weapons and the War on Law Enforcement (2003)	<p><b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.</p> <p>Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).</p> <p><b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.</p>
18	46	Violence Policy Center, The Militarization of the U.S. Civilian Firearms Market (2011)	<p><b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.</p> <p>Additionally, its contents are of a technical nature that constitute</p>

1		expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid. 701, Subd. (c).
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4		This article contains images that are
5		biased and misleading. On page 37
6		of this article there is a picture of
7		four children sitting with an AR-50
8		with a caption stating: "The gun
9		industry has saturated the American
10		civilian 'gun culture' with 50 caliber
11		anti-armor sniper rifles, like this AR-
12		50." Thus this evidence should be
13		deemed inadmissible based upon
14		Fed.R.Evid. 403.
15		<b>Prejudicial.</b> Additionally, the article
16		should not be admitted into evidence
17		because of the sever prejudicial
18		nature of its biased statements such
19		as: "It [the gun industry] is a highly
20		militarized and increasingly cynical
21		industry that has cast all restraint
22		aside to generate profit from
23		military-style firearms." Such a
24		statement is not based upon
25		evidence, but on the opinion of the
26		author of this article. Proper
27		foundation for such an opinion has
28		not been made. Fed. R. Evid. 403.
		<b>Authentication.</b> The document
		referred to has not been properly
		authenticated. Fed. R. Evid. 901,
		902.
47	Violence Policy Center, Firearm Justifiable Homicides and Non-Fatal Self-Defense Gun Use: An Analysis of Federal Bureau of Investigation	<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents,

1	and National Crime Victimization	and because it is not being put forth
2	Survey Data (2018)	by an expert who can speak directly
3		to the reliability thereof under
4		Fed.R.Evid. 702, nor is it proper lay
5		opinion under Fed.R.Evid. 702, the
6		document's contents are
7		inadmissible hearsay and should not
8		be considered by the court under
9		Fed.R.Evid. 801-802.
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11		Additionally, its contents are of a
12		technical nature that constitute
13		expert opinion. Since Defendant did
14		not designate its author as an expert,
15		it cannot be considered. Fed. R.
16		Evid.701, Subd. (c).
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18		<b>Authentication.</b> The document
19		referred to has not been properly
20		authenticated. Fed. R. Evid. 901,
21		902.
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23	<b>48</b>	<b>Fed.R.Evid. 702, 801-802.</b> Because
24	California Senate Bill 23, 1999 Cal.	this document is comprised entirely
25	Stat. ch. 129 (S.B. 23)	of out of court statements being
26		offered for the truth of their contents,
27		and because it is not being put forth
28		by an expert who can speak directly
		to the reliability thereof under
		Fed.R.Evid. 702, nor is it proper lay
		opinion under Fed.R.Evid. 702, the
		document's contents are
		inadmissible hearsay and should not
		be considered by the court under
		Fed.R.Evid. 801-802.
		Additionally, its contents are of a
		technical nature that constitute
		expert opinion. Since Defendant did
		not designate its author as an expert,



1		it cannot be considered. Fed. R. Evid.701, Subd. (c).
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3	<b>49</b>	<b>Guns &amp; Ammo: The New Breed of Assault Rifle, Tomorrow's State-of-the-Art Sporting Rifle (July 1981) (July 1981 Guns &amp; Ammo)</b>
4		<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.
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13		Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).
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17		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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20	<b>50</b>	<b>Damien Cave and Charlotte Graham-McLay, New Zealand to Ban Military-Style Semiautomatic Guns, Jacinda Arden Says, New York Times (March 20, 2019)</b>
21		<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not
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1		be considered by the court under Fed.R.Evid. 801-802.
2		
3		Additionally, its contents are of a
4		technical nature that constitute
5		expert opinion. Since Defendant did
6		not designate its author as an expert,
7		it cannot be considered. Fed. R.
8		Evid.701, Subd. (c).
9		<b>Unduly Prejudicial.</b>
10		<b>Fed.R.Evid.403.</b> This article focuses
11		on the country of New Zealand,
12		which in no way can be used to
13		compare or contrast the gun laws in
14		the State of California.
15		
16		Additionally, its contents are of a
17		technical nature that constitute
18		expert opinion. Since Defendant did
19		not designate its author as an expert,
20		it cannot be considered. Fed. R.
21		Evid.701, Subd. (c).
22		<b>Authentication.</b> The document
23		referred to has not been properly
24		authenticated. Fed. R. Evid. 901,
25		902.
26		
27	<b>51</b>	<b>Fed.R.Evid. 702, 801-802.</b> Because
28	Kaylee Hartung, et al., Stoneman	this document is comprised entirely
	Douglas shooting. Now parents are	of out of court statements being
	urged to be alert, CNN (March 25,	offered for the truth of their contents,
	2019)	and because it is not being put forth
		by an expert who can speak directly
		to the reliability thereof under
		Fed.R.Evid. 702, nor is it proper lay
		opinion under Fed.R.Evid. 702, the
		document's contents are
		inadmissible hearsay and should not

1		be considered by the court under Fed.R.Evid. 801-802.
2		
3		<b>Unduly Prejudicial.</b>
4		<b>Fed.R.Evid.403.</b> This article is
5		extremely prejudicial and biased.
6		Fed.R.Evid. 403. The contents of the
7		article are based on opinion and
8		incidents pertaining to one individual
9		who took her own life. In
10		Defendant's Motion for Summary
11		Judgment, Exhibit 37, is listed
12		following the following sentence:
13		"Social science studies consistently
14		show that mass shootings can lead to
15		increased levels of post traumatic
16		stress symptoms, anxiety, and
17		depression in survivors..." This
18		statement is hearsay and the proper
19		foundation has not been made, thus
20		this evidence should not be admitted.
21		Fed. R. Evid. 801, 802.
22		
23		Additionally, its contents are of a
24		technical nature that constitute
25		expert opinion. Since Defendant did
26		not designate its author as an expert,
27		it cannot be considered. Fed. R.
28		Evid.701, Subd. (c).
		<b>Authentication.</b> The document
		referred to has not been properly
		authenticated. Fed. R. Evid. 901,
		902.
24	<b>52</b>	<b>Fed.R.Evid. 702, 801-802.</b> Because
25	Panagiotis K. Stefanopoulos, et al.,	this document is comprised entirely
26	Gunshot wounds: A review of	of out of court statements being
27	ballistics related to penetrating	offered for the truth of their contents,
28	trauma, Journal of Acute Disease,	and because it is not being put forth
	178-185 (2014)	by an expert who can speak directly
		to the reliability thereof under

Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.

**Unduly Prejudicial.**

**Fed.R.Evid.403.** Defendant's Motion for Summary Judgment at page 20 cites to Exhibit 38 with the following broken and incomplete quote: "The 'effects of rifle bullets can be far more destructive compared to handguns because of their higher energy,' and the 'explosive' effects on gunshot victims." However, the full text reads, "Although the effects of rifle bullets can be far more destructive compared to handguns because of their higher energy, almost all of these so-called 'explosive' effects can be traced to the phenomenon of cavitation, a prominent manifestation of high-energy transfer..."

The article states that "[a]lthough controversy still exists regarding the relative necrosis in muscle tissue..." leading one to believe that the use of this as evidence would cause confusion and ultimately lacks foundation. Thus this evidence should not be considered by this court under Fed. R. Evid. 403.

Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert,

1		it cannot be considered. Fed. R. Evid.701, Subd. (c).
2		
3		<b>Authentication.</b> The document
4		referred to has not been properly
5		authenticated. Fed. R. Evid. 901,
6		902.
7		<b>Incomplete.</b> Fed. R. Evid. 106. The
8		introduction of any remaining
9		portions, ought, in fairness, be
10		considered contemporaneously in
11		Defendant's motion.
12	<b>53</b>	<b>Fed. R. Evid. 702, 801-802.</b>
13	United States Census Bureau, Quick	Because the document is comprised
14	Facts: California (available at	entirely of out of court statements
15	<a href="https://www.census.gov/quickfacts/ca">https://www.census.gov/quickfacts/ca</a>	being offered for the truth of their
16	)	contents, and because it is not being
17		put forth by an expert who can speak
18		directly to the reliability thereof
19		under Fed. R. Evid. 702, nor is it
20		proper lay opinion under Fed. R.
21		Evid. 702, the document's contents
22		are inadmissible hearsay and should
23		not be considered by this court.
24	<b>54</b>	Additionally, its contents are of a
25	Law Center to Prevent Gun Violence,	technical nature that constitute
26	The California Model: Twenty Years	expert opinion. Since Defendant did
27	of Putting Safety First	not designate its author as an expert,
28		it cannot be considered. Fed. R. Evid.701, Subd. (c).

1		Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.
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6		Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).
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10		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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14	<b>55</b>	<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.
15	U.S. DOJ Press Release, California Man Charged with Conspiring to Provide Material Support to Terrorism and Being 'Straw Purchaser' of Assault Rifles Ultimately Used in San Bernardino, California, Attack (Dec. 17, 2015)	
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23		Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).
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<p>1 <b>56</b></p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p>	<p>Excerpt of National Shooting Sports Foundation, NSSF Report: Modern Sporting Rifle (MSR) Comprehensive Consumer Report (2013)</p>	<p><b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.</p> <p>Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).</p> <p><b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.</p>
<p>18 <b>57</b></p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Excerpt of National Shooting Sports Foundation, NSSF Report 2017 Edition: Firearms Retailer Survey Report, Trend Data 2008-2016 (2017)</p>	<p><b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.</p>



1		Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).
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5		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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9	<b>58</b>	<b>FBI Training Division: FBI Academy, Quantico, VA, Executive Summary of Justification for Law Enforcement Partners (May 6, 2014)</b>
10		<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being offered for the truth of their contents, and because it is not being put forth by an expert who can speak directly to the reliability thereof under Fed.R.Evid. 702, nor is it proper lay opinion under Fed.R.Evid. 702, the document's contents are inadmissible hearsay and should not be considered by the court under Fed.R.Evid. 801-802.
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19		Additionally, its contents are of a technical nature that constitute expert opinion. Since Defendant did not designate its author as an expert, it cannot be considered. Fed. R. Evid.701, Subd. (c).
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23		<b>Authentication.</b> The document referred to has not been properly authenticated. Fed. R. Evid. 901, 902.
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26	<b>59</b>	<b>Violence Policy Center, Key Points About Assault Weapons</b>
27		<b>Fed.R.Evid. 702, 801-802.</b> Because this document is comprised entirely of out of court statements being
28		

1 offered for the truth of their contents,  
 2 and because it is not being put forth  
 3 by an expert who can speak directly  
 4 to the reliability thereof under  
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 14 not designate its author as an expert,  
 15 it cannot be considered. Fed. R.  
 16 Evid.701, Subd. (c).

17 **Authentication.** The document  
 18 referred to has not been properly  
 19 authenticated. Fed. R. Evid. 901,  
 20 902.

21 Dated: May 2, 2019

22 **MICHEL & ASSOCIATES, P.C.**

23 s/ Sean A. Brady

24 Sean A. Brady  
 25 Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**  
IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*  
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

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

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

Xavier Becerra  
Attorney General of California  
Peter H. Chang  
Deputy Attorney General  
E-mail: peter.chang@doj.ca.gov  
John D. Echeverria  
Deputy Attorney General  
E-mail: john.echeverria@doj.ca.gov  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102

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

Executed May 2, 2019.

s/ Laura Palmerin  
Laura Palmerin