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 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA
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<p>13 WILLIAM WIESE, et al.,</p> <p>14</p> <p>15 Plaintiff,</p> <p>16</p> <p>17 XAVIER BECERRA, et al.,</p> <p>18 Defendant.</p>	<p>2:17-cv-00903-WBS-KJN</p> <p>DECLARATION OF BLAKE GRAHAM</p> <p>Date: June 16, 2017 Time: 10:00 a.m. Courtroom: 5 Judge: The Honorable William B. Shubb Action Filed: April 28, 2017</p>
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DECLARATION OF BLAKE GRAHAM

I, BLAKE GRAHAM, declare:

1. I am a Special Agent Supervisor for the California Department of Justice, Bureau of Firearms. I make this declaration of my own personal knowledge and experience and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

BACKGROUND AND QUALIFICATIONS

2. I received a Bachelor of Science degree in May 1992 in Criminal Justice at the California State University Sacramento. My coursework included forensics, corrections, and a number of classes in criminal justice-related topics.

3. Since 1994, I have worked as either an investigator for the California Department of Alcoholic and Beverage Control (ABC), or as a Special Agent for the California Department of Justice (DOJ). My job responsibilities in all of these positions have increasingly required the recovery, investigation, and identification of firearms, the ammunition used for those firearms, and the magazines used for feeding ammunition for such firearms.

4. My work as an investigator for ABC between 1994 and 1999 included the recovery of firearms, magazines and ammunition.

5. Between 1999 and 2002, I worked as a Special Agent for DOJ, and was assigned to the Violence Suppression Program in the Bureau of Narcotics Enforcement. In this job, I investigated violent crimes and various violations occurring at California gun shows. As a gun show enforcement agent, I attended gun shows in the San Francisco Bay Area to monitor, and if necessary, seize, firearms, ammunition, and magazines sold illegally to felons, parolees, and probationers.

6. From October 2002 to the present, I have been a Special Agent and Special Agent Supervisor, for the DOJ's Bureau of Firearms (BOF). In this capacity, I am assigned to recover firearms from prohibited individuals, monitor gun shows for illegal activities,

1 conduct surveillance on gun dealers suspected of illegal activity, and investigate illegal
2 trafficking of firearms, manufacturing of assault weapons, machine guns, and illegal
3 possession of various magazines and ammunition.

4 7. Since 2008, I have been responsible for reviewing handguns that are submitted
5 by manufacturers for inclusion in California's roster of handguns certified for sale. A copy
6 of the roster can be found on the DOJ website: <http://certguns.doj.ca.gov/>.

7 8. In my career I have attended at least 40 gun shows and have become very
8 knowledgeable on current laws pertaining to the sales of firearms, ammunition, and
9 ammunition containers—including large-capacity magazines (LCMs)—in the State of
10 California.

11 9. I have been trained and qualified to carry several different
12 types of firearms, including: Glock Model 17 (9 mm semi-automatic pistol),
13 multiple Glock .40 caliber semi automatic pistols, Heckler & Koch MPS (9 mm
14 submachine gun), Smith & Wesson, Model 60 (.38 Special revolver), multiple .45 caliber
15 semi-automatic pistols, and a Colt, Model M4 (5.56 mm machine gun). I have access to
16 other Department-owned handguns, shotguns, submachine guns, machine guns, rifles, shotguns
17 and 40 mm "less lethal" launchers.

18 10. Throughout my career, I have conducted training programs in the identification
19 and handling of firearms. I have also trained other Special Agents of BOF on assault
20 weapons and firearms identification. I also have given firearms identification classes to
21 members of the Sacramento and San Joaquin County District Attorney's offices.

22 11. I have also completed at least 15 firearms training courses since 1994. These courses
23 included the assembly and use of specific firearms, cartridge composition (bullet, the
24 propellant, and the casing), common calibers used by law enforcement, and training on rifle
25 and handgun ammunition. I have been certified as a California Peace Officer Standards and
26 Training (POST) approved Firearms Instructor/Rangemaster since 2002.

27 12. During the course of my career and training I have become proficient in the use and
28 disassembly of various revolvers, pistols, submachine guns, shotguns, and rifles. I have made or

1 assisted in the arrest of at least thirty persons for violations involving illegal weapons possession.
2 In the course of my employment I have participated in excess of thirty search warrants which
3 involved the illegal possession of firearms.

4 13. I have been qualified as an expert witness regarding the use of firearms in 14 cases in
5 both federal and state court since 2007.

6 FINDINGS

7 I. USE OF LARGE-CAPACITY MAGAZINES IN MASS SHOOTINGS.

8 14. Through the course of my work, I am familiar with the use of LCMs.

9 15. LCMs are ammunition feeding devices that can hold more than ten rounds, and
10 sometimes up to 100 rounds, of ammunition.

11 16. LCMs allow semi-automatic weapons to fire more than 10 rounds without the need
12 for a shooter to reload the weapon.

13 17. Because LCMs enable a shooter to fire repeatedly without needing to reload, they
14 significantly increase a shooter's ability to kill and injure large numbers of people quickly.

15 18. Because magazines carrying more than 10 rounds at a time allow for uninterrupted
16 shooting, such LCMs have been the preferred ammunition feeding devices in several mass
17 shootings in California and elsewhere.

18 19. To the best of my knowledge, all of the shootings listed below involved persons
19 who shot and wounded and/or killed one or more persons, including peace officers, while
20 using LCMs.

21 a. On January 17, 1989, Patrick Purdy, shot and killed 5 and wounded 32 others at
22 the Cleveland Elementary School in Stockton, California. He used an AK-47 style rifle and
23 LCMs in the shooting.

24 b. On February 28, 1997, Larry Phillips and Emil Matasareanu, armed with
25 multiple assault weapons and LCMs, wounded 20 people, including law enforcement officers,
26 while robbing the Bank of America in North Hollywood, California.

27 c. On January 9, 2005, Andres Raya used a LCM and illegal assault weapon to
28 shoot and kill Police Sgt. Howard Stevenson in Ceres, California.

1 d. On June 15, 2008, Marco Topete used an assault rifle and LCM to shoot and
2 kill Yolo County Sheriff's Deputy Tony Diaz after a traffic stop near Dunnigan, California.

3 e. On November 5, 2009, Nidal Hasan used a semi-automatic pistol and
4 LCMs to shoot and kill 13 and wounded over 30 others at the Fort Hood Army base in Fort
5 Hood, Texas.

6 f. On February 25, 2010, Ricky Liles, used multiple weapons and LCMs to
7 shoot and kill two law enforcement officers and wounded one other in Minkler, California.

8 g. January 8, 2011, Jared Loughner used a handgun with a LCM to shoot and
9 kill 6 people and wounded 13 others in Tucson, Arizona. He was subdued while trying to
10 reload his weapon.

11 h. On July 20, 2012, James Holmes used an assault weapon and LCMs to kill 12
12 people and wound 70 others in a movie theater in Aurora, Colorado.

13 i. On December 14, 2012, Adam Lanza used LCMs and multiple firearms to kill 20
14 children and six adults at Sandy Hook Elementary School in Newtown, Connecticut.

15 j. On June 7, 2013, John Zawahri—who was previously denied purchase of a
16 firearm by DOJ—used a home-built AR-15 rifle and LCMs to kill his father and brother at their
17 family home, and then kill and wound others at the Santa Monica, California Community
18 College.

19 k. On December 2, 2015, Syed Farook and his wife, Tashfeen Malik, used assault
20 weapons and LCMs in killing 14 people and wounding 22 others at the Inland Regional Center in
21 San Bernardino, California.

22 l. On June 12, 2016, Omar Mateen used an assault rifle and LCMs to shoot and
23 kill 49 people and wound 53 others inside a nightclub in Orlando, Florida.

24 m. On July 7, 2016, Micah Johnson used an assault rifle and a LCM to shoot and
25 kill five police officers and wound nine others in Dallas, Texas.

26 n. On July 17, 2016, Gavin Long used an assault rifle and LCMs to shoot and kill
27 three police officers and wound three other officers in Baton Rouge, Louisiana.

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1 **II. LEGISLATION LIMITING LARGE CAPACITY MAGAZINES.**

2 20. I am also aware of the state and federal laws banning the sale and possession of
3 LCMs, and the effect of these laws on the availability of such magazines in California.

4 21. From 1994 to 2004, the federal assault weapons ban controlled the manufacture and
5 sales of LCMs in the United States. During this 10-year window, LCMs were only able to be
6 sold to law enforcement and the military. Over time, LCMs were removed from public access
7 due to incidental seizure during everyday law enforcement investigations in all 50 states.

8 22. In 1999, the California Legislature passed Senate Bill No. 23, which restricted the
9 sales, transfer and manufacture of LCMs on a state level. This bill, which, at the time did not
10 prohibit possession of LCMs, eventually became codified as California Penal Code section
11 32310.

12 **III. REASONS FOR CALIFORNIA'S PROHIBITION ON POSSESSION OF LARGE-
13 CAPACITY MAGAZINES.**

14 23. Once the Federal restrictions were lifted in late 2004, LCMs became available in
15 states outside California. This has created an increase in the amount of illegal importation of
16 LCMs in California.

17 24. Since at least 2002, Agents from the DOJ Bureau of Firearms have conducted
18 investigations in which California residents would travel outside California and purchase or
19 acquire LCMs and then return to California with these illegally imported LCMs.

20 25. In such cases, these same subjects would also acquire ammunition and firearms
21 that would be smuggled back into California at the same time.

22 26. Many times these California residents were already prohibited from acquiring,
23 owning and possessing firearms, ammunition and ammunition feeding devices. Sometimes
24 the traffickers would not be firearms-prohibited but they would ultimately still break the law
25 and smuggle back firearms and LCMs despite facing the potential of felony charges should
26 they be caught.

1 27. The prohibition on sales, but not possession, of LCMs, has also created a market
2 for LCM repair kits. At numerous California gun shows, prior to 2014, I saw subjects
3 purchase disassembled LCMs being sold as large-capacity magazine repair kits. Often the
4 repair kits were for weapons that were not even sold prior to the year 2000.

5 28. Because of the availability of the “repair kits,” Special Agents with the Bureau of
6 Firearms could see California residents were either illegally importing LCM or purchasing
7 these repair kits and assembling them into LCMs in violation of Penal Code Section 32310.

8 29. On October 11, 2013 Governor Brown signed Assembly Bill No. 48, which made
9 it a misdemeanor to knowingly manufacture, import, keep for sale, offer or expose for sale, or
10 give, lend, buy, or receive any LCM conversion kit that is capable of converting an ammunition
11 feeding device into a large-capacity magazine. The bill also made it a misdemeanor or a felony to
12 buy or receive a large-capacity magazine. This new law in essence outlawed “repair kits” and
13 the issues associated with them. Much of AB 48 was codified as Section 32310,
14 subdivisions (a) and (b).


15 30. Even with the passage of AB 48, BOF Agents do not have the ability to identify
16 whether the LCMs at issue were legally purchased, or are the product of an illegal transfer.
17 Also, the presence of large numbers of LCMs in the state—even if lawfully owned by law-
18 abiding citizens—increases the potential for criminal theft or illegal trafficking of such
19 magazines.

20 31. Because of these challenges in identifying legally possessed magazines, as well
21 as use of LCMs in mass shootings that have occurred both in and outside of California for
22 several years, the State of California has chosen to restrict access to large-capacity magazines.
23 The State’s laws prohibiting possession of large capacity magazines—through first Senate Bill
24 No. 1446, and then through Proposition 63—ensures the restriction on the use of such magazines
25 in the State.

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and
2 correct.

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Executed on: June 15, 2017


BLAKE GRAHAM

CERTIFICATE OF SERVICE

Case Name: **Wiese, William, et al. v. Xavier Becerra, et al.** No. **2:17-cv-00903-WBS-KJN**

I hereby certify that on June 15, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DECLARATION OF BLAKE GRAHAM

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 15, 2017, at San Francisco, California.

N. Newlin
Declarant

/s/ N. Newlin
Signature