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 7 *Attorneys for Defendants*

8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA
 11

12
 13 **WILLIAM WIESE, et al.,**

14 Plaintiff,

15 v.

16 **XAVIER BECERRA, et al.,**

17 Defendant.
 18
 19

2:17-cv-00903-WBS-KJN

**DEFENDANTS' REQUEST FOR
 JUDICIAL NOTICE IN SUPPORT OF
 OPPOSITION TO TRO; PRELIMINARY
 INJUNCTION**

Date: June 16, 2017

Time: 10:00 a.m.

Courtroom: 5

Judge: The Honorable William B. Shubb

Action Filed: April 28, 2017:

REQUEST FOR JUDICIAL NOTICE

Defendants Xavier Becerra and Martha Superior respectfully request that this Court take judicial notice, pursuant to Federal Rule of Evidence 201, of some of the declarations and exhibits filed by the Attorney General in opposition to a motion for preliminary injunction in *Duncan v. Becerra*, 17-cv-1017-BEN-JLB (S.D. Cal.). These documents are relevant to show that plaintiffs cannot meet their burden to establish a likelihood of success on the merits of their Second Amendment claim, that they will not suffer irreparable injury, and that the balance of harms and the public interest militate in favor of denying injunctive relief.

Federal Rule of Evidence 201(b) states that “[a] judicially noticed fact must be one not subject to reasonable dispute that is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot readily be questioned.” Fed. R. Evid. 201(b). Judicial notice may be taken of documents filed and orders or decisions entered in any federal or state court. *See Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002). The Court may also take notice of facts and documents that are “not subject to reasonable dispute.” *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Sufficient notice of matters subject to judicial notice is provided by lodging a copy of the relevant documents and records with the Court. Accordingly, Defendant respectfully requests that this Court take judicial notice of the exhibits to the accompanying declaration of counsel.

Dated: June 15, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
TAMAR PACHTER
Supervising Deputy Attorney General
JOHN D. ECHEVERRIA
Deputy Attorney General

/s/ Alexandra Robert Gordon
ALEXANDRA ROBERT GORDON
Deputy Attorney General
Attorneys for Defendants

1 **DECLARATION OF ALEXANDRA ROBERT GORDON**

2
3 I, Alexandra Robert Gordon, declare:

4 1. I am a Deputy Attorney General at the California Department of Justice and serve
5 as counsel to Attorney General Xavier Becerra in the above-titled matter.

6 2. Except as otherwise stated, I have personal knowledge of the facts set forth in this
7 declaration, and if called upon as a witness I could testify competently as to those facts.

8 3. A true and correct copy of the Declaration of Ken James in Support of Defendant’s
9 Opposition to Plaintiffs’ Motion for Preliminary Injunction in *Duncan v. Becerra*, 17-cv-1017-
10 BEN-JLB (S.D. Cal.), Dkt. No. 14, is attached hereto as **Exhibit A**.

11
12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct.

14
15 Executed on June 15, 2016, at San Francisco, California.

16
17 */s/ Alexandra Robert Gordon*

18 ALEXANDRA ROBERT GORDON
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CERTIFICATE OF SERVICE

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

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:

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO TRO; PRELIMINARY INJUNCTION

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

Exhibit A

1 XAVIER BECERRA
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Supervising Deputy Attorney General
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Attorney General Xavier Becerra
9

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
12
13

14 **VIRGINIA DUNCAN, et al.,**

15 Plaintiffs,
16

17 v.

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

20 Defendants.
21
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17-cv-1017-BEN-JLB

DECLARATION OF KEN JAMES
IN SUPPORT OF DEFENDANT
XAVIER BECERRA'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

Date: June 13, 2017
Time: 10:00 a.m.
Dept: 5A
Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

1 I, KEN JAMES, declare:

2 1. I am a retired law enforcement officer retiring from the Emeryville,
3 California Police Department on June 30, 2015 after forty years of service. I served
4 the last seventeen years of my career as the Chief of Police of the department.
5 During my career I held a wide variety of assignments, including patrol officer, K-9
6 officer, and general assignment investigator. I rose through the ranks in the
7 Department and served as a patrol and investigations sergeant, Captain of both the
8 Patrol and Professional Services Divisions prior to my appointment as Chief.
9 During my career I investigated and supervised the investigations of various gun
10 related crimes.

11 2. I served as the Chair of the California Police Chief's Association's
12 Firearms Committee. The California Police Chiefs Association represents the
13 municipal Chiefs, and their seconds in command, of 332 cities who provide public
14 safety services for over twenty-six million Californians. The Association promotes
15 and advances the science and art of police administration and crime prevention, to
16 develop and disseminate professional administrative practices, and to encourage the
17 adherence of all police officers to high professional standards of conduct in strict
18 compliance with the Law Enforcement Officer's Code of Ethics.

19 3. The Association's Firearms Committee is responsible for the formulation
20 and review of the Association's positions on gun violence prevention, including
21 developing and advocating for legislation to reduce and/or prevent gun violence.
22 The Association adopted its initial position paper in 1995 and has updated and
23 revised its position three times since. The initial paper identified six areas,
24 including limiting magazine capacity, that would significantly impact gun violence
25 in California.

26 4. I also serve as a committee member of the International Association of
27 Chiefs of Police's Firearm Committee. The IACP represents over 15,000
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1 professional law enforcement administrators worldwide and promotes the best
2 professionals policing practices. The Firearms Committee advises the IACP's
3 Board of Directors and Executive Board on national firearms issues.

4 5. The information stated in this declaration is based on my knowledge,
5 training, education, and experience.

6 6. In my opinion, the existence of high capacity magazines only serves to
7 enhance the killing and injuring potential of a firearm. I have attended debriefings
8 of several high profile mass shootings, including Columbine, Sandy Hook, Aurora
9 Colorado, San Bernardino, Orlando Nightclub, and the Christopher Dorner
10 shootings in Southern California. In each of these shootings high capacity
11 magazines were utilized allowing the shooter or shooters to move quickly through
12 an area dispensing a large number of bullets without slowing to reload, resulting in
13 mass casualties. I have drawn from these reviews that casualties would have been
14 significantly reduced if a shooter needed to slow or stop to reload after ten shots.

15 7. It is my opinion that possession and use of high capacity magazines by
16 individuals committing criminal acts pose a significant threat to law enforcement
17 personnel and the general public. I have been involved with and/or supervised the
18 investigation of gun violence crimes in which high capacity magazines were used.
19 For example, in a drive-by shooting in the City of Emeryville, the investigation
20 revealed that in excess of forty casings from two different guns were found at the
21 scene. The shooting resulted in the death of one individual, but fortunately, no
22 other injuries to individuals at the scene. Witnesses told officers that the shooting
23 lasted only a matter of seconds. The number of shots fired resulted in adjacent
24 occupied buildings being struck by stray bullets posing a significant threat to the
25 occupants of those buildings.

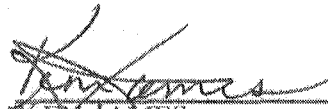
26 8. In my professional capacity as a police chief, Chair of the California
27 Police Chiefs Association's Firearms Committee and member of the IACP's
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1 Firearms Committee, I have read and viewed news accounts of incidents in which
2 individuals have defended themselves from a criminal attacks and perceived
3 criminal attacks by using a firearm. I have performed these reviews to discover
4 evidence that the ability of a victim to fire a large number was necessary. I am not
5 aware that in any of the accounts the victims fired in excess of ten shots in their
6 defense.

7 9. The California Police Chiefs Association, in their initial position paper
8 on gun violence written in 1995 and in subsequent updates, have identified limiting
9 magazine capacities as an appropriate and necessary measure to reduce gun
10 violence. The Association adopted its initial position paper in 1995 and has
11 updated and revised its position three times since. The initial paper identified six
12 areas, including limiting magazine capacity, that would significantly impact gun
13 violence in California. Attached hereto as Exhibit A is a true and correct copy of
14 the Association's position paper adopted in May of 2013. The Association
15 supported legislation that resulted in the current laws regulating magazine capacity.
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17 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
18 is true and correct.

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20 Executed on: June 5, 2017

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22 
23 KEN JAMES
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