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Attorneys for Plaintiffs

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

Lana Rae Renna; Danielle Jaymes; Laura
Schwartz; Michael Schwartz; Robert
Macomber; Clint Freeman; John Klier;
Justin Smith; John Phillips; Cheryl
Prince; Darin Prince; Ryan Peterson;
PWGG, L.P.; North County Shooting
Center, Inc.; Gunfighter Tactical, LLC;
Firearms Policy Coalition, Inc.; San
Diego County Gun Owners PAC;
Citizens Committee for the Right to
Keep and Bear Arms; and Second
Amendment Foundation,

Plaintiffs,

v.

Robert Bonta, Attorney General of
California; and Allison Mendoza,¹
Director of the California Department of
Justice Bureau of Firearms,

Defendants.

Case No.: 20-cv-2190-DMS-DEB

**PLAINTIFFS' RESPONSES TO
DEFENDANTS' OBJECTIONS TO
EVIDENCE SUPPORTING
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

Date: February 10, 2023
Time: 1:30 p.m.
Courtroom 13A (13th Floor)
Hon. Dana M. Sabraw

¹ Allison Mendoza is substituted for former Bureau of Firearms Director Luis Lopez and former Acting Director Blake Graham. Fed. R. Civ. P. 25(d).

Plaintiffs submit this response to Defendants' Objections to Plaintiffs' Evidence Submitted in Support of Plaintiffs' Motion for Preliminary Injunction or, Alternatively, Motion for Summary Judgment:

Declaration of Joseph Ostini (ECF Nos. 13-12, 13-3)

Defendants' Objections	Plaintiffs' Responses
<p>1. Defendants generally object to the entirety of the "Analysis" portion of the declaration (pp. 4 through 9) on the following grounds:</p> <ul style="list-style-type: none"> • The evidence constitutes improper lay opinion. Fed. R. Evid. 701. • The evidence is inadmissible hearsay. Fed. R. Evid. 802. • Plaintiffs have failed to introduce evidence "sufficient to support a finding that the witness has personal knowledge of the matter." Fed. R. Evid. 602. 	<p>As this is a general objection without specificity as to the allegedly objectionable assertions, Plaintiffs generally respond that the assertions in this portion of the declaration are largely based on information that is either undisputed or that is readily verifiable as accurate and thus not reasonably subject to dispute.</p>
<p>2. Defendants object to the statement on page 4: "most Americans that purchase handguns outside of California do not purchase California-roster handguns because they are viewed as outdated."²</p>	<p>Defendants do not object to Exhibit 1 to the declaration, to any of the website links cited in support of the declaration, or to any of the information contained within Exhibit 1 or any of the websites; nor do they challenge the accuracy of any of the information within these readily accessible online sources. The information within these sources individually and/or collectively provides the necessary evidentiary foundation for the challenged assertion and renders it admissible under the evidentiary rules. Further, the assertion is not subject to reasonable dispute.</p>

² Objections 2 through 11 all raised on the same bases:

"The evidence constitutes improper lay opinion. Fed. R. Evid. 701."

"Plaintiffs have failed to introduce evidence 'sufficient to support a finding that the witness has personal knowledge of the matter.' Fed. R. Evid. 602."

<p>1 3. Defendants object to the statement on</p> <p>2 page 4: “very few new models of</p> <p>3 semiautomatic handguns are available</p> <p>4 for purchase to California residents.”</p>	<p>Defendants do not object to Exhibit 1 to</p> <p>the declaration, to any of the website</p> <p>links cited in support of the declaration,</p> <p>or to any of the information contained</p> <p>within Exhibit 1 or any of the websites;</p> <p>nor do they challenge the accuracy of</p> <p>any of the information within these</p> <p>readily accessible online sources. The</p> <p>information within these sources</p> <p>individually and/or collectively provides</p> <p>the necessary evidentiary foundation for</p> <p>the challenged assertion and renders it</p> <p>admissible under the evidentiary rules.</p> <p>Further, the assertion is not subject to</p> <p>reasonable dispute.</p>
<p>12 4. Defendants object to the statement on</p> <p>13 page 4: “these sales and exceptions make</p> <p>14 up an exceedingly small percentage of</p> <p>15 the total handguns sold within</p> <p>16 California.”</p>	<p>Defendants do not object to Exhibit 1 to</p> <p>the declaration, to any of the website</p> <p>links cited in support of the declaration,</p> <p>or to any of the information contained</p> <p>within Exhibit 1 or any of the websites;</p> <p>nor do they challenge the accuracy of</p> <p>any of the information within these</p> <p>readily accessible online sources. The</p> <p>information within these sources</p> <p>individually and/or collectively provides</p> <p>the necessary evidentiary foundation for</p> <p>the challenged assertion and renders it</p> <p>admissible under the evidentiary rules.</p> <p>Further, the assertion is not subject to</p> <p>reasonable dispute.</p>
<p>22 5. Defendants object to the statement on</p> <p>23 page 5: “modern semiautomatic</p> <p>24 handguns are not on the roster.”</p>	<p>Defendants do not object to Exhibit 1 to</p> <p>the declaration, to any of the website</p> <p>links cited in support of the declaration,</p> <p>or to any of the information contained</p> <p>within Exhibit 1 or any of the websites;</p> <p>nor do they challenge the accuracy of</p> <p>any of the information within these</p> <p>readily accessible online sources. The</p> <p>information within these sources</p>

	individually and/or collectively provides the necessary evidentiary foundation for the challenged assertion and renders it admissible under the evidentiary rules. Further, the assertion is not subject to reasonable dispute.
6. Defendants object to the statement on page 5: “the overwhelming majority of handguns for sale in the United States are not on the roster. As a result, off-roster handguns are the norm outside of California.”	Defendants do not object to Exhibit 1 to the declaration, to any of the website links cited in support of the declaration, or to any of the information contained within Exhibit 1 or any of the websites; nor do they challenge the accuracy of any of the information within these readily accessible online sources. The information within these sources individually and/or collectively provides the necessary evidentiary foundation for the challenged assertion and renders it admissible under the evidentiary rules. Further, the assertion is not subject to reasonable dispute.
7. Defendants object to the statement on page 5: “Therefore, these modern off-roster handguns are in common use throughout the United States”	Defendants do not object to Exhibit 1 to the declaration, to any of the website links cited in support of the declaration, or to any of the information contained within Exhibit 1 or any of the websites; nor do they challenge the accuracy of any of the information within these readily accessible online sources. The information within these sources individually and/or collectively provides the necessary evidentiary foundation for the challenged assertion and renders it admissible under the evidentiary rules. Further, the assertion is not subject to reasonable dispute.

1 8. Defendants object to the statement on
2 page 5: “The number of firearms on the
3 California roster is dropping steadily.”

Defendants do not object to Exhibit 1 to
the declaration, to any of the website
links cited in support of the declaration,
or to any of the information contained
within Exhibit 1 or any of the websites;
nor do they challenge the accuracy of
any of the information within these
readily accessible online sources. The
information within these sources
individually and/or collectively provides
the necessary evidentiary foundation for
the challenged assertion and renders it
admissible under the evidentiary rules.
Further, the assertion is not subject to
reasonable dispute.

12 9. Defendants object to the statement on
13 pages 5-6: “For many manufacturers,
14 compliance is not worth the effort or
15 profitable enough to warrant the time and
16 resources necessary to meet these
17 requirements annually.”

Defendants do not object to Exhibit 1 to
the declaration, to any of the website
links cited in support of the declaration,
or to any of the information contained
within Exhibit 1 or any of the websites;
nor do they challenge the accuracy of
any of the information within these
readily accessible online sources. The
information within these sources
individually and/or collectively provides
the necessary evidentiary foundation for
the challenged assertion and renders it
admissible under the evidentiary rules.
Further, the assertion is not subject to
reasonable dispute.

22 10. Defendants object to the statement on
23 pages 7: “the total number of guns on the
24 roster could shrink to an exceedingly
25 small number, possibly even to zero, in
26 the coming years.”

Defendants do not object to Exhibit 1 to
the declaration, to any of the website
links cited in support of the declaration,
or to any of the information contained
within Exhibit 1 or any of the websites;
nor do they challenge the accuracy of
any of the information within these
readily accessible online sources. The
information within these sources

1		individually and/or collectively provides the necessary evidentiary foundation for the challenged assertion and renders it admissible under the evidentiary rules. Further, the assertion is not subject to reasonable dispute.
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6	11. Defendants object to the statement on pages 7: “Many small manufacturers of firearms which my survey did not address have not gone through the effort to maintain their firearms on the roster because of the expenses and effort involved.”	Defendants do not object to Exhibit 1 to the declaration, to any of the website links cited in support of the declaration, or to any of the information contained within Exhibit 1 or any of the websites; nor do they challenge the accuracy of any of the information within these readily accessible online sources. The information within these sources individually and/or collectively provides the necessary evidentiary foundation for the challenged assertion and renders it admissible under the evidentiary rules. Further, the assertion is not subject to reasonable dispute.
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Declaration of John Phillips (ECF No. 71-5)

17	12. Defendants object to lines 11 through 14 on page 3: “The Glock G43 is one of the top-selling firearms designed for concealed carry that is in common use throughout the country.” ³	Phillips’s declaration explains with specificity the basis of his extensive knowledge and experience in the firearms commercial industry, including the availability, sales patterns, and popularity of firearms for sale in California and across the country, ¶¶2-9, which firmly supports the admissibility of the challenged assertion.
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³ Objections 12 through 14 are all raised on the same bases:
 “The evidence constitutes improper lay opinion. Fed. R. Evid. 701.”
 “Plaintiffs have failed to introduce evidence ‘sufficient to support a finding that the witness has personal knowledge of the matter.’ Fed. R. Evid. 602.”

13. Defendants object to lines 26 through 27 on page 3: “I am further aware that the Sig Sauer 320 is the most popular carry gun in the nation”

Phillips’s declaration explains with specificity the basis of his extensive knowledge and experience in the firearms commercial industry, including the availability, sales patterns, and popularity of firearms for sale in California and across the country, ¶¶2-9, which firmly supports the admissibility of the challenged assertion.

14. Defendants object to lines 18 through 21 on page 4: “a Sig 365, Sig 320 M17, Glock 17 Gen 5 MOS, FN 509, and/or FNX-9 . . . are handguns in common use for self-defense and lawful purposes and widely sold and possessed outside of California.”

Phillips’s declaration explains with specificity the basis of his extensive knowledge and experience in the firearms commercial industry, including the availability, sales patterns, and popularity of firearms for sale in California and across the country, ¶¶2-9, which firmly supports the admissibility of the challenged assertion.

Declaration of Lana Rae Renna (ECF No. 71-6)

15. Defendant objects to lines 11 through 14 on page 1: “a Smith & Wesson M&P® 380 SHIELD™ EZ . . . is a handgun in common use for self-defense and other lawful purposes and widely sold and possessed outside of California.”⁴

The challenged assertion is not subject to any reasonable dispute, and Defendants have not disputed Plaintiffs’ other evidence rendering the matter not subject to any reasonable dispute.

16. Defendants object to lines 16 through 19 on page 1: “The Smith & Wesson M&P® 380 SHIELD™ EZ is specifically designed for those with limited hand strength. I would be able to

Plaintiff Renna’s description of her damaged thumb tendon adequately supports her assertion about the greater efficacy of this type of firearm as a self-defense mechanism, and the fact that this

⁴ Objections 15 through 16 all raised on the same bases:

“The evidence constitutes improper lay opinion. Fed. R. Evid. 701.”

“Plaintiffs have failed to introduce evidence ‘sufficient to support a finding that the witness has personal knowledge of the matter.’ Fed. R. Evid. 602.”

1 use this gun more safely and accurately
2 than the guns currently available to
3 purchase on Defendants' Roster."

model is designed for people like her
with limited hand strength is also readily
verifiable as accurate and thus not
reasonably subject to dispute.

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6 **Declaration of Michael Schwartz (ECF No. 71-7)**

7 17. Defendants object to lines 4 through
8 6 on page 2: "a Glock 19 Gen5 and/or
9 Springfield Armory Hellcat . . . are both
10 handguns in common use for self-
11 defense and other lawful purposes and
12 widely sold and possessed outside of
13 California." ⁵

The challenged assertion is not subject to
any reasonable dispute, and Defendants
have not disputed Plaintiffs' other
evidence that renders the matter not
subject to any reasonable dispute.

14 Dated: February 3, 2023

15 The DiGuiseppe Law Firm, P.C.

Benbrook Law Group, PC

16 By s/ Raymond M. DiGuiseppe

By s/ Bradley A. Benbrook

17 Raymond M. DiGuiseppe
18 Attorneys for Plaintiffs

Bradley A. Benbrook
Attorneys for Plaintiffs

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26 ⁵ Objection 17 is raised on the same basis:

27 "The evidence constitutes improper lay opinion. Fed. R. Evid. 701."

28 "Plaintiffs have failed to introduce evidence 'sufficient to support a finding that
the witness has personal knowledge of the matter.' Fed. R. Evid. 602."