Case 3 1 2 3 4 5 6 7	 20-cv-02190-DMS-DEB Document 74-2 Fil Raymond M. DiGuiseppe The DiGuiseppe Law Firm, P.C. 4320 Southport-Supply Road, Suite 300 Southport, NC 28461 P: 910-713-8804 E: law.rmd@gmail.com Bradley A. Benbrook Stephen M. Duvernay Benbrook Law Group, PC 701 University Avenue, Suite 106 Sacramento, CA 95825 P: 916-447-4900 	ed 02/03/23 PageID.1374 Page 1 of 8 Michael P. Sousa Law Offices of Michael P. Sousa, APC 3232 Governor Dr., Suite A San Diego, CA 92122 P: 858-453-6122 E: msousa@msousalaw.com William A. Sack Firearms Policy Coalition 426 Campbell Avenue Havertown, PA 19083 P: 916-596-3492 E: Wsack@fpclaw.org
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10 11	Attorneys for Plaintiffs	
12		DISTRICT COURT
13	SOUTHERN DISTRICT OF CALIFORNIA	
14	Lana Rae Renna; Danielle Jaymes; Laura	Case No.: 20-cv-2190-DMS-DEB
 15 16 17 18 19 20 21 22 23 24 25 26 27 	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.	PLAINTIFFS' RESPONSES TO DEFENDANTS' OBJECTIONS TO EVIDENCE SUPPORTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION OR ALTERNATIVELY, MOTION FOR DUMMARY JUDGMENTDate: February 10, 2023 Time: 1:30 p.m. Courtroom 13A (13th Floor) Hon. Dana M. Sabraw
28	¹ Allison Mendoza is substituted for Lopez and former Acting Director Blake (former Bureau of Firearms Director Luis Graham. Fed. R. Civ. P. 25(d).

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

4	Declaration of Joseph Ost	ini (ECF Nos. 13-12, 13-3)
5	Defendants' Objections	Plaintiffs' Responses
6	1. Defendants generally object to the	As this is a general objection without
7	entirety of the "Analysis" portion of the declaration (pp. 4 through 9) on the	specificity as to the allegedly objectionable assertions, Plaintiffs
8	following grounds:	generally respond that the assertions in
9	• The evidence constitutes improper lay	this portion of the declaration are largely
10	opinion. Fed. R. Evid. 701.The evidence is inadmissible hearsay.	based on information that is either undisputed or that is readily verifiable as
	Fed. R. Evid. 802.	accurate and thus not reasonably subject
11	• Plaintiffs have failed to introduce	to dispute.
12	evidence "sufficient to support a finding that the witness has personal knowledge	
13	of the matter." Fed. R. Evid. 602.	
14		
15	2. Defendants object to the statement on page 4: "most Americans that purchase	Defendants do not object to Exhibit 1 to the declaration, to any of the website
16	handguns outside of California do not	links cited in support of the declaration,
17	purchase California-roster handguns	or to any of the information contained
18	because they are viewed as outdated." ²	within Exhibit 1 or any of the websites; nor do they challenge the accuracy of
		any of the information within these
19		readily accessible online sources. The
20		information within these sources individually and/or collectively provides
21		the necessary evidentiary foundation for
22		the challenged assertion and renders it
23		admissible under the evidentiary rules. Further, the assertion is not subject to
24		reasonable dispute.
25		_
26	$\frac{1}{2}$ Objections 2 through 11 all raised on	n the same bases
20		

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

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1	3. Defendants object to the statement on	Defendants do not object to Exhibit 1 to
2	page 4: "very few new models of	the declaration, to any of the website
	semiautomatic handguns are available	links cited in support of the declaration, or to any of the information contained
3	for purchase to California residents."	within Exhibit 1 or any of the websites;
4		nor do they challenge the accuracy of
5		any of the information within these
6		readily accessible online sources. The
		information within these sources individually and/or collectively provides
7		the necessary evidentiary foundation for
8		the challenged assertion and renders it
9		admissible under the evidentiary rules.
10		Further, the assertion is not subject to
11		reasonable dispute.
	4. Defendants object to the statement on	Defendants do not object to Exhibit 1 to
12	page 4: "these sales and exceptions make	the declaration, to any of the website
13	up an exceedingly small percentage of	links cited in support of the declaration,
14	the total handguns sold within California."	or to any of the information contained within Exhibit 1 or any of the websites;
15		nor do they challenge the accuracy of
16		any of the information within these
		readily accessible online sources. The information within these sources
17		information within these sources individually and/or collectively provides
18		the necessary evidentiary foundation for
19		the challenged assertion and renders it
20		admissible under the evidentiary rules.
21		Further, the assertion is not subject to reasonable dispute.
22	5. Defendants object to the statement on	Defendants do not object to Exhibit 1 to
23	page 5: "modern semiautomatic	the declaration, to any of the website
24	handguns are not on the roster."	links cited in support of the declaration, or to any of the information contained
25		within Exhibit 1 or any of the websites;
26		nor do they challenge the accuracy of
27		any of the information within these readily accessible online sources. The
		information within these sources
28	PLAINTIFFS' RESPONSES TO DEFEN	
	PLAINTIFFS RESPONSES TO DEFEN	

1 2		individually and/or collectively provides the necessary evidentiary foundation for the challenged assertion and renders it
3		admissible under the evidentiary rules.
		Further, the assertion is not subject to
4 5		reasonable dispute.
6	6. Defendants object to the statement on	Defendants do not object to Exhibit 1 to
7	page 5: "the overwhelming majority of	the declaration, to any of the website
	handguns for sale in the United States are not on the roster. As a result, off-roster	links cited in support of the declaration, or to any of the information contained
8	handguns are the norm outside of	within Exhibit 1 or any of the websites;
9	California."	nor do they challenge the accuracy of
10		any of the information within these readily accessible online sources. The
11		information within these sources
12		individually and/or collectively provides
13		the necessary evidentiary foundation for the challenged assertion and renders it
14		admissible under the evidentiary rules.
15		Further, the assertion is not subject to reasonable dispute.
16		
17	7. Defendants object to the statement on page 5: "Therefore, these modern	Defendants do not object to Exhibit 1 to the declaration, to any of the website
18	off-roster handguns are in common use	links cited in support of the declaration,
19	throughout the United States"	or to any of the information contained
20		within Exhibit 1 or any of the websites; nor do they challenge the accuracy of
21		any of the information within these
22		readily accessible online sources. The information within these sources
23		individually and/or collectively provides
24		the necessary evidentiary foundation for the challenged assertion and renders it
25		admissible under the evidentiary rules.
26		Further, the assertion is not subject to reasonable dispute.
27		
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	PLAINTIFFS' RESPONSES TO DEFEN	
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1	8. Defendants object to the statement on	Defendants do not object to Exhibit 1 to
2	page 5: "The number of firearms on the California roster is dropping steadily."	the declaration, to any of the website links cited in support of the declaration,
3		or to any of the information contained
4		within Exhibit 1 or any of the websites; nor do they challenge the accuracy of
5		any of the information within these
6		readily accessible online sources. The information within these sources
7		individually and/or collectively provides
8		the necessary evidentiary foundation for the challenged assertion and renders it
9		admissible under the evidentiary rules.
10		Further, the assertion is not subject to reasonable dispute.
11	0. Defendents chiest to the statement on	Defendente de not chiest te Exhibit 1 te
12	9. Defendants object to the statement on pages 5-6: "For many manufacturers,	Defendants do not object to Exhibit 1 to the declaration, to any of the website
13	compliance is not worth the effort or	links cited in support of the declaration,
14	profitable enough to warrant the time and resources necessary to meet these	or to any of the information contained within Exhibit 1 or any of the websites;
15	requirements annually."	nor do they challenge the accuracy of
16		any of the information within these readily accessible online sources. The
17		information within these sources
18		individually and/or collectively provides the necessary evidentiary foundation for
19		the challenged assertion and renders it
20		admissible under the evidentiary rules. Further, the assertion is not subject to
21		reasonable dispute.
22	10. Defendants object to the statement on	Defendants do not object to Exhibit 1 to
23	pages 7: "the total number of guns on the	the declaration, to any of the website
24	roster could shrink to an exceedingly small number, possibly even to zero, in	links cited in support of the declaration, or to any of the information contained
25	the coming years."	within Exhibit 1 or any of the websites;
26		nor do they challenge the accuracy of any of the information within these
27		readily accessible online sources. The
28		information within these sources
	PLAINTIFFS' RESPONSES TO DEFEN	

1		individually and/or collectively provides the necessary evidentiary foundation for
2		the challenged assertion and renders it
3		admissible under the evidentiary rules. Further, the assertion is not subject to
4		reasonable dispute.
5	11. Defendants object to the statement on	Defendants do not object to Exhibit 1 to
6	pages 7: "Many small manufacturers of	the declaration, to any of the website
7	firearms which my survey did not address have not gone through the effort	links cited in support of the declaration, or to any of the information contained
8	to maintain their firearms on the roster	within Exhibit 1 or any of the websites;
9	because of the expenses and effort involved."	nor do they challenge the accuracy of any of the information within these
10		readily accessible online sources. The
11		information within these sources individually and/or collectively provides
12		the necessary evidentiary foundation for
13		the challenged assertion and renders it admissible under the evidentiary rules.
14		Further, the assertion is not subject to
15		reasonable dispute.
16		
16	Declaration of John P	hillips (ECF No. 71-5)
17	12. Defendants object to lines 11 through	Phillips's declaration explains with
17 18	12. Defendants object to lines 11 through 14 on page 3: "The Glock G43 is one of	Phillips's declaration explains with specificity the basis of his extensive
17 18 19	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	Phillips's declaration explains with specificity the basis of his extensive knowledge and experience in the firearms commercial industry, including
17 18 19 20	12. Defendants object to lines 11 through 14 on page 3: "The Glock G43 is one of the top-selling firearms designed for	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
17 18 19 20 21	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	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,
 17 18 19 20 21 22 	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	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
 17 18 19 20 21 22 23 	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	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,
 17 18 19 20 21 22 23 24 	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	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
 17 18 19 20 21 22 23 24 25 	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.
 17 18 19 20 21 22 23 24 	 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 ³ Objections 12 through 14 are all rais "The evidence constitutes improper 	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.
 17 18 19 20 21 22 23 24 25 	 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 ³ Objections 12 through 14 are all rais "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs" have failed to introduce et al. "Plaintiffs" have failed to introduce et al. "Plaintif	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.
 17 18 19 20 21 22 23 24 25 26 	 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 ³ Objections 12 through 14 are all rais "The evidence constitutes improper "Plaintiffs have failed to introduce et the witness has personal knowledge of the 	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.
 17 18 19 20 21 22 23 24 25 26 27 	 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 ³ Objections 12 through 14 are all rais "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs have failed to introduce et al. "The evidence constitutes improper "Plaintiffs" have failed to introduce et al. "Plaintiffs" have failed to introduce et al. "Plaintif	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.
 17 18 19 20 21 22 23 24 25 26 27 	 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 ³ Objections 12 through 14 are all rais "The evidence constitutes improper "Plaintiffs have failed to introduce er the witness has personal knowledge of the PLAINTIFFS' RESPONSES TO DEFEN 	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.

1 2 3 4 5 6 7	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.
7 8 9 10 11 12 13 14	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.
 15 16 17 18 19 20 21 22 23 24 25 26 27 28 	 14 on page 1: "a Smith & Wesson M&P® 380 SHIELDTM EZ is a handgun in common use for self-defense and other lawful purposes and widely sold and possessed outside of California."⁴ 16. Defendants object to lines 16 through 19 on page 1: "The Smith & Wesson M&P® 380 SHIELDTM EZ is specifically designed for those with limited hand strength. I would be able to ⁴ Objections 15 through 16 all raised of "The evidence constitutes improper "Plaintiffs have failed to introduce evidence with the witness has personal knowledge of the 	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. 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 on the same bases: lay opinion. Fed. R. Evid. 701." vidence 'sufficient to support a finding that matter.' Fed. R. Evid. 602."
	PLAINTIFFS' RESPONSES TO DEFENI -6	

1 2 3	use this gun more safely and accurately than the guns currently available to 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.
4	
5	
6	Declaration of Michael Schwartz (ECF No. 71-7)
7	17. Defendants object to lines 4 through The challenged assertion is not subject to 6 on page 2: "a Glock 19 Gen5 and/or any reasonable dispute, and Defendants
8	Springfield Armory Hellcat are both have not disputed Plaintiffs' other
9	handguns in common use for self- evidence that renders the matter not
10	defense and other lawful purposes and subject to any reasonable dispute. widely sold and possessed outside of
	California." ⁵
11	
12	
13	Dated: February 3, 2023
14	
15	The DiGuiseppe Law Firm, P.C. Benbrook Law Group, PC
16	
17	By s/ Raymond M. DiGuiseppeBy s/ Bradley A. BenbrookRaymond M. DiGuiseppeBradley A. Benbrook
18	Raymond M. DiGuiseppe Attorneys for PlaintiffsBradley A. Benbrook Attorneys for Plaintiffs
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21	
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25	
26	⁵ Objection 17 is raised on the same basis: "The avidence constitutes improper law opinion Fed P. Evid. 701."
27	"The evidence constitutes improper lay opinion. Fed. R. Evid. 701." "Plaintiffs have failed to introduce evidence 'sufficient to support a finding that
28	the witness has personal knowledge of the matter.' Fed. R. Evid. 602."
	PLAINTIFFS' RESPONSES TO DEFENDANTS' OBJECTIONS TO EVIDENCE -7-