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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT

12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 WILLIAM WIESE, et al.,  
14  
15 Plaintiffs,  
16  
17 vs.

18 ROB BONTA, in his official capacity as  
19 Attorney General of California, et al.,  
20  
21 Defendants.

Case No. 2:17-cv-00903-WBS-KJN

**STATEMENT OF UNDISPUTED MATERIAL  
FACTS IN SUPPORT OF PLAINTIFFS’  
MOTION FOR SUMMARY JUDGMENT**

**[FRCP 56]**

Date: July 10, 2023  
Time: 1:30 p.m.  
Judge: Hon. William B. Shubb  
Courtroom 5, 14th Floor

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23 Pursuant to Fed. Rule Civ. Pro. 56, and E.D. Cal. L.R. 260(a), plaintiffs William Wiese,  
24 Jeremiah Morris, Lance Cowley, Sherman Macaston, Clifford Flores, L.Q. Dang, Frank  
25 Federeau, Alan Normandy, Todd Nielsen, The Calguns Foundation, Firearms Policy Coalition,  
26 Firearms Policy Foundation, and Second Amendment Foundation (“Plaintiffs”) hereby submit  
27 this Statement of Undisputed Material Facts in support of their Motion for Summary Judgment,  
28

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1 filed herewith.

No.	UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE
1	<p>2 Defendant Rob Bonta is the head</p> <p>3 of the California Department of</p> <p>4 Justice (“DOJ”) which, along with</p> <p>5 its Bureau of Firearms, regulates</p> <p>6 and enforces state law related to</p> <p>7 the sales, transfer, possession and</p> <p>8 ownership of firearms.</p>	<p>California Const., art. 5, § 13; Defendants’</p> <p>Answer to Third Amended Complaint (“TAC”)</p> <p>¶ 24.</p>
2	<p>9 Defendant Allison Mendoza is</p> <p>10 sued in her official capacity as the</p> <p>11 Acting Director of the Bureau of</p> <p>12 Firearms.</p>	<p>Defendants’ Answer to TAC, ¶ 25.</p>
3	<p>13 California law defines a “large</p> <p>14 capacity magazine” (“LCM”) as</p> <p>15 “any ammunition feeding device</p> <p>16 with the capacity to accept more</p> <p>17 than 10 rounds” of ammunition.</p>	<p>Cal. Pen. Code § 16740.</p>
4	<p>18 Since 1999, through passage of</p> <p>19 Sen. Bill 23, California prohibited</p> <p>20 the manufacture, importation, sale,</p> <p>21 or receipt of LCMs.</p>	<p>Cal. Pen. Code § 32310(a) (formerly §</p> <p>12020(a)(2)).</p>
5	<p>22 California law did not prohibit</p> <p>23 persons from acquiring LCMs that</p> <p>24 had been legally acquired, prior to</p> <p>25 Jan. 1, 2000.</p>	<p>Plaintiffs’ Request for Jud. Notice (“RJN”),</p> <p>Exh. A, p.1; Exh. B, p. 4; Exh. E, ¶ 12.</p>
6	<p>26 In 2016, the Legislature passed</p> <p>27 Sen. Bill 1446, which amended</p> <p>28 Pen. Code § 32310(b) to make it a</p> <p>criminal offense to possess a</p> <p>LCM, effective Jan. 1, 2017.</p>	<p>Plaintiffs’ RJN, Exh. B, p. 4; C.</p>
7	<p>Proposition 63, a measure banning</p> <p>the possession of LCMs, was</p> <p>approved by the voters in an</p> <p>election on November 9, 2016.</p>	<p>Plaintiffs’ RJN, Exh. A, p. 1; Exh.</p>
8	<p>Proposition 63 amended Pen.</p> <p>Code § 32310 to impose criminal</p> <p>penalties on persons possessing</p>	<p>Pen. Code § 32310(c); Plaintiffs’ RJN, Exh. E,</p> <p>p. 8.</p>

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No.	UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE
	LCMs on or after July 1, 2017.	
9	Plaintiffs Wiese, Morris, Cowley, Macaston, Flores, Dang, Federau, Normandy, and Nielsen (“Individual Plaintiffs”) all acquired LCMs for firearms, in California, prior to 2000.	Wiese Decl., ¶ 4; Macaston Decl., ¶ 5; Flores Decl., ¶ 4; Dang Decl., ¶ 4; Federau Decl., ¶ 4; Normandy Decl., ¶ 4; Nielsen Decl., ¶ 4.
10	Individual Plaintiffs would otherwise acquire additional LCMs for their existing firearms for lawful purposes.	Wiese Decl., ¶¶ 5-6; Morris Decl., ¶¶ 5-6; Macaston Decl., ¶ 8; Flores Decl., ¶ 9; Dang Decl., ¶ 7; Federau Decl., ¶¶ 5-6.
11	A magazine is a receptacle for a firearm that holds cartridges or shells under spring pressure preparatory for feeding into the chamber of a firearm.	Sporting Arms and Ammunition Manufacturers’ Institute (SAAMI) Glossary, available at <a href="https://saami.org/saami-glossary/?letter=M">https://saami.org/saami-glossary/?letter=M</a> .
12	Magazines may take many forms, such as box, drum, rotary, or tubular, and may be fixed or removable.	<i>Id.</i>
13	Modern, semi-automatic firearms today are designed to be used, and are sold with magazines.	Decl. of D. Allen Youngman (Lee Decl., Exh. A) (“Youngman Decl.”), ¶ 1.
14	A magazine is an inherent operating part of a functioning firearm.	<i>Id.</i> , ¶ 7.
15	Many new handguns sold by retailers in California cannot be fired without a magazine inserted, according to California law.	Youngman Decl. at ¶ 7; Cal. Pen. Code § 31910(b)(4)-(6).
16	In most other states, firearms, including many of the most popular pistols and rifles, are sold with standard capacity magazines.	<i>Id.</i> , ¶ 8.
17	Examples of such firearms	<i>Id.</i> , ¶ 8.

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No.	UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE
	include: the Glock 17 pistol (with 17-round magazines); the Glock 19 pistol (with 15-round magazines), the SIG Sauer P226 pistol (with 15-round 9mm magazines), and the Beretta 92-series pistol (with 15, or 17-round magazines).	Jerry Lee and Chris Berens, <i>Gun Digest 2018</i> 374, 386-88, 408 (72nd ed. 2017) (Lee Decl., Exh. D).
18	The most popular rifle in American history is the AR-15 platform, a semiautomatic rifle with standard magazines of twenty or thirty rounds.	David B. Kopel, <i>The History of Firearm Magazines and Magazine Prohibitions</i> , 88 Alb. L. Rev. 849, 859 (2015), (Lee Decl., Exh. G, and available online at <a href="https://davekopel.org/2A/LawRev/2015/History-of-firearms-magazines-and-magazine-prohibition.pdf">https://davekopel.org/2A/LawRev/2015/History-of-firearms-magazines-and-magazine-prohibition.pdf</a> )
19	A study by the National Shooting Sports Foundation (NSSF) estimated that there were over 24 million “modern sporting rifles” (MSRs) in circulation in the United States as of 2022.	Commonly Owned: NSSF Announces Over 24 Million MSRs in Circulation, <i>The Firearm Indus. Trade Ass’n</i> (July 20, 2022)(Lee Decl., Exh. E, and available at: <a href="https://bit.ly/3QBxiyv">https://bit.ly/3QBxiyv</a> ).
20	A 2022 NSSF survey of MSR owners showed that over half (52%) of MSR owners reported they possessed magazines with 30 round capacities, followed by 17% who said they owned magazines with 20 round capacities. When asked why they chose their respective capacity, most frequent responses were related to their popularity/standard and being readily available.	<i>Modern Sporting Rifle Comprehensive Consumer Report</i> at p. 31 (Lee Decl., Exh. F, and available at <a href="https://bit.ly/3GLmErS">https://bit.ly/3GLmErS</a> ).
21	Magazines holding more than 10 rounds of ammunition are, in virtually every other state of the Union, in common use by law-abiding for lawful purposes.	Youngman Decl. at ¶¶ 7-8.  This fact is not subject to genuine dispute. See, <i>Duncan v. Bonta</i> , 19 F.4th 1087, 1097 (9th Cir. 2021) (en banc), cert. granted, judgment vacated, 142 S. Ct. 2895 (2022), and vacated and remanded, 49 F.4th 1228 (9th Cir. 2022);

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No.	UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE
		<p><i>Heller v. District of Columbia</i>, 670 F.3d 1244, 1261 (D.C. Cir. 2011) (<i>Heller II</i>) (“[w]e think it clear enough in the record that semi-automatic rifles and magazines holding more than ten rounds are indeed in ‘common use,’ as the plaintiffs contend”); <i>Colorado Outfitters Ass’n v. Hickenlooper</i>, 24 F. Supp. 3d 1050, 1068 (D. Colo. 2014) (“lawfully owned semi-automatic firearms using a magazine with the capacity of greater than 15 rounds number in the tens of millions”); <i>Shew v. Malloy</i>, 994 F. Supp. 2d 234, 246 (D. Conn. 2014) (semi-automatic rifles such as the AR-15 as well as magazines with a capacity greater than 10 rounds “are ‘in common use’ within the meaning of <i>Heller</i> and, presumably, used for lawful purposes”); <i>Fyock v. City of Sunnyvale</i>, 25 F. Supp. 3d 1267, 1276-1277 (N.D. Cal. 2014) (such magazines are “typically possessed by law-abiding citizens for lawful purposes”); <i>N.Y. State Rifle &amp; Pistol Ass’n</i>, 990 F. Supp. 2d at 365 (presuming use for lawful purposes).</p> <p>“An issue is ‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party.” <i>Far Out Productions, Inc. v. Oskar</i>, 247 F.3d 986, 992 (9th Cir. 2001) (citing <i>Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 248-49 (1986)).</p>
22	<p>It is generally well-known, well-accepted, and generally indisputable that magazines capable of holding more than 10 rounds are commonly owned by millions of persons in the United States, for a variety of lawful purposes, including recreational target shooting, competition, home defense, collecting and hunting.</p>	<p>Youngman Decl., ¶ 9.</p> <p>This fact is not subject to genuine dispute. See the authorities cited <i>supra</i> in support of Undisputed Material Fact No. ___, which are incorporated as though set forth herein.</p>
23	<p>The NSSF estimated that between 1990 and 2015 there were 230 million pistol and rifle magazines</p>	<p>Decl. of James Curcuruto in Support of Plaintiffs’ Motion for Preliminary Injunction (Lee Decl., Exh. B) (“Curcuruto Decl.”), ¶ 8.</p>

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No.	UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE
	<p>in the possession of United States consumers generally, and that magazines capable of holding more than 10 rounds of ammunition accounted for approx. 115 million, or half of all magazines owned, during this time period.</p>	
24	<p>It is likely that tens of millions of magazines capable of holding 10 or more rounds were in the hands of United States consumers generally between 1990 and 2015.</p>	<p>Curcuruto Decl., ¶ 13.</p>
25	<p>An analysis of a survey performed in 2021 found that 48% of gun owners in the United States have at one point or another owned magazines that are capable of holding more than 10 rounds.</p>	<p>William English, <i>2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned</i> (May 13, 2022) (Lee Decl. Exh. C) (“Survey”), at p. 22.</p>
26	<p>According to the <i>Survey</i>, approx. 39 million Americans have at some point owned at least one magazine that holds more than 10 rounds.</p>	<p><i>Id.</i>, at 23.</p>
27	<p>According to the <i>Survey</i>, American gun owners have owned as many as 269 million handgun magazines that hold over 10 rounds.</p>	<p><i>Id.</i>, at 24.</p>
28	<p>According to the <i>Survey</i>, American gun owners have owned as many as 273 million rifle magazines that hold over 10 rounds.</p>	<p><i>Id.</i></p>
29	<p>According to the <i>Survey</i>, individuals who own magazines that hold more than 10 rounds most commonly cite the following</p>	<p><i>Id.</i>, at 23.</p>

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No.	UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE
	as the reasons for owning such devices: recreational target shooting, home defense, hunting, and defense outside the home.	
30	In California, the California DOJ estimated that as of December 16, 2016, “[t]here are likely hundreds of thousands of large capacity magazines in California at this time.”	Finding of Emergency promulgated on or about December 16, 2016 (RJN Exh. A), p. 1.
31	The DOJ expected that “many gun owners” would be affected by a new ban on LCMs.	<i>Id.</i>
32	Prior to passage of SB 1446, the Senate Public Safety Committee considered and rejected the idea that the LCM ban would constitute a “takings” under the Fifth Amendment’s Takings Clause.	California Senate Rules Committee, Office of Senate Floor Analyses - Analysis published 5/19/16 re SB 1446 (Plaintiffs’ RJN Exh. B), at pp. 4-6.
33	Under the new law, owners of LCMs in the State of California, unless exempt, must: (1) Remove the large-capacity magazine from the state; (2) Sell the large-capacity magazine to a licensed firearms dealer; or (3) Surrender the large-capacity magazine to a law enforcement agency for destruction.	Cal. Pen. Code § 32310(d).
34	The law does not offer to compensate owners of LCMs for their surrender to a LCM for destruction.	<i>Id.</i>
35	Individual Plaintiffs are unwilling to destroy or surrender their lawfully-acquired LCMs in their possession.	Wiese Decl., ¶¶ 5-6; Morris Decl., ¶¶ 5-6; Macaston Decl., ¶ 8; Flores Decl., ¶ 9; Dang Decl., ¶ 7; Federau Decl., ¶¶ 5-6.

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No.	UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE
36	Unless enjoined, enforcement of Pen. Code § 32310(c) will cause Individual Plaintiffs to suffer permanent physical deprivation of their personal property.	Wiese Decl., ¶ 8; Macaston Decl., ¶ 11; Flores Decl., ¶ 11; Dang Decl., ¶ 10; Federau Decl., ¶ 8; Morris Decl., ¶ 8.
37	Some Individual Plaintiffs have “pre-ban” magazines of substantial value, either intrinsically or because they have historical value.	Dang Decl., ¶ 5; Flores Decl., ¶¶ 4-5.
38	Some of these magazines are the only magazines that these Individual Plaintiffs may have for that particular firearm.	Dang Decl., ¶ 5; Flores Decl., ¶ 4; Macaston Decl., ¶ 6.
39	Some of these magazines are the only magazines that were ever made for that particular firearm.	Dang Decl., ¶ 5; Macaston Decl., ¶ 6.

Dated: March 31, 2023

**SEILER EPSTEIN LLP**

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/s/ Raymond M. DiGuiseppe  
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