

1 John W. Dillon (SBN 296788)
2 jdillon@dillonlawgp.com
3 **DILLON LAW GROUP APC**
4 2647 Gateway Road
5 Suite 105, No. 255
6 Carlsbad, California 92009
7 Phone: (760) 642-7150
8 Fax: (760) 642-7151

7 George M. Lee (SBN 172982)
8 gml@seilerepstein.com
9 **SEILER EPSTEIN LLP**
10 275 Battery Street, Suite 1600
11 San Francisco, California 94111
12 Phone: (415) 979-0500
13 Fax: (415) 979-0511

12 *Attorneys for Plaintiffs*

14 **UNITED STATES DISTRICT COURT**

15 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

16 JAMES MILLER, an individual, et al.,

18 Plaintiffs,

19 vs.

20 XAVIER BECERRA, in his official
21 capacity as Attorney General of
22 California, et al.,

23 Defendants.

Case No. 3:19-cv-01537-BEN-JLB

**PLAINTIFFS’ OBJECTIONS TO
DEFENDANTS’ EVIDENCE AND TRIAL
EXHIBITS**

Trial: February 3, 2021
Time: 10:00 a.m.
Courtroom 5A
Judge: Hon. Roger T. Benitez

26 //
27 //
28

**PLAINTIFFS’ OBJECTIONS TO DEFENDANTS’
EVIDENCE AND EXHIBITS**

Plaintiffs James Miller et al. (“Plaintiffs”) hereby object to the following evidence offered by the defense through their trial exhibits, submitted to the Court on February 2, 2021, on the following grounds:

DEFENSE EXHIBIT	EXHIBIT DESCRIPTION (AS DESCRIBED BY DEFENDANTS)	PLAINTIFFS’ OBJECTION(S)	RULING ON OBJECTION(S)
I	Violence Policy Ctr., Key Points About Assault Weapons	Lacks foundation for and contains impermissible lay opinion [FRE 602, 701]. If the exhibit is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
K	Brady Ctr. to Prevent Gun Violence, Assault Weapons “Mass Produced Mayhem” (2008)	Lacks foundation for and contains impermissible lay opinion [FRE 602, 701]. If the exhibit is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

DEFENSE EXHIBIT	EXHIBIT DESCRIPTION (AS DESCRIBED BY DEFENDANTS)	PLAINTIFFS' OBJECTION(S)	RULING ON OBJECTION(S)
M	Expert Report and Declaration of Michael Mersereau, Rupp v. Becerra, No. 17-cv-00746-JLS-JDE (C.D. Cal. March 25, 2019) (Dkt. 76-3)	<p>Relevance [FRE 402], confusion of issues and cumulative [FRE 403]. <i>Rupp v. Becerra</i> involved a different challenge to the AWCA (Pen. Code § 30510).</p> <p>Lacks foundation for expert opinion testimony [FRE 702].</p> <p>Declarant lacks personal knowledge as to incidents described in ¶¶ 14-18 [FRE 602].</p> <p>If the declaration is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
N	Violence Policy Ctr., <i>The Militarization of the U.S. Civilians Firearms Market</i> (2011)	<p>Lacks foundation for and contains impermissible lay opinion [FRE 602, 701].</p> <p>If the exhibit is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEFENSE EXHIBIT	EXHIBIT DESCRIPTION (AS DESCRIBED BY DEFENDANTS)	PLAINTIFFS' OBJECTION(S)	RULING ON OBJECTION(S)
X	Br. of Amicus Curiae Everytown for Gun Safety in Supp. of Def.'s Mot. for Summ. J., Rupp v. Becerra, No. 8:17-cv-00746-JLSJDE (C.D. Cal. Apr. 1, 2019) (Dkt. 82-1)	<p>Relevance [FRE 402], confusion of issues and cumulative [FRE 403]. <i>Rupp v. Becerra</i> involved a different challenge to the AWCA (Pen. Code § 30510).</p> <p>Lacks foundation for and contains impermissible lay opinion [FRE 602, 701].</p> <p>If the brief is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802]</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
AA	Violence Policy Ctr., "Officer Down": Assault Weapons and the War on Law Enforcement (2003)	<p>Lacks foundation for and contains impermissible lay opinion [FRE 602, 701].</p> <p>If the exhibit is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802]</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

DEFENSE EXHIBIT	EXHIBIT DESCRIPTION (AS DESCRIBED BY DEFENDANTS)	PLAINTIFFS' OBJECTION(S)	RULING ON OBJECTION(S)
AD	Excerpts of Deposition of Gary Kleck, Rupp v. Becerra, No. 8:17-cv-00746-JLSJDE (C.D.Cal. Dec. 12, 2018) (Dkt. 76-15)	Relevance [FRE 402], confusion of issues and cumulative [FRE 403]. <i>Rupp v. Becerra</i> involved a different challenge to the AWCA (Pen. Code § 30510). If the testimony is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802]	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
AE	Law Ctr. to Prevent Gun Violence, The California Model: Twenty Years of Putting Safety First (2013)	Lacks foundation for and contains impermissible lay opinion [FRE 602, 701]. If the exhibit is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802]	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
AJ	Fed. Bureau of Investigation, Pulse Nightclub Shooting Part 1	Relevance [FRE 402]	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
AK	Fed. Bureau of Investigation, Pulse Nightclub Shooting Part 2	Relevance [FRE 402]	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
AV	Defendant's Second Supplemental Response to Plaintiff Troy Willis's First Set of Interrogatories	Relevance [FRE 402]. An unrelated party's interrogatory responses provided in another case are not relevant.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEFENSE EXHIBIT	EXHIBIT DESCRIPTION (AS DESCRIBED BY DEFENDANTS)	PLAINTIFFS' OBJECTION(S)	RULING ON OBJECTION(S)
BR	Expert Report of Robert J. Spitzer, Worman, et al. v. Healey, et al., 1:17-cv-10107-WGY (2017)	<p>Relevance [FRE 402], confusion of issues and cumulative [FRE 403]. <i>Worman v. Healey</i> involved a challenge to Massachusetts' assault weapons laws.</p> <p>Lacks foundation for expert opinion testimony [FRE 702].</p> <p>If the exhibit is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
BW	Expert Report of Christopher S. Koper, Duncan, et al. v. Becerra, et al., 17-cv- 1017-BEN-JLB (2018)	<p>Relevance [FRE 402], confusion of issues and cumulative [FRE 403].</p> <p>If the declaration is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
CB	Declaration of Professor Daniel Webster in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction, Duncan, et al. v. Becerra, et al., 17-cv-1017-BEN-JLB (June 5, 2017)	<p>Relevance [FRE 402], confusion of issues and cumulative [FRE 403].</p> <p>If the declaration is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

DEFENSE EXHIBIT	EXHIBIT DESCRIPTION (AS DESCRIBED BY DEFENDANTS)	PLAINTIFFS' OBJECTION(S)	RULING ON OBJECTION(S)
CD	Violence Policy Center, High-Capacity Ammunition Magazines are the Common Thread Running Through Most Mass Shootings in the United States (2018)	Lacks foundation for and contains impermissible lay opinion [FRE 602, 701]. If the exhibit is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
CN	Testimony of Brian J. Siebel, Senior Attorney, Brady Center to Prevent Gun Violence, Before the Council of the District of Columbia (Oct. 1, 2008)	Lacks foundation for and contains impermissible lay opinion [FRE 602, 701]. If the exhibit is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
CP	Nat. Law Enforcement PartnerShip to Prevent Gun Violence, Protecting Communities from Assault Weapons and High-capacity Ammunition Magazines (2017)	Lacks foundation for and contains impermissible lay opinion [FRE 602, 701]. If the exhibit is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEFENSE EXHIBIT	EXHIBIT DESCRIPTION (AS DESCRIBED BY DEFENDANTS)	PLAINTIFFS' OBJECTION(S)	RULING ON OBJECTION(S)
CQ	Declaration of San Francisco Policy <i>[sic]</i> Department Officer Joseph Emanuel in Support of Plaintiff's Ex Parte Application for Order to Show Cause Re: Preliminary Injunction, People v. Badger Mountain Supply, et al., No. CGC-17- 557010 (S.F. Super. Feb 21, 2017)	Relevance [FRE 402]. Lacks foundation for expert opinion testimony [FRE 702]. Declarant lacks personal knowledge as to incidents described in ¶¶ 42-44 [FRE 602]. If the declaration is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
CR	Declaration of Detective Michael Mersereau of the Los Angeles Police Department in Support of Amici Curiae the City and County of San Francisco, the City of Los Angeles, and the City of Sunnyvale, Duncan v. Becerra, 9th Cir. No. 17-56081 (9th Cir. Oct. 19, 2017)	Relevance [FRE 402], confusion of issues and cumulative [FRE 403]. Lacks foundation for expert opinion testimony [FRE 702]. Declarant lacks personal knowledge as to incidents described in ¶¶ 12-16 [FRE 602] If the declaration is being offered for the truth of the matters asserted therein, it is hearsay [FRE 802].	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1 Dated: February 24, 2021

SEILER EPSTEIN LLP

2
3 /s/ George M. Lee
George M. Lee

4 **DILLON LAW GROUP APC**

5
6 /s/ John W. Dillon
7 John W. Dillon

8 Attorneys for Plaintiffs

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28