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

12 **TRACY RIFLE AND PISTOL LLC et al.,**  
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14 Plaintiffs,  
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16 **v.**  
17 **KAMALA D. HARRIS, in her official**  
**capacity as Attorney General of California;**  
**et al.,**  
18 Defendants.

2:14-cv-02626-TLN-DB

**DEFENDANTS' STATEMENT OF  
UNDISPUTED FACTS IN SUPPORT OF  
THEIR MOTION FOR SUMMARY  
JUDGMENT**

Date: 01/12/2017  
Time: 2:00 p.m.  
Judge: Hon. Troy L. Nunley  
Trial Date: 05/30/2017  
Action Filed: 11/10/2014

Pursuant to Local Rule 260(a), Defendants Kamala D. Harris, in her official capacity as Attorney General of California, and Stephen J. Lindley, in his official capacity as the Chief of the California Department of Justice Bureau of Firearms, submit the following Statement of Undisputed Facts, together with references to supporting evidence, in support of their concurrently filed motion for summary judgment.

**SEPARATE STATEMENT OF UNDISPUTED FACTS**

**Undisputed Facts**

**Supporting Evidence**

1.	<p>On September 12, 2014, the DOJ Bureau of Firearms inspected Tracy Rifle. At the time of the inspection, the building’s exterior windows were covered with large vinyl decals depicting four firearms—three handguns and a rifle. The Bureau of Firearms issued a “Notification of Inspection Findings” citing Plaintiffs Tracy Rifle and Baryla for violating Penal Code section 26820 because of the handgun decals, and requiring Plaintiffs to take corrective action by February 11, 2015.</p>	<p>ECF No. 22, First Am. Compl. ¶¶ 25-26.</p>
2.	<p>On or about February 23, 2010, the DOJ Bureau of Firearms inspected Ten Percent Firearms. Displayed in the dealership’s parking lot was a metal sign shaped like a revolver. The DOJ inspector informed the dealership that the sign violated the handgun advertising restriction, and Ten Percent Firearms immediately removed the sign. The</p>	<p>ECF No. 22, First Am. Compl. ¶ 28.</p>

1		Bureau of Firearms issued a “Notification of	
2		Inspection Findings” citing Plaintiffs Ten	
3		Percent Firearms and Morris for violating the	
4		handgun advertising ban	
5	3.	On January 28, 2015, the DOJ Bureau of	ECF No. 22, First Am. Compl. ¶ 30.
6		Firearms inspected Imbert & Smithers. At	
7		the time of the inspection, the building’s	
8		exterior displayed a sign featuring the	
9		dealership’s logo, which incorporates the	
10		outline of a single-action revolver. The	
11		Bureau of Firearms issued a “Notification of	
12		Inspection Findings” citing Imbert &	
13		Smithers and Rolsky for violating Penal	
14		Code section 26820, and requiring them to	
15		take corrective action by July 28, 2015.	
16	4.	Plaintiffs desire to display on-site handgun	ECF No. 22, First Am. Compl. ¶¶ 27, 29,
17		advertising that is visible from the outside of	31-32.
18		their dealerships.	
19	5.	A nationwide study by the U.S. Department	Defendants’ Notice of Legislative Facts in
20		of Justice reports that “[a]bout 70% to 80%	Support of Motion for Summary Judgment
21		of firearm homicides and 90% of nonfatal	(NLF) Ex. 13 at 1, 19-20.
22		firearm victimizations were committed with	
23		a handgun from 1993 to 2011.” The study	
24		reports that, in that period, between 6,900	
25		and 13,500 people annually were killed with	
26		handguns and between 43,000 and 94,000	
27		people annually were assaulted or otherwise	
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1		victimized in nonfatal crimes involving	
2		handguns.	
3	6.	A study by the California Department of	NLF Ex. 11 at 27.
4		Justice found that about half of California's	
5		murder victims in recent years were killed	
6		with handguns.	
7	7.	One 2013 study focusing on California's	NLF Ex. 12 at 2.
8		rural areas noted that 90% of guns recovered	
9		from crime scenes and sent to the state's	
10		crime laboratory were handguns.	
11	8.	Data from the California Department of	NLF Ex. 14.
12		Public Health shows that between 2005 and	
13		2009, over 1,000 Californians used handguns	
14		to kill themselves.	
15	9.	A study published in the <i>New England</i>	NLF,Ex. 15 at 913.
16		<i>Journal of Medicine</i> found that increased	
17		handgun ownership is associated with a	
18		higher murder rate.	
19	10.	A study published in the <i>American Journal</i>	NLF Ex. 16 at 2098, 2103.
20		<i>of Public Health</i> of found a substantial	
21		correlation between gun ownership and	
22		firearm suicide, and notes that several studies	
23		have shown that individual gun ownership is	
24		related to an increased risk of being a	
25		homicide victim.	
26	11.	A study published in the <i>American Journal</i>	NLF Ex. 17 at 974.
27		<i>of Public Health</i> found that "[l]egal purchase	
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1		of a handgun appears to be associated with a	
2		long-lasting increased risk of violent death.”	
3	12.	A study published in the <i>New England</i>	NLF Ex. 18 at 1586.
4		<i>Journal of Medicine</i> found that “purchase of	
5		a handgun is associated with substantial	
6		changes in the risk of violent death.”	
7	13.	A study published in the journal <i>Injury</i>	NLF Ex19 at 48.
8		<i>Prevention</i> found that “[a]mong adults who	
9		died in California in 1998, those dying from	
10		violence were more likely than those dying	
11		from non-injury causes to have purchased a	
12		handgun.”	
13	14.	At least three studies have found that	NLF Ex. 17 at 975; Ex. 18 at 1583; Ex. 19
14		handgun purchases are associated with an	at 51.
15		increased risk of suicide for the purchaser, a	
16		risk that extends to members of his	
17		household.	
18	15.	A study examining firearm and suicide data	NLF Ex. 18 at 1583, 1587.
19		from California concluded that buying a	
20		handgun is associated with an increase in the	
21		risk of suicide, which starts within a week of	
22		purchase and lasts for at least six years. The	
23		study noted that “[i]n the first year after the	
24		purchase of a handgun, suicide was the	
25		leading cause of death among handgun	
26		purchasers . . . .” It also noted that the	
27		increase risk of suicide could not be	
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1		explained by people purchasing a handgun to	
2		use in a suicide—fewer than 10% of people	
3		who committed suicide or attempted to	
4		commit suicide purchased guns for that	
5		purpose, and most firearm suicides occurred	
6		well after the gun had been purchased.	
7	16.	A study examining firearm and suicide data	NLF Ex. 19 at 51.
8		from California found a “very strong	
9		association between handgun purchase and	
10		subsequent gun suicide.”	
11	17.	Professor Gundlach has offered an opinion	ECF No. 43-1, Gundlach Report ¶ 10.
12		that, based on his expertise and review of	
13		marketing scholarship, it is reasonable to	
14		conclude that Penal Code section 26820	
15		inhibits impulsive handgun purchases.	
16	18.	Professor Gundlach has offered an opinion	ECF No. 43-1, Gundlach Report ¶ 11.
17		that, based on his expertise and review of	
18		marketing scholarship, it is reasonable to	
19		conclude that if Penal Code section 26820 is	
20		invalidated and signage like that used by	
21		Tracy Rifle and other plaintiffs become more	
22		commonplace, there will be an increase in	
23		impulsive handgun purchases.	
24	19.	Professor Gundlach cites evidence that	ECF No. 43-1, Gundlach Report ¶ 33.
25		firearms are purchased on impulse.	
26	20.	Professor Gundlach cites the Chief Executive	ECF No. 43-1, Gundlach Report ¶ 33 fn. 71.
27		Officer of Sturm, Ruger & Company during	
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1		a quarterly earnings call as reporting that “we	
2		try to build thousands of units of a new	
3		product before launching it. That’s really	
4		important because so much of firearms	
5		purchases is an impulse buy.”	
6	21.	Professor Gundlach cites the publication of a	ECF No. 43-1, Gundlach Report ¶ 33
7		firearms industry trade organization as noting	fns. 72-75.
8		that men tend to purchase their first firearm	
9		on impulse.	
10	22.	Professor Gundlach cites evidence of	ECF No. 43-1, Gundlach Report ¶ 33 fn. 76.
11		individual consumers acknowledging that	
12		they have purchased firearms on impulse.	
13	23.	Professor Gundlach has offered an opinion	ECF No. 43-1, Gundlach Report ¶¶ 48, 51.
14		that “limitations on the use of on-premise	
15		signage and graphics like those set forth in	
16		Section 26820 act as a constraint and	
17		impediment to the impulse purchase of a	
18		handgun that would otherwise be induced by	
19		such on-premise signage and graphics,” and	
20		that “[i]t is precisely in the way described by	
21		these researchers that Section 26820 may be	
22		reasonably described to act as a constraint	
23		and impediment to the impulse purchase of a	
24		handgun that would otherwise be induced by	
25		on-premise signage and graphics.”	
26	24.	Professor Gundlach discusses research that	ECF No. 43-1, Gundlach Report ¶ 54-60.
27		identifies “dispositional antecedents”—	
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<p>1 2 3 4 5 6 7 8 9</p>	<p>personality traits—that affect buying decisions. He explains that this research has found that impulse buying is “associated with impulsivity and related personality traits,” that people with impulse buying tendencies have “higher unreflective, immediate, spontaneous, and kinetic traits,” and that “the tendency to buy impulsively is rooted in facets of personality.”</p>	
<p>10 11 12 13 14 15 16 17</p>	<p>25. Professor Gundlach has offered an opinion that situational variables, including the types of signs and graphics displayed and posted by Plaintiffs and addressed in Penal Code section 26820, together with dispositional variables on the part of individuals, offer the greatest explanation for the tendency of consumers to engage in an impulse purchase.</p>	<p>ECF No. 43-1, Gundlach Report ¶ 65.</p>
<p>18 19 20 21 22 23 24 25</p>	<p>26. Professor Gundlach has offered an opinion that “if retail managers of handguns can use signage and graphics like that proscribed by Section 26820 to influence the situation surrounding the purchase of a handgun, they can have the greatest impact on purchasers of handguns who are predisposed to buy on impulse.”</p>	<p>ECF No. 43-1, Gundlach Report ¶ 67.</p>
<p>26 27 28</p>	<p>27. Professor Gundlach has offered an opinion that “based on the analysis of decades of</p>	<p>ECF No. 43-1, Gundlach Report ¶¶ 70-75.</p>



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	<p>empirical research, . . . it is reasonable to conclude that limitations placed on the use of marketing stimuli in the retail environment and involving visually appealing on-premise signs and graphics of the type proscribed by Section 26820, reduce the impulse purchase of handguns by consumers predisposed to purchase them.” he substantiates the connections he makes between empirical research and section 26820 by checking them against the theoretical research on impulse buying.</p>	
28.	<p>Professor Mann has offered an opinion that impulsive Personality traits increase the risk of suicide.</p>	<p>ECF No. 43-2, Mann Report ¶¶ 11, 16-22.</p>
29.	<p>Professor Mann supports his opinion by explaining that that: people who commit suicide have “a more pronounced trait of impulsiveness”; that “[s]uicidal behavior is transmitted in families and the familial transmission is linked to the transmission of this trait of impulsiveness”; and that the “impulsive trait has been related to deficits in executive function, whereby the person when making a decision about making a suicide attempt or opting for the possibility of help through antidepressant . . . opts for the quick</p>	<p>ECF No. 43-2, Mann Report ¶ 18.</p>

1		fix for their emotional pain by making a	
2		suicide attempt.”	
3	30.	Professor Mann has offered an opinion that	ECF No. 43-2, Mann Report ¶¶ 12, 23-28.
4		the availability of a firearm, particularly a	
5		handgun, in the home increases the risk of	
6		suicide for impulsive individuals.	
7	31.	To support his conclusion that the	ECF No. 43-2, Mann Report ¶ 23 fn. 6.
8		availability of a firearm, particularly a	
9		handgun, in the home increases the risk of	
10		suicide for impulsive individuals, Professor	
11		Mann cites an article he co-authored on	
12		firearms and suicide prevention that was	
13		recently published in the <i>American Journal</i>	
14		<i>of Psychiatry</i> .	
15	32.	Professor Mann reports that “[s]uicidal	ECF No. 43-2, Mann Report ¶ 24.
16		behavior is generally impulsive and 70% of	
17		suicide attempters act less than one hour after	
18		deciding to kill themselves”	
19	33.	Professor Mann cites social science research	ECF No. 43-2, Mann Report ¶¶ 26-27.
20		showing that the firearm suicide rate	
21		decreases as the firearm ownership rate	
22		decreases and that states with higher firearm	
23		ownership have higher firearm suicide rates	
24		but comparable non-firearm suicide rates.	
25	34.	Professor Mann has offered an opinion that	ECF No. 43-2, Mann Report ¶¶ 13, 29.
26		suicide attempts using a firearm is more	
27		often fatal than any of the other means of	
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	suicide that are amongst those in the top ten most frequently used methods.	
35.	Professor Mann has offered an opinion that prevention of firearm suicide requires multiple different strategies because the factors involved are complex and one strategy is insufficient.	ECF No. 43-2, Mann Report ¶¶ 14, 30-32.
36.	Counsel for the State has asked Professor Mann to give an opinion on what he thinks would happen to suicide rates assuming that invalidation of California Penal Code section 26820 would result in an increase in handgun purchases by people with impulsive personality traits. Assuming that to be true, Professor Mann has offered an opinion that then there would be an increase in handgun suicides if section 26820 were invalidated.	ECF No. 43-2, Mann Report ¶¶ 15, 33.
37.	Professor Mann bases this opinion on the relationship between firearm availability and firearm suicide and impulsive people's increased risk for suicide.	ECF No. 43-2, Mann Report ¶ 33

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Dated: December 5, 2016

Respectfully Submitted,  
  
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