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12	UNITED STATES	DISTRICT COURT
13	EASTERN DISTRIC	CT OF CALIFORNIA
14		
15		
16	TRACY RIFLE AND PISTOL LLC; MICHAEL BARYLA; TEN PERCENT	Case No.: 2:14-cv-02626-TLN-DB
17	FIREARMS; WESLEY MORRIS; SACRAMENTO BLACK RIFLE, INC.;	PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE
18 19	ROBERT ADAMS; PRK ARMS, INC.; JEFFREY MULLEN; IMBERT & SMITHERS, INC.; and ALEX ROLSKY,	STATEMENT OF UNDISPUTED FACTS SUBMITTED IN SUPPORT OF DEFENDANTS' MOTION FOR
20	Plaintiffs,	SUMMARY JUDGMENT
21	v.	Hearing Date: Feb. 23, 2017 Time: 2:00 p.m.
22	KAMALA D. HARRIS, in her official capacity as Attorney General of California; and	Courtroom: 2 Judge: Troy L. Nunley
23	STEPHEN J. LINDLEY, in his official capacity as Chief of the California Department of Justice	Action filed Nov. 10, 2014
24	Bureau of Firearms,	7 tetion filed 1 (0 v. 10, 2011
25	Defendants.	
26		
27		
28	1	

Pursuant to Federal Rule of Civil Procedure 56(c)(1) and Local Rule 260(a), Plaintiffs
Tracy Rifle and Pistol LLC, Michael Baryla, Ten Percent Firearms, Wesley Morris, Sacramento
Black Rifle, Inc., Robert Adams, PRK Arms, Inc., Jeffrey Mullen, Imbert & Smithers, Inc., and
Alex Rolsky submit the following response to Defendants' Separate Statement of Undisputed
Facts in support of their Motion for Summary Judgment.

	Defendants' Undisputed Facts	Plaintiffs' Response
1.	On September 12, 2014, the DOJ Bureau of	Undisputed.
	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.	
2.	On or about February 23, 2010, the DOJ	Undisputed.
	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	
		1. 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. 2. 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

1		sign. The Bureau of Firearms issued a	
2		"Notification of Inspection Findings" citing	
3		Plaintiffs Ten Percent Firearms and Morris	
4		for violating the handgun advertising ban	
5			
6	3.	On January 28, 2015, the DOJ Bureau of	Undisputed.
7		Firearms inspected Imbert & Smithers. At the	
8		time of the inspection, the building's exterior	
9		displayed a sign featuring the dealership's	
10		logo, which incorporates the outline of a	
11		single-action revolver. The Bureau of	
12		Firearms issued a "Notification of Inspection	
13		Findings" citing Imbert & Smithers and	
14		Rolsky for violating Penal Code section	
15		26820, and requiring them to take corrective	
16		action by July 28, 2015.	
17			
18	4.	Plaintiffs desire to display on-site handgun	Undisputed.
19		advertising that is visible from the outside	
20		of their dealerships.	
21			
22	5.	A nationwide study by the U.S. Department	This fact is neither material, nor is the
23		of Justice reports that "[a]bout 70% to 80%	underlying evidence significantly
24		of firearm homicides and 90% of nonfatal	probative on the critical issue in the case:
25		firearm victimizations were committed with	Whether Section 26820 directly and
26		a handgun from 1993 to 2011." The study	materially limits impulse buys and in turn
27		reports that, in that period, between 6,900	leads to materially less handgun crime
28		and 13,500 people annually were killed with	and violence. See Anderson v. Liberty

1		handguns and between 43,000 and 94,000	Lobby, Inc., 477 U.S. 242, 248 (1986) ("the
2		people annually were assaulted or otherwise	materiality determination rests on the
3		victimized in nonfatal crimes involving	substantive law, [and] it is the substantive
4		handguns.	law's identification of which facts are
5			critical and which facts are irrelevant that
6			governs."). Rather, this appears to be
7			offered in support of the general notion
8			that "less handguns means less crime and
9			violence," which the Court has stated is
10			not the relevant inquiry.
11			
12	6.	A study by the California Department of	This fact is neither material, nor is the
13		Justice found that about half of California's	underlying evidence significantly
14		murder victims in recent years were killed	probative on the critical issue in the case:
15		with handguns.	Whether Section 26820 directly and
16			materially limits impulse buys and in turn
17			leads to materially less handgun crime
18			and violence. See Anderson v. Liberty
19			Lobby, Inc., 477 U.S. 242, 248 (1986) ("the
20			materiality determination rests on the
21			substantive law, [and] it is the substantive
22			law's identification of which facts are
23			critical and which facts are irrelevant that
24			governs."). Rather, this appears to be
25			offered in support of the general notion
26			that "less handguns means less crime and
27			violence," which the Court has stated is
28			not the relevant inquiry.

	I	
7.	One 2013 study focusing on California's	This fact is neither material, nor is the
	rural areas noted that 90% of guns	underlying evidence significantly
	recovered from crime scenes and sent to the	probative on the critical issue in the case:
	state's crime laboratory were handguns.	Whether Section 26820 directly and
		materially limits impulse buys and in turn
		leads to materially less handgun crime
		and violence. See Anderson v. Liberty
		Lobby, Inc., 477 U.S. 242, 248 (1986) ("th
		materiality determination rests on the
		substantive law, [and] it is the substantive
		law's identification of which facts are
		critical and which facts are irrelevant tha
		governs."). Rather, this appears to be
		offered in support of the general notion
		that "less handguns means less crime and
		violence," which the Court has stated is
		not the relevant inquiry.
8.	Data from the California Department of	This fact is neither material, nor is the
	Public Health shows that between 2005 and	underlying evidence significantly
	2009, over 1,000 Californians used	probative on the critical issue in the case:
	handguns to kill themselves.	Whether Section 26820 directly and
		materially limits impulse buys and in tur
		leads to materially less handgun crime
		and violence. See Anderson v. Liberty
		Lobby, Inc., 477 U.S. 242, 248 (1986) ("th
		materiality determination rests on the

1			substantive law, [and] it is the substantive
2			law's identification of which facts are
3			critical and which facts are irrelevant that
4			governs."). Rather, this appears to be
5			offered in support of the general notion
6			that "less handguns means less crime and
7			violence," which the Court has stated is
8			not the relevant inquiry.
9			
10	9.	A study published in the New England	This fact is neither material, nor is the
11		Journal of Medicine found that increased	underlying evidence significantly
12		handgun ownership is associated with a	probative on the critical issue in the case:
13		higher murder rate.	Whether Section 26820 directly and
14			materially limits impulse buys and in turn
15			leads to materially less handgun crime
16			and violence. See Anderson v. Liberty
17			Lobby, Inc., 477 U.S. 242, 248 (1986) ("the
18			materiality determination rests on the
19			substantive law, [and] it is the substantive
20			law's identification of which facts are
21			critical and which facts are irrelevant that
22			governs."). Rather, this appears to be
23			offered in support of the general notion
24			that "less handguns means less crime and
25			violence," which the Court has stated is
26			not the relevant inquiry.
27			
28	10.	A study published in the American Journal	This fact is neither material, nor is the

of Public Health of found a substantial correlation between gun ownership and firearm suicide, and notes that several studies have shown that individual gun ownership is related to an increased risk of being a homicide victim.

underlying evidence significantly probative on the critical issue in the case: Whether Section 26820 directly and materially limits impulse buys and in turn leads to materially less handgun crime and violence. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). Rather, this appears to be offered in support of the general notion that "less handguns means less crime and violence," which the Court has stated is not the relevant inquiry.

11. A study published in the *American Journal*of Public Health found that "[1]egal

purchase of a handgun appears to be

associated with a long-lasting increased risk

of violent death."

This fact is neither material, nor is the underlying evidence significantly probative on the critical issue in the case: Whether Section 26820 directly and materially limits impulse buys and in turn leads to materially less handgun crime and violence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are

		critical and which facts are irrelevant that
		governs."). Rather, this appears to be
		offered in support of the general notion
		that "less handguns means less crime and
		violence," which the Court has stated is
		not the relevant inquiry.
12.	A study published in the New England	This fact is neither material, nor is the
	Journal of Medicine found that "purchase of	underlying evidence significantly
	a handgun is associated with substantial	probative on the critical issue in the case:
	changes in the risk of violent death."	Whether Section 26820 directly and
		materially limits impulse buys and in turn
		leads to materially less handgun crime
		and violence. See Anderson v. Liberty
		Lobby, Inc., 477 U.S. 242, 248 (1986) ("the
		materiality determination rests on the
		substantive law, [and] it is the substantive
		law's identification of which facts are
		critical and which facts are irrelevant that
		governs."). Rather, this appears to be
		offered in support of the general notion
		that "less handguns means less crime and
		violence," which the Court has stated is
		not the relevant inquiry.
13.	A study published in the journal <i>Injury</i>	This fact is neither material, nor is the
	Prevention found that "[a]mong adults who	underlying evidence significantly
<u> </u>	died in California in 1998, those dying from	probative on the critical issue in the case:
		Journal of Medicine found that "purchase of a handgun is associated with substantial changes in the risk of violent death." 13. A study published in the journal Injury Prevention found that "[a]mong adults who

violence were more likely than those dying from non-injury causes to have purchased a handgun." Whether Section 26820 directly and materially limits impulse buys and in turn leads to materially less handgun crime and violence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). Rather, this appears to be offered in support of the general notion that "less handguns means less crime and violence," which the Court has stated is not the relevant inquiry.

14. At least three studies have found that handgun purchases are associated with an increased risk of suicide for the purchaser, a risk that extends to members of his household.

This fact is neither material, nor is the underlying evidence significantly probative on the critical issue in the case: Whether Section 26820 directly and materially limits impulse buys and in turn leads to materially less handgun crime and violence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). Rather, this appears to be offered in

		,	
1			support of the general notion that "less
2			handguns means less crime and violence,"
3			which the Court has stated is not the
4			relevant inquiry.
5			
6	15.	A study examining firearm and suicide data	This fact is neither material, nor is the
7		from California concluded that buying a	underlying evidence significantly probative
8		handgun is associated with an increase in	on the critical issue in the case: Whether
9		the risk of suicide, which starts within a	Section 26820 directly and materially limits
10		week of purchase and lasts for at least six	impulse buys and in turn leads to materially
11		years. The study noted that "[i]n the first	less handgun crime and violence. See
12		year after the purchase of a handgun,	Anderson v. Liberty Lobby, Inc., 477 U.S.
13		suicide was the leading cause of death	242, 248 (1986) ("the materiality
14		among handgun purchasers" It also	determination rests on the substantive law,
15		noted that the increase risk of suicide could	[and] it is the substantive law's
16		not be explained by people purchasing a	identification of which facts are critical and
17		handgun to use in a suicide—fewer than	which facts are irrelevant that governs.").
18		10% of people who committed suicide or	Rather, this appears to be offered in
19		attempted to commit suicide purchased guns	support of the general notion that "less
20		for that purpose, and most firearm suicides	handguns means less crime and violence,"
21		occurred well after the gun had been	which the Court has stated is not the
22		purchased.	relevant inquiry.
23			
24	16.	A study examining firearm and suicide data	This fact is neither material, nor is the
25		from California found a "very strong	underlying evidence significantly probative
26		association between handgun purchase and	on the critical issue in the case: Whether
27		subsequent gun suicide."	Section 26820 directly and materially limits
28			impulse buys and in turn leads to materially

1			less handgun crime and violence. See
2			Anderson v. Liberty Lobby, Inc., 477 U.S.
3			242, 248 (1986) ("the materiality
4			determination rests on the substantive law,
5			[and] it is the substantive law's
6			identification of which facts are critical and
7			which facts are irrelevant that governs.").
8			Rather, this appears to be offered in
9			support of the general notion that "less
10			handguns means less crime and violence,"
11			which the Court has stated is not the
12			relevant inquiry.
13			
14	17.	Professor Gundlach has offered an opinion	The underlying evidence of this opinion is
15		that, based on his expertise and review of	not significantly probative on the critical
16		marketing scholarship, it is reasonable to	issue in the case: Whether Section 26820
17		conclude that Penal Code section 26820	directly and materially limits impulse buys
18		inhibits impulsive handgun purchases.	and in turn leads to materially less handgun
19			crime and violence. See Anderson v.
20			Liberty Lobby, Inc., 477 U.S. 242, 248
21			(1986) ("the materiality determination rests
22			on the substantive law, [and] it is the
23			substantive law's identification of which
24			facts are critical and which facts are
25			irrelevant that governs."). Professor
26			Gundlach has not identified any evidence of
27			impulse purchases of firearms that were
28			triggered by the sort on-premises

1 advertising that is at issue here; therefore, 2 this evidence is the sort of "speculation and 3 conjecture" rejected by the courts. 4 5 Furthermore, Professor Gundlach's opinion 6 lacks sufficient evidentiary support to 7 warrant summary judgment. See Yocom v. 8 Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert 9 testimony is admissible on summary 10 judgment only if the opinion is supported by 11 facts sufficient to satisfy the requirements of 12 Fed.R.Civ.P. 56(e). It is not enough to 13 simply opine; the factual basis must be 14 stated."); United States v. Various Slot 15 Machines on Guam, 658 F.2d 697, 700 (9th 16 Cir. 1981) ("[I]n the context of a motion for 17 summary judgment, an expert must back up 18 his opinion with specific facts."). 19 20 18. Professor Gundlach has offered an opinion The underlying evidence of this opinion is 21 that, based on his expertise and review of not significantly probative on the critical 22 marketing scholarship, it is reasonable to issue in the case: Whether Section 26820 23 conclude that if Penal Code section 26820 is directly and materially limits impulse buys 24 invalidated and signage like that used by and in turn leads to materially less handgun 25 Tracy Rifle and other plaintiffs become crime and violence. See Anderson v. 26 more commonplace, there will be an Liberty Lobby, Inc., 477 U.S. 242, 248 27 increase in impulsive handgun purchases. (1986) ("the materiality determination rests 28 on the substantive law, [and] it is the

1			substantive law's identification of which
2			facts are critical and which facts are
3			irrelevant that governs."). Professor
4			Gundlach has not identified any evidence of
5			impulse purchases of firearms that were
6			triggered by the sort on-premises
7			advertising that is at issue here; therefore,
8			this evidence is the sort of "speculation and
9			conjecture" rejected by the courts.
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11			Furthermore, Professor Gundlach's opinion
12			lacks sufficient evidentiary support to
13			warrant summary judgment. See Yocom v.
14			Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert
15			testimony is admissible on summary
16			judgment only if the opinion is supported by
17			facts sufficient to satisfy the requirements of
18			Fed.R.Civ.P. 56(e). It is not enough to
19			simply opine; the factual basis must be
20			stated."); United States v. Various Slot
21			Machines on Guam, 658 F.2d 697, 700 (9th
22			Cir. 1981) ("[I]n the context of a motion for
23			summary judgment, an expert must back up
24			his opinion with specific facts.").
25			
26	19.	Professor Gundlach cites evidence that	The underlying evidence of this fact is not
27		firearms are purchased on impulse.	significantly probative on the critical issue
28			in the case: Whether Section 26820 directly

and materially limits impulse buys and in turn leads to materially less handgun crime and violence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). Professor Gundlach has not identified any evidence of impulse purchases of firearms that were triggered by the sort on-premises advertising that is at issue here; therefore, this evidence is the sort of "speculation and conjecture" rejected by the courts.

Furthermore, Professor Gundlach's opinion lacks sufficient evidentiary support to warrant summary judgment. *See Yocom v. Cole*, 904 F.2d 711 (9th Cir. 1990) ("Expert testimony is admissible on summary judgment only if the opinion is supported by facts sufficient to satisfy the requirements of Fed.R.Civ.P. 56(e). It is not enough to simply opine; the factual basis must be stated."); *United States v. Various Slot Machines on Guam*, 658 F.2d 697, 700 (9th Cir. 1981) ("[I]n the context of a motion for

1			summary judgment, an expert must back up
2			his opinion with specific facts.").
3			
4	20.	Professor Gundlach cites the Chief	This fact is neither material, nor is the
5		Executive Officer of Sturm, Ruger &	underlying evidence significantly probative
6		Company during a quarterly earnings call as	on the critical issue in the case: Whether
7		reporting that "we try to build thousands of	Section 26820 directly and materially limits
8		units of a new product before launching it.	impulse buys and in turn leads to materially
9		That's really important because so much of	less handgun crime and violence. See
10		firearms purchases is an impulse buy."	Anderson v. Liberty Lobby, Inc., 477 U.S.
11			242, 248 (1986) ("the materiality
12			determination rests on the substantive law,
13			[and] it is the substantive law's
14			identification of which facts are critical and
15			which facts are irrelevant that governs.").
16			Professor Gundlach has not identified any
17			evidence of impulse purchases of firearms
18			that were triggered by the sort on-premises
19			advertising that is at issue here; therefore,
20			this evidence is the sort of "speculation and
21			conjecture" rejected by the courts.
22			
23			Furthermore, Professor Gundlach's opinion
24			lacks sufficient evidentiary support to
25			warrant summary judgment. See Yocom v.
26			Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert
27			testimony is admissible on summary
28			judgment only if the opinion is supported by

1			facts sufficient to satisfy the requirements of
2			Fed.R.Civ.P. 56(e). It is not enough to
3			simply opine; the factual basis must be
4			stated."); United States v. Various Slot
5			Machines on Guam, 658 F.2d 697, 700 (9th
6			Cir. 1981) ("[I]n the context of a motion for
7			summary judgment, an expert must back up
8			his opinion with specific facts.").
9			
10	21.	Professor Gundlach cites the publication of	This fact is neither material, nor is the
11		a firearms industry trade organization as	underlying evidence significantly probative
12		noting that men tend to purchase their first	on the critical issue in the case: Whether
13		firearm on impulse.	Section 26820 directly and materially limits
14			impulse buys and in turn leads to materially
15			less handgun crime and violence. See
16			Anderson v. Liberty Lobby, Inc., 477 U.S.
17			242, 248 (1986) ("the materiality
18			determination rests on the substantive law,
19			[and] it is the substantive law's
20			identification of which facts are critical and
21			which facts are irrelevant that governs.").
22			Professor Gundlach has not identified any
23			evidence of impulse purchases of firearms
24			that were triggered by the sort on-premises
25			advertising that is at issue here.
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27			Furthermore, Professor Gundlach's opinion
28			lacks sufficient evidentiary support to

1			warrant summary judgment. See Yocom v.
2			Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert
3			testimony is admissible on summary
4			judgment only if the opinion is supported by
5			facts sufficient to satisfy the requirements of
6			Fed.R.Civ.P. 56(e). It is not enough to
7			simply opine; the factual basis must be
8			stated."); United States v. Various Slot
9			Machines on Guam, 658 F.2d 697, 700 (9th
10			Cir. 1981) ("[I]n the context of a motion for
11			summary judgment, an expert must back up
12			his opinion with specific facts."); therefore,
13			this evidence is the sort of "speculation and
14			conjecture" rejected by the courts.
15			
16	22.	Professor Gundlach cites evidence of	This fact is neither material, nor is the
17		individual consumers acknowledging that	underlying evidence significantly probative
18		they have purchased firearms on impulse.	on the critical issue in the case: Whether
19			Section 26820 directly and materially limits
20			impulse buys and in turn leads to materially
21			less handgun crime and violence. See
22			Anderson v. Liberty Lobby, Inc., 477 U.S.
23			242, 248 (1986) ("the materiality
24			determination rests on the substantive law,
25			[and] it is the substantive law's
26			identification of which facts are critical and
27			which facts are irrelevant that governs.").
28			Professor Gundlach has not identified any

1 evidence of impulse purchases of firearms 2 that were triggered by the sort on-premises 3 advertising that is at issue here; therefore, 4 this evidence is the sort of "speculation and 5 conjecture" rejected by the courts. 6 7 Furthermore, Professor Gundlach's opinion 8 lacks sufficient evidentiary support to 9 warrant summary judgment. See Yocom v. 10 Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert 11 testimony is admissible on summary 12 judgment only if the opinion is supported by 13 facts sufficient to satisfy the requirements of 14 Fed.R.Civ.P. 56(e). It is not enough to 15 simply opine; the factual basis must be 16 stated."); United States v. Various Slot 17 Machines on Guam, 658 F.2d 697, 700 (9th 18 Cir. 1981) ("[I]n the context of a motion for 19 summary judgment, an expert must back up 20 his opinion with specific facts."). 21 22 23. Professor Gundlach has offered an opinion The underlying evidence of this opinion is 23 that "limitations on the use of on-premise not significantly probative on the critical 24 signage and graphics like those set forth in issue in the case: Whether Section 26820 25 Section 26820 act as a constraint and directly and materially limits impulse buys 26 impediment to the impulse purchase of a and in turn leads to materially less handgun 27 handgun that would otherwise be induced crime and violence. See Anderson v. 28 by such on-premise signage and graphics," Liberty Lobby, Inc., 477 U.S. 242, 248

1 and that "[i]t is precisely in the way 2 described by these researchers that Section 3 26820 may be reasonably described to act as 4 a constraint and impediment to the impulse 5 purchase of a handgun that would otherwise 6 be induced by on-premise signage and 7 graphics." 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 24. Professor Gundlach discusses research that

(1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). Professor Gundlach has not identified any evidence of impulse purchases of firearms that were triggered by the sort on-premises advertising that is at issue here; therefore, this evidence is the sort of "speculation and conjecture" rejected by the courts.

Furthermore, Professor Gundlach's opinion lacks sufficient evidentiary support to warrant summary judgment. See Yocom v. Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert testimony is admissible on summary judgment only if the opinion is supported by facts sufficient to satisfy the requirements of Fed.R.Civ.P. 56(e). It is not enough to simply opine; the factual basis must be stated."); United States v. Various Slot Machines on Guam, 658 F.2d 697, 700 (9th Cir. 1981) ("[I]n the context of a motion for summary judgment, an expert must back up his opinion with specific facts.").

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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."

underlying evidence significantly probative on the critical issue in the case: Whether Section 26820 directly and materially limits impulse buys and in turn leads to materially less handgun crime and violence. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). Professor Gundlach has not identified any evidence of impulse purchases of firearms that were triggered by the sort on-premises advertising that is at issue here; therefore, this evidence is the sort of "speculation and conjecture" rejected by the courts.

Furthermore, Professor Gundlach's opinion lacks sufficient evidentiary support to warrant summary judgment. *See Yocom v. Cole*, 904 F.2d 711 (9th Cir. 1990) ("Expert testimony is admissible on summary judgment only if the opinion is supported by facts sufficient to satisfy the requirements of Fed.R.Civ.P. 56(e). It is not enough to simply opine; the factual basis must be stated."); *United States v. Various Slot*

		Machines on Guam, 658 F.2d 697, 700 (9th
		Cir. 1981) ("[I]n the context of a motion for
		summary judgment, an expert must back up
		his opinion with specific facts.").
25.	Professor Gundlach has offered an opinion	The underlying evidence of this opinion is
	that situational variables, including the	not significantly probative on the critical
	types of signs and graphics displayed and	issue in the case: Whether Section 26820
	posted by Plaintiffs and addressed in Penal	directly and materially limits impulse buys
	Code section 26820, together with	and in turn leads to materially less handgun
	dispositional variables on the part of	crime and violence. See Anderson v.
	individuals, offer the greatest explanation	Liberty Lobby, Inc., 477 U.S. 242, 248
	for the tendency of consumers to engage in	(1986) ("the materiality determination rests
	an impulse purchase.	on the substantive law, [and] it is the
		substantive law's identification of which
		facts are critical and which facts are
		irrelevant that governs."). Professor
		Gundlach has not identified any evidence of
		impulse purchases of firearms that were
		triggered by the sort on-premises
		advertising that is at issue here; therefore,
		this evidence is the sort of "speculation and
		conjecture" rejected by the courts.
		Furthermore, Professor Gundlach's opinion
		lacks sufficient evidentiary support to
		warrant summary judgment. See Yocom v.
		Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert
	25.	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

testimony is admissible on summary judgment only if the opinion is supported by facts sufficient to satisfy the requirements of Fed.R.Civ.P. 56(e). It is not enough to simply opine; the factual basis must be stated."); *United States v. Various Slot Machines on Guam*, 658 F.2d 697, 700 (9th Cir. 1981) ("[I]n the context of a motion for summary judgment, an expert must back up his opinion with specific facts.").

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."

The underlying evidence of this opinion is not significantly probative on the critical issue in the case: Whether Section 26820 directly and materially limits impulse buys and in turn leads to materially less handgun crime and violence. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). Professor Gundlach has not identified any evidence of impulse purchases of firearms that were triggered by the sort on-premises advertising that is at issue here; therefore, this evidence is the sort of "speculation and

1 conjecture" rejected by the courts. 2 3 Furthermore, Professor Gundlach's opinion 4 lacks sufficient evidentiary support to 5 warrant summary judgment. See Yocom v. 6 Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert 7 testimony is admissible on summary 8 judgment only if the opinion is supported by 9 facts sufficient to satisfy the requirements of 10 Fed.R.Civ.P. 56(e). It is not enough to 11 simply opine; the factual basis must be 12 stated."); United States v. Various Slot 13 Machines on Guam, 658 F.2d 697, 700 (9th 14 Cir. 1981) ("[I]n the context of a motion for 15 summary judgment, an expert must back up 16 his opinion with specific facts."). 17 18 27. Professor Gundlach has offered an opinion The underlying evidence of this opinion is 19 that "based on the analysis of decades of not significantly probative on the critical 20 issue in the case: Whether Section 26820 empirical research, . . . it is reasonable to 21 conclude that limitations placed on the use directly and materially limits impulse buys 22 of marketing stimuli in the retail and in turn leads to materially less handgun 23 environment and involving visually crime and violence. See Anderson v. 24 appealing on-premise signs and graphics of Liberty Lobby, Inc., 477 U.S. 242, 248 25 the type proscribed by Section 26820, (1986) ("the materiality determination rests 26 reduce the impulse purchase of handguns by on the substantive law, [and] it is the 27 consumers predisposed to purchase them." substantive law's identification of which 28 he substantiates the connections he makes facts are critical and which facts are

1		between empirical research and section	irrelevant that governs."). Professor
2		26820 by checking them against the	Gundlach has not identified any evidence of
3		theoretical research on impulse buying.	impulse purchases of firearms that were
4			triggered by the sort on-premises
5			advertising that is at issue here; therefore,
6			this evidence is the sort of "speculation and
7			conjecture" rejected by the courts.
8			
9			Furthermore, Professor Gundlach's opinion
10			lacks sufficient evidentiary support to
11			warrant summary judgment. See Yocom v.
12			Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert
13			testimony is admissible on summary
14			judgment only if the opinion is supported by
15			facts sufficient to satisfy the requirements of
16			Fed.R.Civ.P. 56(e). It is not enough to
17			simply opine; the factual basis must be
18			stated."); United States v. Various Slot
19			Machines on Guam, 658 F.2d 697, 700 (9th
20			Cir. 1981) ("[I]n the context of a motion for
21			summary judgment, an expert must back up
22			his opinion with specific facts.").
23			
24	28.	Professor Mann has offered an opinion that	Undisputed.
25		impulsive Personality traits increase the risk	
26		of suicide.	
27			
28	29.	Professor Mann supports his opinion by	Undisputed.
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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 fix for their emotional pain by making a suicide attempt."

30. Professor Mann has offered an opinion that the availability of a firearm, particularly a handgun, in the home increases the risk of suicide for impulsive individuals.

This fact is neither material, nor is the underlying evidence significantly probative on the critical issue in the case: Whether Section 26820 directly and materially limits impulse buys and in turn leads to materially less handgun crime and violence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). Rather, this appears to be offered in support of the general notion

1			that "less handguns means less crime and
2			violence," which the Court has stated is
3			not the relevant inquiry.
4			
5			Further, by failing to draw a connection
6			between the sign ban and this opinion,
7			Dr. Mann is engaging in the sort of
8			"speculation and conjecture" rejected by the
9			courts.
10			
11	31.	To support his conclusion that the	This fact is neither material, nor is the
12		availability of a firearm, particularly a	underlying evidence significantly probative
13		handgun, in the home increases the risk of	on the critical issue in the case: Whether
14		suicide for impulsive individuals, Professor	Section 26820 directly and materially limits
15		Mann cites an article he co-authored on	impulse buys and in turn leads to materially
16		firearms and suicide prevention that was	less handgun crime and violence. See
17		recently published in the American Journal	Anderson v. Liberty Lobby, Inc., 477 U.S.
18		of Psychiatry.	242, 248 (1986) ("the materiality
19			determination rests on the substantive law,
20			[and] it is the substantive law's
21			identification of which facts are critical and
22			which facts are irrelevant that governs.").
23			Rather, this appears to be offered in
24			support of the general notion that "less
25			handguns means less crime and violence,"
26			which the Court has stated is not the
27			relevant inquiry.
28			

1			Furthermore, Professor Mann's opinion
2			lacks sufficient evidentiary support to
3			warrant summary judgment. See Yocom v.
4			Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert
5			testimony is admissible on summary
6			judgment only if the opinion is supported by
7			facts sufficient to satisfy the requirements of
8			Fed.R.Civ.P. 56(e). It is not enough to
9			simply opine; the factual basis must be
10			stated."); United States v. Various Slot
11			Machines on Guam, 658 F.2d 697, 700 (9th
12			Cir. 1981) ("[I]n the context of a motion for
13			summary judgment, an expert must back up
14			his opinion with specific facts.").
15			
16	32.	Professor Mann reports that "[s]uicidal	This fact is neither material, nor is the
17		behavior is generally impulsive and 70% of	underlying evidence significantly probative
18		suicide attempters act less than one hour	on the critical issue in the case: Whether
19		after deciding to kill themselves"	Section 26820 directly and materially limits
20			impulse buys and in turn leads to materially
21			less handgun crime and violence. See
22			Anderson v. Liberty Lobby, Inc., 477 U.S.
23			242, 248 (1986) ("the materiality
24			determination rests on the substantive law,
25			[and] it is the substantive law's
26			identification of which facts are critical and
27			which facts are irrelevant that governs.").
28			

33. Professor Mann cites social science research showing that the firearm suicide rate decreases as the firearm ownership rate decreases and that states with higher firearm ownership have higher firearm suicide rates but comparable non-firearm suicide rates.

Furthermore, Professor Mann's opinion lacks sufficient evidentiary support to warrant summary judgment. *See Yocom v. Cole*, 904 F.2d 711 (9th Cir. 1990) ("Expert testimony is admissible on summary judgment only if the opinion is supported by facts sufficient to satisfy the requirements of Fed.R.Civ.P. 56(e). It is not enough to simply opine; the factual basis must be stated."); *United States v. Various Slot Machines on Guam*, 658 F.2d 697, 700 (9th Cir. 1981) ("[I]n the context of a motion for summary judgment, an expert must back up his opinion with specific facts.").

This fact is neither material, nor is the underlying evidence significantly probative on the critical issue in the case: Whether Section 26820 directly and materially limits impulse buys and in turn leads to materially less handgun crime and violence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). Rather, this appears to be offered in

1			support of the general notion that "less
2			handguns means less crime and violence,"
3			which the Court has stated is not the
4			relevant inquiry.
5			
6			Furthermore, Professor Mann's opinion
7			lacks sufficient evidentiary support to
8			warrant summary judgment. See Yocom v.
9			Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert
10			testimony is admissible on summary
11			judgment only if the opinion is supported by
12			facts sufficient to satisfy the requirements of
13			Fed.R.Civ.P. 56(e). It is not enough to
14			simply opine; the factual basis must be
15			stated."); United States v. Various Slot
16			Machines on Guam, 658 F.2d 697, 700 (9th
17			Cir. 1981) ("[I]n the context of a motion for
18			summary judgment, an expert must back up
19			his opinion with specific facts.").
20			
21	34.	Professor Mann has offered an opinion that	The underlying evidence of this opinion is
22		suicide attempts using a firearm is more	not significantly probative on the critical
23		often fatal than any of the other means of	issue in the case: Whether Section 26820
24		suicide that are amongst those in the top ten	directly and materially limits impulse buys
25		most frequently used methods.	and in turn leads to materially less handgun
26			crime and violence. See Anderson v.
27			Liberty Lobby, Inc., 477 U.S. 242, 248
28			(1986) ("the materiality determination rests

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1			on the substantive law, [and] it is the
2			substantive law's identification of which
3			facts are critical and which facts are
4			irrelevant that governs."). Rather, this
5			appears to be offered in support of the
6			general notion that "less handguns means
7			less crime and violence," which the Court
8			has stated is not the relevant inquiry.
9			
10			Furthermore, Professor Mann's opinion
11			lacks sufficient evidentiary support to
12			warrant summary judgment. See Yocom v.
13			Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert
14			testimony is admissible on summary
15			judgment only if the opinion is supported by
16			facts sufficient to satisfy the requirements of
17			Fed.R.Civ.P. 56(e). It is not enough to
18			simply opine; the factual basis must be
19			stated."); United States v. Various Slot
20			Machines on Guam, 658 F.2d 697, 700 (9th
21			Cir. 1981) ("[I]n the context of a motion for
22			summary judgment, an expert must back up
23			his opinion with specific facts.").
24			
25	35.	Professor Mann has offered an opinion that	The underlying evidence of this opinion is
26		prevention of firearm suicide requires	not significantly probative on the critical
27		multiple different strategies because the	issue in the case: Whether Section 26820
28		factors involved are complex and one	directly and materially limits impulse buys

1		strategy is insufficient.	and in turn leads to materially less handgun
2			crime and violence. See Anderson v.
3			Liberty Lobby, Inc., 477 U.S. 242, 248
4			(1986) ("the materiality determination rests
5			on the substantive law, [and] it is the
6			substantive law's identification of which
7			facts are critical and which facts are
8			irrelevant that governs.").
9			
10			Furthermore, Professor Mann's opinion
11			lacks sufficient evidentiary support to
12			warrant summary judgment. See Yocom v.
13			Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert
14			testimony is admissible on summary
15			judgment only if the opinion is supported by
16			facts sufficient to satisfy the requirements of
17			Fed.R.Civ.P. 56(e). It is not enough to
18			simply opine; the factual basis must be
19			stated."); United States v. Various Slot
20			Machines on Guam, 658 F.2d 697, 700 (9th
21			Cir. 1981) ("[I]n the context of a motion for
22			summary judgment, an expert must back up
23			his opinion with specific facts.").
24			
25	36.	Counsel for the State has asked Professor	The underlying evidence of this opinion is
26		Mann to give an opinion on what he thinks	not significantly probative on the critical
27		would happen to suicide rates assuming that	issue in the case: Whether Section 26820
28		invalidation of California Penal Code	directly and materially limits impulse buys
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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.

and in turn leads to materially less handgun crime and violence. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) ("the materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). Rather, this appears to be offered in support of the general notion that "less handguns means less crime and violence," which the Court has stated is not the relevant inquiry. And by failing to draw a connection between the sign ban and this opinion, Dr. Mann is engaging in the sort of "speculation and conjecture" rejected by the courts.

Furthermore, Professor Mann's opinion lacks sufficient evidentiary support to warrant summary judgment. *See Yocom v. Cole*, 904 F.2d 711 (9th Cir. 1990) ("Expert testimony is admissible on summary judgment only if the opinion is supported by facts sufficient to satisfy the requirements of Fed.R.Civ.P. 56(e). It is not enough to simply opine; the factual basis must be stated."); *United States v. Various Slot*

1			Machines on Guam, 658 F.2d 697, 700 (9th
2			Cir. 1981) ("[I]n the context of a motion for
3			summary judgment, an expert must back up
4			his opinion with specific facts.").
5	_		
6	37.	Professor Mann bases this opinion on the	The underlying evidence of this opinion is
7		relationship between firearm availability	not significantly probative on the critical
8		and firearm suicide and impulsive people's	issue in the case: Whether Section 26820
9		increased risk for suicide.	directly and materially limits impulse buys
10			and in turn leads to materially less handgun
11			crime and violence. See Anderson v.
12			Liberty Lobby, Inc., 477 U.S. 242, 248
13			(1986) ("the materiality determination rests
14			on the substantive law, [and] it is the
15			substantive law's identification of which
16			facts are critical and which facts are
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18			appears to be offered in support of the
19			general notion that "less handguns means
20			less crime and violence," which the Court
21			has stated is not the relevant inquiry.
22			And by failing to draw a connection
23			between the sign ban and this opinion,
24			Dr. Mann is engaging in the sort of
25			"speculation and conjecture" rejected by the
26			courts.
27			
28			Furthermore, Professor Mann's opinion

lacks sufficient evidentiary support to 2 warrant summary judgment. See Yocom v. 3 Cole, 904 F.2d 711 (9th Cir. 1990) ("Expert 4 testimony is admissible on summary 5 judgment only if the opinion is supported by 6 facts sufficient to satisfy the requirements of 7 Fed.R.Civ.P. 56(e). It is not enough to 8 simply opine; the factual basis must be 9 stated."); United States v. Various Slot 10 Machines on Guam, 658 F.2d 697, 700 (9th 11 Cir. 1981) ("[I]n the context of a motion for 12 summary judgment, an expert must back up 13 his opinion with specific facts."). 14 15 16 BENBROOK LAW GROUP, PC Dated: February 2, 2017 17 By s/Stephen M. Duvernay 18 STEPHEN M. DUVERNAY Attorneys for Plaintiffs 19 20 21 22 23 24 25 26 27 28